

REVIEW DECISION NOTICE

Decision by East Lothian Local Review Body (the “**ELLRB**”)

Application for Review by Mr Jeff Marshall of Planning Permission for Erection of fencing, gate, painting of window and door bands (Part Retrospective) at 1 Wedderburn Terrace, Inveresk EH21 7TJ.

Site Address: 1 Wedderburn Terrace, Inveresk EH21 7TJ

Application Ref: 20/00876/P

Application Drawing: Please refer to the Drawings/Plans detailed at 3.1 (i)

Date of Review Decision Notice: 11 February 2021

Decision

The ELLRB unanimously agreed that the Review should be dismissed for the reasons set out below.

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

1. Introduction

The above application for Planning Permission was considered by the ELLRB, at a meeting held on Thursday, 21 January 2021. The Review Body was constituted by Councillor K Mackie (Chair), Councillor N Gilbert, and Councillor J McMillan. All three members of the ELLRB had attended an unaccompanied site visit in respect of this application prior to the meeting.

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

Mr M Mackowaik, Planning Adviser to the LRB
Mr C Grilli, Legal Adviser/Clerk to the LRB
Ms F Currie, Clerk

2. Proposal

2.1. The planning application was for Planning Permission for erection of fencing, gate, painting of window and door bands (Part Retrospective) at 1 Wedderburn Terrace, Inveresk EH21 7TJ.

2.2. The planning application was registered on 3 September 2020 and the decision notice granting the application subject to condition is dated 29 October 2020.

2.3. The condition and the reason for the condition is more particularly set out in full in the said Decision Notice dated 29 October 2020. The condition and reasons for the condition are set out as follows:

Condition

Within 2 months of the date of this decision notice the fence and gate the subject of this application shall be reduced in height such that no part of them is more than 1.3m in height above ground level. Details of the fencing and gate shall be submitted to and approved by the Planning Authority and thereafter the fence and gate shall accord with the details so approved.

Reason:

To safeguard the character and appearance of the conservation area.

2.4. The notice of review appealing against the above condition is dated 9 November 2020.

3. **Preliminaries**

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

i.	<p>The drawings accompanying this application are referenced and numbered as follows:</p> <ul style="list-style-type: none"> - PHOTO 1 - PHOTO 2 - FENCE DIMENSIONS - DETAILS - LOCATION PLAN - PAINT COLOUR - SITE PLAN - FENCE WITH DIMENSIONS - COLOUR DETAILS
ii.	The Application for planning permission registered on 3 September 2020
iii.	The Appointed Officer's Submission
iv.	<p>Policies of the adopted East Lothian Local Development Plan 2018 relevant to the determination of the application:</p> <ul style="list-style-type: none"> - CH2: Development Affecting Conservation Areas - CH5: Battlefields - DP2: Design - DP5: Extensions and Alterations to Existing Buildings <p>In addition the following provisions are also relevant to the determination of the application, namely:-</p> <ul style="list-style-type: none"> - Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997; - Scottish Government's policy on development within a conservation area given in Scottish Planning Policy: June 2014. - Cultural Heritage and the Built Environment Supplementary Planning Guidance; and - the Inveresk Conservation Area Character Appraisal.
v.	Notice of Review dated 9 November 2020 together with Applicant's Submission with supporting statement .

4. Findings and Conclusions

- 4.1 The ELLRB confirmed that the application for a review of the planning application 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. They confirmed that they had access to the planning file in respect of this matter and to all the information that the Appointed Officer had available when reaching the original decision to grant planning permission subject to conditions, including all drawings and copies of all representations and objections received in respect of the original application. They also confirmed they had received and reviewed the Applicant's Submission and further representations made in connection within this appeal before the ELLRB today.
- 4.2 The Members then asked the Planning Adviser to summarise the planning policy position in respect of this matter. The Planning Adviser advised that the review relates to planning application which retrospectively sought permission for i) the erection of 0.98 metre high fencing that has been added to the top of the existing 0.7m high stone wall that enclose the front boundary and a small part of the south boundary of the property at no 1 Wedderburn Terrace and (ii) for the 1.79m high gate that has been erected to enclose the driveway of the said property. Also, part-retrospectively planning permission was sought for the painting of the window and door bands of the existing house. The applicant disagrees with the condition attached to planning permission 20/00876/P that was subsequently granted on the 29th of October 2020
- 4.3 The property to which this case relates is a single storey, detached house with associated garden. It is located within a primarily residential area as defined by Policy RCA1 of the adopted East Lothian Local Development Plan 2018. The property is also situated within the Inveresk Conservation Area and within the Battle of Pinkie Cleugh Historic Battlefield Site. The property is bounded to the north, east and south by neighbouring residential properties and to the west by the public road of Wedderburn Terrace. The timber fencing and gate have a total length of 9.59 metres and therefore enclose the gap along the front roadside boundary of the property. The fencing and gate have been painted a dark grey colour.
- 4.4 The Planning Adviser noted that there were no public letters of objection in relation to the application and that the Council's Road Services were consulted on the application and raised no objection.
- 4.5 Wedderburn Terrace is within the Inveresk Conservation Area which is characterised by the road side boundary enclosures comprising either stone walls or hedging. These boundary enclosures make a positive contribution to the character and appearance of the conservation area. The planning officer assessed that the proposal does not have a significant adverse effect on the key features of the Battle of Pinkie Cleugh Historic Battlefield Site. In their report the case officer noted that the fencing and associated gate that have been erected are readily visible from the public road of Wedderburn Terrace. The 1.79 metre height of the fencing and the gate are imposing in character and appear alien and visibly different to the stone walls and hedging enclosing the roadside boundaries of nearby properties and are inappropriate for use on the front roadside boundary of the garden of the house. The planning officer concluded that it should be made a condition of any grant of planning permission that the fence and gate be reduced in height. Provided the fence and gate are no higher than 1.3 metres above ground level, whilst still of a timber close boarded form they would not be so imposing to be harmful to the setting of the house and to the character and appearance of the conservation area. Subject to their reduction in height the fencing and gate are not contrary to Policy CH2, DP2 of the adopted East Lothian Local Development Plan 2018. The planning officer's report also concluded that the painting of the window bands in the manner they have been painted is not and would not be harmful to the character or appearance of the house or to this part of the

