



THE CITY OF EDINBURGH COUNCIL

Business Centre G.2 Waverley Court 4 East Market Street Edinburgh EH8 8BG Email: planning.support@edinburgh.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 100634485-001

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.

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: Anderson Strathern LLP
Ref. Number: SOU0088.0001/CUD
First Name: * Chris
Last Name: * Devlin
Telephone Number: *
Extension Number:
Mobile Number:
Fax Number:
Building Name:
Building Number: 1
Address 1 (Street): * Rutland Court
Address 2:
Town/City: * Edinburgh
Country: * United Kingdom
Postcode: * EH3 8EY
Email Address: *

Is the applicant an individual or an organisation/corporate entity? *

Individual Organisation/Corporate entity

Applicant Details

Please enter Applicant details

Title:	<input type="text"/>	You must enter a Building Name or Number, or both: *	
Other Title:	<input type="text"/>	Building Name:	<input type="text"/>
First Name: *	<input type="text" value="Michael"/>	Building Number:	<input type="text" value="61"/>
Last Name: *	<input type="text" value="Baynham"/>	Address 1 (Street): *	<input type="text" value="North Castle Street"/>
Company/Organisation	<input type="text" value="Caledonian Trust PLC"/>	Address 2:	<input type="text"/>
Telephone Number: *	<input type="text"/>	Town/City: *	<input type="text" value="Edinburgh"/>
Extension Number:	<input type="text"/>	Country: *	<input type="text" value="Scotland"/>
Mobile Number:	<input type="text"/>	Postcode: *	<input type="text" value="EH3 2LJ"/>
Fax Number:	<input type="text"/>		
Email Address: *	<input type="text"/>		

Site Address Details

Planning Authority:	<input type="text" value="City of Edinburgh Council"/>
Full postal address of the site (including postcode where available):	
Address 1:	<input type="text"/>
Address 2:	<input type="text"/>
Address 3:	<input type="text"/>
Address 4:	<input type="text"/>
Address 5:	<input type="text"/>
Town/City/Settlement:	<input type="text"/>
Post Code:	<input type="text"/>

Please identify/describe the location of the site or sites

<input type="text" value="Land 29 Metres East of 63 Brunstane Road South, Edinburgh"/>
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Northing	<input type="text" value="672338"/>	Easting	<input type="text" value="331790"/>
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Description of Proposal

Please provide a description of your proposal to which your review relates. The description should be the same as given in the application form, or as amended with the agreement of the planning authority: *
(Max 500 characters)

Demolition of existing dilapidated buildings and erection of two houses with associated garages

Type of Application

What type of application did you submit to the planning authority? *

- Application for planning permission (including householder application but excluding application to work minerals).
- Application for planning permission in principle.
- Further application.
- Application for approval of matters specified in conditions.

What does your review relate to? *

- Refusal Notice.
- Grant of permission with Conditions imposed.
- No decision reached within the prescribed period (two months after validation date or any agreed extension) – deemed refusal.

Statement of reasons for seeking review

You must state in full, why you are seeking a review of the planning authority's decision (or failure to make a decision). Your statement must set out all matters you consider require to be taken into account in determining your review. If necessary this can be provided as a separate document in the 'Supporting Documents' section: * (Max 500 characters)

Note: you are unlikely to have a further opportunity to add to your statement of appeal at a later date, so it is essential that you produce all of the information you want the decision-maker to take into account.

You should not however raise any new matter which was not before the planning authority at the time it decided your application (or at the time expiry of the period of determination), unless you can demonstrate that the new matter could not have been raised before that time or that it not being raised before that time is a consequence of exceptional circumstances.

See paper apart

Have you raised any matters which were not before the appointed officer at the time the Determination on your application was made? *

Yes No

If yes, you should explain in the box below, why you are raising the new matter, why it was not raised with the appointed officer before your application was determined and why you consider it should be considered in your review: * (Max 500 characters)

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review. You can attach these documents electronically later in the process: * (Max 500 characters)

1. Decision Notice; 2. Report of Handling; 3. Planning application form; 4. Planning statement (in two parts); 5. Neighbour notification; 6. Location plan; 7. Site layout with adjacent developments; 8. Site layout and floor plans; 9. House elevations; 10. Plans and elevations of garages; 11. Affordable Housing Policy (Updated May 2021); 12. NPF4; 13. Local Development Plan; 14. Consultation response; 15. Report of Handling 19/01796/FUL; 16. Plan showing application boundaries

Application Details

Please provide the application reference no. given to you by your planning authority for your previous application.

