

## **Notice of Review: Land 25m South West Deaflawhill Cottage, Carrington Road, Dalkeith**

### **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 dwellinghouses; formation of access, car parking and areas of hard standing and associated works at land 25m south west of Deaflawhill Cottage, Carrington Road, Dalkeith (between Bonnyrigg and Newtongrange).

#### **2 Background**

- 2.1 Planning application 21/00352/DPP for the erection of two dwellinghouses; formation of access, car parking and areas of hard standing and associated works at land 25m south west of Deaflawhill Cottage, Carrington Road, Dalkeith (between Bonnyrigg and Newtongrange) was refused planning permission on 22 November 2021; 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 22 November 2021 (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:

- Have determined to consider a visual presentation of the site and undertaking a site visit (elected members not attending the site visit can still participate in the determination of the review); and
- Have determined to progress the review by written submissions.

4.2 The case officer's report identified that there were seven consultation responses and four representations received. As part of the review process the interested parties were notified of the review. Three additional comments have been received – both the Eskbank and Newbattle Community Council and Bonnyrigg and Lasswade Community Council have reaffirmed their objections and SEPA have confirmed that they do not object (SEPA did not make comment on the application prior to it being determined). 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 13 June 2017, and without prejudice to the determination of the review, the following conditions have been prepared for the consideration of the LRB if it is minded to uphold the review and grant planning permission.

1. Prior to the commencement of development, the following details shall be submitted to and approved in writing by the planning authority:
  - a. Details and samples of all external materials for the buildings, boundary treatments and bin and bike stores
  - b. Details of the proposed materials of the areas of hardstanding;
  - c. A landscape plan, including details of a scheme of landscaping for the site. Details shall include the position, number, size and species of all trees and shrubs proposed, as well as identifying all trees on site which are proposed to be removed and retained.

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

***Reason:*** *These details were not submitted as part of the application: to protect the visual amenity of the surrounding area; to integrate the development into the area; to ensure the development is served by adequate amenities.*

2. No development shall begin until an update proposed site plan is submitted to the planning authority that demonstrates the proposed dwellings have sufficient private amenity space and is approved in writing. The updated site plan will include details of boundary treatments that deliver private amenity space. 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:*** *to ensure that private dwellings have access to private amenity space in line with Midlothian's private amenity space standards.*

3. Within six months of the development being completed or occupied, whichever is the earlier date, the landscape scheme approved under the terms of condition 1c) above shall be carried out; thereafter, any trees or shrubs removed, dying, becoming seriously diseased or being severely damaged shall be replaced during the next available planting season with others of a similar size and species.

***Reason:*** *To protect and enhance the landscaping of the area; to ensure that planting on the site is carried out as early as possible, and has an adequate opportunity to become established.*

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

**Reason:** To ensure the quality of the development is enhanced by the provision of appropriate digital infrastructure in accordance with the requirements of policy IT1 of the adopted Midlothian Local Development Plan 2017.

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

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

6. Development shall not begin until details of a sustainability/biodiversity scheme for the site, including the provision of house bricks and boxes for bats and swifts throughout the development has been submitted to and approved in writing by the planning authority along with details of how the proposals will implement the recommendations set out in chapter 5.0 of the Ecology Assessment August 2021, Nigel Rudd Ecology). Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority.

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

7. Construction of the development hereby permitted shall not take place outwith the hours of 8am to 7pm on Mondays to Fridays, 8am to 1pm on Saturdays, with no work at any time on Sundays.

**Reason:** To safeguard the amenity of the surrounding residential area; to protect the amenity of neighbouring properties.

8. No development shall take place until a programme of archaeological (evaluation) work has been undertaken and a written scheme of investigation has been submitted to and approved in writing by the local planning authority.

**Reason:** To ensure this development does not result in the unnecessary loss of archaeological material in accordance with Policies ENV24 and ENV25 of the Midlothian Local Development Plan 2017.

9. No development shall commence until details of the proposed surface water management scheme and outfall for the development demonstrating that development does not result in any increase in flooding risk for existing properties is submitted to and approved in writing by the planning authority.

**Reason:** To ensure that the development is provided with adequate surface water drainage; and to ensure that development complies with policies ENV9, ENV10 and ENV15 of the Midlothian Local Development Plan 2017.

10. No development shall commence until;
- a) a scheme of intrusive site investigations has been carried out on site to establish the risks posed to the development by past coal mining activity, and;
  - b) any remediation works and/or mitigation measures to address land instability arising from coal mining legacy, as may be necessary, have been implemented on site in full in order to ensure that the site is made safe and stable for the development proposed.

The intrusive site investigations and remedial works shall be carried out in accordance with authoritative UK guidance.

**Reason:** To ensure compliance with policy ENV16 of the Midlothian Local Development Plan 2017.

11. Prior to the occupation of the development, or it being taken into beneficial use, a signed statement or declaration prepared by a suitably competent person confirming that the site is, or has been made, safe and stable for the approved development shall be submitted to the planning authority for approval in writing. This document shall confirm the methods and findings of the intrusive site investigations and the completion of any remedial works and/or mitigation necessary to address the risks posed by past coal mining activity.

**Reason:** To ensure compliance with policy ENV 16 of the Midlothian Local Development Plan 2017.

## **6 Recommendations**

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

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

**Date:** 17 June 2022  
**Report Contact:** Hugh Shepherd, Planning Officer  
[Hugh.Shepherd@midlothian.gov.uk](mailto:Hugh.Shepherd@midlothian.gov.uk)

**Background Papers:** Planning application 21/00352/DPP available for inspection online.

# Appendix A



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

Erection of two dwellinghouses; formation of access, car parking and areas of hard standing and associated works at Land 25M South West of Deaflawhill Cottage, Dalkeith

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File No: 21/00352/DPP

Scale: 1:1,000

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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      100538060-001

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

## Applicant or Agent Details

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

Applicant  Agent

## Agent Details

Please enter Agent details

Company/Organisation:	<input type="text" value="Rick Finc Associates Ltd"/>		
Ref. Number:	<input type="text"/>	You must enter a Building Name or Number, or both: *	
First Name: *	<input type="text" value="Stuart"/>	Building Name:	<input type="text" value="Melford House"/>
Last Name: *	<input type="text" value="Szylak"/>	Building Number:	<input type="text" value="3"/>
Telephone Number: *	<input type="text" value="01312266166"/>	Address 1 (Street): *	<input type="text" value="Walker Street"/>
Extension Number:	<input type="text"/>	Address 2:	<input type="text"/>
Mobile Number:	<input type="text"/>	Town/City: *	<input type="text" value="Edinburgh"/>
Fax Number:	<input type="text"/>	Country: *	<input type="text" value="Scotland"/>
		Postcode: *	<input type="text" value="EH3 7JY"/>
Email Address: *	<input type="text" value="stuart@rickfincassociates.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="Holly Cottage"/>
First Name: *	<input type="text" value="lan"/>	Building Number:	<input type="text"/>
Last Name: *	<input type="text" value="Dickson"/>	Address 1 (Street): *	<input type="text" value="Croft Road"/>
Company/Organisation	<input type="text"/>	Address 2:	<input type="text"/>
Telephone Number: *	<input type="text"/>	Town/City: *	<input type="text" value="West Linton"/>
Extension Number:	<input type="text"/>	Country: *	<input type="text" value="Scotland"/>
Mobile Number:	<input type="text" value=""/>	Postcode: *	<input type="text" value="EH46 7DZ"/>
Fax Number:	<input type="text"/>		
Email Address: *	<input type="text" value="stuart@rickfincassociates.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"/>
Address 2:	<input type="text"/>
Address 3:	<input type="text"/>
Address 4:	<input type="text"/>
Address 5:	<input type="text"/>
Town/City/Settlement:	<input type="text"/>
Post Code:	<input type="text"/>

Please identify/describe the location of the site or sites

<input type="text" value="Land 25M South West of Deaflawhill Cottage Dalkeith"/>
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Northing	<input type="text" value="664723"/>	Easting	<input type="text" value="332507"/>
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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)

Erection of two dwellinghouses; formation of access, car parking and areas of hard standing and associated works

## Type of Application

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

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

What does your review relate to? \*

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

## Statement of reasons for seeking review

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

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

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

Please see accompanying Statement

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

Yes  No

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

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

Documents as uploaded on Midlothian Planning Portal in support of original application. Supporting Statement of Review.

## Application Details

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

21/00352/DPP

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

04/04/2021

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

22/11/2021

## 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: Mr Stuart Szylak

Declaration Date: 21/02/2022

2022

**NOTICE OF REVIEW**  
**21/00352/DPP**

**LAND 25M SOUTH WEST OF DEAFLOWHILL  
COTTAGE, DALKEITH**

**S T A T E M E N T   O F   R E V I E W**

**ERECTION OF TWO DWELLINGHOUSES; FORMATION OF ACCESS, CAR  
PARKING AND AREAS OF HARD STANDING AND ASSOCIATED WORKS**



**RFA DEVELOPMENT CONSULTANTS  
ON BEHALF OF MR IAN DICKSON**

**FEBRUARY 2022**

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## Executive Summary

This review relates to a detailed planning application to develop two dwellinghouses on derelict and vacant brownfield land on land 25m southwest of Deaflawhill Cottage, Newtongrange Midlothian.

## Principle of Use & Strategic Greenspace Safeguarding

Although the proposed development does not adhere in its entirety to the aims and objectives of **Development in the Countryside** policy, and that of the **Strategic Greenspace Safeguarding**, we would contend there are a number of other material considerations which outweigh these policy conflicts so the appeal could be supported:

- The site is considered an historic building group which was previously utilised for residential development and does not adversely affect the character and setting of the surrounding area. In that context, the site is brownfield by definition within a countryside location rather than a greenspace as reported.
- The site still very much remains brownfield in nature with the site utilised as a stonemason's yard for the storage of building materials, a container, and there is an existing vehicular access into the site directly from Carrington Road. It has been in the appellant's ownership and used as a storage site for over 10 years so has a legal established use and therefore it is unquestionable that the site is brownfield by definition.
- The proposed site is small in size and is located within a much wider blanket Countryside designation outlined in the adopted Midlothian LDP. The size of the site proposed would not adversely affect the objectives of the blanket Countryside designation and policy aims.
- Land to the northwest of the application site is allocated for a major residential development (Hs11) and was granted planning permission for 248 units. Scottish Planning Policy states that in accessible rural areas, decision making should generally *'guide most new development to locations within or adjacent to settlements'*.

## Prime Agricultural Land

The site is definitely not Prime Agricultural Land, as stated by the Case Officer. The Macaulay Institute classes this part of Dalkeith as Class 5 land, very low in quality (see Figure 4.2).

Regardless, the LDP states that in the context of Prime Agricultural Land *'where possible built development should be directed to land that has previously been developed ('brownfield' land) in order to minimise the loss of agricultural land'*. In this instance we have comprehensively justified that the site is brownfield by definition and therefore directing development to the right place which does not conflict with the associated text to Policy ENV 4. We have demonstrated to a reasonable degree of certainty

that the loss of the site would have a negligible impact on the food production capacity of the agricultural land within Midlothian.

