

Notice of Review: Land North of 6 Ashbank, Gorebridge

Determination Report

Report by Chief Officer Place

1 Purpose of Report

- 1.1 The purpose of this report is to provide a framework for the Local Review Body (LRB) to consider a 'Notice of Review' for the change of use of vacant land to builder's yard (sui generis), siting of shipping containers and associated engineering operations to form earth bund and hardstanding (retrospective) on land north of 6 Ashbank, Gorebridge.

2 Background

- 2.1 Planning application 21/00499/DPP for the change of use of vacant land to builder's yard (sui generis), siting of shipping containers and associated engineering operations to form earth bund and hardstanding (retrospective) on land north of 6 Ashbank, Gorebridge was refused planning permission on 19 October 2021; a copy of the decision is attached to this report.
- 2.2 The review has progressed through the following stages:
- 1 Submission of Notice of Review by the applicant.
 - 2 The Registration and Acknowledgement of the Notice of Review.
 - 3 Carrying out Notification and Consultation.

3 Supporting Documents

- 3.1 Attached to this report are the following documents:
- A site location plan (Appendix A);
 - A copy of the notice of review form and supporting statement (Appendix B). Any duplication of information is not attached;
 - A copy of the case officer's report (Appendix C);
 - A copy of the decision notice, excluding the standard advisory notes, issued on 19 October 2021 (Appendix D); and
 - A copy of the key plans/drawings (Appendix E).
- 3.2 The full planning application case file and the development plan policies referred to in the case officer's report can be viewed online via www.midlothian.gov.uk

4 Procedures

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

5 Conditions

- 5.1 In accordance with the procedures agreed by the LRB at its meeting of 13 June 2017, and without prejudice to the determination of the review, the following conditions have been prepared for the consideration of the LRB if it is minded to uphold the review and grant planning permission.
1. Within 3 months of the date of this permission a scheme to deal with any contamination of the site and/or previous mineral workings shall be submitted to the planning authority for approval in writing.

The scheme shall contain details of the proposals to deal with any contamination and/or previous mineral workings and include:

- a) The nature, extent and types of contamination and/or previous mineral workings on the site;
- b) 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;
- c) Measures to deal with contamination and/or previous mineral workings encountered during construction work; and
- d) The condition of the site on completion of the specified decontamination measures.

Any decontamination/remediation works required by the above scheme of investigation shall be completed within 3 months of the scheme being approved in writing by the planning authority.

2. On completion of the decontamination/remediation works referred to in Condition 1 above, 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.

Reason for conditions 1 and 2: To ensure that any contamination on the site is adequately identified and that appropriate decontamination/remediation measures are undertaken to mitigate the identified risk to site users and the wider environment.

3. The design and installation of all plant, machinery and equipment shall be such that the combined noise level shall not exceed NR 30 daytime (07:00 to 23:00 hrs) or NR 25 if the noise is tonal and NR 25 night-time (23:00 to 07:00 hrs) or NR 20 if the noise is tonal as measured from within any living apartment in any neighbouring noise-sensitive premises. For the purposes of this condition the assessment position shall be as identified by BS 7445 in relation to internal noise measurements.
4. For an assessment position 3.5 meters from the facade of any residential property (1 m from the facade in the case of upper floors) the Rating Level shall not exceed the background noise level by more than 5 dB when rated in accordance with BS 4142. The background noise levels shall be LA90 and should be demonstrated as being representative of the background noise levels for the relevant assessment period of the day and night.
5. Within 1 month of the date of this permission details of a waste management plan for the site shall be submitted to and approved in writing by the planning authority. The plan shall include the location of any areas of waste storage, the means of enclosure of any waste and a timetable for regular removal of the waste. Once approved the waste management plan shall be complied with for the duration of the site's use as a builder's yard.

6. No burning of waste material shall take place on the site.

Reason for Conditions 3 to 6: To safeguard the amenity of local residents, landowners and businesses.

7. No trees, hedgerow or shrubs within the site shall be lopped, topped, felled or removed without the prior written approval of the planning authority.
8. Within 1 month of the date of this permission details of a scheme of hedgerow planting for the northern and eastern boundaries of the site shall be submitted to the planning authority for written approval. Once approved the planting shall be completed by the close of the next planting season following the date of approval of the scheme of hedgerow planting.

Reason for Conditions 7 and 8: To safeguard the landscape setting of this countryside site.

- 5.2 If the LRB dismisses the review, the use of the land as a builder's yard will need to cease; the storage containers and any other structures placed on the land will need to be removed from the land; the hard surface removed and the earth bund spread across the site. In this case the applicant will be asked to comply with this requirement within two months of the LRB decision. However, the failure to carry out the required works will result in the Council having to consider issuing an enforcement notice to resolve the breach of planning control.

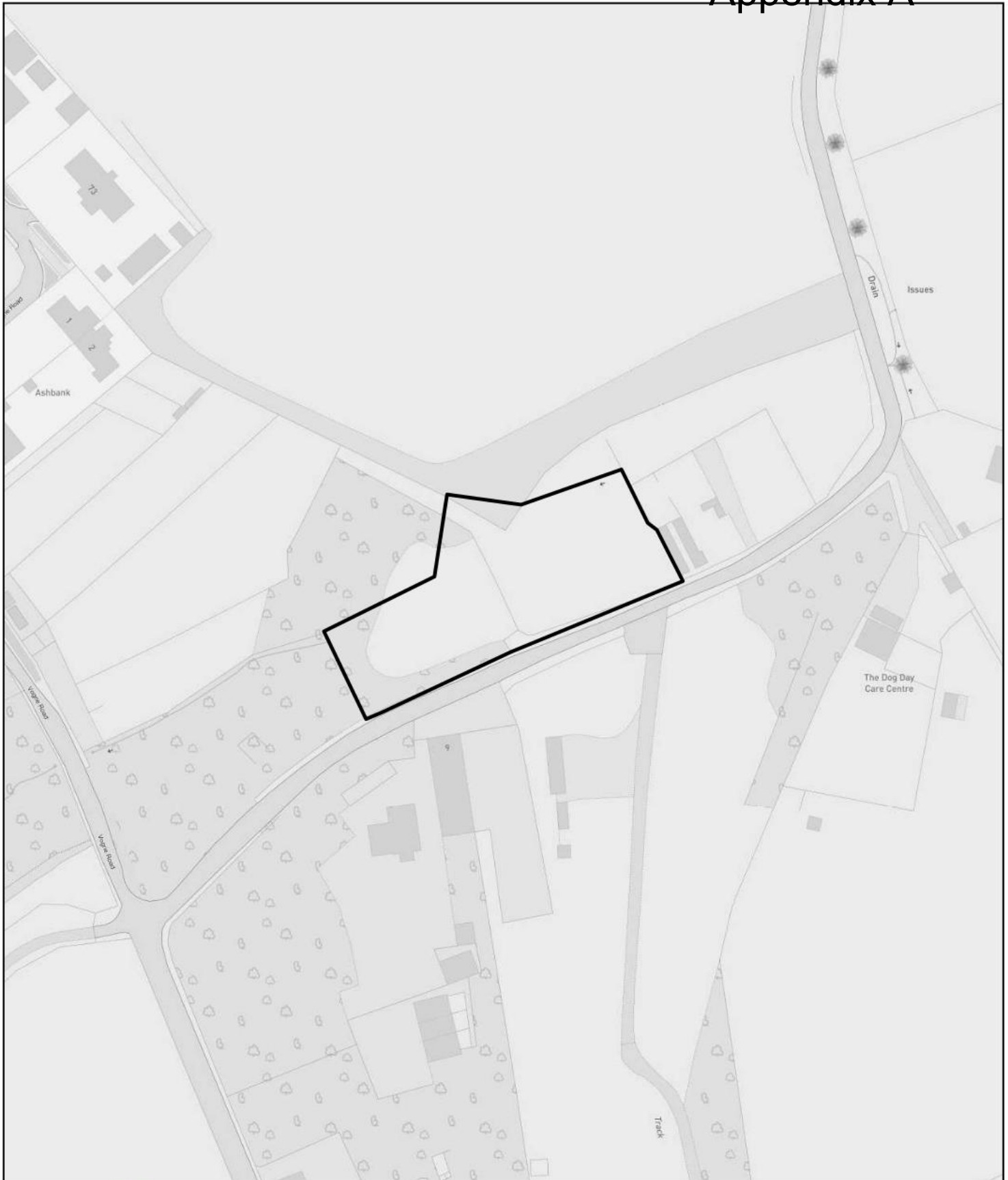
6 Recommendations

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

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date: 11 March 2022
Report Contact: Graeme King, Planning Officer
Graeme.King@midlothian.gov.uk

Background Papers: Planning application 21/00499/DPP available for inspection online.



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

Change of use of vacant land to builder's yard(sui generis) ,
siting of shipping containers and associated engineering
operations to form earth bund and hardstanding
(retrospective) at Land North of 6 Ashbank, Gorebridge,

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File No: 21/00499/DPP

Scale:1:1,500





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

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

Thank you for completing this application form:

ONLINE REFERENCE 100520368-001

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

Applicant or Agent Details

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

☐ Applicant ☒ Agent

Agent Details

Please enter Agent details

Company/Organisation:	<input type="text" value="Sorrell Associates"/>		
Ref. Number:	<input type="text"/>	You must enter a Building Name or Number, or both: *	
First Name: *	<input type="text" value="Jim"/>	Building Name:	<input type="text" value="The Green House"/>
Last Name: *	<input type="text" value="Sorrell"/>	Building Number:	<input type="text" value="41"/>
Telephone Number: *	<input type="text" value="0131 343 3463"/>	Address 1 (Street): *	<input type="text" value="St Bernard's Crescent"/>
Extension Number:	<input type="text"/>	Address 2:	<input type="text"/>
Mobile Number:	<input type="text"/>	Town/City: *	<input type="text" value="Edinburgh"/>
Fax Number:	<input type="text"/>	Country: *	<input type="text" value="Scotland"/>
		Postcode: *	<input type="text" value="EH4 1NR"/>
Email Address: *	<input type="text" value="jimsorrell@sorrellassociates.co.uk"/>		

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

☐ Individual ☒ Organisation/Corporate entity

Applicant Details

Please enter Applicant details

Title:	<input type="text" value="Mr"/>	You must enter a Building Name or Number, or both: *	
Other Title:	<input type="text" value="Rory"/>	Building Name:	<input type="text"/>
First Name: *	<input type="text"/>	Building Number:	<input type="text" value="16"/>
Last Name: *	<input type="text" value="Joyce"/>	Address 1 (Street): *	<input type="text" value="South Quarry View"/>
Company/Organisation	<input type="text" value="Peter Joyce & Son Ltd"/>	Address 2:	<input type="text"/>
Telephone Number: *	<input type="text"/>	Town/City: *	<input type="text" value="Gorebridge"/>
Extension Number:	<input type="text"/>	Country: *	<input type="text" value="Scotland"/>
Mobile Number:	<input type="text"/>	Postcode: *	<input type="text" value="EH23 4GT"/>
Fax Number:	<input type="text"/>		
Email Address: *	<input type="text" value="rorypjplumber@yahoo.com"/>		

Site Address Details

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

Please identify/describe the location of the site or sites

Northing	<input type="text" value="660997"/>	Easting	<input type="text" value="335191"/>
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Description of Proposal

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

Change of use of vacant land to builder's yard (sui generis), siting of shipping containers and associated engineering operations to form earth bund and hardstanding (retrospective)

Type of Application

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

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

What does your review relate to? *

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

Statement of reasons for seeking review

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

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

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

Explained in Planning Appeal Statement

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

☐ Yes ☒ No

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

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

Listed in Planning Appeal Statement

Application Details

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

21/00499/DPP

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

18/05/2021

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

19/10/2021

Review Procedure

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

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

☐ Yes ☒ No

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

Please select a further procedure *

Holding one or more hearing sessions on specific matters

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

For the appellant to explain to the local review body particular matters which he considers did not receive due attention by the Council's planning officials including the business justification for allowing use of the site by his company, how this will complement existing neighbouring uses, and the improvements to the appearance of the site and the local environment that will be enabled.

