

Notice of Review: Land at Whitehill Farm, Whitehill Village, Dalkeith

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 a dwellinghouse; the erection of agricultural building and associated works at land at Whitehill Farm, Whitehill Village, Dalkeith.

2 Background

- 2.1 Planning application 21/00239/PPP for planning permission in principle for the erection of a dwellinghouse; the erection of agricultural building and associated works at land at Whitehill Farm, Whitehill Village, Dalkeith was refused planning permission on 22 November 2021; a copy of the decision is attached to this report.
- 2.2 The review has progressed through the following stages:
- 1 Submission of Notice of Review by the applicant.
 - 2 The Registration and Acknowledgement of the Notice of Review.
 - 3 Carrying out Notification and Consultation.

3 Supporting Documents

- 3.1 Attached to this report are the following documents:
- A site location plan (Appendix A);
 - A copy of the notice of review form and supporting statement (Appendix B). Any duplication of information is not attached;
 - A copy of the case officer's report (Appendix C);
 - A copy of the decision notice, excluding the standard advisory notes, issued on 22 November 2021 (Appendix D); and
 - A copy of the key plans/drawings (Appendix E).
- 3.2 The full planning application case file and the development plan policies referred to in the case officer's report can be viewed online via www.midlothian.gov.uk

4 Procedures

- 4.1 In accordance with agreed procedures:

- Have determined to consider a visual presentation of the site and undertaking a site visit (elected members not attending the site visit can still participate in the determination of the review); and
 - Have determined to progress the review by way of a hearing.
- 4.2 The case officer's report identified that there were six consultation responses and 17 representations received. As part of the review process the interested parties were notified of the review. One additional representation has been received in support of the application. All comments can be viewed online on the electronic planning application case file.
- 4.3 The next stage in the process is for the LRB to determine the review in accordance with the agreed procedure:
- Identify any provisions of the development plan which are relevant to the decision;
 - Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies;
 - Consider whether or not the proposal accords with the development plan;
 - Identify and consider relevant material considerations for and against the proposal;
 - Assess whether these considerations warrant a departure from the development plan; and
 - State the reason/s for the decision and state any conditions required if planning permission is granted.
- 4.4 In reaching a decision on the case the planning advisor can advise on appropriate phraseology and on appropriate planning reasons for reaching a decision.
- 4.5 Following the determination of the review the planning advisor will prepare a decision notice for issuing through the Chair of the LRB. A copy of the decision notice will be reported back to the LRB for noting.
- 4.6 A copy of the LRB decision will be placed on the planning authority's planning register and made available for inspection online.

5 Conditions

- 5.1 In accordance with the procedures agreed by the LRB at its meeting of 13 June 2017, and without prejudice to the determination of the review, the following conditions have been prepared for the consideration of the LRB if it is minded to uphold the review and grant planning permission.
1. Development shall not begin until an application for approval of Matters Specified in Conditions for a scheme to deal with any contamination of the site and/or previous mineral workings has been submitted to and approved by the planning authority. The scheme shall contain details of the proposals to deal with any contamination and/or previous mineral workings and include:
 - i. the nature, extent and types of contamination and/or previous mineral workings on the site;

- ii. measures to treat or remove contamination and/or previous mineral workings to ensure that the site is fit for the uses hereby approved, and that there is no risk to the wider environment from contamination and/or previous mineral workings originating within the site;
- iii. measures to deal with contamination and/or previous mineral workings encountered during construction work; and
- iv. the condition of the site on completion of the specified decontamination measures.

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

- 2. On completion of the decontamination/ remediation works referred to in condition 1, and prior to any building on the site being occupied or brought onto use, a validation report or reports shall be submitted to the planning authority confirming that the works have been carried out in accordance with the approved scheme. No part of the development shall be occupied unless or until the planning authority have approved the required validation.

Reason for conditions 1 and 2: To ensure that any contamination on the site is adequately identified and that appropriate decontamination measures are undertaken to mitigate the identified risk to site users and construction workers, built development on the site, landscaped areas, and the wider environment.

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

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

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

4. 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, agricultural buildings, private garden ground, 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) Detailed plans, sections and elevations of the proposed agricultural buildings, indicating the colour and type of materials to be used on the external walls, roof and windows;
 - e) Details of all hard surfacing and kerbing;
 - f) Details of a sustainability/biodiversity scheme for the site, including the provision of house bricks and boxes for bats and swifts;
 - g) Details of the recognised path/route running through the site and how this would be integrated into the works hereby approved;
 - h) Details of the position of any Scottish Water infrastructure on site and the proximity to the development hereby approved;
 - i) Details of the works carried out in proximity to the high pressure pipeline running through the site, including means of construction;
 - j) Details of the provision of superfast broadband connections for the house;
 - k) Details of the provision of electric vehicle charging stations for the house;
 - l) Proposals for the treatment and disposal of foul and surface water drainage from the proposed houses. Unless otherwise approved in writing by the Planning Authority, the surface water drainage shall comply with the standards detailed in the SUDS Manual; and
 - m) Details of a scheme of landscaping and a plan showing the position, number, size and species of all trees and shrubs that are proposed to be planted; all trees on the site which are to be removed and retained; and details of the means of protection of all trees that are to be retained.

Thereafter, the development hereby approved shall accord with the details agreed in terms of this condition.

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 agricultural buildings and site access arrangements; to ensure protected species are not adversely affected.

5. The scheme of landscaping approved in accordance with condition 4m) shall include details of planting along the site boundaries and around the farm steading hereby approved.

Reason: *To ensure adequate landscaping is provided at this rural site.*

6. The scheme of landscaping approved in accordance with condition 4m) shall include details of details of a phasing scheme for the implementation of the landscaping for approval.
7. The scheme of landscaping approved in accordance with condition 4m) shall be carried out and completed within one year of work commencing on site. 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 6 and 7: *To ensure the landscaping is carried out and becomes successfully established*

8. Before the new house is occupied the installation of the means of drainage treatment and disposal approved in terms of condition 4l) 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.*

9. The access arrangements required in condition 4a) shall include that the private access road onto Whitehill Road be a minimum of 6.0 metres wide for the first 12 metres.
10. Any gates approved in condition 4a) at the site entrance shall be set back by a minimum of 6 metres.

Reason for conditions 9 and 10: *In the interests of road safety; to allow vehicles to enter the development while other vehicles are waiting to exit; to allow a vehicle to park off-road while waiting to enter the site.*

11. The access arrangements required in condition 4a) shall include that the first 12 metres of access road shall be surfaced in non-loose material.

Reason: *In the interests of road safety; to prevent materials spilling onto the public road and footpath.*

12. No development shall take place on site until the applicants or their successors have undertaken and reported upon a programme of archaeological (monitored soil strip and evaluation) work in

accordance with a written scheme of investigation to be submitted to and approved in writing by the Planning Authority.

Reason: *To ensure a proper archaeological evaluation of the site, which is within an area of potential archaeological interest, and that adequate measures are in place to record any archaeological finds.*

13. Unless otherwise approved in writing by the planning authority, subsequent to the submission to the planning authority of a Breeding Bird Management Plan, the works hereby approved shall not be carried out during the months of March to September inclusive.

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

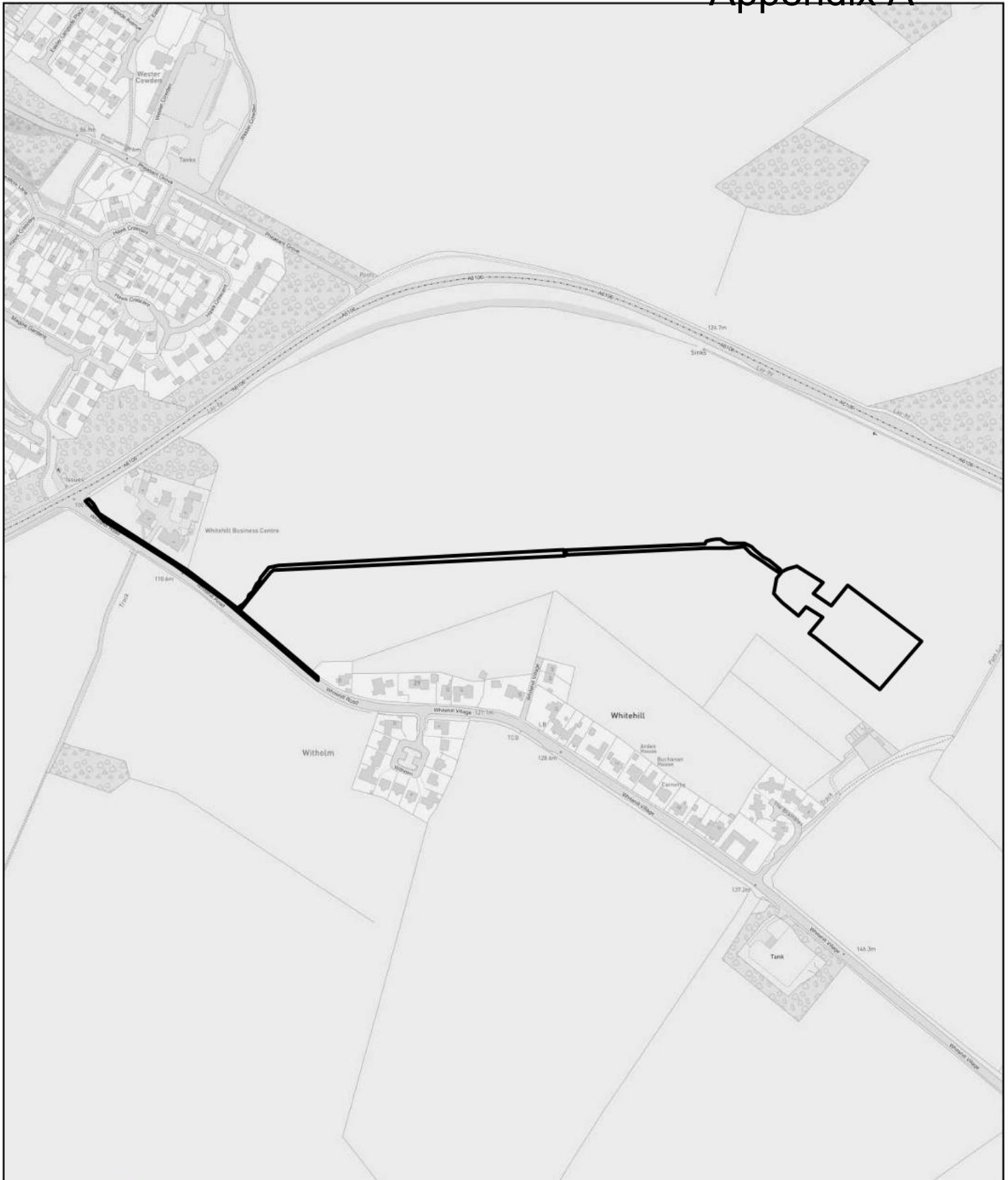
6 Recommendations

- 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: 17 June 2022
Report Contact: Mhairi-Anne Cowie, Planning Officer
Mhairi-Anne@midlothian.gov.uk

Background Papers: Planning application 21/00239/PPP available for inspection online.



