

Notice of Review: Land 250M North West of Fyrnlea, Penicuik Determination Report

Report by Chief Officer Place

1 Purpose of Report

- 1.1 The purpose of this report is to provide a framework for the Local Review Body (LRB) to consider a 'Notice of Review' for planning permission in principle for the erection of a dwellinghouse and formation of access at land 250M North West of Fyrnlea, Penicuik.

2 Background

- 2.1 Planning application 20/00472/PPP for planning permission in principle for the erection of a dwellinghouse and formation of access at land 250M North West of Fyrnlea, Penicuik was refused planning permission on 31 August 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 31 August 2020 (Appendix D); and
 - A copy of the key plans/drawings (Appendix E).
- 3.2 The full planning application case file and the development plan policies referred to in the case officer's report can be viewed online via www.midlothian.gov.uk

4 Procedures

- 4.1 In accordance with procedures agreed by the LRB, the LRB by agreement of the Chair:

- Have determined to consider a visual presentation of the site instead of undertaking a site visit because of the COVID-19 pandemic restrictions; and
 - Have determined to progress the review by way of a hearing.
- 4.2 The case officer's report identified that there were three 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. Development shall not begin until an application for the approval of matters specified in conditions for the following details has been submitted to and approved in writing by the Planning Authority:
 - a) A detailed layout plan of the site, showing the siting of the proposed house, details of vehicular access, parking provision and manoeuvring within the site and details of all walls, fences or other means of enclosure, including bin stores or other ancillary structures;

- b) Existing and finished ground levels and floor levels for all buildings, open space and access roads in relation to a fixed datum;
- c) Detailed plans, sections and elevations of the proposed house, indicating the colour and type of materials to be used on the external walls, roof and windows;
- d) Details of all hard surfacing and kerbing;
- e) Details of a sustainability/biodiversity scheme for the site, including the provision of house bricks and boxes for bats and swifts;
- f) Details of the provision of high speed fibre broadband connections for the houses;
- g) Details of the provision of electric vehicle charging stations for the house;
- h) Proposals for the treatment and disposal of foul and surface water drainage from the proposed house. Unless otherwise approved in writing by the Planning Authority, the surface water drainage shall comply with the standards detailed in the SUDS Manual; and
- i) Details of a scheme of landscaping for the boundaries of the site and a plan showing the position, number, size and species of all trees and shrubs that are proposed to be planted; all trees on the site which are to be removed and retained; and details of the means of protection of all trees that are to be retained.

Reason: *Permission is granted in principle only. No details were approved with the application and detailed consideration is required for the siting, massing and design of the proposed dwellinghouse and site access arrangements; to ensure protected species are not adversely affected.*

2. The vehicular access details required in condition 1a) shall include the proposed vehicular access with a visibility splay of 215 metres by 2.4 metres.

Reason: *In the interests of road safety; to ensure that a safe access is provided for the future occupants of the house.*

3. The details of the hardstanding required in terms of condition 1d) shall be porous materials.

Reason: *In the interests of road safety; to prevent water run-off from the site into the surrounding countryside.*

4. The scheme of landscaping approved in accordance with condition 1i) shall be carried out and completed within six months of the building either being completed or brought into use, whichever is the earlier date. Any trees removed, dying, severely damaged or becoming seriously diseased within five years of planting shall be replaced in the following planting season by trees of a size and species similar to those originally required.

Reason: *To ensure the landscaping is carried out and becomes successfully established*

5. Before the new house is occupied the installation of the means of drainage treatment and disposal approved in terms of condition 1h) above shall be completed to the satisfaction of the planning authority.

Reason: *To ensure that the house is provided with adequate drainage facilities prior to occupation.*

6. No development shall take place on site until the applicants or their successors have undertaken and reported upon a programme of archaeological (monitored soil strip) work in accordance with a written scheme of investigation to be submitted to and approved in writing by the Planning Authority.

Reason: *To ensure a proper archaeological evaluation of the site, which is within an area of potential archaeological interest, and that adequate measures are in place to record any archaeological finds.*

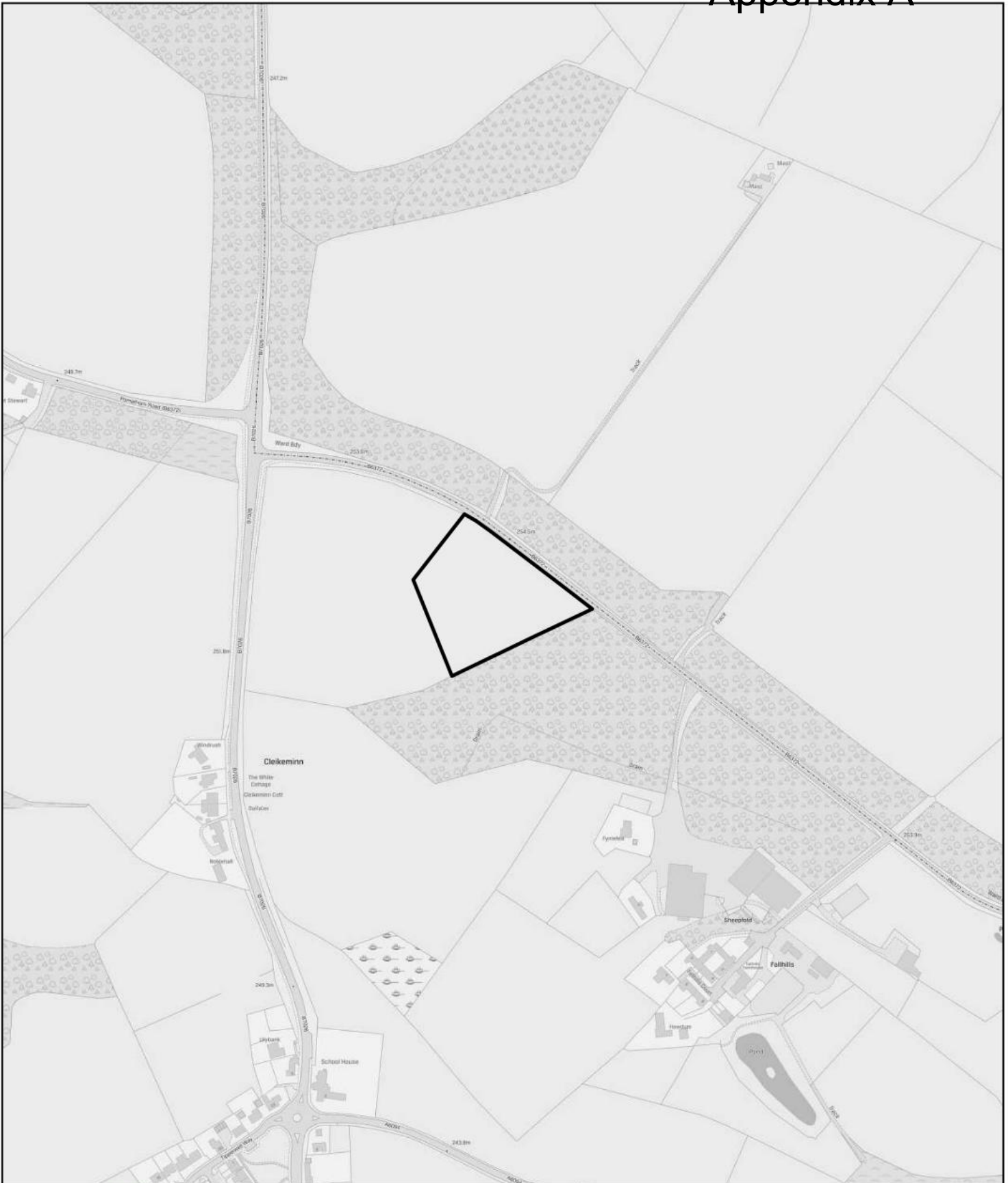
6 Recommendations

- 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: 18 March 2021

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

Background Papers: Planning application 20/00472/PPP available for inspection online.



