

Notice of Review: 4 Elmfield Park, Dalkeith

Determination Report

Report by Chief Officer Place

1 Purpose of Report

- 1.1 The purpose of this report is to provide a framework for the Local Review Body (LRB) to consider a 'Notice of Review' for the erection of a fence (retrospective) at 4 Elmfield Park, Dalkeith.

2 Background

- 2.1 Planning application 22/00248/DPP for the erection of a fence (retrospective) at 4 Elmfield Park, Dalkeith was refused planning permission on 29 July 2022; a copy of the decision is attached to this report.
- 2.2 The review has progressed through the following stages:
- 1 Submission of Notice of Review by the applicant.
 - 2 The Registration and Acknowledgement of the Notice of Review.
 - 3 Carrying out Notification and Consultation.

3 Supporting Documents

- 3.1 Attached to this report are the following documents:
- A site location plan (Appendix A);
 - A copy of the notice of review form and supporting information (Appendix B). Any duplication of information is not attached;
 - A copy of the case officer's report (Appendix C);
 - A copy of the decision notice, excluding the standard advisory notes, issued on 29 July 2022 (Appendix D); and
 - A copy of the key plans/drawings/images (Appendix E).
- 3.2 The full planning application case file and the development plan policies referred to in the case officer's report can be viewed online via www.midlothian.gov.uk

4 Procedures

- 4.1 In accordance with agreed procedures the LRB:
- Have determined to undertaking a site visit; and
 - Have determined to progress the review of written submissions.

- 4.2 The case officer's report identified that there was one consultation response and no representations received. As part of the review process the interested party was notified of the review. No additional comments have been received. All comments can be viewed online on the electronic planning application case file.
- 4.3 The next stage in the process is for the LRB to determine the review in accordance with the agreed procedure:
- Identify any provisions of the development plan which are relevant to the decision;
 - Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies;
 - Consider whether or not the proposal accords with the development plan;
 - Identify and consider relevant material considerations for and against the proposal;
 - Assess whether these considerations warrant a departure from the development plan; and
 - State the reason/s for the decision and state any conditions required if planning permission is granted.
- 4.4 In reaching a decision on the case the planning advisor can advise on appropriate phraseology and on appropriate planning reasons for reaching a decision.
- 4.5 Following the determination of the review the planning advisor will prepare a decision notice for issuing through the Chair of the LRB. A copy of the decision notice will be reported back to the LRB for noting.
- 4.6 A copy of the LRB decision will be placed on the planning authority's planning register and made available for inspection online.

5 Conditions

- 5.1 The nature of the proposal is such that it is considered that no conditions would be required if the LRB is minded to grant planning permission.
- 5.2 If the LRB dismisses the review, the unauthorised fence will be required to be removed/lowered to a height of one metre. In this case the applicant will be asked to comply with this requirement within two months of the LRB decision. However, the failure to undertake the required works will result in the Council having to consider issuing an enforcement notice to resolve the breach of planning control.

6 Recommendations

- 6.1 It is recommended that the LRB:
- a) determine the review; and
 - b) the planning advisor draft and issue the decision of the LRB through the Chair

Peter Arnsdorf
Planning, Sustainable Growth and Investment Manager

Date: 28 November 2022
Report Contact: Ingrid Forteath, Planning Officer
ingrid.forteath@midlothian.gov.uk

Background Papers: Planning application 22/00248/DPP available for inspection online.