Please select a further procedure *

By means of inspection of the land to which the review relates

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

To enable the local review body to witness the non-agricultural character of the site deriving from its previous uses, the nature of the use being carried on for which approval is now sought, and its setting amongst an enclave of complementary neighbouring commercial uses

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

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

☐ Yes ☒ No

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

☐ Yes ☒ No

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

The site entrance has a secure gate and the appellant will be glad to provide access to the LRB members.

Checklist – Application for Notice of Review

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

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

☒ Yes ☐ No

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

☒ Yes ☐ No

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

☒ Yes ☐ No ☐ N/A

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

☒ Yes ☐ No

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

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

☒ Yes ☐ No

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

Declare – Notice of Review

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

Declaration Name: Mr Jim Sorrell

Declaration Date: 18/01/2022

PETER JOYCE & SON LTD
Plumbing, Heating & Mechanical Services

16 South Quarry View
Gorebridge, Midlothian
EH23 4GT

T: 01875 822239
M: 07790189433/07815953679
E: pjplumber@btinternet.com

Date: 07/05/2021

FAO: Midlothian Planning Committee

We would appreciate if you could read this letter as a background to our need to apply for the planning application to allow us to create a yard and housing on the current site.

We are a small family business who have been based in Gorebridge since 2000, but we have been Midlothian residents since birth.

Peter, originally started out as a Sole Trader after being made redundant from Colin Dickson, Plumbers from North Wynd in Dalkeith, due to his employers impending retirement, Peter moved to Kelly's Kitchen's in Bonnyrigg, but after around 18 months Kelly's Kitchens, also ceased trading and Peter took the decision to become self-employed. After a few years of hard work and determination and building his reputation, Peter was in a position to employ an apprentice, who was also from Gorebridge, when this apprentice was qualified, Rory, Peter's son was employed as an apprentice. The business has gone from strength to strength.

After a few years we were able to employ other plumbers and take on larger contracts and we started seeking premises to relocate to. Unfortunately we were unable to source anything suitable in the area.

We moved to our current address in 2009 as this offered us the opportunity to gain a double garage, to allow us to store items. We also applied to Midlothian Council, and were granted planning permission to build a further 2 garages on our property, we thought this would have allowed us to store more materials in order to be more competitive when pricing work. Unfortunately we were unable to proceed with this planning application because in 2015 we had been subcontracting to Muirfield Contracts who were building houses in Gorebridge, they ceased trading owing us **£90,918.78**. We were devastated but determined not to let this end all of our previous hard work, we worked tirelessly to enable us to pay all our suppliers and achieved this within a year. This determination to succeed has stayed with us and we have continued to expand our business. We have contacted Midlothian Council over the years asking for some help in finding suitable premises but unfortunately nothing has become available for us and we have traded from our home address, since 2009. In the past year our neighbours have retired and have waged a bit of a war, trying to get a petition to have us removed, constantly filming and photographing visitors, they have been abusive towards us and sent letters advising us of their intentions of reporting us to the police, council, MP's etc.

We were offered the use of containers and the wooden shed, formally a pigeon hut, on this site at Ashbank and when this land became available to purchase we thought it was perfect as it was within easy reach of all our employees, there were already other industrial work premises, including a scaffolding yard, garage and Roofing company in the area, and it would allow us to expand our business due to continued and repeat

customers. This has allowed us to employ another plumber, an apprentice plumber and a foreman joiner, we were also able to employ a 58 year old labourer, who had just lost his job due to covid and thought he had become unemployable. We have in-fact 10 employees all of who live in Midlothian, 9 in Gorebridge and 1 in Bonnyrigg. One of our plumbers recently retired and he lived in Newtongrange.

Unfortunately we also inherited a vermin problem, after speaking to pest control and Midlothian Council Environmental department we were advised that the best and quickest way to alleviate this problem was to scrape back the soft ground and replace with hard-core and create a bund to separate our land from the local fly tipping ground next door. This appears to have worked as currently we have no rats/vermin. This bund will be removed and the soil re-used once the clear up of next door has taken place.

As a Midlothian business, we like to use local companies when possible, including SW Scaffolding, P&M Sinclair, B&D Roofing, DM Construction, Lithgow Electrical, Airtex Structural Height Specialists. We also use the services of Rocket Car wash to clean the vans, and the local bakeries and shops.

We also try to help other local organisations, including supplying and fitting new drainage at Arniston Rangers Football Club, we contribute to Gorebridge Bowling Club and the Gala Day. We also carry out work at reduced rates at the Midlothian Foodbank and Gorebridge Church

We are aware that a plumber's yard would become a target to thieves due to the high value materials and equipment required to run a successful, expanding business, therefor our proposal of building houses on the current site would hopefully act as a deterrent and avoid theft and illegal dumping which is currently on the increase in this area.

Our hope would be that we, ourselves will build the houses, again creating work and guaranteeing our employees work for a considerable amount of time.

As previously stated we have been raised, lived, worked and been an employer in Midlothian all our lives and would like to continue to do so.

We are willing to work alongside, and would appreciate the help and guidance from Midlothian Councils planning department to help us achieve our objectives and also create a unique working and living space.

Kind Regards

Peter, Margaret & Rory Joyce

**Land to North of 6 Ashbank, Gorebridge
EH23 4NJ**

**Appeal against the Decision by Officials
of Midlothian Council to Refuse Planning
Permission for Application Reference
21/00499/DPP**

**Change of use of vacant land to builder's
yard (sui generis), siting of shipping
containers and associated engineering
operations to form earth bund and
hardstanding (retrospective)**

**Planning Appeal Statement to the Local
Review Body**

On behalf of:

Mr Rory Joyce,
Peter Joyce & Son Ltd

18th January 2022

Sorrell Associates
planning | development | consultancy

The Green House
41 St Bernard's Crescent
Edinburgh EH4 1NR
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Application Documents

Drawings

- (EX)01 - Existing Site Layout on Aerial Image
- (EX)02 - Existing Site Layout on Ordnance Survey Plan
- (EX)03 - Existing Site Plan on Aerial Image
- (EX)04 - Existing Site Plan on Ordnance Survey Plan
- (LOC)01 - Location Plan
- (PL)01 - Proposed Site Plan
- (PL)02 - Proposed Site Plan, Showing Works Completed
- (PL)03A - Site Sections
- 21-109(SK)03.2 - Indicative Site Plan

Other Documents

- Supporting Letter from Peter Joyce and Son Ltd - 11th June 2021

Application Determination

- Consultation Response - Environmental Health Officer 7th October 2021
- Report of Handling
- Decision Notice - 19th October 2021

Appeal Documents

- Location plan showing land uses in vicinity of application site

SECTION 1 INTRODUCTION

1. This Appeal Statement is submitted on behalf of Mr Rory Joyce (*'the applicant' or 'appellant'*), the proprietor of Peter Joyce & Son Ltd (*'the company'*), specialists in plumbing, heating and mechanical services.

Background to the Proposal

2. The company is a family-run business which has been established in Gorebridge for over 20 years, operating from various sites / properties in and around the town. Trade has steadily increased and 13 staff are now employed. The company requires a permanent site at which to consolidate and then expand further but, until now, the applicant has been unable to find an appropriate opportunity.
3. Mr Joyce is appealing against the refusal of planning permission (ref 21/00499/DPP) by Midlothian Council (*'the Council'*) regarding his company's use of land on the north side of Ashbank, Gorebridge (*'the application site' or 'appeal site'*), for which the description of development is:

'Change of use of vacant land to builder's yard (sui generis), siting of shipping containers, and associated engineering operations to form earth bund and hardstanding (retrospective).'

4. The application site is some 0.34ha (0.8 acres) and located to the south of Gorebridge, some 500m from Lady Brae, across farmland which is part of Stobs Farm. The site is within the designated countryside area. However this apparent rural setting is deceptive as the immediate area is of low-quality appearance and the site is amongst an enclave of commercial uses located on Ashbank and Vogrie Road.



Fig 1 - Site location on north side of Ashbank

5. The site was acquired by Mr Joyce in March 2021, together with an adjacent wooded area, and has been used by the company as a plumber's yard since that time.
6. For several years the previous owner had used the site for the storage of end-of-life vehicles, including failed MOT's and damaged stock cars. Mr Joyce understands this included carrying out repairs at the site or stripping down these vehicles for parts.

7. The description of development in the application refers to the site having previously been "vacant land". However this is incorrect as it was actively used for car storage up to the time of purchase.
8. The site is also understood to have a prior history of use as a coal yard in association with the Old Vogrie Coal & Fireclay Works which was located immediately opposite. It was also used for keeping pigeons.
9. Mr Joyce presumed that the previous use for car storage had established an industrial use of the land which could be continued as a plumber's yard without requiring planning permission. He therefore proceeded to clear the site and commenced use by his company.
10. However he was subsequently contacted by the Council Planning Dept who advised that retrospective planning approval was necessary.
11. The retrospective nature of this proposal is therefore due to a genuine misunderstanding regarding planning procedure, and the applicant took swift action in seeking to regularise the position by appointing Fouin & Bell Architects to prepare a planning application.

Land Use and Groundworks Requiring Approval

12. The site is used by the company for the storage of plumbing equipment and supplies. The main activity is early each morning when employees meet on site and load their vehicles before travelling to clients' premises, returning in late afternoon / early evening.
13. During the rest of the day the site is largely inactive with only occasional deliveries of equipment, plumbing parts, etc and a limited staff presence. Overall the business generates a low level of activity and traffic movements.
14. There are no permanent buildings on the site and ten shipping containers have been positioned around the western and southern periphery to provide storage for plumbing equipment and supplies. This includes one container left by the previous owner that will be refurbished for use as an office should consent be granted.



Fig 2 - Containers on south side of site



Fig 3 - Containers on west side of site

15. The west / central part of the site is used for parking and loading of vehicles, being accessed from the site entrance on Ashbank in the middle of the southern boundary.

16. It is Mr Joyce's position that the site was already in generally poor condition with an unsightly appearance when he acquired it. The area inside the western boundary had been 'backfilled' by the previous owner to achieve a level gradient, given the slope down to the adjacent woodland. Much of the former grassed area across the site had also become scrubland as a consequence of the car storage.
17. A large number of derelict vehicles and three large steel containers were left behind and Mr Joyce says he arranged for these to be cleared. The remains of pigeon lofts / 'doocot' structures were also removed.
18. Having cleared the site it became apparent that vermin were entering from the adjacent site to the east, which appears to be used for fly-tipping and occasional fires. Mr Joyce says he consulted Midlothian Environmental Health and was advised to form a soil bund inside the site along the eastern boundary. He did this, and it has halted the vermin problem. He will remove the bund when the adjacent site is cleared up.



Fig 4 - Earth bund along east boundary

19. Mr Joyce says that he has also laid the central/west part of the site with materials left over from road tarmacing. This is described in the application as 'hardcore' and in practice it provides a loose gravel surface. The eastern part of the site remains as scrub grassland.
20. The matters regarded as requiring approval by the Council planning officials comprise the use of the site as a yard, the siting of the containers, the formation of the bund and the gravel surfacing of part of the site.

Planning Application Process

21. The application was submitted on 10th June 2021. However permission was refused by decision letter of 19th October 2021 with a single reason for refusal:

'The proposed development is not in keeping with the scale and character of the surrounding rural area and is poorly integrated into the rural landscape; the proposal is therefore contrary to policy RD1 of the Midlothian Local Development Plan 2017. Any economic benefits generated by the proposal are not a significant enough material consideration to outweigh the provisions of the development plan.'

22. The refusal was administered by planning officials under delegated powers, and so Mr Joyce's appeal seeks a review of that decision by the Council's Local Review Body ('LRB').
23. Mr Joyce is aware that objections were submitted by some neighbours regarding the site clearance and groundworks he has carried out and that the Council's enforcement team was consequently notified. However he feels the commentary provided on these events by the officers in the Report of Handling (ps6-7) is one-sided against him and does not represent a fair assessment.
24. He also feels, from the explanation given in their report, that this unduly influenced the officers in deciding to refuse consent, when balancing the merits of the application. This is reflected in the expressions used by officers that he has '*wilfully ignored planning regulations*' and that approval would '*completely over-rule national and local planning guidance and create a precedent that could make the overall aims and objectives of the LDP undeliverable*'.
25. Mr Joyce regards such statements as exaggerated and unreasonable. He therefore asks the LRB to consider the points set out in this Appeal Statement and to undertake a more rational consideration of the proposal.
26. He strongly believes his proposals are appropriate for the site and will complement neighbouring uses. He accepts he has carried out works to his site but he also believes he is being unfairly blamed for drainage, ground contamination and access issues which derive from previous uses or other landowners in the area. He hopes a productive partnership can be formed with the Council and neighbours to resolve any matters to mutual benefit.

