



APPEALS AND LOCAL REVIEW BODY DECISIONS

Report by Head of Communities and Economy

1 PURPOSE OF REPORT

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

2 BACKGROUND

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

3 PREVIOUS REVIEWS DETERMINED BY THE LRB

- 3.1 At its meeting on 16 January 2018 the LRB made the following decisions:

	Planning Application Reference	Site Address	Proposed Development	LRB Decision
1	17/00636/DPP	14 High Street, Lasswade	Change of use from office to restaurant	Permission granted at LRB meeting of 16.01.2018
2	17/00690/DPP	Land west of Roanshead Crescent, Easthouses	Planning permission in principle for the erection of three dwellinghouses	Permission refused at LRB meeting of 16.01.2018

	Planning Application Reference	Site Address	Proposed Development	LRB Decision
3	17/00758/DPP	31A Eldindean Road, Bonnyrigg	Extension to dwelling house	Permission refused at LRB meeting of 16.01.2018
4	17/00404/S42	2A Nivensknowe Road, Loanhead	Application to remove conditions relating to fencing and boundary treatment from a previous grant of planning permission to change the use of warehouse to vehicle servicing depot	Permission granted at LRB meeting of 16.01.2018

4 APPEAL DECISIONS

- 4.1 An appeal against a refusal of planning permission for the erection of nine dwelling houses, formation of access and car parking and associated works at land west of the Laird and Dog Hotel, High Street, Lasswade has been dismissed. The Reporter appointed by the Scottish Ministers concluded that the proposed development is out of keeping with the character of the area and the conservation area in terms of its scale, form, design and materials. The Reporter also dismissed a claim for costs made by the applicant. A copy of the appeal decision accompanies this report.
- 4.2 An appeal against a refusal of planning permission for the erection of 11 flatted dwellings and five dwelling houses, formation of access and car parking and associated works at land at junction of Bryans Road and Morris Road, Newtongrange has been upheld subject to conditions and the conclusion of a legal agreement to secure developer contributions. The Reporter appointed by the Scottish Ministers concluded that the proposed development is in keeping with the character of the area in terms of its scale, form, design and materials. A copy of the appeal decision accompanies this report.

5 RECOMMENDATION

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

Ian Johnson
Head of Communities and Economy

Date: 8 February 2018
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Background Papers: LRB procedures agreed on the 13 June 2017.



Decision by Nick Smith, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-290-2042
- Site address: Land west of the Laird and Dog Hotel, High Street, Lasswade, EH18 1NB
- Appeal by Cook Investments/Dimension Homes Ltd against the decision by Midlothian Council
- Application for planning permission 16/00727/DPP dated 19 October 2016 refused by notice dated 16 June 2017
- The development proposed: erection of 9 dwelling houses; formation of new access and car parking and associated works
- Date of site visit by Reporter: 8 November 2017

Date of appeal decision: 15 January 2018

Decision

I dismiss the appeal and refuse planning permission.

My decision on the appellant's claim for an award of expenses is set out in a separate decision notice, also issued today.

Preliminary matter

1. The council concluded that the size and nature of the proposal meant it did not require an environmental impact assessment (EIA). However, due to an oversight a formal screening opinion was not adopted and placed on Part 1 of the planning register. Having had regard to all of the submissions, I am satisfied that the proposal is not EIA development.

Reasoning

2. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The development plan comprises SESplan Strategic Development Plan 2013 and Midlothian Local Development Plan 2017. There are several matters raised by local residents to which I have had regard and I consider these later in this decision notice. There is little dispute about the principle of redeveloping this brownfield site for housing. The main issues in this appeal are the impacts of the proposal on:

- the character or appearance of the Lasswade and Kevoch Conservation Area;
- the setting of nearby listed buildings;

- the specific qualities, character and integrity of the nearby Melville Castle Garden and Designed Landscape;
- the adjacent Old Lasswade Parish Church scheduled ancient monument; and,
- the amenity of neighbouring properties.

3. No parties refer me to policies in SESplan (2013) or to any provisions of the proposed SESplan (2016). It could be argued that SESplan (2013) policy 1B is relevant because it seeks to conserve and enhance the built environment. However, I am satisfied that this and all other relevant matters are covered by policies in the Midlothian Local Development Plan (2017).

