

Notice of Meeting and Agenda



Planning Committee

Venue: Virtual Meeting,

Date: Tuesday, 01 September 2020

Time: 13:00

Executive Director : Place

Contact:

Clerk Name: Mike Broadway

Clerk Telephone: 0131 271 3160

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Further Information:

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

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1 Welcome, Introductions and Apologies

2 Order of Business

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

3 Declaration of Interest

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

4 Minute of Previous Meeting

- 4.1** Minutes of Meeting held on 9 June 2020 - For Approval 5 - 12

5 Public Reports

Application for Planning Permission Considered at a Previous Meeting - Report by Chief Officer Place

- 5.1** Application for Planning Permission for the Erection of 12 Flatted Dwellings; Formation of Access Roads and Car Parking and Associated Works at Land at Windsor Square, Penicuik (19/00510/DPP). 13 - 32

Applications for Planning Permission Considered for the First Time – Reports by Chief Officer Place

- 5.2** Application for Planning Permission in Principle for Residential Development with Associated Engineering Works, Open Space and Landscaping at Land North of Oak Place, Mayfield (19/00981/PPP). 33 - 64

- 5.3** Application for Planning Permission in Principle for a Mixed Use Development Comprising: Class 4 (Business Use); Class 5 (General Industry); Class 6 (Storage And Distribution); and Sui Generis Uses (Home Improvement Showrooms/Warehousing, Builders Merchant and Car Showroom) (Amendment of Acceptable Uses of the Site from Use Classes 4 and 5 Approved by the Grant of Planning Permission 02/00660/OUT) at Whitehills, Whitehill Road, Millerhill, Dalkeith (19/00748/PPP). 65 - 92

- 5.4** Application for Planning Permission for Change of Use from Public House to Mixed Use of Public House/Restaurant and Hot Food Takeaway and Associated External Alterations including Infilling of Window Openings and Formation of New Window and Door Openings (Retrospective) at 119 Hunterfield Road, Gorebridge (20/00209/DPP). 93 - 106

6 Private Reports

No Private Reports to be discussed at this meeting.

7 Date of Next Meeting

The next meeting will be held on Tuesday 13 October 2020 at 1.00pm.

Plans and papers relating to the applications on this agenda can also be viewed at <https://planning-applications.midlothian.gov.uk/OnlinePlanning>

Minute of Meeting



Planning Committee

Date	Time	Venue
9 June 2020	10.00 am	As a consequence of the current public health restrictions this was a virtual meeting held using Microsoft Teams

Present:

Councillor Alexander	Councillor Cassidy
Councillor Curran	Councillor Hackett
Councillor Hardie	Councillor Johnstone
Councillor Lay-Douglas	Councillor McCall
Councillor Milligan	Councillor Muirhead
Councillor Parry	Councillor Russell
Councillor Small	Councillor Wallace
Councillor Winchester	

1. Apologies for Absence and Appointment of Chair

Apologies for absence were intimated on behalf of Councillors Imrie (Chair) and Munro.

In the absence of the Chair, it was agreed, in terms of Standing Order 7.3, that Councillor Milligan be appointed to Chair the Meeting.

2. Order of Business

The order of business was as outlined in the agenda.

3. Declarations of interest

Councillor Smail declared a non-pecuniary interest in agenda item 5.1 - Proposed Residential Development with Associated Infrastructure at Land at Newton Farm and Wellington Farm, Old Craighall Road, Millerhill, Dalkeith (20/00231/PAC) – on the grounds that he knew the current occupant of Wellington Farm, who was a former Conservative Party candidate.

Councillors McCall and Hardie both declared non-pecuniary interests in agenda item 5.5 - Application for Planning Permission for the Erection of 12 Flatted Dwellings; Formation of Access Roads and Car Parking and Associated Works at Land at Windsor Square, Penicuik (19/00510/DPP). – on the grounds that, they had attended Penicuik Community Council meetings when the matter had been discussed; and had spoken with the applicants, however at no time had either offer an opinion on the current applications before Members.

Councillor Hardie left the meeting shortly thereafter at approximately 10.09 am and did not return.

4. Minutes of Previous Meetings

The Minute of Meeting of the Committee which took place on 25 February 2020 was submitted and unanimously approved, with the Chair being authorised to sign it as a true record of the meeting.

5. Reports

Sederunt

With reference to item 3 above, Councillor Smail, having declared a non-pecuniary interest in the following item of business, left the meeting at approximately 10.14 am, taking no part in the consideration thereof.

Agenda No	Report Title	Report by:
5.1	Proposed Residential Development with Associated Infrastructure at Land at Newton Farm and Wellington Farm, Old Craighall Road, Millerhill, Dalkeith (20/00231/PAC)	Chief Officer Place

Outline of Report

There was submitted report, dated 25 May 2020, by the Chief Officer Place advising that a pre application consultation had been submitted regarding a proposed residential development with associated infrastructure at land at Newton Farm and Wellington Farm, Old Craighall Road, Millerhill.

The report advised that in accordance with the pre-application consultation procedures noted by the Committee at its meeting on 6 June 2017 (paragraph 5.8 refers) the pre application consultation was being reported to Committee to enable Members to express a provisional 'without prejudice' view on the proposed major development. The report outlined the proposal, identified the key development plan policies and material considerations and stated a provisional without prejudice planning view regarding the principle of development for the Committee's consideration.

Summary of Discussion

The Committee in discussing the proposals, acknowledged that the existing Midlothian Local Development Plan identified the land as a safeguarded site, with the potential of being allocated for housing development in future development plans. Notwithstanding the premature nature as a currently unallocated site concerns were expressed regard the pressure such a development might have on existing infrastructure in the area particularly education.

Decision

After further discussion and having heard from the Planning Manager who responded to Members' question and comments, the Committee noted:

- (a) The provisional planning position set out in the report;
- (b) The comments made by Members; and
- (c) That the expression of a provisional view did not fetter the Committee in its consideration of any subsequent formal planning application.

Action

Planning Manager

Sederunt

Councillor Smaill rejoined the meeting at the conclusion of the foregoing item of business, at approximately 10.19am.

Agenda No	Report Title	Report by:
5.2	Proposed Residential Development with Associated Landscaping and Infrastructure at Land at Stobs Farm, Lady Brae, Gorebridge (20/00128/PAC).	Chief Officer Place

Outline of report and summary of discussion

There was submitted report, dated 25 May 2020, by the Chief Officer Place advising that a pre application consultation had been submitted regarding a proposed residential development with associated landscaping and infrastructure at land at Stobs Farm, Lady Brae, Gorebridge (20/00128/PAC).

The report advised that in accordance with the pre-application consultation procedures noted by the Committee at its meeting on 6 June 2017 (paragraph 5.8 refers) the pre application consultation was being reported to Committee to enable Members to express a provisional 'without prejudice' view on the proposed major development. The report outlined the proposal, identified the key development plan policies and material considerations and stated a provisional without prejudice planning view regarding the principle of development for the Committee's consideration.

Summary of Discussion

The Committee in discussing the proposals, acknowledged that the existing Midlothian Local Development Plan identified the land as countryside (policy RD1) and in part as prime agricultural land (policy ENV4) with a presumption against development unless it could be demonstrated that there was a shortfall in the supply of housing land. Notwithstanding the premature nature as a currently unallocated site concerns were expressed regard the pressure such a development might have on existing infrastructure in the area particularly education and the transport network. On a more practical note it was pointed out that part of the site may lie in the Moorfoot Community Council area so they should be included in any future consultations.

Decision

After further discussion and having heard from the Planning Manager who responded to Members' question and comments, the Committee noted:

- (a) The provisional planning position set out in the report;
- (b) The comments made by Members; and
- (c) That the expression of a provisional view did not fetter the Committee in its consideration of any subsequent formal planning application.

Action

Planning Manager

Sederunt

Councillor Alexander joined the meeting towards the conclusion of the foregoing item of business at approximately 10.27am.

Agenda No	Report Title	Report by:
5.3	Section 42 Application to Amend Condition 2 (Landscaping) of Planning Permission 15/00884/DPP for the Formation of a Train Cleaning and Stabling Depot and Associated Works at Millerhill Traincare Depot, Whitehill Road, Newcraighall (19/01001/S42).	Chief Officer Place

Outline of report and summary of discussion

There was submitted a report dated 25 May 2020, by the Chief Officer Place advising that at its meeting on 1 March 2016 (paragraph 5.6 refers), the Committee granted planning permission for the formation of a train cleaning and stabling depot

on railway operational land, erection of gabion walls and alterations to ground levels, formation of new railway lines, erection of boundary fencing, and formation of SUDS features, car parking and access at the Former Millerhill Marshalling Yards, Whitehill Road, Dalkeith.

The current Section 42 Application sought to amend the wording of the Condition 2 to reposition the proposed boundary hedge due to the topography of the site and the operational requirement to keep a distance of 3 metres between new planting and the rail lines.

Decision

The Committee, having heard from the Planning Manager, who responded to Members' questions and comment, agreed that planning permission be granted for the following reason:

The development will support the furtherance of an established use within the Council's economic land supply; and the landscaping proposals will ensure that an effective landscape buffer will be provided along the eastern boundary. The proposal therefore complies with policies STRAT1, DEV2, DEV7 and ENV11 of the Midlothian Local Development Plan 2017.

subject to the detailed conditions contained within the report.

Action

Planning Manager

Agenda No	Report Title	Report by:
5.4	Section 42 Application to Amend Conditions 3, 4, 5, 6 and 10 imposed on a Grant of Planning Permission 15/00113/PPP for the Demolition of the Existing Dwellinghouse, Erection of Hotel and Residential Development, Formation of Access Roads, Car Parking and Associated Works at Land at Calderstones, Biggar Road, Hillend, Damhead (18/00528/S42).	Chief Officer Place
Outline of report and summary of discussion		
<p>There was submitted a report dated 25 May 2020, by the Chief Officer Place advising that at its meeting on 25 August 2015 (paragraph 2 of the Appendix refers), the Committee granted planning permission for the demolition of the existing dwellinghouse, erection of hotel and residential development, formation of access roads, car parking and associated works at land at Calderstones, Biggar Road, Hillend.</p> <p>The current section 42 application sought to amend the wording of five of the conditions, relating to the phasing of development, hard and soft landscaping, the siting, design and materials of all buildings/structures on the site, site access roads and footpaths (including haul routes), approval of the junction to the A702 and the timing of its provision and the condition requiring the closure of the access to the Midlothian Snowsports Centre. The application was accompanied by an environmental impact assessment report.</p>		

Decision
<p>The Committee, having heard from the Planning Manager who responded to Members' questions and comment, agreed to grant planning permission for the following reasons</p> <p><i>The proposed development for a hotel/tourist accommodation accords with policy VIS2 of the Midlothian Local Development Plan 2017; as such there is a presumption in favour of the proposed development. This presumption in favour of the development is not outweighed by other policies in the development plan or other material considerations. The proposed amendments to conditions are considered not to undermine this policy position or have a detrimental impact.</i></p> <p>subject to the detailed conditions contained within the report.</p>
Action
Planning Manager

Agenda No	Report Title	Report by:
5.5	Application for Planning Permission for the Erection of 12 Flatted Dwellings; Formation of Access Roads and Car Parking and Associated Works at Land at Windsor Square, Penicuik (19/00510/DPP).	Chief Officer Place

Outline of report and summary of discussion
<p>There was submitted a report dated 25 May 2020, by the Chief Officer Place concerning the above application.</p> <p>The Committee acknowledged the issues raised by Councillor McCall, who had called the application in, and gave consideration to her further suggestion that there would be merit in visiting the site prior to determining the application. In discussing how this might be accommodated given the current public health restrictions, the possibility of a virtual site visit using a drone, as employed by some other Councils, or something similar was debated, along with the practicalities of conducting site visits employing social distancing measure when it was appropriate to do so. Consideration was also given to any potential implications arising from continuing consideration of the application to allow time for a possible site inspection visit to take place.</p>

Decision
<p>After further discussion and having heard from the Planning Manager, the Committee agreed to:-</p> <p>(a) continue consideration of the application to allow a site inspection visit to take place; and</p> <p>(b) instruct Officers to investigate and report on the most appropriate way of undertaking site visits given the current public health restrictions.</p>
Action
Planning Manager/Democratic Services

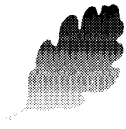
6. Private Reports

No private business was discussed.

7. Date of Next Meeting

The next meeting will be held on Tuesday 1 September 2020.

The meeting terminated at 10.45 pm



APPLICATION FOR PLANNING PERMISSION 19/00510/DPP FOR THE ERECTION OF 12 FLATTED DWELLINGS; FORMATION OF ACCESS ROADS AND CAR PARKING; AND ASSOCIATED WORKS AT LAND AT WINDSOR SQUARE, PENICUIK

Report by Chief Officer Place

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1 The application is for the erection of 12 flatted dwellings on land at Windsor Square, Penicuik. There has been 33 representations from 28 different households and consultation responses from Scottish Water, the Council's Education Resources Manager, the Council's Policy and Roads Safety Manager and the Council's Environmental Health Manager. An objection has also been received from the Penicuik and District Community Council.**
- 1.2 The relevant development plan policies are STRAT2, DEV2, DEV5, DEV6, DEV7, DEV8, TRAN5, IT1, ENV9, ENV10, IMP1 and IMP2 of the Midlothian Local Development Plan 2017.**
- 1.3 The recommendation is to grant planning permission subject to conditions and the applicant entering into a planning obligation to secure contributions towards necessary infrastructure.**

2 LOCATION AND SITE DESCRIPTION

- 2.1 The application site comprises 3 parcels of land within an established residential area in Penicuik: a former care home; a 2 storey house; and, an area of grassed public amenity space. The former care home is a modern single storey building with a footprint of 377 sqm; this building is currently unoccupied. The walls are finished with grey dry dash render; the doors and windows are brown coloured timber framed units; and the roof is finished with grey/brown profiled concrete roof tiles.**
- 2.2 The only occupied building on the site is the 2 storey house; it was formerly used as accommodation for the caretaker associated with the care home and is now let as social housing. The walls are finished in off white dry dash render; the windows are brown coloured timber framed units; and the roof is finished with grey/brown profiled concrete**

roof tiles. Both the house and the former care home are owned by the applicant, Ark Housing Association.

- 2.3 The final parcel of land is an area of grassed amenity space measuring 1160sqm. The space is predominantly open with the exception of three small groupings of trees and hedges. The amenity space slopes uphill slightly from north to south and noticeably downhill from west to east. The eastern edge of the amenity space is approximately 2m lower than the western edge. The amenity space is owned by the Council.
- 2.4 The immediate surroundings are entirely residential. The buildings are all modern two storey houses; mostly terraced with some semi-detached. The road layout at Windsor Square follows a one way system round the square, with traffic moving in a clockwise direction. The street has on-street parking on both sides, with parking spaces marked out on the street on the inner edge of the curve.

3 PROPOSAL

- 3.1 It is proposed to erect 12 two bedroom flats in three blocks of four flats. The buildings will be 17.5m wide, 8.8m deep, 5.5m tall to the eaves and 8.8m tall to the ridge of the roof. The walls of the buildings will be finished with white render; the roofs will be finished with red concrete pantiles; and the windows will be white uPVC units. Access to the upper flats will be via single storey porches on the front elevation of the blocks. Two of the blocks will be erected on land currently occupied by the curtilage of the existing buildings; the third block will be situated at the northern side of the site on land that is currently open space. An area of open space measuring 704sqm will be retained at the eastern side of the site. Parking will be via end on parking spaces in front of the buildings.
- 3.2 The 12 flats are to be all affordable housing units provided by a Registered Social Landlord (RSL), Ark Housing Association, and form part of the Council's Strategic Housing Investment Plan (SHIP).

4 BACKGROUND

- 4.1 Planning permission 572/86 was granted for the extension of the existing care home building to provide four extra bedrooms and the erection of a warden's house at 76 Windsor Square, Penicuik.
- 4.2 Planning permission 697/90 was granted for the construction of a vehicular access at 76 Windsor Square, Penicuik.
- 4.3 Planning application 18/00730/DPP for the erection of 20 flatted dwellings; formation of access roads and car parking; and associated works at land at Windsor Square, Penicuik was refused in January 2019. The reasons for refusal were as follows:

1. *The development would result in the loss of an area of open space that makes a positive contribution to the character and amenity of the surrounding area. The loss of the open space is contrary to policies STRAT2 and DEV2 of the Midlothian Local Development Plan 2017.*
2. *The size, layout and allocation of private open space for the flats will provide an inadequate level of amenity for residents. The provision of private open space is contrary to policies DEV2 and DEV6 of the Midlothian Local Development Plan 2017*
3. *The scale, proportions and design of the buildings are out of character with the surrounding area. The proposal is therefore contrary to policies DEV2 and DEV6 of the Midlothian Local Development Plan 2017.*
4. *The development would result in a reduction in width of the existing road at Windsor Square. The impact on the width of the road is a material consideration in the assessment of the planning application.*
5. *The development would create additional demand for parking while reducing the existing one-street parking capacity. The impact on parking is a material consideration in the assessment of the planning application.*
6. *The development includes a formal pedestrian footway with a sub-standard width. Pedestrian safety is a material consideration in the assessment of the planning application.*

4.4 The application has been called to Committee for determination by Councillor McCall. The reasons for the call-in are; concerns about waste water and the ability of the current system to cope with another 12 properties and the loss of green space.

5 CONSULTATIONS

- 5.1 **Scottish Water** does not object to the application. However, cannot confirm whether there is sufficient capacity at Rosebery Water Treatment Works; it is recommended that the applicant submit a Pre-Development Enquiry Form to Scottish Water to allow for assessment of capacity. The Penicuik Waste Water Treatment Works has sufficient capacity at present.
- 5.2 The Council's **Education Resources Manager** advises that a development of 12 dwellings would give rise to four primary school pupils and three secondary school pupils and advises that the applicant will be required to make a developer contribution to meet the provisional requirements. The site is in the catchment areas of Strathesk Primary School, Sacred Heart RC Primary School, Beeslack and Penicuik High Schools and St David's RC High School.

- 5.3 The Council's **Policy and Road Safety Manager** does not object to the application subject to the submission of surface water drainage details.
- 5.4 The Council's **Environmental Health Manager** does not object to the application subject to conditions being attached to any grant of planning permission to secure site investigations and mitigation measures to address any land contamination and appropriate construction hours for a residential area.
- 5.5 **Penicuik and District Community Council** objects to the proposal for the following reasons:
- The views of local residents have not been taken fully into consideration;
 - The proposal will result in the loss of an area of public open space;
 - The proposal will result in the loss of on-street parking spaces;
 - Flats are not in keeping with semi-detached houses and would be a blot on the landscape.

6 REPRESENTATIONS

- 6.1 There has been 33 representations, from 28 different households, objecting to the application all of which can be viewed in full on the online planning application case file. A summary of the objections are as follows:
- Flats are out of character with the existing housing in the area;
 - Access for emergency services is already difficult;
 - The green space is a valuable play space for local children;
 - The volume of traffic will impact on pedestrian safety;
 - The development will create an increased demand for parking;
 - Parking is already difficult in the area;
 - The height of the buildings will result in a loss of sunlight for existing properties;
 - A new playpark would attract children from a wider area and encourage anti-social behaviour;
 - Flats will overlook houses;
 - An area of natural green space with 6 trees on it will be lost;
 - There are existing problems with foul water drainage capacity in the area;
 - The space would be better used as allotments;
 - The development will result in a loss of views of the Pentlands;
 - If Ark buy the green space it would be easier for them to eventually build on it;
 - The residents of Windsor Square don't want a playpark on the green space;
 - The amenities and utilities which service the Square would be put under strained by increasing the local population;

- Ark should develop their site and leave the existing green space for the residents of Windsor Square;
- The planning application does not state how much green space will be acquired by Ark Housing;
- The Council should not sell public owned land to a non-Midlothian Housing Association;
- The Scottish Water consultation response states that drainage cannot be guaranteed;
- No mention of the provision of disabled parking spaces;
- Inadequate lighting for the new dwellings;
- The addition of 12 dwellings would be a huge increase which would completely alter the character of the street;
- Loss of daylight;
- The loss of the open space would mean that children would need to cross Windsor Drive, which is a busy road and a bus route, to get to the nearest green space at Ladywood Park;
- The application form states that no trees will be felled, this is unlikely as the location of the trees will mean they will need to be felled;
- The illustration drawings submitted with the application show a car heading in the wrong direction round the one way system;
- There are already issues with surface water flooding during times of severe weather;
- A new use could be found for the existing building;
- Do Ark Housing Association own the land? No title deeds can be obtained from Registers of Scotland;
- Loss of the green space will have a detrimental impact on the health of local children; and
- There are lots of bats at dusk and they appear to roost in the existing building.

6.2 One of the objections has been submitted on behalf of the Windsor Square Residents' Committee. Their grounds for objection are as follows:

- The application form has been filled out incorrectly. A public right of way will be impeded by the formation of 2 parking spaces on the open space;
- The Scottish Water consultation response states that Scottish Water cannot confirm that this development can currently be serviced;
- There are 2 large drain covers within the grassed area. What will happen to these drainage pipes?
- The application form states that no trees will be felled. There are in fact 3 trees on the site;
- Why have no roof plans or landscape plans been submitted?
- If parking and street lighting were a concern in relation to the previous application then they are still a concern;

- The illustration drawings submitted with the application show a car heading in the wrong direction round the one way system; and
- It has been confirmed to Windsor Square Resident Committee that the Architect has already had conversations with Mr Graeme King in relation to the current green land to enquire about purchasing the rest of the green space within Windsor Square. If this was granted, this will allow Ark Housing to develop more houses and will not need permission from any of the residents.

7 PLANNING POLICY

- 7.1 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan (June 2013) and the Midlothian Local Development Plan 2017 (MLDP). The following policies are relevant to the proposal:

Midlothian Local Development Plan 2017

- 7.2 Policy **STRAT2: Windfall Housing Sites** permits housing on non-allocated sites within the built-up area provided: it does not lead to loss or damage of valuable open space; does not conflict with the established land use of the area; has regard to the character of the area in terms of scale, form, design and materials and accords with relevant policies and proposals.
- 7.3 Policy **DEV2: Protecting Amenity within the Built-Up Area** states that development will not be permitted where it would have an adverse impact on the character or amenity of a built-up area.
- 7.4 Policy **DEV5: Sustainability in New Development** sets out the requirements for development with regards to sustainability principles.
- 7.5 Policy **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.
- 7.6 Policy **DEV7: Landscaping in New Development** requires development proposals to be accompanied by a comprehensive scheme of landscaping. The design of the scheme is to be informed by the results of an appropriately detailed landscape assessment.
- 7.7 Policy **DEV8: Open Spaces** states that the Council will seek to protect and enhance the open spaces identified on the Proposals Map. Development will not be permitted in these areas that would:
- A. Result in a permanent loss of the open space; and/or
 - B. Adversely affect the accessibility of the open space; and/or

- C. Diminish the quality, amenity or biodiversity of the open space; and/or
 - D. Otherwise undermine the value of the open space as part of the Midlothian Green Network or the potential for the enhancement of the open space for this purpose.
- 7.8 Policy **TRAN5: Electric Vehicle Charging** seeks to promote a network of electric vehicle charging stations by requiring provision to be an integral part of any new development.
- 7.9 Policy **IT1: Digital Infrastructure** supports the incorporation of high speed broadband connections and other digital technologies into new homes.
- 7.10 Policy **ENV9: Flooding** presumes against development which would be at unacceptable risk of flooding or would increase the risk of flooding elsewhere. It states that Flood Risk Assessments will be required for most forms of development in areas of medium to high risk, but may also be required at other locations depending on the circumstances of the proposed development. Furthermore it states that Sustainable urban drainage systems will be required for most forms of development, so that surface water run-off rates are not greater than in the site's pre-developed condition, and to avoid any deterioration of water quality.
- 7.11 Policy **ENV10: Water Environment** requires that new development pass surface water through a sustainable urban drainage system (SUDS) to mitigate against local flooding and to enhance biodiversity and the environmental.
- 7.12 Policy **IMP1: New Development** This policy ensures that appropriate provision is made for a need which arises from new development. Of relevance in this case are education provision, transport infrastructure; contributions towards making good facility deficiencies; affordable housing; landscaping; public transport connections, including bus stops and shelters; parking in accordance with approved standards; cycling access and facilities; pedestrian access; acceptable alternative access routes, access for people with mobility issues; traffic and environmental management issues; protection/management/compensation for natural and conservation interests affected; archaeological provision and 'percent for art' provision.
- 7.13 Policy **IMP2: Essential Infrastructure Required to Enable New Development to Take Place** states that new development will not take place until provision has been made for essential infrastructure and environmental and community facility related to the scale and impact of the proposal. Planning conditions will be applied and; where appropriate, developer contributions and other legal agreements will be used to secure the appropriate developer funding and ensure the proper phasing of development.

