

# Notice of meeting and agenda



## Local Review Body

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

**Date:** Tuesday, 24 January 2017

**Time:** 14:00

**John Blair**  
Director, Resources

**Contact:**

Clerk Name: Mike Broadway

Clerk Telephone: 0131 271 3160

Clerk Email: [mike.broadway@midlothian.gov.uk](mailto:mike.broadway@midlothian.gov.uk)

**Further Information:**

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

**Audio Recording Notice:** Please note that this meeting will be recorded. The recording will be publicly available following the meeting. The Council will comply with its statutory obligations under the Data Protection Act 1998 and the Freedom of Information (Scotland) Act 2002.

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

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## **2 Order of Business**

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

## **3 Declarations of Interest**

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

## **4 Minutes of Previous Meeting**

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- |            |  |               |
|------------|--|---------------|
| <b>4.1</b> | Minutes of Meeting held on 29 November 2016 - For Approval | <b>3 - 10</b> |
|------------|--|---------------|

## **5 Public Reports**

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Decision Notices:-

- |            |                                     |                |
|------------|-------------------------------------|----------------|
| <b>5.1</b> | 5 Thornyhall, Dalkeith 16.00575.DPP | <b>11 - 14</b> |
|------------|-------------------------------------|----------------|

- |            |   |                |
|------------|---|----------------|
| <b>5.2</b> | 7 Cochrina Place, Rosewell 16.00568.DPP | <b>15 - 18</b> |
|------------|---|----------------|

Notice of Review Request Considered at a Previous Meeting – Report by Head of Communities and Economy:-

- |            |  |                |
|------------|--|----------------|
| <b>5.3</b> | Former Arniston Gas Works, Gorebridge 15.00335.DPP - Update Determination Report | <b>19 - 28</b> |
|------------|--|----------------|

Notice of Review Requests Considered for the First Time – Reports by Head of Communities and Economy:-

- |            |   |                |
|------------|---|----------------|
| <b>5.4</b> | 66 Newbattle Abbey Crescent, Dalkeith 16.00508.DPP - Determination Report | <b>29 - 48</b> |
|------------|---|----------------|

## **6 Private Reports**

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No private reports to be discussed at this meeting.

Plans and papers relating to the applications on this agenda can also be viewed online at [www.midlothian.gov.uk](http://www.midlothian.gov.uk).

# Minute of Meeting



## Local Review Body

Date	Time	Venue
29 November 2016	2.00pm	Council Chambers, Midlothian House, Buccleuch Street, Dalkeith

### Present:

Councillor Bryant (Chair)	Councillor Baxter
Councillor Beattie	Councillor Milligan
Councillor Montgomery	Councillor Rosie

## 1 Apologies

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Apologies received from Councillors Bennett, Constable, de Vink and Imrie.

## 2 Order of Business

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

## 3 Declarations of interest

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No declarations of interest were received.

## 4 Minutes of Previous Meetings

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The Minutes of Meeting of 25 October 2016 were submitted and approved as a correct record.

## 5 Reports

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Agenda No	Report Title	Presented by:
5.1	Decision Notice – Grange Dell Lodge, Penicuik [16/00470DPP]	Peter Arnsdorf

### Executive Summary of Report

With reference to paragraph 5.5 of the Minutes of 25 October 2016, there was submitted a copy of the Local Review Body decision notice upholding a review request from Alan Hardie Architect, Suite 4, Dundas House, Westfield Park, Eskbank, seeking on behalf of their clients Mr A, and Mrs F Reynolds, a review of the decision of the Planning Authority to refuse planning permission (16/00470/DPP, refused on 16 August 2016) for the Subdivision of Single Dwellinghouse to form Two Dwellinghouses and Associated Extension and Alterations at Grange Dell Lodge, Penicuik and granting planning permission subject to conditions.

### Decision

To note the LRB decision notice.

### Eligibility to Participate in Debate

In considering the following items of business, only those LRB Members who had attended the site visits on Monday 24 October 2016 participated in the review process, namely Councillors Bryant (Chair), Baxter, Beattie, Milligan, Montgomery and Rosie.

Agenda No	Report Title	Presented by:
5.2	Notice of Review Requests Considered for the First Time – (a) 5 Thornyhall, Dalkeith [16/00575/DPP]	Peter Arnsdorf

### Executive Summary of Report

There was submitted report, dated 17 November 2016, by the Head of Communities and Economy regarding an application from Ms G Hay, 5 Thornyhall, Dalkeith seeking a review of the decision of the Planning Authority to refuse planning permission (16/00575/DPP, refused on 30 September 2016) for the Alteration of Existing Conservatory Roof at that address.

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

The Local Review Body had made an unaccompanied visit to the site on Monday 28 November 2016.

### Summary of Discussion

Having heard from the Planning Adviser, the LRB gave careful consideration to the merits of the case based on all the written information provided. In particular, the LRB discussed the potential visual impact that the proposed development was likely to have on the host property and on the neighbourhood as a whole. The LRB felt that on balance, the materials to be used appeared to offer an acceptable match in terms of colour, and acknowledged that there were a wide number of conservatories of differing design in the area.

### Decision

To agreed to uphold the review request, and grant planning permission for the following reason:

*The proposed alteration by means of its scale, form and design is compatible with its location and the host building and will not have a significant impact on neighbouring and nearby properties.*

### Action

Head of Communities and Economy

Agenda No	Report Title	Presented by:
5.3	(b) 7 Cochrina Place, Rosewell [16/00568/DPP]	Peter Arnsdorf

### Executive Summary of Report

There was submitted report, dated 17 November 2016, by the Head of Communities and Economy regarding an application from FEM Building Design Services, 8 Plantain Grove, Lenzie, Glasgow, seeking on behalf of their client Mrs A Ainsworth, a review of the decision of the Planning Authority to refuse planning permission (16/00568/DPP, refused on 30 September 2016) for the Erection of an Extension at 7 Cochrina Place, Rosewell.

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

The Local Review Body had made an unaccompanied visit to the site on Monday 28 November 2016.

### Summary of Discussion

Having heard from the Planning Adviser, the LRB then gave careful consideration to the merits of the case based on all the written information provided. In this particular instance, it was felt that notwithstanding the policy position, on balance the individual circumstances of the application site meant that the proposed extension would be acceptable.

### Decision

To agreed to uphold the review request, and grant planning permission for the following reason:

*The proposed extension by means of its scale, form and design is compatible with its location and the host building and will not have a significant impact on neighbouring and nearby properties.*

### Action

Head of Communities and Economy

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Agenda No	Report Title	Presented by:
5.4	(c) Land at Howgate Restaurant, Penicuik [16/00429/PPP]	Peter Arnsdorf

### Executive Summary of Report

There was submitted report, dated 17 November 2016, by the Head of Communities and Economy regarding an application from Rick Finc Associates Ltd, 3 Walker Street, Edinburgh, seeking on behalf of their client Mr N Cameron-Hogg, a review of the decision of the Planning Authority to refuse planning permission in principle (16/00429/DPP, refused on 12 August 2016) for the Erection of three Dwellinghouses at Land at Howgate Restaurant, Penicuik.

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

The Local Review Body had made an unaccompanied visit to the site on Monday 28 November 2016.

### Summary of Discussion

Having heard from the Planning Adviser, the LRB then gave careful consideration to the merits of the case based on all the written information provided. In this particular instance there was a division of opinion, on the one hand it was felt that notwithstanding the policy position, on balance the individual circumstances of the application site meant that the proposed development would be acceptable. However, on the other hand there were concerns regarding the policy position and issues of precedent.

After discussion, Councillor Montgomery, seconded by Councillor Rosie, moved that the Review Request be upheld and that planning permission in principle be grant subject to (i) the prior signing of a legal agreement; and (ii) the suggested conditions, proposed by the Head of Communities and Economy in his report.

As an amendment, Councillor Beattie, seconded by Councillor Baxter, moved to dismiss the Review Request and uphold the decision to refuse planning permission in principle on the grounds given in the original decision notice.

On a vote being taken, two Members voted for the amendment and four for the motion which accordingly became the decision of the meeting.

