

## **Local Review Body**

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

Date: Tuesday, 29 August 2017

Time: 14:00

John Blair Director, Resources

#### Contact:

Clerk Name:Mike BroadwayClerk Telephone:0131 271 3160Clerk Email:mike.broadway@midlothian.gov.uk

#### **Further Information:**

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

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

#### 1 Welcome, Introductions and Apologies

#### 2 Order of Business

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

#### **3** Declarations of Interest

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

4	Minutes of Previous Meeting	
4.1	Minutes of Meeting held on 13 June 2017 - For Approval	5 - 12
5	Public Reports	
	Decision Notices: -	
5.1	31 Broomhill Avenue, Penicuik 17/00081/DPP	13 - 16
5.2	Rosehill, 27 Park Road, Dalkeith 17/00096/DPP	17 - 20
	Update on Review Requests Considered at previous meetings – Reports by Head of Communities and Economy:-	
5.3	Former Arniston Gas Works, Gorebridge 15/00335/PPP	21 - 36
5.4	Land West of the junction of Lugton Brae and Old Dalkeith Road, Dalkeith (Former Lugton Inn Site) 15/00703/DPP	37 - 44
	Notice of Review Requests Considered for the First Time – Reports by Head of Communities and Economy:-	
5.5	Unit 33/1 Mayfield Industrial Estate, Mayfield, Dalkeith 17/00390/DPP	45 - 58
5.6	35 Temple, Gorebridge 17/00275/DPP	59 - 76
5.7	The Abbey Granary, 12 Newbattle Road, Newtongrange 17/00371/DPP	77 - 92
5.8	Land South of Glenarch Lodge, Melville Rd, Dalkeith 17/00267/DPP	93 - 132

#### 6 Private Reports

No private reports to be discussed at this meeting.

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



## Local Review Body

Date	Time	Venue
13 June 2017	2.00pm	Council Chambers, Midlothian House, Buccleuch Street, Dalkeith

#### **Present:**

Councillor Alexander	Councillor Baird
Councillor Cassidy	Councillor Imrie
Councillor Lay-Douglas	Councillor Milligan
Councillor Montgomery	Councillor Muirhead
Councillor Munro	

#### 1 Election of Chair

In terms of Standing Order 7, the Committee was invited to elect a Chair.

Councillor Muirhead, seconded by Councillor Milligan, moved the appointment of Councillor Imrie as Chair.

Councillor Baird, seconded by Councillor Alexander, moved the appointment of Councillor Cassidy as Chair.

On a vote being taken 2 members voted for Councillor Cassidy and 5 for Councillor Imrie.

Councillor Imrie was duly elected as Chair of the Local Review Body.

#### 2 Apologies

Apologies received from Councillor Smaill.

#### 3 Order of Business

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

#### 4 **Declarations of interest**

No declarations of interest were received.

#### 5 Reports

Agenda No	Report Title	Presented by:
5.2	Overview of the Local Review Body – Membership and Terms of Reference	Mike Broadway

#### **Executive Summary of Report**

The Clerk gave an overview of the Local Review Body highlighting in particular the membership and terms of reference as detailed in the Scheme of Administration (relative to Standing Order 7).

#### Decision

To note the overview.

Agenda No	Report Title	Presented by:
5.3	Procedures for the Local Review Body	Peter Arnsdorf

There was submitted report, dated 1 June 2017, by the Head of Communities and Economy, advising the Local Review Body (LRB) of the procedural arrangements for the determination of Local Reviews by the LRB.

The Planning Manager outlined the various stages that comprised the procedural process, in particular highlighting that:-

- reviews would normally be considered by the LRB at the first available meeting;
- the LRB would determine Reviews by way of written submissions unless the applicant had specifically requested a Hearing in their Notice of Review Request;
- site visits would normally be scheduled for the Monday afternoon immediately preceding the meeting of the LRB at which the Review was to be determined. Only those Members attending the Site Visits would thereafter be able to participate in the determination of the Review .The site visit would be unaccompanied if the Review was to be determined by way of written submissions and accompanied if the Review was to be determined by way of a Hearing. The LRB would be notified in advance of any changes to this timetable; and
- the LRB could decide to defer the consideration of any Review if they require any further information

#### Summary of Discussion

The Committee, in welcoming the guidance offered on the procedural arrangements, acknowledged that they could be revisited in the future should the need arise.

#### Decision

After further discussion, the Committee agreed:

- (i) the LRB administrative and procedural arrangements set out in the report; and
- (ii) that a copy of the procedural arrangements be placed on the Council's website, and be made otherwise readily available on request.

#### Action

Head of Communities and Economy

Agenda No	Report Title	Presented by:
5.4	Decision Notice – Airybank House, Cousland Kilns Road, Cousland [15.00952.DPP]	Peter Arnsdorf

With reference to paragraph 5.3 of the Minutes of 7 March 2017, there was submitted a copy of the Local Review Body decision notice dismissing a review request from Andrew Bennie Planning Ltd, 3 Abbotts Court, Dullatur seeking on behalf of their client Onyx Homes, a review of the decision of the Planning Authority to refuse planning permission (15.00952.DPP, refused on 7 November 2016) for the Erection of Eight Dwellinghouses at Airybank House, Cousland Kilns Road, Cousland. and refusing planning permission.

#### Decision

To note the LRB decision notice.

Agenda No	Report Title	Presented by:
5.5	Decision Notice – Land at Hardengreen House, Dalhousie Road, Dalkeith [16.00758.DPP]	Peter Arnsdorf

#### Executive Summary of Report

With reference to paragraph 5.4 of the Minutes of 7 March 2017, there was submitted a copy of the Local Review Body decision notice upholding a review request from Halvorsen Architects, Mountskip House, Gorebridge seeking on behalf of their client Mrs C Walters, a review of the decision of the Planning Authority to refuse planning permission (16.00758.DPP, refused on 10 January 2017) for the Erection of nursery building and formation of car park at Land at Hardengreen House, Dalhousie Road, Dalkeith and granting planning permission subject to conditions.

#### Decision

To note the LRB decision notice.

Agenda No	Report Title	Presented by:
5.6	Decision Notice – 1D Dalhousie Avenue, Bonnyrigg [16.00762.DPP]	Peter Arnsdorf

With reference to paragraph 5.5 of the Minutes of 7 March 2017, there was submitted a copy of the Local Review Body decision notice upholding a review request from Mr and Mrs R McKenna, 1D Dalhousie Avenue, Bonnyrigg seeking a review of the decision of the Planning Authority to refuse planning permission (16.00762.DPP, refused on 6 January 2017) for the erection of porch at that address and granting planning permission.

#### Decision

To note the LRB decision notice.

Agenda No	Report Title	Presented by:
5.7	Decision Notice – Land South West of Wellington School, Penicuik [16.00460.PPP]	Peter Arnsdorf

#### **Executive Summary of Report**

With reference to paragraph 5.6 of the Minutes of 7 March 2017, there was submitted a copy of the Local Review Body decision notice dismissing a review request from Mr Colin Campbell, White Heather Cottage, Ruddenleys Farm, Lamancha, West Linton seeking a review of the decision of the Planning Authority to refuse planning permission in principle (16.00460.PPP, refused on 21 November 2016) for the Erection of a Dwellinghouse at Land 200m South West of Wellington School, Penicuik and refusing planning permission.

#### Decision

To note the LRB decision notice.

#### Eligibility to Participate in Debate

In considering the following items of business, only those LRB Members who had attended the site visits on Monday 12 June 2017 participated in the review process, namely Councillors Imrie (Chair), Alexander, Baird, Cassidy, Lay-Douglas, Milligan, Montgomery, Muirhead and Munro.

Agenda No	Report Title	Presented by:
5.8	Notice of Review Request Considered for the First Time – (a) 31 Broomhill Avenue, Penicuik [17/00081/DPP].	Peter Arnsdorf

There was submitted report, dated 1 June 2017, by the Head of Communities and Economy regarding an application from Mr & Mrs C Neil, 31 Broomhill Avenue, Penicuik seeking a review of the decision of the Planning Authority to refuse planning permission (17/00081/DPP, refused on 30 March 2017) for the Erection of an Extension at that address.

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

The Local Review Body had made an unaccompanied visit to the site on Monday 12 June 2017.

#### Summary of Discussion

Having heard from the Planning Adviser, the LRB then gave careful consideration to the merits of the case based on all the written information provided. In particular, consideration was given to the likely impact of the proposed extension on the host building and the surrounding area, and on the character and appearance of the local streetscape. The LRB also acknowledged the current policy position and discussed the lack of any representations opposing the proposed scheme.

#### Decision

To agreed to uphold the review request, and grant planning permission for the following reason:-

The proposed extension in terms of its size, form and design will not detract from the host dwellinghouse or the streetscape and therefore complies with policy RP20 of the Midlothian Local Plan (2008).

subject to the following conditions:-

1. The colour and texture of the render on the extension shall match the colour and texture of the render on the existing building.

**Reason:** To ensure that the extension matches the external appearance of the existing building and thereby maintains the visual quality of the area.

2. The roof light serving the en-suite at first floor level on the extension shall be

glazed with obscure glass which notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (or any Order revoking and re-enacting that Order) shall not be replaced with clear glass.

3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (or any Order revoking and re-enacting that Order) the windows on the south east elevation of the extension shall not be altered in size and apart from those shown on the approved drawings no rooflights or windows shall be installed on this elevation unless planning permission is granted by the Planning Authority.

**Reason for conditions 2 and 3:** In order to minimise overlooking and protect the privacy of the occupants of the adjoining property.

#### Action

Head of Communities and Economy

Agenda No	Report Title	Presented by:
5.9	(b) Rosehill, 27 Park Road, Dalkeith [17/00096/DPP]	Peter Arnsdorf

#### **Executive Summary of Report**

There was submitted report, dated 1 June 2017, by the Head of Communities and Economy regarding an application from RT Hutton, Planning Consultant, The Malt Kiln, 2 Factors Brae, Limekilns, Fife seeking on behalf of their client Society of the Sacred Heart, a review of the decision of the Planning Authority to refuse planning permission (17/00096/DPP, refused on 13 April 2017) for the Erection of an Extension to Building and Alteration to Wall at Rosehill, 27 Park Road, Dalkeith

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

The Local Review Body had made an unaccompanied visit to the site on Monday 12 June 2017.

#### Summary of Discussion

Having heard from the Planning Adviser, the LRB then gave careful consideration to the merits of the case based on all the written information provided. In particular, consideration was given to the likely impact of the proposed development on the existing building. Whilst concerns were voiced regarding the size, form and design, and number of the extensions to the host building, it was felt that on balance the individual circumstances of the application site and the size, form and design of the proposed extension would be acceptable in support of the expansion of the care home business.

#### Decision

To agreed to uphold the review request, and grant planning permission for the following reason:-

The proposed extension in terms of its size, form and design will not detract from the host building or have a detrimental impact on the amenity of residents of the care home and therefore complies with policy RP20 of the Midlothian Local Plan (2008).

#### Action

Head of Communities and Economy

The meeting terminated at 3.06 pm.

#### Local Review Body: Review of Planning Application Reg. No. 17/00081/DPP

Mr and Mrs C Neil 31 Broomhill Avenue Penicuik EH26 9EG

Midlothian Council, as Planning Authority, having considered the review of the application by Mr And Mrs Craig Neil, 31 Broomhill Avenue, Penicuik, EH26 9EG, which was registered on 26 April 2017 in pursuance of their powers under the above Act, hereby **grant** permission to carry out the following proposed development:

**Extension to dwellinghouse at 31 Broomhill Avenue, Penicuik, EH26 9EG,** in accordance with the application and the following plans:

Drawing Description.	Drawing No/Scale	Dated
Site plan, location plan and	1 1:1250 1:500 1:100	10.02.2017
elevations		
Proposed floor plan	2 1:50	10.02.2017
Proposed floor plan	3 1:50	10.02.2017
Proposed elevations	4 1:100	10.02.2017

Subject to the following conditions:

1. The colour and texture of the render on the extension shall match the colour and texture of the render on the existing building.

**Reason:** To ensure that the extension matches the external appearance of the existing building and thereby maintains the visual quality of the area.

- The roof light serving the en-suite at first floor level on the extension shall be glazed with obscure glass which notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (or any Order revoking and re-enacting that Order) shall not be replaced with clear glass.
- 3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (or any Order revoking and reenacting that Order) the windows on the south east elevation of the extension

shall not be altered in size and apart from those shown on the approved drawings no rooflights or windows shall be installed on this elevation unless planning permission is granted by the Planning Authority.

**Reason for conditions 2 and 3:** In order to minimise overlooking and protect the privacy of the occupants of the adjoining property.

The Local Review Body (LRB) considered the review of the planning application at its meeting of 13 June 2017. The LRB carried out a site visit on the 12 June 2017.

In reaching its decision the LRB gave consideration to the following development plan policies and material considerations:

#### **Development Plan Policies:**

- 1. RP20 Midlothian Local Plan Development within the built-up area
- 2. DP6 Midlothian Local Plan House Extensions

#### Material considerations:

- 1. The individual circumstances of the proposal
- 2. The size, form and design of nearby buildings

In determining the review the LRB concluded:

The proposed extension in terms of its size, form and design will not detract from the host dwellinghouse or the streetscape and therefore complies with policy RP20 of the Midlothian Local Plan (2008).

Dated: 13/06/2017

Peter Arnsdorf Planning Manager (Advisor to the Local Review Body) Communities and Economy Midlothian Council

On behalf of:

Councillor R Imrie Chair of the Local Review Body Midlothian Council

## SCHEDULE 2

## NOTICE TO ACCOMPANY REFUSAL ETC.

#### TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

*Notification to be sent to applicant on refusal of planning permission or on the grant of permission subject to conditions, or* 

## Notification to be sent to applicant on determination by the planning authority of an application following a review conducted under section 43A(8)

- 1. 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 question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.
- 2. 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 reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by 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.

Advisory note:

If you have any questions or enquiries regarding the Local Review Body procedures or this decision notice please do not hesitate to contact Peter Arnsdorf, Planning Manager tel: 0131 2713310 or via peter.arnsdorf@midlothian.gov.uk

#### Local Review Body: Review of Planning Application Reg. No. 17/00096/DPP

RT Hutton Planning Consultant The Malt Kiln 2 Factors Brae Limekilns Fife KY11 3HG

Midlothian Council, as Planning Authority, having considered the review of the application by Society of The Sacred Heart, Rosehill, 27 Park Road, Dalkeith, EH22 3DH, which was registered on 28 April 2017 in pursuance of their powers under the above Act, hereby **grant** permission to carry out the following proposed development:

Extension to building and alteration to wall at Rosehill, 27 Park Road, Dalkeith, EH22 3DH, in accordance with the application and the following plans:

Drawing Description.	Drawing No/Scale	<u>Dated</u>
Elevations And Floor Plan	2738/01 A EXISTING	17.02.2017
Elevations, Floor Plan And Cross	2738/04 PROPOSED	17.02.2017
Section		
Location Plan	2738/05 1:1250	17.02.2017
Site Plan	2738/06	17.02.2017

The Local Review Body (LRB) considered the review of the planning application at its meeting of 13 June 2017. The LRB carried out a site visit on the 12 June 2017.

In reaching its decision the LRB gave consideration to the following development plan policies and material considerations:

#### **Development Plan Policies:**

- 1. RP20 Midlothian Local Plan Development within the built-up area
- 2. RP22 Midlothian Local Plan Conservation Areas
- 3. RP24 Midlothian Local Plan Listed Buildings

Material considerations:

- 1. The individual circumstances of the proposal
- 2. The size, form and design of previous extensions to the building

In determining the review the LRB concluded:

The proposed extension in terms of its size, form and design will not detract from the host building or have a detrimental impact on the amenity of residents of the care home and therefore complies with policy RP20 of the Midlothian Local Plan (2008).

Dated: 13/06/2017

Peter Arnsdorf Planning Manager (Advisor to the Local Review Body) Communities and Economy Midlothian Council

On behalf of:

Councillor R Imrie Chair of the Local Review Body Midlothian Council

## SCHEDULE 2

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#### TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

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## Notification to be sent to applicant on determination by the planning authority of an application following a review conducted under section 43A(8)

- 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 question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.
- 2. 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 reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by 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.

Advisory note:

If you have any questions or enquiries regarding the Local Review Body procedures or this decision notice please do not hesitate to contact Peter Arnsdorf, Planning Manager tel: 0131 2713310 or via peter.arnsdorf@midlothian.gov.uk



### Notice of Review: Former Arniston Gas Works, Gorebridge Update Report

Report by Ian Johnson, Head of Communities and Economy

#### 1 Purpose of Report

1.1 The purpose of this report is to provide an update for the Local Review Body (LRB) regarding an application for planning permission in principle for the erection of 10 dwellinghouses, formation of access and associated works at the Former Arniston Gas Works, Gorebridge.

