

Notice of Meeting and Agenda



Local Review Body

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

Date: Tuesday, 05 March 2019

Time: 13:00

Director, Resources

Contact:

Clerk Name: Mike Broadway

Clerk Telephone: 0131 271 3160

Clerk Email: mike.broadway@midlothian.gov.uk

Further Information:

This is a meeting which is open to members of the public.

Recording Notice: Please note that this meeting will be recorded. The recording will be publicly available following the meeting. The Council will comply with its statutory obligations under the Data Protection Act 1998 and the Freedom of Information (Scotland) Act 2002.

1 Welcome, Introductions and Apologies

2 Order of Business

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

3 Declaration of Interest

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

4 Minute of Previous Meeting

Minute of Meeting of 14 January 2019 3 - 6

5 Public Reports

5.1 Notice of Review - 36 Cowden Crescent, Dalkeith - Determination Report 7 - 20

5.2 Notice of Review - Land at Sainsburys, Loanhead - Determination Report 21 - 82

5.3 Notice of Review - Land at 39 The Brae, Auchendinny, Penicuik - Determination Report 83 - 100

6 Private Reports

None

7 Date of Next Meeting

The next meeting will be held on 16 April 2019 at 1.00 pm

Plans and papers relating to the applications on this agenda can also be viewed online at www.midlothian.gov.uk.

Minute of Meeting



Local Review Body

Date	Time	Venue
14 January 2019	1.00pm	Council Chambers, Midlothian House, Buccleuch Street, Dalkeith

Present:

Councillor Imrie (Chair)	Councillor Alexander
Councillor Curran	Councillor Milligan
Councillor Muirhead	Councillor Smail

1 Apologies

Apologies for absence were received from Councillors Baird, Cassidy, Lay-Douglas and Munro.

2 Order of Business

The order of business was confirmed as outlined in the agenda that had been previously circulated.

3 Declarations of interest

No declarations of interest were received.

4 Minutes of Previous Meetings

The Minutes of Meeting of 27 November 2018 was submitted and approved as a correct record.

5 Reports

Agenda No	Report Title	Presented by:
5.1	Decision Notice – Land Adjoining Meyerling, Howgate, Penicuik [18/00218/DPP].	Peter Arnsdorf
Executive Summary of Report		
With reference to paragraph 5.3 of the Minutes of 27 November 2018, there was submitted a copy of the Local Review Body decision notice dismissing a review request from Shona Mackay, Format Design, 146 Duddingston Road West, Edinburgh seeking, on behalf of their client Mr V Crolla, a review of the decision of the Planning Authority to refuse planning permission (18/00218/DPP, refused on 1 June 2018) for the erection of four dwellinghouses; formation of access road and associated works at land adjoining Meyerling, Howgate, Penicuik and refusing planning permission.		
Decision		
To note the LRB decision notice.		

Agenda No	Report Title	Presented by:
5.2	Decision Notice – 20 Pendreich Terrace, Bonnyrigg [18/00566/DPP].	Peter Arnsdorf

Executive Summary of Report

With reference to paragraph 5.4 of the Minutes of 27 November 2018, there was submitted a copy of the Local Review Body decision notice upholding a review request from Douglas Mack, FEM Building Design, 8 Plantain Grove, Lenzie, Glasgow seeking, on behalf of their clients Mr & Mrs K Toles, a review of the decision of the Planning Authority to refuse planning permission (18/00566/DPP, refused on 10 September 2018) for the erection of single storey extension and front and rear dormer extensions at 20 Pendreich Terrace, Bonnyrigg and granting planning permission subject to conditions.

Decision

To note the LRB decision notice.

Eligibility to Participate in Debate

In considering the following items of business, only those LRB Members who had attended the site visits on Monday 14 January 2019 participated in the review process, namely Councillors Alexander, Curran, Imrie, Milligan, Muirhead and Smaill.

Agenda No	Report Title	Presented by:
5.3	Notice of Review Request Considered for the First Time – 28-30 Buccleuch Street, Dalkeith [18/00643/DPP].	Peter Arnsdorf

Executive Summary of Report

There was submitted report dated 21 December 2018 by the Director, Education, Communities and Economy, regarding an application from Stuart Hannah, Stuart Hannah Architectural Services, 9 Bonaly Brae, Edinburgh seeking, on behalf of their clients Miss A Khan, a review of the decision of the Planning Authority to refuse planning permission (18/00643/DPP, refused on 5 November 2018) for the Change of Use from Flatted Dwelling to House in Multiple Occupancy (HMO); Formation of Dormer Window and New Window Opening and Installation of Rooflights at 28 – 30 Buccleuch Street, Dalkeith

Accompanying the Notice of Review Form and supporting statement, which were appended to the report, was a copy of the report of handling thereon.

The Local Review Body had made an unaccompanied visit to the site on Monday 14 January 2019.

Summary of Discussion

Having heard from the Planning Advisor, the LRB then gave careful consideration to the merits of the case based on all the written information provided. In discussing the proposed development and the reasons for its refusal, the LRB considered the potential impact that the proposed development would have, there being some debate over the likely pressure that it would have on car parking spaces given its intended use as affordable housing for single young adults. It also being acknowledged that not all town centre properties had dedicated parking provision. With regards the proposed window layout for the street elevation, it was agreed that this was unsympathetic to the character of the building and would require to be addressed in the event that consent was granted.

After further discussion, Councillor Smaill, seconded by Councillor Curran, moved that on balance given the particular circumstance involved, to uphold the review request, and grant planning permission subject to the proposed condition contained in the Director, Education, Communities and Economy's report.

As an amendment, Councillor Milligan, seconded by Councillor Muirhead, moved to dismiss the review request, and uphold the decision to refuse planning permission for the reasons detailed in the case officer's report.

On a vote being taken, two Members voted for the amendment and three for the motion, which accordingly became the decision of the meeting.

Decision

The LRB agreed to grant planning permission for the following reason:

The proposed house of multiple occupancy (HMO) is located in a town centre location, close to amenities and public transport services, and as such the overriding need for housing, of different tenures, and its compatibility with the neighbouring uses outweighs concerns over the lack of car parking provision.

subject to the following condition:

1. The layout of the rooflights on the proposed north elevation is not approved. Prior to development commencing a scaled plan showing a revised layout of the rooflights shall be submitted to and approved in writing by the planning authority. Development thereafter shall comply with the approved revised plan.

Reason: *To safeguard the character of the conservation area.*

Action

Planning Manager

The meeting terminated at 1.09 pm.



Notice of Review: 36 Cowden Crescent, Dalkeith

Determination Report

Report by Dr Mary Smith Director of Education, Communities and Economy

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 formation of driveway and erection of retaining walls at 36 Cowden Crescent, Dalkeith.

2 Background

- 2.1 Planning application 18/00750/DPP for the formation of driveway and erection of retaining walls at 36 Cowden Crescent, Dalkeith was refused planning permission on 6 November 2018; 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, issued on 6 November 2018 (Appendix D); and
 - A copy of the relevant drawings/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 agreed by the LRB, the LRB by agreement of the Chair:
- Have scheduled an accompanied site visit for Tuesday 5 March 2019; and
 - Have determined to progress the review by way of a hearing.

- 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 the 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 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.

1. Details of the material, height and design of any safety barriers proposed on top of the retaining walls shall be submitted to the planning authority and they shall not be installed until these details have been approved in writing by the planning authority.

Reason: *To safeguard the character of the application property and the visual amenity of the surrounding area.*

2. Details of the height, materials and design of any gates to be installed at the vehicular entrance shall be submitted to the planning authority and the gates shall not be installed until these details have been approved in writing by the planning authority.

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

3. Any gates to the vehicular access shall be so designed and installed so as to only open inwards.

Reason: *To ensure gates do not open over the pavement: to ensure no hazard is caused to pedestrians using the footway.*

4. Prior to the driveway being brought into use a dropped kerb footway crossing shall be constructed at the vehicle entrance.

Reason: *In the interest of road safety and the free flow of traffic.*

5. The driveway shall be made of porous materials or provision made to direct run off water to a permeable or porous area or surface within the curtilage of the dwelling house.

Reason: *In order to minimise flooding and pollution of water courses.*

6 Recommendations

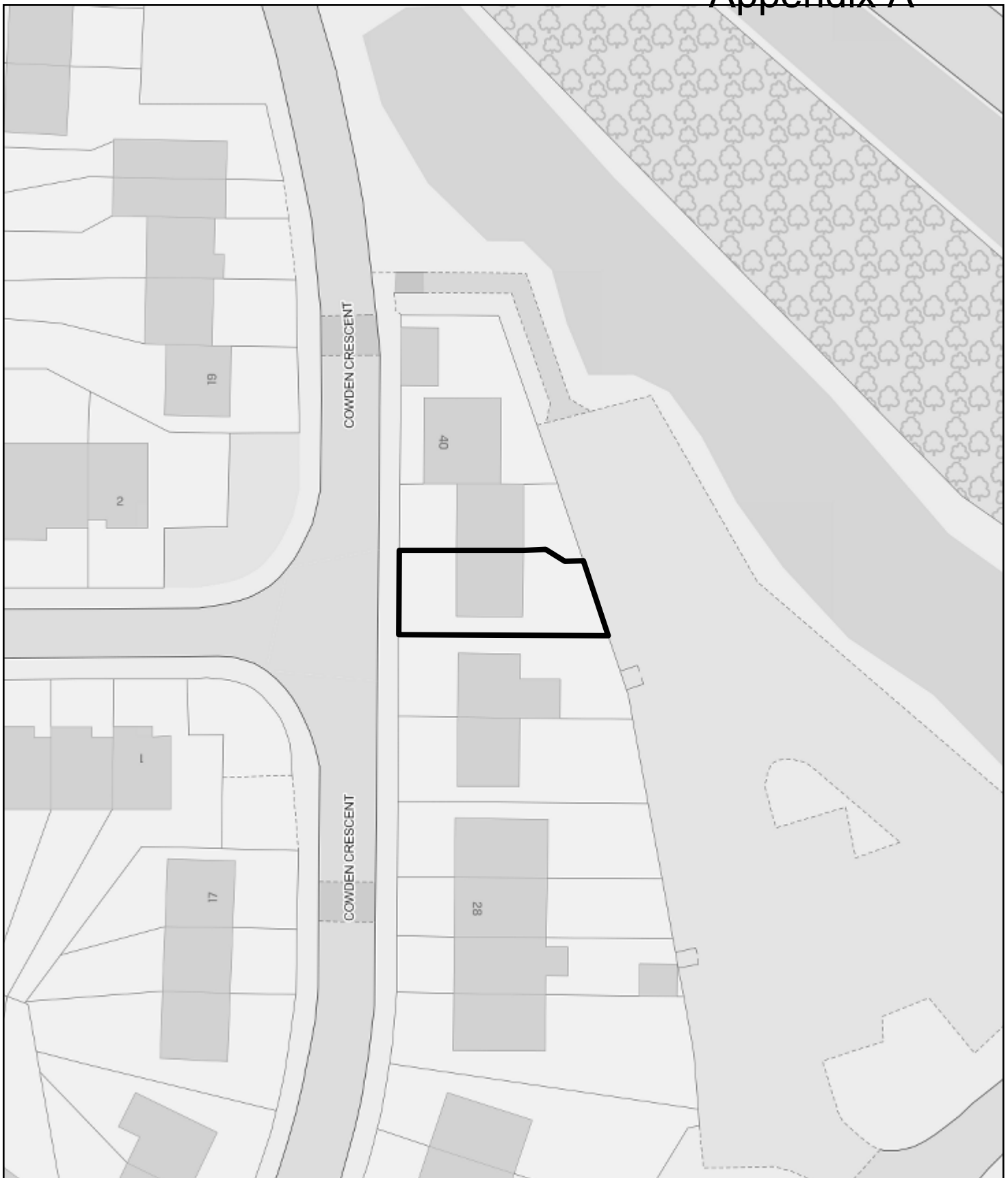
- 6.1 It is recommended that the LRB:
 - a) determine the review; and
 - b) the planning advisor draft and issue the decision of the LRB through the Chair

Date: 26 February 2019

Report Contact: Peter Arnsdorf, Planning Manager (LRB Advisor)
peter.arnsdorf@midlothian.gov.uk

Tel No: 0131 271 3310

Background Papers: Planning Application File 18/00750/DPP



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

Formation of driveway and erection of associated retaining walls at 36 Cowden Crescent, Dalkeith

Reproduced from the Ordnance Survey map with the permission of the controller of Her Majesty's Stationary Office. Crown copyright reserved. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings

Midlothian Council Licence No. 100023416 (2019)

File No. 18/00750/DPP

Scale: 1:500
Page 10 of 100



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 of Delegation and Local Review Procedure) (SCOTLAND)
Regulations 2013

The Town and Country Planning (Appeals) (SCOTLAND) Regulations 2013

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://www.eplanning.scot>**

1. Applicant's Details

Title	MRS
Forename	CAROLINE
Surname	MORFAT
Company Name	
Building No./Name	36
Address Line 1	Cowden Crescent
Address Line 2	Dalkeith
Town/City	midlothian
Postcode	EH22 2HN
Telephone	0781 787777
Mobile	
Fax	
Email	

2. Agent's Details (If any)

Ref No.	
Forename	
Surname	
Company Name	
Building No./Name	
Address Line 1	
Address Line 2	
Town/City	
Postcode	
Telephone	
Mobile	
Fax	
Email	

3. Application Details

Planning authority	
Planning authority's application reference number	

Site address

36 Cowden Crescent Dalkeith EH22 2HN

Description of proposed development

double driveway

Date of application

2/10/18

Date of decision (if any)

6/11/18

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



Page 12 of 100

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.

A hearing would be beneficial to enable the issues in the statement could be investigated. To enable clarification of why other residents have drawn either the same size or less than I have requested

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?



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

All information included in original application

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:

[Redacted Signature]

Name:

[Redacted Name]

Date:

16/1/19

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

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.

1. There is precedent in the Council of driveways of similar dimensions
2. MLC removed parking at the rear of the property to accommodate housing.
3. Husband had serious heart attack and there is limited parking in the street for emergency vehicles
4. By building a driveway I will be removing car from the road.

Page 14 of 100

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 you 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.

MIDLOTHIAN COUNCIL

DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

Planning Application Reference: 18/00750/dpp

Site Address: 36 Cowden Crescent, Dalkeith

Site Description:

The application property comprises an end terrace two storey dwellinghouse finished in drydash render with a brick (painted black) basecourse. The garden and house sit at an elevated level by approximately 0.9m above the pavement level.

Proposed Development:

Formation of driveway and erection of associated retaining walls

Proposed Development Details:

It is proposed to form a driveway within the front garden. It is to be surfaced in block paving. The works include lowering the level of the front garden to provide a driveway level with the pavement with 0.9m high brick retaining walls. The submitted details are annotated that the proposed driveway is to be 4.3m long and 9m wide with concrete steps leading up to the house in the middle.

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

History sheet checked.

