

Notice of Meeting and Agenda



Planning Committee

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

Date: Tuesday, 28 March 2023

Time: 13:00

Executive Director : Place

Contact:

Clerk Name: Democratic Services
Clerk Telephone:
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Further Information:

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

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1 Welcome, Introductions and Apologies

2 Order of Business

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

3 Declaration of Interest

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

- 4.1** Minute of 28 February 2023 submitted for approval 3 - 14

5 Public Reports

Non-Planning Application Reports

- 5.1** Tree Preservation Order, Bilston - Report by Chief Officer Place 15 - 38
- 5.2** Prosecution for non-compliance with Enforcement Notice , 1 Laurel Bank Road, Mayfield - Report by Chief Officer Place 39 - 62
- 5.3** Prosecution for non-compliance with Enforcement Notice, Edgehead Farmhouse, Pathhead - Report by Chief Officer Place 63 - 88
- 5.4** Listed Building Enforcement Notice, 130 High Street, Dalkeith - Report by Chief Officer Place 89 - 102
- 5.5** NPF4 Impact on Outstanding Planning Applications - Report by Chief Officer Place 103 - 106

Planning Application Reports

- 5.6** Land between Deanburn and Mauricewood Road, Penicuik (22.00253.DPP) - Report by Chief Officer Place 107 - 122
- 5.7** Land East, North East of Auchendinny (22.00848.DPP) Report by Chief Officer Place 123 - 166

6 Private Reports

No items for discussion

7 Date of Next Meeting

The next meeting will be held on Tuesday 16 May 2023

Minute of Meeting

Planning Committee
Tuesday 28 March 2023
Item No: 4.1



Planning Committee

Date	Time	Venue
Tuesday 28 February 2023	1.00 pm	Council Chambers, Midlothian House

Present:

Councillor Imrie (Chair)	Councillor Bowen
Councillor Cassidy	Councillor Curran
Councillor McCall	Councillor McEwan
Councillor McKenzie	Councillor McManus
Councillor Milligan	Councillor Parry
Councillor Pottinger	Councillor Russell
Councillor Scott	Councillor Smail
Councillor Virgo	Councillor Winchester

In Attendance:

Peter Arnsdorf	Planning, Sustainable Growth and Investment Manager
Alan Turpie	Legal and Governance Manager
Derek Oliver	Chief Officer, Place
Janet Ritchie	Democratic Services Officer

1. Apologies

Apologies for absence were received from Councillor Alexander and Councillor Drummond.

2. Order of Business

The order of business was as set out in the Agenda.

3. Declarations of interest

Councillor Smaill declared an interest in 5.3 and would leave the meeting during this item.

Councillor Milligan advised that with regards to 5.6 the Applicant and an Objector contacted him and he advised on the planning system but made no comment regarding the application.

Councillor Scott declared an interest in 5.3 and would leave the meeting during this item.

Councillor Smaill also advised that he had received correspondence with regards to 5.6 but made no comments regarding the application.

4. Minutes of Previous Meetings

The minute of the meeting of 10 January 2023 was submitted and approved as a correct record.

5. Reports

Agenda No	Report Title	Submitted by:
5.1	National Planning Framework No. 4 (NPF4) Update, MLDP2 Launch and DPS15 Report and Appendices	Chief Officer Place
Outline of report and summary of discussion		
<p>The purpose of this report was to update the Committee on the adoption of the National Planning Framework No. 4 (NPF4) and to advise of the implications for Midlothian of NPF4 adoption, including the formal commencement of the preparation of Midlothian's next Local Development Plan and engagement with communities with regard the preparation of Local Place Plans</p> <p>The Planning, Sustainable Growth and Investment Manager presented this report outlining the main sections contained within the report.</p>		

The Chair expressed his views with regards to the infrastructure and services and that with regards to housing numbers the Council has no option the Scottish Government dictates the housing numbers.

Unfortunately if the Council allow more developments in Midlothian other services should assist with the funding of appropriate infrastructure and services. During further discussion Councillors expressed their views with regards to Housing, Infrastructure and services and developer's contributions.

The Planning, Sustainable Growth and Investment Manager provided clarity on Developer's contributions and that there is a legal framework around this and Midlothian is at the top end of the charge table when charging developer's contributions and also in the recovery of contributions.

It was further highlighted that there is an expectation to take further houses in addition to the houses already agreed throughout Midlothian and the lack of adequate infrastructure and that Midlothian is one of the fast growing Councils but that this is not taken into consideration. Councillor Milligan stressed that the Council needs to oppose any additional housing until the council gets identified and funded solutions for what is required.

The Planning, Growth and Investment Manager provided clarity on the housing numbers and the scale of growth in Midlothian and advising that during the recommended workshops this will be looked at in more detail.

The Planning, Sustainable Growth and Investment Manager also responded to further comments expressed regarding Developer's contributions, key agency discussions, the engagement with local communities and the effect on social housing if further houses were not built.

Decision

The Planning Committee noted the update on NPF4 and agreed to instruct the Planning, Sustainable Growth and Investment Manager to:

1. Commence preparation of the second Midlothian Local Development Plan (MLDP2);
2. Issue invitations to local community groups to prepare Local Place Plans (LPPs) which will help inform production of MLDP2 (Appendix A);
3. Establish a MLDP2 Officer Project Board, comprising senior managers from across the Council services, to ensure the spatial dimensions of other Council strategies are reflected in MLDP2;
4. Arrange a series of workshops between elected members and officers on NPF4 and MLDP2;
5. Publish the Development Plan Scheme for Midlothian no.15 (DPS15)(Appendix B); and
6. Make any non-material changes necessary to the DPS15 and the Local Place Plan invitations prior to publication.

Action
The Planning, Sustainable Growth and Investment Manager

Agenda No	Report Title	Submitted by:
5.2	Planning Performance Framework Annual Report 2021/22	Chief Officer Place
Outline of report and summary of discussion		
<p>This report provides an update on the progress of work undertaken on the Planning Performance Framework (PPF) for Midlothian. Specifically, it provides feedback from Scottish Government on the Council's submitted PPF for 2021/22.</p> <p>The Planning, Sustainable Growth and Investment Manager presented this report outlining the main sections contained within the report highlighting the ratings shown on Appendix A to the report.</p> <p>The Chair expressed his congratulations to the staff.</p>		
Decision		
The Planning Committee noted the feedback from Scottish Government on the Council's submitted Planning Performance Framework (PPF) for 2021/22.		
Action		
The Planning, Sustainable Growth and Investment Manager		

Councillor Scott, Councillor Smaill and Councillor McCall left the meeting at 1.30 pm.

Agenda No	Report Title	Submitted by:
5.3	Land North of 6 Ashbank, Gorebridge - Enforcement Notice Prosecution Report and Appendices	Chief Officer Place
Outline of report and summary of discussion		
<p>This report relates to the non-compliance with the requirements of an enforcement notice served by the Council pursuant to Section 127 of the Town and Country Planning (Scotland) Act 1997, as amended, with regard the change of use of vacant land to a builders' yard (sui generis); siting of shipping containers and associated engineering operations to form a hardstanding at land north of 6 Ashbank, Gorebridge.</p> <p>The enforcement notice required the unauthorised use of the land as a builder's yard to permanently cease and for the shipping containers brought onto the site in associated with that use to be removed from the land. Furthermore, the areas of hardstanding formed on the land to facilitate the unauthorised use shall be removed</p>		

and the land returned to grass. None of these steps have been taken, either by the enforcement notice compliance date of 6 January 2023 or to date (at the time of drafting this report). Non-compliance with an enforcement notice constitutes an offence.

The Planning, Sustainable Growth and Investment Manager presented this report to the committee advising of the key sections contained within the report.

Decision

The Planning Committee agreed to instruct the Planning, Sustainable Growth and Investment Manager (or an alternatively appropriately appointed officer) to refer the case to the Crown Office and Procurator Fiscal Service for consideration of prosecutorial action pursuant to Section 136 of the Town and Country Planning (Scotland) Act 1997 as amended.

Action

The Planning, Sustainable Growth and Investment Manager

Councillors Scott, Smail and McCall re-joined the meeting at 1.34 pm, following discussion of the above item.

Councillor McKenzie declared that the Applicant is in his Ward and that he had correspondence with him regarding the process but did not comment on the Application.

Agenda No	Report Title	Submitted by:
5.4	2 Conifer Road, Mayfield – Enforcement Notice Appeal Decision	Chief Officer Place
Outline of report and summary of discussion		
<p>The purpose of this report was to advise the Committee of an enforcement notice appeal decision with regard the erection of an outbuilding in the side garden of 2 Conifer Road, Mayfield.</p> <p>A retrospective planning application for the erection of an outbuilding at 2 Conifer Road, Mayfield was refused 29 September 2020. Despite the refusal of planning permission and a letter to the occupant dated 26 August 2021 requesting the removal of the outbuilding by 11 October 2021, the outbuilding remained in place. An enforcement notice was issued on the occupier and the owner (Melville Housing Association) on 13 September 2022, with a take effect date of 13 October 2022 and a five month compliance period. The occupier appealed the enforcement notice - a Scottish Government Reporter appointed to determine the appeal dismissed it and upheld the enforcement notice.</p> <p>The Planning, Sustainable Growth and Investment Manager presented this report outlining the main sections contained within the report.</p>		

Decision
The Planning Committee noted the enforcement notice appeal decision with regard to the erection of an outbuilding in the side garden of 2 Conifer Road, Mayfield.
Action
The Planning, Sustainable Growth and Investment Manager

Agenda No	Report Title	Submitted by:
5.5	Land South of Mayfield and East of Newtongrange Report and Plans (22/00027/PPP)	Chief Officer Place
Outline of report and summary of discussion		
<p>This report relates to the application for planning permission in principle for residential development with associated neighbourhood retail, commercial and leisure development and/or community facilities on land to the south of Mayfield and east of Newtongrange, Crawlees Road, Gowkshill, Gorebridge (alternately referred to as the South Mayfield or Lingerwood site).</p> <p>The Planning, Sustainable Growth and Investment Manager presented this report to the committee outlining the main sections contained within the report.</p> <p>The Planning, Sustainable Growth and Investment Manager responded to concerns raised with regards to this site merging Newtongrange, Gowkshill and Mayfield and the possibility of coalescence. He confirmed that the majority of the site was allocated in 2003 and as this application does wrap round Mayfield Industrial Estate it does link these but consideration was given to coalescence and it was judged to be acceptable although there is the recognition of the connection to the existing settlements. He advised that the development will not go right up to boundaries and there will also be green space, woodlands and open space throughout. He also confirmed that there was plans to improve the existing roads and also to incorporate a bus route.</p> <p>Councillor Scott raised concerns with regards the proposed number of houses and the capacity of the existing schools in the area and by continuing to approve these developments without any acknowledgement for the need of a High School in Gorebridge as part of the infrastructure required is against the MP4 policies which emphasises an infrastructure first approach as part of the considerations. Continuing to approve these developments will have an extraordinary impact on the Education provision required for Midlothian.</p> <p>During a lengthy discussion further comments were raised with regards to the building material types and the character of the neighbourhood, Social Housing, the impact if this development was refused, the concerns regarding Crawlees Road and the road infrastructure, the abandoned railway as a possible dividing feature for the area, developers contributions used to rejuvenate Mayfield Town Centre and a</p>		

division of the industrial area from the residential area. Major concerns were also highlighted with regards to the Infrastructure, the loss of natural green space, the individual identities of the villages and the Education provision and the roads infrastructure.

The Planning, Sustainable Growth and Investment Manager in a further response advised that as this is still at the planning in principle stage and a lot of the details have still to be agreed but he noted the concerns raised, he also confirmed there was a 25% policy for social housing for this development. He further advised that due to the size of the site this will be done in phases over a period of time. Councillor Curran, seconded by Councillor Pottinger moved to refuse the planning application in principle.

As an amendment Councillor Imrie, seconded by Councillor McKenzie moved to grant the planning application in principle.

On a vote being taken 4 voted for the Motion to refuse the planning application in principle and 10 voted for the Amendment to grant the planning application in principle, therefore this became the decision of the Committee.

It was also noted that the 6 local Members would get in touch with the Planning Officers to discuss any concerns.

Decision

The Planning Committee agreed that planning permission in principle is granted for the following reasons:

The proposed development site is allocated for housing in the Midlothian Local Development Plan 2017 (MLDP) where there is a presumption in favour of an appropriate form of development. Whilst the proposed development would deliver in excess of the indicative residential unit capacity set out in the MLDP, the submitted EIA has sufficiently demonstrated that the proposed level of development can be achieved, subject to detailed design and subject to securing developer contributions. The proposed ancillary neighbourhood retail, commercial, leisure and community facilities are a welcome additions and contribute to the provision of a sustainable community in accordance with National Planning Framework 4. The presumption for development is not outweighed by any other material considerations.

Subject to the conditions as set out in the report.

Action

The Planning, Sustainable Growth and Investment Manager/Elected Members

Councillor McEwan highlighted that he had received correspondence along with other Councillors regarding the next application but had made no comments.

Agenda No	Report Title	Submitted by:
5.6	Hamilton Waste, Eldin Industrial Estate, Loanhead Report and Plans (22/00345/PPP)	Chief Officer Place
Outline of report and summary of discussion		
<p>This report relates to the application for a change of use of land to a waste transfer site (comprising washer plant to clean and separate soils from waste, and a crusher to break down stone, brick and rubble into aggregate) and the erection of associated plant and machinery. The site is a concrete surfaced yard at Eldin Industrial Estate, Edgefield Road, Loanhead.</p> <p>The Planning, Sustainable Growth and Investment Manager presented this report to the committee outlining the main sections contained within the report.</p> <p>The Chair acknowledged that Councillor Parry had called this in therefore gave her the opportunity to speak. Councillor Parry declared that she had also received communication regarding this application and advised that the reason for the call-in was that it would adversely impact on the character of the area. She also highlighted some further concerns regarding the change of operating hours, the impacts on Straiton pond and the wildlife, the proximity on safer routes to schools and the number of recommendations received from communities and that some of these had not been explored or commented on.</p> <p>The Planning, Sustainable Growth and Investment Manager responded to the comments made advising that the all commercial vehicles would not go through residential areas and there was a designated access route on the Edgefield relief road. He further responded to the concerns regarding Straiton pond wildlife and that there was a programme to mitigate dust to keep it within the site and also advised on the restrictions on the hours of operation. Mr Oliver also advised that regarding waste management and dust and this would be monitored by SEEPA.</p> <p>Further comments were made with regards to the proximity to housing and schools but it was also acknowledged that there was a lot of conditions put in place to address the concerns raised.</p> <p>Councillor Virgo, seconded by Councillor Winchester moved to grant permission with the conditions as set out in the report.</p> <p>Councillor Parry, seconded by Councillor McCall moved to continue the application to the next cycle to look at the conditions and also to arrange a site visit.</p> <p>In responding to Councillor Curran's comments regarding the site and dust suppression and the Planning, Sustainable Growth and Investment Manager confirmed that the site was previously a waste transfer site and then a contractor's yard and that SEEPA would monitor the site in terms of compliance.</p>		

On a vote being taken 7 voted for the Amendment to continue the application to the next meeting and 9 voted for the Motion to grant planning permission therefore that became the decision of the Committee.

Decision

The Planning Committee agreed that planning permission be granted for the following reason:

The site forms part of the established economic land supply and the proposed use is in keeping with the scale and character of the surrounding industrial estate where there is a presumption in favour of an appropriate form of development. Appropriate conditions will ensure that the amenity of residential properties in the surrounding area will be safeguarded. The proposal complies with the relevant policies of the Development Plan and the presumption for development is not outweighed by any other material considerations.

Subject to the conditions as set out in the report.

Action

The Planning, Sustainable Growth and Investment Manager

Councillor Parry left the meeting at 14.22 pm

Agenda No	Report Title	Submitted by:
5.7	Land at Robertson Bank, Gorebridge Report and Plans (20/00899/DPP)	Chief Officer Place
Outline of report and summary of discussion		
<p>This report relates to the application for the erection of 14 dwelling houses, formation of access roads and car parking and associated works. The site is situated to the south of Lady Brae, Gorebridge, and to the west of the Borders Rail line.</p> <p>The Planning, Sustainable Growth and Investment Manager presented this report to the committee outlining the main sections contained within the report.</p> <p>The Chair acknowledged that Councillor Scott had called this in therefore gave her the opportunity to speak. Councillor Scott declared that she had received communication regarding this application but gave no opinion. Councillor Scott then went on to explain some of the dangers on some parts of Lady Brae and that such a right turn would prove dangerous and did not in her opinion feel that this was the best place for an entrance. She further expanded on some of the other reasons for her objection with regards to Education, flooding, the embankment and the removal of substantial trees and highlighted there is also a historic tunnel which has not been detailed in the report. If this application was approved there is a need for some calming measure on the bend before Lady Brae and if approved would it be possible for a mechanism for the developers to pay for as slope monitor insurance for any damage to residents properties.</p>		

The Planning, Sustainable Growth and Investment Manager advised that land owners have a responsibility and if any damage is done to other land owners properties there is a mechanism for this. With regards to the slope there is a presumption that the house builder will build units safely and responsibly. He responded to the comments with regards to Education and the entrance to the site meets the visibility standards and according to their records there had been no recorded accidents in the last 3 years. He also advised that there would be a mining an intrusive investigation and if a tunnel was there this would be discovered.

Councillor Virgo, seconded by Councillor Winchester moved to grant planning permission.

Decision

The Planning Committee agreed that planning permission be granted for the following reason:

The proposed development site will contribute to the sustainable delivery of housing in compliance with the policies of National Planning Framework 4 and is allocated for housing in the Midlothian Local Development Plan 2017 (MLDP) where there is a presumption in favour of an appropriate form of development. The proposed detailed scheme of development in terms of its layout, form, design and landscape framework is acceptable and as such accords with development plan policies, subject to securing developer contributions. The presumption for development is not outweighed by any other material considerations.

Subject to the conditions as set out in the report.

Action

The Planning, Sustainable Growth and Investment Manager

Agenda No	Report Title	Submitted by:
5.8	Easthouses Primary School Report and Plans (22/00721/DPP)	Chief Officer Place
Outline of report and summary of discussion		
<p>This report relates to the application for the erection of a primary school and nursery; formation of a multi-use games area (MUGA), car parking and associated works on the northern part of the former Newbattle High School site, Easthouses Road, Easthouses.</p> <p>The Planning, Sustainable Growth and Investment Manager presented this report to the committee outlining the main sections contained within the report.</p> <p>Councillor Virgo, Seconded by Councillor Pottinger moved to grant planning permission.</p>		

Councillor Pottinger commented on safer route to schools and the Chair advised the Planning, Sustainable Growth and Investment Manager to pick this up with the relevant Planning Officer to ensure that safer routes to school would be considered.

Decision

The Planning Committee agreed that planning permission is granted for the following reason:

The site is located within the settlement boundary of Easthouses and on a site with an established educational and community use and as such there is presumption in favour of an appropriate educational use development. The proposed detailed scheme of development in terms of its layout, form, design and landscape framework is acceptable and as such accords with development plan policies. The presumption for development is not outweighed by any other material considerations.

Subject to the conditions as set out in the report.

Action

The Planning, Sustainable Growth and Investment Manager

6. Private Reports

No items for discussion

7. Date of Next Meeting

The next meeting will be held on Tuesday 28 March 2023 at 1.00pm

The meeting terminated at 14.36 pm



Midlothian

TREE PRESERVATION ORDER (1 of 2022) AT PENTLAND LEA AND THE FIRS, SEAFIELD ROAD, BILSTON

Report by Chief Officer Place

1 PURPOSE OF REPORT

- 1.1 This report seeks the Committee's approval to confirm a Tree Preservation Order (TPO) 1 of 2022 issued on 1 December 2022 for eight individual trees (T1 - T8) and two groups of trees (G1 and G2) at Pentland Lea and The Firs, Seafield Road, Bilston.

2 BACKGROUND

- 2.1 At its meeting of 22 November 2022 the Committee determined to issue a TPO regarding eight individual trees (T1 - T8) and two groups of trees (G1 and G2) at Pentland Lea and The Firs, Seafield Road, Bilston.
- 2.2 The TPO was issued on the basis that a report regarding the confirmation of the TPO, once the owner of the land and other interested parties have had the opportunity to make comment, be reported to Committee for consideration. The following details of the case are set out in the 22 November 2022 Committee report attached as Appendix A:
- Site location and description;
 - Background and justification for issuing the TPO;
 - Details of the TPO proposal;
 - Location plan;
 - Local development context plan; and
 - Site photos
- 2.3 The TPO came into effect on 1 December 2022 and continues in force for six months (until 1 June 2023) or until the Order is 'confirmed', which is the process of making the TPO permanent (until it is removed).
- 2.4 Following the service of the TPO the landowners were given the opportunity to make representation. Furthermore, in accordance with the Regulations, a notice was published in the Midlothian Advertiser and on the Council's website and the Roslin and Bilston Community Council were also notified of the decision to issue the Tree Preservation Order and invited to make a representation. In addition a site notice was attached to a nearby lamp post advising of the TPO and the consultation process.

Interested parties were given until 26 January 2023 to make representations, this was extended to 10 February 2023 for the property owner in response to a request from their agent. Legislation requires that a period of at least 28 days is made available for representation to be submitted to the Council following a decision to make a Tree Preservation Order.

- 2.4 One representation on behalf of the landowner was received.

3 REPRESENTATIONS

- 3.1 The Council received one representation objecting to the issuing of a TPO, dated 8 February 2023, on behalf of the owners of Pentland Lea and The Firs. The representation is attached as Appendix B.
- 3.2 In summary, the objection considers the making of the TPO premature given proposals for the potential re-development on the site are at a very early stage (pre-application) and the surrounding area is undergoing considerable change as a result of new development. The key points raised in the objection are set out below and are addressed in turn.
- 3.3 **Objection Paragraph 14:** *'The owners consider that the TPO is not appropriate as they have maintained the trees and landscaping at the site for a considerable time and will continue to do so, in line with appropriate redevelopment plans which were the subject of initial plans to prompt discussion... The owners consider that the imposition of the TPO during this process was unreasonable and unnecessary.'*
- 3.4 Response: It is understood that initial plans submitted as part of the pre-application enquiry are intended for discussion and by no means final. However, the indicative site layout raised sufficient concerns for potential tree loss and/or adverse effects on existing trees and their root systems, to consider it expedient in the interest of amenity to make a TPO. This does not preclude any further discussions or the possibility of development on the site. The TPO gives greater tree protection as part of an assessment of a development proposal, should one come forward.
- 3.5 **Objection Paragraph 15:** *'The TPO incorrectly defines the site as it includes land outside the Firs and Pentland Lea. It is understood that no arboricultural assessment has been carried out to define the health and appropriateness of trees identified in the TPO and accordingly the making of the TPO is premature as it could protect trees that should not be protected [for example sycamore trees and cherry trees].'*
- 3.6 Response: Trees on land adjoining the objector's ownership boundary were intentionally included within the TPO, as they contribute to visual amenity of the adjoining properties at Corby Craig Avenue, and provide screening and landscape softening within existing views and to any potential future development at Pentland Lea and the Firs. Whilst the trees are within a different ownership, the effective extent of their roots (generally described as a Root Protection Area) may still be affected by

any potential development on the objectors land. The registered owner of the adjoining land was notified of the making of the TPO.

- 3.7 There is no legal requirement for a tree survey to be carried out as part of the TPO process, nor is there any prescription as to species that may or may not warrant protection. Although condition and retention span may be taken into consideration, the deciding factor in making a TPO is whether it is expedient in the interest of amenity and/or the tree warrants protection based on its cultural or historic value.
- 3.8 A tree survey and arboricultural impact assessment would generally need to be submitted as part of any application for development affecting existing trees. The making of a TPO does not preclude development on the site or works to trees where these may be required for sound arboricultural management or safety reasons. However, a 'Work to Trees' application would need to be submitted and consented by the planning authority ahead of any works to trees protected by TPO, unless the proposed tree works qualify for an exemption.
- 3.9 **Objection Paragraph 16:** *'The identified trees are not under threat from development – as evidenced by the proper pre-application approach taken by the owners towards the development of the area. Works could have been carried out prior to the pre-application process and accordingly, the owners are being adversely impacted by the actions of the council in this matter. The trees outside the owners control, and which provide the screening and visual impact referred to in the TPO and Tree Report would be retained even if development were to proceed on site.'*
- 3.10 Response: As stated earlier, the indicative site layout raised sufficient concerns for potential tree loss and/or adverse effects on existing trees and their root systems, to consider it expedient to make a TPO. This does not prohibit any further discussion with regard to development on the site. Trees on adjoining land are included within the TPO, to safeguard them from potential adverse effects on their roots and associated Root Protection Areas and because of the contribution they make to local amenity and green network.
- 3.11 **Objection Paragraph 17:** *'Notwithstanding the reasons for the imposition of the TPO, other trees of greater importance – i.e. the trees actually adjoining the Bilston Burn, are not protected, which undermines the reasons for this TPO.'*
- 3.12 Response: TPO 2 of 1999 is in place near the Firs, immediately south of Seafeld Road. This was made in the context of residential development at Seafeld Crescent, to safeguard the surrounding framework of trees and includes trees along the Bilston Burn and at the Seafeld Road frontage. No other (imminent or perceived) threats have so far warranted the need for additional TPOs within the Bilston Burn corridor near Pentland Lea and The Firs.

- 3.13 **Objection Paragraph 18:** *‘MDC should not retrospectively protect the amenity of the area through the imposition of this TPO. Had such protection been necessary, or had augmentation been required to provide a meaningful screening and softening appearance, the correct approach should have been through the requirement for additional planting as part of the landscaping proposals for the new housing development..’*
- 3.14 Response: The TPO serves to protect mature trees and established elements of planting that contribute to local character and amenity, in tandem with newly established areas of open space and structure planting that have been implemented as part of the adjoining developments.

4 PLANNING ISSUES

- 4.1 The individual trees and tree groups by means of their size, location and character form a visually prominent and important landscape feature in the local area. The trees feature in views along Seafield Road and from surrounding properties; adding to the setting and amenity of the area. They contribute notably to the character of Seafield Road, whilst providing screening, landscape softening and separation between new housing developments.
- 4.2 Within the wider landscape context, the trees contribute to the green network in terms of supporting habitat and biodiversity within the adjoining Bilston Burn corridor, and maintaining connectivity with planned green spaces in allocated housing site Hs16 (Phase 3) to the north, as well as the rural landscape that lies beyond (as illustrated in the attached masterplan).
- 4.3 The trees form part of the landscape character of the area and contribute to the local green network. The issuing of a TPO will be an important tool in protecting the trees aiding in the preservation of local amenity, biodiversity and habitat connectivity.

5 PROCEDURES

- 5.1 The provision for issuing a Tree Preservation Order is set out in the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006, and the Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 2010. A planning authority may make a Tree Preservation Order if it appears to them to be “expedient in the interest of amenity and/or that the trees, groups of trees or woodlands are of cultural or historic significance” (Scottish Government Planning Circular 1/2011: Tree Preservation Orders). The TPO subject of this report has been made on amenity grounds.
- 5.2 The TPO will continue to remain in effect to the end of the six month period (ending 1 June 2023). If the local planning authority wishes the TPO to stay in effect beyond the six months it must ‘confirm’ the order.

- 5.3 To 'confirm' the Order the LPA must register the TPO in the Land Registry of Scotland, place a copy on its own TPO register and notify Scottish Forestry (previously the Forestry Commission Scotland), interested persons and any person who has made a representation (in this case no representations were received).

6 RECOMMENDATION

- 6.1 It is recommended that Committee:
- a) Confirm the Tree Preservation Order (1 of 2022) for eight individual trees (T1 – T8) and two groups of trees (G1 and G2) at Pentland Lea and The Firs, Seafield Road, Bilston; and
 - b) Instruct the Planning, Sustainable Growth and Investment Service Manager to carry out the necessary procedures, following confirmation and endorsement of a tree preservation order, that are required by the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006 and the Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 2010.

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date: 20 March 2023
Contact Person: Grant Ballantine
grant.ballantine@midlothian.gov.uk
Background Papers: November 2022 Committee Report (attached)



TREE PRESERVATION ORDER REGARDING TREES AT PENTLAND LEA AND THE FIRS, SEAFIELD ROAD, BILSTON

Report by Chief Officer Place

1 PURPOSE OF REPORT

- 1.1 This report seeks the Committee's approval to issue a Tree Preservation Order (TPO) on eight individual trees and two groups of trees located at Pentland Lea and The Firs, Seafield Road, Bilston.

2 LOCATION AND SITE DESCRIPTION

- 2.1 Pentland Lea and The Firs are located north of Seafield Road, in an area of Bilston that is changing as a consequence of recent and ongoing housing development. The properties adjoin the western extent of the recently completed Corby Craig development (allocated housing site h56) and are bound to the north and west by new housing at Pentland Green (allocated housing site Hs16). The Bilston Burn corridor extends in close proximity to the south; on the opposite side of Seafield Road.
- 2.2 The trees are growing within the grounds surrounding the existing dwellinghouses and outbuildings at Pentland Lea and The Firs, and on a strip of land immediately adjoining, between the boundary of The Firs and neighbouring properties at Corby Craig Avenue. The trees are mostly located along the property boundaries; with groups of trees and individual specimens providing amenity value and screening.

3 BACKGROUND

- 3.1 Planning permission (18/00679/PPP) has been granted for a dwellinghouse on land to the north west of Pentland Lea, Seafield Road Bilston, but has not been implemented, this permission expires 31 March 2023 (the house would be sited between proposed TPO T1 and T2 shown on the location plan attached to this report). Subsequent to this application the owner of Pentland Lea and The Firs, Seafield Road, Bilston has been in discussion with Planning Officers regarding a potential residential development of 13 dwellinghouses on the site of the two properties (Pentland Lea would be retained, but The Firs would be demolished) – as part of the applicant's plans they are proposing to remove the trees subject to the TPO consideration.

4 PROPOSAL

- 4.1 It is proposed to issue a Tree Preservation Order (TPO) covering eight individual trees and two tree groups as shown on the attached location plan and in the attached photographs and as described below:
- 4.2 The eight individual trees are all broadleaf species, located along property boundaries and comprise:
- A Beech tree (T1) marks the western boundary of Pentland Lea;
 - A Norway Maple tree (T2) and Sycamore tree (T3) punctuate the driveway at Pentland Lea and marks the boundary with The Firs;
 - An Alder tree (T4), Ash tree (T5) and Sycamore tree (T6) form a row along the north eastern boundary of The Firs;
 - A Cherry tree (T7) marks the access to The Firs and punctuates the boundary with Seafield Road; and
 - A Sycamore tree (T8) marks the driveway access to Pentland Lea.
- 4.3 Tree Group 1 (G1) comprises mature mixed species within the front gardens of Pentland Lea. The trees are clustered near the southern property boundary with Seafield Road and provide screening to the main dwellinghouse. As a group, the trees contribute notably to local amenity and the character of Seafield Road. The mix of species supports habitat and local biodiversity; adding to the mix of species found within the Bilston Burn corridor; which extends on the opposite side of Seafield Road. The group includes Birch, Larch, Beech, Norway Maple, Yew, Holly and Cherry.
- 4.4 Tree Group 2 (G2) comprises broadleaf species located along the eastern boundary of the Firs. The trees were most likely planted at the time that the dwelling at The Firs was built in order to provide screening; and continues to perform that role whilst providing relief and separation from recent housing at Corby Craig Avenue. This group consists of Sycamore, Whitebeam and Rowan.
- 4.5 The large mature Ash tree east of the dwellinghouse at Pentland Lea is not included in this proposal. It is evident that the tree is suffering from Ash Dieback Disease and although speed of decline varies; due to its likely retention span it is not considered suitable for a TPO.

5 PROCEDURES

- 5.1 The provision for issuing a Tree Preservation Order is set out in the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006 and the Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 2010. A planning authority may make a TPO if it appears to them to be “expedient in the interest of amenity and/or that the trees, groups of trees or woodlands are of cultural or historic significance” (Scottish Government Planning Circular 1/2011: Tree Preservation Orders).

- 5.2 Following the service of a TPO the owner of the land and other interested parties have the opportunity to make representation. However there is no right of appeal against a Tree Preservation Order.
- 5.3 The TPO shall be in effect for six months, during which time representations from the owner of the land and other interested parties will be considered. If the local planning authority wishes the TPO to stay in effect beyond the six months it must '*confirm*' the order.

6 PLANNING ISSUES

- 6.1 The individual trees and tree groups by means of their size, location and character form a visually prominent and important landscape feature in the local area. The trees feature in views along Seafield Road and from surrounding properties; adding to the setting and amenity of the area. They contribute notably to the character of Seafield Road, whilst providing screening, landscape softening and separation between new housing developments.
- 6.2 Within the wider landscape context, the trees contribute to the green network in terms of supporting habitat and biodiversity within the adjoining Bilston Burn corridor, and maintaining connectivity with planned green spaces in allocated housing site Hs16 (Phase 3) to the north, as well as the rural landscape that lies beyond (as illustrated in the attached masterplan).
- 6.3 The trees form part of the landscape character of the area and contribute to the local green network. The issuing of a TPO will be an important tool in protecting the trees aiding in the preservation of local amenity, biodiversity and habitat connectivity.

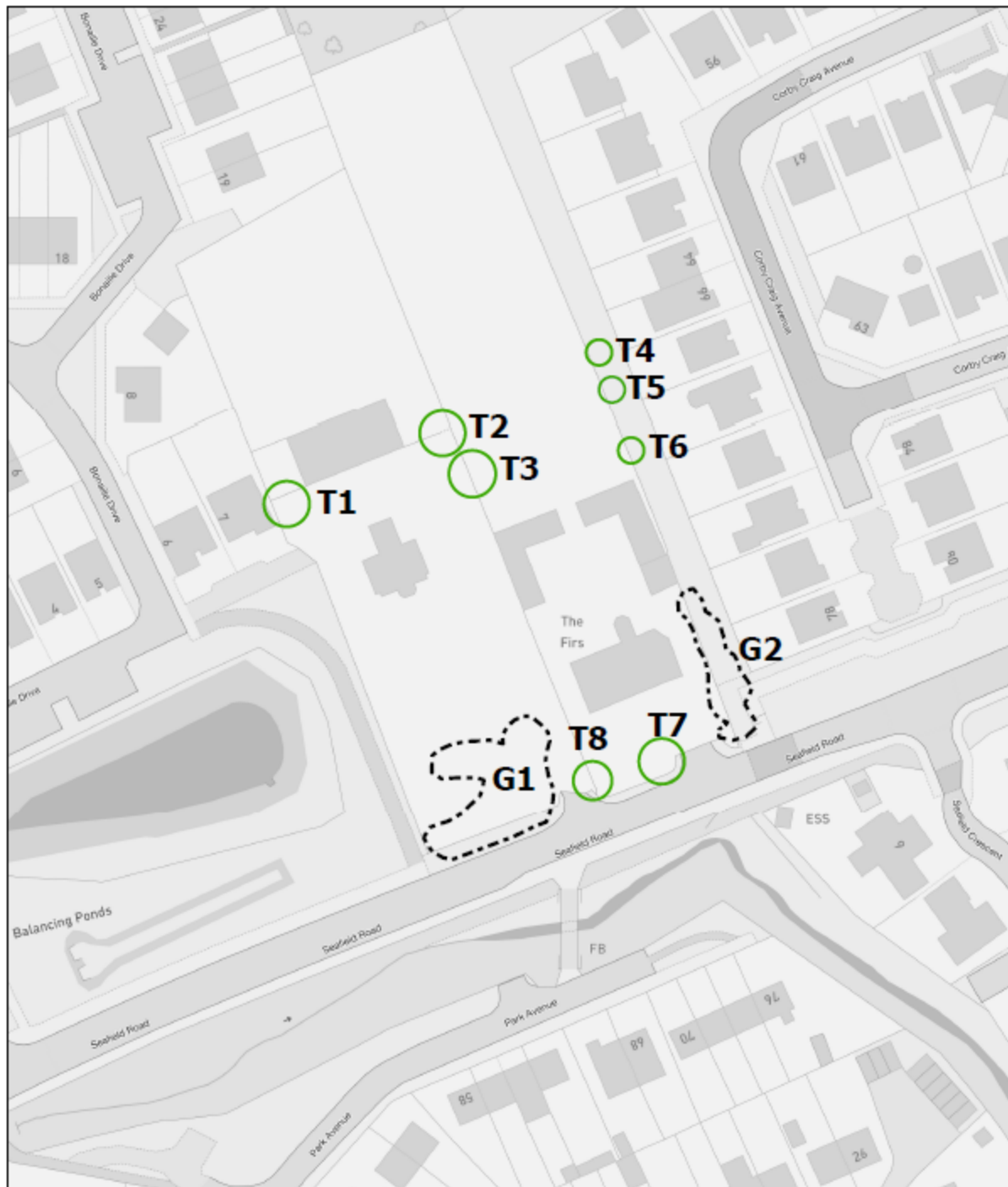
7 RECOMMENDATION

- 7.1 It is recommended that the Committee:
- a) Agree to the issuing of a TPO to protect the identified trees at Pentland Lea and The Firs, Seafield Road, Bilston; and
 - b) Agree to receive a further report to consider confirming the TPO once the owner(s) of the land and other interested parties have had the opportunity to make comment.