#### 2 Background

- 2.1 Planning application 15/00335/PPP for planning permission in principle for the erection of 10 dwellinghouses, formation of access and associated works at the Former Arniston Gas Works, Gorebridge was refused planning permission on 30 June 2015 for the following reasons:
  - 1. The proposed development is sited outside any identified settlement boundary and without a proven agricultural, forestry, countryside recreation, tourism or waste disposal need the development is contrary to policies RP1 and DP1 of the adopted Midlothian Local Plan which seeks to protect the countryside.
  - 2. The proposed development would lead to the direct and indirect loss of trees and woodland within a conservation area, to the detriment of the character of the locality, and as such the development is contrary to adopted Midlothian Local Plan policies RP5 (Woodland, trees and hedges) and RP20 (Conservation areas).
  - 3. The indicative layout of the proposal does not comply with the terms of policy DP2 Development Guidelines, which seeks a high standard of development with access to open space and play facilities. The proposed indicative layout does not adequately demonstrate that ten dwellings can be accommodated within the application site and therefore constitutes an over-development.
  - 4. As a result of the loss of trees and the density of the proposed development the proposal will have a significant adverse impact on the character and appearance of the conservation area and is, therefore, contrary to adopted Midlothian Local Plan policy RP22 Conservation Areas which seeks to protect the character and appearance of conservation areas.
  - 5. The access to the proposed development is potentially substandard. The applicant has not demonstrated that an Page 21 of 132

acceptable access could be created to serve this development without adversely impacting on the landscape character of the area. The use of this access would potentially cause a hazard to the safety and free flow of traffic.

- 6. The proposal takes little cognisance of the Borders railway line, in terms of providing for its safe operation and for protecting the amenity of the dwellings proposed to be in close proximity to it.
- 7. Allowing the proposed development will jeopardise the implementation of the restocking notice, served by the Forestry Commission. The required planting of trees supports the aims and objectives of policies RP5, RP7 and RP22 of the Midlothian Local Plan, which seek to protect woodland to the benefit of the countryside and to maintain the high quality of the environment.
- 8. It has not been demonstrated, to the satisfaction of the Planning Authority, that the proposed development will not have a significant adverse impact on protected species. Therefore the proposed development is contrary to policy RP13 of the adopted Midlothian Local Plan.
- 2.2 A Notice of Review was submitted by the applicants and at its meeting of 20 October 2015 the LRB resolved to uphold the review and grant planning permission subject to conditions and the prior signing of a legal agreement to secure developer contributions towards, education provision, children's play provision, the Borders Rail Line, town centre improvements and community facilities. A copy of the original report (excluding the attachments which can be viewed online via <u>www.midlothian.gov.uk</u>) to the LRB is appended to this report as Appendix A.
- 2.3 Despite the best endeavours of Council Officers the legal agreement was not concluded and as a consequence an update report was reported to the LRB at its meeting of 24 January 2017. A copy of the update report to the LRB is appended to this report as Appendix B. The LRB determined to write to the applicant directly outlining its disappointment with progress and expressing a desire to conclude the matter timeously. A copy of the letter sent by the Chair of the LRB, dated 30 January 2017, is appended to this report as Appendix C.
- 2.4 In response the applicants expressed a desire to conclude the legal agreement and instructed a solicitor to progress the matter. However, in preparing the legal agreement it became apparent that there were outstanding issues relating to land ownership this stalled progress on concluding the legal agreement. The Planning Manager verbally updated the LRB at its meeting of 7 March 2017 and made a commitment to update the LRB prior to planning permission being issued.

#### 3 Current Position

3.1 Since the LRB meeting in March 2017 the applicant's solicitor and the Council's solicitor have resolved the uncertainty regarding land ownership and are in a position to conclude the legal agreement.

3.2 The legal agreement has not been concluded or the planning permission issued because the Planning Manager made a commitment to update the LRB prior to planning permission being issued.

#### 4 Recommendations

4.1 It is recommended that the LRB note the update and instruct officers to conclude the legal agreement and issue the planning permission in accordance with the decision taken by the LRB at its meeting of 20 October 2015.

Date: Report Contact:	15 August 2017 Peter Arnsdorf, Planning Manager (LRB Advisor) peter.arnsdorf@midlothian.gov.uk
Tel No:	0131 271 3310

**Background Papers:** Planning application 15/00335/PPP available for inspection online.





Local Review Body APPENDIX A Tuesday 20 October 2015 Item No

# Notice of Review: Former Arniston Gas Works, Gorebridge Determination Report

Report by Ian Johnson, Head of 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 planning permission in principle for the erection of 10 dwellinghouses, formation of access and associated works at the Former Arniston Gas Works, Gorebridge.

#### 2 Background

- 2.1 Planning application 15/00335/PPP for planning permission in principle for the erection of 10 dwellinghouses, formation of access and associated works at the Former Arniston Gas Works, Gorebridge was refused planning permission on 30 June 2015; 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 advisor notes, issued on 30 June 2015 (Appendix D); and
  - A copy of the relevant plans (Appendix E).
- 3.2 The full planning application case file and the development plan policies referred to in the case officer's report can be viewed online via www.midlothian.gov.uk

#### 4 Procedures

4.1 In accordance with procedures agreed by the LRB, the LRB by agreement of the Chair:

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- Have scheduled an accompanied site visit for Monday 19 October 2015; and
- Have determined to progress the review by way of a hearing.
- 4.2 The case officer's report identified that nine consultation responses and no representations have been received. As part of the review process the consultees were notified of the review. Three additional comments have been received. All the comments can be viewed online on the electronic planning application case file via www.midlothian.gov.uk.
- 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 19 June 2012 and 26 November 2013, 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. Development shall not commence until an application for approval of matters specified in conditions for a scheme of hard and soft landscaping has been submitted to and approved in writing by the Planning Authority. Details of the scheme shall include:
    - existing and finished ground levels and floor levels for all buildings, open space and roads in relation to a fixed datum;

- ii. existing trees, landscaping features and vegetation to be retained; removed, protected during development and in the case of damage, restored;
- iii. proposed new planting in communal areas and open space, including trees, shrubs, hedging, wildflowers and grassed areas;
- iv. location and design of any proposed walls, fences and gates;
- v. schedule of plants to comprise species, plant sizes and proposed numbers/density;
- vi. a programme for completion and subsequent maintenance of all soft and hard landscaping. The landscaping in the open spaces shall be completed prior to the houses/buildings on adjoining plots are occupied. Any tree felling or vegetation removal proposed as part of the landscaping scheme shall take place out with the bird breeding season (March-August); and,
- vii. drainage details and details of sustainable urban drainage systems to manage water runoff.

All hard and soft landscaping shall be carried out in accordance with the scheme approved in writing by the Planning Authority as per the programme for completion and subsequent maintenance (vi). Thereafter any trees or shrubs removed, dying, becoming seriously diseased or damaged within five years of planting shall be replaced in the following planting season by trees/shrubs of a similar species to those originally required.

**Reason:** To ensure the quality of the development is enhanced by landscaping to reflect its setting in accordance with policies RP7, RP22, RP25 and DP2 of the adopted Midlothian Local Plan and national planning guidance and advice. To ensure that there is no adverse impact on the operation of the adjacent railway.

2. Development shall not commence until an application for approval of matters specified in conditions for the siting, design and external appearance of all residential units and other structures has been submitted to and approved in writing by the Planning Authority. The application shall include samples of materials to be used on external surfaces of the buildings; hard ground cover surfaces; means of enclosure and ancillary structures. Development shall thereafter be carried out using the approved materials or such alternatives as may be agreed in writing with the Planning Authority.

**Reason:** To ensure the quality of the development is enhanced by the use of quality materials to reflect its setting in accordance with policies RP7, RP22, RP25 and DP2 of the Midlothian Local Plan and national planning guidance and advice.

 Development shall not commence until an application for approval of matters specified in conditions for details of a scheme for 'Percent for Art', including a timetable for implementation, have been submitted to and approved in writing by the Planning Authority. The scheme of 'Percent for Art' shall be implemented as per the approved details.

**Reason:** To ensure that the quality of the development is enhanced by the use of art to reflect its setting in accordance with policies IMP1 and DP2 of the adopted Midlothian Local Plan and national planning guidance and advice.

- 4. Development shall not commence until an application for approval of matters specified in conditions for the site access, roads, footpaths, cycle ways and transportation movements has been submitted to and approved in writing by the Planning Authority. Details of the scheme shall include:
  - i. existing and finished ground levels for all roads and cycle ways in relation to a fixed datum;
  - ii. proposed vehicular, cycle and pedestrian access;
  - iii. proposed roads (including turning facilities), footpaths and cycle ways;
  - iv. proposed visibility splays, traffic calming measures, lighting (including footpath lighting) and signage;
  - v. proposed construction traffic access and haulage routes;
  - vi. a green transport plan designed to minimise the use of private transport and to promote walking, cycling, safe routes to school and the use of public transport;
  - vil. proposed car parking arrangements;
  - viii. an AutoTrack, vehicle swept path analysis, to demonstrate that the site is suitable for HGVs (refuse and recycling vehicles) to enter and exit in a forward gear; and,
  - ix. a programme for the completion of the construction access, roads, footpaths and cycle paths.

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 the future users of the buildings, existing local residents and those visiting the development site during the construction process have a safe and convenient access to and from the site.

- 5. Development shall not commence until an application for approval of matters specified in conditions for a scheme to deal with any contamination of the site has been submitted to and approved in writing by the Planning Authority. The scheme shall contain details of the proposals to deal with any contamination and include:
  - i. a site survey (including bore hole testing where necessary) to establish that the level of contamination within the site is acceptable in relation to the proposed development, or that remedial and/or protective measures could be undertaken to bring contamination to an acceptable level in relation to the proposed development; and

ii. a detailed schedule of any required remedial and/or protective measures, including their programming.

Prior to any part of the site being occupied for residential purposes, the measures to decontaminate/remediate the ground conditions of the site shall be fully implemented as approved by the Planning Authority.

**Reason:** To ensure that any contamination and adverse ground conditions on the site are adequately identified and that appropriate decontamination measures and ground remediation works are undertaken to mitigate the identified risk to site users and construction workers, built development on the site, landscaped areas, and the wider environment.

6. Details of building levels on the site, to be submitted in terms of condition 1i above, shall show finished floor levels for buildings being raised above ground level.

**Reason:** In order to prevent surface water runoff from surrounding roads from adversely impacting on the properties.

7. Details of the means of drainage, to be submitted in terms of condition 1vii above, shall ensure that any SUDs system shall be located outwith 10metres of the adjacent railway infrastructure.

**Reason:** In order to ensure that water from the proposed development does not drain on to the railway; in the interests of railway safety.

8. Details of the siting of the buildings, to be submitted in terms of condition 2 above, shall ensure that no buildings are to be erected within 2m of the boundary with the railway.

Reason: In the interests of railway safety.

9. Details of the design of dwellinghouses, to be submitted in terms of condition 2 above, shall include measures to mitigate against noise and vibrations generated by the adjacent railway.

**Reason:** In order to protect the amenity of future residents of the dwellings from noise and disturbance generated by the railway.

10. Details of the materials to be used on the external surfaces of the buildings, to be submitted in terms of condition 2 above, shall comprise traditional materials, including natural slate, wet or smooth render, natural stone and timber.

**Reason:** In order to ensure a high quality development which respects, and reflects, the character and appearance of buildings within the conservation area and designed landscape.

11. Details of the means of enclosure, to be submitted in terms of condition 2 above, shall include a 1.8m high trespass proof fence along the boundary with the adjacent railway.

#### Page 29 of 132

**Reason:** In order to prevent unauthorised and unsafe access to the railway; in the interest of the safe operation of the railway.

12. Details of the vehicular access, to be submitted in terms of condition 4ii above, shall ensure that the vehicular access shall measure 5.5m wide.

**Reason**: To ensure the safe passage of pedestrians and vehicles in the interests of highway safety.

13. Details of the proposed parking arrangements, to be submitted in terms of condition 4vii above, shall include space for five visitor parking spaces within the development site.

**Reason:** In order to ensure that sufficient on-site parking is provided so that vehicles do not park in unsafe locations which would be potentially detrimental to highway safety.

5.2 If the LRB is minded to uphold the review and grant planning permission for the proposed development it shall be subject to a legal agreement to secure developer contributions towards education provision, the Borders Railway, town centre improvements, children's play provision and community facilities. The legal agreement shall be concluded prior to the issuing of the LRB decision.

#### 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:13 October 2015Report Contact:Peter Arnsdorf, Planning Manager<br/>peter.arnsdorf@midlothian.gov.ukTel No:0131 271 3310

Background Papers: Planning application 15/00335/PPP available for inspection online.



Local Review Body ADDENDIX B Tuesday 24 Januar 2017 ENDIX B Item No

### Notice of Review: Former Arniston Gas Works, Gorebridge Update Determination Report

Report by Ian Johnson, Head of Communities and Economy

#### 1 Purpose of Report

1.1 The purpose of this report is to provide an update for the Local Review Body (LRB) regarding an application for planning permission in principle for the erection of 10 dwellinghouses, formation of access and associated works at the Former Arniston Gas Works, Gorebridge. A copy of the original report to the LRB is appended to this report.

#### 2 Background

- 2.1 Planning application 15/00335/PPP for planning permission in principle for the erection of 10 dwellinghouses, formation of access and associated works at the Former Arniston Gas Works, Gorebridge was refused planning permission on 30 June 2015 for the following reasons:
  - 1. The proposed development is sited outside any identified settlement boundary and without a proven agricultural, forestry, countryside recreation, tourism or waste disposal need the development is contrary to policies RP1 and DP1 of the adopted Midlothian Local Plan which seeks to protect the countryside.
  - 2. The proposed development would lead to the direct and indirect loss of trees and woodland within a conservation area, to the detriment of the character of the locality, and as such the development is contrary to adopted Midlothian Local Plan policies RP5 (Woodland, trees and hedges) and RP20 (Conservation areas).
  - 3. The indicative layout of the proposal does not comply with the terms of policy DP2 Development Guidelines, which seeks a high standard of development with access to open space and play facilities. The proposed indicative layout does not adequately demonstrate that ten dwellings can be accommodated within the application site and therefore constitutes an over-development.
  - 4. As a result of the loss of trees and the density of the proposed development the proposal will have a significant adverse impact on the character and appearance of the conservation area and is, therefore, contrary to adopted Midlothian Local Plan policy RP22 Conservation Areas which seeks to protect the character and appearance of conservation areas.

- The access to the proposed development is potentially substandard. The applicant has not demonstrated that an acceptable access could be created to serve this development without adversely impacting on the landscape character of the area. The use of this access would potentially cause a hazard to the safety and free flow of traffic.
- 6. The proposal takes little cognisance of the Borders railway line, in terms of providing for its safe operation and for protecting the amenity of the dwellings proposed to be in close proximity to it.
- 7. Allowing the proposed development will jeopardise the implementation of the restocking notice, served by the Forestry Commission. The required planting of trees supports the aims and objectives of policies RP5, RP7 and RP22 of the Midlothian Local Plan, which seek to protect woodland to the benefit of the countryside and to maintain the high quality of the environment.
- 8. It has not been demonstrated, to the satisfaction of the Planning Authority, that the proposed development will not have a significant adverse impact on protected species. Therefore the proposed development is contrary to policy RP13 of the adopted Midlothian Local Plan.
- 2.2 A Notice of Review was submitted by the applicants and at its meeting of 20 October 2015 the LRB was minded to uphold the review and grant planning permission subject to conditions and the prior signing of a legal agreement to secure developer contributions towards, education provision, children's play provision, the Borders Rail Line, town centre improvements and community facilities.

#### 3 Current Position

5.

- 3.1 To date the applicants have not concluded the legal agreement despite the planning authority's continued and consistent best efforts since October 2015 to reasonably engage with them. The view of the planning authority throughout that extended period is that there is no significant impediment to the completion of the legal agreement. However, there is no clear indication that the applicants will conclude the agreement within a reasonable timescale. All planning authorities in Scotland are consistently advised by Scottish Government to determine planning applications without undue delay, and to eliminate what are referred to as 'legacy' cases of applications remaining undetermined due to lack of progress on the conclusion of legal agreements. Having regard to these matters this application is being reported further to this meeting of the LRB.
- 3.2 The applicants and other relevant parties have been advised that this application is being referred back to the LRB.