Consultations:

Policy and Road Safety Manager –no objection in principle to the formation of driveways at this location however not supportive of application in its present form. The substandard length at 4.3m may result in parked vehicles overhanging and obstructing the public footway, resulting in pedestrians being required to walk on the carriageway. This is clearly undesirable and would not be in the interests of improving road safety.

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.

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 proposal will not have a significant impact on the visual amenity of the area. The retaining wall would be more in keeping with the predominant finish on the house if it was rendered to match. However there is a small brick wall and reconstituted stone wall within neighbouring front gardens. Also a 1m high boundary wall could be erected along the site frontage without requiring planning permission from the Council.

However a major issue in the consideration of the application is road safety. The proposed length of the driveway at 4.3m is much less than the standard 6m and may result in parked vehicles overhanging and obstructing the public footway, resulting in pedestrians being required to walk on the carriageway. This is clearly undesirable and would not be in the interests of improving road safety. It has not been demonstrated to the satisfaction of the Planning Authority that a driveway could be accommodated at the application site without a detrimental impact on road safety.

Recommendation:

Refuse planning permission



Refusal of Planning Permission

Town and Country Planning (Scotland) Act 1997

Reg. No. 18/00750/DPP

Mrs Caroline Moffat
36 Cowden Crescent
Dalkeith
EH22 2HN

Midlothian Council, as Planning Authority, having considered the application by Mrs Caroline Moffat, 36 Cowden Crescent, Dalkeith, EH22 2HN, which was registered on 2 October 2018 in pursuance of their powers under the above Acts, hereby **refuse** permission to carry out the following proposed development:

Formation of driveway and erection of associated retaining walls at 36 Cowden Crescent, Dalkeith, EH22 2HN

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	02.10.2018
Site Plan		02.10.2018
Illustration/Photograph		02.10.2018
Illustration/Photograph		02.10.2018

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

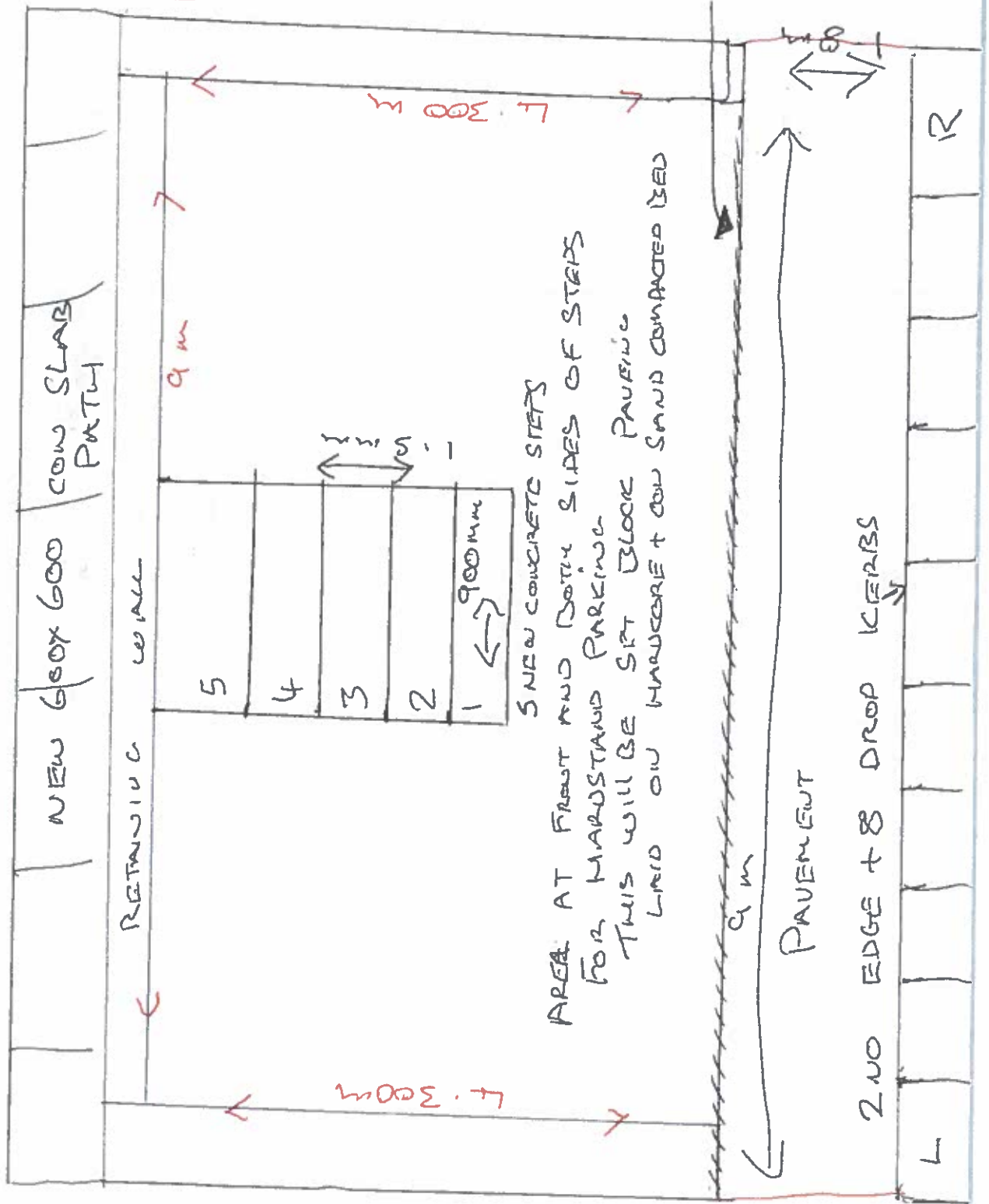
The proposed length of the driveway at 4.3m may result in parked vehicles overhanging and obstructing the public footway, resulting in pedestrians being required to walk on the carriageway. It has not been demonstrated to the satisfaction of the Planning Authority that a driveway could be accommodated at the application site without a detrimental impact on road safety.

Dated 6 / 11 / 2018

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

Appendix E

W
S
C
O
H



RE:

WALL
WILL BE BUILT
WITH A
9" DOUBLE SIC
FACE BRICK
WALL
9'0" x 4'300"
BY 900mm
HIGH

Fence removed
and left
open for
access

12

Red line boundary indicates retaining walls



L

Red Line indicates boundary of retaining walls



steps removed and moved back as per site plan



Notice of Review: Land at Sainsburys Supermarket, Straiton Mains, Loanhead

Determination Report

Report by Dr Mary Smith Director of Education, Communities and Economy

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' to amend condition 2 of planning permission 18/00134/DPP at Sainsburys Supermarket, Straiton Mains, Loanhead.

2 Background

- 2.1 Planning application 18/00134/DPP for the erection of extension to building and erection of fence at Sainsburys Supermarket, Straiton Mains, Loanhead was granted permission in April 2018 subject to a landscaping condition (condition 2):
2. The scheme of landscaping required in condition 1d) shall include replacement planting for the trees to be removed and also screen planting along the south western area of the fence as shown in green on approved drawing number CHQ.18.12447-PL0005.
- 2.2 Planning application 18/00747/S42 to amend condition 2 of planning permission 18/00134/DPP, to not include landscaping along the south western area of the fence, was refused planning permission on 12 November 2018; a copy of the decision is attached to this report.
- 2.3 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, issued on 12 November 2018 (Appendix D); and
 - A copy of the relevant drawings/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 agreed by the LRB, the LRB by agreement of the Chair:
- Have scheduled an unaccompanied site visit for Tuesday 5 March 2019; and
 - Have determined to progress the review by way of written submissions.
- 4.2 The case officer's report identified that there were no consultations required and one representation received. As part of the review process the interested party was notified of the review. An additional comment has been received and has been made available on the case file. The comment reinforces the concerns set out in the representations section of the officer's report of handling. All the 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 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 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.

6 Recommendations

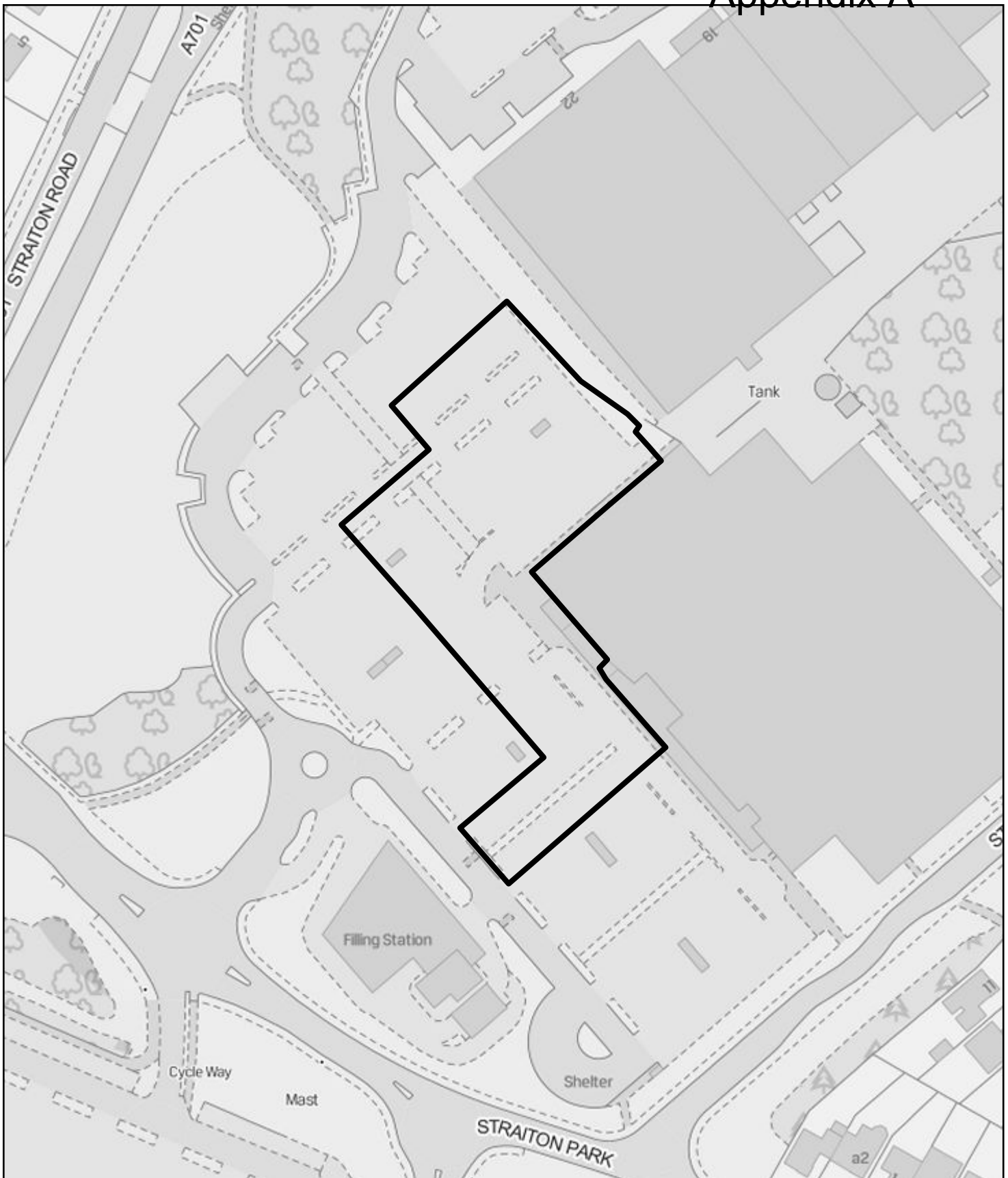
- 6.1 It is recommended that the LRB:
- a) determine the review; and
 - b) the planning advisor draft and issue the decision of the LRB through the Chair

Date: 26 February 2019

Report Contact: Peter Arnsdorf, Planning Manager (LRB Advisor)
peter.arnsdorf@midlothian.gov.uk

Tel No: 0131 271 3310

Background Papers: Planning Application File 18/00747/S42



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

Section 42 application to amend condition 2 of planning permission 18/00134/DPP (to allow development without requirement of screen planting along southwestern area of fence) at Sainsburys Supermarket, Straiton Mains, Loanhead

Reproduced from the Ordnance Survey map with the permission of the controller of Her Majesty's Stationary Office. Crown copyright reserved. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings

Midlothian Council Licence No. 100023416 (2019)

File No. 18/00747/S42

Scale: 1:1,250
Page 24 of 100



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 100148465-001

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

Agent Details

Please enter Agent details

Company/Organisation: WYG Planning

Ref. Number:

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

First Name: *

Building Name:

Last Name: *

Building Number:

Telephone Number: *

Address 1 (Street): *

Extension Number:

Address 2:

Mobile Number:

Town/City: *

Fax Number:

Country: *

Postcode: *

Email Address: *

Is the applicant an individual or an organisation/corporate entity? *

☐ Individual ☒ Organisation/Corporate entity

Applicant Details

Please enter Applicant details

Title:	Other	You must enter a Building Name or Number, or both: *	
Other Title:		Building Name:	Beech Building
First Name: *		Building Number:	
Last Name: *		Address 1 (Street): *	Ansty Park
Company/Organisation	Sainsbury's Supermarkets Limited	Address 2:	
Telephone Number: *		Town/City: *	Coventry
Extension Number:		Country: *	United Kingdom
Mobile Number:		Postcode: *	CV7 9RD
Fax Number:			
Email Address: *			

Site Address Details

Planning Authority:	Midlothian Council
Full postal address of the site (including postcode where available):	
Address 1:	SAINSBURYS SUPERMARKET
Address 2:	STRAITON MAINS
Address 3:	
Address 4:	
Address 5:	
Town/City/Settlement:	LOANHEAD
Post Code:	EH20 9PW

Please identify/describe the location of the site or sites

--	--

Northing	666135	Easting	327275
----------	--------	---------	--------

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)

Section 42 application to amend condition 2 of planning permission 18/00134/DPP (to allow development without requirement of screen planting along southwestern area of fence)

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.

Please see the enclosed Appeal Statement.

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)

- Review Statement and appendices; - Site and Contextual Photographs (within Statement appendices); - Full Application Correspondence (within Statement appendices); - The Council's Decision Notice; - Site Location Plan; and - Copy of Submitted Application Package.

Application Details

Please provide details of the application and decision.

What is the application reference number? *

18/00747/S42

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

03/10/2018

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

12/11/2018

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

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

Please select a further procedure *

By means of inspection of the land to which the review relates

Please explain in detail in your own words why this further procedure is required and the matters set out in your statement of appeal it will deal with? (Max 500 characters)

Gain an understanding of the wider setting of site.

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? *

Page 28 of 100 ☒ 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: Miss Hannah Munro

Declaration Date: 18/01/2019



APPEAL STATEMENT

Client: Sainsbury's Supermarkets Ltd

Proposal: Section 42 application to amend condition 2 of planning permission 18/00134/DPP (to allow development without requirement of screen planting along southwestern area of fence)

Site: Sainsbury's Supermarket, Straiton Mains, Loanhead, EH20 9PW

Date: January 2019

Ref: NE3793/A107381



Document control

Document	Planning Statement		
Project:	Section 42 application to amend condition 2 of planning permission 18/00134/DPP (to allow development without requirement of screen planting along southwestern area of fence)		
Client:	Sainsburys Supermarket		
Job Number:	NE3793/A107381		
Date:	January 2019		
Prepared by: KD/GM	Checked by: GM	Approved By: GM	



Contents

1.0	Introduction	3
2.0	Background to Appeal	4
3.0	Planning Policy and Material Considerations.....	6
4.0	Planning Analysis	14
5.0	Conclusion.....	Error! Bookmark not defined.