8 PLANNING ISSUES

- 8.1 The main issue to be determined is whether the proposal accords with the development plan unless material planning considerations indicate otherwise. The representations and consultation responses received are material considerations.

Principle of Development

- 8.2 The application site is located within the built up area of Penicuik where there is a presumption in favour of appropriate development. In such circumstances MLDP policy STRAT2 supports the principle of windfall housing development. The application site is situated within a residential area and as such the site is not inherently unsuitable for residential development and the consultations carried out have not highlighted any overriding reasons as to why the site could not be redeveloped for residential purposes. Generally, it is considered that a residential use of the site is compatible with the character of the area. The principal planning issues relate to the assessment of the appropriateness of the scale, mass and proportions of the development, the design, material finish, layout, amenity space, access and parking and impact on local amenity.

Loss of Open Space

- 8.3 MLDP policy DEV8 (Open Spaces) states that the Council will seek to protect and enhance the open spaces identified on the Proposals Map. These spaces are generally public parks; civic spaces; recreation areas; and natural and semi-natural areas within built-up areas. The open space at Windsor Square is not one of the spaces identified on the Proposals Map as being protected under policy DEV8. Whilst the open space is not protected by policy DEV8 this is a reflection of its size rather than an assessment of its quality and amenity value to local residents.
- 8.4 The shape of the space, the fact that it is predominantly grassed and the excellent passive surveillance afforded by its central location within a group of houses all mean that the space is highly effective as a safe informal play space for children. While there are other larger open spaces and formal play areas in the wider surrounding area they are not as easy for younger unaccompanied children to access due to their distance from Windsor Square and the nature of the roads that must be crossed to access the areas. Many of the representations received have highlighted the benefits of the space and its importance to the local residents.
- 8.5 The previous scheme was for 20 flats and would have resulted in the complete loss of the open space. The loss of the space was one of the reasons for refusal of application 18/00730/DPP. The current proposal has reduced the number of flats by eight and will allow for the retention

of the majority of the open space. An area of 721sqm will be retained, this represents 62% of the existing area.

- 8.6 The space that will remain will be of usable size and will continue to benefit from excellent passive surveillance. The space will continue to be centrally located and this will allow it to be a valuable community space which helps to define Windsor Square's character as a "square" centred on a shared space. Whilst the proposal will result in a reduction of open space when compared to the existing situation, this must be balanced against the provision of 12 modern social housing flats and the removal of a redundant building. On balance the loss of a portion of the open space will not have a significant enough impact on the character and amenity of the local area to warrant refusal of the application.

Design, Layout and Finish Materials

- 8.7 The three blocks of flats will all be two storey buildings with conventional pitched roofs – this reflects the existing dwellinghouses in Windsor Square. The buildings are conventionally proportioned and detailed and are in keeping with the character of the surrounding area. Whilst the designs and finish materials do not match those of the majority of the buildings at Windsor Square, it is common for urban streets to include a variety of designs and finishes reflecting different phases of development; the existing care home building and former caretaker's house are an example of this.
- 8.8 Windsor Square, at present, does not have any flats, however the mixing of two storey houses and flats is a common feature of streets throughout Midlothian and beyond. The proposed development would constitute 23.5% of the housing units at Windsor Square and would not represent a significant change in character.
- 8.9 The blocks will have a strong relationship with the streetscape and this will maintain the existing streetscape character of the houses within the central portion of Windsor Square. The scale and location of the buildings will ensure that there will be no significant loss of daylight, sunlight or privacy when compared to the existing situation.
- 8.10 The Scottish Water consultation response confirmed that it has no objection to the proposal. The response also confirms that Scottish Water cannot confirm whether there is sufficient capacity at Rosebery Water Treatment Works (this part of the response relates to the provision of water to the site); it is recommended that the applicant submit a Pre-Development Enquiry Form to Scottish Water to allow for assessment of capacity. It is also confirmed that the Penicuik Waste Water Treatment Works (i.e. foul water waste) has sufficient capacity at present. Finally the response also confirms that Scottish Water will not accept connection of surface water drainage into their combined sewer system, except for limited exceptional circumstances on brownfield sites.

- 8.11 These are all common consultation responses from Scottish Water and do not indicate any fundamental issues with the application site. It is Scottish Water's standard approach to provide a no objection response for planning consultations and advise that the applicant should submit a Pre-Development Enquiry (PDE) to Scottish Water. Ark Housing Association submitted a PDE in December 2019 and Scottish Water confirmed in their response that there was sufficient water capacity and foul water capacity to accommodate the development.
- 8.12 Engineers acting for the applicant have calculated the surface water run-off that the proposed development will generate and the capacity of the attenuation that would be required to ensure that discharge rates comply with Scottish Water standards. Provisional agreement has been reached with Scottish Water for the relocation of the existing surface water drain that passes through the area of green space and for connection of the surface water drainage from the site into the Scottish Water network.
- 8.13 Enabling works to facilitate connections to utilities infrastructure (such as the relocation of the surface water drain) are a common part of the development process; usually details are provided at a post decision phase as part of the information submitted to discharge conditions and to secure a building warrant. In this instance the planning authority asked for more information at the application phase as it was aware that Scottish Water had recently started to take a firmer position on surface water drainage connections (for many years it was a relatively straightforward process for applicants), in particular on brownfield sites such as the site at Windsor Square. The Council as both planning authority and flood protection authority is satisfied that the applicant has provided sufficient information to demonstrate that the site can be safely drained of surface water run-off. Finalised details of the drainage scheme can be secured via condition.

Parking and Access

- 8.14 The proposed layout provides 12 allocated spaces in front of the flats and eight visitor parking spaces adjacent to the blocks. The parking provision comfortably exceeds, by 67%, the Council's parking standards for social housing which requires one space per flat. The additional parking will provide visitor parking comparable with private housing and will also provide an additional two spaces to compensate for a loss of two on street parking spaces. The Council's Policy and Road Safety Manager has considered the proposal and is satisfied that the parking and access arrangements are acceptable. As is standard practice within Midlothian finalised details of surfacing materials and lighting provision will be secured via condition and through the roads construction consent process (RCC).

Biodiversity

- 8.15 The Council screens all planning applications against a range of biodiversity constraints such as nature conservation sites, areas of ancient woodland and areas with recorded sitings of protected species. If the screening process identifies constraints within an application site the Council may ask an applicant to submit reports demonstrating that the constraints have been considered and, if necessary, mitigation measures prepared. Appropriate mitigation measures will then be secured by condition. The biodiversity screening process did not identify any biodiversity constraints that apply to this application site.

Landscaping

- 8.16 Currently there are three trees and some areas of shrubs within the open space. There are two trees and various hedges/shrubs on the care home site. The trees will be felled to accommodate the development. As is standard practice a landscaping plan will be secured by condition; compensatory planting will be secured as part of the landscaping plan.

Other Matters

- 8.17 The ownership of the site is not a material planning consideration. The applicant has completed the necessary owner's notification required under planning legislation. Should the applicant wish to consider the development of the remaining area of open space at some point in the future that would require a further application for planning permission which would be assessed on its merits in relation to policies in place at the time of the application.

Developer Contributions

- 8.18 Scottish Government advice on the use of Section 75 Planning Agreements is set out in Circular 03/2012: Planning Obligations and Good Neighbour Agreements. The Circular advises that planning obligations should only be sought where they meet all of the following tests:
1. Necessary to make the proposed development acceptable in planning terms (paragraph 15);
 2. Serve a planning purpose (paragraph 16) and, where it is possible to identify infrastructure provision requirements in advance, should relate to development plans;
 3. Relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area (paragraphs 17-19);
 4. Fairly and reasonably relate in scale and kind to the proposed development (paragraphs 20-23);
 5. Be reasonable in all other respects.

- 8.19 In relation to Midlothian Council, policies relevant to the use of Section 75 agreements (a form of planning obligation) are set out in the MLDP and Midlothian Council's Developer Contributions Guidelines (Supplementary Planning Guidance).
- 8.20 This proposed development of which the principal element is the provision of 12 flatted dwellings has been assessed in relation to the above guidance and it is considered that a planning obligation is required in respect of the following matters:
- The proposed development in conjunction with housing identified in the MLDP give rise to a need for additional primary school capacity in the Penicuik area. A proportionate contribution will be sought;
 - The proposed development in conjunction with housing identified in the MLDP give rise to a need for additional secondary school capacity in the Penicuik area. A proportionate contribution will be sought; and
 - The MLDP identifies the provision of the A701 Relief Road as being key to accommodating development within this transport corridor. A proportionate contribution will be required from this development.

9 RECOMMENDATION

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

The proposed development will be in keeping with the scale and character of the surrounding area; will provide adequate open space and parking provision; and will not have a significant detrimental impact on the residential amenity of the area. The proposal therefore complies with policies STRAT2, DEV2, DEV5, DEV6, DEV7, TRAN5, IT1, ENV9, ENV10, IMP1 and IMP2 of the Midlothian Local Development Plan 2017.

- 9.2 Subject to:

- i) The prior signing of a legal agreement to secure:
- a contribution towards education provision; and
 - a contribution towards the A701 Relief Road.

The legal agreement shall be concluded within six months. If the agreement is not concluded timeously the application will be refused for none compliance with MLDP policies IMP1 and IMP2.

Subject to the following conditions:

1. The development shall not begin until a scheme to deal with any contamination of the site has been submitted to and approved by the Planning Authority. The scheme shall contain details of the proposals to deal with any contamination and include:

- i. the nature, extent and types of contamination on the site;
 - ii. measures to treat or remove contamination to ensure that the site is fit for the uses hereby approved, and that there is no risk to the wider environment from contamination originating within the site;
 - iii. measures to deal with contamination encountered during construction work; and
 - iv. the condition of the site on completion of the specified decontamination measures.
2. On completion of any required decontamination/ remediation works, referred to in Condition 1, and prior to any dwelling on the site being occupied, a validation report shall be submitted to the planning authority confirming that the works have been carried out in accordance with the approved scheme. No dwelling on the site shall be occupied unless or until the planning authority have approved the required validation.

Reason for conditions 1 and 2: To ensure that any contamination on the site is adequately identified and that appropriate decontamination measures are undertaken to mitigate the identified risk to site users and construction workers, built development on the site, landscaped areas, and the wider environment.

3. Development shall not begin until 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, roads, parking areas and paths 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 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 development being 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); unless a suitably qualified ecologist has carried out a walkover survey of the felling/removal area in the 48 hours prior to the

- commencement of felling/removal, and confirmed in writing that no breeding birds will be affected;
- vii proposed car park configuration and surfacing;
- viii details of the location, design, height and specification of proposed street lighting within the development;
- ix proposed footpaths; 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 (3vi). 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 policy DEV7 of the Midlothian Local Development Plan 2017 and national planning guidance and advice.*

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

Reason: *In the interest of protecting the character and appearance of the area so as to comply with policies DEV2 of the Midlothian Local Development Plan 2017.*

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

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

6. Development shall not begin until details, including a timetable of implementation, of 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 the building. 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; and to comply with policy IT1 of the Midlothian Local Development Plan 2017*

7. Development shall not begin until details of a scheme to deal with surface water drainage has been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority.

Reason: *To ensure that the development is provided with adequate surface water drainage; and to ensure that development complies with policies ENV9 and ENV10 of the Midlothian Local Development Plan 2017.*

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

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

9. Development shall not begin until details, including a timetable of implementation, of “Percent for Art” have been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing by the planning authority.

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

10. No development shall begin in any part of the site until the following additional procedures have been completed:
 - a) The developer has submitted to the planning authority details of the measures it proposes to ensure that all the flats/dwellings built on the site are occupied in perpetuity only as affordable housing as defined in the Midlothian Local Development Plan 2017;

- b) The planning authority has approved the measures, submitted to discharge requirement 10 a) above, in writing; and
- c) The developer has provided documentary evidence to the planning authority that the measures that the planning authority has approved are in place and the planning authority has confirmed in writing that the provision that has been made is satisfactory.

Reason: *The application has been assessed on the basis that the development provides affordable housing and this condition is essential in order to ensure that the flats/dwellinghouses remain available for occupation by people on modest incomes to meet locally the identified needs of people who cannot afford to buy or rent housing generally available on the open market.*

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

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

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

Peter Arnsdorf
Planning Manager

Date: 25 May 2020

Application No: 19/00510/DPP
Applicant: Ark Housing Association, The Priory, Canaan Lane, Edinburgh

Agent: N/A

Validation Date: 10 June 2019

Contact Person: Graeme King

Email: graeme.king@midlothian.gov.uk

Background Papers: 17/00740/DPP

Attached Plans: Site Plan, Elevations and Floor Plans



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

Erection of 12 flatted dwellings, formation of access roads and car parking and associated works at Land At Windsor Square, Penicuik

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File No. 19/00510/DPP

Scale: 1:1,000
Page 30 of 106

Midlothian Council Licence No. 100023416 (2019)



12 x 2 Bed Units
 Active Solar Panels
 Housing for Varying Needs

Site Boundary
 (2.380.8m²)
 (0.238 ha)
 Easting 324150
 Northing 660800

Maldenham Council
 Boundary

Communal land = 918.4m²
 Equal to 7.2% of former Council land.
 All back gardens > 50m²

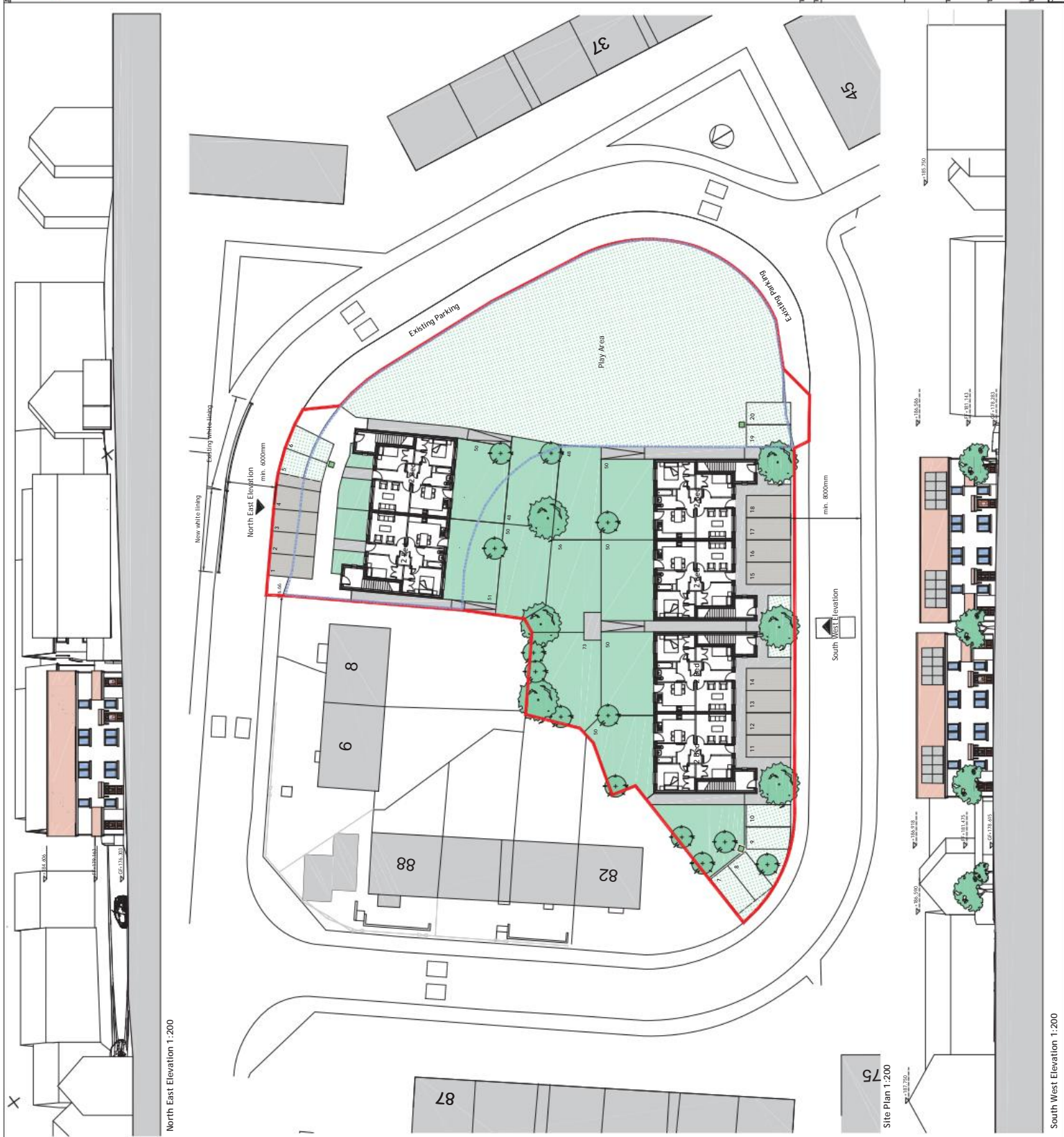
PURPOSE OF PLAN: PLANNING
 REVISIONS:
 A. Layout and elevations submitted to planning
 B. Revised layout and elevations
 C. Revised layout and elevations
 D. Revised layout and elevations
 E. Revised layout and elevations
 F. Revised layout and elevations
 G. Revised layout and elevations
 H. Revised layout and elevations
 I. Revised layout and elevations
 J. Revised layout and elevations

Robert Chalmers Architect
 14, Oldfield Road, Maldenham, Kent, ME10 2JF
 Tel: 01522 19577 Mobile: 07963 273029
 Email: info@robertchalmersarchitect.co.uk

Project:
 Proposal for 12 x 2 Bed Units, Detached ER04, BE7
 for AA Housing Association

Drawing:
 Site, Layout and Elevations

DATE	DESCRIPTION	BY	CHECKED
20 Sept 2018	1:2000A1	RC	RC
14 Oct 2018	1:2000B1	RC	RC
14 Oct 2018	1:2000C1	RC	RC
14 Oct 2018	1:2000D1	RC	RC
14 Oct 2018	1:2000E1	RC	RC
14 Oct 2018	1:2000F1	RC	RC
14 Oct 2018	1:2000G1	RC	RC
14 Oct 2018	1:2000H1	RC	RC
14 Oct 2018	1:2000I1	RC	RC
14 Oct 2018	1:2000J1	RC	RC



View from North



View from South



View from East



View from West



Streetview 1



Streetview 2

Notes

Materials

- Red Concrete Roof Pantiles
- White Rendered Walls
- White uPVC Windows
- Composite Front and Back Doors
- Obscured Glazing to Side Elevations

Purpose of Issue

PLANNING

Revisions

- A Side window added in plan. 06 Jun 19
- B Gables updated. 02 Sep 19

Robert Chalmers Architect

14 Wardie Square, Edinburgh EH5 1EU
 Tel: 0131-552 1557 Mobile: 07963-731628
 Email: info@robertchalmersarchitect.co.uk

Project

Proposal for
 74-76 Windsor Square, Penicuik EH26 8ET
 for Ark Housing Association

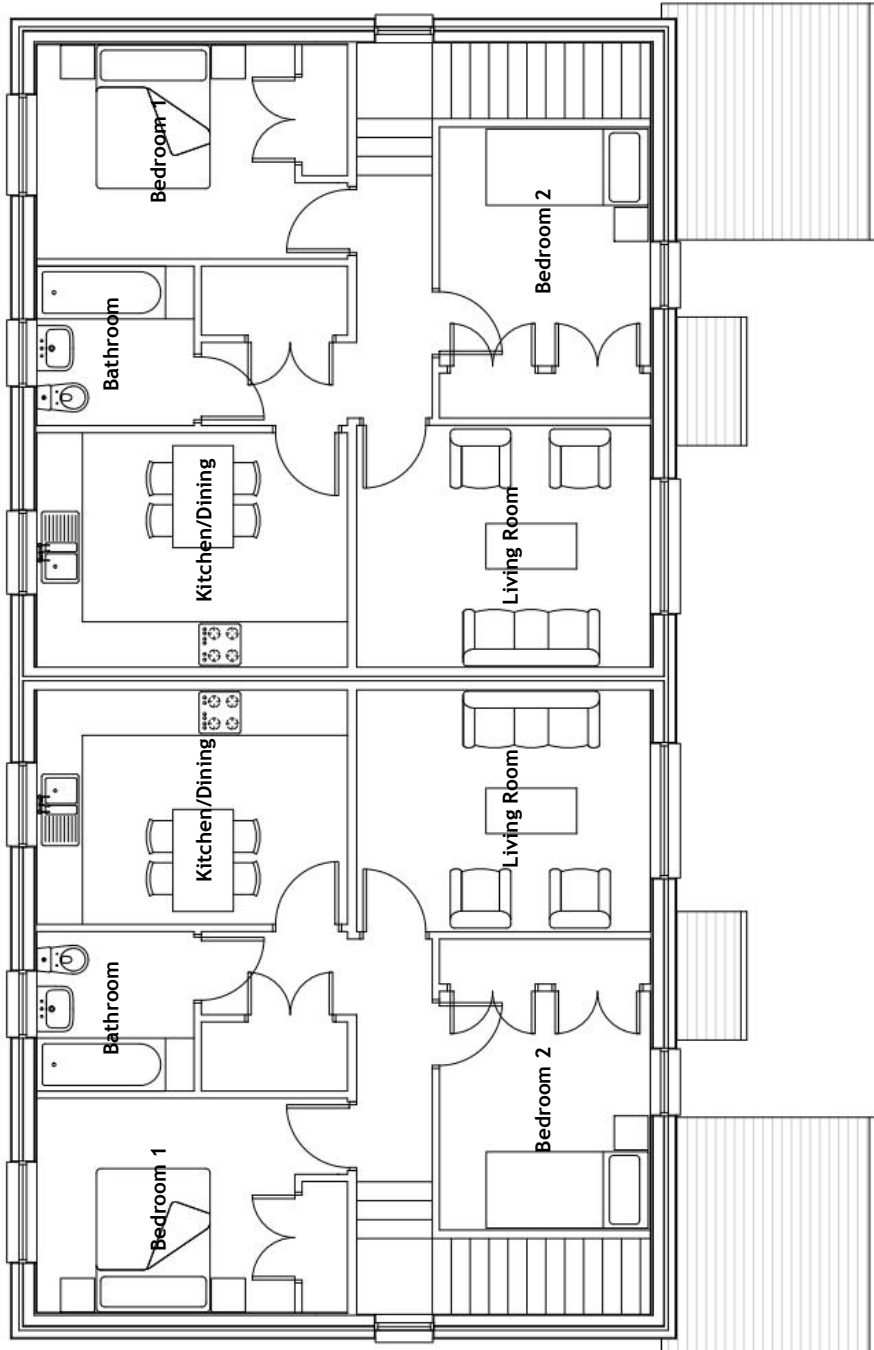
Drawing

2 Bed
 Plans, Section and Elevations

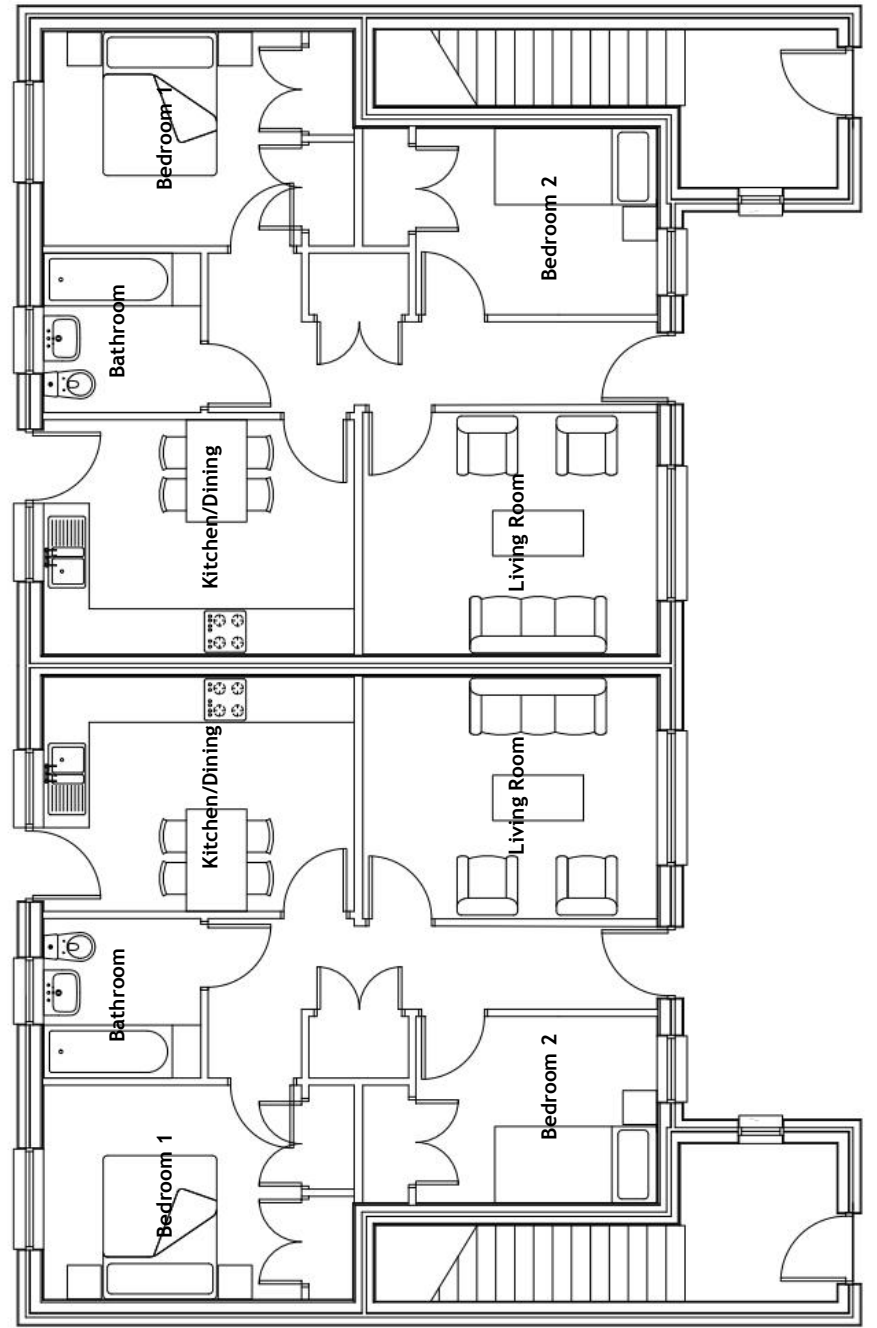
Date	Scale	Drawn	Checked
27 May 19	noted @A3	JC	RC

