

**Notice of Review: Land West of 6 Ramsay Cottages,  
Bonnyrigg (also known as land at Cockpen Farm,  
Newtongrange)****Determination Report**

Report by Chief Officer Place

**1 Purpose of Report**

- 1.1 The purpose of this report is to provide a framework for the Local Review Body (LRB) to consider a 'Notice of Review' for the erection of 10 dwellinghouses and associated works at land west of 6 Ramsay Cottages, Bonnyrigg (also known as land at Cockpen Farm, Newtongrange).

**2 Background**

- 2.1 Planning application 21/00806/DPP for the erection of 10 dwellinghouses and associated works at land west of 6 Ramsay Cottages, Bonnyrigg (also known as land at Cockpen Farm, Newtongrange) has not been determined within the statutory time period (2 months as extended by agreement) and as such the applicant has exercised their rights to request the LRB to determine the application. Officers were preparing to refuse the application.
- 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);
  - A copy of the case officer's report (Appendix C);
  - A copy of the decision notice worksheet, which includes the reasons for refusal prepared by the case officer (Appendix D); and
  - A copy of the key plans/drawings (Appendix E).
- 3.2 The full planning application case file and the development plan policies referred to in the case officer's report can be viewed online via [www.midlothian.gov.uk](http://www.midlothian.gov.uk)

## **4 Procedures**

4.1 In accordance with agreed procedures:

- 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 written submissions.

4.2 The case officer's report identified that there were seven consultation responses and 17 representations received. As part of the review process the interested parties were notified of the review. No additional comments have been received. All comments can be viewed online on the electronic planning application case file.

4.3 The next stage in the process is for the LRB to determine the review in accordance with the agreed procedure:

- Identify any provisions of the development plan which are relevant to the decision;
- Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies;
- Consider whether or not the proposal accords with the development plan;
- Identify and consider relevant material considerations for and against the proposal;
- Assess whether these considerations warrant a departure from the development plan; and
- State the reason/s for the decision and state any conditions required if planning permission is granted.

4.4 In reaching a decision on the case the planning advisor can advise on appropriate phraseology and on appropriate planning reasons for reaching a decision.

4.5 Following the determination of the review the planning advisor will prepare a decision notice for issuing through the Chair of the LRB. A copy of the decision notice will be reported back to the LRB for noting.

4.6 A copy of the LRB decision will be placed on the planning authority's planning register and made available for inspection online.

## **5 Conditions**

5.1 In accordance with the procedures agreed by the LRB at its meeting of 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. Prior to the commencement of development, the following details shall be submitted to and approved in writing by the planning authority:

- a) Details and samples of all external materials for the buildings, boundary treatments, bin and bike stores;
- b) Details of the proposed materials of the areas of hardstanding;
- c) A landscape plan, including details of a scheme of landscaping for the site. Details shall include the position, number, size and species of all trees and shrubs proposed, as well as identifying all trees on site which are proposed to be removed and retained.

Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be agreed in writing with the planning authority.

***Reason:*** *These details were not submitted as part of the application: to protect the visual amenity of the surrounding area; to integrate the development into the area; to ensure the development is served by adequate amenities.*

- 2. Within six months of the development being completed or occupied, whichever is the earlier date, the landscape scheme approved under the terms of condition 1c) above shall be carried out; thereafter, any trees or shrubs removed, dying, becoming seriously diseased or being severely damaged shall be replaced during the next available planting season with others of a similar size and species.

***Reason:*** *To protect and enhance the landscaping of the area; to ensure that planting on the site is carried out as early as possible, and has an adequate opportunity to become established.*

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

***Reason:*** *To ensure the quality of the development is enhanced by the provision of appropriate digital infrastructure in accordance with the requirements of policy IT1 of the adopted Midlothian Local Development Plan 2017.*

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

***Reason:*** *To ensure the development accords with the requirements of policy TRAN5 of the adopted Midlothian Local Development Plan 2017.*

5. Development shall not begin until details of a sustainability/biodiversity scheme for the site, including the provision of house bricks and boxes for bats and swifts throughout the development has been submitted to and approved in writing by the planning authority along with details of how the proposals will implement the recommendations set out in chapter 5.0 of the Ecology Assessment (September 2021, Nigel Rudd Ecology). Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority.

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

6. No construction of the development hereby permitted shall not take place outwith the hours of 8am to 7pm on Mondays to Fridays, 8am to 1pm on Saturdays, with no work at any time on Sundays.

***Reason:*** *To safeguard the amenity of the surrounding residential area; to protect the amenity of neighbouring properties.*

7. No development shall take place until a programme of archaeological (evaluation) work has been undertaken and a written scheme of investigation has been submitted to and approved in writing by the local planning authority.

***Reason:*** *In order to comply with policy ENV 25 of the MLDP 2017.*

8. No development shall take place until details of a 3m wide cycling / pedestrian route connecting development to the north, through the proposed site, to the frontage of 1 – 6 Ramsay Cottages on the B704 are prepared and submitted to the local planning authority for approval in writing.

***Reason:*** *To delivery effective site connectivity and promote low carbon movement.*

9. Prior to the commencement of development details of a safe pedestrian crossing point on the B704 to the existing public footway on the southern edge of the B704 shall be submitted to the local planning authority for approval in writing.
10. Prior to the commencement of development details of new street lighting extending from 1 – 6 Ramsay Cottages to cover the new pedestrian link required under condition 8 shall be submitted to the local planning authority for approval in writing.

***Reason for conditions 9 and 10:*** *To ensure user safety of the new multi user route.*

11. No development shall commence until details of the proposed surface water management scheme and outfall for the development demonstrating that development does not result in any increase in flooding risk for existing properties is submitted to and approved in writing by the planning authority.

***Reason:*** *To ensure that the proposed development complies with policy ENV 10.*

12. No development shall commence until a revised layout showing the provision of 5 visitor parking spaces is prepared and submitted to the planning authority for approval of writing. Thereafter development shall take place in accordance with approved plans.

***Reason:*** *To ensure adequate parking is provided as part of the development.*

- 5.2 If the LRB is minded to uphold the review and grant planning permission for the proposed development it shall be subject to a legal agreement to secure developer contributions towards primary and secondary school education provision, Borders Rail, community facilities, play provision and affordable housing. The legal agreement shall be concluded prior to the issuing of the LRB decision. The legal agreement shall be concluded within 6 months of the resolution to grant planning permission, if the agreement is not concluded the review will be reported back to the LRB for reconsideration.

## **6 Recommendations**

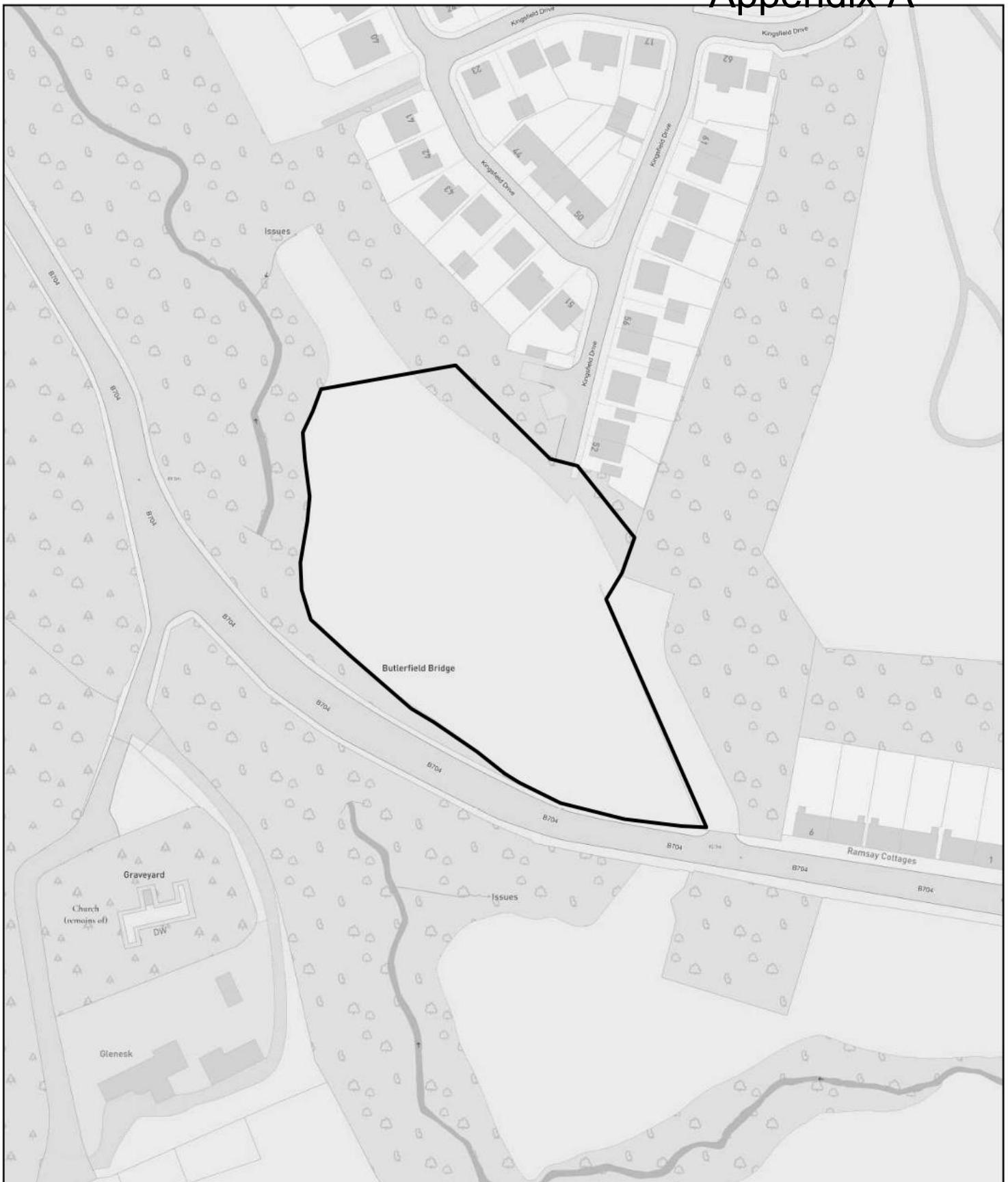
- 6.1 It is recommended that the LRB:
  - a) determine the review; and
  - b) the planning advisor draft and issue the decision of the LRB through the Chair

**Peter Arnsdorf**  
**Planning, Sustainable Growth and Investment Manager**

**Date:** 17 June 2022  
**Report Contact:** Hugh Shepherd, Planning Officer  
[Hugh.Shepherd@midlothian.gov.uk](mailto:Hugh.Shepherd@midlothian.gov.uk)

**Background Papers:** Planning application 21/00806/DPP available for inspection online.

# Appendix A



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

Erection of 10 dwellinghouses and three garages; formation of access road, car parking and footpaths and associated works at Land West of 6 Ramsay Cottages , Bonnyrigg,

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File No: 21/00806/DPP

Scale:1:1,500





Fairfield House 8 Lothian Road Dalkeith EH22 3ZN Tel: 0131 271 3302 Fax: 0131 271 3537 Email: [planning-applications@midlothian.gov.uk](mailto:planning-applications@midlothian.gov.uk)

