



APPEALS AND LOCAL REVIEW BODY DECISIONS

Report by Director of Education, Communities and Economy

1 PURPOSE OF REPORT

- 1.1 This report informs the Committee of notices of reviews determined by the Local Review Body (LRB) at its meeting in March 2019; and two appeal decisions received from Scottish Ministers.

2 BACKGROUND

- 2.1 The Council's LRB considers reviews requested by applicants for planning permission, who wish to challenge the decision of planning officers acting under delegated powers to refuse the application or to impose conditions on a grant of planning permission.
- 2.2 The decision of the LRB on any review is final, and can only be challenged through the Courts on procedural grounds.
- 2.3 Decisions of the LRB are reported for information to this Committee.
- 2.4 In addition, this report includes two decisions on appeal which have been considered by Scottish Ministers.

3 PREVIOUS REVIEWS DETERMINED BY THE LRB

- 3.1 At its meeting on 5 March 2019 the LRB made the following decisions:

	Application Reference	Site Address	Proposed Development	LRB Decision
1	18/00581/DPP	Land at 39 The Brae, Auchendinny, Penicuik	Erection of dwellinghouse	Permission refused at LRB meeting of 05.03.2019
2	18/00747/S42	Sainsburys, Straiton Mains, Loanhead	Application to remove a condition from a grant of planning permission requiring landscaping	Permission refused at LRB meeting of 05.03.2019
3	18/00750/DPP	36 Cowden Crescent, Dalkeith	Formation of driveway and erection of retaining walls	Permission refused at LRB meeting of 05.03.2019

4 APPEAL DECISIONS

- 4.1 Appeals against refusals of planning permission for two applications forming a single development proposal for the erection of four dwellinghouses (one application for a single dwellinghouse and the second for three dwellinghouses) on land to the north, south and west of Airybank, Quarrybank, Cousland have been upheld subject to securing developer contributions on the three dwellinghouse application. The Reporter appointed by the Scottish Ministers concluded that the proposed development is compatible with its setting and that it “would not detract materially from the existing character and amenity of the area”. A copy of the appeal decisions accompanies this report.

5 RECOMMENDATION

- 5.1 The Committee is recommended to note the decisions made by the Local Review Body at its meeting in March 2019 and the appeal decisions by Scottish Ministers.

Dr Mary Smith
Director of Education, Communities and Economy

Date: 22 March 2019
Contact Person: Peter Arnsdorf, Planning Manager
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Background Papers: LRB procedures agreed on the 13 June 2017.



Decision by Richard Hickman, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-290-2049
- Site address: Land adjoining Airybank House, Quarrybank/Kilns Road, Cousland, EH22 2QP
- Appeal by Midlothian Developments against the decision by Midlothian Council
- Application for planning permission 18/00592/DPP dated 13 August 2018 refused by notice dated 22 November 2018
- The development proposed: Erection of one dwellinghouse
- Application drawings : See list in annex B at the end of this decision notice
- Date of site visit by Reporter: 4 February 2019
- A claim for an award of expenses against the council is the subject of a separate decision.

Date of appeal decision: 12 March 2019

Decision

I allow the appeal and grant planning permission subject to the conditions listed in annex A below. Attention is drawn to the advisory notes at the end of the notice.

Reasoning

1. I am required to determine this appeal in accordance with the development plan unless material considerations indicate otherwise.
2. Airybank House is a large fairly new house located on the northwest side of the village of Cousland. It occupies a spacious site, with a line of trees along the northwest perimeter where it adjoins farmland. The house proposed in this application would occupy part of the open ground curving round to the west and north of the house. A separate application for three detached houses on the remaining parts of this area has been refused, and is the subject of a separate appeal (ref PPA-290-2048).
3. The proposal is for a large mainly two storey house (type Y) that would provide 4 bedrooms as well as extensive public rooms. It would be located near the centre of the open ground referred to above, with another new house proposed to the northeast and two to the south. All four new houses would share the access that already serves Airybank House.
4. The reasons for refusal are :



(a) The proposed house is incompatible with the edge-of-village setting and the wider settlement of Cousland due to the scale, massing, form and design and would consequently have a detrimental impact on the character and appearance of the area, contrary to policies DEV2 and STRAT2 of the Midlothian Local Development Plan 2017 and Scottish Planning Policy.

(b) It has not been demonstrated to the satisfaction of the council that the proposed development would not have a detrimental impact on European Protected Species and is therefore contrary to policy ENV15 of the Midlothian Local Development Plan 2017.

5. Representations received from neighbouring proprietors, and on behalf of the Cousland Village Hall Association Committee, object to the proposal on a number of grounds, including that :

- The scale and design of the proposal does not reflect the character of the area and would be out of keeping with the village;
- The new houses would be too close together, and to existing houses, giving rise to problems of overlooking and loss of privacy;
- Potential effects on trees and wildlife, including protected species;
- Unstable ground conditions on the site;
- Loss of rural view;
- A community survey shows opposition to two storey houses, which are considered to be out of character with the village.

6. Other representations do not oppose the principle of residential development, provided that it respects the character of the village, or give support.

7. Policy DEV2 (Protecting Amenity within the Built-Up Area) states that development within existing built up areas will be permitted unless it is likely to detract materially from the existing character and amenity of the area. Policy STRAT2 (Windfall Housing Sites) states that development on infill sites within built up areas will be permitted provided that five specified criteria are met. These cover safeguarding of valuable public and private space; avoiding conflict with established land uses in the area; that it has regard to the character of the area in terms of scale, form, design and materials; meets traffic and parking requirements; and accords with other relevant policies and proposals, covering a wide range of matters including a requirement for developer contributions to ensure that appropriate provision is made where a need arises or for the provision of essential infrastructure to enable new development to take place, as well as matters relating to the layout and landscaping of new development.

