



APPEALS AND LOCAL REVIEW BODY DECISIONS

Report by Head of Communities and Economy

1 PURPOSE OF REPORT

- 1.1 This report informs the Committee of notices of reviews determined by the Local Review Body (LRB) at its meeting in May 2018; and an appeal decision received from Scottish Ministers.

2 BACKGROUND

- 2.1 The Council's LRB considers reviews requested by applicants for planning permission, who wish to challenge the decision of planning officers acting under delegated powers to refuse the application or to impose conditions on a grant of planning permission.
- 2.2 The decision of the LRB on any review is final, and can only be challenged through the Courts on procedural grounds.
- 2.3 Decisions of the LRB are reported for information to this Committee.
- 2.4 In addition, this report includes a decision on appeal which has been considered by Scottish Ministers.

3 PREVIOUS REVIEWS DETERMINED BY THE LRB

- 3.1 At its meeting on 22 May 2018 the LRB made the following decisions:

	Application Reference	Site Address	Proposed Development	LRB Decision
1	17/00905/S42	Former Loanhead Ex Servicemens Club, 10 Academy Lane, Loanhead	Application to remove a condition from a grant of planning permission to limit the number of children at a nursery for a temporary period of 12 months	Permission granted at LRB meeting of 22.05.2018
2	17/00920/DPP	Land to north west of 3 Eskview Villas, Dalkeith	Erection of dwellinghouse and two flatted dwellings; formation of access, car parking and	Permission refused at LRB meeting of 22.05.2018

			associated works	
	Application Reference	Site Address	Proposed Development	LRB Decision
3	17/00930/DPP	Land west of 14-18 The Loan, Loanhead	Erection of 3 flatted dwellings; change of use of existing garage to form dwellinghouse and installation of rooflight, door and windows	Permission granted at LRB meeting of 22.05.2018 subject to the conclusion of a Planning Obligation to secure developer contributions

4 APPEAL DECISIONS

- 4.1 An appeal against a refusal of planning permission for the erection of 11 flatted dwellings and five dwelling houses, formation of access and car parking and associated works at land at junction of Bryans Road and Morris Road, Newtongrange has been upheld subject to conditions. The Reporter appointed by the Scottish Ministers issued a decision advising the Council of the intention to grant planning permission subject to the conclusion of a legal agreement to secure developer contributions in January 2018. A copy of this decision was reported to the Committee at its meeting in February 2018. A decision has now been issued following the conclusion of the legal agreement securing developer contributions. The Reporter also dismissed a claim for costs made by the applicant. A copy of the appeal decision accompanies this report.

5 RECOMMENDATION

- 5.1 The Committee is recommended to note the decisions made by the Local Review Body at its meeting in May 2018 and the appeal decision by Scottish Ministers.

Ian Johnson
Head of Communities and Economy

Date: 12 June 2018
Contact Person: Peter Arnsdorf, Planning Manager
 peter.arnsdorf@midlothian.gov.uk
Tel No: 0131 271 3310
Background Papers: LRB procedures agreed on the 13 June 2017.



Decision by Amanda Chisholm, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-290-2041
- Site address: Land at junction of Bryans Road and Morris Road, Newtongrange, Dalkeith, EH22 4ST
- Appeal by T & V Builders against the decision by Midlothian Council
- Application for planning permission 16/00809/DPP dated 16 November 2016 refused by notice dated 20 June 2017
- The development proposed: Erection of eleven flatted dwellings and five dwelling houses; formation of car parking and access road; and associated works
- Application drawings listed in schedule
- Date of site visit by Reporter: 19 September 2017

Date of appeal decision: 1 June 2018

Decision

I allow the appeal and grant planning permission subject to the 11 conditions listed at the end of the decision notice. Attention is drawn to the three advisory notes at the end of the notice.

Note: A claim for an award of expenses to be made against the planning authority has also been submitted on behalf of the appellant. I deal with that matter in a separate decision notice.