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100478174-007

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

## Applicant or Agent Details

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

☐ Applicant ☒ Agent

## Agent Details

Please enter Agent details

Company/Organisation:	<input type="text" value="Geddes Consulting"/>		
Ref. Number:	<input type="text"/>	You must enter a Building Name or Number, or both: *	
First Name: *	<input type="text" value="Stuart"/>	Building Name:	<input type="text" value="Quadrant"/>
Last Name: *	<input type="text" value="Salter"/>	Building Number:	<input type="text" value="17"/>
Telephone Number: *	<input type="text" value="0131 553 3639"/>	Address 1 (Street): *	<input type="text" value="Bernard Street"/>
Extension Number:	<input type="text"/>	Address 2:	<input type="text"/>
Mobile Number:	<input type="text"/>	Town/City: *	<input type="text" value="Edinburgh"/>
Fax Number:	<input type="text"/>	Country: *	<input type="text" value="UK"/>
		Postcode: *	<input type="text" value="EH6 6PW"/>
Email Address: *	<input type="text" value="stuart@geddesconsulting.com"/>		

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

☐ Individual ☒ Organisation/Corporate entity

## Applicant Details

Please enter Applicant details

Title:	<input type="text" value="Other"/>	You must enter a Building Name or Number, or both: *	
Other Title:	<input type="text"/>	Building Name:	<input type="text" value="Miller House"/>
First Name: *	<input type="text"/>	Building Number:	<input type="text"/>
Last Name: *	<input type="text"/>	Address 1 (Street): *	<input type="text" value="2 Lochside View"/>
Company/Organisation	<input type="text" value="Miller Homes Limited"/>	Address 2:	<input type="text" value="Edinburgh Park"/>
Telephone Number: *	<input type="text"/>	Town/City: *	<input type="text" value="Edinburgh"/>
Extension Number:	<input type="text"/>	Country: *	<input type="text" value="UK"/>
Mobile Number:	<input type="text"/>	Postcode: *	<input type="text" value="EH12 9DH"/>
Fax Number:	<input type="text"/>		
Email Address: *	<input type="text" value="stuart@geddesconsulting.com"/>		

## Site Address Details

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

Please identify/describe the location of the site or sites

Land at Cockpen Farm, Newtongrange

Northing	<input type="text" value="663437"/>	Easting	<input type="text" value="332758"/>
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## Description of Proposal

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

Erection of 10 dwellings and three garages; formation of access road, car parking and footpaths and associated works.

## Type of Application

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

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

What does your review relate to? \*

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

## Statement of reasons for seeking review

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

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

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

Please refer to Local Review Body Statement.

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

☐ Yes ☒ No

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

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

Please see Planning Application (PA) Document Reference List and Miller Homes (MH) Document Reference List.

## Application Details

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

21/00806/DPP

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

01/10/2021

## Review Procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Can this review continue to a conclusion, in your opinion, based on a review of the relevant information provided by yourself and other parties only, without any further procedures? For example, written submission, hearing session, site inspection. \*

☐ Yes ☒ No

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

Please select a further procedure \*

Further written submissions on specific matters

Please explain in detail in your own words why this further procedure is required and the matters set out in your statement of appeal it will deal with? (Max 500 characters)

Please refer to Local Review Body Statement.

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

Can the site be clearly seen from a road or public land? \*

☒ Yes ☐ No

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

☒ Yes ☐ No

## Checklist – Application for Notice of Review

Please complete the following checklist to make sure you have provided all the necessary information in support of your appeal. Failure to submit all this information may result in your appeal being deemed invalid.

Have you provided the name and address of the applicant?. \*

☒ Yes ☐ No

Have you provided the date and reference number of the application which is the subject of this review? \*

☒ Yes ☐ No

If you are the agent, acting on behalf of the applicant, have you provided details of your name and address and indicated whether any notice or correspondence required in connection with the review should be sent to you or the applicant? \*

☒ Yes ☐ No ☐ N/A

Have you provided a statement setting out your reasons for requiring a review and by what procedure (or combination of procedures) you wish the review to be conducted? \*

☒ Yes ☐ No

Note: You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. You may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

Please attach a copy of all documents, material and evidence which you intend to rely on (e.g. plans and Drawings) which are now the subject of this review \*

☒ Yes ☐ No

Note: Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice (if any) from the earlier consent.

## Declare – Notice of Review

I/We the applicant/agent certify that this is an application for review on the grounds stated.

Declaration Name: Mr Stuart Salter

Declaration Date: 06/03/2022

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**Cockpen Road, Newtongrange  
Local Review Body Statement**

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On behalf of

**millershomes**

**March 2022**

Prepared by:



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## Document Control and Approval

Status	Prepared	Approved	Date
Final	Stuart Salter	Bob Salter	4 <sup>th</sup> March 2022

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### **Executive Summary**

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## Executive Summary

Miller Homes was established in 1934 in Edinburgh and retains its headquarters in the City to this day. The company builds across the UK with Scotland, and the Lothians in particular, remaining a core part of the Company's area of operation. The adjacent new housing at Miller Homes' *Lady Victoria Grange* development (Ref: h37 *Cockpen Farm*) stands testament to the quality family homes that the Company has been building for generations across Scotland and is renown.

The company now builds approximately 4,000 new homes across the UK from its base in Edinburgh and has built many hundreds of new homes across Midlothian in recent decades. Everyone knows someone who lives in a *Miller Home*.

The Appeal site is a logical extension to the current Miler Homes development at *Lady Victoria Grange* (Ref: h37 *Cockpen Farm*) which will itself be completed later in 2022. All necessary services and drainage capacity needed to serve this small development of 9 homes is allowed for via the existing site at *Lady Victoria Grange*.

Providing land for an additional 9 homes of similar design to *Lady Victoria Grange* within the settlement boundary of Newtongrange would not create any unacceptable precedence for coalescence with any neighbouring development or settlements.

This Local Review Body Statement has assessed the Appeal proposal for residential development of 9 homes at *Cockpen Road* against the policies of SESplan and the adopted Midlothian Local Development Plan (LDP), as well as considering other material considerations including Scottish Planning Policy (SPP).

The site is within the *A7/ A68 /Borders Rail Corridor*, one of the SESplan Strategic Development Areas (SDA), which are to be the focus of new development for the Lothian region. The Appeal proposal's location within the SDA is in accord with the approved development strategy for Midlothian and the SESplan region.

The *Planning Statement* demonstrates that there is a shortfall in the supply of housing land in Midlothian and the housing supply target and housing land requirement will not be met by 2024. SESplan Policy 7 *Maintaining a Five Year Housing Land Supply* is therefore triggered as a key development plan policy in the determination of this Appeal. The proposal accords with the relevant two criteria of SESplan Policy 7 and the principle of the proposal is supported by SESplan.

Other SESplan policies are not directly relevant to the determination of this Appeal.

The principle of the Appeal proposal is also supported by the adopted LDP due to the shortfall in the supply of housing land in Midlothian, specifically Policy STRAT 2 *Windfall Housing Sites*.

The Appeal proposal does not conflict with any other relevant LDP Policies, as summarised in this Appeal Statement and other supporting documents. Subject to appropriate planning conditions, the Appeal proposal accords with all relevant development plan requirements.

The additional 9 homes would also be required to be subject to a Section 75 Agreement, which based on recent payments made by Miller Homes could be in the region of £37,500 per home.

Development of the Appeal site could therefore generate a further planning obligation windfall payment of circa **£337,500** for Midlothian Council to put towards local services across the area.

The Appeal proposal is supported by SPP. It constitutes sustainable development and this is a significant material consideration that adds weight to the case for approval.

Case law also confirms that a *tilted balance* in favour of granting planning permission applies in cases where a shortfall in the effective housing land supply emerges.

In these circumstances, planning permission should only be refused where disbenefits of a proposal can be shown to significantly and demonstrably outweigh the benefits. There are no disbenefits that outweigh the benefits of the Appeal proposal.

No material considerations have been identified that indicate the Appeal should be refused.

Accordingly, Miller Homes respectfully submit that the Appeal should be allowed and Planning Permission granted.



## 1.0 Introduction

1.1 Miller Homes was established in 1934 in Edinburgh and retains its headquarters in the City to this day. The company builds across the UK with Scotland, and the Lothians in particular, remaining a core part of the Company's area of operation. The adjacent new housing at Miller Homes' *Lady Victoria Grange* development (Ref: h37 *Cockpen Farm*) stands testament to the quality family homes that the company has been building for generations across Scotland.

1.2 The company now builds approximately 4,000 new homes across the UK from its base in Edinburgh and has built many hundreds of new homes across Midlothian over recent decades. Everyone knows someone who lives in a *Miller Home*.

### Structure of Appeal Statement

1.3 This *Appeal Statement* (the Statement) is prepared on behalf of Miller Homes (the Appellant) in support of an Appeal to the Midlothian Local Review Body (LRB) against the failure of Midlothian Council (the Council) to determine an Application for Planning Permission (PP) for residential development at Cockpen Road, Newtongrange

1.4 This Statement should be read in conjunction with the documents submitted as part of the Application (PA 0.01 to PA 0.35).

1.5 This Appeal submission includes copies of consultations and exchanges of correspondence between the Appellant and relevant consultees prior to determination (PA 1.01 to PA 1.12). These highlight the issues being raised by the Council and other consultees and the responses made by the Appellant.

1.6 All of these documents are referenced in the Planning Application (PA) Document Reference List submitted with this Appeal.

1.7 Chapter 1 of this Statement sets out the background to the Appeal. This includes a summary of the determination of the planning application and the additional or updated information submitted by the Appellants since the planning application was submitted to address comments raised by the Council and consultees.

1.8 Chapter 2 sets out the Appellant's Grounds of Appeal.

1.9 The Appellant considers that the Appeal proposal complies with the relevant policies in the statutory development plan. Material considerations are identified and discussed. The evidence for this compliance is considered and presented in Chapter 3.

1.10 Chapter 4 summarises the case for the Appeal and concludes the Appeal should be upheld based on the evidence originally presented to the Council and now presented to the Local Review Body, subject to appropriate conditions.

### Description of Appeal Proposal

1.11 The Appeal site is located in the south west corner of the settlement of Newtongrange, to the south of an housing development currently under construction by the Appellant. The Appeal proposal is for residential development of 9 homes with associated engineering, infrastructure, landscaping and open space.

1.12 The Application Boundary for the site extends to 0.9ha, as shown in Dwg. No. 0126-Cockpen Road-STEX-P002 *Site Boundary* (PA 0.03). The Appeal site was formerly part of a wider agricultural unit.

- 1.13 Following the ongoing construction of the residential development to the north, the Appeal site is now vacant private land and has lost its former use and function.
- 1.14 The application boundary is formed to the south by Cockpen Road (B704). To the north of the site is the existing residential development currently under construction by the Apellant. The western and eastern boundaries of the site are formed by existing tree belts.
- 1.15 The Appeal proposal is explained further in Section 2 of this Statement as well as the *Design Statement* (PA 0.05) submitted in support of the Application.
- 1.16 The Appeal proposal will form a modest and logical continuation of the residential development under construction to the north (Ref: h37 *Cockpen Farm*). The proposed homes will be detached homes and will comprise a mix of house types and sizes ranging from three to five bedrooms.
- 1.17 Dwg. No. 0126-Cockpen Road-MPDF-P001-E *Proposed Site Layout* (PA 1.05) submitted in support of the Application sets out the layout of the proposed homes.
- 1.18 The proposed homes have been positioned to provide active frontage to the road and passive surveillance to the extended streetscape. The proposed homes have been arranged in a small courtyard like configuration adjacent to the site entrance. This will provide a focal point for the development and will create a welcoming entrance into the development and creates a natural end point for the earlier completed development which is currently missing.
- 1.19 Each home will have a private driveway with either an integral or detached garage. The proposed homes will also have sufficient parking to meet the Council's parking requirements.
- 1.20 The Appeal site will be accessed from the development to the north which is currently under construction. This will require the existing road (Kingsfield Drive) to be extended further into the site. As shown on the *Proposed Site Layout* (PA 1.05), this road will include a section of shared surface which will serve four of the proposed homes. The use of shared surfaces promotes pedestrian priority and will encourage a reduction in vehicle speeds within the site.
- 1.21 A single point of access is appropriate for the scale of development proposed. A turning head is also included within the proposal. This will ensure that refuse vehicles can access and manoeuvre safely within the proposed development.
- 1.22 A landscape framework is proposed that complements the existing green network. New homes are focused in the east of the site, providing a buffer between development and the area of mature woodland along the western boundary. The existing open space is retained in the west of the site. This is enhanced with new meadow and tree planting, providing a biodiversity improvement on site.
- 1.23 More formal landscaping is proposed in the east of the site, providing an attractive setting for new homes as well as the existing tracks that run adjacent to the eastern boundary. These existing tracks will be overlooked by new homes, making them safer and more welcoming for all users. The development of the Appeal site presents an opportunity to improve the amenity and ecological value of this area without compromising the function of the informal route through the site.
- 1.24 Further details on the proposal are set out in *Design Statement* (PA 0.05, Section 2.1).
- 1.25 This Statement highlights the relevant development plan policies and material considerations that need to be taken into account by the Council in the determination of this Application for PP. This Statement demonstrates the proposal's compliance with the policies of the development plan and other material considerations, which will allow the Council to grant PP.

