

## Notice of Review: Land at Soutra Mains Farm, 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' to remove condition 6 of planning permission 08/00159/OUT at land at Soutra Mains Farm, Pathhead.

### 2 Background

- 2.1 Planning application 08/00159/OUT for the erection of seven (limited to four by condition) single storey holiday cottages, coffee shop and associated access road and parking at land at Soutra Mains Farm, Pathhead was granted permission 26 May 2010 subject to a occupancy condition (condition 6):

6. The accommodation hereby approved shall be occupied solely as holiday accommodation for periods of no more than 4 consecutive weeks and none of the holiday homes shall be used as a sole or main residence.

***Reason:*** For the avoidance of doubt. The Midlothian Local Plan supports the creation of holiday accommodation but not dwellinghouses in this location.

- 2.2 Planning application 20/00890/S42 to remove condition 6 of planning permission 08/00159/OUT, to enable the long term rental of the holiday homes and in doing so use them as single dwellinghouses, was refused planning permission on 11 March 2021; a copy of the decision is attached to this report.
- 2.3 A Section 42 application, is in itself, a planning application - a particular kind of planning application for development without complying with or amending the condition/s previously imposed on an earlier grant of planning permission. A grant of planning permission under Section 42 results in an entirely new planning permission which will supersede the original permission if implemented. Therefore, if planning permission is granted for this application it will supersede planning permission 08/00159/OUT if implemented.
- 2.4 Although a Section 42 application is a new planning application in law the Act states "on such an application the planning authority shall consider only the question of the conditions subject to which planning permission should be granted". The principle, layout and form of development are not subject to assessment. Planning authorities

should attach to the new permission all of those conditions from the previous permission, where it is intended these should still apply. In this case a number of the conditions attached to the earlier permission have been discharged and are no longer relevant.

- 2.5 The review has progressed through the following stages:
- 1 Submission of Notice of Review by the applicant.
  - 2 The Registration and Acknowledgement of the Notice of Review.
  - 3 Carrying out Notification and Consultation.

### **3 Supporting Documents**

- 3.1 Attached to this report are the following documents:
- A site location plan (Appendix A);
  - A copy of the notice of review form and supporting statement (Appendix B). Any duplication of information is not attached;
  - A copy of the case officer's report (Appendix C);
  - A copy of the decision notice, issued on 11 March 2021 (Appendix D); and
  - A copy of the relevant drawings/plans (Appendix E).
- 3.2 The full planning application case file and the development plan policies referred to in the case officer's report can be viewed online via [www.midlothian.gov.uk](http://www.midlothian.gov.uk)

### **4 Procedures**

- 4.1 In accordance with procedures agreed by the LRB, the LRB by agreement of the Chair:
- Have determined to consider a visual presentation of the site instead of undertaking a site visit because of the COVID-19 pandemic restrictions; and
  - Have determined to progress the review by written submissions.
- 4.2 The case officer's report identified that there were no consultations required and no representation received.
- 4.3 The next stage in the process is for the LRB to determine the review in accordance with the agreed procedure:
- Identify any provisions of the development plan which are relevant to the decision;
  - Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies;
  - Consider whether or not the proposal accords with the development plan;
  - Identify and consider relevant material considerations for and against the proposal;
  - Assess whether these considerations warrant a departure from the development plan; and
  - State the reason/s for the decision and state any conditions required if planning permission is granted.
- 4.4 In reaching a decision on the case the planning advisor can advise on appropriate phraseology and on appropriate planning reasons for reaching a decision.

- 4.5 Following the determination of the review the planning advisor will prepare a decision notice for issuing through the Chair of the LRB. A copy of the decision notice will be reported to the next LRB for noting.
- 4.6 A copy of the LRB decision will be placed on the planning authority's planning register and made available for inspection online.

## **5 Conditions**

5.1 In accordance with the procedures agreed by the LRB at its meeting of 13 June 2017, and without prejudice to the determination of the review, the following condition has been prepared for the consideration of the LRB if it is minded to uphold the review and grant planning permission.

1. A maximum of four dwellinghouses and a coffee shop shall be constructed on the site.

***Reason:** To define the terms of the consent.*

5.2 If the LRB is minded to uphold the review and grant planning permission for the proposed development (the provision of 4 dwellinghouses) it shall be subject to a legal agreement to secure developer contributions towards education provision and public transport (Borders Rail). 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.

