

## **Notice of Review: 38 Lawrie Terrace, Loanhead**

### **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 former storage building to church/place or worship (retrospective) at 38 Lawrie Terrace, Loanhead.

#### **2 Background**

- 2.1 Planning application 21/00727/DPP for the change of use of former storage building to church/place or worship (retrospective) at 38 Lawrie Terrace, Loanhead was refused planning permission on 1 December 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 1 December 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 agreed procedures the LRB:

- 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 of written submissions.
- 4.2 The case officer's report identified that there were two consultation responses and three representations received. As part of the review process the interested parties were notified of the review. One additional comment has been received complaining about noise generated by the use of the building. 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 The nature of the proposal is such that it is considered that no conditions would be required if the LRB is minded to grant planning permission.
- 5.2 If the LRB dismisses the review, the use of the building as a church/place of worship will need to cease. In this case the applicant will be asked to comply with this requirement within two months of the LRB decision. However, the failure to cease the unauthorised use 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:** 10 June 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 21/00727/DPP available for inspection online.



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

Change of use of former storage building to church / place of worship (retrospective) at 38 Lawrie Terrace, Loanhead, EH20 9AR

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File No: 21/00727/DPP

Scale: 1:650





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 100464399-013

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

## 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="Broughton Place Lane"/>
First Name: *	<input type="text" value="Stuart"/>	Building Number:	<input type="text" value="12"/>
Last Name: *	<input type="text" value="Howgate"/>	Address 1 (Street): *	<input type="text" value="12 Broughton Place Lane"/>
Company/Organisation	<input type="text"/>	Address 2:	<input type="text"/>
Telephone Number: *	<input type="text" value="0131 271 3302"/>	Town/City: *	<input type="text" value="Edinburgh"/>
Extension Number:	<input type="text"/>	Country: *	<input type="text" value="Midlothian"/>
Mobile Number:	<input type="text"/>	Postcode: *	<input type="text" value="EH1 3RS"/>
Fax Number:	<input type="text"/>		
Email Address: *	<input type="text" value="stuart.howgate@midlothian.gov.uk"/>		

## 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

Storage/Workshop Unit 38-40 Lawrie terrace Loanhead EH20 9AR

Northing

Easting

## 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)

The change of use to a small Church/place of worship/Community Centre [retrospective] at 38 Lawrie Terrace Loanhead EH20 9AR. Planning Application 21/00272/DP

## 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.

Refusal on two grounds: 1. "Risk to road safety as increase of vehicle accessing the site through a small/constrained car park". Appealed because there is no vehicular parking or access permitted, only pedestrian access through communal areas. On-street parking sufficient. 2. "Adverse effect/impact on amenity". The tenants have actioned a Professional Acoustic Report and all works associated with it was only just completed by 22/11/2021. Neighbours welcomed the report and the actions taken.

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)

There is no legal vehicular access permitted to this building other than for dropping off or collection, nor is there car parking permitted in the rear other than for owners of all the properties, therefore only pedestrian access is used. This is adhered to and accepted. The conditions of the first refusal have also been actioned in accordance with all the three recommendations by the EH Acoustics Report, a professional body - see attached information.

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)

Documents to follow

## Application Details

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

21/00727/DPP

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

30/09/2021

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

30/11/2021

## 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

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)

Non.

## 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 Stuart Howgate

Declaration Date: 28/02/2022



## GROUND FOR REVIEW AGAINST THE REFUSAL NOTICE FOR

### **PLANNING APPLICATION NOTICE [21/00272/DPP]**

#### **1. “Amenity of the occupants of the residential properties to the north”.**

On the request of neighbours and as supported with the evidence submitted within the original application, the recommendations as directed by EH Acoustics on this building [see supporting statements] were completed on 30/11/22. If complied fully, and the drums removed, this would meet standards.

These works were only been completed on 30/11/2021 – during the time this application was considered. The Environmental Officer considered the information and these mitigation works, if the officer still had concerns over noise, then surely a visit to inspect and review since would be a balanced way forward before determination.

A site meeting is proposed with the Review Board to inspect the premises as part of this request.

#### **2. “Intensification in the number of vehicles accessing the site through a small and constrained carpark”.**

No-one uses or is permitted to use the vehicular access other than the property owners through Legal Disposition.