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

Planning permission in principle for the erection of a dwellinghouse and formation of access at Land 250M North West of Fyrnlea, Penicuik

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File No: 20/00472/PPP

Scale: 1:5,000

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

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 100312098-001

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="Holder Planning"/>		
Ref. Number:	<input type="text"/>	You must enter a Building Name or Number, or both: *	
First Name: *	<input type="text" value="Robin"/>	Building Name:	<input type="text"/>
Last Name: *	<input type="text" value="Holder"/>	Building Number:	<input type="text" value="5"/>
Telephone Number: *	<input type="text" value="07585 008650"/>	Address 1 (Street): *	<input type="text" value="South Charlotte 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="Scotland"/>
		Postcode: *	<input type="text" value="EH2 4AN"/>
Email Address: *	<input type="text" value="robin@holderplanning.co.uk"/>		

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

Individual Organisation/Corporate entity

Applicant Details

Please enter Applicant details

Title:	<input type="text" value="Mr"/>	You must enter a Building Name or Number, or both: *	
Other Title:	<input type="text"/>	Building Name:	<input type="text"/>
First Name: *	<input type="text" value="Stephen"/>	Building Number:	<input type="text" value="4A"/>
Last Name: *	<input type="text" value="Lamb"/>	Address 1 (Street): *	<input type="text" value="Glenfinlas Street"/>
Company/Organisation	<input type="text" value="Valley Landscaping Limited"/>	Address 2:	<input type="text"/>
Telephone Number: *	<input type="text"/>	Town/City: *	<input type="text" value="Edinburgh"/>
Extension Number:	<input type="text"/>	Country: *	<input type="text" value="Scotland"/>
Mobile Number:	<input type="text"/>	Postcode: *	<input type="text" value="EH3 6AQ"/>
Fax Number:	<input type="text"/>		
Email Address: *	<input type="text" value="valleylandscapingltd@gmail.com"/>		

Site Address Details

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

Please identify/describe the location of the site or sites

<input type="text" value="Land 250m North West Fyrnelea, Penicuik, Midlothian"/>
--

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

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

Planning permission in principle for the erection of a dwellinghouse and formation of access

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 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)

Review Statement Road Safety Report by Andrew Carrie

Application Details

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

20/00472/PPP

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

23/07/2020

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

31/08/2020

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 *

Holding one or more hearing sessions on specific matters

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

A Hearing is considered necessary to fully explore the issues raised in this Review.

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)

As site visit is required, particularly to understand the issues relating to the visibility splay and the proposed landscaping.

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 Robin Holder

Declaration Date: 30/09/2020



MIDLOTHIAN COUNCIL LOCAL REVIEW BODY

APPLICANT STATEMENT

Development: Planning Permission in Principle for the erection of a dwellinghouse and formation of access.
(Application Reference 20/00472/PPP)

Location: Fallhills Farm, Howgate

Date: 30th September 2020

HolderPlanning

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1.0 INTRODUCTION AND SUMMARY OF REVIEW

- 1.1 Midlothian Council has refused planning permission in principle under delegated powers for a new house in association with a horticultural business at Fallhills Farm, near Howgate. The refusal reasons are as follows:
1. It has not been demonstrated to the satisfaction of the Planning Authority that the proposed house is required in connection with the furtherance of an established countryside activity or business. For this reason the proposed development is contrary to RD1 of the proposed Midlothian Local Development Plan and the related supplementary planning guidance.
 2. The proposal presents a significant threat to road safety as the required visibility splays for a vehicular access are not achievable either within the application site or on land under the control of the applicant.
 3. The proposal would have a detrimental impact on the landscape character of the area as any landscaping would need to be set back 2.4 metres from the roadside which would be out of keeping with the area.
- 1.2 We disagree with all three refusal reasons for the following reasons, in summary:
1. The proposed house is required in connection with the furtherance of an established countryside business. The business is not only established at Fallhills Farm but at 3 further locations across Scotland. The Planning Officer's Delegated Report on the matter is factually incorrect and, in our view, places a meaning on the relevant planning policy (Policy RD1) which is unjustified.
 2. The necessary visibility splays for the access are in the control of the applicant and the Roads Authority. The Planning Officer's refusal reason is not consistent with the advice received from the Policy & Roads Safety Officer, **who did not recommend refusal**. Moreover, the Planning Officer's refusal reason is based on a misunderstanding of road and traffic matters relevant to this application.
 3. In our view the provision of a hedge with a short setback of 2.4m to ensure traffic visibility will enhance the character of the area, particularly as there is no hedge at present. However, the applicant is content not to plant a hedge and would accept a condition precluding the hedge. Notwithstanding this point, given that this is a Planning in Principle application, in our view this is a matter which can be dealt with at the detailed planning stage.
- 1.3 We expand upon these points in the following sections of this statement.
- 1.4 The background to this proposal is straight forward. Mr Lamb operates a successful landscape contractor business – Valley Landscaping - employing 7 people. He now wishes to expand the business further, but his current working arrangements are impractical for this objective. Because of the incremental growth of business, it is currently operating out of 4 separate premises in disparate locations, one of which is Fallhills Farm. He now needs to consolidate the three locations in South East Scotland into a single location at Fallhills Farm where he is able to be present at all times. This consolidation will also provide the appropriate platform for further expansion and additional local employment.

- 1.5 The proposed new house will allow the necessary 24/7 supervision, and Mr Lamb is willing and able to accept a legal agreement that ties his occupation of the house to the business in accordance with the Council's policy for new homes associated with a business requiring a countryside location.
- 1.6 In pre-application communications, the planning officer initially indicated that neither the business related buildings or the house accorded with the Council's planning policies and would therefore be recommended for refusal. Mr Lamb did not think this was a plausible response in the context of planning legislation and policy and he asked Holder Planning to provide him with a second opinion.
- 1.7 Our review of planning policy and legislation concluded that the operation of the business and the buildings associated with it **did not require planning permission as it fell under the definition of permitted development**. The Planning Officer appears subsequently to have accepted this. If it had required planning permission, however, we cannot see any reason why officers would have wished to refuse it, given that planning policies support horticultural businesses in the countryside, and the applicant was already operating from Fallhills Farm in premises rented from the landowner.
- 1.8 We also advised Mr Lamb, as he already appreciated, that the new house associated with the business did require planning permission, and that the relevant planning policy (Policy RD1) supported such development in the countryside associated with an established horticultural businesses . However, the Planning Officer maintained the view that the house contravened Policy Policy RD1 because the established business is not established on the site in question, but elsewhere. **This is wrong for two reasons**. Firstly, the business is established on site and, secondly, Policy RD1 does not make the distinction as to whether the business is established on or off the site.

2.0 VALLEY LANDSCAPING AND THEIR PROPOSALS



2.1 Valley Landscaping is a successful and established rural business, currently operating rather inefficiently from the following scattered locations. The above photograph was recently taken at Fallhills Farm.

Office – Peebles

Storage & Distribution – near Carlops

Storage & Distribution – Fallhills Farm

Depot - Aberdeen

2.2 The depot in Aberdeen will be retained, but they are seeking to consolidate the other three into a single location at Fallhills Farm. This will facilitate an expansion of their client base and the ability to employ more local staff.

The company serves an expanding market, supplying the following business sectors with trees, shrubs and plants and undertaking ground maintenance:

- Building companies
- Factoring companies
- Commercial companies
- Retail Parks
- Woodland Trust
- Greenbelt Group

2.3 There are currently 7 employees in the business, and this is set to increase to 10-12 staff, the additional people being employed locally once the business has relocated.

2.4 They have now purchased land from the owner of Fallhills Farm to accommodate their horticultural activities and associated storage and distribution. The horticulture and storage can be implemented under permitted development rights, but the associated house requires planning permission.

2.5 The nature of the business is such that it requires constant on-site supervision, both to manage the growing of plants and trees, and to ensure the security of the storage

premises. The house is for the owner and manager of the business – Stephen Lamb – and he is willing to associate the house with the landscape business by way of an appropriate legal agreement.

- 2.6 The site will not have any public retail element.
- 2.7 It should be noted that that the horticulture and storage uses do not require planning permission because they are either not development or are permitted development. For clarity, however, the indicative plan submitted with this application shows the new house and its relationship to the proposed storage sheds and growing areas.
- 2.8 It should be noted that the applicant’s original approach to Midlothian Council Planning Department sought advice on the need for planning permission for the consolidation of the business at Fallhills Farm as well as the related house. The Planning Officer advised that neither proposal was acceptable. Holder Planning requested a discussion with the Planning Officer as this advice did not appear to be correct and we thought there may have been some misunderstanding. However, that request was declined on the basis that the Planning Officer indicated that he had no access to a work phone during the pandemic lockdown, but that he might be available in a few weeks’ time.
- 2.9 It should also be noted that the applicant cannot proceed to relocate his business unless the associated house is permitted.
- 2.10 Also submitted with the application was an illustrative site layout, supported by a visual analysis, demonstrating how the development fits well into the local landscape. Although this is an application for Planning in Principle, where detailed plans will require to be approved by the Council in due course, the illustration below shows the appropriate arrangement of the house, the storage shed and the areas of land that will be cultivated for shrubs and trees.



3.0 ASSESSMENT OF REFUSAL REASONS

REFUSAL REASON 1

3.1 Refusal Reason 1 is stated as follows:

It has not been demonstrated to the satisfaction of the Planning Authority that the proposed house is required in connection with the furtherance of an established countryside activity or business. For this reason the proposed development is contrary to RD1 of the proposed Midlothian Local Development Plan and the related supplementary planning guidance.

3.2 The full text of the relevant part of Policy RD1 to which the refusal reason is referring is as follows:

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.