#### 4 Recommendations

4.1 At its meeting of 20 October 2015 the LRB was minded to uphold the review and grant planning permission subject to conditions and the prior signing of a legal agreement to secure developer contributions towards,

education provision, children's play provision, the Borders Rail Line, town centre improvements and community facilities. However, as the application remains undetermined due to the required legal agreement not being concluded it is appropriate for the LRB to determine to follow one of the following courses of action, or an alternative course of action as may be stated by the LRB:

#### **Options:**

- a) uphold the review and grant planning permission subject to conditions, but not subject to the legal agreement to secure developer contributions; or
- b) provide a further 3 months for the applicants to conclude the legal agreement, failing which, and without further referral to the LRB the review would be dismissed and planning permission refused for the reasons outlined in the planning officers decision; or
- c) defer the review and maintain the LRB's original decision only to grant planning permission subject to securing developer contributions and that the review will be held in abeyance until such time a legal agreement has been concluded.

Date:	10 January 2017
Report Contact:	Peter Arnsdorf, Planning Manager (LRB Advisor)
	peter.arnsdorf@midlothian.gov.uk
Tel No:	0131 271 3310

**Background Papers:** Planning application 15/00335/PPP available for inspection online.



Midlothlan Council Midlothlan House 40-46 Buccleuch Street Dalkeith EH22 1DN

30 January 2017

Mr Matthew James McHale Dalhousie Lodge 43 Rosewell Road Bonnyrigg EH19 3PP



Dear Mr McHale

#### Notice of Review: Former Arniston Gas Works, Gorebridge

I am writing to you as the Chair of the Local Review Body (LRB).

I refer to your notice of review regarding an application for planning permission in principle for the erection of 10 dwellinghouses, formation of access and associated works at the Former Arniston Gas Works, Gorebridge.

Your Notice of Review was considered by the LRB at its meeting of 20 October 2015 at which we were minded to uphold the review and grant planning permission subject to conditions and the prior signing of a legal agreement to secure developer contributions towards, education provision, children's play provision, the Borders Rail Line, town centre improvements and community facilities.

At our meeting of 24 January 2017 the LRB considered an update report which advised that you have not concluded the legal agreement despite the best efforts of Council Officers. The LRB were disappointed that you had not yet progressed this matter to conclusion and as a consequence it was agreed that I shall write to you requesting an explanation as to why there has been a delay in progressing this matter and to request clarification with regard your intentions to conclude the outstanding agreement.

I note that since the LRB meeting of 24 January 2017 your Solicitor has been in contact with the Council's Planning Manager with the intension of concluding the outstanding legal agreement – please ensure this matter is now swiftly concluded.

A further update report will be considered by the LRB at its meeting of 7 March 2017 at which a decision could be made to either refuse your review, or set a finite date to conclude the legal agreement. As such it would be prudent to concluded the outstanding legal agreement prior to the stated meeting of the LRB.

Your Ref: Our Ref: 15/00335/PPF Tel 0131 271 3310 Fax 0131 271 3537 Legal Post LP4 - Dalkeith www.midlothian.gov.uk Could I please ask you to update Peter Arnsdorf, Planning Manager (Advisor to the LRB), <u>peter.amsdorf@midlothian.gov.uk</u> with regard your intensions so that he can update the LRB at its meeting of 7 March 2017.

Yours sincerely

Zm

Councillor Jim Bryant Chair of the Local Review Body Jim Bryant@midlothian.gov.uk

Сс

Craig M Forster Allan McDougall Solicitors & Estate Agents 55 Mayfield Road Edinburgh EH9 3AA


# Notice of Review: Land west of the junction of Lugton Brae and Old Dalkeith Road (the former Lugton Inn site), Dalkeith Update Report

Report by Ian Johnson, Head of Communities and Economy

#### 1 Purpose of Report

1.1 The purpose of this report is to provide an update for the Local Review Body (LRB) regarding an application for the erection of 5 dwellinghouses on land west of the junction of Lugton Brae and Old Dalkeith Road (the former Lugton Inn site), Dalkeith.

#### 2 Background

- 2.1 Planning application 15/00703/DPP for the erection of 5 dwellinghouses on land west of the junction of Lugton Brae and Old Dalkeith Road (the former Lugton Inn site), Dalkeith was refused planning permission on 21 October 2015 for the following reasons:
  - 1. The proposed parking provision is significantly below the minimum standard specified in Midlothian Council's Parking Standards 2014. The proposed parking provision would have a detrimental impact on road safety and on the amenity of both local residents and potential occupants. The proposal is therefore contrary to policy RP20 of the Midlothian Local Plan.
  - 2. The proposed outdoor space provision is significantly below the minimum standard specified in policy DP2 of the Midlothian Local Plan. The amenity of potential occupants would be below expected standards. The proposal is therefore contrary to policies RP20 and DP2 of the Midlothian Local Plan.
  - 3. The width and height of the building would result in a bulky addition to the streetscape that would be overbearing to neighbours at Bridgend. The proposal is therefore contrary to policy RP20 of the Midlothian Local Plan.
  - 4. The width and height of the building would result in a bulky addition to the streetscape that would have a significant detrimental impact on the character and appearance of the Dalkeith House and Park Conservation Area. The proposal is therefore contrary to policy RP22 of the Midlothian Local Plan.
- 2.2 A Notice of Review was submitted by the applicants and at its meeting of 8 March 2016 the LRB resolved to uphold the review and grant planning permission subject to conditions and the prior signing of a legal agreement to secure developer contributions towards, education provision, children's play provision, the Borders Rail Line and town Page 37 of 132

centre improvements. A copy of the original report (excluding the attachments which can be viewed online via <u>www.midlothian.gov.uk</u>) to the LRB is appended to this report.

#### 3 Current Position

- 3.1 To date the applicants have not concluded the legal agreement despite the planning authority's continued and consistent best efforts since March 2016 to reasonably engage with them. The view of the planning authority throughout that extended period is that there is no significant impediment to the completion of the legal agreement. However, there is no clear indication that the applicants will conclude the agreement within a reasonable timescale. All planning authorities in Scotland are consistently advised by Scottish Government to determine planning applications without undue delay, and to eliminate what are referred to as 'legacy' cases of applications remaining undetermined due to lack of progress on the conclusion of legal agreements. Having regard to these matters this application is being reported further to this meeting of the LRB.
- 3.2 The applicants have been advised that this application is being referred back to the LRB.
- 3.3 At its meeting of 8 March 2016 the LRB resolved to uphold the review and grant planning permission subject to conditions and the prior signing of a legal agreement to secure developer contributions towards, education provision, children's play provision, the Borders Rail Line and town centre improvements. However, as the application remains undetermined due to the required legal agreement not being concluded it is appropriate for the LRB to consider the progress of the review.

# 4 Recommendations

- 4.1 It is recommended that:
  - a) the LRB write to the applicant expressing its disappointment with progress and expressing a desire to conclude the legal agreement timeously; and
  - b) provide a further 2 months for the applicants to conclude the legal agreement, failing which, the LRB will revisit the site and review the application afresh.

Date: Report Contact:	15 August 2017 Peter Arnsdorf, Planning Manager (LRB Advisor) peter.arnsdorf@midlothian.gov.uk
Tel No:	0131 271 3310

**Background Papers:** Planning application 15/00703/PPP available for inspection online.





# Notice of Review: Land west of the junction of Lugton Brae and Old Dalkeith Road (the former Lugton Inn site), Dalkeith Determination Report

Report by Ian Johnson, Head of 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 5 dwellinghouses on land west of the junction of Lugton Brae and Old Dalkeith Road (the former Lugton Inn site), Dalkeith.

#### 2 Background

- 2.1 Planning application 15/00703/DPP for the erection of 5 dwellinghouses on land west of the junction of Lugton Brae and Old Dalkeith Road (the former Lugton Inn site), Dalkeith was refused planning permission on 21 October 2015; 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 advisor notes, issued on 21 October 2015 (Appendix D); and
  - A copy of the relevant plans (Appendix E).
- 3.2 The full planning application case file and the development plan policies referred to in the case officer's report can be viewed online via www.midlothian.gov.uk

# 4 Procedures

4.1 In accordance with procedures agreed by the LRB, the LRB by agreement of the Chair:

- Have scheduled an accompanied site visit for Monday 7 March 2016; and
- Have determined to progress the review by way of a hearing.
- 4.2 The case officer's report identified that two consultation responses and five representations have been received. As part of the review process the interested parties were notified of the review. Five additional comments have been received and reinforce their original objections to the application. All the comments can be viewed online on the electronic planning application case file via www.midlothian.gov.uk.
- 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 19 June 2012 and 26 November 2013, 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. Development shall not begin until the following details have been submitted to and approved in writing by the planning authority:
    - a) Scaled site plan showing existing and finished ground levels and floor levels for all buildings, open space and access roads in relation to a fixed datum;
    - A revised ground floor plan showing 2 car parking spaces (in addition to any space within garages) per dwellinghouse;

- c) Details and samples of all external finishing materials on the dwellinghouses, areas of external hard surface and boundary walls;
- d) A detailed landscape plan, including schedule of plants to comprise species, plant sizes and proposed numbers/density; and
- e) Drawings of all walls, gates and fences to be erected on the site.

Development shall thereafter comply with the approved details unless otherwise approved in writing by the Planning Authority.

**Reason:** These details are required in order to ensure that the proposed development does not have an adverse impact on the appearance of the Conservation Area and to ensure that the development is provided with an acceptable level of car parking.

2. No boundary wall shall encroach on to the public footpath to the south nor shall it encroach on to the public highway to the east.

**Reason:** In order to ensure that there is no adverse impact on vehicle and pedestrian safety.

3. Any trees, shrubs or plants which are planted in terms of the approved landscape scheme which die, become diseased, are severely damaged or are removed within five years of being planted shall be replaced with a tree, hedge or plant of a similar size and species as may be agreed in writing by the planning authority.

**Reason:** To ensure the quality of the development is enhanced by landscaping to reflect its setting in accordance with policies RP22 and DP2 of the Midlothian Local Plan and national planning guidance and advice.

5.2 If the LRB is minded to uphold the review and grant planning permission for the proposed development it shall be subject to a legal agreement to secure developer contributions towards education provision, the Borders Railway, town centre improvements and children's play provision. The legal agreement shall be concluded prior to the issuing of the LRB decision.

# 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:1 March 2016Report Contact:Peter Arnsdorf, Planning Manager<br/>peter.arnsdorf@midlothian.gov.uk

Tel No: 0131 271 3310 Background Papers: Planning application 15/00703/DPP available for inspection online.



# Notice of Review: Unit 33/1, Mayfield Industrial Estate, Mayfield, Dalkeith

# **Determination Report**

Report by Ian Johnson, Head of 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 change of use from general industry (class 5) to bodybuilding gym (class 11) (retrospective) at Unit 33/1, Mayfield Industrial Estate, Mayfield, Dalkeith.

# 2 Background

- 2.1 Planning application 17/00390/DPP for the change of use from general industry (class 5) to bodybuilding gym (class 11) (retrospective) at Unit 33/1, Mayfield Industrial Estate, Mayfield, Dalkeith was refused planning permission on 23 June 2017; 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); and
  - A copy of the decision notice, issued on 23 June 2017 (Appendix D).
- 3.2 The full planning application case file and the development plan policies referred to in the case officer's report can be viewed online via www.midlothian.gov.uk

#### 4 Procedures

4.1 In accordance with procedures agreed by the LRB, the LRB by agreement of the Chair:

- Have scheduled an accompanied site visit for Monday 28 August 2017; and
- Have determined to progress the review by way of a hearing.
- 4.2 The case officer's report identified that two consultation responses were received. There were no representations received. As part of the review process the consultees 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 via www.midlothian.gov.uk.
- 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 It is considered that no conditions would be required if the LRB is minded to grant planning permission. The reasons for refusing the application relate to the loss of an industrial use and it is considered that this cannot be mitigated by conditions if the LRB are minded to support the review on the basis that the proposed development is acceptable.

# 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:** 15 August 2017

Report Contact:Peter Arnsdorf, Planning Manager (LRB Advisor)<br/>peter.arnsdorf@midlothian.gov.ukTel No:0131 271 3310

**Background Papers:** Planning application 17/00390/DPP available for inspection online.





# **NOTICE OF REVIEW**

Under Section 43A(8) Of the Town and County Planning (SCOTLAND) ACT 1997 (As amended) In Respect of Decisions on Local Developments

The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (SCOTLAND) Regulations 2013

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

# IMPORTANT: Please read and follow the guidance notes provided when completing this form. Failure to supply all the relevant information could invalidate your notice of review.

PLEASE NOTE IT IS FASTER AND SIMPLER TO SUBMIT PLANNING APPLICATIONS ELECTRONICALLY VIA https://www.eplanning.scot

1. Applicant's De	tails	2. Agent's Details	(if any)
Title Forename Surname	MR JOHN WYNNE	Ref No. Forename Surname	
Company Name Building No./Name Address Line 1 Address Line 2 Town/City	SPARTAN GYM UNIT 33/1 MAYFIELD INDIEST. DALKEITH EH22 4AD	Company Name Building No./Name Address Line 1 Address Line 2 Town/City	CORPORATE RESOURCES
Postcode Telephone Mobile Fax Email Seartar	07591 159 892 vijy medinburgh @gmi	Postcode Telephone Mobile Fax	REGEIVED 2.7 JUL 2017
3. Application De	tails		
Planning authority Planning authority's Site address	application reference number	MIDLOTHIAN	1 28P 17/W 390/DAP
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Date of application 16/05/A? Date of decision (if any) 23/6/A	
Note. This notice must be served on the planning authority within three months of the date of decision needs from the date of expiry of the period allowed for determining the application.	otice or
4. Nature of Application	
Application for planning permission (including householder application)	
Application for planning permission in principle	
Further application (including development that has not yet commenced and where a time limit has been imposed; renewal of planning permission and/or modification, variation or removal of a planning condition)	
Application for approval of matters specified in conditions	
5. Reasons for seeking review	
Refusal of application by appointed officer	V
Failure by appointed officer to determine the application within the period allowed for determination of the application	
Conditions imposed on consent by appointed officer	
6. Review procedure	
The Local Review Body will decide on the procedure to be used to determine your review and may at an during the review process require that further information or representations be made to enable them to the review. Further information may be required by one or a combination of procedures, such as: writter submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject review case.	determine
Please indicate what procedure (or combination of procedures) you think is most appropriate for the har your review. You may tick more than one box if you wish the review to be conducted by a combination of procedures.	
Further written submissions One or more hearing sessions Site inspection Assessment of review documents only, with no further procedure	
If you have marked either of the first 2 options, please explain here which of the matters (as set out in yo statement below) you believe ought to be subject of that procedure, and why you consider further subminearing necessary.	
7. Site inspection	
In the event that the Local Review Body decides to inspect the review site, in your opinion:	
Can the site be viewed entirely from public land? Is it possible for the site to be accessed safely, and without barriers to entry?	

If there are reasons why you think the Local Review Body would be unable to undertake an unaccompanied site inspection, please explain here:

# No

#### 8. Statement

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

If the Local Review Body issues a notice requesting further information from any other person or body, you will have a period of 14 days in which to comment on any additional matter which has been raised by that person or body.

State here the reasons for your notice of review and all matters you wish to raise. If necessary, this can be continued or provided in full in a separate document. You may also submit additional documentation with this form.

1 ENPTY UNIT - 18 MONTHS ENPTY AFTER NUMBEROUS RETTING ATTENTS 3 WE ARE ON A RUS KOUTE - NO NEG FOR PRIVATO TRANSPORT (CARS) 3 WUS STOP JURCETLY OUTSIDE GYA. 4 OTHER UNITS HAVE BEEN CONVERTED PROF INJUSTRIAL TO REISURE. WHY NOT US? 5 MAYFIELD BYA IS CLOSING DOWN - WHAT ARE REORLE GOING TO DO? 64 LOTS OF NEW HOUSES ARE BEING BUILT. MURE REORLE UNL WANT A GYM. 47 OUR GYM PROMOTES MEENELTHY LIFESTYLE. OBESITY IS AN ISSUE IN MAYFIELD. 87 WE ARE TRYING TO PROMOTE EXERCUSE & HUALTHY EATING HUBBITS 87 WE ARE TRYING TO PROMOTE FUR THE COMMUNITY. 87 WE OFFER FREE DUCT & TRAINING PROGRAMS TO EVERYORE 64 WE OFFER FREE DUCT & TRAINING PROGRAMS TO EVERYORE 74 OUR GYM REMATES INCLUST A ROUTE FOR THE COMMUNITY.

