

# Notice of Meeting and Agenda



## Local Review Body

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

**Date:** Monday, 06 March 2023

**Time:** 13:00

### Executive Director : Place

**Contact:**

Clerk Name: Democratic Services  
Clerk Telephone:  
Clerk Email: [democratic.services@midlothian.gov.uk](mailto:democratic.services@midlothian.gov.uk)

### Further Information:

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

**Privacy notice:** Please note that this meeting may be recorded. The recording may be publicly available following the meeting. If you would like to know how Midlothian Council collects, uses and shares your personal information, please visit our website: [www.midlothian.gov.uk](http://www.midlothian.gov.uk)

## **1 Welcome, Introductions and Apologies**

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## **2 Order of Business**

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

## **3 Declaration of Interest**

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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**

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- 4.1** Minute of meeting of 23 January 2023 submitted for approval 3 - 6

## **5 Public Reports**

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Notice of Reviews - Determination Reports by Chief Officer Place

- 5.1** Land at 2 Finlay Place, Mayfield - 22.00481.DPP 7 - 28
- 5.2** 40-42 Hamilton Crescent, Newtongrange - 22.00720.DPP 29 - 52
- 5.3** 124 Main Street, Pathhead - 22.00702.DPP 53 - 80

## **6 Private Reports**

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No items for discussion

## **7 Date of Next Meeting**

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The next meeting will be held on Monday 17 April 2023 at 1 pm

Plans and papers relating to the applications on this agenda can also be viewed at <https://planning-applications.midlothian.gov.uk/OnlinePlanning>

# Minute of Meeting

Local Review Body  
Tuesday 6 March 2023  
Item No 4.1



## Local Review Body

Date	Time	Venue
Monday 23 January 2023	1.00pm	Council Chambers

### Present:

Councillor Imrie (Chair)	Councillor Alexander
Councillor Bowen	Councillor Cassidy
Councillor Drummond	Councillor McEwan
Councillor McManus	Councillor Smail

### In Attendance:

Peter Arnsdorf	Planning, Sustainable Growth and Investment Manager
Janet Ritchie	Democratic Services Officer

## 1 Welcome, Introductions and Apologies

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Apologies for absence were received from Councillor Virgo and Councillor Milligan

## 2 Order of Business

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The order of business was as outlined in the agenda previously circulated.

## 3 Declarations of interest

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No declaration of interests were received

## 4 Minute of Previous Meeting

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The Minute of the Meeting of 5 December 2022 was submitted and approved as correct records.

## 5 Reports

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### Notice of Reviews – Determination Reports by Chief Officer Place

Agenda No	Report Title	Presented by:
5.1	Land at ASDA. New Pentland, Loanhead (22/00364/DPP)	Peter Arnsdorf
<b>Outline of report and summary of discussion</b>		
<p>The purpose of this report was to provide a framework for the Local Review Body (LRB) to consider a 'Notice of Review' for the erection of a retail pod (retrospective) at land at ASDA, New Pentland, Loanhead.</p> <p>Planning application 22/00364/DPP for the erection of a retail pod (retrospective) at land at ASDA, New Pentland, Loanhead was granted planning permission subject to a condition on 1 August 2022; a copy of the decision is attached to this report subject to the condition as set out in the report.</p> <p>The Planning, Sustainable Growth and Investment Manager presented this report and advised that the review would proceed on the written submissions provided.</p> <p>In discussing the proposed development and the reasons for the removal of the condition which was the subject of the review, the LRB did not agree that this structure was not a suitable or appropriate permanent structure and Councillor Drummond, seconded by Councillor Cassidy moved to uphold the review and grant planning permission with the removal of the condition stated in the report.</p>		
<b>Decision</b>		
<p>The Local Review Body agreed to uphold the review request and to grant planning permission subject to the removal of the stated condition as set out in the report.</p>		
<b>Action</b>		
<p>Planning, Sustainable Growth and Investment Manager</p>		

Agenda No	Report Title	Presented by:
5.2	Land East of 19 Cairnbank Road, Penicuik (22/00289/DPP	Peter Arnsdorf
<b>Outline of report and summary of discussion</b>		
<p>The purpose of this report was to provide a framework for the Local Review Body (LRB) to consider a 'Notice of Review' for the erection of four dwelling houses at land east of 19 Cairnbank Road Penicuik.</p> <p>Planning application 22/00289/DPP for the erection of four dwelling houses at land east of 19 Cairnbank Road, Penicuik was refused planning permission on 2 September 2022; a copy of the decision is attached to this report.</p> <p>The Planning, Sustainable Growth and Investment Manager presented this report and advised that the review would proceed on the written submissions provided</p> <p>The Local Review Body in discussing the proposed development and the reasons for its refusal, raised concerns with regards over development of the site, the level of garden amenity, the loss of trees, the restrictive access arrangements, the volume of traffic generated during and after construction and access for emergency vehicles. In responding to a question the Planning, Sustainable Growth and Investment Manager confirmed that any right of way in place would not change if this development was granted planning permission.</p> <p>Councillor McManus, seconded by Councillor Drummond moved to dismiss the review request and uphold the decision to refuse planning permission for the reasons as stated in the case officer's report.</p> <p>On an Amendment Councillor Smaill, seconded by Councillor Cassidy moved to uphold the review request and grant planning permission subject to conditions relating to enlarging the parking sites, the road is returned to its existing state and there is no obstruction with regards to emergency services.</p> <p>On a vote being taken 5 Members voted for the Motion and 3 Members voted for the Amendment.</p>		
<b>Decision</b>		
<p>The Local Review Body agreed to dismiss the review request and uphold the Planning decision to refuse Planning Permission for the erection of 4 dwelling houses at the land east of 19 Cairnbank Road, Penicuik for the reasons as stated in the Case Officers Report.</p>		
<b>Action</b>		
<p>Planning, Sustainable Growth and Investment Manager</p>		

## 6. Private Reports

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No private business was discussed.

## **7. Date of Next Meeting**

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The next meeting is scheduled for Monday 6 March 2023 at 1 pm

The meeting terminated at 13.18 pm

## **Notice of Review: Land at 2 Finlay Place, Mayfield**

### **Determination Report**

Report by Chief Officer Place

#### **1 Purpose of Report**

- 1.1 The purpose of this report is to provide a framework for the Local Review Body (LRB) to consider a 'Notice of Review' for the change of use from public open space to private garden ground at land at 2 Finlay Place, Mayfield.

#### **2 Background**

- 2.1 Planning application 22/00481/DPP for the change of use from public open space to private garden ground at land at 2 Finlay Place, Mayfield was refused planning permission on 24 August 2022; a copy of the decision is attached to this report.
- 2.2 The review has progressed through the following stages:
- 1 Submission of Notice of Review by the applicant.
  - 2 The Registration and Acknowledgement of the Notice of Review.
  - 3 Carrying out Notification and Consultation.

#### **3 Supporting Documents**

- 3.1 Attached to this report are the following documents:
- A site location plan (Appendix A);
  - A copy of the notice of review form and supporting statement (Appendix B). Any duplication of information is not attached;
  - A copy of the case officer's report (Appendix C);
  - A copy of the decision notice, excluding the standard advisory notes, issued on 24 August 2022 (Appendix D); and
  - A copy of the key plans/drawings (Appendix E).
- 3.2 The full planning application case file and the development plan policies referred to in the case officer's report can be viewed online via [www.midlothian.gov.uk](http://www.midlothian.gov.uk)

#### **4 Procedures**

- 4.1 In accordance with agreed procedures, the LRB:

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

## **5 Conditions**

- 5.1 In accordance with the procedures agreed by the LRB at its meeting of 20 June 2022, and without prejudice to the determination of the review, the following conditions have been prepared for the consideration of the LRB if it is minded to uphold the review and grant planning permission.
1. The development to which this permission relates shall commence no later than the expiration of three years beginning with the date of this permission.

**Reason:** *To accord with the provisions of Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning (Scotland) Act 2019).*

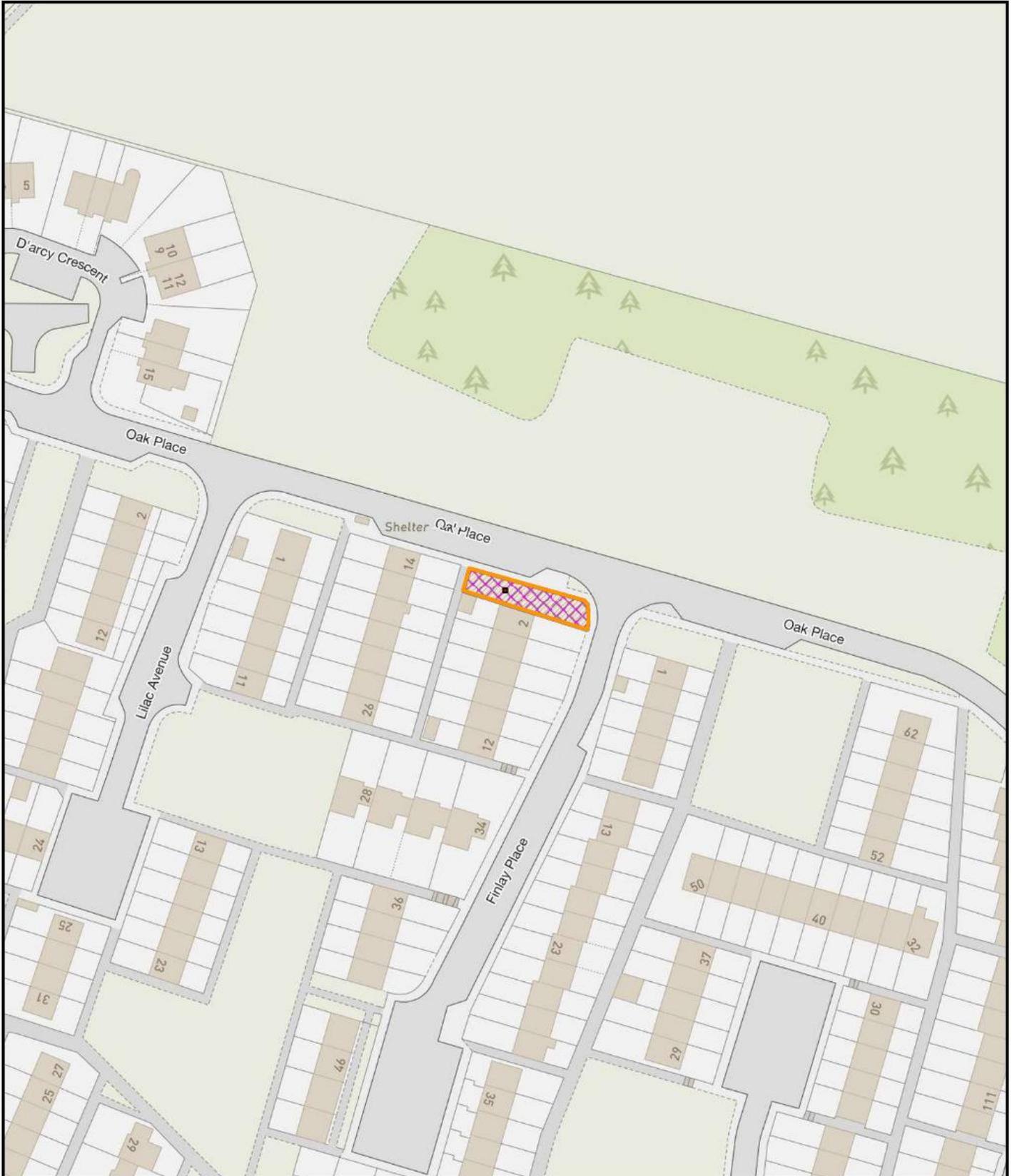
## **6 Recommendations**

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

**Peter Arnsdorf**  
**Planning, Sustainable Growth and Investment Manager**

**Date:** 22 February 2023  
**Report Contact:** Duncan Robertson, Planning Officer  
[duncan.robertson@midlothian.gov.uk](mailto:duncan.robertson@midlothian.gov.uk)

**Background Papers:** Planning application 22/00481/DPP available for inspection online.



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

**Change of use of open space to private garden  
Land at 2 Finlay Place, Mayfield**

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File No.22/00481/DPP

Scale: 1:1,250



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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 100601820-001

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

## 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="Allan"/>	Building Number:	<input type="text" value="2"/>
Last Name: *	<input type="text" value="Shiels"/>	Address 1 (Street): *	<input type="text" value="2 FINLAY PLACE"/>
Company/Organisation	<input type="text"/>	Address 2:	<input type="text" value="MAYFIELD"/>
Telephone Number: *	<input type="text" value="REDACTED"/>	Town/City: *	<input type="text" value="DALKEITH"/>
Extension Number:	<input type="text"/>	Country: *	<input type="text" value="United Kingdom"/>
Mobile Number:	<input type="text"/>	Postcode: *	<input type="text" value="EH22 5NF"/>
Fax Number:	<input type="text"/>		
Email Address: *	<input type="text" value="REDACTED"/>		<input type="text"/>

## Site Address Details

Planning Authority:

Midlothian Council

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

Address 1:

2 FINLAY PLACE

Address 2:

MAYFIELD

Address 3:

Address 4:

Address 5:

Town/City/Settlement:

DALKEITH

Post Code:

EH22 5NF

Please identify/describe the location of the site or sites

Northing

664945

Easting

335614

## 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)

CHANGE OF USE FROM PUBLIC OPEN SPACE TO PRIVATE GARDEN GROUND. SMALL EXTENTION AND UTILITIES AREA AT THE GABLE END OF THE HOUSE.

## 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.

I am requesting this review due to being refused the land, this was refused due to being detrimental to the local community and a loss of open space. I don't feel that can be justified as there is no active use of the land I am applying for. the tree and drainage that is on the land is out with the measurements of the land i am looking to buy. I was given permission back in August 2009 to purchase the whole land 172 square meters. documents will follow.

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)

supporting documents to follow

## Application Details

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

100579434

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

27/06/2022

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

24/08/2022

## Review Procedure

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

Can this review continue to a conclusion, in your opinion, based on a review of the relevant information provided by yourself and other parties only, without any further procedures? For example, written submission, hearing session, site inspection. \*

Yes  No

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

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

Yes  No

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

Yes  No

## Checklist – Application for Notice of Review

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

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

Yes  No

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

Yes  No

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

Yes  No  N/A

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

Yes  No

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

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

Yes  No

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

## Declare – Notice of Review

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

Declaration Name: Mr Allan Shiels

Declaration Date: 14/10/2022

Development  
Midlothian Council  
Midlothian House  
Buccleuch Street  
Dalkeith  
EH22 1DJ

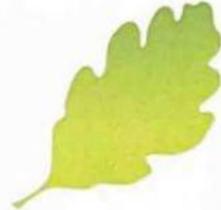
Strategic Services

Director  
Ian L. Young

Midlothian

28 July 2008

Darren Dickson  
7 Colliery View  
NEWTONGRANGE  
Midlothian  
EH22 4AQ



Dear Darren

### Request to Purchase Land Adjacent To 2 Finlay Place, Mayfield

I write with reference to your recent correspondence regarding your client's request to purchase land adjacent to 2 Finlay Place, Mayfield.

Please find enclosed a copy of the plan I received from the Council's Land Surveyor which shows the area your client has requested to purchase. The total area shown is 172 sq m and this plan will be used in connection with the sale.

In addition to the terms and conditions stated in my previous letter I can advise that a concern has been raised by one of the Local Members in relation to the tree which sits on the site. Therefore an extra condition of sale would be that a replacement tree would require to be planted on the site if practical and possible.

I hope this information is of use to you. If you have any questions please do not hesitate to contact me on the number given below.

Yours sincerely



Alison McGowan  
Estates Surveyor  
alison.mcgowan@midlothian.gov.uk

Enc

This letter merely indicates or outlines the terms, or some of the terms, on which the Council would consider entering into a binding and legal contract with you/your client, and does not of itself create or impose, nor shall it be deemed to create or impose, on the Council any legally enforceable obligation or obligations of a contractual nature.

Your Ref:  
Our Ref: AM/JR/57588

A McGowan

Tel 0131 271 3493  
Fax 0131 271 3239  
Minicom 0131 271 3291  
Legal Post LP4 - Dalkeith  
www.midlothian.gov.uk

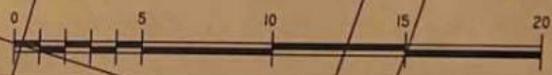
THIS IS THE PLAN REFERRED TO  
IN THE FOREGOING DISPOSITION  
BY THE MIDLOTHIAN COUNCIL IN  
FAVOUR OF



LOCATION PLAN MAYFIELD  
SCALE 1:1250  
AREA 172 SQUARE METRES OR THEREBY



© CROWN COPYRIGHT  
MIDLOTHIAN COUNCIL  
LA 09038L  
SCALE IN METRES



Midlothian  
Commercial Services  
Land Survey

LAND SALE  
2 FINLAY PLACE  
MAYFIELD  
MIDLOTHIAN

DRAWN: JGD  
SCALE: 1:200  
DATE: 25.6.08  
REF D-3594

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Development  
Midlothian Council  
Midlothian House  
Buccleuch Street  
Dalkeith  
EH22 1DJ

Strategic Services

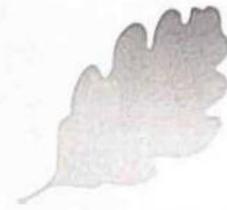
Director  
Jan L Young

145 m<sup>2</sup>  
GAVIN  
SHIELS

Midlothian

5 June 2008

Mr Darren Dickson  
7 Colliery View  
Newtongrange  
Midlothian  
EH22 4AQ



Dear Darren

### Request to Purchase Land Adjacent to 2 Finlay Place, Mayfield

I write with reference to your client's recent request to purchase land at the above address.

I can advise that I have consulted the relevant Council Sections and the Local Members for Ward 5 Midlothian East have been notified of the details and have no objections to the sale.

I am therefore prepared to recommend to Committee that the area of land be sold to Mr Shiels based on the following terms and conditions:

1. The site is to be used to facilitate an extension to his property and for no other purpose whatsoever without the Council's prior written consent.
2. The sale price is £5,000.
3. The date of entry will be as stipulated in the Missives to follow hereon.
4. He will erect a suitable fence or boundary on the site.
5. He will be responsible for the Council's reasonable legal, valuation and surveying fees.
6. He will be responsible for obtaining planning permission and any other statutory consents in connection with the proposed use of the subjects, if required.
7. He will be responsible for paying any fees associated with the cost of advertising the proposed sale in the local press for two consecutive weeks even if the sale does not proceed to legal conclusion.