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date: 11 November 2022
Contact Person: Grant Ballantine
grant.ballantine@midlothian.gov.uk
Background Papers: Site location plan and site photographs

LOCATION PLAN
MIDLOTHIAN COUNCIL PROPOSED TREE PRESERVATION ORDER
PENTLAND LEA AND THE FIRS, SEAFIELD ROAD, BILSTON



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

Pentland Lea and The Firs, Seafield Road, Bilston
 Proposed Tree Preservation Order 1 of 2022

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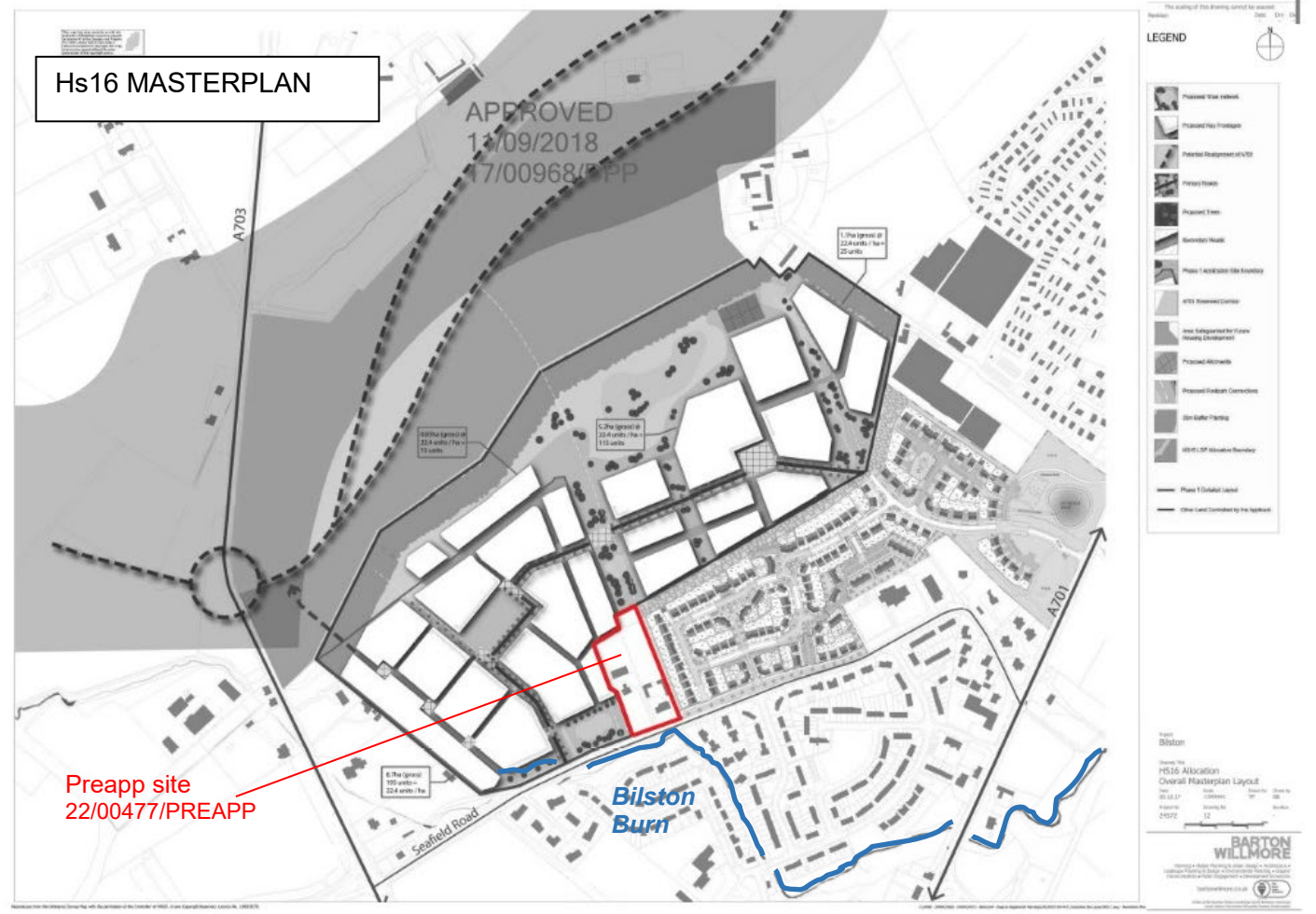
Midlothian Council Licence No. 100023416 (2022)

File No:

Scale: 1:1,000



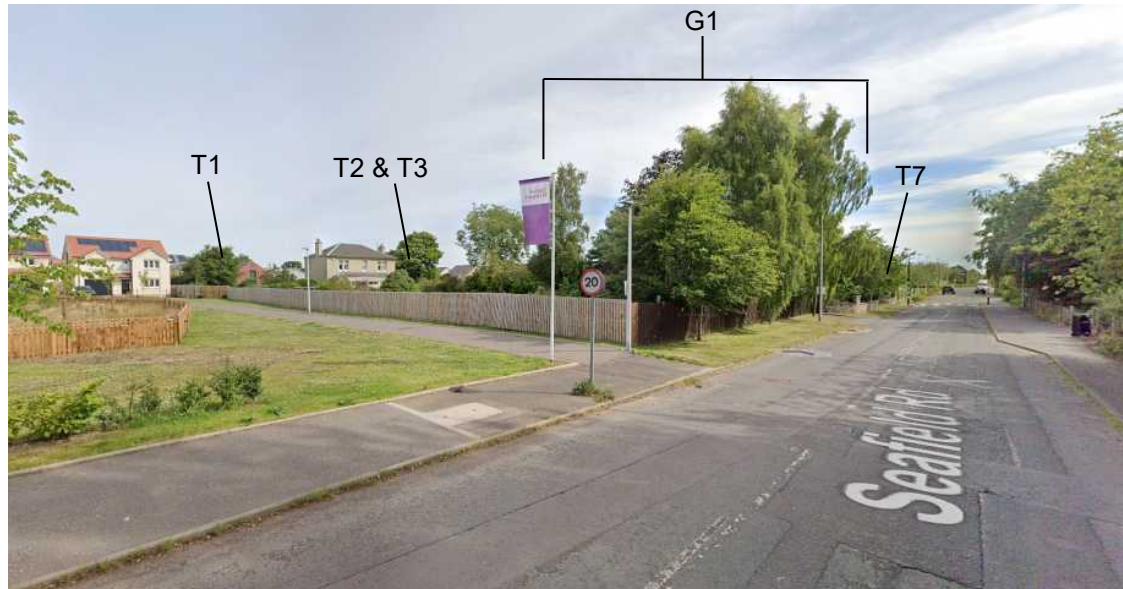
LOCAL DEVELOPMENT CONTEXT
MIDLOTHIAN COUNCIL PROPOSED TREE PRESERVATION ORDER
PENTLAND LEA AND THE FIRS, SEAFIELD ROAD, BILSTON



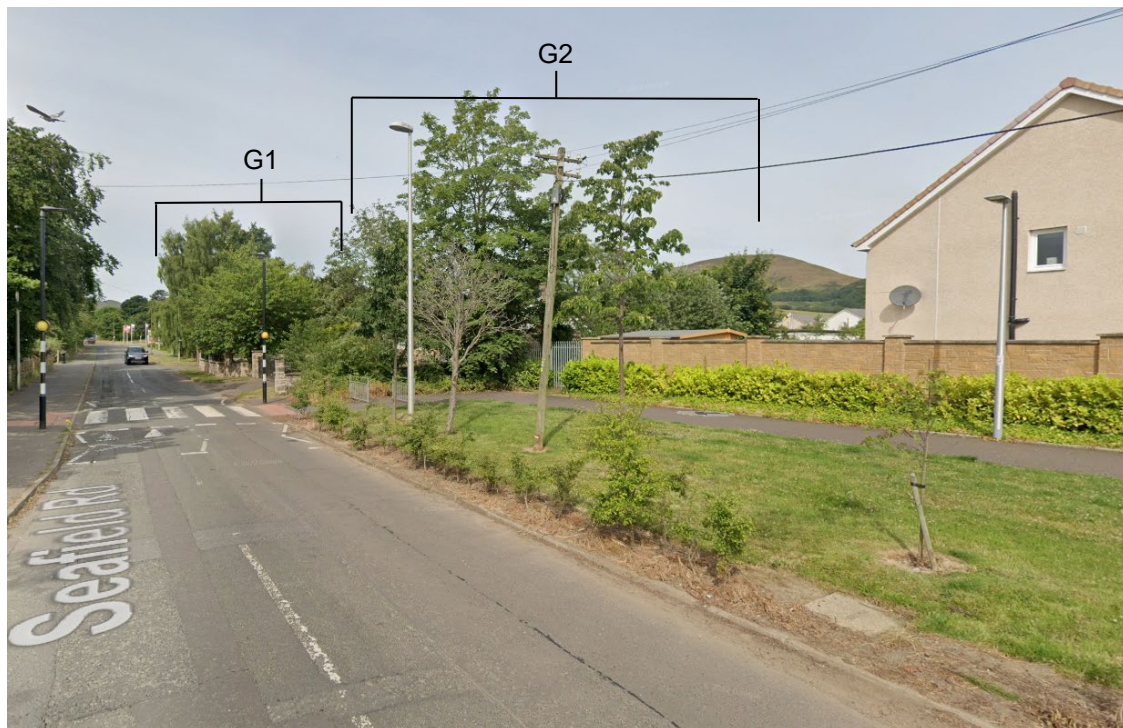
SITE PHOTOS

MIDLOTHIAN COUNCIL PROPOSED TREE PRESERVATION ORDER PENTLAND LEA AND THE FIRS, SEAFIELD ROAD, BILSTON

View in approach along Seafield Road (travelling east)



View in approach along Seafield Road (travelling west)



View north west towards Pentland Lea from Bilston Burn footbridge



View north towards The Firs from Bilston Burn footbridge



View south towards dwelling at The Firs from vacant land



View south west towards dwelling at The Firs from vacant land





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24a Stafford Street
Edinburgh
EH3 7BD

08 February 2023

Tree Preservation Order No 1 (2002)

Land at Pentland Lea and The Firs, Seafield Road, Bilston

Representation on behalf of Mr S Tiffney and Mr J Tiffney

Introduction

1. On 1 December 2022, Midlothian Council [MDC] issued a letter enclosing a Notice of the Making of a Tree Preservation Order no 1 (2022) [TPO], served on Mrs and Mrs Tiffney of Pentland Lea and Mr and Mrs Tiffney [the owners] of The Firs, Seafield Road, Bilston [the site].
2. This representation is on behalf of those recipients, who are the owners of part of the land to which the TPO relates, and it one of objection to the TPO. The reasons for objection are set out below. It is submitted by the 10 February 2023 deadline, as agreed in writing with MDC.

Background

3. The site comprises two detached houses with outbuildings set within relatively spacious grounds, both houses being set back from the frontage onto Seafield Road and with large rear gardens. Until recently the properties were surrounded by agricultural land, comprising fields with hedgerow and mature trees.
4. Over the recent past the context of the site has changed significantly – from semi-rural to modern urban due to the erection of a significant amount of housing. The site is now surrounded on three sides by modern housing estate, with some new landscaping which will become established over time. Notwithstanding this change, the owners have continued to manage their land including retention of the trees.



Source Google Maps [from 2008]



Source Google Maps [from 2022]

Pre-Application Submission

5. As the site is wholly contained within the settlement of Bilston which now has an urban character and form, on 24 June 2022, a pre-application submission was made to MDC to discuss the potential for residential development at the site. An illustrative layout was shown, diagrammatically indicating how development *could* take place, on a site within the built area and identifying the potential to optimise opportunities, in the interests of sustainability (ie reduction of green field release) to prompt discussion regarding the site. No works have been carried out to the trees and it has not been the owner's intentions to carryout any works, pending the discussion with MDC.
6. Some 10 weeks later, on 6 September 2023, the case officer visited the site and then no further contact was made until the issuing of the TPO came to the owners attention on 4 December 2022, more than 5 months after first pre-application submission. On 23 December 2022, 6 months after the pre-application submission, the case officer issued the response (copy email attached as Appendix 1). The owner's considered that a more reasonable approach would have been to enter into dialogue between the two parties, noting that no reference is made to the TPO in the pre-application response although it is stated that *'the removal of trees should be avoided'*.
7. It is noted that the report into the proposed making of the TPO (dated 22 November 2022 – referred to below as 'the TPO report') states that *'as part of the applicant's plans they are proposing to remove the trees subject to the TPO consideration'*. It must be noted that the pre-application, as described above was submitted prior to consideration of the TPO's and the purpose of the pre-application was to promote discussion regarding development. At no time have the owners stated that the trees would be removed, which is evidenced by the fact that no works were carried out to the trees whilst not controlled.
8. It should also be noted that the TPO report refers to all trees the subject of the TPO being identified as being lost – this is not correct (see below).

The TPO

9. The unsigned TPO received by an owner is dated 1 December and relates to 8 trees and 2 groups of trees. The trees appear to be indicatively identified on the accompanying plan and it appears that :

T1	Beech	Pentland Lea
T2	Norway Maple	Pentland Lea or The Firs
T3	Sycamore	Pentland Lea or The Firs
T4	Alder	Not on site but on adjoining land
T5	Ash	Not on site but on adjoining land
T6	Sycamore	Not on site but on adjoining land
T7	Cherry	Pentland Lea
T8	Sycamore	Pentland Lea or The Firs
G1	Birch, Larch, Beech, Norway Maple, Yew, Holly, Cherry	Pentland Lea
G2	Sycamore, Whitebeam, Rowan	Not on site but on adjoining land
10. As noted in the TPO report, three individual trees (T4, T5 and T6) and Group G2 are not within the site and would not, therefore, be under threat from development even if the site were to be developed. Those trees can be covered by TPO will continue to provide the noted screening, relief and separation.
11. It appears that the TPO is not substantiated by topographical survey and arboricultural report to properly consider the health and appropriateness of the trees for protection, reference only being made to the health of one Ash tree on site (excluded from the TPO). It is considered that such health and appropriateness for protection should be carried out prior to making any decision to subject the trees (and therefore owners) to the constraints of a TPO.
12. The stated reason for the making of the TPO is that *'the trees contribute notably to the character of Seafield Road, whilst providing screening, landscape softening and separation between housing developments. The trees feature in views along Seafield Road, adding to the setting and amenity of the area. Within the wider landscape context, the trees contribute to the green network in terms of supporting habitat and biodiversity within the adjoining Bilston Burn corridor, and maintaining connectivity with planned green spaces in allocated housing site Hs16 and the rural landscape beyond. Mature boundary trees are a defining feature of the area. Should the trees be felled it would have a detrimental impact on local amenity, biodiversity and habitat connectivity.'*
13. Notwithstanding the above comments, it is noted that there are few trees subject to TPO in the area and adjoining the burn, despite those trees providing significantly greater impact in the visual amenity of the area. It is unclear why those trees are not considered to be sufficiently important to warrant protection.



Source : MDC TPO Planning Portal – confirmed TPO indicated

Representations

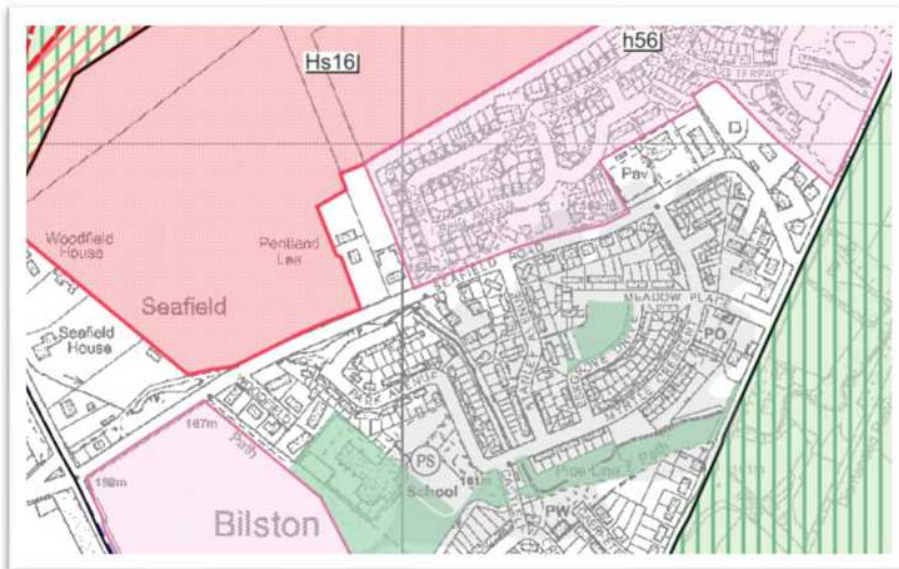
14. The owners consider that the TPO is not appropriate as they have maintained the trees and landscaping at the site for a considerable time and will continue to do so, in line with appropriate redevelopment plans which were the subject of initial plans to prompt discussion through pre-application submission only, which it is considered is the proper approach to development proposals. The owners consider that the imposition of the TPO during this process was unreasonable and unnecessary. It is requested that the TPO is not confirmed for the reasons expressed below.
15. The TPO incorrectly defines the site as it includes land outside the Firs and Pentland Lea. It is understood that no arboricultural assessment has been carried out to define the health and appropriateness of trees identified in the TPO and accordingly the making of the TPO is premature as it could protect trees that should not be protected [for example sycamore trees and cherry trees]
16. The identified trees are not under threat from development – as evidenced by the proper pre-application approach taken by the owners towards the development of the area. Works could have been carried out prior to the pre-application process and accordingly, the owners are being adversely impacted by the actions of the council in this matter. The trees outside the owners control, and which provide the screening and visual impact referred to in the TPO and Tree Report would be retained even if development were to proceed on site.
17. Notwithstanding the reasons for the imposition of the TPO, other trees of greater importance – i.e. the trees actually adjoining the Bilston Burn, are not protected, which undermines the reasons for this TPO. Those trees to the south side of Seafeld Road (right-hand in picture extracts below) provide greater contribution to the street scene and even if there were any loss of the frontage trees at the site, such open area would be in keeping with Bilston, as now developing and evolving, on this side of Seafeld Road



Source : Google Maps 2022

18. MDC should not retrospectively protect the amenity of the area through the imposition of this TPO. Had such protection been necessary, or had augmentation been required to provide a meaningful screening and softening appearance, the correct approach should have been through the requirement for additional planting as part of the landscaping proposals for the new housing development – it is not the responsibility of the owners to now ensure the protection of amenity.
19. It is clear from the reasoning for the TPO that MDC considers the trees add to the '*screening, landscape softening and separation between housing developments*' yet this was not a material consideration in determining the housing developments, despite policy in the MLDP requiring landscaping for development proposals [for example DEV 5 Sustainability in New Developments, DEV 6 Layout and Design of New Developments, DEV 7 Landscaping in New Development]. Residential amenity was assessed, and the trees were not identified as being important to amenity, the Handling report stating '*8.12 All of the proposed buildings are sufficiently distanced from existing neighbouring houses so as not to give rise to any demonstrable harm to their residential amenity in terms of loss of daylight, loss of sunlight or overlooking. There would be no significant harm to the amenity of any existing neighbouring property from the proposed development.*'
20. Planning permission in principle has been granted for a house on the site, due to expire on 31 March 2023. In the consideration of that application, the Handling reports states that : *The land to the west and further north has been allocated for housing with a permission recently granted. The approved site plan for this housing site shows houses to the west backing onto the current application site. There is sufficient distance between the two sites to ensure no overlooking or impact on privacy between the properties*'. The separation of the houses is therefore sufficient, without the need for the screening the trees provide.
21. The Proposals Map of the MLDP does not identify the Bilston Burn in this location as being important for open space or amenity and it is not identified as an important green network. Even if the trees were

to be removed, the SuDs pond for the major housing development lies to the immediate west, which provides for green network to the Bilston Burn.



Source : Extract MDLP Proposals Map

Conclusions

22. The owners of the site who have been served Notice regarding the TPO consider that it is not appropriate for the trees to be protected at this time, pending discussion regarding the potential redevelopment of the area. The trees are not under threat and whilst provide a degree of maturity to the landscaping in the area, they are by no means the most important landscaping in the area - that is afforded by the planting on the Bilston Burn and to the south of Seafield Road, which the Council recognises as important but has not protected.
23. Bilston is in the process of considerable change, and it is clear from inspection of the redeveloped area that MDC has not sought considerable frontage planting to Seafield Road, and that the existing trees are not necessary to protect visual or residential amenity. The green network to Bilston Burn is retained via the SuDs area to the recent housing development, which is a permanent feature.
24. It is requested that :
 - the TPO is not confirmed as it is premature, unjustified and unnecessary and
 - MDC continues its discussion regarding the potential for the redevelopment of the site, with which detail, as expressed in the pre-application response, the owners are generally intending to comply.



Appendix 1 Pre-Application Email Response

From: Whitney Lindsay <Whitney.Lindsay@midlothian.gov.uk>
Sent: 23 December 2022 11:59
To: Rory Gibson <Rory.Gibson@RoryGibsonArchitects.co.uk>
Subject: 22/00477/PREAPP - Land At Pentlandslea and The Firs, Seafield Road

Afternoon Rory,

Apologies for the delay in providing a pre-application response.

Pre-application Enquiry for the Erection of 13 dwellinghouses at land at Pentlandslea and The Firs, Seafield Road

I refer to your pre-application enquiry regarding the Erection of 13 dwellinghouses at land at Pentlandslea and The Firs, Seafield Road

Planning policy currently comprises National Planning Framework 3 and Scottish Planning Policy, SESPlan and the adopted Midlothian Local Development Plan 2017. On 8 November the Revised Draft National Planning Framework 4 was submitted to the Scottish Parliament for approval along with an Explanatory Report that outlines the changes from Draft NPF4 to the Revised Draft. The Planning Act requires that NPF4 must be approved by the Scottish Parliament before it can be adopted by Scottish Ministers. On adoption the provisions in the Planning Act will commence to make NPF4 part of the statutory development plan. The existing National Planning Framework 3 and Scottish Planning Policy remain in place until NPF4 has been adopted by Scottish Ministers. As the Revised Draft NPF4 is at an advanced stage and represents the settled view of the Scottish Government in terms of its planning policy it is a material consideration of significant weight in the assessment of the application.

I can advise that, for planning purposes, the site is located in an area covered by the Midlothian Local Development Plan 2017. This local development plan was adopted in 2017 and contains the policies against which planning decisions are made in this local authority area. The main relevant planning policies are DEV2: protecting Amenity within the Built-Up Area, DEV5: Sustainability in New Development, DEV6: Layout and Design of New Development, DEV7: Landscaping in New Development, TRAN5: Electric Vehicle Charging and ENV11: Woodland Trees and Hedges. The application site is sandwiched between two allocated housing sites; Hs16 and h56. The full text for these policies can be found in the local plan document which is available via the Council's online planning pages.

You are seeking advice in relation to your proposal for the a residential development which comprises of the following:

- Erection of 13 dwellinghouses

As the application site is located within the built-up area there is a presumption in favour of development that complies with the relevant policies of the adopted Midlothian Local Development Plan 2017, and would not have a detrimental impact on the character or amenity of the surrounding area. The main considerations in the assessment of the current proposal is the impact upon the character and appearance of the area, residential amenity, impact upon neighbour amenity, parking and road safety, drainage, protected species and trees.

Whilst the principal of a residential development may be acceptable at the application site, I do have some concerns regarding the density of the proposal. The application site relates to a narrow rectangular plot of land that is host to two existing dwellinghouses that are sandwiched between residential developments. The proposed layout does not visually connect or relate to the surrounding developments or the layout of the area.

It is considered that there is scope for a small residential development at the application site as, however, this should avoid the loss of mature trees and siting of dwellinghouses to the front of the existing dwellinghouses. There should also be some sort of landscaping buffer/planting along the eastern boundary of the site so retain the Bilston Burn Corridor. Any revised proposals should look at incorporating the existing trees into the layout and utilise them to enhance the development.

In terms of roads and drainage, it is noted that the Councils Policy and Road Safety Manager offered no objection in principle to this proposal but noted that the following issues would require to be addressed at any detailed design stage :

1. The minimum requirement for an adoptable access road would be 5.5m wide with a 2m wide footway on one side and a 2m wide grass verge / service strip on the other. Given the limited traffic flows the access could be formed as a 5.5m wide 'shared surface' with a 2m wide grass verge / service strip on both sides if required.
2. The existing grass verge over the site frontage would require to be changed to a 2m wide public footway with any redundant access points being infilled.
3. Details of the new access and its driver visibility splay would be required and any alterations required to the traffic calming features / zebra crossings over the site frontage.
4. Details of the proposed surface water management strategy would be required to ensure that any development did not result in an increase in flooding risk in the local area.

It is noted that policy DP2 Development Guidelines, from the now superseded 2008 Midlothian Local Plan, sets out the Development Guidelines that are to be applied for residential developments. The policy indicates the standards that should be applied when considering applications for dwellings. The guidance set out within this policy has been successfully applied to development proposals throughout Midlothian and will be reflected within the Council's Supplementary Guidance (SG) on Quality of Place which is currently being drafted.

The impact upon neighbouring amenity would need to be assessed in terms of impact of the development overall upon neighbouring properties in terms of overlooking, overshadowing, overbearing, outlook, daylighting etc... Furthermore, each dwelling would need to be afforded an acceptable level of amenity in terms of outlook, daylighting, privacy etc..



It is noted that there are a number of trees in and around the site, therefore a tree survey, Arboricultural Impact Assessment and tree retention/removal plan should be carried out and the removal of trees should be avoided.

As there are trees in an around the site along with existing buildings on site, an ecology/bat survey is likely to be required.

It is noted that site investigations are also likely to be required – in terms of planning, if permission was granted this could be conditioned.

There would also be a requirement for developer contributions – if you could provide a breakdown of how many bedrooms each dwelling will have, then I could arrange for a rough figure to be calculated.

Overall, it is considered that the principal of the residential development could be supported by the Planning Authority, as long as the development is reduced in density and is of a high quality that positively contributes and enhances the character, appearance and setting of the area and retains the trees to the front of the existing dwellinghouses/site as well as complying with the relevant policies of the adopted Midlothian Local Development Plan 2017, and would not have a detrimental impact on the character or amenity of the surrounding area.

Please note that the above comments are made on an informal basis only and are consequently not binding on the Council. Should a formal planning application be submitted other matters may be raised by third parties and consultees which are pertinent to the proposed development.

I would also advise that any future planning applications may be the subject of consultations with other relevant bodies/agencies.

Should you still wish to submit a planning application, you will be able to locate the relevant application forms via the Council's online planning pages: <https://www.eplanning.scot/ePlanningClient/>

Should you have any further questions, please do not hesitate to get in contact.

Kind regards,

Whitney

Whitney Lindsay

Planning Officer - Local Developments

Planning, Sustainable Growth and Investment Service





Place Directorate
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Dalkeith
EH22 3ZN

whitney.lindsay@midlothian.gov.uk



NON COMPLIANCE WITH THE REQUIREMENTS OF AN ENFORCEMENT NOTICE REGARDING THE ERECTION OF A GARAGE AND SUN ROOM AT 1 LAUREL BANK ROAD, MAYFIELD.

Report by Chief Officer Place

1 REPORT SUMMARY AND RECOMMENDATION

- 1.1** This report relates to the non-compliance with the requirements of an enforcement notice served by the Council pursuant to Section 127 of the Town and Country Planning (Scotland) Act 1997, as amended, with regard the erection of a building comprising a garage and sun room at 1 Laurel Bank Road, Mayfield.
- 1.2** The enforcement notice required the dismantling of an unauthorised building that comprises a garage and sun room and to also remove the dismantled materials from the site. None of these steps have been taken, either by the enforcement notice compliance date of 23 November 2022 or to date (at the time of drafting this report). Non-compliance with an enforcement notice constitutes an offence.
- 1.3** This report recommends that the Committee instruct the Planning, Sustainable Growth and Investment Manager to refer the case to the Crown Office and Procurator Fiscal Service for consideration to be given to prosecutorial action in relation to the parties who have breached the enforcement notice, pursuant to Section 136 of the Town and Country Planning (Scotland) Act 1997. The maximum penalty on successful prosecution is a fine of up to £50,000 per offence.

2 BACKGROUND

- 2.1** A retrospective planning application (19/00687/DPP) for the erection of garage, sun room and decking (retrospective) at 1 Laurel Bank Road, Mayfield was refused 13 September 2019 and a subsequent notice of review was dismissed by the Local Review Body (LRB) at its meeting of 18 February 2020. The planning application was refused and subsequent review dismissed for the following reasons:

- 1 As a result of a combination of its forward projection, design and materials the building appears as an incongruous feature out of*

keeping with the character of the original house at the application property and has a detrimental impact on the visual amenity of the surrounding area.

- 2 *For the above reason the proposal is contrary to policy DEV2 of the adopted Midlothian Local Development Plan 2017 which seeks to protect the character and amenity of the built-up area.*

- 2.2 Despite the refusal of planning permission and the LRB decision to dismiss the review the property owner had not taken action to remedy the breach of planning control and the unauthorised building remained in situ and as such an enforcement notice was issued 17 February 2022, with a take effect date of 23 March 2022 and a five month compliance period. A copy of the enforcement notice is attached to this report as Appendix A. The enforcement notice required the property owner to:
1. Dismantle the building that houses the unauthorised garage and sun room; and
 2. Remove all dismantled materials permanently from the land subject of this notice.
- 2.3 Although the decking does not have the benefit of planning permission it is considered to be acceptable in planning terms and as such it was considered not to be expedient to require its removal as part of the enforcement notice. The reason to refuse the retrospective planning application did not include reference to the decking.
- 2.4 The property owners appealed the enforcement notice - a Scottish Government Reporter appointed to determine the appeal dismissed it and upheld the enforcement notice. A copy of the appeal decision is attached as Appendix B. As a consequence of the appeal the compliance period is extended to 23 November 2022 (five months after the appeal decision).
- 2.5 In reaching the decision the Reporter confirmed that a breach of planning control had taken place onsite as alleged and that the proposed steps to address the breach of planning control were not excessive.
- 2.6 Because of the nature and scale of the breach of planning control, rather than recommending referral to the Crown Office and Procurator Fiscal Service (COPFS) as a financial punitive step the Council issued a Fixed Penalty Notice on 24 January 2023 as an alternative course of action to see if this would resolve the breach of planning control.
- 2.7 Section 136A of the Town and Country Planning (Scotland) Act 1997 as amended provides that a local planning authority may serve a Fixed Penalty Notice (FPN) if it is identified that a person is in breach of a valid enforcement notice. A FPN requires a fine of £2,000 to be paid (reduced by a quarter if paid within 5 days of being issued) as an

alternative to prosecutorial action. The issuing of a FPN precludes other prosecutorial action if it is paid within 30 days. The FPN has not been paid.

- 2.8 During a site inspection by a Council officer in early March 2023 it was established that none of the enforcement notice requirements had been complied with by the required date (see photographs attached as Appendix C). The land owners have formally been informed that as the FPN has not been complied with and the enforcement notice has also not been complied with, that being an offence, the matter would be referred to the Committee for consideration of prosecutorial action.

3 THE LEGISLATIVE POSITION

- 3.1 It is not a criminal offence for development to take place without the requisite planning permission, but it is an offence to fail to comply with an enforcement notice. There is a 6 month period from the date of the offence occurring (that is the date by which the notice should have been complied with, not the date from which the breach of planning control occurred) in which a prosecution could be potentially brought.
- 3.2 In Scotland the Crown Office and Procurator Fiscal Service (COPFS) are responsible for making decisions about prosecutorial actions. In the majority of instances, criminal offences are referred to COPFS by Police Scotland. However, other bodies who are the responsible regulatory organisation for particular legislative areas will also refer cases. This includes the Health and Safety Executive, the Scottish Environmental Protection Agency and local authorities in relation to planning and other matters.
- 3.3 It should be noted that failure to comply with an enforcement notice is not only an offence, it is also a continuing offence should a prosecution be successfully brought, a conviction secured and the enforcement notice requirements remain outstanding. For example, if non-compliance with the enforcement notice requirements continued for a further month after conviction that would be a further 31/30 offences occurring which would bring further potential implications for a defendant in terms of further potential convictions, criminal records and levels of fines.
- 3.4 The Town and Country Planning (Scotland) 1997 Act provides that *"In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence"*
- 3.5 The failure to comply with an enforcement notice is clearly regarded as a serious matter and understandably so by the Scottish Ministers because of its implications for the integrity of the planning system and indeed in relation to the upholding of the rule of law. The Planning

(Scotland) Act 2019 which has now been enacted specifically provided for the increasing of fines for a number of enforcement related matters. In relation to enforcement notices the level of fine on successful prosecution has increased from a maximum of £20,000 to £50,000.

4 OTHER CONSIDERATIONS

- 4.1 The Scottish Government Policy on planning enforcement is contained in Circular 10/2009: Planning Enforcement. It includes the following guidance that is particularly relevant to the consideration of this case :

“Planning authorities should bear in mind the statutory time limits for taking enforcement action and, in particular, the possibility that a referral to the Procurator Fiscal to determine whether to initiate a criminal prosecution may need to be made promptly in those cases where breaches have to be prosecuted within 6 months of the date on which the offence was committed. This is not the date of the alleged breach of planning control but the last date of failure to comply with the Notice requiring the breach to be remedied.”

“The integrity of the development management process depends upon the planning authority's readiness to take effective enforcement action when necessary. Public respect for the development management system is undermined if unauthorised development, which is unacceptable on its planning merits, is allowed to proceed without any apparent attempt by the planning authority to intervene before serious harm to amenity results from the breach.”

5. CONCLUSION

- 5.1 The responsibility of the outstanding breach of planning control lies with the landowners who decided to erect the unauthorised building without the benefit of planning permission. All of the unauthorised development which is the subject of the enforcement notice remains on site in breach of the enforcement notice requirements. The unauthorised development has been the subject of public complaint.
- 5.2 It is for COPFS to make the final decision with regard prosecutorial action against the non-compliance with an enforcement notice. In this case, unauthorised development has been carried out which does not have the benefit of planning permission. A planning application for the erection of garage, sun room and decking (retrospective) at 1 Laurel Bank Road, Mayfield was refused and a subsequent notice of review was dismissed by the Council's LRB. The Council has lawfully served an enforcement notice in relation to unauthorised developments and that notice has been upheld on appeal by the Scottish Ministers. The notice has not been complied with within the period specified by the notice. It is an offence for an enforcement notice not to be complied with. Therefore having regard to the guidance provided by Scottish Ministers in Circular 10/2009, the serious nature of the breach of

planning control and the Council's responsibility to uphold confidence and integrity in the planning system and the rule of law, it is considered to be in the public interest for the Council to refer this case to COPFS.

6 RECOMMENDATION

- 6.1 It is recommended that the Committee determine to instruct the Planning, Sustainable Growth and Investment Manager (or an alternatively appropriately appointed officer) to refer the case to the Crown Office and Procurator Fiscal Service for consideration of prosecutorial action pursuant to Section 136 of the Town and Country Planning (Scotland) Act 1997 as amended.

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date: 20 March 2023
Contact Person: Matthew Atkins, Lead Officer Planning Obligations
matthew.atkins@midlothian.gov.uk

**IMPORTANT
THIS COMMUNICATION AFFECTS YOUR PROPERTY**

**Town and Country Planning (Scotland) Act 1997, as amended
by the Planning (Scotland) Act 2019 (“the Act”)**

ENFORCEMENT NOTICE

Issued by Midlothian Council

17 February 2022

**Mr. James Bevis and Ms. Louise Axon
1 Laurelbank Road
Mayfield
Dalkeith
EH22 5HT**

- 1. THIS IS A FORMAL NOTICE** issued by Midlothian Council (“the Council”) because it appears that there has been a breach of planning control under the terms of section 123(1)(a) of the Act (as amended) at the land described below. The Council considers it expedient to issue this Enforcement Notice (“EN”) having regard to the provisions of the development plan and to other material planning considerations. Note that Schedule 1 of this EN contains important information.

2. THE LAND TO WHICH THE NOTICE RELATES

Land at 1 Laurelbank Road, Mayfield, Dalkeith, EH22 5HT, as shown edged in red on the location plan attached to this EN.

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

Without planning permission, the erection of a detached garage and sun room on the land referred to in Part 2 of this Notice (above) which was completed within a period of four years prior to the date of service of this EN (17 February 2022).

