

# Notice of Meeting and Agenda



## Local Review Body

**Venue:** Council Chambers,  
Midlothian House, Dalkeith, EH22 1DN

**Date:** Tuesday, 25 October 2022

**Time:** 13:00

**Executive Director : Place**

**Contact:**

Clerk Name: Democratic Services  
Clerk Telephone:  
Clerk Email: [democratic.services@midlothian.gov.uk](mailto:democratic.services@midlothian.gov.uk)

**Further Information:**

This is a meeting which is open to members of the public.

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## **1 Welcome, Introductions and Apologies**

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## **2 Order of Business**

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Including notice of new business submitted as urgent for consideration at the end of the meeting.

## **3 Declaration of Interest**

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Members should declare any financial and non-financial interests they have in the items of business for consideration, identifying the relevant agenda item and the nature of their interest.

## **4 Minute of Previous Meeting**

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**4.1** Minutes of Meeting held on 13 September 2022 - For Approval. 3 - 8

**4.2** Minutes of Special Meeting held on 26 September 2022 - For Approval. 9 - 14

## **5 Public Reports**

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Notices of Review - Determination Reports by Chief Officer: Place  
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**5.1** Land at Whitehill Farm, Whitehill Village, Dalkeith (21/00239/PPP). 15 - 54

**5.2** Land 170m East of Newrigg, Nine Mile Burn, Penicuik (22/00040/MSC and 22/00054/MSC) 55 - 112

**5.3** 4 High Street, Loanhead (22/00267/DPP) 113 - 132

## **6 Private Reports**

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No private reports to be discussed at this meeting.

## **7 Date of Next Meeting**

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The next meeting will be held on **Monday 5 December 2022 at 1.00 pm.**

Plans and papers relating to the applications on this agenda can also be viewed at <https://planning-applications.midlothian.gov.uk/OnlinePlanning>

# Minute of Meeting



## Local Review Body

Date	Time	Venue
13 September 2022	1.00pm	Virtual Meeting using MS Teams

### Present:

Councillor Imrie (Chair)	Councillor Cassidy
Councillor Drummond	Councillor McEwan
Councillor McManus	Councillor Milligan
Councillor Smail	Councillor Virgo
Also in Attendance:	Councillor Parry

### In Attendance:

Matthew Atkins	Lead Officer Planning Obligations
Janet Ritchie	Democratic Services Officer

## 1 Welcome, Introductions and Apologies

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The Chair welcomed everyone to the meeting.

No apologies for absence had been received.

## 2 Order of Business

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The order of business was as outlined in the agenda previously circulated.

## 3 Declarations of interest

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Councillor McManus declared an interest with regards to Item 5.3 advising that he had been involved in the initial application when he was in the Community Council prior to being elected.

## 4 Minute of Previous Meeting

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The Minutes of the meetings of 20 June 2022 and 27 June 2022 were submitted and both were approved as correct records.

## 5 Reports

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Agenda No	Report Title	Presented by:
5.1	Notice of Review – 144 Main Street Pathhead (22/00264/DPP) – Determination Report.	Matthew Atkins
Outline of report and summary of discussion		
<p>There was submitted a report, dated 26 August 2022 by the Chief Officer Place, regarding an application seeking a review of the decision of the Planning Authority to refuse planning permission for the installation of replacement windows (retrospective) at 144 Main Street, Pathhead.</p> <p>The LRB, having heard from the Planning Advisor, gave careful consideration to the merits of the case based on all the written information provided. In discussing the proposed replacement windows and the reasons for its refusal, the LRB considered the potential impact that it would have on the character and appearance of the conservation area and noted that the adjoining property had windows in keeping with the conservation area however it was also noted that there were multiple different windows within this area.</p> <p>Thereafter, Councillor Smaill, seconded by Councillor Virgo moved to dismiss the review request and to uphold the decision to refuse planning permission for the reasons detailed in the case officer's report.</p> <p>As an amendment Councillor Cassidy, seconded by Councillor McManus moved to uphold the review request and grant planning permission.</p>		



On a vote being taken 4 Members voted to dismiss the review and uphold the decision to refuse planning permission and 4 Members voted for the Amendment to uphold the review and grant planning permission.

There being an equality of votes, in terms of Standing Order 11.2 (iv), the Chair used his casting vote to dismiss the review and uphold the planning decision to refuse planning permission which accordingly became the decision of the Local Review Body.

#### Decision

The Local Review Body agreed to dismiss the review and uphold the Planning Decision to refuse Planning Permission for the replacement windows (retrospective) at 144 Main Street, Pathhead, for the following reason:

1. The replacement windows are located within the principal elevation and replaced four traditional timber framed sash and case windows. The visual mix of four bulky framed, non-traditional, uPVC windows and a uPVC mullion alongside traditional timber framed sash and case windows within the principle street elevation visually detracts from the appearance of the traditional application property and conservation area.
2. The uPVC framed windows are not of a high quality, traditional design or opening method. Therefore, the replacement windows fail to preserve or enhance the character or appearance of the conservation area or the application building, resulting in a significant adverse impact on the character and appearance of the application property and the conservation area, which is contrary to policies ENV19 and DEV2 of the adopted Midlothian Local Development Plan and Historic Environment Scotland policy and guidance.

#### Action

Planning, Sustainable Growth and Investment Manager

Agenda No	Report Title	Presented by:
5.2	Notice of Review – 2 Louis Braille Way, Gorebridge (22/00008/DPP) – Determination Report.	Matthew Atkins
Outline of report and summary of discussion		
<p>There was submitted a report, dated 26 August 2022 by the Chief Officer Place, regarding an application seeking a review of the decision of the Planning Authority to refuse planning permission for the erection of decking and fencing (retrospective) at 2 Louis Braille Way, Gorebridge.</p> <p>The LRB, having heard from the Planning Advisor, gave careful consideration to the merits of the case based on all the written information provided. In discussing the proposed development and the reasons for the refusal of planning permission, the LRB considered the impact of the visual appearance of the decking and fencing and noted that the fencing was in keeping with the other fencing in this area and did not have a detrimental impact.</p>		

Concerns were also expressed about the stability of the structure and the Planning Advisor confirmed that he would highlight these potential health and safety concerns to Building Standards.

#### Decision

The LRB agreed to uphold the review request and grant Planning Permission for the erection of decking and fencing (retrospective) at 2 Louis Braille Way, Gorebridge for the following reason:

The fence and decking is in-keeping with the fences in the surrounding area and does not have a significant detrimental impact on the visual amenity of the surrounding area.

#### Action

Planning, Sustainable Growth and Investment Manager

Prior to the commencement of the following item of business, Councillor McManus having declared an interest took no part in the consideration of this review request.

Agenda No	Report Title	Presented by:
5.3	Notice of Review – 12 Dryden Terrace, Loanhead (21/01024/DPP) – Determination Report.	Matthew Atkins

#### Executive Summary of Report

There was submitted report dated 26 August 2022 by the Chief Officer Place, regarding an application seeking a review of the decision of the Planning Authority to refuse planning permission for alterations to the shopfront including installation of roller shutter and fascia sign (part retrospective) at 22 John Street, Penicuik.

The LRB, having heard from the Planning Advisor, gave careful consideration to the merits of the case based on all the written information provided. In discussing the installation of the roller shutter and fascia sign and the reasons for its refusal, the LRB considered the potential impact on the visual amenity within the conservation area and the security of the premises. It was also noted that the shutters sourced were in keeping with the ones on the other side of the street which was not within the conservation area.

#### Decision

The LRB agreed to uphold the review request, and grant Planning Permission for the alteration to the shopfront including installation of roller shutter and fascia sign at 22 John Street, Penicuik for the following reason:

The proposed retrospective application does not have a detrimental impact on the visual amenity and the shutters are in keeping with others in this area. Consideration was also given to the security of the premises.

#### Action

Planning, Sustainable Growth and Investment Manager

## **6. Private Reports**

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No private business was discussed.

## **7. Date of Next Meeting**

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Special Meeting of LRB will be held on Monday 26 September 2022 at 1 pm.

The meeting terminated at 13.41 pm



# Minute of Meeting



## Special Meeting of the Local Review Body

Date	Time	Venue
Monday 26 September 2022	1.00pm	Virtual Meeting using MS Teams

### Present:

Councillor Imrie (Chair)	Councillor Bowen
Councillor Cassidy	Councillor Drummond
Councillor McEwan	Councillor McKenzie (substitute for Councillor Alexander)
Councillor McManus	Councillor Smail
Councillor Virgo	

### In Attendance:

Peter Arnsdorf, Planning, Sustainable Growth and Investment Manager	Alison Ewing, Planning Officer
Mike Broadway, Democratic Services Officer	

## 1 Apologies

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Apologies for absence had been received from Councillors Alexander and Milligan.

## 2 Order of Business

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The order of business was as outlined in the agenda that had been previously circulated.

## 3 Declarations of interest

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For the purposes of transparency, Councillors McManus and McKenzie both advised that they had been approached regarding one of the applications and whilst they had listen to the views that had been expressed they had not at any time offered an opinions on the application concerned. Consequently, they would still take part in the decision making process as they did not believe that this in itself would interfere in their being able to come to an objective decision on the Review Request concerned.

## 4 Minute of Previous Meeting

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There were no Minutes submitted for approved at this meeting.

## 5 Reports

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Agenda No	Report Title	Presented by:
5.1	Notice of Review – Land at Dalrymple Gardens, Cousland (22/00301/DPP) – Determination Report.	Peter Arnsdorf
<b>Executive Summary of Report</b>		
<p>There was submitted a report, dated 16 September 2022 by the Chief Officer Place, regarding an application seeking a review of the decision of the Planning Authority to refuse planning permission for the erection of a dwellinghouse and associated works at land at 24 Dalrymple Gardens, Cousland.</p> <p>Accompanying the Notice of Review Form and supporting statement, which were appended to the report, was a copy of the report of handling thereon, together with a copy of the decision notice.</p>		
<b>Summary of Discussion</b>		
<p>The LRB, having heard from the Planning Advisor, gave careful consideration to the merits of the case based on all the written information provided. In discussing the proposed development and the reasons for its refusal, the LRB considered at length the impact on the character of the area, the size of the garden and issues regarding provision for off street parking.</p>		

Thereafter, Councillor McManus, seconded by Councillor McKenzie moved to dismiss the review request and to uphold the decision to refuse planning permission for the reasons detailed in the case officer's report.

### Decision

The Local Review Body agreed to dismiss the review and uphold the Planning Decision to refuse Planning Permission for the erection of a dwellinghouse and associated works at land at 24 Dalrymple Gardens, Cousland for the following reason:

1. It has not been demonstrated to the satisfaction of the Planning Authority that the proposed dwellinghouse will not be subject to substandard levels of amenity, with a garden size smaller than that required for a modern dwellinghouse.
2. The proposed dwellinghouse fails to connect visually to the character, appearance and layout of the area. The proposed dwellinghouse will materially detract from the character of the area.
3. It has not been demonstrated to the satisfaction of the Planning Authority that the proposed dwellinghouse could be afforded an adequate level of off-street parking spaces. The proposed dwellinghouse may result in a pressure for parking spaces will have a significant detrimental impact on the character and amenity of the surrounding area.
4. It has not been demonstrated to the satisfaction of the Planning Authority that the proposed development would not lead directly or indirectly to the loss of, or damage to existing vegetation and landscaping within the site which contributes to the residential visual amenity of the site and surrounding area.
5. For the above reasons the proposal is contrary to policies DEV2, DEV6, and ENV11 of the adopted Midlothian Local Development Plan. If the proposal were approved it would undermine the consistent implementation of the policy, the objective of which is to protect the character and amenity of the built-up area and ensure that good levels of residential amenity are achieved in new developments.

### Action

Planning, Sustainable Growth and Investment Manager

Agenda No	Report Title	Presented by:
5.2	Notice of Review – White Cottage, Gladhouse Reservoir, Temple (21/00467/DPP) – Determination Report.	Peter Arnsdorf
<b>Executive Summary of Report</b>		
There was submitted a report, dated 16 September 2022 by the Chief Officer Place, regarding an application seeking a review of the decision of the Planning Authority to refuse planning permission for alterations to the dwellinghouse to increase roof height of White Cottage, Gladhouse Reservoir, Temple.		

Accompanying the Notice of Review Form and supporting statement, which were appended to the report, was a copy of the report of handling thereon, together with a copy of the decision notice.

### Summary of Discussion

The LRB, having heard from the Planning Advisor, gave careful consideration to the merits of the case based on all the written information provided. In discussing the proposed development and the reasons for the refusal of planning permission, the LRB considered impact on the existing character of the area and the quality of the design.

Thereafter, Councillor Virgo, seconded by Councillor McKenzie moved to uphold the review request and to grant planning permission subject to conditions.

### Decision

The LRB agreed to uphold the review request and grant Planning Permission for the alterations to dwellinghouse to increase roof height of White Cottage, Gladhouse Reservoir, Temple for the following reason:

*The proposed alterations and increasing the height of the building by means of its form, design and materials is an appropriate form of development for its setting and will not be detrimental to the streetscape or the character of the area and as such accords with the presumption in favour of supporting sustainable development as set out in the Midlothian Local Development Plan 2017. Furthermore, the existing host building is not of such a strong architectural design that it justifies resisting the evolution of the built form.*

subject to:

1. Details of the colour of the frames of the new windows at ground floor level shall be submitted to the planning authority and the windows shall not be installed until this detail has been approved in writing by the planning authority.
2. The new windows at ground floor level on the existing building shall be installed within two months of the first floor accommodation being completed or brought in to use whichever is the earlier date.

**Reason for conditions 1 and 2:** *To safeguard the appearance of the building as altered and the visual amenity of the surrounding area.*

3. Details of the external appearance and dimensions of the proposed air source heat pump shall be submitted to the planning authority and the air source heat pump shall not be installed until these details have been approved in writing by the planning authority.

**Reason:** *For the avoidance of doubt as to what is approved, no details having been provided as part of the application submission.*

4. Any noise associated with the air source heat pump shall comply with the product and installation standards for air source heat pumps specified in the Micro-generation Certification Scheme MCS 020(a).

**Reason:** *To protect the residential amenity of surrounding properties.*

5. Development shall not begin until a bat survey has been carried out by a suitably qualified ecologist and any mitigation measures identified implemented



in accordance with details to be 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 with the planning authority.

**Reason:** *To ensure the development accords with the requirements of policy DEV5 of the Proposed Midlothian Local Development Plan 2017.*

Action
Planning, Sustainable Growth and Investment Manager

## 6. Private Reports

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No private business was discussed.

## 7. Date of Next Meeting

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The next scheduled meeting will be held on Tuesday 25 October 2022 at 1.00pm.

The meeting terminated at 1.36 pm.



## **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](http://www.midlothian.gov.uk)

#### **4 Procedures**

- 4.1 In accordance with agreed procedures:

- Have determined to undertake a site visit and have visual images circulated to the LRB (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 20 June 2022, and without prejudice to the determination of the review, the following conditions have been prepared for the consideration of the LRB if it is minded to uphold the review and grant planning permission.

1. The development to which this permission relates shall commence not later than the expiration of five years beginning with the date of this permission.

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

2. Development shall not begin until an application for 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.

3. 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.***

4. 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.*

5. 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.*

6. 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.*

7. 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.
8. 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*

9. 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.*

10. 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.
11. 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.*

12. 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.*

13. 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.*

14. 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**

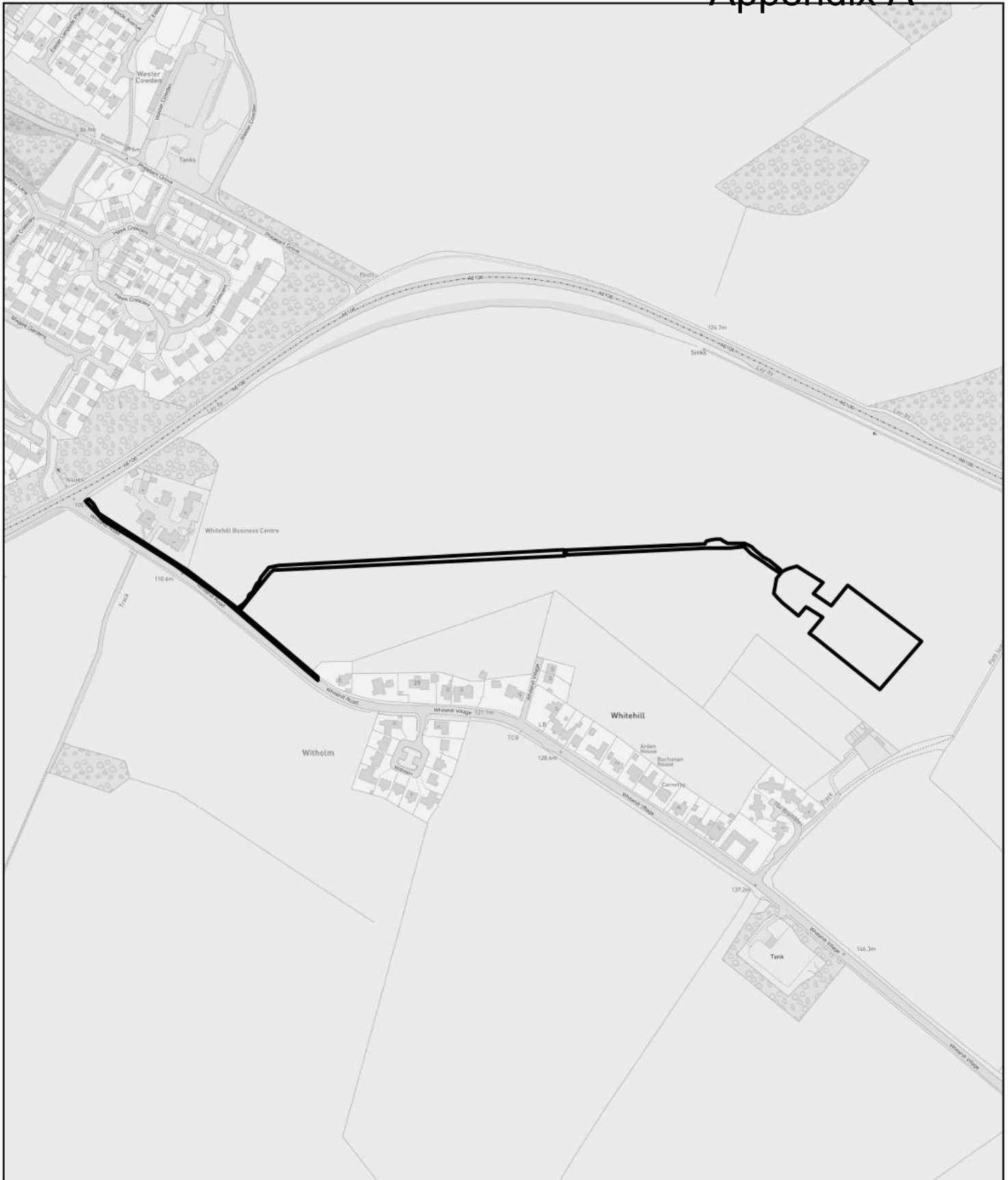
- 6.1 It is recommended that the LRB:
- a) determine the review; and
  - b) the planning advisor draft and issue the decision of the LRB through the Chair

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

**Date:** 17 October 2022  
**Report Contact:** Mhairi-Anne Cowie, Planning Officer  
[Mhairi-Anne.Cowie@midlothian.gov.uk](mailto:Mhairi-Anne.Cowie@midlothian.gov.uk)

**Background Papers:** Planning application 21/00239/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

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## 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	<u>Mr.</u>	Ref No.	
Forename	<u>GEORGE</u>	Forename	<u>J. STUART</u>
Surname	<u>PIRIE</u>	Surname	<u>MACGAVIE</u>
Company Name		Company Name	<u>MACGAVIE &amp; CO LTD</u>
Building No./Name	<u>45, GILCOMSTON PARK</u>	Building No./Name	<u>LITREHILL</u>
Address Line 1		Address Line 1	<u>KEIR</u>
Address Line 2		Address Line 2	
Town/City	<u>ABERDEEN</u>	Town/City	<u>DUNBLANE</u>
Postcode	<u>AB25 1PN</u>	Postcode	<u>FK15 9NU</u>
Telephone	<u>% AGENT</u>	Telephone	<u>07885 612815</u>
Mobile		Mobile	
Fax		Fax	
Email	<u>% AGENT</u>	Email	<u>smacgavieandco@outlook.com</u>
<b>3. Application Details</b>			
Planning authority	<u>MIDLOTHIAN COUNCIL</u>		
Planning authority's application reference number	<u>21/00239/PPP</u>		
Site address	<u>LAND AT WHITEHILL FARM, WHITEHILL VILLAGE, DALKEITH.</u>		
Description of proposed development	<u>APPLICATION FOR PLANNING PERMISSION IN PRINCIPLE FOR THE ERECTION OF A DWELLINGHOUSE, AGRICULTURAL BUILDINGS, FORMATION OF ACCESS ROAD AND ASSOCIATED WORKS.</u>		



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 your 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 ACCESS 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.