1.26 As part of the Application, and in response to matters raised during the determination process, the following reports and submissions were lodged with the Council by the Appellants:

- Design Statement (PA 0.05);
- Proposed Site Layout (PA 1.05);
- Proposed Drainage Layout (PA 1.06);
- Proposed Levels Layout (PA 1.07);
- Landscape Proposal Specification (PA 1.08);
- Landscape Proposal (PA 1.09);
- Desk Study Constraints Report (PA 0.29);
- Transport Statement (PA 0.30);
- Flood Risk Assessment (PA 0.31);
- Air Quality Impact Assessment (PA 0.32);
- Ecological Assessment (PA 0.33); and
- Tree Survey Report (PA 0.35).

1.27 Scottish Planning Policy (SPP) (2020) was quashed by the Court of Session in July 2021, and the previous 2014 version of SPP came back into force.

### **Determination Process of the Application**

1.28 The PP application was lodged on 1<sup>st</sup> October 2021. Formal acknowledgement was received from the Council dated 11<sup>th</sup> October 2021, which confirmed the Application had been registered on 6<sup>th</sup> October 2021.

1.29 The statutory determination deadline was therefore 6<sup>th</sup> December 2021.

1.30 During the course of the Application's determination, the following consultation responses and Council comments were received:

- Archaeology Consultation Response (PA 1.01);
- Transport Consultation Response (PA 1.02); and
- NatureScot Consultation Response (PA 1.03).

1.31 The Appellant amended the Appeal proposal from 10 homes to 9 homes on 9<sup>th</sup> December 2021 (PA 1.04).

1.32 The Council has not determined the Application in a period of over five months from submission, which is well over double the statutory two month period.

1.33 The Appellants agreed a series of extensions to the determination period from the original statutory deadline of 6<sup>th</sup> December 2021 to 11<sup>th</sup> January 2022 (PA 1.11) and finally to 16<sup>th</sup> February 2022 (PA 1.12).

1.34 The Appellant's right to appeal against the Council's non-determination of the Application began on 16<sup>th</sup> February 2022 and is valid for a period of three months.

## 2.0 Grounds of Appeal

2.1 The Appellant's Grounds of Appeal are as follows:

1. The *Planning Statement* (PA 0.34) demonstrates that there is a shortfall in the supply of housing land in Midlothian and the housing supply target set by SESplan and housing land requirement in the adopted LDP will not be met by 2024. SESplan Policy 7 *Maintaining a Five Year Housing Land Supply* is therefore triggered as a key development plan policy in the determination of this Appeal, along with LDP Policy STRAT 2 *Windfall Housing Sites*.
2. The Appeal site is effective. There are no infrastructure constraints impacting the Appeal proposal that cannot be resolved by planning obligations.

In terms of SESplan Policy 7, the Appellant's *Design Statement* (PA 0.05, Section 2.3) confirms that the Appeal proposal will not have a significant adverse impact on the character of the settlement and the local area and it is therefore in accord with SESplan Policy 7, criterion a.

The Appeal site is not in the Green Belt and SESplan Policy 7, criterion b does not apply.

SESplan Policy 7, criterion c, requires proposals to provide necessary infrastructure. The Appellant's *Planning Statement* (PA 0.34) sets out that existing utilities, roads, public transport, and education infrastructure either have capacity, or the Appellant is willing in principle to make a financial contribution towards the provision of additional infrastructure in accord with the tests in Circular 3/2012 *Planning Obligations and Good Neighbour Agreements*.

Taking all these matters into account, the Appeal proposal accords with SESplan Policy 7.

Compliance with LDP Policy STRAT 2 *Windfall Housing Sites* has also been examined in the *Planning Statement* (PA 0.34). Based on the evidence lodged with this Appeal as well as the Application, the Appeal proposal complies with the five criteria identified in LDP Policy STRAT 2.

3. The Appeal site is within 400m of existing bus stops and within a 15 minute walk of Newtongrange Train Station. The Appeal proposal will, therefore, be well served by existing public transport services in accord with the statutory walking distances set out in PAN 75 *Planning for Transport* and the Scottish Government's "20 minute neighborhoods".
4. The Appeal proposal will retain and enhance around 0.3ha of open space within the site. This will include meadow planting and additional tree planting. This will help to screen the development from the B704 and improve the biodiversity and amenity value of the site. The Appeal proposal also includes the provision of bat boxes and 'Swift' boxes which will further enhance the biodiversity value of the site.
5. The *Flood Risk Assessment* (PA 0.31) demonstrates that the Appeal site will not be at risk of flooding, nor will it increase the risk of flooding for neighboring development. The Appeal proposal will also tie into the existing SuDS delivered as part of the residential development to the north.
6. The *Noise Impact Assessment* (PA 1.10) and *Air Quality Impact Assessment* (PA 0.32) both demonstrate that the Appeal proposal will not have an adverse impact on existing noise or air quality levels. Residents of the proposed development will also not be affected by any adverse noise or air quality issues.

7. Case law also confirms that a 'tilted balance' in favour of granting planning permission applies in cases where a shortfall in the effective housing land supply emerges. In these circumstances, planning permission should only be refused where disbenefits of a proposal can be shown to significantly and demonstrably outweigh the benefits. There are no disbenefits that outweigh the benefits of the Appeal proposal.

## 3.0 Compliance with Development Plan

- 3.1 In accord with the provisions of Section 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997, this Appeal must be determined in accordance with the provisions of the development plan unless material considerations indicate otherwise.
- 3.2 Material considerations both for and against the proposal should be considered and an assessment made as to whether these considerations warrant a departure from the development plan.
- 3.3 The development plan comprises the approved Strategic Development Plan (SDP) known as SESplan (approved June 2013) and the adopted Midlothian LDP (adopted November 2017).
- 3.4 The Appeal site is located within the settlement boundary of Newtongrange. Policy DEV 2 *Protecting Amenity within the Built-Up Area* is therefore applicable to the determination of this Application.
- 3.5 The preamble to Policy DEV 2 states that there is ...*a requirement to deliver additional housing on windfall sites (policy STRAT2) and such opportunities will generally located within existing built-up areas.*
- 3.6 This Chapter summarises the evidence as to whether or not the Appeal proposal complies with the policy framework in the statutory development plan.

### Compliance with SESplan

#### Principle of Development – Spatial Strategy and Housing Land Supply

- 3.7 Compliance of the Appeal proposal with SESplan's spatial strategy and policies is set out in detail in the *Planning Statement* (PA 0.34, paragraphs 3.3 to 3.29), including the following:
  - The Appeal proposal is within the A7/ A68 /*Borders Rail Corridor*, one of the Strategic Development Areas (SDAs) which are the focus of new development in Midlothian. SESplan Policy 1A *The Spatial Strategy: Development Locations* confirms that the SDAs are where new strategic development shall be directed by local development plans. As the Appeal proposal is in an SDA, its location is in accord with the approved development strategy for Midlothian and the SESplan region.
  - SESplan Policy 6 *Housing Land Flexibility*.
  - SESplan Policy 7 *Maintaining a Five Year Housing Land Supply*.
- 3.8 The Appeal proposal is therefore in accord with the relevant criteria of SESplan Policy 7 and the principle of the proposal is supported by the approved SDP.
- 3.9 SESplan Policy 8 *Transportation*, Policy 9 *Infrastructure*, Policy 11 *Delivering the Green Network*, and Policy 15 *Water and Flooding* set out requirements for the local development plans in the area to address. These are therefore not directly relevant to the determination of this Appeal and are addressed through relevant LDP policies.
- 3.10 The Appeal proposal's location within a defined SDA is in accord with the approved development strategy for Midlothian and the SESplan region. SESplan Policy 7 is triggered as a key development plan policy in the determination of this Appeal due to the shortfall in the supply of housing land in Midlothian.

- 3.11 The Appeal proposal accords with the relevant criteria of SESplan Policy 7 and is supported by the approved SDP.

### **Compliance with Midlothian LDP**

- 3.12 Compliance of the Appeal proposal with the policies of the LDP is set out in detail in the *Planning Statement* (PA 0.34, paragraphs 3.30 to 3.170), including the following:

- Policy DEV 2 *Protecting Amenity within the Built-Up Area*.
- The Appeal site is allocated under Policy DEV 8 *Open Spaces and* is identified within the Council's *Open Space Strategy*.

The Appeal site is a redundant piece of land that formed part of a wider farming unit on which the development to the north is built on. The site does not function as an area of open space for the development to the north nor has it ever done given its past use as part of a commercial farming unit

The Appeal site is not considered to have any significant open space value or amenity. Furthermore, the site is not considered to have any realistic potential to be enhanced for open space use. The loss of this area of open space will not have an adverse impact on the availability of access to open space within Newtongrange.

The Appeal proposal will not undermine the existing value of the open space. Rather, the introduction of meadow planting and additional tree planting in the western part of the site will enhance its existing value.

- Policy STRAT 2 *Windfall Housing Sites*.
- Policy DEV 6 *Layout and Design of New Development*.
- Policy DEV 7 *Landscaping in New Development*.
- Policy DEV 9 *Open Space Standards*.
- Policy DEV 5 *Sustainability in New Development*.
- Policy ENV 15 *Species and Habitat Protection and Enhancement*.
- Policy ENV 11 *Woodland, Trees and Hedges*.
- Policy ENV 9 *Flooding*
- Policy ENV 10 *Water Environment*.
- Policy IMP 3 *Water and Drainage*.
- Policy TRAN 1 *Sustainable Travel*.
- Policy TRAN 5 *Electric Vehicle*.
- Policy IMP 1 *New Development*.
- Policy ENV 17 *Air Quality*.



- Policy ENV 18 *Noise*.

- 3.13 The principle of the approving the Appeal proposal is supported by adopted Policy STRAT 2 *Windfall Housing Sites* of the adopted LDP. The Appeal proposal complies with the criteria in Policy STRAT 2.
- 3.14 The Appeal proposal does not conflict with any other relevant LDP policies. Subject to appropriate planning conditions and Section 75 Legal Agreement, the Appeal proposal accords with all relevant development plan requirements.