I should be grateful if you would consider the above request and confirm in writing whether or not your client wishes to proceed with the purchase of land adjacent to 2 Finlay Place, Mayfield.

Yours sincerely



Estates Surveyor  
alison.mcgowan@midlothian.gov.uk

This letter merely indicates or outlines the terms, or some of the terms, on which the Council would consider entering into a binding and legal contract with you/your client, and does not of itself create or impose, nor shall it be deemed to create or impose, on the Council any legally enforceable obligation or obligations of a contractual nature.

Your Ref:  
Our Ref: AM/PB/56918

A McGowan

Tel 0131 271 3493  
Fax 0131 271 3239  
Minicom 0131 271 3291  
Legal Post LP4 - Dalkeith  
www.midlothian.gov.uk

Allan Shiels Esq  
2 Finlay Place  
Mayfield  
Dalkeith  
Midlothian  
EH22 5NF

93 High Street  
Dalkeith EH22 1JA  
T: 0131 663 7261  
F: 0131 663 5483

DX 540573 DALKEITH  
dalkeith@allanmcdougall.co.uk

Our Ref: D.JMAC.CM.SHI  
Your Ref:  
Date: 27 August 2009

Dear Mr Shiels,

***Purchase of Land at 2 Finlay Place, Mayfield***

We have been contacted by the Midlothian Council in relation to the purchase of land adjacent to 2 Finlay Place, Mayfield. We enclose a copy of an Offer which they have made. In the circumstances, we would ask that you telephone and make an appointment to meet with our Mr MacIntyre to discuss matters further.

Yours faithfully



Partners: David JC Nicol Gordon F Bathgate Damian A White  
Julie Harris Fiona R Mason Craig M Forster  
Clare M McCarroll John MacIntyre Isobel Joiner

Consultants: William F Brown Scott H Miller Alan P McLaren

Offices at: 3 Coates Crescent Edinburgh T: 0131 225 2121  
20 High Street Penicuik T: 01908 675694  
33 Lasswade Road Edinburgh T: 0131 666 2424  
93 High Street Dalkeith T: 0131 663 7261  
5 St Vincent Place Glasgow T: 0141 275 4883  
Property Shop Direct Line T: 0131 240 3818

Visit our web site: [www.amcdlaw.co.uk](http://www.amcdlaw.co.uk)

Law and Administration Corporate Services  
Midlothian Council  
Midlothian House  
Buccleuch Street  
Dalkeith  
EH22 1DJ

Director  
Ian Jackson

Midlothian

24 August 2009

26 AUG 2009

John MacIntyre  
Allan McDougall  
Solicitors  
93 High Street  
Dalkeith  
EH22 1JA

Dear Sirs,

**Sale of land beside 2 Finlay Place, Mayfield  
Allan Shiels**

On behalf of and as authorised by the Midlothian Council ("the Council") I hereby offer to sell to your client Mr. Allan Shiels ("the Purchaser") ALL and WHOLE that plot or area of ground adjacent to 2 Finlay place, Mayfield in the County of Midlothian extending to 172 square metres or thereby in total being the subjects shown shaded in pink on the plan annexed and executed as relative hereto together with the whole parts, privileges and pertinents thereof ("the Subjects") and that on the following terms and conditions:-

- 1 The purchase price shall be FIVE THOUSAND POUNDS (£5,000) STERLING payable on the date of entry after mentioned.
- 2 The Date of Entry shall be as agreed between the parties.
- 3 In the event that the price is not paid in full on the date of entry for any reason not attributable to fault or delay on the part of the Council interest at the rate of 4 per centum per annum above the base lending rate of The Royal Bank of Scotland plc as varied from time to time shall be payable, and that notwithstanding the consignment nor the fact that the Purchasers have been denied entry. If the price is not paid in full as aforesaid within 28 days of the date of entry for any reason not attributable to fault or delay on the part of the Council, the Council shall be entitled but not bound to resile from the missives to follow hereon but reserving nonetheless their right to claim damages from the Purchaser for all loss, damage and expenses suffered by the Council which will include but will not necessarily be limited to any capita loss on resale, interest on the purchase price at the aforesaid rate both before and after decree against the Purchaser from the date of entry until the date of receipt of the sale proceeds on resale, advertising and Estate Agents' expenses, and the Council's legal expenses in connection with any resale.

Your Ref:JM

Our Ref: E 7.562/DQ

Tel 0131 271 3138  
Fax 0131 271 3107  
Minicom 0131 271 3291  
DX540568 Dalkeith (Receipt only)  
Legal Post LP - 4 Dalkeith  
www.midlothian.gov.uk

The Subjects are sold subject to all existing burdens and conditions contained in the titles thereto and will be sold subject to all existing rights of way and access, servitude rights, wayleaves and others in, over, under and through or affecting the subjects of sale.

- 5 The Council will not exhibit Property Enquiry certificates or Searches.
- 6 At the date of settlement the Council will in exchange for the purchase price exhibit a good and marketable title to the Subjects.
- 7 Clauses to the following effect shall be inserted in the Disposition to follow hereon if desired :-
  - (i) The Subjects shall be used as garden ground and a driveway and for no other purpose whatsoever without the prior written consent in writing of the Council.
  - (ii) The Purchaser in using the subjects shall be bound to conform in all respects to the provisions of any local Acts and Acts relating to Town Planning, all statutory powers available to the council as local authority under or in virtue of the said Acts being hereby reserved.
  - (iii) The subjects, so far as not occupied by buildings, internal roadways and car parking areas, shall be kept landscaped and free from weeds and in a neat and tidy condition to the satisfaction of the Council; in particular and without prejudice to the foregoing generality any materials stored by the Purchaser on the subjects shall be adequately screened all to the reasonable satisfaction of the Council so as not to injure the amenity of the area.
  - (iv) The Purchaser at his sole expense shall erect fencing on the boundary of the subjects sold; the Purchaser shall maintain, repair and when necessary renew such fences at his sole expense in all time coming and all fences to be erected in terms of this condition shall be in accordance with a design and specification to be approved by the Council in writing prior to the erection thereof.
  - (v) There is reserved to the Council power to take access to the subjects at any time and to such extent as the Council shall reasonably determine as necessary or desirable (a) in the interests of all or any of the purchasers, tenants or proprietors of ground adjoining the subjects or (b) for the proper development of the ground adjoining or in the neighbourhood of the subjects.
  - (vi) Where under this offer or the Disposition to follow thereon, the Council is required to give its approval, permission or consent the Council is giving that approval, permission or consent as seller only and not as local authority in terms of any statute or statutory instrument or order and notwithstanding the generality not as planning or roads authority to which separate application will require to be made as necessary.
  - (vii) There shall be reserved to the Council in so far as we have a right thereto and subject always to the terms of the Coal Mining Subsidence Act 1991 and the Coal Industry Act 1994, the whole mines, metals and minerals of whatsoever nature within and under the subjects, with full power and

liberty to the council or any persons authorised by them, but without entering on the surface of the subjects, to search for, work, win, raise, calcine, manufacture and carry away the said minerals and others to do everything necessary for all or any of these purposes; declaring that in the event of the Council exercising any of the said reserved rights or powers, they shall be bound to make payment to the purchasers for all damage which may thereby be occasioned to the surface of the subjects or buildings or erections thereon as such damage shall, failing agreement, be determined by an Arbiter to be mutually chosen, or, on the application of either party, to be appointed by the Sheriff Principal of Lothian and Borders.

(viii) The large tree in the centre of the site will be replaced by the purchaser if possible and practical

8 The Purchaser shall pay the Council's reasonable valuation, surveying and legal costs and the advertising costs.

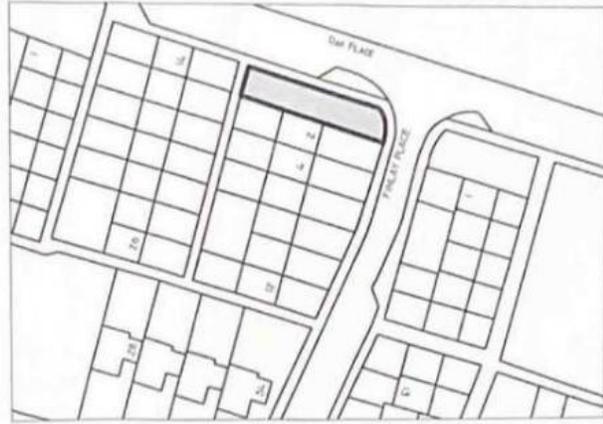
The contact for this case is David Quinn, ([david.quinn@midlothian.gov.uk](mailto:david.quinn@midlothian.gov.uk)).

Yours faithfully

*Elspeth Osborne*

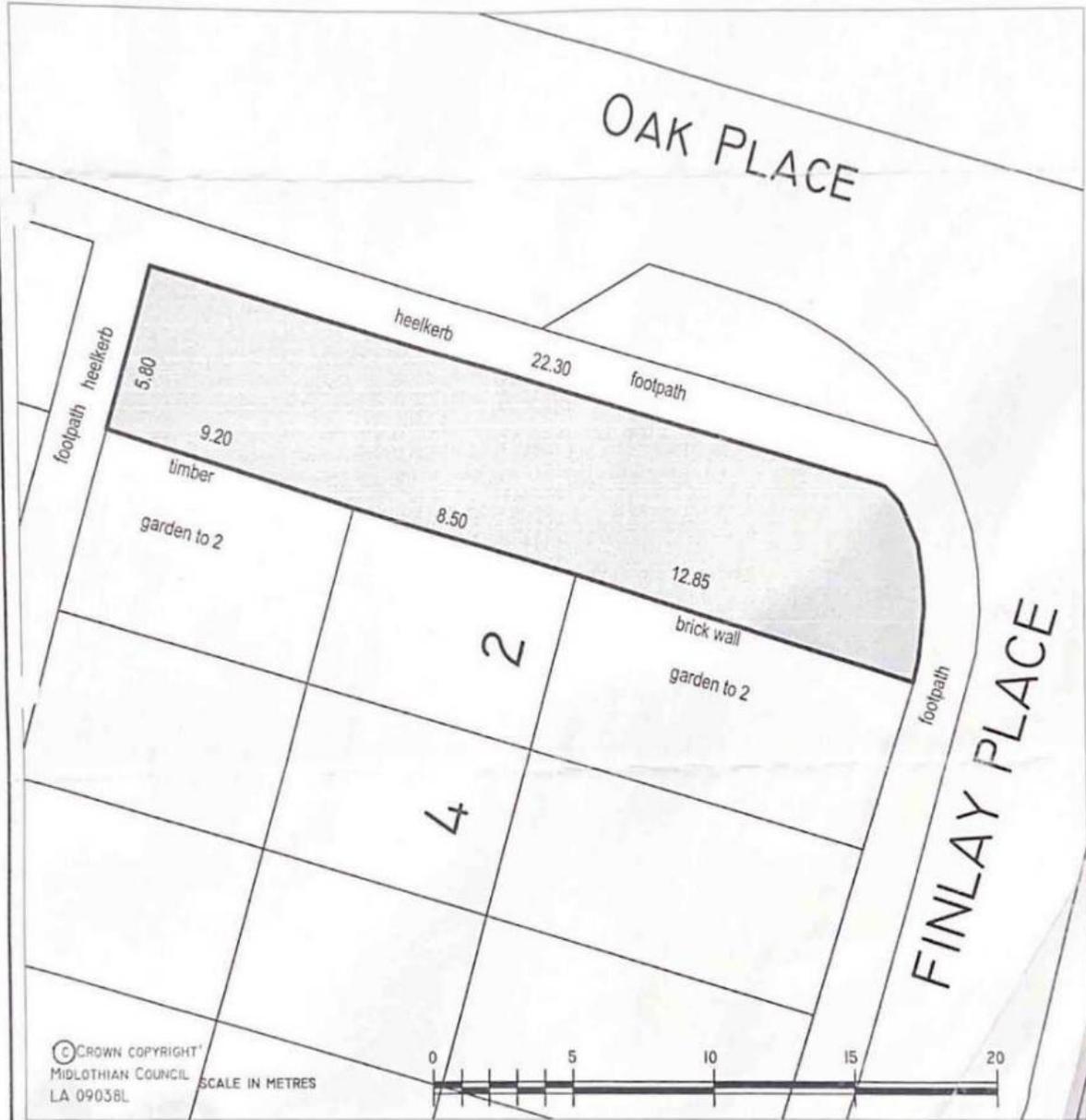
Elspeth Osborne  
Legal Manager

THE PLAN REFERRED TO  
THE FOREGOING DISPOSITION  
THE MIDLOTHIAN COUNCIL IN  
FAVOUR OF

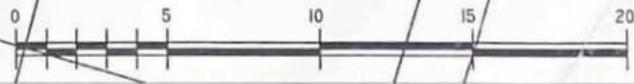


Aspean Osborne

LOCATION PLAN MAYFIELD  
SCALE 1:1250  
AREA 172 SQUARE METRES OR THEREBY



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MIDLOTHIAN COUNCIL  
LA 09038L SCALE IN METRES



Midlothian  
Commercial Services  
Land Survey

LAND SALE  
2 FINLAY PLACE  
MAYFIELD  
MIDLOTHIAN

DRAWN: JGD  
SCALE: 1:200  
DATE: 25.6.08  
REF D-3594

## MIDLOTHIAN COUNCIL

### DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

**Planning Application Reference:** 22/00481/DPP

**Site Address:** Land at 2 Finlay Place, Mayfield, Dalkeith

**Site Description:** The application site is located within a primarily residential area of Mayfield. The property comprises of a two storey end terrace property with front driveway and rear garden. The land located to the north of the application property is currently utilised as a landscape buffer between the gable end of the property and the pedestrian footpath and road, Oak Place.

**Proposed Development:** Change of use from public open space to private garden ground

**Proposed Development Details:** The application refers to the change of use from public open space to private garden ground. The space is currently utilised as public open space and as a landscape buffer between the gable end of the property and the pedestrian footpath and road, Oak Place. There is currently a manhole cover and tree located within the area of public open space.

**Background (Previous Applications, Supporting Documents, Development Briefs):** History sheet checked.

**Consultations:** No consultations were required.

**Representations:** One representation has been received objecting to the application. The representation objected to the proposal based on the loss of public open space, the use of the existing garden ground and increase in noise and detrimental impact to surrounding neighbours should this application be approved.

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

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

#### **DEV2 Protecting Amenity in the Built up Area**

Development will be permitted within existing and future build-up areas, and in particular within residential areas, unless it is likely to detract materially from the existing character or amenity of the 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.

With regards to this application, planning permission is requested for the change of use from public open space to private garden ground at the land at 2 Finlay Place, Mayfield, Dalkeith.

The land is currently owned by Midlothian Council. On discussion with Neil Hunter, Property Development Manager, within Midlothian Council's Property and Facilities Management department, it was noted that should the Planning Authority consider the approval of this proposal the Council would require the retention of a proportion of the land to allow access to the manhole cover and maintenance of the existing tree.

However the Planning Authority does have concerns regarding the application, in particular, the loss of this public open space which would occur due to a change of use proposal.

Similar pockets of land next to residential properties can be seen in close proximity to the application site, at 1 Finlay Place and to 1 and 2 Lilac Avenue. It is considered that these small pockets of public open space contribute positively to the character of the area and street at Oak Place and the loss of such space would be detrimental to the overall setting.

In addition, the open space acts as a landscape buffer, setting apart the gable end of the property and respective back gardens from the pedestrian footpath. As such this creates a standoff between the two uses, creating separation and an element of privacy and security. As with this proposal this would result in the loss of this space which would have an impact on the overall setting of the residential housing.

As such all relevant matters including the principles and policies of the adopted Midlothian Local Development Plan 2017 have been taken into consideration in determining this application. Given the concerns with regards to the loss of open space and as such the landscape buffer, planning permission is to be refused for the change of use from public open space to private garden ground.

**Recommendation:** Refuse Planning Permission

**Reg. No. 22/00481/DPP**

Mr Allan Shiels  
2 Finlay Place  
Mayfield  
Dalkeith  
EH22 5NF

Midlothian Council, as Planning Authority, having considered the application by Mr Allan Shiels, 2 Finlay Place, Mayfield, Dalkeith, EH22 5NF, which was registered on 1 July 2022 in pursuance of their powers under the above Acts, hereby **refuse** permission to carry out the following proposed development:

**Change of use from public open space to private garden ground at Land At 2, Finlay Place, Mayfield, Dalkeith**

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	01.07.2022

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

1. *The proposed change of use would result in the unacceptable loss of open space, which acts as a landscape buffer, and the detrimental impact on the setting and character of the local residential area.*

Dated 24 / 08 /2022



.....  
Matthew Atkins Lead Officer – Planning Obligations  
Fairfield House, 8 Lothian Road, Dalkeith, EH22 3ZN



The Coal  
Authority

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

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

**STANDING ADVICE**

The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848.