Have you raised any matters which were not before the appointed officer at the time your application was determined? Yes No

If yes, please explain below a) why your are raising new material b) why it was not raised with the appointed officer before your application was determined and c) why you believe it should now be considered with your review.

OUR MEMBERS MAR A GREAT GROUP OF MEN & WOMEN WHO TRAIN HAND & HELP EACH OTHER. THIS IS POSITIVE AND HEALTHY

# 9. List of Documents and Evidence

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Please provide a list of all supporting documents,	materials and evidence which	you wish to submit with	vour notice
of review			,

By & MAIL.	
Note. The planning authority will make a copy of the notice of review, the review documents and any reprocedure of the review available for inspection at an office of the planning authority until such time as determined. It may also be available on the planning authority website.	notice of the the review is
10. Checklist	
Please mark the appropriate boxes to confirm that you have provided all supporting documents and ever relevant to your review:	/idence
Full completion of all parts of this form	
Statement of your reasons for requesting a review	2
All documents, materials and evidence which you intend to rely on (e.g. plans and drawings or other documents) which are now the subject of this review.	
<u>Note.</u> Where the review relates to a further application e.g. renewal of planning permission or modifical variation or removal of a planning condition or where it relates to an application for approval of matters conditions, it is advisable to provide the application reference number, approved plans and decision no that earlier consent.	specified in
DECLARATION	
I, the applicant/agent hereby serve notice on the planning authority to review the application as set out and in the supporting documents. I hereby confirm that the information given in this form is true and ac best of my knowledge.	on this form curate to the
Signature: Name: JEHN WIPNIE Date: 26-7	-17-
Any personal data that you have been asked to provide on this form will be held and processed in account the requirements of the 1998 Data Protection Act.	ordance with

# APPENDIX C

#### **MIDLOTHIAN COUNCIL**

#### DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

#### Planning Application Reference: 17/00390/DPP

Site Address: Unit 33/1 Mayfield Industrial Estate, Dalkeith.

**Site Description:** The application site is a unit within a large building housing 5 commercial units. The other units are in use as a laundry, metal fabrication and MOT centre. There is associated parking to the south. The site is within the northern part of Mayfield Industrial Estate, which appears to be fully occupied with businesses such as a scaffolding company, coach/car hire and cleaning services.

**Proposed Development:** Change of use from general industry (class 5) to bodybuilding gym (class 11) (retrospective).

**Proposed Development Details:** A gym use began in October 2016. Four people will be employed at the site with between 25-30 customers per day. The opening hours are 9am to 9pm Mondays to Fridays, 9am to 3.30pm at weekends. The applicant had originally stated that they may introduce classes, however they later confirmed this would not be the case. The application form states there are five parking spaces serving the site but the applicant has also suggested that there are seven parking spaces.

The applicant states that unit was vacant for approximately 18 months before they started the gym. This was marketed on site as well as advertising in Wallyford and on Gumtree. There were only two enquiries, one for retail use and the other a dance studio. The site was previously used by a limo company with a lease due to expire in 2017. In December 2014 the limo company informed the owners they would surrender the lease on the condition that a replacement tenant could be found. The applicant suggests that it has taken considerable time and effort to find a suitable tenant. The owner of the unit, RP Slight & Sons, appears to be a joiner business based in Wallyford.

The applicant makes reference to other leisure activities in the area and good transport links and they also indicate the use could improve the health of people in the area. An existing gym in the area is closing down and there will be more people and housing in the area.

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

#### Application site

16/00846/DPP Change of use from general industry (class 5) to bodybuilding gym (class 11) (retrospective). Refused – inappropriate non-industrial use in industrial estate resulting in the loss of premises which would otherwise be used for the furtherance of economic development; not demonstrated that the site has been

vacant and marketed for sufficient time that there is no prospect of it being occupied by a business more appropriate to the area; contrary RP20, COMD1 and ECON4.

#### **Consultations:**

The Policy and Road Safety Manager has no objection.

The Economic Development Manager considers that demand for small industrial units is strong and that if marketed more effectively a suitable industrial tenant would be found. There is a lack of such units in the surrounding area. Although there are other leisure uses in the surrounding area, these are large units which were obsolete. The site is part of a row of industrial units and the use as a gym is incongruous with the remainder of the units in the surrounding area. They would not be supportive of this application.

Representations: No representations were received.

Relevant Planning Policies: The relevant policies of the 2008 Midlothian Local Plan are;

**RP20 Development Within the Built Up Area** states that development will not be permitted where it is likely to detract materially from the existing character or amenity of the area;

**COMD1 Committed Development** identifies Mayfield Industrial Estate as one of the established economic land supply sites in the Local Plan. This is for business and general industry use; and

ECON4 Storage and Distribution and other non-residential use on existing industrial land and buildings states that in locations close to the strategic road network, consideration may e given to a storage and distribution (class 6) or other non-residential use on such sites and on existing industrial land and buildings subject to the following criteria being met: the level of employment arising from the proposal is equivalent to class 4 or class 5 uses; there is no loss of land identified for research and development/knowledge based industries; and provision is made to accommodate traffic generated by the proposed use, and for suitable access, without adversely affecting the local area.

The relevant policies of the **2014 Midlothian Local Development Plan Proposed Plan** are;

**STRAT1 Established Economic Land Supply** contains similar policy requirements to policy COMD1 of the adopted Local Plan;

**DEV2 Protecting Amenity Within the Built Up Area** contains similar policy requirements to policy RP20 of the adopted Local Plan; and

**ECON1 Existing Employment Locations** states that existing business and industrial locations will be safeguarded against loss. Within these areas, economic development, redevelopment or expansion (excluding retail) will be supported where it: would contribute to an employment density commensurate with the type of development proposed; would be compatible with neighbouring uses; would not have a detrimental impact on the amenity of the area; and could mitigate any infrastructure deficiency or requirement. The introduction or expansion of non-business or industrial uses will not be permitted. The loss or redevelopment of an existing business or industrial site in productive employment use to an alternative

non-employment generating use will only be permitted if there is no net detriment to the overall supply of economic land.

**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 has been submitted as a result of enforcement action, as the applicants opened and began operating the business without obtaining planning permission. Therefore this use is currently unauthorised. The site lies within the established Mayfield Industrial Estate. The surrounding industrial estate appears to be operating successfully with no vacant units, is busy and active.

The applicant has stated that the site was vacant for 18 months until the gym use began in October 2016. They state that the advertising campaign for marketing the unit, while it was empty, involved erecting an advertising sign at the site, displaying another advertising sign at the applicant's other site in Wallyford and also advertising on Gumtree. Only two enquiries were received, neither for industrial use.

The application site is small and the Economic Development Manager considers these to be generally in high demand for industrial use. The advertising campaign carried out appears to have been very limited and not at the scale which would convince the Planning Authority that there is no appetite for the unit to be used for industrial purposes. As stated by the Economic Development Manager, if the unit had been more effectively marketed then it is highly likely that an industrial tenant would have been found.

The Planning Authority has a strong preference that such units be retained for industrial type uses, as these are activities which cannot be readily accommodated out with these designated areas. There appears to be a low number of vacant industrial sites within this area of Mayfield. The Planning Authority would be concerned if this unit were to be lost from the economic development land supply to a leisure use.

Therefore it has not been demonstrated to the satisfaction of the Planning Authority that the property was adequately marketed and that a sufficient period of time has passed between the unit becoming vacant and the gym use being established to justify that there was no prospect of the building being taken over by a use or business more appropriate within this industrial area.

Notwithstanding the above, policy ECON4 does provide some scope to support the change of use from industrial land and buildings to other uses (excluding residential), in exceptional circumstances, where proposals comply with the necessary criteria.

The first of these criteria relates to employment numbers being equivalent to that generated for a class 4 or 5 use. The Scottish Enterprise Economic Impact Guidance, provided by the Council's Economic Development Section, states that based on the footprint of the building, a light industrial use would have generated approximately four jobs. The applicant has confirmed that there are four staff employed at the site.

The proposal would not result in the loss of land identified for research and development/knowledge-based industries as the site was previously in class 5 use.

The Policy and Road Safety Manager has not raised any road safety concerns. There is an area of parking to the south of the site which the applicant has stated is for their use.

The applicant has promoted the community benefits of the proposed use as a material consideration. The Planning Authority does not dispute that the proposed use may be of benefit to the community but is concerned that the proposal attracts members of the community to a busy and active industrial estate. It is not clear why the proposed use must operate from the industrial estate rather than from a building within the community. The applicant also makes reference to other leisure uses in the area. These have been subject to planning applications which were granted on the specifics of their operation. These should not act as a precedent to allow leisure uses within industrial areas and each application should be considered on its own merits.

Overall, it has not been demonstrated that there are exceptional circumstances which would lead to the Planning Authority being able to support this proposal. There is a realistic probability that the site could quite easily be leased by a business which would offer appropriate employment and use of this industrial unit. This position has been taken for previous similar applications, a view which has been supported by the Council's Planning Committee and Local Review Body at site in an industrial estate in Penicuik.

Recommendation: Refuse planning permission.



# **Refusal of Planning Permission**

Town and Country Planning (Scotland) Act 1997

# Reg. No. 17/00390/DPP

Spartan Gym Unit 33/1 Mayfield Industrial Estate Dalkeith EH22 4AD

Midlothian Council, as Planning Authority, having considered the application by Mr Ludovico Rizza, Unit 33/1, Mayfield Industrial Estate, Dalkeith, EH22 4AD, which was registered on 16 May 2017 in pursuance of their powers under the above Acts, hereby **refuse** permission to carry out the following proposed development:

Change of use from general industry (class 5) to bodybuilding gym (class 11) (retrospective) at Unit 33/1, Mayfield Industrial Estate, Dalkeith, EH22 4AD

In accordance with the application and the following plans:

Drawing Description.	Drawing No/Scale	<u>Dated</u>
Location Plan	1:1250	16.05.2017

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

- 1. The proposed development would result in an inappropriate non-industrial activity within the established industrial estate thereby resulting in the loss of premises which would otherwise be used for the furtherance of economic development.
- 2. It has not been demonstrated, to the satisfaction of the Planning Authority, that the site has been vacant and marketed for a sufficient period of time, or level, to justify that there is no prospect of it being occupied by a business or other industrial operation which would be more appropriate to the surrounding area.
- 3. For the above reasons the proposed development does not comply with the terms of policies RP20, COMD1 or ECON4 of the adopted Midlothian Local Plan.

Dated 23 / 6 / 2017

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



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

Planning and Local Authority Liaison Direct Telephone: 01623 637 119 Email: <u>planningconsultation@coal.gov.uk</u> Website: <u>www.gov.uk/government/organisations/the-coal-</u>

#### **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. These hazards can include: mine entries (shafts and adits); shallow coal workings; geological features (fissures and break lines); mine gas and previous 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 development taking place.

It is recommended that information outlining how the former mining activities affect the proposed development, along with any mitigation measures required (for example the need for gas protection measures within the foundations), be submitted alongside any subsequent application for Building Standards approval (if relevant). Any form of development over or within the influencing distance of a mine entry can be dangerous and raises significant safety and engineering risks and exposes all parties to potential financial liabilities. As a general precautionary principle, the Coal Authority considers that the building over or within the influencing distance of a mine entry should wherever possible be avoided. In exceptional circumstance where this is unavoidable, expert advice must be sought to ensure that a suitable engineering design is developed and agreed with regulatory bodies which takes into account of all the relevant safety and environmental risk factors, including gas and mine-water. Your attention is drawn to the Coal Authority Policy in relation to new development and mine entries available at:

https://www.gov.uk/government/publications/building-on-or-within-the-influencing-distanceof-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, digging of 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.

Property specific summary information on past, current and future coal mining activity can be obtained from: <u>www.groundstability.com</u> or a similar service provider.

If any of the 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: <a href="https://www.gov.uk/government/organisations/the-coal-authority">www.gov.uk/government/organisations/the-coal-authority</a>

This Informative Note is valid from 1<sup>st</sup> January 2017 until 31<sup>st</sup> December 2018



# Notice of Review: 35 Temple, Gorebridge Determination Report

Report by Ian Johnson, Head of 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 installation of replacement windows at 35 Temple, Gorebridge.

#### 2 Background

- 2.1 Planning application 17/00275/DPP for the installation of replacement windows at 35 Temple, Gorebridge was refused planning permission on 17 May 2017; 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 17 May 2017 (Appendix D); and
  - A copy of the relevant drawings/plans (Appendix E).
- 3.2 The full planning application case file and the development plan policies referred to in the case officer's report can be viewed online via www.midlothian.gov.uk

#### 4 Procedures

- 4.1 In accordance with procedures agreed by the LRB, the LRB by agreement of the Chair:
  - Have scheduled an unaccompanied site visit for Monday 28 August 2017; and
  - Have determined to progress the review by way of written submissions.
- 4.2 The case officer's report identified that there were no consultations required and no representations received.

- 4.3 The next stage in the process is for the LRB to determine the review in accordance with the agreed procedure:
  - Identify any provisions of the development plan which are relevant to the decision;
  - Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies;
  - Consider whether or not the proposal accords with the development plan;
  - Identify and consider relevant material considerations for and against the proposal;
  - Assess whether these considerations warrant a departure from the development plan; and
  - State the reason/s for the decision and state any conditions required if planning permission is granted.
- 4.4 In reaching a decision on the case the planning advisor can advise on appropriate phraseology and on appropriate planning reasons for reaching a decision.
- 4.5 Following the determination of the review the planning advisor will prepare a decision notice for issuing through the Chair of the LRB. A copy of the decision notice will be reported to the next LRB for noting.
- 4.6 A copy of the LRB decision will be placed on the planning authority's planning register and made available for inspection online.

# 5 Conditions

- 5.1 In accordance with the procedures agreed by the LRB at its meeting of 13 June 2017, and without prejudice to the determination of the review, the following condition has been prepared for the consideration of the LRB if it is minded to uphold the review and grant planning permission.
  - 1. The proposed cross section drawing no GA/170 rev H is not approved.

**Reason:** For the avoidance of doubt regarding the approved design of the windows: the design of the window on this drawing does not correspond with the design of the windows shown on the proposed elevations drawing no. 30184711/1.

#### 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:	15 August 2017
Report Contact:	Peter Arnsdorf, Planning Manager (LRB Advisor) peter.arnsdorf@midlothian.gov.uk
Tel No:	0131 271 3310

**Background Papers:** Planning application 17/00275/DPP available for inspection online.

	APPENDIX A
Education, Economy & Communities Midlothian Council Fairfield House 8 Lothian Road Dalkeith EH22 3AA	35 Temple, EH23 4SQ, Gorebridge
Reproduced from the Ordnance Survey map with the permission of the controller of Her Majesty's Stationary Office. Crown copyright reserved. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings Midlothian Council Licence No. 100023416 (2016)	File No. 17/00275/DPP         N           Scale: 1:750         A           Page 62 of 132         A





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 100047975-002

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

# **Applicant or Agent Details**

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

Applicant 🖾 Agent

# **Agent Details**

Please enter Agent details	S		
Company/Organisation:	John Gordon Associates Ltd		·
Ref. Number:	_	You must enter a Bi	uilding Name or Number, or both: *
First Name; *	John	Building Name:	
Last Name: *	Gordon	Building Number:	3
Telephone Number: *	01383850134	Address 1 (Street): *	Dean Acres
Extension Number:		Address 2:	Comrie
Mobile Number:		Town/City: *	Dunfermline
Fax Number:		Country: *	Scotland
		Postcode: *	KY12 9XS
Email Address: *	gordonassociates@sky.com		
te the applicant an individu	ual or an organisation/corporate entity? *	52	
is the applicant an intriviol	and an organisation/corporate entity?		
🔀 Individual 🗌 Organ	nisation/Corporate entity		

	etails		
Please enter Applicant	details		
Title:	Mr	You must enter a B	uilding Name or Number, or both: *
Other Title:		Building Name:	
First Name: *	A	Building Number:	35
Last Name: *	Matthews	Address 1 (Street): *	Temple
Company/Organisation		Address 2:	
Telephone Number: *		Town/City: *	Gorebridge
Extension Number:		Country: *	UK
Mobile Number:		Postcode: *	EH23 4SQ
Fax Number:			
Email Address: *			
Cián A dal			
Site Address	Details		
SITE Address Planning Authority:	Midlothian Council		
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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)
INSTALLATION OF REPLACEMENT WINDOWS
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 a 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.
We have a picture of the property from the early 70s with white casement windows. The proposed windows are "timber effect" PVCu windows. We have been informed the council themselves have not applied for planning permission to install brown double glazed casement windows (they were white sash and case) and PVCu doors in the properties owned by them in Temple park next door to us. This sounds like double standards and besides this sets a precedent.
Have you raised any matters which were not before the appointed officer at the time the Section was made? *
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)

Application Drawings Application form Refusal Notice Historic Photograph			
Application Details	io de te the s		
Please provide details of the application and decision.			
What is the application reference number? *	17/00275/DPP		
What date was the application submitted to the planning authority? *	07/04/2017		]
What date was the decision issued by the planning authority? *	17/05/2017		
The Local Review Body will decide on the procedure to be used to determine you	r review and may at any time o	during the review	
Process require that further information or representations be made to enable there required by one or a combination of procedures, such as; written submissions; the 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 parties only, without any further procedures? For example, written submission, he Yes X No Please indicate what procedure (or combination of procedures) you think is most it	n to determine the review. Fur holding of one or more hearing e relevant information provided earing session, site inspection.	rther information in ng sessions and/o d by yourself and	other
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Checklist – Application for Notice of Review	2		
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?. *	X Yes No		
Have you provided the date and reference number of the application which is the subject of this review? *	X 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? *	X 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? *	X 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 *	X 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 John Gordon			
Declaration Date: 06/06/2017			

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# APPENDIX C

#### **MIDLOTHIAN COUNCIL**

#### DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

#### Planning Application Reference: 17/00275/DPP

# Site Address:

35 Temple, Gorebridge

#### Site Description:

The application property comprises a two storey traditional stone dwellinghouse with a slate roof and brown painted timber framed slim double glazed casement windows. There is a light oak upvc conservatory attached to the south east gable of the house.