Appendix A



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

Erection of fence (retrospective) 4 Elmfield Park, Dalkeith

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File No.22/00248/DPP

Scale: 1:1,250





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 the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100603463-001

The online reference 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:	<input type="text" value="Mr"/>	You must enter a Building Name or Number, or both: *	
Other Title:	<input type="text"/>	Building Name:	<input type="text"/>
First Name: *	<input type="text" value="David"/>	Building Number:	<input type="text" value="4"/>
Last Name: *	<input type="text" value="Soar"/>	Address 1 (Street): *	<input type="text" value="Elmfield Park"/>
Company/Organisation	<input type="text"/>	Address 2:	<input type="text"/>
Telephone Number: *	<input type="text" value="[REDACTED]"/>	Town/City: *	<input type="text" value="Dalkeith"/>
Extension Number:	<input type="text"/>	Country: *	<input type="text" value="Scotland"/>
Mobile Number:	<input type="text"/>	Postcode: *	<input type="text" value="EH22 1ER"/>
Fax Number:	<input type="text"/>		
Email Address: *	<input type="text" value="[REDACTED]"/>		

Site Address Details

Planning Authority:

Midlothian Council

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

Address 1:

4 ELMFIELD PARK

Address 2:

Address 3:

Address 4:

Address 5:

Town/City/Settlement:

DALKEITH

Post Code:

EH22 1ER

Please identify/describe the location of the site or sites

Northing

667107

Easting

333448

Description of Proposal

Please provide a description of your 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)

erection of boundry fence

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 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.

1] Fence is no longer a stark feature, Colour has been changed to green in keeping with other boundary treatments in the street. 2] As above objection No2 is with a degree of subjectivity, as to what constitutes the street scene see photos 3] Highway and road services have made no comment or objection 4] There have been no objections from any neighbour's, only compliments 5] The garden has become a pleasant useable space with increased security, privacy, reduction in pollution and traffic noise

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

☐ Yes ☒ No

If yes, you should explain in the box below, why you are raising the new matter, why it was not raised with the appointed officer before your application was determined and why you consider it should be considered in your review: * (Max 500 characters)

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)

photographs

Application Details

Please provide the application reference no. given to you by your planning authority for your previous application.

22/00248/DPP

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

29/03/2022

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

29/07/2022

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. *

T 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? *

T Yes ≤ No

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

T 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?. *

T Yes ≤ No

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

T 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 T 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? *

T 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 *

T 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 David Soar

Declaration Date: 14/10/2022



















MIDLOTHIAN COUNCIL

DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

Planning Application Reference: 22/00248/dpp

Site Address: 4 Elmfield Patrk, Dalkeith

Site Description:

The application property comprises a semi-detached two storey dwellinghouse, and its associated garden, located within a residential area.

Proposed Development:

Erection of fence (retrospective)

Proposed Development Details:

Retrospective planning permission is being sought for a fence which has been erected around the front garden of the application property. The fence is constructed from timber and has been stained a red/brown colour and measures a maximum of 1.85m high from within the front garden of the application property and 1.5m high with 1.5m high timber gates, to the driveway within the front garden, as measured from outwith the site. (A google map search shows that this has replaced a lower wire mesh fence similar to others on the surrounding area.)

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

History sheet checked.

The submitted application form states that the fence was completed in 2014. Google maps show the fence being under construction in 2020.

Consultations:

Policy and Road Safety Manager – comments that while the fence will have reduced general visibility for drivers using the driveway no objections have been received from local residents and the fence does not raise any major road safety issues.

Representations:

None received.

Relevant Planning Policies:

The relevant policy of the **Midlothian Local Development Plan 2017** is;

DEV2 – Protecting amenity within the built-up area - seeks to protect the character and amenity of the built-up area.

It is noted that policy DP6 House Extensions, from the now superseded 2008 Midlothian Local Plan, set out design guidance for new extensions requiring that they are well designed in order to maintain or enhance the appearance of the house and

the locality. The policy guidelines contained in DP6 also relate to size of extensions, materials, impact on neighbours and remaining garden area. It also states that front porches to detached or semi-detached houses are usually acceptable provided they project less than two metres out from the front of the house. It also allowed for novel architectural solutions. The guidance set out within this policy has been successfully applied to development proposals throughout Midlothian and will be reflected within the Council's Supplementary Guidance on Quality of Place which is currently being drafted.