Appendix A – Site Location Plan

Appendix B – Site and Contextual Photographs

Appendix C – Approved Plan PL0005 from 18/00134/DPP

Appendix D - Submitted Application Package

Appendix E - Decision Notice

Appendix F – Project Correspondence

Appendix G – Delegated Officer's Report



1.0 Introduction

Scope and Purpose

- 1.1 This Local Review Statement has been prepared by WYG on behalf of our client, Sainsbury's Supermarkets Ltd. It relates to a request for a local review against Midlothian Council's decision to refuse planning permission on 12 November 2018 to amend condition 2 of planning permission 18/00134/DPP to allow development without requirement of screen planting along southwestern area of fence (known hereafter as "the condition") at the existing Sainsbury's store, Straiton Mains (known hereafter as "the site"). The consented fence (without the screen planting) has now been installed at the site.
- 1.2 The following matters are dealt within this Statement:
- Section 2 – The background to the request for the review, including the characteristics of the site, its surroundings and planning history;
 - Section 3 – The Planning Policy and Material Considerations;
 - Section 4 – Planning Analysis
 - Section 5 – Summary and Conclusions.



2.0 Background to Local Review

- 2.1 This section sets out the relevant background to the request for the review, including a description of the site and its surrounds and the relevant planning history of the site.

The Site and Surroundings

- 2.2 The site is the existing Sainsbury's store and associated car park is located within the Straiton Retail Park, which is located off A701 Straiton Road. The site is situated within Straiton Mains area of Loanhead. The store is not located within either a conservation area or within proximity to any listed buildings.
- 2.3 The Straiton Retail Park hosts a diverse range of occupiers including Boots, Nandos, Halfords and Next. The commercial nature and function of the Retail Park is described in more detail within the Midlothian Local Development Plan (2017).
- 2.4 To the north and west of the application site is the continuation of customer car parking. To the east of the site is an existing hedgerow which is retained as part of a recent service yard addition to the site of the store to facilitate a Groceries Online Hub (GOL). Further east is the Next retail store. To the south of the application site is the existing supermarket which consent ref: 18/00134/DPP applied to extend to facilitate the GOL.
- 2.5 The Sainsbury's store dates from the mid-1990s and is a modern retail unit on the retail park. The store itself comprises of white and grey masonry blockwork and a glazed entranceway on its north eastern or main elevation. There is no screen landscape planting currently on the main store building.
- 2.6 To confirm, there are no natural or cultural heritage constraints which could be affected by the proposal.
- 2.7 A Site Location Plan is attached at Appendix A.
- 2.8 Photographs of the site and surrounding context are set out at Appendix B.

Relevant Planning History

- 2.9 The planning application records for the Sainsbury's store on the Council's website date back to 2003. These applications include an extension to the existing Sainsbury's store (dated from 2009) and erection of a petrol filling station (dated from 2010). A summary of the most pertinent application is provided below.



2.10 In February 2018, an application was submitted for an extension to the existing supermarket to form a Groceries Online (GOL) distribution hub and associated works at the site (ref: 18/00134/DPP). Consent was conditionally granted on 26 April 2018 by the Council for the following reason:

"The proposed development is related to an existing established retail unit and would not have a detrimental impact on the character, appearance or amenity of the surrounding area and so complies with policies DEV2 and TRC2 of the adopted Midlothian Local Development Plan 2017."

2.11 The consent was subject to the following 4no. conditions

1. Prior to the commencement of development, the following details shall be submitted to and approved in writing by the Planning Authority:

a) Details of the materials and colour of the proposed retaining walls;

b) Details of the colour of the proposed fence;

c) Details of the proposed Click and Collect bays, including any related structures or features; and;

d) Details of a scheme of landscaping

Reason: These details were not submitted with the original application; in order to protect the visual amenity of the area.

2. The scheme of landscaping required in condition 1d) shall include replacement planting for the trees to be removed and also screen planting along the southwestern area of the fence as shown in green on approved drawing number CHO.18.12447- PL0005.

Page 35 of 100

3. The scheme of landscaping approved in accordance with condition 1d) shall be carried out and completed within six months of the yard being completed or brought into use, whichever is the earlier date. Any trees, shrubs or hedges removed, dying, severely damaged or becoming seriously diseased within five years of planting shall be replaced in the following planting season by trees of a size and species similar to those originally required.

Reason for conditions 2 and 3: To ensure the landscaping is carried out and becomes successfully established.

4. Development shall not begin until the approved temporary protective fencing is erected around all trees and hedges on the site to be retained and this shall not be removed until development



is complete. There shall be no excavation, soil removal or storage shall take place within the enclosed area.

Reason: To ensure the development does not result in the loss or damage of trees and hedges which merit retention [focus of our request for review]

Imposition of Condition 1(d) and 2

- 2.12 Condition 1 (part d) and condition 2 were added to the permission without discussion with the applicant as to whether there would be any knock-on effect of introducing landscaping. Condition 2 refers to a 'green line' on approved drawing CHQ.18.12447- PL0005, however there is no green line on approved plan PL0005 (as evidenced from the plan marked by the Council as "APPROVED 26.04.2018 18/00134/DPP, and included at Appendix X of this statement). As a point of principle, Condition 2 is incapable of being complied with because it refers to something that does not exist.
- 2.13 There is, on the Council's online system, a 'doctored' version of plan PL0005, albeit not marked as "approved". This plan was altered by the officer, without permission of the architect or applicant, and appears as if it was included as an application drawing, which it was not. It is our position that this is not acceptable. All plans submitted in relation to an application should come from the applicant or their agent. In our view, it is not within the gift of the local planning authority to alter plans without permission or to impose changes to the design – at least without discussing with the applicant first.
- 2.14 The GOL extension granted on 26 April 2018 has subsequently been constructed in accordance with the approved plans. This includes the building extension and enclosed timber secure compound.

Application Proposals

- 2.15 The application subject of this request for review was submitted to the Council on 1 October 2018 (application ref: 18/00747/S42). The application was made under Section 42 ("S42") of the Act (Town and Country Planning (Scotland) Act 1997 (as amended)) to develop land without compliance with conditions attached to an existing permission. The application sought planning permission to amend condition no.2 of application ref: 18/00134/DPP to delete the requirement for "screen planting along the southwestern area of the fence". A copy of the submitted application package can be found at Appendix D.
- 2.16 In Scottish Planning Policy (2014), the Scottish Ministers establish in paragraph 4 that one of the 'Core Values of the Planning Service' is that planning decisions should be proportionate,



and planning conditions should only be imposed where necessary. We consider that the screen planting is not necessary, when taking into account the location of the consented scheme within the non-sensitive and well-established Straiton Retail Park. The application was accompanied with robust and reasonable planning justification for why the condition did not adhere to the tests set out in Circular 4/1998.

2.17 During the course of the application, discussions took place between the case officer and WYG and no issues were raised with the S42 application to modify the condition.

2.18 The Council subsequently issued a refusal on 12 November 2018. The application was refused for the following reasons:

1. The proposed amendment of condition 2 of planning permission 18/00134/DPP would remove the requirement for planting to screen a 2.4 metre high fence at a prominent area of a supermarket car park which would have a detrimental impact on the appearance and visual amenity of the area and would therefore be contrary to the aims of policy DEV2 of the adopted Midlothian Local Development Plan 2017.

2. The fence approved in planning permission 18/00134/DPP was considered acceptable only on the basis that it would be screened by planting to limit the visual impact of the fence and yard that it surrounds.

2.19 The Council's decision notice is contained at Appendix E and full project correspondence is contained at Appendix F.

Summary

2.20 The appeal site comprises the existing Sainsbury's store and associated car park in Straiton Mains, Loanhead. The store is located within the well-established and popular Straiton Retail Park. The immediate proximity of the store is typified by retail uses.

2.21 In applying the condition, without discussion with the applicant/agent, the officer refers to an area of landscaping that was not proposed or agreed by the applicant/agent, and doctored the architect's plan without discussion or permission. No consultation with the applicant or agent as to the practicality of the landscaping strip was held.

2.22 A S42 application was submitted in October 2018 for development of the GOL consent (ref: 18/00134/DPP) without compliance with condition no.2 of the aforementioned consent. The Council subsequently refused the application on the basis that the removal of the requirement for screen planting would have a detrimental impact on the appearance and visual amenity of



the area and that therefore it was contrary to the LDP. Further, without the required screen planting, the Council claim that the fence and yard would be unacceptable in planning terms for its visual impact.



3. Planning Policy and Material Considerations

- 3.1 This section of the planning statement outlines and provides an assessment of the proposed development against the considerations set out within the Development Plan.

Planning Approach

- 3.2 Scottish Ministers state that Planning Authorities when assessing a S42 application should consider the following, as per paragraph 42 (1-2) of the Town and Country Planning (Scotland) Act 1997:

(1) This section applies, subject to subsection (4), to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.

(2) On such an application the planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and —

(a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly;

(b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.

- 3.3 The Proposed Development will also be assessed against Section 25 (1) of the Town and Country Planning (Scotland) Act 1997 (as amended). Section 25 of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning etc (Scotland) Act 2006) requires that in making a determination, the determination shall be made in accordance with the Development Plan, unless material considerations indicate otherwise. Therefore, if the development accords with the Development Plan it should be approved unless there are material considerations of sufficient weight that would indicate otherwise.
- 3.4 This is in line with the approach advocated in Circular 4/1998 'The Use of Planning Conditions in Planning Permissions'.
- 3.5 Accordingly, this section of the Statement considers requirements set out in the Development Plan context relevant to the S42 Application.

Statutory Development Plan



3.6 The statutory Development Plan for Straiton Mains currently comprises the following:

- The Midlothian Local Development Plan (LDP), adopted 7 November 2017
- The Strategic Development Plan (SDP) for Edinburgh and South-East Scotland, which was approved (with modifications) in 2013.

Midlothian Local Development Plan (2017)

3.7 Midlothian Council adopted their LDP in November 2017 following examination by the DPEA. The LDP details the development strategy for the period until 2024 and provides a policy framework to guide future development proposals for Midlothian. The LDP has been prepared in the context of the SDP and aims to, *"focus on providing for, and managing, future changes across the Council area in line with the SESplan requirements."*

3.8 The Council detail the purpose of the LDP is to (inter alia):

- set out a clear vision for shaping the future of Midlothian's communities and surrounding countryside; promote and manage sustainable growth;
- ensure the availability of infrastructure to support such growth;
- protect and mitigate against any adverse impacts of development on environmental and cultural assets;
- promote sustainable travel;
- provide a framework to guide decisions on development proposals; and
- give confidence to investors and communities alike with respect to the location of future development and investment.

Straiton Retail Park

3.9 It is important to note that the role of the Straiton Retail Park as a 'commercial centre' to, *"accommodate development serving the regional catchment which cannot be accommodated in the regional town centre or a strategic town centre, or to serve development with a primarily Midlothian catchment which cannot be accommodated in a Midlothian town centre"* (Midlothian LDP, page 31 paragraph 4.6.6). The Retail Park also supports the Council's development aspirations for the A701 Corridor as it provides a significant contribution to employment levels and enhances the retail offer available in Midlothian (Midlothian LDP, page 127 paragraph 8.3.4).



- 3.10 In terms of visual amenity, it is acknowledged by the Council that the, *"appearance of the Straiton area is dominated by the Straiton Retail Park on the east of the A701, and by the somewhat haphazard collection of uses, including Straiton Bing and the Clippens waste site, on the west. This untidy and uncoordinated presence does not reflect the important role that this area plays as key entrance to Midlothian"* (Midlothian LDP, page 128 paragraph 8.3.10)
- 3.11 The Council's Delegated Report refers to Policy DEV2 and TCR2 of the LDP.
- 3.12 Policy DEV2 of the LDP states the presumption in favour of development proposals within existing built-up areas, and in particular within residential areas, that would not materially detract from the existing amenity and character of the area.
- 3.13 Policy TCR2 of the LDP confirms, in relation to the Straiton Commercial Hub, that proposals to extend existing facilities will be supported (in principle) provided that the following criteria are met:
- A. there are no alternative sites in or on the edge of Edinburgh City Centre (where the proposed development has an anticipated catchment from across the city region); OR there are no alternative sites in, or on the edge of, Dalkeith town centre (where the proposed development has an anticipated catchment wholly or predominantly within Midlothian);*
 - B. they address a quantitative or qualitative deficiency within the catchment;*
 - C. they do not, either individually or cumulatively with other developments, undermine the vitality and viability of regional, strategic or other town centres, within the expected catchment of the proposed development; and*
 - D. they are accompanied by measures to improve the environmental quality of the commercial hub and its accessibility by public transport, walking or cycling.*
- Page 41 of 100
- 3.14 It should be noted that, in assessing policies DEV2 and TCR2 of the LDP, none of the policies expressly refer to boundary treatments or required landscaping. Whilst DEV2 relates to amenity and character concerns (which are discussed in Section 3.0 of this Statement), TCR2 is of no direct relevance to the condition and will therefore not be considered further.
- 3.15 The following other LDP policies are also pertinent to the assessment of the development proposal:
- 3.16 Policy DEV5 'Sustainability in New Development' of the LDP sets out the expectation of the Council that development proposals will follow the principles of sustainability, including (inter alia): *"building in harmony with the site including (...) utilising natural features."*



3.17 Policy DEV6 'Layout and Design of New Development' requires *"good design and a high quality of architecture"* including *"good quality materials should be used in design"*.

3.18 Policy DEV7 'Landscaping in New Development' calls for all development proposals to provide a landscaping scheme which ensures (inter alia):

A. *complement the existing landscape both within and in the vicinity of the site;*

3.19 In policy IMP1 'New Development' of the LDP states that planning conditions will be applied where development proposals require (inter alia) appropriate provision of landscaping in the short to long term.

Emerging LDP

3.20 The preparation of the next LDP2, which in time will supersede the adopted LDP, is still in its infancy. Therefore, there are no material considerations of any weight pertinent to the Proposed Development.

Strategic Development Plan – SESplan (2013)

3.21 The first SDP for the Edinburgh and South East Scotland region comprising of the City of Edinburgh, East Lothian, Fife, Midlothian, Scottish Borders and West Lothian Councils was approved (with modifications) by Scottish Ministers on the 27 June 2013. The SDP aims to, *"ensure that the City Region, underpinned by its high quality built and natural environment, continues to be internationally recognised as an outstanding area in which to live, work and do business ... Maintaining and enhancing the area's special qualities and delivering high quality, resilient places ... will be vital to ensure the future prosperity of the area."*

Supplementary Planning Documents

3.22 There are no supplementary planning documents of relevance to the Proposed Development.



Material Considerations

National Planning Guidance

Scottish Planning Policy (2014) (SPP)

- 3.23 The SPP is a Scottish Government policy statement addressing how nationally important land use planning matters should be addressed across the country.
- 3.24 One of the Scottish Ministers' 'Core Values of the Planning Service' is that local authorities should attach proportionate planning conditions only where necessary. For the reasons set out in this Statement we do not consider the condition to be necessary or proportionate, when considering the site's location within the established Straiton Retail Park.

