

## **REVIEW DECISION NOTICE**

Decision by East Lothian Local Council Review Body (the "ELLRB")

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Application for Review by Cundall on behalf of Mr Andrew Meikle of Beanston Main Cottages, Haddington, EH41 3SB (the applicant) of a non-determination (deemed refusal) of the planning application for the erection of one house and associated works on the site of this application (being circa 0.12 hectares at the land west of Hoprig Mains Farmhouse, Gladsmuir, Macmerry, East Lothian).

Site address: Land west of Hoprig Mains Farmhouse, Gladsmuir, Macmerry, East Lothian

Application Ref: 22/01120/P

Application Drawing: Please refer to the Drawings/ Plans detailed in number 4 below

Date of Review decision notice: 15 August 2023

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### **1. Decision**

The ELLRB unanimously agreed to grant the application for the erection of one house and associated works at the land west of Hoprig Mains Farmhouse, Gladsmuir, Macmerry, East Lothian for the reasons more particularly set out below.

This Notice constitutes the formal decision notice of the Local Review Body as required by the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.

### **2. Introduction**

The ELLRB was constituted by Councillor D Collins (Chair), Councillor J McMilan and Councillor S McIntosh. The above application for planning permission was considered by the ELLRB at a meeting held on Monday 31 July 2023. This was following a decision made at the Local Review Body meeting on 15 June 2023 to continue the application pending additional information from an Agricultural and Rural advisor. All three members of the ELLRB had attended a site visit in respect of the application on 14 June 2023.

The following persons were also present at the meeting of the ELLRB:

Mr M Mackowiak, Planning Advisor  
Ms F Haque, Legal Adviser/Clerk  
Ms F Currie, Clerk

### **3. Proposal**

The planning application is for the review of the non-determination (deemed refusal) for the erection of one house and associated works on the site of this application (being circa 0.12 hectares at the land west of Hoprig Mains Farmhouse, Gladsmuir, Macmerry, East Lothian).

The planning application was registered on 11 October 2022 with a determination date of 10 December 2022. The application was not determined and therefore deemed refused.

For information an application was made in similar terms by the applicant in October 2020 (Ref: 20/00250/P) and the main reasons for refusal was:

1. the erection of a house on the application site would be a new build housing development in the countryside of East Lothian for which a need to meet the requirements of the operation of an agricultural, horticultural, forestry, countryside recreation, or other business, leisure or tourism use has not been demonstrated, and which is not proposed as affordable housing development

of an existing rural settlement. The proposal is therefore contrary to Policies DC1 and DC4 of the adopted East Lothian Local Development Plan 2018; and

2. the erection of a house on the application site would be new build housing development in the countryside of East Lothian for which a desirable primary use supported in principle by criterion b of Policy DC1 and with benefits that outweigh the normal presumption against new build housing in the countryside has not been demonstrated; and which is not promoted to fund the restoration of a listed building, building of recognised heritage value or significant designated feature of the built or natural environment, the retention of which is desirable. The proposal is therefore contrary to Policy DC5 of the adopted East Lothian Local Development Plan 2018.

#### 4. Preliminaries

In advance of the ELLRB, members were provided with copies of the following:

1	Appointed Officer's Submission with (1) Officer's Summary Report; (2) Consultation Responses; (3) Copies of any relevant Development Plan Policies; (4) Schedule of Conditions
2	Applicant's Submission including (1) Statement of Case by Cundall; (2) Stuart Burke & Kiloh Associates' Mineral Stability Assessment Report for Proposed Residential Dwelling; (3) Davidson and Robertson Report on Operational Needs Assessment; (4) Letter from Scottish Water dated 13 March 2020; (5) Letter from The Coal Authority dated 4 May 2020; and (6) site plan, location plan, site survey, elevation plan and floor plans.
3	<p>Policies of the adopted East Lothian Local Development Plan 2018 relevant to the determination of the application:</p> <ul style="list-style-type: none"> <li>• DC1 (Rural Diversification);</li> <li>• DC4 (New Build Housing in the Countryside);</li> <li>• DC5 (Housing as Enabling Development);</li> <li>• DP1 (Landscape Character);</li> <li>• DP2 (Design);</li> <li>• T1 (Development Location and Accessibility);</li> <li>• NH8 (Trees and Development); and</li> <li>• T2 (General Transport Impact).</li> </ul> <p>National Planning Framework 4 policies:</p> <ul style="list-style-type: none"> <li>• 1 (Tackling the climate and nature crises);</li> <li>• 2 (Climate mitigation and adaptation);</li> <li>• 3 (Biodiversity);</li> <li>• 9 (Brownfield, vacant and derelict land and empty buildings),</li> <li>• 14 (Liveable Places);</li> <li>• 15 (Local living and 20 minute neighbourhoods);</li> <li>• 16 (Quality Homes);</li> <li>• 17 (Rural Homes); and</li> <li>• 29 (Rural development).</li> </ul>
4	Notice of Review dated 21 March 2023
5	Notice of Continuation dated 15 June 2023
6	Report from Laurence Gould Dated 11 July 2023 (hereafter the Laurence Gould Report)
7	Response from Cundall dated 11 July 2023 to Laurence Gould Report
8	Email from Davidson and Robertson dated 7 June 2023 commenting on the methodology used for their Operational Needs Assessment
9	Statement from Greaves West & Ayre re calculation of labour hours

## 5. Findings and conclusions

- 5.1 The ELLRB confirmed that all members were present (1) when the decision to continue the application was made at the Local Review Body meeting on 15 June 2023 pending a report from an independent agricultural advisor; and (2) at the site visit on 14 June 2023. They confirmed that they had access to the papers in respect of this matter and had reviewed them.
- 5.2 The Members requested that the Planning Advisor summarise the application and the related policy position in respect of this matter. The Planning Advisor advised that at the previous Local Review Body meeting on the 15 June a deferral of this appeal was agreed in order to allow the council's agricultural and rural consultant (Laurence Gould) to submit their comments. On 30 of June, the Rural Advisor at Laurence Gould submitted his report to the Council of a review of information submitted by applicant. On the 6 July the Rural Advisor was asked to consider Policy 17 of National Planning Framework 4 in his report, in particular Policy 17(vi) which concerns single homes for the retirement succession of a viable farm holding. The report was updated on the 11 July and includes an addendum covering that specific issue.

The Planning Advisor stated the points noted in number 3 (heading "Proposal" above). The applicant had submitted further information to address the requirement of policy DC4 with the planning application dated 11 October 2022.

The proposed house would have a footprint of some 190 square meters. It would be composed of a large 2-storey main structure and a smaller single-storey element. Planning permission is also sought for the formation of areas of hardstanding and a residential garden within the application site.

Existing derelict buildings on the site are to be demolished to facilitate the erection of the proposed house and associated works. The demolition of the stable buildings is categorised as permitted development and does not require planning permission.

In addition to application drawings the applicant's agent submitted with their application a Minerals Stability Assessment Report, a Planning Statement, an Operational Needs Assessment Report and a Chartered Accountants Statement in support of the application.

The applicant also submitted a Planning Statement of Case with the application. This states that that the owner of Hoprig Mains Farm is resident within Hoprig Mains Farmhouse and that the farm is operated by the owner's son (Mr G Meikle) who resides with his partner within a cottage at Hoprig Mains Farm Cottages located to the southwest of Hoprig Mains Farm complex. The farm is operated within a sole trader capacity and there are no other employees. The owner currently provides periodic operational support during busy sowing and harvest seasons.

Operations in the main involve the arable farming of 250 acres (over 100 hectares) of land, with off-site contractual commitments involving the farming of 340 acres (over 137 hectares) of land and seasonal support towards the farming of a further 250 acres of land on two neighbouring farms respectively. The applicant is the eldest son of the farm owner (Mr John Meikle) and currently lives does not live on the farm. It is John Meikle's intention to reduce his involvement in the farm business and the applicant intends to return to the farm along with his partner and child in order to provide the operational support currently provided by his father. Such support would involve the operation of farm machinery and vehicles and administrative tasks. The submitted statement goes on to assert that further to the owner's reduced involvement in the farm business the applicant's permanent presence on the farm will become necessary to provide operational support on grounds of safety. The statement further informs that no suitable dwelling or building capable of conversion exists on site and that the operational requirements presented for the applicant and his family to live on site justifies the requirement for a new house at this location.

