

Notice of Review: 25 High Street, Bonnyrigg

Determination Report

Report by Chief Officer Place

1 Purpose of Report

- 1.1 The purpose of this report is to provide a framework for the Local Review Body (LRB) to consider a 'Notice of Review' for the change of use of workshop to piercing studio (class 2) at 25 High Street, Bonnyrigg.

2 Background

- 2.1 Planning application 22/00869/DPP for the change of use of workshop to piercing studio (class 2) at 25 High Street, Bonnyrigg was refused planning permission on 30 January 2023; a copy of the decision is attached to this report.
- 2.2 The review has progressed through the following stages:
- 1 Submission of Notice of Review by the applicant.
 - 2 The Registration and Acknowledgement of the Notice of Review.
 - 3 Carrying out Notification and Consultation.

3 Supporting Documents

- 3.1 Attached to this report are the following documents:
- A site location plan (Appendix A);
 - A copy of the notice of review form and supporting statement (Appendix B). Any duplication of information is not attached;
 - A copy of the case officer's report (Appendix C);
 - A copy of the decision notice, excluding the standard advisory notes, issued on 30 January 2023 (Appendix D); and
 - A copy of the key plans/drawings (Appendix E).
- 3.2 The full planning application case file and the development plan policies referred to in the case officer's report can be viewed online via www.midlothian.gov.uk.

4 Procedures

- 4.1 In accordance with agreed procedures, the LRB:

- Have determined to undertake a site visit (only elected members attending the site visit can participate in the determination of the review); and
 - Have determined to progress the review by written submissions.
- 4.2 The case officer's report identified that there were two consultation responses and two representations received. As part of the review process the interested parties were notified of the review. One additional comment reinforcing an objection to the application has been received. All comments can be viewed online on the electronic planning application case file.
- 4.3 The next stage in the process is for the LRB to determine the review in accordance with the agreed procedure:
- Identify any provisions of the development plan which are relevant to the decision;
 - Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies;
 - Consider whether or not the proposal accords with the development plan;
 - Identify and consider relevant material considerations for and against the proposal;
 - Assess whether these considerations warrant a departure from the development plan; and
 - State the reason/s for the decision and state any conditions required if planning permission is granted.
- 4.4 In reaching a decision on the case the planning advisor can advise on appropriate phraseology and on appropriate planning reasons for reaching a decision.
- 4.5 Following the determination of the review the planning advisor will prepare a decision notice for issuing through the Chair of the LRB. A copy of the decision notice will be reported back to the LRB for noting.
- 4.6 A copy of the LRB decision will be placed on the planning authority's planning register and made available for inspection online.

5 Conditions

- 5.1 In accordance with the procedures agreed by the LRB at its meeting of 20 June 2022, 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 development to which this permission relates shall commence no later than the expiration of three years beginning with the date of this permission.

Reason: *To accord with the provisions of Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning (Scotland) Act 2019).*

6 Recommendations

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

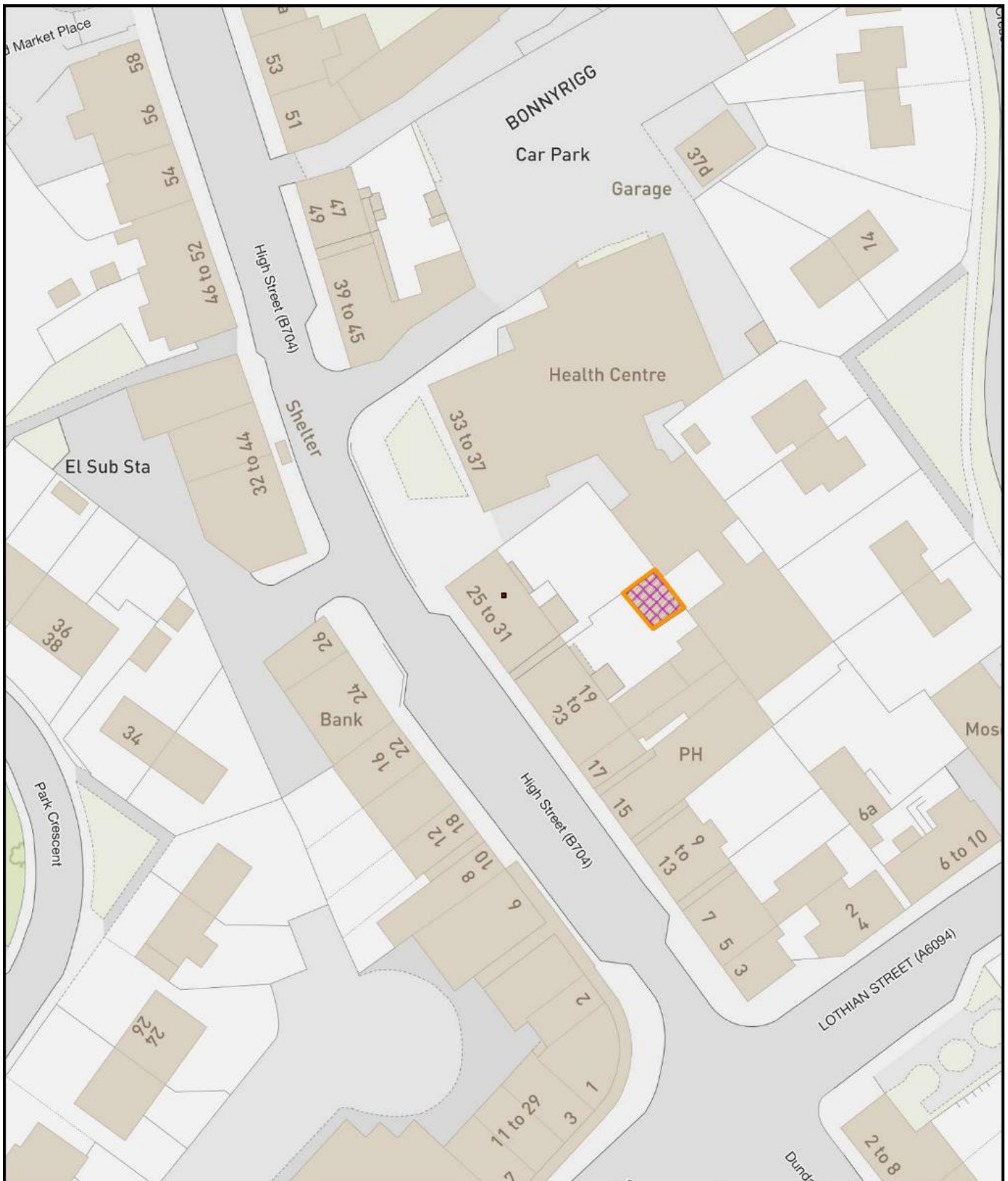
Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date: 12 May 2023

Report Contact: Peter Arnsdorf - Planning, Sustainable Growth and Investment Manager
peter.arnsdorf@midlothian.gov.uk

Background Papers: Planning application 22/00869/DPP available for inspection online.

Appendix A



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

change of use from workshop to piercing studio
25 High Street, Bonnyrigg

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File No.22/00869/DPP

Scale: 1:750





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 100620893-001

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

Applicant or Agent Details

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

☐ Applicant ☒ Agent

Agent Details

Please enter Agent details

Company/Organisation:	<input type="text" value="Cockburn's Consultants"/>		
Ref. Number:	<input type="text"/>	You must enter a Building Name or Number, or both: *	
First Name: *	<input type="text" value="Brent"/>	Building Name:	<input type="text"/>
Last Name: *	<input type="text" value="Quinn"/>	Building Number:	<input type="text" value="1A"/>
Telephone Number: *	<input type="text" value="07708971120"/>	Address 1 (Street): *	<input type="text" value="Belford Park"/>
Extension Number:	<input type="text"/>	Address 2:	<input type="text"/>
Mobile Number:	<input type="text"/>	Town/City: *	<input type="text" value="Edinburgh"/>
Fax Number:	<input type="text"/>	Country: *	<input type="text" value="City of Edinburgh"/>
		Postcode: *	<input type="text" value="EH4 3DP"/>
Email Address: *	<input type="text" value="cockburnsconsultants@gmail.com"/>		

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

☒ Individual ☐ Organisation/Corporate entity

Applicant Details

Please enter Applicant details

Title:	<input type="text" value="Mr"/>	You must enter a Building Name or Number, or both: *	
Other Title:	<input type="text"/>	Building Name:	<input type="text" value="Per Agent"/>
First Name: *	<input type="text" value="Matin"/>	Building Number:	<input type="text"/>
Last Name: *	<input type="text" value="Khan"/>	Address 1 (Street): *	<input type="text" value="Per Agent"/>
Company/Organisation	<input type="text"/>	Address 2:	<input type="text"/>
Telephone Number: *	<input type="text"/>	Town/City: *	<input type="text" value="Per Agent"/>
Extension Number:	<input type="text"/>	Country: *	<input type="text" value="Per Agent"/>
Mobile Number:	<input type="text"/>	Postcode: *	<input type="text"/>
Fax Number:	<input type="text"/>		
Email Address: *	<input type="text" value="REDACTED"/>		

