

Notice of Review: Land South West of St Roberts Croft, Nine Mile Burn, Penicuik

Determination Report

Report by Chief Officer Place

1 Purpose of Report

- 1.1 The purpose of this report is to provide a framework for the Local Review Body (LRB) to consider a 'Notice of Review' for planning permission in principle for the erection of dwellinghouse on land south west of St Roberts Croft, Nine Mile Burn, Penicuik.

2 Background

- 2.1 Planning application 23/00708/PPP for planning permission in principle for the erection of dwellinghouse on land south west of St Roberts Croft, Nine Mile Burn, Penicuik was refused planning permission on 15 December 2023; 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 15 December 2023 (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.

4 Procedures

- 4.1 In accordance with agreed procedures, the LRB:

- Have determined to undertake a site visit (only elected members attending the site visit can participate in the determination of the review); and
 - Have determined to progress the review by written submissions.
- 4.2 The case officer's report identified that there were four consultation responses and four representations received. As part of the review process the interested parties were notified of the review. No additional comments have been received. All comments can be viewed online on the electronic planning application case file.
- 4.3 The next stage in the process is for the LRB to determine the review in accordance with the agreed procedure:
- Identify any provisions of the development plan which are relevant to the decision;
 - Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies;
 - Consider whether or not the proposal accords with the development plan;
 - Identify and consider relevant material considerations for and against the proposal;
 - Assess whether these considerations warrant a departure from the development plan; and
 - State the reason/s for the decision and state any conditions required if planning permission is granted.
- 4.4 In reaching a decision on the case the planning advisor can advise on appropriate phraseology and on appropriate planning reasons for reaching a decision.
- 4.5 Following the determination of the review the planning advisor will prepare a decision notice for issuing through the Chair of the LRB. A copy of the decision notice will be reported back to the LRB for noting.
- 4.6 A copy of the LRB decision will be placed on the planning authority's planning register and made available for inspection online.

5 Conditions

- 5.1 In accordance with the procedures agreed by the LRB at its meeting of 20 June 2022, and without prejudice to the determination of the review, the following conditions have been prepared for the consideration of the LRB if it is minded to uphold the review and grant planning permission.
1. The development to which this permission relates shall commence no later than the expiration of five years beginning with the date of this permission.

Reason: *To accord with the provisions of Section 59(2) of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning (Scotland) Act 2019).*

2. Development shall not begin until an application for the approval of matters specified in conditions for the following details has been submitted to and approved in writing by the planning authority:

- a) A detailed layout plan of the site, showing the siting of the proposed house, details of vehicular access, parking provision and manoeuvring within the site and details of all walls, fences or other means of enclosure, including bin stores or other ancillary structures;
- b) Existing and finished ground levels and floor levels for all buildings, open space and access roads in relation to a fixed datum;
- c) Detailed plans, sections and elevations of the proposed house, indicating the colour and type of materials to be used on the external walls, roof and windows;
- d) Details of all hard surfacing and kerbing;
- e) Details of a sustainability/biodiversity scheme for the site, including the provision of house bricks and boxes for bats and swifts;
- f) Details of the provision of superfast broadband connections for the house;
- g) Details of the provision of electric vehicle charging stations for the house;
- h) Proposals for the treatment and disposal of foul and surface water drainage from the proposed house and a surface water management system. Unless otherwise approved in writing by the planning authority, the surface water drainage shall comply with the standards detailed in the SUDS Manual; and
- i) Details of a scheme of existing and proposed landscaping at the site and a plan and planting schedule detailing the position, number, size and species of all trees and shrubs that are proposed to be planted; all trees on the site which are to be removed and retained; and details of the means of protection of all trees that are to be retained.

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

3. The house approved in terms of conditions 2a) and 2c) shall be a maximum of two storeys high with the upper level of accommodation provided wholly within the roofspace.
4. The means of enclosure approved in accordance with condition 2a) shall comprise either native hedging or natural stone walling.

Reason for conditions 3 and 4: *To be in keeping with the surrounding houses within the housing group; to protect the visual amenity of the surrounding rural area.*

5. The scheme of landscaping approved in accordance with condition 2i) shall include a tree survey which shall include root protection areas of trees within and adjacent to the site.
6. The scheme of landscaping approved in accordance with condition 2i) shall be carried out and completed within six months of the house either being completed or brought into use, whichever is the earlier date. Any trees removed, dying, severely damaged or becoming seriously diseased within five years of planting shall be replaced in the following planting season by trees of a size and species similar to those originally required.

Reason for conditions 5 and 6: To ensure the landscaping is appropriate to the rural surroundings and integrates the development into the area; to ensure that the landscaping is carried out and becomes successfully established.

7. Before the new house is occupied the installation of the means of drainage treatment and disposal approved in terms of condition 2h) above shall be completed to the satisfaction of the planning authority.

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

8. Development shall not begin until an application for approval of matters specified in conditions for a written scheme of investigation for a programme of archaeological (monitored soil strip) work has been submitted to and approved in writing by the planning authority. Development thereafter shall comply with the approved scheme of investigation.

Reason: To ensure this development does not result in the unnecessary loss of archaeological material in accordance with Policy ENV25 of the Midlothian Local Development Plan 2017.

9. The works hereby approved, including vegetation and site clearance works, shall not be carried out during the months of March to August inclusive, unless approved in writing by the planning authority after a check for nesting birds is completed by a suitably competent person within 48 hours of works commencing and, in the event an active nest is found, an appropriate protection zone to the satisfaction of the planning authority is in place within which there can be no works until the related chicks have fledged.

Reason: To protect and enhance the local biodiversity of the site; there is potential for the disturbance of breeding birds at the site during bird breeding season.

6 Recommendations

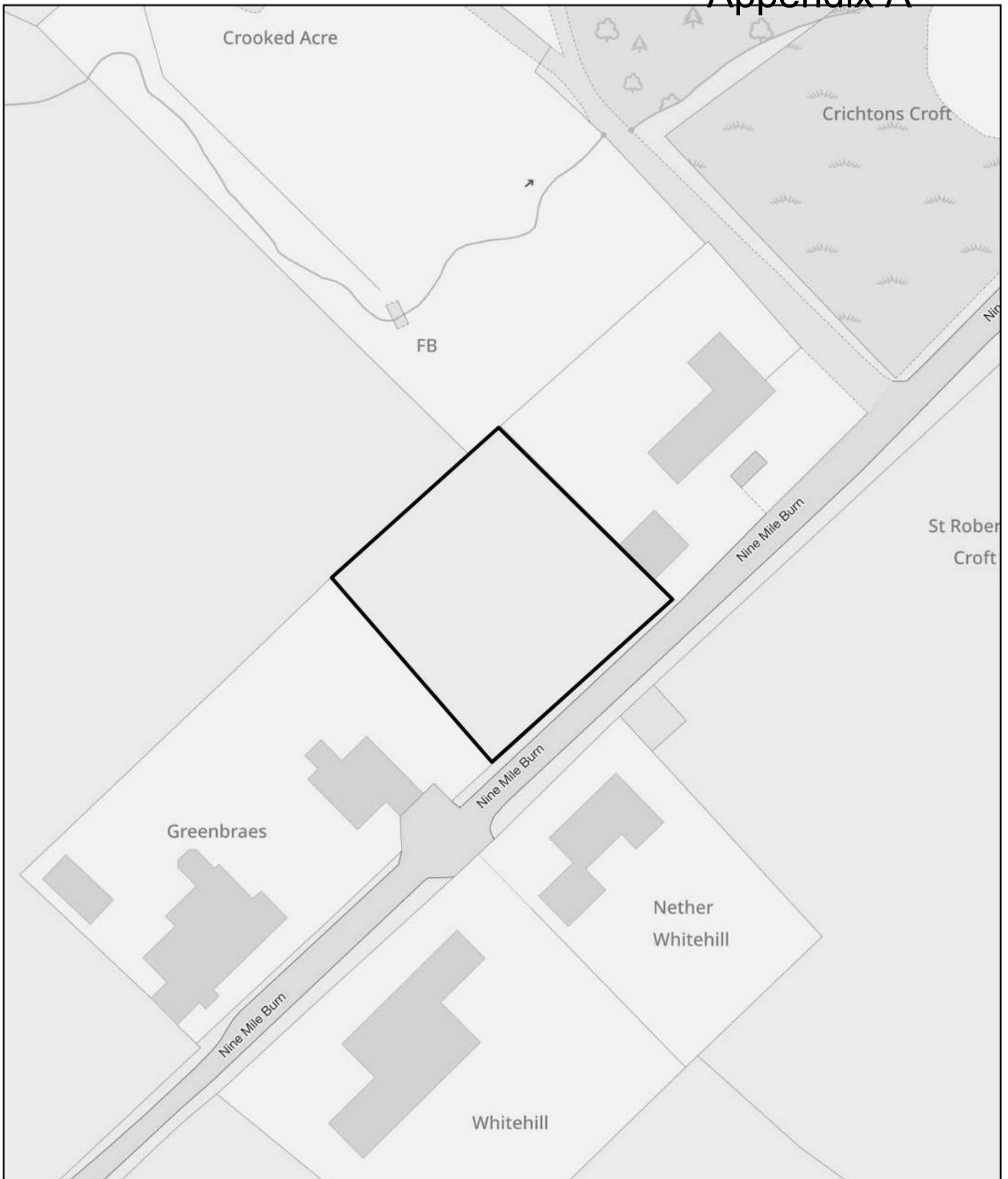
- 6.1 It is recommended that the LRB:
- a) determine the review; and
 - b) the planning advisor draft and issue the decision of the LRB through the Chair

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date: 15 March 2023
Report Contact: Mhairi-Anne Cowie, Planning Officer
Mhairi-Anne.Cowie@midlothian.gov.uk

Background Papers: Planning application 23/00708/PPP available for inspection online.

Appendix A



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

Application for planning permission in principle for erection of dwellinghouse at Land South West of St Roberts Croft, Nine Mile Burn, Penicuik,

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File No: 23/00708/PPP

Scale:1:750





Fairfield House 8 Lothian Road Dalkeith EH22 3ZN Tel: 0131 271 3302 Fax: 0131 271 3537 Email: 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 100650058-002

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

Applicant or Agent Details

Are you an applicant or an agent? * (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

☐ Applicant ☒ Agent

Agent Details

Please enter Agent details

Company/Organisation:	<input type="text" value="Ferguson Planning"/>		
Ref. Number:	<input type="text"/>	You must enter a Building Name or Number, or both: *	
First Name: *	<input type="text" value="-"/>	Building Name:	<input type="text"/>
Last Name: *	<input type="text" value="-"/>	Building Number:	<input type="text" value="38"/>
Telephone Number: *	<input type="text" value="01896 668744"/>	Address 1 (Street): *	<input type="text" value="Thistle Street"/>
Extension Number:	<input type="text"/>	Address 2:	<input type="text"/>
Mobile Number:	<input type="text"/>	Town/City: *	<input type="text" value="Edinburgh"/>
Fax Number:	<input type="text"/>	Country: *	<input type="text" value="Scotland"/>
		Postcode: *	<input type="text" value="EH2 1EN"/>
Email Address: *	<input type="text" value="Ruairaidh@fergusonplanning.co.uk"/>		

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

☒ Individual ☐ Organisation/Corporate entity

Applicant Details

Please enter Applicant details

Title:	<input type="text" value="Other"/>	You must enter a Building Name or Number, or both: *	
Other Title:	<input type="text" value="-"/>	Building Name:	<input type="text"/>
First Name: *	<input type="text" value="J. McCormick, H. Walker,"/>	Building Number:	<input type="text" value="38"/>
Last Name: *	<input type="text" value="I. Clarke, and F. Connerty"/>	Address 1 (Street): *	<input type="text" value="Thistle Street"/>
Company/Organisation	<input type="text" value="per Agent"/>	Address 2:	<input type="text"/>
Telephone Number: *	<input type="text"/>	Town/City: *	<input type="text" value="Edinburgh"/>
Extension Number:	<input type="text"/>	Country: *	<input type="text" value="Scotland"/>
Mobile Number:	<input type="text"/>	Postcode: *	<input type="text" value="EH2 1EN"/>
Fax Number:	<input type="text"/>		
Email Address: *	<input type="text" value="REDACTED"/>		

Site Address Details

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

Please identify/describe the location of the site or sites

Land south-west of St Robert's Croft, Nine Mile Burn, EH26 9LZ

Northing	<input type="text" value="657506"/>	Easting	<input type="text" value="317516"/>
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Description of Proposal

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

Erection of dwellinghouse

Type of Application

What type of application did you submit to the planning authority? *

- ☐ Application for planning permission (including householder application but excluding application to work minerals).
- ☒ Application for planning permission in principle.
- ☐ Further application.
- ☐ Application for approval of matters specified in conditions.

