

Notice of Review: Land to North West of 3 Eskview Villas, 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 dwellinghouse and two flatted dwellings; formation of access, car parking and associated works at land to north-west of 3 Eskview Villas, Dalkeith.

2 Background

- 2.1 Planning application 17/00920/DPP for the erection of dwellinghouse and two flatted dwellings; formation of access, car parking and associated works at land to north-west of 3 Eskview Villas, Dalkeith was refused planning permission on 5 March 2018; a copy of the decision is attached to this report.
- 2.2 The review has progressed through the following stages:
- 1 Submission of Notice of Review by the applicant.
 - 2 The Registration and Acknowledgement of the Notice of Review.
 - 3 Carrying out Notification and Consultation.

3 Supporting Documents

- 3.1 Attached to this report are the following documents:
- A site location plan (Appendix A);
 - A copy of the notice of review form and supporting statement (Appendix B). Any duplication of information is not attached;
 - A copy of the case officer's report (Appendix C);
 - A copy of the decision notice, issued on 5 March 2018 (Appendix D); and
 - A copy of the relevant drawings/plans (Appendix E).
- 3.2 The full planning application/review 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 21 May 2018; and
 - Have determined to progress the review by way of written submissions.
- 4.2 The case officer's report identified that three consultation responses and 15 representations from 11 different households were received. As part of the review process the interested parties were notified of the review. Six additional comments have been received from interested parties reinforcing their objection to the application. All the comments can be viewed online on the electronic planning application/review case file.
- 4.3 The next stage in the process is for the LRB to determine the review in accordance with the agreed procedure:
- Identify any provisions of the development plan which are relevant to the decision;
 - Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies;
 - Consider whether or not the proposal accords with the development plan;
 - Identify and consider relevant material considerations for and against the proposal;
 - Assess whether these considerations warrant a departure from the development plan; and
 - State the reason/s for the decision and state any conditions required if planning permission is granted.
- 4.4 In reaching a decision on the case the planning advisor can advise on appropriate phraseology and on appropriate planning reasons for reaching a decision.
- 4.5 Following the determination of the review the planning advisor will prepare a decision notice for issuing through the Chair of the LRB. A copy of the decision notice will be reported to the next LRB for noting.
- 4.6 A copy of the LRB decision will be placed on the planning authority's planning register and made available for inspection online.

5 Conditions

- 5.1 In accordance with the procedures agreed by the LRB at its meeting of 13 June 2017, and without prejudice to the determination of the review, the following condition has 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 a scheme to deal with any contamination of the site has been submitted to and approved by the planning authority. The scheme shall contain details of the proposals to deal with any contamination and include:
 - i. the nature, extent and types of contamination on the site;
 - ii measures to treat or remove contamination to ensure that the site is fit for the uses hereby approved, and that there is

- no risk to the wider environment from contamination originating within the site;
- iii measures to deal with contamination encountered during construction work; and
- 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.*

2. Unless otherwise approved in writing by the planning Authority development shall comply with the Conclusions contained in the approved Coal Mining Risk Assessment.

Reason: *To ensure that the history of coal mining within the surrounding area is adequately addressed as part of the development process.*

3. Development shall not begin until temporary protective fencing is erected around all trees on the site to be retained. The fencing shall be positioned in circumference to the trunk at a distance from it which correlates to the trees canopy unless otherwise agreed in writing with the local planning authority. No excavation, soil removal or storage shall take place within the enclosed area.

Reason: *To ensure the development does not result in the loss or damage of trees which merit retention in accordance with local and national planning guidance and advice.*

4. Prior to any external finish materials, hard surface materials; and fences/boundary walls being installed details and, if requested, samples of the materials shall be submitted to and approved in writing by the Planning Authority. Thereafter development shall comply with the approved details unless otherwise approved in writing by the Planning Authority.

Reason: *To safeguard the character of the conservation area.*

- 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, children's play provision and Borders Rail. The legal agreement shall be concluded prior to the issuing of the LRB decision. The legal agreement shall be concluded within 6 months of the resolution to grant planning permission, if the agreement is not concluded the review will be reported back to the LRB for reconsideration.

6 Recommendations

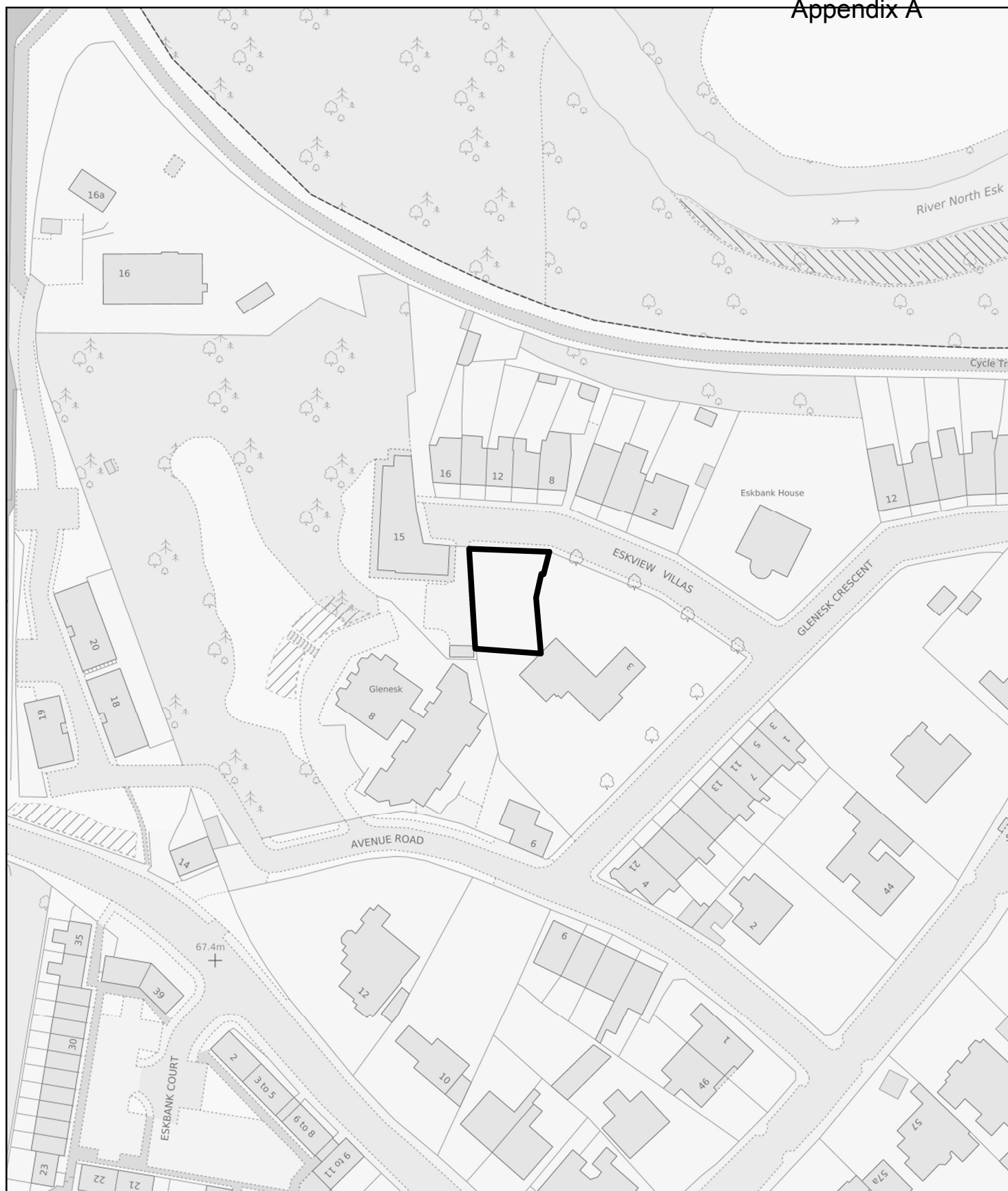
- 6.1 It is recommended that the LRB:
- a) determine the review; and
 - b) the planning advisor draft and issue the decision of the LRB through the Chair

