



LISTED BUILDING ENFORCEMENT NOTICE APPEAL DECISION WITH REGARD THE INSTALLATION OF WINDOWS AND DOORS IN THE NORTH FACING ELEVATION OF SOUTH CHURCH HALL, WEST STREET, PENICUIK.

Report by Chief Officer Place

1 PURPOSE OF REPORT

- 1.1 The purpose of this report is to advise the Committee of a listed building enforcement notice appeal decision with regard the installation of windows and doors in the north facing elevation of South Church Hall, West Street, Penicuik.

2 BACKGROUND

- 2.1 South Church Hall, West Street, Penicuik is a Category C listed building. It is also within the Penicuik Conservation Area.
- 2.2 A listed building enforcement notice was issued on the owner of the property on 6 October 2023, with a take effect date of 6 November 2023 and a compliance date of 31 December 2023. A copy of the enforcement notice is attached to this report as Appendix B. The enforcement notice required the owner and occupier of the property to:
- 1) Remove the unauthorised storm doors to the north elevation and replace either with the original removed doors or with replacement doors of the same material, finish and detailing as those doors as shown on the plan appended to this notice (Drawing 21.41 / P L(P)004).
 - 2) Remove the unauthorised windows to the north elevation and replace with windows of the same dimensions, profile and finish as those shown on the plan appended to this notice (Drawing 21.41 / P L(P)004)
- 2.3 The owner appealed the listed building enforcement notice - a Scottish Government Reporter appointed to determine the appeal dismissed it and upheld the listed building enforcement notice. A copy of the appeal decision is attached to this report as Appendix A. As a consequence of the appeal the compliance period is extended to 12

July 2024 – the Planning Service will monitor compliance with the notice.

3 THE DECISION

- 3.1 In considering the appeal the Reporter reached a number of conclusions, including:

“... All told, I find the windows and doors as installed have failed to preserve the listed building’s features of special architectural and historic interest. In regard to the effect upon the conservation area, given the publicly prominent location of this distinctive building, the impact of these alterations to the principal elevation also has a wider bearing on the overall street scene. I find that these incongruous alterations have a localised but nevertheless adverse impact on the character and appearance of the conservation area in which the building is situated.”

- 3.2 The Reporter therefore dismissed the appeal, refusing to grant listed building consent for the matters covered in the listed building enforcement notice, and directed the notice be upheld subject to variation of the compliance period. The legal, technical grounds of appeal, as set out in paragraph 1 of the Reporter’s decision, were also dismissed.

4 RECOMMENDATION

- 4.1 It is recommended that the Committee notes the enforcement notice appeal decision with regard the installation of windows and doors in the north facing elevation of South Church Hall, West Street, Penicuik.

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date: 1 March 2024
Contact Person: Peter Arnsdorf, Planning, Sustainable Growth and Investment Manager
peter.arnsdorf@midlothian.gov.uk



Appeal Decision Notice

Decision by Christopher Warren, a Reporter appointed by the Scottish Ministers

- Listed building enforcement appeal reference: LBE-290-2002
- Site address: South Church Hall, West Street, Penicuik, EH26 9EB
- Appeal by Southfield Homes Edinburgh Limited against the listed building enforcement notice dated 06 October 2023 served by Midlothian Council
- Alleged breach of listed building control: installation of windows and doors in north facing elevation of South Church Hall, West Street, Penicuik without the required listed building consent
- Grounds of appeal under s.35(1) of the Act: (a), (b) (c), (e), (g), (h), (i), (ia) (j), (k)
- Date of site visit by Reporter: 07 December 2023

Date of appeal decision: 12 January 2024

Decision

I dismiss the appeal, refuse to grant listed building consent for the matters covered in the listed building enforcement notice, and direct that the notice be upheld subject to variation of the terms of the notice by amending section 6 (time for compliance) by the replacement of the words “by 31 December 2023” with the words “within six months from when this notice takes effect”.

