

Notice of Review: Land South West of Cockmuir, Penicuik Determination Report

Report by Derek Oliver, Chief Officer Place

1 Purpose of Report

- 1.1 The purpose of this report is to provide a framework for the Local Review Body (LRB) to consider a 'Notice of Review' for the erection of dwellinghouse (retrospective) on land south west of Cockmuir, Penicuik.

2 Background

- 2.1 Planning application 19/01004/DPP for the erection of dwellinghouse (retrospective) on land south west of Cockmuir, Penicuik was refused planning permission on 14 February 2020; a copy of the decision is attached to this report.
- 2.2 The review has progressed through the following stages:
- 1 Submission of Notice of Review by the applicant.
 - 2 The Registration and Acknowledgement of the Notice of Review.
 - 3 Carrying out Notification and Consultation.

3 Supporting Documents

- 3.1 Attached to this report are the following documents:
- A site location plan (Appendix A);
 - A copy of the notice of review form and supporting statement (Appendix B). Any duplication of information is not attached;
 - A copy of the case officer's report (Appendix C);
 - A copy of the decision notice, excluding the standard advisory notes, issued on 14 February 2020 (Appendix D); and
 - A copy of the key plans/drawings.
- 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 instead of undertaking a site visit because of the COVID-19 pandemic restrictions; and
 - Have determined to progress the review by written submissions.
- 4.2 The case officer's report identified that there was seven consultation responses and no 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 to the next 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. A scheme to deal with any contamination of the site and/or previous mineral workings is submitted to and approved by the Planning Authority. The scheme shall contain details of 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) The condition of the site on completion of the specified decontamination measures.
2. On completion of the decontamination/remediation works referred to in condition 1, a validation report 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/ground conditions is adequately identified and that appropriate decontamination measures/ground mitigation 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.*

6 Recommendations

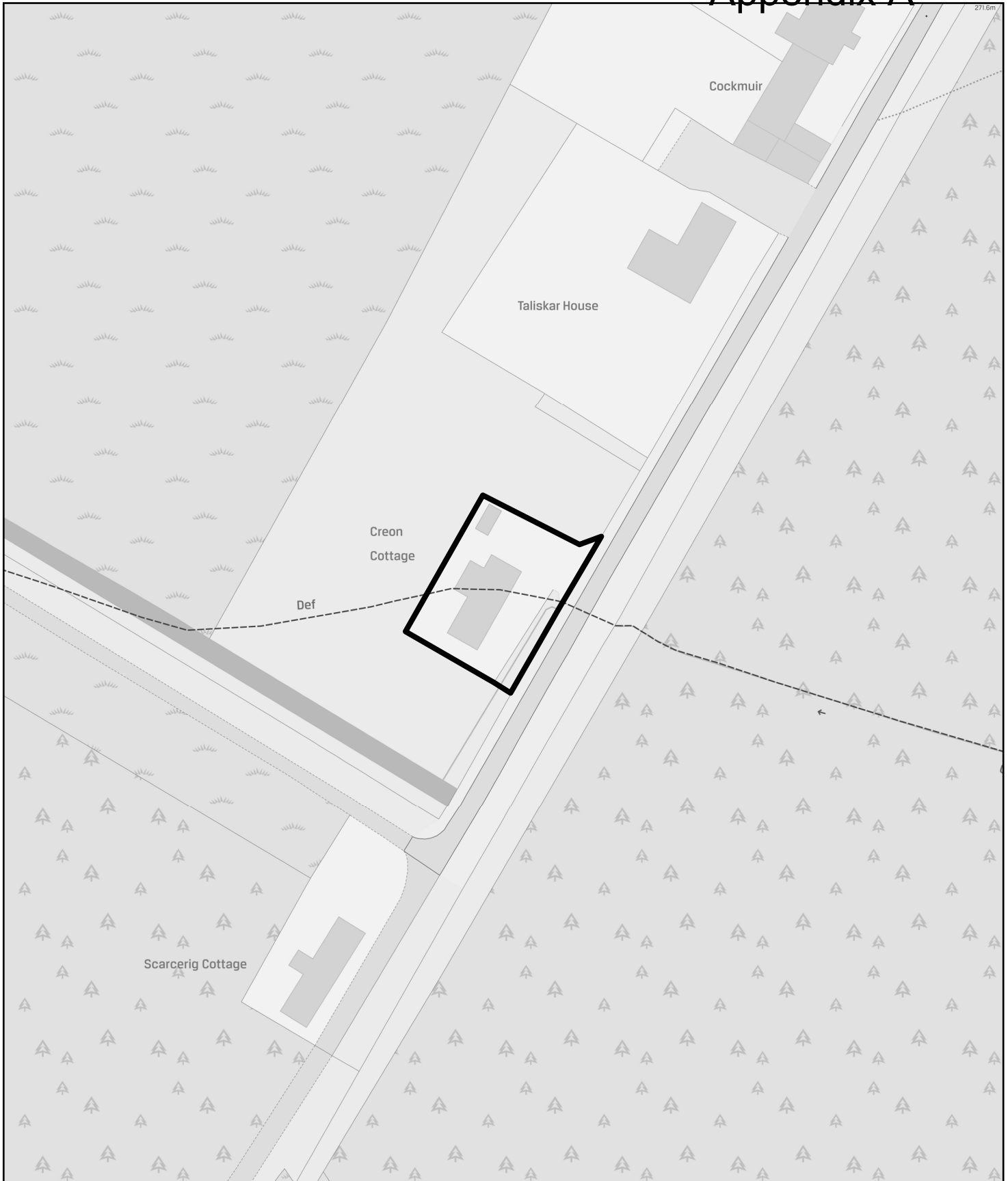
- 6.1 It is recommended that the LRB:
- a) determine the review; and
 - b) the planning advisor draft and issue the decision of the LRB through the Chair

Date: 7 December 2020

Report Contact: Peter Arnsdorf, Planning Manager
peter.arnsdorf@midlothian.gov.uk

Background Papers: Planning application 19/01004/DPP available for inspection online.

Appendix A



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

Erection of dwellinghouse (retrospective) at Land South West of Cockmuir, Penicuik

Reproduced from the Ordnance Survey map with the permission of the controller of Her Majesty's Stationary Office. Crown copyright reserved. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings

Midlothian Council Licence No. 100023416 (2020)

File No: 19/01004/DPP

Scale: 1:1,000





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 100253174-001

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

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

☒ Individual ☐ Organisation/Corporate entity

Applicant Details

Please enter Applicant details

Title:	<input type="text" value="Mr"/>	You must enter a Building Name or Number, or both: *
Other Title:	<input type="text"/>	Building Name: <input type="text" value="Cockmuir"/>
First Name: *	<input type="text" value="Morleymor"/>	Building Number: <input type="text"/>
Last Name: *	<input type="text" value="Fisher"/>	Address 1 (Street): * <input type="text" value="Cockmuir Farm"/>
Company/Organisation	<input type="text"/>	Address 2: <input type="text"/>
Telephone Number: *	<input type="text"/>	Town/City: * <input type="text" value="Penicuik"/>
Extension Number:	<input type="text"/>	Country: * <input type="text" value="UK"/>
Mobile Number:	<input type="text"/>	Postcode: * <input type="text" value="EH26 8QJ"/>
Fax Number:	<input type="text"/>	
Email Address: *	<input type="text" value="REDACTED"/>	

Site Address Details

Planning Authority:	<input type="text" value="Midlothian Council"/>
Full postal address of the site (including postcode where available):	
Address 1:	<input type="text" value="CREON COTTAGE"/>
Address 2:	<input type="text"/>
Address 3:	<input type="text"/>
Address 4:	<input type="text"/>
Address 5:	<input type="text"/>
Town/City/Settlement:	<input type="text" value="WEST LINTON"/>
Post Code:	<input type="text" value="EH26 8QJ"/>

Please identify/describe the location of the site or sites

Northing	<input type="text" value="654812"/>	Easting	<input type="text" value="326236"/>
----------	-------------------------------------	---------	-------------------------------------

Description of Proposal

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

Erection of dwellinghouse (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.

See attached 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)

See attached Appeal Document List (Appendix 1 of Appeal Statement)

Application Details

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

19/01004/DPP

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

04/12/2019

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

14/02/2020

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 *

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)

See Appeal Statement

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

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

☒ Yes ☐ No

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

☒ Yes ☐ No

Checklist – Application for Notice of Review

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

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

☒ Yes ☐ No

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

☒ Yes ☐ No

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

☒ Yes ☐ No ☐ N/A

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

☒ Yes ☐ No

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

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

☒ Yes ☐ No

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

Declare – Notice of Review

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

Declaration Name: Mr Stuart Salter

Declaration Date: 08/05/2020

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 100210954-001

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.

Type of Application

What is this application for? Please select one of the following: *

- ☒ Application for planning permission (including changes of use and surface mineral working).
- ☐ Application for planning permission in principle.
- ☐ Further application, (including renewal of planning permission, modification, variation or removal of a planning condition etc)
- ☐ Application for Approval of Matters specified in conditions.

Description of Proposal

Please describe the proposal including any change of use: * (Max 500 characters)

Cross Authority Area Dwelling House, (Creon Cottage) at Cockmuir, Penicuik - retrospective application due to confusion of border position. Application to erect 1 1/2 storey private dwelling house.

Is this a temporary permission? *

☐ Yes ☒ No

If a change of use is to be included in the proposal has it already taken place?
(Answer 'No' if there is no change of use.) *

☐ Yes ☒ No

Has the work already been started and/or completed? *

☐ No ☐ Yes – Started ☒ Yes - Completed

Please state date of completion, or if not completed, the start date (dd/mm/yyyy): *

11/12/2018

Please explain why work has taken place in advance of making this application: * (Max 500 characters)

Planning Application was consented ref - 120/01445/PPP and 14/321/AMC, (Scottish Borders Council). The builder persuaded the client to move the house over to avoid boggy ground. The boundary was erroneously forgotten about when the building was re sited. As a result the house straddles the boundary between Scottish Borders and Midlothian Council. This was an honest mistake.

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:	Gray Macpherson Architects		
Ref. Number:		You must enter a Building Name or Number, or both: *	
First Name: *	Gray Macpherson	Building Name:	Tigh-na-geat House
Last Name: *	Architects	Building Number:	1
Telephone Number: *	0131 445 2223	Address 1 (Street): *	Damhead Farm
Extension Number:		Address 2:	Lothianburn
Mobile Number:		Town/City: *	Edinburgh
Fax Number:		Country: *	Scotland
		Postcode: *	EH10 7DZ
Email Address: *	mich@graymacphersonarchitects.co.uk		
Is the applicant an individual or an organisation/corporate entity? *			
<input checked="" type="checkbox"/> Individual <input type="checkbox"/> Organisation/Corporate entity			

Applicant Details

Please enter Applicant details

Title:	Mr	You must enter a Building Name or Number, or both: *	
Other Title:		Building Name:	Morleymor Fisher
First Name: *	Morleymor	Building Number:	
Last Name: *	Fisher	Address 1 (Street): *	Creon Cottage
Company/Organisation		Address 2:	Cockmuir Farm
Telephone Number: *		Town/City: *	Penicuik
Extension Number:		Country: *	Scotland
Mobile Number:		Postcode: *	EH26 8QJ
Fax Number:			
Email Address: *			

Site Address Details

Planning Authority:

Midlothian Council

Full postal address of the site (including postcode where available):

Address 1:

CREON COTTAGE

Address 2:

Address 3:

Address 4:

Address 5:

Town/City/Settlement:

WEST LINTON

Post Code:

EH26 8QJ

Please identify/describe the location of the site or sites

Northing

654812

Easting

326236

Pre-Application Discussion

Have you discussed your proposal with the planning authority? *

☒ Yes ☐ No

Pre-Application Discussion Details Cont.

In what format was the feedback given? *

☐

Meeting

☐

Telephone

☒

Letter

☐

Email

Please provide a description of the feedback you were given and the name of the officer who provided this feedback. If a processing agreement [note 1] is currently in place or if you are currently discussing a processing agreement with the planning authority, please provide details of this. (This will help the authority to deal with this application more efficiently.) * (max 500 characters)

It is proposed that a planning application be submitted to both planning authorities with Scottish Borders Council being the lead planning authority. The fee which should accompany this application would be 150% of a normal application for a new house and would be paid fully to Scottish Borders Council.

Title:

Mr

Other title:

First Name:

Alan

Last Name:

Gueldner, (Scottish Borders

Correspondence Reference
Number:

AG/19/00087/UNDEV

Date (dd/mm/yyyy):

20/11/2019

Note 1. A Processing agreement involves setting out the key stages involved in determining a planning application, identifying what information is required and from whom and setting timescales for the delivery of various stages of the process.

Site Area

Please state the site area:

4500.00

Please state the measurement type used:

☐

Hectares (ha)

☒

Square Metres (sq.m)

Existing Use

Please describe the current or most recent use: * (Max 500 characters)

Private domestic.

Access and Parking

Are you proposing a new altered vehicle access to or from a public road? *

☐

Yes

☒

No

If Yes please describe and show on your drawings the position of any existing. Altered or new access points, highlighting the changes you propose to make. You should also show existing footpaths and note if there will be any impact on these.

Are you proposing any change to public paths, public rights of way or affecting any public right of access? *

☐

Yes

☒

No

If Yes please show on your drawings the position of any affected areas highlighting the changes you propose to make, including arrangements for continuing or alternative public access.

How many vehicle parking spaces (garaging and open parking) currently exist on the application Site?

0

How many vehicle parking spaces (garaging and open parking) do you propose on the site (i.e. the Total of existing and any new spaces or a reduced number of spaces)? *

2

Please show on your drawings the position of existing and proposed parking spaces and identify if these are for the use of particular types of vehicles (e.g. parking for disabled people, coaches, HGV vehicles, cycles spaces).

Water Supply and Drainage Arrangements

Will your proposal require new or altered water supply or drainage arrangements? *

☐

Yes

☒

No

Do your proposals make provision for sustainable drainage of surface water?? *
(e.g. SUDS arrangements) *

☐

Yes

☒

No

Note:-

Please include details of SUDS arrangements on your plans

Selecting 'No' to the above question means that you could be in breach of Environmental legislation.

Are you proposing to connect to the public water supply network? *

☐

Yes

☐

No, using a private water supply

☒

No connection required

If No, using a private water supply, please show on plans the supply and all works needed to provide it (on or off site).

Assessment of Flood Risk

Is the site within an area of known risk of flooding? *

☐ Yes ☒ No ☐ Don't Know

If the site is within an area of known risk of flooding you may need to submit a Flood Risk Assessment before your application can be determined. You may wish to contact your Planning Authority or SEPA for advice on what information may be required.

Do you think your proposal may increase the flood risk elsewhere? *

☐ Yes ☒ No ☐ Don't Know

Trees

Are there any trees on or adjacent to the application site? *

☐ Yes ☒ No

If Yes, please mark on your drawings any trees, known protected trees and their canopy spread close to the proposal site and indicate if any are to be cut back or felled.

Waste Storage and Collection

Do the plans incorporate areas to store and aid the collection of waste (including recycling)? *

☒ Yes ☐ No

If Yes or No, please provide further details: * (Max 500 characters)

Area to store domestic storage bins.

Residential Units Including Conversion

Does your proposal include new or additional houses and/or flats? *

☒ Yes ☐ No

How many units do you propose in total? *

1

Please provide full details of the number and types of units on the plans. Additional information may be provided in a supporting statement.

All Types of Non Housing Development – Proposed New Floorspace

Does your proposal alter or create non-residential floorspace? *

☐ Yes ☒ No

Schedule 3 Development

Does the proposal involve a form of development listed in Schedule 3 of the Town and Country Planning (Development Management Procedure (Scotland) Regulations 2013? *

☐ Yes ☒ No ☐ Don't Know

If yes, your proposal will additionally have to be advertised in a newspaper circulating in the area of the development. Your planning authority will do this on your behalf but will charge you a fee. Please check the planning authority's website for advice on the additional fee and add this to your planning fee.

If you are unsure whether your proposal involves a form of development listed in Schedule 3, please check the Help Text and Guidance notes before contacting your planning authority.

Planning Service Employee/Elected Member Interest

Is the applicant, or the applicant's spouse/partner, either a member of staff within the planning service or an elected member of the planning authority? *

☐ Yes ☒ No

Certificates and Notices

CERTIFICATE AND NOTICE UNDER REGULATION 15 – TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND) REGULATION 2013

One Certificate must be completed and submitted along with the application form. This is most usually Certificate A, Form 1, Certificate B, Certificate C or Certificate E.

Are you/the applicant the sole owner of ALL the land? *

☒ Yes ☐ No

Is any of the land part of an agricultural holding? *

☐ Yes ☒ No

Certificate Required

The following Land Ownership Certificate is required to complete this section of the proposal:

Certificate A

Land Ownership Certificate

Certificate and Notice under Regulation 15 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Certificate A

I hereby certify that –

(1) - No person other than myself/the applicant was an owner (Any person who, in respect of any part of the land, is the owner or is the lessee under a lease thereof of which not less than 7 years remain unexpired.) of any part of the land to which the application relates at the beginning of the period of 21 days ending with the date of the accompanying application.

(2) - None of the land to which the application relates constitutes or forms part of an agricultural holding

Signed: Gray Macpherson Architects

On behalf of: Mr Morleymor Fisher

Date: 04/12/2019

☒ Please tick here to certify this Certificate. *

Checklist – Application for Planning Permission

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Please take a few moments to complete the following checklist in order to ensure that you have provided all the necessary information in support of your application. Failure to submit sufficient information with your application may result in your application being deemed invalid. The planning authority will not start processing your application until it is valid.

a) If this is a further application where there is a variation of conditions attached to a previous consent, have you provided a statement to that effect? *

☐ Yes ☐ No ☒ Not applicable to this application

b) If this is an application for planning permission or planning permission in principle where there is a crown interest in the land, have you provided a statement to that effect? *

☐ Yes ☐ No ☒ Not applicable to this application

c) If this is an application for planning permission, planning permission in principle or a further application and the application is for development belonging to the categories of national or major development (other than one under Section 42 of the planning Act), have you provided a Pre-Application Consultation Report? *

☐ Yes ☐ No ☒ Not applicable to this application

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

d) If this is an application for planning permission and the application relates to development belonging to the categories of national or major developments and you do not benefit from exemption under Regulation 13 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, have you provided a Design and Access Statement? *

☐ Yes ☐ No ☒ Not applicable to this application

e) If this is an application for planning permission and relates to development belonging to the category of local developments (subject to regulation 13. (2) and (3) of the Development Management Procedure (Scotland) Regulations 2013) have you provided a Design Statement? *

☐ Yes ☐ No ☒ Not applicable to this application

f) If your application relates to installation of an antenna to be employed in an electronic communication network, have you provided an ICNIRP Declaration? *

☐ Yes ☐ No ☒ Not applicable to this application

g) If this is an application for planning permission, planning permission in principle, an application for approval of matters specified in conditions or an application for mineral development, have you provided any other plans or drawings as necessary:

☒ Site Layout Plan or Block plan.

☒ Elevations.

☒ Floor plans.

☒ Cross sections.

☒ Roof plan.

☐ Master Plan/Framework Plan.

☐ Landscape plan.

☒ Photographs and/or photomontages.

☐ Other.

If Other, please specify: * (Max 500 characters)

Provide copies of the following documents if applicable:

A copy of an Environmental Statement. *

☐ Yes ☒ N/A

A Design Statement or Design and Access Statement. *

☐ Yes ☒ N/A

A Flood Risk Assessment. *

☐ Yes ☒ N/A

A Drainage Impact Assessment (including proposals for Sustainable Drainage Systems). *

☐ Yes ☒ N/A

Drainage/SUDS layout. *

☐ Yes ☒ N/A

A Transport Assessment or Travel Plan

☐ Yes ☒ N/A

Contaminated Land Assessment. *

☐ Yes ☒ N/A

Habitat Survey. *

☐ Yes ☒ N/A

A Processing Agreement. *

☐ Yes ☒ N/A

Other Statements (please specify). (Max 500 characters)

Declare – For Application to Planning Authority

I, the applicant/agent certify that this is an application to the planning authority as described in this form. The accompanying Plans/drawings and additional information are provided as a part of this application.

Declaration Name: Mr Gray Macpherson Architects

Declaration Date: 04/12/2019

Proposal Details

Proposal Name	100253174
Proposal Description	Cockmuir LRB
Address	CREON COTTAGE, WEST LINTON, EH26 8QJ
Local Authority	Midlothian Council
Application Online Reference	100253174-001

Application Status

Form	complete
Main Details	complete
Checklist	complete
Declaration	complete
Supporting Documentation	complete
Email Notification	complete

Attachment Details

Notice of Review	System	A4
Appeal Statement - Document 2_01	Attached	A4
0_01 Application Form	Attached	A4
0_02 Covering Letter to Midlothian Council	Attached	A4
0_03 Copy of Covering Letter to SBC	Attached	A4
0_04 Location Plan	Attached	A4
0_05 Block Plan	Attached	A3
0_06 Floor Plans	Attached	A1
0_07 Elevations	Attached	A1
0_08 Borehole Log	Attached	A4
0_09 Water Supply Test Results	Attached	A4
0_10 Photos	Attached	Not Applicable
1_01 Validation correspondence	Attached	A4
1_02 Validation Letter	Attached	A4
1_03 Scottish Water response	Attached	A4
1_04 Roads response	Attached	A4
1_05 Environmental Health response	Attached	A4
1_06 SBC response	Attached	A4
1_07 Report of Handling	Attached	A4
1_08 Decision Notice	Attached	A4
2_02 Decision Notice 19_01680_FUL	Attached	A4
2_03 Report of Handling 19_01680_FUL	Attached	A4
2_04 Approved Location Plan	Attached	A4

19_01680_FUL		
2_05 Decision Notice 12_01445_PPP	Attached	A4
2_06 Approved Location Plan	Attached	A1
12_01445_PPP		
2_07 Decision Notice 14_00321_AMC	Attached	A4
2_08 Approved Location Plan	Attached	A1
14_00321_AMC		
2_09 Approved Plans and Elevations	Attached	A3
14_00321_AMC		
2_10 Supplementary Guidance	Attached	A4
Countryside and Green Belt		
2_11 Superseded SPG Development	Attached	A4
in the Countryside		
2_12 Location Plan 12_00770_PPP	Attached	A1
2_13 Decision Notice 12_00770_PPP	Attached	A4
2_14 Borders LDP Policy HD2	Attached	A4
2_15 Planning Enforcement Charter	Attached	A4
Notice_of_Review-2.pdf	Attached	A0
Application_Summary.pdf	Attached	A0
Notice of Review-001.xml	Attached	A0

Creon Cottage, Cockmuir, Penicuik
Appeal Statement

On behalf of

Morleymor Fisher

May 2020

Prepared by:



The Quadrant
17 Bernard Street
Leith
Edinburgh
EH6 6PW

[t] 0131 553 3639

[e] info@geddesconsulting.com

[w] www.geddesconsulting.com

Document Control and Approval

Status	Prepared	Approved	Date
Draft for Comment	Phil McLean	Andrew Marshall	5 th May 2020
Final	Phil McLean	Andrew Marshall	7 th May 2020

x:\projects\0111 - geddes general\3_sites\sites\midlothian\cockmuir, penicuik\reports\20 05 07 appeal statement - cockmuir.doc

Contents

1.0	Introduction	1
2.0	Grounds of Appeal	2
3.0	Conclusion	8
Appendix 1	Appeal Document List	

1.0 Introduction

- 1.1. This *Appeal Statement* (the Statement) is prepared on behalf of Morleymor Fisher (the Appellant) in support of an Appeal to the Midlothian Local Review Body (LRB) against the delegated decision of the Midlothian Council Case Officer (the Case Officer) to refuse to grant Planning Permission (Ref: 19/01004/DPP) for the erection of a dwellinghouse (retrospective) on land at Cockmuir, Penicuik. The dwellinghouse is known as Creon Cottage.
- 1.2. The purpose of this Statement is to respond to the Council's Reasons for Refusal of the Application, and to set out the justification for allowing this Appeal having regard to relevant material considerations. The Council's Reasons for Refusal are set out in the *Decision Notice* (Document 1.08), as follows:
 1. *It has not been demonstrated, to the satisfaction of the Planning Authority, that there is a requirement for the proposed house in connection with an establish countryside business or activity. In addition, the site is not located within an existing group of dwellings; nor did the proposal involve the redevelopment or conversion of a redundant rural building. For these reasons the proposal does not comply with the terms of policy RD1 of the adopted Midlothian Local Development Plan and the adopted Supplementary Guidance: Housing Development in the Countryside and Green Belt*
 2. *A planning application (ref. no. 12/00770/PPP) for the erection of a dwellinghouse on part of the application site was refused planning permission on 22 January 2013. There is no convincing and/or overriding reason why this similar proposal should be granted planning permission despite the decision on the previous planning application.*
- 1.3. This Appeal relates to the existing dwellinghouse of Creon Cottage, Cockmuir. The property is situated in a row of dwellings at Cockmuir near Penicuik. To the north of the property is the dwelling of Taliska House, with other dwellings beyond. To the south is the dwelling of Scarcerig Cottage. The location of the property is shown in the *Location Plan* (Document 0.04), which is submitted as part of this Appeal.
- 1.4. The property is located directly on the local authority boundary between Midlothian and Scottish Borders. This Appeal relates to the part of the property within the Midlothian Council area. Planning Permission for the property has already been granted by Scottish Borders Council (Ref: 19/01680/FUL) (see Documents 2.02, 2.03, and 2.04).
- 1.5. This Statement should be read in conjunction with the documents submitted in support of this Appeal. The *Appeal Document List* is included in Appendix 1 of this Statement.
- 1.6. Taking account of matters relevant to this Appeal, this Statement concludes that the Appeal should be allowed and Planning Permission granted.

2.0 Grounds of Appeal

- 2.1 The Case Officer's Reasons for Refusal are set out in the *Decision Notice* (Document 1.08), as follows:

1. It has not been demonstrated, to the satisfaction of the Planning Authority, that there is a requirement for the proposed house in connection with an establish countryside business or activity. In addition, the site is not located within an existing group of dwellings; nor did the proposal involve the redevelopment or conversion of a redundant rural building. For these reasons the proposal does not comply with the terms of policy RD1 of the adopted Midlothian Local Development Plan and the adopted Supplementary Guidance: Housing Development in the Countryside and Green Belt

2. A planning application (ref. no. 12/00770/PPP) for the erection of a dwellinghouse on part of the application site was refused planning permission on 22 January 2013. There is no convincing and/or overriding reason why this similar proposal should be granted planning permission despite the decision on the previous planning application.

- 2.2 The Case Officer's Reasons relate solely to the principle of development and an interpretation of development plan policy and associated guidance. This Statement therefore focuses on the principle of development, with reference to relevant planning policy and material considerations. The Case Officer did not raise any other concerns with the development, for example in relation to design or technical matters.

Relevant Planning History

- 2.3 Permission was originally granted for this development by Scottish Borders Council through Planning Permission in Principle Ref: 12/01445/PPP, approved 3rd March 2014 (Documents 2.05 and 2.06), and Approval of Matters Specified in Conditions (AMSC) Ref: 14/00321/AMC, approved 30th June 2014 (Documents 2.07, 2.08, and 2.09). This approval was for a positioning approximately 20m SSW of the current position, and wholly within the Scottish Borders Council area.
- 2.4 Construction of the approved dwellinghouse was completed in 2018. Due to ground conditions in the originally proposed location, the builder proposed to the Appellant that a change to the siting of the house should be made. A Building Standards *Completion Certificate* was issued by Scottish Borders Council on 11th December 2018 (Ref: 14/01430/EREDWG). Council Tax is paid to Scottish Borders Council.
- 2.5 It subsequently came to light that that amended siting of the house meant it was no longer wholly within the Scottish Borders Council area. The Appellant had overlooked this fact when agreeing to an amendment to the siting of the dwellinghouse due to the absence of any physical marker of the local authority boundary on the ground, which simply ran through what was an open field. Retrospective planning applications were therefore submitted to both planning authorities to regularise the position of the dwellinghouse as constructed.
- 1.7. Planning Permission for the property, as constructed, has already been granted by Scottish Borders Council for the amended siting (Ref: 19/01680/FUL) (see Documents 2.02, 2.03, and 2.04). The Report of Handling (Document 2.03) assessed the impact of the amended siting as being insignificant:

The principle of a house has already been accepted on a site adjacent to and overlapping this proposal (12/01445/PPP and 14/00321/AMC). In terms of policy HD2, there is an existing

building group of three houses, even though two of those houses are within Midlothian. The house which is the subject of this application relates well to the building group. The principle of a house as proposed is acceptable in this instance.

- 2.6 The related application to Midlothian Council was refused by the Case Officer and is now the subject of this Appeal.

Principle of Development – Planning Policy

- 2.7 The first Reason for Refusal in the Decision Notice (Document 1.08) relates to compliance or otherwise with Policy RD1: *Development in the Countryside* of the Midlothian Local Development Plan (LDP) (adopted November 2017). It also refers to ... *the adopted Supplementary Guidance: Housing Development in the Countryside and Green Belt.*

- 2.8 LDP Policy RD1 sets out the circumstances in which Midlothian Council will normally support new development in the countryside, including housing. This includes ... *housing groups (allowing 1 new dwelling during the plan period where there are 5 existing units).* The Policy notes that details will be set out in relevant Supplementary Guidance.

- 2.9 The Council's Supplementary Guidance: *Housing Development in the Countryside and Green Belt* (the SG) was adopted in 2019 (Document 2.10).

Grouping of dwellings at Cockmuir

- 2.10 The Council's SG explains at paragraph 6.1 that ... *Policy RD1 allows for the development of a house where there is a group of 5 or more existing dwellinghouses. This aspect of the countryside policy sets out a flexible approach to ensure that there are appropriate opportunities for small-scale infill within housing groups. The aim is to allow for development in the countryside of a scale and at locations which maintain the essential character of the countryside.*

- 2.11 It is clear that the aim of this policy provision is to allow infill development of a scale and location that maintains the essential character of the countryside.

- 2.12 The SG goes on to explain at paragraph 6.2 that ... *The policy does not apply to housing groups of less than five housing units. Neither does it apply where an existing planning permission for one or more dwellings, if implemented, brings the number of dwellings in a group up to five during the Local Development Plan period. Only houses that are complete by the Local Development Plan adoption date (7 November 2017) will be considered in determining the size of the group.*

- 2.13 Excluding the Appeal property, there are four other dwellings in the cluster at Cockmuir: Scarcerig Cottage lies to the south, while to the north are Taliska House, Cockmuir, and Tambeag. These all predate the adoption of the LDP. There is no requirement in the Policy that all existing dwellings must be within the Midlothian Council area.

- 2.14 Therefore, while the principle of a fifth dwelling is not fully in accord with Policy RD1 and the guidance in the Council's SG in terms of housing numbers, there is still a requirement to assess the proposal against the aims of the policy in respect of maintaining the essential character of the countryside.

Suitability of location

- 2.15 The Council's SG states at paragraph 6.7 that new dwellings within housing groups must be ... *of a location, scale and character that is in keeping with that of the existing group.* Paragraph 6.8 sets out that ... *the preference of the Council will generally be for new units to be located within any gaps in the group.*

- 2.16 Creon Cottage, the Appeal property, is located on an infill plot within the linear grouping of dwellings at Cockmuir. Scarcerig Cottage lies to the south, while Taliska House is to the north, with the other dwellings of the group beyond. The development therefore accords with the Council's guidance for the location of new homes within existing groupings. The relationship of the Appeal proposal to the adjacent buildings can be seen on the submitted Location Plan (Document 0.04) albeit Scarcerig Cottage is obscured by a Council watermark on the version stamped as refused. The approved Location Plan for Planning Permission 19/01680/FUL (approved by Scottish Borders Council) (Document 2.04) shows these more clearly.

Case Officer's assessment

- 2.17 The Case Officer's *Report of Handling* (Document 1.07) contains an assessment of the Appeal proposal against the relevant provisions of LDP Policy RD1 but simply states: *Cockmuir is not identified as one of the established acceptable groups of five or more dwellings in the approved SPG on housing groups. Therefore there is no scope to approve a further house in this area based on it being within an established group of dwellings.*
- 2.18 It appears from the reference to ...SPG... that the Case Officer's assessment has erroneously been based against the now-superseded Supplementary Planning Guidance (SPG): *Development in the Countryside: Policy DP1, Section 1.2 Housing Groups* (Document 2.11). That SPG was adopted in October 2009 and was prepared under the previous Local Plan (2008). It identified specific housing groups where the previous Local Plan policy applied. This SPG is superseded by the 2019 SG and it therefore carries no weight in the assessment of applications. There is no list of specified housing groups in the adopted SG. Therefore, the Case Officer's statement that *...Cockmuir is not identified as one of the established acceptable groups...* is not a reflection of the Council's up-to-date policy position.
- 2.19 The Council's latest SG does not specifically identify housing groups to which the policy applies. Instead, it sets out a criteria-based approach. As explained above, the Appeal proposal accords with the criteria set out in the SG with the exception that there are four existing dwellings at Cockmuir rather than five. The principle of development is otherwise in accord with the aims of LDP Policy RD1.
- 2.20 It is clear that the Case Officer has not correctly interpreted and applied the Council's up-to-date policy and guidance on development in the countryside. The Reasons for Refusal are therefore not well-founded. Having regard to other significant material considerations (discussed below), a minor departure from the terms of Policy RD1 is fully justified.

Material Considerations

Relevance of planning history

- 2.21 The second Reason for Refusal refers to a previous refused planning application from 2012 and essentially states there has been no change in circumstances since then that would indicate a different decision should be reached:
- 2. A planning application (ref. no. 12/00770/PPP) for the erection of a dwellinghouse on part of the application site was refused planning permission on 22 January 2013. There is no convincing and/or overriding reason why this similar proposal should be granted planning permission despite the decision on the previous planning application.*
- 2.22 A copy of the Location Plan and Decision Notice for that application have been submitted with this Appeal for reference (Documents 2.12 and 2.13). The refused application was for a dwellinghouse wholly within Midlothian, rather than one that lies partly within the Scottish Borders Council area, as with this Appeal.

- 2.23 This Reason for Refusal fails to acknowledge that the 2012 application (refused in 2013) was assessed against the provisions of the previous Local Plan (2008) and its associated SPG, both of which are now superseded. As explained above, the Appeal proposal does accord with the Council's up-to-date policy framework.
- 2.24 While the planning history of the site is a material planning consideration, the application subject of this Appeal should have been assessed by the Case Officer on its own merits against the current statutory planning policy framework (the adopted LDP and SG). In this instance, limited, if any, weight should be afforded to the refusal of planning permission seven years previously.
- 2.25 Moreover, the key material consideration that requires to be given significant weight is the approval of a dwellinghouse by Scottish Borders Council through permissions 12/01445/PPP and 14/00321/AMC, and subsequent permission 19/01680/FUL for the revised siting (as discussed above). The dwellinghouse that has been constructed, and which retrospective permission is sought for in this Appeal, is essentially development that has already been approved by Scottish Borders Council under its own policy framework.
- 2.26 The reason for this Appeal proposal is simply an administrative and procedural consequence of an insignificant amendment to the siting of the approved dwelling, which happens to mean that the dwellinghouse straddles the local authority boundary given the unusual circumstances of this site.
- 2.27 Had the dwellinghouse been constructed on the site as originally proposed, there would still be a dwellinghouse at this location, around 20m SSW of the current position. This would have essentially the same impact in terms of landscape, amenity, traffic, and all other relevant planning matters. The only significant difference arising from the change in siting is the procedural implication of the local authority boundary.
- 2.28 The Case Officer's *Report of Handling* (Document 1.07) also incorrectly states that ... *As part of the application site is located within the Scottish Borders there was a requirement to consult with Scottish Borders. Scottish Borders offered no response.* A response from Scottish Borders Council was provided (Document 1.06), confirming the principle of development was in accord with its planning policy. There is no date on the consultation as published on the Council's planning portal. However, it is noted that it was published on the same date, but prior to, the issue of the Decision Notice. It is therefore clear that the consultation response was available for consideration prior to the Application's determination.

Scottish Borders Council planning policy

- 2.29 As the Appeal proposal is for a development that is within two local authority areas, relevant policies of the other authority are a material consideration that must be taken into account.
- 2.30 The applicable policy in the Scottish Borders Local Development Plan (LDP) (2016) regarding the principle of the development is Policy HD2: *Housing in the Countryside* (Document 2.14). This Policy states that Scottish Borders Council ... *wishes to promote appropriate rural housing development: ... b) associated with existing building groups where this does not adversely affect their character or that of the surrounding area.*
- 2.31 Section A of Policy HD2 confirms that ... *Housing of up to a total of 2 additional dwellings or a 30% increase of the building group, whichever is the greater, associated with existing building groups may be approved provided that: a) the Council is satisfied that the site is well related to an existing group of at least three houses or building(s) currently in residential use or capable of conversion to residential use.* Other criteria are also set out relating to scale, design, and other relevant planning matters.

- 2.32 As set out in the Report of Handling for permission 19/01680/FUL (Document 2.03), the assessment of Scottish Borders Council is that the proposal is in accord with Policy HD2:

In terms of policy HD2, there is an existing building group of three houses [actually four], even though two of those houses are within Midlothian [actually three]. The house which is the subject of this application relates well to the building group. The principle of a house as proposed is acceptable in this instance.

- 2.33 This was also confirmed by Scottish Borders Council in its consultation response to Midlothian Council on the application subject of this Appeal (Document 1.06).

- 2.34 However, the Case Officer had no regard to the Scottish Borders LDP or to the views of Scottish Borders Council, despite this matter being a significant material consideration.

Consequences of Refusal

- 2.35 The Case Officer's *Report of Handling* (Document 1.07) states that as a consequence of refusal of this proposal, ...*Enforcement action will be necessary to ensure that the house is removed.*

- 2.36 Essentially what the Case Officer is suggesting is that this house, which has already been constructed and occupied, should be demolished and rebuilt around 20m away from its current position. This is in spite of the fact that the *Report of Handling* (Document 1.07) confirms there are no specific adverse impacts arising from the amended siting in terms of privacy, amenity, or other matters.

- 2.37 This approach is wholly contrary to the Council's *Enforcement Charter (2017)* (Document 2.15), which confirms that ... *The main purpose of planning enforcement is to resolve the problem rather than to punish the mistake. In addition, any action taken has to be appropriate to the scale of the breach.*

- 2.38 The Enforcement Charter goes on to confirm that enforcement action will only be taken if this is in the public interest:

However, enforcement is also a discretionary power. That means that even where there is a breach of planning control the Council has to consider if it is in the public interest to take enforcement action. It is not required to take any particular action on a specific breach of planning control, and indeed can decide that no action is necessary [page 3].

... The Council is unlikely to take enforcement action, for example, over developments which in planning terms are seen as acceptable. It may be more appropriate, in such cases, to seek or require the submission of a retrospective planning application [page 9].

- 2.39 Part Three of the Council's *Enforcement Charter* sets out its policies on enforcement. On page 14 it states:

...the taking of formal enforcement action solely to "regularise" an unauthorised development, which is otherwise wholly acceptable in planning terms, is not necessarily the most appropriate response, especially if it uses staff resources which could more effectively be occupied in pursuing more serious complaints. In addition, very trivial developments can occur which technically constitute breaches of planning control, but which have little or no planning significance. The Council will not generally pursue such matters by means of formal enforcement action.

- 2.40 The breach in planning control that has occurred in this case is simply an amendment to the siting of an otherwise approved development. The Appellant is seeking to regularise the dwellinghouse

as constructed, following an honest oversight regarding the procedural implications of amending its siting. The Appellant has not sought to conceal his actions in an effort to elude planning requirements.

- 2.41 The Appeal proposal cannot be considered as if it were a wholly unauthorised development. Given that there is no adverse impact arising from the amended siting (as confirmed in the Case Officer's *Report of Handling*, Document 1.07), there would clearly be no public interest in pursuing enforcement action. There is no *...planning significance...* arising from the change in siting. The change is trivial in planning terms but simply happens to have impacted on local authority boundaries given the unusual circumstances of the site.
- 2.42 Moreover, the Case Officer's suggestion that enforcement action should seek to secure the removal of the dwellinghouse fails to recognise that only part of the dwellinghouse is within the Midlothian Council area. Midlothian Council does not have enforcement powers within the Scottish Borders Council area.
- 2.43 Any enforcement proceedings by Midlothian Council seeking removal of the dwellinghouse would require the cooperation of Scottish Borders Council. It is clear that there is no basis for any such cooperation from Scottish Borders Council given it has approved the development within its area.
- 2.44 It would be illogical and unreasonable for Midlothian Council to pursue enforcement action to partially remove the dwellinghouse and this would serve no planning purpose.
- 2.45 If Midlothian Council were to serve a formal Enforcement Notice to require the dwellinghouse to be removed (whether in whole or part), the Appellant would have the right to appeal this to Scottish Ministers. It is almost certain that such an Appeal by the Appellant would succeed given the circumstances of the case as outlined in this Statement. It would clearly not be an appropriate use of the Council's resources to pursue this matter.

Conclusion on material considerations

- 2.46 The Case Officer's assessment failed to give appropriate weight to the significant material consideration arising from the planning history of the site, namely the approval of a dwellinghouse in this general location by Scottish Borders Council.
- 2.47 The Case Officer's assessment was carried out as if this were a standalone proposal for a new dwellinghouse, without due regard to the context of the application. However, in reality, the only difference between this proposal and the originally approved development is an amended siting for the dwellinghouse of approximately 20m. In planning terms this amendment is not significant. There are no impacts arising in terms of landscape, privacy, amenity, or other matters. This matter must be accorded significant weight in determining this Appeal.
- 2.48 Moreover, if this Appeal is not allowed and Planning Permission granted, the logical consequence would be for the Council to pursue formal enforcement action to seek demolition of the house and rebuilding around 20m away from its current position. Any such action would be wholly disproportionate and could certainly not be justified as being in the public interest given the breach of planning control has no planning significance. It would also require the cooperation of Scottish Borders Council but there is no basis for this cooperation. Pursuing this matter would not be a worthwhile use of Council resources, nor would it portray the Council's Planning Service in a positive manner.

3.0 Conclusion

- 3.1 Permission was originally granted for this development by Scottish Borders Council, for a positioning approximately 20m SSW of the current position, and wholly within the Scottish Borders Council area. Construction of the approved dwellinghouse was completed in 2018. Due to ground conditions in the originally proposed location, the builder proposed to the Appellant that a change to the siting of the house should be made. It subsequently came to light that that amended siting of the house meant it was no longer wholly within the Scottish Borders Council area.
- 3.2 Retrospective planning applications were therefore submitted to both planning authorities to regularise the position of the dwellinghouse as constructed. Planning Permission for the property has already been granted by Scottish Borders Council for the amended siting. The related application to Midlothian Council was refused by the Case Officer and is now the subject of this Appeal.
- 3.3 The principle of development represents a minor departure from Policy RD1 of the adopted LDP and associated Supplementary Guidance as an infill development in an existing housing group comprising of four other dwellings. This minor departure is fully justified having regard to other significant material considerations.
- 3.4 The Case Officer's assessment failed to give appropriate weight to the significant material consideration arising from the relevant planning history of the site, namely the approval of a dwellinghouse in this general location by Scottish Borders Council. The Case Officer has afforded inappropriate weight to the Council's refusal of a previous application in 2013, which was for a different siting and was considered under the now superseded Local Plan and SPG policies, which are no longer relevant.
- 3.5 The Case Officer's assessment was carried out as if this were a standalone proposal for a new dwellinghouse, without due regard to the context of the application. However, in reality, the only difference between this proposal and the originally approved development is an amended siting for the dwellinghouse of approximately 20m. In planning terms this amendment is not significant. There are no impacts arising in terms of landscape, privacy, amenity, or other matters. This matter must be afforded significant weight in determining this Appeal.
- 3.6 The Case Officer also failed to have regard to the Scottish Borders LDP, which is a material consideration given this development is partly within the Scottish Borders. Policy HD2 of the Scottish Borders LDP supports the principle of the development and this has been confirmed by Scottish Borders Council both in its response to the application subject of this Appeal, and in its granting of planning permission for the development within its own area.
- 3.7 Moreover, if this Appeal is not allowed and Planning Permission granted, the logical consequence would be for the Council to pursue formal enforcement action to seek demolition of the house and rebuilding around 20m away from its current position. This action would be wholly disproportionate and could certainly not be justified as being in the public interest given the breach of planning control has no planning significance. It would also require the cooperation of Scottish Borders Council given that Midlothian Council has no enforcement powers outwith its own area. There is no basis for any such cooperation from Scottish Borders Council given it has approved the development within its area.
- 3.8 Accordingly, it is submitted that this Appeal to the LRB should be upheld and Planning Permission granted for this development.