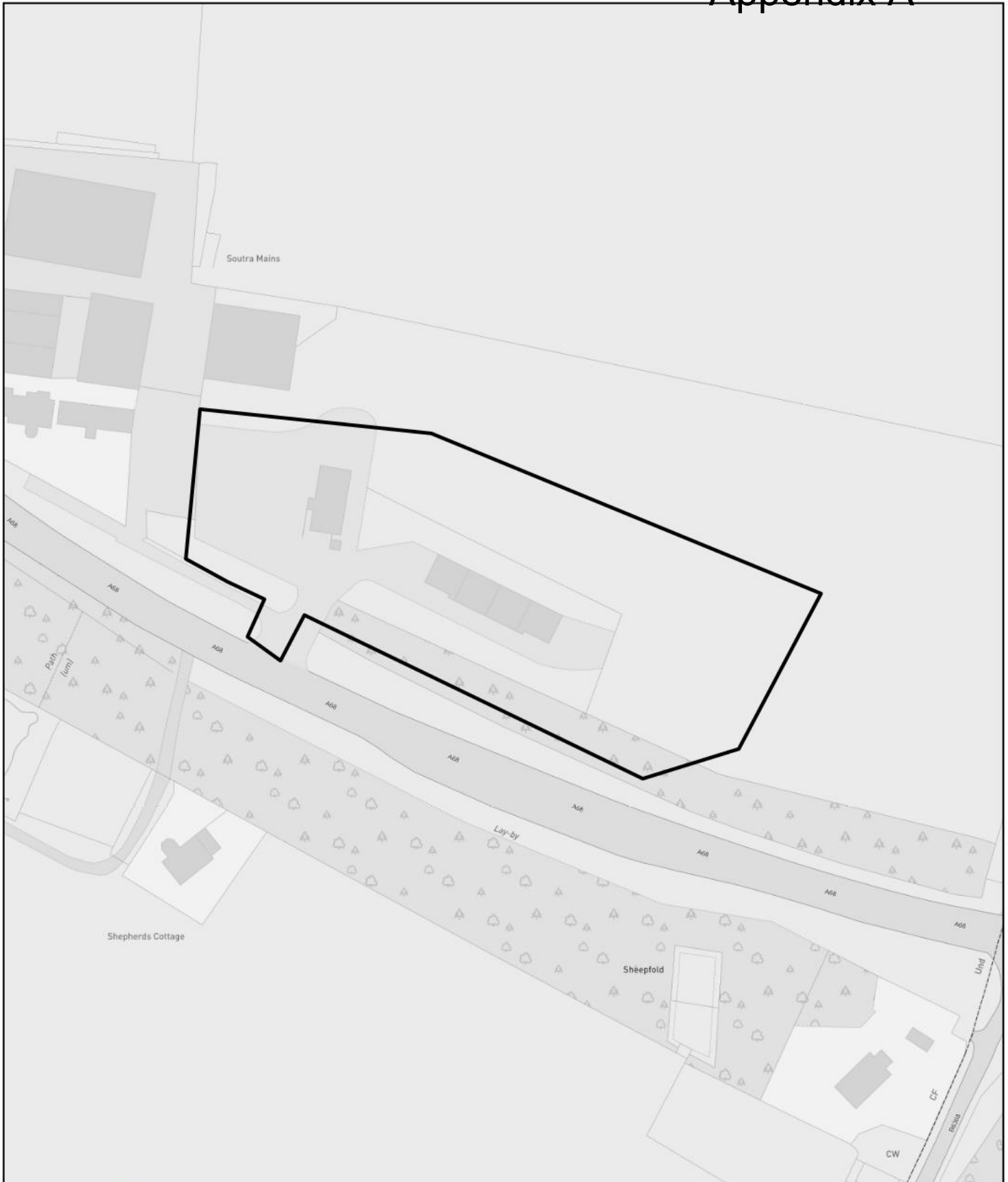
## **6 Recommendations**

- 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

**Date:** 4 June 2021

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

**Background Papers:** Planning Application File 20/00890/S42



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

Section 42 application to amend condition 6 of planning permission 08/00159/OUT (to allow for long term rental of holiday homes) at Land At Soutra Mains Farm, Pathhead,

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File No: 20/00890/S42

Scale: 1:1,500

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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](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      100340214-002

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="Suzanne McIntosh Planning Limited"/>		
Ref. Number:	<input type="text"/>	You must enter a Building Name or Number, or both: *	
First Name: *	<input type="text" value="Suzanne"/>	Building Name:	<input type="text"/>
Last Name: *	<input type="text" value="McIntosh"/>	Building Number:	<input type="text" value="45C"/>
Telephone Number: *	<input type="text" value="07792230979"/>	Address 1 (Street): *	<input type="text" value="Bath Street"/>
Extension Number:	<input type="text"/>	Address 2:	<input type="text" value="Portobello"/>
Mobile Number:	<input type="text"/>	Town/City: *	<input type="text" value="Edinburgh"/>
Fax Number:	<input type="text"/>	Country: *	<input type="text" value="United Kingdom"/>
		Postcode: *	<input type="text" value="EH15 1HB"/>
Email Address: *	<input type="text" value="smcintoshplan@gmail.com"/>		

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" value="Soutra Mains Farm"/>
First Name: *	<input type="text" value="George"/>	Building Number:	<input type="text"/>
Last Name: *	<input type="text" value="Russell"/>	Address 1 (Street): *	<input type="text" value="Blackshield"/>
Company/Organisation	<input type="text"/>	Address 2:	<input type="text" value="Fala"/>
Telephone Number: *	<input type="text"/>	Town/City: *	<input type="text" value="Midlothian"/>
Extension Number:	<input type="text"/>	Country: *	<input type="text" value="Scotland"/>
Mobile Number:	<input type="text"/>	Postcode: *	<input type="text" value="EH37 5TF"/>
Fax Number:	<input type="text"/>		
Email Address: *	<input type="text" value="smcintoshplan@gmail.com"/>		

## 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="SOUTRA MAINS FARM"/>
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 5TF"/>

Please identify/describe the location of the site or sites

Northing	<input type="text" value="659465"/>	Easting	<input type="text" value="345280"/>
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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)

Refusal of Planning Permission 20/00890/S42 - S42 application to amend condition 6 of planning permission 08/00159/OUT (to allow for long term rental of holiday homes) at Land at Soutra Mains Farm, Pathhead

## 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.

A separate statement is provided

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)

Docs as lodged with the application, decision notice and notice of review statement

## Application Details

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

20/00890/S42

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

15/12/2020

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

11/03/2021

## 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: Mrs Suzanne McIntosh

Declaration Date: 18/03/2021

APPEAL TO THE LOCAL REVIEW BODY MIDLOTHIAN COUNCIL  
AGAINST THE REFUSAL OF PLANNING APPLICATION  
UNDER S42

TO AMEND CONDITION 6 OF  
PLANNING PERMISSION 08/00159/OUT  
(TO ALLOW FOR LONG TERM RENTAL OF HOLIDAY HOMES)

AT SOUTRA MAINS FARM,  
BLACKSHIELD, FALA,  
PATHHEAD,  
MIDLOTHIAN  
EH37 5TF

MR G RUSSELL

SUZANNE MCINTOSH PLANNING LIMITED  
17 March 2021

## **1. THE REQUEST FOR REVIEW**

The Planning Officer has refused the application under S42 of the Town and Country Planning (Scotland) 1997 Act (as amended) which requested a variation of the condition on the planning permission for the holiday cottages at Soutra Mains Farm.

