

## Notice of Review: West Church, 14 Old Edinburgh 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' to vary condition 1 of planning permission 334/94 at West Church, 14 Old Edinburgh Road, Dalkeith.

#### 2 Background

- 2.1 Planning application 334/94 for the change of use of church and church hall to industrial premises and minor alterations to the church was granted planning permission subject to a condition restricting the uses of the building and grounds (condition 1):

1. The use hereby permitted shall be restricted to use of the Church for specialist joinery work and cabinetmaking and for no other purposes within Class 4 or other classes of the Schedule of the Town and Country (Use Classes) (Scotland) Order 1989.

**Reason:** *To allow the planning authority to retain effective control over the future use of the premises in the interests of preventing any change of use which might detract from the character and amenity of the area or this building.*

- 2.2 Planning application 24/00220/S42 to vary condition 1 of planning permission 334/94, to allow events and weddings in the building and grounds was refused planning permission on 24 May 2024; a copy of the decision is attached to this report. The applicant has advised that the proposed development 'may' include the erection of a marquee, between 50 and 150 guests per event and would operate outwith the working hours of the joinery and cabinetmaking business (i.e. evenings and weekends).
- 2.3 A Section 42 application, is in itself, a planning application - a particular kind of planning application for development without complying with or amending the condition/s previously imposed on an earlier grant of planning permission. A grant of planning permission under Section 42 results in an entirely new planning permission which will supersede the original permission if implemented. Therefore, if planning permission is granted for this application it will supersede planning permission 334/94 if implemented.

- 2.4 Although a Section 42 application is a new planning application in law the Act states “on such an application the planning authority shall consider only the question of the conditions subject to which planning permission should be granted”. The principle, layout and form of development are not subject to assessment. Planning authorities should attach to the new permission all of those conditions from the previous permission, where it is intended these should still apply. In this case the conditions attached to the earlier permission have been either discharged or would no longer be appropriate if planning permission is granted for an events business at the site.
- 2.5 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 plan identifying the properties of the local objectors (Appendix AA);
  - 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); and
  - A copy of the decision notice, issued on 24 May 2024 (Appendix D).
- 3.2 The full planning application case file and the development plan policies referred to in the case officer’s report can be viewed online via [www.midlothian.gov.uk](http://www.midlothian.gov.uk).

### **4 Procedures**

- 4.1 In accordance with agreed procedures, the LRB:
- Have determined to undertake a site visit (only elected members attending the site visit can participate in the determination of the review); and
  - Have determined to progress the review by written submissions.
- 4.2 The case officer’s report identified that there were five consultation responses, and 49 representations received (45 objections and four supporting). As part of the review process the interested parties were notified of the review – 19 additional comments have been received, all objecting/continuing their objection to the application (six of these additional representations are from representors who did not object to the planning application prior to the review and 13 reinforcing/ supplementing their original objection). 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 20 June 2022, 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.
1. The development to which this permission relates shall commence no later than the expiration of three years beginning with the date of this permission.

***Reason:*** To accord with the provisions of Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning (Scotland) Act 2019).