3.3 The relevant section of the Planning Officer's Delegated Short Report commenting on the basis for Refusal Reason 1 is reproduced below:

"It is proposed to erect a house that relates to a landscape business. This is the justification for the house. The submitted site plan and associated documents are clear there is no landscape business currently operating from this site. The related business operates from a number of other locations and it is proposed to consolidate three of the existing operations to this site, with the fourth remaining elsewhere. It is submitted that the horticulture business is established and this demonstrates that this is a viable long term business. The related policies are clear that there is some policy support for houses required for the furtherance of an established countryside activity, where it demonstrated that this meets the relevant policy criteria. The landscape business detailed as the justification for the house is not operational from the site, therefore the proposed house does not relate to the furtherance of an established business and there is therefore no policy support. The Planning Authority disagrees with the statement that as the business is established elsewhere, this provides justification for a house at this site. The

policy is clear that any house must further the countryside activity. At present, the site is used for livestock grazing. There are no horticultural operations taking place.

- 3.4 **Unfortunately, the section highlighted in yellow is incorrect and appears to be based on a fundamental misunderstanding of the circumstances.** At present the applicant rents storage space at Fallhills Farm and operates part of the business from that location. It is therefore established in that location. Notwithstanding this point, the Planning Officer has compounded this misunderstanding by concluding that the horticultural business cannot be considered to be established if it is established elsewhere from the application site. This, in our view, is an incorrect and unjustified interpretation of Policy RD1. The Planning Officer's interpretation depends on adding words to the policy which are not there e.g. *the furtherance of an established countryside activity...**(in its existing location)***. However, the policy does not contain those additional words which the planning officer relies upon.
- 3.5 It is a well-established in planning law that the meaning of policies has to be taken at face value. To quote the well-known words of the Supreme Court in the Tesco v Dundee case ***"planning authorities do not live in the world of Humpty Dumpty: they cannot make the development plan mean whatever they would like it to mean"***.
- 3.6 So, in our view the proposals fully comply with Policy RD1 as stated. As a matter of fact the proposals are for an established countryside activity in this location and elsewhere, both of which provide a positive context for the application of Policy RD1. The furtherance of the established countryside activity will be achieved by consolidating three disparate parts of the business into a single southern Scotland operational base, with an associated house to provide the necessary 24/7 oversight of the horticultural operation as well as ensuring onsite security. In our view, this is exactly the kind of development that Midlothian should be encouraging in its countryside, to contribute to the countryside economy.

Refusal Reason 2

- 3.7 Refusal Reason 2 is stated as follows:

The proposal presents a significant threat to road safety as the required visibility splays for a vehicular access are not achievable either within the application site or on land under the control of the applicant.

- 3.8 We are concerned about the manner in which this refusal reason has been arrived at, as in our view it is unreasonable and does not appear to be based on the necessary professional expertise. It is important to note that the Midlothian Council's Policy & Road Safety response **did not object to the application**. Their response stated:

"I have no objection in principle to this proposal but would recommend that the following conditions be applied:

1. Details of the proposed vehicle access with visibility splay (215m by 2.4m for a 60mph road) should be submitted for approval.

2. Details of the parking and manoeuvring layout within the site should be submitted for approval.

3. Details of the proposed management of surface water within the site should be submitted for approval."

- 3.9 Unfortunately the Planning Officer chose not to contact the applicant to ascertain whether or not the visibility splay could be achieved (**which it can**), and then compounded this shortcoming by reaching conclusions that were not only wrong, but also we assume outwith their professional expertise. The Planning Officer's Delegated Short Report contains the following statement:

*For new accesses onto a 60mph road, as currently proposed, **visibility splays of 215 metres by 2.4 metres are required to provide a safe access.** The roadside boundary of the site measures approximately 150 metres long. This means that the required visibility splay is not achievable within the application site or on land under the control of the applicant. It has not been demonstrated that a safe access can be provided for this proposal.*

- 3.10 This statement is factually incorrect and Mr Lamb has had to bear the expense of procuring an expert traffic consultant to confirm the actual position. Submitted with this Review statement is the comprehensive report by Andrew Carrie Traffic & Transportation Ltd, from which we draw our comments below. We do, however, recommend that Mr Carrie's report is read in full.

- 3.11 The first important fact to note is that the visibility splay recommended by the Roads Officer is in the control of the applicant and the Roads Authority and can be achieved.** Unfortunately, the Planning Officer made no attempt to ascertain the actual position with the applicant. The applicant was not made aware of the Roads Officer's comment and within 3 days of it being sent to the Planning Officer, the application was refused.
- 3.12 The second important fact to note, contrary to that stated by the Planning Officer, is that the stated visibility splay of 215m x 2.4m is not necessarily required in order to achieve a safe access.** The 215m x 2.4m splay is a standard splay parameter for a 60mph road but, as explained in national guidance, is not necessary if it can be demonstrated that car speeds in the vicinity are less than that. Andrew Carrie's report, following his undertaking of a speed survey, demonstrates that because of the nearby junction, cars approaching from the left, as one leaves the proposed site access, have a speed significantly less than 60mph, and therefore a shorter visibility splay is required. In the normal course of events, this is the kind of issue that is subject to dialogue between the applicant and Roads Officer to reach a satisfactory agreement. However, the Planning Officer's apparent priority to refuse the application prevented such a dialogue.
- 3.13 The third important fact to note is that this application is for Planning in Principle, and it is not required or appropriate to provide a detailed drawing of the proposed visibility splay at this stage.** Instead, this is a matter that should be dealt with by a condition requiring it to be provided at the Approval of Matters Specified in Conditions stage of the planning process. Thus, if the Local Review Body is minded to grant Planning in Principle, we would recommend the following conditions.

"Details of the proposed vehicle access with visibility splay should be submitted for approval."

- 3.14** This has been amended from that recommended by the Roads officer to remove the specific reference to a splay of 215m x 2.4m, because Andrew Carrie's assessment demonstrates that this is not required. Further dialogue with the Roads Officer will establish what that length of splay should be and the condition allows for flexibility on that point. Ultimately the Council will make the decision, but we do know that the maximum splay of 215m x 2.4m is achievable if required and its maintenance is in the control of the applicant.

Refusal Reason 3

3.15 Refusal Reason 3 is as follows:

The proposal would have a detrimental impact on the landscape character of the area as any landscaping would need to be set back 2.4 metres from the roadside which would be out of keeping with the area.

3.16 The Delegated Short Report has the following text on this matter:

“Also, although the submission states that a hedge would be planted along this roadside boundary, the required visibility splay means this would need to be set back at least 2.4 metres from the road. Typically hedgerows in the countryside are either hard up to roads or are set back slightly. Setting a hedge at least 2.4 metres from the roadside is likely to have an adverse landscape visual impact on the surrounding area.

3.17 We disagree with this refusal reason. Firstly, and as a point of principle, roadside hedges are typical of Midlothian. They are an attractive feature of the landscape and good for biodiversity.

3.18 At present, there is no roadside hedge in the immediate vicinity and the applicant considers that it would be an attractive addition. The fact that it would be planted back from the verge for the purposes of maintaining the splay visibility would not, in our view, have a negative landscape impact. If the LRB disagrees with that but is minded to grant Planning in Principle for the new house, then it would be entitled to attach a condition that precludes a hedge. The applicant has no difficulty with that. All detailed landscaping matters are anyway subject to the approval of the Council at the Approval of Matters stage, and we would suggest that then is the appropriate time to deal with the matter.

4.0 CONCLUSION

- 4.1 Valley Landscaping are a successful horticultural contractor currently running part of their business from rented premises at Fallhills Farm. Currently they have three separate premises in South East Scotland, which is becoming increasingly impractical to operate and difficult to supervise as the business expands. Mr Lamb, the owner of the business therefore wishes to consolidate the business on the application site, which will provide the platform for further expansion and additional local employment. The scale and nature of the business requires 24/7 supervision and hence the proposal for an associated house. Mr Lamb accepts the need for an appropriate legal agreement to tie the house to the business.
- 4.2 The application is for Planning in Principle and therefore all detailed design matters and the road access should be addressed at the Approval of Matters Specified in Conditions stage of the process.
- 4.3 In refusing the application, the Planning Officer's Short Delegated Report indicates a misunderstanding of the location of the current business operation, an incorrect understanding of the relevant planning policy and an incorrect understanding of what is required to achieve a safe access. It also appears that little or no account has been taken of the fact that this is a Planning in Principle application, where detailed matters such as landscaping and road access can be controlled at the detailed planning stage.
- 4.4 We have explained in detail why, in our view, none of the three refusal reasons are justified, which can be summarised as follows:
- The application accords with Policy RD1, which supports new houses related to an established countryside use.
 - The applicant and the Roads Authority are in control of the land required to achieve the necessary access visibility splay.
 - The proposed hedge, indicatively shown as it is, will enhance the landscape character of the area. However, the applicant is content to accept a condition precluding the hedge. Notwithstanding, in our view this is an issue best dealt with at the detailed planning stage.