Further information is also available on the Coal Authority website at:  
[www.gov.uk/government/organisations/the-coal-authority](http://www.gov.uk/government/organisations/the-coal-authority)

Standing Advice valid from 1st January 2021 until 31st December 2022

THIS IS THE PLAN REFERRED TO IN THE FOREGOING DISPOSITION BY THE MIDLOTHIAN COUNCIL IN FAVOUR OF

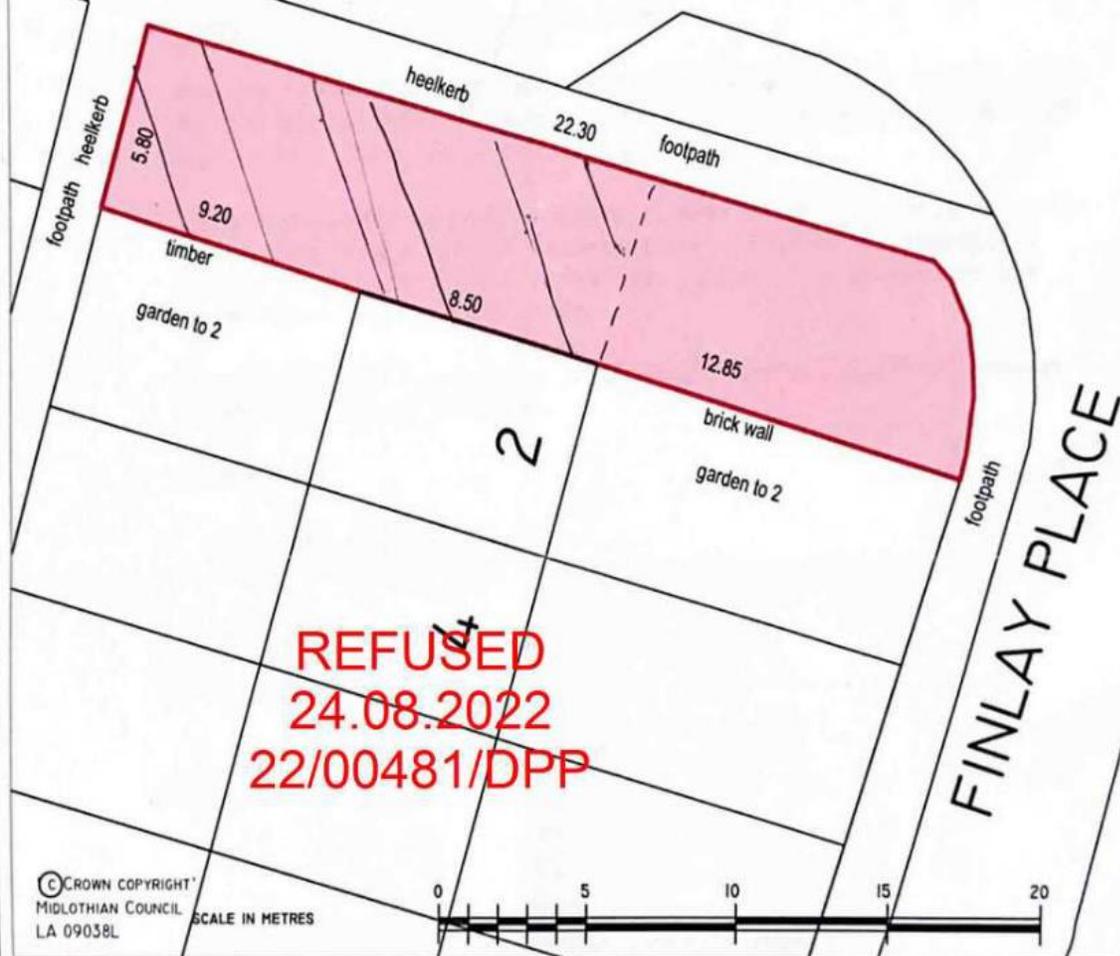


LOCATION PLAN MAYFIELD  
SCALE 1:1250  
AREA 172 SQUARE METRES OR THEREBY

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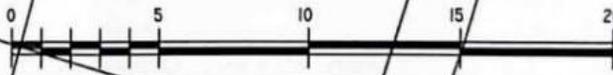
OAK PLACE



**REFUSED**  
**24.08.2022**  
**22/00481/DPP**

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LA 09038L

SCALE IN METRES



Midlothian  
Commercial Services  
Land Survey

LAND SALE  
2 FINLAY PLACE  
MAYFIELD  
MIDLOTHIAN

DRAWN:JGD  
SCALE: 1:200  
DATE: 25.6.08  
REF D-3594



## **Notice of Review: 40-42 Hamilton Crescent, Newtongrange. Determination Report**

Report by Chief Officer Place

### **1 Purpose of Report**

- 1.1 The purpose of this report is to provide a framework for the Local Review Body (LRB) to consider a 'Notice of Review' for the erection of an extension at first floor level to form three flatted dwellings above existing shop and associated works at 40-42 Hamilton Crescent, Newtongrange.

### **2 Background**

- 2.1 Planning application 22/00720/DPP for the erection of an extension at first floor level to form three flatted dwellings above existing shop and associated works at 40-42 Hamilton Crescent, Newtongrange was refused planning permission on 2 December 2022; a copy of the decision is attached to this report.

- 2.2 The review has progressed through the following stages:

- 1 Submission of Notice of Review by the applicant.
- 2 The Registration and Acknowledgement of the Notice of Review.
- 3 Carrying out Notification and Consultation.

### **3 Supporting Documents**

- 3.1 Attached to this report are the following documents:

- A site location plan (Appendix A);
- A copy of the notice of review form and supporting statement (Appendix B). Any duplication of information is not attached;
- A copy of the case officer's report (Appendix C);
- A copy of the decision notice, excluding the standard advisory notes, issued on 2 December 2022 (Appendix D); and
- A copy of the key plans/drawings (Appendix E).

- 3.2 The full planning application case file and the development plan policies referred to in the case officer's report can be viewed online via [www.midlothian.gov.uk](http://www.midlothian.gov.uk)

### **4 Procedures**

- 4.1 In accordance with agreed procedures, the LRB:

- Have determined to undertake a site visit (only elected members attending the site visit can participate in the determination of the review); and
  - Have determined to progress the review by written submissions.
- 4.2 The case officer's report identified that there were four consultation responses and four representations received. As part of the review process the interested parties were notified of the review. One additional comment reinforcing a previous objection has been received. All comments can be viewed online on the electronic planning application case file.
- 4.3 The next stage in the process is for the LRB to determine the review in accordance with the agreed procedure:
- Identify any provisions of the development plan which are relevant to the decision;
  - Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies;
  - Consider whether or not the proposal accords with the development plan;
  - Identify and consider relevant material considerations for and against the proposal;
  - Assess whether these considerations warrant a departure from the development plan; and
  - State the reason/s for the decision and state any conditions required if planning permission is granted.
- 4.4 In reaching a decision on the case the planning advisor can advise on appropriate phraseology and on appropriate planning reasons for reaching a decision.
- 4.5 Following the determination of the review the planning advisor will prepare a decision notice for issuing through the Chair of the LRB. A copy of the decision notice will be reported back to the LRB for noting.
- 4.6 A copy of the LRB decision will be placed on the planning authority's planning register and made available for inspection online.

## **5 Conditions**

5.1 In accordance with the procedures agreed by the LRB at its meeting of 20 June 2022, and without prejudice to the determination of the review, the following conditions have been prepared for the consideration of the LRB if it is minded to uphold the review and grant planning permission.

1. The development to which this permission relates shall commence no later than the expiration of three years beginning with the date of this permission.

**Reason:** *To accord with the provisions of Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning (Scotland) Act 2019).*

2. Prior to the commencement of development, details of the location and materials of all wall, gates, fences or other means of enclosure to be erected shall be 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 agreed in writing with the planning authority.

***Reason:*** *These details were not submitted with the original application; in order to protect the character and appearance of the existing site and the surrounding area*

3. Development shall not begin until details, including a timetable of implementation, of ultra-fast fibre broadband have been submitted to and approved in writing by the planning authority. The details shall include delivery of ultra-fast fibre broadband prior to the occupation of the dwellinghouse. The delivery of ultra-fast 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 Midlothian Local Development Plan 2017.*

4. Prior to the commencement of development, a Noise and Vibration Impact Assessment shall be undertaken by a suitably qualified and competent acoustician to assess the impact of the combined effect of all noise and vibration sources on the residential properties arising from the ground floor commercial use, and submitted to and approved in writing by the planning authority. The noise impact assessment shall be carried out in terms BS 4142:2014+A1:2019 and Noise Rating Curves shall be used to assess plant noise. Vibration shall be assessed in terms of BS 6472-1:2008.

The report shall identify the minimum acoustic performance of the separating structure necessary to ensure that prospective residents are not adversely affected by intrusive noise and vibration from the commercial use. Thereafter the development shall be carried out in accordance with the approved details or such alternatives as may be agreed in writing with the planning authority.

5. Prior to occupation of the development hereby approved, the correct installation of the mitigation measures contained within the noise and vibration impact assessment report shall be validated by a suitably qualified and competent acoustician and the findings shall be submitted to and approved in writing by the planning authority.
6. The design and installation of all plant, machinery and equipment shall be such that the combined noise level shall not exceed NR 30 daytime (07:00 to 23:00 hrs) or NR 25 if the noise is tonal and NR 25 night-time (23:00 to 07:00 hrs) or NR 20 if the noise is tonal

when measured within any nearby living apartment and no structure borne vibration is perceptible within any living apartment.

***Reason for conditions 4, 5 and 6: To safeguard the amenity of the future occupants of the flats and neighbouring properties***

- 5.2 If the LRB is minded to uphold the review and grant planning permission for the proposed development it shall be subject to a legal agreement to secure developer contributions towards education infrastructure. The legal agreement shall be concluded prior to the issuing of the LRB decision. The legal agreement shall be concluded within 6 months of the resolution to grant planning permission, if the agreement is not concluded the review will be reported back to the LRB for reconsideration.

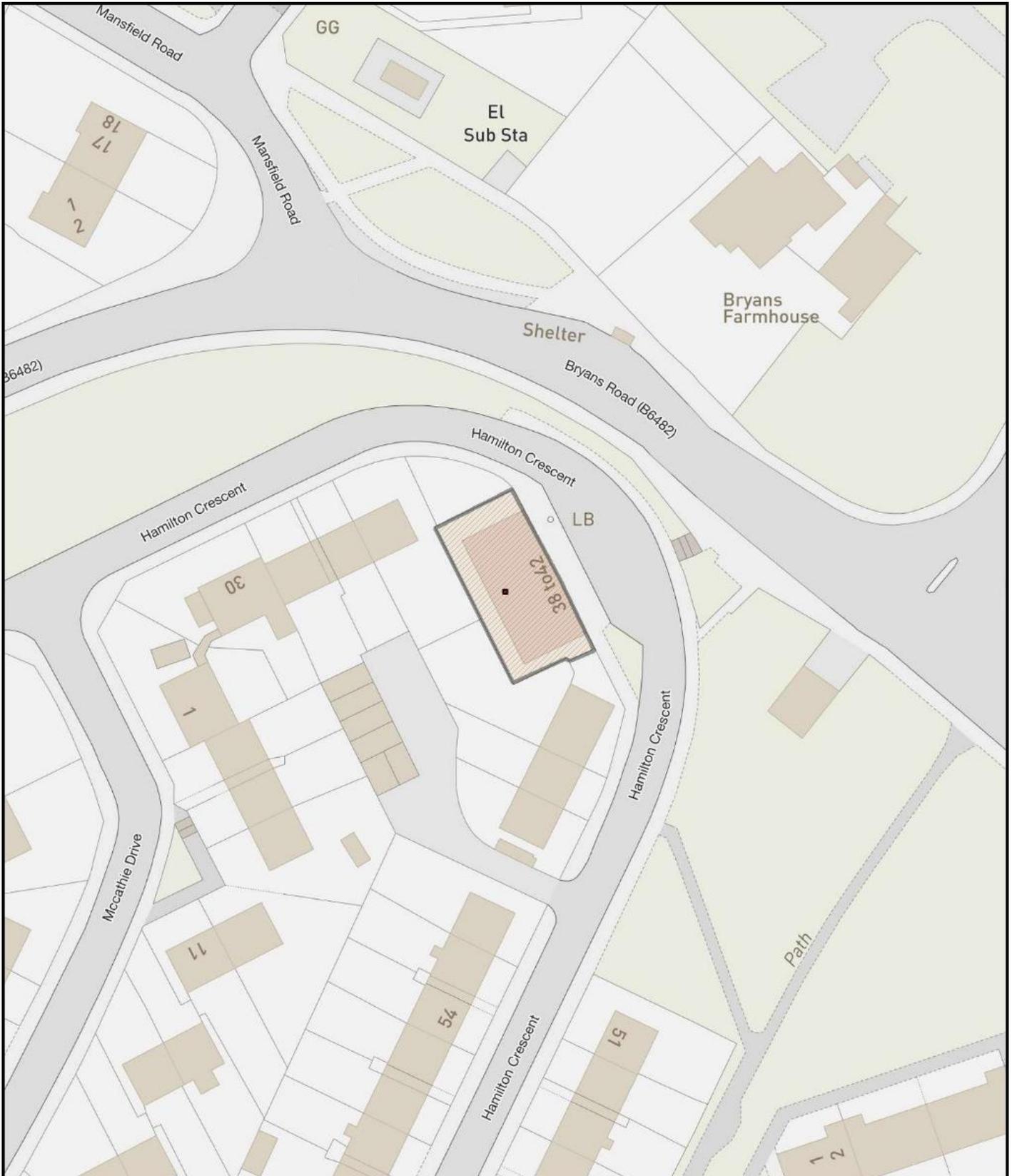
## **6 Recommendations**

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

**Peter Arnsdorf**  
**Planning, Sustainable Growth and Investment Manager**

**Date:** 22 February 2023  
**Report Contact:** Alison Ewing, Planning Officer  
[alison.ewing@midlothian.gov.uk](mailto:alison.ewing@midlothian.gov.uk)

**Background Papers:** Planning application 22/00720/DPP available for inspection online.



 <p><b>Education, Economy &amp; Communities</b> Midlothian Council Fairfield House 8 Lothian Road Dalkeith EH22 3AA</p>	<p><b>Extension of building to form 3 flatted dwellings 40 - 42 Hamilton Crescent, Newtongrange</b></p>
<p>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</p>	<p>File No.22/00720/DPP</p> <p>Scale: 1:750</p>





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

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      100601542-004

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:	<input type="text"/>		
Ref. Number:	<input type="text"/>	You must enter a Building Name or Number, or both: *	
First Name: *	<input type="text" value="Scott"/>	Building Name:	<input type="text"/>
Last Name: *	<input type="text" value="Allan"/>	Building Number:	<input type="text" value="36"/>
Telephone Number: *	<input type="text" value="07790 846 990"/>	Address 1 (Street): *	<input type="text" value="Wallace Avenue"/>
Extension Number:	<input type="text"/>	Address 2:	<input type="text"/>
Mobile Number:	<input type="text"/>	Town/City: *	<input type="text" value="Wallyford"/>
Fax Number:	<input type="text"/>	Country: *	<input type="text" value="East Lothian"/>
		Postcode: *	<input type="text" value="EH21 8BZ"/>
Email Address: *	<input type="text" value="scott@ego3d.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="Haysam Khan"/>	Building Number: <input type="text" value="38-42"/>
Last Name: *	<input type="text" value="Sarwani"/>	Address 1 (Street): * <input type="text" value="Hamilton Crescent"/>
Company/Organisation	<input type="text"/>	Address 2: <input type="text"/>
Telephone Number: *	<input type="text"/>	Town/City: * <input type="text" value="Newtongrange"/>
Extension Number:	<input type="text"/>	Country: * <input type="text" value="United Kingdom"/>
Mobile Number:	<input type="text"/>	Postcode: * <input type="text" value="EH22 4BU"/>
Fax Number:	<input type="text"/>	
Email Address: *	<input type="text"/>	<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" value="40-42 HAMILTON CRESCENT"/>
Address 2:	<input type="text" value="NEWTONGRANGE"/>
Address 3:	<input type="text"/>
Address 4:	<input type="text"/>
Address 5:	<input type="text"/>
Town/City/Settlement:	<input type="text" value="DALKEITH"/>
Post Code:	<input type="text" value="EH22 4BU"/>

Please identify/describe the location of the site or sites

Northing	<input type="text" value="664768"/>	Easting	<input type="text" value="333974"/>
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## 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)

Proposed 3No Apartments Over Existing Retail Units

## 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.

The concerns raised within the Planning report were not discussed with the appliance or agent giving an opportunity of redesign, i.e. overlooking at stair access which is noted as not significant to the overlooking of the existing No36 property however significant to No44. Looking at the proposals 3No 1 Bedroom properties could have been provided with access adjacent to No36, this would increase the amenity, reduce impact on neighbouring properties and reduce the parking requirements.

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)

No discussion with the appointed Planning Officer was made during the Planning process.

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)

Existing photos, plans, elevations and plans/elevation of proposed also attached.

## Application Details

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

22/00720/DPP

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

05/10/2022

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

02/12/2022

## Review Procedure

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

Can this review continue to a conclusion, in your opinion, based on a review of the relevant information provided by yourself and other parties only, without any further procedures? For example, written submission, hearing session, site inspection. \*

Yes  No

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

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

Yes  No

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

Yes  No

## Checklist – Application for Notice of Review

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

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

Yes  No

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

Yes  No

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

Yes  No  N/A

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

Yes  No

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

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

Yes  No

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

## **Declare – Notice of Review**

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

Declaration Name: Mr Scott Allan

Declaration Date: 10/01/2023

## MIDLOTHIAN COUNCIL

### DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

**Planning Application Reference:** 22/00720/DPP

**Site Address:** 40 - 42 Hamilton Crescent, Newtongrange, EH22 4BU

#### **Site Description:**

The application site comprises a single storey commercial building of pitch roof construction with flat roof element to the rear, located within a predominantly residential area. The property is located on the bend of Hamilton Crescent and is bound by residential properties to the rear, with Mansfield Road to the north east. There is a unit operating as a takeaway located to the east of the property, on the opposite side of Hamilton Crescent. The unit is currently utilised as a retail unit.

#### **Proposed Development:**

Extension of building at first floor level to form 3 flatted dwellings above existing shop and associated works

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

It is proposed to extend the existing building at first floor level to form 3 flatted dwellings above the existing shop unit. The proposed additional level will extend 2.4m above the pitch of the existing unit reaching a maximum height of 8m. The maximum eaves height is proposed to be 6.8m. The flats are proposed to cover the full length of the existing unit and be of pitched roof construction, at a width of 6.8m. There is an additional hipped roof section projecting to the rear of the roof to be 3.6m deep and 9.1m in length. This will project to the rear of the existing extent of built development at ground floor. The additional area of roof to the ground floor unit will be of flat roof construction and form means of access and amenity space associated with the dwellings proposed.

To the north west and south east elevations of the property it is proposed to install access stairs and associated platforms to allow access from the ground floor to the units at first floor. These will reach a maximum height of 3.6m to the north west elevation, and 3.3m to the south east elevation. The stairs include one landing platform half way up, with further landing platform at the top of the stairs. It is proposed to install balustrade of 1m in height to the stairs and landing platforms.

