

# Notice of Meeting and Agenda



## Local Review Body

**Venue:** Virtual Meeting,

**Date:** Monday, 21 March 2022

**Time:** 13:00

**Executive Director : Place**

**Contact:**

Clerk Name: Democratic Services  
Clerk Telephone:  
Clerk Email: [democratic.services@midlothian.gov.uk](mailto:democratic.services@midlothian.gov.uk)

**Further Information:**

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

**Privacy notice:** Please note that this meeting may be recorded. The recording may be publicly available following the meeting. If you would like to know how Midlothian Council collects, uses and shares your personal information, please visit our website: [www.midlothian.gov.uk](http://www.midlothian.gov.uk)

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**1 Welcome, Introductions and Apologies**

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**2 Order of Business**

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

**3 Declaration of Interest**

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

**4 Minute of Previous Meeting**

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No Minutes for Approval at this Meeting.

**5 Public Reports**

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Notices of Review - Determination Reports by Chief Officer:  
Place.

- |            |   |          |
|------------|---|----------|
| <b>5.1</b> | Land North of 6 Ashbank, Gorebridge (21/00499/DPP)        | 3 - 50   |
| <b>5.2</b> | Land 115m East of Highwood House, Rosewell (21/00453/PPP) | 51 - 90  |
| <b>5.3</b> | Land Adjoining Meyerling, Penicuik (21/00775/DPP)         | 91 - 128 |

**6 Private Reports**

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No private reports to be discussed at this meeting.

**7 Date of Next Meeting**

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To Be Confirmed

Plans and papers relating to the applications on this agenda can also be viewed at <https://planning-applications.midlothian.gov.uk/OnlinePlanning>

## **Notice of Review: Land North of 6 Ashbank, Gorebridge**

### **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 vacant land to builder's yard (sui generis), siting of shipping containers and associated engineering operations to form earth bund and hardstanding (retrospective) on land north of 6 Ashbank, Gorebridge.

#### **2 Background**

- 2.1 Planning application 21/00499/DPP for the change of use of vacant land to builder's yard (sui generis), siting of shipping containers and associated engineering operations to form earth bund and hardstanding (retrospective) on land north of 6 Ashbank, Gorebridge was refused planning permission on 19 October 2021; 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 19 October 2021 (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](http://www.midlothian.gov.uk)

## **4 Procedures**

- 4.1 In accordance with procedures agreed by the LRB, the LRB by agreement of the Chair:
- Have determined to consider a visual presentation of the site and undertaking a site visit (elected members not attending the site visit can still participate in the determination of the review); and
  - Have determined to progress the review by way of a hearing.
- 4.2 The case officer's report identified that there were four consultation responses and three representations received. As part of the review process the interested parties were notified of the review. No additional comments have 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 13 June 2017, and without prejudice to the determination of the review, the following conditions have been prepared for the consideration of the LRB if it is minded to uphold the review and grant planning permission.
1. Within 3 months of the date of this permission a scheme to deal with any contamination of the site and/or previous mineral workings shall be submitted to the planning authority for approval in writing.



The scheme shall contain details of the proposals to deal with any contamination and/or previous mineral workings and include:

- a) The nature, extent and types of contamination and/or previous mineral workings on the site;
- b) Measures to treat or remove contamination and/or previous mineral workings to ensure that the site is fit for the uses hereby approved, and that there is no risk to the wider environment from contamination and/or previous mineral workings originating within the site;
- c) Measures to deal with contamination and/or previous mineral workings encountered during construction work; and
- d) The condition of the site on completion of the specified decontamination measures.

Any decontamination/remediation works required by the above scheme of investigation shall be completed within 3 months of the scheme being approved in writing by the planning authority.

2. On completion of the decontamination/remediation works referred to in Condition 1 above, a validation report or reports shall be submitted to the planning authority confirming that the works have been carried out in accordance with the approved scheme.

***Reason for conditions 1 and 2: To ensure that any contamination on the site is adequately identified and that appropriate decontamination/remediation measures are undertaken to mitigate the identified risk to site users and the wider environment.***

3. The design and installation of all plant, machinery and equipment shall be such that the combined noise level shall not exceed NR 30 daytime (07:00 to 23:00 hrs) or NR 25 if the noise is tonal and NR 25 night-time (23:00 to 07:00 hrs) or NR 20 if the noise is tonal as measured from within any living apartment in any neighbouring noise-sensitive premises. For the purposes of this condition the assessment position shall be as identified by BS 7445 in relation to internal noise measurements.
4. For an assessment position 3.5 meters from the facade of any residential property (1 m from the facade in the case of upper floors) the Rating Level shall not exceed the background noise level by more than 5 dB when rated in accordance with BS 4142. The background noise levels shall be LA90 and should be demonstrated as being representative of the background noise levels for the relevant assessment period of the day and night.
5. Within 1 month of the date of this permission details of a waste management plan for the site shall be submitted to and approved in writing by the planning authority. The plan shall include the location of any areas of waste storage, the means of enclosure of any waste and a timetable for regular removal of the waste. Once approved the waste management plan shall be complied with for the duration of the site's use as a builder's yard.

6. No burning of waste material shall take place on the site.

***Reason for Conditions 3 to 6: To safeguard the amenity of local residents, landowners and businesses.***

7. No trees, hedgerow or shrubs within the site shall be lopped, topped, felled or removed without the prior written approval of the planning authority.
8. Within 1 month of the date of this permission details of a scheme of hedgerow planting for the northern and eastern boundaries of the site shall be submitted to the planning authority for written approval. Once approved the planting shall be completed by the close of the next planting season following the date of approval of the scheme of hedgerow planting.

***Reason for Conditions 7 and 8: To safeguard the landscape setting of this countryside site.***

- 5.2 If the LRB dismisses the review, the use of the land as a builder's yard will need to cease; the storage containers and any other structures placed on the land will need to be removed from the land; the hard surface removed and the earth bund spread across the site. In this case the applicant will be asked to comply with this requirement within two months of the LRB decision. However, the failure to carry out the required works will result in the Council having to consider issuing an enforcement notice to resolve the breach of planning control.

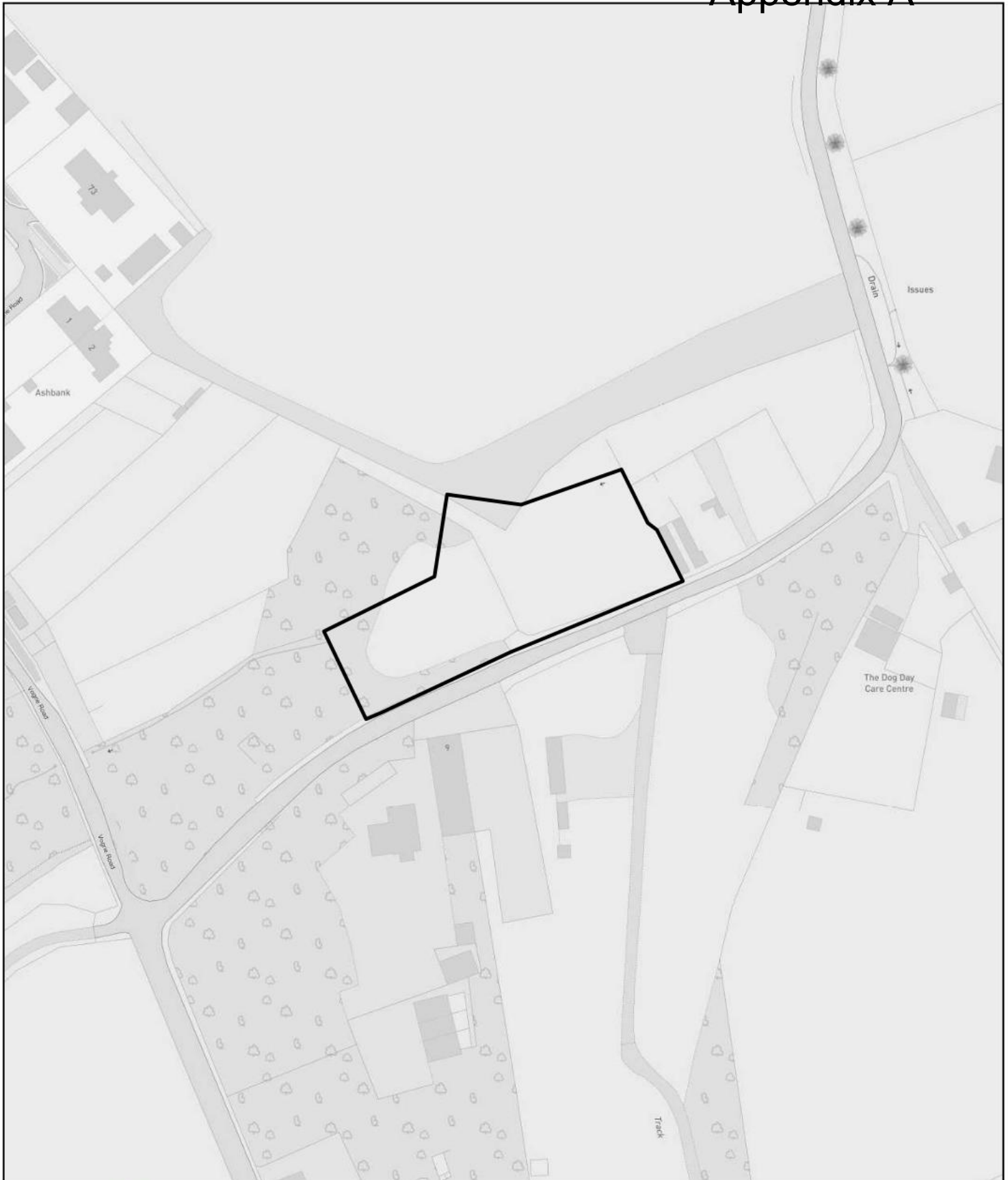
## **6 Recommendations**

- 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:** 11 March 2022  
**Report Contact:** Graeme King, Planning Officer  
[Graeme.King@midlothian.gov.uk](mailto:Graeme.King@midlothian.gov.uk)

**Background Papers:** Planning application 21/00499/DPP available for inspection online.



**Planning Service  
Place Directorate**  
Midlothian Council  
Fairfield House  
8 Lothian Road  
Dalkeith  
EH22 3AA

Change of use of vacant land to builder's yard(sui generis) ,  
siting of shipping containers and associated engineering  
operations to form earth bund and hardstanding  
(retrospective) at Land North of 6 Ashbank, Gorebridge,

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File No: 21/00499/DPP

Scale: 1:1,500  
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Fairfield House 8 Lothian Road Dalkeith EH22 3ZN Tel: 0131 271 3302 Fax: 0131 271 3537 Email: [planning-applications@midlothian.gov.uk](mailto: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 100520368-001

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="Sorrell Associates"/>		
Ref. Number:	<input type="text"/>	You must enter a Building Name or Number, or both: *	
First Name: *	<input type="text" value="Jim"/>	Building Name:	<input type="text" value="The Green House"/>
Last Name: *	<input type="text" value="Sorrell"/>	Building Number:	<input type="text" value="41"/>
Telephone Number: *	<input type="text" value="0131 343 3463"/>	Address 1 (Street): *	<input type="text" value="St Bernard's Crescent"/>
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="Scotland"/>
		Postcode: *	<input type="text" value="EH4 1NR"/>
Email Address: *	<input type="text" value="jimsorrell@sorrellassociates.co.uk"/>		

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

☐ Individual ☒ Organisation/Corporate entity

## Applicant Details

Please enter Applicant details

Title:	Mr	You must enter a Building Name or Number, or both: *	
Other Title:	Rory	Building Name:	
First Name: *		Building Number:	16
Last Name: *	Joyce	Address 1 (Street): *	South Quarry View
Company/Organisation	Peter Joyce & Son Ltd	Address 2:	
Telephone Number: *		Town/City: *	Gorebridge
Extension Number:		Country: *	Scotland
Mobile Number:		Postcode: *	EH23 4GT
Fax Number:			
Email Address: *	rorypjplumber@yahoo.com		

## Site Address Details

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

Please identify/describe the location of the site or sites

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Northing	660997	Easting	335191
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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)

Change of use of vacant land to builder's yard (sui generis), siting of shipping containers and associated engineering operations to form earth bund and hardstanding (retrospective)

## 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.

Explained in Planning 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)

Listed in Planning Appeal Statement

## Application Details

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

21/00499/DPP

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

18/05/2021

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

19/10/2021

## 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

Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may select more than one option if you wish the review to be a combination of procedures.

Please select a further procedure \*

Holding one or more hearing sessions on specific matters

Please explain in detail in your own words why this further procedure is required and the matters set out in your statement of appeal it will deal with? (Max 500 characters)

For the appellant to explain to the local review body particular matters which he considers did not receive due attention by the Council's planning officials including the business justification for allowing use of the site by his company, how this will complement existing neighbouring uses, and the improvements to the appearance of the site and the local environment that will be enabled.

Please select a further procedure \*

By means of inspection of the land to which the review relates

Please explain in detail in your own words why this further procedure is required and the matters set out in your statement of appeal it will deal with? (Max 500 characters)

To enable the local review body to witness the non-agricultural character of the site deriving from its previous uses, the nature of the use being carried on for which approval is now sought, and its setting amongst an enclave of complementary neighbouring commercial uses

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

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

☐ Yes ☒ No

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

☐ Yes ☒ No

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

The site entrance has a secure gate and the appellant will be glad to provide access to the LRB members.

## 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 Jim Sorrell

Declaration Date: 18/01/2022



**PETER JOYCE & SON LTD**  
**Plumbing, Heating & Mechanical Services**

16 South Quarry View  
Gorebridge, Midlothian  
EH23 4GT

T: 01875 822239  
M: 07790189433/07815953679  
E: [pjplumber@btinternet.com](mailto:pjplumber@btinternet.com)

Date: 07/05/2021

FAO: Midlothian Planning Committee

We would appreciate if you could read this letter as a background to our need to apply for the planning application to allow us to create a yard and housing on the current site.

We are a small family business who have been based in Gorebridge since 2000, but we have been Midlothian residents since birth.

Peter, originally started out as a Sole Trader after being made redundant from Colin Dickson, Plumbers from North Wynd in Dalkeith, due to his employers impending retirement, Peter moved to Kelly's Kitchen's in Bonnyrigg, but after around 18 months Kelly's Kitchens, also ceased trading and Peter took the decision to become self-employed. After a few years of hard work and determination and building his reputation, Peter was in a position to employ an apprentice, who was also from Gorebridge, when this apprentice was qualified, Rory, Peters's son was employed as an apprentice. The business has gone from strength to strength.

After a few years we were able to employ other plumbers and take on larger contracts and we started seeking premises to relocate to. Unfortunately we were unable to source anything suitable in the area.

We moved to our current address in 2009 as this offered us the opportunity to gain a double garage, to allow us to store items. We also applied to Midlothian Council, and were granted planning permission to build a further 2 garages on our property, we thought this would have allowed us to store more materials in order to be more competitive when pricing work. Unfortunately we were unable to proceed with this planning application because in 2015 we had been subcontracting to Muirfield Contracts who were building houses in Gorebridge, they ceased trading owing us **£90,918.78**. We were devastated but determined not to let this end all of our previous hard work, we worked tirelessly to enable us to pay all our suppliers and achieved this within a year. This determination to succeed has stayed with us and we have continued to expand our business. We have contacted Midlothian Council over the years asking for some help in finding suitable premises but unfortunately nothing has become available for us and we have traded from our home address, since 2009. In the past year our neighbours have retired and have waged a bit of a war, trying to get a petition to have us removed, constantly filming and photographing visitors, they have been abusive towards us and sent letters advising us of their intentions of reporting us to the police, council, MP's etc.

We were offered the use of containers and the wooden shed, formally a pigeon hut, on this site at Ashbank and when this land became available to purchase we thought it was perfect as it was within easy reach of all our employees, there were already other industrial work premises, including a scaffolding yard, garage and Roofing company in the area, and it would allow us to expand our business due to continued and repeat

customers. This has allowed us to employ another plumber, an apprentice plumber and a foreman joiner, we were also able to employ a 58 year old labourer, who had just lost his job due to covid and thought he had become unemployable. We have in-fact 10 employees all of who live in Midlothian, 9 in Gorebridge and 1 in Bonnyrigg. One of our plumbers recently retired and he lived in Newtongrange.

Unfortunately we also inherited a vermin problem, after speaking to pest control and Midlothian Council Environmental department we were advised that the best and quickest way to alleviate this problem was to scrape back the soft ground and replace with hard-core and create a bund to separate our land from the local fly tipping ground next door. This appears to have worked as currently we have no rats/vermin. This bund will be removed and the soil re-used once the clear up of next door has taken place.

As a Midlothian business, we like to use local companies when possible, including SW Scaffolding, P&M Sinclair, B&D Roofing, DM Construction, Lithgow Electrical, Airtex Structural Height Specialists. We also use the services of Rocket Car wash to clean the vans, and the local bakeries and shops.

We also try to help other local organisations, including supplying and fitting new drainage at Arniston Rangers Football Club, we contribute to Gorebridge Bowling Club and the Gala Day. We also carry out work at reduced rates at the Midlothian Foodbank and Gorebridge Church

We are aware that a plumber's yard would become a target to thieves due to the high value materials and equipment required to run a successful, expanding business, therefor our proposal of building houses on the current site would hopefully act as a deterrent and avoid theft and illegal dumping which is currently on the increase in this area.

Our hope would be that we, ourselves will build the houses, again creating work and guaranteeing our employees work for a considerable amount of time.

As previously stated we have been raised, lived, worked and been an employer in Midlothian all our lives and would like to continue to do so.

We are willing to work alongside, and would appreciate the help and guidance from Midlothian Councils planning department to help us achieve our objectives and also create a unique working and living space.

Kind Regards

Peter, Margaret & Rory Joyce

**Land to North of 6 Ashbank, Gorebridge  
EH23 4NJ**

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**Appeal against the Decision by Officials  
of Midlothian Council to Refuse Planning  
Permission for Application Reference  
21/00499/DPP**

**Change of use of vacant land to builder's  
yard (sui generis), siting of shipping  
containers and associated engineering  
operations to form earth bund and  
hardstanding (retrospective)**

**Planning Appeal Statement to the Local  
Review Body**

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On behalf of:

Mr Rory Joyce,  
Peter Joyce & Son Ltd

18<sup>th</sup> January 2022

**Sorrell Associates**  
planning | development | consultancy

The Green House  
41 St Bernard's Crescent  
Edinburgh EH4 1NR  
[www.sorrellassociates.co.uk](http://www.sorrellassociates.co.uk)

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## **Application Documents**

### Drawings

- (EX)01 - Existing Site Layout on Aerial Image
- (EX)02 - Existing Site Layout on Ordnance Survey Plan
- (EX)03 - Existing Site Plan on Aerial Image
- (EX)04 - Existing Site Plan on Ordnance Survey Plan
- (LOC)01 - Location Plan
- (PL)01 - Proposed Site Plan
- (PL)02 - Proposed Site Plan, Showing Works Completed
- (PL)03A - Site Sections
- 21-109(SK)03.2 - Indicative Site Plan

### Other Documents

- Supporting Letter from Peter Joyce and Son Ltd - 11<sup>th</sup> June 2021

### Application Determination

- Consultation Response - Environmental Health Officer 7<sup>th</sup> October 2021
- Report of Handling
- Decision Notice - 19<sup>th</sup> October 2021

## **Appeal Documents**

- Location plan showing land uses in vicinity of application site

## SECTION 1 INTRODUCTION

1. This Appeal Statement is submitted on behalf of Mr Rory Joyce (*'the applicant' or 'appellant'*), the proprietor of Peter Joyce & Son Ltd (*'the company'*), specialists in plumbing, heating and mechanical services.

### Background to the Proposal

2. The company is a family-run business which has been established in Gorebridge for over 20 years, operating from various sites / properties in and around the town. Trade has steadily increased and 13 staff are now employed. The company requires a permanent site at which to consolidate and then expand further but, until now, the applicant has been unable to find an appropriate opportunity.
3. Mr Joyce is appealing against the refusal of planning permission (ref 21/00499/DPP) by Midlothian Council (*'the Council'*) regarding his company's use of land on the north side of Ashbank, Gorebridge (*'the application site' or 'appeal site'*), for which the description of development is:

*'Change of use of vacant land to builder's yard (sui generis), siting of shipping containers, and associated engineering operations to form earth bund and hardstanding (retrospective).'*

4. The application site is some 0.34ha (0.8 acres) and located to the south of Gorebridge, some 500m from Lady Brae, across farmland which is part of Stobs Farm. The site is within the designated countryside area. However this apparent rural setting is deceptive as the immediate area is of low-quality appearance and the site is amongst an enclave of commercial uses located on Ashbank and Vogrie Road.



Fig 1 - Site location on north side of Ashbank

5. The site was acquired by Mr Joyce in March 2021, together with an adjacent wooded area, and has been used by the company as a plumber's yard since that time.
6. For several years the previous owner had used the site for the storage of end-of-life vehicles, including failed MOT's and damaged stock cars. Mr Joyce understands this included carrying out repairs at the site or stripping down these vehicles for parts.

7. The description of development in the application refers to the site having previously been "vacant land". However this is incorrect as it was actively used for car storage up to the time of purchase.
8. The site is also understood to have a prior history of use as a coal yard in association with the Old Vogrie Coal & Fireclay Works which was located immediately opposite. It was also used for keeping pigeons.
9. Mr Joyce presumed that the previous use for car storage had established an industrial use of the land which could be continued as a plumber's yard without requiring planning permission. He therefore proceeded to clear the site and commenced use by his company.
10. However he was subsequently contacted by the Council Planning Dept who advised that retrospective planning approval was necessary.
11. The retrospective nature of this proposal is therefore due to a genuine misunderstanding regarding planning procedure, and the applicant took swift action in seeking to regularise the position by appointing Fouin & Bell Architects to prepare a planning application.

#### **Land Use and Groundworks Requiring Approval**

12. The site is used by the company for the storage of plumbing equipment and supplies. The main activity is early each morning when employees meet on site and load their vehicles before travelling to clients' premises, returning in late afternoon / early evening.
13. During the rest of the day the site is largely inactive with only occasional deliveries of equipment, plumbing parts, etc and a limited staff presence. Overall the business generates a low level of activity and traffic movements.
14. There are no permanent buildings on the site and ten shipping containers have been positioned around the western and southern periphery to provide storage for plumbing equipment and supplies. This includes one container left by the previous owner that will be refurbished for use as an office should consent be granted.



**Fig 2 - Containers on south side of site**



**Fig 3 - Containers on west side of site**

15. The west / central part of the site is used for parking and loading of vehicles, being accessed from the site entrance on Ashbank in the middle of the southern boundary.

16. It is Mr Joyce's position that the site was already in generally poor condition with an unsightly appearance when he acquired it. The area inside the western boundary had been 'backfilled' by the previous owner to achieve a level gradient, given the slope down to the adjacent woodland. Much of the former grassed area across the site had also become scrubland as a consequence of the car storage.
17. A large number of derelict vehicles and three large steel containers were left behind and Mr Joyce says he arranged for these to be cleared. The remains of pigeon lofts / 'doocot' structures were also removed.
18. Having cleared the site it became apparent that vermin were entering from the adjacent site to the east, which appears to be used for fly-tipping and occasional fires. Mr Joyce says he consulted Midlothian Environmental Health and was advised to form a soil bund inside the site along the eastern boundary. He did this, and it has halted the vermin problem. He will remove the bund when the adjacent site is cleared up.



**Fig 4 - Earth bund along east boundary**

19. Mr Joyce says that he has also laid the central/west part of the site with materials left over from road tarmacing. This is described in the application as 'hardcore' and in practice it provides a loose gravel surface. The eastern part of the site remains as scrub grassland.
20. The matters regarded as requiring approval by the Council planning officials comprise the use of the site as a yard, the siting of the containers, the formation of the bund and the gravel surfacing of part of the site.

#### **Planning Application Process**

21. The application was submitted on 10<sup>th</sup> June 2021. However permission was refused by decision letter of 19<sup>th</sup> October 2021 with a single reason for refusal:

*'The proposed development is not in keeping with the scale and character of the surrounding rural area and is poorly integrated into the rural landscape; the proposal is therefore contrary to policy RD1 of the Midlothian Local Development Plan 2017. Any economic benefits generated by the proposal are not a significant enough material consideration to outweigh the provisions of the development plan.'*



22. The refusal was administered by planning officials under delegated powers, and so Mr Joyce's appeal seeks a review of that decision by the Council's Local Review Body ('LRB').
23. Mr Joyce is aware that objections were submitted by some neighbours regarding the site clearance and groundworks he has carried out and that the Council's enforcement team was consequently notified. However he feels the commentary provided on these events by the officers in the Report of Handling (ps6-7) is one-sided against him and does not represent a fair assessment.
24. He also feels, from the explanation given in their report, that this unduly influenced the officers in deciding to refuse consent, when balancing the merits of the application. This is reflected in the expressions used by officers that he has '*wilfully ignored planning regulations*' and that approval would '*completely over-rule national and local planning guidance and create a precedent that could make the overall aims and objectives of the LDP undeliverable*'.
25. Mr Joyce regards such statements as exaggerated and unreasonable. He therefore asks the LRB to consider the points set out in this Appeal Statement and to undertake a more rational consideration of the proposal.
26. He strongly believes his proposals are appropriate for the site and will complement neighbouring uses. He accepts he has carried out works to his site but he also believes he is being unfairly blamed for drainage, ground contamination and access issues which derive from previous uses or other landowners in the area. He hopes a productive partnership can be formed with the Council and neighbours to resolve any matters to mutual benefit.



## SECTION 2      GROUNDS OF APPEAL - OVERVIEW AND PLANNING POLICY

27. Permission has been refused by the planning officials with reference to Policy RD1 of the Midlothian Local Development Plan ('LDP'). Mr Joyce disagrees with their assessment and considers that approval is justified in accordance with both the land-use principles and detailed criteria required by this policy. This is explained in Sections 3-6 of this Statement, and summarised as follows.

28. Policy RD1 states that 'Development in the Countryside' will only be permitted:

*'if required for the furtherance of agriculture, forestry, countryside recreation or tourism.'*

29. However RD1 also provides specific support for 'Business in the Countryside', and this is the primary reason by which Mr Joyce considers planning permission is justified. The policy states that:

*'Development opportunities that will enhance rural economic development will be permitted provided that they accord with criteria a)-d). Proposals will not be permissible if they are of a primarily retail nature or harm the amenity of nearby residents through unacceptable levels of noise, light or traffic.'*

30. **Section 3** provides Mr Joyce's consideration that the officials did not give sufficient weight to this matter and he instead asks the LRB to grant consent in support of Peter Joyce & Son as an established and expanding local business.

31. Four Criteria (a-d) are set by Policy RD1 which require development to be a) integrated with the rural landscape, b) suitably accessed, c) to protect the water environment (drainage, etc) and d) accessible by public transport. RD1 also requires no harm to be caused to the amenity of nearby residents from noise, light or traffic.

32. Mr Joyce considers an important justification for his company's use of the site is in satisfying the first of these criteria, by integrating into the rural landscape. This is based on i) the precedent set by previous use of the site, ii) visual and environmental improvements, and iii) compatibility with the enclave of commercial businesses on neighbouring sites. These are addressed in **Section 4**.

33. Compliance with the remaining detailed criteria set by Policy RD1 is then addressed in **Section 5** and planning conditions are proposed to provide confidence to the LRB that these matters can be implemented.

34. Finally **Section 6** explains that the current proposal is only intended for a temporary period as Mr Joyce's wider ambition is to develop the site with two new bespoke permanent buildings together with enhanced landscaping, access, drainage and site treatment.

35. A further planning application for this proposal is intended as soon as practically possible. However the current application is necessary in the short term to regularise the planning status of the current land use, existing containers and ground works. The applicant proposes a planning condition which restricts the period of approval to three years, as a means to demonstrate his commitment to these wider improvements.

### SECTION 3 BUSINESS JUSTIFICATION

36. The planning application was supported by a letter from Peter Joyce & Son dated 7<sup>th</sup> May 2021 which sets out the background to the company's growth as a local business, its need for land or premises in Gorebridge, its expanding business and increasing workforce.
37. The letter encapsulates the benefits the company provides through local employment. This is at the heart of the business justification for the granting of planning permission, which is summarised as follows.
- The company is a family-run business which has been established in Gorebridge for over 20 years,
  - The company has operated from various sites / properties in and around Gorebridge including at Parkhill, South Quarry View and Mayfield Industrial Estate but none have proved sustainable
  - Trade has steadily increased and Mr Joyce believes there is scope to expand further but a new property is required
  - The company has grown to 13 staff - a significant local employer. The workforce spans a wide age range from trainees, apprentices to plumbers with long experience
  - Most of the workforce live in Gorebridge and a local site accessible on foot is vital.
  - Mr Joyce has actively sought new premises and sites in the local area but to no avail
  - Midlothian Council business team was approached to search for new premises. Only a few opportunities were identified but these were inappropriate due to wrong location (Penicuik) or too small / no yard (a shop unit).
38. Sadly Mr Joyce has been unable to identify any properties locally which are available and provide appropriate premises and yard space. Use of the site at Ashbank will enable the company to consolidate its existing business, continue providing a service to its customer base and ensuring the continued employment of its local workforce.
39. The use of the shipping containers provides a first step in establishing the site as its base and then to seek approval for their replacement with permanent buildings, which in turn offers the scope to expand the business and generate more jobs.
40. Mr Joyce considers the employment and business benefits that derive from his company's use of the site falls directly within the remit of the support provided for 'business in the countryside' by Policy RD1 as an *'opportunity that will enhance rural economic development'*.
41. In the Report of Handling the officers acknowledge some positive aspects of the company's business expansion and they accept the difficulty for businesses to find suitable sites. However they conclude that this cannot justify approval due to their assessment that Mr Joyce has sought *'to wilfully ignore planning regulations'* and their consideration that *'the principle of this type of development at this type of location is fundamentally unacceptable'*.
42. Mr Joyce fully accepts the need for the site to be managed and operated appropriately, respecting the interests of the rural setting, environmental matters and the amenity for neighbours, and he considers the officers have unfairly assessed his actions (paras 22-26 above).

43. He also believes that a reasoned assessment by the LRB of the nature of the site and its setting will establish that the operation of a plumber's yard in this location is entirely compatible with neighbouring uses and the character of the locality.
44. All of these matters are addressed in the following sections of this Statement and, if the LRB agrees with Mr Joyce, it would be entirely reasonable for them to give due weight to the economic benefits that derive from supporting a local business.

## SECTION 4 INTEGRATION WITH THE RURAL LANDSCAPE

45. The reason for refusal considers that *'The proposed development is not in keeping with the scale and character of the surrounding rural area and is poorly integrated into the rural landscape.'* The officers also say in the Report of Handling that the applicant *'has turned a grassed field into an unattractive one of hardstanding with the character of a semi-derelict industrial site'*.
46. The applicant disagrees with these assessments and asks the LRB to consider the following matters, which lead him to believe his use of the site is appropriate for the location and can integrate with the rural landscape.

### Previous Use of the Application Site

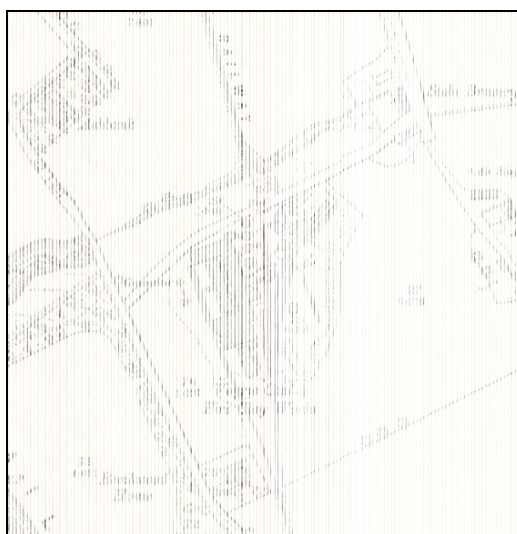
47. Mr Joyce considers that the site has a history of past uses which set a precedent by which the continuation of the current use can be found acceptable.
48. When he acquired the land in March 2021 it had been used over a period of many years for the storage of end-of-life vehicles, including failed MOT's and damaged stock cars. The previous owner would carry out repairs at the site or strip down these vehicles for parts.
49. Mr Joyce arranged for the clearance of a large number of vehicles which were left behind on the site and also the removal of three large steel containers.