Inveresk Conservation Area and would preserve its character. Therefore this part of the proposal was considered compliant with Policy CH2 and DP5 of the LDP.

- 4.6 The applicant's submission explains that the fence was added for privacy and to stop people looking in to their house, and that given the layout of the house the applicant's bathroom as well as other rooms could be seen from the street. The applicant believes that their right to privacy has not been considered. They also noted that the vast majority of houses in the village have walls that are considerably taller than the proposed fence and that they should be allowed the same privacy. They request that the LRB consider article 8 of the European Convention on Human Rights in respect for their privacy and on protection and peaceful enjoyment of property. The applicant argues that the original decision failed to take these issues into account and instead placed the rights of others to intrude upon the applicant's privacy and security.
- 4.7 The Members then raised the questions pertinent to the application which the planning adviser responded to. The questions included:
- 4.7.1 Clarification as to whether or not the fence, subject to this review, is higher than the walls opposite and surrounding the premises. The Planning Adviser confirmed that the fencing was higher than other walls in the area and suggested that the applicant could consider alternatives to the fencing to protect privacy such as including building a stone wall, blinds and obscured glazed windows.
- 4.7.2 Do other properties on the street have fencing as a boundary? The Planning Adviser confirmed that this was the only property on this street.
- 4.7.3 When the purchaser purchased the site would they have been made aware that they were buying a property in a conservation area and be aware of their ability to make changes to the Property? The Planning Adviser confirmed that the applicant's solicitor would have made them aware that this was a conservation area when purchasing the site.
- 4.8 The Chair asked his colleagues if they had sufficient information to proceed to determine the application today and they unanimously agreed to proceed. Comments on the application followed.
- 4.9 Councillor Gilbert commented that at the site visit he noted that the fence was incongruously higher than walls in the surrounding area. He also noted that the properties situated within the remainder of the street seemed to use walls and hedges as opposed to fences to mark their boundaries. He was of the view that reducing the height of the fencing would result in the fencing being less dominant in the environment and further he was of the opinion that if the colour of the fence was more in keeping with the walls surrounding it would blend in better. Accordingly for those and the reasons stated within the Planning Officer's report he was minded to refuse this appeal.
- 4.10 Councillor MacMillan agreed with Councillor Gilbert's comments. He then added that the site visit had been helpful in considering this application. His impression was that there were no other fences in the area. He also commented that the dark grey fence was visibly different to the surrounding area. The fencing at its current height does not accord with the terms of policies CH2 and DP2 of the adopted East Lothian Local Development Plan 2018 as the fencing does not enhance the character of the property nor does it accord with the neighbouring properties. He then commented that a fence at the lower (1.3m) level would still provide a level of privacy. Accordingly he was minded to support the determination of the Planning Officer and refuse the appeal.
- 4.11 The Chair commented that she supported the conservation area as that is what helps Inveresk continue to be an attractive area. She also noted that it was clear that Inveresk was

a conservation village as there is a sign stating this when driving into the village. She did not believe that the current scale and size of the fence preserves or enhances the surrounding area and is out of keeping with the remainder of the street.

Accordingly, the ELLRB unanimously decided that the Review should be dismissed and Condition 1 of the Planning Permission should remain for the reasons more particularly set out in the Planning Officer's Report.

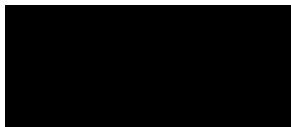
Accordingly, the ELLRB unanimously agreed that the appeal should be refused and condition 1 of the Planning Permission is retained as restated below:

Condition

Within 2 months of the date of this decision notice the fence and gate the subject of this application shall be reduced in height such that no part of them is more than 1.3m in height above ground level. Details of the fencing and gate shall be submitted to and approved by the Planning Authority and thereafter the fence and gate shall accord with the details so approved.

Reason:

To safeguard the character and appearance of the conservation area.



Carlo Grilli
Legal Adviser to ELLRB

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997**Notification to be sent to applicant on determination by the planning authority of an application following a review conducted under Section 43A(8)**

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

- 1 If the applicant is aggrieved by the decision of the planning authority to refuse permission or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.

- 2 If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.