Site Address Details

Planning Authority:	<input type="text" value="Midlothian Council"/>
Full postal address of the site (including postcode where available):	
Address 1:	<input type="text" value="25 HIGH STREET"/>
Address 2:	<input type="text"/>
Address 3:	<input type="text"/>
Address 4:	<input type="text"/>
Address 5:	<input type="text"/>
Town/City/Settlement:	<input type="text" value="BONNYRIGG"/>
Post Code:	<input type="text" value="EH19 2DA"/>

Please identify/describe the location of the site or sites

Northing	<input type="text" value="665255"/>	Easting	<input type="text" value="330886"/>
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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)

Please see attached Grounds of Appeal Statement

Type of Application

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

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

What does your review relate to? *

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

Statement of reasons for seeking review

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

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

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

Please see Grounds of Appeal Statement

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

☐ Yes ☐ No

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

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

Grounds of Appeal Statement All plans, etc. associated with planning application, as made

Application Details

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

22/00869/DPP

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

02/12/2022

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

30/01/2023

Review Procedure

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

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

☐ Yes ☐ No

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

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

☐ Yes ☐ No

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

☐ Yes ☐ No

Checklist – Application for Notice of Review

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

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

☐ Yes ☐ No

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

☐ Yes ☐ No

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

☐ Yes ☐ No ☐ N/A

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

☐ Yes ☐ No

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

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

☐ Yes ☐ No

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

Declare – Notice of Review

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

Declaration Name: Mr Brent Quinn

Declaration Date: 10/03/2023

LOCAL REVIEW BODY (LRB) STATEMENT OF APPEAL

25 High Street Bonnyrigg EH19 2DA



Refusal of Planning Permission by Midlothian Council for Change of Use Change of use from workshop to piercing studio (class 2)

Ref: 22/01666/PPP

Mr Khan

March 2023



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Appendix 2:	Midlothian Local Development Plan, (adopted 2017)
Appendix 3:	Supplementary Guidance on Food & Drink and Other Non-Retail Uses in Town Centres (published 2017)
Appendix 3:	National Planning Framework 4

25 High Street, Bonnyrigg

1. INTRODUCTION

INTRODUCTION

This Appeal Statement is submitted on behalf of Mr Khan ('the appellant') and sets out the grounds of appeal against the decision of the Midlothian Council (MC) to refuse planning application LPA ref: 22/00869/DPP by a delegated decision on 30/01/2023.

The Application for Full Planning Permission sought consent for the "Change of use from workshop to piercing studio (class 2) at 25 High Street Bonnyrigg EH19 2DA".

The three reasons cited for the refusal of the application are set out below.

1. Although within Bonnyrigg Town Centre, the proposal would change the character of this area by bringing a higher than expected footfall commercial use into a largely secluded, residential area and detract materially from the existing character of this area.

2. The proposal would result in the loss of privacy to the amenity ground of the occupants of the flatted properties in the area by bringing members of the public into a generally private area as well as a perceived impact on security in this area and overlooking to the flatted dwellings.

3. For the above reasons, the proposal is contrary to policies DEV2 and TCR1 of the adopted Midlothian Local Development Plan 2017 and its associated Supplementary Guidance.

Report Structure

The remaining sections in this appeal statement comprise:

- A description of the appeal site, the surrounding context and a summary of the appeal proposals (Section 2)
- Ground of Appeal (Section 3)
- Summary of the appellant's case and conclusion (Section 4).

Supporting Documents

This appeal statement should be read in conjunction with all the supporting documents and drawings submitted as part of the original planning application.

Application Process

This appeal is made to the Local Review Body on the basis it was a local application, and which was determined under delegated powers. For the reasons outlined in this statement, we conclude that the development is in accordance with relevant development plan policies and supported by significant material considerations.

25 High Street, Bonnyrigg

2. APPLICATION SITE, CONTEXT & PROPOSAL

APPLICATION SITE, CONTEXT & PROPOSAL

Site Description

The application site comprises a single storey building located within Bonnyrigg Town Centre. The building is located to the rear of properties on High Street (see Figure 1, Location Plan, below). The buildings between the application premises and the High Street are two storeys in height, with the ground floor in commercial use and the upper floor occupied by residential flats. The site is accessed by a pedestrian vennel and is located within the garden ground of the flatted dwellings.



Figure 1: Location Plan (in red)(not to scale)

The building is a small square outbuilding with harled walls, a hipped slate roof and blocked up window openings. To the east and north of the site is a building accommodating a health centre and dentist, to the south is an extension which relates to a nearby hot food takeaway. The commercial units and residential flats are to the west of the site. The building is currently in use as a workshop/office. A floor plan of the existing use is shown below (Figure 2):



Figure 2: Existing Floor Plan (not to scale)

Proposal

It is proposed to change the use of the building to a piercing studio. No external alterations are proposed. A floor plan of the proposed use is shown below, in Figure 3:



Figure 3: Proposed Floor Plan (not to scale)

Planning Context/History

Referring to the Midlothian Council Planning Application Portal, the following historic planning applications have been made:

13/00188/DPP Change of use from workshop/office to form residential accommodation and alterations to roof.

Refused – proposed alterations low standard of design and to the detriment of the appearance of the building and surrounding area; low standard of amenity for future residents in terms of privacy, overlooking, garden provision and outlook; impact on amenity of existing residents.

12/00611/DPP Change of use from workshop to dwellinghouse and formation of dormers.

Refused – low standard of amenity for future residents in terms of privacy, overlooking, garden provision and outlook; dormers bulky and unattractive.

06/00135/FUL Change of Use from workshop to form residential accommodation.

Refused - low standard of amenity for future residents.

Consultees & Representations

The table below provides a summary of the technical consultee responses:

Consultee	Comment
Roads Planning	No Objection.
Protective Services	Consulted, but did not comment

A single objector to the application came from a neighbouring property and raised the following issues:

- The proposal is contrary to policies TCR2, DEV2 and DEV6 of the MDLP;
- The proposal would result in people accessing the site through the vennel and garden and change the character of the garden;
- The proposal would affect their privacy, security and outlook, as well as overlooking from the site into their property;
- While the commercial units are in a local shopping centre, the applicant site is part of residential garden ground with a different character to the High Street;
- Access to their flat is only through the vennel and communal garden ground owned by the flats;
- The site has been used as storage for the commercial unit at 23 High Street, which has a right of access across the garden, though this has been limited;
- The site has not been used as a workshop, only storage; Highlight the planning history of the site and that previous refusals made reference to the impact on the amenity of the flats above commercial units;
- Concern over a class 2 use which is for visiting members of the public and the potential range of uses this could be;

- The vennel is narrow and unsuitable for increased use;
- The statement that a workshop use did not raise any interest due to the restricted access but a class 2 use would be suitable with the same access does not make sense but proves the access is inadequate for any use that relies on additional pedestrian access;
- The hot food takeaway below the flats uses the vennel for deliveries but this is less intensive and a different character to the proposal; Works have been carried out conversion works at the site which has caused a lot of disruption and is in breach of planning; and
- Works to the path and fencing to subdivide the garden have been done without the consent of the land owners.

These issues are addressed in Section 3 of this appeal statement. In terms of representation, to balance this out, there has also been a letter of support received from the proposed occupier of the premises in the event that planning permission is granted. The content of this is summarised below:

- The site was an eyesore and so the proposal will improve this;
- No part of the proposal encroaches onto the communal garden ground;
- The vennel and site has always been open to the public so there is no change to the security in the area;
- It is not possible to see into any neighbouring properties from the site.
- They would be willing to put a film over the middle section of the windows to help any perception of impact on privacy;
- Other commercial uses in the area are open later and result in more noise and smell than the proposed use would be;
- The proposal would increase the range of commercial uses in Bonnyrigg;
- There have been no other complaints to the proposal; Records of customers require to be kept for 3 years so if there are any issues these could be accessed are necessary;
- There is support from local residents and businesses; and
- The works carried out at the site were repairs done during 'normal' operational hours of the construction trade.

25 High Street, Bonnyrigg

3. GROUNDS OF APPEAL

GROUNDS OF APPEAL

Determining Issues

Section 25 of the Town and Country Planning (Scotland) Act 1997 requires that where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise.