Planning permission reference 08/00159/OUT was granted on 26<sup>th</sup> May 2010. This permission was for the erection of 4 holiday cottages, a coffee shop, access road and parking area. The consent was subsequently implemented after the matters specified in the conditions attached to the outline permission were agreed in subsequent applications with the Planning Authority.

The development has been successful with the busy coffee shop, the well used car park and the popular holiday cottages until late 2019/early 2020. When the pandemic struck and all bookings for 2020 were immediately cancelled and subsequently all bookings for 2021 were also cancelled. Two years bookings wiped out – overnight as a result of the government's restrictions, lockdowns and subsequent second lockdown. There is no roadmap to recovery for the holiday cottages from the covid restrictions. Even now, a year on from the first lockdown there is no certainty as to the tourism economy opening up again. Winter times occupation for these cottages have always been much quieter than spring and summer since their completion.

In addition, Mr and Mrs Russell Senior who manage the holiday cottages are now in their 70's. Both having been on the vulnerable list could not meet and greet any potential guests even if things did open up now and everything returned to normal. Their age and the fact that they have further health concerns to the extent that required them to shield. Mr Russell has had cancer and major surgery/ treatment in the last year. His recovery as a vulnerable person must take precedent in their lives; however their business and investment in the site must carry on. Part of his continued recovery is obviously to not put himself at risk of set backs or worse. Having many different people coming and going from their property has been another concern – if the tourists were allowed to return soon.

We understand that personal circumstances are material considerations in the determination of planning applications so need to bring all of these issues to the attention of the Local Review Body. In addition, the stress of the lack of bookings, the flood of cancellations for 2020, 2021 and 2022, the loss of income

overnight from the holiday cottages is a continued stress that no-one could have predicted. All of this coupled with Mr Russell's serious health issues have meant that it would be a much more sensible solution all round if the cottages could be let for much longer periods and not restricted in the way they are at present.

Less routine maintenance by way of change overs & meet and greets is required to be done by Mr and Mrs Russell even if things do pick up again and to ensure the lovely cottages they have completed are occupied and not sitting empty and unused with no income coming in then a change to the consent as it stands is required.

The Covid (Scotland) Act 2020 has given council's powers to react differently to situations, extend permissions, be flexible with their approach in order to support local businesses, especially in the tourism sector through the pandemic. Not in Midlothian it seems.

To take account of the dire present ongoing economic restrictions and situation brought about by the government in dealing with the pandemic the applicant has requested through formal channels – the S42 application to create flexibility, allow them to lawfully occupy the cottages on a longer let basis and at least support them on a temporary basis. Each request was met with a blank 'No'. In addition no account has been taken of the personal circumstances specific to the Russells.

The lack of flexibility in the approach by Midlothian Planning has created a situation where the cottages either sit empty and the applicants have no income stream or they let them on longer leases and are in breach of their planning permission.

Conscious of doing the right thing they applied and were refused the request to allow flexibility in relation to the holiday cottages at Soutra Mains Farm for the period of the pandemic and post economic recovery.

We therefore submit this appeal to the Local Review Body in the hope that the councillors can see the merit in a flexible approach and the flaws in the logic of the condition as it stands now the cottages are complete and have, up to 2020 been occupied. The Planning Officer would not even consider allowing a change for at least a temporary period until the pandemic is over and the tourism trade recovers. We had suggest a three year period of flexibility before reverting to holiday cottages full time. We were met with the same negative attitude.

## 2. THE CONDITION AND THE TECHNICALITIES

Condition 6 of the 08/00159/OUT permission states the following:

*6. The accommodation hereby approved shall be occupied solely as holiday accommodation for periods of no more than 4 consecutive weeks and none of the holiday homes shall be used as a sole or main residence.*

The reason for the condition is stated as follows: *For the avoidance of doubt. The Midlothian Local Plan supports the creation of holiday accommodation but no dwellinghouses in this location.*

Since implementation of the permission and operation of the holiday cottages business the cottages have been occupied as holiday lets, advertised through Scottish holiday cottages web sites and managed by Mr and Mrs Russell. Bookings have been building over the time since completion of the cottages and feedback has been positive about the accommodation and overall service provided until this year.

2020 has been an impossible year for everyone involved in tourism and hospitality. All bookings for 2020 and 2021 have been cancelled as a result of the Covid 19 pandemic. There are no potential bookings for 2022. Mr and Mrs Russell have therefore been forced to look at other options in relation to this critical income stream at Soutra Mains.

One solution they are seeking is to be able to rent the cottages out for a much longer period than purely the 'holiday let' as restrained by the existing, aged planning permission as there are clearly no holiday let opportunities for the foreseeable future and the cottages would be empty. The 4 week limit is unreasonably prohibitive.

The Russells have been approached by Midlothian local residents asking if accommodation is available to rent for longer periods than holidays and at affordable rates. In order to do this however they would potentially be in breach of condition 6 if the let period were longer than 4 weeks. To assist them to deal with the impacts of the pandemic they will require the condition to be removed to allow them to do this.