### **Material Considerations**

- 3.15 Material considerations both for and against the Appeal proposal should also be considered and assessed to determine whether these warrant a departure from the development plan. Circular 3/2013 *Development Management Procedures* (Annex A) explains what material considerations can be taken into account.
- 3.16 The SPP 2014 is applicable for this Appeal and notes (paragraph iii) that it is non-statutory guidance but is a material consideration that carries ...*significant weight*.
- 3.17 SPP sets out the policy requirements for both development plans and development management determinations for *Enabling the Delivery of New Homes*. The *Planning Statement* (PA 0.34, paragraphs 4.4 to 4.12) addresses the policy requirements of SPP in detail.
- 3.18 A housing shortfall exists and consequently a shortage in the five year effective land supply needs to be addressed. In summary, where a shortfall in the five year effective land supply emerges then development plan policies for the supply of housing land will not be considered up to date (paragraph 125) and will be given limited weight in the determination.
- 3.19 SPP refers to the development management process and how the issue of prematurity is to be addressed with a presumption in favour of sustainable development (paragraphs 32 to 35).
- 3.20 Case law confirms that a 'tilted balance' in favour of granting planning permission applies in cases where a shortfall in the effective housing land supply emerges. In these circumstances, planning permission should only be refused where adverse impacts of a proposal can be shown to significantly and demonstrably outweigh the benefits.
- 3.21 SPP also expects proposals to support sustainable development, assessed in accord with the principles set out in paragraph 29.
- 3.22 The *Planning Statement* (PA 0.34, paragraph 4.8) explains how the Appeal proposal contributes to sustainable development, as defined by SPP.
- 3.23 The Appeal proposal contributes to sustainable development and this is a significant material consideration. The shortfall in the housing land supply is a significant material consideration in the determination of this Appeal.



## 4.0 Conclusions

- 4.1 The Appeal site is a logical extension to the current Miler Homes development at *Lady Victoria Grange* (Ref: h37 *Cockpen Farm*) which will itself be completed later in 2022. All necessary services and drainage capacity is allowed for via the existing site at *Lady Victoria Grange*.
- 4.2 Providing land for an additional 9 homes of similar design to *Lady Victoria Grange* within the settlement boundary of Newtongrange would not create any unacceptable precedence for coalescence with any neighbouring development or settlements.
- 4.3 This Appeal Statement has assessed the proposal for residential development at Cockpen Road against the policies of SESplan and the adopted LDP, as well as taking into account material considerations, including SPP.
- 4.4 The site is within the *A7/ A68 /Borders Rail Corridor*, one of the SESplan SDAs, which are to be the focus of new development. The Appeal proposal's location within the SDA is in accord with the approved development strategy for Midlothian and the SESplan region.
- 4.5 The *Planning Statement* (PA 0.34) demonstrates that there is a shortfall in the supply of housing land in Midlothian and the housing supply target and housing land requirement will not be met by 2024. SESplan Policy 7 is therefore triggered as a key development plan policy in the determination of this Appeal. The proposal accords with the relevant two criteria of SESplan Policy 7 and the principle of the proposal is supported by the approved SDP.
- 4.6 Other SESplan policies are not directly relevant to the determination of this Appeal.
- 4.7 The principle of the Appeal proposal is also supported by the LDP due to the shortfall in the supply of housing land in Midlothian, specifically Policy STRAT 2 *Windfall Housing Sites*.
- 4.8 The Appeal proposal does not conflict with any other relevant LDP Policies, as summarised in this Appeal Statement and other supporting documents. Subject to appropriate planning conditions, the Appeal proposal accords with all relevant development plan requirements.
- 4.9 The additional 9 homes would also be required to be subject to a Section 75 Agreement, which based on recent payments made by Miller Homes could be in the region of £37,500 per home.
- 4.10 Development of the Appeal site could therefore generate a further planning obligation windfall payment of circa **£337,500** for Midlothian Council.
- 4.11 The Appeal proposal is supported by SPP as it contributes to sustainable development in terms of and this is a significant material consideration that adds weight to the case for approval.
- 4.12 Case law also confirms that a *tilted balance* in favour of granting planning permission applies in cases where a shortfall in the effective housing land supply emerges.
- 4.13 In these circumstances, planning permission should only be refused where disbenefits of a proposal can be shown to significantly and demonstrably outweigh the benefits. There are no disbenefits that outweigh the benefits of the Appeal proposal.
- 4.14 No material considerations have been identified that indicate that the Appeal should be refused.

- 4.15 Accordingly, Miller Homes respectfully submit that the Local Review Body should allow the Appeal and PP granted.

## MIDLOTHIAN COUNCIL

### DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

**Planning Application Reference:** 21/00806/DPP

**Site Address:** Land West of 6 Ramsay Cottages, Bonnyrigg

**Site Description:** The site is located to the south of committed development site h37 at Cockpen Farm through which the site is proposed to be accessed via Kingsfield Drive. The site is located to the north of the B704 and is approximately 0.9ha in size. The site is identified by the applicant as a former agricultural field and has not previously been developed. The site is separated from the existing residential site (nearing completion) by a multi user path and post and wire fence.

The levels of the site rise and fall around a central within the site. Proceeding south into the site levels descend from the committed housing development into the site. Levels then rise proceeding further to the south east corner of the site. Levels fall way to the west at the west boundary of the site.

Overhead wires traverse the sites north east boundary. At the sites west and south boundaries is established woodland. A former access track from the B704 binds the sites east boundary. This no longer provide vehicular access. The track is in turn screened from the site by strong landscaping. Further east is more established woodland.

The site is identified as being within the built up limits of Newtongrange, but is further identified by policy DEV 8 as Open Space. Land to the west is designated as Protect River Valley (ENV 8) and further as "Regionally and Locally Important Nature and Conservation Site" (ENV 14). Cockpen Dene Burn runs approximately 9m to the west of the site boundary and 30m west of the nearest proposed built form.

**Proposed Development:** Erection of 9 dwellinghouses and three garages; formation of access road, car parking and footpaths and associated works

**Proposed Development Details:**

The proposed development has been amended during the determination from 10 dwellings to 9.

Planning permission is sought for the erection of 9 dwellinghouses and four garages; formation of access road, car parking and footpaths and associated works

The development proposal comprises of the following:

The nine dwellinghouses are all detached and predominantly arranged into a singular row facing east and the proposed access into the site. At the north of the site two dwellings are proposed to face south and would be accessed off a private

drive. Similarly to the south two dwellings are orientated to the north and would present gable ends to the access route.

The access is formed of a short stretch of adoptable road, off which private driveways will serve the dwellings. The southernmost four units are served by a private drive that continues from the adoptable road. Five visitor parking spaces are proposed, three in parallel bays and two in bay parking arrangements on the private drive. No vehicular connection is proposed to the B704.

The proposed detached properties are traditional in form, generally rectangular footprints punctuated with projecting gable elements. The dwellings would have pitched roofs. Plots 2, 3, 8 and 9 are provided with single garages.

Connections are proposed to be made with the approved footpath running along the south west of site h37 and onto the existing access track to the east via a 2m wide path.

Landscaping is proposed as the sites west boundary where the site slopes steeply down to the west. Additional landscaping is proposed within the development as well as a modest amenity space at the south of the site in front of dwellings 8 and 9.

**Background (Previous Applications, Supporting Documents, Development Briefs):** Planning history sheet checked.

The site is located to the south of a major committed residential development site (h37) within the MLDP. The site was located within the red line boundary for below identified applications. However, no approved plans have identified any new function or development for the site and it has remained undeveloped.

- 09/00056/OUT Outline application for the erection of 131 dwellinghouses and formation of access from Butlerfield Spine Road at Cockpen Farm, Cockpen Dean, Bonnyrigg, CONSENT 23.02.2009
- 15/00968/MS C Erection of 131 dwellinghouses and formation of access and associated works (approval of matters specified in conditions 2, 3, 8, 10, 11 and 12 of planning permission 09/00056/OUT) at Cockpen Farm, Cockpen Dean, Bonnyrigg PERMISSION 14.12.2015
- 16/00601/MS C Erection of 131 dwellinghouses and formation of access and associated works (approval of matters specified in conditions 4, 6 and 9 of planning permission 09/00056/OUT) at Land At Cockpen Farm, Cockpen Dean, Bonnyrigg CONSENT 05.09.2016

### **Consultations:**

The **Council's Policy and Road Safety Manager** initially raised a number of concerns to the proposal development prior to its amendment. Subsequently amendments has meant that no objection has been raised subject to the following proposed conditions:

1. The existing 2m wide footpath link from plot 9 to the adopted road verge of the B704 should be increased to 3m wide to allow its use as a cycling / pedestrian link. To provide a safe pedestrian crossing point on the B704 the existing public footway and street lighting at the cottages should be extended to cover the new pedestrian link.
2. Details of publicly available EV charging units within this development should be submitted for approval.

The **Council's Education Manager** has not raised any objection and identifies the site is within the catchments of:

- |                                |                               |
|--------------------------------|-------------------------------|
| • Non-denominational primary   | Newtongrange Primary School   |
| • Denominational primary       | St Andrew's RC Primary School |
| • Non-denominational secondary | Newbattle High School         |
| • Denominational secondary     | St David's RC High School     |

The **Council's Environmental Health Manager** has not made any comments at this time.

**Scottish Water** offered no objection to this planning application, but advised that the applicant should be aware that this does not confirm that the proposed development can currently be serviced. They set out that a Capacity review and we can confirm that there is currently sufficient capacity in the Rosebery Water Treatment Works to service your development. However, please note that further investigations may be required to be carried out once a formal application has been submitted to us. In addition a review of Waste Water Infrastructure was undertaken by Scottish Water who have stated that, "*according to our records there is no public Scottish Water, Waste Water infrastructure within the vicinity of this proposed development therefore we would advise applicant to investigate private treatment options.*"

The **Council's Archaeological Consultee** has raised no objection to the application subject to a condition being attached to any consent. Their draft condition is:

*No development shall take place on the proposed site until the applicant has undertaken and reported upon a programme of archaeological (evaluation) work in accordance with a written scheme of investigation which has been submitted by the applicant (or their agent) and approved by the planning authority.*

The **Wildlife Information Centre (TWIC)** identified a number of amendments required to the submitted Ecology Report and furthermore the submission of protected species information.

The Council's **Land Resources Manager** sets not objection in principle to the development.

### **Representations:**

17 objection representation was received which object to the above planning application and can be viewed online. The objection representation raised concerns which can be summarised as follows:

- Development would result in the loss of view to the south from existing development;
- Concern over ability of road to deal with new traffic and the impact on pedestrian safety that would result from additional vehicle movements;
- Concern over the number of visitor parking spaces and the width of driveways to deal with modern car sizes;
- There was an understanding that the site would be planted with walkway as part of the previous development;
- The proposed development would harm the local biodiversity of the site. Deer, birds of prey and other animals are reported to be sited regularly there;
- The site forms a buffer between the development and the B704 which would be lost;
- The development would result in the loss of amenity space enjoyed by local residents, it was suggested that the site became inaccessible when construction fencing was erected;
- The site is an important green connection between woodland to the east and west of the site that would be lost;
- The site forms a buffer between new development at Redheugh (sites Hs7 and H50) to the south that would be eroded;
- Concern that the only access for construction traffic will be through residential areas to the north and will cause detrimental harm to the amenity of residents;
- The land is designated as Open Space in the MLDP which would be lost;
- Bought property in the estate under the understanding that no further development would be carried out;
- The existing development already experiences drainage difficulties, there is concern this development would add to those concerns.

### **Relevant Planning Policies:**

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

Policy **STRAT2: Windfall Housing Sites** supports housing on non-allocated sites within the built-up area provided: it does not lead to loss or damage of valuable open space; does not conflict with the established land use of the area; has regard to the character of the area in terms of scale, form, design and materials and accords with relevant policies and proposals.

Policy **ENV2: Midlothian Green Networks** supports development proposals brought forward in line with the provisions of the Plan that help to deliver the green network opportunities identified in the Supplementary Guidance on the Midlothian Green Network.

Policy **ENV9: Flooding** presumes against development which would be at unacceptable risk of flooding or would increase the risk of flooding elsewhere. It states that Flood Risk Assessments will be required for most forms of development in areas of medium to high risk, but may also be required at other locations depending on the circumstances of the proposed development. Furthermore it states that sustainable urban drainage systems will be required for most forms of

development, so that surface water run-off rates are not greater than in the site's pre-developed condition, and to avoid any deterioration of water quality.