Subject to any application to the Court of Session, this notice takes effect on the date of the decision, which constitutes the determination of the appeal for the purpose of Section 35(3) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

Reasoning

1. The appeal was made on the following grounds as provided for by section 35(1) of the above Listed Buildings Act:

- (a) that the building is not of special architectural or historic interest;
- (b) that the matters alleged to constitute a contravention of section 8(1) or (2) have not occurred;
- (c) that those matters (if they occurred) do not constitute such a contravention;
- (e) that listed building consent ought to be granted for the works, or that any relevant condition of such consent which has been granted ought to be discharged, or different conditions substituted;
- (g) except in relation to such a requirement as is mentioned in section 34(2)(b) or (c), that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out;
- (h) that the period specified in the notice as the period within which any step required by the notice is to be taken falls short of what should reasonably be allowed;
- (i) that the steps required by the notice for the purpose of restoring the character of the building to its former state would not serve that purpose;

- (ia) that the cessation of any works required by the notice exceeds what is necessary to remedy the contravention of section 8(1) or (2);
- (j) that steps required to be taken by virtue of section 34(2)(b) exceed what is necessary to alleviate the effect of the works executed to the building; and
- (k) that steps required to be taken by virtue of section 34(2)(c) exceed what may reasonably be required to bring the building to the state in which it would have been if the terms and conditions of the listed building consent had been complied with.

2. I deal with each of these grounds of appeal in turn. The appellant had originally also cited ground (f) (that copies of the notice were not served as required by section 34(6)) but the appellant subsequently withdrew this ground of appeal. I have accordingly not considered the appeal against ground (f).

Ground (a)

3. The appellant has requested that a review be undertaken to establish whether the building continues to warrant its category C listing, with the inference being that its recent change of use and extension (approved in 2022) have diminished its special interest.

4. The appellant has not provided any evidence, or assessment of its own, in support of this ground of appeal. The recent alterations were granted listed building consent, meaning the effect of the proposed works must have been assessed and deemed to be appropriate in line with the duty imposed by section 14(2) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 which requires special regard to be given to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

5. In this context, I can see no basis for me to now reach the alternative view that those wider works (excluding the windows and doors which are the subject of this appeal) have in fact resulted in a loss of the building's special architectural or historic interest. In the absence of any substantive evidence to demonstrate why the building no longer warrants its listing, I find no reason to support such an assertion. The appeal on ground (a) fails.

Ground (b)

6. The works specified in the enforcement notice have occurred, by the appellant's own admission. The appeal on ground (b) therefore fails.

Ground (c)

7. The appellant has ticked this ground of appeal on the appeal form, but no reference has been made to it in the accompanying appeal statement or other submissions. In any event, I consider that the windows and doors installed in the north elevation of the building do materially differ to what had been approved by the council under application reference 21/01022/LBC. Not only does the design of the windows differ in several ways to those shown on the approved drawings (and also to the original windows), but the consent had proposed the retention of the original doors rather than replacing them with modern alternatives. This ground of appeal therefore fails.

Ground (e)

8. In considering this ground of appeal, I have the option to grant listed building consent for the works which are the subject of the enforcement notice and which (as outlined above) presently constitute a breach of control, should I deem this to be an appropriate and justified course of action.

9. I must have special regard to the desirability of preserving the building, and any features of special architectural or historic interest which it possesses. In this regard, the listing description is of relevance to my assessment, as is the 'managing change in the historic environment' guidance published by Historic Environment Scotland (HES), both in relation to windows and doors. As the building is located in the Penicuik Conservation Area, I must also pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area.

10. The listing description makes specific reference to the design of the windows and doors in the north elevation of the building. I have also seen photographs of the original windows and doors, which were taken prior to works to the building commencing. I am left in no doubt that the original doors and windows would have positively contributed to the character, appearance and special interest of the building as a gothic church hall. Whilst the use of the building has subsequently changed and replacement windows were approved as part of its proposed conversion to residential use, the approved plans illustrated that the replacement window frames would be of similar proportions, design and thickness to the original windows. Furthermore, the original timber doors were proposed to be retained. In my view this would have been an appropriately sympathetic approach, in line with HES guidance.

11. As it stands, the window frames which have been installed quite starkly differ in their proportions, design and thickness to those which were approved. I find the installed windows to be unsympathetic to both the ecclesiastical character of the building and its gothic influences, thereby detracting from the building's special interest. The windows have an overtly domestic and contemporary character, which jar with the elevation's obvious design cues which relate to its original use as a church, not least the shape and proportions of the window openings.