Appendix 1 Appeal Document List

Reference	Planning Application as Lodged
0.01	Application for Planning Permission (Application Form)
0.02	Covering Letter to Midlothian Council dated 22/11/19
0.03	Copy of Covering Letter to Scottish Borders Council dated 22/11/19
0.04	Location Plan, Dwg No. P01 Rev B
0.05	Block Plan, Dwg No. P02 Rev A
0.06	Floor Plans, Dwg No. P03
0.07	Elevations, Dwg No. P04
0.08	Borehole Log
0.09	Water Supply Test Results
0.10	Photos
Reference	Determination
1.01	Correspondence regarding validation and planning fee
1.02	Validation Letter dated 20/12/19
1.03	Scottish Water consultation response dated 13/1/20
1.04	Roads consultation response dated 27/1/20
1.05	Environmental Health consultation response dated 5/2/20
1.06	Scottish Borders Council consultation response (undated)
1.07	Report of Handling
1.08	Decision Notice
Reference	Additional Appeal Documents
2.01	Appeal Statement
2.02	Decision Notice (Granted) on Application 19/01680/FUL (Scottish Borders)
2.03	Report of Handling for Application 19/01680/FUL (Scottish Borders)
2.04	Approved Location Plan for Application 19/01680/FUL (Scottish Borders)
2.05	Decision Notice (Granted) for 12/01445/PPP (Scottish Borders)
2.06	Approved Location Plan for Application 12/01445/PPP (Scottish Borders)
2.07	Decision Notice (Granted) for Application 14/00321/AMC (Scottish Borders)
2.08	Approved Location Plan for Application 14/00321/AMC (Scottish Borders)
2.09	Approved Plans and Elevations for Application 14/00321/AMC (Scottish Borders)
2.10	Supplementary Guidance: <i>Housing Development in the Countryside and Green Belt</i>
2.11	Supplementary Planning Guidance: <i>Development in the Countryside</i> [superseded]

2.12	Decision Notice (Refused) for Application 12/00770/PPP
2.13	Location Plan for Application 12/00770/PPP
2.14	Scottish Borders Local Development Plan (2016) (extract: Policy HD2)
2.15	Midlothian Council Planning Enforcement Charter

12/01445/PPP

© michael gray architects

note:
this drawing must not be used for or used for
measurements. check all dimensions on site.

Scottish Borders Council
Town And Country
Planning (Scotland) Act
1997

APPROVED

subject to the
requirements of the
associated Decision
Notice



Ordnance Survey (c) Crown Copyright 2012. All rights reserved. Licence number 100020449

Client: Mr Morleymor Fisher

Job: Cockmuir Farm

Title: Site Layout Plan

Scale: 1:1000

Date: 19/11/2012

Job No: 486

Dwg No: SBC - P01

Rev:

michael gray
architects

Tigh-na-Gearr House,
Damhead Farm, Lothianburn,
Edinburgh EH10 7DZ

tel: 0131 448 2223
fax: 0131 448 7377



Client: Mr & Mrs Macpherson

Job: Codrumb Farm

Title: SITE LOCATION PLAN

Scale: 1:1000

Date: 18.2.2014

Job No: 504

Draw No: P01

Rev:

graymacpherson architects.

Tigh-na-Gearr House,
Darnhead Farm, Liffenham,
Edinburgh EH10 7DZ
Tel: 0131 448 2223
Fax: 0131 448 7517

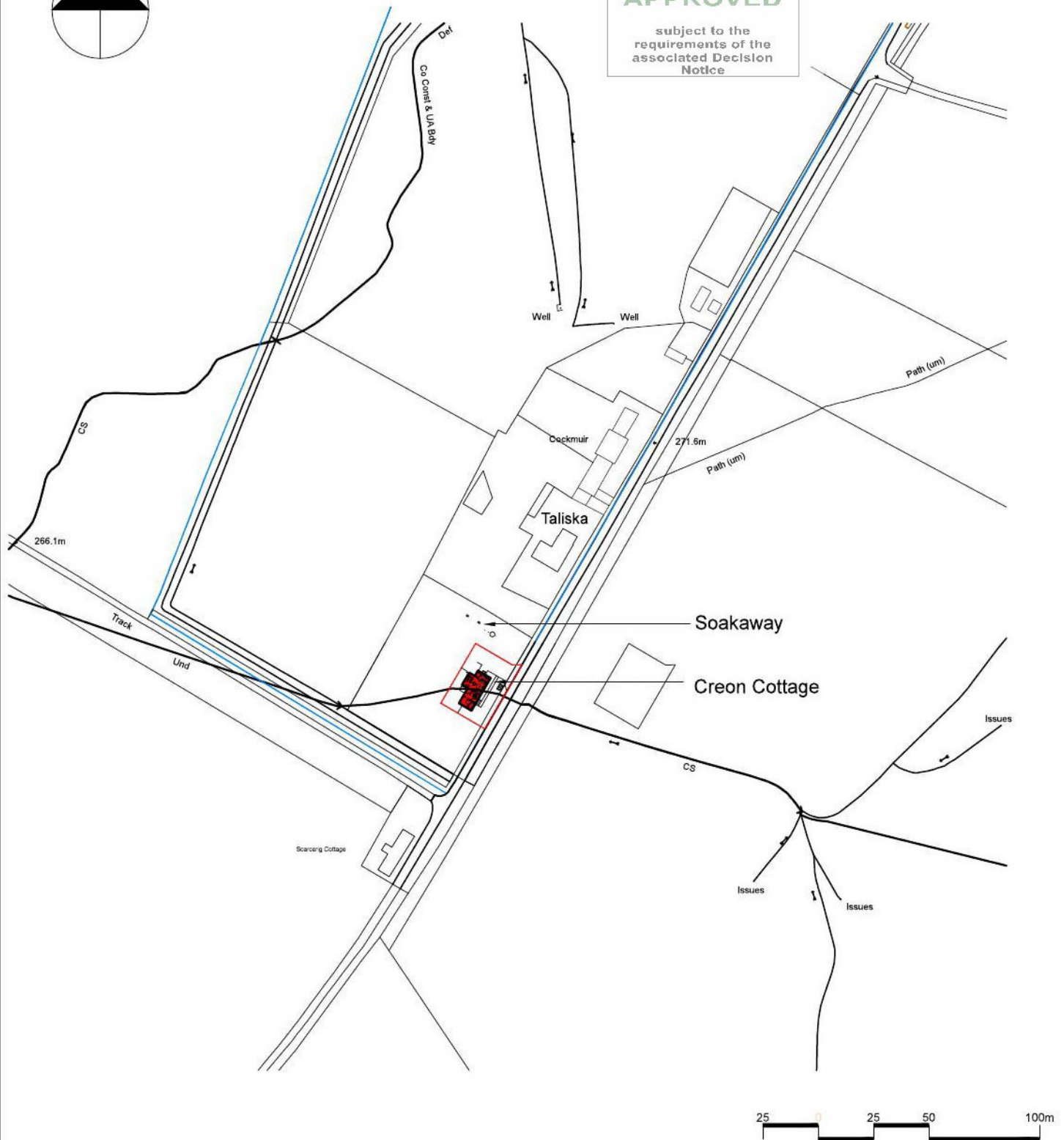
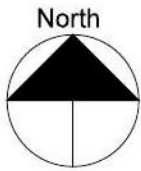
19/01680/FUL

18/02/2020

Scottish Borders Council
Town And Country
Planning (Scotland) Act
1997

APPROVED

subject to the
requirements of the
associated Decision
Notice



Client: Mr & Mrs Morleymore

Job:
Creon Cottage
Cockmuir Farm

Title:
Location Plan

Scale: 1:2500

Date: 21.11.2019

Job No: 504

Dwg No: P01

Rev: A

note:
this drawing must not be scaled from or used for
measurements. check all dimensions on site.

© gray macpherson architects LLP

graymacpherson
architects LLP

Tigh-na-Geat House,
Damhead Farm, Lothianburn,
Edinburgh EH10 7DZ

tel. 0131 445 2223
fax. 0131 445 7377

Material Specification.

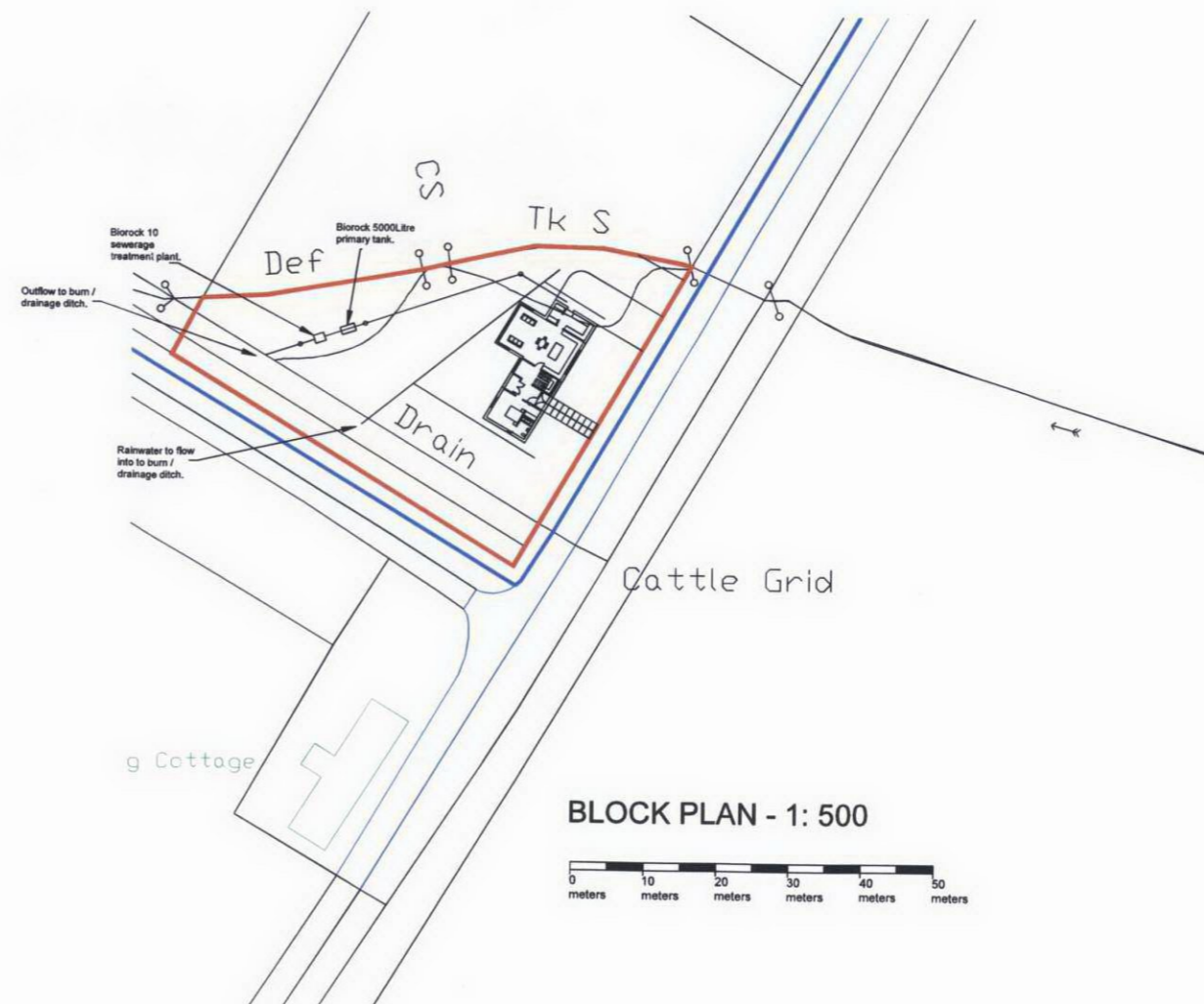
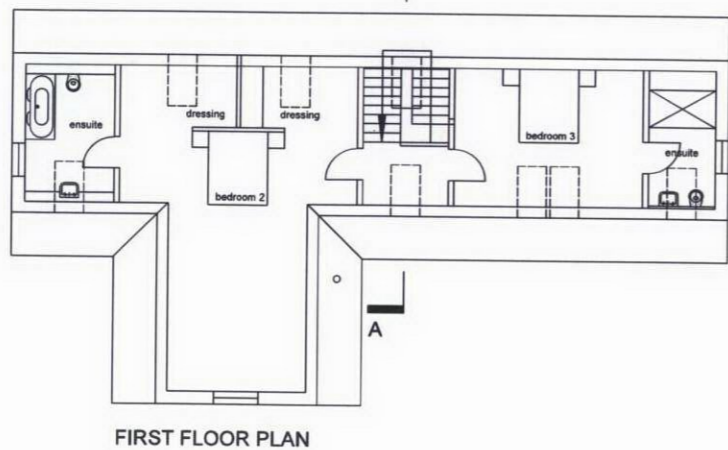
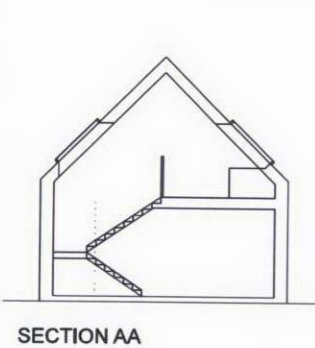
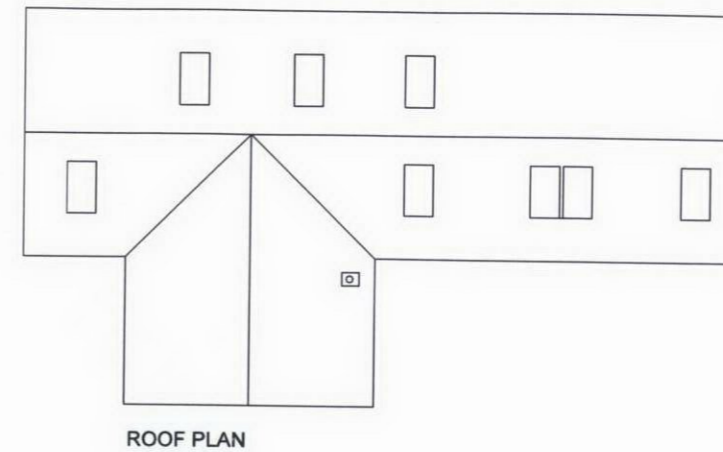
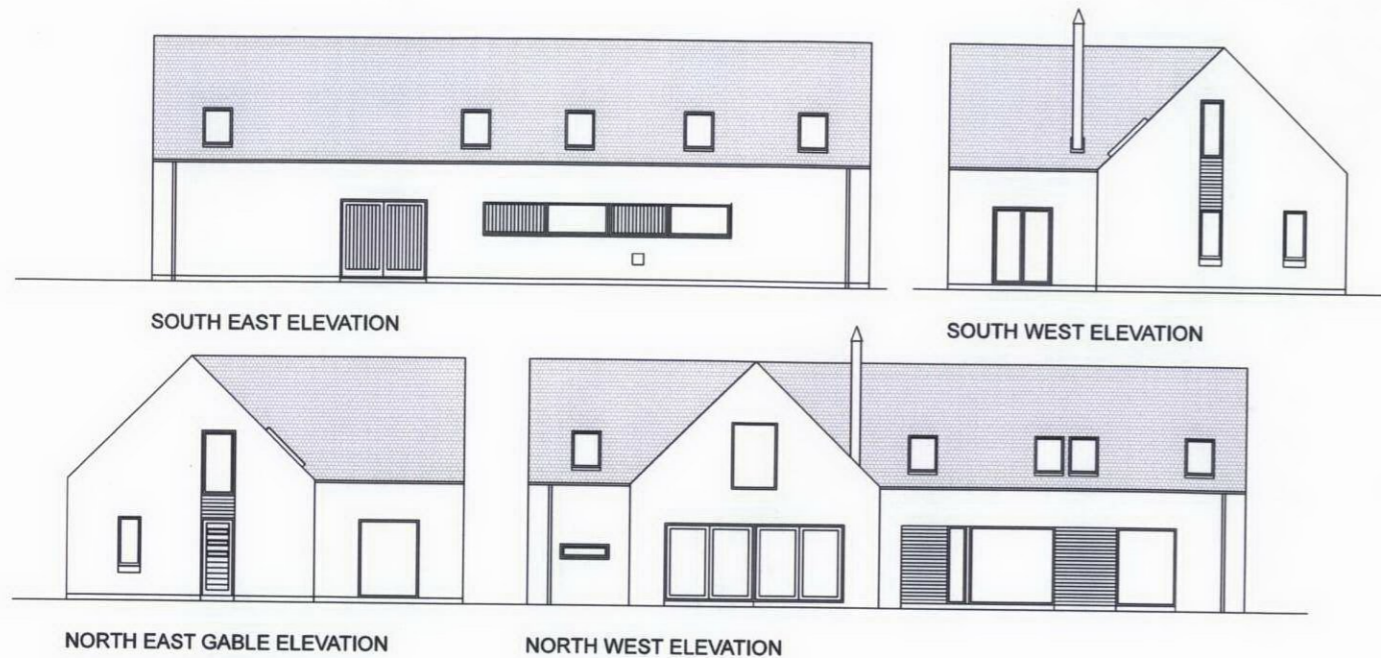
Roof - heavy duty spanish
slate.

Walls - smooth white render.
Gutters and downpipes - mill
finish aluminum.

Windows - aluminum clad
timber windows RAL grey 7012
finish.

Timber cladding - natural finish
cedar boards fixed with
stainless steel screws.

Flue - stainless steel factory
insulated flue.



Client: Mr & Mrs Morleymore

Job: Cockmuir Farm

Title: Plans, Elevations and
Block Plan

Scale: 1:100 and 1:500

Date: 18.2.2014

Job No: 504

Dwg No: P02

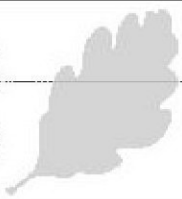
Rev:

graymacpherson architect

Tigh-na-Geat House,
Damhead Farm,
Edinburgh, EH10 7DZ

tel. 0131 445 2223
fax. 0131 445 7377

This copy has been made by or with the authority of Midlothian Council pursuant to Section 47 of the Designs and Patents Act 1988. Unless that Act provides a relevant exception to copyright, the copy must not be copied without the prior permission of the copyright owner.



Soakaway in accordance with engineers drawings. Refer to drawing 1131308/SOK-02-A dated 27/11/2015
Note distribution pipes to be smooth bore perforated pipes.
Soakaway and septic tank to be located no less than 5 meters from boundary.
Note : gradient of distribution pipes in soakaway to be 1:200.

Klargester Alpha septic tank
- 3800 litre capacity -
population equivalent to 10
person. Locate more than 5
meters from house.

See location plan for
position of borehole

REFUSED
19.01004.DPP
14.02.2020

1 meter high
timber boarded
fence

Oil tank

Boundary between Midlothian and
Scottish Borders



BLOCK PLAN - 1: 500

© gray macpherson architects LLP

The water treatment consists
of a UV Filter and a
particulate filter in
accordance with MLC
recommendations.

Revision A - 20.01.2020
Septic tank note corrected - formerly
read as oil tank..
Soak away shown.
Note on water treatment added.
Note on bore hole location added.

Client: Morleymor Fisher

Job: Creon Cottage
Cockmuir Farm

Title: Block Plan

Scale: 1:500

Date: 20.01.2020

Job No: 504

Dwg No: P02

Rev: A

graymacpherson
architects LLP

Tigh-na-Geat House,
Damhead Farm, Lothianburn,
Edinburgh EH10 7DZ

tel. 0131 445 2223
fax. 0131 445 7377

HOUSING DEVELOPMENT (HD)

POLICY HD2

HOUSING IN THE COUNTRYSIDE

- 1.1 The Council aims to encourage a sustainable pattern of development focused on defined settlements in accordance with the need to support existing services and facilities and to promote sustainable travel patterns. For the exceptions to this general approach the Housing in the Countryside policy aims to encourage housing development in appropriate locations in the countryside. The policy sets the basis for the consideration of small scale appropriate additions to existing identifiable building groups, or within dispersed building groups located within the Southern Housing Market Area. It should be noted that in the context of building groups, that it may be the case that some buildings groups are considered to be complete and are therefore unable to accommodate further development. The policy also aims to allow appropriate conversions, restoration, and replacement in the countryside. However, the policy restricts isolated new housing in the countryside unless it can be satisfactorily substantiated by an economic justification. In doing this the policy will protect the environment from inappropriate and sporadic new housing development whilst still being able to support rural communities and businesses.
- 1.2 Any proposal for new housing in the countryside as affordable housing will only be supported if it addresses an identified housing need, as listed in Policy HD1, or in a local housing needs survey, or in a Registered Social Landlord's delivery programme. Further information on this can be found in the Supplementary Planning Guidance on Affordable Housing.
- 1.3 The provisions regarding dispersed building groups within the policy have been formulated in response to concerns over rural sustainability in the Southern Housing Market area. Detailed evidence on the relationship of the proposed new housing to the dispersed building group should accompany planning applications seeking approval under this provision. However, within the Southern Housing Market Area there are currently anchor points identified at Ettrick and Yarrow Feus. Whilst these anchor points are located within the Southern Housing Market Area, they take the form of a community hub or social centre that draws people together, therefore in terms of policy these anchor points will be treated as a building group under Policy HD2(A).
- 1.4 For housing proposals that come forward that sit within the area covered by the Countryside Around Towns (CAT) policy, Policy EP6 will apply. Where the new proposal relates to an existing building group and the proposal is acceptable under Policy HD2, and it can be demonstrated that the high quality environment will be maintained, the proposal could be permissible. In addition, where a proposal is in relation to the replacement of an existing dwelling within the CAT then it may be acceptable if it meets the criteria of Policy HD2 (E).
- 1.5 The Council will review its policy guidance on housing in the countryside by producing revised Supplementary Guidance.

POLICY HD2: HOUSING IN THE COUNTRYSIDE

The Council wishes to promote appropriate rural housing development:

- a) in village locations in preference to the open countryside where permission will only be granted in special circumstances on appropriate sites,
- b) associated with existing building groups where this does not adversely affect their character or that of the surrounding area, and
- c) in dispersed communities in the Southern Borders housing market area.

These general principles in addition to the requirement for suitable roads access will be the starting point for the consideration of applications for housing in the countryside, which will be supplemented by Supplementary Planning Guidance / Supplementary Guidance on New Housing in the Borders Countryside and on Placemaking and Design.

(A) BUILDING GROUPS

Housing of up to a total of 2 additional dwellings or a 30% increase of the building group, whichever is the greater, associated with existing building groups may be approved provided that:

- a) the Council is satisfied that the site is well related to an existing group of at least three houses or building(s) currently in residential use or capable of conversion to residential use. Where conversion is required to establish a cohesive group of at least three houses, no additional housing will be approved until such conversion has been implemented,
- b) the cumulative impact of new development on the character of the building group, and on the landscape and amenity of the surrounding area will be taken into account when determining new applications. Additional development within a building group will be refused if, in conjunction with other developments in the area, it will cause unacceptable adverse impacts,
- c) any consents for new build granted under this part of this policy should not exceed two housing dwellings or a 30% increase in addition to the group during the Plan period. No further development above this threshold will be permitted.

In addition, where a proposal for new development is to be supported, the proposal should be appropriate in scale, siting, design, access, and materials, and should be sympathetic to the character of the group.

The calculations on building group size are based on the existing number of housing units within the group as at the start of the Local Development Plan period. This will include those units under construction or nearing completion at that point.

(B) DISPERSED BUILDINGS GROUPS

In the Southern Housing Market area there are few building groups comprising 3 houses or more, and a more dispersed pattern is the norm. In this area a lower threshold may be appropriate, particularly where this would result in tangible community, economic or environmental benefits. In these cases the existence of a sense of place will be the primary consideration.

Housing of up to 2 additional dwellings associated with dispersed building groups that meet the above criteria may be approved provided that:

- a) the Council is satisfied that the site lies within a recognised dispersed community in the Southern Borders housing market area,
- b) any consents for new build granted under this part of this policy should not exceed two housing dwellings in addition to the group during the Plan period. No further development above this threshold will be permitted,

- c) the design of housing will be subject to the same considerations as other types of housing in the countryside proposals.

(C) CONVERSIONS OF BUILDINGS TO A HOUSE

Development that is a change of use of a building to a house may be acceptable provided that:

- a) the Council is satisfied that the building has architectural or historic merit, is capable of conversion and is physically suited for residential use,
- b) the building stands substantially intact (normally at least to wallhead height) and the existing structure requires no significant demolition. A structural survey will be required where in the opinion of the Council it appears that the building may not be capable of conversion, and
- c) the conversion and any proposed extension or alteration is in keeping with the scale and architectural character of the existing building.

(D) RESTORATION OF HOUSES

The restoration of a house may also be acceptable provided that the walls of the former residential property stand substantially intact (normally at least to wallhead height). In addition:

- a) the siting and design reflects and respects the historical building pattern and the character of the landscape setting,
- b) any proposed extension or alteration should be in keeping with the scale, form and architectural character of the existing or original building, and
- c) significant alterations to the original character will only be considered where it can be demonstrated that these provide environmental benefits such as a positive contribution to the landscape and/or a more sustainable and energy efficient design.

(E) REPLACEMENT DWELLINGS

The proposed replacement of an existing house may be acceptable provided that:

- a) the siting and design of the new building reflects and respects the historical building pattern and the character of the landscape setting,
- b) the proposal is in keeping with the existing/original building in terms of its scale, extent, form and architectural character,
- c) significant alterations to the original character of the house will only be considered where it can be demonstrated that these provide environmental benefits such as a positive contribution to the landscape and /or a more sustainable and energy efficient design.

(F) ECONOMIC REQUIREMENT

Housing with a location essential for business needs may be acceptable if the Council is satisfied that:

- a) the housing development is a direct operational requirement of an agricultural, horticultural, forestry or other enterprise which is itself appropriate to the countryside, and it is for a worker predominantly employed in the enterprise and the presence of that worker on-site is essential to the efficient operation of the enterprise. Such development could include businesses that would cause disturbance or loss of amenity if located within an existing settlement, or
- b) it is for use of a person last employed in an agricultural, horticultural, forestry or other enterprise which is itself appropriate to the countryside, and also employed on the unit that is the subject of the application, and the development will release another house for continued use by an agricultural, horticultural, forestry or other enterprise which is itself appropriate to the countryside, and

- c) the housing development would help support a business that results in a clear social or environmental benefit to the area, including the retention or provision of employment or the provision of affordable or local needs housing, and
- d) no appropriate site exists within a building group, and
- e) there is no suitable existing house or other building capable of conversion for the required residential use.

In **ALL** instances in considering proposals relative to each of the policy sections above, there shall be compliance with the Council's Supplementary Planning Guidance where it meets the terms of this policy and development must not negatively impact on landscape and existing communities. The cumulative effect of applications under this policy will be taken into account when determining impact.

KEY POLICIES TO WHICH THIS POLICY SHOULD BE CROSS REFERENCED:

Policy PMD2 Quality Standards

Policy ED10 Protection of Agricultural Land and Carbon Rich Soils

Policy HD1 Affordable and Special Needs Housing

Policy EP6 Countryside Around Towns

Many of the Plan's environmental policies will be relevant particularly EP4 National Scenic Areas and EP5 Special Landscape Areas.

THE FOLLOWING SUPPLEMENTARY PLANNING GUIDANCE MAY BE RELEVANT TO THIS POLICY:

Affordable Housing

Biodiversity

Countryside Around Towns

Green Space

Landscape and Development

Local Landscape Designations

New Housing in the Borders Countryside

Placemaking and Design

Use of Timber in Sustainable Construction

THE FOLLOWING PROPOSED SUPPLEMENTARY GUIDANCE MAY BE RELEVANT TO THIS POLICY:

Affordable Housing

Biodiversity

Countryside Around Towns

Greenspace

Landscape and Development

New Housing in the Borders Countryside

Placemaking and Design

Use of Timber in Sustainable Construction

Site: COCKMUIR, NR PENICUIK

Client: Commander Morleymor Fisher

Engineer:

Contract No: 21657

Borehole No: 01

Inspection Pit to 1.20
Rotary Open Hole to 30.00

Location: NT 263 549

Orientation: Vertical

Equipment: Unimog Dando Multitec 10

Progress	Sample Depth	Samples and Tests		Casing Depth	Level (mOD)	Depth	Description of Strata	Legend	Water Depth	Installation/Backfill		
		Type	Result							Description	Symbol	Depth
18/3						1.00	# MADE GROUND (brick, rubble and metal)			127 x 113mm upvc casing with 2 to 6mm diameter gravel surround.		
2010							# SAND and GRAVEL					
18/3						6.00	# Limestone BOULDER					
						6.70	# White sandstone BOULDER					
						7.20	# Red SANDSTONE					
						9.80	# Sandy gravelly CLAY					
						16.30	# White SANDSTONE			127 x 113mm upvc well screen with 1mm slots and 2 to 6mm diameter gravel.		12.00
						27.50	# Red SANDSTONE					
19/3						30.00	END OF BOREHOLE					30.00
21/3												

Remarks:

- # Description based on Driller's log.
- Client: Commander Morleymor Fisher, Cockmuir, Near Penicuik, Midlothian, EH26 8QJ
- An inspection pit was excavated by hand to a depth of 1.20m to clear services.
- 168.8 x 6.8mm mild steel casing installed from ground level to 19.5m and grouted in place.
- Approximate yield 2 cubic metres per hour.

Diam	To Depth	
	Boring	Casing
175	19.50	19.50
150	30.00	

Driller	Originator	Ground-water				Water Added		Chiselling			Flush		To Depth	RAEBURN	Fig No:
		Struck	Rose To	Time(mins)	Cut Off	From	To	From	To	Time(hr)	Returns Full	Type Air			
DJ	DM												30.00		1
Chk & App	Status														Sheet 1 of 1
AT	Final														Scale 1:155

Gray Macpherson Architects LLP
Tigh-na-Geat House
Damhead Farm Lothianburn
Edinburgh EH10 7DZ

Registered in Scotland No.S0304502 VAT No.171116147 RIAS Chartered Practice

+44 (0) 131 445 2223
info@GrayMacphersonArchitects.co.uk
GrayMacphersonArchitects.co.uk

22nd November 2019

Ref. MGA/P01

Scottish Borders Council
Newtown St Boswells
Melrose
TD6 0SA

Dear Sirs,

RE: On line planning ref – 100206489 -001. Retrospective planning application, Cross Authority Dwelling House, (Creon Cottage) at Cockmuir, Penicuik.

We are writing to confirm that we have made 2 identical planning applications to both Scottish Borders Council and Midlothian Council for the retrospective planning consent to erect a private dwelling house, cross authority at Cockmuir Farm, EH26 8QJ.

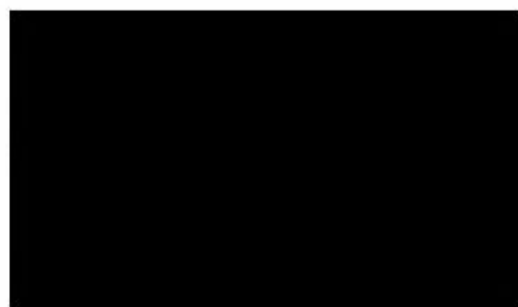
The applications are retrospective and are to resolve an issue that has come to light regarding the location of the house and the Council boundaries. Planning consent was secured for the house in December 2014 from Scottish Borders Council. Planning reference 14/01445/PPP and 14/00321/AMC. The consent show the house wholly within the Councils boundary in the corner of the field.

Noe that the house has be constructed, the location of the building has slightly changed from the consent. Rather than being wholly within Scottish Borders, it now straddles the boundary between the Scottish Borders and Midlothian.

The client has informed us that this was a totally innocent mistake. The reasons for moving the building slightly northwards was the boggy nature of the ground and the location of some trees in the corner of the field. There are no defining features identifying the boundary and unfortunately this was overlooked when the building was re sited.

Please note that no fee has been paid to Midlothian Council.

Yours faithfully,



Michael Gray
Gray Macpherson Architects LLP

Gray Macpherson Architects LLP
Tigh-na-Geat House
Damhead Farm Lothianburn
Edinburgh EH10 7DZ

Registered in Scotland No.S0304502 VAT No.171116147 RIAS Chartered Practice

+44 (0) 131 445 2223
info@GrayMacphersonArchitects.co.uk
GrayMacphersonArchitects.co.uk

22nd November 2019

Ref. MGA/P01

Midlothian Council
8 Lothian Road
Fairfield House
Dalkeith
Midlothian
EH22 3ZN

Dear Sirs,

RE: On line planning ref – 100206489 -001. Retrospective planning application, Cross Authority Dwelling House, (Creon Cottage) at Cockmuir, Penicuik.

We are writing to confirm that we have made 2 identical planning applications to both Scottish Borders Council and Midlothian Council for the retrospective planning consent to erect a private dwelling house, cross authority at Cockmuir Farm, EH26 8QJ.

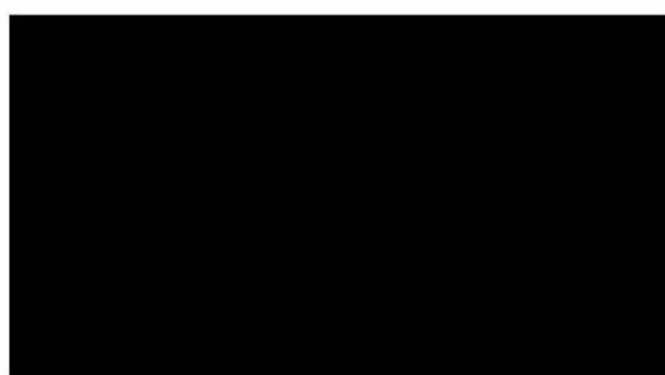
The applications are retrospective and are to resolve an issue that has come to light regarding the location of the house and the Council boundaries. Planning consent was secured for the house in December 2014 from Scottish Borders Council. Planning reference 14/01445/PPP and 14/00321/AMC. The consent show the house wholly within the Councils boundary in the corner of the field.

Noe that the house has be constructed, the location of the building has slightly changed from the consent. Rather than being wholly within Scottish Borders, it now straddles the boundary between the Scottish Borders and Midlothian.

The client has informed us that this was a totally innocent mistake. The reasons for moving the building slightly northwards was the boggy nature of the ground and the location of some trees in the corner of the field. There are no defining features identifying the boundary and unfortunately this was overlooked when the building was re sited.

Please note that a fee of £601.50 has been paid to Scottish Borders Council.

Yours faithfully,



Michael Gray
Gray Macpherson Architects LLP



Refusal of Planning Permission

Town and Country Planning (Scotland) Act 1997

Reg. No. 19/01004/DPP

Gray Macpherson Architects
Tigh-na-geat House
1 Damhead Farm
Lothianburn
EH10 7DZ

Midlothian Council, as Planning Authority, having considered the application by Mr Morleymor Fisher, Creon Cottage, Cockmuir Farm, Penicuik, EH26 8QJ which was registered on 17 December 2019 in pursuance of their powers under the above Acts, hereby **refuse** permission to carry out the following proposed development:

Erection of dwellinghouse (retrospective) at Land South West of Cockmuir, Penicuik

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

<u>Document/Drawing.</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Location Plan	P01 Rev B 1:2500	20.01.2020
Block Plan	P02 Rev A 1:500	20.01.2020
Floor Plans	P03 1:50	17.12.2019
Elevations, Floor Plan And Cross Section	P04 1:50	17.12.2019

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

- 1. It has not been demonstrated, to the satisfaction of the Planning Authority, that there is a requirement for the proposed house in connection with an establish countryside business or activity. In addition, the site is not located within an existing group of dwellings; nor did the proposal involve the redevelopment or conversion of a redundant rural building. For these reasons the proposal does not comply with the terms of policy RD1 of the adopted Midlothian Local Development Plan and the adopted Supplementary Guidance: Housing Development in the Countryside and Green Belt*
- 2. A planning application (ref. no. 12/00770/PPP) for the erection of a dwellinghouse on part of the application site was refused planning permission on 22 January 2013. There is no convincing and/or overriding reason why this similar proposal should be granted planning permission despite the decision on the previous planning application.*

Dated 14 / 2 / 2020

A handwritten signature in black ink, consisting of a stylized 'D' and 'R'.

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

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 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.

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.

Refusal of Planning Permission

Town and Country Planning (Scotland) Act 1997



Reg. No. 12/00770/PPP

Michael Gray Architects
Tigh-na-geat House
1 Lothianburn
Edinburgh
EH10 7DZ

Midlothian Council, as Planning Authority, having considered the application by Mr Morleymor Fisher, Cockmuir Farm, 1 Cockmuir Farm, Penicuik, EH26 8QJ, which was registered on 23 November 2012 in pursuance of their powers under the above Acts, hereby **refuse** permission to carry out the following proposed development:

Erection of dwellinghouse at Land 90M South West Of Cockmuir, Penicuik

In accordance with the application and the following plans:

<u>Drawing Description.</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Location Plan	MC PO1 1:1000	23.11.2012

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

- 1. It has not been demonstrated, to the satisfaction of the planning authority, that there is a requirement for the proposed house in connection with an establish countryside business or activity. In addition, the site is not located within an existing group of dwellings; nor does the proposal involve the redevelopment of a redundant building. For these reasons the proposal does not comply with the terms of policies RP1 and DP2 of the adopted Midlothian Local Plan.*
- 2. It has not been demonstrated, to the satisfaction of the planning authority, that the proposed dwellinghouse will not have a significant adverse impact on the character and appearance of the local landscape. Therefore, the proposal does not comply with the terms of policy RP7 of the adopted Midlothian Local Plan.*

Dated: 22/01/2013

A handwritten signature in black ink, appearing to read 'Peter', located below the date.

Peter Arnsdorf
Development Management Manager
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 Development Manager, Development Management Section, 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 representatives 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.

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997**Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013****Application for Planning Permission****Reference : 12/01445/PPP****To : Mr Morleymor Fisher per Michael Gray Tigh-Na-Geat House 1 Lothianburn Edinburgh
EH10 7DZ**


With reference to your application validated on **26th November 2012** for planning permission under the Town and Country Planning (Scotland) Act 1997 for the following development :-

Proposal : Erection of dwellinghouse**at : Land North Of Scarcerig Cottage Leadburn Scottish Borders**

The Scottish Borders Council hereby **grant planning permission** in accordance with the approved plan(s) and the particulars given in the application and in accordance with Section 58 of the Town and Country Planning (Scotland) Act 1997.

subject to the conditions on the attached schedule imposed by the Council for the reasons stated

**Dated 3rd March 2014
Planning and Regulatory Services
Environment and Infrastructure
Council Headquarters
Newtown St Boswells
MELROSE
TD6 0SA**

Signed
.....
Head of Planning and Regulatory Services

APPLICATION REFERENCE : 12/01445/PPP

Schedule of Plans and Drawings Approved:

Plan Ref	Plan Type	Plan Status
SBC-P01	Location Plan	Approved

REASON FOR DECISION

The proposals are acceptable and subject to conditions, informatives and a legal agreement comply with the relevant Scottish Borders Structure Plan and Local Plan policies in that the site of the proposed dwellinghouse is well related to an existing building group of three houses, no other new builds within Scottish Borders boundary at this location have been granted within the Local Plan period and the new development will not have an unacceptable adverse impact on the character of the building group or on the landscape and amenity of the surrounding area.

SCHEDULE OF CONDITIONS

- No development shall commence until the details of the layout, siting, design and external appearance of the building(s), the means of access thereto and the landscaping of the site have been submitted to and approved in writing by the Planning Authority.
Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.
- Application for approval of matters specified in the conditions set out in this decision shall be made to the Planning Authority before whichever is the latest of the following:
(a) the expiration of three years from the date of this permission, or
(b) the expiration of six months from the date on which an earlier application for approval of matters specified in the conditions set out in this decision notice was refused or dismissed following an appeal.
Only one application may be submitted under paragraph (b) of this condition, where such an application is made later than three years after the date of this consent.
Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.
- No development shall commence until all matters specified in conditions have, where required, been submitted to and approved in writing by the Planning Authority. Thereafter the development shall only take place except in strict accordance with the details so approved.
Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.
- The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the matters specified in the conditions set out in this decision.
Reason: To achieve a satisfactory form of development, and to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

- 5 No development shall commence until a report, by a suitably qualified person, has been submitted to and approved in writing by the planning authority, demonstrating the provision of an adequate water supply to the development in terms of quality, quantity and the impacts of this proposed supply on surround supplies or properties. The provisions of the approved report shall be implemented prior to the occupation of the dwellinghouse/s hereby approved.
Reason: To ensure that the site is adequately serviced without a detrimental effect on the water supplies of surrounding properties.
- 6 Prior to the occupation of the dwellinghouse the private access track leading to the site located with Scottish Borders Council boundary shall be upgraded to provide a well compacted free draining surface capable of supporting a 14 tonne axle loading.
Reason: To ensure that there is a satisfactory access provided to the site
- 7 No trees within the application site shall be felled, lopped, lifted or disturbed in any way without the prior consent of the Planning Authority.
Reason: The existing tree(s) represent an important visual feature which the Planning Authority considered should be substantially maintained.
- 8 The development hereby permitted shall not be commenced before fully detailed design proposals for foul and surface water drainage, demonstrating that there will be no negative impact to public health, the environment or the quality of watercourses or ground water, have been submitted to and approved by the Planning Authority.

Reason: The Planning Authority is aware that drainage issues are likely to arise at this site, that have not been fully addressed in the outline/change of use planning application, which establishes only the land-use principle of the area of land identified in the submitted drawing(s).

FOR THE INFORMATION OF THE APPLICANT

It should be noted that:

For clarification, if a private water supply/source is chosen for the development, the provision of the following should fulfil the requirements of the aforementioned condition:

1. **A description of the source(s) of the supply – i.e. whether the supply is taken from a watercourse, loch, spring, well or borehole, or any other source or combination of sources.**
2. **The location of the source(s) of the supply – i.e. the appropriate eight figure Ordnance Survey National Grid Reference(s).**
3. **The name and address of every relevant person in relation to the supply.**

NB. A “relevant person”, in relation to a private water supply, means a person (or persons) who: (a) provide the supply; (b) occupy the land from, or on which, the supply is obtained or located; or (c) exercise powers of management or control in relation to the supply.

4. **The estimated maximum average volume of water provided by the proposed supply, in cubic metres per day (m³/day), and the details of any pump tests/flow rate tests undertaken to determine this estimate.**
5. **Any treatment that is intended to be carried out in relation to the proposed supply for the development.**
6. **Where there are existing users of the proposed supply, the addresses of all of the properties that are to be served thereby and the purpose(s) for which the water is supplied – i.e. for domestic use or as part of a commercial/public activity.**

7. Where there are existing users of the proposed supply, the existing and proposed occupancy levels of all of the properties that are to be served thereby, as far as is reasonably practicable.

NB. As a minimum, the provision of the number of bedrooms per property will allow an estimate to be made of occupancy levels.