## **Landscape & Ecology**

An Ecological Assessment was undertaken and concluded that it was considered that the re-development of the appeal site would enhance the biodiversity of opportunities on the site with a positive impact on the biodiversity status of the land, a biodiversity net gain. This would be achieved by bringing existing habitats under management, creation of new habitats and installation of features to provide nesting/breeding opportunities and shelter for fauna.

The proposed development respects the character of the locale, is of an appropriate scale, siting and design regarding the history of the site and the requirements of modern day living and the consented scheme adjacent to the site, while maintaining and improving the diversity and distinctiveness of the local landscape which has been diluted over time due to the current use of the site which has been left effectively vacant and derelict.

## **Access**

Proposed development would use the existing access. Regarding visibility splays for the access and egress to the site, the DMBR standards (210m) are not strictly applicable in this case, and there are a number of residential properties within the immediate locale that share similar visibility traits for access and egress without causing a road safety issue. According to CrashMap data there have been no recorded accidents along Carrington Road in the past 5 years.

There are a number of measures that could be employed to ensure as safe as possible access and egress to the proposed development. The appellant would be supportive of a reduction in the speed limit to 40mph on Carrington Road which would correspond with the adjacent roads of the A7 and B704 at the point of connecting to Carrington Road. This could be achieved through a TRO, and traffic calming measures such as appropriate signage including additional access signage. The appellant would be happy to support such mitigation measures and bear the cost of implementation. Vegetation both north and south of the access could be maintained to improve visibility as it lies within the appellant's ownership.

As a part of the proposed development the access point has been moved further south than the existing access, resulting in an improvement in visibility to the south on access and egress. The nature of Carrington Road is such that 60mph cannot be achieved along the sections where the proposed access is located, and the minimal additional trips created from the proposed development means that there would be no adverse impact on the road network, or to road safety with adjacent properties experiencing similar traits.

## Conservation Area

The appeal site is brownfield by definition and currently used as a stonemason's yard. Development of the site will bring an unkempt derelict brownfield site back into a sustainable use, significantly improving the appearance of the site. It is considered that re-development of the appeal site would enhance the biodiversity of opportunities on the site with a positive impact on the status of the land, with a biodiversity net gain.

The proposed development adheres to the policy and advice in SPP and PAN 71 with the proposal respecting and enhancing the locale and has a positive impact on the area. SPP is clear in its wording that *'proposals that do not harm the character or appearance of the conservation area should be treated as preserving its character and appearance'*. The proposed development preserves the character and appearance of the Dalhousie and Cockpen Conservation Area as the appellant has clearly demonstrated that the proposal does not harm the character or appearance of the conservation area. The appellant has clearly demonstrated that the proposal preserves the character and appearance of the Dalhousie and Cockpen Conservation Area

## Trees

There are no significant trees within the area proposed for development and what exists on the ground is very much just self-seeded scrubs and shrubs of limited landscape quality.

No Tree Survey or Arboriculture Impact Assessment was requested by Midlothian Council throughout the planning process but as rightly indicated through the Council's Report of Handling, such can be appropriately conditioned through the granting of any planning application. The appellant would be accepting of such a condition.

# 1 Introduction

## Purpose of this Statement

- 1.1 The appellant is aggrieved by the decision to refuse permission for the proposed development at land 25m southwest of Deaflawhill Cottage, Dalkeith (21/00352/DPP) and requests the Planning Authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997.
- 1.2 The application was made by Mr Ian Dickson (hereafter referred to as “the appellant” This request for Review has been made within three months beginning with the date of the Decision Notice (22 November 2021).
- 1.3 The purpose of this Supporting Statement is to assist the Local Review Body (LRB) in the understanding, assessment and determination of the application). The appellant is proposing to develop two dwellinghouses on brownfield land at Deaflawhill Cottage Dalkeith.
- 1.4 This Statement provides a summary of the appeal submission. It is not, however, a substitute for the important supporting documents, and all supporting documents that were submitted as part of the original planning application should be read in their entirety. It addresses comments made within the Case Officer’s Report of Handling, addresses the key policy issues and highlights material considerations in respect of the Reasons for Refusal. It presents a convincing and compelling case for permitting the proposed development.

## Background

- 1.5 A full planning application was submitted on 03 May 2021 and validated on 24 June 2021. The application was supported by:
- Formal detailed architectural drawings (plans and elevations);
  - Visibility splays drawing;
  - Design and Access Statement;
  - Ecological Assessment; and,
  - Phase 1 GEO Environmental Desk Study.
- 1.6 A series of discussions were undertaken between the case officer and the appellant’s agent during the determination phase. These provided further clarifications and information to support the application.
- 1.7 The application was refused by delegated decision on 22 November 2021.

## Reasons for Refusal

- 1.8 The decision notice issued for the application noted that it was refused for the following reasons:
1. *The proposal does not satisfy any of the criteria in relation to acceptable rural development set out in the Midlothian Local Development Plan 2017. As such, the principle of the development cannot be supported as development is contrary to policies RD1, ENV3, ENV4 and ENV8 of the Midlothian Local Development Plan 2017.*
  2. *The development is unable to demonstrate safe access into the site by virtue of insufficient distance for suitable visibility splays.*
  3. *The proposed development, by virtue of its proposed scale and massing, is unsympathetic to the character of the conservation area, the existing built and the natural landscaped character of the area and so conflicts with policies DEV6, ENV7 and ENV19 of the Midlothian Local Development Plan 2017.*
  4. *The proposed removal of vegetation from the site would harm the Tree Preservation Order and so conflict with policy ENV11 of the Midlothian Local Development Plan 2017.*
- 1.9 The reasons for refusal are considered and rebutted in Section 3 of this Statement.

## 2 The Site and Proposals

### Site Location and Description

#### *Location*

- 2.1 The appeal site is located on land 25m southwest of Deaflawhill Cottage, Dalkeith (see Figure 2.1).
- 2.2 The site is brownfield within a countryside location to the east of Bonnyrigg and to the west of Newtongrange along the A7 corridor which runs from Edinburgh to the Scottish Borders. To the north of the site is the Lothian Bridge Caravan Park and the Newbattle Viaduct which is now a part of the recently reinstated Borders Railway. To the west of the site, it is constrained by Carrington Road and to the east by the Dalhousie Burn which flows at a lower level. To the south are existing trees which are also under the ownership of the appellant and provide an effective buffer for the site.
- 2.3 Much of the site is surrounded by trees which are to be retained as part of this proposal. There is a stone yard located to the north adjacent to the existing road junction. There is also evidence of historic buildings within the site which have since been demolished.

#### *Site Description*

- 2.4 The site is located circa 220m to the south of the Carrington Road and A7 junction. It is located on the south east/east side of Carrington Road which bounds the site's western boundary. The site is bound to the north/north east by core path (MID/8-1/3), and to the east by Dalhousie Burn.
- 2.5 Much of the appeal site along the Carrington Road edge of the western boundary is fairly level. However, the site slopes steeply down from the top of the existing bank towards the Dalhousie Burn along its eastern edge. The levels along Carrington Road range from approx. +65.0m in the south to approx. +60m in the north. This forms the majority of the developable platform along the western edge. The levels then fall steeply to approx. +52.0m along the Dalhousie Burn corridor. The majority of the site therefore sits between 8 and 13m above the level of the burn.

**Figure 2.1 - Site Location**



## The Proposals

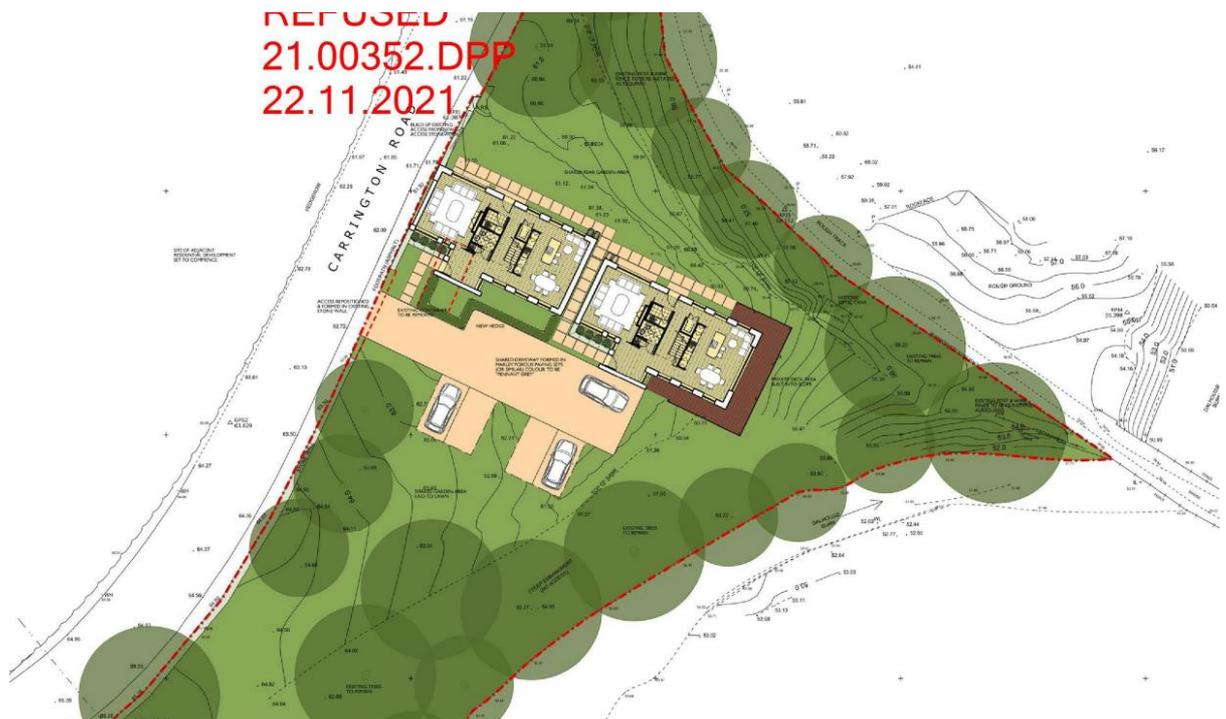
- 2.6 The proposed development seeks to deliver two dwellings. The proposed dwellings are circa 7.8m in height and are two storey with pitched roofs.



- 2.7 In form, the dwellings are based on a traditional style with contemporary additions, principally forward facing (southwest) two storey projections that form an entrance hall, an open plan kitchen/dining/utility room, lounge and toilet at ground floor and bedroom accommodation at first floor level including a master bedroom with en-suite and dressing room, 3 double bedrooms and a family bathroom.

- 2.8 The proposal seeks to maximise light at ground floor level through doubled glazed aluminium

clad windows and doors, and the proposed materials include natural rubble stone to approximately 3.7m where dark timber cladding features below the roof eaves. The roof is proposed to be blue/grey slate.



- 2.9 The proposed development provides access from Carrington Road, a shared driveway and 4 designated parking spaces, 2 per dwelling.
- 2.10 Due to the site levels the south and east gable of one unit will have a wraparound deck which is supported by stilts which provides private amenity space for that unit, with the other unit having private space on the southern elevation. The remainder of the site area is shared amenity space around the properties.