(IMPORTANT – CONTINUES ON NEXT PAGE)

4. REASONS FOR ISSUING THIS NOTICE

- (a) Retrospective planning permission (reference 19/00687/DPP) for the erection of the garage and sun room subject of this Notice, was refused by Midlothian Council on 13 September 2019.
- (b) A Notice of Review for the refused planning permission - referred to in part 4 (a) above - was submitted by the joint owner of the property on 13 December 2019. The Council's Local Review Body (LRB) dismissed the review at its meeting on 18 February 2020.
- (c) Notwithstanding the decision of the LRB - referred to in part 4(b) above - the unauthorised development subject of this Notice remains in place, at the date of service of this Notice (17 February 2022).
- (d) The Council's planning authority has deferred taking enforcement action - following the decision of the LRB - due to the circumstances relating to the Covid 19 pandemic. However, that situation has now improved and the unauthorised building that houses both developments now needs to be removed. Its continuing presence on the land - beyond the allowances already made for the Covid 19 pandemic - is in conflict with the democratic, planning, decision making process (as referred to in parts 4(a) and 4(b) of this Notice above) and would thereby undermine the credibility of the planning system and public trust in its outcomes.

5. WHAT YOU ARE REQUIRED TO DO

- A Dismantle the building that houses the unauthorised garage and sun room and
- B remove all dismantled materials permanently from the land subject of this Notice.

6. TIME PERIOD FOR COMPLIANCE

Within 5 calendar months from when this Notice takes effect, namely by 23 August 2022.

7. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on 23 March 2022 unless an appeal is made against it beforehand.

(IMPORTANT – CONTINUES ON NEXT PAGE)

Signed

A handwritten signature in black ink, appearing to read 'M. A.', is positioned within a light gray rectangular box.

Matthew Atkins

Lead Officer Planning Obligations
Midlothian Council.

On behalf of:

Derek Oliver

Chief Officer - Place,
Midlothian Council.

Date: 17 February 2022

(IMPORTANT – CONTINUES ON NEXT PAGE)

8. **YOUR RIGHT OF APPEAL**

You can appeal against this notice, but any appeal must be received, or posted in time to be received by the Scottish Ministers before 23 March 2022. Any other person who has an interest in the land to which this notice relates may also appeal to the Scottish Ministers by the same date.

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

9. **WHAT HAPPENS IF YOU DO NOT APPEAL**

If you do not appeal against this EN, it will take effect on 23 March 2022 and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period specified in the notice. Failure to comply with an enforcement notice which has taken effect can result in prosecution or the service of a Fixed Penalty Notice on the relevant person(s) who have not complied with its requirements in terms of s145A(1) of the Act. Failure to comply with an enforcement notice which has taken effect may also result in the Council taking direct action to correct the breach.

(IMPORTANT – CONTINUES ON NEXT PAGE)

SCHEDULE 1

EXPLANATORY NOTE FOR THOSE IN RECEIPT OF AN ENFORCEMENT NOTICE

RELEVANT LEGISLATION

A copy of copy of Sections 123, 124, 127-139 of the Act is attached. You may wish to note the points referred to below.

RIGHT OF APPEAL

If you wish to appeal against this EN, you should write to Planning and Environmental Appeals Division, Ground Floor, Hadrian House, Callendar Business Park, Callendar Road, Falkirk, FK1 1XR. The appeal must be received, or posted in time to be received by the Scottish Ministers before the date on which this notice takes effect. The Scottish Ministers have no power to consider an appeal lodged out of time.

The appeal, which must be made in writing, must be based on one or more of the grounds set out in section 130 of the Act. If you decide to appeal you should state the facts on which you propose to rely in support of each of the grounds of appeal. The grounds of appeal and the statement of facts must be submitted with your appeal or within fourteen days of your being required to do so by the Scottish Ministers.

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

PENALTIES FOR NON-COMPLIANCE WITH AN ENFORCEMENT NOTICE

Where an enforcement notice requires the discontinuance of a use of land or compliance, in respect of a use of land or the carrying out of operations, with any conditions or limitation, then any person who, without the grant of planning permission uses the land or causes or permits it to be used, or carries out these operations or causes or permits them to be carried out, is guilty of an offence and liable on summary conviction to a fine not exceeding £50,000 or on conviction on indictment to an unlimited fine. If the use or operations are continued after conviction, the person may be convicted of a second or subsequent offence. In determining the amount of any fine for any convicted person, in either circumstance, the court shall in particular have regard to any financial benefit that has accrued - or appears likely to accrue - to any person who has committed the offence. That consideration will similarly apply to the level of fine imposed by the court on any convicted person who complies with an enforcement notice requiring the removal or alteration of a building(s) or works, in cases where the building(s) or works are subsequently re-instated or restored at any time after the compliance date.

(IMPORTANT – CONTINUES ON NEXT PAGE)

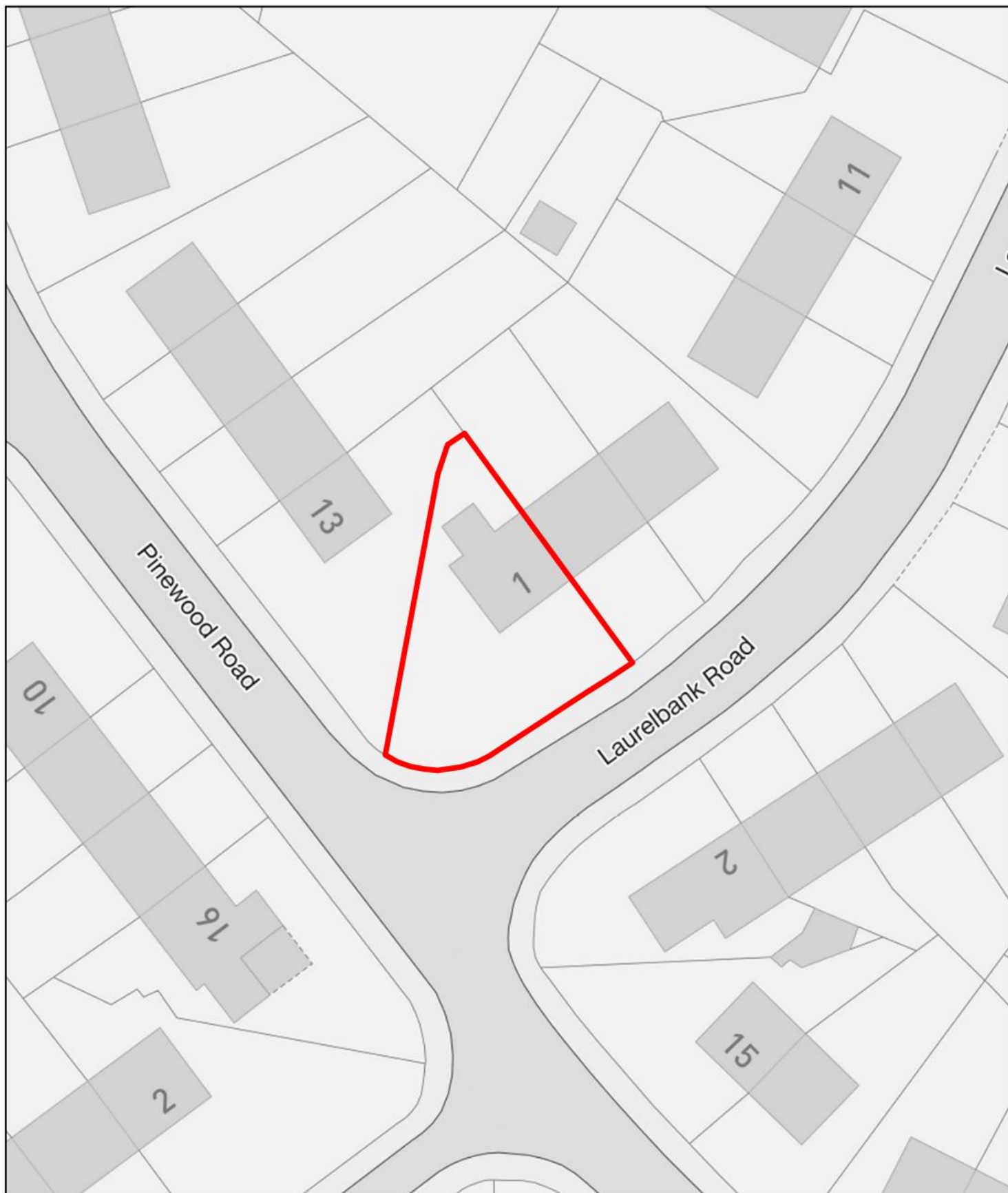
As an alternative to prosecution the Council may serve a Fixed Penalty Notice. This requires payment of a fine to be made within 30 days of its service, which will be retained by them. The level of fine is £2,000 for non-compliance with an enforcement notice. If payment is made within the first 15 days following service of a Fixed Penalty Notice the amount to be paid to the Council is reduced to £1,500.

DIRECT ACTION FOR NON-COMPLIANCE WITH AN ENFORCEMENT NOTICE

If the steps required by an enforcement notice are not taken within the specified period(s) the Council may also enter on the land, take those steps and recover the costs involved, from the owner or lessee of the land.

FURTHER OFFENCES

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



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

Enforcement Notice

Land at 1 Laurelbank Road, Mayfield, EH22 5HT

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Scale: 1:400

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	PART VI ENFORCEMENT		
	<i>Application</i>		
Expressions used in connection with enforcement	123	(1)	For the purposes of this Act -
		(a)	carrying out development without the required planning permission, or
		(b)	failing to comply with any condition or limitation subject to which planning permission has been granted, or
		(c)	initiating development without giving notice in accordance with section 27A (1) of this Act, or
		(d)	carrying out development without displaying a notice in accordance with section 27C (1) of this Act
			constitutes a breach of planning control.
		(2)	For the purposes of this Act -
		(a)	the issue of an enforcement notice, or
		(b)	the service of a breach of condition notice,
			under this Part constitutes taking enforcement action as does the issuing of a notice under section 33A
		(3)	In this Part “planning permission” includes planning permission under Part III of the 1947 Act and Part III of the 1972 Act.
Time Limits	124	(1)	Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of 4 years beginning with the date on which the operations were substantially completed.
		(2)	Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of 4 years beginning with the date of the breach.
		(3)	In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach.
		(4)	Subsections (1) to (3) do not prevent -
		(a)	the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect, or
		(b)	taking further enforcement action in respect of any breach of planning control if, during the period of 4 years ending with that action being taken, the planning authority have taken or purported to take enforcement action in respect of that breach.
Enforcement Notices			
Issue of enforcement notice	127	(1)	The planning authority may issue a notice (in this Act referred to as an “enforcement notice”) where it appears to them –
		(a)	that there has been a breach of planning control, and
		(b)	that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.
		(2)	A copy of an enforcement notice shall be served -
		(a)	that there has been a breach of planning control, and
		(b)	on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
		(3)	The service of the notice shall take place -

		(a)	not more than 28 days after its date of issue, and
		(b)	not less than 28 days before the date specified in it as the date on which it is to take effect.
Contents and effect of notice	128	(1)	An enforcement notice shall state -
		(a)	the matters which appear to the planning authority to constitute the breach of planning control, and
		(b)	the paragraph of section 123(1) within which, in the opinion of the authority, the breach falls.
		(2)	A notice complies with subsection (1) (a) if it enables any person on whom a copy of it is served to know what those matters are.
		(3)	An enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the following purposes.
		(4)	Those purposes are –
		(a)	remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or
		(b)	remedying any injury to amenity which has been caused by the breach.
		(5)	An enforcement notice may, for example, require -
		(a)	the alteration or removal of any buildings or works,
		(b)	the alteration or removal of any buildings or works,
		(c)	any activity on the land not to be carried on except to the extent specified in the notice, or
		(d)	the contour of a deposit of refuse of waste materials on land to be modified by altering the gradient or gradients of its sides.
		(6)	An enforcement notice issued in respect of a breach of planning control consisting of demolition of a building may require the construction of a building (in this section referred to as a “replacement building”) which, subject to subsection (7) is as similar as possible to the demolished building.
		(7)	A replacement building -
		(a)	must comply with any requirement imposed by or under any enactment applicable to the construction of buildings,
		(b)	may differ from the demolished building in any respect which, if the demolished building had been altered in that respect, would not have constituted a breach of planning control, and
		(c)	must comply with any regulations made for the purposes of this subsection (including regulations modifying paragraphs (a) and (b) of this subsection).
		(8)	An enforcement notice shall specify the date on which it is to take effect and, subject to section 131(3), shall take effect on that date.
		(9)	An enforcement notice shall specify the period for compliance with the notice at the end of which any steps are required to have been taken or any activities are required to have ceased, and may specify different periods for different steps or activities.
		(10)	Where different periods apply to different steps or activities, references in this Part to the period for compliance with an enforcement notice, in relation to any step or activity, are to the period at the end of which the step is required to have been taken or the activity is required to have ceased.
		(11)	An enforcement notice shall specify such additional matters as may be prescribed.
		(12)	Regulations may require every copy of an enforcement notice served under section 127 to be accompanied by an explanatory note giving prescribed information as to the right of appeal under section 130.

		(13)	Where
		(a)	an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not do so, and
		(b)	all the requirements of the notice have been complied with,
			then, so far as the notice did not so require, planning permission shall be treated as having been granted under section 33 in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities.
		(14)	Where -
		(a)	an enforcement notice requires the construction of a replacement building, and
		(b)	all the requirements of the notice with respect to that construction have been complied with,
			planning permission shall be treated as having been granted under section 33 in respect of development consisting of that construction.
Variation and withdrawal of enforcement notice	129	(1)	The planning authority may -
		(a)	withdraw an enforcement notice issued by them, or
		(b)	waive or relax any requirement of such a notice and, in particular, may extend any period specified in accordance with section 128(9).
		(2)	The powers conferred by subsection (1) may be exercised whether or not the notice has taken effect.
		(3)	The planning authority shall, immediately after exercising the powers conferred by subsection (1), give notice of the exercise to every person who has been served with a copy of the enforcement notice or would, if the notice were reissued, be served with a copy of it.
		(4)	The withdrawal of an enforcement notice does not affect the power of the planning authority to issue a further enforcement notice.
Appeal against enforcement notice	130	(1)	A person on whom an enforcement notice is served or any other person having an interest in the land may, at any time before the date specified in the notice as the date on which it is to take effect, appeal to the Secretary of State against the notice on any of the following grounds -
		(a)	Repealed by 2006 Act.
		(b)	that the matters which, by virtue of section 128(1)(a) have been stated in the notice, have not occurred;
		(c)	That the matters (if they occurred) do not constitute a breach of planning control;
		(d)	that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;
		(e)	that copies of the enforcement notice were not served as required by section 127;
		(f)	that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;
		(g)	that any period specified in the notice in accordance with section 128(9) falls short of what should reasonably be allowed.
		(2)	An appeal under this section shall be made -
		(a)	by giving written notice of the appeal to the Secretary of State before the date specified in the enforcement notice as the date on which it is to take effect, or

			(b)	by sending such notice to him in a properly addressed and prepaid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before that date ; or
			(c)	by sending such notice to them using electronic communications at such time that, in the ordinary course of transmission, it would be delivered to them before that date
		(3)		A person who gives notice under subsection (2) shall submit to the Secretary of State, either when giving the notice or within the prescribed time, a statement in writing -
			(a)	specifying the grounds on which he is appealing against the enforcement notice, and
			(b)	giving such further information as may be prescribed.
Appeals: supplementary provisions	131	(1)		The Secretary of State may by regulations prescribe the procedure which is to be followed on appeals under section 130 and, in particular, but without prejudice to the generality of the foregoing provisions of this subsection, in so prescribing may -
			(a)	specify the matters on which information is to be given in a statement under section 130(3);
			(b)	require the planning authority to submit, within such time as may be specified, a statement indicating the submissions which they propose to put forward on the appeal;
			(c)	specify the matters to be included in such a statement;
			(d)	require the authority or the appellant to give such notice of an appeal as may be specified to such persons as may be specified;
			(e)	require the authority to send to the Secretary of State, within such period from the date of the bringing of the appeal as may be specified, a copy of the enforcement notice and a list of the persons served with copies of it.
		(2)		Repealed by 2006 Act
		(3)		Where an appeal is brought under section 130 the enforcement notice shall be of no effect pending the final determination or the withdrawal of the appeal.
		(4)		Schedule 4 applies to appeals under section 130, including appeals under that section as applied by regulations under any other provisions of this Act.
General provisions relating to determination of appeals	132	(1)		On the determination of an appeal under section 130, the Secretary of State shall give directions for giving effect to the determination, including, where appropriate, directions for quashing the enforcement notice.
		(2)		On such an appeal the Secretary of State may -
			(a)	correct any defect, error or misdescription in the enforcement notice, or
			(b)	vary the terms of the enforcement notice,
				if he is satisfied that the correction or variation will not cause injustice to the appellant or the planning authority.
		(3)		The Secretary of State may -
			(a)	dismiss an appeal if the appellant fails to comply with section 130(3) within the prescribed time, and
			(b)	allow an appeal and quash the enforcement notice if the planning authority fail to comply with any requirement imposed by virtue of paragraph (b), (c) or (e) of section 131(1).
		(4)		Where it would otherwise be a ground for determining an appeal in favour of the appellant that a person required by section 127(2) to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.

Grant or modification of planning permission on appeal against enforcement notice.	133	(1)	On the determination of an appeal under section 130, the Secretary of State may
		(a)	Repealed by 2006 Act
		(b)	Repealed by 2006 Act
		(c)	Repealed by 2006 Act
		(d)	determine whether on the date on which the appeal was made, any existing use of the land was lawful, any operations which had been carried out in, on, over or under the land were lawful or any matter constituting a failure to comply with any condition or limitation subject to which the permission was granted was lawful and, if so, issue a certificate under section 150.
		(2)	The provision of sections 150 to 153 mentioned in subsection (3) shall apply for the purposes of subsection (1)(d) as they apply for the purposes of section 150, but as if -
		(a)	any reference to an application for a certificate were a reference to the appeal and any reference to the date of such an application were a reference to the date on which the appeal is made, and
		(b)	references to the planning authority were references to the Secretary of State.
		(3)	Those provisions are sections 150(5) to (7), 152(4) (so far as it relates to the form of the certificate), (6) and (7) and 153.
		(4)	Repealed by 2006 Act.
		(5)	Repealed by 2006 Act.
		(6)	Repealed by 2006 Act.
		(7)	Repealed by 2006 Act.
		(8)	Repealed by 2006 Act.
		(9)	Repealed by 2006 Act.
		(10)	Repealed by 2006 Act.
		(11)	Repealed by 2006 Act.
Validity of enforcement notices	134		The validity of an enforcement notice shall not be questioned in any proceedings whatsoever on any of the grounds specified in section 130(1) (b) to (e) except by appeal under that section.
Execution and cost of works required by enforcement notice	135	(1)	If any steps which are required by an enforcement notice to be taken have not been taken within the compliance period, the planning authority may -
		(a)	enter the land take those steps, and
		(b)	recover from the person who is then the owner or lessee of the land any expenses reasonably incurred by them in doing so.
		(2)	If that person did not appeal to the Secretary of State although entitled to do so, he shall not be entitled to dispute the validity of the action taken by the planning authority under subsection (1) in accordance with the enforcement notice.
		(3)	In computing the amount of the expenses which may be recovered by them under subsection (1), a planning authority may include in that amount such proportion of their administrative expenses as seems to them to be appropriate.
		(4)	Where a copy of an enforcement notice has been served in respect of any breach of planning control -
		(a)	any expenses incurred by the owner, lessee or occupier of any land for the purpose of complying with the notice, and
		(b)	any sums paid by the owner or lessee of any land under subsection (1) in respect of expenses incurred by the planning authority in taking steps required by such a notice to be taken,
			shall be recoverable from the person by whom the breach of planning control was committed.

		(5)	If on a complaint by the owner of any land it appears to the sheriff that the occupier of the land is preventing the owner from carrying out work required to be carried out by an enforcement notice, the sheriff may by warrant authorise the owner to go on to the land and carry out that work.
		(6)	A planning authority taking steps under subsection (1) may sell any materials removed by them from the land unless those materials are claimed by the owner within three days of their removal.
		(7)	After any such sale the planning authority shall pay the proceeds to the owner less the expenses recoverable by them from him.
		(8)	Where a planning authority seek, under subsection (1), to recover any expenses from a person on the basis that he is the owner of any land, and such person proves that -
		(a)	he is receiving the rent in respect of that land merely as trustee, tutor, curator, factor or agent of some other person, and
		(b)	he has not, and since the date of the service on him of the demand for payment has not had, in his hands on behalf of that other person sufficient money to discharge the whole demand of the authority,
			his liability shall be limited to the total amount of the money which he has or has had in his hands on behalf of that other person.
		(9)	A planning authority who by reason of subsection (8) have not recovered the whole of any such expenses from a trustee, tutor, curator, factor or agent may recover any unpaid balance from the person on whose behalf the rent is received.
		(10)	Any person who wilfully obstructs a person acting in the exercise of powers under subsection (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
		(11)	In this section and in sections 136, 136A, 140 and 141 any reference to the compliance period, in relation to an enforcement notice, is a reference to the period specified in the notice for compliance with it or such extended period as the planning authority may allow for compliance. .
Offence where enforcement notice not complied with	136	(1)	Where, at any time after the end of the compliance period in respect of an enforcement notice, any step required by the notice to be taken has not been taken or any activity required by the notice to cease is being carried on, the person who is then the owner of the land is in breach of the notice.
		(2)	Where the owner of the land is in breach of the notice he shall be guilty of an offence.
		(3)	In proceedings against any person for an offence under subsection (2), it shall be a defence for him to show that he did everything he could be expected to do to secure compliance with the notice.
		(4)	A person who has control of or an interest in the land to which an enforcement notice relates (other than the owner) must not carry on any activity which is required by the notice to cease or cause or permit such an activity to be carried on.
		(5)	A person who, at any time after the end of the period for compliance with the notice, contravenes subsection (4) shall be guilty of an offence.
		(6)	An offence under subsection (2) or (5) may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under the subsection in question by reference to any period of time following the preceding conviction for such an offence.
		(7)	Where -
		(a)	a person charged with an offence under this section has not been served with a copy of the enforcement notice, and
		(b)	the notice is not contained in the appropriate register kept under section 147,

			it shall be a defence for him to show that he was not aware of the existence of the notice.
		(8)	A person guilty of an offence under this section shall be liable -
		(a)	on summary conviction, to a fine not exceeding £50,000, and
		(b)	on conviction on indictment, to a fine.
		(9)	In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.
	136a	Fixed penalty notice where enforcement notice not complied with	
		(1)	Where a planning authority have reason to believe that, by virtue of subsection (1) of section 136, a person is in breach of an enforcement notice they may, provided that the conditions mentioned in subsection (7) are satisfied, serve on him a fixed penalty notice as respects that breach.
		(2)	The fixed penalty notice is to specify—
		(a)	the step specified, under subsection (3) of section 128, in the enforcement notice which has not been taken, or
		(b)	the activity so specified which has not ceased.
		(3)	It is not competent to serve more than one fixed penalty notice in relation to a particular step or activity.
		(4)	For the purposes of this section, a “fixed penalty notice” is a notice offering the person the opportunity of discharging, by paying to the planning authority, within the period of 30 days which immediately follows the day on which that notice is served, a penalty of an amount (being a prescribed amount) specified in the notice, any liability to conviction for an offence under section 136 as respects the breach of the enforcement notice.
		(5)	But if payment is made within the first 15 days of the period mentioned in subsection (4) the amount payable is reduced by 25%.
		(6)	The fixed penalty notice is to identify the period mentioned in subsection (4) and is also to state that if payment is made within the first 15 days of that period the amount payable is reduced by 25%.
		(7)	The conditions are that the fixed penalty notice—
		(a)	is served within the period of 6 months which immediately follows the compliance period in relation to the enforcement notice, and
		(b)	is not served after the person has been charged with an offence under section 136 as respects the breach of the enforcement notice
		(8)	During the period mentioned in subsection (4) it is not competent to commence proceedings against the person for an offence under section 136 as respects that breach.
		(9)	If the amount (or as the case may be the reduced amount) is timeously paid it is not competent to commence proceedings against the person for an offence under section 136 as respects that breach.
		(10)	A penalty received by a planning authority by virtue of subsection (4) is to accrue to that authority.
		(11)	In prescribing an amount for the purposes of subsection (4), the Scottish Ministers may make different provision for different cases or for different classes of case.
Effect of planning permission etc on enforcement or breach of condition notice	137	(1)	Where, after the service of –
		(a)	a copy of an enforcement notice, or
		(b)	a breach of condition notice,

			planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission.
		(2)	Where, after a breach of condition notice has been served, any condition to which the notice relates is discharged, the notice shall cease to have effect so far as it requires any person to secure compliance with the condition in question.
		(3)	The fact that an enforcement notice or breach of condition notice has wholly or partly ceased to have effect by virtue of this section shall not affect the liability of any person for an offence in respect of a previous failure to comply, or secure compliance, with the notice.
Enforcement notice to have effect against subsequent development	138	(1)	Compliance with an enforcement notice, whether in respect of –
		(a)	the removal or alteration of any building or works,
		(b)	the discontinuance of any use of land, or
		(c)	any other requirements contained in the notice,
			shall not discharge the notice.
		(2)	Without prejudice to subsection (1), any provision of an enforcement notice requiring a use of land to be discontinued shall operate as a requirement that it shall be discontinued permanently, to the extent that it is in contravention of Part III; and accordingly the resumption of that use at any time after it has been discontinued in compliance with the enforcement notice shall to that extent be in contravention of the enforcement notice.
		(3)	Without prejudice to subsection (1), if any development is carried out on land by way of reinstating or restoring buildings or works which have been removed or altered in compliance with an enforcement notice, the notice shall, notwithstanding that its terms are not apt for the purpose, be deemed to apply in relation to the buildings or works as reinstated or restored as it applied in relation to the buildings or works before they were removed or altered.
		(4)	A person who, without the grant of planning permission in that behalf, carries out any development on land by way of reinstating or restoring buildings or works which have been removed or altered in compliance with an enforcement notice shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding the statutory maximum.
		(5)	In determining the amount of the fine to be imposed under subsection (4), the court is in particular to have regard to any financial benefit which has accrued or appears likely to accrue to the convicted person in consequence of the activity which constituted the offence.
Power of Secretary of State to serve enforcement notice	139	(1)	If it appears to the Secretary of State that it is expedient that an enforcement notice should be served in respect of any land, he may himself serve such a notice under section 127.
		(2)	An enforcement notice served by the Secretary of State shall have the same effect as if it had been served by the planning authority.
		(3)	The Secretary of State shall not serve such a notice without consulting the planning authority.
		(4)	The provisions of this Act relating to enforcement notices apply, so far as relevant, to an enforcement notice served by the Secretary of State as they apply to an enforcement notice served by a planning authority, but with the substitution for any reference to the planning authority of a reference to the Secretary of State, and any other necessary modifications.

Planning and Environmental Appeals Division

Hadrian House, Callendar Business Park, Falkirk, FK1 1XR

E: dpea@gov.scot

T: 0300 244 6668



Scottish Government
Riaghaltas na h-Alba
gov.scot

Appeal Decision Notice

Decision by Euan McLaughlin, a Reporter appointed by the Scottish Ministers

- Enforcement notice appeal reference: ENA-290-2008
- Site address: 1 Laurelbank Road, Mayfield, Dalkeith, EH22 5HT
- Appeal by Mr James Bevis and Ms Louise Axon against the enforcement notice dated 17 February 2022 served by Midlothian Council
- The alleged breach of planning control: Without planning permission, the erection of a detached garage and sunroom on the land referred to in Part 2 of this Notice.
- Date of site visit by Reporter: 26 May 2022

Date of appeal decision: 23 June 2022

Decision

I dismiss the appeal and direct that the enforcement notice dated 17 February 2022 be upheld. Subject to any application to the Court of Session, the enforcement notice takes effect on the date of this decision, which constitutes the determination of the appeal for the purpose of Section 131(3) of the Act.

Reasoning

1. The appeal against the enforcement notice was made on the following grounds as provided for by section 130(1) of the Town and Country Planning (Scotland) Act 1997:
 - Ground f) the steps required by the notice are excessive and less onerous steps would remedy the breach or remedy any injury to amenity which has been caused by any such breach.
2. The enforcement notice requires the appellant to dismantle the building that houses the unauthorised garage and sunroom and remove all dismantled materials permanently from the land subject of the notice. For ground f) to succeed it must be demonstrated that this exceeds what is necessary to remedy the breach of planning control.
3. Through this appeal process the appellant is essentially seeking that planning permission be granted for the building. It is not open to me, in deciding this appeal, to grant planning permission for the development enforced against. For that reason, consideration of any planning merits related to the development is not directly relevant to my consideration of this appeal.
4. I note that the appellant has previously submitted a planning application for the unauthorised building which has been refused by the council. I was able to observe during my site visit that the garage and sunroom would not be classed as permitted development under Class 3A of The Town and Country Planning (General Permitted Development) (Scotland) Order 1992. Planning permission is therefore required for the building and in its absence the garage and sunroom represent a breach of planning control.

5. Section 5 of the enforcement notice sets out the steps required to be undertaken to remedy this breach, which is effectively to restore the land to its condition before the breach took place. In my view these steps are not excessive and there are no less onerous steps which would remedy the breach of control. For this reason, the appeal on ground f) fails.

Euan McLaughlin

Reporter







NON COMPLIANCE WITH THE REQUIREMENTS OF AN ENFORCEMENT NOTICE REGARDING THE UNDERTAKING OF DEVELOPMENT NOT IN ACCORDANCE WITH APPROVED PLANS AT EDGEHEAD FARMHOUSE, EDGEHEAD ROAD, EDGEHEAD, PATHHEAD.

Report by Chief Officer Place

1 REPORT SUMMARY AND RECOMMENDATION

- 1.1** This report relates to the non-compliance with the requirements of an enforcement notice served by the Council pursuant to Section 127 of the Town and Country Planning (Scotland) Act 1997, as amended, with regard the use of clear glazing rather than opaque glazing in windows forming part of an approved extension at Edgehead Farmhouse, Edgehead Road, Edgehead, Pathhead.
- 1.2** The enforcement notice required the replacement of clear glazing with opaque glazing at first floor level in an approved two storey extension (in accordance with the approved plans) and the retention of the opaque glazing thereafter. None of these steps have been taken, either by the enforcement notice compliance date of 23 November 2022 or to date (at the time of drafting this report). Non-compliance with an enforcement notice constitutes an offence.
- 1.3** This report recommends that the Committee instruct the Planning, Sustainable Growth and Investment Manager to refer the case to the Crown Office and Procurator Fiscal Service for consideration to be given to prosecutorial action in relation to the parties who have breached the enforcement notice, pursuant to Section 136 of the Town and Country Planning (Scotland) Act 1997. The maximum penalty on successful prosecution is a fine of up to £50,000 per offence.

2 BACKGROUND

- 2.1** Planning permission 21/00477/DPP for the erection of extensions and external alterations including infilling of window opening, formation of window openings and installation of replacement windows at Edgehead Farmhouse, Edgehead Road, Edgehead, Pathhead was granted 29 July 2021. Listed building consent was also granted for the stated

works and for other works, including internal alterations and the demolition of an extension (21/00479/LBC).

- 2.2 This dwelling which was original a farmhouse building and is located in close proximity to 14 relatively new build dwellings which have been constructed since 2016. Edgehead Farmhouse is a Grade C Listed Building and within the Edgehead Conservation Area.
- 2.3 The approved plans for the stated planning permission and listed building consent show two of the new windows, at first floor level, on the proposed approved extension to the rear of the farmhouse building to be opaque glazed in the interests of protecting the amenity of nearby residential properties. Both windows the subject of that requirement are large and visually prominent. The approved extensions and alterations have been constructed, however clear glazing has been installed in all windows, including those approved as being opaque, thereby causing detriment to the amenity of adjoining residents.
- 2.4 An enforcement notice to address the non-compliance with the approved plans was issued 24 August 2022, with a take effect date of 24 September 2022 and a three month compliance period (24 December 2022). A copy of the enforcement notice is attached to this report as Appendix A. The enforcement notice required the property owner to:
 1. Remove the clear glass panels from the two windows referred to in Parts 3 and 4 of the Enforcement Notice (which explain the breach of planning control in relation to the approved planning permission) and replace them with obscured glazing panels; and
 2. Thereafter, permanently retain obscured glazing panels in the same windows.
- 2.5 The property owner did not appeal the enforcement notice.
- 2.6 Because of the nature and scale of the breach of planning control, rather than recommending referral to the Crown Office and Procurator Fiscal Service (COPFS) as a financial punitive step the Council issued a Fixed Penalty Notice on 24 January 2023 as an alternative course of action to see if this would resolve the breach of planning control.
- 2.7 Section 136A of the Town and Country Planning (Scotland) Act 1997 as amended provides that a local planning authority may serve a Fixed Penalty Notice (FPN) if it is identified that a person is in breach of a valid enforcement notice. A FPN requires a fine of £2,000 to be paid (reduced by a quarter if paid within 5 days of being issued) as an alternative to prosecutorial action. The issuing of a FPN precludes other prosecutorial action if it is paid within 30 days. The FPN has not been paid.
- 2.8 During a site inspection by a Council officer in early March 2023 it was established that none of the enforcement notice requirements had

been complied with by the required date. The land owners have formally been informed that as the FPN has not been complied with and the enforcement notice has also not been complied with, that being an offence, the matter would be referred to the Committee for consideration of prosecutorial action.

3 THE LEGISLATIVE POSITION

- 3.1 It is not a criminal offence for development to take place without the requisite planning permission, but it is an offence to fail to comply with an enforcement notice. There is a 6 month period from the date of the offence occurring (that is the date by which the notice should have been complied with, not the date from which the breach of planning control occurred) in which a prosecution could be potentially brought.
- 3.2 In Scotland the Crown Office and Procurator Fiscal Service (COPFS) are responsible for making decisions about prosecutorial actions. In the majority of instances, criminal offences are referred to COPFS by Police Scotland. However, other bodies who are the responsible regulatory organisation for particular legislative areas will also refer cases. This includes the Health and Safety Executive, the Scottish Environmental Protection Agency and local authorities in relation to planning and other matters.
- 3.3 It should be noted that failure to comply with an enforcement notice is not only an offence, it is also a continuing offence should a prosecution be successfully brought, a conviction secured and the enforcement notice requirements remain outstanding. For example, if non-compliance with the enforcement notice requirements continued for a further month after conviction that would be a further 31/30 offences occurring which would bring further potential implications for a defendant in terms of further potential convictions, criminal records and levels of fines.
- 3.4 The Town and Country Planning (Scotland) 1997 Act provides that *“In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence”*
- 3.5 The failure to comply with an enforcement notice is clearly regarded as a serious matter and understandably so by the Scottish Ministers because of its implications for the integrity of the planning system and indeed in relation to the upholding of the rule of law. The Planning (Scotland) Act 2019 which has now been enacted specifically provided for the increasing of fines for a number of enforcement related matters. In relation to enforcement notices the level of fine on successful prosecution has increased from a maximum of £20,000 to £50,000.

4 OTHER CONSIDERATIONS

- 4.1 The Scottish Government Policy on planning enforcement is contained in Circular 10/2009: Planning Enforcement. It includes the following guidance that is particularly relevant to the consideration of this case :

“Planning authorities should bear in mind the statutory time limits for taking enforcement action and, in particular, the possibility that a referral to the Procurator Fiscal to determine whether to initiate a criminal prosecution may need to be made promptly in those cases where breaches have to be prosecuted within 6 months of the date on which the offence was committed. This is not the date of the alleged breach of planning control but the last date of failure to comply with the Notice requiring the breach to be remedied.”

“The integrity of the development management process depends upon the planning authority’s readiness to take effective enforcement action when necessary. Public respect for the development management system is undermined if unauthorised development, which is unacceptable on its planning merits, is allowed to proceed without any apparent attempt by the planning authority to intervene before serious harm to amenity results from the breach.”

5. CONCLUSION

- 5.1 The responsibility of the outstanding breach of planning control lies with the landowner who decided to erect an extension without complying with the relevant planning permission. All of the unauthorised development which is the subject of the enforcement notice remains on site in breach of the enforcement notice requirements. The unauthorised development has been the subject of public complaint.
- 5.2 It is for COPFS to make the final decision with regard prosecutorial action against the non-compliance with an enforcement notice. In this case, unauthorised development has been carried out which does not have the benefit of planning permission (non-compliance with the approved planning permission). The Council has lawfully served an enforcement notice in relation to unauthorised developments. The notice has not been complied with within the period specified by the notice. It is an offence for an enforcement notice not to be complied with. Therefore having regard to the guidance provided by Scottish Ministers in Circular 10/2009, the serious nature of the breach of planning control and the Council’s responsibility to uphold confidence and integrity in the planning system and the rule of law, it is considered to be in the public interest for the Council to refer this case to COPFS.

6 RECOMMENDATION

- 6.1 It is recommended that the Committee determine to instruct the Planning, Sustainable Growth and Investment Manager (or an alternatively appropriately appointed officer) to refer the case to the Crown Office and Procurator Fiscal Service for consideration of prosecutorial action pursuant to Section 136 of the Town and Country Planning (Scotland) Act 1997 as amended.