In the context of the above it is worth making reference to the House of Lord's Judgement on the case of the City of Edinburgh Council v the Secretary of State for Scotland 1998 SLT120. It sets out the following approach to deciding an application under the Planning Acts.

- 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; and
- assess whether these considerations warrant a departure from the development plan.

The development plan in this case comprises:

- SESplan, as modified and approved, (June 2013)
- Midlothian Local Development Plan (adopted 2017)
 - Relevant Policies:
 - DEV2 Protecting Amenity within the Built-Up Area advises that development will not be permitted where it is likely to detract materially from the existing character or amenity of the area;
 - TCR1 Town Centres states proposals for retail, commercial leisure development or other uses which will attract significant numbers of people, will be supported in Midlothian's town centres, provided their scale and function is consistent with the town centre's role, as set out in the network of centres and subject to the amenity of neighbouring uses being preserved. The conversion of ground level retail space to residential uses will not be permitted. Residential units at ground floor level in retail units will not be permitted but the conversion of upper floors to housing and the formation of new residential space above ground-level structures in town centres is supported; and
 - TCR2 Location of New Retail and Commercial Leisure Facilities states that the Council will apply a sequential town centre first approach to the assessment of such applications.

- National Planning Framework 4 (approved February 2023)
 - Relevant Policies:
 - Policy 1 Tackling the climate and nature crises
 - Policy 2 Climate mitigation and adaptation
 - Policy 3 Biodiversity
 - Policy 9 Brownfield, vacant and derelict land and empty buildings
 - Policy 13 Sustainable transport
 - Policy 14 Design, quality and place
 - Policy 15 Local Living and 20 minute neighbourhoods
 - Policy 27 City, town, local and commercial centres

Supplementary Guidance on Food & Drink and Other Non-Retail Uses in Town Centres (published 2017) is also relevant. Town centres must focus on a variety of uses and services attracting footfall. The town centre first principle encourages activities which attract significant numbers of people including shopping, commercial leisure uses, offices, community and cultural facilities, however a retail core should be retained. The impact that non-retail uses would have on the surrounding town centre must be assessed and considered acceptable, otherwise this will not be supported. Any proposed use shall not have a detrimental impact on the amenity or environment of surrounding properties and occupants in terms of noise, smell or disturbance. These uses must be provided with adequate parking provision and permission will not be permitted where there would be a threat to road safety.

Other key material considerations in the determination of the application include the Town and Country Planning (Use Classes) (Scotland) Order 1997 (hereafter Use Classes Order). and Circulars and previous planning history and consultation responses. The proposal raises no strategic issues and therefore the policies within SESplan are not considered to be relevant in this case.

Grounds of Appeal

The principle of the development must be assessed primarily against LDP policy DEV2 (Protecting Amenity within the Built-Up Area), TCR1 (Town Centre) of the LDP and its Supplementary Planning Guidance on Food and Drink and Non Retail Uses in Town Centres (SPG).

There appears to be some confusion, in terms of the objector understanding and indeed the case officer as to what the most recent (ergo current) use of the property is in terms of the Use Classes Order. This is the critical starting point that hasn't always been clear in both the planning application to which this appeal relates but also other previous cases. In the descriptions of all previous cases (dating back to 2006) the Planning Authority accept that the use is correctly described as being a workshop/office. This would fall under Class 4 or Class 5 of the Use Classes Order. Both of these uses allow up to 256m² of Class 6 Use. Given that the premises occupy a considerably lower floorspace than this, Class 6 Use in its entirety is entirely acceptable. Overall, it is reasonable to conclude that the existing use of the premises could fall under any of the Classes 4, 5 and 6 of the Use Classes Order. This is further discussed in terms of its material impact of the case below.

This LRB appeal statement has a wider remit and sets out the following three Grounds of Appeal.

1. Ground of Appeal 1 (GOA1): The proposal represents a significant improvement in net terms, on the existing use in terms of amenity of existing residents
2. Ground of Appeal 2 (GOA2): The proposal is entirely in keeping with its Town Centre setting
3. Ground of Appeal 3 (GOA3): There are no other material considerations which warrant refusal of the application. The material considerations, including the single letter of representation, have been fully taken into account. The NPF4 supports and promotes Town Centre uses of this type and investment in the communities

Ground of Appeal 1 (GOA1): The proposal represents a significant improvement in net terms, on the existing use in terms of amenity of existing residents

The proposal is for Class 2 Use, specifically as a piercing parlour.

The main thrust of the refusal centres around amenity and the protection thereof for existing residents. However, there are some fundamental misunderstandings in terms of what is being proposed and how that relates to the existing uses that could be brought into use at any time without any need for planning permission. That is the key material consideration that has not been afforded any weight as a material consideration of the planning application to which this appeal relates. The case officer refers to the proposal as 'introduc(ing) a new commercial unit'. This is incorrect. As above, the existing use as Class 4, 5 or 6 are by their very definition (in the Use Classes Order) commercial. This salient point has been missed entirely. Indeed, the uses permitted under Class 4, 5 and 6 could possibly incorporate the following commercial business into use without any requirement for planning permission:

Mechanical/joinery workshop: This could bring about all sorts of levels of noise and disruption, which would be substantially more negative in terms of impact on amenity than what is being proposed as part of this proposal. There is scope for employee and customer movement on a daily/hourly basis, as well as noise from machinery/workings.

Storage: The premises could be used for short term storage of goods e.g. Amazon deliveries in lockers, which would incorporate multiple visitor movements on a minute by minute bases, as well as a significant impact on traffic and parking in the Town Centre. In their determination of the case, the planning officer stated that the 'proposal would create a commercial use with higher than expected footfall here' which was an unreasonable and incorrect conclusion to draw as the existing use of the site could actually generate substantially more footfall than what is being proposed. Whilst this may not be desirable, per the existing use of the premises, it is entirely feasible and acceptable in terms of the Use Classes Order and the control of land use planning.

This is just one example, and there are many more, e.g. commercial laundry, printing room, etc, etc. The general consensus is that all such uses are generators of significant noise, nuisance, etc. and quite incompatible in relation to residential amenity. Overall, the net impact of the use as proposed

is significantly to the betterment of footfall, transport and overall amenity than how it can be used at present.

SPG states: 'Any proposed use shall not have a detrimental impact on the amenity or environment of surrounding properties and occupants in terms of noise, smell or disturbance'. In this case, the net impact in terms of noise and disturbance is positive against the existing/most recent use (as can be seen against potential operations within Class 4/5/6 above) and there are no smell issues arising from the proposal. Reasons for Refusal 1 and 2 are set out again below:

1. Although within Bonnyrigg Town Centre, the proposal would change the character of this area by bringing a higher than expected footfall commercial use into a largely secluded, residential area and detract materially from the existing character of this area.

2. The proposal would result in the loss of privacy to the amenity ground of the occupants of the flatted properties in the area by bringing members of the public into a generally private area as well as a perceived impact on security in this area and overlooking to the flatted dwellings.

Reason 2 centres around amenity for existing occupiers and refers to 'bringing members of the public' into the area but fails to recognise that substantially more members of the public could be brought into the area through its existing use and that the proposal represents a net betterment in that regard, such that this reason can be quashed. Overall, having regard to the existing and proposed use and its impact on amenity, noise, disturbance, etc, the foregoing demonstrates that the proposal is fully in compliance with policies DEV2 (Protecting Amenity within the Built-Up Area), TCR1 (Town Centre) of the LDP and the SPG. Accordingly, the 2 reasons for refusal (1 and 2) are refuted in their entirety.

Ground of Appeal 2 (GOA2): The proposal is compatible and wholly acceptable in keeping with its Town Centre setting.

The property has lain empty for some 10 years now. This is despite extensive investment by the appellant to try stimulate occupancy. Indeed, the appellant's agent (IME/DJK) who are a well-respected operator in the Edinburgh & Lothian's market recognise that the property is in 'excellent' condition. The premises have been marketed extensively through a variety of different platforms by the agent but the appellant has been unable to lease the property as a workshop or for storage, owing to its unique characteristics. Hence an alternative use (class 2) that does generate a demand and need is now proposed. Empty properties, whether on the High Street or not, detract from the health and vitality of the Town Centre and result in a negative impact in assessing Bonnyrigg's Town Centre Health Check (TCHC), which per section 6 of the SPG, the Council are to carry out every 2 years. The Planning Authority should be responsive to the commercial considerations of its Town Centres and, as above, in this case, to recognise the net positive impact in the use as proposed versus existing/recent. Indeed, in the SPG, it is stated that 'Town centres must now focus on a variety of uses and services, attracting footfall, in order to remain relevant'. This proposal will result in a wholly positive response to that statement, and will provide an additional use within the Town Centre, adding to the offering and vitality of the Town Centre, ensuring it does in fact remain

relevant to the demands of the inhabitants of Bonnyrigg and beyond.