## 3 Planning Policy Context

### Introduction

- 3.1 This section of the Statement identifies the key issues which must be considered when reviewing the decision to refuse application 21/00352/DPP. It then takes each reason for refusal in turn and provides a commentary and rebuttal on each.

### National Legislation

- 3.2 Section 25 of the Town and Country Planning (Scotland) Act 1997 (as amended) specifies that determination of planning applications '*shall be made in accordance with the Development Plan unless material considerations indicate otherwise*'. It is supplemented by Section 37(2) which states that '*in dealing with an application the planning authority shall have regard to the provisions of the Development Plan as far as material to the application and any other material considerations*.'
- 3.3 Continuing on to Section 37(2A) the Act states that "*the notice of the planning authority's decision on an application must include a statement as to whether the authority consider that the application is for a development that is in accordance with the development plan ...*"
- 3.4 Section 25 therefore indicates that strict adherence to the detail of local development plan policy is not a requirement and that, should a justification be made for a proposal which does not comply, the planning authority can approve it as a departure from the local development plan.
- 3.5 Section 37 indicates that reasons for refusing an application must relate to the development plan.

### Scottish Planning Policy (2014)

- 3.6 The first principle of the SPP '*introduces a presumption in favour of development that contributes to sustainable development*'. The SPP notes that '*the Scottish Government's central purpose is to focus government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through creating sustainable economic growth*'.
- 3.7 Paragraphs 28 and 29 of SPP emphasise the need to achieve the right developments in the right places to support economically, environmentally and socially sustainable places. SPP states that policies and decisions should be guided by the following principles (*inter alia*...):
- Giving due weight to net economic benefit;
  - Responding to economic issues, challenges and opportunities;

- Supporting good design and the six qualities of successful places;
- Making efficient use of existing capacities of land, buildings and infrastructure;
- Support the delivery of infrastructure, for example transport, education, energy, digital and water;
- Improving health and wellbeing; and,
- Avoiding over-development, protecting the amenity of new and existing development and considering the implications of development for water, air and soil quality.

3.8 SPP states that planning should direct the right development to the right places and should consider the re-use or re-development of brownfield land before new development takes place on greenfield sites; as well as locating development where investment and growth or improvement would have most benefit for the amenity of local people, and the vitality of the local economy.

3.9 SPP expects Councils to provide a range and type of housing across all market areas, which includes rural locations. Appropriate provision of rural housing outwith major settlements is an important part of a balanced housing land supply.

## The Development Plan

3.10 The extant Development Plan which covers the appeal site comprises:

- **Strategic Development Plan (SDP) (2013)**, as prepared by the Strategic Development Planning Authority for Edinburgh and South East Scotland, known as SESplan; and
- **Midlothian Local Development Plan (MLDP) (2017)** as prepared by Midlothian Council.

3.11 As the role of SESplan is to set out the strategic regional wide policy, and this is a *'local'* development of small scale, then no further assessment of SESplan will be made.

## Midlothian Local Development Plan (2017)

3.12 The accompanying MLDP Proposals M shows that the site is located on the edge of Bonnyrigg settlement and to the southeast of the allocated housing site Hs11. It is in a sustainable and accessible location.

3.13 The site is covering the following MLDP designations:

- Regionally and Locally Important Nature Conservation Site;
- Protection of River Valleys;
- Prime Agricultural Land;
- Newbattle Strategic Greenspace Safeguard;

- Countryside; and,
- Dalhousie and Cockpen Conservation Area.

3.14 MLDP polices relevant to the determination of this appeal include:

- Policy RD 1 - Development in the Countryside;
- Policy ENV 3 - Newbattle Strategic Greenspace Safeguard;
- Policy ENV 4 – Prime Agricultural Land;
- Policy ENV 7 – Landscape Character;
- Policy ENV 8 – Protection of River Valleys;
- Policy ENV 11 - Woodland, Trees and Hedges;
- Policy ENV 14 – Regionally and Locally Important Nature Conservation Sites;
- Policy ENV 19 - Conservation Areas; and,
- Policy DEV 6 – Layout and Design of New Development.

### **Material Considerations**

3.15 The statutory and non-statutory material considerations relevant in the determination of this planning appeal and the Planning Statement submitted with this appeal considers relevant policies, aims and objectives as presented within:

- Scottish Planning Policy (SPP) (2014);
- Planning Advice Notes (PANs);
- Midlothian LDP Nature Conservation Supplementary Guidance; and,
- Midlothian LDP Housing in the Countryside Supplementary Guidance

## 4 Grounds of Review

### Rebuttal of Reasons for Refusal

- 4.1 This section assesses the Reasons for Refusal in turn and provides a rebuttal to each in planning terms.
- 4.2 The decision notice issued for the application noted that it was refused for the following 4 reasons. Each of these are discussed in turn and a clear case made as to why these decisions and opinions are considered unsound.

#### *Reason 1*

*The proposal does not satisfy any of the criteria in relation to acceptable rural development set out in the Midlothian Local Development Plan 2017. As such, the principle of the development cannot be supported as development is contrary to policies RD1, ENV3, ENV4 and ENV8 of the Midlothian Local Development Plan 2017.*

- 4.3 National Planning Policy encourages Local Planning Authorities to take a positive approach to development that could contribute to sustainable economic growth. SPP seeks to direct development towards the most sustainable locations, and support regeneration proposals which make the full and appropriate use of land.
- 4.4 On the accompanying proposals map to the LDP, the site lies within designated Countryside. This does not in itself preclude development.
- 4.5 Although admittedly the proposed development does not adhere in its entirety to the aims and objectives of **Policy RD 1 Development in the Countryside**, we would contend there are a number of material considerations which outweigh this policy conflict so the appeal could be supported.
- 4.6 The Town and Country Planning Act requires planning applications to be determined in accordance with the Development Plan unless material considerations indicate otherwise. The House of Lords in its judgement in the City of Edinburgh Council v Secretary of State for Scotland case 1998 (SLT120) rules that '*although priority must be given to the Development Plan in determining a planning application, there is built in flexibility depending on the facts and circumstances of each case*'. This judgement, along with other such decisions like Tesco Stores v Dundee [2012] PTSR 983, strongly articulate that the Courts have confirmed that the Development Plan provides the planning authority with discretionary powers and that these can be used flexibly.

- 4.7 Planning policy is the starting point for the determination of a planning application and not an absolute. In this instance, the site-specific nature of the locale where the proposed development is located has to be assessed as opposed to relying on a policy which covers a significant blanket area across the wider Midlothian area. It takes no account of the site characteristics or established use.
- 4.8 The adopted LDP seeks to meet the needs of a stabilising population and changing household formation will require more housing offering greater choice and quality. The Scottish Government in SPP expects Councils to provide a range and type of housing across all market areas, which includes more rural locations. Appropriate provision of such housing is an important part of a balanced housing land supply.

**Figure 4.1 – Historical Maps of the site**



- 4.9 Historical maps, (circa 1852) of the site show an existing building located within the application site just to the south west of the old Newbattle Paper Mill. The building sat on a north west to south east axis perpendicular to the Carrington Road. The building or buildings are defined as Deaflawhill on the historic map. Deaflawhill cottage still remains immediately opposite the junction. It is likely that the buildings within the site were once terraces/workers cottages/dwellings associated with the mill. Due to the size and scale of the footprint shown on the historic map it is also likely that the building comprised 2 or more dwellings.
- 4.10 The site is considered an historic building group which was previously utilised for residential development and did not adversely affect the character and setting of the surrounding area. In that context, the site is brownfield by definition within a countryside location.
- 4.11 Brownfield land is defined within SPP as *'land which has been previously developed'* and in directing the right development to the right place, and promoting sustainable development, SPP states that decisions should be guided by a number of policy principles including *'considering the re-use or re-development of brownfield land before new development takes place on greenfield sites'*.
- 4.12 Any real evidence of the previous residential units on the site has mostly gone, although there is still a remaining brick structure which appears to be the old septic tank for the historical cottages. Notwithstanding this, site still very much remains brownfield in nature, with the site utilised as a stonemason's yard for the storage of building materials, there is a container located

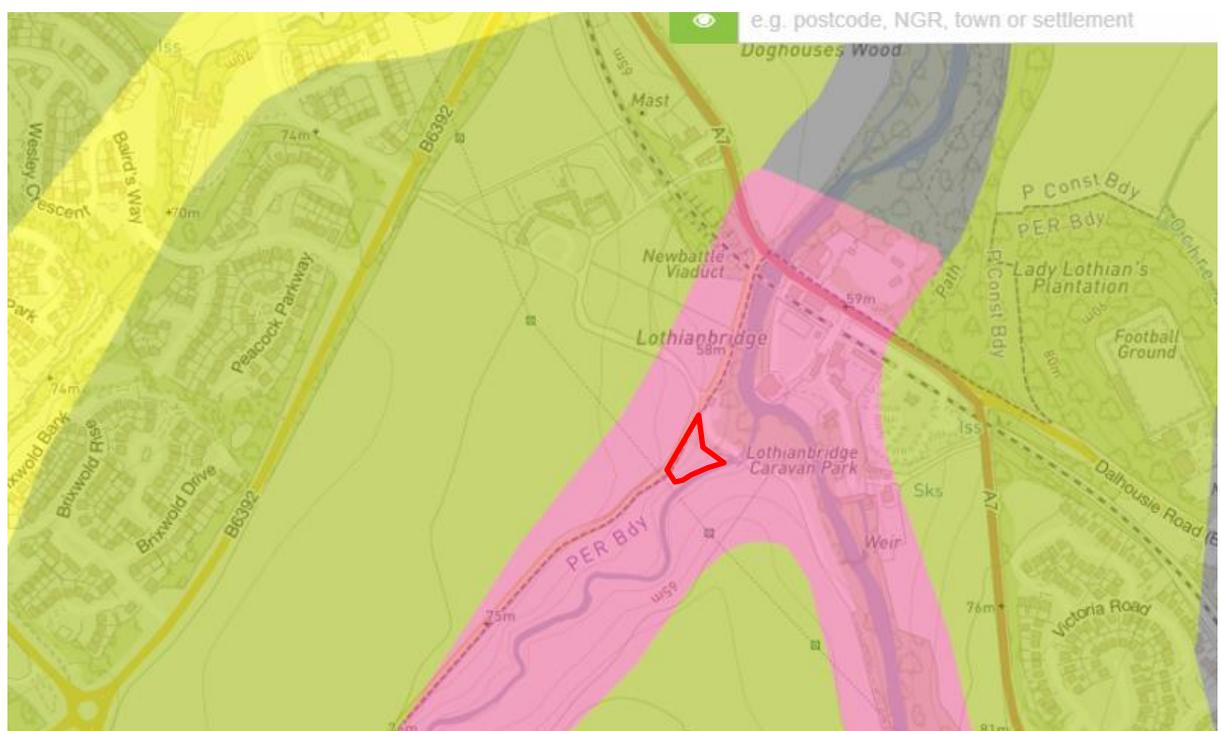
along the northwestern boundary adjacent to Carrington Road, and there is an existing vehicular access into the site directly from Carrington Road. The site has been in the appellant's ownership and used as a storage site for over 10 years so has a legally established use and therefore it is unquestionable that the site is brownfield by definition.

