

Notice of Review: Glencairn, 13 Waverley Road, Dalkeith

Determination Report

Report by Chief Officer Place

1 Purpose of Report

- 1.1 The purpose of this report is to provide a framework for the Local Review Body (LRB) to consider a 'Notice of Review' for the erection of a treehouse (retrospective) at Glencairn, 13 Waverley Road, Dalkeith.

2 Background

- 2.1 Planning application 21/00933/DPP for the erection of a treehouse (retrospective) at Glencairn, 13 Waverley Road, Dalkeith was refused planning permission on 8 February 2022; a copy of the decision is attached to this report.

- 2.2 The review has progressed through the following stages:

- 1 Submission of Notice of Review by the applicant.
- 2 The Registration and Acknowledgement of the Notice of Review.
- 3 Carrying out Notification and Consultation.

3 Supporting Documents

- 3.1 Attached to this report are the following documents:

- A site location plan (Appendix A);
- A copy of the notice of review form and supporting statement (Appendix B). Any duplication of information is not attached;
- A copy of the case officer's report (Appendix C);
- A copy of the decision notice, excluding the standard advisory notes, issued on 8 February 2022 (Appendix D); and
- A copy of the key plans/drawings (Appendix E).

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

4 Procedures

- 4.1 In accordance with agreed procedures the LRB:

- Have determined to consider a visual presentation of the site and undertaking a site visit (elected members not attending the site visit can still participate in the determination of the review); and
 - Have determined to progress the review of written submissions.
- 4.2 The case officer's report identified that there was one consultation response and no representations received. As part of the review process the interested party was notified of the review. One additional comment has been received raising concern over the prominent and unsightly nature of the development and its detrimental impact on the conservation area. All comments can be viewed online on the electronic planning application case file.
- 4.3 The next stage in the process is for the LRB to determine the review in accordance with the agreed procedure:
- Identify any provisions of the development plan which are relevant to the decision;
 - Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies;
 - Consider whether or not the proposal accords with the development plan;
 - Identify and consider relevant material considerations for and against the proposal;
 - Assess whether these considerations warrant a departure from the development plan; and
 - State the reason/s for the decision and state any conditions required if planning permission is granted.
- 4.4 In reaching a decision on the case the planning advisor can advise on appropriate phraseology and on appropriate planning reasons for reaching a decision.
- 4.5 Following the determination of the review the planning advisor will prepare a decision notice for issuing through the Chair of the LRB. A copy of the decision notice will be reported back to the LRB for noting.
- 4.6 A copy of the LRB decision will be placed on the planning authority's planning register and made available for inspection online.

5 Conditions

- 5.1 In accordance with the procedures agreed by the LRB at its meeting of 13 June 2017, and without prejudice to the determination of the review, the following condition has been prepared for the consideration of the LRB if it is minded to uphold the review and grant planning permission.

A tree inspection shall be carried out by a suitably qualified arboriculturalist within three months of the date of decision to assess the condition of the two sycamore trees within which the treehouse is constructed. A report shall be submitted to the planning authority for review within six months of the date of decision, including details of any damage to the trees and their roots; likely effects on tree health as a result of construction (e.g. coach screws in trees, concrete foundations in Root Protection Area (RPA)); recommendations and timetable for re-

inspection. The planning authority shall then confirm if the treehouse is required to be removed (because it is causing damage to the stated trees) and the time period in which it shall be removed.

Reason: *To protect trees at the site which contribute to the character and visual amenity of the surrounding area.*

- 5.2 If the LRB dismisses the review, the treehouse will need to be removed. In this case the applicant will be asked to comply with this requirement within two months of the LRB decision. However, the failure to cease the unauthorised use will result in the Council having to consider issuing an enforcement notice to resolve the breach of planning control.