In terms of making the project viable, there must be an understanding of critical development and use, in making the site feasible, both financially and practically. The Appellant is committed to delivering this Proposal in 2023, using local Midlothian companies in doing so, despite the current difficulties with the economy and increasing construction and materials costs. More generally, due to the Covid-19 pandemic, and the current cost of living crisis, the economy faces a difficult period over the next couple of years at least. Therefore, it will be important to support and allow sustainable, compatible town centre uses to hopefully keep people employed. To give this perspective, it is also important to be clear that Midlothian Council will benefit directly from additional rates monies, which are not applicable when the premises remain empty.

The proposal is for a Class 2 (piercing studio) use. Other typical class 2 uses include (per the Use Classes Order):

Use for the provision of:

- (a) as a bank,*
- (b) for building societies,*
- (c) for estate agencies,*
- (d) for employment agencies,*
- (e) professional and financial services (other than health or medical services), or*
- (f) for betting offices*

These are all uses which are entirely compatible and indeed encouraged, within Town Centre locations such as Bonnyrigg High Street. A piercing studio is equally eminently suitable in this type of location. It is granted that the location has unique characteristics which mean it does not benefit from a traditional High Street frontage, but as outlined above, the benefit in the proposed use versus the existing/most recent use in terms of amenity, but also importantly viability, is of merit such that planning permission should be granted. It is significant to note that, in the case that was refused in 2013 for residential use, that in their report of handling, the case officer stated that 'the owner of the site should give serious consideration to other forms of development as it is clear that the existing building is unsuitable for residential use'. Yet, a proposal for a use that is wholly reasonable and compatible has now also been refused. There must be a sense of reasonableness from the Planning Authority, but that has been conspicuous by its absence in the determination of the case, unfortunately.

There are currently no piercing parlours within Bonnyrigg whatsoever. The closest facility is in Loanhead (Cap in Hand Tattoos) which is also located within the defined Town Centre (Clerk Street). Another similar nearby business (Pete's Tattoo Studios) is at Dalkeith, also within the defined Town Centre (on the High St). It is clear there is a demand for such services, otherwise this proposal would not be presented. The future user of the premises, in the event that planning permission were to be granted, has highlighted that even before they have taken occupation, there are no fewer than 4 inter dependent and related businesses within the Town Centre that would be interested in co-joining services. This type of community and fostering of existing and new business

uses is absolutely to be encouraged. Indeed, piercing parlours are common features of modern town centres and as footfall generating uses they can aid the vitality and viability of the town centres within which they are situated. The surrounding area will retain a mix of uses and the proposal will not result in any dominance or cluster of singular uses within the town centre, in compliance with SPG (10.4). If approved, the use will result in an additional use to complement the existing provision within Bonnyrigg Town Centre. The use does not detract from the primary retail function and as the existing/most recent use was a workshop the proposed use will not result in the loss in shops to the detriment of local residents or the vitality or the viability of the town centre.

The image in the photograph below (Figure 4) shows how the premises are reached from the vennel. There is fencing on either side. It is very clear from this image that when reaching the premises, any patrons are directed in a clearly formed pathway and with minimal disruption to the adjacent garden. It is no different from any resident accessing their outbuilding or shed, which they would be free to do so at any time, and as frequently, or infrequently as they choose. In a similar fashion, any patrons using the premises would be doing so with express purpose i.e. with a pre-arranged appointment; there would be no aimless 'wandering' ergo actual footfall would be minimised. Overall, this would result in no adverse bearing on adjacent properties, including their shared garden ground.



Figure 4: Photograph of Existing Access, taken looking at Premised from Vennel (not to scale)

The position of the site is set back from the main commercial area of the High Street, behind existing commercial units. The case officer has suggested that the vennel access and the area within which the appeal site 'has a different character to the High Street and surrounding town centre, being a more a residential, secluded and private area'. They go on to state that the access 'does not encourage public access but gives the impression of a private access leading to communal garden ground and the accesses to the flatted dwellings'. This is an unreasonable conclusion to draw and we would make the comparison to Edinburgh Old Town, where similar vennels are found in abundance and provide access to a whole plethora of differing commercial and residential uses which all work in harmony and symphony to create one of the world's best Town Centre environments as recognised in its World Heritage Status. Bonnyrigg High Street may be of a slightly different context, but its aspirations and opportunity for access and multi-purpose, commercially sound and cohesive uses as proposed represents a sense of similar aspiration at least.

There are no external alterations being proposed as part of this proposal whatsoever, so there is no impact in respect of overlooking. In the report of handling, the planning officer incorrectly stated that would be 'would still be a perception of overlooking remaining'. This is an unfair and incorrect assertion to make.

To combat and respond to any potential issues arising in terms of, in particular footfall, the use of appropriately worded planning conditions could be employed e.g. a restriction on number of patrons per day/hour. This would be fully compliant with the terms for planning conditions as set out in Circular 4/1990. It is worth noting that the majority of expected patrons using the premises will be from online bookings, as opposed to walk in customers.

Overall, the foregoing confirms that the use as proposed is entirely in keeping with its Town Centre location; it will result in additional service of which there is currently pent up and unmet demand. The footfall of the proposal will actually be fairly negligible, particularly in comparison with other Class 4/5/6 uses that could be employed without any need for planning permission. This nullifies any extant concerns in terms of footfall and perceived amenity issues as set out in reason for refusal number 1. Having regard to footfall and the generation of members of the public, the above is clear that the proposal accords fully with policies DEV2 (Protecting Amenity within the Built-Up Area), TCR1 (Town Centre) of the LDP and the SPG.

Ground of Appeal 3 (GOA3): There are no other material considerations which warrant refusal of the application. The material considerations, including the single letter of objection, have been fully been taken into account. NPF4 supports and promotes Town Centre uses of this type and investment in the communities.

National Planning Framework 4

National Planning Framework 4 was only approved in February 2023. In the table below, we look at the policy principles as set out in that document and in turn express how the proposed development complies.

Policy Principle	How the Proposal Complies
Giving due weight to net economic benefit;	The proposal will deliver much needed investment and delivery of a new, cohesive and compatible use within the Town Centre boundary of Bonnyrigg. The appellant will also seek to appoint local tradesmen during the construction process, contributing to the local economy.
Responding to economic issues, challenges and opportunities, as outlined in local economic strategies;	The proposal supports the growth of the community, ensuring there is additional offering of Town Centre uses
Making efficient use of existing capacities of land, buildings and infrastructure including supporting town centre and regeneration priorities;	The additional customers the use will bring to the town will contribute to local services and facilities through having a higher footfall in the local area.

Supporting delivery of accessible housing, business, retailing and leisure development;	The proposal will deliver a new business use
Reducing waste, facilitating its management and promoting resource recovery; and	Suitable provision for waste collection can be demonstrated.
Avoiding over-development, protecting the amenity of new and existing development and considering the implications of development for water, air and soil quality.	The low-density scale of the premises means the development is considered appropriate for a site of this nature.

Objector Comments

In this section of the report, we address the issues raised in the single letter of objection made in relation to the planning application.

- **Comment**
The proposal is contrary to policies TCR2, DEV2 and DEV6 of the MDLP;
- **Response**
This is addressed in the foregoing discussion.

- **Comment**
The proposal would result in people accessing the site through the vennel and garden and change the character of the garden;
- **Response**
This is addressed in the foregoing discussion. The net impact in terms of footfall and impact on bearing of the existing shared garden is lessened through this proposal versus the existing/most recent use. Further, the nature and characteristic of the access to the appeal premises is very clear and direct, with minimal impact on the adjacent shared garden.

- **Comment**
The proposal would affect privacy, security and outlook, as well as overlooking from the site into the objector's property;
- **Response**
This is addressed in the foregoing discussion. Vacant premises, by their nature, attract more crime and vandalism than when occupied, so security is actually bettered through this proposed use. No external alterations are proposed so there is no impact in terms of privacy and outlook.

- **Comment**
While the commercial units are in a local shopping centre, the applicant site is part of residential garden ground with a different character to the High Street;
- **Response**

This is addressed in the foregoing discussion.

- Comment

Access to their flat is only through the vennel and communal garden ground owned by the flats;

- Response

This is addressed in the foregoing discussion.

- Comment

The site has been used as storage for the commercial unit at 23 High Street, which has a right of access across the garden, though this has been limited;

- Response

The right of access is important, from a legal standpoint. The appellant has full servitude rights.

- Comment

The site has not been used as a workshop, only storage; Highlight the planning history of the site and that previous refusals made reference to the impact on the amenity of the flats above commercial units;

- Response

The Planning Authority have historically accepted the use of the premises as a workshop, on multiple occasions. The overall use, as referred in the foregoing discussion, falls under Class 4/5/6 of the Use Classes Order.