Fig 5 - aerial view of car storage

50. The car storage covered much of the western half of the site as illustrated by the aerial photograph submitted with the application and reproduced as Fig 5. This area of site coverage is very similar to that now being undertaken by the plumber's yard use.
51. It is Mr Joyce's position that land within the western boundary of the site was subject to a considerable amount of backfill by the previous owner to create a level surface. Also, while the aerial photo suggests the site had substantial grass coverage, his experience was that this comprised only low-quality scrub grassland which had been detrimentally affected by the storage of cars.

52. Contrary to the impression given in the Report of Handling, Mr Joyce asserts that the site was not previously vacant but had a long-standing car storage use. It was also not an attractive grass field but had only poor-quality scrub grass and was compromised by the remnants of numerous disused cars, vehicles and other detritus.
53. Prior to car storage, the site was used for the keeping of pigeons with sheds and doocots on site. Two wooden pigeon lofts remained from this use which Mr Joyce also removed from the land.
54. The earliest record available of the site is as part of the Vogrie Coal and Fireclay Works. The map extract at Fig 6 shows the mine works centred on land to the south of Ashbank, with a railway line running through the middle of the application site and continuing northwards.



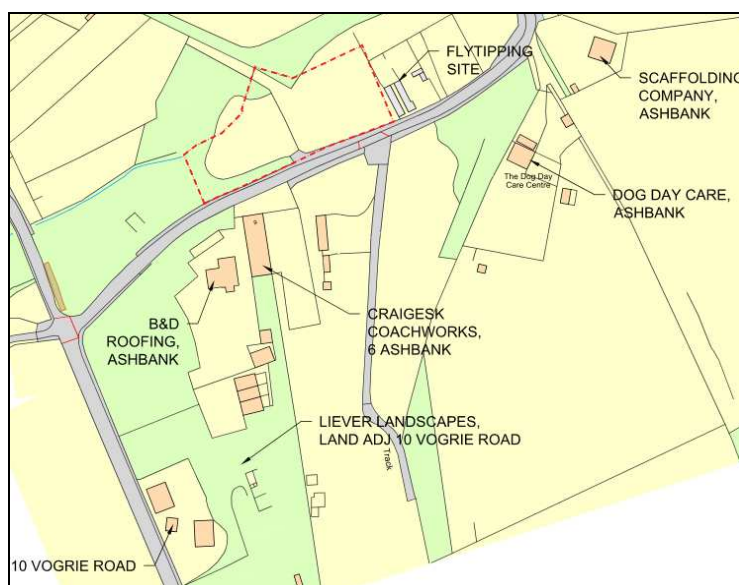
**Fig 6 - Map extract showing the former mining works to the south of Ashbank with a railway running through the application site**

55. The map extract does not show any buildings on the site, however Mr Joyce understands that the site was used as a yard in connection with the mine workings. This is suggested by the site address used by the Coal Board of 'No7 Ashbank Yard', implying it was one of several such yards in the area.
56. He also understands that there used to be a row of terraced cottages which straddled the site's eastern boundary, being partly within the application site and partly in the land currently used for fly tipping.
57. The Report of Handling also refers to the site having been used for the tipping of waste associated with the former colliery and clayworks and subsequently in connection with former farm buildings.
58. From all of the above, Mr Joyce considers it reasonable to regard the site as 'brownfield land' as it fulfils the definition in the LDP Glossary of '*Previously developed land and property*'.
59. He disputes the officers' opinion that '*the site had retained the appearance of a grass field and that the applicant's actions have given it the character of a semi-derelict industrial site.*'
60. Mr Joyce considers that the officers have failed to recognise the full extent of the previous use of the site and that the car storage had already resulted in much of the site having a poor-quality appearance and a semi-derelict nature, constituting a significant incursion to the rural character.

61. The applicant also considers that his clearance of the numerous cars and cabins / sheds substantially improved its condition and appearance and should be regarded as an environmental benefit.
62. He accepts that the groundworks he has undertaken for the preparation of the site for his own purposes, the formation of the bund and positioning of containers have had their own impact. However he asks the LRB to regard this as an acceptable alternative in light of the previous uses.
63. He also asks the LRB to take into account that the current use is a first step in achieving his own ambitions to make further improvements to the appearance and management of the site, which can be secured by planning conditions, of which more below.

### **Compatibility with Neighbouring Uses**

64. Officers place emphasis on the rural setting of the site and consider that its use by the applicant is out of keeping with the surrounding area.
65. However the applicant asks the LRB to visit the site and take note that the site is amongst a number of commercial and other uses on neighbouring land along Ashbank and Vogrie Road. These are shown on a location plan submitted with this appeal and reproduced at Fig 7.



**Fig 7 - Existing commercial businesses at Ashbank**

66. The land immediately east of the application site was previously used for greyhound kennels and is now used for fly-tipping and occasional fires, causing a particular nuisance in the area.
67. 100 metres to the east of the application site where the road bends sharply to the north is a scaffolding company, SW Scaffolding. This comprises a single building with open yard space for the storage of scaffolding poles and equipment.
68. Adjacent to SW Scaffolding is the Dog Day Care Centre, providing a daily boarding service for dogs and comprising a purpose-designed building with half an acre of secure outdoor space.



69. West of the dog centre is a large grassed site which is understood to be used for occasional open storage by DM Construction.
70. Immediately opposite the application site is the Craigesk Coachworks, specialising in the maintenance and repair of cars and other vehicles. To the west of Craigesk is B&D Roofing & Building, a specialist roofing company.
71. Both Craigesk and B&D are long-established businesses. They each have considerable site areas with buildings and open yard space. Mr Joyce understands them to have a sizeable workforce and to generate several vehicle movements on a daily basis, sometimes including articulated vehicles.
72. Beyond B&D Roofing is land occupied by businesses on Vogrie Road to the south of its junction with Ashbank. At no10 Vogrie Road is a site used for plant hire and for caravan storage.
73. On land wrapping around No10 is an elongated site extending down Vogrie Road occupied by a landscape and horticultural business, 'Liever Landscapes'. This is understood to have been operational at the site since 2000 and includes both open yard space and a storage building for the keeping of equipment, materials and plant stock.
74. The planning officers concluded in their Report of Handling that the use as a plumbers' yard *'is out of keeping with the surrounding area'*. Mr Joyce disagrees and asks the LRB to agree with his assessment that these commercial uses collectively provide an enclave of businesses and non-conforming countryside uses in the immediate vicinity of the site.
75. They include vehicle repair, roofers and scaffolding contractors which have unsightly buildings, containers similar to those on the application site, and prominent use of open storage within their respective yards.
76. These neighbouring businesses largely comprise uses which are not traditionally associated with countryside locations. They collectively provide a semi-industrial character in the immediate vicinity of the application site which contrasts with the wider rural setting.
77. The applicant regards the Peter Joyce plumbing business as directly compatible with these neighbouring uses, having a particular synergy with the roofing, coachworks and scaffolding companies.
78. Mr Joyce appreciates the desire of the planning officers to protect the rural character of the countryside and to resist piecemeal development of fields close to Midlothian's towns. However the situation of the site and the prominence of other similar commercial businesses on neighbouring sites appear to have been overlooked by the officials.
79. This directly contradicts the officers' statement that *'the principle of this type of development at this type of location is fundamentally unacceptable'*. Mr Joyce asks the LRB to take the opposite point of view in justifying the appeal.

### **Site Appearance and Landscape Setting**

80. The site is part of a belt of land along Ashbank, together with the land to the east, which has a distinctly different character to the farmland immediately to the north. This belt of land is not in agricultural use and has an unkempt appearance deriving from current and previous uses. This contrast is accentuated by the boundary to the farmland being relatively 'open' and with only limited trees.
81. Despite this context, when viewed from the north the application site is relatively concealed from public view. It is some 500m to the south of houses on Lady Brae and separated by farmland which slopes down into a hollow. Consequently, when approaching south along Ashbank, only glimpsed views of the site are available.
82. However as the north boundary of the site is relatively open, with the exception of one group of tall trees located centrally, the orange-coloured shipping containers are visible within the glimpsed views described above.
83. The southern boundary of the site alongside the road has a row of mature trees and hedges, which provides a reasonable visual protection of the containers from the road. However the gaps in the hedge are more frequent along the western part of this frontage resulting in the containers being more visually prominent, exacerbated by the raised site level as the road slopes down.
84. To the north-west are the nearest houses to the site, located on Vogrie Road beyond a wooded gully and horse paddocks. These houses have views into the site but this is understood to be relatively restricted due to dense woodland on the north west boundary.
85. Mr Joyce considers the containers to have relatively low visibility from surrounding vantage points. However he accepts neither the containers nor the site condition are attractive and, to enhance the setting of the site he proposes two improvements:
- i) to paint the containers green, making them less prominent and blend better with their surroundings.
  - ii) To plant trees and shrubs along the northern and western boundaries, to reduce visibility into the site.
86. He proposes that the LRB considers these as appropriate planning conditions with a planning approval.



## SECTION 5 COMPLIANCE WITH DETAILED CRITERIA

87. A number of development criteria are identified in Policy RD1 and also in the officers Report of Handling (p7). These are now addressed each in turn.
88. **Traffic generation** - The vehicles used by the company comprise cars, small vans and delivery trucks. As explained in Section 1, the main activity at the site is early each morning when employees load their vehicles before travelling to clients' premises, returning in late afternoon / early evening.
89. During the rest of the day the site is largely inactive with only occasional deliveries of equipment, plumbing parts, etc and a limited staff presence. Overall the business generates a low level of activity and traffic movements.
90. **Adequate site access** - the site entrance is in the centre of the road frontage on the southern boundary, and is protected by a security gate which is closed outwith operational hours. It is slightly angled, favouring entry by vehicles from the east, but is easily manageable by cars and small vans leaving or arriving in both directions. Mr Joyce submits that the entrance is fit for purpose in accommodating the vehicles used by the company.
91. The Ashbank roadway is a relatively narrow country lane but Mr Joyce does not considers it a constraint for the small size of vehicles used. However to avoid morning congestion, he liaises with other businesses to agree a protocol for vehicles using the road / time of arrival & departure.
92. **Accessible by Public Transport** - The Borders railway line runs a short distance to the west of the site and Gorebridge rail station is easily reached by pedestrians. It is less than 10 minutes' walk away via a footpath from Vogrie Road at the west end of Ashbank.
93. **Noise** - there is no machinery used on the site in connection with the plumbers business, other than vehicles. The only relatively busy time of day is when the workforce arrives in the early morning to load vehicles and travel on to clients' properties. General activity at the site is otherwise very low throughout the day.
94. Mr Joyce considers that his company's use of the site generates negligible noise levels and there are no houses located nearby. The closest houses are to the north on Vogrie Road but no disturbance to these residents is anticipated.
95. In his consultation response of 7th October 2021 the Council's Environmental Health Officer (EHO) recommended two appropriate planning conditions to restrict noise levels relating to i) plant & machinery and ii) background noise. These are acceptable to the applicant.
96. **Hours of operation** - the EHO recommended a planning condition restricting hours of operation from 07.00 to 19.00 Mon to Fri, from 07.00 to 13.00 on Saturdays, and with the site closed on Sundays.
97. In this instance Mr Joyce would request allowance for an earlier commencement of business from 06.00. The company's workforce generally muster early on site at around this time. It is not anticipated to cause disturbance to any residents given the isolated location of the site, the low noise levels in loading vehicles and the nearest houses being relatively distant to the NW.

98. **Waste Material** - a proposed condition by the EHO is for all waste brought on site to be stored securely in skips or similar containers until removed from site. This is acceptable to the applicant.
99. **Burning of Waste** - a proposed condition by the EHO is for there to be no burning of waste material allowed on site. This is acceptable to the applicant.
100. **Ground Water and Contamination** - the EHO has recommended two planning conditions requiring first the procurement of a scheme to investigate and deal with any contamination on site, and second for a validation report to be issued confirming that any required works have been carried out.
101. These are acceptable in principle to the applicant. However it is noted that the proposed conditions would preclude the use of the site until any decontamination works have been carried out, and this would negate the economic objective of granting consent, should that be the LRB decision.
102. Mr Joyce considers that if any contamination exists in the ground, it derives predominantly from previous uses. Should planning permission be granted, he therefore requests that an arrangement can be made with the EHO so that he can continue using the site while any contamination works are implemented.

### **Conclusion**

103. Policy RD1 presumes in favour of approving development which benefits the rural economy, but this is subject to environmental standards being achieved. Mr Joyce considers that all these matters are either already satisfied by the nature of his current use, or can be satisfied by works being carried out at the site which can be made subject of planning conditions.
104. It is noted that the Environmental Health Officer did not object to the grant of planning permission subject to inclusion of appropriate planning conditions. Mr Joyce accepts the proposed planning conditions put forward in the EHO consultation response, subject to the comments made above.
105. He would also accept conditions regarding the visual improvement of the containers and for a landscaping scheme particularly including boundary planting.

### **SECTION 6      ENHANCED DEVELOPMENT PROPOSALS**

106. The current proposal is only intended for a temporary period as Mr Joyce's wider ambition is to develop the site with two new bespoke permanent buildings together with enhanced landscaping, access, drainage and site treatment.
107. An indicative layout plan was submitted with the current application and it is intended to progress pre-app discussions with the Planning Dept by the time of the LRB's consideration of this appeal. A further detailed application would follow as soon as practically possible.
108. However the current application is necessary in the short term to regularise the planning status of the current land use, existing containers and ground works. As a means to demonstrate his commitment to the wider improvements the applicant proposes a planning condition which restricts the period of approval to three years.

## MIDLOTHIAN COUNCIL

### DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

**Case Officer:** Graeme King    **Site Visit Date:** 02/09/2021

**Planning Application Reference:** 21/00499/DPP

**Site Address:** Land North of 6 Ashbank, Gorebridge

**Site Description:** The application site is a gently sloping site measuring 0.34 hectares. The site has been scraped, vegetation has been removed and the ground has been surfaced with road planings. A 2m high bund, formed from material scraped from the rest of the site has been formed along the Eastern edge of the site. The land to the West of the site is wooded and slopes steeply down from the application site, it appears that inert waste has been used at the Western edge of the site to increase the level area of the site by raising levels on the wooded slope.

There are 9 shipping containers and a cabin situated on the site; these are situated along the Southern (5 shipping containers) and Western (4 shipping containers and a cabin) edges of the site. There is an established hedgerow along the Southern boundary of the site.

To the North the site is bounded by grazing fields. To the East the site is bounded by an area of fly-tipping that was formerly occupied by greyhound kennels. To the West the site is bounded by a steeply sloping area of woodland that contains the ruined foundations of a former house; this area of ground is owned by the applicant. To the South the site is bounded by a public road. On the Southern side of the road are buildings and land that were historically associated with the Vogrie Coal and Fireclay works, the works opened in the mid-19<sup>th</sup> Century and ceased operations in the late 1930's. The land to the South of the road is used as follows (running from West to East):

- The corner plot was until recently an area of woodland. The vegetation was cleared mid-2021 and the site has been partially surfaced with hardcore. No planning application has been submitted.
- 12 Ashbank is an established contractor's yard occupied by a roofing contractor.
- 6 Ashbank is occupied by a car bodywork repair business.
- The land to the east of 6 Ashbank is grazing land with horse stables, the site is not currently in use.
- A dog daycare business is situated to the East of grazing paddock.
- To the east of the dog daycare business is a small contractor's yard occupied by a scaffolding firm.

**Proposed Development:** Change of use of vacant land to builder's yard (sui generis), siting of shipping containers and associated engineering operations to form earth bund and hardstanding (retrospective)

**Proposed Development Details:** Retrospective permission is being sought for the current use of the land, for the groundworks and for the siting of the containers/cabin. Prior to the current use commencing the site was a grass field. For many years the site was used by local pigeon fanciers to accommodate doves. In the late 2010s the site was used on a non-commercial basis to store and prepare cars for stock car racing.

The applicant's agent has submitted an indicative site plan showing the applicant's long term aspirations for the site. The indicative plan shows a 2 steel framed sheds each measuring 18m by 9m, a service yard and 3 houses. The indicative site layout would require a further planning application(s) and has not been assessed as part of the current planning application.

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

#### Application Site

302/92 – Change of use of waste land to site a residential caravan at Ashbank, Vogrie Road, Gorebridge. Refused

#### Land to the North

20/00128/PAC - Proposal of application notice for residential development with associated landscaping and infrastructure at Land At Stobs Farm, Lady Brae, Gorebridge. Pre-application Consultation agreed

20/00129/SCR - EIA screening opinion for proposed residential development with associated engineering, infrastructure, landscaping and open space at Land At Stobs Farm, Lady Brae, Gorebridge. Screening opinion adopted (No EIA required)

#### Land to the East

No planning history other than 302/92.

#### Land to the South (6 Ashbank)

14/00327/PPP - Application for Planning Permission in Principle for erection of dwellinghouse, alterations to building to create artist studio, formation of access and associated works at Craigesk Coachworks, 6 Ashbank, Gorebridge. Withdrawn

14/00773/PPP - Application for Planning Permission in Principle for erection of dwellinghouse; alterations to building to create artist studio; formation of access; and associated work at Craigesk Coachworks, 6 Ashbank, Gorebridge. Refused – Granted consent with conditions via Local Review Body

17/00146/DPP - Erection of dwellinghouse; formation of access and associated retaining wall at Land at Craigesk Coachworks, Gorebridge. Consent with conditions

20/00186/DPP - Application for extension to timeframe in which to implement planning permission 17/00146/DPP (erection of dwellinghouse; formation of access

and associated retaining wall) at Land at Craigesk Coachworks, Gorebridge.  
Withdrawn.

#### Land to East of 6 Ashbank

246/92 – Change of use of former colliery to a paddock, the erection of stables and the siting of a temporary caravan at Ashbank, Gorebridge. Consent with conditions

#### Land to the South (12 Ashbank)

21/00353/DPP - Erection of storage building and welfare building at 12 Ashbank, Gorebridge. Consent with conditions

#### Land to the South of 12 Ashbank

08/00499/FUL - Erection of dwellinghouse at Ashbank, Vogrie Road, Gorebridge.  
Withdrawn

09/00207/FUL - Erection of dwellinghouse at Ashbank, Vogrie Road, Gorebridge.  
Withdrawn

14/00439/DPP - Erection of storage building at Land 115M South Of Craigesk Coachworks, Vogrie Road, Gorebridge. Consent with conditions

14/00774/DPP - Change of use from vacant land to landscape business at Land 115M South Of Craigesk Coachworks, Vogrie Road, Gorebridge. Consent with conditions

20/00375/PPP - Application for planning permission in principle for erection of dwellinghouse at Land at 10 Ashbank, Vogrie Road, Gorebridge. Refused – Granted consent with conditions via Local Review Body

#### Land to West of 12 Ashbank

No planning history

#### Dog daycare

05/00024/FUL - Change of use from agriculture to dog care business and erection of associated building at Brewery Field, Stobs Farm, Stobs Road, Gorebridge. Consent with conditions

#### Scaffolding yard to North of dog daycare

There is no planning history for the use as a scaffolding yard

17/00610/DPP - Erection of dwellinghouse; detached garage; bin store; boundary wall and gates; formation of hard standing and associated works at Land To North Of The Dog Day Care Centre, Gorebridge. Refused

**Consultations:** The **Coal Authority** does not object to the application. The Authority notes that the application is supported by a Coal Mining Risk Assessment which recommends a scheme of intrusive site investigations, however the Coal Authority considers the proposal to be exempt from the need to submit a Coal Mining Risk Assessment (as set out in Coal Authority guidance to local authorities) and therefore the Coal Authority does not recommend any conditions to secure the site investigation works.

The Council's **Biodiversity** screening process identified the constraints that apply to the site and surrounding area (3 species of bird, a flowering plant and an area of semi-natural broad-leaved woodland). The screening provider, The Wildlife Information Centre (TWIC), advises that the proposal will not impact on any of the identified constraints with the possible exception of the woodland. It is unclear from the plans whether or not the vegetation clearance works included the removal of any woodland; if they did, mitigation should be undertaken.

Following the receipt of representations which alleged that the groundworks carried out on the site had resulted in a badger's sett being disturbed the case officer contacted TWIC to check whether there were any records of badgers in the area. TWIC confirmed that their records do not include any details of a badger sett within the site or within a 500m buffer from the site boundaries.

The Council's **Environmental Health** Manager has no objection to the proposal subject to any proposal including conditions to secure a scheme to identify and treat any contamination of the site; and conditions to safeguard the amenity of local residents.

The Council's **Policy and Road Safety** Manager offered no comments on the application.

**Representations:** The application has received 3 objections; 2 from local businesses and 1 from the owner of a neighbouring field. The grounds for objection are as follows:

- The applicant has extended the site onto neighbouring land that he does not own.
- Fences belonging to a neighbour were removed and horses escaped from a field.
- The groundworks disturbed a badger's sett and caused the badgers to leave the sett.
- The groundworks damaged phone lines to local businesses.
- The applicant excavated the road without the necessary permissions from the Roads Authority.
- The excavations in the road disconnected the water supply to a neighbouring business.
- The use of the site has resulted in an increase in vehicles using the local roads.
- Waste is regularly being burnt on the site.
- Trees were felled prior to the submission of the application.

- A lorry associated with the groundworks on the site damaged the wall of a neighbouring business.
- The applicant has dug up asbestos that was buried on the site.
- The groundworks caused polluted water to outfall into a local burn.
- The applicant felled trees on land owned by a neighbouring landowner.
- Multiple lorry loads of road planings have been deposited on the site.

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

Policy **RD1: Development in the Countryside** states that development opportunities that will enhance rural economic development opportunities will be permitted if:

- They are of a scale and character appropriate to the rural area and well integrated into the rural landscape; and
- They are capable of being serviced with an adequate and appropriate access; and
- They are capable of being provided with drainage and a public water supply at reasonable cost, or an acceptable private water supply, unacceptable discharge to watercourses; and
- They are accessible by public transport and services (where appropriate); and
- They are not primarily of a retail nature; and
- They do not harm the amenity of nearby residents through unacceptable levels of noise, light or traffic.

Policy **ENV9: Flooding** presumes against development which would be at unacceptable risk of flooding or would increase the risk of flooding elsewhere. It states that Flood Risk Assessments will be required for most forms of development in areas of medium to high risk, but may also be required at other locations depending on the circumstances of the proposed development. Furthermore it states that sustainable urban drainage systems will be required for most forms of development, so that surface water run-off rates are not greater than in the site's pre-developed condition, and to avoid any deterioration of water quality.

Policy **ENV10: Water Environment** requires that new development pass surface water through a sustainable urban drainage system (SUDS) to mitigate against local flooding and to enhance biodiversity and the environmental.

Policy **ENV11: Woodland Trees and Hedges** does not permit development that would lead to the direct or indirect loss of woodland which has a particular value in terms of amenity, nature conservation, recreation, landscape character or shelter.

Policy **ENV15: Species and Habitat Protection and Enhancement** presumes against development that would affect a species protected by European or UK law.

Policy **ENV18: Noise** states that the Council will seek to prevent noisy development from damaging residential amenity or disturbing noise sensitive uses.



**Planning Issues:** In dealing with a planning application the Planning Authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations. Any representations and consultation responses received are material considerations.

The application site has been the subject of various unauthorised uses over the last 20 to 30 years, the most obvious of which are the siting of the dovecots and the storage of cars, however until recently it had retained the appearance of a grass field. The applicant's actions have turned a grass field that was in keeping with the rural surroundings into an unattractive area of hardstanding with the character of a semi-derelict industrial site. The site is not in keeping with the scale and character of the surrounding rural area and is poorly integrated into the rural landscape; the proposal does not comply with policy RD1 of the Midlothian Local Development Plan 2017.

The Planning Authority acknowledges that the surrounding area has a number of uses that are not ordinarily found in rural locations. Two of the uses, the vehicle coachworks and the roofing contractor's yard, are situated on sites that have a long history of industrial type development dating back to their use in association with the former colliery/clayworks. Other uses in the area, such as the fly-tipping site (and its former use as a greyhound kennels) and the scaffolding yard, do not appear to have any formal planning history and do not appear to have been in continuous use since the colliery/clayworks; the scaffolding yard may now be exempt from enforcement action due to the length of time that the site has been used for its current purposes.

Despite these conflicting uses, the proximity to Gorebridge and the presence of various smallholdings (both active and inactive) the surrounding area has still managed to retain an essentially rural character. Allowing unauthorised development of the scale and character of that which has occurred would significantly alter the character of the surrounding area and would encourage further piecemeal insensitive development in similar sized fields close to Midlothian's towns and villages. Granting of retrospective permission would undermine the effective operation of the various rural development, landscape protection and countryside protection policies within the Midlothian Local Development Plan 2017.

The applicant runs an established local business that started as an individual operator and is now run by the second generation of the family. The business has expanded in recent years and the supporting information supplied with the application states that the business now employs 10 people. Whilst the Planning Authority acknowledges that it can be difficult for expanding businesses to find suitable sites that does not create justification for businesses to wilfully ignore planning regulations and re-locate to a conveniently sited field. Allowing the material consideration of the economic benefits of the proposal to completely over-rule national and local planning guidance would create a precedent that could make the overall aims and objectives of the Local Development Plan undeliverable.

The activities and actions of the applicant at the application site over the last 10 months or so have undoubtedly caused significant disruption to the amenity of local businesses and landowners. Some of these actions have been one-off events associated with the preparation of the site however the disruption created suggests



that without controls in place the use of the site would have a significant detrimental impact on the amenity of local businesses, landowners and residents. Were the Planning Authority minded to grant consent it would be appropriate to attach conditions to control matter such as noise, hours of operation, waste storage and open air activities. Such conditions would not be sufficient to outweigh the fact that the principle of this type of development at this type of location is fundamentally unacceptable.

Historic maps suggest that the site may have been used for tipping of waste associated with the former colliery/clayworks. Anecdotal evidence provided by representors suggest that the site may contain more recent waste associated with former farm buildings. If the Planning Authority was minded to grant consent it would be necessary to attach conditions to secure intrusive site investigations and, if necessary, remediation works to address contaminated land issues.

Given the groundworks that have occurred, the proposed use and the proximity to local watercourses if the Planning Authority was minded to grant consent it would be necessary to attach conditions to secure the implementation of a surface water drainage strategy to ensure that surface water run-off is controlled and suitable treatment levels provide for any potential contaminants and/or pollutants.

The alleged disruption of the badger sett is a possible criminal matter and does not represent a planning breach that can be enforced by the Planning Authority. Any enforcement in relation to the alleged offence is a matter for the Police and the Courts to deal with.

**Recommendation:** Refuse Planning Permission

**Reg. No. 21/00499/DPP**

Fouin and Bell Architects  
1 Johns Place  
Edinburgh  
EH6 7EL

Midlothian Council, as Planning Authority, having considered the application by Peter Joyce and Son Ltd, 16 South Quarry View, Gorebridge, EH23 4GT, which was registered on 10 August 2021 in pursuance of their powers under the above Acts, hereby **refuse** permission to carry out the following proposed development:

**Change of use of vacant land to builder's yard (sui generis), siting of shipping containers and associated engineering operations to form earth bund and hardstanding (retrospective) at Land North of 6 Ashbank, Gorebridge**

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

<u>Document/Drawing.</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Existing Site Layout on Aerial Image	(EX)01 1:500	11.06.2021
Existing Site Layout on Ordnance Survey Plan	(EX)02 1:500	11.06.2021
Existing Site Plan on Aerial Image	(EX)03 1:500	11.06.2021
Existing Site Plan on Ordnance Survey Plan	(EX)04 1:500	11.06.2021
Location Plan	(LOC)01 1:1250	11.06.2021
Proposed Site Plan	(PL)01 1:250	11.06.2021
Proposed Site Showing Works Completed	(PL)02 1:250	11.06.2021
Site Sections	(PL)03A 1:250	13.08.2021
Indicative Site Plan	21-109(SK)03.2 1:500	04.10.2021
Supporting Letter from Peter Joyce and Son Ltd		11.06.2021

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

*The proposed development is not in keeping with the scale and character of the surrounding rural area and is poorly integrated into the rural landscape; the proposal is therefore contrary to policy RD1 of the Midlothian Local Development Plan 2017. Any economic benefits generated by the proposal are not a significant enough material consideration to outweigh the provisions of the development plan.*

Dated 19 / 10 / 2021

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

## PLEASE NOTE

*If the applicant is aggrieved by the decision of the planning authority to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under section 43A of the Town & Country Planning (Scotland) Act 1997 within 3 months from the date of this notice. The notice of review should be addressed to The Planning, Sustainable Growth and Investment Manager, Planning, Sustainable Growth and Investment Service, Midlothian Council, Fairfield House, 8 Lothian Road, Dalkeith EH22 3ZN. A notice of review form is available from the same address and will also be made available online at [www.midlothian.gov.uk](http://www.midlothian.gov.uk)*

*If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonable beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.*

### Prior to Commencement (Notice of Initiation of Development)

*Prior to the development commencing the planning authority shall be notified in writing of the expected commencement of work date and once development on site has been completed the planning authority shall be notified of the completion of works date in writing. Failure to do so would be a breach of planning control under section 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning etc (Scotland) Act 2006). A copy of the Notice of Initiation of Development is available on the Council's web site [www.midlothian.gov.uk](http://www.midlothian.gov.uk)*

## IMPORTANT NOTE REGARDING PUBLIC ACCESS TO INFORMATION

### Making an application

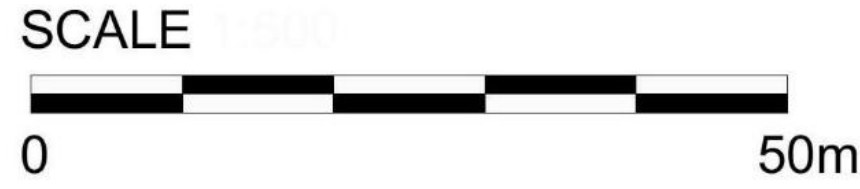
*Please note that when you submit a planning application, the information will appear on the Planning Register and the completed forms and any associated documentation will also be published on the Council's website.*

### Making comment on an application

*Please note that any information, consultation response, objection or supporting letters submitted in relation to a planning application, will be published on the Council's website.*

*The planning authority will redact personal information in accordance with its redaction policy and use its discretion to redact any comments or information it considers to be derogatory or offensive. However, it is important to note that the publishing of comments and views expressed in letters and reports submitted by applicants, consultees and representors on the Council's website, does not mean that the planning authority agrees or endorses these views, or confirms any statements of fact to be correct.*





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REVISION / DESCRIPTION / DATE

Application Boundary

Application Site Area  
3,416m<sup>2</sup> / 0.34ha / 0.84Acres

Ownership Boundary

Ownership Area  
6,322m<sup>2</sup> / 0.63ha / 1.56Acres



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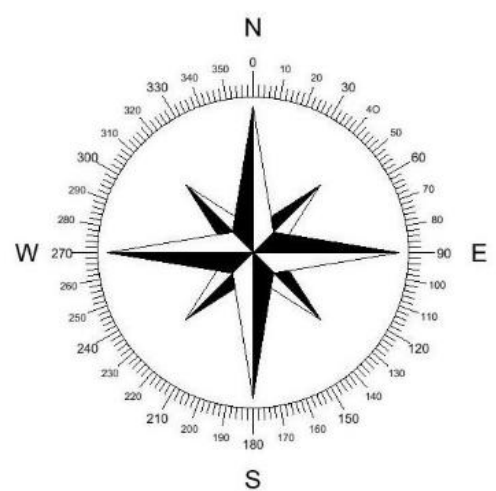
CLIENT  
PETER JOYCE AND SON LTD

PROJECT  
BUILDER YARD  
7 ASHBANK  
GOREBRIDGE MIDLOTHIAN

SCALE@A1 1:500@A1 1:1000@A3 DATE MAY 2021  
DRAWN BY ME CHECKED IH STAGE PLANNING

DRAWING  
EXISTING SITE LAYOUT  
ON AERIAL IMAGE

PROJECT NUMBER 21-109 DRAWING NUMBER (EX)01 REVISION -



# Existing Site Layout with Aerial Plan



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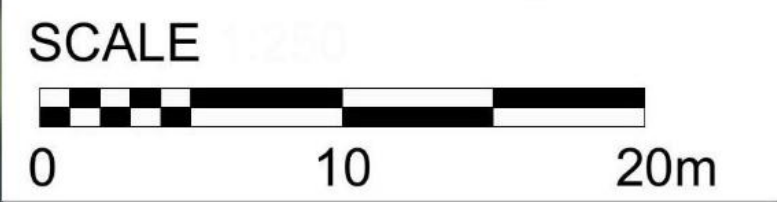
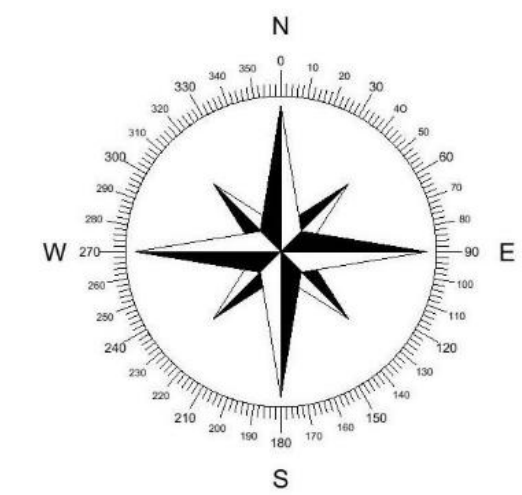
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Application Boundary