8. Policy ENV15 (Species and Habitat Protection and Enhancement) precludes development that would affect a species protected by European or UK law unless (among other things) a species protection plan has been submitted which includes details of possible adverse impacts of development, and appropriate and effective mitigation is proposed and agreed; and in the case of European Protected Species, the development is not detrimental to the maintenance of the species at a favourable conservation status.

9. These policies embrace most of the matters raised in the representations. Thus the determining issues in this appeal are whether or not the proposal would be in accordance

with the policies cited in the reasons for refusal, and whether material considerations would justify a different outcome.

Reason (a) : Residential policy and design considerations

10. The main points put forward in support of the appeal in relation to reason (a) are:

- The appeal site is located within the Cousland settlement boundary where policies DEV2 and STRAT2 permit infill development provided that various specified criteria are met. The proposal would meet these criteria as:
- it is not a valuable area of public or private open space;
- the proposed residential use would be compatible with the established neighbouring uses which are also residential;
- the council has no objection in principle to the use of the land at Airybank House for 4 new houses, reflecting the development plan position;
- there is no predominant architectural style in Cousland, and modern designs have been permitted elsewhere in the village, including a large conspicuous house on the western approach to the village;
- the proposed new house would be seen in the context of Airybank House, which is a large house, and not in the context of the housing area to the east which is physically and visually separated by the intervening road and trees;
- the layout arrangement that is proposed is dictated by the shape of the site and the position of the existing access driveway;
- there would be adequate separation from neighbouring existing houses;
- the proposed finishing materials would be in keeping with other recent developments in the village;
- the proposed access arrangements are acceptable to the council's Road Safety Manager – it is intended that the existing gates at the entrance to the Airybank House driveway will be removed, and the internal access road constructed to adoptable standards;
- the existing tree belts on the perimeter of the site would be retained and strengthened, as set out in the landscape strategy report;
- the appellant is content to make financial contributions to improvements in infrastructure or services arising from the development (policies IMP1 and IMP2);
- policy DEV3 (Affordable and Specialist Housing) is considered to be neither necessary nor appropriate;
- the development would meet the sustainability principles listed in policy DEV5, and the layout and design criteria listed in policy DEV6, where relevant.

11. The main points made by the council in support of the decision to refuse permission are :

- There is no objection in principle to the development of the land at Airybank House for four new houses, reflecting the development plan position;
- the proposed large house (type Y) would be at odds with the character of the surrounding area and the scale of other buildings in Cousland, which are predominantly one or 1.5 storeys in height;

- Airybank House, the largest house in the village, is an exception to this character, and should not be taken as a reference point to define the character of Cousland;
- the proposed house would be highly visible due to the scale and design, incongruous in appearance, and would be detrimental to the character of this semi-rural edge-of-village area;
- the Policy and Road Safety Manager is content that the proposal would not have a significant impact on highway safety, but more visitor parking should be provided within the layout, as well as a pedestrian crossing to link with the existing footway network in Beech Grove.

12. I note that the principle of the development of the two appeal sites for a combined total of four houses is accepted by the council. Residential use would be compatible with existing nearby land uses.

13. The key matter of disagreement is whether the large house that is proposed in this application would be likely to detract materially from the existing character and amenity of the area (according to the council and local residents) or would be sufficiently separated from the main part of the village so that it would not affect the character of the wider area, and would complement the existing large house already in place on adjacent land (according to the appellant).

14. As part of my site visit, I gave special attention to the degree of physical and visual separation between the appeal site and the adjacent sections of the village in Beech Grove (on the opposite side of Quarrybank/Kilns Road). I also looked carefully at how the new house would be likely to appear in views on the approach to the village from the west and north.

15. Existing trees along the northeast boundary of the site (adjacent to plot 1) and flanking Airybank House, which are to be retained, provide a strong visual screen that separates this pocket of land from the housing estate on the opposite side of the road at Beech Grove. While these latter houses are predominantly 1.5 storeys in height, I agree with the appellant that the existence of the proposed additional large houses, including that which is the subject of this appeal, to the west and north of Airybank House would not have a significant impact on the character of the Beech Grove houses, due to the degree of visual separation provided by the trees, even in winter.

16. With regard to the views from the country roads approaching the village from the west and north, I again agree with the appellant that the existing tree belts to the west and north of the appeal site, which are to be retained, would provide a high degree of screening. There might well be glimpses of the upper parts of the new house, but I do not think that would be out of place or unacceptable in these views. Most people using these roads would be well aware that they were approaching the village, and this is particularly true of the western approach road where the large modern house mentioned in the previous paragraph dominates the approach vista.

17. The proposed house would be well separated from the four houses to the south and east of plot 3, so that issues of inappropriate size, loss of privacy and overlooking would not arise as a result of the proposed single house.

18. For these reasons, I am satisfied that the proposed new house would not detract materially from the existing character and amenity of the area, neither of the village as a whole nor that of the nearby properties. I cannot agree with the council that it would be highly visible in most views from the road network, nor incongruous in the context of the setting adjacent to Airybank House.

19. I note the local concerns about possible ground stability and contamination problems on the site, but the Coal Authority does not share these concerns and the council has proposed conditions to safeguard the situation.

