

# Development Management Sub Committee

Wednesday 4 December 2019

**Application for Planning Permission 19/04238/FUL.  
at Kirkgate Church, 1 Kirkgate, Edinburgh.**

**The proposed works is to stabilize the ground within the church yard by taking down and rebuilding the existing structurally unsound boundary retaining wall with new engineered foundations and reinforced concrete wall.**

**Item number**

**Report number**

**Wards**

B13 - Leith

## Summary

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The proposal complies with the Planning (Listed Building and Conservation Areas) Scotland Act 1997 as it preserves the setting and integrity of the listed building, as well as the character and appearance of the conservation area.

The dismantling and rebuilding of the wall will have no adverse impacts on the long term integrity of the listed building or its setting. It will be restored and rebuilt on robust foundations, ensuring preservation.

The proposal is therefore acceptable and complies with the relevant policies of Historic Environment Policy for Scotland, Local Development Plan and non-statutory guidance. There are no material considerations that outweigh this conclusion.

## Links

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**Policies and guidance for this application**

HEPS, LDPP, LEN02, LEN03, LEN04, LEN06, NSG, NSLBCA, CRPLEI, TDM, HESCON, HESDEM, HESSET,

# Report

## **Application for Planning Permission 19/04238/FUL at Kirkgate Church, 1 Kirkgate, Edinburgh.**

**The proposed works is to stabilize the ground within the church yard by taking down and rebuilding the existing structurally unsound boundary retaining wall with new engineered foundations and reinforced concrete wall.**

### **Recommendations**

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1.1 It is recommended that this application be Granted subject to the details below.

### **Background**

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#### **2.1 Site description**

The application relates to the eastern boundary wall of South Leith Churchyard which faces onto Constitution Street. The full length of the wall is approximately 110 metres. The Church, graveyard, walls, gates and railings are category A listed (Ref: LB27466, 14/12/1970). The grounds within the churchyard are designated open space.

The original wall dates c.1790 and was built in random rubble and appears to have been later raised. A modern cement render was applied during the mid - late 20th Century and architectural embellishments to the street elevation. Gravestones are built into its internal façade. The wall contains two railed openings allowing views into the churchyard. There are also four mural plaques located on the eastern side of the wall at regular intervals.

The Church and wall are identified as a Schedule 10 building under the Edinburgh Tram (Line One) Act 2006 which states that no tram equipment shall be attached to the structure without listed building consent being obtained.

This application site is located within the Leith Conservation Area.

#### **2.2 Site History**

02 February 2012 - Application granted for stabilization of ground in churchyard by taking down and rebuilding existing structurally unsound boundary retaining wall. Provision of new engineered foundations along whole 100m length (application reference: 11/03479/FUL).

15 March 2012 - Application granted for stabilization of ground in churchyard by taking down and rebuilding existing structurally unsound boundary retaining wall. Provision of new engineered foundations along whole 100m length (application reference: 11/03479/LBC).

## Main report

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### 3.1 Description of the Proposal

To enable the York Place to Newhaven tram extension project, the wall within the grounds of St Mary's Church (South Leith Parish) requires to be dismantled and rebuilt to ensure the wall becomes structurally sound. In its current condition, the tram works and associated archaeological investigation are likely to undermine the wall to the point of collapse.

The application therefore proposes complete dismantling of the wall down to foundation level, the creation of a new concrete foundation and rebuilding of the wall in replica of the existing, with the addition of two new railed openings.

Two new railed openings are proposed along the length of the wall which will emulate the existing two openings, with cast iron railings.

The proposal will also see the careful taking down of various memorial stones affixed to the internal face of the graveyard wall. These will be returned to their original position following the works.

Overhead Line Equipment (OLE) is required as part of the tram line, with a total of six new OLE columns included within this application - four of which are mounted on top of the church wall.

The existing rubblestone will be reclaimed and reinstated to the graveyard elevation and attached to the new reinforced concrete wall. The street elevation will be finished in lime washed render with the stone coping, string and corning replaced as existing.

The proposed demolition works may result in minor encroachment in to the extents of the graveyard and associated lairs, although the Method Statement seeks to minimise this and the process will be monitored by the Archaeological Team appointed by the applicant.