4. Since this appeal was submitted the council has adopted a new local development plan which replaces the Local Plan (2008). Helpfully, both the council and the appellant referenced policies in both the Local Plan (2008) and the Proposed Local Development Plan (2014). The council has advised of minor modifications to some of these proposed local development plan policies that took place upon adoption. I find that these modifications do not fundamentally change the aims or contents of these policies. I therefore use the Local Development Plan (2017) policies listed below in my consideration of this appeal:

- STRAT2: Windfall housing sites
- DEV2: Protecting amenity within built up areas
- DEV5: Sustainability in new development
- DEV6: Layout and design in new development
- DEV7: Landscaping in new development
- DEV9: Open space standards
- ENV6: Special landscape areas
- ENV11: Woodland, trees and hedges
- ENV16: Vacant, derelict and contaminated land
- ENV19: Conservation areas
- ENV23: Scheduled ancient monuments
- IMP1: New development
- IMP2: Essential infrastructure required to enable new development to take place

5. The site is within the Lasswade and Kevoek conservation area with several listed buildings close by. I must therefore have special regard to the desirability of preserving the setting of the nearby listed buildings and I must pay special attention to the desirability of preserving or enhancing the character or appearance of the Lasswade and Kevoek conservation area, in accordance with sections 59(1) and 64(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

6. Scottish Historic Environment Policy paragraph 3.76 requires me to have careful regard to the specific qualities, character and integrity of the nearby Melville Castle Garden and Designed Landscape. The proposal is also directly adjacent to land containing a scheduled ancient monument; however no works are proposed to this monument.

Impact on the conservation area and nearby historic assets

7. I have been referred to the nearby Mavisbank development by the same developer. Whilst this development uses similar materials to the proposal it is otherwise considerably different. Mavisbank's homes are one and a half storeys with pitched slate roofs in a courtyard style. The properties closest to the A768 reflect the colour and style of the original buildings opposite. The site is largely flat and on the edge of Loanhead village, which is not part of the same conservation area. The appeal proposal differs from each of these and I must consider it on its merits. As such I give Mavisbank little weight.

8. Both the council and the appellant reference the original site development brief (2004) and the updated development brief (2013). Both are based on policies in the now replaced Midlothian Local Plan (2008). However, both the council and the appellant refer me to the equivalent policies in the proposed local development plan (2014) - now slightly modified in the adopted plan (2017). The content and aims of many of these policies continue to be the same as the now replaced local plan (2008). I therefore give the development brief (2013) some weight. I find that the original development brief (2004) has been superseded and I give it no weight.

9. The updated development brief (2013) covers the largest part of the site, where the former school was located; bullets two and three require a maximum of six homes. The proposal is numerically consistent with this but these same bullets require the six homes to be located on the plot of the former school. Production 063: Overlaid Building Plan shows this is not the case. The scale of the proposal therefore exceeds the provisions of the brief.

10. The Lasswade and Kevoek Conservation Area Character Appraisal must form part of my consideration under policy ENV19. It notes that the area surrounding the site, including the High Street, School Green and the lower part of Polton Road, is dominated by 19th century buildings. It also remarks on the dominant style of pitched and slated roofs. This was evident from my site inspection. I therefore find that the critical issue is the impact of the scale, form, design and materials of the proposal on the character and appearance of the conservation area.

11. The development brief (2013) bullets seven and ten require pitched roofs that are finished in slate. The proposed roofs are flat, albeit with a gently sloped element, and are not finished in slate. I find that this jars with the roofscape of the conservation area, which is dominated by pitched, slate roofs. On my site inspection I saw a small number of garages and two homes with flat roofs in the conservation area. These were hidden amongst the vegetation and overshadowed by taller nearby pitched, slate-roofed houses. I therefore give their presence little weight.

12. I find that the proposed third storeys give the impression of bolted-on, box-like structures which overhang the front and sides of the buildings. I find this to suggest significant bulk to the third stories, which would be most visible given their height and prominent hillside position. The site is visible from properties and streets within the conservation area on both sides of the river; including several points along Westmill Road and Polton Road (opposite the site). For these reasons I agree with the council's conclusions regarding juxtaposition.

13. The appellant argues that the council opposes contemporary design and refers me to Scottish Planning Policy, Creating Places, Planning Advice Note 67 and Scottish Historic

Environment Policy. I give these documents some weight. They show how contemporary architecture can (my emphasis) enhance sensitive historic environments. However, their policies and guidance operate within the provisions of Sections 59(1) and 64(1) of the Act, which are my main consideration. I find that these national policies do not argue that contemporary architecture is automatically acceptable in any form where historic assets are present.