The proposed house would be within Hoprig Mains Farm complex, which consists of Hoprig Mains Farmhouse and agricultural buildings. It would be visible in limited long-range views from the B6363 public road to the east of the site at a distance of at least 530 metres and in short duration glimpsed views from the public road running to the south of Hoprig Mains Farm. It would not be readily visible in public views from the north and west.

Vehicular access to the house would be by way of a set-back access formed from the existing private farm access road to the south of the site that is in turn taken from a minor public road to the south of the site. The Council's Roads Services raised no objection to the application, being satisfied that the proposed house could be safely accessed and provide an acceptable amount of on-site parking, and would not therefore be contrary to Policies T1 and T2 of the adopted East Lothian Local Development Plan 2018.

No public objections or representations to the application have been received.

The Council's Environmental Protection Manager was consulted on the application and made no comment.

Scottish Water made no objection to the application.

The Council's Flooding and Structures Manager was consulted on the application and had no objection in terms of flood risk.

The Coal Authority has no objection to the proposal subject to the imposition of planning conditions.

Section 25 of the Town and Country Planning (Scotland) Act 1997 requires that the application be determined in accordance with the development plan, unless material considerations indicate otherwise.

Policies that are relevant to the determination of this planning application are:

National Planning Framework 4 policies:

- 1 (Tackling the climate and nature crises);
- 2 (Climate mitigation and adaptation);
- 3 (Biodiversity);
- 9 (Brownfield, vacant and derelict land and empty buildings),
- 14 (Liveable Places);
- 15 (Local living and 20 minute neighbourhoods);
- 16 (Quality Homes);
- 17 (Rural Homes); and
- 29 (Rural development).

East Lothian Local Development Policy:

- DC1 (Rural Diversification);
- DC4 (New Build Housing in the Countryside);
- DC5 (Housing as Enabling Development);
- DP1 (Landscape Character);
- DP2 (Design);
- T1 (Development Location and Accessibility);
- NH8 (Trees and Development); and
- T2 (General Transport Impact).

The Council's submission from the planning officer contains the main issues relevant to this application which includes a detailed description of the proposal and main policy considerations. The planning officer considered whether the principle of the proposed building of a new house on the application site in a countryside location is consistent with national, strategic and local planning policy relating to the control of new housing development in the countryside. The planning officer's report noted that, the erection of a house on the site must be assessed against development plan policies 17 (Rural homes) of NPF4 and policy DC4 (New Build Housing in the Countryside) which relate to the control of new housing development in the countryside.

The officer emphasised that the key issues for consideration are whether:

1. the proposed house is demonstrated to be necessary to support the sustainable management of a viable rural business orcroft, and there is an essential need for a worker (including those taking majority control of a farm business) to live permanently at or near their place of work in accordance with NPF4 policy 17; and
2. there is a direct operational requirement for that house to support that existing agricultural use in accordance with Policy DC4 of the ELLDP.

The Planning Advisor then summarised the contents of the Laurence Gould Report and outlined the following observations and comments:

1. The labour requirement as set out in the report produced by Davidson and Robertson is identified as 4.1 but the reality is that modern arable businesses operate with much lower labour requirements – a business of this size and scope requires somewhere in the region of 2 labour units.
2. By living on site the applicant will be able to provide more frequent support for more minor activities without which the business might have to employ additional labour for a longer period of time. The issue remains whether this is a material consideration in cost terms or whether it is largely an issue of convenience. An 8 mile commute required by the applicant whilst more onerous than living on site is relatively small in commuting terms.
3. There are four properties linked to the family. Two of these properties might provide a diversified income stream, which is important to the business viability as it does provide some insurance against the ebb and flow of agricultural profits. However, they could also provide a level of accommodation for someone in the family and this is a workable but potentially unattractive option.
4. The Meikle family is reliant to quite a high degree on the contracting income to maintain its current level of profit.
5. Policy 17 states that a house for a retiring farmer will be supported. This policy clearly helps the application but the advisor at Laurence Gould believes it is still a finely balanced decision. There is still accommodation within the control of the family / business that could be utilised for a farm worker. The rural advisor view is that two dwellinghouses is a reasonable requirement. If a home to provide for retirement succession is included then this becomes a requirement for 3 houses, against the current 4 that are within the control of the family / business. The reliance of the business on contracting income and the operational need for a worker to reside on site when they are required for the farm work for only a small proportion of the year are the factors that weaken the applicant's case considerably.

In their response to the Laurence Gould Report, Cundall raised the following points:

1. Laurence Gould confirm that they are satisfied with the viability of the business, therefore satisfying part of the policy which requires a viable agricultural use.
2. LDP Policy DC4 does not explicitly state that it is a requirement that is deemed an absolute necessity to reside on the business land, it instead states the applicant must satisfy that it is a direct operational requirement of a viable agricultural use. Laurence Gould have already agreed that there is an operational requirement (expectation that there is a labour requirement of 2 units – which in this case would be the applicant and his brother, however the Davidson and Robertson continue to refute Laurence Gould's methodology and contend that there is an operational requirement of 4.1 units.) and they have also agreed it is a viable business.
3. Support to Mr Thompson's statement that the grain drying operation in particular would benefit from an onsite presence especially given the long hours grain driers operate and their requirement for frequent monitoring.
4. The commuting time between the Applicants address, and the business is onerous, which in the planning agent at Cundall's opinion could have negative impacts on the operation side of the farm business. An 8 mile commute is a 2 hour 40 minute walk, and it cannot be assumed that Mr Meikle can always attend his place of work by private vehicle. NPF4 places an emphasis on climate change, sustainability and local living, whilst it is hard to apply the principle of local living to rural areas, NPF4 Policy 17: Rural Homes states that proposals will be supported where there is an essential need to live permanently at or near their place of work. This will also assist in meeting the aims of Policy 13 Sustainable Transport which seeks

- to reduce the need to travel unsustainably, Policy 14 seeks to support the efficient use of resources that will allow people to live and work in the same area.
5. The requirement to hire additional labour for the business could have a negative impact on business viability. This is not an issue of 'convenience' as put by the Laurence Gould Report and is in fact an issue on business viability and future proofing its finances. Laurence Gould acknowledge that by not living on site that Mr Meikle may have to employ additional workers.
  6. In terms of the existing dwellings within the farm, it is correct that rent from these properties will provide additional funds to the business, loss of these tenants could have an impact on the business viability, both the LDP and NPF4 are supportive on diversification to rural businesses.
  7. Could these properties provide a level of accommodation for someone in the family? As set out in the appellant's Statement of Case, these cottages are already occupied and under long term secure tenancies (which are in excess of 25 years), they are also not of a sufficient size for the applicant and his family. It would also not be reasonable to expect the applicant to evict his long term tenants, especially in the midst of the cost of living and housing crisis, where there is already a shortage of affordable housing with the local area.
  8. The business has diversified to secure its future viability, this is supported both by local and national planning policy and is not an issue when considering the business viability under Policy DC4 of the LDP. There will still be a requirement to live on site to ensure the successful operation of both the farm business and the contracting, which is based at Hoprig Mains Farm. In addition, the Greaves West & Ayre statement advises that as much as "all elements of the business are important" the "turnover and profit made from the farming activities far outweigh the other elements.
  9. Laurence Gould has already stated that they believe there to be a labour requirement of 2 units on the site, which would consist of the Applicant and his brother (Davidson and Robertson have set out that they consider there to be a labour requirement of 4.1). This response does not dispute that there is an operational requirement for the new dwelling. Laurence Gould response does also not consider that the future income of the business could increase, due to growth of the contracting business or the business diversifications, which would increase the requirement of the applicant to be able to live on site.
  10. Mr John Meikle is retiring, he resides in Hoprig Mains Farmhouse and intends to remain in his dwelling, his dwelling is not in the ownership of the business and will remain his private residence.
  11. There is therefore clear support from Policy 17 for a new single dwelling on the farm holding to accommodate his son (the applicant) who will be taking over his father's duties and will assist in running the day- to-day operations of the farm business and will therefore require accommodation on the site.
  12. As previously stated, there is no existing accommodation on the farm holding available to the applicant.
  13. We dispute that the Farm is reliant of the contracting income, as the Davidson and Robertson Operational Needs Assessment confirms that the farm is profitable through the arable/cereal farming and that Hoprig Mains is one of the larger cereal units in Scotland. The contracting element of the business is a diversification of the farm business, which is supported by both national and local planning policy. This should not be reason made against the applicant and it does not dispute the operational need to reside on this viable business, as the base of the contracting arm of the farm is still at Hoprig Mains. We disagree that 'both of these factors weaken the applicant's case considerably'.
- 5.3 The Chair invited questions for the Planning Officer and there were none. The Chair again confirmed with all members that they had attended the site visit which had taken place on 14 June 2023.
- 5.4 The Chair then asked colleagues if they had sufficient information to proceed to determine the application on, the members agreed to proceed. The Chair then invited comments as below.
- 5.5 Council McMilan commented that it would be helpful to hear the Chair's comments due to her farming experience.
- 5.6 The Chair shared her experience in the farming industry, which began from childhood. She has been running a one hundred acre farm for the past 17 years, this includes a range of activities