#### Supporting Information

The following documents have been submitted in support of the application:

- Conservation Report;
- Method Statement for the deconstruction of the retaining wall;
- Method Statement for the construction of the new reinforced concrete wall;
- Method Statement for the reinstallation of the murals on the inner of the graveyard; and
- Risk Assessment.

These documents can be viewed on the Planning and Building Standards Online Service.

### 3.2 Determining Issues

Section 25 of the Town and Country Planning (Scotland) Act 1997 states - Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise.

Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states that in considering whether to grant planning permission for development which affects a listed building or its setting, a planning authority shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states - special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.

Do the proposals comply with the development plan?

If the proposals do comply with the development plan, are there any compelling reasons for not approving them?

If the proposals do not comply with the development plan, are there any compelling reasons for approving them?

### 3.3 Assessment

To address these determining issues, the Committee needs to consider whether:

- a) The impact on the special architectural character or historic interest of the listed building including its setting is acceptable;
- b) The proposal will preserve the character and appearance of Leith Conservation Area;
- c) Public comments have been addressed and
- d) Impacts on equalities and human rights are acceptable.

#### a) Listed Building

Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states:

*'In considering whether to grant listed building consent for any works, the planning authority or the Secretary of State, as the case may be, shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses'.*

Paragraph 6 of Historic Environment Scotland Policy Statement 2019 (HEPS) identifies:

*HESPS should be taken into account whenever a decision will affect the historic environment. It is also a material consideration for planning proposals that might affect the historic environment, and in relation to listed building consent.*

The assessment on the character and setting of the listed building and character and appearance of the conservation area have been informed by the various Method Statements submitted in support of the application.

Historic Environment Scotland's document 'Managing change in the Historic Environment - Setting' states;

*'Setting' is the way the surroundings of a historic asset or place contribute to how it is understood, appreciated and experienced.*

*The document states that where development is proposed it is important to:*

- Identify the historic assets that might be affected;*
- Define the setting of each historic asset and*
- Assess the impact of any new development on this.*

HESPS ensures the historic environment is protected and enhanced. Policy HEP4 within the document ensures that any changes to specific assets protects the historic environment and should be enhanced where possible. It has been considered that the proposed works to the wall will not have a detrimental impact on the wider historic environment and will enhance the overall setting of the listed building.

LDP Policy Env 2 only permits listed buildings to be demolished in exceptional circumstances. This proposal requires the demolition of a listed building (the churchyard wall), however the wall will be fully rebuilt in the same location using the original materials wherever possible. The reuse of historic fabric will eliminate any significant impact. The works are necessary to strengthen the wall and create robust foundations whilst allowing for the construction of the tram extension.

LDP Policy Env 3 protects the setting of any listed building and ensures that development does not detrimentally impact the architectural character, appearance or historic interest of the building. The integrity of the church and the wall will be fully preserved and upon completion of the works, the appearance will be enhanced through the use of high quality materials and finishings.

LDP Policy Env 4 ensures that any alterations to a listed building are justified, with no unnecessary damage to the structure or diminution of its interest. The works proposed are fully justified and required to enable the completion of the York Place to Newhaven tram line and to ensure conservation of the wall. The approved Method Statements provide detail on the dismantling and reconstruction of the wall.

The proposal includes the addition of four OLE poles on the wall itself (at approximately 25m intervals apart) and a further two on the ground at each end of the wall. The addition of these provide a more integral design solution and does not significantly impact on the setting of the listed building.

The two new cast iron railed openings are created in locations where no monuments exist on the inner facade of the wall. The opening to the southern end of the wall provides a softer end to the wall, providing a more permeable corner feature enhancing views into the churchyard. The second new opening assists to break up the solid mass of the wall, further enhancing views from Constitution Street and enhancing the setting of the wider listed building.

The Council's Archaeologist and Historic Environment Scotland (HES) have been consulted and are satisfied that measures are in place to ensure that the wall and associated elements are carefully dismantled, securely stored and reconstructed. Updated drawings providing more detail were submitted in response to the HES consultation response which have been approved.

The Tram Design Manual sets out the criteria for assessing tram proposals and seeks to ensure a high quality tram system for Edinburgh that embraces the best practice demonstrated in other European Cities and is of a standard appropriate to the city's world renowned status. The manual ensures that particular consideration is given to the impacts associated with listed structures in conservation areas and that the design contributes to a comprehensive approach to the public realm.