18<sup>th</sup> 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 22<sup>nd</sup> 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 1000m<sup>2</sup> 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**

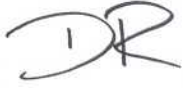
In accordance with the application and the following documents/drawings:

<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, appearing to be 'DR' with a stylized flourish.

.....  
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](mailto:planningconsultation@coal.gov.uk)  
Website: [www.gov.uk/coalauthority](http://www.gov.uk/coalauthority)

### **INFORMATIVE NOTE**

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

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

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

[www.gov.uk/government/publications/building-on-or-within-the-influencing-distance-of-mine-entries](http://www.gov.uk/government/publications/building-on-or-within-the-influencing-distance-of-mine-entries)

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

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

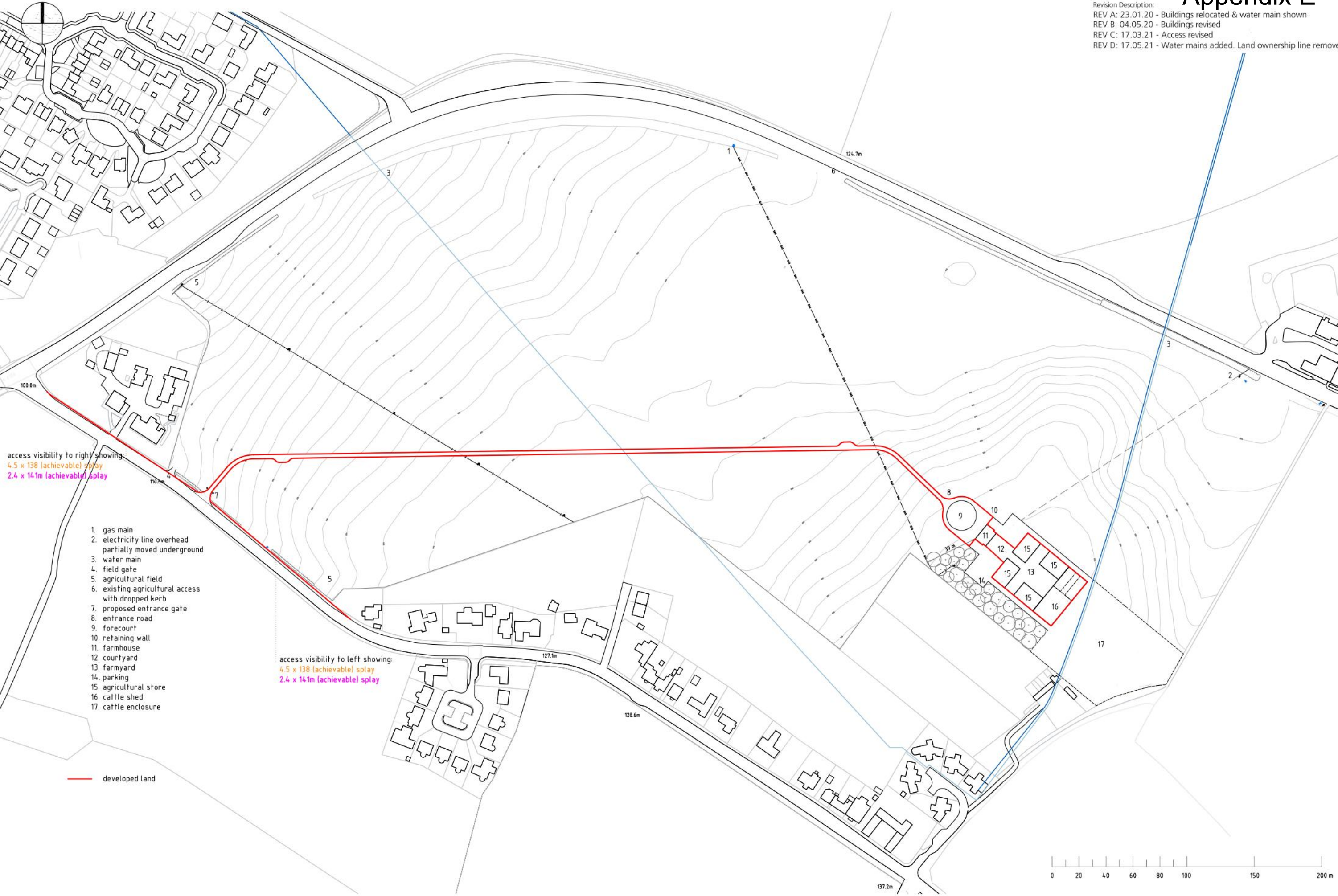
[www.gov.uk/government/organisations/the-coal-authority](http://www.gov.uk/government/organisations/the-coal-authority)

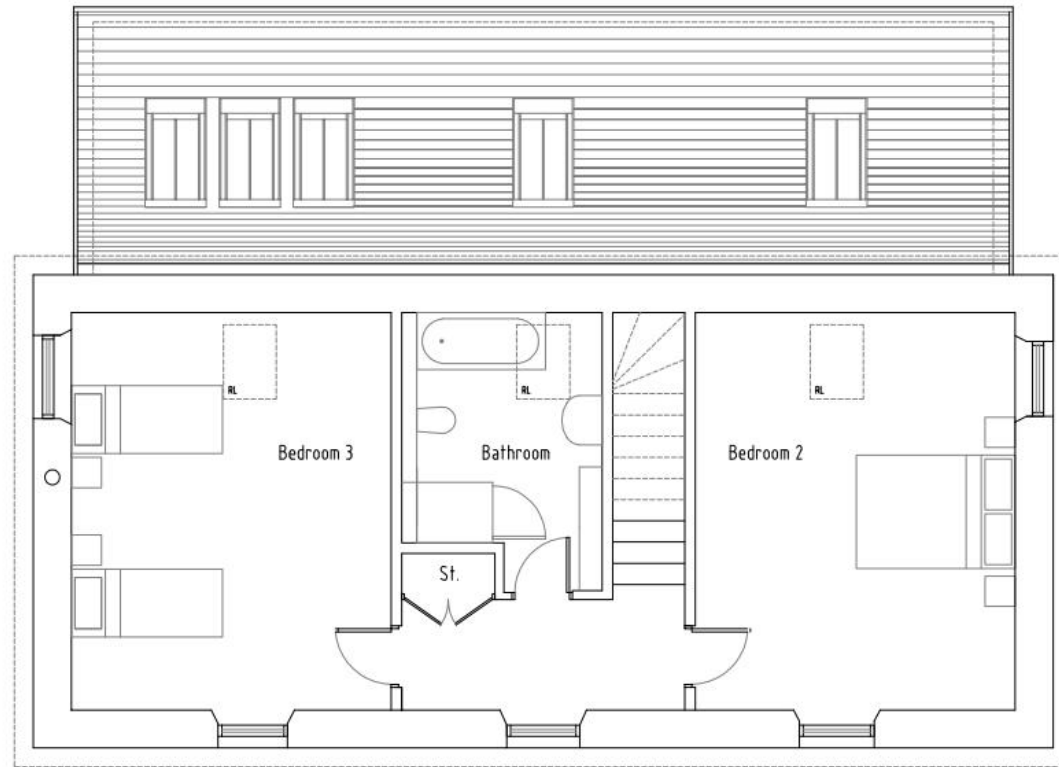
**Informative Note valid from 1st January 2021 until 31st December 2022**



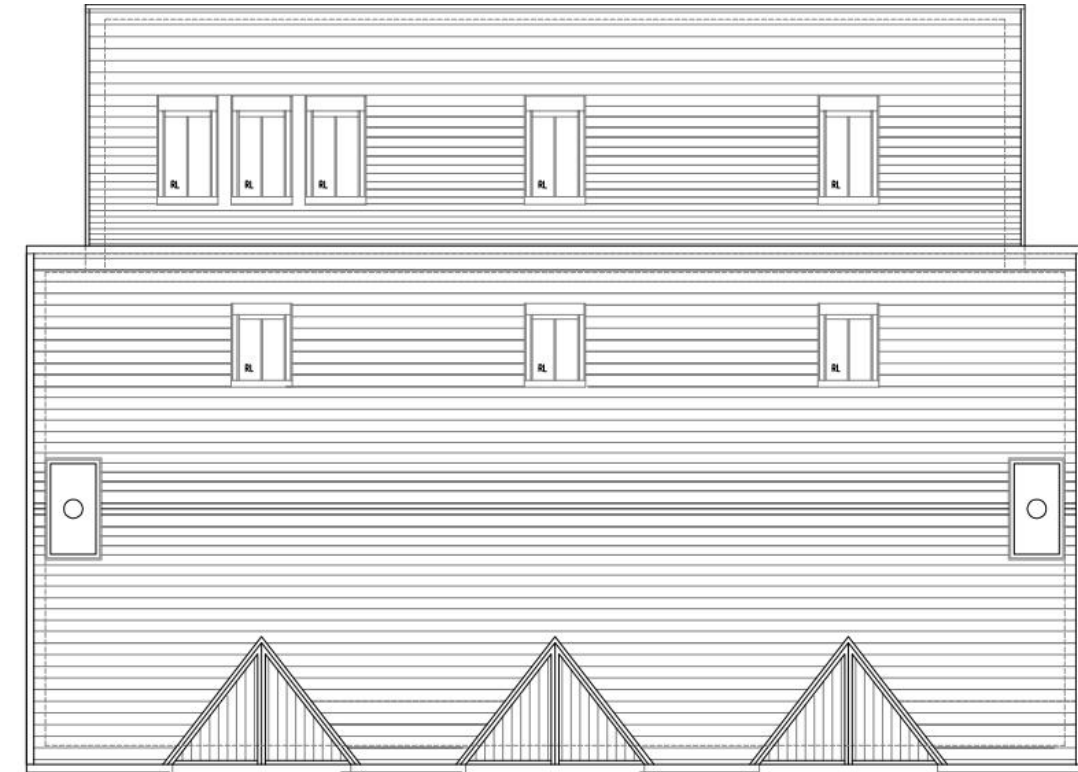
Appendix E

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

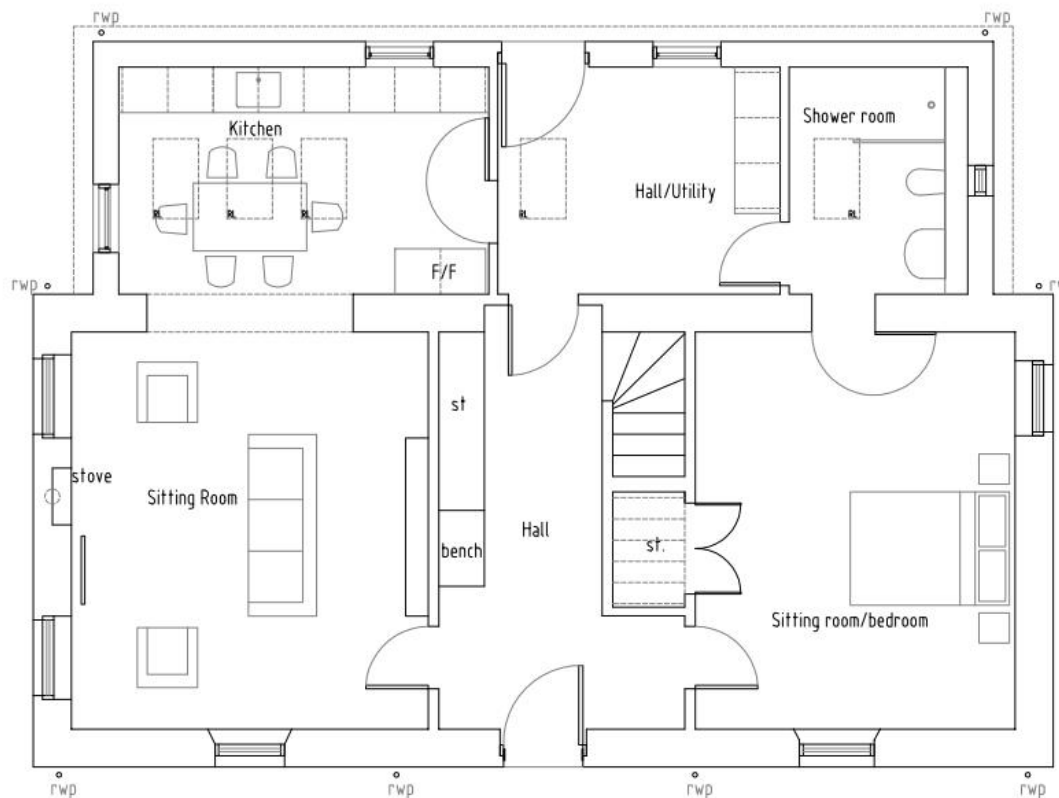




First Floor



Roof Plan



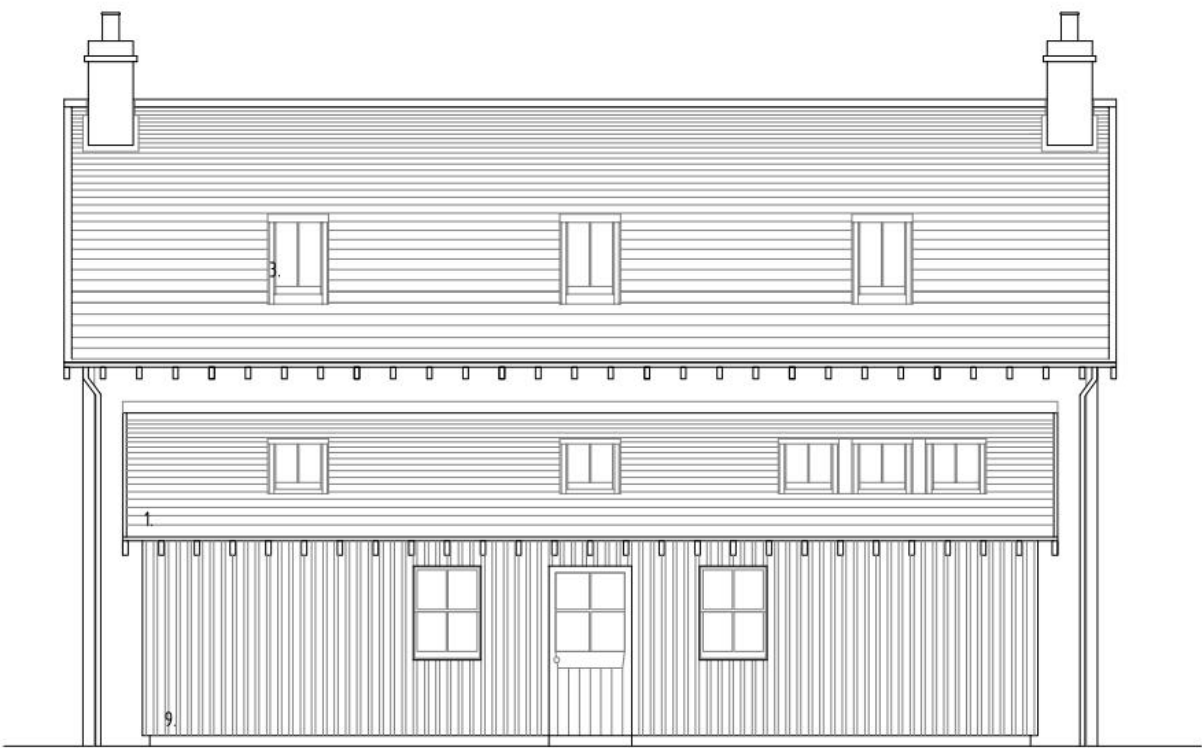
Ground Floor



1. roof - natural slate laid in diminishing courses. 2. roof flashings - lead 3. rooflights - velux low profile 4. roof timbers - stain finish (grey)  
5. render - traditional wet dash harl. keim paint finish (white) 6. natural stone margins 7. windows - traditional sash + case paint finish (estate blue)  
8. doors - timber paint finish (estate blue) 9. timber cladding - larch 10. rainwater goods - cast aluminium ppc finish (grey)



south east elevation



north west elevation



south west elevation



section A-A



north east elevation



## **Notice of Review: Land 170m East of Newrigg, Nine Mile Burn, Penicuik**

### **Determination Report**

Report by Chief Officer Place

#### **1 Purpose of Report**

- 1.1 The purpose of this report is to provide a framework for the Local Review Body (LRB) to consider a 'Notice of Review' for the approval of condition submissions associated with the grant of planning permission in principle for the erection of two holiday lodges at land 170m east of Newrigg, Nine Mile Burn, Penicuik.