### Decision

To agreed to uphold the review request, and grant planning permission in principle for the following reason:

*The proposed erection of three dwellinghouses discreetly designed to fit into the landscape would not have a detrimental impact on the openness of the countryside and would help support the Howgate Restaurant business. These material considerations outweigh the policy objection to the application.*

subject to:-

- (i) the prior signing of a legal agreement to secure contributions towards education provision and the local 'ring and go' scheme; and
- (ii) the following condition:-
  1. Development shall not begin until an application for approval of matters specified in conditions for a scheme of hard and soft landscaping works has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
    - i existing and finished ground levels and floor levels for all buildings and roads in relation to a fixed datum;
    - ii existing trees, landscaping features and vegetation to be retained; removed, protected during development and in the case of damage, restored;
    - iii proposed new planting in communal areas and open space, including trees, shrubs, hedging and grassed areas;
    - iv location and design of any proposed walls, fences and gates, including those surrounding bin stores or any other ancillary structures;
    - v schedule of plants to comprise species, plant sizes and proposed numbers/density;
    - vi programme for completion and subsequent maintenance of all soft and hard landscaping. The landscaping shall be completed prior to the houses being occupied;
    - vii drainage details and sustainable urban drainage systems to manage water runoff;
    - viii proposed car park configuration and surfacing;
    - ix proposed footpaths and cycle paths (designed to be unsuitable for motor bike use); and
    - x proposed cycle parking facilities.

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

***Reason:*** To ensure the quality of the development is enhanced by landscaping to reflect its setting in accordance with policies RP8, RP1, RP7, DP1 and DP2 of the Midlothian Local Plan and national planning guidance and advice.

2. Development shall not begin until an application for approval of matters specified in conditions for the siting, design and external appearance of all residential units and other structures has been submitted to and approved in writing by the planning authority. The application shall include samples of materials to be used on external surfaces of the



buildings; hard ground cover surfaces; means of enclosure and ancillary structures. Development shall thereafter be carried out using the approved materials or such alternatives as may be agreed in writing with the planning authority.

**Reason:** *To ensure the quality of the development is enhanced by the use of quality materials to reflect its setting in accordance with policies RP1, RP7, DP1 and DP2 of the Midlothian Local Plan and national planning guidance and advice.*

3. Development shall not begin until an application for approval of matters specified in conditions for the site access, roads, footpaths, cycle ways and transportation movements has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
  - i existing and finished ground levels for all roads and cycle ways in relation to a fixed datum;
  - ii proposed vehicular, cycle and pedestrian accesses;
  - iii proposed roads (including turning facilities), footpaths and cycle ways;
  - iv proposed visibility splays, traffic calming measures, lighting and signage;
  - v proposed construction traffic access and haulage routes;
  - vi a green travel plan designed to minimise the use of private transport and to promote walking, cycling, safe routes to school and the use of public transport;
  - vii proposed car parking arrangements;
  - viii a programme for completion for the construction of access, roads, footpaths and cycle paths.

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

**Reason:** *To ensure the future users of the buildings, existing local residents and those visiting the development site during the construction process have safe and convenient access to and from the site.*

4. Development shall not begin until an application for approval of matters specified in conditions for details, including a timetable of implementation, of high speed fibre broadband have been submitted to and approved in writing by the planning authority. The details shall include delivery of high speed fibre broadband prior to the occupation of each dwellinghouse. The delivery of high speed fibre broadband shall be implemented as per the approved details.

**Reason:** *To ensure the quality of the development is enhanced by the provision of appropriate digital infrastructure.*

The LRB further agreed that the legal agreement should be concluded prior to the issuing of the LRB decision and that in the event that the legal agreement was not concluded within a 6 month time period to sanction refusal of permission for the reasons outlined in the planning officer's decision.

**Action**

Head of Communities and Economy

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The meeting terminated at 2.27pm.

## Local Review Body: Review of Planning Application Reg. No. 16/00575/DPP

Ms Gweneth Hay  
5 Thornyhall  
Dalkeith  
EH22 2ND

Midlothian Council, as Planning Authority, having considered the review of the application by Ms Gweneth Hay, 5 Thornyhall, Dalkeith, EH22 2ND, which was registered on 19 October 2016 in pursuance of their powers under the above Act, hereby **grant** permission to carry out the following proposed development:

**Alteration of existing conservatory roof at 5 Thornyhall, Dalkeith,** in accordance with the application and the following plans:

<u>Drawing Description.</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Location Plan	1:1250	23.08.2016
Illustration/Photograph		23.08.2016
Illustration/Photograph		23.08.2016

The Local Review Body (LRB) considered the review of the planning application at its meeting of 29 November 2016. The LRB carried out a site visit on the 28 November 2016.

In reaching its decision the LRB gave consideration to the following development plan policies and material considerations:

### Development Plan Policies:

1. RP20 Midlothian Local Plan – Development within the built-up area
2. DP6 Midlothian Local Plan – House Extensions

### Material considerations:

1. The individual circumstances of the proposal

In determining the review the LRB concluded:

The proposed alteration by means of its scale, form and design is compatible with its location and the host building and will not have a significant impact on neighbouring and nearby properties.

Dated: 29/11/2016

A handwritten signature in black ink, appearing to read 'Peter Arnsdorf', with a large, stylized initial 'P'.

Peter Arnsdorf  
Planning Manager (Advisor to the Local Review Body)  
Communities and Economy  
Midlothian Council  
On behalf of:

Councillor J Bryant  
Chair of the Local Review Body  
Midlothian Council

## NOTICE TO ACCOMPANY REFUSAL ETC.

### TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

***Notification to be sent to applicant on refusal of planning permission or on the grant of permission subject to conditions, or***

***Notification to be sent to applicant on determination by the planning authority of an application following a review conducted under section 43A(8)***

1. 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 question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.

2. 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 reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by 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

*Advisory note:*

*If you have any questions or enquiries regarding the Local Review Body procedures or this decision notice please do not hesitate to contact Peter Arnsdorf, Planning Manager tel: 0131 2713310 or via [peter.arnsdorf@midlothian.gov.uk](mailto:peter.arnsdorf@midlothian.gov.uk)*



## Local Review Body: Review of Planning Application Reg. No. 16/00568/DPP

FEM Building Design Services  
8 Plantain Grove  
Lenzie  
Glasgow  
G66 3NE

Midlothian Council, as Planning Authority, having considered the review of the application by Anne Ainsworth, 7 Cochrina Place, Rosewell, EH24 9AD, which was registered on 9 November 2016 in pursuance of their powers under the above Act, hereby **grant** permission to carry out the following proposed development:

**Extension to dwellinghouse at 7 Cochrina Place, Rosewell**, in accordance with the application and the following plans:

<u>Drawing Description.</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Site Plan, Location Plan and Elevations	16/Ainsworth/BW01 1:1250, 1:200, 1:100	19.08.2016
Proposed Floor Plan	16/Ainsworth/BW02 1:50	19.08.2016
Proposed Elevations	16/Ainsworth/BW03 1:100	19.08.2016

The Local Review Body (LRB) considered the review of the planning application at its meeting of 29 November 2016. The LRB carried out a site visit on the 28 November 2016.

In reaching its decision the LRB gave consideration to the following development plan policies and material considerations:

### Development Plan Policies:

1. RP20 Midlothian Local Plan – Development within the built-up area
2. DP6 Midlothian Local Plan – House Extensions

### Material considerations:

1. The individual circumstances of the proposal

In determining the review the LRB concluded:

The proposed extension by means of its scale, form and design is compatible with its location and the host building and will not have a significant impact on neighbouring and nearby properties.

Dated: 29/11/2016

A handwritten signature in dark ink, appearing to read 'Peter Arnsdorf', with a large, stylized initial 'P'.

Peter Arnsdorf  
Planning Manager (Advisor to the Local Review Body)  
Communities and Economy  
Midlothian Council  
On behalf of:

Councillor J Bryant  
Chair of the Local Review Body  
Midlothian Council



## NOTICE TO ACCOMPANY REFUSAL ETC.

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1. 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 question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.

2. 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 reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by 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

*Advisory note:*

*If you have any questions or enquiries regarding the Local Review Body procedures or this decision notice please do not hesitate to contact Peter Arnsdorf, Planning Manager tel: 0131 2713310 or via [peter.arnsdorf@midlothian.gov.uk](mailto:peter.arnsdorf@midlothian.gov.uk)*



## **Notice of Review: Former Arniston Gas Works, Gorebridge Update Determination Report**

Report by Ian Johnson, Head of Communities and Economy

### **1 Purpose of Report**

- 1.1 The purpose of this report is to provide an update for the Local Review Body (LRB) regarding an application for planning permission in principle for the erection of 10 dwellinghouses, formation of access and associated works at the Former Arniston Gas Works, Gorebridge. A copy of the original report to the LRB is appended to this report.