22/03084/FUL

What date was the application submitted to the planning authority? *

14/06/2022

What date was the decision issued by the planning authority? *

20/04/2023

Review Procedure

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

Can this review continue to a conclusion, in your opinion, based on a review of the relevant information provided by yourself and other parties only, without any further procedures? For example, written submission, hearing session, site inspection. *

Yes No

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

Can the site be clearly seen from a road or public land? *

Yes No

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

Yes No

Checklist – Application for Notice of Review

Please complete the following checklist to make sure you have provided all the necessary information in support of your appeal. Failure to submit all this information may result in your appeal being deemed invalid.

Have you provided the name and address of the applicant? *

Yes No

Have you provided the date and reference number of the application which is the subject of this review? *

Yes No

If you are the agent, acting on behalf of the applicant, have you provided details of your name and address and indicated whether any notice or correspondence required in connection with the review should be sent to you or the applicant? *

Yes No N/A

Have you provided a statement setting out your reasons for requiring a review and by what procedure (or combination of procedures) you wish the review to be conducted? *

Yes No

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

Please attach a copy of all documents, material and evidence which you intend to rely on (e.g. plans and Drawings) which are now the subject of this review *

Yes No

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

Declare – Notice of Review

I/We the applicant/agent certify that this is an application for review on the grounds stated.

Declaration Name: Mr Chris Devlin

Declaration Date: 18/07/2023



Caledonian Trust PLC

**Paper Apart in respect of Appeal to City of
Edinburgh Council Local Review Body**

**22/03084/FUL | Demolition of existing
dilapidated buildings and erection of two
houses with associated garages. | Land 29
Metres East Of 63 Brunstane Road South
Edinburgh**

Anderson Strathern LLP

18 July 2023

Anderson Strathern LLP
1 Rutland Court
Edinburgh
EH3 8EY
Ref: SOU0088.0001/CUD

Contents

1. Introduction	3
2. History of the Site.....	3
3. General Compliance with Development Plan	4
4. Affordable Housing Contribution	4
5. Conclusions	8
Appendix of Documents	9

1. Introduction

- 1.1. On 14 June 2022, Caledonian Trust PLC (the “Applicant”) made a planning application for:
- Demolition of existing dilapidated buildings and erection of two houses with associated garages at Land 29 Metres East Of 63 Brunstane Road South Edinburgh
- (the “Proposed Development”)
- 1.2. City of Edinburgh Council (the “Council”) duly validated the planning application and allocated reference number 22/03084/FUL to it.
- 1.3. On 20 April 2023, the Council refused the planning application under delegated powers. The Council considered that the Proposed Development was consistent with the Development Plan except for its policy regarding affordable housing. The Council’s two reasons for refusal, and its only reasons for refusal, relate exclusively to affordable housing provision and are as follows:
1. The proposal is contrary to LDP policy Hou 6 (Affordable Housing) as the application site forms part of a phased residential development of 12 units in total and no provision for affordable housing amounting to 25 % of these units has been made.
 2. The proposal is contrary to NPF 4 policy 16 e) (Quality Homes) as no contribution to the provision of affordable homes on the site for 25% of the total number of homes has been made.
- 1.4. This appeal to the Local Review Body relates to the above refusal. The Applicant does not consider that the Proposed Development forms part of a phased residential development of 12 units, in which case the affordable housing policy requiring a contribution is not engaged and no affordable housing contribution is due.

2. History of the Site

- 2.1. At this juncture it is considered helpful to set out the planning history of the Site leading to the planning application for the Proposed Development. Only the material planning permissions are noted below.