Date: 15 May 2018

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

Tel No: 0131 271 3310

Background Papers: Planning application 17/00920/DPP available for inspection online.



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

Erection of dwellinghouse and two flatted dwellings; formation of access car parking and associated works at Land To North West Of 3 Eskview Villas, Dalkeith

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File No. 17/0920/DPP

Scale: 1:1,250





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 100075985-002

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

Applicant or Agent Details

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

☐ Applicant ☒ Agent

Agent Details

Please enter Agent details

Company/Organisation:	<input type="text" value="HALVORSEN ARCHITECTS"/>		
Ref. Number:	<input type="text"/>	You must enter a Building Name or Number, or both: *	
First Name: *	<input type="text" value="Gail"/>	Building Name:	<input type="text" value="Mountskip House"/>
Last Name: *	<input type="text" value="Halvorsen"/>	Building Number:	<input type="text"/>
Telephone Number: *	<input type="text" value="07956 247858"/>	Address 1 (Street): *	<input type="text" value="Mountskip House"/>
Extension Number:	<input type="text"/>	Address 2:	<input type="text"/>
Mobile Number:	<input type="text"/>	Town/City: *	<input type="text" value="Gorebridge"/>
Fax Number:	<input type="text"/>	Country: *	<input type="text" value="United Kingdom"/>
		Postcode: *	<input type="text" value="EH23 4NW"/>
Email Address: *	<input type="text" value="gail@halvorsenarchitects.co.uk"/>		

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

☐ Individual ☒ Organisation/Corporate entity

Applicant Details

Please enter Applicant details

Title:	Mrs	You must enter a Building Name or Number, or both: *	
Other Title:		Building Name:	127
First Name: *	Christina	Building Number:	
Last Name: *	Walters	Address 1 (Street): *	High Street
Company/Organisation	Genesis J&T Ltd.	Address 2:	
Telephone Number: *	07889337053	Town/City: *	Dalkeith
Extension Number:		Country: *	Midlothian
Mobile Number:		Postcode: *	EH22 1BE
Fax Number:			
Email Address: *			

Site Address Details

Planning Authority:	Midlothian Council
Full postal address of the site (including postcode where available):	
Address 1:	3 ESKVIEW VILLAS
Address 2:	ESKBANK
Address 3:	
Address 4:	
Address 5:	
Town/City/Settlement:	DALKEITH
Post Code:	EH22 3BN

Please identify/describe the location of the site or sites

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Northing	666843	Easting	332512
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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)

A new block of two flats and one 2-storey house in the grounds of Happy Days nursery.

Type of Application

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

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

What does your review relate to? *

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

Statement of reasons for seeking review

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

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

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

Please refer to accompanying report - Reasons for notice of Review

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

☐ Yes ☒ No

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

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

Reasons for notice of Review report

Application Details

Please provide details of the application and decision.

What is the application reference number? *

17/00920/DPP

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

21/11/2017

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

05/03/2018

Review Procedure

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

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

☒ Yes ☐ No

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

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

☐ Yes ☒ No

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

☒ Yes ☐ No

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

They are able to make a visit unaccompanied but should forewarn the nursery as it is an operating nursery with young children on-site.

Checklist – Application for Notice of Review

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

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

☒ Yes ☐ No

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

☒ Yes ☐ No

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

☒ Yes ☐ No ☐ N/A

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

☒ Yes ☐ No

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

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

☒ Yes ☐ No

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

Declare – Notice of Review

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

Declaration Name: Mrs Gail Halvorsen

Declaration Date: 15/03/2018

Reasons for notice of Review - New residential block of two flats and one house, 3 Eskbank Villas, Dalkeith

Reg. No. 17/00920/DPP

Background

Planning permission is sought for a new detached block of two flats and one house in the grounds of Happy Days nursery at 3 Eskview Villas. A pre-application enquiry - 17/00549/PREAPP - was made for the scheme and subsequent telephone conversations about the design held with Graeme King, planning officer at Midlothian Council.

Planning permission for the proposed building has only been refused on three counts, none of which object to the principle of the three dwellings on the site or the style of the proposed building. In fact in several conversations with Graeme King, we were told that Midlothian Council planning department looked favourably on the design, but had reservations about the size of the building.

We believe that the site, so near Dalkeith town centre, with all its amenities and good transport links make this an ideal site for development. The residential block is small, each of the three units only having one open-plan reception room and two bedrooms. Good bus routes are available on Eskbank Road, a three minute walk away, and it is a 15 minute walk to Eskbank Station on the Borders Railway. Kings Park is five minutes walk away.

I will address the three points of objection, all of which we believe are relatively minor issues or not as detrimental as they might appear from the report by Duncan Robertson.

Points raised in DPP report of 5/3/2018 addressed below:

DPP Point 1.

The site has insufficient space to accommodate the necessary levels of private outdoor space.