- Comment

Concern over a class 2 use which is for visiting members of the public and the potential range of uses this could be;

- Response

This is addressed in the foregoing discussion.

- Comment

The vennel is narrow and unsuitable for increased use;

- Response

Figure ?? shows the access and it is entirely fit for the purpose/use as proposed.

- Comment

The statement that a workshop use did not raise any interest due to the restricted access but a class 2 use would be suitable with the same access does not make sense but proves the access is inadequate for any use that relies on additional pedestrian access;

- Response

A workshop may necessitate heavy/very large machinery which would could prove to be impractical owing to the restrictions imposed by the vennel itself. The net impact of what is being proposed is substantially improved in terms of amenity for existing residents when compared with other Class 4/5/6 uses that could be employed without the necessity of any

planning permission.

- Comment
The hot food takeaway below the flats uses the vennel for deliveries but this is less intensive and a different character to the proposal;
- Response
There is no relationship between the proposed use and this existing use whatsoever. However, it is worth noting that a hot food takeaway (Sui Generis) generally results in more footfall and transport movements than a typical Class 2 use, before considering any impact in respect of odours and noise.
- Comment
Works have been carried out conversion works at the site which has cause a lot of disruption and is in breach of planning; and
- Response
This is entirely refuted and is incorrect.
- Comment
Works to the path and fencing to subdivide the garden have been done without the consent of the land owners.
- Response
This is a private, legal matter unrelated to planning control. It is also refuted.

Other Matters

There are no issues arising in respect of road safety or Environmental Health as both of these key consultees offered no objection to the planning application.

25 High Street, Bonnyrigg

4. CONCLUSION

CONCLUSION

It is considered that the proposals are compliant with all relevant policies and guidance whilst each of the Council's reasons for refusal has been responded to. This Proposal represents a sensible solution for the Appeal Site, a modest development, and an opportunity to create much needed alternative uses in Bonnyrigg Town Centre.

The submitted appeal, supported by this statement, seeks to overturn the Council's decision to refuse Planning Permission for Change of Use from workshop to piercing studio (class 2) at 25 High Street Bonnyrigg EH19 2DA.

The three Grounds of Appeal have all been addressed in the foregoing section, but are set out below, for clarity:

1. Ground of Appeal 1 (GOA1): The proposal represents a significant improvement in net terms, on the existing use in terms of amenity of existing residents
2. Ground of Appeal 2 (GOA2): The proposal is entirely in keeping with its Town Centre setting
3. Ground of Appeal 3 (GOA3): There are no other material considerations which warrant refusal of the application. The material considerations, including the single letter of representation, have been fully taken into account. The NPF4 supports and promotes Town Centre uses of this type and investment in the communities.

A more detailed summary is provided, as follows:

1. There appears to be some confusion, in terms of the objector understanding and indeed the case officer as to what the most recent (ergo current) use of the property is in terms of the Use Classes Order. This is the critical starting point that hasn't always been clear in both the planning application to which this appeal relates but also other previous cases. In the descriptions of all previous cases (dating back to 2006) the Planning Authority accept that the use is correctly described as being a workshop/office. This would fall under Class 4 or Class 5 of the Use Classes Order. Both of these uses allow up to 256m² of Class 6 Use. Given that the premises occupy a considerably lower floorspace than this, Class 6 Use in its entirety is entirely acceptable. Overall, it is reasonable to conclude that the existing use of the premises could fall under any of the Classes 4, 5 and 6 of the Use Classes Order
2. Reason 2 centres around amenity for existing occupiers and refers to 'bringing members of the public' into the area but fails to recognise that substantially more members of the public could be brought into the area through its existing use and that the proposal represents a net betterment in that regard, such that this reason can be quashed. Overall, having regard to the existing and proposed use and its impact on amenity, noise, disturbance, etc, the foregoing demonstrates that the proposal is fully in compliance with policies DEV2 (Protecting Amenity within the Built-Up Area), TCR1 (Town Centre) of the LDP and the SPG. Accordingly, the 2 reasons for refusal (1 and 2) are refuted in their

entirety

3. The use as proposed is entirely in keeping with its Town Centre location; it will result in additional service of which there is currently pent up and unmet demand. The footfall of the proposal will actually be fairly negligible, particularly in comparison with other Class 4/5/6 uses that could be employed without any need for planning permission. This nullifies any extant concerns in terms of footfall and perceived amenity issues as set out in reason for refusal number 1. Having regard to footfall and the generation of members of the public, the above is clear that the proposal accords fully with policies DEV2 (Protecting Amenity within the Built-Up Area), TCR1 (Town Centre) of the LDP and the SPG.
4. The constraints of the site are somewhat restrictive. The site has lain empty for over 10 years, giving possible rise to a decay in the Bonnyrigg Town Centre Health Check.
5. In 2013, in a refusal for residential use of the premises, the Planning Authority noted that 'the owner of the site should give serious consideration to other forms of development as it is clear that the existing building is unsuitable for residential use'. The appellant has come forward with a use that is wholly compatible but again it has been refused; in our view unreasonably so, but the LRB now has the opportunity to rectify that.
6. The proposal is fully compliant with the terms and policy objectives as set out in the recently published NPF4.
7. The issues raised by the single objector have been responded to in full and are found to have been wholly satisfied.
8. There are no road safety concerns or objections from the Roads Officer or any other consultee.

As we have demonstrated through this statement, we consider that the proposal complies with the development plan, and key LDP Policies DEV2 (Protecting Amenity within the Built-Up Area), TCR1 (Town Centre) and the SPG document against which the original application was refused.

There is a presumption in favour of applications that accord with the development plan unless there are significant material considerations that indicate the development plan should not be followed.

In addition to the above, the proposal will deliver local investment in trade employment, whilst expanding purchasing power in the local economy and supporting existing services.

The proposal is considered with the guiding principles of the NPF4, and we do not consider that there are any impacts which are significant and demonstrably outweigh the presumption in favour of development.

Taking the above into consideration, it is respectfully requested that, on account of the foregoing and the planning permission in principle be granted, if required subject to suitably worded conditions that comply with the tests as set out in Circular 4/1990.

MIDLOTHIAN COUNCIL

DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

Planning Application Reference: 22/00869/DPP

Site Address: 25 High Street, Bonnyrigg.

Site Description: The application site comprises a single storey building located within Bonnyrigg Town Centre. The building is located to the rear of properties on High Street. These are two storeys, with the ground floor in commercial use and the upper floors residential flats. The site is accessed by a pedestrian vennel and is located within the communal garden ground of the flatted dwellings.

The building is small with harled walls, white uPVC window frames and a hipped slate roof. To the east and north of the site is a health centre, to the south is an extension which relates to a nearby hot food takeaway. The commercial units and residential flats are to the west of the site. The agent has stated the building as most recently in use as a workshop/office.

Proposed Development: Change of use from workshop to piercing studio (class 2).

Proposed Development Details: It is proposed to change the use of the building to a piercing studio. No external alterations are proposed.

The applicant's agent and the letting agent marketing the property state the applicant has been unable to lease the property as a workshop due to the narrow lane to gain access and so a class 2 use is proposed. The applicant's agent considers this would not cause disruption to local residents. They also consider a residential use could be appropriate.

The applicant's agent has also stated the site was last used as a pet shop before the applicant bought this in 2006. This would have had footfall in the communal areas which they do not think caused any disruption with peoples using the communal access. The communal area is used by commercial properties.

Repair works have been carried out at the site. The application form states no parking is proposed, or any new or altered connections to the public water supply or drainage network. The plans show a new sink connecting to the existing drainage.

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

13/00188/DPP Change of use from workshop/office to form residential accommodation and alterations to roof. Refused – proposed alterations low standard of design and to the detriment of the appearance of the building and surrounding area; low standard of amenity for future residents in terms of privacy, overlooking, garden provision and outlook; impact on amenity of existing residents.

12/00611/DPP Change of use from workshop to dwellinghouse and formation of dormers. Refused – low standard of amenity for future residents in terms of privacy, overlooking, garden provision and outlook; dormers bulky and unattractive.
06/00135/FUL Change of Use from workshop to form residential accommodation. Refused - low standard of amenity for future residents. Upheld at appeal.

Consultations:

The Council's **Senior Manager Neighbourhood Services (Roads)** states the proposal does not raise any road safety issues so they have no objection.

The Council's **Senior Manager Protective Services** was consulted but did not make comment on the proposal.

