

Local Review

Statement of Case

Erection of Dwellinghouse and Associated Works Deletion of Condition 9 Imposed on Planning Permission Reference 16/01035/P

At: 11A Letham Holdings, Haddington

Appellant: Caroline Samuel

Date: 16 November 2017

Contents

1.	The Local Review	1
2.	Background: The Proposal.....	3
3.	Planning Guidance: Circular 4/1998	5
4.	Permitted Development Rights	6
5.	Material Planning Considerations.....	8
6.	Assessing the Need for Condition 9.....	12
7.	Conclusions	13
8.	Appendix 1: List of Documents.....	14

1. The Local Review

Introduction

Seath Planning Consultancy Ltd has been instructed by Caroline Samuel [the Appellant] to submit this Local Review [the Review] She is aggrieved at the imposition of Condition number 9 on Planning Permission reference 16/01035/P. This Statement of Case [the Statement] contains the Appellants grounds for a Review.

A full list of Documents, which the Appellant intends to reply upon in support of the Review is included in this Statement as **Appendix 1**.

Background

A planning application for the proposed development was submitted by the Appellant and registered by East Lothian Council, as Planning Authority on the 11 January 2017 under application reference number 16/01035/P. The application form, plans and other related supporting information is submitted as **Documents AS1A, AS1B, AS1C and AS1D**.

The Planning Application is a Local Development under the terms of The Town & Country Planning [Hierarchy of Developments] [Scotland] Regulations 2009. Due to the number of representations and the terms of the Councils Scheme of Delegation the planning application was determined using delegated powers. The planning officer approved the development subject to conditions. The development has been implemented. **Documents 2A and 2B** comprise the Report of Handling dated 11 May 2017 and the Decision Notice dated 23 August 2017 respectively.

This Review is submitted by Seath Planning Consultancy Ltd on behalf of the Appellant. This is in response to the imposition of **condition 9** of planning permission 16/01035/P [the Condition] which states:

“Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 as amended by the Town and Country Planning (General Permitted Development) Scotland) Amendment Order 2011, no development of the types specified in Part 1 of Schedule 1 of the Order or in any statutory instrument invoking and/or re-enacting that part of the Order shall be undertaken on the house hereby approved or any part of the application site other than the development shown on the drawings docketed to this planning permission unless with the prior approval of the Planning Authority.”

The **reason** for the imposition of this condition is states as:

“In the interests of safeguarding the character, integrity and appearance of the development and the visual amenity of the landscape of the area.”

In all cases there must be an objective justification for such a condition. This document comprises the Statement of Case [“the Statement”] providing the grounds of appeal and an assessment of the Condition in the context of the site and surrounding area, and the Scottish Governments Circular 4/1998 Use of Conditions in Planning Permissions. This will provide evidence that there is no objective justification.

This Statement sets out the reasons why it is considered that the Condition is not necessary, or reasonable and is not of relevance to the development permitted. Reference is made to relevant material considerations to reinforce the case for the deletion of the Condition.

2. Background: The Proposal

Site & Surrounding Area

The approved dwellinghouse sits on the northern periphery of a cluster of rural development comprising business and residential uses. It is bounded by land within the ownership of the Appellant to the north and west; the public road to the east; and land owned by the Appellant and residential use (house and extensive amenity space/equine use) to the south.

The area surrounding the Appeal Site [the Site] comprises the business of the Appellant, a very successful plant nursery with associated storage buildings and polytunnels with lay-down areas for plants. The Site itself is under construction with the residential caravan which has been used by the Samuel family for 10 years remaining located between the dwellinghouse and the public road.

Immediate boundary treatment on the roadside comprises mature trees and shrubs which screens views into the Site. Due to the remote nature of the development public views are limited to the neighbouring property and the surrounding countryside at a distance.

Throughout the surrounding area there is evidence of alterations and extensions to existing buildings as occupiers are allowed exercise their rights in relation to the peaceful enjoyment of their property. There does not appear to be any restrictions on these properties. It is not this that the Appellant is aggrieved at but simply she cannot do likewise and utilise permitted development rights herself. Condition 9 restricts her.

Site Design and Layout

The rectangular shaped design of the dwellinghouse is contemporary, simple yet functional affording all the facilities for family life. It has a footprint of approximately 124 sq. metres. It is a modest property for the purposes of housing the Samuel family who have endured residing in temporary accommodation for a 10 year period as the business of Letham Plants has evolved and developed to become the success story it is today.

The Site makes best use of the available land outwith the footprint of the business and in a position which makes best use of access, screening to provide privacy and solar gain to the south and west. Set back from the public road the dwellinghouse is afforded privacy into the amenity space surrounding it.

Any proposed extension undertaken using permitted development rights would be modest in scale and due to the modular flat roofed design its height would be limited in height. Despite the Planning Authority's assertions (in the reason for the imposition of the Condition) it is argued in this Statement that there would be no detriment to the character, integrity and appearance of the dwellinghouse and/or the rural landscape.

Site History

The Appellant established her business some 10 years ago and has stayed in temporary accommodation for that duration of time with her family. Now with the benefit of planning permission for a dwellinghouse she will be allowed to enjoy the fruits of her labour while stating a more comfortable living environment.

As part of this welcomed change to her life she wishes to enjoy all the benefits that other householders benefit from including permitted Development Rights [PD Rights]. This would give her the right to extend her

home without incurring any further additional expense and delays in time. This Statement sets out a reasoned justification as to why Condition 9 of planning permission 16/01035/P is not necessary; is unreasonable and is not relevant to the development permitted.

3. Planning Guidance: Circular 4/1998

Introduction

The reasoned justification for the deletion of the Condition starts with the assessment of any perceived impacts which the implementation of PD Rights may have if they are preserved on this site. This must begin with reference to the proper use of planning conditions. Circular 4/1998 [the Circular] sets out the Scottish Government's policy on the use of conditions in planning permissions.

The General Policy Approach

The Circular clarifies that Conditions imposed on a grant of planning permission can enable many development proposals to proceed where it would otherwise have been necessary to refuse planning permission. While the power to impose planning conditions is very wide, it needs to be exercised in a manner which is fair, reasonable and practicable. Planning conditions should only be imposed where they are: -

- **necessary**
- **relevant to planning**
- **relevant to the development to be permitted**
- **enforceable**
- **precise**
- **reasonable in all other respects.**

The Scottish Government attaches great importance to these six criteria being met so that there is an effective basis for the control and regulation of development which does not place unreasonable or unjustified burdens on applicants and their successors in title. In effect, no condition should be imposed if it does not meet **all the above criteria**.

In this case on behalf of the Appellant it is argued of the dwellinghouse that:

- (i) the Condition is not necessary by reason of the scale, design and location of the dwellinghouse being developed;
- (ii) in the context of scale design and location the Condition's relevance to the development is therefore questionable; and
- (iii) although precisely worded and within the powers available to the Planning Authority the Condition is ultra vires on the basis of unreasonableness. It is considered that permitted development rights can be exercised without detriment to the house and the rural environment.

These matters are now addressed in more detail. Circular 4/1998 is submitted as **Document AS3**

4. Permitted Development Rights

Introduction

This planning application gave the Planning Authority the opportunity for the proposed development to be assessed and considered in the context of its local setting. This should include the consideration of future applications for planning permission for minor and uncontroversial developments. The Scottish Government recognises (Circular 1/2012: Guidance on Householder Permitted Development Rights [the Circular]) that seeking planning permission for such developments is not an effective or efficient way of regulating development.

The intentions of Permitted Development Rights [PD Rights] and control of development are established in paragraph 1.1 of Circular 1/2012 wherein it is stated:

"Developments can have a significant impact on a neighbourhood and the environment."

The intentions are to limit an impact on neighbouring properties and any significant impact on residential and visual amenity usually in urban/suburban areas where development is closer knit. This can happen in typical suburban housing layouts where plot ratios and space standards differ from the rural community where space is not at a premium. This describes the situation on the Appeal Site. The Appellant has the space to create a curtilage around her new dwellinghouse (the application site boundary) to allow a spacious development with ample garden ground all set in acres of land owned by her.

Main Concepts and Application of PD rights

So, it follows that PD rights are granted so that many instances of small alterations and extensions can be carried out without the need to submit an application for planning permission.

To allow the public to understand and implement their rights the Circular sets out the following concepts:

- (i) Principal elevation.
- (ii) Fronting a road.
- (iii) Front and rear curtilage
- (iv) Site coverage.
- (v) Original or existing dwellinghouse.
- (vi) Height and ground level.

These all apply to limitations of future development. The Circular states that it is unlikely that any single factor will be decisive and it usually a combination of two or more. The identification of the principal elevation should not be used as a starting point to control development. There can only be one principal elevation. It is

based on the design of the original dwellinghouse. In this case the principal elevation is the rear of the house approved i.e. that facing the road.

As the principal elevation has been identified, the front and rear curtilages can be identified. The front curtilage is all the land forward of the principal elevation. The rear curtilage is the remainder of the curtilage of the original dwellinghouse.

As stated above, in this case the curtilage is defined by the application site boundary (see Site Plan – **Document AS1C**) with the front curtilage being that facing the road. As the approved dwellinghouse is single storey in scale it will be limited to the restrictions imposed by the Circular. In addition, due to the size of the rear curtilage (not the principal elevation) the limitations placed on extending the property restrict development options further. In effect, any development permitted by the Circular will have a minimal impact when from the public road (in fact it will not be seen) and only at distance from the countryside around the Site. The reason attached to the Condition is unsatisfactory.

In these circumstance, the Planning Authority has the overall control over development on the principal elevation and the Appellant is limited in what she can achieve on Site all as set out in Circular 1/2012 which is submitted as **Document AS4**

It is submitted that development can be achieved without detriment to the dwellinghouse and the rural environment.

5. Material Planning Considerations

Social, Economic and Environmental Justification

The following summary of relevant legislative provisions and case law add weight to the social and economic considerations (Personal Circumstances) surrounding this Appeal Site. The information sets out a case to demonstrate (further) that the proposals are a sustainable form of development in accordance with the principles of Scottish Planning Policy 2014 and the intentions of planning guidance.

The Importance of Personal Circumstances

The personal circumstances of the Appellant have been referred to earlier this Statement. Their importance as a material consideration is justified in this case. It is submitted that the weight to be afforded to the circumstances is applicable, as part of the decision making process. This is now set out in more detail.

The Personal Circumstances are not usually not of relevance in the determination of a planning application. However, given the length of time that the Appellant and her family has endured temporary accommodation while she sets up what is now a successful business, contributing to the local economy of East Lothian, she asks that this hardship be recognised. All she wants to do now is live a life in her new dwellinghouse and to allow her to enjoy PD Rights in this rural location as many other people do.

The Appellant administers her business from the existing caravan and looks to do so from the dwellinghouse. In addition, her son is a musician. There may be requirement to alter and/or extend the dwellinghouse in the future as her business continues to expand and her son's aspirations gain momentum. Being allowed to extend the home without incurring costs through the planning process would be an advantage.

There are cases where Personal Circumstances should be given significant weight in the determination of any planning application and/or appeal. Considerations may include the education of children, ill health, old age or other social and economic factors including inequality in housing provision as is the case with the Appellant.

Case law provides persuasive argument that these Personal Circumstances are only relevant if the Council find there is potential conflict with the Development Plan or the decision taken (in this case Condition 9). Consequently, the assessment of the needs of the occupants of the Appeal Site now needs to be given serious consideration.

Case law is clear that there are occasions where exceptions should be made. Personal Circumstances of an occupier and personal hardship, as described in this Statement of Case, are not to be ignored.

Case law also states that it is inhumane to exclude the human factor from the administration of planning control. The human factor is always present, indirectly as the background to the consideration of the character of land use. It can, however, and sometimes should be given direct effect as an exceptional or special circumstance. It is submitted that the determination of this Review is one such case when viewed against the evidence submitted in support of the Appellant and her family.

It is submitted that these factors are prevalent and they need to be considered not as a general rule but as an exception to a general rule as it relates to PD Rights when taken into consideration with all other evidence submitted as part of this Review. It is repeated that all the Appellant wants is to do is enjoy the same rights that her neighbours enjoy as do those in an urban environment.

It is recognised that, in such circumstances, a specific case has to be made and that the Planning Authority must give reasons for accepting Personal Considerations as a material consideration. This will only be necessary where it is prudent to emphasise that, notwithstanding the position of the Council, exceptions cannot be wholly excluded from consideration in the determination of the planning application and the imposition of conditions.

A case is made in this Statement of Case that personal circumstances apply to the Appellant and when taken together with other evidence it is submitted that a robust argument has been created.

The *Great Portland Estates plc. v Westminster City Council* is a House of Lords case relating to Personal Circumstances. Although an English case it has persuasive argument in relation to Scottish Planning Law and can be adopted as binding evidence in Scotland. It is submitted that it is relevant to this Review case.

It is submitted that if it is found to be necessary the Council should refer to this case. The **Great Portland Estates Plc v Westminster Council** case is attached as **Document AS5**

Human Rights

In 1998, the **European Convention of Human Rights** (ECHR) was incorporated into UK law by the Human Rights Act 1998. The parts of ECHR that are of particular relevance in this case are:

- **The Convention Article 6:** right to a fair hearing-which is clearly relevant to the determination of this Review.
- **The Convention Article 8:** respect for private and family life

Article 8 relates to the right to private and family life and provides that:

- (1) Everyone has the right to respect for his (or her) private and family life, his/her home and his/her correspondence.
- (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights/freedoms of others.

The implications of **Article 8** are that Public Authorities are required to consider carefully the proportionality of their actions when making decisions, which interfere with **Article 8** rights. In practice, for the Appellant, this is a matter of balancing the considerations such as a social need to develop a home for the family; and the protection of the rural area. In this case the Appellant is providing for her family and by retaining PD rights there will be a negligible impact on amenity.

The Appeal Site is in private ownership and not in a protected area. The Appellant is creating a home for her family which may need to be extended in the future. It will remain in private ownership. The Appellant has a

Right to enjoy her private a family life as do other householders. The Council has failed to recognise that there is no real need to withhold PD Rights disregarding the human factor and their responsibilities under legislation.

First Protocol to Article 1

The **First Protocol to Article 1** of the ECHR states that every person is entitled to the peaceful enjoyment of their property. No person should be deprived of their property rights except in the public interest and in accordance with law. The balance between the right to peaceful enjoyment to property and state controls shall, in the planning context, be assessed where the restraint is “manifestly disproportionate”. In this case the Condition has been proven as such.

The effect of the imposition of Condition 9 is to deprive the Appellant of the peaceful enjoyment of her property. Such deprivation must be proportionate to and be compatible with ECHR. It is requested that the rights under the **First Protocol to Article 1** must be given serious consideration and the Condition deleted.

Extracts from the **ECHR** are submitted as **Document AS6**.

Equalities

The Equality Act 2010 expanded the racial equality duty in section 71 of the Race Relations Act 1976 to include other protected characteristics.

Section 149 introduced the **Public Sector Equality Duty [PSED]**. This requires public authorities to have due regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations between people with a protected characteristic and people without.

The duty is set out to require:

- (1) A public authority must, in the exercise of its functions, have due regard to the need to:
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).
- (3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
 - (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
 - (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- (6) Compliance with the duties may involve treating some persons more favourably than others; but that is

not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

Applying relevance to this Review case PD rights should be afforded to the Appellant as they have elsewhere.

In summary, the decision maker has to have due regard to the need to advance equality of opportunity. The obvious point here is that when compared to others in the rural and settled communities the Appellant is at a disadvantage through the withdrawal of PD Rights. So, it follows that there is an inequality applied in this case. Taken together with the personal circumstances (as described in this Statement) and other evidence the Appellant is placed at a disadvantage.

Extracts from the **Equality Act 2010** is submitted **Document AS7**

Summary

Based on the above evidence the personal circumstances and rights of the Appellant should to be taken into consideration when determining the Review. The Site will become the permanent home to a family unit who operate an established business. This situation has been created by the Councils approval of the new dwellinghouse following years of living in temporary accommodation. The new build on the Site affords an excellent living environment where this family will reside in comfort. The Appellant and her family will enjoy a private and family life on land in their ownership.

The proposed development represents an excellent use of the land within a sizeable curtilage created by the application site. In view of the difficulties experienced by the Appellant and her family in the past (establishing a business and living in temporary accommodation whilst doing so) this site represents suitable accommodation which should be given the opportunity to extend in the future using PD rights. It is submitted that the aforementioned environmental, social and economic arguments provide a reasoned justification to allow those rights to be preserved.

The Appellants Human Rights and the application PSED needs to be considered, in the determination of this Review.

The Appellant deserves to have the ability to extend her home within the restrictions as dictated by the Town and Country (Planning General Permitted Development) (Scotland) Order 1992.

It is submitted that it would be inhumane to ignore these factors and not to give them significant weighting when determining this Review.

6. Assessing the Need for Condition 9

The above paragraphs are hereby adopted in regard to the case submitted for the deletion of Condition 9 Of planning permission 16/01035/P.

The Council has made it clear that it requires the removal of PD Rights due to the perceived impact this will have on the dwellinghouse and the amenity of the surrounding area. However, as demonstrated above (Section 4) this will not necessarily be the case.

In addition, the Personal Circumstances of the Appellant; the design and layout of the dwellinghouse on this spacious site; the intentions of PD Rights as they are meant to relate to suburban and suburban areas i.e. to avoid any impact on visual and residential amenity and not necessarily to rural areas; leads to a conclusion that:

1. The removal of PD Rights is not **necessary**;
2. Given the size and orientation of the dwellinghouse and the curtilages removal of PD Rights is **unreasonable**; and
3. The removal of PD Rights is **not relevant to the development permitted** in this rural location.

On the basis of this evidence, the Condition fails to meet three of the tests set out in Circular 4/1998. As a consequence, the Condition is ultra vires. In addition, it has been submitted that the imposition of Condition 9 contravenes the Appellants **Human Rights** and there is an **Inequality** of approach when compared to the rights of other properties elsewhere.

Therefore, the imposition of Condition 9 is manifestly disproportionate in the context of the development approved. In such circumstances, the approach that the Council should take to the assessment of this Review should be a proportionate and reasonable one. It is submitted that the Condition should be deleted.

7. Conclusion

It is against the background of all the above that the Appellant requests that the Local Review Body delete Condition 9 of planning permission 16/01035/P to allow the Appellant to extend her home in the future if so desired.

It is requested that the Review is upheld.

8. Appendix 1: List of Documents

Document AS1: Planning Application reference 16/01035/P
AS1A Planning application form
AS1B Location Plan
AS1C Site Plan
AS1D Elevations, Floor Plan and Sections

Document AS2A: Report of Handling dated 11 May 2017

Document AS2B: Decision Notice ref 16/01035/P dated 23 August 2017

Document AS3: Circular 4/1998 Annex A The Use of Conditions in Planning Permissions

Document AS4: Circular 1/2012 Guidance on Householder Permitted Development Rights

Document AS5: Extract from The Great Portland Estates plc. v Westminster City Council Case

Document AS6: Extracts from the ECHR

Document AS7: Extracts from the Equality Act 2010



John Muir House Haddington EH41 3HA Tel: 01620 827 216 Email: planning@eastlothian.gov.uk

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100034383-001

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

Type of Application

What is this application for? Please select one of the following: *

- Application for planning permission (including changes of use and surface mineral working).
- Application for planning permission in principle.
- Further application, (including renewal of planning permission, modification, variation or removal of a planning condition etc)
- Application for Approval of Matters specified in conditions.

Description of Proposal

Please describe the proposal including any change of use: * (Max 500 characters)

New Dwelling at Letham Mains Holdings, Haddington, EH41 4NW.

Is this a temporary permission? * Yes No

If a change of use is to be included in the proposal has it already taken place?
(Answer 'No' if there is no change of use.) * Yes No

Has the work already been started and/or completed? *

No Yes - Started Yes - Completed

Applicant or Agent Details

Are you an applicant or an agent? * (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

Applicant Agent

Agent Details

Please enter Agent details

Company/Organisation:	Staran Architects Ltd		
Ref. Number:		You must enter a Building Name or Number, or both: *	
First Name: *	Staran	Building Name:	
Last Name: *	Architects	Building Number:	49
Telephone Number: *		Address 1 (Street): *	Cumberland Street
Extension Number:		Address 2:	
Mobile Number:		Town/City: *	Edinburgh
Fax Number:		Country: *	Scotland
		Postcode: *	EH3 6RA
Email Address: *			
Is the applicant an individual or an organisation/corporate entity? *			
<input type="checkbox"/> Individual <input checked="" type="checkbox"/> Organisation/Corporate entity			

Applicant Details

Please enter Applicant details

Title:	Other		You must enter a Building Name or Number, or both: *
Other Title:		Building Name:	
First Name: *	Caroline	Building Number:	11A
Last Name: *	Samuel	Address 1 (Street): *	Letham Mains Holdings
Company/Organisation		Address 2:	
Telephone Number: *		Town/City: *	Haddington
Extension Number:		Country: *	Scotland
Mobile Number:		Postcode: *	EH41 4NW
Fax Number:			
Email Address: *			

Site Address Details

Planning Authority:

East Lothian Council

Full postal address of the site (including postcode where available):

Address 1:

Address 2:

Address 3:

Address 4:

Address 5:

Town/City/Settlement:

Post Code:

Please identify/describe the location of the site or sites

Northing

673030

Easting

348748

Pre-Application Discussion

Have you discussed your proposal with the planning authority? *

Yes No

Pre-Application Discussion Details Cont.

In what format was the feedback given? *

Meeting Telephone Letter Email

Please provide a description of the feedback you were given and the name of the officer who provided this feedback. If a processing agreement [note 1] is currently in place or if you are currently discussing a processing agreement with the planning authority, please provide details of this. (This will help the authority to deal with this application more efficiently.) * (max 500 characters)

A pre-application pack was sent to ELC. It was advised the proposed size, architectural approach and site layout were appropriate. The following was requested to support the planning application: A business plan to support the operational justification of the house. An updated site plan indicating garden ground associated with the house. Timber cladding samples (this will be forwarded after the Xmas break). The roof covering should be grey to reflect the colour of adjacent roofs.

Title:

Other

Other title:

First Name:

Stephanie

Last Name:

McQueen

Correspondence Reference Number:

Dev59687

Date (dd/mm/yyyy):

12/12/2016

Note 1. A Processing agreement involves setting out the key stages involved in determining a planning application, identifying what information is required and from whom and setting timescales for the delivery of various stages of the process.

Site Area

Please state the site area:

944.00

Please state the measurement type used:

Hectares (ha)

Square Metres (sq.m)

Existing Use

Please describe the current or most recent use: * (Max 500 characters)

Agricultural Land

Access and Parking

Are you proposing a new altered vehicle access to or from a public road? *

Yes

No

If Yes please describe and show on your drawings the position of any existing, altered or new access points, highlighting the changes you propose to make. You should also show existing footpaths and note if there will be any impact on these.

Are you proposing any change to public paths, public rights of way or affecting any public right of access? *

Yes

No

If Yes please show on your drawings the position of any affected areas highlighting the changes you propose to make, including arrangements for continuing or alternative public access.

How many vehicle parking spaces (garaging and open parking) currently exist on the application Site?

0

How many vehicle parking spaces (garaging and open parking) do you propose on the site (i.e. the Total of existing and any new spaces or a reduced number of spaces)? *

2

Please show on your drawings the position of existing and proposed parking spaces and identify if these are for the use of particular types of vehicles (e.g. parking for disabled people, coaches, HGV vehicles, cycles spaces).

Water Supply and Drainage Arrangements

Will your proposal require new or altered water supply or drainage arrangements? *

Yes

No

Are you proposing to connect to the public drainage network (eg. to an existing sewer)? *

Yes – connecting to public drainage network

No – proposing to make private drainage arrangements

Not Applicable – only arrangements for water supply required

As you have indicated that you are proposing to make private drainage arrangements, please provide further details.

What private arrangements are you proposing? *

New/Altered septic tank.

Treatment/Additional treatment (relates to package sewage treatment plants, or passive sewage treatment such as a reed bed).

Other private drainage arrangement (such as chemical toilets or composting toilets).

What private arrangements are you proposing for the New/Altered septic tank? *

Discharge to land via soakaway.

Discharge to watercourse(s) (including partial soakaway).

Discharge to coastal waters.

Please explain your private drainage arrangements briefly here and show more details on your plans and supporting information: *

The proposed house will incorporate a new septic tank which will connect into the existing soakaway system.

Do your proposals make provision for sustainable drainage of surface water?? *
(e.g. SUDS arrangements) *

Yes No

Note:-

Please include details of SUDS arrangements on your plans

Selecting 'No' to the above question means that you could be in breach of Environmental legislation.

Are you proposing to connect to the public water supply network? *

- Yes
 No, using a private water supply
 No connection required

If No, using a private water supply, please show on plans the supply and all works needed to provide it (on or off site).

Assessment of Flood Risk

Is the site within an area of known risk of flooding? *

Yes No Don't Know

If the site is within an area of known risk of flooding you may need to submit a Flood Risk Assessment before your application can be determined. You may wish to contact your Planning Authority or SEPA for advice on what information may be required.

Do you think your proposal may increase the flood risk elsewhere? *

Yes No Don't Know

Trees

Are there any trees on or adjacent to the application site? *

Yes No

If Yes, please mark on your drawings any trees, known protected trees and their canopy spread close to the proposal site and indicate if any are to be cut back or felled.

Waste Storage and Collection

Do the plans incorporate areas to store and aid the collection of waste (including recycling)? *

Yes No

If Yes or No, please provide further details: * (Max 500 characters)

A screened refuse store area has been incorporated on the hard standing area at the entrance to the site.

Residential Units Including Conversion

Does your proposal include new or additional houses and/or flats? *

Yes No

How many units do you propose in total? *

1

Please provide full details of the number and types of units on the plans. Additional information may be provided in a supporting statement.

All Types of Non Housing Development – Proposed New Floorspace

Does your proposal alter or create non-residential floorspace? *

Yes No

Schedule 3 Development

Does the proposal involve a form of development listed in Schedule 3 of the Town and Country Planning (Development Management Procedure (Scotland) Regulations 2013? *

Yes No Don't Know

If yes, your proposal will additionally have to be advertised in a newspaper circulating in the area of the development. Your planning authority will do this on your behalf but will charge you a fee. Please check the planning authority's website for advice on the additional fee and add this to your planning fee.

If you are unsure whether your proposal involves a form of development listed in Schedule 3, please check the Help Text and Guidance notes before contacting your planning authority.

Planning Service Employee/Elected Member Interest

Is the applicant, or the applicant's spouse/partner, either a member of staff within the planning service or an elected member of the planning authority? *

Yes No

Certificates and Notices

CERTIFICATE AND NOTICE UNDER REGULATION 15 – TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND) REGULATION 2013

One Certificate must be completed and submitted along with the application form. This is most usually Certificate A, Form 1, Certificate B, Certificate C or Certificate E.

Are you/the applicant the sole owner of ALL the land? *

Yes No

Is any of the land part of an agricultural holding? *

Yes No

Do you have any agricultural tenants? *

Yes No

Certificate Required

The following Land Ownership Certificate is required to complete this section of the proposal:

Certificate E

Land Ownership Certificate

Certificate and Notice under Regulation 15 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Certificate E

I hereby certify that –

(1) – No person other than myself/the applicant was the owner of any part of the land to which the application relates at the beginning of the period 21 days ending with the date of the application.

(2) - The land to which the application relates constitutes or forms part of an agricultural holding and there are no agricultural tenants

Or

(1) – No person other than myself/the applicant was the owner of any part of the land to which the application relates at the beginning of the period 21 days ending with the date of the application.

(2) - The land to which the application relates constitutes or forms part of an agricultural holding and there are agricultural tenants.

Name:

Address:

Date of Service of Notice: *

(4) – I have/The applicant has taken reasonable steps, as listed below, to ascertain the names and addresses of the other owners or agricultural tenants and *have/has been unable to do so –

Signed: Staran Architects

On behalf of:

Date: 15/12/2016

Please tick here to certify this Certificate. *

Checklist – Application for Planning Permission

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Please take a few moments to complete the following checklist in order to ensure that you have provided all the necessary information in support of your application. Failure to submit sufficient information with your application may result in your application being deemed invalid. The planning authority will not start processing your application until it is valid.

a) If this is a further application where there is a variation of conditions attached to a previous consent, have you provided a statement to that effect? *

Yes No Not applicable to this application

b) If this is an application for planning permission or planning permission in principle where there is a crown interest in the land, have you provided a statement to that effect? *

Yes No Not applicable to this application

c) If this is an application for planning permission, planning permission in principle or a further application and the application is for development belonging to the categories of national or major development (other than one under Section 42 of the planning Act), have you provided a Pre-Application Consultation Report? *

Yes No Not applicable to this application

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

d) If this is an application for planning permission and the application relates to development belonging to the categories of national or major developments and you do not benefit from exemption under Regulation 13 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, have you provided a Design and Access Statement? *

Yes No Not applicable to this application

e) If this is an application for planning permission and relates to development belonging to the category of local developments (subject to regulation 13. (2) and (3) of the Development Management Procedure (Scotland) Regulations 2013) have you provided a Design Statement? *

Yes No Not applicable to this application

f) If your application relates to installation of an antenna to be employed in an electronic communication network, have you provided an ICNIRP Declaration? *

Yes No Not applicable to this application

g) If this is an application for planning permission, planning permission in principle, an application for approval of matters specified in conditions or an application for mineral development, have you provided any other plans or drawings as necessary:

- Site Layout Plan or Block plan.
- Elevations.
- Floor plans.
- Cross sections.
- Roof plan.
- Master Plan/Framework Plan.
- Landscape plan.
- Photographs and/or photomontages.
- Other.

If Other, please specify: * (Max 500 characters)

Location Plan Existing and Proposed Site Plans Proposed Plan, Elevations and Section Business Plan Design Report

Provide copies of the following documents if applicable:

A copy of an Environmental Statement. *

Yes N/A

A Design Statement or Design and Access Statement. *

Yes N/A

A Flood Risk Assessment. *

Yes N/A

A Drainage Impact Assessment (including proposals for Sustainable Drainage Systems). *

Yes N/A

Drainage/SUDS layout. *

Yes N/A

A Transport Assessment or Travel Plan

Yes N/A

Contaminated Land Assessment. *

Yes N/A

Habitat Survey. *

Yes N/A

A Processing Agreement. *

Yes N/A

Other Statements (please specify). (Max 500 characters)

Declare – For Application to Planning Authority

I, the applicant/agent certify that this is an application to the planning authority as described in this form. The accompanying Plans/drawings and additional information are provided as a part of this application.

Declaration Name: - Staran Architects

Declaration Date: 15/12/2016

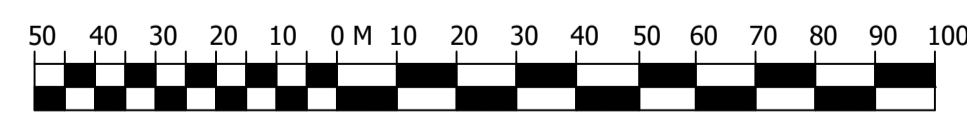
Payment Details

Cheque: 

Created: 15/12/2016 13:15



Site Location Plan



Scale Bar - 1:1250

OS map provided by:
Streetwise
© Crown Copyright 2016.
Licence No. 100047474



- General Notes
- - - - - Indicates Site Boundary and Extent of Proposed Garden Ground.
 - - - - - Indicates Land Also Owned by the Applicant.

No.	Revision/Issue	Date
-----	----------------	------

PLANNING

Contractor to verify all dimensions on site and advise the architect of errors or omissions. No variations or modifications to work shown shall be implemented without prior written approval. All issues of this drawing are superseded by the latest revision. All drawings and specifications remain the property of the Architect.

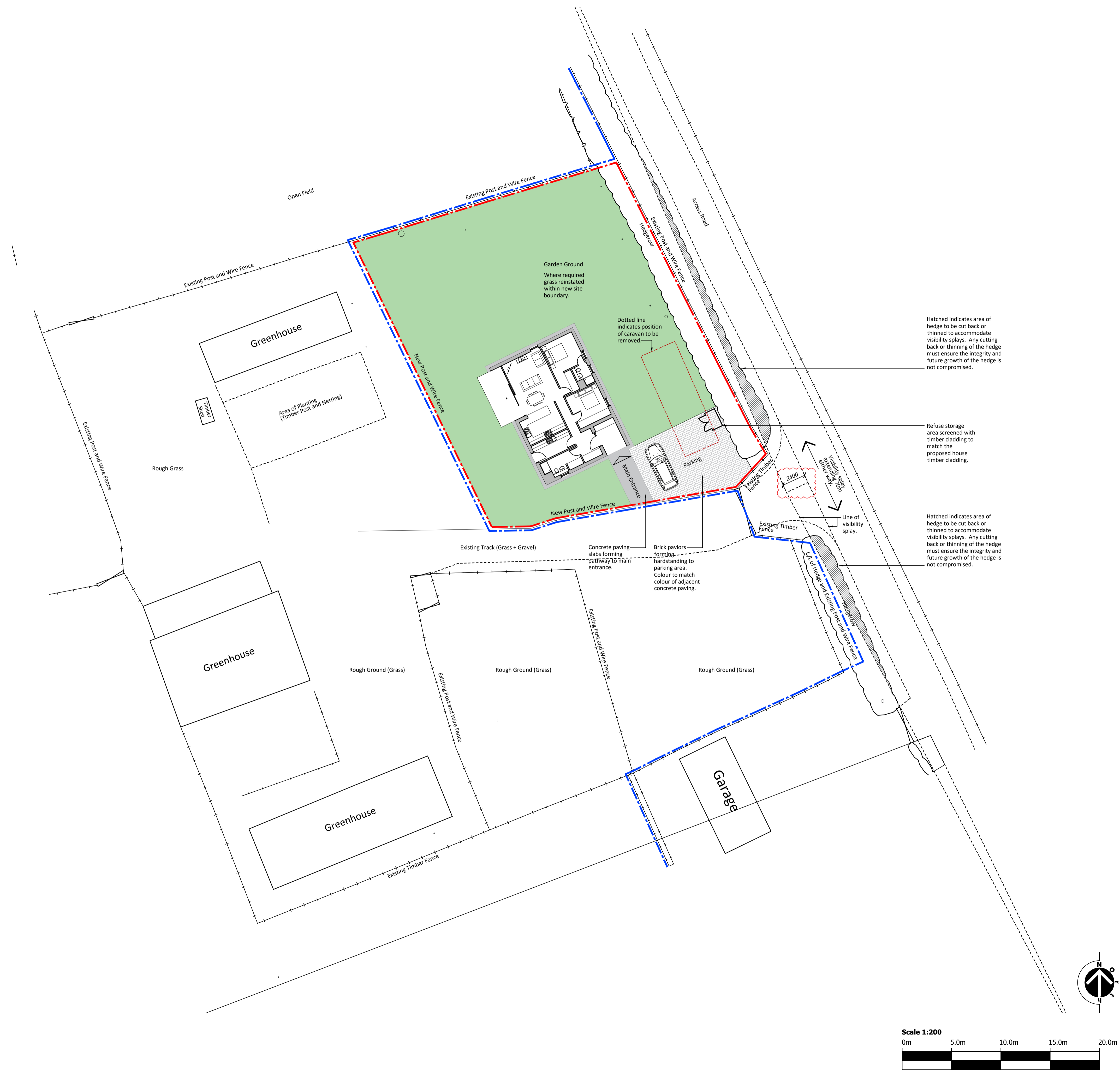
STARAN architects
49 Cumberland St
Edinburgh EH3 6RA
T: 0131 555 9830
E: info@staranarchitects.com

Client Name and Address Caroline Samuel Letham Mains Holdings, Haddington, East Lothian, EH41 4NW.	Job Number 1639
---	---------------------------

Project Details
New Dwelling at Letham Mains Holdings,
Haddington, East Lothian, EH41 4NW.

