

## **REVIEW DECISION NOTICE**

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

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Application for Review by Mr & Mrs Rory Shearer c/o David Paton Building Consultancy, Per David Paton, 13 High Street, Loanhead EH20 9RH of decision to refuse Planning Permission for the erection of fencing at land East of 7 Springfield Cottages, Whitecraig, Musselburgh EH21 8PZ.

Site Address: Land East of 7 Springfield Cottages, Whitecraig, Musselburgh EH21 8PZ

Application Ref: 24/00782/P

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

Date of Review Decision Notice: 10 March 2025

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### **Decision**

The ELLRB unanimously agreed to confirm the original decision of the case officer and to dismiss the appeal and refuse planning permission for the erection of fencing at land east of 7 Springfield Cottages, Whitecraig, Musselburgh EH21 8PZ 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, 23 January 2025. The Review Body was constituted by Councillor A Forrest (Chair), Councillor D Collins, Councillor N Gilbert and Councillor K McLeod. All four 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:-

Mr L Taylor, Planning Adviser to the LRB  
Mr C Grilli, Legal Adviser to the LRB  
Ms F Currie, Clerk

### **2. Proposal**

2.1. The planning application is for review of decision to refuse Planning Permission for the erection of fencing at land east of 7 Springfield Cottages, Whitecraig, Musselburgh EH21 8PZ

2.2. The planning application was registered on 26 July 2024 and the Decision Notice refusing the application is dated 12 September 2024.

2.3. The condition and the reason for the condition is more particularly set out in full in the said

Decision Notice dated 12 September 2024. The reasons for refusal are set out as follows:

1. *The proposed length of fencing would appear as a visually prominent and harmfully imposing feature to the detriment of the character and appearance of the woodland area. By virtue of its extent, height, solid form and its exposed roadside position, the proposed length of fencing would appear as a harmfully dominant and intrusive feature within its woodland setting which would detract from the character and appearance of the landscape of the area. It would not be appropriate to its place or in keeping with its surroundings. It would be harmful to the landscape character and visual amenity of the woodland area and would be incompatible with the surrounding countryside and landscape character of this part of the Edinburgh Green Belt, contrary to Policies 8 and 14 of National Planning Framework 4 and Policies DC7 and DP2 of the adopted East Lothian Local Development Plan 2018.*
2. *The proposed length of fencing would result in the loss of, or damage to, a number of existing trees within the woodland which positively contribute to the landscape character of the area, contrary to Policy 6 of NPF4 and Policy NH8 of the adopted East Lothian Local Development Plan 2018.*

2.4. The notice of review is dated 22 November 2024.

### 3. Preliminaries

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

i.	The drawings accompanying this application are referenced and numbered as follows:  <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;"><u>Drawing No.</u></th> <th style="text-align: left;"><u>Revision No.</u></th> <th style="text-align: left;"><u>Date Received</u></th> </tr> </thead> <tbody> <tr> <td>24/30 PN1</td> <td>A</td> <td>26.07.2024</td> </tr> </tbody> </table>	<u>Drawing No.</u>	<u>Revision No.</u>	<u>Date Received</u>	24/30 PN1	A	26.07.2024
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24/30 PN1	A	26.07.2024					
ii.	The Application for planning permission registered on 26 July 2024						
iii.	The Appointed Officer's Submission						
iv.	Policies relevant to the determination of the application are:  Policies 6 (Forestry, woodland and trees), 7 (Historic assets and places), 8 (Green belts) and 14 (Design, quality and place) of National Planning Framework 4; and  Policies CH5 (Battlefields), NH8 (Trees and Development), DC7 (Development in the Edinburgh Green Belt) and DP2 (Design) of the adopted East Lothian Local Development Plan 2018.						
v.	Notice of Review dated 22 November 2024 together with Applicant's Submission with supporting statement and associated documents.						

### 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 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 planning application relates to a review against the refusal of planning permission for application 24/00782/P on land east of 7 Springfield Cottages, near Carberry, Whitecraig. Planning permission was sought for the erection of a 2.1m high wooden fence stretching for approximately 95m along the northern boundary of an area of woodland to the east of no.7 Springfield Cottages. The fence would be adjacent to the A6124.

The Planning Adviser confirmed that the land is under the ownership of the applicant/occupant of the cottage but it was not proposed to be incorporated into the garden ground and would remain as woodland. The proposed fence would be positioned to align with the existing northern boundary fence of the garden ground at 7 Springfield Cottages which itself is of a similar height.

The Planning Adviser noted that the case officer's report on the application covers the relevant policies to be considered for this application (as more particularly set out at 3(iv) above.

He further noted that the case officer notified nearby neighbouring properties and consulted with relevant Council Services including the Landscape Team and Transportation Team. As the application site is within the Battle of Pinkie designation, Historic Environment Scotland were also consulted and confirmed that no representations from members of the public were received and no objections were received from the Council's Transport Team or Historic Environment Scotland. The case officer therefore determined that there would be no adverse impact on the historic environment or on road safety issues.