The carpark is restricted for owners /residents only, pedestrian access is permitted through the communal areas. Those who arrive by car park along the unrestricted parking along Lawrie Terrace. Supporting evidence is available, although again a site meeting would clarify.

Salem is a Religious Charity who have given a source of support to local families through their activities. There have been complaints of noise at times, however they have engaged specialists, specialists who survey Churches for sound reduction measures, and taken the mitigation steps recommended.

Having carried out all the works required , we would like the Local Review Body to review determine for themselves.

## MIDLOTHIAN COUNCIL

### DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

**Planning Application Reference:** 21/00727/DPP

**Site Address:** 38 Lawrie Terrace, Loanhead.

**Site Description:** The application site comprises a single storey, flat roofed detached building positioned to the rear of residential properties on Lawrie Terrace. There is a single track driveway to the west of the properties at Lawrie Terrace and a pedestrian path to the east of these. The flatted properties at Lawrie Terrace are to the north with the parking serving these properties to the east and residential properties to the west and south. The flats at Lawrie Terrace were historically used as a shop and the building at site was associated storage. The site is in a predominantly residential area comprising two storey four-in-a-blocks, flats and semi-detached houses.

**Proposed Development:** Change of use of former storage building to church / place of worship (retrospective).

**Proposed Development Details:** The applicant confirmed the Church operates on Sundays, beginning at 11am with a Sunday School for children for approximately 40 minutes, followed by a service for adults that lasts approximately an hour but can be longer, with meetings taking place after this. There can also be services on Fridays where the site is used as a studio with only two people attending and streaming these online. Events can include classes, a place to meet, worship, sermons, individual groups singing, charity raising as well as invited preachers, singers and speakers. The maximum number of people in site at any one time is restricted to 60, with approximately 30 people usually attending on Sundays, although more attend at Christmas times and for other special services. People who attend either arrive by bus or park on Lawrie Terrace. There is amplified music played at times and a noise report has been submitted responding to noise complaints from this use. This suggests works to mitigate noise from the building and makes reference to an acoustic drumkit and other instruments. The Church has a small local congregation. The plans show the pedestrian and vehicular access as communal access to the site.

**Background (Previous Applications, Supporting Documents, Development Briefs):** Application site and flats to the north

0059/95/FUL Change of use and alterations to retail shops to form five flats. Consent with conditions – reference was made to the current site as an ‘existing store’ under separate ownership to the application. No proposals related to this.

**Consultations:**

The Council’s **Policy and Road Safety Manager** has no objection and notes that they are not aware of any transportation or road safety issues arising from this use.

The Council's **Environmental Health Manager** has serious concerns over the change of use due to noise nuisance to nearby residential properties. They have received numerous noise complaints about this use from amplified music and singing. The submitted noise report showed a significant level of noise. The building is not suitable or design for such a use and the mitigation measures in the noise report would not adequately address these noise concerns and complaints. They recommend the application be refused on these grounds.

**Representations:** Three objections have been submitted on the following grounds:

- The use has been in place for three years;
- Impact on privacy to nearby residents;
- The use stops local residents using their gardens;
- Noise causes nuisance to nearby occupants. This has resulted in complaints to the Council's Environmental Health team and the police;
- Parking is on The Loan which is a very busy road and not the area to the rear;
- Visitors to the church park in the spaces for the residents of Lawrie Terrace;
- The site was previously a wedding studio not a storage building;
- New doors have been fitted without approval;
- A sign has been erected at the road entrance without approval; and
- Abuse from visitors to the church to local residents.

One states that they would not have bought their property had they known this would operate as a church.

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

**DEV2 Protecting Amenity within the Built-Up Area** states development will not be permitted where it is likely to detract materially from the existing character or amenity of the area; and

**ENV18 Noise** states that the Council will seek to prevent noisy developments from damaging residential amenity or disturbing noise sensitive uses. Where new developments with the potential to create significant noise are proposed, these may be refused or required to be modified so that no unacceptable impact at sensitive receptors is generated. Applicants may be required to carry out a noise impact assessment either as part of an Environmental Impact Assessment or separately.