Drawing Title Location Plan	Drawing Number GA(PL)001
--------------------------------	------------------------------------

Scale @ A1: 1:1250 Date: Dec. 2016 Rev: -



General Notes

--- Indicates Site Boundary and Extent of Proposed Garden Ground.

--- Indicates Land Also Owned by the Applicant. Refer to the location plan for extent of land also owned by the Applicant.

Hatched indicates area of hedge to be cut back or thinned to accommodate visibility splays. Any cutting back or thinning of the hedge must ensure the integrity and future growth of the hedge is not compromised.

Refuse storage area screened with timber cladding to match the proposed house timber cladding.

Hatched indicates area of hedge to be cut back or thinned to accommodate visibility splays. Any cutting back or thinning of the hedge must ensure the integrity and future growth of the hedge is not compromised.

No.	Revision/Issue	Date
Rev. A	As per the planning departments comments the following revisions were made: Colour confined to the proposed site area. Finish to new hard landscaped areas indicated. Area of land also owned by the applicant indicated. Existing fences indicated.	10.01.17.
Rev. B	Visibility splay altered.	27.03.17.
Rev. C	Visibility splay altered.	18.04.17.

PLANNING

Contractor to verify all dimensions on site and advise the architect of errors or omissions. No variations or modifications to work shown shall be implemented without prior written approval. All issues of this drawing are superseded by the latest revision. All drawings and specifications remain the property of the Architect.

STARAN architects 49 Cumberland St
Edinburgh EH3 6RA
T:0113 556 9830 E: info@staranarchitects.com

Client Name and Address
Caroline Samuel
Letham Mains Holdings
Haddington, East Lothian, EH41 4NW

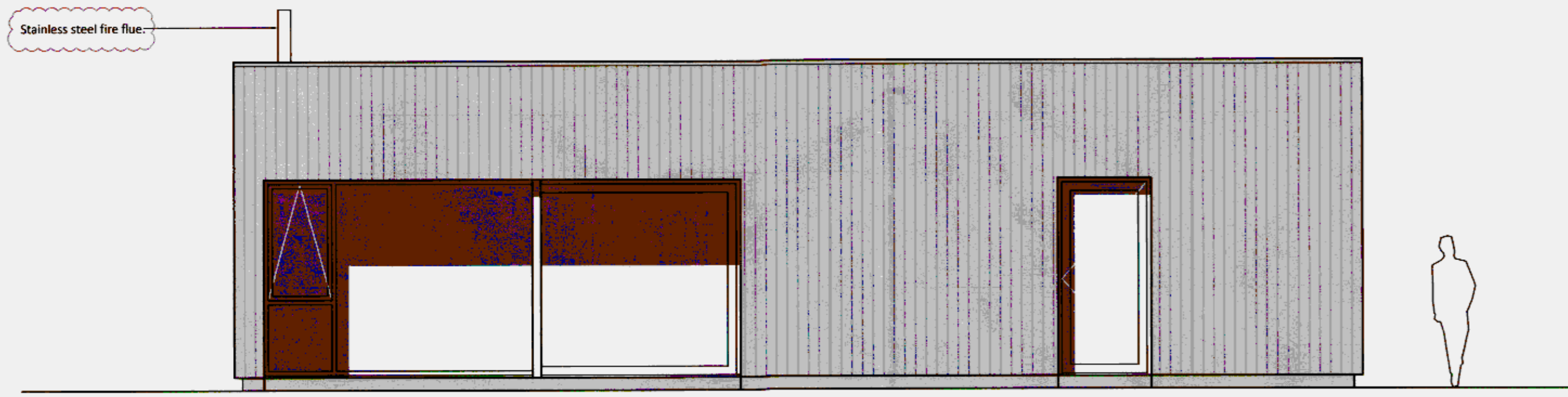
Job Number
1639

Project Details
New Dwelling at Letham Mains Holdings,
Haddington, East Lothian, EH41 4NW.

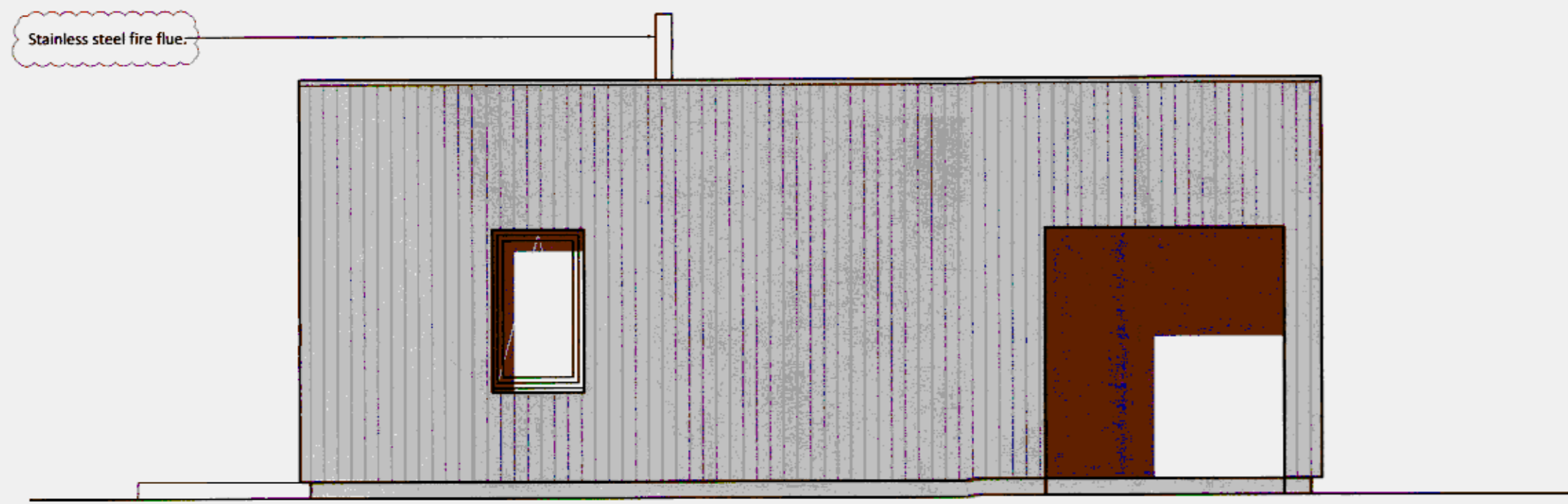
Drawing Title
Proposed Site Plan

Drawing Number
GA(PL)003

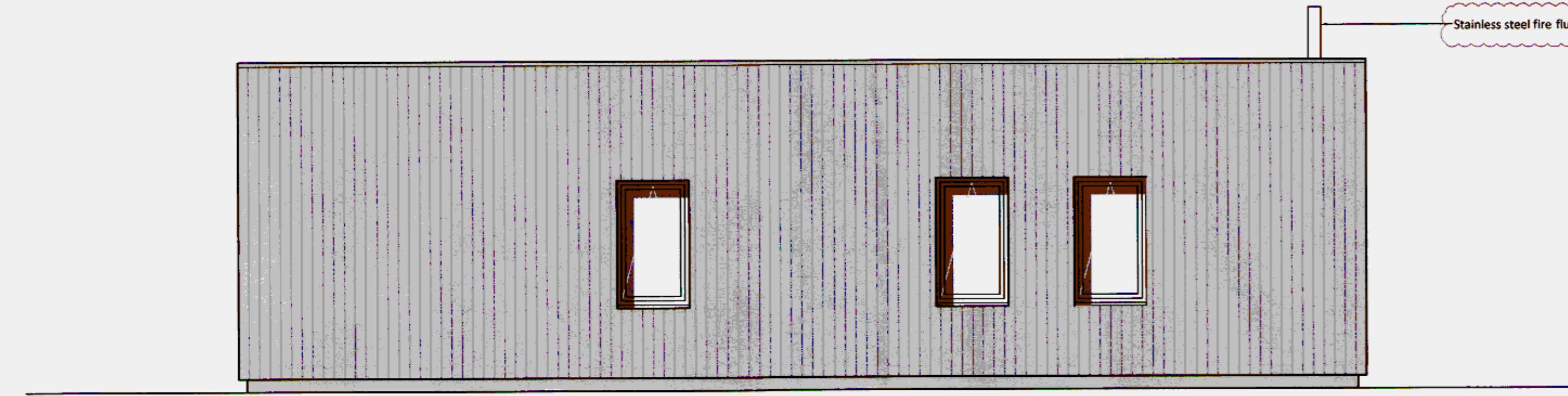
Scale @ A1: 1:200 Date: Nov. 2016 Rev: **C**



Proposed West Elevation



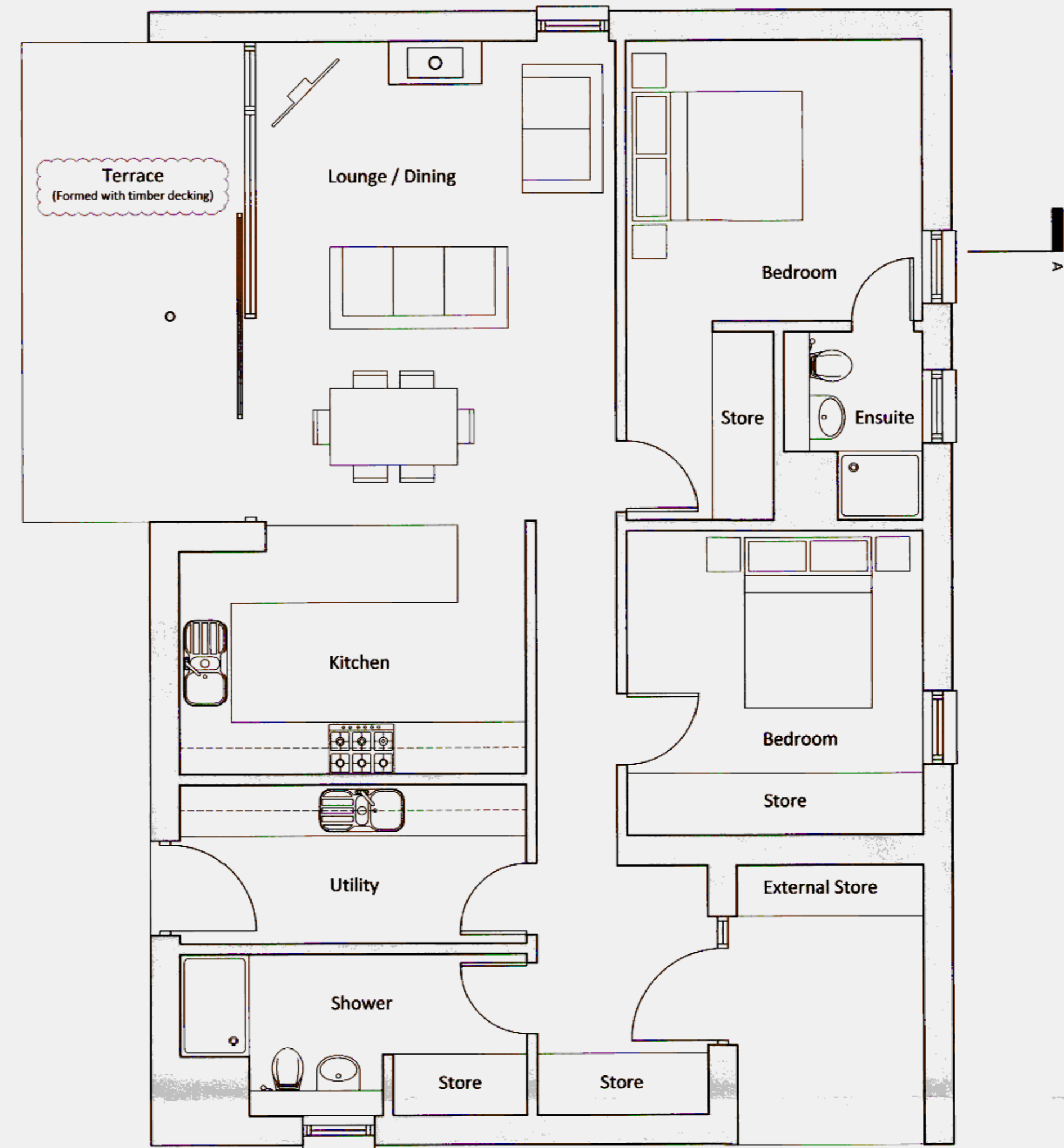
Proposed South Elevation



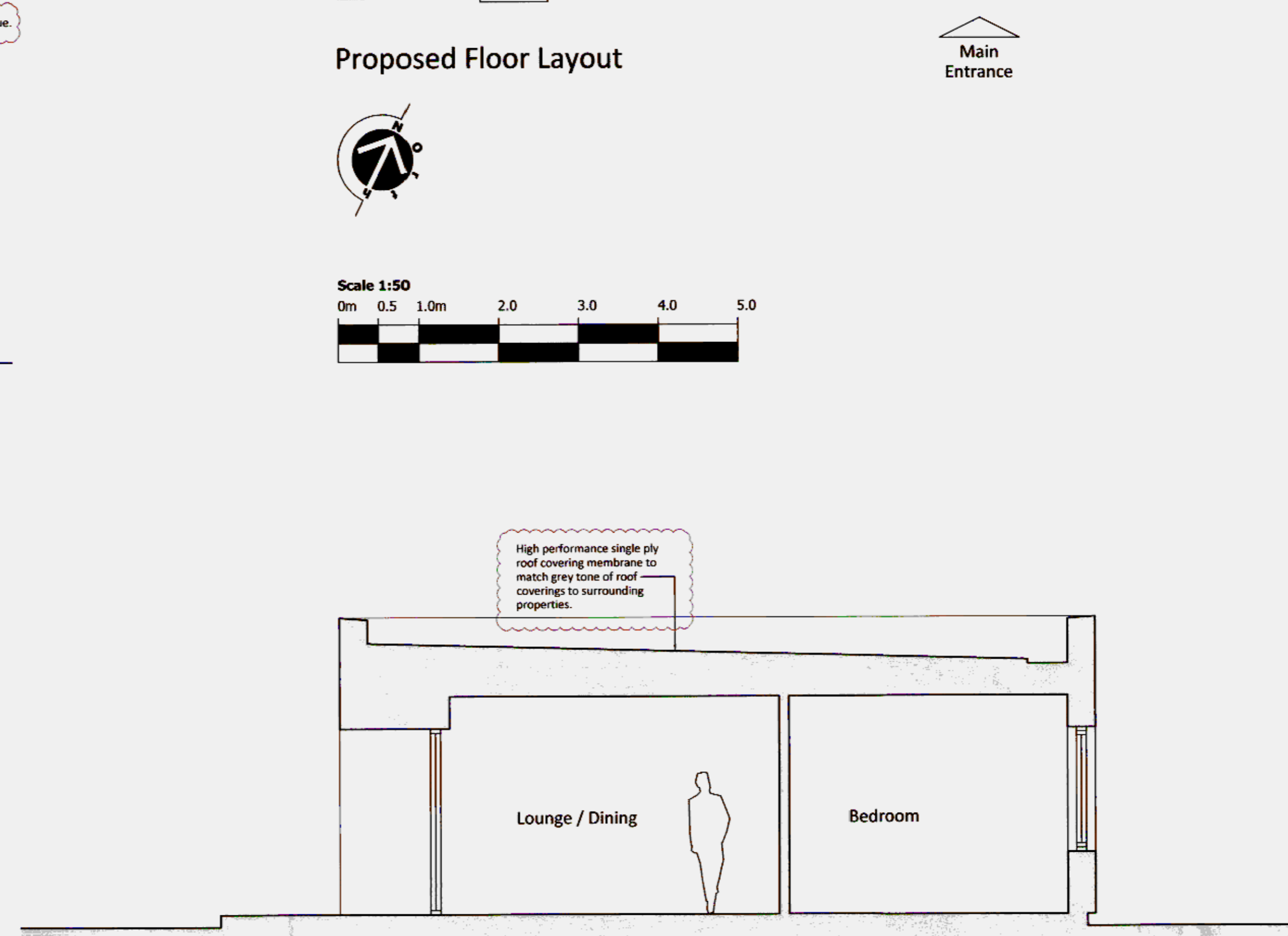
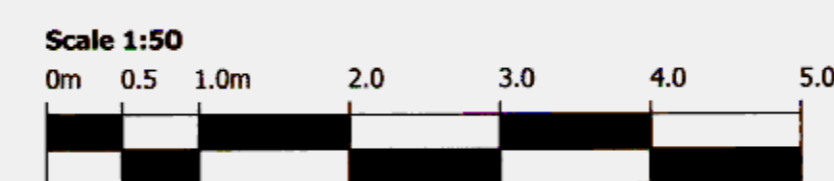
Proposed East Elevation



Proposed North Elevation

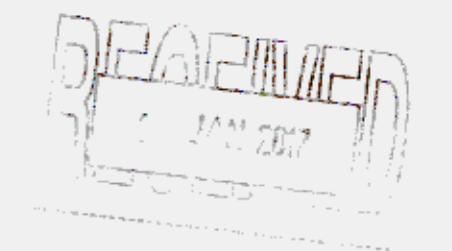


Proposed Floor Layout



Section A-A

General Notes		
Materials Legend		
	Treated Timber Cladding.	
	High Performance Aluclad Glazed Screen and Window Units. Colour: white. Aluclad windows have a timber frame with a PPC aluminium capping externally.	
No.	Revision/Issue	Date
Rev. A	As per the planning departments comments the following revisions were made: Finish to terrace indicated Colour of windows, screens and doors confirmed. Fire flue added. Roof membrane confirmed.	10.01.17.
PLANNING		
Contractor to verify all dimensions on site and advise the architect of errors or omissions. No variations or modifications to work shown shall be implemented without prior written approval. All issues of this drawing are superseded by the latest revision. All drawings and specifications remain the property of the Architect.		
49 Cumberland St Edinburgh EH3 6RA T: 0131 556 9830 E: info@staranarchitects.com		Job Number 1639
Client Name and Address Caroline Samuel Letham Mains Holdings Haddington, East Lothian, EH41 4NW		
Project Details New Dwelling at Letham Mains Holdings, Haddington, East Lothian, EH41 4NW.		
Drawing Title Proposed Layout, Elevation and Section		Drawing Number GA(PL)004
Scale @ A1: 1:50 Date: Sept. 2016 Rev: A		



16/01035



OFFICER REPORT

11th May 2017


App No. 16/01035/P

Application registered on 11th January 2017

Target Date 10th March 2017

Proposal	Erection of house and associated works	SDELL CDEL	
Location	11A Letham Mains Holdings Haddington East Lothian	Bad Neighbour Development	

APPLICANT: Caroline Samuel

Is this application to be approved as a departure from structure/local plan? 

c/o Staran Architects Ltd
49 Cumberland Street
Edinburgh
EH3 6RA

DECISION TYPE: **Consent Granted**

PLANNING ASSESSMENT

On 24th June 2016 planning permission 08/00258/FUL was granted for the change of use of an area of agricultural land, measuring some 0.109 hectares (1,352 square metres), on the west side of U137 public road for the siting of a mobile home, the formation of the area of hardstanding on which the mobile home is positioned, the formation of domestic garden ground to serve the residential accommodation provided in the mobile home, and for the widening of the existing vehicular access from the public road and the re-positioning of the gates at the widened access, all for a temporary period of time until 30th June 2019 to provide residential accommodation for the owner of the existing horticultural business of 'Letham Plants' that the applicant operates from a larger area of land adjoining the site. Planning permission 08/00258/FUL was granted retrospectively as the mobile home was already positioned on the site, the hardstanding area on which the mobile home was positioned was already formed on the site and the alterations to the vehicular access have already been carried out.

Planning permission is now sought for the erection of one house for use as living accommodation in association with the existing horticultural business of 'Letham Plants' that the applicant operates from a larger area of land adjoining the site.

The site the subject of this application is in the countryside at Letham Mains Holdings, some 1.0 mile to the west of the town of Haddington. It is a roughly rectangular shaped area of land, measuring some 944 square metres in area. The site comprises some two-thirds of the land of planning permission 08/00258/FUL on which the mobile home and its associated garden ground are located. Otherwise the land of the site comprises land associated with the existing horticultural business of 'Letham Plants'. The site is bounded to the south by further land owned by the applicant beyond which is the house and garden of 11 Letham Mains Holdings, to the west and north by further land owned by the applicant beyond which is agricultural land, and to the east by the U137 public road on the opposite side of which is further land in the form of a woodland strip, which is also in the ownership of the applicant. The site is accessed from the U137 public road by an existing vehicular access. A timber post and wire fence and hedgerow enclose the east (roadside) boundary of the site. There are no means of enclosure of the north, west and south boundaries of the site.

Since the application was registered, at the request of the Council's Road Services, the visibility splay for the vehicular access has been included on the proposed site layout and that visibility splay has been subsequently amended. In addition, a new timber post and wire fence has been shown as the means of enclosure of the west and south boundaries of the garden ground of the proposed house. These details are shown on amended application drawings submitted by the applicant's agent.

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.

The development plan is the approved South East Scotland Strategic Development Plan (SESplan) and the adopted East Lothian Local Plan 2008.

Policy 1B (The Spatial Strategy: Development Principles) of the approved South East Scotland Strategic Development Plan (SESplan) and Policies DC1 (Development in the Countryside and Undeveloped Coast), DP2 (Design), DP22 (Private Parking) and T2 (General Transport Impact) of the adopted East Lothian Local Plan 2008 are relevant to the determination of the application.

Material to the determination of the application is the Scottish Government's policy on housing and rural development given in Scottish Planning Policy: June 2014 and Planning Advice Note 72: Housing in the Countryside.

PAN 72 states that: "Buildings in rural areas can often be seen over long distances and they are there for a long time. Careful design is essential. Traditional buildings can be an inspiration but new or imaginative re-interpretation of traditional features should not be excluded. Where possible, the aim should be to develop high quality modern designs which maintain a sense of place and support local identity."

The application site is in a countryside location within East Lothian and is part of a much larger area characterised by a low density dispersed built form within an agricultural landscape.

The principle of the proposed building of a new house on the application site must therefore be assessed against national, strategic and local planning policy relating to the control of new housing development in the countryside.

In paragraph 76 of Scottish Planning Policy it is stated that in the pressurised areas easily accessible from Scotland's cities and main towns, where ongoing development pressures are likely to continue, it is important to protect against unsustainable growth in car-based commuting and the suburbanisation of the countryside, particularly where there are environmental assets such as sensitive landscapes or good quality agricultural land. Plans should make provision for most new urban development to take place within, or in planned extensions to, existing settlements.

In paragraph 78 it is stated that in areas of intermediate accessibility and pressure for development, Plans should be tailored to local circumstances, seeking to provide a sustainable network of settlements and a range of policies that provide additional housing requirements, economic development and the varying proposals that may come forward while taking account of the overarching objectives and the other elements of the plan.

In paragraph 81 it is stated that in accessible or pressured rural areas, where there is a danger of unsustainable growth in long-distance car-based commuting or suburbanisation of the countryside, a more restrictive approach to new housing development is appropriate, and plans and decision making should generally guide most new development to locations within or adjacent to settlements; and set out the circumstances in which new housing outwith settlements may be appropriate, avoiding use of occupancy restrictions.

As is stated in paragraphs 2.10 and 2.11 of the adopted East Lothian Local Plan 2008 "East Lothian's countryside and undeveloped coast exhibits little need for regeneration, renewal or action to redress population decline. It is not a remote rural area where a more permissive planning policy approach to new housing in the countryside might be appropriate on these grounds. Rather it is an area where few, if any, locations are more than 1 hours travel time of Edinburgh and, on the whole, is characterised by increasing population and economic growth and a continuing pressure for housing development both within and outwith its towns and villages. Characteristic of the countryside is its wide range of types and sizes of attractive vernacular buildings that contribute greatly to its character." "For these reasons, new development, particularly housing, is directed to existing settlements. New development in the countryside is permitted only in the specific circumstances defined in Policy DC1."

Part 1(b) of Policy DC1 of the adopted East Lothian Local Plan 2008 only allows for new build housing development in the countryside where the Council is satisfied that a new house is a direct operational requirement of an agricultural, horticultural, forestry or other employment use provided that there is no suitable existing building for the required residential use.

No public representation to the application has been received.

The application site is in a countryside location characterised by a low density dispersed built form within a mainly agricultural landscape. The site is not identified in the adopted East Lothian Local Plan 2008 as being within a settlement and the Local Plan does not allocate the land of the site for housing development. Consequently, the erection of a house on the site must be assessed against development plan policy relating to the control of new housing development in the countryside.

At its Cabinet meeting of 10 December 2013, the Council approved Housing Land Supply: Interim Planning Guidance against which planning applications for housing on land not

allocated for housing development will be assessed. At its Cabinet meeting of 16 December 2014, the Council approved an update to the Housing Land Supply: Interim Planning Guidance of 10 December 2013 against which planning applications for housing on land not allocated for housing development will be assessed. The site the subject of this application is not allocated for residential development. However, as is stated in Appendix One of the Guidance, it only applies to housing applications that form an appropriate extension to an existing settlement defined in the adopted East Lothian Local Plan 2008. It does not apply to otherwise isolated development in the countryside, to which the terms of Policy DC1 of the adopted East Lothian Local Plan 2008 will continue to apply. The Council's Housing Land Supply: Interim Planning Guidance (December 2014) is not therefore a material consideration in the determination of this application for planning permission.

Part 4 of Policy DC1 of the adopted East Lothian Local Plan 2008 requires that where an application for planning permission for the building of a new house in the countryside is made on a justification of need for the house to meet the operational requirement of an agricultural or other business use, the application must be accompanied by a statement justifying the direct operational requirement for the house.

In the case of this application a supporting statement has been submitted by the applicant, which comprises a Business Plan for the business of 'Letham Plants' that should be read in association with the supporting documents submitted with planning permission 08/00258/FUL.

The Business Plan submitted with the current application (ref. 16/01035/P) explains that the horticultural business of 'Letham Plants' operated by the applicant, Caroline Samuel, comprises of some 5 acres of productive Grade 2 land, approximately 1 acre of which is used for the plant nursery, and a further 2 acres of woodland. It is further explained that the applicant has operated and traded the horticultural business of 'Letham Plants' from the site since 2007. On part of the 5 acres of productive Grade 2 land there are two polytunnels and an existing timber clad general purpose shed. The polytunnels hold most of the plant stock produced for sale and the general purpose shed is used for storing equipment, managing the plant stocks and other production work, including the production of wreaths (holly wreaths at Christmas and other 'dressed' wreaths and grave displays).

It is further stated that the applicant intends to install new cold frames with Dutch lights in Spring 2017, which will allow certain plant stock to be placed directly outside to reduce the repeat handling of stock.

The Business Plan further explains that the remaining 4 acres of land of the site have until recently been used for the grazing of sheep and that part of the existing timber clad agricultural shed has been used for the storing of hay/feedstock and pens for the sheep. The applicant has indicated in the Business Plan that this current use will cease in the near future as expansion of the horticultural business progresses.

The Business Plan explains that the business focuses on specialist plant varieties and includes the micro-propagation of certain varieties of plants off-site. Plant stock is also bought in from abroad in plug form and managed and potted-on on-site. The plants are displayed and sold at flower shows and farmers markets throughout the UK and via the internet. It is further explained that the business of 'Letham Plants' is categorised by the Royal Horticultural Society as a 'specialist nursery' that specialises in a certain species of plants and grows its own stock.

The Business Plan further explains that the business is labour intensive and produces high value plants, and that there are on-going security issues at the site when the applicant is away attending flower shows and markets.

The Business Plan also includes a projected profit and loss statement for the horticultural business for the years 2017, 2018 and 2019.

The development of the application site for the erection of a house would be related to the existing horticultural use of the land at 11A Letham Mains Holdings.

The Council's Rural Business Consultants have carried out a rural business appraisal of the proposed development based on an assessment of the supporting Business Plan and based on the supporting documents and accounts submitted with planning permission 08/00258/FUL. The supporting documents received with planning permission 08/00258/FUL are: (i) two statements prepared by Mary Munro of the Scottish Agricultural Colleges (SAC) being a 'Business Plan' (dated 8th October 2008) and a 'Justification for Dwelling House' (dated 8th October 2008); and (ii) financial accounts for the business of 'Letham Plants' for the financial year 2009 and for the financial year to 31st March 2015. Planning permission 08/00258/FUL was granted in June 2016 and at the time of the assessment of the current planning application (ref. 16/01035/P) in February 2017 those supporting documents were considered to still be relevant and current to the assessment of the existing horticultural business, which operates from the site.

Through the grant of planning permission 08/00258/FUL, for the siting of the mobile home and the use of land as its associated garden ground, the Council's Rural Business Consultants confirmed that the operational land at 11A Letham Mains Holdings extends to some 5.5 acres (some 2.3 ha) of land on the west side of the U137 public road, which was purchased by the applicant some 18 years ago. It is noted that also in the applicant's ownership is an area of land in the form of a woodland strip (measuring some 0.56 ha), which is on the east side of the U137 public road.

The applicant operates her business as a sole trader under the name of 'Letham Plants' and started trading in March 2007. The business is the production and growing of plants for sale and uses a mixture of modern and traditional systems of production. The business focuses on specialist plant varieties and includes the micro-propagation of certain varieties of plants off-site. The labour requirements of the business enterprise are met by the applicant alone, who works full-time in the business. There is no dwellinghouse on the site that is owned or rented by the applicant and none is available. The applicant currently occupies the static caravan approved to be positioned on the site by the grant of planning permission 08/00258/FUL.

The Council's Rural Business Consultants confirm that the Business Plan submitted with the current application sets out a clear strategy for the business going forward, and that it is evident that over the period she has operated her business the applicant has developed a niche market for which she has become well respected in the sector and that she has identified various strategies by which she can further develop her business.

The Council's Rural Business Consultants confirm that the 2015 accounts demonstrate that the business has reached a level of turnover and profit initially envisaged in the original business

plan and one at which the business is sustainable. Furthermore that the budgets appear reasonable and achievable based on the 2015 performance.

Based on the additional Business Plan received with this current application (ref. 16/01035/P) and on the business plan, accounts and supporting information received with planning permission 08/00258/FUL, the Council's Rural Business Consultants advise that the horticultural business of 'Letham Plants' has been developed over in excess of 9 years and is successful in that it is expanding, generates profits and has stood the test of time. The Rural Business Consultants go on to explain that it would be difficult to argue that the business cannot support the applicant and on that basis they are of the opinion that the business is viable and capable of supporting a permanent dwelling house on the application site.

The Council's Rural Business Consultants also confirm that the plant husbandry requirements of watering, heating, fleecing and ventilation of the poly-tunnels as a requirement of the operation of the horticultural business of 'Letham Plants', along with security, support the need for an on-site presence and thus in their assessment do not dispute the case advanced by the applicant that there is an operational need to live on-site.

On the basis of their appraisal, the conclusion given by the Council's Rural Business Consultants is that they are satisfied that the horticultural business of 'Letham Plants' that operates from the site provides the necessary justification for an operational need for a dwelling house on the site and that the absence of a dwelling house is constraining the development of the applicant's business and adding costs to their operation. Thus, the Rural Business Consultants conclude that, in the particular circumstances of this case, there is an operational need for the erection of a dwelling house on the site to support the existing horticultural business of 'Letham Plants'.

The previous consultations on planning permission 08/00258/FUL confirmed that the applicant does not own or rent a house(s) nearby and that there is no suitable existing building for the required residential use on the site.

Thus, in accordance with Local Plan Policy DC1 Part 1(b), it has been demonstrated that the horticultural business of 'Letham Plants' is an established and viable business, capable of supporting a dwelling and which furthermore, due to the labour intensive nature of the business and the operational timing of those labour requirements, demonstrates a direct operational requirement for the proposed house to support it. Accordingly, the proposal is consistent with Part 1(b) of Policy DC1 of the adopted East Lothian Local Plan 2008, and with Scottish Government's policy on the control of new housing development in the countryside given in Scottish Planning Policy: June 2014.

As required by Part 4 of Policy DC1 of the adopted East Lothian Local Plan 2008 a grant of planning permission for the building of a new house in the countryside based on the Council's acceptance of an operational justification of need for it should be subject to the satisfactory conclusion of an agreement under the provisions of Section 75 of the Town and Country Planning (Scotland) Act 1997.

Thus, in this instance a grant of planning permission for the proposed house has to be subject to the prior conclusion of a Section 75 Agreement designed to tie the house erected on the site in ownership to the horticultural business of 'Letham Plants' operating at 11A Letham Mains Holdings and to restrict occupancy of the house to a person solely or mainly employed in that

business, and to that person's dependants. Such an agreement would safeguard against the future independent sale of a new house. The applicants' agent has confirmed the applicants' willingness to enter into such an Agreement.

Furthermore, owing to its size, the area of agricultural land to be changed in use to residential garden ground for the proposed new house would be capable of accommodating a further house or houses on it. The principle of such other new build housing development without an operational justification of need would be contrary to Policy DC1 of the adopted East Lothian Local Plan 2008. Therefore, the grant of planning permission for the proposed house also requires to be subject to the prior conclusion of an Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 designed to prevent any future erection of another house or houses on it. This would have the effect of safeguarding the purpose and integrity of the Council's policies for the control of new housing development in the countryside. The applicants' agent has confirmed the applicants' willingness to enter into such an Agreement.