Reasoning

1. On 22 January 2018, I issued a notice stating that I was minded to grant planning permission for this development, subject to the conditions listed at the end of the notice, and following the signing and registering or recording of a planning obligation under section 75 of the Town and Country Planning (Scotland) Act 1997 ('the Act'), or some other suitable arrangement, covering contributions towards: affordable housing; education provision; Borders Rail Link; children's play provision; and community facilities. A copy of the notice which sets out the reasoning for my intention is enclosed with this decision.

2. An agreement under section 75 of the Act has now been received and acknowledged by the Registers of Scotland. This notice therefore grants planning permission for the development subject to the conditions listed below.



Amanda Chisholm

Reporter

Conditions

1. Development shall not begin until details of a scheme of hard and soft landscaping have been submitted to and approved in writing by the planning authority. Details of the scheme shall include:

- i. existing and finished ground levels and floor levels for all buildings, open space and roads in relation to a fixed datum;
- ii. existing trees, landscaping features and vegetation to be retained, removed, protected during development and, in the case of damage, restored;
- iii. proposed new planting in communal areas and open space, including trees, shrubs, hedging, wildflowers and grassed areas;
- iv. location and design of any proposed walls, fences and gates, including those surrounding the bin storage area and that separating the pedestrian access to the flatted block from the vehicular access;
- v. schedule of plants to comprise species, plant sizes and proposed numbers/density;
- vi. programme for completion and subsequent maintenance of all soft and hard landscaping. The landscaping in the open spaces shall be completed prior to the houses/buildings on adjoining plots being occupied. Any tree felling or vegetation removal proposed as part of the landscaping scheme shall take place outwith the bird breeding season (March-August);
- vii. drainage details and details of sustainable urban drainage systems to manage water runoff;
- viii. proposed car park configuration and surfacing;
- ix. proposed footpaths and cycle paths (designed to be unsuitable for motor bike use);
- x. details of car park and footpath lighting.

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

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

2. Development shall not begin until samples of materials to be used on external surfaces of the buildings; hard ground cover surfaces; means of enclosure and ancillary structures have been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out using the approved materials or such alternatives as may be agreed in writing with the planning authority.

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

3. The windows identified in yellow on approved drawing no. 14038/P25 shall be glazed with obscured glass. The obscured glass shall not be replaced with clear glass unless otherwise agreed in writing by the Planning Authority. The windows in the flatted block identified on approved drawing no. 14038/P25 shall be directed away from the neighbouring plot as shown on drawing nos. 14038/P22B and 14038/P23A.

Reason: In the interests of protecting the amenity of the neighbouring residential property.

4. Details of the appearance of the proposed cycle store shall be submitted to and approved in writing by the planning authority prior to the commencement of development on site. Details shall include the internal provision of Sheffield storage racks.

Reason: To ensure that adequate cycle parking facilities are provided on site in order to encourage sustainable forms of transport.

5. The buildings permitted shall not be occupied or brought into use until vehicular, cycle and pedestrian access details and routes have been constructed in accordance with plans to be submitted and approved in writing. The plans shall include details of construction, visibility, traffic calming measures, lighting and signage.

Reason: To ensure the future users of the buildings have safe and convenient access to and from the site.

6. Development shall not begin until a scheme of archaeological investigation has been undertaken in accordance with details submitted to and approved in writing by the planning authority.

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

7. No development shall take place on site until the applicants or their successors have submitted a detailed site investigation report, with regards coal mining legacy, following intrusive site investigation works, to the planning authority and that this report is agreed in writing by the planning authority. The site investigation report shall identify any need for remedial works to treat the areas of shallow mine workings and no development shall commence on site until the agreed mitigation measures have been carried out.

Reason: The submitted Coal Mining Risk Assessment (Mineral Stability Desktop Report) identifies that further investigation work is required to be undertaken in order to establish the exact situation regarding coal mining legacy issues on the site. The above details are required in order to ensure that the site can safely be developed.