### **2 Background**

- 2.1 Planning application 15/00335/PPP for planning permission in principle for the erection of 10 dwellinghouses, formation of access and associated works at the Former Arniston Gas Works, Gorebridge was refused planning permission on 30 June 2015 for the following reasons:

1. The proposed development is sited outside any identified settlement boundary and without a proven agricultural, forestry, countryside recreation, tourism or waste disposal need the development is contrary to policies RP1 and DP1 of the adopted Midlothian Local Plan which seeks to protect the countryside.
2. The proposed development would lead to the direct and indirect loss of trees and woodland within a conservation area, to the detriment of the character of the locality, and as such the development is contrary to adopted Midlothian Local Plan policies RP5 (Woodland, trees and hedges) and RP20 (Conservation areas).
3. The indicative layout of the proposal does not comply with the terms of policy DP2 Development Guidelines, which seeks a high standard of development with access to open space and play facilities. The proposed indicative layout does not adequately demonstrate that ten dwellings can be accommodated within the application site and therefore constitutes an over-development.
4. As a result of the loss of trees and the density of the proposed development the proposal will have a significant adverse impact on the character and appearance of the conservation area and is, therefore, contrary to adopted Midlothian Local Plan policy RP22 Conservation Areas which seeks to protect the character and appearance of conservation areas.

5. The access to the proposed development is potentially sub-standard. The applicant has not demonstrated that an acceptable access could be created to serve this development without adversely impacting on the landscape character of the area. The use of this access would potentially cause a hazard to the safety and free flow of traffic.
  6. The proposal takes little cognisance of the Borders railway line, in terms of providing for its safe operation and for protecting the amenity of the dwellings proposed to be in close proximity to it.
  7. Allowing the proposed development will jeopardise the implementation of the restocking notice, served by the Forestry Commission. The required planting of trees supports the aims and objectives of policies RP5, RP7 and RP22 of the Midlothian Local Plan, which seek to protect woodland to the benefit of the countryside and to maintain the high quality of the environment.
  8. It has not been demonstrated, to the satisfaction of the Planning Authority, that the proposed development will not have a significant adverse impact on protected species. Therefore the proposed development is contrary to policy RP13 of the adopted Midlothian Local Plan.
- 2.2 A Notice of Review was submitted by the applicants and at its meeting of 20 October 2015 the LRB was minded to uphold the review and grant planning permission subject to conditions and the prior signing of a legal agreement to secure developer contributions towards, education provision, children's play provision, the Borders Rail Line, town centre improvements and community facilities.

### **3 Current Position**

- 3.1 To date the applicants have not concluded the legal agreement despite the planning authority's continued and consistent best efforts since October 2015 to reasonably engage with them. The view of the planning authority throughout that extended period is that there is no significant impediment to the completion of the legal agreement. However, there is no clear indication that the applicants will conclude the agreement within a reasonable timescale. All planning authorities in Scotland are consistently advised by Scottish Government to determine planning applications without undue delay, and to eliminate what are referred to as 'legacy' cases of applications remaining undermined due to lack of progress on the conclusion of legal agreements. Having regard to these matters this application is being reported further to this meeting of the LRB.
- 3.2 The applicants and other relevant parties have been advised that this application is being referred back to the LRB.

### **4 Recommendations**

- 4.1 At its meeting of 20 October 2015 the LRB was minded to uphold the review and grant planning permission subject to conditions and the prior signing of a legal agreement to secure developer contributions towards,

education provision, children's play provision, the Borders Rail Line, town centre improvements and community facilities. However, as the application remains undetermined due to the required legal agreement not being concluded it is appropriate for the LRB to determine to follow one of the following courses of action, or an alternative course of action as may be stated by the LRB:

Options:

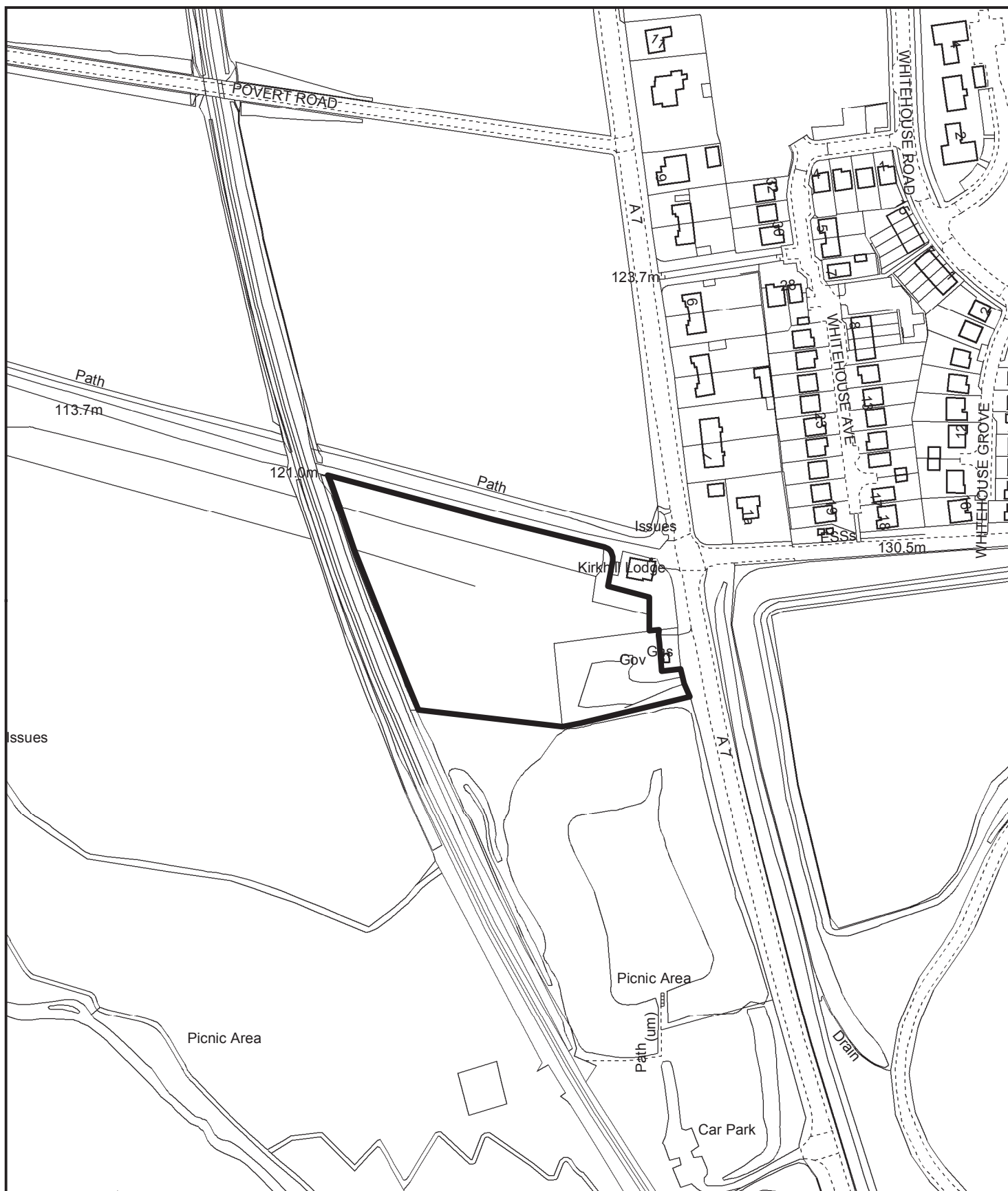
- a) uphold the review and grant planning permission subject to conditions, but not subject to the legal agreement to secure developer contributions; or
- b) provide a further 3 months for the applicants to conclude the legal agreement, failing which, and without further referral to the LRB the review would be dismissed and planning permission refused for the reasons outlined in the planning officers decision; or
- c) defer the review and maintain the LRB's original decision only to grant planning permission subject to securing developer contributions and that the review will be held in abeyance until such time a legal agreement has been concluded.