20. I agree with the council's Policy and Road Safety Manager that a road crossing point should be provided (at the developer's expense) to facilitate safe pedestrian movement from the new house to the rest of the village. The house would have a large front forecourt, having a stated capacity of 4 parking spaces, so I do not think that additional visitors' parking spaces are necessary.

21. The appellant recognises the importance of retaining and strengthening the tree belts on the perimeter of the site, and this can be covered in planning conditions.

22. For all these reasons, I conclude that the proposal would be in accordance with local development plan policies DEV2 and STRAT2, and the related subsidiary policies, including DEV6 (Layout and Design), DEV7 (Landscaping), ENV7 (Local Landscape Character), and ENV11 (Trees and Woodland). Policies DEV5 (Sustainability), TRANS5 (Electric Vehicle Charging), and IT1 (Digital Infrastructure) can be achieved through the detailed design and planning conditions. Policies ENV15 (Species and Habitats), IP1 and IMP2 (achieving necessary infrastructure improvements) are considered below.

Reason (b) European Protected Species

23. The second reason for refusal relates to the potential presence of bats in the locality.

24. The appellant has commissioned a series of bat surveys. The resulting reports confirm that there is a very limited bat presence on the site, consisting of a very modest non-breeding summer roost which is not of significant conservation status. Such roosts are apparently a common occurrence throughout Scotland, and the Scottish Natural Heritage Species Licensing Team is unlikely to require a licence to be obtained. A licence application can be made only after full planning permission has been obtained.

25. The bat specialists recommend that the roost tree should be retained, that no development takes place within 30 metres of the roost, that this area is fenced off, and that bat boxes are provided. The proposed layout can achieve this.

26. The council is satisfied that this matter can be adequately addressed through a revised or corrected bat statement and planning conditions.

27. I have considered the results of the bat survey reports that have been submitted. The sequence of observations confirms that there is only a very limited use of the trees at the appeal site by bats, such that it has very limited conservation status for the observed species. The reports recommend protection and mitigation measures which can be readily

accommodated within the proposed scheme. I am therefore satisfied that, if these measures are carried out, the development would not be detrimental to the maintenance of the species at a favourable conservation status. Consequently the proposal would meet the requirements of local development plan policy ENV15.

28. The proposed works may require a licence from Scottish Natural Heritage. If so, application should be made after planning permission has been granted. That is a matter for the appellant.

29. On this basis, and subject to the issue of a licence if necessary, I am satisfied that the proposal would not affect the favourable conservation status of the bat presence on or near the site, so that the requirements of both the local development plan and European law relating to protected species would be met.

Conclusion on planning merits

30. For the reasons explained above, I am satisfied that the proposal would be acceptable in terms of scale and design; impact on the character of the area and the amenity of neighbouring dwellings; potential impact on European protected species; and the other matters covered by the various development plan policies that have been considered. I conclude that the proposal would be in general accordance with the policies of the local development plan.

31. I have considered the other matters put forward in opposition to the proposal, including the apparent consensus that new housing development in Cousland should be limited to low rise designs. While this might be appropriate as a general principle for the village, I am satisfied that the proposal under consideration is sufficiently separated visually from the main part of the village to ensure that this larger house would not have an adverse visual effect on the character of the village. I find that these other considerations do not alter my conclusion that it is appropriate to approve the present proposal.

32. It is therefore necessary for me to consider what planning conditions should be attached to this permission. There is no request from the council for a contribution to education facilities, as this is a proposal for only a single house.

Planning conditions

33. The council has supplied a list of recommended conditions in appendix 3 of the council's appeal documentation.

34. I have reviewed the list of proposed conditions and am satisfied that they are appropriate and necessary.

Richard Hickman

Reporter

Annex A : List of conditions

1. Development shall not begin until a revised 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 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 including trees, shrubs, hedging and grassed areas;
 - iv. location and design of any proposed walls, fences and gates, including those surrounding bin stores or any other ancillary structures;
 - v. schedule of plants to comprise species, plant sizes and proposed numbers/density;
 - vi. programme for completion and subsequent maintenance of all soft and hard landscaping. The landscaping shall be completed prior to the houses being occupied;
 - vii. drainage details and sustainable urban drainage systems to manage water runoff; and
 - viii. an updated tree survey for all trees within the site, including those adjacent to the site access. This shall include a tree constraints plan for trees to be retained and Root Protection Areas and locations of protective fencing of Construction Exclusion Zones to be overlaid on the landscape plans.

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. Any tree felling or vegetation removal proposed as part of the landscaping scheme shall take place out with the bird nesting season (March-August) and bat roosting period (April – September).

Reason: *To ensure the quality of the development is enhanced by landscaping to reflect its setting in accordance with policies DEV2, DEV6 and DEV7 of the Midlothian Local Development Plan 2017 and national planning guidance and advice.*

2. Development shall not begin until temporary protective fencing is erected around all trees on the site to be retained. The fencing shall be positioned in circumference to the trunk at a distance from it which correlates to the tree canopy unless otherwise agreed in writing with the local planning authority. No excavation, soil removal or storage shall take place within the enclosed area.