What does your review relate to? *

- ☒ Refusal Notice.
- ☐ Grant of permission with Conditions imposed.
- ☐ No decision reached within the prescribed period (two months after validation date or any agreed extension) – deemed refusal.

Statement of reasons for seeking review

You must state in full, why you are seeking a review of the planning authority's decision (or failure to make a decision). Your statement must set out all matters you consider require to be taken into account in determining your review. If necessary this can be provided as a separate document in the 'Supporting Documents' section: * (Max 500 characters)

Note: you are unlikely to have a further opportunity to add to your statement of appeal at a later date, so it is essential that you produce all of the information you want the decision-maker to take into account.

You should not however raise any new matter which was not before the planning authority at the time it decided your application (or at the time expiry of the period of determination), unless you can demonstrate that the new matter could not have been raised before that time or that it not being raised before that time is a consequence of exceptional circumstances.

Please see Local Review Statement

Have you raised any matters which were not before the appointed officer at the time the Determination on your application was made? *

☐ Yes ☒ No

If yes, you should explain in the box below, why you are raising the new matter, why it was not raised with the appointed officer before your application was determined and why you consider it should be considered in your review: * (Max 500 characters)

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review. You can attach these documents electronically later in the process: * (Max 500 characters)

Please see Local Review Statement

Application Details

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

23/00708/PPP

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

30/10/2023

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

15/12/2023

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

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: - Ferguson Planning

Declaration Date: 19/02/2024

F E R G U S O N P L A N N I N G

NEW DWELLING SOUTH-WEST OF
ST ROBERTS CROFT, NINE MILE BURN

JOANNE McCORMICK, HEATHER WALKER, IAIN CLARKE, AND FIONA CONNERTY

FEBRUARY 2024

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Ref: E-JMC-0311
Council ref: 23/00708/PPP
Prepared by: Ruairaidh Thompson MRTPI
Approved by: Tim Ferguson MRTPI
Date of Issue: February 2024

F E R G U S O N
P L A N N I N G

NEW DWELLING, NINE MILE BURN

EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

This Statement is submitted on behalf of Joanne McCormick, Heather Walker, Iain Clarke, Fiona Connerty (the Appellants) against the decision by Midlothian Council to refuse Planning Permission in Principle for the erection of a new dwelling on land south-west of St Robert's Croft, Nine Mile Burn on 15th December 2023 (reference 23/00708/PPP). All Core Documents (CD) are referenced in Appendix 1.

The proposed development is considered to accord with adopted policy and represent sustainable development. The case for the Appellants is summarised below:

- The Appellants and Planning Authority agree that the appeal site lies within the setting and forms part of an existing housing group at Nine Mile Burn. It is further agreed that the appeal site is a physically and functionally "suitable location for a house".
- **In order to be acceptable in planning terms, the proposed development needs to satisfy only one of Policy RD1 or NPF4 Policies 16 & 17.**
- The proposed dwelling represents a prospective self-provided home, an adaptable and wheelchair accessible home, and a home suitable for occupation by older people. Therefore, it satisfies three separate items listed under branch c) of Policy 16 and is considered to accord with that Policy.
- The proposed dwelling would support local living at Nine Mile Burn, consistent with the Rural Revitalisation principle of NPF4. This is appropriate to local circumstances as one new dwelling was approved in 2017 and another in 2018, confirming that the settlement is a location for delivery of further small-scale housing.

Therefore, the proposed dwelling accords Policy 17 as it is consistent with branch b).

- The first reason for refusal claims that no further dwellings can be approved as one new house was approved in the Local Development Plan period Nov' 2017 to Nov' 2022.
- Both the Town and Country Planning (Scotland) Act 2006 (as amended) and paragraph 1.1.4 of the Local Development Plan (LDP) confirm that the LDP has a period of five years. It was adopted on 07/11/2017, so lapsed on 06/11/2022, and is now out of date.
- As the period of the Local Development Plan 2017 has now lapsed, the housing group at Nine Mile Burn to the south of Monks Burn is now eligible for approval of another dwelling.
- The second reason for refusal claims that the appeal site occupies an unsustainable location as Nine Mile Burn represents two housing groups not a defined settlement.
- Nine Mile Burn benefits from a small variety of amenities. Particularly a vehicle repair garage and a specialist retailer (logs for domestic heating). The settlement also has a bus stop served by the 101/102 service. All of these amenities are considered to create a legitimate requirement for support and population growth, consistent with the NPF4 principle Rural Revitalisation.
- **The 101/102 bus service provides public transport connectivity to Penicuik, with average journey time of ten minutes, and ensures Nine Mile Burn is a sustainable location.**
- The appeal site lies 19 minutes cycle of the Lidl supermarket in Penicuik and is consistent with the local living and 20 minute neighbourhood principles, established by NPF4 Policy 15.

FERGUSON
PLANNING

NEW DWELLING, NINE MILE BURN

INTRODUCTION

INTRODUCTION

- 1.1 This Statement supports a Notice of Review of the delegated decision of Midlothian Council to refuse to grant Planning Permission in Principle for the erection of a new dwelling to the south-west of St Robert's Croft, Nine Mile Burn, EH26 9LZ.
- 1.2 The appeal site is located 6 kilometres to the south-west of Penicuik in a cluster of existing dwellings. A total of eight existing dwellings have been identified within the cluster – Ptarmigan, Crooked Acre, Crichtons Croft, St Robert's Croft, Greenbraes, Nether Whitehill, Whitehill, and the Firs. The existing dwellings extend from the north, south, east, and west of the site, visible in **Fig.1**. St Robert's Croft sits adjacent to the appeal site across the north-east boundary while Greenbraes sits adjacent across the south-west boundary.
- 1.3 The appeal site extends to 1,270m² and currently comprises rough grass in distinct square-shaped form, fenced on all four sides, and bounded by the minor public road to the south-east. The site is broadly flat with a gentle slope falling away from south-east to north-west. While existing dwellings bound the site to the north-east and south-west and the minor public road defines the south-east boundary, the north-west boundary of the appeal site is fenced off from a large agricultural field, in grazing use, which also shares boundary with St Robert's Croft and Greenbraes.
- 1.4 The appeal site and its surrounding are accessed by a minor public road that shares a 'T-junction' with the A702 to the north-east of the site. The site lies circa 500 metres along the road from the A702. In total around 20 no. existing dwellings are accessed off the minor public road.
- 1.5 The appeal site and its surroundings are considered to comprise an existing housing group of 8 no. existing dwellings. The minor public road adjacent to the south-east of the site provides access to all existing dwellings within the housing group, although Ptarmigan, Crooked Acre, and the Firs share a private drive to the public road. St Robert's Croft and Whitehill are the only existing dwellings to appear on the first edition Ordnance Survey Map and are considered to be the oldest houses in the locale.
- 1.6 There are no historic environment designations on-site or in the surrounding area. It is noted that archaeological trenching took place prior to construction of Nether Whitehill that found nothing within its own area of interest but noted earthwork remains of a "post-medieval farmstead" (Canmore ID: 365482). Those remains are thought to lie within the curtilage of Crooked Acre and/or Crichtons Croft.
- 1.7 The appeal site is not an environmentally designated site or part of an environmentally designated site. The nearest environmental designation is understood to be the Site of Special Scientific Interest (SSSI) on the River North Esk at Newhall House. The application lies approximately 950 metres north of the SSSI on the other side of the A702.

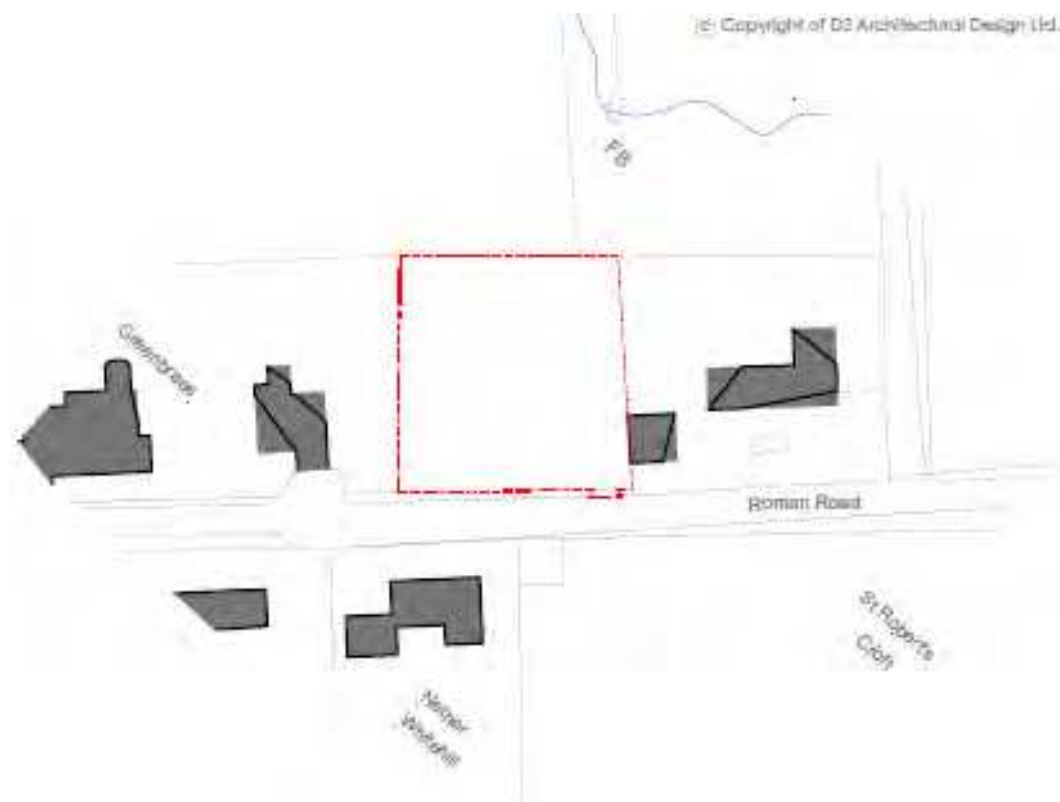


Fig 1: Extract from 23023-D01 Site Plan (Source: D2 Architectural Design).



Fig 2: Aerial image of Nine Mile Burn

NEW DWELLING, NINE MILE BURN

REFUSAL OF APPLICATION BY MIDLOTHIAN
COUNCIL AND PLANNING POLICY CONTEXT

REFUSAL OF APPLICATION BY COUNCIL AND PLANNING POLICY CONTEXT

- 2.1 Planning Application 23/00708/PPP was refused on 15th December 2023. The Decision Notice (**CD9**) cited two reasons for refusal, set out below:

"1. The proposal for a dwellinghouse does not comply with the housing group policy where only one house where there are five existing dwellings or more may be supported during each plan period. Planning permission has already been granted for the erection of one house on an adjacent site within this established housing group of Nine Mile Burn West during this plan period and there is no policy support for a further house to be sited in this group. Therefore, there is no justification for the development of a residential unit in this countryside location as it would be contrary to policy RD1 of the adopted Midlothian Local Development Plan 2018, the related supplementary planning guidance and Policy 17 of the National Planning Framework 4.

2. It has not been demonstrated to the satisfaction of the Planning Authority that the proposed development has been sited in a sustainable location. The proposed development fails to address the global climate crisis in this respect. Therefore the proposed development does not comply with the overarching aims of NPF4 and policy 1 of NPF4 specifically."

National Planning Framework 4

- 2.2 National Planning Framework 4 was adopted in February 2023. The document addresses national planning policy and the

Government's approach to achieving a net zero sustainable Scotland by 2045.

- 2.3 One of the six overarching spatial principles of NPF4 is to support rural revitalisation. This takes the form of encouraging sustainable development in rural areas, recognising the need to grow and support urban and rural communities together. The adopted text confirms that the strategy and policies *"support development that helps to retain and increase the population of rural areas of Scotland"*.
- 2.4 **Policy 1** Tackling the Climate and Nature Crises requires that *"when considering all development proposals significant weight will be given to the global climate and nature crises."*
- 2.5 **Policy 2** Climate Mitigation and Adaptation makes the following policy provisions relevant to the determination of planning applications:
- a) Development proposals will be sited and designed to minimise lifecycle greenhouse gas emissions as far as possible.
 - b) Development proposals will be sited and designed to adapt to current and future risks from climate change.
 - c) Development proposals to retrofit measures to existing developments that reduce emissions or support adaptation to climate change will be supported.
- 2.6 **Policy 15** Local Living and 20 minute Neighbourhoods establishes 20 minute neighbourhoods as a policy principle. The adopted text is incorporated below:

NEW DWELLING AT NINE MILE BURN

a) Development proposals will contribute to local living including, where relevant, 20 minute neighbourhoods. To establish this, consideration will be given to existing settlement pattern, and the level and quality of interconnectivity of the proposed development with the surrounding area, including local access to:

- sustainable modes of transport including local public transport and safe, high quality walking, wheeling and cycling networks;
- employment;
- shopping;
- health and social care facilities;
- childcare, schools and lifelong learning opportunities;
- playgrounds and informal play opportunities, parks, green streets and spaces, community gardens, opportunities for food growth and allotments, sport and recreation facilities;
- publicly accessible toilets;
- affordable and accessible housing options, ability to age in place and housing diversity.