The proposed house would be single storey in height and would be of a contemporary design. It would be of a simple, functional design with a rectangular shaped footprint and a flat roof with parapet upstand. The footprint of the proposed house would measure some 13.2 metres in length by some 9.4 metres in width. It would be some 3.8 metres in height from ground level to the upper edge of the upstand of its flat roof. The external walls of the proposed house would be finished in vertical timber cladding with a base course. Glazing would be kept to a minimum with the exception of a large glazed opening in the west elevation wall of the house. This large glazed opening would be recessed so that part of the roof of the house would form a canopy over a small terrace that would be surfaced with timber decking. The main entrance door of the proposed house would be in its south elevation wall and would also be recessed thereby forming an integral porch. It is proposed that the vertical timber cladding to be used for the external finish of the external walls of the proposed house would be finished with a black coloured stain ('Ronseal Ebony Woodstain') and a sample of the black stained vertical timber cladding has been submitted by the applicant's agent. The frames of the windows and glazed doors would be of white coloured alu-clad timber construction. The flat roof of the proposed house would be clad with a grey coloured single ply roofing membrane. A stainless steel flue would be installed towards the northern end of its flat roof.

The proposed house would be positioned with its east elevation wall set back some 11.5 metres away from the east (roadside) boundary of the site. An area of hardstanding comprising a footpath and parking area would be positioned to the south side of the proposed house between it and the existing vehicular access to the site. A bin store measuring some 2.1 metres in length by some 1.1 metres in width and some 1.7 metres in height would be positioned on the northeast part of the proposed area of hardstanding. The bin store would be of vertical timber board construction.

The proposed house would be accessed from the U137 public road to the east by the existing vehicular access. Parking for at least two cars would be provided on the proposed area of hardstanding to be formed between the existing vehicular access and the south elevation of the proposed house. Otherwise the land of the application site would be laid out as garden ground for the proposed house. Other than to facilitate vehicular and pedestrian access to the proposed parking area and footpath the south boundary of the application site and the west boundary of the application site would be enclosed by timber post and wire fencing. The existing fencing and hedgerow of the north and east (roadside) boundaries would be retained.

The application site is not readily visible from the west and south. It is visible from the U137 public road to the east, when approaching from the higher ground to the north and for the duration of the width of the vehicular access in the east boundary of the site. Otherwise the existing east (roadside) boundary hedgerow provides an effective containment of the east (roadside) boundary of the site and affords effective screening of the site.

The existing general purpose building and the polytunnels on the land to the west of the site, which is owned by the applicant, are of functional utilitarian construction. The general purpose shed is of weathered vertical timber board construction with a dual pitched roof clad with profile sheet.

Further to the south are the detached single storey houses of 11 and 12 Letham Mains Holdings and their associated detached outbuildings. The east elevations of these houses are positioned at an angle to their east (roadside) boundaries with the U137 public road, and at their closest are set back from their east boundaries by some 5 to 11 metres. The external walls of these houses and their outbuildings are finished with a pale coloured painted render. The roofs of the houses are clad with natural slates, and the roofs of their outbuildings are clad with either natural slates or profile sheeting.

In this countryside location there is little definitive layout of built form for the proposed house to be respectful of. However, in its proposed position with its east elevation wall set back from the east (roadside) boundary of the site by some 11.5 metres, the east elevation of the proposed house would be in alignment with the positioning of the east elevation of the existing house of 11 Letham Mains Holdings to the south, and thus the proposed house would sit comfortably in its positional relationship both with that neighbouring building and with the public road to the east.

Furthermore by its single storey height the proposed house would fit comfortably with the single storey heights of the neighbouring houses to the south and of the buildings of the wider area.

In its position on the site the proposed house would be seen in the context of the existing general purpose shed and polytunnels on the site. It would also be viewed in the context of the greater heights and massing of the neighbouring detached houses of 11 and 12 Letham Mains Holdings to the south.

The simple contemporary architectural design of the proposed house would contrast in a complementary manner with the more traditional architectural form of the neighbouring houses to the south. Thus, although of a contemporary flat roofed design, the proposed house, by virtue of its size and height and thus also its scale and massing would not appear harmfully intrusive, overbearing or dominant on the site. The existing east (roadside) boundary hedgerow of the site largely screens the site from immediate views from the U137 public road and would provide the proposed house with immediate visual containment.

The use of a grey coloured single ply roofing membrane for the finish of the flat roof of the proposed house would not be dissimilar in colour to the grey colouring of slated roofs of the neighbouring houses to the south. It can be made conditional of a grant of planning permission for the proposed development that a sample of the grey coloured single ply roofing membrane be submitted for the prior approval of the Planning Authority prior to its use in the development.

*

In the context of its rural landscape setting the very dark, black coloured stain ('Ronseal Ebony Woodstain') proposed for the external timber cladding of the walls of the proposed house would contrast starkly with the white colouring of the frames of the windows and glazed doors in a manner that would draw the eye to the proposed house and would result in it appearing more intrusive within its landscape setting rather than helping it to integrate into its landscape setting. Furthermore, even though the framing of the windows and glazed doors would be of a narrow form and recessed into their openings, the very dark colouring for the finish of the external walls in stark contrast to the white frames of the windows and doors would result in the proposed house appearing visually conspicuous within its landscape setting. It would be more appropriate for the timber cladding of the external walls of the proposed house to be of a more rustic colouring and in this context it may not be appropriate for the frames of the windows and glazed doors to be coloured white. The requirement for the timber cladding of the external walls of the proposed house not to be coloured 'Ronseal Ebony Woodstain' but rather for a sample of the specific colour of stain or timber preservative to be used to colour the vertical timber cladding of the external walls of the proposed house and the specific colour of the alu-clad timber frames of the windows and glazed doors to be submitted for the prior approval of the Planning Authority can be controlled by a condition attached to a grant of planning permission for the proposed development.

Subject to the aforementioned conditional controls in respect of the external finishes of its walls and the frames of its windows and glazed doors, and the visual containment afforded by the east (roadside) boundary hedging of the site, the proposed house, by virtue of its design, form, scale, positioning, and external finishes, would be sufficiently integrated into the landscape in a manner compatible with its surroundings. It would not be harmfully uncomplementary to the character and appearance of the existing neighbouring houses and buildings or to the wider area. The proposed house would not, in its landscape setting, appear dominant or incongruous or exposed and would not be harmful to the landscape character and appearance of the area.

In their immediate relationship with the house and the setting of the application site the proposed garden ground of the house, the hardstanding areas comprising footpaths and parking area, the proposed bin store and the new boundary fencing would not be uncommon features of the garden of a house. They would not in themselves appear dominant or incongruous or exposed within their landscape setting and would not cause the proposed house to be harmful to the landscape character and appearance of the area.

In all, the proposed development, which would not be an overdevelopment of the site, would not be harmful to the character and appearance of the area.

If the proposed development were to be granted planning permission the house once occupied, would benefit from permitted development rights for certain extensions to it. In addition, if the proposed development were to be granted planning permission, the domestic garden ground for the new house, would benefit from permitted development rights for certain structures such as garden sheds and garages and other development on it. Those extensions and structures and other curtilage development could harm the character, integrity and appearance of the house and/or lead to an over development of the site and the creation of a density of built form harmful to the character and amenity of the area. It would therefore be prudent for the Council, as Planning Authority, to impose a condition on a grant of planning permission for the proposed development removing permitted development rights for any alterations and

extensions to the house and for any building of detached structures and the carrying out of other development on the land to be changed to domestic garden ground, which would allow the Planning Authority to control the size and positioning of such forms of development.

The development of the site would not result in any significant loss of prime agricultural land. The application site is physically capable of accommodating the proposed new house, garden ground, and parking area in a manner that would not be an overdevelopment of it.

Given that the occupation of the house will be tied by the Section 75 Agreement to the operation of the existing horticultural business at 11A Letham Mains Holdings there would be no incompatibility of use between the occupation of the house and the existing horticultural activities operated at 11A Letham Mains Holdings.

There are no neighbouring residential properties to the north, west and east of the site for the proposed house to have an impact on in terms of privacy and amenity.

In respect of the house of 11 Letham Mains Holdings and its associated garden ground, the proposed house, by virtue of its size, height, orientation and positioning would not result in any harmful loss of sunlight and daylight to that neighbouring house or its garden ground. The windows and other glazed openings of the proposed house would be separated from the garden of the house of 11 Letham Mains Holdings by the intervening land of the horticultural business that the applicant operates from 11A Letham Mains Holdings and thus would be more than 9 metres away from that neighbouring garden ground. Nor would any of the windows or other glazed openings of the proposed house be within 18 metres of any directly facing windows of that neighbouring house to the south. Thus, the proposed house would not allow for any harmful loss of privacy and amenity to that neighbouring residential property to the south. The proposed house would also provide the future occupants of it with a satisfactory level of privacy and residential amenity.

The Council's Principal Environmental Protection Officer has no comment to make and raises no objection to the proposed development.

On all of these foregoing considerations the proposed development is consistent with Policies 1B of the approved South East Scotland Strategic Development Plan (SESplan), Policies DC1 (Part 5) and DP2 of the adopted East Lothian Local Plan 2008, Scottish Planning Policy: June 2014 and Planning Advice Note 72: Housing in the Countryside.

The proposed house would be accessed from the U137 public road via the existing vehicular access that serves the larger site from which the horticultural business of 'Letham Plants' is operated at 11A Letham Mains Holdings. On-site parking for at least two cars would be provided on the proposed hardstanding area that would be formed to the south of the proposed house, between it and the existing vehicular access.

The Council's Road Services advises that although no changes are proposed to the existing vehicular access from which access to the site would be taken from the U137 public road, in the interests of road safety the access would nonetheless benefit from improved visibility and a visibility splay of 2.4 metres by 70 metres should be provided to each side of the existing vehicular access. Such a visibility splay could be achieved through the cutting back of the hedgerow to each side of the existing vehicular access. This detail has been shown on the

application drawings and Road Services are satisfied that this would be of an acceptable standard.

Road Services also advise that although the access to the proposed house would not be from a classified public road, in the interests of road safety, on-site turning should be provided to enable vehicles to enter and exit the site in a forward gear. There is ample space within the wider site from which the horticultural business of 'Letham Plants' is operated by the applicant, and thus which is in the ownership and control of the applicant for such an on-site turning area to be provided. The requirement for the on-site turning area can be controlled by a condition attached to a grant of planning permission.

Road Services advise that a sufficient amount of on-site parking would be provided to serve the proposed house.

Road Services further advise that due to the narrow width of the U137 public road a construction traffic method statement should be submitted for the site. The construction traffic method statement should recommend mitigation measures to control noise, dust, construction traffic, (including route to /from the site) and should include hours of construction work. Temporary measures shall be put in place to control surface water drainage during the construction works.

The requirements for the visibility splay, on-site turning area, parking provision and construction traffic method statement can be controlled by conditions attached to a grant of planning permission. Subject to these conditional controls Road Services are satisfied that the proposed house would be provided with a safe means of vehicular access and a satisfactory provision of on-site parking and turning and thus they raise no objection to the proposed development. Consequently the proposed development is consistent with Policies T2 and DP22 of the adopted East Lothian Local Plan 2008.

Scottish Water has been consulted on the application however no response has been received from them.

The grant of planning permission is subject to the prior conclusion of an agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 designed to: (i) tie a house erected on the application site in ownership to the horticultural business of 'Letham Plants' operating at 11A Letham Mains Holding and to restrict occupancy of such a house to a person solely or mainly employed in that business and to that person's dependants, and (ii) to prevent the erection of any other house(s) on the land of the application site in order to safeguard the purpose and integrity of the Council's policies for the control of new housing development in the countryside.

In accordance with the Council's policy on time limits for completion of planning agreements the decision also is that in the event of the Section 75 Agreement not having been executed by the applicant, the landowner and any other relevant party within six months of the decision taken on this application, the application shall then be refused. The reason for refusal being that without the proposed house being tied in ownership and occupancy to the horticultural business of 'Letham Plants' operating at 11A Letham Mains Holdings and without limiting the development of the site to the erection of one house, all by an Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 the proposed development is contrary to

CONDITIONS:

- 1 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 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.

- 2 Prior to the occupation of the house hereby approved the vehicular access and parking arrangements shall be laid out and made available for use, as shown in docketed drawing no. GA(PL)003 Rev C, and thereafter the access and parking areas shall be retained for such uses, unless otherwise approved in writing by the Planning Authority.

Prior to the occupation of the house hereby approved, a visibility splay of at least 2.4 metres by 70 metres shall be provided and maintained to either side of the vehicular access so that there shall be no obstruction within the visibility splay above a height of 1.05 metres measured from the adjacent carriageway surface, and the visibility splay shall be laid out in accordance with the details shown for it in docketed drawing no. GA(PL)003 Rev C. Thereafter the visibility splay shall be retained and maintained for such use, unless otherwise approved in writing by the Planning Authority.

On-site parking for at least two cars shall be provided as shown in docketed drawing no. GA(PL)003 Rev C, unless otherwise approved in writing by the Planning Authority.

Prior to the occupation of the house hereby approved, an on-site turning area to serve the house hereby approved shall be provided on the site in accordance with details of it to be submitted to and approved in writing by the Planning Authority and thereafter the on-site turning area so approved shall be maintained and kept available for use, free



from parked vehicles or other obstructions 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.

- 3 A Construction Traffic Method Statement designed to minimise the impact of construction activity and the movements of construction traffic shall be submitted to and approved in writing by the Planning Authority prior to the commencement of development on the site. It shall include any recommended mitigation measures for the control of noise, dust and construction traffic, including hours of construction works, routing of vehicles and delivery time restrictions, which shall be implemented, as applicable, prior to the commencement of development and during the period of development works being carried out on the application site. Temporary measures shall be put in place to control surface water drainage during the construction works.

Reason:

To minimise the impact of construction traffic in the interests of pedestrian, cyclists and road safety in the area and in the interests of safeguarding the amenity of the area.

- 4 Other than to achieve the visibility splay required by condition 2 of this grant of planning permission the east (roadside) boundary hedge of the site shall be retain in situ and at a minimum height of 3 metres unless otherwise agreed in writing by the Planning Authority.

Reason:

In the interests of safeguarding the character, integrity and appearance of the development and the visual amenity of the landscape of the area.

- 5 Notwithstanding that which is shown on the application drawings the vertical board timber cladding to be used to clad the external walls of the house hereby approved shall not be treated with 'Ronseal Ebony Woodstain' but shall be treated with a timber paint, stain or preservative the details of which, including its colour, shall be submitted to and approved in writing by the Planning Authority prior to its use in the development, and thereafter the timber paint, stain or preservative, including its colour, used shall accord with the details so approved.

Reason:

In the interests of safeguarding the character, integrity and appearance of the development and the visual amenity of the landscape of the area.

- 6 Details of the colour to be applied to the external surface of the alu-clad timber frames of the windows, glazed doors and external doors of the house hereby approved shall be submitted to and approved in writing by the Planning Authority and thereafter the

colour used for the external surface of the alu-clad timber frames of the windows, glazed doors and external doors of the house shall accord with the details so approved.

Reason:

In the interests of safeguarding the character, integrity and appearance of the development and the visual amenity of the landscape of the area.

- 7 A sample, including its colour, of the single ply roofing membrane to be approved to the roof of the house hereby approved shall be submitted to and approved in writing by the Planning Authority prior to its use in the development and thereafter the single ply roofing membrane, including its colour, shall accord with the details so approved.

Reason:

In the interests of safeguarding the character, integrity and appearance of the development and the visual amenity of the landscape of the area.

- 8 Samples of the material(s) to be used to surface the hard standing areas in the form of the parking area and footpaths of the house hereby approved shall be submitted to and approved in advance in writing by the Planning Authority prior to their use in the development, and thereafter the materials used shall accord with the details so approved.

Reason:

In the interests of safeguarding the character, integrity and appearance of the development and the visual amenity of the landscape of the area.

- 9 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended by The Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2011, no development of the types specified in Part 1 of Schedule 1 of the Order or in any statutory instrument revoking and/or re-enacting that Part of the Order shall be undertaken on the new house hereby approved, or on any part of the application site, other than the development shown on the drawings docketed to this planning permission, unless with the prior approval of the Planning Authority.

Reason:

In the interests of safeguarding the character, integrity and appearance of the development and the visual amenity of the landscape of the area.

LETTERS FROM

&

11th May 2017

**EAST LoTHIAN COUNCIL
DECISION NOTICE**

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
TOWN AND COUNTRY PLANNING
(DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND) REGULATIONS 2008**

**Caroline Samuel
c/o Staran Architects Ltd
49 Cumberland Street
Edinburgh
EH3 6RA**

APPLICANT: Caroline Samuel

With reference to your application registered on **11th January 2017** for planning permission under the above mentioned Acts and Regulations for the following development, viz:-

**Erection of house and associated works
at
11A Letham Mains Holdings
Haddington
East Lothian**

East Lothian Council as the Planning Authority in exercise of their powers under the above-mentioned Acts and Regulations hereby **GRANT PLANNING PERMISSION** for the said development in accordance with the particulars given in the application, the plan(s) docketed as relative hereto and the conditions set out below:-

CONDITIONS:

- 1 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 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.

- 2 Prior to the occupation of the house hereby approved the vehicular access and parking arrangements shall be laid out and made available for use, as shown in docketed drawing no. GA(PL)003 Rev C, and thereafter the access and parking areas shall be retained for such uses, unless otherwise approved in writing by the Planning Authority.

Prior to the occupation of the house hereby approved, a visibility splay of at least 2.4 metres by 70 metres shall be provided and maintained to either side of the vehicular access so that there shall be no obstruction within the visibility splay above a height of 1.05 metres measured from the adjacent carriageway surface, and the visibility splay shall be laid out in accordance with the details shown for it in docketed drawing no. GA(PL)003 Rev C. Thereafter the visibility splay shall be retained and maintained for such use, unless otherwise approved in writing by the Planning Authority.

On-site parking for at least two cars shall be provided as shown in docketed drawing no. GA(PL)003 Rev C, unless otherwise approved in writing by the Planning Authority.

Prior to the occupation of the house hereby approved, an on-site turning area to serve the house hereby approved shall be provided on the site in accordance with details of it to be submitted to and approved in writing by the Planning Authority and thereafter the on-site turning area so approved shall be maintained and kept available for use, free from parked vehicles or other obstructions 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.

- 3 A Construction Traffic Method Statement designed to minimise the impact of construction activity and the movements of construction traffic shall be submitted to and approved in writing by the Planning Authority prior to the commencement of development on the site. It shall include any recommended mitigation measures for the control of noise, dust and construction traffic, including hours of construction works, routing of vehicles and delivery time restrictions, which shall be implemented, as applicable, prior to the commencement of development and during the period of development works being carried out on the application site. Temporary measures shall be put in place to control surface water drainage during the construction works.

Reason:

To minimise the impact of construction traffic in the interests of pedestrian, cyclists and road safety in the area and in the interests of safeguarding the amenity of the area.

- 4 Other than to achieve the visibility splay required by condition 2 of this grant of planning permission the east (roadside) boundary hedge of the site shall be retain in situ and at a minimum height of 3 metres unless otherwise agreed in writing by the Planning Authority.

Reason:

In the interests of safeguarding the character, integrity and appearance of the development and the visual amenity of the landscape of the area.

- 5 Notwithstanding that which is shown on the application drawings the vertical board timber cladding to be used to clad the external walls of the house hereby approved shall not be treated with 'Ronseal Ebony Woodstain' but shall be treated with a timber paint, stain or preservative the details of which, including its colour, shall be submitted to and approved in writing by the Planning Authority prior to its use in the development, and thereafter the timber paint, stain or preservative, including its colour, used shall accord with the details so approved.

Reason:

In the interests of safeguarding the character, integrity and appearance of the development and the visual amenity of the landscape of the area.

- 6 Details of the colour to be applied to the external surface of the alu-clad timber frames of the windows, glazed doors and external doors of the house hereby approved shall be submitted to and approved in writing by the

Planning Authority and thereafter the colour used for the external surface of the alu-clad timber frames of the windows, glazed doors and external doors of the house shall accord with the details so approved.

Reason:

In the interests of safeguarding the character, integrity and appearance of the development and the visual amenity of the landscape of the area.

- 7 A sample, including its colour, of the single ply roofing membrane to be approved to the roof of the house hereby approved shall be submitted to and approved in writing by the Planning Authority prior to its use in the development and thereafter the single ply roofing membrane, including its colour, shall accord with the details so approved.

Reason:

In the interests of safeguarding the character, integrity and appearance of the development and the visual amenity of the landscape of the area.

- 8 Samples of the material(s) to be used to surface the hard standing areas in the form of the parking area and footpaths of the house hereby approved shall be submitted to and approved in advance in writing by the Planning Authority prior to their use in the development, and thereafter the materials used shall accord with the details so approved.

Reason:

In the interests of safeguarding the character, integrity and appearance of the development and the visual amenity of the landscape of the area.

- 9 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended by The Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2011, no development of the types specified in Part 1 of Schedule 1 of the Order or in any statutory instrument revoking and/or re-enacting that Part of the Order shall be undertaken on the new house hereby approved, or on any part of the application site, other than the development shown on the drawings docketed to this planning permission, unless with the prior approval of the Planning Authority.

Reason:

In the interests of safeguarding the character, integrity and appearance of the development and the visual amenity of the landscape of the area.

The report on this application is attached to this Decision Notice and its terms shall be deemed to be incorporated in full in this Decision Notice.

Details of the following are given in the application report:

- the terms on which the Planning Authority based this decision;
- any variations made to the application in terms of Section 32A of the Town and Country Planning (Scotland) Act 1997; and
- where applicable the summary of the terms of any agreement entered into under Section 75 of the Town and Country Planning (Scotland) Act 1997.

A copy of the Section 75 Agreement can be inspected in the application file at Environment Reception, John Muir House, Haddington.

The docketed plans to which this decision relate are as follows:

Drawing No.

Revision No.

Date Received

GA(PL)001	-	16.12.2016
GA(PL)002	-	16.12.2016
GA(PL)004	A	11.01.2017
GA(PL)005	-	11.01.2017
GA(PL)003	C	18.04.2017

ADVISORY NOTES

1. In accordance with Section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended), the development to which this planning permission relates must commence within **THREE YEARS** of the date of this decision notice. **If development has not commenced within this time period, then this planning permission will lapse.**

2. It should be understood that this permission does not carry with it any necessary consent or approval for the proposed development under other statutory enactments.

23rd August 2017



Iain McFarlane
Service Manager - Planning

NOTES ABOUT REVIEW OF DECISION

If the applicant is aggrieved by the decision of the Planning Authority to grant permission for the proposed development subject to conditions, the applicant may require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within three months from the date of this decision notice. The notice of review should be addressed to the Clerk to the Local Review Body, Committee Team, Communications and Democratic Services, John Muir House, Haddington, East Lothian EH41 3HA.

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 5 of the Town and Country Planning (Scotland) Act 1997.

Circular 4/1998

Annex A THE USE OF CONDITIONS IN PLANNING PERMISSIONS POWERS

Summary of Powers

1. Conditions on planning permissions may be imposed only within the statutory powers available. Advice on these powers is given below. This advice is intended to be a guide, and it must be stressed that it is not definitive. An authoritative statement of the law can only be made by the Courts. The principal powers are in sections 37 and 41 of the Town and Country Planning (Scotland) Act 1997 (referred to below as "the Act"). Sections 58 and 59 of the Act require the imposition of time-limiting conditions on most grants of planning permission (see paragraphs 45 to 52 below). Powers to impose conditions are also conferred on the Secretary of State or Reporters by sections 46, 48 and 133 and Schedule 4 of the Act. Unless the permission otherwise provides, planning permission runs with the land and conditions imposed on the grant of planning permission will bind successors in title.

General Power

2. Section 37(1) of the Act enables the planning authority to grant planning permission "either unconditionally or subject to such conditions as they think fit". The power to impose conditions is not, however, as wide as it appears, and must be interpreted in the light of Court decisions.

Powers for Conditions on Land Outside Application Site and Temporary Permissions

3. Section 41(1) amplifies the general power in section 37(1) in two ways. It makes clear that the planning authority may impose conditions regulating the development or use of land under the control of the applicant even if it is outside the site which is the subject of the application. (The Courts have held that the question whether land is under the control of an applicant is a matter to be determined according to the facts of the particular case. It is only necessary to have such control over the land as is required to enable the developer to comply with the condition.) The section also makes clear that the planning authority may grant planning permission for a specified period only.

Power to Vary or Remove the Effect of Conditions

4. Section 33 of the Act provides, among other things, for planning applications to be made in respect of development which has been carried out without planning permission and for applications for planning permission to authorise development which has been carried out without complying with some planning condition to which it was subject. Special consideration may need to be given to conditions imposed on planning permissions granted under section 33. For example, the standard time-limiting condition will not be appropriate where development has begun before planning permission has been granted.

5. Section 42 of the Act provides for applications for planning permission to develop land without complying with conditions previously imposed on a planning permission. The planning authority can grant such permission unconditionally or subject to different conditions, or they can refuse the application if they decide that the original condition(s) should continue. The original planning permission will continue to subsist whatever the outcome of the application under section 42. This section will not apply if the period within which the development could begin, as specified in the previous condition, has expired without the development having begun.*

OTHER CONSIDERATIONS

Policy and Other Considerations

6. The limits of the enabling powers are not the only constraints on the use of conditions. Conditions should normally be consistent with national planning policies, as expressed in Government Circulars, National Planning Policy Guidelines (NPPGs) and other published material. They should also normally be consistent with the provisions of development plans and other policies of planning authorities. However, where a certain kind of condition is specifically endorsed by a development plan policy it is still necessary to consider whether it is justified in the particular circumstances of the proposed development. In general, conditions which duplicate the effect of other legislation should not be imposed (see paragraphs 19-22).

PRACTICE

Role of Pre-application Discussions

7. Even before an application is made, informal discussions between the applicant and the planning authority can be very helpful. They can allow the applicant to formulate the details of a project so as to take full account of the requirements of the authority and assist the authority in making sure that those requirements are reasonable in the light of the development proposed. Discussion can also reduce the need for conditions, enable the authority to explore the possible terms of conditions which remain necessary and ensure that these are tailored to the circumstances of the case.

"Standard Conditions"

8. Lists of standard or model conditions can be of great benefit. They can improve consistency of decisions, make effective use of staff resources and increase the speed of processing of planning applications. They may also, however, encourage the use of conditions as a matter of routine, without the careful assessment of the need for a condition which every applicant should be able to expect. Slavish or uncritical application of conditions is wholly inappropriate. Lists of standard conditions can usefully be made available locally, so that developers can take account of possible conditions at an early stage in drawing up their proposals. Such lists should contain a warning that they are not comprehensive and that conditions will always be devised or adapted where appropriate to suite the particular circumstances of a case.

Reasons

9. It is for the planning authority, in the first instance, to judge on the facts of the case whether a particular development proposal should be approved subject to planning conditions. By virtue of Article 22(1)(a) of The Town and Country Planning (General Development Procedure) (Scotland) Order 1992, an authority deciding to grant permission subject to conditions must state the reasons for their decision. Where a planning authority, by virtue of Article 15 of the General Development Procedure Order, has consulted other bodies in respect of a planning application and is disposed to grant planning permission subject to a condition suggested to them by another body, the authority should ensure that the body has provided clear reasons for suggesting the imposition of the condition. Such conditions should only be imposed where they will meet clear land use planning objectives; as stated in paragraph 6 above conditions should not be used to duplicate controls available under other legislation. Reasons must be given for the imposition of every condition. It may be that more than one condition will be justified on the same basis, in which case it will be acceptable that such conditions be grouped together and justified by one reason. Reasons such as "to comply with the policies of the Council", "to secure the proper planning of the area" or "to maintain control over the development" are vague, and can suggest that the condition in question has no proper justification. The phrase "to protect amenity" can also be obscure and will often need amplification. If the reasons for the imposition of conditions are clearly explained, developers will be better able to understand the need for them and to comply with them in spirit as well as in letter. The likelihood of proper and acceptable conditions being challenged on appeal, so that development proposals are held up, will also be diminished.

Notes for Information

10. Sometimes planning authorities will wish to give guidance to an applicant for outline planning permission as to the kind of details of reserved matters which they would find acceptable. A planning authority may also wish to draw the attention of an applicant to other statutory consents (eg listed building or road construction consent) which must be obtained before development can commence. This should not be done by imposing a condition: instead a note may be appended to the planning permission. A note may also be desirable to draw the attention of the applicant to his or her right to make an application to vary or remove a condition under section 42 of the Act, or indeed for other purposes.

Planning Agreements

11. Problems posed by a development proposal may be solved either by imposing a condition on the planning permission or by concluding a planning agreement under section 75 of the Act or under other powers. The Secretary of State's policy on planning agreements is set out in SODD Circular 12/1996. This makes it clear that the planning authority should normally seek to regulate a development by a condition rather than through an agreement, since the imposition of restrictions by means of an agreement deprives the developer of the opportunity of seeking to have the restrictions varied or removed by an application or appeal under Part III of the Act if they are subsequently seen as being inappropriate or too onerous. Planning authorities should note that if a certain restriction is contrary to the advice contained in this Circular it is likely to be objectionable regardless of whether it is suggested that it should be implemented by a condition or an agreement. It is *ultra vires* to impose a condition in a planning permission requiring an applicant to enter into an agreement. Nor should conditions imposed on a grant of planning permission be duplicated in a planning agreement.

TESTS

Six Tests for Conditions

12. On a number of occasions the Courts have laid down the general criteria for the validity of planning conditions. In addition to satisfying the Courts' criteria for validity, conditions should not be imposed unless they are both necessary and effective, and do not place unjustifiable burdens on applicants. As a matter of policy, conditions should only be imposed where they are:

- **necessary,**
- **relevant to planning,**
- **relevant to the development to be permitted,**
- **enforceable,**
- **precise, and**
- **reasonable in all other respects.**

TEST: NEED FOR A CONDITION

13. In considering whether a particular condition is necessary, authorities should ask themselves whether planning permission would have to be refused if that condition were not to be imposed. If it would not, then the condition needs special and precise justification. Planning authorities should also avoid imposing conditions through anxiety to guard against every possible contingency, however remote. The argument that a condition will do no harm is no justification for its imposition; as a matter of policy a condition ought not to be imposed unless there is a definite need for it. The same principles, of course, must be applied in dealing with applications for the removal of a condition under section 33 or 42 of the Act; a condition should not be retained unless there are sound and clear-cut reasons for doing so.

14. In some cases a condition will clearly be unnecessary, such as where it would repeat provisions in another condition imposed on the same permission. In other cases the lack of need may be less obvious and it may help to ask whether it would be considered expedient to enforce against a breach - if not, then the condition may well be unnecessary.

15. Conditions should be tailored to tackle specific problems, rather than impose unjustified controls. In so far as a condition is wider in its scope than is necessary to achieve the desired objective, it will fail the test of need. For example, where an extension to a dwellinghouse in a particular direction would be unacceptable, a condition on the permission for its erection should specify that, and not simply remove all rights to extend the building. Permissions should not, however, be overloaded with conditions. It might be appropriate, for example, to impose on a permission in a conservation or other sensitive area a requirement that all external details and materials should be in complete accordance with the approved plans and specifications, rather than recite a long list of architectural details one by one.

Completion of Development

16. Conditions requiring development to be carried out in its entirety, or in complete accordance with the approved plans, often fail the test of need by requiring more than is needed to deal with the problem they are designed to solve. If what is really wanted is simply to ensure that some particular feature or features of the development are actually provided or are finished in a certain way, specific conditions to this end are far preferable to a general requirement.

17. The absence of a specific condition does not prevent enforcement action being taken against development which differs materially from the approved design. However, it may well be easier for planning authorities to enforce compliance with a condition that has been breached, than to enforce on the basis of a material variation from the approved plans or description of development. Where an application includes information, for example on likely hours of working, which significantly influence the planning decision, it may be appropriate to include a specific condition to ensure compliance with the restrictions.

TEST: RELEVANCE TO PLANNING

18. A condition which has no relevance to planning is *ultra vires*. A condition that the first occupants of dwellings must be drawn from the local authority's housing waiting list, for example, would be improper because it was meant to meet the ends of the local authority as housing authority and was not imposed for planning reasons. Although a condition can quite properly require the provision of open space to serve the approved development (as part of a housing estate, for example) it would be *ultra vires* if it required the open space to be dedicated to the public. Other conditions affecting land ownership (requiring, for example, that the land shall not be disposed of except as a whole) where there was no planning justification for such a constraint would similarly be *ultra vires*.

Other Planning Controls

19. Some matters are the subject of specific control elsewhere in planning legislation, for example advertisement control, listed building consent or tree preservation. If these controls are relevant to the development the planning authority should normally rely on them and not impose conditions on a grant of planning permission to achieve the purposes of a separate system of control (but on Trees note paragraphs 77 and 78 below).

Non-planning Controls

20. Other matters are subject to control under separate legislation, yet are also of concern to the planning system. A condition which duplicates the effect of other controls will normally be unnecessary and one whose requirements conflict with those of other controls will be *ultra vires* because it is unreasonable. For example, a planning condition would not normally be appropriate to control the level of emissions from a proposed development where they are subject to pollution control legislation. However, such a condition may be needed to address the impact of the emissions to the extent that they might have land-use implications and/or are not controlled by the appropriate pollution control authority. (For further advice on this subject, see Planning Advice Note 51 *Planning and Environmental Protection*.) A condition cannot be justified on the grounds that the planning authority is not the body responsible for exercising a concurrent control and, therefore, cannot ensure it will be exercised properly. Nor can a condition be justified on the grounds that a concurrent control is not permanent but is subject to expiry and renewal (as, for example, with certain licences). Even where a condition does not actually duplicate or conflict with another control, differences in requirements can cause confusion and it will be desirable as far as possible to avoid solving problems by the use of conditions instead of, or as well as, by another more specific control.

21. Where other controls are also available, a condition may, however, be needed when the considerations material to the exercise of the two systems of control are substantially different, since it might be unwise in these circumstances to rely on the alternative control being exercised in the manner or to the degree needed to secure planning objectives. Conditions may also be needed to deal with circumstances for which a concurrent control is unavailable. A further case where conditions may be justified will be where they can prevent development being carried out in a manner which would be likely to give rise to onerous requirements under other powers at a later stage (eg to ensure adequate arrangements for the disposal of sewage and thus avoid subsequent intervention under the Sewerage (Scotland) Act 1968).