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

Policy **ENV14: Regionally and Locally Important Nature Conservation Sites** states that development will not be permitted where it could adversely affect the nature conservation interest of such sites, unless it can be demonstrated that appropriate mitigation measures are in place.

Policy **ENV15: Species and Habitat Protection and Enhancement** presumes against development that would affect a species protected by European or UK law.

Policy **ENV18: Noise** requires that where new noise sensitive uses are proposed in the locality of existing noisy uses, the Council will seek to ensure that the function of established operations is not adversely affected.

Policy **DEV2: Protecting Amenity within the Built-Up Area** states that development will not be permitted where it would have an adverse impact on the character or amenity of a built-up area.

Policy **DEV5: Sustainability in New Development** sets out the requirements for development with regards to sustainability principles.

Policy **DEV6: Layout and Design of New Development** sets out design guidance for new developments.

Policy **DEV7: Landscaping in New Development** sets out the requirements for landscaping in new developments.

Policy **DEV8: Open Spaces** states that the Council will seek to protect and enhance the open spaces identified on the Proposals Map. Development will not be permitted in these areas that would:

- A. Result in a permanent loss of the open space; and/or
- B. Adversely affect the accessibility of the open space; and/or
- C. Diminish the quality, amenity or biodiversity of the open space; and/or
- D. Otherwise undermine the value of the open space as part of the Midlothian Green Network or the potential for the enhancement of the open space for this purpose.

Policy **TRAN1: Sustainable Travel** aims to encourage sustainable modes of travel.

Policy **TRAN5: Electric Vehicle Charging** seeks to promote a network of electric vehicle charging stations by requiring provision to be an integral part of any new development.

Policy **IT1: Digital Infrastructure** states that proposals for telecommunications developments will be supported where they are sited and designed to minimise environmental impact.

Policy **IMP1: New Development** ensures that appropriate provision is made for a need which arises from new development. Of relevance in this case are education provision, transport infrastructure; contributions towards making good facility deficiencies; affordable housing; landscaping; public transport connections, including bus stops and shelters; parking in accordance with approved standards; cycling access and facilities; pedestrian access; acceptable alternative access routes, access for people with mobility issues; traffic and environmental management issues; protection/management/compensation for natural and conservation interests affected; archaeological provision and 'percent for art' provision.

Policy **IMP3: Water and Drainage** require sustainable urban drainage systems (SUDS) to be incorporated into new development.

#### **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.

#### Principle

The proposed development is not allocated for housing within the MLDP and as such would constitute a windfall site. Policy STRAT 2 is therefore key in determining whether the principle of development is established.

STRAT 2 states that within the built area of settlements windfall development is appropriate so long as:

- A. it does not lead to the loss or damage of valuable public or private open space;*
- B. it does not conflict with the established land use of the area;*
- C. it has regard to the character of the area in terms of scale, form, design and materials;*
- D. it meets traffic and parking requirements; and*
- E. it accords with other relevant policies and proposals, including policies IMP1, IMP2, DEV3, DEV5 - DEV10.*

The site is within the built area as defined by the MLDP. As such consideration of the development against the aforementioned criteria is required. In regards to criteria A, the site is clearly identified as Open Space by policy DEV 8. The nature of the development would mean that this open space would be impacted permanently. As



such, at this stage it is necessary to assess the development against policy DEV 8. That policy states that, *“Development will not be permitted in these areas that would:*

- A. result in a permanent loss of the open space; and/or*
- B. adversely affect the accessibility of the open space; and/or*
- C. diminish the quality, amenity or biodiversity of the open space; and/or*
- D. otherwise undermine the value of the open space as part of the Midlothian Green Network or the potential for the enhancement of the open space for this purpose.*

The development would result in the permanent loss of the open space designation. As such the development would conflict with policy DEV 8. Moreover, the Council’s Open Space Audit (OSA) assesses the value of the open space. The site sits within a larger open space designation (Butlerfield Open Space), and identifies that it but the OSA highlights that it is an area of high quality. The proposed loss of high quality open space would mean that there would be significant harm from its loss as open space.

Whilst this is established the performance against the remaining other criteria is useful to establish. Comments from the public have indicated that the site used for informal recreation/walking etc. The applicant has set out that the field is an enclosed agricultural field not open to the public. The site was easily accessible at the time of a site visit. The proposed development would result in areas of the site not being available to access by the public, however it does provide some links to the new site and to adjacent footways. In regards to criteria B there would be some conflict. In terms of biodiversity and Ecology Report was submitted with the application. This was reviewed by TWIC who raised a number of matters to be addressed in the report. In addition it was noted that the presence of protected species on the site was still forthcoming. Additional information in respect of an amended report or protected species surveys have not been forthcoming. As such, there is some concern that the impact of the development cannot be fully assessed at this time. At the least, were the application to be approved, conditions requiring additional ecology information would be required. The site provides a green link between two established areas of woodland and a designated Regionally and Locally Important Nature Conservation Site to the west. The proposed development would effectively sever this underdeveloped link between habitats leaving a small 5m, partially developed, corridor at the south of the site. The Council’s 2021 Nature Conservation SPG sets out the importance of well-connected habitats. In addition, the Council’s Green Network SPG 2017 states that *“In most circumstances, habitat fragmentation and isolation is detrimental to biodiversity”*. In light of the importance of green connectivity for habitats, the missing information provided as part of the application, the development would be seen to conflict with criteria C and D of DEV 8.

In reviewing the development requirements for the housing site to the north, the MLDP sets out that a low density of development should be delivered *“to ensure adequate perimeter planting to help mitigate the impact on the environmental setting.”* The proposed development arguably begins to erode this intended buffer.

The proposed development conflicts with policy DEV 8 and thus Policy STRAT 2. The principle of development is therefore not established. Other material

considerations would therefore be required to demonstrate that justify the development. No such material considerations are identified.

### Design and Layout

As stated above, there is no policy support in principle for a house on this site and the applicant's agent was informed of this during the assessment of this planning application.

The design has been developed to deliver a modest (relatively) extension to site h37 to the north. The proposed development was amended in response to Transport comments initially raising concern with the vehicular access proposed as part of the development. These were successful in removing transportation concerns subject to aforementioned conditions.

The development would deliver new dwellings in a style that reflects that reflects approved development to the north.

As already set out, aside from a narrow strip at the south of the site, the development would effectively cut connections between woodland to the east from that on the west. When viewing the site in a wider context, the site extended development nearly to the B704. To the south of the B704 are strategic allocations at Redheugh including H50 and Hs7. The erosion of this green buffer could result in some visual connection between the sites and thus result in a modest degree of coalescence between the new development and existing. As such, there is concern that, whilst low density, the development would be over development of the site. Development would benefit from being brought away from the southern edge, to maximise the green connection from east to west and safeguard the separation of the site from allocated development to the south.

It is noted that even if there was policy support for the principle of housing, the siting and scale, over-development issues are also material considerations that warrant refusal of the application.

### Amenity

It is noted that policy DP2 Development Guidelines, from the now superseded 2008 Midlothian Local Plan, sets out design guidance for new developments. The guidance provided in this policy has been successfully applied to development proposals throughout Midlothian and will be echoed within the Council's Supplementary Guidance on Quality of Place which is currently being drafted.

Detached houses should each be provided with a private outdoor space that is free from direct overlooking from public areas and neighbouring property as far as possible. The Council's standard requires that houses of 4 apartments to have useable garden ground no less than 130m<sup>2</sup>. The submitted information indicates sufficient space will be provided for the dwellings.

Spaces between houses may vary depending on the types of houses and the nature of the sites. The Council's applied standard requires a back to back distance of 25

metres, a gable to rear distance of 16 metres and front to front distance of 22 metres. The proposed development appears to meet these separation distances.

Overall, the development demonstrates to the satisfaction of the Planning Authority that the dwellings will be afforded an acceptable level of residential amenity and therefore do not comply with adopted policy DEV6.

### Road Safety/Drainage

The Council's Policy and Road Safety Officer initially raised concerns but has noted that these have been resolved in the removal of a dwelling and provision of additional visitor parking spaces and turning head for HGVs. Subject to the provision of information relating to EV charging, the Officer has no objections.

Whilst the proposed development seeks to connect to the B704 with a pedestrian connection, there is no footpath on the north side of the B704. As such, pedestrians would have to cross the road. The Road Safety and Policy Officer requires a condition providing an extension to the existing footpath and a 3m wide active travel link be provided to encourage cycle travel. If this development were to be approved a legal agreement or conditions securing this would be necessary. Without this improvement, the proposed connectivity to the B704 would potentially be unsafe.

The site is within a 15 minute walk to Newtongrange Station. The nearest Bus Stops are understood to be on the B704 but provide an infrequent service.

With the potential for conditions and off site works, the proposed development would be seen to comply with TRAN 1 and TRAN 5.

### Landscaping and Connectivity

Landscaping is proposed within the development and the application was accompanied by a Landscape Layout. A Tree Survey was further submitted to the application. These have been reviewed by the Council's Landscape Officers.

There is concern that the impact of the development has not been fully assessed in relation to existing trees. It was identified by the Landscape Officer that two veteran oaks are located at the peripheries of the site boundary, close to the proposed visitor parking. These are not shown on the proposed site plan and as such it would appear they are likely to be removed. Removal of healthy mature trees or woodland is not in accordance with the Council's Climate Strategy Action 5 or general commitments to addressing the climate emergency, or the recently approved Nature Conservation Planning Guidance. It is highlighted in the Climate Strategy that mature trees are key features storing CO<sub>2</sub>. Whilst planting is proposed, its mitigation value in regards to carbon capture is limited as it would not mature fast enough to sequester carbon released through felling.

The proposed development would therefore be seen to conflict with ENV 11 and the Council's Climate Change Strategy.

As has been mentioned earlier, the site should deliver a generous east/west green corridor. This has not been delivered in the current scheme.

### Ecology

As has been set out there is some concern regarding the impact on ecology and the connectivity of habitats. Based on the reasons previously set out in this report it is considered that the proposed development does not provide sufficient information that no impact will result on protected species and as such the proposed development would not comply with policy ENV 15 of the MLDP. The severance of habitats would further frustrate the aims of Nature Conservation and Green Networks SPGs.

Policy ENV 14 sets out that development could impact the nature conservation interest of wildlife corridors would only be approved where development has been sited and designed to minimise damage to the value of the site or the public interest (including those of a social or economic nature) to be gained from the proposed development can be demonstrated to clearly outweigh the nature conservation interest of the site. Whilst the site is not designated directly under policy ENV 14 the land to the west is and forms a logical connection with woodland to the east. As such, the development would not comply with policy ENV 14.

### Summary

Whilst there is scope for the development to be amended to further comply with planning policies, it is noted that there is no policy support or other material considerations to warrant the approval of dwellings at the application site.

Should the application have been recommended for approval there would have been a requirement for developer contributions towards essential infrastructure improvements.

Overall, all relevant matters have been taken into consideration in determining this application. It is considered that the proposal does not accord with the principles and policies of the adopted Midlothian Local Development Plan 2017 and is not acceptable in terms of all other applicable material considerations. Therefore, it is recommended that the application is refused.