APPEAL TO LOCAL REVIEW BOARD

ERECTION OF A DWELLING HOUSE AND FORMATION OF ACCESS (IN PRINCIPLE) AT FALLHILLS FARM, PENICUIK

REPORT ON REASON FOR REFUSAL

September 2020

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1.0 Introduction

- 1.1 Valley Landscaping Limited submitted an application for Planning Permission in Principle (Ref 20/00472/PPP) in July 2020 for a new dwelling houses on a site near Fallhills Farm, Penicuik. The site is currently unoccupied and its location is shown in red in Figure 1.



- 1.2 The dwelling house is part of a proposal to merge and relocate an existing and established landscaping and horticultural business which is currently located within Midlothian and the Borders Area in three separate locations, at Peebles, Macbiehill (near Carlops) and Howgate.
- 1.3 The site will not be open to the public, and will be used only by Valley Landscaping and employees, who will meet at the location in the morning then return mid-late afternoon. There are no plans for any regular deliveries to or from the site .
- 1.4 Access is proposed from the B6372, which runs from Penicuik to the north west to the B6046 to the east, The road crosses the B7026 at a staggered priority junction a short distance west of the proposed development. The B7026 continues south to join the B6046 at Howgate, where the route carries on south to join the A701 at Leadburn. To the north, the B6046 carries on past Rosewell to Bonnyrigg and beyond.

1.5 Planning Permission was refused on 31 August 2020, for 3 reasons. The second of those reasons was that :

“The proposal presents a significant threat to road safety as the required visibility splays for a vehicular access are not achievable either within the application site or on land under the control of the applicant.

1.6 The Applicant has considered the Reasons for Refusal, and has appointed Andrew Carrie and Transportation Limited (ACTT) in September 2020, to examine the site and the surrounding road network, and to prepare this Report to accompany a Notice of Review to appeal against the decision to refuse planning permission.

1.7 This Report has been prepared by Andrew Carrie, Director of Andrew Carrie Traffic and Transportation Limited, a consultancy based in Livingston, West Lothian. The practice specialises in the examination of transportation impacts for development proposals.

1.8 Mr Carrie holds a Bachelor of Science (Honours) Degree in Civil Engineering, and is a Fellow of both the Institution of Civil Engineers and the Chartered Institution of Highways and Transportation. He has been registered as a Chartered Engineer since 1983. He has 30 years of experience specifically in the field of transportation impacts for a wide range of residential, retail, commercial, industrial and leisure developments.

2.0 Report of Handling

2.1 The application was determined by officers under delegated powers. The Delegated Worksheet sets out the background to the officer delegated decision, and states under “consultations” that *“The Council’s Policy and Road Safety Manager has no objection in principle but states that conditions be attached to any planning permission relating to parking and manoeuvring and surface water management. Also details of the access with visibility splays of 215 metres by 2.4 metres are required.”*

2.2 This reflects the consultation response dated 25 August 2020 from the Council’s Policy and Road Safety Manager, which states that:

1. *Details of the proposed vehicle access with visibility splay (215m by 2.4m for a 60mph road) should be submitted for approval.*
2. *Details of the parking and manoeuvring layout within the site should be submitted for approval.*
3. *Details of the proposed management of surface water within the site should be submitted for approval.*

2.3 It is notable that the Policy and Road Safety Manager does not consider these issues to be insurmountable, but simply requests further information to clarify the proposals.

2.4 Under “Planning Issues”, the worksheet states that *“For new accesses onto a 60mph road, as currently proposed, visibility splays of 215 metres by 2.4 metres are required to provide a safe access.”* That reflects the Policy and Safety Manager’s response.

2.5 The worksheet then goes on, however, *to add that “The roadside boundary of the site measures approximately 150 metres long. This means that the required visibility splay is not achievable within the application site or on land under the control of the applicant. It has not been demonstrated that a safe access can be provided for this proposal. Also, although the submission states that a hedge would be planted along*

this roadside boundary, the required visibility splay means this would need to be set back at least 2.4 metres from the road. Typically hedgerows in the countryside are either hard up to roads or are set back slightly. Setting a hedge at least 2.4 metres from the roadside is likely to have an adverse landscape visual impact on the surrounding area.”

- 2.6 This summary is simply incorrect. The applicant does not need to control the whole length of the visibility splay, but only that part that would be outwith the existing road verge. If the existing verge is 2 metres wide, for example, then only one-sixth of the visibility length (or approximately 36 metres of the 2.4 metres specified) would be behind the verge, and could easily be accommodated within the site frontage.
- 2.7 The Applicant has purchased the application site from the farmer who owns the rest of the surrounding field, and the tree belt to the east. The farm owner is therefore supportive of the application proposals. Through agreement with the seller, the Applicant in this case controls all of the necessary land along the full length of both visibility splays, and could therefore have provided the visibility splay requested by the Council.
- 2.8 It is notable the Policy and Road Safety Manager’s response is dated Tuesday 25 August, while the decision letter issued on Monday 31 August, only some 3 working days later. The Applicant was given no opportunity to consider or comment on the consultation response, when it would have been straightforward to demonstrate that the required visibility splay was readily achievable, if necessary.
- 2.9 The Council were therefore incorrect to conclude that the visibility splays were not achievable and including this as the second Reason for Refusal.
- 2.10 The following sections of this report therefore examine the necessary visibility in more detail, to clarify that adequate splays can readily be achieved, and this Reason for Refusal has no merit.

3.0 Junction Visibility Splays

- 3.1 Junction visibility splays are specified in the form “x metres by y metres”, where “y” is the distance to which visibility should be available in both directions along the main road, and “x” is the distance along the centre line of the side road, from which the points at “y” should be visible.
- 3.2 Derivation of the relevant visibility standard is set out in the Design Manual for Roads and Bridges (DMRB), in two separate technical directives:
- (i) DMRB CD123 Geometric Design of At-Grade Priority and Signal-Controlled Junctions (Replaces Td42/95); and
 - (ii) DMRB CD109 Highway Link Design (Replaces TD9/93).
- 3.3 CD123 states that the “y-distance” (ie the length visible along the main road) should be dependent on the speed of approaching traffic (not necessarily the speed limit unless no other information is available), and should be sufficient to ensure both that drivers emerging from the side road are able to safely assess gaps in main road traffic, and that drivers on the main road are able to recognise the presence of the junction, and be able to stop safely if the emerging driver makes an error. This distance is therefore

specified as the “Stopping Sight Distance” for the main road traffic, and this in turn is directly related to the design speed of main road traffic.

- 3.4 Figure 3.1 below is extracted from DMRB CD123, and illustrates the format of these required visibility splays.

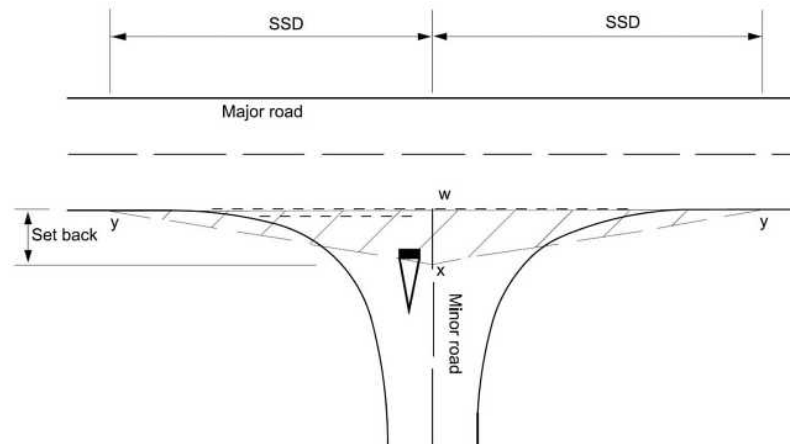


Figure 3.1 – Junction Visibility Splays

- 3.5 Table 3 of DMRB CD109 sets out appropriate “Stopping Sight Distances” for a range of design speeds.
- 3.6 The “design speed” is recommended in CD123 as the 85th percentile speed, that is to say, the speed exceeded by only 15% of the traffic on that approach.
- 3.7 The first step in a junction assessment is therefore to ascertain the appropriate Design Speed, on which junction visibility standards etc are based.
- 3.8 The visibility standard quoted by the Council is based on vehicles travelling at the speed limit of 60 miles per hour. In the absence of information on actual vehicle speeds, that would be a cautionary position to adopt.
- 3.9 In this particular case, however, it is evident that traffic speeds in the vicinity of the site access are significantly lower than the 60 miles per hour speed limit due to the geometry and characteristics of the road, and because traffic is leaving or approaching the junction with the B7026, only 250 metres or so to the west.
- 3.10 The road is very lightly trafficked, but ACTT measured the speed of vehicles that passed the site in a period of just over an hour. Speeds westbound (towards the B7026) past the site were in the region of 60 miles per hour, so at this stage, a visibility splay extending to 215 metres would appear to be appropriate.
- 3.11 In the eastbound direction, 20 vehicle speeds were recorded, ranging from 35 mph to 56 mph, as traffic was observed to be gaining speed as they left the B7026 junction, where turning speeds are around 20 mph. The full range of speeds are set out in Appendix A.
- 3.12 These results show that the recorded average speed eastbound was 42.36 miles per hour, and that, overall, the calculated 85th percentile speed was approximately 46.15 miles per hour eastbound.