22. As a matter of policy, conditions should not be imposed in order to avoid compensation payments under other legislation (although such a condition would not be *ultra vires* if it could be justified on planning grounds). Although conditions which have the effect of restricting for planning purposes the activities in respect of which planning permission is granted may reasonably be imposed without any liability for compensation arising under planning legislation, great care should be taken with conditions which would have the effect of removing future liability for compensation which might arise under other legislation. For example, a condition requiring soundproofing measures may be appropriate to a permission for residential development near a major road where noise levels are high. But it will be inappropriate to impose such a condition with the aim of removing the roads authority's liability to install soundproofing when proposals for major road improvement are implemented. A condition of this sort is not relevant to the existing planning circumstances, but looks to future circumstances in respect of which other legislation provides compensation for those affected.

TEST: RELEVANCE TO THE DEVELOPMENT TO BE PERMITTED

23. Unless a condition fairly and reasonably relates to the development to be permitted, it will be *ultra vires*.

24. It is not, therefore, sufficient that a condition is related to planning objectives: it must also be justified by the nature of the development permitted or its effect on the surroundings. For example, if planning permission is being granted for the alteration of a factory building, it would be wrong to impose conditions requiring additional parking facilities to be provided for an existing factory simply to meet a need that already exists. It would similarly be wrong to require the improvement of the appearance or layout of an adjoining site simply because it is untidy or congested. Despite the desirability of these objectives in planning terms, the need for the action would not be created by the new development. On the other hand, it is proper for conditions to secure satisfactory access or parking facilities, for example, which are genuinely required by the users of a proposed development. Conditions can also be proper where the need for them arises out of the effects of the development rather than its own features; for example, where a permission will result in intensification of industrial use of a site, a condition may be necessary requiring additional sound-insulation in the existing factory buildings. It may even be justifiable to require by condition that an existing building be demolished- perhaps where to have both would result in the site being over-intensively developed.

TEST: ABILITY TO ENFORCE

25. A condition should not be imposed if it cannot be enforced. It is often useful to consider what means are available to secure compliance with a proposed condition. There are two provisions which authorities may use to enforce conditions; an enforcement notice under section 127 of the Act or a breach of condition notice under section 145. Precision in the wording of conditions is crucial when it comes to enforcement.

Practicality of Enforcement

26. Sometimes a condition will be unenforceable because it is in practice impossible to detect an infringement. More commonly it will merely be difficult to prove a breach of its requirements. For example, a condition imposed for traffic reasons restricting the number of persons resident at any one time in a block of flats would be impracticable to monitor and pose severe difficulties in proving an infringement. However, where a condition is intended to prevent harm to the amenity of an area which is clearly likely to result from the development (for example, a condition requiring an amusement centre to close at a certain time in the evening), it will not usually be difficult to monitor compliance with the condition. Those affected by contraventions of its requirements are likely to be able to provide clear evidence of any breaches.

Whether Compliance is Reasonable

27. A condition may raise doubt about whether the person carrying out the development to which it relates can reasonably be expected to comply with it. If not, subsequent enforcement action is likely to fail on the ground that what is required cannot reasonably be enforced. One type of case where this might happen is where a condition is imposed requiring the carrying out of works (eg the construction of a means of access) on land within the application site but not, at the time of the grant of planning permission, under the control of the applicant. If the applicant failed to acquire an interest in that land and carried out the development without complying with the condition, the planning authority could enforce the condition only by taking action against the third party who owned the land to which the condition applied and who had gained no benefit from the development. Such difficulties can usually be avoided by framing the condition so as to require that the development authorised by the permission should not commence until the access has been constructed.

Enforcing Conditions Imposed on Permission for Operational Development

28. An otherwise legally sound condition may prove unenforceable because it is imposed on a grant of planning permission for the carrying out of operations which have not been carried out in accordance with the approved plans. Authorities should take into account the Court of Appeal's judgement in the case of *Handoll and Others v Warner Goodman and Streat (A firm) and Others*, (1995) 25EG157, which held that the judgement of the Divisional Court in *KerrierDC v Secretary of State for the Environment and Brewer* (1980) 41P&CR284, had been wrongly decided. Both cases concerned a planning permission for the erection of a dwelling subject to an agricultural occupancy condition.**

TEST: PRECISION

29. The framing of conditions requires great care, not least to ensure that a condition is enforceable. A condition, for example, requiring only that "a landscaping scheme shall be submitted for the approval of the planning authority" is incomplete since, if the applicant were to submit the scheme and even obtain approval for it, but neglect to carry it out, it is unlikely that the planning authority could actually require the scheme to be implemented. In such a case, a requirement should be imposed that landscaping shall be carried out in accordance with a scheme to be approved in writing by the planning authority; and the wording of the condition must clearly require this. A condition of this kind also sets no requirement as to the time or the stage of development by which the landscaping must be done, which can similarly lead to enforcement difficulties. Conditions which require specific works to be carried out at a certain 'time' or stage should state clearly when this must be done.

Vague Conditions

30. A condition which is not sufficiently precise for the applicant to be able to ascertain what he must do to comply with it is *ultra vires* and must not be imposed. Vague expressions which sometimes appear in conditions, for example "keep the buildings in a tidy state" or "so as not to cause annoyance to nearby residents", give occupants little idea of what is expected of them. Furthermore, conditions should not be made subject to qualifications, such as "if called upon to do so" or "if the growth of traffic makes it desirable", because these do not provide any objective and certain criterion by which the applicant can ascertain what is required.

Discretionary or Vetting Conditions

31. Conditions which attempt to provide for an arbiter to interpret such expressions or qualifications do not avoid this difficulty. Conditions requiring that tidiness, for example, shall be "to the satisfaction of the planning authority" make the applicant no more certain of what is required. Conditions which are imprecise or unreasonable cannot be made acceptable by phrases such as "except with the prior approval of the planning authority" which purport to provide an informal procedure to waive or modify their effect. Similarly, conditions restricting the occupation of a building should not set up a vetting procedure for prospective occupiers. Conditions which raise these difficulties, however, are not to be confused with conditions which require the submission of a scheme or details for approval which will, when granted, provide the precise guidelines to be followed by the developer.

Clarity

32. Conditions should be not only precise but clear. Where the wording of a condition may be difficult to follow, it may be helpful to attach to the permission an illustrative plan (eg describing sight lines required at the entrance to an access road).

TEST: REASONABLENESS

33. A condition can be *ultra vires* on the grounds of unreasonableness, even though it may be precisely worded and apparently within the powers available.

Conditions Invalid on Grounds of Unreasonableness

34. A condition may be unreasonable because it is unduly restrictive. Although a condition may in principle impose a continuing restriction on the use of land (provided that there are good planning reasons for that restriction), such a condition should not be imposed if the restriction effectively nullifies the benefit of the permission. For example, it would normally be reasonable to restrict the hours during which an industrial use may be carried on if the use of the premises outside these hours would affect the amenity of the neighbourhood. However, it would be unreasonable to do so to such an extent as to make it impossible for the occupier to run his business properly. If it appears that a permission could be given only subject to conditions that would be likely to be held unreasonable by the Courts, then planning permission should be refused altogether.

Avoidance of Onerous Requirements

35. Even where a condition would not be so unreasonably restrictive as to be *ultra vires*, it may still be so onerous that as a matter of policy it should be avoided. For example, a condition which would put a severe limitation on the freedom of an owner to dispose of his property, or which would obviously make it difficult to finance the erection of the permitted building by borrowing on mortgage, should be avoided on these grounds. An unduly restrictive condition can never be made acceptable by offering the prospect of informal relaxation of its effect.

Control Over Land

36. Particular care needs to be taken over conditions which require works to be carried out on land in which the applicant has no interest at the time when planning permission is granted. If the land is included in the site in respect of which the application is made, such conditions can in principle be imposed, but the authority should have regard to the points discussed in paragraph 3 above. If the land is outside that site, a condition requiring the carrying out of works on the land cannot be imposed unless the authority are satisfied that the applicant has sufficient control over the land to enable those works to be carried out.

Conditions Depending on Others' Actions

37. It is unreasonable to impose a condition worded in a positive form which developers would be unable to comply with themselves, or which they could comply with only with the consent or authorisation of a third party. Similarly, conditions which require the applicant to obtain an authorisation from another body, such as the Scottish Environment Protection Agency, should not be imposed.

38. Although it would be *ultravires* to require works which the developer has no powers to carry out, or which would need the consent or authorisation of a third party, it may be possible to achieve a similar result by a condition worded in a negative form, prohibiting development until a specified action has been taken. Whereas previously it had been understood that the test of whether such a condition was reasonable, was strict; to the effect that there were at least reasonable prospects of the action in question being performed, the House of Lords (in *the British Railways Board v the Secretary of State for the Environment and Hounslow LBC* [1994] JPL32; [1993] 3 PLR 125) established that the mere fact that a desirable condition, worded in a negative form appears to have no reasonable prospects of fulfilment does not mean that planning permission need necessarily be refused as a matter of law. Thus, while an authority will continue to have regard to all relevant factors affecting a planning application and whether it should be granted with or without conditions, there is no longer a legal requirement to satisfy a reasonable prospects test in respect of any negative condition they may decide to impose. For example, if it could be shown that improvements to sewerage facilities for a new housing development were planned but there was no clear indication that they would be built within the time limits imposed by the permission, it might still be possible to grant consent subject to a condition that the houses should not be occupied until the relevant sewerage works were completed. It might also be reasonable to use a condition requiring that a development should not commence until a particular road had been stopped up or diverted, even if the timing remained uncertain. Planning authorities should therefore note this recent House of Lords ruling and its implications for a less restrictive view in the use of negative conditions.

Consent of Applicant to Unreasonable Conditions

39. An unreasonable condition does not become reasonable because an applicant suggests it or consents to its terms. The condition will normally run with the land and may, therefore, still be operative long after the applicant has moved on. It must always be justified on its planning merits.

REGULATION OF DEVELOPMENT

Outline Permissions

40. An applicant who proposes to carry out building or other operations may choose to apply either for full planning permission, or for outline permission with one or more of the following matters reserved by condition for the subsequent approval of the planning authority: the siting, design or the external appearance of the building, the means of access, or the landscaping of the site ("reserved matters"). An applicant cannot seek an outline planning permission for a change of use alone.

Details Supplied in Outline Applications

41. An applicant can, however, choose to submit as part of an outline application details of any of these "reserved matters". Unless he has indicated that those details are submitted "for illustrative purposes only" (or has otherwise indicated that they are not formally part of the application), the planning authority must treat them as part of the development in respect of which the application is being made. The authority cannot reserve that matter by condition for subsequent approval, unless the applicant is willing to amend the application by withdrawing the details.

Conditions Relating to Outline Permissions

42. Once outline planning permission has been granted, it cannot be withdrawn except by a revocation order under section 65 of the Act, and any subsequent approval of reserved matters does not constitute the granting of a further planning permission. Any conditions relating to anything other than the reserved matters should be imposed when outline permission is granted. The only conditions which can be imposed when the reserved matters are approved are conditions which directly relate to those matters. So, where certain aspects of the development are crucial to the decision, planning authorities will wish to consider imposing relevant conditions when outline permission is granted. For example, it may be considered necessary to require a building to be constructed within a specified "footprint" or to retain important landscape features which would affect the setting of the building and its neighbours.

43. If the planning authority consider that, whatever the precise form the development is to take, access to the buildings should be from a particular road (or, alternatively, that there should be no means of access from a

particular road), then a condition to this effect must be imposed on the outline permission. Approval of the details of the means of access to the permitted buildings can be refused on the grounds that there should not be access to the site from a particular road only if the need for such a restriction arises from the details of the development which have been submitted for approval (eg from the density which is indicated by submitted details of the design and siting of the buildings). It is desirable that, wherever possible, notes should be appended to an outline permission to give the developer guidance as to what precise form of development will be acceptable to the planning authority.

Conditions Reserving Other Matters

44. Authorities should seek to ensure, where possible, that conditions other than those relating to reserved matters, are self-contained and do not require further approvals to be obtained before development can begin. Where necessary, however, a planning authority may also, when granting a full or outline planning permission, impose a condition requiring that details of a specified aspect of the development which was not fully described in the application (eg the provision of car parking spaces) be submitted for approval before the development is begun. In the case of full permission such a condition can relate to details (such as landscaping) which might have been reserved matters had the application been made in outline. The applicant has the same right of appeal to the Secretary of State under section 47 of the Act if he cannot get the authority's approval, agreement or consent to matters reserved under such a condition as he has in respect of applications for approval of reserved matters.

TIME-LIMITS ON THE COMMENCEMENT OF DEVELOPMENT

Statutory Time-limits

45. The imposition of time-limits on the commencement of development is, by virtue of section 58 of the Act, not required for temporary permissions (see paragraphs 104-109), for permissions for any development carried out before the grant of planning permission, or for permissions granted by a development order, an enterprise zone or simplified planning zone scheme.

Time-limits on Full Permissions

46. Other grants of planning permission (apart from outline permissions) should, under section 58 of the Act, be made subject to a condition imposing a time-limit within which the development authorised must be started. The section specifies a period of five years from the date of the permission. Where planning permission is granted without a condition limiting the duration of the planning permission, it is deemed to be granted subject to the condition that the development to which it relates must be begun not later than the expiration of 5 years beginning with the grant of permission.

Time-limits on Outline Permissions

47. Grants of outline planning permission must, under section 59 of the Act, be made subject to conditions imposing two types of time-limit, one within which applications must be made for the approval of reserved matters and a second within which the development itself must be started. The periods specified for the submission of applications for approval of reserved matters are: the latest of three years from the grant of outline permission; 6 months from the date of refusal of an earlier application; and 6 months from the date on which an appeal against such a refusal was dismissed. The periods specified for starting the development are either five years from the grant of permission or two years from the final approval of the last of the reserved matters, whichever is the longer.

Variation from Standard Time-limits

48. If the authority consider it appropriate on planning grounds, they may specify longer or shorter periods than those specified in the Act, and must give their reasons for so doing. In the absence of specific time-limiting conditions, permission is deemed to have been granted subject to conditions imposing the periods referred to in paragraphs 46 and 47. It may be particularly desirable to adopt a flexible approach to the fixing of time-limits where development is to be carried out in distinct parts or phases; section 59(6) of the Act provides that outline permissions may be granted subject to a series of time-limits, each relating to a separate part of the development. Such a condition must be imposed at the time outline planning permission is granted.

49. A condition requiring the developer to obtain **approval** of reserved matters within a stated period should not be used, since the timing of an approval is not within the developer's control. A condition, therefore, should set time-limits only on the **submission** of applications for approval of reserved matters.

Separate Submission of Different Reserved Matters

50. Applications for approval under an outline permission may be made either for all reserved matters at once, or for one at one time and others at another. Even after details relating to a particular reserved matter have been approved, one or more fresh applications may be made for approval of alternative details in relation to the same reserved matter. Once the time-limit for applications for approval of reserved matters has expired, however, no applications for such an approval can be made.

Effect of Time-limit

51. After the expiry of the time-limit for commencement of development it would be *ultra vires* for development to be begun under that permission; a further application for planning permission must be made.

Renewal of Permissions Before Expiry of Time-limits

52. Developers who delay the start of development are likely to want their permission renewed, as the time-limit for implementation approaches. Under Article 5 of The Town and Country Planning (General Development Procedure) (Scotland) Order 1992 applications for such renewals may be made simply by letter, referring to the existing planning permission, although the planning authority have power subsequently to require further information, if needed. As a general rule, such applications should be refused only where:

- a. there has been some material change in planning circumstances since the original permission was granted (e.g. a change in some relevant planning policy for the area, or in relevant road considerations or the issue by the Government of a new planning policy which is material to the renewal application);
- b. there is likely to be continued failure to begin the development and this will contribute unacceptably to uncertainty about the future pattern of development in the area; or
- c. the application is premature because the permission still has a reasonable time to run.

GUIDANCE ON HOUSEHOLDER PERMITTED DEVELOPMENT RIGHTS

Circular 1/2012

CONTENTS

1. INTRODUCTION	04
2. BEFORE STARTING	05
3. MAIN CONCEPTS	07
Principal elevation	08
Fronting a road	11
Front and rear curtilages	14
Site coverage	15
Original or existing dwellinghouse	16
Heights and Ground Levels	16
4. MAKING CHANGES TO A DWELLINGHOUSE	17
Single storey ground floor extension	20
Ground floor extensions of more than one storey	25
Porch	29
Enlargement of the roof	31
Access ramps	36
Improvements or alterations that are not an enlargement, including replacement windows, solar panels, flues and satellite dishes	38
Ancillary buildings including sheds, garages, greenhouses etc.	43
Any building, engineering, installation or other operation	46
Hard surface	50
Decking or other raised platform	52
Gates, fences, walls or other means of enclosure	55
5. MAKING CHANGES TO A FLAT	57
Improvements or alterations that are not an enlargement, including replacement windows, solar panels, flues and satellite dishes	57
Gates, fences, walls or other means of enclosure	60
6. INSTALLING MICROGENERATION EQUIPMENT	62
7. INSTALLING CLOSED CIRCUIT TELEVISION (CCTV)	77
8. THINGS TO CONSIDER	79
9. GLOSSARY	80

PLANNING SERIES

Scottish Planning Policy (SPP) is the statement of Scottish Government policy on nationally important land use planning matters.

National Planning Framework (NPF) is the Scottish Government's strategy for Scotland's long term spatial development.

Circulars contain Scottish Government policy on the implementation of legislation or procedures.

Statements of Scottish Government policy in the SPP, NPF and Circulars may be material considerations to be taken into account in development plans and development management decisions.

Designing Places and the West Edinburgh Planning Framework have the same status in decision making as the SPP and NPF.

Planning Advice Notes (PANs) provide advice and information on technical planning matters.

Further information on the Scottish Government's role in the planning system is available on <http://www.scotland.gov.uk/Topics/Built-Environment/planning>.

1. INTRODUCTION

1.1

Developments can have a significant impact on a neighbourhood and the environment.

1.2

Submitting a [planning application](#) gives an opportunity for the proposed development to be considered in its local setting. However, considering applications for minor and uncontroversial developments is not an efficient way of regulating development.

1.3

[Permitted development rights](#) are granted so that many instances of small alterations and extensions can be carried out without the need to submit an application for planning permission.

1.4

The purpose of this document is to explain householder [permitted development rights](#) and therefore what can be built without submitting a planning application.

1.5

[Section 2](#) provides general advice that should be considered before starting work.

1.6

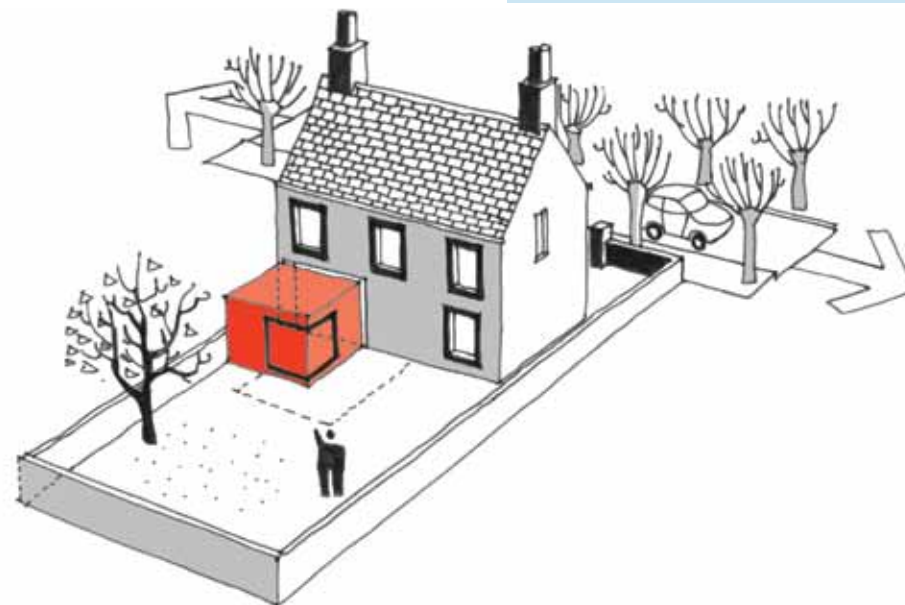
[Section 3](#) explains the main concepts used within the [planning legislation](#). It is necessary to understand these concepts so that the household classes to which they relate can be correctly applied. Sections 4 - 7 provide detailed advice on how the rules should be applied. Further guidance can be found at www.scotland.gov.uk/householderdevelopment

1.7

[Planning authorities](#) can offer help and advice. A list of planning authorities can be found on the planning section of the Scottish Government website www.scotland.gov.uk

Additional Approvals Required

If planning permission is not required, there are sometimes other approvals that may be required. For example, approval under the building regulations from the local council may be required. It is for the individual to ensure that their development complies with relevant legislation. The most frequent are detailed within [Section 2](#).



2. BEFORE STARTING

2.1

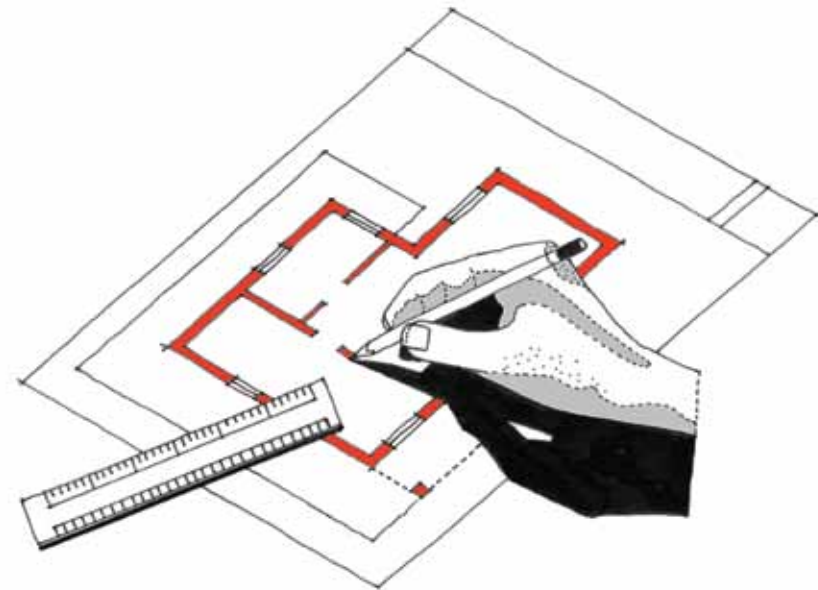
Home improvement projects, such as an extension, should be carefully considered. Time spent planning can save money. It can also ensure the work is completed on time and as required. It is the property owner's responsibility to ensure that the relevant statutory requirements are met. If the development fails to comply with the relevant legislation, the owner is liable for any remedial action (which could go as far as demolition and restoration).

2.2

The position, design and scale of householder developments can help maintain the character of neighbourhoods. These can also help reduce the impact on the wider environment and local biodiversity. Some developments can make homes more sustainable by helping to reduce energy use, whilst the installation of [microgeneration equipment](#) can help generate energy and reduce costs.








2.3

Most [planning authorities](#) offer advice on how the rules apply, as well as advice on the relevant processes and procedures. Further guidance for planning and building regulations is also available from www.scotland.gov.uk/householderdevelopment.



2. BEFORE STARTING

THINGS TO CHECK

-  **Building Standards:** the proposed work will likely require to comply with minimum building standards. A building warrant may also be required before you start the work, you can verify this with your local authority building standards department.
-  **Legal position:** check the legal position to ensure that there are no restrictions on the land or the type of work (for example [Article 4 directions](#) removing permitted development rights, legal title or rights of way). You may wish to consult a professional such as a planning consultant or solicitor.
-  **Planning history:** planning permission granted in the past may have a condition or other restriction prohibiting the kind of work proposed. If in doubt check with your [planning authority](#).
-  **Listed Buildings and Conservation Areas:** Listed Building Consent may be needed if you live in a listed building. If you live in a conservation area you may need to apply for planning permission. If in doubt check with your planning authority.
-  **Scheduled Monuments:** Work proposed in or near a scheduled archaeological site should be planned to avoid direct impact on the monument and impacts on its setting minimised, where sites are not scheduled certain precautions may be required. If in doubt check, for scheduled monuments check with Historic Scotland and for unscheduled sites with your [planning authority](#).
-  **Other Consents:** Check that the proposed work does not require a consent or approval such as a [road](#) or [advertisement](#) consent or is causing an obstruction.
-  **Other things to consider:** a range of other issues like biodiversity, water mains and old mine works are detailed in [Section 8](#).

3. MAIN CONCEPTS

3.1

This section explains in detail the concepts that are fundamental to interpreting and applying the [legislation](#). These concepts are:

- **Principal Elevation** a term used to identify the “front” of the [dwellinghouse](#)
- **Fronting a Road** is a way of determining if the principal elevation, or side elevation, is in the public domain
- **Front and Rear Curtilage** is a way of defining the area of land used for the comfortable enjoyment of the [dwellinghouse](#)
- **Site Coverage** is used to control the overall amount of ground covered by development
- **Original or Existing Dwellinghouse.** The original dwellinghouse is the dwellinghouse as built or as it was on 1 July 1948 if it was built before then. The existing dwellinghouse is the house immediately before carrying out the proposed development
- **Height and Ground Level.** How the height of development is measured



3. MAIN CONCEPTS

Principal Elevation

3.2

The term principal elevation is used to identify the “front” of a dwellinghouse. Whilst there are exceptions, most dwellinghouses are designed so that the “front” of the dwellinghouse faces a road.

3.3

Having established the principal elevation, the rear elevation will be the elevation opposite the principal elevation. Side elevations will link the principal and rear elevation.

Definition

3.4

The principal elevation is a reference to the elevation of the original dwellinghouse which by virtue of its design or setting, or both, is the principal elevation. Where it is not immediately obvious, a combination of the following factors should be used to identify the principal elevation:

- location of main door
- windows
- relationship to road
- boundary treatment
- architectural ornamentation

3.5

It is unlikely that any single factor will be decisive. The identification of the principal elevation should not be used to control development. There can only be one principal elevation. It is based on the design of the original dwellinghouse.

3.6

Figures 1-4 on pages 9-10 illustrate how the principal elevation can be identified in a variety of common situations.

3. MAIN CONCEPTS

Figure 1: In this example the principal elevation is the elevation that fronts the road. It has the main door and is the obvious orientation of the dwellinghouse. The side elevation has no windows and has a shorter length. The rear area is more private with a higher fence.



Figure 2: In this example the side elevation has the main door and a longer length, it has only a secondary window. The windows in the principal elevation show the main orientation of the dwellinghouse and it fronts the road. The boundary treatment indicates a more private rear area.

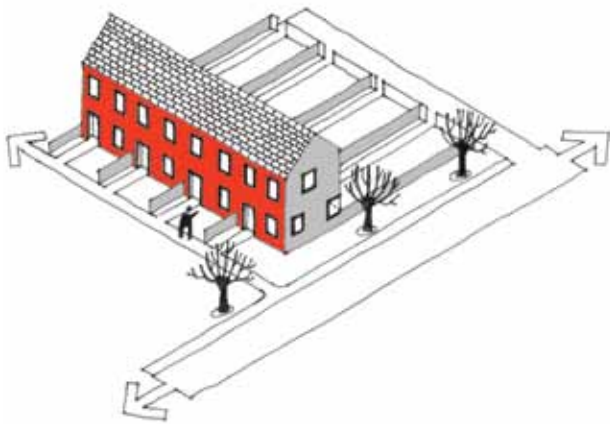


Figure 3: In this example the dwellinghouse on the corner plot will face two roads. However, the principal elevation has the main door and fronts the same road as the adjacent dwellinghouse. Opposite the principal elevation is the private rear area. The side elevation - although fronting a road and having windows - does not reflect the main orientation of the dwellinghouse.



3. MAIN CONCEPTS

Figure 4: In this example of a Radburn-type layout the principal and rear elevations could be identical. However, the overall setting and boundary treatment indicates which elevation would be understood as the “front” and “rear”. The side elevation has windows and faces a road but is not the principal elevation.



3. MAIN CONCEPTS

Fronting a Road

3.7

It is important to determine the relationship of the principal and side elevation to a [road](#). In the context of the householder permitted development rights, “[Fronts](#)” means facing **onto** a [road](#) and applies to both the principal and side elevation. It is determined by a number of factors including the angle of the dwellinghouse to the road, the distance between the dwellinghouse and the road and the size of any intervening land.

3.8

Fronting is used in a number of classes as a way of restricting permitted development. Development is often not permitted if “any part of the development would be forward of a wall forming part of the principal elevation or side elevation...”.

3.9

As illustrated in figures 5 and 6, an imaginary line can be drawn that extends from the principal elevation or side elevation to the boundary, this is the land forward of the principal elevation or side elevation.

Figure 5



Figure 6



3.10

Whilst figures 5 and 6, illustrate this concept in common circumstances, there will be situations where neither the principal nor the side elevation front a road. In such cases, development forward of a wall forming part of the principal elevation or side elevation may be permitted development subject to compliance with other criteria in any given class. Figures 7-11 illustrate situations where the principal elevation may not front a road.

3. MAIN CONCEPTS

Figure 7: Where there is no road. In this example, development would be permitted within any part of the curtilage of the dwellinghouse at the top of the diagram as long as it meets the site coverage, distance from boundary, height restrictions any other relevant restrictions for the type of development.



Figure 8: Where the dwellinghouse is sited at an angle. If an elevation is sited at a very acute angle to a road, it may not be considered to front a road. In this illustration the dwellinghouse is judged to front a road. Any extension within the shaded areas would require a planning application to the planning authority.



Figure 9: As the road bends, the side elevation no longer fronts the road. Any extension within the hatched areas would require a planning application to the planning authority.



3. MAIN CONCEPTS

Figure 10: Within 20 metres of a road it is considered unlikely that any elevation could be argued to be too far from a road so that it no longer fronts a road. Beyond 30 metres from a road, it is increasingly likely that an elevation no longer fronts a road. For distances in between, a judgement would have to be made depending on fact and degree. This will involve considering factors such as topography, landscaping and layout of any adjacent properties. In this example, any developments would be permitted within the curtilage of the development as long as it meets the site coverage, distance from boundary, height restrictions and any other relevant restrictions for the type of development.

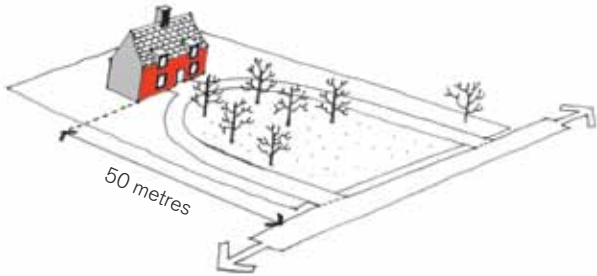
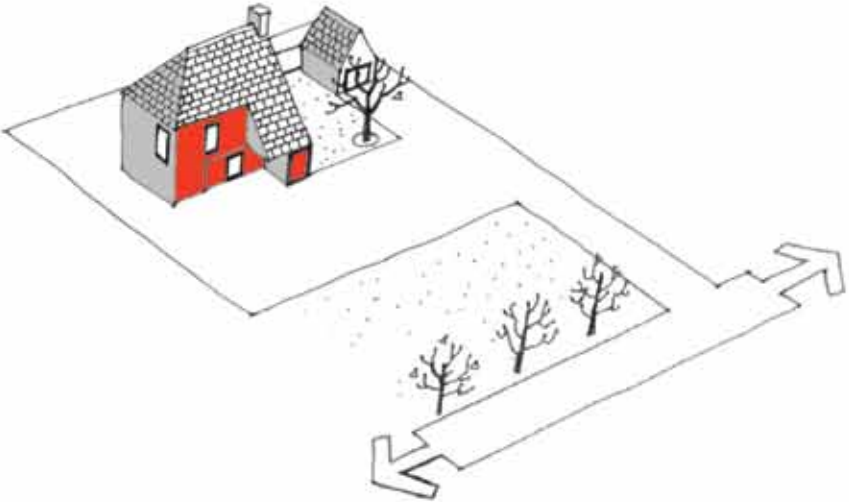


Figure 11: If there is intervening land between the curtilage of a dwellinghouse and a road, it could no longer be argued as fronting the road. In this example, any development would be permitted within the curtilage of the development as long as it meets the site coverage, distance from boundary, height restrictions and any other relevant restrictions for the type of development.

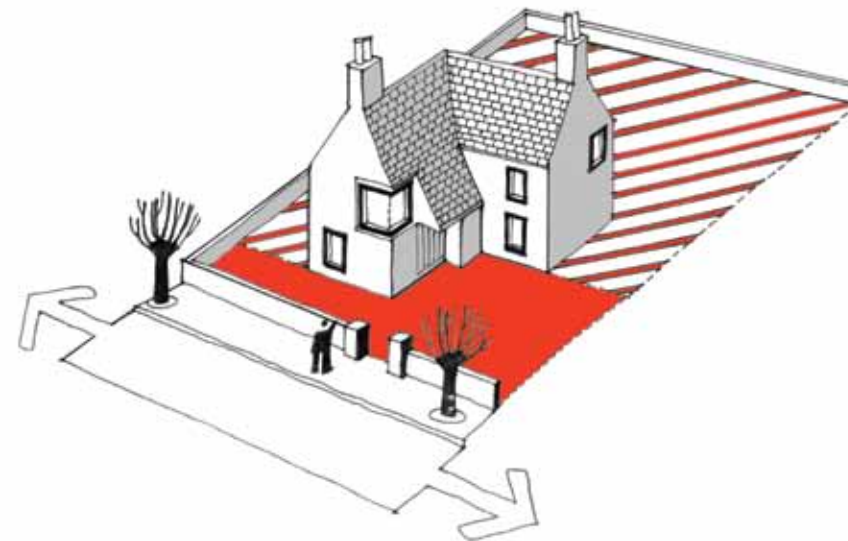


3. MAIN CONCEPTS

Front and Rear Curtilages

3.11

Once the principal elevation has been identified, the front and rear curtilages can be defined. The **front curtilage** is all the land forward of the principal elevation. The rear curtilage is the remainder of the curtilage of the original dwellinghouse. This may not reflect any physical division, like fences, that may exist.



3. MAIN CONCEPTS

Site Coverage

3.12

The size of any proposed extension, shed or other building must be such that the total area undeveloped is at least half of the rear or front curtilage. This is explained in figure 12. In most circumstances, the **limitation** will only relate to the rear curtilage. Where the principal or side elevation does not front onto a road, the limitation could also apply to the front curtilage.

3.13

There is also a restriction to ensure that the total area covered by all extensions (including previous extensions) is not greater than the area covered by the original dwellinghouse.