14. I find the issue is not the contemporary design but the absence of pitched, slate roofs and that the flat roofs and bulky third stories are obvious and intrusive. I find this to be emphasised by the scale and massing of the proposal, which forms a distinctive block on a prominent hillside. As such I find that the proposal does not fit well with the character or appearance of the conservation area. For the same reasons I find the proposal would adversely affect the setting of the category C listed Lasswade Hall and Bridgend House to the east of the site. These are lower down the hill and form part of the same townscape. Consequently the proposal is contrary to policy ENV19 and the provisions of Sections 59(1) and 64(1) of the Act, to which I must have regard.

15. No works are proposed to the Old Lasswade Parish Church scheduled ancient monument, which is on adjacent land. The setting of the category B listed manse and stables to the north west is shielded by trees and a high stone wall along Gospel Wynd/Coffin Lane as well as by the proposed planting around the site boundary. I therefore find the impact of the proposal on these historic assets to be limited. This same vegetation and the local topography also provide visual separation from the nearby western edge of the Melville Castle Garden and Designed Landscape. I therefore find there are no risks to its specific qualities, character and integrity. I also note that Historic Environment Scotland raises no issues with regard to these historic assets.

16. Whilst this proposal is on brownfield land within a defined built up area it is likely to detract materially from the existing character and appearance of the Lasswade and Kevoch Conservation Area, which makes up the adjoining urban area (as set out above). Therefore the proposal also fails policies DEV2 and DEV6 part A. The proposal also fails policy ENV16, which is dependent on meeting policy DEV2. Whilst this is a windfall site the proposal does not have regard to the character of the area in terms of scale, form and design (as set out above). Therefore the proposal also fails policy STRAT2 part C.

Amenity and neighbouring properties

17. Some neighbouring residents raise concerns that the proposed earthworks could undermine the structural integrity of their properties and boundary walls. However, I agree with the council's conclusion in report of handling paragraph 8.16. This acknowledges that the appellant has prepared a method statement (production 041) and that these matters will form part of the building warrant process rather than the planning process. I also agree with the council's consideration of amenity matters in the report of handling for properties adjacent the site to the east. However, plot nine is immediately adjacent to the boundary wall with the neighbouring property at Old School House to the west.

18. Production 084 and the plot, elevation and floor plans suggest that the western corner of plot nine's third storey would overlook Old School House's eastern corner and garden. This would be further emphasised by the steep, downward sloping site topography

along this boundary. Whilst the positioning of plot nine's side and rear windows may reduce some of the overlooking impact I am not convinced that this overcomes the matter due to the height and immediate proximity of plot nine's third story to the boundary. I find that this situation is the result of the proposed design and layout which locates plot nine (and others) outwith the footprint of the original school building. I also find that this could not be overcome through conditions. For this reason I find that the proposal also fails policy DEV2 on amenity grounds.

Other matters

19. Neighbouring residents have raised issues relating to landscape and tree loss. However, the proposal includes planting along the northern and western boundaries to retain the woodland backdrop, consistent with the development brief (2013). The evidence before me does not identify tree preservation orders on the site. I therefore agree with the council's consideration of these matters in the report of handling. I was also made aware of offsite Japanese Knot Weed near to the site entrance. However, this is for separate processes and authorities and it does not affect my consideration of this appeal.

20. Several parties raise concerns about the proposed road access and road safety. The appellant considers that this should not have been a reason for refusal. On my site inspection I saw that the A768 is a busy road, even though this part is a 20 miles per hour zone. The council's roads team note this site does not have a record of accidents and is not currently an area of road safety concern. The council's roads team note that the anticipated traffic resultant from the proposal would be less than was historically the case. They conclude that the existing visibility splays do not meet current standards but that this could be overcome through conditions. Were I to allow the appeal I would impose such conditions. However, these conditions would not resolve the issues set out above with regard to the proposal's impacts on amenity and the historic environment.

Planning obligations

21. The appellant also raises several matters with regard to planning obligations sought by the council in the event of approval. They also refer to the recent Elsie case judgement with regard to the principle of trivial relationships between proposed development and infrastructure to which its developers are asked to contribute. However, as I am dismissing this appeal and therefore such issues are not required to be addressed in this notice.