Both the front and rear gardens of the proposed development are to be shared. Therefore the cumulative area of three individual properties is not relevant in this case. Policy DP2 of the Midlothian Local Plan states that terraced houses should have a private outdoor garden space (i.e. rear garden space) of 100 sq.m., and flats 50 sq.m. per flat. The rear garden is just above 100 sq.m., above the largest required size of garden required for any of the three properties individually.

The front garden is a large (186 sq.m.) shared vehicular space that can act as a hard-surfaced garden for children's activities etc. It will be a very green space with the existing trees, mature hedge and the proposed low-level planting around the edges. It is envisaged that these homes will

be sold to people who are not looking for a large garden of which there are ample types of accommodation in Eskbank.

The site has insufficient space to accommodate the necessary levels of car parking provision.

One house and two flats would require 4.5 parking spaces to conform to Midlothian Council's parking standards - 3 spaces for the residents and 1.5 (in effect 2) for visitors. The proposal has 4 parking spaces. As stated earlier, the local public transport is excellent and cars should be discouraged. There is however normally parking provision on Eskbank Villas.

Midlothian Parking Strategy 2017 refers to the Scotland Regional Transport Partnership's Parking Management Strategy that encourages:

"Lifestyles that are less car-dependent" and says that:

"It is becoming accepted that the unlimited growth of car use cannot be tolerated".

DPP Point 2.

The external stairs would be an unattractive feature.

The stairs are barely visible from the street as they are at the furthest point from the gap in the hedge where the proposed new entrance to the property will be. Please refer to the diagram below.

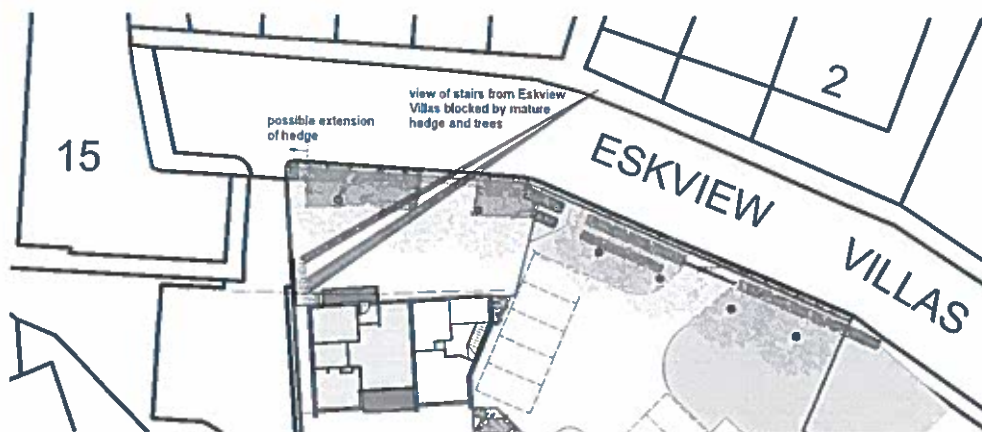


Diagram 1

They are also quite discreet because they are in the shadow of the brick boundary wall. The gap at the end of the hedge could be filled in with an extension of the hedge (see above) and pedestrians could have access through the main entrance.

The stairs are not visible from the adjacent properties due to the boundary fence / wall.

The stairs and balcony have been designed in as light a way as possible using steel as the individual members can be much smaller in steel than in for example, timber. The steel would be finished in a dark grey to match the window frames.

DPP Point 3.

The external stairs and rear balcony would create an unacceptable loss of privacy for properties in the surrounding area.

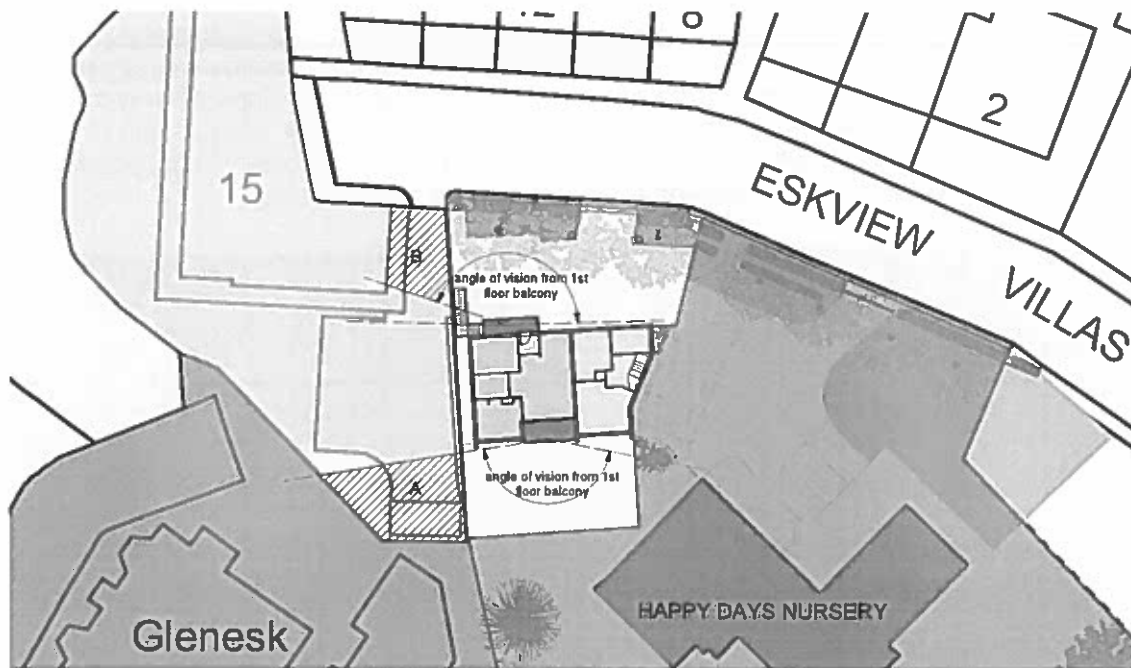


Diagram 2

FRONT - At the front of the property the view towards 15, Eskview Villas (the property shown in yellow in diagram 2) from the stairs themselves is blocked by the timber screens above the brick wall. The only property that the first floor front *balcony* overlooks is 15, Eskview Villas, but because of the screens, only a very small area of the front garden, namely the drive (shown hatched 'B'), is overlooked - see photos below.



View from stair landing towards 15, Eskview Villas showing screens.
(Photo taken from ground level + 3600mm - eye level on landing).



