

## **REVIEW DECISION NOTICE**

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

---

Application for Review by Mr Ronald Anderson of Viewfield, Huntlaw Road, Pencaitland, Tranent EH34 5AG of the decision to refuse Planning Permission for the erection of fence (Retrospective) at Viewfield Huntlaw Road Pencaitland Tranent.

Site Address: Viewfield, Huntlaw Road, Pencaitland, Tranent EH34 5AG

Application Ref: 22/01273/P

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

Date of Review Decision Notice: 15 September 2023

---

### **Decision**

The ELLRB by a majority of two to one agreed to uphold the appeal and to grant planning permission for erection of fence (Retrospective) at Viewfield Huntlaw Road Pencaitland Tranent for the reasons more particularly 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, 20 July 2023. The Review Body was constituted by Councillor J Findlay (Chair), Councillor A Forrest, and Councillor L Allan. All three members of the ELLRB had attended a site visit accompanied by the Planning Adviser in respect of this application prior to the meeting.

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

Ms J Squires, Planning Adviser to the ELLRB  
Mr C Grilli, Legal Adviser/Clerk to the ELLRB  
Ms F Currie, Clerk

### **2. Proposal**

2.1. The application is for review of decision to refuse Planning Permission for the erection of fence (Retrospective) at Viewfield Huntlaw Road Pencaitland Tranent.

2.2. The planning application was registered on 15 December 2022 and the Decision Notice refusing the application is dated 27 January 2023.

2.3. The reasons for refusal were given in the said Decision Notice dated 27 January 2023 and were as follows:

- 1 *In the context of Huntlaw Road, the fencing is not appropriate to its setting and appears out of keeping with the largely low front roadside boundary enclosures of other houses within this part of Pencaitland. Consequently by virtue of its height, close boarded form, roadside positioning and by protruding forward of the principle elevation of the house, the fencing is harmful to the setting of the house and harmful to the character and appearance of the area contrary to Policy DP2 of the adopted East Lothian Local Development Plan 2018.*
- 2 *If approved the fencing would set a harmful precedent for allowing the addition of similar forms of fencing to be erected to enclose the front roadside boundaries of the gardens of other residential properties within the locality. Such change would be individually and cumulatively out of keeping with the character and appearance of the residential properties in the locality, to the greater detriment of the streetscape of Huntlaw Road and the character and appearance of the area contrary to Policy DP2 of the adopted East Lothian Local Development Plan*