**Date:** 10 January 2017

**Report Contact:** Peter Arnsdorf, Planning Manager (LRB Advisor)  
peter.arnsdorf@midlothian.gov.uk

**Tel No:** 0131 271 3310

**Background Papers:** Planning application 15/00335/PPP available for inspection online.



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

Application for planning permission in principle for the erection of 10 dwellinghouses; formation of access and associated works at Former Arniston Gas Works, Gorebridge

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File No. 15/00335/DPP

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## **Notice of Review: Former Arniston Gas Works, Gorebridge Determination Report**

Report by Ian Johnson, Head of Communities and Economy

### **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 10 dwellinghouses, formation of access and associated works at the Former Arniston Gas Works, Gorebridge.

### **2 Background**

- 2.1 Planning application 15/00335/PPP for planning permission in principle for the erection of 10 dwellinghouses, formation of access and associated works at the Former Arniston Gas Works, Gorebridge was refused planning permission on 30 June 2015; 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 advisor notes, issued on 30 June 2015 (Appendix D); and
  - A copy of the relevant plans (Appendix E).
- 3.2 The full planning application case file and the development plan policies referred to in the case officer's report can be viewed online via [www.midlothian.gov.uk](http://www.midlothian.gov.uk)

### **4 Procedures**

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

- Have scheduled an accompanied site visit for Monday 19 October 2015; and
  - Have determined to progress the review by way of a hearing.
- 4.2 The case officer's report identified that nine consultation responses and no representations have been received. As part of the review process the consultees were notified of the review. Three additional comments have been received. All the comments can be viewed online on the electronic planning application case file via [www.midlothian.gov.uk](http://www.midlothian.gov.uk).
- 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 19 June 2012 and 26 November 2013, 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 commence until an application for approval of matters specified in conditions for a scheme of hard and soft landscaping has been submitted to and approved in writing by the Planning Authority. Details of the scheme shall include:
    - i. existing and finished ground levels and floor levels for all buildings, open space and roads in relation to a fixed datum;



- ii. existing trees, landscaping features and vegetation to be retained; removed, protected during development and in the case of damage, restored;
- iii. proposed new planting in communal areas and open space, including trees, shrubs, hedging, wildflowers and grassed areas;
- iv. location and design of any proposed walls, fences and gates;
- v. schedule of plants to comprise species, plant sizes and proposed numbers/density;
- vi. a programme for completion and subsequent maintenance of all soft and hard landscaping. The landscaping in the open spaces shall be completed prior to the houses/buildings on adjoining plots are occupied. Any tree felling or vegetation removal proposed as part of the landscaping scheme shall take place out with the bird breeding season (March-August); and,
- vii. drainage details and details of sustainable urban drainage systems to manage water runoff.

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

***Reason:*** *To ensure the quality of the development is enhanced by landscaping to reflect its setting in accordance with policies RP7, RP22, RP25 and DP2 of the adopted Midlothian Local Plan and national planning guidance and advice. To ensure that there is no adverse impact on the operation of the adjacent railway.*

2. Development shall not commence until an application for approval of matters specified in conditions for the siting, design and external appearance of all residential units and other structures has been submitted to and approved in writing by the Planning Authority. The application shall include samples of materials to be used on external surfaces of the buildings; hard ground cover surfaces; means of enclosure and ancillary structures. Development shall thereafter be carried out using the approved materials or such alternatives as may be agreed in writing with the Planning Authority.

***Reason:*** *To ensure the quality of the development is enhanced by the use of quality materials to reflect its setting in accordance with policies RP7, RP22, RP25 and DP2 of the Midlothian Local Plan and national planning guidance and advice.*

3. Development shall not commence until an application for approval of matters specified in conditions for details of a scheme for 'Percent for Art', including a timetable for implementation, have been submitted to and approved in writing by the Planning

Authority. The scheme of 'Percent for Art' shall be implemented as per the approved details.

**Reason:** *To ensure that the quality of the development is enhanced by the use of art to reflect its setting in accordance with policies IMP1 and DP2 of the adopted Midlothian Local Plan and national planning guidance and advice.*

4. Development shall not commence until an application for approval of matters specified in conditions for the site access, roads, footpaths, cycle ways and transportation movements has been submitted to and approved in writing by the Planning Authority. Details of the scheme shall include:

- i. existing and finished ground levels for all roads and cycle ways in relation to a fixed datum;
- ii. proposed vehicular, cycle and pedestrian access;
- iii. proposed roads (including turning facilities), footpaths and cycle ways;
- iv. proposed visibility splays, traffic calming measures, lighting (including footpath lighting) and signage;
- v. proposed construction traffic access and haulage routes;
- vi. a green transport plan designed to minimise the use of private transport and to promote walking, cycling, safe routes to school and the use of public transport;
- vii. proposed car parking arrangements;
- viii. an AutoTrack, vehicle swept path analysis, to demonstrate that the site is suitable for HGVs (refuse and recycling vehicles) to enter and exit in a forward gear; and,
- ix. a programme for the completion of the construction access, roads, footpaths and cycle paths.

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

**Reason:** *To ensure that the future users of the buildings, existing local residents and those visiting the development site during the construction process have a safe and convenient access to and from the site.*

5. Development shall not commence until an application for approval of matters specified in conditions for a scheme to deal with any contamination of the site has been submitted to and approved in writing by the Planning Authority. The scheme shall contain details of the proposals to deal with any contamination and include:

- i. a site survey (including bore hole testing where necessary) to establish that the level of contamination within the site is acceptable in relation to the proposed development, or that remedial and/or protective measures could be undertaken to bring contamination to an acceptable level in relation to the proposed development; and

- ii. a detailed schedule of any required remedial and/or protective measures, including their programming.

Prior to any part of the site being occupied for residential purposes, the measures to decontaminate/remediate the ground conditions of the site shall be fully implemented as approved by the Planning Authority.

**Reason:** *To ensure that any contamination and adverse ground conditions on the site are adequately identified and that appropriate decontamination measures and ground remediation works 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. Details of building levels on the site, to be submitted in terms of condition 1i above, shall show finished floor levels for buildings being raised above ground level.

**Reason:** *In order to prevent surface water runoff from surrounding roads from adversely impacting on the properties.*

7. Details of the means of drainage, to be submitted in terms of condition 1vii above, shall ensure that any SUDs system shall be located outwith 10metres of the adjacent railway infrastructure.

**Reason:** *In order to ensure that water from the proposed development does not drain on to the railway; in the interests of railway safety.*

8. Details of the siting of the buildings, to be submitted in terms of condition 2 above, shall ensure that no buildings are to be erected within 2m of the boundary with the railway.

**Reason:** *In the interests of railway safety.*

9. Details of the design of dwellinghouses, to be submitted in terms of condition 2 above, shall include measures to mitigate against noise and vibrations generated by the adjacent railway.

**Reason:** *In order to protect the amenity of future residents of the dwellings from noise and disturbance generated by the railway.*

10. Details of the materials to be used on the external surfaces of the buildings, to be submitted in terms of condition 2 above, shall comprise traditional materials, including natural slate, wet or smooth render, natural stone and timber.

**Reason:** *In order to ensure a high quality development which respects, and reflects, the character and appearance of buildings within the conservation area and designed landscape.*

11. Details of the means of enclosure, to be submitted in terms of condition 2 above, shall include a 1.8m high trespass proof fence along the boundary with the adjacent railway.

**Reason:** *In order to prevent unauthorised and unsafe access to the railway; in the interest of the safe operation of the railway.*

12. Details of the vehicular access, to be submitted in terms of condition 4ii above, shall ensure that the vehicular access shall measure 5.5m wide.

**Reason:** *To ensure the safe passage of pedestrians and vehicles in the interests of highway safety.*

13. Details of the proposed parking arrangements, to be submitted in terms of condition 4vii above, shall include space for five visitor parking spaces within the development site.

**Reason:** *In order to ensure that sufficient on-site parking is provided so that vehicles do not park in unsafe locations which would be potentially detrimental to highway safety.*

- 5.2 If the LRB is minded to uphold the review and grant planning permission for the proposed development it shall be subject to a legal agreement to secure developer contributions towards education provision, the Borders Railway, town centre improvements, children's play provision and community facilities. The legal agreement shall be concluded prior to the issuing of the LRB decision.

## **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:** 13 October 2015

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

**Tel No:** 0131 271 3310

**Background Papers:** Planning application 15/00335/PPP available for inspection online.

## **Notice of Review: 66 Newbattle Abbey Crescent, Dalkeith**

### **Determination Report**

Report by Ian Johnson, Head of Communities and Economy

#### **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 store building and fence at 66 Newbattle Abbey Crescent, Dalkeith.