including the ploughing, sowing, spraying the harvest, baling, combining, stacking on the farm. She is aware of how much work is involved in running a farm and sometimes works 18 hours a day for seven days a week. The Chair commented that she found the Laurence Gould Report light in detail as a rebuttal to Davidson and Robertson's Operational Needs Assessment. She further commented that David and Robertson are land agents and work with farmers, on various matter such as compensation. Davidson and Robertson use the Farm Management Handbook from the SAC and the John Nix book, the Chair also uses these books.

- 5.7 Davidson and Robertson used the Farm Management Handbook for their calculations in their Operational Needs Assessment. The Chair reviewed the tables in the Farm Management Handbook, and the figures, concluding that Davidson and Robertson's figures were correct
- 5.8 The Chair proceeded to comment on what activities may be undertaken on the farm. In spring, a farm will be ploughing, power harrowing, sowing, rolling, spraying (e.g. fungicide) for wheat and additional sprays for barley. When doing the harvesting, they may be combining, tractor work, transporting grain and straw, stacking the straw and then moving on to grain drying. The Chair commented that the applicant is likely to be running 3,000 to 5,000 tonnes of grain in their system, which takes weeks. There is also a lot of work in between all of this, such as maintaining the machinery, which includes changing cylinder heads, filters and checking bearings on the combines and servicing before the next stage of the process.

The Chair comments that farming is a tough job and requires people on the ground. There can be extended amounts spent on the combine (with the chair commenting that she have spent 18 hours on the combine before) to get the harvest, which can be weather dependant to do so before the rain comes and so the weather is conducted during the adequate weather time. All of this leads to a very finite area for profit and loss, the Chair gave an example of bread wheat and feed wheat and the costings in connection to this.