## **6 Recommendations**

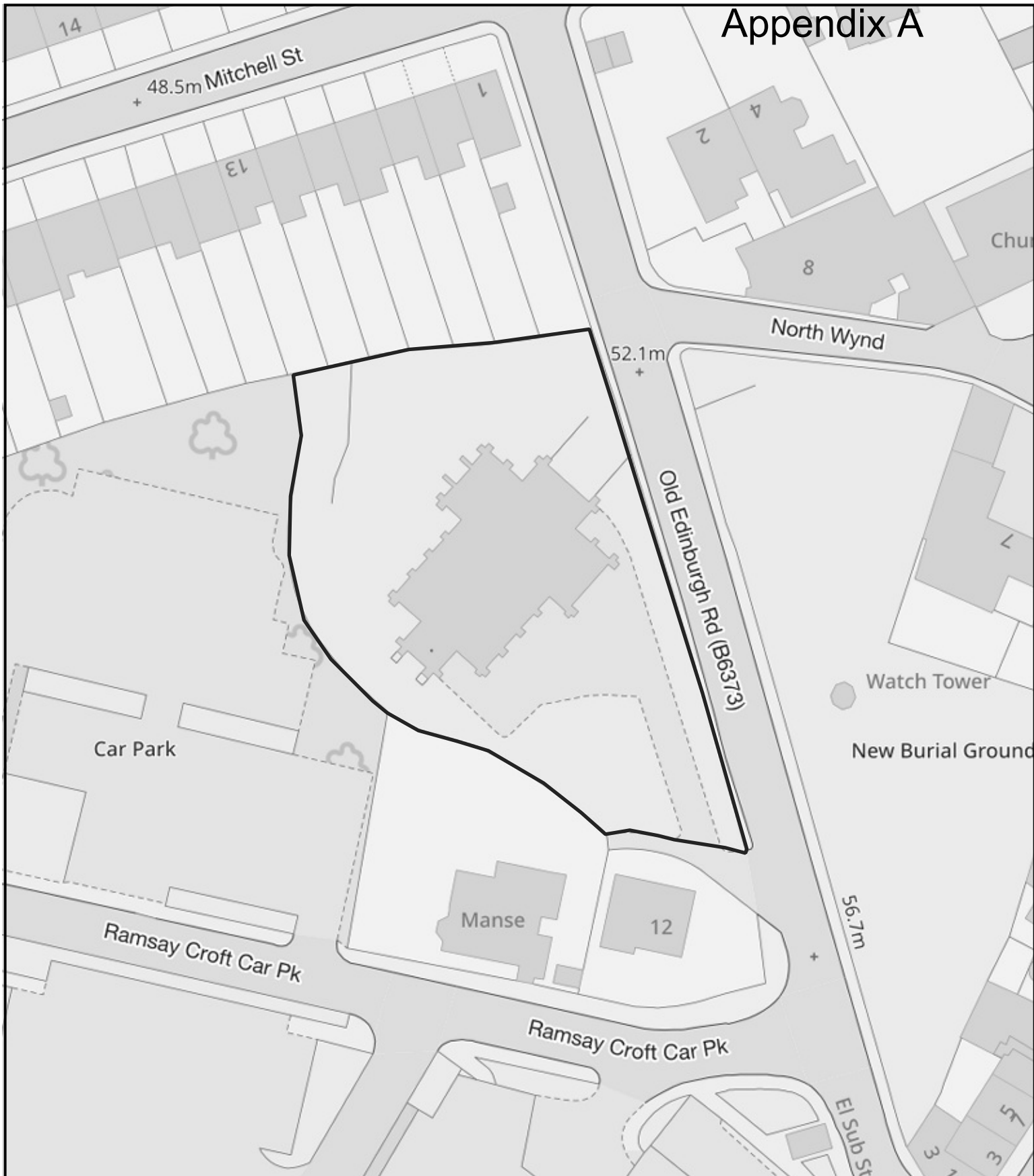
- 6.1 It is recommended that the LRB:
- a) determine the review; and
  - b) the planning advisor draft and issue the decision of the LRB through the Chair

**Peter Arnsdorf**  
**Planning, Sustainable Growth and Investment Manager**

**Date:** 13 September 2024  
**Report Contact:** Mhairi-Anne Cowie – Planning Officer  
[Mhairi-Anne.Cowie@midlothian.gov.uk](mailto:Mhairi-Anne.Cowie@midlothian.gov.uk)