#### **2 Background**

- 2.1 Planning application 21/00330/PPP for planning permission in principle for the erection of two holiday lodges at land 170m east of Newrigg, Nine Mile Burn, Penicuik was approved planning permission on 24 June 2021 subject to conditions. Conditions 1a, 1c, 1d, 1e, 1i and 2 are as follows:

1. 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 holiday lodges, details of vehicular access and parking provision within the site and details of all walls, fences or other means of enclosure, including bin stores or other ancillary structures;
  - c) Detailed plans, sections and elevations of the holiday lodges, indicating the colour and type of materials to be used on the external walls, roof and windows;
  - d) Details of all hard surfacing and kerbing;
  - e) Details of a sustainability/biodiversity scheme for the site, including the provision of house bricks and boxes for bats and swifts; and
  - i) Details of a scheme of landscaping for the site. Details shall include 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.

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:** *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 lodges and site access arrangements; to ensure protected species are not adversely affected; to ensure the development is in keeping with the sensitive area.*

2. The scheme of landscaping approved in accordance with condition 1i) shall include details of boundary planting to integrate the development into the surrounding area which shall be native species.

**Reason:** *To ensure the development is integrated into and in keeping with the surrounding rural and sensitive area.*

- 2.2 Two matters specified in conditions (MSC) applications were submitted to discharge the above said conditions, the applications were:
  1. 22/00040/MSC Erection of 2 holiday lodges (approval of matters specified in condition 2 of planning permission 21/00330/PPP); and
  2. 22/00054/MSC Erection of 2 holiday lodges (approval of matters specified in condition 1a, 1c, 1d, 1e and 1i of planning permission 21/00330/PPP).

Copies of the decision notices are attached to this report. As the two applications (22/00040/MSC and 22/00054/MSC) relate to the same site and the same host proposal it is considered appropriate to consider the two reviews (two reviews were submitted as there was two applications submitted) under one review/report.

- 2.3 Matters Specified in Conditions is the formal application process to discharge information/submissions made to comply with conditions attached to a grant of planning permission in principle (this process does not apply to detailed planning permissions). It is important to note that the grant of planning permission is the planning permission in principle (in this case application 21/00330/PPP referenced in paragraph 2.1) and submissions made under the Matters Specified in Conditions process is not a 'grant of planning permission' but the approval of details to comply with condition/s.
- 2.4 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 and extracted from the applicants submission (the full version can viewed online via [www.midlothian.gov.uk](http://www.midlothian.gov.uk) in the L – Local Review Body section of the online case file;



- A copy of the case officer's report (Appendix C);
  - A copy of the two decision notices, excluding the standard advisory notes, issued on 18 July 2022 (Appendix D); and
  - A copy of the key plans/drawings (Appendix E).
- 3.2 Note - the applicant's notice of review submission includes a landscape appraisal, landscape plans and landscape notes. Because of the electronic size of these files it is not possible to circulate them as part of this report and associated appendices. A copy of these documents can be viewed online via [www.midlothian.gov.uk](http://www.midlothian.gov.uk) in the L – Local Review Body section of the online case file.
- 3.3 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 undertake a site visit and have visual images circulated to the LRB (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 was one consultation responses and no representations received. As part of the review process the interested party was 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 The nature of the proposal is such that it is considered that no conditions would be required if the LRB is minded to approve the applications, which are to discharge conditions attached to a grant of planning permission in principle (21/00330/PPP).

## **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 October 2022  
**Report Contact:** Mhairi-Anne Cowie, Planning Officer  
[Mhairi-Anne.Cowie@midlothian.gov.uk](mailto:Mhairi-Anne.Cowie@midlothian.gov.uk)

**Background Papers:** Applications 22/00040/MSC and 22/00054/MSC are available for inspection online.



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

Erection of 2 holiday lodges (approval of matters specified in condition 2 of planning permission 21/00330/PPP)

Erection of 2 holiday lodges (approval of matters specified in condition 1a, 1c, 1d, 1e and 1i of planning permission)

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Midlothian Council Licence No. 100023416 (2022)

File Nos.: 22/00040/MSC & 22/00054/MSC

Scale: 1:1,000

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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 100595335-001

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="Andrew McCafferty Associates"/>		
Ref. Number:	<input type="text"/>	You must enter a Building Name or Number, or both: *	
First Name: *	<input type="text" value="Andrew"/>	Building Name:	<input type="text" value="Burn House"/>
Last Name: *	<input type="text" value="McCafferty"/>	Building Number:	<input type="text"/>
Telephone Number: *	<input type="text" value="01337810440"/>	Address 1 (Street): *	<input type="text" value="Collessie"/>
Extension Number:	<input type="text"/>	Address 2:	<input type="text"/>
Mobile Number:	<input type="text"/>	Town/City: *	<input type="text" value="Cupar"/>
Fax Number:	<input type="text"/>	Country: *	<input type="text" value="Scotland"/>
		Postcode: *	<input type="text" value="KY15 7RQ"/>
Email Address: *	<input type="text" value="andrewmccafferty@btconnect.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"/>	You must enter a Building Name or Number, or both: *	
Other Title:	<input type="text"/>	Building Name:	<input type="text" value="Peggyslea Farm"/>
First Name: *	<input type="text"/>	Building Number:	<input type="text"/>
Last Name: *	<input type="text"/>	Address 1 (Street): *	<input type="text" value="Nine Mile Burn"/>
Company/Organisation	<input type="text" value="Peggyslea Farm"/>	Address 2:	<input type="text" value="Burn House"/>
Telephone Number: *	<input type="text"/>	Town/City: *	<input type="text" value="Penicuik"/>
Extension Number:	<input type="text"/>	Country: *	<input type="text" value="Scotland"/>
Mobile Number:	<input type="text" value=""/>	Postcode: *	<input type="text" value="EH26 9LX"/>
Fax Number:	<input type="text" value=""/>		
Email Address: *	<input type="text" value=""/>		

## 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" value="PEGGYSLEA FARM"/>
Address 2:	<input type="text" value="PEGGYSLEA ROAD"/>
Address 3:	<input type="text" value="NINE MILE BURN"/>
Address 4:	<input type="text"/>
Address 5:	<input type="text"/>
Town/City/Settlement:	<input type="text" value="PENICUIK"/>
Post Code:	<input type="text" value="EH26 9LX"/>

Please identify/describe the location of the site or sites

Northing	<input type="text" value="657259"/>	Easting	<input type="text" value="317638"/>
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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)

Notice of review against refusal of application 22/00040/MSC for approval of matters specified in condition 2 of planning permission 21/00330/PPP.

## Type of Application

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

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

What does your review relate to? \*

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

## Statement of reasons for seeking review

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

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

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

Please see Planning Statement submitted with this appeal

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 page 3 of attached Planning Statement

## Application Details

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

22/00040/MSC

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

19/01/2022

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

18/07/2022

## Review Procedure

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

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

☒ Yes ☐ No

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

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

☐ Yes ☒ No

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

☒ Yes ☐ No

If there are reasons why you think the local Review Body would be unable to undertake an unaccompanied site inspection, please explain here. (Max 500 characters)

## 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?. \*

T Yes ≤ No

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

T 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? \*

T 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? \*

T 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 \*

T 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 Andrew McCafferty

Declaration Date: 18/08/2022

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 100595207-001

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## 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)

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Mobile Number:	<input type="text"/>	Town/City: *	<input type="text" value="Cupar"/>
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☐ Individual ☒ Organisation/Corporate entity

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Please enter Applicant details

Title:	<input type="text"/>	You must enter a Building Name or Number, or both: *	
Other Title:	<input type="text"/>	Building Name:	<input type="text" value="Peggyslea Farm"/>
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Extension Number:	<input type="text"/>	Country: *	<input type="text" value="United Kingdom"/>
Mobile Number:	<input type="text"/>	Postcode: *	<input type="text" value="EH26 9LX"/>
Fax Number:	<input type="text"/>		
Email Address: *	<input type="text"/>		

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Address 4:	<input type="text"/>
Address 5:	<input type="text"/>
Town/City/Settlement:	<input type="text" value="PENICUIK"/>
Post Code:	<input type="text" value="EH26 9LX"/>

Please identify/describe the location of the site or sites

Northing	<input type="text" value="657259"/>	Easting	<input type="text" value="317638"/>
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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)

Approval of matters specified by condition 1 a), c), d), e) and i) of planning permission 21/00330/PPP.

## 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.

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Please see Planning Statement attached with this Notice of review.

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 page 3 of Planning Statement accompanying this Notice of review.

## Application Details

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

22/00054/MSC

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

19/01/2022

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

18/07/2022

## Review Procedure

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

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

☒ Yes ☐ No

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

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

☐ Yes ☒ No

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

☒ Yes ☐ No

If there are reasons why you think the local Review Body would be unable to undertake an unaccompanied site inspection, please explain here. (Max 500 characters)

## 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.

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T Yes ≤ No

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

T 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? \*

T 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? \*

T 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 \*

T 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 Andrew McCafferty

Declaration Date: 17/08/2022



**Town and Country Planning (Scotland) Act 1997  
As amended by the Planning etc (Scotland) Act 2006**

**Notices of review against:**

- **Refusal of application 22/00054/MSC for approval of matters specified in condition 1a, 1c, 1d, 1e and 1i of planning permission 21/00330/PPP**
- **Refusal of application 22/00040/MSC for approval of matters specified in condition 2 of planning permission 21/00330/PPP**

**at land 170m East of “Newrigg”, Nine Mile Burn, Penicuik**

**Planning statement on behalf of the owners of Peggyslea Farm**

**August 2022**



## **Contents**

### **Executive Summary**

- 1.0 Introduction and purpose of planning statement
- 2.0 The appeal site and proposed development
- 3.0 High Level Landscape and Visual Appraisal (LVIA) of the site prepared by Brindleys Landscape Architects
- 4.0 Consultation responses received in respect of applications 22/00054/MSC and 22/00040/MSC
- 5.0 The development plan covering the appeal site
- 6.0 Material considerations
  - a) Scottish Planning Policy June 2014
  - b) Planning Advice Note 72: Housing in the Countryside, 7 February 2005
- 7.0 Planning appraisal
- 8.0 Rebuttal of refusal reasons – 22/00040/MSC and 22/00054/MSC

## Documents

1. Planning permission in principle decision notice 21/00330/PPP and approved site plan, 24<sup>th</sup> June 2021 for two holiday lodges on the site subject of the appeals
2. Drawings of the proposed lodges (called “Soina”) and colour photographs of a lodge as submitted with the applications
  - Elevation
  - Floorplan
  - Cross section
  - Photographs of “Soina” holiday lodge as erected and at Bizzyberry Lodge, near Biggar
3. Refusal decision notices for applications 22/00054/MSC and 22/00040/MSC both dated 18<sup>th</sup> July 2022.
4. Landscape Layout 1773-01 and Planting Plan 1773-02 as originally submitted December 2021
5. Version of Planting Plan 1773-02 forwarded by case officer March 2022 showing a blue line across the site parallel with the track restricting development
6. Extracts from amended LVIA including visualisations and Landscape Layout 1773-01A and Planting Plan 1773-02A June 2022 showing the lodges parallel with the tree belt
7. Consultation response 28 February 2022 from the Council’s consultant – Policy & Road Safety confirming that conditions 1(a) and 1(d) on 21/00330/PPP have been met
8. Comments in an email 20<sup>th</sup> April 2022 from the Council’s Landscape Officer stating that the proposed planting is generally acceptable
9. Relevant extract from Scottish Planning Policy regarding tourism
10. Extracts from PAN 72 covering “quotations” in delegated report, 7 February 2005
11. Delegated Worksheet
12. Photograph of a “Soina” lodge at Bizzyberry Lodge near Biggar, South Lanarkshire

## Executive Summary

These two appeals against refusal of 22/00054/MSC (condition 1a, 1c, 1d, 1e and 1i of 21/00330/PPP) and 22/00040/MSC (condition 2 on planning permission in principle 21/00330/PPP) are about a difference of opinion between the appellant and the Council's planning officers concerning the siting, design and materials for 2 holiday lodges on a site at Peggyslea Farm which already has planning permission in principle for 2 lodges.

The appellant's proposal to site the 2 lodges behind an existing shelter belt of mature trees is sensible and appropriate rather than setting them back only 1 m behind an existing vehicular track within the farm as required by the planning officers. The officers suggest that siting the lodges parallel with the track would reflect the general pattern of buildings in the area. The appellant disagrees. None of the buildings at Peggyslea Farm or the nearest dwelling "Newrigg" are aligned to roads in the way suggested by officers. The officers' insistence upon siting the lodges parallel with the track on the farm is unnecessary and unreasonable.

People who would wish to stay in the holiday lodges are visiting the area to enjoy the amenities of this part of Midlothian and do not want to have to look out on to a farm track within 1 metre of their front windows. The best siting within the consented site is parallel with the mature tree belt as proposed by the appellant and this siting would screen the lodges and not cause any loss of visual amenity. It would be difficult to see the lodges behind the existing tree belt.

The design of the lodges is attractive and will encourage visitors and tourists to use this luxury accommodation. The lodges are to be built from timber which is a natural material and all external elevations will be dark stained akin to the nearest dwelling "Newrigg" so that the lodges blend into the local context. Lodges of the same design have been granted planning permission at a site called Bizzyberry Lodges near Biggar see (photograph in **Document 12**) which lies within a Special Landscape Area, as does the site at Peggyslea.

The owner has employed chartered landscape architects Brindley Associates to prepare a full landscape layout and planting plan for the lodges and these plans show that the new buildings will fit successfully into the context at Peggyslea Farm.

The appellants consider that the siting and design of the two lodges and the proposed timber materials are appropriate. The proposals comply with policies in the adopted Midlothian Local Development Plan, guidance in Scottish Planning Policy and also Planning Advice Note 73 covering Housing in the Countryside even though these are holiday lodges not dwellings.

For all of the above reasons we request that these appeals against refusal of 22/00040/MSC and 22/00054/MSC are allowed.

## 1.0 Introduction and purpose of statement

***This statement covers both appeals ie against the refusals of applications 22/00054/MSC and 22/00040/MSC. A copy of this statement is included with the submission for each appeal to the Local Review Board.***

Peggyslea Farm is a successful bed and breakfast business established in 2009 comprising 5 en-suite self-contained bedrooms which can accommodate up to 16 people. The business has gradually expanded and is operating at full capacity post COVID. Annette and Colin Noble own and run the business and are experiencing high demand for their visitor/tourism accommodation and wish to expand their “offer” by creating luxury holiday lodges.

The applicants have chosen a lodge design of high quality aimed at visitor comfort and have selected a site for the lodges which is a hardstanding (not greenfield) adjacent to a mature tree shelter belt.

The site subject of these appeals has planning permission in principle (PPiP) for two holiday lodges, ref. 21/00330/PPP. Copies of the approved site plan and decision notice are included as **Document 1**.

Drawings of the proposed lodges and a colour photograph of a completed lodge submitted with the applications are included as **Document 2**.

The purpose of this statement is to address the reasons for refusal (**Document 3**) of the two applications for approval of the following matters specified in conditions on the PPP.

### **Application 22/00054/MSC**

- Condition 1 a), 1c), 1d), 1e), and 1i)

“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 holiday lodges, details of vehicular access and parking provision within the site and details of all walls, fences or other means of enclosure, including bin stores or other ancillary structures;
- c) Detailed plans, sections and elevations of the holiday lodges, indicating the colour and type of materials to be used on the external walls, roof and windows;
- d) Details of all hard surfacing and kerbing;
- e) Details of a sustainability/biodiversity scheme for the site, including the provision of house bricks and boxes for bats and swifts;

- i) Details of a scheme of landscaping for the site. Details shall include 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.

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:** *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 lodges and site access arrangements; to ensure protected species are not adversely affected; to ensure the development is in keeping with the sensitive area."*

### **Application 22/00040/MSC**

- **Condition 2**

"The scheme of landscaping approved in accordance with condition 1i) shall include details of boundary planting to integrate the development into the surrounding area which shall be native species.

**Reason:** *To ensure the development is integrated into and in keeping with the surrounding rural and sensitive area."*

## **2.0 The appeal site and proposed development**

The site is 0.16ha of level hardstanding defined and bordered on all sides by timber post and wire fencing. There is a mature shelter belt immediately adjoining the northwest of the site and in addition a linear mature woodland belt to the south. Other than in close proximity to the site, from views to the southwest (no further than one field distance), the site cannot be seen.

The site is accessed by a track from the A702 which serves Peggyslea B&B and "Newrigg", a house on the other side of the track near to Peggyslea.

## **3.0 High Level Landscape and Visual Appraisal (LVIA) of the site prepared by Brindley Associates Landscape Architects**

The LVIA as originally submitted showed the two lodges sited diagonally across the site (**Document 4**). The case officer forwarded a copy of the Planting Plan showing a blue line across the site parallel with the track (**Document 5**) requiring that the two lodges be sited facing on to the track and enclosed within the blue line.

The applicant decided to reposition the two lodges to be parallel with the mature shelter belt adjoining the northwest side of the site (**Document 6**). In this position, the lodges are

screened by the line of trees and can take advantage of views to the southeast. They are also in a less conspicuous position than fronting onto the track as suggested by the officers.

The applicant also decided to apply a dark stain to the external wooden elevations of the lodges to assist in blending their appearance into the landscape. This dark staining is evident in the elevations of “Newrigg”, the dwelling a short distance from the appeal site and near to Peggyslea (see photograph of “Newrigg” on the amended Landscape Layout 1713/O1A (**Document 6**)).