8. Development shall not begin until details, including a timetable of implementation, of 'Percent for Art' have been submitted to and approved in writing by the planning authority. The 'Percent for Art' shall be implemented as per the approved details.

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

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

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

10. Development shall not begin until details of a sustainability/biodiversity scheme for the site, including the provision of house bricks and boxes for bats and swifts throughout the development has been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority.

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

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

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

Advisory notes

1. **The length of the permission:** This planning permission will lapse on the expiration of a period of three years from the date of this decision notice, unless the development has been started within that period (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).

2. **Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).

3. **Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to

confirm the position (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended)).

Schedule of application drawings

14038/P01	-	location plan
14038/P21C	-	site plan
14038/P22B	-	ground floor plan (flats)
14038/P23A	-	first and second floor plan (flats)
14038/P24A	-	terrace house plans
14038/P25	-	elevations (provided by Midlothian Council in response to the appeal)
14038/P26A	-	bicycle store and section through pend
14038/P27B	-	street elevations
14038/P28B	-	street elevations
14038/P29B	-	3D images



Notice of Intention by Amanda Chisholm, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-290-2041
- Site address: Land at junction of Bryans Road and Morris Road, Newtongrange, Dalkeith, EH22 4ST
- Appeal by T&V Builders against the decision by Midlothian Council
- Application for planning permission 16/00809/DPP dated 16 November 2016 refused by notice dated 20 June 2017
- The development proposed: Erection of eleven flatted dwellings and five dwelling houses; formation of car parking and access road; and associated works.
- Application drawings listed in schedule
- Date of site visit by Reporter: 19 September 2017

Date of appeal decision: 22 January 2018

Notice of Intention

For the reasons given below I am minded to allow the appeal and grant planning permission subject to the 11 proposed conditions listed at the end of this notice, following the signing and registering or recording of a planning obligation under section 75 of the Town and Country Planning (Scotland) Act 1997, or some suitable alternative arrangement, covering the subject areas listed in paragraph 30 below.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise.
2. The development plan comprises the Edinburgh and South East Scotland Strategic Development Plan, adopted in June 2013, and the Midlothian Local Development Plan (LDP), adopted in November 2017. The proposal at appeal does not raise any strategic issues and falls to be assessed against the relevant provisions of the Local Development Plan.
3. Having regard to the provisions of the development plan, the main issues in this appeal are the effect of the proposed development on (1) the character of the area and (2) residential and neighbouring amenity; (3) the adequacy of the proposed dwelling houses' garden grounds; and (4) the safety implications of vehicular access arrangements.

Background



4. The application at appeal follows refusal of an earlier application in June 2015 for thirteen flatted dwellings and five dwelling houses on the same site (15/00029/DPP) and dismissal of the subsequent appeal (PPA-290-2029) in November 2015. The application has revised this previous proposal to address the reasons for refusal.

5. Overall there have been five planning applications for this site, including this one, since 2007. Of these, an application for twelve dwelling houses (16/00207/DPP) was granted subject to conditions and a planning obligation. In response to the interest in the site the planning authority drew up an informal development brief, which was provided as pre-application advice in this case. As this document was intended to provide guidance to assist developers, and was not subject to statutory adoption procedures, it carries little weight as a material consideration.

6. While I am mindful of the previous application and the appeal decision, as well as the extant planning permission, I have considered this case on its own merits.

Character of the area

7. The LDP seeks to protect the existing character of built-up areas from inappropriate development. Policy STRAT2 (Windfall Housing Sites) supports housing development on windfall brownfield sites within built-up areas, provided that it has regard to the character of the area in terms of scale, form, design and materials. This is echoed by the requirements of Policy DEV2 (Protecting Amenity within the Built-Up Area) that development shall not detract materially from the existing character or amenity of built-up residential areas.