12. The removal and replacement of the original timber doors has also been to the detriment of the special interest of the building. The appellant has described the installed doors as 'unashamedly modern'. Whilst that may be the case, I disagree with the appellant that this approach is somehow more respectful to the building than reusing the original doors. I consider the opposite to be true. In reaching this finding I also draw support from HES guidance which prioritises retention of original doors (and windows) wherever possible, or otherwise their sympathetic recreation and replacement.

13. I note that the appellant has asserted that the original doors were beyond repair. However, in those circumstances the correct approach would have been to first apply for and obtain listed building consent for an alternative to retaining the original doors. By proceeding without consent, this was done so at the appellant's own risk. This has most regrettably also resulted in the destruction of the original doors. There would have been no reason for the council to have previously assessed the condition of the doors given they were proposed to be retained. No such assessment of their condition is now possible, but like-for-like replacements, including gothic detailing, would still be capable of being made with reference to the previously approved plans and photographs of the original doors.

14. I also note that the appellant has outlined that the approved window design would not be capable of satisfying building regulations. Whilst that is separate from the planning process, my understanding is that building standards can be relaxed where listed buildings are concerned, reflective of the fact that non-standard approaches are often necessary in such cases. The appellant has stated that 'No willingness to grant a relaxation has been forthcoming...' from the council's building control department. There is nothing before me however to suggest that any such request has been made to, or resisted by, building control.

15. All told, I find the windows and doors as installed have failed to preserve the listed building's features of special architectural and historic interest. In regard to the effect upon the conservation area, given the publicly prominent location of this distinctive building, the impact of these alterations to the principal elevation also has a wider bearing on the overall street scene. I find that these incongruous alterations have a localised but nevertheless adverse impact on the character and appearance of the conservation area in which the building is situated. The appeal on ground (e) therefore fails.

Grounds (g), (i), (j) and (k)

16. Grounds (g), (i), (j) and (k) all essentially relate to the same overall question of whether the steps required by the enforcement notice are excessive, and I note that the appellant has grouped these grounds together in its appeal statement. The relative applicability of each of the individual grounds is dictated by the terms of the enforcement notice. In this case, the steps specified by the enforcement notice effectively require the building to be brought into the state it would have been in had listed building consent 21/01022/LBC been complied with, by requiring windows and doors to be installed which reflect drawings approved as part of that consent. Therefore it is ground (k) which is directly applicable to the circumstances of this case, and I need not give further separate consideration to grounds (g), (i) or (j).

17. The appellant has not suggested any lesser steps which would enable the building to be brought into the same state as it would have been, had the windows resembled the approved plans and had the original doors been retained as proposed. The appellant's case under this ground reiterates arguments for why the windows and doors as installed should be deemed to be acceptable and allowed to be retained.

18. I have already found that the windows and doors materially differ from what had been proposed and granted listed building consent, and that these fail to preserve the listed building's special interest. I can see no lesser steps which would enable the state of the building to resemble what had previously been deemed to be appropriate through the granting of listed building consent 21/01022/LBC (with those consented works now appearing to be largely complete). It is of no relevance to this appeal that the appellant purchased the property subsequent to listed building consent being granted, as the terms of that consent relate to the building rather than the individual. The appeal on ground (k) fails.

Ground (h)

19. The enforcement notice specified that the steps required for compliance would need to be completed by 31 December 2023. Given that date has passed, it will be necessary to amend the period for compliance. That date for compliance was however plainly more than the minimum of 28 days required from after the notice was served, in accordance with section 34 (5B) of the Act.

20. The date specified by the notice was equivalent to three months from the date that the enforcement notice was served. The appellant has requested that the compliance period be extended to at least six months on the basis that a building warrant would need to be obtained, and potentially a different window manufacturer identified.

21. Given the building is both secure and watertight, I do not find there to be a pressing need for the works required by the enforcement notice to be undertaken urgently. I consider a six month compliance period would provide a reasonable balance between addressing the breach of control expeditiously, whilst also giving the appellant ample time to obtain a building warrant, and to have the replacement windows and doors manufactured and installed as specified. The appeal on ground (h) succeeds.