2.7 **Policy 16: Quality Homes** is relevant to the proposed development. Branch c) states that *"development proposals for new homes that improve affordability and choice by being adaptable to changing and diverse needs, and which address identified gaps in provision, will be supported. This could include:*

- i. *self-provided homes;*
- ii. *accessible, adaptable and wheelchair accessible homes;*
- iii. *build to rent;*

- iv. *affordable homes;*
- v. *a range of size of homes such as those for larger families;*
- vi. *homes for older people, including supported accommodation, care homes and sheltered housing;*
- vii. *homes for people undertaking further and higher education; and*
- viii. *homes for other specialist groups such as service personnel."*

2.8 The intent of **Policy 17: Rural Homes** is to encourage, promote and facilitate the delivery of more high quality, affordable and sustainable rural homes in the right locations.

2.9 Branch a) of the Policy sets out that *"development proposals for new homes in rural areas will be supported where the development is suitably scaled, sited and designed to be in keeping with the character of the area and the development."*

2.10 Branch c) of the Policy makes provision that *"new homes in remote rural areas will be supported where the proposal:*

- i. *supports and sustains existing fragile communities;*
- ii. *supports identified local housing outcomes; and*
- iii. *is suitable in terms of location, access, and environmental impact."*

Local Development Plan

2.11 Policy RD1 of the Midlothian Local Development Plan (LDP) details the circumstances in which new houses will be considered acceptable.

NEW DWELLING AT NINE MILE BURN

This sets out details on support for development relating to housing groups and is considered to represent the pertinent material consideration in the determination of the appeal proposal.

2.12 The relevant part of *Policy RD 1* is copied below:

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

- *housing groups (allowing 1 new dwelling during the plan period¹ where there are 5 existing units);*
- *conversions of redundant farm buildings or other non-residential buildings;*
- *redevelopment of redundant farm buildings or other non-residential buildings; or*
- *enabling development where it can be clearly shown to be the only means of preventing the loss of a heritage asset and securing its long-term future."*

¹ Underline represents the emphasis of this author.

NEW DWELLING, NINE MILE BURN

GROUND OF APPEAL AND CASE FOR
APPELLANT

- 3.1 The decision of the Planning Authority to refuse the Application is challenged on the basis of the Grounds of Appeal set out below. It is the submission of the Appellants that the proposed development accords with the relevant adopted policy of National Planning Framework 4 and the Local Development Plan and that there are no material considerations which justify the refusal of the application.

GROUND 1: The proposed development represents the erection of a dwelling on a site which is well related to the existing housing group at Nine Mile Burn and would be fully contained within the existing development pattern and established boundaries.

GROUND 2: The proposed development represents the expansion of a housing group at Nine Mile Burn which is an established hamlet. Nine Mile Burn hosts a vehicle repair garage and a specialist retailer (logs for domestic heating) – which represent amenities that require support. Refusing new housing in the hamlet and depriving existing amenities of custom and support is not a form of sustainable development and would not contribute to a resilient community being maintained locally. Nine Mile Burn benefits from a well used bus service (101/102) and is within twenty minutes cycle of Penicuik and therefore represents a sustainable location.

GROUND 1: THE PROPOSED DEVELOPMENT REPRESENTS THE ERECTION OF A DWELLING ON A SITE WHICH IS WELL RELATED TO THE EXISTING HOUSING GROUP AT NINE MILE BURN AND WOULD BE FULLY CONTAINED WITHIN THE EXISTING DEVELOPMENT PATTERN AND ESTABLISHED BOUNDARIES.

- 3.2 During the course of application determination, the following consultee responses were received from Council Officers and external consultees:
- **Roads Planning – No response.**
 - **Biodiversity – No objection.**
 - **Archaeology – No objection.**
 - **Scottish Water – No objection.**
- 3.3 It is the Appellants' position that the appeal site lies within the setting and forms part of an existing housing group in this part of Nine Mile Burn (shown in **Fig.2**) and that the proposed dwelling would enhance the defined sense of place.
- 3.4 It is accepted by both the Appellants and the Planning Authority that a housing group exists in Nine Mile Burn and the hamlet is suitable for further housing. However, Report of Handling 23/00708/PPP states "there are 16 houses within the group at Nine Mile Burn and therefore potential for one further house in the current MLDP period". The Report of Handling also confirms that the appeal site "would appear to be a suitable location for a house". However, the appointed Planning Officer attaches significant weight to the approval of another new dwelling within the first six months of the Local Development Plan

NEW DWELLING AT NINE MILE BURN

period and considers that approval to exhaust the housing group's expansion capacity.

- 3.5 The Appellants' position is that the proposed dwelling sits together with the other existing dwellings in this part of Nine Mile Burn, to the south of Monks Burn and set back away from the carriageway of the A702. The appeal site sits enclosed between the existing dwellings St Robert's Croft to north-east and Greenbraes the south-west. This approach is strongly supported by the Housing Development in the Countryside and Green Belt Supplementary Guidance, which clarifies that the primary intention of Policy RD1 is "to ensure that there are appropriate opportunities for small-scale infill within housing groups" in section 6.1.

NPF4

- 3.6 It is noted that Report of Handling states "there is no support for a house in principle through NPF4". However, this assessment is considered to be completely mistaken.
- 3.7 Firstly, both NPF4 Policies 16 & 17 are pertinent to the proposal. Report of Handling 23/00708/PPP assesses the proposal against Policy 17 only. This omission is a significant mistake.
- 3.8 Although it is only necessary to prove accordance with one item under branch c) of Policy 16; the proposed development is considered to achieve full accordance with three separate items – (i.) self-provided homes, (ii) accessible, adaptable and wheelchair accessible homes, and (vi) homes for older people, including supported accommodation, care homes and sheltered housing.

- 3.9 Corporate developers (including housebuilders) are not interested in developing modestly sized single houses in the countryside. It does not generate sufficient returns and requires too high a standard of finish. It is a certainty that the proposed dwelling would be delivered on self-build basis, either by one of the Appellants or a successor in title. Therefore, the proposed development is considered to satisfy item i. of branch c) as it represents a self-provided home.
- 3.10 The new dwelling has been designed with accessibility in mind. Although it is intended to accommodate two bedrooms upstairs, all primary living accommodation shall be provided on the ground floor. The ground floor also includes a bedroom and a bathroom.
- 3.11 The design intention is to construct doorways at sufficient width for wheelchairs to easily pass. Space has also been safeguarded for installation of a lift. While it is not the intention of the Appellants to install the lift in initial construction, the option will be retained for future occupiers to exercise, including those subsequent to the first occupation. Consideration and assessment of construction specification and other exact detail is deferred to the subsequent stage of the planning process and the Building Standards system respectively. Therefore, the proposed dwelling is considered to satisfy items ii. & vi. of branch c) as it represents a home which is accessible, adaptable, wheelchair accessible and suitable for occupation by older people.
- 3.12 On this basis, the proposed development is considered to accord with NPF4 Policy 16.

NEW DWELLING AT NINE MILE BURN

- 3.13 Further, although the Report of Handling gives some consideration to NPF4 Policy 17, it focuses on branch a) only omitting the three other branches.
- 3.14 Branch b) of Policy 17 requires that development in rural areas should “*contribute towards local living*” and take account of local context and circumstances. Planning Permission 17/00732/PPP approved a new dwelling on land adjacent to the south-west of Crichton’s Croft in March 2018, several months after the current Local Development Plan was adopted. Therefore, it is considered that the Planning Authority has formally confirmed that the local community in Nine Mile Burn should be supported and the hamlet allowed to expand as a living local community now and into the future. Nine Mile Burn is not an isolated and remote community which is too small to support new housing.
- 3.15 Therefore, the proposed development is considered to accord with NPF4 Policy 17 as it contributes towards local living and takes account of local context and circumstances, satisfying branch b).

LOCAL DEVELOPMENT PLAN

- 3.16 As mentioned above, the Report of Handling agrees that a housing group is present and the site is otherwise suitable for a new dwelling. It declines to support the proposal on the basis that it considers capacity for expansion to be exhausted.
- 3.17 The rationale employed to come to this conclusion is that following adoption of the current Local Development Plan in November 2017, Planning Permission 17/00732/PPP approved a new dwelling on land adjacent to the south-west of Crichton’s

Croft in March 2018. The appointed Planning Officer considers this to have exhausted expansion capacity in the housing group at this part of Nine Mile Burn.

- 3.18 However, it is considered that this represents a misinterpretation of Policy RD1.
- 3.19 **Policy RD1 states that 1 no. new dwelling will be permitted in each housing group “*during the plan period*”. It does not state that each housing group will be permitted to expand by 1 no. new dwelling, with no further development until a new Local Development Plan is adopted.**
- 3.20 Midlothian Local Development Plan (2017) (“the LDP”) was adopted in the legal context established by the Planning etc. (Scotland) Act 2006 (as amended). Local Development Plans adopted in the context established by the 2006 Act have a period of five years. This is reaffirmed in paragraph 1.1.4 of the LDP which confirms it needs to be “reviewed every five years”.
- 3.21 The adoption in November 2017 predates the Planning (Scotland) Act 2019 receiving Royal Assent in July 2019.
- 3.22 Therefore, the period of the LDP began on 7th November 2017 and expired on 6th November 2022. Although it remains adopted, as of February 2024 the LDP period has expired as the statutory date by which the Planning Authority should have adopted a new LDP has not been met.
- 3.23 Therefore, it is the position of the Appellants that it is incorrect to use the fact a new LDP has not been adopted to justify refusal of an otherwise acceptable planning application.



Fig 3: Extract from 23023-D01 Site Plan (Source: D2 Architectural Design).

NEW DWELLING AT NINE MILE BURN

3.24 For the purpose of clarity, the Appellants want to stress that they understand that preparation and adoption of a new Local Development Plan was not possible because of the COVID 19 crisis (2020-22). However, it is considered that it would be neither rationale nor proportionate to refuse planning permission for the proposed dwelling on this basis as COVID was fully beyond the control of the Appellants.

3.25 We agree with the appointed Planning Officer when she states:

“A house situated towards the roadside edge of the plot would appear as a logical addition to the existing group and maintain the strong roadside presence of the group.”

3.26 On this basis, it is unjustified to consider the proposed development to not accord with Policy RD1 as a result of the maximum capacity restriction. Instead, it is considered that the proposed development achieves accordance with Policy RD1 and that the principle of development is acceptable.

3.27 The Planning Authority and Appellants agree that there is an existing housing group at Nine Mile Burn and that the appeal site sits within its sense of place and setting, as required by Policy RD1. As the period of the current Local Development Plan expired in November 2022, it is considered that the maximum capacity restriction in Policy RD1 is no longer applicable and cannot be used to refuse planning applications that are acceptable in all other respects. The appeal site is strongly contained on three sides between two existing dwellings and the adopted public road. On the basis the proposed dwelling is considered to accord with Policy RD1. The proposed

development is considered to easily achieve accordance with both Policy 16 (branch c)) and Policy 17 (branch b)) of NPF4. Therefore, the principle of development is considered to be acceptable.

GROUND 2: THE PROPOSED DEVELOPMENT REPRESENTS THE EXPANSION OF A HOUSING GROUP AT NINE MILE BURN WHICH IS AN ESTABLISHED HAMLET. NINE MILE BURN HOSTS A VEHICLE REPAIR GARAGE AND A SPECIALIST RETAILER (LOGS FOR DOMESTIC HEATING) – WHICH REPRESENT AMENITIES THAT REQUIRE SUPPORT. REFUSING NEW HOUSING IN THE HAMLET AND DEPRIVING EXISTING AMENITIES OF CUSTOM AND SUPPORT IS NOT A FORM OF SUSTAINABLE DEVELOPMENT AND WOULD NOT CONTRIBUTE TO A RESILIENT COMMUNITY BEING MAINTAINED LOCALLY. NINE MILE BURN BENEFITS FROM A WELL USED BUS SERVICE (101/102) AND IS WITHIN TWENTY MINUTES CYCLE OF PENICUIK AND THEREFORE REPRESENTS A SUSTAINABLE LOCATION.

3.28 It is noted that the Report of Handling states that:

“The site is in a relatively remote countryside area. While the above-mentioned details seek to address the climate crisis the application site is a fundamentally unsustainable location for a new house. The majority of trips to and from the site and likely to be done by private car, which is not in line with NPF4’s focus on sustainability.”

