



**MINUTES OF THE MEETING OF THE
LOCAL REVIEW BODY**

**THURSDAY 21 JANUARY 2021
VIA THE DIGITAL MEETINGS SYSTEM**

Committee Members Present:

Councillor K Mackie (Chair)
Councillor N Gilbert
Councillor J McMillan

Advisers to the Local Review Body:

Mr C Grilli, Legal Adviser to the LRB
Mr M Mackowiak, Planning Adviser to the LRB

Other Officers present:

Ms J Squires, Planner (Policy & Projects)

Clerk:

Ms F Currie, Committees Officer

Apologies:

None

Declarations of Interest

None

Introductory Statement by the Legal Adviser

The Legal Adviser outlined the procedure for the meeting and the options available to the Local Review Body in reaching a decision on the planning application.

The Legal Adviser then invited nominations to chair the meeting and Councillors McMillan and Gilbert proposed and seconded Councillor Mackie. It was therefore agreed that Councillor Mackie would chair the Local Review Body (LRB) on this occasion.

1. PLANNING APPLICATION NO. 20/00876/P: ERECTION OF FENCING, GATE, PAINTING OF WINDOW AND DOOR BANDS (PART RETROSPECTIVE) 1 WEDDERBURN TERRACE, INVERESK, MUSSELBURGH EH21 7TJ

The Chair invited the Planning Adviser, who had had no involvement in the original decision, to present a summary of the planning policy considerations in this case.

The Planning Adviser outlined the background and detailed proposals contained in planning application no. 20/00876/P 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 enclosed 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 had 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 appeal was made on the basis that the applicant disagreed with the condition attached to the planning permission that was subsequently granted on the 29th October 2020. The condition stated:

“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. “

The Planning Adviser outlined the details of the property at 1 Wedderburn Terrace and advised the Members that it was located within a primarily residential area as defined by Policy RCA1 of the adopted East Lothian Local Development Plan 2018, situated within the Inveresk Conservation Area and within the Battle of Pinkie Cleugh Historic Battlefield Site.

He reminded Members that section 25 of the Town and Country Planning (Scotland) Act 1997 required that the application be determined in accordance with the development plan, unless material considerations indicate otherwise. The development plan was the approved South East Scotland Strategic Development Plan (SESplan) and the adopted East Lothian Local Development Plan 2018. The planning policies relevant to the determination of the application were: CH2 (Development Affecting Conservation Areas), CH5 (Battlefields), DP2 (Design) and DP5 (Extensions and Alterations to Existing Buildings) of the adopted East Lothian LDP 2018.

Also material to the determination of the application was Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997; the Scottish Government's policy on development within a conservation area given in Scottish Planning Policy (June 2014) and the Cultural Heritage and the Built Environment Supplementary Planning Guidance and the Inveresk Conservation Area Character Appraisal. Among other things, these documents highlighted that a planning authority must have regard to the desirability of preserving or enhancing the character or appearance of a conservation area in exercising its responsibilities in the determination of any application for planning permission for development affecting a conservation area.

The Planning Adviser noted that there were no public letters of objection in relation to the application. The Council's Road Services have been consulted on the application and raised no objection. He then summarised the planning officer's original assessment of the application which noted that Wedderburn Terrace was within the Inveresk Conservation Area which was characterised by the road side boundary enclosures comprising either stone walls or hedging. These boundary enclosures made a positive contribution to the character and appearance of the conservation area.

The planning officer had considered that the proposal did not have a significant adverse effect on the key features of the Battle of Pinkie Cleugh Historic Battlefield Site. In his report the planning officer had noted that the fencing and associated gate that had been erected were readily visible from the public road of Wedderburn Terrace. By their 1.79 metre height they were imposing in character and appeared alien and visibly different to the stone walls and were inappropriate for use on the front roadside boundary of the garden of the house. The officer had 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 were 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 were not contrary to Policy CH2 and DP2 of the adopted East Lothian Local Development Plan 2018.

The planning officer's report had 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 that part of the proposal was considered compliant with Policy CH2 and DP5 of the LDP.

The Planning Adviser then turned to the grounds of appeal set out by the applicant. The submission explained that the fence was added for privacy and to stop people looking into 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 believed that their right to privacy has not been considered. They also noted that the vast majority of houses in the village had walls that were considerably taller than the proposed fence. The applicant also requested that the Local Review Body 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 argued that the original decision had failed to take these issues into account. The applicant felt that the planning authority had unfairly decided that the look of their house was more important than their human rights.

The Chair thanked the Planning Adviser for his summary.

The Planning Adviser responded to questions from Members. He confirmed that the fence was of a similar height to other boundary walls in the area and possibly a little higher in places. He outlined some alternative options for the boundary, including hedging and stone wall, or the installation of blinds or opaque glass in the windows to protect privacy. He confirmed that there were no similar examples of fences to the front of properties in the street and that there were no properties directly overlooking the front of the applicant's house. He considered it reasonable to expect someone buying a property in a conservation area to be made aware of that fact and the potential implications for planning or other matters. Finally, he confirmed that the planning officer would have considered issues relating to privacy, alongside other material considerations, when assessing the application against relevant planning policies.

The Chair asked her colleagues to confirm if they had attended the site visit and if they were satisfied that they had sufficient information before them to determine the application. They confirmed this to be the case.

The Chair then invited Members to give their opinions.

Councillor Gilbert commented that the fence was incongruous, higher than some of the boundary walls of surrounding properties and that there were no other fences in Wedderburn Terrace. He agreed that reducing the fence height would help to reduce its dominance and changing the colour may also help it to blend in. He had no hesitation in supporting the planning officer's recommendation thereby dismissing the appeal.

Councillor McMillan said he had some sympathy for individuals and individualism in planning terms, however he agreed with Councillor Gilbert's comments. He said his impression of the Terrace was that there were no other fences to the front of properties and that the applicant's fence was therefore visibly different from the surrounding walls and hedges. It was important to safeguard the character of the conservation area and, in his opinion, the fence did not preserve or enhance its surroundings, nor did the materials accord with those used by neighbouring properties. Furthermore, he did not agree with the privacy issues stated by the applicant or that lowering the fence would be problematic. He would be supporting the planning officer's recommendation thereby dismissing the appeal.

The Chair stated that its status as a conservation village was one of the things which made Inveresk so attractive. In relation to whether or not a resident would be aware that they were living in a conservation area, the Chair said she that during the site visit she had noted several signs indicating that Inveresk was a conservation village. She added that it was important to be respectful of that designation. Referring to planning policy CH2 and DP2, the Chair said that the fence neither preserved nor enhanced the character or appearance of Wedderburn Terrace and not in keeping with its surroundings. For these reasons, she supported the recommendation of the planning officer and dismissed the appeal.

The Legal Adviser sought confirmation of the decision via a roll call vote:

| | |
|---------------------------|------------------|
| Councillor Gilbert | Appeal dismissed |
| Councillor McMillan | Appeal dismissed |
| Councillor Mackie (Chair) | Appeal dismissed |

The Chair asked whether the LRB needed to review permission for the painting of window and door bands. The Planning Adviser indicated that these did not form part of the applicant's appeal and therefore did not need to be reviewed by the LRB.

Decision

The ELLRB agreed unanimously to uphold the decision of the Planning Case Officer and to grant planning permission subject to the following condition:

- 1 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.

Signed

Councillor Katie Mackie
Chair of Local Review Body (Planning)