It is proposed to include balcony area to the rear of the first floor located externally on a flat roof section of the ground floor unit to be utilised for access to the flat, along with bike storage, and external amenity space associated with one of the flats. Flat no.3 will have private access at first floor level with balcony area of 6.9m<sup>2</sup>. This will be accessed via stairs located to the north west of the property. The stairs to the south east will serve as access points to flat no.1 and no.2 along with amenity space for flat no.1. The balcony area here will be 28.9m<sup>2</sup>. The balcony areas are separated

by the hipped roof segment of the proposed internal accommodation. The balcony areas are proposed to be bound by a fence to be 1.8m in height.

The accommodation at first floor level is proposed to feature 6 windows along the principle elevation with 2 windows serving each flat. To the rear it is proposed to install front door and singular window to both the north west and south east elevation of the projecting segment of the proposed accommodation. To the rear elevation it is proposed to install one window to at the western side, with a further three windows and access door to the eastern side of the elevation. No openings are proposed to the rear elevation which abuts the rear boundary of the unit.

The development is to be finished in off-white smooth render with grey hyperion cladding to the principle elevation. The roof is to be finished in grey concrete tiles with windows and doors to be grey upvc. The external stairs are proposed to comprise galvanised steel with 1.8m high composite clad fencing to be utilised at first floor level. No details of boundary treatments have been submitted.

The level of proposed external amenity space of each unit is as follows:

Flat no.1 – 11 m<sup>2</sup>

Flat no.2 – 17 m<sup>2</sup>

Flat no.3 – 17 m<sup>2</sup>

The proposals do not include the provision of any parking spaces. Refuse storage is to be located to the rear of each side elevation. The existing plant and machinery associated with the commercial unit at ground floor is to be relocated from the roof to the rear elevation of the unit at ground floor level.

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

05/00490/FUL - Change of use from retail to hot food take away - 38 Hamilton Crescent, Newtongrange, Midlothian, EH22 4BU – Refused 2005

### **Consultations:**

The Council's **Senior Manager Neighbourhood Services (Roads)** recommends the application be refused due to road safety concerns over the failure to provide any resident or visitor parking in association with the proposals. A minimum of 3 residential spaces with 2 visitor spaces would be required for a development of this scale. Developments which have no independent parking put additional pressure on the limited number of on-street spaces presently available and can lead to an increase in inconsiderate or illegal parking in the surrounding area.

The Council's **Senior Manager Protective Services** has raised concerns about potential nuisance from the proposed relocation of plant and machinery associated with the commercial unit affecting the proposed attached, and existing nearby domestic properties through structure borne and airborne noise or vibration from plant.

The Council's **Education Resource Manager** confirms contributions would be required for education provision.

**Scottish Water** raised no objection to the proposals. The applicant should be aware that this does not confirm that the proposed development can currently be serviced.

### **Representations:**

Four representations have been submitting objecting on the following grounds.

- Privacy concerns with direct overlooking to rear gardens and existing residential properties;
- Privacy concerns with access and proposed external stairs proposed in line with windows of existing residential properties;
- Traffic concerns with increase in volume of traffic arising from the proposed development;
- Increase pressure on existing parking provision with associated road safety concerns;
- Traffic issues owing to deliveries to the existing shop at the site;
- Concern over access to the proposed dwellings;
- Concern over the level of amenity afforded to future residents of the proposed dwellings;
- Noise concerns relating to additional dwellings in area;
- Noise concerns over proposed access to dwellings;
- Noise concerns during construction period;
- Proposals would be detrimental to the character of the area with the site having never been in residential use;
- Loss of sunlight to gardens.

### **Relevant Planning Policies:**

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

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

**Policy DEV5: Sustainability in New Development** sets out the requirements for development with regards to sustainability principles.

**Policy DEV6: Layout and Design of New Development** states that 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, and passive energy gain, positioning of buildings, open and private amenity space provision and parking.

**Policy DEV7: Landscaping in New Development** requires development proposals to be accompanied by a comprehensive scheme of landscaping. The design of the scheme is to be informed by the results of an appropriately detailed landscape assessment.

**Policy TRAN5: Electric Vehicle Charging** seeks to support and promote the development of a network of electric vehicle charging stations by requiring provision to be considered as an integral part of any new development or redevelopment proposals.

**Policy IT1: Digital Infrastructure** supports the incorporation of high speed broadband connections and other digital technologies into new homes, business properties and redevelopment proposals.

**IMP1: New Development** seeks to ensure that appropriate provision is made for a need which arises from new development. Of relevance in this case are education provision, transport infrastructure; contributions towards making good facility deficiencies; affordable housing; landscaping; public transport connections, including bus stops and shelters; parking in accordance with approved standards; cycling access and facilities; pedestrian access; acceptable alternative access routes, access for people with mobility issues; traffic and environmental management issues; protection/management/compensation for natural and conservation interests affected; archaeological provision and 'percent for art' provision; and

**IMP2: Essential Infrastructure Required to Enable New Development to Take Place** states that new development will not take place until provision has been made for essential infrastructure and environmental and community facility related to the scale and impact of the proposal. Planning conditions will be applied and; where appropriate, developer contributions and other legal agreements will be used to secure the appropriate developer funding and ensure the proper phasing of development.

The policy **DP2 Development Guidelines**, from the now superseded 2008 Midlothian Local Plan, set out the development guidelines that are to be applied for residential developments. The policy set the standards that should be applied when considering applications for dwellings. The guidance set out within this policy has been successfully applied to development proposals throughout Midlothian and will be reflected within the Council's Supplementary Guidance (SG) on Quality of Place which is currently being drafted.

### **Planning Issues:**

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

### Principle of Development

The site is located in a residential area within the built up area of Newtongrange where there is a presumption in favour of compatible developments and so the principle of development is supported, provided this does not detract materially from the character or amenity of the area and complies with any other relevant policies.

## Layout and Design

The proposed development seeks to create an additional storey to an existing single storey building. The surrounding area is predominantly characterised by two storey terraced housing of pitched roof construction. The creation of an additional level of accommodation at the site would be in keeping with the character of the surrounding area and would not appear as being disproportionate to surrounding development as viewed from public viewpoints.

The proposed materials provide for a modern design approach with use of smooth render, grey cladding and grey upvc windows, whilst respecting the existing character of the area. The proposed use of materials would not lead to the development being out of place with its surroundings.

## Amenity of future occupants

The proposed development seeks the creation of three flatted dwellings. Flatted properties should be provided with communal private open space conveniently located for the use of residents. The land supplied for this purpose should, in respect of this application, equate to 150 sqm. As submitted the proposals state that they will provide 45 sqm of amenity space in total in the form of three separate 'drying areas' – one per flatted dwelling. Two of these drying areas will be located to the rear of the building between the rear elevation of the shop premises and the boundary of the site, and one area will be provided at first floor level bound by the proposed 1.8m high balustrade. The proposed dwellings are not provided with an acceptable level of amenity ground.

Whilst the proposals fail to meet the standard with regard to provision of communal private open space, it is noted that the site is within proximity to existing open space which could be utilised by future residents, with Welfare Park located some 0.3km from the site. Additionally, whilst this policy requires the provision of outdoor space for new residential development, where an existing building is to be re-developed it can sometimes be appropriate to make allowance for the constraints of the particular site, if the amenity of the properties created and the overall quality of the development are otherwise of a high standard, with respect of outlook and the levels of daylight provided.

The design of the proposed dwellings with proposed 1.8m high fencing to the rear of the block will create an undesired perception of enclosure to the outlook of the dwellings, and will impact on the level of sunlight and daylight received to the windows at the rear of the proposed flats. The windows to the rear of the proposed dwellings serve both bedroom windows and kitchen windows and therefore these are considered to be habitable rooms where sufficient levels of daylight and sunlight should be facilitated.

On balance, it is concluded that the proposed level of amenity afforded to future residents through both internal standards and external open space provision is not acceptable.

### Amenity of the surrounding area

There is potential for significant impact to the amenity of existing properties in the vicinity of the site. The property at no.36 Hamilton Crescent sits at a lower ground level to the application site. The proposed flatted dwellings will therefore sit at an elevated level as viewed from the gardens of existing property. The proposed development will sit some 1.9m off the boundary of no.36 to the rear and will be very prominent when within the garden of no.36, leading to a detrimental impact to the amenity of the existing occupants. There is only 6m between the rear elevation of the application property and the rear elevation of no. 36. At two storey the proposed additional development will be very overbearing to the outlook from the garden of this property. It will also be overbearing to the outlook from a ground floor windows on the rear of this property which serve both a living room and kitchen.

The proposed balcony area at first floor level on the rear of the proposed flats will give rise to direct overlooking of the rear garden of this property at close proximity and will have direct views in to the ground floor kitchen window and first floor bedroom window at this property with a detrimental impact on the privacy of the existing property.

The proposed access steps and associated platform will allow views into the garden of no.36. However, due to the consideration of their primary function to provide access to the properties, the impact on the amenity of the neighbouring property at no.36 as a direct result of the access stairs is not significant.

Given the sitting of the application site and the property at no.36 the proposed development will result in increased overshadowing to the garden of no. 36 in the early morning however will not impact on sunlight to the garden in the afternoon and the impact is therefore not sufficient to warrant refusal of planning permission. VSC and daylight tests were undertaken to the rear ground floor windows of the property at no.36. The windows passed both tests and it is concluded that the impact of the proposals on the available daylight and sunlight to these rooms will again not be significant to warrant refusal of the application on this basis.

The proposals will have a detrimental impact to the amenity of the existing property at no.44. The proposed creation of an additional storey of accommodation at the application site will be prominent and overbearing as viewed from the kitchen window at no.44. Further, there is concern over the impact to the privacy of the occupiers at no.44 owing to the design of the proposals with access stairs and external landing/amenity space at the proposed dwellings being positioned some 5m from the property at no.44 and within direct line of sight to the bedroom window to the rear of the existing property. The proposed bedroom window of apartment two faces directly towards to existing dwelling. Additionally, the privacy of the existing property by way of overlooking to the kitchen window will be significant and lead to a detrimental impact on the amenity of the existing property.

Owing to the sitting of the application site the proposed development will not have a significant impact on the sunlight and daylight available to the existing property and garden at no.44.

The proposed development will be a prominent as viewed from no.32 and 34 Hamilton Crescent however will not be overbearing to the outlook of the house or garden. Although the proposed development will allow for increased levels of overlooking to the gardens of the properties at no.32 and 34 Hamilton Crescent it is a consideration that the gardens of these properties are of an open nature as existing with low level boundary treatments to neighbouring properties. The resultant increase in over looking to these properties is therefore not significant.

The proposed windows to the front of the dwellings will not give rise to any increased overlooking to surrounding residential properties.

Due to the sitting of the property within the application site, and the proximity of the application property to surrounding neighbouring properties it is unlikely that issues of overbearing and privacy to neighbouring properties could be resolved through amended design or additional features.

### Parking and Road Safety

The proposed development fails to provide any resident or visitor parking in association with the proposals. A minimum of 3 residential spaces with 2 visitor spaces would be required for a development of this scale. Developments which have no independent parking put additional pressure on the limited number of on-street spaces presently available. It is concluded that the creation of three additional dwellings to the area with no associated parking provision would lead to an increase in inconsiderate or illegal parking in the surrounding area and lead to associated road safety concerns.

Traffic issues relating to the existing use of the site as a retail unit are not for consideration in relation to this application. The existing shop constitutes an existing approved use of the site.

### Other Matters

No details of boundary treatments or landscaping have been submitted in association with the application. Should permission be granted the submission of such details could be attached as conditions.

Should planning permission be approved, developer contributions would be required for two of the proposed flats (two bedroom units). Contributions would include towards education provision.

The noise arising from the creation of three additional dwellings in this location is not likely to have a significant impact on neighbour amenity. Noise linked to the construction period is controlled through legislation set by environmental health department at the council and is better controlled through their legislation rather than through planning measures and so a condition to control noise throughout the construction period will not be attached.

As part of the works associated with the planning application the existing plant machinery related to the existing ground floor commercial unit is proposed to be

relocated to the rear elevation of the property at ground floor level as identified on the submitted plans. The Council's Senior Manager Protective Services has raised concerns about potential nuisance from the proposed relocation of plant and machinery associated with the commercial unit affecting the proposed attached, and existing nearby domestic properties through structure borne and airborne noise or vibration from plant. On account of this, the potential impacts would further reduce the amenity of the proposed properties for future residents. Additionally, without adequate mitigation, the proposed relocation of the plant machinery may result negatively on the amenity of existing neighbouring properties. The planning authority therefore cannot be satisfied that the proposed relocation of plant and machinery would not result in an unacceptable impact on neighbouring amenity.

Overall, all relevant matters have been taken into consideration in determining this application. It is not considered that the proposal accords with the principles and policies of the adopted Midlothian Local Development Plan 2017 and is not acceptable in terms of all other applicable material considerations. Therefore, it is recommended that the application is refused.

**Recommendation:**

Refuse planning permission

**Reg. No. 22/00720/DPP**

Scott Allan  
36 Wallace Avenue  
Wallyford  
EH21 8BZ

Midlothian Council, as Planning Authority, having considered the application by Mr Haysam Khan Sarwani, 38-42 Hamilton Crescent, Newtongrange, EH22 4BU, which was registered on 5 October 2022 in pursuance of their powers under the above Acts, hereby **refuse** permission to carry out the following proposed development:

**Extension of building at first floor level to form 3 flatted dwellings above existing shop and associated works at 40 - 42 Hamilton Crescent, Newtongrange, EH22 4BU**

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

<u>Document/Drawing.</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Proposed Elevations and Cross Section	2022-079-003A	04.10.2022
Proposed Floor and Elevations	2022-070-002A	05.10.2022
Existing Floor, Elevations, Illustrations and Site Plan	2022-079-001	05.10.2022
Location Plan	2022-79-000	05.10.2022
Illustration/Photograph	Planning Photos	05.10.2022
Supporting statement	Sun Study	05.10.2022

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

- 1. The proposed development would have an overbearing impact to the properties at no.36 Hamilton Crescent no.44 Hamilton Crescent to the significant detriment of existing occupants.*
- 2. The proposed development will result in an unacceptable adverse impact on the residential amenity of surrounding properties and their associated garden ground, through significant adverse impact on privacy.*
- 3. The proposed flatted dwellings do not benefit from adequate usable amenity space for future residents as the proposal does not provide adequate external open space provision, and the proposed flats would have a poor outlook with an unacceptable standard of internal amenity for future occupants.*
- 4. The proposed development fails to provide any resident or visitor parking in association with the proposals. It has not been demonstrated to the satisfaction of the Planning Authority that the proposed dwellinghouses could be afforded an adequate level of off-street parking spaces. The proposed development would lead to an increase in inconsiderate or illegal parking in the surrounding area and would have a harmful impact on road safety within the local area.*

5. *For the above reasons the proposed development is considered to be an overdevelopment of the site and so does not comply with policies DEV2 and DEV6 of the adopted Midlothian Local Development Plan 2017. If the proposal were approved it would undermine the consistent implementation of the policies, the objective of which is to protect the character and amenity of the built-up area and ensure that good levels of residential amenity are achieved in new developments.*

Dated 2 / 12 / 2022



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



**The Coal  
Authority**

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

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

### **INFORMATIVE NOTE**

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

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

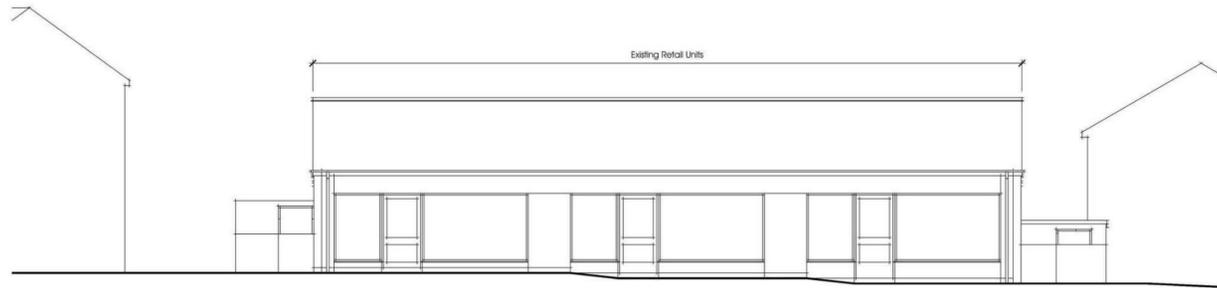
Any form of development over or within the influencing distance of a mine entry can be dangerous and raises significant land stability and public safety risks. As a general precautionary principle, the Coal Authority considers that the building over or within the influencing distance of a mine entry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

[www.gov.uk/government/publications/building-on-or-within-the-influencing-distance-of-mine-entries](http://www.gov.uk/government/publications/building-on-or-within-the-influencing-distance-of-mine-entries)

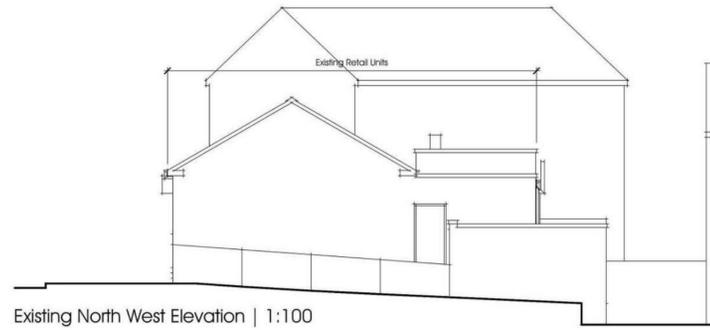
Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires a Coal Authority Permit. Such activities could include site investigation boreholes, excavations for foundations, piling activities, other ground works and any subsequent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

If any coal mining features are unexpectedly encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848. Further information is available on the Coal Authority website at: [www.gov.uk/government/organisations/the-coal-authority](http://www.gov.uk/government/organisations/the-coal-authority)