Circular 4/1998 – The Use of Conditions in Planning Permission

- 3.25 Circular 4/1998 is a Scottish Government policy document on the use of conditions in planning permissions. Referring to Circular 4/1998, the general policy direction is:

"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.*

Page 43 of 100

- 3.26 *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. "[our emphasis]*



4. Planning Analysis

- 4.1 This section of the statement considers the acceptability of the proposal (removal of landscaping condition) in light of the prevailing development plan policies and material considerations. Due to the time taken to challenge the condition and the development programme for the Groceries Online hub, the development has already been carried out without compliance with the condition. Whilst it is regrettable that this creates an unauthorised planning situation, it does at least provide unequivocal evidence of the true effect of removing the condition.
- 4.2 In considering the appropriateness of the condition, it is important to understand the context of the area to which it relates. Whilst the requirement to provide a landscaping scheme is covered under condition 1d, it is condition 2 that attempts to justify the requirement. It reads:
- The scheme of landscaping required in condition 1d) shall include replacement planting for the trees to be removed and also screen planting along the southwestern area of the fence as shown in green on approved drawing number CHQ.18.12447- PL0005.*
- 4.3 The context of the site is a supermarket car park in an out of town location. The development of the Groceries Online Hub resulted in the loss of one tree only.
- 4.4 In terms of the Test of Reasonableness contained in Appendix A, paragraph 9 of Circular 4/1998, Midlothian Council's suggestion of positioning screen planting on part of a narrow pedestrian walkway in the active car park area leading to the click and collect facility will have an unreasonably adverse practical impact on car park operations. The imposition of the condition was done without consultation with the applicant, and condition 2 refers to a "green line" on plan PL0005 that does not exist on the approved drawing. The planning officer produced a 'doctored version' of the drawing without consultation or permission of the applicant, the architect or the agent. If we had had the opportunity of discussing this with the officer prior to the imposition of the condition, we would have been able to discuss why it was not feasible to include landscaping in this location.
- 4.5 Whilst we would accept that it is within the gift of a planning officer to request a landscaping plan, it is not, in our view, appropriate to dictate precisely where that landscaping should be without any consultation. In each case, there could be good reasons why landscaping, or indeed other changes, are not acceptable for operational, feasibility or practical reasons.



- 4.6 We respectfully disagree with the suggestion in the Delegated Report (Appendix G) that there would be no loss of a section of the footpath, because the planting would need enough space for roots in order to establish and sustain itself. Further, any landscaping would need to be protected from impact by pedestrians and cars. Realistically, any landscaping in this area would mean the removal of the pedestrian walkway running along the side of the fence. The pedestrian walkway is an integral and important part of the scheme, and serves to provide safe access from within the car park to the click and collect facility. In our view, it was unreasonable to attach a condition which would necessitate the removal of an integral element of the scheme and on that basis, the condition fails the test of reasonableness. Again, if we were given the opportunity of discussing this with the officer before the condition was imposed, we could have explained why landscaping in this area, within the constraints of the car park layout, was not possible.
- 4.7 We are of the view that the reason given for the condition, *"To ensure the landscaping is carried out and becomes successfully established"*, is ambiguous. We therefore believe that the S42 application should be considered favourably by the Local Review Body due to the lack of clear explanation or justification for the condition being attached to the consent (in line with Appendix A Paragraph 9 of Circular 4/1998).
- 4.8 As directly applicable to conditions, Circular 4/1998 is a significant material consideration for the Local Review Body in determining this Review.
- 4.9 In the delegated decision report, it is stated, in reference to consent 18/00134/DPP that *"There is no requirement for the Planning Authority to discuss conditions in advance of permissions being issued"*. Whilst this is accurate insofar as the relevant planning legislation, this is simply not good practice in ensuring that planning conditions are reasonable, necessary and specific to the proposed development (as understood through Appendix A Paragraph 7 of Circular 4/1998). It is a reasonable interpretation that the planning service did not demonstrate good practice by the failing to enter into discussions regarding their determination of the original planning permission and the subsequent S42 application. Not only that, but the failure to enter into discussions has resulted in a condition that is not only incapable of being complied with (by referring to a line on a plan that does not exist), but which would render an integral part of the approved scheme incapable of being provided if the requirements of the condition were met.



Visual Amenity of the development

- 4.10 Notwithstanding that we consider the condition is unreasonable and should not have been attached, we turn now to consider whether landscaping in this location would be effective in meeting the requirements of the development plan policies.
- 4.11 As noted in Section 2.0 of this Statement, the Sainsbury's Supermarket is a modern retailing unit sitting within a self-contained landscaped car park within a wider retail park. The context of the site is commercial in nature and the neither the Groceries Online hub, the store or the wider car park are overlooked by residential properties or prominent public rights of way. Previous permissions for the supermarket and subsequent extensions have not sought to impose direct screening of the elevations. To that end there is a disparity in approach by Midlothian Council for requiring screen planting of the GOL distribution hub when the main store building did not require such screen planting.
- 4.12 The Straiton Retail Park is an established and well-used commercial centre containing a diverse range of predominantly retailing units. There are no natural or cultural heritage constraints which are impacted by the GOL distribution hub.
- 4.13 The consented scheme only required the loss of 1no. tree which was in poor condition. There was therefore no notable loss in landscaping as a result of the GOL Hub development.
- 4.14 The consented fence comprises of treated timber material, which is sympathetic to its commercial setting in comparison to metal palisade fencing alternatives. The GOL distribution hub also compliments the modern Sainsbury's supermarket building. It is a reasonable interpretation therefore that the fence comprising of natural materials is congruous to its setting and therefore does not require additional screen planting as it would have no adverse visual impact (refer to Appendix B and Section 3.0 of this Statement). The natural appearance of the wood will ensure that it weathers naturally, softening the impact of the structure within the car park.
- 4.15 The Officer's delegated report states:
- "The applicant has argued that the fence, approved through application 18/00134/DPP, is an acceptable addition to the retail area and entirely congruous to its setting, despite there being no examples of this type of boundary treatment in the vicinity....The boundary treatments*



throughout the Straiton retail park generally comprise hedge planting, albeit there are some brick walls at the opposite end of the retail park. There are no fences.

- 4.16 We refer the Local Review Body to Appendix B which contains examples of boundary fences within the immediate vicinity of the site. We consider that there is sufficient evidence of precedence of timber boundary fences (which are unscreened) to warrant the condition being justifiably removed by the S42 application from the original consent. The site and surrounding car parks are, by their nature, cluttered with vehicles associated with the Sainsbury's store and its operation (Refer to Appendix B). The consented fence is essential to minimise the clutter arising from the GOL distribution hub (thereby reducing any visual impact) and also provide sufficient security for the distribution activities. The principle of this element of the consented scheme has been accepted by Midlothian Council. With the clutter of customer vehicles in front of the fence, it's appearance will already be screened from the remainder of the car park for the majority of time there are people at the site. This is particularly so as the GOL Hub is close to the entrance to the store and therefore in an area that will be frequented by car borne visitors. This is evidenced by the fact that Sainsbury's has located the parent and child spaces nearby – these are always in a location that is easily accessible to the store's entrance.
- 4.17 With the clutter of cars already blocking any wider views of the fence, it is questionable whether planting up against the fence would achieve any notable screening. Screen planting in this location is considered to be unnecessary and will not deliver any notable amenity benefits when considering the context of the supermarket. This is a material consideration of significant weight in line with the Development Plan (Refer to Section 3.0). Although policy DEV7 seeks to ensure that new developments provide a landscaping scheme that complements the existing landscaping, we do not consider that condition 2 is necessary to achieve this. The existing landscaping at the site is sufficiently capable to screen the minimal impact that the GOL hub fence has in this commercial retail park.

Page 47 of 100



5. Conclusion

5.1 On the basis of the foregoing analysis, the Local Review Body is invited to conclude the following regarding the review against the decision of Midlothian Council to refuse planning permission for the application made under Section 42 of The Town and Country Planning Act (Scotland) 1997 to amend condition 2 of planning permission 18/00134/DPP (to allow development without requirement of screen planting along southwestern area of fence):

- The condition does not meet the tests of Circular 4/1998 insofar as the condition is not reasonable or practical (as advocated for in SPP 2014);
- The provision of landscaping in this area would result in the complete loss of a pedestrian walkway which is an integral part of the car park layout.
- The fence is constructed of natural materials and complies with the relevant parts of DEV2 of the Midlothian LDP (2017) as it does not materially detract from the character or visual amenity of the area described as “untidy”;
- The commercial character and amenity of the Straiton Retail Park will not be adversely impacted by the fence if left unscreened due to the high-quality design of the fence which complements its surroundings; and
- There are examples of unscreened timber fences within the immediate vicinity of the site.

5.2 In light of the above, the Local Review Body is respectfully asked to allow the review and grant planning consent for the Section 42 Application on the basis that the condition no.2 does not comply with Circular 4/1998 and that the unscreened fence (as constructed) complies with the pertinent policies of the LDP.



Appendix A:

Site Location Plan

Page 49 of 100

[illegible]

PLANNING



All drawings are subject to full site survey. All measurements are to be checked and set out.



Appendix B:

Site and Contextual Photographs

Page 51 of 100

Appendix B – Site and Contextual Photographs

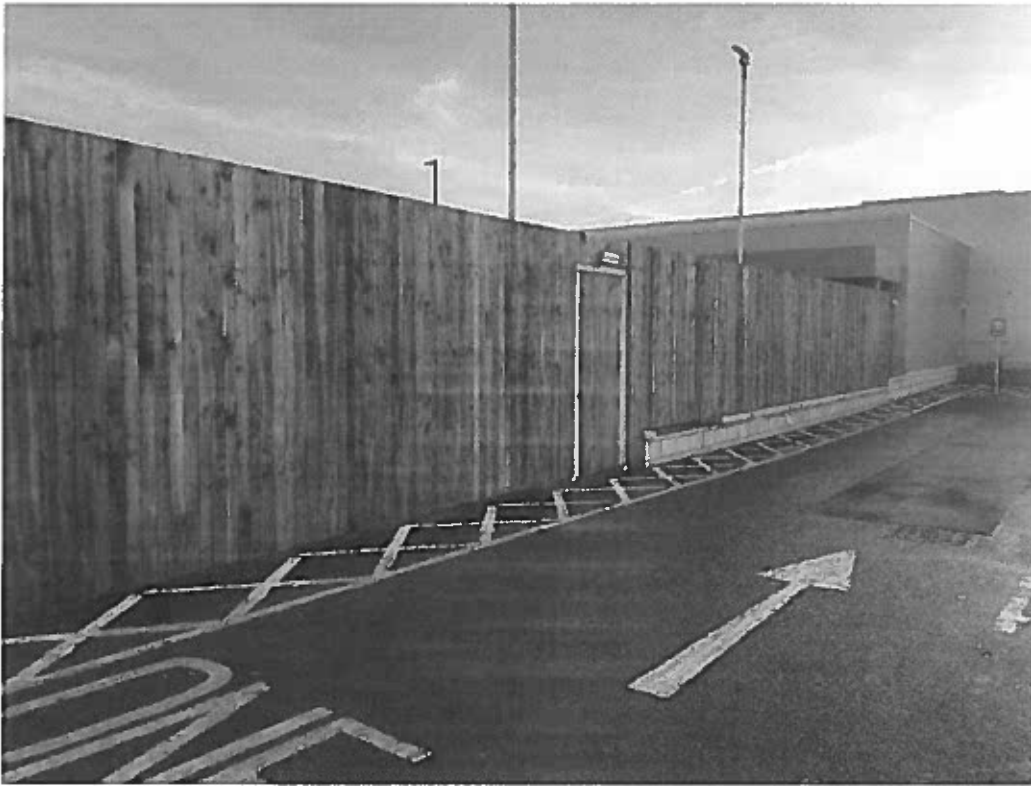


Figure 1: Fence from north-west of the site.

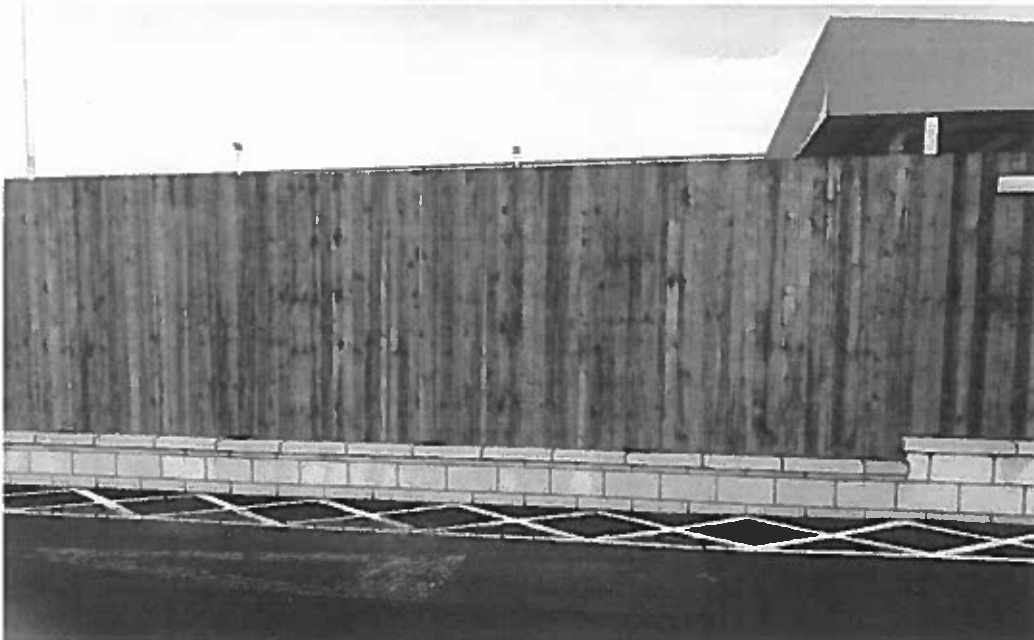


Figure 2: Fence from west of site.



Figure 3: Fence from south west of site.



Figure 4: Section of fence from north of site.



Figure 5: Evidence that the fence is not incongruous to its setting through the use of natural materials.



Figure 6: Evidence of cluttered appearance of car park.



Figure 7: Evidence that the site is not visible from the A701 Straiton Road (available from Google Maps, May 2018).



Figure 8: Use of timber palisade fencing within the recycling area of the Sainsbury's store.



Figure 9: Use of timber boundary treatment within the immediate vicinity of the site.