3.29 Unfortunately, the Report of Handling has made errors of fact and judgement in reaching this conclusion.

NEW DWELLING AT NINE MILE BURN

- 3.30 It is considered to be factually inaccurate that Nine Mile Burn is “a fundamentally unsustainable location for a new house”.
- 3.31 Nine Mile Burn is considered to be a larger hamlet with a small variety of local services. The Report of Handling itself identifies the appeal site to form part of an existing housing group comprising sixteen existing dwellings at Nine Mile Burn. The Appellants accept the spirit of this opinion but consider rather than there are two housing groups at Nine Mile Burn – one to the south of Monks Burn, comprising eight existing dwellings, and a second to the north incorporating fourteen existing dwellings.
- 3.32 Regardless of whether one or two housing groups are present, the settlement benefits from both a vehicle repair garage (Rizzo’s Auto Repairs) and a specialist retailer stocking logs for domestic heating (Colin Mark Garden and Tree Services). Both premises can be accessed in a walk of less than 10 minutes from the site (2 minutes driving).
- 3.33 NPF4 Policy 15 stresses the importance of local living and maintaining land use policies that support local amenities and services. This is important to avoid universal suburbanisation and maintain the character of high density towns and cities, smaller market towns and villages, and countryside hamlets that have a small variety of services (like Nine Mile Burn).
- 3.34 If the rationale adopted in the Report of Handling was to be employed across Midlothian, the ultimate result would be refusal of new housing in any location that does not sit within 20 minutes walk of a supermarket or independent green grocer. Such an approach would have the effect of preventing new housing in all

countryside hamlets (including those that have existing pubs, primary schools, petrol stations, and even small newsagents). In practice, this would effectively exclude young people and families from becoming resident in the countryside and cause an unbalanced, disproportionately older population to emerge.

- 3.35 **It is considered that this is not the intention of either NPF4 Policy 1 or 15. This opinion is strengthened by both the Rural Revitalisation principle of NPF4 which supports “development that helps to retain and increase the population of rural areas” and the National Population Strategy for Scotland (2021) which is entitled “Balance: Ensuring Our Population Is More Balanced And Distributed Across Scotland So All Our Communities Can Flourish”.**
- 3.36 On the contrary, it is the position of the Appellants that Nine Mile Burn and other materially similar settlements require an appropriate level of new housing to ensure the rural community remains balanced and vibrant, so that it is able to fully support existing amenities and services.
- 3.37 Policy 15 further explains the importance of public transport and the availability of good access to “sustainable modes of transport including local public transport and safe, high quality walking, wheeling and cycling networks”.
- 3.38 A two way bus stop exists on the A702 in Nine Mile Burn, just outside the vehicle repair garage. The bus stop is served in both directions by the 101/102 service operated by Houston’s Coaches.

- 3.39 It is considered that members will be more aware than anyone else of the issues that local communities in the Pentlands (including Penicuik), Clydesdale, and north Dumfriesshire have overcome in recent years to protect and preserve the 101/102 bus service. Indeed, the 101/102 is likely to be the most high profile, threatened, rural bus service anywhere in Scotland.
- 3.40 The case of the 101/102 bus service is considered to highlight the importance of supporting local services with both rural-appropriate planning policy and responsible consumer choice.
- 3.41 The 101/102 bus service provides a strong connectivity link to Penicuik (six kilometres to the north-east) and strengthens the accordance of the proposal with Policy 15.
- 3.42 While the appeal site and its surroundings benefit from strong public transport connection to Penicuik, it is not the only sustainable transport method available.
- 3.43 Policy 15 also attaches importance to application sites being located within twenty minutes walk and/or cycle of town and other centres. While the appeal site lies within ten minutes walk of local amenities in Nine Mile Burn, Penicuik town centre can also be reached.
- 3.44 The Lidl supermarket on Kentigern Way in Penicuik stands 4.5 miles from the site (door-to-door distance). Google Maps confirms that a cyclist of average competence and confidence on public road can complete the journey in 19 minutes exactly (extract copied in **Fig.4**).
- 3.45 It should be noted that Google uses speeds and times typical of average competence and confidence for road cycling. It is possible for strong cyclists to complete the journey more quickly.
- 3.46 As the journey can be completed in twenty minutes, it is considered that the proposed development is consistent with the 20 minute neighbourhood principle established by NPF4 Policy 15 and fully accords with the Policy.
- 3.47 The appeal site is considered to occupy a sustainable location which is suitable for further housing. The appeal site sits in close proximity to a small variety of local amenities in Nine Mile Burn; as well as a bus stop served by the 101/102 service (linking Midlothian, the Borders, South Lanarkshire, and Dumfriesshire with Edinburgh city centre and large parts of the inner city); and within twenty minutes cycle of the Lidl supermarket in Penicuik. Therefore, the proposed development is consistent with the dual principles local living and 20 minute neighbourhoods and accords with NPF4 Policies 1 & 15.

NEW DWELLING AT NINE MILE BURN

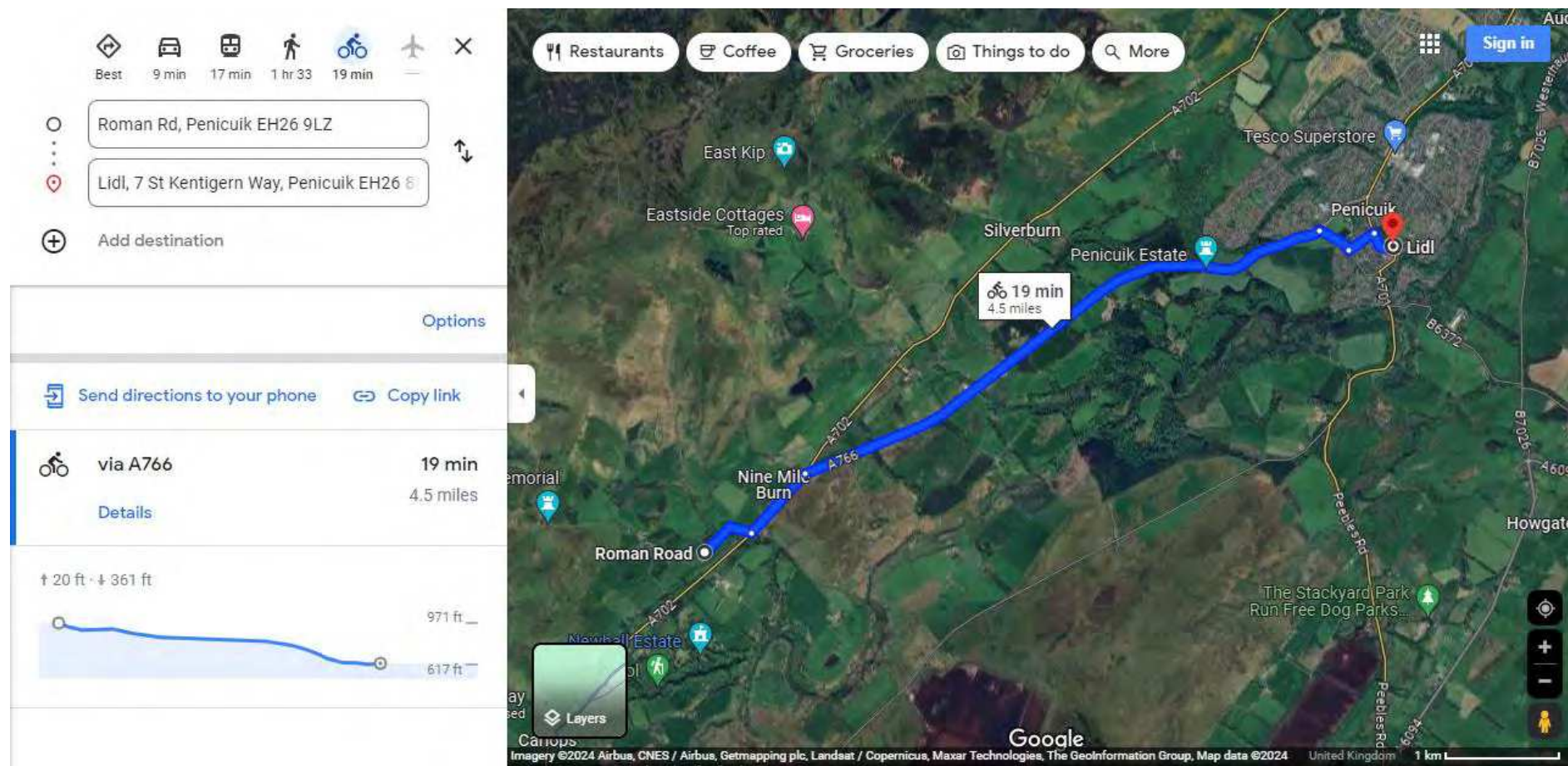


Fig 4: The journey from the appeal site to Lidl, Penicuik by bicycle as detailed by Google Maps, February 2024.

NEW DWELLING, NINE MILE BURN

CONCLUSION

CONCLUSION

- 4.1 The Notice of Review, supported by this Statement, respectfully requests that the Council overturns the decision to refuse Planning Permission in Principle for Application 23/00708/PPP and grant consent for the erection of a new dwelling on land south-west of St Robert's Croft, Nine Mile Burn, EH26 9LZ.
- 4.2 The proposed development represents the enlargement of the existing housing group at Nine Mile Burn to the south of Monks Burn by single dwelling upon a site that is bound by existing dwellings to both the north-east and south-west. The proposed development is considered to represent a self-provided home; a house that is accessible, adaptable, and wheelchair accessible; and a house suitable for older people and those receiving support to live in. On this basis, the proposed development is considered to accord with NPF4 Policies 16 & 17.
- 4.3 The proposed development is considered to also accord with Policy RD1 as it is an infill site in an otherwise continuously developed row of detached dwellings which form an existing housing group. The maximum capacity restriction is not applicable as the period of the Local Development Plan lapsed on 6th November 2022 and is now out of date. Therefore, the proposed development is considered to accord with Policy RD1.
- 4.4 Achieving accordance with only one of Policies 16, 17, & RD1 is sufficient to establish the principle of development. In this case, the proposed development accords with all three policies, therefore it is considered indisputable that the principle of development is acceptable.
- 4.5 The appeal site is considered to be sustainably located in Nine Mile Burn which is a hamlet suitable for further housing. Nine Mile Burn benefits from a small variety of local amenities which require support, a bus stop served by the 101/102 service to both Penicuik and Edinburgh, and can be reached within twenty minutes cycling from the Lidl supermarket in Penicuik. Therefore, the proposed development accords with NPF4 Policies 1 & 15 as it satisfies the dual principles of local living and 20 minute neighbourhoods and would not exacerbate the climate crisis.
- 4.6 The proposed development supports the sustainable growth of an existing rural community and will improve housing choice in the local area. Nine Mile Burn is a small existing community with existing housing groups to both the north and south of Monks Burn. It is considered that the Rural Revitalisation principle applies strongly to Nine Mile Burn and its environs, especially the direction to support rural population growth.
- 4.7 The Local Review Body is respectfully requested to allow the appeal and grant Planning Permission in Principle for the erection of a new dwelling on land south-west of St Robert's Croft, Nine Mile Burn.

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NEW DWELLING, NINE MILE BURN

CORE DOCUMENTS

CORE DOCUMENTS

The following drawings, documents, and plans have been submitted to support the Notice of Review:

- Notice of Review Form;
- CD1 Local Review Statement;
- Application Form
- CD2 (Application) Planning Statement;
- CD3 23023-D01 Site Plan;
- CD4 23023-D02 Conceptually Proposed Elevations;
- CD5 Report of Handling 23/00708/PPP; and
- CD6 Decision Notice 23/00708/PPP.