Representations: The occupants of one neighbouring property have objected on the following grounds:

- The proposal is contrary to policies TCR2, DEV2 and DEV6 of the MDLP;
- The proposal would result in people accessing the site through the vennel and garden and change the character of the garden;
- The proposal would affect their privacy, security and outlook, as well as overlooking from the site into their property;
- While the commercial units are in a local shopping centre, the applicant site is part of residential garden ground with a different character to the High Street;
- Access to their flat is only through the vennel and communal garden ground owned by the flats;
- The site has been used as storage for the commercial unit at 23 High Street, which has a right of access across the garden, though this has been limited;
- The site has not been used as a workshop, only storage;
- Highlight the planning history of the site and that previous refusals made reference to the impact on the amenity of the flats above commercial units;
- Concern over a class 2 use which is for visiting members of the public and the potential range of uses this could be;
- The vennel is narrow and unsuitable for increased use;
- The statement that a workshop use did not raise any interest due to the restricted access but a class 2 use would be suitable with the same access does not make sense but proves the access is inadequate for any use that relies on additional pedestrian access;
- The hot food takeaway below the flats uses the vennel for deliveries but this is less intensive and a different character to the proposal;
- Works have been carried out conversion works at the site which has cause a lot of disruption and is in breach of planning; and
- Works to the path and fencing to subdivide the garden have been done without the consent of the land owners.

The applicant has responded to the representations. The communal areas are not only for the flats but can be accessed by all properties in the area, including delivery drivers for the hot food takeaways in the area. These appear rarely used. The application site can be sold separately from 23 High Street and has not been occupied since 2006, apart from the occasionally using this as an office. They would be happy to change this to residential use. The site would only be used from 9am to

5pm, whereas other people access the area until 10.30pm. The size of the vennel cannot be extended and there are many similar in Edinburgh that do not cause issues. If planning permission is approved, the windows at the site would be tinted to prevent overlooking. The site has never been used as storage to their knowledge and is listed on the land registry as a workshop. They upgraded the existing paving and fencing in the area, as well as carrying out repairs to the site.

The objector made the following comments to the applicant's response;

- The site has never been used as a pet shop, only storage of pet food and supplies;
- There was never any customer access to the site, only by shop staff;
- They understood the applicant owned the site before 2006 and rented this to the pet shop operator;
- There is access to the communal land by delivery drivers but never customers and the nature of this use is different to the proposal; and
- They note that previous applications referred to the previous use of the site as storage/workshop but it is now stated it was a pet shop.

One letter of support has been submitted by the potential user of the site on the following grounds:

- The site was an eyesore and so the proposal will improve this;
- No part of the proposal encroaches onto the communal garden ground;
- The vennel and site has always been open to the public so there is no change to the security in the area;
- It is not possible to see into any neighbouring properties from the site. They would be willing to put a film over the middle section of the windows to help any perception of impact on privacy;
- Other commercial uses in the area are open later and result in more noise and smell than the proposed use would be;
- The proposal would increase the range of commercial uses in Bonnyrigg;
- There have been no other complaints to the proposal;
- Records of customers require to be kept for 3 years so if there are any issues these could be accessed are necessary;
- There is support from local residents and businesses; and
- The works carried out at the site were repairs done during 'normal' operational hours of the construction trade.

Relevant Planning Policies:

Planning policy currently comprises National Planning Framework 3 and Scottish Planning Policy, SESPlan and the adopted Midlothian Local Development Plan 2017. On 11 January 2023 the Revised Draft National Planning Framework 4 was approved by the Scottish Parliament. The Planning Act requires that NPF4 must be approved by the Scottish Parliament before it can be adopted by Scottish Ministers. On adoption, planned for 13 February 2023, the provisions in the Planning Act will commence to make NPF4 part of the statutory development plan. The existing National Planning Framework 3 and Scottish Planning Policy remain in place until NPF4 has been adopted by Scottish Ministers. As the Revised Draft NPF4 is at an advanced stage and represents the settled view of the Scottish Government in terms of its planning policy it is a material consideration of significant

weight in the assessment of the application. The following policies are relevant to the proposal:

- Policy 1 Tackling the climate and nature crises
- Policy 2 Climate mitigation and adaptation
- Policy 3 Biodiversity
- Policy 9 Brownfield, vacant and derelict land and empty buildings
- Policy 13 Sustainable transport
- Policy 14 Design, quality and place
- Policy 15 Local Living and 20 minute neighbourhoods
- Policy 27 City, town, local and commercial centres

The relevant policies of the **2017 Midlothian Local Development Plan** are; **DEV2 Protecting Amenity within the Built-Up Area** advises that development will not be permitted where it is likely to detract materially from the existing character or amenity of the area;

TCR1 Town Centres states proposals for retail, commercial leisure development or other uses which will attract significant numbers of people, will be supported in Midlothian's town centres, provided their scale and function is consistent with the town centre's role, as set out in the network of centres and subject to the amenity of neighbouring uses being preserved. The conversion of ground level retail space to residential uses will not be permitted. Residential units at ground floor level in retail units will not be permitted but the conversion of upper floors to housing and the formation of new residential space above ground-level structures in town centres is supported; and

TCR2 Location of New Retail and Commercial Leisure Facilities states that the Council will apply a sequential town centre first approach to the assessment of such applications.

Supplementary Guidance on Food & Drink and Other Non-Retail Uses in Town Centres is also relevant. Town centres must focus on a variety of uses and services attracting footfall. The town centre first principle encourages activities which attract significant numbers of people including shopping, commercial leisure uses, offices, community and cultural facilities, however a retail core should be retained. The impact that non-retail uses would have on the surrounding town centre must be assessed and considered acceptable, otherwise this will not be supported. Any proposed use shall not have a detrimental impact on the amenity or environment of surrounding properties and occupants in terms of noise, smell or disturbance. These uses must be provided with adequate parking provision and permission will not be permitted where there would be 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 application site is within Bonnyrigg Town Centre where there is general support for appropriate proposals which provide a variety of uses and services and attract footfall. The proposed piercing business would enhance the variety of services offered in the area and would not result in the loss of a retail unit, but reuse a long-

standing vacant building. It is noted that the applicant stated the previous use was a pet shop, however this does not align with the established planning history of the site. This type of high footfall business is encouraged in town centres and supports the town centre first approach. In principle this use is acceptable within Bonnyrigg Town Centre, however the details of the proposal need considered.

The position of the site is set back from the main commercial area of the High Street, behind these commercial units. This is accessed by a narrow vennel which provides access to the flatted dwellings above the commercial units, as well as to the rear of these commercial units. The position of the site means this has a different character to the High Street and surrounding town centre, being a more a residential, secluded and private area. This is emphasised by the narrow access, which does not encourage public access but gives the impression of a private access leading to communal garden ground and the accesses to the flatted dwellings.

The proposal would create a commercial use with higher than expected footfall here, which would be out of character with this more private area and result in members of the public accessing a more private residential area. It is acknowledged that people associated with the ground floor commercial units can access this area, including delivery drivers. However this is a long standing arrangement with access more limited than customers of the proposed use crossing the garden ground to the site. The proposal would result in a potentially reasonably high footfall commercial use in an area which has a more private, residential and secluded character than the surrounding town centre, which would be out of keeping with the existing character and amenity of the immediate area. This would also detract from the amenity of the occupants of the flatted properties, with a loss of privacy of their garden ground as well as change in the distinct character of this area away from the largely residential nature which would result in a perceived impact of security. It is acknowledged that the gardens are communal and are already overlooked, however this is by longstanding commercial units with limited openings at ground floor level and other flatted dwellings, whereas the proposal introduces a new commercial unit at ground floor level which would directly overlook this area.

The windows on the application site face onto the rear elevation of the buildings at the High Street. Given the position of the site, distance between the site and the flatted dwellings and that these are at first floor level, overlooking between properties may be limited. However given the size of the window opening at the site there would at the very least be a perception of overlooking between the properties. Any actual overlooking could be resolved by obscuring the windows at site, however there would still be a perception of overlooking remaining. Given there are no external alterations to the application site, it is not clear how the proposal would affect the outlook of the flatted dwellings.

There is no associated parking for the proposed use. However the site is within a town centre with good public transport links. In this instance, there are no road safety concerns over the proposal and lack of dedicated parking.

The following relates to representations not addressed above.

Any issues over land ownership are not material planning considerations but are private matters between interested parties.

As this is an existing building it is not clear how policy DEV6 is relevant to the proposal.

Had the proposed use been acceptable, it would have been prudent to restrict the use of the site to a piercing studio only as this is what was assessed in the application. Use of the site as another use allowed within class 2, such as beauty salon, estate agent or a bank, could potentially have a detrimental impact on the amenity of nearby area through higher footfall, parking, noise or smells which would need more detailed assessment. Should permission be approved, it would be prudent to attach this condition to allow the planning authority to retain control over the use of the site and ensure any future uses are appropriate to the locale.