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date: 20 March 2023
Contact Person: Matthew Atkins, Lead Officer Planning Obligations
matthew.atkins@midlothian.gov.uk

**IMPORTANT
THIS COMMUNICATION AFFECTS YOUR PROPERTY**

**Town and Country Planning (Scotland) Act 1997, as amended
by the Planning (Scotland) Act 2019 (“the Act”)**

ENFORCEMENT NOTICE

Issued by Midlothian Council

24 August 2022

**Lee Tweedie
Edgehead Farmhouse
Edgehead Road
Edgehead
EH37 5RL**

- 1. THIS IS A FORMAL NOTICE** issued by Midlothian Council (“the Council”) because it appears that there has been a breach of planning control under the terms of section 123(1) (b) of the Act at the land described below. The Council considers it expedient to issue this Enforcement Notice (“EN”) having regard to the provisions of the development plan and to other material planning considerations. Note that Schedule 1 of this EN contains important information.

2. THE LAND TO WHICH THE NOTICE RELATES

Edgehead Farmhouse, Edgehead Road, Edgehead, as shown edged in red on the location plan attached to this EN.

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

The unauthorised installation of clear glazing panels in two of the window openings subject of Midlothian Council (MC) Planning Permission (PP) Reg. No. 21/00477/DPP, which requires both windows to be glazed with obscured glass.

(IMPORTANT – CONTINUES ON NEXT PAGE)

4. REASONS FOR ISSUING THIS NOTICE

- (a) The PP referred to in Part 3 of this EN (page 1) was granted on 29 July 2021 for the *'Erection of extensions and external alterations including infilling of window opening, formation of window openings and installation of replacement windows' at Edgehead Farmhouse*. The unauthorised glazing referred to in Part 3 of this EN has been installed in two large windows located on the upper storey of one of the extensions, namely the two-storey, rear extension. Both windows have been glazed with clear glass panels rather than obscured glass, as approved. That being contrary to the glazing details shown on the relevant approved plans - namely *"Location Plan, Site Plan, Elevations Png6 A 1:1250 1:500 1:50 dated 16.07.2021"* and *"Proposed Elevations Png5 A 1:50 16.07.2021"*. Both plans are also listed on the face of the PP Decision Notice. For the avoidance of any further doubt, both plans and the PP Decision Notice are attached to this EN and form part of the EN.
- (b) MC considers that the non-obscured glazing panels subject of this EN are a material change to the abovementioned PP. Both windows are prominent given their large size and location at first-floor level. One of the windows serves a dressing room and the other an en-suite bathroom. There are separate residential properties in close proximity to the same extension. Public complaint has been received about the unauthorised use of clear glazing and in particular about overlooking. Given all of these considerations, MC as planning authority would not support the retention of clear glazing in either or both windows.

5. WHAT YOU ARE REQUIRED TO DO

- (1) Remove the clear glass panels from both windows - referred to in Parts 3 and 4 of this EN - and replace them with obscured glazing panels, **and**
- (2) Thereafter, permanently retain obscured glazing panels in the same windows.

6. TIME PERIOD FOR COMPLIANCE

Requirement 5(1) - within three calendar months from when this EN takes effect, namely by 24 December 2022.

Requirement 5 (2) - in perpetuity.

(IMPORTANT – CONTINUES ON NEXT PAGE)

7. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on 24 September 2022 unless an appeal is made against it beforehand.

Signed

A handwritten signature in black ink, appearing to read 'M. A.', is positioned below the 'Signed' text.

Matthew Atkins

Lead Officer Planning Obligations
Midlothian Council.

On behalf of:

Derek Oliver

Chief Officer - Place,
Midlothian Council.

Date: 24 August 2022

(IMPORTANT – CONTINUES ON NEXT PAGE)

8. **YOUR RIGHT OF APPEAL**

You can appeal against this notice, but any appeal must be received, or posted in time to be received by the Scottish Ministers before 24 September 2022. Any other person who has an interest in the land to which this notice relates may also appeal to the Scottish Ministers by the same date.

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

9. **WHAT HAPPENS IF YOU DO NOT APPEAL**

If you do not appeal against this EN, it will take effect on 24 September 2022 and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period specified in the notice. Failure to comply with an enforcement notice which has taken effect can result in prosecution or the service of a Fixed Penalty Notice on the relevant person(s) who have not complied with its requirements in terms of s145A(1) of the Act. Failure to comply with an enforcement notice which has taken effect may also result in the Council taking direct action to correct the breach.

(IMPORTANT – CONTINUES ON NEXT PAGE)

SCHEDULE 1

EXPLANATORY NOTE FOR THOSE IN RECEIPT OF AN ENFORCEMENT NOTICE

RELEVANT LEGISLATION

A copy of Sections 123, 124, 127-139 of the Act is attached. You may wish to note the points referred to below.

RIGHT OF APPEAL

If you wish to appeal against this EN, you should write to Planning and Environmental Appeals Division, Ground Floor, Hadrian House, Callendar Business Park, Callendar Road, Falkirk, FK1 1XR. The appeal must be received, or posted in time to be received by the Scottish Ministers before the date on which this notice takes effect. The Scottish Ministers have no power to consider an appeal lodged out of time.

The appeal, which must be made in writing, must be based on one or more of the grounds set out in section 130 of the Act. If you decide to appeal you should state the facts on which you propose to rely in support of each of the grounds of appeal. The grounds of appeal and the statement of facts must be submitted with your appeal or within fourteen days of your being required to do so by the Scottish Ministers.

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

PENALTIES FOR NON-COMPLIANCE WITH AN ENFORCEMENT NOTICE

Where an enforcement notice requires the discontinuance of a use of land or compliance, in respect of a use of land or the carrying out of operations, with any conditions or limitation, then any person who, without the grant of planning permission uses the land or causes or permits it to be used, or carries out these operations or causes or permits them to be carried out, is guilty of an offence and liable on summary conviction to a fine not exceeding £50,000 or on conviction on indictment to an unlimited fine. If the use or operations are continued after conviction, the person may be convicted of a second or subsequent offence. In determining the amount of any fine for any convicted person, in either circumstance, the court shall in particular have regard to any financial benefit that has accrued - or appears likely to accrue - to any person who has committed the offence. That consideration will similarly apply to the level of fine imposed by the court on any convicted person who complies with an enforcement notice requiring the removal or alteration of a building(s) or works, in cases where the building(s) or works are subsequently re-instated or restored at any time after the compliance date.

(IMPORTANT – CONTINUES ON NEXT PAGE)

As an alternative to prosecution the Council may serve a Fixed Penalty Notice. This requires payment of a fine to be made within 30 days of its service, which will be retained by them. The level of fine is £2,000 for non-compliance with an enforcement notice. If payment is made within the first 15 days following service of a Fixed Penalty Notice the amount to be paid to the Council is reduced to £1,500.

DIRECT ACTION FOR NON-COMPLIANCE WITH AN ENFORCEMENT NOTICE

If the steps required by an enforcement notice are not taken within the specified period(s) the Council may also enter on the land, take those steps and recover the costs involved, from the owner or lessee of the land.

FURTHER OFFENCES

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



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

Enforcement Notice

Edgehead Farmhouse, Edgehead Road, Edgehead

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Midlothian Council Licence No. 100023416 (2018)

File No: E/22/27

Scale: 1:750



Planning Permission

Town and Country Planning (Scotland) Act 1997

Reg. No. 21/00477/DPP



David Paton Building Consultancy
13 High Street
Loanhead
EH20 9RH

Midlothian Council, as Planning Authority, having considered the application by Mr Lee Tweedie, Edgehead Farmhouse, Edgehead Road, Edgehead, EH37 5RL, which was registered on 7 June 2021, in pursuance of their powers under the above Acts, hereby grant permission to carry out the following proposed development:

Erection of extensions and external alterations including infilling of window opening, formation of window openings and installation of replacement windows at Edgehead Farmhouse, Edgehead Road, Edgehead, Pathhead, EH37 5RL

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

<u>Document/Drawing</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Location Plan, Site Plan, Elevations	Png6 A 1:1250 1:500 1:50	16.07.2021
Existing Floor Plan	21-07-ex1 1:50	07.06.2021
Existing Elevations	21-07-ex2 1:50	07.06.2021
Proposed Floor Plan	Png4 A 1:50	16.07.2021
Proposed Elevations	Png5 A 1:50	16.07.2021

This permission is granted for the following reasons:

The proposed extensions and alterations would maintain the character and appearance of the surrounding area, the listed building and conservation area and so comply with policies DEV2, ENV19 and ENV22 of the adopted Midlothian Local Development Plan 2017.

Subject to the following conditions:

1. Prior to the commencement of development, the following details shall be submitted to and approved in writing by the Planning Authority:
 - a) Details and samples of all external materials; and
 - b) Plans to a scale of 1:20 showing details of the design of the new windows, including dimensions and cross sections of the windows.

Reason: *These details were not submitted with the application; in order to ensure that the development hereby approved does not detract from the character and appearance of this listed building or surrounding conservation area.*

2. The details of the windows required by condition 1b) shall include genuine timber astragals, which are not to be inserted between or planted on the panes of glass unless otherwise agreed in writing by the Planning Authority.

Reason: *To protect the character and appearance of the existing listed building and conservation area and ensure this maintains the visual quality of the area.*

3. No development shall take place on site until the applicants or their successors have undertaken and reported upon a programme of archaeological (Historic Building Recording) work in accordance with a written scheme of investigation and any further works or mitigation that result from the results of these to be submitted to and approved in writing by the Planning Authority works.

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.*

Dated 29 / 7 / 2021



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



**The Coal
Authority**

Any Planning Enquiries should be directed to:

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

INFORMATIVE NOTE

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

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

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

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

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

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

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

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

PLEASE NOTE

This permission does not carry with it any necessary consent or approval to the proposed development which may be required under the Building (Scotland) Acts and Regulations or under any other Statutory Enactment.

If the applicant is aggrieved by the decision of the planning authority to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under section 43A of the Town & Country Planning (Scotland) Act 1997 within 3 months from the date of this notice. The notice of review should be addressed to The Planning Manager, Planning, Midlothian Council, Fairfield House, 8 Lothian Road, Dalkeith, EH22 3ZN. A notice of review form is available from the same address and will also be made available online at www.midlothian.gov.uk

If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonable beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.

Duration of Planning Permission and/or Listed Building Consent

The permission hereby approved lapses on the expiration of a period of either:

- a) three years from the date of this decision notice, if the permission is for **detailed planning permission (DPP)** or **listed building consent (LBC)** as specified in Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended by Planning etc (Scotland) Act 2006); or*
- b) two years from the date of approval by the planning authority of the last application for matters specified in conditions to be approved if the permission is for **planning permission in principle (PPP)** as specified in Section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended by Planning etc (Scotland) Act 2006). Applications for approval of matters specified in conditions shall be made to the planning authority within three years from the date of this permission.*

Prior to any work taking place on site all pre commencement conditions attached to a grant of planning permission must be agreed in writing with the planning authority. Failure to do so could result in any development works taking place being unauthorised and undertaken at your own risk and expense.

The Felling of Trees

Where full planning permission authorises the felling of trees on a development site, no further consent is required under the Forestry Act 1967 (as amended). However, developers should note that any tree felling not expressly authorised by full planning permission, and not exempted, requires a felling licence granted under the Forestry Act 1967 (as amended).

Developers should note that any felling carried out without either a licence or other valid permission is an offence. This can mean, on conviction, a fine of up to £2,500 (level 4 on the standard scale) or twice the value of the trees, whichever is higher with the conviction being recorded.

Contact your local Forestry Commission Scotland Office if you are not certain whether exemptions apply. You can get an application form for a felling licence from the Forestry Commission website www.forestry.gov.uk or any Forestry Commission Scotland Office.

Prior to Commencement (Notice of Initiation of Development)

Prior to the development commencing the planning authority shall be notified in writing of the expected commencement of work date and once development on site has been completed the planning authority shall be notified of the completion of works date in writing. Failure to do so would be a breach of planning control under section 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning etc (Scotland) Act 2006). A copy of the Notice of Initiation of Development is available on the Council's web site www.midlothian.gov.uk

IMPORTANT NOTE REGARDING PUBLIC ACCESS TO INFORMATION

Making an application

Please note that when you submit a planning application, the information will appear on the Planning Register and the completed forms and any associated documentation will also be published on the Council's website.

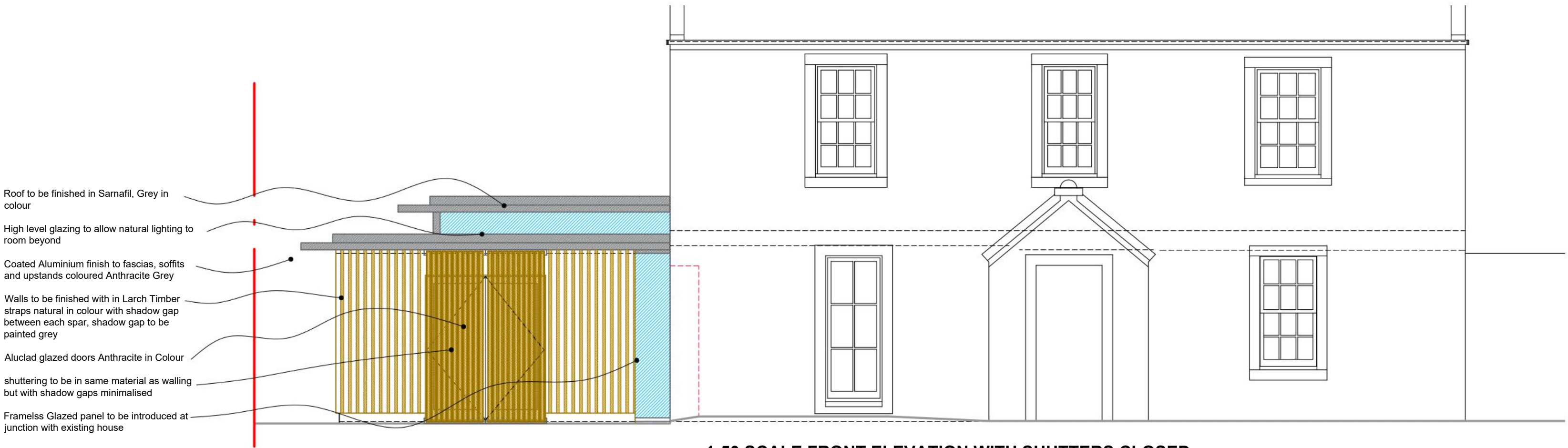
Making comment on an application

Please note that any information, consultation response, objection or supporting letters submitted in relation to a planning application, will be published on the Council's website.

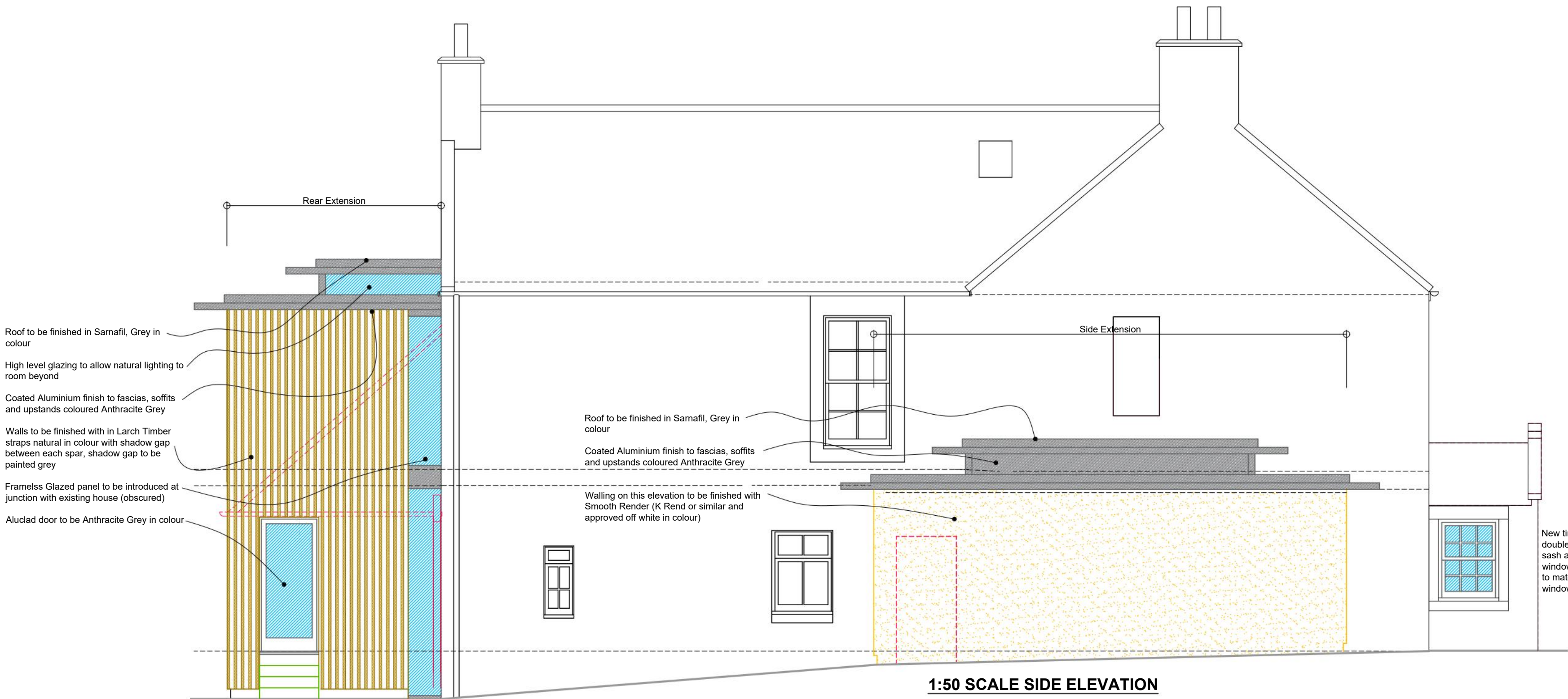
The planning authority will redact personal information in accordance with its redaction policy and use its discretion to redact any comments or information it considers to be derogatory or offensive. However, it is important to note that the publishing of comments and views expressed in letters and reports submitted by applicants, consultees and representors on the Council's website, does not mean that the planning authority agrees or endorses these views, or confirms any statements of fact to be correct.



1:50 SCALE FRONT ELEVATION WITH SHUTTERS OPEN



1:50 SCALE FRONT ELEVATION WITH SHUTTERS CLOSED



1:50 SCALE SIDE ELEVATION

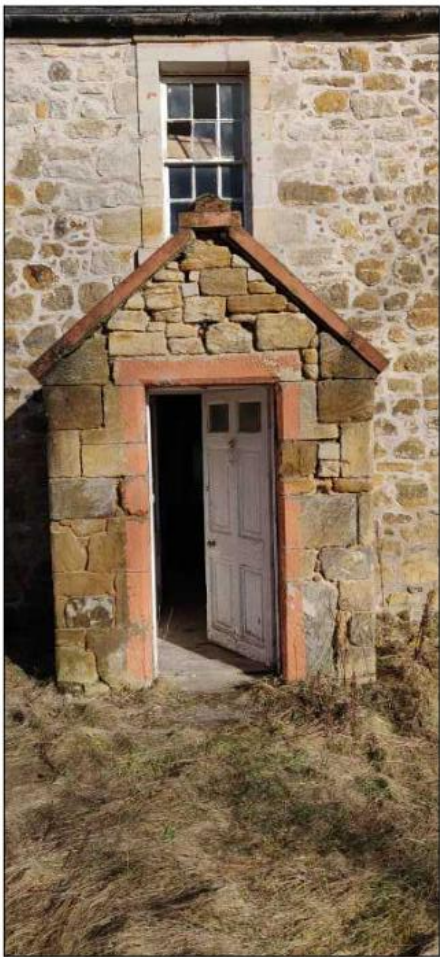


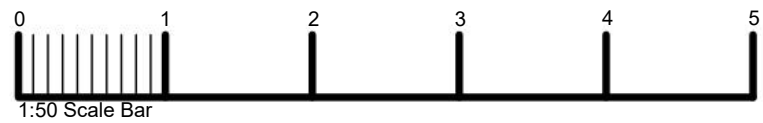
PHOTO SHOWING PRESENT STATE OF FRONT PORCH



PHOTO SHOWING FRONT ELEVATION OF HOUSE WITH MODERN HOUSING ESTATE BEYOND



PHOTO SHOWING SIDE ELEVATION OF HOUSE WITH MODERN HOUSING ESTATE BEYOND



A	Rear Extension made higher as per Planners request	15 July 2021 KM

CLIENT Lee Tweedie		PROJECT Various Works to Dwelling House at; Edgehead Farmhouse Edgehead EH37 5RL	
DRAWING TITLE Proposed Elevations		DATE	May 2021
		DRAWN	KM
		SCALE	1:50 @ A1
david paton building consultancy Chartered Architectural Technologists Established in 1981 13 High Street, Loanhead, Midlothian, EH20 9RH, Telephone No. 0131 440 1213 website: www.davidpatonbc.co.uk e-mail: davidpatonbc@btconnect.com			
CIAT CHARTERED PRACTICE		JOB NO. 21/07	DRAWING NO. Png5
REVISION		A	

PLANNING / LISTED BUILDING DRAWING

	PART VI ENFORCEMENT		
	<i>Application</i>		
Expressions used in connection with enforcement	123	(1)	For the purposes of this Act -
		(a)	carrying out development without the required planning permission, or
		(b)	failing to comply with any condition or limitation subject to which planning permission has been granted, or
		(c)	initiating development without giving notice in accordance with section 27A (1) of this Act, or
		(d)	carrying out development without displaying a notice in accordance with section 27C (1) of this Act
			constitutes a breach of planning control.
		(2)	For the purposes of this Act -
		(a)	the issue of an enforcement notice, or
		(b)	the service of a breach of condition notice,
			under this Part constitutes taking enforcement action as does the issuing of a notice under section 33A
		(3)	In this Part “planning permission” includes planning permission under Part III of the 1947 Act and Part III of the 1972 Act.
Time Limits	124	(1)	Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of 4 years beginning with the date on which the operations were substantially completed.
		(2)	Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of 4 years beginning with the date of the breach.
		(3)	In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach.
		(4)	Subsections (1) to (3) do not prevent -
		(a)	the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect, or
		(b)	taking further enforcement action in respect of any breach of planning control if, during the period of 4 years ending with that action being taken, the planning authority have taken or purported to take enforcement action in respect of that breach.
Enforcement Notices			
Issue of enforcement notice	127	(1)	The planning authority may issue a notice (in this Act referred to as an “enforcement notice”) where it appears to them –
		(a)	that there has been a breach of planning control, and
		(b)	that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.
		(2)	A copy of an enforcement notice shall be served -
		(a)	that there has been a breach of planning control, and
		(b)	on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
		(3)	The service of the notice shall take place -

			(a)	not more than 28 days after its date of issue, and
			(b)	not less than 28 days before the date specified in it as the date on which it is to take effect.
Contents and effect of notice	128	(1)	An enforcement notice shall state -	
			(a)	the matters which appear to the planning authority to constitute the breach of planning control, and
			(b)	the paragraph of section 123(1) within which, in the opinion of the authority, the breach falls.
		(2)	A notice complies with subsection (1) (a) if it enables any person on whom a copy of it is served to know what those matters are.	
		(3)	An enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the following purposes.	
		(4)	Those purposes are –	
			(a)	remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or
			(b)	remedying any injury to amenity which has been caused by the breach.
		(5)	An enforcement notice may, for example, require -	
			(a)	the alteration or removal of any buildings or works,
			(b)	the alteration or removal of any buildings or works,
			(c)	any activity on the land not to be carried on except to the extent specified in the notice, or
			(d)	the contour of a deposit of refuse of waste materials on land to be modified by altering the gradient or gradients of its sides.
		(6)	An enforcement notice issued in respect of a breach of planning control consisting of demolition of a building may require the construction of a building (in this section referred to as a “replacement building”) which, subject to subsection (7) is as similar as possible to the demolished building.	
		(7)	A replacement building -	
			(a)	must comply with any requirement imposed by or under any enactment applicable to the construction of buildings,
			(b)	may differ from the demolished building in any respect which, if the demolished building had been altered in that respect, would not have constituted a breach of planning control, and
			(c)	must comply with any regulations made for the purposes of this subsection (including regulations modifying paragraphs (a) and (b) of this subsection).
		(8)	An enforcement notice shall specify the date on which it is to take effect and, subject to section 131(3), shall take effect on that date.	
		(9)	An enforcement notice shall specify the period for compliance with the notice at the end of which any steps are required to have been taken or any activities are required to have ceased, and may specify different periods for different steps or activities.	
		(10)	Where different periods apply to different steps or activities, references in this Part to the period for compliance with an enforcement notice, in relation to any step or activity, are to the period at the end of which the step is required to have been taken or the activity is required to have ceased.	
		(11)	An enforcement notice shall specify such additional matters as may be prescribed.	
		(12)	Regulations may require every copy of an enforcement notice served under section 127 to be accompanied by an explanatory note giving prescribed information as to the right of appeal under section 130.	

		(13)	Where
		(a)	an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not do so, and
		(b)	all the requirements of the notice have been complied with,
			then, so far as the notice did not so require, planning permission shall be treated as having been granted under section 33 in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities.
		(14)	Where -
		(a)	an enforcement notice requires the construction of a replacement building, and
		(b)	all the requirements of the notice with respect to that construction have been complied with,
			planning permission shall be treated as having been granted under section 33 in respect of development consisting of that construction.
Variation and withdrawal of enforcement notice	129	(1)	The planning authority may -
		(a)	withdraw an enforcement notice issued by them, or
		(b)	waive or relax any requirement of such a notice and, in particular, may extend any period specified in accordance with section 128(9).
		(2)	The powers conferred by subsection (1) may be exercised whether or not the notice has taken effect.
		(3)	The planning authority shall, immediately after exercising the powers conferred by subsection (1), give notice of the exercise to every person who has been served with a copy of the enforcement notice or would, if the notice were reissued, be served with a copy of it.
		(4)	The withdrawal of an enforcement notice does not affect the power of the planning authority to issue a further enforcement notice.
Appeal against enforcement notice	130	(1)	A person on whom an enforcement notice is served or any other person having an interest in the land may, at any time before the date specified in the notice as the date on which it is to take effect, appeal to the Secretary of State against the notice on any of the following grounds -
		(a)	Repealed by 2006 Act.
		(b)	that the matters which, by virtue of section 128(1)(a) have been stated in the notice, have not occurred;
		(c)	That the matters (if they occurred) do not constitute a breach of planning control;
		(d)	that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;
		(e)	that copies of the enforcement notice were not served as required by section 127;
		(f)	that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;
		(g)	that any period specified in the notice in accordance with section 128(9) falls short of what should reasonably be allowed.
		(2)	An appeal under this section shall be made -
		(a)	by giving written notice of the appeal to the Secretary of State before the date specified in the enforcement notice as the date on which it is to take effect, or

			(b)	by sending such notice to him in a properly addressed and prepaid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before that date ; or
			(c)	by sending such notice to them using electronic communications at such time that, in the ordinary course of transmission, it would be delivered to them before that date
		(3)		A person who gives notice under subsection (2) shall submit to the Secretary of State, either when giving the notice or within the prescribed time, a statement in writing -
			(a)	specifying the grounds on which he is appealing against the enforcement notice, and
			(b)	giving such further information as may be prescribed.
Appeals: supplementary provisions	131	(1)		The Secretary of State may by regulations prescribe the procedure which is to be followed on appeals under section 130 and, in particular, but without prejudice to the generality of the foregoing provisions of this subsection, in so prescribing may -
			(a)	specify the matters on which information is to be given in a statement under section 130(3);
			(b)	require the planning authority to submit, within such time as may be specified, a statement indicating the submissions which they propose to put forward on the appeal;
			(c)	specify the matters to be included in such a statement;
			(d)	require the authority or the appellant to give such notice of an appeal as may be specified to such persons as may be specified;
			(e)	require the authority to send to the Secretary of State, within such period from the date of the bringing of the appeal as may be specified, a copy of the enforcement notice and a list of the persons served with copies of it.
		(2)		Repealed by 2006 Act
		(3)		Where an appeal is brought under section 130 the enforcement notice shall be of no effect pending the final determination or the withdrawal of the appeal.
		(4)		Schedule 4 applies to appeals under section 130, including appeals under that section as applied by regulations under any other provisions of this Act.
General provisions relating to determination of appeals	132	(1)		On the determination of an appeal under section 130, the Secretary of State shall give directions for giving effect to the determination, including, where appropriate, directions for quashing the enforcement notice.
		(2)		On such an appeal the Secretary of State may -
			(a)	correct any defect, error or misdescription in the enforcement notice, or
			(b)	vary the terms of the enforcement notice,
				if he is satisfied that the correction or variation will not cause injustice to the appellant or the planning authority.
		(3)		The Secretary of State may -
			(a)	dismiss an appeal if the appellant fails to comply with section 130(3) within the prescribed time, and
			(b)	allow an appeal and quash the enforcement notice if the planning authority fail to comply with any requirement imposed by virtue of paragraph (b), (c) or (e) of section 131(1).
		(4)		Where it would otherwise be a ground for determining an appeal in favour of the appellant that a person required by section 127(2) to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.

Grant or modification of planning permission on appeal against enforcement notice.	133	(1)	On the determination of an appeal under section 130, the Secretary of State may	
			(a)	Repealed by 2006 Act
			(b)	Repealed by 2006 Act
			(c)	Repealed by 2006 Act
			(d)	determine whether on the date on which the appeal was made, any existing use of the land was lawful, any operations which had been carried out in, on, over or under the land were lawful or any matter constituting a failure to comply with any condition or limitation subject to which the permission was granted was lawful and, if so, issue a certificate under section 150.
		(2)	The provision of sections 150 to 153 mentioned in subsection (3) shall apply for the purposes of subsection (1)(d) as they apply for the purposes of section 150, but as if -	
			(a)	any reference to an application for a certificate were a reference to the appeal and any reference to the date of such an application were a reference to the date on which the appeal is made, and
			(b)	references to the planning authority were references to the Secretary of State.
		(3)	Those provisions are sections 150(5) to (7), 152(4) (so far as it relates to the form of the certificate), (6) and (7) and 153.	
		(4)	Repealed by 2006 Act.	
		(5)	Repealed by 2006 Act.	
		(6)	Repealed by 2006 Act.	
		(7)	Repealed by 2006 Act.	
		(8)	Repealed by 2006 Act.	
		(9)	Repealed by 2006 Act.	
		(10)	Repealed by 2006 Act.	
		(11)	Repealed by 2006 Act.	
Validity of enforcement notices	134	The validity of an enforcement notice shall not be questioned in any proceedings whatsoever on any of the grounds specified in section 130(1) (b) to (e) except by appeal under that section.		
Execution and cost of works required by enforcement notice	135	(1)	If any steps which are required by an enforcement notice to be taken have not been taken within the compliance period, the planning authority may -	
			(a)	enter the land take those steps, and
			(b)	recover from the person who is then the owner or lessee of the land any expenses reasonably incurred by them in doing so.
		(2)	If that person did not appeal to the Secretary of State although entitled to do so, he shall not be entitled to dispute the validity of the action taken by the planning authority under subsection (1) in accordance with the enforcement notice.	
		(3)	In computing the amount of the expenses which may be recovered by them under subsection (1), a planning authority may include in that amount such proportion of their administrative expenses as seems to them to be appropriate.	
		(4)	Where a copy of an enforcement notice has been served in respect of any breach of planning control -	
			(a)	any expenses incurred by the owner, lessee or occupier of any land for the purpose of complying with the notice, and
			(b)	any sums paid by the owner or lessee of any land under subsection (1) in respect of expenses incurred by the planning authority in taking steps required by such a notice to be taken,
			shall be recoverable from the person by whom the breach of planning control was committed.	

		(5)	If on a complaint by the owner of any land it appears to the sheriff that the occupier of the land is preventing the owner from carrying out work required to be carried out by an enforcement notice, the sheriff may by warrant authorise the owner to go on to the land and carry out that work.
		(6)	A planning authority taking steps under subsection (1) may sell any materials removed by them from the land unless those materials are claimed by the owner within three days of their removal.
		(7)	After any such sale the planning authority shall pay the proceeds to the owner less the expenses recoverable by them from him.
		(8)	Where a planning authority seek, under subsection (1), to recover any expenses from a person on the basis that he is the owner of any land, and such person proves that -
		(a)	he is receiving the rent in respect of that land merely as trustee, tutor, curator, factor or agent of some other person, and
		(b)	he has not, and since the date of the service on him of the demand for payment has not had, in his hands on behalf of that other person sufficient money to discharge the whole demand of the authority,
			his liability shall be limited to the total amount of the money which he has or has had in his hands on behalf of that other person.
		(9)	A planning authority who by reason of subsection (8) have not recovered the whole of any such expenses from a trustee, tutor, curator, factor or agent may recover any unpaid balance from the person on whose behalf the rent is received.
		(10)	Any person who wilfully obstructs a person acting in the exercise of powers under subsection (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
		(11)	In this section and in sections 136, 136A, 140 and 141 any reference to the compliance period, in relation to an enforcement notice, is a reference to the period specified in the notice for compliance with it or such extended period as the planning authority may allow for compliance. .
Offence where enforcement notice not complied with	136	(1)	Where, at any time after the end of the compliance period in respect of an enforcement notice, any step required by the notice to be taken has not been taken or any activity required by the notice to cease is being carried on, the person who is then the owner of the land is in breach of the notice.
		(2)	Where the owner of the land is in breach of the notice he shall be guilty of an offence.
		(3)	In proceedings against any person for an offence under subsection (2), it shall be a defence for him to show that he did everything he could be expected to do to secure compliance with the notice.
		(4)	A person who has control of or an interest in the land to which an enforcement notice relates (other than the owner) must not carry on any activity which is required by the notice to cease or cause or permit such an activity to be carried on.
		(5)	A person who, at any time after the end of the period for compliance with the notice, contravenes subsection (4) shall be guilty of an offence.
		(6)	An offence under subsection (2) or (5) may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under the subsection in question by reference to any period of time following the preceding conviction for such an offence.
		(7)	Where -
		(a)	a person charged with an offence under this section has not been served with a copy of the enforcement notice, and
		(b)	the notice is not contained in the appropriate register kept under section 147,

			it shall be a defence for him to show that he was not aware of the existence of the notice.
		(8)	A person guilty of an offence under this section shall be liable -
		(a)	on summary conviction, to a fine not exceeding £50,000, and
		(b)	on conviction on indictment, to a fine.
		(9)	In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.
	136a	Fixed penalty notice where enforcement notice not complied with	
		(1)	Where a planning authority have reason to believe that, by virtue of subsection (1) of section 136, a person is in breach of an enforcement notice they may, provided that the conditions mentioned in subsection (7) are satisfied, serve on him a fixed penalty notice as respects that breach.
		(2)	The fixed penalty notice is to specify—
		(a)	the step specified, under subsection (3) of section 128, in the enforcement notice which has not been taken, or
		(b)	the activity so specified which has not ceased.
		(3)	It is not competent to serve more than one fixed penalty notice in relation to a particular step or activity.
		(4)	For the purposes of this section, a “fixed penalty notice” is a notice offering the person the opportunity of discharging, by paying to the planning authority, within the period of 30 days which immediately follows the day on which that notice is served, a penalty of an amount (being a prescribed amount) specified in the notice, any liability to conviction for an offence under section 136 as respects the breach of the enforcement notice.
		(5)	But if payment is made within the first 15 days of the period mentioned in subsection (4) the amount payable is reduced by 25%.
		(6)	The fixed penalty notice is to identify the period mentioned in subsection (4) and is also to state that if payment is made within the first 15 days of that period the amount payable is reduced by 25%.
		(7)	The conditions are that the fixed penalty notice—
		(a)	is served within the period of 6 months which immediately follows the compliance period in relation to the enforcement notice, and
		(b)	is not served after the person has been charged with an offence under section 136 as respects the breach of the enforcement notice
		(8)	During the period mentioned in subsection (4) it is not competent to commence proceedings against the person for an offence under section 136 as respects that breach.
		(9)	If the amount (or as the case may be the reduced amount) is timeously paid it is not competent to commence proceedings against the person for an offence under section 136 as respects that breach.
		(10)	A penalty received by a planning authority by virtue of subsection (4) is to accrue to that authority.
		(11)	In prescribing an amount for the purposes of subsection (4), the Scottish Ministers may make different provision for different cases or for different classes of case.
Effect of planning permission etc on enforcement or breach of condition notice	137	(1)	Where, after the service of –
		(a)	a copy of an enforcement notice, or
		(b)	a breach of condition notice,

			planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission.
		(2)	Where, after a breach of condition notice has been served, any condition to which the notice relates is discharged, the notice shall cease to have effect so far as it requires any person to secure compliance with the condition in question.
		(3)	The fact that an enforcement notice or breach of condition notice has wholly or partly ceased to have effect by virtue of this section shall not affect the liability of any person for an offence in respect of a previous failure to comply, or secure compliance, with the notice.
Enforcement notice to have effect against subsequent development	138	(1)	Compliance with an enforcement notice, whether in respect of –
		(a)	the removal or alteration of any building or works,
		(b)	the discontinuance of any use of land, or
		(c)	any other requirements contained in the notice,
			shall not discharge the notice.
		(2)	Without prejudice to subsection (1), any provision of an enforcement notice requiring a use of land to be discontinued shall operate as a requirement that it shall be discontinued permanently, to the extent that it is in contravention of Part III; and accordingly the resumption of that use at any time after it has been discontinued in compliance with the enforcement notice shall to that extent be in contravention of the enforcement notice.
		(3)	Without prejudice to subsection (1), if any development is carried out on land by way of reinstating or restoring buildings or works which have been removed or altered in compliance with an enforcement notice, the notice shall, notwithstanding that its terms are not apt for the purpose, be deemed to apply in relation to the buildings or works as reinstated or restored as it applied in relation to the buildings or works before they were removed or altered.
		(4)	A person who, without the grant of planning permission in that behalf, carries out any development on land by way of reinstating or restoring buildings or works which have been removed or altered in compliance with an enforcement notice shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding the statutory maximum.
		(5)	In determining the amount of the fine to be imposed under subsection (4), the court is in particular to have regard to any financial benefit which has accrued or appears likely to accrue to the convicted person in consequence of the activity which constituted the offence.
Power of Secretary of State to serve enforcement notice	139	(1)	If it appears to the Secretary of State that it is expedient that an enforcement notice should be served in respect of any land, he may himself serve such a notice under section 127.
		(2)	An enforcement notice served by the Secretary of State shall have the same effect as if it had been served by the planning authority.
		(3)	The Secretary of State shall not serve such a notice without consulting the planning authority.
		(4)	The provisions of this Act relating to enforcement notices apply, so far as relevant, to an enforcement notice served by the Secretary of State as they apply to an enforcement notice served by a planning authority, but with the substitution for any reference to the planning authority of a reference to the Secretary of State, and any other necessary modifications.