This application therefore seeks, in these unprecedented times, that the Planning Authority agree to the removal of condition 6 to allow the cottages to be occupied as affordable private lets. These will provide a valuable resource in this remote area where there is a lack of affordable cottages to rent. The accommodation provided is of a high standard, with large areas of amenity space and parking around the cottages. It would also address the issue of the Russell's age range, vulnerability in relation to further virus outbreaks, Mr Russell's own serious health condition and limiting the numbers of people coming and going from the cottages, change overs/ cleaning and maintenance required.

It is noted that the Scottish Parliament has put in place extraordinary measures throughout Scotland to deal with the impacts of the virus and restrictions in place. These extra measures in the Covid Scotland Act are material considerations in the determination of this application. Also material in the consideration of the planning application are the personal circumstances of the applicant.

Yet the Planning Officer in refusing the application to amend the condition for two reasons which state that:

- 1. Outline planning permission 08/00159/OUT for the erection of holiday cottages, coffee shop and associated access road and parking was considered unacceptable on the basis that there was a requirement for improved tourism accommodation in the area and there was a policy support for tourist accommodation within the countryside. The removal of significant modification of condition 6 of PP 08/00159/OUT would result in the creation of un-restricted residential accommodation that could be occupied on a long term basis which would essentially resulting the creation of four new dwellinghouses in the countryside with no locational requirement to be in the countryside, there is no policy support for new dwellinghouses at the application site. As a result the proposal is contrary to policy RD1 of the adopted Midlothian Local Development Plan 2017.*

Applicant Comment: This flat application of the planning policy approach means that the Planning Officer would clearly rather the four holiday cottages sat empty for at least 2 years – while the pandemic is ongoing. They do not wish to consider the relevant material considerations so we are left with no option but to appeal to the Local Review Body which we know will consider all the material considerations.

The Planners clearly don't place any importance on the fact that the cottages are physically there, have been granted planning and are complete and can operate as holiday cottages. They assume that if the cottages are not short holiday lets under 4 weeks then they are in breach of the policies. What they haven't done is examined in detail what the degree of difference actually is between a 4 week let and a 5 week let or a six month let. Its all essentially the same in terms of impacts; and those impacts were deemed to be acceptable in determining the planning application for the cottages originally.

Its as though the permission was given grudgingly and that its that or nothing. There is no creative thinking in seeking to help with a solution for the applicants. We know the Local Review Body will be instrumental in providing realism and creativity in the need to assist in the solution rather than blocking it.

There appears to be zero ability by Planning to comprehend that that's what was granted then but now we're in a very different situation and we have a duty to assist local people in firstly working their way through the pandemic and secondly in finding suitable accommodation to rent. Planning is not a stick with which to beat people but a facilitator of appropriate development. Our experience in this case has been a different one.

There is clearly a demand for private rented accommodation – what is the planning reason why this cannot be filled by existing buildings sitting empty? These cottages have a high level of amenity, open views and landscape around them, are well located in terms of the building group; screened from the road by the belt of trees; are of an architecture that is vernacular in style and materials. There is no good reason why they cannot use for the purpose of longer lets for the duration of this current situation.

We clearly know that had an application come in now to the council for 4 cottages for let the Planners would refuse them on the basis of the policy. However, these are four cottages that have been built, have been occupied as holiday lets and now cannot be occupied by tourists through no fault of the applicants – there are no tourists; people are not permitted to travel and their fear of the virus and travel will not disappear quickly. Another reasonable solution to their occupation must therefore be found so we implore you to assist us in finding it.

2. *Condition 6 of planning permission 08/00159/OUT satisfies the six tests within Planning Circular 4.1998 (the use of conditions in planning permissions) which require conditions to be necessary. Relevant to planning, and relevant to the development permitted, enforceable, precise and reasonable in all other respects.*

Agreed - it does. What would also satisfy the tests relating to the use of conditions is if the condition were to be varied to say for the period up to 31.12.23 the units may be occupied as longer lets. What would also be acceptable is if the condition were permanently varied or removed entirely. Reason no 2 doesn't relate to why they have refused the application under S42 so isn't relevant directly to the refusal. The LRB should discount it entirely.

### **3 CONCLUSION**

The LRB has a duty to examine the case 'de novo' and as such we ask the LRB to examine all of the issues in this statement relating to the pandemic/ covid 19/ personal circumstances and degree of difference from the granted planning permission as material planning considerations.

The applicant does not seek to sell the cottages and only wishes to utilise them for the period as longer, affordable lets. This is a reasonable request and one that the council has supported in other cases. We ask that you support it here.

Applicants do not want to have to come back to seek further changes time after time. Nor do they wish to jeopardise their own health and well being. A sensible solution all round is to allow these cottages to be occupied and not leave them sitting empty.

*Suzanne C McIntosh MRTPI HonFRIAS*



TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

APPLICATION UNDER S42

TO VARY CONDITION 6 OF  
PLANNING PERMISSION 08/00159/OUT

AT SOUTRA MAINS FARM,  
BLACKSHIELD, FALA,  
PATHHEAD,  
MIDLOTHIAN, EH37 5TF

MR G RUSSELL

SUZANNE MCINTOSH PLANNING LIMITED  
DECEMBER 2020

## BACKGROUND TO THE PROPOSAL

Planning permission reference 08/00159/OUT was granted on 26<sup>th</sup> May 2010. This was an outline permission for the erection of 4 holiday cottages, a coffee shop, access road and parking area. The consent was subsequently implemented after the matters specified in the conditions attached to the outline permission were agreed in subsequent applications with the Planning Authority.