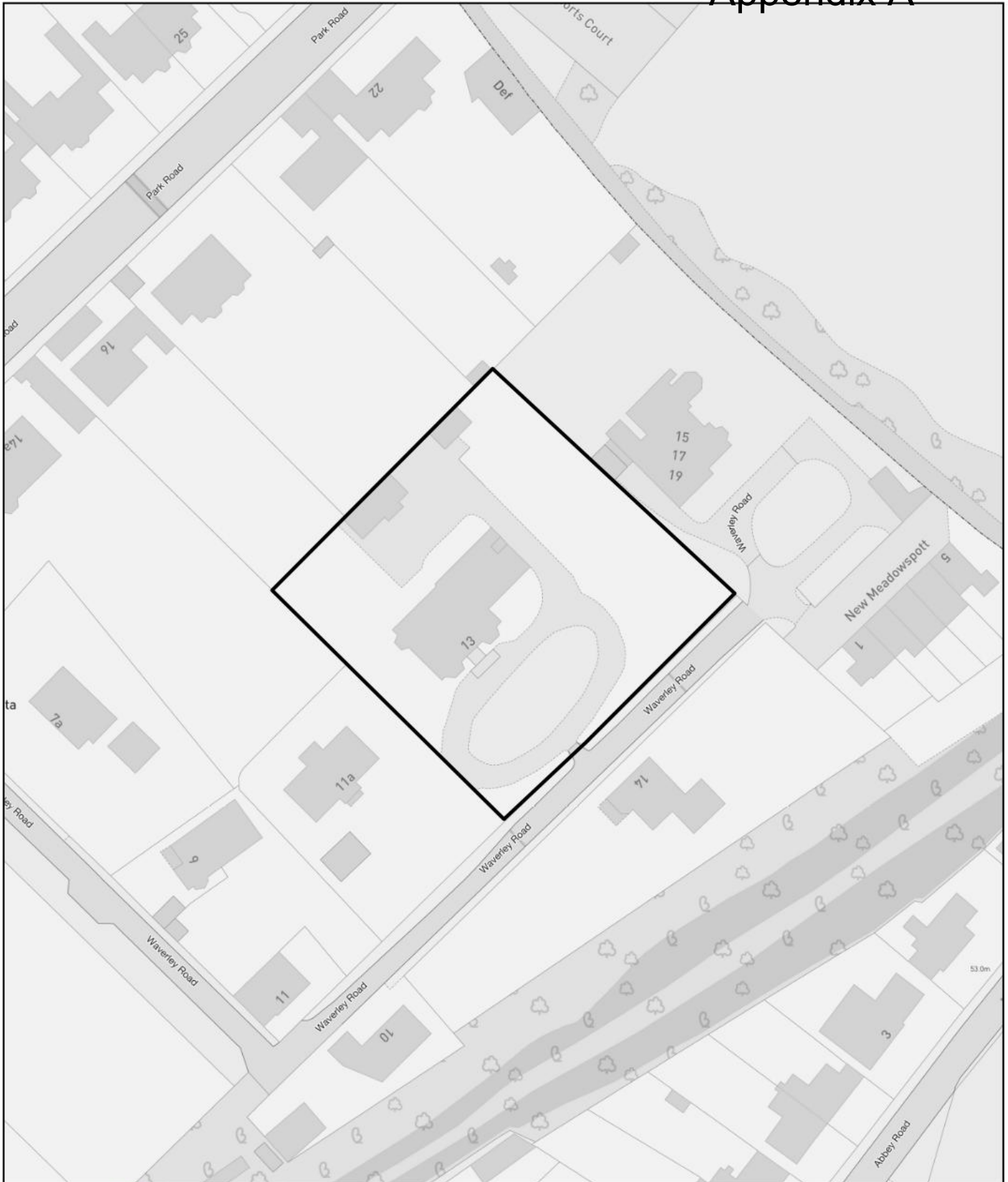
6 Recommendations

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

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date: 10 June 2022
Report Contact: Alison Ewing, Planning Officer
Alison.Ewing@midlothian.gov.uk

Background Papers: Planning application 21/00933/DPP available for inspection online.



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

Erection of treehouse (Retrospective) at Glencairn, 13
Waverley Road, Dalkeith, EH22 3DG

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File No: 21/00933/DPP

Scale: 1:1,000

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NOTICE OF REVIEW

Under Section 43A(8) Of the Town and Country Planning (SCOTLAND) ACT 1997 (As amended) In Respect of Decisions on Local Developments

The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (SCOTLAND) Regulations 2013

The Town and Country Planning (Appeals) (SCOTLAND) Regulations 2013

IMPORTANT: Please read and follow the guidance notes provided when completing this form. Failure to supply all the relevant information could invalidate your notice of review.