LISTED BUILDING ENFORCEMENT NOTICE APPEAL DECISION WITH REGARD THE INSTALLATION OF SIXTEEN UPVC FRAMED WINDOWS AT 130 HIGH STREET, DALKEITH.

Report by Chief Officer Place

1 PURPOSE OF REPORT

- 1.1 The purpose of this report is to advise the Committee of a listed building enforcement notice appeal decision with regard the removal of sixteen singled glazed, timber framed, sash and case windows, and the installation of sixteen double glazed, uPVC framed, tilt and turn windows in the front, rear and side facades at 130 High Street, Dalkeith.

2 BACKGROUND

- 2.1 130 High Street, Dalkeith is a Category B listed building. It is part of a B Group of listed buildings with Nos 100 – 134, 140 and 142 High Street. It is also within the Dalkeith House and Park Conservation Area.
- 2.2 A listed building enforcement notice was issued on the occupiers and owner of the property on 8 November 2022, with a take effect date of 8 December 2022 and a compliance date of 30 May 2023. A copy of the enforcement notice is attached to this report as Appendix B. The enforcement notice required the owner and occupier of the property to:
- (1) Remove all uPVC windows of the property and replace them with white painted, timber frame, sash and case windows which match the removed timber windows in glazing pattern, profile of frames and astragals and all externally visible parts of the case/frames.
 - (2) Reinststate the traditional metal support bar across window cill in three bays on the top floor of the front (north) elevation, matching those still in place in the bays on the floor below.
- 2.3 The owner appealed the listed building enforcement notice - a Scottish Government Reporter appointed to determine the appeal dismissed it and upheld the listed building enforcement notice subject to the deletion of the requirement to reinststate the traditional metal support bars. A copy of the appeal decision is attached to this report as

Appendix A. As a consequence of the appeal the compliance period is extended to 30 August 2023.

3 THE DECISION

- 3.1 The appeal was made on the following grounds as provided for by section 35(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997:
- That (i) works to the building were urgently necessary in the interests of safety or health, or for the preservation of the building; (ii) it was not practicable to secure safety, health or the preservation of the building by repair works; and (iii) the works carried out were limited to the minimum measures immediately necessary;
 - That listed building consent ought to be granted for the works; and
 - The requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out.
- 3.2 The Reporter was satisfied that:
- The removal of the sixteen original windows and installation of sixteen uPVC windows were not urgently necessary in the interests of health and safety, or for the preservation of the building;
 - The windows which have been installed have a harmful impact on the architectural and historic interest of the property, and that the works that have been undertaken conflict with Policy ENV22 (Listed Buildings) of Midlothian Local Development Plan 2017 and the Dalkeith House and Park Conservation Area Character Appraisal 2004, leading to harm to the architectural and historic interest of the property and to the character and appearance of the Conservation Area; and
 - Given that the works have harmed the architectural and historic interest of the listed building and harmed the character and appearance of the Conservation, the requirements of the notice to remove those harmful windows and replace with windows that match the original windows removed is therefore not excessive: the steps are necessary to restore the building to its condition before the works were carried out.
- 3.3 The Reporter therefore dismissed the appeal, refusing to grant listed building consent for the matters covered in the listed building enforcement notice, and directed the notice be upheld subject to variation of the terms of the notice by the deletion of the words “(2) Reinstall the traditional metal support bar across window cill in three bays on the top floor of the front (north) elevation, matching those still in place on the bays on the floor below”.

4 RECOMMENDATION

- 4.1 It is recommended that the Committee notes the enforcement notice appeal decision with regard to the removal of sixteen singled glazed, timber framed, sash and case windows, and the installation of sixteen double glazed, uPVC framed, tilt and turn windows in the front, rear and side facades at 130 High Street, Dalkeith.

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date: 20 March 2023
Contact Person: Peter Arnsdorf, Planning, Sustainable Growth and
Investment Manager
peter.arnsdorf@midlothian.gov.uk



Appeal Decision notice

Decision by C Leigh, a Reporter appointed by the Scottish Ministers

- Listed building enforcement appeal reference: LBE-290-2000
- Site address: 130 High Street, Dalkeith, EH22 1AU
- Appeal by Mrs Gloria Silvestri against the listed building enforcement notice dated 8 November 2022 served by Midlothian Council.
- Alleged breach of listed building control: The removal of sixteen single glazed, timber framed, sash and case windows; the removal of traditional metal support bar across window cill in three bays on the top floor of the front (north) elevation; the installation of sixteen double glazed, uPVC framed, tilt and turn windows in the front, rear and side facades.
- Grounds of appeal under s.35(1) of the Act: (d), (e) and (g)
- Date of site visit by Reporter: 9 February 2023

Date of appeal decision: 1 March 2023

Preliminary matters

Following submissions from the appellant the Council accepted that there had not been the removal of the metal support bar across the window cill in three bays on the top from of the front (north) elevation. I therefore do not consider this matter in the appeal.

Decision

I dismiss the appeal, refuse to grant listed building consent for the matters covered in the listed building enforcement notice, and direct that the notice be upheld subject to variation of the terms of the notice by the deletion of the words “(2) Reinstate the traditional metal support bar across window cill in three bays on the top floor of the front (north) elevation, matching those still in place on the bays on the floor below”. Subject to any application to the Court of Session, this notice takes effect on the date of the decision, which constitutes the determination of the appeal for the purpose of Section 35(3) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

Reasoning

1. The appeal was made on the following grounds as provided for by section 35(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 ('the Act'):

- (d) that (i) works to the building were urgently necessary in the interests of safety or health, or for the preservation of the building; (ii) it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter; and (iii) the works carried out were limited to the minimum measures immediately necessary;

- (e) that listed building consent ought to be granted for the works, or that any relevant condition of such consent which has been granted ought to be discharged, or different conditions substituted;
- (g) except in relation to such a requirement as is mentioned in section 34(2)(b) or (c), that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out;

(d) That the works to the building were urgently necessary

2. I am informed the original windows that have been replaced had deteriorated, causing issues with draughtproofing, damp and noise levels, and being poor in terms of thermal efficiency. I have no reason to doubt that the previous windows, which were original timber windows, were in such a condition. However, to be successful on ground (d) it must be demonstrated that works to the building were urgently necessary for safety or health reasons, or to preserve the building, and that temporary works would not have sufficed for the purposes. It must also be demonstrated that the works done were limited to the minimum measures immediately necessary.

3. The evidence presented to me explains that the windows deteriorated over time, rather than there being an event that led to an urgent need for the works. Nor is there any evidence of temporary works having been considered to suffice for any purpose, or of alternative works being undertaken to the original windows. I further consider the replacement of those original windows with uPVC to not represent the minimum measures immediately necessary.

4. The removal of the sixteen original windows and installation of sixteen uPVC windows were therefore not urgently necessary in the interests of safety or health, or for the preservation of the building. The appeal on ground (d) fails.

(e) That listed building consent out to be granted for the works

5. 130 High Street is a Category B listed building and is an attractive example of a 19th Century tenement with shop. The property sits within a group of other Category B listed buildings with Nos. 100 and 102, 104 and 106, 108 and 110, 112 and 114, 116-120, 122-126, and 140 and 142 High Street. These properties lie within the wider Dalkeith House and Park Conservation Area, where I saw at my site visit a high quality mixed commercial area with windows being predominately timber sash and case design with astragals. Under section 14(2) of the Act I have a duty to have special regard to the desirability of preserving the building or its setting, or any features of special architectural or historic interest which it possesses. I also have a duty to pay special regard to the preservation or enhancement of the conservation area under section 64(1) of the Act.

6. I have been provided with photographs of the original windows that have been replaced at the front of the property, and I saw at my site visit the remaining original windows in the building. Those original windows were sliding sash with a 6 over 6 pane patter, and with slim proportions to their frame and astragals. Their design and use of materials are a suitably elegant and restrained part of the overall composition of the listed building, and represent an essential part of the historic and architectural interest of the property.

7. The new windows at the front of the property do not display a sensitivity of design to the building. The frames are of chunkier dimensions made of uPVC, the glazing sees

applied astragals to create a 4 over 4 pane design, and the windows are tilt and turn opening. These features combine to create windows that significantly jar with the building and harm its special historic and architectural interest. This harmful effect is widely visible in the area due to views along the road, and the inappropriate design further contrasts with the character of nearby buildings.

8. The windows to the rear and side of the building can be seen from Robertson's Close, and from areas and residential properties between High Street and Tait Street/St Andrews Street. I acknowledge these windows are seen from fewer location than those on the front elevation, but I saw at my site visit that, in those more limited locations, the windows are clearly visible and are an important element in the historic and architectural interest of the property.

9. The uPVC windows that have replaced the original windows to the rear and side display similar shortcomings to those at the front: the dimensions of the frames create a heavy appearance, with poor proportions to the windows, and the appearance of the uPVC is a jarring use of modern materials that contrasts with the building. I saw that the rear of the property and the wider area sees a number of changes to buildings, but in this context the windows that have been installed still appear as discordant elements.

10. It is my conclusion regarding the whole building that the windows which have been installed have a harmful impact on the architectural and historic interest of the property.

11. The Midlothian Local Development Plan 2018 is a material consideration in this appeal, and Policy ENV 22 in essence addresses the same provisions in the Act in respect of the preservation of listed buildings, their setting, or any features of architectural or historic interest that they possess. The Council's Dalkeith House & Park Conservation Area Character Appraisal 2004 identifies that sash and case windows with astragals and original fenestration are part of the character of the Area, and states that such windows should almost always be retained. For the same reasons as expressed above, I consider the works that have been undertaken conflict with Policy ENV 22 and the Character Appraisal, leading to harm to the architectural and historic interest of the property and to the character and appearance of the Conservation Area.

12. I acknowledge the appellant's submissions that the installed windows have been installed to improve energy and sound insulation. The publication from Historic Environment Scotland (HES) Managing Change in the Historic Environment: Windows is a further material consideration in this appeal. This advises that the energy efficiency of existing windows can be improved through measures other than replacement and I have not seen any evidence that such measures were considered or rejected for any specific reason. I also note that, although I have no reason to doubt the original windows were poorly deteriorated, I have not seen any evidence as to why the windows could not be repaired and any improvements to efficiency undertaken. Moreover, even if the original windows were beyond repair, the HES publication advises that new double-glazed windows may be acceptable if they can closely match the original window design, detail and materials. As noted earlier, the windows at the appeal property have not done this.

13. The appeal on ground (e) therefore fails.

(g) The steps required by the notice are excessive

14. The notice requires the removal of all the uPVC windows and replacement with windows to match the original in terms of design, appearance and materials.

15. I have found that the works have harmed the architectural and historic interest of the listed building and harmed the character and appearance of the Conservation Area. The requirements of the notice to remove those harmful windows and replace with windows that match the original windows removed is therefore not excessive: the steps are necessary to restore the building to its condition before the works were carried out.

16. I acknowledge the financial burden to which the appellant will be put through compliance with the notice. However, this is not a material consideration in whether the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out. The appeal on ground (g) fails.

Conclusion

17. The appellant states that she has replaced 11 windows at the property, not 16. It is clear that all 16 windows have been replaced at some time, and no firm evidence has been provided to substantiate the claim regarding only 11 being replaced. In any event, even if some windows may have been replaced in the past there is no provision in the Act for an appeal on the ground of immunity from enforcement action. On the basis of what I have read and seen it is my view on the balance of probability that 16 windows have been replaced.

18. I note representations in support of the windows being retained. However, for the reasons set out in this decision the works that have been undertaken are harmful to the listed building and to the Conservation Area, and are thus contrary to the purposes of the Act, as well as conflicting with the development plan and guidance from HES. This support therefore does not alter my findings regarding the replacement windows.

19. I have considered all the other matters raised but there are none which would lead me to alter my conclusion that the appeal fails. I have, though, modified the terms of the notice to remove reference to the need to reinstate the metal support bars on the front elevation to accord with the confirmation from the Council that such works had not occurred.

C Leigh
Reporter

**IMPORTANT – THIS COMMUNICATION AFFECTS YOUR LAND OR
PROPERTY**

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

LISTED BUILDING ENFORCEMENT NOTICE

**Issued by Midlothian Council
08 November 2022**

This Notice is served on:

The Owner 130 High Street
Mrs G Silvestri
19-21 High Street
Bonnyrigg
EH19 2DA

Miss A Gavrill & Mr G Nst (the
occupiers)
130C High Street
Dalkeith
EH22 1AU

Mr W Williams (the occupier)
130A High Street
Dalkeith
EH22 1AU

Mr I & Mrs T Francis (the occupiers)
130D High Street
Dalkeith
EH22 1AU

Mr S & Mrs A Cazan (the occupier)
130B High Street
Dalkeith
EH22 1AU

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

2. THE LISTED BUILDING AFFECTED

130 High Street, Dalkeith, EH22 1AU.

It forms part of a Category B listed building address 128-134 High Street, Dalkeith (Listed Building Reference 24414, date of listing 30 June 1983).

IMPORTANT – CONTINUES ON NEXT PAGE

This listed building is in a B Group with Nos 100 and 102, 104 and 106, 108 and 110, 112 and 114, 116-120, 122-126, and 140 and 142 High Street.

It is in the Dalkeith House and Park Conservation Area.

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

Without listed building consent:

- The removal of sixteen single glazed, timber framed, sash and case windows;
- the removal of traditional metal support bar across window cill in three bays on the top floor of the front (north) elevation.
- The installation of sixteen double glazed, uPVC framed, tilt and turn windows in the front, rear and side facades.

4. REASONS FOR ISSUING THIS NOTICE

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

130 High Street is a Category B listed building.

The features of original windows are an essential part of the character of the windows and buildings. These features include materials, glazing pattern, colour of frames, method of opening, dimensions and profiles of frames and astragals, all externally visible parts of the case/frames, and the size and position of the windows in the building.

The materials, glazing pattern, method of opening, profiles of frames and astragals and the externally visible parts of the case/frames of all the replacement windows differ from the window which were removed. The replacement windows therefore materially detract from the character and appearance of the listed building. Given this, it is concluded that listed building consent is required for the alterations. Listed building consent has not been granted or sought in relation to the replacement windows. A breach of listed building control has therefore occurred.

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

IMPORTANT – CONTINUES ON NEXT PAGE

5. WHAT YOU ARE REQUIRED TO DO

- (1) Remove all uPVC windows of the property and replace them with white painted, timber frame, sash and case windows which match the removed timber windows in glazing pattern, profile of frames and astragals and all externally visible parts of the case/frames.
- (2) Reinstall the traditional metal support bar across window cill in three bays on the top floor of the front (north) elevation, matching those still in place in the bays on the floor below.

6. TIME FOR COMPLIANCE

Requirement 5(1) and 5(2) to be complied with by 30 May 2023.

7. WHEN THIS NOTICE TAKES EFFECT

This Notice takes effect on 08 December 2022 unless an appeal is made against it beforehand.

Signed



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

Date: 08 November 2022

8. YOUR RIGHT OF APPEAL

You can appeal against this notice, but any appeal must be received, or posted in time to be received by the Scottish Ministers before 09 December 2022. Any other person who has an interest in the land to which this notice relates may also appeal to the Scottish Ministers by the same date.

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

9. WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this enforcement notice, it will take effect on 09 December 2022 and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period specified in the notice. Failure to comply with an enforcement notice which has taken effect can result in prosecution or the service of a Fixed Penalty Notice on the relevant person(s) who have not complied with its requirements. Failure to comply with an enforcement notice which has taken effect may also result in the Council taking direct action to correct the breach.

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

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

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

RIGHT OF APPEAL

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

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

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

PENALTIES FOR NON-COMPLIANCE WITH AN ENFORCEMENT NOTICE

Where, after the end of the period for compliance with this notice, any steps required to be taken have not been complied with, unless a valid appeal has been made to the directorate, the person who is, for the time being the owner of the building shall be in breach of this notice and guilty of an offence. Any person guilty of such an offence shall be liable on summary conviction to a fine of £20,000 or on conviction on indictment to an unlimited fine.

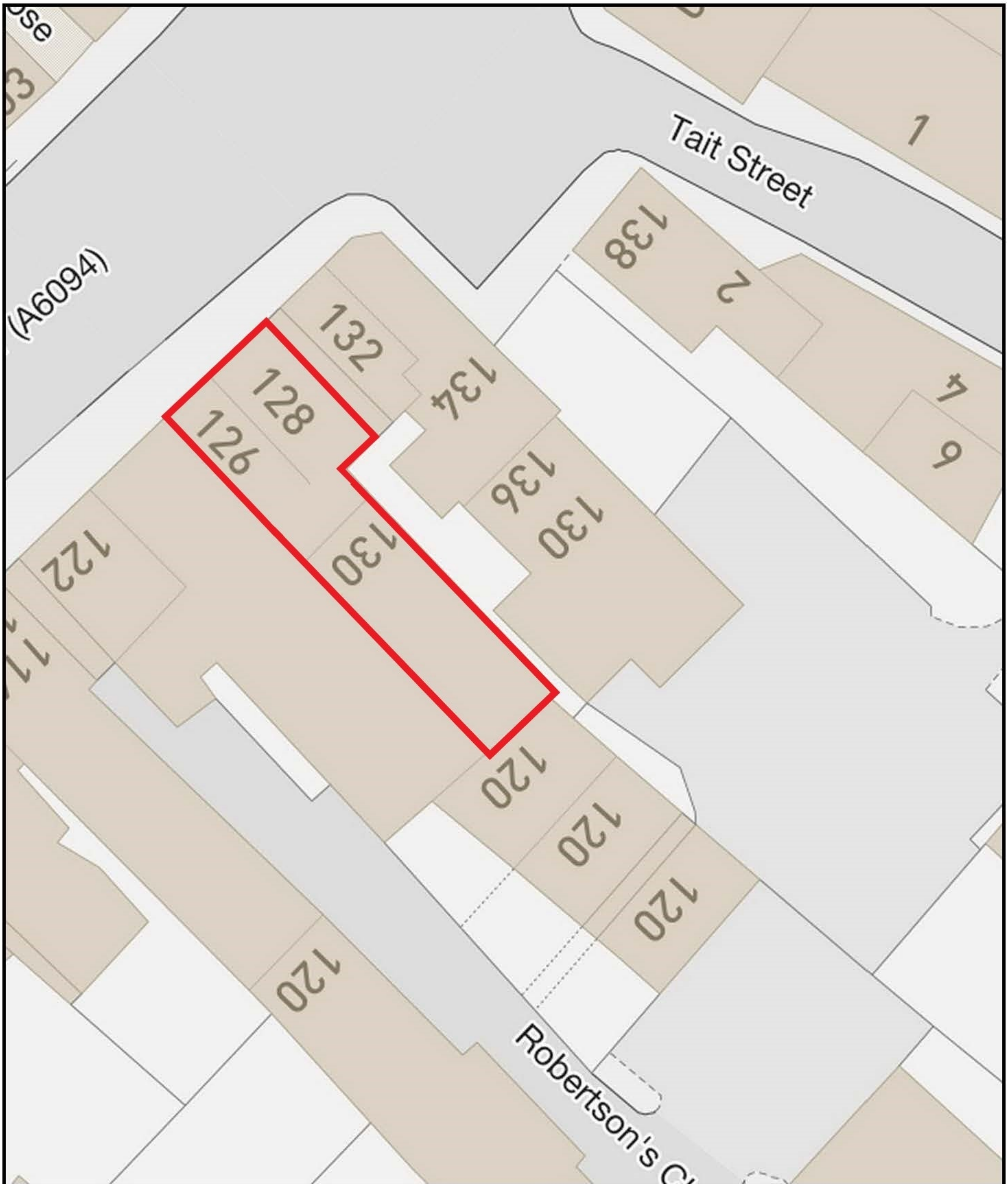
IMPORTANT – CONTINUES ON NEXT PAGE



DIRECT ACTION FOR NON-COMPLIANCE WITH AN ENFORCEMENT NOTICE

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

FURTHER OFFENCES

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



 <p>Education, Economy & Communities Midlothian Council Fairfield House 8 Lothian Road Dalkeith EH22 3AA</p>	130 High Street, Dalkeith, EH22 1AU	
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IMPACT OF NATIONAL PLANNING FRAMEWORK NO.4 (NPF4) ON UNDETERMINED PLANNING APPLICATIONS WHICH ARE THE SUBJECT OF A PLANNING OBLIGATION

Report by Chief Officer Place

1 PURPOSE OF REPORT

- 1.1 The purpose of this report is to seek the Committee's agreement that planning applications, considered prior to the adoption of National Planning Framework No. 4 (NPF4), that have a 'minded to grant' decision and are subject to the completion of a planning obligation are progressed to conclusion without referral back to the Committee or Local Review Body (LRB).

2 BACKGROUND

- 2.1 At its meeting of 28 February 2023 the Committee considered a NPF4 update report which advised; on 11 January 2023 the Scottish Parliament approved NPF4, which was then adopted and published by Scottish Ministers on Monday 13 February 2023. NPF4 along with the Midlothian Local Development Plan (MLDP), which was adopted on 7 November 2017, forms the statutory development plan for Midlothian.
- 2.2 Section 25 of the Town and Country Planning (Scotland) Act 1997 as amended (by the 2006 Planning etc. Act and The Planning (Scotland) Act 2019) states: "Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise". NPF4 is part of the development plan, along with the MLDP and as such both documents provide the policy position against which planning applications and other applications made under the planning Acts are assessed.
- 2.3 As NPF4 is a more recent document than MLDP, and as such is seen as being more up to date, where there is an incompatibility in policies between NPF4 and MLDP, NPF4 will carry more weight in the decision making process in policy terms – however, the local planning authority can determine that material considerations are such that the policy position set out in MLDP is the position the Council wants to adopt in the assessment of an application especially until MLDP2 is adopted. The development land allocations made and confirmed in the MLDP remain and are not amended as a result of the adoption of NPF4.

- 2.4 Procedurally, planning applications are determined in accordance with the Town and Country Planning (Scotland) Act 1997 as amended (*hereafter referred to as the Act*) and associated regulations and Scottish Government advice in particular the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013.
- 2.5 In considering an application section 37(2) of the Act states “the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations”.
- 2.6 Section 37(4) of the Act with regard the determination of applications states that “the date of the grant or refusal” ... “shall be the date on which the planning authority’s decision bears to have been signed on behalf of the authority”. The issuing of the decision notice bears the signature of the authority.
- 2.7 The courts have held that a decision on a planning application is not deemed to have been formally made until the issue of a decision letter *Co-operative Retail Services Ltd v Taff-Ely BC (1978)* and later *R v West Oxfordshire District council ex parte Pearce Homes Ltd (1985)*. Court judgements on points of principle and procedure transpose both Scottish and English planning systems.
- 2.8 As a Committee resolution to approve/refuse an application does not constitute a written decision notice, applications may be withdrawn, appealed against non-determination or referred back to Committee for reconsideration before the issue of a decision notice (this scenario is very unusual – but technically possible).
- 2.9 In cases where an application is not subject to a legal agreement/developer contributions it is Midlothian’s practice to issue the decision notice as soon as practicably possible after a Committee resolution (usually the following day). However, there can be a significant period of time between a Committee resolution and the issuing of a decision notice in those cases which are subject to the conclusion of a legal agreement.
- 2.10 The Council as Planning Authority has a number of planning applications which were considered by the Committee or LRB and have been determined to be acceptable subject to a planning obligation to secure developer contributions. Prior to the conclusion of a planning obligation and the issuing of a decision notice applications have a ‘minded to grant’ status.

3 OUTSTANDING APPLICATIONS

- 3.1 The applications set out in the following tables have a ‘minded to grant’ status and are subject to planning obligation negotiations and legal processes.

Table 1 - Planning Application Decisions made by Committee

Planning Application Reference/Site	Developer	Development	Date considered by Committee	Planning Obligation Status
18/00081/DPP Upper Dalhousie Sand Quarry	Tillicoultry Quarries	Extension to sand quarry	28.08.2018	Heads of Terms with applicant
18/00082/S42 Upper Dalhousie Sand Quarry	Tillicoultry Quarries	Amendment to conditions of existing permission	28.08.2018	Heads of Terms with applicant
17/00408/DPP Newton Farm	Cala	Erection of 504 dwellings	22.01.2019 and 24.11.2020	Advanced draft agreement prepared
17/00409/DPP Wellington Farm	Cala	Erection of 117 Dwellings	22.01.2019	Advanced draft agreement prepared
19/01039/PPP Hs16 Bilston	TW/Hallam Land	Residential development in principle (indicative 214 dwellings)	31.08.2021	Advanced draft agreement prepared
20/00151/PPP HS12	TW	Residential development in principle (indicative 1,032 dwellings)	06.04.2021	Legal instructed to draft agreement
20/00774/PPP Hs1 safeguard	Wellington Farms Ltd	Residential development in principle (indicative 360 dwellings)	15.03.2022	Head of Terms negotiations ongoing
21/00982/PPP Sheriffhall South	Buccleuch	Business, commercial, mixed use development	14.06.2022	Agreement out for signing
22/00066/DPP Newbyres, Gorebridge	Persimmon	Erection of 96 dwellings	22.11.2022	Advanced draft agreement prepared
22/00588/S42 Land at Newtonloan	Omnivale	S42 application for business uses – amendments to access	11.01.2023	Legal instructed to draft agreement

Table 2 - Notice of Review Decisions made by Local Review Body (LRB)

Planning Application Reference/Site	Developer	Development	Date considered by LRB	Planning Obligation Status
15/00703/DPP Land at Lugton Brae	Jamie o Rourke	Erection of five dwellings	08.03.2016	Heads of Terms with applicant
21/00571/PPP Land at Newlandrig	Mr Darling	Residential development in principle (indicative 10 dwellings)	22.02.2022	Draft legal agreement with applicant

- 3.2 The 'minded to grant' decisions set out in tables 1 and 2 were made prior to the adoption of NPF4. As it is a requirement to consider the development plan (including NPF4 from 13 February 2023) prior to issuing a planning application decision, officers have reviewed those cases which have 'minded to grant' status and consider NPF4 does not trigger a referral of the cases back to Committee for reconsideration and that the planning applications can precede to approval on the basis determined by the Committee or LRB at the time of consideration – however, as the decisions were ones made by elected members, it is appropriate for the Committee to consider this position.

4 RECOMMENDATIONS

- 4.1 It is recommended that the Committee agrees that those planning applications, considered prior to the adoption of NPF4, that have a 'minded to grant' decision as set out in tables 1 and 2 of the report are progressed to conclusion without being referred back to the Committee or the Local Review Body.

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date: 20 March 2023
Contact Person: Peter Arnsdorf, Planning, Sustainable Growth and Investment Manager
peter.arnsdorf@midlothian.gov.uk
Background Papers: NPF4 update reported presented to Committee at its meeting of 28 February 2023.



APPLICATION FOR PLANNING PERMISSION 22/00253/DPP FOR THE ERECTION OF 35 DWELLINGHOUSES AND ASSOCIATED WORKS (AMENDMENT TO HOUSETYPES APPROVED BY PLANNING PERMISSION 17/00068/DPP) AT LAND BETWEEN DEANBURN AND MAURICEWOOD ROAD, PENICUIK

Report by Chief Officer Place

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1** The planning application is for the erection of 35 dwellinghouses on land between Deanburn and Mauricewood Road Penicuik. The application proposes an amendment to the house types previously granted planning permission (17/00068/DPP) for part of the wider North West Penicuik development site.
- 1.2** There have been no representations and there was no requirement to undertake statutory or third party consultations.
- 1.3** The relevant development plan policies are policies 1, 2, 3, 6, 13, 14, 15, 16, 18, 20, 21, 22, 23 and 24 of the National Planning Framework 4 (NPF4) and policies STRAT1, DEV2, DEV3, DEV5, DEV6, DEV7, DEV9, TRAN1, TRAN2, TRAN5, IT1, ENV2, ENV7, ENV9, ENV10, ENV11, ENV15, ENV24, ENV25, IMP1, IMP2 and IMP3 of the Midlothian Local Development Plan 2017 (MLDP).
- 1.4** The recommendation is to grant planning permission subject to conditions and the applicant modifying/amending the planning obligation that covers the sites development to ensure contributions towards necessary infrastructure are secured.

2 LOCATION AND SITE DESCRIPTION

- 2.1** The application site is part of a larger housing development site located to the north west of the built up area of Penicuik, on land between Deanburn and Mauricewood Road – the housing development site as a whole is referred to as North West Penicuik and Deanburn. The development site was originally allocated for residential development in the 2008 Midlothian Local Plan. Detailed planning permission (17/00068/DPP) for the erection of 554 residential units and associated works across six development areas (sites h26 - Deanburn and h58 – North West Penicuik in the MLDP) was granted planning permission in

September 2018, subsequent amends to the scheme have increased the unit numbers to 566. Construction work across the wider site is ongoing and approximately 287 dwellings have been built.

- 2.2 The application site is located within one of the six development zones within the wider North West Penicuik development, in an area called the 'Nursery Zone' or 'Carnethy Heights' – the site is the western part of this development zone, 'Nursesey West'. This site slopes downwards from north west to south east with approximately a 5 metre variation in levels across the site. It is accessed from, and located to the west of, Mauricewood Road. There is existing woodland planting around this phase of the development.
- 2.3 The existing housing nearby, to the south, within the existing settlement of Penicuik comprises predominantly traditional post war, two-storey terraced and semi-detached houses and share the same form and character as the proposed development - typically square/rectangular buildings fronting onto streets with front and rear gardens and either fenced or hedged boundaries. The majority of the buildings are characterised by various forms of rendered wall finish.

3 PROPOSAL

- 3.1 The current application is for detailed planning permission for the erection of 35 detached dwellinghouses. The proposal sees an amendment to the house types of 35 dwellinghouses previously approved in terms of the larger consented housing site, planning permission 17/00068/DPP.
- 3.2 The amended house types are of a different design to those previously approved and also result in the overall number of bedrooms increasing by 24 as compared to the approved scheme. The application site will comprise 26 five bedroom dwellings and 9 four bedroom dwellings – all the dwellings are two storey in height.
- 3.3 The proposed housing type mix comprises of the following house types:
 - House type Thurso – five dwellings;
 - House type Lenzie – five dwellings
 - House type Nairn – two dwellings;
 - House type Stirling – seven dwellings;
 - House type Pitlochry – six dwellings;
 - House type Orkney – four dwellings;
 - House type Rothesay – six dwellings
- 3.4 Proposed materials include white render and reconstituted stone base course/surrounds, white uPVC windows with astragals and concrete tile roof.

- 3.5 The proposed layout retains much of the approved roads and footpaths as previously shown on the layout approved in terms of planning permission 17/00068/DPP. There have been some small amendments to some parking arrangements.

4 BACKGROUND

- 4.1 This application site forms part of a larger residential allocation, site h58, in the Midlothian Local Development Plan 2017. The site was originally allocated in the 2008 Midlothian Local Plan as site H16.
- 4.2 The wider housing development site located to the north west of the built up area of Penicuik is referred to as North West Penicuik (site h58 allocated for 385 residential units) and Deanburn (site h26 allocated for 109 residential units). Detailed planning permission (17/00068/DPP) for the erection of 554 residential units and associated works across six development areas (sites h26 and h58 in the MLDP) was granted planning permission in September 2018, subsequent amends to the scheme have increased the unit numbers to 566. Construction work across the wider site is ongoing and approximately 287 dwellings have been built.
- 4.3 The application site is located within one of the six development zones within the wider North West Penicuik development, in an area called the 'Nursery Zone' or 'Carnethy Heights' – the application site is the western part of this development zone, 'Nursey West'. The approved layout and form of development in the southern part of this zone 'Nursery South' has also been subject to amendments via planning permission 19/00576/DPP for the erection of 13 dwellinghouses (including five additional affordable units) and associated works, which was approved in 2019, and planning permission 20/00088/DPP for the erection of 28 flatted dwellings in two blocks and associated works (amendment to the design of the original approval), which was approved in 2020.
- 4.4 The proposal is classed as a Major Development, as defined by the Town and Country Planning (Scotland) (Hierarchy of Developments) Regulations 2009. Therefore, the applicant has certain obligations in relation to pre-application consultation with the community. The applicant submitted a proposal of application notice to the Council (15/00987/PAC) which was reported to Committee at its meeting of March 2016. Although this pre-application consultation was primarily the foundation to application 17/00068/DPP for the wider Deanburn/North West Penicuik development site the current planning application is covered by this 2015 pre-application consultation due to the proposal being within the wider development site and of a similar form of development (note – application 22/00253/DPP was submitted prior to October 2022, when changes in regulations introduced a time limit to submitting a planning application on the back of a pre-application consultation).

5 CONSULTATIONS

- 5.1 No consultations were required as the application relates to the amendment of house types only – no additional units are proposed by this planning application.

6 REPRESENTATIONS

- 6.1 No representations have been received.

7 PLANNING POLICY

- 7.1 The development plan is comprised of National Planning Framework 4 (2023) and the Midlothian Local Development Plan 2017.

- 7.2 The following policies are relevant to the proposal:

National Planning Framework 4 (NPF4)

- 7.3 Policy **1 Tackling the climate and nature crisis**; sets out to encourage, promote and facilitate development that addresses the global climate emergency and nature crisis.
- 7.4 Policy **2 Climate mitigation and adaptation**; sets out to encourage, promote and facilitate development that minimises emissions and adapts to the current and future impacts of climate change.
- 7.5 Policy **3 Biodiversity**; sets out to protect biodiversity, reverse biodiversity loss, deliver positive effects from development and strengthen nature networks.
- 7.6 Policy **6 Forestry, woodland and trees**; sets out to protect and expand forests, woodland and trees.
- 7.7 Policy **13 Sustainable Transport**; sets out to encourage, promote and facilitate developments that prioritise walking, wheeling, cycling and public transport for everyday travel and reduce the need to travel unsustainably.
- 7.8 Policy **14 Design, quality and place**; sets out to encourage, promote and facilitate well designed development that makes successful places by taking a design-led approach and applying the Place Principle.
- 7.9 Policy **15 Local Living and 20 minute neighbourhoods**; sets out to encourage, promote and facilitate the application of the Place Principle and create connected and compact neighbourhoods where people can meet the majority of their daily needs within a reasonable distance of their home, preferably by walking, wheeling or cycling or using sustainable transport options.

- 7.10 Policy **16 Quality homes**; sets out to encourage, promote and facilitate the delivery of more high quality, affordable and sustainable homes, in the right locations, providing choice across tenures that meet the diverse housing needs of people and communities across Scotland.
- 7.11 Policy **18 Infrastructure first**; sets out to encourage, promote and facilitate an infrastructure first approach to land use planning, which puts infrastructure considerations at the heart of placemaking.
- 7.12 Policy **20 Blue and green infrastructure**; sets out to protect and enhance blue and green infrastructure and their networks.
- 7.13 Policy **21 Play, recreation and sport**; sets out to encourage, promote and facilitate spaces and opportunities for play, recreation and sport.
- 7.14 Policy **22 Flood risk and water management**; sets out to strengthen resilience to flood risk by promoting avoidance as a first principle and reducing the vulnerability of existing and future development to flooding.
- 7.15 Policy **23 Health and Safety**; sets out to protect people and places from environmental harm, mitigate risks arising from safety hazards and encourage, promote and facilitate development that improves health and wellbeing.
- 7.16 Policy **24 Digital Infrastructure**; sets out to encourage, promote and facilitate the rollout of digital infrastructure across Scotland to unlock the potential of all our places and the economy.

