

**Education, Economy
& Communities**
Midlothian Council
Fairfield House
8 Lothian Road
Dalkeith
EH22 3AA

**Change of use from communal land to private garden
ground and erection of fence (retrospective) at 28 Eskbank
Road Bonnyrigg**

Reproduced from the Ordnance Survey map with the permission of the
controller of Her Majesty's Stationary Office. Crown copyright reserved.
Unauthorised reproduction infringes Crown copyright and may lead to
prosecution or civil proceedings

Midlothian Council Licence No. 100023416 (2014)

File No. 14/00619/DPP

Scale: 1:1,250



Midlothian 

Fairfield House 8 Lothian Road Dalkeith EH22 3ZN

Tel: 0131 271 3302

Fax: 0131 271 3537

Email: planning-applications@midlothian.gov.uk

Applications cannot be validated until all necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 000097987-002

The online ref number is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the Planning Authority about this application.

Applicant or Agent Details

Are you an applicant, or an agent? * (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

☒ Applicant ☐ Agent**Applicant Details**

Please enter Applicant details

Title: *

Other Title:

First Name: *

Last Name: *

Company/Organisation:

Telephone Number: *

Extension Number:

Mobile Number:

Fax Number:

Email Address: *

You must enter a Building Name or Number, or both: *

Building Name:

Building Number:

Address 1 (Street): *

Address 2:

Town/City: *

Country: *

Postcode: *

Site Address Details

Planning Authority:

Midlothian Council

Full postal address of the site (including postcode where available):

Address 1:

28 ESKBANK ROAD

Address 5:

Address 2:

Town/City/Settlement:

BONNYRIGG

Address 3:

Post Code:

EH19 3AW

Address 4:

Please identify/describe the location of the site or sites.

Northing

665639

Easting

331448

Description of the Proposal

Please provide a description of the proposal to which your review relates. The description should be the same as given in the application form, or as amended with the agreement of the planning authority: *

(Max 500 characters)

Change of use and erection of fence at 28 Eskbank Road, Bonnyrigg

Type of Application

What type of application did you submit to the planning authority? *

- ☒ Application for planning permission (including householder application but excluding application to work minerals).
- ☐ Application for planning permission in principle.
- ☐ Further application.
- ☐ Application for approval of matters specified in conditions.

What does your review relate to? *

- ☐ Refusal Notice.
- ☒ Grant of permission with Conditions imposed.
- ☐ No decision reached within the prescribed period (two months after validation date or any agreed extension) – deemed refusal.

Statement of reasons for seeking review

You must state in full, why you are seeking a review of the planning authority's decision (or failure to make a decision). Your statement must set out all matters you consider require to be taken into account in determining your review. If necessary this can be provided as a separate document in the 'Supporting Documents' section: * (Max 500 characters)

Note: you are unlikely to have a further opportunity to add to your statement of appeal at a later date, so it is essential that you produce all of the information you want the decision-maker to take into account.

You should not however raise any new matter which was not before the planning authority at the time it decided your application (or at the time of expiry of the period of determination), unless you can demonstrate that the new matter could not have been raised before that time or that it not being raised before that time is a consequence of exceptional circumstances.

The fence was erected in June 2013 and has caused no issues and has not been the subject of any objections. The fence is similar to several in the area it is mentioned that it is the entrance to the estate but if you look at nearby estates all have fences at the entrance and if you look about the whole town there are similar structures. A point of note is that no one seems to have planning applications. I am being asked to move my fence between 50 and 20 cm which seem ludicrous and more cost

Have you raised any matters which were not before the appointed officer at the time the determination on your application was made? *

☐ Yes ☒ No

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review. You can attach these documents electronically later in the process: * (Max 500 characters)

1. summary of events

Application Details

Please provide details of the application and decision.