PLEASE NOTE IT IS FASTER AND SIMPLER TO SUBMIT PLANNING APPLICATIONS ELECTRONICALLY VIA <https://www.eplanning.scot>

1. Applicant's Details		2. Agent's Details (if any)	
Title	MR	Ref No.	
Forename	CHRISTOPHER	Forename	
Surname	SHAW	Surname	
Company Name	NIA	Company Name	
Building No./Name	13	Building No./Name	
Address Line 1	WAVERLET ROAD	Address Line 1	
Address Line 2	ESKBANK	Address Line 2	
Town/City	DALKEITH	Town/City	
Postcode	EH22 3D9	Postcode	
Telephone	NIA	Telephone	
Mobile		Mobile	
Fax	NIA	Fax	
Email		Email	
3. Application Details			
Planning authority	MIDLOTHIAN		
Planning authority's application reference number	21-00933-DPP		
Site address	13 WAVERLET ROAD, DALKEITH, EH22 3D9		
Description of proposed development	ERECTOR OF TREEHOUSE		

Date of application

25/11/2021

Date of decision (if any)

8/2/2022

Note. This notice must be served on the planning authority within three months of the date of decision notice or from the date of expiry of the period allowed for determining the application.

4. Nature of Application

Application for planning permission (including householder application)

Application for planning permission in principle

Further application (including development that has not yet commenced and where a time limit has been imposed; renewal of planning permission and/or modification, variation or removal of a planning condition)

Application for approval of matters specified in conditions

5. Reasons for seeking review

Refusal of application by appointed officer

Failure by appointed officer to determine the application within the period allowed for determination of the application

Conditions imposed on consent by appointed officer

6. Review procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may tick more than one box if you wish the review to be conducted by a combination of procedures.

Further written submissions

One or more hearing sessions

Site inspection

Assessment of review documents only, with no further procedure

If you have marked either of the first 2 options, please explain here which of the matters (as set out in your statement below) you believe ought to be subject of that procedure, and why you consider further submissions or a hearing necessary.

7. Site inspection

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

Can the site be viewed entirely from public land?

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

If there are reasons why you think the Local Review Body would be unable to undertake an unaccompanied site inspection, please explain here:

8. Statement

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

If the Local Review Body issues a notice requesting further information from any other person or body, you will have a period of 14 days in which to comment on any additional matter which has been raised by that person or body.

State here the reasons for your notice of review and all matters you wish to raise. If necessary, this can be continued or provided in full in a separate document. You may also submit additional documentation with this form.

Since the application decision the treehouse has been stained a darker colour, and together with other measures to disguise the treehouse, it is no longer visually intrusive, incongruous or out of character within the street scene. I believe it no longer has an adverse impact on the character and appearance of the Eskbank Conservation area. The tree house is only partially visible from the South West, and from the South East, it blends in with the foliage.

Have you raised any matters which were not before the appointed officer at the time your application was determined? Yes No

If yes, please explain below a) why you are raising new material b) why it was not raised with the appointed officer before your application was determined and c) why you believe it should now be considered with your review.

No guidance was given prior to the decision regarding the choice of an acceptable appearance.

9. List of Documents and Evidence

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review

2 x Photographs

13 Waverley road Treehouse South West View

13 Waverley road Treehouse South East View

These are the only public views of the Treehouse

Note. The planning authority will make a copy of the notice of review, the review documents and any notice of the procedure of the review available for inspection at an office of the planning authority until such time as the review is determined. It may also be available on the planning authority website.

10. Checklist

Please mark the appropriate boxes to confirm that you have provided all supporting documents and evidence relevant to your review:

Full completion of all parts of this form



Statement of your reasons for requesting a review



All documents, materials and evidence which you intend to rely on (e.g. plans and drawings or other documents) which are now the subject of this review.



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

DECLARATION

I, the applicant/agent hereby serve notice on the planning authority to review the application as set out on this form and in the supporting documents. I hereby confirm that the information given in this form is true and accurate to the best of my knowledge.

Signature:

[Redacted Signature]

Name:

CHRISTOPHER STAFF

Date:

5TH May 2022

Any personal data that you have been asked to provide on this form will be held and processed in accordance with Data Protection Legislation.