Application Site Area  
3,416m<sup>2</sup> / 0.34ha / 0.84Acres

Ownership Boundary



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PROJECT

BUILDER YARD  
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GOREBRIDGE MIDLOTHIAN

SCALE@A1	1:500@A1 1:1000@A3	DATE	MAY 2021
DRAWN BY	ME	CHECKED	IH
DRAWING	EXISTING SITE PLAN ON AERIAL IMAGE		
PROJECT NUMBER	21-109	DRAWING NUMBER	(EX)03
		REVISION	-

# Existing Site Plan with Aerial Plan



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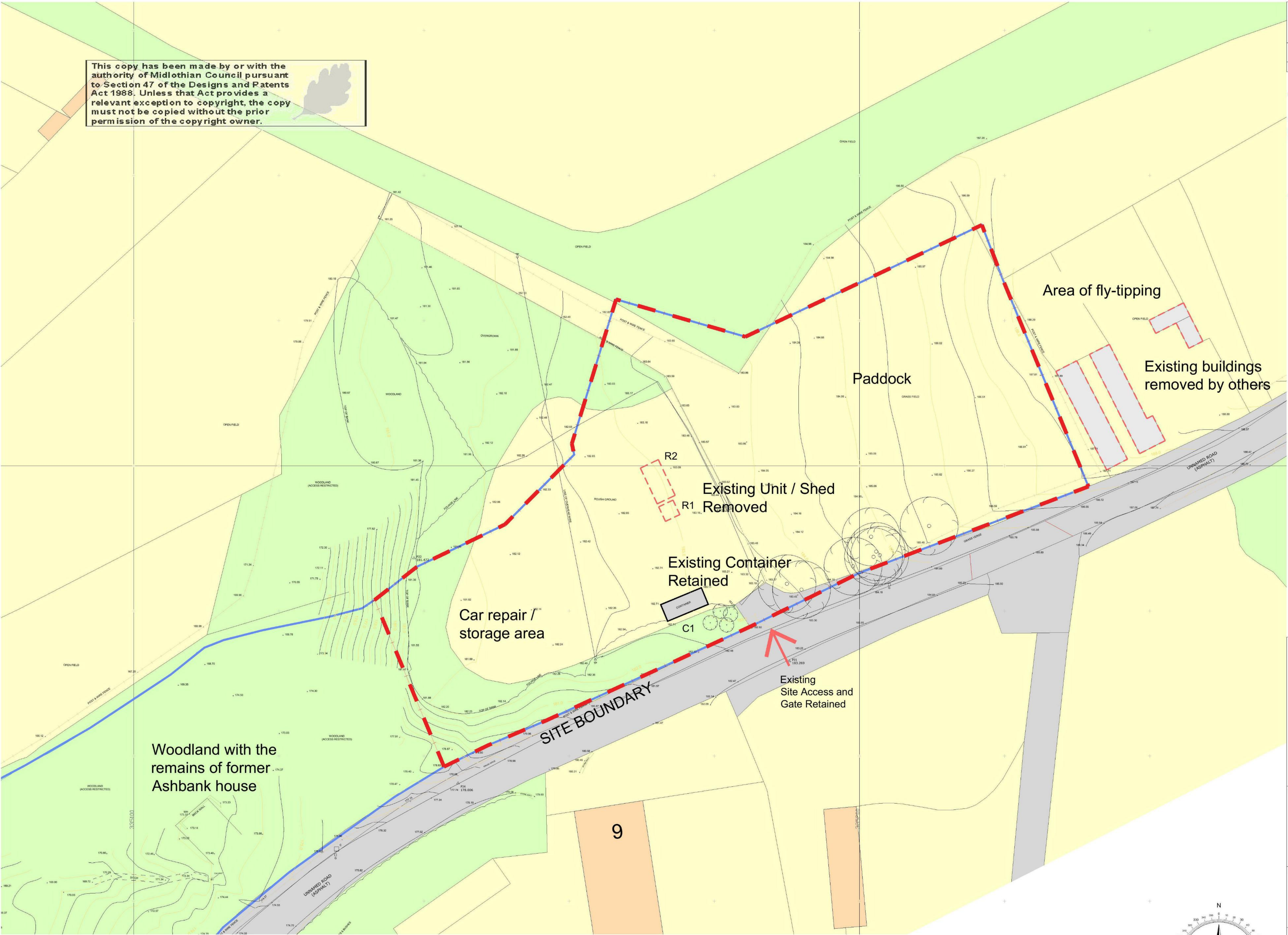
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Application Boundary

Application Site Area  
3,416m<sup>2</sup> / 0.34ha / 0.84Acres

Ownership Boundary



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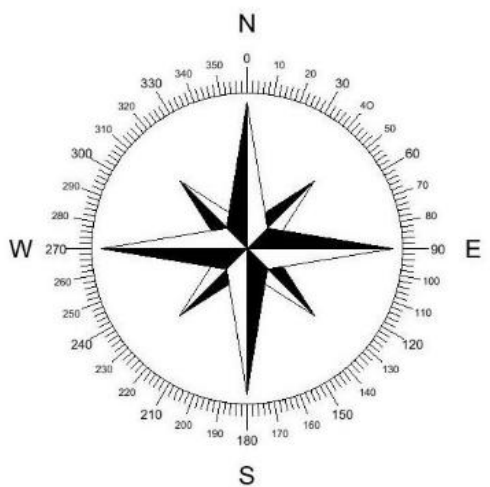
CLIENT  
**PETER JOYCE AND SON LTD**

PROJECT  
**BUILDER YARD  
7 ASHBANK  
GOREBRIDGE MIDLOTHIAN**

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DRAWN BY ME CHECKED IH STAGE PLANNING

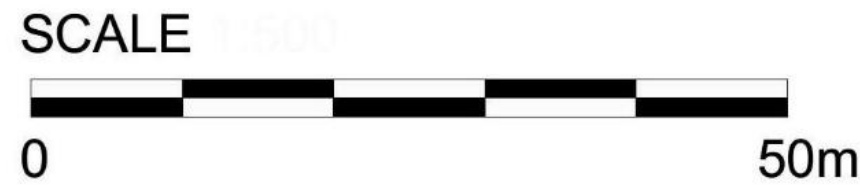
DRAWING  
**EXISTING SITE PLAN  
ON ORDNANCE SURVEY PLAN**

PROJECT NUMBER 21-109 DRAWING NUMBER (EX)04 REVISION -



# Existing Site Plan with OS Plan





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REVISION	DESCRIPTION	DATE
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Application Boundary

Application Site Area  
3,416m<sup>2</sup> / 0.34ha / 0.84Acres

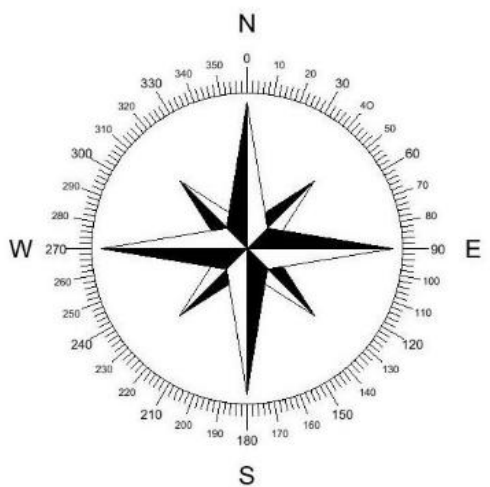
Ownership Boundary

Ownership Area  
6,322m<sup>2</sup> / 0.63ha / 1.56Acres



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# Existing Site Layout with OS Plan



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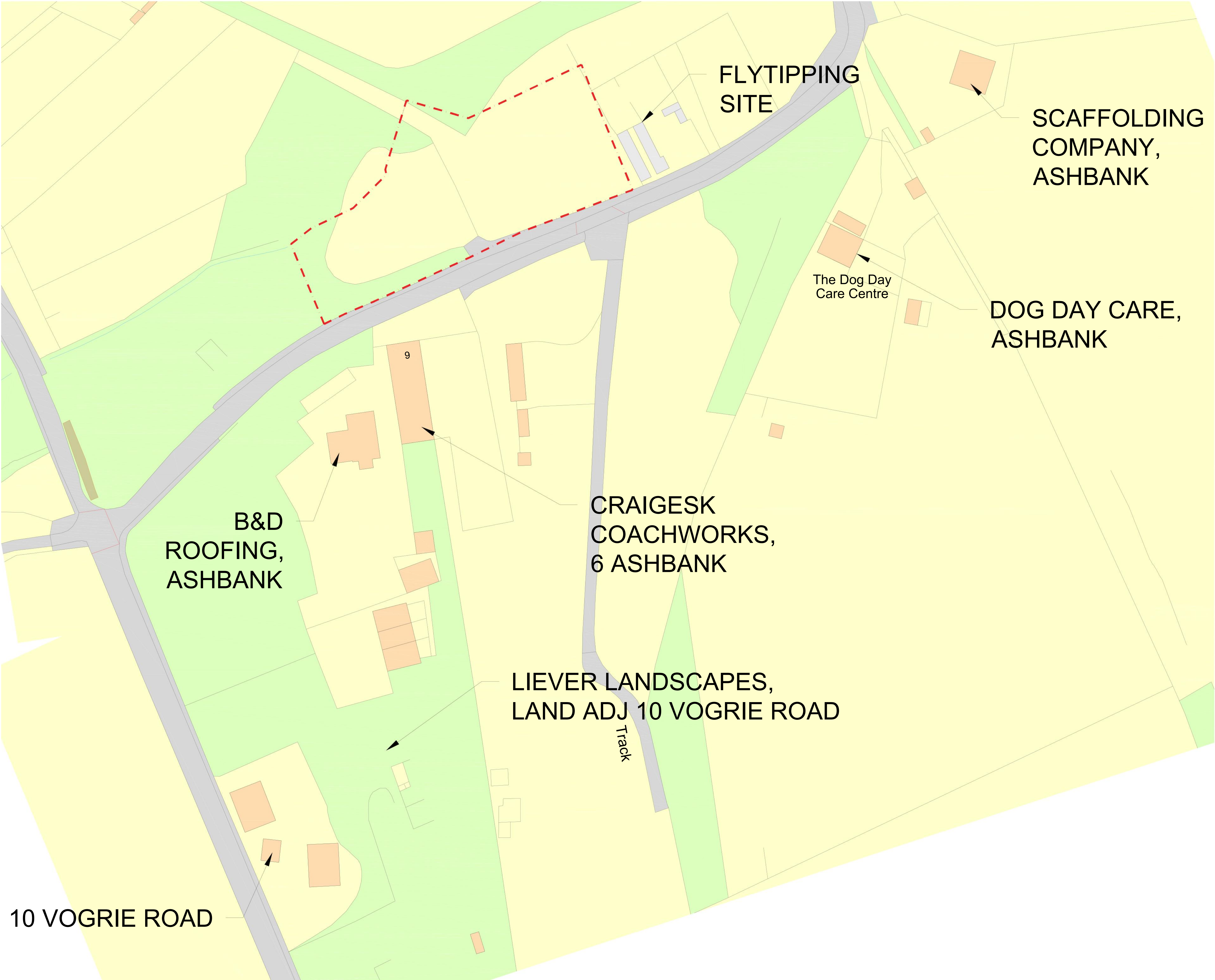
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DRAWN BY	ME	CHECKED	IH	STAGE	PLANNING

DRAWING

EXISTING SITE LAYOUT  
ON ORDNANCE SURVEY PLAN

PROJECT NUMBER	DRAWING NUMBER	REVISION
21-109	(EX)02	-





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GOREBRIDGE MIDLOTHIAN

SCALE@A1	DATE
1:500@A1 1:1000@A3	JAN 2022

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CB	IH	PLANNING

DRAWING

SITE PLAN- NEIGHBOURS

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PROJECT NUMBER	DRAWING NUMBER	REVISION
21-109	(PL)04	-

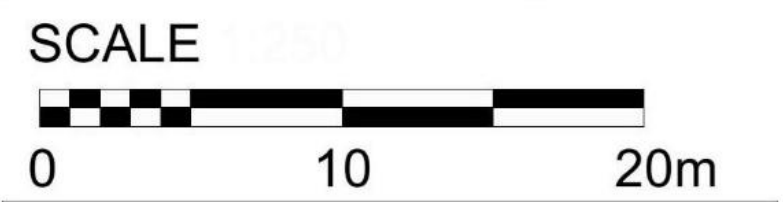
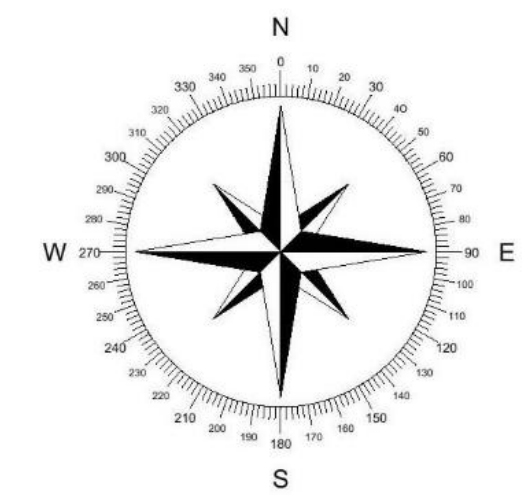
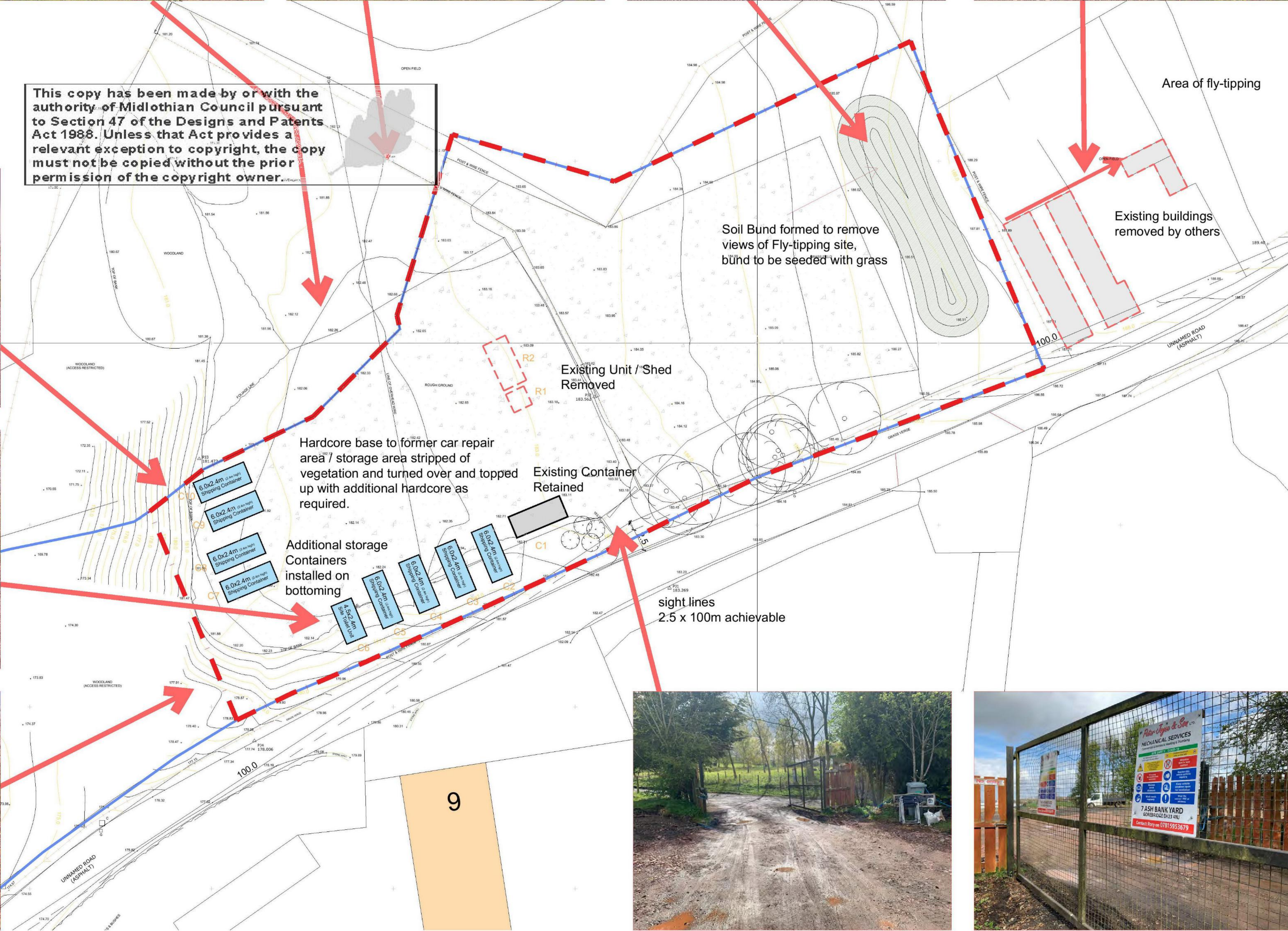




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PROJECT		
BUILDER YARD 7 ASHBANK GOREBRIDGE MIDLOTHIAN		
SCALE@A1	1:250@A1 1:500@A3	DATE MAY 2021
DRAWN BY ME	CHECKED IH	STAGE PLANNING
DRAWING		
SITE PLAN SHOWING WORKS COMPLETED		
PROJECT NUMBER	DRAWING NUMBER	REVISION
21-109	(PL)02	-

# Site Plan - showing works completed

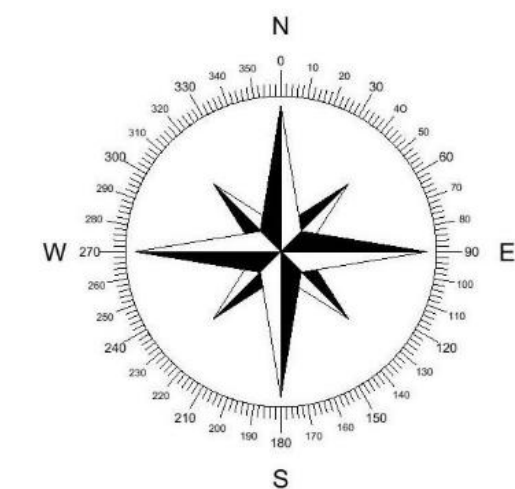
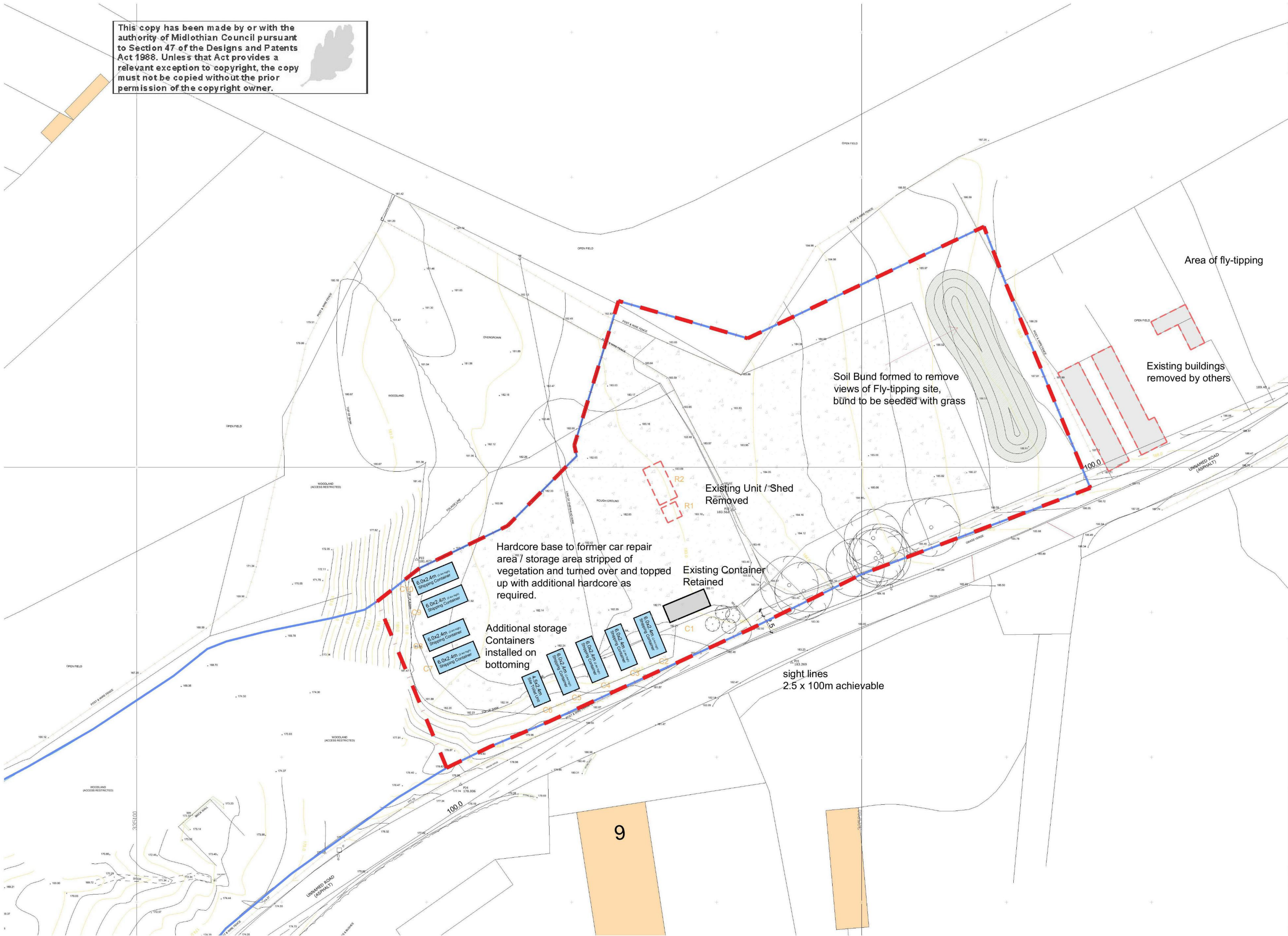


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PROJECT  
**BUILDER YARD  
7 ASHBANK  
GOREBRIDGE MIDLOTHIAN**

SCALE@A1 1:250@A1 1:500@A3 DATE MAY 2021  
DRAWN BY ME CHECKED IH STAGE PLANNING

DRAWING  
**PROPOSED SITE PLAN**

PROJECT NUMBER 21-109 DRAWING NUMBER (PL)01 REVISION -

# Proposed Site Plan



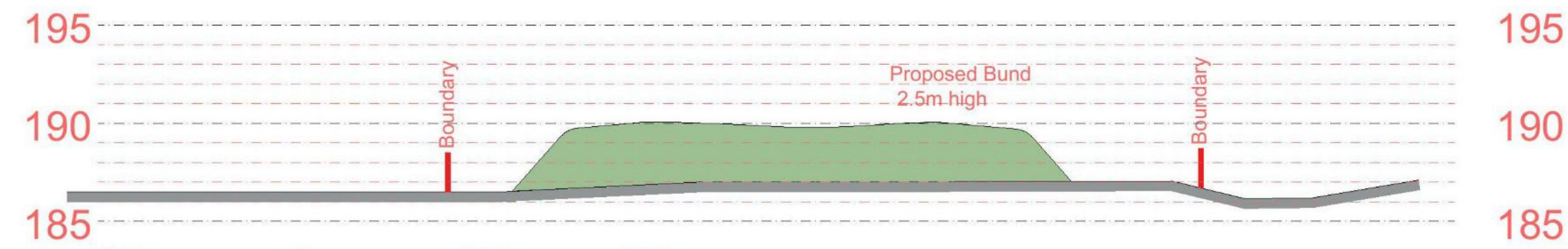
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Proposed

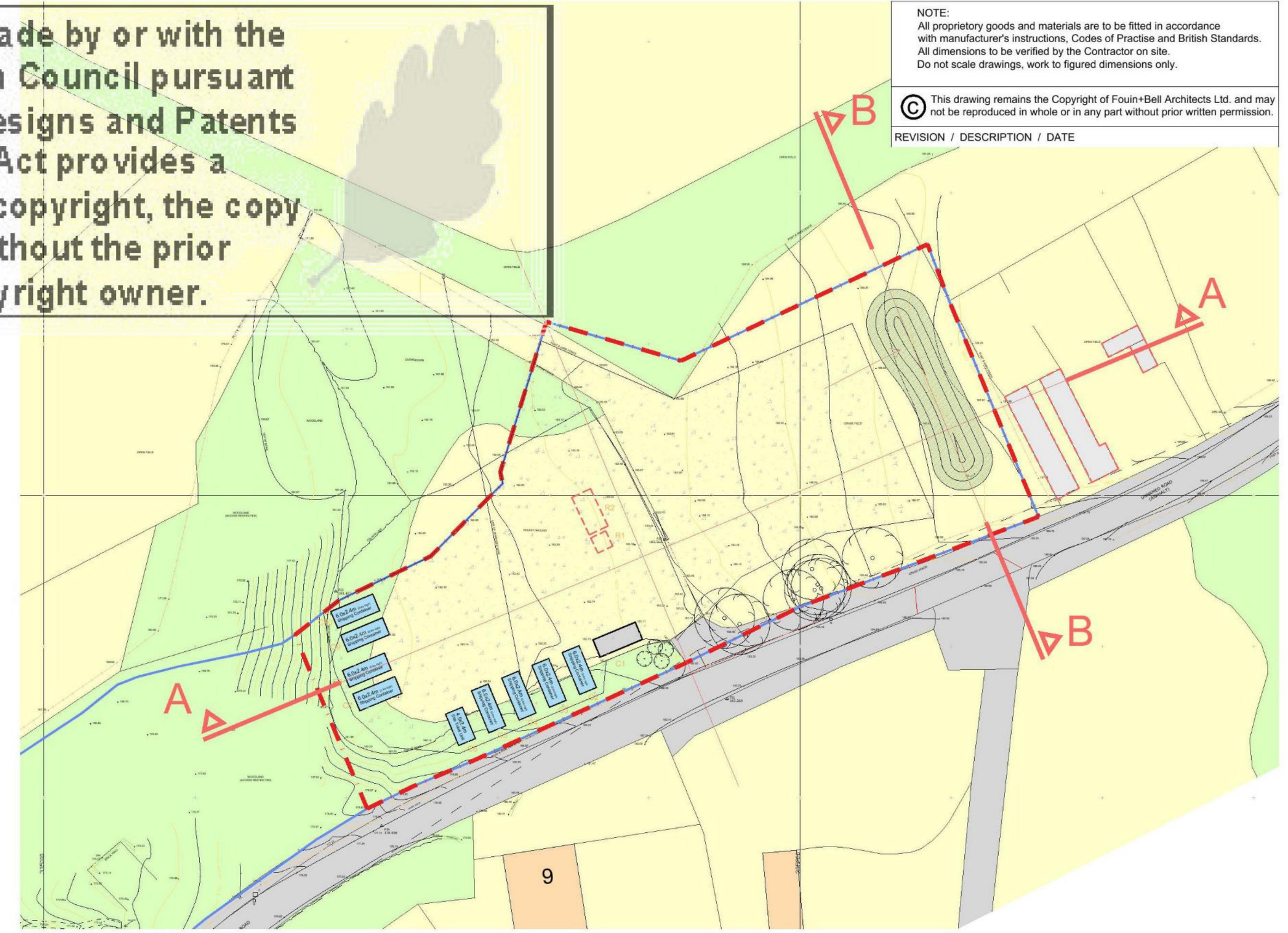


Section B - B

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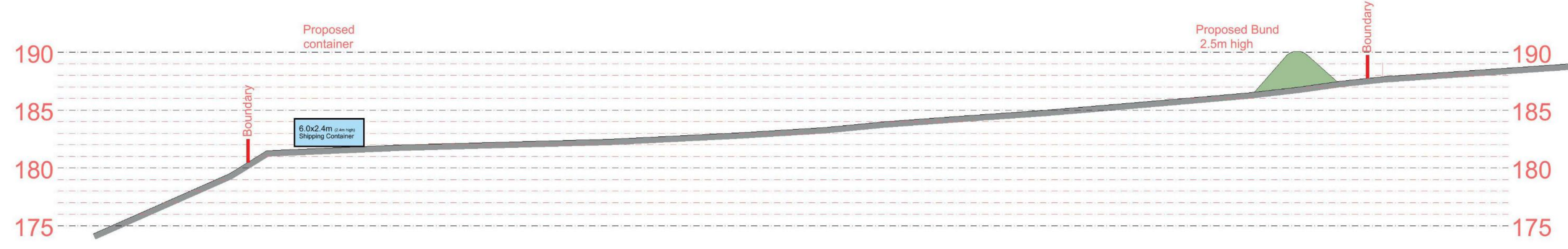


Section B - B



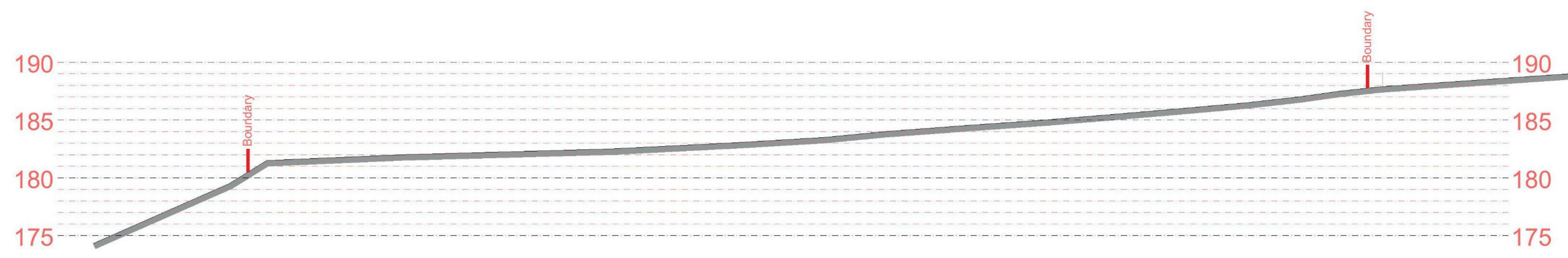
Site Plan - showing section lines

Proposed



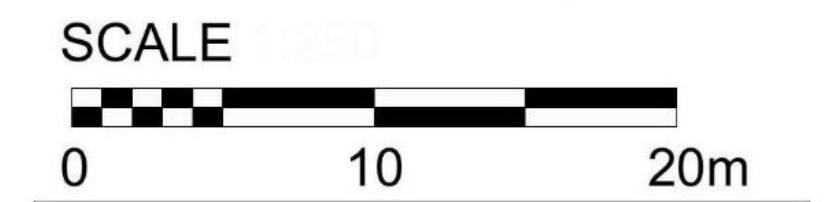
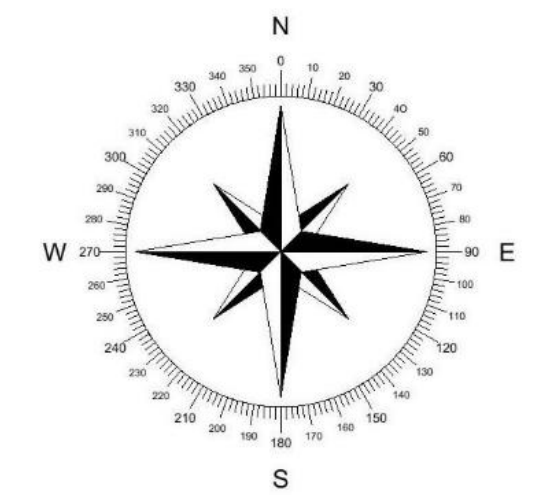
Section A - A

Existing



Section A - A

# Site Sections



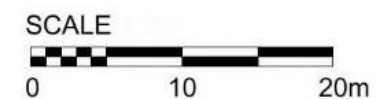
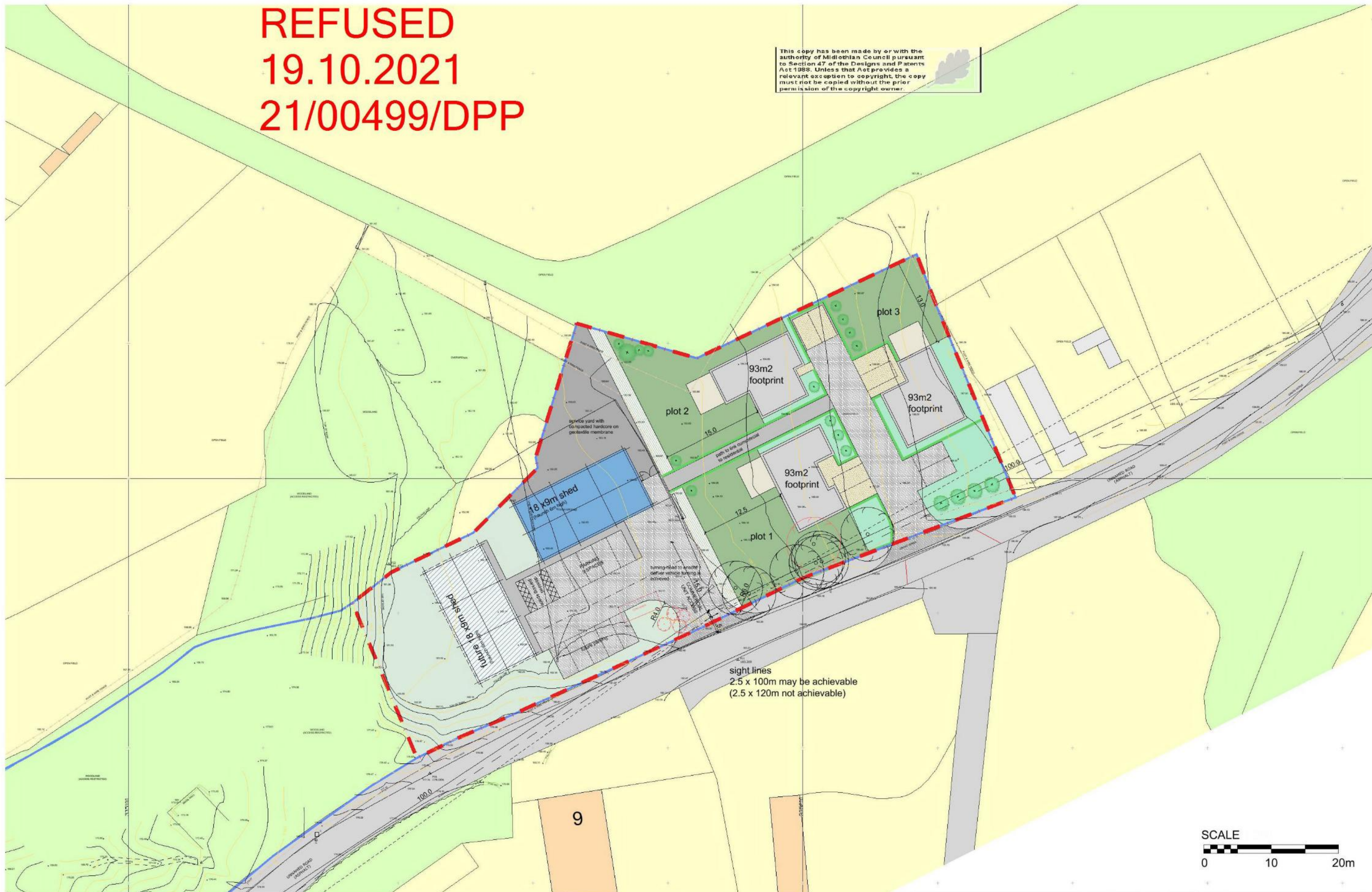
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CLIENT		
PETER JOYCE AND SON LTD		
PROJECT		
BUILDER YARD 7 ASHBANK GOREBRIDGE MIDLOTHIAN		
SCALE@A1	1:250@A1 1:500@A3	DATE MAY 2021
DRAWN BY ME	CHECKED IH	STAGE PLANNING
DRAWING SECTIONS		
PROJECT NUMBER	DRAWING NUMBER	REVISION
21-109	(PL)03	A



REFUSED  
19.10.2021  
21/00499/DPP

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Page 49 of 128

CLIENT

PROJECT  
Proposed Development  
Vogrie Road  
Gorebridge

SCALE @ A1  
1:250+1:500  
DRAWN BY  
me  
DATE  
Sep 2021

SCALE @ A3  
1:500+1:1000  
CHECKED  
IH  
STATUS

DRAWING  
Feasibility Plan  
Option 4

PROJECT NUMBER  
21-109

DRAWING NUMBER  
(SK)03.2  
REVISION  
-



SCALE 1:1250



**REFUSED**  
**19.10.2021**  
**21/00499/DPP**

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**Location Plan**


NOTE:  
All proprietary goods and materials are to be fitted in accordance with manufacturer's instructions, Codes of Practice and British Standards. All dimensions to be verified by the Contractor on site. Do not scale drawings, work to figured dimensions only.