Ground (ia)

22. This ground of appeal has been ticked on the appeal form, but no case has been made in support of this by the appellant. This ground of appeal is potentially relevant where an enforcement notice requires ongoing works to be stopped, by allowing an appellant to claim that ceasing the works exceeds what is necessary to remedy the contravention. In this case, the enforcement notice does not require any ongoing works to stop, so I do not consider this ground of appeal is capable of being applicable in these circumstances.

Conclusion

23. For the reasons outlined above, I uphold the enforcement notice subject to an extension to the time for compliance, as specified.

Christopher Warren
Reporter

IMPORTANT – THIS COMMUNICATION AFFECTS YOUR LAND OR PROPERTY

Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, as amended (“the Act”)

LISTED BUILDING ENFORCEMENT NOTICE

Issued by Midlothian Council

6th October 2023

This Notice is served on:

The Property Owner
West Street South Church Hall,
Penicuik EH26 9EB

The Company Secretary
Southfield Homes Edinburgh Ltd
14 Main Street Longniddry
EH32 0NF

- 1. THIS IS A FORMAL NOTICE** which is issued by Midlothian Council under Section 34 of the Act because the Council considers that there has been a breach of planning control within Sections 6 and 8(1) of the Act at the listed building described below. The Council considers that it is expedient to issue this notice, having regard to the effect of the character of the building as one of special architectural or historic interest and provisions of the development plan.

2. THE LISTED BUILDING AFFECTED

West Street South Church Hall, Penicuik, EH26 9EB

It is a Category C Listed Building (Listed Building Reference 46381, date of listing 9 March 2000).

It is located within the Penicuik Conservation Area.

IMPORTANT – CONTINUES ON NEXT PAGE

3. THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL

Without listed building consent:

- The removal of the original timber storm doors to the north elevation and replacement with unacceptable alternative, harmful to the architectural and historic interest of the listed building and harmful to the character and appearance of the conservation area
- The removal of all the windows to the north elevation and replacement with unacceptable alternative, harmful to the architectural and historic interest of the listed building and harmful to the character and appearance of the conservation area

4. REASONS FOR ISSUING THIS NOTICE

Section 6 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states “no person shall execute or cause to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, unless the works are authorised. The test for whether Listed Building Consent is required is whether the works “would affect its character as a building of special architectural or historic interest”.

West Street South Church Hall, Penicuik EH26 9EB is a Category C listed building.

The list description for the listed building states

N (PRINCIPAL) ELEVATION: 4-light window at centre with intersecting tracery, flanked by pair of 5-panel, 2-leaf timber doors with gothic decoration; tall 5-pane lancet windows with blind upper panes, to outer left and right.

Without listed building consent the timber storm doors and all the windows have been removed to the North (the principal) elevation. These are part of the original historic fabric of the building and of particular historical interest as evidenced by the list description above. Furthermore these elements have been replaced by unacceptable replacements that are harmful to the architectural and historic interest of the building.

Historic Environment Policy for Scotland (HEPS) 2019 offers guidance on the protection and management of the historic environment and Conservation Areas and areas of special architectural or historic interest, the character or

IMPORTANT – CONTINUES ON NEXT PAGE

appearance of which it is desirable to preserve or enhance. Their designation provides the basis for the positive management of an area. The Policy Statement also indicated that the planning authority should consider the design, materials, scale and siting of any development, and its impact on the character of the historic environment.

Historic Environment Scotland's Managing Change in the Historic Environment document on Windows states that windows make a substantial contribution to the character, authenticity and physical integrity of most historic buildings and also to the character and interest of historic streets and places. They are an important element of a building's design. The size, shape and positioning of the openings are significant, as are the form and design of the framing, astragals and glazing. Their style, detailing and materials help us to understand the date when a building was constructed or altered, its function, and advances in related technology.

When altering a window, an assessment of character and special interest will be important when changes to the window's design are envisaged. If clear evidence for an earlier pattern exists, reinstatement of that pattern should be acceptable, unless the later windows are of interest in their own right; for example, if they relate to significant alterations and additions that are part of the building's special interest.