Recommendation: Refuse planning permission.

Reg. No. 22/00869/DPP

MSR Architecture And Design
27 Carnegie Court
Edinburgh
EH8 9SN

Midlothian Council, as Planning Authority, having considered the application by Mr Matin Khan, 25A High Street, Bonnyrigg, EH29 2DA, which was registered on 2 December 2022 in pursuance of their powers under the above Acts, hereby **refuse** permission to carry out the following proposed development:

Change of use from workshop to piercing studio (class 2) at 25 High Street, Bonnyrigg, EH19 2DA

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

<u>Document/Drawing.</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Location Plan	1:1250	02.12.2022
Site Plan	SITE PL.IMG BN.HS 02 1:100	02.12.2022
Elevations, Floor Plan And Cross Section	FL.EL BN.HS 01 1:50	02.12.2022

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

1. *Although within Bonnyrigg Town Centre, the proposal would change the character of this area by bringing a higher than expected footfall commercial use into a largely secluded, residential area and detract materially from the existing character of this area.*
2. *The proposal would result in the loss of privacy to the amenity ground of the occupants of the flatted properties in the area by bringing members of the public into a generally private area as well as a perceived impact on security in this area and overlooking to the flatted dwellings.*
3. *For the above reasons, the proposal is contrary to policies DEV2 and TCR1 of the adopted Midlothian Local Development Plan 2017 and its associated Supplementary Guidance.*

Dated 30 / 1 / 2023

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



**The Coal
Authority**

Any Planning Enquiries should be directed to:

Planning and Local Authority Liaison

Direct Telephone: 01623 637 119 (Planning Enquiries)

Email: planningconsultation@coal.gov.uk

Website: www.gov.uk/coalauthority

INFORMATIVE NOTE

The proposed development lies within an area that has been defined by the Coal Authority as containing coal mining features at surface or shallow depth. These features may include: mine entries (shafts and adits); shallow coal workings; geological features (fissures and break lines); mine gas and former surface mining sites. Although such features are seldom readily visible, they can often be present and problems can occur, particularly as a result of new development taking place.

Any form of development over or within the influencing distance of a mine entry can be dangerous and raises significant land stability and public safety risks. As a general precautionary principle, the Coal Authority considers that the building over or within the influencing distance of a mine entry should be avoided. In exceptional circumstance where this is unavoidable, expert advice must be sought to ensure that a suitable engineering design which takes into account all the relevant safety and environmental risk factors, including mine gas and mine-water. Your attention is drawn to the Coal Authority Policy in relation to new development and mine entries available at:

www.gov.uk/government/publications/building-on-or-within-the-influencing-distance-of-mine-entries

Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires a Coal Authority Permit. Such activities could include site investigation boreholes, excavations for foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Failure to obtain a Coal Authority Permit for such activities is trespass, with the potential for court action.

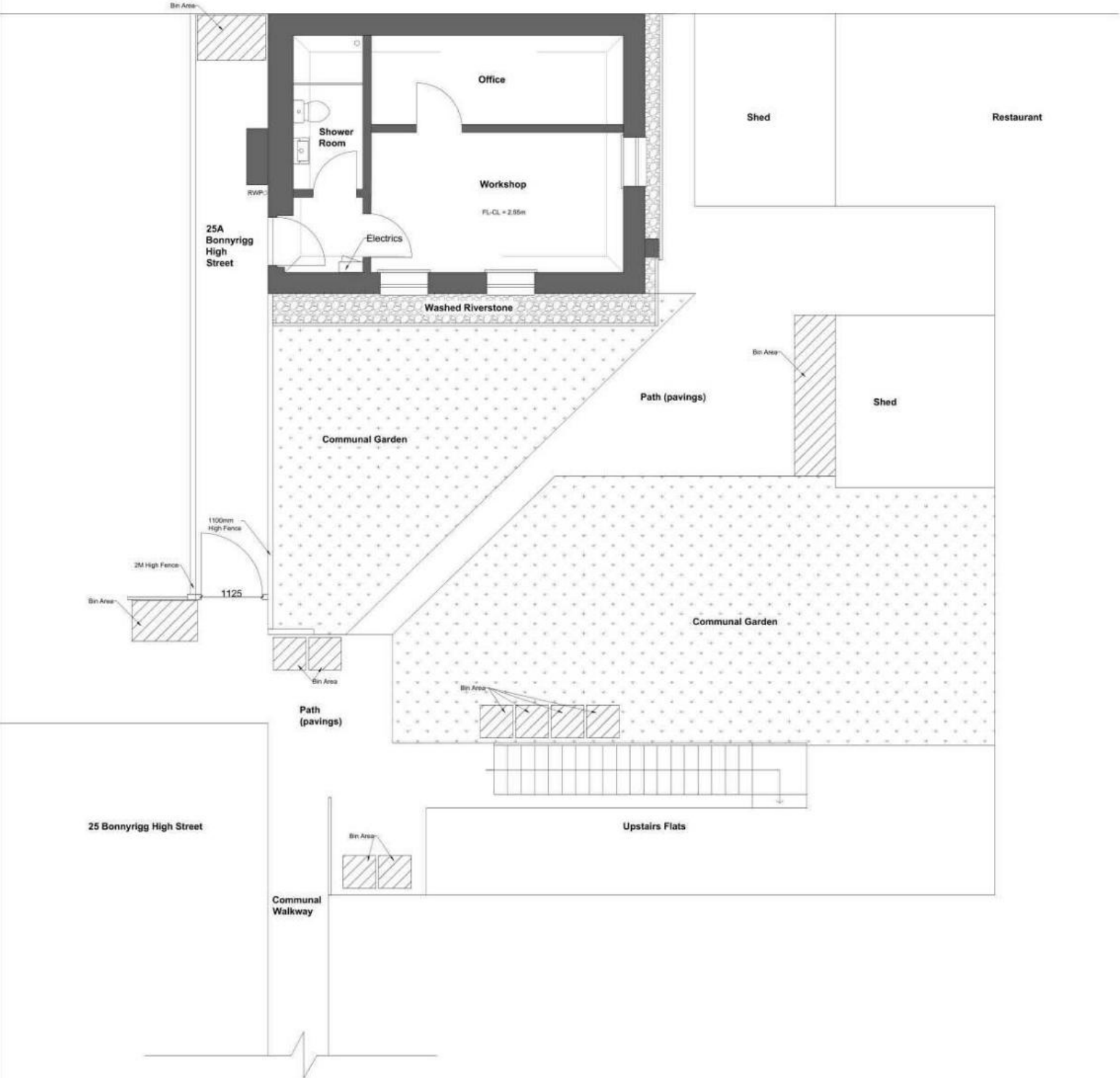
If any coal mining features are unexpectedly encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848. Further information is available on the Coal Authority website at:

www.gov.uk/government/organisations/the-coal-authority

Informative Note valid from 1st January 2023 until 31st December 2024

Existing Site Plan / Site Images

REFUSED
30.01.2023
22/00869/DPP



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Floor Plans and Elevations
Scale: 1:100 / A2 | 01/12/22

DWG Ref: SITE PL.IMG BN.HS 02
25A Bonnyrigg High Street
Edinburgh
EH19 2DA

MSR Architecture & Design
Mohammed Rahman
Architectural Technologist Bsc (Hons)
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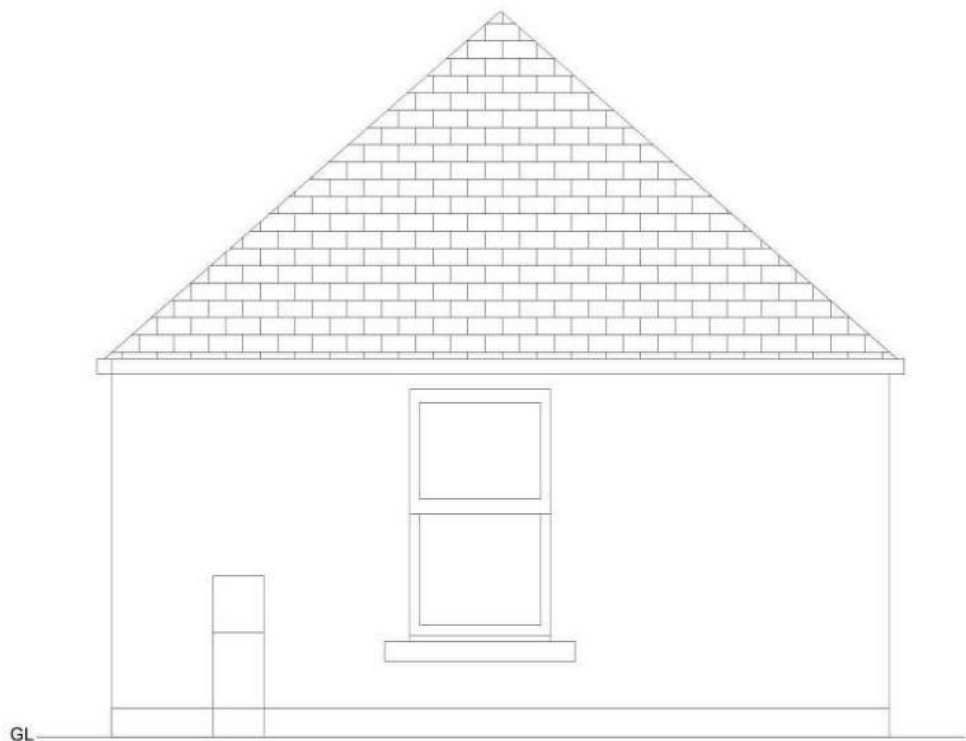
Floor Plan / Elevations