The amended LVIA concludes:

“Visually, it is considered that the site is currently well contained by the existing mature landscape resource, not only within its vicinity but also found within the 1km study area and landform. The existing landscape resource coupled with the proposed landscaping provide not only mitigating screening but also enhanced ecological habitats for increased biodiversity. Locally vernacular materials will be used on the proposed holiday lodges including the dark staining of the timber elevations to reflect the colour of the existing Newrigg property close by. All the measures combined will ensure that the proposed holidays lodges successfully and harmoniously integrate with their surrounding context.

Visibility of the development is considered to be generally limited to receptors within close proximity of the site boundaries, as evidenced by Site Appraisal Panoramas (see Figures 05– 08). From the remaining potential receptors, both primary and transitory, visibility is predicted to be limited or screened entirely by intervening woodland and mature tree cover, within the 1km study area and beyond.

In summary therefore, it is considered that the site at Peggyslea Farm does not lead to unacceptable levels of potential adverse landscape and visual effect.”

Figures 05-08 as mentioned above are included in **Document 6**.

The matters at issue between the applicant and the planning officers acting under delegated authority are set out below in Section 7.0 Planning Appraisal.

#### **4.0 Consultation responses received in respect of applications 22/00054/MSC and 22/00040/MSC**

**Document 7** is a copy of the response of 28 February 2022 from the council’s consultant – Policy & Road Safety confirming that conditions 1(a) and 1(d) have been met.

**Document 8** is an email 20<sup>th</sup> April 2022 from the Council’s Landscape officer which states that the proposed planting to be generally acceptable. The submitted Planting Notes and Landscape Maintenance and Management proposals are also found to be acceptable. There are two points raised:



“- spacings/distribution of 3 no. proposed beech trees (*Fagus sylvatica*) at the northern boundary should be improved to min. 8-10 m distance between trees, to allow for their substantial mature size.

- It is requested that an additional number of native trees is included within the proposals for boundary planting, notably along the southern boundary interface with the existing track.”

These comments are discussed in section 7.0 below. The appellant does not agree with the above suggestions.

There were no representations from third parties objecting to the proposals.

## 5.0 The development plan covering the appeal site

Relevant policies are contained in the adopted Midlothian Local Development Plan 2017.

The planning permission in principle for the two lodges (**Document 1**) was granted because it complied with policies VIS2 and RD1 of the adopted LDP.

The site is brownfield in character and the lodges are required to be served with electric vehicle charging stations. Development on the site would be sustainable and comply with policy **DEV5 Sustainability in New Development**.

Policy **DEV6 Layout and Design of New Development** requires good design and a high quality of architecture in both overall layout and their constituent parts. There is a difference of opinion to whether the proposals comply with this policy, and this is discussed in Section 7.0.

Policy **DEV7 Landscaping in New Development** requires proposals to be accompanied by a comprehensive scheme of landscaping. The appellant considers that the submitted landscaping scheme meets this condition, but this is disputed by the Council and therefore is discussed in Section 7.0.

The two MSC applications subject of these appeals comply with the principal Policy **VIS2 Tourist Accommodation**. There is a difference of opinion about whether the proposal complies with the detailed criteria of the policy, and this also discussed in Section 7.0.

The proposal complies with the principle of Policy RD1 Development in the Countryside. It is the detail included in the two MSC applications which is disputed with the Council, and this is discussed in Section 7.0.

Policy **ENV6 Special Landscape Areas** requires proposals to incorporate high standards of siting and design and not have a significant adverse effect on the special landscape qualities of the area. The appellant considers that the proposals are of a high standard in terms of siting and design, and this is discussed in Section 7.0.

**Policy ENV7 Landscape Character** requires development not to affect local landscape character significantly or adversely. The appellant does not accept that the proposals would have a significant or adverse harmful impact on the local landscape character and this is discussed in Section 7.0.

## 6.0 Material considerations

### a) Scottish Planning Policy, June 2014

An extract from Scottish Planning Policy is included as **Document 9**. Paragraph 75 states that the planning system should:

“in all rural.....areas promote a pattern of development that is appropriate to the character of the particular rural area....

encourage rural development that supports prosperous and sustainable communities and businesses while protecting and enhancing environmental quality;”

These MSC applications (now appeals are made by an existing successful rural business that merit support. Aligning the two lodges with the mature belt adjoining the site makes sense and there is no pattern of aligning new lodges/dwellings with tracks or roads in and around Peggyslea.

### b) Planning Advice Note 72: Housing in the Countryside, 7 February 2005

Advice in this PAN is that new housing should achieve “proper fit” in the landscape. Relevant extracts are contained in **Document 10**. There is specific reference to the importance of using trees to frame sites for new housing which is relevant to the proposal:

“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 LVIA demonstrates that the two lodges do not harm the landscape context and because of the topography of the site would not be easily seen. The design of the lodges is contemporary and application of dark stain to the external timber surfaces would blend the structures into the surrounding area (see **Document 2** containing the submitted drawings and **Document 6** showing the visualisations).

There are no established building lines near the site for the lodges and no pattern of buildings fronting onto a road at Peggyslea or, for example, “Newrigg” which is close to Peggyslea.

## 7.0 Planning appraisal

These two appeals are the result of a difference of opinion between the applicant (now appellant) and the Council's officers about the details of siting, design and materials proposed for two holiday lodges granted planning permission in principle on an area of hardstanding at Peggyslea Farm, Nine Mile Burn.

The two appeals relate to different matters of detail referred to on the same planning permission in principle 21/00330/PPP. (**Document 1** includes a red-line site plan).

- **Impact on the landscape**

The "before" and "after" LVIA (**Document 6**) demonstrates clearly that the proposed lodges would not have a harmful visual impact either in relation to the area immediately around Peggyslea or the wider context designated as a Special Landscape Area. The siting of the lodges, in line with an existing mature tree shelter belt, works well and this screens the new buildings from views from the north. The Planting Plan drawing 1773/02 A (**Document 6**) shows detailed proposals for new trees, hedgerows, bulbs and grass across the site which will enhance biodiversity and make this an attractive site for visitors and tourists to Midlothian.

The Council's own Landscape Officer did not object to the siting, design or materials put forward (**Document 8**) and there were no objections from members of the public to either of the applications now subject of appeal.

- **Siting of the two holiday lodges**

The officers insisted that the two lodges be sited parallel with the track running along the southwestern site set back only 1m from the track edge. This is based on their view that there is a "general pattern" in the area of buildings being parallel with roads. There are the following objections to this requirement:

1. There is no "general pattern" in the area of all buildings being parallel with roads/tracks.
2. A 1m set-back from the road is an unreasonably small distance and would mean a loss of amenity and privacy for visitors staying in the lodges.
3. The lodges are for use by visitors/tourists who wish to gain the most of views south/southeast from the accommodation and maximise exposure to sunshine. The proposed siting, parallel with the tree belt, offers both of these advantages without impinging on anyone's privacy or harming the landscape.

The case officer wishes to impose a theoretical siting which does not reflect a general pattern of building lines in or around Peggyslea. Not only is this unnecessary and unreasonable, but a set-back of only 1m would create an unattractive character which would put off potential visitors/tourists. This insistence on the part of the case officer reveals an absence of commercial and practical realism which is staggering.

The lodges are luxury accommodation and aimed at attracting visitors/tourists who will spend money in the Midlothian economy. Each lodge represents a significant investment on the appellant's part. The requested siting parallel with the tree shelter belt represents the best location within the site to attract visitors/tourists.

- **Design and materials**

The appellant has carefully selected a lodge design of high quality and visitor comfort which will complement and add to the attraction of their existing business. The proposed lodges would provide self-catering accommodation and respond to enquiries about providing this type of accommodation from customers using the existing B&B facilities.

The lodges are of timber construction with wooden shingle roof tiles and have two bedrooms within the roof and dormers. The front of each lodge features a full height glazed feature with pitched roof. There are areas of decking at front and rear to enable access from rooms on the ground floor (see drawings and photograph of an existing lodge in **Document 2** and in **Document 12**).

All external elevations would have a dark stain applied to assist in blending the new lodges into their context. The staining would be similar to that used at "Newrigg" which is the nearest residential property (photograph of gable and elevation of "Newrigg" shown on Landscape Layout drawing 1773/01 A in **Document 6**.)

## **8.0 Rebuttal of refusal reasons – 22/00040/MSC and 22/00054/MSC**

The Delegated Worksheet (**Document 11**) for the two applications contains points which need to be addressed and the appellant's responses are set out below.

**Request for an updated condition matrix.** The report states that an updated condition matrix has not been submitted to reflect the submission of the revised Landscape and Visual Appraisal i.e., **Document 6**. This was unnecessary and is not a statutory requirement or Council policy requirement. The officers are fully aware of the conditions which are subject of the MSC applications and indeed acknowledge submission of the amended LVIA. No additional conditions on the PPP are affected and the comment about the condition matrix is pedantic.

**"..... the lodges should be positioned to face the road as this would better reflect development in the wider area."** The appellant disagrees with this request for the reasons stated above. The presence of the mature tree belt adjacent to the northwest boundary of the site is a significant feature and should dictate the siting of the lodges **not** the access track.

**"Site plan 1773/02A makes reference to bin stores but no details have been submitted. Also, it is not clear if new means of enclosure are proposed at the site".** The drawing referred to (see **Document 6**) shows the location of a "Timber Bin Enclosure for 2 no. 140 litre wheelie bins located at entrance" of the site. Details of the timber bin enclosure can be

submitted to the Council for approval assuming this appeal against refusal of 22/00054/MSC is allowed. This is a minor aspect of the overall proposals and no request was made for submission of these details by the case officer either before or after the amended Planting Plan 1773/02 A was submitted in July.

The report states that it is not clear if new means of enclosure are proposed at the site. There is already fencing around the site's boundaries; no changes are proposed.

**“The proposed lodges are not in keeping with and would detract from the character and appearance of the surrounding rural area.”**

The design criticisms are addressed above. The appellant has stated clearly that a dark wood stain would be applied to all external timber elevations. What “further details” does the case officer require? If it is a manufacturer's name and specification of the proposed staining then this can be controlled in a condition imposed in allowing this appeal.

There is also an allegation that “no details of the materials or colour of the roof, the window frames, doors or area of decking and stairs” has been provided. The appellant clearly stated in the Planning Statement accompanying the submissions for both applications that the lodges were to be made from timber. The amended LVIA stated clearly that the external elevations would be painted with a dark wood stain. It is misleading and unreasonable to suggest that the applicant has provided inadequate detail when the case officer has had ample opportunity (since January 2022) to request such information. This criticism of the case officer also applies to the comment about the colour of the gravel surface.

**“...inadequate details of the type of bat and swift boxes proposed and their exact location on the lodges have been submitted”.**

Details of the integrated bat and swift boxes are set out on pages 5 and 6 (Section 3.2 Possible Further Mitigation and Enhancement Measures) of the amended LVIA, June 2022. See **Document 6**. It is untrue to suggest that inadequate details of these measures have been submitted. The location of the boxes on the two lodges are shown on drawing 1773/02A in **Document 6**.

**“Improved spacing and distribution of the 3 proposed beech trees at the northern boundary to be improved to a minimum of 8-10 metres distance between trees, to allow for their substantial mature size.”**

Brindley Associates, who prepared the amended LVIA, maintain that their Planting Plan (drawing 1773/02A, **Document 6**) is appropriate for the site and do not agree with the above comment.

There is also reference to the need for a tree survey of land outside the appeal site to be undertaken and potentially additional/replacement planting to be carried out within the tree belt. This request relates to land outside the appeal site and is a matter for the appellants to

carry out if they wish to. These appeals should be determined on the basis of the information that has been submitted. The Council's request for works outside the appeal site does not relate to the proposals subject of this appeal.

The Council refers to an absence of details of protective fencing around trees in the submission. There are no trees on the appeal site and so this request/requirement is unnecessary and does not relate to the appeal site. It therefore fails the tests in Circular 4/1998.

**"...the Landscaping Officer requires an additional number of native trees to be included within the proposals for boundary planting, notably along the southern boundary interface with the existing access track."**

Brindley Associates who prepared the amended Planting Plan (**drawing 1773/02A, Document 6**) maintain that their proposals for new trees near the access and a native species – based hedge along the southern boundary are appropriate for the site and do not agree with the above comment. The proposals will make a significant contribution to enhancement of biodiversity and are appropriate for the site.

For all of the above reasons, we request that these appeals against refusal of 22/00040/MSC and 22/00054/MSC are allowed.

**Andrew McCafferty Associates**

**August 2022**

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## MEMORANDUM

**To:** Ms Mhairi-Anne Cowie, Planning Officer, Planning & Development

**From:** Mr Jim Gilfillan, Consultant - Policy & Road Safety, Corporate Resources

**Your Ref:** Planning Application Number : 22/00054/MSC

**Date:** 28 February 2022

**Subject:** **ERECTION OF 2 HOLIDAY LODGES (APPROVAL OF MATTERS SPECIFIED IN CONDITION 1A, 1C, 1D, 1E AND 1I OF PLANNING PERMISSION 21/00330/PPP  
LAND 170M EAST OF NEWRIGG, NINE MILE BURN, A702**

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Following consideration of drawing no. 1773 / 02 I consider that the following conditions have been met:

- 1(a)
- 1(d)



## Andrew McCafferty

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**From:** Mhairi-Anne Cowie <Mhairi-Anne.Cowie@midlothian.gov.uk>  
**Sent:** 20 April 2022 16:27  
**To:** Andrew McCafferty  
**Subject:** Applications 22/00040/MSC and 22/00054/MSC Land 170m East of Newrigg, Nine Mile Burn, Penicuik

Good afternoon Andrew,

I refer to the above applications to address conditions 1a, 1c, 1d, 1e, 1i and 2 of planning permission 21/00330/PPP.

Could you please provide me with an update on when you expect to submit the amended plans we have previously discussed?

I have received the following comments from the Landscape Officer which require some changes and additional information that should be included as part of the revised plans.

*In terms of condition 1i, the Landscape and Visual Appraisal (LVA) allows the proposals to be considered within the immediate and surrounding local context. With regard to the proposed landscape plans (Landscape Layout dwg. 1773/01 and Planting Plan dwg. 1773/02) it is noted that:*

- *Proposed layout, plant species/mixes and sizes are generally acceptable.*
- *Spacings/distribution of 3no. proposed beech trees (*Fagus sylvatica*) at northern boundary should be improved to min. 8 - 10m distance between trees, to allow for their substantial mature size.*
- *The submitted Planting Notes and Landscape Maintenance and Management proposals are acceptable.*

*In terms of condition 2, this requires that the proposed landscape scheme for the development includes details of boundary planting comprising native species to allow it to be suitably integrated within its surroundings.*

- *The proposed native hedgerow mix, plant sizes and planting density for hedgerows is generally acceptable.*
- *Proposed tree species and sizes are acceptable. However, it is requested that an additional number of native trees is included within the proposals for boundary planting, notably along the southern boundary interface with the existing access track.*
- *See note regarding spacings of 3no. beech trees under Condition 1i.*

*It is advised that a Tree Survey is carried out of mature trees within the tree belt adjoining the site (if this has not been completed within the past two years) in order to monitor tree condition. It is expedient, in the interest of safety, to complete any recommended tree works ahead of the proposed holiday lodges being brought into use.*

I look forward to hearing when you expect to submit these amended plans within seven days of the date of this email.

Regards,

Mhairi-Anne

Mhairi-Anne Cowie  
Planning Officer: Local Developments  
Planning, Sustainable Growth and Investment Service  
Place Directorate  
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(please note that due to the Coronavirus outbreak I am currently working remotely and unable to access telephone messages or paper submissions to the office)

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# Scottish Planning Policy

- the scale of development proposed is appropriate, and it has been shown that the proposal cannot reasonably be altered or reduced in scale to allow it to be accommodated at a sequentially preferable location;
- the proposal will help to meet qualitative or quantitative deficiencies; and
- there will be no significant adverse effect on the vitality and viability of existing town centres.

## Promoting Rural Development

### NPF Context

**74.** NPF3 sets out a vision for vibrant rural, coastal and island areas, with growing, sustainable communities supported by new opportunities for employment and education. The character of rural and island areas and the challenges they face vary greatly across the country, from pressurised areas of countryside around towns and cities to more remote and sparsely populated areas. Between these extremes are extensive intermediate areas under varying degrees of pressure and with different kinds of environmental assets meriting protection. Scotland's long coastline is an important resource both for development and for its particular environmental quality, especially in the areas of the three island councils.

### Policy Principles

**75.** The planning system should:

- in all rural and island areas promote a pattern of development that is appropriate to the character of the particular rural area and the challenges it faces;
- encourage rural development that supports prosperous and sustainable communities and businesses whilst protecting and enhancing environmental quality; and
- support an integrated approach to coastal planning.

### Key documents

- [Getting the Best from Our Land – A Land Use Strategy for Scotland](#)<sup>40</sup>
- National Marine Plan

### Delivery

**76.** In the pressurised areas easily accessible from Scotland's cities and main towns, where ongoing development pressures are likely to continue, it is important to protect against an unsustainable growth in car-based commuting and the suburbanisation of the countryside, particularly where there are environmental assets such as sensitive landscapes or good quality agricultural land. Plans should make provision for most new urban development to take place within, or in planned extensions to, existing settlements.

**77.** In remote and fragile areas and island areas outwith defined small towns, the emphasis should be on maintaining and growing communities by encouraging development that provides suitable sustainable economic activity, while preserving important environmental assets such as landscape and wildlife habitats that underpin continuing tourism visits and quality of place.

**78.** In the areas of intermediate accessibility and pressure for development, plans should be tailored to local circumstances, seeking to provide a sustainable network of settlements and a

<sup>40</sup> [www.scotland.gov.uk/Publications/2011/03/17091927/0](http://www.scotland.gov.uk/Publications/2011/03/17091927/0)



rural

location

design

sustainability



# Planning Advice Note housing in the countryside



**housing in the countryside** the intention is to create more widespread good quality rural housing which respects the Scottish landscape





## Some landscape considerations

**Location within the landscape** – Location concerns site selection within the wider landscape. Some areas are so prominent that it is accepted that any development at these locations would be detrimental to the surrounding landscape. 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. Even where sites are less visible they will still require a significant level of skill to assimilate buildings into the landscape. Sites which are least visible can often be suitable for more adventurous or individual designs. Occasionally, where a landmark development is considered to be appropriate, its design needs to be of the highest quality and considered very carefully. Likewise, where there are groupings of new buildings, their location within the landscape and relationship to each other is important.



**Woodlands** – 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. Care should be taken to ensure an appropriate distance between tree root systems and building foundations, so that neither is compromised. In some parts of Scotland, where there is little existing planting and limited scope for landscaping, particular care should be taken in the selection of sites and design of houses.