8. Where there are existing users of the proposed supply and/or there are other properties' water supplies in the vicinity of the development that may be affected thereby (e.g. neighbouring boreholes, wells, springs, etc.), a report advising if and how the proposed development will impact on the existing users and/or the other properties' water supplies.

For information, the minimum daily volume of water that requires to be supplied by a private water supply must be equivalent to one cubic metre (or 1000 litres) of water per day for every five persons who will be using the supply. It is the provision of this quantity that must be ensured and, as such, water storage facilities may be necessary for this purpose. In addition, when designing storage facilities, the minimum recommended capacity is three day's worth of supply, in order to allow for supply interruption/failure.

Finally, the quality of the water must conform to the requirements of The Private Water Supplies (Scotland) Regulations 2006 in relation to chemical and bacteriological parameters pertaining to the designated classification of the supply, in order for it to be classed as wholesome. (NB. Further details of such parameters and classifications are available on request.)

Access Road

Before any development starts on site the applicant should seek the comments of Midlothian Council to confirm the suitability of the access road for the proposed development.

N.B: This permission does not include any consent, approval or licence necessary for the proposed development under the building regulations or any other statutory enactment and the development should not be commenced until all consents are obtained.

Notice of Initiation of Development

Section 27 of the Town and Country Planning (Scotland) Act (as amended) requires that any person who has been granted planning permission (including planning permission in principle) and intends to start development must, once they have decided the date they will start work on the development, inform the planning authority of that date as soon as is practicable. A form is enclosed with this decision notice for this purpose.

Notice of Completion of Development

Section 27B requires that any person who completes a development for which planning permission (including planning permission in principle) has been given must, as soon as practicable after doing so, give notice of completion to the planning authority.

When planning permission is granted for phased development then under section 27B(2) the permission is to be granted subject to a condition that as soon as practicable after each phase, other than the last, is completed, the person carrying out the development is to give notice of that completion to the planning authority.

In advance of carrying out any works it is recommended that you contact Utility Bodies whose equipment or apparatus may be affected by any works you undertake. Contacts include:

Transco, Susiephone Department, 95 Kilbirnie Street, Glasgow, G5 8JD
Scottish Power, Riccarton Mains Road, Currie, Edinburgh, EH14 5AA



Planning and Regulatory Services

Scottish Water, Developer Services, 419 Balmore Road, Possilpark, Glasgow G22 6NU

British Telecom, National Notice Handling Centre, PP404B Telecom House, Trinity Street, Stoke on Trent, ST1 5ND

Scottish Borders Council, Street Lighting Section, Council HQ, Newtown St Boswells, Melrose, TD6 0SA

Cable & Wireless, 1 Dove Wynd, Strathclyde Business Park, Bellshill, ML4 3AL

BP Chemicals Ltd, PO Box 21, Bo'ness Road, Grangemouth, FK2 9XH

THUS, Susiephone Department, 4th Floor, 75 Waterloo Street, Glasgow, G2 7BD

Susiephone System – **0800 800 333**

If you are in a Coal Authority Area (Carlops or Newcastleton), please contact the Coal Authority at the following address: The Coal Authority 200 Lichfield Lane, Berry Hill, Mansfield, Nottinghamshire. NG18 4RG.

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (As Amended)

Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Application for Approval of Matters Specified in Conditions Reference : 14/00321/AMC

**To : Mr Morleymor Fisher per Gray Macpherson Architects LLP Tigh-Na-Geat House 1
Damhead Farm Lothianburn Edinburgh EH10 7DZ**

With reference to your application validated on **11th April 2014** for approval of matters specified in conditions pursuant to Planning Permission in Principle under the Town and Country Planning (Scotland) Act 1997, as amended, for the following development :-

Proposal : Erection of dwellinghouse (approval of matters in all conditions of planning permission in principle 12/01445/PPP)

at : Land North Of Scarcerig Cottage Leadburn Scottish Borders

**Dated 30th June 2014
Regulatory Services
Council Headquarters
Newtown St Boswells
MELROSE
TD6 0SA**

Signed

...
Service Director Regulatory Services

APPLICATION REFERENCE : 14/00321/AMC**Schedule of Plans and Drawings Approved:**

Plan Ref	Plan Type	Plan Status
PO2	General	Approved
PO1	Location Plan	Approved

REASON FOR DECISION

The proposals are acceptable and subject to conditions comply with the relevant Scottish Borders Local Plan policies in that the development is compatible with and respects the character of the surrounding area, neighbouring uses and neighbouring built form and it will not result in any loss of residential amenity.

SCHEDULE OF CONDITIONS

- 1 The development hereby permitted shall be begun before the expiration of two years from the date of this permission.
Reason: To comply with Section 58 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.
- 2 The development hereby permitted shall not be carried out otherwise than in complete accordance with the plans and specifications approved by the Planning Authority.
Reason: To ensure that the development is carried out in accordance with the approved details.
- 3 Two parking spaces shall be provided within the site.
Reason: To ensure that there is adequate off road parking in the interests of road safety.

FOR THE INFORMATION OF THE APPLICANT

The applicant is reminded that this permission does not convey approval for works affecting third party rights which may exist on the land or any adjoining. The applicant is therefore advised to seek the approval of any parties having an interest in any land affected by this permission

N.B: This permission does not include any consent, approval or licence necessary for the proposed development under the building regulations or any other statutory enactment and the development should not be commenced until all consents are obtained.

In advance of carrying out any works it is recommended that you contact Utility Bodies whose equipment or apparatus may be affected by any works you undertake. Contacts include:

Transco, Susiephone Department, 95 Kilbirnie Street, Glasgow, G5 8JD

Scottish Power, Riccarton Mains Road, Currie, Edinburgh, EH14 5AA

Scottish Water, Developer Services, 419 Balmore Road, Possilpark, Glasgow G22 6NU

British Telecom, National Notice Handling Centre, PP404B Telecom House, Trinity Street, Stoke on Trent, ST1 5ND

Scottish Borders Council, Street Lighting Section, Council HQ, Newtown St Boswells, Melrose, TD6 0SA

Cable & Wireless, 1 Dove Wynd, Strathclyde Business Park, Bellshill, ML4 3AL

BP Chemicals Ltd, PO Box 21, Bo'ness Road, Grangemouth, FK2 9XH

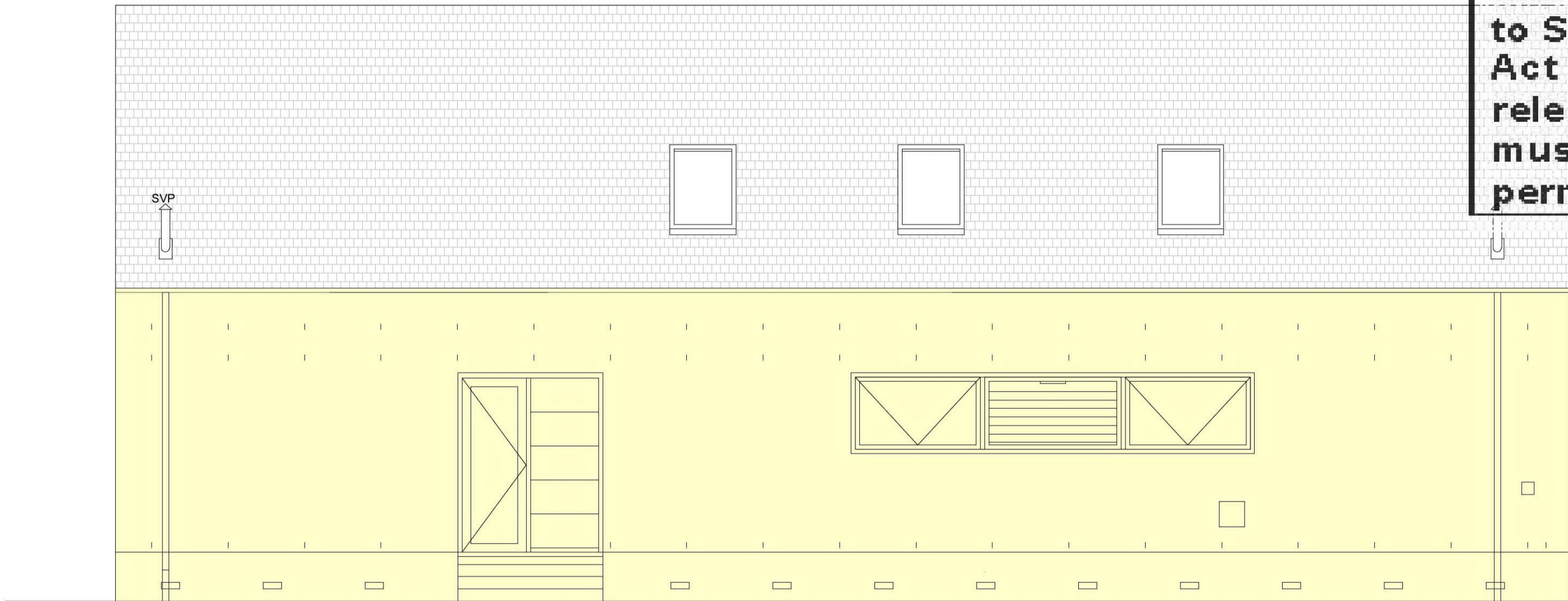
THUS, Susiephone Department, 4th Floor, 75 Waterloo Street, Glasgow, G2 7BD
Susiephone System – **0800 800 333**

If you are in a Coal Authority Area (Carlops or Newcastleton), please contact the Coal Authority at the following address: The Coal Authority 200 Lichfield Lane, Berry Hill, Mansfield, Nottinghamshire. NG18 4RG.

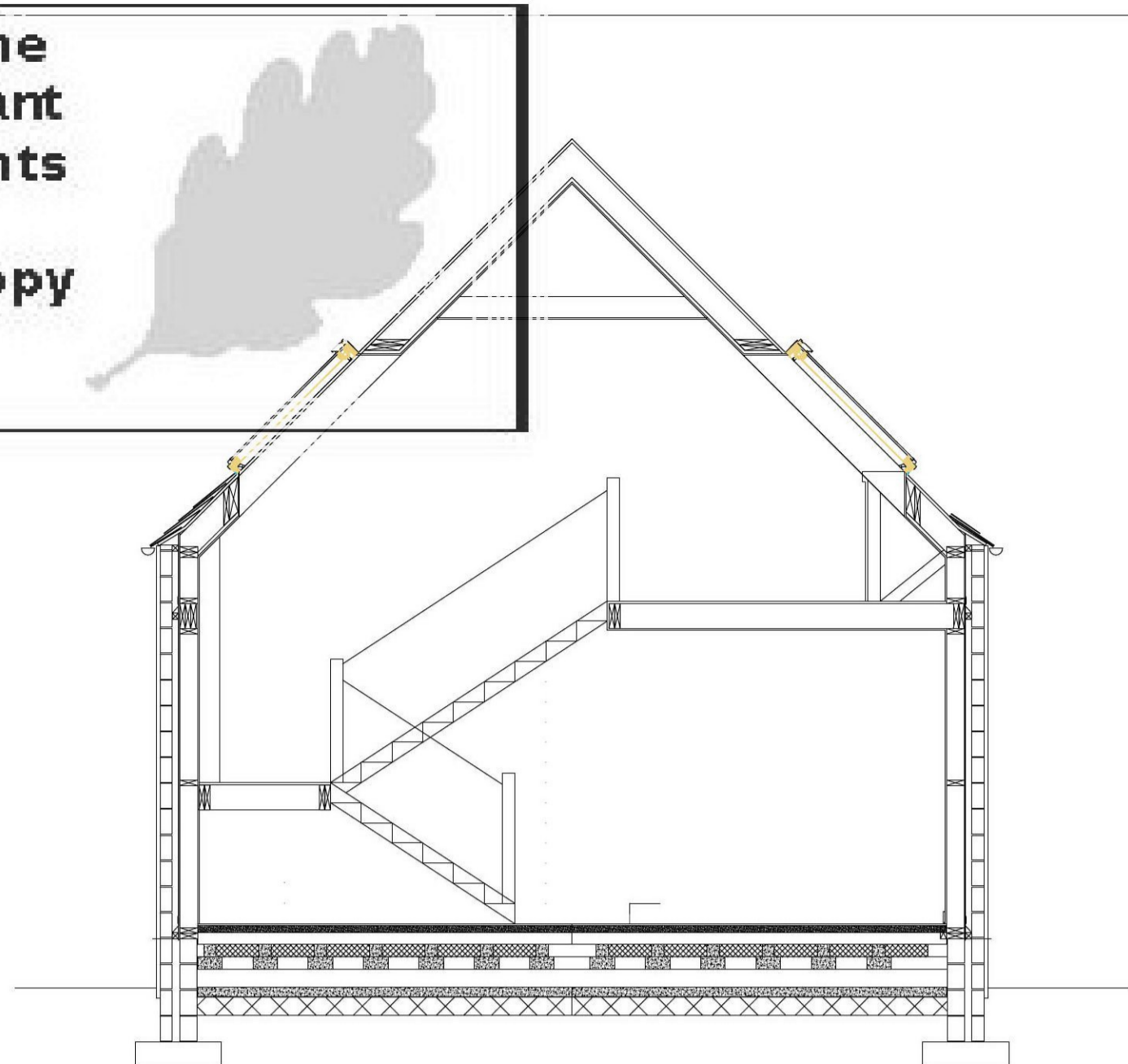
This copy has been made by or with the authority of Midlothian Council pursuant to Section 47 of the Designs and Patents Act 1988. Unless that Act provides a relevant exception to copyright, the copy must not be copied without the prior permission of the copyright owner.

© gray macpherson architects LLP

Materials -
Roof - spanish slate.
Walls - white traditional render.
Windows - brown pvc
Gutters and downpipes - black plastic.
Flue - stainless steel.

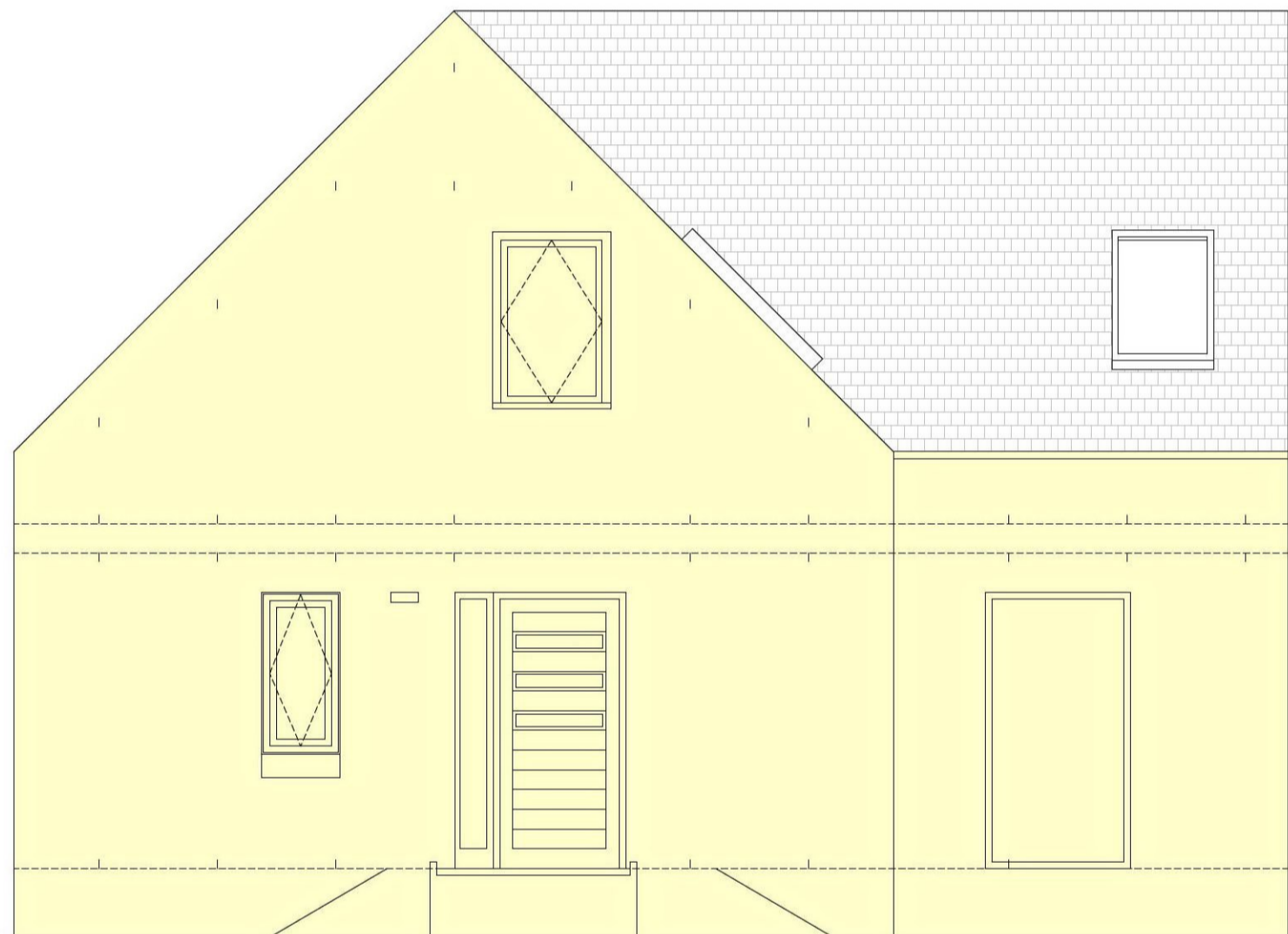


EAST ELEVATION

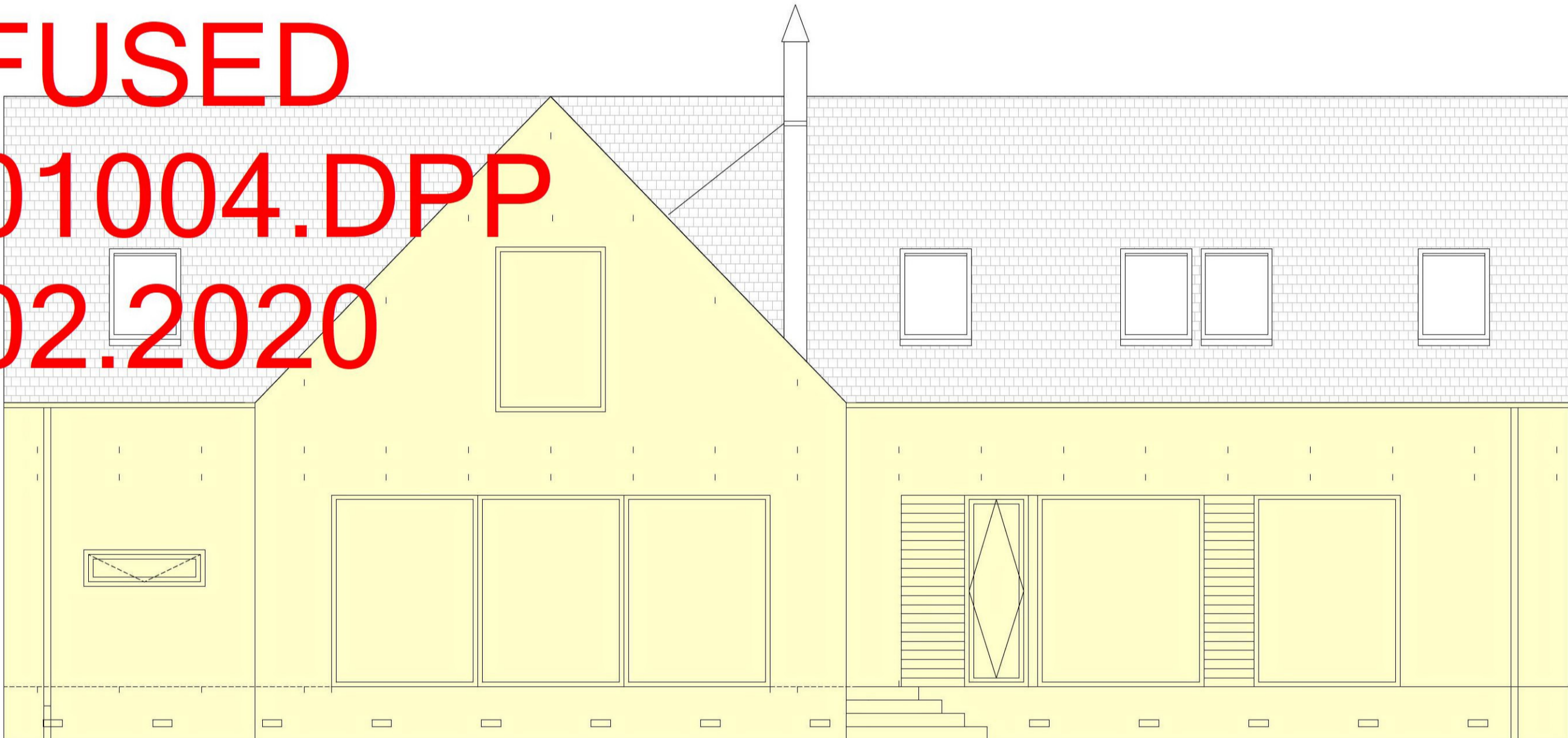


SECTION AA

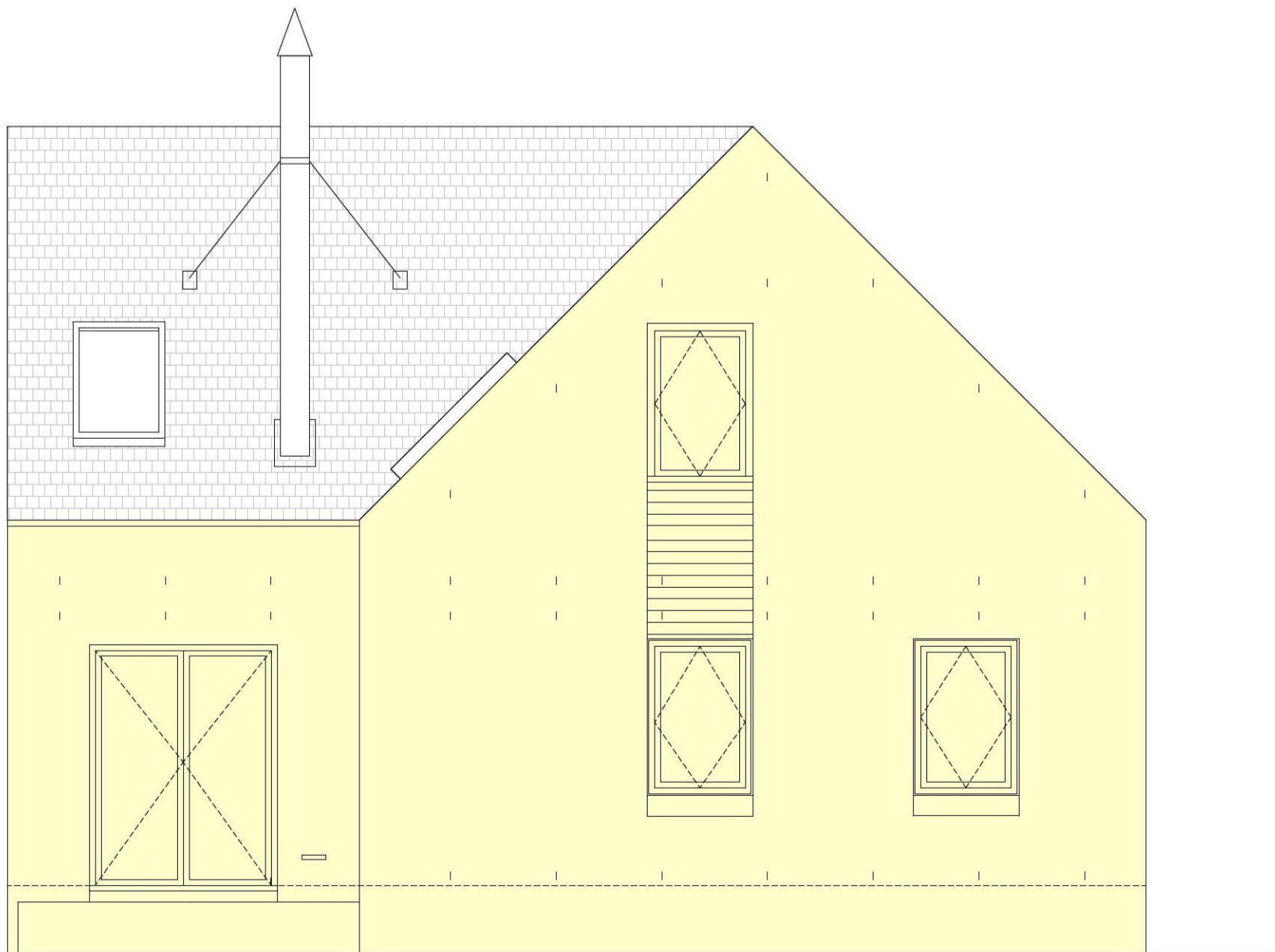
REFUSED
19.01004.DPP
14.02.2020



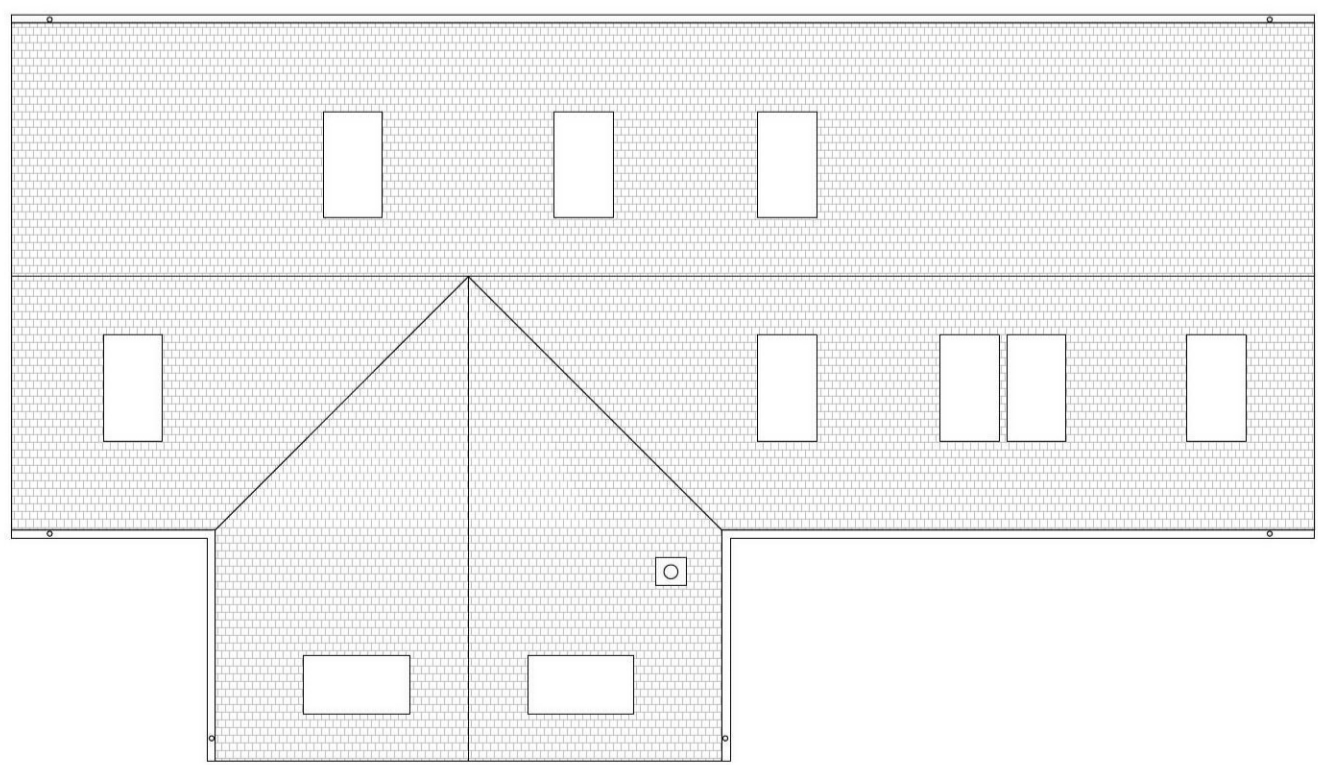
NORTH GABLE ELEVATION



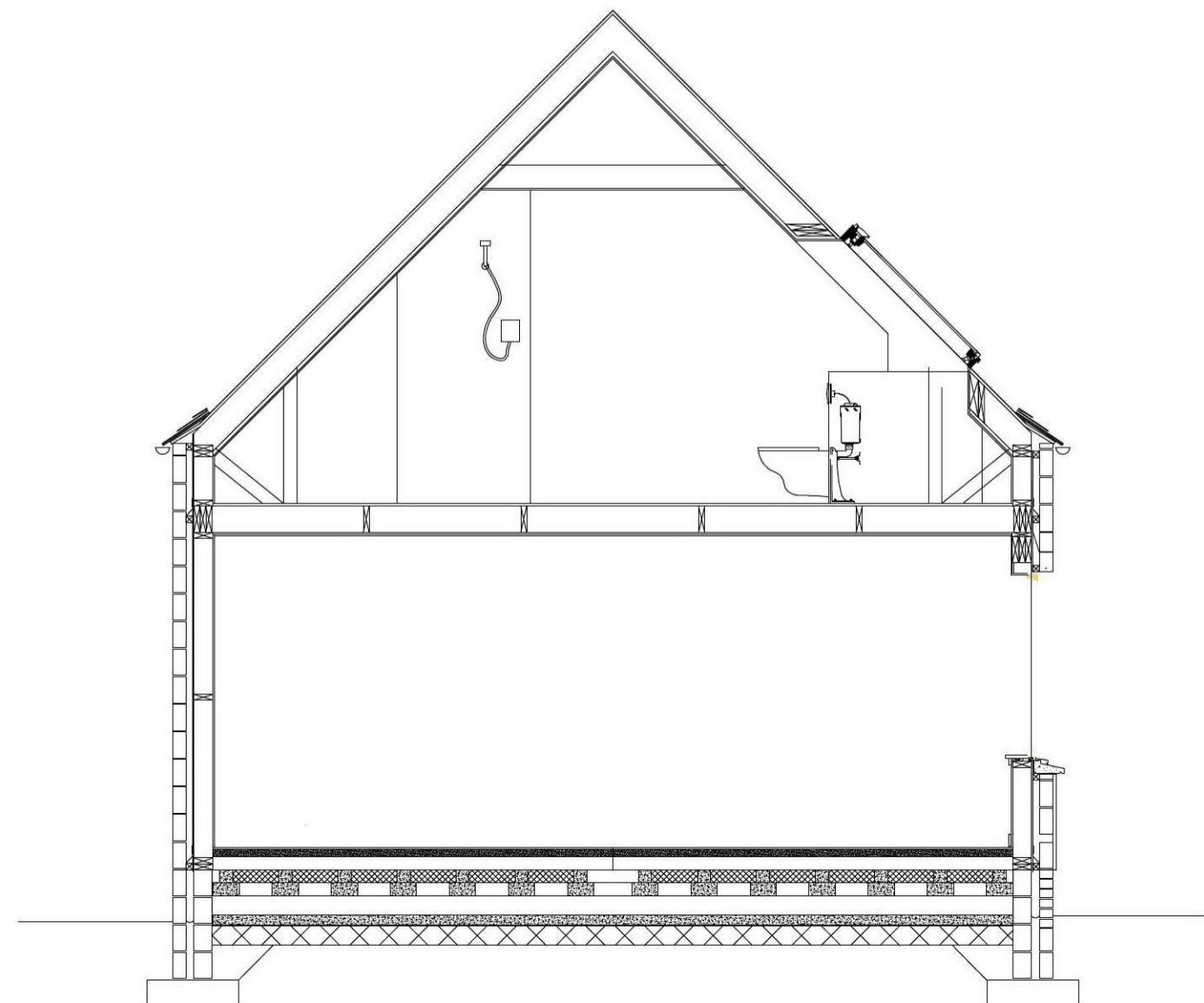
WEST ELEVATION



SOUTH GABLE ELEVATION



ROOF PLAN 1:100



SECTION BB

Client: Mr & Mrs Morleymor
Job: Creon Cottage
Cockmuir Farm
Title: Elevations and sections

Scale: 1:50
Date: 21.11.2019
Job No: 504
Dwg No: P04
Rev:

graymacpherson
architects LLP

Tigh-na-Geat House,
Damhead Farm, Lothianburn,
Edinburgh EH10 7DZ
tel. 0131 445 2223
fax. 0131 445 7377

MEMORANDUM

To: Whitney Lyndsay, Planning

From: Graham Drummond, Environmental Health

Your Ref: 19/01004/DPP

Our Ref: 20/00082/PH_42 GDJS

Date: 05 February 2020

Subject: Land South West of Cockmuir, Penicuik

Erection of dwelling house (retrospective).

Applicant: Mr Morleymor Fisher

This application refers to the retrospective erection of a two storey, detached, four apartment dwelling house on a plot of ground located to the south-west of Cockmuir Farm near Penicuik.

It should be noted that the plot of ground and location of the house straddles the boundary between Midlothian and Scottish Borders Councils.

The water supply to 'Creon Cottage' is the same private supply which serves the adjacent two properties at 'Taliska' and 'Cockmuir Farmhouse'. The water is supplied by a 30 meter deep borehole which is located within the grounds of 'Taliska'.

There is a centralised water treatment unit which serves the three properties and is located within an outbuilding at 'Cockmuir Farmhouse'. The unit comprises a 5 micron 'Puterex' sediment filter and a 'Philips TUV 55W' ultra violet filter. Water tests carried out in May 2015, October 2018 and November 2019 demonstrate that the bacteriological and chemical quality of the water complies with the standards set out in the Private Water Supplies Regulations. This should continue to be the case as long as regular maintenance and servicing of the filter units is carried out, which relies upon the agreement of the three house owners and access to Cockmuir Farmhouse.

Although the house has been erected on a site of previous agricultural land no information has been provided with regards to possible contamination and/or previous mineral workings.

I have no objections to this application subject to the following condition:-

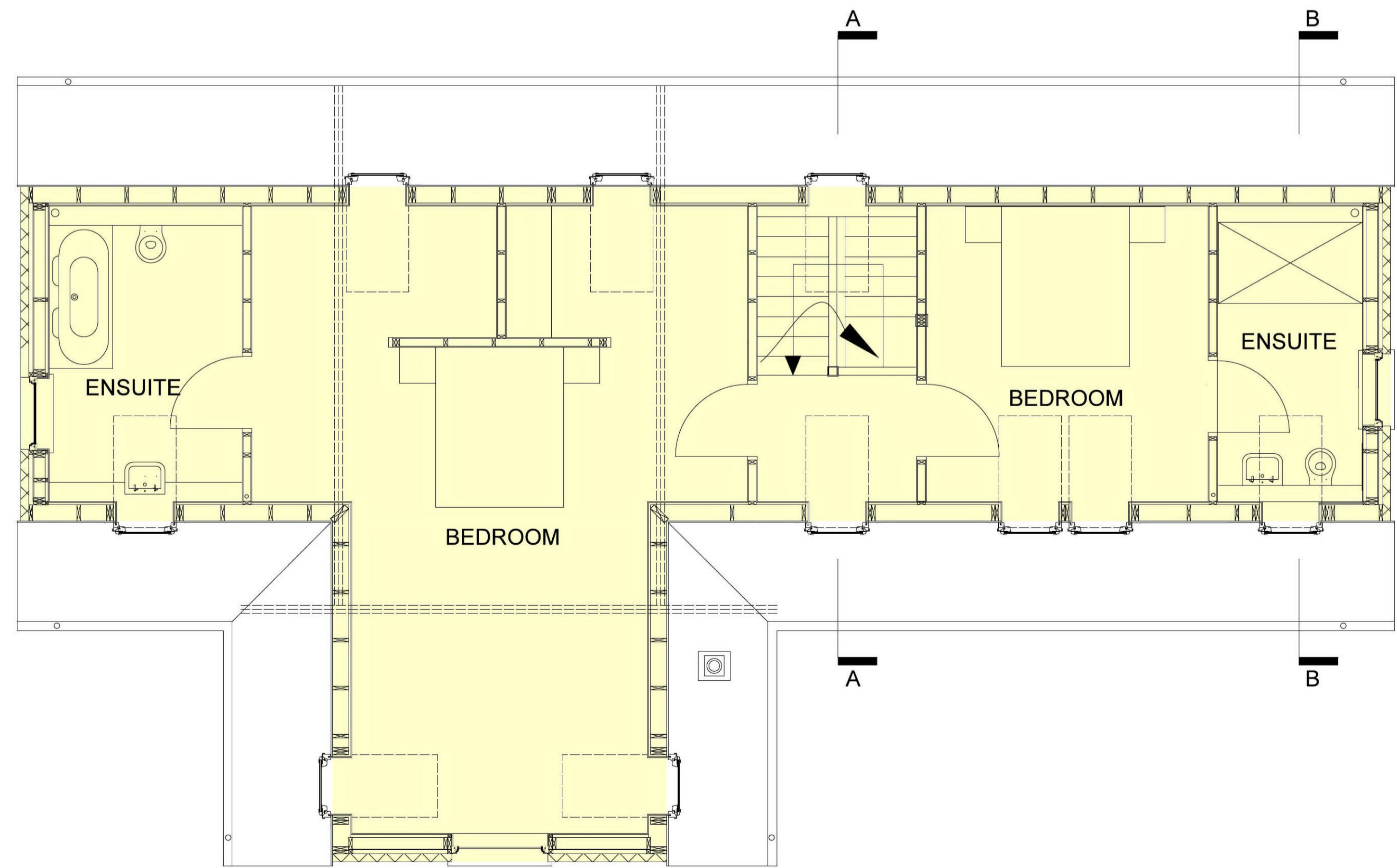
1. A scheme to deal with any contamination of the site and/or previous mineral workings is submitted to and approved by the Planning Authority. The scheme shall contain details of proposals to deal with any contamination and/or previous mineral workings and include:
 - a) The nature, extent and types 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) The condition of the site on completion of the specified decontamination measures.
2. On completion of the decontamination/remediation works referred to in condition 1, a validation report shall be submitted to the Planning Authority confirming that the works have been carried out in accordance with the approved scheme.

This copy has been made by or with the authority of Midlothian Council pursuant to Section 47 of the Designs and Patents Act 1988. Unless that Act provides a relevant exception to copyright, the copy must not be copied without the prior permission of the copyright owner.



GROUND FLOOR PLAN

REFUSED
19.01004.DPP
14.02.2020



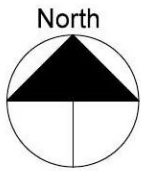
FIRST FLOOR PLAN



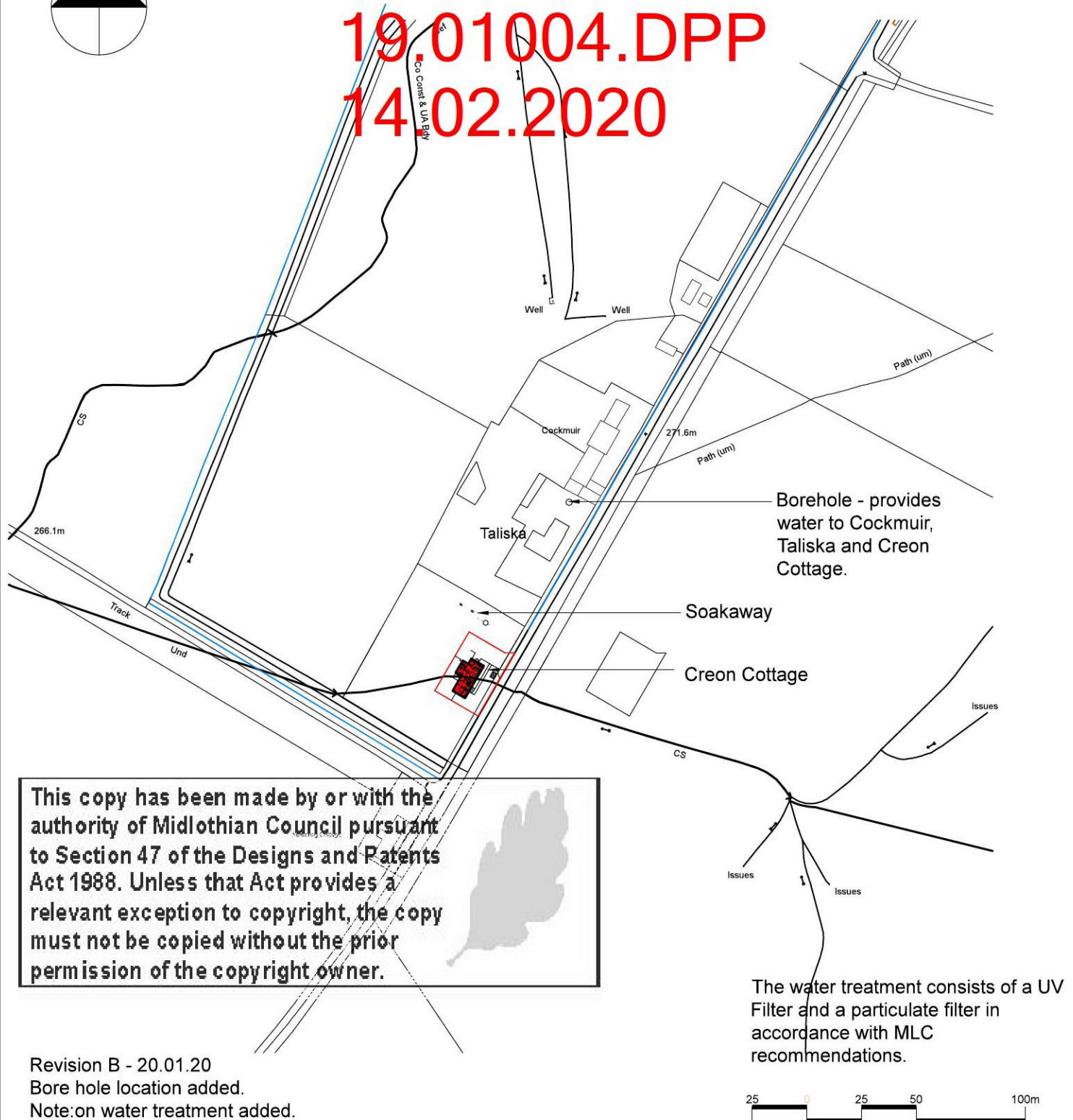
Client: Mr & Mrs Morley
Job: Creon Cottage
Cockmuir Farm
Title: Floor Plans
Scale: 1:50
Date: 21.11.2019
Job No: 504
Dwg No: P03
Rev:

graymacpherson
architects LLP

Tigh-na-Geat House,
Damhead Farm, Lothianburn,
Edinburgh EH10 7DZ
tel. 0131 445 2223
fax. 0131 445 7377



REFUSED
19.01004.DPP
14.02.2020



This copy has been made by or with the authority of Midlothian Council pursuant to Section 47 of the Designs and Patents Act 1988. Unless that Act provides a relevant exception to copyright, the copy must not be copied without the prior permission of the copyright owner.

Revision B - 20.01.20
Bore hole location added.
Note: on water treatment added.

25 25 50 100m

Client: Mr & Mrs Morleymore

Job:
Creon Cottage
Cockmuir Farm

Title:
Location Plan

Scale: 1:2500

Date: 20.01.20

Job No: 504

Dwg No: P01

Rev: B

note:
this drawing must not be scaled from or used for
measurements. check all dimensions on site.

