



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

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

### **1 Purpose of Report**

- 1.1 The purpose of this report is to provide a framework for the Local Review Body (LRB) to consider a 'Notice of Review' for the erection of a dwellinghouse at land at 39 The Brae, Auchendinny, Penicuik.

### **2 Background**

- 2.1 Planning application 18/00581/DPP for the erection of a dwellinghouse at land at 39 The Brae, Auchendinny, Penicuik was refused planning permission on 23 October 2018; a copy of the decision is attached to this report.
- 2.2 The review has progressed through the following stages:
- 1 Submission of Notice of Review by the applicant.
  - 2 The Registration and Acknowledgement of the Notice of Review.
  - 3 Carrying out Notification and Consultation.

### **3 Supporting Documents**

- 3.1 Attached to this report are the following documents:
- A site location plan (Appendix A);
  - A copy of the notice of review form and supporting statement (Appendix B). Any duplication of information is not attached;
  - A copy of the case officer's report (Appendix C);
  - A copy of the decision notice, issued on 23 October 2018 (Appendix D); and
  - A copy of the relevant drawings/plans (Appendix E).
- 3.2 The full planning application case file and the development plan policies referred to in the case officer's report can be viewed online via [www.midlothian.gov.uk](http://www.midlothian.gov.uk)

### **4 Procedures**

- 4.1 In accordance with procedures agreed by the LRB, the LRB by agreement of the Chair:
- Have scheduled an unaccompanied site visit for Tuesday 5 March 2019; and
  - Have determined to progress the review by way of written submissions.

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

## **5 Conditions**

- 5.1 In accordance with the procedures agreed by the LRB at its meeting of 13 June 2017, and without prejudice to the determination of the review, the following conditions have been prepared for the consideration of the LRB if it is minded to uphold the review and grant planning permission.
1. Prior to the commencement of development, the following details shall be submitted to and approved in writing by the planning authority:
    - a) Details all proposed external materials;
    - b) Details of the materials of all areas of hardstanding; and
    - c) Details of the position, design, materials, dimensions and finish of all walls, fences, gates or other means of enclosure.

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

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

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

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

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

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

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

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

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

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

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

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

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

## **6 Recommendations**

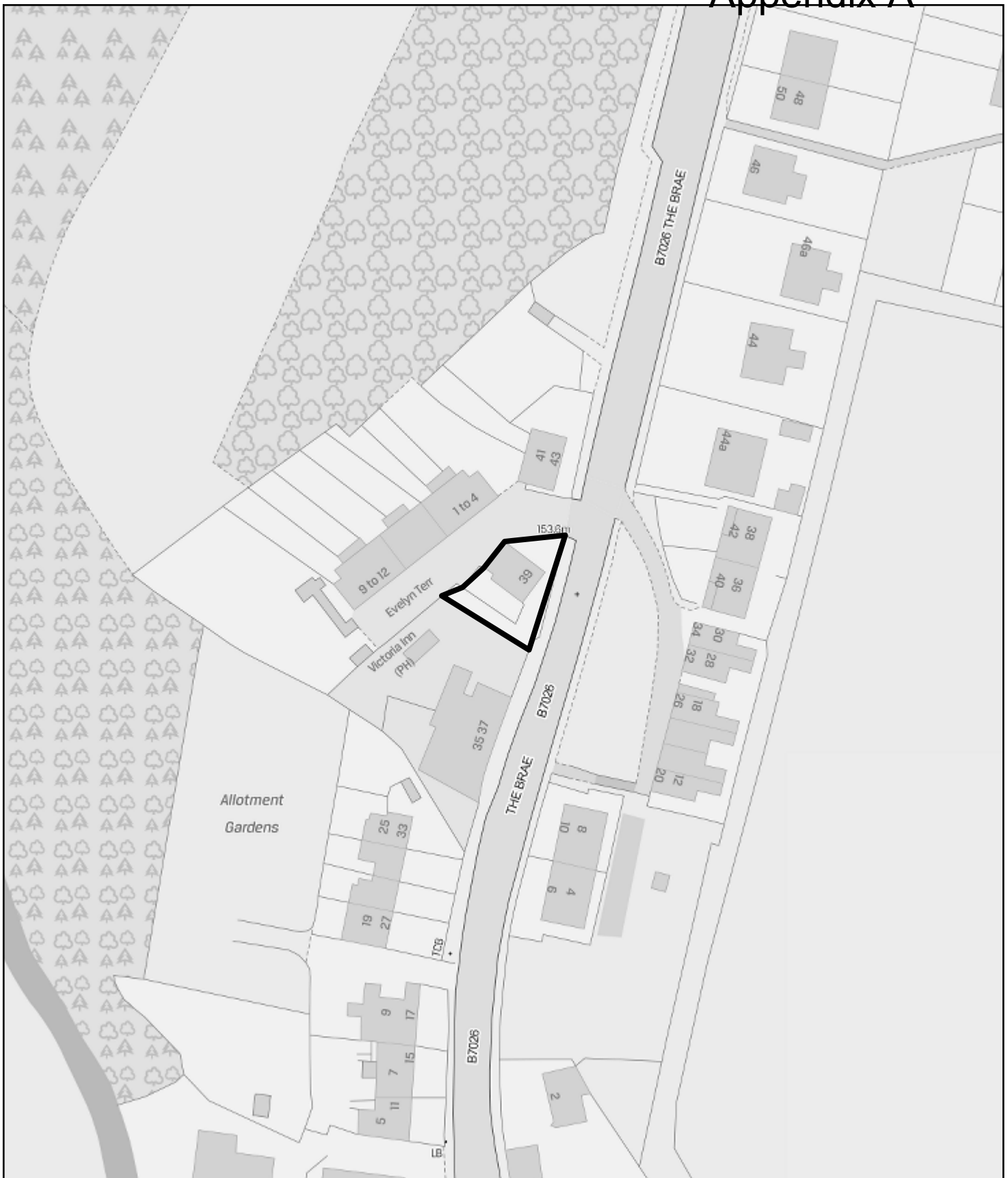
- 6.1 It is recommended that the LRB:
- a) determine the review; and
  - b) the planning advisor draft and issue the decision of the LRB through the Chair