What is the application reference number? *

14/00619/dpp

What date was the application submitted to the planning authority? *

21/08/14

What date was the decision issued by the planning authority? *

28/10/14

Review Procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Can this review continue to a conclusion, in your opinion, based on a review of the relevant information provided by yourself and other parties only, without any further procedures? For example, written submission, hearing session, site inspection. *

☒ Yes ☐ No

In the event that the Local Review Body appointed to consider your application decides to inspect the site, in your opinion:

Can the site be clearly seen from a road or public land? *

☒ Yes ☐ No

Is it possible for the site to be accessed safely and without barriers to entry? *

☒ Yes ☐ No

Checklist - Application for Notice of Review

Please complete the following checklist to make sure you have provided all the necessary information in support of your appeal. Failure to submit all this information may result in your appeal being deemed invalid.

Have you provided the name and address of the applicant? *

☒ Yes ☐ No

Have you provided the date and reference number of the application which is the subject of this review? *

☒ Yes ☐ No

If you are the agent, acting on behalf of the applicant, have you provided details of your name and address and indicated whether any notice or correspondence required in connection with the review should be sent to you or the applicant? *

☐ Yes ☐ No ☒ N/A

Have you provided a statement setting out your reasons for requiring a review and by what procedure (or combination of procedures) you wish the review to be conducted? *

☒ Yes ☐ No

Note: You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. You may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

Please attach a copy of all documents, material and evidence which you intend to rely on (e.g. plans and drawings) which are now the subject of this review *

☒ Yes ☐ No

Note: Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice (if any) from the earlier consent.

Declare - Notice of Review

I/We the applicant/agent certify that this is an application for review on the grounds stated.

Declaration Name: Mr Kevin Clark

Declaration Date: 21/01/2015

Submission Date: 21/01/2015

Summary of events

This matter has been ongoing for nearly two years. In June 2013 I erected the fence which is similar to numerous fences in the estate and adjoining estates. I had asked several neighbours with similar fences if they had sought planning permission and was told they had not and that permission was not required. I erected the fence and subsequently in late August 2013 I received notice from the council that I needed planning permission. I applied for that at a cost of £200 and the planning officer (Vicky Famelton) visited and informed me that she could see no issues as it was similar to the fences in the area.

The following day I was informed that the piece of land the fence was situated on may belong to the council and was later informed to withdraw my application until the matter was clarified.

In February 2014 the council informed me that the piece of land did in fact belong to them, although paperwork seems to suggest they knew in November 2013. The council were unaware that the piece of land was theirs and they agree that there has been no maintenance carried out by the council in over 20 years and that I and previous occupiers of the house had been responsible for the maintenance and garden work.

I had discussions with Mark Kenmure in relation to buying the land and I was eventually informed that the council would not sell the land to me as it was the entrance to the estate.

I thereafter contacted my Local Councillor (Bob Constable) for his assistance and there was an agreement reached to sell the land to me subject to me obtaining the appropriate planning permission and agreeing to several conditions. I was only being sold the land that my fence was on and the council would retain ownership of the upper half of my side garden. I was assured the council would maintain this piece of land. The agreement had several conditions attached one of which was I erect a fence around the area of land I was purchasing. I was informed by the planning department to resubmit my application which I did only to be informed that it was the wrong application and had to submit another application at a cost of £400 to include a change of use application. I submitted this in August 2014. Throughout this period no one from the council has been on the land maintaining it and doing any gardening work. I have mentioned this fact to Mark Kenmure on numerous occasions but keep being told he cannot understand why no one has been near as he has told the landscape department to add it to their list.

On 28th October 2014 I was given permission to buy the land and erect the fence but with a condition that the fence be moved in 20cm at one end and 50cm at the other. I find that ludicrous and another expense to me. I spoke with Mark Kenmure and pointed out that I was buying the land and that 10 square metres of that would be on the other side of the fence and requested he make investigations into whether or not that would result in the reduction of the cost of the purchase to date I have not heard from him. Since receiving the planning permission I have been in touch with Mark Kenmure on three occasions over the weeks and each time he has stated he would make enquiries and get back to me and to date he has not contacted me. I find this very frustrating the matter has gone on since August 2013 with very little information being supplied to me from the council. The fence is identical to others in the estate all of which do not have planning permission. I have pointed this out on numerous occasions and keep being told that as no one has brought it to the council's attention they would not do anything. I do not wish to cause anguish and expense to my neighbours and I have no issues with their fences etc but feel that this situation does not show any fairness to myself or any form of consistency in the councils approach to planning permission to fences.