- 3.13 This is not considered to be a full traffic speed survey, but it is indicative of the likely speeds, so the required splays would be much shorter than those quoted by the Council, which are based on the full speed limit.

Visibility Assessment

- 3.14 Taking account of those measured speeds, ACTT have examined the necessary junction visibility splay,
- 3.15 Table 3.1 below summarises the stopping site distances and junction visibility distances (which are the same) for a range of design speeds. In DMRB, the design speeds are quoted in kilometres per hour, so Table 3.2 includes a conversion to equivalent miles per hour, to facilitate comparison with other standards.

design speed		Visibility
kph	(Equivalent mph)	Distance
50	31.1	70
60	37.3	90
70	43.5	120
85	52.8	160
100	62.1	215
120	74.6	295

Table 3.1 – Visibility Distances from DMRB

- 3.16 Reference to Table 3.1 shows that the visibility splay requirement for a speed of 43.5 mph (approximately 2.5 mph slower than the design speed measured on site) would be 120 metres. For speeds up to 53mph, the required visibility splay should be 160 metres.
- 3.17 ACTT have carefully considered the physical parameters behind the derivation of Stopping Site Distance, and hence visibility splays, to derive a suitable and safe visibility splay that would retain much of the existing character of the site.
- 3.18 The physical relationship between speed and the distance needed to stop, ie Stopping Sight Distances (SSD), is dependent upon the following formula:

$$SSD = vt + v^2/2(d+0.1a)$$

Where:

v = initial speed (m/s)

t = driver reaction time (seconds)

d = deceleration rate (m/s²)

a = gradient

- 3.19 The visibility splays in DMRB are based on a driver reaction time of 2 seconds, and a rate of deceleration rate of 0.25g (or 2.45 m/s²).
- 3.20 Page 1 of Appendix B calculates the stopping sight distance required for a speed of 43.5 mph (70kph), using these parameters, to be 118.4 metres. This correlates closely to the DMRB splays set out in Table 3.1 of this report.

- 3.21 Page 2 of Appendix B calculates the stopping sight distance required for the measured design speed of 46.15 mph (74.27 kph), using these parameters, to be 130.4 metres. That would therefore be a suitable interpolation to be applied to the DMRB table, for the measured design speed.
- 3.22 With regard to the “x-distance” from which this visibility should be available, DMRB states, in paragraph 3.8 of CD123, that “*The minimum distances used to locate point X and therefore generating the visibility splay shall be:*
- 1) *2 metres for direct accesses;*
 - 2) *2.4 metres for simple priority junctions; and*
 - 3) *4.5 metres for all other priority junctions.”*
- 3.23 The proposed development has a single direct private access, and is not therefore a “junction”, and in that case, the set-back distance should be reduced to 2 metres, in accordance with the clear advice of CD123.
- 3.24 For the purposes of this report, visibility has been primarily assessed from a set-back distance of 2.2 metres, i.e between the two possible requirements..
- 3.25 It should be pointed out that a visibility splay from 2.0 metres still allows gaps to be assessed safely. Larger x-distances can marginally improve the junction’s capacity, by allowing drivers to assess safe gaps in traffic without necessarily stopping, or permitting two drivers to more easily accept a single gap, but such a reduction is not detrimental to road safety.

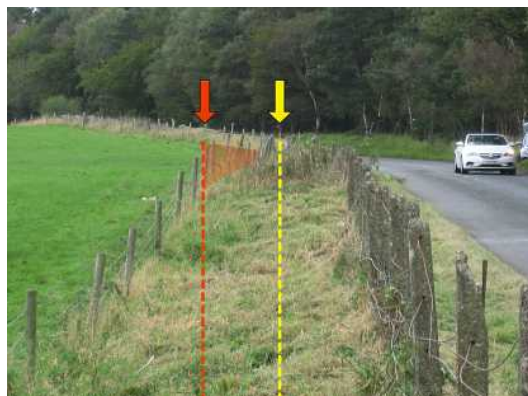
Measurement of Available Visibility Splays

- 3.26 This photograph shows the visibility available looking west along the B6372 from a point 2.2 metres back along the proposed access. The yellow arrow shows the location of a red and white ranging rod, located on the edge of the road, 215 metres from the access centre line. The pole is just visible through the existing foliage.



- 3.27 Some of that foliage is within the road verge and is therefore the responsibility of the roads authority. Nevertheless, the Applicant has control of all of the land behind the verge along the full length of the visibility splay, so can remove and maintain the foliage as required. This demonstrates that visibility is readily available to vehicles approaching from the west, subject to clearance of foliage within the applicants’ control.

- 3.28 This photograph shows the visibility available looking east along the B6372 from a point 2.2 metres back along the proposed access. In this case, the ranging rod highlighted by the yellow arrow is located on the edge of the road, 130 metres from the centre line of the proposed access.



- 3.29 It can be seen that there are two fences along this part of the frontage. The concrete post and wire fence on the right of the photograph signifies the rear of the road verge. The post and wide fence on the left of the photo is a stock fence along the edge of the cultivated field (although ownership extends to the rear of the verge). In this case, the visibility splay, denoted by the yellow line, falls between the two fences on land within the control of the applicant. The remainder (in front of the concrete post fence) is within the road verge and is therefore the responsibility of the roads authority.
- 3.30 The Applicant can remove and maintain the foliage as required, and realign the fence along the rear of the verge. This demonstrates that visibility is readily available to vehicles approaching from the east, for a design speed of 46.15 mph.
- 3.31 The photograph shows the visibility splay required for speeds up to 53 mph. In that case, the ranging rod highlighted by the red arrow is located on the edge of the road, 160 metres from the centre line of the proposed access.
- 3.32 The photograph highlights in red, the area of the existing field that would become road verge to meet that visibility requirement. Some regrading of levels would be required within that area, before placement of a new boundary fence or hedge.
- 3.33 This demonstrates that visibility can readily be made available to vehicles approaching from the east, for a design speed of up to 53 mph, if required. The applicant has the agreement of the landowner to provide and maintain the necessary visibility splays.
- 3.34 These visibility splays are illustrated in Drawing No L119/SK/01 in Appendix C. It is proposed that further discussions would take place with the Council when an application is made for reserved matters. At that stage, a full traffic speed survey could inform a detail design of the necessary splay. However, this report demonstrates at this stage, that a suitable visibility splay can be provided.

4.0 Road Safety

- 4.1 Road accidents usually occur when one or more road users, whether a driver, passenger, pedestrian or cyclist, makes an error in a decision relating to speed, layout, or the position or movement of other road users. These decisions can also be affected by external factors such as fatigue or alcohol. Vehicle failure can also lead to road accidents. Such errors or failures can occur at any point on the road network, although, in general, they tend to be focussed on points where drivers have to make a number of decisions, such as junctions or bends.

- 4.2 For these reasons, road safety requires careful consideration and is not readily quantifiable, in the same way that, for example, junction capacity or design standards are. Road safety depends on many factors, of which road layout and traffic flow are only two.
- 4.3 Accordingly, no guarantee can ever be given that any junction has been designed in a way to prevent the occurrence of any road accident over its design life. While it is regrettable, it is a simple fact of human nature that drivers will make mistakes and that some of these will lead to road accidents.
- 4.4 Best practice, therefore, is to design any particular junction to suitable standards, and ensuring that there are unlikely to be excessive queues which might cause drivers to become impatient and accept gaps which might not otherwise be suitable. Earlier sections have explained that the junction of Mill Road with the A761 Main Street meets current standards with regard to junction visibility.
- 4.5 The accident record on the surrounding road network has also been examined. The police are responsible for the collection of statistical data from recorded injury traffic collisions. Police attending all injury accidents record the relevant information in a standardised form, which has been agreed nationally as covering the factors important to road safety. The collected information includes the exact location of the incident, date and time of day, the number and nature of all casualties, prevailing light and weather conditions (for example dark / raining), road surface conditions (dry/wet), the directions of vehicles and/or pedestrians involved, and any other possible causation factors such as any vehicle skidding, excess speed, etc.
- 4.6 Although accident data is available over a longer period, it is generally accepted that the most recent 3-year or 5-year period is the most appropriate for examination, to determine current accident risk. Older accidents may have had causation factors which have since been addressed, for example by the introduction of new 20mph speed limits, enforcement of existing speed limits, introduction of new pedestrian crossings, or traffic calming or junction improvement schemes.
- 4.7 The injury accident for the five-year period ending December 2019 has been examined, and the location of all accidents is shown in Figure 4.1, by the marker tabs.