- 4.13 The proposed site is small in size. Accordingly, the size of the site proposed would in no way adversely affect the aims and objectives of what the wider blanket Countryside designation and policy seeks to achieve.
- 4.14 There are also a number of surrounding residential developments adjacent to the appeal site. Recent masterplans within Bonnyrigg and Newtongrange have resulted in improved public transport networks and facilities. The Borders Railway stations at Eskbank and Newtongrange are also nearby and easily accessible.
- 4.15 Land to the northwest of the application site is also allocated for residential development (Hs11) and was granted planning permission for 248 dwellinghouses, formation of access roads and car parking, SUDs features and associated works on 09 April 2020, by Grange Estates (18/00740/DPP). In that context, SPP states that in accessible rural areas, decision making should generally *'guide most new development to locations within or adjacent to settlements'*. In this case, the allocated site (Hs11), with planning permission is directly adjacent to the appeal site.
- 4.16 **Policy RD1** is fairly generic in its criteria where development in the countryside would be permitted. The Development Plan cannot map out every eventuality, especially when detailed site specific matters need to be given due weight and attention to understand why its development would be acceptable without setting a precedent for other proposals to come forward. Sustainable place making factors and wider principles of sustainable development provide the basis for the economic objectives underpinning the policies and proposals of the LDP in supporting Midlothian's growing economy by creating quality and sustainable locations for rural housing which is an important aspect of maintaining a balanced housing land supply.
- 4.17 Planning policy is the starting point for the determination of a planning application and not an absolute. In this instance, an element of professional judgement needs to be employed in the context of the site specifics of the proposed development, as opposed to relying on a blanket policy which does not take into consideration every eventuality. Although the proposed development does not adhere in its entirety to the aims and objectives of **Policy RD 1**, there are significant material considerations which outweigh the policy conflict as explained above in detail, directing the right development to the right place and ensuring the re-development of brownfield land.
- 4.18 **Policy ENV 3 Newbattle Strategic Greenspace Safeguard** sets out that development in land under this designation will not be permitted with the exception of *'ancillary development relevant to existing uses; and/or other development for the furtherance of agriculture (including farm*

related diversification), horticulture, countryside recreation or tourism' and 'any proposal should accord with Policy RD 1'. Both **Policies ENV 3** and **Policy RD 1** are very similar in their wording and requirement criteria for development in the countryside/greenspace, so much so that it states that any proposals should accord with **Policy RD 1**. Without wanting to repeat the justification of the proposed development against **Policy RD 1**, there are significant material considerations which outweigh the policy conflict as explained above in detail, directing the right development to the right place and ensuring the re-development of brownfield land.

- 4.19 **The site is designated by Midlothian Council as Prime Agricultural Land (ENV 4)** which seeks to resist development that would result in the permanent loss of designated agricultural land. However, the definitive agricultural land classification maps, produced by the Macaulay Institute, clearly show this land to be Class 5, very low quality. The land is not Prime Agricultural Land.

**Figure 4.2 – Macaulay Institute Prime Agricultural Land Classification Map**



- 4.20 Regardless, Midlothian is a predominantly rural local authority area, especially to the west, and south of the administrative boundary. Around 25% of Midlothian's area constitutes prime land, mostly surrounding the larger settlements in the north of the county. The percentage of land take required as a consequence of housing development on the appeal site is an incredibly small proportion of Midlothian's and Scotland's total supply of prime agricultural land. The appellant considers the site less desirable as agricultural land due to its topography and existing trees and vegetation on the site, historic and current use, and has never been used as arable

land. There is sufficient evidence that there would be no loss of a natural resource in the interests of food security.

- 4.21 The LDP states that in the context of Prime Agricultural Land '*where possible built development should be directed to land that has previously been developed ('brownfield' land) in order to minimise the loss of agricultural land*'. In this instance we have comprehensively justified that the site is brownfield by definition and therefore directing development to the right place which does not conflict with the associated text in **Policy ENV 4**. In that context, we have demonstrated to a reasonable degree of certainty that the loss of the site would have a negligible impact on the food production capacity of the agricultural land within Midlothian.
- 4.22 Given the land is not actually classified by the Macaulay institute and Class 1, 2 or 3 then there is no impact on Prime Agricultural Land. Therefore, the proposed development does not conflict with the aims and objectives of **Policy ENV 4**.
- 4.23 The site is designated as part of a protected river valley (**Policy ENV 8**) associated with the South Esk River. The locational need for the proposed development is the re-development of a brownfield site and providing for a range and type of housing across all market areas, which includes more rural locations. Appropriate provision of rural housing is an important part of a balanced housing land supply.
- 4.24 An Ecological Assessment was undertaken by Nigel Rudd Ecology and submitted as a supporting document to the planning application and this subsequent appeal. It concluded that it was considered that the re-development of the appeal site would enhance the biodiversity of opportunities on the site. This would be achieved by bringing existing habitats under management, creation of new habitats and installation of features to provide nesting /breeding opportunities and shelter for fauna.
- 4.25 Therefore, it is clearly established that the proposed development would not have an adverse impact either on the landscape and conservation value of the valleys, and will actually have biodiversity net gain, as well as bringing an untidy brownfield site back into a sustainable use which would vastly improve the amenity of the site and subsequently the immediate locale. The site is private and currently operates as a stonemason's yard and therefore has never been open to the public.
- 4.26 In that context the proposed development is compliant with the aims and objectives of **Policy ENV 8**.

## *Reason 2*

*The development is unable to demonstrate safe access into the site by virtue of insufficient distance for suitable visibility splays.*

- 4.27 The appellant at the time of the application provided a visibility splay plan (PL-06 Possible

Visibility Splays) via their architects rather than a transportation consultant on the understanding that the detail would be subject to condition and Roads Construction Consent. This would be re-drawn by a transportation consultant to demonstrate that, the available visibility splay to the south could be increased if necessary.

- 4.28 Due to the existing nature of the road, the onerous requirement for a 210m splay required by the DMBR could not be achieved. Nonetheless visibility would be improved from the existing situation
- 4.29 Notwithstanding the above, the DMBR standards (210m) are not strictly applicable in this case, and there are a number of residential properties within the immediate locale that share similar visibility traits and can access and egress their properties safely and without causing a road safety issue. Access and visibility would be improved as a result of development
- 4.30 You will note from Figure 4.3 below that there have been no recorded accidents along Carrington Road in the past 5 years with properties existing along that stretch of road which have identical visibility traits. This is largely due to the actual traffic speeds being lower than the designated design speed of the road itself.

**Figure 4.3 – Crash Map Data on Carrington Road**



- 4.31 In the context of the local road network, Carrington Road is bookended by the A7 to the north, and the B704 to the south, both of which at those points are 40mph speed limits. It is also worth noting that with the allocation to the north of the site (Hs11), although not having a vehicular access onto Carrington Road, there are x3 proposed pedestrian/cycle access routes planned onto Carrington Road which could see in an increase to both pedestrian traffic (especially dog walkers to the Dalhousie Burn), and cyclists using the road. In that context, there are likely a number of measures that could be employed to make Carrington Road more pedestrian and

cycle friendly and safer from a road safety perspective.

- 4.32 The appellant would be supportive of a reduction in the speed limit to 40mph which would correspond with the adjacent roads of the A7 and B704 at the point of connecting to Carrington Road. This could be achieved through a TRO, and traffic calming measures such as appropriate signage including additional access signage. The appellant would be happy to support such mitigation measures and bear the cost of implementation.
- 4.33 Reducing the speed limit to 40mph would likely allow the relevant visibility splay to be maintained, and the appellant could look at a 4.5m set back as opposed to the current 2.5m set back which would increase visibility even further. In the context of the Site Location Plan (Loc-01) submitted with the planning application and this appeal, you will note the client owns all the land adjacent to Carrington Road up to the B704 and therefore vegetation can be maintained under the appellant's ownership to further improve/maintain visibility.
- 4.34 As a part of the proposed development, the access point has moved further south than the existing access, resulting in an improvement in visibility to the south on access and egress. The nature of Carrington Road is such that 60mph cannot be achieved along the sections where the proposed access is located, and the minimal additional trips created from the proposed development means that there would be no adverse impact on the road network, or to road safety with adjacent properties experiencing similar traits.
- 4.35 We would contend that with mitigation, the access can continue to be used safely with no adverse impact to road safety. Furthermore, the adherence to onerous standards is not in accordance with Scottish Roads Development Guidance and Designing Streets.

### *Reason 3*

*The proposed development, by virtue of its proposed scale and massing, is unsympathetic to the character of the conservation area, the existing build and the natural landscaped character of the area and so conflicts with policies DEV6, ENV7 and ENV19 of the Midlothian Local Development Plan 2017.*

- 4.36 **Policy ENV 19 Conservation Areas** sets out to preserve or enhance the character and appearance of the conservation area. The site is located within the Dalhousie and Cockpen Conservation Area. A conservation area character appraisal has not been undertaken by Midlothian Council for this conservation area.
- 4.37 The purpose of a conservation character appraisal is to help manage change. They provide an agreed basis of understanding of what makes an area special. This understanding informs and provides the context in which decisions can be made on proposals which may affect the character. An enhanced level of understanding combined with appropriate management tools

ensures that change and development sustains and respects the qualities and special characteristics of the area.

4.38 Under the heading Conservation Areas, SPP notes that *'proposals for development with conservation areas and proposals outwith which will impact on its appearance, character or setting, should preserve or enhance the character and appearance of the conservation area. Proposals that do not harm the character or appearance of the conservation area should be treated as preserving its character and appearance'*.

4.39 Planning Advice Note (PAN) 71: Conservation Area Management specifies that:

*'When efficiently managed, conservation areas can anchor thriving communities, sustain cultural heritage, generate wealth and prosperity and add to quality of life. To realise this potential many of them need to continue to adapt and develop in response to the modern day needs and aspirations of living and working communities. This means accommodating physical, social and economic change for the better.'*

*Physical change in conservation areas does not necessarily need to replicate its surroundings. The challenge is to ensure that all new development respects, enhances and has a positive impact on the area. Physical and land use change in conservation areas should always be founded on a detailed understanding of the historic and urban design context'.*

4.40 The reason for refusal notes that *'the proposed development, by virtue of its proposed scale and massing, is unsympathetic to the character of the conservation area...'*. The 'character' of an area is the combination of features and qualities which contribute to the intrinsic worth of an area and make it distinctive. Special character does not derive only from the quality of buildings. Elements such as the historic layout of roads, paths and boundaries, paving materials, urban grain and more intangible features, such as smells and noises which are unique to the area, may all contribute to the local scene. Conservation area designation is the means of recognising the importance of all these factors and of ensuring that planning decisions address these qualities.