It has been mentioned that as my house is at the entrance to the estate the council are looking to soften the impact. The entrance to the estate down from me, McQuade Street has a fence around the front garden. I accept that fence is smaller in height than mine but is over 1 metre high and goes around the whole of the garden at the front of the house, my fence is at the rear. On the other side this junction there is a large hedge and a gate over 6 feet tall and a Caravan in the garden. The entrance at Eldendean Road at Eskbank Road has recently had a new fence erected on top of the wall and there is a similar structure at Pendreich Avenue. Opposite my house there is a bricked wall at the front of a house which is over 8 foot high. I presume it is to supply privacy from persons standing at the bus stop but I cannot find planning permissions for any of these structures. I may be wrong but I have suspicions that the person who brought my fence to the attention of the council lives at 32 Eskbank Road and if that is the case I would like it to be noted that they have recently erected a new 6 foot fence at the rear and also at the side of their house at the front of the property.

I am extremely frustrated by the situation, the lack of contact from Mark Kenmure and the lack of consistency shown by the council. This matter has already cost me a great deal of money and time. To remove the fence and bring it in 20 cm at one end

and 50 at the other will cost a considerable amount of money and will change little. The other fences in the area are not 1 metre from the heel of the pavement.

I erected this fence in the good faith that the land belonged to me as the householder, I did not need planning permission as none of my neighbours had planning permission and all I wanted was more space in the back garden for my children to play safely and securely. By the time this matter is resolved my children will probably be too old to play in the garden.

Please contact me if you need more information on [REDACTED] or by email.

Kevin Clark

MIDLOTHIAN COUNCIL

DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

Planning Application Reference: 14/00619/DPP

Site Address: 28 Eskbank Road, Bonnyrigg.

Site Description: The application site comprises a detached two storey dwellinghouse, associated garden ground and public open space. The house has light beige and brown harled walls with a brown profiled tile roof and white uPVC windows. There is a two storey extension to the side of the house and a conservatory to the rear. There is public open space between the front elevation of the house and Eskbank Road and between the side elevation of the house and James Leary Way.

Proposed Development: Change of use from communal land to private garden ground and erection of fence (retrospective).

Proposed Development Details: The applicant seeks retrospective permission for the change of use of communal land to the side of the house to create private garden ground and the erection of a 1.8 metre high fence to contain this private garden ground. The distance between the fence and pavement varies from 43cm to 80cm and this area is stone chipped. The fence was erected in 2013 as applicant was not aware planning permission was required for either the change of use or the erection of the fence.

Two previous applications were submitted for the erection of the fence (see background information below). The 2013 application was withdrawn when the case officer discovered, after a site visit, that the works included a change of use of land as well as the fence. The applicant withdrew the application upon entering discussions with the Council's Estates section to purchase the land. The 2014 application was withdrawn as this did not include the change of use of the communal land as part of the proposal. The current application seeks retrospective planning permission for both the fence and change of use.

Background (Previous Applications, Supporting Documents, Development Briefs):

Application site

14/00442/DPP Erection of fence (retrospective). Withdrawn – the application did not include the change of use and therefore was withdrawn and replaced by the current application.

13/00689/DPP Erection of fence (retrospective). Withdrawn – this application was withdrawn as the owner of the communal space was unknown and the applicant sought to investigate the landowner and negotiate purchase.

Consultations: The Policy and Road Safety Manager has no objection.

Representations: No letters of representation have been received.

Relevant Planning Policies: The relevant policies of the 2008 Midlothian Local Plan are;

RP20 Development Within the Built Up Area which states that development will not be permitted where it is likely to detract materially from the existing character or amenity of the area; and

RP30: Open Space in Towns and Villages which states that development on open spaces not covered by policy RP29 (Playing Fields and Sports Facilities) will not be permitted where: these form a visually important part of the settlement or an integral part of the layout of adjacent buildings; it would result in the loss of an attractive landscaped area; it would result in the loss of land important to informal recreation; or it would result in a material change in the character of the locality, unless it can be demonstrated that suitable alternative open space of similar quality can be provided in an appropriate nearby location.