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F E R G U S O N
P L A N N I N G

NEW DWELLING SOUTH-WEST OF
ST ROBERTS CROFT, NINE MILE BURN

JOANNE McCORMICK, HEATHER WALKER, IAIN CLARKE, AND FIONA CONNERTY

OCTOBER 2023

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Ref: E-JMC-0311
Council ref: TBC
Prepared by: Ruairaidh Thompson MRTPI
Approved by: Tim Ferguson MRTPI
Date of Issue: October 2023

F E R G U S O N
P L A N N I N G

NEW DWELLING, NINE MILE BURN

INTRODUCTION

INTRODUCTION

- 1.1. This Planning Statement, prepared by Ferguson Planning, is submitted to Midlothian Council on behalf of the Applicants Joanne McCormick, Heather Walker, Iain Clarke, Fiona Connerty. This Statement supports an Application for Planning Permission in Principle for the erection of a new dwelling to the south-west of St Robert's Croft, Nine Mile Burn, EH26 9LZ.
- 1.2. The application site is located 6 kilometres to the south-west of Penicuik in a cluster of existing dwellings. A total of eight existing dwellings have been identified within the cluster – Ptarmigan, Crooked Acre, Crichtons Croft, St Robert's Croft, Greenbraes, Nether Whitehill, Whitehill, and the Firs. The existing dwellings extend from the north, south, east, and west of the site, visible in **Fig.1**. St Robert's Croft sits adjacent to the application site across the north-east boundary while Greenbraes sits adjacent across the south-west boundary.
- 1.3. The application site extends to 1,270m² and currently comprises rough grass in distinct square-shaped form, fenced on all four sides, and bounded by the minor public road to the south-east. The site is broadly flat with a gentle slope falling away from south-east to north-west. While existing dwellings bound the site to the north-east and south-west and the minor public road defines the south-east boundary, the north-west boundary of the application site is fenced off from a large agricultural field, in grazing use, which also shares boundary with St Robert's Croft and Greenbraes.
- 1.4. The application site and its surrounding are accessed by a minor public road that shares a 'T-junction' with the A702 to the north-east of the site. The site lies circa 500 metres along the road from the A702. In total around 20 no. existing dwellings are accessed off the minor public road.
- 1.5. The application site and its surroundings are considered to comprise an existing housing group of 8 no. existing dwellings. The minor public road adjacent to the south-east of the site provides access to all existing dwellings within the housing group, although Ptarmigan, Crooked Acre, and the Firs share a private drive to the public road. St Robert's Croft and Whitehill are the only existing dwellings to appear on the first edition Ordnance Survey Map and are considered to be the oldest houses in the locale.
- 1.6. There are no historic environment designations on-site or in the surrounding area. It is noted that archaeological trenching took place prior to construction of Nether Whitehill that found nothing within its own area of interest but noted earthwork remains of a "post-medieval farmstead" (Canmore ID: 365482). Those remains are thought to lie within the curtilage of Crooked Acre and/or Crichtons Croft.
- 1.7. The application site is not an environmentally designated site or part of an environmentally designated site. The nearest environmental designation is understood to be the Site of Special Scientific Interest (SSSI) on the River North Esk at Newhall House. The application lies approximately 950 metres north of the SSSI on the other side of the A702.

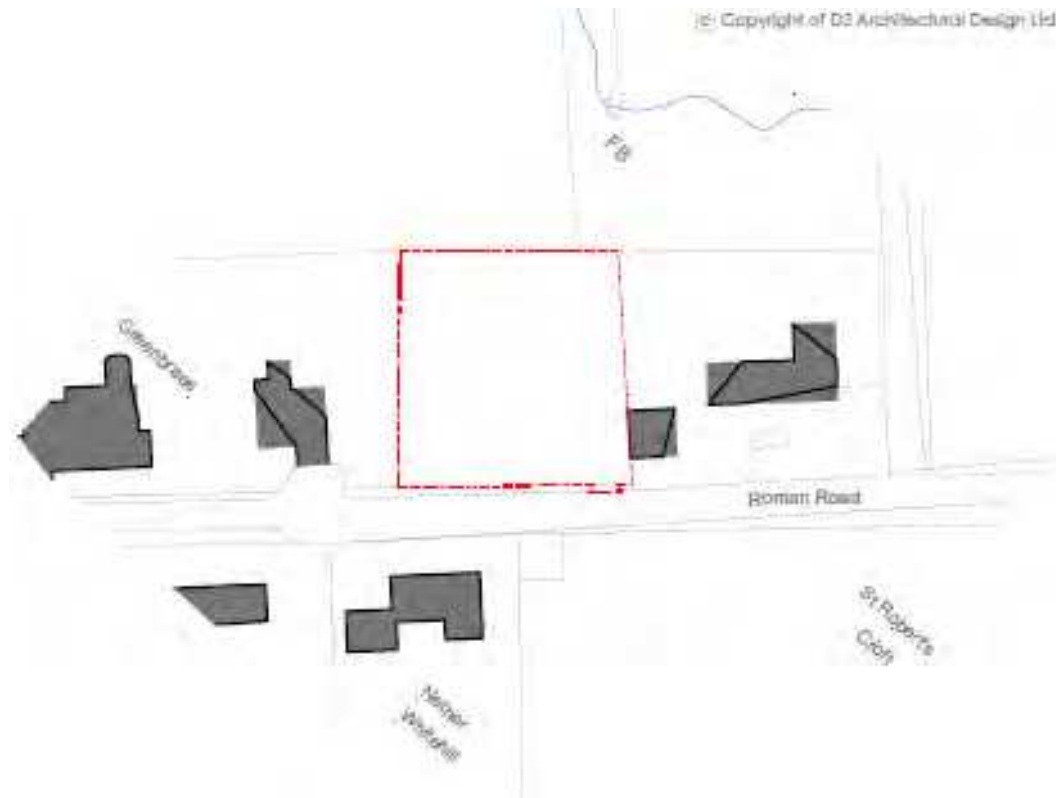


Fig 1: Extract from 23023-D01 Site Plan (Source: D2 Architectural Design).



Fig 2: Aerial image of Nine Mile Burn

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NEW DWELLING, NINE MILE BURN

THE PROPOSAL

THE PROPOSAL

- 2.1 The proposal is for the erection of a new dwelling together with access, garden, and associated works. The layout and access arrangements of the proposed dwelling are conceptually illustrated on 23023-D01 Site Plan, visible in **Fig.3**.
- 2.2 The new dwelling is proposed centrally within the site. The new dwelling is proposed in generally L-plan form and will be placed in a garden extending from all four elevations of the proposed dwelling. The new dwelling is conceptually proposed over two levels.
- 2.3 Proposed Elevations have been prepared on a conceptual basis presenting a design which complements the character of other dwellings in the surrounding area and can be seen in **Fig.4**. Should planning permission be granted for the proposed development then the Applicants will develop this concept into a detailed design informed by and in accordance with adopted policy for the further consideration of the Planning Authority.
- 2.4 The proposed dwelling will be serviced by new private arrangements for drainage of foul water. The Applicants propose to connect to the mains water network in the local area.
- 2.5 Access to the site is proposed across the south-east boundary to the minor public road. The new access would be taken at the north extent of the south-east boundary. The new access would be the sixth residential access taken directly from the public road in the existing housing group.
- 2.6 The proposal contains tree and hedge planting upon the north-east boundary of the site. It is envisaged that tree and shrub planting will become sufficiently established on-site to create a single band of trees across the west of the application site and Greenbraes.
- 2.7 As the Application is for Planning Permission in Principle, the requirement to submit detailed drawings to secure the outstanding elements of the design in the next stage of the planning process is acknowledged.

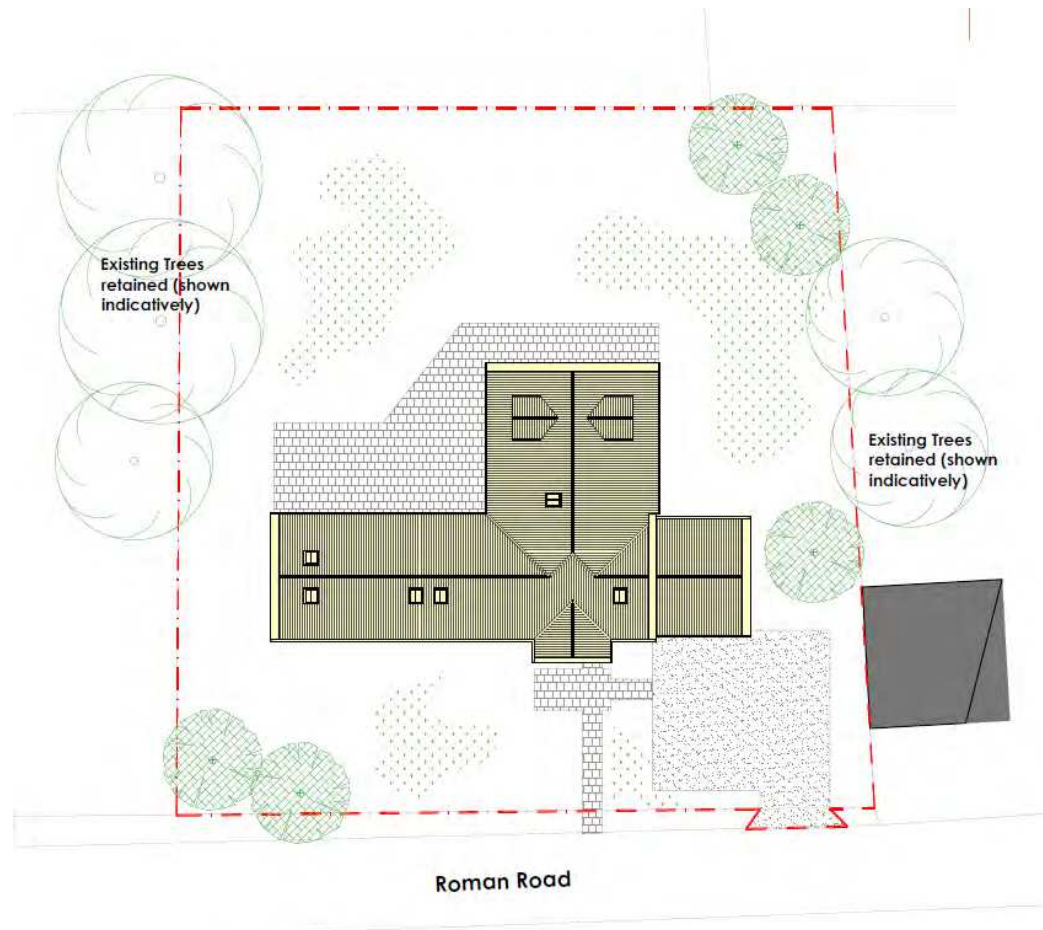


Fig 3: Extract from 23023-D01 Site Plan (Source: D2 Architectural Design).

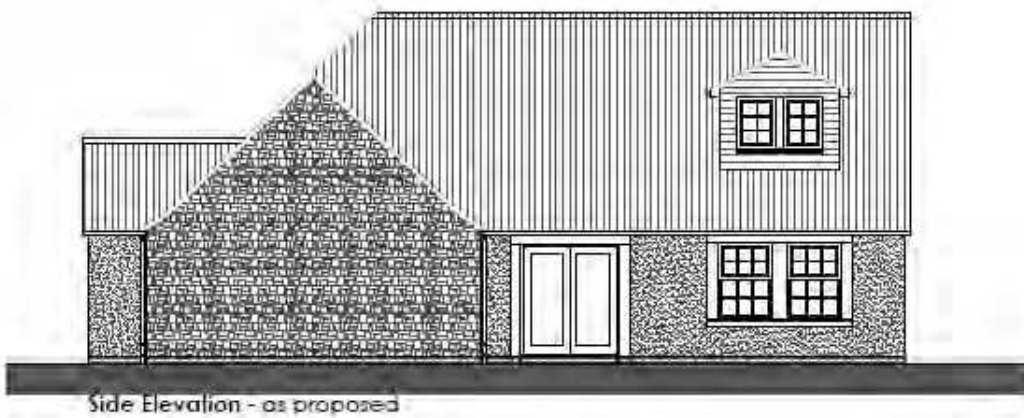
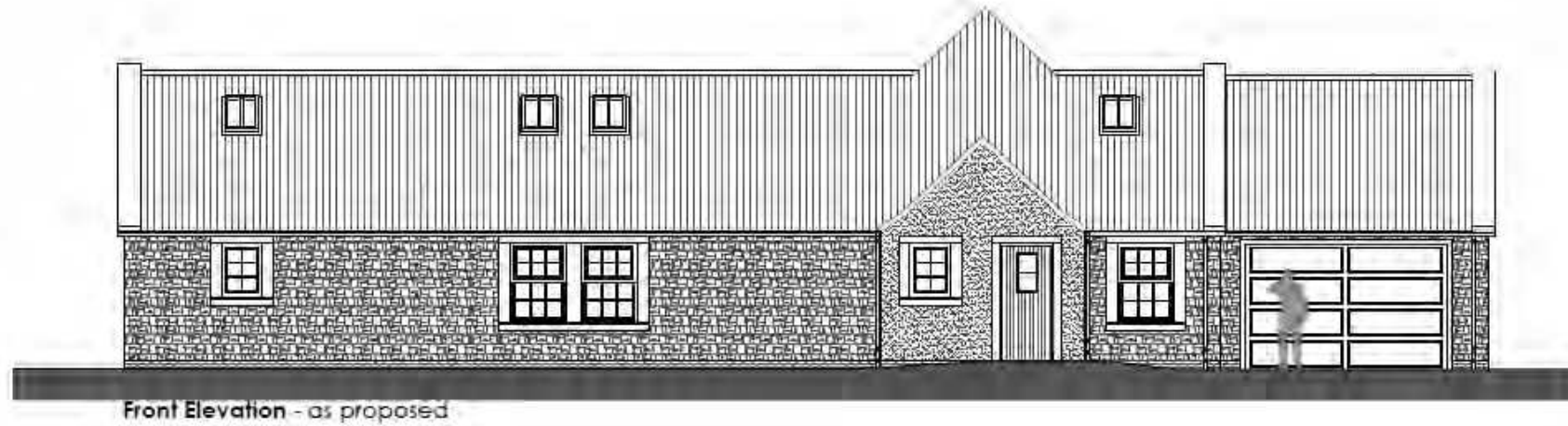


Fig 4: Extract from 23023-D02 Conceptually Proposed Elevations
(Source: D2 Architectural Design).