4.41 The proposed houses have been architect designed and orientated to reflect the historic pattern of development on the site. They replicate the scale and proportion of historic cottages with accommodation within the roof space and traditional elements such as chimneys and dormers. The houses have also been built into the existing boundary wall to create a gatehouse type arrangement. High quality materials such as natural stone and slate will be utilised and to complement the existing stone wall.

4.42 The overall effect is a building which is unobtrusive and sits comfortably within the landscape and the historic setting. The site is also located adjacent to an allocated housing site (Hs11) which has planning permission for predominantly two storey new build houses which are simple

in form with pitched roofs and traditional fenestration.

- 4.43 The appeal site is brownfield by definition and currently used as a stonemason's yard. The development of the site will bring a vacant and derelict brownfield site back into a sustainable use, significantly improving the appearance of the site, and it is considered that the re-development of the appeal site would enhance the biodiversity of opportunities on the site. This would be achieved by bringing existing habitats under management, creation of new habitats and installation of features to provide nesting /breeding opportunities and shelter for fauna.
- 4.44 In that context, the proposed development adheres to the policy and advice in SPP and PAN 71 with the proposal respecting the locale and has a positive impact on the area. SPP is clear in its wording that '*proposals that do not harm the character or appearance of the conservation area should be treated as preserving its character and appearance*'. Therefore, the proposed development preserves the character and appearance of the Dalhousie and Cockpen Conservation Area as the appellant has clearly demonstrated that the proposal does not harm the character or appearance of the conservation area. Therefore, the proposal adheres to the aims and objectives of **Policy ENV 19**.
- 4.45 **Policy ENV 7 Landscape Character** states that development will not be permitted where it may have an unacceptable effect on the local landscape character. The site is considered an historic building group which was previously utilised for residential development and did not adversely affect the character and setting of the surrounding area. In that context, the site is brownfield by definition within a countryside location.
- 4.46 It is clearly established that the proposed development would not have an adverse impact on the local landscape character, and will actually have biodiversity net gain, as well as bringing a scruffy brownfield site back into a sustainable use which would vastly improve the amenity of the site and subsequently the immediate locale. The development of the site also provides the opportunity to clear all the existing waste and debris which has been dumped on the site over the years, which would be a clear benefit to the landscape setting of the site.
- 4.47 The proposal is a design led concept which has robustly assessed and understandings the historic and landscape setting of the site and immediate locale. The proposal seeks to retain and reinstate the existing stone boundary wall; build the proposals into existing wall as per the historic layout; develop in the same location as the historic building group; retain existing trees; work with the existing landscape and topography; minimise hard standing and maximise green space; and utilise high quality materials.
- 4.48 In that context, the proposed development respects the character of the locale, is of an appropriate scale, siting and design regarding the history of the site and the requirements of modern day living and the consented scheme adjacent to the site, while maintain and improving the diversity and distinctiveness of the local landscape which has been diluted over time due to the current use of the site which has been left vacant and derelict. Therefore, the proposal

complies with the aims and objectives of both **Policy ENV 7 and Policy DEV 6**.

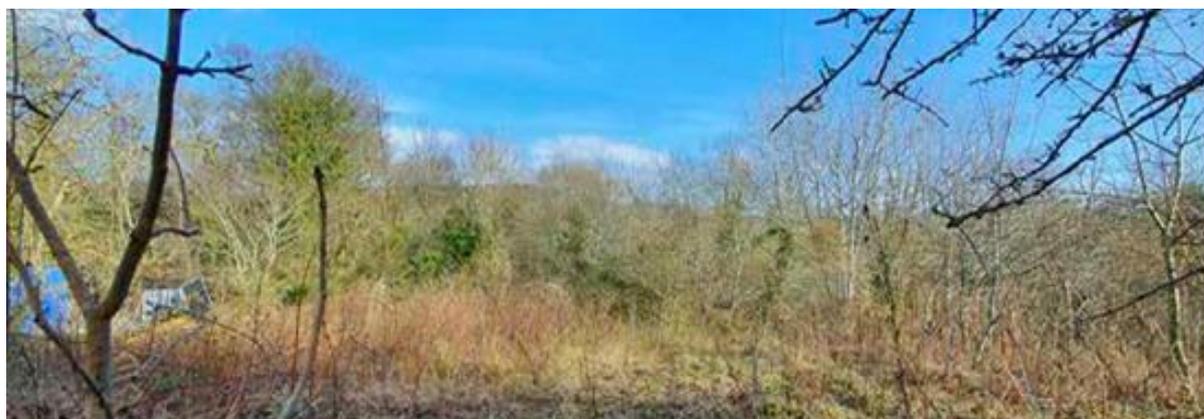
- 4.49 The Council within the Report of Handling notes concerns that the proposal does not provide sufficient private amenity space. It then goes on to note detailed guidance which relates to the previously adopted Local Plan which has been superseded and is no longer relevant. The proposal provides a mix of private amenity space to each unit in the form of garden space and a stilted decking area, as well as shared private amenity space, and direct access to recreational public land around the site.
- 4.50 It is the Appellant's opinion that future occupiers purchasing the properties will make a conscious decision to buy them based on the particulars of the property. The Council does not have any specified policies or guidance on what it deems as acceptable amenity space per dwelling, other than '*private open space should be provided on a scale appropriate to the relevant dwelling type*' through **Policy DEV 6**.

#### *Reason 4*

*The proposed removal of vegetation from the site would harm the Tree Preservation Order and so conflict with policy ENV11 of the Midlothian Local Development Plan 2017.*

- 4.51 **Policy ENV 11** relates to Woodland, Trees and Hedges. The TPO covers approximately half of the application site along its southern edge. Both the historic building group and the proposed development sit on the northern edge and outside of the TPO. The remainder of the site is located within the conservation area and therefore affords protection.
- 4.52 The Council's Report of Handling states that '*the existing landscaping contributes to the area's character as a rural rivet valley location*' but you will note from the photograph below (Figure 4.4) that there are no significant trees within the area proposed for development. What exists on the ground is very much self-seeded scrubs and shrubs of limited landscape quality.

**Figure 4.4 – Landscape Quality of development site**



- 4.53 An Ecological Assessment was undertaken by Nigel Rudd Ecology which was submitted as a

supporting document to the planning application and this subsequent appeal.

- 4.54 There was found to be no potential impact on European or UK Statutory sites as there are none within 2.5km of the Site. However, the site is within the Dalhousie Burn LBS and very close to two other LBSs. The Site is on the north boundary of the Dalhousie Burn LB and extends to no more than 1% of the area of the LBS. The proposal is to site development on the area currently occupied by the stonemason's yard. There will be retention of habitat within the application area, and it is considered there will be no compromise of the integrity of the LBS and the effect would be no more than that arising from an active business premises in the south of the LBS.
- 4.55 The surveys revealed restricted habitat diversity. The Site supports woodland, dense and scattered scrub and unimproved grassland habitats. The site is unmanaged and progressing to woodland in the absence of grazing pressure.
- 4.56 It concluded that it was considered that the re-development of the appeal site would enhance the biodiversity of opportunities on the site would result in a biodiversity net gain. This would be achieved by bringing existing habitats under management, creation of new habitats and installation of features to provide nesting /breeding opportunities and shelter for fauna. In that context, the proposal is compliant with **Policy ENV 11**.
- 4.57 A Tree Survey / Arboriculture Impact Assessment was not requested by Midlothian Council throughout the development management process but as rightly indicated through the Council's Report of Handling, such can be appropriately conditioned through the granting of any planning application. The appellant would be accepting of such a condition.

## 5 Conclusions

- 5.1 This review relates to a detailed planning application to develop 2 dwellinghouses on derelict and vacant brownfield land on land 25m southwest of Deaflawhill Cottage, Dalkeith.
- 5.2 The reasons for refusal are considered and rebutted in Section 5 of this Statement. A positive decision potentially rescues a surplus brownfield site and would be in accordance with the MLDP.
- 5.3 Planning policy is the starting point for the determination of a planning application and not an absolute. In this instance, an element of professional judgement needs to be employed in the context of the site specifics of the proposed development, as opposed to relying on a blanket policy which does not take into consideration detailed site proposals such as this. Although the proposed development does not adhere in its entirety to the aims and objectives of **Policy RD 1**, there are significant material considerations which outweigh the policy conflict, directing the right development to the right place and ensuring the re-development of brownfield land.
- 5.4 We have demonstrated the site is not considered as Prime Agricultural Land by the Macaulay Institute. Regardless, to a reasonable degree of certainty, the loss of the site would have a negligible impact on the food production capacity of the agricultural land within Midlothian. Therefore, the proposed development adheres to the aims and objectives of **Policy ENV 4**.
- 5.5 It is clearly established that the proposed development would not have an adverse impact either on the landscape and conservation value of the valleys, and will actually have biodiversity net gain, as well as bringing an underutilised brownfield site back into a sustainable use which would vastly improve the amenity of the site and subsequently the immediate locale. The site is private and currently operates as a stonemason's yard and therefore has never been open to the public. In that context the proposed development is compliant with the aims and objectives of **Policy ENV 8**.
- 5.6 We would contend that with mitigation, the access can continue to be used safely with no adverse impact to road safety.
- 5.7 The proposed development adheres to the policy and advice in SPP and PAN 71 with the proposal respecting the respects and enhances the locale and has a positive impact on the area. SPP is clear in its wording that *'proposals that do not harm the character or appearance of the conservation area should be treated as preserving its character and appearance'*, therefore the proposed development preserves the character and appearance of the Dalhousie and Cockpen Conservation Area as the appellant has clearly demonstrated that the proposal does not harm the character or appearance of the conservation area. Therefore, the proposal adheres to the aims and objectives of **Policy ENV 19**.

- 5.8 The proposal respects the character of the locale, is of an appropriate scale, siting and design regarding the history of the site and the requirements of modern day living and the consented scheme adjacent to the site, while maintain and improving the diversity and distinctiveness of the local landscape which has been diluted over time due to the current use of the site which has been left vacant and derelict. There, the proposal complies with the aims and objectives of both **Policy ENV 7 and Policy DEV 6**.
- 5.9 No Tree Survey or Arboriculture Impact Assessment was requested by Midlothian Council throughout the planning process but as rightly indicated through the Council's Report of Handling, such can be appropriately conditioned through the granting of any planning application. The appellant would be accepting of such a condition.
- 5.10 It is respectfully requested that the members take time to visit the site prior to any determination and that the impacts and benefits of this proposal are carefully considered. We trust that the LRB can agree with the arguments and opinions put forward by the appellant in this case and can grant planning permission.

## MIDLOTHIAN COUNCIL

### DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

**Planning Application Reference:** 21/00352/DPP

**Site Address:** Land 25M South West of Deaflawhill Cottage  
Dalkeith

**Site Description:** The site is located circa 220m to the south the of the Carrington Road and A7 junction. It is located on the south east/east side of Carrington Road which bounds the site's western boundary. The site is bound to the north / north east by a core path (MID/8-1/3). To the east, the site is bound by Dalhousie Burn. As such the site is characterised by steep gradients, particularly to the east of the site towards Dalhousie Burn and to the north / north east towards the aforementioned core path.