Planning Issues: The main planning issue to be considered is whether or not the proposal complies with the development plan policies and, if not, whether there are any material planning considerations which would otherwise justify approval. The application site is located within an area covered by the Midlothian Local Plan.

There is a large amount of communal open space in the surrounding area. The south side of the Eskbank Road frontage has a continuous landscaped area separating the road from the front gardens of the residential properties. This continues along the sides of the houses at numbers 28 and 30 Eskbank Road, leading into James Leary Way. This creates an impression of a housing estate with open areas of landscaping.

The application site was formerly an area of communal space at the entrance of the housing estate. A 1.8 metre high fence has been erected around this communal land.

The land subject to the change of use forms a visually important part of the layout of the surrounding housing estate, contributing to an open character at the entrance of the estate. The fence encloses this area of communal land, somewhat detracting from the open character and appearance of the area. The fence is positioned between 43cm and 80cm back from the path.

The loss of the open space and erection of the fence results in a harsh and enclosed entrance to the residential estate. This adverse impact could be softened should the fence be positioned 1 metre back from the public footpath to allow some landscape planting to be established between the path and the fence. The current distance between the pavement and the position of the fence is of an inadequate size to allow any landscaping to become successfully established in order to soften the visual impact of the fence. However, the visual impact of the fence would be considerably improved if it were positioned 1 metre back from the path and some form of landscaping be planted and allowed to become established.

The proposed change of use would result in a change in the character of the locality, however due to the large amount of communal open land in the area this not

considered to significantly change the character of the area. The proposed change of use of the land would not result in the loss of an attractive landscaped area, nor would it result in the loss of land important to informal recreation.

There is another 1.8 metre high fence at 13 James Leary Way and has been erected on private land. Due to its position away from the entrance of the housing estate it is considered this fence has a limited impact on the visual character of the area.

The change of use would have only a small landscape visual impact on the surrounding area and the visual impact of the fence would be softened through the planting of landscaping.

Recommendation: Grant planning permission.

Planning Permission

Town and Country Planning (Scotland) Act 1997

Reg. No. 14/00619/DPP

Mr Kevin Clark
28 Eskbank Road
Bonnyrigg
EH19 3AW

Midlothian Council, as Planning Authority, having considered the application by Mr Kevin Clark, 28 Eskbank Road, Bonnyrigg, EH19 3AW, which was registered on 1 September 2014, in pursuance of their powers under the above Acts, hereby grant permission to carry out the following proposed development:

Change of use from communal land to private garden ground and erection of fence (retrospective) at 28 Eskbank Road, Bonnyrigg, EH19 3AW

in accordance with the application and the following plans:

<u>Drawing Description.</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Location Plan	1:100	29.08.2014
Site Plan		29.08.2014
Illustration/Photograph		29.08.2014
Illustration/Photograph		29.08.2014
Illustration/Photograph		29.08.2014
Illustration/Photograph		29.08.2014
Illustration/Photograph		29.08.2014

This permission is granted for the following reason:

The proposed development will not have a significant adverse impact on the character or appearance of the area and, as such, complies with policies RP20 and RP30 of the adopted Midlothian Local Plan.

Subject to the following conditions:

1. Within three months of the date of this consent, the eastern section of the fence, outlined in green on the approved location plan, shall be repositioned so that it is no closer than 1 metre from the heel of the pavement.
2. Within three months of the date of this consent, a scheme of landscaping shall be submitted to and approved in writing by the planning authority for the area of land between the pavement and the fence. Details shall include a plan showing the number, size and species of all trees and shrubs that are proposed to be planted.

Reason: for conditions 1 and 2: *To soften the impact of the fence at a prominent location in the interest of the visual amenity of the area.*

3. The scheme of landscaping approved in accordance with condition 2 shall be carried out and completed within six months of the repositioning of the fence. Any landscaping removed, dying, severely damaged or becoming seriously diseased within five years of planting shall be replaced in the following planting season by trees of a size and species similar to those originally required.