View from front balcony towards 15, Eskview Villas showing screens.
(Photo taken from ground level + 4650mm - eye level on balcony).

REAR BALCONY - There is one balcony at the rear - on the first floor. It was deliberately positioned in the centre of the block so that it did not adversely overlook neighbouring properties. Please refer to diagram 2. The property shown in blue is the existing Happy Days nursery that does not mind being overlooked. The property shown in yellow, 15, Eskview Villas, is only overlooked for a very small proportion of the end of the garden (shown hatched 'A') but because of the high boundary wall it is barely overlooked at all - please see photos below.



View from rear balcony towards Glenesk House - RHS cut off by wall of proposed building.
(Photo taken from ground level + 4650mm - eye level on balcony).

The property shown in purple, Glenesk House, similarly is barely overlooked at all - please see photos above.

Policy and Road Safety

Please find the points made by road safety addressed below:

1. The landscape architects' layout drawing does show a dropped kerb verge at the vehicle entrance.
2. No gates are proposed, but if this changes they will open inwards.
3. The number of parking spaces is addressed above.

Representations

The following points address the relevant objections of the neighbours:

4. Direct sunlight into the houses in Eskview Villas will not be affected. Please see the shadow diagrams in Appendix 2. The shade of the trees is much more detrimental.
5. *The materials and design are considered out of character with the properties surrounding it.* The buildings on this side of Eskview Villas, including Glenesk House, 15 Eskview Villas and Happy Days nursery, are an eclectic mix of sizes, styles and materials between them - brick, stone, harling, tile-clad walls and full height glazed walls; slate and zinc roofs of varying pitches. The new house will be read more in context with these buildings than the houses opposite as it is set back considerably from the road and has the vegetation screening it on this side. The planners do not object to the style and materials. Please see Appendix 1.
6. There are no burdens on this property.
7. Vehicular access to the site has been calculated and considered adequate by landscape architects Rankin Fraser.
8. It is considered good practice now to have "shared spaces" for vehicles and people when the vehicles will be driving slowly - hence the reference to children playing in the front garden,
9. The way in which Happy Days use the remainder of their grounds is not a planning issue, however it should be pointed out that Happy Days have a very strong ethos of encouraging children to play outside and have won numerous awards including:
 - 2014 NMT (Nursery Management Today) UK Award - 'Best Outdoor Learning Environment'
 - 2015 NMT (Nursery Management Today) UK Award- 'Best Green Nursery in the UK'
 - 2016 NMT (Nursery Management Today) UK Award - 'Best Outdoor Learning Environment'
 - Green Flag award - Happy Days, Dalkeith 2014
 - Green Flag award - Happy Days, Hardengreen 2016

Appendix 1

Photos of adjacent properties



3 Eskview Villas: From proposed new building



From side



15 Eskview Villas: From street



From proposed stairs (if no screens)

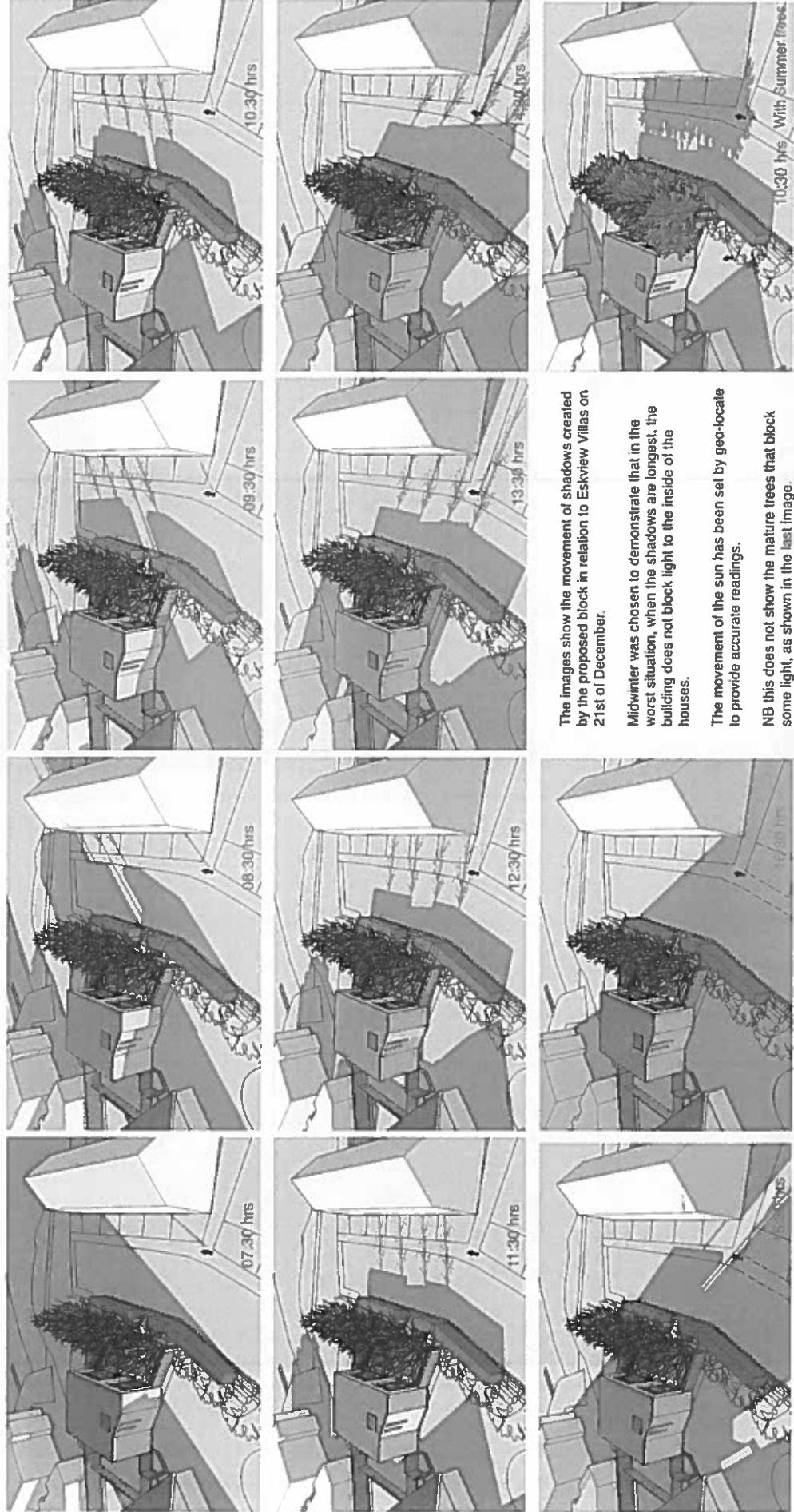
Glenesk House: From car park of 3 Eskview Villas