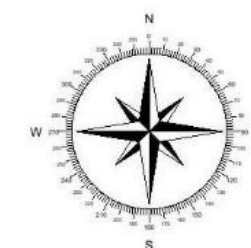
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REVISION / DESCRIPTION / DATE

Application Boundary  
Application Site Area  
3,416m<sup>2</sup> / 0.34ha / 0.84Acres

Ownership Boundary  
Ownership Area  
6,322m<sup>2</sup> / 0.63ha / 1.56Acres

<b>fouin + bell</b>  <b>architects</b> <small>1 John's Place Edinburgh EH6 7EL T: 0131 478 7100 F: 0131 478 7111 mail@fouin-bell.com www.fouin-bell.com</small>			
CLIENT			
PETER JOYCE AND SON LTD			
PROJECT			
BUILDER YARD 7 ASHBANK GOREBRIDGE MIDLOTHIAN			
SCALE@A1	1:500@A1	1:1000@A3	DATE
			MAY 2021
DRAWN BY	CHECKED	STAGE	
ME	IH	PLANNING	
DRAWING			
SITE LOCATION PLAN			
PROJECT NUMBER	DRAWING NUMBER	REVISION	
21-109	(LOC)01	-	





## **Notice of Review: Land 115m East of Highwood House, Barley Dean, Rosewell**

### **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 planning permission in principle for residential development and associated works at land 115m east of Highwood House, Barley Dean, Rosewell.

#### **2 Background**

- 2.1 Planning application 21/00453/PPP for planning permission in principle for residential development and associated works at land 115m east of Highwood House, Barley Dean, Rosewell was refused planning permission on 26 November 2021; 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 26 November 2021 (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](http://www.midlothian.gov.uk)

#### **4 Procedures**

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

- Have determined to consider a visual presentation of the site and undertaking a site visit (elected members not attending the site visit can still participate in the determination of the review); and
  - Have determined to progress the review by way of written submissions.
- 4.2 The case officer's report identified that there were six consultation responses and one representation received. As part of the review process the interested parties were notified of the review. No additional comments have been received. All 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 13 June 2017, and without prejudice to the determination of the review, the following conditions have been prepared for the consideration of the LRB if it is minded to uphold the review and grant planning permission.

1. No more than five dwellings shall be erected on the site unless approved by the grant of a planning application.

***Reason:*** *The application has been assessed on the basis of a maximum of five dwellings being built on the site. Any additional dwellings would have a further impact on local infrastructure and additional mitigation measures may be required. Any such*

*measures would need further assessment by way of a planning application.*

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

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

3. On completion of the decontamination/ remediation works referred to in condition 2, and prior to any building on the site being occupied or brought onto use, a validation report or reports shall be submitted to the planning authority confirming that the works have been carried out in accordance with the approved scheme. No part of the development shall be occupied unless or until the planning authority have approved the required validation.

***Reason for conditions 2 and 3:*** *To ensure that any contamination on the site is adequately identified and that appropriate decontamination measures are undertaken to mitigate the identified risk to site users and construction workers, built development on the site, landscaped areas, and the wider environment.*

4. Development shall not begin until an application for approval of matters specified in conditions for a scheme of investigation and remediation to deal with previous mineral workings has been submitted to and approved in writing by the planning authority. The scheme shall include:
  - a) A scheme of intrusive site investigations to establish the risks posed to the development by past shallow coal mining activity;
  - b) A report of findings arising from the intrusive site investigations and the results of any gas monitoring; and
  - c) A scheme of remedial and/ or mitigation works to address land instability arising from coal mining legacy.

Before any work starts onsite on the erection of the dwellinghouses the investigation schemes and remediation/mitigation works shall

be fully implemented as approved by the planning authority and the Coal Authority and a verification report shall be submitted to and approved in writing by the planning authority and the houses hereby approved shall not be occupied until this has been approved in writing by the planning authority. This document shall confirm the methods and findings of the intrusive site investigations and the completion of any remedial works and/or mitigation necessary to address the risks posed by past coal mining activity.

**Reason:** *To ensure that any risks posed by the coal mining history of the area are identified and addressed prior to development commencing.*

5. Development shall not begin until an application for the approval of matters specified in conditions for the following details has been submitted to and approved in writing by the planning authority:
  - a) A detailed layout plan of the site, showing the siting of the proposed houses, details of vehicular access, parking provision and manoeuvring within the site and details of all walls, fences or other means of enclosure, including bin stores or other ancillary structures;
  - b) Existing and finished ground levels and floor levels for all buildings, open space and access roads in relation to a fixed datum;
  - c) Detailed plans, sections and elevations of the proposed houses, indicating the colour and type of materials to be used on the external walls, roof and windows;
  - d) Details of all hard surfacing and kerbing;
  - e) Details of a sustainability/biodiversity scheme for the site, including the provision of house bricks and boxes for bats and swifts;
  - f) Details of the provision of superfast broadband connections for the houses;
  - g) Details of the provision of electric vehicle charging stations for the houses;
  - h) Proposals for the treatment and disposal of foul and surface water drainage from the proposed houses. Unless otherwise approved in writing by the Planning Authority, the surface water drainage shall comply with the standards detailed in the SUDS Manual; and
  - i) Details of a scheme of landscaping for the boundaries of the site and a plan showing the position, number, size and species of all trees and shrubs that are proposed to be planted; all trees on the site which are to be removed and retained; and details of the means of protection of all trees that are to be retained.

**Reason:** *Permission is granted in principle only. No details were approved with the application and detailed consideration is required for the siting, massing and design of the proposed dwellinghouses and site access arrangements; to ensure protected species are not adversely affected.*

6. The scheme of landscaping approved in accordance with condition 5i) shall include details of planting along the site boundaries.
7. The scheme of landscaping approved in accordance with condition 5i) shall be carried out and completed within six months of the first house either being completed or brought into use, whichever is the earlier date. Any trees removed, dying, severely damaged or becoming seriously diseased within five years of planting shall be replaced in the following planting season by trees of a size and species similar to those originally required.

3 **Reason:** *To ensure the landscaping is carried out and becomes successfully established*

8. Before the new houses are occupied the installation of the means of drainage treatment and disposal approved in terms of condition 5h) above shall be completed to the satisfaction of the planning authority.

4 **Reason:** *To ensure that the house is provided with adequate drainage facilities prior to occupation.*

9. The works hereby approved shall be carried out in line with the ecological survey dated 11 August 2021.

**Reason:** *To ensure that any impacts on protected species are mitigated for and to comply with policy ENV15 of the adopted Midlothian Local Development Plan 2017.*

- 5.2 If the LRB is minded to uphold the review and grant planning permission for the proposed development it shall be subject to a legal agreement to secure developer contributions towards primary and secondary school education provision, off site play facilities, Borders Rail and community facilities. The legal agreement shall be concluded prior to the issuing of the LRB decision. The legal agreement shall be concluded within 6 months of the resolution to grant planning permission, if the agreement is not concluded the review will be reported back to the LRB for reconsideration.

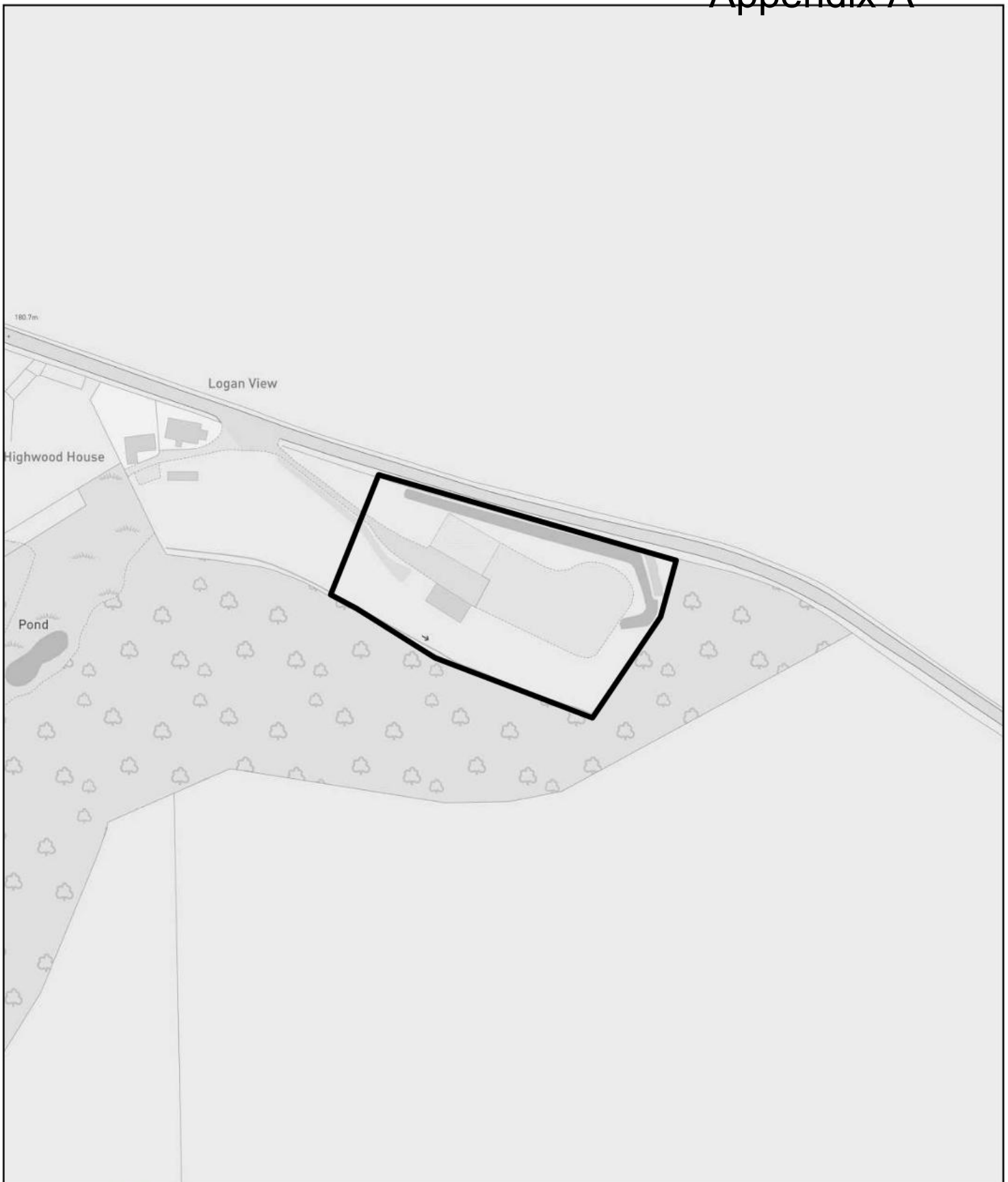
## 6 Recommendations

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

**Peter Arnsdorf**  
**Planning, Sustainable Growth and Investment Manager**

**Date:** 10 February 2022  
**Report Contact:** Mhairi-Anne Cowie, Planning Officer  
[Mhairi-Anne.Cowie@midlothian.gov.uk](mailto:Mhairi-Anne.Cowie@midlothian.gov.uk)

**Background Papers:** Planning application 21/00453/PPP available for inspection online.



**Planning Service  
Place Directorate**  
Midlothian Council  
Fairfield House  
8 Lothian Road  
Dalkeith  
EH22 3AA

Application for planning permission in principle for residential development at Land 115M East of Highwood House, Barley Dean, Rosewell,

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File No: 21/00453/PPP

Scale: 1:2,000

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Fairfield House 8 Lothian Road Dalkeith EH22 3ZN Tel: 0131 271 3302 Fax: 0131 271 3537 Email: [planning-applications@midlothian.gov.uk](mailto: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 100512246-001

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="Format Design"/>		
Ref. Number:	<input type="text"/>	You must enter a Building Name or Number, or both: *	
First Name: *	<input type="text" value="Shona"/>	Building Name:	<input type="text" value="Holyrood Business Park"/>
Last Name: *	<input type="text" value="Mackay"/>	Building Number:	<input type="text" value="146"/>
Telephone Number: *	<input type="text" value="01316617666"/>	Address 1 (Street): *	<input type="text" value="Duddingston Road West"/>
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="Scotland"/>
		Postcode: *	<input type="text" value="EH16 4AP"/>
Email Address: *	<input type="text" value="formatdesign@aol.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="Other"/>	You must enter a Building Name or Number, or both: *	
Other Title:	<input type="text" value="Mrs"/>	Building Name:	<input type="text" value="Highwood House"/>
First Name: *	<input type="text" value="P Sime"/>	Building Number:	<input type="text"/>
Last Name: *	<input type="text" value="E Thomson"/>	Address 1 (Street): *	<input type="text" value="Barleydean"/>
Company/Organisation	<input type="text"/>	Address 2:	<input type="text"/>
Telephone Number: *	<input type="text"/>	Town/City: *	<input type="text" value="Rosewell"/>
Extension Number:	<input type="text"/>	Country: *	<input type="text" value="Scotland"/>
Mobile Number:	<input type="text"/>	Postcode: *	<input type="text" value="EH24 9EA"/>
Fax Number:	<input type="text"/>		
Email Address: *	<input type="text" value="formatdesign@aol.com"/>		

## Site Address Details

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

Please identify/describe the location of the site or sites

<input type="text" value="Land 115M East of Highwood House, Barley Dean, Rosewell"/>	
Northing	<input type="text"/>
Easting	<input type="text"/>

## 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)

Application for planning permission in principle for residential development at Land 115M East of Highwood House, Barley Dean, Rosewell

## 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 attached planning 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)

Planning Appeal Statement

## Application Details

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

21/00453/PPP

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

18/06/2021

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

26/11/2021

## 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

Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may select more than one option if you wish the review to be a combination of procedures.

Please select a further procedure \*

By means of inspection of the land to which the review relates

Please explain in detail in your own words why this further procedure is required and the matters set out in your statement of appeal it will deal with? (Max 500 characters)

To allow the members of the Local Review Body to view the appeal site and its Environs

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: Mrs Shona Mackay

Declaration Date: 03/12/2021

APPEAL TO LOCAL REVIEW BOARD REGARDING THE REFUSAL OF  
PLANNING PERMISSION 21/00453/PPP  
FOR  
PLANNING PERMISSION IN PRINCIPLE FOR RESIDENTIAL  
DEVELOPMENT  
AT  
LAND 115M EAST OF HIGHWOOD HOUSE, BARLEY DEAN, ROSEWELL



02 DECEMBER 2021

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formatdesign@aol.com  
[www.formatbuildingdesign.com](http://www.formatbuildingdesign.com)

## 1 Introduction

The proposal is for planning permission in principle for a small residential development, reference 21/00453/PPP.

## 2 The refusal

The proposal was refused on 26 November 2021 for the following reasons:

- 1. It has not been satisfactorily demonstrated that the application site is of a sufficient size to accommodate a scheme of the scale of the development as proposed in the submission. It has not been demonstrated that the site could accommodate the necessary levels of private outdoor space; acceptable parking arrangements; a scheme to deal with surface water drainage; adequate drainage provision; and adequate boundary planting. The proposal is an overdevelopment of the site, and is therefore contrary to policies **RD1** and **DEV6** of the adopted Midlothian Local Development Plan 2017.*
- 2. It has not adequately demonstrated that the proposed development can be successfully integrated into the surrounding rural area and special landscape area with suitable landscaping. The proposal is therefore contrary to policies **RD1**, **ENV6** and **ENV7** of the adopted Midlothian Local Development Plan 2017.*
- 3. It has not been demonstrated through the submission of site investigation works that contamination of the site from historic uses can be addressed, mitigated and remediation works be carried out to an acceptable level to allow the site to be developed.*

## Summary of Representations

Only one representation has been submitted, in support of the application. This states that the site will benefit from the change from a disused yard to a well presented, rural type small development for people who want a quality-of-life outwith mass housing schemes. Family living in a spacious environment will be good for health.

## 3 Case in support of approval

### A. Response to the reasons for refusal

The refusal notice provided 3 reasons listed in section 2 above and they are responded to in order here.

**Reason 1:** This reason is concerned with a lack of information to demonstrate that there is adequate space to accommodate the indicative number of units (reduced to 6 prior to determination). In particular with regards to amenity space for future occupants, parking, surface water drainage, foul drainage, landscaping (boundary planting in particular).



This is an application for planning permission in principle, and so these matters would not be expected to be provided in full detail, but it is appreciated that the applicant should be able to demonstrate how these would be accommodated.

First of all, we have a site area of over 5600 square metres for a development of 6 houses. The **mygov.scot** website advises that “A plot over 250 square metres should be enough for a medium-sized house with a small front and back garden”, and “A plot around 400 square metres will be enough for a 4-bedroom house with a large garden”. If we multiply the latter figure by 6 then that is 2400 square metres less than half of the site, in fact only 42%. This leaves a very significant area for communal space, parking landscaping and drainage.



**Aerial image of the site showing extent of area and existing landscape screening**

The site benefits from being near to a small watercourse and so it will be relatively straightforward to provide a private water treatment within the site which would outfall to the burn. Likewise, runoff from the developed areas could be adequately attenuated with an outfall to the burn at a level better than presently exists. These have not been provided at this outline stage but are readily achievable.

Parking can be accommodated at the point where the access track enters the development area and there is adequate space for this. Surfaces would be porous, and it would be designed to avoid ‘urbanization’, with careful choice of materials and planting of hedges about it.

With regards to landscaping, there is more than adequate space left over for landscaping. The report of handling says that “*there needs to be planting*”



*within the site to integrate the development into the surrounding landscape, as well as taking into account the change in ground levels from the road to the north down to the site, then down from the site to the land to the south".* The site already benefits significantly from existing vegetation to three sides and the change in ground levels is positive attribute as it helps in providing containment to the site reducing its visibility in the surrounding landscape. Photos were provided in the planning statement to demonstrate this, but it is best experienced by visiting the site and this is strongly recommended. There is a maturing tree plantation to the south and east which already screens the site heavily and which will continue to mature and increase in its screening ability. The roadside has a significant roadside hedge, more akin to a linear woodland feature now, and this is dense enough to provide excellent screening. This could be supplemented and maintained by condition. The site drops significantly from this road (see photo on page 5), and this itself has a significant benefit in screening any development from views from the north.

The report goes on to advise *"Any landscaping must have space to grow and become established, as well as not having an adverse impact on the amenity of the houses in terms of overshadowing or fall distances. From the indicative plans submitted, it has not been demonstrated that the site could accommodate either six or eight houses"*. As stated already, there is a large amount of space within which additional landscaping can be accommodated. The layout shown in the application was indicative and it can be reshaped and repositioned. The lesser 6-house scheme was shown in a position whereby it was more in line with the position of existing buildings, although the applicant would argue that there is no overriding requirement to build exactly upon the existing footprint, certainly not in this particular case.

**Reason 2:** This is concerned with the alleged lack of evidence to demonstrate that the proposed development can be successfully integrated into the surrounding rural area and special landscape area with suitable landscaping. The proposal is therefore contrary to policies **RD1**, **ENV6** and **ENV7** of the adopted Midlothian Local Development Plan 2017.



**The site viewed from the east showing the maturing tree plantation**

Again, this site is very well appointed in respect of containing the development. There is plenty of existing vegetation and the topography further helps to reduce the visibility.

The plot sits within a depression partly created by the small valley and accentuated by historic excavations related to quarrying.

There is a significant woodland feature to the south and east side that has been planted as part of the restoration of the former open-cast site at the adjacent Shewington site.

The roadside is heavily vegetated providing very good screening to any passing vehicles or cyclists.



**The drop into the site from the roadside**

**Reason 3:** The final reason relates to the lack of site investigation works to show that contamination of the site from historic uses can be addressed to allow the site to be developed.

There is evidence of the storage of vehicles and various materials and some historic uses such as quarrying and coal mining.

It was anticipated that one of the matters to be resolved during the submission of a detailed planning application would be site contamination and mitigation, however it was not considered that this would be necessary or appropriate at the outline stage. It is a costly exercise, and not one that would be advisable to fulfil without the knowledge that the development would be supported. If planning permission in principle were granted, then funding would be possible. It is anticipated that some remedial works will be required but that these would not be extensive.

The applicant did however carry out a Coal Mining Risk Assessment as this was more critical to the principle of the development.

The Coal Authority advised as the site is within the Development High Risk Area there are coal mining features and hazards which need to be considered in relation to the determination of the application. More specifically, the Coal

Authority's information indicated that the site lies in an area where historic unrecorded coal mining activity is likely to have taken place at shallow depth.

The planning application was accompanied by a Coal Mining Risk Assessment report prepared by Wardell Armstrong, which correctly acknowledged that a five-foot coal seam is conjectured to outcrop across the site, and concludes that possible unrecorded shallow mine workings pose a risk of surface instability. Therefore an intrusive site investigation is required in order to further assess the risk posed by any unrecorded shallow mine workings. The report advises that should workings be found which pose an unacceptable risk, these will need to be treated by means of a drilling and grouting exercise. This was accepted.



The current houses on site (west of access)

#### **B. Responses to other significant statements within the Report of Handling:**

The report states that “*the proposal appears to comply with the basic redevelopment principles of policy RD1 and the SG. However, there are details that need to be considered, including access and services. Also, there is a requirement that any development respects and enhances the character and appearance of the countryside. The scale of development should not extend significantly beyond the footprint of the original building, unless there are significant design reasons for doing so.*”

This clearly indicates support for the principle of the development subject to scale, services, access, and landscape fit.

“*The footprint of the existing buildings on site is a total of approximately 461 square metres. The eight-house layout shows a footprint of approximately 972 square metres and the six-house layout shows approximately 736 square metres. Both of these layouts show houses out with the footprint of the existing buildings.*”



The main buildings on site extend to 461 square metres, however there are other lesser buildings, hard standings and areas of accumulated scrap vehicles and other materials which it is felt would benefit from the redevelopment.

*“...it is likely that the majority of trips would be made by private car. This does not appear to be in keeping with the Council’s aims of reducing reliance on the use of the private car and increasing opportunities for ‘active’ travel.”*

The site is relatively remote from public transport, but not excessively so. Also, it is intended to ensure the properties all have good ‘work from home’ facilities. Electric car charging facilities will be provided for all units, plus visitors. Ongoing national policies and government targets to offset climate change will ensure that in future private vehicles will be significantly more sustainable.

*“This lack of sustainability could be offset by achieving other environmental improvements through works to a site that is in poor condition which would be an overall benefit to the wider area.”*

The applicant is willing to work with the Council to achieve this, within reason. The site is in serious need of improvement and a good environment would be enjoyed by existing residents and future residents of the development.

*“Should planning permission be supported here, developer contributions would be required. The contributions would be towards education, Borders Rail, community facilities and play provision. This would be in the region of £22,000 per unit.”*

It was the opinion of the applicant’s planning consultant that the site was outwith the Borders Rail A7/A68 corridor. The SPG states that no sites within the A701 Corridor are expected to contribute as they are sufficiently remote from the stations to derive any direct benefit. There appears to be a lack of any map based designated zoning for applicant’s to access to see the extent of this ‘corridor’.

#### **4 Summary**

The proposed development is set within ample ground to accommodate parking, landscaping drainage and private amenity space.

The number of units, form and scale of development remains flexible, although at least 6 units is sought by the applicant.

The applicant will ensure that the development remains sustainable in terms of energy usage, materials and drainage, and as far as possible, transport.

A site investigation report is agreeable at the detailed stage, and it is hoped that the coal mining risk assessment will suffice at this outline stage.

#### **5 Conclusion**

The proposed development will be designed to preserve the landscape character of the surrounding area which contains low density housing within a landscape of improved pasture with shelterbelts.

The scale and form of the building has carefully considered the landscape setting and will incorporate appropriate architectural layout, form and materials.

The houses will provide a valuable contribution to the local rural housing stock providing opportunities for rural tenants and permitting the sustainable increase in the rural population. They will include home work spaces and covered storage for equipment. The development also facilitates the delivery of relatively low-cost rural housing, an issue that remains a priority to supporting community vitality.

With regards to access, the site will have good visibility in both directions.

The houses can all be readily serviced in terms of power, communications drainage and water supply.

It is not a location that could be deemed to be remote, and it is within a short distance of local amenities, and with a reasonable level of public transport available a short distance from the site.

Whilst the wording of countryside policies does not directly support the proposals, the development can be justified in terms of the existing site appearance, the unsightly buildings on site, and the legacy of non-agricultural uses, as well as its low visibility through topography and planting.

The proposal will enhance the rural housing supply and enhance the opportunities for living and working in the countryside in a sustainable manner, and one which will rid the area of what has become an eyesore and a blot on the local landscape.

The development will contribute towards a sustainable, economically active rural area, which is more likely to attract investment and which will encourage vibrant, growing communities. It achieves this whilst maintaining local landscape character.

It is hoped that the Local Review Body will agree and support this proposal in principle.



Existing site (also see cover photo)

## Policies of the Midlothian Local Development Plan 2017 referred to in the reasons for refusal

### Policy DEV 6 - Layout and Design of New Development

The Council will require good design and a high quality of architecture, in both the overall layout of development proposals and their constituent parts. The layout and design of development proposals should meet the following criteria:

- A. the layout of development proposals should complement or enhance the character of any adjoining or nearby urban area; include attractive street frontages; provide outlook onto communal open space; and integrate the siting of buildings, landscaping, open space, boundary treatment, and pedestrian/ cycle/ vehicular routes;
- B. any locally prominent landscape feature or historic building should be reflected in the layout and local landmarks and viewpoints should be incorporated into the streetscape to provide a welcoming atmosphere and assist with navigation;
- C. good quality materials should be used in the design;
- D. existing pedestrian routes, including desire lines, should be taken into account and the layout should be convenient for pedestrians and cyclists, with special attention to the provision of footpaths and cycleways which create links between key destinations;
- E. a high standard of passive energy gain should be achieved and overshadowing of buildings should be avoided;

- F. pedestrian routes, open space, sustainable urban drainage features or roads should be overlooked by front or side windows of buildings and doors should face onto streets or active frontages;
- G. buildings should be laid along contours to avoid excessive changes in levels and underbuilding in the street scene;
- H. open space for different age groups should be designed and sited to minimise disturbance and protect residential amenity;
- I. adequate spacing between housing should be provided to ensure privacy and amenity;
- J. where there is a recognised need for new open space in the area (see policy DEV9: Open Space Standards), this should complement and/or contribute to existing open space provision and the proposed green network;
- K. private open space should be provided on a scale appropriate to the relevant dwelling type;
- L. where the proposed development is of a scale and in a location which makes the provision of bus services a realistic prospect, roads providing access through the site must be of a width and design sufficient to allow the passage of buses, with lay-bys provided to allow them to stop without obstructing other traffic;
- M. any roads, lighting and parking must satisfy the Council's standards; and
- N. cycle parking and bin stores shall be incorporated into the layout of developments.

Exceptions to the above criteria may be considered where the proposed development is of a very high standard.

### **Policy RD 1 - Development in the Countryside**

Development in the countryside will only be permitted if:

- A. it is required for the furtherance of agriculture (including farm-related diversification), horticulture, forestry, countryside recreation or tourism; or
- B. it accords with policies RD2, MIN1, NRG1 or NRG2; or
- C. it accords with the Council's Supplementary Guidance on Development in the Countryside and Green Belt.

All such development will need to be:

- a. of a scale and character appropriate to the rural area and well-integrated into the rural landscape; and
- b. capable of being serviced with an adequate and appropriate access; and
- c. capable of being provided with drainage and a public water supply at reasonable cost, or an acceptable private water supply. Development must protect and where appropriate improve the water environment, avoiding unacceptable and unnecessary surface and foul water discharges to watercourses; and
- d. accessible by public transport and services (where appropriate), either within 1,600 metres (1 mile) of a settlement or a bus route with a frequency of at least 1 bus per hour.