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

Application for planning permission in principle for the erection of dwellinghouse, agricultural buildings, formation of access road and associated works at Land At Whitehill Farm, Whitehill Village, Dalkeith,

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File No: 21/00239/PPP

Scale: 1:5,000



NOTICE OF REVIEW

Under Section 43A(8) Of the Town and County Planning (SCOTLAND) ACT 1997 (As amended) In Respect
of Decisions on Local Developments

The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (SCOTLAND)
Regulations 2013

The Town and Country Planning (Appeals) (SCOTLAND) Regulations 2013

IMPORTANT: Please read and follow the guidance notes provided when completing this form. Failure to supply all the relevant information could invalidate your notice of review.

**PLEASE NOTE IT IS FASTER AND SIMPLER TO SUBMIT PLANNING APPLICATIONS
ELECTRONICALLY VIA <https://www.eplanning.scot>**

1. Applicant's Details		2. Agent's Details (if any)	
Title	Mr.	Ref No.	
Forename	GEORGE	Forename	J. STUART
Surname	PIRIE	Surname	MACGAVIE
Company Name		Company Name	MACGAVIE & CO LTD
Building No./Name	45, GILCOMSTON PARK	Building No./Name	LITREHILL
Address Line 1		Address Line 1	KEIR
Address Line 2		Address Line 2	
Town/City	ABERDEEN	Town/City	DUNBLANE
Postcode	AB25 1PN	Postcode	FK15 9NU
Telephone	c/o AGENT	Telephone	07885 612815
Mobile		Mobile	
Fax		Fax	
Email	c/o AGENT	Email	smacgavieandco@outlook.com
3. Application Details			
Planning authority		MIDLOTHIAN COUNCIL	
Planning authority's application reference number		21/00239/PPP	
Site address		<p style="font-size: 1.2em; margin: 0;">LAND AT WHITEHILL FARM, WHITEHILL VILLAGE, DALKEITH.</p>	
Description of proposed development			
<p style="font-size: 1.1em; margin: 0;">APPLICATION FOR PLANNING PERMISSION IN PRINCIPLE FOR THE ERECTION OF A DWELLINGHOUSE, AGRICULTURAL BUILDINGS, FORMATION OF ACCESS ROAD AND ASSOCIATED WORKS.</p>			

Date of application

12 APRIL 2021

Date of decision (if any)

22 NOVEMBER 2021

Note. This notice must be served on the planning authority within three months of the date of decision notice or from the date of expiry of the period allowed for determining the application.

4. Nature of Application

Application for planning permission (including householder application)

☐

Application for planning permission in principle

☒

Further application (including development that has not yet commenced and where a time limit has been imposed; renewal of planning permission and/or modification, variation or removal of a planning condition)

☐

Application for approval of matters specified in conditions

☐

5. Reasons for seeking review

Refusal of application by appointed officer

☒

Failure by appointed officer to determine the application within the period allowed for determination of the application

☐

Conditions imposed on consent by appointed officer

☐

6. 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.

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

Further written submissions

☒

One or more hearing sessions

☒

Site inspection

☒

Assessment of review documents only, with no further procedure

☐

If you have marked either of the first 2 options, please explain here which of the matters (as set out in your statement below) you believe ought to be subject of that procedure, and why you consider further submissions or a hearing necessary.

THIS PROPOSAL IS FOR THE FURTHERANCE OF AN AGRICULTURAL USE. IT IS FULLY SUPPORTED BY PROFESSIONAL AGRICULTURAL BODIES - WHICH HAVE BEEN DISCOUNTED BY THE DETERMINING PLANNING OFFICER - PLEASE SEE ATTACHED STATEMENT.

7. Site inspection

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

Can the site be viewed entirely from public land?

NO ☐

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

YES ☐

If there are reasons why you think the Local Review Body would be unable to undertake an unaccompanied site inspection, please explain here:

CONSIDERING THE EXTENT OF THE LANDHOLDING (C55AURS) THE LOCAL REVIEW BODY MAY WISH TO ASK PERTINENT QUESTIONS ON THE PROPOSED SITING OF THE FARM STEADING AND PROPOSED USE OF THE LAND.

8. Statement

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. **Note:** 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.

If the Local Review Body issues a notice requesting further information from any other person or body, you will have a period of 14 days in which to comment on any additional matter which has been raised by that person or body.

State here the reasons for your notice of review and all matters you wish to raise. If necessary, this can be continued or provided in full in a separate document. You may also submit additional documentation with this form.

PLEASE SEE ATTACHED STATEMENT. SM.

Have you raised any matters which were not before the appointed officer at the time your application was determined?

Yes ☐ No ☒

If yes, please explain below a) why you are raising new material b) why it was not raised with the appointed officer before your application was determined and c) why you believe it should now be considered with your review.

9. List of Documents and Evidence

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review

DOCUMENTS :

- | | |
|--|--|
| 1. THE PLANNING APPLICATION (21/00239/APP) | 7. HISTORICAL PLANS OF WHITEHILL FARM |
| 2. THE DELEGATED WORKSHEET / SHORT REPORT. | |
| 3. THE DECISION NOTICE (22 NOV 2021) | 8. NOTICE OF REVIEW STATEMENT BY MACGARNIE & CO LTD (18 Feb 22). |
| 4. THE AGRICULTURAL LABOUR REPORT (Feb 21) | |
| 5. THE ACCRYS STATEMENT (MARCH 21) | |
| 6. THE PLANNING STATEMENT (MARCH 21) | |

Note. The planning authority will make a copy of the notice of review, the review documents and any notice of the procedure of the review available for inspection at an office of the planning authority until such time as the review is determined. It may also be available on the planning authority website.

10. Checklist

Please mark the appropriate boxes to confirm that you have provided all supporting documents and evidence relevant to your review:

Full completion of all parts of this form



Statement of your reasons for requesting a review



All documents, materials and evidence which you intend to rely on (e.g. plans and drawings or other documents) which are now the subject of this review.



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 from that earlier consent.

DECLARATION

I, the ~~applicant~~ agent hereby serve notice on the planning authority to review the application as set out on this form and in the supporting documents. I hereby confirm that the information given in this form is true and accurate to the best of my knowledge.

Signature:

Name:

J. STUART MAC GARNIE

Date:

18 February 2022

Any personal data that you have been asked to provide on this form will be held and processed in accordance with Data Protection Legislation.

18th February 2022

FAO Mhairi-Anne Cowie

Planning Department

Midlothian Council

Fairfield House

8, Lothian Road

Dalkeith

EH22 3AA

Notice of Review – Local Review Body: Midlothian Council

Planning Ref: 21/00239/PP – Land at Whitehill Farm, Whitehill, Dalkeith

LRB - Planning Statement – Section 8 of the Notice of Review Form

To whom it may concern,

I refer to the above Planning Permission in Principle (PPP) application.

I am instructed by the applicant to submit a Notice of Review of the decision under The Town & Country Planning (Appeals) (Scotland) Regulations 2013 (Schemes of Delegation and Local Review Procedure).

The application was refused by delegated decision on the 22nd November 2021. This Notice of Review to the Local Review Board (LRB) has been timeously lodged. It is supported by a suite of documents as detailed in section 9 of the appropriate form.

The Notice of Review will address the Planning Officer's four reasons for refusal, whilst focussing upon:

- The history of Whitehill Farm and the farming proposal.
- The Permitted Development Rights of up to 1000sq m of agricultural buildings (Not 465sq m referred to by the Planning Officer).
- The sizeable area of agricultural land in the ownership of the applicant, circa 55 acres.

- A formal request to the LRB Panel to engage with an independent experienced Agricultural Advisor to assess the submitted Agricultural Report and confirm its validity or otherwise, which has not been addressed by the Planning Officer.
- The applicant's acceptance of an agricultural occupancy condition or similar.

This statement is to be considered in conjunction with the planning statement (Doc 6) submitted with the PPP application (Doc 1) along with the various documents upon which I rely (Docs 1-8).

Pre-amble:

Within the terms of the Town and Country Planning (Scotland) Act 1997 (as amended) all planning applications are required to be determined by planning authorities in accordance with the Local Development Plan (LDP), unless material considerations apply.

The LRB Panel will be aware that the primary objectives of the Midlothian LDP states that economic growth is the central objective of the LDP and that the LDP supports these objectives through a positive policy context. It seeks to deliver economic benefits by:

~ Providing land and supporting the redevelopment of existing sites/property to meet the diverse needs of business sectors;

~ Supporting measures and initiatives which increase economic activity;

~ Giving due weight to the net economic benefit of the proposed development;

There is a presumption in favour of development if an application complies with the LDP and it is my professional opinion that this proposal fully complies with the relevant policies of the Midlothian LDP and supplementary guidance.