**Date:** 26 February 2019

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

**Tel No:** 0131 271 3310

**Background Papers:** Planning Application File 18/00581/DPP



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

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

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File No. 18/00581/DPP

Scale: 1:1,000



Midlothian

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

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100131092-004

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

## Applicant or Agent Details

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

☐ Applicant ☒ Agent

## Agent Details

Please enter Agent details

Company/Organisation: F.E.M Building Design

Ref. Number:

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

First Name: \*

Douglas

Building Name:

Last Name: \*

Mack

Building Number:

8

Telephone Number: \*

Address 1  
(Street): \*

Plantain Grove

Extension Number:

Address 2:

Lenzie

Mobile Number:

Town/City: \*

Glasgow

Fax Number:

Country: \*

Scotland

Postcode: \*

G66 3NE

Email Address: \*

douglas@femdesign.co.uk

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

☒ Individual ☐ Organisation/Corporate entity

## Applicant Details

Please enter Applicant details

Title:	<input type="text" value="Mr"/>	You must enter a Building Name or Number, or both: *	
Other Title:	<input type="text"/>	Building Name:	<input type="text"/>
First Name: *	<input type="text" value="Peter"/>	Building Number:	<input type="text" value="39"/>
Last Name: *	<input type="text" value="McVey"/>	Address 1 (Street): *	<input type="text" value="The Brae"/>
Company/Organisation	<input type="text"/>	Address 2:	<input type="text"/>
Telephone Number: *	<input type="text"/>	Town/City: *	<input type="text" value="Auchendinny"/>
Extension Number:	<input type="text"/>	Country: *	<input type="text" value="Scotland"/>
Mobile Number:	<input type="text"/>	Postcode: *	<input type="text" value="EH26 0RB"/>
Fax Number:	<input type="text"/>		
Email Address: *	<input type="text"/>		

## Site Address Details

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

Please identify/describe the location of the site or sites

Northing

Easting

## Description of Proposal

Please provide a description of your proposal to which your review relates. The description should be the same as given in the application form, or as amended with the agreement of the planning authority: \*  
(Max 500 characters)

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

## Type of Application

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

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

What does your review relate to? \*

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

## Statement of reasons for seeking review

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

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

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

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

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

☐ Yes ☒ No

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

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

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

## Application Details

Please provide details of the application and decision.