There will be no diminution of the listed buildings historical interest through the proposed works.

#### **b) Conservation Area**

Section 64(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states:

*In exercise, with respect to any buildings or other land in a conservation area, of any powers under any of the provisions in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.*

Leith Conservation Area was designated in 1998. Leith Conservation Area Character Appraisal states that South Leith Parish Church is the earliest building in the area, the Gothic revival style of which forms an interesting contrast to its opposite neighbour, the classically proportioned Trinity house. The church is identified within the Old Leith and The Shore sub area within the conservation area.

LDP Policy Env 6 only permits development within conservation areas which preserves or enhances the special character or appearance of the area, whilst ensuring consistency with the conservation area character appraisal. The wall is to be re-erected in situ as part of the tram construction works and the proposed works will have no detrimental impact on the character or appearance of the conservation area. The rebuild will ensure the wall is made more robust with sound foundations to ensure longevity and integration into the wider public realm.

The proposal complies with the Planning (Listed Building and Conservation Areas) Scotland Act 1997 and LDP Policy Env 6 as it preserves the character and appearance of the conservation area.

### **c) Public comments**

One representation was received. This was objecting to the quality of the finishings for proposed wall. However, revised drawings have since been received which addresses this.

### **d) Equalities and human rights**

The proposal has been assessed and has no impact in terms of equalities or human rights.

### **Conclusion**

In conclusion, the proposal complies with HESPS, the LDP and non-statutory guidance. There are no adverse effects on the historic interest of the listed building, or on the character and appearance of Leith Conservation Area.

The proposed scheme is necessary and the impact can be offset by the undertaking of appropriate archaeological and conservation mitigation and by the design of the new wall reflecting closely that of the original.

It is recommended that this application be Granted subject to the details below.

### **3.4 Conditions/reasons/informatives**

#### **Conditions:-**

1. A detailed specification, including trade names where appropriate, of all the proposed external materials shall be submitted to and approved in writing by the Planning Authority before work is commenced on site; Note: samples of the materials may be required.
2. Prior to the commencement of works on site, sample panels, to be no less than 1.5m x 1.5m, shall be produced, demonstrating each proposed external material and accurately indicating the quality and consistency of future workmanship, and submitted for written approval by the Council as planning authority.
3. No development shall take place until the applicant has secured the implementation of a programme of archaeological work (excavation, historic building recording, conservation, reporting and analysis, publication, public engagement and interpretation), in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Planning Authority, having first been agreed by the City Archaeologist.

#### **Reasons:-**

1. In order to enable the planning authority to consider this/these matter/s in detail.
2. In order to enable the planning authority to consider this/these matter/s in detail.
3. In order to safeguard the character of the statutorily listed building.

## **Informatives**

It should be noted that:

1. The works hereby permitted shall be commenced no later than the expiration of three years from the date of this consent.
2. Through section 7 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (as amended) the applicant is required to allow Historic Environment Scotland the opportunity to carry out recording of the building. Applicants should complete and return the Consent Application Referral Form at <https://www.historicenvironment.scot/about-us/what-we-do/survey-and-recording/threatened-buildings-survey-programme>

## **Financial impact**

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### **4.1 The financial impact has been assessed as follows:**

There are no financial implications to the Council.

## **Risk, Policy, compliance and governance impact**

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5.1 Provided planning applications are determined in accordance with statutory legislation, the level of risk is low.

## **Equalities impact**

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### **6.1 The equalities impact has been assessed as follows:**

The application has been assessed and has no impact in terms of equalities or human rights.

## **Sustainability impact**

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### **7.1 The sustainability impact has been assessed as follows:**

This application is not subject to the sustainability requirements of the Edinburgh Design Guidance.