Appendix C:
Approved Plan PL0005 from
18/00134/DPP

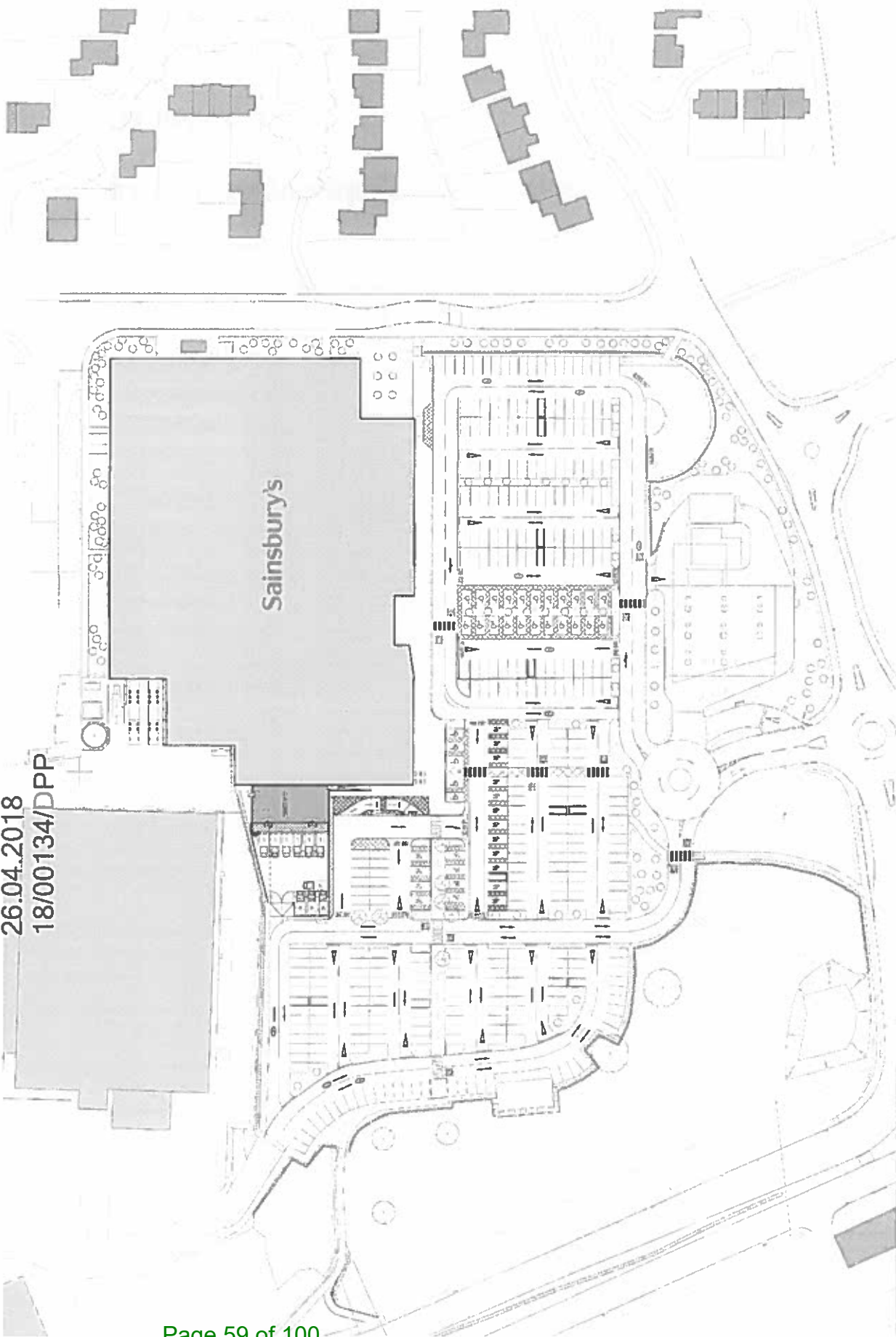
Page 58 of 100

APPROVED
26.04.2018
18/00134/DPP



STRAITON

Existing Parking Spaces	
Barriers	871
Disabled	47
Foot and Cycle	25
Total	140
Proposed Parking Spaces	
Barriers	300
Disabled	22
Foot and Cycle	30
Total	352
Difference	212



Sainsbury's
ARCHITECTS

100 High Street, Stratton, Stratford-upon-Avon, CV37 7JF
Tel: 01927 551111 Fax: 01927 551112
Email: info@sainsburys.co.uk Website: www.sainsburys.co.uk

Project Number: 18/00134/DPP
Drawing Number: 18/00134/DPP
Scale: 1:1000
Date: 26.04.2018

CHS 18/1747/ALLEN

PLANNING

1



Appendix D:

Submitted Application Package

Page 60 of 100



KD/GM/SL/NE3793

Kathryn.donnelly@wyg.com

FAO- Ms Mhairi-Anne Cowie, Planning Officer

Midlothian Council
Fairfield House
8 Lothian Road
Dalkeith
EH22 3AA

28 September 2018

Dear Mhairi-Anne

EPLANNING REF: 100138442-001

SECTION 42 OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

SAINSBURYS SUPERMARKETS LTD, STRAITON MAINS, LOANHEAD, EH20 9PW

Introduction

Further to recent correspondence, WYG write on behalf of Sainsbury's Supermarkets Ltd ("the applicant") to amend condition no.2 of consent ref: 18/00134/DPP ("the extant consent") granted conditionally on 26 April 2018 for Sainsbury's Supermarkets Ltd, Straiton Mains, Loanhead EH20 9PW ("the site"). This application is made under Section 42 of the Town and Country Planning (Scotland) Act 1997 ("S42 Application") to develop the consented scheme without compliance with condition no.2 attached to the consent.

The proposed amendment to condition no.2 is to remove the requirement for screen planting along the south-western area of the consented fence line (as shown in green on approved drawing number: CHQ.18.12447-PL0005). The screen planting compromises car park safety and its inclusion was not discussed with the applicant. Furthermore, it is not considered necessary in the context of the store's location on a retail park.

Please find enclosed:

- Completed, signed and dated application form and ownership certificate;

The following plans and drawings:

2 St James Gate, Newcastle upon Tyne, NE1 4AD
Tel: +44 (0)191 255 7300 Fax: +44 (0)191 255 7301
Email: newcastle@wyg.com Website: www.wyg.com

WYG Planning Limited. Registered in England & Wales Number: 5241035
Registered Office: Arndale Court, Otley Road, Headingley, Leeds, LS6 2UJ



creative minds safe hands



- Approved site location plan (dwg. ref. CHQ.18.12395-PL0001); and
- Approved proposed store plan (dwg. ref. CHQ.18.12447-PL0005) which has subsequently been annotated by Midlothian Council to denote the location of the required screen planting.

A cheque for the sum of £202.00, being the requisite fee for the further application, has been sent to Midlothian Council under separate cover letter.

The Application Site

The Sainsbury's Supermarket is located in the Straiton Retail Park, located off the A701 Straiton Road. The site is situated within the existing customer car park.

To the north and west of the application site is the continuation of customer car parking. To the east of the site is an existing hedgerow which is to be retained as part of the scheme. Further east is the Next retail store. To the south of the application site is the existing supermarket which the extant consent applied to extend.

To confirm, there are no natural or cultural heritage constraints which could be affected by the proposal.

Proposal

The applicant received planning permission for the proposal, "Extension to building and erection of fence at Sainsburys Supermarket, Straiton Mains, Loanhead, EH20 9PW" (Midlothian Council's reference: 18/00134/DPP) on 26 April 2018. WYG subsequently successfully discharged suspensive conditions 1A to C of ref: 18/00134/DPP. The remaining suspensive condition (condition no.1D) attached to the extant consent relates to a required scheme of landscaping. Condition no.1D states

*"1. Prior to the commencement of development, the following details shall be submitted to and approved in writing by the Planning Authority (inter alia):
d) Details of a scheme of landscaping."*

Condition no.2 is a compliance condition which states:

"2. The scheme of landscaping required in condition 1d) shall include replacement planting for the trees to be removed and also screen planting along the southwestern area of the fence as shown in green on approved drawing number CHQ.18.12447-PL0005." [section proposed to be deleted shown underlined]

It is condition no.2 which the applicant is wishing to amend through this S42 Application to delete the requirement for "screen planting along the southwestern area of the fence".

WYG kept in close contact with the planning officer throughout the course of the extant consent's determination period, yet the principle of this condition was not raised by Midlothian Council in advance of the condition being attached to the consent. Had Midlothian Council raised this matter during the course of the application, then WYG would have confirmed the serious practical and safety implications of removing a dedicated pedestrian walkway in favour of low level planting.



Application Justification

In Scottish Planning Policy (2014), the Scottish Ministers establish in paragraph 4 that one of the 'Core Values of the Planning Service' is that planning decisions should be proportionate, and planning conditions should only be imposed where necessary. We consider that the screen planting is not necessary, when taking into account the location of the consented scheme within the non-sensitive and well-established Straiton Retail Park.

Referring to Circular 4/1998, the Scottish Ministers state:

"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. "[our emphasis]"

We consider that condition no.2, which is a compliance condition relating to the suspensive condition no.1D, is not reasonable or practical when considering the context of its proposed location. We consider that the condition will place an unnecessary and overly-restrictive burden on the applicant.

The consented fence comprises of treated timber material, which is sympathetic to its commercial setting. It is a reasonable interpretation that the fence would be congruous to its setting and therefore not require additional screen planting. To confirm, the fence is essential to provide sufficient security for the distribution activities associated with the GOL operations and the principle of this element of the consented scheme has already been approved by Midlothian Council.

Further, Midlothian Council's suggestion of positioning screen planting in place of a pedestrian walkway in the active car park area leading to the click and collect facility will have a significantly adverse practical impact on safety and car park manoeuvrability. Furthermore, the proposed planting in this area would therefore be susceptible to damage from cars manoeuvring in close proximity to it.

It has been envisaged that this area, denoted in green in dwg. no. CHQ.18.12447-PL0005 should instead continue to be used as a walkway by customers and staff accessing the store from the car park.

Conclusions

The proposal involves the amendment of condition no.2 attached to the extant consent ref: 18/00134/DPP to remove the conditional requirement of screen planting along the south-western fence line. Given the nature and characteristics of the immediate location, the application should be viewed as complying with the relevant national planning policy and guidance.



We look forward to receiving your acknowledgement of the application in due course and will contact you shortly to discuss your progress in registering it. Please do not hesitate to contact us should you have any queries in the meantime.

Yours sincerely

A handwritten signature in dark ink that reads 'K. Donnelly'.

Kathryn Donnelly
Planner



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 100138442-001

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.

Type of Application

What is this application for? Please select one of the following: *

- ☐ Application for planning permission (including changes of use and surface mineral working).
- ☐ Application for planning permission in principle.
- ☒ Further application, (including renewal of planning permission, modification, variation or removal of a planning condition etc)
- ☐ Application for Approval of Matters specified in conditions.

Please give the application reference no. of the previous application and date when permission was granted.

Application Reference No: *

18/00134/DPP

Date (dd/mm/yyyy): *

26/04/2018

Description of Proposal

Please describe the proposal including any change of use: * (Max 500 characters)

Application made under Section 42 of the Town and Country Planning (Scotland) Act 1997 to amend condition no.2 of consent ref: 18/00134/DPP. This application seeks the removal of the conditional requirement for screen planting along the south-western area of the fence (as shown in green on approved drawing number: CHQ.18.12447-PL0005).

Is this a temporary permission? *

☐ Yes ☒ No

If a change of use is to be included in the proposal has it already taken place?

(Answer 'No' if there is no change of use.) *

☐ Yes ☒ No

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

Agent Details

Please enter Agent details

Company/Organisation:	WYG		
Ref. Number:		You must enter a Building Name or Number, or both: *	
First Name: *	Kathryn	Building Name:	The Cube
Last Name: *	Donnelly	Building Number:	45
Telephone Number: *		Address 1 (Street): *	Leith Street
Extension Number:		Address 2:	
Mobile Number:		Town/City: *	Edinburgh
Fax Number:		Country: *	Scotland
		Postcode: *	EH1 3AT
Email Address: *			
Is the applicant an individual or an organisation/corporate entity? *			
<input type="checkbox"/> Individual <input checked="" type="checkbox"/> Organisation/Corporate entity			

Applicant Details

Please enter Applicant details

Title:		You must enter a Building Name or Number, or both: *	
Other Title:		Building Name:	The Cube
First Name: *		Building Number:	45
Last Name: *		Address 1 (Street): *	Leith Street
Company/Organisation	Sainsbury's Supermarkets Ltd c/o	Address 2:	
Telephone Number: *		Town/City: *	Edinburgh
Extension Number:		Country: *	Scotland
Mobile Number:		Postcode: *	EH1 3AT
Fax Number:			
Email Address: *			

Page 66 of 100

Site Address Details

Planning Authority:

Midlothian Council

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

Address 1:

SAINSBURYS SUPERMARKET

Address 2:

STRAITON MAINS

Address 3:

Address 4:

Address 5:

Town/City/Settlement:

LOANHEAD

Post Code:

EH20 9PW

Please identify/describe the location of the site or sites

Northing

666135

Easting

327275

Pre-Application Discussion

Have you discussed your proposal with the planning authority? *

☒ Yes ☐ No

Pre-Application Discussion Details Cont.

In what format was the feedback given? *

☐ Meeting

☐ Telephone

☐ Letter

☒ Email

Please provide a description of the feedback you were given and the name of the officer who provided this feedback. If a processing agreement [note 1] is currently in place or if you are currently discussing a processing agreement with the planning authority, please provide details of this. (This will help the authority to deal with this application more efficiently.) * (max 500 characters)

Ms Cowie indicated that in order to discharge condition no.1D of consent ref: 18/00134/DPP, compliance with condition no.2 needed to be demonstrated. Condition 2 requires landscaping along the area outlined in green on the approved plan and the replacement planting for the trees to be removed for the development.

Title:

Ms

Other title:

First Name:

Mhairi-Anne

Last Name:

Cowie

Correspondence Reference Number:

Date (dd/mm/yyyy):

31/08/2018

Note 1. A Processing agreement involves setting out the key stages involved in determining a planning application, identifying what information is required and from whom and setting timescales for the delivery of various stages of the process.

Site Area

Please state the site area:

0.50

Please state the measurement type used:

☒ Hectares (ha) ☐ Square Metres (sq.m)

Existing Use

Please describe the current or most recent use: * (Max 500 characters)

Customer parking

Access and Parking

Are you proposing a new 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.

Are you proposing any change to public paths, public rights of way or affecting any public right of access? *

☐ Yes ☒ No

If Yes please show on your drawings the position of any affected areas highlighting 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?

419

How many vehicle parking spaces (garaging and open parking) do you propose on the site (i.e. the Total of existing and any new spaces or a reduced number of spaces)? *

397

Please show on your drawings the position of existing and proposed parking spaces and identify if these are for the use of particular types of vehicles (e.g. parking for disabled people, coaches, HGV vehicles, cycles spaces).