Midlothian Local Development Plan (MLDP)

- 7.17 Policy **STRAT 1: Committed Development** seeks the early implementation of all committed development sites and related infrastructure, facilities and affordable housing, including sites in the established housing land supply. Committed development includes those sites allocated in previous development plans which are continued in the MLDP.
- 7.18 Policy **DEV2: Protecting Amenity within the Built-Up Area** states that development will not be permitted where it would have an adverse impact on the character or amenity of a built-up area.
- 7.19 Policy **DEV3: Affordable and Specialist Housing** seeks an affordable housing contribution of 25% from sites allocated in the MLDP. Providing lower levels of affordable housing requirement may be acceptable where this has been fully justified to the Council. This policy supersedes previous local plan provisions for affordable housing; for sites allocated in the Midlothian Local Plan (2003) that do not benefit from planning permission, the Council will require reasoned justification

in relation to current housing needs as to why a 25% affordable housing requirement should not apply to the site.

- 7.20 Policy **DEV5: Sustainability in New Development** sets out the requirements for development with regards to sustainability principles.
- 7.21 Policy **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, and passive energy gain, positioning of buildings, open and private amenity space provision and parking.
- 7.22 Policy **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.
- 7.23 Policy **DEV9: Open Space Standards** sets out the necessary open space for new developments. This policy requires that the Council assess applications for new development against the open space standards as set out in Appendix 4 of that Plan and seeks an appropriate solution where there is an identified deficiency in any of the listed categories (quality, quantity and accessibility).
- 7.24 Policy **TRAN1: Sustainable Travel** aims to encourage sustainable modes of travel.
- 7.25 Policy **TRAN2: Transport Network Interventions** highlights the various transport interventions required across the Council area, including the A701 realignment.
- 7.26 Policy **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.
- 7.27 Policy **IT1: Digital Infrastructure** supports the incorporation of high speed broadband connections and other digital technologies into new homes.
- 7.28 Policy **ENV2 Midlothian Green Networks** supports development proposals brought forward in line with the provisions of the Plan that help to deliver the green network opportunities identified in the Supplementary Guidance on the *Midlothian Green Network*.
- 7.29 Policy **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.

- 7.30 Policy **ENV9: Flooding** presumes against development which would be at unacceptable risk of flooding or would increase the risk of flooding elsewhere. It states that Flood Risk Assessments will be required for most forms of development in areas of medium to high risk, but may also be required at other locations depending on the circumstances of the proposed development. Furthermore it states that Sustainable urban drainage systems will be required for most forms of development, so that surface water run-off rates are not greater than in the site's pre-developed condition, and to avoid any deterioration of water quality.
- 7.31 Policy **ENV10: Water Environment** requires that new development pass surface water through a sustainable urban drainage system (SUDS) to mitigate against local flooding and to enhance biodiversity and the environmental.
- 7.32 Policy **ENV11: Woodland, Trees and Hedges** states that development will not be permitted where it could lead directly or indirectly to the loss of, or damage to, woodland, groups of trees (including trees covered by a Tree Preservation Order, areas defined as ancient or semi-natural woodland, veteran trees or areas forming part of any designated landscape) and hedges which have a particular amenity, nature conservation, biodiversity, recreation, landscape, shelter, cultural, or historical value or are of other importance.
- 7.33 Policy **ENV15: Species and Habitat Protection and Enhancement** presumes against development that would affect a species protected by European or UK law.
- 7.34 Policy **ENV24: Other Important Archaeological or Historic Sites** seeks to prevent development that would adversely affect regionally or locally important archaeological or historic sites, or their setting.
- 7.35 Policy **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.
- 7.36 Policy **NRG6: Community Heating** seeks to ensure developments deliver, contribute towards or enable the provision of community heating schemes.
- 7.37 Policy **IMP1: New Development**. This policy ensures that appropriate provision is made for a need which arises from new development. Of

relevance in this case are education provision, transport infrastructure; contributions towards making good facility deficiencies; affordable housing; landscaping; public transport connections, including bus stops and shelters; parking in accordance with approved standards; cycling access and facilities; pedestrian access; acceptable alternative access routes, access for people with mobility issues; traffic and environmental management issues; protection/management/compensation for natural and conservation interests affected; archaeological provision and 'percent for art' provision.

- 7.38 Policy **IMP2: Essential Infrastructure Required to Enable New Development to Take Place** states that new development will not take place until provision has been made for essential infrastructure and environmental and community facility related to the scale and impact of the proposal. Planning conditions will be applied and; where appropriate, developer contributions and other legal agreements will be used to secure the appropriate developer funding and ensure the proper phasing of development.
- 7.39 Policy **IMP3: Water and Drainage** require sustainable urban drainage systems (SUDS) to be incorporated into new development.

8 PLANNING ISSUES

- 8.1 The main planning issue to be considered in determining this application is whether the proposal complies with development plan policies unless material planning considerations indicate otherwise. The representations and consultation responses received are material considerations.

The Principle of Development

- 8.2 The site is part of an allocated housing site (site h58) in the MLDP and is located within the built up area of Penicuik where there is a presumption in favour of appropriate residential development. The site has been allocated for housing since the 2008 Midlothian Local Plan and contributes towards the Council's housing land supply. No material considerations have been presented to outweigh the presumption in favour of development. Furthermore, the principle of residential development on the site has been established by the grant of planning permission 17/00068/DPP in September 2018. Planning permission was secured, through application 17/00068/DPP, for 35 dwellinghouses in the same position as is proposed in this application. The residential development will not conflict with adjacent uses.
- 8.3 With regard NPF4, although the site is allocated for housing in the MLDP, consideration still needs to be given to the site's location in terms of sustainability. In this regard the site is within an urban area in proximity to a range of local services including shops, schools, pharmacy and medical practices, employment opportunities, public

transport options and active travel connections and as such is considered to be in a sustainable location in compliance with NPF4.
The supply of effective housing land

- 8.4 The Council is required to maintain a supply of effective housing land (enough land allocated and coming forward for housing to meet its housing targets) at all times. The number of homes required in a local authority area is set by the Scottish Government in NPF4 and is met by the development strategy and policies of the MLDP and the assessment of individual proposals. Where a shortfall in the supply of effective housing land emerges, sites that are not allocated for residential development should be considered as possible additional sites to make up the shortfall. With a 10 year housing target being set at 8,850 units (for the life of MLDP2, to be prepared for adoption in 2026/27) it is a reasonable presumption that an annualised target of 885 units will be expected prior to the adoption of MLDP2 – this provides an impetus to support the granting of planning permission for residential development on allocated housing sites such as the one proposed.

Layout, Form, Design and Materials

- 8.5 The proposed development seeks to change the house types of 35 of the previously approved dwellinghouses. The amendments will result in the bedroom numbers increasing by 24, 22 of the dwellings will increase from four to five bedrooms and one of the dwellings increasing from a three bedroom house to a five bedroom house.
- 8.6 The house types are being remixed to other house types within the house builder's range; while this is a material change to the original planning permission it does not constitute a significant difference in design when compared to that which is approved.
- 8.7 No additional units are proposed on the application site and the proposed change does not alter the density of development in this part of the site. The proposed dwellinghouses are all located within the same plots approved in terms of the original consent, with only small changes in their siting. The change in design and siting of each dwelling will not have an adverse impact on the layout or character of the area.
- 8.8 A condition on the original permission (17/00068/DPP) requires that details of the materials be submitted and approved by the planning authority prior to the commencement of development. The materials have not been specified on the submitted plans, but are anticipated to include white render and reconstituted stone base course/surrounds, white uPVC windows with astragals and concrete tile roof. A condition securing material samples for approval is recommended if planning permission is granted.

- 8.9 The MLDP requires good levels of amenity for residential development in terms of gardens sizes, open space and the separation distances in order to prevent loss of privacy and creating a sense of overbearing on neighbours. It is considered that the majority of dwellings achieve good sized gardens having regard to Midlothian's established approach on garden size for dwellings with 3 apartments (rooms excluding kitchens and bathrooms – i.e. bedrooms and living rooms) to deliver 110sqm and of 4 or more apartments to deliver 130sqm. It is further assessed that the spacing between proposed new dwellings within the site and existing dwellings (outside the site) is adequate.
- 8.10 The footprint and layout of the proposed dwellinghouses are very similar to those of the previously approved layout. Overall, the development proposal will not result in a loss of amenity due to the scale, design, siting and orientation of the proposed dwellings. Furthermore, the proposed dwellings will be afforded an acceptable level of private garden ground and outlook as compared to the currently approved scheme. Therefore, the proposed layout is acceptable in terms of its impact on amenity and is consistent with decisions previously taken by the Council on this site and the wider development of North West Penicuik.

Access and Transportation Issues

- 8.11 The overall road layout and configuration is consistent with the previous approval and any adjustments to the roads layout and parking provision are very minor in scale and will not have an adverse impact on road and pedestrian safety within this part of the site. The application site, the western part of the 'Nursesey Zone', is likely to be primarily accessed off Lyell Crescent/Mauricewood Road although the route through the wider development can take road users onto Rullion Road to the south west.

Developer Contributions

- 8.12 No additional units are proposed on this part of the site and as such the quantum of contributions would not change. However, the granting of planning permission would need to be subject to a modification/variation of the existing planning obligation (section 75 agreement) to ensure that this new planning permission is bound by it.

9 RECOMMENDATION

- 9.1 That planning permission be granted for the following reason:

The proposed development site will contribute to the sustainable delivery of housing in compliance with the policies of National Planning Framework 4 and is allocated for housing in the Midlothian Local Development Plan 2017 (MLDP) where there is a presumption in favour of an appropriate form of development. Furthermore, the

principle of residential development on the site has been established by the grant of planning permission 17/00068/DPP. The proposed detailed scheme of development in terms of its layout, form, design and landscape framework is acceptable and as such accords with development plan policies. The presumption for development is not outweighed by any other material considerations.

Subject to:

- a. The prior amendment/modification of the planning obligation associated with planning permission 17/00068/DPP (and any other amendment planning applications) to ensure it covers the development approved under this application (22/00253/DPP).
- b. the following conditions:
 1. The development to which this permission relates shall commence no later than the expiration of three years beginning with the date of this permission.

Reason: *To accord with the provisions of Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning (Scotland) Act 2019).*

2. Development shall not begin until samples of materials to be used on external surfaces of the buildings; hard ground cover surfaces; means of enclosure and ancillary structures have been submitted to and approved in writing by the planning authority. An enhanced quality of materials shall be used in the area of improved quality. Development shall thereafter be carried out using the approved materials or such alternatives as may be agreed in writing with the planning authority

Reason: *To ensure the quality of the development is enhanced by the use of quality materials to reflect its setting in accordance with policies DEV2 and DEV6 of the Midlothian Local Development Plan 2017 and national planning guidance and advice.*

3. Notwithstanding that delineated on application drawing the development shall not begin until details of a revised scheme of hard and soft landscaping has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
 - i other than existing and finished ground levels and floor levels for all buildings, open space and roads in relation to a fixed datum;
 - ii existing trees, landscaping features and vegetation to be retained; removed, protected during development and in the case of damage, restored;

- iii proposed new planting in communal areas, road verges and open space, including trees, shrubs, hedging, wildflowers and grassed areas;
- iv location and design of any proposed walls, fences and gates, including those surrounding bin stores or any other ancillary structures;
- v schedule of plants to comprise species, plant sizes and proposed numbers/density;
- vi programme for completion and subsequent maintenance of all soft and hard landscaping;
- vii a woodland management plan for existing and proposed areas of woodland;
- viii a biodiversity action plan and maintenance plan to enhance the biodiversity value of the existing suds pond located nearby to the north east of the nursery area;
- ix drainage details, watercourse diversions, flood prevention measures and sustainable urban drainage systems to manage water runoff;
- x proposed car park configuration and surfacing;
- xi proposed footpaths and cycle paths (designed to be unsuitable for motor bike use); and,
- xii details of existing and proposed services; water, gas, electric and telephone.

All hard and soft landscaping shall be carried out in accordance with the scheme approved in writing by the planning authority as the programme for completion and subsequent maintenance (vi).

Any trees or shrubs removed, dying, becoming seriously diseased or damaged within five years of planting shall be replaced in the following planting season by trees/shrubs of a similar species to those originally required.

Reason: *To ensure the quality of the development is enhanced by landscaping to reflect its setting in accordance with policies DEV2, DEV6 and DEV7 of the Midlothian Local Development Plan 2017 and national planning guidance and advice.*

4. No building shall have an under-building that exceeds 0.5 metres in height above ground level unless otherwise agreed in writing by the planning authority.

Reason: *Under-building exceeding this height is likely to have a materially adverse effect on the appearance of a house.*

5. Development shall not begin until details of the provision and use of electric vehicle charging stations have been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details

or such alternatives as may be approved in writing with the planning authority.

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

6. Development shall not begin until details, including a timetable of implementation, of superfast fibre broadband have been submitted to and approved in writing by the planning authority. The details shall include delivery of superfast fibre broadband prior to the occupation of the building. The delivery of superfast fibre broadband shall be implemented as per the approved details.

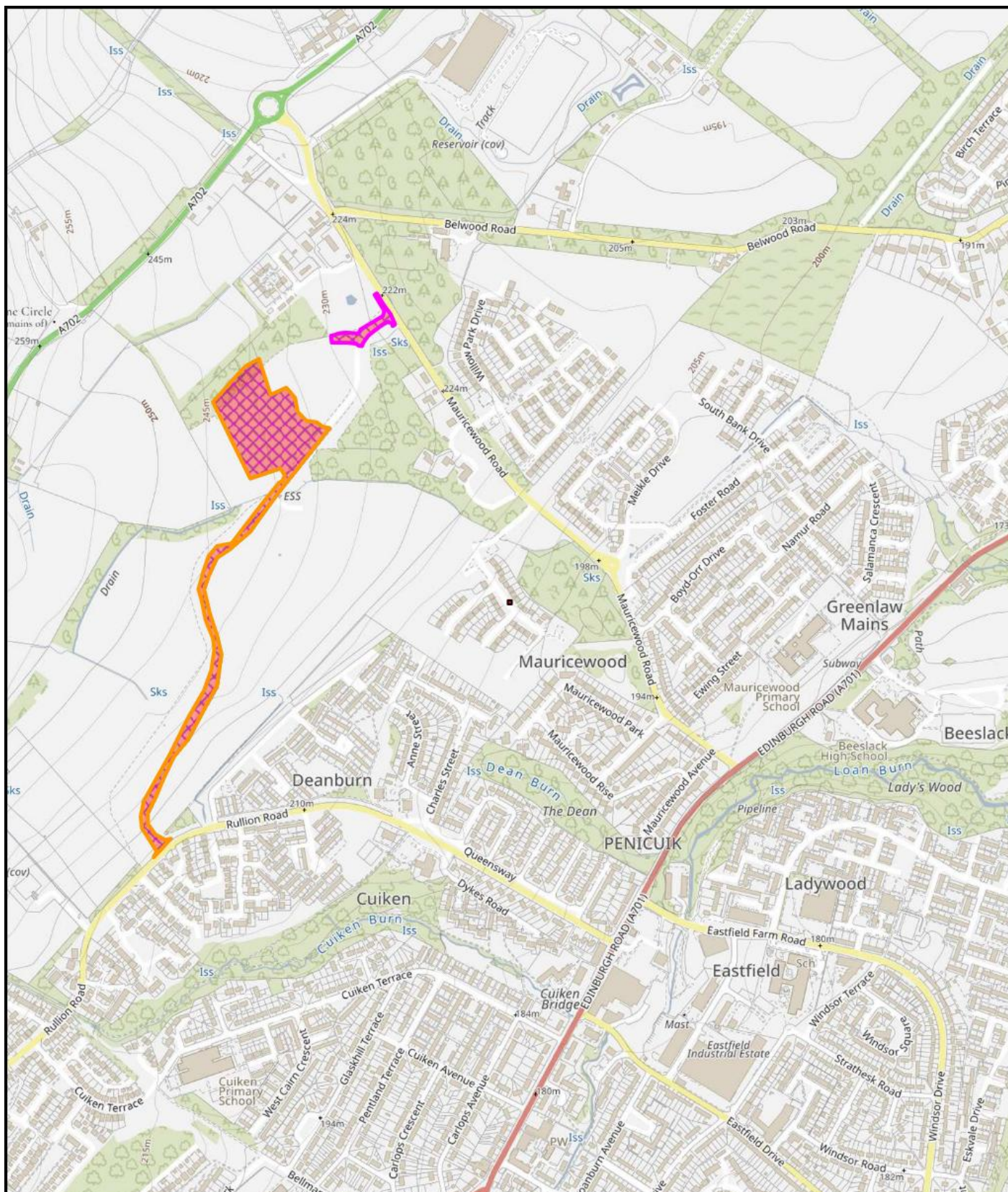
Reason: *To ensure the quality of the development is enhanced by the provision of appropriate digital infrastructure; and to comply with policy IT1 of the Midlothian Local Development Plan 2017.*

7. Development shall not begin until details of a sustainability/biodiversity scheme for the site, including the provision of house bricks and boxes for bats and swifts throughout the development has been submitted to an approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing by the planning authority.

Reason: *To ensure the quality of the development is enhanced by the use of art to reflect its setting in accordance with policies in the Midlothian Local Development Plan 2017 and national planning guidance and advice.*

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date:	20 March 2023
Application No:	22/00253/DPP
Applicant:	Avant Homes Scotland
Agent:	N/A
Validation Date:	23 May 2022
Contact Person:	Whitney Lindsay
Email:	Whitney.Lindsay@Midlothian.gov.uk
Background Papers:	17/00068/DPP, 19/00576/DPP and 20/00088/DPP
Attached Plans:	A location plan from application 17/00068/DPP showing the different development areas including the 'Nursery Zone' referenced in the above report and the proposed site layout.



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

Amend 35 housetypes under 17/00068/DPP Land between Deanburn and Mauricewood Road

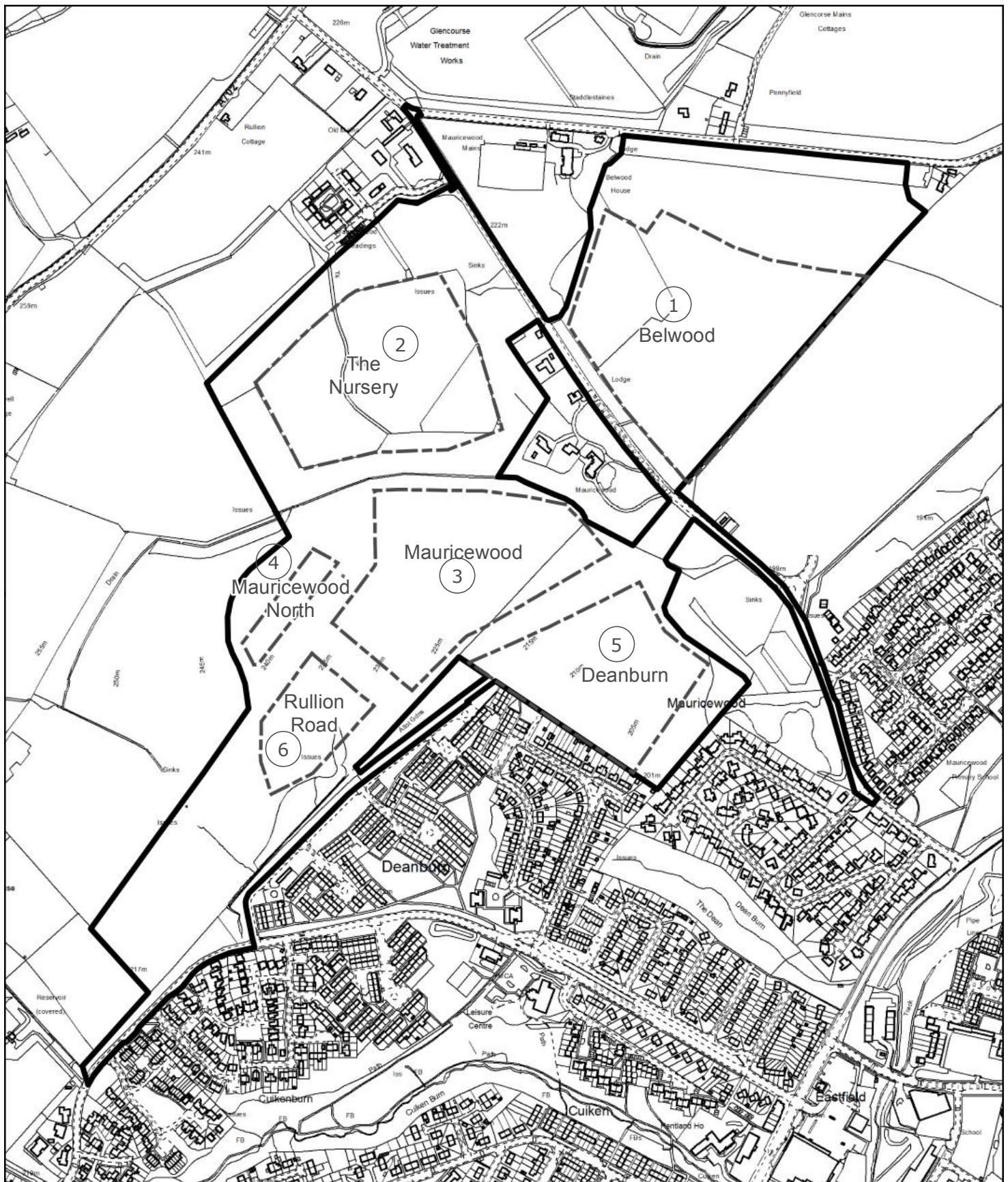
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File No.22/00253/DPP

Scale: 1:10,000





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

Land between Deanburn and Mauricewood Road, Penicuik

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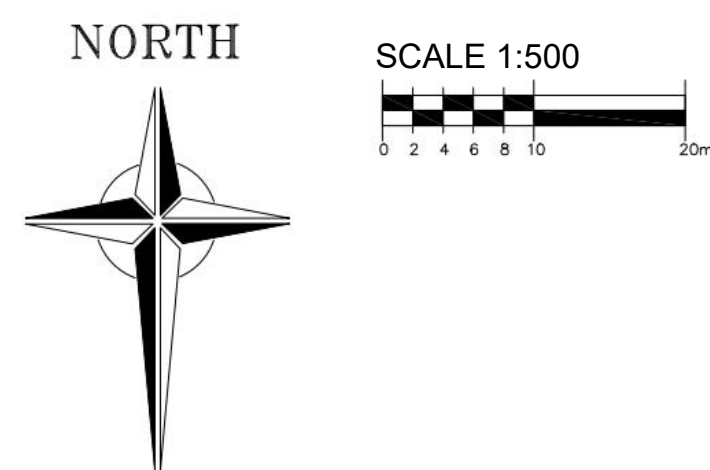
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File No. 17/00068/DPP

Scale: 1:7,000
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	Site Boundary
F1	0.75m high post and two rail feu boundary
F2	1.8m high vertical boarded timber screen fence
F2	1.8m high vertical boarded timber screen fence with brick piers
	Undefined boundary with feu marker
MFE	1.2m high metal feature fence and piers
AWG	1.8m high split face block screen wall with piers

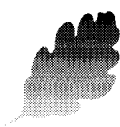


**ALL PLOTS LOCATED MINIMUM
1000mm FROM ALL PLOT FUE
BOUNDARIES TO ACCORD WITH
TECHNICAL STANDARD 2.6**

NURSERY WEST
AVANT HOMES

NURSERY SITE, PENICUIK				
Code	House Type	SQ FT.	No.	Total Sq Ft.
HAN	HAMILTON	932	6	5592
HAR	HARRIS	939	0	0
NTN	NEWTON	1030	4	4120
LEN	LENZIE	1142	5	5710
ASH	ASHBURY	1219	8	9752
ORK	ORKNEY	1294	4	5176
NAI	NAIRN	1305	2	2610
ROS	ROSEBURY	1434	10	14340
PIT	PITLOCHRY	1440	5	7200
OBY	OVERBURY	1463	8	11704
ROT	ROTHERAY	1481	7	10367
STI	STIRLING	1567	9	14103
WES	WESTBURY	1609	5	8045
DHM	DURHAM	1780	2	3560
THU	THURSO	1878	3	5634
			78	107913

PENICIL - NURSERY SITE AV22 SPEC - APR 2023 Rev B									
Plot No	+	AS	Type/Elev/CON/ST	Handling				Gable Feature Window (*)	
				-	-	-	-		
101	AV22	WES AS22	Westbury	AS				YES LOC TBC	
102	AV22	DHM AS22	Durham	OPP					
103	AV22	ROS AS22	Rosebury	OPP				YES LOC TBC	
104	AV22	ORB AS22	Overbury	AS					
105	AV22	ORB AS22	Overbury	OPP					
106	AV22	WES AS22	Westbury	OPP					
107	AV22	DHM AS22	Durham	OPP					
108	AV22	WES AS22	Westbury	OPP				YES LOC TBC	
109	AV22	ASH AS22	Ashbury	OPP					
110	AV22	HAM AS22	Hamilton	OPP					
111	AV22	HAM AS22	Hamilton	AS					
112	AV22	HAM AS22	Hamilton	OPP					
113	AV22	HAM AS22	Hamilton	AS					
114	AV22	ROS AS22	Rosebury	AS					
115	AV22	ASH AS22	Ashbury	AS					
116	AV22	ROS AS22	Rosebury	OPP					
117	AV22	ROS AS22	Rosebury	AS					
118	AV22	ASH AS22	Ashbury	OPP					
119	AV22	HAM AS22	Hamilton	AS					
120	AV22	HAM AS22	Hamilton	OPP					
121	AV22	NTN AS22	Newton	OPP					
122	AV22	NTN AS22	Newton	OPP					
123	AV22	ASH AS22	Ashbury	OPP				YES LOC TBC	
124	AV22	ROS AS22	Rosebury	OPP					
125	AV22	STI AV22	Stirling	OPP					
126	AV22	LEN AV22	Lenzie	AS					
127	AV22	NAI AV22	Nairn	AS					
128	AV22	NAI AV22	Nairn	OPP					
129	AV22	LEN AV22	Lenzie	AS					
130	AV22	STI AV22	Stirling	AS					
131	AV22	STI AV22	Stirling	OPP				YES LOC TBC	
132	AV22	THU AV22	Thurso	OPP					
133	AV22	PIT AV22	Pitlochry	OPP					
134	AV22	PIT AV22	Pitlochry	AS					
135	AV22	WES AS22	Westbury	AS				YES LOC TBC	
136	AV22	ORB AS22	Overbury	OPP					
137	AV22	ASH AS22	Ashbury	OPP					
138	AV22	ROS AS22	Rosebury	OPP					
139	AV22	ROS AS22	Rosebury	OPP					
140	AV22	ORB AS22	Overbury	AS					
141	AV22	ORB AS22	Overbury	AS					
142	AV22	NTN AS22	Newton	AS					
143	AV22	ASH AS22	Ashbury	AS					
144	AV22	ASH AS22	Ashbury	AS					
145	AV22	ORB AS22	Overbury	OPP					
146	AV22	ORB AS22	Overbury	AS					
147	AV22	NTN AS22	Newton	OPP					
148	AV22	ROS AS22	Rosebury	OPP					
149	AV22	ASH AS22	Ashbury	AS					
150	AV22	ASH AS22	Ashbury	AS					
151	AV22	ORB AS22	Overbury	OPP					
152	AV22	ROS AS22	Rosebury	OPP					
153	AV22	WES AS22	Westbury	AS				YES LOC TBC	
154	AV22	STI AV22	Stirling	AS				YES LOC TBC	
155	AV22	LEN AV22	Lenzie	AS					
156	AV22	STI AV22	Stirling	OPP					
157	AV22	PIT AV22	Pitlochry	OPP					
158	AV22	THU AV22	Thurso	OPP					
159	AV22	STI AV22	Stirling	AS					
160	AV22	ORK AV22	Orkney	OPP					
161	AV22	ORK AV22	Orkney	OPP					
162	AV22	LEN AV22	Lenzie	AS					
163	AV22	ROT AV22	Rothsay	AS					
164	AV22	ROT AV22	Rothsay	AS					
165	AV22	STI AV22	Stirling	OPP					
166	AV22	ROT AV22	Rothsay	AS					
167	AV22	THU AV22	Thurso	OPP					
168	AV22	ROT AV22	Rothsay	OPP					
169	AV22	ROT AV22	Rothsay	AS					
170	AV22	STI AV22	Stirling	OPP				YES LOC TBC	
171	AV22	STI AV22	Stirling	AS				YES LOC TBC	
172	AV22	LEN AV22	Lenzie	OPP					
173	AV22	PIT AV22	Pitlochry	AS					
174	AV22	ROT AV22	Rothsay	OPP				YES LOC TBC	
175	AV22	PIT AV22	Pitlochry	AS				YES LOC TBC	
176	AV22	ROT AV22	Rothsay	OPP					
177	AV22	ORK AV22	Orkney	AS					
178	AV22	ORK AV22	Orkney	OPP				YES LOC TBC	



APPLICATION FOR PLANNING PERMISSION 22/00848/DPP FOR THE ERECTION OF 395 DWELLINGS, FORMATION OF ACCESS ROAD, CAR PARKING, LANDSCAPING AND ASSOCIATED WORKS AT LAND EAST AND NORTH EAST OF AUCHENDINNY, THE BRAE, AUCHENDINNY, PENICUIK

Report by Chief Officer Place

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1 The application is for the erection of 395 dwellings, formation of access road, car parking, landscaping and associated works on land east/north east of Auchendinny, The Brae, Auchendinny, Penicuik.**
- 1.2 There have been 164 representations and consultation responses from Scottish Water, Historic Environment Scotland, The Woodland Trust, Roslin and Bilston Community Council, the Council's Archaeological Advisor, the Council's Ecological Advisor (TWIC), the Council's Senior Manager Neighbourhood Services (Roads), the Council's Senior Manager Neighbourhood Services (Flood Officer), the Council's Land Resources Manager, the Council's Senior Manager Protective Services and the Council's Education Executive Business Manager.**
- 1.3 The relevant development plan policies are policies 1, 2, 3, 4, 6, 7, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, and 31 of the National Planning Framework 4 (NPF4) and policies STRAT3, DEV2, DEV3, DEV5, DEV6, DEV7, DEV9, TRAN1, TRAN2, TRAN5, IT1, RD1, ENV2, ENV4, ENV7, ENV8, ENV9, ENV10, ENV11, ENV14, ENV15, ENV17, ENV23, ENV24, ENV25, NRG6, IMP1, IMP2 and IMP3 of the Midlothian Local Development Plan 2017 (MLDP).**
- 1.4 The recommendation is to grant planning permission subject to conditions and the applicant entering into a planning obligation to secure contributions towards necessary infrastructure and the provision of affordable housing.**

2 LOCATION AND SITE DESCRIPTION

- 2.1 The site is located on the eastern/north eastern fringes of Auchendinny, near Penicuik. It is bound to the west by The Brae (B7026) and residential properties located on Firth Crescent, Firth Road and The Brae.
- 2.2 Directly to the north and north east of the site lies an unclassified road, with the former Oatslie Landfill and agricultural fields beyond. A single residential property (Lee Lodge) is also located along the site's northeastern boundary. The River North Esk Valley and associated woodland bounds part of the site to the south and southeast. In addition, a number of residential properties are located along parts of the southern boundary (including Small Steps Cottage, Sandia, Firth View Firth lodge and others within the same hamlet).
- 2.3 The site comprises an irregular shaped parcel of land measuring 27.8 hectares. The site slopes from the north to the south west and south east towards the nearby River North Esk Valley. It contains a series of former agricultural fields and a former golf driving range (now demolished). It also contains a series of overhead (and underground) high voltage electricity cables with associated pylons.
- 2.4 Firth Road bisects the south western part of the site, splitting the site into two parcels of land. This road also contains associated footpath links, linking the site to the existing hamlet to the south. A footpath is located along The Brae to the west of the site. An unclassified road runs along the north and north east of the site.
- 2.5 The site is allocated as a strategic housing land allocation within the Midlothian Local Development Plan (Site Hs20 - Auchendinny).
- 2.6 The existing built form within Auchendinny is varied, ranging from single storey bungalows along The Brae, two-storey Victorian properties and two-storey 1950s/1960s post-war houses and flats.

3 PROPOSAL

- 3.1 Detailed planning permission is sought for 395 residential dwellings with associated roads, landscaping, open space, footpath/cycle ways, a sustainable urban drainage system (SUDS) and other associated works.
- 3.2 The overall Masterplan includes the provision of the following:
 - 395 residential units over three phases (including affordable housing within each phase).
 - Formation of one new primary vehicular access within the north western corner of the site to The Brae, and improvements to Firth

Road and the corresponding footpath to allow for a creation of a second vehicular access to the site.

- Provision of a primary spine road running from the primary vehicular access in a north-south circular direction through the site towards, but not connecting with, Firth Road. A network of secondary access roads are also proposed to link residential properties to the primary spine road.
- Provision of a network of paths running the full extent of the site as follows:
 - A primary 3m wide multi-user route from The Brae at the north western corner of the site and extending south east along a new spine road (to the north of the Glencorse Centre); linking up to 2m wide footpath running along the length of a linear greenway; then extending back to 3m wide multi-user route west of the site into the areas of open space within the south western corner of the site; finally extending south along the western boundary to the south western corner of the site at the edge of the application boundary (and applicant's control) – with potential to facilitate future connection to the NCR196 (a National Cycle Network route) on land outwith the applicant/Council's control via a separate approval process (led by the Council) and not part of this planning application.
 - Provision of additional 3m wide multi-user route links within the site connecting to from the north west of the proposed school site to the unclassified road to the northeast of the site (close to the existing landfill vehicular access); then extending northwest around the northern site boundary to the junction with The Brae; and connecting the north-eastern corner of the site to the unclassified road to the north of Gunpowder Cottage.
- Provision of a series of 2m wide pedestrian footpaths throughout the site linking residential properties to primary routes.
- Provision of various public open spaces running adjacent to the primary spine road through the centre of the site, an 'entrance green' within the north west corner of the site, a 'civic square' within the central part of the site and other local open spaces within the south western corner of the site. An extensive area of informal open space is provided within the southern part of the site.
- Retention of existing trees to northern boundary of the site, and existing mature woodland to the eastern and southern boundaries with sufficient space incorporated to allow safe retention of such trees.

- Two individual trees to eastern boundary to be removed to accommodate the development, with linear group of mixed species along the access road to Firth Lodge/ Old Woodhouselee, in the south west corner of the development to also be removed.
- Provision of structure planting or landscape buffers along key interfaces including the western, southern and north eastern site boundaries and adjacent to existing residential properties in addition to hedgerow planting and shrubs.
- Provision of a large area of woodland structure planting along the southern boundary (between the existing and proposed properties) that will include Birch, Rowan, Alder, Aesculus Hippocastanum Baumannii, Hornbeam, and Maple.
- Finally, whilst not part of this planning application, the masterplan identifies an area of land measuring approximately 1.5 hectares within the north western part of the site 'safeguarded' for the provision of a new two-stream primary school.

3.3 With respect to the proposed housing, the average housing density comprises approximately 19 dwellings per hectare and will consist of the follow housing mix:

House Type:	Number:
Private:	
3-bed	64
4-bed	195
5-bed	38
<u>Total Private</u>	297

Affordable:	
2-bed Cottage Flat	60
2-bed	20
3-bed	18
<u>Total Affordable</u>	98

3.4 The application is accompanied by:

- Design and Access Statement (DAS);
- Ecology Assessment;
- Great Crested Newt Protection Pan;
- Habitat Suitability Assessment;
- Great Crested Newt eDNA Results;
- Flood Risk Assessment;
- Transport Assessment;
- Design Risk Assessment;
- Pre-Application Consultation Report;

- Road Safety Audit;
- Site Investigation Report;
- Review of Heat Network Suitability; and
- Tree Survey and Arboriculture Assessment.

4 BACKGROUND

- 4.1 The site has an extant planning permission for residential development, including formation of access roads, parking, SUDS and associated works and land safeguarded for possible education use. Application 20/00089/DPP for 395 dwellings was approved by Committee at its meeting of November 2020. The site has been subject to a change in ownership/developer (previously a coalition of Stewart Milne Homes, Avant Homes and Miller Developments) and the current application seeks to remix and amended the site layout and house types from that previously approved.
- 4.2 As the proposal comprised a new major scale planning application it was necessary for the applicant to re-consult the local community and other interested parties. The applicant carried out a pre-application consultation (22/00577/PAC) for residential development, the erection of a primary school and associated roads, landscaping, open space, footpath/cycle ways, SUDs and infrastructure, which was reported to Committee at its meeting of August 2022.
- 4.3 A previous pre-application consultation (17/00606/PAC) relating to application 20/00089/DPP was reported to the Committee at its meeting of 14 November 2017.
- 4.4 An Environmental Impact Assessment (EIA) Screening Opinion (17/00767/SCR) for residential development and a primary school was determined in September 2017 and it was confirmed that an EIA was not required. The proposed development to which this application relates is comparable to that identified within application reference 17/00767/SCR, and as such it remains the opinion of the planning authority that by virtue of factors including its nature, size and location, it is considered unlikely that the proposed development would have significant environmental effects. Therefore the planning authority's opinion is that the proposed development does not constitute an "EIA development" and environmental impact assessment is not required.
- 4.5 The application for planning permission constitutes a 'Major Development' as defined in the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 and thereby it requires to be determined by the Planning Committee.