**Recommendation:** Refuse planning permission

**DEVELOPMENT MANAGEMENT  
MAJOR PLANNING APPLICATION DECISION NOTICE WORKSHEET:**

Case Officer: HS

Planning Application Reference:21/00806/dpp

Recommendation: Refuse

Reason(s) for Decision:

1. The development will result in the loss of open space without an overriding justification contrary to Midlothian Local Development Plan policies STRAT2 and DEV8.
2. The proposed removal of vegetation from the site would conflict with Midlothian Local Development Plan policy ENV11 to the detriment of public amenity, biodiversity and in conflict to the objectives of the Council's Climate Strategy.
3. The development would result in the overdevelopment of a greenfield site that connects two areas of woodland and habitat that support biodiversity and as such the development would conflict with Midlothian Local Development Plan policies DEV6, ENV14 and ENV15.

Conditions/LA Statement:

N/A

Approved/Refused Plans/supporting statements:

No.	Drawing Description	Drawing number	Date
1	Location Plan	P001 1:5000	06.10.2021
2	Proposed Site Plan	21014_MPDF_P001_E 1:500	10.12.2021
3	Landscape Proposal	109_113_01 Rev B 1:1250	10.12.2021
4	Landscape Proposal	109_113_02 Rev B 1:250	10.12.2021
5	Proposed Drainage Layout	805292_DRA_01 Rev B 1:250	10.12.2021
6	Proposed Levels Layout	805292_LEV_01 Rev B 1:250	10.12.2021
7	Elevations, Floor Plan and Cross Sections	BRD/2018/PLANNING/01 1:100 BRD/2018/PLANNING/02 1:100	06.10.2021
8	Floor Plans	415SC1P1 1:100	06.10.2021

		415SC1P4 1:100 409SCP1 1:100 409SCP4 1:100	
9	Elevations	415SC1P2 1:100 415SC1P5 1:100 409SCP2 1:100 409SCP5 1:100	06.10.2021
10	Floor Plans and Elevations	408SC1P1 1:100 408SC1P3 1:100 505SCP1 1:100 505SCP3 1:100	06.10.2021
11	FACING BRICK FEATURE WALL 1800M	41_02 REV A 1:10	06.10.2021
12	Standard Post and Rail Fence	G10 1:10	06.10.2021
13	Standard Fence	G13 1:10:20	06.10.2021
14	Single Attached Garage	GAR/2018/02 1:100	06.10.2021
15	Single Garage	GAR/2018/01 1:100	06.10.2021

Determination Process: Delegated (Delegated decisions will be issued with back sheet 1 and Committee decisions will be issued with back sheet 2)

Development Type Code (SE Code): 02B

Is there a new Planning Obligation

YES ☐

NO ☒

Has the Keepers acknowledgement been received from Registers of Scotland for the S75 Agreement? Yes/No (*if not, the DN should not be forwarded for signing*)

Were changes required to be made to the proposal by the Case Officer?

- i) During the determination of the application? Yes
- ii) During Pre Application discussions/negotiation? No

Was the proposal a departure from the development plan? Yes

## Policies

Please place an X against **all** policies used to determine the application (list attached). These must be detailed or **NO** decision will be issued. Where no Policies were used please mark **NONE**.

Did the Council have an interest in the application? No

Coal Authority advice note? CAIN1

## Policies

Used	Policy	Uniform Code (admin only)	Used	Policy	Uniform Code (admin only)	Used	Policy	Uniform Code (admin only)
	<b>NONE</b>	<b>No input</b>	x	ENV 11	17EN11		NRG 5	17NRG5
	DEV 1	17DEV1		ENV 12	17EN12		NRG 6	17NRG6
	DEV 2	17DEV2		ENV 13	17EN13		RD 1	17RD1
	DEV 3	17DEV3	x	ENV 14	17EN14		RD 2	17RD2
	DEV 4	17DEV4	x	ENV 15	17EN15		RD 3	17RD3
x	DEV 5	17DEV5		ENV 16	17EN16		RD 4	17RD4
x	DEV 6	17DEV6		ENV 17	17EN17		STRAT1	17ST1E
X	DEV 7	17DEV7		ENV 18	17EN18			17ST1H
X	DEV 8	17DEV8		ENV 19	17EN19			17ST1M
	DEV 9	17DEV9		ENV 20	17EN20	x	STRAT2	17ST2
	DEV 10	17DEVX		ENV 21	17EN21		STRAT3	17ST3
	ECON 1	17ECO1		ENV 22	17EN22		STRAT4	17ST4
	ECON 2	17ECO2		ENV 23	17EN23		STRAT5	17ST5
	ECON 3	17ECO3		ENV 24	17EN24		TCR 1	17TCR1
	ECON 4	17ECO4		ENV 25	17EN25		TCR 2	17TCR2
	ECON 5	17ECO5		IMP 1	17IMP1	x	TRAN 1	17TRN1
	ECON 6	17ECO6		IMP 2	17IMP2		TRAN 2	17TRN2
	ECON 7	17ECO7		IMP 3	17IMP3		TRAN 3	17TRN3
	ENV 1	17EN1		IMP 4	17IMP4		TRAN 4	17TRN4
	ENV 2	17EN2		IMP 5	17IMP5	x	TRAN 5	17TRN5
	ENV 3	17EN3		IT 1	17IT1		VIS 1	17VIS1
	ENV 4	17EN4		MIN 1	17MIN1		VIS 2	17VIS2
	ENV 5	17EN5		MIN 2	17MIN2		VIS 3	17VIS3
	ENV 6	17EN6		MIN 3	17MIN3		WAST 1	17WST1
	ENV 7	17EN7		NRG 1	17NRG1		WAST 2	17WST2
	ENV 8	17EN8		NRG 2	17NRG2		WAST 3	17WST3
x	ENV 9	17EN9		NRG 3	17NRG3		WAST 4	17WST4
	ENV 10	17EN10		NRG 4	17NRG4		WAST 5	17WST5

The STRAT 1 Policy has been split into Economic (17ST1E), Housing (17ST1E) and Monktonhall (17ST1M) please select the relevant code.



# Appendix E

Cockpen

mill

# erhomes

Drawing No. 21014-STEX-P001  
Site Location

 Site boundary

Rev - (07.09.21) Drawn: SB Checked: RM Approved: SS

Status: Planning

scale 1:5,000 @ A3

0 50m 100m 250m



geddesconsulting

The Quadrant, 17 Bernard St., Edinburgh, EH6 6PW | Tel: 0131 5533639 | info@geddesconsulting.com







Filepath: General\Projects\0126 - Miller Homes\Cockpen Retained Land\Plans & Drawings\Masters\0126-Cockpen Road Retained Land - Master.vcx

Cockpen

millershomes

Drawing No. 21014-MPDF-P001-B  
Proposed Site Layout

- Proposed new homes
- Garden
- Green space
- Meadow
- Tree planting
- Woodland
- Shrubs
- Beech hedge
- Laurel hedge
- Mixed hedge
- Road
- Shared surface
- Footpath
- Driveway

Rev B (29.09.21) Drawn: SB Checked: KP Approved: SS  
Note: Landscaping updated & visitor parking added  
Rev A (13.08.21) Drawn: SB Checked: KP Approved: SS  
Note: Layout amended  
Rev - (06.05.21) Drawn: SB Checked: KP Approved: SS

Status: Planning

scale 1:500 @ A3

0 5m 10m 25m



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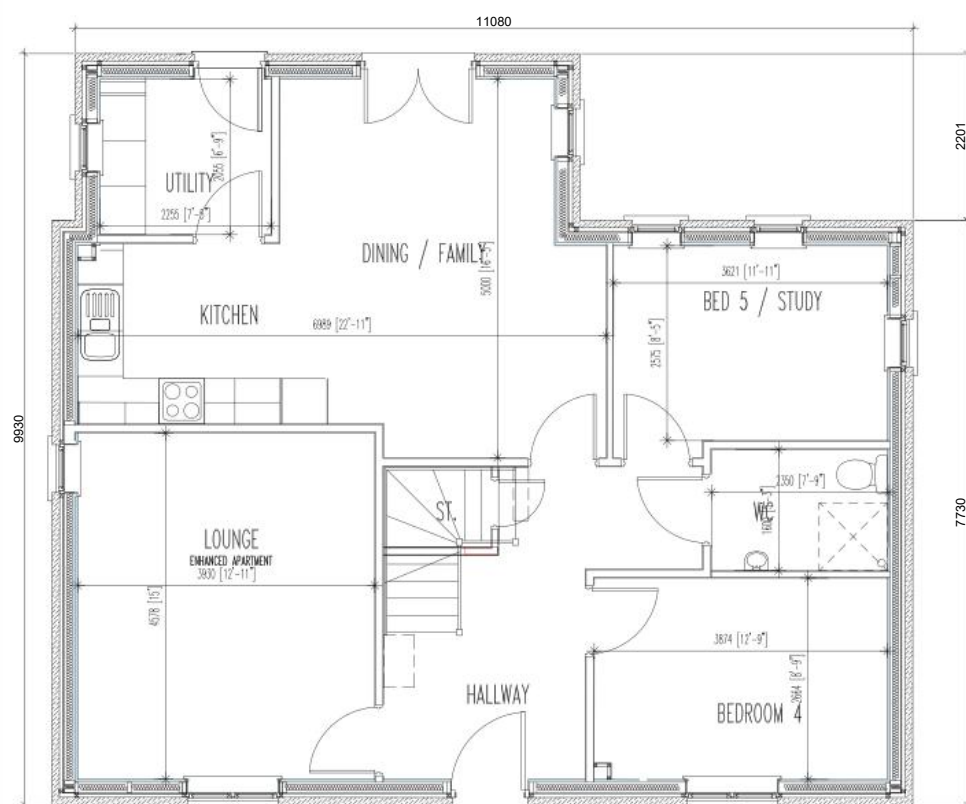
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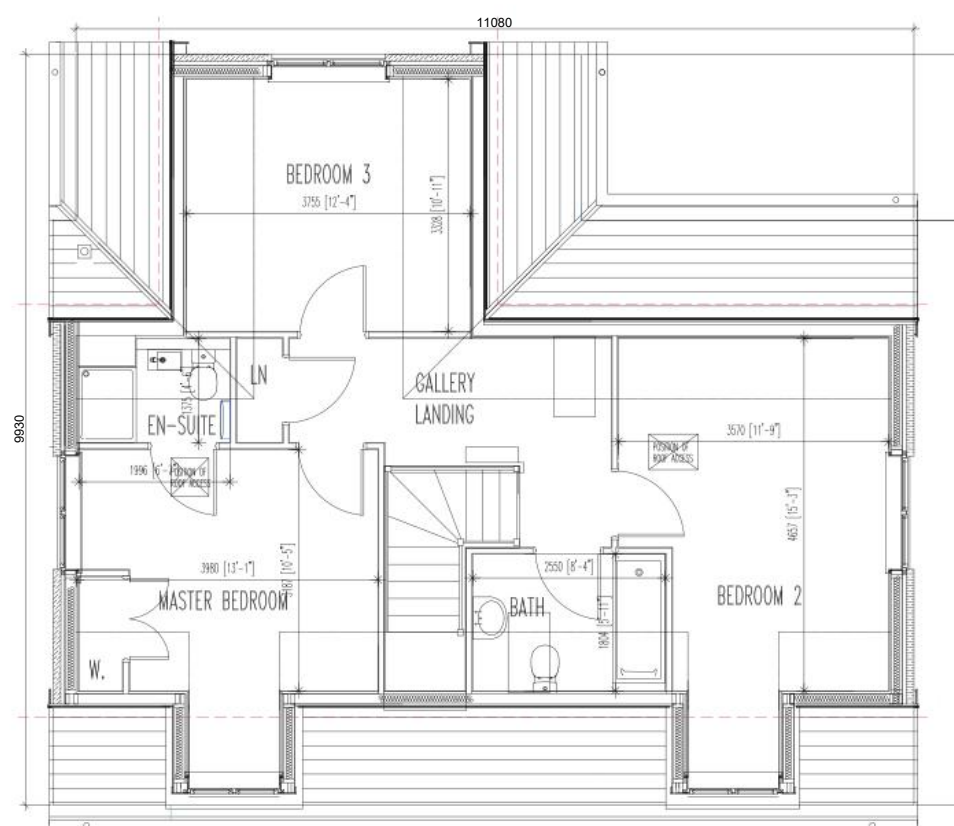
SIDE ELEVATION