Condition 6 of the 08/00159/OUT permission states the following:

*6. The accommodation hereby approved shall be occupied solely as holiday accommodation for periods of no more than 4 consecutive weeks and none of the holiday homes shall be used as a sole or main residence.*

The reason for the condition is stated as follows: *For the avoidance of doubt. The Midlothian Local Plan supports the creation of holiday accommodation but no dwellinghouses in this location.*

Since implementation of the permission and operation of the holiday cottages business the cottages have been occupied as holiday lets, advertised through Scottish holiday cottages web sites and managed by Mr Russell. Bookings have been building over the time since completion of the cottages and feedback has been positive about the accommodation and service provided until this year.

2020 has been a very difficult year. All bookings for 2020 have been cancelled as a result of the Covid 19 pandemic. All bookings for 2021 have been cancelled and there are no new bookings or potential bookings for 2021. Mr Russell has therefore been forced to look at other options in relation to this critical income stream at Soutra Mains.

One solution he is seeking to utilise for 2021 onwards is to rent the cottages out for a much longer period than purely the 'holiday let' as restrained by the existing, aged planning permission as there are clearly no holiday let opportunities for the foreseeable future and the cottages would be empty.

He has been approached by Midlothian local residents asking if accommodation is available to rent for longer periods than holidays and at affordable rates. In

order to do this however he would potentially be in breach of condition 6 if the let period were longer than 4 weeks. To assist him to survive the pandemic he will require the condition to be removed.

This application therefore seeks, in these unprecedented times, that the Planning Authority agree to the removal of condition 6 to allow the cottages to be occupied as affordable short term lets. These will provide a valuable resource in this remote area where there is a lack of affordable cottages to rent. The accommodation provided is of a high standard, with large areas of amenity space and parking around the cottages.

It is noted that the Scottish Parliament has put in place extraordinary measures throughout Scotland to deal with the impacts of the virus. This is a material consideration in the determination of this application.

*Suzanne C McIntosh MRTPI HonFRIAS*

## MIDLOTHIAN COUNCIL

### DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

**Planning Application Reference:** 20/00890/S42

**Site Address:** Land at Soutra Mains Farm, Blackshiels, Pathhead

**Site Description:**

The application site relates to four terraced holiday cottages associated with Soutra Mains farm. The holiday cottages are finished in natural stone with pitched slate roofs and white framed windows. There are informal parking spaces available at either end of the terraced building.

There are a collection of buildings at Soutra Mains Farm which include a single storey cafe building, two farm houses and agricultural buildings. The holiday cottages and cafe are relatively recent additions (2014) to the group. The surrounding area is generally open countryside with some tree belts.

Access and egress at the application site is taken via a vehicle access road from the A68.

**Proposed Development:** Section 42 application to amend condition 6 of planning permission 08/00159/OUT (to allow for long term rental of holiday homes).

**Proposed Development Details:**

The application, made under Section 42 of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006 (hereafter referred to as the Act), seeks to allow for long term rental of the approved holiday homes.

A Section 42 application, is in itself a planning application - a particular kind of planning application for development without complying with a condition/s previously imposed on an earlier grant of planning permission. A grant of planning permission under Section 42 results in an entirely new planning permission which will supersede the original permission if implemented. Therefore, if planning permission is granted for this application it will supersede planning consent 08/00159/OUT if implemented.

In this case, the applicant is requesting the removal of a planning condition which was attached to the previously approved planning application 08/00159/OUT, which ensures that the holiday cottages are only occupied solely as holiday accommodation and are not occupied as a sole or main residence as well as ensuring the holiday lets are not occupied for periods of more than 4 consecutive weeks.

Condition 6 of planning application 08/00159/OUT states:

*The accommodation hereby approved shall be occupied solely as holiday accommodation for periods of no more than 4 consecutive weeks and none of the holiday homes shall be used as a sole or main residence.*

*Reason: For the avoidance of doubt. The Midlothian Local Plan supports the creation of holiday accommodation but no dwellinghouses in this location.*

If approved the result would be that the holiday cottages could be let on a long term basis rather than on the basis of a maximum of four week periods.

The applicant has submitted a statement in support of their application to either amend or remove the condition.

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

Planning permission was refused in 2003, for the demolition of agricultural store building and erection of dwellinghouse with installation of septic tank and soakaway. Planning ref: 03/00542/FUL.

Planning permission was refused in 2004, for the erection of single storey dwellinghouse. Planning ref: 04/00136/FUL.

Planning permission was granted in 2005 for the conversion of and alterations to former agricultural building to form a dwellinghouse. Planning ref: 05/00389/FUL.

Planning permission was granted in 2006 for the erection of agricultural storage shed. Planning ref: 06/00339/FUL.

Outline planning permission, 08/00159/OUT, for the erection of holiday cottages, coffee shop, parking area and new access road at Soutra was approved in May 2010. Permission was granted subject to a number of conditions, including a limit on the number of holiday cottages to four. The coffee shop was allowed as being ancillary to the main use of the site as holiday accommodation.