The application site is located within the Temple and Arniston Conservation Area.

#### **Proposed Development:**

Installation of replacement windows

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

It is proposed to replace the existing timber framed windows on the front, a first floor window on the north west gable and two windows on the south east gable with white upvc double glazed (24mm) windows the glazing pattern of which is to match existing apart from the ground floor window on the south east gable.

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

History sheet checked.

#### **Consultations:**

None required.

#### **Representations:**

None received.

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

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

Historic Environment Scotland's Managing Change in the Historic Environment Guidance Notes on windows recognises that windows make a substantial contribution to the character and interest of historic buildings, streets and places. Changes in framing materials, the adoption of different opening methods or the use of planted-on or sandwiched astragals should be avoided.

#### Midlothian Local Plan 2008

RP20 – Development within the built-up area - seeks to protect the character and amenity of the built-up area.

RP22 – Conservation Areas - seeks to preserve or enhance the character and appearance of conservation areas. It requires the use of traditional natural materials and that particular care in the design of replacement windows and doors will be required on the public frontage of buildings.

Particular care is required in terms of materials used, design and method of opening of replacement windows within conservation areas.

#### 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 majority of the windows on the traditional buildings in this part of Temple are timber framed including sash and case (with and without astragals) and quite a few casement windows. The use of timber contributes to the traditional character of the area. Nos 4 (false transom) and 22 (sash and case) have upvc framed windows. There is no record of planning permission having been granted for these.

The majority of the traditional houses in this part of Temple are single storey or 1 1/s storey. At two storeys the application property is quite prominent in the street scene.

In 2002 a planning application was received for replacement windows at no. 11 Temple seeking permission for upvc windows. The applicant was advised that upvc was not acceptable on the grounds of upvc not exhibiting the same characteristics as timber and that upvc does not provide a historically or architecturally correct solution and that it would set an undesirable precedent to the detriment of the conservation area. The scheme was subsequently amended to timber.

The draft conservation area appraisal for the Temple and Arniston Conservation Area states that "To maintain the character of the conservation area, careful consideration should be given to the sensitive use of materials, design, proportions and detail in any development proposals." And that "Temple has retained much of its historic and architectural character.

The use of upvc, a non-traditional material which can appear heavy and clumsy is inappropriate for the conservation area particularly taking in to account its preserved character referred to above. Ideally the windows should be replaced with timber framed sash and case windows in keeping with the age and character of the building. Slim double glazing may be acceptable.

The proposed replacement windows would be out of keeping with the character of the traditional properties in the area and would detract from the character and appearance of the conservation area, contrary to policy. Also, if allowed, it would set an undesirable precedent for similar proposals, which would erode the special character of the Temple and Arniston Conservation Area.

#### **Recommendation:**

Refuse planning permission



# **Refusal of Planning Permission**

Town and Country Planning (Scotland) Act 1997

# Reg. No. 17/00275/DPP

John Gordon Associates Ltd 3 Dean Acres Comrie Dunfermline KY12 9XS

Midlothian Council, as Planning Authority, having considered the application by Mr A Matthews, 35 Temple, Gorebridge, EH23 4SQ, which was registered on 10 April 2017 in pursuance of their powers under the above Acts, hereby **refuse** permission to carry out the following proposed development:

#### Installation of replacement windows at 35 Temple, Gorebridge, EH23 4SQ

in accordance with the application and the following plans:

Drawing Description.	Drawing No/Scale	<b>Dated</b>
Location Plan	1:1250	10.04.2017
Proposed Elevations	30184711/1 1:20	10.04.2017
Proposed Cross Section	GA/070 1:1	10.04.2017

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

- 1. The proposed replacement windows due to the use of inappropriate modern materials would detract from the character and appearance of the Temple and Arniston Conservation Area.
- 2. For the above reason, the proposal is contrary to the provisions of policy RP22 of the adopted Midlothian Local Plan which seeks to safeguard the character and appearance of conservation areas.
- 3. The proposal is also contrary to advice from Historic Environment Scotland contained in the Managing Change in the Historic Environment Guidance Notes.
- 4. If the proposals were approved it would set an undesirable precedent for other similar types of alterations, which would be to the detriment of the character and appearance of the Temple and Arniston Conservation Area.

Dated 17 / 5 / 2017

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


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## Notice of Review: The Abbey Granary, 12 Newbattle Road, Newtongrange

## **Determination Report**

Report by Ian Johnson, Head of 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 change of use of public house to a mixed use of public house, restaurant and take away at The Abbey Granary, 12 Newbattle Road, Newtongrange.

#### 2 Background

- 2.1 Planning application 17/00371/DPP for the change of use of public house to a mixed use of public house, restaurant and take away at The Abbey Granary, 12 Newbattle Road, Newtongrange was granted planning permission on 7 July 2017; a copy of the decision is attached to this report. The applicant has requested a review to seek the removal of Condition 5 from the grant of permission. Condition 5 on planning permission 17/00371/DPP is as follows:
  - 5. No hot food takeaway use or activity, either as a primary or ancillary use, shall take place from the premises subject to the application to which this condition is attached.

**Reason:** To minimise disturbance to nearby residential properties, both existing and proposed, from noise and other environmental disturbance and so as to comply with the aims of policy DP7 of the adopted Midlothian Local Plan.

- 2.2 Although the applicant has requested the removal of condition 5 it is within the scope of the LRB to review the decision to grant planning permission in its entirety, including the other conditions attached to the grant of planning permission.
- 2.3 The review has progressed through the following stages:
  - 1 Submission of Notice of Review by the applicant.
  - 2 The Registration and Acknowledgement of the Notice of Review.
  - 3 Carrying out Notification and Consultation.

#### 3 Supporting Documents

- 3.1 Attached to this report are the following documents:
  - A site location plan (Appendix A);
  - A copy of the notice of review form and supporting statement (Appendix B). Any duplication of information is not attached;

- A copy of the case officer's report (Appendix C); and
- A copy of the decision notice, issued on 7 July 2017 (Appendix D).
- 3.2 The full planning application case file and the development plan policies referred to in the case officer's report can be viewed online via www.midlothian.gov.uk

## 4 Procedures

- 4.1 In accordance with procedures agreed by the LRB, the LRB by agreement of the Chair:
  - Have scheduled an unaccompanied site visit for Monday 28 August 2017; and
  - Have determined to progress the review by way of written submissions.
- 4.2 The case officer's report identified that two consultation responses and one representation have been received. As part of the review process the consultees and representor 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 via www.midlothian.gov.uk.
- 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. Unless otherwise approved in writing by the Planning Authority, the use hereby permitted shall not open to the public outwith the hours of 11am to 11pm.

**Reason:** In order to allow the Planning Authority to assess any impact that extended opening hours could have on the amenity of the surrounding area.

- 2. Notwithstanding the plans hereby approved, details of the proposed ventilation system shall be submitted to the Planning Authority for prior written approval. 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.
- 3. The design and installation of any ventilation system, plant or equipment and associated noise shall comply with noise rating curves (NR30) when measured within any nearby living apartment between 7am and 10pm and noise rating curves (NR25) between 10pm and 7am elsewhere.
- 4. No amplified music or sound reproduction equipment used in association with the use hereby approved shall be audible at the boundary of any nearby residential properties.

**Reason for conditions 2 - 4:** To safeguard the amenity of the surrounding area.

#### 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:** 15 August 2017

Report Contact:Peter Arnsdorf, Planning Manager (LRB Advisor)<br/>peter.arnsdorf@midlothian.gov.ukTel No:0131 271 3310

**Background Papers:** Planning application 17/00371/DPP available for inspection online.



## APPENDIX B



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 100051372-002

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

## **Applicant or Agent Details**

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

### **Agent Details**

Please enter Agent details			
Company/Organisation:	David Paton Building Consultancy		
Ref. Number:		You must enter a Bu	uilding Name or Number, or both: *
First Name: *	Kevin	Building Name:	
Last Name: *	McLellan	Building Number:	13
Telephone Number: *	0131 440 1213	Address 1 (Street): *	High Street
Extension Number:		Address 2:	
Mobile Number:		Town/City: *	Loanhead
Fax Number:		Country: *	Scotland
		Postcode: *	EH20 9RH
Email Address: *	davidpatonbc@btconnect.com		
Is the applicant an individu	ual or an organisation/corporate entity? *		
🗌 Individual 🔀 Organ	nisation/Corporate entity		

Please enter Applicant of	tails		
- were enter Approattet	letails		
Title:	Mr	You must enter a Be	uilding Name or Number, or both: *
Other Title:		Building Name:	
First Name: *	Akram	Building Number:	79a
Last Name: *	Mohammed	Address 1 (Street): *	Broughton Street
Company/Organisation	KAINAM Ltd	Address 2:	
Telephone Number: *		Town/City: *	Edinburgh
Extension Number:		Country: *	Scotland
Mobile Number:		Postcode: *	EH1 3RJ
Fax Number:			
Email Address: *			
Site Address	Details		
Planning Authority:	Midlothian Council		
Full postal address of the	site (including postcode where available	e):	
Address 1:	12 NEWBATTLE ROAD		]
Address 2:	NEWTONGRANGE		
Address 3:			
Address 4:			
Address 4: Address 5:			
	DALKEITH		
Address 5: Town/City/Settlement:	DALKEITH EH22 4RL		
Address 5: Town/City/Settlement: Post Code:			
Address 5: Town/City/Settlement: Post Code:	EH22 4RL		

Description of Proposal
Please provide a description of your proposal to which your review relates. The description should be the same as given in the application form, or as amended with the agreement of the planning authority; * (Max 500 characters)
Change of use from Public house (sui generis) to mixed use of public house, restaurant and take away
Turne of Application
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 a 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.
We would like the Removal of Condition 5 to this permission - see document attached to this application
Have you raised any matters which were not before the appointed officer at the time the Determination on your application was made? *
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)

Supporting Statement stating case of why Condition should be removed Site and Locati	on Plan		
Application Dataila			(
Application Details Please provide details of the application and decision.			
What is the application reference number? *	17/00371/DPP		1
mains the application reference number?	17/00371/DPP		J
What date was the application submitted to the planning authority? *	09/05/2017		]
What date was the decision issued by the planning authority? *	07/07/2017	]	
Review Procedure			
The Local Review Body will decide on the procedure to be used to determine your review a process require that further information or representations be made to enable them to deter equired by one or a combination of procedures, such as: written submissions; the holding on specting the land which is the subject of the review case.	mine the review. Further	information r	mayh
an this review continue to a conclusion, in your opinion, based on a review of the relevant arties only, without any further procedures? For example, written submission, hearing ses	information provided by sion, site inspection, *	yourself and	othe
n the event that the Local Review Body appointed to consider your application decides to in	nspect the site, in your o	pinion:	
Can the site be clearly seen from a road or public land? *	X	Yes 🗌 No	
s it possible for the site to be accessed safely and without barriers to entry? *	X	Yes 🗌 No	)
Checklist – Application for Notice of Review			
lease complete the following checklist to make sure you have provided all the necessary o submit all this information may result in your appeal being deemed invalid.	information in support of	your appeal.	Failu
ave you provided the name and address of the applicant?. *	🗙 Yes 🗔	No	
ave you provided the date and reference number of the application which is the subject of eview? *	this 🔀 Yes 🔲	No	
you are the agent, acting on behalf of the applicant, have you provided details of your nam nd address and indicated whether any notice or correspondence required in connection wi eview should be sent to you or the applicant? *	ne 🛛 Yes 🗌 th the	No 🗆 N/A	
lave you provided a statement setting out your reasons for requiring a review and by what rocedure (or combination of procedures) you wish the review to be conducted? *	X Yes	No	
ote: You must state, in full, why you are seeking a review on your application. Your statem quire to be taken into account in determining your review. You may not have a further opp ta later date. It is therefore essential that you submit with your notice of review, all necess n and wish the Local Review Body to consider as part of your review.	ortunity to add to your st	atement of re	view
lease 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 *	X Yes	No	
ote: Where the review relates to a further application e.g. renewal of planning permission of lanning condition or where it relates to an application for approval of matters specified in co	or modification, variation	or removal of	fa

\*

## Declare – Notice of Review

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

Mr Kevin McLellan

11/07/2017

Declaration Name:

1.14

ł.

Declaration Date:

Page 5 of 5

#### THE ABBEY GRANARY, 12 NEWBATTLE ROAD, NEWTONGRANGE, EH22 4RL CHANGE OF USE FROM SOLELY PUBLIC HOUSE TO INCLUDE CLASS 3 FOOD AND DRINK INCLUDING TAKE AWAY APPLICATION NO. 17/00371/DPP GRANTED 7 JULY 2017

On behalf of our client KAINAM Ltd, we would like to appeal against Condition 5 attached to the above Planning Permission which states that no hot food takeaway whatsoever will be allowed on these premises to minimise disturbance to nearby residential properties from noise and other environmental disturbance.

At present The Abbey Granary has permission to open as a Public House with Off Sales which can open until 23.00 Monday – Thursday, 01.00 Friday and Saturday and Midnight on a Sunday. A comment on the application was made from a neighbour of the premises, who does not object to the application as applied for, but in fact objects to it re-opening as a Pub because of the nuisance and disturbance this previously caused the neighbours with excessive noise from patrons of the Pub leaving the premises, discarding cans into neighbouring gardens and vandalising properties well into the early hours of the morning. The above permission limits the opening hours of the Restaurant to 23.00 every day, to minimise the disturbance to residential properties nearby.

Without an element of Take Away, the viability of a Restaurant in this location would be questionable and it has to be raised that neither Midlothian Councils own Environmental Dept. or Roads / Public Safety team raised any objections about this application. It would appear that the only issue is the fact that the premise has residential properties on 3 sides of it. It has mostly commercial properties existing on the opposite side of the road from this property.

Precedence was set by Midlothian Council at 202 High Street, Dalkeith (Application No. 09/00509/DPP) which was to change the use of a former public house to a restaurant with Take Away, this site like the Abbey Granary is not within the neighbourhood centre of the town and has a denser population of houses to the application site than exists at the Abbey Granary and yet it was deemed acceptable in that location.

Also even though in a town centre, permission was granted at 93 Clerk Street, Loanhead (09/00369/DPP) for the change of use of a former Public House to Restaurant with Take Away, this premise has residential above it and yet was given permission.

No objections were raised from any of the neighbours to the site which suggests that they would appear to be more comfortable if the premises served this residential area as a Restaurant with Take Away rather than its present use of a Public House with Off Sales.

As stated above, without the Take Away element to the restaurant you limit its chances of being viable, and with it the chances of this redundant building being brought back to use or worse still reinstated as a Public House. We ask that Condition 5 is removed from this permission to allow this to happen.

David Paton Building Consultancy 13 High Street Loanhead EH20 9RH

Tel 0131 440 1213

10 July 2017

## APPENDIX C

#### **MIDLOTHIAN COUNCIL**

#### DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

#### Planning Application Reference: 17/00371/DPP

Site Address: The Abbey Granary, 12 Newbattle Road.

#### Site Description:

The application site comprises a single storey building which is currently vacant and was previously used as a public house. The public house known as the Abbey Granary has been closed since April 2016.

The application site is located on a corner plot on a residential street. The locale is a combination of residential dwellinghouses with commercial units located nearby. The application building is located in close proximity to Newtongrange neighbourhood shopping centre.