Water Supply and Drainage Arrangements

Will your proposal require new or altered water supply or drainage arrangements? *

☐ Yes ☒ No

Do your proposals make provision for sustainable drainage of surface water?? *
(e.g. SUDS arrangements) *

☐ Yes ☒ No

Note:-

Please include details of SUDS arrangements on your plans

Selecting 'No' to the above question means that you could be in breach of Environmental legislation.

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

- ☐ Yes
☐ No, using a private water supply
☒ No connection required

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

Page 68 of 100

Assessment of Flood Risk

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

☐ Yes ☒ No ☐ Don't Know

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

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.

All Types of Non Housing Development – Proposed New Floorspace

Does your proposal alter or create non-residential floorspace? *

☐ Yes ☒ No

Schedule 3 Development

Does the proposal involve a form of development listed in Schedule 3 of the Town and Country Planning (Development Management Procedure (Scotland) Regulations 2013? *

☐ Yes ☒ No ☐ Don't Know

If yes, your proposal will additionally have to be advertised in a newspaper circulating in the area of the development. Your planning authority will do this on your behalf but will charge you a fee. Please check the planning authority's website for advice on the additional fee and add this to your planning fee.

If you are unsure whether your proposal involves a form of development listed in Schedule 3, please check the Help Text and Guidance notes before contacting your planning authority.

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 – TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND) REGULATION 2013

One Certificate must be completed and submitted along with the 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 2013

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: Kathryn Donnelly

On behalf of: Sainsbury's Supermarkets Ltd c/o WYG

Date: 01/10/2018

☒ Please tick here to certify this Certificate. *

Checklist – Application for Planning Permission

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

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) If this is a further application where there is a variation of conditions attached to a previous consent, have you provided a statement to that effect? *

☒ Yes ☐ No ☐ Not applicable to this application

b) If this is an application for planning permission or planning permission in principle where there is a crown interest in the land, have you provided a statement to that effect? *

☐ Yes ☐ No ☒ Not applicable to this application

c) If this is an application for planning permission, planning permission in principle or a further application and the application is for development belonging to the categories of national or major development (other than one under Section 42 of the planning Act), have you provided a Pre-Application Consultation Report? *

☐ Yes ☐ No ☒ Not applicable to this application

Town and Country Planning (Scotland) Act 1997

Page 70 of 100

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

d) If this is an application for planning permission and the application relates to development belonging to the categories of national or major developments and you do not benefit from exemption under Regulation 13 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, have you provided a Design and Access Statement? *

☐ Yes ☐ No ☒ Not applicable to this application

e) If this is an application for planning permission and relates to development belonging to the category of local developments (subject to regulation 13. (2) and (3) of the Development Management Procedure (Scotland) Regulations 2013) have you provided a Design Statement? *

☐ Yes ☐ No ☒ Not applicable to this application

f) If your application relates to installation of an antenna to be employed in an electronic communication network, have you provided an ICNIRP Declaration? *

☐ Yes ☐ No ☒ Not applicable to this application

g) If this is an application for planning permission, planning permission in principle, an application for approval of matters specified in conditions or an application for mineral development, have you provided any other plans or drawings as necessary:

- ☒ Site Layout Plan or Block plan.
- ☐ Elevations.
- ☐ Floor plans.
- ☐ Cross sections.
- ☐ Roof plan.
- ☐ Master Plan/Framework Plan.
- ☐ Landscape plan.
- ☐ Photographs and/or photomontages.
- ☐ Other.

If Other, please specify: * (Max 500 characters)

Provide copies of the following documents if applicable:

A copy of an Environmental Statement. *

☐ Yes ☒ N/A

A Design Statement or Design and Access Statement. *

☐ Yes ☒ N/A

A Flood Risk Assessment. *

☐ Yes ☒ N/A

A Drainage Impact Assessment (including proposals for Sustainable Drainage Systems). *

☐ Yes ☒ N/A

Drainage/SUDS layout. *

☐ Yes ☒ N/A

A Transport Assessment or Travel Plan

☐ Yes ☒ N/A

Contaminated Land Assessment. *

☐ Yes ☒ N/A

Habitat Survey. *

☐ Yes ☒ N/A

A Processing Agreement. *

☐ Yes ☒ N/A

Other Statements (please specify). (Max 500 characters)

Cover letter from agent.

Declare – For Application to Planning Authority

I, the applicant/agent certify that this is an application to the planning authority as described in this form. The accompanying Plans/drawings and additional information are provided as a part of this application.

Declaration Name: Miss Kathryn Donnelly

Declaration Date: 01/10/2018

Payment Details

Cheque: WYG Environment Planning Transport Ltd, 032989

Created: 01/10/2018 14:59

Page 72 of 100

Proposed for release

Existing areas of landscaping to be removed. Small edge to perimeter mounds of approximately 500mm required to edge

Abstract

Proposed canopy

No Tests to be removed


Proposed 2.4m closed board timber fence sitting on top of a
demolishing retaining wall Max height 2500mm

Proposed ramp 120 for new access / fire escape


Fluorinated cyclic racks


10mo Relocated Parent and Child spaces. Safe walkway requested. Relocated disabled bays elsewhere within car park. refer to wider plan

Extent of SSL Demise	9.923 Acres/4.018 Hectares
Extent of Proposed Works	1.232 Acres/0.500 Hectares




PLANNING





0m 20m 40m 60m 80m 100m 120m

1:200 scale



CHQ ARCHITECTS

100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 8



Appendix E:

Decision Notice

Page 74 of 100

MIDLOTHIAN COUNCIL

DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

Planning Application Reference: 18/00747/S42

Site Address: Sainsbury's Supermarket, Straiton Mains, Loanhead.

Site Description: The application site comprises an area of car parking associated with an adjacent single storey detached retail unit, larger car park area and petrol filling station within Straiton Retail Park.

Proposed Development: Section 42 application to amend condition 2 of planning permission 18/00134/DPP (to allow development without requirement of screen planting along southwestern area of fence).

Proposed Development Details: It is proposed to amend condition 2 of planning permission 18/00134/DPP which reads as follows:

The scheme of landscaping required in condition 1d) shall include replacement planting for the trees to be removed and also screen planting along the southwestern area of the fence as shown in green on approved drawing number CHQ.18.12447-PL0005.

Reason for conditions 2 and 3: To ensure the landscaping is carried out and becomes successfully established.

The applicant seeks to remove the requirement to carry out screen planting along the southwestern area of the fence. The remainder of the condition would remain. The applicant states this requirement was not discussed in advance of the permission being issued; would result in the loss of a pedestrian walkway and compromising car park safety; is not considered necessary, reasonable or practical; is unjustified; is susceptible from damage by cars. The applicant also stated that the approved fence is timber and acceptable in the retail area.

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

Sainsbury's

18/00134/DPP Extension to building and erection of fence. Consent with conditions – details of materials, colour of fence, click and collect bays and landscaping; landscaping to include replacement landscaping for trees lost and screen planting; implementation of landscaping; and temporary protective fencing in place around trees to be retained before works begin until complete.

10/00518/DPP Erection of petrol filling station, formation of additional car parking and formation of internal access roads. Consent with conditions.

09/00640/PAC Proposal of application notice for extension to retail store, formation of additional car parking, erection of filling station and associated works. No objection.

09/00532/DPP Extension to retail store and erection of raised car parking area.
Consent with conditions.
03/00201/FUL Extension to kiosk and alterations to layout of petrol filling station.
Permitted.

Consultations: No consultations were required.

Representations: One representation has been received on the following grounds:

- the required planting will break up the appearance of the fence;
- this will mitigate the planting already lost in the area;
- the planting would not affect a footpath regularly used by shoppers;
- the applicant has stated that the planting would be hit by cars, but surely people would be hit by cars if the applicant's statement over the footpath is true;
- it appears the applicant is now proposing to scale this down the previously approved scheme to a proposal that may have been refused if submitted at the outset; and
- the applicant has not submitted a strong case to alter the original proposal.

Relevant Planning Policies: The relevant policies of the **2017 Midlothian Local Development Plan** are;

DEV2 Protecting Amenity Within the Built-Up Area states development will not be permitted where it is likely to detract materially from the character or amenity of the area; and

TCR2 Location of New Retail and Commercial Leisure Facilities provides criteria which must be met for new retail development and extensions to existing facilities within the Straiton Commercial Hub. This policy states that such development will be supported in principle provided that: there are no alternative sites in or on the edge of Edinburgh City Centre or there are not alternative sites in, or on the edge of Dalkeith town centre; they address a quantitative or qualitative deficiency within the catchment; they do not undermine the vitality and viability of regional, strategic or other town centres, within the expected catchment of the proposed development; and they are accompanied by measures to improve the environmental quality of the commercial hub and its accessibility by public transport, walking or cycling.

Planning Issues: The main planning issue to be considered is whether or not the proposal complies with the development plan policies and, **Page 76 of 100** if not, whether there are any material planning considerations which would otherwise justify approval.

The Planning Authority imposed a planning condition on application 18/00134/DPP which required a scheme of landscaping for the site. It also specifically required the installation of screen planting along the southwestern side of the fence, which had been identified in green on the approved drawing.

The landscaping was originally required by the Planning Authority in order to mitigate against the loss of trees as a result of the approved works, and to use screen planting to soften the visual impact of the yard/development. The applicant seeks to remove the requirement to carry out screen planting along the south-western area of the fence. The remainder of the condition would remain.

The condition clearly requires screen planting along the area of fence shown in green on the approved drawing. The condition does not require extensive planting in the area identified in green on the approved drawing. There is a difference between what is required by the condition and the applicant's interpretation of the condition. The green line, identified by the Planning Authority, on the approved drawing only highlights the area of fence where the screen planting is required, clarifying what part of the fence is to be screened. The condition does not require low level planting along the pedestrian walkway, as has been suggested by the applicant. The condition and delegated worksheet (for the previous application) both state that screen planting is required, not low level planting.

Planning permission for application 18/00134/DPP was granted allowing a 2.4 metre high fence at a highly prominent area within a well used supermarket car park. As stated above, the Planning Authority was concerned regarding the visual impact of the proposed fence and, as such, sought measures to reduce its visual impact. The applicant has argued that the fence, approved through application 18/00134/DPP, is an acceptable addition to the retail area and entirely congruous to its setting, despite there being no examples of this type of boundary treatment in the vicinity.

It is the Planning Authority's practice to take the same care when considering the acceptability of proposed boundary treatments as it would when considering applications for other structures and buildings. Timber fences are generally seen in the context of suburban residential developments. The boundary treatments throughout the Straiton retail park generally comprise hedge planting, albeit there are some brick walls at the opposite end of the retail park. There are no fences.

The Planning Authority was concerned regarding the visual impact of the fence on the surrounding area and considered that a landscaping scheme, involving screen planting, would be justified to reduce that adverse visual impact. The current application does not resolve this original concern.

In addition, the screen planting, in the position required, would not result in the loss of a footpath, to the detriment of pedestrian and road safety. The condition requires the installation of screen planting, and not low level planting, and so it would be highly unlikely that cars would damage this as they would need to cross a pedestrian footpath to do so. The details of the planting are to be agreed with the Planning Authority, who would not approve planting which is not appropriate or suitable for the site.

There is no requirement for the Planning Authority to discuss conditions in advance of permissions being issued. The Planning Authority is careful to ensure that any conditions imposed satisfy the six tests: The condition is **necessary** as it will result in the screening of a fence which would not otherwise have been acceptable on account of its adverse visual impact. There can be no argument that the condition is not **relevant to planning** or **relevant to the development to be permitted**. The condition is **enforceable, precise and reasonable in all other respects**. The Planning Authority considers that the use of screen planting to soften the impact of an incongruous fence is justified in the circumstances and allowed the Planning Authority to support an application which could otherwise have been refused.

Given the above, there is no reason for the Planning Authority to remove the requirement for screen planting along the highlighted section of fence and therefore this condition will remain.

Recommendation: Refuse planning permission.

Refusal of Planning Permission

Town and Country Planning (Scotland) Act 1997



Reg. No. 18/00747/S42

WYG
The Cube
45 Leith Street
Edinburgh
EH1 3AT

Midlothian Council, as Planning Authority, having considered the application by WYG, The Cube, 45 Leith Street, Edinburgh, EH1 3AT, which was registered on 3 October 2018 in pursuance of their powers under the above Acts, hereby **refuse** permission to carry out the following proposed development:

Section 42 application to amend condition 2 of planning permission 18/00134/DPP (to allow development without requirement of screen planting along southwestern area of fence) at Sainsburys Supermarket, Straiton Mains, Loanhead, EH20 9PW

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

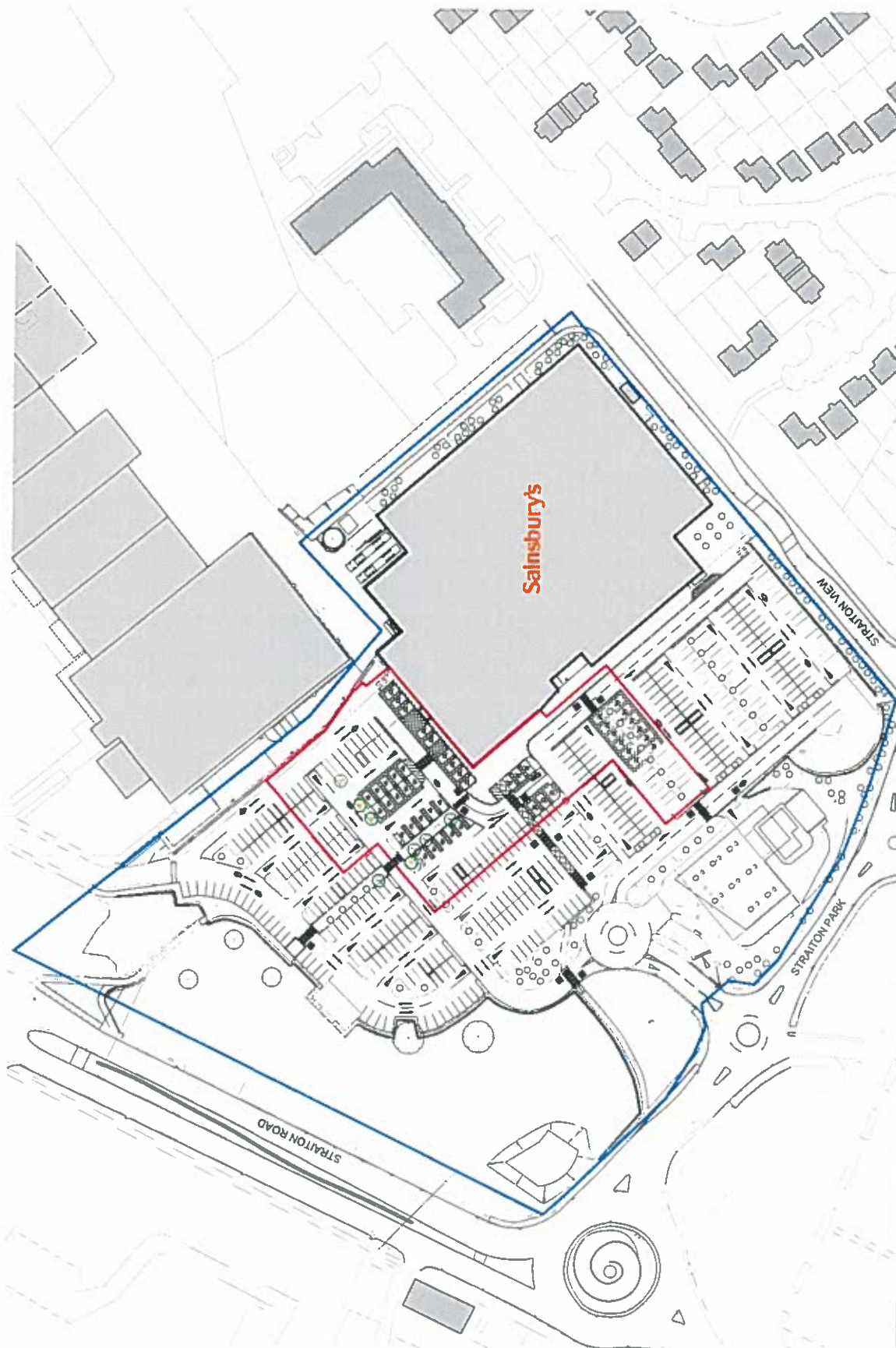
<u>Document/Drawing.</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Location Plan	CHQ.18.12395-PL0001 1:1250	03.10.2018
Site Plan	CHQ.18.12447-PL0005 1:200	03.10.2018