**New planting** – The purpose of new planting is not to screen or hide new development, but to help integration with the surrounding landscape. New trees and shrubs which are locally native will usually be easier to establish than non-native plants, and will be more in keeping with the character of the area. Planting with locally native species has the additional benefits of creating habitats for wildlife and potentially contributing to Local Biodiversity Action Plans.



**Boundary treatments** – The open space associated with a house or houses should be considered as an integral part of the development, not as an afterthought, and again be treated in relation to the surrounding environment. Suburban ranch-type fences, concrete block walls and the regimented use of non-native fast-growing conifers should be avoided. Although the use of dry-stone walling in some areas can help the integration of new development with the landscape, the costs involved may mean that this can only be justified in exceptional circumstances. Such circumstances are most likely to arise in designated areas, e.g. National Parks, National Scenic Areas, Conservation Areas and local landscape designations.



## MIDLOTHIAN COUNCIL

### DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

**Planning Application Reference:** 22/00040/MSC & 22/00054/MSC

**Site Address:** Land 170M East of Newrigg, Nine Mile Burn, Penicuik.

**Site Description:** The application site comprises an area of hardstanding next to fields and surrounded by countryside. There are some trees to the north and southeast, with open fields around the remainder of the site. The site is flat, as is the land to the north and west and undulating to the east and south. A large amount of the land surrounding the site is under the control of the applicant, alongside a B&B to the northwest. The site is accessed from the A702 by a track that serves the B&B, another house to the northwest and one house to the southeast.

**Proposed Development:**

22/00040/MSC Erection of 2 holiday lodges (approval of matters specified in condition 2 of planning permission 21/00330/PPP).

22/00054/MSC Erection of 2 holiday lodges (approval of matters specified in condition 1a, 1c, 1d, 1e and 1i of planning permission 21/00330/PPP).

**Proposed Development Details:** These current applications are to approve conditions attached to planning permission in principle 21/00330/PPP, which approved planning permission in principle for the erection of two holiday lodges. These conditions are as follows:

1. 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 holiday lodges, details of vehicular access and parking provision within the site and details of all walls, fences or other means of enclosure, including bin stores or other ancillary structures;
  - c) Detailed plans, sections and elevations of the holiday lodges, indicating the colour and type of materials to be used on the external walls, roof and windows;
  - d) Details of all hard surfacing and kerbing;
  - e) Details of a sustainability/biodiversity scheme for the site, including the provision of house bricks and boxes for bats and swifts; and
  - i) Details of a scheme of landscaping for the site. Details shall include 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.



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:** *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 lodges and site access arrangements; to ensure protected species are not adversely affected; to ensure the development is in keeping with the sensitive area.*

2. The scheme of landscaping approved in accordance with condition 1i) shall include details of boundary planting to integrate the development into the surrounding area which shall be native species.

**Reason:** *To ensure the development is integrated into and in keeping with the surrounding rural and sensitive area.*

**Background (Previous Applications, Supporting Documents, Development Briefs):** Application site

21/00330/PPP Application for planning permission in principle for the erection of 2 holiday lodges. Consent with conditions – standard PPP ones; landscaping; archaeology; limit on length of stay; restriction on area of development.

**Consultations:** 22/00054/MS – The Council's **Policy and Road Safety Manager** states conditions 1a and 1d have been met by the information submitted.

**Representations:** No representations have been received (05/07).

**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** requires good design and a high quality of architecture, in both the overall layout of developments and their constituent parts. The layout and design of developments are to meet listed criteria;

**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;

**VIS2 Tourist Accommodation** states proposals for the development of hotels or self-catering tourist accommodation will be supported, provided the proposal: is in a scale and in keeping with the character or the local area; is sited and designed to respect its setting and is located in an unobstructed manner within the rural landscape; is well located in terms of the strategic road network and maximises public transport access; and is in accordance with the following.

Proposals for self-catering tourist accommodation will be permitted where: the proposal is not within the Green Belt unless linked to some related existing development; the proposal is of a character and scale in keeping with the rural setting and can be located in an unobtrusive manner; and the applicant can demonstrate that the proposal is for the furtherance of a viable long-term business;

**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 shall not harm the amenity of nearby residents through unacceptable levels of noise, light or traffic;

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

**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.

**Scottish Planning Policy** states that all rural and island areas should promote a pattern of development that is appropriate to the character of the particular rural area and the challenges it faces. The siting and design of development should take account of local landscape character.

**Planning Advice Note 72: Housing in the Countryside** sets out design principles that should be considered in such applications, including siting, design and materials. This states individual houses shall be planned, with location carefully selected and design appropriate to locality. It is crucial that the proposed location and siting of new housing considers the impact on the landscape, in terms of both immediate and wider surroundings. If a proper fit in the landscape is not achieved, then even a well-designed building can fail. It must be informed by and respond to the landscape, rather than being a house which is designed without regard to the context and placed within a site. 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. Care should be taken to ensure an appropriate distance between tree root systems and building foundations, so that neither is compromised. Attention should be paid to established building lines and orientation of any buildings in the area. Views to and from the site should be maximised, but not at the expense of good design. Rural architecture in Scotland is derived largely from the simplicity of the form and proportion and in the arrangement of doors and windows. Traditional Scottish style has sometimes been diluted by modern designs which do not always reflect the historic scale and proportions. There is a need for sensitive designers to tackle this. The main objective should be to adapt

the best from the local elements and to interpret traditional shapes and sizes into a modern context.

**Planning Issues:** The grant of planning permission in principle 21/00330/PPP established the principle of two holiday lodges at this site. The current applications being assessed relate to the details required to discharge conditions 1a, 1c, 1d, 1e, 1i and 2. Conditions 3, 6 and 7 cannot be addressed by an MSC application but are to be complied with through the submitted design and when the development proceeds. Since the original application was submitted, a revised High Level Landscape and Visual Appraisal including plans 1773/01 A and 1773/02 A has been submitted. An updated condition matrix has not been submitted to reflect this.

**Matter 1a - considered in application 22/00054/MS:** 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 detailed layout plan of the site, showing the siting of the holiday lodges, details of vehicular access and parking provision within the site and details of all walls, fences or other means of enclosure, including bin stores or other ancillary structures.

**Submission:** High Level Landscape and Visual Appraisal including landscape layouts 1773/01 A and 1773/02 A.

**Decision:** Refused.

**Reason for decision:** Policy and guidance states the siting and design of development should take account of local landscape character and individual houses shall be planned, with location carefully selected and design appropriate to locality. It is crucial the proposed location and siting of new housing considers the impact on the landscape, in terms of both immediate and wider surroundings. Attention should be paid to established building lines and orientation of any buildings in the area.

Taking this into consideration, the lodges should be positioned to face the road as this would better reflect development in the wider area. The general character of houses in the surrounding area and Ninemileburn are for these to largely address the road they are accessed from. These are either with front elevations or gables, with most relatively close to the road. The case officer raised concerns over the position of the lodges at an early stage, having previously raised these with the agent for 21/00330/PPP. The applicant's agent agreed to amend the position of the lodges to address these concerns. However the revised plans show the lodges positioned parallel to the west boundary, perpendicular to the road. This repositioning does not reflect the general character of houses in the surrounding area and is not supported.

The details of the vehicular access and parking within the site is acceptable in terms of road safety.

Site plan 1773/02A makes reference to bin stores but no details have been submitted. Also it is not clear if new means of enclosure are proposed at the site.

The position of the lodges does not respect or reflect the general character of houses in the area and so is contrary to policies RD1, ENV6 and ENV7 of the adopted Midlothian Local Development Plan 2017, Scottish Planning Policy and Planning

Advice Note 72: Housing in the Countryside. Also inadequate details of any means of enclosure or bin stores have been submitted.

**Matter 1c - considered in application 22/00054/MSC:** 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: Detailed plans, sections and elevations of the holiday lodges, indicating the colour and type of materials to be used on the external walls, roof and windows.

**Submission:** Elevations; floor plan; cross section; photo of proposed lodge; document 10 – no details submitted for this but agent confirmed this was a typo and relates to the details of a similar lodge in Biggar. High Level Landscape and Visual Appraisal makes reference to colour stain of walls.

**Decision:** Refuse.

**Reason for decision:** Policy and guidance states the siting and design of development should take account of local landscape character, with individual houses planned with design appropriate to locality. It is crucial that the proposed location and siting of new housing considers the impact on the landscape, in terms of both immediate and wider surroundings. It must be informed by and respond to the landscape, rather than being a house which is designed without regard to the context and placed within a site. Scottish rural architecture is derived largely from the simplicity of the form and proportion and in the arrangement of doors and windows. Traditional Scottish style can be diluted by modern designs which do not reflect the historic scale and proportions. New houses adapt the best from the local elements and to interpret traditional shapes and sizes into a modern context.

The proposed lodges are relatively large and bulky, of an unusual scale and proportions with projecting areas and dormer features. These appear to be standard kit lodge, rather than designed for the specific site or local vernacular. The case officer raised concerns at an early stage over the design of the lodges for these reasons, with large projecting sections and dormer features more alpine in style. They recommended the lodges be either traditional in design to reflect the rural area or to be contemporary but still of a scale, design and materials to reflect the area. Either of these design approaches could be more suitable in this sensitive rural area than that proposed. The applicant's agent agreed to amend the design of the lodges to address these concerns and suggested a farm worker cottage style. However amended plans were not submitted and the revised plans and photomontages show the lodges as originally proposed. The proposed lodges are not in keeping with and would detract from the character and appearance of the surrounding rural area.

The plans state that the elevations of the lodges are to be timber with a dark wood stain. No further details have been provided. There are no details of the materials or colour or the roof, the window frames, doors or area of decking and stairs.

The design of the proposed lodges are out of character with the vernacular of the area and have not been designed to reflect the area. These would detract from the surrounding rural area and so are contrary to policies RD1, ENV6 and ENV7 of the adopted Midlothian Local Development Plan 2017, Scottish Planning Policy and Planning Advice Note 72: Housing in the Countryside. Also inadequate details of the proposed materials have been submitted.

**Matter 1d - considered in application 22/00054/MSC:** 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: Details of all hard surfacing and kerbing.

**Submission:** High Level Landscape and Visual Appraisal including landscape layouts 1773/01 A and 1773/02 A.

**Decision:** Refuse.

**Reason for decision:** The plans state a gravel surface to access and car parking spaces of a colour to match the architectural finish of the lodges. The gravel is to be edged with timer on both sides.

The details of the vehicular access and parking within the site is acceptable in terms of road safety.

As considered in Matter 1c, the materials and colours of the lodges are not clear. It is therefore not clear what the gravel surface would match.

Inadequate information has been submitted to fully consider this condition. Therefore this matter is not approved.

**Matter 1e - considered in application 22/00054/MSC:** 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: Details of a sustainability/biodiversity scheme for the site, including the provision of house bricks and boxes for bats and swifts.

**Submission:** High Level Landscape and Visual Appraisal including landscape layouts 1773/01 A and 1773/02 A. Planting Notes and Landscape Maintenance and Management Proposals makes reference to bat and swift boxes.

**Decision:** Refuse.

**Reason for decision:** The Landscape and Visual Appraisal and detailed landscape proposals set out measures to enhance biodiversity and include native tree and hedgerow planting, along with the use of pollinator and species rich grass mixes. The submissions make reference to bat and swift boxes. It is not clear what is being proposed or their position on the lodges.

Whilst the majority of information addresses this condition, inadequate details of the type of bat and swift boxes proposed and their exact location on the lodges have been submitted. Therefore this matter is not approved.

**Matter 1i - considered in application 22/00054/MSC:** 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: Details of a scheme of landscaping for the site. Details shall include 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.

**Submission:** 1773/01 A; 1773/02 A; Planting Notes and Landscape Maintenance and Management Proposals.

**Decision:** Refuse.

**Reason for decision:** Policy and guidance state it is crucial that the proposed location and siting of new housing considers the impact on the landscape, in terms of both immediate and wider surroundings. 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. Care should be taken to ensure an appropriate distance between tree root systems and building foundations, so that neither is compromised.

A comprehensive Landscape and Visual Appraisal allows the proposals to be considered within the immediate and surrounding local context. The proposed layout of planting, plant species/mixes and sizes are generally acceptable. The submitted Planting Notes and Landscape Maintenance and Management proposals are generally acceptable.

The Landscape Officer requested alterations to improve the landscaping prior to the amended site plan being submitted, to allow these to be accommodated in the revised plans. This included improved spacing and distribution of the 3 proposed beech trees at northern boundary to be improved to a minimum of 8 – 10 metres distance between trees, to allow for their substantial mature size. A Tree Survey of mature trees within the tree belt adjoining the site to monitor tree condition was also requested, if one has not been completed within the past two years. In the interest of safety, any recommended tree works should be carried out before the proposed holiday lodges being brought into use. While this is outwith the application site, these are on land under the control of the applicant. The condition of these trees is of importance given their proximity to the lodges and potential for these to damage them. This would also allow an opportunity for additional or replacement planting to be carried out here to help maintain the rural character of the area, or at the very least ensure that the proposed works do not result in the loss of mature, established trees, which would be of significant concern in this climate emergency where mature trees should be retained, protected and enhanced where possible.

These comments were passed to the applicant's agent before the amended plans were submitted but have not been taken into consideration in the revised plans.

The submissions make reference to protective fencing around trees but no details of this, including design or position, have been submitted.

The submitted landscaping details and information does not demonstrate to the satisfaction of the planning authority that the proposals sufficiently contribute to the local landscape character or allow the development to be suitably integrated within its setting. This is contrary to policies RD1, ENV6 and ENV11 of the adopted Midlothian Local Development Plan 2017, Scottish Planning Policy and Planning Advice Note 72: Housing in the Countryside. Also inadequate details of the required protective fencing have been submitted.

**Matter 2 - considered in application 22/00040/MSC:** The scheme of landscaping approved in accordance with condition 1i) shall include details of boundary planting to integrate the development into the surrounding area which shall be native species.

**Submission:** Planning Statement; High Level Landscape and Visual Appraisal; Planting Notes and Landscaping Maintenance and Management Proposals;



elevations; floor plans; cross sections; photos of proposed lodge; photos of house in area; details of lodge in Biggar.

**Decision:** Refuse.

**Reason for decision:** Policy and guidance state it is crucial that the proposed location and siting of new housing considers the impact on the landscape, in terms of both immediate and wider surroundings.

The proposed native hedgerow mix, plant sizes and planting density for hedgerows is generally acceptable, as is the proposed tree species and sizes. However the Landscape Officer requires an additional number of native trees be included within the proposals for boundary planting, notably along the southern boundary interface with the existing access track. This is to allow the development to make a greater contribution to the local landscape setting.

These comments were forwarded to the applicant's agent before the amended plans were submitted but have not been taken into consideration in the revised plans.

The submitted landscaping details and information does not demonstrate to the satisfaction of the planning authority that the proposals sufficiently contribute to the local landscape character or allow the development to be suitably integrated within its setting. This is contrary to policies RD1, ENV6 and ENV11 of the adopted Midlothian Local Development Plan 2017, Scottish Planning Policy and Planning Advice Note 72: Housing in the Countryside. Also inadequate details of the required protective fencing have been submitted.



**Reg. No. 22/00040/MSC**

Andrew McCaffery Associates  
Burn House  
Collessie  
Fife  
KY15 7TQ

Midlothian Council, as Planning Authority, having considered the application by Peggyslea Farm, Nine Mile Burn, Penicuik, EH26 9LX, which was registered on 24 January 2022 in pursuance of their powers under the above Acts, hereby **refuse** permission to carry out the following proposed development:

**Erection of 2 holiday lodges (approval of matters specified in condition 2 of planning permission 21/00330/PPP) at Land 170M East of Newrigg, Nine Mile Burn, Penicuik**

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

<u>Document/Drawing.</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
High Level Landscape And Visual Appraisal		16.06.2022
Proposed Elevations	1:100	24.01.2022
Proposed Floor Plan	1:100	24.01.2022
Proposed Cross Section	1:50	24.01.2022
Illustration/Photograph	Doc 8	24.01.2022
Planting Notes And Landscape		24.01.2022
Maintenance And Management Proposals		
Planning Statement		24.01.2022

The reason(s) for the Council's decision are set out below:

**Matter 2:** These scheme of landscaping approved in accordance with condition 1i) shall include details of boundary planting to integrate the development into the surrounding area which shall be native species.

**Submission:** Planning Statement; High Level Landscape and Visual Appraisal; Planting Notes and Landscaping Maintenance and Management Proposals; elevations; floor plans; cross sections; photos of proposed lodge; photos of house in area; details of lodge in Biggar.

**Decision:** Refused.

**Reason for decision:** *The submitted landscaping details and information does not demonstrate to the satisfaction of the planning authority that the proposals sufficiently contribute to the local landscape character or allow the development to be suitably integrated within its setting. This is contrary to policies RD1, ENV6 and ENV11 of the adopted Midlothian Local Development Plan 2017, Scottish Planning Policy and Planning Advice Note 72: Housing in the Countryside. Also inadequate details of the required protective fencing have been submitted.*

Dated 18/ 07/2022

A handwritten signature in black ink, appearing to read 'MZA', is positioned above a dotted line.

.....  
Matthew Atkins  
Lead Officer – Planning Obligations  
Fairfield House, 8 Lothian Road, Dalkeith, EH22 3ZN



**The Coal  
Authority**

**Any Planning Enquiries should be directed to:**

Planning and Local Authority Liaison  
Direct Telephone: 01623 637 119  
Email: [planningconsultation@coal.gov.uk](mailto:planningconsultation@coal.gov.uk)  
Website: [www.gov.uk/coalauthority](http://www.gov.uk/coalauthority)

### **STANDING ADVICE**

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

Further information is also available on the Coal Authority website at:  
[www.gov.uk/government/organisations/the-coal-authority](http://www.gov.uk/government/organisations/the-coal-authority)

Standing Advice valid from 1st January 2021 until 31st December 2022

# Refusal of Planning Permission

Town and Country Planning (Scotland) Act 1997



**Reg. No. 22/00054/MSC**

Andrew McCafferty Associates  
Burn House  
Collessie  
Fife  
KY15 7RQ

Midlothian Council, as Planning Authority, having considered the application by Peggyslea Farm, Nine Mile Burn, Penicuik, EH269LX, which was registered on 21 January 2022 in pursuance of their powers under the above Acts, hereby **refuse** permission to carry out the following proposed development:

**Erection of 2 holiday lodges (approval of matters specified in condition 1a, 1c, 1d, 1e and 1i of planning permission 21/00330/PPP) at Land 170M East of Newrigg, Nine Mile Burn, Penicuik**

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

<u>Document/Drawing.</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
High Level Landscape And Visual Appraisal		16.06.2022
Proposed Elevations	1:100	21.01.2022
Proposed Floor Plan	1:100	21.01.2022
Proposed Cross Section	1:50	21.01.2022
Illustration/Photograph	Doc 8	21.01.2022
Planting Notes And Landscape		21.01.2022
Maintenance And Management Proposals		
Planning Statement		21.01.2022

The reason(s) for the Council's decision are set out below:

**Matter 1a:** 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 detailed layout plan of the site, showing the siting of the holiday lodges, details of vehicular access and parking provision within the site and details of all walls, fences or other means of enclosure, including bin stores or other ancillary structures.