**Proposed Development:** Change of use from public house (sui generis) to mixed use of public house, restaurant and take away.

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

Planning permission is sought for the change of use from a public house to a mixed use; public house, restaurant and hot food take away. The restaurant would have 30 to 40 seat covers. It is also proposed that there would be a small waiting area to be used for the take away element.

The proposed opening hours look to remain the same as the as the opening hours that the public house known as the 'Abbey Granary' was licensed for; Monday – Thursday 11.00 - 23.00Friday – Saturday 11.00 - 01.00Sunday 11.00 - 00.00

There is an existing kitchen and ventilation system at present which is to be upgraded. It is noted within the supporting information that any new ventilation ducts would be secured to the rear gable of the pitched roof section to be able to take the terminals to high level to avoid any nuisance to the adjacent dwellinghouses.

No external alterations are proposed to the application building, it was noted within the supporting statement that any external alterations would be handled under a separate application.

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

No relevant planning history.

#### **Consultations:**

The **Environmental Health Manager** informally offered no objection to the principal of the proposed restaurant use but raised initial concerns relating to the hours of operation and sought further details with regards to the proposed ventilation. No formal consultation response has been received.

The **Road Safety Manager** offered no objection to the proposed change of use. The road safety manager noted that 'the provision of off-street parking would normally be recommended for a development of this nature however in this instance alterations are restricted to a change of use of the building and with no adjacent land available, the provision of additional parking is not feasible.'

#### **Representations:**

One representation has been received of which objects to the above planning application. The representation raised concerns which can be summarised as follows:

• Concerns with regards to the opening of the premises causing noise disruptions, anti-social behaviour, general disruptions and littering.

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

The relevant policies of the 2008 Midlothian Local Plan are;

RP20 – Development within the Built-Up Area - seeks to protect the character and amenity area.

**DP7 Control of Class 3 (Food and Drink) Uses and Hot Food Takeaway Shops** states that applications for restaurants solely for the consumption of food and drink on the premises will be considered on their individual merits, taking account of such factors as the size of the proposed establishment; its relationship to adjoining uses and in relationship to other relevant planning policies; and its likely traffic generations and parking provision. Planning permissions for restaurants will include conditions, as appropriate, to mitigate any impact on the amenity of the surrounding area from noise and cooking smells.

DP7 goes on to state that if a proposed restaurant includes a hot food takeaway element, it will be considered in terms of the section of this policy relating to hot food takeaways and restaurants with ancillary hot food takeaway elements. The policy states that appropriate locations for hot food takeaways would be within a town centre, local or neighbourhood shopping centre or a predominantly commercial or business area. In addition, it states that they will not be permitted where there are residential properties on the floor or floors above or immediately on either side and the floors above such properties unless these are owned and occupied by the applicant or his immediate family or by an employee working in the establishment. The cumulative effect of additional hot food takeaway establishments will be assessed to ensure that the vitality and viability of the shopping centre is not considered to be seriously harmful. In addition, permission will not be granted where it would cause significant harm to residential amenity or the general environment of the area as a result of noise, disturbance, smell or litter. Also, permission would not be granted in a location where it would present a threat to road safety.

#### 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 proposed change of use seeks to reuse an existing building which has been vacant for over a year. The proposed change of use does not see any physical alterations or extensions to the appearance of the building and therefore will not result in any visual impact upon the streetscape or locale.

The food and drink use class 3 groups together a range of uses where food or drink is sold for consumption on the premises - for example restaurants, cafes and snack bars. The building is currently a public house which is a *sui generis* use which allows for the premises to operate primarily as a public house where the primary purpose is for the sale of liquor for consumption on the premises. However, it is noted that the current use would also allow for the sale of food for the consumption on the premises at an ancillary level to the public house. Currently, the premises could re-open as a public house and offer food for consumption on the premises at an ancillary level. Therefore, the use of the building as a restaurant and public house is already partly established.

It is noted that there is no provision for off-street parking and nor is it possible to provide any off-street parking due to the lack of availability of land. The application site is located within close walking distance of Newtongrange neighbourhood centre and public transport links which are connected to the wider locale.

The proposed change of use looks to bring a vacant building back into use and it is considered that the proposed use is of a similar character to the existing use. There are no material planning considerations that would otherwise warrant the refusal of the premises being used as a restaurant and public house. However, a condition will be used to limit the hours of operations so as to mitigate any impact on the amenity of the neighbouring properties.

Hot food takeaways are classed as a *sui generis* use and raise different environmental issues, such as litter, noise, longer opening hours and extra traffic and pedestrian activity, from those raised by other Class 3 uses. With regards to the application proposal to partly operate as a takeaway, this raises concerns with regards to the impact upon neighbour amenity and road safety.

Hot food takeaway shops will not be permitted in premises that are located within residential areas where there are residential properties above or immediately on either side. Although, the application is located within close proximity to Newtongrange neighbourhood centre, the premises are located on the corner of a residential area with neighbouring dwellings located in close proximity adjacent to the application site. A hot food takeaway in this location would result in a harmful loss of residential amenity. The use of the application site partly or even wholly as a hot food takeaway is not an acceptable use for the premises due to the close proximity to residential dwellings. Therefore, a condition will be used to ensure that the premise does not operate as a hot food takeaway in any capacity.

Minimal information has been submitted with regards to the kitchen ventilation; a condition will be used to ensure details of the proposed ventilation are submitted to the Planning Authority for prior written approval. A condition will also be used limiting the noise of any plant, machinery or equipment will also be attached to the permission to mitigate any impact on the amenity of the surrounding area from noise or cooking smells.

An objection representation was received which raised concerns. All material planning considerations raised within the representations have been addressed above within this section of the report. It is noted that the premises known as the Abbey Granary is already an established public house and no planning permission would be required for the premises to re-open, the proposed change of use of the building from a public house to a restaurant and public house are of a similar nature to the existing use and there are no material considerations that would warrant the refusal of the current application.

Overall, all relevant matters have been taken into consideration in determining this application. It is considered that the proposal accords with the principles and policies of Midlothian Local Plan and is acceptable in terms of all other applicable material considerations. Therefore, it is recommended that the application is approved subject to conditions.

Recommendation: Grant planning permission.

## Planning Permission Town and Country Planning (Scotland) Act 1997

### Reg. No. 17/00371/DPP



David Paton Building Consultancy 13 High Street Loanhead EH20 9RH

Midlothian Council, as Planning Authority, having considered the application by Mr Akram Mohammed, 79A Broughton Street, Edinburgh, EH1 3RJ, which was registered on 10 May 2017, in pursuance of their powers under the above Acts, hereby grant permission to carry out the following proposed development:

Change of use from public house (sui generis) to mixed use of public house, restaurant and take away at The Abbey Granary, 12 Newbattle Road, Newtongrange, EH22 4RL

In accordance with the application and the following plans:

Drawing Description.	Drawing No/Scale	Dated
Site Plan	17-20-001 1:1250 1:500	10.05.2017
Other Statements		10.05.2017
Other Statements		02.06.2017

This permission is granted for the following reason:

The development will not have a significant adverse impact on the character of the locale or on the amenity of neighbouring land and buildings and therefore complies with policies RP20 and DP7 of the adopted Midlothian Local Plan.

Subject to the following conditions:

1. Unless otherwise approved in writing by the Planning Authority, the use hereby permitted shall not open to the public outwith the hours of 11am to 11pm Mondays to Sundays.

**Reason:** In order to allow the Planning Authority to assess any impact that extended opening hours could have on the amenity of the surrounding area.

- 2. Notwithstanding the plans hereby approved, details of the proposed ventilation system shall be submitted to the Planning Authority for prior written approval. 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.
- 3. The design and installation of any ventilation system, plant or equipment and associated noise shall comply with noise rating curves (NR30) when measured within any nearby living apartment between 7am and 10pm and noise rating curves (NR25) between 10pm and 7am elsewhere.

4. No amplified music or sound reproduction equipment used in association with the use hereby approved shall be audible at the boundary of any nearby residential properties.

Reason for conditions 2 - 4: To safeguard the amenity of the surrounding area.

5. No hot food takeaway use or activity, either as a primary or ancillary use, shall take place from the premises subject to the application to which this condition is attached.

**Reason:** To minimise disturbance to nearby residential properties, both existing and proposed, from noise and other environmental disturbance and so as to comply with the aims of policy DP7 of the adopted Midlothian Local Plan.

Dated 7/7/2017

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



## Notice of Review: Land 100m South of Glenarch Lodge, Melville Road, Dalkeith

## **Determination Report**

Report by Ian Johnson, Head of 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 three dwellinghouses at land 100m south of Glenarch Lodge, Melville Road, Dalkeith.

#### 2 Background

- 2.1 Planning application 17/00267/DPP for the erection of three dwellinghouses at land 100m south of Glenarch Lodge, Melville Road, Dalkeith was refused planning permission on 2 June 2017; 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 2 June 2017 (Appendix D); and
  - A copy of the relevant drawings/plans (Appendix E).
- 3.2 The full planning application case file and the development plan policies referred to in the case officer's report can be viewed online via www.midlothian.gov.uk

#### 4 Procedures

4.1 In accordance with procedures agreed by the LRB, the LRB by agreement of the Chair:

- Have scheduled an unaccompanied site visit for Monday 28 August 2017; and
- Have determined to progress the review by way of written submissions.
- 4.2 The case officer's report identified that six consultation responses and six representations have been received. As part of the review process the consultees and representors 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 via www.midlothian.gov.uk.
- 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.
  - Development shall not begin until samples of materials to be used on external surfaces of the buildings; hard ground cover surfaces; means of enclosure and ancillary structures have been submitted to and approved in writing by the planning authority. The external walls of the houses shall be finished in natural stone, wet dash render, zinc, larch or timber cladding Development shall thereafter be carried out using the approved materials or such alternatives as may be agreed in writing with the planning authority.

**Reason:** To ensure the quality of the development is enhanced by the use of quality materials to reflect its setting in accordance with policies RP20 and DP2 of the Midlothian Local Plan, policies DEV2, DEV5 and DEV6 of the Proposed Midlothian Local Plan and national planning guidance and advice.

2. Unless otherwise approved in writing by the Planning Authority, the stone walls around the boundary of the site, including the wall along Melville Road, shall be repaired within 12 months of the commencement of development, using lime based mortar and matching natural stone. The height and form of the wall shall be as existing.

**Reason**: To ensure that appropriate and traditional materials are used in the repair of this stone wall.

3. The visible infill in the gabion baskets hereby approved shall be infilled with natural stone to match the existing walls along the site frontage to Melville Road.

**Reason**: To promote visual cohesion in the area; to ensure that the gabion baskets are in keeping with the existing stone walls in the area.

4. Unless otherwise agreed in writing, the garage doors hereby approved shall be of roller shutter design.

**Reason**: To ensure there is adequate room a car in the vehicular manoeuvre area when these doors to be open; in the interests of road safety.

- 5. Development shall not begin until a scheme to deal with any contamination of the site and/or previous mineral workings has been submitted to and approved in writing by the planning authority. The scheme shall contain details of the proposals to deal with any contamination and/or previous mineral workings and include:
  - i. the nature, extent and types of contamination and/or previous mineral workings on the site;
  - ii. measures to treat or remove contamination and/or previous mineral workings to ensure that the site is fit for the uses hereby approved, and that there is no risk to the wider environment from contamination and/or previous mineral workings originating within the site;
  - iii. iii measures to deal with contamination and/or previous mineral workings encountered during construction work; and
  - iv. iv the condition of the site on completion of the specified decontamination measures.

Before any part of the site is occupied for residential purposes, the measures to decontaminate the site shall be fully implemented as approved by the planning authority.

**Reason**: To ensure that any contamination on the site is adequately identified and that appropriate decontamination

measures are undertaken to mitigate the identified risk to site users and construction workers, built development on the site, landscaped areas, and the wider environment.

- 7. Development shall not begin until a scheme of hard and soft landscaping works has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
  - i existing and finished ground levels and floor levels for all buildings and roads in relation to a fixed datum;
  - ii existing trees, landscaping features and vegetation to be retained; removed, protected during development and in the case of damage, restored;
  - iii proposed new planting in communal areas and open space, including trees, shrubs, hedging and grassed areas;
  - iv location and design of any proposed walls, fences and gates, including those surrounding bin stores or any other ancillary structures. The details shall include a trespass proof fence along the eastern boundary;
  - schedule of plants to comprise species, plant sizes and proposed numbers/density;
  - vi programme for completion and subsequent maintenance of all soft and hard landscaping. The landscaping in the open spaces shall be completed prior to the houses on adjoining plots are occupied;
  - vii drainage details and sustainable urban drainage systems to manage water runoff (not within 10 metres of any railway infrastructure);
  - viii proposed car park configuration and surfacing;
  - ix proposed footpaths; and
  - x proposed cycle parking facilities.

All hard and soft landscaping shall be carried out in accordance with the scheme approved in writing by the planning authority as the programme for completion and subsequent maintenance (vi). Thereafter any trees or shrubs removed, dying, becoming seriously diseased or damaged within five years of planting shall be replaced in the following planting season by trees/shrubs of a similar species to those originally required.

**Reason:** To ensure the quality of the development is enhanced by landscaping to reflect its setting in accordance with policies RP20 and DP2 of the Midlothian Local Plan, policies DEV2, DEV5, DEV6, DEV7 and DEV9 of the Proposed Midlothian Local Plan and national planning guidance and advice.

8. Unless otherwise agreed in writing by the Planning Authority, the window serving the lounge on the west elevation of the corner house as shown on drawing no. 6 shall be obscurely glazed prior to the occupation of the house. The obscure glazing shall not be replaced with clear glass without the prior written approval of the Planning Authority.

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

- 5.2 If the LRB is minded to uphold the review and grant planning permission for the proposed development it shall be subject to a legal agreement to secure developer contributions towards education provision, the Borders Railway and children's play provision. The legal agreement shall be concluded prior to the issuing of the LRB decision. The legal agreement shall be concluded within 6 months of the resolution to grant planning permission, if the agreement is not concluded the review will be reported back to the LRB for reconsideration.
- 5.3 There is an outstanding objection to the planning application from the Coal Authority which needs to be addressed prior to any grant of planning permission being issued. If the LRB resolve to grant permission the applicant shall be required to submit a Coal Mining Risk Assessment for consideration by the Coal Authority, and only once the Coal Authority is satisfied that appropriate measures can be taken to mitigate the historical coal legacy issues on the site will the planning permission be issued.