Granted	Reference	Description
16 November 2022	19/01796/FUL	Planning permission granted for ten houses with associated roads, garages and parking (as amended from 19 houses)
7 May 2014	14/01049/FUL	Planning permission granted to vary the existing consent to provide two additional residential units, increasing the number of newly formed units from 10 to 12 (as amended)

Granted	Reference	Description
29 April 2009	08/02704/FUL	Planning permission granted for revision to previous application (ref 06/02742/FUL), additional unit added by conversion of outlying building (as amended)
14 December 2006	06/02742/FUL	Planning permission granted to convert steading and outbuildings to form 9 dwelling houses (as amended)

2.2. For context, a plan that shows all of the various planning boundaries of the above is included with this submission as Document 16.

3. General Compliance with Development Plan

3.1. As at 20 April 2023, the date of the Council's decision notice in this matter, the Development Plan consisted of: (i) Edinburgh Local Development Plan (adopted November 2016), and (2) Fourth National Planning Framework (adopted February 2023) ("NPF4"). In its assessment of the Development Plan, the appointed officer concludes:

The proposal supports principles of sustainable development and protects historic assets. It achieves an appropriate design, achieves an appropriate living environment and has no adverse impact on neighbours' amenity. It raises no specific transport issues.

3.2. In short, the appointed officer concludes that the Proposed Development is entirely consistent with the Development Plan but for an affordable housing contribution. Excepting the Council's conclusions as to an affordable housing contribution, which the Applicant disputes in this Review, the Applicant agrees that the Proposed Development is supported by the Development Plan, including the relevant policies contained in the NPF4.

3.3. Notwithstanding that NPF4 was adopted post-validation of the planning application for the Proposed Development but prior to final determination by the appointed officer, the Applicant was not asked for further submissions in respect of NPF4. On this basis, and the basis that the appointed officer was satisfied as to compliance with NPF4 (except for affordable housing), the Applicant has not provided additional submissions on NPF4 as part of this Review. Should the Members of the Local Review Body consider that further submissions are necessary to address any aspect of compliance with the Development Plan, however, then the Applicant respectfully expects to be afforded the opportunity to make those further submissions.

4. Affordable Housing Contribution

4.1. As noted above, the Council's grounds of refusal are related exclusively to compliance with the Council's affordable housing policy. We have had sight of the Council's Housing Management and Development service consultation response to the planning application, dated 13 January 2023 (Document 14). This concludes:

This application is for a development consisting of up to two homes. However, as the site is phased development expanding on the adjacent development of ten homes (19/01796/FUL), the total number of residential units now meets the policy threshold of 12

homes, and therefore the affordable housing policy will apply. There will be an AHP requirement for a contribution equivalent to a minimum of three affordable homes, which is 25% of residential units.

- 4.2. We dispute that the planning application falls within the ambit of the affordable housing policy of the Council requiring a contribution to be made.

The Development Plan – Affordable Housing Policy

- 4.3. Turning first to policy matters, by its second reason for refusal the Council has misinterpreted Policy 16(e) of the fourth National Planning Framework and how this policy should interact with Policy HOU 6 of the Council's Local Development Plan in the circumstances of the Proposed Development. Policy 16(e) in its entirety states:

e) Development proposals for new homes will be supported where they make provision for affordable homes to meet an identified need. Proposals for market homes will only be supported where the contribution to the provision of affordable homes on a site will be at least 25% of the total number of homes, unless the LDP sets out locations or circumstances where:

(i) a higher contribution is justified by evidence of need, or

(ii) a lower contribution is justified, for example, by evidence of impact on viability, where proposals are small in scale, or to incentivise particular types of homes that are needed to diversify the supply, such as self-build or wheelchair accessible homes.

The contribution is to be provided in accordance with local policy or guidance.