A detailed planning application 10/00538/DPP for the erection of a coffee/gift shop and four holiday lodges was refused in December 2010 for the following reasons:

- 1. It has not been demonstrated that the proposed retail use has a requirement for a countryside location and it is not of a scale appropriate to its position in the countryside and area of great landscape value; for these reasons the proposal does not comply with the terms of policy RP1 of the Midlothian Local Plan.*
- 2. The proposal does not comply with the terms of policy ECON8 of the Midlothian Local Plan as it primarily comprises a retail development of an inappropriate scale in the countryside.*
- 3. The scale, form and design of the proposed development will have an adverse impact on the character and appearance of the landscape, which*

*forms part of the area of great landscape value, and which convey a level of development inappropriate to the confines of this site; and is therefore contrary to the terms of policies RP6 and RP7 of the Midlothian Local Plan.*

4. *The proposed tourist accommodation dwellings have not been designed to enhance the area of great landscape value and results in buildings that are out of character with the rural setting ;and as such do not comply with the terms of policies DP1 and ECON7 of the Midlothian Local Plan.*
5. *The increased level of traffic generated by the retail use would lead to an increased level of traffic leaving and entering the trunk road which may be detrimental to the safety of other road users.*

Application 11/00199/MS to discharge the conditions of the original 2008 application was approved. However, it was only possible to discharge some of the conditions as information had not been submitted in connection with some of the outstanding conditions.

Application 12/00067/MS was submitted to address the remaining outstanding matters relating to the 2008 and 2011 applications. However, insufficient information was submitted and a further grant of permission was issued, but not all the conditions were discharged.

Application 13/00274/MS was submitted in order to discharge the outstanding matters from the 2008, 2011 and 2012 applications. This application was submitted with the same information as had been submitted previously. The planning authority refused the planning application due to not being able to assess the proposal given the lack of information submitted by the applicant.

Planning application 13/00370/DPP for the erection of four retail units (part retrospective) was refused in September 2013 for the following reasons:

1. *The proposed development would comprise a development in the countryside for which it has not been demonstrated that there is an operational requirement for a countryside location. Accordingly, the proposed development is contrary to the Edinburgh and the Lothians Structure Plan (ELSP) policy ENV3 and adopted Midlothian Local Plan (MLP) policies RP1 and ECON8.*
2. *As the application site is in the countryside it is not in one of the locations specified in the ELSP policy RET1 – Sequential approach to the location of retail and commercial leisure development, as being potentially suitable for retail developments. Accordingly, the proposed development is contrary to ELSP policy RET1 and the adopted MLP policy SHOP5.*
3. *It has not been demonstrated to the satisfaction of the Planning Authority that the operation of the proposed retail complex would not undermine the vitality and viability of Midlothian's town centres, in particular Pathhead.*

4. *It has not been demonstrated that the retail complex could operate successfully without having a significant and adverse impact on road safety on the trunk road.*

The applicant appealed the refusal of planning application 13/00370/DPP to the Local Review Body (LRB). The LRB dismissed the review request and upheld the decision to refuse planning permission on the following grounds:

1. *The proposed development would comprise a development in the countryside for which it has not been demonstrated that there is an operational requirement for a countryside location. Accordingly, the proposed development is contrary to the adopted Midlothian Local Plan (2008) policies RP1, SHOP5 and ECON8;*
2. *It has not been demonstrated to the satisfaction of the Planning Authority that the operation of the proposed retail complex would not undermine the vitality and viability of Midlothian's town centres, in particular Pathhead; and*
3. *It has not been demonstrated that the retail complex could operate successfully without having a significant and adverse impact on road safety on the trunk road.*

Planning application 14/00293/DPP for the erection of four retail units (part retrospective) was refused by Midlothian Council's Planning Committee in September 2014 for the following reasons:

1. *The proposed development would comprise a development in the countryside for which it has not been demonstrated that there is an operational requirement for a countryside location. Accordingly, the proposed development is contrary to the adopted Midlothian Local Plan (2008) policies RP1, SHOP5 and ECON8.*
2. *As the application site is in a remote countryside location it is not in one of the acceptable types of locations, as specified in the sequential town centre first approach identified in the Scottish Planning Policy. As no sequential test has been submitted for assessment it has not been demonstrated, to the satisfaction of the Planning Authority, that the site is appropriate for the proposed use and that there are no other more sustainable or suitable sites which could accommodate the development more appropriately. Accordingly, the proposed development is contrary to the SPP, policy 3 of the Strategic Development Plan and policy SHOP5 of the adopted Midlothian Local Plan.*
3. *It has not been demonstrated to the satisfaction of the Planning Authority that the operation of the proposed retail complex would not undermine the vitality and viability of Midlothian's town centres, in particular Pathhead.*

4. *It has not been demonstrated that the retail complex could operate successfully without having a significant and adverse impact on road safety on the trunk road.*

This applicant appealed against the Planning Committee's decision to refuse planning application 14/00293/DPP. The application was also refused at appeal by the Reporter on the 15 December 2014.

Application 14/00542/MSD to discharge the conditions of the original 2008 application was approved in September 2014.

Pre-application advice was provided in December 2016 with regards to a development proposal seeking to erect a new building to incorporate a visitor centre comprising open retail space/retail units and a tourism facility. Overall, it was advised that it was unlikely that the development proposal would be supported.