Appendix 2

Shadow movement 21st December

Proposed block of two flats and one house - 3, Eskview Villas



Appendix 3

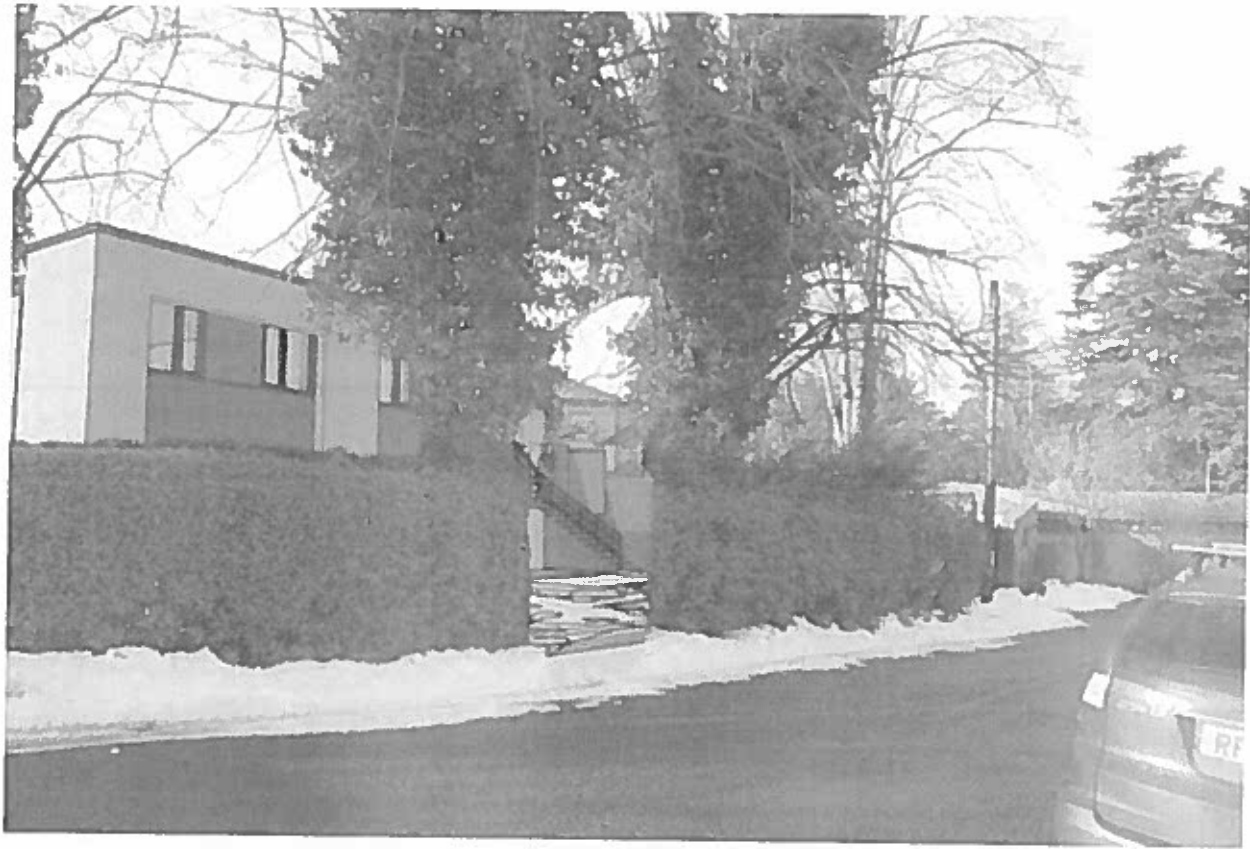
Additional photos



Tree foliage blocks views of proposed building in Summer months



View on approach in Eskview Villas blocked by mature trees, even in the Winter months



View of building and entrance from Eskview Villas in Winter

Please note that this is the only view of the entire stairs. Being to the North of the building and tucked away in the corner the front garden, beside the existing boundary wall, it is nearly always in shadow. The balcony is at the top of the stairs behind the tree.

MIDLOTHIAN COUNCIL PLANNING APPLICATION DELEGATED WORKSHEET:**Case Officer:** Graeme King **Site Visit Date:** 30/11/2017**Planning Application Reference:** 17/00920/DPP**Site Address:** Land to North West of 3 Eskview Villas, Dalkeith

Site Description: The application site is an area of open ground measuring approximately 430 sqm. The site was formerly used as garden ground associated with the building at 3 Eskview Villas; the building was originally built in the mid 1980's as a house and was converted to a children's nursery in the late 1990's. The land is not presently being used by the nursery.

The surrounding area is predominantly residential. To the North the plot is bounded by a line of trees and hedges which separate it from Eskview Villas; a street of 19thC two storey terraced houses. To the West the plot is bounded by a 2.8m high brick boundary wall beyond which is a care home. To the South the site is bounded by the garden ground associated with the nursery; there is no physical boundary demarcating this boundary at present. To the East the site is bounded by car parking spaces and pedestrian circulation space associated with the nursery; at present there is a timber fence and a brick wall that run close to the Eastern edge of the plot, although the proposed plot extends beyond the line of the fence and wall. The site is within Eskbank and Ironmills Conservation Area.

Proposed Development: Erection of dwellinghouse and two flatted dwellings

Proposed Development Details: It is proposed to erect a two storey flat roofed building measuring 15.1m wide, 9.2m deep and 6.6m tall. The building will incorporate a 2 bed house and two 2 bed flats. The building will be of a modern design with a flat roof; large areas of full height glazing; and a contemporary palette of finish materials including white render, timber cladding stained mid brown and grey coloured aluminium clad doors and windows. Access to the upper flat will be via an external stair on the front elevation of the building; the upper flat will have a balcony on the rear elevation.

The house and flats will have a vehicular access from Eskview Villas which will provide access to a shared parking area, finished with concrete paving, providing 4 parking spaces. The properties will share a rear garden of 105 sqm.