**Background Papers:** Planning application 24/00220/S42 available for inspection online.

# Appendix A



## Planning Service Place Directorate

Midlothian Council  
Fairfield House  
8 Lothian Road  
Dalkeith, EH22 3AA

Section 42 application to amend condition 1 of  
planning permission 334/94

West Church, 14 Old Edinburgh Road, Dalkeith

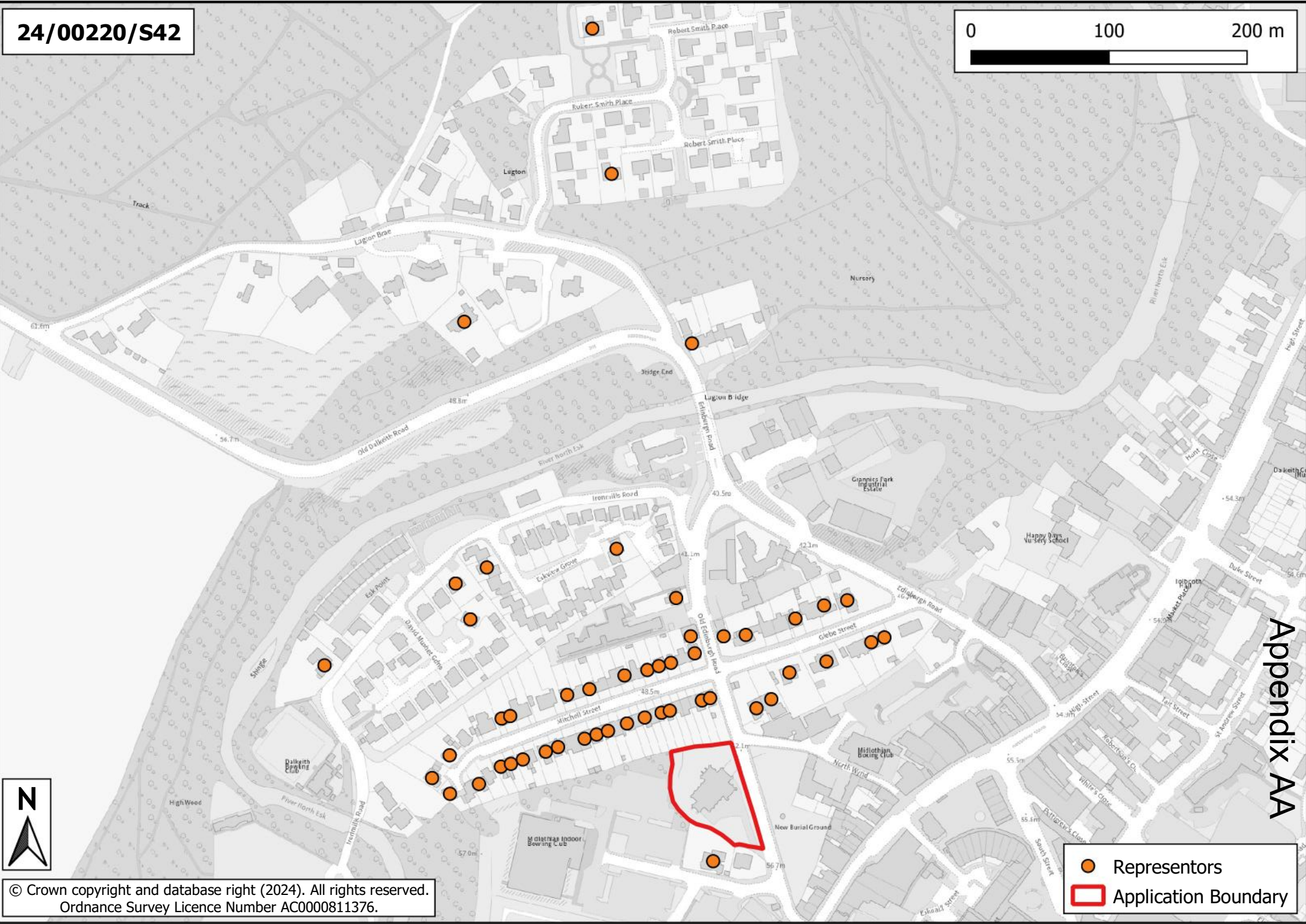
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File No. 24/00220/S42

Scale 1:750





- Representors
- Application Boundary

## 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	MARK	Forename	
Surname	IVINSON	Surname	
Company Name	OROCCO LTD.	Company Name	
Building No./Name	14	Building No./Name	
Address Line 1	OLD EDINBURGH	Address Line 1	
Address Line 2	ROAD.	Address Line 2	
Town/City	DALKEITH	Town/City	
Postcode	EH22 1JD	Postcode	
Telephone		Telephone	
Mobile		Mobile	
Fax		Fax	
Email		Email	
<b>3. Application Details</b>			
Planning authority		MIDLOTHIAN COUNCIL	
Planning authority's application reference number		24/00220/S42	
Site address			
WEST CHURCH 14 OLD EDINBURGH ROAD DALKEITH EH22 1JD.			
Description of proposed development			
EVENTS & WEDDINGS AT WEST CHURCH WITHIN THE CHURCH AND GROUNDS.			

Date of application

26.3.2024

Date of decision (if any)

24.05.2024

**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:

YOU WOULD NEED ENTRY INTO THE CHURCH ITSELF.

## 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.

We believe the planning officer as taken the views of the local residents over the request and information below that we sent to her; therefore we would like a review so that we can speak to the local councillors and share our wonderful space and ideas.

We are looking to hire out the church for local people and for those far and wide to use this amazing space as somewhere they can hold gatherings, whether that be meetings, burns suppers, family get togethers. The church is a beautiful historical building that we want to share with the public and bring more businesses into Dalkeith which in turn could mean more awareness of the area and hopefully bring positiveness, more spend and help local businesses to grow.

We see Dalkeith as a forward thinking district which is why we have remained within the Midlothian area as our business grows; we want to enhance the offerings of the area especially with so many new houses, and businesses emerging in the short time that we have been here.

In time, we may erect a marquee in the grassy area at the back of the church (see Site Plan attached). We are aware of noise implications and would welcome any suggestions/workable solutions the council would have in order to meet regulations.

We don't have a large space as the ground floor is taken up by the workshop therefore we envisage circa 50-150 people.

Our events will be outside normal working hours and public parking areas will be used.

At present, we don't know how many days the building will be used for events; this is new territory for us and hoping that with the support from Midlothian Council and the correct advertising/social networking we will build the business up gradually.

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 your 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.