- 4.8 Figure 4.1 indicates that there have been no injury accidents on the B6372 in the vicinity of the site during that time.

- 4.9 It cannot be denied that, as the number of users of any length of road increases, there is a greater likelihood that one or more of them will make an error which may lead to an accident. It would be unreasonable to assume otherwise. That in itself, however, does not constitute grounds to refuse any application which might lead to increased traffic flows, however marginal – if it did, it would effectively create a presumption against any increase in traffic or pedestrian flows, at any junction, anywhere. The test that must be applied, sensibly, is to ask whether any change in risk to road safety is real and / or significant.
- 4.10 While local and national policy aims to reduce the occurrence of injury accidents all over the road network, the 5-year accident record on the B7026, and on the B6372 itself, leading to and from the application site, is not indicative of a particular road safety difficulty.
- 4.11 This would suggest that road users are exercising the appropriate care in negotiating the existing road layout, and perhaps supports the argument that drivers are more aware of their surroundings than an approach based on “road standards” would suggest.
- 4.12 In any case, it is unlikely that the proposed relocation of the landscaping business, and the development of a dwelling house, would exacerbate that situation to an unacceptable degree.

5.0 Conclusions

- 5.1 This Report examines the matters raised by the Council’s second Reason for Refusal of an application for planning permission for a dwelling house on a site at Fallhills Farm, Penicuik, adjacent to the B6372.
- 5.2 The Council’s Policy and Road Safety Manager, when consulted on the application, requested details of the proposed vehicle access showing a visibility splay of 215m by 2.4m for a 60mph road, and details of the parking and manoeuvring layout within the site. The Policy and Road Safety Manager did not recommend refusal of the application, so clearly did not consider these issues to be insurmountable.
- 5.3 Nevertheless, the Council’s Delegated Worksheet suggests that the required visibility splay is not achievable within the application site or on land under the control of the applicant, and that in any case, the proposed boundary hedge would have to be set back too far.
- 5.4 Only 3 working days elapsed between the Policy and Road Safety Manager’s response and the issue of the decision letter, refusing the application. The Applicant was given no opportunity to demonstrate that the specified visibility splay was readily achievable, since in this case, the Applicant does own all of the necessary land.
- 5.5 The Council were therefore incorrect to in conclude that the visibility splays were not achievable and including this as the second Reason for Refusal.
- 5.6 This report then goes on to examine the available visibility splays in more detail, and demonstrates that the specified visibility splay of 2.4 metres by 215 metres can be achieved if required.
- 5.7 This report examines the current Design Manual for Roads and Bridges CD123 “Geometric design of at-grade priority and signal-controlled junctions” and concludes

that, for a direct private access (as opposed to a full road junction), the set-back distance should be reduced to 2 metres.

- 5.8 This report also examines actual vehicle speeds in the vicinity of the proposed site access, and demonstrates that speeds are lower than the national speed limit of 60 miles per hour. For the speeds measured, a visibility distance of between 120 metres and 160 metres would be perfectly adequate.
- 5.9 The report therefore demonstrates that, while the full specified visibility splays are achievable, a visibility splay of 2m by 120 or 160 metres can be provided, without detriment to road safety, but preserving more of the existing character of the road.
- 5.10 This Report then examines the road injury accident record on surrounding roads, and shows that there have been no injury accidents in the immediate vicinity of the site in the last 5 years, the period normally used for road safety analysis. The accident record does not indicate any particular blackspot or difficulty requiring remedial action.
- 5.11 There are no grounds to refuse any application simply because it might lead to increased traffic flows, however marginal – if it did, it would effectively create a presumption against any increase in traffic or pedestrian flows, at any junction, anywhere. The test that must be applied, sensibly, is to ask whether any change in risk to road safety is real and / or significant.
- 5.12 It is proposed that further discussions would take place with the Council when an application is made for reserved matters. At that stage, a full traffic speed survey could inform a detail design of the necessary splay. However, this report demonstrates at this stage, that a suitable visibility splay can be provided.
- 5.13 In this case, the addition of traffic to and from the relocated landscaping business, plus one additional dwelling, is not a significant increased road safety risk.

APPENDIX A

Date: 14-Sep-20
Job No. L119
Project : Fyrnlea, Peniciok
Location: B6372
Weather - Dry, overcast
Time - 10.40 to 11.30

Surveyed by: Andrew Carrie

DIRECTION: Westbound			
RECORD	SPEED(mph)	SPEED(mph)	RECORD
1	37		51
2	39		52
3	42		53
4	37		54
5	39		55
6	45		56
7	37		57
8	46		58
9	45		59
10	45		60
11	41		61
12	38		62
13	56		63
14	48		64
15	46		65
16	45		66
17	35		67
18	47		68
19	38		69
20	41		70
21			71
22			72
23			73
24			74
25			75
26			76
27			77
28			78
29			79
30			80
31			81
32			82
33			83
34			84
35			85
36			86
37			87
38			88
39			89
40			90
41			91
42			92
43			93
44			94
45			95
46			96
47			97
48			98
49			99
50			100

DIRECTION: Eastbound			
RECORD	SPEED(mph)	SPEED(mph)	RECORD
1	30		51
2	60		52
3	61		53
4	55		54
5	44		55
6	33		56
7	35		57
8	32		58
9			59
10			60
11			61
12			62
13			63
14			64
15			65
16			66
17			67
18			68
19			69
20			70
21			71
22			72
23			73
24			74
25			75
26			76
27			77
28			78
29			79
30			80
31			81
32			82
33			83
34			84
35			85
36			86
37			87
38			88
39			89
40			90
41			91
42			92
43			93
44			94
45			95
46			96
47			97
48			98
49			99
50			100

Number of Records 20
 85th Percentile 46.15
 Average Speed 42.35
 Maximum Speed 56
 Minimum Speed 35
 Excess of 60 MPH 0
 Excess of 60 MPH (%) 0.0%

Number of Records 8
 85th Percentile 59.75
 Average Speed 43.75
 Maximum Speed 61
 Minimum Speed 30
 Excess of 60 MPH 1
 Excess of 60 MPH (%) 12.5%

Forward Visibility Calculator

APPENDIX B

Page 1 - DMRB Speed 43.5 mph (70 kph)

Formula $SSD = vt + v^2/2(d+0.1a)$

Vehicle Speed **43.5** mph
 70.01 kph
 19.45 v (m/s)
 378.16 v^2

Driver Reaction time **2** t (sec)
 38.89 (v x t)

Deceleration Rate **0.25** g
 2.45 d (m/s)

Gradient **0.00** a
 2.4525 d+0.1a
 4.905 $2(d+0.1a)$

	vt	+	$v^2/2(d+0.1a)$	=	SSD
Stopping Site Distance =	38.89	+	77.10	=	115.99

SSD Bonnet Adjusted (SSD+2.4) 118.39

	Designing Streets		DMRB
	Lights	HGV/Bus	All
	(<5% HGV)	(>5% HGV)	
Reaction Time	1.5s	1.5s	2s
Deceleration rate	0.45g	0.375g	0.25g

Forward Visibility Calculator

Page 2 - DMRB 46.15 mph

Formula $SSD = vt + v^2/2(d+0.1a)$

Vehicle Speed **46.15** mph
 74.27 kph
 20.63 v (m/s)
 425.63 v^2

Driver Reaction time **2** t (sec)
 41.26 (v x t)