In Planning Policy terms, the existing land use is agricultural. (There is no specific land use category detailed within the Town & Country Planning (Use Classes) (Scotland) Order 1997) The proposed use, subject to this appeal, is a diversification of an existing agricultural use, primarily a top-quality successful breeding programme for Aberdeen Angus Cattle, to include quality beef production. This is supported by the Agricultural Report where there can be no other interpretation than an agricultural activity on agricultural land. There is no dispute over this use and in this regard, there is a policy presumption in favour of development. This is further supported by the Scottish Government, whereby Permitted Development Rights establish both the principle of agricultural development on agricultural land and specifically allow for buildings up to 1000sqm to be erected without the express need for planning permission. The Planning Officer is incorrect in their Delegated Worksheet/Short Report (Doc 2 -page 11: para 3) when he refers to 465sqm.

The associated agricultural dwelling is an integral component of this development, which benefits from policy support in the Midlothian Local Development Plan, notably Policy RD1 and Supplementary Guidance for Housing Development in The Countryside and Greenbelt, when supported by a "qualified professional report." The application is supported by a qualified professional report in which the conclusion is clear, whereby " The labour requirement calculations in this report clearly justify the labour needs for this business." The Report also confirms there is a need for at least one agriculture worker to reside at the site (Doc 4 Page 12) and that the proposal is viable.

The application is supported by a number agricultural organisations including The National Farmers Union (Doc 4 appendix G).

The application is for PPP, however it is accompanied by indicative drawings showing the farm buildings and appropriate sized agricultural dwelling (Doc 4: Appx A-D). The final design of the agricultural dwelling would be subject to a full application procedure.

The Proposal:

To diversify the existing agricultural operation by erecting a farm steading, comprising cattle courts, feed storage buildings, equipment buildings, workshops, cattle holding areas and cattle sheds, associated agriculture worker's house and new access. This complies with National Guidance on agriculture in rural areas and this constitutes a significant investment.

Considerable expenditure has already been expended on new field drainage systems, totalling some £44,000, improving the land for grazing. This new field drainage has also solved an historical run-off/flooding problem adjacent to the northern corner of the land holding and the main road (A6106). This is a matter that has been problematic for the Council and is recorded as such (Doc 4: Appx H). This matter has now been resolved by the landowner/applicant.

History of Whitehill Farm:

It is important that the LRB Panel is made aware of the history of Whitehill Farm. The farm which extended to some 60 acres has been in existence in its present state for some one hundred and seventy years. The farm house and farmland was originally sold by the Duke of Buccleuch in 1955 to his Estate Manager. In turn the farm in its entirety, was sold to the Wright family in 1980 as a working farm, whereby intensive arable production took place. It is noted that this is when all the hedges were removed creating one large tract of arable land. The Wright's subsequently sold off the farmhouse and buildings. The applicant recently purchased the entire farm from the Wrights. The attached plans (DOC 7) detail the extent of the Whitehill farm holding and its field and hedge patterns over a period of 170 years. There is no dispute over this. Whitehill Farm has always operated as a viable agricultural unit and today comprises 55 acres.

Introduction:

As detailed in the Agricultural Report by Colin McPhail, a recognised experienced agricultural consultant, the applicant owns a sizeable tract of land extending to some 55 acres, known as Whitehill Farm. The land is agricultural, however does not now benefit from necessary farm buildings. This proposal is for a diversification of agricultural use, whereby a range of suitable buildings (c1224sqm) are to be erected, along with an appropriately sized agricultural dwelling, creating a farm steading of efficient and operational design. (The Local Review Body will note that agricultural buildings up to 1000m² are now subject to Permitted Development Rights when located on existing agricultural land.) The farm house is required for agricultural purposes, namely animal husbandry, on-site management and security. A new improved access is necessary and guidance from the Council's Road's Department is that the access should be taken from the Whitehill Village side (Doc 5). This is acceptable to the applicant and the Councils roads department. Whilst the applicant is content to accept an agricultural occupancy restriction any concerns relating to the agricultural worker's house being delivered without the agricultural buildings could be reasonably controlled solely with the timing of an occupancy condition. These proposed planning conditions are

considerable safeguards as to the intended development and agricultural operation of the development proposed.

Midlothian Council Planning Officer – Delegated Decision to Refuse:

The Decision Notice contains four reasons for refusal. I address each of these in my Reasoned Response in order, as set out in the Decision Notice (Doc 3).

1. "It has not been demonstrated to the satisfaction of the planning authority that the proposed house is required in the furtherance of an established countryside activity or business. For this reason, the proposed development is contrary to Policy RD1 of the Midlothian Local Development Plan 2017 and the related supplementary planning guidance.

Reasoned Response:

This reason for refusal is difficult to comprehend. The planning application is for the diversification of an existing established agricultural use on a substantial agricultural acreage within the ownership of the applicant/appellant. This fundamentally meets the requirement that the proposal is for the furtherance of an established countryside activity. The construction of agricultural buildings is Permitted Development up to some 1000sqm as noted elsewhere. This is reflected in the Planning Officer's Delegated Worksheet (Doc 2– Page 9: para 3) where the planning officer states:

" While the applicant could set up his business, or activity, whenever he wished at the site, as planning permission is not required for a change of use of the land, he has not done so. The planning authority, therefore, does not agree that the house is required in connection with an established activity as is required by the MLDP."

The applicant has not built the farm buildings as the proposal is inextricably linked with the agricultural dwelling and the agricultural buildings extend to some 1224sqm. The requirement for an associated agricultural dwelling of appropriate size is an established and accepted necessity for this business and this is clearly reflected in Policy RD1 and Supplementary Guidance for Housing Development in the Countryside & Greenbelt, where there is Policy Support when supported by a qualified professional Report. Such a Report has been submitted and is unequivocal in its conclusions. Attention is drawn to the conclusions of the Agricultural Report (Doc 4: Conclusions). I am at a loss as to why the Agricultural Report has been dis-regarded in the Delegated Worksheet (Doc 2) and subsequent reasons for refusal (Doc 3).

The principal policy RD1, along with Scottish Government support on rural diversification permits dwellings linked to agricultural and forestry. There can be no other interpretation.

This is not some 'tin pot' approach to try and get a house in the countryside, whereby someone with 5 acres, some stables and 5 horses argues that a linked dwelling is necessary. This proposal is a genuine and significant investment in the furtherance of an established countryside business at Whitehill Farm, which has the full support of the agricultural industry, not least a comprehensive supporting Agricultural Report by a recognised agricultural professional.

Based upon the wording of the policy and the information provided, I am unclear as to how the Planning Officer has concluded that there is insufficient evidence to conclude that the policy is complied with. The Planning Officer seems to be suggesting that the livestock enterprise should already be established on site. As already noted, the agricultural workers house is integral to the proper management and animal husbandry of such a livestock business. This also addresses why alternative accommodation that may or may not be available in the wider area would not be suitable for the applicant.

Finally on this matter, it is requested that the LRB Panel takes cognisance that the applicant has offered as part of the application an agricultural occupancy restriction clearly linking the agricultural workers house with the proposal.

2. Supporting this application would encourage the sub-division of ever decreasing and unviable parcels of land from larger agricultural units, each with its own large farmhouse to the detriment of the landscape character of Midlothian's rural areas. For this reason, the proposed development is contrary to policies RD1 and ENV7 of the Midlothian Local Development Plan 2017 and the related supplementary guidance.

Reasoned Response:

There is absolutely no policy justification within the Midlothian LDP, for this sweeping statement, which appears to be assuming that this application would result in cumulative landscape harm to the wider Midlothian countryside.

As previously referred to, Whitehill Farm has been in its present form and acreage for some 170 years. This is not a sub-division of ever decreasing and unviable parcels of land from larger agricultural units, it is a farm in its own right and always has been.

As planning authorities commonly state, each application is to be treated on its own merits. This application is supported by a fact-based Agricultural Report supporting this proposal on a substantial area of land extending to some 55 acres. The LRB Panel will note that there is limited/ no reference to the actual size of the acreage in the Delegated Worksheet, or an acknowledgement that it is an existing farm. This proposal certainly does NOT represent "ever decreasing and unviable parcels of land." In the assessment of the application the Planning Officer has sought no professional opinion on the viability of the Whitehill Farm holding related to this application, despite this being addressed in the Agricultural Report. The planning officer is not qualified to refuse the application on this unsupported premise and the reason for refusal is unjustified. The point I would like the LRB Panel to focus upon is how can the Planning Officer dismiss the conclusions contained within the comprehensive professional Agricultural Report prepared by a highly experienced qualified Agricultural consultant, as well as support from the National Farmers Union.

It is also noted that over the years, as shown in the chronology of plans (Doc 7)) the number of field boundaries and hedges of Whitehill Farm have been removed, probably to facilitate larger areas for arable production. The applicant will be replanting a number of hedges and wildlife strips under various farming stewardships as supported by the single farm payments procedures. This field

pattern will for allow for much of the former character of the area to be re-established, where smaller grassed fields and margins will assist in bio-diversity.

3. The location of the application site and siting and scale of the related development would have a significant detrimental impact on the landscape character of the area. This is therefore contrary to policies DEV6, RD1 and ENV7 of the character of the Local Development Plan 2017 and national policies.