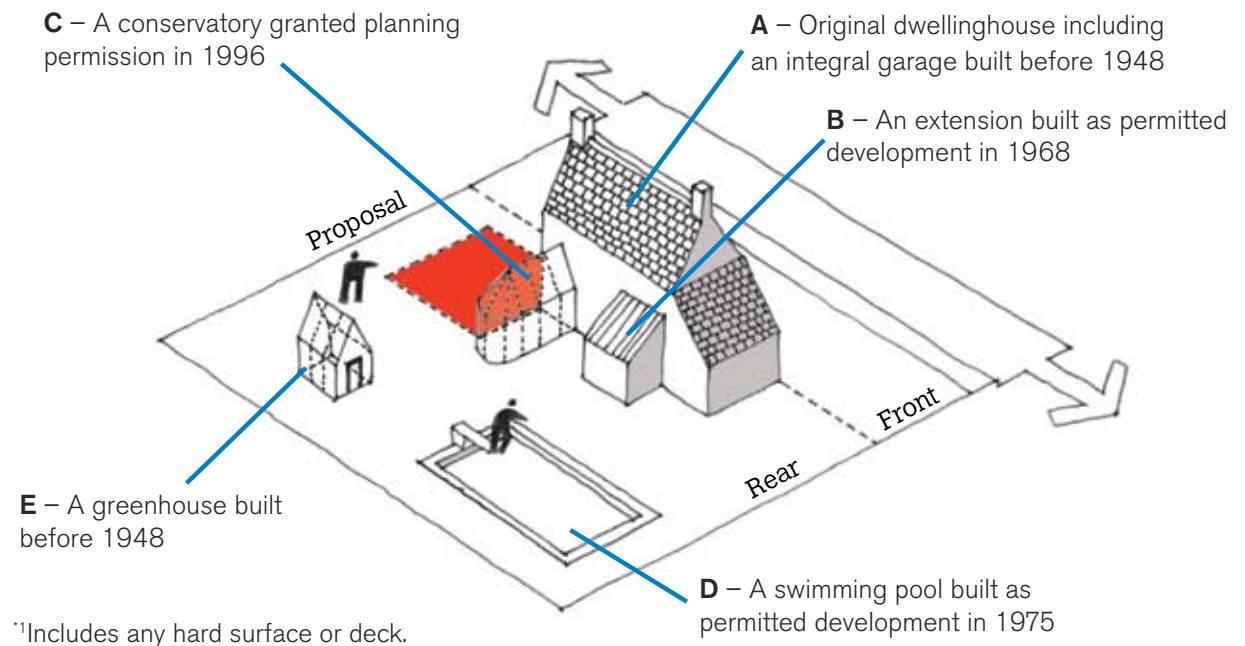
Figure 12: Calculating Site Coverage

In this example the total developed area comprises: the extension (B); conservatory (C) and swimming pool (D) since these developments occurred since 1948, together with the greenhouse (E) as it was not attached to the original dwellinghouse.

Therefore, in this example

$$\% \text{ of site coverage} = \frac{\text{Area of B} + \text{C} + \text{D} + \text{E} + \text{Proposal}}{\text{Area of rear curtilage minus A}^{*1}} \times 100$$

If the site coverage will be more than 50% of the rear curtilage in this example, planning permission is required.



3. MAIN CONCEPTS

Original or Existing Dwellinghouse

3.14

It is important to differentiate between the original dwellinghouse and the existing dwellinghouse.

3.15

The [original dwellinghouse](#) is the dwellinghouse as built or as it was on 1 July 1948 if it was built before then.

3.16

The [existing dwellinghouse](#) is the dwellinghouse immediately before carrying out the development proposal that is being assessed. It does not include any outbuildings, even where they were built at the same time as the original dwellinghouse.

Heights and Ground Levels

3.17

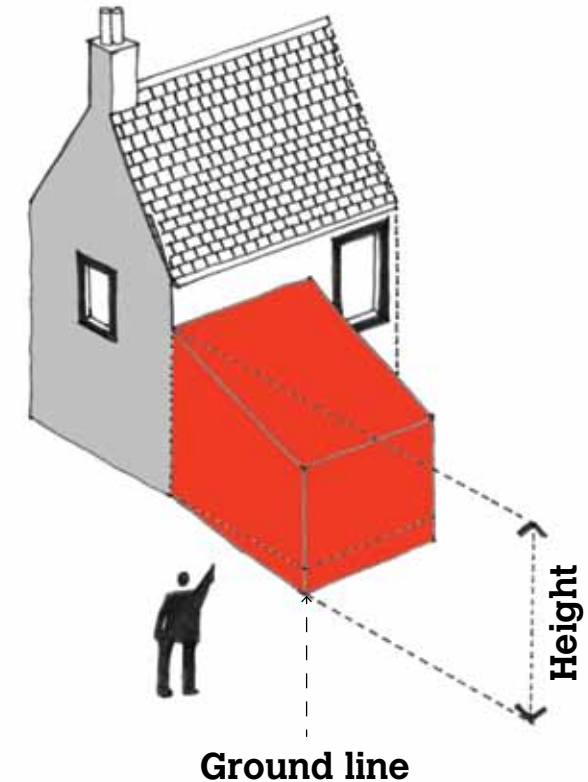
For the purposes of Classes 1A to 3E of the General Permitted Development Order, the height of the development is measured from the lowest part of the surface of the ground adjacent to the building or structure.

3.18

In all other instances the height of the building or structure is calculated from the highest part of the surface of the ground immediately adjacent to the building or structure.

3.19

The ground is the natural ground and would not include any addition laid on top of the natural ground.



4. MAKING CHANGES TO A DWELLINGHOUSE

4.1

The relevant [permitted development rights](#) for the main types of householder developments are explained within this section.

4.2

[Permitted development rights](#) for the different types of development are described within a “class”. Most classes are subject to limitation and restrictions. The main householder classes are grouped into the following categories:

> [Enlarging a dwellinghouse](#)

> [Improvements, additions or other alterations to a dwellinghouse that are not an enlargement](#)

> [Other developments within the curtilage of a dwellinghouse](#)

4.3

Permitted development rights for flats are detailed in [Section 5](#).

4.4

[Section 6](#) details permitted development rights for microgeneration and [Section 7](#) details the regulations for CCTV.

4.5

All the limitations within a class must be complied with. In addition, permitted development rights are removed if the proposed development is to create or materially widen a means of access to a trunk road or classified road or creates an obstruction that is likely to cause a hazard for people using the road.

4. MAKING CHANGES TO A DWELLINGHOUSES – INTRODUCTION TO ENLARGING A DWELLINGHOUSE

Introduction to Enlarging a Dwellinghouse

4.6

It is important to understand the definition of [enlargement](#). Enlargement is defined as any development that increases the internal volume of the [original dwellinghouse](#) and includes a canopy or roof, with or without walls, which is attached to the [dwellinghouse](#), but does not include a [balcony](#). Therefore, a car-port is an [enlargement](#) but a [balcony](#) is not.

4.7

There are many types of [enlargements](#). The following 4 classes cover the most common types of enlargements for [dwellinghouses](#).

Single storey ground floor extension

Class 1A – Any enlargement of a dwellinghouse by way of a single storey ground floor extension, including any alteration to the roof required for the purpose of the enlargement.

This class covers the typical single storey extension to the rear of the property. Typical developments include conservatories, car-ports as well as other canopies or roofs, with or without walls.

Ground floor extension of more than one storey

Class 1B – Any enlargement of a dwellinghouse by way of a ground floor extension consisting of more than one storey including any alteration to the roof required for the purpose of the enlargement.

This class covers the typical 2 storey extension. The limitations set a minimum distance of 10 metres between the extension and any boundary, since many 1½ storey and 2 storey extension are more likely to have a greater impact than a single storey extension. It is recognised that the majority of extensions will not be able to meet this criteria, therefore [an application for planning permission would be required](#) in most instances.

4. MAKING CHANGES TO A DWELLINGHOUSE – INTRODUCTION TO ENLARGING A DWELLINGHOUSE

Porch

Class 1C – The erection, construction or alteration of any porch outside any external door of a dwellinghouse.

This class allows for the construction of a small porch on any external door.

Enlargement of the roof

Class 1D – Any enlargement of a dwellinghouse by way of an addition or alteration to its roof.

This class allows for the construction of a typical rear facing dormer.

4.8

These permitted development rights do NOT apply to flats.

4.9

If the proposed development falls into any of the above classes and is in a [conservation area](#) then an application to the [planning authority](#) is required.

4.10

A [listed building consent](#) is required if the proposed development affects the character or setting of a [listed building](#). A building warrant from the local authority is also often required, as explained in [Section 2](#).

4. MAKING CHANGES TO A DWELLINGHOUSE – SINGLE STOREY GROUND FLOOR EXTENSIONS

Single storey ground floor extensions

SUMMARY

4.11

This is the most popular type of development. Permitted development rights allow the [enlargement](#) of a [dwellinghouse](#) by a single storey ground floor extension. The permitted development rights allow any alteration to the roof required for the purpose of the

[enlargement](#). In summary, the effect of the limitations is that:

- extensions are generally located to the rear
- if the extension is on, or within 1 metre of the boundary, it **cannot** project, from the rear wall of the existing dwellinghouse, by more than 3 metres in the case of terraced house, or 4 metres in all other cases
- the height of the eaves is a maximum of 3 metres
- the height of the extension is not higher than 4 metres

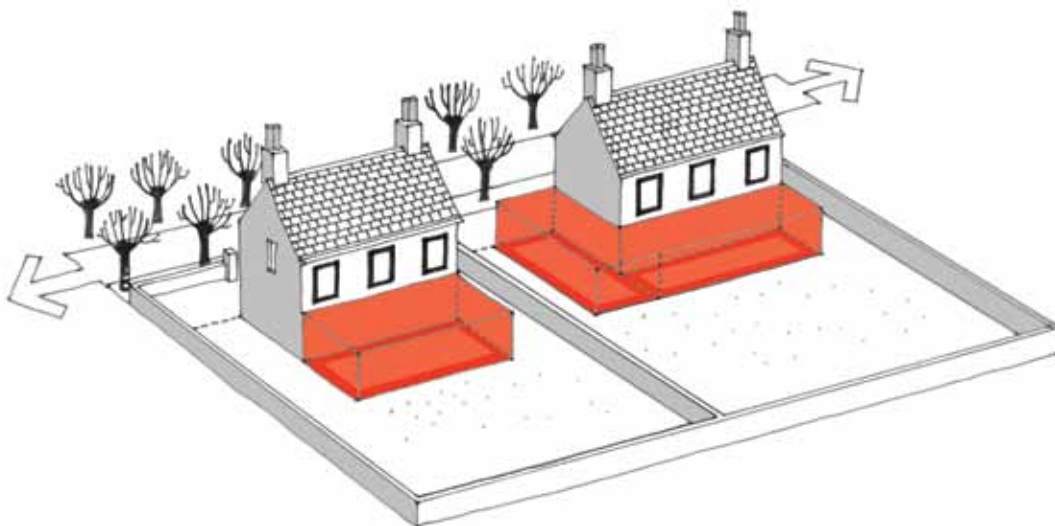
- the footprint of the extension is no larger than the original [dwellinghouse](#) or covering more than half the [curtilage](#)

4.12

There are no permitted development rights for single storey ground floor extensions in [conservation areas](#) or for flats. Listed building consent will normally be required if your building is Listed.

4.13

A building warrant from the local authority will likely be required for this type of extension, as explained in [Section 2](#).



4. MAKING CHANGES TO A DWELLINGHOUSE – SINGLE STOREY GROUND FLOOR EXTENSIONS



TECHNICAL EXPLANATION

4.14

If the extension exceeds any of the following limits then an application for planning permission is required.

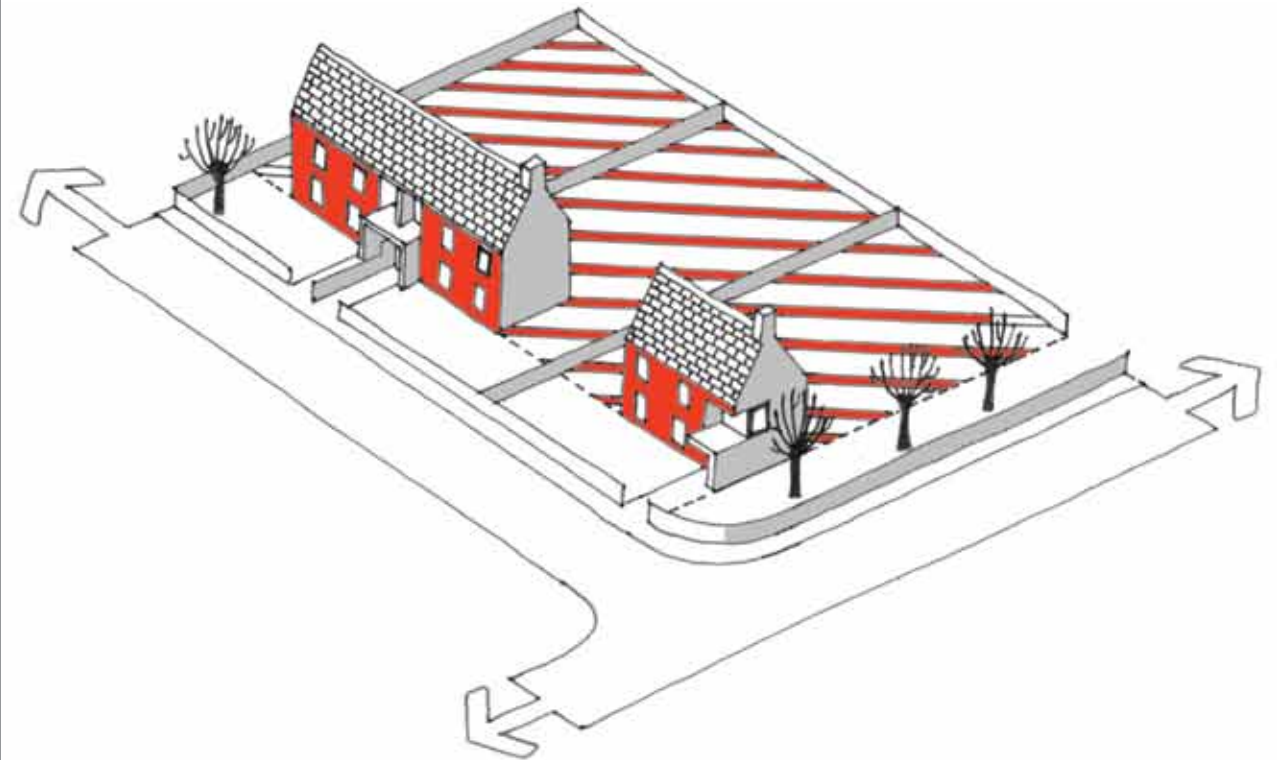
4.15

Roof alterations relating to the extension are also permitted. Other roof alterations should be carried out using the other relevant permitted development classes.

4.16

The extension **cannot** be forward of a wall forming part of the principal elevation or side elevation if that elevation is fronting a road. The identification of the [principal elevation](#) and side elevations are discussed in paragraphs 3.2 – 3.6, whilst [fronting a road](#) is discussed at 3.7 – 3.10. This is illustrated in figure 13.

Figure 13: The shaded areas of the curtilage indicate where a single storey extension is permitted as long as the other limitations are met.

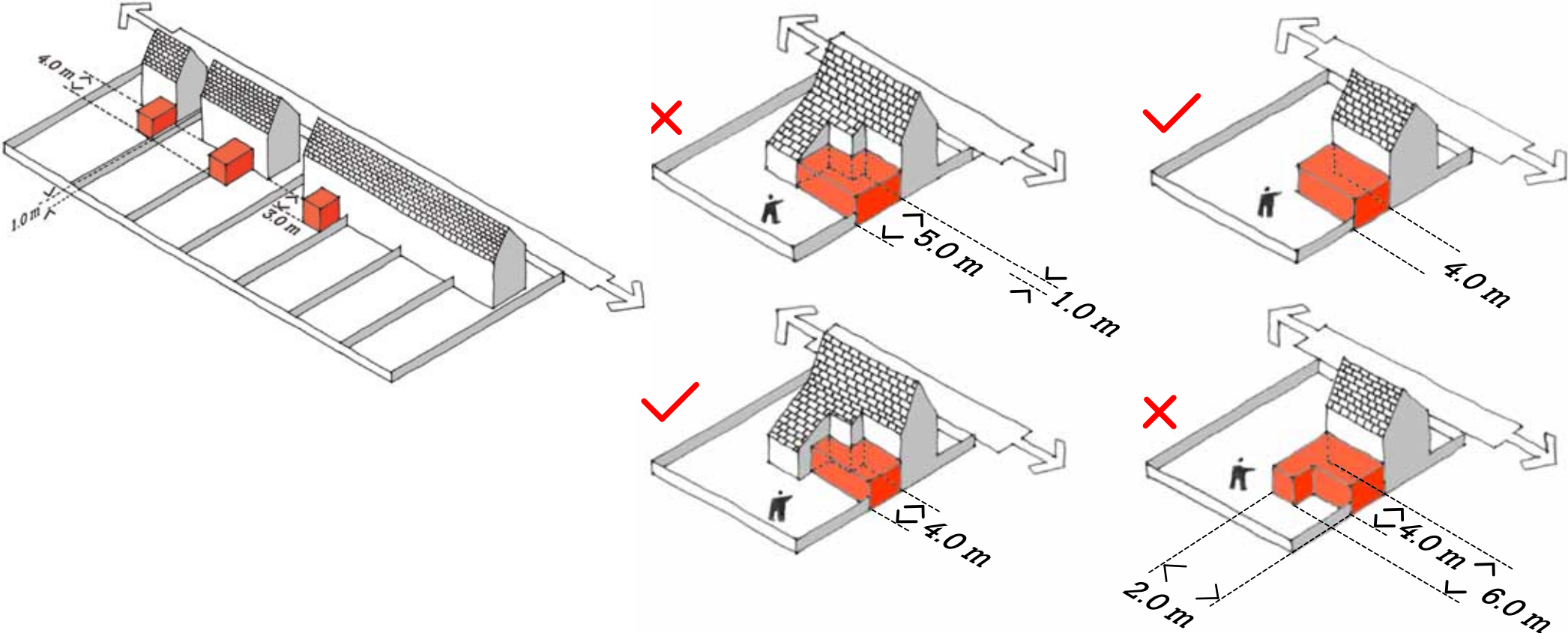


4. MAKING CHANGES TO A DWELLINGHOUSE – SINGLE STOREY GROUND FLOOR EXTENSIONS

4.17
If any part of the extension is within 1 metre of the boundary of the curtilage, it can only project from the line of the rear elevation nearest to the boundary by 3 metres if a terraced house or 4 metres in any other case.

4.18
This restriction does not apply to a side extension that does not project beyond the line of the rear elevation. For example if a side extension, does extend beyond the line of the rear wall and is within 1 metre of the

boundary, then it cannot project from the rear wall nearest the boundary by more than 3 metres if a terraced house or 4 metres in any other case.



4. MAKING CHANGES TO A DWELLINGHOUSE – SINGLE STOREY GROUND FLOOR EXTENSIONS

4.19

The overall height of an extension can have a significant impact on neighbours. The **eaves** of the extension **cannot** be higher than 3 metres. The overall height of the extension **cannot** exceed 4 metres.

4.20

When measuring the height of the extension on sloping, or uneven ground, the height should be measured from the lowest point immediately adjacent to the extension.

4.21

The area covered by all extensions, including any existing and the proposed extension, cannot be greater than the footprint of the original dwellinghouse. This is to ensure that the extension (including previous extensions) is in proportion to the original dwellinghouse.

4.22

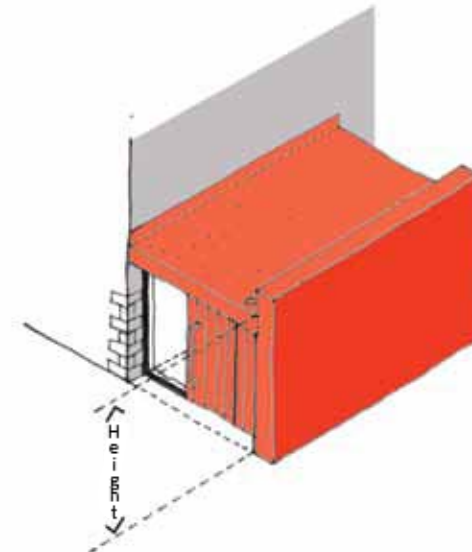
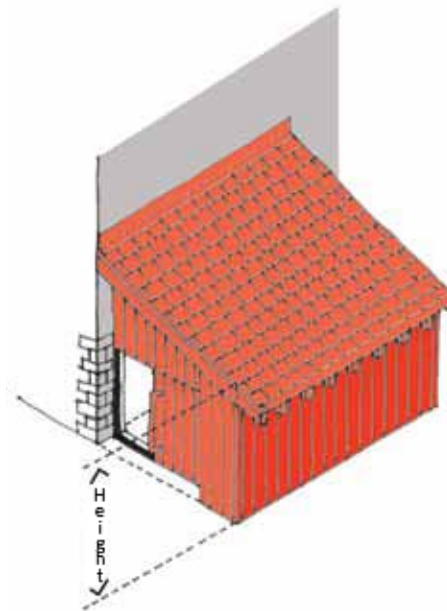
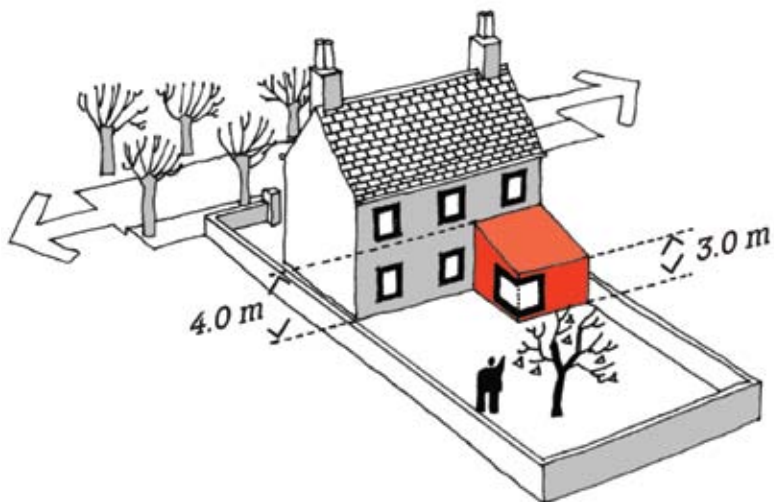
The proposed extension (including previous extensions) and existing developments cannot exceed half of the of the rear (or front if appropriate) curtilage of the original dwellinghouse. This is explained further in paragraphs 3.12 – 3.13.

4.23

There are no Class 1A permitted development rights in a **conservation area** or for **flats**. A listed building consent is required if the proposed extension affects the character or setting of a listed building.

4.24

Planning authorities will be able to confirm whether a property is located within a conservation area. Information on listed buildings is available from <http://www.historic-scotland.gov.uk/historicandlistedbuildings> or www.environment.scotland.gov.uk.



4. MAKING CHANGES TO A DWELLINGHOUSE – SINGLE STOREY GROUND FLOOR EXTENSIONS



LEGISLATION

Class 1A.—

(1) Any enlargement of a dwellinghouse by way of a single storey ground floor extension, including any alteration to the roof required for the purpose of the enlargement.

(2) Development is not permitted by this class if—

- (a) any part of the development would be forward of a wall forming part of the principal elevation or side elevation where that elevation fronts a road;
- (b) any part of the development would be within 1 metre of the boundary of the curtilage of the dwellinghouse and it would extend beyond the line of the wall forming part of the rear elevation that is nearest that boundary by more than—
 - (i) 3 metres in the case of a terrace house; or
 - (ii) 4 metres in any other case;
- (c) the height of the eaves of the development would exceed 3 metres;
- (d) any part of the development would exceed 4 metres in height;
- (e) as a result of the development the area of ground covered by the resulting dwellinghouse would be more than twice the area of ground covered by the original dwellinghouse;
- (f) as a result of the development the area of ground covered by development within the front or rear curtilage of the dwellinghouse (excluding the original dwellinghouse and any hard surface or deck) would exceed 50% of the area of the front or rear curtilage respectively (excluding the ground area of the original dwellinghouse and any hard surface or deck); or
- (g) it would be within a conservation area.

4. MAKING CHANGES TO A DWELLINGHOUSE – GROUND FLOOR EXTENSION OF MORE THAN A ONE STOREY

Ground floor extension of more than a one storey

SUMMARY

4.25

Permitted development rights allow the [enlargement](#) of a [dwellinghouse](#) by the way of a ground floor extension consisting of more than one storey. The permitted development rights also allow any alteration to the roof required for the purpose of the enlargement. In summary, the effect of the limitations is that:

- extensions are generally located to the rear
- the distance between the extension and any boundary is a minimum of 10 metres
- the height of the extension is not higher than the existing dwellinghouse
- the footprint of the extension is not larger than the [original dwellinghouse](#) or covering more than half the [curtilage](#)

4.26

Many 1½ storey and 2 storey extensions are more likely to have a greater impact than a single storey extension. It is recognised that the majority of 1½ storey and 2 storey extensions will require an application for planning permission.

4.27

There are no permitted development rights in [conservation areas](#) or for flats. Listed building consent will normally be required if your building is Listed.

4.28

A building warrant from the local authority will be required for this type of extension, as explained in [Section 2](#).



4. MAKING CHANGES TO A DWELLINGHOUSE – GROUND FLOOR EXTENSION OF MORE THAN A ONE STOREY



TECHNICAL EXPLANATION

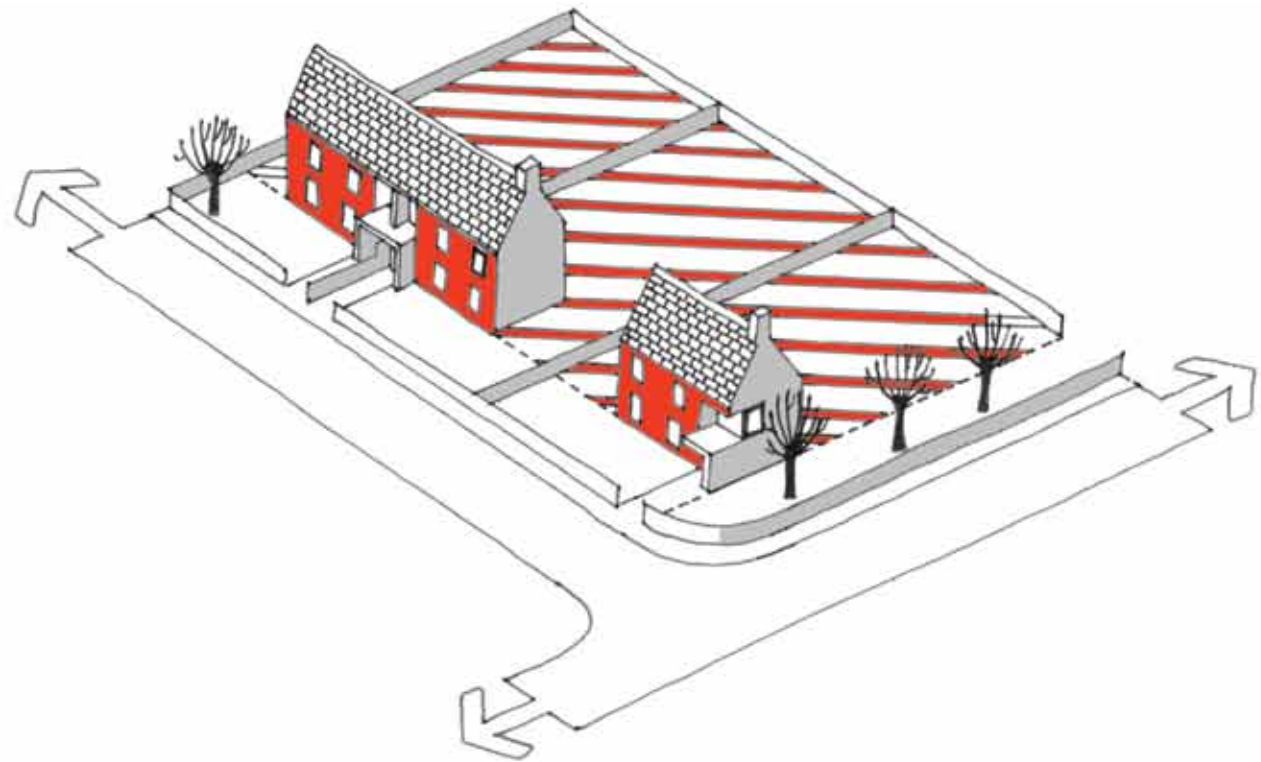
4.29

If the extension exceeds any of the following limits then an [application for planning permission](#) is required.

4.30

The extension **cannot** be forward of a wall forming part of the principal elevation or side elevation if that elevation is fronting a road. The identification of the principal elevation and side elevations are discussed in paragraphs 3.2 – 3.6, whilst [fronting a road](#) is discussed at 3.7 – 3.10. This is illustrated in figure 14.

Figure 14: The shaded areas of the curtilage indicate where an extension of more than a single storey is permitted as long as the other limitations are met.



4. MAKING CHANGES TO A DWELLINGHOUSE – GROUND FLOOR EXTENSION OF MORE THAN A ONE STOREY

4.31

1½ storey or 2 storey extensions are more likely to have a visual impact, potentially causing overshadowing or overlooking. No part of the extension can therefore be within 10 metres of any boundary of the [curtilage](#).

4.32

The overall height of the extension **cannot** be higher than the existing roof. This would be the ridge of the roof. Roof alterations relating to the extension are also permitted. Other roof alterations should be carried out using the other relevant classes.

4.33

The area covered by all extensions, including any existing and the proposed extension, cannot be greater than the footprint of the original dwellinghouse. This is to ensure that the extension (including previous extensions) is in proportion to the original dwellinghouse.

4.34

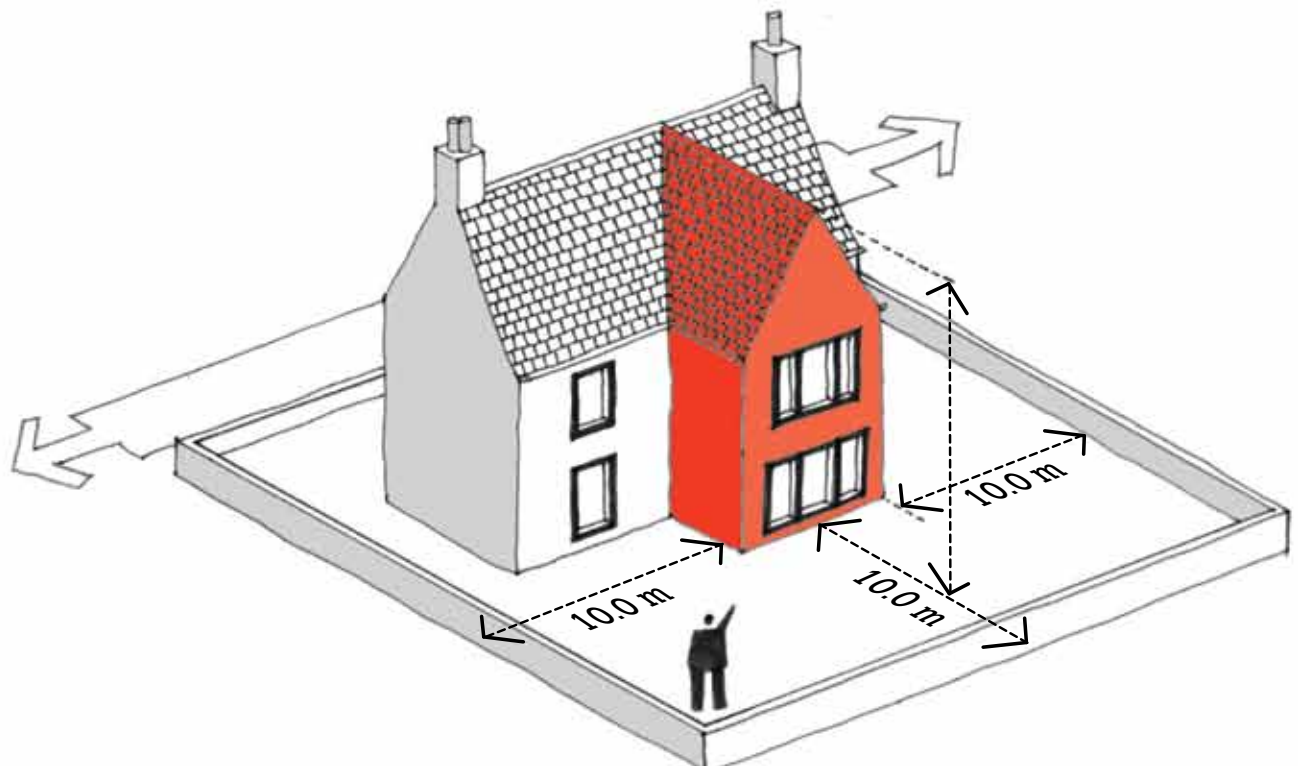
The proposed extension (including previous extensions) and existing developments cannot exceed half of the rear (or front if appropriate) curtilage of the [original dwellinghouse](#). This is explained further in paragraphs 3.11 – 3.13.

4.35

There are no Class 1B permitted development rights in a [conservation area](#) or for flats. A listed building consent is required if the proposed extension affects the character or setting of a listed building.

4.36

Planning authorities will be able to confirm whether a property is located within a conservation area. Information on listed buildings is available from <http://www.historic-scotland.gov.uk/historicandlistedbuildings> or www.environment.scotland.gov.uk.



4. MAKING CHANGES TO A DWELLINGHOUSE – GROUND FLOOR EXTENSION OF MORE THAN A ONE STOREY**LEGISLATION****Class 1B.—**

(1) Any enlargement of a dwellinghouse by way of a ground floor extension consisting of more than one storey, including any alteration to the roof required for the purpose of the enlargement.

(2) Development is not permitted by this class if—

- (a) any part of the development would be forward of a wall forming part of the principal elevation or side elevation where that elevation fronts a road;
- (b) any part of the development would be within 10 metres of the boundary of the curtilage of the dwellinghouse;
- (c) as a result of the development the height of the dwellinghouse would exceed the height of the existing dwellinghouse, when measured at the highest part of the roof and excluding any chimney;
- (d) as a result of the development the area of ground covered by the resulting dwellinghouse would be more than twice the area of ground covered by the original dwellinghouse;
- (e) as a result of the development the area of ground covered by development within the front or rear curtilage of the dwellinghouse (excluding the original dwellinghouse and any hard surface or deck) would exceed 50% of the area of the front or rear curtilage respectively (excluding the ground area of the original dwellinghouse and any hard surface or deck); or
- (f) it would be within a conservation area.

