

## **REVIEW DECISION NOTICE**

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

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Application for Review by Mr Gary Stewart against decision by an appointed officer of East Lothian Council

Site Address: 13 Caledonian Crescent, Prestonpans EH32 9GF

Application Ref: 16/00563/P

Application Drawing: DWG1; DWG2 DWG3; DWG4;

Date of Review Decision Notice: 12 July 2018

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### **Decision**

The ELLRB overturned the decision to refuse planning permission for the reasons given below and upheld the review.

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 Thursday, 15 February 2018. The Review Body was constituted by Councillor N. Hampshire (Chair); Councillor L Bruce, Councillor S. Kempson and Councillor S. Currie, All four members of the ELLRB had attended an unaccompanied site visit in respect of this application prior to the meeting.

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

Leigh Taylor, Planning Adviser  
Carlo Grilli, Legal Adviser  
Fiona Stewart, Clerk.

## 2. Proposal

- 2.1. The planning application is for the change of use of Open Space to Domestic Garden Ground and Erection of Fencing (Retrospective).
- 2.2. The planning application was registered on 17 July 2017 and was refused under delegated powers on 8 September 2017. The Notice of Review is dated 24 November 2017.
- 2.3. The reasons for refusal under delegated powers are set out in full in the Decision Notice and are, in summary, that the combined effect of the change of use of the land and the fenced enclosure of that land is harmful to the character, appearance and visual amenity of the area. Consequently, the change of use and fenced enclosure are contrary to Policy 1B (The Spatial Strategy: Development Principles) of the approved South East Scotland Strategic Development Plan (SES Plan) and Policy DP2 (Design) of the adopted East Lothian Local Plan 2008.

## 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 dated 17 July 2017
3	The Appointed Officer's Report of Handling
4	A copy of the Decision Notice dated 8 September 2017
5	Copies of Policy 1B (The Spatial Strategy: Development Principles) of the approved South East Scotland Strategic Development Plan (SES Plan) and Policies ENV1, DP2 (Design) of the adopted East Lothian Local Plan 2008.
6	Notice of Review dated 24 November 2017 together with Applicant's Submission with supporting statement and associated documents.

## 4. Findings and Conclusions

- 4.1. The Chair 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 main determining factor was whether or not the Councillors believed there would be a material detrimental effect on the amenity of the area from this application. Further, the Planning Adviser advised that the ownership of the land is not a material consideration for planning purposes.
- 4.4. The Chair noted that, while the land was in the ownership of the applicant, in terms of the planning consent for the estate, the land was to be retained as open space. The Chair then clarified that the issue was in relation to the 1.8 meter fencing around the area in question. The Chair commented that in other planning applications the planning authority has changed open space into garden ground and noted that there are decisions in which open space can be decided to no longer be required. Councillor Hampshire commented that if this application had come forward without this area being open space then this would have been permitted. There is an anomaly here and this land should have been sold to the remainder of the estate or a factor. The Chair is of the view that a private owner should have the right to protect their own land and, accordingly, in these circumstances was minded to uphold the applicant's appeal.

- 4.5. Councillor Currie commented that this was developed as open space and ownership of the land is now with the applicant's house instead of remaining as common ground within the estate. He noted that it is a sizable area of land. Councillor Currie noted that prior to fencing being erected the land used to be open and created visual impact. In terms of this application it was considered unacceptable due to the detrimental visual impact caused to the area by having this fence in place. Councillor Currie commented that when developed there was a sale of the house, 13 Caledonian Crescent, Prestonpans, by the developer which included the area to the front and he is of the view that the remainder of the estate should not have a view on what happens with this area of land as they have no responsibility to maintain this area. In addition Councillor Currie noted that there are other similar fences around the development although this is darker in colour. Councillor Currie was of the view that there was merit in the appeal and there would be no precedent created as there were areas within the larger development with similar fencing. Accordingly Councillor Currie was minded to uphold the appeal.
- 4.6. Councillor Kempson agreed with Councillor Currie's comments and was also minded to uphold the appeal.
- 4.7. Councillor Bruce agreed with the comments from Councillor Currie and was minded to uphold the appeal.

Accordingly, the ELLRB decided unanimously that the Review should be upheld and the original decision to refuse this application should be overturned. Planning consent was therefore granted for a change of use of open space to domestic garden ground and the erection of fencing.



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.