The site is largely covered by trees/ landscaping with a small clearing adjacent to Carrington Road. A TPO covers a large proportion of the site at its southern end. A stone working enterprise is situated within the clearing, with the presence of a shipping container on site and ad hoc storage of stone materials within the site. Despite this operation the site is read as being part of the wooded river/burn valley to the west/north west of the Dalhousie Burn.

The site is accessed from Carrington Road by a wooden gate. A footpath runs along Carrington Road. The footpath is narrow (circa 1m) with a loose surface.

The site is located in the open countryside, within Dalhousie & Cockpen Conservation Area and is characterised by the following policy designations:

- RD1 Open Countryside
- ENV3 Newbattle Greenspace Safeguard
- ENV4 Prime Agricultural Land
- ENV8 Protection of River Valley
- ENV11 Woodland, Trees and Hedges (TPO no. 1 of 2004, Legal ref: 069)
- ENV14 Regional Locally Important Nature Conservation
- Coal Mining High Risk Area

The site is understood to have hosted historic development, likely cottages (number unknown). Historical online maps show that the site has been vacant of built form for a period of over 70 years.

**Proposed Development:** Erection of two dwelling houses; formation of access, car parking and areas of hard standing and associated works

**Proposed Development Details:** The proposed development seeks to deliver 2no. dwellings. The proposed dwellings are circa 7.8m in height and are two storey with pitched roofs.

In form the dwellings are based on a traditional style with contemporary additions, principally forward facing (south west) two storey projections that form an entrance hall at ground floor and bedroom accommodation at first floor. The proposed dwellings propose a significant amount of glazing particularly at ground floor level.

The proposed materials are natural rubble stone to approximately 3.7m where dark timber cladding features below the roof eaves. The roof is proposed to be blue/grey slate.

The proposed development provides access from Carrington Road, a shared driveway and 4 designated parking spaces (2 per dwelling).

Due to the site levels the south east gable is surrounded by a private decking area which is supported by stilts.

The proposals are proposed to share amenity space around the properties. Plans do not demarcate any specific amenity space for private use, aside from the proposed decking and front garden of the western property.

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

Planning History:

- 04/00227/OUT - Change of use of land to form a caravan park and outline planning permission for associated house/office. Refused at Planning Committee 01.09.2004

Land Between Deaflawhill Cottage And Glenburn Cottage, Cockpen Road

- 05/00606/OUT - Erection of dwellinghouse.
- Appeal ref: 06/00002/NONDET - Erection of dwellinghouse. Dismissed. 11.04.2006 (Archieved)

### **Consultations:**

**Archaeology:** No objection subject to the application of condition to any grant of planning permission. Recommended Condition:

*No development shall take place on the proposed site until the applicant has undertaken and reported upon a programme of archaeological (Desk-Based Assessment, Survey and Evaluation) work in accordance with a written scheme of investigation which has been submitted by the applicant (or their agent) and approved by the planning authority*

**Scottish Water:** No objection to the development. There is currently sufficient capacity in ROSEBERY Water Treatment Works. Further investigations may be required to be carried out once a formal application has been submitted to us. Comments note that the nearest waste water infrastructure is approx. 180m from the site boundary and there may be issues/obstacles in the route of connection.

**Bonnyrigg & Lasswade Community Council (BLCC):** Object to the proposals for the following reasons:

- Overdevelopment – development is larger than historic development on the site. No other two storey development in proximity to the site.
- Contrary to policy RD1.
- Allocated residential development site HS11 to the west of the site is well screened from the area.
- Proposed development would conflict with policies ENV19 (Conservation Areas), ENV3 (Newbattle Strategic Space), ENV11 (Woodland, Trees and Hedges), and ENV14 (Regionally and Locally Important Nature Conservation Site).
- Any development would need to improve landscape screening to the path to the north of the site.

**Eskbank & Newbattle Community Council (ENCC)** – Object to the proposals for the following reasons:

- Development does not meet tests for rural housing.
- Development is restricted by policy ENV 3 and would erode an important “green lung”.
- Existing operations and siting of container on site do not have planning permission.
- Additional concerns regarding discharge of septic tank into Dalhousie Burn and insufficient visibility spays for access.

**Policy & Road Safety, Corporate Resources:** States that *“highly unlikely that the standard visibility splay of 4.5m by 215m could be achieved at this location. Even allowing the relaxation down to 2.4m by 215m does not appear to be achievable and therefore unless the developer can demonstrate that a suitable visibility splay can be achieved under land within his control I would not be in a position to support this application”*. Existing footpath is substandard.

**Flooding:** No objection

**The Coal Authority:** No objection subject to proposed conditions:

In light of the above, the Coal Authority recommends the imposition of the following conditions:

1. *No development shall commence until;*

*a) a scheme of intrusive site investigations has been carried out on site to establish the risks posed to the development by past coal mining activity, and;*

*b) any remediation works and/or mitigation measures to address land instability arising from coal mining legacy, as may be necessary, have been implemented on site in full in order to ensure that the site is made safe and stable for the development proposed.*

*The intrusive site investigations and remedial works shall be carried out in accordance with authoritative UK guidance.*

2. *Prior to the occupation of the development, or it being taken into beneficial use, a signed statement or declaration prepared by a suitably competent person confirming that the site is, or has been made, safe and stable for the approved development*

*shall be submitted to the Local Planning Authority for approval in writing. This document shall confirm the methods and findings of the intrusive site investigations and the completion of any remedial works and/or mitigation necessary to address the risks posed by past coal mining activity.*

**Representations:** There have been 4 representation made to the application all objecting to the development. It is noted that one is a duplication and another seeks confirmation of receipt of the ENCC objection. Objections have been made for the following reasons:

- Development would harm the river valley
- Development would harm the conservation area
- Resulting harm to vegetation and biodiversity
- Site hosts bats, beavers, otters and deer.
- Loss of landscaping along Dalhousie Burn and associated walkways
- Loss of privacy because of upper storeys and balconies.
- Harm to the local highway.
- Scale of houses is obtrusive and out of character with the area.

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

**RD 1 – Development in the Countryside.** The policy generally seeks to restrict new development in the Countryside.

**DEV 5 - Sustainability in New Development.** The policy sets out a number of principles that new development should adhere to.

**DEV 6 - Layout and Design of New Development.** The Council will require good design and a high quality of architecture, in both the overall layout of development proposals and their constituent parts.

**ENV 3** This purpose of the policy is to that greenspace centred on Newbattle be preserved in the long-term to act as a 'green lung' between the South Esk communities of Dalkeith, Eskbank, Bonnyrigg, Easthouses and Newtongrange.

**ENV 4 - Prime Agricultural Land.** The permanent loss of prime agricultural land is generally resisted.

**ENV 7 - Landscape Character.** The policy sets out to resist harmful development. Acceptable development should be compatible in terms of scale, siting and design.

**ENV 8** Protection of River Valleys. This policy sets out that *“Development within the river valley protection areas of the Rivers North and South Esk and River Tyne will not be permitted unless there is a specific locational need for the development.”*

**ENV 11 - Woodland, Trees and Hedges.** The loss of trees and hedges is generally resisted with equivalent replacements required in wake of any required loss of trees or landscaping.

**ENV 14** Regionally and Locally Important Nature Conservation Sites. The policy sets out that where development would harm such areas, applications should be refused unless; the siting of development avoids harm and appropriate mitigation is achievable; or the public interest of the proposed development outweighs the assessed harm.

**ENV 15** - Species and Habitat Protection and Enhancement. The policy sets out that development that adversely impacts protected species will be refused apart from in certain circumstances, including where appropriate mitigation is proposed and agreed.

**ENV 19** - Conservation Areas. Within or adjacent to a Conservation Area, development will not be permitted which would have any adverse effect on its character and appearance.

**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

A case is put forward in the application for the site to be considered previously developed. It is understood that any former development on the site was removed circa 70 years ago. Since then no evidence of development has been identified. From a site visit it is considered that the site has been reclaimed by nature/landscaping and is greenfield land. An existing stone working /storage use does not benefit from planning permission.

The proposed development is within defined by the Local Development Plan as Countryside. Policy RD 1 controls new development within the Countryside. It sets out that:

- *Normally, housing will only be permissible where it is required for the furtherance of an established countryside activity.*
- *Proposals to replace an existing dwelling may be permissible where it can be demonstrated that it is incapable of renovation or improvement; that the proposal relates to a complete dwelling (i.e. not the plot of a previous, now demolished house)*

The policy sets out four points of exception to this in principle resistance to housing in the countryside. Including:

- *housing groups (allowing 1 new dwelling during the plan period where there are 5 existing units);*
- *conversions of redundant farm buildings or other non-residential buildings;*
- *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.*

The Design and Access Statement sets out that there was a row of cottages on the site historically, the footprint of which the proposals will seek to utilise / replicate. However, the structures have been demolished and are no longer present on site. In line with policy RD 1 the development cannot be considered to replace an existing dwelling. The proposed development therefore does not meet any of the aforementioned exceptions. A presumption against development at this location is therefore the starting position for assessing the development.

The site is found within the Newbattle Strategic Greenspace Safeguard (ENV 3) designation. The policy sets out that development in land under this designation will not be permitted with the exception of, "*ancillary development relevant to existing uses; and/ or other development for the furtherance of agriculture (including farm-related diversification), horticulture, forestry, countryside recreation or tourism.*" The proposed development is not ancillary to an existing use, or for the furtherance of agriculture, horticulture, forestry, countryside recreation or tourism. As such the proposed development conflicts with policy ENV 3.

The site is designated as Prime Agricultural Land (ENV 4). The policy seeks to resist development that would result in the permanent loss of designated agricultural land. Whilst forming part of the designation it is noted that the site is not used for agricultural purposes. Whilst the proposals may seek to utilise historical footprints, the development would likely result in the permanent removal of more agricultural land through the delivery of associated hardstanding, gardens and utilities. As such, the proposals are considered to result in some minor conflict with policy ENV 4.

The site is designated as part of a protected river valley (ENV 8) associated with the South Esk River. The policy sets out that development will not be permitted within these areas unless there is a specific locational need for the development. No evidence has been submitted with the application to demonstrate that a locational requirement exists for the proposed dwellings. The development would therefore be in conflict with policy ENV 8.

In light of the above matters, the proposed development is considered to be contradictory to multiple policies within the MLDP that would result in the principle of development not being supported.

### Design and Layout

The proposed layout is logical in limiting the impact on Carrington Road by presenting a single gable end to the road. However, there are concerns that the proposals do not provide private amenity. There is likely to be sufficient space within the site to provide sufficient private amenity space, but that the steep banks at the north and east of the site (as marked on the Site Layout Plan) hinder the ability of the development to provide demarcated garden space for dwellings to the rear (north). The majority of useable space appears to be directly behind the west property or to the south of the proposed parking. Policy DEV 6 requires development

to deliver privacy and amenity for existing and future residents. The development does not provide sufficient outdoor private amenity space. The Council's Detailed Development guidance is taken from policy DP2 of the previously adopted plan and set out that for dwellings of this size 130sqm outdoor private amenity space should be provided.

The proposed development is circa 40m to the south of Deaflawhill Cottages and so no concern over the privacy and amenity of these dwellings is held.