**Submission:** High Level Landscape and Visual Appraisal including landscape layouts 1773/01 A and 1773/02 A.

**Decision:** Refused.

**Reason for decision:** *The position of the lodges does not respect or reflect the general character of houses in the area and so is contrary to policies RD1, ENV6 and ENV7 of the adopted Midlothian Local Development Plan 2017, Scottish Planning Policy and Planning Advice Note 72: Housing in the Countryside. Also inadequate details of any means of enclosure or bin stores have been submitted.*

**Matter 1c:** 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: Detailed plans, sections and elevations of the holiday lodges, indicating the colour and type of materials to be used on the external walls, roof and windows.

**Submission:** Elevations; floor plan; cross section; photo of proposed lodge; document 10 – no details submitted for this but agent confirmed this was a typo and relates to the details of a similar lodge in Biggar. High Level Landscape and Visual Appraisal makes reference to colour stain of walls.

**Decision:** Refuse.

**Reason for decision:** *The design of the proposed lodges are out of character with the vernacular of the area and have not been designed to reflect the area. These would detract from the surrounding rural area and so are contrary to policies RD1, ENV6 and ENV7 of the adopted Midlothian Local Development Plan 2017, Scottish Planning Policy and Planning Advice Note 72: Housing in the Countryside. Also inadequate details of the proposed materials have been submitted.*

**Matter 1d:** 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: Details of all hard surfacing and kerbing.

**Submission:** High Level Landscape and Visual Appraisal including landscape layouts 1773/01 A and 1773/02 A.

**Decision:** Refuse.

**Reason for decision:** *Inadequate information has been submitted to fully consider this condition. Therefore this matter is not approved.*

**Matter 1e:** 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: Details of a sustainability/biodiversity scheme for the site, including the provision of house bricks and boxes for bats and swifts.

**Submission:** High Level Landscape and Visual Appraisal including landscape layouts 1773/01 A and 1773/02 A. Planting Notes and Landscape Maintenance and Management Proposals makes reference to bat and swift boxes.

**Decision:** Refuse.

**Reason for decision:** *Inadequate information has been submitted to fully consider this condition and address the impact on the bio-diversity in the surrounding area. Therefore this matter is not approved.*

**Matter 1i:** 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: Details of a scheme of landscaping for the site. Details shall include 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.

**Submission:** 1773/01 A; 1773/02 A; Planting Notes and Landscape Maintenance and Management Proposals.

**Decision:** Refuse.

**Reason for decision:** *The submitted landscaping details and information does not demonstrate to the satisfaction of the planning authority that the proposals sufficiently contribute to the local landscape character or allow the development to be suitably integrated within its setting. This is contrary to policies RD1, ENV6 and ENV11 of the*

*adopted Midlothian Local Development Plan 2017, Scottish Planning Policy and Planning Advice Note 72: Housing in the Countryside. Also inadequate details of the required protective fencing have been submitted.*

Dated 18/ 07 /2022



.....  
Matthew Atkins  
Lead Officer – Planning Obligations  
Fairfield House, 8 Lothian Road, Dalkeith, EH22 3ZN



**The Coal  
Authority**

**Any Planning Enquiries should be directed to:**

Planning and Local Authority Liaison

Direct Telephone: 01623 637 119

Email: [planningconsultation@coal.gov.uk](mailto:planningconsultation@coal.gov.uk)

Website: [www.gov.uk/coalauthority](http://www.gov.uk/coalauthority)

### **STANDING ADVICE**

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

Further information is also available on the Coal Authority website at:  
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Standing Advice valid from 1st January 2021 until 31st December 2022



PLANTING SCHEDULE

TREES						
CODE	SPECIES	SPECIFICATION	GIRTH	HEIGHT	DENSITY	NUMBER
Ag1	Alnus glutinosa	Heavy Standard: 5 brks: 3x: B: Clear Stem min. 200cm	12-14cm	350-425cm	Counted	2 No.
Bpe	Betula pendula	Heavy Standard: 5 brks: 3x: RB: Clear Stem 175-200cm	12-14cm	350-425cm	Counted	2 No.
Fs	Fagus sylvatica	Heavy Standard: 5 brks: 3x: RB: Clear Stem 175-200cm	12-14cm	350-425cm	Counted	3 No.
Sau	Sorbus aucuparia	Heavy Standard: 5 brks: 3x: B: Clear Stem 175-200cm	12-14cm	350-425cm	Counted	2 No.

INDIGENOUS HEDGE						
CODE	SPECIES	SPECIFICATION	% MIX	HEIGHT	DENSITY	NUMBER
Ac	Acer campestre	1+1: Transplant - seed raised: B	25	60-80cm	5/m	123 No.
Cmo	Crataegus monogyna	1+1: Transplant - seed raised: B	25	60-80cm	5/m	123 No.
Fs	Fagus sylvatica	1+1: Transplant - seed raised: B	10	60-80cm	5/m	50 No.
la	Ilex aquifolium	Bushy: 2 brks: C: 2L	5	30-40cm	5/m	25 No.
Psp	Prunus spinosa	1+1: Transplant - seed raised: Branched: 2 brks: B	35	60-80cm	5/m	172 No.

FORMAL HEDGE - Hedgerow separating lodge plots						
CODE	SPECIES	SPECIFICATION	POT SIZE	HEIGHT	DENSITY	NUMBER
Cbe	Carpinus betulus	1+1: Transplant - seed raised: Branched: 3 brks: C	-	60-80cm	7/m	90 No.

BULBS				
CODE	SPECIES	SPECIFICATION	DENSITY	NUMBER
NFG	Narcissus 'February Gold'	Grade 30/12	25/m²	236 No.

BULBS			
CODE	SPECIES	SPECIFICATION	DENSITY
NFG	Narcissus 'February Gold'	Grade 10/12	25/m²

WILDFLOWERS - POLLINATOR'S PARADISE (W/Fg) FROM GERMINAL OR SIMILAR APPROVED SPECIES		
SPECIES	MIXTURE BREAKDOWN	
Echinacea	5.0%	
Rudbeckia Hirta	5.0%	
Cornopsis lanceolata	4.0%	
Cosmos "sensation mix"	2.0%	
Ratibida pinnata	3.0%	
Symphyctichium laeve	2.0%	
Digitalis purpurea	2.0%	
Liatris purcata	1.0%	
Leucanthemum x superbum	10.0%	
Papaver rhoeas	10.0%	
Vicia sativa	7.0%	
Achillea millefolium	5.0%	
Trifolium repens	5.0%	
Lotus corniculatus	9.0%	
Calendula ar. stades	7.0%	
Nigella oxford blue	5.0%	
Agrostemma githago	11.0%	
Oenothera biennis	2.0%	
Helioopsis helianthoides	2.0%	
Trifolium pratense	2.0%	
Phacelia lankesteri	1.0%	


Sowing rate 1-2 g/m²

ECO SPECIES RICH LAWN (W/Fg20) FROM GERMINAL OR SIMILAR APPROVED


SPECIES	MIXTURE BREAKDOWN
Leontodon autumnalis	0.5%
Lotus corniculatus	0.5%
Medicago lupulina	1.0%
Agrostis capillaris	5.0%
Pimpinella saxifraga	0.2%
Hypochaeris radicata	0.2%
Festuca rubra communata	10.0%
Centaurea nigra	2.0%
Cerastium fontanum	0.2%
Primula veris	0.1%
Agrostis stolonifera	2.5%
Ranunculus repens	2.3%
Taraxacum officinale	0.3%
Linum usitatissimum	1.2%
Galium verum	1.2%
Lolium perenne	2.5%
Stilene dioica	2.0%
Trifolium pratense	1.0%
Plantago lanceolata	5.0%
Poa trivialis	0.9%
Pumella vulgaris	20.0%
Festuca ovina	12.5%
Festuca rubra italica	0.2%
Scabiosa columbiana	5.0%
Poa pratensis	15.0%
Festuca rubra rubra	2.5%
Phleum bertolonii	2.0%
Trifolium repens	1.0%
Daucus carota	0.5%
Teucrium scordonia	0.5%
Achillea millefolium	0.5%
Rhinanthus minor	0.2%

Sowing rate 20 g/m²

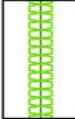
Legend




Proposed tree planting in 1m diameter weed free circles




Proposed tree planting in native species based proposed hedgerow




Proposed native species based hedge planting




Proposed close mown grass (see planting schedule)




Proposed long grass (see planting schedule)




Proposed interface between different mowing regimes




Proposed bulb planting (see planting schedule)




Proposed gravel for access/ car parking spaces, edged both sides with a 35mm timber edge



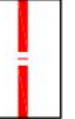
Timber Bin Enclosure for 2 no 140 litre wheelite bins



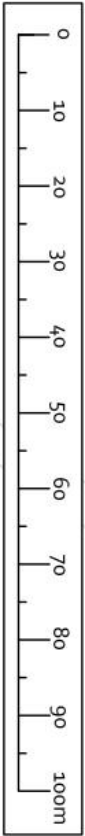
Swift Box



Bat Box



Site boundary



General Notes

1. Prior to commencement of any work on site, protective fencing must be erected around existing trees to be retained in accordance with BS 5837:(2012).
2. Prior to any deep cultivation or excavation of planting pits the landscape contractor must check with the site manager / engineer for exact locations of any underground services.
3. Some tree positions may have to be amended to accommodate any amendments to locations of services.
4. For information on surface materials & details of hard landscape features such as walls & fences refer to architect's drawings.
5. For information on levels & drainage refer to engineer's drawings.
6. Limited information with regard to levels, drainage & underground services was available to us at time of preparation of drawing.
7. Only proposed planting has been shown on drawings 1773-01/02.
8. Refer to separate A4 document for Management and Maintenance.

Project: Peggyslea Farm, Nine Mile Burn

Client: Mr and Mrs Noble

Drawing Title: Landscape Layout

Scale: 1:1000 @ A3

Drawing No: 1773/01

Status: Planning

Drawn by: C Rigby

Checked by: L Houghton



brindley

ASSOCIATES

a: Dolphin House, 4, Hunter Square, Edinburgh, EH1 1QW

t: 0131 357 3657



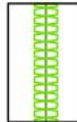






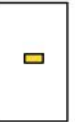


w: [brindleyassociates.co.uk](http://brindleyassociates.co.uk)

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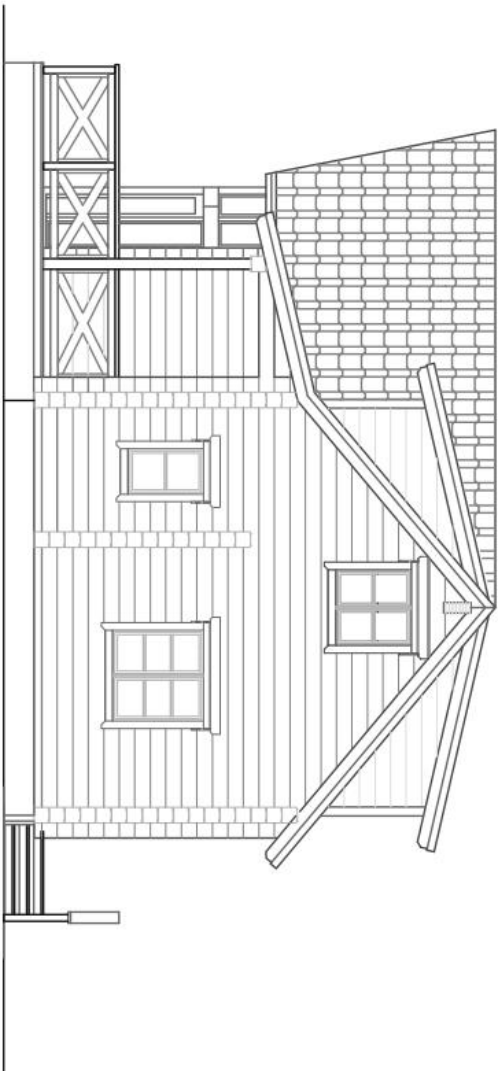
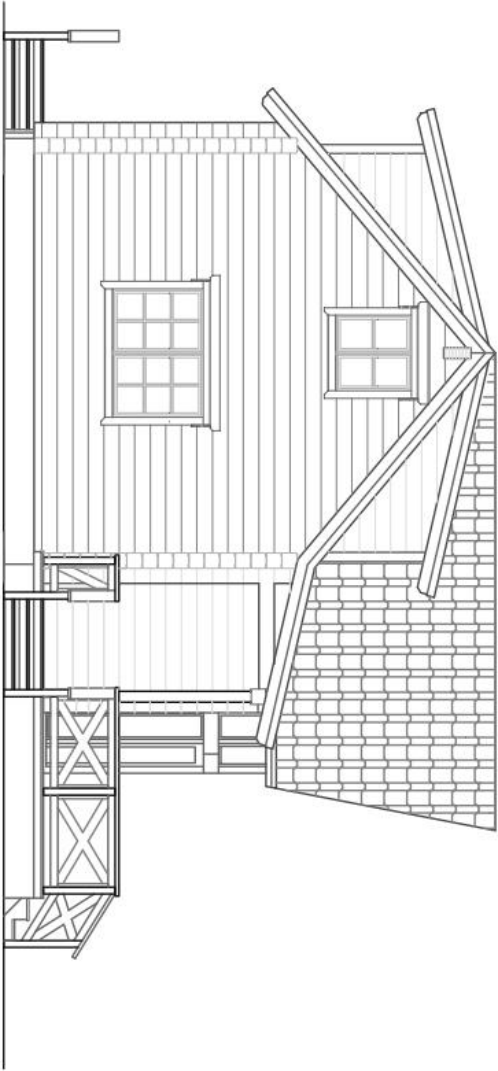
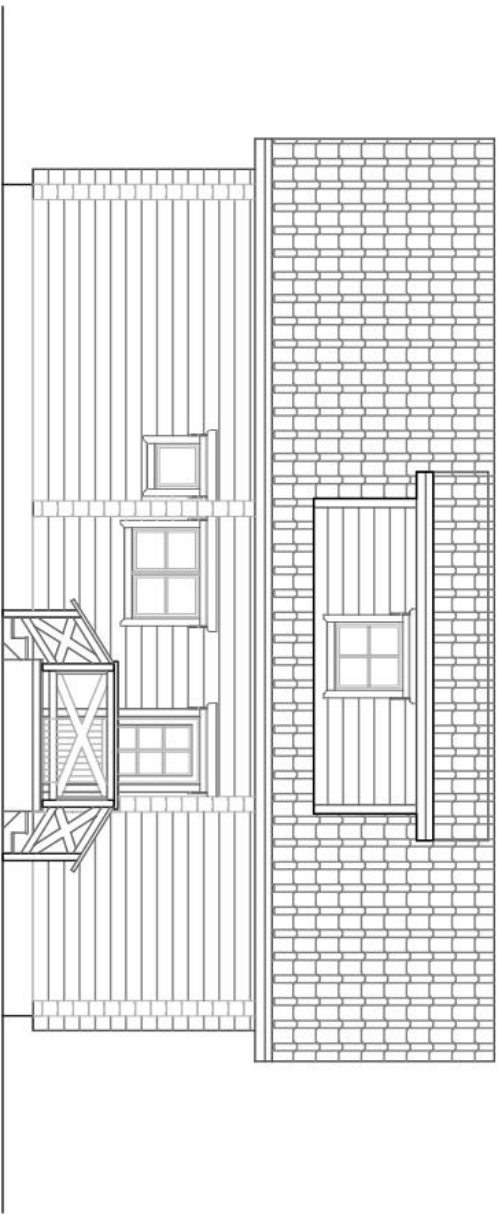
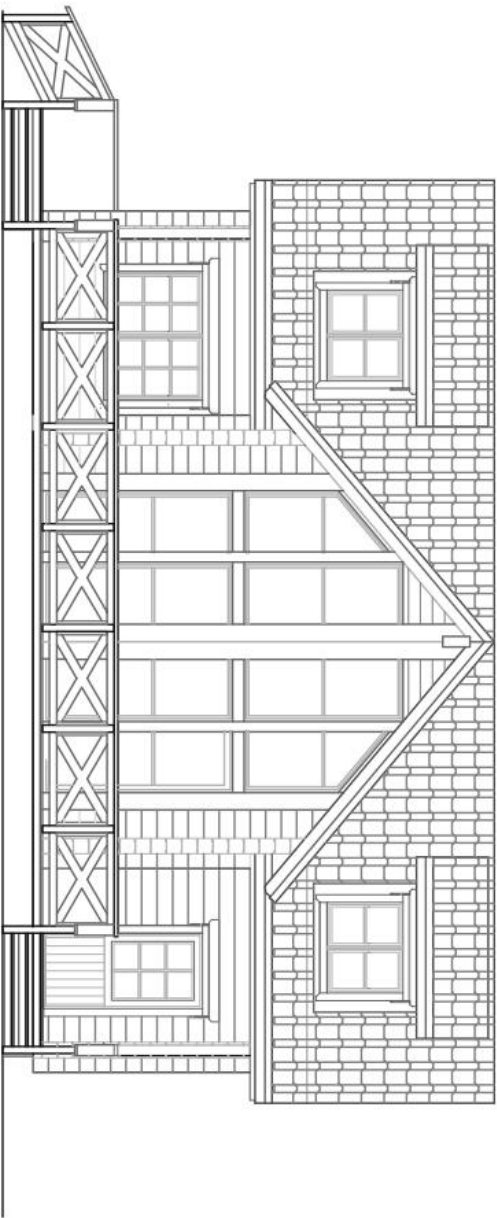