REAR ELEVATION



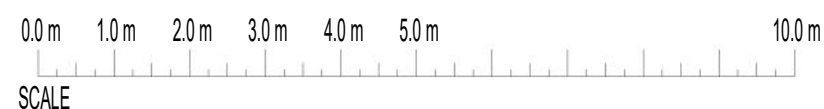
GROUND FLOOR PLAN



FIRST FLOOR PLAN



SIDE ELEVATION



**miller homes**

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EDINBURGH, EH12 9DH  
Tel: 0870 336 5000 Fax: 0870 336 5160  
www.millerhomes.co.uk

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Scale: 1:100  
Date: 2018

Title: BAIRD HOUSE TYPE  
2020 SPECIFICATION

Author:  
Drawing No. BRD/2018/PLANNING/01

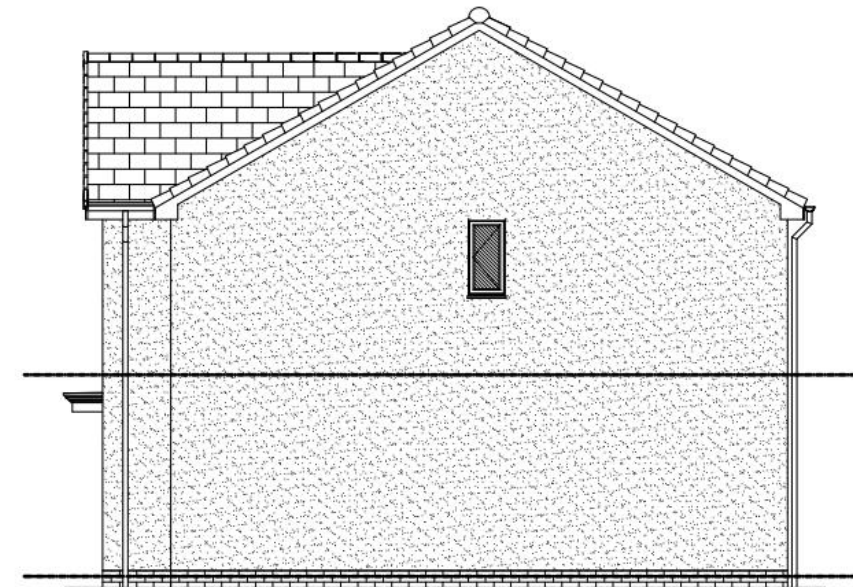
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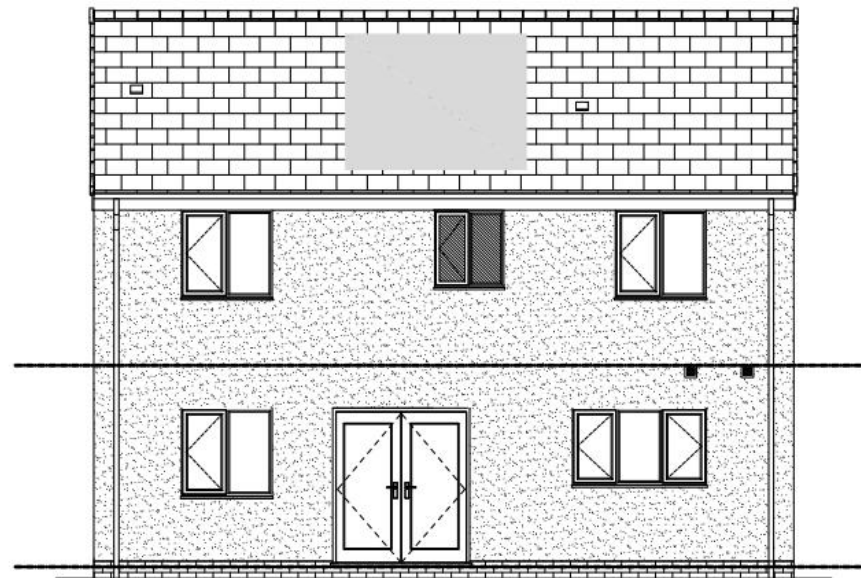




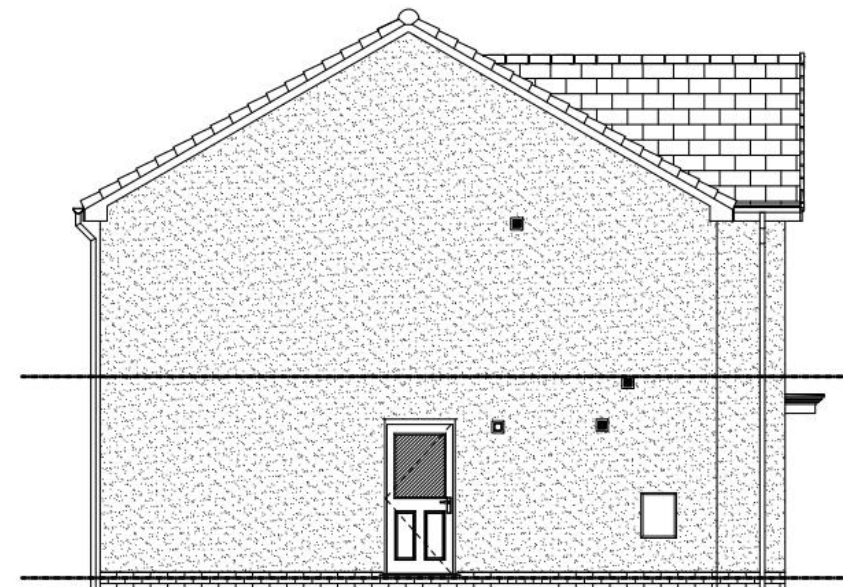
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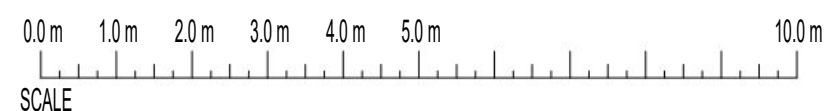
SIDE ELEVATION



REAR ELEVATION



SIDE ELEVATION



SCALE

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Scale: 1:100  
Date: 2021

Title: CEDARWOOD HOUSE TYPE

Author:  
Drawing No. 415SC1P2

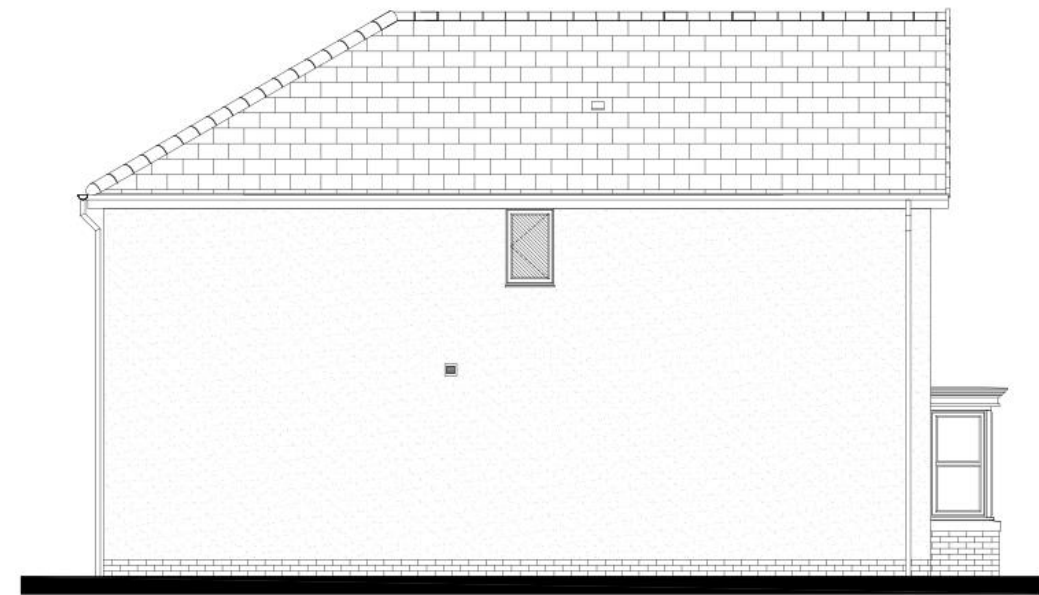
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PLANNING - ELEVATIONS RENDER AS

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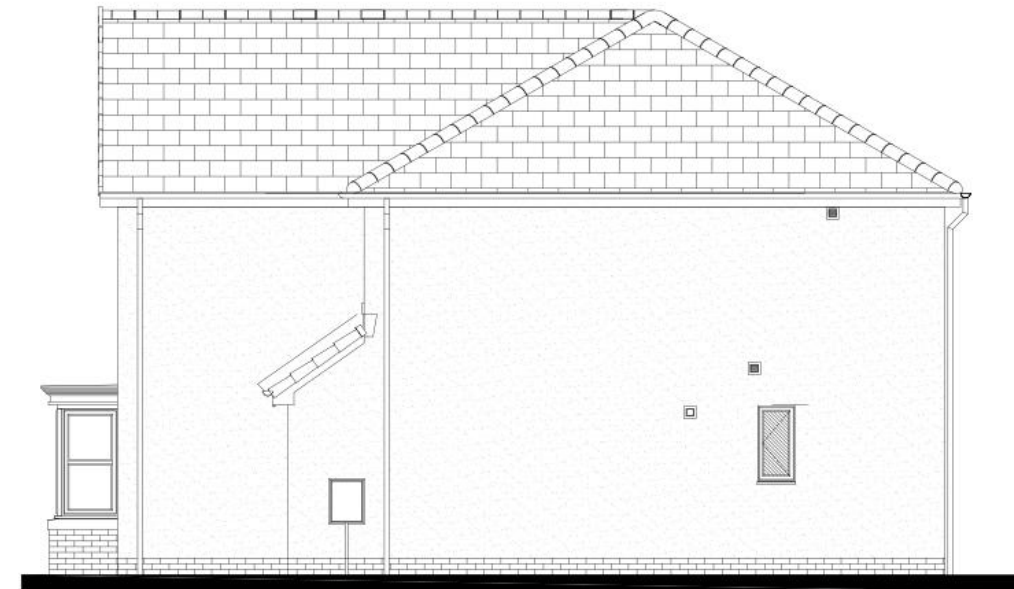
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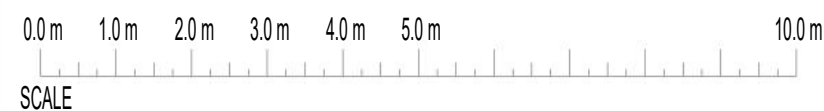
SIDE ELEVATION