8. The appeal site is located within the built-up area of Newtongrange, and comprises brownfield land. The area, largely residential, is characterised by a variety of housing designs and types, including four-in-a-block flats and terraced, semi-detached, and detached dwelling houses, mainly sitting in their own garden grounds. The overall impression is one of spaciousness. Bryans Farmhouse, a traditional two-storey dwelling house, sits in its own garden grounds immediately adjacent to the western boundary of the appeal site. Other buildings in the area comprise a police station, a shop, a fast-food outlet and an industrial estate. Newbattle High School is situated approximately 500 metres to the north. The principle of residential development at this brownfield location, in a predominantly residential area, is not disputed.

9. In terms of mass and bulk, the proposed terraced housing would echo that existing in the area. The depth of the flatted building would accommodate one flat only, apart from the southernmost element, which echoes the depth of other buildings in the locale. In my view the flatted building would constitute a modern interpretation of flatted development, and its massing and bulk would not be out of step with some of the other modern housing in the area.

10. In terms of height, the proposed terraced houses would present as two storeys, with the second floor accommodated within the pitched roof. The proposed flatted building would be two storeys, apart from a three-storey element at its southeast corner. These heights would generally accord with the one- or two-storey heights of existing dwellings in the area. The exception would be at the southeast corner. Although this would introduce a

new height feature into the locale, its extent would be limited, and I agree that this three-storey element would provide an added design emphasis to the building, as set out in the non-statutory development brief.

11. In regard to roof design, LDP policy does not preclude flat roofs. I agree that most of the dwellings in the site's environs have pitched roofs of various styles. At the site inspection, however, I observed some relatively modern buildings with flat roofs in the vicinity of the appeal site: one group of dwellings on Morris Road and other non-residential buildings, i.e. the police station, the school and the buildings within the industrial estate. In this location a flat-roofed development would continue this modern theme and would therefore not be incongruous. I also consider that a pitched roof on the flatted building would increase its height and thus the potential for overshadowing of the neighbouring property.

12. Taking all these things together, although the proposed development would introduce some change into the surrounding area, I do not consider that it would conflict with LDP policies in terms of its effect on the character of the area.

Residential and neighbouring amenity

13. In terms of quality of place, the LDP seeks to ensure that new development meets basic functional requirements such as satisfying privacy, sunlight and daylight levels in order to preserve the quality of life of residents. While Policy DEV2 protects the amenity of built-up residential areas, Policy DEV6 (Layout and Design of New Development) requires good design and a high quality of architecture, in both the overall layout of development proposals and their constituent parts. This includes avoiding overshadowing of buildings; adequate spacing between housing to ensure privacy and amenity; and providing private open space on a scale appropriate to the relevant dwelling type. These policies are intended to be supported by supplementary guidance on quality of place; however, this document has yet to be finalised and, as such, some of the more prescriptive elements of the superseded Local Plan (Policy DP2) are not currently defined in the new policy regime.

14. In terms of separation distance, the southwestern corner of the flatted block would be close to the boundary with the outbuilding of Bryans Farmhouse; however, relying on the council's measurements, this two-storey element would be approximately 15 and 13 metres from the closest windows of Bryans Farmhouse and its conservatory respectively. The three-storey element would be approximately 21 and 19 metres from these facades. In terms of overlooking and privacy, on the site inspection I observed that the ground floor, rear garden and conservatory are mainly screened from views from the appeal site by a combination of walls, fences and outbuildings. The ground levels in the appeal site vary, with a slight uphill slope from west to east and from south to north. The two- and three-storey components of the flatted block would be 6.1 metres and 8.9 metres in height, including this slope, slightly lower and higher than Bryans Farmhouse respectively. Accordingly, these elevations of the flatted block would overlook the habitable rooms on the house's eastern façade. However, no windows are proposed for these elevations, apart from bathroom windows for which opaque glazing is proposed (Drawing 14038/P25); the adjacent bedroom windows would be angled to look away from the farmhouse (Drawing 14038/P23A). Taking these things together, I consider that overlooking of Bryans

Farmhouse would be effectively prevented. I also consider that the separation distances and relative heights would avoid any overbearing impact.