4. MAKING CHANGES TO A DWELLINGHOUSE – GROUND FLOOR EXTENSION OF MORE THAN A ONE STOREY

Porch

4.37

Permitted development rights allow the erection, construction or alteration of any porch outside any external door of a dwellinghouse. The limitations are:

- the porch cannot have a footprint of greater than 3 square metres
- the minimum distance between the porch and any boundary and a road is more than 2 metres
- the height of the porch cannot be higher than 3 metres

4.38

If the porch exceeds any of the above limits then [an application for planning permission](#) is required.

4.39

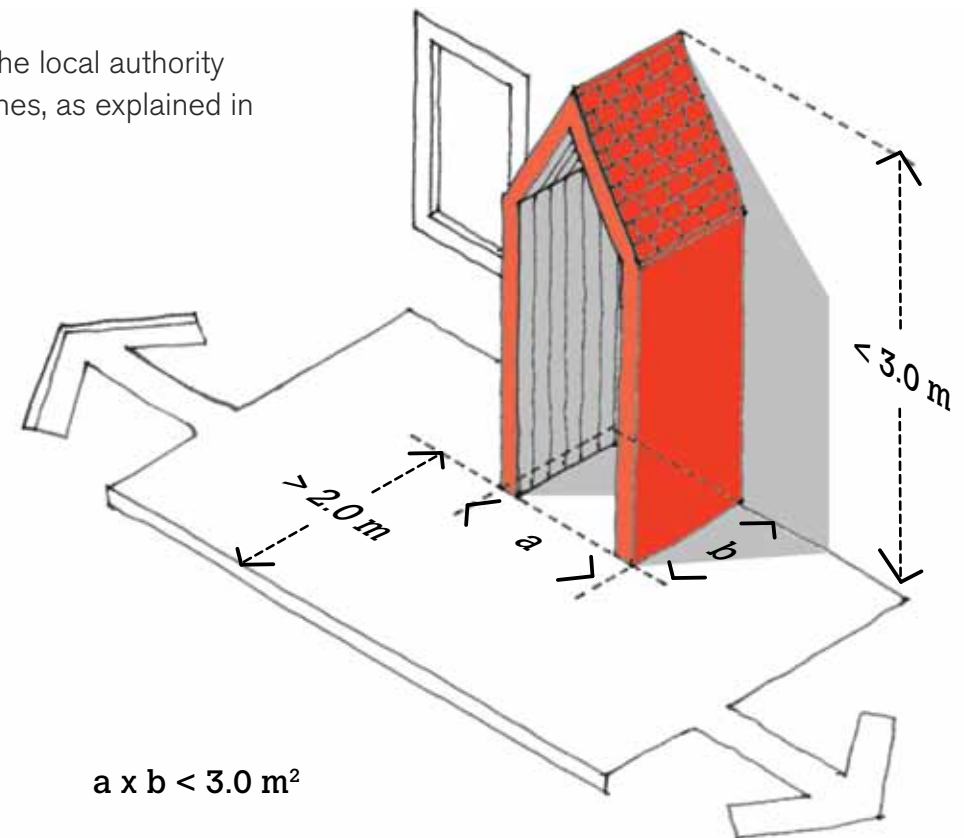
There are no permitted development rights for porches in a [conservation area](#) or for a flat. A [listed building consent](#) is required if the proposed extension affects the character or setting of a [listed building](#).

4.40

Planning authorities will be able to confirm whether a property is located within a conservation area. Information on listed buildings is available from <http://www.historic-scotland.gov.uk/historicandlistedbuildings> or www.environment.scotland.gov.uk

4.41

A building warrant from the local authority may be required for porches, as explained in [Section 2](#).



4. MAKING CHANGES TO A DWELLINGHOUSE – GROUND FLOOR EXTENSION OF MORE THAN A ONE STOREY**LEGISLATION****Class 1C.—****(1) The erection, construction or alteration of any porch outside any external door of a dwellinghouse.**

(2) Development is not permitted by this class if—

- (a) its footprint would exceed 3 square metres;
- (b) any part of it would be within 2 metres of a boundary between the curtilage of the dwellinghouse and a road;
- (c) any part of the development would exceed 3 metres in height; or
- (d) it would be within a conservation area.

4. MAKING CHANGES TO A DWELLINGHOUSE – ENLARGEMENT OF THE ROOF

Enlargement of the roof

SUMMARY

4.42

Permitted development rights allow the [enlargement](#) of a dwellinghouse by way of an addition or alteration to its roof. This class typically relates to the addition of a dormer. A badly designed dormer can harm the appearance of a dwellinghouse. The larger the dormer, the more challenging it is to produce a good design. In summary, the effect of the limitations is that:

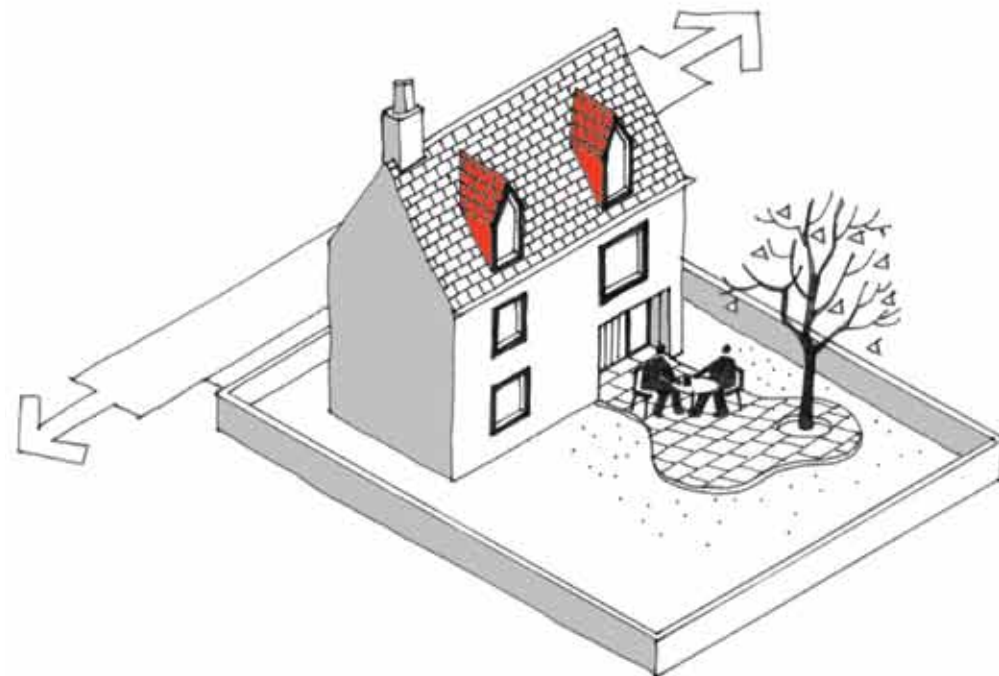
- dormers are generally located to the rear
- the distance between the dormer and boundary it fronts is a minimum of 10 metres
- the height of the dormer is not higher than the existing dwellinghouse
- the dormer, or dormers, covers less than half the roof
- the distance between the dormer and the edge of the roof is a minimum of 0.3 metres

4.43

There are no permitted development rights to enlarge a roof in a [conservation area](#). Listed building consent will normally be required if your building is Listed.

4.44

Building standards may apply and a building warrant from the local authority may be required for this type of development as explained in [Section 2](#).



4. MAKING CHANGES TO A DWELLINGHOUSE – ENLARGEMENT OF THE ROOF



TECHNICAL EXPLANATION

4.45

If the development exceeds any of the following limits then an [application for planning permission](#) is required.

4.46

Figure 15 overleaf illustrates the restrictions for a dormer, the highlighted areas indicate where the development is not permitted as long as the other limitations are met.

4.47

There are no permitted development rights in a [conservation area](#) or for flats. A listed building consent is required if the proposed development affects the character or setting of a listed building.

4.48

Planning authorities will be able to confirm whether a property is located within a [conservation area](#). Information on listed buildings is available from www.historic-scotland.gov.uk/historicandlistedbuildings or www.environment.scotland.gov.uk.

4. MAKING CHANGES TO A DWELLINGHOUSE – ENLARGEMENT OF THE ROOF

4.49

The development **cannot** be part of the roof forming the principal elevation or side elevation if that elevation is fronting a road. The identification of the principal elevation and side elevations are discussed in paragraphs 3.2 – 3.6, whilst **fronting a road** is discussed at 3.7 – 3.10.

4.50

Any enlargement or alteration to a roof is likely to have a visual impact and potentially cause overlooking. The development must be at least 10 metres from the boundary that it fronts.

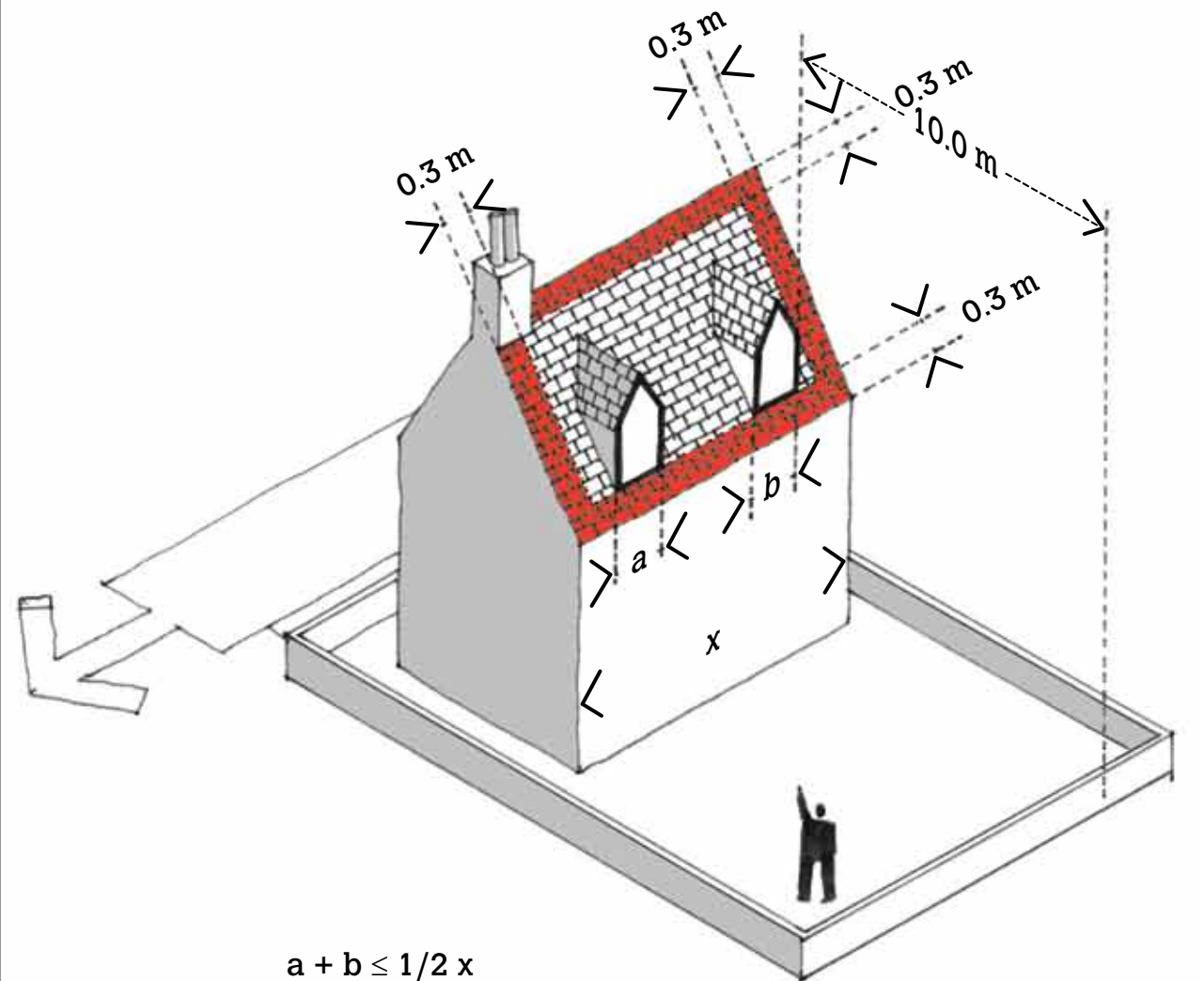
4.51

The dormer must not exceed half the width of the roof plane (the width of the roof plane is measured at the eaves line). The development must be at least 0.3 metres from the edge of the roof plane, for example the ridge of the roof or the edge of a hipped roof.

4.52

The overall height of the dwellinghouse **cannot** be increased as a result of the development. This is measured against the existing ridge of the roof.

Figure 15: Roof enlargements



4. MAKING CHANGES TO A DWELLINGHOUSE – ENLARGEMENT OF THE ROOF**LEGISLATION****Class 1D.—****(1) Any enlargement of a dwellinghouse by way of an addition or alteration to its roof.**

(2) Development is not permitted by this class if—

- (a) it would be on a roof plane forming part of the principal elevation or side elevation where that elevation fronts a road;
- (b) it would be on a roof plane and would be within 10 metres of the boundary of the curtilage of the dwellinghouse which that roof plane fronts;
- (c) as a result of the development the height of the dwellinghouse would exceed the height of the existing dwellinghouse, when measured at the highest part of the roof and excluding any chimney;
- (d) its width would exceed half the total width of the roof plane, measured at the eaves line, of the dwellinghouse;
- (e) any part of the development would be within 0.3 metres of any edge of the roof plane of the dwellinghouse; or
- (f) it would be within a conservation area.

4. MAKING CHANGES TO A DWELLINGHOUSE – INTRODUCTION TO IMPROVEMENTS, ADDITIONS OR ALTERATIONS TO A DWELLINGHOUSE THAT ARE NOT AN ENLARGEMENT

Introduction to improvements, additions or alterations to a dwellinghouse that are not an enlargement

4.53

There are many types of alterations or improvements to a [dwellinghouse](#) that are not [enlargement](#). The most common types of alterations or improvements to a dwellinghouses are described in classes 2A and 2B.

Access Ramps

Class 2A – The erection, construction or alteration of any access ramp outside any external door of a dwellinghouse.

This class allows small ramps to be attached to any external door of dwellinghouse so long as certain limitations are met. The ramp is not longer than 5 metres and the overall length of ramp and landings is not longer than 9 metres. The ramp is not higher than 0.4 metres and the combined height of the ramp and any handrail does not exceed 1.5 metres.

Improvements or alterations that are not an enlargement, including replacement windows, solar panels, flues and satellite dishes etc

Class 2B – Any improvement, addition or other alteration to the external appearance of a dwellinghouse that is not an enlargement.

This class is best visualised as a 1 metre bubble surrounding the walls and roof of a dwellinghouse. A householder can add a wide range of different types of development without having to apply for planning permission.

Wind turbines, balconies, raised terraces or platforms are not permitted by this class.

4.54

These permitted development rights do **NOT** apply to [flats](#).

4.55

If the proposed development falls into any of the above classes and is in a [conservation area](#) then an application to the [planning authority](#) is required.

4. MAKING CHANGES TO A DWELLINGHOUSE – ACCESS RAMPS

Access Ramps

4.56

Permitted development rights allow the erection, construction or alteration of any access ramp outside any external door of a dwellinghouse. The limitations are:

- the length of all flights cannot be more than 5 metres
- the length of all flights and landings cannot be more than 9 metres
- the height of the access ramp, including associated handrails, cannot be higher than 1.5 metres
- the height of the platform cannot be higher than 0.4 metres

4.57

If the access ramp exceeds any of the above limits, or is in a [conservation area](#), or within the curtilage of a listed building, then an [application for planning permission](#) is required. Listed building consent is required if the proposed access ramp affects the character or setting of a listed building.

4.58

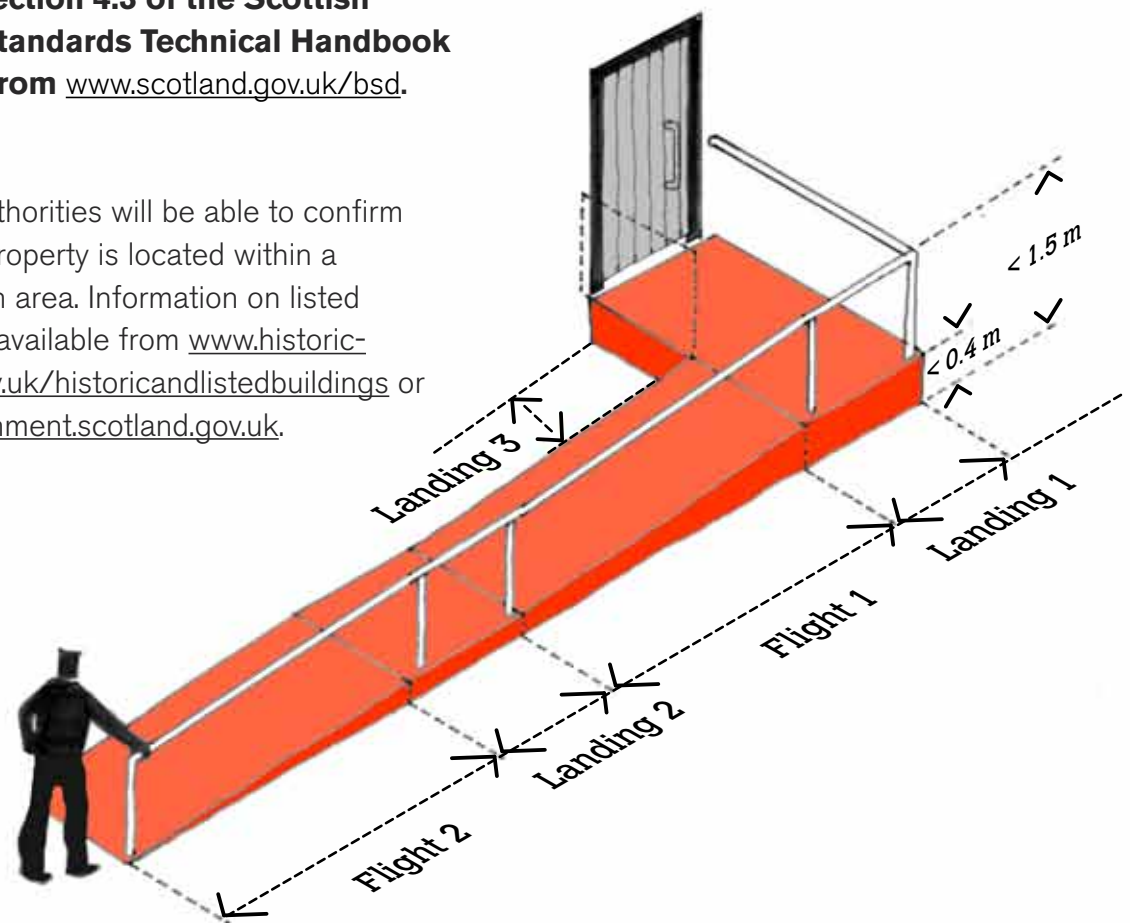
Scottish Building Standards require ramps to be safe. Supporting guidance, including information on suitable gradients and lengths of ramp, can be found in section 4.3 of the [Scottish Building Standards Technical Handbook](#) available from www.scotland.gov.uk/bsd.

4.59

Planning authorities will be able to confirm whether a property is located within a conservation area. Information on listed buildings is available from www.historic-scotland.gov.uk/historicandlistedbuildings or www.environment.scotland.gov.uk.

4.60

When measuring the height of the development on sloping or uneven ground, the height should be measured from the lowest point immediately adjacent to the ramp.



4. MAKING CHANGES TO A DWELLINGHOUSE – ACCESS RAMPS**LEGISLATION****Class 2A.–****(1) The erection, construction or alteration of any access ramp outside an external door of a dwellinghouse.**

(2) Development is not permitted by this class if–

- (a) the combined length of all flights forming part of the access ramp would exceed 5 metres;
- (b) the combined length of all flights and landings forming part of the access ramp would exceed 9 metres;
- (c) any part of the ramp would exceed 0.4 metres in height;
- (d) the combined height of the ramp and any wall (excluding any external wall of the dwellinghouse), fence, balustrade, handrail or other structure attached to it would exceed 1.5 metres; or
- (e) it would be within a conservation area or within the curtilage of a listed building.

4. MAKING CHANGES TO A DWELLINGHOUSE - IMPROVEMENTS OR ALTERATIONS THAT ARE NOT AN ENLARGEMENT, INCLUDING REPLACEMENT WINDOWS, SOLAR PANELS, FLUES AND SATELLITE DISHES ETC

Improvements or alterations that are not an enlargement, including replacement windows, solar panels, flues, and satellite dishes etc

4.61

Permitted development rights allow any improvement, addition or other alteration to the external appearance of a dwellinghouse that is not an enlargement. This is best visualised as a 1 metre bubble surrounding the dwellinghouse. A householder can therefore carry out a wide range of different types of development without having to apply for planning permission. This class also covers the installation, alteration or replacement of solar PV or solar thermal equipment.

4.62

If the development exceeds any of the following limits then an application for planning permission is required.

4.63

The development must not enlarge the dwellinghouse. This means that the development cannot increase the internal volume of the original building. This includes a canopy or roof, with or without wall, which is attached to the building but does not include a balcony.

4.64

The development must not project by more than 1 metre from the wall or roof.

4.65

The following types of development are not permitted by this class:
balcony, roof terrace or raised platform
wind turbine

4.66

The following developments are also not permitted as they are permitted by other classes:

- access ramps
- a range of building or engineering operations including garden works, oil tanks
- a flue forming part of biomass heating system
- flue forming part of combined heat and power system
- air source heat pump
- CCTV

4.67

Section 6 discusses the installation, alteration or replacement of a biomass heating system flue or a combined heat and powers system flue or air source heat pump.

4. MAKING CHANGES TO A DWELLINGHOUSE - IMPROVEMENTS OR ALTERATIONS THAT ARE NOT AN ENLARGEMENT, INCLUDING REPLACEMENT WINDOWS, SOLAR PANELS, FLUES AND SATELLITE DISHES ETC

4.68

To ensure that the general character of an area is maintained, there is a condition that materials used for any roof covering must be similar in appearance to the existing roof. Solar PV or solar thermal panels are not considered to be a roof covering.

4.69

An alteration to the external appearance would allow the painting (or repainting) of the property. It would also allow the painting or attaching of an advertisement to the property. While an application for planning consent may not be required by virtue of this class, an application for advertisement consent may be required under the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 depending on the nature and size of any such advertisement.

4.70

There are no Class 2B permitted development rights in a [conservation area](#). [Listed building consent](#) is required if the proposed development affects the character or setting of a [listed building](#).

4.71

A building warrant from the local authority may be required, as explained in [Section 2](#).

4.72

Planning authorities will be able to confirm whether a property is located within a conservation area. Information on listed buildings is available from <http://www.historic-scotland.gov.uk/historicandlistedbuildings> or www.environment.scotland.gov.uk.

4. MAKING CHANGES TO A DWELLINGHOUSE - IMPROVEMENTS OR ALTERATIONS THAT ARE NOT AN ENLARGEMENT, INCLUDING REPLACEMENT WINDOWS, SOLAR PANELS, FLUES AND SATELLITE DISHES ETC



LEGISLATION

Class 2B.—

(1) Any improvement, addition or other alteration to the external appearance of a dwellinghouse that is not an enlargement.

(2) Development is not permitted by this class if—

- (a) it would protrude more than 1 metre from the outer surface of an external wall, roof plane, roof ridge or chimney of the dwellinghouse;
- (b) it would be a wind turbine;
- (c) it would be a balcony;
- (d) it would be on the roof and would result in a raised platform or terrace;
- (e) it would be within a conservation area; or
- (f) it would be development described in class 2A(1), 3B(1), 6C(1), 6F(1), 6H(1) or 72(1).

(3) Development is permitted by this class subject to the condition that the materials used for any roof covering must be as similar in appearance to the existing roof covering as is reasonably practicable.

4. MAKING CHANGES TO A DWELLINGHOUSE - INTRODUCTION TO OTHER DEVELOPMENT WITHIN THE CURTILAGE OF A DWELLINGHOUSE

Introduction to other development within the curtilage of a dwellinghouse

4.73

There are many other types of developments that can happen within the curtilage of dwellinghouse. The following 5 classes cover the most common types of developments. Installation of microgeneration equipment is discussed in [Section 6](#).

Ancillary buildings including sheds, garages, sun-houses, greenhouses etc.

Class 3A – The provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of a dwellinghouse or the maintenance or improvement of such a building.

This class generally allows the provision of any building incidental to the enjoyment of the dwellinghouse if it is in the rear curtilage. In the main this covers sheds, garages, greenhouses etc.

In the case of dwellinghouses in a [conservation area](#) or within the curtilage of a [listed building](#), the floor area of the ancillary building can not exceed 4 square metres.

Any building, engineering, installation or other operation

Class 3B – The carrying out of any building, engineering, installation or other operation within the curtilage of a dwellinghouse, required for a purpose incidental to the enjoyment of that dwellinghouse.

This class generally allows for the carrying out of an operation within the rear curtilage of a dwellinghouse not covered by other classes. Typical development permitted by this class include free-standing solar panels, flag poles, swimming pools, oil tanks etc.

This permitted development rights does not apply in [conservation areas](#) or within the curtilage of a [listed building](#).

4. MAKING CHANGES TO A DWELLINGHOUSE - INTRODUCTION TO OTHER DEVELOPMENT WITHIN THE CURTILAGE OF A DWELLINGHOUSE

Hard surface

Class 3C – The provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse or the replacement in whole or in part of such a surface.

This class generally permits the construction or replacement of a hard surface. If the hard surface is between the dwellinghouse and a road then the materials used should be permeable or, alternatively, rain water run off should be to a permeable surface within the curtilage.

This permitted development rights for hard surfaces does not apply in [conservation areas](#) or within the curtilage of a [listed building](#).

Decking or other raised platform

Class 3D – The erection, construction, maintenance, improvement or alteration of any deck or other raised platform within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse.

This class generally permits the construction of a deck or other raised platform in the rear garden so long as the floor level does not exceed 0.5 metres and the combined height of the deck and any attached balustrade or screening does not exceed 2.5 metres.

In the case of land in a [conservation area](#) or within the curtilage of a [listed building](#), the footprint of the deck cannot exceed 4 square metres.

Gates, fences, walls or other means of enclosure

Class 3E – The erection, construction, maintenance, improvement or alteration of any gate, fence, wall or other means of enclosure any part of which would be within or would bound the curtilage of a dwellinghouse.

The overall height of the gate, fence, wall or other means of enclosure must not exceed 2 metres. However, if it fronts a road or comes forward of the principal elevation or side elevation nearest a road then it cannot exceed 1 metre. Where an existing gate, fence, wall or other means of enclosure is replaced or altered the height limit is either 1 metre or 2 metre or, if greater than these, the height of the original structure.

These permitted development rights do not apply in a [conservation area](#) or within the curtilage of a [listed building](#).

4. MAKING CHANGES TO A DWELLINGHOUSE – ANCILLARY BUILDINGS INCLUDING SHEDS, GARAGES, GREENHOUSES ETC

Ancillary buildings including sheds, garages, greenhouses etc

SUMMARY

4.74

Permitted development rights allow for the provision of any building required for a purpose incidental to the enjoyment of the dwellinghouse. Typical developments include sheds, garages, sun-houses and greenhouses. In summary, the effect of the limitations is that:

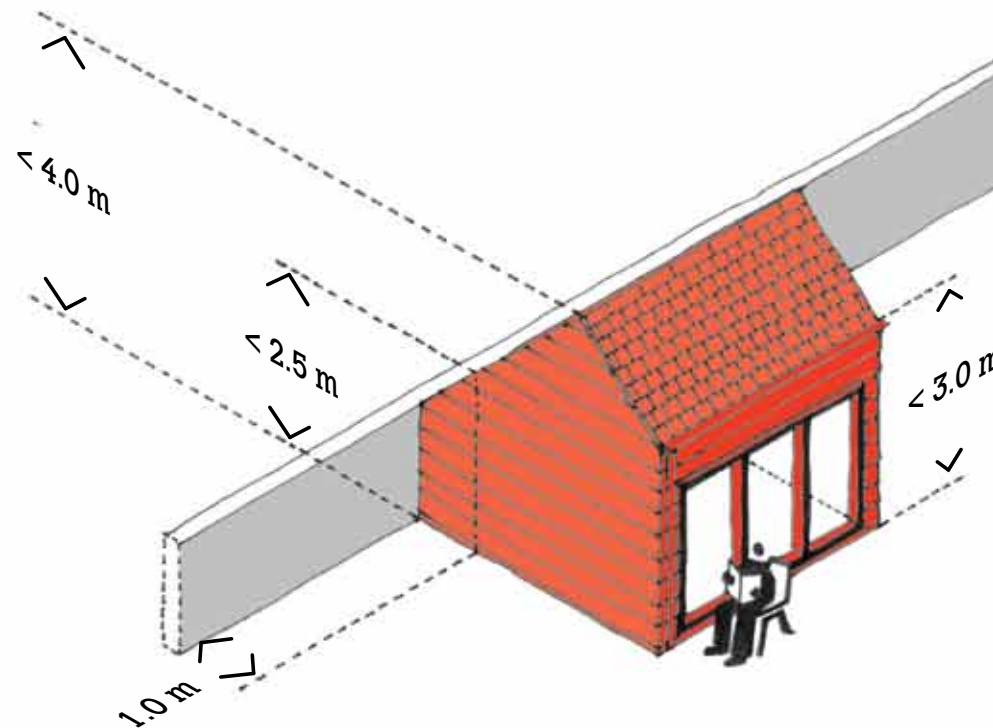
- ancillary buildings are generally located to the rear
- at least half the curtilage remains undeveloped
- the height of the building is not higher than 4 metres and the sections within 1 metre of the boundary would be higher than 2.5 metres
- the height of the eaves is not higher than 3 metres

4.75

In the case of dwellinghouses in a conservation area or within the curtilage of a listed building development is permitted as long as the footprint of the ancillary building does not exceed 4 square metres. [Listed building consent](#) is required if the proposed development affects the character or setting of a [listed building](#).

4.76

A building warrant from the local authority may be required for these types of developments, as explained in [Section 2](#).



4. MAKING CHANGES TO A DWELLINGHOUSE – ANCILLARY BUILDINGS INCLUDING SHEDS, GARAGES, GREENHOUSES ETC



TECHNICAL EXPLANATION

4.77

If the building exceeds any of the following limits then an application for planning permission is required.

4.78

The building **cannot** be used as a separate dwelling.

4.79

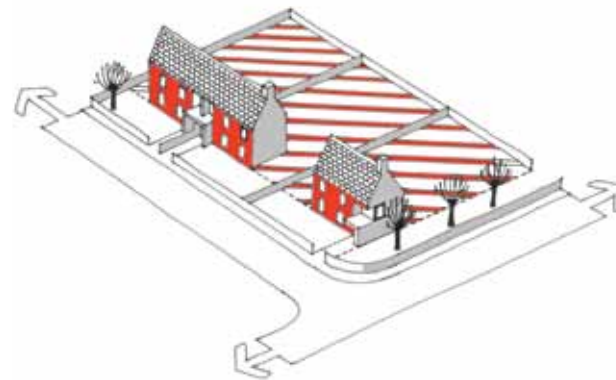
The building **cannot** be forward of a wall forming part of the principal elevation or side elevation if that elevation is fronting a road. The identification of the **principal elevation** and side elevations are discussed in paragraphs 3.2 – 3.6, whilst **fronting a road** is discussed at 3.7 – 3.10.

4.80

This is illustrated below, the shaded areas of the curtilage indicate where an ancillary building is permitted as long as the other limitations are met.

4.81

The overall height of a building can have a significant impact on neighbours. The **eaves** of the building **cannot** be higher than 3 metres. The height of the building **cannot** exceed 4 metres.



4.82

The parts of the building within 1 metre of a boundary must not be higher than 2.5 metres. This is illustrated on page 43.

4.83

When measuring the height of the development on sloping or uneven ground, the height should be measured from the lowest point immediately adjacent to the extension.

4.84

The proposed development and existing developments (including extensions, sheds, garages) cannot exceed half of the of the rear (or front if appropriate) curtilage of the original dwellinghouse, this is explained in paragraphs 3.11 – 3.12.

4.85

In the case of dwellinghouses in a **conservation area** or within the curtilage of a **listed building**, the floor area of the ancillary building cannot exceed 4 square metres. A **listed building consent** is required if the proposed development affects the character or setting of a **listed building**.

4.86

Planning authorities will be able to confirm whether a property is located within a conservation area. Information on listed buildings is available from www.historic-scotland.gov.uk/historicandlistedbuildings or www.environment.scotland.gov.uk.

4. MAKING CHANGES TO A DWELLINGHOUSE – ANCILLARY BUILDINGS INCLUDING SHEDS, GARAGES, GREENHOUSES ETC**LEGISLATION****Class 3A.—**

(1) The provision within the curtilage of a dwellinghouse of a building for any purpose incidental to the enjoyment of that dwellinghouse or the alteration, maintenance or improvement of such a building.

(2) Development is not permitted by this class if—

- (a) it consists of a dwelling;
- (b) any part of the development would be forward of a wall forming part of the principal elevation or side elevation where that elevation fronts a road;
- (c) the height of the eaves would exceed 3 metres;
- (d) any part of the development would exceed 4 metres in height;
- (e) any part of the development within 1 metre of the boundary of the curtilage of the dwellinghouse would exceed 2.5 metres in height;
- (f) as a result of the development the area of ground covered by development within the front or rear curtilage of the dwellinghouse (excluding the original dwellinghouse and any hard surface or deck) would exceed 50% of the area of the front or rear curtilage respectively (excluding the ground area of the original dwellinghouse and any hard surface or deck); or
- (g) in the case of land in a conservation area or within the curtilage of a listed building, the resulting building would have a footprint exceeding 4 square metres.

4. MAKING CHANGES TO A DWELLINGHOUSE - ANY BUILDING, ENGINEERING, INSTALLATION OR OTHER OPERATION

Any building, engineering, installation or other operation



SUMMARY

4.87

Permitted development rights allow for the carrying out of works within the rear curtilage of a dwellinghouse not covered by other classes. It is intended to apply to garden works, free-standing solar panels, flag poles, swimming pools and oil tanks. In summary, the effect of limitations is that:

- the development is generally located in the rear
- the height of the resulting structure is not higher than 3 metres
- at least half the curtilage remains undeveloped

4.88

This permitted development rights do not apply in [conservation areas](#) or within the curtilage of a [listed building](#).

4.89

A building warrant from the local authority may be required for these types of developments, as explained in [Section 2](#).