NEW DWELLING, NINE MILE BURN

PLANNING POLICY CONTEXT

PLANNING POLICY CONTEXT

3.1 Sections 25 & 37(2) of the Town and Country Planning (Scotland) Act 1997 (as amended) require that Applications for Planning Permission are determined in accordance with the Development Plan and other material considerations.

3.2 National Planning Framework 4 sets out national planning policies and is part of the development plan. Midlothian Local Development Plan (2016) sets out the local planning policy context.

NATIONAL PLANNING FRAMEWORK 4 (2023)

3.3 The National Planning Framework 4 was adopted in February 2023. It is part of the development plan for the purpose of sections 25 and 37 of the Act. The document addresses national planning policy and the Government's approach to achieving a net zero sustainable Scotland by 2045.

3.4 National Planning Framework 4 establishes "*six overarching spatial principles*". The principle which is most pertinent to the proposed development is Rural Revitalisation. Rural Revitalisation is defined as encouragement of "*sustainable development in rural areas, recognising the need to grow and support urban and rural communities*". The adopted text confirms that the strategy and policies "*support development that helps to retain and increase the population of rural areas of Scotland.*"

3.5 **Policy 1** Tackling the Climate and Nature Crises requires that "*when considering all development proposals significant weight will be given to the global climate and nature crises.*"

3.6 **Policy 2** Climate Mitigation and Adaptation makes the following policy provisions relevant to the determination of planning applications:

- a) Development proposals will be sited and designed to minimise lifecycle greenhouse gas emissions as far as possible.
- b) Development proposals will be sited and designed to adapt to current and future risks from climate change.
- c) Development proposals to retrofit measures to existing developments that reduce emissions or support adaptation to climate change will be supported.

3.7 **Policy 3** Biodiversity contains the Government's planning policy on wildlife and habitats. The following branches of the Policy are considered to be relevant to the proposal:

- Development proposals will contribute to the enhancement of biodiversity, including where relevant, restoring degraded habitats and building and strengthening nature networks and the connections between them. Proposals should also integrate nature-based solutions, where possible.
- Proposals for local development will include appropriate measures to conserve, restore and enhance biodiversity, in accordance with national and local guidance. Measures should be proportionate to the nature and scale of development.

3.8 **Policy 5** Soils makes the following policy provisions for the determination of planning applications:

NEW DWELLING AT NINE MILE BURN

"a) Development proposals will only be supported if they are designed and constructed:

- i. In accordance with the mitigation hierarchy by first avoiding and then minimising the amount of disturbance to soils on undeveloped land; and*
- ii. In a manner that protects soil from damage including from compaction and erosion, and that minimises soil sealing.*

b) Development proposals on prime agricultural land, or land of lesser quality that is culturally or locally important for primary use, as identified by the LDP, will only be supported where it is for:

- i. Essential infrastructure and there is a specific locational need and no other suitable site;*
- ii. Small-scale development directly linked to a rural business, farm or croft or for essential workers for the rural business to be able to live onsite;*
- iii. The development of production and processing facilities associated with the land produce where no other local site is suitable;*
- iv. The generation of energy from renewable sources or the extraction of minerals and there is secure provision for restoration; and*

In all of the above exceptions, the layout and design of the proposal minimises the amount of protected land that is required."

3.9 **Policy 13** Sustainable Transport addresses the transport impact of development. Branch b) of the Policy sets out that "development proposals will be supported where it can be demonstrated that the transport requirements generated have

been considered in line with the sustainable travel and investment hierarchies and where appropriate they:

- i. Provide direct, easy, segregated and safe links to local facilities via walking, wheeling and cycling networks before occupation;*
- ii. Will be accessible by public transport, ideally supporting the use of existing services;*
- iii. Integrate transport modes;*
- iv. Provide low or zero-emission vehicle and cycle charging points in safe and convenient locations, in alignment with building standards;*
- v. Supply safe, secure and convenient cycle parking to meet the needs of users and which is more conveniently located than car parking;*
- vi. Are designed to incorporate safety measures including safe crossings for walking and wheeling and reducing the number and speed of vehicles;*
- vii. Have taken into account, at the earliest stage of design, the transport needs of diverse groups including users with protected characteristics to ensure the safety, ease and needs of all users; and*
- viii. Adequately mitigate any impact on local public access routes."*

3.10 **Policy 14** Design, Quality, and Place contains the Government's policy expectations on design. The Policy makes the following requirements of development proposals:

- a) Development proposals will be designed to improve the quality of an area whether in urban or rural locations and regardless of scale.

NEW DWELLING AT NINE MILE BURN

b) Development proposals will be supported where they are consistent with the six qualities of successful places:

Healthy: Supporting the prioritisation of women's safety and improving physical and mental health.

Pleasant: Supporting attractive natural and built spaces.

Connected: Supporting well connected networks that make moving around easy and reduce car dependency

Distinctive: Supporting attention to detail of local architectural styles and natural landscapes to be interpreted, literally or creatively, into designs to reinforce identity.

Sustainable: Supporting the efficient use of resources that will allow people to live, play, work and stay in their area, ensuring climate resilience, and integrating nature positive, biodiversity solutions.

Adaptable: Supporting commitment to investing in the long-term value of buildings, streets and spaces by allowing for flexibility so that they can be changed quickly to accommodate different uses as well as maintained over time.

Further details on delivering the six qualities of successful places are set out in Annex D.

c) Development proposals that are poorly designed, detrimental to the amenity of the surrounding area or inconsistent with the six qualities of successful places, will not be supported.

3.11 **Policy 15** Local Living and 20 minute Neighbourhoods establishes 20 minute neighbourhoods as a policy principle. The adopted text is incorporated below:

a) Development proposals will contribute to local living including, where relevant, 20 minute neighbourhoods. To establish this, consideration will be given to existing settlement pattern, and the level and quality of interconnectivity of the proposed development with the surrounding area, including local access to:

- sustainable modes of transport including local public transport and safe, high quality walking, wheeling and cycling networks;
- employment;
- shopping;
- health and social care facilities;
- childcare, schools and lifelong learning opportunities;
- playgrounds and informal play opportunities, parks, green streets and spaces, community gardens, opportunities for food growth and allotments, sport and recreation facilities;
- publicly accessible toilets;
- affordable and accessible housing options, ability to age in place and housing diversity.

3.12 **Policy 16** Quality Homes is relevant to the proposed development. Branch c) states that *"development proposals for new homes that improve affordability and choice by being adaptable to changing and diverse needs, and which address identified gaps in provision, will be supported. This could include:*

- i. *self-provided homes;*
- ii. *accessible, adaptable and wheelchair accessible homes;*
- iii. *build to rent;*
- iv. *affordable homes;*
- v. *a range of size of homes such as those for larger families;*

- vi. *homes for older people, including supported accommodation, care homes and sheltered housing;*
- vii. *homes for people undertaking further and higher education; and*
- viii. *homes for other specialist groups such as service personnel."*

3.13 **Policy 17** Rural Homes states that *"development proposals for new homes in rural areas will consider how the development will contribute towards local living and take into account identified local housing needs (including affordable housing), economic considerations and the transport needs of the development as appropriate for the rural location."*

FERGUSON
PLANNING

NEW DWELLING, NINE MILE BURN

PLANNING ASSESSMENT

PLANNING ASSESSMENT

Principle of Development

- 4.1. The application site is considered to lie within the sense of place and setting of an existing housing group at Nine Mile Burn. The housing group comprises eight existing dwellings – Ptarmigan, Crooked Acre, Crichtons Croft, St Robert's Croft, Greenbraes, Nether Whitehill, Whitehill, and the Firs.
- 4.2. The Application site is considered to sit within the sense of place and setting of the housing group at Nine Mile Burn. This is clearly demonstrated by the adjacent relationships with St Robert's Croft across the north-east boundary and Greenbraes across the south-west boundary.
- 4.3. The proposal is considered to represent *"self-provided homes"* (item i.), *"accessible, adaptable and wheelchair accessible homes"* (item ii.), and *"homes for older people, including supported accommodation, care homes and sheltered housing"* (item vi.) under branch c) of NPF4 Policy 16.
- 4.4. It is considered that there is no prospect of the proposed dwelling being delivered by a housebuilder or other corporate developer. Development of the new dwelling would be delivered on self-build basis – either by the Applicants or successors in title. Therefore, the proposed dwelling is considered to satisfy item i. of branch c) as it represents self-provided homes.
- 4.5. The new dwelling has been designed with accessibility in mind. Although it is intended to accommodate two bedrooms upstairs, all primary living accommodation shall be incorporated on the ground floor. Additionally a bedroom and a bathroom shall also be included on the ground floor. The design intention includes a bedroom and a bathroom accommodated on the ground floor.
- 4.6. It is intended to construct doorways at sufficient width for wheelchairs to easily pass. Space has also been safeguarded for installation of a lift. While it is not the intention of the Applicants to install the lift in initial construction, the option will be retained for future occupiers to exercise, including those subsequent to the Applicants. Consideration and assessment of construction specification and other exact detail is deferred to the subsequent stage of the planning process and the Building Standards system respectively. Therefore, the proposed dwelling is considered to satisfy item ii. & vi. of branch c) as it represents a home which is accessible, adaptable, wheelchair accessible and suitable for occupation by older people.
- 4.7. Branch b) of Policy 17 requires that development in rural areas should *"contribute towards local living"* and take account of local context and circumstances. The existing dwelling Nether Whitehill has been constructed in the most recent five or six years. It is understood to have been consented in May 2017.
- 4.8. The proposal comprises the erection of a new dwelling upon a site which is well related existing dwellings at Nine Mile Burn. The application site is strongly contained on three sides between two existing dwellings and the adopted public road. The proposal is considered to achieve explicit accordance with both Policy 16

(branch c)) and Policy 17 (branch b)) of NPF4. Therefore, the principle of development is considered to be acceptable.

Soil Quality

4.9. It is recognised that loss of Prime Quality Agricultural Land (Classes 1, 2, & 3.1) is resisted by Policy 5.

4.10. However, land on-site is designated at Class 4.1, as shown in **Fig.5**. Therefore, there is no Prime Quality Agricultural Land on-site. As such, the proposal does not represent loss of Prime Quality Agricultural Land and is considered to accord with Policy 5.

Archaeology

4.11. The site lies close to but beyond archaeological remains identified in the residential curtilage of Crooked Acre and/or Crichtons Croft (Canmore ID: 365482). Archaeological trenching prior to construction of Nether Whitehill identified no evidence that remains extend this far south (Canmore ID: 375710). The remains further north are understood to relate to a “post-medieval farmstead”.

4.12. Criterion o) of NPF4 Policy 7 sets out that potential impact on non-designated buried assets should be assessed during the planning process. To this effect, the Applicants would be prepared to accept conditioning of submission of a Written Scheme of Investigation in a grant of Planning Permission in Principle. It is considered that use of a condition is reasonable and proportionate to the scale of development proposed, in accordance with Policy 7 of NPF4.

Access and Parking

4.13. Access is proposed across the south-east boundary of the site from the minor public road adjacent. The nearby existing dwellings Crichtons Croft, St Robert’s Croft, Greenbraes, Nether Whitehill, and Whitehill all take access directly from the adopted road. Local residential access defines the use of the road within the adopted public network.

4.14. The speed of passing traffic is managed by the presence of multiple residential accesses and the rising topography of the road on approach to Langlee Mains. Access for the proposed dwelling from the public road is considered to be safe and acceptable.

4.15. It is proposed to serve the new dwelling with two parking spaces within the residential curtilage. These arrangements are considered to be consistent with standards expected by the Council as Public Roads Authority. As the proposal provides for safe and acceptable access it is considered to be in accordance with Policy 13.

Ecology

4.16. The application site represents ecologically low value land, the use of which has been dominated by sheep grazing for decades. While this is appropriate to the local area, it has proven not to be conducive to establishment of species rich habitat.

4.17. It is intended for the proposed dwelling to be endowed with new hedgerow and deciduous trees of native species. These will serve as an extension to the band of trees that have become established upon the north-west boundary of Greenbraes to create a single small woodland body. The new planting will enhance biodiversity and the natural habitat locally.