SECTION 2 GROUNDS OF APPEAL - OVERVIEW AND PLANNING POLICY

27. Permission has been refused by the planning officials with reference to Policy RD1 of the Midlothian Local Development Plan ('LDP'). Mr Joyce disagrees with their assessment and considers that approval is justified in accordance with both the land-use principles and detailed criteria required by this policy. This is explained in Sections 3-6 of this Statement, and summarised as follows.

28. Policy RD1 states that 'Development in the Countryside' will only be permitted:

'if required for the furtherance of agriculture, forestry, countryside recreation or tourism.'

29. However RD1 also provides specific support for 'Business in the Countryside', and this is the primary reason by which Mr Joyce considers planning permission is justified. The policy states that:

'Development opportunities that will enhance rural economic development will be permitted provided that they accord with criteria a)-d). Proposals will not be permissible if they are of a primarily retail nature or harm the amenity of nearby residents through unacceptable levels of noise, light or traffic.'

30. **Section 3** provides Mr Joyce's consideration that the officials did not give sufficient weight to this matter and he instead asks the LRB to grant consent in support of Peter Joyce & Son as an established and expanding local business.

31. Four Criteria (a-d) are set by Policy RD1 which require development to be a) integrated with the rural landscape, b) suitably accessed, c) to protect the water environment (drainage, etc) and d) accessible by public transport. RD1 also requires no harm to be caused to the amenity of nearby residents from noise, light or traffic.

32. Mr Joyce considers an important justification for his company's use of the site is in satisfying the first of these criteria, by integrating into the rural landscape. This is based on i) the precedent set by previous use of the site, ii) visual and environmental improvements, and iii) compatibility with the enclave of commercial businesses on neighbouring sites. These are addressed in **Section 4**.

33. Compliance with the remaining detailed criteria set by Policy RD1 is then addressed in **Section 5** and planning conditions are proposed to provide confidence to the LRB that these matters can be implemented.

34. Finally **Section 6** explains that the current proposal is only intended for a temporary period as Mr Joyce's wider ambition is to develop the site with two new bespoke permanent buildings together with enhanced landscaping, access, drainage and site treatment.

35. A further planning application for this proposal is intended as soon as practically possible. However the current application is necessary in the short term to regularise the planning status of the current land use, existing containers and ground works. The applicant proposes a planning condition which restricts the period of approval to three years, as a means to demonstrate his commitment to these wider improvements.

SECTION 3 BUSINESS JUSTIFICATION

36. The planning application was supported by a letter from Peter Joyce & Son dated 7th May 2021 which sets out the background to the company's growth as a local business, its need for land or premises in Gorebridge, its expanding business and increasing workforce.
37. The letter encapsulates the benefits the company provides through local employment. This is at the heart of the business justification for the granting of planning permission, which is summarised as follows.
- The company is a family-run business which has been established in Gorebridge for over 20 years,
 - The company has operated from various sites / properties in and around Gorebridge including at Parkhill, South Quarry View and Mayfield Industrial Estate but none have proved sustainable
 - Trade has steadily increased and Mr Joyce believes there is scope to expand further but a new property is required
 - The company has grown to 13 staff - a significant local employer. The workforce spans a wide age range from trainees, apprentices to plumbers with long experience
 - Most of the workforce live in Gorebridge and a local site accessible on foot is vital.
 - Mr Joyce has actively sought new premises and sites in the local area but to no avail
 - Midlothian Council business team was approached to search for new premises. Only a few opportunities were identified but these were inappropriate due to wrong location (Penicuik) or too small / no yard (a shop unit).
38. Sadly Mr Joyce has been unable to identify any properties locally which are available and provide appropriate premises and yard space. Use of the site at Ashbank will enable the company to consolidate its existing business, continue providing a service to its customer base and ensuring the continued employment of its local workforce.
39. The use of the shipping containers provides a first step in establishing the site as its base and then to seek approval for their replacement with permanent buildings, which in turn offers the scope to expand the business and generate more jobs.
40. Mr Joyce considers the employment and business benefits that derive from his company's use of the site falls directly within the remit of the support provided for 'business in the countryside' by Policy RD1 as an *'opportunity that will enhance rural economic development'*.
41. In the Report of Handling the officers acknowledge some positive aspects of the company's business expansion and they accept the difficulty for businesses to find suitable sites. However they conclude that this cannot justify approval due to their assessment that Mr Joyce has sought *'to wilfully ignore planning regulations'* and their consideration that *'the principle of this type of development at this type of location is fundamentally unacceptable'*.
42. Mr Joyce fully accepts the need for the site to be managed and operated appropriately, respecting the interests of the rural setting, environmental matters and the amenity for neighbours, and he considers the officers have unfairly assessed his actions (paras 22-26 above).

43. He also believes that a reasoned assessment by the LRB of the nature of the site and its setting will establish that the operation of a plumber's yard in this location is entirely compatible with neighbouring uses and the character of the locality.
44. All of these matters are addressed in the following sections of this Statement and, if the LRB agrees with Mr Joyce, it would be entirely reasonable for them to give due weight to the economic benefits that derive from supporting a local business.

SECTION 4 INTEGRATION WITH THE RURAL LANDSCAPE

45. The reason for refusal considers that *'The proposed development is not in keeping with the scale and character of the surrounding rural area and is poorly integrated into the rural landscape.'* The officers also say in the Report of Handling that the applicant *'has turned a grassed field into an unattractive one of hardstanding with the character of a semi-derelict industrial site'*.
46. The applicant disagrees with these assessments and asks the LRB to consider the following matters, which lead him to believe his use of the site is appropriate for the location and can integrate with the rural landscape.

Previous Use of the Application Site

47. Mr Joyce considers that the site has a history of past uses which set a precedent by which the continuation of the current use can be found acceptable.
48. When he acquired the land in March 2021 it had been used over a period of many years for the storage of end-of-life vehicles, including failed MOT's and damaged stock cars. The previous owner would carry out repairs at the site or strip down these vehicles for parts.
49. Mr Joyce arranged for the clearance of a large number of vehicles which were left behind on the site and also the removal of three large steel containers.



Fig 5 - aerial view of car storage

50. The car storage covered much of the western half of the site as illustrated by the aerial photograph submitted with the application and reproduced as Fig 5. This area of site coverage is very similar to that now being undertaken by the plumber's yard use.
51. It is Mr Joyce's position that land within the western boundary of the site was subject to a considerable amount of backfill by the previous owner to create a level surface. Also, while the aerial photo suggests the site had substantial grass coverage, his experience was that this comprised only low-quality scrub grassland which had been detrimentally affected by the storage of cars.

52. Contrary to the impression given in the Report of Handling, Mr Joyce asserts that the site was not previously vacant but had a long-standing car storage use. It was also not an attractive grass field but had only poor-quality scrub grass and was compromised by the remnants of numerous disused cars, vehicles and other detritus.
53. Prior to car storage, the site was used for the keeping of pigeons with sheds and doocots on site. Two wooden pigeon lofts remained from this use which Mr Joyce also removed from the land.
54. The earliest record available of the site is as part of the Vogrie Coal and Fireclay Works. The map extract at Fig 6 shows the mine works centred on land to the south of Ashbank, with a railway line running through the middle of the application site and continuing northwards.

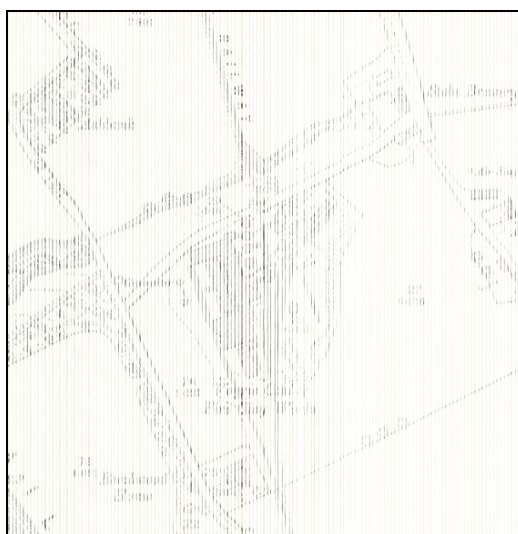


Fig 6 - Map extract showing the former mining works to the south of Ashbank with a railway running through the application site

55. The map extract does not show any buildings on the site, however Mr Joyce understands that the site was used as a yard in connection with the mine workings. This is suggested by the site address used by the Coal Board of 'No7 Ashbank Yard', implying it was one of several such yards in the area.
56. He also understands that there used to be a row of terraced cottages which straddled the site's eastern boundary, being partly within the application site and partly in the land currently used for fly tipping.
57. The Report of Handling also refers to the site having been used for the tipping of waste associated with the former colliery and clayworks and subsequently in connection with former farm buildings.
58. From all of the above, Mr Joyce considers it reasonable to regard the site as 'brownfield land' as it fulfils the definition in the LDP Glossary of '*Previously developed land and property*'.
59. He disputes the officers' opinion that '*the site had retained the appearance of a grass field and that the applicant's actions have given it the character of a semi-derelict industrial site.*'
60. Mr Joyce considers that the officers have failed to recognise the full extent of the previous use of the site and that the car storage had already resulted in much of the site having a poor-quality appearance and a semi-derelict nature, constituting a significant incursion to the rural character.

61. The applicant also considers that his clearance of the numerous cars and cabins / sheds substantially improved its condition and appearance and should be regarded as an environmental benefit.
62. He accepts that the groundworks he has undertaken for the preparation of the site for his own purposes, the formation of the bund and positioning of containers have had their own impact. However he asks the LRB to regard this as an acceptable alternative in light of the previous uses.
63. He also asks the LRB to take into account that the current use is a first step in achieving his own ambitions to make further improvements to the appearance and management of the site, which can be secured by planning conditions, of which more below.

Compatibility with Neighbouring Uses

64. Officers place emphasis on the rural setting of the site and consider that its use by the applicant is out of keeping with the surrounding area.
65. However the applicant asks the LRB to visit the site and take note that the site is amongst a number of commercial and other uses on neighbouring land along Ashbank and Vogrie Road. These are shown on a location plan submitted with this appeal and reproduced at Fig 7.



Fig 7 - Existing commercial businesses at Ashbank

66. The land immediately east of the application site was previously used for greyhound kennels and is now used for fly-tipping and occasional fires, causing a particular nuisance in the area.
67. 100 metres to the east of the application site where the road bends sharply to the north is a scaffolding company, SW Scaffolding. This comprises a single building with open yard space for the storage of scaffolding poles and equipment.
68. Adjacent to SW Scaffolding is the Dog Day Care Centre, providing a daily boarding service for dogs and comprising a purpose-designed building with half an acre of secure outdoor space.

69. West of the dog centre is a large grassed site which is understood to be used for occasional open storage by DM Construction.
70. Immediately opposite the application site is the Craigesk Coachworks, specialising in the maintenance and repair of cars and other vehicles. To the west of Craigesk is B&D Roofing & Building, a specialist roofing company.
71. Both Craigesk and B&D are long-established businesses. They each have considerable site areas with buildings and open yard space. Mr Joyce understands them to have a sizeable workforce and to generate several vehicle movements on a daily basis, sometimes including articulated vehicles.
72. Beyond B&D Roofing is land occupied by businesses on Vogrie Road to the south of its junction with Ashbank. At no10 Vogrie Road is a site used for plant hire and for caravan storage.
73. On land wrapping around No10 is an elongated site extending down Vogrie Road occupied by a landscape and horticultural business, 'Liever Landscapes'. This is understood to have been operational at the site since 2000 and includes both open yard space and a storage building for the keeping of equipment, materials and plant stock.
74. The planning officers concluded in their Report of Handling that the use as a plumbers' yard *'is out of keeping with the surrounding area'*. Mr Joyce disagrees and asks the LRB to agree with his assessment that these commercial uses collectively provide an enclave of businesses and non-conforming countryside uses in the immediate vicinity of the site.
75. They include vehicle repair, roofers and scaffolding contractors which have unsightly buildings, containers similar to those on the application site, and prominent use of open storage within their respective yards.
76. These neighbouring businesses largely comprise uses which are not traditionally associated with countryside locations. They collectively provide a semi-industrial character in the immediate vicinity of the application site which contrasts with the wider rural setting.
77. The applicant regards the Peter Joyce plumbing business as directly compatible with these neighbouring uses, having a particular synergy with the roofing, coachworks and scaffolding companies.
78. Mr Joyce appreciates the desire of the planning officers to protect the rural character of the countryside and to resist piecemeal development of fields close to Midlothian's towns. However the situation of the site and the prominence of other similar commercial businesses on neighbouring sites appear to have been overlooked by the officials.
79. This directly contradicts the officers' statement that *'the principle of this type of development at this type of location is fundamentally unacceptable'*. Mr Joyce asks the LRB to take the opposite point of view in justifying the appeal.