Job & Drawing No.
236-003

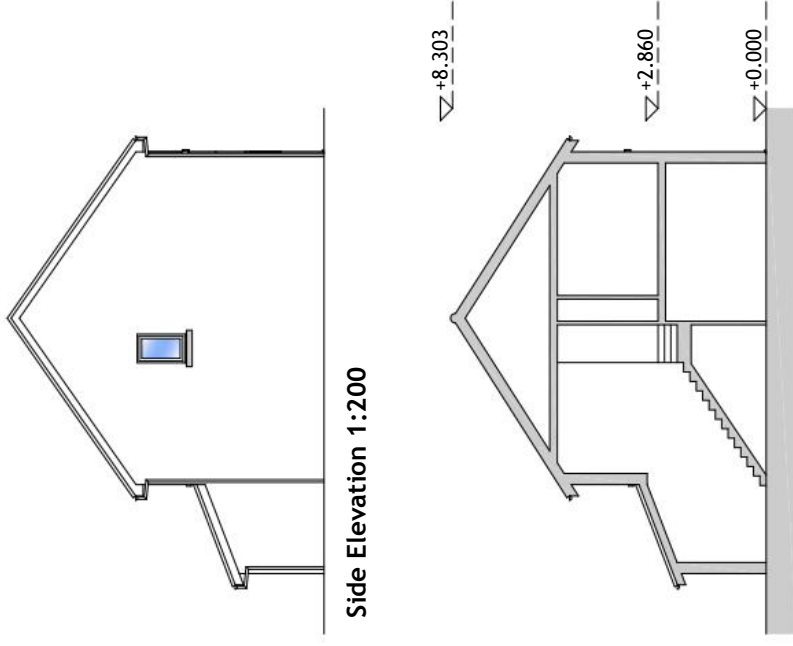
Rev No. **B**



2 Bedroom First Floor 1:100

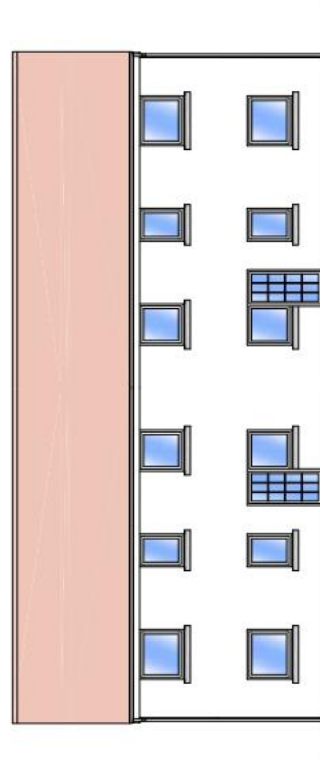


2 Bedroom Ground Floor 1:100

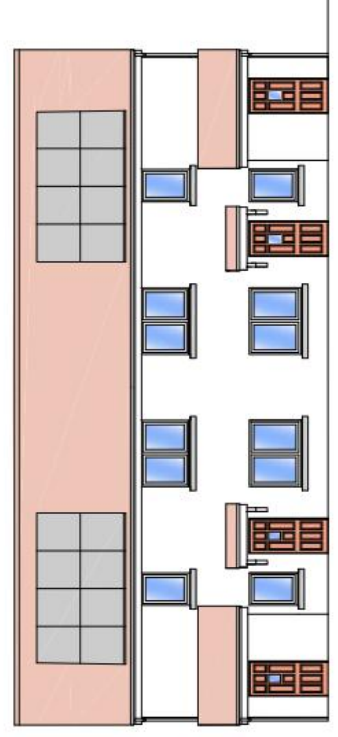


Side Elevation 1:200

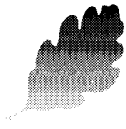
Section 1:200



Rear Elevation 1:200



Front Elevation 1:200



**APPLICATION FOR PLANNING PERMISSION IN PRINCIPLE
19/00981/PPP FOR RESIDENTIAL DEVELOPMENT WITH ASSOCIATED
ENGINEERING WORKS, OPEN SPACE AND LANDSCAPING AT LAND
NORTH OF OAK PLACE, MAYFIELD.**

Report by Chief Officer Place

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1 The application is for planning permission in principle for residential development on land to the north east of Mayfield. There have been eight representations and consultation responses from the Coal Authority, Scottish Water, the Scottish Environment Protection Agency (SEPA), the Council's Archaeological Advisor, the Council's Flooding Officer, the Council's Policy and Road Safety Manager, the Council's Head of Education, the Council's Environmental Health Manager, the Council's Housing Planning and Performance Manager and Mayfield and Easthouses Community Council.**
- 1.2 The relevant development plan policies comprise policies 5 and 7 of the South East of Scotland Strategic Development Plan 2013 (SESPlan) and policies STRAT 1, STRAT 3, DEV2, DEV3, DEV5, DEV6, DEV7, DEV9, TRAN1, TRAN2, TRAN5, IT1, ENV2, ENV7, ENV9, ENV10, ENV11, ENV14, ENV15, NRG6, IMP1, IMP2 and IMP3 of the Midlothian Local Development Plan 2017 (MLDP).**
- 1.3 The recommendation is to grant planning permission in principle subject to conditions and securing developer contributions towards necessary infrastructure and affordable housing provision.**

2 LOCATION AND SITE DESCRIPTION

- 2.1 The site is located on the north eastern fringes of Mayfield. It is bound to the south by Oak Place and gardens associated with residential properties on D'Arcy Terrace and D'Arcy Crescent. Land to the west comprises an agricultural field allocated for housing under housing site h48 (Bryans, Easthouses). Right of Way (ROW) 5-9 is also located to the north west of the site. To the north lies the remainder of the agricultural field. Agricultural fields are located to the east of the site**

with an area of woodland located to the south east of the site which forms a tree belt around the existing Mayfield settlement from the east.

- 2.2 Core Path 5-11 intersects the central portion of the site, running generally in a north-south direction. Pedestrian footpaths are located along Oak Avenue and D'Arcy Terrace/Crescent with a bus stop located directly to the south of the site on Oak Avenue.
- 2.3 The site comprises an irregular shaped parcel of land measuring 9.64 hectares. There is a substantial level change across the site with a fall from east to west of over 30m. As such, there are open views from the site to the west towards the Pentland Hills and to the north west.
- 2.4 The surrounding area is characterised as agricultural land including existing farms and rolling countryside to the north and east. This is contrasted with urban built form to the south of the site which comprises two-storey terraced residential properties of post-war construction with small private gardens and finished in brick or render. Recent additions to the existing housing stock include two-storey terraced and semi- detached houses within D'Arcy Terrace/Crescent.

3 PROPOSAL

- 3.1 Planning permission in principle is sought by the applicant for residential development with associated engineering works, open space and landscaping.
- 3.2 An Indicative Development Framework has been prepared by the applicant to outline the following indicative design principles:
 - Residential development, with an indicative capacity of up to 170 residential units within various development blocks (measuring approximately 5.76 hectares).
 - Three discrete areas including land to the west of the core path with the largest concentration of development, sustainable urban drainage systems (SUDS) infrastructure and structure planting; land to the east of the core path comprising development blocks and a smaller open space area; and land directly to the east of D'Arcy Crescent (Council owned land) comprising additional development blocks and partial removal of the existing woodland.
 - Formation of one new vehicular access within the southern part of the site off Oak Place.
 - Provision of a primary access road ('Neighbourhood Street') connecting Oak Place to a circular road within the central part of the site with secondary roads connected via a series of primary nodes.

- Provision of a central open space area along either side of the existing Core Path 5-11 - providing a pedestrian gateway to the site and connecting the site to Mayfield and the core path network to the north. This also identifies the provision of an equipped play area.
- Provision of open space within selected higher parts of the site.
- Provision of indicative drainage infrastructure proposals including a SUDS detention basin within the south western corner of the site.
- Opportunities to create a 3m footpath/cyclepath to the south west of the site to provide future connectivity and an opportunity for a 'Safe Route to School' through allocated housing site h48 (Bryans, Easthouses).
- Substantial structure planting along the northern and north eastern boundaries with partial retention of the existing woodland within the south eastern corner of the site. The application also includes the removal of part of the existing woodland within the southern part of the site, opposite Oak Place.

3.3 The application is accompanied by:

- A pre-application consultation report (PAC);
- A design and access statement (DAS);
- A planning statement;
- A transport assessment (TA);
- A drainage strategy report;
- A flood risk assessment (FRA);
- A landscape and visual impact assessment (LVIA);
- A preliminary ecological appraisal;
- A site effectiveness statement;
- A soil and agricultural land report;
- A tree survey and arboricultural constraints report;
- A desktop study report in relation to contaminated land; and
- Appropriate plans/drawings.

4 BACKGROUND

- 4.1 Planning application 16/00134/DPP for the erection of 179 dwellinghouses and 20 flatted dwellings; formation of access roads, car parking, SUDS features and associated works was refused by the Committee at its meeting in January 2018.
- 4.2 An Environmental Impact Assessment (EIA) Screening Opinion (19/00273/SCR) request, regarding residential development with associated engineering works, was determined and it was confirmed that an EIA was not required on 8 April 2019.

- 4.3 The applicants carried out a pre-application consultation (19/00106/PAC) for residential development with associated engineering works, open space and landscaping in February, March, April and May 2019.
- 4.4 The linear area of grassed open space to the south is part of a larger area of land for which planning permission 08/00175/FUL was granted in August 2008 for the erection of 49 houses and 48 flatted dwellings. However this development has not been implemented and the planning permission has expired.
- 4.5 The application for planning permission constitutes a 'Major Development' as defined in the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 and thereby it requires to be determined by the Planning Committee.

5 CONSULTATIONS

- 5.1 The **Coal Authority** does not object to the application, outlining that the site is located within a low risk area where a coal mining risk assessment is not required. However, they request that the Coal Authority's Standing Advice is included as an informative on any issued planning permission.
- 5.2 **Scottish Water** does not object to the application. However, they could not confirm capacity, at present, within the corresponding water and waste water treatment works to accommodate any likely demand. Potential conflicts on existing Scottish Water infrastructure was also noted, with further liaison with the applicant required to resolve any potential capacity issues. Scottish Water will generally not accept any surface water connections into its combined sewer system but following the submission of additional evidence it would make an exception. The discharge to a surface water sewer would be acceptable at a controlled discharge rate.
- 5.3 The **Scottish Environment Protection Agency (SEPA)** does not object to the application subject to approval of surface water drainage mitigation measures from Midlothian Council as Flood Prevention Authority.
- 5.4 The Council's **Archaeological Advisor** does not object to the application and advises that as the site has already been largely evaluated by archaeological trial trenching in relation to a previous planning application no further archaeological work is required to be undertaken as part of this application.
- 5.5 The Council's **Flooding Officer** does not object to the application, but advises that the indicative SUDS features would outfall to an existing Scottish Water sewer located within D'Arcy Terrace and that Scottish Water's position would usually seek to avoid additional discharge into

their existing network. Subsequently, and following further submissions from the applicant, on this occasion the above arrangements are acceptable.

- 5.6 The Council's **Policy & Road Safety Manager** does not object to the application subject to the following conditions:
1. Details of the proposed vehicle access to the site should be submitted for approval.
 2. Improvements to the existing bus stops and shelters will be required and details should be submitted for approval.
 3. The internal road/footway layout should be designed to adoptable standards with residents and visitor parking being provided to meet current Council standards.
 4. Any core paths running through the site should be upgraded to 3m wide cycleway/footpaths with details of the routes being submitted for approval.
 5. Details of the proposed surface water management scheme for the development should be submitted for approval.

- 5.7 The Council's **Head of Education** does not object to the application, but advises that the proposed development of up to 170 dwellings could be expected to generate the following number of pupils:

Primary 65
Secondary 51

The site for this development lies within the following school catchment areas:

Non-denominational primary -	Lawfield Primary School
Denominational primary -	St Luke's RC Primary School
Non-denominational secondary -	Newbattle Community High School
Denominational secondary -	St David's RC High School

Primary

The Easthouses/Mayfield area has insufficient spare capacity for this site which falls within the catchment of Lawfield/St Luke's RC Primary School. A contribution will be required towards the cost of providing additional primary school capacity. The erection of 170 units is significantly more than the indicative site capacity of 63 units, and would create a need to provide more primary capacity than planned in the extension of Lawfield Primary School. Additional capacity will be provided at the new primary school in Easthouses combined with a review of catchment boundaries.

Secondary

A significant amount of new housing has already been allocated to Newbattle High School and additional secondary capacity will be required. A developer contribution will be required towards the cost of any additional provision including towards St David's High School.

- 5.8 The Council's **Environmental Health Manager** does not object to the application subject to conditions being attached to any grant of planning permission ensuring that ground contamination remediation works are undertaken and the hours of construction are limited to reasonable working times.
- 5.9 The Council's **Housing Planning and Performance Manager** has not objected to the application. The planning authority will require an affordable housing provision of at least 25%. Therefore, details of anticipated affordable housing need can be confirmed at a later stage, prior to the submission of any subsequent matters specified in conditions application.
- 5.10 The **Mayfield and East Easthouses Community Council** objects to the application on the basis that the proposal is an over development of the site. The previous application in early 2019 was rejected for 199 houses/flats as the proposal was considered to be over development, particularly considering that the previous consultation with the community outlined a proposal for 63 houses/flats. The application has not addressed the objections or reasons for refusal of the previous application.

6 REPRESENTATIONS

- 6.1 There have been eight representations received, which can be viewed in full on the online planning application case file. A summary of the points raised are as follows:
- Existing surface water problems exacerbated by increased impervious surfacing;
 - Unreasonable drainage and flooding risk to existing properties;
 - Insufficient infrastructure to cope with the increased number of houses proposed including roads, healthcare, doctor and medical facilities, education and community facilities;
 - Insufficient separation from existing properties on D'Arcy Crescent and the potential loss of existing boundary fencing;
 - Detrimental impact on nature conservation;
 - Loss of existing ecological habitat to support many forms of wildlife;
 - Displacement of numerous species of birds and deer who reside/forage on the site;
 - Loss of privacy and potential overlooking to rear gardens and windows of existing properties;
 - Potential overshadowing and reduced daylight to existing properties/gardens; and

- Infrastructure capacity to accommodate surface water flows associated with the proposed development.

7 PLANNING POLICY

- 7.1 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan (June 2013) and the adopted Midlothian Local Development Plan 2017 (MLDP). The following policies are relevant to the proposal:

Edinburgh South East Scotland Strategic Development Plan 2013 (SESPlan)

- 7.2 **Policy 5 (HOUSING LAND)** requires local development plans to allocate sufficient land for housing which is capable of becoming effective in delivering the scale of the housing requirements for each period.
- 7.3 **Policy 7 (MAINTAINING A FIVE YEAR HOUSING LAND SUPPLY)** states that sites for greenfield housing development proposals either within or outwith the identified Strategic Development Areas may be allocated in Local Development Plans or granted planning permission to maintain a five years' effective housing land supply, subject to satisfying each of the following criteria: (a) The development will be in keeping with the character of the settlement and local area; (b) The development will not undermine Green Belt objectives; and (c) Any additional infrastructure required as a result of the development is either committed or to be funded by the developer.

Midlothian Local Development Plan 2017 (MLDP)

- 7.4 Policy **STRAT1: Committed Development** seeks the early implementation of all committed development sites and related infrastructure, including sites in the established economic land supply. Committed development includes those sites allocated in previous development plans which are continued in the MLDP. The development strategy supports the provision of 63 units on the majority of the site (h41 – North Mayfield) to 2024.
- 7.5 Policy **STRAT3: Strategic Housing Land Allocations** states that strategic land allocations identified in the plan will be supported provided they accord with all other policies. The development strategy supports the provision of an indicative 63 housing units on the site (h41).
- 7.6 Policy **DEV2: Protecting Amenity within the Built-Up Area** states that development will not be permitted where it would have an adverse impact on the character or amenity of a built-up area.

- 7.7 Policy **DEV3: Affordable and Specialist Housing** seeks an affordable housing contribution of 25% from sites allocated in the MLDP. Providing lower levels of affordable housing requirement may be acceptable where this has been fully justified to the Council. This policy supersedes previous local plan provisions for affordable housing; for sites allocated in the Midlothian Local Plan (2003) that do not benefit from planning permission, the Council will require reasoned justification in relation to current housing needs as to why a 25% affordable housing requirement should not apply to the site.
- 7.8 Policy **DEV5: Sustainability in New Development** sets out the requirements for development with regards to sustainability principles.
- 7.9 Policy **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 set criteria.
- 7.10 Policy **DEV7: Landscaping in New Development** requires development proposals to be accompanied by a comprehensive scheme of landscaping. The design of the scheme is to be informed by the results of an appropriately detailed landscape assessment.
- 7.11 Policy **DEV9: Open Space Standards** requires that the Council assess applications for new development against set open space standards and seeks an appropriate solution where there is an identified deficiency in quality, quantity and/or accessibility.
- 7.12 Policy **TRAN1: Sustainable Travel** aims to encourage sustainable modes of travel.
- 7.13 Policy **TRAN2: Transport Network Interventions** highlights the various transport interventions required across the Council area.
- 7.14 Policy **TRAN5: Electric Vehicle Charging** seeks to promote a network of electric vehicle charging stations by requiring provision to be an integral part of any new development.
- 7.15 Policy **IT1: Digital Infrastructure** supports the incorporation of high speed broadband connections and other digital technologies into new homes.
- 7.16 Policy **ENV2: Midlothian Green Networks** supports development proposals brought forward in line with the provisions of the Plan that help to deliver the green network opportunities identified in the Supplementary Guidance on the Midlothian Green Network.
- 7.17 Policy **ENV7: Landscape Character** states that development will not be permitted where it significantly and adversely affects local landscape character. Where development is acceptable, it should

respect such character and be compatible in terms of scale, siting and design. New development will normally be required to incorporate proposals to maintain the diversity and distinctiveness of the local landscapes and to enhance landscape characteristics where they have been weakened.

- 7.18 Policy **ENV9: Flooding** presumes against development which would be at unacceptable risk of flooding or would increase the risk of flooding elsewhere. It states that Flood Risk Assessments will be required for most forms of development in areas of medium to high risk, but may also be required at other locations depending on the circumstances of the proposed development. Furthermore it states that Sustainable urban drainage systems will be required for most forms of development, so that surface water run-off rates are not greater than in the site's pre-developed condition, and to avoid any deterioration of water quality.
- 7.19 Policy **ENV10: Water Environment** requires that new development pass surface water through a sustainable urban drainage system (SUDS) to mitigate against local flooding and to enhance biodiversity and the environmental.
- 7.20 Policy **ENV11: Woodland, Trees and Hedges** states that development will not be permitted where it could lead directly or indirectly to the loss of, or damage to, woodland, groups of trees (including trees covered by a Tree Preservation Order, areas defined as ancient or semi-natural woodland, veteran trees or areas forming part of any designated landscape) and hedges which have a particular amenity, nature conservation, biodiversity, recreation, landscape, shelter, cultural, or historical value or are of other importance.
- 7.21 Policy **ENV15: Species and Habitat Protection and Enhancement** presumes against development that would affect a species protected by European or UK law.
- 7.22 Policy **NRG6: Community Heating** requires that, wherever reasonable, community heating should be supported in connection with buildings and operations requiring heat.
- 7.23 Policy **IMP1: New Development** ensures that appropriate provision is made for a need which arises from new development. Of relevance in this case are education provision, transport infrastructure; contributions towards making good facility deficiencies; affordable housing; landscaping; public transport connections, including bus stops and shelters; parking in accordance with approved standards; cycling access and facilities; pedestrian access; acceptable alternative access routes, access for people with mobility issues; traffic and environmental management issues; protection/management/compensation for natural and conservation interests affected; archaeological provision and 'percent for art' provision.

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

National Policy

- 7.26 **SPP (Scottish Planning Policy)** sets out Government guidance for housing. All proposals should respect the scale, form and density of their surroundings and enhance the character and amenity of the locality.
- 7.27 SPP encourages a design-led approach in order to create high quality places. It states that a development should demonstrate six qualities to be considered high quality, as such a development should be; distinctive; safe and pleasant; welcoming; adaptable; resource efficient; and, easy to move around and beyond. The aims of SPP are developed within local development plan policies.
- 7.28 SPP states that “*design is a material consideration in determining planning applications and that planning permission may be refused and the refusal defended at appeal or local review solely on design grounds*”.
- 7.29 SPP supports the Scottish Government’s aspiration to create a low carbon economy by increasing the supply of energy and heat from renewable technologies and to reduce emissions and energy use. Part of this includes a requirement to guide development to appropriate locations.
- 7.30 The Scottish Government policy statement **Creating Places** emphasises the importance of quality design in delivering quality places. These are communities which are safe, socially stable and resilient.
- 7.31 The Scottish Government policy statement **Designing Streets** emphasises that street design must consider place before movement, that street design guidance (as set out on the document) can be a material consideration in determining planning applications and that street design should be based on balanced decision-making. Of relevance in this case are the statements that:

“On-plot parking should be designed so that the front garden is not overly dominated by the parking space.”

“Parking within the front curtilage should generally be avoided as it breaks up the frontage, can be unsightly and restricts informal surveillance. On-plot parking may be suitable in restricted situations when integrated with other parking solutions and when considered in terms of the overall street profile.”

8 PLANNING ISSUES

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

The Principle of Development

- 8.2 The site is part (approximately 88.5%/8.54 hectares) of a site allocated for housing (site h41 – North Mayfield) as part of the Council’s established housing land supply in the MLDP and is located within the built up area of Mayfield where there is a presumption in favour of appropriate residential development. The indicative number of residential units allocated for site h41 in the MLDP is 63. The application is for an indicative 170 dwellings. An increase in the number of houses could be acceptable subject to the layout, form and design of the proposed development being acceptable and the impact of the development on infrastructure, including education provision, being appropriately mitigated.
- 8.3 The remainder of the site, (approximately 11.5%/1.1 hectares) is located within the built up area of Mayfield where there is a presumption in favour of appropriate development including residential development subject to its compatibility to its locality.

Layout, Form and Density

- 8.4 The application is for planning permission in principle. This means that the detailed layout, form and design of the development would be subject to further applications (matters specified in conditions (MSC)) and assessment if the proposal is granted planning permission. In this case conditions would be imposed requiring the following details to be submitted by way of an application:
- layout, form and design of any proposed buildings – which will dictate the number of residential units;
 - proposed materials to be used in the construction of the dwellinghouses, ground surfaces and ancillary structures – including those to be used in the area of improved quality;

- details of landscaping and boundary treatments;
- provision of open space and play areas/facilities;
- percent for art;
- sustainable urban drainage systems (SUDS);
- details of road, access and transportation infrastructure;
- sustainability and biodiversity details;
- archaeology mitigation details (if required);
- the provision of broadband infrastructure; and
- ground conditions/mitigation of coal mining legacy.