Reason: *To ensure the landscaping is carried out and becomes successfully*

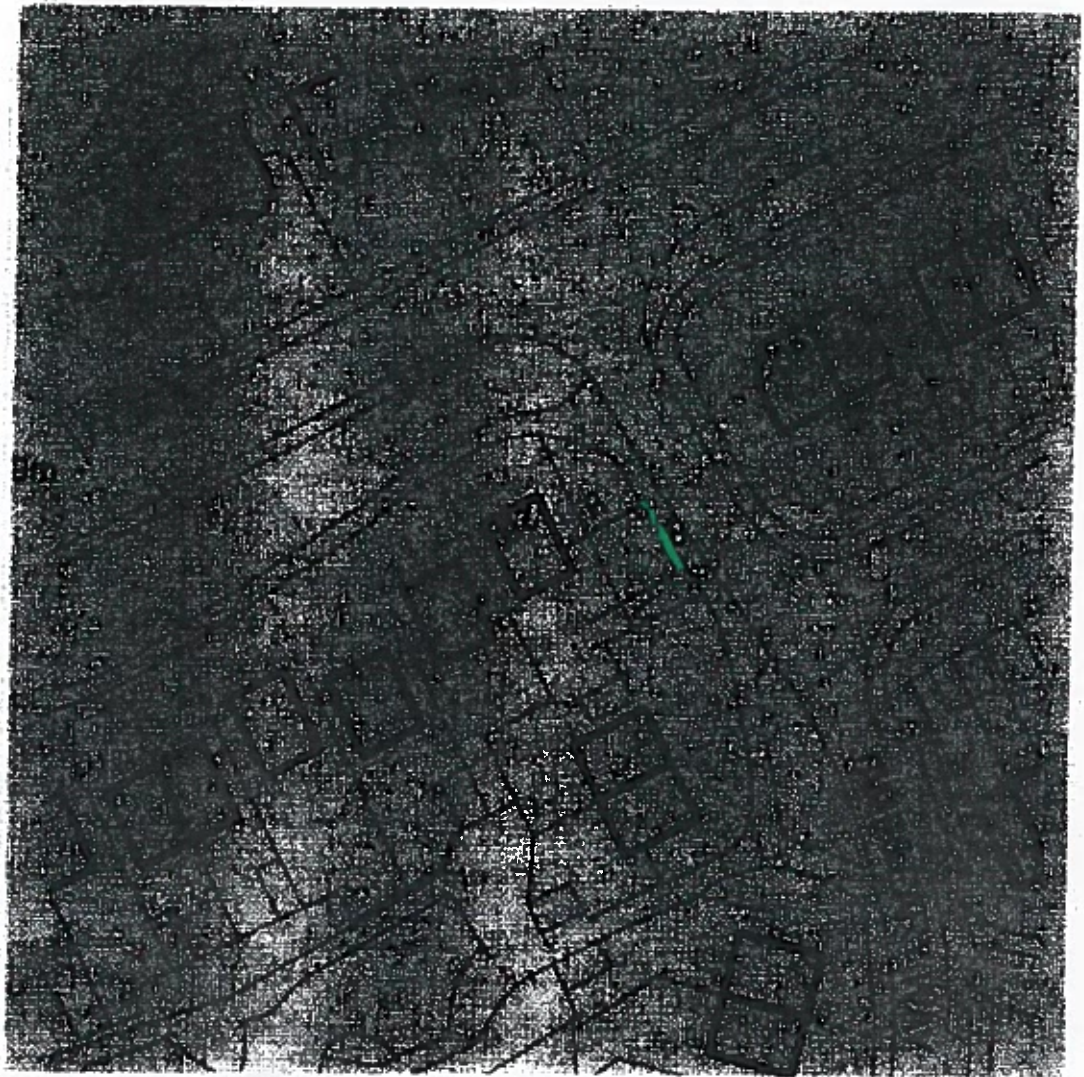
established.

Dated 28 / 10 / 2014

A handwritten signature in black ink, consisting of a stylized 'D' and 'R' joined together.

.....
Duncan Robertson
Senior Planning Officer; Local Developments,
Fairfield House, 8 Lothian Road, Dalkeith, EH22 3ZN

APPENDIX E



A = 6160 mm

B = 9340 mm

C = 7350 mm

CORPORATE RESOURCES	
FILE	14100619 / DPM
RECEIVED	29 AUG 2014

CORPORATE RESOURCES	
FILE	XXXXXXXXXX
	XXXXXXXXXX