## 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

NO FURTHER EVIDENCE OTHER THAN THE DOCUMENTS  
SENT IN INITIAL APPLICATION

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:



e:

MARK WILSON

Date:

30.05.2024

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

[REDACTED]  
Sent: Thursday, May 30, 2024 3:06 PM

To: Duty Planning Officer <[dutyplanningofficer@midlothian.gov.uk](mailto:dutyplanningofficer@midlothian.gov.uk)>  
[REDACTED]

Subject: RE: Midlothian Council Planning - 24/00220/S42

**CAUTION:** This email originated from outside Midlothian Council. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Hi Jade

I have already appealed this through the portal and it went to the Scottish Government??

They have rejected it and now its to go to the Local Review Body –which is where I wanted it to go to initially so no idea how I got that wrong.

I am dyslexic and ive read the how to guides but im really not understanding how I can get the form you attached onto the portal without having to type it all out again.

Im so sorry but is there anyway you can help. I have attached the completed form.

Thank you  
Mark

From: Duty Planning Officer <[dutyplanningofficer@midlothian.gov.uk](mailto:dutyplanningofficer@midlothian.gov.uk)>

Sent: Thursday, May 30, 2024 1:34 PM  
[REDACTED]

Subject: Midlothian Council Planning - 24/00220/S42

Dear Mr Ivinson,

I am writing to you in regards to the appeal received for the below application.

**24/00220/S42**

**Section 42 application to amend condition 1 of planning permission 334/94**  
**West Church, 14 Old Edinburgh Road, Dalkeith**

Your application was dealt with under delegated powers and so any review of the decision would be by the Local Review Body (LRB) (this is an internal group made up of local councillors). In order for the review to be considered you need to submit a notice of review form within three months of the decision notice.

Please see attached or the link below for the Notice of Review process:

[Planning appeals and the local review body | Midlothian Council](#)

I trust this is of assistance.

Kind regards,

Jade Macmillan  
Research and Information Officer *(On behalf of duty officer)*

Planning, Sustainable Growth and Investment Service  
Place Directorate  
Midlothian Council

Email: [dutyplanningofficer@midlothian.gov.uk](mailto:dutyplanningofficer@midlothian.gov.uk)

Web: [Midlothian Council Homepage](#)

**We are reviewing the Midlothian Local Development Plan** [Midlothian Local Development Plan 2 | Development plans and policies | Midlothian Council](#)

**If you have any questions about the review, or would like to be added to our MLDP2 mailing list, please email** [LDP@midlothian.gov.uk](mailto:LDP@midlothian.gov.uk)

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## MIDLOTHIAN COUNCIL

### DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

**Planning Application Reference:** 24/00220/S42

**Site Address:** West Church, 14 Old Edinburgh Road, Dalkeith.

**Site Description:** The application site relates to a category B listed building and associated land. The building is an early English gothic church finished in a natural stone with slate roofing. The building was historically used as a church and is now a class 4 use as a joinery business. The application site is located within the Eskbank and Ironmills Conservation Area and Dalkeith Town Centre. There are residential properties to the north and south, a public car park to the west and a graveyard to the east.

**Proposed Development:** Section 42 application to amend condition 1 of planning permission 334/94.

**Proposed Development Details:** It is proposed to amend condition 1 of planning permission 334/94 (Change of use of church and church hall to industrial premises and minor alterations to the church) which reads as follows:

1. The use hereby permitted shall be restricted to use of the Church for specialist joinery work and cabinetmaking for no other purposes within Class 4 or other classes of the Schedule of the Town and Country (Use Classes)(Scotland) Order 1989.

**Reason:** *To allow the Planning Authority to retain effective control over the future use of the premises in the interests of preventing any change of use which might detract from the character and amenity of the area or this building.*

The application form states it is proposed to allow the use of the former church and grounds for events and weddings while maintaining the existing use of specialist joinery and cabinetmaking and offices. No alterations to the access are proposed. Parking will remain as existing with 8 spaces on site. No new drainage arrangements are proposed. The site will connect to private water supply rather than the public water supply/network.

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

23/00625/DPP Formation of new access, erection of gates and associated works. Permitted.

23/00039/LBC Internal alterations including; formation of additional offices and toilets; and relocation of painting booth. Permitted.

17/00893/WTT Pruning of trees within the Eskbank and Ironmills conservation area. Granted with conditions.

06/00288/LBC Installation of four telecommunications antennae behind replica louvres, internal alterations associated with the installation of equipment cabinets and installation of external meter cabinet. Consent with conditions.

26/00287/FUL Installation of four telecommunications antennae behind replica louvres, internal alterations associated with the installation of equipment cabinets and installation of external meter cabinet. Consent with conditions.

03/00465/LBC Internal Alterations to create workshop and office. Consent with conditions.