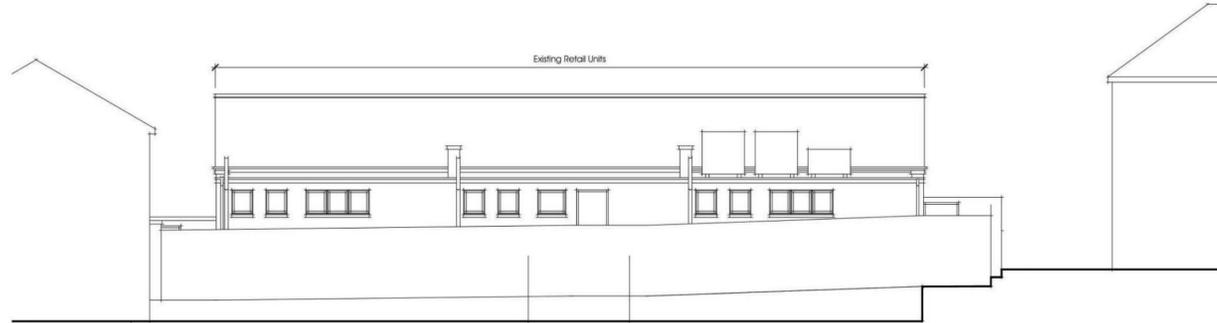
**Informative Note valid from 1st January 2021 until 31st December 2022**



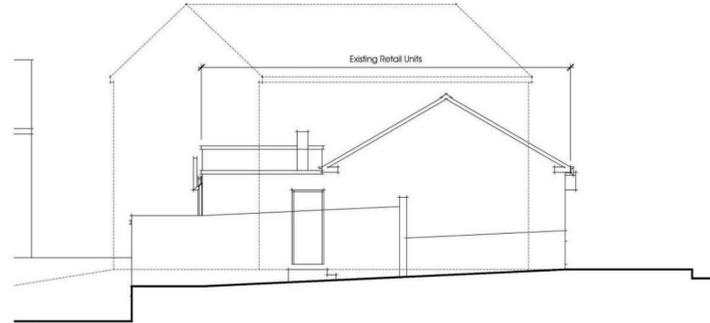
Existing North East Elevation | 1:100



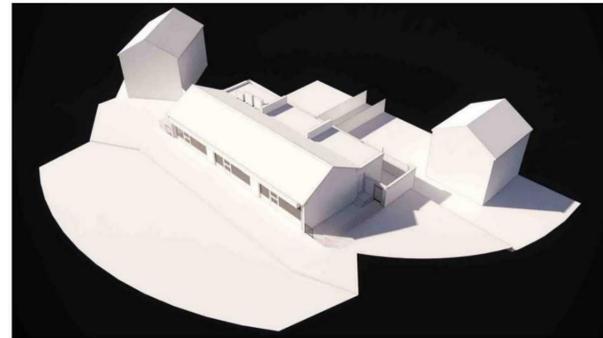
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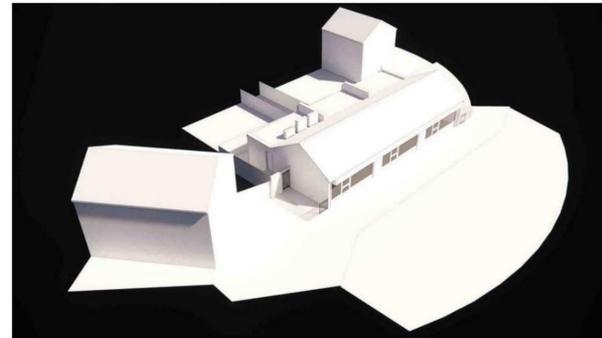
Existing South West Elevation | 1:100



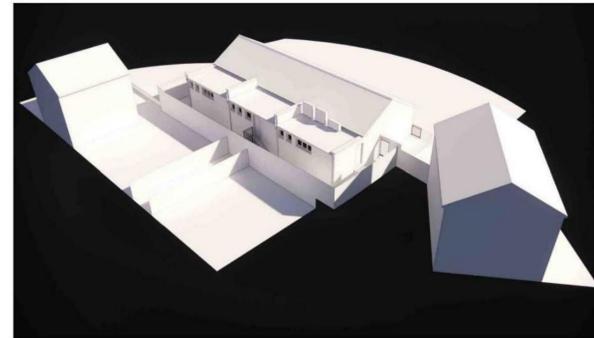
Existing South East Elevation | 1:100



Architectural Illustration 01 | NTS



Architectural Illustration 01 | NTS



Architectural Illustration 01 | NTS

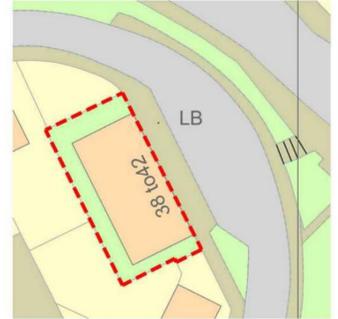


Architectural Render 01 | NTS

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02.12.2022  
22/00720/DPP

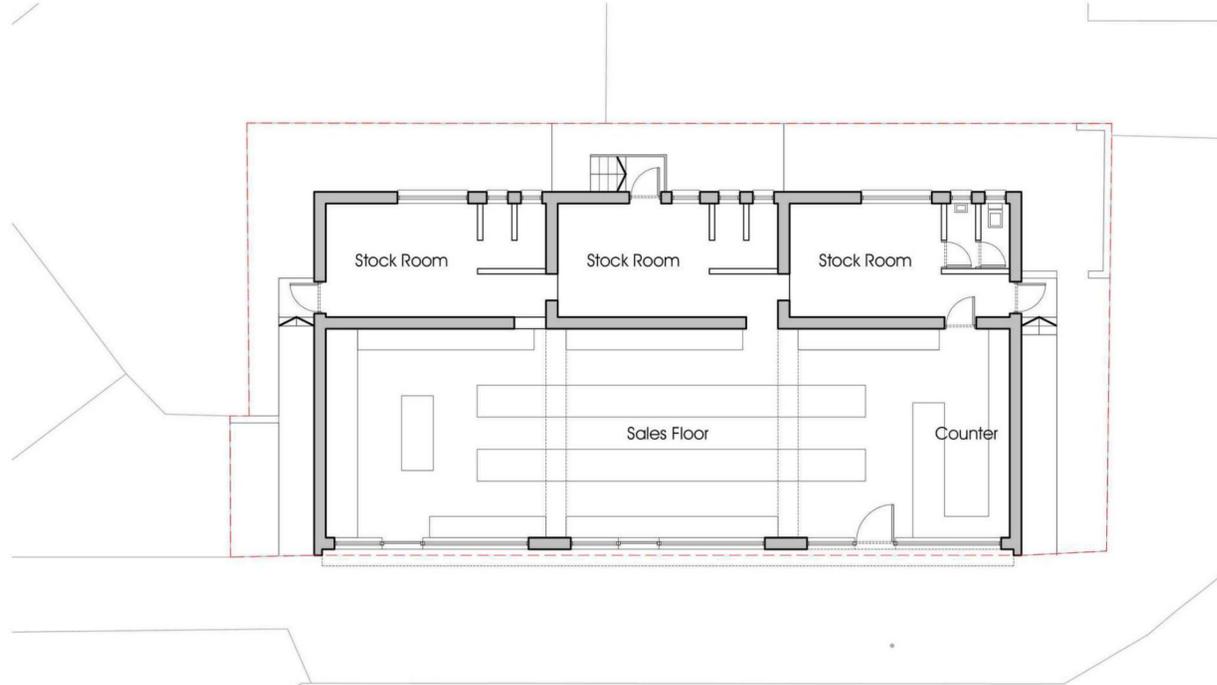


Location Plan | 1:1250

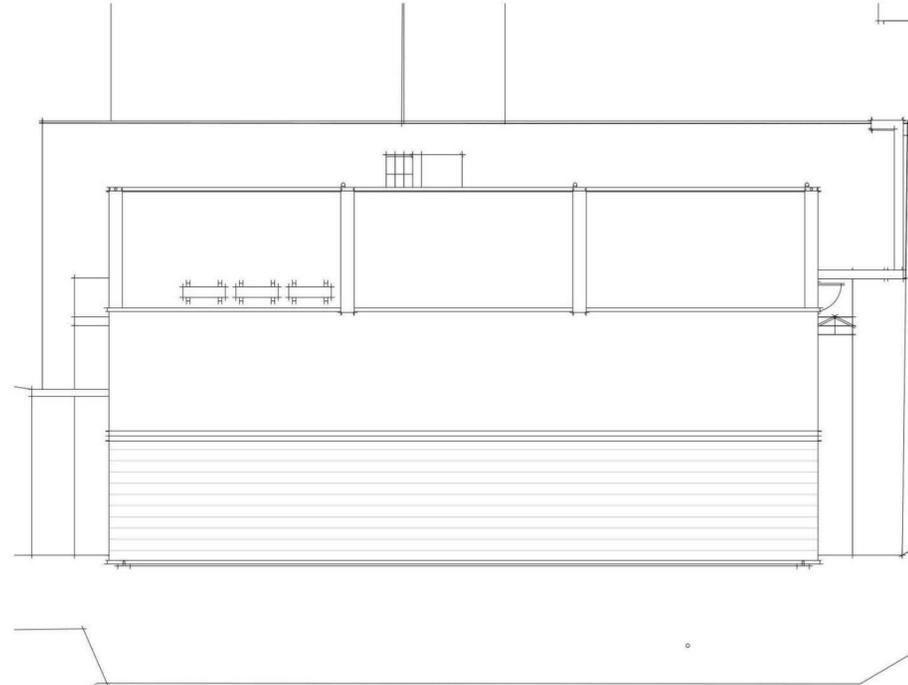


Block Plan | 1:500

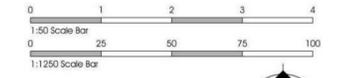
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Existing Shop Layout | 1:100



Existing Roof Plan | 1:100



Revision: Description: Date:

**Scott Francis Allan**  
Architectural Design

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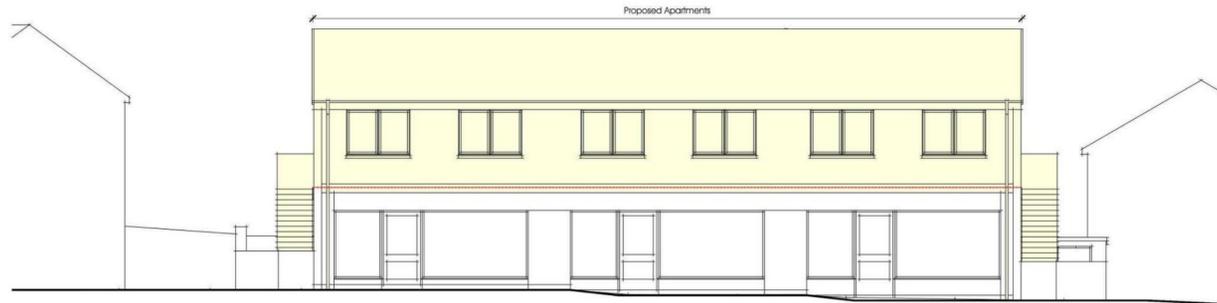
**Planning Permission**

Project:  
**Proposed 3No Apartments Over Existing Retail Units**  
**38-42 Hamilton Crescent,**  
**Newfongrange, EH22 4BU**

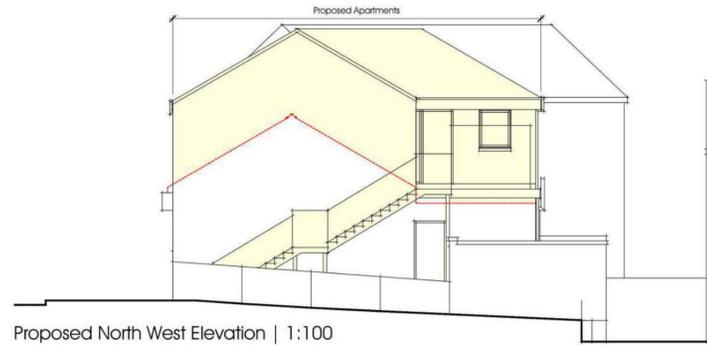
Client:  
**Haysam Khan Sarwani**

Drawing:  
**Existing Floor Plans, Site Plan, Elevations and Illustrations**

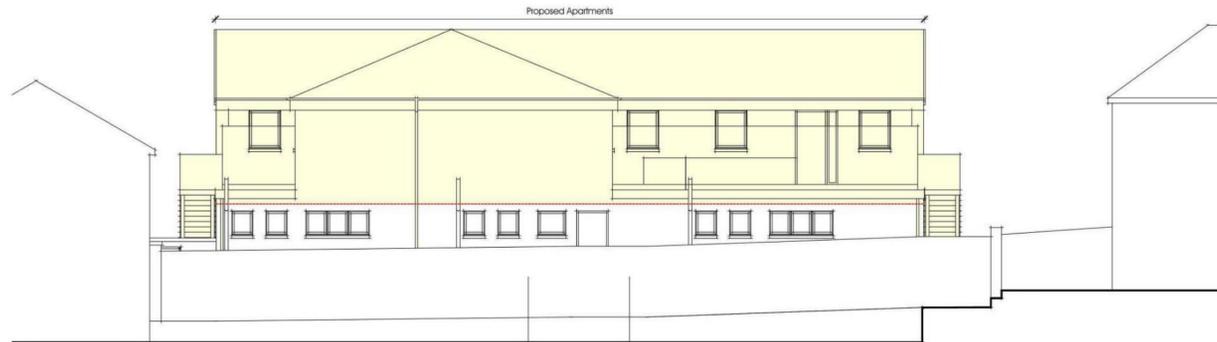
Drawing No. Scale: Date: Name: Sheet Size:  
**2022-79-001 As Noted Sept 2022 SFAllan A1**



Proposed North East Elevation | 1:100



Proposed North West Elevation | 1:100



Proposed South West Elevation | 1:100



Proposed South East Elevation | 1:100



Architectural Illustration 01 | NTS



Architectural Illustration 01 | NTS



Architectural Illustration 01 | NTS



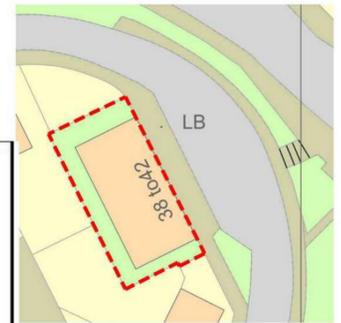
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02.12.2022  
22/00720/DPP

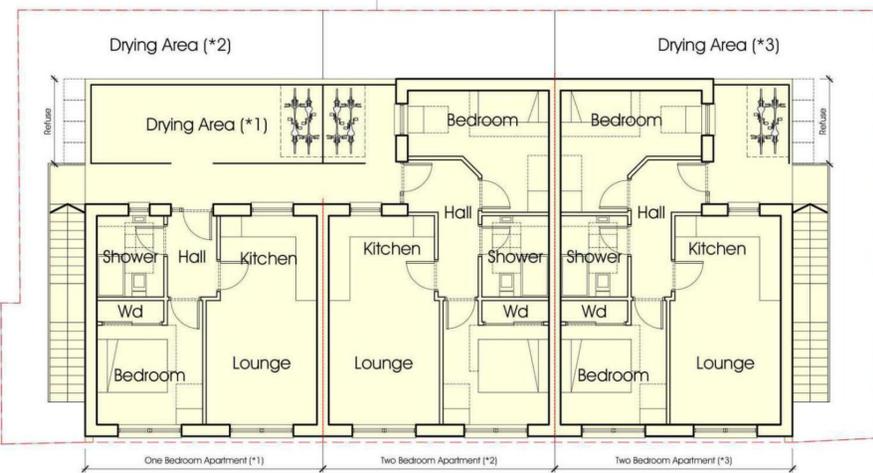
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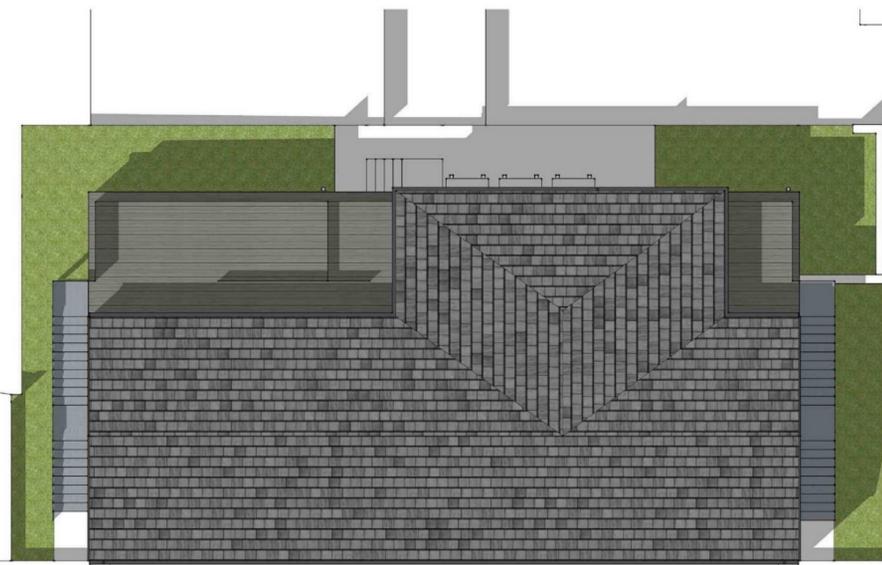
Location Plan | 1:1250



Block Plan | 1:500

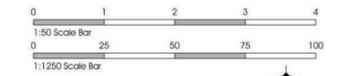


Proposed Apartment Layouts | 1:100



Proposed Roof Plan | 1:100

- Material Specification:
- External Walls - Extension
    - 1 Smooth Render (Off White)
    - 2 Hypocor Cladding (Grey)
  - Roof
    - 1 Concrete Roof Tiles (Grey)
    - 2 Soffit and Fascia (Grey)
  - Windows and Doors
    - 1 Double Glazed PVC Window/Doors (Grey)
  - Gutter and Down Pipes
    - 1 PVC Gutters (Black)
    - 2 PVC Down Pipes (Black)
  - Access
    - 1 Galvanized Steel External Stair
  - Fencing
    - 1 1800mm High Composite Clad High Level Fencing
  - Cycle Stores
    - 2No Per Apartment
  - Areas:
    - Total Site Area: Area: 300sqm
    - Development Area: Area: 202sqm
    - Apartment 01: Area: 37sqm, Drying Area: 15sqm
    - Apartment 01: Area: 51sqm, Drying Area: 17sqm
    - Apartment 01: Area: 51sqm, Drying Area: 17sqm