What is the application reference number? \*

18/00581/DPP

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

10/08/2018

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

23/10/2018

## Review Procedure

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

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

☒ Yes ☐ No

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

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

☒ Yes ☐ No

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

☒ Yes ☐ No

## Checklist – Application for Notice of Review

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

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

☒ Yes ☐ No

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

☒ Yes ☐ No

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

☒ Yes ☐ No ☐ N/A

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

☒ Yes ☐ No

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

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

☒ Yes ☐ No

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

## **Declare – Notice of Review**

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

Declaration Name: Mr Douglas Mack

Declaration Date: 18/01/2019

## MIDLOTHIAN COUNCIL

### DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

**Planning Application Reference:** 18/00581/DPP

**Site Address:** Land at 39 The Brae, Auchendinny.

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

**Proposed Development:** Erection of dwellinghouse.

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

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

Application site

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

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

Land to south

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Recommendation:** Refuse planning permission.



## Refusal of Planning Permission

Town and Country Planning (Scotland) Act 1997

**Reg. No. 18/00581/DPP**

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

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

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

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

<u>Document/Drawing.</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Location Plan	1:1250	29.08.2018
Site Plan, Location Plan And Elevations	18/McVey/PP/001(-)1:1250 1:500 1:50	29.08.2018

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

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

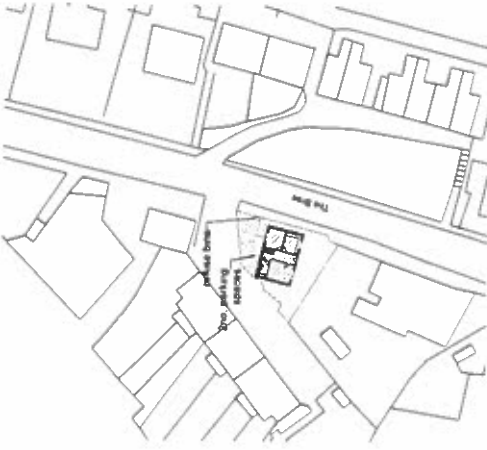
*and is therefore contrary to policy ENV15 of the adopted Midlothian Local Development Plan.*

Dated 23 / 10 / 2018

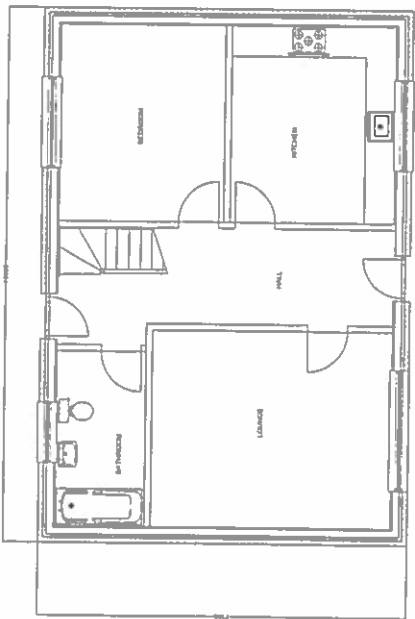
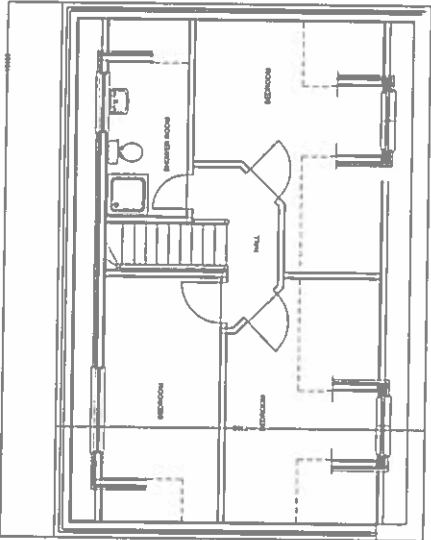
A handwritten signature in black ink, appearing to be 'DR' with a stylized flourish.