MIDLOTHIAN COUNCIL

DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

Planning Application Reference: 21/00933/DPP

Site Address: Glencairn, 13 Waverley Road, Dalkeith EH22 3DG

Site Description:

The application site comprises the garden grounds of Glencairn, a large detached dwellinghouse, with associated outbuildings and generous garden ground. The main part of the house is three storey in height with stone walls, a slate roof and white painted timber sash and case windows. There is a single storey section to the side with a hipped roof and matching materials.

The house is B listed and the site is within the Eskbank and Ironmills Conservation Area.

Proposed Development:

Erection of treehouse (Retrospective)

Proposed Development Details:

Retrospective planning permission is sought for the erection of a treehouse to the principle boundary of the application site. The treehouse is 3.6m from the ground, and measures 1.75m by 2.28m. The treehouse has been erected in a Sycamore tree and is constructed in wood, and has a perspex sheet roof and features two perspex windows on the south-east and north elevations. There is a ladder and climbing wall which sits vertically up to the treehouse.

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

17/00235/LBC Installation of glazed canopy – Granted 2017

17/00236/DPP Installation of glazed canopy, formation of area of hardstanding and construction of planter (part retrospective) – Granted 2017

Consultations:

The **Eskbank & Newbattle Community Council** objects to the application. They have concerns that the structure is visually obtrusive and not sympathetic to the Conservation Area or the Category B Listed residence. They feel that the proposals do not enhance or preserve the character and appearance of the conservation area with inexpensive choice of materials.

Representations:

None received.

Relevant Planning Policies:

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

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

DEV2 - Protecting amenity within the built-up area - seeks to protect the character and amenity of the built-up area.

ENV 19 - Conservation Areas - seeks to preserve or enhance the character and appearance of conservation areas.

ENV22 – Listed Buildings - states that development will not be permitted where it would adversely affect the character or appearance of a Listed Building; its setting; or any feature of special, architectural or historic interest.

It is noted that policy DP6 House Extensions, from the now superseded 2008 Midlothian Local Plan, set out design guidance for new extensions requiring that they are well designed in order to maintain or enhance the appearance of the house and the locality. The policy guidelines contained in DP6 also relate to size of extensions, materials, impact on neighbours and remaining garden area. It also states that front porches to detached or semi-detached houses are usually acceptable provided they project less than two metres out from the front of the house. It also allowed for novel architectural solutions. The guidance set out within this policy has been successfully applied to development proposals throughout Midlothian and will be reflected within the Council's Supplementary Guidance on Quality of Place which is currently being drafted.

Planning Issues:

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

The treehouse is located to the principal boundary of the application property, along Waverley Road. Located at an elevated level the development is visually intrusive to the street scene and unduly prominent as viewed from Waverley Road and the surrounding conservation area. The proposal appears out of place on the principal elevation of the site, uncharacteristic of the surrounding area and appearing incongruous within the street scene. The situation is not helped by the light colour of the timber walls of the treehouse. The applicant has verbally indicated that they would be willing to paint the treehouse a different colour. However it would still appear as an incongruous feature along the site frontage in the conservation area.

The treehouse fails to preserve or enhance the character or appearance of the conservation area resulting in a significant adverse impact on the character and appearance of the conservation area, which is contrary to policies ENV19 and DEV2 of the adopted Midlothian Local Development Plan.

Set some distance from the house the treehouse will not have a significant impact on the setting of the listed building.

Together with numerous other mature trees in the immediately surrounding area, the two sycamore trees contribute to the local character of the Eskbank and Ironmills Conservation Area at Waverley Road. From observations undertaken at site visit, the sycamore trees which have been used to construct the treehouse appear generally in good condition with no obvious signs of damage or recent pruning works that may be associated with erection of the tree house. An email was sent to the applicant on 21st December 2021 requesting further information on the fastening techniques used to build to tree house. It was confirmed by the applicant that the treehouse is fixed to the tree using Turbo Coach Screws, with the associated climbing frame concreted into the ground at a depth of around 600mm.

Given the condition and mature size of the trees, any damage caused by the coach screws that were used in the construction is unlikely to be detrimental. There is concern with the potential damage or severance of roots in the root protection area of the tree caused by the ground fixings, which have the potential to affect the long term health of the tree. Should permission have been granted for this application, it would have been accompanied by a condition to ensure that the health of the tree is monitored periodically.