334/94/FUL Change of use of church and church hall to industrial premises and minor alterations to the church. Consent with conditions – including restriction of use; details of loading bay; details of fences and walls; details of landscaping, implementation and replanting; details of mechanical extraction system; no trees to be lopped, topped or felled without permission; alteration to vehicular access to be agreed with the Council; no industrial operations to be carried out outwith the Church; no products, materials or waste stored outwith the Church; limits of noise during particular hours; use of the Church Hall restricted to storage and office purposes for the authorised use of the Church and/or for domestic storage associated with the Manse; the permission for uses of the Church Hall shall enure for the benefit of the applicant and his company only and limited to the duration of the applicant's occupation of the Manse.

### **Consultations:**

The **Dalkeith and District Community Council** object on the following grounds:

- It is very unsatisfactory that the application does not contain any detail of how the proposed events use would operate, including hours of operation, how often events would take place, number of guests, if a marquee is proposed;
- Noise impact to the surrounding area;
- Only condition 1 of 334/94 is proposed to be amended and not conditions 9 and 10 which relate to noise. It would not be possible to hold events in a marquee and comply with these conditions. The reason for these conditions remain relevant;
- Removing condition 1 would not comply with policy ENV18 and have a significant detrimental impact on the surrounding area;
- There is limited space within the church to hold events so these will likely take place in a marquee;
- An events venue is a significant change in the setting of this historically important listed building and so is contrary to Policy ENV22. While there may be no physical alteration to the church building, a marquee in the grounds on a semi permanent basis will affect the appearance. Given the prominent position the former church and grounds have in the Dalkeith townscape, the marquee would be very obvious to all those approaching the town from the north and would not enhance the vista;
- The above also applies to the impact of the proposal to the surrounding conservation area;
- There is no detail of toilet facilities for the event use;

- Impact on wildlife in the surrounding area. It is understood there is a colony of bats in the church; and
- Concerns over road safety as the vehicular access to the site might cause issues for drivers who are not used to it as there are restricted sight lines, usually cars parked on Old Edinburgh Road and a bus stop directly opposite.

The Council's **Senior Manager Neighbourhood Services (Roads)** was consulted but did not respond.

The Council's **Protective Services Manager** notes it is not clear from the information submitted where the events are to be located. While it may be feasible to hold events within the building without causing intrusive noise issues for nearby residents resulting from music, functions within the grounds will negatively impact on nearby residential amenity. Even if functions are held within the former church building, noise sources other than music, such as guests within the grounds, disposal of bottles from functions into bins, vehicle movements and reversing alarms are likely to cause issues. For these reasons and the proximity of neighbouring residential properties to the former church, they consider the premises unsuitable for use as an events venue and recommend refusal of the application. They also make comment on the use of a private water supply as stated on the application form.

**Scottish Water** has no objection.

The Council's **Biodiversity Consultant** considers that the proposals does not impact biodiversity.

**Representations:** Forty-one representations have been received, 4 supporting and forty-five objecting to the proposal. Some representors have made more than one comment:

The supporting comments are as follows:

- The proposal will bring economic benefits to the community;
- The proposal will bring much needed employment to the area;
- People do not drive to weddings but use public transport or taxis;
- In terms of impact on wildlife, any marquee would be erected on turf. If there were bats at the site, these will already be affected by noise from the joinery use during the day;
- There are no proposed external alterations so the fact the church is listed is irrelevant;
- There is unlikely to be a significant increase in litter;
- There are several licenced premisses in the area and the introduction of an events venue playing music once or twice a month does not constitute a material concern;
- The creation of a new wedding venue would be good to give people a more affordable option;
- The proposal will breathe new life into this historic building;
- The events will surely be managed with respect for the venue and local residents;
- The proposal presents an opportunity to celebrate local heritage in a way that actively includes and benefits the community; and

- Similar events venues in residential areas do not have a detrimental impact on the amenity of local residents in terms of noise or parking.

The objections are as follows:

- The proposal is contrary to MLDP policies ENV15, ENV18, ENV19 and ENV22, as well as a Planning Advice Note and Environmental Noise Regulations;
- There is a lack of information submitted with the application;
- If condition 1 is changed then the remainder of other conditions attached to 334/94 will be in breach;
- Condition 1 was attached to allow the Planning Authority to retain effective control over the future use of the premises in the interest of preventing any change of use which might detract from the character and amenity of the area or this building. The need for this condition has not changed. The character and amenity of the area and this building has been maintained while allowing a joinery business to operate here successfully;
- Other conditions on 334/94 would need to be amended to allow an events use at this site;
- Events cannot be held in the church as this is in use as a joinery workshop;
- The continued use of the church as a workshop implies events would take place outside which would significantly affect nearby properties;
- The proposed events use is not ancillary to a joinery;
- The site backs onto residential houses and gardens which would be significantly affected by the proposed use;
- Loss of privacy and security to nearby properties given the elevated position of the church and grounds;
- Noise and disturbance to surrounding residents and properties from guests, amplified music, fireworks, PA systems, setting up/clearing events and vehicles associated with the events use;
- The events use will bring noise at antisocial hours;
- The events use would decrease the quality of life of the surrounding area;
- As the church and grounds are B listed and within a conservation area, these changes should not be allowed and the proposed use is not compatible with an events venue;
- The proposal would adversely affect the character and appearance of the B listed building;
- The proposal would adversely affect the character and appearance of the church and is contrary to the policy relating to conservation areas;
- The applicant has confirmed to local residents that a marquee would be erected and an alcohol licence applied for;
- Concerns over use of a marquee or other structures within the site as these would detrimentally affect the surrounding conservation area and setting of the listed building;
- Concerns over security issues and vandalism if a marquee is on site when the site is empty;
- A marquee is a significant threat to the environment through inefficiency in heating and ventilation which leads to excessive greenhouse gas emissions. This is a temporary structure made of unrecyclable plastic and so significantly contributes to environmental degradation. Marquees are not designed to

withstand the weather for an extended period of time and will eventually end up in a landfill. The lack of sustainability is contrary to NPF4;

- If a marquee is used, this will not mitigate noise to the surrounding area;
- Concern that parking associated with events will exacerbate an existing problem in the area;
- Safety of pedestrians in the area as the entrance to the church and grounds is almost hidden;
- There are a number of protected trees within the site which would likely to be lost if a marquee is proposed;
- The surrounding trees would be detrimentally affected by servicing works;
- Light pollution from outdoor/disco lighting;
- Increase in litter in the area which is already poorly served by litter bins;
- Concern over drainage and how this will affect the site and area;
- Impact on wildlife, particularly bats, hedgehogs, owls, deer and nesting birds;
- The proposal appears to be an attempt to turn the church in to a pub/wedding venue;
- The proposed events use has not already taken place as stated on the application form;
- Suggestions of required consultees;
- The potential for antisocial behaviour;
- The application site boundary overlaps to neighbouring properties;
- Disappointment that there was no discussion with local residents before the application was submitted;
- Dalkeith does not need another licenced premises;
- Comments over the low number of people notified as the proposal would affect a much larger area;
- Lack of site notice erected at the site;
- The proposed events use would reduce property values in the area;
- There are a number of events venues in the area already;
- The proposal will have a limited impact on employment in the area;
- The proposal is disrespectful given the graveyards in the area with funerals regularly held there. Also churches are places for solemn ceremony;
- There are health and safety concerns over toilet facilities and ground levels in the area meaning there is a significant drop from the site to Old Edinburgh Road and Mitchell Street;
- Serving food at the site and resultant waste could attract vermin and other wild animals;
- None of the representors supporting the proposal are local residents; and
- The financial benefits of the church being used as an events venue does not justify the damage it would do to the character and meaning of the church.

**Relevant Planning Policies:** The development plan is comprised of National Planning Framework 4 (2023) and the Midlothian Local Development Plan 2017. The following policies are relevant to the proposal:

National Planning Framework 4 (NPF4)

- **Policy 1 Tackling the climate and nature crises;** sets out to encourage, promote and facilitate development that addresses the global climate emergency and nature crisis;

- Policy **2 Climate mitigation and adaptation**; sets out to encourage, promote and facilitate development that minimises emissions and adapts to the current and future impacts of climate change;
- Policy **3 Biodiversity**; sets out to protect biodiversity, reverse biodiversity loss, deliver positive effects from development and strengthen nature networks;
- Policy **6 Forestry, woodland and trees**; sets out to protect and expand forests, woodland and trees.
- Policy **7 Historic assets and places**; sets out to protect and enhance historic environment assets and places, and to enable positive change as a catalyst for the regeneration of places.
- Policy **13 Sustainable Transport**; sets out to encourage, promote and facilitate developments that prioritise walking, wheeling, cycling and public transport for everyday travel and reduce the need to travel unsustainably.
- Policy **14 Design, quality and place**; sets out to encourage, promote and facilitate well designed development that makes successful places by taking a design-led approach and applying the Place Principle.
- Policy **23 Health and Safety**; sets out to protect people and places from environmental harm, mitigate risks arising from safety hazards and encourage, promote and facilitate development that improves health and wellbeing.
- Policy **26 Business and industry**; sets out to encourage, promote and facilitate business and industry uses and to enable alternative ways of working such as home working, live-work units and micro-businesses.
- Policy **27 City, town, local and commercial centres**; sets out to encourage, promote and facilitate development in our city and town centres, recognising they are a national asset. This will be achieved by applying the Town Centre First approach to help centres adapt positively to long-term economic, environmental and societal changes, and by encouraging town centre living.