Site Appearance and Landscape Setting

80. The site is part of a belt of land along Ashbank, together with the land to the east, which has a distinctly different character to the farmland immediately to the north. This belt of land is not in agricultural use and has an unkempt appearance deriving from current and previous uses. This contrast is accentuated by the boundary to the farmland being relatively 'open' and with only limited trees.
81. Despite this context, when viewed from the north the application site is relatively concealed from public view. It is some 500m to the south of houses on Lady Brae and separated by farmland which slopes down into a hollow. Consequently, when approaching south along Ashbank, only glimpsed views of the site are available.
82. However as the north boundary of the site is relatively open, with the exception of one group of tall trees located centrally, the orange-coloured shipping containers are visible within the glimpsed views described above.
83. The southern boundary of the site alongside the road has a row of mature trees and hedges, which provides a reasonable visual protection of the containers from the road. However the gaps in the hedge are more frequent along the western part of this frontage resulting in the containers being more visually prominent, exacerbated by the raised site level as the road slopes down.
84. To the north-west are the nearest houses to the site, located on Vogrie Road beyond a wooded gully and horse paddocks. These houses have views into the site but this is understood to be relatively restricted due to dense woodland on the north west boundary.
85. Mr Joyce considers the containers to have relatively low visibility from surrounding vantage points. However he accepts neither the containers nor the site condition are attractive and, to enhance the setting of the site he proposes two improvements:
- i) to paint the containers green, making them less prominent and blend better with their surroundings.
 - ii) To plant trees and shrubs along the northern and western boundaries, to reduce visibility into the site.
86. He proposes that the LRB considers these as appropriate planning conditions with a planning approval.

SECTION 5 COMPLIANCE WITH DETAILED CRITERIA

87. A number of development criteria are identified in Policy RD1 and also in the officers Report of Handling (p7). These are now addressed each in turn.
88. **Traffic generation** - The vehicles used by the company comprise cars, small vans and delivery trucks. As explained in Section 1, the main activity at the site is early each morning when employees load their vehicles before travelling to clients' premises, returning in late afternoon / early evening.
89. During the rest of the day the site is largely inactive with only occasional deliveries of equipment, plumbing parts, etc and a limited staff presence. Overall the business generates a low level of activity and traffic movements.
90. **Adequate site access** - the site entrance is in the centre of the road frontage on the southern boundary, and is protected by a security gate which is closed outwith operational hours. It is slightly angled, favouring entry by vehicles from the east, but is easily manageable by cars and small vans leaving or arriving in both directions. Mr Joyce submits that the entrance is fit for purpose in accommodating the vehicles used by the company.
91. The Ashbank roadway is a relatively narrow country lane but Mr Joyce does not considers it a constraint for the small size of vehicles used. However to avoid morning congestion, he liaises with other businesses to agree a protocol for vehicles using the road / time of arrival & departure.
92. **Accessible by Public Transport** - The Borders railway line runs a short distance to the west of the site and Gorebridge rail station is easily reached by pedestrians. It is less than 10 minutes' walk away via a footpath from Vogrie Road at the west end of Ashbank.
93. **Noise** - there is no machinery used on the site in connection with the plumbers business, other than vehicles. The only relatively busy time of day is when the workforce arrives in the early morning to load vehicles and travel on to clients' properties. General activity at the site is otherwise very low throughout the day.
94. Mr Joyce considers that his company's use of the site generates negligible noise levels and there are no houses located nearby. The closest houses are to the north on Vogrie Road but no disturbance to these residents is anticipated.
95. In his consultation response of 7th October 2021 the Council's Environmental Health Officer (EHO) recommended two appropriate planning conditions to restrict noise levels relating to i) plant & machinery and ii) background noise. These are acceptable to the applicant.
96. **Hours of operation** - the EHO recommended a planning condition restricting hours of operation from 07.00 to 19.00 Mon to Fri, from 07.00 to 13.00 on Saturdays, and with the site closed on Sundays.
97. In this instance Mr Joyce would request allowance for an earlier commencement of business from 06.00. The company's workforce generally muster early on site at around this time. It is not anticipated to cause disturbance to any residents given the isolated location of the site, the low noise levels in loading vehicles and the nearest houses being relatively distant to the NW.

98. **Waste Material** - a proposed condition by the EHO is for all waste brought on site to be stored securely in skips or similar containers until removed from site. This is acceptable to the applicant.
99. **Burning of Waste** - a proposed condition by the EHO is for there to be no burning of waste material allowed on site. This is acceptable to the applicant.
100. **Ground Water and Contamination** - the EHO has recommended two planning conditions requiring first the procurement of a scheme to investigate and deal with any contamination on site, and second for a validation report to be issued confirming that any required works have been carried out.
101. These are acceptable in principle to the applicant. However it is noted that the proposed conditions would preclude the use of the site until any decontamination works have been carried out, and this would negate the economic objective of granting consent, should that be the LRB decision.
102. Mr Joyce considers that if any contamination exists in the ground, it derives predominantly from previous uses. Should planning permission be granted, he therefore requests that an arrangement can be made with the EHO so that he can continue using the site while any contamination works are implemented.

Conclusion

103. Policy RD1 presumes in favour of approving development which benefits the rural economy, but this is subject to environmental standards being achieved. Mr Joyce considers that all these matters are either already satisfied by the nature of his current use, or can be satisfied by works being carried out at the site which can be made subject of planning conditions.
104. It is noted that the Environmental Health Officer did not object to the grant of planning permission subject to inclusion of appropriate planning conditions. Mr Joyce accepts the proposed planning conditions put forward in the EHO consultation response, subject to the comments made above.
105. He would also accept conditions regarding the visual improvement of the containers and for a landscaping scheme particularly including boundary planting.

SECTION 6 ENHANCED DEVELOPMENT PROPOSALS

106. The current proposal is only intended for a temporary period as Mr Joyce's wider ambition is to develop the site with two new bespoke permanent buildings together with enhanced landscaping, access, drainage and site treatment.
107. An indicative layout plan was submitted with the current application and it is intended to progress pre-app discussions with the Planning Dept by the time of the LRB's consideration of this appeal. A further detailed application would follow as soon as practically possible.
108. However the current application is necessary in the short term to regularise the planning status of the current land use, existing containers and ground works. As a means to demonstrate his commitment to the wider improvements the applicant proposes a planning condition which restricts the period of approval to three years.

MIDLOTHIAN COUNCIL

DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

Case Officer: Graeme King **Site Visit Date:** 02/09/2021

Planning Application Reference: 21/00499/DPP

Site Address: Land North of 6 Ashbank, Gorebridge

Site Description: The application site is a gently sloping site measuring 0.34 hectares. The site has been scraped, vegetation has been removed and the ground has been surfaced with road planings. A 2m high bund, formed from material scraped from the rest of the site has been formed along the Eastern edge of the site. The land to the West of the site is wooded and slopes steeply down from the application site, it appears that inert waste has been used at the Western edge of the site to increase the level area of the site by raising levels on the wooded slope.

There are 9 shipping containers and a cabin situated on the site; these are situated along the Southern (5 shipping containers) and Western (4 shipping containers and a cabin) edges of the site. There is an established hedgerow along the Southern boundary of the site.

To the North the site is bounded by grazing fields. To the East the site is bounded by an area of fly-tipping that was formerly occupied by greyhound kennels. To the West the site is bounded by a steeply sloping area of woodland that contains the ruined foundations of a former house; this area of ground is owned by the applicant. To the South the site is bounded by a public road. On the Southern side of the road are buildings and land that were historically associated with the Vogrie Coal and Fireclay works, the works opened in the mid-19th Century and ceased operations in the late 1930's. The land to the South of the road is used as follows (running from West to East):

- The corner plot was until recently an area of woodland. The vegetation was cleared mid-2021 and the site has been partially surfaced with hardcore. No planning application has been submitted.
- 12 Ashbank is an established contractor's yard occupied by a roofing contractor.
- 6 Ashbank is occupied by a car bodywork repair business.
- The land to the east of 6 Ashbank is grazing land with horse stables, the site is not currently in use.
- A dog daycare business is situated to the East of grazing paddock.
- To the east of the dog daycare business is a small contractor's yard occupied by a scaffolding firm.

Proposed Development: Change of use of vacant land to builder's yard (sui generis), siting of shipping containers and associated engineering operations to form earth bund and hardstanding (retrospective)

Proposed Development Details: Retrospective permission is being sought for the current use of the land, for the groundworks and for the siting of the containers/cabin. Prior to the current use commencing the site was a grass field. For many years the site was used by local pigeon fanciers to accommodate doves. In the late 2010s the site was used on a non-commercial basis to store and prepare cars for stock car racing.

The applicant's agent has submitted an indicative site plan showing the applicant's long term aspirations for the site. The indicative plan shows a 2 steel framed sheds each measuring 18m by 9m, a service yard and 3 houses. The indicative site layout would require a further planning application(s) and has not been assessed as part of the current planning application.

Background (Previous Applications, Supporting Documents, Development Briefs):

Application Site

302/92 – Change of use of waste land to site a residential caravan at Ashbank, Vogrie Road, Gorebridge. Refused

Land to the North

20/00128/PAC - Proposal of application notice for residential development with associated landscaping and infrastructure at Land At Stobs Farm, Lady Brae, Gorebridge. Pre-application Consultation agreed

20/00129/SCR - EIA screening opinion for proposed residential development with associated engineering, infrastructure, landscaping and open space at Land At Stobs Farm, Lady Brae, Gorebridge. Screening opinion adopted (No EIA required)

Land to the East

No planning history other than 302/92.

Land to the South (6 Ashbank)

14/00327/PPP - Application for Planning Permission in Principle for erection of dwellinghouse, alterations to building to create artist studio, formation of access and associated works at Craigesk Coachworks, 6 Ashbank, Gorebridge. Withdrawn

14/00773/PPP - Application for Planning Permission in Principle for erection of dwellinghouse; alterations to building to create artist studio; formation of access; and associated work at Craigesk Coachworks, 6 Ashbank, Gorebridge. Refused – Granted consent with conditions via Local Review Body

17/00146/DPP - Erection of dwellinghouse; formation of access and associated retaining wall at Land at Craigesk Coachworks, Gorebridge. Consent with conditions

20/00186/DPP - Application for extension to timeframe in which to implement planning permission 17/00146/DPP (erection of dwellinghouse; formation of access

and associated retaining wall) at Land at Craigesk Coachworks, Gorebridge.
Withdrawn.

Land to East of 6 Ashbank

246/92 – Change of use of former colliery to a paddock, the erection of stables and the siting of a temporary caravan at Ashbank, Gorebridge. Consent with conditions

Land to the South (12 Ashbank)

21/00353/DPP - Erection of storage building and welfare building at 12 Ashbank, Gorebridge. Consent with conditions

Land to the South of 12 Ashbank

08/00499/FUL - Erection of dwellinghouse at Ashbank, Vogrie Road, Gorebridge.
Withdrawn

09/00207/FUL - Erection of dwellinghouse at Ashbank, Vogrie Road, Gorebridge.
Withdrawn

14/00439/DPP - Erection of storage building at Land 115M South Of Craigesk Coachworks, Vogrie Road, Gorebridge. Consent with conditions

14/00774/DPP - Change of use from vacant land to landscape business at Land 115M South Of Craigesk Coachworks, Vogrie Road, Gorebridge. Consent with conditions

20/00375/PPP - Application for planning permission in principle for erection of dwellinghouse at Land at 10 Ashbank, Vogrie Road, Gorebridge. Refused – Granted consent with conditions via Local Review Body

Land to West of 12 Ashbank

No planning history

Dog daycare

05/00024/FUL - Change of use from agriculture to dog care business and erection of associated building at Brewery Field, Stobs Farm, Stobs Road, Gorebridge. Consent with conditions

Scaffolding yard to North of dog daycare

There is no planning history for the use as a scaffolding yard

17/00610/DPP - Erection of dwellinghouse; detached garage; bin store; boundary wall and gates; formation of hard standing and associated works at Land To North Of The Dog Day Care Centre, Gorebridge. Refused

Consultations: The **Coal Authority** does not object to the application. The Authority notes that the application is supported by a Coal Mining Risk Assessment which recommends a scheme of intrusive site investigations, however the Coal Authority considers the proposal to be exempt from the need to submit a Coal Mining Risk Assessment (as set out in Coal Authority guidance to local authorities) and therefore the Coal Authority does not recommend any conditions to secure the site investigation works.