15. In terms of overshadowing, relying on the 'sun on ground indicators' used by the council, the height and separation distance of the southwestern corner of the flatted block would result in some overshadowing of the ground floor of Bryans Farmhouse, on the eastern and southern elevations. This would be limited to the early morning, until 9:30 a.m., after which the outbuilding would be overshadowed until early afternoon (1 p.m.) which would therefore affect the efficiency of the solar panels fixed to the roof. However, I do not consider this overshadowing to be significant enough to dismiss the appeal.

16. The terraced houses would be some 9.5 metres high, taking into account the higher ground level. They would therefore be higher than Bryans Farmhouse as well as being in relatively close proximity. However, as they would effectively be at right angles to the farmhouse, overlooking would be limited to the nearest bathroom windows on the front elevation, for which opaque glazing is proposed. No concerns were expressed in this regard and I consider that, given the proposed mitigation, overlooking would be avoided.

17. I note the concerns expressed regarding the potential effect on the child-minding business run by the owner of Bryans Farmhouse. My understanding is that this business is ancillary to the house. I do not consider that a child-minding business would require a greater level of privacy than the house and, given my conclusions above, do not find that the child-minding business would be significantly affected by overlooking or overshadowing.

Adequacy of garden grounds

18. Policy DEV6 (Layout and Design of New Development) requires that private open space should be provided on a scale appropriate to the relevant dwelling type.

19. The rear gardens for the proposed terraced houses would not be uniform in size, ranging from 60.42 to 69.4 square metres in area. While I acknowledge that larger garden sizes could be desirable, I agree that an increased length would likely result in long and narrow gardens that would be difficult to use and maintain. I therefore consider that the proposed rear gardens would be sufficient to meet the requirements of Policy DEV6.

20. The amenity space for the flatted building would comprise the green space shown on Drawing 14038/P21/C which, taken together, would total 630 square metres in extent, approximately 57 square metres per flat. While I acknowledge that some of this space would not be ideal for amenity use, such as sitting outdoors, overall this allocated space would contribute to the amenity of the residents. I therefore consider that sufficient amenity space would be allocated for the flatted block's residents.

Access arrangements

21. Vehicular access would be via a pend from Morris Road through the flatted block, leading to the car park and terraced houses. According to the written submissions, Morris Road is well used by vehicles and pedestrians, particularly students, and I observed this at the site inspection. I have considered the adequacy of vehicular access arrangements, and the potential risk of collisions between vehicles exiting the appeal site and pedestrians

and/or vehicles using Morris Road, in light of the concerns raised. At this location the building would be set back from the footway by at least two metres and therefore would not impede the visibility of drivers entering or exiting the car park. I also note, from Drawing 14038/P29B, that there would be a wall separating the pedestrian access to the building entrance from the vehicular access: where it would adjoin the footway it would appear to be half a metre in height, the same as the rest of the wall around the site's curtilage. At this height, I consider that visibility at this point would not be obstructed. However, were the wall to be higher than half a metre at this point, it might obstruct visibility of those exiting. I consider that the council is best placed to deal with this issue and secure a wall height appropriate to ensure driver visibility at this point, through a planning condition.

22. The exit would be on an upward slope and concerns have been expressed about drivers accelerating away. However, the local authority had requested a standard vehicle footway and dropped kerb access to the car park, which would give pedestrians priority and reduce vehicle speed, and this is shown on Drawing 14038/P21 C. In addition, the junction of Morris Road and Bryans Road/ Suttieslea Road is now controlled by traffic lights, which would reduce the speed of vehicles on this part of Morris Road. Taking all these together, I do not consider that there would be an increased risk of accident as vehicles enter and exit the appeal site.