#### 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:** 15 August 2017

Report Contact:	Peter Arnsdorf, Planning Manager (LRB Advisor) peter.arnsdorf@midlothian.gov.uk
Tel No:	0131 271 3310

**Background Papers:** Planning application 17/00267/DPP available for inspection online.



# APPENDIX B



Fairfield House 8 Lothian Road Datkeith 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 100047823-003

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)

## **Agent Details**

Please enter Agent details	S		
Company/Organisation:	Eskbank Design Studio Ltd		
Ref. Number:		You must enter a B	uilding Name or Number, or both: *
First Name: *	Craig	Building Name:	
Last Name: *	Douglas	Building Number:	7
Telephone Number: *	01316633308	Address 1 (Street): *	Newbattle Road
Extension Number:		Address 2:	Eskbank
Mobile Number:		Town/City: *	Dalkeith
Fax Number:		Country *	United Kingdom
		Postcode: *	EH22 3DA
Email Address: *	eskbankdesignstudio@talktalk.net		
Is the applicant an individ	ual or an organisation/corporate entity? *		
🗙 Individual 🗌 Orga	nisation/Corporate entity		

Applicant De	etails		
Please enter Applicant			
Title:	Mr	You must enter a B	uilding Name or Number, or both: *
Other Title:		Building Name:	
First Name: *	Craig	Building Number:	7
Last Name: *	Douglas	Address 1 (Street): *	Newbattle Road
Company/Organisation	Eskbank Design Studio Ltd	Address 2:	Eskbank
Telephone Number: *	01316633308	Town/City: *	Dalkeith
Extension Number:		Country: *	UK
Mobile Number:	07708479656	Postcode: *	EH22 3DA
Fax Number:			
Email Address: *	eskbankdesignstudio@talktalk.net		
Site Address	Details		
Planning Authority:	Midlothian Council		
Full postal address of th	e site (including postcode where available	):	
Address 1:			
Address 2:			
Address 3:			
Address 4:			
Address 5:			
Town/City/Settlement:			
Post Code:			
Please identify/describe	the location of the site or sites		
Northing	666888	Easting	332332

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 3 dwellinghouses at Land 100M South Of Glenarch Lodge, Melville Road, Dalkeith
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 a 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 document - 1333 Review Statement.
Have you raised any matters which were not before the appointed officer at the time the Determination on your application was made? *
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)

1333 Review Statement			
Application Details			
Please provide details of the application and decision.			
What is the application reference number? *	17/00267/DP	>	]
What date was the application submitted to the planning authority? *	05/04/2017		]
What date was the decision issued by the planning authority? *	02/06/2017		
Review Procedure			17
The Local Review Body will decide on the procedure to be used to determine your review all process require that further information or representations be made to enable them to determ equired by one or a combination of procedures, such as: written submissions; the holding or aspecting 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 arties only, without any further procedures? For example, written submission, hearing sessed Yes No	information provid sion, site inspectio	led by yourself and on, *	d other
n the event that the Local Review Body appointed to consider your application decides to in	spect the site, in y	our opinion:	
an the site be clearly seen from a road or public land? •		X Yes N	n
s it possible for the site to be accessed safely and without barriers to entry? *			-
Checklist – Application for Notice of Review			
lease complete the following checklist to make sure you have provided all the necessary in a submit all this information may result in your appeal being deemed invalid.	formation in supp	ort of your appeal	Failur
ave you provided the name and address of the applicant?. *	X Yes		
ave you provided the date and reference number of the application which is the subject of t view? *	his 🔀 Yes	No No	
you are the agent, acting on behalf of the applicant, have you provided details of your name ad address and indicated whether any notice or correspondence required in connection with wiew should be sent to you or the applicant?	e 🛛 Yes I the	5 🗋 No 🗌 N/A	
ave you provided a statement setting out your reasons for requiring a review and by what rocedure (or combination of procedures) you wish the review to be conducted? *	X Yes	No No	
ote: You must state, in full, why you are seeking a review on your application. Your stateme quire to be taken into account in determining your review. You may not have a further oppo a later date. It is therefore essential that you submit with your notice of review, all necessar I and wish the Local Review Body to consider as part of your review.			
ease attach a copy of all documents, material and evidence which you intend to rely on g. plans and Drawings) which are now the subject of this review *	X Yes		
ote: Where the review relates to a further application e.g. renewal of planning permission or anning condition or where it relates to an application for approval of matters specified in cor polication reference number, approved plans and decision paties (it easy) from the wind the second secon	modification, vari	ation or removal o	fa

## Declare – Notice of Review

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

Declaration Name: Mr Craig Douglas

Declaration Date:

16/06/2017

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#### PLANNING REFERENCE: 17/00267/DPP

#### PROPOSED HOUSING AT MELVILLE ROAD, ESKBANK, DALKEITH, MIDLOTHIAN EH22 3AA.

STATEMENT TO ADDRESS PLANNING REFUSAL.

#### Reason for refusal:

1. The proposed houses would be provided with inadequate levels of private usable amenity space, contrary to policy DP2 of the adopted Midlothian Local Plan.

3. As the proposed development would result in very poor levels of amenity being provided for the future occupants of the residential properties, the proposal is contrary to policies RP20, HOUS3 and DP2 of the adopted Midlothian Local Plan.

#### **Response:**

The garden ground provided for each house is in excess of the requirements in 5(b) of the current local plan, namely:

b) houses of 4 apartments or more should have usable garden areas no less than 130m<sup>2</sup>.

Garden areas referred to above should be so designed and located so that a usable part of the garden area will enjoy at least three hours of any available sunlight on 1 March.

The planner recognises in the 'Planning Application Delegated Worksheet' that the 'position of windows and rooms these serve (that are on boundaries) limit (overlooking) concerns. These windows are to shower rooms and would have opaque glazing.

Courtyard house 1 (below) has an overall plot of 767m<sup>2</sup> (denoted by a blue chain link line). The usable garden is 303m<sup>2</sup> (green shading) with additional 'Private Spaces' totalling 35.4m<sup>2</sup>



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Corner house (below) has an overall plot of 207m<sup>2</sup> (denoted by a blue chain link line). The usable garden is 150m<sup>2</sup> (green shading).



Courtyard house 2 (below) has an overall plot of 574m<sup>2</sup> (denoted by a blue chain link line). The usable garden is 150m<sup>2</sup> (green shading) with additional 'Private Spaces' totalling 43.1m<sup>2</sup>



The plot sizes above exclude the house footprint.

Private spaces open directly to and link rooms in the houses.

DP2 - Distance between buildings complies with the criteria in the 'Local Plan' (5c). The houses offer private (secret) gardens complying with (5b) of the 'Local Plan' as well as conventional garden spaces allowing a multiple of different domestic uses. The site has been carefully designed to maximise outdoor south facing space without compromising privacy.

The main part of the corner house garden is intentionally to the front to benefit from the southerly aspect and links with the open plan living area.

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#### SUNPATH ANALYSIS 1





View 1 - 1<sup>st</sup> March at 08.00hrs

View 1 - 1st March at 10.00hrs



View 1 - 1st March at 12.00hrs



Page3

View 1 - 1st March at 14.00hrs



View 1 - 1st March at 16.00hrs

See sun path at:

https://www.dropbox.com/s/pit4zkp0an85br7/View%201%20-%20SUN.mp4?dl=0

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#### **SUNPATH ANALYSIS 2**



View 2 - 1st March at 08.00hrs

View 2 - 1st March at 10.00hrs





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View 2 - 1st March at 12.00hrs





View 2 - 1st March at 16.00hrs See sun path at:

https://www.dropbox.com/s/dht3aneaps4uguv/View%202%20-%20SUN.mp4?dl=0

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#### **SUNPATH ANALYSIS 3**



View 3 - 1<sup>st</sup> March at 08.00hrs



View 3 - 1st March at 12.00hrs



View 3 - 1st March at 10.00hrs



View 3 - 1st March at 14.00hrs



View 3 - 1st March at 16.00hrs

See sun path at:

https://www.dropbox.com/s/csz95yy7kfpj02b/View%203%20-%20SUN.mp4?dl=0

The above illustrations demonstrate that each of the houses/gardens enjoy at least six hours of sunlight on 1<sup>st</sup> March – from 09.00hrs to 15.00hrs.



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The proposed contemporary houses are low carbon/passive, highly insulated with photo voltaic roof panels (electricity) and ground source heat pumps (hot water/heating). The main living areas and gardens are south facing making use of natural sunlight (concrete floors/thermal mass). They are individually designed to suit their location on the site. Contemporary design not mass house-builder. DP2 – 5d encourages the use of 'novel architectural solutions, high standard of design, energy conservation and sustainability'.

The houses are built using good quality materials including natural stone, zinc cladding, cedar lining, smooth render and sedum (grass) roofs. Please refer to the design statement for details of the proposed materials.

The houses and gardens are orientated to face south maximising the amount of sunshine enjoyed by the gardens. The houses and gardens are not conventional, they are individually designed to suit their situation, providing a mix of 'private' courtyards, conventional garden as well as woodland/screening.

#### **Reason for refusal:**

2. The proposed dwellings would be exposed to high levels of noise and potentially vibration from the adjacent railway line and inadequate information has been submitted to demonstrate the full impact this would have on the amenity of the occupants or the impact that any mitigation measures proposed to address this would have on the character and appearance of the conservation area, contrary to policies DP2 and RP22 of the adopted Midlothian Local Plan.

9. It has not been demonstrated to the satisfaction of the Planning Authority that the development can take place without affecting former coal mining activities at the application site through the submission of a Coal Mining Risk Assessment approved by the Coal Authority.

10. It has not been demonstrated to the satisfaction of the Planning Authority that there would be no unacceptable adverse impact on any European Protected Species, contrary to policy RP13 of the adopted Midlothian Local Plan.

#### **Response:**

The applicant is happy to commission an acoustic/vibration report, mining risk assessment and a bat survey and would put in place the necessary measures to comply with the findings, if planning permission is granted (with these conditions). It is difficult to justify the expense of these before that time – the acoustic/vibration report and mining risk assessment would cost in excess of £8,000.

The acoustic requirements would be met with a combination of house wall construction, triple glazing and acoustic fencing.

The existing houses at Railway Cottages, which are closer to the railway line and at the same level, have not been afforded much in the way of acoustic measures (chain link fencing). See photograph below:

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It is likely that coring will be done to physically check the ground conditions for mining. It would be hoped at this stage to utilise these cores to introduce ground source heating pipework.

#### Reason for refusal:

4. The proposed house designs are not in keeping with and would not maintain or enhance the character and appearance of the surrounding area or conservation area. Neither are the house types of such a high quality or innovative design that they would represent an acceptable approach within the conservation area where buildings of traditional form, design and materials are encouraged. The houses will sit at in exposed prominent position and will detract from the character and appearance of the conservation area, contrary to policies DP2, HOUS3, RP20 and RP22 of the adopted Midlothian Local Plan.

5. The cumulative effect of the design, layout and prominence of the houses along with the amount of works required to accommodate the access and visibility splays will have a significant detrimental impact on the local landscape and character and appearance of the surrounding area, contrary to policies DP2, HOUS3, RP20 and RP22 of the adopted Midlothian Local Plan.

#### **Response:**

The planners' assessment of the merits of the architecture and their appropriateness in the setting is subjective.

Local Plan Policies state:

1.2.4. The Framework embraced the principles of sustainable development. It sought action to address the threat posed by climate change by using resources and infrastructure more efficiently, reducing energy consumption and CO emissions, promoting waste reduction and

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recycling, developing renewable sources of energy, promoting more sustainable forms and patterns of transport, and reusing 'brownfield' land.

1.2.11. The settlement strategy continues to give priority to the reuse of urban brownfield land.

2.2.3. Policy ENV1G requires local plans, in encouraging the development of infil sites, the redevelopment of brownfield land....to promote a high quality of design in all new development.

3.2.4. The reuse of previously developed land and vacant buildings within settlements is encouraged.

3.10.1. National Planning Policy Government guidance in PAN 33 Development of Contaminated Land encourages the full and effective use of all land, including that which has been previously developed and is now lying derelict. Reuse of such 'brownfield' land helps to revitalise urban areas and reduces the need to use greenfield land for new development. This will assist in the protection of the Green Belt and the countryside.

3.10.2. Structure Plan Policy - One of the objectives of the ELSP 2015 is to protect and enhance the environment by ensuring that, where possible, brownfield land is developed in preference to greenfield land.

Policy 5(a) The housing layout and house types should be designed to provide for a high standard of passive energy gain; in this respect buildings should be arranged as to avoid unduly overshadowing one another

Policy 5(d) The Council wishes to encourage a high standard of design. Novel architectural solutions including those which meet the need for energy conservation and sustainability will be encouraged.

Of the objections made only two people objected to the style of the houses.

#### Reason for refusal:

6. The application site is at an important and prominent location at the entrance to Eskbank and the proposed development would materially detract from the appearance of the area and this and the above reasons the proposal is contrary to policies RP20 and RP22 of the adopted Midlothian Local Plan.

7. The proposed development will result in the significant loss of trees, which will result in the degrading of the landscape buffer and resultant definition of the settlement edge in this area, to the detriment of the character and appearance of the conservation area and local landscape, contrary to the aims of policies RP5 and RP7 of the adopted Midlothian Local Plan.

#### Response:

It is proposed to retain the majority of trees/screening to the north, north west, south and south east of the site as indicated on the proposed site plan and the animation file:

https://www.dropbox.com/s/mwwxushk9kp5jvm/Glenesk.mp4?dl=0

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Additional screening is proposed to replace trees removed as a consequence of the works.

If necessary additional landscaping could be incorporated in consultation with the councils' landscape officer.

A planning application has been submitted for the adjacent site, to the north, for six houses, which would be encountered before this site on the approach to Eskbank.

The existing houses at Weir Crescent (1970's estate) are as prominent on the approach to Eskbank. They are, in fact, at a higher level than any of the proposed new houses.

#### Reason for refusal:

 The proposed access and associated works would result in significant road safety concerns which would be to the detriment of the safety of road users.

#### Response:

The council's transportation consultant has no objection to the proposals. The position of the site access, sight lines etc were discussed at great length to find the most suitable arrangement.

The adjusted sight lines will allow road users greater visibility to see oncoming traffic on the bend.

The applicant is prepared to discuss and consider contributing to additional traffic calming measures if necessary. The council's transportation consultant has agreed that the speed limit can be reduced from 40 mph to 30 mph. A condition of any consent is that street lighting would be introduced. Both of the above measures would be carried out the applicants' expense.

#### **Conclusion:**

The proposed houses are not mass house builder standard types, their design has been carefully considered to sit well within the site. They are very thermally efficient, have renewable energy sources, the materials used are of a good quality and recyclable.

The proposal would bring a brownfield site into use.

This development helps to address the shortage of new homes in Midlothian.

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# APPENDIX C

#### **MIDLOTHIAN COUNCIL**

#### DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

#### Planning Application Reference: 17/00267/DPP

Site Address: Land 100m south of Glenarch Lodge, Melville Road, Dalkeith.

**Site Description:** The site is an area of vacant land at the entrance to Eskbank on an elevated level above Melville Road. The applicant states this was a former colliery. It is located within the transition area between the countryside and the built up area. Melville Road is to the west and south, the Borders Railway to the east and countryside to the north. The ground levels within the site are much higher than the land to the east and west. The land to the north was recently used in connection with the construction of the Borders Railway. There are houses along part of the site at Melville Road to the west. A stone wall runs along the boundary to Melville Road. The site is within the Eskbank and Ironmills Conservation Area. There is an Area of Great Landscape Value/Special Landscaped Area 80 metres to the north.

Proposed Development: Erection of 3 dwellinghouses.

**Proposed Development Details:** Three houses are proposed, with single and two storey elements, in a contemporary design. These are to be finished in: sandstone, light grey render, larch cladding and zinc cladding walls; sedum, single ply membrane and glass roofs; light grey aluminium window and door frames; and solar panels.

An acoustic fence is proposed along the boundary to the railway and the elevations facing this direction are to have triple glazed windows. The fence height will be determined following an acoustic survey, which has not been undertaken. The retaining wall to the railway line will be retained with the cement infill areas painted. The houses will be connected to the public water supply and drainage network and have ground source heat pumps. Existing landscaping is to be removed.

A new access is to be formed onto Melville Road which will require engineering works given the changes in ground levels. Two garages are to be set into the land adjacent to the access. The boundary wall to Melville Road is to be lowered to achieve visibility splays. Gabion retaining walls by the access are to be filled with site rubble and sandstone. The speed limit along Melville Road at the site is to be lowered from 40mph to 30mph and street lighting is proposed.

A design and access statement has been submitted providing the rationale behind the proposal.

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

Land to the north

17/00421/DPP Erection of 6 dwellinghouses; formation of access road and car parking and associated works. Pending consideration.

#### **Consultations:**

The Council's **Policy and Road Safety Manager** has no objection to the proposal. They state the location of the access is located at the optimum position to achieve a satisfactory visibility splay. This means that the existing stone wall is to be reduced and a wide, level grass verge is to be formed on each side of the entrance. Should permission be granted, conditions should be attached, including: extending street lighting over the site; extend the 30mph speed limit to the end of the lighting; specific types of garage doors; and sections of the visibility splay. A developer contribution is required towards the costs of changing the speed limit at the site.

The Council's **Environmental Health Manager** has concerns over noise and disturbance given the proximity to the Waverly Line. They request that a noise impact assessment be carried out to demonstrate the site is suitable for residential development and that the houses would not be adversely affected by noise and vibration from train movements or that acceptable acoustic and vibration standards can be achieved through suitable mitigation and building layout/design measures. They request that a condition be imposed in order to address any ground contamination issues at the site.

The **Coal Authority** has objected to the application as the information submitted revealed a significant risk to any development of the site. Further specialist intrusive works and investigation is required before they can be satisfied that the site can be safely developed. This should determine the extent of past coal mining activities and the implications for the layout and design for the proposal. Any remedial, preventative and mitigation measures should then be proposed as part of a revised Mineral Position or Coal Mining Risk Assessment Report to address any issues of land instability.

**Network Rail** has no objection but requests that conditions be attached to any permission granted relating to drainage, boundary treatments, landscaping and noise. They also require details of the development prior to work starting on site.

The Council's Education Resource Manager states the development will result in one additional primary and one additional secondary place.

**Eskbank and Newbattle Community Council** objects to the proposal on road safety grounds. They note the stone walls along Melville Road are in a poor state of repair mainly due to road accidents, particularly outwith the application site. They request that should permission be granted, a condition be attached to repair these walls.