- 8.5 Accordingly, whilst the indicative development framework submitted by the applicant outlines a potential developable area of 5.76 hectares (or up to 170 dwellings), the accompanying planning statement makes it clear that the exact unit numbers have not yet been confirmed.
- 8.6 The indicative development framework therefore outlines an indicative masterplan with potential development blocks, open spaces, roads and footpaths that any future development could take reference from. However, and more critically, it does not represent any agreement on the final development layout nor the location of any acceptable developable areas. Therefore, although the indicative development framework is informative it is not recommended for approval (condition 1).
- 8.7 Despite the proposed development seeking in principle support for residential development, the applicant has provided extensive commentary within the accompanying planning statement to outline why exceeding the potential unit numbers on the site from 63 to 'up to 170 dwellings' could be acceptable.
- 8.8 Ultimately, this commentary puts forward various positions seeking to justify an increase in housing density within this (predominantly) allocated site. It is suggested that the density for the h41 site allocation is 'extremely low' and that a degree of flexibility above the unit numbers within the allocation should be accepted. Furthermore higher densities would address potential non-delivery of other allocated sites in Mayfield and Newtongrange and that higher densities would 'contribute towards alleviating the existing demonstrated shortfall' in the 5 year effective housing land supply' (the Council disputes there is a shortfall in the 5 year housing land supply).
- 8.9 This position is noted but it is not the primary determining factor in assessing the suitability of increased density on the site nor is it applicable for the current application. When required, as part of any future MSC application, the guiding principles will relate to relevant policies within the MLDP covering the creation of a suitable, distinctive and responsive design which respects the existing site characteristics, considers opportunities/constraints and demonstrates that a future development proposal would not result in unacceptable adverse impacts on the landscape character nor the amenity of the surrounding

area. Should this not be the case, it is likely that design changes would be recommended in relation to any future MSC application and if they were not acceptable, they would be resisted by the planning authority.

- 8.10 In principle, a partial, and modest, increase in unit numbers above 63 dwellings above the housing allocation for Site h41 would be acceptable given that the site includes an additional parcel of land measuring 1.1 hectares to the south of the allocated site.
- 8.11 However, the design parameters and level of potential change within the indicative development framework are solely indicative. As such, any future design, including increased housing numbers/densities, must take cognisance of various site constraints which could amend or reduce potential developable parts of the site. This process will be undertaken within the assessment of any future MSC or detailed planning application but the following outlines selected constraints that should be considered within any future development proposal.
- 8.12 Firstly, cognisance of constraints relating to higher, and visually dominant, parts of the site would need to be undertaken in line with the MLDP Settlement Statement and site h41 site-specific requirements which suggest that development will need to avoid the highest parts of the site. Accordingly, with respect to the indicative development framework, any future development proposal should provide increased open space provision within higher parts of the site and the removal of developable areas within such locations. This could potentially include open space provision similar to those areas proposed within the concept layout within the pre-application consultation exhibition. Additionally, any future development proposal should avoid the use of excessive retention structures which would not be viewed favourably, particularly if they were proposed to maximise unit numbers at the expense of built form outcomes and to the detriment of a high quality sense of place.
- 8.13 Moreover, it is recommended that options to potentially retain selected parts of the existing woodland should be considered. Should this not be achievable, suitable rationale should be provided to justify any potential loss of the existing woodland which will be considered at that time. Despite the above, suitable retention/enhancement of green network linkages within this part of the site should be provided to link the proposed open space on the higher parts of the site to Oak Place. A detailed landscape plan would also be required to outline where suitable tree/woodland replanting had been undertaken to offset any potential loss.
- 8.14 Overall, the above matters, and any detailed design, layout, form and density considerations would need to be satisfactorily addressed within any corresponding MSC or detailed planning application in order to agree the detailed design across the site. It is not anticipated that any of the above requirements would prevent the delivery of residential

development within the site. Rather, the above constraints, and critically the topographical constraints of the site, are likely to significantly reduce the overall quantum of units potentially deliverable within the site and it seems unlikely that 170 units as indicatively suggested is achievable. Any future MSC design would be required to demonstrate how these constraints can be overcome and how any future development complies with the respective MLDP policies and settlement study objectives in this regard.

- 8.15 In addition to addressing the above design, visual impact and amenity issues, support for any future development proposal (above the 63 units allocated within Site h41) would be contingent upon the provision of suitable mitigation and/or contributions towards infrastructure delivery. This is likely to relate to road/transport, education, affordable housing and open space infrastructure to accommodate potential increased demand associated with the respective increase in residents.

Access and Transportation Issues

- 8.16 The proposed single vehicular access via Oak Place to accommodate up to 170 dwellings is considered to be acceptable in principle, subject to confirmation of detailed road design and road safety considerations. The proposed primary access route, with corresponding secondary roads would also allow for safe and efficient vehicular manoeuvrability within the site. This arrangement has been supported by the Council's Policy & Road Safety Manager subject to conditions relating to the detailed design of the access, bus stop improvements and providing adoptable road designs in accordance with Designing Streets.
- 8.17 Given that the proposed development relates to planning permission in principle, the indicative development framework only provides an indication of development blocks and excludes detailed matters such as parking arrangements. Accordingly, the design and quantum of any future car parking provision can be addressed within any corresponding MSC or detailed planning application, where such proposals would be required to take cognisance of Midlothian's Car Parking Standards.
- 8.18 The site is considered to be located within a sustainable location that would encourage sustainable transport choices, including movements by bus given the proximity of bus stops directly adjacent to the site. Mayfield town centre is located approximately 1km from the site, which provides a small number of local services, including retail, commercial and community uses.
- 8.19 The site is bisected by Core Path 5-11 with Core Path 10 and ROW 5-8 and 5-9 located within close proximity to the site, allowing for sustainable connectivity to other settlements within Midlothian via the wider core path network. Proposed enhancements to the setting of Core Path 5-11 to allow for a landscaped corridor with adjacent areas

of open space and retained hedges are supported, subject to detailed design details being submitted within any future MSC application. Connectivity to the adjacent allocated housing site h48 (Bryans, Easthouses) via a 3m wide cycle/footpath to Conifer Road is supported and would allow for safe pedestrian movements and a 'Safe Route to School' option to/from the site as well as enhanced pedestrian connectivity to any forthcoming residential development to the west. Ultimately, the acceptability of detailed roads and pedestrian accessibility considerations will come down to any future detailed design and how this could, or otherwise, satisfy the relevant conditions that should be applied to any grant of planning permission to address these matters.

Landscape and Visual Impact

- 8.20 The potential landscape and visual impacts associated with the proposed development are assessed within the accompanying LVIA. The methodological approach for the LVIA addresses many of the matters identified during pre-application scoping. However, an updated landscape and development strategy should be provided within any future MSC application to avoid potential landscape and visual impacts to the surrounding area.
- 8.21 In this regard, additional areas of open space would likely be required within higher parts of the site in lieu of developable areas. This should prevent unacceptable and visually dominant built form within more visually prominent parts of the site. This outcome is expressly sought to address the significant level change and site specific requirements for site h41 within the MLDP. This matter would be critical to the determination of any future MSC application, particularly as the recent refusal (16/00134/DPP) on site h41 was based (in part) on the unsuccessful resolution of this issue.
- 8.22 Secondly, given the local landscape and amenity value of Woodland W1 in terms of landscape screening, further justification for its partial removal would be required alongside full details of replanting proposals to demonstrate that there would be no unreasonable impacts on landscape character and visual amenity when viewed from Oak Place.
- 8.23 Overall, these considerations would be required to be addressed within any future development proposal to ensure that the detailed design does not result in unacceptable impacts to landscape character and visual amenity of the surrounding area. Whilst residential development could be accommodated within the site, resolution of these matters would likely require the location and quantum of future residential blocks to be amended or reduced. It is anticipated that an updated LVIA and landscape design documentation assessing any future development proposal against these objectives would also be required.

Open Space

- 8.24 The table within Appendix 4 of the MLDP outlines open space standards that future development proposals will be required to meet with respect to open space quality, quantity and accessibility. A comprehensive review of open space provision against these requirements shall be undertaken as part of an assessment of any future MSC or detailed planning application. As such, the following provides a review of the current open space provision within Mayfield.
- 8.25 Overall, it is noted that the quality of existing open space provision within Mayfield scores low and upgrades to existing open space infrastructure would be beneficial or enhanced quality of any new provision would be sought to improve quality. There is also an under provision of equipped play areas within this part of Mayfield that needs to be addressed via suitable infrastructure provision within any future MSC application. There is sufficient provision of informal open space, however, the Midlothian Open Space Assessment 2018 outlines that there is a significant under provision of playing fields that should be addressed. In contrast, the Midlothian Sports Pitch needs Assessment 2018 outlines that, in general, there is sufficient provision of sports pitches (including football, rugby, hockey, cricket and bowls) to cater for future demand and suggests closure of selected football pitches be undertaken, following the construction of the Newbattle High School (which is now open).
- 8.26 Subsequent MSC applications will potentially secure formal/informal play areas and an infrastructure contribution would be required towards the maintenance of any proposed play/open space areas - this would be secured via a planning obligation that would accompany any grant of planning permission in principle.

Flood Risk and Surface Water Drainage

- 8.27 The accompanying FRA outlines that the proposed development site is not at risk of coastal, fluvial, groundwater or drainage system flooding. Notwithstanding the above, it states that there is potential for pluvial (from rainfall) flows to pose a flood risk to properties on D'Arcy Terrace and Oak Place. Accordingly, the accompanying drainage strategy report outlines an indicative, and robust, approach demonstrating the effective management and discharge of surface water flows within the site to a SUDS detention basin. Staged discharge at pre-development greenfield run-off rates are also proposed to accommodate the 1:200 year flood event plus a 30% allowance for climate change impacts. This discharge to a Scottish Water surface water sewer was questioned by Midlothian's flooding advisor - given Scottish Water's preference to avoid discharge to their existing network. However, the applicant confirmed that this would be provided to Scottish Water's surface water drain and not to any combined sewer. A copy of a recent pre-development enquiry (PDE) was provided to demonstrate in

principle support from Scottish Water for this arrangement, subject to limiting any discharge rate to 10 litre/second discharge and providing the detailed surface water design via subsequent Scottish Water technical approval. These arrangements were agreed by the applicant and the Council's Flooding Officer subject to the provision of detailed surface water drainage infrastructure details, which could be secured by a condition on any grant of planning permission.

- 8.28 In addition, the FRA goes on to recommend that finished floor levels of proposed dwellings are set at a minimum of 0.15m above the surrounding ground levels, with SUDS approaches to direct water away from buildings which would avoid any risk from surface water flooding. This could be secured by condition on a grant of planning permission.

Ecological Matters

- 8.29 A Preliminary Ecological Appraisal (PEA) has been undertaken on behalf of the applicant outlining that the site contains a locally important wildlife corridor. Whilst parts of the site were considered to offer potential suitability for foraging and commuting of various species, the PEA outlined that there should be no unacceptable impacts on protected species and no additional surveys would be required. Despite this, the PEA states that pre-works would be required if any clearance is undertaken during the bird nesting season in addition to checks for hare and hedgehog.
- 8.30 Therefore, the key impacts associated with the proposed development in ecological terms relates to the potential for the loss of hedges and woodland resulting in the removal or fragmentation of foraging habitats for multiple species. Accordingly, given that the indicative development framework outlines the indicative design rationale for the site, the applicant will be required to include post-development ecological enhancements (compliant with the Midlothian Local Biodiversity Action Plan) via a condition on a grant of planning permission in line with those measures outlined within the PEA. This could include retaining and enhancing areas of hedgerow, planting wildflower meadow and increasing biodiversity enhancement for bat, birds, hedgehogs and invertebrates.

Archaeology

- 8.31 The proposed development would not result in unacceptable impacts to any heritage assets. Additionally, it would not result in any adverse archaeological impacts given that the previous archaeological trial trenching found no significant archaeological artefacts nor any requirement to undertake further archaeological investigations. This position has been supported by the Council's Archaeological advisor.

Feasibility of Communal Heating System

- 8.32 In order for the Government's renewable energy and heat demand targets to be met, it is important that all types of new development consider the role they play in using heat from renewable sources. Paragraph 154 of SPP states that the planning system should "support the transitional change to a low carbon economy including deriving 11% of heat demand from renewable sources by 2020" and "support the development of a diverse range of electricity generation from renewable energy technologies - including the expansion of renewable energy generation capacity - and the development of heat networks".
- 8.33 MLDP policy NRG6 states that community heating within new developments should be supported where technically and financially feasible. It remains to be demonstrated by the applicant that the proposed development does not offers the potential for a new district heating network to be created within the site. Accordingly, a condition will be required on any grant of planning permission requiring that a feasibility study for the provision of a community heating system for any new development is undertaken by a suitably qualified engineer, commissioned by the applicant, and submitted for the approval of the planning authority.

Developer Contributions

- 8.34 Scottish Government advice on the use of Section 75 Planning Agreements is set out in Circular 03/2012: Planning Obligations and Good Neighbour Agreements. The circular advises that planning obligations should only be sought where they meet all of the following tests:
- necessary to make the proposed development acceptable in planning terms (paragraph 15);
 - serve a planning purpose (paragraph 16) and, where it is possible to identify infrastructure provision requirements in advance, should relate to development plans;
 - relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area (paragraphs 17-19);
 - fairly and reasonably relate in scale and kind to the proposed development (paragraphs 20-23); and
 - be reasonable in all other respects.
- 8.35 In relation to Midlothian Council, policies relevant to the use of Section 75 agreements (a form of planning obligation) are set out in the MLDP and Midlothian Council's Developer Contributions Guidelines (Supplementary Planning Guidance).
- 8.36 The proposed development has been assessed in relation to the above guidance and it is considered that a planning obligation is required in respect of the following matters:

- A contribution towards education (including nursery) provision;
- A contribution towards town centre improvements/community facilities/space within Mayfield;
- A contribution towards the Borders Rail;
- Maintenance of open space including children's play areas/open space and SUDS; and
- Provision of affordable housing (25%).

Affordable Housing

- 8.37 There is no specific affordable housing mix identified within the indicative development framework, however, it is noted that the applicant agrees to the provision of 25% affordable housing within the accompanying planning statement. Accordingly a requirement to provide a minimum of 25% affordable housing will be required to be secured via a planning obligation. Further discussions with the Council's Housing Planning and Performance Manager will be required to confirm the optimum unit mix based on the Council's Housing List and/or to address any requisite demand within any chosen registered social landlord that would bring forward the affordable housing element within any future MSC application.

Other Matters

- 8.38 Concerns were raised by objectors regarding the existing capacity of general practice medical facilities within the immediate area and the potential impacts of new housing on the capacity of health and care services. This matter is required to be addressed by the Midlothian Health and Social Care Partnership through the provision of sufficient health service capacity. That can involve liaison with the Council as planning authority but it is not, on its own, a sufficient basis in itself on which to resist or delay the application.
- 8.39 Regarding matters raised by representors and consultees and not already addressed in this report:
- There was a claim in an objection that neighbour notification did not include a letter drop of local residents (beyond the statutory neighbour notification requirements) - this is not a statutory requirement within the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013;
 - The planning authority do not consider that that the site's development would fail to be in the public interest as the majority of it is an allocated housing site within the MLDP and would be subject to a detailed design to ensure that it would be of a suitable design and would provide a range of contributions to accommodate suitable infrastructure provision within the local area;
 - Any potential off-site amenity impacts would be considered once the detailed design and layout has been provided within any subsequent MSC or detailed planning application. At this stage, the indicative development framework suggests that suitable housing

setbacks could be introduced within any future design to prevent unreasonable overshadowing of private open spaces or any unacceptable overlooking to habitable room windows;

- Concerns about the removal of any existing residential boundary fencing were also outlined. However, the proposed development does not propose any such removal, notwithstanding that the planning authority would require the provision of suitable boundary treatments within any future MSC or detailed application that avoid the unnecessary removal of any residential boundary fencing (which in itself is a legal matter between the parties involved).

8.40 The Mayfield and East Easthouses Community Council also raised matters relating to the potential overdevelopment of the site and whether the applicant addressed issues raised within the Community Council's previous objection for 199 units and the Planning Committee's refusal reasons. Importantly, the proposed development seeks approval for the principle of residential development. Therefore, the detailed design matters considered within the previous refusal, and within much of the Community Council's previous objection, are not specifically applicable to the current application given that a detailed layout is not yet available.

8.41 Therefore, matters relating to the detailed design, layout, scale, and density will be fully assessed within any future MSC or detailed application, should the proposed development be granted planning permission. Notwithstanding this, cognisance of the principles for the reasons for refusal and the general commentary within the previous Community Council's response have been fully considered within the current application including consideration of strategic matters relating to landscaping, developer contributions, landscape and visual impact, site specific objectives, impact on local services/amenities and affordable housing requirements. Additionally, an assessment considering whether any future development proposal would represent an overdevelopment of the site would be undertaken when assessing any future MSC or detailed application.

8.42 The following matters have been raised in representations which are not material considerations in the determination of the application:

- Procedural matters which are specified by the Scottish Government in the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013; and
- Financial gain, by the applicant, associated with the applicant developing the site.

9 RECOMMENDATION

9.1 It is recommended that planning permission be granted for the following reason:

The majority of the site is allocated for housing and forms part of the Council's committed housing land supply within the Midlothian Local Development Plan 2017 where there is a presumption in favour of residential development. The remainder of the site is located within the built-up area of Mayfield where there is a presumption in favour of appropriate development, including contributing to the provision of housing. This presumption in favour of development is not outweighed by any other material considerations.

Subject to:

- a. the prior signing of a legal agreement to secure the provision of; affordable housing and contributions towards education (including nursery) provision, the Borders Railway; town centre improvements/community facilities/space within Mayfield; and maintenance of children's play areas/open space.

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

- b. the following conditions:
 1. The proposed masterplan (Indicative Development Framework Drawing No. 18022-MPDF-P001G) submitted with the application is not approved.

Reasons: *To ensure the development is implemented in a manner which mitigates the impact of the development on existing land users, future occupants and addresses potential landscape and visual impacts. This requires consideration by way of separate Matters Specified in Conditions Planning Application(s) once a detailed design has been progressed. Whilst the proposed masterplan is indicative, there are initial reservations regarding potential development on higher parts of the site. Requirements to avoid excessive retaining structures are also sought as are recommendations to avoid the extensive loss of the existing woodland. Resolution of these matters could require an amendment/reduction to the indicative developable areas within the proposed masterplan. Additionally, the impact on local infrastructure and additional mitigation measures that could be required needs to be assessed.*

2. No more than 170 residential units shall be erected on the site unless otherwise agreed by way of a planning application. The housing mix, densities across the site and the detailed layout is not approved and is subject to matters specified in conditions application/s – this will determine the final number of dwellinghouses on the site.

Reason: *The application has been assessed on the basis of a maximum of 170 dwellings being built on the site. Any additional dwellings would have a further impact on local infrastructure, in particular education provision, and additional mitigation measures may be required. Any such measures would need further assessment by way of a planning application.*

3. Development shall not begin until an application for approval of matters specified in conditions regarding the phasing of the development has been submitted to and approved in writing by the planning authority. The phasing schedule shall include the construction of each residential phase of the development, the provision of affordable housing, the provision of open space, children's play provision, structural landscaping, SUDS provision and transportation infrastructure. Development shall thereafter be carried out in accordance with the approved phasing unless agreed in writing with the planning authority.

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

4. Development shall not begin on an individual phase of development (identified in compliance with condition 3) 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, footways and cycle ways in relation to a fixed datum;
 - ii. the proposed vehicular, cycle and pedestrian accesses into the site;
 - iii. the proposed roads, footways and turning facilities (designed to an adoptable standard) and cycle ways including suitable walking and cycling routes;
 - iv. proposed visibility splays, traffic calming measures, lighting and signage;
 - v. proposed car parking arrangements;
 - vi. proposed cycle parking/storage facilities;
 - vii. proposed connections to Core Paths;
 - viii. proposed alignment, surface materials and widths (3m wide cycleway/footpaths) for Core Path upgrades;
 - ix. improvements to the existing bus stops and shelters; and
 - x. a programme for completion for the construction of access, roads, footpaths, cycle paths and associated works.

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.

5. Development shall not begin on an individual phase of development (identified in compliance with condition 3) 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 in the open spaces shall be completed prior to the houses on adjoining plots are occupied;
 - vii. proposed car park configuration and surfacing;
 - viii. proposed footpaths and cycle paths (designed to be unsuitable for motor bike use);
 - ix. proposed play areas and equipment;
 - x. proposed cycle parking facilities; and
 - xi. proposed area of improved quality (minimum of 20% of the proposed dwellings).

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 DEV2, DEV5, DEV6, DEV7 and DEV9 of the Midlothian Local Development Plan 2017 and national planning guidance and advice.

6. Development shall not begin on an individual phase of development (identified in compliance with condition 3) 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. These materials will also include those proposed in the area of improved quality (20% of the proposed dwellings). Development shall thereafter be carried out using the approved materials or such alternatives as may be agreed in writing with the planning authority.

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

7. Development shall not begin until an application for approval of matters specified in conditions for a scheme of effective drainage and flood management for the site has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
 - i. drainage details and sustainable urban drainage systems to manage water runoff;
 - ii. existing and proposed levels across the site using at least 1m contours and cross sections, where applicable; and
 - iii. Finished floor levels of dwellings a minimum of 0.15m above the proposed natural ground level.

Reason: The planning application is in principle and the details required are to ensure the surface water from the whole site can be appropriately treated and to ensure that levels on the site are appropriate in relation to flood risk.

8. Development shall not begin until an application for approval of matters specified in conditions for a scheme to deal with any contamination of the site and/or previous mineral workings has been submitted to and approved by the planning authority. The

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

- i. the nature, extent and types of contamination and/or previous mineral workings on the site;
 - ii. measures to treat or remove contamination and/or previous mineral workings to ensure that the site is fit for the uses hereby approved, and that there is no risk to the wider environment from contamination and/or previous mineral workings originating within the site; and
 - iii. measures to deal with contamination and/or previous mineral workings encountered during construction work; and
9. On completion of the decontamination/remediation works within Condition 8 above, a validation report confirming that the works have been carried out in accordance with the approved scheme. Before any part of the site is occupied for residential purposes, the measures to decontaminate the site shall be fully implemented as approved by the planning authority.

Reason: *To ensure that any contamination on the site is adequately identified and that appropriate decontamination measures are undertaken to mitigate the identified risk to site users and construction workers, built development on the site, landscaped areas, and the wider environment.*

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

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

11. Development shall not begin until an application for approval of matters specified in conditions setting out details, including a timetable of implementation, of high speed fibre broadband has 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.*

12. Development shall not begin until an application for approval of matters specified in conditions for a scheme of biodiversity for the site, including the provision of house bricks and boxes for bats and birds throughout the development, a programme of ecological surveys (repeat survey work no more than 12 months in advance of the commencement of development on the site) and management proposals for any Invasive Non Native Species has been submitted to and approved in writing by the planning authority. The scheme shall incorporate the species mitigation and enhancements recommended within section 4 of the Preliminary Ecological Appraisal prepared by Envirocentre dated September 2019. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority.

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

13. Development shall not begin until an application for approval of matters specified in conditions for the provision and use of electric vehicle charging stations throughout the development has been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority.

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

14. Development shall not begin until an application for approval of matters specified in conditions for a scheme setting out the scope and feasibility of a community heating scheme for the development hereby approved and; if practicable, other neighbouring developments/sites, in accordance with policy NRG6 of the Midlothian Local Development Plan, shall be submitted for the prior written approval of the planning authority.

15. No dwellinghouse on the site shall be occupied until a community heating scheme for the site and; if practicable, other neighbouring developments/sites, is approved in writing by the planning authority. The approved scheme shall be implemented in accordance with a phasing scheme also to be agreed in writing in advance by the planning authority. There shall be no variation therefrom unless with the prior written approval of the planning authority.

Reason for conditions 13 and 14: To ensure the provision of a community heating system for the site to accord with the requirements of policy NRG6 of Midlothian Local Development Plan 2017 and in order to promote sustainable development.