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

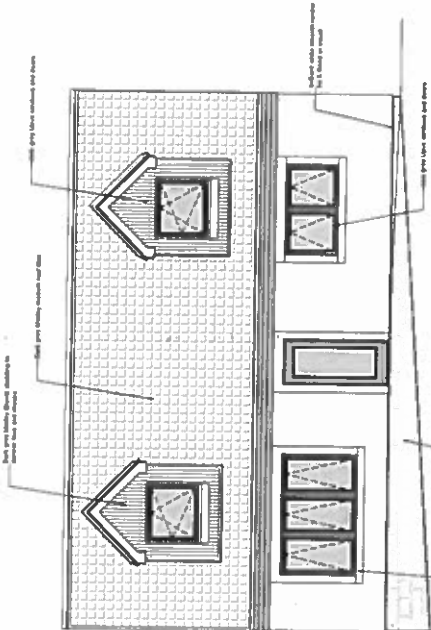
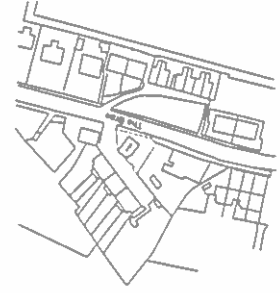
# Appendix E



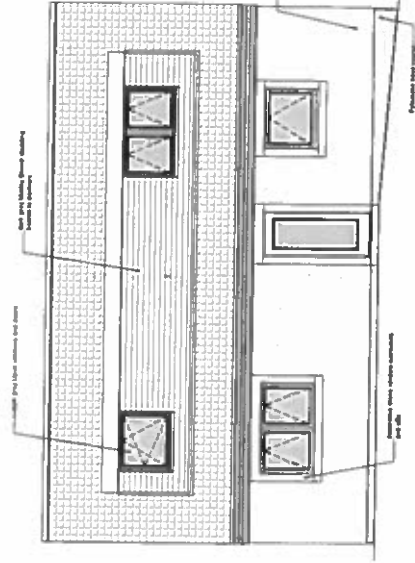
<p>1. The drawings are the property of F&amp;E Design and shall not be reproduced or used in any way without the written consent of F&amp;E Design.</p> <p>2. The drawings are for the purpose of planning and design only and shall not be used for construction or any other purpose without the written consent of F&amp;E Design.</p> <p>3. The drawings are to be used in conjunction with the planning and design report and shall not be used for any other purpose without the written consent of F&amp;E Design.</p> <p>4. The drawings are to be used in conjunction with the planning and design report and shall not be used for any other purpose without the written consent of F&amp;E Design.</p>	
<p><b>CLIENT</b></p> <p>Mr P. Harvey</p> <p>12 The Grove</p> <p>Ashton-under-Lyne</p>	<p><b>PROJECT</b></p> <p>Domestic design and erect</p> <p>Building/Plot</p>
<p><b>DATE</b></p> <p>14/04/2019</p>	
<p><b>DISPERSED NUMBER</b></p> <p>14/04/2019/0011</p>	
<p><b>F&amp;E BUILDING DESIGN</b></p>	



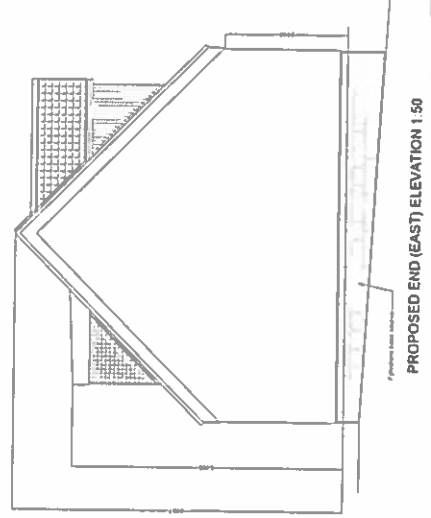
EXISTING SITE BLOCK PLAN (1:500)



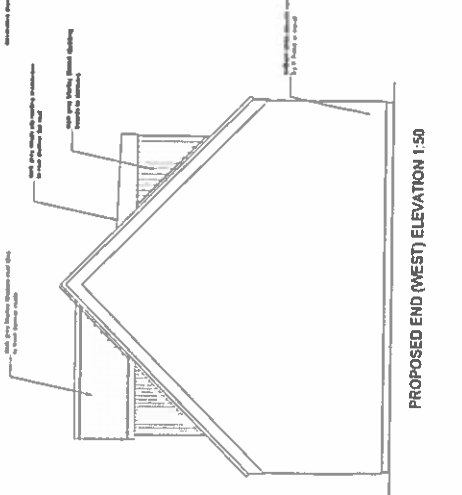
PROPOSED FRONT (NORTH) ELEVATION 1:50



PROPOSED REAR (SOUTH) ELEVATION 1:50



PROPOSED END (EAST) ELEVATION 1:50



PROPOSED END (WEST) ELEVATION 1:50