Rev | A | Updated for Planning 04/10/2022  
Revision: Description: Date:

**Scott Francis Allan**  
Architectural Design

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**Planning Permission**

Project:  
**Proposed 3No Apartments Over Existing Retail Units**  
**38-42 Hamilton Crescent,**  
**Newfongrange, EH22 4BU**

Client:  
**Haysam Khan Sarwani**

Drawing:  
**Existing Floor Plan, Elevations and Illustrations**

Drawing No: 2022-79-002A Scale: As Noted Date: Sept 2022 Name: SFAllan Sheet Size: A1



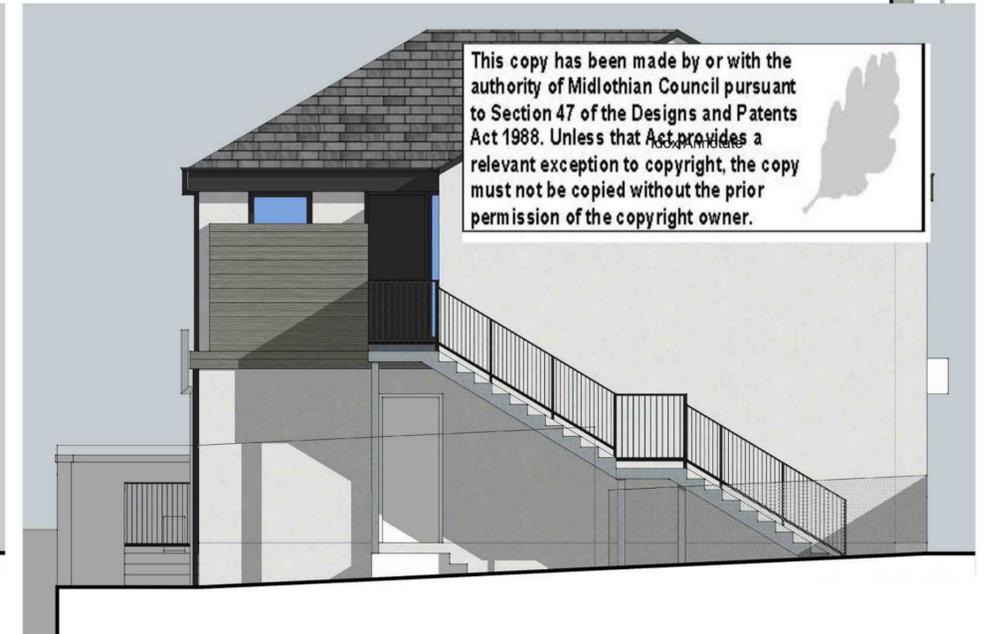
Proposed North East Elevation | 1:50



Proposed North West Elevation | 1:50

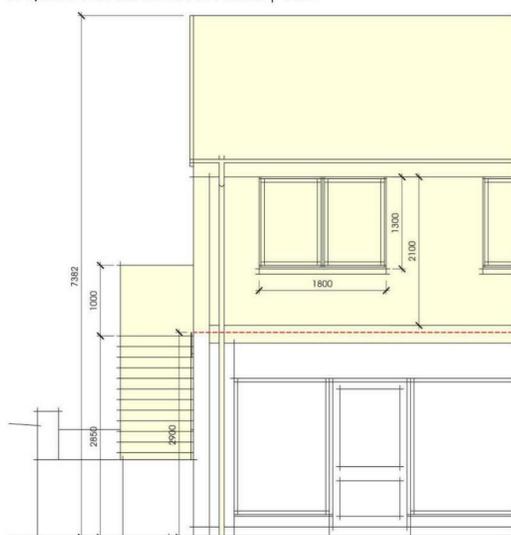


Proposed South West Elevation | 1:50

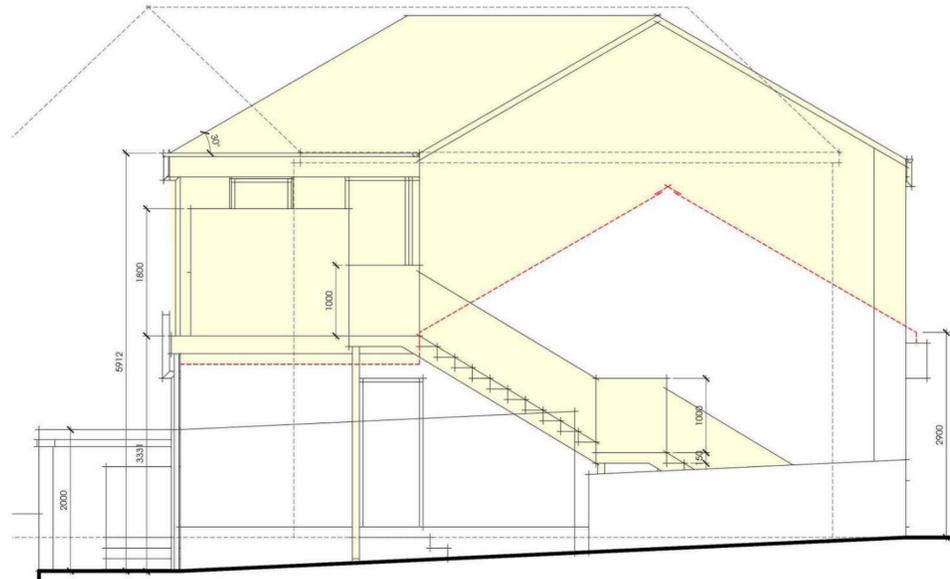


Proposed South East Elevation | 1:50

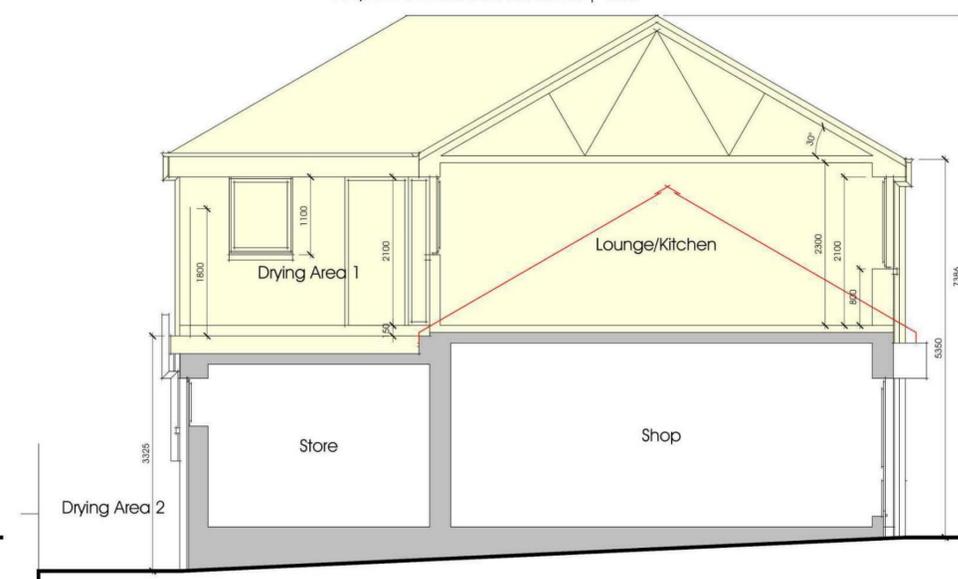
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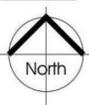
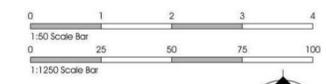
Proposed North East Elevation - Dimensions | 1:50



Proposed South East Elevation - Dimensions | 1:50



Proposed Cross Section 1:50



Rev / A | Updated for Planning  
Revision: Description: Date: 03/10/2022

**Scott Francis Allan**  
Architectural Design  
36 Wallace Avenue | Wallyford | East Lothian | EH21 8BZ  
Mobile: 07790 846 990 | Email: scott@ego3d.co.uk  
Facebook.com/scottfrancisallan

**Planning Permission**

Project:  
Proposed 3No Apartments Over Existing Retail Units  
38-42 Hamilton Crescent,  
Newfongrange, EH22 4BU

Client:  
Haysam Khan Sarwani

Drawing:  
Proposed Elevations

Drawing No: 2022-79-003A  
Scale: As Noted  
Date: Sept 2022  
Name: SFAllan  
Sheet Size: A1

## **Notice of Review: 124 Main Street, Pathhead Determination Report**

Report by Chief Officer Place

### **1 Purpose of Report**

- 1.1 The purpose of this report is to provide a framework for the Local Review Body (LRB) to consider a 'Notice of Review' for: the erection of two storey extension to dwellinghouse; extension to dwellinghouse at first floor level; infill of window openings; installation of rooflights; and replacement door and windows at 124 Main Street, Pathhead.

### **2 Background**

- 2.1 Planning application 22/00702/DPP for: the erection of two storey extension to dwellinghouse; extension to dwellinghouse at first floor level; infill of window openings; installation of rooflights; and replacement door and windows at 124 Main Street, Pathhead was refused planning permission on 16 November 2022; a copy of the decision is attached to this report.

- 2.2 The review has progressed through the following stages:

- 1 Submission of Notice of Review by the applicant.
- 2 The Registration and Acknowledgement of the Notice of Review.
- 3 Carrying out Notification and Consultation.

### **3 Supporting Documents**

- 3.1 Attached to this report are the following documents:

- A site location plan (Appendix A);
- A copy of the notice of review form and supporting statement (Appendix B). Any duplication of information is not attached;
- A copy of the case officer's report (Appendix C);
- A copy of the decision notice, excluding the standard advisory notes, issued on 16 November 2022 (Appendix D); and
- A copy of the key plans/drawings (Appendix E).

- 3.2 The full planning application case file and the development plan policies referred to in the case officer's report can be viewed online via [www.midlothian.gov.uk](http://www.midlothian.gov.uk). The applicant, as part of their notice of review submission, included a context visual assessment report providing analysis of extensions and alterations in the Pathhead area – this assessment includes a quantity of photographs which can be viewed in online case file.

## **4 Procedures**

4.1 In accordance with agreed procedures, the LRB:

- Have determined to undertake a site visit (only elected members attending the site visit can participate in the determination of the review); and
- Have determined to progress the review by written submissions.

4.2 The case officer's report identified that there was one consultation response and two representations received. As part of the review process the interested parties were notified of the review. One additional comment reinforcing a previous objection has been received. All comments can be viewed online on the electronic planning application case file.

4.3 The next stage in the process is for the LRB to determine the review in accordance with the agreed procedure:

- Identify any provisions of the development plan which are relevant to the decision;
- Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies;
- Consider whether or not the proposal accords with the development plan;
- Identify and consider relevant material considerations for and against the proposal;
- Assess whether these considerations warrant a departure from the development plan; and
- State the reason/s for the decision and state any conditions required if planning permission is granted.

4.4 In reaching a decision on the case the planning advisor can advise on appropriate phraseology and on appropriate planning reasons for reaching a decision.

4.5 Following the determination of the review the planning advisor will prepare a decision notice for issuing through the Chair of the LRB. A copy of the decision notice will be reported back to the LRB for noting.

4.6 A copy of the LRB decision will be placed on the planning authority's planning register and made available for inspection online.

## **5 Conditions**

5.1 In accordance with the procedures agreed by the LRB at its meeting of 20 June 2022, and without prejudice to the determination of the review, the following conditions have been prepared for the consideration of the LRB if it is minded to uphold the review and grant planning permission.

1. The development to which this permission relates shall commence no later than the expiration of three years beginning with the date of this permission.

**Reason:** To accord with the provisions of Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning (Scotland) Act 2019).

2. The external frames of the replacement windows at the front of the property shall be white in colour.
3. The following details of the replacement windows proposed at the front of the house shall be submitted to the planning authority and the replacement windows shall not be installed until these details have been approved in writing by the planning authority:
  - a) materials of the window frames;
  - b) the proposed method of opening; and
  - c) dimensions of that part of the frames of the replacement windows which will be visible externally.
4. The rooflights on the front elevation of the existing building shall be flush fitting so as to not project beyond the plane of the roof.
5. No roof vents shall be installed on the front elevation of the house.
6. Details of the colour of the proposed replacement front door shall be submitted to the planning authority and the door shall not be installed until this detail has been approved in writing by the planning authority.

**Reason for conditions 2-6:** To safeguard the character of the existing building and the character and appearance of this part of the Pathhead and Ford Conservation Area.

7. Unless otherwise approved in writing by the planning authority within 2 months of the rear extension being completed or being brought in to use, whichever is the earlier date, a 1.8m high trellis shall be erected along the boundary, at the higher ground level, with no. 126 for a distance of 3.5 m as measured from the rear wall of the main part of the original house.

**Reason:** In order to minimise overlooking and to protect the privacy of the occupants of the adjoining property.

## **6 Recommendations**

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

**Peter Arnsdorf**  
**Planning, Sustainable Growth and Investment Manager**

**Date:** 22 February 2023  
**Report Contact:** Ingrid Forteath, Planning Officer  
[ingrid.forteath@midlothian.gov.uk](mailto:ingrid.forteath@midlothian.gov.uk)

**Background Papers:** Planning application 22/00702/DPP available for inspection online.



 <p><b>Education, Economy &amp; Communities</b> Midlothian Council Fairfield House 8 Lothian Road Dalkeith EH22 3AA</p>	<p><b>Extensions and alterations to dwellinghouse 124 Main Street, Pathhead</b></p>
<p>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</p>	<p>File No.22/00702/DPP</p> <p>Scale: 1:1,250</p> <div style="text-align: right;">  </div>
<p>Midlothian Council Licence No. 100023416 (2018)</p>	



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

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      100600307-002

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

## Applicant or Agent Details

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

Applicant  Agent

## Agent Details

Please enter Agent details

Company/Organisation:	<input type="text" value="King Architects"/>		
Ref. Number:	<input type="text"/>	You must enter a Building Name or Number, or both: *	
First Name: *	<input type="text" value="Mark"/>	Building Name:	<input type="text"/>
Last Name: *	<input type="text" value="King"/>	Building Number:	<input type="text" value="72"/>
Telephone Number: *	<input type="text" value="07917625580"/>	Address 1 (Street): *	<input type="text" value="Douglas Road"/>
Extension Number:	<input type="text"/>	Address 2:	<input type="text"/>
Mobile Number:	<input type="text"/>	Town/City: *	<input type="text" value="Longniddry"/>
Fax Number:	<input type="text"/>	Country: *	<input type="text" value="United Kingdom"/>
		Postcode: *	<input type="text" value="EH32 0LJ"/>
Email Address: *	<input type="text" value="mark@kingarchitects.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="Other"/>	You must enter a Building Name or Number, or both: *	
Other Title:	<input type="text" value="Mr. &amp; Ms"/>	Building Name:	<input type="text"/>
First Name: *	<input type="text" value="John &amp; Lisa"/>	Building Number:	<input type="text" value="124"/>
Last Name: *	<input type="text" value="Stewart"/>	Address 1 (Street): *	<input type="text" value="Main Street"/>
Company/Organisation	<input type="text"/>	Address 2:	<input type="text"/>
Telephone Number: *	<input type="text"/>	Town/City: *	<input type="text" value="Pathhead"/>
Extension Number:	<input type="text"/>	Country: *	<input type="text" value="Scotland"/>
Mobile Number:	<input type="text"/>	Postcode: *	<input type="text" value="EH37 5PX"/>
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" value="124 MAIN STREET"/>
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" value="PATHHEAD"/>
Post Code:	<input type="text" value="EH37 5PX"/>

Please identify/describe the location of the site or sites

Northing	<input type="text" value="664065"/>	Easting	<input type="text" value="339653"/>
----------	-------------------------------------	---------	-------------------------------------

## 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)

Proposed rear extension, attic conversion and associated alteration. Variation to former consent 21/00476/DPP

## Type of Application

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

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

What does your review relate to? \*

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

## Statement of reasons for seeking review

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

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

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

The officers assessment failed to take into consideration the current state of disrepair, the unpractical consented plan, material considerations such as local context and recent planning consents. Report is factually incorrect regarding any impact on neighboring properties and in any regard no worse than previous consent. Subjective comments made and no communication given to discuss pre-planning or pre-LRB submission. Further supporting information attached. LRB site visit welcome.

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)

In light of unexpected refusal, we provide a short statement in response to the report and reasons for refusal, together with an overlay of existing approval vs proposal. Examples of dilapidated condition together with examples of local properties and recent planning approvals. All material to the proposal and assessment.

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 Statement 124 Main Street - Existing Condition Photos Context Photo Record L(-- )03B Proposed Elevations with planning approval overlay L(-- )01 Location Plan L(-- )02 Existing Elevations L(-- )03B Proposed Elevations L(-- )04A Proposed Ground L(-- )05A Proposed Attic L(-- )06 Existing Ground L(-- )07 Site Plans L(-- )08 Proposed Section

## Application Details

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

22/00702/DPP

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

20/09/2022

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

16/11/2022

## Review Procedure

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

Can this review continue to a conclusion, in your opinion, based on a review of the relevant information provided by yourself and other parties only, without any further procedures? For example, written submission, hearing session, site inspection. \*

Yes  No

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)

A site inspection with accompanied access inside and to the rear of the property will provide the LRB with a more holistic picture of the task in hand (which cannot be fully appreciated from record photos) and how the interventions will not be to the detriment of the conservation area.

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

If there are reasons why you think the local Review Body would be unable to undertake an unaccompanied site inspection, please explain here. (Max 500 characters)

As the majority of intervention is to the rear private garden ground of the property. Access within the property and to the rear is suggested. The dilapidated building can be opened up for the LRB if accompanied.

## Checklist – Application for Notice of Review

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

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

Yes  No

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

Yes  No

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

Yes  No  N/A

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

Yes  No

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

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

Yes  No

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

## Declare – Notice of Review

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

Declaration Name: Mr Mark King

Declaration Date: 31/01/2023

# Planning Statement

Design & Planning Statement in support of planning application submitted for the demolition of a rear extension and rear extension and attic conversion of dilapidated private dwelling house. Variation to approved consent 21/00476/DPP at 124 Main Street, Pathhead.