Legend	
	Proposed tree planting in 1m diameter weed free circles
	Proposed tree planting in native species based proposed hedgerow
	Proposed native species based hedge planting
	Proposed close mown grass (see planting schedule)
	Proposed long grass (see planting schedule)
	Proposed interface between different mowing regimes
	Proposed bulb planting (see planting schedule)
	Proposed gravel for access / car parking spaces, edged both sides with a 35mm timber edge
	Timber Bin Enclosure for 2 no 140 litre wheelie bins
	Swift Box
	Bat Box
	Site boundary

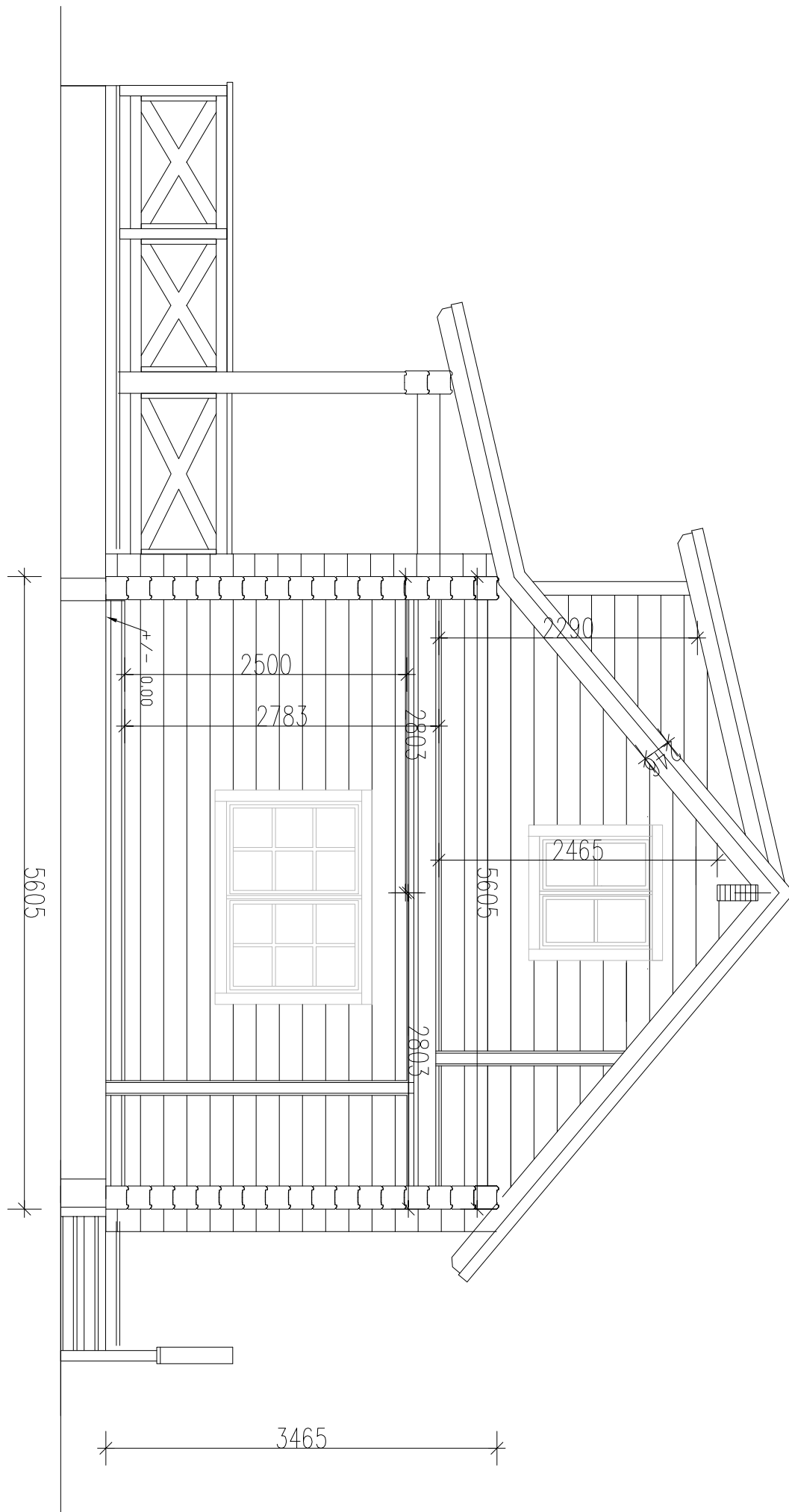






House SDI11A		No:	2.
Elevation		1:100	
		Worknumber	
		Check	
DAS BLOCKHAUS AUS FINNLAND Nikarintie 2 00800 Kuusink, FINNLAND tel. +358 8 8180800, fax. +358 8 8180810 E-mail: hirsise@hirsiseet.com www.hirsiseet.com		Designer: hirsiseet hirsiseet@hirsiseet.com Date: 15.11.2010	







REFUSED  
18.07.2022  
22/00040/MS  
C.







**Bizzyberry Lodge, Biggar**







## **Notice of Review: 4 High Street, Loanhead**

### **Determination Report**

Report by Chief Officer Place

#### **1 Purpose of Report**

- 1.1 The purpose of this report is to provide a framework for the Local Review Body (LRB) to consider a 'Notice of Review' for the infill of existing windows; alterations to door and window openings (retrospective) at 4 High Street, Loanhead.

#### **2 Background**

- 2.1 Planning application 22/00267/DPP for the infill of existing windows; alterations to door and window openings (retrospective) at 4 High Street, Loanhead was refused planning permission on 14 June 2022; 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 14 June 2022 (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 undertake a site visit and have visual images circulated to the LRB (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 no consultations required and no representations received.
- 4.3 The next stage in the process is for the LRB to determine the review in accordance with the agreed procedure:
- Identify any provisions of the development plan which are relevant to the decision;
  - Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies;
  - Consider whether or not the proposal accords with the development plan;
  - Identify and consider relevant material considerations for and against the proposal;
  - Assess whether these considerations warrant a departure from the development plan; and
  - State the reason/s for the decision and state any conditions required if planning permission is granted.
- 4.4 In reaching a decision on the case the planning advisor can advise on appropriate phraseology and on appropriate planning reasons for reaching a decision.
- 4.5 Following the determination of the review the planning advisor will prepare a decision notice for issuing through the Chair of the LRB. A copy of the decision notice will be reported back to the LRB for noting.
- 4.6 A copy of the LRB decision will be placed on the planning authority's planning register and made available for inspection online.

## **5 Conditions**

- 5.1 In accordance with the procedures agreed by the LRB at its meeting of 20 June 2022, and without prejudice to the determination of the review, the following conditions have been prepared for the consideration of the LRB if it is minded to uphold the review and grant planning permission.
1. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 or any subsequent order amending or superseding it, no additional door and/or window openings shall be formed without the submission of a planning application.

***Reason:*** To safeguard the privacy of the occupants and neighbouring residents.

## **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

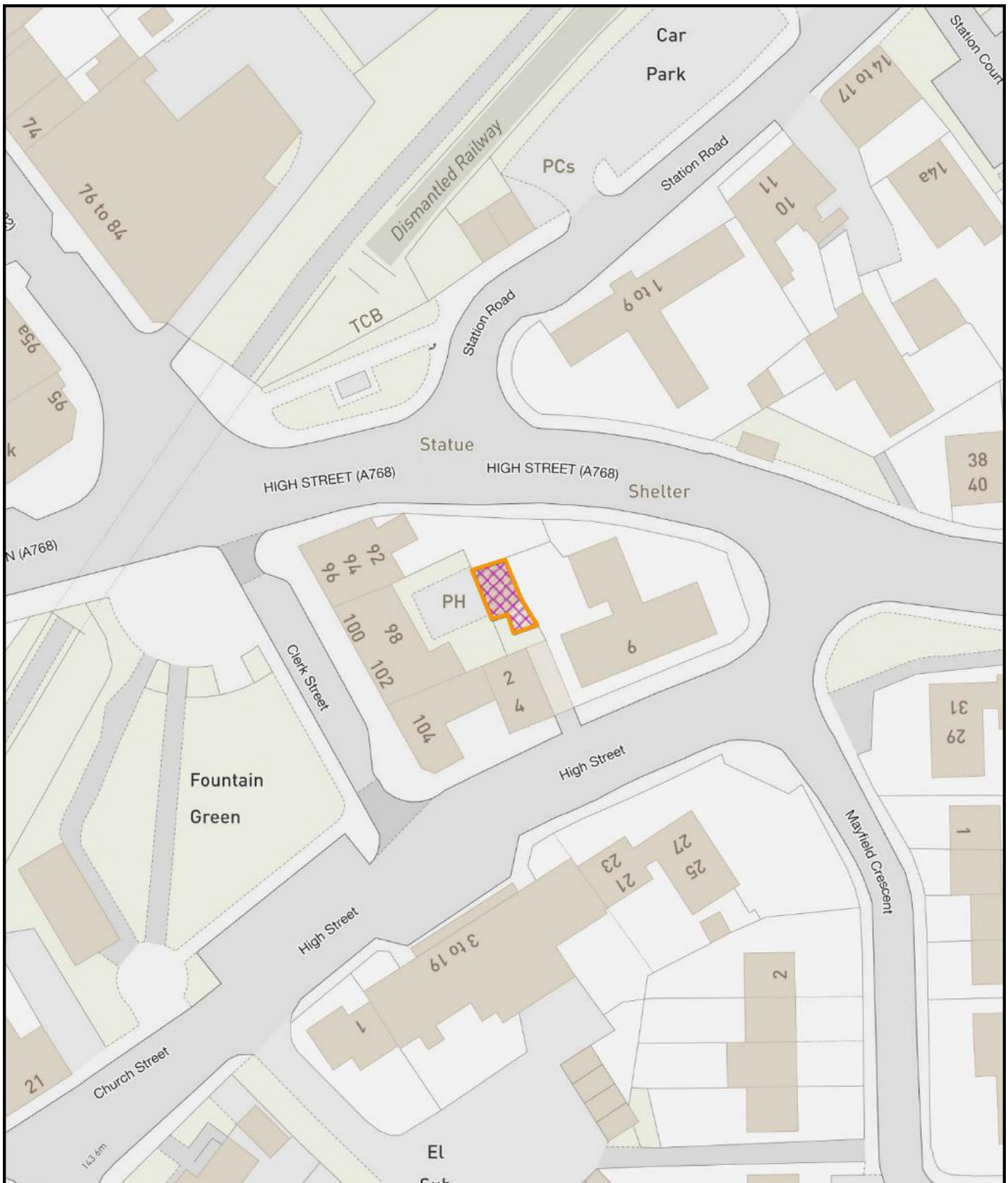
**Peter Arnsdorf**  
**Planning, Sustainable Growth and Investment Manager**

**Date:** 17 October 2022  
**Report Contact:** Graeme King, Planning Officer  
[Graeme.King@midlothian.gov.uk](mailto:Graeme.King@midlothian.gov.uk)

**Background Papers:** Planning application 22/00267/PPP available for inspection online.



# Appendix A



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

**External alterations to building (retrospective)  
4 High Street, Loanhead**

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Midlothian Council Licence No. 100023416 (2018)

File No.22/00267/DPP

Scale: 1:750





Fairfield House 8 Lothian Road Dalkeith EH22 3ZN Tel: 0131 271 3302 Fax: 0131 271 3537 Email: [planning-applications@midlothian.gov.uk](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 100311973-008

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="Keltec Design"/>		
Ref. Number:	<input type="text"/>	You must enter a Building Name or Number, or both: *	
First Name: *	<input type="text" value="SarahJane"/>	Building Name:	<input type="text" value="Tearloch House"/>
Last Name: *	<input type="text" value="Kelso"/>	Building Number:	<input type="text"/>
Telephone Number: *	<input type="text" value="07837732779"/>	Address 1 (Street): *	<input type="text" value="Blairadam"/>
Extension Number:	<input type="text"/>	Address 2:	<input type="text"/>
Mobile Number:	<input type="text"/>	Town/City: *	<input type="text" value="Kinross"/>
Fax Number:	<input type="text"/>	Country: *	<input type="text" value="Perth &amp; Kinross"/>
		Postcode: *	<input type="text" value="KY4 0HX"/>
Email Address: *	<input type="text" value="Keltecdesign@live.co.uk"/>		

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

☒ Individual ☐ Organisation/Corporate entity

## Applicant Details

Please enter Applicant details

Title:	<input type="text" value="Mr"/>	You must enter a Building Name or Number, or both: *
Other Title:	<input type="text"/>	Building Name: <input type="text"/>
First Name: *	<input type="text" value="Aadil"/>	Building Number: <input type="text" value="4"/>
Last Name: *	<input type="text" value="Bashir"/>	Address 1 (Street): * <input type="text" value="High Street"/>
Company/Organisation	<input type="text"/>	Address 2: <input type="text"/>
Telephone Number: *	<input type="text"/>	Town/City: * <input type="text" value="Loanhead"/>
Extension Number:	<input type="text"/>	Country: * <input type="text" value="United Kingdom"/>
Mobile Number:	<input type="text"/>	Postcode: * <input type="text" value="EH20 9RA"/>
Fax Number:	<input type="text"/>	
Email Address: *	<input type="text" value="REDACTED"/>	

## Site Address Details

Planning Authority:	<input type="text" value="Midlothian Council"/>
Full postal address of the site (including postcode where available):	
Address 1:	<input type="text" value="4 HIGH STREET"/>
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" value="LOANHEAD"/>
Post Code:	<input type="text" value="EH20 9RA"/>

Please identify/describe the location of the site or sites

Northing	<input type="text" value="665527"/>	Easting	<input type="text" value="328305"/>
----------	-------------------------------------	---------	-------------------------------------



## 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)

Infill of existing windows; alterations to door and window openings (retrospective), at 4 High Street, Loanhead, EH20 9RA

## 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.

We feel that assumptions have been made without the full facts or any want to find out the full facts, with no returned emails or telephones messages despite contact being made during the application process. The previous planning application and conditions were clear in their intent, but this appears to have been disregarded or not referred to in the assumptions made by the allocated planning officer. Please also refer to the supporting documents for rebuttals to the reasons for refusal.

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)

The planner was not interested in returning any queries, or indeed taking onboard any comments and was advised by the planning officer to lodge an application to the local review body.

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 refer to supporting documents.

## Application Details

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

22/00267/DPP

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

08/04/2022

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

14/06/2022

## Review Procedure

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

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

☒ Yes ☐ No

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

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

☐ Yes ☒ No

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

☐ Yes ☒ No

If there are reasons why you think the local Review Body would be unable to undertake an unaccompanied site inspection, please explain here. (Max 500 characters)

The site is currently accessed via a secured access gate which is currently closed, until the application has been under review.

## 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?. \*

T Yes ≤ No

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

T 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? \*

T 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? \*

T 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 \*

T 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: Mrs SarahJane Kelso

Declaration Date: 01/09/2022

## **Local Review Body Application**

### **Supporting Statement - 4 High Street, Loanhead**

#### **Reasons For Refusal**

1 - As part of the proposal, four roof lights are proposed on the roof of the application site. During the site visit, it was seen that the windows have already been installed in the roof, thus making the application retrospective. The installation of the four roof lights is of concern due to the location and setting of the property within the courtyard. It is considered that due to the angle of the roof, the number, positioning and size of the rooflights, there is a significant impact on the privacy and amenity to the occupants and users of the property, 4 High Street.

The neighbours in the surrounding flatted properties will be overlooking into the first floor kitchen and living area, affording no privacy and impacting on the amenity of the property.

*Reference has been made to 4 velux windows, however there is already permission for 2 velux windows. If 2 velux windows had already been granted why is it now a concern in terms of privacy? Also this would be no different to the surrounding flats on the ground floor level, where they have lounges and kitchen's next to the pavements. We would understand this if it was a private bedroom area and the level of privacy with required. However the precedence already set in the surrounding area is that it is acceptable to have lounges/kitchens directly overlooked by members of the public on the public footpath, so this would be no different, in fact this gives a great level of privacy in that regard. With an already approved application for the installation of 2 velux windows and no concerns raised in the original application with overlooking, we are concerned why it is now being raised as an issue from surrounding flats when the only high level flats that will overlook the property are on the originally consented side of the building.*

2 - The two window openings on the side elevation have been infilled, however the colour of the materials used does not match the colour of the existing building. This is unacceptable in terms of the appearance of the building, as the application site can be seen by a number of neighbouring properties due to the setting and location of the building within the courtyard

*As you will be aware, this is a very old building with differing materials and as such it will be very difficult to match existing materials. However, i do feel that this could have been resolved with a discussion on this topic as opposed to refusal and citing this as one of the reason's. I did try to make contact with the planning officer but they refused to respond on this point. The building prior to the conversion had various area's of the building in stone and brick infill, so trying to use materials that match the original building is virtually impossible. Again no attempt was made to return contact or enter into any discussions despite our repeated attempts to make contact. Please refer to rear elevation of the existing building showing area's of original stonework & red brick infill area's.*



3 - In addition, the application proposes two windows to replace two of the smaller windows approved in application 20/00701/DPP. One of the windows measures 545mm x 1700mm and another measures 720mm x 1100mm and is to be a fire escape window. These windows are to be larger than previously consented and there is a concern with regards to privacy given this.

*I'm not sure what the point is on this in terms of privacy as the windows that were consented in the previous application were (under condition 2 of 20/00701/DPP) to be obscure glazed and that was still the intention with these windows, so in terms of privacy it is a mute point. Again this could have been clarified with a discussion, despite us making reference to this in our email correspondence. But again no response was received from the planning officer.*

*Please see extract from planning consent - 20/00701/DPP (Condition 2)*

2. The ground floor windows on the East elevation of the building shall be glazed with obscure glazing.

4 - It should be noted that a previous consent was granted in December 2020 for the change of use of the residential annexe to separate dwellinghouse (20/00701/DPP). As part of this planning permission it was stated in the delegated report that the usual permitted development rights allowing the formation of door and window openings were removed due to three elevations of the building being bound by shared garden spaces. This was conditioned as part of the consent, 'Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 or any subsequent order amending or superseding it, no additional door and/or window openings shall be formed without the submission of a planning application.