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

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

17. Development shall not begin until an application for approval of matters specified in conditions for a Construction Environment Management Plan (CEMP) has been submitted to and approved in writing by the planning authority. The CEMP shall include:

- i. Details of a construction access;
- ii. signage for construction traffic, pedestrians and other users of the site;
- iii. controls on the arrival and departure times for construction vehicles, delivery vehicles and for site workers (to avoid school arrival/departure times);
- iv. details of piling methods (if employed);
- v. details of any earthworks;
- vi. control of emissions strategy;
- vii. a dust management plan strategy;
- viii. waste management and disposal of material strategy;
- ix. a community liaison representative will be identified to deal with the provision of information on the development to the local community and to deal with any complaints regarding construction on the site;
- x. prevention of mud/debris being deposited on the public highway;
- xi. material and hazardous material storage and removal; and
- xii. controls on construction, engineering or any other operations or the delivery of plant, machinery and materials (to take place between 0700 to 1900hrs Monday to Friday and 0800 to 1300hrs on Saturdays).

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

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

18. Prior to the occupation of the first dwellinghouse the affordable housing mix in terms of; size of units (bedroom numbers), the type of units (dwellinghouses and/or flats) and the location of the units shall be approved in writing with the planning authority.

Reason: *To ensure 25% of the units on the site are affordable housing units in accordance with policy DEV3 of the Midlothian Local Development Plan 2017 and that the units are appropriate in terms of their size and type to meet local need.*

Peter Arnsdorf
Planning Manager

Date: 18 August 2020

Application No: 19/00981/PPP

Applicant: Gladman Developments Ltd

Agent: N/A

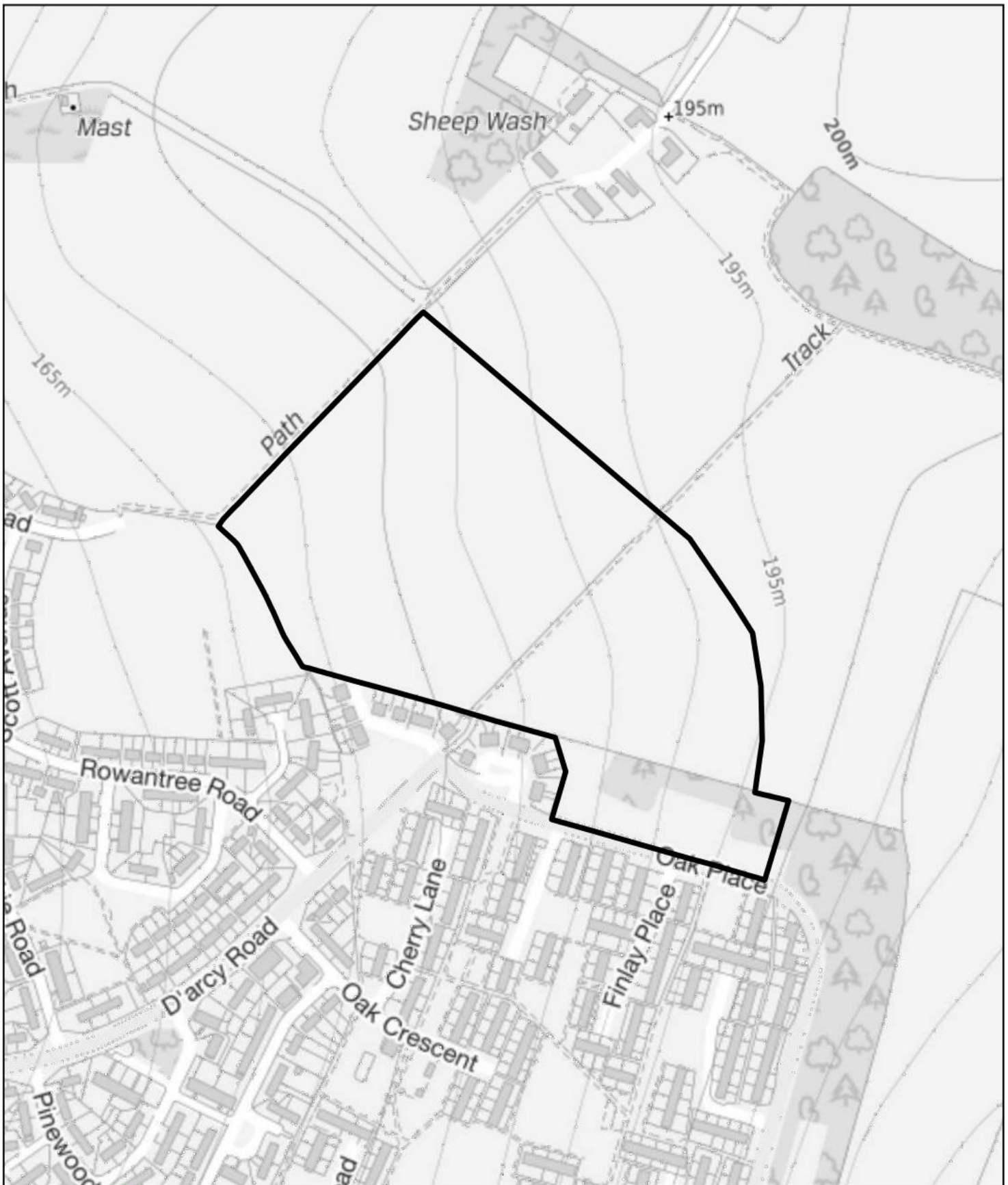
Validation Date: 28 November 2019

Contact Person: Steve Iannarelli

Tel No: 0131 271 3313

Background Papers: 19/00273/SCR, 19/00106/PAC, 08/00175/FUL

Attached Plans: Indicative Development Framework and Movement Hierarchy



Midlothian

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

Application for planning permission in principle for residential development and associated works at Land North of Oak Place, Mayfield, Dalkeith

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File No. 19/00981/PPP

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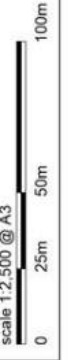


Drawing No. 18022-MPDF-P001-G
Indicative Development Framework

	Site boundary
	Developable area (5.76ha)
Greenspace	
	Amenity open space (1.55ha)
	Meadow (0.18ha) Not including SuDS
	Indicative size and location of SuDS basin (subject to technical assessments)
	Frontage
	Proposed site access
	Neighbourhood street
	Lane
	Shared driveway
	Path
	Primary node
	Secondary node
	Play area
	Structure planting
	Proposed larger trees
	Proposed tree line
	Proposed ornamental trees
	Core Paths
	Other signed paths
	Existing woodland
	Existing trees
	Existing hedges
	Proposed housing development Planning Ref: 19/00042/DPP LDP Ref: h48

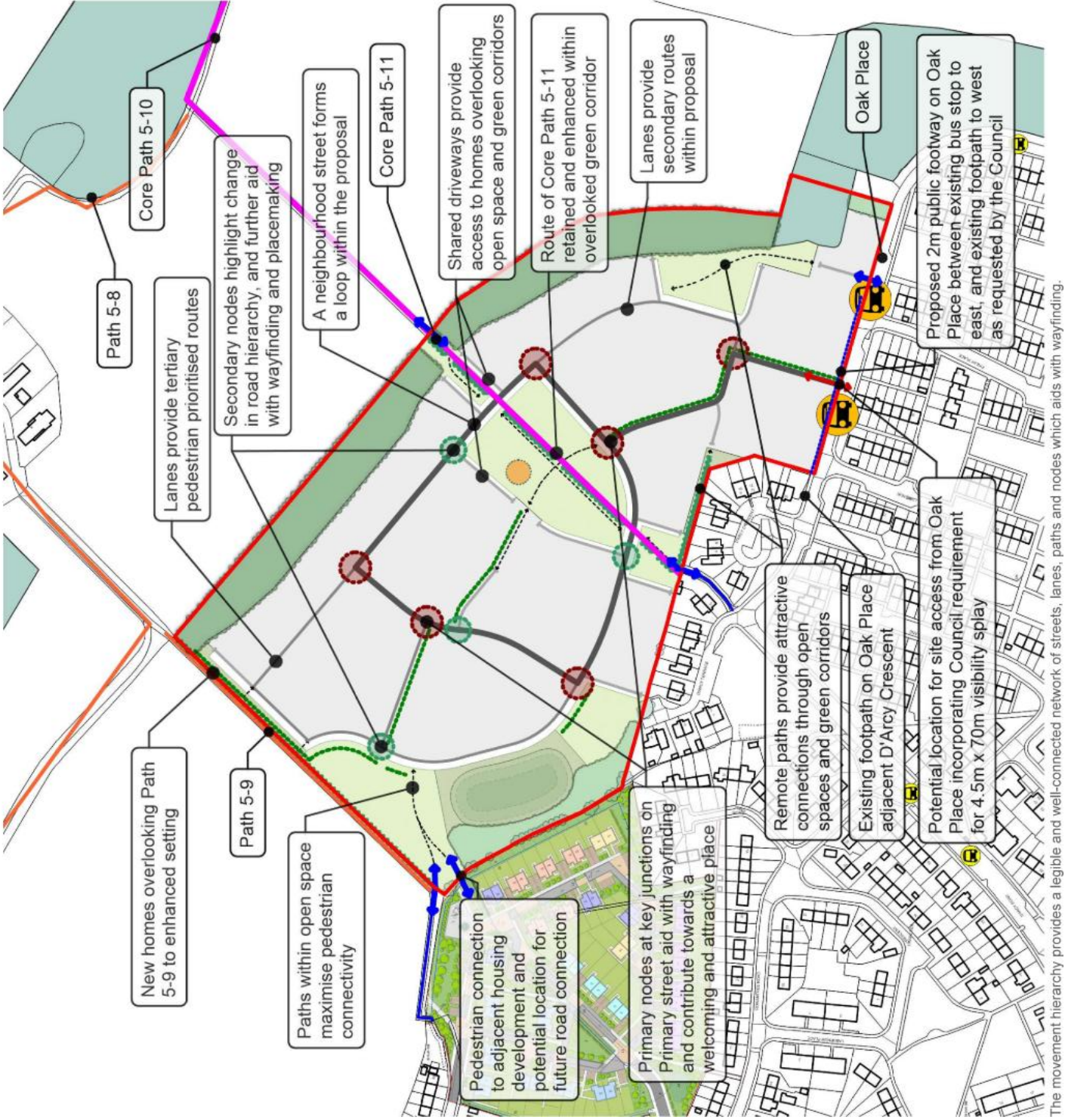
Rev G (22.10.19) Drawn: KP Checked: KT Approved: KT
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Status: Planning

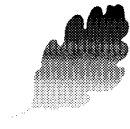


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The movement hierarchy provides a legible and well-connected network of streets, lanes, paths and nodes which aids with wayfinding.



APPLICATION FOR PLANNING PERMISSION IN PRINCIPLE (19/00748/PPP) FOR A MIXED USE DEVELOPMENT COMPRISING: CLASS 4 (BUSINESS USE); CLASS 5 (GENERAL INDUSTRY); CLASS 6 (STORAGE AND DISTRIBUTION); AND SUI GENERIS USES (HOME IMPROVEMENT SHOWROOMS/ WAREHOUSING, BUILDERS MERCHANT AND CAR SHOWROOM) (AMENDMENT OF ACCEPTABLE USES OF THE SITE FROM USE CLASSES 4 AND 5 APPROVED BY THE GRANT OF PLANNING PERMISSION 02/00660/OUT) AT WHITEHILLS, WHITEHILL ROAD MILLERHILL DALKEITH

Report by Chief Officer Place

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1 The application is for planning permission in principle for a mixed use development comprising: class 4 (business); class 5 (general industry); class 6 (storage and distribution); and sui generis uses (home improvement showrooms/warehousing; builders' merchants; and car showrooms) on land at Whitehills, Millerhill.**
- 1.2 There have been no representations and consultation responses from the Coal Authority, the Scottish Environment Protection Agency (SEPA), the City of Edinburgh Council, the Council's Policy and Road Safety Manager, the Council's Economic Development Manager, The Wildlife Information Centre (TWIC) and Danderhall and District Community Council.**
- 1.3 The relevant development plan policies are policy 2 of the Edinburgh and South East Scotland Strategic Development Plan 2013 (SESplan) and policies STRAT1, STRAT5, DEV2, DEV5, DEV6, DEV7, ECON1, TRAN1, TRAN2, TRAN4, TRAN5, IT1, ENV2, ENV7, ENV9, ENV10, ENV11, ENV15, ENV16, ENV25, NRG6, IMP1, IMP2, IMP3 of the Midlothian Local Development Plan 2017 (MLDP). The site is identified as site e26, an allocated business/general industrial site in the MLDP.**
- 1.4 The recommendation is to grant planning permission subject to conditions and the applicant entering in to a Planning Obligation.**

2 LOCATION AND SITE DESCRIPTION

- 2.1 The application site comprises an economic land allocation, site e26, within the area of Midlothian known as Shawfair. It is located to the south of the Fort Kinnaird Retail Park (within the City of Edinburgh Council administrative area), in an area bound by Whitehill Road to the north, west and south. The site is bound by the A1, the main Edinburgh to Newcastle arterial route, and the Waverley rail line to the east.
- 2.2 The site is approximately 18 hectares and is currently in agricultural use. The site slopes down generally from south to north and a small burn runs along the northern boundary of the site.
- 2.3 While there are a range of retail units in Fort Kinnaird Retail Park there are also a number of different commercial businesses operating from the land to the north, including a B&Q; numerous car showrooms; storage uses; builder's merchants; retail warehouses; and fast food outlets - all within the City of Edinburgh Council's administrative area.
- 2.4 In addition to the range of uses to the north there are a number of residential properties to the west and south of the application site. The Millerhill Energy Centre and Zero Waste facility are located to the south east of the application site and are accessed via Whitehill Road.

3 PROPOSAL

- 3.1 The application is for planning permission in principle for a mix of the following uses:
 - Class 4 – office/business/light industry
 - Class 5 – general industry
 - Class 6 – storage and distribution
 - Sui Generis – uses which are not included within the defined use classes. The application cites these uses as home improvement showrooms/warehouses, builders' merchants and car showrooms.

The Town and Country Planning (Use Classes) (Scotland) Order 1997 categorises different land uses into different classes to enable planning practitioners and decision makers to determine if a change of use of land or buildings is proposed or has occurred. In defining if a material change of use between one class and another has occurred it enables planning authorities to assess the impact of different uses and enables decisions to be made with regard the right development in the right location. Different uses within the same class are seen to have similar impacts and characteristic and are therefore inter changeable in land use planning terms.

- 3.2 The applicant has provided a site plan for consideration, but on the basis that it is for indicative purposes only.

- 3.3 In addition to the indicative site layout plan the applicant has submitted:
- A planning statement;
 - A noise statement;
 - A marketing report;
 - A transport statement;
 - A mining report;
 - A number of emails and letters to clarify different aspects of the proposal; and
 - Appropriate plans/drawings.

4 BACKGROUND

- 4.1 Outline planning application 02/00660/OUT for residential, industrial and commercial floor space, community facilities (including new primary schools), associated landscaping with the provision for sport and recreation and new transport facilities at land bounded by A720, Old Dalkeith Road and The Wisp, Millerhill was granted planning permission in August 2014.
- 4.2 Along with other planning conditions and a planning obligation, the outline planning permission for Shawfair required compliance with the approved Masterplan for the area. Condition 4 of planning permission 02/00660/OUT stated:
- “The development shall accord with the terms of the Master Plan and Design Guide (and the associated addendums) approved as Supplementary Planning Guidance. Where significant changes are proposed to the development and a planning application is required, the planning application shall be accompanied by the required amendment to the Master Plan and Design Guide and the justification for the change.”
- 4.3 Section 42 application 17/00650/S42, to amend the above-mentioned condition 4 of planning permission 02/00660/OUT was granted by the Committee at its meeting in April 2018 subject to amended conditions and an updated legal agreement (required because application 17/00650/S42 supersedes application 02/00660/OUT as the key permission for the Shawfair development). Condition 4 was amended as follows:
- “The development shall accord with the terms of the approved Masterplan and Design Guide (and associated addendums) approved as Supplementary Planning Guidance. Any significant changes to the Masterplan shall be made by way of an application for approval of matters specified in condition which shall be submitted for the approval of the planning authority.”
- 4.4 In May 2019 the applicant requested that the planning authority provide a screening opinion on the proposed mixed use development

(19/00399/SCR). In the absence of a number of detailed elements within the request, such as the scale and height of the proposed buildings, the planning authority based its screening opinion on assumed compliance with the approved Masterplan and Design Guide. As a result, the planning authority concluded that an environmental impact assessment was not required to be carried out.

- 4.5 The applicant carried out a pre-application consultation (19/00489/PAC) for the expansion of the range of uses at Whitehills, Millerhill in May – August 2019. The pre-application consultation was reported to the Planning Committee at its meeting on 27 August 2019. The Committee noted the report which set out the potential to widening the use classes on the site for the benefit of generating employment.
- 4.6 The application for planning permission in principle constitutes a 'Major Development' as defined in the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 and thereby it requires to be determined by the Planning Committee.

5 CONSULTATIONS

- 5.1 **The Coal Authority** does not object to the application, but has confirmed that the application site falls within a defined area of high risk for legacy coal mining. The planning application is accompanied by a Phase 1 Desk Study and Coal Mining Risk Assessment (October 2019, prepared by Mason Evans). The report identifies that a mine shaft entry is present within the application site and recommends that intrusive investigations are undertaken to confirm the coal mining conditions and to identify the necessary remedial measures. The submitted report does not provide a detailed assessment of the risk posed by the mine shaft and the implications it poses for the layout of the development of the site. A precautionary approach is recommended as any work within the proximity of a mine entry can be dangerous and present significant financial liabilities. As a result The Coal Authority have recommended that intrusive investigations must be undertaken in advance of the submission of a detailed layout for the site. Condition/s should be attached to any grant of planning permission to mitigate the coal mining legacy.
- 5.2 The **Scottish Environment Protection Agency (SEPA)** does not object to the application.
- 5.3 The **City of Edinburgh Council (CEC)** Chief Planning Officer supports the principle of the development of the allocated site for class 4 and 5 uses. However, has raised concerns regarding the other uses which form part of this application. He states that the proposal to amend the range of acceptable uses, to include those proposed, is contrary to the adopted MLDP.

- 5.4 While CEC have not formally objected to the planning application they have raised the following key concerns regarding the proposal:
- The CEC commissioned 'Commercial Needs Study' (prepared to inform the Edinburgh City Plan 2030) concludes that there is demand for industrial properties on Edinburgh's urban fringes. The study also suggests that low supply of industrial properties is constraining market demand. CEC state that speculative industrial developments elsewhere in the city have proved popular. CEC suggest that there is a shift in the provision of industrial premises, from aging inner-city property to more accessible and modern edge of city premises.
 - CEC state that the results of their Commercial Needs Study sit at odds with the applicant's own supporting statement, which states that there has been no market interest by class 4 or 5 operators.
 - CEC highlight concerns regarding the projected traffic levels and the way they have been presented as part of this application. However, they state that any likely changes in traffic levels are unlikely to cause any particular cross boundary concerns. They state that Whitehill Road is heavily parked and that a contribution should be sought from the developer to progress a suitable order to introduce waiting and loading restrictions on this road, or seek a suitable kerb realignment at the new junction, in order to protect sightlines.
- 5.5 The Council's **Policy and Road Safety Manager** does not object to the application, stating that the applicant's transport assessment indicates that the change to the proposed uses from those previously approved would not produce any substantial change in traffic generation from this site.
- 5.6 The Council's **Economic Development Manager** does not object to the application, stating that there is steady demand for industrial properties in Midlothian. While demand for office space is not as strong as it is in Edinburgh, there is some demand in Midlothian. Furthermore, the sui generis uses would support the construction sector and provide opportunities for local jobs.
- 5.7 **The Wildlife Information Centre (TWIC)** does not object to the application. TWIC screen all planning applications submitted to the planning authority for potential issues regarding protected species - they have stated that the proposed development is unlikely to have an adverse impact on the ecological issues highlighted in the application.
- 5.8 The **Danderhall and District Community Council** have stated that they do not object in principle to a wider selection of uses which, they say will support additional jobs and amenities for local residents. They do, however raise concerns with regard the details of the proposal. They state that while they appreciate that the market has changed since the Shawfair Masterplan was drafted and then subsequently approved they do have concerns that the wider range of uses will have

implications for the area in relation to traffic and road infrastructure. The Community Council highlight that numerous planning permissions, for large numbers of new homes, have been given planning permission since 2002 and that the Fort Kinnaird area was not as expansive as it is now. The Community Council highlight that the Scottish Ministers rejected the SESPLAN2 on account of insufficient consideration being given to transportation.

- 5.9 In their objection the Community Council have highlighted several specific areas of concern regarding the local road network and lack of public transport. The Community Council conclude their correspondence by making the following requests:
- That an up-to-date transport statement be provided;
 - That road improvements, including traffic management measures, are made to Whitehills Road and Newcraighall Road;
 - That public transport contracts servicing Millerhill, Newton Village, Hilltown and Danderhall are agreed with a provider before the development is completed; and,
 - That consideration is given to providing a medium-sized supermarket in one of the units on the application site.

6 REPRESENTATIONS

- 6.1 No representations have been received.

7 PLANNING POLICY

- 7.1 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan (June 2013) and the Midlothian Local Development Plan, adopted in November 2017. The following policies are relevant to the proposal:

Edinburgh and South East Scotland Strategic Development Plan 2013 (SESplan)

- 7.2 **Policy 2 (Supply and Location of Employment Land)** states that the Strategic Development Plan supports the development of a range of marketable sites of the size and quality to meet the requirements of business and industry within the SESplan area. Local Development Plans will support the delivery of the quantity of the established strategic employment land supply as identified. Local Development Plans should also ensure they provide a range and choice of marketable sites to meet anticipated requirements.

Midlothian Local Development Plan 2017 (MLDP)

- 7.3 Policy **STRAT1: Committed Development** seeks the early implementation of all committed development sites and related infrastructure, facilities and affordable housing, including sites in the established housing land supply. Committed development includes

those sites allocated in previous development plans which are continued in the MLDP.

- 7.4 Policy **STRAT5: Strategic Employment Land Allocations** supports development for employment uses on sites identified as strategic employment land allocations.
- 7.5 Policy **DEV2: Protecting Amenity within the Built-Up Area** states that development will not be permitted where it would have an adverse impact on the character or amenity of a built-up area.
- 7.6 Policy **DEV5: Sustainability in New Development** sets out the requirements for development with regards to sustainability principles.
- 7.7 Policy **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 set criteria.
- 7.8 Policy **DEV7: Landscaping in New Development** requires development proposals to be accompanied by a comprehensive scheme of landscaping. The design of the scheme is to be informed by the results of an appropriately detailed landscape assessment.
- 7.9 Policy **ECON1: Existing Employment Locations** seeks to safeguard those sites allocated for economic land uses.
- 7.10 Policy **TRAN1: Sustainable Travel** aims to encourage sustainable modes of travel.
- 7.11 Policy **TRAN2: Transport Network Interventions** highlights the various transport interventions required across the Council area, including the A720 Sheriffhall Junction.
- 7.12 Policy **TRAN4: Freight** states that new storage and distribution businesses should be located where they will be readily accessible to the rail or strategic road network.
- 7.13 Policy **TRAN5: Electric Vehicle Charging** seeks to promote a network of electric vehicle charging stations by requiring provision to be an integral part of any new development.
- 7.14 Policy **IT1: Digital Infrastructure** supports the incorporation of high speed broadband connections and other digital technologies into new developments.
- 7.15 Policy **ENV2: Midlothian Green Networks** supports development proposals brought forward in line with the provisions of the Plan that help to deliver the green network opportunities identified in the Supplementary Guidance on the *Midlothian Green Network*.

- 7.16 Policy **ENV7: Landscape Character** states that development will not be permitted where it significantly and adversely affects local landscape character. Where development is acceptable, it should respect such character and be compatible in terms of scale, siting and design. New development will normally be required to incorporate proposals to maintain the diversity and distinctiveness of the local landscapes and to enhance landscape characteristics where they have been weakened.
- 7.17 Policy **ENV9: Flooding** presumes against development which would be at unacceptable risk of flooding or would increase the risk of flooding elsewhere. It states that Flood Risk Assessments will be required for most forms of development in areas of medium to high risk, but may also be required at other locations depending on the circumstances of the proposed development. Furthermore it states that Sustainable urban drainage systems will be required for most forms of development, so that surface water run-off rates are not greater than in the site's pre-developed condition, and to avoid any deterioration of water quality.
- 7.18 Policy **ENV10: Water Environment** requires that new development pass surface water through a sustainable urban drainage system (SUDS) to mitigate against local flooding and to enhance biodiversity and the environmental.
- 7.19 Policy **ENV11: Woodland, Trees and Hedges** states that development will not be permitted where it could lead directly or indirectly to the loss of, or damage to, woodland, groups of trees (including trees covered by a Tree Preservation Order, areas defined as ancient or semi-natural woodland, veteran trees or areas forming part of any designated landscape) and hedges which have a particular amenity, nature conservation, biodiversity, recreation, landscape, shelter, cultural, or historical value or are of other importance.
- 7.20 Policy **ENV15: Species and Habitat Protection and Enhancement** presumes against development that would affect a species protected by European or UK law.
- 7.21 Policy **ENV16: Vacant, Derelict and Contaminated Land** states that the Council requires to be satisfied that any proposed use of land is suitable in relation to any potential risks from prior contamination and land instability.
- 7.22 Policy **ENV25: Site Assessment, Evaluation and Recording** requires that where development could affect an identified site of archaeological importance, the applicant will be required to provide an assessment of the archaeological value of the site and of the likely impact of the proposal on the archaeological resource.
- 7.23 Policy **NRG6: Community Heating** requires that, wherever reasonable, community heating should be supported in connection with buildings and operations requiring heat.