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

1. *The proposed amendment of condition 2 of planning permission 18/00134/DPP would remove the requirement for planting to screen a 2.4 metre high fence at a prominent area of a supermarket car park which would have a detrimental impact on the appearance and visual amenity of the area and would therefore be contrary to the aims of policy DEV2 of the adopted Midlothian Local Development Plan 2017.*
2. *The fence approved in planning permission 18/00134/DPP was considered acceptable only on the basis that it would be screened by planting to limit the visual impact of the fence and yard that it surrounds.*

Dated 12 / 11 / 2018

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



			<p>PLANNING</p>  <p>0m 25m 50m 75m 100m 125m</p>	<p>Sainsbury's</p> <p>1000 Market Road Leamington CV32 5PW</p>	<p>ARCHITECTS</p> <p>1000 Market Road Leamington CV32 5PW</p>	<p>CHQ ARCHITECTS</p> <p>1000 Market Road Leamington CV32 5PW</p>	<p>Site Location Plan</p>	<p>Scale</p> <p>1:1250 @ A3</p>	<p>Date</p> <p>February 18</p>	<p>Drawn by</p> <p>CHQ</p>	<p>Checked by</p> <p>CHQ</p>	<p>Project No.</p> <p>CHQ-18-12395-PL0001</p>





Notice of Review: Land at 39 The Brae, Auchendinny, Penicuik Determination Report

Report by Dr Mary Smith Director of Education, Communities and Economy

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 dwellinghouse at land at 39 The Brae, Auchendinny, Penicuik.

2 Background

- 2.1 Planning application 18/00581/DPP for the erection of a dwellinghouse at land at 39 The Brae, Auchendinny, Penicuik was refused planning permission on 23 October 2018; 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, issued on 23 October 2018 (Appendix D); and
 - A copy of the relevant drawings/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 agreed by the LRB, the LRB by agreement of the Chair:
- Have scheduled an unaccompanied site visit for Tuesday 5 March 2019; and
 - Have determined to progress the review by way of written submissions.

- 4.2 The case officer's report identified that there was one consultation response and one representation received. As part of the review process the interested parties were notified of the review. No additional comments have been received. All the 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 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.
1. Prior to the commencement of development, the following details shall be submitted to and approved in writing by the planning authority:
 - a) Details all proposed external materials;
 - b) Details of the materials of all areas of hardstanding; and
 - c) Details of the position, design, materials, dimensions and finish of all walls, fences, gates or other means of enclosure.

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

Reason: *These details were not submitted as part of the application: to ensure the house is finished in high quality materials; to protect*

the visual amenity of the surrounding area; to help integrate the proposal into the surrounding area.

2. The roof of the house hereby approved shall be finished in natural slate.

Reason: *To maintain the visual quality of the surrounding area; the surrounding properties in the area have slate roofs; to integrate the house into the surrounding area.*

3. Unless otherwise agreed in writing by the planning authority, the areas of hardstanding agreed in terms of condition 1b) shall be surfaced in a porous material.

Reason: *To ensure that the site is adequately drained; in the interests of the amenity of the area.*

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

Reason: *To ensure the quality of the development is enhanced by the provision of appropriate digital infrastructure in accordance with the requirements of policy IT1 of the adopted Midlothian Local Development Plan.*

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

Reason: *To ensure the development accords with the requirements of policy TRAN5 of the adopted Midlothian Local Development Plan 2017.*

6. Development shall not begin until a bat survey of the site has been carried out and any mitigation measures identified have been implemented. The survey shall be carried out prior to any demolition/construction works taking place and be undertaken by a qualified ecologist. The survey must be in accordance the Council's guidance on 'carrying out a bat survey'. The results of the bat survey and any identified mitigation measures shall be submitted to and approved in writing by the planning authority.

Reason: *To ensure the development accords with the requirements of policy DEV5 of the Proposed Midlothian Local Development Plan 2017.*

6 Recommendations

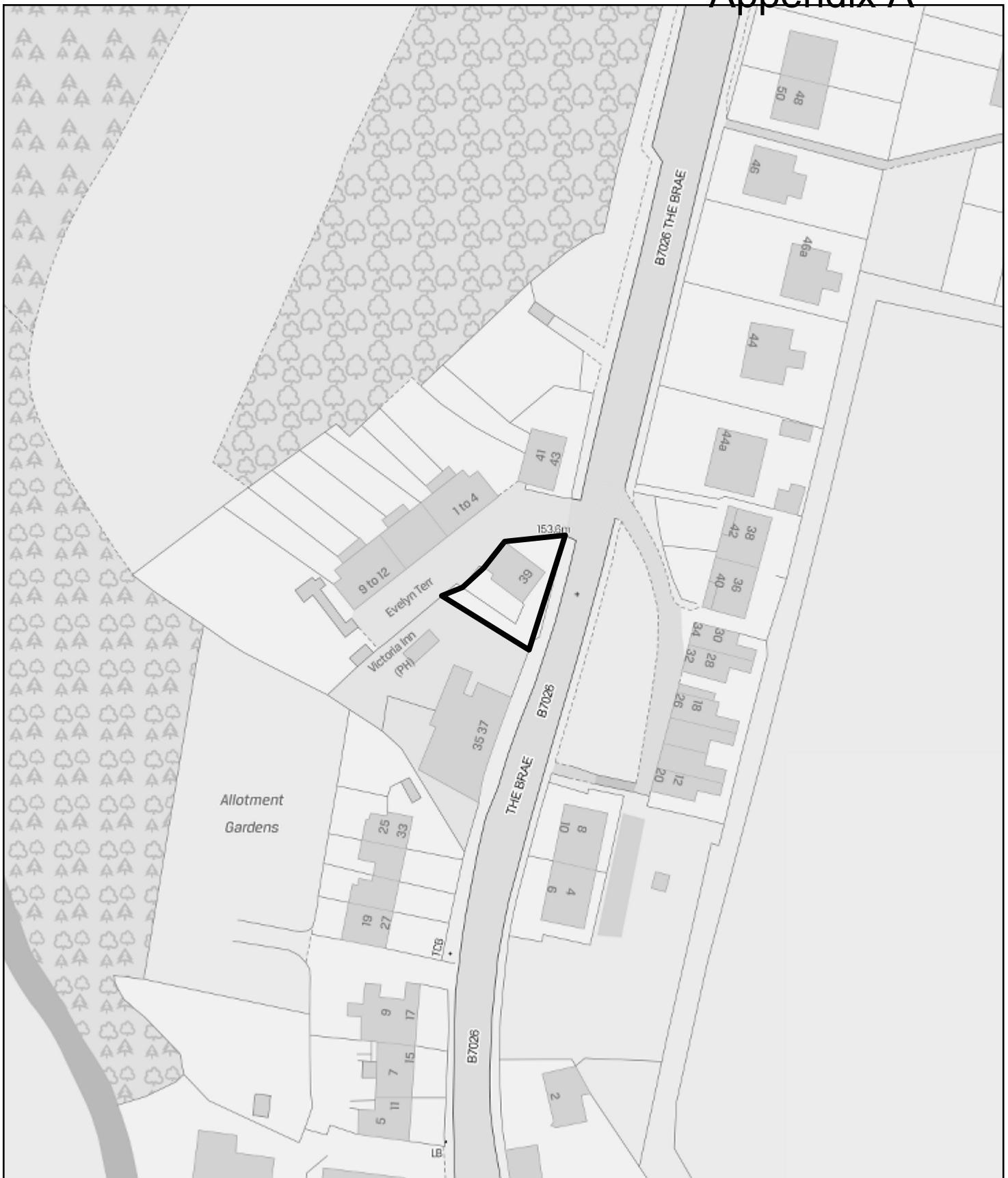
- 6.1 It is recommended that the LRB:
- a) determine the review; and
 - b) the planning advisor draft and issue the decision of the LRB through the Chair

Date: 26 February 2019

Report Contact: Peter Arnsdorf, Planning Manager (LRB Advisor)
peter.arnsdorf@midlothian.gov.uk

Tel No: 0131 271 3310

Background Papers: Planning Application File 18/00581/DPP



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

Erection of dwellinghouse at Land At 39 The Brae,
Auchendinny, Penicuik

Reproduced from the Ordnance Survey map with the permission of the
controller of Her Majesty's Stationary Office. Crown copyright reserved.
Unauthorised reproduction infringes Crown copyright and may lead to
prosecution or civil proceedings

Midlothian Council Licence No. 100023416 (2019)

File No. 18/00581/DPP

Scale: 1:1,000
Page 87 of 100





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 100131092-004

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

Agent Details

Please enter Agent details

Company/Organisation:	F.E.M Building Design		
Ref. Number:		You must enter a Building Name or Number, or both: *	
First Name: *	Douglas	Building Name:	
Last Name: *	Mack	Building Number:	8
Telephone Number: *		Address 1 (Street): *	Plantain Grove
Extension Number:		Address 2:	Lenzie
Mobile Number:		Town/City: *	Glasgow
Fax Number:		Country: *	Scotland
		Postcode: *	G66 3NE
Email Address: *	douglas@femdesign.co.uk		

Is the applicant an individual or an organisation/corporate entity? *

☒ Individual ☐ Organisation/Corporate entity

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="Peter"/>	Building Number:	<input type="text" value="39"/>
Last Name: *	<input type="text" value="McVey"/>	Address 1 (Street): *	<input type="text" value="The Brae"/>
Company/Organisation	<input type="text"/>	Address 2:	<input type="text"/>
Telephone Number: *	<input type="text"/>	Town/City: *	<input type="text" value="Auchendinny"/>
Extension Number:	<input type="text"/>	Country: *	<input type="text" value="Scotland"/>
Mobile Number:	<input type="text"/>	Postcode: *	<input type="text" value="EH26 0RB"/>
Fax Number:	<input type="text"/>		
Email Address: *	<input type="text"/>		

Site Address Details

Planning Authority:	<input type="text" value="Midlothian Council"/>
Full postal address of the site (including postcode where available):	
Address 1:	<input type="text"/>
Address 2:	<input type="text"/>
Address 3:	<input type="text"/>
Address 4:	<input type="text"/>
Address 5:	<input type="text"/>
Town/City/Settlement:	<input type="text"/>
Post Code:	<input type="text"/>

Please identify/describe the location of the site or sites

Northing	<input type="text" value="662088"/>	Easting	<input type="text" value="325419"/>
----------	-------------------------------------	---------	-------------------------------------

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)

Demolish existing derelict shop and erect a single one and a half storey dwellinghouse

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.

It is our opinion that the refusal decision is unsubstantiated and that the removal of a derelict building and overgrown garden grounds being replaced by a modern family home will only enhance the amenity of the immediate area.

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)

Planning Appeal Statement Drawing Numbers 18/PP/McVey/PP01(-) Photographs (7no. in total)

Application Details

Please provide details of the application and decision.

What is the application reference number? *

18/00581/DPP

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

10/08/2018

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

23/10/2018

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.

Page 91 of 100

Declare – Notice of Review

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

Declaration Name: Mr Douglas Mack

Declaration Date: 18/01/2019

MIDLOTHIAN COUNCIL

DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

Planning Application Reference: 18/00581/DPP

Site Address: Land at 39 The Brae, Auchendinny.

Site Description: The site comprises a vacant former retail unit and associated land within Auchendinny. The building is in a state of disrepair. There are a variety of houses and flats to the north, west and east. There is a former public house to the south, most recently used as an art gallery. The land within the site is relatively level, but sits on a slope down from north to south, with a steep drop down to the south.

Proposed Development: Erection of dwellinghouse.

Proposed Development Details: The existing building is to be demolished and replaced with a single storey house with accommodation in the roofspace served by dormer windows. The house is proposed to have a pitched roof, finished in dark grey concrete tiles. The walls are to be smooth render with stone window surrounds and cills and a fyestone base course. The window frames and doors will be dark grey uPVC. The two front dormers measure 1.9 metres wide with a pitched roof and the sides to match the roof. The rear dormer measures 8.8 metres long and is proposed to be clad in dark grey Marley Eternit cladding, the same as the front of the other dormers. Due to the levels within the site, there is to be an underbuild of up to 0.9 metres. Two parking spaces are proposed to the front of the house, beside a bin store.

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

Application site

0397/97 Erection of new shop and dwellinghouse. Consent with conditions – the flat shall only be occupied by a person owning and/or employed in the shop, due to the lack of amenity space provided. This has not been implemented.

288/91 Outline permission for the erection of a dwellinghouse. Refused – overdevelopment as inadequate privacy and amenity would be provided; and it is desirable for the shop to be retained on site as this is a useful community facility.

Land to south

12/00287/DPP Change of use from public house to art gallery and workshop and installation of slate roof. Consent with conditions.

Consultations: The Policy and Road Safety Manager has no objection.

Representations: One objection has been received on the following grounds:

- the proposal will exacerbate existing parking issues in the area;

- there is a lot of development planned in Auchendinny and there is no need for more; and
- loss of view.

Relevant Planning Policies: The relevant policies of the **2017 Midlothian Local Development Plan** are;

STRAT2 Windfall Housing Sites advises within the built-up areas, housing development on non-allocated sites and including the reuse of buildings and redevelopment of brownfield land, will be permitted provided that: it does not lead to the loss or damage of valuable public or private open space; it does not conflict with the established land use of the area; it respects the character of the area in terms of scale, form, design and materials; it meets traffic and parking requirements; and it accords with other relevant Local Plan policies and proposals;

DEV2 Protecting Amenity within the Built-Up Area advises development will not be permitted where it is likely to detract materially from the existing character or amenity of the area;

DEV6 Layout and Design of New Development states good design and a high quality of architecture will be required in the overall layout of development proposals. This also provides guidance on design principles for development, materials, access, passive energy gain, positioning of buildings, open and private amenity space provision and parking; and

ENV15 Species and Habitat Protection and Enhancement states development that would affect a species protected by European or UK law will not be permitted unless: there is an overriding public need and there is no satisfactory alternative; a species protection plan has been submitted, which is based on survey results and includes details of the status of protected species on site and possible adverse impact of development; suitable mitigation is proposed and agreed; and the development is not detrimental to the maintenance of European protected species at a favourable conservation status.