Reason: *To ensure the development does not result in the loss or damage of a tree which merits retention in accordance with policy ENV11 of the Midlothian Local Development Plan 2017 and national planning guidance and advice.*

3. Development shall not begin until 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 surrounding area so as to comply with policies DEV2 and DEV6 of the Midlothian Local Development Plan 2017 and national planning guidance and advice.*

4. Development shall not begin until details of the site access, roads, footpaths, cycle ways and transportation movements has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
 - i. existing and finished ground levels for all roads and cycle ways in relation to a fixed datum;
 - ii. proposed vehicular, cycle and pedestrian access;
 - iii. proposed roads (including turning facilities), footpaths and cycle ways;
 - iv. proposed visibility splays, any traffic calming measures and lighting;
 - v. proposed construction traffic access and haulage routes;
 - vi. proposed car parking arrangements, including visitor parking; and
 - vii. a pedestrian crossing point, to be established at a suitable point at the access to the application site, providing a link over Cousland Kilns Road to the existing footway in Beech Grove.

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 houses, existing local residents and those visiting the development site during the construction process have safe and convenient access to and from the site.*

5. The dwellings hereby approved shall not be occupied until vehicular, cycle and pedestrian access details and routes hereby approved have been constructed.

Reason: *To ensure the future users of the houses have safe and convenient access to and from the site.*

6. The updated tree survey required in condition 1viii shall include all trees by the site access and the north and west of the site and indicate any necessary works to facilitate construction access and means of protection during construction.

Reason: *To ensure that existing trees are protected and retained.*

7. Prior to the commencement of development, an updated site plan shall be submitted clearly showing the location of the bat roost within the north of the site and a 30 metre Construction Exclusion Zone from this bat roost.

Reason: *To protect protected species from disturbance from construction.*

8. Development shall not begin until 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; and
 - iv. the condition of the site on completion of the specified decontamination measures.

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.

9. On completion of the decontamination/ remediation works required in condition 8 and prior to any dwellinghouse being occupied, a validation report or reports shall be submitted to the planning authority confirming that the works have been carried out in accordance with the approved scheme. No part of the development shall be occupied until this report has been approved by the planning authority.

Reasons for conditions 8 and 9: *To ensure that any contamination on the site/ground conditions is adequately identified and that appropriate decontamination measures/ground mitigation measures are undertaken to mitigate the identified risk to site users and construction workers, built development on the site, landscaped areas, and the wider environment; to ensure the remediation works are undertaken.*

10. The houses shall not 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 the houses.*

11. 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 any 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 updated bat report is undertaken by a qualified ecologist and any mitigation measures identified implemented in accordance with

details to be submitted and approved in writing by the planning authority. The updated investigation shall be carried out within the 6 months prior to development commencing.

Reason: *In the interests of safeguarding protected species in accordance with policy ENV15 adopted Midlothian Local Development Plan 2017 and to ensure that an up to date understanding of these species on the site is available prior to development commencing.*

13. 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 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.*

14. Development shall not begin until details of the provision and use of electric vehicle charging stations throughout the development 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.*

Annex B : List of approved drawings	Drawing No/Scale
Location Plan	PL(00).1 1:1250
Site Plan	PL-02-01 1:1250
Proposed Floor Plan (House Type Y)	BW01HB 1:100
Proposed Floor Plan (House Type Y)	BW02 HB 1:100
Proposed Elevations (House Type Y)	BW03 HB 1:100
Proposed Cross Sections (House Type Y)	BW05 HB 1:100

Advisory notes

1. **The length of the permission:** This planning permission will lapse on the expiration of a period of three years from the date of this decision notice, unless the development has been started within that period (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).

2. **Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).

3. **Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended)).

4. **Application to Scottish Natural Heritage:** If required, the appellant should make application to Scottish Natural Heritage for a licence to carry out works in the vicinity of the bat roost.

Notice of Intention by Richard Hickman, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-290-2048
- Site address: Land adjoining Airybank House, Quarrybank/Kilns Road, Cousland, EH22 2QP
- Appeal by Midlothian Developments against the decision by Midlothian Council
- Application for planning permission 18/00593/DPP dated 14 August 2018 refused by notice dated 22 November 2018.
- The development proposed: Erection of 3 detached dwellinghouses
- Application drawings : Listed in annex B
- Date of site visit by Reporter: 4 February 2019
- A claim for an award of expenses against the council is the subject of a separate decision

Date of notice: 12 March 2019

Notice of Intention

For the reasons given below I am minded to allow the appeal and grant planning permission subject to the conditions listed in annex A below, following the signing and registering or recording of a planning obligation under section 75 of the Town and Country Planning (Scotland) Act 1997, covering the matters listed in annex C below .

Reasoning

1. I am required to determine this appeal in accordance with the development plan unless material considerations indicate otherwise.
2. Airybank House is a large fairly new house located on the northwest side of the village of Cousland. It occupies a spacious site, with a line of trees along the northwest perimeter where it adjoins farmland. The three houses proposed in this application would occupy part of the open ground curving round to the west and north of the house. Two house types are proposed : House type Y would be located on plots one and three, at the ends of the development area, with house type X in between on plot two. A separate application proposes a fourth house that would occupy the remainder of this area, on a rather larger plot situated between plots one and two. This is the subject of a separate appeal (PPA-290-2049). All four new houses would share the access that already serves Airybank House.

3. House type X is a 1-2 storey design that would provide four bedrooms. House type Y is a much larger mainly two storey design that would also provide 4 bedrooms as well as extensive public rooms. It should be noted that the submitted plans for the proposed type Y house are for the house on plot one, towards the north end of the site. The type Y house on plot 3 is shown on the layout plan as “handed” (ie it is a mirror image of the house on plot one).