The Council's **Biodiversity** screening process identified the constraints that apply to the site and surrounding area (3 species of bird, a flowering plant and an area of semi-natural broad-leaved woodland). The screening provider, The Wildlife Information Centre (TWIC), advises that the proposal will not impact on any of the identified constraints with the possible exception of the woodland. It is unclear from the plans whether or not the vegetation clearance works included the removal of any woodland; if they did, mitigation should be undertaken.

Following the receipt of representations which alleged that the groundworks carried out on the site had resulted in a badger's sett being disturbed the case officer contacted TWIC to check whether there were any records of badgers in the area. TWIC confirmed that their records do not include any details of a badger sett within the site or within a 500m buffer from the site boundaries.

The Council's **Environmental Health** Manager has no objection to the proposal subject to any proposal including conditions to secure a scheme to identify and treat any contamination of the site; and conditions to safeguard the amenity of local residents.

The Council's **Policy and Road Safety** Manager offered no comments on the application.

Representations: The application has received 3 objections; 2 from local businesses and 1 from the owner of a neighbouring field. The grounds for objection are as follows:

- The applicant has extended the site onto neighbouring land that he does not own.
- Fences belonging to a neighbour were removed and horses escaped from a field.
- The groundworks disturbed a badger's sett and caused the badgers to leave the sett.
- The groundworks damaged phone lines to local businesses.
- The applicant excavated the road without the necessary permissions from the Roads Authority.
- The excavations in the road disconnected the water supply to a neighbouring business.
- The use of the site has resulted in an increase in vehicles using the local roads.
- Waste is regularly being burnt on the site.
- Trees were felled prior to the submission of the application.

- A lorry associated with the groundworks on the site damaged the wall of a neighbouring business.
- The applicant has dug up asbestos that was buried on the site.
- The groundworks caused polluted water to outfall into a local burn.
- The applicant felled trees on land owned by a neighbouring landowner.
- Multiple lorry loads of road planings have been deposited on the site.

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

Policy **RD1: Development in the Countryside** states that development opportunities that will enhance rural economic development opportunities will be permitted if:

- They are of a scale and character appropriate to the rural area and well integrated into the rural landscape; and
- They are capable of being serviced with an adequate and appropriate access; and
- They are capable of being provided with drainage and a public water supply at reasonable cost, or an acceptable private water supply, unacceptable discharge to watercourses; and
- They are accessible by public transport and services (where appropriate); and
- They are not primarily of a retail nature; and
- They do not harm the amenity of nearby residents through unacceptable levels of noise, light or traffic.

Policy **ENV9: Flooding** presumes against development which would be at unacceptable risk of flooding or would increase the risk of flooding elsewhere. It states that Flood Risk Assessments will be required for most forms of development in areas of medium to high risk, but may also be required at other locations depending on the circumstances of the proposed development. Furthermore it states that sustainable urban drainage systems will be required for most forms of development, so that surface water run-off rates are not greater than in the site's pre-developed condition, and to avoid any deterioration of water quality.

Policy **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.

Policy **ENV11: Woodland Trees and Hedges** does not permit development that would lead to the direct or indirect loss of woodland which has a particular value in terms of amenity, nature conservation, recreation, landscape character or shelter.

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

Policy **ENV18: Noise** states that the Council will seek to prevent noisy development from damaging residential amenity or disturbing noise sensitive uses.

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

The application site has been the subject of various unauthorised uses over the last 20 to 30 years, the most obvious of which are the siting of the dovecots and the storage of cars, however until recently it had retained the appearance of a grass field. The applicant's actions have turned a grass field that was in keeping with the rural surroundings into an unattractive area of hardstanding with the character of a semi-derelict industrial site. The site is not in keeping with the scale and character of the surrounding rural area and is poorly integrated into the rural landscape; the proposal does not comply with policy RD1 of the Midlothian Local Development Plan 2017.

The Planning Authority acknowledges that the surrounding area has a number of uses that are not ordinarily found in rural locations. Two of the uses, the vehicle coachworks and the roofing contractor's yard, are situated on sites that have a long history of industrial type development dating back to their use in association with the former colliery/clayworks. Other uses in the area, such as the fly-tipping site (and its former use as a greyhound kennels) and the scaffolding yard, do not appear to have any formal planning history and do not appear to have been in continuous use since the colliery/clayworks; the scaffolding yard may now be exempt from enforcement action due to the length of time that the site has been used for its current purposes.

Despite these conflicting uses, the proximity to Gorebridge and the presence of various smallholdings (both active and inactive) the surrounding area has still managed to retain an essentially rural character. Allowing unauthorised development of the scale and character of that which has occurred would significantly alter the character of the surrounding area and would encourage further piecemeal insensitive development in similar sized fields close to Midlothian's towns and villages. Granting of retrospective permission would undermine the effective operation of the various rural development, landscape protection and countryside protection policies within the Midlothian Local Development Plan 2017.

The applicant runs an established local business that started as an individual operator and is now run by the second generation of the family. The business has expanded in recent years and the supporting information supplied with the application states that the business now employs 10 people. Whilst the Planning Authority acknowledges that it can be difficult for expanding businesses to find suitable sites that does not create justification for businesses to wilfully ignore planning regulations and re-locate to a conveniently sited field. Allowing the material consideration of the economic benefits of the proposal to completely over-rule national and local planning guidance would create a precedent that could make the overall aims and objectives of the Local Development Plan undeliverable.

The activities and actions of the applicant at the application site over the last 10 months or so have undoubtedly caused significant disruption to the amenity of local businesses and landowners. Some of these actions have been one-off events associated with the preparation of the site however the disruption created suggests

that without controls in place the use of the site would have a significant detrimental impact on the amenity of local businesses, landowners and residents. Were the Planning Authority minded to grant consent it would be appropriate to attach conditions to control matter such as noise, hours of operation, waste storage and open air activities. Such conditions would not be sufficient to outweigh the fact that the principle of this type of development at this type of location is fundamentally unacceptable.

Historic maps suggest that the site may have been used for tipping of waste associated with the former colliery/clayworks. Anecdotal evidence provided by representors suggest that the site may contain more recent waste associated with former farm buildings. If the Planning Authority was minded to grant consent it would be necessary to attach conditions to secure intrusive site investigations and, if necessary, remediation works to address contaminated land issues.

Given the groundworks that have occurred, the proposed use and the proximity to local watercourses if the Planning Authority was minded to grant consent it would be necessary to attach conditions to secure the implementation of a surface water drainage strategy to ensure that surface water run-off is controlled and suitable treatment levels provide for any potential contaminants and/or pollutants.

The alleged disruption of the badger sett is a possible criminal matter and does not represent a planning breach that can be enforced by the Planning Authority. Any enforcement in relation to the alleged offence is a matter for the Police and the Courts to deal with.

Recommendation: Refuse Planning Permission

Reg. No. 21/00499/DPP

Fouin and Bell Architects
1 Johns Place
Edinburgh
EH6 7EL

Midlothian Council, as Planning Authority, having considered the application by Peter Joyce and Son Ltd, 16 South Quarry View, Gorebridge, EH23 4GT, which was registered on 10 August 2021 in pursuance of their powers under the above Acts, hereby **refuse** permission to carry out the following proposed development:

Change of use of vacant land to builder's yard (sui generis), siting of shipping containers and associated engineering operations to form earth bund and hardstanding (retrospective) at Land North of 6 Ashbank, Gorebridge

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

<u>Document/Drawing.</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Existing Site Layout on Aerial Image	(EX)01 1:500	11.06.2021
Existing Site Layout on Ordnance Survey Plan	(EX)02 1:500	11.06.2021
Existing Site Plan on Aerial Image	(EX)03 1:500	11.06.2021
Existing Site Plan on Ordnance Survey Plan	(EX)04 1:500	11.06.2021
Location Plan	(LOC)01 1:1250	11.06.2021
Proposed Site Plan	(PL)01 1:250	11.06.2021
Proposed Site Showing Works Completed	(PL)02 1:250	11.06.2021
Site Sections	(PL)03A 1:250	13.08.2021
Indicative Site Plan	21-109(SK)03.2 1:500	04.10.2021
Supporting Letter from Peter Joyce and Son Ltd		11.06.2021

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

The proposed development is not in keeping with the scale and character of the surrounding rural area and is poorly integrated into the rural landscape; the proposal is therefore contrary to policy RD1 of the Midlothian Local Development Plan 2017. Any economic benefits generated by the proposal are not a significant enough material consideration to outweigh the provisions of the development plan.

Dated 19 / 10 / 2021

A handwritten signature in black ink, appearing to be 'DR' with a stylized flourish.

.....

Duncan Robertson

Lead Officer – Local Developments

Fairfield House, 8 Lothian Road, Dalkeith, EH22 3ZN

PLEASE NOTE

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, Sustainable Growth and Investment Manager, Planning, Sustainable Growth and Investment Service, 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.

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

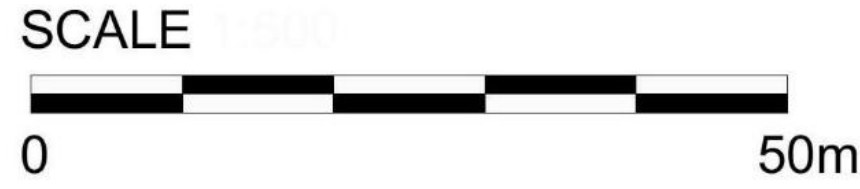
Making an application

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.



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REVISION / DESCRIPTION / DATE

Application Boundary

Application Site Area
3,416m² / 0.34ha / 0.84Acres

Ownership Boundary

Ownership Area
6,322m² / 0.63ha / 1.56Acres



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architects

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CLIENT
PETER JOYCE AND SON LTD

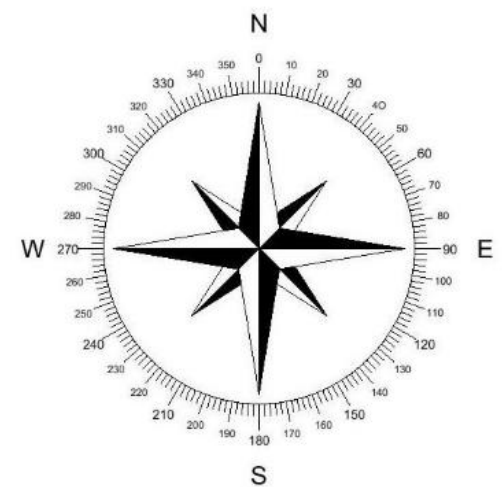
PROJECT
BUILDER YARD
7 ASHBANK
GOREBRIDGE MIDLOTHIAN