4. MAKING CHANGES TO A DWELLINGHOUSE - ANY BUILDING, ENGINEERING, INSTALLATION OR OTHER OPERATION

TECHNICAL

4.90

If the development exceeds any of the following limits then an application for planning permission is required.

4.91

Building operation is included in the description, as in terms of the definition of development and includes a wider range of development than just the provision of an actual building.

4.92

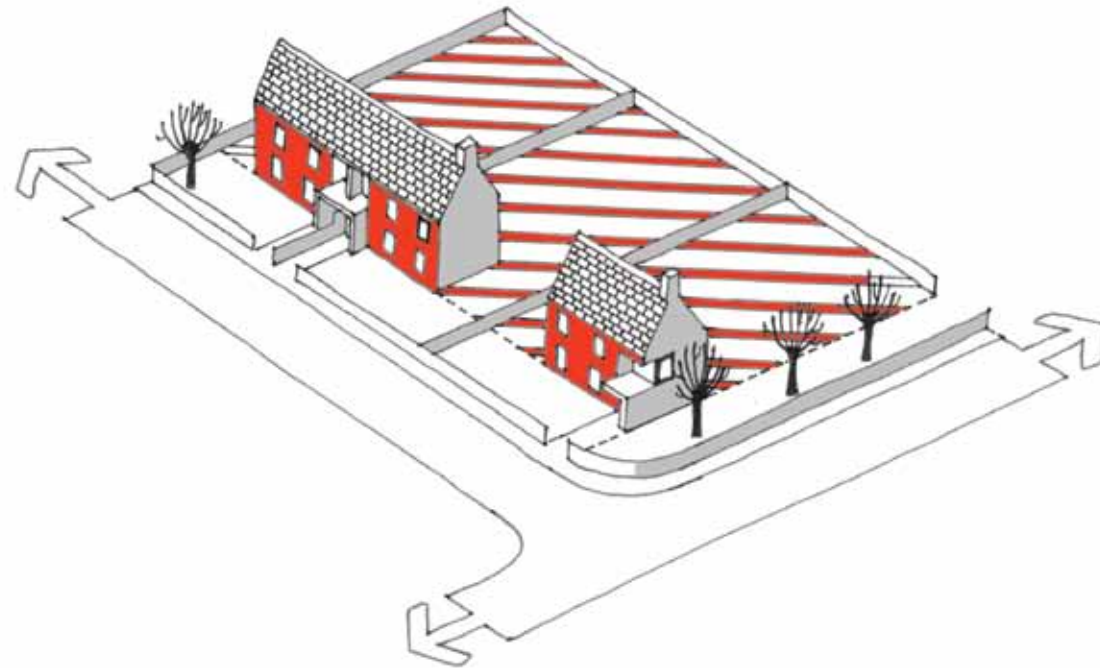
The development **cannot** be forward of a wall forming part of the principal elevation or side elevation if that elevation is fronting a road. The identification of the [principal elevation](#) and side elevations are discussed in paragraphs [3.2 – 3.6](#), whilst [fronting a road](#) is discussed at [3.7 – 3.10](#).

4.93

This is illustrated below, the shaded areas of the curtilage indicate where works is permitted as long as the other limitations are met.

4.94

The overall height of the development can have a significant impact on neighbours. The development **cannot** be higher than 3 metres. When measuring the height of the development on sloping or uneven ground, the height should be measured from the lowest point immediately adjacent to the development.



4. MAKING CHANGES TO A DWELLINGHOUSE - ANY BUILDING, ENGINEERING, INSTALLATION OR OTHER OPERATION

4.95

The proposed development and existing developments (including extensions, sheds, garages etc.) **cannot** exceed half of the rear curtilage (or front if appropriate) curtilage of the original dwellinghouse, this is explained in paragraphs [3.12](#) – [3.13](#).

4.96

The following types of development are not permitted by this class, as these types of developments are permitted by other classes:

- ancillary buildings
- hard surface
- decking
- gate, fence, wall or other means of enclosure
- ground source heat pump
- water source heatpump
- free-standing wind turbine
- air source heat pump
- means of access

4.97

There are no Class 3B permitted development rights in a [conservation area](#) or within the curtilage of a [listed building](#). An application to the planning authority is required.

4.98

Planning authorities will be able to confirm whether a property is located within a [conservation area](#). Information on [listed buildings](#) is available from www.historic-scotland.gov.uk/historicandlistedbuildings or www.environment.scotland.gov.uk.

4. MAKING CHANGES TO A DWELLINGHOUSE - ANY BUILDING, ENGINEERING, INSTALLATION OR OTHER OPERATION**LEGISLATION****Class 3B.—**

(1) The carrying out of any building, engineering, installation or other operation within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of that dwellinghouse.

(2) Development is not permitted by this class if—

- (a) any part of the development would be forward of a wall forming part of the principal elevation or side elevation where that elevation fronts a road;
- (b) any resulting structure would exceed 3 metres in height;
- (c) as a result of the development the area of ground covered by development within the front or rear curtilage of the dwellinghouse (excluding the original dwellinghouse and any hard surface or deck) would exceed 50% of the area of the front or rear curtilage respectively (excluding the ground area of the original dwellinghouse and any hard surface or deck);
- (d) it would be within a conservation area or within the curtilage of a listed building; or
- (e) it would be development described in class 3A(1), 3C(1), 3D(1), 3E(1), 6D, 6E, 6G(1), 6H(1) or 8.

4. MAKING CHANGES TO A DWELLINGHOUSE – HARD SURFACE

Hard surface

4.99

Permitted development rights allow the construction or replacement of a hard surface within the curtilage of a dwellinghouse.

4.100

If the hard surface exceeds any of the following limits then an application for planning permission is required.

4.101

If the hard surface is located between the dwellinghouse and a road, then it must be constructed of a porous material or that provision is made for surface water run off to be directed to a porous area within the curtilage of the dwellinghouse.

4.102

This provision is introduced following a review of extreme flooding events and concerns expressed by regulatory authorities and water companies that the cumulative impact of small increases in hard surfacing is leading to increased run off into road drains that ultimately flow into watercourses or sewage treatment works. The intention of the condition is to encourage householders to adopt the principles of source control.

4.103

The Department of Communities and Local Government has produced separate guidance on permeable paving. This can be found at: www.communities.gov.uk/documents/planningandbuilding/pdf/pavingfrontgardens.pdf.

4.104

Planning permission is required for a hard surface in [conservation areas](#) and in the curtilage of [listed buildings](#). A building warrant from the local authority may be required, as explained in [Section 2](#).

4.105

Planning authorities will be able to confirm whether a property is located within a [conservation area](#). Information on [listed buildings](#) is available from: www.historic-scotland.gov.uk/historicandlistedbuildings or www.environment.scotland.gov.uk.

4. MAKING CHANGES TO A DWELLINGHOUSE – HARD SURFACE



LEGISLATION

Class 3C.—

(1) The provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of that dwellinghouse or the replacement in whole or in part of such a surface.

(2) Development is not permitted by this class if it would be within a conservation area or within the curtilage of a listed building.

(3) Development is permitted by this class subject to the condition that where the hard surface would be located between the dwellinghouse and a road bounding the curtilage of the dwellinghouse—

(a) the hard surface must be made of porous materials; or

(b) provision must be made to direct run off water from the hard surface to a permeable or porous area or surface within the curtilage of the dwellinghouse.

4. MAKING CHANGES TO A DWELLINGHOUSE – DECKING OR OTHER RAISED PLATFORM

Decking or other raised platform

SUMMARY

4.106

Permitted development rights allow the erection, construction, maintenance, improvement or alteration of any deck or other raised platform within the curtilage of a dwellinghouse. In summary, the effect of the limitations is that:

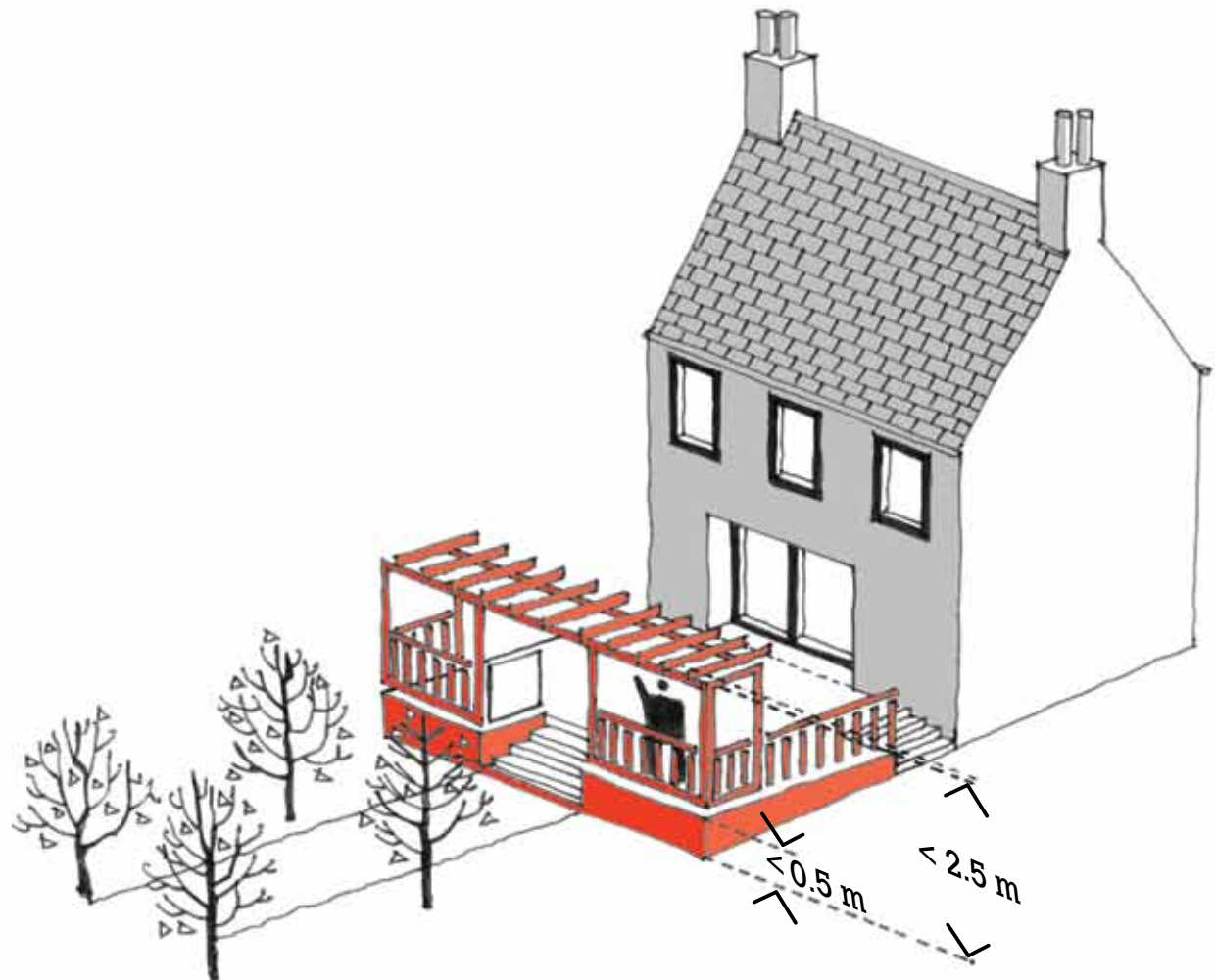
- decks are generally located to the rear
- the height of the floor level does not exceed 0.5 metre
- the total height of the deck, including any attached structure does not exceed 2.5 metres

4.107

If the deck, or raised platform, is in a conservation area or within the curtilage of listed building the maximum size of the deck, or raised platform, is 4 square metres. There are no permitted development rights for flats.

4.108

A building warrant from the local authority may be required for the deck or other raised platform, as explained in [Section 2](#).



4. MAKING CHANGES TO A DWELLINGHOUSE – DECKING OR OTHER RAISED PLATFORM



TECHNICAL EXPLANATION

4.109

If the deck, or raised platform, exceeds any of the following limits then [an application for planning permission](#) is required.

4.110

Decks cannot be forward of a wall forming part of the principal elevation or side elevation if that elevation is fronting a road. The identification of the [principal elevation](#) and side elevations are discussed in paragraphs 3.2 – 3.6, whilst [fronting a road](#) is discussed at 3.7 – 3.10.

4.111

This is illustrated below, the shaded areas of the curtilage indicate where an extension is permitted as long as the other limitations are met.

4.112

The maximum height of the platform of the decking is 0.5 metre. The total height if, for example screens are attached, is 2.5 metres.

4.113

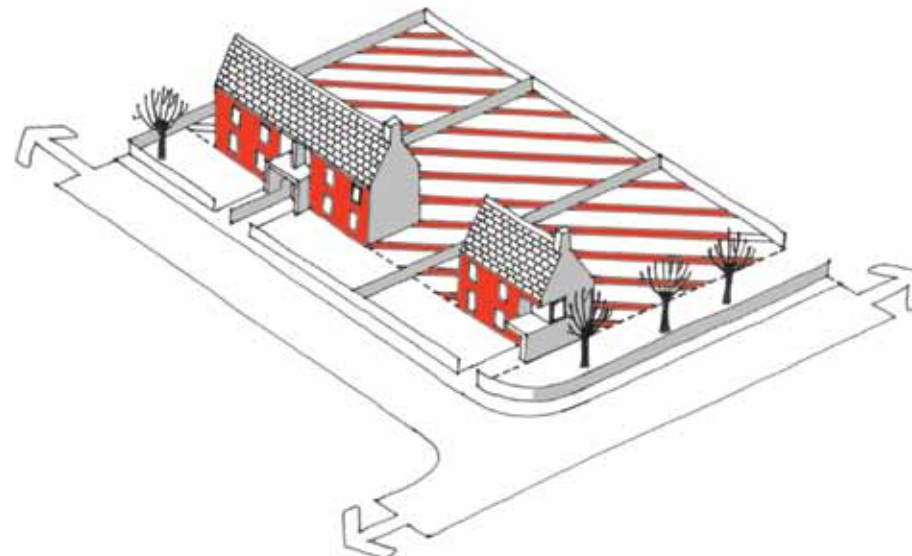
When measuring the height of the deck on sloping or uneven ground, the height should be measured from the lowest point immediately adjacent to the decking.

4.114

The size of decking in [conservation areas](#) and within the curtilage of [listed buildings](#) is restricted to 4 square metres to be permitted development.

4.115

Planning authorities will be able to confirm whether a property is located within a [conservation area](#). Information on [listed buildings](#) is available from www.historic-scotland.gov.uk/historicandlistedbuildings or www.environment.scotland.gov.uk.



4. MAKING CHANGES TO A DWELLINGHOUSE – DECKING OR OTHER RAISED PLATFORM**LEGISLATION****Class 3D.—**

(1) The erection, construction, maintenance, improvement or alteration of any deck or other raised platform within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of that dwellinghouse.

(2) Development is not permitted by this class if—

- (a) any part of the development would be forward of a wall forming part of the principal elevation or side elevation where that elevation fronts a road;
- (b) the floor level of any part of the deck or platform would exceed 0.5 metres in height;
- (c) the combined height of the deck and any wall, fence, balustrade, handrail or other structure attached to it, would exceed 2.5 metres; or
- (d) in the case of land within a conservation area or within the curtilage of a listed building the deck or platform would have a footprint exceeding 4 square metres.

4. MAKING CHANGES TO A DWELLINGHOUSE – GATES, FENCES, WALLS OR OTHER MEANS OF ENCLOSURE

Gates, fences, walls or other means of enclosure

4.116

Permitted development rights allow the erection, construction, maintenance, improvement or alteration of any gate, fence, wall or other means of enclosure.

4.117

If the gate, fence, wall or other means of enclosure exceeds the following limits then an application for planning permission is required.

4.118

The maximum height of any gate, fence, wall or other means of enclosure is 2 metres. Whilst its maximum height 1 metre if it fronts a road (explained in paragraphs 3.9 - 3.10) or comes forward of the [principal elevation](#) or side elevation nearest a road. Identifying the principal elevation is explained in paragraphs 3.2 – 3.6.

4.119

When measuring the height of the development on sloping or uneven ground, the height should be measured from the lowest point immediately adjacent to the gate, fence, wall or other means of enclosure.

4.120

The replacement or alteration of an existing gate, fence, wall or other means of enclosure to its original height is permitted. For example, an existing 1.2 metre fence forward of the principal elevation can be replaced with a fence up to 1.2 metres in height. If the replacement fence is higher than 1.2 metres then an application for planning permission would be required. Alternatively, if replacing a 0.8 metre high fence forward of the [principal elevation](#) it can be replaced by with a fence up to 1 metre in height.

4.121

Planning permission is needed for gates, fences, wall or other mean of enclosure in [conservation areas](#) and in the curtilage of [listed buildings](#).

4.122

Planning authorities will be able to confirm whether a property is located within a [conservation area](#). Information on [listed buildings](#) is available from www.historic-scotland.gov.uk/historicandlistedbuildings or www.environment.scotland.gov.uk.

4. MAKING CHANGES TO A DWELLINGHOUSE – GATES, FENCES, WALLS OR OTHER MEANS OF ENCLOSURE**LEGISLATION****Class 3E.–**

(1) The erection, construction, maintenance, improvement or alteration of any gate, fence, wall or other means of enclosure any part of which would be within or would bound the curtilage of a dwellinghouse.

(2) Development is not permitted by this class if–

- (a) any part of the resulting gate, fence, wall or other means of enclosure would exceed 2 metres in height;
- (b) any part of the resulting gate, fence, wall or other means of enclosure would exceed one metre in height where it–
 - (i) fronts a road; or
 - (ii) extends beyond the line of the wall of the principal elevation or side elevation that is nearest a road;
- (c) it replaces or alters an existing gate, fence, wall or other means of enclosure and exceeds whichever is the greater of the original height or the heights described in sub-paragraphs (a) and (b);
- (d) it would be within a conservation area; or
- (e) it would be within, or bound, the curtilage of a listed building.

5. MAKING CHANGES TO A FLAT

5.1

Due to the vast variety of flats, it is not possible to provide extensive permitted development rights for flats.

5.2

A flat is defined as a “separate and self contained set of premises whether or not on the same floor and forming part of a building from some other part of which it is divided horizontally”.

5.3

The specific permitted development rights for flats are detailed below. Other relevant classes include:-

- Class 7: construction of gate, fences, walls and other means of enclosure
- Class 72: Closed Circuit Television Cameras (CCTV).

Improvements or alterations that are not an enlargement, including replacement windows, solar panels, flues, satellite dishes

SUMMARY

5.4

Permitted development rights allow any improvement or other alteration to the external appearance of a dwelling situated within a building containing one or more flats that is not an [enlargement](#). This is best visualised as a 1 metre bubble surrounding a flat. A wide range of different types of developments are permitted without having to apply for planning permission, including the installation, alteration or replacement of solar PV or solar thermal equipment. In summary, the effect of the limitations is that:

- the development does not enlarge the flat
- the distance any development can project from the walls and roof of the flat is not more than 1 metre

- the development is not a balcony, roof terrace or raised platform, wind turbine, a flue forming part of biomass heating system, flue forming part of combined heat and power system, air source heat pump, CCTV or an [enlargement](#)

5.5

There are no permitted development rights in a [conservation area](#) or within the curtilage of a listed building. A [listed building consent](#) is required if the proposed development affects the character or setting of a [listed building](#).

5.6

A building warrant from the local authority may be required, as explained in [Section 2](#).

5. MAKING CHANGES TO A FLAT – IMPROVEMENTS OR ALTERATIONS THAT ARE NOT AN ENLARGMENT, INCLUDING REPLACEMENT WINDOWS, SOLAR PANELS, FLUES AND SATELLITE DISHES ETC.



TECHNICAL EXPLANATION

5.7

If the development exceeds any of the following limits then an application for planning permission is required.

5.8

The development must not enlarge the flat. This means that the development cannot increase the internal volume of the original building. Enlargement includes a canopy or roof, with or without wall, which is attached to the building but does not include a balcony.

5.9

The development must not project by more than 1 metre from the wall or roof.

5.10

The size of windows and doors **cannot** be altered. An application for planning permission is required if, for example, a larger window is created from 2 smaller windows or a window is converted into a door which is larger than the window.

5.11

The development cannot be a balcony or, if it is on the roof, a raised platform or terrace. The following types of development are not permitted by this class because they are permitted by other classes:

- wind turbine
- biomass heating system flue
- combined heat and powers system flue
- air source heat pump
- CCTV

5.12

There are no Class 4A permitted development rights for conservation areas or within the curtilage of a listed building. Planning authorities will be able to confirm whether a property is located within a conservation area. Information on listed buildings is available from: www.historic-scotland.gov.uk/historicandlistedbuildings or www.environment.scotland.gov.uk.

5.13

Section 6 discusses the installation, alteration or replacement of a biomass heating system flue or a combined heat and powers system flue or air source heat pump.

5.14

An alteration to the external appearance of a flat would allow the painting (or repainting) of the property. It would also allow the painting or attaching of an advertisement to the property. While an application for planning permission may not be required by virtue of this class, an application for advertisement consent may be required under the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 depending on the nature and size of any such advertisement.

5. MAKING CHANGES TO A FLAT – IMPROVEMENTS OR ALTERATIONS THAT ARE NOT AN ENLARGMENT, INCLUDING REPLACEMENT WINDOWS, SOLAR PANELS, FLUES AND SATELLITE DISHES ETC.**LEGISLATION****Class 4A.–**

(1) Any improvement or other alteration to the external appearance of a dwelling situated within a building containing one or more flats.

(2) Development is not permitted by this class if–

- (a) it would be an enlargement;
- (b) it would protrude more than 1 metre from the outer surface of an external wall, roof plane, roof ridge or chimney;
- (c) the dimensions of an existing window or door opening would be altered;
- (d) it would be a balcony;
- (e) it would be on the roof and would result in a raised platform or terrace;
- (f) it would be a wind turbine;
- (g) it would be within a conservation area or within the curtilage of a listed building; or
- (h) it would be development described in class 6C(1), 6F(1) or 6H(1) or 72(1).

5. MAKING CHANGES TO A FLAT – GATES, FENCES, WALLS OR OTHER MEANS OF ENCLOSURE

Gates, fences, walls or other means of enclosure

5.15

Permitted development rights allow the erection, construction, maintenance, improvement or alteration of any gate, fence, wall or other means of enclosure.

5.16

If the gate, fence, wall or other means of enclosure exceeds any of the following limits then an application for planning permission is required.

5.17

The maximum height of any new gate, fence, wall or other means of enclosure is 2 metres, but where it is within 20 metres of a road the maximum height is 1 metre.

5.18

When measuring the height of the development on sloping or uneven ground, the height should be measured from the highest point immediately adjacent to the gate, fence, wall or other means of enclosure.

5.19

The replacement or alteration of an existing gate, fence, wall or other means of enclosure to its original height is permitted. For example, an existing 1.2 metre fence within 20 metres of a road can be replaced with a fence up to 1.2 metres in height. If the replacement fence is higher than 1.2 metres then an application for planning permission would be required. Alternatively, if replacing a 0.8 metre high fence within 20 metres of a road it can be replaced by with a fence up to 1 metre in height.

5.20

There are no Class 7 permitted development rights for [conservation areas](#) or within the curtilage of a [listed building](#). Planning authorities will be able to confirm whether a property is located within a [conservation area](#). Information on listed buildings is available from www.historic-scotland.gov.uk/historicandlistedbuildings or www.environment.scotland.gov.uk

5. MAKING CHANGES TO A FLAT – GATES, FENCES, WALLS OR OTHER MEANS OF ENCLOSURE**LEGISLATION****Class 7.–****(1) The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.**

(2) Development is not permitted by this class if–

- (a) the height of any gate, fence, wall or other means of enclosure to be erected or constructed within 20 metres of a road would, after the carrying out of the development, exceed one metre above ground level;
- (b) the height of any other gate, fence, wall or other means of enclosure to be erected or constructed would exceed two metres above ground level;
- (c) the height of any existing gate, fence, wall or other means of enclosure maintained, improved or altered would, as a result of the development, exceed its former height or the height referred to in sub-paragraph (a) or (b) as the height appropriate to it if erected or constructed, whichever is the greater; or
- (d) it would involve development within the curtilage of, or in respect of a gate, fence, wall or other means of enclosure surrounding, a listed building. or
- (e) it would be development described in class 3E(1)

6. INSTALLING MICROGENERATION EQUIPMENT

6.1

The relevant permitted development rights for the main types of microgeneration equipment are explained within this section.

6.2

This guidance replaces:

- Planning Circular 2/2009: The Town and Country Planning (General Permitted Development) (Domestic Microgeneration) (Scotland) Amendment Order 2009; and
- Planning Circular 2/2010: The Town and Country Planning (General Permitted Development) (Domestic Microgeneration) (Scotland) Amendment Order 2010.

6.3

Classes 6A and 6B have been removed since Classes 2B and 4A now apply for installation of solar PV and solar thermal equipment that would be attached to a wall or roof of a [dwellinghouse](#) or a flat. Class 3B permits the installation of free-standing solar PV and solar thermal equipment for a dwellinghouse.

6.4

All the limitations and restrictions within a class will need to be complied with. Where a proposal would involve a combination of classes, then the development would have to comply with the limitations and restrictions of all the relevant classes to be [permitted development](#).

6.5

There are many types of [microgeneration](#) equipment. The following 6 classes, along with Classes 2B, 3B and 4A, cover the installation of the most common types of domestic [microgeneration](#), ensuring appropriate controls are applied to the specific type of development.

6. INSTALLING MICROGENERATION EQUIPMENT

Flues for Biomass Heating System

Class 6C – The installation, alteration or replacement of a flue, forming part of a biomass heating system, on a dwellinghouse or building containing a flat.

Flues for Combined Heat and Power System

Class 6F – The installation, alteration or replacement of a flue, forming part of a combined heat and power system, on a dwellinghouse or building containing a flat.

Ground and Water Source Heat Pumps

Class 6D – The installation, alteration or replacement of a ground source heat pump within the curtilage of a dwellinghouse or building containing a flat.

Class 6E – The installation, alteration or replacement of a water source heat pump within the curtilage of a dwellinghouse or building containing a flat.

Free-standing Wind Turbines and Air Source Heat Pumps

Class 6G – The installation, alteration or replacement of a free-standing wind turbine within the curtilage of a dwelling.

Class 6H – The installation, alteration or replacement of an air source heat pump within the curtilage of a dwelling.

6. INSTALLING MICROGENERATION EQUIPMENT – FLUES FOR BIOMASS HEATING SYSTEM

Flues for Biomass Heating System

6.6

Permitted development rights allow the installation, alteration or replacement of a flue, forming part of a biomass heating system, on a dwellinghouse or building containing a flat.

6.7

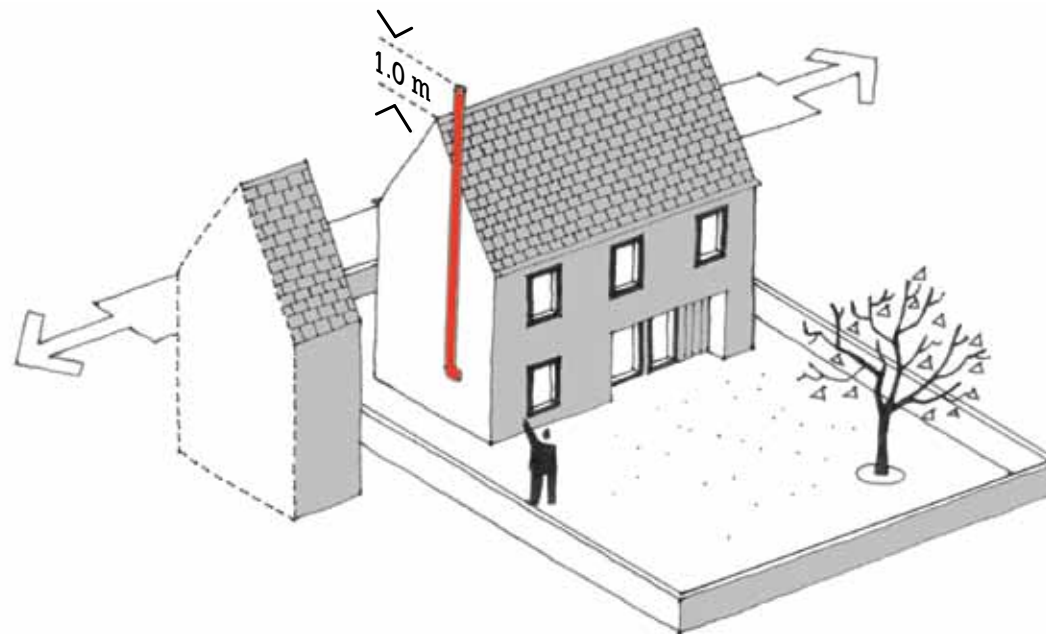
If the flue exceeds any of the following limitations then [an application for planning permission](#) is required.

6.8

A planning permission is needed for flues for [dwellinghouses](#) or [flats](#) within an [Air Quality Management Area](#). [Air Quality Management Area](#) has the meaning given in section 83(1) of the Environment Act 1995.

6.9

Planning permission is required if the flue is to be attached to the [principal elevation](#) of a [dwellinghouse](#) or [flat](#) within a [conservation area](#) or [World Heritage Site](#). The identification of the [principal elevation](#) is discussed in paragraphs 3.2 – 3.6.



6. INSTALLING MICROGENERATION EQUIPMENT – FLUES FOR BIOMASS HEATING SYSTEM



LEGISLATION

Class 6C.–

(1) The installation, alteration or replacement of a flue, forming part of a biomass heating system, on a dwellinghouse or building containing a flat.

(2) Development is not permitted by this class if–

- (a) the height of the flue would protrude more than one metre above the highest part of the roof (excluding any chimney) on which the flue is fixed;
- (b) in the case of land within a conservation area or a World Heritage Site, the flue would be installed on the principal elevation of the dwellinghouse or building containing a flat; or
- (c) the flue would be within an Air Quality Management Area.

6. INSTALLING MICROGENERATION EQUIPMENT – FLUES FOR COMBINED HEAT AND POWER SYSTEM

Flues for Combined Heat and Power System

6.10

Flues for Combined Heat and Power System permitted development rights allow the installation, alteration or replacement of a flue for combined heat and power system, on a [dwellinghouse](#) or building containing a [flat](#).

6.11

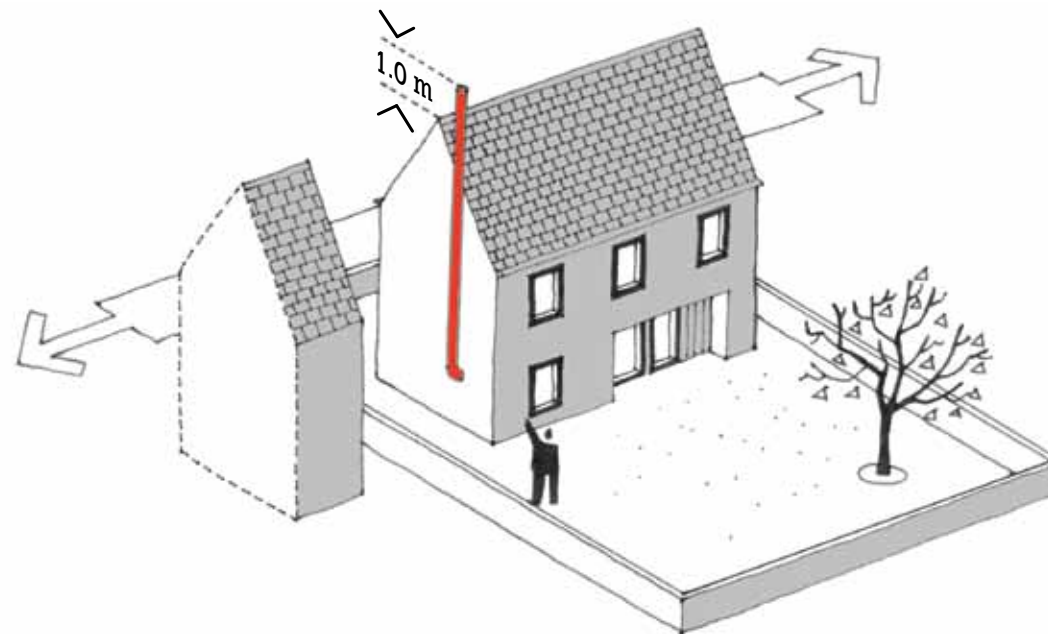
If the flue exceeds any of the following limitations then an [application for planning permission](#) is required.

6.12

A planning permission is needed for flues for [dwellinghouses](#) or [flats](#) within an [Air Quality Management Area](#). Air Quality Management Area has the meaning given in section 83(1) of the Environment Act 1995.

6.13

Planning permission is required if the flue is to be attached to the principal elevation of a [dwellinghouse](#) or [flat](#) within a [conservation area](#) or [World Heritage Site](#). The identification of the principal elevation is discussed in paragraphs 3.2 – 3.6.



6. INSTALLING MICROGENERATION EQUIPMENT – FLUES FOR COMBINED HEAT AND POWER SYSTEM**LEGISLATION****Class 6F.–**

(1) The installation, alteration or replacement of a flue, forming part of a combined heat and power system, on a dwellinghouse or building containing a flat.

(2) Development is not permitted by this class if–

- (a) the height of the flue would protrude more than 1 metre above the highest part of the roof (excluding any chimney) on which the flue is fixed;
- (b) in the case of land within a conservation area or World Heritage Site, the flue would be installed on the principal elevation of the dwellinghouse, or building containing a flat; or
- (c) in the case of a combined heat and power system fuelled by biomass sources, the flue would be within an Air Quality Management Area.

6. INSTALLING MICROGENERATION EQUIPMENT – GROUND AND WATER SOURCE HEAT PUMPS

Ground and Water Source Heat Pumps

6.14

Permitted development rights allow the installation, alteration or replacement of a [Ground Source Heat pump](#) or [Water Source Heat pump](#) within the curtilage of a [dwellinghouse](#) or a building containing a [flat](#).

6.15

There are no restrictions on those permitted development rights.



LEGISLATION

Class 6D.– The installation, alteration or replacement of a ground source heat pump within the curtilage of a dwellinghouse or building containing a flat.

Class 6E.– The installation, alteration or replacement of a water source heat pump within the curtilage of a dwellinghouse or building containing a flat.

6. INSTALLING MICROGENERATION EQUIPMENT – FREE-STANDING WIND TURBINES AND AIR SOURCE HEAT PUMPS

Free-standing Wind Turbines and Air Source Heat Pumps

6.16

Classes 6G and 6F permits the installation, alteration or replacement of a free-standing micro wind turbines (MWT) and air source heat pumps (ASHP) within the curtilage of a dwelling, which means a dwellinghouse, a building containing one or more flats or a flat contained within such a building. However, it is recognised that in most cases an application for planning permission is required.