4. The reasons for refusal are :

(a) The proposed houses are incompatible with their edge-of-village setting and the wider settlement of Cousland due to their scale, massing, form and design and would consequently have a detrimental impact on the character and appearance of the area, contrary to policies DEV2 and STRAT2 of the Midlothian Local Development Plan 2017 and Scottish Planning Policy.

(b) It has not been demonstrated to the satisfaction of the council that the proposed development would not have a detrimental impact on European Protected Species and is therefore contrary to policy ENV15 of the Midlothian Local Development Plan 2017.

5. Representations received from neighbouring proprietors, and on behalf of the Cousland Village Hall Association Committee, object to the proposal on a number of grounds, including that :

- The scale and design of the proposal does not reflect the character of the area and would be out of keeping with the village;
- The new houses would be too close together, and to existing houses, giving rise to problems of overlooking and loss of privacy;
- Potential effects on trees and wildlife, including protected species;
- Unstable ground conditions on the site;
- Loss of rural view;
- A community survey shows opposition to two storey houses, which are considered to be out of character with the village.

6. Other representations do not oppose the principle of residential development, provided that it respects the character of the village, or give support.

7. Policy DEV2 (Protecting Amenity within the Built-Up Area) states that development within existing built up areas will be permitted unless it is likely to detract materially from the existing character and amenity of the area. Policy STRAT2 (Windfall Housing Sites) states that development on infill sites within built up areas will be permitted provided that five specified criteria are met. These cover safeguarding of valuable public and private space; avoiding conflict with established land uses in the area; that it has regard to the character of the area in terms of scale, form, design and materials; meets traffic and parking requirements; and accords with other relevant policies and proposals, covering a wide range of matters including a requirement for developer contributions to ensure that appropriate provision is made where a need arises or for the provision of essential

infrastructure to enable new development to take place, as well as matters relating to the layout and landscaping of new development.

8. Policy ENV15 (Species and Habitat Protection and Enhancement) precludes development that would affect a species protected by European or UK law unless (among other things) a species protection plan has been submitted which includes details of possible adverse impacts of development, and appropriate and effective mitigation is proposed and agreed; and in the case of European Protected Species, the development is not detrimental to the maintenance of the species at a favourable conservation status.

9. These policies embrace most of the matters raised in the representations. Thus the determining issues in this appeal are whether or not the proposal would be in accordance with the policies cited in the reasons for refusal, and whether material considerations would justify a different outcome.

Reason (a) : Residential policy and design considerations

10. The main points put forward in support of the appeal in relation to reason (a) are:

- The appeal site is located within the Cousland settlement boundary where policies DEV2 and STRAT2 permit infill development provided that various specified criteria are met. The proposal would meet these criteria as:
 - it is not a valuable area of public or private open space;
 - the proposed residential use would be compatible with the established neighbouring uses which are also residential;
 - the council has no objection in principle to the use of the land at Airybank House for 4 new houses, reflecting the development plan position;
 - there is no predominant architectural style in Cousland, and modern designs have been permitted elsewhere in the village, including a large conspicuous house on the western approach to the village;
 - the proposed new houses would be seen in the context of Airybank House, which is a large house, and not in the context of the housing area to the east which is physically and visually separated by the intervening road and trees;
 - the layout arrangement that is proposed is dictated by the shape of the site and the position of the existing access driveway;
 - there would be adequate separation from neighbouring existing houses;
 - the proposed finishing materials would be in keeping with other recent developments in the village;
 - the proposed access arrangements are acceptable to the council's Road Safety Manager – it is intended that the existing gates at the entrance to the Airybank House driveway will be removed, and the internal access road constructed to adoptable standards;
 - the existing tree belts on the perimeter of the site would be retained and strengthened, as set out in the landscape strategy report;
 - the appellant is content to make financial contributions to improvements in infrastructure or services arising from the development (policies IMP1 and IMP2);

- policy DEV3 (Affordable and Specialist Housing) is considered to be neither necessary nor appropriate;
- the development would meet the sustainability principles listed in policy DEV5, and the layout and design criteria listed in policy DEV6, where relevant.

11. The main points made by the council in support of the decision to refuse permission are :

- There is no objection in principle to the development of the land at Airybank House for four new houses, reflecting the development plan position;
- while the smaller house type (X) might be acceptable on the site, the proposed larger houses (type Y) would be at odds with the character of the surrounding area and the scale of other buildings in Cousland, which are predominantly one or 1.5 storeys in height;
- Airybank House, the largest house in the village, is an exception to this character, and should not be taken as a reference point to define the character of Cousland;
- the proposed houses would be highly visible due to their scale and design, incongruous in appearance, and would be detrimental to the character of this semi-rural edge-of –village area;
- the Policy and Road Safety Manager is content that the proposals would not have a significant impact on highway safety, but more visitor parking should be provided within the layout, as well as a pedestrian crossing to link with the existing footway network in Beech Grove.

12. I note that the principle of the development of the two appeal sites for a combined total of four houses is accepted by the council. Residential use would be compatible with existing nearby land uses.

13. The key matter of disagreement is whether the large houses that are proposed would be likely to detract materially from the existing character and amenity of the area (according to the council and local residents) or would be sufficiently separated from the main part of the village so that the proposed houses would not affect the character of the wider area, and would complement the existing large house already in place on adjacent land (according to the appellant).

14. As part of my site visit, I gave special attention to the degree of physical and visual separation between the appeal site and the adjacent sections of the village in Beech Grove (on the opposite side of Quarrybank/Kilns Road) and the four houses to the south and east of plot 3. I also looked carefully at how the new houses would be likely to appear in views on the approach to the village from the west and north.