- 7.24 Policies **IMP1: New Development and IMP2: Essential Infrastructure Required to Enable New Development to Take Place** require the developer to deliver, or contribute to, the required infrastructure to mitigate the impact of the development.
- 7.25 Policy **IMP3: Water and Drainage** require sustainable urban drainage systems (SUDS) to be incorporated into new development.

8 PLANNING ISSUES

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

Principle of Development – Class 4 and 5 Uses

- 8.2 Planning permission in principle has been granted for the principle of class 4 and 5 uses on the site, by virtue of the original outline planning permission (02/00660/OUT) and associated Masterplan and then by the subsequent section 42 planning application (17/00650/S42). The current application seeks to extend the range of uses for the site only and, therefore, the approved Shawfair Masterplan is still relevant in terms of the assessment of this application.
- 8.3 The application site is on land allocated in the MLDP as forming part of the Council's established economic land supply (the site was originally allocated for economic development in the 2003 Shawfair Local Plan). The MLDP allocates the Whitehill site for business (class 4) and general industry (class 5) uses. This reflects the position taken in the Shawfair Masterplan.
- 8.4 SESplan policy 2 (Supply and Location of Employment Land), the sites allocation in the MLDP and the previous grants of planning permission support the presumption in favour of class 4 and 5 uses on the site.

Principle of Development – Class 6 and Sui Generis Uses

- 8.5 The applicant is seeking permission to expand the range of uses which would be acceptable. While it is clear that there is straight-forward policy support for class 4 and 5 uses on the site there is no such definitive planning policy support for the other uses proposed.
- 8.6 SESplan supports the safeguarding of existing economic sites in Midlothian and requires additional economic land to be allocated for development. SESplan also allows consideration of mixed-use development on economic sites, if supported by the MLDP, which does not result in a net loss to the overall strategic land supply. SESplan

also states that there should be a range of marketable sites to meet anticipated demand.

- 8.7 As a committed site within the established economic land supply, there is support for the early implementation of development at the site. The majority of the sites forming part of the Council's economic land supply are identified as being acceptable for business and general industry (classes 4 and 5), which have traditionally been those which produce the highest density of employment thereby providing a sustainable jobs market to the residents and future residents of Midlothian.
- 8.8 Policy ECON1 of the MLDP sets the criteria by which potential uses are assessed and includes the following requirements; the contribution towards appropriate employment densities; compatibility with neighbouring uses; avoiding detrimental impacts on the amenity of the area; and, meeting infrastructure deficiencies or requirements. This policy does not specifically support the introduction of non-business or non-industrial uses. While the policies of the MLDP do not explicitly support the proposed uses it is necessary for the Council to consider whether some support could be provided for the principle of establishing a wider range of uses at the application site than those previously granted planning permission to support economic activity and job creation.
- 8.9 It is the case that the application site was allocated for economic development (business and industry) and has been subject to a marketing campaign by the applicant. The evidence submitted by the applicant suggests that there has been limited interest in the site from businesses seeking to operate under the terms of classes 4 and 5. The applicant states that the existing local development plan allocation for the site, as classes 4 and 5, does not respond to the current market demand and that the Council should be more flexible in order to bring forward at least some development on this allocated but, as yet, undeveloped site. This flexibility would be in the spirit of SESplan policy, which seeks to encourage economic development by providing for a range and choice of marketable sites. This is particularly the case as economic development sites are not currently allocated for all of the uses being proposed as part of this application. The proposed uses cannot easily be accommodated elsewhere in Midlothian and could easily be lost from the Council area if not accommodated on a site such as this. The applicant's evidence suggests that the mixed range of uses proposed would be marketable.
- 8.10 In order to assess the appropriateness of the proposed uses it is necessary to consider them against the criteria set out in policy ECON1 of the MLP.
- 8.11 With regards to employment generation at the application site the applicant has stated that it is their opinion that the uses proposed will provide for a similar level of full-time equivalent (FTE) employment as

would be the case under the previously consented and allocated position.

- 8.12 Employment density projections are based on the *Employment Densities Guide, English Partnership, 2010*. This document does not provide clear projected FTE employment figures for all of the uses proposed as part of this application. As a result, the applicant has estimated the projected FTE employment figures. The applicant has estimated that based on the approved masterplan the site would generate on average 48sqm per FTE and the proposed uses would generate 46.4sqm per FTE. This shows that they consider that more employees will be accommodated within the same floorspace as previously approved – the proposed uses will not be detrimental to the number of jobs created.
- 8.13 In the circumstances it is difficult to draw direct comparisons between the projected employment generation from the permitted uses and the proposed uses. Even accounting for the applicant being generous in terms of their job creation estimates for their proposed uses the planning authority is satisfied that the proposed range of uses will generate employment figures roughly in line with what would be expected for a site of this size. In any event, it is the case that the site has remained undeveloped for a significant period of time (since 2003) and that the current proposal appears to represent a potential way to generate at least some employment in this area, providing new jobs for the new community at Shawfair, Danderhall and the wider area. The marketing data submitted by the applicant identifies that there has been some interest in the site for the proposed uses and it is expected that those uses can be brought forward more timeously than any class 4 or 5 uses given that there is no realistic prospect, certainly in the short term, of realising the levels of employment arising from a limited class 4 and 5 development.
- 8.14 With regards to the employment generating potential of the application site it is also relevant to consider the current uncertainty regarding the jobs market, as a result of the COVID-19 pandemic and the resultant impact on the local and national economy. It should be possible for the Council to respond in a flexible way in order to address local and national crises. Supporting this application will ensure that the Council is responding in a positive way to the economic difficulties currently facing the country. It is debatable whether the types of uses proposed in this application are those which will assist in the economic recovery, but the flexible approach to the extended range of uses provides the best opportunity. Sustainable economic growth is a material consideration which can outweigh the policy position with regard support for non-class 4 and 5 uses.
- 8.15 With regards to whether the proposed development would be compatible with neighbouring uses it is necessary to consider what those neighbouring uses are.

- 8.16 Planning permission has been granted for a large residential development to the west of the application site and there are a number of houses and cottages located around the boundary of the site. Arguably, of all of the proposed uses the one with the most potential to be incompatible with the neighbouring residential properties is the class 5 use. Given that the class 5 use is one of the established uses for the site it is considered that proposed development will be compatible with neighbouring residential properties, whether they are existing or future dwellings.
- 8.17 To the north of the application site is the Fort Kinnaird Retail Park and the allocated business and industrial land which is all located within the City of Edinburgh. Within the retail area there are a range of the usual out-of-town retail operators. In that area there are also DIY stores, builder's suppliers, storage uses and retail warehouses. Within the allocated business and industrial land there are a collection of consented car showrooms.
- 8.18 It is considered that the proposed development will not inhibit the employment generating activities of the neighbouring areas. Given that the applicant is, in effect, proposing an extension to some of the uses found in the South Fort Kinnaird area it is considered that the development will be complimentary to, and entirely compatible with, the neighbouring uses to the north.
- 8.19 As described above, the proposed development will not have an adverse impact on the amenity of the area. Conditions can be imposed in order to protect residential amenity, as was done in previous planning consents in Shawfair.
- 8.20 With regards to mitigating infrastructure deficiencies the application site falls within the area covered by the outline planning permission for Shawfair, as amended by the granting of a section 42 planning permission (17/00650/S42). The planning permission is bound by a Planning Obligation (section 75 agreement) securing developer contributions towards infrastructure. However the agreement declares that those contributions are not applicable in relation to the Whitehill site – this was done so as not to place a restrictive burden on the development of employment uses on a site which already has the burden of remediating challenging ground conditions (the site falls within a defined area of high risk for legacy coal mining).
- 8.21 Notwithstanding the provisions of that agreement and the applicant's position that the whole of the current development proposal should not be subject to developer contributions, the application is being assessed against a new local development plan (compared to the one the original Shawfair planning obligation was agreed under), different uses being proposed and what would constitute a new planning permission in law is proposed.

- 8.22 Having regards to the provisions of the development plan, the uses proposed and the proximity to Sheriffhall and the Borders Rail Line it is necessary to consider taking contributions towards these elements of infrastructure from those non-class 4 and 5 uses (because the class 4 and 5 uses on this site were exempt from contributions in the main Shawfair planning obligation, it could be considered to be unreasonable to take a contribution via this application, simply because of the nuances of the application process and considering the economic circumstances specific to this site).
- 8.23 In order to provide flexibility, in order to assist with the early delivery of development at this site, the planning authority has presented two further options to the applicant, which could potentially replace the requirement for a financial contribution. The first option is the potential to reach an agreement to transfer, to the Council, serviced plots capable of accommodating class 4 or 5 uses. The planning authority appreciates that the market for speculative start-up premises is considered a risk in the current times but considers that there would be a great benefit to the local community to have a ready supply of these types of premises to support the economic recovery.
- 8.24 Another way of supporting the local community and encouraging economic recovery is for the applicant to agree to set up a Local Training and Employment Plan. This extent of this plan would be negotiated with the applicant but would generally provide training, apprenticeships and employment opportunities for local people at different stages of the development.
- 8.25 Should this application be supported it would require to be dependent on the applicant accepting one of the abovementioned options.
- 8.26 While the proposed development is not entirely in compliance with the uses allocated for this site it is clear that the proposed uses will not fundamentally undermine the strategic and local planning policy position, which seeks to ensure that there is a readily available supply of land for economic development. The allocated economic land will still provide the opportunity to create as many jobs, and perhaps a better variety of jobs, as it had the potential to do previously and the proposed uses would be compatible with neighbouring uses.
- 8.27 While the range of acceptable uses is proposed to be expanded, as a result of this application, it will not exclude accommodating class 4 and 5 uses should operators of those types of businesses emerge. Therefore, it is still a possibility, albeit unlikely, that the whole of the Whitehills site could be occupied by class 4 and 5 operators.
- 8.28 While it is the case that a flexible approach to the range of uses at Whitehills should be employed, it is also the case that it would be unacceptable if there were to be no class 4 or 5 uses accommodated at the site. This would be entirely contrary to the aims of the development plan. The applicant has agreed to a limit on the floorspace for those

proposed non-class 4 and 5 uses, limiting those uses to 50% of the entire floorspace at Whitehills.

Masterplan matters

- 8.29 During the assessment of the application the applicant made it clear that they were only seeking permission to amend the range of already consented uses in order to allow a more flexible arrangement which would allow the accommodation of businesses which otherwise could not be located at Whitehills, or anywhere else in Midlothian. There has been no suggestion that the applicant was seeking to vary any of the other elements of the approved masterplan. Specifically, the applicant has not sought an increase in floorspace which was restricted through the approved masterplan. The submitted planning statement acknowledges that the approved masterplan limits floorspace at Whitehills to 25,000sqm. The submitted transport briefing note appears to base its findings on a total floorspace of 25,000sqm. The Council's policy and road safety consultation response is based on the transport assessment. For these reasons it is reasonable to, again, limit the consented floorspace to 25,000sqm. Taking into account the above-mentioned requirement for 50% of the total floorspace to be retained in class 4 or 5 use these restrictions can be covered by planning conditions.
- 8.30 The applicant has not sought to amend other elements of the masterplan, so they will also remain unchanged. The building heights, drainage and landscaping are three such elements which will remain as originally agreed in the masterplan and design guide.
- 8.31 Screening of the archaeological potential of the entire Shawfair area has previously been carried out and has identified that there is no requirement to carry out any archaeological survey work at the Whitehills site.

Other Comments Regarding the Proposed Uses

- 8.32 The CEC comments make it clear that they consider that the applicant's submission contradict the findings of their own 'Commercial Needs Study'. CEC have stated that, despite what the applicant states, there is still a demand for class 4 and 5 properties on the edge of the city. This demand appears to be generated by the movement of those operations out of older, less well served, properties within the city to more modern and accessible properties on the edge of the urban area. In effect, it appears that CEC are suggesting that the application site should be retained in class 4 and 5 use to allow for some of the businesses looking to relocate out of the inner-city areas. This position is at odds with Edinburgh's own position regarding the adjacent area at Fort Kinnaird, which, over time, has been allowed to be developed by non-office and non-industrial uses. Many of the same uses being proposed through this current application are present on land immediately adjacent, within CEC. There are a number of car

showrooms on Edinburgh's allocated business and industrial land to the north.

- 8.33 The Danderhall and District Community Council state that they do not object to the principle of the planning application. As it is the principle of the development which is being assessed through this application it is considered that the Community Council's representation does not form an objection to the proposal. They do support the opportunity to create jobs at this site but have highlighted concerns regarding traffic levels and management. The Community Council have also highlighted a desire for the site at Whitehills to accommodate a retail superstore. While the applicant identified at pre-application consultation stage that they wanted to open the site up to class 1 retail uses, the planning authority raised concerns that these uses would be contrary to the development plan and could not be supported at Whitehills – the applicant responded to these concerns and removed retail from their proposed mix of uses.

Access and transport matters

- 8.34 As this application has been submitted to establish the principle of an extended range of uses at Whitehills there have been few details regarding the access and transport matters submitted for consideration. The transport assessment establishes that there will be little change in traffic generation at the site as a result of the amended range of uses, when compared to the allocated class 4 and 5 uses, and the Council's Policy and Road Safety Manager concurs with that position, despite the concerns raised by the local Community Council.
- 8.35 CEC have raised some concerns regarding the levels of parking on Whitehills Road, in the area where the indicative plans suggest access and egress at the application site will be taken. CEC suggest that visibility splays will be required and potentially a traffic order applied for in order to make the junction safe.
- 8.36 The application site boundary does not extend to the carriageway at Whitehills Road. Therefore it is expected that the applicant will require to secure planning permission from CEC to gain access to the application site in the position identified in the indicative site plan. In any event, the planning authority are satisfied that it should be possible to secure an appropriate access to the site in order to accommodate the proposed development.

Landscaping

- 8.37 The structure planting at Whitehills was previously being secured through the planning applications for the wider Shawfair site and the approved masterplan. It would be appropriate to continue to require the structure planting which has been consistently sought through the approved masterplan.

Other matters

- 8.38 It will be necessary for the application to comply with other relevant policies within the MLDP, including the requirements for high speed fibre broadband connections for buildings; a scheme for protecting and enhancing on-site biodiversity; a scheme for linking into the green network; and, proposals for the incorporation of electric vehicle charging points and stations.
- 8.39 The Coal Authority has requested that if the application is approved a planning condition is attached which secure further investigations. These investigations must be used to inform the future remediation and the proposed layout of buildings and structures. It is essential that in arriving at a proposed layout the most expensive areas to remediate are not left to the lower value uses, thereby making it less likely to secure those uses on the site due to reasons of viability.

Developer Contributions

- 8.40 Scottish Government advice on the use of Section 75 Planning Agreements is set out in Circular 03/2012: Planning Obligations and Good Neighbour Agreements. The Circular advises that planning obligations should only be sought where they meet all of the following tests:
- necessary to make the proposed development acceptable in planning terms (paragraph 15);
 - serve a planning purpose (paragraph 16) and, where it is possible to identify infrastructure provision requirements in advance, should relate to development plans;
 - relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area (paragraphs 17-19);
 - fairly and reasonably relate in scale and kind to the proposed development (paragraphs 20-23);
 - be reasonable in all other respects.
- 8.41 In relation to Midlothian Council, policies relevant to the use of Section 75 agreements (a form of planning obligation) are set out in the MLDP and Midlothian Council's Developer Contributions Guidelines (Supplementary Planning Guidance).
- 8.42 The proposed development has been assessed in relation to the above guidance and it is considered that a planning obligation is required in respect of the following matter:
- The MLDP identifies the provision of the Borders Railway and Sheriffhall junction improvements as being key to accommodating development within this transport corridor. A proportionate contribution will be required from this development.

Conclusion

- 8.43 The proposed class 4 and 5 uses accord with the development plan and the presumption in favour of the development is not outweighed by any other material considerations. The class 6 and sui generis uses are not in strict compliance with the uses allocated in the local plan, and those uses previously approved. However, there is scope for the Council to take a flexible approach, in the circumstances, in order to support the economic resilience in the area and assist in the creation of jobs in an economically challenging time. The Council has a readily available economic land supply which, based on current take up rates, will take a significant period of time to exhaust and, as such, the proposal does not undermine the aims of the development plan. Furthermore if the Council wanted to take a more flexible approach to supporting business this would be the ideal location – a site not in significant demand for class 4, 5 uses and its proximity to the mix of uses north of the site at Fort Kinnaird.

9 RECOMMENDATION

- 9 It is recommended that planning permission be granted for the following reason:

The proposed mixed use development site is identified as being part of the Council's established economic land supply within the Midlothian Local Development Plan 2017 and as such there is a presumption in favour of the proposed development. This presumption in favour of development, along with a flexible approach to accommodating a range of employment generating uses during difficult economic conditions is not outweighed by any other material considerations.

Subject to:

- i) the prior signing of a legal agreement to secure the provision of contributions towards strategic transport infrastructure including Borders Rail and Sheriffhall junction improvements from the class 6 and sui generis uses. The legal agreement shall be concluded within six months. If the agreement is not concluded timeously the application will be refused; or
- ii) the transfer of serviced plots to the Council; or
- iii) the applicant entering into an agreement with the Council to establish and implement an Employment and Training Plan;

and the following conditions:

1. The uses hereby approved shall be limited to the following, and for no other uses:
 - Class 4 – Office/Light Industry
 - Class 5 – General Industry
 - Class 6 – Storage and Distribution

Sui Generis – limited to home improvement showrooms/warehouses, builder’s merchants and car showrooms.

(The uses are defined as per The Town and Country Planning (Use Class) (Scotland) Order 1997 (UCO) and shall comply with the equivalent use classes in any order which revokes or supersedes the UCO).

Reason: *In the interests of clarify the range of uses which have been proposed and assessed as being acceptable in terms of compliance with development plan policy*

2. The gross floorspace of the combined development at the entire Whitehills site, allocated site e26 in the adopted Midlothian Local Development Plan, shall not exceed 25,000sqm. The combined gross floorspace of the class 6 and approved sui generis uses shall not exceed 12,500sqm.

Reason: *The application has been assessed on the basis of a maximum floorspace of 25,000sqm, which is in compliance with the approved Shawfair Masterplan. While a flexible approach to the range of uses is being taken in the circumstances the proposed development would not be in compliance with the development plan should no class 4 or 5 uses be accommodated on the Whitehills site.*

3. In the January of each year, until the development is completed, an updated phasing plan shall be submitted to and approved in writing by the planning authority. The phasing plan shall include the construction of each phase of the development, the provision of open space, structural landscaping, SUDS provision, transportation infrastructure, and percent for art. The plan shall clarify those phases of development completed, under construction and those phases of development scheduled to commence within 5 years of the submitted phasing plan. Development shall thereafter be carried out in accordance with the approved phasing unless agreed in writing with the planning authority.

Reason: *To enable the timeous delivery of infrastructure and services to meet the needs of occupants and future occupants of the development.*

4. The development shall accord with the terms of the approved Masterplan and Design Guide (and associated addendums) approved as Supplementary Planning Guidance in all respects other than where those documents refer to the acceptable uses for the Whitehills site as covered by condition 1 above. Any significant changes to the Masterplan shall be made by way of an application for approval of matters specified in condition which shall be submitted for the approval of the planning authority.

Reason: *To ensure the development complies with the development plan, national planning advice and guidance and good place making principals.*

5. Within 12 months, unless an alternative time period is agreed with the planning authority, from this grant of planning permission the scope and feasibility of a community heating scheme for the development hereby approved and, if practicable, other neighbouring developments/sites, in accordance with policy NRG6 of the Midlothian Local Development Plan 2017, shall be submitted for the prior written approval of the planning authority. Any structures, buildings or engineering works required to implement an approved scheme shall require a matters specified in conditions application.

Reason: *To ensure the provision of a community heating system to accord with the requirements of policy NRG6 of Midlothian Local Development Plan 2017 and in order to promote sustainable development.*

6. The structure landscaping (incorporating associated footpaths and cyclepaths) detailed in the approved Shawfair Masterplan and the Design Guide for Shawfair for the Whitehills site shall be carried out within 9 months of the commencement of development in Whitehills unless otherwise agreed in writing by the planning authority.

Reason: *To ensure the Structural Landscaping is carried out timeously and provides a good quality landscape setting for the new development. The landscaping and footpaths make a valuable contribution to the creation of quality places as well as encouraging walking and cycling.*

7. A valid application for approval of matters specified in conditions shall be submitted to the planning authority before the expiration of either:
 - I. twenty five (25) years from the date of this grant of permission;
 - II. six (6) months from the date on which an earlier application, for the same development block, for approval under this condition was refused; or,
 - III. six (6) months from the date on which an appeal or review against such a refusal was determined.

Reason: *To accord with Section 59(5) of the Town and Country Planning (Scotland) Act 1997 (as amended) and to allow sufficient time for this development to be implemented in line with consents across other parts of the Shawfair development area.*

8. Development shall not begin on an individual phase of development (identified in compliance with condition 3 and the masterplan) or part thereof of the development at Whitehills until an application for approval of matters specified in conditions for a scheme of hard and soft landscaping works and open space 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 landscaped 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 in the open spaces shall be completed prior to the buildings on adjoining plots are 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);
 - x. proposed culverts or other means providing vehicular or pedestrian traffic across watercourses or ditches;
 - xi. proposed cycle parking facilities; and
 - xii. proposed pieces of public art and/or sculpture (percent for art).

All hard and soft landscaping and open space 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 DEV2, DEV5, DEV6, DEV7 and DEV9 of the Midlothian Local Development Plan 2017 and national planning guidance and advice.*

9. Development shall not begin on an individual phase of development (identified in compliance with condition 3 and the masterplan) until an application for approval of matters specified in

conditions for the siting, design, use and external appearance of all buildings 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 DEV2, DEV5 and DEV6 of the Midlothian Local Development Plan 2017 and national planning guidance and advice.*

10. Development shall not begin on an individual phase of development (identified in compliance with condition 3 and the masterplan) 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. a programme for completion for the construction of access, roads, footpaths and cycle paths;
 - ii. existing and finished ground levels for all roads, footways and cycle ways in relation to a fixed datum;
 - iii. the proposed roads (including turning facilities), footpaths and cycle ways including suitable walking and cycling routes linking the new development with other areas of the Shawfair development;
 - iv. proposed visibility splays, traffic calming measures, lighting and signage;
 - v. proposed construction traffic access and haulage routes;
 - vi. proposed car parking arrangements;
 - vii. proposed public transport infrastructure including bus shelters and bus laybys; and
 - viii. a green travel plan designed to promote walking, cycling and the use of public transport.

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.*

11. Development shall not begin on an individual phase of development (identified in compliance with condition 3 and the masterplan) until an application for approval of matters specified in conditions for a

scheme to deal with any contamination of the site and/or previous mineral workings has been submitted to and approved by the planning authority. The scheme shall contain details of the proposals to deal with any contamination and/or previous mineral workings and include:

- i. the nature, extent and types of contamination and/or previous mineral workings on the site;
- ii. measures to treat or remove contamination and/or previous mineral workings to ensure that the site is fit for the uses hereby approved, and that there is no risk to the wider environment from contamination and/or previous mineral workings originating within the site;
- iii. measures to deal with contamination and/or previous mineral workings encountered during construction work;
- iv. the condition of the site on completion of the specified decontamination measures; and
- v. details of how mine water is kept separate to SUDS ponds and wetlands.

Before any part of the site is occupied for commercial purposes, the measures to decontaminate the site shall be fully implemented as approved by the planning authority.