23. The local authority has not raised concerns about the potential for the proposed building to encroach on the sightlines of vehicles using the junction of Bryans Road and Morris Road, but concerns have been expressed in the representations. The flatted building would be set back from Bryans Road by more than 13 metres at its closest point, slightly back from the frontage of Bryans Farmhouse. The intervening ground would comprise grassed amenity space, separated from the road by a footway and a brick wall (0.5 metre high) surmounted by railings. Given its setback from Bryans Road, and the open nature of the amenity space, I do not consider that the building would restrict motorists' visibility at this location.

24. Finally, I have considered the potential impact on access by the emergency services. While I understand the concerns raised in the representations, this is a matter for the local authority to consider when reviewing an application for a building warrant. I have therefore not considered it further here.

Other matters

25. The site is considered to contain archaeological remains and concerns have been expressed that appropriate archaeological investigation is required prior to development. In line with Policy ENV25, such investigation can be effected through condition and I have therefore not considered this matter further.

Conditions and Legal Agreement

26. The list of suggested conditions, for use were the appeal to be allowed, was provided by the council prior to the adoption of the Midlothian LDP but taking into account its proposed policies. These conditions reflect those recommended in the report to the planning committee; the appellant has signalled that it is content with them. Given the council's responsibility for the enforcement of these conditions, I have adopted the council's

wording where possible, taking into account the principles set out in Circular 4/1998: The Use of Conditions in Planning Permissions and making amendments to reflect the adoption of the LDP.

27. In particular, I have added wording to Condition 1(iv) to reflect my concerns about the height of the wall that would separate the pedestrian access to the building from the vehicular access at the proposed bend and secure an appropriate design that would ensure driver visibility at this location.

28. I have also added wording to Condition 3 to ensure that specified bedroom windows in the flatted block would be angled to look away from the farmhouse, as shown on Drawing 14038/P23A, to prevent overlooking.

29. The appellant and the council agree that the Heads of Terms for an agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 should include provision of affordable housing and contributions towards education provision, Borders Rail Link, children's play provision and community facilities, in line with the requirements of Policies IMP1 and IMP2 of the LDP. I have reviewed the proposed planning obligation using the policy tests set out in Circular 3/2012: Planning Obligations and Good Neighbour Agreements, and consider that the obligation is necessary to make the proposed development acceptable in planning terms; serve a planning purpose; relate to the proposed development; are fair and reasonable in scale, kind and all other respects.

30. Before granting planning permission I therefore consider that a planning obligation covering the topics of affordable housing, education provision, Borders Rail Link, children's play provision and community facilities should be completed. Accordingly, I will defer determination of this appeal for a period of 12 weeks to enable the relevant planning obligation (either an agreement with the planning authority or a unilateral obligation by the appellant under section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended) or some suitable alternative arrangement as may be agreed by the parties) to be completed and registered or recorded, as the case may be. If, by the end of the 12 week period, a copy of the relevant obligation with evidence of registration or recording has not been submitted to this office, I will review the situation.

31. The conditions and advisory notes which I am minded to attach to the planning permission, should it be granted, are shown below.

Overall Conclusion

32. I therefore conclude, for the reasons set out above, that the proposed development accords overall with the relevant provisions of the development plan and that there are no material considerations which would still justify refusing to grant planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

Amanda Chisholm

Reporter

Proposed Conditions

1. Development shall not begin until details of a scheme of hard and soft landscaping have been submitted to and approved in writing by the planning authority. Details of the scheme shall include:

- i. existing and finished ground levels and floor levels for all buildings, open space and roads in relation to a fixed datum;
- ii. existing trees, landscaping features and vegetation to be retained, removed, protected during development and, in the case of damage, restored;
- iii. proposed new planting in communal areas and open space, including trees, shrubs, hedging, wildflowers and grassed areas;
- iv. location and design of any proposed walls, fences and gates, including those surrounding the bin storage area and that separating the pedestrian access to the flatted block from the vehicular access;
- v. schedule of plants to comprise species, plant sizes and proposed numbers/density;
- vi. programme for completion and subsequent maintenance of all soft and hard landscaping. The landscaping in the open spaces shall be completed prior to the houses/buildings on adjoining plots being occupied. Any tree felling or vegetation removal proposed as part of the landscaping scheme shall take place outwith the bird breeding season (March-August);
- vii. drainage details and details of sustainable urban drainage systems to manage water runoff;
- viii. proposed car park configuration and surfacing;
- ix. proposed footpaths and cycle paths (designed to be unsuitable for motor bike use);
- x. details of car park and footpath lighting.