- 4.4. Step by step, in the first instance policy 16(e) requires a 25% contribution for affordable where the proposals are for market homes (as is the case in this Review). But a contribution of 25% is demonstrably impossible where the total number of units is two – one half of one unit cannot be affordable housing (on which see below regarding small-scale development).
- 4.5. Policy 16(e) then continues that the above requirement can **only** be departed from where the Local Development Plan sets out locations or circumstances as described in the two limbs that are noted at (i) and (ii) in the policy.
- 4.6. In respect of limb (i), the Council's Local Development Plan does not provide any circumstance connected with this example where a requirement higher than 25% can be justified by evidence of need.
- 4.7. In respect of limb (ii), one can refer to Policy HOU 6 in the Local Development Plan which states that a requirement for 25% affordable housing shall apply only in respect of sites of 12 or more units, thereby providing a circumstance where no affordable contribution shall be due for small-scale development (consistent with, and as envisaged by, limb (ii) of Policy 16(e) of NPF4). Policy HOU 6 itself is silent on phased development, as is Policy 16(e). Since the Council's Affordable Housing policy document (Document 11) does not form part of the Local Development Plan, it cannot be referred to under limb (ii) because Policy 16(e) is clear that only the Local Development Plan can outline circumstances where, as in this example, small-scale development is exempt from an affordable housing requirement. Members will be aware that NPF4 and the Local Development Plan are supposed to be read together insofar as practicably possible but in the case of an incompatibility between two it is the later

document that prevails (section 24(3) of the Town and Country Planning (Scotland) Act 1997). It should be noted that NPF4 post-dates both the Local Development Plan and the Affordable Housing policy document.

- 4.8. Policy 16(e) then finishes by noting that the “contribution is to be provided in accordance with local policy or guidance”. This must necessarily only be engaged, however, where it has been established using exclusively the terms of Policy 16(e) and Policy HOU 6 that a contribution is due, neither of which refer to phased development. If no contribution is due, as has been established for the Proposed Development in accordance with Policy 16(e) and Policy HOU 6, then this element of Policy 16(e) is not relevant and therefore the terms of the Council’s Affordable Housing policy document should be disregarded.
- 4.9. Consequently, the reasonable interpretation of Policy 16(e) and its interaction with Policy HOU 6 is that the Proposed Development is a small-scale development exempt from an affordable housing contribution. Both of the Council’s reasons for refusal are therefore not valid.
- 4.10. In any event, we note that the relevant provision of the affordable housing policy relied upon states:

Where a proposal is fewer than 12 units but is *clearly* part of a phased development of a larger site which would be subject to an affordable housing requirement, an affordable element will be required at an appropriate stage in the development of the site as a whole. (our emphasis)

- 4.11. In order for the affordable housing policy to apply, we consider that it is incumbent on the Council to demonstrate that the proposal is *clearly* part of a phased development. By its consultation response the Council has not done so. No evidence or reasoning is presented in the consultation response to demonstrate that the Proposed Development is part of a wider phased development. Put simply, an (incorrect) assumption was made.
- 4.12. In this example, the description contained in the Planning Application is “Demolition of existing dilapidated buildings and erection of two houses with associated garages.” This is therefore demonstrably a discrete planning application for two homes that necessitates demolition of an existing dilapidated building (rather than conversion or restoration of the building, for example). The Planning Application does not make any reference to an existing planning permission or to existing development. No reference in the planning application is made to phasing. The Proposed Development should not be treated as an extension to the existing 10-unit site (ref. 19/01796/FUL).

Planning History of the Review Site

- 4.13. Second, the planning history of the site demonstrates that the housing at this location has been applied for and built out over a 17-year period not because of deliberate and designed phasing but rather responding to changes in Development Plan policy in respect of the green belt. For example, the Council’s report of handling in respect of permission ref. 14/01049/FUL states:

a) The site lies within a wider site already conceded for residential use within the Green Belt within earlier consents... It is acknowledged as a housing site within the previous site boundary and serves no Green Belt function. It is noted that the area is recommended to be removed from the Green Belt in a report due to be presented to Committee on May 15 [2014].

- 4.14. The significance of this relates to existing planning permissions attaching to the Review Site and the surrounding area (please see Doc 16). Permissions 06/02742/FUL and 08/02704/FUL were granted when the wider area at this location formed part of the green belt. At that time only certain development in certain very limited circumstances would be permitted.
- 4.15. In July 2008, as part of the Council's statutory processes to produce a new local development plan, submissions were made on behalf of the Applicant to have the Review Site (and other adjacent land) removed from the green belt. These submissions were rejected in July 2009.
- 4.16. Submissions were then made in respect of changes in the green belt boundary for the current Local Development Plan (2016). Under this Local Development Plan, the green belt boundary was finally amended.
- 4.17. Further housing would likely not have been possible without this change in the Council's green belt boundary. Development has come forward on an ad hoc basis as and when made possible by changes in Council planning policy over three separate local plan and local development plan cycles. Therefore, no deliberate or designed phasing of the wider area could have been planned or proposed because of the strength of the presumption against development in the green belt. The development of housing at this location has not been phased given the constraints of the local plan and local development plan policy towards the green belt historically.