6.17

The aim of these provisions is to manage adverse impacts on neighbours and amenity generally (e.g. noise and visual impact) set against the wider environmental, social and economic benefits of microgeneration. They do this by means of limitations and conditions.

Limitations

6.18

The limitations are that:

- the installation must be not less than over 100 metres from the curtilage of a neighbouring dwelling

- development is not permitted if it would result in the presence within the curtilage of a dwelling of more than one installation of each type of technology

6.19

That still provides potential opportunities for one MWT and one ASHP within the same curtilage but not more than one of each using permitted development rights. This allows for a wind turbine to provide the electricity to power a heat pump.

Conditions

6.20

The conditions require that MWT/ASHP microgeneration equipment be:

- subject to the prior notification and/or prior approval procedure
- sited to minimise effects on the amenity of the area so far as reasonably practicable
- used only for the purposes of domestic microgeneration
- removed as soon as reasonably practicable where it is no longer needed for or capable of domestic microgeneration

The prior notification and prior approval condition

6.21

For MWT the condition requires that a developer must before beginning the development apply to the planning authority for the approval of the authority of the design and size of the proposed wind turbine and a determination as to whether the prior approval of the authority will be required in respect of the siting and external appearance of the proposed wind turbine. Where the prior approval of the planning authority is required or where the authority indicates in response to a prior notification that it is required, the authority has 2 months in which to determine the case. Where prior notification applies, the period runs from receipt of the prior notification; where prior approval is required by the Order, without prior notification, the period is 2 months from the receipt of the application for prior approval. Thereafter the developer can challenge the failure of the authority to reach a decision or the decision itself.

6. INSTALLING MICROGENERATION EQUIPMENT – FREE-STANDING WIND TURBINES AND AIR SOURCE HEAT PUMPS

6.22

The purpose of prior approval for micro-wind turbines is to allow the planning authority to consider any matter it may deem relevant in respect of the design and size of the proposed wind turbine. However, it is intended principally to provide a safeguard for aerodromes, radar technical sites, radio and television networks and National Scenic Areas (NSAs) that could be affected by wind turbine installations.

6.23

The consultation process which the planning authority should undertake is the same as that for a planning application.

6.24

Aerodromes and radar technical sites are safeguarded by the Town and Country Planning (Safeguarded Aerodromes, Technical Sites and Military Explosive Storage Areas) (Scotland) Direction 2003. Circular 2/2003¹ contains the Direction and explains what consultation is required by planning authorities when a planning application for development is made which could affect such a site. Certain military technical sites owned by the Secretary

of State for Defence are also safeguarded under a similar process.

6.25

The operators of safeguarded aerodromes, technical sites and military explosives storage areas are also likely to need to examine specific proposals with particular reference to matters such as siting, design (including height), external appearance and type of construction when planning authorities consider applications for approval required by conditions attached to a grant of planning permission in principle. Although these are not applications for planning permission, and are therefore not covered by the Direction, Circular 2/2003 explains that planning authorities should as a matter of good practice consult the relevant consultees when they receive such applications and allow the consultees sufficient time to consider the implications for their operations before taking decisions on them.

6.26

It is considered therefore that as a conclusion of that good practice the same consultation procedure should apply where the planning authority's prior approval of a micro-wind turbine installation is sought.

6.27

Any response from the aviation safeguarding or other consultee to the planning authority would allow the authority to: issue their approval; issue it subject to conditions, or; refuse the application for approval. Where conditions are attached to an approval or the authority decides to refuse the application for approval, the developer can challenge the decision.

6.28

In relation to air source heat pumps, the prospective developer needs to give prior notification to the authority of its intentions. The planning authority may determine that prior approval is then required subject to the information provided in the notification on the siting and external appearance of the pump.

¹ www.scotland.gov.uk/Publications/2003/01/16204/17030

6. INSTALLING MICROGENERATION EQUIPMENT – FREE-STANDING WIND TURBINES AND AIR SOURCE HEAT PUMPS

6.29

In considering a prior notification and/or application for prior approval, authorities must also have regard to the requirements of the EIA regulations. Further guidance on EIA and permitted development is contained in Circular 3/2011 The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011².

Consultation - Further guidance

6.30

Additional guidance on aerodrome and technical sites safeguarding from obstacles including wind turbines is provided by the Civil Aviation Authority in CAP 168: Licensing of Aerodromes³, CAP 670: ATS Safety Requirements⁴, CAP 738 – Safeguarding of Aerodromes⁵ and CAP 764 – CAA Policy and Guidelines on Wind Turbines⁶.

6.31

For terrestrial radio and television networks the planning authority may consider it necessary to consult with the electronic communications provider or OFCOM to safeguard signal

² <http://www.scotland.gov.uk/Publications/2011/06/01084419/0>

³ www.caa.co.uk/docs/33/CAP168.PDF

⁴ www.caa.co.uk/docs/33/CAP670.PDF

⁵ www.caa.co.uk/docs/33/CAP738.PDF

⁶ www.caa.co.uk/docs/33/Cap764.pdf

broadcasts from main sites or from relay sites typical of rural settings. OFCOM has provided guidance on the impact of tall structures on broadcast and other wireless services⁷.

6.32

In relation to NSAs, the same prior approval process consultations may be conducted with Scottish Natural Heritage. It is good practice to follow guidance in Circular 9/1987 - Development Control in National Scenic Areas, which requires notification of applications to SNH for all buildings or structures over 12 metres high (including agricultural and forestry developments). For micro-wind turbines, SNH regards 12 metres as being to the blade tip height. Further information is contained in SNH's Micro Renewables and the Natural Heritage Guidance Note⁸.

6.33

It would also be open to the planning authority and prospective developer to negotiate away any issues of concern, including submitting revised proposals as opposed to appeals or local reviews being pursued.

⁷ http://licensing.ofcom.org.uk/binaries/spectrum/fixed-terrestrial-links/wind-farms/tall_structures.pdf

⁸ www.snh.org.uk/pdfs/strategy/renewable/A301202.pdf

General amenity condition

6.34

When MWT or ASHP equipment is installed on domestic properties under permitted development rights, consideration should be given to the siting and layout of the equipment in relation to the design of the building and its visual appearance; to those in the neighbouring area to which the equipment will be visible; as well as to the optimal orientation for energy purposes.

Purpose condition

6.35

The Purpose condition is intended to guide developers towards installations that are fit for purpose and scalable to domestic situations. Accredited installers will usually provide that advice. The Energy Act 2004 defines “microgeneration” as the use for the generation of electricity or the production of heat of any plant where its capacity is:

- (a) in relation to the generation of electricity, 50 kilowatts;
- (b) in relation to the production of heat, 45 kilowatts thermal.

6. INSTALLING MICROGENERATION EQUIPMENT – FREE-STANDING WIND TURBINES AND AIR SOURCE HEAT PUMPS

6.36

However there is no threshold between domestic and non-domestic generation. Indicative guidance may be provided by suppliers of the products. Non-domestic scale microgeneration equipment will generally require planning permission meantime.

Removal condition

6.37

In instances where existing MWT or ASHP equipment is no longer intended to be used, for example if other technologies are installed, or the equipment becomes incapable of being used, for example through breakdown that cannot be or is not repaired, the condition requires that it must be removed as soon as reasonably practicable. The removal condition is otherwise self-explanatory.

Inability to comply with conditions and limitations

6.38

Where a prospective developer is unable to comply with the conditions and limitations above, then a full application for planning permission would be required.

Further advice

6.39

Further advice on siting and design can be found in the Scottish Government's guidance "Planning for Micro Renewables", which is available on-line at www.scotland.gov.uk/Resource/Doc/150324/0040009.pdf

6.40

It is a matter for the planning authority to consider enforcement action where they consider that microgeneration equipment does not meet the limitations or conditions.

6.41

The downloadable prior notification forms on the e-planning website have been updated. Councils should consider adopting these updated forms to ease the provisions for householders.

6. INSTALLING MICROGENERATION EQUIPMENT – FREE-STANDING WIND TURBINES AND AIR SOURCE HEAT PUMPS **LEGISLATION****Class 6G.–****(1) The installation, alteration or replacement of a free-standing wind turbine within the curtilage of a dwelling.**

(2) Development is not permitted by this class if–

- (a) it would result in the presence within the curtilage of a dwelling of more than one free-standing wind turbine; or
- (b) the wind turbine would be situated less than 100 metres from the curtilage of another dwelling.

(3) Development is not permitted by this class in the case of land within–

- (a) a conservation area;
- (b) a World Heritage Site;
- (c) a site of special scientific interest; or
- (d) a site of archaeological interest.

(4) Development is not permitted by this class if the wind turbine would be within the curtilage of a listed building.

(5) Development is permitted by this class subject to the following conditions–

- (a) the developer must before beginning the development apply to the planning authority for–
 - (i) the approval of the authority in respect of the design and size of the proposed wind turbine; and
 - (ii) a determination as to whether the prior approval of the authority will be required in respect of the siting and external appearance of the proposed wind turbine;
- (b) the application is to be accompanied by–
 - (i) a written description of the proposed development, including details of the design and size of the proposed wind turbine; and
 - (ii) a plan indicating the site;

6. INSTALLING MICROGENERATION EQUIPMENT – FREE-STANDING WIND TURBINES AND AIR SOURCE HEAT PUMPS **LEGISLATION****Class 6G.– (continued)**

- (c) the development is not to be commenced before—
 - (i) the applicant has received written approval from the planning authority in respect of the size and design of the wind turbine; and
 - (ii) the occurrence of one of the following—
 - (aa) the receipt by the applicant from the planning authority of a written notice of their determination that prior approval in respect of the siting and external appearance of the proposed wind turbine is not required;
 - (bb) the expiry of a period of 28 days following the date on which the application was received by the planning authority without the planning authority giving notice of their determination that such approval is required; or
 - (cc) where the planning authority gives the applicant notice within a period of 28 days following the date of receiving the application of their determination that such prior approval is required, the giving of such approval;
 - (d) the development must, except to the extent that the planning authority otherwise agree in writing, be carried out—
 - (i) to the extent to which prior approval is required, in accordance with the details approved;
 - (ii) to the extent to which prior approval is not required, in accordance with the details submitted with the application;
 - (e) the development is to be carried out within a period of three years from the date on which all approvals required in accordance with this paragraph have been given.
- (6) Development is permitted by this class subject to the conditions that a free-standing wind turbine—
- (a) must, so far as reasonably practicable, be sited so as to minimise its effect on the amenity of the area; and
 - (b) is used only for the purposes of domestic microgeneration; and
 - (c) that is no longer needed for or capable of domestic microgeneration must be removed as soon as reasonably practicable.

6. INSTALLING MICROGENERATION EQUIPMENT – FREE-STANDING WIND TURBINES AND AIR SOURCE HEAT PUMPS **LEGISLATION****Class 6H.–****(1) The installation, alteration or replacement of an air source heat pump within the curtilage of a dwelling.**

(2) Development is not permitted by this class if—

- (a) it would result in the presence within the curtilage of a dwelling of more than one air source heat pump; or
- (b) the air source heat pump would be situated less than 100 metres from the curtilage of another dwelling.

(3) Development is not permitted by this class in the case of land within a conservation area if the air source heat pump would be visible from a road.

(4) Development is not permitted by this class if the air source heat pump would be within—

- (a) a World Heritage Site; or
- (b) the curtilage of a listed building.

(5) Development is permitted by this class subject to the following conditions—

- (a) the developer must before beginning the development apply to the planning authority for a determination as to whether the prior approval of the authority will be required to the siting and external appearance of the air source heat pump;
- (b) the application is to be accompanied by a written description of the proposed development and a plan indicating the site;
- (c) the development is not to be commenced before the occurrence of one of the following—
 - (i) the receipt by the applicant from the planning authority of a written notice of their determination that such prior approval is not required;
 - (ii) the expiry of a period of 28 days following the date on which the application was received by the planning authority without the planning authority giving notice of their determination that such approval is required; or
 - (iii) where the planning authority gives the applicant notice within a period of 28 days following the date of receiving the application of their determination that such prior approval is required, the giving of such approval;

6. INSTALLING MICROGENERATION EQUIPMENT – FREE-STANDING WIND TURBINES AND AIR SOURCE HEAT PUMPS**LEGISLATION CONTROLLING****Class 6H.– (continued)**

- (d) the development must, except to the extent that the planning authority otherwise agree in writing, be carried out—
 - where prior approval is required, in accordance with the details approved;
 - where prior approval is not required, in accordance with the details submitted with the application;
- (e) the development is to be carried out—
 - where approval has been given by the planning authority, within a period of three years from the date on which approval was given; or
 - in any other case, within a period of three years from the date on which the application under paragraph (a) above was made.
- (6) Development is permitted by this class subject to the conditions that an air source heat pump—
 - (a) must, so far as reasonably practicable, be sited so as to minimise its effect on the amenity of the area;
 - (b) is used only for the purposes of domestic microgeneration; and
 - (c) that is no longer needed for or capable of domestic microgeneration must be removed as soon as reasonably practicable.

7. INSTALLING CLOSED CIRCUIT TELEVISION CAMERAS

7.1

Class 72 extends permitted development rights to include the installation, alteration or replacement on buildings or other structures (such as walls, fences or poles) of CCTV cameras for security purposes, subject to specified limits on size, numbers and positioning.

7.2

This class does not apply within conservation areas or national scenic areas. Nor does it give permitted development rights to poles or other structures specially constructed to hold cameras; these still require planning consent.

7.3

Where CCTV cameras are being installed on a listed building or scheduled monument, they will continue to be subject to listed building consent and schedule monument consent procedures.

7.4

Up to 4 cameras are permitted on the same side of a building or structure and up to 16 cameras on any one building or structure, provided that they are at least 10 metres apart.

7.5

Each camera must be sited so as to minimise its effect on the external appearance of the building or structure and cameras should also be removed once they are no longer required for security purposes.

7.6

The field of vision of a camera should, so far as practicable, not extend beyond the boundaries of the land where it is sited or any adjoining land to which the public have access. Intrusion and inconvenience to neighbours should be limited so far as is practicable without compromising the camera's effectiveness for security purposes.

7. INSTALLING CLOSED CIRCUIT TELEVISION CAMERAS **LEGISLATION****Class 72.—****(1) The installation, alteration or replacement on any building or other structure of a closed circuit television camera for security purposes.**

(2) Development is not permitted by this class if—

- (a) the development is in a conservation area or a national scenic area;
- (b) the dimensions of the camera including its housing exceed 75 centimetres by 25 centimetres by 25 centimetres;
- (c) any part of the camera would, when installed, altered or replaced, be less than 250 centimetres above ground level;
- (d) any part of the camera would, when installed, altered or replaced, protrude from the surface of the building or structure by more than one metre when measured from the surface of the building or structure;
- (e) any part of the camera would, when installed, altered or replaced, be in contact with the surface of the building or structure at a point which is more than one metre from any other point of contact;
- (f) any part of the camera would be less than 10 metres from any part of another camera installed on a building or structure;
- (g) the development would result in the presence of more than four cameras on the same side of the building or structure; or
- (h) the development would result in the presence of more than 16 cameras on the building or structure.

(3) Development is permitted by this class subject to the following conditions:—

- (a) the camera shall, so far as practicable, be sited so as to minimise its effect on the external appearance of the building or structure on which it is situated;
- (b) the camera shall be removed as soon as reasonably practicable after it is no longer required for security purposes;
- (c) the field of vision of the camera shall, so far as practicable, not extend beyond the boundaries of the land upon which the building or structure is erected or of any area which adjoins that land and to which the public have access.

(4) For the purposes of this class—“camera”, except in paragraph (2)(b), includes its housing, pan and tilt mechanism, infra red illuminator, receiver, mountings and brackets.

8. THINGS TO CONSIDER

Water mains, sewers and ensuring surface water drainage

Householders and developers are encouraged to contact Scottish Water to undertake a property search in order to ascertain whether any proposed extension, or buildings, are constructed over or adjacent to its existing underground pressurized water mains as access is required to allow sewers to be maintained or repaired. Similarly, Scottish Water advice is that the increase in run-off from the additional roof area resulting from extending a property is appropriately dealt with to reduce the risk of localised flooding or indeed flooding downstream. Scottish Water would also expect to see that surface water drainage is dealt with on site and not discharged into the public sewerage system. Contact Scottish Water: www.scottishwater.co.uk

Old mine works

In former coal mining areas prior written permission is required from the Coal Authority for any ground works which would enter or disturb any coal mine entries (current or abandoned) or the coal itself at any depth from the surface downwards. Contact the Coal Authority: <http://coal.decc.gov.uk/>

Protected species

If a dwellinghouse contains a bat roost and a proposed alteration, extension or enlargement would affect it, a licence may be required from Scottish Natural Heritage prior to commencement. Bat roosts, even when not in use, are protected. Proposed works should if possible be designed to avoid impacting on bats or bat roosts. Further information, including on how the presence of a bat roost in a dwellinghouse might be identified, and on how if necessary to apply for a licence, can be found on SNH's website at:

www.snh.gov.uk/about-scotlands-nature/species/mammals/land-mammals/bats/
www.snh.gov.uk/planning-and-development/advice-for-planners-and-developers/protected-animals/
www.snh.gov.uk/protecting-scotlands-nature/protected-species/which-and-how/mammals/bat-protection/

If householders think bats may be present in their property or if they are unsure about the effect of any proposed works on a bat roost, they should contact Scottish Natural Heritage for further advice. Other protected species commonly associated with houses include nesting birds such as the swift, house martin and house sparrow. All wild birds are given some protection under the law, particularly their nests. If a dwellinghouse supports a bird nest which is in use or being built and the proposed works would affect the nest site, the works should be planned to avoid the nesting season. If works are carried out during the season, an offence may be committed. Further information about birds and the law can be found on SNH's website at: www.snh.gov.uk/protecting-scotlands-nature/protected-species/which-and-how/birds/

9. GLOSSARY

the 1992 Order

the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended. The main amendments for the purposes of householder development are:

Town and Country Planning (General Permitted Development) (Domestic Microgeneration) (Scotland) Amendment Order 2009

Town and Country Planning (General Permitted Development) (Domestic Microgeneration) (Scotland) Amendment Order 2010

Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2011

Advertisement

any word, letter, model, sign, placard, board, notice, awning, blind, device or representation, whether illuminated or not, in the nature of, and employed wholly or partly for the purposes of, advertisement, announcement or direction (excluding any such thing employed wholly as a memorial or as a railway signal), and includes any hoarding or similar structure or any balloon used or adapted for

use and anything else used, or designed or adapted principally for use, for the display of advertisements.

Advertisement Consent

a consent granted for the display of an advertisement by either the express consent of the planning authority or Scottish Ministers in accordance with the provisions of The Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 or deemed to be granted in accordance with part IV of the same regulations.

Air Quality Management Area

has the meaning given in section 83(1) of the Environment Act 1995.

Article 4 Direction

a direction, usually made by a planning authority and approved by Scottish Ministers, where in a particular area, particular permitted developments rights are not applicable.

ASHP

air source heat pumps.

Balcony

a platform, enclosed by a wall or balustrade, projecting outward from the external wall of a building, with access from an upper floor window or door.

Conservation Area

an area of special architectural or historic interest [the character or appearance of which it is desirable to preserve or enhance] designated under Section 61 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

Conservation Area Consent

consent granted under the above mention that for demolition of an unlisted building within a conservation area.

Class

a class of development to which permitted development rights apply because planning permission is granted by the 1992 Order.

Curtilage

curtilage is not defined in the 1997 Act or 1992 Order but it is accepted to mean land which is used for the comfortable enjoyment of a building and which serves the purpose of that building in some necessary or reasonably useful way. It need not be marked off or enclosed in any way. Normally the curtilage would relate to the property boundary of the dwellinghouse.

9. GLOSSARY

Domestic microgeneration

means the production of electricity or heat for domestic consumption using microgeneration equipment.

Dwellinghouse

a residential property, not including a building containing one or more flats, or a flat contained within such a building.

Eaves height

the height of the eaves should be measured at the base of the external wall of the extension to the point where the external wall would meet (if projected upwards) the upper surface of the roof slope. Parapet walls and overhanging parts of eaves should not be included in any calculation of eaves height.

Enlargement of dwellinghouses

any development that increases the internal volume of the original dwellinghouse and includes a canopy or roof, with or without walls, which is attached to the dwellinghouse, but does not include a balcony.

Enlargement for flats

means any development that increases the internal volume of the original building, and includes a canopy or roof, with or without walls, which is attached to the building but does not include a balcony.

Free-standing solar

means solar photovoltaics or solar thermal equipment which is not installed on a building.

Free-standing wind turbine

means a wind turbine which is not installed on a building.

Flat

means a separate and self-contained set of premises whether or not on the same floor and forming part of building from some other part of which it is divided horizontally.

Fronts

an elevation which face onto a road.

General Permitted Development Order (GPDO)

a statutory instrument granting permitted development rights.

Listed Building

a building of special architectural or historic interest included in a list compiled or approved by the Scottish Ministers under Section 1 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, any object or structure fixed to the building or which, while not fixed, forms part of the land within its curtilage since before 1 July 1948 and still in that curtilage at the date of listing.

a list of listed building is available from Historic Scotland www.historic-scotland.gov.uk/historicandlistedbuildings.

Listed Building Consent

consent granted under the above mentioned Act for demolition of a listed building, or alteration that would affect its character.

MWT

means micro wind turbines.

Microgeneration

has the meaning given in section 82(6) of the Energy Act 2004 which equipment with an output of up to 50 kilowatts of electricity or 45 kilowatts of thermal (heat) energy.

9. GLOSSARY

Original dwellinghouse

is the dwellinghouse as built or as it was on 1 July 1948 if it was built before then.

Permitted Development (PD)

planning permission granted for certain classes of development by the 1992 Order. Also known as **Permitted Development Rights (PDR)**.

Permitted Development Legislation

permitted development rights are granted by the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended. The 1992 Order grants planning permission for classes of specific types of developments, but most classes are subject to a set of limitations and conditions. The relevant pieces of legislation can be found on www.legislation.gov.uk/ssi/2011/357/contents/made.

Principal elevation

the elevation of the original dwellinghouse which by virtue of its design or setting, or both, is the principal elevation.

Road

as defined by section 151 of the Roads (Scotland) Act 1984. A road is any way over which there is a public right of passage including its verge. A road is therefore not confined to only publicly adopted roads used by motor vehicles.

Road Construction Consent

a permission which must be obtained from the roads authority before constructing a new road or extending an existing road, in accordance with Section 21 of the Roads (Scotland) Act 1984.

Solar PV

solar photovoltaics: which is equipment designed to convert energy from the sun into electricity.

Solar thermal

means equipment designed to heat water using energy from the sun.

Terrace house

means a dwellinghouse situated in a row of three or more buildings used, or designed for use, as single dwellinghouses; and having a mutual wall with, or having a main wall adjoining the main wall of, the dwellinghouse (or building designed for use as a dwellinghouse) on either side of it. It includes the dwellinghouses at each end of such a row of buildings as is referred to.

the 1997 Act

the Town and Country Planning (Scotland) Act 1997 as amended.

the 2006 Act

the Planning etc (Scotland) Act 2006.

World Heritage Site

land appearing on the World Heritage List kept under article 11(2) of the 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage.



© Crown copyright 2012

You may re-use this information (excluding logos and images) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or e-mail: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

ISBN: 978-1-78045-683-6 (web only)

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

Produced for the Scottish Government by APS Group Scotland
DPPAS12651 (02/12)

Published by the Scottish Government, February 2012

WESTMINSTER CITY COUNCIL V GREAT PORTLAND ESTATES PLC: HL 1985

References: [1985] AC 661, [1984] 3 WLR 1035

Coram: Lord Scarman

Ratio The House was asked whether the 1971 Act permitted the relevant authorities, by resort to their development plans, to support the retention of traditional industries or was the ambit of the Act such as to permit only 'land use' aims to be pursued? The court considered also the relevance of personal considerations in planning matters.

Held: Lord Scarman considered what was a material consideration: 'The test, therefore, of what is a material 'consideration' in the preparation of plans or in the control of development (see section 29(1) of the Act of 1971 in respect of planning permission: section 11(9) and Schedule 4 paragraph 11(4)) in respect of local plans) is whether it serves a planning purpose: see *Newbury District Council v Secretary of State for the Environment* [1981] AC 578, 599 per Viscount Dilhorne. And a planning purpose is one which relates to the character of the use of the land.'

Ratio Lord Scarman drew attention to the relevance to planning decisions, on occasion, of personal considerations, saying: 'Personal circumstances of an occupier, personal hardship, the difficulties of businesses which are of value to the character of a community are not to be ignored in the administration of planning control.' and

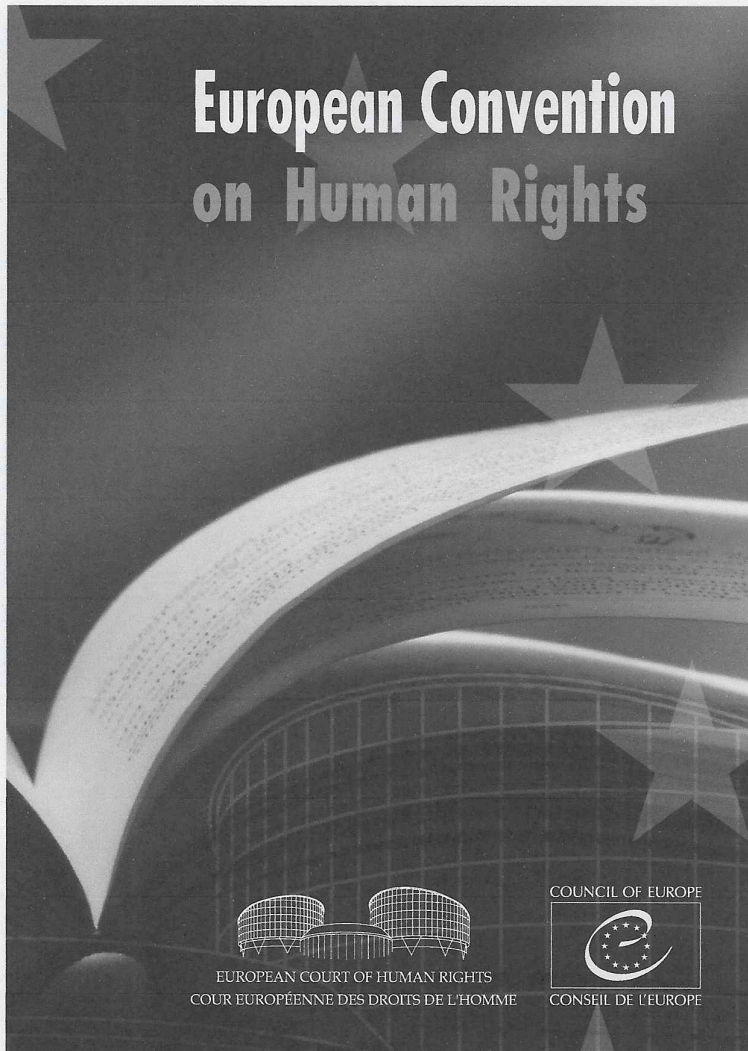
However, like all generalisations Lord Parker's statement has its own limitations. Personal circumstances of an occupier, personal hardship, the difficulties of businesses which are of value to the character of a community are not to be ignored in the administration of planning control. It would be inhuman pedantry to exclude from the control of our environment the human factor. The human factor is always present, of course, indirectly as the background to the consideration of the character of land use. It can, however, and sometimes should, be given direct effect as an exceptional or special circumstance. But such circumstances, when they arise, fall to be considered not as a general rule but as exceptions to a general rule to be met in special cases. If a planning authority is to give effect to them, a specific case has to be made and the planning authority must give reasons for accepting it. It follows that, though the existence of such cases may be mentioned in a plan, this will only be necessary where it is prudent to emphasise that, notwithstanding the general policy, exceptions cannot be wholly excluded from consideration in the administration of planning control.'

On the other hand: 'It is a logical process to extend the ambit of Lord Parker LCJ's statement so that it applies not only to the grant or refusal of planning permission and to the imposition of conditions, but also to the formulation of planning policies and proposals. The test, therefore, of what is a material consideration in the preparation of plans or in the control of development in respect of planning permission and in local plans, is whether it serves a planning purpose, and a planning purpose is one which relates to the character of the use of the land.'

Ratio Lord Scarman discussed the extent of reasons needed to be given, saying that once there is an explicit requirement on a public authority to provide reasons then they must be proper, adequate and intelligible.

If no new point however was raised by the Inspector, the reasons given by the authority may be a simple repetition of those given to the Inspector.

European Convention on Human Rights



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE



as amended by Protocols Nos. 11
and 14

supplemented by Protocols Nos. 1, 4,
6, 7, 12 and 13

The text of the Convention is presented as amended by the provisions of Protocol No. 14 (CETS no. 194) as from its entry into force on 1 June 2010. The text of the Convention had previously been amended according to the provisions of Protocol No. 3 (ETS no. 45), which entered into force on 21 September 1970, of Protocol No. 5 (ETS no. 55), which entered into force on 20 December 1971, and of Protocol No. 8 (ETS no. 118), which entered into force on 1 January 1990, and comprised also the text of Protocol No. 2 (ETS no. 44) which, in accordance with Article 5 § 3 thereof, had been an integral part of the Convention since its entry into force on 21 September 1970. All provisions which had been amended or added by these Protocols were replaced by Protocol No. 11 (ETS no. 155), as from the date of its entry into force on 1 November 1998. As from that date, Protocol No. 9 (ETS no. 140), which entered into force on 1 October 1994, was repealed and Protocol No. 10 (ETS no. 146) lost its purpose.

The current state of signatures and ratifications of the Convention and its Protocols as well as the complete list of declarations and reservations are available at www.conventions.coe.int.

Only the English and French versions of the Convention are authentic.

European Court of Human Rights
Council of Europe
F-67075 Strasbourg cedex
www.echr.coe.int

CONTENTS

Convention for the Protection of Human Rights and Fundamental Freedoms	5
Protocol	31
Protocol No. 4.....	34
Protocol No. 6.....	38
Protocol No. 7.....	42
Protocol No. 12.....	48
Protocol No. 13.....	52



Convention for the Protection of Human Rights and Fundamental Freedoms

Rome, 4.XI.1950

THE GOVERNMENTS SIGNATORY HERETO, being members of the Council of Europe,

Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10th December 1948;

Considering that this Declaration aims at securing the universal and effective recognition and observance of the Rights therein declared;

Considering that the aim of the Council of Europe is the achievement of greater unity between its members and that one of the methods by which that aim is to be pursued is the maintenance and further realisation of Human Rights and Fundamental Freedoms;

Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the Human Rights upon which they depend;

Being resolved, as the governments of European countries which are likeminded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration,

Have agreed as follows:

ARTICLE 1

Obligation to respect Human Rights

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

SECTION I RIGHTS AND FREEDOMS

ARTICLE 2

Right to life

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
 - (a) in defence of any person from unlawful violence;
 - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

ARTICLE 3

Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

ARTICLE 4

Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this Article the term "forced or compulsory labour" shall not include:
 - (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
 - (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
 - (c) any service exacted in case of an emergency or calamity threatening the life or wellbeing of the community;
 - (d) any work or service which forms part of normal civic obligations.

ARTICLE 5

Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
 - (a) the lawful detention of a person after conviction by a competent court;
 - (b) the lawful arrest or detention of a person for noncompliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
 - (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
 - (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
 - (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

ARTICLE 6

Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
 - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
 - (b) to have adequate time and facilities for the preparation of his defence;
 - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
 - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

ARTICLE 7

No punishment without law

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

ARTICLE 8

Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 9

Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and

in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 10

Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

ARTICLE 11

Freedom of assembly and association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

ARTICLE 12

Right to marry

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

ARTICLE 13

Right to an effective remedy

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

ARTICLE 14

Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

ARTICLE 15

Derogation in time of emergency

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

ARTICLE 16

Restrictions on political activity of aliens

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

ARTICLE 17

Prohibition of abuse of rights

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and

Equality Act 2010
CHAPTER 15

- (b) persons who apply for employment, or
 - (c) persons the employer considers for employment.
- (8) “Trade organisation”, “qualifications body” and “relevant qualification” each have the meaning given in Part 5 (work).

PART 11

ADVANCEMENT OF EQUALITY

CHAPTER 1

PUBLIC SECTOR EQUALITY DUTY

149 Public sector equality duty

- (1) A public authority must, in the exercise of its functions, have due regard to the need to—
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- (2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).
- (3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—
 - (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
 - (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
 - (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- (4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons’ disabilities.
- (5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—
 - (a) tackle prejudice, and
 - (b) promote understanding.
- (6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

- (7) The relevant protected characteristics are –
 - age;
 - disability;
 - gender reassignment;
 - pregnancy and maternity;
 - race;
 - religion or belief;
 - sex;
 - sexual orientation.
- (8) A reference to conduct that is prohibited by or under this Act includes a reference to –
 - (a) a breach of an equality clause or rule;
 - (b) a breach of a non-discrimination rule.
- (9) Schedule 18 (exceptions) has effect.

150 Public authorities and public functions

- (1) A public authority is a person who is specified in Schedule 19.
- (2) In that Schedule –
 - Part 1 specifies public authorities generally;
 - Part 2 specifies relevant Welsh authorities;
 - Part 3 specifies relevant Scottish authorities.
- (3) A public authority specified in Schedule 19 is subject to the duty imposed by section 149(1) in relation to the exercise of all of its functions unless subsection (4) applies.
- (4) A public authority specified in that Schedule in respect of certain specified functions is subject to that duty only in respect of the exercise of those functions.
- (5) A public function is a function that is a function of a public nature for the purposes of the Human Rights Act 1998.

151 Power to specify public authorities

- (1) A Minister of the Crown may by order amend Part 1, 2 or 3 of Schedule 19.
- (2) The Welsh Ministers may by order amend Part 2 of Schedule 19.
- (3) The Scottish Ministers may by order amend Part 3 of Schedule 19.
- (4) The power under subsection (1), (2) or (3) may not be exercised so as to –
 - (a) add an entry to Part 1 relating to a relevant Welsh or Scottish authority or a cross-border Welsh or Scottish authority;
 - (b) add an entry to Part 2 relating to a person who is not a relevant Welsh authority;
 - (c) add an entry to Part 3 relating to a person who is not a relevant Scottish authority.
- (5) A Minister of the Crown may by order amend Schedule 19 so as to make provision relating to a cross-border Welsh or Scottish authority.