#### **2 Background**

- 2.1 Planning application 16/00508/DPP for the erection of store building and fence at 66 Newbattle Abbey Crescent, Dalkeith was refused planning permission on 4 October 2016; 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, issued on 4 October 2016 (Appendix D); and
- A copy of the relevant drawings/plans (Appendix E).

- 3.2 The full planning application case file and the development plan policies referred to in the case officer's report can be viewed online via [www.midlothian.gov.uk](http://www.midlothian.gov.uk)

#### **4 Procedures**

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

- Have scheduled an accompanied site visit for Monday 23 January 2017; and
  - Have determined to progress the review by way of a written submissions.
- 4.2 The case officer's report identified that two consultation responses and one representation have been received. As part of the review process the interested party were notified of the review. No additional comments have been received. All the comments can be viewed online on the electronic planning application case file via [www.midlothian.gov.uk](http://www.midlothian.gov.uk)
- 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 19 June 2012 and 26 November 2013, and without prejudice to the determination of the review, the following conditions have been prepared for the consideration of the LRB if it is minded to uphold the review and grant planning permission.
1. The replacement fence shall comprise a 1.8m high vertical boarded timber fence details of the colour finish of which shall be submitted to the Planning Authority and the fence shall not be erected until this detail is approved in writing by the Planning Authority.
  2. Details of the materials and external finishes of the store building shall be submitted to the Planning Authority and the store shall not

be erected until these details have been approved in writing by the Planning Authority.

***Reason for conditions 1 and 2:*** *For the avoidance of doubt as to what is approved in order to safeguard the visual amenity of the surrounding area.*

## **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:** 10 January 2017

**Report Contact:** Peter Arnsdorf, Planning Manager (LRB Advisor)  
peter.arnsdorf@midlothian.gov.uk

**Tel No:** 0131 271 3310

**Background Papers:** Planning application 16/00508/DPP available for inspection online.



# APPENDIX A



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

**Erection of store building and fence at 66 Newbattle Abbey  
Crescent, Dalkeith, EH22 3LW**

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**File No. 16/00508/DPP**

**Scale: 1:1,250**

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Midlothian



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

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

Thank you for completing this application form:

ONLINE REFERENCE 100031858-001

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

## Applicant Details

Please enter Applicant details

Title:	<input type="text" value="Mrs"/>	You must enter a Building Name or Number, or both: *	
Other Title:	<input type="text"/>	Building Name:	<input type="text" value="66 Newbattle Abbey Crescent"/>
First Name: *	<input type="text" value="Leigh"/>	Building Number:	<input type="text" value="66"/>
Last Name: *	<input type="text" value="Seath"/>	Address 1 (Street): *	<input type="text" value="Newbattle Abbey Crescent"/>
Company/Organisation	<input type="text"/>	Address 2:	<input type="text" value="Dalkeith"/>
Telephone Number: *	<input type="text" value=""/>	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="EH22 3LW"/>
Fax Number:	<input type="text"/>		
Email Address: *	<input type="text" value=""/>		

## Site Address Details

Planning Authority:

Midlothian Council

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

Address 1:

66 NEWBATTLE ABBEY CRESCENT

Address 2:

ESKBANK

Address 3:

Address 4:

Address 5:

Town/City/Settlement:

DALKEITH

Post Code:

EH22 3LW

Please identify/describe the location of the site or sites

Northing

665544

Easting

332662

## 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)

It is proposed to replace the existing 1.65m high fence along the application site boundaries with a 1.8m high vertical boarded timber fence. The proposals include repositioning the fence along the southern boundary of the site set back by 0.2m from the adjacent pavement increasing the size of the rear garden. It is also proposed to erect a timber store, with a monopitch roof, measuring 2.5m wide by 5.3m deep on the south side of the house within the enlarged garden.

## 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.

Refused solely due to the proposal to relocate the fence, the proposed store is not an issue. We simply wish to relocate our boundary fence to our garden boundary. This change will only be visible to around 10 neighbours in the cul de sac. We are finding it difficult to maintain this land due to its position and as we have young kids, meaning this is unsightly, not visually appealing or adding any character to the area. A precedence has already been set in the estate by many other properties

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)

- Fence and Storage Proposal 20160719 - This details the proposal and examples of other properties in the immediate surrounding area who have fences which are hard against the pavement/road side, demonstrating that a precedence has already been set in the locale. - Photos of our property and the proposed site - Photos of neighbours' properties (as mentioned above) - Drawings - Elevation and floor plan

## Application Details

Please provide details of the application and decision.

What is the application reference number? \*

16/00508/DPP

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

21/07/2016

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

04/10/2016

## 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)

I'm not sure if any further procedures are actually required, however it maybe beneficial for the site to be viewed to aide the review. As the planning authority indicies that the fence would be visable from the main road in the concluding summary, however we don't believe this to be the case (due to large shrubs in the front garden) or even relevant.

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: Mrs Leigh Seath

Declaration Date: 13/12/2016

This document outlines proposed changes to the boundary fence and the erection of a new garden store at 66 Newbattle Abbey Crescent (NAC), Dalkeith, Midlothian, EH22 3LW.

The document will provide details of the 3 changes outlined below:

1. Replacement of the boundary fence in the back garden.
2. Repositioning of the south side of the boundary fence.
3. Erection of a new external store.

1. Replacement of the boundary fence in the back garden

The proposal is to replace all of the existing fence surrounding the back garden with a new timber of the same height (1.8m).

The existing fence is very old and appears to be rotten in a number of areas, there is a concern that the fence will not stand up to the elements and may collapse in high winds. The fence is not visually appealing in its current state and looks very dated in relation to the other fences in the cul-de-sac. The replacement of the boundary fence would bring it up to the same standard as neighbouring fences and improve the overall appearance of the area.

2. Repositioning of the south side of the boundary fence.

The proposal is to move the south side of the boundary fence out by 2.5 metres, repositioning this side of the boundary fence would mean:

- The area of garden which is currently on the outer side of the fence would become part of the back garden, including the 2 birch trees.
- The south side of the fence would meet with the kerb edging.
- The east and the west facing sides of the fence are not being proposed for relocation and would remain in the same location. .

The area of garden which is currently on the outer side of the fence resembles a piece of waste land which is not being maintained and is unsightly. Enclosing this area of the garden within the new fence will ensure it is maintained effectively and removes the unsightly contribution to the visual amenity. This would enhance the appearance of the area.

Enclosing the 2 birch trees will have minimal impact on the visual amenity of the area, as this simply means that 1.8m of the tree trunk will not be visible from the road side due to the timber fence. These trees are in excess of 40 foot tall (see 66 NAC (5), (7) and (8) attached) and will continue to add huge benefit to the visual amenity and character of the surrounding area, as do many other enclosed trees in the estate. Some examples of enclosed trees are documented below for reference.

The proposal indicates that the fence is located 90cms away from the 2 birch trees, ensuring sufficient space between the trees and fence, making sure the trees are fully protected and not effected/damaged in anyway.

Attachments 66 NAC (1), (2), (3), (4), (5), (7) and (8) are photos showing the current fence and area of the garden to the south of the property.

Drawings D01-5 and D03-4 illustrate the proposed repositioning of the fence

### 3. Erection a new external store

It is proposed that a new external store is erected on the south elevation of the property, this would be of timber construction and will measure 2.5 metres x 5 metres. The external store will be enclosed within the boundary fence.

The front of the external store will be set back from the west elevation of the house by 1m

Drawing *D01-5* attached provides further detail in relation to size and position of the external store.

### Other information

The proposed new fence and external store would not be visible from the main road of NAC or by the neighbours directly opposite to the east, this is due to the proximity of trees and planting in the front garden of this property - See attachment *66 NAC (1)* and *66 NAC (2)*.

In order to ensure continuity in appearance of the properties and maintain the character of the estate, it is fully intended that the proposed changes at 66 NAC would be of similar structure and position of other boundary fences in near proximity. A few examples of this have been provided below for ease of comparison when considering how the above proposals will look and fit in with the surrounding area.

### Examples with attachment references:

**Number 75 NAC** is situated in the same cul-de-sac as 66 NAC. This property approximately 40 yards to the north east directly behind the area for the proposed plans.