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

**DEV2 Protecting Amenity within the Built-Up Area** advises that development will not be permitted where it is likely to detract materially from the existing character or amenity of the area;

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

**TCR1 Town Centres** states proposals for retail, commercial leisure development or other uses which will attract significant numbers of people, will be supported in Midlothian's town centres, provided their scale and function is consistent with the town centre's role, as set out in the network of centres and subject to the amenity of neighbouring uses being preserved. The conversion of ground level retail space to residential uses will not be permitted. Residential units at ground floor level in retail units will not be permitted but the conversion of upper floors to housing and the formation of new residential space above ground-level structures in town centres is supported.

In support of this policy the Council has prepared supplementary guidance on food and drink and other non-retail uses in town centres; this guidance will also include guidance in respect of food and drink and hot food takeaways outwith town centres;

**ENV11 Woodland, Trees and Hedges** states that development will not be permitted where it could lead directly or indirectly to the loss of, or damage to, woodland, groups of trees and hedges (including trees covered by a Tree Preservation Order, areas defined as ancient or semi-natural woodland, veteran trees or areas forming part of any designated landscape) which have particular amenity, nature conservation, biodiversity, recreation, landscape, shelter or historical value or are of other importance;

**ENV18 Noise** states that the Council will seek to prevent noisy developments from damaging residential amenity or disturbing noise sensitive uses. Where new developments with the potential to create significant noise are proposed, these may be refused or required to be modified so that no unacceptable impact at sensitive receptors is generated. Applicants may be required to carry out a noise impact assessment either as part of an Environmental Impact Assessment or separately. Where new noise sensitive uses are proposed in the locality of existing noisy uses, the Council will seek to ensure that the function of the established operation is not adversely affected;

**ENV19 Conservation Areas** states that within or adjacent to conservation areas, development will not be permitted which would have any adverse effect on its character and appearance. In the selection of site, scale, choice of materials and details of design, it will be ensured that new buildings preserve or enhance the character and appearance of the conservation area. Traditional natural materials appropriate to the locality or building affected will be used in new buildings; and

**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.

**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 application as submitted only includes limited information, in that it is proposed to allow the use of the former church and grounds for events and weddings while maintaining the existing use of specialist joinery and cabinetmaking and offices. It is only proposed to amend condition one on planning permission 334/94 to allow this use. It is not proposed to change any other conditions attached to this permission, which includes restrictions on hours of operation and noise from the site.

The case officer contacted the applicant to inform them that the application as submitted is not the right type of application to allow them to secure planning permission for the proposed events use. The appropriate application is for a change of use from joinery to a mixed use operation of a joinery and events venue. The applicant was asked to clarify if they wished to proceed with the application as submitted or withdraw and submit a new application for a change of use. The case officer asked for additional information should the application proceed, including: hours and frequency of events; number of guests; details of parking; noise mitigation measures; if a marquee or other structure is proposed; proposed layout; and areas where guests can access.

The applicant did not respond to this contact, therefore the application is being assessed on the basis of the information submitted only.

The applicant was asked to submit details of how the proposal has considered NPF4 policies. No information has been submitted to demonstrate that this application given consideration to the global nature crisis. The application site is within a town centre which is a broadly sustainable location with good public transport links. These factors help address issues regarding climate change. Given this, the proposal is unlikely to have an adverse impact on sustainability or biodiversity.

The application site is within the built up area and Dalkeith Town Centre, where there is a presumption in favour of development where this does not have a material detrimental impact on the existing character or amenity of the area. Town centre locations can be appropriate for a wide variety of commercial uses, again provided these will not undermine the character and amenity of the area. The site is at the northern edge of the town centre and the residential properties immediately adjacent to the north are outwith the town centre. The residential properties to the south are within the town centre.

Due to position of the site and the proposed events use there is potential for this to have a significant detrimental impact on the amenity of nearby residents and the surrounding area, through noise and disturbance, parking and road safety.

The events use would take place within the former church building and associated grounds, however it is not clear what areas of the associated grounds and to what extent. It may be possible that events could be held within the former church building without causing intrusive noise issues for nearby residents resulting from associated music, however this is very difficult to assess based on the information submitted. Due to the proximity of the site to residential properties, any events within the grounds would have a significant detrimental impact on the amenity of surrounding residents in terms of noise and disturbance. Also noise from guests accessing and leaving the site, guests within the grounds, setting up and tidying up the site, vehicle movements and reversing alarms are likely to have a significant detrimental impact on the area.

Depending on the extent of events use in the gardens, there may be an adverse impact on the privacy of adjacent residential properties through overlooking. While there is landscaping around all boundaries at present, with the exception of trees this could be removed to accommodate the events use and create overlooking from the site to surrounding properties.