SCALE@A1 1:500@A1 1:1000@A3 DATE MAY 2021
DRAWN BY ME CHECKED IH STAGE PLANNING

DRAWING
EXISTING SITE LAYOUT
ON AERIAL IMAGE

PROJECT NUMBER 21-109 DRAWING NUMBER (EX)01 REVISION -

Existing Site Layout with Aerial Plan



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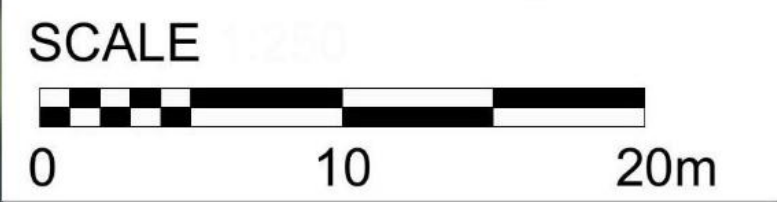
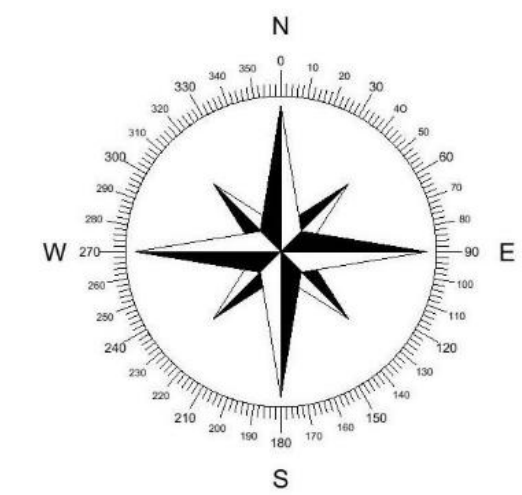
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REVISION / DESCRIPTION / DATE

Application Boundary

Application Site Area
3,416m² / 0.34ha / 0.84Acres

Ownership Boundary



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PROJECT

BUILDER YARD
7 ASHBANK
GOREBRIDGE MIDLOTHIAN

SCALE@A1	1:500@A1 1:1000@A3	DATE	MAY 2021
DRAWN BY	ME	CHECKED	IH
DRAWING	EXISTING SITE PLAN ON AERIAL IMAGE		
PROJECT NUMBER	21-109	DRAWING NUMBER	(EX)03
		REVISION	-

Existing Site Plan with Aerial Plan

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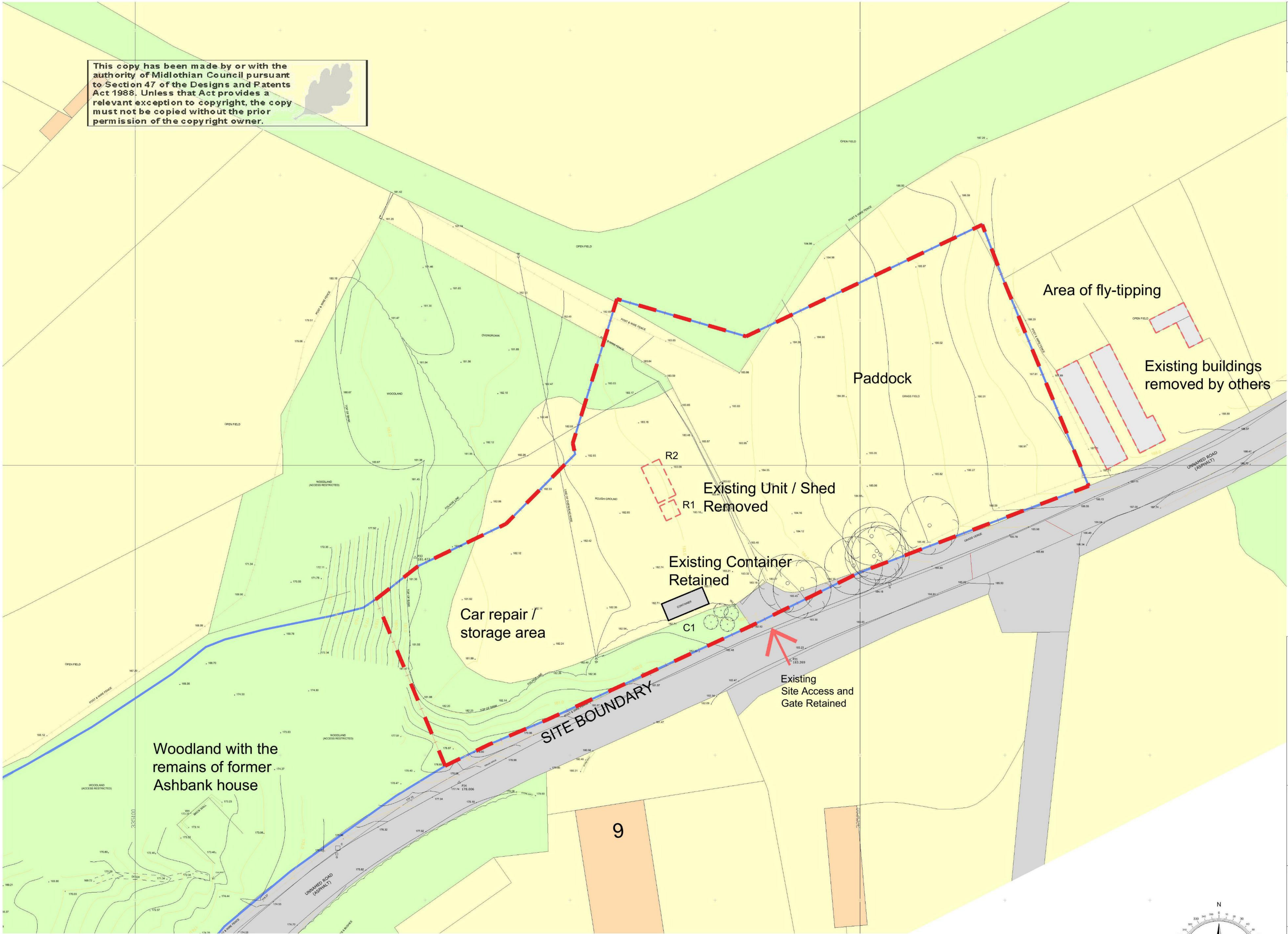
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Application Boundary

Application Site Area
3,416m² / 0.34ha / 0.84Acres

Ownership Boundary



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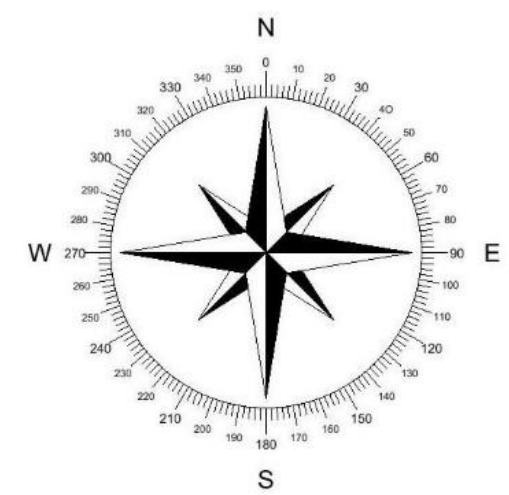
CLIENT
PETER JOYCE AND SON LTD

PROJECT
**BUILDER YARD
7 ASHBANK
GOREBRIDGE MIDLOTHIAN**

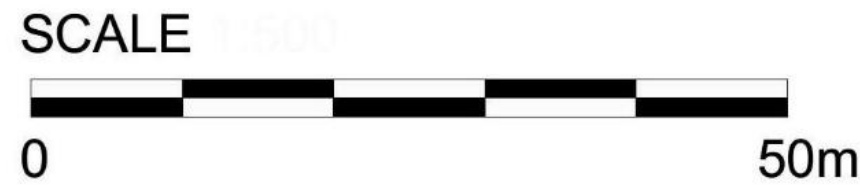
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DRAWING
**EXISTING SITE PLAN
ON ORDNANCE SURVEY PLAN**

PROJECT NUMBER 21-109 DRAWING NUMBER (EX)04 REVISION -



Existing Site Plan with OS Plan



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REVISION	DESCRIPTION	DATE
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Application Boundary

Application Site Area
3,416m² / 0.34ha / 0.84Acres

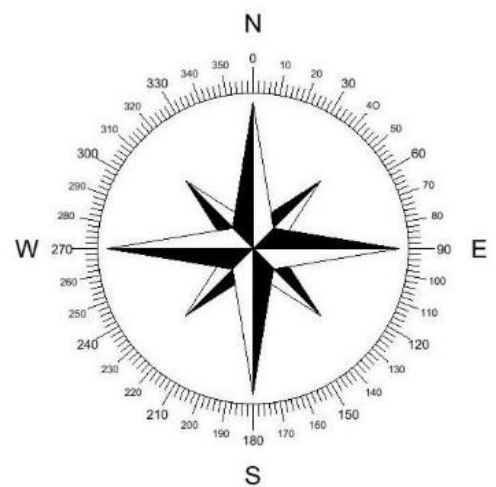
Ownership Boundary

Ownership Area
6,322m² / 0.63ha / 1.56Acres



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Existing Site Layout with OS Plan



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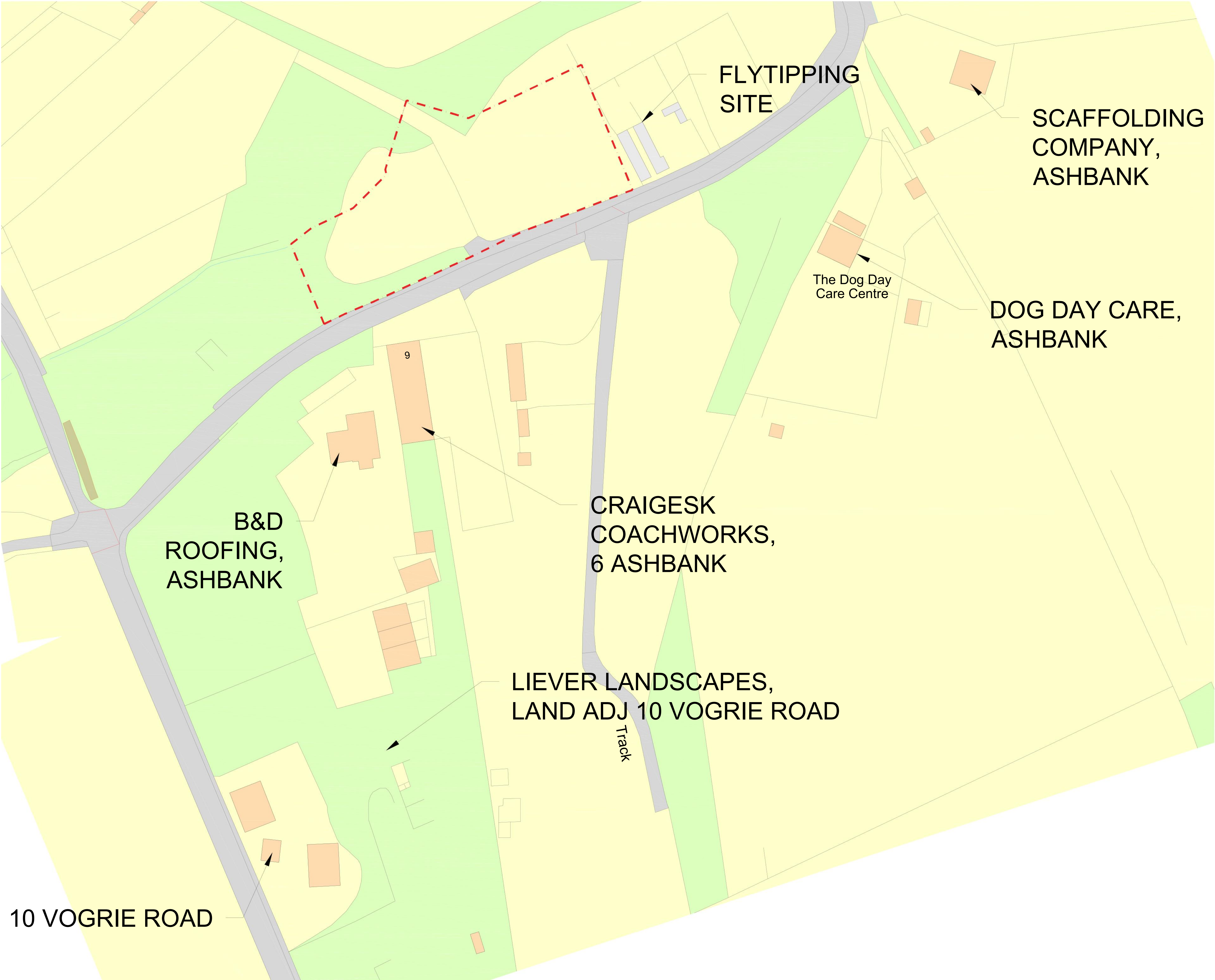
BUILDER YARD
7 ASHBANK
GOREBRIDGE MIDLOTHIAN