- The west facing side of the boundary fence in the back garden is approximately 20 cm from the kerb – attachment *75 NAC (1)*
- Trees reside on the inner side of the fence – attachment *75 NAC (1)*

**Number 81 NAC** is situated to the south and directly opposite the area for the proposed plans at 66 NAC. The proposed changes at 66 NAC would mirror the boundary structure and position of that at number 81 NAC providing visual symmetry at the entrance of the cul-de-sac where both 66 and 81 reside on opposite sides of the road.

- Boundary fence in the back garden meets with the kerb edge around the whole boundary – attachment *81 NAC (1)* and *81 NAC (2)*
- Trees reside on the inner side of the fence – attachment *81 NAC (2)*
- Boundary fence meets with the neighbours front garden to the south – attachment *81 NAC (3)*

**Number 90 NAC** is situated on the main road with the east facing side of the boundary fence running parallel with the pavement. This property is approximately 150 yards south of 66 NAC.

- The east facing side of the boundary fence in the back garden meets with the kerb edge – attachment *90 NAC (1)* and *90 NAC (3)*
- A Tree resides on the inner side of the fence – attachment *90 NAC (2)*

**Number 109 NAC** is situated on the main road (opposite number 90) with the east facing side of the boundary fence running parallel with the pavement. This property is approximately 160 yards south of 66 NAC.

- The east facing side of the boundary fence in the back garden meets with the kerb edge – attachment *109 NAC (1)*
- The south facing side of the boundary fence extends to the neighbours boundary running parallel with the neighbours drive way – Images *109 NAC (2)* and *(3)*.

**Number 112 NAC** is situated on the main road with the east facing side of the boundary fence running parallel with the pavement. This property is approximately 200 yards south of 66 NAC.

- The east facing side of the boundary fence in the back garden meets with the kerb edge – attachment *112 NAC (1)* and *(4)*
- The north facing side of the boundary fence extends to the neighbours boundary running parallel with the neighbours drive way – Images *112 NAC (2)* and *(3)*.
- Trees reside on the inner side of the fence – attachment *112 NAC (5)*

**Number 149 NAC** is situated on a corner plot of a cul-de-sac at the end of NAC. This property is approximately 220 yards south east of 66 NAC.

- The north and east facing sides of the boundary fence in the back garden meets with the kerb edge – attachment *149 NAC (1)*

**Number 180 NAC** is situated on the main road. This property is approximately 60 yards south west of 66 NAC.

- Trees reside on the inner side of the fence – attachment *180 NAC (1)*

The examples provided above are all with in close proximity of the proposed plans, this is not an exhaustive list of properties in the estate which have boundary fences of a similar structure and position.



**MIDLOTHIAN COUNCIL****DEVELOPMENT MANAGEMENT  
PLANNING APPLICATION DELEGATED WORKSHEET:**

**Planning Application Reference:** 16/00508/dpp

**Site Address:** 66 Newbattle Abbey Crescent, Dalkeith

**Site Description:**

The application property comprises a detached two storey dwellinghouse with a flat roof garage at the side. It is finished externally in a mix of facing brick and drydash render with white plastic framed windows and concrete roof tiles.

The application property is located within the Newbattle Conservation Area and the Newbattle Abbey Designed Landscape.

**Proposed Development:**

Erection of store building and fence

**Proposed Development Details:**

It is proposed to replace the existing 1.65m high fence along the application site boundaries with a 1.8m high vertical boarded timber fence. The proposals include repositioning the fence along the southern boundary of the site set back by 0.2m from the adjacent pavement increasing the size of the rear garden.

It is also proposed to erect a timber store, with a monopitch roof, measuring 2.5m wide by 5.3m deep on the south side of the house within the enlarged garden.

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

History sheet checked.

16/00253/dpp - Erection of two storey and single storey extension to dwellinghouse; installation of replacement windows and satellite dish and formation of patio at 66 Newbattle Abbey Crescent pp. 22.06.16.

11/00864/dpp – Erection of fence and decking at 74 Newbattle Abbey Crescent – approved at Local Review 31.07.12 on the basis that the enclosure of part of the front garden by a 1.8 metre high fence would be compatible to the adjoining boundary fence and would not set a precedent that would undermine the 'open plan' form to the residential estate.

The applicant's agent was advised at pre-application stage of the Planning Authority's concerns regarding the impact on the visual amenity of the surrounding area as a result of enclosing the strip of land along the south side of the property, including the two birch trees. In order to retain the visual benefits of the area in order to protect the character of the area it was suggested that the fence be set back with the birch trees retained on the outer side of the fence.



A supporting statement has been submitted along with the application describing the proposed works. It states that the current fence is rotten in places and that its replacement would bring it up to the same standard as neighbouring fences and improve the overall appearance of the area. Also the area of garden on the outer side of the fence resembles a piece of waste land and that enclosing it would ensure it is maintained enhancing the appearance of the area with the two birch trees being visible over the top of the fence continuing to add benefit to the visual amenity and character of the area. It states that the new fence and store will not be visible from the main road of Newbattle Abbey Crescent due to planting in the front garden. Examples of other fences at nos 74, 81, 90, 109, 113, 149 and 176 (actually no. 180) Newbattle Abbey Crescent have been cited.

#### **Consultations:**

Scotia Gas Networks –object to the planning application until such time as a detailed consultation has taken place with the developer due to the presence of a high pressure gas transmission pipeline in the vicinity of the proposed development. Objection subsequently withdrawn.

Policy and Road Safety Manager - The relocation of the boundary fence to the rear of the public footway would result in a reduction in the present level of visibility available to the adjacent driveway however as the land in question is private garden ground it does not form part of any formal visibility splay. A boundary fence at the side of a private driveway is not an unusual feature in residential developments and there are many examples of this type of situation. If the proposed fence were to be setback from the footway by a nominal distance (say 0.5m) then this would provide drivers with a slightly improved level of visibility of vehicles using the driveway however it should be remembered that the road in question is a residential cul-de-sac and the level of traffic using it will be relatively low.

#### **Representations:**

One representation has been received from the occupier of 67 Newbattle Abbey Crescent which is to the rear of the application site, objecting to the proposals. He state that the proposals breach the building line set up by planners some 50 years ago and that the proposed fence will restrict vision from his driveway raising road safety issues. He also states that the area of garden was kept neat and tidy by the previous occupier and that in the last six months it has been left in an unkempt condition.

#### **Relevant Planning Policies:**

Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 places a duty on planning authorities to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

The relevant policies of the **2008 Midlothian Local Plan** are;

RP1 – Protection of the countryside – seeks to restrict development in the countryside.

RP7 – Landscape Character - advises that development will not be permitted where it may adversely affect the quality of the local landscape.

RP8 - Water Environment - aims to prevent damage to water environment, including groundwater and requires compliance with SEPA's guidance on SUDs.

RP9 – Protection of River Valleys – not identified as area at risk of flooding on SEPA flood map however close to an area at risk of flooding from surface water.

RP22 – Conservation Areas – seeks to preserve or enhance the character and appearance of conservation areas.

RP25- Nationally Important Gardens and Designed Landscapes - seeks to protect the character, appearance and setting of designed landscapes.

RP30 – Open Space in Towns and Villages - does not permit development on important areas of open space within built-up areas. Development is not permitted where it would result in the loss of a visually important open space; or an attractive landscaped area; or area important for informal recreation.

DP3 - Protection of the Water Environment - sets out development guidelines regarding flooding, treatment of water courses, drainage and Sustainable Urban Drainage Systems (SUDS).

DP6 – House Extensions - requires that extensions are well designed in order to maintain or enhance the appearance of the house and the locality. The policy guidelines also relate to size of extensions, materials, impact on neighbours and remaining garden area.

**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. As this is an existing house there is no objection in principle to its alteration.

The proposal does not conflict with the aims of policies RP9, RP8 and DP3 in relation to the water environment.

This part of the conservation area is characterised by a modern housing estate with open spaces and trees within a wooded setting.

The proposed store will not have a significant impact on the character of the conservation area or the designed landscape. It would result in the loss of what appears to be a self seeded sycamore tree and some shrubs. Also the replacement of the existing fence in its current position would not have a significant impact on the character of the conservation area or the designed landscape. Also the proposals will not have a significant impact on the amenity of neighbouring properties.

Of particular concern is the impact of the proposed relocated fence along the southern boundary of the fence.