The application form states there are 8 parking spaces existing and proposed at the site. This seems a relatively small amount for an event use. Representors have stated the proposal would exacerbate existing parking issues in the area. The site is adjacent to a public car park, is well served by public transport and there is on-street parking in the wider town centre area. The transportation consultant has not raised any road safety or parking concerns. Given this, lack of parking would not be a reason for refusal.

As the proposal is purely for an events use and no external alterations or related structures, there would be no change to the character or appearance of the listed building or conservation area as compared to the existing situation.

As the proposal is purely for an events use and no external alterations, related structures or works, there would be no impact on protected trees within the site. Had the proposal included a marquee, other structures or service provisions, such as electricity supply and related groundworks, this may have had an impact on the trees and so additional information would have been required to fully assess this.

The Council's Biodiversity consultant did not require any ecology reports and did not consider that protected species would be affected by the proposal as submitted. Had the application included external alterations to the building, the installation of a marquee or removal of trees, protected species surveys may have been required. Representors have commented there are bats within the church building. However this is already in active use as a joinery workshop and related offices. The proposed events use would not be significantly different to the existing situation in terms of impact on bats.

There may be some impact on the amenity of the surrounding residential properties from light associated with the use however this is difficult to assess given the information submitted. Should the events use be supported, it would be possible to limit external lighting.

The application form states the proposal would connect to a private water supply. The site is within Dalkeith town centre where there is public water supply and Scottish Water has confirmed they have no objection to the proposal. The Protective Services team are not aware of any private water supplies in the centre of Dalkeith and suggest it may be that water is connected through a private pipe, such as one that Scottish Water has not adopted, but the supply is still mains water. It is highly unlikely that the water supply is private and it is expected that the public water supply would be used. However confirmation of this would be required should this use be supported. If this is the case, further information is required from the applicant to satisfy the Protected Services team that this is acceptable.

No new drainage works are proposed.

The proposal as submitted did not include details for a marquee at the site. It is noted that representors state the applicant has confirmed with them this is proposed. However as the application did not include proposals for a marquee, this is not being assessed. Had a marquee been proposed, its impact on the setting of the listed building and character and appearance of the conservation area, trees and noise would have been considered.

The following addresses representor comments not addressed above.

Neighbour notification was carried out in line with the relevant regulations and requirements. A site notice was not required to be installed at the site. Commenting on an application is not restricted to local residents only and anyone can make comment on an application.

The application site boundary matches previous applications here and the application forms states this is owned by the applicant.

While it could be useful, there is no obligation for applicants to discuss a proposal of this scale with local residents before submitting an application.

It is not clear why the proposed events use would increase litter to the surrounding area. This is not a reason to refuse the proposal.

The impact on property prices is not a material planning consideration, nor is the security of the site or health and safety concerns.

Alcohol licence applications are separate to the planning process and would be considered by the Licencing section.

Potential for antisocial behaviour is not a material planning consideration but a matter for the police.

Potential for vermin as a result from food preparation is not a material planning consideration but a matter for the Environmental Health team.

The application is seriously deficient in the information required to be submitted for assessment for this type of proposal. There has been no communication from the applicant. In addition, the type of application submitted, even if approved, would not secure permission for what the applicant wants to do on site.

**Recommendation:** Refuse planning permission.

# Refusal of Planning Permission

Town and Country Planning (Scotland) Act 1997

**Reg. No. 24/00220/S42**

Mr Mark Ivinson  
14 Old Edinburgh Road  
Dalkeith  
EH22 1JD

Midlothian Council, as Planning Authority, having considered the application by Mr Mark Ivinson, 14 Old Edinburgh Road, Dalkeith, EH22 1JD, which was registered on 27 March 2024 in pursuance of their powers under the above Acts, hereby **refuse** permission to carry out the following proposed development:

**Section 42 application to amend condition 1 of planning permission 334/94 at West Church, 14 Old Edinburgh Road, Dalkeith, EH22 1JD**

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

<u>Document/Drawing.</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Location Plan, Site Plan	W140E/1250/01 1:1250 1:500	27.03.2024

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

- It has not been demonstrated to the satisfaction of the planning authority that the proposed events use would not have a serious and significant adverse impact on the amenity of surrounding residential properties as a result of noise and disturbance and so does not comply with policies DEV2 and ENV18 of the adopted Midlothian Local Development Plan 2017 and policies 14 and 23 of National Planning Framework 4.*

Dated 24 / 5 / 2024



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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](mailto:planningconsultation@coal.gov.uk)

Website: [www.gov.uk/coalauthority](http://www.gov.uk/coalauthority)

**INFORMATIVE NOTE**

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

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](http://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](http://www.gov.uk/government/organisations/the-coal-authority)

**Informative Note valid from 1st January 2023 until 31st December 2024**