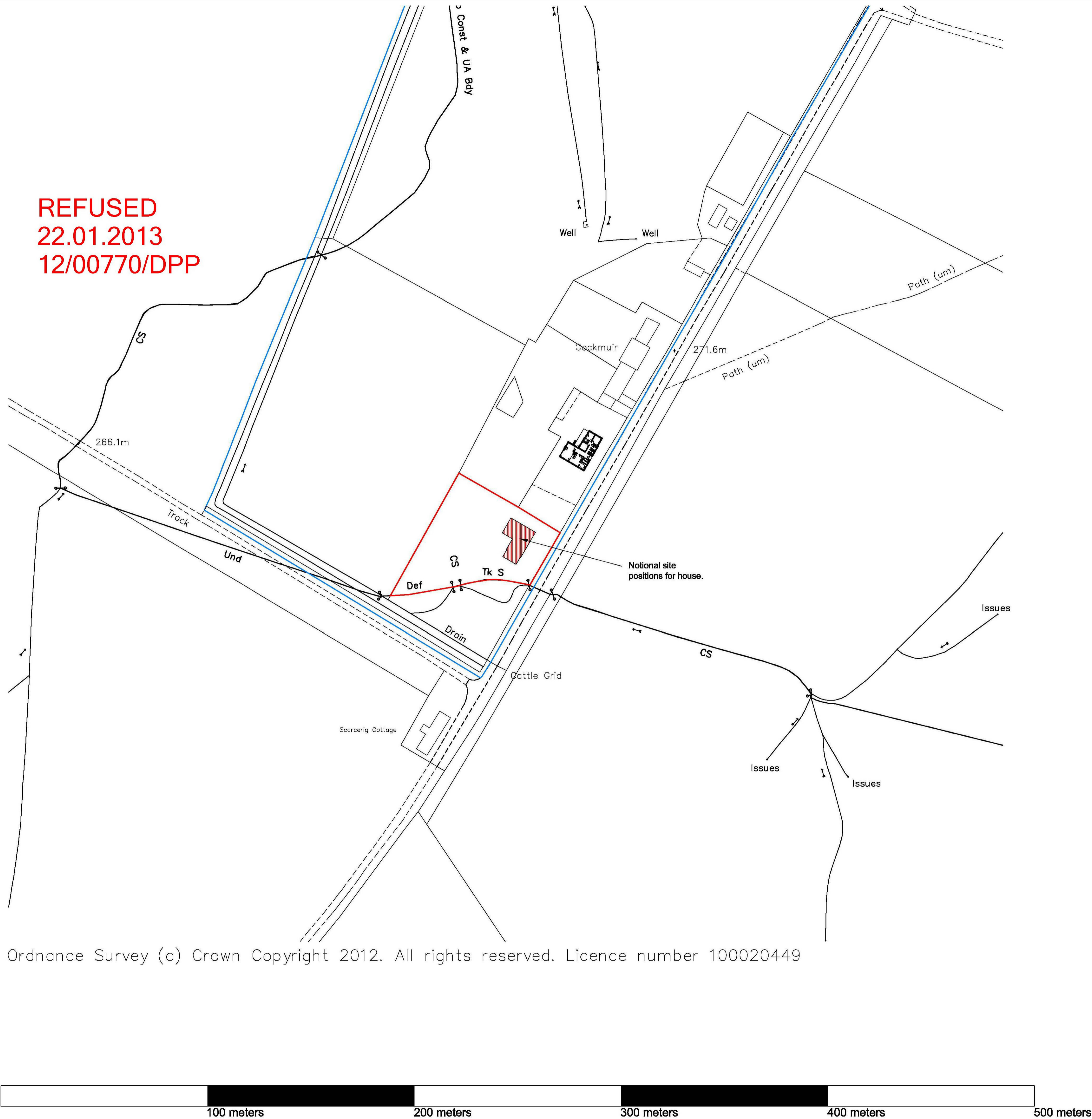
© gray macpherson architects LLP

graymacpherson
architects LLP

Tigh-na-Geat House,
Damhead Farm, Lothianburn,
Edinburgh EH10 7DZ

tel. 0131 445 2223
fax. 0131 445 7377

This copy has been made by or with the authority of Midlothian Council pursuant to Section 47 of the Designs and Patents Act 1988. Unless that Act provides a relevant exception to copyright, the copy must not be copied without the prior permission of the copyright owner.



© michael gray architects

note:
this drawing must not be scaled from or used for
measurements. check all dimensions on site.

Client: Mr Morleymor Fisher

Job: Cockmuir Farm

Title: Site Layout Plan

Scale: 1:1000

Date: 19/11/2012

Job No: 486

Dwg No: MC - PQ1

Rev:

michael gray
architects

Tigh-na-Geat House,
Damhead Farm, Lothianburn,
Edinburgh EH10 7DZ

tel: 0131 445 2223
fax: 0131 445 7377



Midlothian Council

Planning Enforcement Charter

A guide to enforcing planning controls

First Published by Midlothian Council May 2008
First updated March 2010
Amended March 2014
Reviewed February 2017

INTRODUCTION

An application for planning permission is required for most types of 'development' that takes place in Scotland. Development involves among other things building operations, for example, the erection of and alteration to buildings, and material changes in the use of land or buildings.

Some types of development are granted planning permission automatically without the need either to apply for or obtain planning permission from the Council. This exception is called 'Permitted Development'. The different types of permitted development are specified in the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended by the Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2011. The amendment Order came into force on 6 February 2012. Further guidance on these matters can be obtained from the Council's website at <http://www.midlothian.gov.uk> or from our Duty Planning Officer (tel: 0131 271 3302).

In certain cases, however, developers or householders undertake development without having either sought or obtained the required planning permission from the Council. In other cases they fail to keep to the terms of the planning permission that has been granted.

Councils have powers to enforce planning controls in such cases, if they consider it is in the public interest to do so. Councils monitor developments to ensure planning controls are being followed but there is also an important role for the public in alerting the Council to any problems they become aware of.

This Charter explains how the enforcement process works in Midlothian. The first part of the Charter outlines the key points about Planning Enforcement, including a brief description of existing planning enforcement powers.

This is followed by the Council's procedures relating to planning enforcement matters. These include the role of the Council and the service standards it sets itself. It also explains what happens at each stage of what can be a lengthy process.

The final part of the Charter contains the Council's detailed policies relating to planning enforcement.

These policies are based on current Government policy on planning enforcement, which is set out in Circular 10/2009, "Planning Enforcement." This document is available from the Scottish Executive and can be viewed electronically at <http://www.scotland.gov.uk/Topics/Planning>

Enforcement is one of the most complex parts of the planning system. We hope you will find this Charter useful and will let us know if you think we could improve the service further.

Further copies of this Charter are available on the Council's website, at all local libraries and from the Council's offices at Fairfield House, 8 Lothian Road, Dalkeith.

This Charter sets out the current powers available to planning authorities. The Planning etc (Scotland) Act 2006 introduces a number of changes. The guidance contained in this Charter will be revised as necessary as these changes are introduced to keep it up to date.

Part One
General overview of planning enforcement

1 KEY POINTS ON PLANNING ENFORCEMENT

A breach of planning control is not normally a criminal offence. The main purpose of planning enforcement is to resolve the problem rather than to punish the mistake. In addition, any action taken has to be appropriate to the scale of the breach. (Note however that once enforcement notices have been served non-compliance can lead to a criminal prosecution. Also, unauthorised alterations to a Listed Building or the demolition of a building in a Conservation Area without the relevant consents are likely to be a criminal offence).

Possible breaches of planning control can include:

- development works being carried out without the required planning permission or consent;
- unauthorised changes of use of land or buildings;
- failure to comply with conditions attached to a planning permission or consent;
- departures from approved plans or consent.

The Council has statutory powers to investigate breaches of planning control and the conditions attached to planning consents, and to take formal action where a satisfactory outcome cannot be achieved by negotiation. However, enforcement is also a *discretionary* power. That means that even where there is a breach of planning control the Council has to consider if it is in the public interest to take enforcement action. It is not required to take any particular action on a specific breach of planning control, and indeed can decide that no action is necessary.

Planning enforcement work also covers:

- dealing with cases of neglect of land or buildings, which are considered to have a detrimental effect on the amenity of any part of the Council's area.
- the display of advertisements such as billboards and advertisement hoardings without the benefit of advertisement consent.

The Council recognises that delays can be a source of considerable frustration to those reporting a suspected breach of planning control, particularly if they consider their amenity is affected.

The length of time required to resolve a case or take action can be affected by a number of factors. Progress can be delayed for the gathering of further evidence, to allow negotiations to take place or for formal procedures to be concluded. Similarly, an application to regularise the breach of control or an appeal against a decision of the planning authority can also delay resolution of the case.

Either of the Council's Planning Enforcement Officers will be pleased to offer advice on planning enforcement matters (tel. 0131 271 3313 or 0131 271 3319).

SERVICE STANDARD

By publishing our standards and targets, we aim to improve our enforcement service and make it responsive to the needs of our customers. We intend to review this charter bi-annually to ensure it remains relevant and up to date.

2 THE COUNCIL'S EXISTING PLANNING ENFORCEMENT POWERS

The powers available to the Council are set out in Part VI of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006 (<http://www.legislation.gov.uk/ukpga/1997/8/contents>) and (http://www.opsi.gov.uk/legislation/scotland/acts2006/asp_20060017_en_1) and in Part 1 Chapter IV of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (<http://www.legislation.gov.uk/ukpga/1997/9/contents>).

TYPES OF NOTICE

Breach of Condition Notice – this is used to enforce the conditions applied to any planning permission. It is effective from the date it is served. It may be used as an alternative to an enforcement notice (see below), and is served on any person carrying out the development and/or any person having control of the land. There is no right of appeal. Contravening a breach of condition notice can result in the Council deciding to prosecute, with a fine of up to £1,000. As an alternative to prosecution, the Council can decide to serve a **Fixed Penalty Notice** (see below) on the relevant person(s) who have not complied with the requirements of a breach of condition notice.

Enforcement Notice – this is generally used to deal with unauthorised development, but can also apply to breach of planning conditions. There are similar notices and powers to deal with listed buildings and advertisements (opposite and overleaf). An enforcement notice will specify a time period to take effect (a minimum of 28 days – but see the section overleaf on advertisements); the steps that must be taken to remedy the breach and the time for this to be completed. There is a **right of appeal** and the terms of the notice are suspended until a decision is reached. Failure to comply with an enforcement notice within the time specified is an **offence**, and may lead to a fine of up to £20,000 in the Sheriff Court. As an alternative to prosecution, the Council can decide to serve a **Fixed Penalty Notice** on the relevant person(s) who have not complied with the requirements of an enforcement notice. Failure to comply with an enforcement notice may also result in the Council taking **Direct Action** to correct the breach.

Fixed Penalty Notice – this new enforcement provision came into effect on 3 August 2009. Service of a Fixed Penalty Notice requires payment of a fine to be made directly to the planning authority within 30 days of service, which will be retained by them. The level of payment has been set at £2,000 for non-compliance with an enforcement notice, and £300 for non-compliance with a breach of condition notice. If payment is made within the first 15 days following service of a Fixed Penalty Notice the amount to be paid is reduced by 25%. It should be noted however that this type of notice cannot be served where a person has already been prosecuted for non-compliance with the same enforcement or breach of condition notice.

Listed Building Enforcement Notice – this must be served on the current owner, occupier and anyone else with an interest in the property. The procedures are similar to those outlined above. The notice must specify the steps to be taken to remedy the breach and a final date for compliance. Failure to meet the terms of the notice by the date specified is an offence.

There is the right of appeal to Scottish Ministers against the notice. Breaches of listed building control are a serious matter. It is a criminal offence to undertake unauthorised works to demolish, significantly alter, or extend a listed building. In certain circumstances, this can lead either to an unlimited fine or imprisonment.

Stop Notice – this is used in urgent or serious cases where unauthorised activity must be stopped, usually on grounds of public safety. When a stop notice is served, the planning authority must also issue an enforcement notice. There is no right of appeal against a stop notice and failure to comply is an offence. An appeal can be made against the accompanying enforcement notice. If a stop notice is served without due cause, i.e. the works or use of land are found to be lawful, the Council may face claims for compensation. The use of stop notices therefore needs to be carefully assessed by the Council.

Temporary Stop Notice – another new enforcement provision which came into effect on 3 August 2009. Service of a temporary stop notice is designed to strengthen existing stop notice procedures by giving provision for stopping a breach of planning control *immediately* (i.e. from the moment the notice is displayed on site) - in cases where it is considered expedient to do so. There is no Right of Appeal against service of a temporary stop notice to the Scottish Ministers. It can have effect for a maximum period of 28 days, and unlike a stop notice it does not have to be served with an enforcement notice. The same comments about claims for compensation applicable to the service of stop notices (above) apply to the service of temporary stop notices.

Notice under Section 33A – provision that similarly came into effect on 3 August 2009. This gives planning authorities the power to serve a notice that **requires** a retrospective planning application to be submitted to the planning authority for unauthorised development that has been already carried out. Under the terms of S.33A (2) of the Planning etc. (Scotland) Act 2006, service of this type of notice also constitutes “taking enforcement action.” Prior to the above date submission of a retrospective planning application could only be requested by the planning authority, and - in the event of non-submission - the Council had to assess whether it was expedient to take further enforcement action.

Planning Contravention Notice – this is used to obtain information about activities on land where a breach of planning control is suspected. It is served on the owner or occupier, on a person with any other interest in the land or who is carrying out operations on the land. They are required to provide information about operations being carried out on the land and any conditions or limitations applying to any planning permission already granted. Failure to comply with the notice within 21 days of it being served is an offence and can lead to a fine in the Courts.

Notice under Section 272 (of the Town and Country Planning (Scotland) Act 1997) – this provides limited powers to obtain information on interests in land and the use of land. Failure to provide the information required is an offence.

Notice under Section 179 (of the Town and Country Planning (Scotland) Act 1997) – this allows planning authorities to serve a notice on the owner, lessee or occupier of land which is adversely affecting the amenity of the area. This is also known as an ‘**Amenity Notice**’ and sets out the action that needs to be taken to resolve the problem within a specified period. There is a right of

appeal and the terms of the notice are suspended until a decision is reached. Failure to comply may also result in the Council taking **Direct Action**.

Other Powers

Advertisement Powers The Council's powers are set out in the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984.

The Council have powers to serve advertisement enforcement notices in relation to advertisements that are unauthorised in terms of the above regulations. A notice of this type can specify a time period (normally 28 days) for compliance with its terms. However, this period can be reduced to seven days if the Council believes there is an urgent need for the advertisement to be removed or altered in the interests of public safety. Displaying an advertisement in contravention of the regulations is an offence and, if convicted in court, an offender can be fined. The Council also has powers to remove or destroy placards and posters that do not have planning permission or deemed consent. If the person who put up the poster can be identified, they have to be given at least two days' notice that the Council intends to take the poster down. If they cannot be readily identified, then the advert can be removed immediately. The content of an advertisement is not covered by planning control. Any complaints about advertisement content should be made to the Advertisement Standards Authority.

Interdict and Interim Interdict – an interdict is imposed by the courts and is used to stop or prevent a breach of planning control. Court proceedings can prove costly and Councils normally only seek interdicts in serious cases or where enforcement notices have been ignored in the past. However a Council can seek an interdict in relation to any breach without having to use other powers first. Breaching an interdict is treated as a contempt of court and carries heavy penalties.

Direct Action – failure to comply with the terms of an enforcement notice within the time specified can result in the Council carrying out the specified work. The Council may recover any costs it incurs from the landowner.

Other Enforcement Related Requirements

The Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006, has introduced new requirements for developers. They are required to send prior notice to the planning authority of the date that work is expected to commence. This information needs to be submitted in advance of any work actually commencing on any development for which planning permission has been granted. They are further required to notify the planning authority when the work has been completed. These requirements apply to developments where planning permission has been granted on or after 3 August 2009. In addition (and for planning permissions granted on or after the same date) developers are required - for certain prescribed types of development – to display information regarding the development that is taking place on the site. Failure to submit a notice of Initiation of Development to the planning authority or to display a site notice (for certain types of development) constitutes a breach of planning control.

1 PROCEDURE FOR IDENTIFYING AND REPORTING ALLEGED BREACHES OF PLANNING CONTROL

Members of the public have a vital role in reporting suspected breaches of control. Any concerns should be raised with the Council. You can make preliminary enquiries by telephone, or in person at the Council offices, but these must be followed up in writing or by e-mail.

Information from The Public

The following information should be provided when reporting a suspected breach:

- the address of the property concerned;
- details of the suspected breach of planning control. Relevant dates should be provided, including dates when the works, use, or activity started, finished (if relevant), or whether it is still ongoing;
- your name, telephone number and address;
- an e-mail address if the complaint is submitted electronically;
- information on how the suspected breach harms you or why it is of concern to you; and
- whether you wish your enquiry to be treated confidentially*

**While the Council will do its best to honour requests for confidentiality, it is subject to the requirements of the Freedom of Information (Scotland) Act 2002 (FOI). In this regard the most recent rulings from the Commissioner indicate that information received in confidence in respect to enforcement is exempt from the requirements of the FOI. Requests for total confidentiality however may limit the ability of the authority to take formal action and cannot be guaranteed if the case leads to court proceedings.*

To report a suspected breach of planning control please write to:
Midlothian Council, Planning, Fairfield House, 8 Lothian Road, Dalkeith, EH22 3ZN **OR** alternatively, you can email planning.enforcement@midlothian.gov.uk (You should provide all of the abovementioned information about the suspected breach when doing so)

Anonymous enquiries will normally only be investigated in cases where the information received by the planning authority relates to allegations of unauthorised works taking place or having taken place to a Listed Building, or the unauthorised felling of trees within a conservation area. In both instances unauthorised works of this nature - without the benefit of the required consents - constitutes a criminal offence.

Monitoring conditions

Members of the public also have an important role in monitoring the conditions that are placed on certain planning consents. Details of the conditions are included within the decision notice attached to the permission. (For more recent planning permissions the relevant decision notice - including

the details of any planning conditions that accompany it (if applicable) - can be found at our online planning application facility (<https://planning-applications.midlothian.gov.uk/OnlinePlanning>). Alternatively, or for details of any planning conditions relating to older planning permissions, you can contact the Council's Duty Planning Officer (tel: 0131 271 3302). Planning condition monitoring is undertaken by the Council's Planning service. However, there are a large number of permissions granted each year and it is not practical, nor is it expected, that the Council will monitor all conditions at all times.

Your involvement is therefore invaluable in providing information where it is believed that conditions attached to the consent are not being complied with or have

not been discharged in a satisfactory way. Breaches of conditions are investigated in the same way as any other breach of planning control.

Registering complaints

Information received by the Council's Planning service is checked to ensure that it involves a possible breach of control and includes all the detail required for a possible investigation. After preliminary checking and compliance with the requirements for investigation, the complaint will be registered. Once registered, a written or e-mail acknowledgement will be sent to the person who made the complaint.

SERVICE STANDARD

If preliminary checking of a complaint suggests a breach of planning control, the complaint will be registered. Once registered, a written or e-mail acknowledgement will be sent to the person who made the complaint within (5) working days. This will include a reference number and contact details for the investigating officer.

2 PROCEDURES FOR INVESTIGATING AND ACTING ON POSSIBLE BREACHES OF PLANNING CONTROL

Investigation Procedures

A priority system is used for *investigating* registered complaints. The breaches of planning control that the Council considers to be of major significance will be given priority. This is based on matters such as the environmental effects and consequences of the breach, the significance of the site, and whether the works or activity subject of the complaint are actively ongoing or not.

Complaints relating to householder breaches of planning control that have been completed when first complained about will generally be given a lower priority for investigation than other more serious cases. (Examples here could be developments such as unauthorised gates, walls, fences, porches and garages that were already completed or substantially completed when first reported to the Council). Other cases that will generally be given a lower priority for investigation include householder or other developments, which, although unauthorised, are not considered on assessment of initial details provided to the Council to raise significant planning issues. In general, the cases described in this paragraph will be investigated in chronological order of receipt.

SERVICE STANDARD

In the investigation of breaches of planning control greater priority will be given to investigating the most significant breaches of planning control. These cases include:

- major breaches of planning control which may be causing serious and significant irreversible damage or harm to the environment, including to the built environment e.g. irreversible damage to listed buildings;
- breaches of planning control relating to major developments, particularly housing;
- breaches of planning control which have a significant detrimental impact on amenity or which cause significant harm;
- the unauthorised felling of trees, and related matters affecting trees protected by Tree Preservation Orders;
- breaches of householder planning control relating to ongoing unauthorised works which raise significant planning issues.

This priority system for the Council's investigation of registered breaches of planning control highlights the need, for anyone reporting a suspected breach of planning control to us, to provide the information outlined on the previous page.

The Council investigates around 300 cases of breaches of planning control each year. Giving priority to the investigation of registered complaints in this manner helps the Council to direct its enforcement resources to what it considers are the most important enforcement cases first.

Action Procedures

In some cases formal enforcement action may not be appropriate, even though planning controls have been breached. As stated previously, the purpose of planning enforcement is to resolve problems, not punish mistakes. The planning authority has to consider each case on its merits and decide on the best solution. The Council is unlikely to take enforcement action, for example, over developments which in planning terms are seen as acceptable. It may be more appropriate, in such cases, to seek or require the submission of a retrospective planning application. In many other instances negotiated solutions will be sought and achieved, and if successful, formal enforcement action may not be required.

The Council's detailed policies for taking enforcement action are described in PART THREE of this Charter. They also outline a range of possible options for remedying each breach of planning control. Only a relatively small number of cases require formal enforcement action. This normally involves either an enforcement or breach of condition notice being served on those involved in the development. Both types of notice include the following information:

- a description of the breach of control that has taken place;
- the steps that should be taken to remedy the breach;
- the timescale for taking these steps;
- the consequences of failure to comply with the notice; and
- where appropriate, any rights of appeal the recipient has and how to lodge an appeal.

SERVICE STANDARD

Where a planning breach cannot be resolved and action is justified, a formal notice will be served. This will normally be either an enforcement notice or a breach of condition notice. The Council will write to the recipient of the notice to explain what is required, the timescales involved and the available options to resolve the issue.

An Officer duly authorised by the Council has powers to enter any land to:

- establish if there has been a breach of planning control;
- check if there has been compliance with a formal notice;
- check if a breach has been satisfactorily resolved.

Where the terms of any enforcement notice are not complied with, every effort will be made to resolve the case to the satisfaction of the Council. Options include:

- direct action by the Council and/or
- the matter being referred to the Procurator Fiscal for possible prosecution.

Details of enforcement notices, breach of condition notices, notices under section 33A, stop notices and temporary stop notices are entered into an **Enforcement Register**. You can inspect these documents at Fairfield House, 8 Lothian Road, Dalkeith, during standard office hours.

Enforcement action has to be taken within **strict time limits**.

- A **four year** limit – this applies to “unauthorised operational development” (the carrying out of building, engineering, mining or other operations in, on, over or under land) and change of use to a single dwellinghouse. After four years following the breach of planning control, the development becomes lawful if no enforcement action has begun, and no enforcement action can be taken.
- A **ten year** limit – this applies to all other development including change of use (other than to a single dwellinghouse) and breaches of condition. After ten years, the development becomes lawful if no enforcement action has begun.

As noted in PART ONE of the Charter the persons served with an enforcement notice can **appeal** against it to the Scottish Ministers. In these cases, with the one or two exceptions explained in Part One, the notice will have no effect until, and unless, the appeal is dismissed by the Ministers.

3 PROCEDURE FOR MAKING A SUGGESTION OR COMPLAINT

The Council hopes the public will be satisfied with the planning enforcement service. However, if you have any suggestions, concerns or difficulties, we want to hear from you. We are committed to improving our service and dealing promptly with any failures.

We will consider all complaints made about the way an enforcement enquiry was dealt with. Some people may disagree with the outcome of an investigation but, of itself, that is not grounds for complaint. (*Part One of this Charter outlines details of the separate appeals' procedure for a recipient of an enforcement notice and Part Three explains the Council's policy when an appeal is made.*)

In the first instance, complaints should be discussed with the member of staff involved. If you are still dissatisfied, talk to the Lead Officer Major Developments and Enforcement tel. 0131 271 3311. If he/she is unable to help, you should be referred to the Planning Manager.

Complaints/suggestions/compliments can be received over the phone (tel 0131 561 5444), by e-mail (feedback@midlothian.gov.uk), by letter or completion of a Feedback form. Complaints will be acknowledged and resolved within 10 working days. However, if the issue is complex or there is a reason that a response cannot be made within that timescale, then someone will be in touch to agree a new response date. The complainant will be given a written response explaining the outcome of the investigation and any action that the Council proposes to take. If no action is proposed, the reasons will be explained.

SERVICE STANDARD

We will get in touch with you within 10 working days of receiving a complaint to let you know what is happening. We will monitor all complaints and suggestions made and use them to review and improve the service we provide.

If the complainant is not happy with the response, they can ask for the matter to be reviewed by the Chief Executive. He will acknowledge the complaint and arrange for the issue to be investigated and responded to within 10 days or within a timescale agreed with the complainant.

If having followed Midlothian Council's complaints procedure the complainant is still unhappy then they can take their complaint to an adjudicator and ask for the matter to be investigated. This will normally be the Scottish Public Sector Ombudsman and they do not usually accept complaints that have not been the subject of the Council's own complaints process first. They can be contacted at:

SPSO
FREEPOST EH641
Edinburgh EH3 0BR
Telephone: 0800 377 7339, or e-mail: ask@spsso.org.uk

Generally, you must contact the Ombudsman within 12 months.

1 THE ROLE OF PLANNING ENFORCEMENT

The planning system operates to regulate development and the use of land in the public interest. Planning enforcement has a key role to play in this respect. The purpose of planning enforcement is to control unauthorised activity and to remedy the effect of unauthorised development.

2 ENQUIRIES AND COMPLAINTS POLICY

A large volume of enquiries and complaints are received each year relating to the way in which land and buildings are being developed and used. This forms the main focus for planning enforcement work. All are recorded and subsequently investigated - apart from those that are either anonymous (with limited exceptions outlined in part Two of this Charter) or those that do not contain all of the written details outlined in [the](#) same section.

It is not the function of the planning authority to become involved in private neighbour disputes where no planning issue is evident. In addition, it is not the Council's role to mediate in private legal disputes relating, for example, to the ownership of land. Such cases will not be investigated by planning staff. However, where such enquiries and complaints relate to another statutory function of the Council, they will be passed to the relevant department for further investigation. In any event, the complainant will be advised accordingly.

Every recorded planning enquiry or complaint will be investigated and assessed on its own individual merits. In certain circumstances no further action will be required. This will include cases where:

- investigation reveals that no breach of a planning permission or consent is apparent;
- the activity or development under investigation is not development or is permitted development under the terms of the appropriate statutory legislation; and
- the use of land or buildings does not constitute a material change of use for which planning permission would be required.

The Council's procedures for *investigating* registered complaints about breaches of planning control are separately outlined in PART TWO of this Charter. Thereafter, priorities for further *action* will be determined by such factors as:

- the seriousness of the environmental impact of the breach of control, including the extent of the area over which such impact will be felt;
- the need to prevent irremediable damage to the environment or irreversible changes which will have a harmful impact;
- consideration of whether early action will prevent the development of a more serious situation in the future;
- the length of time over which the activity complained of has taken place.

3 ENFORCEMENT ACTION POLICY

The Council's procedures relating to taking enforcement action are separately described in PART TWO of this Charter. The following paragraphs describe the Council's detailed policies for taking enforcement action.

In cases where initial investigation indicates that there has been a possible breach of planning control, in terms of either the development or use of land and buildings, further research into the planning history of the site might be required. Certain operations and uses of land acquire immunity from planning enforcement action through the passage of time. It may therefore be necessary to determine when the development complained of commenced.

Where the Council is satisfied that a breach of planning control is involved, consideration will be given to the appropriate response to remedy the situation. The appropriate action to be taken will reflect the seriousness of the situation in terms of the environmental and amenity impact of the unauthorised development or use. Possible options, in ascending order of seriousness include:

- no further action to be taken, in view of the minor nature of the breach of control;
- an invitation to the owner or occupier of the land to submit an application for retrospective planning permission, if necessary, accompanied by the service of a Planning Contravention Notice and/or a Section 33A Notice;
- service of a Breach of Condition Notice, where conditions imposed on a planning permission are not being complied with;
- service of an Enforcement Notice;
- service of a Temporary Stop Notice;
- service of a Stop Notice, where it is essential that the unauthorised use or development be ceased in the short term, pending the outcome of any appeal against an Enforcement Notice; and
- an application to the courts for an interdict to restrain a breach of planning control.

In most cases, before any formal enforcement action is taken, the owner or occupier of the land will be given the opportunity to discuss the problem, and the Council will attempt to resolve matters through negotiation. The person in breach will be advised of the relevant enforcement action that will be taken if a satisfactory remedy cannot be achieved in this manner.

An exception to this approach will be necessary if urgent action is required to remedy a breach, which if allowed to continue could result in substantial environmental damage.

In any event, the Council will not allow protracted negotiations to hamper or delay the taking of formal enforcement action, if it is evident that the breach of planning control is unlikely to be resolved voluntarily.

The choice of appropriate formal enforcement action is at the discretion of the Council. Careful consideration will be given to the appropriate course of

action based on the circumstances of each case, and bearing in mind the concept of *Proportionality* referred to below.

The service of an Enforcement Notice carries with it a **right of appeal** to the Scottish Ministers. Pending the outcome of the appeal, the requirements of the notice are suspended. This can introduce a substantial delay in remedying breaches of planning control. Where it considers that circumstances warrant, the Council will serve a Stop Notice, require the unauthorised use or development to cease pending the outcome of the appeal.

Failure to comply with the requirements of a valid enforcement notice is a criminal offence, which may result in prosecution. Alternatively the Council may issue a Fixed Penalty Notice requiring the payment of a fine for non-compliance with a notice. In determining what further action to take in such circumstances, the Council will bear in mind that its primary objective is to ensure that the unauthorised use or development is ceased or otherwise brought under effective planning control, in order to remedy its undesirable effects on the environment. In certain circumstances, the Council has the statutory power to enter onto land and carry out the works required by the enforcement notice, and to recover the costs incurred from the owner of the land. The Council will use this power in cases where it is appropriate and practical.

4 PROPORTIONALITY

In the consideration of enforcement action, the Council will at all times seek to ensure that the action taken is commensurate with the breach of planning control to which it relates. The Council does not condone any breaches of planning control, and recognises that it is unsatisfactory that anyone should carry out development without submitting the necessary planning application and paying the appropriate fee. However, the taking of formal enforcement action solely to “regularise” an unauthorised development, which is otherwise wholly acceptable in planning terms, is not necessarily the most appropriate response, especially if it uses staff resources which could more effectively be occupied in pursuing more serious complaints. In addition, very trivial developments can occur which technically constitute breaches of planning control, but which have little or no planning significance. The Council will not generally pursue such matters by means of formal enforcement action.

In adopting this approach, the Council will bear in mind that individual householders, self-employed people, and even small businesses may not have ready access to relevant professional advice, and may have undertaken developments unwittingly without obtaining the appropriate planning permissions. In taking remedial action in such circumstances, it will be designed to be proportionate to the consequences and effects of the planning breach. Nevertheless, if a careful consideration of the planning circumstances warrants it, the Council may require the closure of unauthorised business premises, even if an alternative location is not readily available.

5 PUBLIC EXPECTATIONS POLICY

During the process of *investigating* a planning enquiry or complaint, based on information received from outwith the Planning Authority, the Council will do its best to honour requests for confidentiality of the informant. The complainant will also be kept informed either by telephone or in writing of any relevant subsequent findings or conclusions.

The owner and/or occupier(s) of the subject property or land will be contacted where possible during the initial stages of investigation. Any breach of planning control found, and the relevant planning issues, will be clearly explained to them.

The steps required to remedy any planning breach, and the options available to the Council for remedial action, will be outlined.

In deciding to take formal enforcement action, the Council cannot provide a guarantee of confidentiality for the original complainants. The Council may be required to justify any action that it takes, and to demonstrate that the development enforced against has a significant adverse effect on the locality. It will be in a better position to achieve this if it can provide the evidence of direct complaints from people adversely affected by the development, particularly if they are in writing. Nonetheless, the Council recognises that, in certain cases, the complainants have experienced fear, intimidation or harassment, and it will attempt to act with extreme sensitivity in such circumstances. However, its primary objective will be to take whatever action is necessary to remedy the breach of planning control, commensurate with the seriousness of the problem.

Throughout the whole process from initial investigation to taking statutory enforcement action (where necessary) great emphasis will be placed on a customer centred perspective. Enforcement staff will aim to provide a courteous and efficient service to all parties. Information and advice will be provided in plain language.

It must be recognised, however, that complaints may arise out of personal disputes which are long standing, and may be very heated. In such circumstances, staff will attempt to take a dispassionate stance, and, wherever possible, defuse the situation. The Council appreciates that there will be occasions when passions run high and tempers flare in the course of investigations of possible breaches of planning control. It will expect its staff to behave in a professional manner in such circumstances. Equally, it will not tolerate verbal abuse, or threats of physical violence to its staff, carrying out their legitimate tasks in the interests of the wider community. The Council will not hesitate to take whatever action is necessary to protect the health and safety of its staff.

It is inevitable that there will be cases which cannot be resolved to the satisfaction of the original complainants, and that they will therefore be disappointed in the outcome of the investigation. The Council will attempt to explain as fully as possible the reasons for its decision in such cases. It reserves the right, however, not to pursue further complaints which may arise over the same matter, where these might be interpreted as harassment of the person complained of.

6 SECTION 179 POLICY

The majority of complaints relate to positive actions on the part of the owner or occupier of land and buildings (for example, the carrying out of unauthorised building operations, or changing the use of premises without obtaining planning permission). However, a sizeable proportion are concerned with the neglect of land and buildings, resulting in their deteriorating to a condition where they are detrimental to the amenity of the surrounding area. Section 179 of the Town and Country Planning (Scotland) Act 1997 gives the planning authority the power to serve notices on the owners and occupiers of land which, as a result of its condition, is detrimental to the amenity of part of its district.

In most respects such notices are similar to enforcement notices served under other parts of the legislation, and the Council's planning enforcement policies will apply equally to them. The concept of proportionality is of particular relevance in that there may well be hundreds of small sites throughout Midlothian, the state of maintenance of which is less than desirable. To seek to treat all these sites by means of Section 179 notices would be out of all proportion to the problems which they cause. In general, the use of this power should be confined to the worst instances, where the condition of the land is particularly detrimental to amenity, by reason for example, of its size, prominent position, or location within an environmentally sensitive area.

Where such a notice is served, but is not complied with, the planning authority has the power to enter the land and carry out the outstanding work, thereafter seeking to recover the costs from the landowner. In such instances, the Council will generally utilise this power. However, it reinforces the need for careful consideration of the use of Section 179 notices, because of the practicality and resource implications of taking such action.

7 MONITORING AND REVIEW POLICY

Enforcement related work has traditionally been carried out in a reactive manner, by responding to enquiries and complaints from members of the public. A significant number of these relate to allegations of non-compliance with the terms of planning permissions. Subject to the availability of staff resources, the Council will therefore seek to monitor each year certain developments which are under construction or recently completed, to check compliance with approved plans and conditions. Priority will normally be given to major and more complex developments, which are often subject to a large number of conditions, on the basis that they will usually be prominently located and have a significant environmental impact.

Current Government guidance recognises that planning policies should be regularly reviewed and consistently applied. Enforcement policy will be reviewed periodically. Other factors which will assist in effective monitoring and review are:

- (a) liaison with other authorities;
- (b) co-ordination and co-operation between planning and legal staff;
- (c) close links with other Council Units which exercise related enforcement activities.

MIDLOTHIAN COUNCIL

DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

Planning Application Reference: 19/01004/DPP

Site Address: Land South-West of Cockmuir, Penicuik

Site Description:

The application site is situated at the southern end of the remote Ankriellaw to Cockmuir road, which is located to the south of Mount Lothian. Mount Lothian is on the Howgate to Temple road, the B6372.

The application site is host to a single storey detached dwellinghouse, with living accommodation afforded within the roof space, which is the subject of this planning application. The dwelling has a 'T' plan footprint and is of a traditional design. The application dwelling is finished in a white wet dash render with a slate pitched roof and brown timber framed windows and doors. There is some timber panelling design detailing within the rear, front and side elevations. There are 10 dark grey framed rooflights.

A gravel driveway has been formed to the east of the application site; there is a shipping container sited within the northern rear corner of the application site. The front and side site boundaries are defined and enclosed by a timber post and rail fence and the rear boundary and garden ground is enclosed by a timber fence.

The land immediately to the rear and sides of the application site is rough grazing land that is enclosed. Beyond this is more rough grazing land that is defined by a post and wire fence and conifer trees to the north-west and south.

There are three dwellings located to the north of the application site which includes Taliskar House which was granted planning permission in 2010, and beyond this is the old Cockmuir Farm complex of buildings; it is noted that retrospective planning permission was granted in 2018 for the subdivision to form two dwellinghouses. There is also a dwellinghouse located to the south of the application site within the Borders. These buildings are generally traditional in form and scale and have been laid out in a linear fashion along and fronting on to the road.

To the east of the application site is rough open farm land.

Proposed Development: Erection of dwellinghouse (retrospective)

Proposed Development Details:

Retrospective planning permission is sought for the erection of a dwellinghouse. The submitted application form noted that the works were completed on the 11th December 2018.

The application dwelling is a single storey dwellinghouse with living accommodation afforded within the roof space. The dwelling has a 'T' plan footprint and is of a traditional design. The application dwelling is finished in a white wet dash render with a slate pitched roof and brown timber framed windows and doors. There is some timber panelling design details within the rear, front and side elevations. There are 10 dark grey framed rooflights.

Within the submitted application form, it is noted that the dwellinghouse, as approved by the Scottish Borders, was erected to its current incorrect location as builder persuaded the client to move the house over to avoid boggy ground and that the boundary was erroneously forgotten about when the building was re-sited.

It is noted that the submitted site plan shows a septic tank and soakaway located to the north of the application site, out with the redline application site boundary. Therefore the septic tank and soakaway do not form part of the assessment of the application. These works will require planning permission.

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

In 2012 a planning permission in principle application was submitted which relates to part of the application site, planning ref: 12/00770/PPP. The application was for the erection of dwellinghouse which was refused in 2013 for the reasons:

- 1. It has not been demonstrated, to the satisfaction of the planning authority, that there is a requirement for the proposed house in connection with an establish countryside business or activity. In addition, the site is not located within an existing group of dwellings; nor does the proposal involve the redevelopment of a redundant building. For these reasons the proposal does not comply with the terms of policies RP1 and DP2 of the adopted Midlothian Local Plan.*
- 2. It has not been demonstrated, to the satisfaction of the planning authority, that the proposed dwellinghouse will not have a significant adverse impact on the character and appearance of the local landscape. Therefore, the proposal does not comply with the terms of policy RP7 of the adopted Midlothian Local Plan.*

It is noted that at the same time as the above planning application submitted, an application for planning permission in principle was submitted to the Scottish Borders on land adjacent to the abovementioned application site and also relates to part of the current application site, for the erection of a dwellinghouse, planning ref: 12/01445/PPP. This application was granted planning permission by Scottish Borders in 2014. Subsequently, an approval of matters in all conditions of planning permission in principle 12/01445/PP was approved in 2014, planning ref: 14/00321/AMC.

Consultations:

Scottish Water offered no objection but advised that there is no public waste or water infrastructure in the area and that private options should be investigated. It is noted that the applicant has a private water supply and a septic tank and soakaway located out with the application site. **Scottish Water** also advised that they will **not** accept any surface water connections into the combined sewer system.

The **Council's Environmental Health Manager** advised that the application property is served by the same private supply which serves the adjacent two properties at 'Taliskar' and 'Cockmuir Farmhouse'. Water tests carried out in May 2015, October 2018 and November 2019 demonstrate that the bacteriological and chemical quality of the water complies with the standards set out in the Private Water Supplies Regulations; this should continue to be the case as long as regular maintenance and servicing of the filter units is carried out, which relies upon the agreement of the three house owners and access to Cockmuir Farmhouse. The **Council's Environmental Health Manager** advised that although the house has been erected on a site of previous agricultural land no information has been provided with regards to possible contamination and/or previous mineral workings. Therefore, the **Council's Environmental Health Manager** offered no objection subject to conditions being attached in relation to contaminated land/site investigations.

The **Council's Policy and Road Safety Manager** offered no objection.

The **Health and Safety Executive (HSE)** do not advise against, consequently, **HSE** does not advise, on safety grounds, against the granting of planning permission in this case

National Grid offered no Objection to the above proposal which is in close proximity to a High-Pressure Gas Pipeline.

SGN advised that there should be no mechanical excavations taking place above or within 0.5m of a low/medium pressure system or above or within 3.0m of an intermediate pressure system. The applicant should, where required, confirm the position using hand dug trial holes.

As part of the application site is located within the **Scottish Borders** there was a requirement to consult with **Scottish Borders**. **Scottish Borders** offered no response.

Representations: No representations received.

Relevant Planning Policies:

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

Policy **RD1: Development in the Countryside** states that development in the countryside will only be permitted if:

- it is required for the furtherance of agriculture, including farm related diversification, horticulture, forestry, countryside recreation or tourism; or

- it accords with policies RD2, MIN1, NRG1 or NRG2; or
- it accords with the Council's Supplementary Guidance on *Development in the Countryside and Green Belt*.

The following circumstances are exceptions to the above requirements to demonstrate that the housing is for the furtherance of a countryside activity:

- housing groups (allowing 1 new dwelling during the plan period where there are 5 existing units); or
- conversions of redundant farm buildings or other non-residential buildings; or
- redevelopment of redundant farm buildings or other non-residential buildings; or
- enabling development where it can be clearly shown to be the only means of preventing the loss of a heritage asset and securing its long-term future.

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

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

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

Supplementary Guidance: Housing Development in the Countryside and Green Belt provides guidance regarding the circumstances in which exceptions may be made to the requirements to demonstrate that the proposed housing is for the furtherance of a countryside activity, including: the circumstances when/where new housing may be appropriate within the context of housing groups; when the conversion/redevelopment of farm buildings or other non-residential buildings would be acceptable; and enabling development.

Planning Issues:

The main planning issue to be considered is whether or not the proposal complies with the development plan policies and, if not, whether there are any material planning considerations which would otherwise justify approval.

Principle

Policy RD1 of the local development plan seeks to protect the countryside from unacceptable development. The policy provides a list of land uses that are considered acceptable in the countryside and sets out particular circumstances where new housing may be acceptable within the countryside. This is clarified further within the adopted Supplementary Guidance on Housing Development in the Countryside and Greenbelt.

Development within the countryside needs to demonstrate a requirement for a countryside location. Unallocated housing development within the countryside will only be permitted where; it demonstrates it is required for the furtherance of an

established countryside activity (agriculture, horticulture, forestry, countryside, recreation or tourism), it is classed as a housing grouping development, it comprises the conversion of redundant rural buildings, it comprises of the redevelopment of a redundant rural building or is required to secure the long term future of a heritage asset. It is also noted that not all rural development requires an associated dwellinghouse.

Retrospective planning permission is sought for the erection of a new dwellinghouse adjacent to a dwelling at Cockmuir. The applicant has submitted no supporting statement or justification for the requirement of a dwellinghouse in this location. Therefore, it has not been demonstrated that the proposed house is required in connection with, or to further, an established countryside activity or business. There is no way to support the proposed house through this part of the policy.

Cockmuir is not identified as one of the established acceptable groups of five or more dwellings in the approved SPG on housing groups. Therefore there is no scope to approve a further house in this area based on it being within an established group of dwellings.

The neighbouring dwellinghouse, Taliskar House, was granted planning permission in 2010 and was justified as a redevelopment of a redundant farm building. As the application site was previously an area of flat paddock ground, with no buildings located on it, the same justification for a dwellinghouse cannot be used in this case.

Therefore, the proposal is contrary to adopted policy RD1 Development in the Country Site and the adopted Supplementary Guidance: Housing Development in the Countryside and Green Belt.

Planning history

The application dwellinghouse has been sited so as to straddle the boundary of both the Scottish Borders and Midlothian Council areas, with the majority of the application site being located within Midlothian. Furthermore, it is noted that the associated septic tank and soakaway are located outwith the application site boundary, on land also within Midlothian Council.