Reasoned Response:

The actual siting of the farm steading in the extensive area of land available was taken after consideration of a number of factors, not least the flat plateau area. An examination of historical maps identifies the original Whitehill Farm steading in a similar locale, whereby the ground was drained, relatively flat whereby minimal ground works were required. It is the natural place to construct and replace farm buildings. Whilst there may be some impact on the landscape it can hardly be labelled 'significant detrimental impact' as suggested by the Planning Officer. It is also noted that the Planning Officer, other than referring to Reason 2, has not provided any specific landscape features which the proposal would impact upon, in order to have a significant detrimental impact. This is not the sort of wording I would associate with a farming development of this nature. The proposed development is agricultural so it is hardly out of keeping with the wider area and to put matters into perspective the cattle court would likely have a ridge height of less than 7m (Doc 4: Appx A-D).

It is my opinion that the proposed farm steading is an intrinsic part of the rural landscape. The scale and character is appropriate in a rural area, which can be finalised at the full application stage. This can also include various landscaping, new hedging and tree planting schemes, which would have historically been present at this site and which alongside the smaller field patterns and hedgerows would more than compensate for any minor impact from erection of agricultural buildings and dwelling.

In reality however the LRB Panel is advised that this reason for refusal is not tenable. As has already been established, Permitted Development Rights already extend to include buildings up to 1000sqm on agricultural land and the scale of the overall farm buildings would not be radically different from what could be achieved under these Permitted Development Rights.

4. It has not been demonstrated to the satisfaction of the Planning Authority that the proposed agricultural buildings would not have a significant adverse impact on the amenity of the nearby residential properties through noise, smell and general disturbance and so is contrary to policies ENV17 and ENV18 of the Midlothian Local Development Plan 2017.

Reasoned Response:

This is a PPP application. Throughout the 7 month determination of the application, the planning officers not once raised the matter of amenity, noise, smell and general disturbance.

It is also noted that SEPA was not consulted on this application. It is noted that the HSE did not object to this application.

It is clarified that the agricultural use is not classed as an intensive livestock rearing unit under the Permitted Development Rights Legislation (PDR). This is defined as any 'building, structure, erection of works used for housing pigs, poultry, rabbits or animals bred for their skin or fur or for storage of slurry or sewage sludge'. This proposal does not include slurry production or storage. This proposal does not fall within the characteristic of an intensive livestock/rearing category noted in the PDR, whereby the 400m envelope is considered necessary to restrict development through the PDR. Furthermore, the document referenced by the EHO in the internal response to the Planning Department, is advice intended for farmers under section 13 of the Prevention of Environmental Pollution from Agricultural Activity (PEPFAA), which advises the 400m separation is clearly geared towards intensive livestock production.

The siting of the farm steading/buildings within the extensive area of land available, was chosen after considered investigation and consultation with the Agricultural Consultant. A number of guidance documents were considered, including the Scottish Government's 2005 guidance note on new agricultural developments, (PEPFAA) Code. In addition, historical maps show that there were farm buildings in this vicinity, taking advantage of the flat plateaued area, which has good ground drainage and avoided the need for unnecessary ground works.

The proposal is to produce pedigree breeding cattle, utilising the recognised deep straw bedding system. This procedure is not classed as slurry production, similar to a cattle milking operation. This is an important point whereby the Council's EHO has made erroneous comments in their consultation response to the application. The pedigree stock will have to be kept dry and waste straw stored in a responsible way under cross-compliance for the Basic Payment Scheme and SEPA Regulations. The Environmental Protection Act 1990 gives powers to act to ensure compliance.

The PEPFAA Code in Chapter 13, refers to avoiding intensive livestock buildings 400m from housing developments where slurry is a by-product. This farming operation does not produce slurry, rather a fibrous straw solid. The PEPFAA also requests buildings being sited downwind which is the case here where the prevailing wind is south westerly.

The proposed farm steading has been carefully sited to take account of environmental protection and it is my professional opinion that the proposed site is acceptable and that there are significant environmental regulatory controls in place (under other regimes) to ensure there is negligible impact on any residential areas.

As an aside, it is noted that Midlothian Council recently granted planning permission for horse stables adjacent to houses along Whitehill Road (Planning Application 21/00505/DPP – Erection of stables/store buildings and formation of hard standing). It is noted that the Environmental Health Department was not consulted despite a number of objections on impact on amenity from adjacent householders.

Conclusions:

- This is a PPP application for farm buildings and associated agricultural dwelling at Whitehill Farm comprising some 55 acres of land within the applicant's ownership.

- Whitehill farm, is a recognised entity has been in existence in its present form for over 170years. The farm buildings proposed replace pre-existing buildings which the farm had historically.
- Agricultural buildings up to 1000sqm benefit from Permitted Development Rights subject to appropriate conditions and therefore the principle of providing agricultural buildings on this site is already established.
- The focus of this appeal to the LRB Panel, centres on the requirement for an associated agricultural worker's dwelling, integral to the agricultural business.
- Policy RD1 and associated Supplementary Guidance provides the policy context upon which this appeal is to be determined, whereby houses necessary to support countryside businesses such as the one subject to this appeal are permissible when supported by a qualified Agricultural Report.
- The requirement for the agricultural dwelling is supported by the submitted Agricultural Report, prepared by an experienced and recognised agricultural expert. This is the correct method by which planning authorities determine whether a dwelling is required as part of a countryside activity.
- The Planning Officer does not properly reflect the conclusions of the Agricultural Report in his determination of the application, which are crystal clear. To take a different view from a recognised professional is surprising.
- There is limited impact upon the landscape, which will reflect the agricultural buildings and re-introduction of field boundaries and hedges.
- The proposal will comply with all relevant Environmental Regulations.
- In order to clarify this difference of opinion on the Agricultural Report and to acknowledge that the Agricultural Report is of prime importance in this Notice of Review, the LRB Panel may consider a 'Further Procedure Order' and appoint an external agricultural professional to independently assess the Agricultural Report. The appellant is confident the Agricultural Report is professional and robust in its findings and conclusions.

Recommendations:

1. It is respectfully requested that the LRB Panel acknowledges that the development of the farm buildings is permitted development.
2. It is respectfully requested that the LRB Panel acknowledges the primacy of the Agricultural Report, confirming that an agricultural worker's house is appropriate in this instance and grants PPP subject to suitable conditions.

Stuart MacGarvie MRTPI.

18 February 2022.

MIDLOTHIAN COUNCIL

DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

Planning Application Reference: 21/00239/PPP

Site Address: Land At Whitehill Farm, Whitehill Village, Dalkeith.

Site Description: The application site forms part of an agricultural field which surrounds the site. The site comprises an area of land to the east of the field, at the highest part, with a narrow area to the west leading to the Whitehill Road. Whitehill is to the south, countryside to the east and north and Dalkeith lies to the west. The north and west of the agricultural field is bounded by the A6106. The surrounding field slopes up from west to east and north to south. There is a gas pipeline that runs centrally through the proposed site and an overhead electricity line.

Proposed Development: Application for planning permission in principle for the erection of dwellinghouse, agricultural buildings, formation of access road and associated works.

Proposed Development Details: The application is for planning permission in principle, however the applicant's agent has submitted a site plan showing an indicative layout of a house, retaining wall, stores, sheds and access as well as floor plans and elevations of a two storey house. The works would connect to a new private drainage system and to the public water supply. A planning statement, agricultural appraisal and access statement have been submitted. The access statement includes details of the proposed vehicular access and visibility splays.

The planning statement states the site is agricultural land at present and the proposal is an intensification and diversification of this. It is proposed to graze and breed cattle here, as well as beef production. The statement sets out that the house is required in connection to this and that the proposed site is the best location on a level area. A new vehicular access is formed from the Whitehill Road. Field drainage works have been carried out at the wider site. The applicant is willing to accept a condition that states the house is not occupied until the agricultural buildings are constructed.

The agricultural report was prepared by an independent agricultural consultant. The site is agricultural land and bought by the applicant to be furthered and diversified with buildings and accommodation to operate a pedigree livestock farm. This will support an established countryside activity. The applicant has kept livestock for several decades and is based in Aberdeenshire and Inverness-shire. Details of the specific experience of the applicant have been submitted. The applicant wishes to set up a breeding centre. The business is a viable and ongoing concern as the applicant set up the business and maintain animal welfare standards while living off site and is now in a position to build cattle accommodation and a home at Whitehill. The type of cattle to be kept and bred on site are high value purebreds, with 30 kept on site. The proposed breeding involves an embryo transfer programme and these operations are extremely labour intensive. The report states the specialised nature

of the livestock requires labour hours for 1.6 people, with potential for more staff once the herd is fully established. It is critical for someone to live on site, for animal welfare, health and safety and security reasons. The farm will also be a training facility for young people. The surrounding land is capable of growing cereals and/or crops of silage. This was previously used for growing potatoes in 2019 and cereals in 2020. Details of machinery as well as state of the art cattle accommodation have been submitted. The position of the steading will have limited impact on the area and on nearby neighbours.

Background (Previous Applications, Supporting Documents, Development Briefs): Land to south of field

21/00505/DPP Erection of stables/store building and formation of hardstanding.
Consent with conditions.

Consultations:

The Council's **Policy and Road Safety Manager** has no objection in principle but if permission is approved, this should include conditions relating to details of the site access, gates and parking and manoeuvring areas.

The Council's **Environmental Health Manager** has serious concerns regarding this proposal due to its proximity to adjacent housing, as it has the potential to impact on the residents of the nearby existing and proposed housing in terms of odour and noise. They recommend an odour assessment report be submitted before any approval to demonstrate the development could proceed without adverse effects to the existing or proposed housing. If this is demonstrated and the application approved, a noise impact assessment should be conditioned to demonstrate the normal operations of the proposed farm will not affect the nearby residential use, both existing and proposed. They also state that occupation of the proposed house shall be limited to the owners of the farm, or persons employed therein, and their dependents and a legal agreement be entered into to ensure the ownership and occupancy of the residential property is tied to the operation of the proposed farm. This is sought in order to minimise the likelihood of complaints from any future occupier of the residential property due to noise from the normal operations of the farm. Also, if permission is approved, conditions relating to ground contamination be attached, as well as the hours of construction.

