

## REVIEW DECISION NOTICE

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Decision by East Lothian Local Review Body (the ELLRB)

Site Address: 6 Balfour Square, Tranent, EH33 1DB

Application for Review by Ms Marzena Pichniarczyk against decision by an appointed officer of East Lothian Council.

Application Ref: 15/00135/P

Application Drawings: DWG001, DWG002 AND DWG003

Date of Review Decision Notice – 4<sup>th</sup> September 2015

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### Decision

The ELLRB overturns the decision to refuse planning permission for the reasons given below and grants the application, subject to the condition set out herein.

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

### **1** Introduction

1.1 The above application for planning permission was considered by the ELLRB, at a meeting held on 27<sup>th</sup> August 2015. The Review Body was constituted by Councillor Tim Day (Chair), Councillor John McNeil and Councillor Jim Gillies. All three members of the ELLRB had attended an unaccompanied site visit in respect of this application on 27<sup>th</sup> August 2015.

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

Phil McLean, Planning Adviser  
Morag Ferguson, Legal Adviser  
Fiona Stewart, Clerk.

### **2** Proposal

2.1 The application site is at 6 Balfour Square in Tranent. The property is a single storey detached house. The application seeks retrospective permission for a 2.5m high timber fence adjacent to the rear garden boundary. The application drawings were included within the Review Papers.

The planning application was originally validated on 23<sup>rd</sup> February 2015. It was refused under delegated powers on 22<sup>nd</sup> April 2015. The notice of review is dated 9<sup>th</sup> July 2015.

The reason for refusal is set out in full in the Decision Notice and is, in summary, that, fence encloses this part of the relatively open lane and has a negative impact on its appearance and amenity, and that it reduces the passive surveillance of the lane, harmful to the amenity of the area. The appointed office also considered that the fence may set a precedent for other such fences along the length of the lane which would have a cumulatively negative impact on the character and appearance of the lane and its amenity, all contrary to Policy 1B of the approved South East Scotland Strategic Development Plan and Policy DP2 of the adopted East Lothian Local Plan 2008.

The Applicant has applied to the ELLRB to review the decision to refuse planning consent.

### 3 **Preliminaries**

3.1 The ELLRB members were provided with copies of the following:-

1	The drawings specified above
2	The application for planning permission
3	The Appointed Officer's Report of Handling
4	A copy of the Decision Notice dated 22 <sup>nd</sup> April 2015
5	Copy of Policy 1B of the approved South East Scotland Strategic Development Plan
6	Copies of Policy DP2 of the Adopted East Lothian Local Plan 2008
7	Copy of Plans of the Fence
8	Appointed Officer's photographs
9	Notice of Review dated 9 <sup>th</sup> July 2015 and supporting review statement, supporting letters and photographs

### 4 **Findings and Conclusions**

4.1 The ELLRB confirmed that the application for a review of the original decision permitted them to consider the application afresh and it was open to them to grant it in its entirety, grant it subject to conditions or to refuse it.

The Members asked the Planning Adviser to summarise the planning policy position in respect of this matter. The Planning Adviser gave a brief presentation to Members advising that the application seeks retrospective consent for a 2.5m high fence erected to the rear of the property at 6 Balfour Square, Tranent. He advised that the site is within a residential area of Tranent, designated under local plan policy ENV1. It is also within the designated area of the Battle of Prestonpans.

He confirmed that the main policy considerations relevant to the application are design and amenity, both in terms of character and appearance, and in terms of safety and security. The key development plan policies in relation to these matters are Strategic Development Plan policy 1B and Local Plan policy DP2, copies of which are in the Review Papers.

He noted that the application was refused by the appointed officer on the basis that the fence encloses a relatively open part of the lane to the rear of the property and therefore has a negative impact on its character and amenity and reduces the passive surveillance of the lane. The appointed officer also considered that it would also set a precedent for other fences, which would cumulatively have a harmful effect. The application was therefore considered to be contrary to relevant development plan policies.

He summarised the applicant's request for a review, which argues that the fence is needed to provide security and privacy to the house, detailing examples of anti-social behaviour that has occurred at the rear of the property and providing photographic evidence. The lane is argued not to create a sense of welcome, safety and security at present and the fence more clearly distinguishes public and private space. A hedge is not believed to be a viable alternative given the time taken to grow one and the potential for damage. The applicant proposes to adjust the height of the fence to a maximum of 1.8m if required and argues that this will not reduce passive surveillance of the lane and will not have a harmful impact on its openness and sense of security. The applicant also supplies a letter from a neighbour and another from the local community warden in support of her case.

He confirmed that there were no consultations carried out on the application by the case officer, nor any representations received.

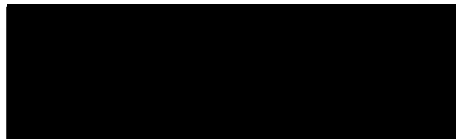
In summary, he advised that the main questions for the LRB to consider in reviewing the case are whether the proposed development would comply with the policies of the development plan in respect of design and amenity, whether there are any other material considerations that

should be taken into account, and whether any of these outweigh the provisions of the development plan in this case.

Finally, he reminded Members that they have the option of seeking further information if necessary before making a decision, either through further written submissions, a hearing session, a further site visit, or a combination of these procedures.

The Chair asked the members to consider whether they had sufficient information to enable them to proceed to make a decision in respect of this matter. All members considered that they did have sufficient information. Accordingly, the decision of the ELLRB was that they would proceed to reach a decision at this meeting.

- 4.2 Councillor Gillies considered that new timber fence had no more of a negative impact on the lane than the existing wire fence, which was in a poor state of repair. He did not consider that the issue of precedent was particularly relevant given that there are a number of different fences in the area at present. He was of the view that a darker colour would help to minimise the visual impact of the fence and proposed that, should the ELLB decide to grant permission, this should be imposed as a condition. He was minded to allow the application. Councillor McNeil agreed with the views of Councillor Gillies on the issue of precedent. He also noted the poor state of repair of the existing wire fence and the variety of other fences in the immediate area. Thus he was also minded to overturn the original decision to refuse planning permission and to grant this application. He also approved the terms of the draft condition proposed.
- 4.3 Councillor Day concurred with the views of his colleagues. He considered that, as the fence would only be visible to those using the lane, the issues of design and impact on amenity were less important in this case. He considered that a hedge, as suggested by the case officer, would have a similar effect on passive surveillance so he was not persuaded by that aspect of the argument against the fence. He agreed with Councillor Gillies' suggested condition regarding a darker colour to reduce the dominance and intrusive impact of the fence.
- 4.4 Accordingly, the ELLRB unanimously decided that the Review should be upheld and the original decision to refuse this application should be overturned. Planning permission for the fence is hereby granted, subject to the condition set out below.



**Morag Ferguson**  
**Legal Adviser to ELLRB**

#### **Condition:**

***The fence hereby approved shall be painted or stained in a dark green colour in accordance with a sample paint or stain to be submitted to and approved in writing by the Planning Authority. Details of the proposed paint or stain shall be submitted to the Planning Authority within one month of the date of this permission. The fence shall be painted or stained in accordance with the approved details within three months following the written approval of the Planning Authority.***

***Reason: To ensure the development integrates successfully with its surroundings and preserves the character and amenity of the area.***

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997**

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

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

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