- 5.9 With regards to the cottages, the Chair comments that using one of the cottages for the family will remove income, she comments on the need for diversification and buffers in a business for the expenses. For example, the Laurence Gould Report makes reference to hiring engineers and the Chair comments that this is expensive, drawing on her own experience stating that inserting a clutch on a tractor cost the £5,000.
- 5.10 With regards to health and safety, the Chair commented that those on the farm will be doing long hours, ranging from 12 to 20 hours a day. Accidents happen when people are tired so need to make sure that there are enough people on the farm to ensure that farmers get breaks. It is also a health risk for the applicant to drive home after working such long hours, especially after working on a combine as can still feel the effects afterwards.
- 5.11 The Chair commented that it would also be helpful for there to be someone else on the farm for security issues, for example theft. Also commenting on succession generally and the importance of getting young people interested in farming.
- 5.12 The Chair is comfortable that the application fits in with NPF4, she has seen the site and there is nothing that can be done with it. It supports the management and viable business for the applicant to be on site to support to do the work and maintenance and keep things within a good financial state, rather than using outside engineers. With regards to Policy 17 of the NPF4, she also agrees that the application fits in with this and that there have been no objections. In conclusion to her comments, the Chair supports the application.
- 5.13 Councillor McIntosh commented that she had similar thoughts with the Chair especially in relation to health and safety. She commented that the Council should not be encouraging car dependency with planning decisions, for both the environmental aspect and in this case how tiring it would be for the individual to drive after working long hours. She commented that we need to consider what kind of rural life the Council is promoting and that it should be a nice life.
- 5.14 She also commented on the family life aspect and someone cannot be asked to move away from their home as they have retired, equally cannot ask someone to move into a sibling's family home on the farm if they were to work on the farm. She also agreed that the Laurence Gould Report

failed to provide evidence as to why two units would apply as opposed to the calculation presented by Davidson and Robertson's using the Farm Management Handbook. The contracting element would also be difficult if there was not an additional person to help with the day to day on the farm.

5.15 Councillor McMilan commented that policies under DC1, DC4 and NP4 is around need and that members are there to guard the policies and interpret them. One of the key points for him was the development of and in the countryside and the rural economy. Commenting that the Chair's comments around safety, security and the need for human scrutiny on site at night at key points. The economic development strategy talks about the need to make it easier to set up and grow a business. The applicants have expressed the need for people to be around to help with the family business. With someone on site, engaged and committed to the business, the business can look to the future and diversification and keeping the farm viable. It would strike him that taking all this into account, the application is the development of the countryside for business. Councillor McMilan would see the application as an essential need.

5.16 All members supported the application and granted planning permission subject to the following conditions:

1. The development hereby approved shall begin before the expiration of 3 years from the date of this permission.

Reason: Pursuant to Section 58 of the Town and Country Planning (Scotland) Act 1997 as amended.

2. No development shall take place on site unless and until final site setting out details have been submitted to and approved by the Planning Authority.

The above mentioned details shall include a final site setting-out drawing to a scale of not less than 1:200, giving:

- a. the position within the application site of all elements of the proposed development and position of adjoining land and buildings;
- b. finished ground and floor levels of the development relative to existing ground levels of the site and of adjoining land and building(s). The levels shall be shown in relation to an Ordnance Bench Mark or Temporary Bench Mark from which the Planning Authority can take measurements and shall be shown on the drawing; and
- c. the ridge height of the proposed house and garage shown in relation to the finished ground and floor levels on the site.

Reason: To enable the Planning Authority to control the development of the site in the interests of the amenity of the area.

3. A schedule and/or samples of all of the external finishing materials and finishing colours to be used in the external finishes of the house and garage hereby approved shall be submitted to and approved in writing by the Planning Authority prior to their use in the development. Thereafter, the external finishing materials and colours used shall accord with the schedule and samples so approved.

Reason: To ensure the satisfactory appearance of the development in the interest of safeguarding the character and appearance of the area.

4. Samples of the surface finishes to be used to surface the hardstanding areas to be used as driveway, vehicle parking and footpaths shall be provided for the inspection and approval of the Planning Authority prior to the use of such ground surfacings within the development, and thereafter, the ground surfacings used shall accord with the samples so approved.

Reason: In the interests of the character and appearance of the area.



5. Prior to the occupation of the house hereby approved the vehicular access, turning and parking arrangements shall be laid out and made available for use, as shown in docketed drawing no. 04B titled 'Site Plan' and thereafter the access, turning and parking areas shall be retained for such uses, unless otherwise approved in writing by the Planning Authority.

Reason: To ensure the provision of an acceptable standard of vehicular access, turning and parking in the interests of road safety.