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.

The **Coal Authority** has no objection subject to conditions being attached relating to site investigation and remedial works prior to the commencement of development.

Scottish Water has no objection but states they will not accept any surface water connections to the combined sewer and that there is no public waste infrastructure in the area and that private treatment options be investigated. The proposal impacts on a water main and the applicant must identify any potential conflicts and contact them direct to apply for a diversion. The applicant should be aware that any conflict with assets identified may be subject to restrictions on proximity of construction.

The Council's **Biodiversity Consultant** states a check for breeding birds, especially ground-nesting birds, should be undertaken if works begin in bird breeding season.

Scottish Gas Networks has objected to the application.

Representations: Fourteen letters of objection have been submitted on the following grounds, with some objectors submitting multiple comments:

- The proposal does not comply with policies DEV8, RD1, ENV4 of the MLDP;
- The site has always been a rural area;
- Query over the size of works being a steading rather than a cottage;
- Little justification for an inappropriate and unnecessary application;
- The size of the development is not in keeping with the village;
- The site is overdeveloped for the enterprise that could be operated here;
- No concerns over the livestock and agricultural aspect but query if a Section 75 could be applied and a time period;
- Why is the existing access from the A6016 is not used, which is closer to the development;
- Why is this access not considered viable due to the presence of a gas main when this has been used for farm machinery as well as heavy machinery for recent drainage works;
- The proposed road would need to cross a high pressure gas mains pipeline which would be dangerous to people and livestock. Access from the A6016 would not cross this and be a safer option;
- The road by the access is in poor condition and concern over surfacing if used by heavy vehicles;
- The traffic survey was carried out during lockdown and not representative of normal conditions. The bus service was not in operation during the surveyed period. A new traffic survey should be submitted;
- The village has a 30mph speed limit and at the proposed entrance is 60mph;
- Whitehill Village road is an important bus route and the congestion caused by slow moving heavy lorries would be a public safety hazard;
- The junction at the A6016 to Whitehill Village is awkward due to the road camber and would be hazardous with increased traffic. The proposed access would pose a hazard to public safety due to a combination of speed limit, turning circle at the road entrance, public transport route and condition of the road. The Whitehill Village road gradient is particularly steep and creating an access onto this, especially for larger vehicles, would have implications in terms of camber, infill construction and splay;
- Whitehill Village road needs a full upgrade and should be reduced to 20mph;
- There will be more HGVs through the quiet village. Query if the Council or the applicant will resurface the road from the A6106 to the Scottish Water plant at no cost to the village?;
- There would be more traffic and pollution in the village;
- The proposed entrance was never a field entrance but hedging which has disintegrated over a number of years and not been replaced;
- There is no reference in the application to the needs of pedestrians, cyclists or horseriders, all of whom regularly use Whitehill Village road and would be detrimentally affected by the proposed access and is contrary to the Midlothian Active Travel Strategy;

- The site should be accessed from the old A68 by a new roundabout junction near Fordel services, which would improve road safety;
- Comments over the dropped kerbs in the area;
- No landscape details have been submitted;
- Whitehill Village road is part of the ancient Dere Street and has some of the most outstanding views in the country. The loss of land to another road and increased traffic could hardly be said to have a minimum impact upon the local landscape;
- The works required at the site access would have a significant detrimental impact on the landscape character of area;
- The proposal would be unnecessarily obtrusive to the surroundings and from wider views;
- The proposed access road is disproportionately long for the nature of the development, would result in the unnecessary loss of important agricultural land, cut across a long section of graded land and disrupt surface water flow;
- The access uses up an unnecessary amount of prime agricultural land and leaves part of the land as a very small area of questionable agricultural value;
- Impact on nearby residential properties in regards noise, during and after construction from HGVs;
- The livestock nature of the use would result in working throughout the day and night and detrimentally impact nearby residents;
- Could working be limited to particular times to limit impact on neighbours?;
- Pollution to nearby properties;
- The proposal would bring noise and air pollution, dusts, smells and vermin that would adversely affect nearby properties;
- Could controls be in place to ensure local residents are not detrimentally affected by noise, light, dust and vermin?;
- The access road is less than 10 metres from neighbours' gardens;
- Have the drainage/sewerage/public water supply capacities been checked and can these cope with the proposed development?;
- Were the drainage works necessary for the proposed agricultural works or may this allow a change of use to the steading buildings to residential if the business were to fail?;
- Potential pollution of watercourses;
- Impact on/potential removal of a well used footpath through the site;
- Can the path be upgraded by the applicant or the Council at no cost to the village?;
- What measures are being taken to make safe a main join to the high pressure gas pipeline to low pressure pipes to nearby houses as a result of development?;
- There was no neighbour notification/neighbours were not made aware of the application by the Council or by signage at the site;
- Issues over letters of objection being uploaded onto the planning file;
- Timescales to submit comments were not clear;
- Concern that conversations could not be had with the case officer;
- Comments on the consultation response from the Archaeology consultant;
- The proposal does not protect existing communities;
- The applicant does not own the path to cross to enter the field;
- There are horses in the fields adjacent to the access;

- If approved, measures should be put in place to ensure no change of use of the agricultural buildings to residential in the future;
- The development is questionable on political and environmental grounds due to cattle contributing significantly to greenhouse gas emissions. When the economy is moving to Net Carbon zero targets, such developments should not be actively encouraged, particularly where the land can already be used for arable purposes without additional building or infrastructure requirements;
- Query if this type of development should be supported when Scotland is hosting a major international climate change conference. Are we not meant to be moving away from fossil fuels and intensive farming methods which are Carbon emitters;
- The agricultural report referred to in submissions is in not the planning file and has not been provided by the planning team despite requests. More details of the proposed agricultural works and compliance with policy are required;
- A request that the landscape plans be provided;
- There is an existing problem with litter and fly tipping in the area which would be exacerbated by another long rural road; and
- Queries if this may lead to future development/use of the site, if the site is segregated and rendered unusable for agricultural purposes.

One objector states they have no objection to the agricultural and livestock aspect but query if a Section 75 would be applied if approved. Another states they do not object to the house and associated farm buildings, only the access road.

The complaints referred to in some letters have been addressed separately.

Three letters of support have been submitted. One states that there has been an access point from Whitehill Road into the fields for over twenty years. This has recently had gates erected and was previously an opening between two gateposts. Another supports this as existing agricultural land will continue to be used for this purpose rather than more housing. The submitted information demonstrates the access can be achieved in a safe and efficient manner with minimal impact to existing residents and road users.

The other is from the director of a company that represents people who occupy land and rural property, sent in both a professional and personal capacity;

- The proposal would benefit not only the local area but also Scottish agriculture in general;
- The applicant has previously run his herd from other people's units whilst looking for a small farm near his other business in Edinburgh, as farms such as the application site rarely come on the market;
- The drainage works carried out make the site suitable for grazing;
- Addressing litter and vermin issues can be done if there is an onsite presence;
- Pastoral use of the land will be limited to less noisy machinery during working hours;
- The design of the buildings would address odour and vermin issues;
- The current operations at the site would result in more dust and water run off than the proposed operations;

- The proposed workings could store more soil carbon than emitted by the cattle;
- A lot of the works could be done through permitted development without requiring planning permission;
- The nature of the proposed operation is for small grazing compartments and so the access road would not sever it or make it unusable for agricultural purposes;
- The proposed operations would result in fewer vehicular movements in smaller vehicles than the recent potato crop at the site;
- The proposal will increase more accessibility and paths at the site;
- Scottish Gas Networks has been consulted and having a proper crossing point rather than soft agricultural tracks over the gas pipe is a benefit; and
- A new purpose built farm complex is subject to regulation relating to noise.

Three additional letters of support were handed to the Lead Officer for Local Development from the applicant during a site meeting, from three different people. There is no way to know if these are legitimate. They were not submitted in an appropriate way and so these have not been taken into account in this assessment.

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

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

DEV6 Layout and Design of New Development states that good design and a high quality of architecture will be required in the overall layout of development proposals. This also provides guidance on design principles for development, materials, access, passive energy gain, positioning of buildings, open and private amenity space provision and parking. This includes that building should be laid along contours to avoid excessive changes in levels and underbuilding in the streetscene;

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

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

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

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

unacceptable discharge to watercourses; and accessible by public transport and services, within 1 mile of a bus route with a frequency of 1 bus per hour.

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

ENV4 Prime Agricultural Land does not permit development that would lead to the permanent loss of prime agricultural land unless there is appropriate justification;

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;

ENV17 Air Quality states that the Council may require further assessments to identify air quality impacts where considered requisite. It will refuse planning permission, or seek effective mitigation, where development proposals cause unacceptable air quality or dust impacts;

ENV18 Noise states that the Council will seek to prevent noisy developments from damaging residential amenity or disturbing noise sensitive uses. Where new developments with the potential to create significant noise are proposed, these may be refused or required to be modified so that no unacceptable impact at sensitive receptors is generated. Applicants may be required to carry out a noise impact assessment either as part of an Environmental Impact Assessment or separately. Where new noise sensitive uses are proposed in the locality of existing noisy uses, the Council will seek to ensure that the function of the established operation is not adversely affected;

ENV25 Site Assessment, Evaluation and Recording requires that where development could affect an identified site of archaeological importance, the applicant will be required to provide an assessment of the archaeological value of the site and of the likely impact of the proposal on the archaeological resource.

Supplementary Guidance for Housing Development in the Countryside and Green Belt is adopted and expands policy RD1 and the criteria to be met in such proposals. There is some support for development that is required for the furtherance of an established countryside activity. The applicant must demonstrate compliance with the relevant policies. Any application shall be accompanied by an independent report prepared by a suitably qualified professional to support the need for a house and on the viability of the associated business and its operational requirement. In outlining the needs of the business, it should be apparent whether the need can be met within an existing settlement and whether the occupier will be employed full-time in the associated activity.