As noted above, planning permission was refused in 2013 for the erection of a dwellinghouse adjacent to the application site, on land located wholly within Midlothian Council. Whereas, planning permission was granted for the erection of a dwellinghouse on the neighbouring land located wholly within the Borders.

The granting of planning permission for a dwellinghouse, located on land adjacent to the application site, wholly within the Scottish Borders does not outweigh the fact that there is no policy support for a dwellinghouse in this rural location.

Design

As stated above, there is no support in principle for a house on this site. Therefore, the presence of a house on this site is having more of an adverse impact on the character and appearance of the area than what is considered acceptable. Despite this, the general approach to the design of the dwellinghouse is not incompatible with

an approach which could potentially be supported on an otherwise acceptable plot within the countryside.

Amenity

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

The proposed dwelling satisfies the minimum gable to gable distance from Taliskar House and Scarcerig, as was required through policy DP2 of the previous local plan.

The daylight and sunlight previously enjoyed by the neighbouring dwellings will not be affected.

The application dwelling does not have an overbearing impact on the rear gardens and elevations of the neighbouring properties.

Overall, the retrospective dwellinghouse will not result in the harmful loss of neighbour amenity.

The application dwelling is sited and orientated so as to have an adequate outlook.

The application dwelling has a small amount of enclosed rear garden ground. The application dwellinghouse is afforded approximately 110m² of enclosed rear garden ground. This meets the minimum requirements required by policy DP2.

Overall, the application will be afforded an acceptable level of amenity.

Road Safety

The Council's Policy and Road Safety Manager offered no objection to the planning application and therefore there are no parking or road safety concerns.

Other matters

Within the submitted application form, it is noted that the dwellinghouse, as approved by the Scottish Borders, was erected to its current incorrect location as builder persuaded the client to move the house over to avoid boggy ground and that the boundary was erroneously forgotten about when the building was re-sited. There was no supporting evidence submitted to justify the relocation of the dwellinghouse. Furthermore, there was no engagement with Midlothian Council's Planning Department prior to the erection of the dwellinghouse. The justification noted within the submitted application form does not outweigh the lack of policy support for a dwellinghouse in this location.

The applicant was refused planning permission for a house by Midlothian Council on a neighbouring site fully within Midlothian Council's jurisdiction. The applicant was granted planning permission for a house by Scottish Borders Council on a neighbouring site fully within Scottish Borders Council's jurisdiction. The applicant

built the house on a site which did not benefit from planning permission. The current retrospective application is being assessed against Midlothian Council's current relevant planning policies and, as such, it is recommended that the application is refused. Enforcement action will be necessary to ensure that the house is removed.

Overall, all relevant matters have been taken into consideration in determining this application.

Recommendation: Refuse planning permission.

SCOTTISH BORDERS COUNCIL

**APPLICATION TO BE DETERMINED UNDER POWERS DELEGATED TO
CHIEF PLANNING OFFICER**

PART III REPORT (INCORPORATING REPORT OF HANDLING)

REF : 19/01680/FUL

APPLICANT : Mr & Mrs Morleymor Fisher

AGENT : Gray Macpherson Architects

DEVELOPMENT : Erection of dwellinghouse (retrospective)

LOCATION: Creon Cottage
Cockmuir
West Linton
Scottish Borders
EH26 8QJ

TYPE : FUL Application

REASON FOR DELAY:

DRAWING NUMBERS:

Plan Ref	Plan Type	Plan Status
P01 rev a	Location Plan	Approved
P02	Existing Block Plan	Approved
P03	Existing Plans	Approved
P04	Existing Elevations	Approved

NUMBER OF REPRESENTATIONS: 0

SUMMARY OF REPRESENTATIONS:

No representations were received.

Consultation responses were received from:

Roads - no comment. The access to the site is wholly within Midlothian; Environmental Health - no objection; Health and Safety Executive - HSE does not advise, on safety grounds, against the granting of planning permission in this case.

PLANNING CONSIDERATIONS AND POLICIES:

Scottish Borders Local Development Plan 2016
PMD2 - Quality standards
HD2 - Housing in the countryside
HD3 - Protection of residential amenity
EP13 - Trees, woodlands and hedgerows
EP16 - Air quality
IS2 - Developer contributions
IS7 - Parking provision and standards
IS9 - Waste water treatment and sustainable urban drainage

The site is not strategic, therefore the policies contained within SESplan have not been considered.

The following council guidance is material:
Development contributions;
New housing in the Borders countryside;
Placemaking and design;
Privacy and sunlight guide;
Waste management.

Recommendation by - Ranald Dods (Planning Officer) on 18th February 2020

Site and proposal

The site is located within the countryside and straddles the boundary of Scottish Borders and Midlothian Council areas. Approximately 421m squared of the site and 74m squared of the house lie within Midlothian and 300m squared and 61m squared (respectively) lie within Scottish Borders. Midlothian Council will determine the application in relation to their local development plan.

This application is made in retrospect for planning permission for a single storey with attic accommodation house.

Site history

The portion of the site within the Borders overlaps land on which there is planning history. That is: 12/01445/PPP, erection of dwellinghouse, granted 3 Mar 14; 14/00321/AMC, approval of matters in all conditions in 12/01445/PPP, granted 30 Jun 14. That permission has now lapsed.

Principle

The principle of a house has already been accepted on a site adjacent to and overlapping this proposal (12/01445/PPP and 14/00321/AMC). In terms of policy HD2, there is an existing building group of three houses, even though two of those houses are within Midlothian. The house which is the subject of this application relates well to the building group. The principle of a house as proposed is acceptable in this instance.

Design

The design of the house proposed in this application is broadly the same as was approved in the grant of 14/00321/AMC, albeit some 2m less wide and with a slightly different fenestration pattern. The design and specifications of the house are acceptable in this particular context.

Amenity and privacy

The site is sufficiently distant from the neighbouring properties and does not to raise privacy or amenity issues. No overshadowing will result.

Trees

There are trees adjacent to the southern boundary of the site. They are not covered by a tree preservation order and, although they are not outstanding specimens, they do make a positive contribution to the amenity of the area. The house appears to be outwith the root protection area of those trees and they do not appear to have been affected by the construction of the house .

Air quality

A flue serving a solid fuel stove has been installed. Given the rural setting of the property and the location of the flue in relation to the adjoining properties, it is unlikely that this will have a negative effect on local air quality and therefore complies with policy IS16

Developer contributions

A contribution for education provision would be required if the house were entirely within Scottish Borders. As it is, the majority of the house lies within Midlothian and therefore any children arising from the house would be educated within that council area. As a result, there will be no burden on the Borders education estate and a contribution is not required.

Roads issues

A single carriageway public road which is wholly within Midlothian leads to the site. The access to the site and parking area are also within Midlothian. Roads have no objection to the proposal.

Services

The application form does not specify whether the house is connected to a private water supply or to the public mains and a condition is recommended in that regard. Foul drainage would be by means of a private system. Having checked with Building Standards, I can confirm that the foul drainage discharge is within Midlothian. There is sufficient space within the site for the storage of general waste and recycling containers.

Conclusion

Subject to a legal agreement and compliance with the schedule of conditions, the development will accord with the relevant provisions of the Local Development Plan 2016 and there are no material considerations that would justify a departure from these provisions.

REASON FOR DECISION :

Subject to compliance with the schedule of conditions, the development will accord with the relevant provisions of the Local Development Plan 2016 and there are no material considerations that would justify a departure from these provisions.

Recommendation: Approved - conditions & informatives

- 1 The dwellinghouse hereby approved shall not be occupied until a report, by a suitably qualified person, has been submitted to and approved in writing by the planning authority, demonstrating the provision of an adequate water supply to the development in terms of quality, quantity and the impacts of this proposed supply on surrounding supplies or properties. The provisions of the approved report shall be implemented prior to the occupation of the dwellinghouse/s hereby approved.
Reason: To ensure that the site is adequately serviced without a detrimental effect on the water supplies of surrounding properties.

Informatives

It should be noted that:

- 1 Wood Burning Stoves
If wood burning stoves are to be installed as part of this development and so long as it is less than 45kW no further information needs to be provided. If it is greater than 45kW then the developer needs to declare this and provide additional information so that a screening assessment can be carried out

“Photographs taken in connection with the determination of the application and any other associated documentation form part of the Report of Handling”.

MEMORANDUM

To: Ms Whitney Lindsay Planning Officer, Planning & Development

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

Your Ref: Planning Application Number : 19/01004/DPP

Date: 27 January 2020

Subject: **ERECTION OF DWELLINGHOUSE (retrospective application)**
LAND SOUTH WEST OF COCKMUIR, PENICUIK

I have no objection to the application.

Thank you for consulting SBC on this cross-boundary application.

Site

The site is located within the countryside and straddles the boundary of Scottish Borders and Midlothian Council areas. Approximately 421m² of the site and 74m² of the house lie within Midlothian and 300 m² and 61m² (respectively) lie within Scottish Borders. The majority of the development is therefore outwith the SBC area.

Site history

The portion of the site within the Borders overlaps land on which there is planning history. That is: 12/01445/PPP, erection of dwellinghouse, granted 3 Mar 14; 14/00321/AMC, approval of matters in all conditions in 12/01445/PPP, granted 30 Jun 14. The house which is the subject of the current application does not overlap the footprint of the house proposed in the AMC. The permission granted under the AMC has now lapsed.

Policies

Scottish Borders Local Development Plan 2016

PMD2 - Quality standards

HD2 - Housing in the countryside

HD3 - Protection of residential amenity

EP13 - Trees, woodlands and hedgerows

EP16 - Air quality

IS2 - Developer contributions

IS7 - Parking provision and standards

IS9 - Waste water treatment and sustainable urban drainage

IS11- Hazardous development

The site is not strategic, therefore the policies contained within SESplan have not been considered.

The following SBC guidance is material:

Development contributions;

New housing in the Borders countryside;

Placemaking and design;

Privacy and sunlight guide;

Trees and development

Waste management.

Principle

The principle of a house has already been accepted on a site adjacent to and overlapping this application site (12/01445/PPP and 14/00321/AMC). The key policy against which this application (as it relates to SBC) will be assessed is HD2, housing in the countryside. In terms of that policy, there is an existing building group of three houses, even though two of those houses are within Midlothian. The house which is the subject of this application relates well to the building group. The principle of a house as proposed is acceptable in this instance. I have taken advice from the council's Legal Department. As the majority of the site lies within Midlothian and the only road access to the site is also in that area, it would seem reasonable that any child product arising from the house would ordinarily be expected to be educated within the Midlothian school estate. I have consulted my colleagues in Building Standards and am advised that the foul drainage outfall for the house lies within Midlothian. The house lies within the inner zone (7926) of the National Grid Gas feeder pipeline. Having consulted HSE, they do not advise against granting permission.

Although the principle is acceptable in terms of SBC policy, it will be for Midlothian Council to determine the application in relation to their local development plan. Any LRB or enforcement procedures are likely to be to Midlothian rather than Scottish Borders Council.

Yours sincerely,

Ranald Dods
Planning Officer
Development Management
Regulatory Services
Scottish Borders Council

Tel: 01835 825 239
Mobile: 0774 123 1272
E-mail: ranald.dods@scotborders.gov.uk



 Please do not print this e-mail unless absolutely necessary - SAVE PAPER

Find out more about Scottish Borders Council: [Web](#) | [Twitter](#) | [Facebook](#) | [Flickr](#) | [YouTube](#)

***** This email and any files transmitted with it are privileged, confidential and subject to copyright. Any unauthorised use or disclosure of any part of this email is prohibited. If you are not the intended recipient please inform the sender immediately; you should then delete the email and remove any copies from your system. The views or opinions expressed in this communication may not necessarily be those of Scottish Borders Council. Please be advised that Scottish Borders Council's incoming and outgoing email is subject to regular monitoring and any email may require to be disclosed by the Council under the provisions of the Freedom of Information (Scotland) Act 2002 .



13th January 2020

Midlothian Council
Fairfield House 8 Lothian Road
Dalkeith
EH22 3ZN

Development Operations
The Bridge
Buchanan Gate Business Park
Cumbernauld Road
Stepps
Glasgow
G33 6FB

Development Operations
Freephone Number - 0800 3890379
E-Mail - DevelopmentOperations@scottishwater.co.uk
www.scottishwater.co.uk

Dear Local Planner

EH26 Penicuik Cockmuir Land South West of
PLANNING APPLICATION NUMBER: 19/01004/DPP
OUR REFERENCE: 787115
PROPOSAL: Erection of dwellinghouse (retrospective)

Please quote our reference in all future correspondence

Scottish Water has no objection to this planning application; however, the applicant should be aware that this does not confirm that the proposed development can currently be serviced and would advise the following:

Water

- Unfortunately, according to our records there is no public Scottish Water, Water infrastructure within the vicinity of this proposed development therefore we would advise applicant to investigate private options.

Foul

- Unfortunately, according to our records there is no public Scottish Water, Waste Water infrastructure within the vicinity of this proposed development therefore we would advise applicant to investigate private treatment options.

Surface Water

For reasons of sustainability and to protect our customers from potential future sewer flooding, Scottish Water will **not** accept any surface water connections into our combined sewer system.

There may be limited exceptional circumstances where we would allow such a connection for brownfield sites only, however this will require significant justification taking account of various factors including legal, physical, and technical challenges. However it may still be deemed that a combined connection will not be accepted. Greenfield sites will not be considered and a connection to the combined network will be refused.

In order to avoid costs and delays where a surface water discharge to our combined sewer system is proposed, 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. We will assess this evidence in a robust manner and provide a decision that reflects the best option from environmental and customer perspectives.

General notes:

- **Scottish Water asset plans can be obtained from our appointed asset plan providers:**

Site Investigation Services (UK) Ltd

Tel: 0333 123 1223

Email: sw@sisplan.co.uk

www.sisplan.co.uk

- Scottish Water's current minimum level of service for water pressure is 1.0 bar or 10m head at the customer's boundary internal outlet. Any property which cannot be adequately serviced from the available pressure may require private pumping arrangements to be installed, subject to compliance with Water Byelaws. If the developer wishes to enquire about Scottish Water's procedure for checking the water pressure in the area then they should write to the Customer Connections department at the above address.
- If the connection to the public sewer and/or water main requires to be laid through land out-with public ownership, the developer must provide evidence of formal approval from the affected landowner(s) by way of a deed of servitude.
- Scottish Water may only vest new water or waste water infrastructure which is to be laid through land out with public ownership where a Deed of Servitude has been obtained in our favour by the developer.
- The developer should also be aware that Scottish Water requires land title to the area of land where a pumping station and/or SUDS proposed to vest in Scottish Water is constructed.
- **Please find all of our application forms on our website at the following link <https://www.scottishwater.co.uk/Business-and-Developers/Connecting-to-Our-Network>**

Next Steps:

- **Single Property/Less than 10 dwellings**

For developments of less than 10 domestic dwellings (or non-domestic equivalent) we will require a formal technical application to be submitted directly to Scottish Water or via the chosen Licensed Provider if non domestic, once full planning permission has been granted. Please note in some instances

we will require a Pre-Development Enquiry Form to be submitted (for example rural location which are deemed to have a significant impact on our infrastructure) however we will make you aware of this if required.

- **10 or more domestic dwellings:**

For developments of 10 or more domestic dwellings (or non-domestic equivalent) we require a Pre-Development Enquiry (PDE) Form to be submitted directly to Scottish Water prior to any formal Technical Application being submitted. This will allow us to fully appraise the proposals.

Where it is confirmed through the PDE process that mitigation works are necessary to support a development, the cost of these works is to be met by the developer, which Scottish Water can contribute towards through Reasonable Cost Contribution regulations.

- **Non Domestic/Commercial Property:**

Since the introduction of the Water Services (Scotland) Act 2005 in April 2008 the water industry in Scotland has opened up to market competition for non-domestic customers. All Non-domestic Household customers now require a Licensed Provider to act on their behalf for new water and waste water connections. Further details can be obtained at www.scotlandontap.gov.uk

- **Trade Effluent Discharge from Non Dom Property:**

Certain discharges from non-domestic premises may constitute a trade effluent in terms of the Sewerage (Scotland) Act 1968. Trade effluent arises from activities including; manufacturing, production and engineering; vehicle, plant and equipment washing, waste and leachate management. It covers both large and small premises, including activities such as car washing and launderettes. Activities not covered include hotels, caravan sites or restaurants.

If you are in any doubt as to whether or not the discharge from your premises is likely to be considered to be trade effluent, please contact us on 0800 778 0778 or email TEQ@scottishwater.co.uk using the subject "Is this Trade Effluent?". Discharges that are deemed to be trade effluent need to apply separately for permission to discharge to the sewerage system. The forms and application guidance notes can be found using the following link <https://www.scottishwater.co.uk/business/our-services/compliance/trade-effluent/trade-effluent-documents/trade-effluent-notice-form-h>

Trade effluent must never be discharged into surface water drainage systems as these are solely for draining rainfall run off.

For food services establishments, Scottish Water recommends a suitably sized grease trap is fitted within the food preparation areas so the development complies with Standard 3.7 a) of the Building Standards Technical Handbook and for best management and housekeeping practices to be followed which prevent food waste, fat oil and grease from being disposed into sinks and drains.

The Waste (Scotland) Regulations which require all non-rural food businesses, producing more than 50kg of food waste per week, to segregate that waste for separate collection. The regulations also ban the use of food waste disposal units that dispose of food waste to the public sewer. Further information can be found at www.resourceefficientscotland.com

If the applicant requires any further assistance or information, please contact our Development Operations Central Support Team on 0800 389 0379 or at planningconsultations@scottishwater.co.uk.

Yours sincerely

Lisa Kinloch

Development Operations Analyst

Lisa.Kinloch1@scottishwater.co.uk

Midlothian Local Plan: Supplementary Planning Guidance

Development in the Countryside: Policy DP1, Section 1.2: Housing Groups



As adopted the Cabinet of Midlothian Council on 6th October 2009

Content

- **Context**
- **Purpose**
- **Potential Development within Housing Groups**
- **Location Issues**
- **Sustainable Building Design**
- **Design and Landscape**
- **Other Issues**

Appendices

- **A: Methodology**
- **B: Policy DP1 – Development in the Countryside, Section 1.2: Housing Groups**
- **C: Acceptable Housing Groups**
- **D: Table of Unacceptable Housing Groups (with 5 or more houses)**

Maps

- **Map 1: Housing Groups and Accessibility Zone**

Context

1. In line with national planning policy, the Edinburgh and Lothians Structure Plan 2015 directs the majority of the area's strategic housing requirements to be met in Edinburgh City and the main towns in the Lothians (as identified within the Core Development Areas). This allows the vast majority of new development to be focused where employment and local services are accessible and infrastructure is most likely to be available or provided at reasonable cost, thus promoting sustainable development. For this reason, development outwith the main settlements continues to be restrained. However, changes in national policy prompted a review of countryside policy, which has been carried out through the preparation of the Midlothian Local Plan (MLP), adopted in December 2008.
2. Scottish Planning Policy (SPP) 15 *Planning for Rural Development* encourages a more flexible approach to development in the countryside to allow for rural diversification, whilst taking into account the local context of the area. The Structure Plan allows local authorities to include such policies within their respective local plans.
3. Planning policy in Midlothian primarily allows for the development of a new house in the countryside only where it can be demonstrated that it is required for the furtherance of an established countryside activity (refer to MLP policies RP1 and DP1). The Housing Groups policy (policy DP1, section 1.2 – refer Appendix B) provides an exception to this by permitting, subject to satisfying certain criteria, a new house to be built where there is an existing group of at least five houses at the commencement of the Local Plan period, ie 23 December 2008. This brings some flexibility to the 'development in the countryside' policy to enable it to accommodate limited growth whilst ensuring that any such development is:
 - of an appropriate scale to the locality;
 - causes minimal adverse impact to the landscape and character of the area; and
 - has appropriate access to public transport and/or local facilities.
4. The policy does not apply to housing groups of less than five housing units. Neither does it apply where an existing planning permission for one or more new dwellings, if implemented, brings the number of dwellings up to five during the Local Plan period. Such housing groups will fall to be considered in this context of this or a similar policy in the forthcoming Local Development Plan. Further clarification of policy interpretation is provided in **Appendix A**.

Purpose

5. The purpose of this supplementary planning guidance (SPG) is to identify housing groups that are considered suitable, in principle, for consideration in the context of the Housing Groups policy (Policy DP1, section 1.2) of the Midlothian Local Plan. The information contained in this guidance will be a material consideration when determining planning applications for development of new houses in the countryside.

6. The methodology used for identifying suitable housing groups for the application of this policy can be found in **Appendix A** and the full text of policy DP1, section 1.2 is provided in **Appendix B**.

Potential Development within Housing Groups

7. The maps and related comments contained within this guidance represent the findings of the Council's assessment of potential housing groups for the purposes of this policy. The maps identify the properties that comprise the housing group. This guidance does not identify specific locations for new houses (see paragraph 10 below). The groups have been included on the basis of a desktop study and one or more site visits/visual surveys of their potential to comply with policy DP1.
8. **Appendix C (and Map 1)** identify those housing groups that are considered in principle to meet the requirements of section 1.2 of policy DP1. It includes those housing groups which are considered in principle to meet the requirements of section 1.2 of policy DP1, except with regard to public transport and/or local services, where proximity to these is assessed as marginal. Following consultation, it was agreed that these groups which are marginal in terms of accessibility, should be included within the acceptable housing groups.
9. **Appendix D** presents a table of the housing groups that have been considered but assessed as not meeting the requirements of section 1.2 of policy DP1. Any proposals that come forward at these locations are likely to be regarded as contrary to one or more aspects of section 1.2 of policy DP1 (as specified in the table).
10. As mentioned above, this guidance does not identify specific locations for new houses, therefore the suitability of any given proposal will be determined at the planning application stage. The following matters will be considered in assessing the acceptability of a given proposal.

Guidance on Acceptable Plots

- Gap sites within the group will generally take precedence over other locations (typically these are sites with built development on either side).
- Where no gap sites are present, sites adjoining the group are preferable. Normally, a site will be preferred if at least two sides adjoin the boundaries of existing properties though, in some cases, a site which adjoins the boundary of only one property may be preferable if it relates better visually to the group.
- All proposals which adjoin a group (rather than being a gap site) should meet the following requirements:
 - there is an existing physical or visual feature which provides containment for the group and therefore reduces pressure for ribbon development or rural sprawl;
 - where such a feature does not exist, there should be potential for such a feature to be provided so long as it is in character with the scale and appearance of the group.
- Proposals located in open fields adjoining a group, which have no physical features to provide containment will not be acceptable.
- Proposals located on the opposite side of physical features which form strong boundaries for a group (e.g. main roads, burns, substantial tree belts, etc.) will not be acceptable. These are specified in the group specific notes.

- 11.** This is an enabling policy and there is no imperative for development to take place within these housing groups. Early discussions with the Council's Development Management Team are encouraged prior to the submission of an application.
- 12.** It should be noted that, whilst the policy requires that any proposals have acceptable site access, water supply and sewerage provision, detailed technical site assessments have not been undertaken as part of the work on this SPG. It will be the responsibility of the applicant to demonstrate compliance with policy and necessary standards. Therefore, while an applicant may identify a plot which would appear to be acceptable in principle, it may not necessarily mean that the plot complies with policy DP1 in relation to these infrastructure matters and each application will be considered on its merits.

Location Issues

- 13** There are a number of underlying principles within policy DP1, section 1.2 as well as policies RP1 *Protection of the Countryside*, RP9 *Protection of River Valleys* and RP16 *Regional and Country Parks/DP4 Pentland Hills Regional Park*. These policies set particular requirements that must be taken into account when applying the provisions of policy DP1. The following requirements have influenced the selection of housing group locations:

- Avoid the Green Belt
- Avoid significant loss of prime agricultural land
- Avoid defined river valley policy area (development can only be permitted if there is a specific locational requirement)
- Avoid the Pentland Hills Regional Park (unless development is compatible with aims of the Regional Park)

It is important that prime agricultural land is protected, especially that which forms part of a well-defined field. In identifying a suitable plot within a potential housing group, small pockets of land outwith defined field boundaries which have little impact on the agricultural productivity of the farm unit may be acceptable.

Sustainable Building Design

- 14.** All proposals are required by policy DP1 to incorporate sustainable building design. Houses developed under this policy should meet the 'Excellent' standard set out in the Building Research Establishment Assessment Method BREEAM rating system. This points-based system looks at the impact of the building in its totality and allows for developers to exercise choice in how they go about making a sustainable building. Certification that this standard has been achieved will require to be demonstrated through the planning application process, and to this end the applicant will require to engage an independent BREEAM assessor. Further information is available at www.Ecohouses.org. The Council considers that it is important that these new houses are designed in such a way as to offset greenhouse gas emissions associated with their use, given that they are at relatively remote locations. In addition to meeting the BREEAM standard, the Council requires that space heating requirements are met primarily from on site zero carbon equipment. Houses in the countryside have potentially greater scope for incorporating sustainable building design compared to new houses in urban areas, and advantage should be taken of such opportunities.

Design and Landscape

- 15** The Housing Groups policy is a significant change to previous practices, and as such it is important that it is implemented to achieve high standards of design and landscaping. It would be inappropriate in most instances to permit the development of a new house that is unsympathetic in design, materials, proportions, plot size and aspect, to those in the existing group. Policy DP1, section 1.2 specifies that any new house should be of a character and scale appropriate to the existing units, and that they should enhance the landscape and appearance of the existing group. However there may be scope for a contemporary design of exceptional quality, but this would depend on the location of the plot, and its relationship with the rest of the group. The guiding principle will be the need to 'enhance the appearance of the group'.

- 16** The assessment of the potential groups considered the relevant landscape features. The details provided in **Appendix C** include aerial photos, which clearly show the significant woodland and landscaping. The associated notes provide a guide on what areas of landscaping are important, should be retained, and not considered for development of new housing unit/s. Any new unit must respect the landscaping, and in less densely wooded areas, the presence of trees may assist with the fit in the landscape of a new house. Consideration should also be given to making provision for further landscaping, to ‘enhance the landscape’ as required by DP1, section 1.2 h).

Other Matters

- 17** Policy DP1 provides for additional new housing within the countryside subject to specific constraining factors and limitations, particularly on the number of additional dwellings which can be permitted in any particular defined group. This SPG provides information to further explain the terms of the policy; it does not qualify or change any part of the policy. There may be circumstances where applicants for planning permission consider that their proposals, whilst not in compliance with policy DP1 (and thereby not in accordance with this SPG) have some particular merit. In such circumstances, it would be necessary for the applicant for a particular scheme to submit a reasoned justification on planning grounds in support of the application, explaining why the planning authority should grant an exception to, and departure from, its adopted planning policy and SPG. The Council, as planning authority, could then consider this submission as a material consideration in the assessment of the planning application. Where technical errors come to light within the base information for this SPG, and these are accepted by the Council, then further consideration will be given to the issue of compliance with the Local Plan and this SPG.
- 18** To ensure standards are maintained, the implementation of this policy will be monitored throughout the Local Plan period. The preparation of the Midlothian Local Development Plan will provide an opportunity to review and amend the Council’s approach to development of houses in the countryside.

APPENDIX A : Methodology

Stage 1: GIS-based identification of groupings of houses

- A.1** The initial stage of the process was to identify which groupings of buildings in the countryside (excluding the Green Belt*) could potentially be regarded as “housing groups” for the purposes of this policy. A GIS (Geographic Information System) layer was created which identified the outlines of all the buildings located outwith the settlement envelopes (and not in the Green Belt) as identified in the adopted Midlothian Local Plan.
- A.2** Initial screening involved filtering out agricultural and other non-residential buildings, together with single houses and pairs of houses.

Stage 2: GIS-based filtering of groups to remove those that did not meet the policy criteria

- A.3** The second screening process was to remove those housing groups that clearly did not meet the criteria in policy DP1. In particular, compliance with criteria, c), d), h) and i) was assessed as well as establishing the presence of 5 or more houses (criterion b) (refer to details of Policy DP1, section 1.2 included in Appendix B).

Number of Existing Housing Units

- A.4** The screening process involved the application of a number of rules:
- Where current development proposals with planning permission are being implemented, only houses that would technically be “complete” by the date of Local Plan adoption (December 2008) were included in the total number of housing units in the group.
 - Large houses were counted as a single housing unit whether or not they are sub-divided or have potential for sub-division. Generally large country houses have potential to be sub-divided into multiple units. However such development does not generally result in a group of individual houses (but more likely a group of flats) and as such cannot be equated to a ‘housing group’ (for the purpose of this policy). Furthermore incorporating a single house on adjacent plots would unlikely to be in character with the original building.
 - Agricultural and other non-residential buildings were not taken into consideration as the policy only applies to groups of **5 houses** or more (refer A.1 above). It was also recognised that such buildings may have the potential for conversion to housing, but this was similarly discounted as such opportunities can be considered under the terms of policy DP1, section 1.3.

*Policy DP1 section 1.2 specifically excludes housing groups in the Green Belt

Cohesiveness of Housing Grouping

- A.5** The spatial distribution of existing houses within a locality was an important consideration in assessing the suitability of a housing group to accommodate an additional unit; policy DP1 section 1.2 requires housing groups to be ‘identifiable groupings’ that are ‘in close proximity’ (refer to the introductory text of the policy as well as criterion i). The existing spatial relationship of houses within the group was examined, with particular reference to:
- Existing and potential plot size
 - Effect of man-made and natural landscape features
 - Existing pattern and character of development
- A.6** It is considered that if housing units are separated by too wide a gap, then they fail to form a cohesive grouping and adding one or more units to this grouping would run the risk of ribbon development or rural sprawl. For the purposes of this policy, it was concluded that a gap of no greater than 150% of the width of existing house plots would be used as a general rule when establishing the number of units in the housing group. It should be noted that some groupings do not follow this rule precisely, as individual circumstances were taken into account. Scattered dwellings some distance from the core of the group were thereby discounted.
- A.7** Main roads and substantial landscape features within a housing group could reduce the cohesiveness of the group and this was also taken into account.
- A.8** By taking such account of the existing pattern of development or layout of housing, the scale and form of any new development should achieve best fit with the existing character whilst still providing for modern garden space and privacy requirements.

Accessibility of Housing Grouping

- A.9** Criterion c) of the Housing Groups policy requires that housing groups be located close to local services and/or have access to regular public transport. To promote sustainable development when allocating strategic housing sites as extensions of existing settlements, a distance of 400m to a regular bus service (3 or more buses per hour) or 800m to a proposed train station is applied as the required standard. These distances are based on Annex B of PAN75 *Planning for Transport* (August 2005). It is recognised that, by the nature of its location, new housing in the countryside cannot reasonably be expected to achieve a similar level of accessibility to services. Therefore, a distance of 1600m (approximately equal to 1 mile) (the maximum distance specified in Annex B of PAN75) to bus services of approximately 1 per hour was applied. For the purpose of this part of the assessment the network distance was calculated using existing roads and paths as opposed to crow-flying distance. Those housing groups located within this area were considered to have met this criterion of the policy.

Groups that were located just outwith this boundary, and that met the other criteria of the policy, were classified as 'marginal housing groups'. However, the marginal housing groups were subsequently included with the acceptable housing groups for the purposes of consultation which did not identify any significant concerns about the prospect of development in these marginal locations. These marginal groups have therefore been incorporated into the list of acceptable housing groups as given in Appendix C.

A.10 Map 1 shows the location of the acceptable housing groups in relation to those areas of rural Midlothian that are within 1600m network distance of a suitable bus route.

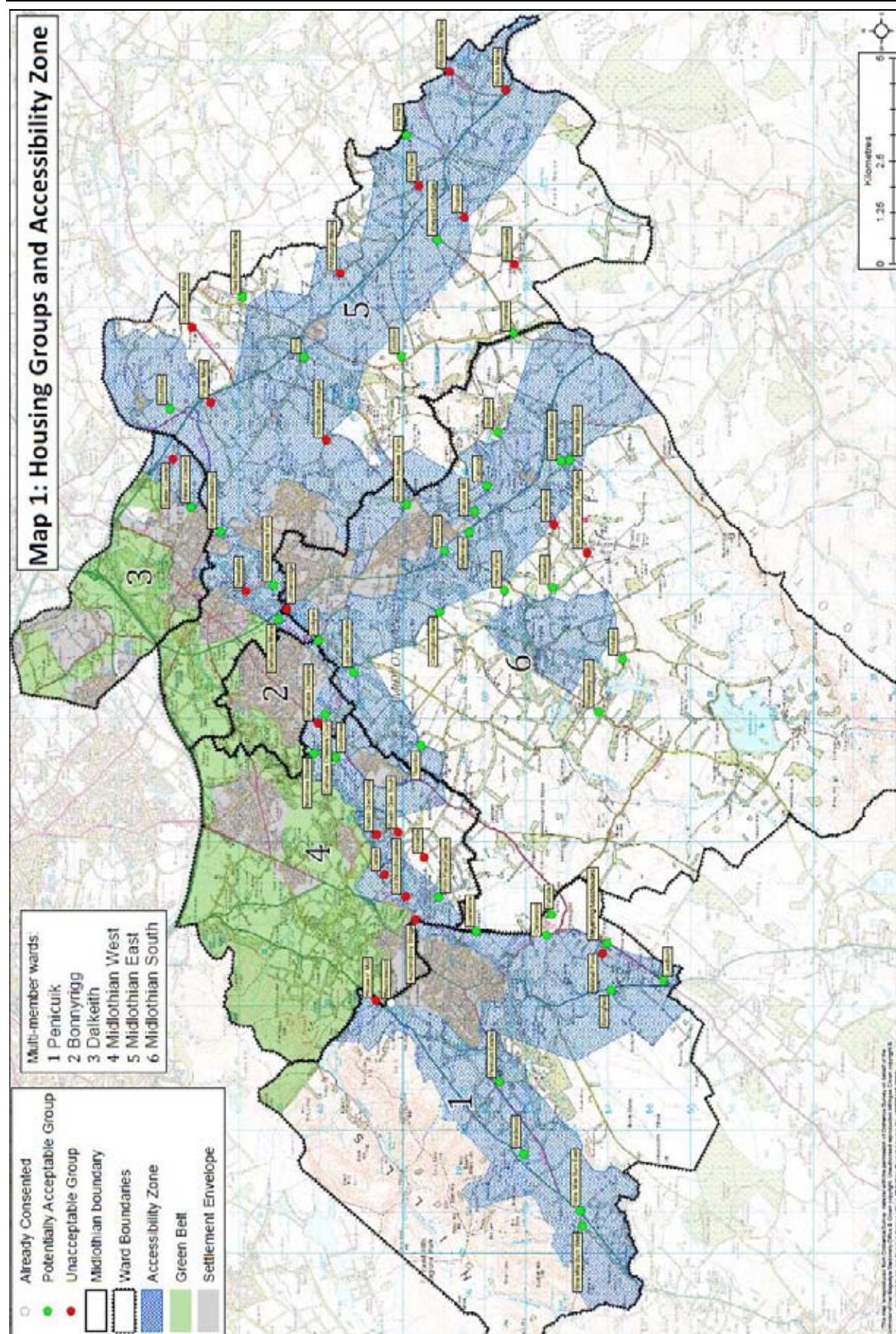
A.11 With regards to local services, the Cousland and Temple areas have access to some basic services (such as shops, post-offices or village hall), but do not benefit from a suitable bus service. Housing groups in close proximity to these settlements, ie 1600m, were also considered to have met this aspect of the policy.

Character of Grouping and Scope for New Housing Unit/s

A.12 The final matter that was assessed during this stage was whether a new house located in a housing group was likely to be able to achieve a similar character and form as the existing houses in that group. This is important to ensure that the groups identified are capable of meeting criteria d) and h). For example, constructing a new detached dwelling next to a stand-alone converted farm steading may look conspicuous and out of character, and as such would be unlikely to meet these criteria. The suitability of potential housing groupings to accommodate additional houses without negative impact on their character was assessed by site visit (see Stage 3 below).

Stage 3: Site visits

A.13 Officers visited all of the groups to emerge from stage 2, including the housing groups with marginal accessibility. The purpose of these visits was twofold. Firstly, to ensure that the GIS assessment (desktop study) was accurate and to clarify uncertainties that had emerged and, secondly, to determine if the group had any potential plots where development might be acceptable. For this latter purpose, the 'Guidance' set out in paragraph 10 of this SPG was applied. Where there was considered to be no potential acceptable location for a new house, the housing group was discounted.



APPENDIX B: Policy DP1 – Development in the Countryside

Section 1.2: Housing Groups

1.2 Housing Groups

Where there are clearly identifiable groupings of 5 or more houses in close proximity, already located in the countryside and outwith village envelopes, it may be possible to supplement these with a limited number of additional dwellings subject to the following criteria:

- a) the location is outwith the Green Belt;
- b) the new units are restricted to a maximum of 1 new unit per 5 existing units within the Local Plan period;
- c) the location is close to local services (school, shops) and/or has access to a regular public transport service giving access to such facilities;
- d) the new units fit in the landscape and are of a character and scale appropriate to the existing units;
- e) the new units are capable of being served by an adequate and appropriate access;
- f) the new units are capable of being provided with drainage and a public water supply at reasonable cost, or an alternative acceptable private water supply, and avoid unacceptable discharge to watercourses;
- g) the new units incorporate sustainable building design;
- h) the new units enhance the landscape and appearance of the existing group of buildings; and
- i) the new units will not result in ribbon development and the plot size/width should be similar to other units within the group.

Housing groups to which this policy may apply must form a cohesive entity. The new unit should generally be located within gaps in the group.

Supplementary planning guidance will be prepared identifying house groups to which this section of DP1 should apply. The success or otherwise of the new policy will be reviewed before consideration is given to widening its application in future Local Plans, if appropriate.

APPENDIX C: Potential Acceptable Housing Groups

Acceptable Housing Groups

Bellmains
Borthwick
Braidwood
Carrington Barns
Castleton
Catcune
Catcune mill
Cleikeminn
Cockpen
Crichton
Dalhousie Chester Court
Dalhousie Mains
Easter Middleton
Fala Hall
Fallhills
Firth Field/ Gardens
Ford
Gortonlee
Harvieston
Home Farm
Kippielaw Steading
Leadburn
Loanstone
Meyerling/Mosshouses
Monteith houses Farm
Montrose Stables
Newbattle Home Farm
Nine Mile Burn East
Nine Mile Burn West
Penicuik Estate
Red Row/Rose Mains
Rosebery South
Southfield
Springfield
Thornton
Tynehead
Upper Dalhousie
Vineyard Cottages
Wester Cowden
Wester Middleton
Yorkston

[Note: Houses considered as part of the group are marked as dark grey on the attached Ordnance Survey maps; other buildings are shown in light grey]

Bells mains

Location: South-east edge of Gorebridge

Ordnance Survey Grid reference: NT3460



The group consists of 15 dwellings therefore 3 additional units are potentially permissible.

There is no potential to extend in landward direction as this involves development in open fields with no physical features to provide containment. The thick belt of mature woodland, on the west side of the group should be left intact. Access into the street Bells mains may be problematic

Borthwick

Location: South-west of Gorebridge

Ordnance Survey Grid reference: NT3659



The group consists of 5 units therefore 1 additional unit is potentially permissible.

The Gore Water forms a strong physical boundary to the north and east of the group, therefore any proposed dwelling should not be located beyond this. The fields to the south, east and west are very open with no physical features to provide containment. This is also true of the field within the group, which should be maintained, as it is important for the character of the area. The mature trees in the area should be retained for the same reason.

The design of any new dwelling should be of a high quality and in character with the area given that the group is located in a conservation area, AGLV, Designed Landscape and due to the number and quality of the listed buildings within the group.

Braidwood

Location: South-west of Penicuik

Ordnance Survey Grid reference: NT1959



The group consists of 4 units from a steading conversion and a farmhouse, therefore 1 additional unit is potentially permissible.

The fields to the south, east, north-west and north-east are very open with no physical features to provide containment. Any new dwelling should complement the steading design of the existing grouping. In addition, due to the visibility of the group from the A702, any new development may require landscape treatment to mitigate any negative visual impact.

Carrington Barns

Location: West of Gorebridge

Ordnance Survey Grid reference: NT3261



The group consists of 4 terraced houses and a farmhouse, therefore 1 additional unit is potentially permissible.

The fields around the group are open with no physical features to provide containment.

Castleton

Location: East of Temple

Ordnance Survey Grid reference: NT3358



The grouping consists of 4 terraced cottages and a farmhouse, therefore 1 additional unit is potentially permissible.

The land around the Castleton Burn is considered to be too steep and heavily wooded to accommodate any new dwellings. Any proposed dwelling should not be located north of the access road as this is open with no physical features to provide containment. Furthermore, it would not relate well to the rest of the group. Any new dwelling should be located close to the cottages as these form the nucleus of the group. The tree cover to the south and west of the group consists of ancient woodland of plantation origin, which should be preserved.

Catcune

Location: South-east of Gorebridge

Ordnance Survey Grid reference: NT3559



The group consists of 4 semi-detached houses and a farmhouse, therefore 1 additional unit is potentially permissible.

The Waverley Line forms a strong physical boundary to the south of the group, therefore any new dwelling should not be located to the south of this. The fields to the north and east are very open with no physical features to provide containment.

Catcune Mill

Location: South-east of Gorebridge

Ordnance Survey Grid reference: NT3560



The group consists of 5 houses, therefore 1 additional unit is potentially permissible.

The mature trees to the north and west of Catcune Mill should be left intact. Proposals on the opposite side of the Gore Water would not relate well to the group. The field to the south of road is very open with no physical features to provide containment. The access road from A7 to this point reasonable, but gets progressively poorer towards Gorebridge. It may be undesirable to encourage additional traffic on this route, but can be considered further should an application be submitted.

The group is in an AGLV therefore design and siting will be important. There may also be a potential flood risk due to the close proximity of the Gore Water.

Cleikeminn

Location: North of Howgate

Ordnance Survey Grid reference: NT2458



The group consists of 5 houses in a row therefore 1 additional unit is potentially permissible.

The fields to the east and west of the group are very open with no physical features to provide containments. Therefore, it is considered that there is only potential within garden grounds of the existing properties.

Location: between Bonnyrigg and Newtongrange
Ordnance Survey Grid reference: NT3163 / NT3164

Ordnance Survey Grid reference: NT3163 / NT3164



The group consists of 6 dwellings therefore 1 new unit is potentially permissible. Although the group is divided by a local burn, it is considered cohesive due to the distinct identity of the area.

The field to the north-west and south-west of the group are very open with no physical features to provide containment. Any proposed new dwellings should be located to the west of the crossroads as this forms a strong physical boundary for the group. In addition, the mature trees are important for the character of the area and should be retained.

Crichton

Location: South of Pathhead

Ordnance Survey Grid reference: NT3861 & NT3862



The group consists of 17 houses, therefore 3 additional units are potentially permissible.

The fields to north and south of village are very open with no physical features to provide containment. Due to the location of this group in a conservation area, as well as the large number of listed building, care should be taken in relation to the effect of any new development on the character, appearance and setting of these historic features.

Dalhousie Chesters Court

Location: between Bonnyrigg and Rosewell

Ordnance Survey Grid reference: NT3063



4 houses from converted steading and a farmhouse in close proximity, therefore 1 additional unit is potentially permissible.

Any proposed houses should not be consented on the north side of the road as the road provides a strong boundary to the group. Equally, proposals to the west of the path lined with mature trees, would be unacceptable. The fields to the south and east are very open with no physical features to provide containment.

Dalhousie Mains

Location: South of Newbattle Abbey Crescent

Ordnance Survey Grid reference: NT3264



The group consists of 6 dwellings, therefore 1 additional unit is potentially permissible.

The A7 forms a strong physical boundary to the east of the group, therefore any proposed dwelling should not be located beyond this. The fields to the south, east and north are very open with no physical features to provide containment. The mature trees within and around the group should be preserved. Many of the buildings in the group are listed, therefore care should be taken in the siting and design of any new dwelling.