2.4. The notice of review is dated 24 April 2023.

### 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> <table border="1" data-bbox="376 1055 1203 1368"> <thead> <tr> <th data-bbox="376 1055 679 1093"><u>Drawing No.</u></th> <th data-bbox="679 1055 1023 1093"><u>Revision No.</u></th> <th data-bbox="1023 1055 1457 1093"><u>Date Received</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="376 1115 679 1149">DWG 01</td> <td data-bbox="679 1115 1023 1149">-</td> <td data-bbox="1023 1115 1457 1149">16.12.2022</td> </tr> <tr> <td data-bbox="376 1149 679 1182">DWG 02</td> <td data-bbox="679 1149 1023 1182">-</td> <td data-bbox="1023 1149 1457 1182">15.12.2022</td> </tr> <tr> <td data-bbox="376 1182 679 1216">PHOTO 01</td> <td data-bbox="679 1182 1023 1216">-</td> <td data-bbox="1023 1182 1457 1216">15.12.2022</td> </tr> <tr> <td data-bbox="376 1216 679 1249">PHOTO 02</td> <td data-bbox="679 1216 1023 1249">-</td> <td data-bbox="1023 1216 1457 1249">15.12.2022</td> </tr> <tr> <td data-bbox="376 1249 679 1283">PHOTO 03</td> <td data-bbox="679 1249 1023 1283">-</td> <td data-bbox="1023 1249 1457 1283">15.12.2022</td> </tr> <tr> <td data-bbox="376 1283 679 1317">PHOTO 04</td> <td data-bbox="679 1283 1023 1317">-</td> <td data-bbox="1023 1283 1457 1317">15.12.2022</td> </tr> <tr> <td data-bbox="376 1317 679 1350">DWG 03</td> <td data-bbox="679 1317 1023 1350">-</td> <td data-bbox="1023 1317 1457 1350">15.12.2022</td> </tr> <tr> <td data-bbox="376 1350 679 1368">REPORT 01</td> <td data-bbox="679 1350 1023 1368">-</td> <td data-bbox="1023 1350 1457 1368">15.12.2022</td> </tr> </tbody> </table>	<u>Drawing No.</u>	<u>Revision No.</u>	<u>Date Received</u>	DWG 01	-	16.12.2022	DWG 02	-	15.12.2022	PHOTO 01	-	15.12.2022	PHOTO 02	-	15.12.2022	PHOTO 03	-	15.12.2022	PHOTO 04	-	15.12.2022	DWG 03	-	15.12.2022	REPORT 01	-	15.12.2022
<u>Drawing No.</u>	<u>Revision No.</u>	<u>Date Received</u>																										
DWG 01	-	16.12.2022																										
DWG 02	-	15.12.2022																										
PHOTO 01	-	15.12.2022																										
PHOTO 02	-	15.12.2022																										
PHOTO 03	-	15.12.2022																										
PHOTO 04	-	15.12.2022																										
DWG 03	-	15.12.2022																										
REPORT 01	-	15.12.2022																										
ii.	The Application for planning permission registered on 15 November 2022																											
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"> <li>- DP1 - Landscape Character;</li> <li>- DP2 - Design;</li> <li>- RCA1 – Residential Character and Amenity;</li> </ul> <p>In addition the following provisions are also relevant to the determination of the application, namely:-</p> <ul style="list-style-type: none"> <li>- National Planning Framework 4 (NPF4) Policy 16 (Quality Places)</li> </ul>																											
v.	Notice of Review dated 24 April 2023 together with Applicant's Submission.																											

#### **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 refuse planning permission, including all drawings and copies of all representations received in respect of the original application. They also confirmed they had received and reviewed the Applicant's Submission 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 planning application relates to a 1.8 meter high wooden fence, which has already been erected. The fence is within the curtilage of a house. The Planning Adviser confirmed that the building is not listed, and the site is not in a Conservation Area. Planning permission is required only for the section of fence at the Huntlaw Road side of the house, and the side section of the fence extending back to the line of the principal elevation of the house. The remainder of the fence is permitted development.

The Planning Adviser commented that the site lies in a residential area. Huntlaw Road contains a mix of one and two storey houses. The boundary treatment of the first few houses to the southeast of Huntlaw Road and the two houses opposite this site consists of a stone wall of around 1m in height. Elsewhere on the road a variety of boundary treatments exist, including chainlink fence, wall with railings, close boarded timber fence, decorative walling and hedges. Other than some of the hedges, boundary treatments are generally 1m or lower in height.

The Planning Adviser then advised that the application must be determined in accordance with the development plan unless material considerations indicate otherwise. The development plan at the time of the application consisted of the South East Scotland Strategic Development Plan (SESPlan) and the adopted East Lothian Local Development Plan (the LDP), with National Planning Framework 4 (NPF4) being a material consideration. The development plan now consists of the LDP and NPF4, which came into force in February this year. The Planning Adviser confirmed that Policies DP1 - Landscape Character; DP2 - Design; and RCA1 – Residential Character and Amenity applied in relation to this application.

The Planning Adviser then noted that the case officer in their report noted that the house and fence are visible from Huntlaw Road, and also Lempockwells Road, a route out of Pencaitland to the south. Due to its height, close boarded form, and roadside positioning the fencing was considered much more prominent and imposing in character than the enclosures of other front gardens in this part of Huntlaw Road. As a result, it was not considered to be appropriate to its setting and was out of keeping with the other boundary treatments, contrary to Policy DP2. It was further considered that the fencing would set a harmful precedent for allowing the addition of similar forms of fencing in this residential area.

The application was therefore refused for two reasons. The first being that the fence was not appropriate its setting and is harmful to the character and appearance of the area contrary to Policy DP2 of the LDP, and secondly would set a harmful precedent, also contrary to LDP Policy DP2.