Planning Advice Note 39: Farm and Forestry Buildings provides general principles of good practice governing siting that can help to ensure that these buildings are integrated with the immediate surroundings and the general landscape setting. Existing trees and hedges should be retained where possible and new

buildings should respect the field boundary pattern. Consideration should also be given to the best way of integrating a new building with its immediate surroundings. The positioning of agricultural buildings should retain and, if possible, augment existing groups of trees and shelter belts. Trees can improve the appearance of large new buildings by softening their outline and horizontal emphasis. The PAN was prepared to address a number of problems relating to such developments, including poorly sited buildings, located for example in prominent skyline locations, or without regard to existing development.

Planning Advice Note 72: Housing in the Countryside sets out design principles that should be considered in such applications, including siting, design and materials. A well designed house must reflect the landscape in which it is set. It must be informed by and respond to it, rather than being a house which is designed without regard to the context and placed within a site. Most new developments should try to fit into or nestle within the landscape. Skyline development should normally be avoided, as should heavily engineered platforms. This is to ensure that the building does not interrupt and conflict with the flow of the landform or appear out of scale. Setting a building against a backdrop of trees is one of the most successful means by which new development can blend with the landscape. Where trees exist they should be retained. The overall aim should be to ensure that new housing is carefully located, worthy of its setting, and is the result of an imaginative, responsive and sensitive design process.

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. Comments from representors and consultees will also be taken into consideration.

Principle of a house and buildings

The planning authority has restrictive policies relating to proposals for new housing developments within the countryside. These policies 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 (MLDP), which support residential developments within the countryside where justified. Policy RD1 of the MLDP contains a section specifically related to proposals for the development of new housing. It states that housing will only be permissible where it is required in connection with the furtherance of an existing and established businesses in the countryside. In addition, the applicant must demonstrate that the need for the new house is permanent and cannot be met within an existing settlement, and that the occupier will be employed full-time in the associated countryside activity.

The applicant owns the site and seeks to diversify the use of the property, which has most recently been used for growing cereals and potatoes. It is proposed to graze and breed cattle, as well as beef production with an element of training. It has been argued that the proposed house relates to this proposed business and that the new house is, therefore, justified on this basis. The submitted site plan and associated documents are clear in stating that the proposed business is not currently operating from the site. The related business operates from another location and it is proposed

to relocate this to this site. However, the applicant states that the site is currently in agricultural use and that the proposal will further and diversify this use.

The supporting information accompanying the planning application has been submitted by an agricultural consultancy. Within the supporting information it has been stated that the proposed house is required due to the nature of the proposed business of producing pedigree livestock, which will support an established countryside activity. It appears this refers to the business the applicant currently operates elsewhere and not the application site.

The applicant's agent states that the house is required to support a countryside use. Whilst it is the case that the field is in agricultural use, the applicant's business does not operate from the site. The field that is in the applicant's ownership has been subdivided off from another agricultural unit. While the applicant could set up his business, or activity, whenever he wished at this site, as planning permission is not required for a change of use of the land, he has not done so. The planning authority, therefore, does not agree that the house is required in connection with an established activity as is required by the MLDP.

In addition, the planning authority has significant concerns regarding the size of the agricultural unit, in effect being one large field, and the scale of the business being able to support, on a long term basis, a large house and occupant engaged full-time at the site. The supporting documents state that the proposal is for the keeping of thirty cows on one field. The number of livestock is very low. The case is weak for this being a scale of business which could support a large new house in the countryside.

Supporting this application would act as encouragement for the subdivision of ever decreasing, and potentially unviable, parcels of land from larger agricultural units, each with their own large farmhouse. There is a significant risk that the Council's policy which aims to protect the valuable qualities of the Midlothian countryside could be circumvented by farmhouse proposals from non-genuine agricultural-related applicants.

With regards to the argument for on-site security, the land is within close proximity to Whitehill. There is a good level of passive supervision of the area. The site is close to Dalkeith where there is a large amount of housing, including new developments, which would afford the operators of the business quick access to the site. Indeed there is an existing planning permission for a house to the east of Whitehill which is less than 200 metres from the application site. This house offers a similar amount of accommodation as the indicative plans but is within a settlement boundary. The Planning Authority considers that the information that has been submitted does not demonstrate there is a requirement for someone to live on site for this element of the business and it has not been demonstrated that the need for accommodation cannot be met in an existing settlement.

Policy RD1 sets out other circumstances where the development of a residential unit may be supported in the countryside. However, as the proposal does not relate to a housing group, is not for the conversion of a redundant farm building or other non-residential building, the redevelopment of a redundant farm building or other non-

residential building or an enabling development there is not support for the new house in terms of these other facilitating criteria.

Notwithstanding the above that the principle of residential development here is not supported, the following assessment of the other matters related to this case are relevant.

Siting of the proposed house and buildings and impact on landscape

The application is for planning permission in principle so no details, other than indicative plans, have been submitted. The lack of detail makes it more difficult to consider if the proposal is of a scale and character appropriate to the rural area and if this will be well integrated into the rural landscape, as well as its impact on the surrounding landscape character.

Planning guidance and policy states that new development, including houses and agricultural buildings, should fit into the landscape and landform of an area. The site plan shows the proposal development is sited at the highest part of the field under the control of the applicant, at the brow of a hill. This is a highly prominent part of the field and would be very visible in the surrounding area and wider views. There are no existing trees or landscaping in the immediate vicinity of the application site. The siting of a house and buildings here would not be integrated in to the immediate surroundings or general landscape setting, being a development on a prominent skyline with no existing landscaping or landform to accommodate the development. This is not to say that planting trees around the site would make this acceptable. The proposal does not fit into the existing landscape due to the topography in the area and planting of trees would not resolve this.

The submitted plans show a proposed development which has not demonstrated that it would not be of a scale appropriate to the rural area or be well integrated into the rural landscape. This would have a significant detrimental impact on the landscape character of the area.

Should permission be approved, details of the design, setting and materials of all buildings would be required. This should respect the character and appearance of this rural area.

Amenity for occupants of proposed house

The submitted plans are only indicative, however the application site area is sufficiently large to be able to accommodate a dwellinghouse, garden ground, turning area and parking.

There could be concern over impact on the amenity of the proposed house if it were occupied by anyone other than the people operating the related farm. Due to the proximity of the house to the farm buildings, the occupants would be significantly affected by noise, smell and general disturbance from this use. Whilst previously the planning authority would restrict the occupancy of the house to the person operating the farm use, the Chief Planner's letter from 2011 stated that these are rarely

appropriate and should generally be avoided. The reasoning is that if a house is acceptable at a location, its occupancy should not be restricted. Therefore if planning permission were to be approved for this application, the occupancy of the house would not be restricted. However the issues over the principle and siting of the proposal, as detailed above, as well as the following assessment mean that this proposal is not acceptable in this location.

Impact on amenity to residential properties

The site is close to residential properties in Whitehill which could be affected by noise, light and traffic from the proposed use. The Environmental Health Manager shared this concern, asking for odour and noise reports to demonstrate the proposal would not have an adverse impact on the amenity of these residents.

The use of the site for grazing cattle does not require planning permission. The site is in agricultural use at present and so there would be no material change of the use of this land if this took place. There are permitted development rights to erect agricultural buildings and so some buildings, including a cattle shed, could be erected on site without requiring planning permission, subject to a number of criteria being met one of which is a limit on the size of the building. This is restricted to 465 square metres, as any buildings with a larger footprint would be of such a scale that could have an adverse impact on the area and requires full assessment.

Although the application is for planning permission in principle, the submitted indicative plans show the proposed buildings to have a footprint of more than 1200 square metres and so are of a scale that would not benefit from permitted development rights.

It has already been considered that the position of the site is such that it would have an adverse impact on the landscape character of the area. It is also considered that this could have a significant impact on the amenity of the nearby residential properties. The site is close to these and would likely result in smell, noise and general disturbance in the area.

Access

The proposal is accessed from a new vehicular access from the road running through Whitehill by a road approximately 500 metres long. The Policy and Road Safety Manager previously raised concerns over an access onto the A6106 due to road safety concerns and so the current access is proposed. They have considered all the information submitted, including the access report, current speed limits and timings of the surveys, and have no objections to the proposal in terms of road safety. Should the application be approved, further applications will need to include details of the access. This should be 6 metres wide for the first 12 metres from Whitehill Road, to allow vehicles to enter the development while other vehicles are waiting to exit, and this first 12 metres should be surfaced in non-loose material with any gates set back 6 metres to allow a vehicle to park off-road while waiting to enter the development.

While the proposed access and recommended conditions would make the proposed development safe in road safety terms, this would have a significant impact on the landscape character of the area. The widening of the access to the requirements would be similar to the road access to the clusters of houses at Witholm and the Brambles elsewhere in Whitehill, which would have a formal and suburban appearance for a farm access.

Also the ground level where the access road would be located is at a higher level than Whitehill Road and would be a prominent feature in the surrounding area, cutting through this open field.

The access road would be some distance to neighbouring garden ground which would limit impact on the amenity of local residents. Also the road is for farm traffic which would be unlikely to generate such traffic to disturb horses in the closes fields some 30 metres away. The same is true for pollution concerns to locate residents.

There is not a core path through the site but there is a recognised route running from south to north that would cross the access track. This would be retained and details of how this will be achieved are required.

Should permission be approved, details of the road and related drainage would be required to ensure any water run-off is addressed.