Land capability for agriculture (partial cover)

- 1 - Land capable of producing a very wide range of crops.
- 2 - Land capable of producing a wide range of crops.
- 3.1 - Land capable of producing consistently high yields of a narrow range of crops and/ or moderate yields of a wider range. Short grass leys are common.
- 3.2 - Land capable of average production though high yields of barley, oats and grass can be obtained. Grass leys are common.
- 4.1 - Land capable of producing a narrow range of crops, primarily grassland with short arable breaks of forage crops and cereal.
- 4.2 - Land capable of producing a narrow range of crops, primarily on grassland with short arable breaks of forage crops.
- 5.1 - Land capable of use as improved grassland. Few problems with pasture establishment and maintenance and potential high yields.

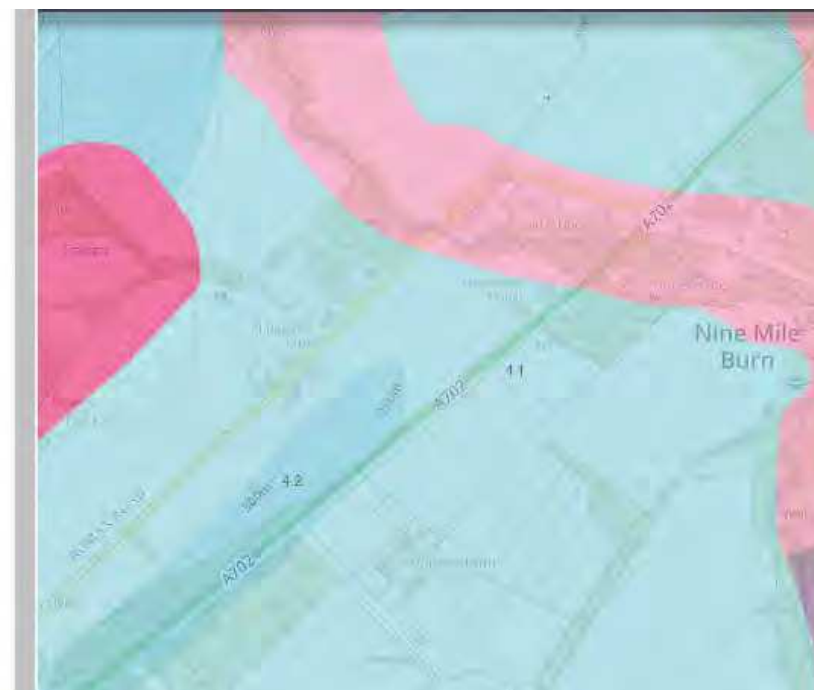


Fig 5: Extract from Land capability for agriculture (partial cover) Map. The application site (overlaid with the annotation “St Robert’s Croft”) can be seen to sit in Class 4.1 (Source: <https://soils.environment.gov.scot/>)

4.18. The application site currently comprises little habitat which supports limited species. The inclusion of new hedging in the proposal will create corridors that support biodiversity and improve the volume and utility of semi-natural habitat on the site and in its surroundings. It is intended also to plant the garden with native species of shrub and flower species which will offer greater diversity of habitat, particularly flora. It is anticipated that greater flora diversity will encourage greater diversity of fauna, especially bees and other pollinators.

4.19. Therefore, the proposal is considered to accord with Policy 3 of NPF4.

Site Servicing and Renewable Energy

4.20. The proposed dwelling will be serviced by connection to the mains water network. Foul and surface water drainage will be managed by connection to private means. The Applicants are content to secure connection details via condition.

4.21. The Applicants are committed to delivering sustainable development by designing out polluting operations and activity. The Applicants envisage incorporating renewable energy (micro) generation equipment in the new dwelling. Technologies being considered at the present time include solar panels, air source heat pumps, and possibly heat recovery systems designed bespoke for the development. Therefore, the proposal would contribute towards decarbonising the housing stock and is considered to accord with Policies 1 & 2.

NEW DWELLING, NINE MILE BURN

CONCLUSION

CONCLUSION

- 5.1. Ferguson Planning has been appointed by the Applicants to submit an Application for Planning Permission in Principle for the erection of a new dwelling to the south-west of St Robert's Croft, Nine Mile Burn, EH26 9LZ.
- 5.2. The proposal represents the enlargement of an existing housing group by one dwelling upon a site that is bound by existing dwellings to both the north-east and south-west. The proposal is considered to represent a self-provided home; a house that is accessible, adaptable, and wheelchair accessible; and a house suitable for older people and those receiving support to live. Therefore, the proposal is considered to accord with NPF4 Policy 16 and the principle of development is considered to be acceptable.
- 5.3. The application site lies on land which is designated as Class 4.1 and sits below Class 3.1, the minimum threshold for Prime Quality Agricultural Land. Therefore, the proposal does not represent the loss of Prime Quality Agricultural Land and accords with Policy 5 of NPF4.
- 5.4. Access to the site is proposed from the minor public road adjacent across the south-east boundary. The road is not a primary thoroughfare and is characterised by multiple existing residential accesses. Two parking spaces are included within the curtilage of the dwelling. The proposed development is considered to be acceptable in access and parking terms, therefore it is considered that the proposal accords with Policy 13.
- 5.5. It is considered that the proposal is in accordance with relevant adopted policy of the Development Plan and is not afflicted by any other material considerations. It is respectfully requested that planning permission is granted.

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MIDLOTHIAN COUNCIL

DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

Planning Application Reference: 23/00708/PPP

Site Address: Land South West of St Roberts Croft, Nine Mile Burn, Penicuik.

Site Description: The application site is an overgrown area of land within the countryside and the Pentland Hills Regional Park. There are houses to either side of the site (southwest and northeast), with countryside and a house to the southeast and countryside and the Pentland Hills to the northwest. The site is within the housing group at Nine Mile Burn which comprises a variety of house designs, largely traditional in design, scale, form and materials.

Proposed Development: Application for planning permission in principle for erection of dwellinghouse.

Proposed Development Details: The application is for planning permission in principle, however an indicative site plan has been submitted. This shows a house, access and parking. Indicative elevations have also been submitted, with the house appearing single storey with accommodation in the roofspace from the front but includes a large projecting section to the rear, which provides two floors of accommodation. New private drainage in the form of a septic tank is proposed. The house will connect to the public water supply.

The applicants' agent has submitted a planning statement that provides a rationale for the proposal, as well as reference to the Midlothian Local Development Plan 2017 (MLDP) and National Planning Framework 4 (NPF4). This states the site is within an existing housing group of eight units and is a gap site. This will be a self provided home and suitable for occupation by older people. Additional native landscaping is proposed to integrate the house into the area and promote biodiversity and wildlife. Solar panels, air source heat pumps and heat recovery systems designed bespoke for the development are being considered. The site is on land which does not meet the standard for prime quality agricultural land.

Background (Previous Applications, Supporting Documents, Development Briefs): Application site
22/00903/DPP Erection of dwellinghouse; formation of access and associated works. Withdrawn.

Land to northeast (by Crichton's Croft, beyond St Robert's Croft)
21/00127/MSD Erection of dwellinghouse (approval of matters specified in condition 1 of planning permission 17/00732/PPP). Consent with conditions – implemented.
17/00732/PPP Application for planning permission in principle for erection of dwellinghouse. Consent with conditions - implemented.

Greenbraes (to southwest)
07/00653/FUL Erection of conservatory and chimney. Consent with conditions.

06/00701/FUL Erection of conservatory. Consent with conditions.
04/00739/FUL Creation of parking area with associated earthwork and landscaping (retrospective). Consent with conditions.
04/00699/FUL Extension and alterations to dwellinghouse, retrospective permission for erection of fence and lamppost. Consent with conditions.
03/00543/FUL Extension to dwellinghouse and retrospective permission for erection of fence. Refused.

St Robert's Croft (to northeast)

02/00158/FUL Extension to dwellinghouse. Permitted.
01/00774/FUL Erection of detached double garage. Consent with conditions.
01/00404/FUL Extension to dwellinghouse and construction of decking. Permitted.

Land to southeast

17/00840/DPP Change of use from agricultural land to private garden ground.
Consent with conditions.

Whitehill (to south)

17/00686/DPP Extension to dwellinghouse and alterations to existing roof to increase roof height. Consent with conditions.
17/00284/DPP Erection of dwellinghouse; formation of access and associated drainage infrastructure. Consent with conditions.
17/00008/DPP Erection of dwellinghouse, formation of access, change of use from agricultural land to private garden ground and associated drainage infrastructure. Withdrawn.
15/00592/DPP Erection of dwellinghouse and formation of access. Refused. Allowed at LRB.
15/00125/DPP Erection of dwellinghouse and formation of access. Withdrawn.
14/00328/DPP Sub-division of and extensions to existing dwellinghouse to form 2 dwellinghouses, and erection of dwellinghouse. Withdrawn.
13/00648/DPP Sub-division of and extensions to existing dwellinghouse to form 2 dwellinghouses; erection of dwellinghouse and detached garages; and change of use of agricultural land to private garden ground. Withdrawn.

Consultations:

The Council's **Senior Manager Neighbourhood Services (Roads)** was consulted but did not respond. In a previous enquiry and application for a house at this site, they had no objection but requested details of the proposed vehicle access, parking arrangements and the proposed surface water management system. There has been no significant change in circumstances in the area since the previous comments were received.

The Council's **Biodiversity Consultant** recommends a condition be attached to any permission to ensure no work take place during bird breeding season unless unavoidable, in which case checks should be made. They note an otter survey was submitted in the most recent application at the site. This did not identify otter resting sites or holts in the area and so no further action or mitigation was required. This report is current and so no further works are required in relation to protected species.

The Council's **Archaeological Consultant** recommends a condition be attached to any permission requiring a programme of archaeological works be submitted for approval before any works begin on site.

Scottish Water has no objection and states that there is public drainage in the area. They will not accept any surface water connections to the combined sewer.

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

- Loss of privacy to neighbouring properties due to overlooking from the proposed house;
- Impact and potential damage to mature trees at a neighbouring property;
- There is a natural spring within the site which connects to Monks Burn. The related works will affect the water table, impacting on the neighbouring garden and potentially buildings;
- The proposal will devalue neighbouring properties;
- The proposal will result in the loss of view in a regionally significant park;
- Potential future problems, such as use as a holiday let;
- Environmental damage during construction to the sensitive surroundings;
- The proposal will not support the wider benefits of the community but will detract from the quality of life of existing residents and recreational users of the Pentland Hills Regional Park;
- Concern permission will be granted for a group of property developers to exploit the park for financial gain;
- Green spaces should be protected; and
- There are two houses under construction within 100 metres from the site – this is a rural hamlet so is another house required? Roman Road is in danger of becoming a high street.

Relevant Planning Policies: The development plan is comprised of National Planning Framework 4 (2023) and the Midlothian Local Development Plan 2017. The following policies are relevant to the proposal:

The relevant policies of the National Planning Framework 4 are:

- Policy **1 Tackling the climate and nature crisis** sets out to encourage, promote and facilitate development that addresses the global climate emergency and nature crisis;
- Policy **2 Climate mitigation and adaptation** sets out to encourage, promote and facilitate development that minimises emissions and adapts to the current and future impacts of climate change;
- Policy **3 Biodiversity** sets out to protect biodiversity, reverse biodiversity loss, deliver positive effects from development and strengthen nature networks;
- Policy **4 Natural Places** sets out to protect, restore and enhance natural assets making best use of nature-based solutions;
- Policy **5 Soils** sets out to protect carbon-rich soils, restore peatlands and minimise disturbance to soils from development. The policy also sets out acceptable scenarios for development on prime agricultural land;
- Policy **6 Forestry, woodland and trees** sets out to protect and expand forests, woodland and trees;

- Policy **7 Historic assets and places** sets out to protect and enhance historic environment assets and places, and to enable positive change as a catalyst for the regeneration of places;
- Policy **13 Sustainable transport** sets out to encourage, promote and facilitate developments that prioritise walking, wheeling, cycling and public transport for everyday travel and reduce the need to travel unsustainably;
- Policy **14 Design, quality and place** sets out to encourage, promote and facilitate well designed development that makes successful places by taking a design-led approach and applying the Place Principle;
- Policy **15 Local Living and 20 minute neighbourhoods** sets out to encourage, promote and facilitate the application of the Place Principle and create connected and compact neighbourhoods where people can meet the majority of their daily needs within a reasonable distance of their home, preferably by walking, wheeling or cycling or using sustainable transport options;
- Policy **16 Quality homes** sets out to encourage, promote and facilitate the delivery of more high quality, affordable and sustainable homes, in the right locations, providing choice across tenures that meet the diverse housing needs of people and communities across Scotland;
- Policy **17 Rural homes** sets out to encourage, promote and facilitate the delivery of more high quality, affordable and sustainable rural homes in the right locations;
- Policy **20 Blue and green infrastructure** sets out to protect and enhance blue and green infrastructure and their networks;
- Policy **22 Flood risk and water management** sets out to strengthen resilience to flood risk by promoting avoidance as a first principle and reducing the vulnerability of existing and future development to flooding; and
- Policy **24 Digital infrastructure** sets out to encourage, promote and facilitate the roll-out of digital infrastructure across Scotland to unlock the potential of all our places and the economy.