## **Consultation and engagement**

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### **8.1 Pre-Application Process**

Due to the historic sensitivity of the site, there have been extensive discussions with the Tram Extension Project Team to ensure that appropriate mitigation strategies and designs are produced that would minimise the archaeological and heritage impacts on the listed building. These discussions have included the following:

- The full excavation of the underlying archaeological remains;
- The forensic archaeological excavation of the underlying burials dating between c.1300-1650;

- The detailed archaeological recording of the historic wall and memorials;
- The construction methodology designed to avoid disturbance to the post-1790 burials located within the current graveyard;
- Ensuring that the design of the rebuilt graveyard wall reflects closely that of the current historic wall and in particular ensuring the reuse of historic fabric along the inner (graveyard) elevation;
- Ensuring the conservation of the wall's important historic memorials is undertaken during development;
- Minimising downs-takings and thereby minimising impacts on the historic wall and underlying burials; and
- Ensuring that the final design reflects the important heritage of the site.

## **8.2 Publicity summary of representations and Community Council comments**

One representation was received.

### **Background reading/external references**

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- To view details of the application go to
- [Planning and Building Standards online services](#)
- [Planning guidelines](#)
- [Conservation Area Character Appraisals](#)
- [Edinburgh Local Development Plan](#)
- [Scottish Planning Policy](#)

<b>Statutory Development Plan Provision</b>	Edinburgh Local Development Plan.
<b>Date registered</b>	14 October 2019
<b>Drawing numbers/Scheme</b>	01B, 2-6,  Scheme 1

**David R. Leslie**  
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## **Links - Policies**

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### **Relevant Policies:**

The Historic Environment Policy for Scotland 2019 outlines Government policy on how we should care for the historic environment when taking planning decisions.

### **Relevant policies of the Local Development Plan.**

LDP Policy Env 2 (Listed Buildings - Demolition) identifies the circumstances in which the demolition of listed buildings will be permitted.

LDP Policy Env 3 (Listed Buildings - Setting) identifies the circumstances in which development within the curtilage or affecting the setting of a listed building will be permitted.

LDP Policy Env 4 (Listed Buildings - Alterations and Extensions) identifies the circumstances in which alterations and extensions to listed buildings will be permitted.

LDP Policy Env 6 (Conservation Areas - Development) sets out criteria for assessing development in a conservation area.

### **Relevant Non-Statutory Guidelines**

**Non-statutory guidelines 'LISTED BUILDINGS AND CONSERVATION AREAS'** provides guidance on repairing, altering or extending listed buildings and unlisted buildings in conservation areas.

**The Leith Conservation Area Character Appraisal** emphasises the areas unique and complex architectural character, the concentration of buildings of significant historic and architectural quality, the unifying effect of traditional materials, the multiplicity of land use activities, and the importance of the Water of Leith and Leith Links for their natural heritage, open space and recreational value

The Tram Design Manual sets out the criteria for assessing tram proposals it seeks to ensure a high quality tram system for Edinburgh that embraces the best practice demonstrated in other European cities, and is of a standard appropriate to the city's world-renowned status.

Planning Advice Note 71 on Conservation Area Management recognises conservation areas need to adapt and develop in response to the modern-day needs and aspirations of living and working communities.

Managing Change in the Historic Environment: Demolition sets out Government guidance on the principles that apply to the demolition of listed buildings.

Managing Change in the Historic Environment: Setting sets out Government guidance on the principles that apply to developments affecting the setting of historic assets or places.

# Appendix 1

## **Application for Planning Permission 19/04238/FUL. at Kirkgate Church, 1 Kirkgate, Edinburgh**

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### **Consultations**

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#### **Archaeology comment**

*Further to your consultation request I would like to make the following comments and recommendations concerning these linked LBC & FUL applications to stabilize the ground within the church yard by taking down and rebuilding existing structurally unsound boundary retaining wall with new engineered foundations and R.C. wall.*

*The proposals seek to take down and rebuild the eastern boundary wall for South Leith Parish Church on Constitution Street. This A- listed wall was constructed c.1790 when Constitution Street was inserted along and through the eastern side of the church's graveyard. The results of the 2008 excavations carried out along Constitution Street by Headland Archaeology for CEC/TIE have just been published by CEC Museums in 2019 (Past Lives of Leith, Franklin et al). These results have established that the original graveyard was much larger thought prior to 2008 and extended across the entire width of the current road towards Leith Links. The excavations exhumed c.380 inhumations, buried in organised laid rows & lairs running north-south roughly parallel with the existing graveyard wall. However they also demonstrated that an estimated further 300+ burials had been disturbed, without apparent reporting, by the insertion of a large Victorian sewer and services up until this work.*