The site is within 1 mile of services and public transport

Drainage and water supply

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

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

Scottish Water has stated that the proposal impacts on a water main and so the applicant must identify any potential conflicts and contact them direct to apply for a diversion. The applicant should be aware that any conflict with assets identified may be subject to restrictions on proximity of construction. The applicant's agent was made aware of this and does not consider that the proposal would affect SW infrastructure. As the application is for planning permission in principle, limited details of the proposed works are submitted. Should planning permission be approved, further details of this situation are required including proximity to SW infrastructure, what development would affect this and confirmation from SW that these works are acceptable.

Other

With regards to the construction at the site, mitigation measures regarding ground conditions and contamination and/or previous mineral workings must be considered. The Council's Environmental Health Manager recommends that conditions be attached to protect future occupants of the site and neighbouring land from the potential impact of contaminated land. A scheme mitigating any contamination of the site and/or previous mineral workings, and the submission of a validation report(s) confirming the approved works have been carried out shall be required by planning condition should permission be approved. The site was previously used as a coal depot rather than landfill. Any contamination or land condition concerns can be addressed by these conditions. Also further details relating to coal mining legacy in the area are required.

The proposals would result in the loss of prime agricultural land but, if approved, the use would relate to an agriculture use, being farm buildings and a farmhouse.

Scottish Gas Networks were consulted as the proposed site crosses and is in close proximity to a high pressure gas pipeline that runs through the site. They have objected to the proposal due to this proximity. However, based on their comments, their concerns could be addressed through particular construction methods and information being submitted. Pipeline crossing points are not uncommon, particularly for new developments, and reinforced concrete slabs can be used to protect the integrity of the pipeline and ensure no damage is caused. These requirements could be covered by condition if planning permission were approved.

Neighbour notification was carried out correctly with all notifiable neighbours identified and sent letters. The application was also advertised in the local press.

Due to high workload, there were slight delays in letters of representation being uploaded to the planning file but this was a matter of days and all comments are available to view.

The application is for a single house, agricultural buildings and associated works. This is what is being assessed. The Planning Authority cannot consider any potential future schemes at the site, such as future development if the segregated wider site is not viable.

Policy DEV8 relates to open spaces identified in the MLDP. This site is not identified as this in the MLDP and so this policy is not relevant.

The agricultural report submitted was not originally made publically available as this stated it was private and confidential. The agent subsequently confirmed this could be made public. Neighbour notification was carried out again to notify interested parties that this information was available, as well as notification sent to all representors who made comment until that point.

Any issues over vermin from the site is not a material planning consideration.

It has been stated the development is questionable on political and environmental grounds due to cattle contributing significantly to greenhouse gas emissions. The

use of the site for grazing cattle does not require planning permission. The site is in agricultural land at present and so there would be no material change of the use of this land if this took place and this would be outwith planning control. Also, there are permitted development rights to erect agricultural buildings and so some buildings can be erected at such sites without requiring planning permission. Albeit the planning authority try to resist houses in the countryside, in some cases it can be demonstrated these are required and expected for some businesses. In these instance, these can be required to be low carbon and meet relevant Building Standards requirements to limit emissions.

The applicant's agent has confirmed that the applicant owns the site outlined in red and blue.

Recommendation: Refuse planning permission in principle.

Reg. No. 21/00239/PPP

MacGarvie & Co Ltd
Littlehill
Littlehill, Keir
Dunblane
FK15 9NU

Midlothian Council, as Planning Authority, having considered the application by Mr George Pirie, 45 Gilcomston Park, Aberdeen, AB25 1PN, which was registered on 12 April 2021 in pursuance of their powers under the above Acts, hereby **refuse** permission to carry out the following proposed development:

Application for planning permission in principle for the erection of dwellinghouse, agricultural buildings, formation of access road and associated works at Land At Whitehill Farm, Whitehill Village, Dalkeith

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

<u>Document/Drawing.</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Location Plan	(SK-P) L1 C 1:2500	12.04.2021

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

- 1. It has not been demonstrated to the satisfaction of the Planning Authority that the proposed house is required in connection with the furtherance of an established countryside activity or business. For this reason the proposed development is contrary to policy RD1 of the Midlothian Local Development Plan 2017 and the related supplementary planning guidance.*
- 2. Supporting this application would encourage the subdivision of ever decreasing, and unviable, parcels of land from larger agricultural units, each with their own large farmhouse to the detriment of the landscape character of Midlothian's rural areas. For this reason the proposed development is contrary to policies RD1 and ENV7 of the Midlothian Local Development Plan 2017 and the related supplementary planning guidance.*
- 3. The location of the application site and siting and scale of the related development would have a significant detrimental impact on the landscape character of the area. This is therefore contrary to policies DEV6, RD1 and ENV7 of the Midlothian Local Development Plan 2017 and national policies.*
- 4. It has not been demonstrated to the satisfaction of the Planning Authority that the proposed agricultural buildings would not have a significant adverse impact on the amenity of the nearby residential properties through noise, smell and general disturbance and so is contrary to policies ENV17 and ENV18 of the Midlothian Local Development Plan 2017.*

Dated 22 / 11 / 2021

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 (Planning Enquiries)
Email: planningconsultation@coal.gov.uk
Website: www.gov.uk/coalauthority

INFORMATIVE NOTE

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

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

Any form of development over or within the influencing distance of a mine entry can be dangerous and raises significant land stability and public safety risks. As a general precautionary principle, the Coal Authority considers that the building over or within the influencing distance of a mine entry should be avoided. In exceptional circumstance where this is unavoidable, expert advice must be sought to ensure that a suitable engineering design which takes into account all the relevant safety and environmental risk factors, including mine gas and mine-water. Your attention is drawn to the Coal Authority Policy in relation to new development and mine entries available at:

www.gov.uk/government/publications/building-on-or-within-the-influencing-distance-of-mine-entries

Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires a Coal Authority Permit. Such activities could include site investigation boreholes, excavations for foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Failure to obtain a Coal Authority Permit for such activities is trespass, with the potential for court action.

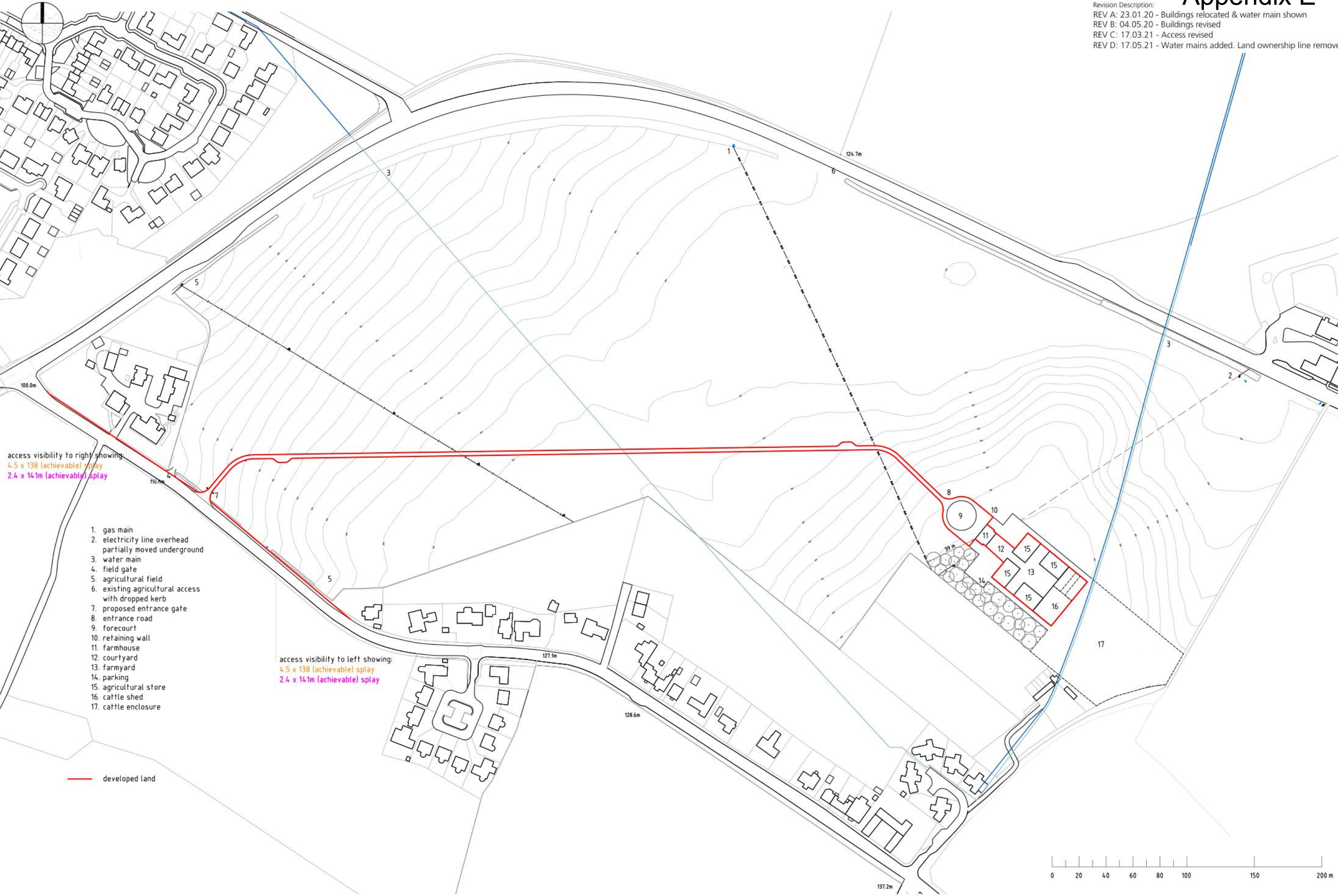
If any coal mining features are unexpectedly encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848. Further information is available on the Coal Authority website at:

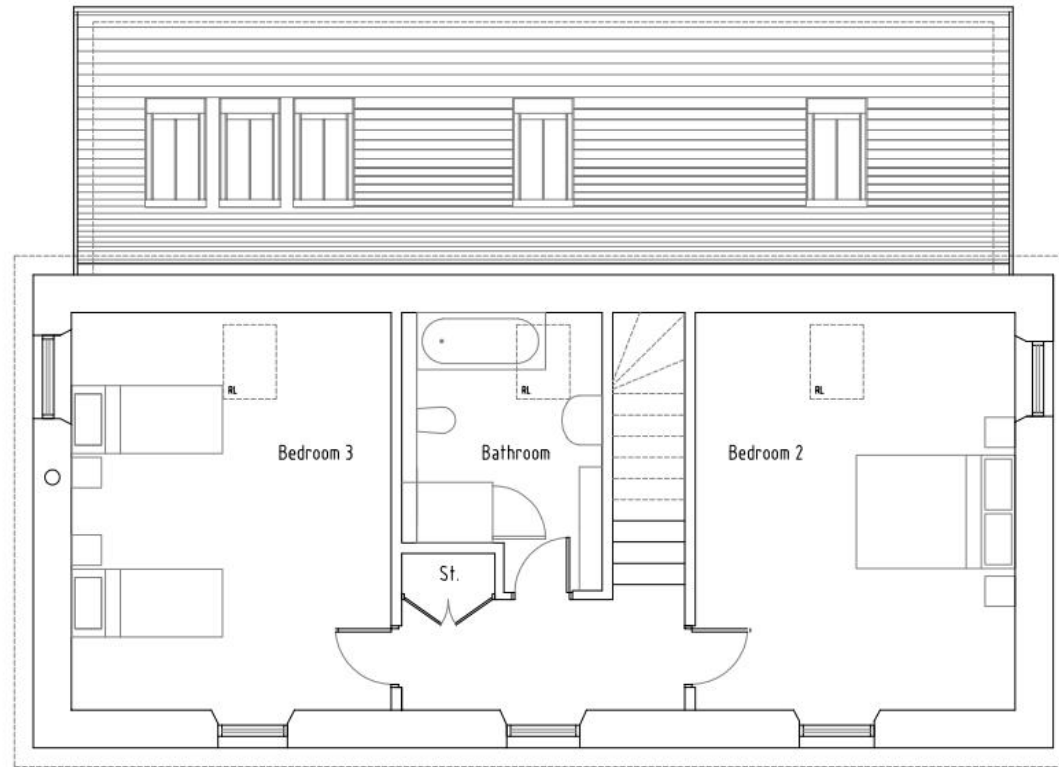
www.gov.uk/government/organisations/the-coal-authority

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

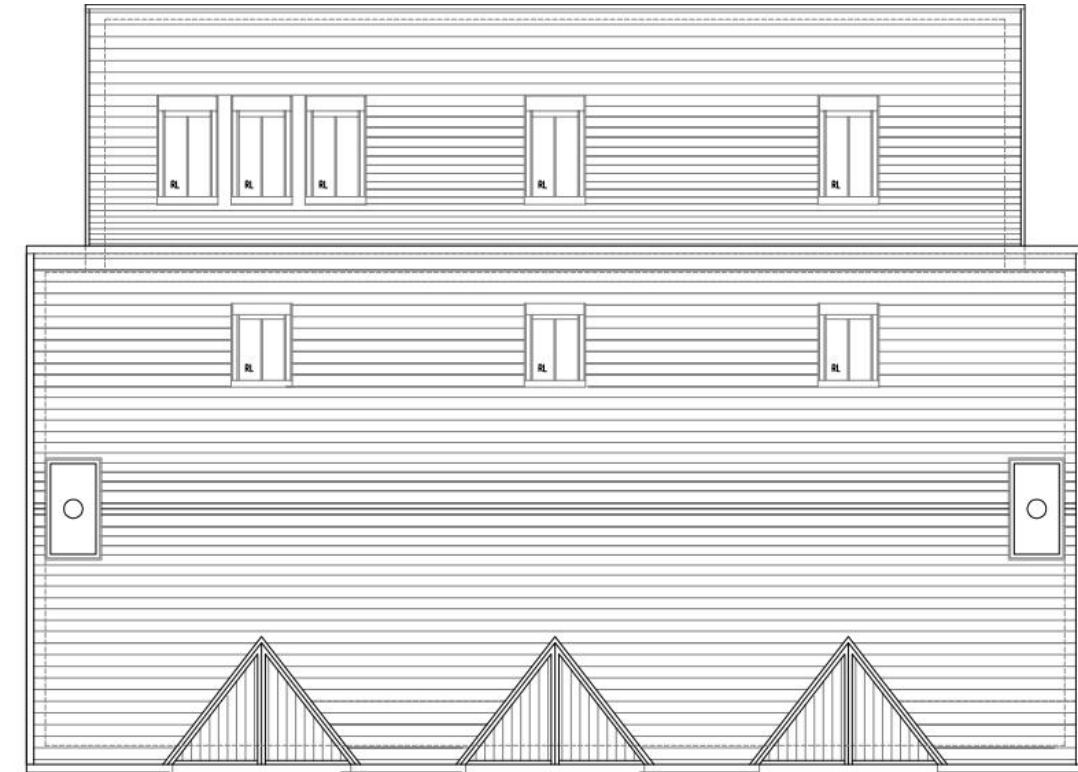
Appendix E

Revision Description:
REV A: 23.01.20 - Buildings relocated & water main shown
REV B: 04.05.20 - Buildings revised
REV C: 17.03.21 - Access revised
REV D: 17.05.21 - Water mains added. Land ownership line removed

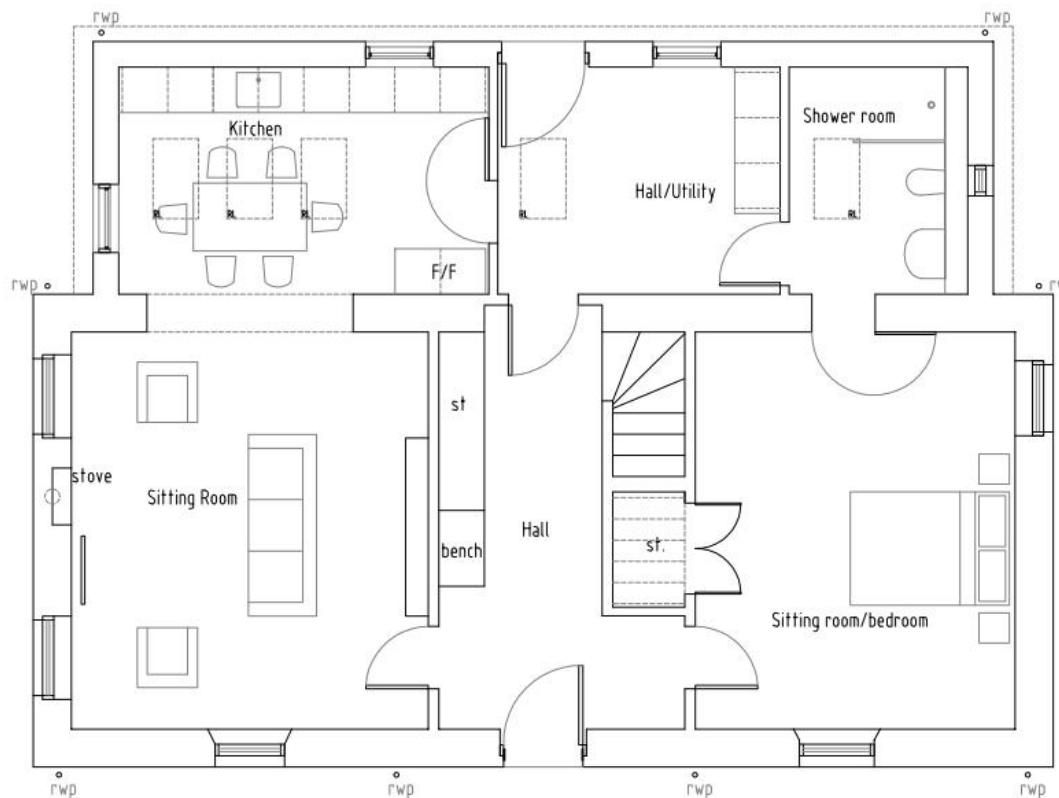




First Floor



Roof Plan



Ground Floor

This architectural elevation drawing shows the front facade of a house. The drawing includes the following numbered callouts:

- 1.** Points to the roofline on the left side.
- 2.** Points to the chimney on the left side.
- 3.** Points to the roofline on the right side.
- 4.** Points to the roofline on the right side, near the chimney.
- 5.** Points to the ground line on the right side.
- 6.** Points to the lower right window.
- 7.** Points to the upper right window.
- 8.** Points to the central door.
- 9.** Points to the upper left window.
- 10.** Points to the ground line on the left side.

A line drawing of a house with a chimney, a gabled roof, and a smaller gabled section on the left. The drawing includes numbered labels 1 through 9 indicating different parts of the structure:

- 1: Chimney
- 2: Roofline of the main house
- 3: Roofline of the smaller gabled section
- 4: Eave of the main house
- 5: Wall of the main house
- 6: Window of the main house
- 7: Window of the smaller gabled section
- 8: Window of the main house
- 9: Window of the smaller gabled section

This architectural section drawing illustrates the internal structure of a house. The roof is shown with a central chimney and exposed rafters. The interior features a large open space on the upper floor, a staircase with a dashed line indicating its path, and several doorways. The drawing uses solid lines for structural elements and dashed lines for hidden or implied components.

A line drawing of a house with a chimney, two windows, and a porch. The drawing is labeled with numbers 2, 4, 5, 7, and 9. The house has a gabled roof with a chimney on the left side. The left wall has a window with four panes. The right wall has a window with four panes. The porch is on the right side of the house. The drawing is labeled with numbers 2, 4, 5, 7, and 9.

Rev.
A