The contemporary approach does have some merit and would create distinctive dwellings. However, the proposed scale of the new houses would be significantly greater to the residential development to the north of the site (Deaflawhill Cottage). Whilst the DAS submitted suggests that the previous footprint of historic structures would be utilised, the necessity to stilt the eastern / south east elements of the development would seem to suggest a growth in footprint and scale.

The southern facing elements of the development are characterised by projected entrances with bedroom space above. These features are considered to conflict with the simple and traditional form of development in proximity to the site. The projections further exacerbate the stepped nature of the dwellings that departs from the apparent alignment of the historic cottages on the site. Similarly, the proposed development includes a significant quantum of glazing which would appear in contrast to the character of development in proximity to the site.

Whilst a contemporary approach to the proposals is not considered inappropriate in and of itself, it is considered the proposed design (for reasons above) would result in some conflict with policy DEV 6.

### Transport and Access

Initially no visibility splay information was submitted with the application and the Council's Policy & Road Safety Officer raised concerns that safe visibility may not be achievable given the 60mph speed limit on Carrington Road. In response additional information was submitted to the application. After review of this information the Policy & Road Safety Officer confirms that his concerns remain. As such, the development is unable to demonstrate safe access to the public highway and as such should be refused.

### Conservation Area

Policy ENV 19 sets out to preserve or enhance the character and appearance of the Conservation Area. Whilst there is no Character Appraisal for the Conservation Area the character and scale of the new development contrasts heavily with the existing residential development to the north. In respect of the character of the Conservation Area, there is more concern attached to the loss of vegetation and future increased pressure on trees at the site. Their loss would alter the rural character of the site and so come into contact with policy ENV19.

### Landscape and Trees

Whilst the proposed development sets out to retain established trees at the site, it would result in the loss of vegetation at the site, some of which is within the TPO. The existing landscaping contributes to the areas character as a rural river valley location, and further aids in promoting tranquillity and enjoyment of existing core paths.

Whilst mature trees are sought to be preserved within the site, the proposed domestication of the site is considered to result in some added pressure on the trees despite the protection afforded to them by the TPO and Conservation Area. It is further identified that the Ecology Assessment submitted to the application references the loss of some woodland trees.

The proposed development would likely have an adverse impact on the conservation area and additional planting to screen the site would be needed.

No Tree Survey or Arboriculture Impact Assessment was submitted with the application. As such the full impact of the development on trees cannot be fully assessed. As such, if this development were to be permitted, conditions requiring this information would be required. As it stands, there is considered to be harm resulting from the development in line with policies ENV 7 and ENV 11.

### Ecology

The Wildlife Information Centre (TWIC) have reviewed all submitted information pertaining to biodiversity at the site and are content with the methodology of the assessments. However, they have confirmed that whether the proposed development is able to deliver lasting net gain in biodiversity is not clear given that this is partly reliant on appropriate site management being implemented longer-term. The development may result in harm against policy ENV 15 of the MLDP. In order to alleviate such concern, were this application to be approved, a comprehensive Biodiversity Management Plan would be required prior to development and secured by condition. Additionally, lighting within the development would need to be conditioned in order to make sure no inappropriate illumination of habitat would result.

In relation to policy ENV 14 and the Local Biodiversity Site (LBS), TWIC has set out that there might be harm to the LBS through cumulative small scale developments. The Ecology Assessment sets out that the development site covers 1% of the LBS and so the harm to the LBS is not likely to be significant. However, the cumulative impact could result in further harm to the LBS. Whilst mitigation is proposed in order to mitigate any such harm, additional habitat creation would be encouraged through any such Biodiversity Management Plan.

### Drainage

No specific detail has been submitted in relation to Foul Water drainage or Surface Water Drainage. If the development were to be approved, such details would be required by condition. No objection in relation to flooding was raised by the council's consultee.

## **Summary**

It is recommended the proposed development be refused for the following reasons:

- The development is contrary to the MLDP policies RD1, ENV3, ENV4 and ENV8.
- The development is unable to demonstrate safe access into the site.
- The proposed scale of the development is not in keeping with the neighbouring uses and would result in harm according to policy DEV 6.
- The proposed development would result in harm to the Dalhousie and Cockpen Conservation Area and policy ENV19.
- The proposed development would result in harm to the character of the landscape and policy ENV7.
- The proposed development would result in harm to the TPO on the site and policy ENV 11.

**Recommendation:** refuse planning permission.

# Refusal of Planning Permission

Town and Country Planning (Scotland) Act 1997

**Reg. No. 21/00352/DPP**

Yeoman McAllister Architects  
Waterside Studios  
64 Coltbridge Avenue  
Edinburgh  
EH12 6AH

Midlothian Council, as Planning Authority, having considered the application by Mr Ian Dickson, Holly Cottage, Croft Road, West Linton, EH46 7DZ, which was registered on 24 June 2021 in pursuance of their powers under the above Acts, hereby **refuse** permission to carry out the following proposed development:

**Erection of two dwellinghouses; formation of access, car parking and areas of hard standing and associated works at Land 25M South West of Deaflawhill Cottage, 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	Loc-01 1:1250/5000	24.06.2021
Topographical Survey	PL-00 1:250	24.06.2021
Site Plan	PL-01 1:250	24.06.2021
Proposed Ground Floor Plan	PL-02 1:100 Ground	24.06.2021
Proposed First Floor Plan	PL-03 1:100 First	24.06.2021
Elevations	PL-04 1:100	24.06.2021
Proposed Cross Section	PL-05 1:200/500 A-A and B-B and Proposed	24.06.2021
Proposed Visibility Splays	PL-06	04.10.2021
Design and Access Statement		24.06.2021

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

- 1. The proposal does not satisfy any of the criteria in relation to acceptable rural development set out in the Midlothian Local Development Plan 2017. As such, the principle of the development cannot be supported as development is contrary to policies RD1, ENV3, ENV4 and ENV8 of the Midlothian Local Development Plan 2017.*
- 2. The development is unable to demonstrate safe access into the site by virtue of insufficient distance for suitable visibility splays.*
- 3. The proposed development, by virtue of its proposed scale and massing, is unsympathetic to the character of the conservation area, the existing built and the*

*natural landscaped character of the area and so conflicts with policies DEV 6, ENV7 and ENV 19 of the Midlothian Local Development Plan 2017.*

4. *The proposed removal of vegetation from the site would harm the Tree Preservation Order and so conflict with policy ENV11 of the Midlothian Local Development Plan 2017.*

Dated 22 / 11 / 2021



.....  
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**

## **PLEASE NOTE**

*If the applicant is aggrieved by the decision of the planning authority to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under section 43A of the Town & Country Planning (Scotland) Act 1997 within 3 months from the date of this notice. The notice of review should be addressed to The Planning, Sustainable Growth and Investment Manager, Planning, Sustainable Growth and Investment Service, Midlothian Council, Fairfield House, 8 Lothian Road, Dalkeith EH22 3ZN. A notice of review form is available from the same address and will also be made available online at [www.midlothian.gov.uk](http://www.midlothian.gov.uk)*

*If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonable beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.*

### *Prior to Commencement (Notice of Initiation of Development)*

*Prior to the development commencing the planning authority shall be notified in writing of the expected commencement of work date and once development on site has been completed the planning authority shall be notified of the completion of works date in writing. Failure to do so would be a breach of planning control under section 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning etc (Scotland) Act 2006). A copy of the Notice of Initiation of Development is available on the Council's web site [www.midlothian.gov.uk](http://www.midlothian.gov.uk)*

## **IMPORTANT NOTE REGARDING PUBLIC ACCESS TO INFORMATION**

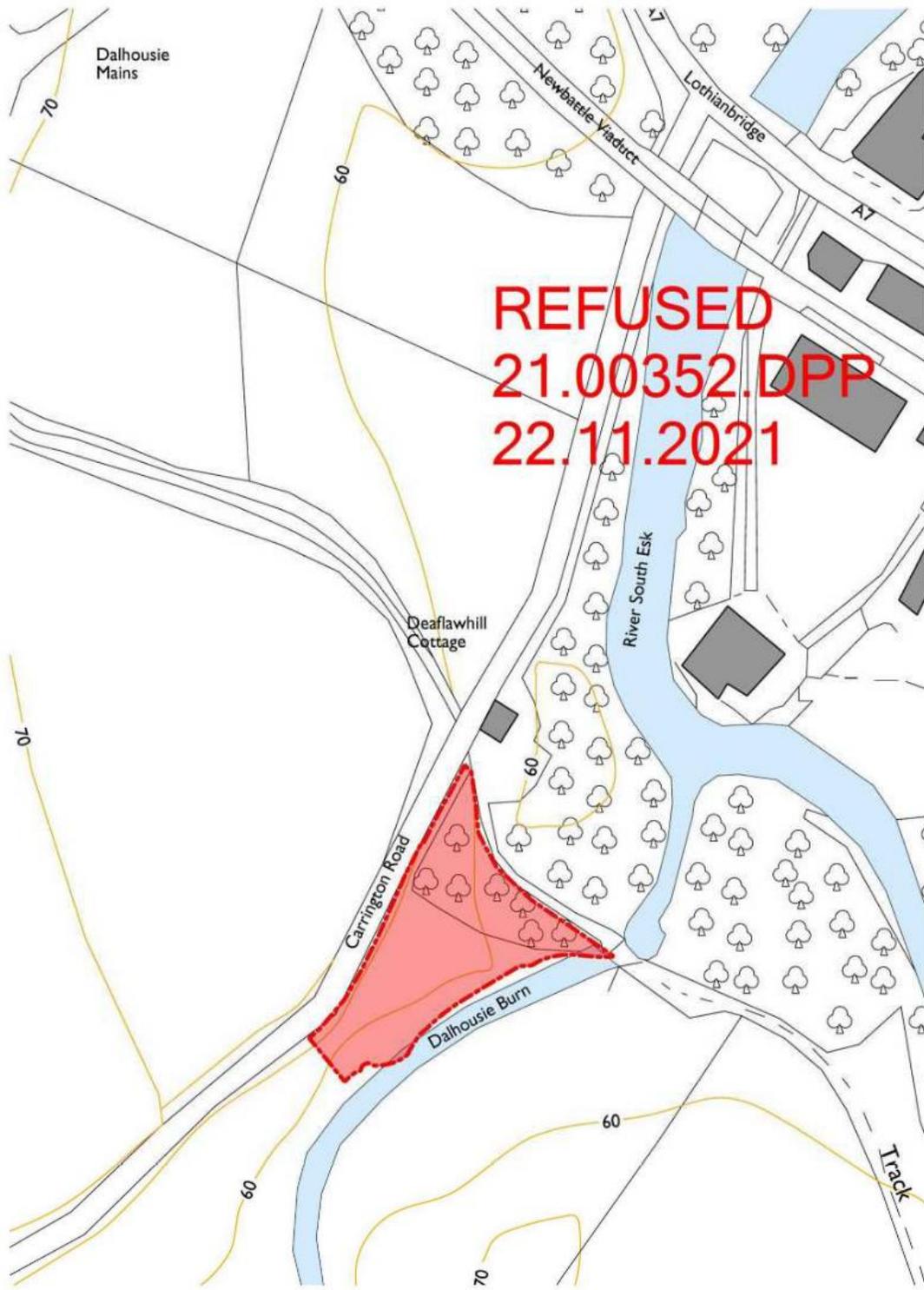
### *Making an application*

*Please note that when you submit a planning application, the information will appear on the Planning Register and the completed forms and any associated documentation will also be published on the Council's website.*