### **Housing**

Normally, housing will only be permissible where it is required for the furtherance of an established countryside activity (see criterion A above). The applicant will be required to show the need for the new dwelling is permanent; cannot be met within an existing settlement; and that the occupier will be employed full-time in the associated countryside activity.

Proposals to replace an existing dwelling may be permissible where it can be demonstrated that it is incapable of renovation or improvement; that the proposal relates to a complete dwelling (i.e. not the plot of a previous, now demolished house); and provided that the replacement is of a similar scale.

The following circumstances are exceptions to the above requirement to demonstrate that the housing is for the furtherance of a countryside activity. The details of these exceptions will be set out in the relevant Supplementary Guidance:



- housing groups (allowing 1 new dwelling during the plan period where there are 5 existing units);
- conversions of redundant farm buildings or other non-residential buildings;
- redevelopment of redundant farm buildings or other non-residential buildings; or
- enabling development where it can be clearly shown to be the only means of preventing the loss of a heritage asset and securing its long-term future.

In all circumstances, proposals for new dwellings in the countryside must demonstrate a 'Very Good' or better BREEAM (Buildings Research Establishment Environmental Assessment Methodology) rating or equivalent standard for any successor development.

#### **Policy ENV 6 - Special Landscape Areas**

Development proposals affecting Special Landscape Areas will only be permitted where they incorporate high standards of siting and design and where they will not have an unacceptable impact on the special landscape qualities of the area.

#### **Policy ENV 7 - Landscape Character**

Development will not be permitted where it may have an unacceptable effect on local landscape character. Where development is acceptable, it should respect such character and be compatible in terms of scale, siting and design. New developments will normally be required to incorporate proposals to maintain the diversity and distinctiveness of local landscapes and to enhance landscape characteristics where they have been weakened.



East end of site, looking west

## MIDLOTHIAN COUNCIL

### DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

**Planning Application Reference:** 21/00453/PPP

**Site Address:** Land 115M East of Highwood House, Barley Dean, Rosewell.

**Site Description:** The application site comprises a vacant area of land under the control of two houses to the west. There are two brick buildings on site in varying states of repair which appear to be used for storage. The site appears to be used as a storage area with numerous debris lying around, such as static caravan, caravan, tyres, trailers and other items. The site is accessed by a single lane track that leads to the vehicular access for the houses to the west, also under the control of the applicants. There is landscaping to either side of the track. Outwith the site but to either side of the track are items such as a storage container, caravan, lorry, trailers, tyres and other items.

There is countryside to the south, east and north and the two related houses to the west some 93 metres away. The site is at a lower level than the road to the north, with a drop down to the countryside to the south. The site appears to form part of an infilled quarry and is 0.73 hectares in area.

**Proposed Development:** Application for planning permission in principle for residential development.

**Proposed Development Details:** The application is for planning permission in principle, however the applicant's agent has submitted an indicative site plan, floor plans and elevations showing eight houses and a subsequently revised scheme of six houses in a steading layout. These are traditional design with stone and wet dash rendered walls, slate roofs and are single storey with accommodation in the roofspace. These are three bed and accessed by the existing access track. Twelve parking spaces are shown. The existing buildings on site are to be demolished. The applicant's agent has confirmed the houses will connect to the public water supply and have private drainage arrangements.

The agent has submitted a supporting statement stating the following. The site was previously used for coal and stone mining and so is previously developed land which at present is overgrown and used by fly-tippers. It was also previously a market garden and piggery. The positives of building in the countryside are highlighted, including health benefits and access to the outdoors, along with the negatives of this being unsustainable. The proposal would tidy up an unsightly site and enhance the appearance of the area. It would also add to the mix and availability of housing the countryside and provide more affordable/low cost homes. The siting of the houses would fit into the landscape and these are of traditional design and materials.

**Background (Previous Applications, Supporting Documents, Development Briefs):** No relevant history.

## Consultations:

The Council's **Policy and Road Safety Manager** has reservations over the remoteness of the site and the lack of any pedestrian or public transport services in the local area. As the site is in a rural area, there are no pedestrian footways or street lighting available and given the remoteness of the site and the lack of any convenient public transport or walking / cycling facilities, it is likely that the majority of trips, including school journeys, would require to be made by private car. This does not appear to be in keeping with the Council's aims of reducing reliance on the use of the private car and increasing opportunities for 'active' travel. They recommend that this application be refused.

The Council's **Environmental Health Manager** has significant concerns due to the potentially contaminative historic site uses and the potential impact of contamination to affect the development site. An assessment of the site in 2005 noted the site has been raised above surrounding ground level by approximately 2 metres suggesting infill or made ground. Buildings on site were observed to potentially contain asbestos. The ground cover comprises gravel and dirt, with evidence of a paved area underneath present cover. Evidence of made ground, colliery and spoil fragments were observed in areas of disturbed ground. A site representative reported that the eastern part of the site had historically comprised a depression from a former quarry, and had subsequently filled in over the years with wastes of various types, including domestic, organic, metals and plastics. A number of heaps of waste materials, metals, wood, plastics and road materials were observed. Scrap and waste was also observed in the field adjacent to the south of the site, and the banking of approximately 2m in height was also observed to comprise waste. A number of reportedly empty drums were stored on site, as well as hydraulic fluids, oils and cleaning products were stored in small containers within a storage shed with a cracked concrete floor. No evidence of hydrocarbon staining was noted in this area. However a number of motor vehicles, including a disused HGV, were observed to be stored on areas of dirt and grass ground cover. Heating of the greenhouses was observed to be from coal burning stove heaters. On the basis of these comments and that it is likely that contamination is present on site at such levels that it would pose a very high risk to the health of any future residents, they recommend the proposal be refused.

The Council's **Biodiversity Officer** has considered the submitted bat and owl survey and state these submitted ecology surveys are acceptable and that the recommendations in these reports be followed.

The Council's **Education Resource Manager** was consulted but did not make comment on the proposal.

The **Coal Authority** has no objection subject to conditions being attached to any permission, due to the coal mining history of the site and area.

**Scottish Water** has no objection. They state that there is no waste water infrastructure in the area and that they will not accept any surface water connections to the combined sewer.



**Representations:** One representation supporting the application has been submitted. This states that the site will benefit from the change from a disused yard to a well presented, rural type small development for people who want a quality of life outwith mass housing schemes. Family living in a spacious environment will be good for health.

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

**DEV5 Sustainability in New Development** sets out the requirements for development with regards to sustainability principles;

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

**DEV7 Landscaping in New Development** requires development proposals to be accompanied by a comprehensive scheme of landscaping. The design of the scheme is to be informed by the results of an appropriately detailed landscape assessment;

**TRAN5 Electric Vehicle Charging** seeks to support and promote the development of a network of electric vehicle charging stations by requiring provision to be considered as an integral part of any new development or redevelopment proposals;

**IT1 Digital Infrastructure** supports the incorporation of high speed broadband connections and other digital technologies into new homes, business properties and redevelopment proposals;

**RD1 Development in the Countryside** states development in the countryside will only be permitted if: it is required for the furtherance of agriculture, including farm related diversification, horticulture, forestry, countryside recreation or tourism; it accords with other named policies; or it accords with the Council's Supplementary Guidance on Development in the Countryside and Green Belt. All such development will need to be: of a scale and character appropriate to the rural area and well integrated into the rural landscape; capable of being serviced with an adequate and appropriate access; capable of being provided with drainage and a public water supply at reasonable cost, or an acceptable private water supply, avoiding unacceptable discharge to watercourses; and accessible by public transport and services, within 1 mile of a bus route with a frequency of 1 bus per hour. In the case of businesses, these should not be primarily of a retail nature and do not harm the amenity of nearby residents through unacceptable levels of noise, light or traffic;

**ENV6 Special Landscape Areas** states development proposals in such areas will only be permitted where they incorporate high standards of siting and design and where they will not have a significant adverse effect on the special landscape qualities of the area;

**ENV7 Landscape Character** states that development will not be permitted where it significantly and adversely affects local landscape character. Where development is acceptable, it should respect such character and be compatible in terms of scale, siting and design. New development will normally be required to incorporate

proposals to maintain the diversity and distinctiveness of the local landscapes and to enhance landscape characteristics where they have been weakened;

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

**IMP1 New Development** seeks to ensure that appropriate provision is made for a need which arises from new development. Of relevance in this case are education provision, transport infrastructure; contributions towards making good facility deficiencies; affordable housing; landscaping; public transport connections, including bus stops and shelters; parking in accordance with approved standards; cycling access and facilities; pedestrian access; acceptable alternative access routes, access for people with mobility issues; traffic and environmental management issues; protection/management/compensation for natural and conservation interests affected; archaeological provision and 'percent for art' provision;

**IMP2 Essential Infrastructure Required to Enable New Development to Take Place** states that new development will not take place until provision has been made for essential infrastructure and environmental and community facility related to the scale and impact of the proposal. Planning conditions will be applied and; where appropriate, developer contributions and other legal agreements will be used to secure the appropriate developer funding and ensure the proper phasing of development; and

**IMP3 Water and Drainage** require sustainable urban drainage systems (SUDS) to be incorporated into new development.

**Supplementary Guidance for Housing Development in the Countryside and Green Belt** is adopted and expands policy RD1 and the criteria to be met in such proposals. This provides some support for the conversion or redevelopment of redundant farm buildings or other non-residential buildings to houses. It must be justified and demonstrated that these buildings are fully redundant. Such developments will not be supported where these are still in use or where their loss may result in the requirement for a replacement building elsewhere. Any redevelopment must result in a development that respects and enhances the character and appearance of the countryside. Also the scale of development should not extend significantly beyond the footprint of the original building unless there are significant design reasons for doing so.

**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.

Principle of development

The Planning Authority has restrictive policies with regards to new housing proposals within the countryside. These restrictions aim to prevent the creeping suburbanisation of the countryside which is under significant pressure due to the convenient commuting distance to Edinburgh. However, there are enabling policies, within the adopted Midlothian Local Development Plan, which support residential developments within the countryside in some instances, subject to specific criteria. Policy RD1 and the related supplementary guidance includes several sections where houses in the countryside could be acceptable in planning terms. In addition, all such development will need to: be of a scale and character appropriate to the rural area and be well integrated into the rural landscape; be capable of being served by an adequate and appropriate access; be capable of being provided with drainage and a public water supply at reasonable cost, or acceptable private water supply; and be accessible by public transport and services.

The proposed houses are not required for the furtherance of an established countryside activity. The proposal is not an enabling development where it is clearly shown that this is the only means of preventing the loss of a heritage asset and securing its long term future.

There can be policy support for the conversion or redevelopment of redundant non-residential buildings in the countryside where these meet particular criteria. Any redevelopment must result in a development that respects and enhances the character and appearance of the countryside. Also the scale of development should not extend significantly beyond the footprint of the original building unless there are significant design reasons for doing so.

There are two buildings within the site which are in varying states of disrepair and appear to be used as storage. These do not represent examples of traditional, architectural or historic interest or make a significant positive contribution to the character and appearance of the landscape.

The applicant's agent has confirmed that the original use of these has ceased, but over the years they have accumulated with junk storage that is no longer required for that use. These buildings are dilapidated and ready for demolishing. There is no requirement for providing said accommodation elsewhere if the permission was granted. Given this, in this instance it has been satisfactorily demonstrated that the buildings on site are redundant and there would be no requirement for replacement buildings if these were replaced.

Given this, the proposal appears to comply with the basic redevelopment principles of policy RD1 and the SG. However there are details that need to be considered, including access and services. Also, there is a requirement that any development respects and enhances the character and appearance of the countryside. The scale of development should not extend significantly beyond the footprint of the original building, unless there are significant design reasons for doing so.

### Scale and character of the proposed development, impact on rural landscape and special landscape area and amenity for occupants

The scale of development should not extend significantly beyond the footprint of the original building unless there are significant design reasons for doing so. Guidance states that new development should fit and be well integrated into the landscape and landform of an area and be of a scale and character appropriate to the rural area. Any redevelopment must result in a development that respects and enhances the character and appearance of the countryside.

The footprint of the existing buildings on site is a total of approximately 461 square metres. The eight house layout shows a footprint of approximately 972 square metres and the six house layout shows approximately 736 square metres. Both of these layouts show houses outwith the footprint of the existing buildings.

The site is positioned at a lower level from the road to the north and higher than the ground to the south. This means that for any development to be well integrated into the surrounding area, sufficient landscaping would be required within the site. The general design approach for a traditional steading style development is appropriate for a rural location.

The application is for planning permission in principle however an indicative site plan and proposed floor plans and elevations of the houses have been submitted. Whilst it is acknowledged that these are indicative only, these are useful to show what could be accommodated at the site. The site plan shows a development of eight single storey houses in a steading style layout with accommodation wholly within the roofspace of traditional design and materials. Another scheme for a similar but reduced scheme for six houses in a slightly different footprint has been submitted.

The site appears too constrained for either a six or eight house development. There appears to be limited room to accommodate the houses, required parking for the houses and visitors, private amenity space for each house and the foul and surface water drainage services. Also, there needs to be planting within the site to integrate the development into the surrounding landscape, as well as taking into account the change in ground levels from the road to the north down to the site, then down from the site to the land to the south. Any landscaping must have space to grow and become established, as well as not having an adverse impact on the amenity of the houses in terms of overshadowing or fall distances. From the indicative plans submitted, it has not been demonstrated that the site could accommodate either six or eight houses.

### Access

The Policy and Road Safety Manager has not raised any concern over the site access.

There is a policy requirement for the site to be accessible by public transport and services, either within 1 mile of a settlement or a bus route with a frequency of at least 1 bus per hour. The site appears to be on the cusp of this, with the west boundary 0.96 miles from this catchment and the east boundary 1.04 miles. This



siting reflects the reservations of the Policy and Road Safety Manager over the remoteness of the site and the lack of any pedestrian or public transport services in the local area. Given this and that there are no pedestrian footways or street lighting available, it is likely that the majority of trips would be made by private car. This does not appear to be in keeping with the Council's aims of reducing reliance on the use of the private car and increasing opportunities for 'active' travel.

The applicant's agent has noted that they propose enhanced working from home facilities.

The location of the site is not sustainable, however this is at a borderline position of the catchment for services. This lack of sustainability could be offset by achieving other environmental improvements through works to a site that is in poor condition which would be an overall benefit to the wider area.

#### Ground contamination

There are strong concerns over contamination of the site due to the potentially contaminative historic site uses and the potential impact of contamination to affect the development site. The Environmental Health Manager makes reference to an assessment carried out at the site in 2005 which raises a number of concerns, including: the use of the site as a quarry; land infill using wastes of various types, including domestic, organic, metals and plastics; ground level alterations; asbestos buildings; storage of waste, scrap as well as a number of motor vehicles, including a disused HGV, stored on areas of dirt and grass ground cover; and storage of reportedly empty 45 gallon drums, as well as hydraulic fluids, oils and cleaning products being stored in small containers within a storage shed with a cracked concrete floor.

In the majority of their consultation responses, the Environmental Health team would request site investigation works to be required as a condition, to allow the site to be adequately assessed and for suitable mitigation and remediation works to be carried out to ensure the site cleared of any contamination before development begins. However in this case, they consider that it is likely that contamination is present at this site at such levels that it would pose a very high risk to the health of any future residents. Initially they requested that these site investigation works be carried out with the findings submitted before the application was determined, such was their concern that the principle of development here could not be established.

This information was requested and the applicant's agent queried if this could be required by condition. When it was confirmed this could not be, they submitted the following information and no site investigation report. The applicants have lived near the site all their lives but have no knowledge of the contamination alluded to. They note that particular requirements would be necessary to get any building warrant which would address site contamination. Some of the waste at the site is a result of fly tipping. Some of the drums referred to stored natural fertiliser.

Site investigation works are usually required by condition with any remediation works to be carried out before development begins. However the Environmental Health

Manager has such serious concerns over the level of contamination at the site being at such levels that it would pose a very high risk to the health of any future residents. They have requested this site investigation works are carried out before any decision is made because it is not clear if this contamination can be adequately addressed to allow any development at the site. Therefore they cannot support the principle of development here before considering this information. No site investigation works have been submitted to address these concerns.

#### Drainage and water supply

The application form states that the development will connect to the public water supply. Scottish Water has not raised any concerns over this or the impact a further connection would have on the supply to the area.

A private drainage system is proposed, including a septic tank and soakaway. This is acceptable in principle, as Scottish Water has confirmed there is no public waste infrastructure in the area, however the concerns over the size of the site being able to accommodate all the required amenities to occupants should be noted. Should planning permission be granted, details of the drainage, both foul and surface water, would be required. This drainage information would ensure that there is no pollution to watercourses as a result of the proposal, as well as how surface water run off would be dealt with.

#### Other matters

Should planning permission be supported here, developer contributions would be required. The contributions would be towards education, Borders Rail, community facilities and play provision. This would be in the region of £22,000 per unit.

#### Summary

Overall there are concerns over the principle of development, the scale of the proposals, the remoteness of the site and the condition of the land and questions if this can be developed. The Planning Authority appreciate that some of these concerns are finely balanced and that the proposal would have a number of environmental improvements for the site and the wider area. If these concerns can be addressed, there may be some scope for some development of the site. However the application in its current form cannot be supported.

**Recommendation:** Refuse planning permission in principle.

**Reg. No. 21/00453/PPP**

Format Design  
146 Duddingston Road West  
Edinburgh  
EH16 4AP

Midlothian Council, as Planning Authority, having considered the application by Mrs P Sime Mrs E Thomson, Highwood House, Barleydean, Rosewell, EH24 9EA, which was registered on 18 June 2021 in pursuance of their powers under the above Acts, hereby **refuse** permission to carry out the following proposed development:

**Application for planning permission in principle for residential development at Land 115M East of Highwood House, Barley Dean, Rosewell**

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

<u>Document/Drawing.</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Location Plan	10275-03-06 1:2500	18.06.2021

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

- 1. It has not been satisfactorily demonstrated that the application site is of a sufficient size to accommodate a scheme of the scale of the development as proposed in the submission. It has not been demonstrated that the site could accommodate the necessary levels of private outdoor space; acceptable parking arrangements; a scheme to deal with surface water drainage; adequate drainage provision; and adequate boundary planting. The proposal is an overdevelopment of the site, and is therefore contrary to policies RD1 and DEV6 of the adopted Midlothian Local Development Plan 2017.*
- 2. It has not adequately demonstrated that the proposed development can be successfully integrated into the surrounding rural area and special landscape area with suitable landscaping. The proposal is therefore contrary to policies RD1, ENV6 and ENV7 of the adopted Midlothian Local Development Plan 2017.*
- 3. It has not been demonstrated through the submission of site investigation works that contamination of the site from historic uses can be addressed, mitigated and remediation works be carried out to an acceptable level to allow the site to be developed.*

Dated 26 / 11 / 2021

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](mailto:planningconsultation@coal.gov.uk)  
Website: [www.gov.uk/coalauthority](http://www.gov.uk/coalauthority)

### **INFORMATIVE NOTE**

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

It is recommended that information outlining how former mining activities may affect the proposed development, along with any mitigation measures required (for example the need for gas protection measures within the foundations), is submitted alongside any subsequent application for Building Warrant approval (if relevant).

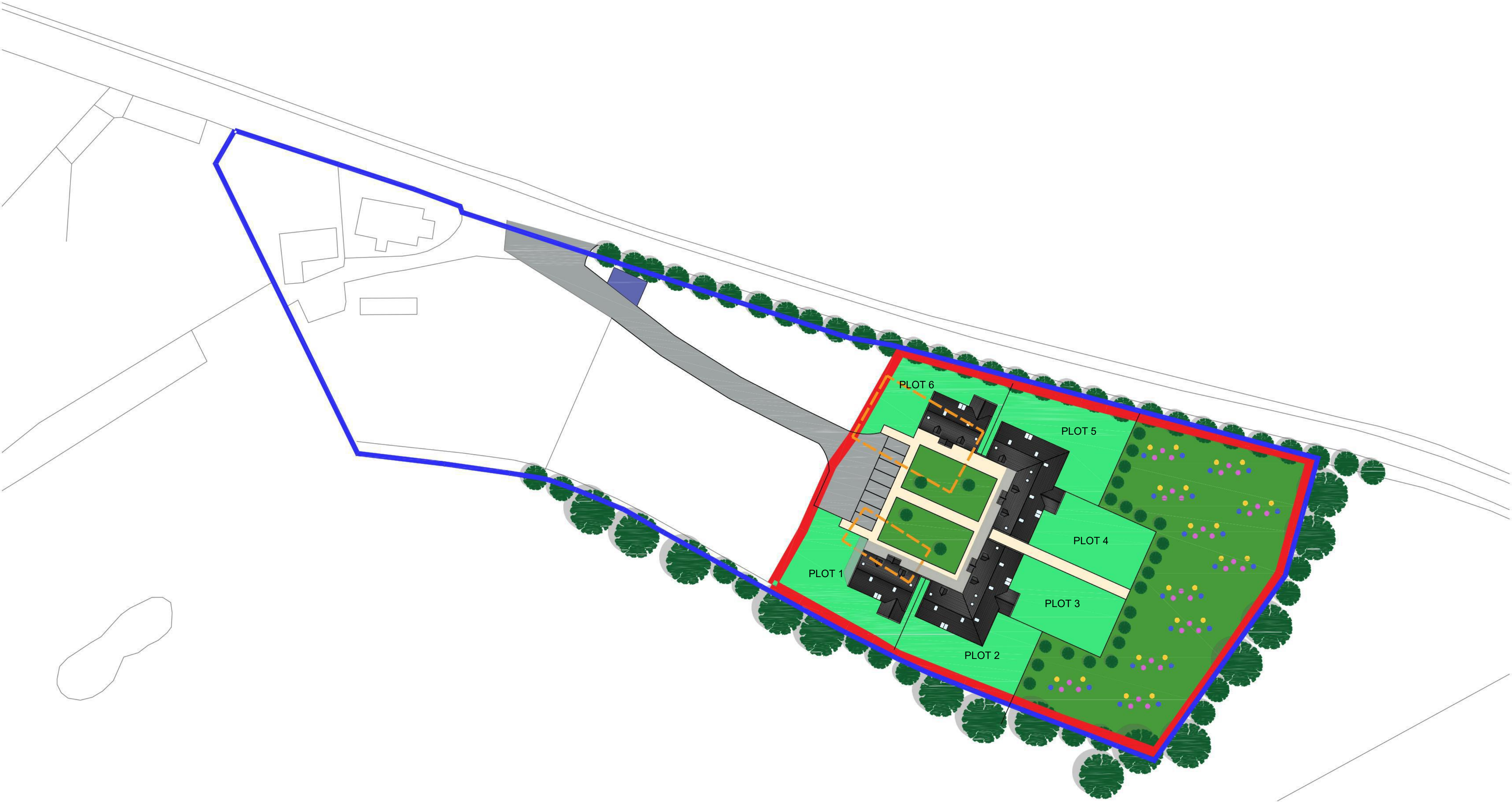
Any form of development over or within the influencing distance of a mine entry can be dangerous and raises significant land stability and public safety risks. As a general precautionary principle, the Coal Authority considers that the building over or within the influencing distance of a mine entry 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](http://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.

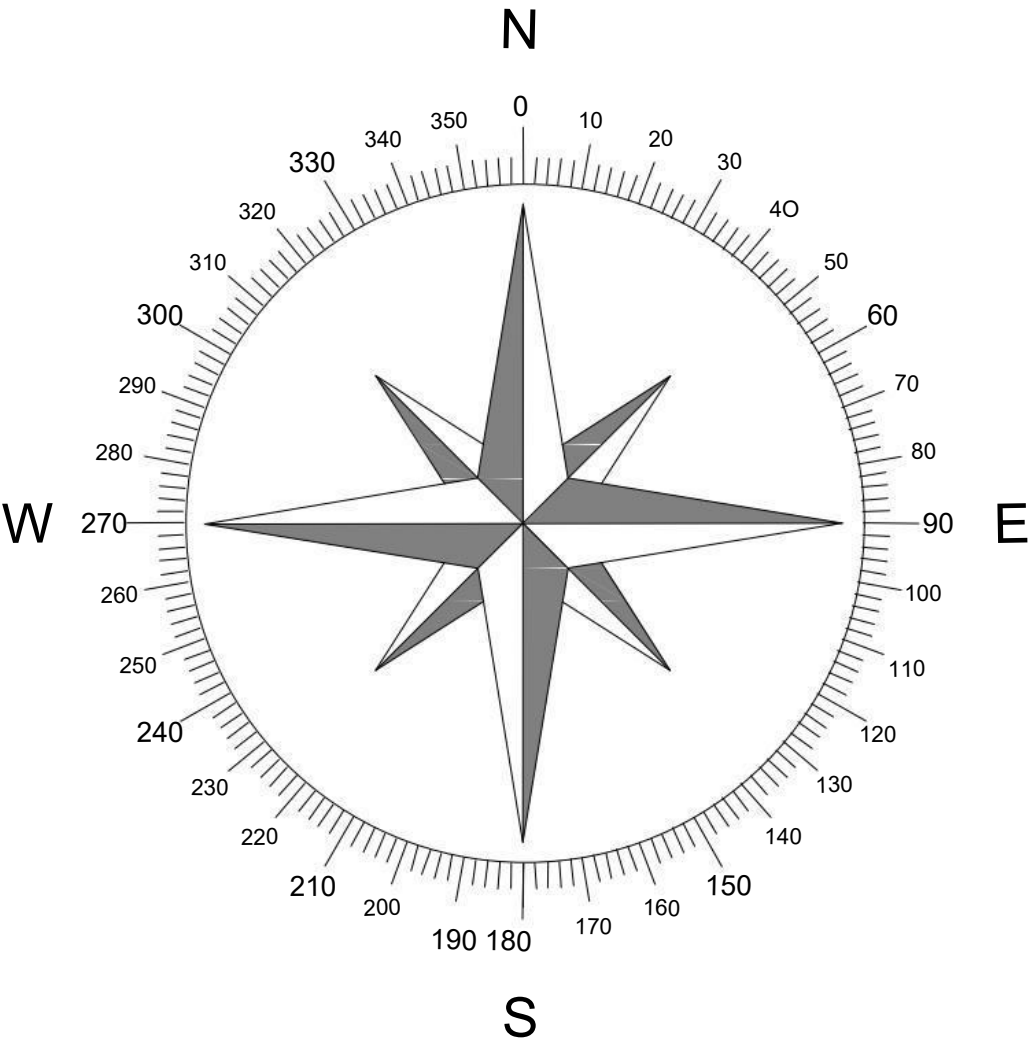
If any coal mining features are unexpectedly encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848. Further information is available on the Coal Authority website at: [www.gov.uk/government/organisations/the-coal-authority](http://www.gov.uk/government/organisations/the-coal-authority)

**Informative Note valid from 1st January 2021 until 31st December 2022**





- LEGEND:
- GARDENS WITH LANDSCAPING
  - STEADING COMMUNAL GREENSPACE, LANDSCAPING & PUBLIC WALKWAY TO WILD FLOWER MEADOWS @ REAR OF PROPOSED DEVELOPMENT
  - DECORATIVE POROUS PAVING
  - EX. GRAVEL ROADWAY AND PROPOSED PARKING
  - REFUSE COLLECTION POINT
  - SITE BOUNDARY APPROX 0.55 HECTARES
  - EX. DERELICT OUTBUILDINGS TO BE DEMOLISHED
  - LAND UNDER APPLICANTS CONTROL



Prop. Site Plan  
Scale 1/500

rev	date	details	by	rev	date	details	by	<p>THIS DRAWING WAS PREPARED TO OBTAIN BUILDING CONTROL AND/OR PLANNING PERMISSION AND CAN ONLY BE USED AS A WORKING DRAWING WITH PERMISSION FROM FORMAT BUILDING DESIGN.</p> <p>THIS OFFICE'S LIABILITY ENDS UPON THE RECEIPT OF A DECISION FROM BUILDING CONTROL AND/OR THE PLANNING DEPARTMENT.</p> <p>THIS DRAWING IS NOT TO BE REPRODUCED WITHOUT PERMISSION.</p> <p>CONTRACTOR NOT TO DEVIATE FROM THE APPROVED DRAWING WITHOUT INFORMING FORMAT DESIGN.</p> <p>ALL SIZES AND DIMENSIONS TO BE VERIFIED ON SITE BY CONTRACTOR AND MANUFACTURER.</p> <p>Page 84 of 128</p>	<p><b>SERVICES OFFERED:</b></p> <p>MEASURED SURVEYS PLANNING CONSULTANTS FEASIBILITY STUDIES NEW BUILDS</p> <p>PLANNING APPLICATIONS LISTED BUILDING APPLICATIONS BUILDING WARRANT APPLICATIONS LIQUOR LICENCING DRAWINGS DEED PLANS</p>	drawing title:Prop. Site Plan		scale: @A1
A	26 08 21	Blue line added to show land under applicant control	MJ							job title: land at Highwood House, Shewington, Midlothian		drawing no: 10275 03 04
B	28 10 21	No.'s of dwellings reduced and site plan amended with introduction of meadows to rear	MJ							client: Mrs P Sime Mrs E Thomson		date: 12.05.21
										status: Planning In Principle		drawn:MJ
<div><div>format DESIGN</div><div>Tel: 0131 661 7666 Fax: 0131 659 6033 Email: formatdesign@aol.com Web: www.formatbuildingdesign.com</div></div> <div>FADADS Limited</div> <div>Holyrood Business Park 146 Duddingston Road West Edinburgh EH16 4AP</div>												