REAR ELEVATION



SIDE ELEVATION



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Date: 2021

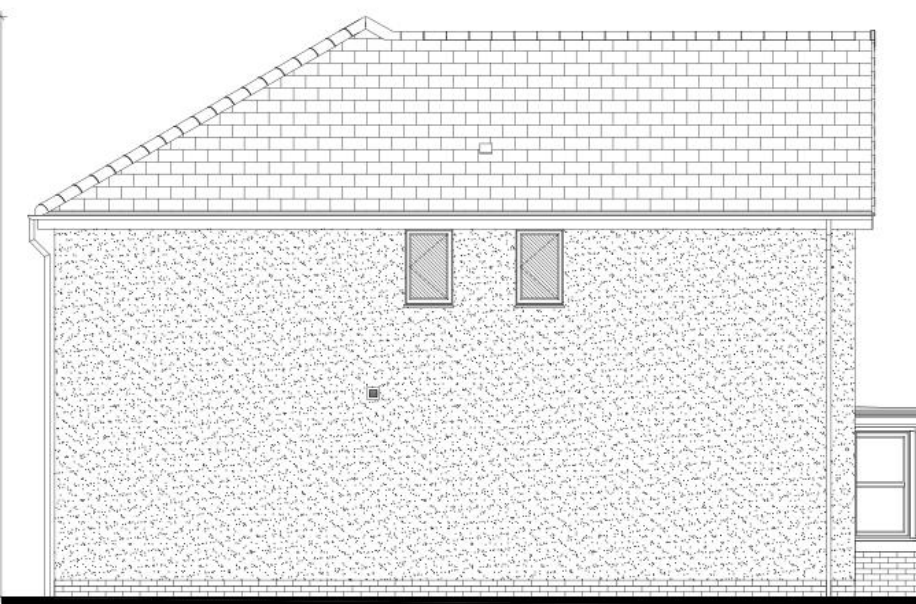
Author: Title:  
Drawing No. 409SCP2 PLANNING - ELEVATIONS RENDER AS

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DISCREPANCIES MUST BE REPORTED TO THE DESIGN OFFICE BEFORE PROCEEDING





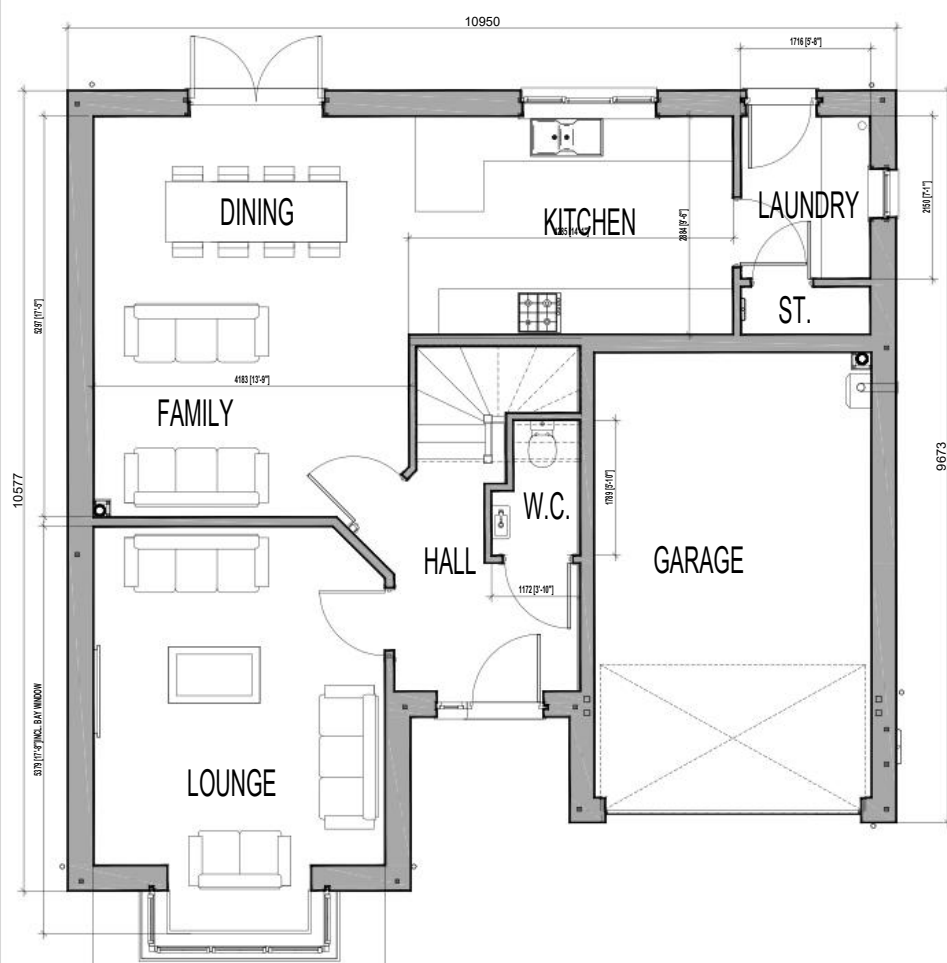
FRONT ELEVATION



SIDE ELEVATION



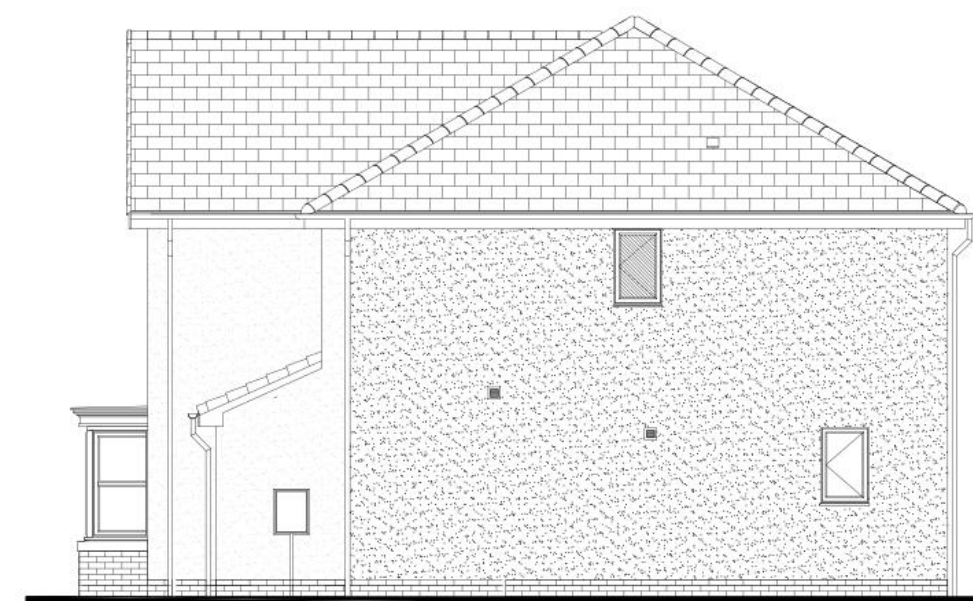
REAR ELEVATION



GROUND FLOOR PLAN



FIRST FLOOR PLAN



SIDE ELEVATION

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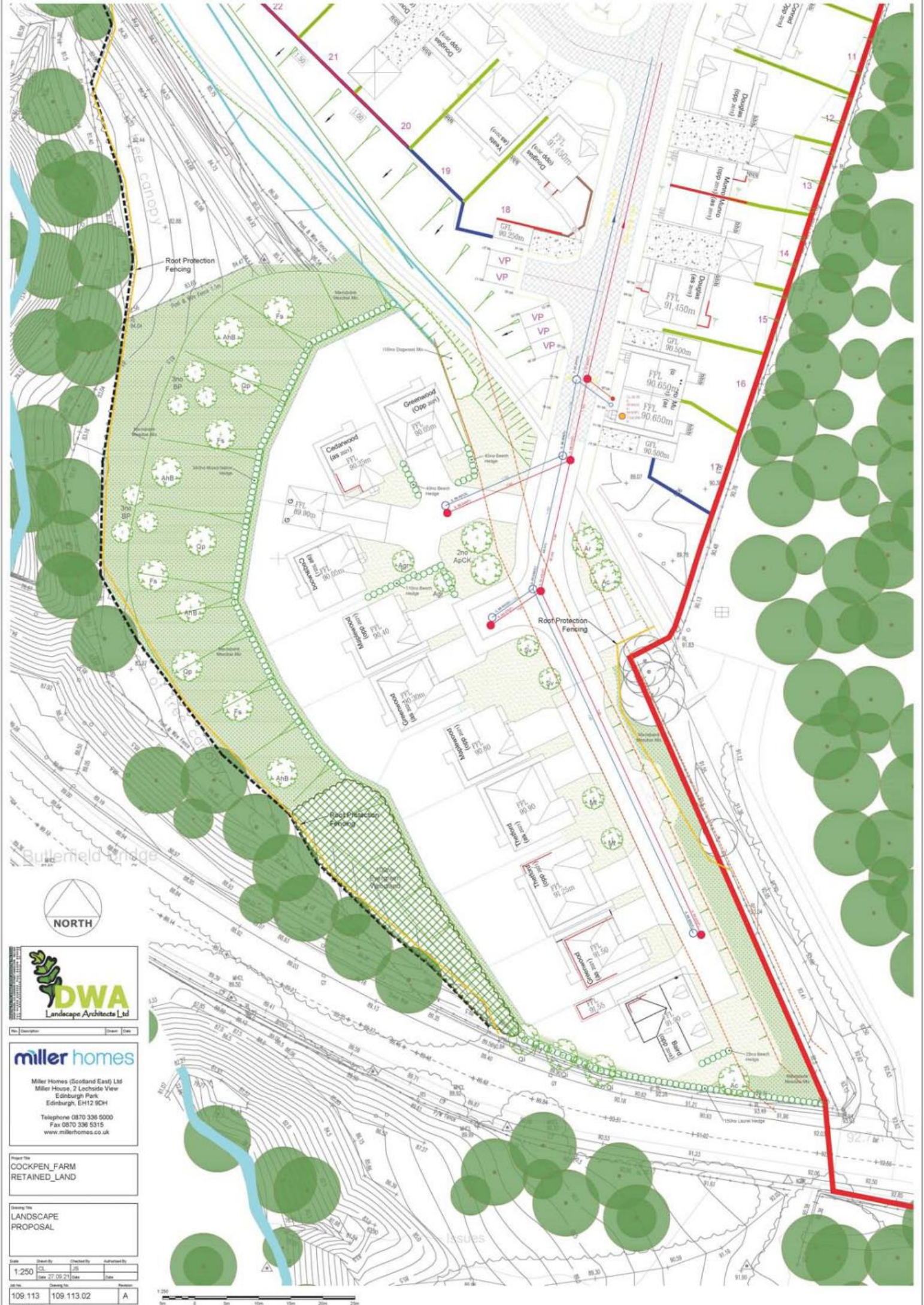
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Scale: 1:100 Title: THETFORD HOUSE TYPE  
Date: 2021

Author: Title:  
Drawing No. 505SCP1 PLANNING RENDER AS

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**DWA**  
Landscape Architects Ltd

Miller Homes (Scotland East) Ltd  
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Edinburgh Park  
Edinburgh, EH12 8QH  
Telephone 0870 336 5000  
Fax 0870 336 5315  
www.millerhomes.co.uk

Project No  
**COCKPEN\_FARM  
RETAINED LAND**

Drawing No  
**LANDSCAPE  
PROPOSAL**

Date	Drawn By	Checked By	Authorised By
1:250	CL	JS	
Date: 27.09.21	CL	JS	

As Shown: Drawing No: Revision:

109.113	109.113.02	A
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Original sheet size A1









KEY

- 91.20 + - INDICATES A PROPOSED GROUND LEVEL
- FFL 91.50 - INDICATES A PROPOSED FINISHED FLOOR SLAB LEVEL
- INDICATES PROPOSED BANKING
- INDICATES UNDERBUILD GREATER THAN 150mm
- INDICATES A STEP

NOTE: PROPOSED LEVELS ARE SUBJECT TO +/- 500mm CHANGE DUE TO SITE CONDITIONS.

Rev.	Description	Date
A	Updated to latest layout	30.09.21

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Edinburgh Park  
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www.millerhomes.co.uk

Project Title  
**Cockpen Farm  
Retained Land**

Drawing Title  
**Levels  
Layout**

Scale	Drawn By	Checked By	Authorised By
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	Date 22.07.21	Date	Date
Job No.		Drawing No.	Revision
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Original Sheet Size A1			