**King**architects

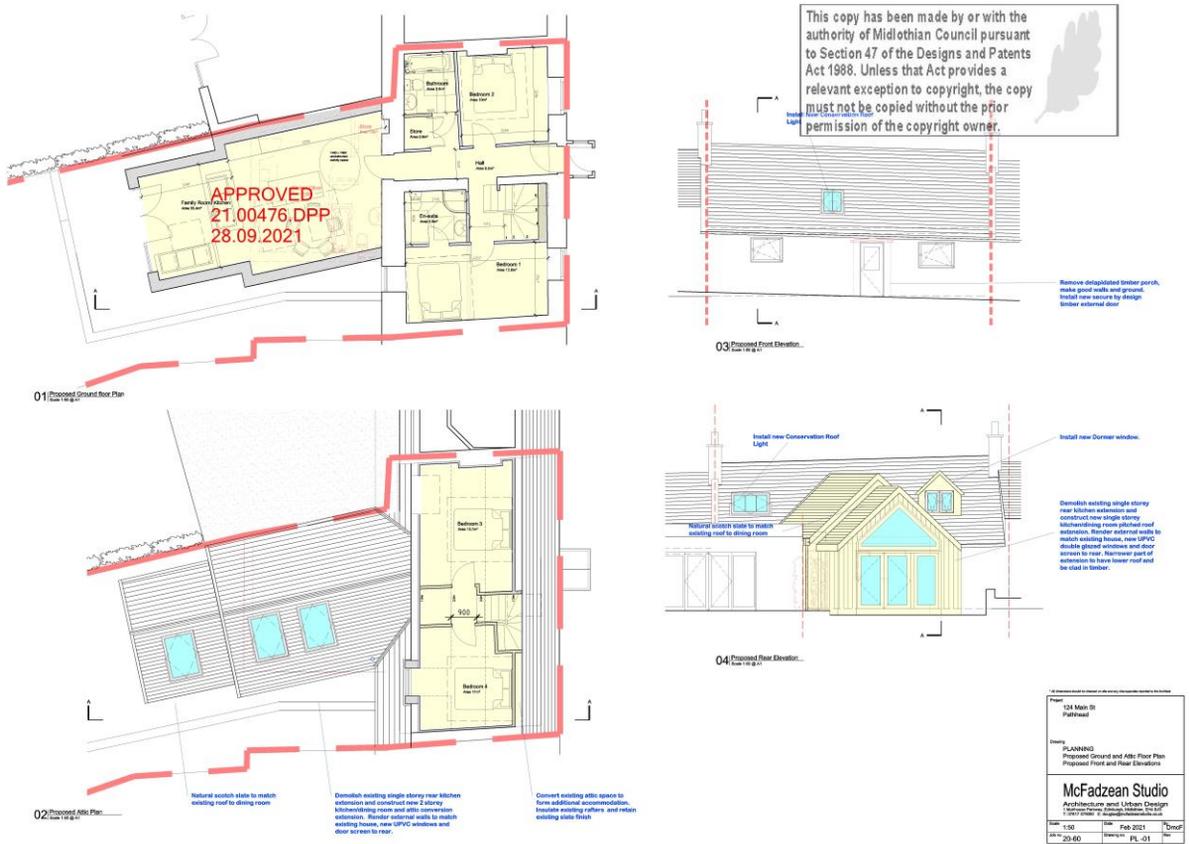
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**72 douglas road  
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EH32 0LJ**

**m. 07917 625580  
[mark@kingarchitects.co.uk](mailto:mark@kingarchitects.co.uk)  
[www.kingarchitects.co.uk](http://www.kingarchitects.co.uk)**

# Previous Approved Application



Following approval and sale of the property to the new owners and applicant it became apparent that the approved plans did not work practically and there was insufficient headroom at the stair and within the attic for any compliance with Building Standards.

It was also apparent, that the approved plans did not maximise the potential of property and that improvements could be made to reduce circulation, improve family living and use more sustainable energy efficient materials.

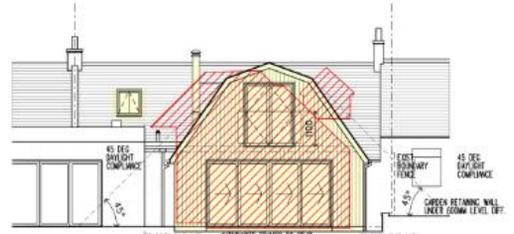
The existing building is SEVERELY DILAPIDATED and maximising its potential will go some way into subsiding the costs associated with the repair and modernisation of such a property.

# Proposed with red overlay showing extent of previous approval

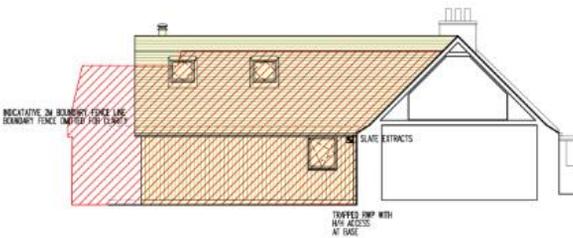
CONSERVATION RECEPTS TO BE VISIBLE FOR WORK SHOWING CONSERVATION RECESSED SLATE KIT



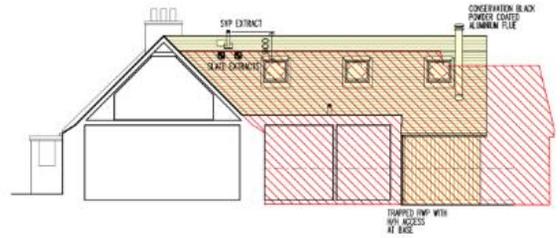
North Elevation  
1:100



South Elevation  
1:100



East Sectional Elevation  
1:100



West Sectional Elevation  
1:100

Description	Material	Colour
Windows	Double glazed/Conservation Style aluminium	White to front/back
Doors	Double glazed/powder coated aluminium	Anthracite
Roof	Slate to match exist.	Slate Grey
Walls	Central Cladding	Grey
Gutters/downs	PVC-u gutters/downpipes to rear	Black to match
Barrier	Glass	Clear

INDICATES OUTLINE AND MISSING OF PREVIOUS PLANNING APPROVAL REF: 21/00476/01P



REV	DATE	DESCRIPTION
B	01/07/22	PLANNING APPROVAL OUTLINE OVERLAP REF: 21/00476/01P
A	03/07/22	BUILDING WARRANT REFS ADDED

0	30	100	
CLIENT: MR. & MS. STEWART 324 Main Street, Pathhead, EH32 5PX			
DRAWING: Proposed Elevations			architecture alterations masterplanning home improvement
Draw	Check	Approved	72 douglas road longside east lothian eh32 0J
The drawings are the work and the copyright of King Architects and must not be used for any purpose other than that for which it is prepared. Any reproduction or use in contravention of the conditions of sale is prohibited.			t: 01753 809 456 m: 07763 155 556 e: info@kingarchitects.co.uk www.kingarchitects.co.uk

The proposed plans now demonstrate compliance with Building Standards and build practicality. The red overlay shows the extent of the approved plans versus the revised proposals submitted.

## **Reason for officer's refusal & Justification for LRB to overturn decision**

The reasons for the Council's decision are set out below, together with our clarifications to address in bold below:

The proposed extension is unsympathetic to the traditional character of the original building, in terms of its design, in particular its massing. It would appear as a very bulky addition, detracting from the character of the original building. Neither does the extension constitute a high quality example of contemporary design.

**Find attached elevation overlay L(--)-03 B. This shows the outline and massing of the previous planning approval Ref: 21/00476/DPP. Whilst the approved elevations shows the ridge some 30cm lower than the proposed elevations, the proposed ridge is no higher than existing (this to allow useable headroom within attic). The materials used match that of the previous approved application 21/00476/DPP and demonstrates use of natural slate to match existing and use of cladding matching previous approval. Use of geometry, openings and materials improve the massing and visual character to the rear extension than that of the previous approval. The redline of previous approval demonstrating that the proposed extension extends less into the garden ground than that of its former approval. The design and material choice is exemplary in terms of contemporary design that also addresses and responds to heritage and the local context and demonstrates a far higher quality of design than the former approval Ref: 21/00476/DPP**

The proposed rooflights at the front of the property would detract from the traditional character of the original cottage, and would have an adverse effect on the character and appearance of this part of the Pathhead and Ford Conservation Area.

**The rooflights shown are low pitch, low intervention conservation style rooflights in keeping with the area and heritage while offering natural daylight, ventilation and fire escape to enable the attic to be safely habited and a useful space. One rooflight is already approved on application 21/00476/DPP. The proposed plans indicate a further rooflight above and in line with each of the existing window openings below which will provide natural daylight, ventilation and fire escape to enable the attic to be safely habited and a useful space. The upstairs cannot be inhabited without windows. Both numbers 153 and 163 Main Street have large rooflights on the street frontage.**

The replacement windows will be unconvincing substitutes for traditional sash and case windows. The replacement windows will detract from the principal elevation and traditional character of the building and consequently the character and appearance of this part of the Pathhead and Ford Conservation Area.

**The existing windows are currently dilapidated white UPVC framed windows which are top hung and opening outwards. The proposed replacement to mock sash and case with a timber look will be far more appealing and sympathetic to the inferior quality of the existing windows.**

The proposed full height glazed doors and rooflights at first floor level would result in direct overlooking to the gardens of the immediate neighbours at no.s 120 and 126 Main Street, Pathhead with an overbearing detrimental impact on the privacy and consequently the amenity of the occupiers.

**The previous approved application had a larger glazed area at high level which planning would have no control over how this could be viewed from internally. I attach the site plan showing the location and “direct” line of site from opening.**

**It can be demonstrated that the “direct” line of site is directly down the applicants garden. These gardens are very elongated and some 30m or so in length. Some neighbouring garden land can be “indirectly” seen, however constitutes the very end of the gardens and only a small proportion over 15m or so from rear of the buildings.**

The proposed extension will have a detrimental impact on daylight to a bedroom window at the rear of no. 126 Main Street, Pathhead.

**The proposed elevations show the 45 degree rule and not in turn will not have a material impact on the daylight to neighbouring windows both sides of the property. It can also be demonstrated that due to the orientation of the site and extension the extension will not overshadow neighbouring property and the light quality to neighbouring properties will not be materially impacted.**

## **Policy DEV2: Protecting Amenity within the Built-Up Area.**

This policy supports development within the built up area unless it is likely to detract materially from the existing character or amenity of the area.

It is demonstrated in this application that the proposal will provide an ideal architectural solution for this site. The proposal relates well to its setting; its form and location are derived from the scale, form and mass of similar buildings in the village and the extension set within the applicants rear garden. It will create a good solution that respects the spatial parameters and neighbouring houses, location of windows, impact on light enjoyed by existing neighbours' windows, window to window overlooking distances, plot to building ratio and extent of private usable garden space, The proposal will provide a well thought through, balanced solution that meets each of the criteria the Planning Authority will use to assess its resultant impacts.

## **Policy ENV19: Conservation Areas.**

This policy relates to the general appearance of the development not having an adverse effect on the character or appearance of the area. In relation to alterations and extensions in the conservation area these are generally required to not have a negative effect on the conservation area in terms of design, siting, external appearance etc. The proposal has been designed to the highest standard in relation to each of the relevant policies in order to achieve a positive solution to turn a dilapidated building into useful family living accommodation that will complement the village and be a positive contribution to the conservation area.

### **Material Considerations:**

**Other material planning considerations that have a bearing on the consideration this proposal are the historic approval of the site, the dilapidated nature of the building and the numerous examples of recent alterations, new builds and extensions approved in the Pathhead conservation area.**

**For the clarifications and reasons mentioned above compliance can be met with policies DEV2 and ENV19 of the adopted Midlothian Local Development Plan 2017**

## MIDLOTHIAN COUNCIL

### DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

**Planning Application Reference:**22/00702/dpp

**Site Address:** 124 Main Street, Pathhead

#### **Site Description:**

The application property comprises a single storey mid terraced traditional cottage and its associated garden. The cottage is finished externally in cream wetdash render with a slate roof and white plastic coated window frames. There is a timber porch at the front and a single storey flat roof extension at the rear of the cottage.

The application property is located within the Pathhead and Ford Conservation Area.

#### **Proposed Development:**

Two storey extension to dwellinghouse and extension at first floor level; infill of window opening; installation of rooflights, replacement door and windows

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

It is proposed to take down the existing single storey extension at the rear of the property and erect an extension at the rear of the house incorporating accommodation at first floor level within the roofspace. The extension measures 6m wide and 6.9m deep. It is to be finished externally in grey cedar cladding with grey aluminium window and door frames with slate on a mansard style roof including rooflights on both sides and full height glazing at the rear gable at first floor level and an aluminium flue on the north elevation

Three rooflights, incorporating a central glazing bar, measuring 0.75m wide by 1.2m tall are proposed at the front of the house. The plans also indicate that replacement windows are proposed at the front of the house with mock sash and case timber effect windows to be installed.

The plans also show that it is intended to install a new timber effect door the top half of which is to be glazed at the front of the porch.

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

History sheet checked.

21/00089/dpp - Two storey extension to dwellinghouse; single storey extension to dwellinghouse and formation of dormer window - withdrawn.

21/00476/dpp - Extension to dwellinghouse, formation of dormer, installation of rooflights and demolition of front porch and installation of replacement front door – It was proposed to take down the existing single storey extension at the rear of the property and erect a single storey pitched roof extension in its place measuring a maximum of 5.7m wide and a maximum of 9.2 deep with a 1.5m wide pitched roof dormer on the south east side of the extension on the roof of the original cottage.

The rear part of the extension was stepped in at the side by 0.5m with a lower ridge height. The extension was to be finished externally in render to match that on the house with timber cladding on the rear section with upvc window and door frames and a slate roof. Two rooflights were proposed, one at the front of the property and one at the rear. The plans also showed that it was intended to remove the porch at the front of the house and install a new timber door the top half of which is to be glazed. Approved 28.09.21 subject to conditions including a reduction in the size of the rooflight at the front and details of the design of the front door.

22/00264/dpp - Installation of replacement windows (retrospective) at 144 Main Street, Pathhead – refused 13.05.22 including on the basis that the uPVC framed windows are not of a high quality, traditional design or opening method. Therefore, the replacement windows fail to preserve or enhance the character or appearance of the conservation area or the application building, resulting in a significant adverse impact on the character and appearance of the application property and the conservation area, which is contrary to policies ENV19 and DEV2 of the adopted Midlothian Local Development Plan and Historic Environment Scotland policy and guidance – upheld by Local Review Body – 20.09.22

#### **Consultations:**

The Wildlife Information Centre have recommended that a bat survey be carried out.

#### **Representations:**

Two representations have been received in relation to the application objecting to the proposals on the following grounds:

- Overlooking to the garden of no 126 Main Street next door;
- Loss of privacy to no. 120
- Overshadowing of no. 120
- Inappropriate size and style of extension – neither subservient to or in keeping with the style of the existing property; and
- Overbearing impact on no. 120

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

Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 places a duty on planning authorities to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

Historic Environment Policy for Scotland seeks wherever possible to protect conserve or enhance the special characteristics and qualities of the historic environment.

Historic Environment Scotland's Managing Change in the Historic Environment Guidance Notes on windows recognises that windows make a substantial contribution to the character and interest of historic buildings, streets and places. It advises that where inappropriate modern replacements have been installed it should be acceptable to replace the windows with an aim to regain the original design intention or improve the existing situation.

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

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

ENV 19 - Conservation Areas - seeks to preserve or enhance the character and appearance of conservation areas. It requires the use of materials appropriate to the locality or structure affected and that care in the design of replacement windows and doors will be required on the public frontage of buildings.

It is noted that policy DP6 House Extensions, from the now superseded 2008 Midlothian Local Plan, set out design guidance for new extensions requiring that they are well designed in order to maintain or enhance the appearance of the house and the locality. The policy guidelines contained in DP6 also relate to size of extensions, materials, impact on neighbours and remaining garden area. It also states that front porches to detached or semi-detached houses are usually acceptable provided they project less than two metres out from the front of the house. It also allowed for novel architectural solutions. Policy DP6 also provides specific guidance with respect to dormer extensions. In particular, dormers should not extend, other than to a limited extent beyond the glazed area, i.e. they should be dormer windows rather than box dormers, and should not occupy a predominant proportion of the existing roof area. The guidance set out within this policy has been successfully applied to development proposals throughout Midlothian and will be reflected within the Council's Supplementary Guidance on Quality of Place which is currently being drafted.

#### **Planning Issues:**

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

The main issues in this case concerns the design of the proposals and the effect on the character and appearance of the original house and the conservation area and the impact of the rear extension on the amenity of neighbouring properties.

The original cottage is traditional in design and modest in scale. Whilst there is an existing single storey flat roof extension at the rear of the property the form of the original cottage is still evident.

Large extensions may be acceptable where, as a result of their design, they do not have a significant impact on the character of the original property or are of a very high quality design finished in high quality materials.

The proposed extension would dominate the rear elevation of the house and its massing, in particular the shallow pitched roof section at ridge level resulting in a very bulky gable end at the rear, does not respect the traditional pitched form of the roof on or the traditional character of the original house. As a result of its overall size and design the extension will appear as a very bulky addition at the rear of the existing building the design of which is unsympathetic to and would detract from the character of the host building. Whilst the proposed cladding and aluminium window and door frames are more contemporary in nature the extension is not of such a high quality or bold contemporary design sufficient to warrant approval.

Located at the rear the proposed extension will not have a significant impact on the character or appearance of the conservation area.

Sufficient garden area will remain after the erection of the extension.

It is the Council's duty to preserve and enhance the character and appearance of conservation areas.

Street view on Google maps shows a side hung pair of windows in the front window openings at the application property in 2011 after which there is a gap in the views until August 2019 with the present single paned windows in situ. There is no record of planning permission having been granted for the current windows. Taking in to account the location of the application property within a conservation area, care is required in terms of materials used, design and method of opening of replacement windows on the front elevation. Ideally the windows on the front of the property should be replaced with timber sash and case windows.