As stated above notwithstanding some examples of fences hard up to the pavements – see below – the overriding character of Newbattle Abbey Crescent is

open plan with houses set back behind front gardens and in general fences are set back from the pavement with grassed/planted areas in front where the fence faces the road all of which contributes to the pleasant character of this part of the conservation area.

The application property is located at the entrance to a cul-de-sac off the main road at Newbattle Abbey Crescent with a front garden facing the main road and the fence along the south side of the property set back 2.5m from the road with a grassed area containing shrubs and trees on the outer side of the fence. The two silver birch trees in this area were shown on the original layout for the estate. This area whilst owned by the applicant contributes to the open landscaped character of the estate and along with the grass verge on the opposite side of the road creates a pleasant green entrance to this cul-de-sac. The proposed fence would be visible from both the main road when approaching from the south and on entering the cul-de-sac with the enclosure of this area detracting from this character.

The supporting statement states that the area of land has not been maintained and is unsightly. This was not the case in February or April of this year (2016) when the site was visited in relation to pre-application enquiries including in relation to the repositioning of the fence. The subsequent lack of maintenance of this area by the owner does not justify the relocation of the fence. It is acknowledged that the tops of the two birch trees would still be visible above the fence however it is both the trees and their open setting which contribute to the visual amenity of the surrounding area. Also whilst the applicant has cited examples of other fences hard up to the pavement, with trees behind, the fences present a harsher street frontage than a grassed/planted strip.

The following examples of fences/trees behind fences were cited by the applicant.

75 Newbattle Abbey Crescent – Planning permission was granted for the fence along the side of this property in 2004. Contrary to the statement made in the supporting statement it is set back 0.4m from the pavement with some planting on the outer side of the fence. Planning permission was granted subject to conditions including the requirement for landscaping along the outer side of the fence. The trees within the rear garden of this property did not form part of the original landscaping of the estate.

81 Newbattle Abbey Crescent – It is acknowledged that the fence along the north and west boundaries of no. 81 opposite to the application site is located hard up to the pavement. This was approved as part of the original layout. A grass verge between the pavement and the road helps to reduce the impact of the fence on the visual amenity of the area. This would not be the case at the application property as there is no grass verge between the pavement and the road on the south side of the application property. As such contrary to the statement made in the supporting statement the proposals would not provide visual symmetry to the entrance to this part of Newbattle Abbey Crescent. The trees within the garden of this property did not form part of the original landscaping of the estate.

90 Newbattle Abbey Crescent– The fence on the west side of this property is located hard up to the pavement. This was approved as part of the original layout

and included a silver birch tree in the back garden. A grass verge between the pavement and the road helps to reduce the impact of the fence on the visual amenity of the area. This would not be the case at the application property as there is no grass verge between the pavement and the road on the south side of the application property.

109 and 112 Newbattle Abbey Crescent - The fences on the west side of these properties are located hard up to the pavement adjacent to neighbouring driveways. This was approved as part of the original layout and included a silver birch tree in each of the back gardens – since removed from 112.

149 Newbattle Abbey Crescent – The fence on the side of this property is located hard up to the pavement. This was approved as part of the original layout.

176 Newbattle Abbey Crescent –Whilst there are trees within the garden of this property enclosed by the fence the fence along the south side of this property is located adjacent to an area of open space containing trees which makes a significant contribution to the visual amenity of the surrounding area.

There is also a fence at the front of no 74 Newbattle Abbey Crescent which is hard up to the pavement. This was approved by the Local Review Body in 2012 on the grounds that the enclosure of part of the front garden by a 1.8 metre high fence would be compatible to the adjoining boundary fence and would not set a precedent that would undermine the 'open plan' form to the residential estate. This property is located at the end of the cul-de-sac and the fence does not have a significant impact on the entrance to this part of Newbattle Abbey Crescent.

The proposed relocation of the fence along the south side of the application property would have a detrimental impact on the visual amenity of the immediate surrounding area and the overall character of Newbattle Abbey Crescent diminishing its attractive open character and as such is contrary to local plan policy.

The relocation of the fence along the southern boundary of the application site would result in the rear fence extending up to the pavement adjacent to the driveway of no. 67 resulting in a reduction in the present level of visibility available to the driveway. This is not ideal however the Council's Policy and Road Safety Manager has not objected to the proposals on road safety grounds.

**Recommendation:**

Refuse planning permission

## Refusal of Planning Permission

Town and Country Planning (Scotland) Act 1997

**Reg. No. 16/00508/DPP**

D2 Architectural Design Ltd  
9 Eskbank Road  
Dalkeith  
Edinburgh  
EH191HD

Midlothian Council, as Planning Authority, having considered the application by Mrs L Seath, 66 Newbattle Abbey Crescent, Dalkeith, EH22 3LW, which was registered on 21 July 2016 in pursuance of their powers under the above Acts, hereby **refuse** permission to carry out the following proposed development:

### **Erection of store building and fence at 66 Newbattle Abbey Crescent, Dalkeith, EH22 3LW**

In accordance with the application and the following plans:

<u>Drawing Description.</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Location Plan	S01 1:2500 1:200	21.07.2016
Proposed floor plan	P01 1:50	21.07.2016
Proposed floor plan	P02 1:50	21.07.2016
Proposed elevations	PO3 1:100	21.07.2016

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

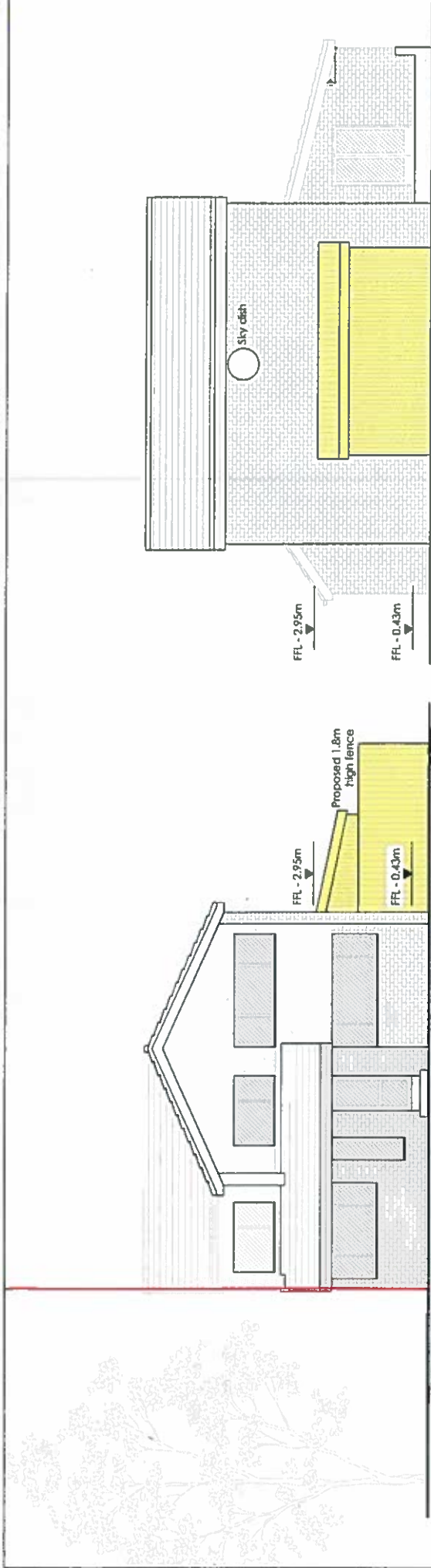
- The proposed relocation of the fence along the south side of the application property would result in the enclosure of a grassed area containing shrubs and trees which contribute to the visual amenity and character of the area, with the fence hard up to the pavement presenting a harsh boundary treatment along the street frontage, all of which would have a detrimental impact on the visual amenity of the immediate surrounding area and the overall character of Newbattle Abbey Crescent and this part of the Newbattle Conservation Area diminishing its attractive open landscaped character.*
- For the above reasons the proposed relocation of the fence is contrary to policies RP7 and RP30 of the adopted Midlothian Local Plan which seek to protect landscape character and visually important open spaces.*
- For the above reasons the proposed relocation of the fence is contrary to policy RP22 of the adopted Midlothian Local Plan which seeks to preserve or enhance the character and appearance of conservation areas.*