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

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

2. Development shall not begin until samples of materials to be used on external surfaces of the buildings; hard ground cover surfaces; means of enclosure and ancillary structures have been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out using the approved materials or such alternatives as may be agreed in writing with the planning authority.

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

3. The windows identified in yellow on approved drawing no. 14038/P25 shall be glazed with obscured glass. The obscured glass shall not be replaced with clear glass unless otherwise agreed in writing by the Planning Authority. The windows in the flatted block

identified on approved drawing no. 14038/P25 shall be directed away from the neighbouring plot as shown on drawing nos. 14038/P22B and 14038/P23A.

Reason: In the interests of protecting the amenity of the neighbouring residential property.

4. Details of the appearance of the proposed cycle store shall be submitted to and approved in writing by the planning authority prior to the commencement of development on site. Details shall include the internal provision of Sheffield storage racks.

Reason: To ensure that adequate cycle parking facilities are provided on site in order to encourage sustainable forms of transport.

5. The buildings permitted shall not be occupied or brought into use until vehicular, cycle and pedestrian access details and routes have been constructed in accordance with plans to be submitted and approved in writing. The plans shall include details of construction, visibility, traffic calming measures, lighting and signage.

Reason: To ensure the future users of the buildings have safe and convenient access to and from the site.

6. Development shall not begin until a scheme of archaeological investigation has been undertaken in accordance with details submitted to and approved in writing by the planning authority.

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

7. No development shall take place on site until the applicants or their successors have submitted a detailed site investigation report, with regards coal mining legacy, following intrusive site investigation works, to the planning authority and that this report is agreed in writing by the planning authority. The site investigation report shall identify any need for remedial works to treat the areas of shallow mine workings and no development shall commence on site until the agreed mitigation measures have been carried out.

Reason: The submitted Coal Mining Risk Assessment (Mineral Stability Desktop Report) identifies that further investigation work is required to be undertaken in order to establish the exact situation regarding coal mining legacy issues on the site. The above details are required in order to ensure that the site can safely be developed.

8. Development shall not begin until details, including a timetable of implementation, of 'Percent for Art' have been submitted to and approved in writing by the planning authority. The 'Percent for Art' shall be implemented as per the approved details.

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

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

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

10. Development shall not begin until details of a sustainability/biodiversity scheme for the site, including the provision of house bricks and boxes for bats and swifts throughout the development has been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority.

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

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

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

Advisory notes

1. **The length of the permission:** This planning permission will lapse on the expiration of a period of three years from the date of this decision notice, unless the development has been started within that period (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).

2. **Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).

3. **Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended)).

Schedule of application drawings

14038/P01	-	location plan
14038/P21C	-	site plan
14038/P22B	-	ground floor plan (flats)
14038/P23A	-	first and second floor plan (flats)
14038/P24A	-	terrace house plans
14038/P25	-	elevations (provided by Midlothian Council in response to the appeal)
14038/P26A	-	bicycle store and section through pend
14038/P27B	-	street elevations
14038/P28B	-	street elevations
14038/P29B	-	3D images



Notice

T: 0300 244 6668
F: 0131 244 8988
E: dpea@gov.scot

Decision by Amanda Chisholm, a Reporter appointed by the Scottish Ministers

- Appeal reference: PPA-290-2041
- Site address: Land at junction of Bryans Road and Morris Road, Newtongrange, Dalkeith, EH22 4ST
- Claim for expenses by T&V Builders against Midlothian Council

Date of decision: 1 June 2018

Decision

I find that the planning authority has not acted in an unreasonable manner resulting in liability for expenses and, in exercise of the powers delegated to me, I decline to make any award.