Background (Previous Applications, Supporting Documents, Development Briefs):**3 Eskview Villas**

262/83 – Erection of one dwellinghouse at Glenesk Crescent, Eskbank, Dalkeith.
Consent with conditions

22/85 – Change of proposed roofing material from artificial asbestos slate to small grey concrete tile (265mm x 165mm) at Glenesk Crescent, Eskbank, Dalkeith.
Consent with conditions

585/91 – Installation of velux roof lights at 3 Eskview Villas, Eskbank. Consent with conditions

0215/97 – Change of use from dwellinghouse to a children's nursery at 3 Eskview Villas, Eskbank. Consent with conditions

0577/97 – Erection external stair at children's nursery at 3 Eskview Villas, Dalkeith. Permitted

99/00713/FUL – Installation of 2 windows at 3 Eskview Villas, Dalkeith. Consent with conditions

Surrounding area – Land owned by Eskbank House

04/00396/FUL - Erect two storey outhouse for use as garage, workshop and art studio at Eskbank House, 14 Glenesk Crescent, Eskbank. Refused

07/00337/FUL - Erection of garage, workshop and studio at Land Adjacent to 3 Eskview Villas, Eskbank. Application withdrawn

08/00297/FUL - Erection of garage, workshop and studio at Land Adjacent to 3 Eskview Villas, Eskbank. Consent with conditions

12/00340/DPP - Erection of garage, workshop and studio at Land Adjacent to 3 Eskview Villas, Eskbank. Granted consent with conditions via appeal

13/00282/DPP - Erection of garage, workshop and studio (Amendment to design approved in planning permission 12/00340/DPP) at Land Adjacent to 3 Eskview Villas, Eskbank. Consent with conditions

Surrounding area – Glenesk House (Enhanced sheltered housing)

0411/96 - Extension to existing dwellinghouse to provide 10 amenity flats, 8 high care bedsit flats, wardens flat and ancillary accommodation; the erection of 14 amenity flats, 2 group care homes and greenhouse at Glenesk, 8 Avenue Road, Dalkeith. Consent with conditions

0307/98 - Erection of two group care houses and a workshop (amendment to planning permission no 0411/96, dated 28 February 1997) at Glenesk, 8 Avenue Road, Dalkeith. Consent with conditions

01/00052/FUL - Erection of extension to provide 18 residential units for the elderly (amendment to planning permission no 0411/96, dated 28.2.97) and refurbishment and extension to existing cottage at Glenesk, 8 Avenue Road, Dalkeith. Consent with conditions

02/00021/FUL - Removal of condition 16 of planning permission 0411/96 which requires the provision of a pedestrian path between the new access road and

Melville Road in association with the construction of 14 amenity flats at Glenesk, 8 Avenue Road, Dalkeith. Consent with conditions

Consultations: The **Coal Authority** has considered the Coal Mining Risk Assessment submitted in support of the application and has no objection to the proposal.

The Council's **Policy and Road Safety Manager** has no objection to the principle of residential development on the site but has concerns over the limited number of parking spaces proposed. The proposal provides 4 off-road parking spaces rather than the 5 spaces required by current council parking standards. The response notes that some general on-street parking is available, however as most existing properties do not have private driveways and the adjacent children's nursery will generate a number of staff and customer vehicle trips, on-street parking can be at a premium. The current proposal would put additional pressure on the limited number of on-street spaces available.

The Council's **Head of Education** has provided information on education capacity in the surrounding area and the proposed development's forecasted impact on capacity.

Representations: The application has received 15 objections from 11 different addresses. The grounds for objection are as follows:

- Road Safety – The surrounding roads are congested and prone to speeding; the proposal will exacerbate this situation.
- Parking – The proposed development has insufficient parking and the surrounding streets do not have sufficient spare capacity to accommodate further demand for parking.
- Visibility from vehicular access – The width of the proposed access and its location, between 2 trees, will result in restricted visibility for vehicles using the access.
- Design and materials – The design and finish materials are out of character with the character of the neighbouring houses and the surrounding conservation area.
- Site layout – The development would result in buildings on both sides of Eskview Villas and this will be out of character with the surrounding area.
- Loss of daylight and sunlight – The development would result in a loss of daylight and sunlight to existing properties on Eskview Villas.
- Loss of privacy – The development would result in overlooking of existing properties on Eskview Villas and loss of privacy.
- Errors in the Design Statement – The Design Statement includes various factual errors including using incorrect names for local streets.
- Alternative uses for site – The site would be better used as land associated with the nursery; this would enhance the learning experience of the children.
- Neighbour notification – Additional neighbour notification should have been carried out.

- Impact on setting of Listed Building – The development would have a detrimental impact on the setting of the category A listed building at Eskbank House.
- Restrictive burden – The land was formerly associated with Eskbank House. When the land was sold in the late 1970's/early 1980's the sale was subject to a restrictive burden which restricted the number of houses that could be built to one house.

Due to the number of objections received (and the fact that the application could only be approved subject to the applicant entering onto a suitably worded legal agreement) Council Members were notified of the intention to issue a decision. The application was not called to planning committee.

Relevant Planning Policies: The adopted development plan is the **Midlothian Local Development Plan 2017 (MLDP)**. The following policies are relevant to this application:

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

Policy **DEV2: Development within the Built-up Area** states that development will not be permitted within existing and future built-up areas where it is likely to detract materially from the existing character or amenity of the area.

Policy **DEV6: Layout and Design of New Development** sets out design guidance for new developments.

Policy **ENV19: Conservation Areas** states that development will not be permitted within or adjacent to conservation areas where it would have any adverse effect on its character or appearance.

Planning Issues: The main planning issue to be considered in determining this application is whether the proposal complies with development plan policies unless material planning considerations indicate otherwise. Any representations and consultation responses received are material considerations.

Principle of development

The application site is situated within the built-up area of Dalkeith and Eskbank. Policies DEV2 and STRAT2 support the principle of development within the built-up area subject to the details of the proposal being acceptable. The broad principle of residential development at this location is acceptable. The overall acceptability of the proposal must be determined via consideration of the detail of the proposal.

Some of the representations have made reference to the fact that the land now known as 3 Eskview Villas, which includes the application site, was for many years an orchard associated with Eskbank House; and that when it was sold off in the late 1970's/early 1980's the deeds contained a restrictive burden restricting development to one house. The enforcement of burdens in title deeds is a legal matter rather than a planning matter. The original planning permission (application reference 0262/83) for the property now known as 3 Eskview Villas does not include any planning conditions restricting the number of units on the site. The applicant's agent has been made aware of this issue and has been advised that it would be beneficial to seek advice on this matter from a solicitor.