Dated 4 / 10 / 2016

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

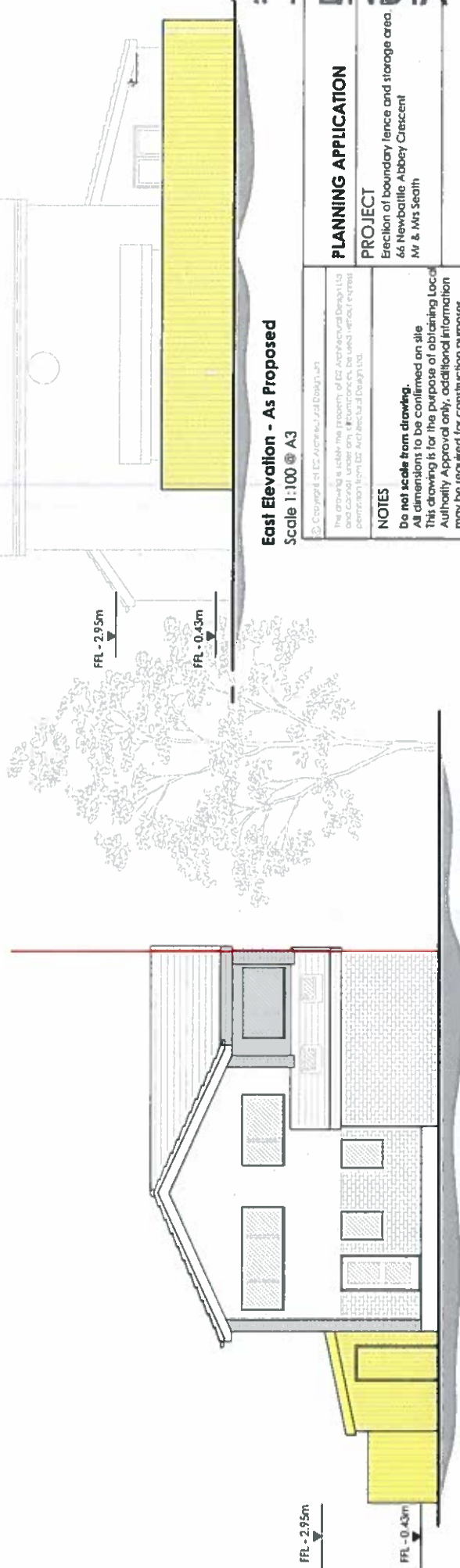
.....  
Duncan Robertson  
Lead Officer – Local Developments  
Fairfield House, 8 Lothian Road, Dalkeith, EH22 3ZN





**South Elevation - As Proposed**  
Scale 1:100 @ A3

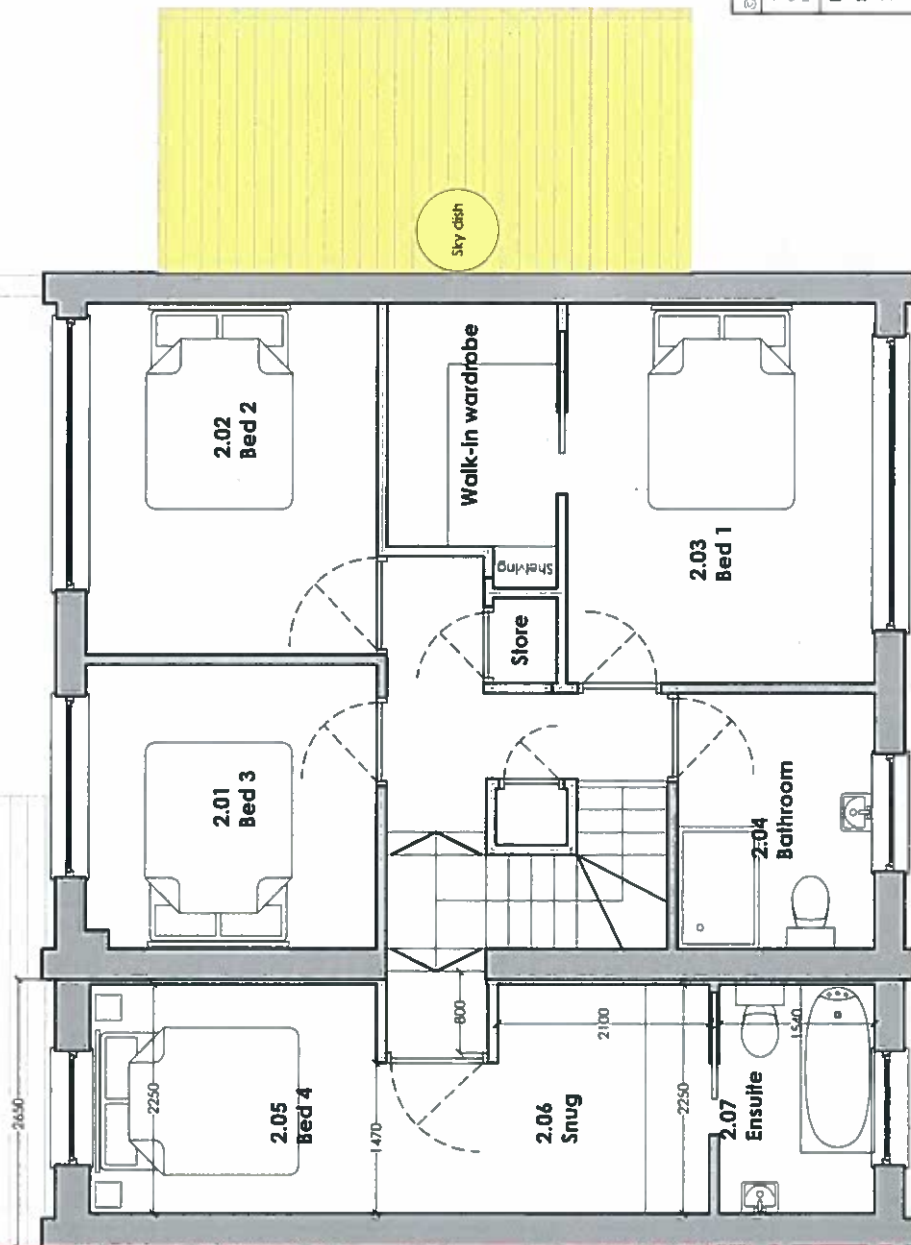
**West Elevation - As Proposed**  
Scale 1:100 @ A3



**North Elevation - As Proposed**  
Scale 1:100 @ A3

**East Elevation - As Proposed**  
Scale 1:100 @ A3

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<p><b>NOTES</b></p> <p>Do not scale from drawing.</p> <p>All dimensions to be confirmed on site.</p> <p>This drawing is for the purpose of obtaining Local Authority Approval only, additional information may be required for construction purposes.</p>		<p><b>PROJECT</b></p> <p>Erection of boundary fence and storage area</p> <p>64 Newbattle Abbey Crescent</p> <p>Mr &amp; Mrs Seath</p>	
<p><b>architectural design</b></p> <p>1031 5th Floor, Dalrymple, Glasgow G11 5LH T: 0131 541 5111 E: info@architecturaldesign.co.uk W: www.architecturaldesign.co.uk</p>		<p><b>DRAWING</b></p> <p>Elevations - As proposed</p> <p>DATE 20.07.16 DRAWN DL SCALE 1:50 @ A3</p> <p>PROJECT 16040 DRAWING No. P03 REVISION -</p>	



**First Floor plan - As Proposed**  
Scale 1:50 @ A3

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<p><b>NOTES</b></p> <p><b>Do not scale from drawing</b></p> <p>All dimensions to be confirmed on site</p> <p>This drawing is for the purpose of obtaining Local Authority Approval only, additional information may be required for construction purposes.</p>	<p><b>PROJECT</b></p> <p>Erection of boundary fence and storage area.</p> <p>66 Newbottle Abbey Crescent</p> <p>Mr &amp; Mrs Seath</p>
<p><b>architectural design</b></p> <p>3 Fitzrovia Road, Dublin, D02 YL11 T: 0131 541 5114 E: info@d2architectural.co.uk W: www.d2architectural.co.uk</p>	<p><b>DRAWING</b></p> <p>First Floor Plans - As proposed</p> <p>DATE: 20.07.16 DRAWN: DL SCALE: 1:50 @ A3</p> <p>PROJECT: 16040 DRAWING No.: P02 REVISION: -</p>