Conclusions

22. I therefore conclude, for the reasons set out above, that the proposed development does not accord overall with the relevant provisions of the development plan and that there are no material considerations which would still justify granting planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions. Accordingly I dismiss the appeal.

Nick Smith

Reporter



Decision by Nick Smith, a Reporter appointed by the Scottish Ministers

- Appeal reference: PPA-290-2042
- Site address: Land west of the Laird and Dog Hotel, High Street, Lasswade, EH18 1NB
- Claim for expenses by Cook Investments/Dimension Homes Ltd against Midlothian Council

Date of decision: 15 January 2018

Decision

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

Reasoning

1. Scottish Ministers' policy on expenses in planning appeals is contained in Circular 6/1990: *Awards of expenses in appeals and other planning proceedings*. For a claim to be successful it must be made at the appropriate stage in proceedings; the party against whom the claim is made must have acted unreasonably; and that unreasonable conduct must have caused the party making the claim to incur unnecessary expense.
2. In this case the claim was included in the appellant's appeal statement and was, therefore made at the appropriate stage of the proceedings.
3. Section six of the appellant's appeal statement makes their case for expenses on the basis that the council's handling procedures, timescales and decision making were not reasonable and that the council's refusal of the application lacked adequate reasoning.
4. The council accepts that the recommendation of council officials to the committee was to grant planning permission subject to conditions. In reaching a decision on an application however, members do not have to follow the recommendation of officials. The committee must determine each application on its own merits, having regard to the development plan and all the material information available to it. The acceptability of a proposal and its compliance with the development plan is a matter for the judgement of committee members.
5. In a democratic context, a committee is entitled to arrive at a decision different from that recommended by its professional officers, provided it had reasonable grounds for doing



so. I am satisfied that the council properly exercised its planning judgement. The committee clearly took account of local representations, as it was required to do, but there is no evidence that the strength of local opposition led the committee to exercise its planning judgement unreasonably. On consideration of this appeal I have reached the same conclusion as the council on the impact of the proposal's scale, form and design upon the character and appearance of the conservation area.

6. On the matter of the information that was before the committee; the report of handling was before the committee prior to its decision. Elected members often raise and debate matters with varying levels of relevance to a case during their consideration. I have listened to the audio file provided by the appellant and considered the report of handling. I find no evidence to persuade me that the information before the committee was incorrect or insufficient.

7. The procedures to be followed at committee meetings are a matter for the council, and the evidence does not suggest to me that the procedures followed were unusual or unreasonable. In addition, there is no evidence that the council failed to consider the relevant provisions of the development plan, which were set out in the planning officer's report to the committee and form part of the reasons for refusal. Although there was some matter of debate regarding the number of homes and the development brief, these matters were clarified.

8. The time taken by the council to determine the proposal is not a matter upon which I can comment.

9. I can understand the appellant's wish to contest the third reason for refusal regarding the access arrangements. However, I find that the appellant's claim is based on the nature of discussions held by councillors at the committee which determined the original application. I have already noted in paragraph 4 to 7 (above) my conclusions regarding these matters. Overall, I conclude that the council did not act unreasonably in finding the access arrangements to be unsatisfactory. On that basis there is no need to consider whether the appellant incurred unnecessary expense.

10. Even if this were not the case, reasons for refusal one and two mean that the appellant would still have needed to lodge an appeal in the absence of reason three. I am also satisfied that the appellant has not had to carry out additional or substantive work to make their case regarding the proposed access. The vast majority of their appeal statement focuses on the proposal's location, scale, form and design and also the planning obligations to be sought in the event of approval.

11. I therefore decline to award expenses to the appellant.

Nick Smith
Reporter



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

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

Date of appeal decision: 22 January 2018

Notice of Intention

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

Reasoning

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

Background



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

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

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

Character of the area

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

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

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

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

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

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

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

Residential and neighbouring amenity

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

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

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

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

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

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

Adequacy of garden grounds

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

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

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

Access arrangements

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

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

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

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

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

Other matters

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

Conditions and Legal Agreement

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

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

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

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

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

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

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

Overall Conclusion

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

Amanda Chisholm

Reporter

Proposed Conditions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Advisory notes

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

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

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

Schedule of application drawings

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