Parking and Road Safety

The proposed development includes a parking layout with 4 car parking spaces. The Council's Parking Standards specify that private 2 bed properties, such as those proposed in the application, should be provided with 1 private space allocated to the individual property and 0.5 communal visitor spaces per unit. A development of three 2 bed units should have a minimum of 4.5 spaces; in such instances it is Midlothian Council's standard practice to round up the minimum provision so that a development of the scale proposed should be provided with 5 spaces (3 allocated spaces and 2 communal visitor spaces). While it is acknowledged that the surrounding streets benefit from unrestricted on-street parking, anecdotal evidence indicates that there is already significant demand for the existing provision. Approving a scheme without adequate levels of parking would exacerbate a known local issue.

A number of representations have made reference to the proposed vehicular access arrangements from Eskview Villas. It is proposed that access to the development will be formed in the space between two existing trees; the access will be 4.5m wide. The arrangement is similar to the existing arrangement that serves the nursery at 3 Eskview Villas, although that access is slightly narrower at 4m wide. The Council's Policy and Road Safety Manager has not raised any objection to the detail of the access arrangements and the Council therefore considers the access arrangements to be acceptable.

Amenity of proposed development

The proposed development will have a shared area of courtyard parking at the front of the building. The proposed site plan refers to this space as "hard landscaped shared front garden" and the supporting Design Statement refers to it as "a shared vehicular space that can act as a hard-surfaced garden for children's activities etc."; despite these comments it clear that the "front garden" would function only as parking space and as an overshadowed North facing space it cannot be considered as amenity space.

It is proposed that the house and the two flats will share a rear garden space of 105 sqm. Policy DEV6 of the MLDP states that "private open space should be provided on a scale appropriate to the relevant dwelling type"; further detail on the space standards for private open space will be provided in the Supplementary Guidance on Quality of Place that is currently under preparation. The former Midlothian Local Plan

2008 specified that 2 bed semi-detached houses should have a minimum private rear garden space of 110 sqm and terraced houses should have a private rear garden area of at least 100 sqm. Flats should be provided with outdoor space equivalent to half of the terraced house provision; in some cases this could be communal space although for most cottage flat scale developments the garden space is individually allocated. These space standards have been successfully incorporated within developments throughout Midlothian for more than 10 years; it is likely that the Quality of Space Supplementary Guidance will carry these standards on. It is clear from the proposed site plan that the 3 proposed units will have a provision of outdoor space that is significantly below the standards expected by Midlothian Council; this would result in a development with a sub-standard level of amenity for the occupants.

Design, Finish Materials and Character of the area

There are modern extensions in the surrounding area, both at the neighbouring care home and at various dwellinghouses; and these have successfully added modern development to the area which has respected the scale and form of the area while being representative of the time in which they were built. The proposed building is an obviously modern flat roofed design; its form reflects the scale and character of the blocks of 2 storey terraces that are a feature of the surrounding area. It utilises a simple palette of contemporary finish materials that have been successfully used in historic urban areas throughout Scotland. The design seeks to create a well detailed modern design that does not mimic the exact design and finish of the surrounding buildings but instead creates a deferential contrast to the buildings on the opposite side of Eskview Villas.

The intention of a crisp modern design is undermined by the access arrangements for the upper flat which are via an external stair formed from metal. The stair would be an incongruous feature that would detract from the character and appearance of the principal elevation and the surrounding streetscape. While it is acknowledged that there is an existing galvanised steel external at 3 Eskview Villas this stair is an unfortunate addition to the building that detracts from the character of the surrounding area. The existing stair should not be regarded as a precedent to justify the proposed external stair but instead as a clear demonstration of why such an approach would be unacceptable.

A number of representations have referred to the fact that the various terraces in the surrounding area (2 on Eskview Villas, 2 on Glenesk Crescent and 1 on Avenue Road) are single sided and do not face towards houses on the opposite side of the road. While this is largely the case, although the terrace at Avenue Road does in part face towards housing of a similar age; it does not appear to be a conscious design decision. The different terraces reflect the piecemeal nature of development in the area, with the terraces being formed at a later date on plots that were no longer considered desirable for the detached dwellinghouses that originally characterised the area.

Amenity of neighbouring properties

As is noted above the proposed development would include a prominent external stair on the front elevation of the building. In addition there would also be a balcony on the rear elevation of the building. Both of these features will create the potential for significant overlooking of existing neighbouring properties and would result in an unacceptable loss of amenity for existing residents.

The proposed building will be due South of the houses at 8 to 16 Eskview Villas; this could potentially result in a loss of sunlight to the existing houses. The widely recognised industry standard for assessing the impact of new development on daylight and sunlight for existing properties is the BRE Trust's publication "Site Layout Planning for Daylight and Sunlight, A Guide to Good Practice". The Guide states that a simple rule of thumb for determining whether or not a proposed building will result in a significant loss of sunlight or daylight to an existing house facing within 90 degrees of South is to carry out a 25 degree test. A section drawing of the existing and proposed buildings is used; if a line at 25 degrees to the horizontal is projected from the mid-point of the window being assessed, the window will receive sufficient daylight and sunlight if the line passes above the highest point of the proposed building. A 25 degree test for the proposal clearly indicates that the existing houses at Eskview Villas will not be impacted upon by the proposed building, although the existing trees may have an impact on them.

Other matters raised in representations

Neighbour notification was sent to all notifiable properties within 20 metres of the boundary of the application site. The neighbour notification complies with the standard specified by the Scottish Government in the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013.

Developer Contributions

For developments of 3-9 units the first two units are not required to contribute towards developer contributions. A development of the proposed scale would incur developer contributions for 1 unit. As the recommended decision is for refusal of the application draft Heads of Terms have not been prepared.

Recommendation: Refuse Planning Permission

1. The site has insufficient space to accommodate the necessary levels of private outdoor space and the necessary levels of car parking provision. The proposal is therefore contrary to policies STRAT2, DEV2 and DEV6 of the adopted Midlothian Local Development Plan 2017.
2. The external stairs would be an unattractive feature that would have a detrimental impact on the character of the surrounding area. The proposal is therefore contrary to policies DEV2 and ENV19 of the adopted Midlothian Local Development Plan 2017.
3. The external stairs and rear balcony would create an unacceptable loss of privacy for properties in the surrounding area. The proposal is therefore

contrary to policy DEV2 and DEV6 of the adopted Midlothian Local Development Plan 2017.