15. Existing trees along the northeast boundary of the site (adjacent to plot 1) and flanking Airybank House, which are to be retained, provide a strong visual screen that separates this pocket of land from the housing estate on the opposite side of the road at Beech Grove. While these latter houses are predominantly 1.5 storeys in height, I agree with the appellant that the existence of the proposed additional large houses to the west and north of Airybank House would not have a significant impact on the character of the

Beech Grove houses, due to the degree of visual separation provided by the trees, even in winter.

16. The four houses to the south and southeast of the appeal site consist of a semi-detached pair of traditional cottages, a modern bungalow, and a large modern house of contemporary design situated in a very prominent position at the western entry to the village. The village hall is a low key building located adjacent to these houses. I do not think that the introduction of the new houses to the north would appear visually out of place in the context of this variety of buildings, and would not be readily visible from the nearby roads.

17. With regard to the views from the country roads approaching the village from the west and north, I again agree with the appellant that the existing tree belts to the west and north of the appeal site, which are to be retained, would provide a high degree of screening. There might well be glimpses of the upper parts of the new houses, but I do not think that would be out of place or unacceptable in these views. Most people using these roads would be well aware that they were approaching the village, and this is particularly true of the western approach road where the large modern house mentioned in the previous paragraph dominates the approach vista.

18. Turning to the subject of privacy, overlooking, and whether the new houses would be on cramped sites that would bring them too close to neighbouring properties and each other, I note that the type Y houses at each end of the development site would occupy large plots with plenty of amenity space. The smaller type X house would be on a smaller but adequate plot within the centre of the development site where it would have no impact on the amenity of the four houses to the south. It is the type Y house on plot 3, at the southern end of the site, which is closest to these houses.

19. The appellant has supplied details of the separation distances between this proposed new house and the three adjoining houses. The eastern façade of the new house would be about 17m from the mutual rear boundary with the cottages in Kilns Road/ Quarrybank, which are in turn located some 20 plus metres from the boundary, giving a combined distance between the buildings of 40m or more. In any event, no windows are proposed on either floor of the new house gable that would face these cottages.

20. With regard to the southern elevation, the nearest section of this façade would be about 16m from the mutual boundary, with the flank of the existing house a similar distance away, giving a separation distance of around 30m between the façades. A high and substantial hedge separates the two properties, giving plenty of privacy between the gardens. Although the design of house type Y includes a first floor balcony, this would face away from the existing house to the south, due to the reversal of the house plans.

21. For these reasons, I am satisfied that the new houses that are proposed would not detract materially from the existing character and amenity of the area, neither of the village as a whole nor that of the nearby properties. I cannot agree with the council that they would be highly visible in most views from the road network, nor incongruous in the context of the setting adjacent to Airybank House.

22. I note the local concerns about possible ground stability and contamination problems on the site, but the Coal Authority does not share these concerns and the council has proposed conditions to safeguard the situation.

23. I agree with the council's Policy and Road Safety Manager that a road crossing point should be provided (at the developer's expense) to facilitate safe pedestrian movement from the new houses to the rest of the village. Each house would have a large front forecourt, having a stated capacity of 4 parking spaces for each house, so I do not think that additional visitors' parking spaces are necessary.

24. The appellant recognises the importance of retaining and strengthening the tree belts on the perimeter of the site, and this can be covered in planning conditions.

25. For all these reasons, I conclude that the proposal would be in accordance with local development plan policies DEV2 and STRAT2, and the related subsidiary policies, including DEV6 (Layout and Design), DEV7 (Landscaping), ENV7 (Local Landscape Character), and ENV11 (Trees and Woodland). Policies DEV5 (Sustainability), TRANS5 (Electric Vehicle Charging), and IT1 (Digital Infrastructure) can be achieved through the detailed design and planning conditions. Policies ENV15 (Species and Habitats), IP1 and IMP2 (achieving necessary infrastructure improvements) are considered below.

Reason (b) European Protected Species

26. The second reason for refusal relates to the potential presence of bats on the site.

27. The appellant has commissioned a series of bat surveys. The resulting reports confirm that there is a very limited bat presence on the site, consisting of a very modest non-breeding summer roost which is not of significant conservation status. Such roosts are apparently a common occurrence throughout Scotland, and the Scottish Natural Heritage Species Licensing Team is unlikely to require a licence to be obtained. A licence application can be made only after full planning permission has been obtained.

28. The bat specialists recommend that the roost tree should be retained, that no development takes place within 30 metres of the roost, that this area is fenced off, and that bat boxes are provided. The proposed layout can achieve this.

29. The council is satisfied that this matter can be adequately addressed through a revised or corrected bat statement and planning conditions.

30. I have considered the results of the bat survey reports that have been submitted. The sequence of observations confirms that there is only a very limited use of the trees at the appeal site by bats, such that it has very limited conservation status for the observed species. The reports recommend protection and mitigation measures which can be readily accommodated within the proposed scheme. I am therefore satisfied that, if these measures are carried out, the development would not be detrimental to the maintenance of the species at a favourable conservation status. Consequently the proposal would meet the requirements of local development plan policy ENV15.

31. The proposed works may require a licence from Scottish Natural Heritage. If so, application should be made after planning permission has been granted. That is a matter for the appellant.

32. On this basis, and subject to the issue of a licence if necessary, I am satisfied that the proposal would not affect the favourable conservation status of the bat presence on the site, so that the requirements of both the local development plan and European law relating to protected species would be met.