5. CONSULTATIONS

- 5.1 **Scottish Water** does not object to the application. The water supply will be fed from Rosebery Water Treatment Works. The foul water

drainage will be dealt with by the Edinburgh PFI Waste Water Treatment Works. Both have sufficient capacity at present, however it is not possible to reserve capacity for future developments (this is a separate regulatory process between the applicant and Scottish Water).

- 5.2 For reasons of sustainability, and to protect Scottish Water customers from potential future sewer flooding, Scottish Water will not accept any surface water connections into the combined sewer system. There may be limited exceptional circumstances where they would allow such a connection for brownfield sites only, however this will require significant justification from the customer taking account of various factors including legal, physical and technical challenges.
- 5.3 In order to avoid costs and delays where a surface water discharge to the combined sewer system is anticipated, the developer should contact Scottish Water at the earliest opportunity with strong evidence to support the intended drainage plan prior to making a connection request.
- 5.4 **Historic Environment Scotland** does not object to the application.
- 5.5 The **Woodland Trust** object to the planning application on the basis of potential damage and detrimental impact to an area of Ancient Woodland of Semi Natural Origin.
- 5.6 **Roslin and Bilston Community Council** object to the planning application on the following grounds:
- The proposed development would result in an unacceptable increase in traffic using Oatslie Road – there is an insufficient assessment of potential increased traffic using Oatslie Road;
 - Oatslie Road is unsuited for through traffic. Measures to prevent any increase in traffic at this location should be identified;
 - The proposed development would encourage trips by car rather than foot or cycling conflicting with active travel policies;
 - There is a lack of provision of safe links between the proposed development and the facilities in Roslin;
 - For residents in the proposed development, Roslin contains the nearest doctors' surgery. Roslin Medical Practice is at capacity in relation to its present staffing level. There is a strong possibility that residents in the proposed development would travel to Roslin for healthcare. Roslin also contains the nearest pharmacy, post office and supermarket. There is concern over increased journeys between Roslin and the proposed development;
 - The proposed development would accommodate a large number of children of primary school age without any assurance that they would have access to a primary school, or that there are any safe routes to school; and

- The developer should be required to fund the full cost of a new school for the proposed new houses.
- 5.7 The **Council's Archaeological Advisor** does not object to the application and has confirmed that no further archaeological work is required in relation to the application site. The site has previously been archeologically evaluated (with subsequent targeted excavation) and reported upon appropriately.
- 5.8 The **Council's Ecological Advisor - The Wildlife Information Centre (TWIC)** does not object to the application and has confirmed that the supporting information submitted is sufficiently thorough. The report concludes that there will be no effects on protected species or habitats and includes recommendations for biodiversity enhancements. A condition is suggested to ensure a pre-construction survey for badgers is undertaken.
- 5.9 The **Council's Senior Manager Neighbourhood Services (Roads)** does not object to the application subject to details concerning bus shelter provision; electric vehicle charging points; off-site improvement works; and details of additional cycleway/footpath provision being secured by conditions.
- 5.10 The **Council's Senior Manager Neighbourhood Services (Flood Officer)** does not object to the application subject to details concerning surface water drainage management (SUDS) being secured by condition.
- 5.11 The **Council's Land Resource Manager** does not object to the application and has confirmed that the internal network of paths for the development is sufficient, along with the provision of acceptable access points into and out of the proposed development.
- 5.12 The **Council's Senior Manager Protective Services** does not object to the application subject to conditions to secure site investigation works.
- 5.13 The **Council's Education Executive Business Manager** does not object to the application. The development would give rise to an anticipated 111 primary school pupils and 79 secondary school pupils. Developer contributions towards education facilities would be required to mitigate the demand from the proposed development. The catchment schools are:
- Non-denominational primary Roslin Primary School / Mauricewood Primary School
 - Denominational primary Sacred Heart RC Primary School
 - Non-denominational secondary Beeslack Community High School
 - Denominational secondary St David's RC High School

- 5.14 The Council utilises a primary school pupil product ratio of 0.28 per dwelling and a secondary school pupil product ratio of 0.2 per dwelling when calculating anticipated primary and secondary school pupil numbers from developments and also for the purposes of negotiating developer contributions with applicants.
- 5.15 The **Midlothian Health and Social Care Partnership** did not provide a response to a consultation request on the application.
- 5.16 The consultation responses are available to view in full on the online planning application case file.

6. REPRESENTATIONS

- 6.1 There have been 164 comments received, 163 objecting to the application, and one neutral representation. The objections included 155 objections on a standard template, and eight individually written objections, with one individually written neutral representation. Two further objections were received via the standard template, but with no address provided, and as such are not valid representations.
- 6.2 Representations received can be viewed in full on the online planning application case file. A summary of the main points raised are as follows:

Summary of comments received via standard objection template:

Scale and Layout

- The scale of the proposed development is disproportionate and inappropriate for a small village;
- The development will have a detrimental impact on the 39 dwellings to the south west of Firth Road;
- There is an increase in the housing numbers proposed compared to that allocated within the MLDP;
- There is no school provision at the site;
- The safeguarded school site could become additional housing;
- The proposed embankment at the edge of the development south west of Firth Road could have an impact on sunlight/daylight to existing dwellings and could also result in overlooking;
- There is a lack of assessment provided with the application regarding sunlight studies/impacts;
- Encroachment of the built development to the south west of the site from that previously approved scheme;
- The development will have an impact on land designated under Protection of River Valleys and associated concern over impact on the River Esk and Glencorse burn and protected species which are said to inhabit these areas.

Active Travel

- There is a lack of provision of active travel routes between Auchendinny and Roslin as required by Midlothian Councils Active Travel Strategy, Green Network Supplementary Guidance and MLDP;
- Unsuitability of cycling routes and pavements between Auchendinny and Roslin;
- There will be increased traffic levels on the B7026 as a result of the proposed development;
- There is a lack of connectivity to route NCR196;
- No priority is given to active travel over car usage;
- Failure to meet aims of MLDP Policy DEV5 and DEV6 with regards to accessibility, active travel and cycle parking;
- Concern as to why the cycle path at Firth Road is now proposed to be 2m wide, making it unsuitable for cyclists, and why there is the loss of a 3m cycle path to the eastern perimeter of the proposed school site losing connectivity around the site;
- Note that pedestrian and cyclist access to the back road past Oatslie landfill site should come out directly opposite the old railway line through the landfill site;
- Request for developer contributions towards active travel routes towards Roslin and the creation of a shared use path from the north of the site to the proposed cycle way at the A701;
- Request that shared paths have clear priority at street crossings and be at least 4m wide;
- The prioritised cyclist crossing point at main entrance looks to be dangerous; and
- There should be a requirement for dedicated cycle stores to be built near the flats at the development.

Transport Assessment

- There will be an increase in vehicles on Firth Road resulting in safety concerns at the junction onto it because of the poor visibility;
- Inaccuracy of submitted transport assessment including walking distances to local bus stops which is not as stated, with actual distance rendering walking and public transport an unrealistic travel choice for future residents;
- The unsuitability of Firth Road for two way traffic at the area adjacent to the play park owing to street parking and associated concern over road safety;
- The proposed pedestrian crossing at the north end of The Brae is noted to be dangerous with the three way junction leading to road safety issues. The pavement should be extended to the western side of the road in this location;
- Concern over proposed travel to school routes owing to no primary school being proposed;

- The footpaths surrounding the site, including the core path that runs across The Brae are in a poor state;
- Safety concerns at The Brae relating to poor visibility from driveways/ entrances to existing dwellings;
- Query over accuracy of vehicle movements stated in the transport assessment for a development of the scale proposed; and
- Failure to incorporate developments in Roslin and Bilston/Seafield in the committed development assessment within the submitted transport report.

Local Services

- Additional pressure on doctor's surgery and primary school places.

Summary of additional comments received via individually written objections:

- Query over continued accessibility of Firth Road;
- Concern over construction traffic and access constraints/ road safety implications;
- Lack of an EIA undertaken for the application;
- Access to Firth Road not suitable for scale of development proposed;
- Loss of prime agricultural land;
- Negative impact on climate crisis as a result of the development;
- Concern over impact of development on protected species and the need to consider wildlife through detailed design and landscape features;
- Lack of nearby facilities and services, contrary to 20 minute neighbourhood concept;
- Overprovision of car parking spaces for new dwellings encourages private car use;
- There will be a detrimental impact on road/traffic safety as a consequence of the increase in volume of traffic resulting from the proposal;
- Increased noise associated with additional traffic;
- Concern over current and proposed maintenance of roads, drains, surface and pavements in and around the development/ Auchendinny;
- Lack of bus travel and public transport availability in the area;
- Loss of character and history of the village;
- Need for traffic calming measures/ weight limits to restrict HGVs using the main road and bridge in the village;
- There is a need for vegetation clearance and pavement widening along The Brae to better facilitate active travel;
- There should be the inclusion of cycle lanes along The Brae;

- Lack of detailed flood consideration and lack of evidence demonstrating that there will be no flood risk to existing properties;
- Concern over the proposed embankment to the south west of the site with regards to flooding/drainage at existing properties;
- Concern that the Glencorse Centre car park will become overcrowded with construction workers/ visitors to the development;
- There is a need to upgrade the play park at the Glencorse Centre;
- There will be an increase in demand on the services provided at the Glencorse Centre and inability to manage this in line with planned cuts to funding;
- Unacceptable increase in traffic using Oatslie Road and associated safety concerns. The transport assessment fails to recognise the existence of Oatslie Road and likelihood this will be used by traffic avoiding the B7026;
- Concern over flooding from Glencorse Burn, and increased risk of flooding to existing dwellings at Dalmore Estate;
- Objection to proposed design of development; and
- The proposals to plant native trees and plants to encourage wildlife/ birds is supported.

7. PLANNING POLICY

7.1 The development plan is comprised of National Planning Framework 4 (2023) and the Midlothian Local Development Plan 2017.

7.2 The following policies are relevant to the proposal:

National Planning Framework 4 (NPF4)

7.3 **Policy 1 Tackling the climate and nature crises;** sets out to encourage, promote and facilitate development that addresses the global climate emergency and nature crisis.

7.4 **Policy 2 Climate mitigation and adaptation;** sets out to encourage, promote and facilitate development that minimises emissions and adapts to the current and future impacts of climate change.

7.5 **Policy 3 Biodiversity;** sets out to protect biodiversity, reverse biodiversity loss, deliver positive effects from development and strengthen nature networks.

7.6 **Policy 4 Natural Places;** sets out to protect, restore and enhance natural assets making best use of nature-based solutions.

7.7 **Policy 6 Forestry, woodland and trees;** sets out to protect and expand forests, woodland and trees.

- 7.8 Policy **7 Historic assets and places**; sets out to protect and enhance historic environment assets and places, and to enable positive change as a catalyst for the regeneration of places.
- 7.9 Policy **12 Zero Waste**; sets out to encourage, promote and facilitate development that is consistent with the waste hierarchy.
- 7.10 Policy **13 Sustainable transport**; sets out to encourage, promote and facilitate developments that prioritise walking, wheeling, cycling and public transport for everyday travel and reduce the need to travel unsustainably.
- 7.11 Policy **14 Design, quality and place**; sets out to encourage, promote and facilitate well designed development that makes successful places by taking a design-led approach and applying the Place Principle.
- 7.12 Policy **15 Local Living and 20 minute neighbourhoods**; sets out to encourage, promote and facilitate the application of the Place Principle and create connected and compact neighbourhoods where people can meet the majority of their daily needs within a reasonable distance of their home, preferably by walking, wheeling or cycling or using sustainable transport options.
- 7.13 Policy **16 Quality homes**; sets out to encourage, promote and facilitate the delivery of more high quality, affordable and sustainable homes, in the right locations, providing choice across tenures that meet the diverse housing needs of people and communities across Scotland.
- 7.14 Policy **17 Rural Homes**; supports development proposals or new homes in rural areas where the development is suitably scaled, sited and designed to be in keeping with the character of the area and the development, and meets set conditions including where the site is allocated for housing within the local development plan. Development proposals for new homes in rural areas shall consider how the development will contribute towards local living.
- 7.15 Policy **18 Infrastructure first**; sets out to encourage, promote and facilitate an infrastructure first approach to land use planning, which puts infrastructure considerations at the heart of placemaking.
- 7.16 Policy **20 Blue and green infrastructure**; sets out to protect and enhance blue and green infrastructure and their networks.
- 7.17 Policy **21 Play, recreation and sport**; sets out to encourage, promote and facilitate spaces and opportunities for play, recreation and sport.
- 7.18 Policy **22 Flood risk and water management**; sets out to strengthen resilience to flood risk by promoting avoidance as a first principle and reducing the vulnerability of existing and future development to flooding.

- 7.19 Policy **23 Health and Safety**; sets out to protect people and places from environmental harm, mitigate risks arising from safety hazards and encourage, promote and facilitate development that improves health and wellbeing.
- 7.20 Policy **24 Digital Infrastructure**; sets out to encourage, promote and facilitate the rollout of digital infrastructure across Scotland to unlock the potential of all our places and the economy.
- 7.21 Policy **25 Community wealth building**; sets out to encourage, promote and facilitate a new strategic approach to economic development that also provides a practical model for building a wellbeing economy at local, regional and national levels.
- 7.22 Policy **31 Culture and creativity**; sets out to encourage, promote and facilitate development which reflects our diverse culture and creativity, and to support our culture and creative industries.

Other National Policy

- 7.23 **Designing Places, A Policy Statement for Scotland** sets out the six key qualities which are at the heart of good design namely identity, safe and pleasant environment, ease of movement, a sense of welcome, adaptability and good use of resources.
- 7.24 The **Scottish Government's Policy on Architecture for Scotland** sets out a commitment to raising the quality of architecture and design.

Midlothian Local Development Plan 2017 (MLDP)

- 7.25 Policy **STRAT3: Strategic Housing Land Allocations** states that strategic land allocations identified in the plan will be supported provided they accord with all other policies. The development strategy supports the provision of 350 units on allocated housing site (Hs20).
- 7.26 Policy **DEV2: Protecting Amenity within the Built-Up Area** states that development will not be permitted where it would have an adverse impact on the character or amenity of a built-up area.
- 7.27 Policy **DEV3: Affordable and Specialist Housing** seeks an affordable housing contribution of 25% from sites allocated in the MLDP. Providing lower levels of affordable housing requirement may be acceptable where this has been fully justified to the Council. This policy supersedes previous local plan provisions for affordable housing; for sites allocated in the Midlothian Local Plan (2003) that do not benefit from planning permission, the Council will require reasoned justification in relation to current housing needs as to why a 25% affordable housing requirement should not apply to the site.

- 7.28 Policy **DEV5: Sustainability in New Development** sets out the requirements for development with regards to sustainability principles.
- 7.29 Policy **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, and passive energy gain, positioning of buildings, open and private amenity space provision and parking.
- 7.30 Policy **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.
- 7.31 Policy **DEV9: Open Space Standards** sets out the necessary open space for new developments. This policy requires that the Council assess applications for new development against the open space standards as set out in Appendix 4 of that plan and seeks an appropriate solution where there is an identified deficiency in any of the listed categories (quality, quantity and accessibility).
- 7.32 Policy **TRAN1: Sustainable Travel** aims to encourage sustainable modes of travel.
- 7.33 Policy **TRAN2: Transport Network Interventions** highlights the various transport interventions required across the Council area, including the A701 realignment.
- 7.34 Policy **TRAN5: Electric Vehicle Charging** seeks to promote a network of electric vehicle charging stations by requiring provision to be an integral part of any new development.
- 7.35 Policy **IT1: Digital Infrastructure** supports the incorporation of high speed broadband connections and other digital technologies into new homes.
- 7.36 Policy **RD1: Development in the Countryside** sets out where appropriate development would be acceptable in the countryside subject to defined criteria. The policy states that proposals for development will be of an appropriate scale and character appropriate to the rural area and well integrated to the rural landscape.
- 7.37 Policy **ENV2: Midlothian Green Networks** supports development proposals brought forward in line with the provisions of the Plan that help to deliver the green network opportunities identified in the Supplementary Guidance on Green Networks.

- 7.38 Policy **ENV4: Prime Agricultural Land** does not permit development that would lead to the permanent loss of prime agricultural land unless there is appropriate justification to do so.
- 7.39 Policy **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.
- 7.40 Policy **ENV8: Protection of River Valleys** outlines that development within the river valley protection areas of the Rivers North and South Esk and River Tyne will not be permitted unless there is a specific locational need for the development.
- 7.41 Policy **ENV9: Flooding** presumes against development which would be at unacceptable risk of flooding or would increase the risk of flooding elsewhere. It states that Flood Risk Assessments will be required for most forms of development in areas of medium to high risk, but may also be required at other locations depending on the circumstances of the proposed development. Furthermore it states that sustainable urban drainage systems will be required for most forms of development, so that surface water run-off rates are not greater than in the site's pre-developed condition, and to avoid any deterioration of water quality.
- 7.42 Policy **ENV10: Water Environment** requires that new development pass surface water through a sustainable urban drainage system (SUDS) to mitigate against local flooding and to enhance biodiversity and the environment.
- 7.43 Policy **ENV11: Woodland, Trees and Hedges** states that development will not be permitted where it could lead directly or indirectly to the loss of, or damage to, woodland, groups of trees (including trees covered by a Tree Preservation Order, areas defined as ancient or semi-natural woodland, veteran trees or areas forming part of any designated landscape) and hedges which have a particular amenity, nature conservation, biodiversity, recreation, landscape, shelter, cultural, or historical value or are of other importance.
- 7.44 Policy **ENV14: Regionally and Locally Important Nature Conservation Sites** states that development will not be permitted where it could adversely affect the nature conservation interest of such sites, unless it can be demonstrated that appropriate mitigation measures are in place.

- 7.45 Policy **ENV15: Species and Habitat Protection and Enhancement** presumes against development that would affect a species protected by European or UK law.
- 7.46 Policy **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 impact.
- 7.47 Policy **ENV 23: Scheduled Monuments** outlines that Development which could have an adverse effect on a scheduled monument, or the integrity of its setting, will not be permitted.
- 7.48 Policy **ENV24: Other Important Archaeological or Historic Sites** seeks to prevent development that would adversely affect regionally or locally important archaeological or historic sites, or their setting.
- 7.49 Policy **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.
- 7.50 Policy **NRG6: Community Heating** requires that, wherever reasonable, community heating should be supported in connection with buildings and operations requiring heat.
- 7.51 Policy **IMP1: New Development** ensures that appropriate provision is made for a need which arises from new development. Of relevance in this case are education provision, transport infrastructure; contributions towards making good facility deficiencies; affordable housing; landscaping; public transport connections, including bus stops and shelters; parking in accordance with approved standards; cycling access and facilities; pedestrian access; acceptable alternative access routes, access for people with mobility issues; traffic and environmental management issues; protection/management/compensation for natural and conservation interests affected; archaeological provision and 'percent for art' provision.
- 7.52 Policy **IMP2: Essential Infrastructure Required to Enable New Development** to Take Place states that new development will not take place until provision has been made for essential infrastructure and environmental and community facility related to the scale and impact of the proposal. Planning conditions will be applied and where appropriate, developer contributions and other legal agreements will be used to secure the appropriate developer funding and ensure the proper phasing of development.
- 7.53 Policy **IMP3: Water and Drainage** require sustainable urban drainage systems (SUDS) to be incorporated into new development.

Supplementary Guidance

- 7.54 The adopted **Green Networks Supplementary Guidance 2018 (SG)** seeks to create 'an improved network of woodland, wildlife habitats, greenspace and watercourses has increased the attractiveness of Midlothian as a place to live, work, invest and visit'.
- 7.55 A series of Strategic Green Network Connections identified in the MLDP are relevant to the Penicuik-Auchendinny area including: Strategic Connection 2: Shawfair - Penicuik Link. 'Connection Points' are also identified that require to be linked to each other by multi user paths. With respect to Auchendinny, the primary requirement relates to a requirement to provide a link from Connection Point 23 (NCR 196 at Dalmore Mill) through the site to Connection Point 25 (Auchendinny – at the north eastern corner of the site at the dismantled former railway line). It does not specify a particular alignment but identifies suggested connection points where connection is identified.
- 7.56 In addition to the connection above, various site-specific requirements for Site Hs20 are identified within the Green Networks SG including the provision of established boundary planting averaging 20m to minimise the impact on the North Esk Valley and the protection of ancient and semi-natural ancient woodland. It also requires the inclusion of biodiversity enhancements on landscape proposals. Finally, connections are encouraged from Firth Crescent to the Brae and from the north of the site to the A701.

8. PLANNING ISSUES

- 8.1 The main planning issue to be considered in determining this application is whether the proposal complies with development plan policies unless material planning considerations indicate otherwise. The representations and consultation responses received are material considerations.

Principle of development

- 8.2 The site is allocated as a strategic housing land allocation within the MLDP (Site HS20) and is located within the built up area of Auchendinny where there is a presumption in favour of appropriate residential development.
- 8.3 The southern part of the site (containing open space and a proposed multi-user route) is located outwith the built up area of Auchendinny and is allocated as land within the countryside in the MLDP. Policy RD1 requires that development in the countryside is related to agriculture, horticulture, recreation or tourism. Also, it needs to be of a scale and character appropriate to the rural area. As the proposed development within this part of the site includes informal open space, landscaping/woodland planting and the provision of a multi-user route

this meets the above tests given that these features specifically enhance recreation opportunities within this part of the site therefore complying with MLDP policy RD1.

- 8.4 Moreover, the site is also allocated as prime agricultural land. However, an exception within MLDP policy ENV4 provides a specific exemption for all sites allocated for development within the development strategy in the MLDP. In this instance, given the site's allocation for housing within in the MLDP, it's future development and the 'loss' of prime agricultural land is compliant with the requirements of this policy. As such, the wider spatial strategy objectives within the MLDP considered that future development for housing would outweigh any potential benefit brought by its allocation as prime agricultural land. As such, the loss of this prime agricultural land is acceptable.
- 8.5 The indicative number of units allocated for site HS20 in the MLDP is 350.
- 8.6 As highlighted in this report, extant planning permission (20/00089/DPP) exists for 395 dwellings at the site. Development has not commenced on the site, however the applicant has commenced submitting information pursuant of discharging conditions.
- 8.7 In light of the site's allocation and the extant planning permission the principle of a residential development is well established.
- 8.8 The Council is required to maintain a supply of effective housing land (enough land allocated and coming forward for housing to meet its housing targets) at all times. The number of homes required in a local authority area is set by the Scottish Government in NPF4 and is met by the development strategy and policies of the MLDP and the assessment of individual proposals. Where a shortfall in the supply of effective housing land emerges, sites that are not allocated for residential development should be considered as possible additional sites to make up the shortfall. With a 10 year housing target being set at 8,850 units (for the life of MLDP2, to be prepared for adoption in 2026/27) it is a reasonable presumption that an annualised target of 885 units will be expected prior to the adoption of MLDP2 – this provides an impetus to support the granting of planning permission for residential development on allocated housing sites such as the one proposed.
- 8.9 The development land allocations made and confirmed in the MLDP remain and are not amended as a result of the adoption of NPF4.
- 8.10 With regard NPF4, although the site is allocated for housing in the MLDP, consideration still needs to be given to the sites location in terms of sustainability. In this regard, although the site has limited facilities in its immediate proximity, it is reasonably close to Penicuik, the Midlothian Science Zone and Roslin and as such within a range of

local shops and services, employment opportunities, leisure facilities, public transport options and active travel connections and as such is considered to be in a sustainable location in compliance with the principles of NPF4.

- 8.11 The proposed residential development will not conflict with adjacent land uses.

Design, Place-making, Layout and Form of Development

- 8.12 The proposed development seeks approval for 395 dwellings, comprising 63 terrace dwellings; 16 semi-detached dwellings, 256 detached dwellings, and 60 cottage flats (4 in a block style buildings). The average density is approximately 19 dwellings per hectare (if the 5.7 hectare informal open space and 1.5 hectare proposed school site are both excluded from the calculation). This reflects a medium density development within a suburban area and is not inherently out of character with the surrounding context.
- 8.13 The principle change from the already approved layout (20/00089/DPP) are the house types proposed. The proposed scheme moves away from the provision of a larger number of cottage flats and has sought to deliver increased numbers of terraced, semi-detached and detached dwellinghouses. This approach does increase demand for space. It is however noted that the proposed dwelling numbers and the general layout proposed reflects that approved under application 20/00089/DPP.
- 8.14 The proposed development incorporates a typical suburban layout that includes a well-coordinated and comprehensive design approach that takes cognisance and responds to features/constraints within the site and the adjacent site interfaces.
- 8.15 The proposed vehicular connection to the site generally reflects the road alignment approved as part of the previous detailed planning permission. This includes retention of the proposed access to the north west of the site off The Brae, and from Firth Road.
- 8.16 An appropriate network of internal streets and secondary links are also retained, alongside shared drives and private driveways, facilitating suitable parking provision to accommodate the needs of future residents. This is combined with new footpath/cycleway creating acceptable provision of connectivity from the site to nearby pedestrian footpath/cycle network. This arrangement enables safe, efficient pedestrian and vehicular movements within the site in accordance with Designing Streets guidance.
- 8.17 The proposed layout facilitates the creation of open space, landscaping and woodland/structure planting, combined with a spine road that incorporates a tree lined avenue along the primary spine road running

north-south then extending east-west towards the south western corner of the site, improving visual amenity and creating an enhanced landscape offer within the site along with incorporating footpath connections. Additionally, various open space areas are proposed including an entrance green, civic square, secondary open spaces and a substantial informal open space area within the south of the site. Cumulatively, this proposal does not result in an overdevelopment of the site.

- 8.18 The proposed dwellings are generally orientated to the primary internal access road, secondary streets/links and towards the adjacent public open space. This creates a strong consistent streetscape frontage and attractive outlooks for future residents. Furthermore, the orientation of houses fronting open spaces, and the proposed SUDS basins provide for natural surveillance and deliver a good layout with character and interest.
- 8.19 The proposed layout seeks to deliver private amenity space within the development. Midlothian's space standards are generally achieved, with some properties having an excess of amenity space and others falling just short. However, where garden areas are considered to be just short of requirements, reasonable garden depths are achieved.
- 8.20 In addition to the above, the proposed development retains good levels of separation within the development. Back to back distances are achieved where such properties are proposed. Where rear to gable relationships occur, appropriate 16m distances are achieved in the majority of dwellings. In instances where such distances fall slightly below standards ordinarily sought, there are no facing windows proposed therefore reducing any privacy impacts to an acceptable level.
- 8.21 The proposed footprint of development extends closer to existing residential properties off The Brae at the south west of the site compared to the previously approved scheme. The proposed encroachment on the open space in this location is marginal, with a distance of circa 35m to neighbouring properties retained (the general standard is a 25m separation distance). On balance, the extension of proposed development in this location will not lead to an unacceptable detrimental impact to the character and amenity of neighbouring properties. No visual conflict is identified with neighbouring development.
- 8.22 No phasing plan has been submitted with the application. It should be made a condition of a grant of planning permission that a comprehensive annotated phasing plan and phasing schedule is submitted for the prior written approval of the planning authority. The structural landscaping for the site should be completed in the early phases of development to enable it to grow and become established to complement the built form as it comes forward. Furthermore, the

phasing should address the timing of pedestrian and cycling connections through the site.

- 8.23 The proposed built form is therefore generally considered to respond to the site's characteristics appropriately and would be considered to comply with NPF4 policy 14 and MLDP policies DEV5 and DEV6.
- 8.24 The proposed housing mix includes a range of dwelling types, styles and sizes, including two-bedroom cottage flats and 2, 3, 4 and 5 bedroom houses. This results in a good variety of housing types and sizes and is considered to be appropriate for a site of this nature – providing a series of houses to accommodate varied housing demand.

Affordable Housing

- 8.25 The provision of 25% affordable housing is in accordance with MLDP policy DEV3 and is acceptable.
- 8.26 The existing planning permission for the site (20/00089/DPP) provides for 25% affordable housing provision (99 units) to be delivered by means of the transfer of serviced remediated plots at identified trigger points to the Council. This was secured through the agreed planning obligation which will be modified/amended to reflect the proposed development should permission be granted.
- 8.27 The quantum of affordable units is appropriate according to policy DEV3. The location of the affordable units largely reflects the extant planning permission and is acceptable.

Architectural Styles

- 8.28 The proposed dwellings in terms of their scale, massing, height and positioning within the site do not appear incongruous nor visually dominant within the immediate area. Whilst retention structures are proposed within a small number of properties, these are modest (a maximum of 0.55m in height) and primarily run perpendicular to the respective dwellings at the side and rear of the plots. Additionally, some dwellings feature a purpose under build owing to the levels of the site. In the main these are below 0.5m as would ordinarily be sought through development proposals.
- 8.29 There are a small number of dwellings which feature a higher under build of 0.6m, with one instance of 0.8m. This would detract from the visual amenity of the street scene and should be avoided. Should permission be granted a condition should be attached to ensure that no under build on the site exceeds 0.5m, thus ensuring that the proposed external levels within the site are not incongruous or visually dominant within the immediate area.

- 8.30 The proposed open space to the southern section of the site is suitably graded to avoid a substantial level change and it is complemented by landscaping which minimises potential unreasonable visual impacts. This minimises engineering works within the site and ensure that levels across the site, including finished floor levels for the proposed dwellings, are acceptable in planning terms.
- 8.31 All the proposed houses will be two storeys in height, and traditional in form. The vast majority would include pitched roofs with one house type including a hipped roof. This will create a continuity in style and built form that will establish distinct neighbourhood character areas that complement the visual amenity of the nearby area.
- 8.32 Properties with an 'Active Gable' are proposed where they are located adjacent to open space and footpath frontages. The purpose of such a design feature is to create visual interest to the street scene as well as providing for enhanced natural surveillance. As proposed, the 'Active Gable' features are not satisfactory and do not provide for the level of enhanced visual interest which would ordinarily be sought. Any grant of permission would be subject to a condition requiring additional details for such plots. Details should seek to incorporate additional windows to street facing gables, or alternatively look to provide enhanced landscaping to plot boundaries as compared to that which is currently proposed.
- 8.33 The external finishing materials and colours of the proposed dwellings are acceptable in planning terms, subject to a condition requiring the provision of samples on any grant of planning permission.
- 8.34 Details of proposed ground surface materials have not been provided and should permission be granted a condition relating to the proposed ground surface materials should be attached.
- 8.35 Cumulatively, the layout results in an acceptable outcome that does not appear as an overdevelopment of the site. The proposed layout results in a well-coordinated, comprehensive design rationale that takes cognisance and responds to the features/constraints within the site and the adjacent site boundaries.

Areas of Improved Quality

- 8.36 The planning authority require an enhanced design quality with at least 20% of the proposed dwellings to be located within Areas of Improved Quality (AIQ). The corresponding enhancements relate to the design and layout of individual buildings, the use of materials (including building finishes, boundary treatments and ground surfaces).
- 8.37 Within such areas, the external finish materials are required to create prominent landmark grouping or key individual buildings that define these enhanced character areas. An AIQ seeks to add interest and

character to developments, particularly in developments of the scale proposed.

- 8.38 In this instance, the proposed AIQ for this site comprises dwellings primarily focussed at the entrance to the site, dwellings facing onto areas of open space, those dwellings along the linear open space toward the southern end of the site, and those on the eastern part of the site fronting onto the SUDS basin. In terms of the number of dwellings included, the locations and built form the proposed AIQ is acceptable.
- 8.39 The proposed external finishes of dwellings within AIQ are acceptable, with the use of single material and colours on whole elevations, along with natural slate roofing. These finishes would provide a simple palette of contemporary materials that complement and enhance the proposed built form.
- 8.40 The proposed boundary treatments across the site, both within and outwith the AIQ require refinement. Should planning permission be granted a condition relating to further details of boundary treatments will be required. Boundary treatments within AIQ should comprise high quality stone walls, or half stone wall/half railing features.

Boundary Treatments

- 8.41 A variety of boundary treatments are proposed within the site. These include 1.8m high timber boundary fences, fence with stone piers, and Anstone walls. Many of these features are also complemented by adjacent shrubs, tree planting or landscaped areas that soften their appearance.
- 8.42 Where garden boundaries are abutting a road or are prominent in the street scene then it is important that they be bounded not by a fence as is proposed in some instances; but instead, by a higher quality of boundary treatment such as fence with stone piers, or Anstone walls as proposed in other areas of the development. As such, a condition will be required on any grant of planning permission requiring approval of the proposed boundary treatments. Subject to the aforementioned condition, the proposed boundary treatments will generally be in keeping with the character and amenity of the area and are therefore acceptable.

Garden Ground

- 8.43 The MLDP requires good levels of amenity for residential development in terms of garden sizes, open space and the separation distances between dwellinghouses to mitigate against overlooking, loss of privacy and a sense of overbearing on neighbours. The requirements with regard usable private garden sizes should be: (i) 100 square metres for terraced houses of 3 or more apartments; (ii) 110 square metres for

other houses of 3 apartments; and (iii) 130 square metres for houses of 4 apartments or more.

- 8.44 With respect to the proposed development, the majority of the proposed dwellings meet the requirements, with a number of properties across the site exceeding such requirements. Despite this, selected dwellings fall below the minimum sizes above. Of the detached and semi-detached houses that fall below, they only fall marginally below and they have access to various areas of communal open space including the substantial open space areas to the south of the site. Such variety in garden sizes allows for variation in the built form to the benefit of the overall design. As such, they are acceptable in this instance.
- 8.45 Moreover, the typical layout of terraced house, being narrow fronted houses, dictates that if the minimum size was applied they would have overly long gardens. The proposed houses are similar to those of the rest of the houses in the development, which is not significantly below the minimum size. Given the close proximity of the proposed dwellings to communal open spaces it is considered that the relaxation in the size of the gardens of the terraced houses is justified in this particular case.
- 8.46 The development manages to deliver acceptable levels of spatial separation between proposed dwellings and falls only marginally short of the minimum standard where it does not meet the minimum. In the case of those that fall marginally short, the shortfall would not result in significant harm to the amenity of those properties in terms of overlooking or intrusiveness and thus is not significant.
- 8.47 All of the proposed buildings are sufficiently distanced from existing neighbouring houses out with the site boundary so as not to give rise to any demonstrable harm to their residential amenity in terms of loss of daylight, loss of sunlight or overlooking. There would be no significant harm to the amenity of any existing neighbouring property from the proposed development.
- 8.48 In general the currently proposed layout is acceptable and the proposed development will not undermine the objectives of MLDP policy DEV6.

Access and Transportation

- 8.49 Primary access to the site is proposed at the north western corner of the site to The Brae. A secondary access is provided within the western part of the site via an extension of Firth Road. These arrangements create an acceptable engineering design solution that would facilitate safe, efficient vehicular manoeuvrability to/from the site. They also allow for traffic generation associated with the proposed development to be accommodated sufficiently within the local road network.

- 8.50 A primary spine road runs through the site and provides an efficient connection to a network of internal secondary roads allowing safe efficient safe manoeuvrability to corresponding dwellings.
- 8.51 The proposed development includes a series of informal paths, 2m wide footpaths and 3m wide multi-user routes which facilitate integrated opportunities for active travel, cycling and sustainable travel opportunities.
- 8.52 Previous grant of planning consent for the site included the provision of a 3m wide multi-user route running along the western side of the site identified for a proposed new school. This route ran from Firth Road to join the proposed cycleway/footpath opposite plot 72 and provided a convenient active travel route for residents at the southern side of the development to travel northward to access the new crossing point on The Brae. Any future development proposals which come forward for the proposed school site will be required to facilitate a 3m wide cycleway/ footpath.
- 8.53 The loss of the proposed 3m wide multi-user route at this location, and along Firth Road, as part of the proposed development results in the loss of an important element of the layout previously approved and the wider path network across the site, and a continuous 3m wide multi-user route should be reinstated.
- 8.54 The optimal location for such a path, to allow connectivity from the north of the site at The Brae, down to the proposed open space and 3m wide multi-user route at the south of the site would be to extend the proposed 2m wide footpath which runs through the central landscaped area of the site to allow for the provision of a 3m path. Such provision would ensure that active travel through the site is encouraged and result in a convenient active travel route for users of the site. This can be secured by a condition on a grant of planning permission.
- 8.55 Sufficient access is afforded to public transport opportunities, with improvement sought by the Council's Senior Manager Neighbourhood Services (Roads) to encourage more sustainable travel options away from car based travel. Specifically, the provision of new bus shelters (on the A701/Edinburgh Road) and multi-user cycle path routes. These can be secured via a condition on a grant of planning permission.
- 8.56 The Council's Senior Manager Neighbourhood Services (Roads) raises no concern with the transportation assessment update report submitted with the application subject to conditions outlined above relating to: bus shelter provision (two 5-bay shelters); electric vehicle charging points and specifications; off-site improvement works to The Brae; and details of additional cycleway/footpath provision being secured by condition(s).