6. No development shall take place until a scheme of landscaping has been submitted to and approved in writing by the Planning Authority. The scheme shall provide details of: the height and slopes of any mounding on or recontouring of the site including SUDS basin/ponds details; tree and shrub sizes, species, habitat, siting, planting distances and a programme of planting. The scheme shall include indications of all existing trees and hedgerows on the land, details of any to be retained, and measures for their protection in the course of development.

All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the occupation of the buildings or the completion of the development, whichever is the sooner, and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Planning Authority gives written consent to any variation. No trees or shrubs, detailed in the approved landscaping plans to be retained on the site, shall be damaged or uprooted felled, topped, lopped or interfered with in any manner without the previous written consent of the Planning Authority.

Reason: In order to ensure the implementation of a landscaping scheme to enhance the appearance of the development in the interests of the amenity of the area.

7. Prior to the commencement of development, to ensure that the site is clear of contamination, a Geo-Environmental Assessment shall be carried out and the following information shall be submitted to and approved by the Planning Authority:

- a. Phase I - A preliminary investigation incorporating a desk study, site reconnaissance, development of a conceptual model and an initial risk assessment.
- b. Phase II - Incorporating a site survey (ground investigation and sample analysis) and risk evaluation. It is required if the Phase I investigation has indicated that the site is potentially contaminated and the degree and nature of the contamination warrants further investigation.
- c. Phase III - Where risks are identified, a Remediation Strategy should be produced detailing and quantifying any works which must be undertaken in order to reduce the risks to acceptable levels.

Should remedial works be required then, prior to any residential units being occupied, a Validation Report shall be submitted to and be approved by the Planning Authority confirming that the works have been carried out in accordance with the Remediation Strategy.

The presence of any previously unsuspected or unforeseen contamination that becomes evident during the development of the site shall be brought to the attention of the Planning Authority. At this stage, further investigations may have to be carried out to determine if any additional remedial measures are required.

Reason: To ensure that the site is clear of contamination and that remediation works are acceptable prior to the use of the site.

8. Prior to the commencement of any part of the development hereby approved a scheme of intrusive site investigations to establish exact nature of coal mining legacy features and to establish the risks posed to development approved by past coal mining activity shall be submitted for Planning Authority consideration and approval in writing.

Where the findings of the intrusive site investigations identify that coal mining legacy on the site poses a risk to surface stability, no development shall commence until remedial

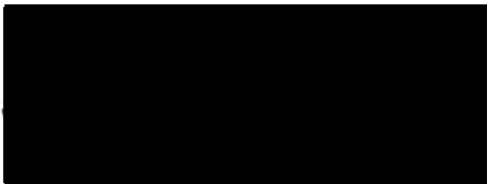
stabilisation works to address land instability have been implemented on site in full in order to ensure that the site is made safe and stable for the development approved.  
All intrusive site investigations and remedial works shall be carried out in accordance with authoritative UK guidance.

Prior to the occupation of the development, or it being taken into beneficial use, a signed statement or declaration prepared by a suitably competent person confirming that the site has been made safe and stable for the approved development shall be submitted to and approved in advance in writing by the Planning Authority in consultation with the Coal Authority. This document shall confirm the completion of the remedial works and any mitigating measures necessary to address the risks posed by past coal mining activity.

Reason: To ensure that adequate remediation of coal mining legacy on the site has been undertaken prior to the occupation of the flatted building hereby approved.

9. Prior to the commencement of development, a report on the actions to be taken to reduce the Carbon Emissions from the build and from the completed development shall be submitted to and approved in writing by the Planning Authority. This shall include the provision of renewable technology for all new buildings, where feasible and appropriate in design terms, and new electric vehicle charging points and infrastructure for them, where feasible and appropriate in design terms. The details shall include a timetable for implementation. Development shall thereafter be carried out in accordance with the report so approved.

Reason: To minimise the environmental impact of the development.



**Fariha Haque**  
**Legal Adviser to ELLRB**

## TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

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

Notice Under Regulation 21 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.

- 1 If the applicant is aggrieved by the decision of the planning authority to refuse permission or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.
  
- 2 If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland ) Act 1997.