Supplementary Planning Guidance – Dormer Extensions was prepared, in part, due to a growing concern over the increasing size of dormers and the impact of large box dormer extensions on the character of the original building and on the visual amenity of the surrounding area.

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 within the built up area where there is support for development provided it does not detract materially from the character or amenity of the area. Therefore, while the principle of a residential development on this site is acceptable, the detailed elements of the proposal require to be assessed.

The house design is generally of traditional proportions which could be acceptable in Auchendinny, where there are a variety of different house types and no overriding distinctive character. The proposed materials are generally acceptable, however should permission be granted the roof should be finished in slate rather than concrete roof tiles. The house would be seen in close proximity to the houses at

Evelyn Terrace which have slate roofs and the proposed concrete tiles would look incongruous in this context.

A flat roofed dormer is proposed on the rear elevation measuring 8.8 metres long. This is a large and bulky addition which does not comply with the related SPG. This incongruous feature is not acceptable as it would detract from the character and appearance of the area, being highly visible given the changes in ground levels and the prominence of this elevation.

Given the ground level changes within the site, the proposed house would have an underbuild of 0.9 metres to the east. The Planning Authority generally would not accept an underbuild of more than 0.5 metres in new housing as this detracts from the appearance of houses. Changes in levels should be accommodated in the design. However it is noted that the previously approved house had a similar underbuild.

These changes in ground levels continue around the site, which is highly visible from the south and east. The house would generally fit into the streetscene of The Brae, however the east elevation would be a highly prominent feature, as this is only 1 metre from the site boundary. The house's proximity to boundaries and the levels of the site means this would be a prominent feature which would benefit from landscaping to soften this impact, however, as detailed below, the site is small and therefore unlikely to be able to accommodate this.

The application site is small at approximately 240 square metres. The footprint of the house is 78 square metres leaving only 162 square metres for related amenity space. Two parking spaces are proposed to the front which is acceptable in road safety terms, however these will be hard up to the front elevation of the house. Only 86 square metres of usable garden ground is proposed to the rear, which given the size is not considered usable. The site is too small to accommodate a house of the scale proposed along with the required parking and amenity space and therefore the proposal is considered overdevelopment.

It is clear from the site history that the development of one house here was not acceptable due to the lack of adequate amenity space for the occupants. The previous approval for a flat at the site was only considered acceptable as it related to the retention of the shop unit and even then only under the very specific circumstances, ensuring that this be related to the shop and not be occupied separately. The circumstances at the site have not changed since the previous application and there is no justification for a reduction in the required standards.

The house would be 8 metres from the closest property at Evelyn Terrace to the northwest. The previously approved house in 1997 was approximately 2 metres higher than the proposed house. The previous application considered that the larger house would reduce the outlook from the existing properties, however the house on Evelyn Terrace does not enjoy a good outlook at present. It was also calculated, during the previous application, that there would not be a significant loss of sunlight and daylight to warrant refusal of the proposal on these grounds. Despite the proximity to nearby properties, given the proposed house is lower than the previously approved house which was considered acceptable, it is considered that the impact

on the amenity and outlook on existing properties would not be sufficiently significant to warrant refusal on these grounds.

The existing building is in a dilapidated condition with a number of small openings. No biodiversity report has been carried out to demonstrate that its demolition would not have an adverse impact on protected species, bats in this instance. It has not been demonstrated that the proposal complies with policy.

The following section addresses comments made by the representor not addressed above. The Policy and Road Safety Manager has not raised any road safety concerns over parking or access. The application site is not allocated as housing but of part of the built up area where development may be acceptable provided it meets the required standards. The MLDP has allocated land around Auchendinny for development which has been considered acceptable by elected members and the Scottish Government. The loss of a view is not a material planning consideration.

Recommendation: Refuse planning permission.



Refusal of Planning Permission

Town and Country Planning (Scotland) Act 1997

Reg. No. 18/00581/DPP

F.E.M Building Design
8 Plantain Grove
Lenzie
G66 3NE

Midlothian Council, as Planning Authority, having considered the application by Mr Peter McVey, 39 The Brae, Auchendinny, EH26 0RB, which was registered on 29 August 2018 in pursuance of their powers under the above Acts, hereby **refuse** permission to carry out the following proposed development:

Erection of dwellinghouse at Land At 39 The Brae, Auchendinny, Penicuik

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	29.08.2018
Site Plan, Location Plan And Elevations	18/McVey/PP/001(-)1:1250 1:500 1:50	29.08.2018

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

1. *The proposed development would result in a low standard of amenity for future occupants, particularly as an inadequate level of amenity space will provided. Therefore, the proposed development is considered to be an overdevelopment of the site, contrary to policies STRAT2 and DEV2 of the adopted Midlothian Local Development Plan 2017.*
2. *The proposed dormer extension on the proposed rear elevation, on account of its size and design, would appear overly bulky and would be an unduly dominant feature at roof level, and would significantly detract from the form of the roof of the building with a detrimental impact on the character and appearance of the property.*
3. *The proposed dormer extension on the proposed rear elevation would be publicly visible and its unsatisfactory relationship to the building would have a significant detrimental impact on the visual amenity of the locality.*
4. *For the above reasons (2 and 3) the proposal is contrary to policies STRAT2, DEV2 and DEV6 of the adopted Midlothian Local Development Plan 2017. If the application were approved it would undermine the consistent implementation of these policies, the objectives of which are to protect the character and amenity of the built-up area and to ensure that extensions do not detract from the appearance of the property.*
5. *It has not been demonstrated to the satisfaction of the Planning Authority that the proposed development would not have a detrimental impact on protected species*

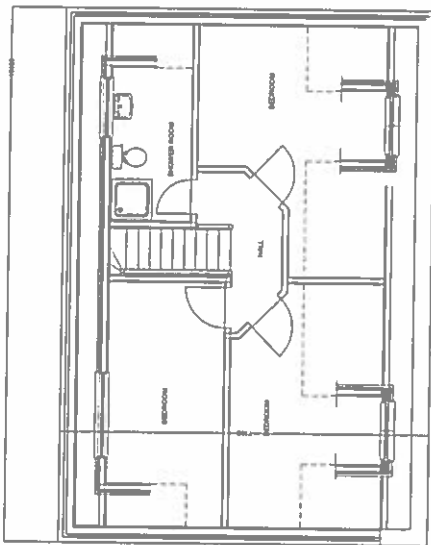
and is therefore contrary to policy ENV15 of the adopted Midlothian Local Development Plan.

Dated 23 / 10 / 2018

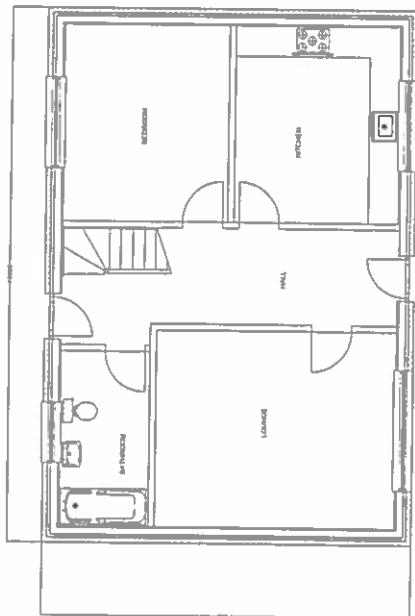
A handwritten signature in black ink, consisting of a stylized 'D' and 'R'.

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

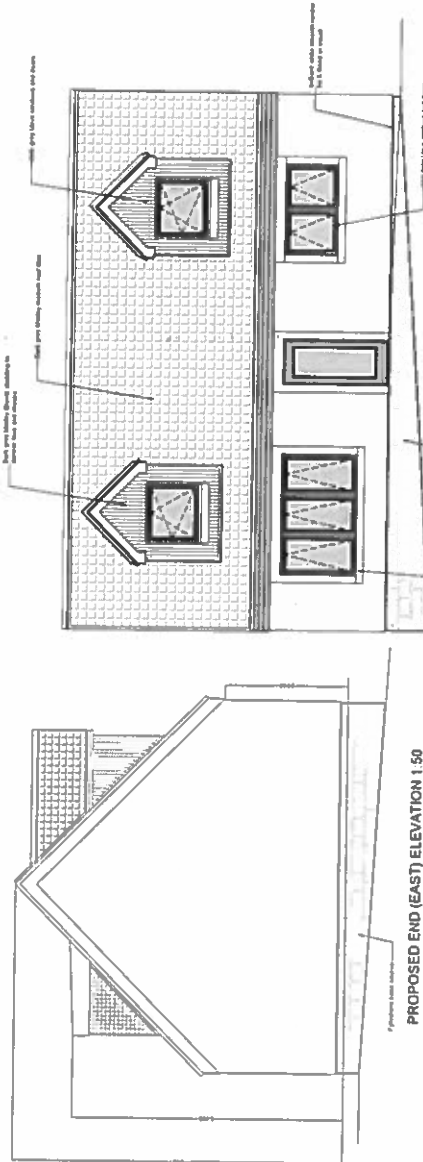
Appendix E



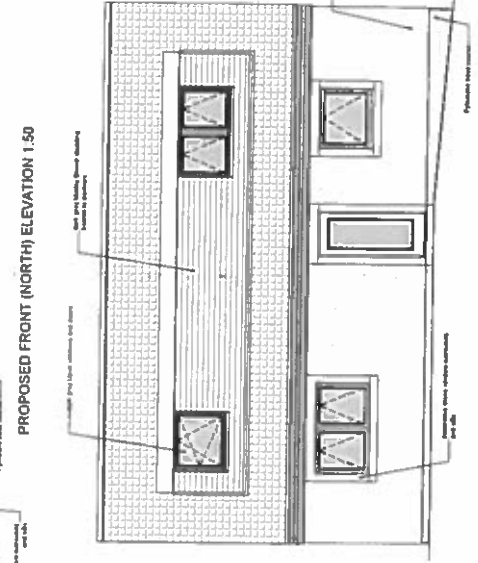
PROPOSED UPPER FLOOR PLAN 1.50



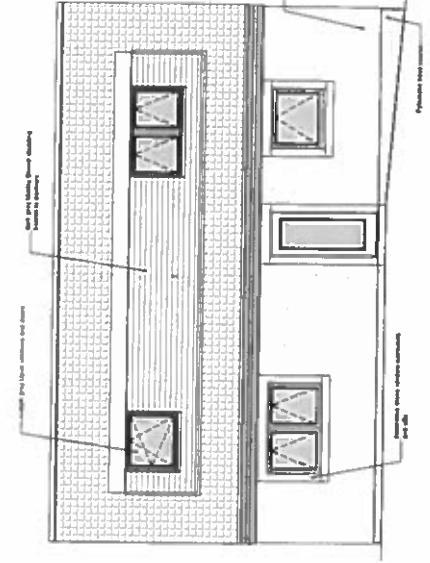
PROPOSED GROUND FLOOR PLAN 1:50



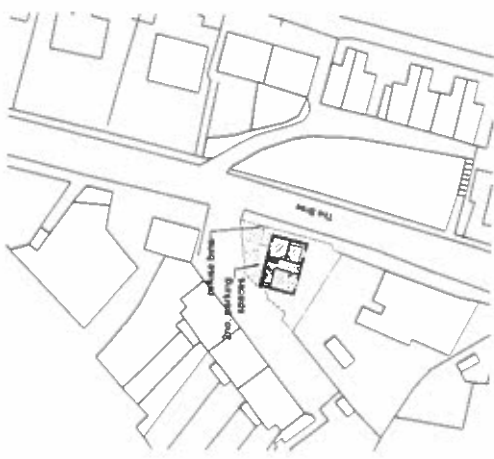
PROPOSED END (EAST) ELEVATION 1:50



PROPOSED REAR (SOUTH) ELEVATION 1:50



PROPOSED END (WEST) ELEVATION 1:50



PROPOSED SITE BLOCK PLAN (1500)



EXISTING NORTH ELEVATION



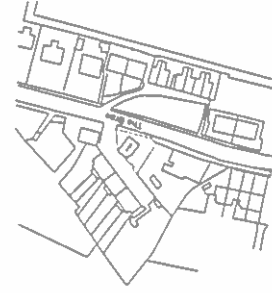
100% COTTON



EXISTING WEST ELEVATION



EXISTING SITE BLOCK PLAN (1:500)



EXISTING LOCATION PLAN 1:1250

<p>1. <input type="checkbox"/> I am a student, and I am a member of a 1994-1995 student group that meets for one hour each week.</p> <p>2. <input type="checkbox"/> I am a student, and I am a member of a 1994-1995 student group that meets for one hour each week.</p> <p>3. <input type="checkbox"/> I am a student, and I am a member of a 1994-1995 student group that meets for one hour each week.</p> <p>4. <input type="checkbox"/> I am a student, and I am a member of a 1994-1995 student group that meets for one hour each week.</p> <p>5. <input type="checkbox"/> I am a student, and I am a member of a 1994-1995 student group that meets for one hour each week.</p> <p>6. <input type="checkbox"/> I am a student, and I am a member of a 1994-1995 student group that meets for one hour each week.</p> <p>7. <input type="checkbox"/> I am a student, and I am a member of a 1994-1995 student group that meets for one hour each week.</p> <p>8. <input type="checkbox"/> I am a student, and I am a member of a 1994-1995 student group that meets for one hour each week.</p> <p>9. <input type="checkbox"/> I am a student, and I am a member of a 1994-1995 student group that meets for one hour each week.</p> <p>10. <input type="checkbox"/> I am a student, and I am a member of a 1994-1995 student group that meets for one hour each week.</p>	<p>Student</p> <p>Name _____</p> <p>Year _____</p> <p>Age _____</p> <p>Address _____</p> <p>City _____</p> <p>State _____</p> <p>Zip _____</p> <p>Phone _____</p> <p>E-mail _____</p>	<p>Parent</p> <p>Name _____</p> <p>Address _____</p> <p>City _____</p> <p>State _____</p> <p>Zip _____</p> <p>Phone _____</p> <p>E-mail _____</p>	<p>Teacher</p> <p>Name _____</p> <p>Address _____</p> <p>City _____</p> <p>State _____</p> <p>Zip _____</p> <p>Phone _____</p> <p>E-mail _____</p>	<p>Principal</p> <p>Name _____</p> <p>Address _____</p> <p>City _____</p> <p>State _____</p> <p>Zip _____</p> <p>Phone _____</p> <p>E-mail _____</p>	<p>Superintendent</p> <p>Name _____</p> <p>Address _____</p> <p>City _____</p> <p>State _____</p> <p>Zip _____</p> <p>Phone _____</p> <p>E-mail _____</p>
--	--	--	---	---	--