*Significantly, dating of the burials has demonstrated that the graveyard predates the established date for South Leith Parish Church of 1483AD by some 150 years. Furthermore, burials seem to cease around 1650 possible as result of the reconstruction of the towns defences along Constitution Street in the 1640s and also by the outbreak of the plague in 1644/5 which wiped out over 50% of the Leith's 's population. The excavations also uncovered remains relating to the laying out of burgrave plots along the Kirkgate in the early 14th century and the remains associated with the fortification of the town in the in the 16th and 17th centuries.*

*Accordingly, this application must be considered under terms of Scottish Government's Our Place in Time (OPIT), Scottish Planning Policy (SPP), PAN 02/2011, Historic Environment Scotland's Policy Statement (HESPS) 2016 and Archaeology Strategy and Edinburgh Local Development Plan (2016) policies ENV2, ENV8 & ENV9. The aim should be to preserve archaeological remains in situ as a first option, but alternatively where this is not possible, archaeological excavation or an appropriate level of recording may be an acceptable alternative.*

*The above works will have an obvious significant archaeological impact both upon the surviving Listed (post-1790) graveyard boundary wall and its associated memorials, as well as upon the underlying archaeological remains and burials dating to between c. 1300 and c. 1650AD. Although the development will have a significant heritage impact, I am content that the proposed scheme is both necessary (in terms of health & Safety implications of the condition of the existing wall) and that the impact can be offset by the undertaking of appropriate archaeological and conservation mitigation and by the design of the new wall reflecting closely that of the current original.*

*Due to the historic sensitivity of the site, and as part of our role in advising the Tram Extension Project Team we have had extensive discussions to ensure that appropriate mitigation strategies and designs are produced that would minimise the archaeological and heritage impacts, namely:*

- o The full excavation of the underlying archaeological remains*
- o The forensic archaeological excavation of the underlying burials dating between c. 1300-1650*
- o The detailed archaeological recording of the historic wall and memorials*
- o construction methodology designed to avoid disturbance to the post-1790 burials located within the current graveyard*
- o ensure that the design of the rebuilt graveyard wall reflects closely that of the current historic wall and in particular the ensure reuse of historic fabric along inner (graveyard) elevation*
- o ensure the conservation of the wall's important historic memorials is undertaken during development and*
- o Minimise downs-takings thereby minimising impacts on historic wall and underlying burials and to ensure that the final design reflects the important heritage of the site.*

*Accordingly, having assessed the submitted application I'm happy to support the proposed designs for the wall in that, although it will incorporate new OLE poles and have addition openings these changes in my opinion will not have an adverse effect upon the character and setting of the historic kirkyard and Parish church. Similarly, the reuse of historic fabric in the new rebuilt wall will minimise any significant impact.*

*The proposals will also see the careful taking down and re-sighting of the important memorial stones constructed and affixed to the internal face of the graveyard wall. This work must be undertaken in reference and accordance with the submitted 2019 Conservation Report by Nic Boyes and the Deconstruction and Reinstatement methodologies produced by Morrison Utilities Services in support of the application.*

*In addition, it is essential that a programme of archaeological works is undertaken prior to and during demolition and development, comprising excavation, historic building recording, public engagement and conservation (memorial slabs). This is in order that any archaeological remains and built heritage is properly recorded, conserved and excavated where preservation in situ is not possible. The work will be undertaken based upon and in accordance with the agreed archaeological briefs produced by GUARD and agreed by ourselves for the wider Tram Newhaven Extension Project.*

*It is recommended that this programme of works be secured using the following condition attached to both consents if granted;*

*'No development/demolition shall take place on the site until the applicant has secured the implementation of a programme of archaeological work (excavation, historic building recording, conservation, reporting and analysis, publication, public engagement & interpretation) in accordance with the submitted written scheme of investigations which has been submitted by the applicant and approved by the Planning Authority.'*

*The work must be carried out by professional archaeological and conservation organisations with responsibility for the execution and resourcing of the programme of archaeological and conservation works and for the archiving and appropriate level of publication of the results lying with the applicant.*

## **HES comment**

### *Our Advice*

*The current application concerns the taking down and replacement of the Category A listed kirkyard wall fronting Constitution Street. The wall dates from the early 1790s when Constitution Street was driven through the eastern part of South Leith Parish Churchyard. The original wall was built in random rubble, and appears to have been later raised, with an additional lined lime coating and architectural embellishment to the roadside. This was later replicated in cement rich render.*