Planning application 17/00641/PPP for planning permission in principle for the erection of retail unit was refused by the Committee at its meeting of 14 November 2017 for the following reasons:

1. *The proposed retail development would comprise of a development in the countryside for which it has not been demonstrated that there is an operational requirement for a countryside location. Accordingly, the proposed development is contrary to the adopted Midlothian Local Development Plan (2017) policies TRC2 and RD1.*
2. *As the application site is in a remote countryside location it is not in one of the acceptable locations, as specified in the sequential town centre first approach identified in the Scottish Planning Policy (SPP). As no sequential test has been submitted for assessment it has not been demonstrated, to the satisfaction of the Planning Authority, that the site is appropriate for the proposed use and that there are no other more sustainable or suitable sites which could accommodate the development more appropriately. Accordingly, the proposed development is contrary to the SPP, policy 3 of the Strategic Development Plan and policy TRC2 of the adopted Midlothian Local Development Plan (2017).*
3. *It has not been demonstrated to the satisfaction of the Planning Authority that the operation of the proposed retail complex would not undermine the vitality and viability of Midlothian's town centres, in particular Pathhead.*
4. *It has not been demonstrated to the satisfaction of the Planning Authority that the required visibility splays (215 metres in each direction) can be achieved.*
5. *The indicative information submitted shows a building which, on account of its scale, form, design and materials will not be compatible to its location or to existing nearby buildings.*

Planning application 17/00951/PPP for planning permission in principle for the erection of retail unit was approved by the Planning Committee at its meeting of 20



February 2018 for the following reason: The benefits of the proposed development, include support for a local business, the provision of local jobs and the provision of a local facility, are significant material considerations which outweigh the policies in the Midlothian Local Development Plan 2017 and national planning policy which seek to restrict non countryside based developments in the countryside and to promote the principle of 'town centres first'.

Application 18/00693/MSA was submitted in order to discharge the outstanding matters from application 17/00951/PPP. This application was approved in August 2019.

Section 42 application, 19/00221/S42, to remove condition 7 of planning permission 17/00951/PPP (to develop the site without providing improved public transport facilities) was withdrawn in June 2019.

Section 42 application to remove condition 7 of Planning permission 17/00951/PPP (to develop the site without providing improved public transport facilities) was granted in 2019.

Section 42 application to amend condition 6 of planning permission 08/00159/OUT (to allow for long term rental of holiday homes) was withdrawn in 2020. Planning ref: 20/00297/S42.

**Consultations:** No consultations required.

**Representations:** No representations received.

**Relevant Planning Policies:**

Scottish Government advice Circular 4/1998 (The use of conditions in planning permissions) sets out six tests which planning conditions must comply with:

- Necessary;
- Relevant to planning;
- Relevant to the development to be permitted;
- Enforceable;
- Precise; and
- Reasonable in all other respects.

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

Policy **RD1: Development in the Countryside** states that development in the countryside will only be permitted if:

- it is required for the furtherance of agriculture, including farm related diversification, horticulture, forestry, countryside recreation or tourism; or
- it accords with policies RD2, MIN1, NRG1 or NRG2; or
- it accords with the Council's Supplementary Guidance on *Development in the Countryside and Green Belt*.

The following circumstances are exceptions to the above requirements to demonstrate that the housing is for the furtherance of a countryside activity:

- housing groups (allowing 1 new dwelling during the plan period where there are 5 existing units); or
- conversions of redundant farm buildings or other non-residential buildings; or
- redevelopment of redundant farm buildings or other non-residential buildings; or
- enabling development where it can be clearly shown to be the only means of preventing the loss of a heritage asset and securing its long-term future.

Policy **VIS2: Tourist Accommodation** states that proposals for the development of hotels or self-catering tourist accommodation will be supported, provided that the proposal:

- Is in scale and keeping with the character of the local area;
- Is sited and designed to respect its setting and is located in an unobtrusive manner within the rural landscape (where applicable);
- Is well located in terms of the strategic road network and maximises public transport access; and
- Is in accordance with one of the other sections of policy VIS2.

The section on **Self-catering tourist accommodation** states that such proposals will be permitted where:

- The proposal is not in the Green Belt unless linked to some related existing development;
- The proposal is of a character and scale in keeping with the rural setting and can be located in an unobtrusive manner; and
- The applicant can demonstrate that the proposal is for the furtherance of a viable long-term business.

Policy **ENV6: Special Landscape Areas** states that development proposals will only be permitted where they incorporate high standards of siting and design and where they will not have significant adverse effect on the special landscape qualities of the area.

Policy **ENV7: Landscape Character** which advises that development will not be permitted where it may adversely affect the quality of the local landscape. Provision should be made to maintain local diversity and distinctiveness of landscape character and enhance landscape characteristics where improvement is required.

### **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.

In 2008, the applicant applied for planning permission for holiday cottages at Soutra Mains, as well as a coffee shop. That application was granted planning permission, but with a condition which sought to ensure that the four cottages approved were only used as holiday accommodation. The planning authority imposed a condition, which it considered to pass the tests for conditions, in order to limit the length of time any party could stay in the cottages to a period which would be considered appropriate, and generous, for a holiday period. Anyone staying in the cottages could not do so for a period exceeding four weeks. The planning authority made the above decision to support the tourism industry in Midlothian and also in order to

ensure that the development did not undermine the local plan policies which sought to protect the Midlothian countryside from creeping suburbanisation through the construction of new homes in the countryside with no link to a rural business.

Although a Section 42 application is a new planning application in law the Act states *“on such an application the planning authority shall consider only the question of the conditions subject to which planning permission should be granted”*. The principle of a holiday accommodation development is established by the earlier grant of planning permission and cannot be reassessed as part of the consideration of this application.

Oddly, the applicant has applied to make a change to the condition only, removing the limit on the number of consecutive weeks a party can stay in the cottages but has not applied for a change of use from holiday cottages to another residential use (this is an issue as the description on the 2008 application specifically references holiday cottages).

Within the applicant's supporting statement it is noted that the current Covid-19 pandemic and associated restrictions have resulted in the cancellation of bookings for the rest of 2020 and there being no bookings in place for 2021. The applicant has been looking at alternative options for an income stream as a result of having no bookings, one of which was to rent the cottages out for a longer period of time as the scope for holiday let opportunities has reduced. The applicant has requested that condition 6 be reworded or removed so as to allow for longer term rentals over the next few years to mitigate the impacts of the Covid-19 pandemic and maintain cash flow.