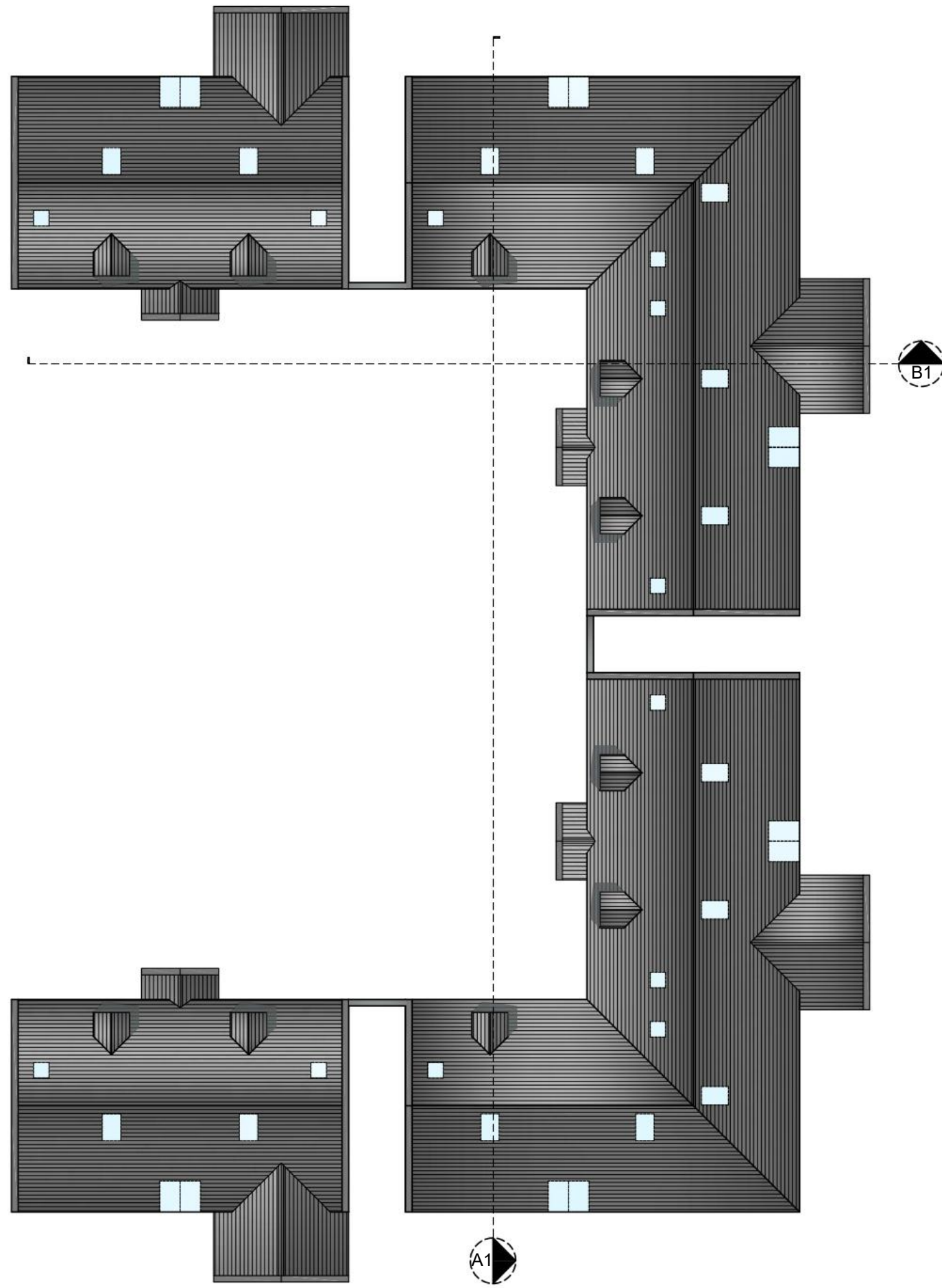




Prop.West Streetscape (A1)  
Scale 1/50



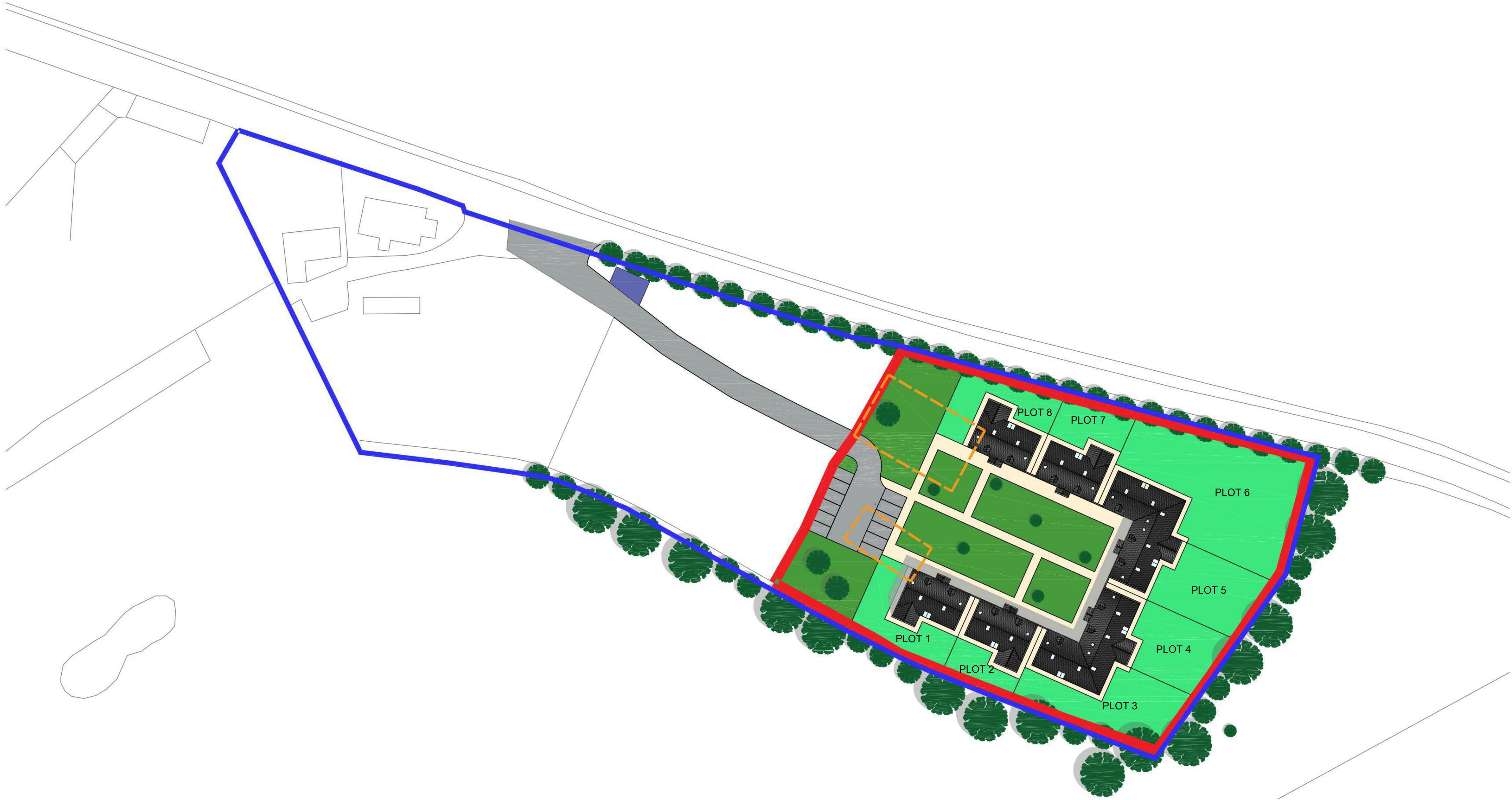
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Scale 1/50



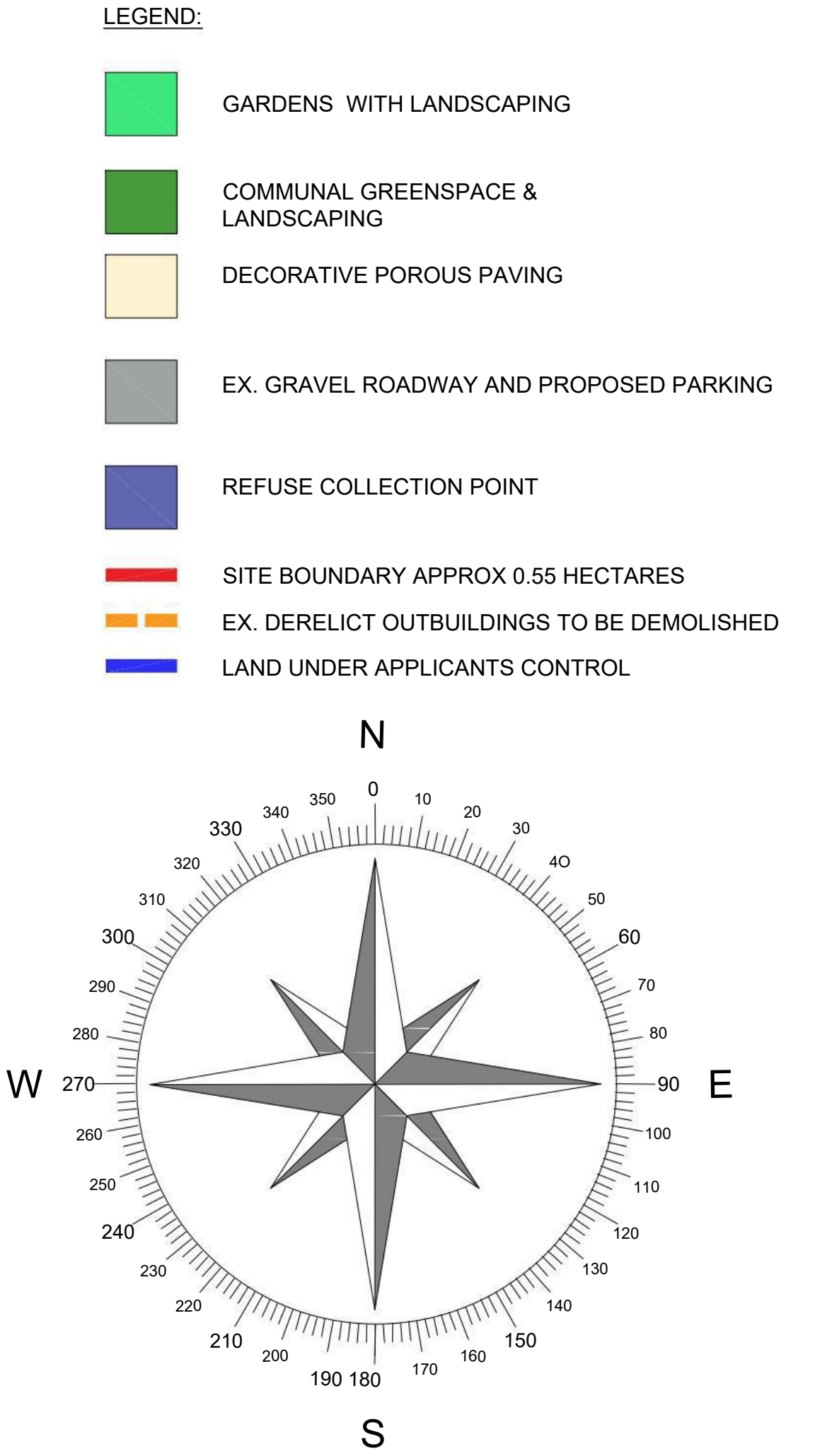
Prop.Block Plan  
Scale 1/50

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A	28 10 21	No.'s of dwellings reduced to 6 on site	MJ							job title: land at Highwood House, Shewington, Midlothian		drawing no: 10275 03 04
										client: Mrs P Sime Mrs E Thomson		date: 12.05.21
										status: Planning In Principle		drawn:MJ
										<div>format DESIGN</div> <div>FADADS Limited</div> <div>Holyrood Business Park 146 Duddingston Road West Edinburgh EH16 4AP</div> <div>Tel: 0131 661 7666</div> <div>Fax: 0131 659 6033</div> <div>Email: formatdesign@aol.com</div> <div>Web: www.formatbuildingdesign.com</div>		





Prop. Site Plan  
Scale 1/500



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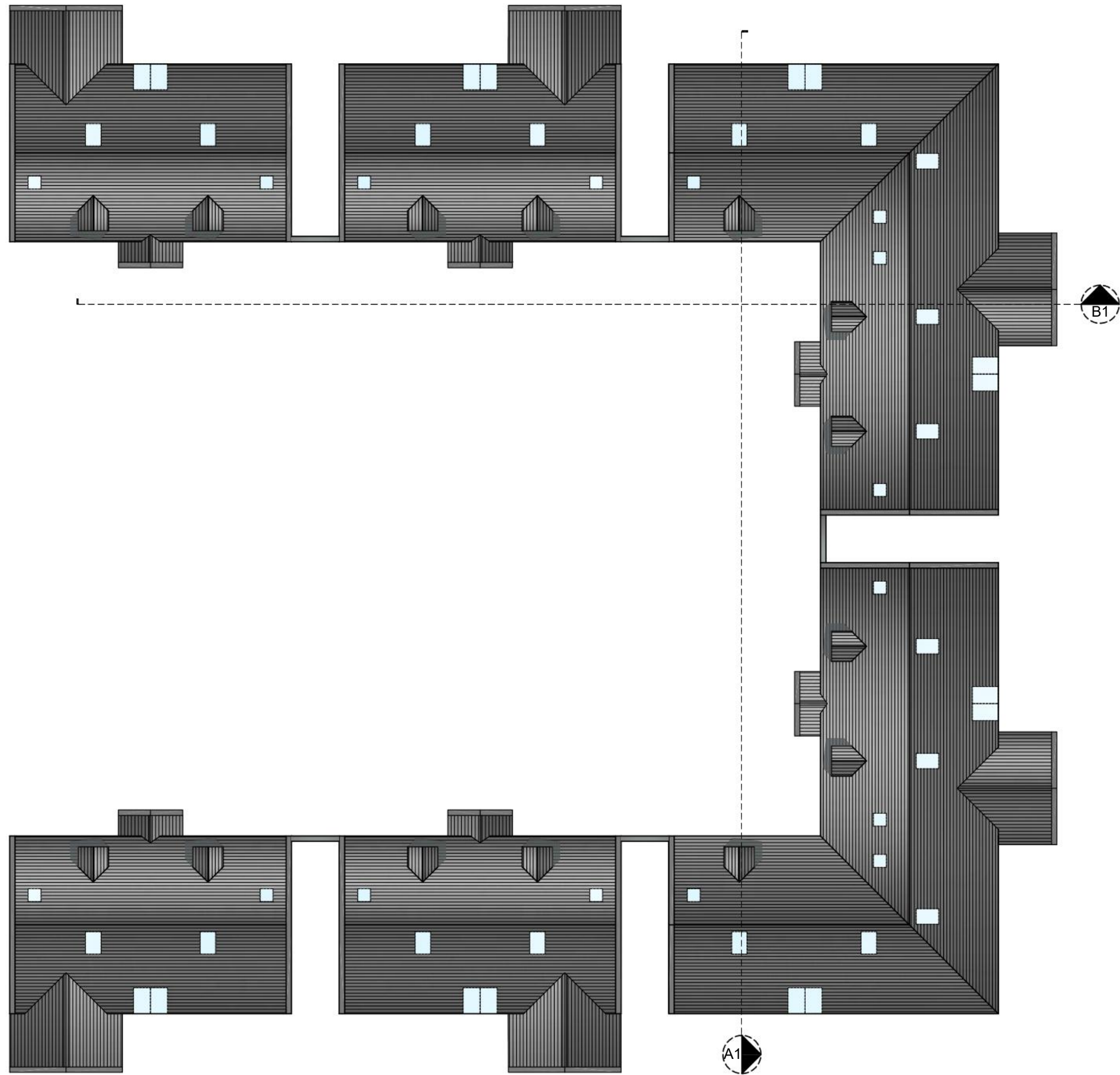




Prop.West Streetscape (A1)  
Scale 1/50



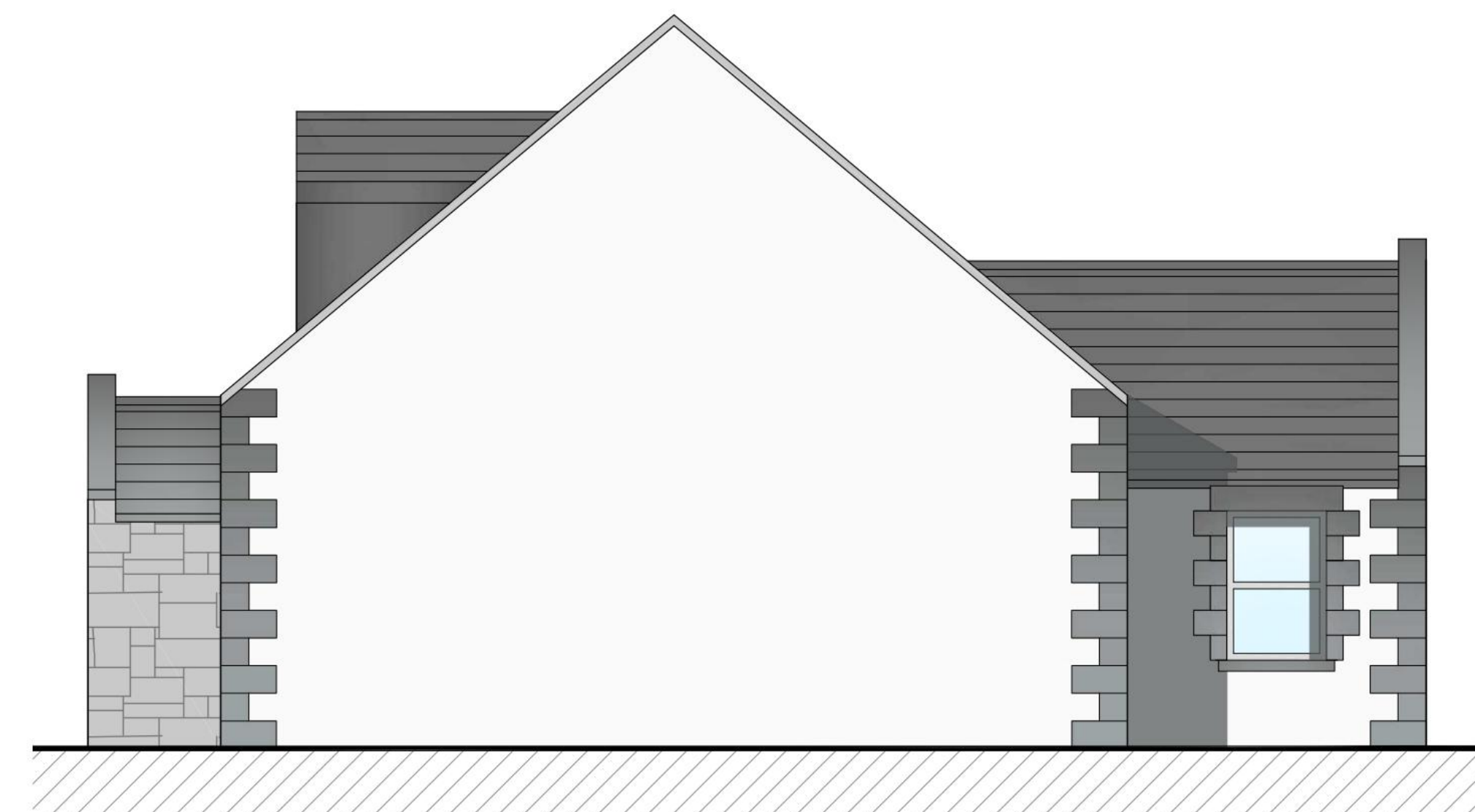
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Scale 1/50



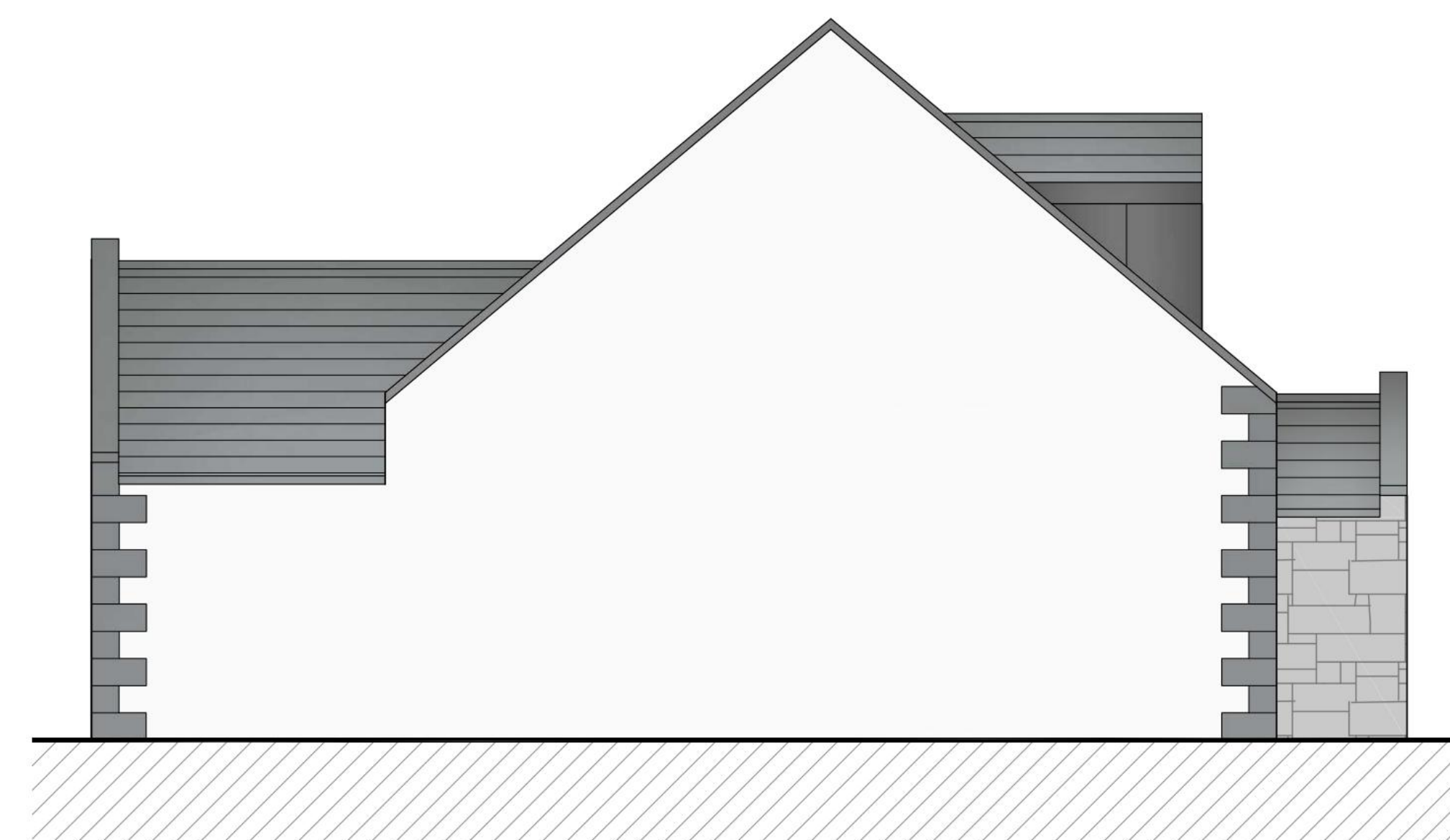
Prop.Block Plan  
Scale 1/50

rev	date	details	by	rev	date	details	by	<p>THIS DRAWING WAS PREPARED TO OBTAIN BUILDING CONTROL AND/OR PLANNING PERMISSION AND CAN ONLY BE USED AS A WORKING DRAWING WITH PERMISSION FROM FORMAT BUILDING DESIGN.</p> <p>THIS OFFICE'S LIABILITY ENDS UPON THE RECEIPT OF A DECISION FROM BUILDING CONTROL AND/OR THE PLANNING DEPARTMENT.</p> <p>THIS DRAWING IS NOT TO BE REPRODUCED WITHOUT PERMISSION.</p> <p>CONTRACTOR NOT TO DEVIATE FROM THE APPROVED DRAWING WITHOUT INFORMING FORMAT DESIGN.</p> <p>ALL SIZES AND DIMENSIONS TO BE VERIFIED ON SITE BY CONTRACTOR AND MANUFACTURER.</p>	<p><b>SERVICES OFFERED:</b></p> <p>MEASURED SURVEYS PLANNING CONSULTANTS FEASIBILITY STUDIES NEW BUILDS</p> <p>PLANNING APPLICATIONS LISTED BUILDING APPLICATIONS BUILDING WARRANT APPLICATIONS LIQUOR LICENCING DRAWINGS DEED PLANS</p>	<p>drawing title:Prop. Streetscapes</p> <p>job title: land at Highwood House, Shewington, Midlothian</p> <p>client: Mrs P Sime Mrs E Thomson</p> <p>status: Planning In Principle</p>	<p>scale: @A1</p> <p>drawing no: 10275 03 04</p> <p>date: 12.05.21</p> <p>drawn:MJ</p> <p><b>format DESIGN</b></p> <p>FADADS Limited Holyrood Business Park 146 Duddingston Road West Edinburgh EH16 4AP</p> <p>Tel: 0131 661 7666 Fax: 0131 659 6033 Email: formatdesign@aol.com Web: www.formatbuildingdesign.com</p>





Prop.Side Elevation  
Scale 1/50



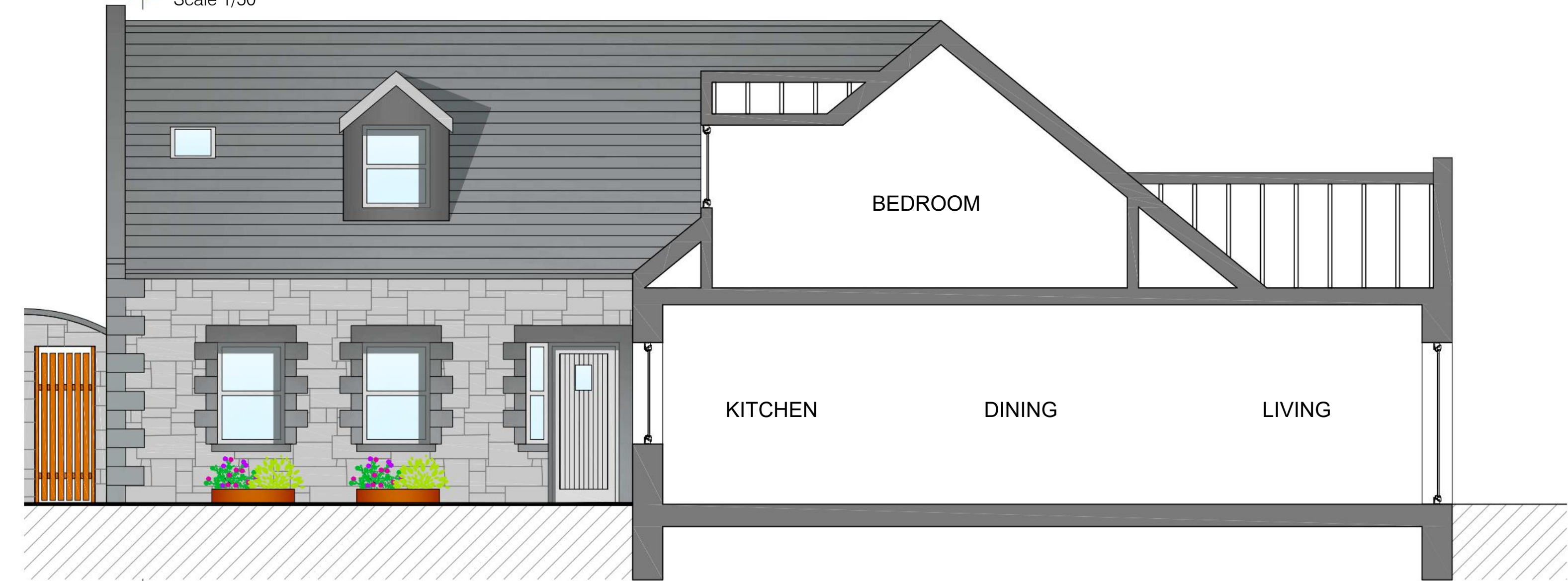
Prop.Side Elevation  
Scale 1/50

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<p><b>SERVICES OFFERED:</b></p> <p>MEASURED SURVEYS PLANNING CONSULTANTS FEASIBILITY STUDIES NEW BUILDS</p> <p>PLANNING APPLICATIONS LISTED BUILDING APPLICATIONS BUILDING WARRANT APPLICATIONS LIQUOR LICENCING DRAWINGS DEED PLANS</p>							
<p>drawing title: Prop House type 1 plans &amp; elevations</p> <p>job title: land at Highwood House, Shewington, Midlothian</p> <p>client: Mrs P Sime Mrs E Thomson</p> <p>status: Planning In Principle</p>							
<p>scale: @A1</p> <p>drawing no: 10275 03 01</p> <p>date: 12.05.21</p> <p>drawn:MJ</p>							
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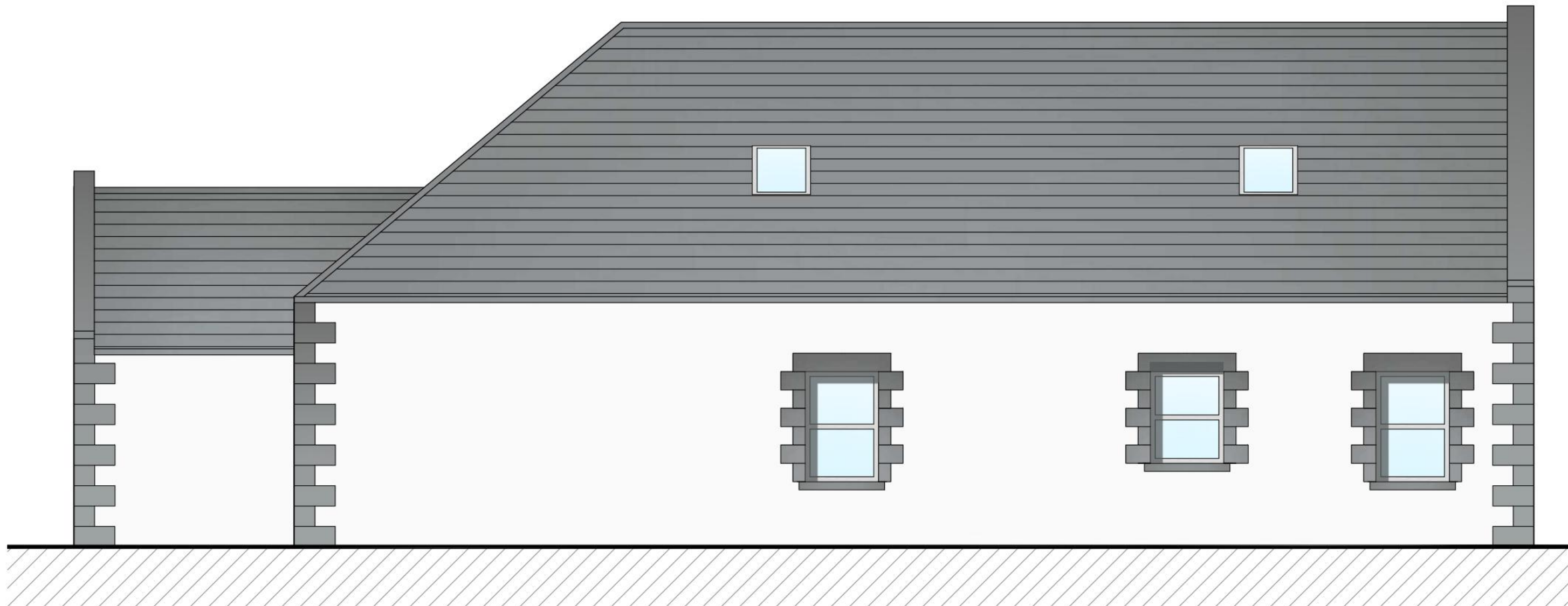




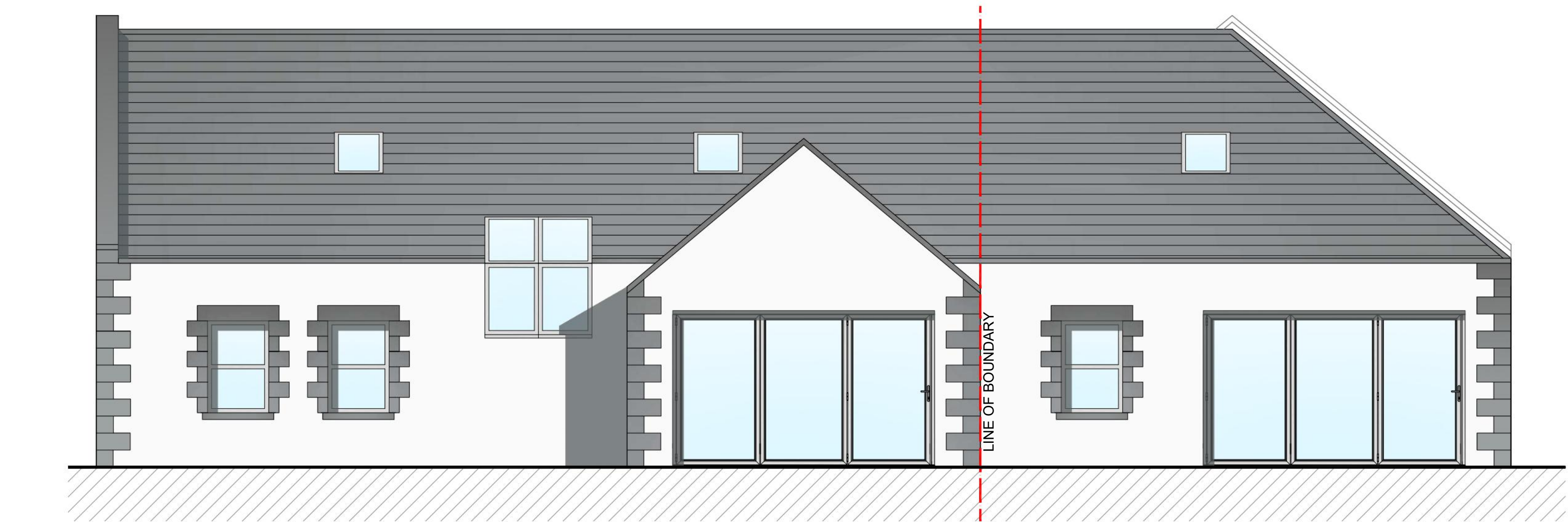
Prop. Sectional Elevation  
Scale 1/50



Prop. Sectional Elevation  
Scale 1/50



Prop. Side Elevation  
Scale 1/50



Prop. Rear Elevation  
Scale 1/50

HOUSE TYPES 2 - 3 ELEVATIONS

- LEGEND:
- WET DASH
  - TRADITIONAL STONE FRONTAGE
  - NATURAL SLATE

rev	date	details	by	rev	date	details	by	<p>THIS DRAWING WAS PREPARED TO OBTAIN BUILDING CONTROL AND/OR PLANNING PERMISSION AND CAN ONLY BE USED AS A WORKING DRAWING WITH PERMISSION FROM FORMAT BUILDING DESIGN.</p> <p>THIS OFFICE'S LIABILITY ENDS UPON THE RECEIPT OF A DECISION FROM BUILDING CONTROL AND/OR THE PLANNING DEPARTMENT.</p> <p>THIS DRAWING IS NOT TO BE REPRODUCED WITHOUT PERMISSION.</p> <p>CONTRACTOR NOT TO DEVIATE FROM THE APPROVED DRAWING WITHOUT INFORMING FORMAT DESIGN.</p> <p>ALL SIZES AND DIMENSIONS TO BE VERIFIED ON SITE BY CONTRACTOR AND MANUFACTURER.</p> <p>Page 89 of 128</p>	<p><b>SERVICES OFFERED:</b></p> <p>MEASURED SURVEYS PLANNING CONSULTANTS FEASIBILITY STUDIES NEW BUILDS</p> <p>PLANNING APPLICATIONS LISTED BUILDING APPLICATIONS BUILDING WARRANT APPLICATIONS LIQUOR LICENCING DRAWINGS DEED PLANS</p>	<p>drawing title: Prop. House types 2 - 3 Elevations</p>	scale: @A1
							<p>job title: land at Highwood House, Shewington, Midlothian</p>			drawing no: 10275 03 03	
										<p>client: Mrs P Sime Mrs E Thomson</p>	date: 12.05.21
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## **Notice of Review: Land Adjoining Meyerling, Off The A6094, Penicuik**

### **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 erection of a dwellinghouse and associated works at land adjoining Meyerling, off the A6094, Penicuik.