Reason: *To ensure that any contamination on the site is adequately identified and that appropriate decontamination measures are undertaken to mitigate the identified risk to site users and construction workers, built development on the site, landscaped areas, and the wider environment.*

12. Development shall not begin on an individual phase of development (identified in compliance with condition 3 and the masterplan) until an application for approval of matters specified in conditions for a scheme of intrusive site investigations for the mine entry and shallow coal workings has been submitted to and approved by the planning authority. The scheme shall contain details of the proposals to deal with any coal mining legacy and include:
 - i. the submission of a report of findings arising from both schemes of intrusive site investigations;
 - ii. the submission of a layout plan which identifies an appropriate zone of influence for the mine entry, and the definition of a suitable 'no-build' zone;
 - iii. the submission of a scheme of treatment for the mine entry for approval; and
 - iv. the submission of a scheme of remedial works for the shallow coal workings for approval.

Development shall not be commenced until the approved treatment/remedial works have been implemented.

Reason: *The Coal Authority have requested the above condition in order to adequately address concerns regarding the stability and safety of the development site.*

13. Development shall not begin on an individual phase of development (identified in compliance with condition 3 and the masterplan) until an application for approval of matters specified in conditions setting out details, including a timetable of implementation, of high speed fibre broadband has 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 commercial building. 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.*

14. Development shall not begin on an individual phase of development (identified in compliance with condition 3 and the masterplan) until an application for approval of matters specified in conditions for a scheme of sustainability/biodiversity for the site, including the provision of bricks and boxes for bats and swifts, and biodiversity-friendly landscaping throughout the development has been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority.

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

15. Development shall not begin on an individual phase of development (identified in compliance with condition 3 and the masterplan) until an application for approval of matters specified in conditions for the provision and use of electric vehicle charging stations has been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority.

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

16. Development shall not begin on an individual phase of development (identified in compliance with condition 3 and the masterplan) until an application for approval of matters specified in conditions for a Construction Environment Management Plan (CEMP) has been

submitted to and approved in writing by the planning authority. The CEMP shall include:

- i. signage for the construction traffic, pedestrians and other users of the site;
- ii. controls on the arrival and departure times for the construction vehicles and for site workers;
- iii. details of piling methods (if employed);
- iv. details of earthworks;
- v. control of emissions strategy;
- vi. a dust management plan strategy;
- vii. waste management and disposal of material strategy;
- viii. a community liaison representative will be identified to deal with the provision of information on the development to the local community and to deal with any complaints regarding construction on the site;
- ix. prevention of mud/debris being deposited on the public highway; and,
- x. material and hazardous material storage and removal.

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

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

17. Development shall not begin on an individual phase of development (identified in compliance with condition 3 and the masterplan) until an application for approval of matters specified in conditions assessing flood risk and its mitigation has been submitted to and approved in writing by the planning authority. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be approved in writing with the planning authority.

Reason: *To address concerns in relation to Flood Risk and to ensure flood risk to the development can be mitigated and the development will not increase the risk of flooding elsewhere.*

18. Construction, engineering, site delivery and any other operations shall only take place between 0800 to 1900hrs Monday to Friday and 0800 to 1300hrs on Saturdays. Any amendment of these hours shall be agreed in writing with the planning authority prior to work taking place outwith the hours stated.
19. Construction, engineering, site delivery and any other operations shall comply with following noise level: 70 dB $L_{Aeq(12hr)}$ (façade), with the best practicable means (BPM) at all times in accordance

with BS5228 guidance. All fixed plant/machinery noise shall comply with the following:

Night time (22:00 – 07:00 hrs) NR25 (internal, open window)

Day time (07:00 - 22:00 hrs) - NR30 (internal, open window)

Reason for conditions 18 and 19: *To ensure noise assessment criteria are appropriate to protect residential amenity.*

20. Any hedging identified for removal shall, prior to its removal, either (i) be removed outwith the bird nesting period, or (ii) be surveyed for nesting birds by a qualified ecologist. The results of the nesting bird survey including any proposed mitigation shall be submitted to and approved by the planning authority in writing. If the survey is approved by the planning authority the hedging shall be removed before the beginning of the bird nesting period following the date of the survey, failing which the hedging shall not be removed.

Reason: *In the interests of safeguarding nesting birds, which are afforded protection in law and to ensure the development accords with policy ENV15 of the Midlothian Local Development Plan 2017 and national planning guidance and advice.*

21. Permitted development under Class 40, section (1) (e) of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 as amended, replaced or superseded by any subsequent regulation is expressly excluded within the site and no electricity substation shall be erected within the site unless details of its position and appearance have been submitted to and approved in writing by the planning authority.

Reason: *To ensure that any substation is unobtrusive and not unduly close to any occupied building.*

22. Unless otherwise approved in writing by the planning authority there shall be no storage nor industrial activity outwith any buildings erected within the Whitehills site. Any area so approved for external storage or industrial activity shall only be used for these purposes as an ancillary operation to the lawful use of the building within the same curtilage.

Reason: *In the interests of visual amenity.*

Peter Arnsdorf
Planning Manager

Date: 18 August 2020

Application No: 19/00748/PPP
Applicant: Shawfair LLP, 27 Silvermills Court, Henderson
Place Lane, Edinburgh

Agent: Colliers International, 1 Exchange Crescent,
Edinburgh

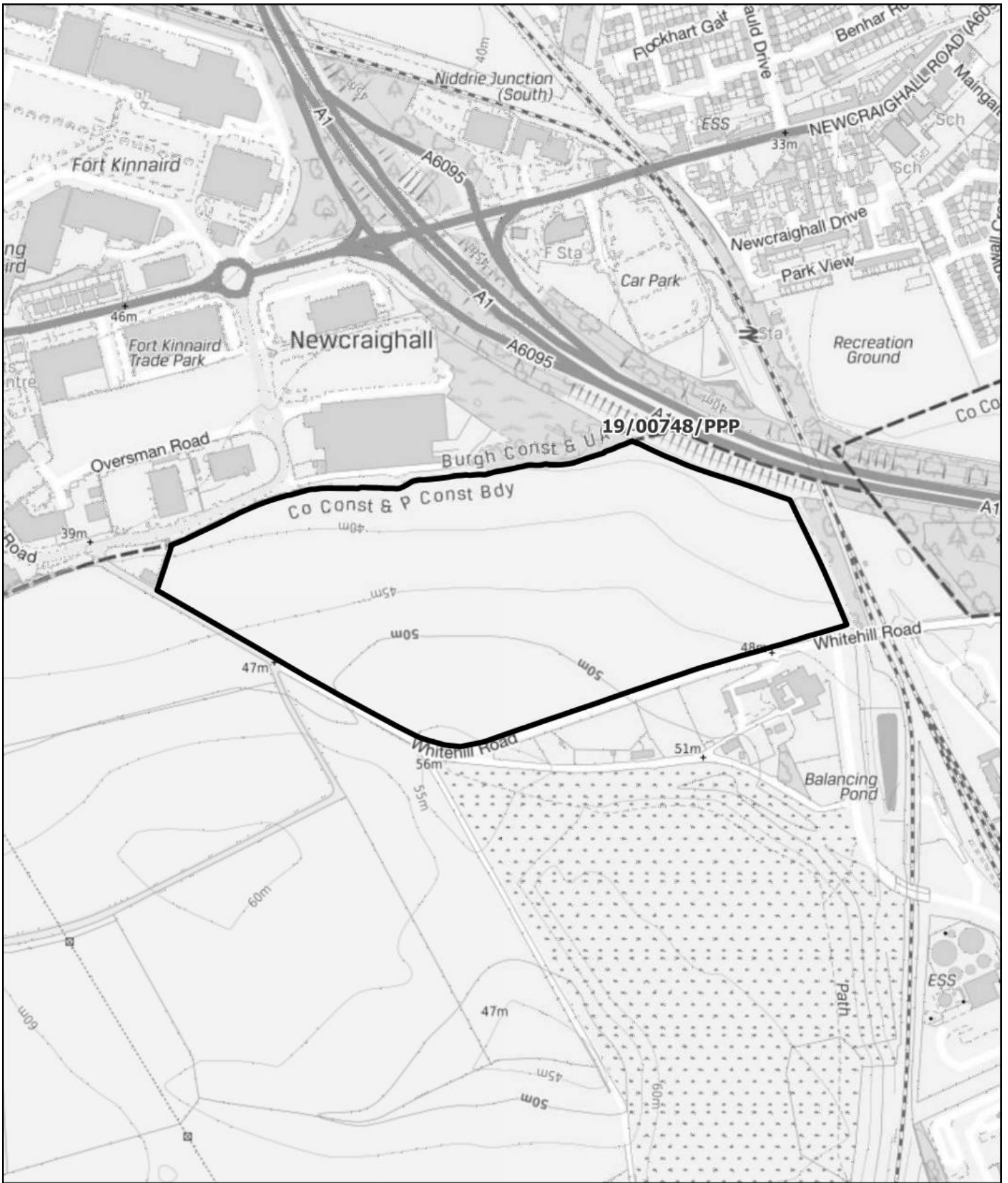
Validation Date: 17 September 2019

Contact Person: Duncan Robertson

Tel No: duncan.robertson@midlothian.gov.uk

Background Papers: 02/00660/OUT and 17/00650/S42

Attached Plans: Indicative Masterplan



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

Application for Planning Permission in Principle for Use Class 4- Business Use; Use Class 5- General Industry; Use Class 6- Storage and Distribution; Sui Generis- Home Improvement Showrooms/ Warehousing; Sui Generis- Builders Merchant; and Sui Generis- Car Showroom (amendment of acceptable uses of the site from Use Classes 4 and 5 approval by the grant of planning permission 02/00660/OUT)) at Whitehills, Whitehill Road, Millerhill, Dalkeith

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File No: 19/00748/PPP

Scale: 1:6,000
Page 91 of 106





*
CULVERT TO EXISTING BURN
SUBJECT TO SEPA CONSENT

ALL PLOTS TO BE UTILISED FOR
CLASS 4/5/6/3/1 GENERIS USES

— PLOT BOUNDARY (APPROXIMATE AREA IN ACRES)

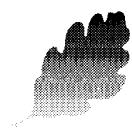
— SITE BOUNDARY

INDICATIVE SUDS

project	Whitehills, Eclinburgh	status	FINAL
client	Shawfair LLP		
job no	E1731	scale	1:2000@A3
dwg no	(SK)007	date	27.03.18
revision	A	drawn	AG

Indicative Masterplan





APPLICATION FOR PLANNING PERMISSION (20/00209/DPP) FOR CHANGE OF USE FROM PUBLIC HOUSE TO MIXED USE OF PUBLIC HOUSE/RESTAURANT AND HOT FOOD TAKEAWAY AND ASSOCIATED EXTERNAL ALTERATIONS INCLUDING INFILLING OF WINDOW OPENINGS AND FORMATION OF NEW WINDOW AND DOOR OPENINGS (RETROSPECTIVE) AT 119 HUNTERFIELD ROAD, GOREBRIDGE

Report by Chief Officer Place

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1 The application is for the change of use from public house to a mixed use of public house/restaurant and hot food takeaway and associated external alterations including infilling of window openings and formation of new window and door openings (retrospective) at 119 Hunterfield Road, Gorebridge. There have been 53 representations and consultation responses from the Council's Policy and Road Safety Manager and the Council's Environmental Health Manager.**
- 1.2 The relevant development plan policies are DEV2 and ENV18 of the Midlothian Local Development Plan 2017. At its meeting of 20 November 2018 the Committee adopted Supplementary Guidance on Food and Drink and Other Non-Retail Uses in Town Centres as the detailed policy position for these uses.**
- 1.3 The recommendation is to grant planning permission subject to conditions, including a condition restricting the hot food takeaway component of the application.**

2 LOCATION AND SITE DESCRIPTION

- 2.1 The application site comprises a single storey detached building which was historically used as a public house. The business is currently closed whilst internal works are undertaken and because of the COVID-19 public health emergency.**
- 2.2 The application premises comprises a T-plan building with a pitched roof, a flat roofed extension to the northern gable end and a small flat roof extension to the rear. The application building is primarily finished in an off-white render, with a painted dark brown base course and a slate pitched roof.**

- 2.3 There is associated land to the rear and side of the application premises that is enclosed by a high boundary fence. A section of this land has been used as a smoking area/beer garden associated with the main building.
- 2.4 The site is located in an area comprising a mix of retail and residential uses.

3 PROPOSAL

- 3.1 Retrospective planning permission is sought for the change of use from a public house to a mixed use premises, comprising a public house/restaurant and hot food take away.
- 3.2 The applicant's supporting statement states that the applicant has occupied the site for '*five years or so*'. The business is currently closed until the internal and external alterations have been completed.
- 3.3 The proposed hours of operation of the public house/restaurant are:
Sunday – Thursday 09.00 – 00.00
Friday – Saturday 09.00 – 01.00

The proposed hours of operation of the hot food takeaway are:
Monday – Sunday 16.00 – 23.00

The operating hours for a delivery service may differ from the hot food takeaway but remain within the hours of operation of the public house/restaurant.

- 3.4 Retrospective planning permission is also sought for external alterations to the building which have been partially completed. These works comprise the infilling of a window opening and alterations to a second window opening so as to form a large door opening with side panel windows. The proposed opening is to be installed with double leaf hard wood framed glazed doors with glazed side panels. The proposed door opening provides a separate access to the hot food takeaway 'side' of the building enabling this component of the business to operate independent of the pub/restaurant. The external alterations are to the flat roofed part of the building.
- 3.5 Whilst the public house/restaurant and the hot food takeaway have separate entrances there is a shared kitchen (which is planned to be enlarged) within the building. A new roof mounted outlet grille for the kitchen canopy extractor fan and roof mounted outlet grille for the fryer extractor fan are to be installed on top of the flat roof part of the building.
- 3.6 The supporting statement also outlines that the proposal would include a takeaway delivery service. It is considered that the delivery of food

from the restaurant would be an incidental use associated with the restaurant. The delivery of food served within the restaurant does not require separate planning permission provided it does not become the main focus of the business operations at the site.

- 3.7 The application is accompanied by:
- A supporting statement;
 - An operating plan;
 - A letter from the secretary/treasurer of the Arniston Improvement Trust (landlord); and
 - Appropriate plans/drawings.
- 3.8 The applicant also submitted four separate letters (from four separate properties with a total of eight signatures) of support for the application premises operating as a public house/restaurant and takeaway. The letters expressed concern over the premises re-opening solely as a public house due to the impact on neighbour amenity.

4 BACKGROUND

- 4.1 In December 2019 planning application 19/00813/DPP for the change of use from public house to restaurant and hot food takeaway and associated external alterations including infilling of window openings and formation of new window and door openings (retrospective) was withdrawn by the applicant.
- 4.2 In 2013 planning application 13/00402/DPP for the installation of replacement windows and infilling of existing door opening (retrospective) was granted planning permission. The officer's report states that the use of the premises is a public house.
- 4.3 In 2008 planning application 08/00429/FUL for the formation of door opening, alterations to windows and formation of hardstanding and erection of fence (part retrospective) was granted planning permission subject to conditions.
- 4.4 In 2005 planning application 05/00391/FUL for alterations and the extension to the public house was granted planning permission.
- 4.5 The current application has been called to Planning Committee for consideration by Councillor Johnstone due to the level of negative comments regarding the proposal from members of the public.
- 4.6 The current planning application is the result of an enforcement investigation relating to the unauthorised change of use to hot food takeaway (sui generis use) and alterations to the building.

5 CONSULTATIONS

- 5.1 The Council's **Policy and Road Safety Manager** does not object to the application, but notes that while initially having concerns over the potential impact of the hot food takeaway element of this operation on the existing parking situation, the unit appears to have been operating for some time with no record of any major parking or road safety issues arising.
- 5.2 The Council's **Environmental Health Manager** advised that the consultation response provided for the previous planning application, 19/00813/DPP (which was withdrawn), was still relevant and applicable to this proposal. The consultation response raised concerns in relation to the introduction of a hot food takeaway use in close proximity to existing residential properties, as there is the potential for causing disturbance to neighbouring residents due to noise from plant and loss of amenity due to odour from cooking effluvia. Overall, the Council's Environmental Health Manager does not object to the application subject to conditions being attached to any grant of planning permission in relation to noise and ventilation.

6 REPRESENTATIONS

- 6.1 There have been 41 representations objecting to the application and 12 supporting it, all of which can be viewed in full on the online planning application case file. The concerns and comments noted within the submitted representations will be addressed within the planning issues section of this report.
- 6.2 A summary of the objections are as follows:
- The building was gifted to the community and should be used for a community use;
 - The building should be retained as a public house;
 - The building should be a Gothenburg public house with profits going to the community;
 - The building should be used as a community facility;
 - There is an over provision of hot food takeaways in the area;
 - The formation of an additional entrance will result in the hot food takeaway operating independently from the restaurant/public house;
 - The time the business has been operating without relevant permissions;
 - Works have taken place without planning permission;
 - The building is in a poor state;
 - The use of the building is limited to being a public house and cannot be used as a takeaway outlet as per the deeds;
 - There is significant pressure on the NHS as a result of poor health from a poor diet including from fast food restaurants;

- The adverse impact upon the character and external appearance of historic building of Gorebridge;
- The building should be listed or in a conservation area;
- The works impact on the external appearance of the building;
- Parking and road safety;
- The proposal will result in anti-social behaviour with youths gathering outside; and
- The proposal will result in an increase in litter.

6.3 The supporting representations can be summarised as follows:

- Gorebridge needs investment and jobs to be created and this proposal provides it;
- The development provides much needed facilities for the growing community;
- The proposal will provide somewhere for people to eat and socialise;
- Support the re-opening of the business due to the quality of the food;
- The re-instating of a pub would be no greater an advantage to the community than the proposal; and
- If the use was just a public house it would encourage alcohol abuse.

7 PLANNING POLICY

7.1 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan (June 2013) and the Midlothian Local Development Plan 2017 (MLDP). The following policies are relevant to the proposal:

Midlothian Local Development Plan 2017 (MLDP)

7.2 Policy **DEV2: Protecting Amenity within the Built-Up Area** states that development will not be permitted where it would have an adverse impact on the character or amenity of a built-up area.

7.3 Policy **ENV18: Noise** states that the Council will seek to prevent noisy development from damaging residential amenity or disturbing noise sensitive uses. Where new developments with the potential to create significant noise are proposed, these may be refused or require to be modified so that no unacceptable impact at sensitive receptors is generated.

Supplementary Guidance: Food and Drink and Other Non-Retail Uses in Town Centres

7.4 Hot food takeaways will not be permitted in premises where there are residential properties on the floor or floors above or immediately on

either side, and on the floors above such adjacent properties. The only exception to this is where it can be demonstrated that the hot food takeaway will have no adverse impact on neighbouring residential amenity.

- 7.5 Consideration will be given to the cumulative effect of additional hot food takeaway establishments on the vitality and viability of the town centre. The dominance of any one use in town centres could have a detrimental impact on their health and character. Planning permission will not be granted if this is assessed to be seriously harmful to the surrounding town centre. Hot food takeaways in town centres will not be supported where 50% or greater of ground floor commercial units within 100 metres of the unit are in use as hot food takeaways.
- 7.6 The adopted supplementary guidance states that the proximity of hot food takeaways to secondary schools encourages school pupils to eat unhealthy food. It is recognised that the planning system is limited in restricting access to unhealthy foods, as it is not possible to restrict the sale, from shops, of unhealthy foods to school pupils. However, it is reasonable and appropriate for the Council to prevent provision of new premises (including temporary vehicles/structures) and the change of use of premises to hot food takeaways on account of the adverse impact that they have on the diets of young people and the health of communities. Hot food takeaways will not be permitted where they fall within 400 metres of the curtilage of a primary or secondary school.
- 7.7 Planning applications for class 3 uses, (food and drink as defined in the Town and Country Planning (Use Classes)(Scotland) Order 1997), for the consumption of food and drink on the premises will be considered on their individual merits, taking the following factors into account: the size of the proposed establishment; the relationship to adjoining uses particularly residential properties; its likely traffic generation and parking provision; and, its acceptability in terms of other relevant planning policies of the MLDP.
- 7.8 The supplementary guidance states that conditions will be imposed, as appropriate, restricting the hours of opening of the premises; requiring the provision of adequate ventilation equipment; or otherwise as necessary to ensure that the use does not have an adverse environmental impact on its neighbourhood.
- 7.9 Such proposals may include an element of takeaway trade provided that it remains clearly ancillary to the principal use of the premises for the consumption of food and drink on the premises. This is unless they fall within the 400m 'no hot food takeaway buffer' around primary and secondary schools or there are other material planning concerns which require there to be no takeaway element, such as road safety.
- 7.10 Planning applications which would lead to the loss of a public house from a town centre must demonstrate that the premises are no longer

viable as a public house and that the replacement use will either protect or enhance the vitality and viability of the town centre by providing a facility with similar opportunities for social interaction.

8 PLANNING ISSUES

8.1 The main issue to be determined is whether the proposal accords with the development plan unless material planning considerations indicate otherwise. The representations and consultation responses received are material considerations.

8.2 The proposed change of use seeks to reuse an existing building that was historically a public house. The applicant's supporting statement states the current business has been operating at the premises for '*five years or so*'. However the mixed use does not have the benefit of planning permission and is therefore unauthorised. The application is retrospective. The premises is currently closed until refurbishment works have been completed.

Principle of the Public House/Restaurant

8.3 The food and drink use class (class 3) groups together a range of uses where food or drink is sold for consumption on the premises - for example restaurants, cafes and snack bars. The building is currently a public house which is a *sui generis* use which allows for the premises to operate primarily as a public house where the primary purpose is for the sale of liquor for consumption on the premises. However, it is noted that the current public house use would also allow for the sale of food for the consumption on the premises at an ancillary level to the public house.

8.4 Currently, the premises could re-open as a public house and offer food for consumption on the premises at an ancillary level without the requirement for any planning permission. Therefore, the use of the building as a restaurant and public house is already partly established.

8.5 It is considered that the use of the building as a restaurant and public house is of a similar character to the existing permitted use. The proposal to operate a public house/restaurant would not have an adverse impact on the amenity of the area. There are no material planning considerations that would otherwise warrant the refusal of the premises being used as a restaurant and public house.

Principle of Hot Food Takeaway

8.6 With regards to the proposed food takeaway element of the proposal, hot food takeaways are classed as a *sui generis* use and raise different environmental issues, such as litter, noise, longer opening hours and extra traffic and pedestrian activity, from those raised by other class 3 uses. Furthermore, the Council is concerned that the proximity of hot

food takeaways to schools encourages school pupils to eat unhealthy food.

- 8.7 Hot food takeaways will not be permitted in premises that are located within residential areas where there are residential properties above or immediately on either side. The premises are located on the corner of a residential area with neighbouring dwellings located in close proximity adjacent to the application site; the closest flatted dwellings are approximately 7 metres to the west, rear of the application premises.
- 8.8 A hot food takeaway in this location may result in a harmful loss of residential amenity. As noted above, the Council's Environmental Health Manager offered no objection to the proposed change of use subject to conditions being attached in relation to noise and ventilation. Should the principle of a hot food takeaway be considered acceptable then conditions could be attached, as appropriate, restricting the hours of opening of the premises; requiring the provision of adequate ventilation equipment; or otherwise as necessary to ensure that the use does not have an adverse environmental impact on its neighbourhood. Therefore, the proposed hot food takeaway will not result in a harmful loss of residential amenity.
- 8.9 Hot food takeaways in town centres will not be supported where 50% or greater of ground floor commercial units within 100 metres of the unit are in use as hot food takeaways. Whilst the application site is not located within a town centre, there is still a requirement to ensure that the proposed hot food takeaway does not result in over-provision. There are five units located within 100 metres of the application site; a retail shop, a restaurant/takeaway, a bakery, a chemist and a betting office which was recently granted planning permission to change its use to a gym. Of the commercial units at this part of Gorebridge, less than half are in food provision use. Given the provisions of the adopted supplementary guidance, the proposed hot food takeaway would not result in 50% or more of the units being used as a hot food takeaway and so it is considered that the proposal would not result in the over-provision of this type of use in this part of Gorebridge.
- 8.10 The application site is located approximately 130 metres from the curtilage of Gorebride Primary School. The supplementary guidance is clear in stating that hot food takeaways within 400 metres of the curtilage of a primary school will be not granted planning permission. This is to address the adverse impacts such uses have on the diets of young people and the health of communities. The use of the application site as a hot food takeaway, even in part, is not an acceptable use for the premises due to the close proximity to Gorebridge Primarily School and the resultant non-compliance with the adopted supplementary guidance.
- 8.11 Within the applicant's supporting statement it is noted that the application is for a public house/restaurant with the hot food takeaway operating on an ancillary basis. It is proposed that the hot food

takeaway would not operate as a separate business and this is further ensured by the title deeds. The supporting statement also noted that the primary school that is located within 400 metres of the application site does not allow for pupils to leave at lunch time and that the operating hours for the takeaway are outwith the school's hours. Whilst this is a material consideration, the recently adopted supplementary guidance clearly states that hot food takeaways, even on an ancillary basis, will not be permitted where they fall within 400 metres of the curtilage of a primary or secondary school. There is no policy support for a hot food takeaway to operate in any capacity at the application site. Therefore, a condition will be used to ensure that the premise does not operate as a hot food takeaway in any capacity.