By retaining the old description the applicant is, in effect, suggesting that the cottages will still be used as holiday accommodation but for periods in excess of four weeks. The planning authority does not believe that if the cottages were to be occupied by a party for in excess of four weeks they would still be considered holiday accommodation. Indeed, the planning authority has obtained evidence that the cottages are already being advertised for occupation on a non-holiday basis prior to the Covid-19 pandemic, i.e. as regular dwellinghouses.

Council planning policy supports holiday accommodation in the countryside. However, the proposed removal of the condition is an attempt to turn these holiday cottages in to more regular dwellinghouses which would be let on a longer basis than it would be expected for a holiday cottage.

Therefore, in effect, the proposal is for four dwellinghouses. In terms of planning policy, development within the countryside needs to demonstrate a requirement for a countryside location. Unallocated housing development within the countryside will only be permitted where; it demonstrates it is required for the furtherance of an established countryside activity (agriculture, horticulture, forestry, countryside, recreation or tourism); it is classed as a housing grouping development; it comprises the conversion or redevelopment of redundant rural buildings; or, is required to secure the long term future of a heritage asset. The change of use of the holiday cottages to regular dwellinghouses would not comply with any of the abovementioned criteria.

It is noted that there are currently restrictions in place which impact domestic and international holidays, due to the current Covid-19 lockdown. Whilst, it is expected that some restrictions will remain, and will likely result in the majority of the population potentially not having had any holidays in the first half of 2021, the result will be more of the population having domestic holidays and potentially more demand for holiday accommodation such as that on offer at Soutra, once restrictions begin to be lifted. There is no oversupply of short term accommodation like this in Midlothian.

Furthermore, it is noted that if the holiday lets are registered for non-domestic rates, then applicant may be eligible for grant funding and should submit an application to the Strategic Framework Business Fund rather than seek to amend the use of the cottages to one which does not comply with planning policy.

Planning conditions must satisfy the tests within circular 4/1998. The circular states that conditions should not be imposed unless they are both necessary and effective, and do not place unjustifiable burdens on applicants. The circular sets out six tests, namely that a condition shall only be imposed where it is necessary, relevant to planning, relevant to the development permitted, enforceable, precise and reasonable in all other respects.

In assessing whether the condition was necessary, relevant to the development to be permitted and relevant to planning policy on tourist accommodation and development within the countryside the Council accepted the requirement for tourist accommodation in this location. Condition 6 was required for sake of clarity and to ensure that the holiday cottages were not occupied as a sole or main residence and to ensure that the proposal did not result in the creation of new dwellinghouses, which would be contrary to policy. The remaining tests relate to whether the condition is enforceable, precise and reasonable in all other respects. The condition is clearly worded, is enforceable and reflects the description of the development proposal approved under planning permission 08/00159/OUT. Condition 6 of planning application, 08/00159/OUT, meets all of the tests.

Overall, all relevant matters have been taken into consideration in determining this application. It is considered that the proposal does not accord with the principles and policies of Midlothian Local Development Plan and is not acceptable in terms of all other applicable material considerations. The planning authority consider that it is essential to retain the condition that ensures that the holiday cottages only be used for self-catering purposes as per the description of approved planning permission 08/00159/OUT. The holiday cottages are only considered acceptable as self-catering accommodation and not as independent dwellinghouses. There is no policy support for the erection of independent dwellinghouses at the site. Therefore, it is recommended that the application is refused.

**Recommendation:** Refuse planning permission.

**Reg. No. 20/00890/S42**

Suzanne McIntosh Planning Limited  
45C Bath Street  
Portobello  
Edinburgh  
EH15 1HB

Midlothian Council, as Planning Authority, having considered the application by Mr George Russell, Soutra Mains Farm, Blackshield, Fala, Midlothian, EH37 5TF which was registered on 15 December 2020 in pursuance of their powers under the above Acts, hereby **refuse** permission to carry out the following proposed development:

**Section 42 application to amend condition 6 of planning permission 08/00159/OUT (to allow for long term rental of holiday homes) at Land at Soutra Mains Farm, Pathhead**

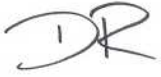
In accordance with the application and the following documents/drawings:

<u>Document/Drawing.</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Location Plan	1:1250	15.12.2020
Supporting statement	Background to the Proposal	15.12.2020

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

- 1. Outline planning permission 08/00159/OUT for the erection of holiday cottages, coffee shop and associated access road and parking was considered acceptable on the basis that there was a requirements for improved tourist accommodation in the area and there was policy support for tourist accommodation within the countryside. The removal, or significant modification, of condition 6 of planning permission 08/00159/OUT would result in the creation of un-restricted residential accommodation that could be occupied on a long term basis, which would essentially result in the creation of four new dwellinghouses in the countryside with no locational requirement to be in the countryside. There is no policy support for new dwellinghouses at the application site. As a result the proposal is contrary to policy RD1 of the adopted Midlothian Local Development Plan 2017.*
- 2. Condition 6 of planning permission 08/00159/OUT satisfies the six tests within Planning Circular 4/1998 (The use of conditions in planning permissions) which require conditions to be necessary, relevant to planning, and relevant to the development permitted, enforceable, precise and reasonable in all other respects.*

Dated 11 / 3 / 2021

A handwritten signature in black ink, consisting of the letters 'D' and 'R' joined together in a stylized, cursive manner.

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

PLAN REFERRED TO:



AREA OF LAND WITHIN RED BOUNDARY: 1.74 HECTARES.

scale: 1:1250.