#### **2 Background**

- 2.1 Planning application 21/00775/DPP for the erection of a dwellinghouse and associated works at land adjoining Meyerling, off the A6094, Penicuik was refused planning permission on 19 November 2021; 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 19 November 2021 (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](http://www.midlothian.gov.uk)

#### **4 Procedures**

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

- Have determined to consider a visual presentation of the site and undertaking a site visit (elected members not attending the site visit can still participate in the determination of the review); and
  - Have determined to progress the review by way of written submissions.
- 4.2 The case officer's report identified that there were two consultation responses and five representations received. As part of the review process the interested parties were notified of the review. No additional comments have 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 13 June 2017, and without prejudice to the determination of the review, the following conditions have been prepared for the consideration of the LRB if it is minded to uphold the review and grant planning permission.
1. Prior to the commencement of development, the following details shall be submitted to and approved in writing by the planning authority:
    - a) Details and samples of all proposed external materials;
    - b) Details of the materials of the window frames;
    - c) Details of the colour of the window frames;
    - d) Details of the materials of all doors;

- e) Details of the colour of all doors;
- f) Details of the proposed solar panels;
- g) Details of the materials of all areas of hardstanding;
- h) Details of the position, design, materials, dimensions and finish of all walls, fences, gates or other means of enclosure;
- i) Proposals for the treatment and disposal of foul and surface water drainage from the proposed houses;
- j) Details of a scheme of landscaping for the site. Details shall include the position, number, size and species of all trees and shrubs that are proposed to be planted, as well as identifying all trees on site which are proposed to be removed and retained;
- k) Details of a sustainability/biodiversity scheme for the site, including the provision of house bricks and boxes for bats and swifts and small mammal passage points in any fence; and
- l) Existing and finished ground levels for all buildings and open space in relation to a fixed datum.

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

**Reason:** *These details were not submitted as part of the application: to ensure the house is finished in high quality materials; to protect the visual amenity of the surrounding rural area; to ensure the house is provided with adequate amenity; to help integrate the proposal into the surrounding area.*

2. The external finishes of the house and garage hereby approved shall be natural stone and natural slate.

**Reason:** *To ensure the proposal is finished in materials appropriate to the rural area.*

3. Unless otherwise agreed in writing by the planning authority, the rooflights on the garage hereby approved shall either be obscurely glazed or located with the bottom of the glazing a minimum of 1.6 metres, as measured vertically, above the first floor level.

**Reason:** *To protect the privacy of neighbouring properties.*

4. The areas of hardstanding agreed in terms of condition 1g) shall be surfaced in a porous material.

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

5. The proposed drainage treatment and disposal required in condition 1i) shall consider the creation of a biodiverse Sustainable Urban Drainage System (SUDS) such as a pond and planted bioswales.

6. Before the house is occupied, the installation of the means of drainage treatment and disposal in terms of condition 1i) shall be completed to the satisfaction of the planning authority.

***Reason for conditions 5 and 6:*** *To ensure that the house is provided with adequate drainage facilities prior to occupation.*

7. The buildings permitted shall not be occupied or brought into use until vehicular access has 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.*

8. The scheme of landscaping required in terms of condition 1j) shall include a tree survey and arboricultural constraints plan to BS5837 for all existing trees on and immediately adjacent to the site which shall identify and eliminate any impacts on existing trees.
9. No trees on site shall be lopped, topped or felled without the prior written approval of the planning authority.
10. The landscaping plan required in terms of conditions 1j) shall include a tree retention and protection plan which clearly indicates the tree number location, crown spread and root protection areas and tree protection fencing. Any trees proposed for removal or pruning should be clearly identified and any tree removals shall be restricted to those necessary on health and safety grounds following the submission of recommendations as part of the Tree Survey by a qualified Arboricultural Consultant.

***Reason for conditions 8 to 10:*** *To ensure existing trees are retained where possible and canopy cover is protected; to protect the landscape character of the area.*

11. The landscaping plan required in terms of condition 1j) shall include details of replacement planting incorporating tree and hedgerow planting. The tree planting shall be broadleaf native species and the hedging shall be mixed native hedgerow.
12. The landscaping plan required in terms of conditions 1j) shall include a minimum ten metre woodland edge shelterbelt buffer strip along the south and east boundary of the site.
13. The landscaping plan required in terms of conditions 1j) shall include a landscape plan, specification, planting schedule and maintenance specification including tree and woodland management.

***Reason for conditions 11 to 13:*** *To protect the rural character of the area and integrate the development into the surrounding rural area; to increase canopy cover at the site; to promote biodiversity.*

14. The scheme of landscaping approved in terms of condition 1j) shall include details of tree protection measures during development which shall be approved in writing by the planning authority and be retained until development is completed.

***Reason:*** *To ensure that any trees affected by the proposal are protected during development.*

15. The scheme of landscaping approved in accordance with condition 1j) shall be carried out and completed within six months of the house either being completed or brought into use, whichever is the earlier date. Any trees or hedgerow removed, dying, severely damaged or becoming seriously diseased within five years of planting shall be replaced in the following planting season by trees of a size and species similar to those originally required.

***Reason:*** *To ensure the landscaping is carried out and becomes successfully established.*

16. Development shall not begin until details, including a timetable of implementation, of superfast broadband have been submitted to and approved in writing by the planning authority. The details shall include delivery of superfast broadband prior to the occupation of the dwellinghouse. The delivery of superfast 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.*

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

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



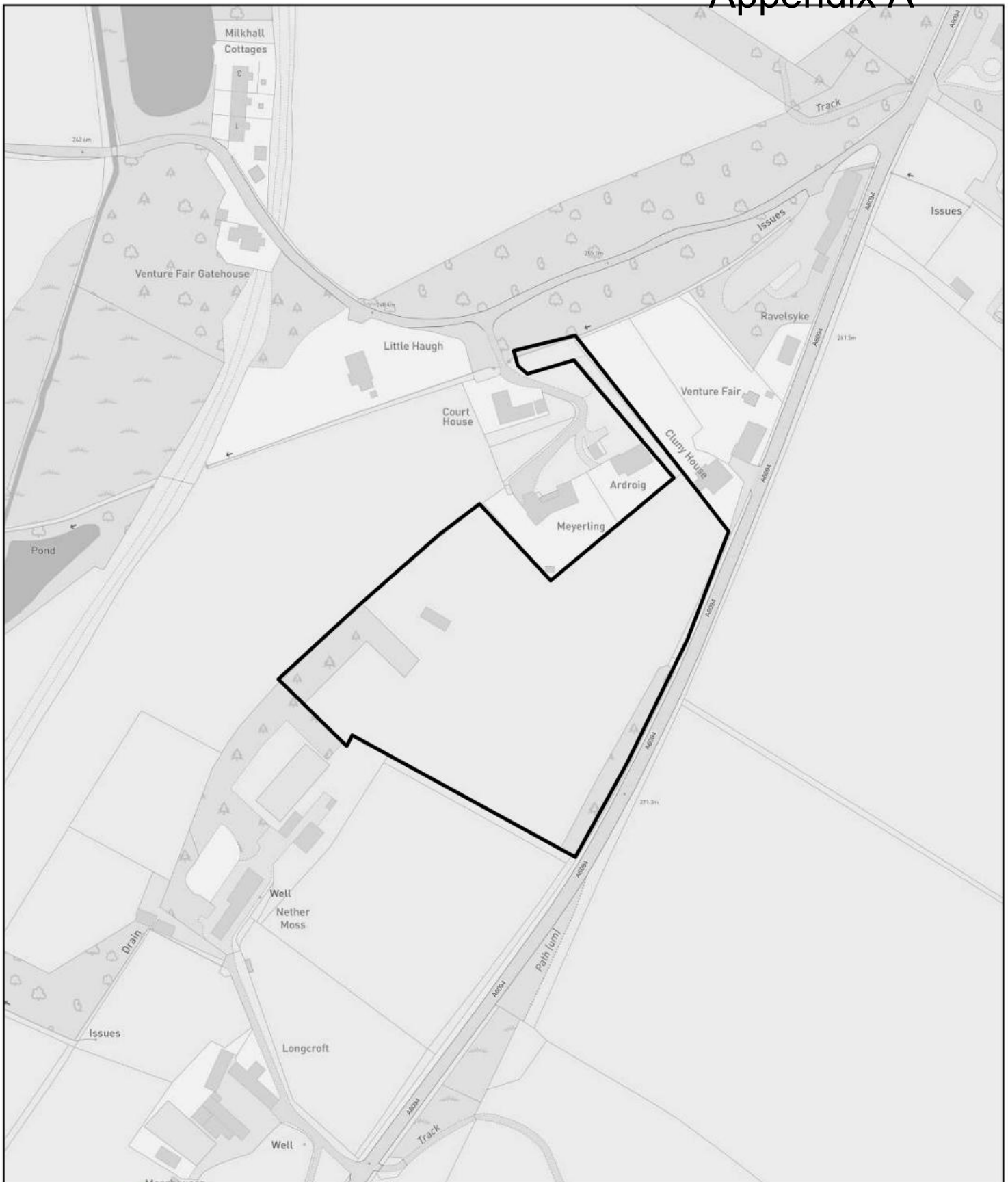
## **6 Recommendations**

- 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:** 10 February 2022  
**Report Contact:** Mhairi-Anne Cowie, Planning Officer  
[Mhairi-Anne.Cowie@midlothian.gov.uk](mailto:Mhairi-Anne.Cowie@midlothian.gov.uk)

**Background Papers:** Planning application 21/00775/DPP available for inspection online.



**Planning Service  
Place Directorate**  
Midlothian Council  
Fairfield House  
8 Lothian Road  
Dalkeith  
EH22 3AA

Erection of dwellinghouse; formation of access road and associated works at Land Adjoining Meyerling, Penicuik,

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File No: 21/00775/DPP

Scale: 1:2,500

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Fairfield House 8 Lothian Road Dalkeith EH22 3ZN Tel: 0131 271 3302 Fax: 0131 271 3537 Email: [planning-applications@midlothian.gov.uk](mailto: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 100513834-001

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="Format Design"/>		
Ref. Number:	<input type="text"/>	You must enter a Building Name or Number, or both: *	
First Name: *	<input type="text" value="Shona"/>	Building Name:	<input type="text" value="Holyrood Business Park"/>
Last Name: *	<input type="text" value="Mackay"/>	Building Number:	<input type="text" value="146"/>
Telephone Number: *	<input type="text" value="01316617666"/>	Address 1 (Street): *	<input type="text" value="Duddingston Road West"/>
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="Scotland"/>
		Postcode: *	<input type="text" value="EH16 4AP"/>
Email Address: *	<input type="text" value="formatdesign@aol.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="Format Design"/>
First Name: *	<input type="text" value="T"/>	Building Number:	<input type="text" value="146"/>
Last Name: *	<input type="text" value="Pia"/>	Address 1 (Street): *	<input type="text" value="Holyrood Business Park"/>
Company/Organisation	<input type="text"/>	Address 2:	<input type="text" value="Duddingston Road West"/>
Telephone Number: *	<input type="text"/>	Town/City: *	<input type="text" value="EDINBURGH"/>
Extension Number:	<input type="text"/>	Country: *	<input type="text" value="United Kingdom"/>
Mobile Number:	<input type="text"/>	Postcode: *	<input type="text" value="EH16 4AP"/>
Fax Number:	<input type="text"/>		
Email Address: *	<input type="text" value="formatdesign@aol.com"/>		

## Site Address Details

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

Please identify/describe the location of the site or sites

<input type="text" value="Land Adjoining Meyerling, Penicuik"/>			
Northing	<input type="text"/>	Easting	<input type="text"/>



## Description of Proposal

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

Erection of dwellinghouse; formation of access road and associated works at Land Adjoining Meyerling, Penicuik

## 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 attached 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)

Appeal statement

## Application Details

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

21/00775/DPP

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

20/09/2021

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

19/11/2021

## 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

Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may select more than one option if you wish the review to be a combination of procedures.

Please select a further procedure \*

By means of inspection of the land to which the review relates

Please explain in detail in your own words why this further procedure is required and the matters set out in your statement of appeal it will deal with? (Max 500 characters)

To allow the members of the Local Review Body to view the application site and surrounding area

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: Mrs Shona Mackay

Declaration Date: 08/12/2021

APPEAL TO LOCAL REVIEW BOARD REGARDING THE REFUSAL OF  
PLANNING PERMISSION 21/00775/DPP  
FOR  
ERECTION OF DWELLINGHOUSE; FORMATION OF ACCESS ROAD AND  
ASSOCIATED WORKS  
AT  
LAND ADJOINING MEYERLING PENICUIK



13 DECEMBER 2021

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## 1 Introduction

The proposal is for a single dwellinghouse, with outbuilding. They are linked by a glazed walkway. The site will be set amidst a common wildflower meadow with walkway and with indigenous hedge and tree planting to the south, east and west boundaries. An existing access also exists to the north side leading towards Milkhall Pond.

The following plan is to help identify neighbouring properties. The site is identified by an S in a blue circle.



A plan of all neighbouring properties, with key

## 2 The refusal

The proposal was refused on 24 November 2021 for the six following reasons:

### 3 Case in support of approval

#### A. Response to the reasons for refusal

The refusal notice provided 6 reasons in total that the authority considered that this application failed to comply with the local development plan. These are listed in full below and responded to in order.

**Reason 1:** *“The proposal for a dwellinghouse does not comply with the housing group policy where only one house per five units may be supported. Planning permission has already been granted for the erection of one house on an adjacent site within this established housing group of Meyerling/Mosshouses and there is no policy support for a further house to be sited in this group.”*

The applicant has been trying to obtain consent for a house in this area, on the adjacent site, for a considerable period of time, since 2008. The granting of consent for the house to the north side of Meyerling in 2013 was therefore seen as a particular unfair step which could potentially undermine a further dwelling here. However, that house was granted prior to the 2016 Development Plan, and we are now in a new development plan period and a further appropriately located dwellinghouse can now be considered. To quote SPG DP1, section 1.2 Housing Groups part b) *“the new units are restricted to a maximum of 1 new unit per 5 existing units within the Local Plan period”*

In fact, there is now a more significant group, and the location of the proposed dwelling sits within what would be a logical extension to that group.

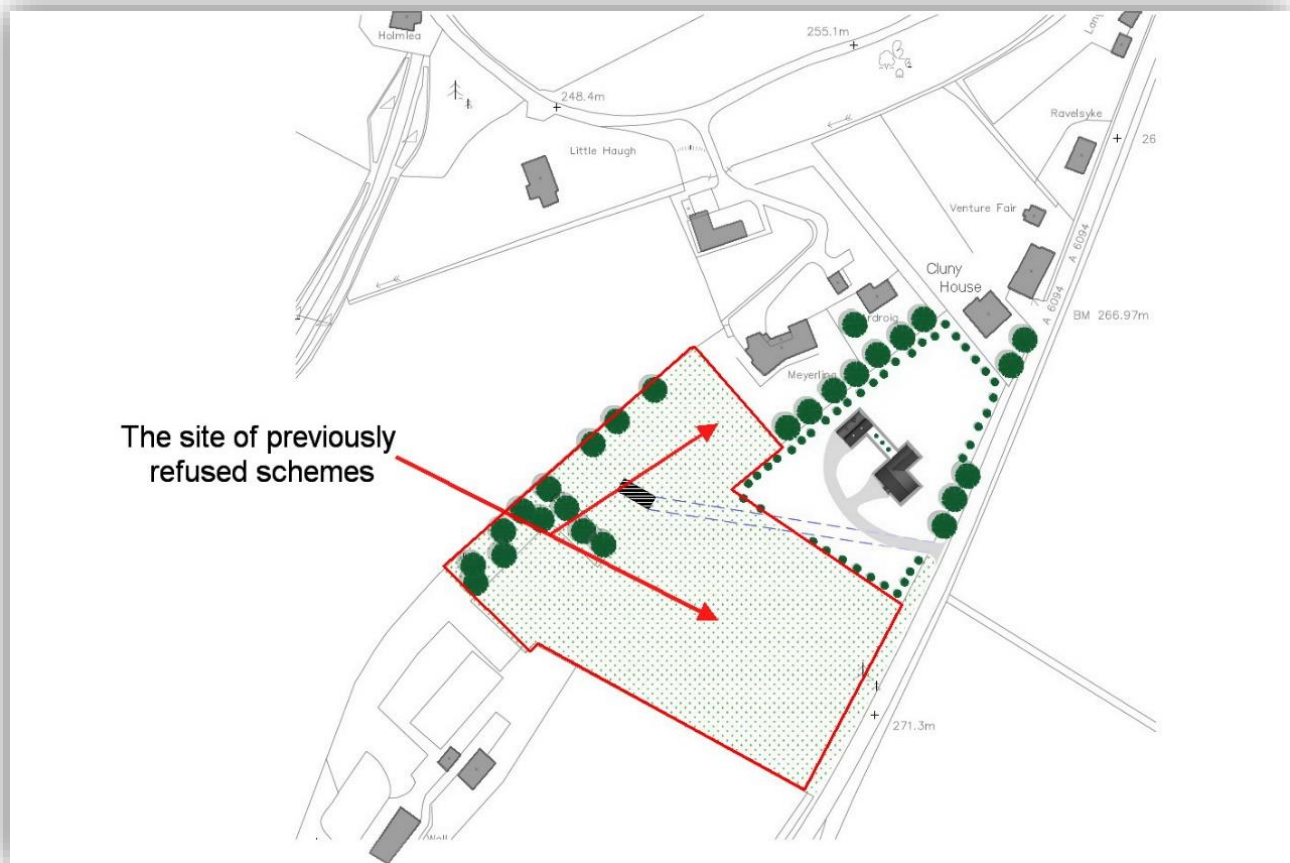
Furthermore, this did not appear to prevent the approval of five new dwellinghouses at the Howgate Restaurant site nearby, in addition to the two conversion units. This further adds to the strength of the grouping.

**Reason 2:** *“The proposal does not comply with the establish principles and criteria for accommodating a new house in a housing group it does not respect the character and cohesiveness of the group.”*

Now that the applicant has obtained the land adjacent to Cluny House (see figures on pages 2 and 5), it has been possible to propose a dwelling in a far more appropriate position, integral to the housing group, and forming a cohesive and logical extension to it. The applicant completely disagrees with the view that the proposal *“does not comply with the establish principles and criteria for accommodating a new house in a housing group it does not respect the character and cohesiveness of the group”*.

As the plan on page 4 clearly demonstrates, the currently proposed position is acceptable. If required, the house could be moved nearer to Cluny House, however it was felt that the greater separation would be better in terms of amenity.





**Plan to show adjoining properties, settlement layout, and site of previous refusals**

**Reason 3:** *"It has not been demonstrated that the proposed dwellinghouse is required in connection with an established countryside activity and it has not been justified in connection with policy RD1."*

The applicant owns the surrounding fields mainly to the west and whilst it is not related to a recognised and established countryside activity, the applicant has used the fields for keeping horses and stabling/riding. It would be of significant benefit to live on site in terms of security and welfare of the animals, feeding and also reducing the need to travel to and from the site.

However, the fact that this is a house that creates a natural extension to the existing settlement is of paramount importance in the consideration of this proposal. It has taken a very long time for the correct set of circumstances to come together, and the applicant has spent a lot of time and money in pursuing this objective.

**Reason 4:** This reason relates to 1 to 3 above and does not require a separate response.

**Reason 5:** *"The proposed vehicular access, and subsequent potential intensification in use, would have a significant adverse impact on the safety of road users on the A6094 by way of its below standard visibility for all vehicles existing the site and the forward visibility of vehicles travelling behind those turning into the site, particularly from the southbound carriageway. These concerns have not been sufficiently allayed by the proposals."*

The access to the site is via the existing access to the field and stables. The site now extends to the mutual boundary with Cluny House, and it is possible to position the access anywhere along this front boundary, however the present position benefits from being clear of trees and being an existing field access. This access is regularly used by the applicant. If they were living on the site then those trips generated by travelling to the site would be removed. Clearly the applicant would require to use the access for other trips (shopping, school etc) however this is a single house and it is felt that the difference would not be significant.

The current access has loose surface and barely allows for a vehicle to pull off the main road before accessing the gate, and this will be upgraded. The geometry, materials for surfacing and drainage can be controlled by condition, and the ability to control this will ensure that a better and safer access than the existing field access can be agreed.

Whilst not felt to be critical to the acceptance of the current proposal, it would seem to be entirely appropriate to extend the lower speed limit to a point closer to Mosshouses or even Roseview given the changing nature of this area, particularly when another 7 houses appear at Howgate Restaurant. It is unclear as to why such a move would be resisted. This is said as a comment only and is not given as a reason for upholding the appeal.

**Reason 6:** The last reason advises “*It has not been demonstrated to the satisfaction of the Planning Authority that the proposed access can be constructed without having a significant adverse impact on the character and appearance of the surrounding area and therefore the proposed access is contrary to policies.*”

Finally, the Council considers that it has not been demonstrated that the access can be constructed without having a significant adverse impact on the character and appearance of the surrounding area. It is of course an existing access and there will be no need to remove further trees. It is an access for a single house, and so we are just considering a private driveway. Materials will be appropriate to the location.

## **B. Responses to significant statements within the Report of Handling:**

[The quotes are in italics and the responses have been indented.]

Page 5 para 3 “*The planning authority has consistently considered the development of the site for housing is contrary to planning policy and cannot be supported.....*”

First of all, and most significantly, this is now a different application site. Secondly, the 2008 application that was appealed to the LRB was actually supported in principle by the LRB, and they only chose to refuse it on the grounds of potential noise from vehicles using the proposed access road to the Milkhall Pond Road.

Page 5 para 4 “*The planning authority has restrictive policies for proposals for new housing developments within the countryside. These aim to prevent the*



*creeping suburbanisation of the countryside which are under significant pressure due to the convenient commuting distance to Edinburgh.”*

This proposal is not creeping suburbanisation but a carefully considered layout of a dwellinghouse within an enclosed site within a small rural settlement. There would be no coalescence, it would not be linking settlements, and it is not suburban in character. It is a logical extension to the existing group/settlement.

Page 6 para 2*As part of the planning permission granted for housing at the former Howgate restaurant to the north, one house was approved through the housing groups policy...”*

This seems an unusual interpretation as five new houses were proposed (plus two conversions), and therefore the entire proposal seems to be outwith the scope of the policy and the whole proposal should be excluded from the calculation.

Page 6 para 6*“ The character of the existing houses in this group is small scale, rural houses....”*.

There was no dialogue entered into whereby the applicant was given any opportunity to lower the roof height, and perhaps change the design to one with wall-head dormers, akin to the house at Cluny House adjacent and to the north (see image below, for location see page 2).



Cluny House (left) and Venture Fair

Also, it should be noted the nearby property at Walltower Farm is a large Georgian two storey house.



Walltower Farm House

Page 7 para 1 *"The proposed house sits centrally in this part of the site, .... the siting of the house does not respect the cohesiveness of the group..."*

Again, no discussion took place regarding this possibility, and the applicant was aware of likely objections and decided that maintaining separation would be preferable. The house can easily be repositioned tighter to the northwest or northeast boundary if it is considered that this would make the new house acceptable.

Page 7 para 7" *...the planning authority is concerned that if permission is approved for this house, the protected trees would come under pressure to be removed to help with visibility"*

It is regrettable that the trees to the south were lost. The geometry of the road meant that these hindered visibility in that direction. The trees do not have this effect on visibility to the north, as visibility is affected by topography rather than geometry. The applicant is aware that these trees are now protected.

The following image shows the visibility to the north and that only low-level foliage need be affected (arrowed).





Visibility northwards

Page 8 para 5 “*The strip of land to the rear of the existing properties to the northwest to access onto Milkhall Road is to be used as a pedestrian and cycle access.*”

This is not necessarily the case but it does appear to make sense and improves accessibility.

Page 9 para 2 “*...the argument presented along with this proposal is the latest attempt in a long line for housing at this site, where residential development of the site has been consistently resisted by the Council for almost 20 years... The Local Review Body has also dismissed requests for reviews on three occasions.*”

The current application is now on a new site. This is a significantly different scheme in that it proposes the house on the north east paddock, never previously part of the development site. It has been very difficult for the applicant to see other schemes being approved in the intervening period, to an extent that it has felt very personal.

The Local Review Body were in fact supportive of an earlier proposal, 08/00383/OUT, but concluded that the access around the houses to the north west was not appropriate, and refused it on that basis. The sole reason for refusal was “*The proposed access route, by reason of its close proximity to the boundaries of the properties at Meyerling and Ardraig, coupled with the steep nature of the access is likely to lead to*

*an unacceptable loss of amenity for the occupants of these dwellings during the construction and occupation of the dwellinghouse.”*

This is a very different proposal to those submitted before, and the site boundary is new.

The following figure shows two previous schemes.

On the left is the original proposed scheme for a detached house on the site to the south west, with the long access towards Milkhall Pond, refused in October 2010, referred to above.

On the right is the four-house proposal on the site to the south west with access at the point of the existing field access.



Previous applications 2008 (left) and 2018

The present proposal cannot be directly compared to the previously refused schemes. It is substantially different in form and scale and is on an entirely different, albeit adjoining, plot of land.



### C. Response to public comment on other issues:

This is a summary of the objections followed by a brief response in bold text. Many of these issues have already been dealt with above.

- *The proposal is contrary to the Edinburgh and Lothian Structure Plan, policies RD1, ENV3, ENV7 and ENV11 of the Midlothian Local Development Plan and the Supplementary Guidance;* - **The structure plan is no longer relevant. The development plan has already been covered.**
- *There has been little change at the site since the previous applications for housing have been refused and the previous reasons for refusal remain valid;* **As stated already, the site boundary is very different.**
- *The proposed house does not match existing properties and would appear out of place in this rural area;* **It is similar to Cluny House and can easily be adjusted.**
- *The proposal would be ribbon development and result in coalescence;* **This is an inaccurate description.**
- *Loss of privacy to nearby properties from both the proposed pedestrian and cycle way and a two-storey house;* **The pedestrian route is not an issue and the house is sufficiently distant.**
- *Overshadowing nearby properties;* **This is not an issue.**
- *Poor vehicular access due to insufficient visibility splays;* **Discussed above.**
- *The proposed access would create road safety hazards and has not changed since the previous refusals;* **Discussed above.**
- *It is not fair for motorists using the A6094 to have speed restrictions to accommodate development;* **Safety is paramount to enjoying higher speeds!**
- *Road safety concerns from queuing traffic entering the site from the north as this will not be readily visible to other road users due to the levels of the road;* **Discussed above.**
- **There is no provision for bin collections or service vehicles;** *It is only a single house and refuse would be collected in the same manner as neighbouring houses.*
- *The distance to public transport is very marginal and on a dangerous route;* **Covered in planning statement.**
- *There is already poor water pressure in the area which would be exacerbated by the proposal;* **Covered in planning statement.**
- *The porosity of the site is poor and there are concerns over existing water run off to neighbouring properties as well as the proposed soakaway;* **SUDS proposals would be incorporated - Covered in planning statement.**
- *The land is unsuitable for septic tank and soakaway use;* **Covered in planning statement. It would be handled as per other local dwellings.**
- *Future connection to public sewer is unlikely to be achievable;* **Covered in planning statement.**
- *The applicant has removed trees without permission to the southwest, destroying the character of the rural roadside and works began to remove trees to the north before these were protected by a TPO;* **Not a matter for this procedure.**
- *The site was never earmarked for building;* **It would not be expected of a rural windfall site.**
- *Increase in noise and traffic;* **Not likely for a single dwelling.**
- *There will be no countryside left if houses are built on every open space;* **the relative size of the site is minimal in this respect, and forms a logical extension**
- *Impact on wildlife.* **No impact as this is an open field. In fact the proposed wildflower meadow and other planting is more likely to have a positive impact.**

## 4 Summary

The proposed house is in a different location to previous applications and has been positioned to remain within the envelope of existing house layout within the group.

The applicant owns the adjoining fields within which he has horses stabled here and used for riding, and which he regularly visits.

The house can all be readily serviced in terms of power, communications drainage and water supply.

It is not a location that could be deemed to be remote, and it is within a definable cluster of buildings with a public transport service available within a reasonable distance from the site.

The house would supplement a growing housing group in a logical and well considered manner. It will enhance the rural housing supply and enhance the opportunities for living and working in the countryside.

The development will contribute towards a sustainable, economically active rural area, which is more likely to attract investment and which will encourage vibrant, growing communities. It achieves this whilst maintaining local landscape character.

## 5 Conclusion

The proposed development may be seen to conflict with certain local development plan policies, however there are other material considerations to take into account, as presented here, and it is generally in keeping with national planning policy objectives of ensuring that Scotland is a successful sustainable place; a low carbon place; a natural resilient place; and a connected place.

This is a different proposal and a different site to previous submissions.

The benefits of the development are not outweighed by its impacts. It is a well contained site, and subject to landscaping and upgrading of the existing access, the site can make a very useful contribution to community and local housing.

It is therefore presented to the Local Review Body that the development be supported in principle.

If there is a need to reposition the house or the point of access within the site boundary then the applicant would welcome the opportunity to enter into constructive dialogue to achieve a more positive outcome, beneficial to all parties.



## MIDLOTHIAN COUNCIL

### DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

**Planning Application Reference:** 21/00775/DPP

**Site Address:** Land Adjoining Meyerling, Penicuik.

**Site Description:** The application site comprises a field used for grazing horses and a narrow, overgrown strip of land running between the garden grounds of two houses. Part of the site sits on a ridge making it highly visible from views from the west and northwest. There are some trees along this boundary, as well as along the eastern boundary that runs along the A6094 which forms the eastern boundary of the site. These are covered by a Tree Protection Order. There is a stable at the west of the site which is accessed by a field access from the A6094. There are open fields to the west, houses to the north, the A6094 along the east between the site and open fields to the south. The site lies to the south of Howgate.

**Proposed Development:** Erection of dwellinghouse; formation of access road and associated works.

**Proposed Development Details:** A house and garage are positioned at the northern part of the site. The house is two storey with an L shaped footprint measuring a maximum of 15 metres by 17 metres with a pitched roof 9.8 metres high. This is connected to the garage by a 13.8 metre glazed link. The garage is single storey with accommodation in the roofspace served by two dormer windows and rooflights and is 12.2 metres by 7.9 metres with a pitched roof 6.3 metres high. The walls are natural stone with granite coping, quoins and window surrounds and the roofs natural slate. The supporting statement states the window frames are timber. The application form states solar panels are proposed on the south elevation but these are not on the plans. The land around the house is to be a garden, with the remainder of the site wild flower meadow. The existing field access will be widened to a permeable access for the house and stables which are retained. A rain water harvesting tank, sewerage system and surface water soakaway are proposed. The application form states the houses will connect to the public water supply but the supporting statement states this will be served by a private water supply.

The agent has submitted a supporting statement stating the following. The area is characterised by low density housing and the proposed house will add to the mix and availability of housing the countryside. The siting of the house will supplement the cluster of housing in the area and fit into the landscape. The house is of traditional design and materials with contemporary detailing. There will be no impact on nearby properties. The strip of land to the north will be used for pedestrian and cycle access. The speed limit on the A60894 should be dropped from 60mph to either 30 or 40mph to allow for suitable visibility splays. The site is served by public transport.

**Background (Previous Applications, Supporting Documents, Development Briefs):** Part of application site (excludes the area where the house is sited)

18/00218/DPP Erection of 4 dwellinghouses; formation of access road and associated works. Refused – no justification for houses; layout has adverse impact on surrounding area; prominent views from west having adverse impact on the surrounding area; road safety concerns over access; contrary RD1 and ENV7. Subsequent review dismissed by LRB – for the same reasons.