SCALE@A1	1:500@A1	1:1000@A3	DATE	MAY 2021	
DRAWN BY	ME	CHECKED	IH	STAGE	PLANNING

DRAWING

EXISTING SITE LAYOUT
ON ORDNANCE SURVEY PLAN

PROJECT NUMBER	DRAWING NUMBER	REVISION
21-109	(EX)02	-



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SCALE

0 50m

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BUILDER YARD
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GOREBRIDGE MIDLOTHIAN

SCALE@A1	1:500@A1 1:1000@A3	DATE
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DRAWING

SITE PLAN- NEIGHBOURS

-

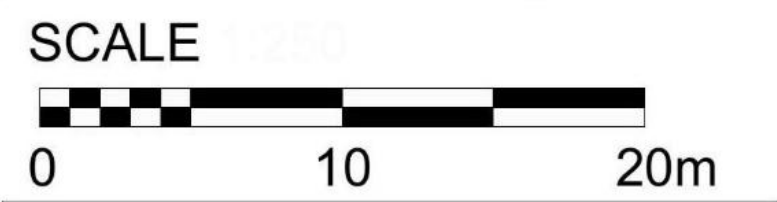
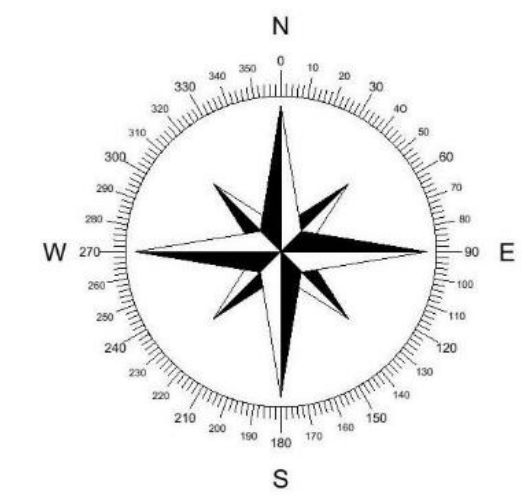
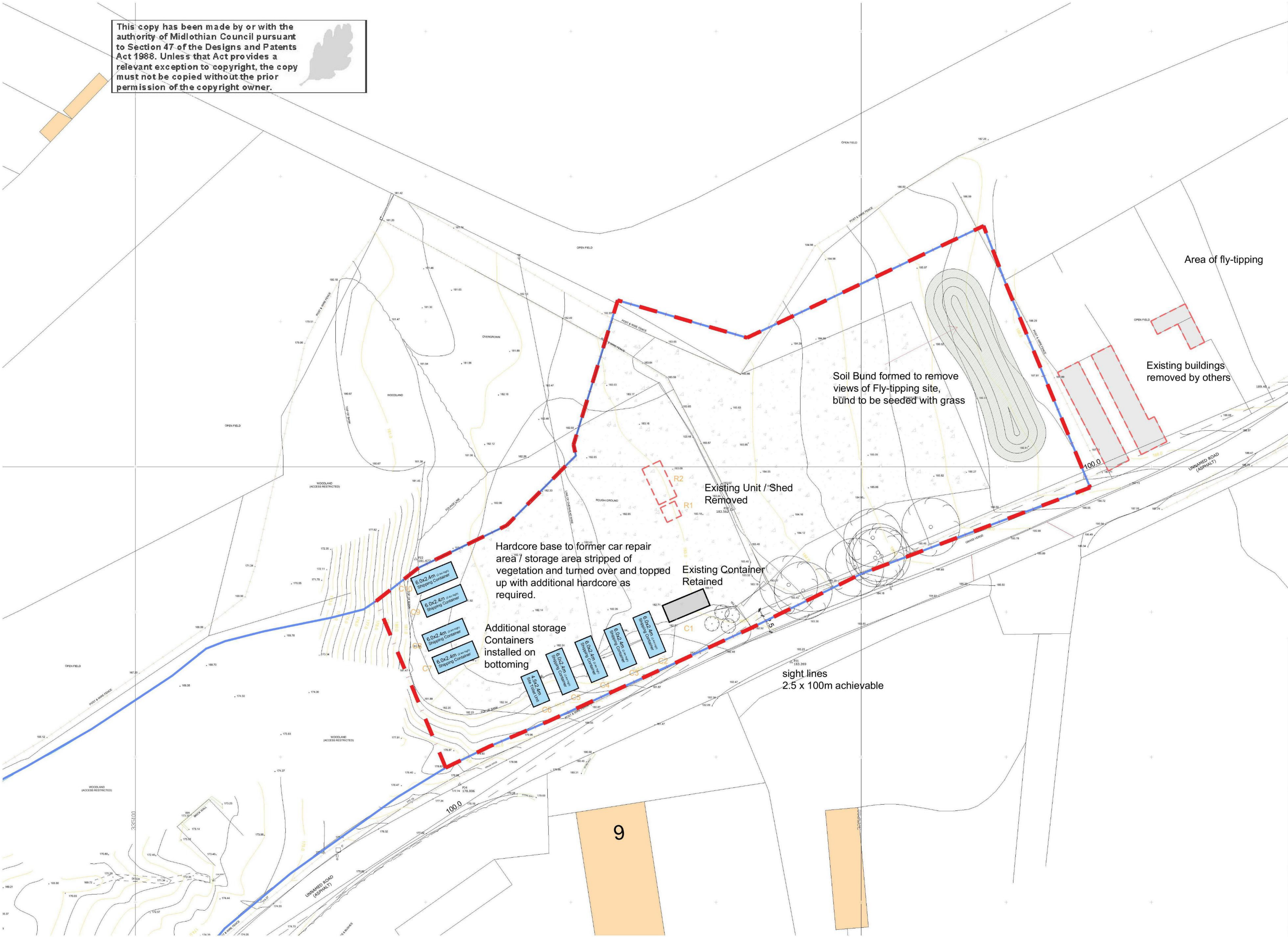
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21-109	(PL)04	-

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PROJECT		
BUILDER YARD 7 ASHBANK GOREBRIDGE MIDLOTHIAN		
SCALE@A1	1:250@A1 1:500@A3	DATE MAY 2021
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PROJECT NUMBER	DRAWING NUMBER	REVISION
21-109	(PL)01	-