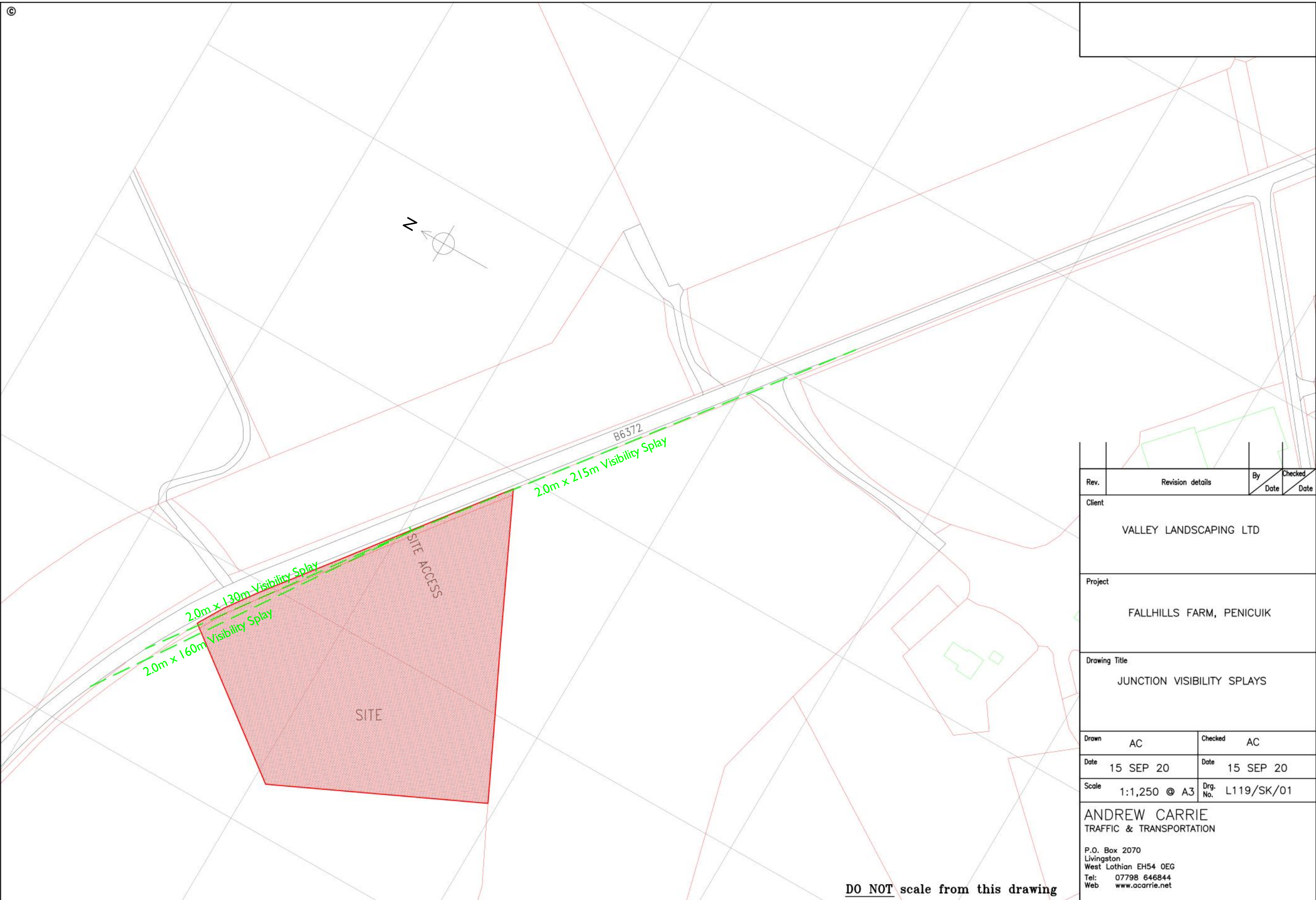
Deceleration Rate **0.25** g
 2.45 d (m/s)

Gradient **0.00** a
 2.4525 d+0.1a
 4.905 $2(d+0.1a)$

	vt	+	$v^2/2(d+0.1a)$	=	SSD
Stopping Site Distance =	41.26	+	86.78	=	128.04

SSD Bonnet Adjusted (SSD+2.4) 130.44

	Designing Streets		DMRB
	Lights	HGV/Bus	All
	(<5% HGV)	(>5% HGV)	
Reaction Time	1.5s	1.5s	2s
Deceleration rate	0.45g	0.375g	0.25g



Rev.	Revision details	By	Checked
		Date	Date

Client
VALLEY LANDSCAPING LTD

Project
FALLHILLS FARM, PENICUIK

Drawing Title
JUNCTION VISIBILITY SPLAYS

Drawn	AC	Checked	AC
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Date	15 SEP 20	Date	15 SEP 20
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Scale	1:1,250 @ A3	Drg. No.	L119/SK/01
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ANDREW CARRIE
TRAFFIC & TRANSPORTATION

P.O. Box 2070
Livingston
West Lothian EH54 0EG
Tel: 07798 646844
Web: www.acarrie.net

DO NOT scale from this drawing

MIDLOTHIAN COUNCIL

DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

Planning Application Reference: 20/00472/PPP

Site Address: Land 250M North West of Fyrnlea, Penicuik.

Site Description: The application site comprises an area measuring 1.34 hectares of agricultural land currently used for grazing sheep. The site is relatively level, with an area of woodland to the southeast and east. There is open countryside to all other boundaries. There is a field access from the B6372. The levels in the surrounding area mean the site is at a higher level from the B7026 to/from Howgate so this is not readily visible from this road, or Howgate to the southwest.

Proposed Development: Planning permission in principle for the erection of a dwellinghouse and formation of access.

Proposed Development Details: The application is for planning permission in principle, however the agent has submitted a site plan showing an indicative layout of a house, a barn and two plant/tree nursery areas within the site. They have submitted two supporting statements. It is proposed to relocate an existing landscape business currently operating from four locations (Aberdeen, the Borders, Carlops/West Linton and Howgate) and establish this business to this site. The Aberdeen depot would remain but the other three sites would close and the business would be operated from this site. The business cannot relocate to this site without the proposed house being approved as this is required for on-site supervision to manage plant growth and provide security. The applicant would enter into a legal agreement to link the house to the horticultural business. Additional landscaping is proposed along the roadside boundary. The house would connect to the public drainage system and water supply.

Background (Previous Applications, Supporting Documents, Development Briefs): No relevant history.

Consultations:

The Council's **Policy and Road Safety Manager** has no objection in principle but states that conditions be attached to any planning permission relating to parking and manoeuvring and surface water management. Also details of the access with visibility splays of 215 metres by 2.4 metres are required.

The Council's **Archaeological Consultant** recommends a condition be attached to any permission requiring a programme of archaeological works be submitted for approval before any works begin on site.

Scottish Water has no objection. They state that there is no waste water infrastructure in the area and that they will not accept any surface water connections to the combined sewer.

Representations: No representations have been received.

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

DEV5 Sustainability in New Development sets out the requirements for development with regards to sustainability principles;

DEV6 Layout and Design of New Development requires good design and a high quality of architecture, in both the overall layout of developments and their constituent parts. The layout and design of developments are to meet listed criteria;

DEV7 Landscaping in New Development requires development proposals to be accompanied by a comprehensive scheme of landscaping. The design of the scheme is to be informed by the results of an appropriately detailed landscape assessment;

TRAN5 Electric Vehicle Charging seeks to support and promote the development of a network of electric vehicle charging stations by requiring provision to be considered as an integral part of any new development or redevelopment proposals;

IT1 Digital Infrastructure supports the incorporation of high speed broadband connections and other digital technologies into new homes, business properties and redevelopment proposals;

RD1 Development in the Countryside states development in the countryside will only be permitted if: it is required for the furtherance of agriculture, including farm related diversification, horticulture, forestry, countryside recreation or tourism; it accords with other named policies; or it accords with the Council's Supplementary Guidance on Development in the Countryside and Green Belt. All such development will need to be: of a scale and character appropriate to the rural area and well integrated into the rural landscape; capable of being serviced with an adequate and appropriate access; capable of being provided with drainage and a public water supply at reasonable cost, or an acceptable private water supply, avoiding unacceptable discharge to watercourses; and accessible by public transport and services, within 1 mile of a bus route with a frequency of 1 bus per hour. In the case of businesses, these should not be primarily of a retail nature and do not harm the amenity of nearby residents through unacceptable levels of noise, light or traffic;

ENV7 Landscape Character states that development will not be permitted where it significantly and adversely affects local landscape character. Where development is acceptable, it should respect such character and be compatible in terms of scale, siting and design. New development will normally be required to incorporate proposals to maintain the diversity and distinctiveness of the local landscapes and to enhance landscape characteristics where they have been weakened.

Supplementary Guidance for Housing Development in the Countryside and Green Belt is adopted and expands policy RD1 and the criteria to be met in such proposals. There is some support for development that is required for the furtherance of an established countryside activity. The applicant must demonstrate compliance with the relevant policies. Any application shall be accompanied by an independent report prepared by a suitably qualified professional to support the need for a house and on the viability of the associated business and its operational requirement. In outlining the needs of the business, it should be apparent whether

the need can be met within an existing settlement and whether the occupier will be employed full-time in the associated activity.

Planning 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.

The Planning Authority has restrictive planning policies with regards to new housing proposals within the countryside. These restrictions aim to prevent the creeping suburbanisation of the countryside which is under significant pressure due to the convenient commuting distance to Edinburgh. However, there are enabling policies, within the adopted Midlothian Local Development Plan, which support residential developments within the countryside in some instances, subject to specific criteria. Policy RD1 and the related supplementary guidance includes several sections where houses in the countryside could be acceptable in planning terms.

It is proposed to erect a house that relates to a landscape business. This is the justification for the house. The submitted site plan and associated documents are clear there is no landscape business currently operating from this site. The related business operates from a number of other locations and it is proposed to consolidate three of the existing operations to this site, with the fourth remaining elsewhere. It is submitted that the horticulture business is established and this demonstrates that this is a viable long term business.

The related policies are clear that there is some policy support for houses required for the furtherance of an established countryside activity, where it is demonstrated that this meets the relevant policy criteria. The landscape business detailed as the justification for the house is not operational from the site, therefore the proposed house does not relate to the furtherance of an established business and there is therefore no policy support. The Planning Authority disagrees with the statement that as the business is established elsewhere, this provides justification for a house at this site. The policy is clear that any house must further the countryside activity.