The planning Adviser noted that no representations had been made by the public on this application. Road Services were consulted and had no objection.

The applicant in their original application stated that before erecting the fence they removed a substantial hedge. They have supplied photographs of the hedge, which can also be verified on Google Streetview and shows it to be about the same height as the lighting column in front of the house. The applicant stated they built the fence to protect their award winning dogs from theft, and to prevent them jumping out of the garden. The applicant states that the fence gives their neighbours a better outlook and more light. The applicant notes that laurel hedge and climbing plants have been planted.

The Planning Adviser summarised the case officer's views on the effect of the adoption of NPF4 subsequent to their determination of the application stating that the case officer considered that Policy 16 Quality Places applies. The case officer considered the proposal would not comply with Policy 16g of NPF4 as it detrimentally affects the character of the house and the surrounding area.

The Planning Adviser observed that the applicant in their appeal submission argues that the case officer did not take sufficient account of the planting of laurel and climbers. A photograph has been submitted showing laurel, which is evergreen and shade tolerant, planted between the wall and the hedge. While this could grow to cover the fence, the fence would be visible in the surrounding area throughout such a growth period. The available growing space between the fence and the edge of the footway is narrow and it cannot be certain that the hedge will grow or survive. The hedge may never therefore obscure the fence. In those circumstances, if consent were granted, it would not be reasonable to seek removal of the fence.

However, the Planning Adviser noted that this planting could improve the appearance of the proposal, if consented. They therefore recommended that should the ELLRB be minded to allow this appeal, a condition be imposed requiring a landscaping plan to be submitted for approval by the planning authority within 2 months of consent being issued.

The applicant also states that the fence is an improvement on the previous substantial hedge. The Planning Adviser stated that as this hedge has now been removed, whether or not the fence is an improvement is not a material consideration and further confirmed that the needs of the dogs is not a material consideration.

The Planning Adviser therefore considered the proposal to be contrary to the development plan, and did not consider there were any material considerations which would indicate that planning permission should be determined other than in accordance with the development plan.

- 4.3. 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.
- 4.4. Councillor Forrest commented that he felt the site visit was helpful in putting the application in context alongside the submitted photographs provided. He commented that he had concerns regarding potential precedent and for the reasons set out in the Planning Case Officer's report he was minded to support the officer's decision.

- 4.5. Councillor Allan commented that she was of the view that the fence would be hidden by growth of proposed hedge in a short period. She commented that while initially she felt there was a significant impact she was of the view that in the long term the fence would be hidden and therefore was minded to uphold the review.
- 4.6. The Chair commented that he thought that if the hedge was grown over the fence the impact would be minimal further he noted that no neighbours had objected to the application. He commented that he would be supportive of the application but only on the basis that there was a suitable condition requiring a landscaping plan which would include requirement to grow a hedge or climbers to the height of the fence

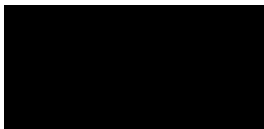
Accordingly, the ELLRB by a majority of two to one (2:1) decided to uphold the application and to grant planning permission subject to the following condition:

1. No later than 2 months after the issue of this consent, a Landscaping Scheme shall be submitted to the Planning Authority for approval. The aim of this scheme will be to obscure the fence from views from Huntlaw Road using suitable species of climbing plants and evergreen shrubs. The Landscaping Scheme must include full details of all shrub and climber species with siting and planting distances, and a maintenance plan. Thereafter the Landscaping Scheme shall be implemented unless otherwise agreed by the Planning Authority. Should the landscaping fail to achieve its aim of obscuring the fence within three years of the issue of this consent, or after this fail so that the aim is no longer achieved, within two months of a request by the planning authority, a revised Landscaping Scheme shall be submitted for approval of the planning authority and thereafter implemented. The approved Landscaping Scheme shall thereafter be maintained as approved unless otherwise agreed by the Planning Authority.

*Reason*

*To ensure establishment of landscaping to avoid adverse impact on the character and amenity of Huntlaw Road that would otherwise arise from the erection of the fence.*

Planning Permission is hereby granted.



**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.