Conclusion on planning merits

33. For the reasons explained above, I am satisfied that the proposal would be acceptable in terms of scale and design; impact on the character of the area and the amenity of neighbouring dwellings; potential impact on European protected species; and the other matters covered by the various development plan policies that have been considered. I conclude that the proposal would be in general accordance with the policies of the local development plan.

34. I have considered the other matters put forward in opposition to the proposal, including the apparent consensus that new housing development in Cousland should be limited to low rise designs. While this might be appropriate as a general principle for the village, I am satisfied that the proposal under consideration is sufficiently separated visually from the main part of the village to ensure that these larger houses would not have an adverse visual effect on the character of the village. I find that these other considerations do not alter my conclusion that it is appropriate to approve the present proposal.

35. It is therefore necessary for me to consider what planning conditions and obligations should be attached to this permission.

Planning conditions and obligations

36. The council has supplied a list of recommended conditions and planning obligations in appendix 3 of the council's appeal documentation.

37. I have reviewed the list of proposed conditions and am satisfied that they are appropriate and necessary.

38. With regard to planning obligations, the consultation reply from the council's education service staff dated 30 August 2018 explains the basis for the contributions towards education requirements. The second part of appendix 3 sets out draft Heads of Terms for an agreement under section 75 of the act to secure these contributions.

39. Given the apparent capacity limitations at the relevant schools, I recognise the need for the council to secure these contributions by means of a section 75 or similar agreement.

Intended decision

40. For all these reasons, I am minded to allow the appeal and grant planning permission. However I conclude that a planning obligation should be completed in order to secure the potential need for the items listed in annex C below. I will accordingly defer determination of this appeal for a period of 12 weeks to enable the relevant planning obligation (either an agreement with the planning authority or a unilateral obligation by the appellant under section 75 of the Town and Country Planning (Scotland) Act 1997 or some suitable alternative arrangement as may be agreed by the parties) to be completed and registered or recorded, as the case may be. If, by the end of the 12 week period, a copy of the relevant obligation with evidence of registration or recording has not been submitted to this office, I will have to consider whether planning permission should be refused or granted without a planning obligation.

Richard Hickman

Reporter

Annex A : List of conditions

1. Development shall not begin until a revised 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 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 including trees, shrubs, hedging and grassed areas;
 - iv. location and design of any proposed walls, fences and gates, including those surrounding bin stores or any other ancillary structures;
 - v. schedule of plants to comprise species, plant sizes and proposed numbers/density;
 - vi. programme for completion and subsequent maintenance of all soft and hard landscaping. The landscaping shall be completed prior to the houses being occupied;
 - vii. drainage details and sustainable urban drainage systems to manage water runoff; and
 - viii. an updated tree survey for all trees within the site, including those adjacent to the site access. This shall include a tree constraints plan for trees to be retained and Root Protection Areas and locations of protective fencing of Construction Exclusion Zones to be overlaid on the landscape plans.

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. Any tree felling or vegetation removal proposed as part of

the landscaping scheme shall take place out with the bird nesting season (March-August) and bat roosting period (April – September).

Reason: *To ensure the quality of the development is enhanced by landscaping to reflect its setting in accordance with policies DEV2, DEV6 and DEV7 of the Midlothian Local Development Plan 2017 and national planning guidance and advice.*

2. Development shall not begin until temporary protective fencing is erected around all trees on the site to be retained. The fencing shall be positioned in circumference to the trunk at a distance from it which correlates to the tree canopy unless otherwise agreed in writing with the local planning authority. No excavation, soil removal or storage shall take place within the enclosed area.

Reason: *To ensure the development does not result in the loss or damage of a tree which merits retention in accordance with policy ENV11 of the Midlothian Local Development Plan 2017 and national planning guidance and advice.*

3. Development shall not begin until 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 surrounding area so as to comply with policies DEV2 and DEV6 of the Midlothian Local Development Plan 2017 and national planning guidance and advice.*

4. Development shall not begin until details of the site access, roads, footpaths, cycle ways and transportation movements has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:
 - i. existing and finished ground levels for all roads and cycle ways in relation to a fixed datum;
 - ii. proposed vehicular, cycle and pedestrian access;
 - iii. proposed roads (including turning facilities), footpaths and cycle ways;
 - iv. proposed visibility splays, any traffic calming measures and lighting;
 - v. proposed construction traffic access and haulage routes;
 - vi. proposed car parking arrangements, including visitor parking; and
 - vii. a pedestrian crossing point, to be established at a suitable point at the access to the application site, providing a link over Cousland Kilns Road to the existing footway in Beech Grove.

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 houses, existing local residents and those visiting the development site during the construction process have safe and convenient access to and from the site.

5. The dwellings hereby approved shall not be occupied until vehicular, cycle and pedestrian access details and routes hereby approved have been constructed.

Reason: To ensure the future users of the houses have safe and convenient access to and from the site.

6. The updated tree survey required in condition 1viii shall include all trees by the site access and the north and west of the site and indicate any necessary works to facilitate construction access and means of protection during construction.

Reason : To protect the trees on the site during and after construction.

7. Prior to the commencement of development, an updated site plan shall be submitted clearly showing the location of the bat roost within the north of the site and a 30 metre Construction Exclusion Zone from this bat roost.

Reason: To protect protected species from disturbance from construction.

8. Development shall not begin until 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; and
 - iv. the condition of the site on completion of the specified decontamination measures.