Easter Middleton

Location: South-east of North Middleton

Ordnance Survey Grid reference: NT3658



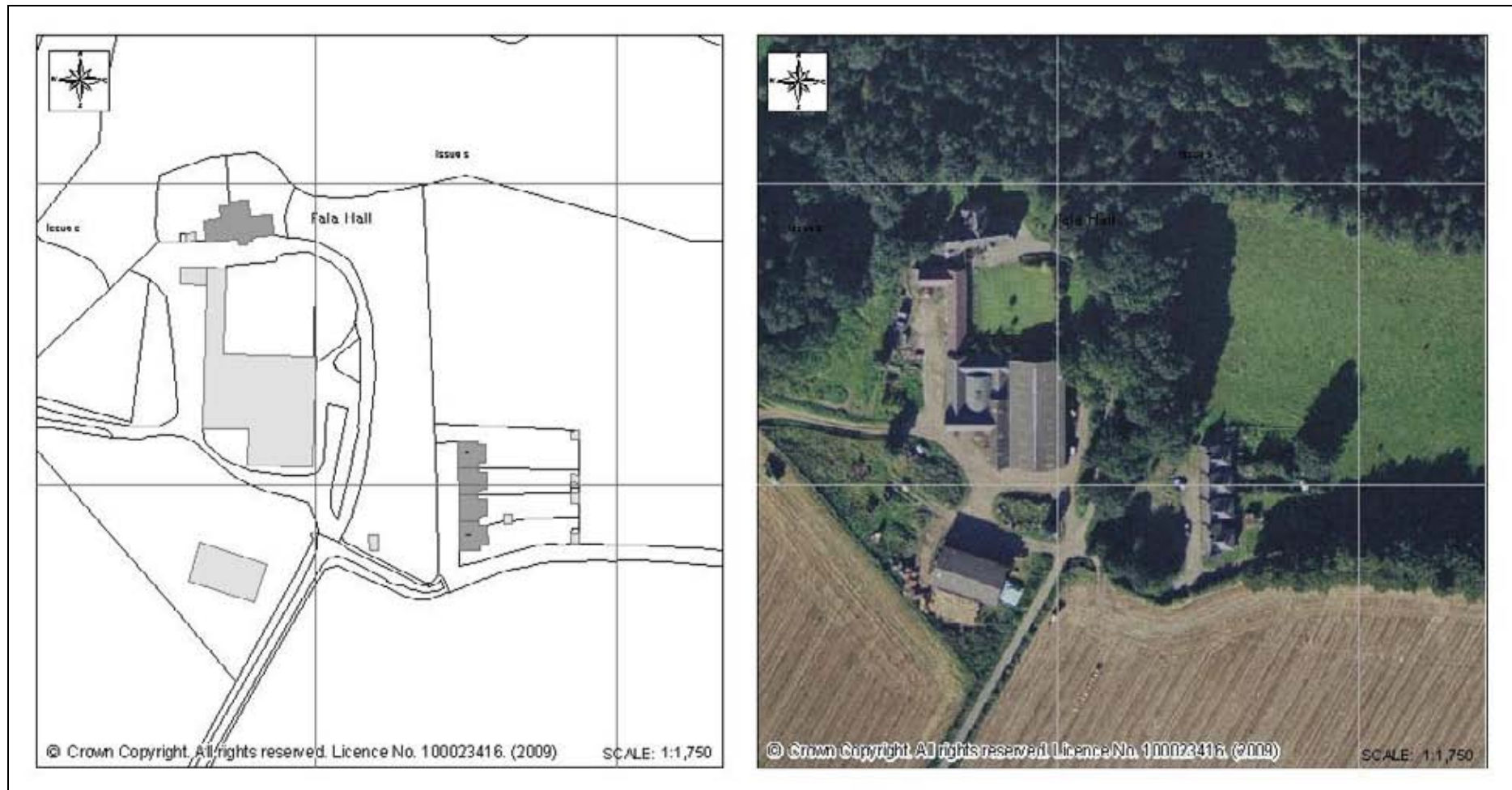
The group consists of a terrace of 8 houses, therefore 1 additional unit is potentially permissible. The farmhouse to the west at Easter Middleton Farm is too far away to be considered as part of the group. The Smithy cottage and other dwellings in the vicinity of Wester Middleton (to the south), in addition to being too far away, are physically and visually separate from the group.

Any proposed dwellings should be in the vicinity of the terraced houses. The mature woodlands to the south and east should be left intact. Furthermore, any proposed house should not be consented to north of road as this provides a strong boundary to the group.

Fala Hall

Location: North of Fala

Ordnance Survey Grid reference: NT4461



The group consists of 4 terraced houses and a farmhouse, therefore 1 additional unit is potentially permissible.

The fields to the east, south-east, and south-west are very open with no physical features to provide containment. The land to the north and north-west of the group is heavily wooded and should therefore be avoided.

Fallhills

Location: North-east of Howgate

Ordnance Survey Grid reference: NT2558



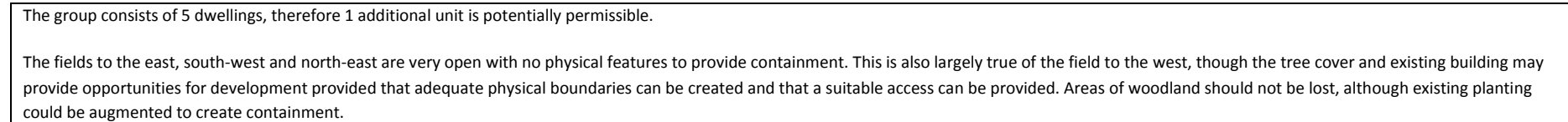
The group consists of 4 dwellings from a steading conversion, 2 semi-detached houses and 2 detached houses, therefore 1 additional unit is potentially permissible. There are further houses to the north but these are visually separate from the group.

The fields around the group are very open with no physical features to provide containment. Any new house should preferably be located where there is existing screening, and should not detract from the cohesive appearance of the steading. Furthermore, any new dwelling should be located in close proximity to the converted steading as this forms the nucleus of the group. The mature trees to the north of the group should be preserved.

Location: South-east of Auchendinny
Ordnance Survey Grid reference: NT2561

Ordnance Survey Grid reference: NT2561

Ordnance Survey Grid reference: NT2561



Ford

Location: West of Pathhead

Ordnance Survey Grid reference: NT3864



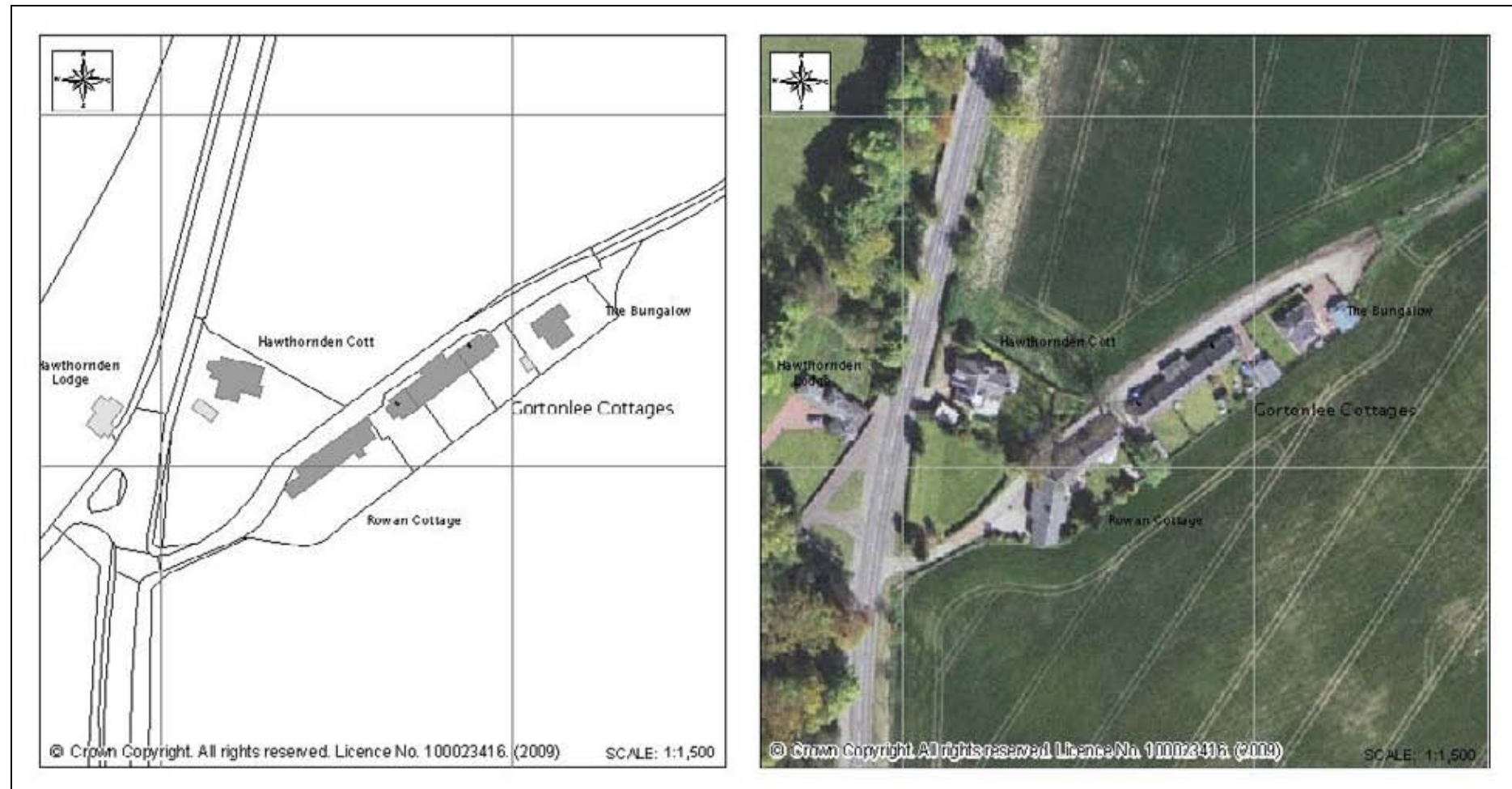
10 houses in close proximity, therefore 2 plots are potentially permissible (Woodlands and the Dowry House are either too far or visually separate to be considered as part of the group).

Ford is located in a valley with the southern slope being more wooded than the more exposed north. Any new development should not be located beyond the local ridgelines. Any new development should not be located to the east of the Dreepy Burn on the south side of the road and the Tyne Water on the north side of the road. As group is in a conservation area it is important to ensure that the design of any dwelling enhances or preserves the character of the area. Particular care should be taken in preserving Ford's setting within the wooded valley and ensuring that mature trees are preserved. Flooding issues may arise in relation to development near the local burns.

Gortonlee

Location: West of Pathhead

Ordnance Survey Grid reference: NT2964



The group consists of 7 dwellings therefore one new unit is potentially permissible. Hawthornden Lodge is considered physically separated from the group by the road.

The fields to the north and south are very open with no physical features to provide containment. Any proposed house should not be consented to the west of the main road as this provides a strong boundary to the group. Furthermore, there are mature trees on this side of the road which should be retained.

Harvieston Mains

Location: West of Gorebridge

Ordnance Survey Grid reference: NT3460



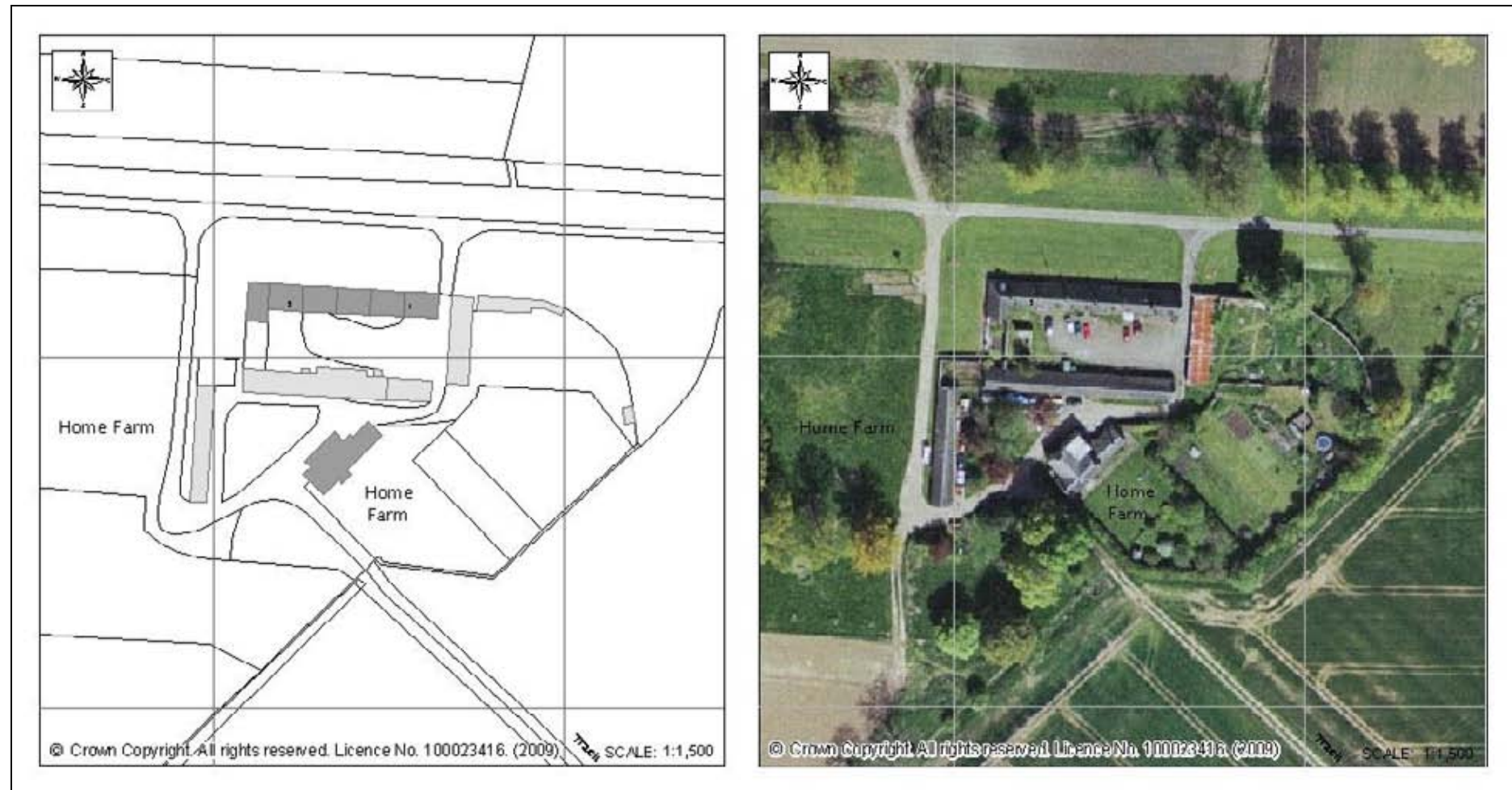
The group consists of 9 dwellings, therefore 1 additional unit is potentially permissible.

The A7 forms a strong physical boundary to the north of the group, therefore any new dwelling should not be located to the north of this. The fields to the south-east, west and south are very open with no physical features to provide containment. Due to the location within the designed landscape of Arniston, the design of any new dwelling should be of a high quality and in character with the area.

Home Farm

Location: South-east of Gorebridge

Ordnance Survey Grid reference: NT2558



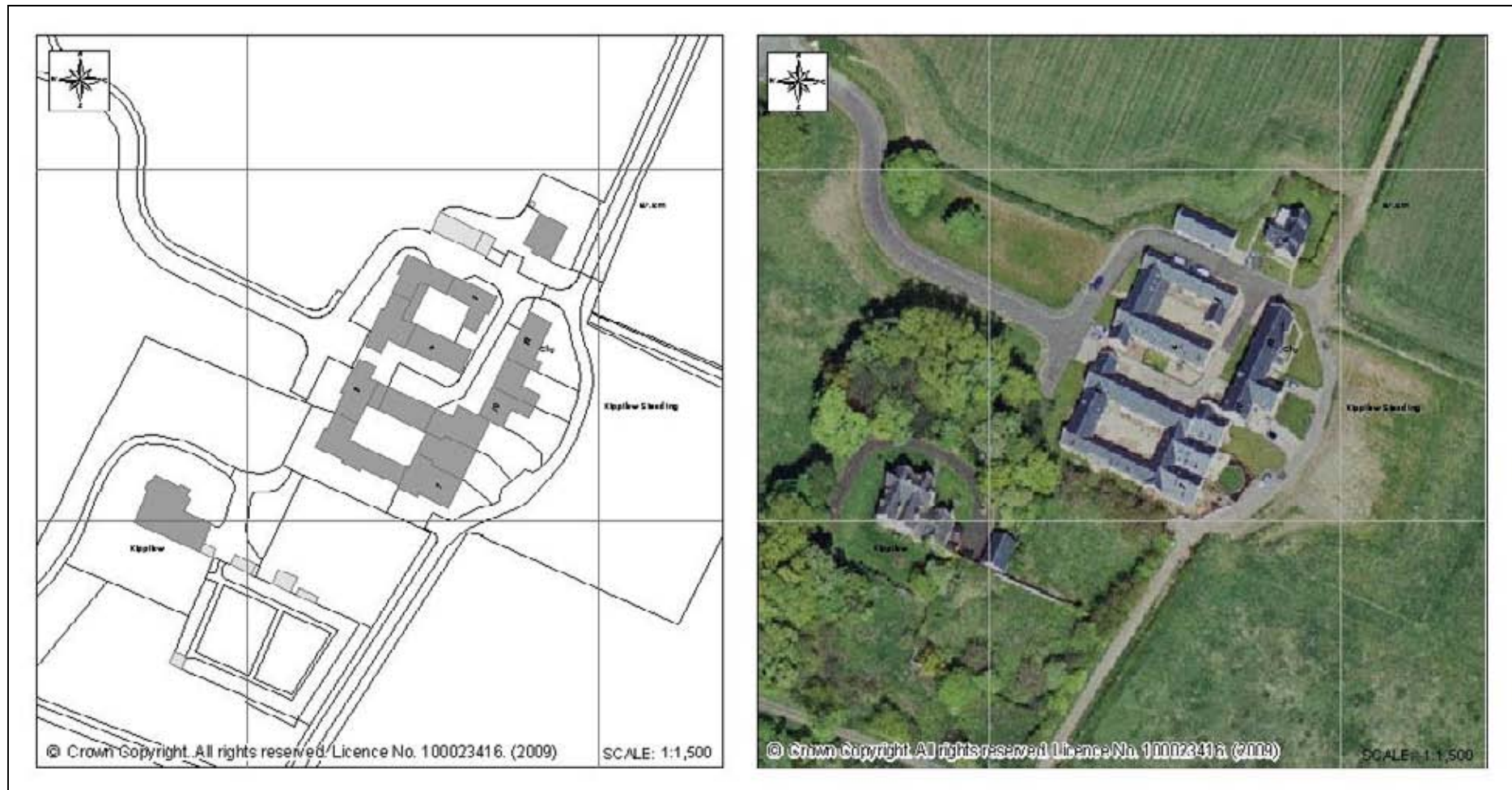
The group consists of 5 terraced houses and a farmhouse, therefore 1 additional unit is potentially permissible.

Road access poor, single track with no passing places. Widening/formation of passing places may be constrained due to sensitivity of Historic Garden and Designed Landscape. All of the units in the group are listed. It may be difficult to develop an additional unit in character with the group and achieve the necessary access without destroying listed features.

Kippielaw Steading

Location: South of Woodburn

Ordnance Survey Grid reference: NT3464



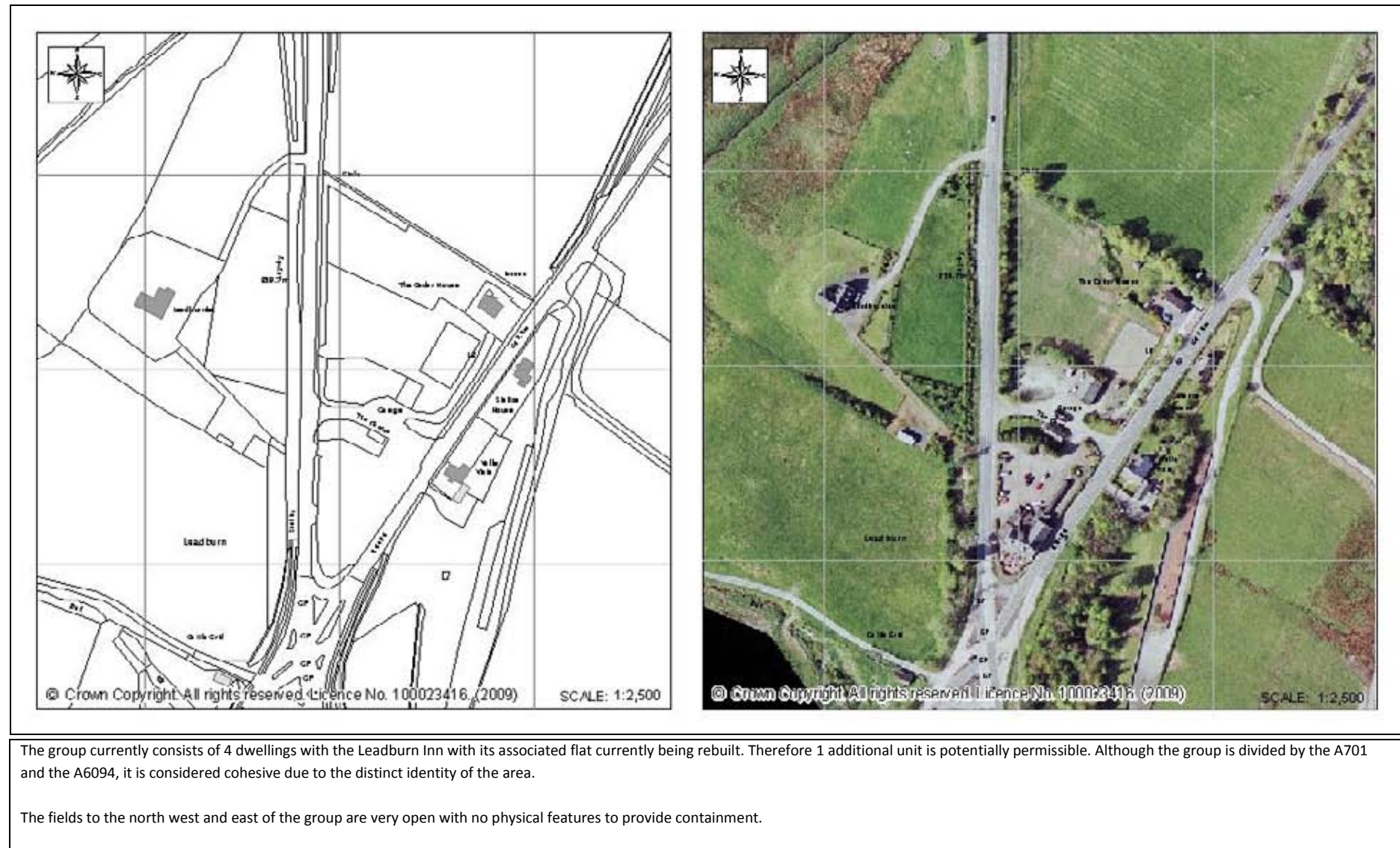
The group consists of 12 houses from the steading conversion and 2 further detached houses. Therefore 2 additional units are potentially permissible.

The fields to the north and east are very open with no physical features to provide containment. Any new dwellings should be located within the vicinity of the converted steading as this forms the nucleus of the group. Furthermore, new dwellings should be designed in such a way as to respect the character and appearance of the steading.

Leadburn

Location: South-west of Howgate

Ordnance Survey Grid reference: NT2355



Loanstone

Location: East of Penicuik

Ordnance Survey Grid reference: NT2459 & NT2460



Group consists of 14 dwellings therefore 2 additional units are potentially permissible.

The field to the east is open with no physical features to provide containment. Any proposed new dwellings to the rear of the houses on the west side of the road should be resisted as these would constitute development in an open field with no physical features to provide containment. Development at either the north or the south side of Loanstone would likely constitute ribbon development. However there are several gaps on the west side, along with possible garden ground that might be acceptable. Road access may pose difficulties given that the B7062 is a busy road.

Meyerling / Mosshouses

Location: South-west of Howgate

Ordnance Survey Grid reference: NT2456



Grouping consists of 5 dwellings, therefore 1 additional unit is potentially permissible. Little Haugh, Holmlea and Milkhall Cottages to the north-west are considered visually separate from the grouping.

Any proposed dwelling should be located on the west side of the A6094 as this provides a strong boundary to the group. The mature trees to the north of the group should be preserved. The steepness of the field to the west of the group would make any proposed dwelling highly visible. In addition, development here would be in an open field with no physical features to provide containment

Monteith Houses Farm

Location: North-east of Gorebridge

Ordnance Survey Grid reference: NT3561



Group consists of 7 dwellings, three from a steading conversion as well as four nearby houses. Therefore 1 additional unit is potentially permissible.

Proposals for any new dwellings in the fields to the north-east of the group should be resisted as development here would be in an open field with no physical features to provide containment.

Montrose Stables

Location: between Bonnyrigg and Rosewell

Ordnance Survey Grid reference: NT2962



The group consists of 4 units from a steading conversion and 2 semi-detached houses, therefore 1 additional unit is potentially permissible.

The road to the south-east forms a strong physical boundary to the group, therefore any new dwelling should not be located to the south-east of this. The fields to the north, north-east, west and south-west are very open with no physical features to provide containment.

Newbattle Home Farm

Location: between Dalkeith and Newtongrange

Ordnance Survey Grid reference: NT3365



The group consists of 5 houses, therefore 1 additional unit is potentially permissible.

Any proposed dwelling should be located on the east side of Newbattle Road as this road provides a strong eastern boundary to the group. The fields to the south and west are very open with no physical features to provide containment. There are a large number of mature trees within the grouping which should be retained.

Nine Mile Burn East

Location: South-west of Penicuik

Ordnance Survey Grid reference: NT1857



The group consists of 7 dwellings. Monks Burn Cottage is visually and physically separate from the rest of the group due to the burn. Therefore, 1 new unit is potentially permissible.

Any proposed dwelling should be located on the SE side of the A702 as this provides a strong boundary to the group. The burn constitutes a significant landscape feature and therefore proposed dwelling on the S-side should be refused due to the poor relationship to the bulk of the group. The fields to the N & E of the group are mostly open with no physical features to provide containment. The group has significant tree cover, much of which is ancient woodland of semi-natural origin, which should be preserved.

Nine Mile Burn West

Location: South-west of Penicuik

Ordnance Survey Grid reference: NT1757



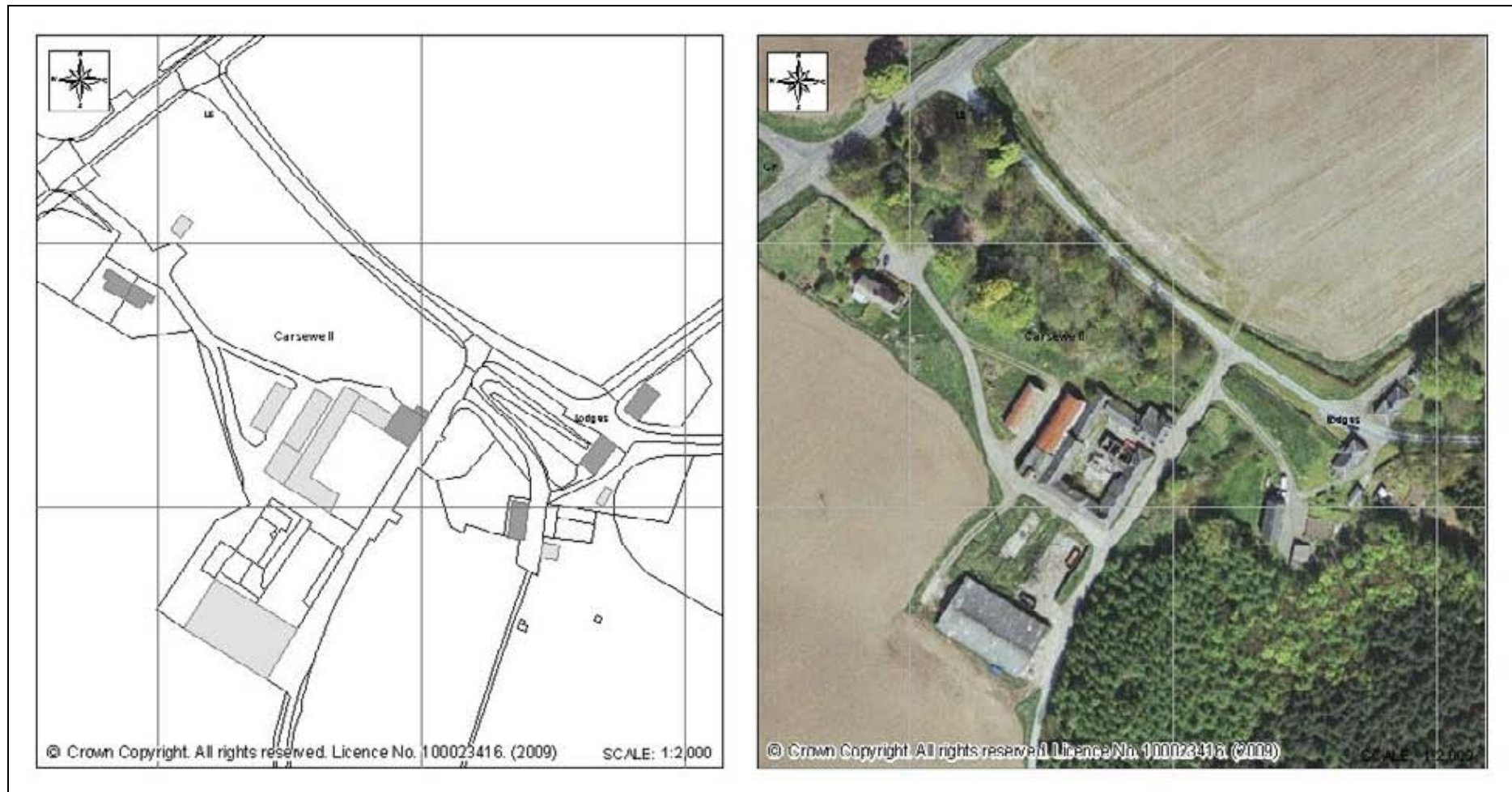
The group consists of 15-16 houses, therefore 3 additional units are potentially permissible.

Fields to the N, S & W are considered to be open and unrelated to the group and development would therefore be unacceptable here. The A702 provides a strong boundary to the group and as such the houses on the S-side of this trunk road are not considered to form part of the group. Any new dwelling should therefore be restricted to possible plots on the N-side of the A702. The open field between the A702 and the Nine Mile Burn road should remain undeveloped. Any proposed development within the boundary of the Pentland Hills Regional Park must be considered against policy DP4 in the Local Plan.

Penicuik Estate

Location: South-west of Penicuik

Ordnance Survey Grid reference: NT2159



The group consists of 6 houses, therefore 1 additional unit is potentially permissible.

The land to north of Carswell Steading and to the south-east and east of the group is heavily wooded and therefore considered undesirable. The field to north is very open and considered to have a poor physical relationship with the group. Land to north-west is separated from the group by the A701 and considered to have a poor physical and visual relationship to the group. The field to south-west is open, though it may be possible to develop in the gap adjoining the grouping provided that a suitable landscape boundary is incorporated to provide containment. Due to the location within the designed landscape of Penicuik, the design of any new dwelling should be of a high quality and in character with the area.

Red Row / Rose Mains

Location: North-east of Pathhead

Ordnance Survey Grid reference: NT4065



The group consists of 6 terraced houses, a detached cottage, 2 farmhouses and a lodge, therefore 2 additional units are potentially permissible.

Fleming's Wood to the north and Jeffrey's Wood to the west consist of mature trees and are not considered appropriate for new development. The fields to the north, south and west of the group are very open with no physical features to provide containment.

Rosebery South

Location: South-west of Temple

Ordnance Survey Grid reference: NT3057



The grouping consists of 7 houses, therefore 1 additional unit is potentially permissible.

The field to the south-east is very open with no physical features to provide containment. As all of the buildings in the group are on the north-west side of the road, development in the south-east field would not relate well to the grouping. There are a number of gaps amongst the group that should take precedence rather than extending the linear layout. Any proposed development to the rear of the line of houses should be resisted due to the open nature of the field.

Southfield

Location: South of Cousland

Ordnance Survey Grid reference: NT3767

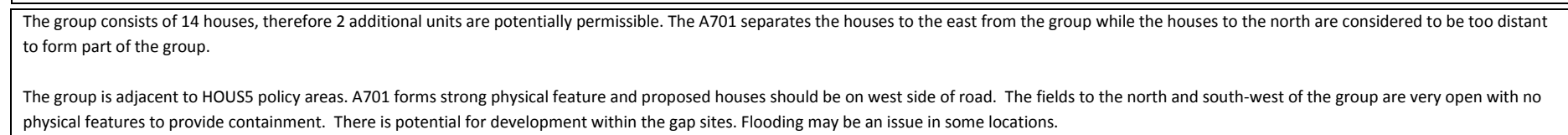


The group consists of 5 terraced houses and a farm house across the road, therefore 1 additional unit is potentially permissible.

The fields around the group are very open with no physical features to provide containment. The mature trees to the north of the terraced houses should be preserved.

Location: South-east of Penicuik
Ordnance Survey Grid reference: NT2356

Ordnance Survey Grid reference: NT2356



Thornton

Location: South-east of Rosewell

Ordnance Survey Grid reference: NT2961



The group consists of 5 houses, therefore 1 additional unit is potentially permissible.

Any proposed dwelling should be located on the south-west side of the main road as this provides a strong boundary to the group. Equally, any proposed dwellings should be located to the north-east of the tree belts. The fields on both the south-east and north-west of the housing group are very open with no physical features to provide containment and should be avoided.

Tynehead

Location: North-east of North Middleton

Ordnance Survey Grid reference: NT2969



The group consists of 7 houses, therefore 1 additional unit is potentially permissible.

The Waverley railway line forms a strong western boundary to the group, therefore new houses located to the W of this will not be acceptable. The fields to the east and south of the group are very open with no physical features to provide containment, therefore the development of new houses at these locations should be resisted. The area to the north of Rose Cottage is wooded with mature trees which should be preserved.

Upper Dalhousie

Location: South of Bonnyrigg

Ordnance Survey Grid reference: NT3163



The group consists of 6 terraced houses and a detached house, therefore 1 additional unit is potentially permissible.

The road to the east forms a strong physical boundary to the group, therefore any new dwelling should not be located beyond this. The fields to the south and west (behind the terraced houses) are very open with no physical features to provide containment. Any proposals in the vicinity of the detached house should respect the character of this building and not harm the mature trees in its vicinity.

Vineyard Cottages

Location: South-west of Fala Dam

Ordnance Survey Grid reference: NT4181



The group consists of 5 terraced houses and two detached houses, therefore 1 additional unit is potentially permissible.

The fields around the group are very open with no physical features to provide containment. The mature trees within and around the group should be preserved. Land to the rear of the terraced houses is for car parking for the houses and Vineyard Business Centre.

Wester Cowden

Location: East of Dalkeith

Ordnance Survey Grid reference: NT3567



The grouping consists of 6 semi-detached houses, therefore 1 additional unit is potentially permissible. The farmhouse to the south is too far away to be considered as part of the group.

The field to the east is very open with no physical features to provide containment. There is a new housing development to the west. It may be possible for a new dwelling to be located at the farm to the south provided that it visually relates to the group.

Wester Middleton

Location: South-east of North Middleton

Ordnance Survey Grid reference: NT3657 & NT 3658



The grouping consists of 8 terraced houses, 2 semi-detached houses and 2 detached houses, therefore 2 additional units are potentially permissible.

The fields to the south and south-west are very open with no physical features to provide containment. The main road provides a strong boundary to the north-east of the group. Any proposed dwelling should be located on the south-west side of this road.

Yorkston

Location: South of Temple

Ordnance Survey Grid reference: NT3156



The group consists of 9 cottages and a farmhouse, therefore 2 additional units are potentially permissible.

The fields to the north, south and east of the group are very open with no physical features to provide containment. Any new unit should be located in close proximity to the cottages as these form the nucleus of the group. The mature trees within the group should be preserved.

APPENDIX D

Table of Unacceptable Housing Groups (with 5 or More Houses)

[Note: the location of the following housing groups is marked on Map 1 (as a red dot)]

Table 1: Unacceptable: Groups within policy RP9 River Valley areas

Name	General Location	OS Location	Assessment Criteria					NOTES
			Number of Units	Cohesion	Access to Services	Acceptable Plots	Other reasons (where applicable)	
Auchendinny Bridge	S of Auchendinny	NT2561	6	Y	Y	NA	Y	River Valley policy RP9.
Newbattle	SE of Eskbank	NT3365	c. 200	Y	Y	NA	Y	River Valley policy RP9.
Old Woodhouselee	E of Auchendinny	NT2561	5	Y	Y	NA	Y	River Valley policy RP9.
Roslin Glen North (1)	S of Roslin	NT2762	11	Y	Y	NA	Y	River Valley policy RP9. Steeply sloping

Table 2: Unacceptable: Groups at Distance from Accessibility Zone

Name	General Location	OS Location	Assessment Criteria					NOTES
			Number of Units	Cohesion	Access to Services	Acceptable Plots	Other reasons (where applicable)	
Blackcastle	E of Tynehead	NT4159	5	Y	N	NA	NA	4 terraced houses and nearby detached house. No facilities or access to public transport.
Esperton Quarry Cottages	SW of North Middleton	NT3457	5	Y	N	NA	NA	4 semi-detached cottages and one detached cottage. Insufficient access to services.

Table 3: Unacceptable: Groups whose characteristics do not meet policy DP1

Name	General Location	OS Location	Assessment Criteria					NOTES
			Number of Units	Cohesion	Access to Services	Acceptable Plots	Other reasons (where applicable)	
Easter Cowden	E of Dalkeith	NT3867	5	N	Y	NA	NA	Row of 4 terraced houses with farmhouse further south. The latter is too far away to be considered as part of the group.
Fordel Mains	S of Cousland	NT3766	6	N	Y	NA	NA	4 terraced houses and two houses in the vicinity of the farm. The former are too far

Name	General Location	OS Location	Assessment Criteria					NOTES
			Number of Units	Cohesion	Access to Services	Acceptable Plots	Other reasons (where applicable)	
								away from the latter for this to be considered as a cohesive group.
Frostineb	W of Fala	NT4280	5	N	Y	NA	NA	Group of 4 houses with another much further away. Too dispersed to be considered a cohesive group.
Halkerston	SW of North Middleton	NT3458	5	N	Y	NA	NA	Terrace of 4 cottages. Halkerston farmhouse to the W is considered too far away to be considered as part of the group. No plots.
Kirkettle	E of Auchendinny	NT2661	5	N	N	NA	NA	4 terraced houses and a farm house (some distance away). Too dispersed to be considered a cohesive group.
Lothianbridge	between Dalkeith and Newtongrange	NT3264	5	N	Y	NA	NA	Two groups (4 and 2 units) separated by river, therefore not cohesive. Farm building conversion consented for 3 units so possible for future consideration, though it may be difficult to find a site (see notes).
Milkhall Pond	SW of Howgate	NT2456	5	N	Y	N	NA	Group consists of 3 terraced houses and 2 detached. Little Haugh is too visually separate to be considered as part of a cohesive group. Field to N and E is very open with no physical features to provide containment. The land around Holmlea is heavily wooded with the land to the W of it being too steep for development.

Name	General Location	OS Location	Assessment Criteria					NOTES
			Number of Units	Cohesion	Access to Services	Acceptable Plots	Other reasons (where applicable)	
Oatslie	SW of Roslin	NT2563 / NT2662	8	N	Y	NA	NA	Group of 3 cottage to west. 2 semi-detached cottages in middle. Farmhouse in middle. Two detached houses to east. All too far apart to form a cohesive group.
Oxenfoord Mains	SE of Cousland	NT3967	5	N	N	NA	NA	4 terraced cottages and farmhouse. The latter is too far away to be considered as part of a cohesive group.
Southside Cottages	SE of Mayfield	NT3663	6	N	Y	NA	NA	Group of 4 and group of 2 therefore not cohesive.
Soutra Mains	SE of Fala	NT4559	6	N	Y	NA	NA	Farm with 5 cottages in vicinity. However 3 of these houses are separated by A68 & at some distance - cannot be considered as part of group.
Woodcote Mains	E of Fala	NT4560	6	N	Y	NA	NA	2 groups (3-4 and 3) which are too far apart to be considered cohesive. Derelict buildings present which may be acceptable for conversion.

Table 4: Unacceptable: Groups with no acceptable plots

Name	General Location	OS Location	Assessment Criteria					NOTES
			Number of Units	Cohesion	Access to Services	Acceptable Plots	Other reasons (where applicable)	
Dalhousie Chesters	SE of Bonnyrigg	NT2963	8	Y	Y	N	NA	8 houses and depot. Next to bus route. No acceptable plots.
Fala Dam	NW of Fala	NT4261 / NT4361	14	Y	Y	N	NA	Field to S of Fala Dam is separated from the group by a burn and is too open to be considered. Land to the N and W of number 1 is heavily wooded. Land to immediately W of Mount Fala is too steep. Land to E of Falaburn House is local open space/sitting area and is desirable to retain (probably too small in any case).
House O' Muir	N of Penicuik	NT2262	5-6	Y	Y	N	Y	Regional Park – policy DP4, PHP2 would not support
Roslin Glen South (3)	S of Roslin	NT2761 / NT2762	6	Y	Y	N	Y	River Valley policy RP9 (pt). Only the open fields are outwith RP9 area, therefore no acceptable plot.
Whitburgh Mains	E of Pathhead	NT4063	6-7	Y	Y	N	NA	Cluster of 6-7 houses. 3 facing road with garages to the rear, while 4 face onto the side of these. Open fields to the SE and mature tree planting around other edges. Only possible site would be that of the garages, though this would be difficult in terms of access and privacy

Housing Development in the Countryside and Green Belt Supplementary Guidance



Contents

1. Introduction	2
2. Development in Rural Areas	2
3. Countryside and Green Belt in Midlothian	3
4. General Development Requirements	6
5. Housing - Development Required to Support an Established Countryside Activity	8
6. Housing - Development in Housing Groups	8
7. Conversions of redundant farm buildings or other non-residential buildings	11
8. Redevelopment of redundant farm buildings or other non-residential buildings	12
9. Enabling Development	13
10. Appendix 1: LDP Policies	14

Housing Development in the Countryside and Green Belt SG (adopted)

1. Introduction

1.1 This Supplementary Guidance relates principally to policies RD1 Development in the Countryside of the Midlothian Local Development Plan 2017 but also ENV1 Protection of the Green Belt. It seeks to provide additional guidance and clarity regarding the circumstances in which exceptions may be made to the requirement to demonstrate that the proposed housing is for the furtherance of a countryside activity, including: the circumstances when/where new housing may be appropriate within the context of housing groups; when the conversion of redundant farm buildings or other non-residential buildings to houses would be acceptable; when/where redevelopment of farm buildings or other non-residential buildings would be acceptable; and enabling development. Policy RD1 includes reference to business development in the countryside but this issue is not subject of this guidance.