Historic Environment Scotland's Managing Change in the Historic Environment document on Doorways states that the doorway and associated features of a historic building, or groups of historic buildings, form important elements in defining their character. Age, design, materials, and associated features are amongst the numerous factors that contribute to the interest of historic doorways.

In almost all cases, repair of components on a like-for-like basis is preferable to replacement of whole units, as this will best maintain the character and historic fabric of the door or doorway. Where there is no alternative to the replacement of an original or historic door, the new elements should match the original in all respects. This should include exact replication of the opening method, maintenance and reuse of door furniture and historic glass where this contributes to a building's character. Any new replacement proposals must seek to improve the situation through designs and materials that are sympathetic to the character of the building.

The works that have been undertaken are considered to result in the unacceptable loss of historic fabric of architectural importance, contrary to the requirement of Section 6 of the Planning (Listed Buildings and Conservation Areas Act (Scotland) 1997

The works are also contrary to Policy ENV22 of the Midlothian Local Development Plan 2017 and the above referenced Historic Environment Scotland guidance

IMPORTANT – CONTINUES ON NEXT PAGE

In view of the harmful impact of the alterations, enforcement action is required.

5. WHAT YOU ARE REQUIRED TO DO

- 1) Remove the unauthorised storm doors to the north elevation and replace either with the original removed doors or with replacement doors of the same material, finish and detailing as those doors as shown on the plan appended to this notice (Drawing 21.41 / P L(P)004)
- 2) Remove the unauthorised windows to the north elevation and replace with windows of the same dimensions, profile and finish as those shown on the plan appended to this notice (Drawing 21.41 / P L(P)004)

6. TIME FOR COMPLIANCE

Requirement 5(1), 5(2) to be complied with by 31 December 2023.

7. WHEN THIS NOTICE TAKES EFFECT

This Notice takes effect on 6 November 2023 unless an appeal is made against it beforehand.

Signed:



Matthew Atkins
Lead Officer – Planning Obligations
Planning, Sustainable Growth and Investment Service
Place Directorate
Midlothian Council

Date: 6 October 2023

8. YOUR RIGHT OF APPEAL

You can appeal against this notice, but any appeal must be received, or posted in time to be received by the Scottish Ministers before 6th November 2023. Any other person who has an interest in the land to which this notice relates may also appeal to the Scottish Ministers by the same date.

Schedule 1 of this notice gives information on your Right of Appeal

9. WHAT HAPPENS IF YOU DO NO APPEAL

If you do not appeal against this enforcement notice, it will take effect on 6th November 2023 and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period specified in the notice. Failure to comply with an enforcement notice which has taken effect can result in prosecution or the service of a Fixed Penalty Notice on the relevant person(s) who have not complied with its requirements. Failure to comply with an enforcement notice which has taken effect may also result in the Council taking direct action to correct the breach.

SCHEDULE 1**EXPLANATORY NOTE FOR THOSE IN RECEIPT OF AN ENFORCEMENT NOTICE****RELEVANT LEGISLATION**

Sections 6, 8 and 34-39 of the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997, as amended.

You may wish to note in particular the points referred to below

RIGHT OF APPEAL

If you wish to appeal against this notice, you should write to The Directorate for Planning and Environmental Appeals, Ground Floor, Hadrian House, Callendar Road, Falkirk, FK1 1XR or contact the DPEA via their website <https://www.dpea.scotland.gov.uk/>. The appeal must be received, or posted in time to be received by the Scottish Ministers before the date on which this notice takes effect. The Scottish Ministers have no power to consider an appeal lodged out of time.

The appeal, which must be made in writing, must be based on one or more of the grounds set out in section 35 of the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997, as amended. If you decide to appeal you should state the facts on which you propose to rely in support of each of the grounds of appeal. The grounds of appeal and the statement of facts must be submitted with your appeal or within fourteen days of your being required to do so by the Scottish Ministers.

If you lodge an appeal, the enforcement notice is suspended and will not take effect unless the appeal is withdrawn or dismissed.