At present, the site is used for livestock grazing. There are no horticultural operations taking place.

Notwithstanding the above that the principle of residential development here is not supported, the following comments are relevant.

The application site area is sufficiently large to be able to accommodate a dwellinghouse, garden ground, turning area and parking.

The land around the site is undulating meaning that any house may be screened by the surrounding ground levels from the south, west and east, to a point, depending on the design and scale. There is landscaping at present to the east and north of the site. The case officer has noticed when visiting the area over the previous year, large areas of woodland in the area have been felled, particularly to the east and northeast of the site. This may leave the site more exposed from views, particularly from the north, than at present. Should the principle of development be established,

this should ensure that additional landscaping be within the site to help integrate this into the surrounding area.

For new accesses onto a 60mph road, as currently proposed, visibility splays of 215 metres by 2.4 metres are required to provide a safe access. The roadside boundary of the site measures approximately 150 metres long. This means that the required visibility splay is not achievable within the application site or on land under the control of the applicant. It has not been demonstrated that a safe access can be provided for this proposal. Also, although the submission states that a hedge would be planted along this roadside boundary, the required visibility splay means this would need to be set back at least 2.4 metres from the road. Typically hedgerows in the countryside are either hard up to roads or are set back slightly. Setting a hedge at least 2.4 metres from the roadside is likely to have an adverse landscape visual impact on the surrounding area.

The application site area is sufficiently large to be able to accommodate a dwellinghouse, garden ground, turning area and parking.

The application form states that the house would connect to the public waste and water supply in the area. However Scottish Water has stated that there is no waste water infrastructure in the area. Should planning permission be granted, details of the drainage, both foul and surface water, would be required.

(As an aside, the application includes some information relating to the horticulture business that is not necessary for the assessment of this application but interesting to note. It is stated that the nursery will grow trees and plants for use by the business and will not be for public sale. Employees will arrive at the site in mornings, go on their jobs and then come back to the site in the afternoons. There will be no public access to the site. There will be few deliveries to the site. One supporting statement states that there will be up to twenty staff employed at the business in the future, with the other stating there are 7 current employees which will increase to 10-12 in the future.)

Recommendation: Refuse planning permission in principle.

Refusal of Planning Permission

Town and Country Planning (Scotland) Act 1997

Reg. No. 20/00472/PPP

Yeoman McAllister Architects
Waterside Studios
64 Coltbridge Avenue
Edinburgh
EH12 6AH

Midlothian Council, as Planning Authority, having considered the application by Valley Landscaping Limited, Mr Stephen Lamb, 4A Glenfinlas Street, Edinburgh, EH3 6AQ, which was registered on 23 July 2020 in pursuance of their powers under the above Acts, hereby **refuse** permission to carry out the following proposed development:

Planning permission in principle for the erection of a dwellinghouse and formation of access at Land 250M North West of Fyrnlea, 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	LOC-001 1:2500	23.07.2020

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

- 1. It has not been demonstrated to the satisfaction of the Planning Authority that the proposed house is required in connection with the furtherance of an established countryside activity or business. For this reason the proposed development is contrary to RD1 of the proposed Midlothian Local Development Plan and the related supplementary planning guidance.*
- 2. The proposal presents a significant threat to road safety as the required visibility splays for a vehicular access are not achievable either within the application site or on land under the control of the applicant.*
- 3. The proposal would have a detrimental impact on the landscape character of the area as any landscaping would need to be set back 2.4 metres from the roadside which would be out of keeping with the area.*

Dated 31 / 8 / 2020



.....
Peter Arnsdorf/Joyce Learmonth/Duncan Robertson
Lead Officer – Local Developments Fairfield House, 8 Lothian Road, Dalkeith, EH22 3ZN



The Coal
Authority

Any Planning Enquiries should be directed to:

Planning and Local Authority Liaison

Direct Telephone: 01623 637 119

Email: planningconsultation@coal.gov.uk

Website:

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

STANDING ADVICE - DEVELOPMENT LOW RISK AREA

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

Further information is also available on the Coal Authority website at:

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

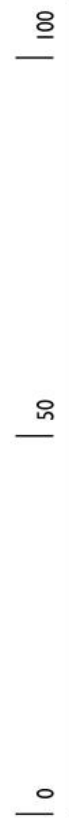
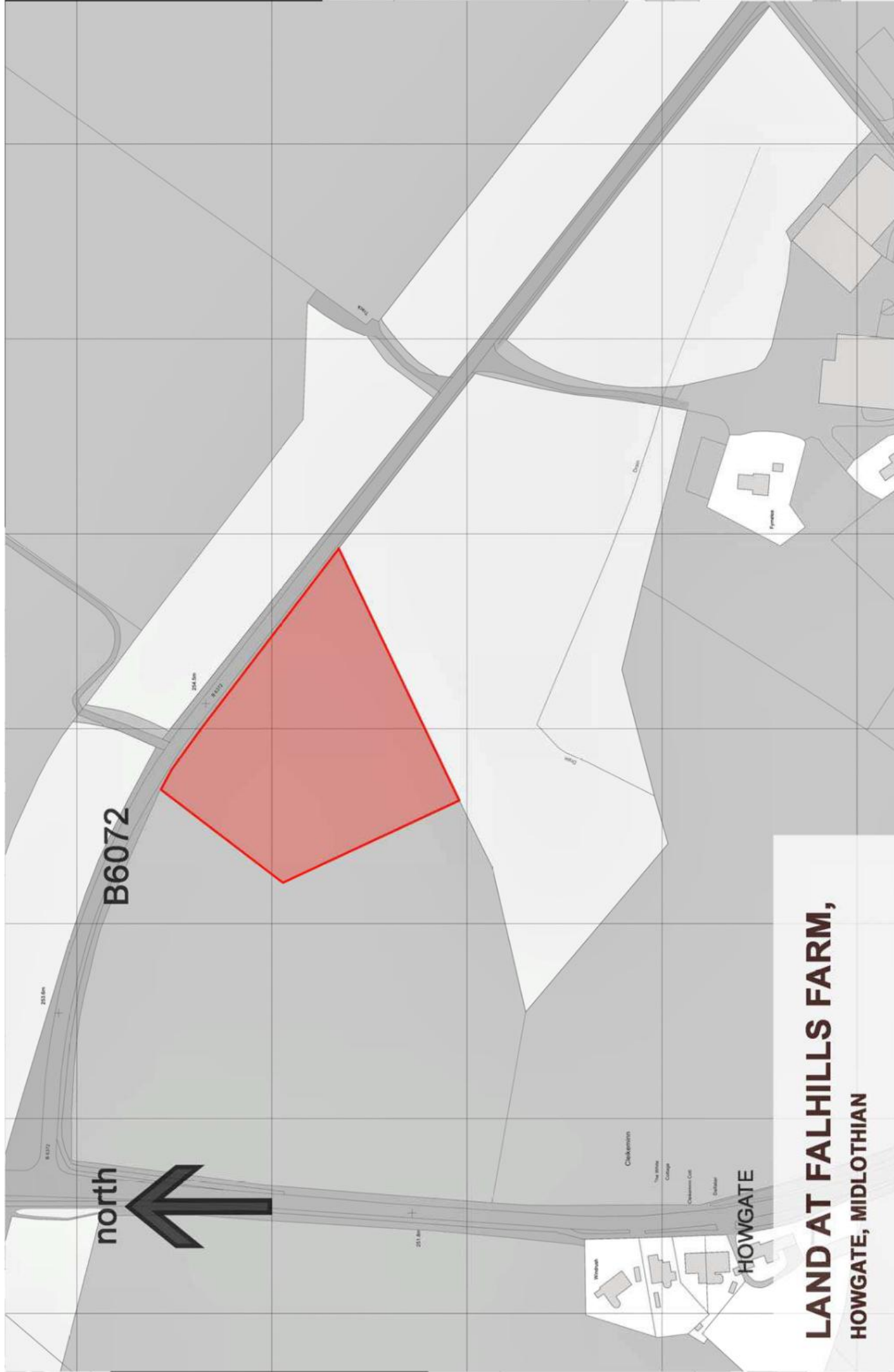
This Standing Advice is valid from 1st January 2019 until 31st December 2020



yeomanmcallister

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CLIENT	Valley Landscaping Limited		
JOB	Proposed Dwelling House, Falhills Farm, Howgate, Midlothian.		
DRAWING	Site Location Plan		
STATUS	PLANNING		
Drawn	Checked	Approved	DATE
--	--	--	July 20
JOB NO	S/4645	OR NO	LOC-001
REV	/	REV	/
This drawing and its data are the copyright of Yeoman McAllister Architects and must not be used for any purpose other than that for which it is intended. Yeoman McAllister accepts no responsibility for any inaccuracy in printing of this drawing by any parties.			SCALE 1:2500 SHEET SIZE A3