1.2 When considering proposals, prospective applicants should be aware that all policies in the Local Development Plan will apply to any proposal. While policies RD1 or ENV1 are likely to be the most significant factor in determining applications in the countryside, this alone does not guarantee compliance with the plan as a whole. Consideration of proposals for development covered by these policies should also refer to policies RD2 Low Density Rural Housing, MIN1 Areas of Search for Mineral Extraction, NRG1 Renewable and Low Carbon Energy Projects, and NRG2 Wind Energy, where these are applicable. In addition consideration and acknowledgement should be given to existing and emerging supplementary and planning guidance on relevant topics such as Green Networks, Low Density Rural Housing, Quality of Place etc.

2. Development in Rural Areas

2.1 Generally planning policy has historically sought to restrict unnecessary development in countryside locations, principally to prevent sporadic and unsustainable growth and to maximise use of infrastructure, resources and services more commonly available in established urban areas. While this principle is still relevant today, the countryside is a workplace for some, a playground for others and a vital ecosystem for all.

2.2 Government policy supports rural development that supports prosperous and sustainable communities and business whilst protecting and enhancing environmental quality. It also promotes responsible access and the right to roam. However as a place to live and work there are challenges to address and overcome in respect of the the climate change agenda and the Government's sustainability policies, particularly given the development pressures resulting from Midlothian's close proximity to Edinburgh.

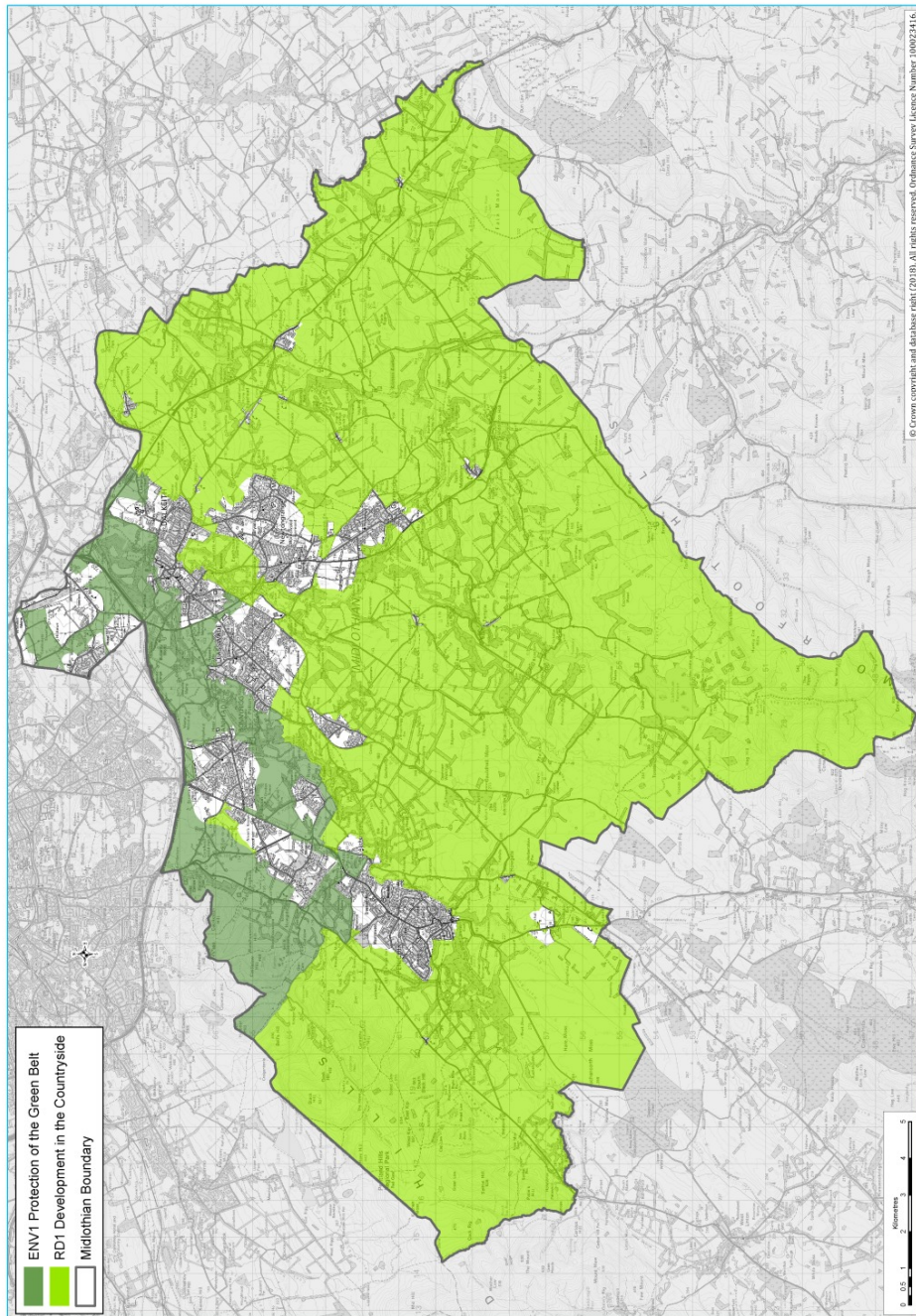
Housing Development in the Countryside and Green Belt SG (adopted)

2.3 The Council's planning policies seek to provide a balance between development and protecting the essential characteristics of the countryside. It seeks to do this by minimising the adverse affects on the character of the countryside while maximising the benefits to its communities and the Midlothian economy. Policies RD1 and ENV1 from the Local Development Plan are reproduced in Appendix 1 for convenience.

3. Countryside and Green Belt in Midlothian

3.1 For the purposes of this guidance, the countryside is defined as land out with defined settlement boundaries, which can be seen in the image below. Approximately 9.5% of Midlothian is covered by the Green Belt and a further 80% is covered by the countryside policy.

Housing Development in the Countryside and Green Belt SG (adopted)



Housing Development in the Countryside and Green Belt SG (adopted)

3.2 Midlothian is located in close proximity to Edinburgh with the A720 City bypass forming the majority of the northern boundary. This creates development pressure for housing developments of all types, including in the countryside. As a consequence of this location, Midlothian's larger settlements are located close to the City Bypass and alongside the main north-south transport routes through Midlothian, particularly the A7 and A701. This has resulted in a concentration of urban development at the northern edge of the county with concerns frequently raised about the loss of countryside, the increase in coalescence between settlements and the consequential loss of identity for communities. As a result, the countryside in this area is covered by the Green Belt policy. Green Belt is a long established planning policy tool to protect the setting of urban areas, prevent urban sprawl and manage and protect agricultural, forestry and recreational uses and discourage inappropriate development.

3.3 The wider landscape of Midlothian consists of the Pentland Hills in the west, the Moorfoot Hills in the south with the Tranent-Mayfield ridge in the east. This bowl shape was the result of a concentration of ice which melted approximately 20,000 years ago with a torrent of melt water carving out the river valleys of the North and South Esk. The ground elevation of Midlothian is slightly higher than Edinburgh to the north due to a rebound in the earth's crust.

3.4 The character of the agricultural land in the north of the county is generally flat and lower lying, which contains the majority of Midlothian's Prime Agricultural Land. The land rises gently southwards away from the coast where a more undulating landscape is common, resulting in a large number of protected Special Landscape Areas. There are a wide variety of landscapes in this area with moorlands and natural uplands towards the Moorfoot Hills at the southern boundary and dramatic incised valleys around the North and South Esk.

3.5 Throughout Midlothian there are large areas of countryside owned by landed estates centred on historic castles and country houses which have played a crucial role in the shaping of Midlothian's human landscape and are an important link to our past. The gardens and parkland in the vicinity of these have often been carefully designed to provide an attractive setting, with many identified in the *Inventory of Historic Gardens and Designed Landscapes* for their aesthetic, historical, scenic and/or nature conservation value.

3.6 The wider human landscape has been shaped by past and present developments in agriculture. Throughout Midlothian there are many groups of historic sandstone agricultural buildings, with the most common layouts being steadings with associated housing such as stand alone farmhouses (often 2-storey) and terraced farm cottages (often single or one and a half storey).

3.7 There are large river valleys centred on the North and South Esk rivers in the west and centre of the county and the Tyne to the east. As the geography of these areas have been untouched by agriculture in many places, these form important wildlife corridors and well as distinctive features in the landscape.

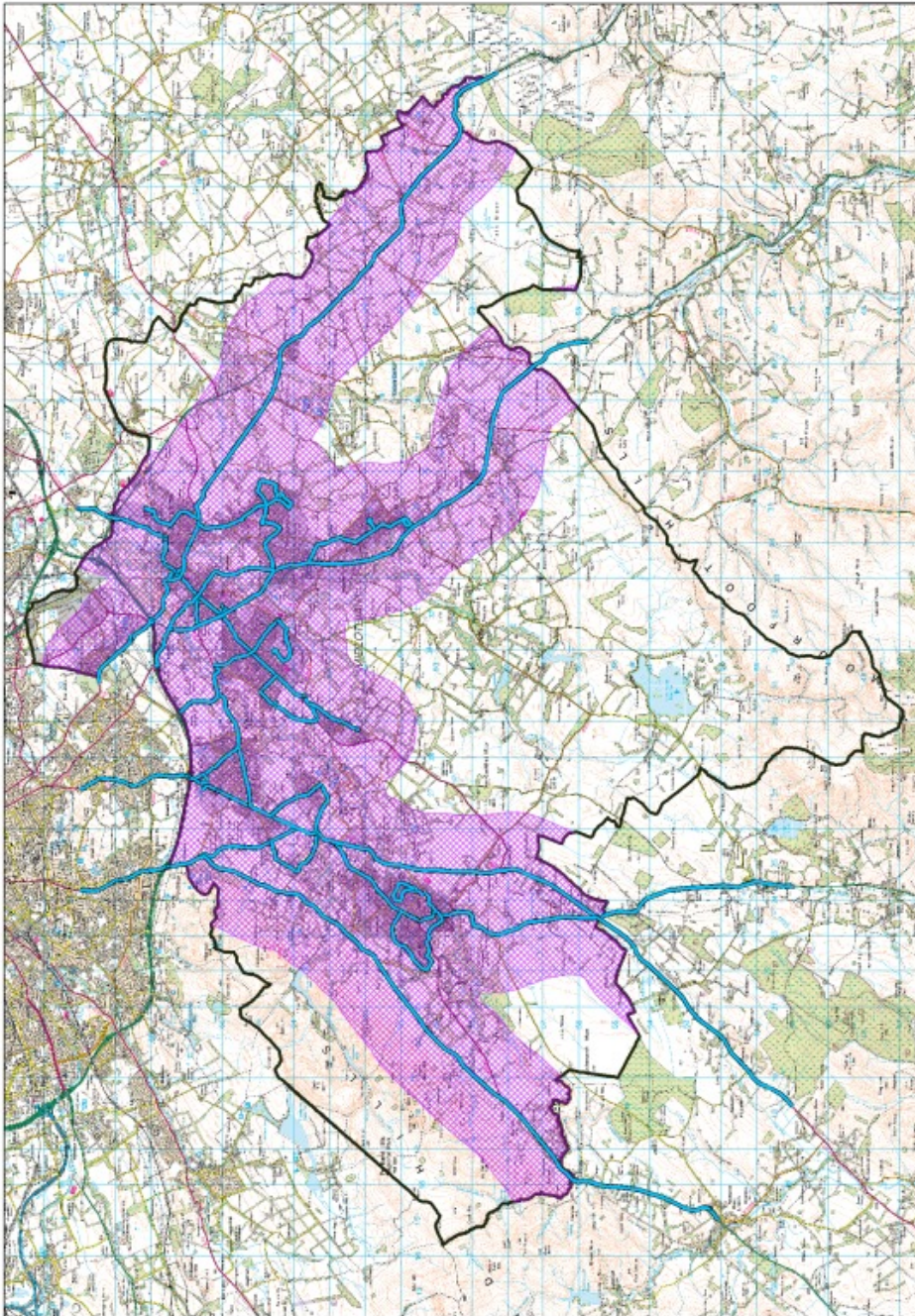
Housing Development in the Countryside and Green Belt SG (adopted)

4. General Development Requirements

4.1 All development in the countryside is required to be of a scale and character that is appropriate to the rural landscape, be capable of being serviced with an adequate and appropriate access, be capable of being provided with drainage and public water supply and be accessible by public transport. These requirements are a necessary pre-requisite for any development to be considered acceptable, irrespective of whether the proposal would otherwise be supported by LDP policy. Reference should be made to policies RD1 and ENV1 for the full requirements.

4.2 With respect to the public transport requirement, all development has to be either within 1 mile (1600m) of services (such as shops or schools) or to a bus service of at least 1 per hour. The map below shows the bus routes in Midlothian at the time of writing and the areas that are within 1 mile of them. The purpose of this element of policy RD1 is to ensure that development proposals in rural areas are located in sustainable locations. While proposals at locations remote from public transport and services would be contrary to this aspect of the policy RD1, the Council will give consideration to other aspects of sustainability, such as measures to minimise greenhouse gas emissions and reducing energy use through good design and use of low and zero-carbon technology, in weighing the significance of this.

Housing Development in the Countryside and Green Belt SG (adopted)



Housing Development in the Countryside and Green Belt SG (adopted)

4.3 Where proposals involve the restoration, redevelopment or other work to redundant buildings, care will be required in ensuring that adverse impacts on protected species are avoided. Such buildings can be in use by Barn Owls or Bats for nesting or roosting. Where such impacts are unavoidable, it will need to be demonstrated that a protected species licence is capable of being granted. Developments which do not avoid adverse impacts on protected species will be contrary to policy ENV15 of the MLDP.

4.4 It will be the responsibility of the applicant to demonstrate compliance with the policy and the necessary standards. Policies RD1 and ENV1 are reproduced in Appendix 1.

5. Housing - Development Required to Support an Established Countryside Activity

5.1 Both policies permit development which is required for the furtherance of an established countryside activity. The onus is on the applicant to demonstrate compliance with the relevant policies to the satisfaction of the Council.

5.2 In demonstrating the need for a permanent dwelling, the Council will expect an application to be accompanied by an independent report prepared by a suitably qualified professional to support the need for a house and on the viability of the associated business and its operational requirements. In outlining the needs of the business, it should be apparent to the Council whether the need can be met within an existing settlement and whether the occupier will be employed full-time in the associated countryside activity, and therefore whether it meets the other requirements of the policy. The most common reasons for such houses are typically the need for an onsite presence for security and animal husbandry.

6. Housing - Development in Housing Groups

6.1 Policy RD1 allows for the development of a house where there is a group of 5 or more existing dwellinghouses. This aspect of the countryside policy sets out a flexible approach to ensure that there are appropriate opportunities for small-scale infill within housing groups. The aim is to allow for development in the countryside of a scale and at locations which maintain the essential character of the countryside.

Groups that are applicable

6.2 The policy does not apply to housing groups of less than five housing units. Neither does it apply where an existing planning permission for one or more dwellings, if implemented, brings the number of dwellings in a group up to five during the Local Development Plan period. Only houses that are complete by the Local Development Plan adoption date (7 November 2017) will be considered in determining the size of the group. Groups within the Green Belt are covered by policy ENV1 of the LDP, which does not make provision for

Housing Development in the Countryside and Green Belt SG (adopted)

development at housing groups, therefore proposals in such locations will not be considered in accordance with the plan. Dwellings located within the built-up area as defined by policy DEV2 of the LDP will not be considered as constituting part of a group.

6.3 The cohesiveness of the group will be considered in determining the appropriateness of any proposed development. The proximity of the buildings which constitute a group should, as a rule of thumb, be no more than twice the width of the curtilage of the existing units. Units should generally have intervisibility with one another for them to be considered as part of the same cohesive group, therefore local topographical features will be important.

6.4 The planning system seeks to direct development to areas where there is good access to public transport and/or local services. This is more difficult to achieve in the countryside as the public transport and services available are typically not of a frequency which would normally accommodate new development, leading to a concern relating to sustainability and reducing the need for car based travel. Policy RD1 states that any development will need to be accessible to public transport or local services within 1600m (1 mile).

6.5 Housing groups that were identified in the previous adopted *Development in the Countryside* Supplementary Planning Guidance were identified using very similar criteria to those outlined above. It is therefore likely that they will be regarded as groups that are applicable under this Supplementary Guidance unless there has been a significant change of circumstances.

Identifying appropriate plots for development

6.6 Upon receipt of a proposal, the council will assess the suitability for growth within the group in question in line the criteria outlined. Account will be taken of the form, character and cohesiveness of the group as well as the level of containment provided by existing features, such as natural and manmade boundaries.

6.7 Any new unit within a housing group must be of a location, scale and character that is in keeping with that of the existing group. More significant proposals beyond infill development, with wider implications for landscape impact or servicing should be promoted through the Local Development Plan.

6.8 With regards to the location of new development, the preference of the Council will generally be for new units to be located within any gaps in the group. Where there are no gaps, consideration will be given to locations adjoining the existing group, particularly where there is a site that adjoins the group on two sides. Where there are existing physical or visual barriers separating the site or where distance results in the site being remote from the host group, development will not be acceptable.

Housing Development in the Countryside and Green Belt SG (adopted)

Guidance on Acceptable Plots

1. Gap sites within the group will generally take precedence over other locations (typically these are sites with built development on either side);
2. Where no gap sites are present, sites adjoining the group are preferable. Normally, a site will be preferred if at least two sides adjoin the boundaries of existing properties though, in some cases, a site which adjoins the boundary of only one property may be preferable if it relates better visually to the group. All proposals which adjoin a group (as opposed to gap sites) should meet the following requirements:
 - there is an existing physical or visual feature which provides containment for the group and therefore reduces pressure for ribbon development or rural sprawl;
 - where such a feature does not exist, there should be potential for such a feature to be provided so long as it is in character with the scale and appearance of the group;
3. Proposals located in open fields adjoining a group, which have no physical features to provide containment will not be acceptable;
4. Proposals which impact adversely on trees, hedgerow and boundary features or are located on the opposite side of physical features which form strong boundaries for a group (e.g. main roads, burns, substantial tree belts, etc) will not be acceptable.

6.9 The design of any proposed dwelling will be an important consideration in determining the acceptability of a proposal. Development must be small-scale in relation to the existing group and respect the character, cohesiveness and amenity of the group being extended. For example, proposals should not be suburban in character when they relate to the expansion of a group whose character and design is of a rural vernacular nature. Proposals should be avoided where they represent ribbon or linear development along a public road unless this represents the most sustainable building pattern for the locality. Furthermore, proposals will not be acceptable where it results in coalescence with another group or settlement. More detail on acceptable design can be found in the Quality of Place Supplementary Guidance.

Housing Development in the Countryside and Green Belt SG (adopted)

7. Conversions of redundant farm buildings or other non-residential buildings

7.1 Policies RD1 and ENV1 gives policy support for the conversion of redundant farm steadings and other non-residential buildings in the countryside. The aim is to ensure that buildings that contribute to the character of the countryside, such as those of traditional or historic design, are retained and where possible alternative uses found.

7.2 Before such developments can be considered, it must be justified and demonstrated that the buildings in question are fully redundant. The Planning Authority will not support the conversion of such buildings where these are still in use or where their loss may result in the requirement for a replacement building elsewhere.

7.3 Where buildings are capable of renovation and conversion and are examples of traditional, architectural or historic interest their demolition and redevelopment will be resisted. Resulting buildings must make a significant and positive contribution to the landscape and its retention beneficial to the surroundings.

Will converting a non-residential building be acceptable?

The conversion of the building may be acceptable, provided that both of the following are not applicable:

- The building still in use; and
- The conversion of the building would result in a requirement for a building elsewhere, unless it is demonstrated that the existing building is no longer suitable for the use that is being displaced.

Both of the following must be applicable for a conversion to be deemed acceptable:

- The building capable of renovation and conversion without substantial alteration or extension to the original fabric; and
- The building represents an example of traditional, architectural or historic interest OR the building makes a significant positive contribution to the character and appearance of the landscape

Housing Development in the Countryside and Green Belt SG (adopted)

7.4 The acceptability of a proposed steading conversion will largely depend upon the design elements used. The building which is proposed for conversion should be of a scale which will allow for the conversion without the need for significant extension to the building, though account will be made for the needs of future users. Where the building has existing openings, these should be retained in designing the conversion in order to retain its character. Acceptable conversions should not alter the original fabric of the building to a significant degree. More detail on acceptable design can be found in the Quality of Place Supplementary Guidance.

8. Redevelopment of redundant farm buildings or other non-residential buildings

8.1 Where a redundant farm building or other non-residential building in the countryside is judged not to be an example of traditional, architectural or historic interest, their demolition and redevelopment may be appropriate. The aim is to allow for the removal of buildings, which may be an eyesore, and their replacement with development of a higher design quality, resulting in a net environmental benefit.

8.2 As mentioned above, before such developments can be considered, it must be justified and demonstrated that the buildings in question are fully redundant. The aim is to ensure that new development preserves and enhances the appearance and character of the countryside, therefore should such a building be demolished prior to receipt of a planning application and assessment by the Council, it is unlikely that new development will be supported except unless it is required for an established countryside use as outlined in policy RD1. Redevelopment of redundant buildings will not be consented in the Green Belt and such proposals are not supported by policy ENV1.

Will redeveloping a non-residential building be acceptable?

The redevelopment of the building may be acceptable, provided that the following are applicable:

- The building is no longer in use;
- The loss of the building would not result in a requirement for a building elsewhere, unless it is demonstrated that the existing building is no longer suitable for the use that is being displaced; and
- The building does not represent an example of traditional, architectural or historic interest or make a significant positive contribution to the character and appearance of the landscape

Housing Development in the Countryside and Green Belt SG (adopted)

8.3 For a proposal for redevelopment to be deemed successful, it must result in a development which respects and enhances the character and appearance of the countryside. Furthermore, the scale of development should not extend significantly beyond the footprint of the original building, unless there are significant design reasons for doing so. More detail on acceptable design can be found in the Quality of Place Supplementary Guidance.

9. Enabling Development

9.1 There are a number of large rural buildings of value to the local landscape and whose current use has or may become redundant. In the interest of retaining such buildings, the Council will consider enabling development as an option. Where a building is listed, reference should be made to policy ENV22 of the MLDP.

9.2 Where such enabling development is proposed, it is the responsibility of the applicant/developer to bring to the attention of the Council any issue that they consider relevant. The Council will need to be convinced of the following in determining such a proposal.

Will enabling development be acceptable?

The provision of new development to financially assist in the preservation of a redundant building may be acceptable, provided that the following are applicable:

- It is demonstrated that the quality of the building and/or its contribution to the character or appearance of the rural landscape is of considerable significance;
- The building is not located in the Green Belt;
- The proposed enabling development is located in the vicinity of the building whose restoration it is proposed to enable;
- It is demonstrated that such development is the only means of retaining the building and other options of funding have been exhausted.
- It is demonstrated that the scale of the proposed development represents the minimum necessary to enable the building's conservation and reuse;
- The resulting development is of a high quality design that respects the building and its setting;
- The development will result in the building having a lasting use.

9.3 In considering matters relating to the financial viability of alternative options and the minimum necessary scale of new development needed to retain a building, the Council reserves the right to base its decision on satisfactory evidence to that effect through an open book process.

Housing Development in the Countryside and Green Belt SG (adopted)

10. Appendix 1: LDP Policies**Policy RD 1****Development in the Countryside**

Development in the countryside will only be permitted if:

- A. it is required for the furtherance of agriculture (including farm-related diversification), horticulture, forestry, countryside recreation or tourism; or
- B. it accords with policies RD2, MIN1, NRG1 or NRG2; or
- C. it accords with the Council's Supplementary Guidance on *Development in the Countryside and Green Belt*.

All such development will need to be:

- a. of a scale and character appropriate to the rural area and well integrated into the rural landscape; and
- b. capable of being serviced with an adequate and appropriate access; and
- c. capable of being provided with drainage and a public water supply at reasonable cost, or an acceptable private water supply. Development must protect and where appropriate improve the water environment, avoiding unacceptable and unnecessary surface and foul water discharges to watercourses; and
- d. accessible by public transport and services (where appropriate), either within 1,600 metres (1 mile) of a settlement or a bus route with a frequency of at least 1 bus per hour.

Housing

Normally, housing will only be permissible where it is required for the furtherance of an established countryside activity (see criterion A above). The applicant will be required to show the need for the new dwelling is permanent; cannot be met within an existing settlement; and that the occupier will be employed full-time in the associated countryside activity.

Housing Development in the Countryside and Green Belt SG (adopted)

Proposals to replace an existing dwelling may be permissible where it can be demonstrated that it is incapable of renovation or improvement; that the proposal relates to a complete dwelling (i.e. not the plot of a previous, now demolished house); and provided that the replacement is of a similar scale.

The following circumstances are exceptions to the above requirement to demonstrate that the housing is for the furtherance of a countryside activity. The details of these exceptions will be set out in the relevant Supplementary Guidance:

- housing groups (allowing 1 new dwelling during the plan period where there are 5 existing units);
- conversions of redundant farm buildings or other non-residential buildings;
- redevelopment of redundant farm buildings or other non-residential buildings; or
- enabling development where it can be clearly shown to be the only means of preventing the loss of a heritage asset and securing its long-term future.

In all circumstances, proposals for new dwellings in the countryside must demonstrate a 'Very Good' or better BREEAM (Buildings Research Establishment Environmental Assessment Methodology) rating or equivalent standard for any successor development.

Business in the countryside

Development opportunities that will enhance rural economic development opportunities will be permitted provided that they accord with criteria a - d above. 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.

Housing Development in the Countryside and Green Belt SG (adopted)

Policy ENV 1

Protection of the Green Belt

Development will not be permitted in the Green Belt except for proposals that:

- A. are necessary to agriculture, horticulture or forestry; or
- B. provide opportunities for access to the open countryside, outdoor sport or outdoor recreation which reduce the need to travel further afield; or
- C. are related to other uses appropriate to the rural character of the area; or
- D. provide for essential infrastructure; or
- E. form development that meets a national requirement or established need if no other site is available.

Any development proposal will be required to show that it does not conflict with the overall objectives of the Green Belt which are to:

- Direct development to the most appropriate locations and support regeneration;
- Protect and enhance the character, landscape setting and identity of the City and Midlothian towns by clearly identifying their physical boundaries and preventing coalescence; and
- Protect and provide access to open space.

Housing

Housing will normally only be permissible where it is required for the furtherance of an established Green Belt activity (see criterion A above). The applicant will be required to show the need for the new dwelling is permanent; cannot be met within an existing settlement; and that the occupier will be employed full-time in the associated countryside activity. A planning condition limiting the occupancy of the house is likely to be attached in the event of approval.

COMMUNICATING CLEARLY

We are happy to translate on request and provide information and publications in other formats, including Braille, tape or large print.

如有需要我們樂意提供翻譯本，和其他版本的資訊與刊物，包括盲人點字、錄音帶或大字體。

Zapewnimy tłumaczenie na żądanie oraz dostarczymy informacje i publikacje w innych formatach, w tym Braillem, na kasecie magnetofonowej lub dużym drukiem.

ਅਸੀਂ ਮੰਗ ਕਰਨ ਤੇ ਖੁਸ਼ੀ ਨਾਲ ਅਨੁਵਾਦ ਅਤੇ ਜਾਣਕਾਰੀ ਤੇ ਹੋਰ ਰੂਪ ਵਿੱਚ ਪ੍ਰਕਾਸ਼ਨ ਪ੍ਰਦਾਨ ਕਰਾਂਗੇ, ਜਿਨ੍ਹਾਂ ਵਿੱਚ ਬਰੇਲ, ਟੇਪ ਜਾਂ ਵੱਡੀ ਛਪਾਈ ਸ਼ਾਮਲ ਹਨ।

Körler için kabartma yazılar, kaset ve büyük nüshalar da dahil olmak üzere, istenilen bilgileri sağlamak ve tercüme etmekten memnuniyet duyuyoruz.

اگر آپ چاہیں تو ہم خوشی سے آپ کو ترجمہ فراہم کر سکتے ہیں اور معلومات اور دستاویزات دیگر شکلوں میں مثلاً بریل (تایپا افراد کے لیے) بھرے ہوئے حروف کی لکھائی میں، ٹیپ پر یا بڑے حروف کی لکھائی میں فراہم کر سکتے ہیں۔

Laura Kinsey

From: Laura Kinsey on behalf of Duty Planning Officer
Sent: 16 December 2019 11:11
To: 'mich@graymacphersonarchitects.co.uk'
Subject: FW: Incomplete Application - Land South West of Cockmuir. Penicuik

Good morning Michael,

19/01004/DPP
Erection of dwellinghouse (retrospective)
At Land South West of Cockmuir, Penicuik

I have had confirmation from Scottish Borders that the fee has been refunded to yourself or the applicant (I'm not sure who made the payment). As explained as the majority of the site falls within Midlothian, the fee should come to us. A payment of £601.50 is therefore required to be paid before the application can be made valid. Payment can be made by cheque made payable to Midlothian Council or by card by calling 0131 271 3147. I would be grateful if you could confirm when payment is likely to be made.

I hope this is of assistance.

Regards,

Laura

Laura Kinsey
Planning Information Officer
Fairfield House
8 Lothian Road
Dalkeith
EH22 3AA
laura.kinsey@midlothian.gov.uk
0131 271 3302

From: Laura Kinsey On Behalf Of Duty Planning Officer
Sent: 09 December 2019 12:24
To: 'Michael Gray' <mich@graymacphersonarchitects.co.uk>
Subject: RE: Incomplete Application - Land South West of Cockmuir. Penicuik

Michael,

Thank you for sending in the revised location plan and site plan. I will arrange for these to be uploaded to the case file and the previous plans marked up as superseded. As discussed I would advise you also send a revised copy of the location plan and site plan to Scottish Borders.

As explained, the majority of the application site falls within the Midlothian boundary. The fee should therefore be paid to Midlothian Council and we will take the lead during the application process. I have spoken with the case officer from the Scottish Borders and they will arrange for the fee to be transferred over.

I trust this is of assistance.

Regards,

Laura

Laura Kinsey
Planning Information Officer
Fairfield House
8 Lothian Road
Dalkeith
EH22 3AA
laura.kinsey@midlothian.gov.uk
0131 271 3302

From: Michael Gray <mich@graymacphersonarchitects.co.uk>
Sent: 06 December 2019 16:06
To: Duty Planning Officer <dutyplanningofficer@midlothian.gov.uk>
Subject: Re: Incomplete Application - Land South West of Cockmuir. Penicuik

Laura,

I attach updated drawings.

regards,

Michael

On 6 Dec 2019, at 14:57, Duty Planning Officer <dutyplanningofficer@midlothian.gov.uk> wrote:

Dear Sir/Madam,

Application reference: 19/01004/DPP
Erection of dwellinghouse (retrospective)
At Land South West of Cockmuir, Penicuik

Thank you for your application for the above proposal.

As submitted your applications is incomplete. Please see the attached letter for details.

If you intend submitting the additional information via e-mail please use Planning-Applications@midlothian.gov.uk

Regards

Laura Kinsey

Laura Kinsey
Planning Information Officer
Fairfield House

8 Lothian Road
Dalkeith
EH22 3AA
laura.kinsey@midlothian.gov.uk
0131 271 3302

The information contained in this message may be confidential or legally privileged and is intended for the addressee only.

If you have received this message in error or there are any problems please notify the originator immediately.

If you are not the intended recipient you should not use, disclose, distribute, copy, print, or rely on this e-mail.

All communication sent to or from Midlothian Council may be subject to recording and/or monitoring in accordance with relevant legislation.

Midlothian Council
Fairfield House
8 Lothian Road
Dalkeith
EH22 3ZN

Education, Communities and Economy
Planning
Director: Dr Mary Smith

Midlothian

20 December 2019

Gray Macpherson Architects
Tigh-na-geat House
1 Damhead Farm
Lothianburn
EH10 7DZ

Dear Sir/Madam

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (as amended by Planning etc (Scotland) Act 2006)
Application For Detailed Planning Permission for Erection of dwellinghouse (retrospective) at Land South West of Cockmuir, Penicuik

Thank you for your application which was registered on 17 December 2019.

Please always quote the reference number given at the bottom of this letter when telephoning or writing. This is the official registration number of your application.

Your application has been allocated to Ms Whitney Lindsay, who will telephone or write to you regarding this proposal, if necessary, after visiting the application site. Please contact this officer on 0131 271 3315 if you wish to discuss your application, or if you wish the description of the proposal altered in any way.

You may expect a determination on your application within two months. The target date for this application is 17 February 2020.

In the event of a decision not being made within the two month period, you may ask for the application to be reviewed by the Council's Local Review Body. The local review should be made in accordance with section 43A of the above Act by notice sent within 3 months of the target date specified above.

You can apply for a review on non-determination by downloading the forms from the Council website. Alternatively please email planning-applications@midlothian.gov.uk or phone 0131 271 3302.

Please note that Regulation 15 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 requires that notice is correctly served on any landowners with an interest in the land which is the subject of a planning application. If it transpires prior to the determination of a planning application that the ownership certificate is incorrect, the Council may deem your application is invalid and remove it from the Planning Register. Please double check you have correctly served notice on all landowners to avoid delays in the processing of your application.

Please ask for: Ms Whitney Lindsay
Our Reference: 19/01004/DPP
Uniform ref: ACKAPP

Direct Dial: 0131 271 3315
Fax No: 0131 271 3537

Please note that any information, consultation response, objection or supporting letters submitted in relation to an application under the Planning Acts, will be published on the Council's website www.midlothian.gov.uk.

Yours faithfully

Ms Whitney Lindsay
Planning Officer

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. The representations will then be destroyed from the back office systems 6 months after the date of determination or 6 months after an appeal decision date and 6 months after a Local Review Decision date. **General Data Protection (GDPR)** privacy statement can be found at www.midlothian.gov.uk/privacy (Communities and Economy). **Planning Redaction Policy** can be found at www.midlothian.gov.uk/downloads/file/1378/redaction_policy*

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.

IMPORTANT NOTE REGARDING ORDNANCE SURVEY PLANS

Please note that the use of any Ordnance Survey (OS) Plan is copyright protected. If you are using, or intend on using an OS plan you must ensure an appropriate copyright acknowledgement and licences/serial number is submitted on/with the plan. If you are using a plan not derived from OS data, you are required to state the source of the plan. For further information please visit www.ordnancesurvey.co.uk

Environmental Health
Midlothian Council
Fairfield House
8 Lothian Road
Dalkeith
EH22 3ZH

Date of Issue: 29 October 2018

TEST REPORT

For the attention of: Edel Ryan

The Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017

Laboratory Reference: 50492377/1/1

Taken by G DRUMMOND on 24/10/2018

Client Reference: CRF/35/18/BDW

Received on 24/10/2018

Sample Description: PRIVATE WATER SUPPLY

Sample type: Private Water Supply - 2017

Sampling Point: TALISKA HOUSE, COCKMUIR FARM KITCHEN COLD TAP

Parameter	Method	Units	Result	Maximum Limit
Date Analysis Started			24/10/2018	
Aerobic colony counts @ 22 °C	M/001	cfu/ml	135	
Coliforms	M/042	cfu/100ml	0	0
E.coli	M/042	cfu/100ml	0	0
Enterococci faecalis	M/004.11	cfu/100ml	0	0
Clostridium perfringens	M/007	cfu/100ml	0	0

Observation (These do not form part of the accredited tests)

The test results comply with the requirements of the above regulations for potable drinking water.

Signed:

Jemma Tennant: Operational Manager

The sample was examined under my direction, according to documented standard and in-house methods (Note 2) , details of which are available on request.

This laboratory is accredited in accordance with the recognised International Standard ISO/IEC 17025. This accreditation demonstrates technical competence for a defined scope and the operation of a laboratory quality management system (refer joint ISO-ILAC-IAF communiqué dated April 2017).

- Notes:
1. No liability can be accepted for information given by customer
 2. Non-accredited tests are indicated by "**"
 3. Subcontracted tests are indicated by "#"
 4. This report must not be reproduced except in full without written approval of the laboratory



ROBERT C BEATTIE
Scientific Bereavement & Registration Services Senior Manager
Edinburgh Scientific Services
4 Marine Esplanade, Edinburgh EH6 7LU Tel 0131 555 7980, Fax: 0131 555 7987
Email: scientific.services@edinburgh.gov.uk



MIDLOTHIAN COUNCIL

DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

Planning Application Reference: 19/01004/DPP

Site Address: Land South-West of Cockmuir, Penicuik

Site Description:

The application site is situated at the southern end of the remote Ankriellaw to Cockmuir road, which is located to the south of Mount Lothian. Mount Lothian is on the Howgate to Temple road, the B6372.

The application site is host to a single storey detached dwellinghouse, with living accommodation afforded within the roof space, which is the subject of this planning application. The dwelling has a 'T' plan footprint and is of a traditional design. The application dwelling is finished in a white wet dash render with a slate pitched roof and brown timber framed windows and doors. There is some timber panelling design detailing within the rear, front and side elevations. There are 10 dark grey framed rooflights.

A gravel driveway has been formed to the east of the application site; there is a shipping container sited within the northern rear corner of the application site. The front and side site boundaries are defined and enclosed by a timber post and rail fence and the rear boundary and garden ground is enclosed by a timber fence.

The land immediately to the rear and sides of the application site is rough grazing land that is enclosed. Beyond this is more rough grazing land that is defined by a post and wire fence and conifer trees to the north-west and south.

There are three dwellings located to the north of the application site which includes Taliskar House which was granted planning permission in 2010, and beyond this is the old Cockmuir Farm complex of buildings; it is noted that retrospective planning permission was granted in 2018 for the subdivision to form two dwellinghouses. There is also a dwellinghouse located to the south of the application site within the Borders. These buildings are generally traditional in form and scale and have been laid out in a linear fashion along and fronting on to the road.

To the east of the application site is rough open farm land.

Proposed Development: Erection of dwellinghouse (retrospective)

Proposed Development Details:

Retrospective planning permission is sought for the erection of a dwellinghouse. The submitted application form noted that the works were completed on the 11th December 2018.

The application dwelling is a single storey dwellinghouse with living accommodation afforded within the roof space. The dwelling has a 'T' plan footprint and is of a traditional design. The application dwelling is finished in a white wet dash render with a slate pitched roof and brown timber framed windows and doors. There is some timber panelling design details within the rear, front and side elevations. There are 10 dark grey framed rooflights.

Within the submitted application form, it is noted that the dwellinghouse, as approved by the Scottish Borders, was erected to its current incorrect location as builder persuaded the client to move the house over to avoid boggy ground and that the boundary was erroneously forgotten about when the building was re-sited.

It is noted that the submitted site plan shows a septic tank and soakaway located to the north of the application site, out with the redline application site boundary. Therefore the septic tank and soakaway do not form part of the assessment of the application. These works will require planning permission.

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

In 2012 a planning permission in principle application was submitted which relates to part of the application site, planning ref: 12/00770/PPP. The application was for the erection of dwellinghouse which was refused in 2013 for the reasons:

- 1. It has not been demonstrated, to the satisfaction of the planning authority, that there is a requirement for the proposed house in connection with an establish countryside business or activity. In addition, the site is not located within an existing group of dwellings; nor does the proposal involve the redevelopment of a redundant building. For these reasons the proposal does not comply with the terms of policies RP1 and DP2 of the adopted Midlothian Local Plan.*
- 2. It has not been demonstrated, to the satisfaction of the planning authority, that the proposed dwellinghouse will not have a significant adverse impact on the character and appearance of the local landscape. Therefore, the proposal does not comply with the terms of policy RP7 of the adopted Midlothian Local Plan.*

It is noted that at the same time as the above planning application submitted, an application for planning permission in principle was submitted to the Scottish Borders on land adjacent to the abovementioned application site and also relates to part of the current application site, for the erection of a dwellinghouse, planning ref: 12/01445/PPP. This application was granted planning permission by Scottish Borders in 2014. Subsequently, an approval of matters in all conditions of planning permission in principle 12/01445/PP was approved in 2014, planning ref: 14/00321/AMC.

Consultations:

Scottish Water offered no objection but advised that there is no public waste or water infrastructure in the area and that private options should be investigated. It is noted that the applicant has a private water supply and a septic tank and soakaway located out with the application site. **Scottish Water** also advised that they will **not** accept any surface water connections into the combined sewer system.

The **Council's Environmental Health Manager** advised that the application property is served by the same private supply which serves the adjacent two properties at 'Taliskar' and 'Cockmuir Farmhouse'. Water tests carried out in May 2015, October 2018 and November 2019 demonstrate that the bacteriological and chemical quality of the water complies with the standards set out in the Private Water Supplies Regulations; this should continue to be the case as long as regular maintenance and servicing of the filter units is carried out, which relies upon the agreement of the three house owners and access to Cockmuir Farmhouse. The **Council's Environmental Health Manager** advised that although the house has been erected on a site of previous agricultural land no information has been provided with regards to possible contamination and/or previous mineral workings. Therefore, the **Council's Environmental Health Manager** offered no objection subject to conditions being attached in relation to contaminated land/site investigations.

The **Council's Policy and Road Safety Manager** offered no objection.

The **Health and Safety Executive (HSE)** do not advise against, consequently, **HSE** does not advise, on safety grounds, against the granting of planning permission in this case

National Grid offered no Objection to the above proposal which is in close proximity to a High-Pressure Gas Pipeline.

SGN advised that there should be no mechanical excavations taking place above or within 0.5m of a low/medium pressure system or above or within 3.0m of an intermediate pressure system. The applicant should, where required, confirm the position using hand dug trial holes.

As part of the application site is located within the **Scottish Borders** there was a requirement to consult with **Scottish Borders**. **Scottish Borders** offered no response.

Representations: No representations received.

Relevant Planning Policies:

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

Policy **RD1: Development in the Countryside** states that development in the countryside will only be permitted if:

- it is required for the furtherance of agriculture, including farm related diversification, horticulture, forestry, countryside recreation or tourism; or

- it accords with policies RD2, MIN1, NRG1 or NRG2; or
- it accords with the Council's Supplementary Guidance on *Development in the Countryside and Green Belt*.

The following circumstances are exceptions to the above requirements to demonstrate that the housing is for the furtherance of a countryside activity:

- housing groups (allowing 1 new dwelling during the plan period where there are 5 existing units); or
- conversions of redundant farm buildings or other non-residential buildings; or
- redevelopment of redundant farm buildings or other non-residential buildings; or
- enabling development where it can be clearly shown to be the only means of preventing the loss of a heritage asset and securing its long-term future.

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

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

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

Supplementary Guidance: Housing Development in the Countryside and Green Belt provides guidance regarding the circumstances in which exceptions may be made to the requirements to demonstrate that the proposed housing is for the furtherance of a countryside activity, including: the circumstances when/where new housing may be appropriate within the context of housing groups; when the conversion/redevelopment of farm buildings or other non-residential buildings would be acceptable; and enabling development.

Planning Issues:

The main planning issue to be considered is whether or not the proposal complies with the development plan policies and, if not, whether there are any material planning considerations which would otherwise justify approval.

Principle

Policy RD1 of the local development plan seeks to protect the countryside from unacceptable development. The policy provides a list of land uses that are considered acceptable in the countryside and sets out particular circumstances where new housing may be acceptable within the countryside. This is clarified further within the adopted Supplementary Guidance on Housing Development in the Countryside and Greenbelt.

Development within the countryside needs to demonstrate a requirement for a countryside location. Unallocated housing development within the countryside will only be permitted where; it demonstrates it is required for the furtherance of an

established countryside activity (agriculture, horticulture, forestry, countryside, recreation or tourism), it is classed as a housing grouping development, it comprises the conversion of redundant rural buildings, it comprises of the redevelopment of a redundant rural building or is required to secure the long term future of a heritage asset. It is also noted that not all rural development requires an associated dwellinghouse.

Retrospective planning permission is sought for the erection of a new dwellinghouse adjacent to a dwelling at Cockmuir. The applicant has submitted no supporting statement or justification for the requirement of a dwellinghouse in this location. Therefore, it has not been demonstrated that the proposed house is required in connection with, or to further, an established countryside activity or business. There is no way to support the proposed house through this part of the policy.