PENALTIES FOR NON-COMPLIANCE WITH AN ENFORCEMENT NOTICE

Where, after the end of the period for compliance with this notice, any steps required to be taken have not been complied with, unless a valid appeal has been made to the directorate, the person who is, for the time being the owner of the building shall be in breach of this notice and guilty of an offence. Any person guilty of such an offence shall be liable on summary conviction to a fine of £50,000 or on conviction on indictment to an unlimited fine.

DIRECT ACTION FOR NON-COMPLIANCE WITH AN ENFORCEMENT NOTICE

If the steps required by a Listed Building Enforcement Notice are not taken within the specified period(s) the Council may enter on the land, take those steps and recover as a civil debt from the person who is then the owner, or the lessee of the land, any expenses reasonably incurred.

FURTHER OFFENCES

Compliance with the terms of a listed building enforcement notice does not discharge that notice. It will continue in effect and any repetition of the breach of control may incur further penalties or may result in direct action by the Council.



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

Listed Building Enforcement Notice

South Church Hall, West Street, Penicuik

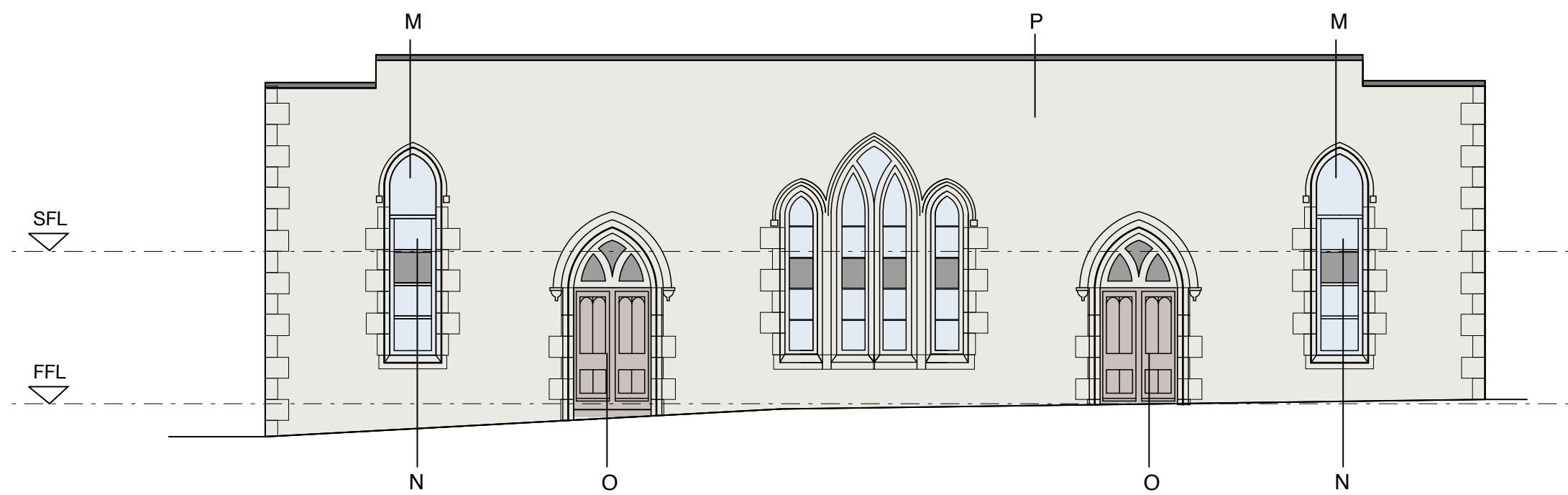
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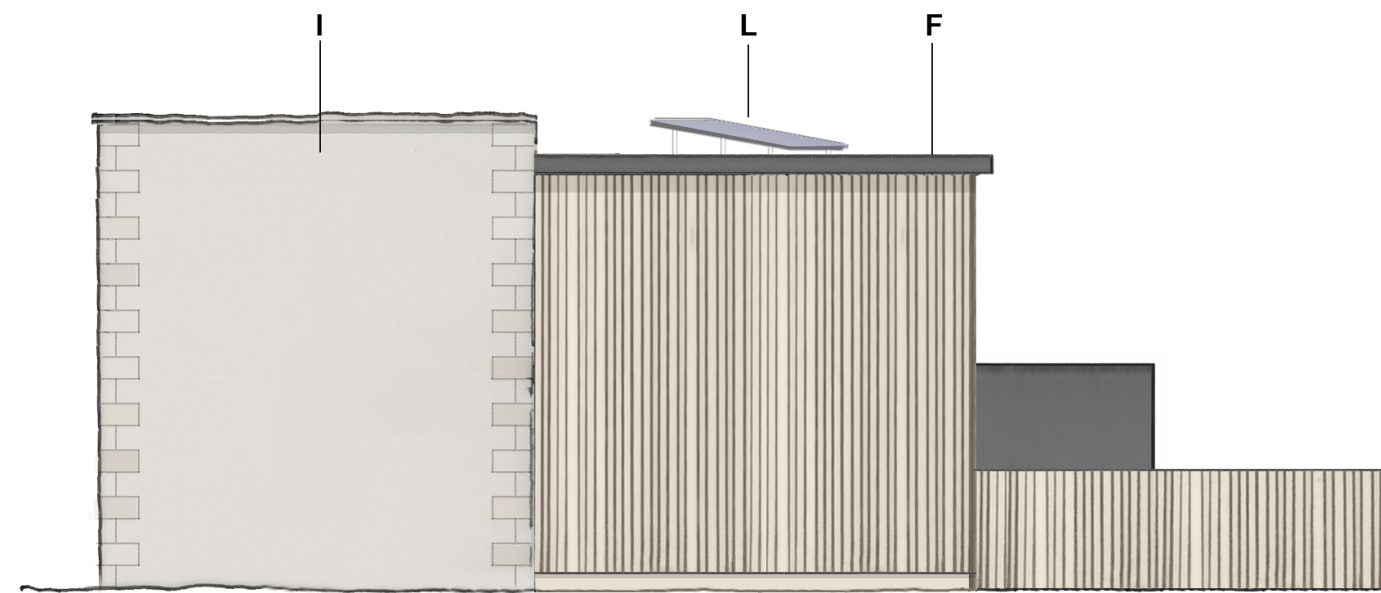
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Scale: 1:500