- 8.57 The proposed private and visitor parking accords with the Council's car parking standards. The proposed parking area located to the rear of plots 80-83 includes the provision of 10 parking bays, 6 of which are proposed for visitor car parking. The proposed layout details parking spaces located directly adjacent to the 2m wide public footway with no landscape buffer proposed. This is not acceptable and details should be submitted to show the relocation of 2 visitor parking spaces to roadside parking bays to allow for enhanced boundary treatments in this location with provision of low level planting to the street frontage. Such details can be required by condition.
- 8.58 Overall the proposed development is considered to comply with NPF4 policy 13 and MLDP policy TRAN1.

Multi-User Cycle Path & Green Networks

- 8.59 In terms of requirements for a multi-user cycle path, the Green Networks SG requires a multi-user path that connects from the NCR196 (around Dalmore Mill) to the north of the site (around the former railway line). The proposed development includes a series of 3m wide multi-user route which link up from the north west and north east of the site, through its centre, towards the south of the site. The multi-user cycle path to the south of the proposed development contributes towards the delivery of strategic accessibility objectives for this area. This allows for the provision of a cycle path to the edge of the site on land within the applicant's control.
- 8.60 This above approach is supported in principle and seeks to allow the Council to progress with planned feasibility options for the final part of the multi-user cycle path over the River North Esk on land not owned/controlled by the applicant. This option specifically allows for consideration of a future connection facilitated by the Council from the south western corner of the site (in the applicant's control) to the NCR196 and the possible future realisation of accessibility connections through the site to NCR196.
- 8.61 In addition to the above multi-user cycle ways, 2m wide pedestrian footpaths are located across the site, ensuring safe, direct and coherent access from The Brae to homes and open space across the site. The Council's Land Resource Manager does not object to the application and has confirmed that the internal network of paths for the development is sufficient, along with provision of acceptable access points into and out of the proposed development.
- 8.62 The section of 2m wide public footway opposite plots 90, 91, 92 and 93 could be viewed as redundant owing to its proximity to the adjacent 3m wide multi-user route. This land could be better used to facilitate additional landscaping to the development and should be replaced by a 2m wide grass verge or low level planting over this section. This can be secured by a condition on a grant of planning permission.

- 8.63 The proposed outcomes are considered to accord with NPF4 policy 13, MLDP policy TRAN1 and the intent of the Green Networks SG as it provides a multi-user cycle path from the northern connection point, through the entire site, to the south western and south eastern corners of the site. This will allow for direct connectivity to NCR196 to be provided by the Council once feasibility options are prepared by the Council to confirm the most suitable and practical option to achieve this once engineering and ownership constraints have been be addressed.

Open Space

- 8.64 The proposed open spaces are similar in size compared to the extant planning permission. The proposed development provides an extensive range of formal public spaces including a civic square, 'entrance green', secondary open spaces and a linear greenway within the centre of the site. This is combined with substantial areas of informal open space within the south western corner of the site that significantly exceeds the open space requirements for a development of this nature.
- 8.65 In light of the significant open space provided the development is considered to comply with NPF4 policy 21 and MLDP policy DEV8, notwithstanding that infrastructure contributions will be required towards offsite open space and play space provision. These shall be secured via a planning obligation that would accompany any grant of planning permission.

Landscape and Visual Impact

- 8.66 The MLDP settlement strategy for site Hs20 includes objectives to include transitional edges to the river valley including SUDS, open space and boundary enhancement of existing vegetation, retention of the existing vegetation along the boundaries of the former driving range and an avenue with trees/paths/swales. The applicant's landscape plans demonstrate that these outcomes are achieved.
- 8.67 The submitted tree survey and arboriculture assessment report provides assessment of tree cover within the development site and at the site boundaries and describes the impact of the development on these features. Findings include the retention of a narrow strip of trees along the minor access road/north east boundary to be retained; retention of mature woodlands along the east and south boundaries with sufficient space incorporated to allow safe retention of all trees in these areas; the removal of two individual trees (tag numbers 4458 and 4459, adjacent to Lee Lodge) to accommodate the development; and the removal of a linear group of mixed species along the access road to Firth Lodge/ Old Woodhouselee, in the south west corner of the development. Although recently submitted, the survey report appears dated given that a number of the above features proposed for removal have already been removed to accommodate development.

- 8.68 It is noted that the removal of the stated trees was granted under the existing consent at the site and therefore no further action is required on this matter.
- 8.69 A woodland management plan should be submitted for approval to ensure the remaining woodland strip is actively managed (including by means of thinning and restocking with a variety of native species), to maintain continuous cover along the north east boundary with Oatslie Road.
- 8.70 NPF4 places greater emphasis on biodiversity enhancement and affords greater protection to the natural environment, woodland and trees where these have the potential to be adversely affected by development proposals. Concern was raised through representations as to potential damage and detrimental impact of the development on existing ancient woodland in the vicinity of the site. Specifically, concern was raised over increased vulnerability of habitats to the outside influences, or edge effects, that result from the land's change of use. On balance, it is considered that the proposed landscape strategy, including tree removal and substantial replanting, results in an acceptable outcome that enhances landscaping opportunities within the site and successfully integrates the proposed development into the surrounding landscape whilst minimising the impact on the existing natural environment.
- 8.71 Further details on the proposed landscaping across the site should be required by way of condition. Such details should include increased provision of areas of biodiverse/flowering lawn mix throughout the proposed network of greenways and more widely at the fringes of the site, to optimise biodiversity and habitat value; including within the green spaces overlooked by Plots 90 - 101, 170 -174, 183 - 186, 168 - 174, 219 - 220 and those at the eastern extent of the site at Plots 149 - 152 and 157 – 162.
- 8.72 Additionally, enhanced landscaping details should be provided for areas of open space between Plots 245 + 247; and 289 – 300. In instances such as these where small strips of open space are proposed issues can occur with regard to maintenance and safety concerns and where possible this should be avoided.
- 8.73 The proposed streets are predominantly bound by green verges and associated landscaping that will aid in creating attractive vistas, particularly when travelling north - south through the site. Overall, the landscape strategy accords with NPF4 policy 4 and 6, and MLDP policy ENV11.
- 8.74 In terms of visual impact, the proposed development will not result in unacceptable impacts to any sensitive nearby receptors, including heritage assets.

- 8.75 The provision of woodland planting around the site, particularly substantial planting along the southern edges of the site provides suitable landscape screening to prevent any unreasonable visual intrusion into the existing river valley. This outcome minimises the visual impact of the proposed development from the North Esk Valley and heritage assets within the wider context. This outcome complies with MLDP policy DEV6 with respect to boundary impacts on existing landscape character and MLDP policy ENV8 relating to the protection of river valleys in that it will not have an impact on the landscape and conservation value of the existing river valley.

Flood Risk and Surface Water Drainage

- 8.76 The applicant's flood risk assessment (FRA) outlines that there are two small watercourses towards the east and south east of the site that drain to the River North Esk, with Glencorse Burn flowing to the west of the site. The SEPA National Flood Maps show that the site lies outside of the floodplain of the River North Esk and the site is not at significant risk from fluvial nor groundwater flooding.
- 8.77 The SUDS proposal as delineated on the application comprise two SUDS basins to the east of the site, designed as relatively soft features in the landscape. The SUDS scheme will ensure that there will be no net detriment to the locality's surface water drainage whilst providing a locally attractive space which enhances biodiversity.
- 8.78 Given concerns raised through representations over the possibility of surface water runoff from the side slope proposed to be formed adjacent to plots 356, 362, 363 and 368 – to the south west boundary of the site - a land drain or landscaped bund should be formed at the foot of the slope to reduce the possibility of run-off onto adjacent properties located off The Brae. This can be secured via condition on a grant of planning permission.
- 8.79 There has been no objection from the Council's Senior Manager Neighbourhood Services (Flood Officer). Subject to the provision of a condition covering the addition of measures to reduce potential surface water run off at the foot of the slope to the south west of the site, and the aforementioned mitigation measures in the form of SUDS, the proposed drainage, would accord with the corresponding objectives of NPF4 policy 22 and MLDP policy ENV9 and ENV10.

Ecological Matters

- 8.80 Ecology reports were submitted which have been reviewed by the Council's Biodiversity Advisor, TWIC. The Ecological Assessment and accompanying information covering the whole of the site submitted do not recommend against the development on grounds of impact on biodiversity.

- 8.81 It is recommended that a pre-construction check for badgers is undertaken no more than 3 months prior to the commencement of works. This can be required by condition to any grant of planning permission. With such a condition the proposed development complies with NPF4 policy 3 and MLDP policy ENV15.

Archaeology/Heritage

- 8.82 No objection to the proposed development was received from either the Council's Archaeological Advisor or Historic Environment Scotland. The Council's Archaeological Advisor confirmed that no further archaeological work is required in relation to this application site. The site area has already been archaeologically evaluated (with a subsequent targeted excavation), and reported upon appropriately under the prior consent granted at the site and as such the proposed development is considered to comply with NPF4 policy 7 and MLDP policy ENV24.

Safeguarding Land for Education

- 8.83 The sites strategic housing land allocation within the MLDP (Site HS20) refers to the requirement for a new single stream primary school within the site. As identified on the site plan, an area of land to the north of the site has been selected for the possible provision of such, and excluded from the proposed development land.
- 8.84 Whilst the allocation refers to a school, the Council has decided not to pursue this option. The lack of provision of the school therefore in this instance, does not equate to grounds for the refusal of the application.
- 8.85 The future use of the school site, should a school not be required, is not a matter for consideration as part of the assessment of this application and any forthcoming proposals would be dealt with under a separate planning application. However, the site is part of the application site and if left undeveloped could have an adverse impact on the visual amenity of the area. Therefore, clarification will be sought with regards to what will be done with the parcel of land in the meantime, perhaps by utilising some informal landscape planting or accommodating the construction compound.

Percent for Art

- 8.86 Details of a public art strategy for the proposed development will be required to ensure that the percent for art required by MLDP policy IMP1 is met. This can be secured via a condition on any grant of planning permission.

Feasibility of District Heating System

- 8.87 In order for the Government's renewable energy and heat demand targets to be met, it is important that all types of new developments consider the role they play in using heat from renewable sources.
- 8.88 MLDP Policy NRG6 states that community heating within new developments should be supported where technically and financially feasible.
- 8.89 The conclusions of the submitted *Review of Heat Network Suitably Report* are considered to be sound. The planning authority agree that there is no heat network within the vicinity of the site to enable to development to be served, nor are there any pipeline projects for the near future.
- 8.90 The applicant has confirmed that consideration has been provided to safeguarding for future district heating pipes at Auchendinny, however with consideration that a Community Heating Network is not viable at the site, and will not be throughout the construction of the site at this location as confirmed in the Heat Network report, such safeguarding has not been provided.

Contamination and Remediation

- 8.91 The Council's Senior Manager Protective Services recommends that a standard contaminated land site investigation condition is attached to any consent granted to ensure that the land in the application site is suitable for its intended use.
- 8.92 The planning application is accompanied by Geotechnical Design & Environmental Risk Assessment Report providing detail as to the suitability of the land for its intended use and to assess potential risks from contamination in the context of the development.
- 8.93 Appropriate assessment of the submitted information, along with a remediation strategy outlining how such measures will be implemented and a validation report confirming how the corresponding remediation approaches have been undertaken will be required. This can be secured by a condition on a grant of planning permission.
- 8.94 The proposed development, subject to appropriate conditions complies with NPF4 policy 23 and MLDP policy ENV16.

Developer Contributions and Affordable Housing

- 8.95 In relation to Midlothian Council, policies relevant to the use of planning obligations are set out in the MLDP and Midlothian Council's Developer Contributions Guidelines (Supplementary Planning Guidance). If the Council is minded to grant planning permission for the development it

will be necessary for the applicant to enter into a planning obligation to secure:

- A financial contribution towards primary education capacity;
- A financial contribution towards secondary education capacity;
- A financial contribution towards the A701 realignment and A702 link road project/public transport;
- A financial contribution towards off site children's play and open space improvements;
- Long term maintenance arrangements for communal open space within the site; and
- The provision of affordable housing (25%).

8.96 Scottish Government advice on the use of Section 75 Planning Agreements is set out in Circular 03/2012: Planning Obligations and Good Neighbour Agreements. The circular advises that planning obligations should only be sought where they meet all of the following tests:

- necessary to make the proposed development acceptable in planning terms (paragraph 15);
- serve a planning purpose (paragraph 16) and, where it is possible to identify infrastructure provision requirements in advance, should relate to development plans;
- relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area (paragraphs 17-19);
- fairly and reasonably relate in scale and kind to the proposed development (paragraphs 20-23); and
- be reasonable in all other respects.

8.97 Developer contributions, including for affordable housing provision, have been secured through a planning obligation which was concluded in relation to planning permission 20/00089/DPP. Should this application be granted planning permission a revised planning obligation would be required to be completed ahead of the issuing of a new permission in order to ensure that it is also bound by the obligation.

8.98 The planning obligation associated with the existing planning permission for the site (20/00089/DPP) secured financial contributions towards additional capacity in relation to primary and secondary education, the A701 Relief Road and associated works and off site play/open space provision. In addition, the agreement provides that the necessary affordable housing provision (25% of the total consented units) will be met by means of the transfer of serviced remediated plots to the Council.

8.99 The existing agreement provided that there was a period of one year from the granting of permission in respect of 20/00089/DPP for the

Council to draw down the primary school land. That period fell away without the school land being drawn down and furthermore the Council, at its meeting in December 2022, in agreeing the update to the Learning Estate Strategy agreed that the delivery of a primary school at this site would no longer be pursued and primary pupils arising from this site would be accommodated by extending another existing primary school. The revised obligation will therefore omit provisions in relation to the primary school land reservation.

- 8.100 The requirements as set out above for any proposed planning obligation would meet the above tests.

Other Matters

- 8.101 Concerns were raised by objectors regarding the existing capacity of general practice medical facilities within the immediate area and the potential impacts of new housing on the capacity of health and care services. This matter is required to be addressed by the Midlothian Health and Social Care Partnership through the provision of sufficient health service capacity. That can involve liaison with the Council as planning authority (and initial discussions on this have been undertaken at a strategic level) but it is not, on its own, a sufficient basis in itself on which to resist or delay the application.

9. RECOMMENDATION

- 9.1 That planning permission be granted for the following reason:

The proposed development site will contribute to the sustainable delivery of housing in compliance with the policies of National Planning Framework 4 and the vast majority of the site is allocated for housing in the Midlothian Local Development Plan 2017 (MLDP) forming part of the Council's committed housing land supply and where there is a presumption in favour of an appropriate form of development. The remainder of the site is located within the Countryside where the complimentary recreational development proposed (multi user cycle path) is of a scale and nature appropriate to the character of this area. This presumption in favour of development is not outweighed by any other material conditions.

Subject to:

- a. The prior signing of a planning obligation to secure:
- A financial contribution towards primary education capacity;
 - A financial contribution towards secondary education capacity;
 - A financial contribution towards the A701 realignment and A702 link road project/public transport;
 - A financial contribution towards off site children's play and open space improvements;

- Long term maintenance arrangements for communal open space within the site; and
- The provision of affordable housing (25%).

The legal agreement shall be concluded within six months. If the agreement is not concluded timeously the application will be refused.

b. The following condition:

1. The development to which this permission relates shall commence no later than the expiration of three years beginning with the date of this permission.

Reason: To accord with the provisions of Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning (Scotland) Act 2019).

2. Development shall be carried out in accordance with the layout approved on site plan site plan ref. AUCH/SK004 Rev M.2 unless otherwise agreed in writing by the planning authority.

Reason: For the avoidance of doubt as to what is approved.

3. Development shall not begin until details of the phasing of the development has been submitted to and approved in writing by the planning authority. The phasing schedule shall include the construction of each residential phase of the development, the provision of affordable housing, the provision of open space, structural landscaping, the SUDS provision and transportation/roads infrastructure. Structural landscaping and transportation/roads infrastructure shall form part of Phase 1 of the scheme. Development shall thereafter be carried out in accordance with the approved phasing unless agreed in writing with the planning authority.

Reason: To ensure the development is implemented in a manner which mitigates the impact of the development process on existing land users and the future occupants of the development.

4. Notwithstanding that specified on application drawings hereby approved the external elevations of the buildings indicated on site plan ref. AUCH/SK004 Rev M.2 as 'Active Gables' are not approved. Development shall not begin until the following have been submitted to and approved in writing by the planning authority:
 - i. housetype elevations with increased provision of external windows to street fronting gables on plots 31, 53, 93, 121, 130, 154, 188, 220, 320, 338, 341, 352, 358, 377, 384, 389, and 391.

Development shall thereafter be carried out in accordance with the approved elevations.

Reason: *To ensure the quality of the development is enhanced by the creation of visual interest to the street scene as well as providing for enhanced natural surveillance in accordance with NPF Policies 14 and 23 and policies DEV2 and DEV6 of the Midlothian Local Development Plan 2017 and national planning guidance and advice.*

5. Unless otherwise agreed in writing by the planning authority, the footpath identified in colour orange between points A and B on site plan ref. AUCH/SK004 Rev M.2 is not approved and shall instead be 3m wide and constructed to an adoptable standard to facilitate a multi-user route.
6. Development shall not begin until an updated scheme for footpath, multi-user paths, cycle ways and parking has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
 - i) Bus shelter improvements on the A701 to create two 5-bay shelters on either side of the road;
 - ii) Details of traffic calming measures to ensure priority is afforded to users of the proposed 3m wide multi-user route where this intersects with the proposed internal road network.
 - iii) Details of 3m wide multi-user route across the site including those identified in terms of Condition 5 to specify precise alignment, surface material specifications and gradients for the path;
 - iv) Details of revised parking arrangements to the east of plots 80-83 onto laybys at adjacent proposed spine road; and
 - v) Details of proposed cycle parking/storage facilities for proposed cottage flats.

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

7. The proposed off-site improvements to The Brae including the change in speed limit, gateway feature, and pedestrian crossing shall be submitted to and approved in writing by the planning authority prior to occupation of any individual phase of development (as approved under Condition 3). 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 for conditions 5 - 7: To ensure that future users of the site and existing local residents have access to the provision of safe and convenient access to and from the site; to ensure that all footpaths and multi-user paths meets the Councils design requirements; and to ensure that the development accords with the requirements of NPF policies 13 and 15 and MLDP policy TRAN5.

8. Development shall not begin until details, including a timetable of implementation, of superfast fibre broadband have been submitted to and approved in writing by the planning authority. The details shall include delivery of superfast fibre broadband prior to the occupation of the building. The delivery of superfast fibre broadband shall be implemented as per the approved details.

Reason: To ensure the quality of the development is enhanced by the provision of appropriate digital infrastructure; and to comply with policy IT1 of the Midlothian Local Development Plan 2017.

9. Development shall not begin until details of the provision and use of electric vehicle charging stations have been submitted to and approved in writing by the planning authority. The charging units shall be rapid changing units and located in publicly accessible areas within the development. Publicly available electric vehicle charging points shall be designed with a single, double head charging unit which can serve two adjacent bays. Banks of end-on charging bays are preferred with the bays being located adjacent to landscaped areas rather than property frontages. Where end-on electric vehicle bays are located on public footways the standard 2m wide footway will require to be widened to provide room for the charging unit and any bollards required. 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 TRAN5 of the Midlothian Local Development Plan 2017.

10. Development shall not commence until details of a scheme to deal with surface water run off to the land to the west of plots 356, 362, 363 and 368 is 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 that the development is provided with adequate surface water drainage; and to ensure that development complies with policies ENV9 and ENV10 of the Midlothian Local Development Plan 2017

11. Development shall not begin until details and, if requested, samples of materials to be used on external surfaces of the buildings and hard ground cover surfaces have been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out using the approved materials or such alternatives as may be agreed in writing with the planning authority. External materials and finishes of improved quality shall be provided for properties within the Areas of Improved Quality.

Reason: *To ensure the quality of the development is enhanced by the use of quality materials to reflect its setting in accordance with policies DEV2 and DEV6 of the Midlothian Local Development Plan 2017 and national planning policy, guidance and advice.*

12. Development shall not begin on an individual phase of development (identified in compliance with condition 3) until details of the siting, design and external appearance of ancillary structures of that phase have been submitted to and approved in writing by the planning authority for that phase. Development shall thereafter be carried out to the design and specifications approved, or such alternatives as may be agreed in writing with the planning authority.

Reason: *To ensure the proposed development is appropriate in its design and complies with policies DEV2, DEV5 and DEV6 of the Midlothian Local Development Plan 2017.*

13. Notwithstanding the plans hereby approved, the proposed boundary treatments delineated on site plan ref. AUCH/SK004 Rev M.2 are not approved. Development shall not begin until updated details of boundary treatments to street frontages have been submitted to and approved in writing by the planning authority. Boundary treatments of improved quality shall be provided for properties within the Areas of Improved Quality. Development shall thereafter be carried out using the approved materials or such alternatives as may be agreed in writing with the planning authority.

Reason: *To ensure the quality of the development is enhanced by the use of quality materials to reflect its setting in accordance with policies DEV2, DEV5 and DEV6 of the Midlothian Local Development Plan 2017 and national planning guidance and advice.*

14. Development shall not begin on an individual phase of development (identified in compliance with condition 3) until an updated scheme for hard and soft landscaping works has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
- (i) Additional hedge planting to the boundaries of plots 288, 299, 300, 385, and 395;

- (ii) Details of proposed additional landscaping to the replace the proposed section of 2m wide public footway opposite plots 90, 91, 92 and 93;
- (iii) Details of proposed enhanced scheme of landscaping to open space adjacent to plots 245, 246 and 247, 248; and 291, 292 and 293, 294; and 295,296 and 297, 298;
- (iv) Details of tree protection measures, complying with BS5837:2012, for all trees that are to be retained;
- (v) A Woodland Management Plan outlining sustainable management, motoring, maintenance and replanting requirements for existing woodland within the site;
- (vi) Specifications for roadside tree planting showing cross sections of tree pits, adequate rooting volume for street trees and specification for urban tree planting systems;
- (vii) Details of street furniture and play/ trim trail provision across the development, including location and specification; and
- (viii) Updated scheme of landscaping to include enhanced provision of flowing lawn mix across the proposed network of greenways.

All hard and soft landscaping shall be carried out in accordance with the scheme approved in writing by the planning authority as the programme for completion and subsequent maintenance. Thereafter any trees or shrubs removed, dying, becoming seriously diseased or damaged within five years of planting shall be replaced in the following planting season by trees/shrubs of a similar species to those originally required.

Reason: *To ensure the quality of the development is enhanced by landscaping to reflect its setting in accordance with policies DEV5, DEV6 and DEV7 of the Midlothian Local Development Plan 2017 and national planning guidance and advice.*

15. Prior to the commencement of development a pre-construction check for badgers shall be undertaken and the findings shall be reported upon and submitted to the planning authority for approval in writing. Thereafter, development shall be carried out in accordance with the approved findings and recommendations.

Reason: *To protect and enhance protected species and other biodiversity on the site in accordance with policy ENV15.*

16. Development shall not begin until details of a sustainability/biodiversity scheme for the site, including the provision of house bricks and boxes for bats and swifts throughout the development, as well as mammal passage points in walls and fences, has been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in

accordance with the approved details or such alternatives as may be approved in writing with the planning authority.

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

17. Development shall not begin until updated details showing the repositioning of Plots 39-46; 60-64; and 72-83 have been submitted and approved in writing by the planning authority to show the repositioning of gables to house type ERINVALE. 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: *To ensure that the proposed layout presents an acceptable level of amenity for future residents and responds positively to the street scene in line with policies DEV2 and DEV6 of the Midlothian Local Development Plan 2017.*

18. Development shall not begin until a scheme, including a timetable of implementation, of 'Percent for Art' have been submitted to and approved in writing by the planning authority. The 'Percent for Art' shall be implemented as per the approved details.

Reason: *To ensure the quality of the development is enhanced by the use of art to reflect its setting in accordance with policies DEV6 and IMP1 of the Midlothian Local Development Plan 2017 and national planning guidance and advice.*

19. No building shall have an under-building that exceeds 0.5 metres in height above ground level unless otherwise agreed in writing by the planning authority.

Reason: *Under-building exceeding this height is likely to have a materially adverse effect on the appearance of a building.*

20. The development shall not begin until 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.
- 21. On completion of the decontamination/remediation works referred to in Condition 20 above and prior to any dwelling house being occupied, 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 dwelling house shall be occupied unless or until the planning authority have approved the required validation.

Reason for conditions 20 and 21: 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.

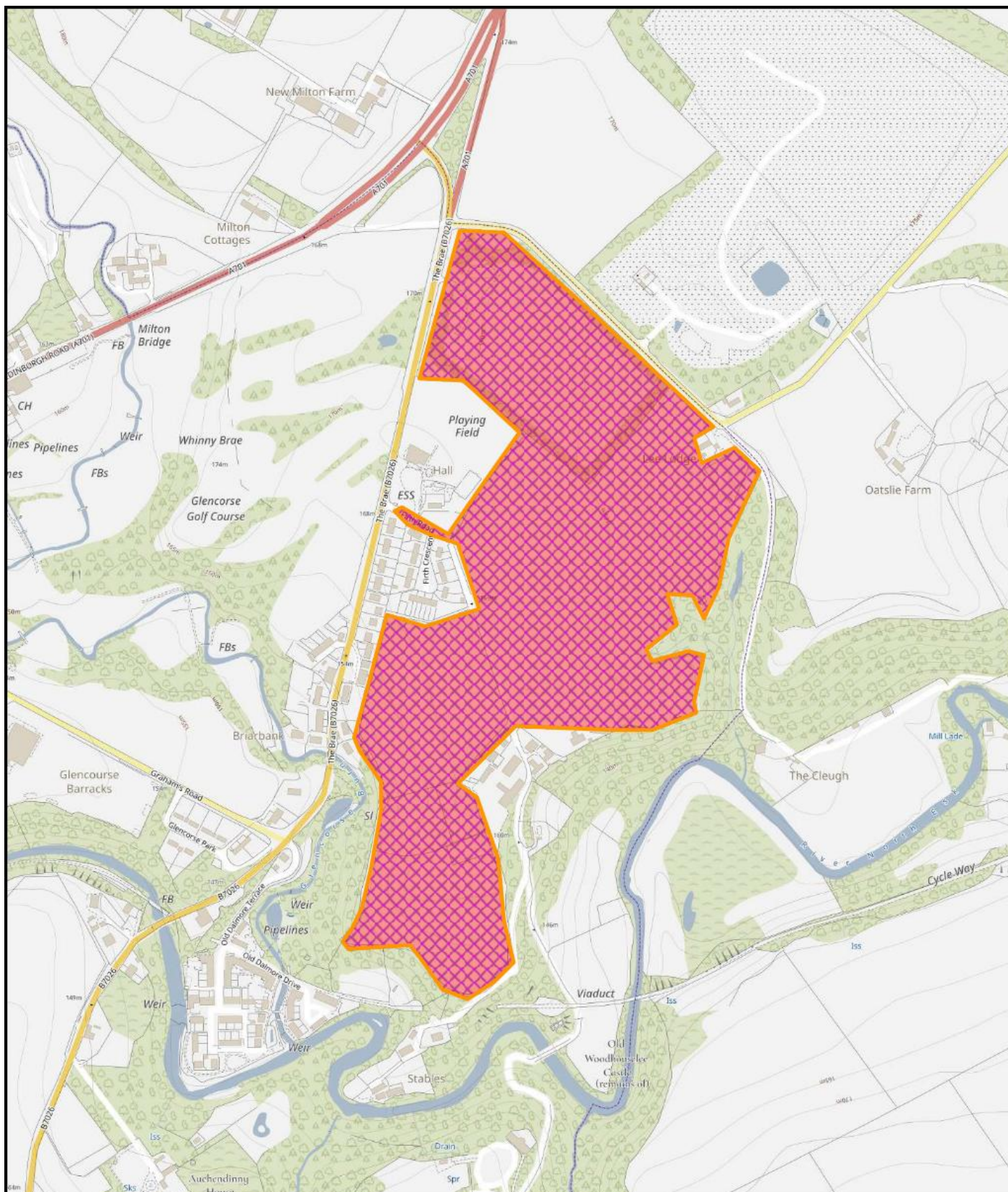
- 22. Development shall not begin until a Construction Environment Management Plan (CEMP) has been submitted to and approved in writing by the planning authority. The CEMP shall include:
 - i. Details of a construction access;
 - ii. signage for construction traffic, pedestrians and other users of the site;
 - iii. controls on the arrival and departure times for construction vehicles, delivery vehicles and for site workers (to avoid school arrival/departure times);
 - iv. details of piling methods (if employed);
 - v. details of any earthworks;
 - vi. control of emissions strategy;
 - vii. a dust management plan/strategy;
 - viii. waste management and disposal of material strategy;
 - ix. a community liaison representative will be identified to deal with the provision of information on the development to the local community and to deal with any complaints, regarding construction on the site;
 - x. prevention of mud/debris being deposited on the public highway;
 - xi. material and hazardous material storage and removal; and
 - xii. controls on construction, engineering or any other operations or the delivery of plant, machinery and materials (to take place between 0700 to 1900hrs Monday to Friday and 0800 to 1300hrs on Saturdays).

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: *In order to control the construction activity on the site, ensure environmental impact during the construction period is acceptable and to ensure appropriate mitigation is in place.*

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date:	20 March 2023
Application No:	22/00848/DPP
Applicant:	The Technical Department Bellway Homes Scotland East
Agent:	N/A
Validation Date:	19/12/2022
Contact Person:	Alison Ewing, Planning Officer
Email:	alison.ewing@midlothian.gov.uk
Background Papers:	Planning application 20/00089/DPP



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

Erection of 395 dwellings and associated works Land South East of Auchendinny

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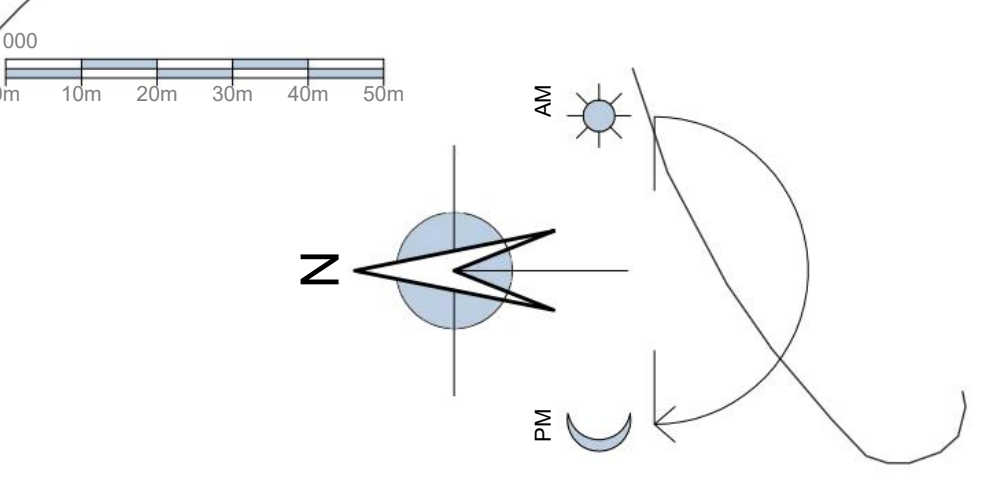
File No.22/00848/DPP

Scale: 1:7,500



- Bellway Development Boundary
- Affordable Housing
- Shared Driveway
- 1800mm Timber Boundary Fence
- 1800mm Fence with Stone Piers
- 1800mm Ashstone wall
- *

Plot with Activated Gable



NOTES :-

All Properties to be a minimum of 1 Meter away from Boundaries.

All footpaths minimum 900mm wide.
Common footpaths to be min 1200mm wide.

Driveways to be minimum 3.3m wide.
Groundworker to **ASK** if in doubt

All landscaping shown for information only. Refer DWA Landscapes current drawings for up to date information.

Any retention, levels or surface finishes information is shown for information only, Refer to Mike Gemmell Associates current drawings for current Engineering designs.

Approximate garden sizes for guidance only. These may vary slightly, depending on site specific conditions.

Auchendinny, Panicleuk		29.99 acres (net)		64.20 acres (gross)			
rev D	July 2022						
		Sq Ft	Nos	Coverage	Av Sgft	%	Total %
Hambury 3 Bed terrace	801	0	0				
Gailes 3 bed semi	902	0	0				
Kinloch 3 bed terrace	928	19	17632				
Glencoe 3 bed semi	955	6	5730				
Erinvale 3 Bed det	1040	13	13520				
Erinvale 3 Bed terrace	1040	6	6240				
Fulford 3 bed det	1045	0	0				
Lytham 3 bed det	1072	3	3216				
Rosevale 3 bed det	1084	7	7588				
Oakmont 4 bed det	1203	28	33684				64
Victoria 4 bed det	1315	35	46025				
Pinehurst 4 bed det	1382	11	15202				
Avondale 4 bed det	1410	33	46530				
Muirfield 4 bed det	1447	32	46394				
Lomond 4 bed det	1502	19	26538				
Carriack 4 bed det	1503	4	6012				
Doyles 4 bed det	1586	0	0				
Burgess 4 bed det	1615	34	54910				196
Sunningdale 5 bed det	1793	25	44825				37
Turnberry 5 bed det	1847	12	22184				12
		297	407400	1372	100		297
Coverage per net acre		13,583 sq ft/acre					
Coverage per gross acre		6,346 sq ft/acre					
Affordable		4.16 acres (net)		4.36 acres (gross)			
		Sq Ft	Nos	Coverage	Av Sgft	%	Total %
HT001 1 Bed 2p Cottage Fla	527	0	0				
HT002 GF 2 Bed Cott Flat	743	30	22290				31
HT002 FF 2 Bed Cott Flat	843	30	25290				31
HT003 2 Bed Sp Mid Terr	865	20	17300				20
HT007 3 bed Sp End Terr	985	18	17730				18
Sub-total		98	82610		843	100	100
Coverage per net acre		19,856 sq ft/acre					
Coverage per gross acre		18,963 sq ft/acre					
Total		34.15 acres (net)		68.55 acres (gross)			
		Sq Ft	Nos	Coverage	Av Sgft	%	Total %
Affordable		98	82610			25	
Private		297	407400			75	
Sub-total		395	490010		1241	100	100
Coverage per net acre		14,348 sq ft/acre					
Coverage per gross acre		7,145 sq ft/acre					

BELWAY HOUSE MATERIAL CODING KEY	
A	areas of improved quality (85no. units)
STONE WORK (Basecourses ONLY)	
PRECAST:	Thistlestone Buff Black Dressed Stone
RENDER (full height):	Buff
DOOR COLOUR:	White Wet Dash Render
WINDOW COLOUR:	Cupa H14 Natural Slate
RAINWATER GOODS:	White
FASCIAS / SOFFIT:	Black
	White (P.V.C.U)
B	
STONE WORK:	
PRECAST:	Thistlestone Buff Black Dressed Stone
RENDER PANELS:	Buff
DOOR COLOUR:	Tuscan Chip on Magnolia Background
WINDOW COLOUR:	Russell Highland Slate Grey
RAINWATER GOODS:	White
FASCIAS / SOFFIT:	Black
	White (P.V.C.U)
C	
STONE WORK:	
PRECAST:	Thistlestone Buff Black Dressed Stone
RENDER PANELS:	Buff
DOOR COLOUR:	Iceberg White Chip on White Background
WINDOW COLOUR:	Russell Highland Slate Grey
RAINWATER GOODS:	White
FASCIAS / SOFFIT:	Black
	White (P.V.C.U)

AMENDMENTS

Issue	Date	Detail
M	Dec 22	Plots 1, 2, 3, 6 & 9 revised.
L	Nov 22	Minor changes to suit Planning
J	Nov 22	Updated for Planning Application
I	Nov 22	Additional colouring and pathways/driveways updated
		Enhanced areas redline changed to blue

Bellway
Bellway Homes Limited

SCOTLAND WEST
Bothwell House
Hamilton Business Park
Cairst Street
Hamilton
ML3 0QA
Tel: 01698 477440

SCOTLAND EAST
6 Almondvale Business Park
Almondvale Way
Livingston
West Lothian
EH54 6GA
Tel: 01506 594420

Project

RESIDENTIAL DEVELOPMENT AUCHENDINNY MIDLOTHIAN

Drawing

PROPOSED DEVELOPMENT LAYOUT

Scale: 1:1000@A0 Drawn By: HH Date: 23/09/19

Drawing No: AUCH/SK/004 M