15/00291/DPP Erection of dwellinghouse and formation of access road. Refused – no justification for house; not form part of group; prominent views from west having adverse impact on the surrounding area; access result in loss of amenity for existing houses; no SUDs or sustainable building design; contrary RP1, DP1 and RP7.

15/00286/DPP Alterations to existing access and formation of hardstanding. Refused – significant adverse impact on road safety for A6094; not demonstrated can be done without adverse landscape impact; contrary RP1 and RP7.

11/00203/DPP Planning permission in principle for the erection of dwellinghouse and formation of access road. Refused – access safety concerns; impact of loss of trees and landscaping to form visibility splays. Subsequent review dismissed by LRB – for the same reasons.

08/00383/OUT Outline application for erection of dwellinghouse including new access road. Refused - prominent views from west having adverse impact on the surrounding area; does not fit with group; access issues having impact on residential amenity; no potable water. Subsequent review dismissed by LRB - access issues having impact on residential amenity.

07/00417/OUT Outline application for the erection of dwellinghouse, offices, seven stables, tack room and creation of two paddocks. Withdrawn.

04/00890/OUT Outline application for the construction of an equestrian centre/riding school and associated dwellinghouse. Refused – inadequate justification; sporadic residential development in rural area; access issues; prominent views from west having adverse impact on the surrounding area; and potential impact on residential amenity.

03/00188/OUT Outline application for the erection of one dwellinghouse. Refused – contrary to Local Plan and National policies; sporadic residential development in rural area; access issues having impact on residential amenity; prominent views from west having adverse impact on the surrounding area.

02/00395/OUT Outline application for the erection of one dwellinghouse. Refused – contrary to Local Plan and National policies; sporadic residential development in rural area; access issues; prominent views from west having adverse impact on the surrounding area.

Howgate restaurant

18/00148/DPP Conversion and associated extensions and alterations of former restaurant to form two dwellinghouses; erection of 5 new dwellinghouses; alterations to existing access; formation of culvert and associated works. Consent with conditions.

### **Consultations:**

The **Policy and Road Safety Manager** recommends refusal as the applicant is unable to meet the minimum level of visibility required for a new junction onto a 60mph road. The proposal is reliant on the existing speed limit of the A6094 being reduced to 30 or 40mph to meet the achievable level of visibility. This section of the A6094 is an unlit 60mph rural road with a narrow footpath along one side. The road



has sections of limited forward visibility with overtaking manoeuvres restricted by solid centre lines. The road operates as a rural 60mph road with very little urban frontage to indicate to drivers that they should be driving at a lower, more urban speed. This section of road would not be a suitable candidate for a reduction in the current 60mph speed limit and it is highly unlikely that the erection of warning or speed limit signs would result in any meaningful change in driver behaviour.

**Scottish Water** has no objection. They state that there is no waste water infrastructure in the area and that they will not accept any surface water connections to the combined sewer.

**Representations:** Five letters of objection have been received on the following grounds:

- The proposal is contrary to the Edinburgh and Lothian Structure Plan, policies RD1, ENV3, ENV7 and ENV11 of the Midlothian Local Development Plan and the Supplementary Guidance;
- There has been little change at the site since the previous applications for housing have been refused and the previous reasons for refusal remain valid;
- The proposed house does not match existing properties and would appear out of place in this rural area;
- The proposal would be ribbon development and result in coalescence;
- Loss of privacy to nearby properties from both the proposed pedestrian and cycle way and a two storey house;
- Overshadowing nearby properties;
- Poor vehicular access due to insufficient visibility splays;
- The proposed access would create road safety hazards and has not changed since the previous refusals;
- It is not fair for motorists using the A6094 to have speed restrictions to accommodate development;
- Road safety concerns from queuing traffic entering the site from the north as this will not be readily visible to other road users due to the levels of the road;
- There is no provision for bin collections or service vehicles;
- The distance to public transport is very marginal and on a dangerous route;
- There is already poor water pressure in the area which would be exacerbated by the proposal;
- The porosity of the site is poor and there are concerns over existing water run off to neighbouring properties as well as the proposed soakaway;
- The land is unsuitable for septic tank and soakaway use;
- Future connection to public sewer is unlikely to be achievable;
- The applicant has removed trees without permission to the southwest, destroying the character of the rural roadside and works began to remove trees to the north before these were protected by a TPO;
- The site was never earmarked for building;
- Increase in noise and traffic;
- There will be no countryside left if houses are built on every open space; and
- Impact on wildlife.

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

**DEV5 Sustainability in New Development** states it will be expected that development proposals will have regard to the following principles of sustainability: building in harmony with the site including optimising on orientation and relationships to contours, provision of shelter and utilising natural features; fostering and maintaining biodiversity; treating and conserving water on site in line with best practice and guidance on sustainable urban drainage; addressing sustainable energy in line with other MLDP policies; recycling of construction materials and minimising the use of non-renewable resources; facilitating accessibility and adaptability; providing for waste recycling in accordance with standards which will be set out in guidance on waste separation, collection and recycling requirements for new developments; and incorporating high speed broadband connections and other digital technologies in line with MLDP policy;

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

**DEV7 Landscaping in New Development** states development proposals will be required to be accompanied by a comprehensive scheme of landscaping. This should: complement the existing landscape within and in the vicinity of the site; create landmarks in the development layout and use the landscape to emphasise these;

**TRAN5 Electric Vehicle Charging** states that the Council will support and promote the development of a network of electric vehicle charging stations by requiring provision to be considered as an integral part of any new development or redevelopment proposals;

**IT1 Digital Infrastructure** supports the incorporation of high speed broadband connections and other digital technologies into new homes;

**RD1 Development in the Countryside** states development in the countryside will only be permitted if: it is required for the furtherance of agriculture, including farm related diversification, horticulture, forestry, countryside recreation or tourism; it accords with other named policies; or it accords with the Council's Supplementary Guidance on Development in the Countryside and Green Belt. All such development will need to be: of a scale and character appropriate to the rural area and well integrated into the rural landscape; capable of being serviced with an adequate and appropriate access; capable of being provided with drainage and a public water supply at reasonable cost, or an acceptable private water supply, avoiding unacceptable discharge to watercourses; and accessible by public transport and services to a prescribed level.

In the case of businesses, these should not be primarily of a retail nature and not harm the amenity of nearby residents through unacceptable levels of noise, light or traffic;

**ENV7 Landscape Character** states development will not be permitted where it may significantly and adversely affect local landscape character. Where development is acceptable, it should respect such character and be compatible in terms of scale, siting and design; and

**ENV11 Woodland, Trees and Hedges** states development will not be permitted where it could lead directly or indirectly to the loss of, or damage to, woodland, groups of trees and hedges which have particular amenity, nature conservation, biodiversity, recreation, landscape, shelter or historical value or other importance.



**Supplementary Guidance for Housing Development in the Countryside and Green Belt** has been adopted which expands policy RD1 and the criteria to be met in such proposals. This provides some support the development of one house where there is a group of 5 or more existing dwellinghouses. A house may be permitted where there is small-scale infill within such groups. Houses should generally be located within any gaps in the group. Where there are no gaps, consideration will be given to locations adjoining the existing group, particularly where there is a site that adjoins the group on two sides. Where there are existing physical or visual barriers separating the site or where distance results in the site being remote from the host group, development will not be acceptable. Proposals in open fields adjoining a group, which have not physical features to provide containment will not be acceptable. Proposals which impact adversely on trees, hedgerow and boundary features, or are located on the opposite side of physical features which form strong boundaries for a group will not be acceptable. The design of any proposed dwelling is an important consideration. Development must be small-scale in relation to the existing group and respect the character, cohesiveness and amenity of the group being extended.

**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.

As detailed in the Background section, numerous planning applications for housing for part of this site have been refused since 2002. The planning authority has consistently considered the development of the site for housing is contrary to planning policy and cannot be supported. Recent applications have been submitted with the agent stating these comply with the housing group section of the related policy. However the planning authority did not consider that this site meets the criteria of this policy or forms an acceptable plot for development within this housing group. This has been supported by LRB where previous reviews have been dismissed. However the current application site includes an area which was not previously included in other applications, where the house is now proposed. This adjoins houses on two boundaries.

The planning authority has restrictive policies for proposals for new housing developments within the countryside. These aim to prevent the creeping suburbanisation of the countryside which are under significant pressure due to the convenient commuting distance to Edinburgh. However, there are enabling policies, within the adopted Midlothian Local Plan, which support residential developments within the countryside. Policy RD1 of the local plan contains several sections where houses could be acceptable in the countryside.

The proposed house is not required for the furtherance of an established countryside activity. It is not a replacement house or the conversion or redevelopment of existing redundant farm buildings or other non-residential buildings. The proposal is not an enabling development where it is clearly shown that this is the only means of preventing the loss of a heritage asset and securing its long term future.

Policy RD1 provides some support for houses in groups where 1 new dwelling is permitted during the plan period where there are 5 existing units. The applicant states houses to the south are within the group and so the number of houses within the group is 17. However the planning authority considers the group of Meyerling/Mosshouses extends to the houses to the north and northwest of the site only. The houses to the south are visually separate from the houses to the north and northwest and so do not form part of a larger group. Therefore at present there are six houses within the existing group meaning there may be policy support for one house, provided this complies with the related criteria.

As part of the planning permission granted for housing at the former Howgate restaurant to the north, one house was approved through the housing groups policy. This means that the one house in this group that could be supported by this section of the policy has already been approved. There is no policy support for a further house in this group during this current Local Development Plan period.

There is no policy support for housing at this site. However, the agent states the proposal will diversify and provide accommodation for people who wish to live in these areas without a link to proposed businesses or conversions of non-residential buildings. As detailed above, the policies aim to protect the character of rural areas from sporadic developments which result in suburbanisation of the countryside, but there are a number of criteria which can be met where housing in the countryside is appropriate and acceptable. These criteria do not dictate that these houses have to be large or unaffordable, thereby providing opportunities for a range of housetypes provided they meet policy requirements. This justification for a house here on these grounds is not materially significant to result in a decision which would depart from the adopted policy.

Notwithstanding the lack of policy support in principle, the details of the proposed scheme must also be considered.

The Supplementary Guidance provides details on how to identify appropriate plots for development. Any new unit within a group must be of a location, scale and character in keeping with that of the existing group. A house may be permitted where there is small-scale infill within groups and should generally be located within any gaps in the group. Where there are no gaps, consideration will be given to locations adjoining the existing group, particularly where there is a site that adjoins the group on two sides. Where there are existing physical or visual barriers separating the site or where distance results in the site being remote from the host group, development will not be acceptable. There shall be an existing physical or visual feature which provides containment for the group or potential for this.

The area the proposed house is sited is within an area of the site that adjoins the group to the north and northwest. The remainder of the site does not. The character of the existing houses in this group is small scale, rural houses which either address the A6094 or cluster together to the northwest. These are either single storey, single storey with accommodation wholly within the roofspace or single storey with wallhead dormers providing accommodation in the roofspace.



The proposed house sits centrally in this part of the site, neither close to the houses facing the A6094 or forming a cluster with the houses to the northwest. Although this part of the site adjoins houses on two sides, the siting of the house does not respect the cohesiveness of the group. It should be noted that if the house were repositioned to front onto the A6094, this would impact the protected trees along this boundary and so is unlikely to be supported. The proposed house is traditional in scale and form but is large at two storey. This would be the largest house in the group and not respect the smaller scale character of this group. The proposed garage almost appears comparable in size and scale to another house in the group. There are protected trees to the east of this area which would provide some containment, but no other physical features to provide containment to the south. Due to the position of the house, this could appear to be ribbon development and, if approved, lead to future applications for houses in the remainder of the site.

It is clear that had the principle of supporting a house at this site through the housing groups policy been established, the position and design of the proposed house does not comply with the guidance for acceptable plots and so would not be supported.

Adequate garden ground and parking is provided for the house.

The position of the house within the plot means this would be screened from views from the east and west by existing, now protected, trees. This limits the visual impact of the house in the surrounding rural landscape. The trees within the site positively contribute to the landscape character and setting in the area, as well as nearby biodiversity sites and green networks. Should permission be approved, a tree survey and constraints plan are required to ensure all existing trees are protected where identified as necessary and tree removal should be restricted to where necessary on health and safety grounds as identified in the tree survey by a qualified arboricultural consultant. Also additional native planting would be required including a 10 metre woodland edge shelterbelt along the south and east boundaries.

The site is within 1 mile of services and public transport

The existing access is recessed slightly from the A6094 with a gate. Although there are some trees to the north, a number to the south have been removed. This removal did not require planning permission, but this loss has had a detrimental impact on the landscape character of the area. This appears to be connected to providing adequate visibility and accommodation for the required visibility splays for the vehicular access. It is regrettable that these have been removed as these enhanced the landscape of the area, however as these were not protected the planning authority had no control over these works. The trees to the north of the access have recently been covered by a Tree Preservation Order and are now protected from works unless a works to trees application is approved.

Although the ground levels in the area and curve of the A6094 are major issues in achieving the required visibility splays, the planning authority is concerned that if permission is approved for this house, the protected trees would come under pressure to be removed to help with visibility. This would have a significant

detrimental impact on the landscape character of the area, as can be seen to the south of the access where trees have already been lost.

The required minimum splays to meet the minimum level of visibility required for a new junction onto a 60mph road have not been met. The applicant's agent suggests that the existing speed limit of the A6094 being reduced to 30 or 40mph to meet the required visibility splays.

This section of the A6094 is an unlit 60mph rural road with a narrow footpath along one side and the road has sections of limited forward visibility with overtaking manoeuvres restricted by solid centre lines. The road operates as a rural 60mph road with very little urban frontage to indicate to drivers that they should be driving at a lower, more urban speed. This section of road would not be suitable for a reduction in the current 60mph speed limit and it is highly unlikely that the erection of warning or speed limit signs would result in any meaningful change in driver behaviour.

Although the agent has suggested a speed reduction in an attempt to provide the access to the site, this does not address the significant road safety concerns to a standard where this could be considered acceptable. Road safety issues have been included in the reasons for refusing previous applications here and are applicable in this application.

The proposed layout means the garage would be approximately 8 metres from the boundary to the northwest and the house would be 45 metres from the house to the north. There are no windows on the ground floor elevation of the garage facing the northwest and two rooflights in the roof. No cross section of the garage has been provided so it is not clear how high there are from floor level and if these would result in significant overlooking to the garden ground to the nearby house. If planning permission were approved, these could either be conditioned out or require to be obscure glazing. There is a large amount of glazing on the elevation of the house facing north, however there is approximately 45 metres between this and the shared boundary and so it is considered that there will not be a significant adverse impact on the privacy on the occupants of the existing property. Also, due to the distance between properties, there is unlikely to be any significant impact on overshadowing to properties.

The strip of land to the rear of the existing properties to the northwest to access onto Milkhall Road is to be used as a pedestrian and cycle access. Should planning permission be granted, adequate boundary treatments could be in place along this area to protect the amenity of the existing and proposed residents.

No details of the private sewage treatment system and site drainage have been submitted as yet but if permission is granted these would be required. The objectors' comments about potential impact on their amenity and flooding would be addressed at this stage. Scottish Water have no objection to the proposal or any concerns over water pressure in the area.

The Council's Biodiversity consultant has not raised any concern in regards impact on wildlife. Should planning permission be approved, details of a scheme to enhance biodiversity here would be required.



The proposal is for one house and so any increase in noise in the area is not considered to be significant.

In summary it appears that the argument presented along with this proposal is the latest attempt in a long line for housing at this site, where residential development of the site has been consistently resisted by the Council for almost 20 years. If refused permission this will be the eighth time that planning permission has been refused for housing on this site since 2002. The Local Review Body has also dismissed requests for reviews on three occasions. The proposal to develop housing here is not supported by current planning policy; the site does not have an adequate access which could serve dwellings; and the design and scale of the proposed houses is not appropriate in this location. The applicant is strongly advised to give serious consideration to these points before submitting any further application.

The LRB detailed, in its determination of the Review of application 08/00383/OUT, that should the principle of a house at the proposed site be established, it would require to be of a particularly high quality design and be accompanied with a substantial landscaping scheme to soften its impact on the surrounding landscape. It is considered that this proposal does not meet these points, related policies or provide sufficient justification to depart from policy.

**Recommendation:** Refuse planning permission.

**Reg. No. 21/00775/DPP**

Format Design  
146 Duddingston Road West  
Edinburgh  
Scotland  
EH16 4AP

Midlothian Council, as Planning Authority, having considered the application by Mr Tony Pia, 146 Duddingston Road West, Edinburgh, EH16 4AP, which was registered on 20 September 2021 in pursuance of their powers under the above Acts, hereby **refuse** permission to carry out the following proposed development:

**Erection of dwellinghouse; formation of access road and associated works at Land Adjoining Meyerling, Penicuik**

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

<u>Document/Drawing.</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Location Plan	10141-03-03 1:2500	20.09.2021
Site Plan	10041-03-02 1:1000	20.09.2021
Floor plans, elevations, cross sections	10141 03 01 1:100	11.11.2021

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

- 1. The proposal for a dwellinghouse does not comply with the housing group policy where only one house per five units may be supported. Planning permission has already been granted for the erection of one house on an adjacent site within this established housing group of Meyerling/Mosshouses and there is no policy support for a further house to be sited in this group.*
- 2. The proposal does not comply with the establish principles and criteria for accommodating a new house in a housing group it does not respect the character and cohesiveness of the group.*
- 3. It has not been demonstrated that the proposed dwellinghouse is required in connection with an established countryside activity and it has not been justified in connection with policy RD1.*
- 4. For the above reasons the proposed development does not comply with the terms of policy RD1 of the adopted Midlothian Local Development Plan 2017.*
- 5. The proposed vehicular access, and subsequent potential intensification in use, would have a significant adverse impact on the safety of road users on the A6094 by way of its below standard visibility for all vehicles existing the site and the forward visibility of vehicles travelling behind those turning into the site, particularly from the*



*southbound carriageway. These concerns have not been sufficiently allayed by the proposals.*

6. *It has not been demonstrated to the satisfaction of the Planning Authority that the proposed access can be constructed without having a significant adverse impact on the character and appearance of the surrounding area and therefore the proposed access is contrary to policies RD1 and ENV7 of the adopted Midlothian Local Development Plan 2017.*

Dated 19 / 11 / 2021



.....  
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  
Email: [planningconsultation@coal.gov.uk](mailto:planningconsultation@coal.gov.uk)  
Website: [www.gov.uk/coalauthority](http://www.gov.uk/coalauthority)

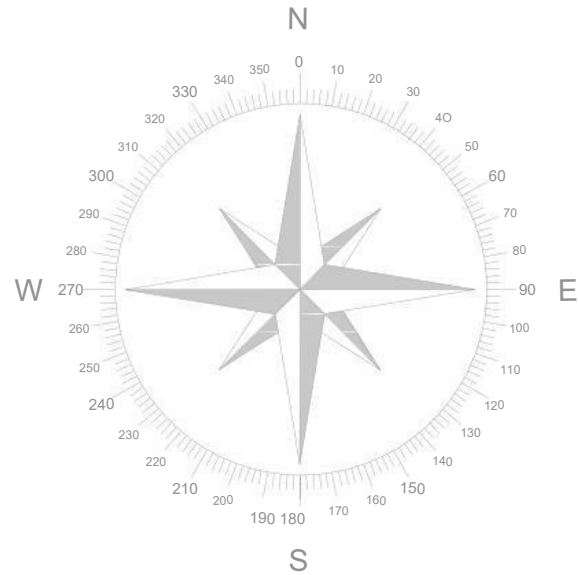
### **STANDING ADVICE**

The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848.

Further information is also available on the Coal Authority website at:  
[www.gov.uk/government/organisations/the-coal-authority](http://www.gov.uk/government/organisations/the-coal-authority)

Standing Advice valid from 1st January 2021 until 31st December 2022



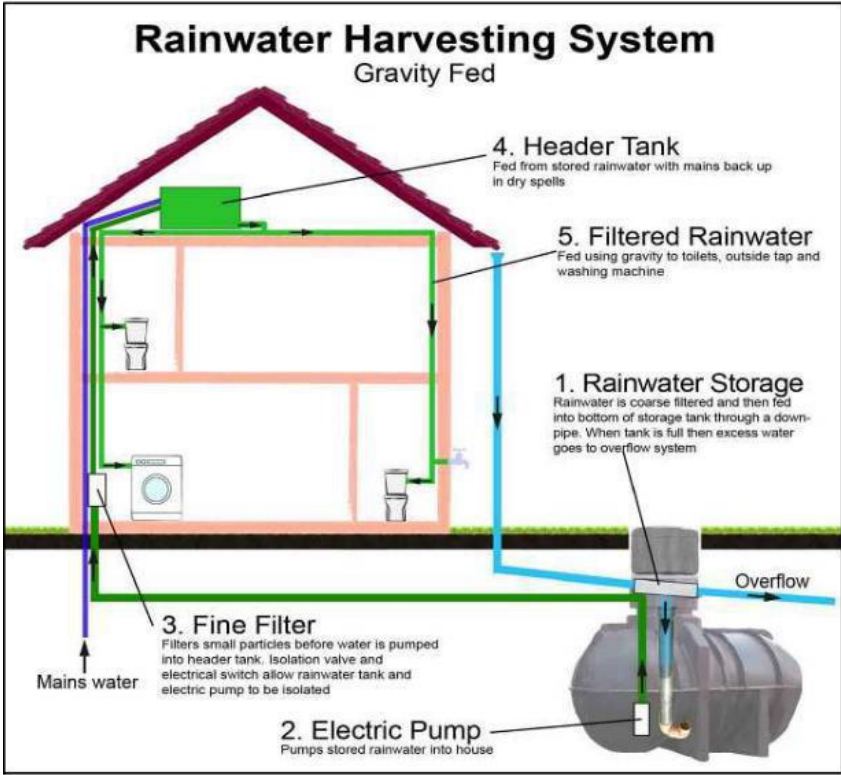


**SITE PLAN LEGEND:**

— BOUNDARY LINE

AREA OF SITE = APPROX 2.2 HECTARES

- 1. Proposed traditional farmhouse style single dwelling & detached garage linked by frameless structural glazed connection. PV Solar panels to be installed on south facing roof elevation
  - 2. Proposed landscaped gardens
  - 3. Proposed wild flower meadows
  - 4. Ex. stables retained
  - 5. Proposed permeable road access from existing gated entrance to stables
  - 6. Proposed subterranean rain water harvesting tank for flushing of toilets and utilities - 2.2m³ capacity
  - 7. Proposed Tricel novo uk 18 with gravity discharge to sample chamber sewerage treatment system
  - 8. Proposed surface water soakaway and percolation area
- Ex. access to stables
- Mains water supply taking from 180mmØ MDPE distribution main to the north of the site, already serving surrounding properties



Rain Water Harvesting Methodology



Proposed Site Plan  
Scale 1/1000



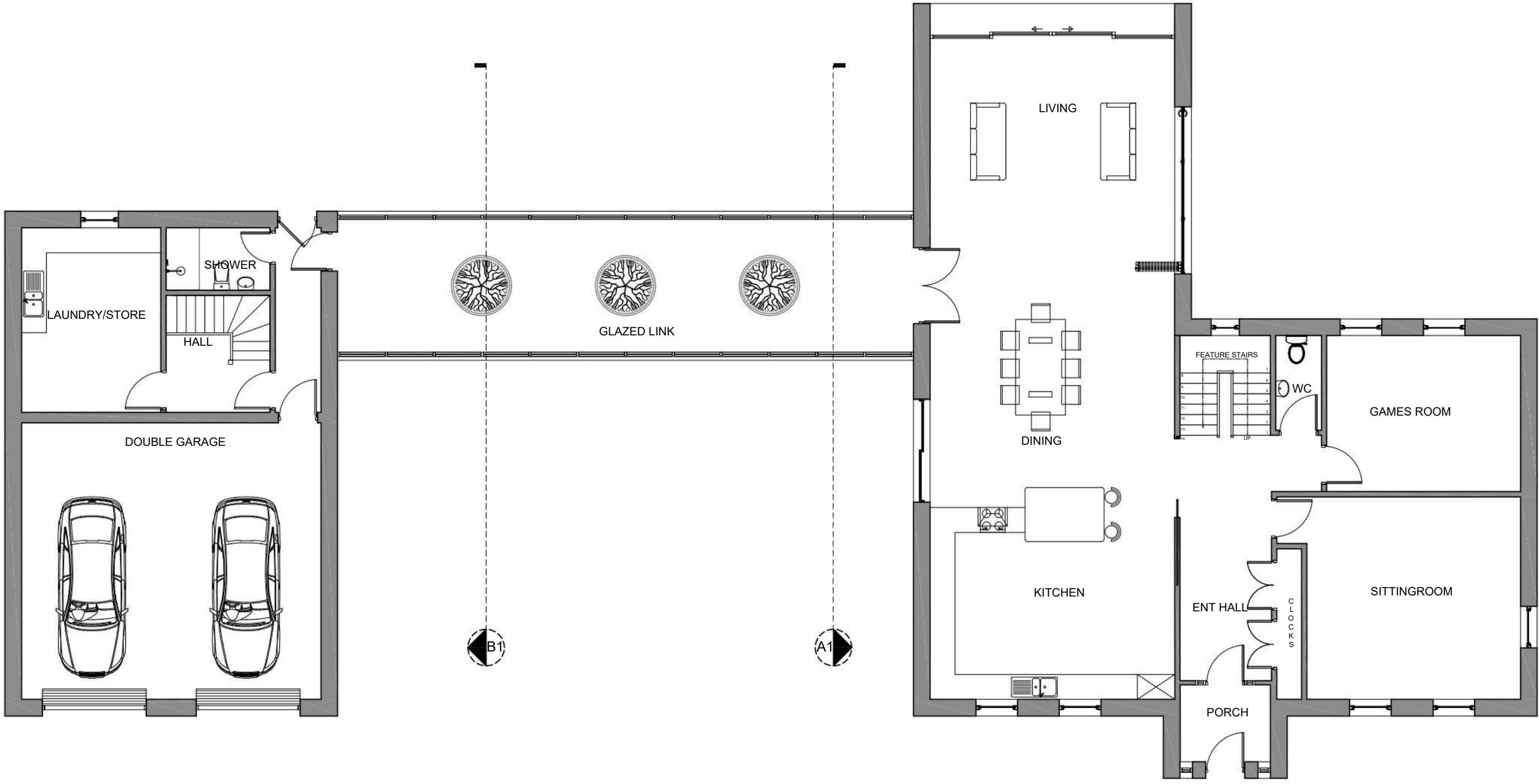
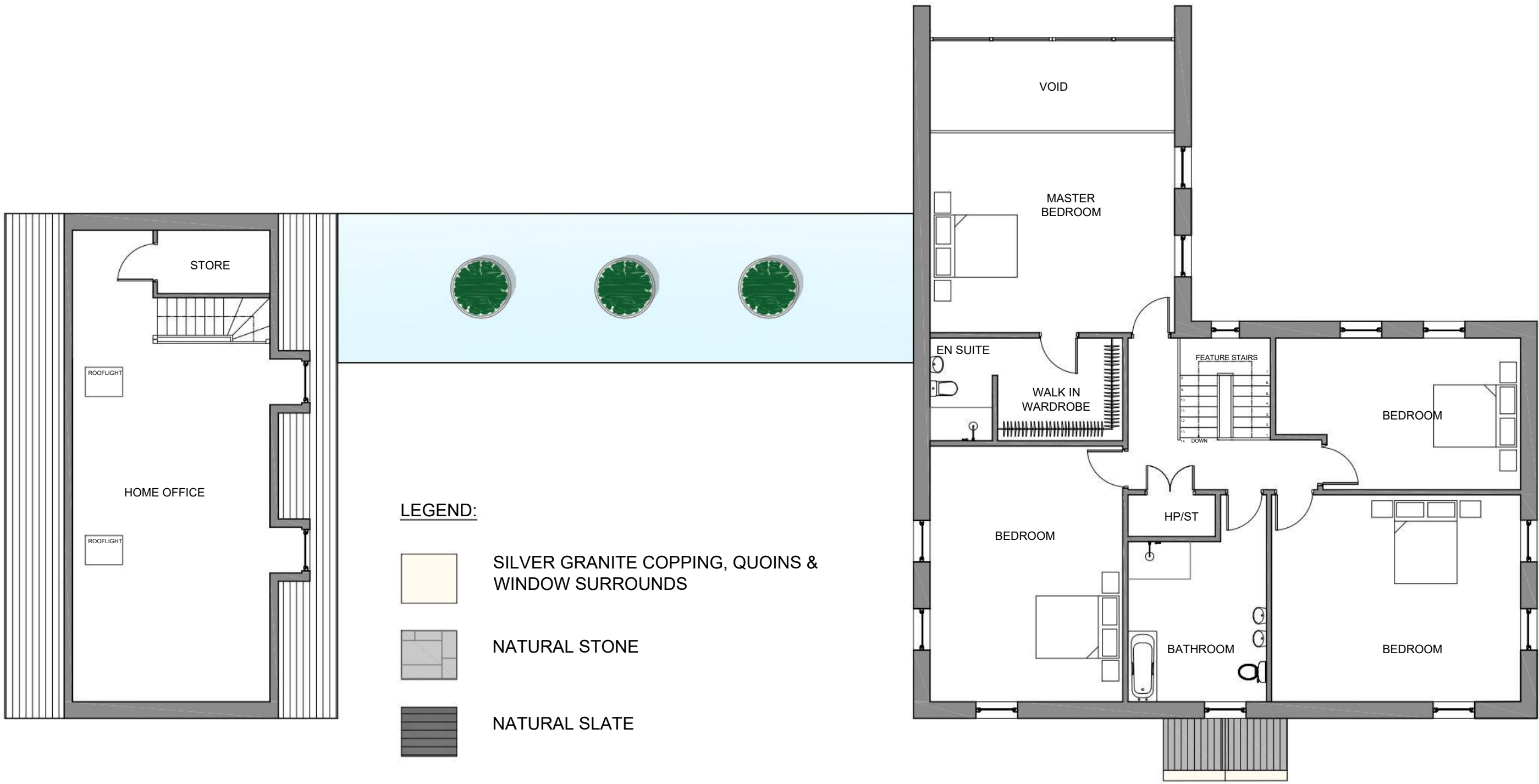
Photo 1  
Looking South - Approx 115 Metres To Slight Bend



Photo 2  
Looking North From Gate 105M Approx To Brow Of Hill

rev	date	details	by	rev	date	details	by	<p>THIS DRAWING WAS PREPARED TO OBTAIN BUILDING CONTROL AND/OR PLANNING PERMISSION AND CAN ONLY BE USED AS A WORKING DRAWING WITH PERMISSION FROM FORMAT BUILDING DESIGN.</p> <p>THIS OFFICE'S LIABILITY ENDS UPON THE RECEIPT OF A DECISION FROM BUILDING CONTROL AND/OR THE PLANNING DEPARTMENT.</p> <p>THIS DRAWING IS NOT TO BE REPRODUCED WITHOUT PERMISSION.</p> <p>CONTRACTOR NOT TO DEVIATE FROM THE APPROVED DRAWING WITHOUT INFORMING FORMAT DESIGN.</p> <p>Page 126 of 128</p> <p>ALL SIZES AND DIMENSIONS TO BE VERIFIED ON SITE BY CONTRACTOR AND MANUFACTURER.</p>	<p><b>SERVICES OFFERED:</b></p> <p>MEASURED SURVEYS PLANNING CONSULTANTS FEASIBILITY STUDIES NEW BUILDS</p> <p>PLANNING APPLICATIONS LISTED BUILDING APPLICATIONS BUILDING WARRANT APPLICATIONS LIQUOR LICENCING DRAWINGS DEED PLANS</p>	drawing title: Prop. Site Plan		scale: @A2
										job title: Howgate, Penicuik Midlothian	drawing no:10041-03-02	
										client: Tony Pia	date: 05.08.21	
										status: Planning	drawn: MJ	
										<b>format DESIGN</b>		Tel: 0131 661 7666 Fax: 0131 659 6033 Email: formatdesign@aol.com Web: www.formatbuildingdesign.com
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A	11 11 21	Sectional elevations for planner and correct orientation of plans elevations	MJ									job title: Howgate, Penicuik Midlothian	drawing no:10141 03 01	
												client: Tony Pia	date: 13.05.21	
												status: Planning	drawn: MJ	
												format DESIGN FADADS Limited Holyrood Business Park 146 Duddingston Road West Edinburgh EH16 4AP Tel: 0131 661 7666 Fax: 0131 659 6033 Email: formatdesign@aol.com Web: www.formatbuildingdesign.com		