The relevant policies of the **2017 Midlothian Local Development Plan** are;

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

RD3 Pentland Hills Regional Park states that proposals in this area will not be permitted where it would be contrary to the policy aims of the Park, the detailed policy considerations set out in a separate Appendix of the MLDP or other policies in this Plan, and/or current and future management plans for the Park. This appendix

details the following specific policy considerations which relate only to proposals within the Pentland Hills Regional Park boundary:

1. The Special Landscape Area designation affecting the Pentland Hills Regional Park will be the overriding factor when considering proposals which may be acceptable under other MLDP policies.
2. Development, redevelopment and the conversion of existing buildings within the Regional Park will not be permitted unless essential for the purposes of agriculture (including farm-related diversification), forestry, outdoor recreation, tourism or other rural activities compatible with the aims of the Regional Park. Any such development proposal will be considered against the following criteria:
 - a) it should make a positive contribution to the amenity of the Park in terms of design and landscaping;
 - b) it should not be visually obtrusive or necessitate visually obtrusive constructions;
 - c) it should be compatible with existing adjoining and neighbouring developments and uses;
 - d) it should be capable of being served by an adequate and appropriate access;
 - e) it can be serviced at reasonable cost and there would be no unacceptable discharge to watercourses;
 - f) where conversion is proposed, this should be possible without substantial rebuilding and with the retention of original character and attractiveness.
3. With the co-operation of owners and occupiers, Scottish Natural Heritage and other interested bodies, the economic, landscape and nature conservation of the grouse moor will be protected and safeguarded.
4. The Council will seek to ensure that, through design, species composition and sympathetic integration, new forestry schemes will complement the hill environment.
5. There will be a general presumption against waste disposal operations within the Midlothian section of the Regional Park.
6. The conservation of the hill landscape and wildlife interests will be sought in all proposals involving the installation of the public service utilities.
7. Intrusive tourist developments, including static and transit caravan and camping sites, will not be permitted within the Regional Park.
8. Public car parks will be provided only on the periphery of the Regional Park. They must be related to specific recreational opportunities and will be designed to integrate with the landscape and character of each particular location.
9. There will be a general presumption against formal picnic sites in remote hill areas. Managed picnic sites will be provided only in association with existing facilities and car parking;

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

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

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

ENV11 Woodland, Trees and Hedges states development will not be permitted where it could lead directly or indirectly to the loss of, or damage to, woodland, groups of trees and hedges (including trees covered by a Tree Preservation Order, areas defined as ancient or semi-natural woodland, veteran trees or areas forming part of any designated landscape) which have particular amenity, nature conservation, biodiversity, recreation, landscape, shelter or historical value or other importance;

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

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

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

TRAN5 Electric Vehicle Charging supports and promotes the development of a network of electric vehicle charging stations by requiring provision to be considered as an integral part of any new development or redevelopment proposal; and

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

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

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

The primary focus of the NPF4 planning policies seek for developments to be sustainable and give consideration to the global climate and nature crises.

In response to NPF4 the agent has stated:

- This will be a self provided home and suitable for occupation by older people;
- Additional native landscaping will be planted at the site boundary to integrate this into the site and promote biodiversity and wildlife; and
- Solar panels, air source heat pumps and heat recovery systems designed bespoke for the development are being considered.

The site is in a relatively remote countryside area. While the abovementioned details seek to address the climate crisis the application site is a fundamentally unsustainable location for a new house. The majority of trips to and from the site are likely to be done by private car, which is not in line with NPF4's focus on sustainability. The use of zero and low carbon technology and landscaping would all be expected as standard in proposals. These are not extra measures which help address the climate and nature crises.

The Planning Authority has restrictive planning policies with regards to new housing proposals within the countryside. These restrictions aim to prevent the creeping suburbanisation of the countryside which is under significant pressure due to the convenient commuting distance to Edinburgh. However there are enabling policies within the adopted Midlothian Local Development Plan and NPF4 which support residential developments within the countryside in some instances, subject to specific criteria. Policy RD1 of the MLDP, policy 17 of NPF4 and the related supplementary guidance includes several sections where houses in the countryside could be acceptable in planning terms.

The proposed house is not required for the furtherance of an established countryside activity, nor is it a replacement house or for the conversion or redevelopment of existing redundant farm buildings or other non-residential buildings. The proposal is not an enabling development where it is clearly shown that this is the only means of preventing the loss of a heritage asset and securing its long term future. The site is not allocated for housing within the LDP nor is it brownfield land. This is not a single home for the retirement succession of a viable farm holding, nor is this the subdivision of an existing residential dwelling. The proposal does not reinstate a former dwelling house nor is it a one-for-one replacement of an existing permanent house. There is no support for a house in principle through NPF4.

Policy RD1 of the MLDP, and associated supplementary guidance, provides some support for houses in groups where a new dwelling is permitted during the plan period where there are five or more existing dwellinghouses. There are 16 houses within the group at Nine Mile Burn and therefore potential for one further house in the current MLDP period. Any new house must form part of the group and meet the criteria included in the SG for suitable plots within groups. The specific guidance notes that the fields to the North South and West of the group are open and unrelated to the housing group, so development would be unacceptable here. The open field between the A702 and the Nine Mile Burn road should remain undeveloped. This also advises that development within the boundary of the Pentland Hills Regional Park should be considered against the local plan policy.

Planning permission in principle was granted in March 2018 for the erection of a dwellinghouse at the Land Adjacent to Crichton Croft, Nine Mile Burn, to the northeast of this application site. A matters specified in conditions application was approved in April 2021 and implemented in April 2023. This house was approved under the current adopted Midlothian Local Development Plan 2017. This means there is no provision in the current Midlothian Local Development Plan 2017 for the approval of an additional house in this group during this local development plan period. It is noted that there may be scope for an additional dwellinghouse within the next local plan period or in MLDP2.

While there are numerous ways in which a new house can satisfy planning policy in the countryside this proposal satisfies none of them. The proposal does not comply with the acceptable criteria in NPF4 policy 17 or MLDP RD1. The proposal is a completely unjustified attempt to build a new house in the Midlothian countryside.

Notwithstanding the lack of policy support, the details of the proposal need to be given some consideration.

Had there been support for a new house within this group in the current local plan period, the application site would appear to be a suitable location for a house. The dominant characteristic of the housing group at Nine Mile Burn West is that of a linear settlement with a strong relationship to the historic road. The site would be in keeping with the linear characteristic of the group and is a gap site between to existing houses. A house situated towards the roadside edge of the plot would appear as a logical addition to the existing group and maintain the strong roadside presence of the group. The clear and logical relationship with the existing group will ensure that development of the plot will not have a detrimental impact on the character of either the special landscape area or the Pentland Hills Regional Park.

The application site area is sufficiently large to be able to accommodate a dwellinghouse, garden ground, turning area and parking.

The application is for planning permission in principle. While indicative elevations have been submitted, these are for illustrative purposes only. Should the current application be approved, a further application would be required to consider the design, materials and layout of the development. Due to the sensitive location within the countryside, the Pentland Hills Regional Park and a special landscape area, it is important that any new house is in keeping with and does not detract from the character and appearance of the area. The dominant scale within the group is single storey houses with some additional accommodation in the roofspace and any new house should respect this. It is worth noting that the indicative plans show a house with a large projecting section to the rear which is higher than the traditional frontage of the house which detracts from its overall traditional appearance and proportions and would not be considered acceptable.

Landscaping the site to integrate any house into the area is welcomed, as is the planting of native species. The existing mature tree cover at land adjoining the north eastern site boundary (St John's Croft) and the south western site boundary is to be retained. Should permission be approved, details demonstrating that the root protection area of the existing trees are safeguarded so these are not detrimentally

affected by the proposed works. A tree survey to determine and protect arboricultural constraints would also be required.

The site is served by an existing access. There are no road safety objections to the proposal. Should permission in principle be supported, the further application would include details of the access and parking for consideration and approval.

Scottish Water did not raise any concerns over water supply. Should permission be granted a planning condition would be attached requiring further details of drainage, including surface water, and sewerage provision. This should take into account the natural spring within the site.

The following addresses representor comments not addressed above.

The submitted elevations are indicative. Should this planning permission be approved, a further application which would include details of the design and layout of the house and development would be required. The impact on the privacy of neighbouring properties, existing landscaping and the surrounding sensitive rural area would be considered at that stage.

The loss of value of existing properties and the loss of a view are not a material planning considerations.

Should planning permission be approved, this would be for the use as a house only. Any change of use to a holiday let may require planning permission and the impact of this on the surrounding area would be assessed at the time.

It is not clear how the proposal would detract from the quality of life of existing residents and recreational uses of the Pentland Hills Regional Park. As previously stated, if approved the house would need to be in keeping with the character of the existing group and surrounding sensitive area with a design to be agreed.

As previously stated, the house approved as part of the housing group is currently under construction to the northeast of the site. The case officer is not aware of where the other house is under construction as stated by the representor.

Recommendation: Refuse planning permission in principle.

Reg. No. 23/00708/PPP

Ferguson Planning
38 Thistle Street
Edinburgh
EH2 1EN

Midlothian Council, as Planning Authority, having considered the application by per J McCormick, H Walker, I Clarke and F Connerty, 38 Thistle Street, Edinburgh, EH2 1EN, which was registered on 2 November 2023 in pursuance of their powers under the above Acts, hereby **refuse** permission to carry out the following proposed development:

Application for planning permission in principle for erection of dwellinghouse at Land South West of St Roberts Croft, Nine Mile Burn, Penicuik

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

<u>Document/Drawing.</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Location Plan, Site Plan	D01 1:1250 1:200	02.11.2023

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

- The proposal for a dwellinghouse does not comply with the housing group policy where only one house where there are five existing dwellings or more may be supported during each plan period. Planning permission has already been granted for the erection of one house on an adjacent site within this established housing group of Nine Mile Burn West during this plan period and there is no policy support for a further house to be sited in this group. Therefore, there is no justification for the development of a residential unit in this countryside location as it would be contrary to policy RD1 of the adopted Midlothian Local Development Plan 2018, the related supplementary planning guidance and Policy 17 of the National Planning Framework 4.*
- It has not been demonstrated to the satisfaction of the Planning Authority that the proposed development has been sited in a sustainable location. The proposed development fails to address the global climate crisis in this respect. Therefore the proposed development does not comply with the overarching aims of NPF4 and policy 1 of NPF4 specifically.*

Dated 15 / 12 / 2023

A handwritten signature in black ink, consisting of a stylized 'D' and 'R'.

.....
Duncan Robertson
Lead Officer – Local Developments
Fairfield House, 8 Lothian Road, Dalkeith, EH22 3ZN



**The Coal
Authority**

Any Planning Enquiries should be directed to:

Planning and Local Authority Liaison

Direct Telephone: 01623 637 119

Email: planningconsultation@coal.gov.uk

Website: www.gov.uk/coalauthority

Development Low Risk Area- STANDING ADVICE

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

Further information is also available on the Coal Authority website at:

www.gov.uk/government/organisations/the-coal-authority

Standing Advice valid from 1st January 2023 until 31st December 2024

Appendix E

REFUSED
15.12.2023
23/00708/DPP

Existing Trees
 retained (shown
 indicatively)

Existing Trees
 retained (shown
 indicatively)

Location Plan

Scale 1:1250 @ A3
 0 10 20 30m



GENERAL KEY

- EXISTING BUILDING
- PROPOSED NEW WORKS
- SITE BOUNDARY

Do not scale from drawing.

All dimensions to be confirmed on site
 This drawing is for the purpose of obtaining Local
 Authority Approval only, additional information
 may be required for construction purposes.

d2 architectural design

Newbattle Abbey | Newbattle Road | Dalkeith | EH22 3LT
 T. 0131 444 9998 E. mail@d2architecturaldesign.co.uk
 W. www.d2architecturaldesign.co.uk

PLANNING IN PRINCIPLE**PROJECT**

Proposed New House
 Land south of St Robert's Croft,
 Nine Mile Burn,
 EH26 9LZ

DRAWING

Location & Site Plan
 Indicative Layout - as proposed

DATE	DRAWN	SCALE
13.09.23	AS	as shown @ A3

PROJECT	DRAWING No.	REVISION
23023	D01	

Site Plan - as proposed

Scale 1:200 @ A3

0 2m 4m 6m 8m 10m

Roman Road

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