However, there are a large number of upvc sash and case windows on the fronts of properties in Pathhead. Upvc is not a traditional, vernacular material and does not make a positive contribution to the conservation area. However in 1996 in relation to a planning application for replacement windows at no 66 Main Street, Pathhead the Planning Committee took the view that white upvc sliding sash and case windows may be acceptable in the conservation area subject in particular to the method of opening, the profile of the windows and the dimensions of the frames matching as near as possible the original windows. (Upvc windows are not acceptable where they would detract from the distinct uniform character of the street scene or of a building containing flatted property.) Since then upvc sash and case windows have been approved on the fronts of the houses within the Pathhead and Ford and Edgehead conservation areas. Details of the method of opening of the replacement windows proposed at the front of the house have not been submitted however the plans are annotated that these are to be mock sash and case timber effect windows rather than genuine sash and case windows. Mock sash and case windows will not be a convincing substitute for traditional sash and case windows in terms of their non-traditional method of opening and their profile and both when open and closed. The proposed replacement windows are unsympathetic to the traditional character of the application property and the surrounding area detracting from the character and appearance of this part of the conservation area. The Local review Body has recently refused planning permission for upvc replacement windows which were not of a high quality and not of a traditional opening method – see planning history.

Whilst the proposed front door is a like for like replacement in terms of its design it is not in keeping with the traditional character of the original cottage. A vertical boarded timber door would be more in keeping. However there are a variety of door styles and colours on the fronts of properties along Main Street predominantly timber however including some upvc and some composite. The proposed front door should ideally be constructed in timber. Composite front doors with a coloured (rather than stained) painted effect have been approved in other conservation areas. Taking all of this into account the proposed replacement door will not have a significant impact on the character and appearance of this part of the conservation area.

One of the characteristics of properties within the Pathhead and Ford Conservation Area is the strong roof form of the houses. The proposed three large roof lights on the front of the house will be very prominent features. The number, positioning, and size of the rooflights do not respect the traditional design of the building and will appear incongruous and detract from the traditional character of the building and the street scene within this part of the Pathhead and Ford Conservation Area.

The proposals will not be overbearing to the outlook of no. 120 next door. The extension will not have a significant impact on daylight to the patio doors at the rear of the extension at this property. This room is also served by full height glazing on its north side. The proposal will result in increased overshadowing of the garden area nearest to the house at no. 120 in the morning, particularly in the winter months however the impact will be reduced in the summer and is not sufficient to warrant refusal of planning permission. It will not have a significant impact on sunlight to the house at no. 120. The rooflight proposed on the rear elevation of the existing house will have views of the garden of no. 120 however but for the location of the application property in a conservation area, this could ordinarily be installed as permitted development. The rooflights serving the bedroom on the north side of the roof, in particular the one nearest the gable of the extension will have views of the garden of no. 120. There is also a possibility that these will have oblique views back towards the dormers and a roof light serving a bathroom at the rear of no 120. There is a 3.5m (approx.) high hedge along the boundary with the back garden of no. 120 with the application property. Whilst on site the owner of no. 120 advised that it is proposed to lower the height of the hedge. Currently there is potential for the proposed doors at first floor level on the gable of the extension to have views of the area of no. 120's garden nearest to the house. The hedge would screen views along the rest of the garden at no. 120 however were the hedge to be reduced in height the doors would overlook a larger area of no. 120's garden.

The ground level at no. 126 is at a higher level than the ground level in the area of the proposed extension. There is a bedroom window at the rear of no. 126 next door and an obscure glazed bathroom window and clear glazed door on the side of the extension at the rear of no. 126 facing the application property. The extension will be prominent to the outlook of the bedroom window and along with the extension at no. 126 will create somewhat of a tunnel effect. However on balance the impact on the outlook of this room is not sufficient to warrant refusal of planning permission. The extension will impact on daylight to this window. It will also be prominent to the outlook of the glazed door on the side of the extension at the rear of no. 126. However this room is also served by windows at the rear and has a glazed roof and as such the extension will not be overbearing to the outlook from this room as a whole or have a significant impact on daylight. The kitchen window proposed on the side of the extension will have views towards in particular the glazed door on the side of the extension at the rear of no. 126. This could be minimised by the erection of a trellis on top of the existing boundary fence. The rooflights on the south side of the extension have the potential to overlook the patio of no. 126. The glazed doors at first floor level will have views of no. 126's garden. However in the main views are directed along the garden of the application property and overlooking will not be significant as compared to the common scenario of overlooking from first floor windows on two storey houses which is not considered to be a significant issue in

terms of any impact on privacy. The conservatory at no. 126 has an opaque glazed roof. The proposal will not have a significant impact on sunlight to no. 126. The extension will not be overbearing to the outlook of no. 126's garden.

The Wildlife Information Centre have not referred to a specific bat record for the property. Should planning permission be forthcoming the applicant's agent would be advised of the possibility of bats at the site and their protected status.

**Recommendation:**

Refuse planning permission

## Reg. No. 22/00702/DPP

King Architects  
72 Douglas Road  
Longniddry  
EH32 0LJ

Midlothian Council, as Planning Authority, having considered the application by Mr and Ms John and Lisa Stewart, 124 Main Street, Pathhead, EH37 5PX, which was registered on 21 September 2022 in pursuance of their powers under the above Acts, hereby **refuse** permission to carry out the following proposed development:

**Two storey extension to dwellinghouse and extension at first floor level; infill of window opening; installation of rooflights, replacement door and windows at 124 Main Street, Pathhead, EH37 5PX**

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

<u>Document/Drawing.</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Location Plan	L(-- )01 1:1250	21.09.2022
Existing Elevations	L(-- )02 1:100	21.09.2022
Proposed Elevations	L(-- )03 1:100	21.09.2022
Proposed Floor Plan	L(-- )04 1:50	21.09.2022
Proposed Floor Plan	L(-- )05 1:50	21.09.2022
Existing Floor Plan	L(-- )06 1:50	21.09.2022

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

- 1. The proposed extension is unsympathetic to the traditional character of the original building, in terms of its design, in particular its massing. It would appear as a very bulky addition, detracting from the character of the original building. Neither does the extension constitute a high quality example of contemporary design.*
- 2. The proposed rooflights at the front of the property would detract from the traditional character of the original cottage, and would have an adverse effect on the character and appearance of this part of the Pathhead and Ford Conservation Area.*
- 3. The replacement windows will be unconvincing substitutes for traditional sash and case windows. The replacement windows will detract from the principal elevation and traditional character of the building and consequently the character and appearance of this part of the Pathhead and Ford Conservation Area.*
- 4. The proposed full height glazed doors and rooflights at first floor level would result in direct overlooking to the gardens of the immediate neighbours at no.s 120 and 126 Main Street, Pathhead with an overbearing detrimental impact on the privacy and consequently the amenity of the occupiers.*

5. *The proposed extension will have a detrimental impact on daylight to a bedroom window at the rear of no. 126 Main Street, Pathhead.*
6. *For the above reasons the proposals are contrary to policies DEV 2 and ENV19 of the adopted Midlothian Local Development Plan 2017 which seeks to protect the character and amenity of the built-up area and the character and appearance of conservation areas.*

Dated 16 / 11 / 2022



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



The Coal  
Authority

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

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

**STANDING ADVICE**

The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848.

Further information is also available on the Coal Authority website at:  
[www.gov.uk/government/organisations/the-coal-authority](http://www.gov.uk/government/organisations/the-coal-authority)

Standing Advice valid from 1st January 2021 until 31st December 2022

CONSERVATION ROOFLIGHTS TO BE VELUX GGL MK06 SD5N2 CONSERVATION RECESSED SLATE KIT.

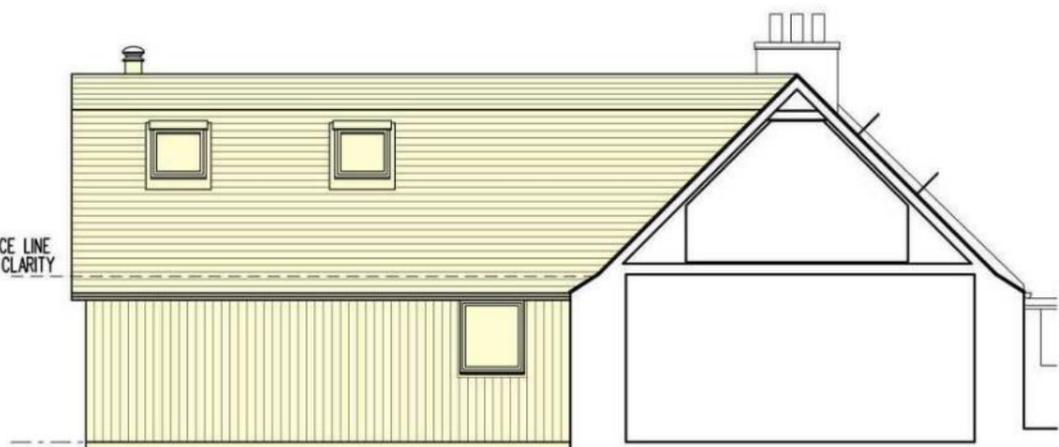
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1 North Elevation  
1:100



2 South Elevation  
1:100



3 East Sectional Elevation  
1:100

REFUSED  
16.11.2022  
22/00702/DPP



4 West Sectional Elevation  
1:100

Description	Material	Colour
Windows	Double glazed/Conservation Style Aluminium	Anthracite
Doors	Double glazed/powder coated aluminium	Anthracite
Roof	Slate to match exist.	Slate Grey
Walls	Cedral Cladding	Grey
Gutters/pipes	PVC-u gutters/downpipes to rear	Black to match
Barrier	Glass	Clear



REV	REVISIONS	DATE	DRAWN	DESCRIPTION

0	50	100
CLIENT	MR. & MS. STEWART	
JOB	124 Main Street, Pathhead. EH37 5PX	
DRAWING	Proposed Elevations	
Draw	Checked	Approved
Date	10/06/22	Job No KA/0220Dr No L(-)-103
Rev	-	
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REV	DATE	DRAWN	DESCRIPTION

CLIENT	MR. & MS. STEWART		
JOB	124 Main Street, Pathhead. EH37 5PX		
DRAWING	Proposed Ground Floor Plan		
Drawn	Checked	Approved	Date 08/09/22 Job No KA/0220 Dr No L(--)-04 Rev
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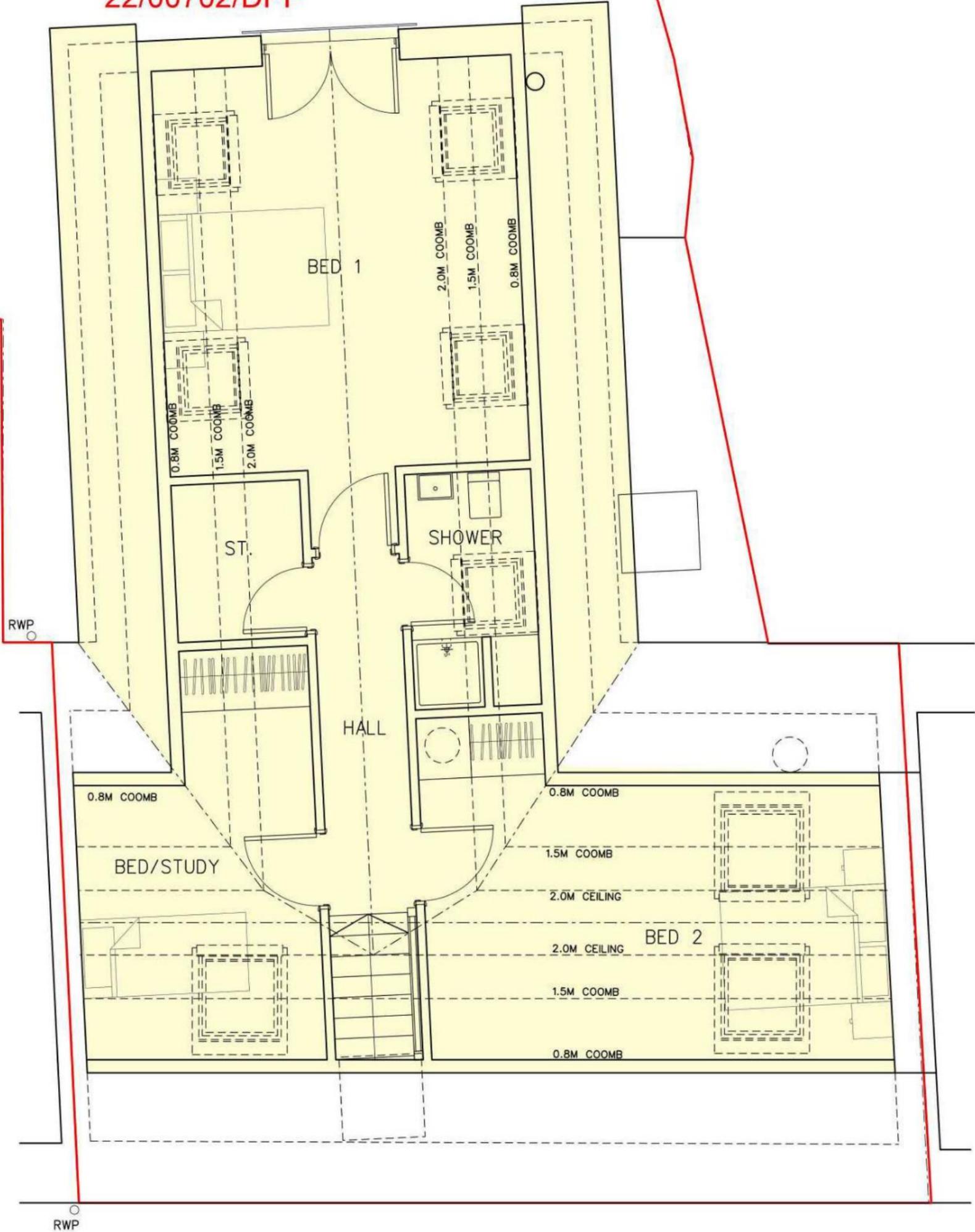
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REV	DATE	DRAWN	DESCRIPTION

CLIENT	MR. & MS. STEWART					
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DRAWING	Proposed Attic Floor Plan					
Drawn	Checked	Approved	Date 08/09/22	Job No KA/0220	Dr No LC--105	Rev
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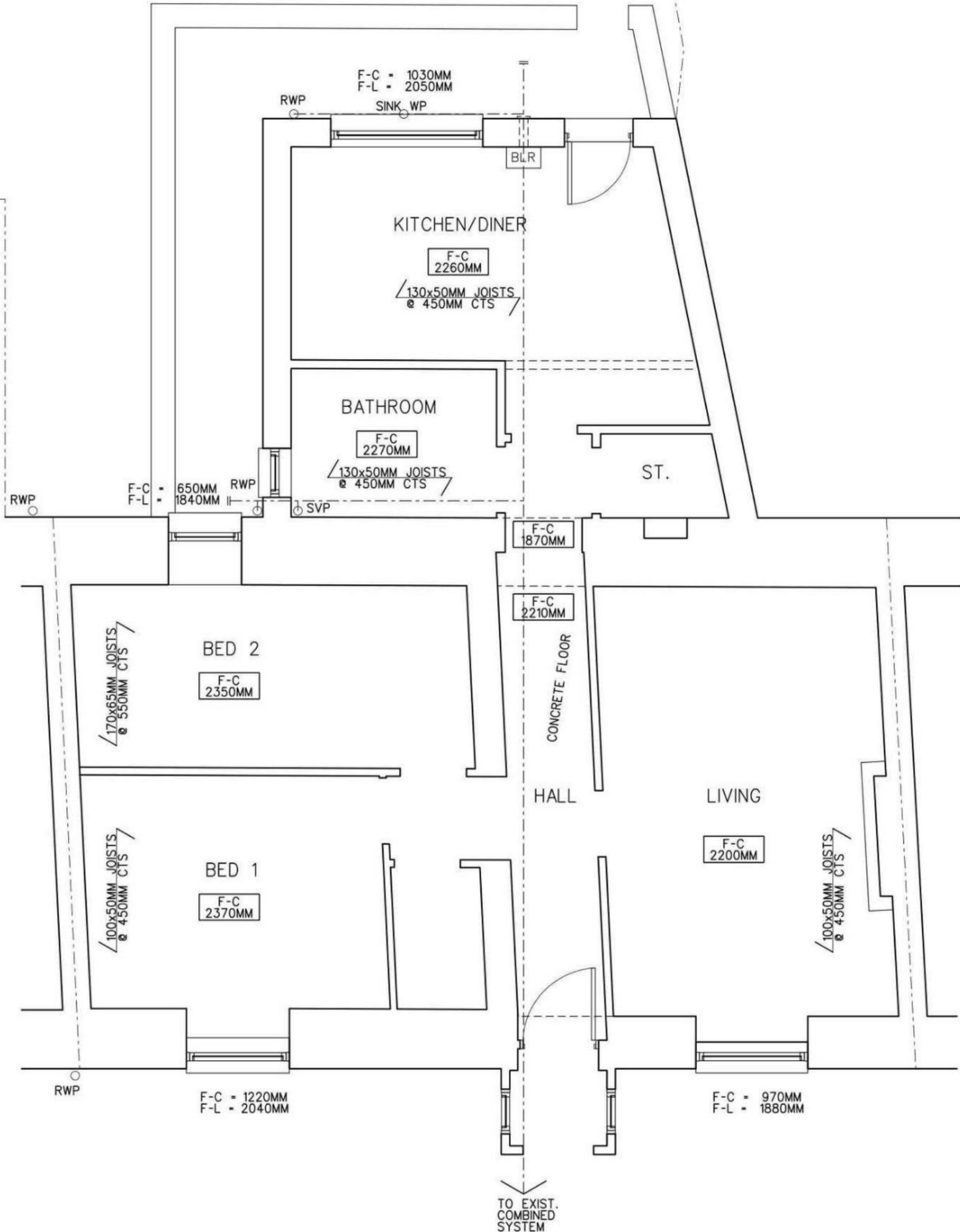
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REV	DATE	DRAWN	DESCRIPTION

CLIENT	MR. & MS. STEWART		
JOB	124 Main Street, Pathhead. EH37 5PX		
DRAWING	Existing Ground Floor Plan		
Drawn	Checked	Approved	Date 08/09/22 Job No KA/0220 Dr No L(--)-06 Rev
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