To allow the erection of a structure of the size and design proposed would set an undesirable precedent for other similar structures in the area.

The treehouse may result in some level of increased overlooking to the garden of the property to the east of the application site, however given the separation distance between the dwellings this is not considered to be significant.

Sufficient garden area remains after the erection of the treehouse.

Overall, all relevant matters have been taken into consideration in determining this application. It is considered that the proposal does not accord with the principles and policies of the adopted Midlothian Local Development Plan 2017. Therefore, it is recommended that the application is refused.

Recommendation:

Refuse planning permission

Enforcement action is recommended to secure removal of the treehouse.

Refusal of Planning Permission

Town and Country Planning (Scotland) Act 1997

Reg. No. 21/00933/DPP

Mr Christopher Shaw
Glencairn
13 Waverley Road
Eskbank
EH22 3DG

Midlothian Council, as Planning Authority, having considered the application by Mr Christopher Shaw, Glencairn, 13 Waverley Road, Eskbank, EH22 3DG, which was registered on 25 November 2021 in pursuance of their powers under the above Acts, hereby **refuse** permission to carry out the following proposed development:

Erection of treehouse (Retrospective) at Glencairn, 13 Waverley Road, Dalkeith, EH22 3DG

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

<u>Document/Drawing.</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Location Plan	3.01 1:1250	25.11.2021
Landscaping Plan	1:200	25.11.2021
Illustration/Photograph	North View	25.11.2021
Illustration/Photograph	South East View	25.11.2021
Illustration/Photograph	South View	25.11.2021
Illustration/Photograph	South West View	25.11.2021
Other Statements – Treehouse Information		25.11.2021

The reason(s) for the Council's decision are set out below

The treehouse, located on the principal street elevation, is visually intrusive and is uncharacteristic of the surrounding area and appears incongruous within the street scene resulting in a significant adverse impact on the character and appearance of this part of the Eskbank and Ironmills Conservation Area, contrary to policies ENV19 and DEV2 of the adopted Midlothian Local Development Plan 2017.

Dated 8 / 2 / 2022



.....
Duncan Robertson

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



**The Coal
Authority**

Any Planning Enquiries should be directed to:

Planning and Local Authority Liaison
Direct Telephone: 01623 637 119 (Planning Enquiries)
Email: planningconsultation@coal.gov.uk
Website: www.gov.uk/coalauthority

INFORMATIVE NOTE

The proposed development lies within an area that has been defined by the Coal Authority as containing potential hazards arising from former coal mining activity at the surface or shallow depth. These hazards can include: mine entries (shafts and adits); shallow coal workings; geological features (fissures and break lines); mine gas and former surface mining sites. Although such hazards are seldom readily visible, they can often be present and problems can occur in the future, particularly as a result of new development taking place.

It is recommended that information outlining how former mining activities may affect the proposed development, along with any mitigation measures required (for example the need for gas protection measures within the foundations), is submitted alongside any subsequent application for Building Warrant approval (if relevant).

Any form of development over or within the influencing distance of a mine entry can be dangerous and raises significant land stability and public safety risks. As a general precautionary principle, the Coal Authority considers that the building over or within the influencing distance of a mine entry should be avoided. In exceptional circumstance where this is unavoidable, expert advice must be sought to ensure that a suitable engineering design which takes into account all the relevant safety and environmental risk factors, including mine gas and mine-water. Your attention is drawn to the Coal Authority Policy in relation to new development and mine entries available at:
www.gov.uk/government/publications/building-on-or-within-the-influencing-distance-of-mine-entries

Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires a Coal Authority Permit. Such activities could include site investigation boreholes, excavations for foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Failure to obtain a Coal Authority Permit for such activities is trespass, with the potential for court action.

If any coal mining features are unexpectedly encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848. Further information is available on the Coal Authority website at:
www.gov.uk/government/organisations/the-coal-authority

Informative Note valid from 1st January 2021 until 31st December 2022

Appendix E



LOCATION OF THE TREEHOUSE





VIEW FROM THE NORTH
(GLENCAIRN GARDEN)







VIEW FROM THE
SOUTH EAST
(WAVERLET ROAD)