Preliminary matter

My decision on the appeal which is the subject of this expenses claim has been issued in a separate decision notice.

Reasoning

1. Awards of expenses do not follow decisions on planning merits, and are made only where each of the following tests (as set out in Circular 6/1990) is met:
 - the claim is made at the appropriate stage in the proceedings;
 - the party against whom the claim is made has acted unreasonably; and, if so,
 - such unreasonable conduct has caused the party making the application unnecessary expense, either because it was unnecessary for the matter to come before the Scottish Ministers, or because of the way in which the party against whom the claim is made has conducted its side of the case.
2. The claim was made at the appropriate stage of the proceedings.
3. The appellant claims that the planning authority has acted unreasonably as the reasons for refusal were not sound or clear cut. It should not have been necessary for the case to come before the Scottish Ministers, for two reasons: (i) the appellant complied in full with the planning brief, further addressing concerns from consultants and objectors



throughout the application process; and (ii) the planning committee should have accepted the recommendation made in the planning officer's Report to Committee and should also have taken into account the contents of the decision notice for the previous appeal.

4. In response the planning authority states firstly, that complete, precise and relevant reasons for the refusal of the planning application were provided and, secondly, that there are no overriding reasons for a planning committee to concur with the recommendation of an officer's report.

5. In respect of the second test, I am of the view that the planning authority clearly set out the reasons for refusing planning permission, which related to the effect of the proposed development on the character of the area and on residential and neighbouring amenity; the adequacy of the proposed dwelling houses' garden grounds; and the safety implications of vehicular access arrangements. The reasoning referred to the relevant Local Development Plan policies, where appropriate. I consider that the planning authority's reasons express legitimate planning concerns, based on the provisions of the development plan and the concerns expressed in the representations. It was for the planning authority as decision maker to determine the weight to be attached to the relevant considerations. I therefore do not consider that the planning authority acted unreasonably in this regard.

6. In the decision notice I noted that, in light of the interest in the appeal site, the planning authority drew up an informal development brief, which was provided as pre-application advice in this case and was intended to provide guidance to assist developers. Although the appellant considers that the concerns of objectors were addressed throughout the application process, this did not prevent objections to the proposed development being lodged. While I understand the appellant's frustration in this regard, the development brief remained informal in nature and therefore carried little weight as a material consideration. I therefore do not consider that the planning authority acted unreasonably in this regard.

7. It is not incumbent on a planning committee to accept the recommendations of professional advisors but, in making a different judgement, I consider that it should have acted in a reasonable manner. In terms of the committee report, I note that it highlighted concerns about the provision of adequate private garden space but considered that, given the circumstances, the standards prevailing at the time of the report's preparation could be relaxed. No mention was made of the safety issues around vehicles entering or exiting the proposed development. Although the professional advisors were content that the site could accommodate the proposed development without adversely affecting residential amenity or the character of the surrounding area, issues in this regard were raised in representations; the report to the planning committee made it clear that these comprised material considerations. Although the planning officer considered that the relaxation of garden standards and concerns expressed in the representations were not such as to require refusal, in my view the committee was entitled to use its judgement in reaching a different view and also in raising its own concerns about the risk of accidents.

8. Finally, with regard to the previous appeal, this was in relation to a different development proposal which, although similar to that at appeal, differed in its design details. The reporter for the earlier appeal was satisfied with certain aspects of the proposal but concluded that, in regard to car parking provision and garden and open space, the scale of development proposed exceeded the capacity of the site. However, while the report to

committee noted the reporter's conclusions, in my view the committee was not bound by the findings of the appeal.

9. Taking all of the above together, I conclude that the planning authority did not behave in an unreasonable manner in its handling of this case. In the light of that conclusion, I do not need to consider the third test in Circular 6/1990.

Amanda Chisholm

Reporter