PROPOSED FRONT ELEVATION



PROPOSED WEST ELEVATION

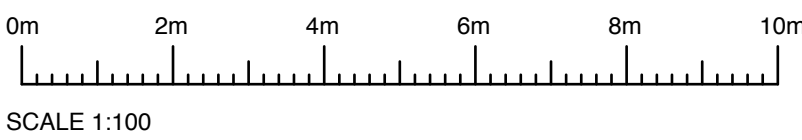


PROPOSED REAR ELEVATION



PROPOSED GABLE ELEVATION

- A Zinc fascia with ogee profiled gutter
B Zinc fascia to existing stone walled
C Zinc fascia and column to outbuilding
D Powder coated aluminium window and door in charcoal grey
E 25x150mm vertical lapped weatherboarding in silver grey natural finish
F Roof finished in standing seam single ply membrane
G Glazed door screen and window transition element
H Retained part of stone rear return wall
I Existing elevation retained and consolidated
J Zinc canopy detail over entrance door screen
K Retained front stone walled parapet
L Solar panels
M Gothic windows to be upgraded to inward opening metal frames in charcoal grey powder coat finish (detail to follow).
N Floor plate behind obscure glass panel
O Historic storm doors to be retained and restored
P Stonework and pointing to be consolidated



PLANNING

The purpose of this drawing is solely for the purposes of obtaining building warrant / planning / listed buildings approval. The drawing may be suitable for construction purposes but it may be necessary to augment/and or amend this information for this purpose. No liability will be accepted for any omission on this drawing should the drawing be used for construction purposes.

LORN MACNEAL ARCHITECTS	3 ST VINCENT STREET EDINBURGH EH3 6SW	
	T + 44 (0)131 226 3838 F + 44 (0)131 220 4767	
	mail@lornmacneal.co.uk www.lornmacneal.co.uk	
	CHURCH HALL, PENICUIK EH26 9DG	
	PROPOSED ELEVATIONS	
Scale 1: 100 @ A1		Date 05/01/2022
Drawing No. 21.41 / L(P)004		
DO NOT SCALE FOR CONSTRUCTION PURPOSES		
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