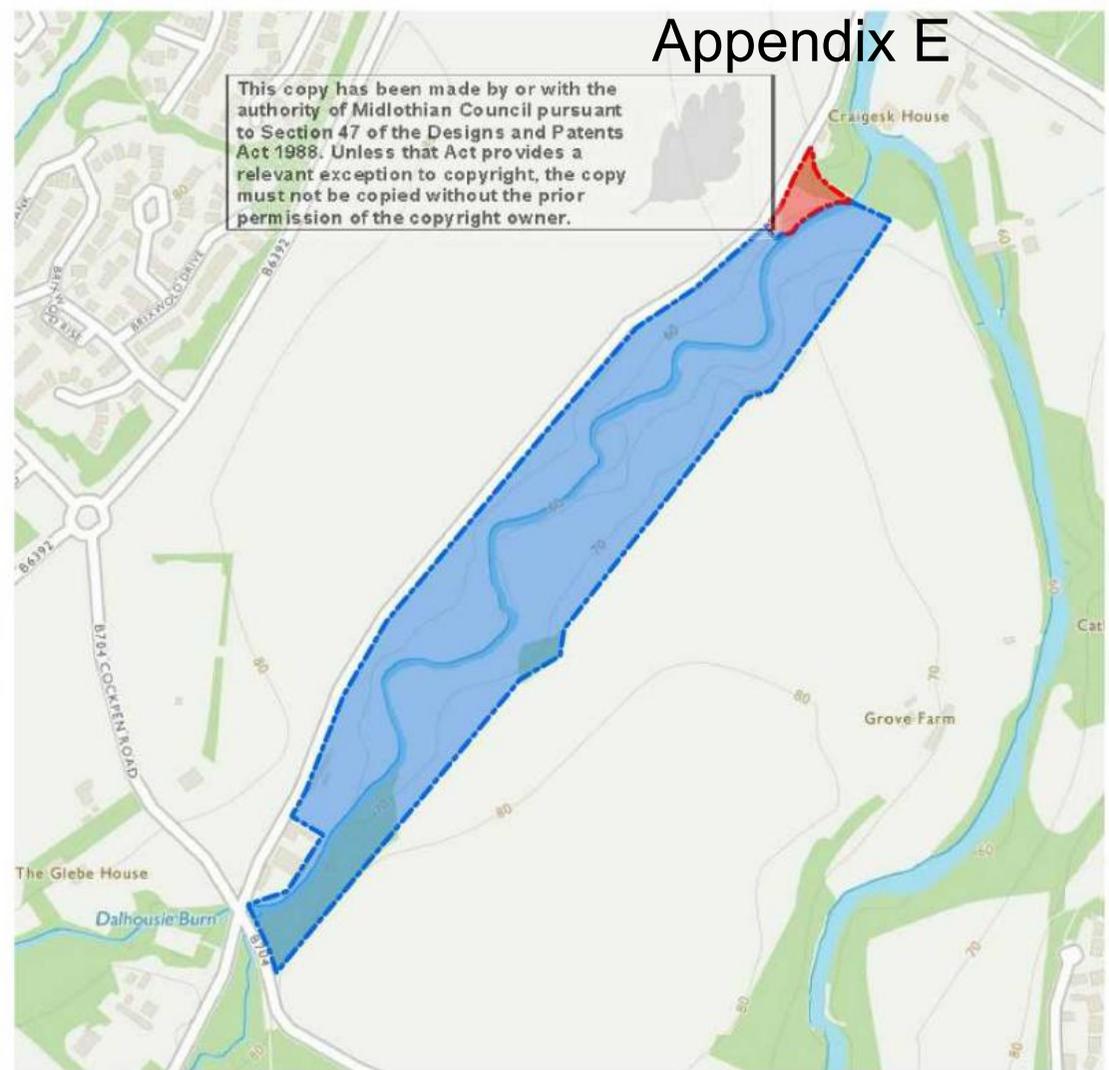
### *Making comment on an application*

*Please note that any information, consultation response, objection or supporting letters submitted in relation to a planning application, will be published on the Council's website.*

*The planning authority will redact personal information in accordance with its redaction policy and use its discretion to redact any comments or information it considers to be derogatory or offensive. However, it is important to note that the publishing of comments and views expressed in letters and reports submitted by applicants, consultees and representors on the Council's website, does not mean that the planning authority agrees or endorses these views, or confirms any statements of fact to be correct.*



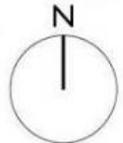
Application Boundary  
Scale 1:1250 @ A3



# Appendix E

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Adjacent Land under Client's Ownership  
Scale 1:1250 @ A3



KEY: ■ Application Boundary   Client's Ownership Boundary

0	62.5	125
CLIENT	Mr I. Dickson / Mr T. Love	
JOB	Proposed Dwelling Houses, Carrington Rd. Dalhousie Burn Valley	
DRAWING	Site Location Plan	
STATUS	<b>PLANNING</b>	
Drawn	NRC	Checked... Approved...
DATE	Apr 21	JOB NO s/4690 OR NO Loc-01
REV	/	



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SCALE 1:1250/5000 SHEET SIZE A3

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**REFUSED**  
**21.00352.DPP**  
**22.11.2021**



Site Layout Plan



REV	DATE	DRAWN	DESCRIPTION	CHECK	APP'D
REVISIONS					

CLIENT	Mr I. Dickson / Mr T. Love				
JOB	Proposed Dwelling Houses, Carrington Rd, Dalhousie Burn Valley				
DRAWING	Site Layout Plan				
STATUS	<b>PLANNING</b>				
Drawn	GW	Checked	aparis	Date	01/11/21
Job No	1014650		Drawn	P.L.D.	
Scale	1:250		Sheet	S16 A1	

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**REFUSED**  
**21.00352.DPP**  
**22.11.2021**



Site Layout Plan

Achievable Visibility Splay  
 2.5 x 141.5m to the North  
 2.5 x 130m to the South

REV	DATE	DRAWN	DESCRIPTION	CHECK	APP'D
REVISIONS					

CLIENT	Mr I. Dickson / Mr T. Lové				
JOB	Proposed Dwelling Houses, Carrington Rd, Dalhousie Burn Valley				
DRAWING	Possible Visibility Splays				
STATUS	<b>PLANNING</b>				
DATE	01/04/21	BY	14/09/21	PL	06
SCALE	1:500				SHEET 02 OF 02

**yeomanmcallister**

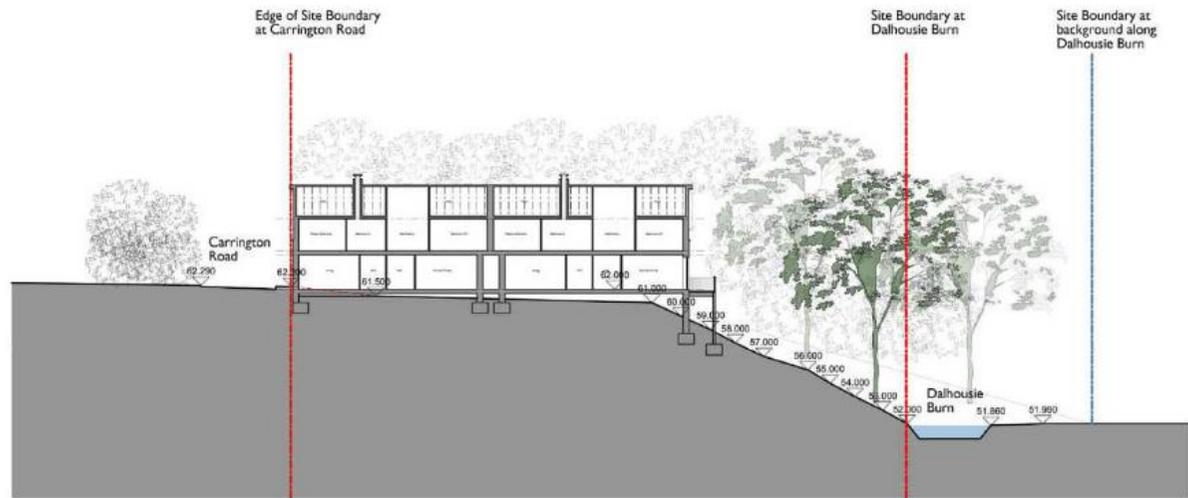
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SITE SECTION A-A  
Scale 1:200 @ A1



SITE SECTION B-B  
Scale 1:200 @ A1



PROPOSED SITE PLAN  
Scale 1:500 @ A1

REV	DATE	ISSUES/DESCRIPTION	CHECKED	APP'D

0	10	100
DATE	21.11.2021	SCALE
PROJECT	Mr I. Dickson / Mr T. Love	PROJECT NO.
DESCRIPTION	Proposed Dwelling Houses, Carrington Rd Dalhousie Burn Valley	CLIENT
DESIGNER	Proposed Site Sections A-A & B-B	DATE
STATUS	PLANNING	PROJECT NO.
DATE	22.11.2021	SCALE

yeomanmcallister



**REFUSED**  
**21.00352.DPP**  
**22.11.2021**

West (Road) Elevation

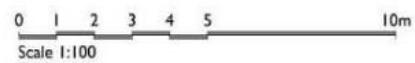
South Elevation



East Elevation

North Elevation

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**Material Schedule**

- 

Natural Random Rubble Stone
- 

Black Timber Cladding Boards
- 

Double Glazed Alu Clad Windows/Doors
- 

Blue/Grey Slate Roof

REV	DATE	DRAWN	DESCRIPTION	CHECK	APP'D
REVISIONS					

<p>CLIENT: Mr I. Dickson / Mr T. Love</p> <p>SITE: Proposed Dwelling Houses, Carrington Rd, Dalhousie Burnt Valley</p> <p>DRAWING: Proposed Elevations</p> <p>STATUS: <b>PLANNING</b></p> <p>Drawn: GJV, Desked: [blank], Approved: [blank], SH11 Agpt 21, Job No: 14690, DR NO: PL-04, REV: [blank]</p> <p>The drawing and its details are the copyright of Yeoman McAllister Architects and must not be used for any purpose other than that for which it is intended without the written consent of the copyright owner.</p>	<p>yeomanmcallister</p> <p>EDINBURGH: Victoria Studios, 64 Dalrymple Avenue, Edinburgh, EC2 1AR, Tel: 0131 246 180, Fax: 0131 246 182, info@yeomanmcallister.com</p> <p>LONDON: Stationers, 278 Tottenham Court Road, London, W1P 0LP, Tel: 020 7460 1000, london@yeomanmcallister.com</p> <p>SCALE: 1:100 SHEET 505 A2</p>
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