**Planning Issues:** The main planning issue to be considered is whether or not the proposal complies with the development plan policies and, if not, whether there are any material planning considerations which would otherwise justify approval.

The application site has an unusual relationship to the surrounding area as it is fully enclosed by residential properties. It appears to have been a store related to the previous retail uses in the building to the north, however this did not form part of the application when these were changed to flats. This remained as a store. The proposed use as a church/place of worship has begun on site.

Due to this location and proposed use, there is potential for this to have a detrimental impact on the amenity of nearby residents, particularly those living in the building to the north. This is through noise, impact on privacy and road safety.

The proposed use regularly involves around 30 people attending the site on a weekly basis, but this could be as high as 60.

The site is accessed from Lawrie Terrace from a pedestrian path and a single track driveway to either side of the building. This is through the car parking for these properties and along the backs of their gardens. These gardens are bound by either 1 metre or 1.8 metre high fences. Due to the ground levels of the area, the windows on the rear elevations are clearly visible over these fences from the parking to the rear. This means the privacy of these occupants will be significantly detrimentally affected by people accessing the site. Also, the only access door into the application site is less than 2 metres from the garden boundary of the nearest house, which has a 1 metre high boundary fence. The privacy and amenity of the occupants of this house is significantly affected by this use as any people accessing the site will directly overlook their garden and have views into their house.

Also the surrounding properties are affected by noise from the site and the Environmental Health Manager has confirmed that they have received noise complaints. The type of use in such close proximity to residential properties, with amplified music and singing, in a building not suitable for this type of use and without potential for adequate measures to mitigate this noise to an acceptable level causes significant noise to neighbouring properties. Also there is potential for noise and disturbance to these nearby residential properties from people accessing and leaving the site making noise.

Objectors have states that users of the church/place of worship park in the spaces by the site which are private parking for the residential units at Lawrie Terrace. There is a sign at the vehicular entrance to the site advertising the proposed use and requests people park at the roadside, however it is not unexpected that visitors may park at the car park by the site. The Policy and Road Safety Manager has not received any complaints of road safety to date and so have no objection. However the planning authority is concerned over road safety not only from people parking in residents' spaces, but also residents using their parking spaces when the church/place of worship is in use, as there would be a conflict of vehicles and up to 60 people in a small area.

The following addresses objectors' comments not addressed above.

Whilst new doors may have been fitted at the site which need planning permission, if planning permission is approved for the use as proposed, a further application will be followed up if it is considered in the public interest.

The sign by the road entrance is likely to be removed if planning permission is refused as this will no longer be necessary.

Abuse from visitors to the church to local residents would be a matter for the police rather than something the planning authority.

**Recommendation:** Refuse planning permission.

**Reg. No. 21/00727/DPP**

Howgate Property Ltd  
Rear Unit  
38-40 12 Broughton Place Lane  
Edinburgh  
EH20 9AR

Midlothian Council, as Planning Authority, having considered the application by Howgate Property Ltd, Mr Stuart Howgate, Rear Unit, 38-40 12 Broughton Place Lane, Edinburgh, EH20 9AR, which was registered on 30 September 2021 in pursuance of their powers under the above Acts, hereby **refuse** permission to carry out the following proposed development:

**Change of use of former storage building to church / place of worship (retrospective) at 38 Lawrie Terrace, Loanhead, EH20 9AR**

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

<u>Document/Drawing.</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Location Plan		30.09.2021

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

- 1. The use of the site as a church/place of worship would result in a significant adverse impact on the privacy and amenity of the occupants of the residential properties to the north.*
- 2. The use of the site as a church/place of worship would result in a risk to road safety with regards to the intensification in the number of vehicles accessing the site through a small and constrained car park.*
- 3. For the above reasons, the proposal does not comply with policy DEV2 of the adopted Midlothian Local Development Plan 2017*
- 4. The use of the site as a church/place of worship would have a significant detrimental impact on the amenity of nearby residents as a result of noise and disturbance and so does not comply with policies DEV2 and ENV18 of the adopted Midlothian Local Development Plan 2017.*

Dated 01/12/2021



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Peter Arnsdorf  
Planning, Sustainable Growth and Investment Manager  
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**