Principle of Delivery of Food

- 8.12 Within the applicant's supporting statement, it is stated that the proposed change of use would include the delivery of food from the premises. The delivery of food from restaurants is an evolving area given the growth of food delivery platforms across the country. Whilst the hot food takeaway use is not acceptable and, in this case, it is recommended that it be refused by the use of a planning condition it is considered that the delivery of food served within the restaurant would be an incidental use associated with the restaurant. Therefore, the delivery of food served within the restaurant does not require separate planning permission.

Parking and Road Safety

- 8.13 There is no provision for off-street parking and nor is it possible to provide any off-street parking due to the lack of availability of land. The Council's Policy and Road Safety Manager did not object to the application, but noted that while initially having concerns over the potential impact of the hot food takeaway element of this operation on the existing parking situation, the unit appears to have been operating for quite some time with no record of any major parking or road safety issues arising. Therefore, there are no road safety concerns as a consequence of the development proposal, although this has been raised as an issue of concern by representors.

External Alterations

- 8.14 The proposed external alterations seek to form a second entrance which will provide a separate access to the proposed hot food takeaway. Whilst the hot food takeaway is considered to be unacceptable in planning terms, this does not, in itself, warrant the refusal of the external alterations. The interior of the building can be reconfigured without the requirement of planning permission.
- 8.15 The proposed external alterations are limited to the flat roof part of the building which is a later addition. The application building is not a listed

building nor is it located within a conservation area. The in-filling of a window and formation of a double leaf door opening with glazed side panels will not have an adverse impact upon the character or appearance of the building or area. The flat roofed extension is an obvious later addition with different window dimensions and design to the original building and, as such, the installation of a double leaf hardwood framed glazed door with glazed side panels will have a negligible impact on the character of the building. Details of the external colour of the double leaf doors and side panels have not been detailed within the submitted plans. A condition can be attached to any grant of planning permission requiring this detail to be submitted to the planning authority for prior written approval. Overall, the external alterations do not have a detrimental impact on the character of the surrounding area and do not impact on the amenity of any neighbouring properties.

Other matters

- 8.16 All material planning considerations raised by the representors are addressed above or as follows.
- 8.17 Concerns relating to the ownership or matters within the title deeds are not material planning considerations. These are separate legal matters outwith the assessment of this planning application.
- 8.18 Some representors make suggestions on how the building should be used. Again, this is not a material planning consideration. The planning application has been assessed on the basis of the proposals as submitted.
- 8.19 Concerns relating to the impact of the proposed development upon the character and appearance of the building were assessed above. It is noted that some representors felt that the building should be listed or that the building should be in a conservation area. It is noted that the building is not listed nor is it located within the conservation area and therefore there is no requirement for listed building consent or conservation area consent. Furthermore, it is noted that an application to designate the application property as a listed building was submitted to Historic Environment Scotland. Historic Environment Scotland concluded that whilst the building is of local and social interest, it is not of sufficient special architectural or historic interest which would result in it being listed. Public houses of the 19th and 20th centuries are a common building type in Scotland and this example has been substantially altered since its original construction.
- 8.20 Concerns regarding potential anti-social behaviour as a result of the proposed use are speculation and are not a material planning consideration.

- 8.21 Concerns relating to litter and bin storage at the site are a material consideration and should planning permission be approved for the hot food takeaway, further details of a waste management plan would be required.

9 RECOMMENDATION

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

The development will not have an adverse impact on the character of the area or on the amenity of neighbouring land and buildings and therefore complies with policies DEV2 and ENV18 of the Midlothian Local Development Plan 2017 and the adopted Supplementary Guidance for Food and Drink and Other Non-Retail Uses in Town Centres.

Subject to the following conditions:

1. No hot food takeaway use or activity, either as a primary or ancillary use, shall take place from the premises subject to the application to which this condition is attached.

Reason: *The application premises is located within 400 metres of the curtilage of Gorebridge Primary School and, as such, the hot food takeaway element of the proposal does not comply with adopted policy; so as to ensure that the planning authority retains effective control over the use of the premises in order to comply with the Supplementary Guidance for Food and Drink and Other Non-retail Uses in Town Centres in relation to public health. The use of the premises as a hot food takeaway raises significant road safety concerns.*

2. Notwithstanding the plans hereby approved, details of the external colour of the double leaf door and side panel frames shall be submitted to the planning authority for prior written approval. Thereafter these features shall be installed as approved by the planning authority.

Reason: *In the interest of protecting the character and appearance of the application building and area so as to comply with policy DEV2.*

3. The design and installation of any plant, machinery or equipment shall be such that the combined noise level complies with NR25 (or NR20 if the noise is tonal) when measured within any living apartment and no structure borne vibration is perceptible within any living apartment.

4. Within three month from the date of this decision notice, details of the extract ventilation system, including a drawing showing its

location, external appearance and finish shall be submitted to and approved in writing by the planning authority. The use shall not start trading until the approved details are operational in accordance with that approved in writing by the planning authority.

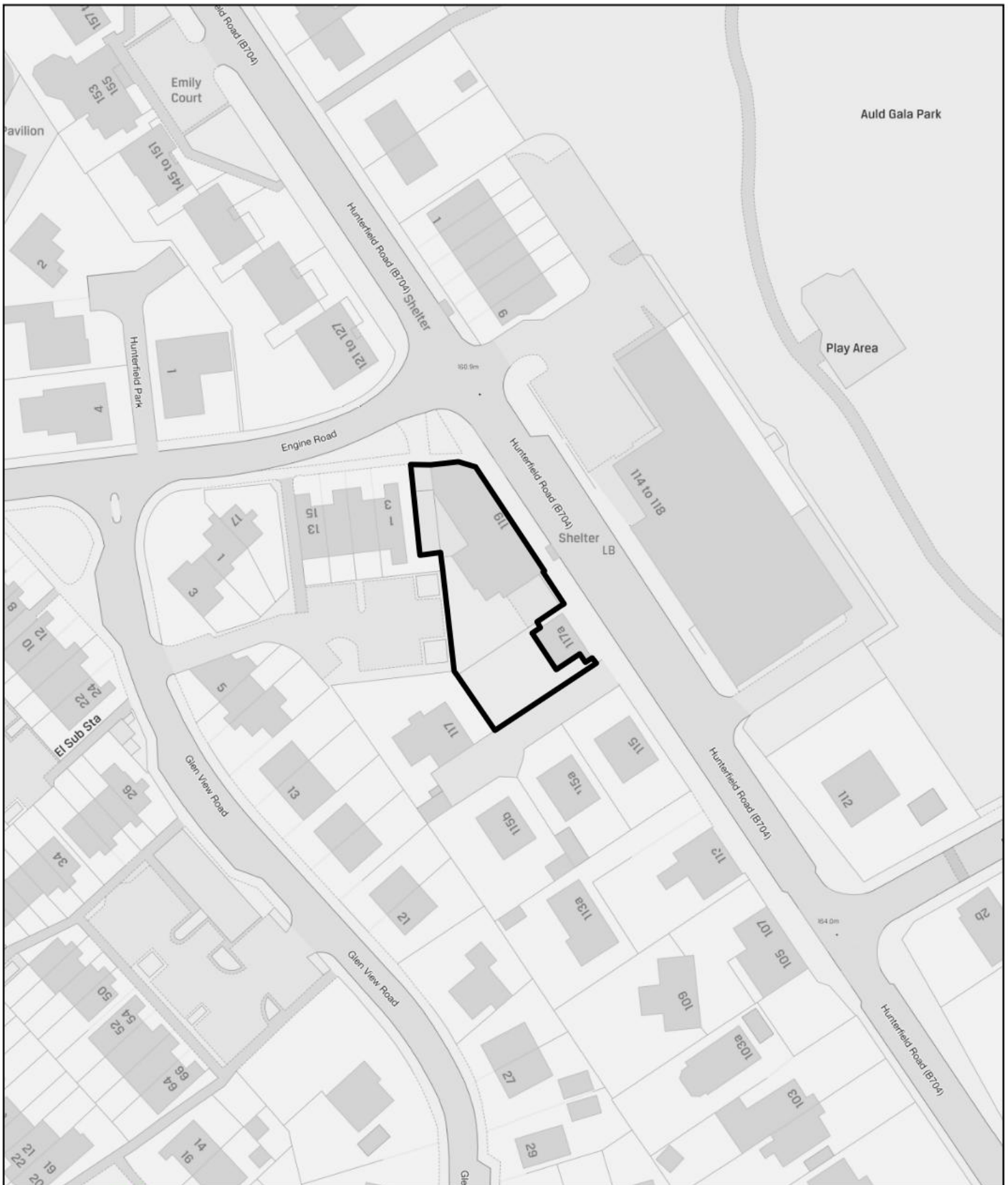
5. The design of the extract ventilation system approved in terms of condition 4 shall either ensure that:
 - cooking effluvia are ducted to above the level of the adjacent pitched roof of the application premises; or
 - effluvia are expelled with a minimum upwards velocity of 15 metres per second.

Reason for conditions 3 - 5: To safeguard the amenity of the surrounding area, so as to comply with adopted policy ENV18.

**Peter Arnsdorf
Planning Manager**

Date: 18 August 2020

Application No: 20/00209/DPP
Applicant: Mr Paolo Morellie
Agent: N/A
Validation Date: 17 March 2020
Contact Person: Whitney Lindsay
Tel No: 0131 271 3315
Background Papers: 19/00813/DPP, 13/00402/DPP, 08/00429/FUL,
05/00391/FUL
Attached Plans: Elevations



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

Change of use from public house to mixed use of public house/restaurant and hot food takeaway and associated external alterations including infilling of window openings and for motion of new window and door openings (retrospective) at 119 Hunterfield Road, Gorebridge, EH23 4TU

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File No: 20/00209/DPP

Scale: 1:1,000
Page 105 of 106

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Client: 2000200188

P. Morelli Esq.,
Proposed Alterations to
The Hunterfield Tavern,
119 Hunterfield Road, Gorebridge.

Project:
Proposed Alterations to
The Hunterfield Tavern,
119 Hunterfield Road, Gorebridge.

Title:
Existing North & East Elevations
Proposed North & East Elevations

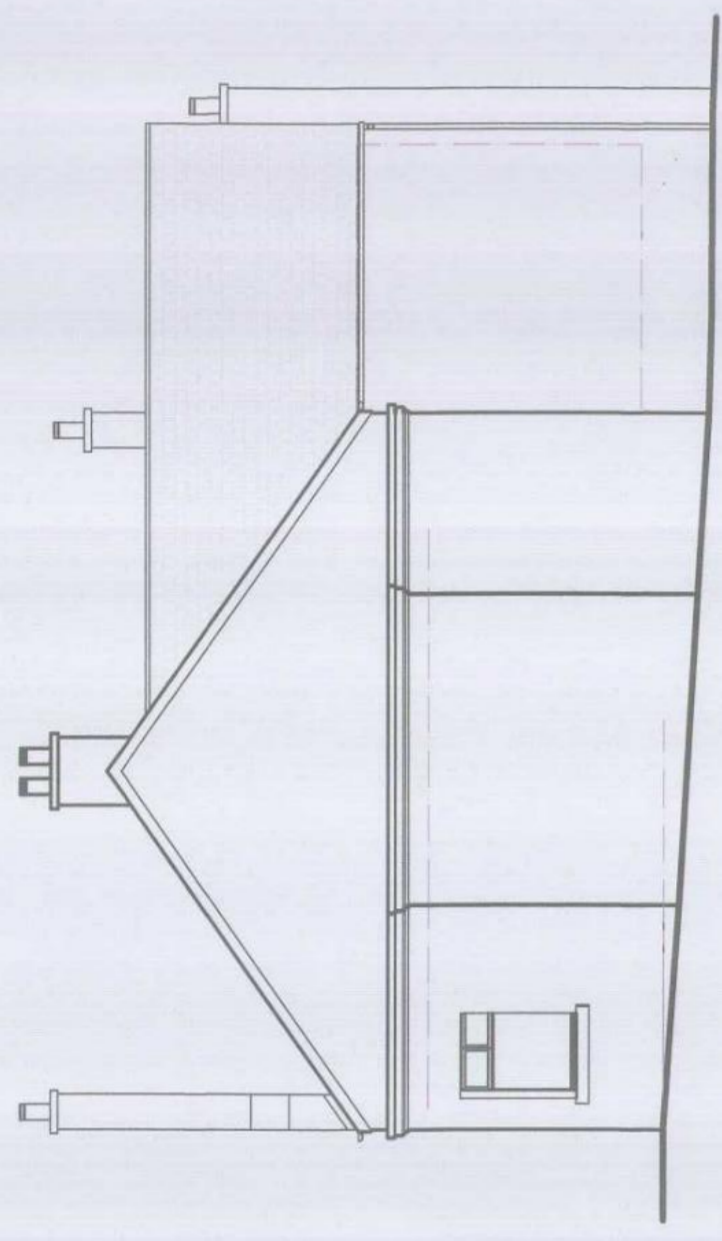
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Drawn by:
H.D.J.A.

Drawing No.:
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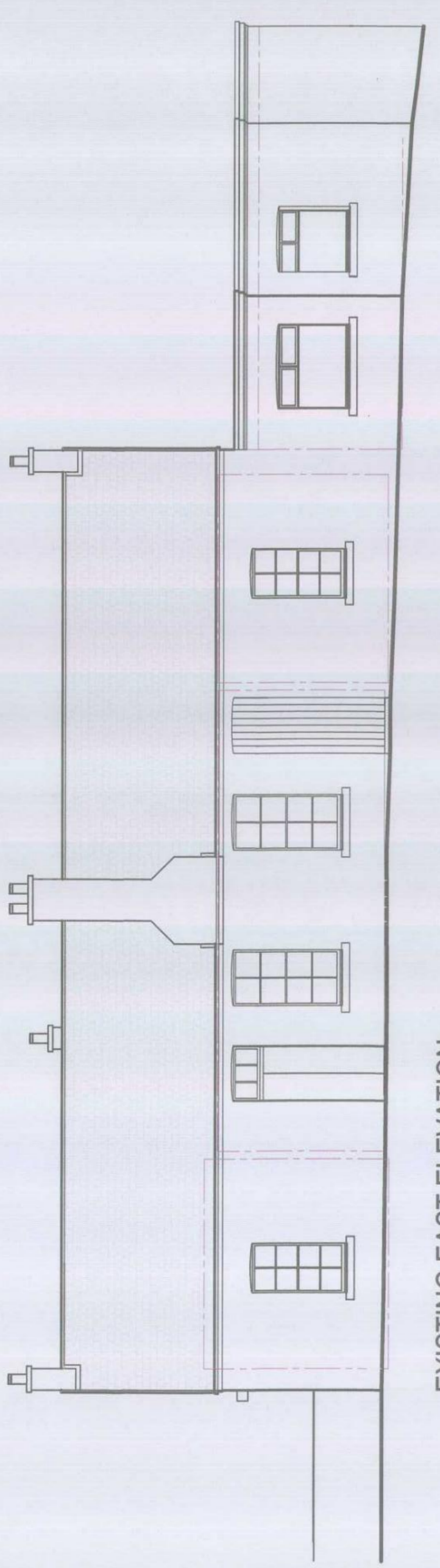
IN-BUILT DESIGN
30 Bruntsfield Gardens,
Edinburgh, EH10 4DZ.
Tel. 0131 228 1755
Fax. 0131 288 1765

We hereby certify that this is a true copy of the plan,
referred to in the Application for Planning Permission /
Building Warrant.

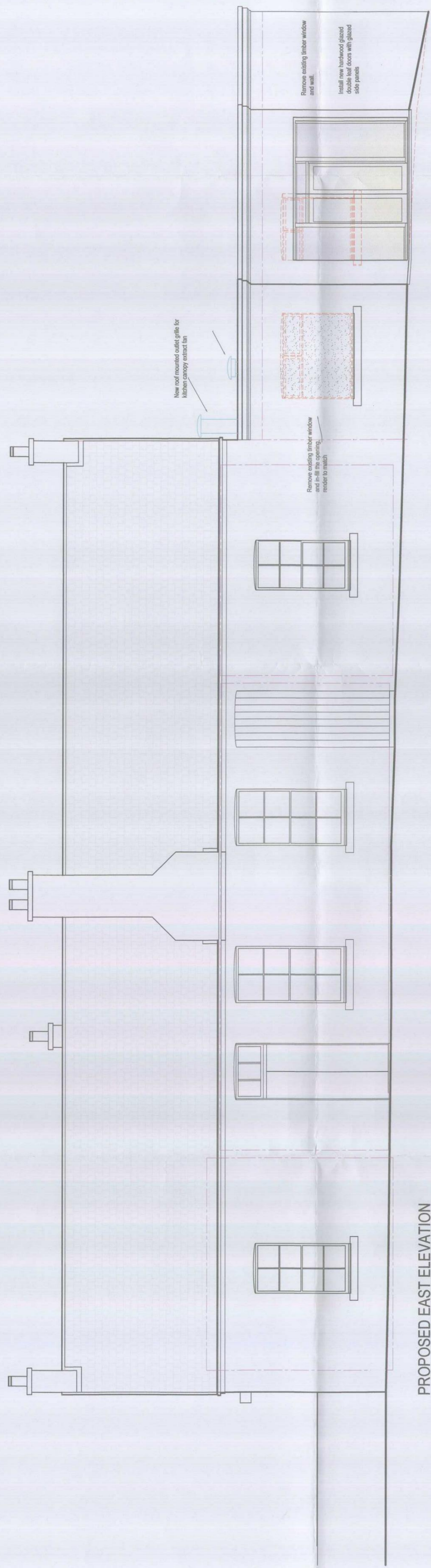
Date: _____
Signed: _____
Rev. A: 28.10.19 Air extract valves added



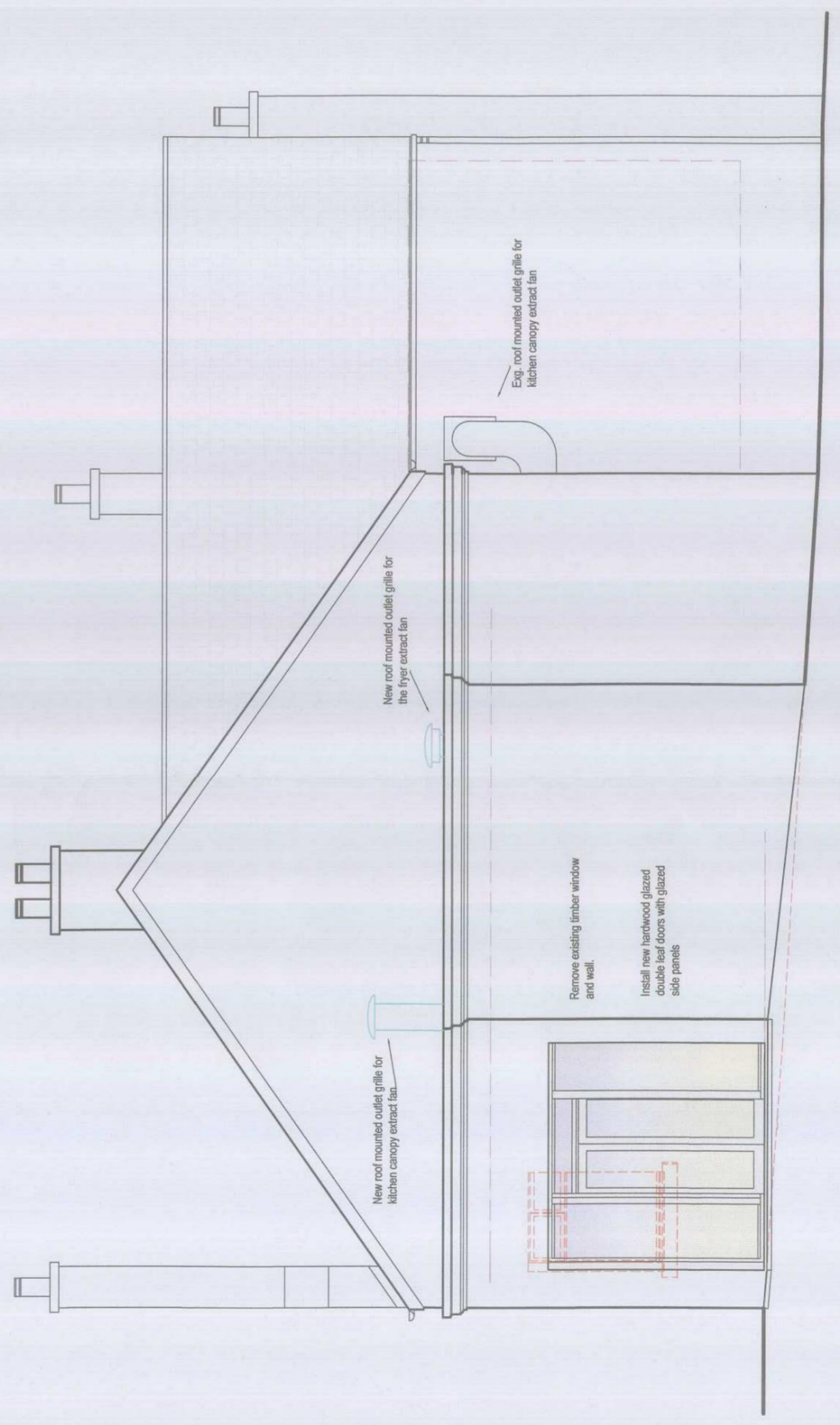
EXISTING NORTH ELEVATION



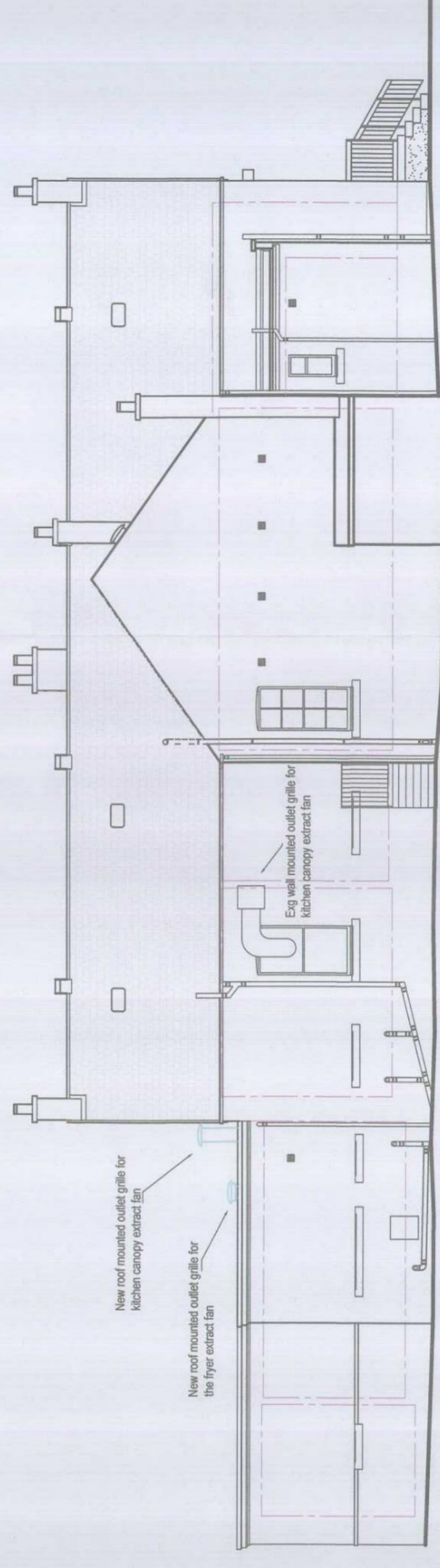
EXISTING EAST ELEVATION



PROPOSED EAST ELEVATION



PROPOSED NORTH ELEVATION



PROPOSED WEST ELEVATION

This drawing was prepared to obtain Planning Permission and / or Building Control and the Firm's liability ends on receipt of a decision from the Planning and / or Building Control Departments.
Contractor not to deviate from the approved drawing, without informing the office.
Contractor to verify all dimensions and levels prior to commencing or starting work to satisfy himself as to the accuracy of the drawings.
All sizes and dimensions to be verified on site.
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