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.

9. On completion of the decontamination/ remediation works required in condition 8 and prior to any dwellinghouse being occupied, a validation report or reports shall be submitted to the planning authority confirming that the works have been carried out in accordance with the approved scheme. No part of the development shall be occupied until this report has been approved by the planning authority.

Reasons for conditions 8 and 9: *To ensure that any contamination on the site/ground conditions is adequately identified and that appropriate decontamination measures/ground mitigation measures are undertaken to mitigate the identified risk to site users and construction workers, built development on the site, landscaped areas, and the wider environment; to ensure the remediation works are undertaken.*

10. The houses shall not 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 the houses.*

11. 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 any 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 updated bat report is undertaken by a qualified ecologist and any mitigation measures identified implemented in accordance with details to be submitted and approved in writing by the planning authority. The updated investigation shall be carried out within the 6 months prior to development commencing.

Reason: *In the interests of safeguarding protected species in accordance with policy ENV15 adopted Midlothian Local Development Plan 2017 and to ensure that an up to date understanding of these species on the site is available prior to development commencing.*

13. 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 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.*

14. Development shall not begin until details of the provision and use of electric vehicle charging stations throughout the development 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.*

Annex B : List of approved drawings	Drawing No/Scale
Location Plan	PL(00).1 1:1250
Site Plan	PL-01-01 1:100
Proposed Floor Plan (House Type X)	BW01 B 1:100
Proposed Elevations (House Type X)	BW02 B 1:100
Proposed Floor Plan (House Type Y)	BW01B 1:100
Proposed Floor Plan (House Type Y)	BW02 B 1:100
Proposed Elevations (House Type Y)	BW03 B 1:100
Proposed Cross Sections (House Type Y)	BW04 B 1:100
Proposed Cross Sections (House Type Y)	BW05 B 1:100
Elevations, Floor Plan and Section (Garage)	101 A 1:100

For Annex C see following pages

Annex C : Draft heads of terms for section 75 or similar agreement**MIDLOTHIAN COUNCIL****Town & Country Planning (Scotland) Act 1997
Section 75 Agreement****Draft Heads of Terms**

Version 1: 8 January 2019

- 1.0** 1. Parties **Local Planning Authority** - Midlothian Council
Landowners/ Developer – Midlothian Developments
Agent – Andrew Bennie Planning Ltd
- 2.0** 2. The Land Land at Airybank, Quarrybank, Cousland
- 3.0** **The Planning Application(s)** Planning Application references 18/00592/DPP and 18/00593/DPP
- 4.0** **The Development** The applications together propose detailed planning permission for 4 residential units in total. If the Council is to be minded to grant planning permission for the development it will be necessary for the applicants to enter into a Section 75 planning obligation in respect of the following areas
- Education provision
 - Children’s Play
- 5.0** **Developer Contributions** In accordance with Midlothian Council’s, Developer Contributions Guidelines (Supplementary Planning Guidance) and the Proposed Midlothian Local Development Plan 2014 the following contributions are sought in respect of land at. All contributions are based on BCIS TPI 2Q 2017 (324) figures and are subject to indexation unless otherwise stated. The SPG provides that contributions in relation to developments of 3-9 dwellings will be sought but that there will be an exemption from contributions for the first two units. In this instance which is a 4 unit development, contributions would be sought from 2 of those units.

3.

- (a) **Denominational Primary** The Head of Education has advised that additional capacity will be required at St David's RC Primary school in Dalkeith

A contribution per unit is sought for **£493**
Based on the 2 units a total contribution is sought of **£986**

- (b) **Secondary capacity** The Head of Education has advised that the proposed development lies within the catchment area of Dalkeith High School. The Head of Education has advised that as a result of new housing development in the Dalkeith area, additional non denominational secondary capacity will be required

A contribution per unit is sought for **£8,298**
Based on the 2 units a total contribution is sought of £16,596

Children's Play A contribution of **£2,415** towards children's play provision in Cousland is required based on £345 per child bed space with 7 child bed spaces being contained in the two contributing units

Issuing of Planning Permission Planning permission shall be issued within 5 days of written acknowledgement by the Keeper of the Registers of Scotland that the agreement has been registered.

The contribution payments are required as follows:

Either a payment of the whole sum due via a Section 69 payment to release the planning permission. The whole sum due as identified above (£19,997) would need to be indexed to the index point at the time of payment.

Or if via Section 75 the whole sum (£19,997) on commencement of development – subject to the indexation provisions as below

Interest

Indexation Cash contributions not received by the due time shall be subject to additional interest in accordance with the provision of the Late Payment Act 1996.

Fees Those contributions subject to indexation are calculated as at BCIS 2Q2017 (324) and shall be subject to further indexation using the BCIS All in Tender Price Index up to the date of due

payment.

Developers shall be required to pay the Council's legal fees on terms as agreed with the Council's Principal Solicitor.

These Heads of Terms are subject to completion of formal legal documentation as deemed appropriate by the parties' solicitors, subject to a general agreement between the parties.

Matthew Atkins, Lead Officer Planning Obligations
Tel: 0131 271 3027
Dated: 8 January 2019

Advisory notes

- 1. The length of the permission:** This planning permission will lapse on the expiration of a period of three years from the date of this decision notice, unless the development has been started within that period (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).
- 2. Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).
- 3. Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended)).
- 4. Application to Scottish Natural Heritage:** If required, the appellant should make application to Scottish Natural Heritage for a licence to carry out works in the vicinity of the bat roost.