Representations: Six letters of objection have been received:

- The houses are unattractive and do not fit in the environment of Eskbank;
- Strong road safety concerns due to the high number of accidents on Melville Road;

- Although the speed limit would be dropped from 40mph to 30mph, there are still concerns over driver patterns and behaviour, the profile of the road and visibility;
- The temporary 30mph speed limit when the Borders Rail was carried out resulted in an increase in accidents in the area;
- Planting trees within the visibility splay would negate the safety aspect;
- A Road Safety Audit is required;
- The site is unsuitable for housing due to mine workings and its raised elevation;
- Light pollution due to the proposed street lighting;
- The acoustic fence may need to be significantly higher than expected following an acoustic assessment. This would be a further eyesore in the area;
- The lowering of cope stones will reduce screening at nearby properties;
- The proposed landscaping should be evergreen to limit overlooking between existing and proposed properties; and
- There are bats in the surrounding area.

Relevant Planning Policies: The relevant policies of the 2008 Midlothian Local Plan are;

**RP5 Woodland Trees and Hedges** does not permit development that would lead to the direct or indirect loss of woodland which has a particular value in terms of amenity, nature conservation, recreation, landscape character or shelter;

**RP7 Landscape Character** which advises that development will not be permitted where it may adversely affect the quality of the local landscape. Provision should be made to maintain local diversity and distinctiveness of landscape character and enhance landscape characteristics where improvement is required;

**RP13 Species Protection** states development that would affect a species protected by law will require an appropriate level of environmental and biodiversity assessment. Where development is permitted, proposals will require: measures for mitigation; and measures for enhancement or sustainable habitat replacement, where appropriate.

**RP20 Development within the Built Up Area** states that development will not be permitted where it is likely to detract materially from the existing character or amenity of the area;

**RP22 Conservation Areas** states within or adjacent to a conservation area, development will not be permitted which would have any adverse effect on its character or appearance. In the selection of site, scale, choice of materials and details of design it will be ensured that new buildings preserve or enhance the character and appearance of the conservation area. Traditional materials appropriate to the locality will be used in new buildings;

**HOUS3 Windfall Housing Sites** advises that within the built-up areas, housing development on non-allocated sites, 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, including policies IMP1, IMP2, IMP3 and DP2;

**IMP** policies relate to developer contributions for new developments in Midlothian which are payable for housing development of over 3 dwellings.

DP2 Development Guidelines sets out Development Guidelines for residential developments. The policy indicates the standards that should be applied when

considering applications for dwellings, including distances between buildings and provision of parking and amenity space.

The relevant policies of the **2014 Midlothian Local Development Plan Proposed Plan** are;

STRAT2 Windfall Housing Sites contains similar policy requirements to HOUS3 of the adopted Local Plan

**DEV2 Protecting Amenity within the Built Up Area** contains similar policy requirements to RP20 of the adopted Local Plan;

**DEV6 Layout and Design of New Development** contains similar policy requirements to DP2 of the adopted Local Plan;

**DEV7 Landscaping in New Development** provides details on appropriate landscaping within new development sites;

ENV7 Landscape Character contains similar policy requirements to RP7 of the adopted Local Plan;

ENV11 Woodland, Trees and Hedges contains similar policy requirements to RP5 of the adopted Local Plan;

**ENV15 Species and Habitat Protection and Enhancement** contains similar policy requirements to RP13 of the adopted Local Plan, but has extra criteria to be met for development to be considered acceptable;

**ENV18 Noise** states that where new noise sensitive uses are proposed in the locality of existing noisy uses, the Council will ensure that the function of the established operation is not adversely affected;

ENV19 Conservation Areas contains similar policy requirements to RP22 of the adopted Local Plan; and

IMP1 New Development and IMP2 Essential Infrastructure Required to Enable New Development to Take Place contain similar policy requirements to IMP policies of the adopted Local Plan.

**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 applicant made reference to pre-application discussions had with the Planning Authority and considers issues raised previously have been addressed. This is not the case.

While the application site is located in an area defined as being within the built up area of Eskbank it is immediately adjacent to the countryside and still has a rural/edge of settlement character. The vehicular approach to Eskbank, along Melville Road, is strongly characterised by trees and woodland within a steeply sloping valley. The application site itself is covered by part of a larger group of trees which defines the edge of the settlement. The removal of the trees from the site, and their replacement with buildings, will seriously undermine the strong definition of the settlement of Eskbank in this location.

It is only upon reaching the stone railway bridge where the trees recede and the view opens up to reveal that the character of the area has changed from countryside to the built up character associated with being in a settlement.

Although there are residential properties on the opposite side of Melville Road from the application site, these are set back from the road with garden space and landscaping between. On approach from both the north and the south, these properties are generally softened in to the landscape as a result of their distance from the road, the road trajectory, their position and orientation and the mature established garden planting. There are flatted dwellings to the east of the site, across the railway line, which are on a lower ground level than the site and are well screened from view. These are visually and physically read as being separate from the site. These residential developments integrate well with, and retain the rural character of, the area.

The proposed houses will be on a significantly higher ground level than Melville Road and the site plan, submitted with the planning application, indicates that a considerable amount of groundwork will be carried out and landscaping/trees and other planting will be removed from the site in order to accommodate the proposed dwellings and vehicular access. These works will result in the development being highly prominent. The prominence of the development will have a significant detrimental impact on the existing character and appearance of this area and conservation area.

Where settlements abut the countryside it is the Planning Authority's standard approach, established through adopted planning policy, to require the provision of a landscape buffer in order to clearly define the boundaries of settlements. This is particularly the case where new developments are proposed on the periphery of settlements. This proposed development will effectively remove a successfully establish landscape buffer from this location, opening up views of the built up area which are otherwise softened by the existing trees.

The house designs are of a contemporary style. Such an approach may be acceptable provided the character of the site is not detrimentally affected by the siting and appearance of the new houses. The Planning Authority welcomes innovatively designed and detailed buildings where this is appropriate given the local context, with particular reference to the character of the local landscape and nearby buildings (especially in conservation areas) and topography of the area. The proposed houses are large and bulky, with little consideration or reference to the surrounding area. The houses will sit prominently on this site, which will be left more exposed as a result of the removal of trees. The development will dominate views at the edge of the settlement, resulting in a very hard entrance to Eskbank in contrast to the current character of the area.

The development, as proposed, will not preserve or enhance the character and appearance of the conservation area.

The site plan indicates that the proposed garden areas for the dwellings will far exceed the Local Plan standards. However, this is misleading as they include the total area of the plots, excluding the house footprints, which includes land in the visibility splays, steeply sloping land and areas of landscaping. This is not all usable garden ground. The houses are served by much smaller garden ground, some of which are to the front of houses or in areas where there would be some degree of

overlooking and therefore not private. The houses are not served by sufficient private usable garden ground.

The proximity of the two houses to the north of the site could result overlooking and impact on privacy of the occupants. However the position of the windows and rooms these serve limits such concerns. Should permission be granted, it should be conditioned that certain windows be obscurely glazed to ensure the privacy of the occupants.

The position of the two dwellings raises potential for the house to the west to overshadow the one to the east, due to the site's orientation and changes in ground levels.

As previously noted, there is a large amount of landscaping in the site, which is mainly self-seeded vegetation generally located along the boundaries. This vegetation consists of a mix of young to early-mature trees and shrubs including sycamore, birch, ash, hawthorn, elm and elderflower. Some trees have been coppiced. Although none are significant specimen trees, the overall appearance of the site is one of lush and green vegetation and surrounding meadow grass land. The site acts as a wildlife buffer zone between the railway and the road.

No detailed landscape proposals have been submitted with the proposals. Given the houses would be highly exposed and prominent, should permission be granted it is paramount that sufficient landscaping, including the retention of some of the existing vegetation and new tree planting, is incorporated into the design to attempt to integrate the development in the surrounding area. Any new planting would need to be agreed to ensure this is sufficient to integrate the site into the surrounding area and be natural to the area. If permission were granted then a number of other conditions relating to landscaping would be required, including replacement planting and tree protection measures. It should be noted that landscaping should be used to help integrate a development into an area, rather than screen and hide it. The Planning Authority are concerned that the scale and position of development is such that landscaping may not be sufficient to integrate it into the area.

All objectors raised road safety as a significant concern, particularly in relation to poor visibility, the twisting nature of the road, the high number of accidents which occur on a regular basis and the speed cars are driven. They allege that the high vehicle speeds cause accidents on this stretch of road. There is a perception that the development will increase the incidence of accidents in the area.

While the Council's Policy and Road Safety Manger has indicated that the proposed development will not have a detrimental impact on road safety in this location the Planning Authority must take in to account the concerns being raised by other third parties and reach a decision on whether the new access and development should be supported.

The Planning Authority considers that the issues raised by the objectors represent valid material concerns regarding the proposed development. Works to accommodate the required visibility splays include regrading of the ground in part of

the site and lowering the height of the existing boundary wall. It is also proposed that the speed limit across the site boundary be reduced to 30mph.

Although on plan these measures appear to address road safety concerns, the Planning Authority are concerned that introducing a vehicular access at the proposed location would still pose a significant threat to road safety given the speed of vehicles and the bending nature of the road, despite a proposed reduction in the speed limit. The proposed access is at the tightest curve in this road where vehicles travel at speed, with poor visibility. The Planning Authority is concerned that the visibility splay required to serve the new access may not be deliverable unobstructed while addressing the concerns over the landscaping of the site. In addition, the provision of an acceptable visibility spay is likely to require a significant use of land within the site, potentially further reducing the amenity provided to the residential properties.

The wall along the railway line is to be retained and the existing cement areas painted light grey. Although this will not be a particularly attractive feature in the conservation area, this maintains the existing situation. The inclusion of an acoustic fence on top of this may have a detrimental impact on the area depending on its height and design. The applicant has not established the necessary height of the fence and therefore it has not been demonstrated to the satisfaction of the Planning Authority that there will not be an adverse impact on the character and appearance of the conservation area.

The Environmental Health Manger requested further information to demonstrate that noise and vibration issues could be addressed to a satisfactory level due to the proximity to the railway. The strong concerns over the impact the railway would have on the amenity of occupants mean this information is vital to assess if the proposed development could be acceptable. The application cannot be fully assessed without this information and the Planning Authority cannot attach conditions to permission which are not reasonable or achievable. The applicant has been asked to submit this information but has not done so. It has, therefore, not been demonstrated that the development could offer adequate levels of noise protection within the houses or garden grounds or sufficiently address vibration issues which would result in a reasonable level of amenity to the occupants.

In addition, and as stated earlier, the absence of the noise report means that height of the acoustic fencing along the boundary of the railway is not clear. This may need to be higher than indicated on the proposed plans which may have a detrimental impact on the character and appearance of the surrounding conservation area and also the daylight and outlook from the house closest to this boundary.

The Coal Authority has objected to the planning application, as the information submitted revealed there is a significant risk to any development of the site, due to previous uses in the area and historic mine shafts. The information submitted with the application has not demonstrated that the site can be safely developed and further specialist intrusive works and investigation is required in order to determine the extent of past coal mining activities and the implications for the layout and design for the proposal. Only after considering this could the Coal Authority be satisfied that the site can be safely developed. Remedial, preventative and mitigation measures

should then be proposed as part of a revised Mineral Position or Coal Mining Risk Assessment Report to address any issues of land instability. Given the history of the site and the objection from the statutory consultee, the Planning Authority cannot support the proposal as it has not been demonstrated that the site can be safely developed.

The applicant states they cannot justify the expense of the additional surveys until they have some indication the application would be supported. They request conditions be attached to any permission requiring the further information be submitted in due course. The Planning Authority cannot support the application as it has not been demonstrated that the site can be safely developed and if it can, that future occupants would be offered adequate levels of noise protection within the houses or garden ground or sufficiently address vibration issues which would result in a reasonable level of amenity. These are fundamental material planning considerations which need to be considered as part of the assessment which cannot be conditioned.

A number of objectors stated there are bats in the surrounding area which could be affected by the proposal. This has been discussed with the applicant. It may be that bats are not roosting within the site but use it for foraging or navigation. It has not been demonstrated to the satisfaction of the Planning Authority that bats have been considered as part of the development or that mitigation measures have been put in place to ensure these are not detrimentally affected.

The following addresses issues raised by objectors and the Community Council not addressed above. The Planning Authority cannot require the applicant to carry out works to walls outwith their ownership as suggested. It is not clear how the lowering of the cope stones of the boundary wall will reduce screening to nearby properties.

Should permission be granted, developer contributions are required to ensure that essential infrastructure and environmental requirements associated with the provision of the dwellings can be carried out. A contribution towards the costs of changing the speed limit across the site is also required. Given the previous uses of the site, should permission be granted a condition should be attached to address ground contamination issues. Also, conditions reflecting the comments made by Network Rail should be attached.

Numerous discussions were had between the applicant and the Planning Authority at pre-application stage. The Planning Authority has consistently raised concerns over the impact of developing the site. These include concerns that the development would adversely impact on the surrounding area, as well as the impact on the amenity of future occupants, landscaping and access. The applicant has been informed that the Planning Authority considered that support for a residential development on this site would be very unlikely.

Recommendation: Refuse planning permission.



## **Refusal of Planning Permission**

Town and Country Planning (Scotland) Act 1997

### Reg. No. 17/00267/DPP

Eskbank Design Studio Ltd 7 Newbattle Road Eskbank Dalkeith EH22 3DA

Midlothian Council, as Planning Authority, having considered the application by Mr Craig Douglas, 7 Newbattle Road, Eskbank, Dalkeith, EH22 3DA, which was registered on 6 April 2017 in pursuance of their powers under the above Acts, hereby **refuse** permission to carry out the following proposed development:

# Erection of 3 dwellinghouses at Land 100M South Of Glenarch Lodge, Melville Road, Dalkeith

In accordance with the application and the following plans:

Drawing Description.	Drawing No/Scale	Dated
Location Plan	1:5000 1:2500	06.04.2017
Site Plan	1 1:200	06.04.2017
Site Plan	2 1:200	06.04.2017
Proposed Elevations	3 1:100	06.04.2017
Elevations, Floor Plan and Cross Sections	4 1:100	06.04.2017
Elevations, Floor Plan and Cross Sections	5 1:100	06.04.2017
Elevations, Floor Plan and Cross Sections	6 1:100	06.04.2017
Proposed Elevations	7 1:100	06.04.2017
Design and Access Statement		06.04.2017

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

- 1. The proposed houses would be provided with inadequate levels of private usable amenity space, contrary to policy DP2 of the adopted Midlothian Local Plan.
- 2. The proposed dwellings would be exposed to high levels of noise and potentially vibration from the adjacent railway line and inadequate information has been submitted to demonstrate the full impact this would have on the amenity of the occupants or the impact that any mitigation measures proposed to address this would have on the character and appearance of the conservation area, contrary to policies DP2 and RP22 of the adopted Midlothian Local Plan.
- 3. As the proposed development would result in very poor levels of amenity being provided for the future occupants of the residential properties, the proposal is contrary to policies RP20, HOUS3 and DP2 of the adopted Midlothian Local Plan.
- 4. The proposed house designs are not in keeping with and would not maintain or enhance the character and appearance of the surrounding area or conservation

area. Neither are the house types of such a high quality or innovative design that they would represent an acceptable approach within the conservation area where buildings of traditional form, design and materials are encouraged. The houses will sit at in exposed prominent position and will detract from the character and appearance of the conservation area, contrary to policies DP2, HOUS3, RP20 and RP22 of the adopted Midlothian Local Plan.

- 5. The cumulative effect of the design, layout and prominence of the houses along with the amount of works required to accommodate the access and visibility splays will have a significant detrimental impact on the local landscape and character and appearance of the surrounding area, contrary to policies DP2, HOUS3, RP20 and RP22 of the adopted Midlothian Local Plan.
- 6. The application site is at an important and prominent location at the entrance to Eskbank and the proposed development would materially detract from the appearance of the area and this and the above reasons the proposal is contrary to policies RP20 and RP22 of the adopted Midlothian Local Plan.
- 7. The proposed development will result in the significant loss of trees, which will result in the degrading of the landscape buffer and resultant definition of the settlement edge in this area, to the detriment of the character and appearance of the conservation area and local landscape, contrary to the aims of policies RP5 and RP7 of the adopted Midlothian Local Plan.
- 8. The proposed access and associated works would result in significant road safety concerns which would be to the detriment of the safety of road users.
- 9. It has not been demonstrated to the satisfaction of the Planning Authority that the development can take place without affecting former coal mining activities at the application site through the submission of a Coal Mining Risk Assessment approved by the Coal Authority.
- 10. It has not been demonstrated to the satisfaction of the Planning Authority that there would be no unacceptable adverse impact on any European Protected Species, contrary to policy RP13 of the adopted Midlothian Local Plan.

Dated 2/6/2017

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



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