Proposed Site Plan

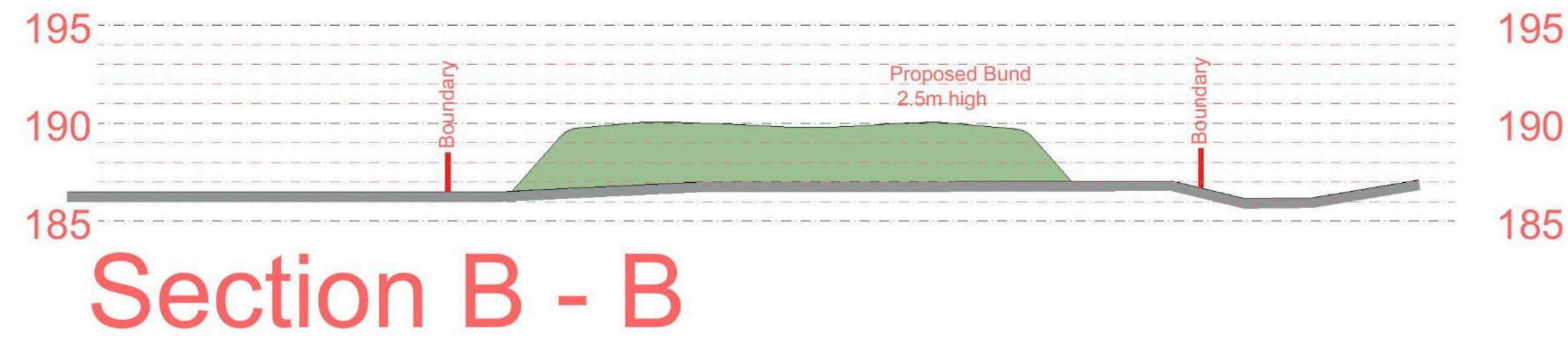
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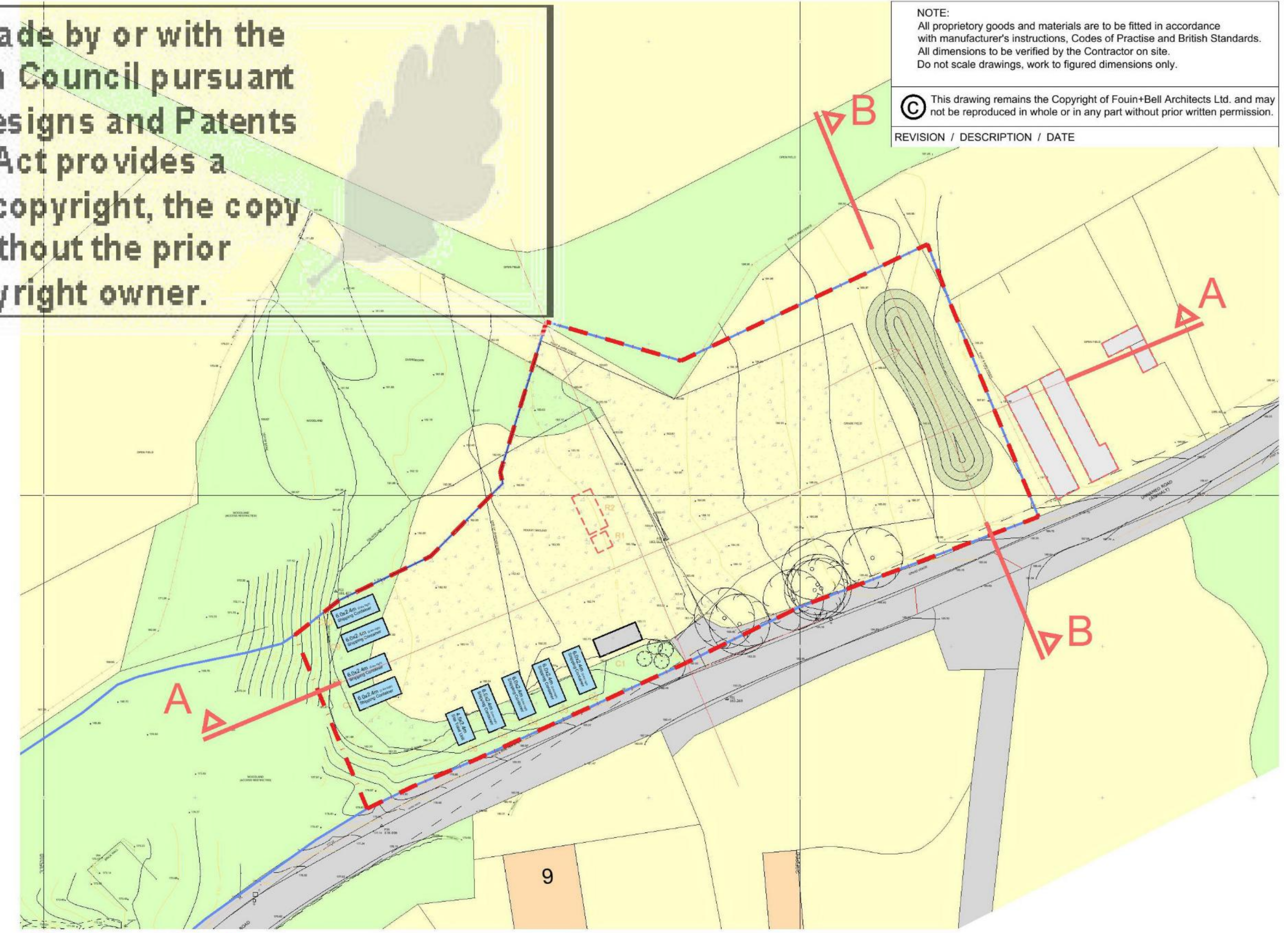
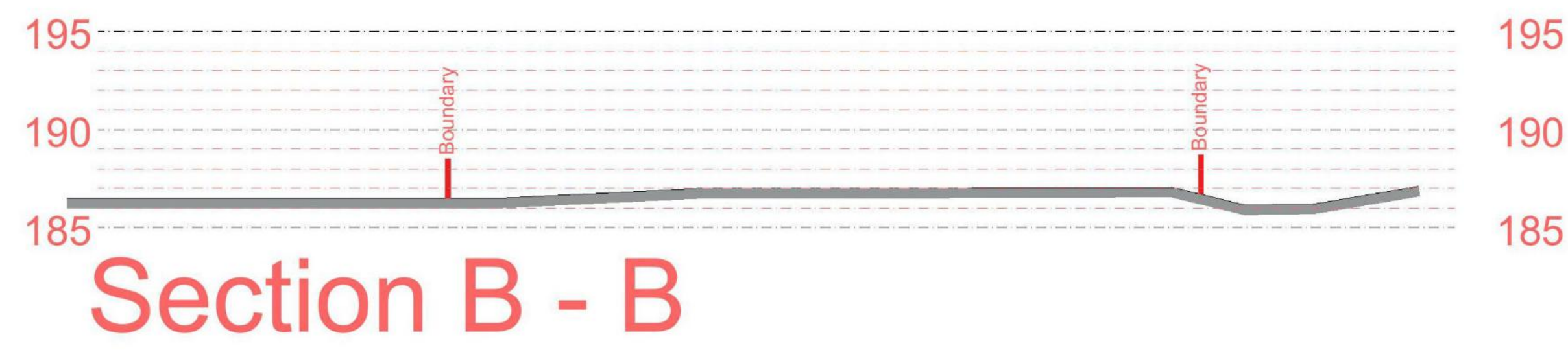
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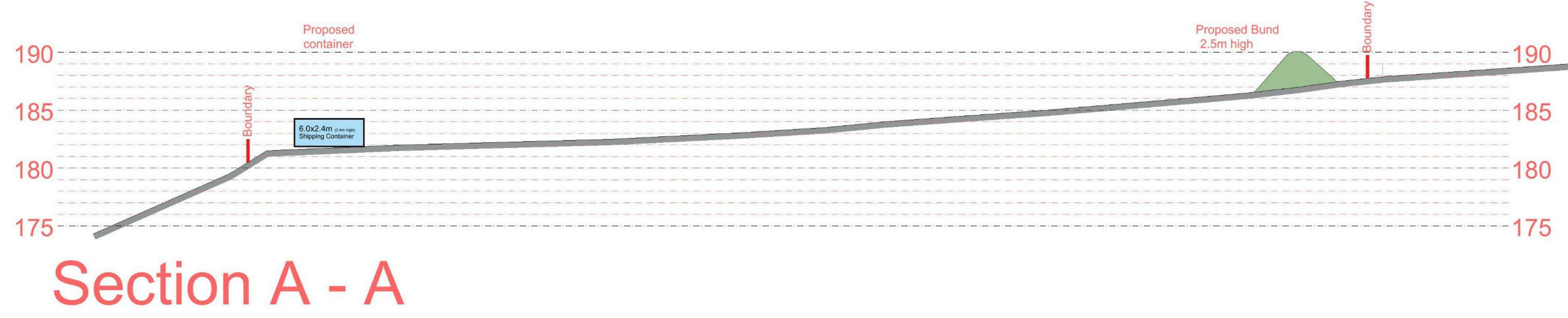
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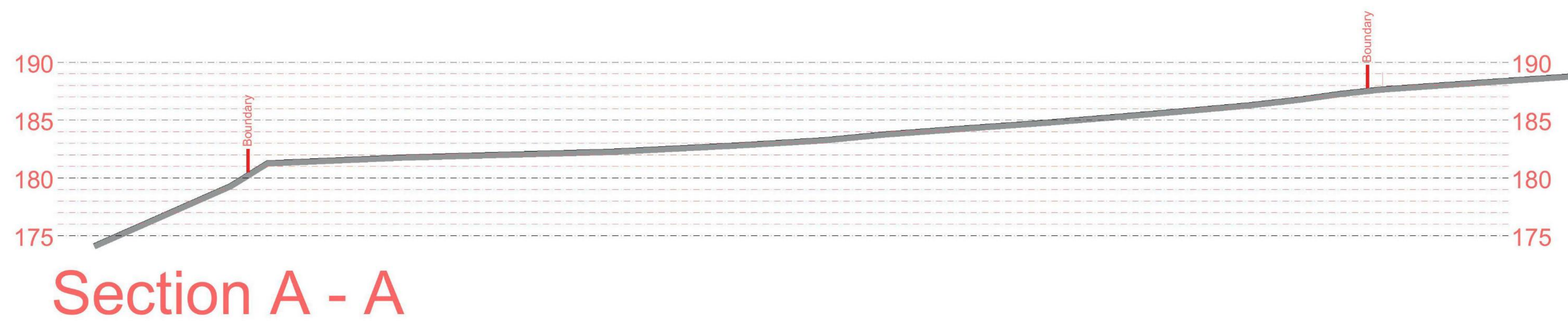
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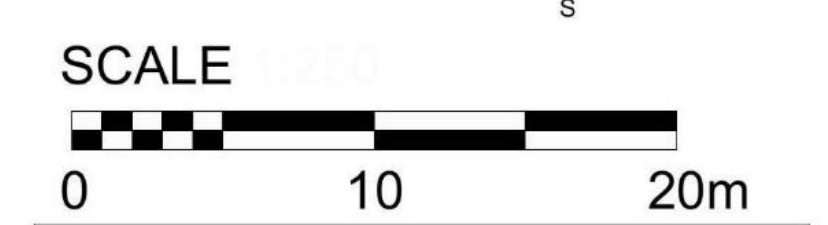
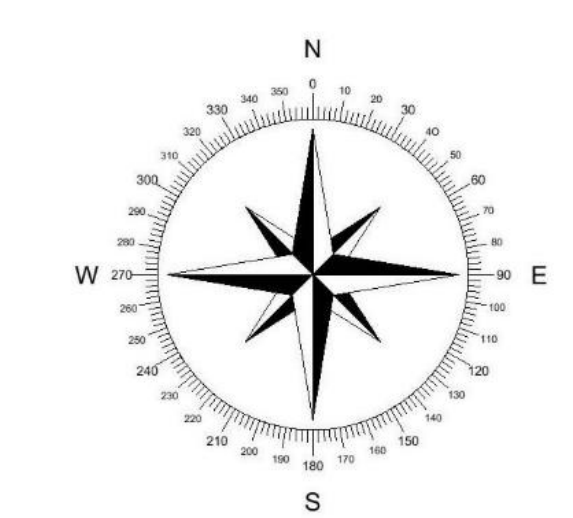
Proposed



Existing



Site Sections

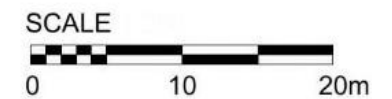
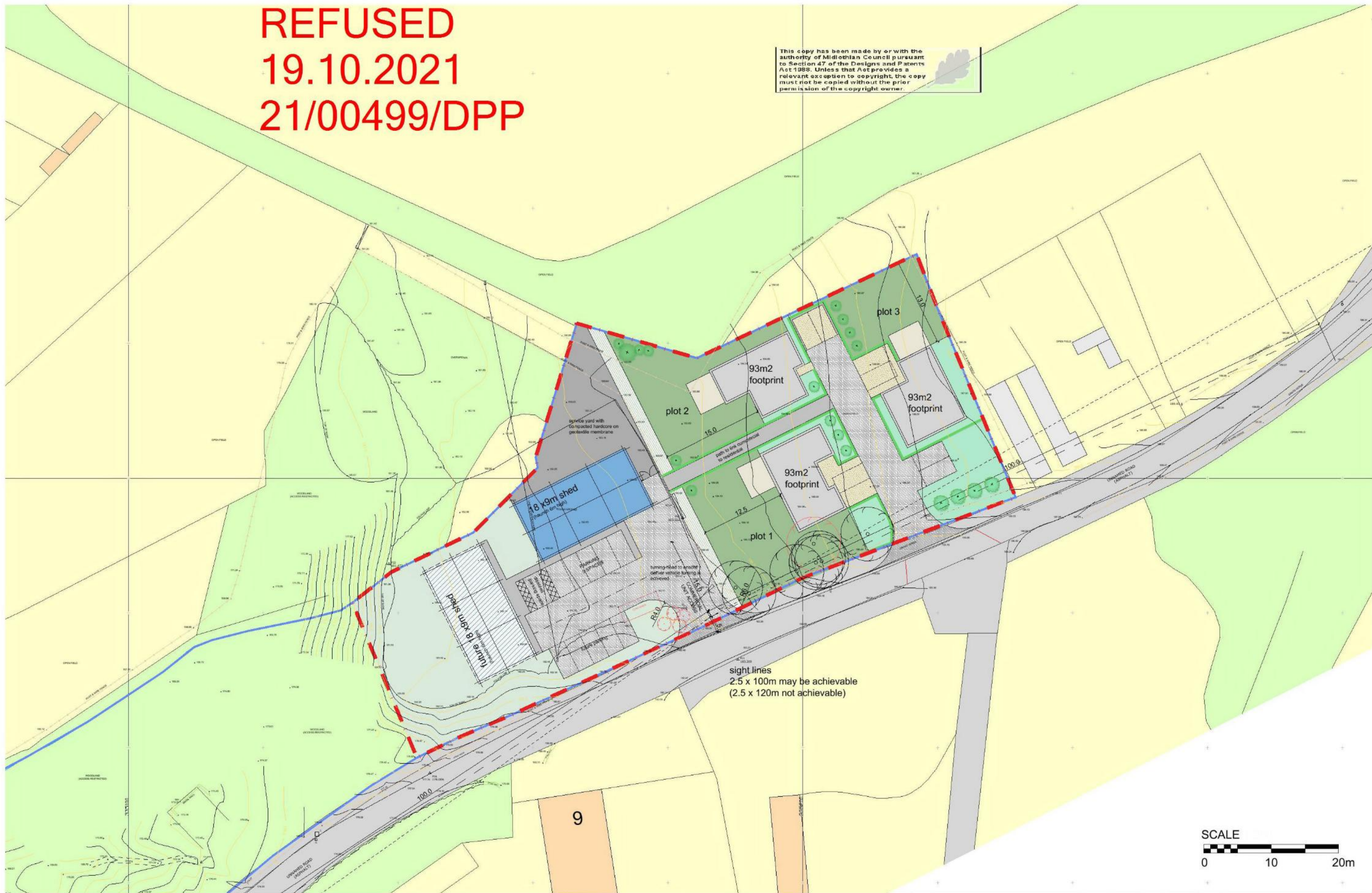


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PROJECT		
BUILDER YARD 7 ASHBANK GOREBRIDGE MIDLOTHIAN		
SCALE@A1	1:250@A1 1:500@A3	DATE MAY 2021
DRAWN BY ME	CHECKED IH	STAGE PLANNING
DRAWING SECTIONS		
PROJECT NUMBER	DRAWING NUMBER	REVISION
21-109	(PL)03	A

REFUSED
19.10.2021
21/00499/DPP

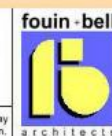
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CLIENT

PROJECT

Proposed Development
Vogrie Road
Gorebridge

SCALE @ A1

1:250+1:500

DRAWN BY: me

DATE: Sep 2021

SCALE @ A3

1:500+1:1000

CHECKED: IH

STATUS: -

DRAWING
Feasibility Plan
Option 4

PROJECT NUMBER

21-109

DRAWING NUMBER

(SK)03.2

REVISION

-

SCALE 1:1250



REFUSED
19.10.2021
21/00499/DPP

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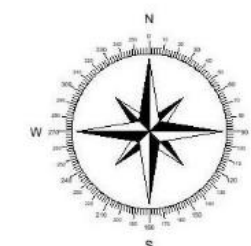
Application Boundary
 Application Site Area
 3,416m² / 0.34ha / 0.84Acres


Ownership Boundary
 Ownership Area
 6,322m² / 0.63ha / 1.56Acres



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Location Plan



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CLIENT			
PETER JOYCE AND SON LTD			
PROJECT			
BUILDER YARD 7 ASHBANK GOREBRIDGE MIDLOTHIAN			
SCALE@A1	1:500@A1	1:1000@A3	DATE
			MAY 2021
DRAWN BY	CHECKED	STAGE	
ME	IH	PLANNING	
DRAWING			
SITE LOCATION PLAN			
PROJECT NUMBER	DRAWING NUMBER	REVISION	
21-109	(LOC)01	-	