In response to the consultation, the Council's Landscape Officer raised an objection to the development due to concerns over the impact that the fencing would have on both the landscape character of the area, and due to the potential for damage to existing trees within the application site. The Landscape Officer's comments raised concerns that the new fence would affect the rural character of the area, with much of the existing woodland bounded by low post and wire fencing. Concerns were also raised that the type of fence proposed would reduce permeability and connectivity between this area of woodland and other areas of woodland to the north within the Carberry estate, which are part of the Elphinstone Ridge Special Landscape Area designation.

In applying relevant policies to the proposal, the case officer noted that LDP 2018 policy DP2 requires new development to be appropriate to its location in terms of size, proportion, positioning, scale and massing. The case officer concluded that, due to the extent, height, solid appearance and exposed roadside position, the impact that the new fencing would have on the landscape character of the area would not be acceptable and that the proposal would be contrary to NPF4 policies and LDP 2018 policies. Accordingly, Planning permission was subsequently refused and the decision notice issued which included the two reasons for refusal.

The Planning Adviser then confirmed that the appellant's submission seeks to challenge the reasons for refusal and disagrees with the case officer's conclusion that the fence would cause harm the landscape character of the area. The submission highlights the mix of other boundary treatments in the locality, including other timber fencing and stone walls, and that the area where the fence was proposed is the only section that has no existing boundary. The statement also highlights that the fencing is necessary to provide a safeguard and screen from the A6124 which is a busy road. The Planning Adviser also noted that the appellant also disagrees with the Landscape Officer's opinion regarding the impact that the fencing could have on damage to existing trees, and that their intention is to protect the area of woodland.

4.3. Members then asked the questions of the Planning Adviser: namely:

- 4.3.1. The Planning Adviser responded to a question from Councillor McLeod. He stated that the suggestion of a lower post and wire fence [*no more than 1.2m*] had come from the Landscape Officer. He could not confirm whether this alternative had been put to the applicant.
- 4.3.2. Councillor Gilbert asked who would cover the cost of relocating of road signs, should this be necessary. The Planning Adviser suggested that it may be possible to control this through planning conditions. The Legal Adviser confirmed that a condition could be added in general terms relating to all road signs affected by the work. This would place an obligation on the applicant to work with road services officers to arrange suitable relocation of any affected signs.
- 4.3.3. Replying to questions from Councillor Collins, the Planning Adviser could not confirm the proposed means of anchorage for the fence posts. While he did confirm that from the Landscape Officer's response a lower height fence would appear to be acceptable, he said that the type of fence – closed board timber – and its impact on its surroundings must also be considered. The Legal Adviser added that any proposal for a lower fence would have to be appropriately assessed through the planning process, as it differed from the proposal contained in the original application.
- 4.3.4. The Chair asked about the potential impact on access and the right to roam. The Planning Adviser said the right to roam was general principle and he was not aware of any restrictions associated with the land specified in this application, but it may be necessary to consult the title deeds. He acknowledged that the erection of a fence could impact access. The Legal Adviser explained that the right to roam would be unlikely to be documented in title deeds and that the right was gained from actual usage. While there was potential for restriction on access if the fence was erected, he would require further information to determine whether the right to roam existed on this area of land.

4.4. 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.

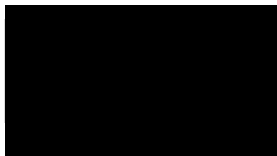
- 4.4.1. Councillor McLeod stated that he found the site visit useful and noted that there had been a suggested alternative to the proposed fence by the Landscape Officer but, as far as he was aware, this had not been discussed further or accepted. He felt that the proposed fence would affect drivers' line of sight for cars coming down the hill, and he had observed that the majority of other properties in the area had fencing to the front but not the sides of the houses. He had also noted that there had been an attempt to plant conifers but that this had not been very successful. Based on this information, he

confirmed he was minded to support the case officer and refuse the application.

- 4.4.2. Councillor Collins agreed that the site visit had been helpful. In her view, the method for putting in the posts was important due to the ground condition and the risk of damage from adverse weather should the posts not be anchored properly. She considered that the lights would have little impact on the house due to the tree screening, with infill increasing during the summer. For these reasons, she was minded to support the decision of the planning case officer.
- 4.4.3. Cllr Gilbert was of the opinion that, due to its height and construction, the fence would be a dominant and intrusive feature in the landscape. It would change the entrance to the village from that direction, entirely, and would be harmful to the landscape, character and visual amenity of the woodland. He was minded to support the decision of the planning case officer.
- 4.4.4. The Chair agreed that the site visit had been useful, and that construction of the fence would make the road more closed in. He also felt that there was a risk of the fence collapsing in adverse weather. He was minded to support the planning case officer's decision.

Accordingly, the ELLRB unanimously to uphold the original decision of the planning officer and to refuse planning permission for the reasons more particularly set out in the original decision notice

Planning Permission is hereby refused.



**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.