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REFUSED
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22/00869/DPP



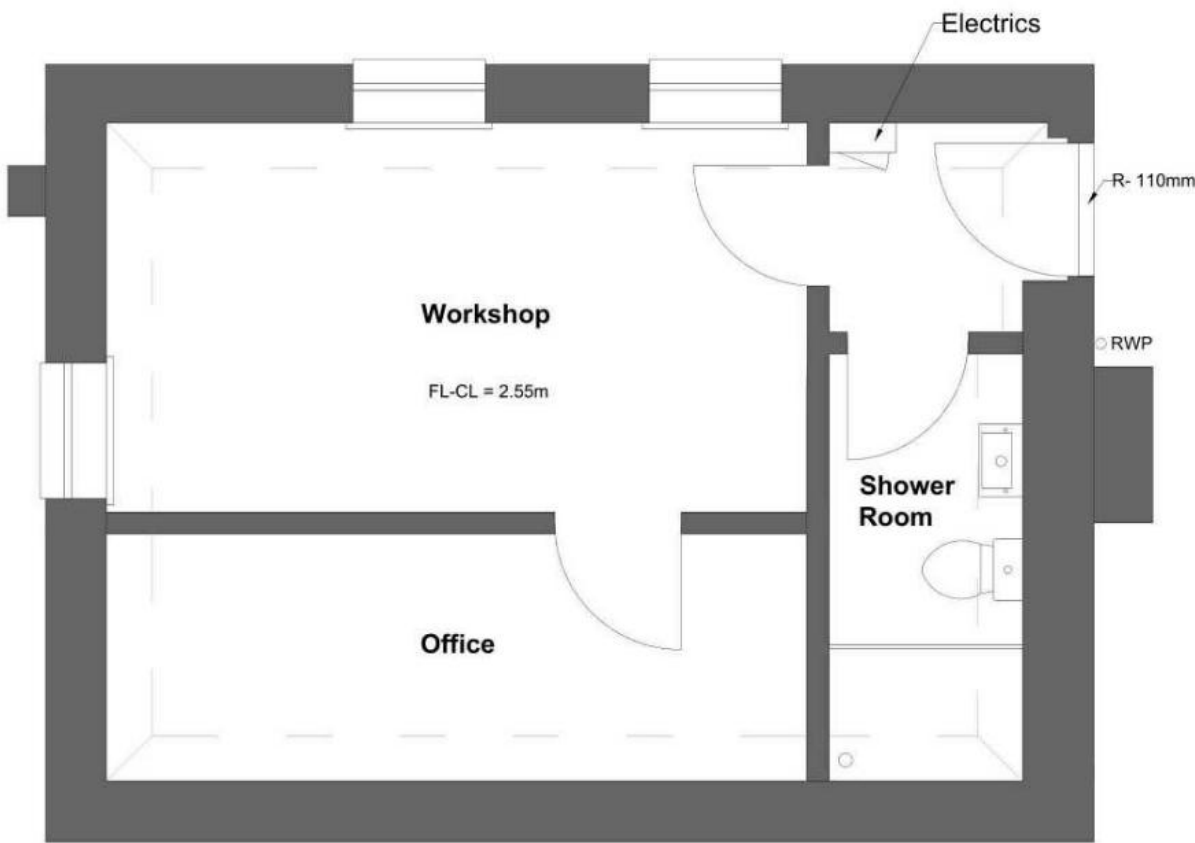
Existing West Elevation



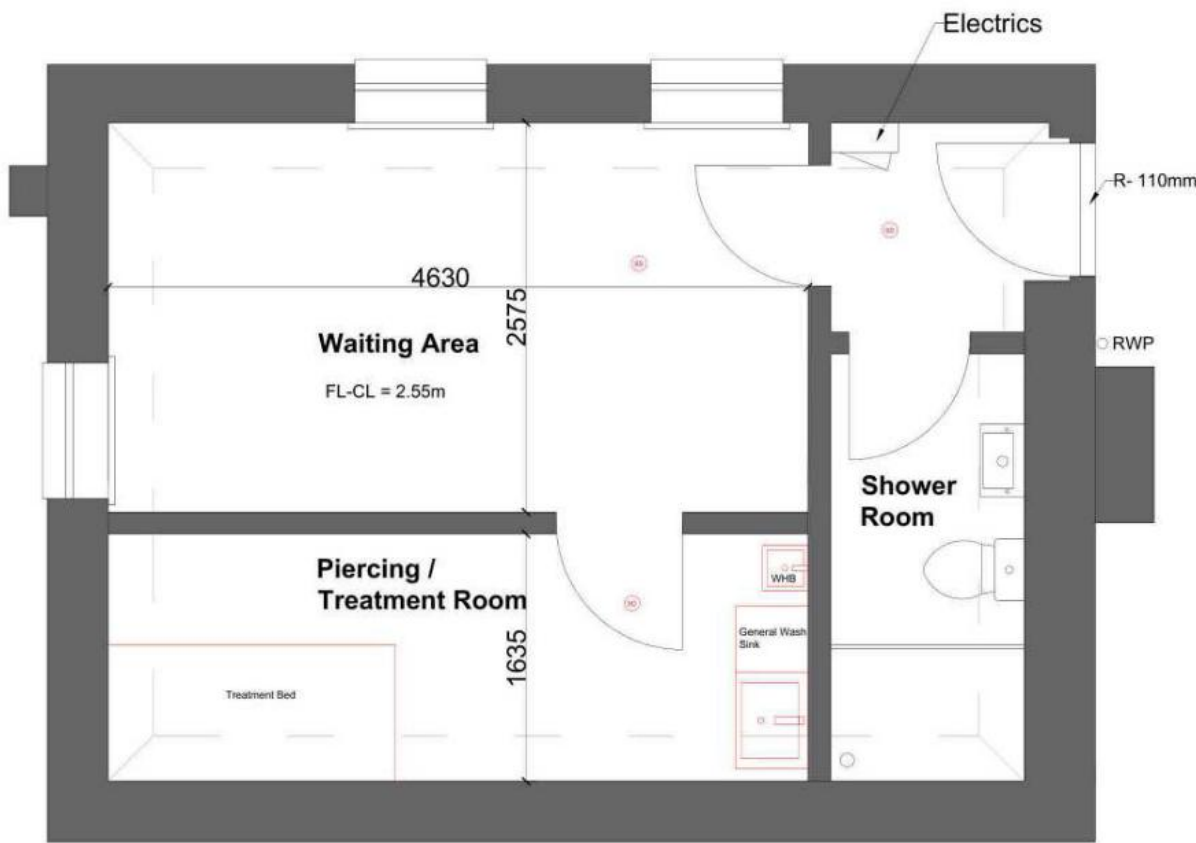
Existing South Elevation

Notes:

- All glazing to have blinds for additional privacy.
- Proposed sink drainage to connect to existing.
- Any electrical works to comply with the latest relevant requirements of BS 7671 : 2018.
- Any new light switches to be positioned at a height of between 1000mm-1200mm above floor level.
- Any new power socket outlets to be positioned at least 350mm from any internal corner and nor more than 1500mm or less than 300mm above the floor level.
- W.C to be fitted with a centrifugal fan type giving at least 15 litres/sec (intermittent) rate of extraction ducted to external air.
- SD - Smoke alarm detectors to be in accordance with BS 5839 and installed in accordance with the recommendations contained in Part 6 of BS 5839 2004 for a grade D type LD4 system and to be hard wired and interlinked.
- Contractor to provide a copy of electrical installation certificate and a copy of electricians registration document on completion of any electrical work carried out.



Existing Floor Plan



Proposed Floor Plan

Floor Plans and Elevations
Scale: 1:50 / A2 | 01/12/22

DWG Ref: FL.EL BN.HS 01
25A Bonnyrigg High Street
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