*Listed Building Consent was granted for the rebuilding of the wall in March 2012. In this scheme, by the architect Bob Heath, the graveyard-side was to be rebuilt in salvaged rubble stone and the street-side in concrete block, rendered with lime plaster mortar and lined to resemble the current treatment. The new street-side walling was to receive a stone cope, string course and cornice on the projecting features. Two new openings were to be created and these were to be infilled with cast iron railings to match the original pattern at South Leith Parish Church (see elevation onto both Constitution Street and Kirkgate).*

*We welcome the Conservation Assessment Report on the gates and the internal wall of the graveyard and its monuments. The detailed treatment to rebuild the internal wall using salvaged stone, repair and reset the monuments can form, as before, an element of the conditions.*

*However, regarding the new replacement wall facing Constitution Street, the current application contains far less detail, and appears to be of a lesser standard than that*

*approved in 2012. Although we have no concerns with a reinforced concrete wall, we noted at the pre-application meeting that an embossed concrete finish to the wall was not appropriate, and that the standard of the previously approved scheme (lined lime plaster finish and stone cope, string and cornice) should be emulated.*

*Although the drawings show the replacement and replication of a stone cope, there is no further information or detail on how the new wall will be constructed, including the projecting rusticated features and no stone cornices or string courses are shown. We would recommend additional details showing a lime-based render finish and stone detailing as before. This may mean some changes to the treatment of the reinforced concrete sub wall.*

*The drawings show 'new railings to match existing' but we would recommend that new cast iron railings to match the original churchyard pattern are provided, as with the 2012 application.*

*We have no concerns with the repositioning of the OLE poles on the top of the new wall. We note that the walling - with its impervious cement coating - has moved and is in danger, meaning some remedial work would likely be necessary even without the tram works.*

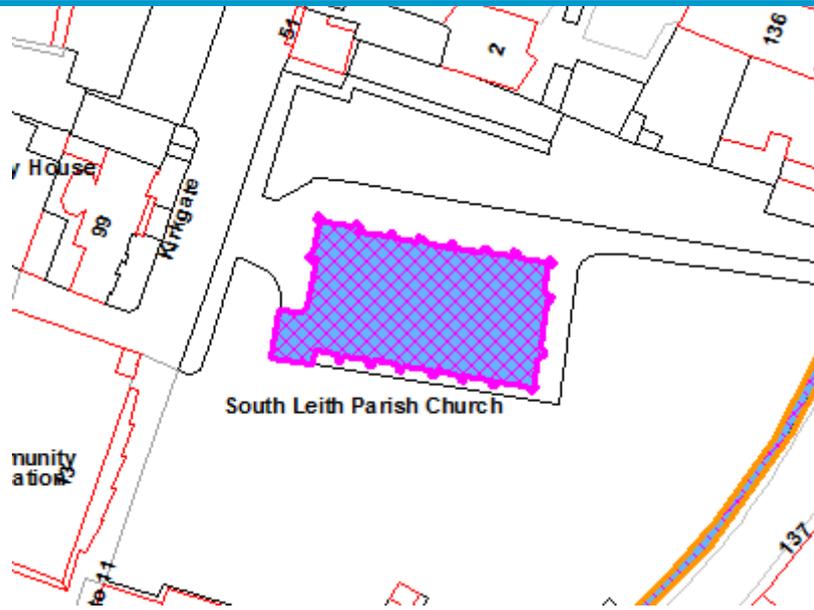
*To conclude, we accept, as before, the need for the wall to be rebuilt, but do not support the diminution in quality of its proposed replacement. We would suggest that additional discussion and details are provided to guarantee the quality of the new build elements.*

*There should be detailed conditions on the new railings and trial panels for render, stonework and monument repair and re-siting.*

*Planning authorities are expected to treat our comments as a material consideration, and this advice should be taken into account in your decision making. Our view is that the proposals do not raise historic environment issues of national significance and therefore we do not object. However, our decision not to object should not be taken as our support for the proposals. This application should be determined in accordance with national and local policy on development affecting the historic environment, together with related policy guidance.*

## Location Plan

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