Refusal of Planning Permission

Town and Country Planning (Scotland) Act 1997



Reg. No. 17/00920/DPP

Halvorsen Architects
Mountskip House
Gorebridge
EH23 4NW

Midlothian Council, as Planning Authority, having considered the application by Mrs Christina Walters, 127 High Street, Dalkeith, EH22 1BE, which was registered on 27 November 2017 in pursuance of their powers under the above Acts, hereby **refuse** permission to carry out the following proposed development:

Erection of dwellinghouse and two flatted dwellings; formation of access car parking and associated works at Land To North West Of 3, Eskview Villas, Dalkeith

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

<u>Document/Drawing.</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Location Plan	HD ESK01 1:1250	27.11.2017
Block Plan	HD ESK02 1:500	27.11.2017
Site Plan (Existing)	HD ESK 03 1:100	27.11.2017
Site Plan (Proposed)	HD ESK 04 1:100	27.11.2017
Proposed Floor Plan	HD ESK 05A 1:100	27.11.2017
Proposed Floor Plan	HD ESK 06A 1:100	27.11.2017
Roof Plan	HD ESK 07 1:100	27.11.2017
Proposed Elevations	HD ESK 08 1:100	27.11.2017
Proposed Elevations	HD ESK 09A 1:100	27.11.2017
Proposed Elevations	HD ESK 10A 1:100	27.11.2017
Proposed Elevations	HD ESK 11 1:100	27.11.2017
Root Protection Details	1712.L.G(92)003 1:100	27.11.2017
Access Statement		27.11.2017
Coal Mining Risk Assessment		27.11.2017
Design Statement		27.11.2017
Other Statements (Landscaping)		27.11.2017

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

1. *The site has insufficient space to accommodate the necessary levels of private outdoor space and the necessary levels of car parking provision. The proposal is therefore contrary to policies STRAT2, DEV2 and DEV6 of the adopted Midlothian Local Development Plan 2017.*
2. *The external stairs would be an unattractive feature that would have a detrimental impact on the character of the surrounding area. The proposal is therefore contrary to policies DEV2 and ENV19 of the adopted Midlothian Local Development Plan 2017.*

3. *The external stairs and rear balcony would create an unacceptable loss of privacy for properties in the surrounding area. The proposal is therefore contrary to policy DEV2 and DEV6 of the adopted Midlothian Local Development Plan 2017.*

Dated 5 / 3 / 2018

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

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

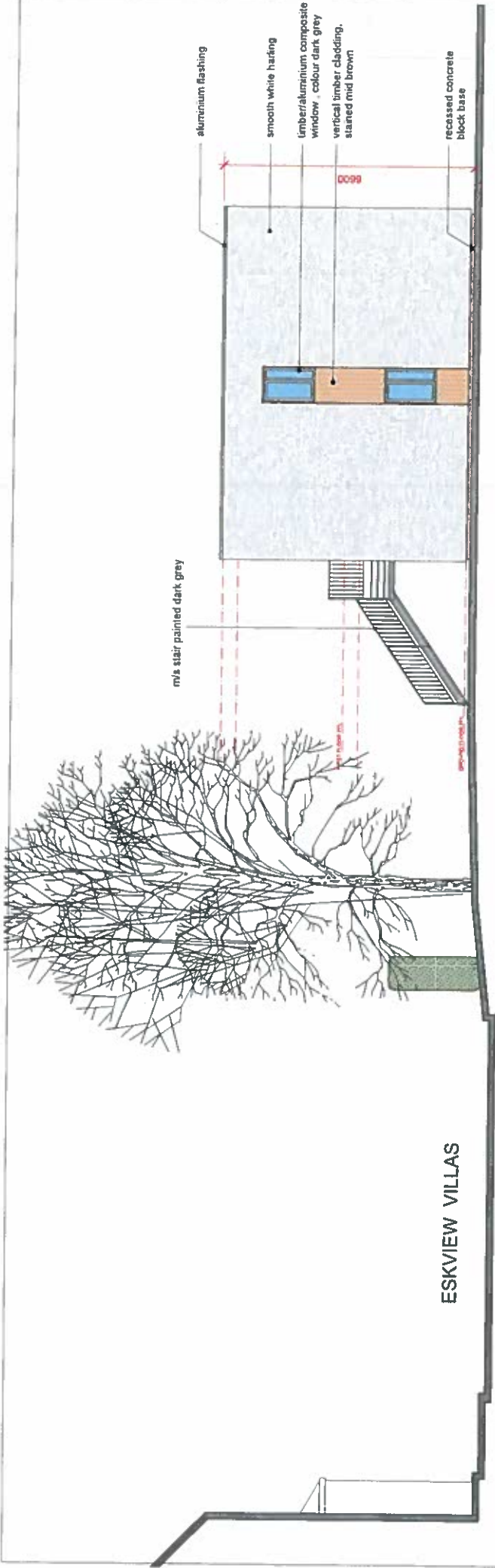


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Project title	NEW FLATS, ESKBANK	Ref	HD ESK FL
Drawing title	BLOCK PLAN	Date	15/11/17
Drawing no.	HD ESK 02	Purpose	PLANNING
		Scale	1:500

ESKVIEW VILLAS



ELEVATION WITHOUT BOUNDARY WALL

screen to adjacent garden:
vertical timber cladding, stained mid brown
+ m/s frame painted dark grey

HAPPY DAYS NURSERY



ELEVATION WITH BOUNDARY WALL

brick boundary wall

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Project title	NEW FLATS, ESKBANK	Ref.	HD ESK FL
Drawing title	WEST ELEVATION	Date	15/11/17
Drawing no.	HD ESK 08	Purpose	PLANNING
		Scale	1:100

HAPPY DAYS NURSERY

aluminium flashing

smooth white harling

timber/aluminium composite window colour dark grey



screen to adjacent garden:
vertical timber cladding, stained mid brown
+ m/s frame painted dark grey

vertical timber cladding, stained mid brown

m/s stair + balcony painted dark grey

harled planter

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Project title	NEW FLATS, ESKBANK	Ref	HD ESK FL
Drawing title	NORTH ELEVATION	Date	15/11/17
Drawing no.	HD ESK 09 A	Scale	1:100
Purpose		PLANNING	



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Project title:	NEW FLATS, ESKBANK	Ref:	HD ESK FL
Drawing title:	SOUTH ELEVATION	Date:	15/11/17
Drawing no.:	HD ESK 10 A	Scale:	1:100
Purpose:		PLANNING	