Calculation of Number of Units

- 4.18. Third, as alluded to above, the Council's affordable housing officer, Alex Blyth, has considered the Planning Application to be an extension of the 10 housing units developed under planning permission 19/01796/FUL. Even if the Council's Affordable Housing policy document can be said to apply, and this can be considered phased development, which the Applicant disputes, the effective total number of units is under the 12 units threshold prescribed in the policy. Planning permission 14/01049/FUL is an existing planning permission over the Planning Application site and granted prior to the change in the Council's green belt boundary. It may be that Mr Blyth was not aware of this permission when giving his consultation response. This planning permission has not been fully built out. A single housing unit (Plot 10 in that permission) has not been constructed. The footprint of the single house referred to is broadly consistent with that of the dilapidated building to be demolished should the Review be granted.
- 4.19. Given the above, the Review Site already has the benefit of planning permission for a single unit under the extant planning permission 14/01049/FUL. Consequently, only one of the two proposed units in the Proposed Development should be taken into consideration for the purposes of the affordable housing policy, taking the total number to 11 units. This is under the 12 units threshold at which the affordable housing policy is engaged.

Consistency of Approach

- 4.20. Fourth, it is inconsistent for the Council to ask for an affordable housing contribution at this stage when no such contribution has been asked for previously as the wider area has been developed. The Council's affordable housing policy was adopted in October 2017. We understand that the affordable housing policy contained the wording around phased development at that time. The Applicant made planning application reference 19/01796/FUL in 2019, post-adoption of the affordable housing policy. The Council did not consider this proposal to be part of any phased development of the wider area, notwithstanding the

planning history stated above. The report of handling in that planning application (Document 15) does not require any affordable housing contribution to be made. That application was treated as a standalone development, as we submit this application should be treated. The criteria by which the Council judges a site to be part of a phased development is not clearly stated, which is prejudicial to all applicants. The Council has not adopted a consistent approach to the application of its own policy.

Viability

- 4.21. Finally, where the Council seeks an affordable housing contribution in this case, based on twelve units, such a contribution is neither physically nor financially viable. A physical, on-site contribution is impossible due to the land only being capable of accommodating two units. In the alternative event of a commuted sum being asked for, such sum is likely to exceed the development value of the site.

5. Conclusions

- 5.1. The Council concludes that the Proposed Development is consistent with the Council's Development Plan (as at 20 April 2023) except for the Council's affordable housing policies. The Applicant agrees with the Council's position but has shown above that the Council's affordable housing policies are not engaged such that an affordable housing requirement is due. The Proposed Development is demonstrably a small-scale development and should not bear any affordable housing contribution. Planning permission should therefore be granted without any affordable housing requirement.

Anderson Strathern LLP
18 July 2023

Appendix of Documents

Number	Description of Document
Doc 1.	Decision Notice (ref. 22/03084/FUL) dated 20 April 2023
Doc 2.	Report of Handling (ref. 22/03084/FUL)
Doc 3.	Planning application form
Doc 4.	Planning statement (in two parts)
Doc 5.	Neighbour notification
Doc 6.	Location plan
Doc 7.	Site layout with adjacent developments
Doc 8.	Site layout and floor plans
Doc 9.	House elevations
Doc 10.	Plans and elevations of garages
Doc 11.	City of Edinburgh Council Affordable Housing Policy (Updated May 2021)
Doc 12.	Fourth National Planning Framework
Doc 13.	Edinburgh Local Plan (2016)
Doc 14.	Consultation response: Affordable Housing dated 13 January 2023
Doc 15.	Report of Handling re. planning application ref. 19/01796/FUL
Doc 16.	Plan showing planning application boundaries over wider area at site location