Cockmuir is not identified as one of the established acceptable groups of five or more dwellings in the approved SPG on housing groups. Therefore there is no scope to approve a further house in this area based on it being within an established group of dwellings.

The neighbouring dwellinghouse, Taliskar House, was granted planning permission in 2010 and was justified as a redevelopment of a redundant farm building. As the application site was previously an area of flat paddock ground, with no buildings located on it, the same justification for a dwellinghouse cannot be used in this case.

Therefore, the proposal is contrary to adopted policy RD1 Development in the Country Site and the adopted Supplementary Guidance: Housing Development in the Countryside and Green Belt.

Planning history

The application dwellinghouse has been sited so as to straddle the boundary of both the Scottish Borders and Midlothian Council areas, with the majority of the application site being located within Midlothian. Furthermore, it is noted that the associated septic tank and soakaway are located outwith the application site boundary, on land also within Midlothian Council.

As noted above, planning permission was refused in 2013 for the erection of a dwellinghouse adjacent to the application site, on land located wholly within Midlothian Council. Whereas, planning permission was granted for the erection of a dwellinghouse on the neighbouring land located wholly within the Borders.

The granting of planning permission for a dwellinghouse, located on land adjacent to the application site, wholly within the Scottish Borders does not outweigh the fact that there is no policy support for a dwellinghouse in this rural location.

Design

As stated above, there is no support in principle for a house on this site. Therefore, the presence of a house on this site is having more of an adverse impact on the character and appearance of the area than what is considered acceptable. Despite this, the general approach to the design of the dwellinghouse is not incompatible with

an approach which could potentially be supported on an otherwise acceptable plot within the countryside.

Amenity

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

The proposed dwelling satisfies the minimum gable to gable distance from Taliskar House and Scarcerig, as was required through policy DP2 of the previous local plan.

The daylight and sunlight previously enjoyed by the neighbouring dwellings will not be affected.

The application dwelling does not have an overbearing impact on the rear gardens and elevations of the neighbouring properties.

Overall, the retrospective dwellinghouse will not result in the harmful loss of neighbour amenity.

The application dwelling is sited and orientated so as to have an adequate outlook.

The application dwelling has a small amount of enclosed rear garden ground. The application dwellinghouse is afforded approximately 110m² of enclosed rear garden ground. This meets the minimum requirements required by policy DP2.

Overall, the application will be afforded an acceptable level of amenity.

Road Safety

The Council's Policy and Road Safety Manager offered no objection to the planning application and therefore there are no parking or road safety concerns.

Other matters

Within the submitted application form, it is noted that the dwellinghouse, as approved by the Scottish Borders, was erected to its current incorrect location as builder persuaded the client to move the house over to avoid boggy ground and that the boundary was erroneously forgotten about when the building was re-sited. There was no supporting evidence submitted to justify the relocation of the dwellinghouse. Furthermore, there was no engagement with Midlothian Council's Planning Department prior to the erection of the dwellinghouse. The justification noted within the submitted application form does not outweigh the lack of policy support for a dwellinghouse in this location.

The applicant was refused planning permission for a house by Midlothian Council on a neighbouring site fully within Midlothian Council's jurisdiction. The applicant was granted planning permission for a house by Scottish Borders Council on a neighbouring site fully within Scottish Borders Council's jurisdiction. The applicant

built the house on a site which did not benefit from planning permission. The current retrospective application is being assessed against Midlothian Council's current relevant planning policies and, as such, it is recommended that the application is refused. Enforcement action will be necessary to ensure that the house is removed.

Overall, all relevant matters have been taken into consideration in determining this application.

Recommendation: Refuse planning permission.

Refusal of Planning Permission

Town and Country Planning (Scotland) Act 1997

Reg. No. 19/01004/DPP

Gray Macpherson Architects
Tigh-na-geat House
1 Damhead Farm
Lothianburn
EH10 7DZ

Midlothian Council, as Planning Authority, having considered the application by Mr Morleymor Fisher, Creon Cottage, Cockmuir Farm, Penicuik, EH26 8QJ which was registered on 17 December 2019 in pursuance of their powers under the above Acts, hereby **refuse** permission to carry out the following proposed development:

Erection of dwellinghouse (retrospective) at Land South West of Cockmuir, Penicuik

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

<u>Document/Drawing.</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Location Plan	P01 Rev B 1:2500	20.01.2020
Block Plan	P02 Rev A 1:500	20.01.2020
Floor Plans	P03 1:50	17.12.2019
Elevations, Floor Plan And Cross Section	P04 1:50	17.12.2019

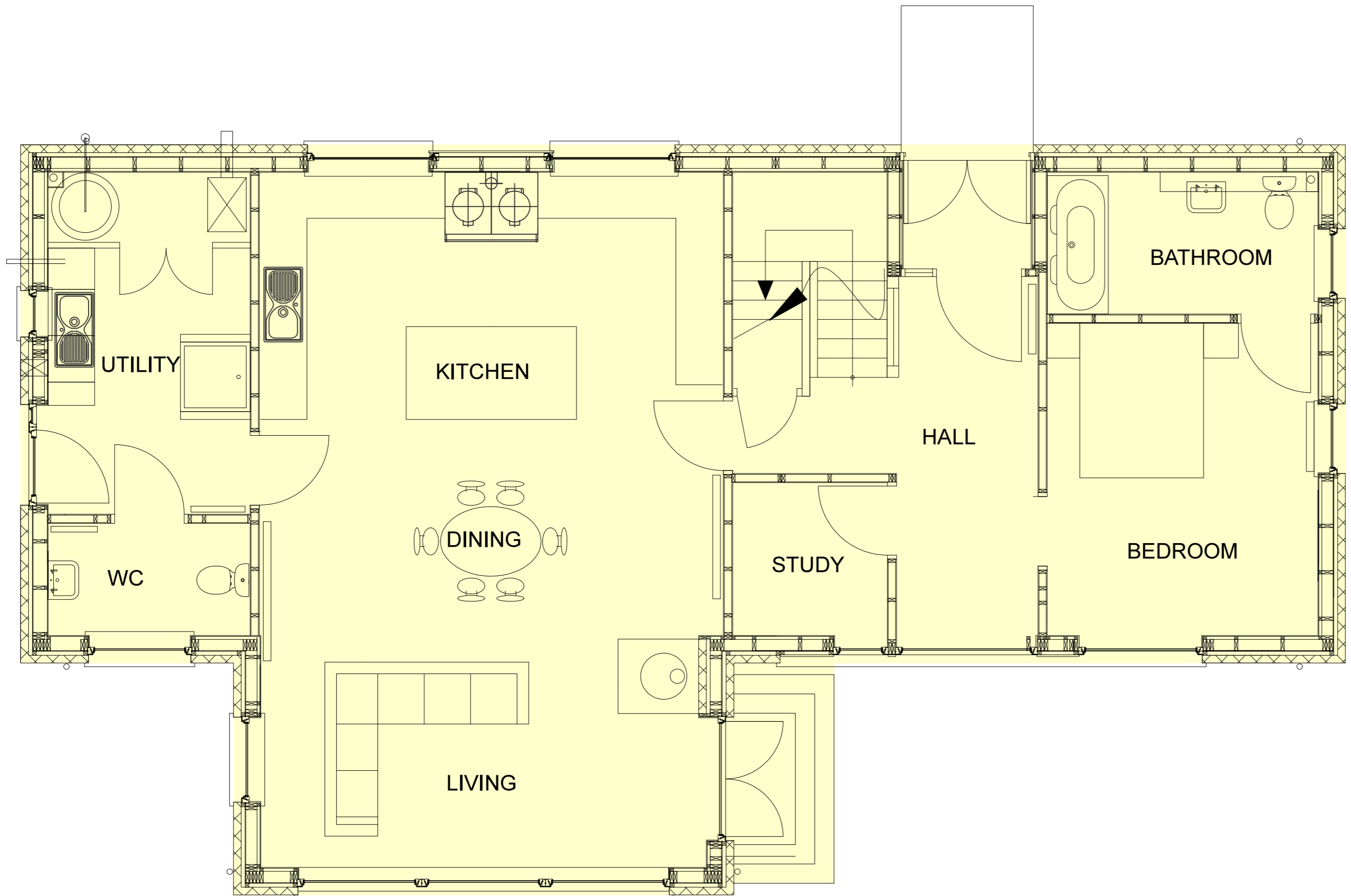
The reasons for the Council's decision are set out below:

- 1. It has not been demonstrated, to the satisfaction of the Planning Authority, that there is a requirement for the proposed house in connection with an establish countryside business or activity. In addition, the site is not located within an existing group of dwellings; nor did the proposal involve the redevelopment or conversion of a redundant rural building. For these reasons the proposal does not comply with the terms of policy RD1 of the adopted Midlothian Local Development Plan and the adopted Supplementary Guidance: Housing Development in the Countryside and Green Belt*
- 2. A planning application (ref. no. 12/00770/PPP) for the erection of a dwellinghouse on part of the application site was refused planning permission on 22 January 2013. There is no convincing and/or overriding reason why this similar proposal should be granted planning permission despite the decision on the previous planning application.*

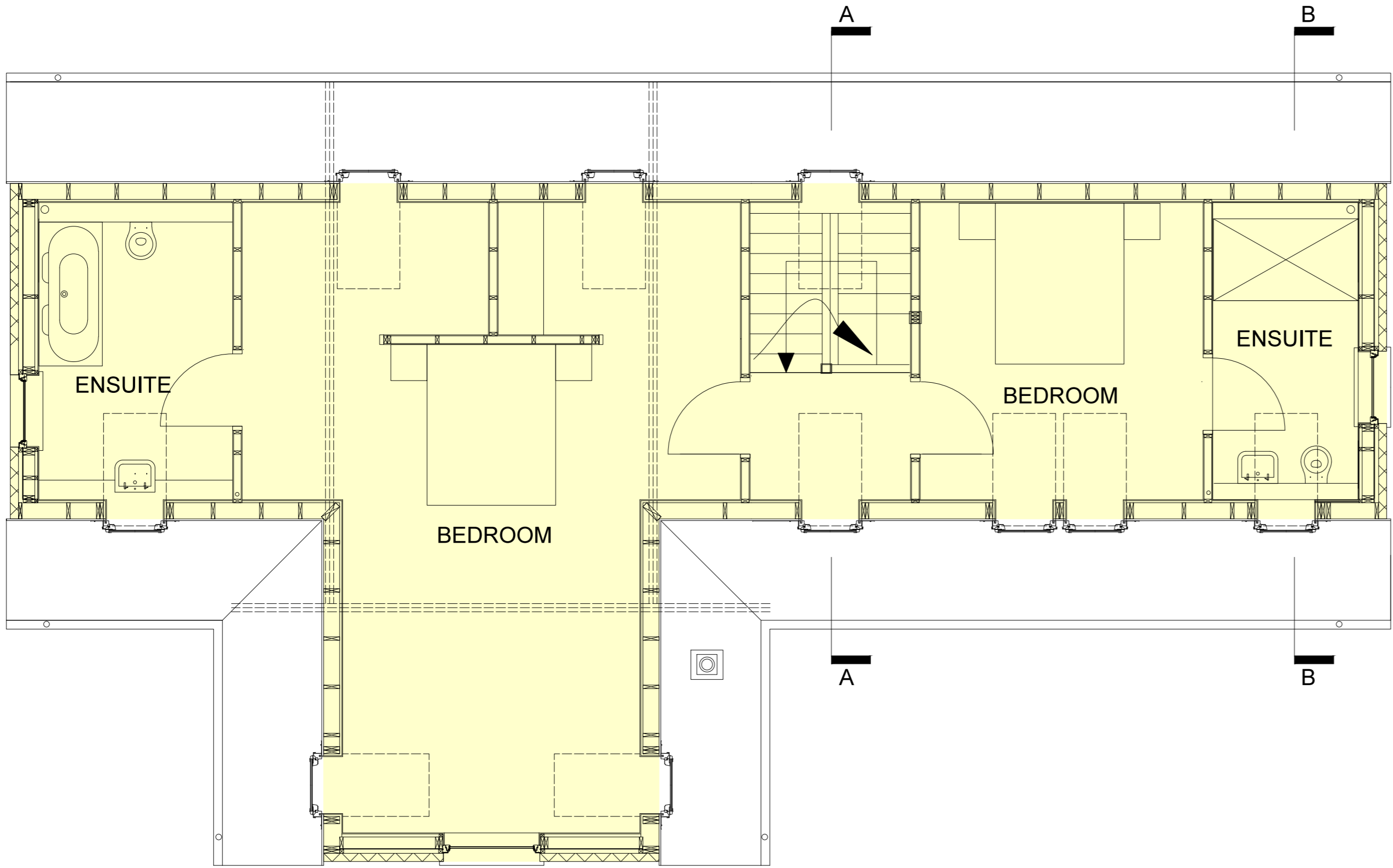
Dated 14 / 2 / 2020

A handwritten signature in black ink, consisting of a stylized 'D' and 'R'.

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



GROUND FLOOR PLAN



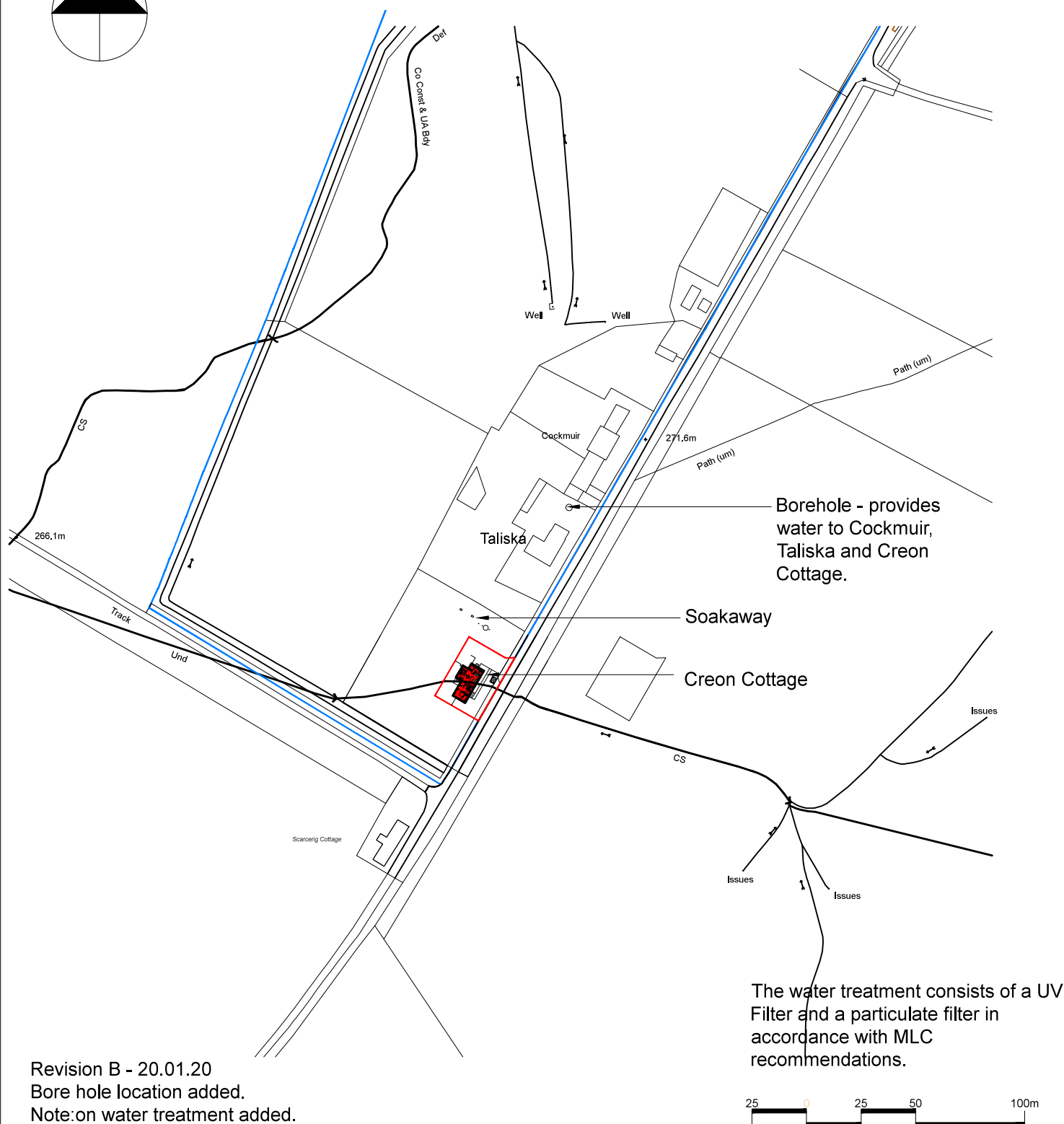
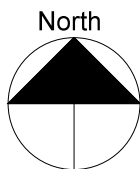
FIRST FLOOR PLAN



Client: Mr & Mrs Morley
Job: Creon Cottage
Cockmuir Farm
Title: Floor Plans
Scale: 1:50
Date: 21.11.2019
Job No: 504
Dwg No: P03
Rev:

graymacpherson
architects LLP

Tigh-na-Geat House,
Damhead Farm, Lothianburn,
Edinburgh EH10 7DZ
tel. 0131 445 2223
fax. 0131 445 7377



Client: Mr & Mrs Morleymore

Job:
Creon Cottage
Cockmuir Farm

Title:
Location Plan

Scale: 1:2500

Date: 20.01.20

Job No: 504

Dwg No: P01

Rev: B

note:
this drawing must not be scaled from or used for
measurements. check all dimensions on site.

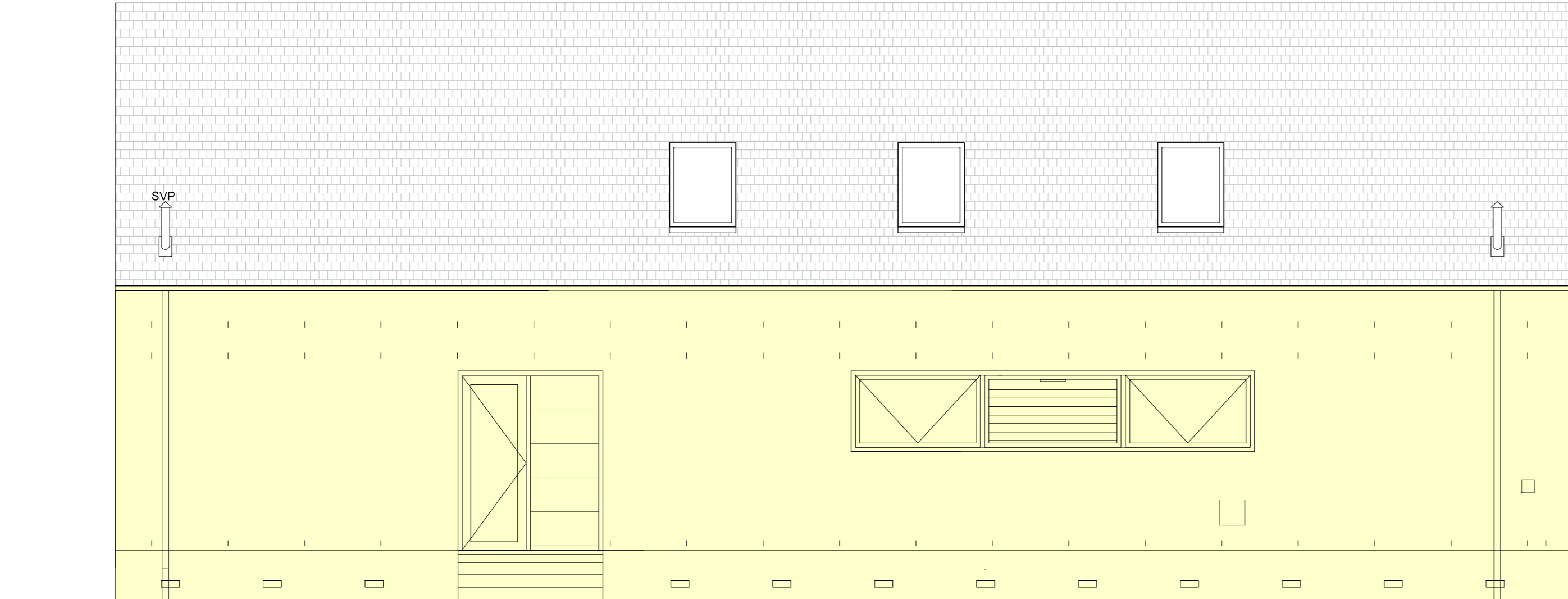
© gray macpherson architects LLP

graymacpherson
architects LLP

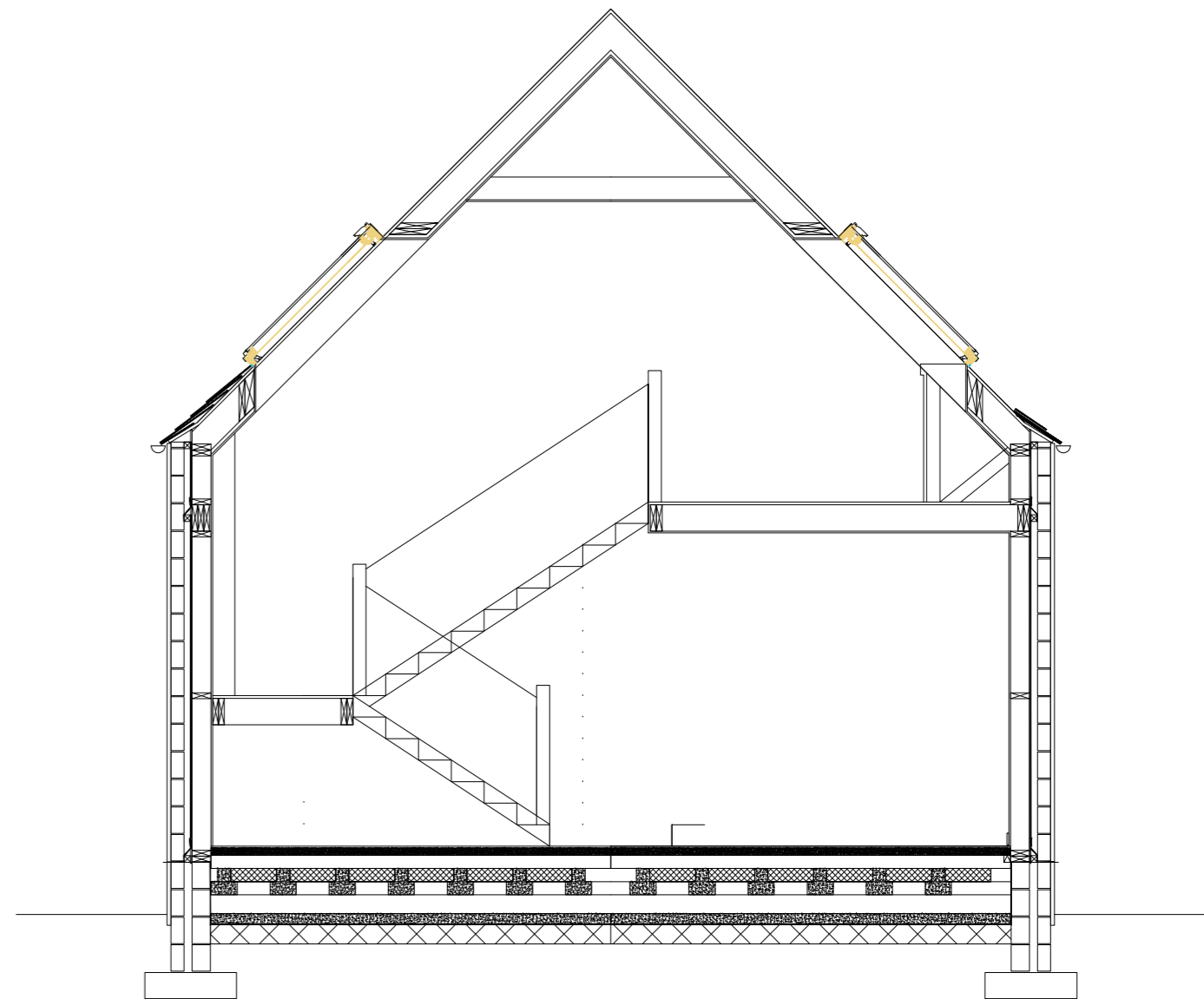
Tigh-na-Geat House,
Damhead Farm, Lothianburn,
Edinburgh EH10 7DZ

tel. 0131 445 2223
fax. 0131 445 7377

Materials -
Roof - spanish slate.
Walls - white traditional render.
Windows - brown pvc
Gutters and downpipes - black plastic.
Flue - stainless steel.



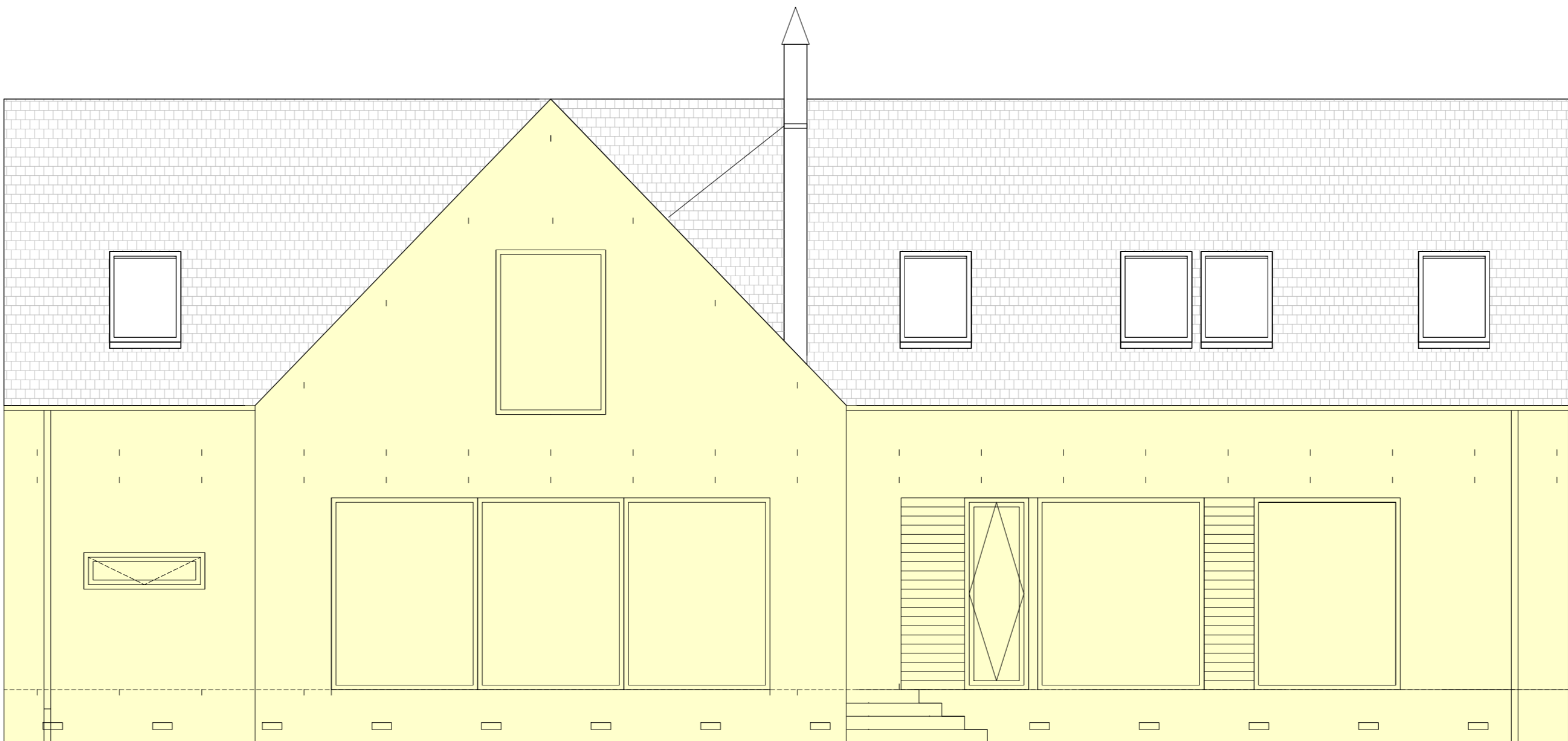
EAST ELEVATION



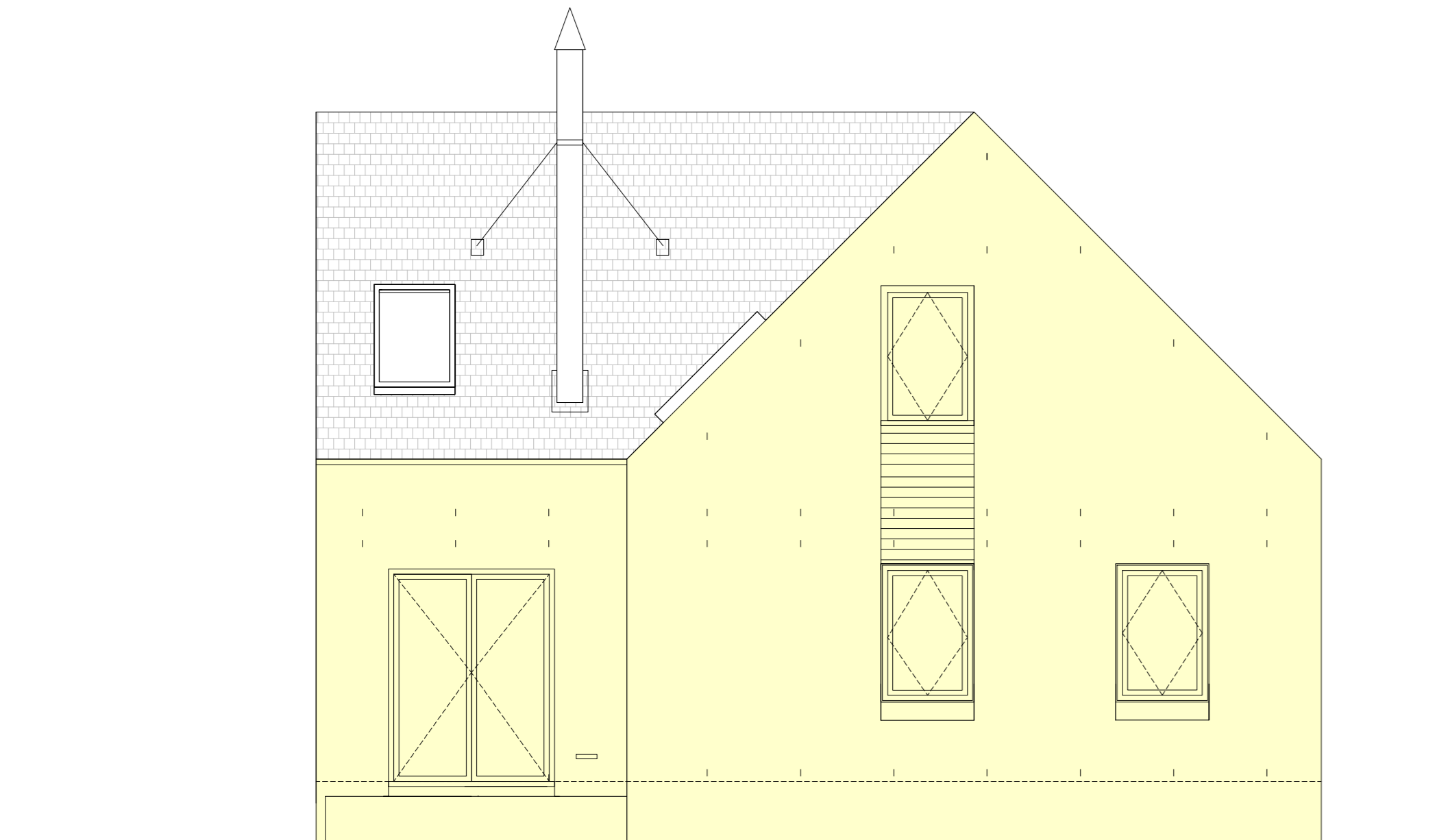
SECTION AA



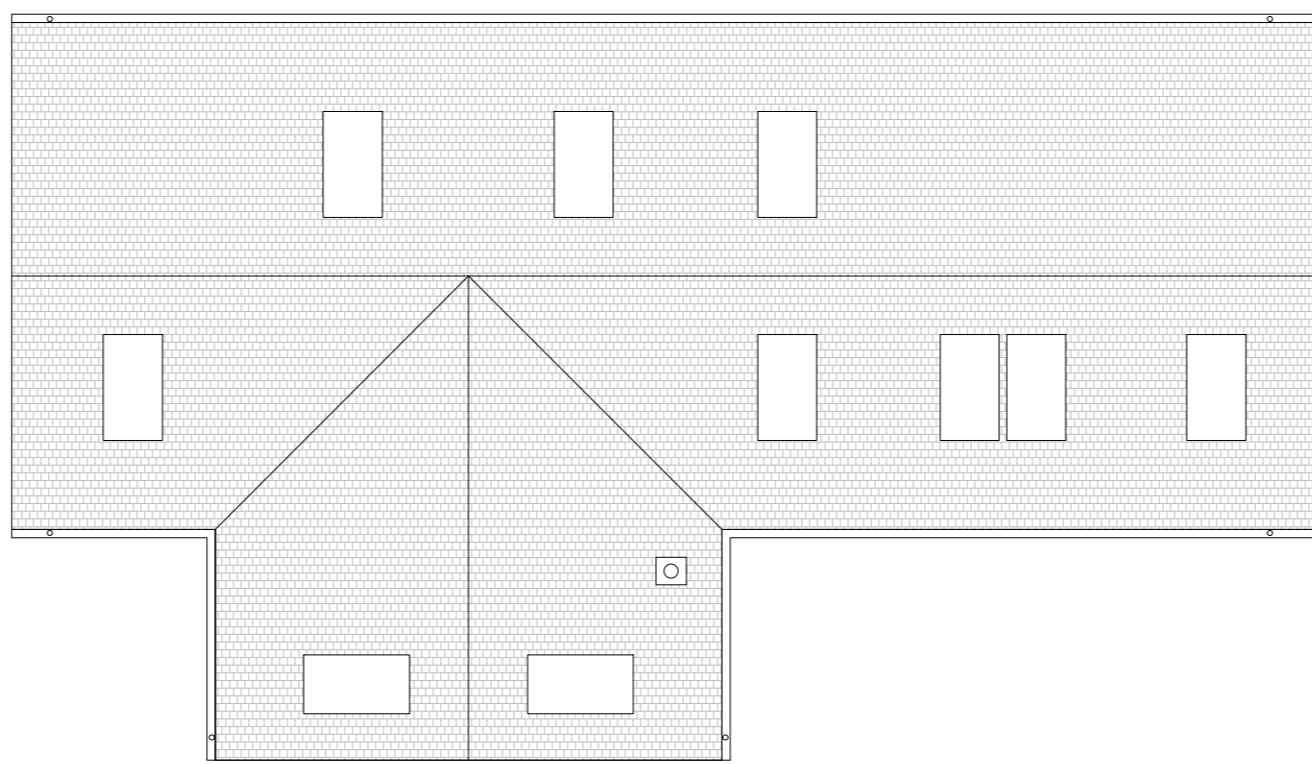
NORTH GABLE ELEVATION



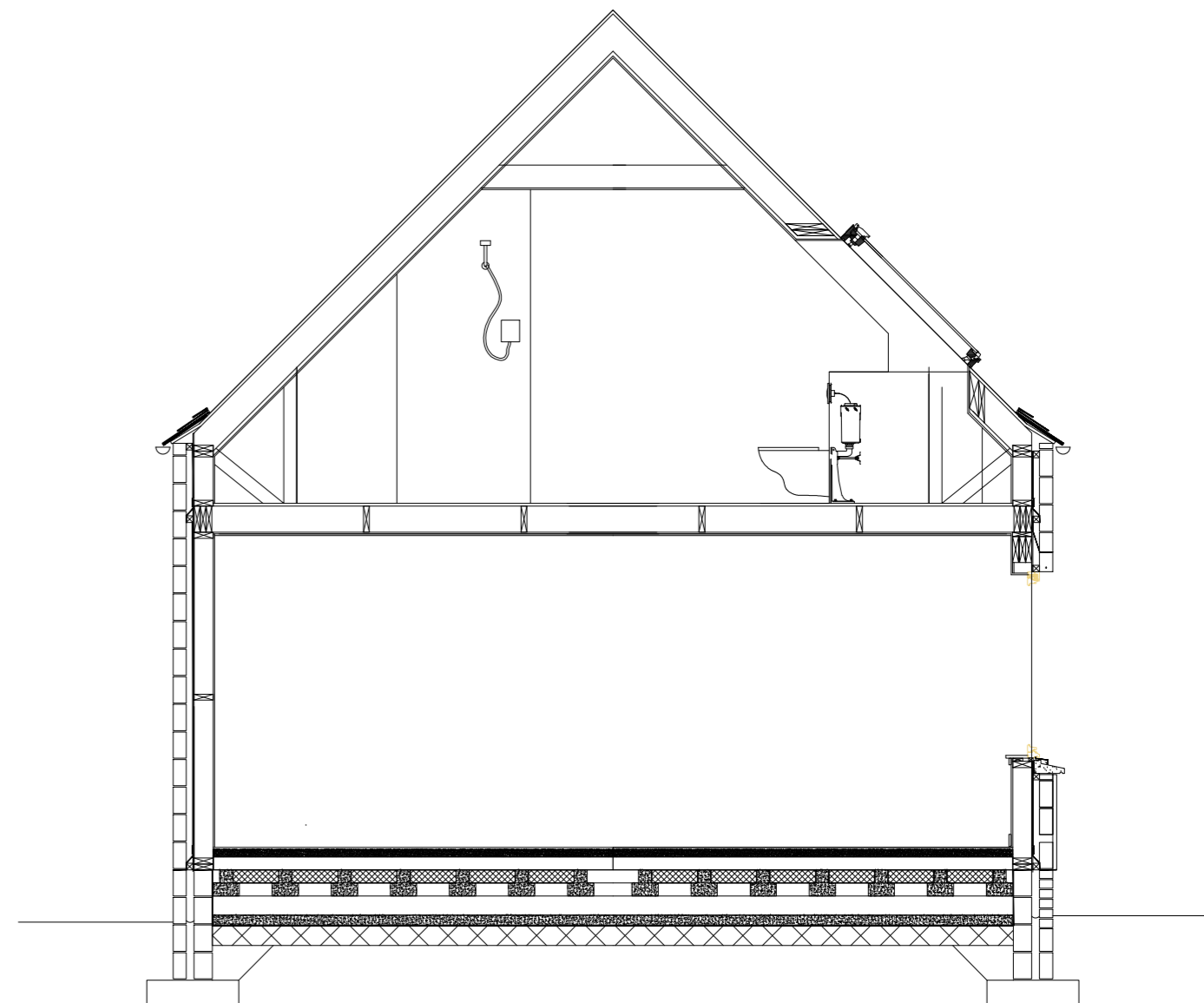
WEST ELEVATION



SOUTH GABLE ELEVATION



ROOF PLAN 1:100



SECTION BB

Client: Mr & Mrs Morley

Job: Creon Cottage
Cockmuir Farm

Title: Elevations and sections

Scale: 1:50

Date: 21.11.2019

Job No: 504

Dwg No: P04

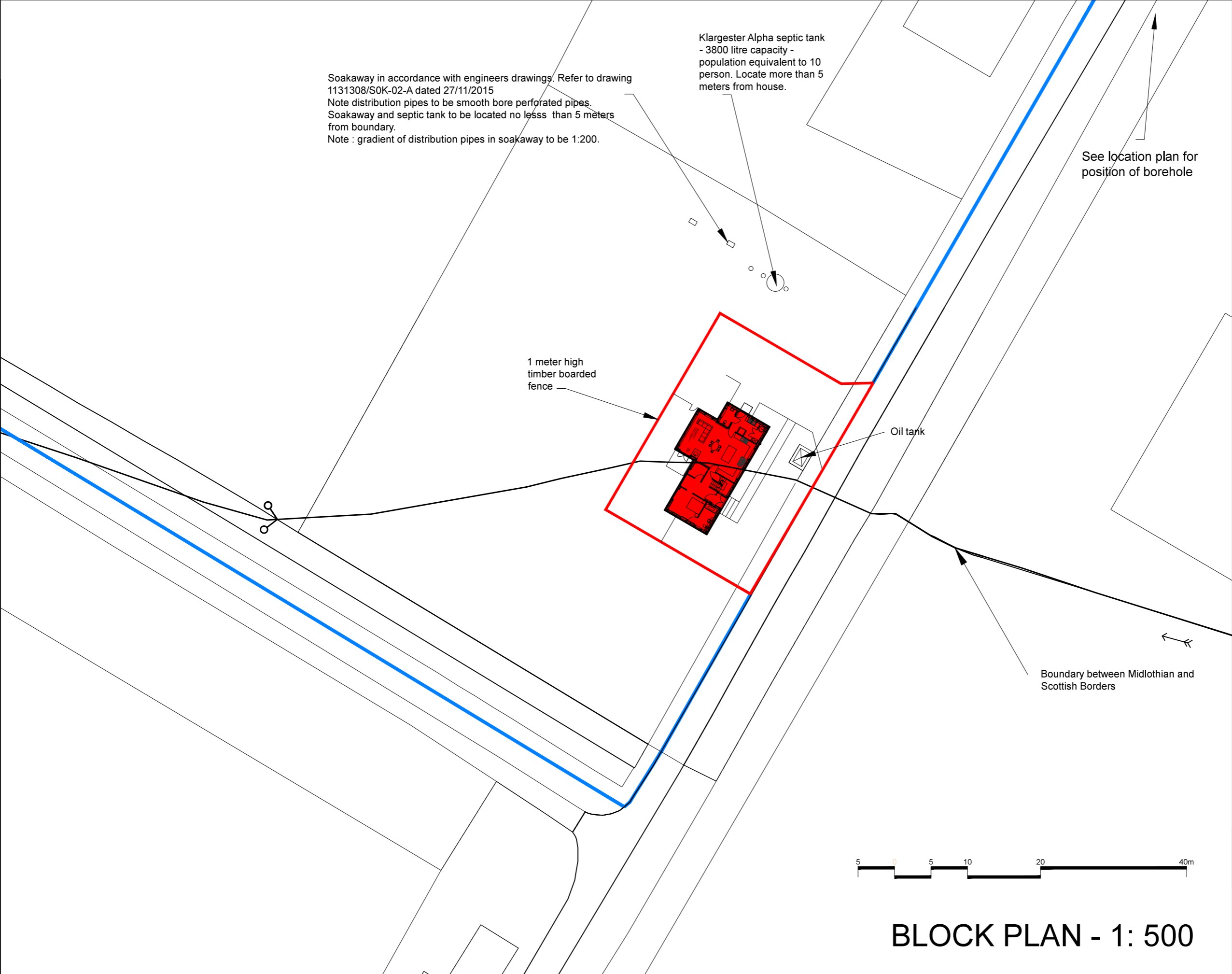
Rev:

graymacpherson
architects LLP

Tigh-na-Geat House,
Damhead Farm, Lothianburn,
Edinburgh EH10 7DZ

tel. 0131 445 2223

fax. 0131 445 7377



© gray macpherson architects LLP

The water treatment consists of a UV Filter and a particulate filter in accordance with MLC recommendations.

Revision A - 20.01.2020
Septic tank note corrected - formerly read as oil tank..
Soak away shown.
Note on water treatment added.
Note on bore hole location added.

Client: Morleymor Fisher

Job: Creon Cottage
Cockmuir Farm

Title: Block Plan

Scale: 1:500

Date: 20.01.2020

Job No: 504

Dwg No: P02

Rev: A

graymacpherson architects LLP

Tigh-na-Geat House,
Damhead Farm, Lothianburn,
Edinburgh EH10 7DZ

tel. 0131 445 2223
fax. 0131 445 7377

BLOCK PLAN - 1: 500