*Whilst we understand this point in terms of the rights to form doors and windows are not to be permitted without the "submission of a planning application". This was the case, as the planning submission had been carried out prior to the installation of the Velux windows. Had the condition been more specific in terms of 'submission and planning approval' then the council would have a case, to state that the planning enforcement team get involved. We feel we have been compliant with the planning conditions in this regard according to the written condition no.3 in application (20/00701/DPP). As such no attempt was made to confirm installation dates for the velux windows, prior to the refusal notice, again we feel that no attempt was made by the planner to reasonably undertake the correct investigations before citing enforcement action will be taken.*

*Please see extract from planning consent - 20/00701/DPP (Condition 3)*

3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 or any subsequent order amending or superseding it, no additional door and/or window openings shall be formed without the submission of a planning application.



## MIDLOTHIAN COUNCIL

### DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

**Planning Application Reference:** 22/00267/DPP

**Site Address:** 4 High Street, Loanhead, EH20 9RA

**Site Description:** The application subjects are a 1 ½ storey outbuilding in a hard surface yard to the rear of a 2 storey building on Loanhead High Street.

Planning permission was granted in December 2020 for the change of use of residential annexe to separate dwellinghouse.

Both the street fronting building and the outbuilding date from the late 19thC; the walls are stone and the roofs are finished with slate.

To the North, East and West the outbuilding is bounded by gardens of neighbouring flats. To the South the site is bounded by the external stairs that lead to the flat above the hairdresser and by the shared yard space and pend. The street fronting building is identified in the Midlothian Local Development Plan 2017 as being within the town centre of Loanhead, however the application building is not within the town centre.

**Proposed Development:** Infill of existing windows; alterations to door and window openings (retrospective).

**Proposed Development Details:** The application refers to the infill of existing windows; alterations to door and window openings. This application is retrospective as the works have already been carried out.

Four roof lights are proposed on the roof of the property.

Two window openings on the side elevation are to be infilled.

On the side elevation, two windows are proposed. One of the windows measures 545mm x 1700mm and another measures 720mm x 1100mm. This window is to be a fire escape window.

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

20/00701/DPP – Change of use of residential annexe to separate dwellinghouse at 4 High Street, Loanhead, EH20 9RA. The application was granted with conditions 22/12/20.

**Consultations:** No consultations required.

**Representations:** No representations received.

## **Relevant Planning Policies:**

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

### **Policy DEV2 Development within the Built-up Area**

The policy states that development will not be permitted within existing and future built-up areas where it is likely to detract materially from the existing character or amenity of the area.

### **Planning Issues:**

In dealing with a planning application the Planning Authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations. Any representations and consultation responses received are material considerations.

The application building is a long established building within the surrounding townscape. Whilst relatively plain in appearance it is a historic building within the context of Loanhead.

The building adjoins three separate garden areas and is overlooked by various flatted properties. The block of which the application site forms part of, is a narrow triangular block and consequently all of the garden areas and many of the surrounding flats are similarly overlooked.

As part of the proposal, four roof lights are proposed on the roof of the application site. During the site visit, it was seen that the windows have already been installed in the roof, thus making the application retrospective.

The installation of the four roof lights is of concern due to the location and setting of the property within the courtyard. It is considered that due to the angle of the roof, the number, positioning and size of the rooflights, there is a significant impact on the privacy and amenity to the occupants and users of the property, 4 High Street. The neighbours in the surrounding flatted properties will be overlooking into the first floor kitchen and living area, affording no privacy and impacting on the amenity of the property.

The two window openings on the side elevation have been infilled, however the colour of the materials used does not match the colour of the existing building. This is unacceptable in terms of the appearance of the building, as the application site can be seen by a number of neighbouring properties due to the setting and location of the building within the courtyard.

In addition, the application proposes two windows to replace two of the smaller windows approved in application 20/00701/DPP. One of the windows measures 545mm x 1700mm and another measures 720mm x 1100mm and is to be a fire escape window. These windows are to be larger than previously consented and there is a concern with regards to privacy given this.

It should be noted that a previous consent was granted in December 2020 for the change of use of the residential annexe to separate dwellinghouse (20/00701/DPP). As part of this planning permission it was stated in the delegated report that the usual permitted development rights allowing the formation of door and window openings were removed due to three elevations of the building being bound by shared garden spaces. This was conditioned as part of the consent, 'Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 or any subsequent order amending or superseding it, no additional door and/or window openings shall be formed without the submission of a planning application.'

As such, all relevant matters including the principles and policies of the adopted Midlothian Local Development Plan 2017 have been taken into consideration in determining this application. Given the concerns with regards overlooking and privacy and the fact that permitted developments rights were previously removed with regards to door and window openings, planning permission is to be refused. As the changes have been implemented and as such this proposal is retrospective, this case will be passed to the Planning Enforcement Team to pursue.

**Recommendation:** Refuse Planning Permission

**Reg. No. 22/00267/DPP**

Keltec Design  
Tearloch House  
Blairadam  
Kinross  
Perth & Kinross  
KY4 0HX

Midlothian Council, as Planning Authority, having considered the application by Mr Aadil Bashir, 4 High Street, Loanhead, EH20 9RA, which was registered on 8 April 2022 in pursuance of their powers under the above Acts, hereby **refuse** permission to carry out the following proposed development:

**Infill of existing windows; alterations to door and window openings (retrospective)  
at 4 High Street, Loanhead, EH20 9RA**

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

<u>Document/Drawing.</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Location Plan	01-01 1:1250	08.04.2022
Floor Plan (Both Proposed And Existing)	02-02D 1:100	08.04.2022
Proposed Elevations	03-02D 1:100	08.04.2022
PSAD Existing Elevations	PSAD 03-01A 1:100	08.04.2022

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

1. *The development has a significant adverse impact on the amenity of the area, particularly in relation to overlooking and privacy and the relationship with neighbouring dwellings, and is therefore contrary to the aims of policy DEV2 of the Midlothian Local Development Plan 2017.*

Dated 14 / 6 / 2022



.....  
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](mailto:planningconsultation@coal.gov.uk)  
Website: [www.gov.uk/coalauthority](http://www.gov.uk/coalauthority)

### **INFORMATIVE NOTE**

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

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

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

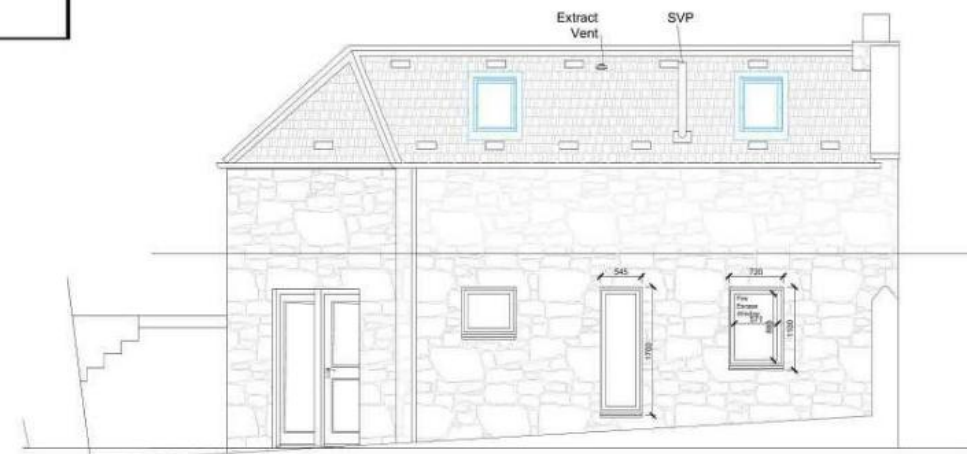
Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires a Coal Authority Permit. Such activities could include site investigation boreholes, excavations for foundations, piling activities, other ground works and any subsequent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

If any coal mining features are unexpectedly encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848. Further information is available on the Coal Authority website at: [www.gov.uk/government/organisations/the-coal-authority](http://www.gov.uk/government/organisations/the-coal-authority)

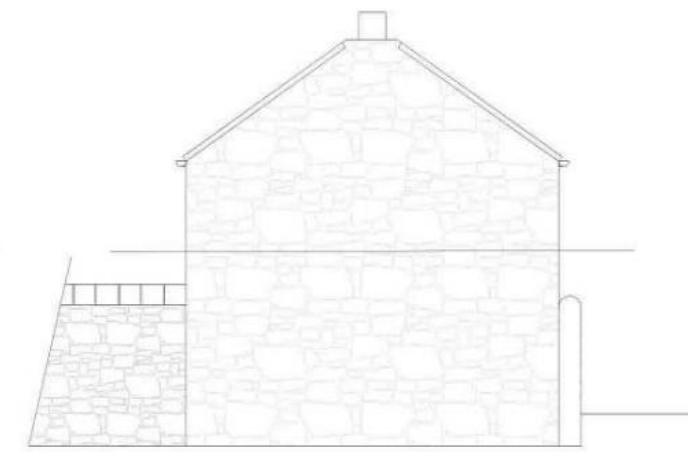
**Informative Note valid from 1st January 2021 until 31st December 2022**

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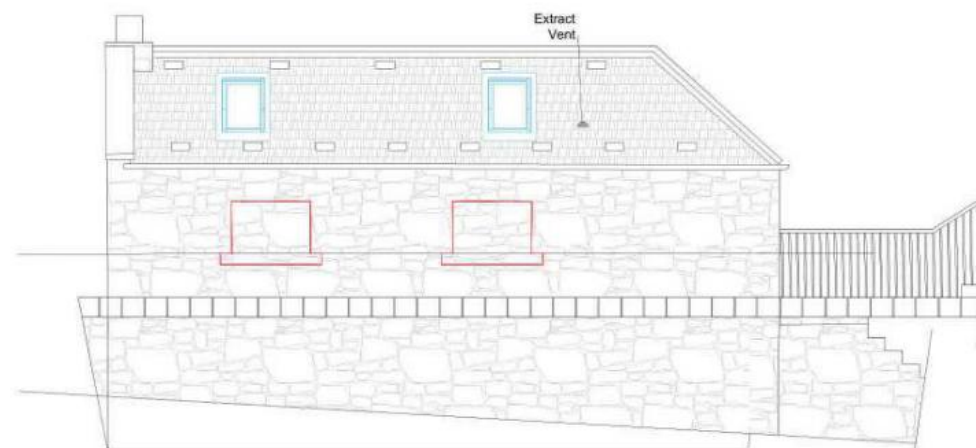
**REFUSED**  
**14.06.2022**  
**22/00267/DPP**



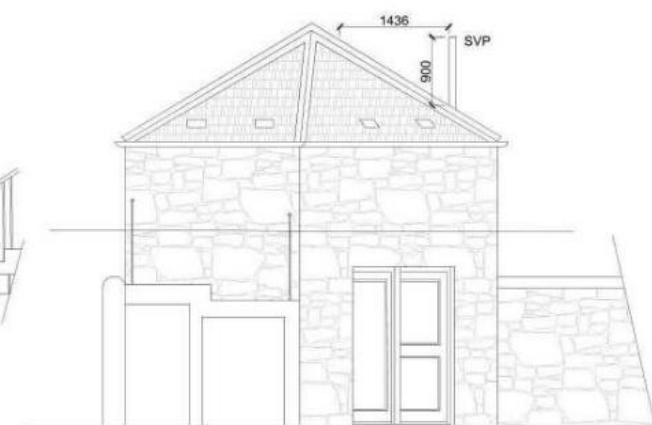
Proposed Side Elevation



Proposed Rear Elevation



Proposed Side Elevation

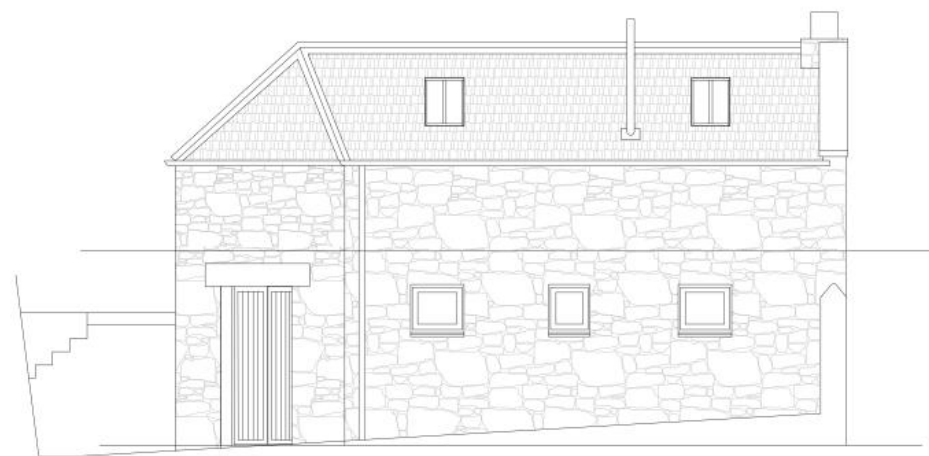


Proposed Front Elevation

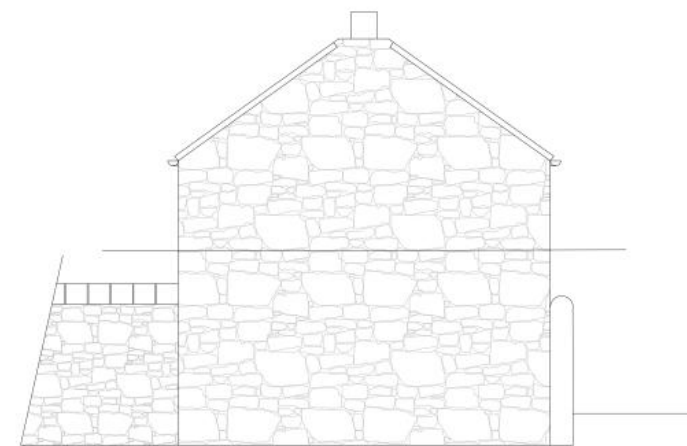
PROJECT		<b>4 High Street Loanhead</b>	
TITLE		<b>Proposed Elevations</b>	
DRAWN BY	SMK	DATE	08/10/20
NUMBER	03-02	SCALE	1/100
D		D	

NO.	REVISION	DATE	BY
D	Updated as per Clients Amends	22/10/21	SK
C	Fire escape window note added.	08/10/21	SK
B	Updated as per building control queries.	05/08/21	SK
A	Updated as per building control queries.	21/06/21	SK

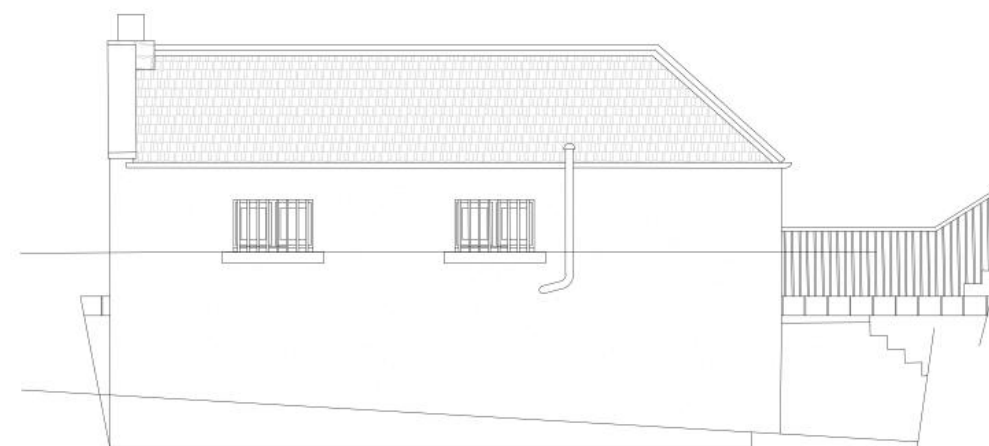




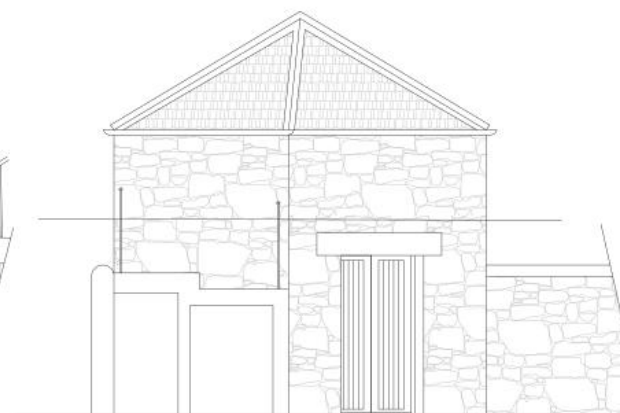
Existing Side Elevation



Existing Rear Elevation



Existing Side Elevation
























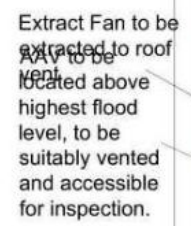
Existing Front Elevation

PROJECT		4 High Street Loanhead	
TITLE		Existing Elevations	
DRAWN BY		SMK	DATE 08/10/20
NUMBER		03-01	SCALE 1/100
A		A	

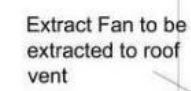
A		Colour removed from the drawing per BC comments.		28/04/21	SK
No.	REVISION		DATE	BY	



ELECTRICAL LEGEND	
	Domestic wiring
	Spotlight/light
	Exterior light fitting
	For voltage distribution
	Low voltage shower downlighter
	IP65 rated 'Aqualase'
	Conduit for lights
	1 way light switch
	2 way light switch
	multi-switch point
	Double 13 Amp switched socket outlet (at low level)
	Double 13 Amp switched socket outlet (at high level)
	13 Amp switched spur outlet
	Single 13 Amp switched socket outlet (at low level, switched at multi-gang for under worktop appliances.
	Cooker control unit on 30 Amp supply
	Telephone outlet
	TV ariel outlet
	Wall mounted mechanical extract fan with fused isolator spur.
	Ceiling mounted mechanical extract fan with fused isolator spur.
	Wall mounted fresh air supply duct, vent kit.
	Wall mounted fresh air supply duct vent kit.
	Audible smoke alarm (interwired & mains powered with battery backup)
	Audible heat alarm (interwired & mains powered with battery backup)



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				DRAWN BY <b>SMK</b>		DATE <b>08/10/20</b>	
						SCALE <b>1/50</b>	
D Updated per clients amends.		22/10/21	SK	NUMBER <div style="font-size: 2em; font-weight: bold;">02-02</div>		<div style="font-size: 3em; font-weight: bold;">D</div>	
C Smoke Alarm & Fire Escape note added to master bedroom.		08/10/21	SK				
B Updated as per building control queries.		05/08/21	SK				
A Updated as per building control queries.		21/06/21	SK				
No.	REVISION	DATE	BY				