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 surrounding area is in general characterised by houses set back from the road with 1m high wire mesh fences or walls along the front boundary with the pavement, with some higher hedges in places. (There is a wall incorporating railings along the front of no 19 which measures a maximum of 1.5m high, and fences measuring over 1m in height between the front gardens of nos 28 and 30 Elmfield Park and along the front of no. 3 Allan Terrace further along the street. There is no record of planning permission having been granted for these back to 1975.

As erected at 1.5m high the fence is a prominent and somewhat stark feature out of keeping with the character of and detracting from the visual amenity of the area. If approved the fence could set an undesirable precedent for other similar fences along the street frontage which would lead to the degradation of the character and appearance of the area. Notwithstanding the comments received from the Policy and Road Safety Manager at its current height the fence impacts on visibility in particular from the applicant's and to a lesser extent from the driveway of no 6 next door causing a potential road safety hazard both for vehicles and pedestrians. The fence does not have a significant impact on the amenity of the neighbouring properties in terms of outlook or daylight or sunlight.

Recommendation:

Refuse planning permission and appropriate enforcement action to be taken.

Refusal of Planning Permission

Town and Country Planning (Scotland) Act 1997

Reg. No. 22/00248/DPP

Mr David Soar
4 Elmfield Park
Dalkeith
EH22 1ER

Midlothian Council, as Planning Authority, having considered the application by Mr David Soar, 4 Elmfield Park, Dalkeith, EH22 1ER, which was registered on 31 May 2022 in pursuance of their powers under the above Acts, hereby **refuse** permission to carry out the following proposed development:

Erection of fence (retrospective) at 4 Elmfield Park, Dalkeith, EH22 1ER

In accordance with the application and the following documents/drawings:

<u>Document/Drawing.</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Location Plan		31.05.2022
Illustration/Photograph		31.05.2022
Illustration/Photograph		31.05.2022
Illustration/Photograph		31.05.2022
Illustration/Photograph		31.05.2022
Illustration/Photograph		31.05.2022
Illustration/Photograph		31.05.2022
Site Plan		31.05.2022
Site Plan		31.05.2022
Proposed Elevations		31.05.2022

The reasons for the Council's decision are set out below:

- 1. The fence is a very prominent and stark feature, out of character with the street scene with a detrimental impact on the character and visual amenity of the surrounding area.*
- 2. For the above reason the fence is contrary to the aims of policy DEV 2 of the adopted Midlothian Local Development Plan 2017 which seeks to protect the character and amenity of the built-up area.*
- 3. The fence results in a reduction in the general level of visibility in the area and a reduction in sightlines for drivers using existing driveways at this location causing a potential reduced level of road safety.*

Dated 29 / 07 /2022

A handwritten signature in black ink, appearing to read 'MZA', is positioned above a dotted line.

.....
Matthew Atkins
Lead Officer – Planning Obligations
Fairfield House, 8 Lothian Road, Dalkeith, EH22 3ZN



**The Coal
Authority**

Any Planning Enquiries should be directed to:

Planning and Local Authority Liaison
Direct Telephone: 01623 637 119 (Planning Enquiries)
Email: planningconsultation@coal.gov.uk
Website: www.gov.uk/coalauthority

INFORMATIVE NOTE

The proposed development lies within an area that has been defined by the Coal Authority as containing potential hazards arising from former coal mining activity at the surface or shallow depth. These hazards can include: mine entries (shafts and adits); shallow coal workings; geological features (fissures and break lines); mine gas and former surface mining sites. Although such hazards are seldom readily visible, they can often be present and problems can occur in the future, particularly as a result of new development taking place.

It is recommended that information outlining how former mining activities may affect the proposed development, along with any mitigation measures required (for example the need for gas protection measures within the foundations), is submitted alongside any subsequent application for Building Warrant approval (if relevant).

Any form of development over or within the influencing distance of a mine entry can be dangerous and raises significant land stability and public safety risks. As a general precautionary principle, the Coal Authority considers that the building over or within the influencing distance of a mine entry should be avoided. In exceptional circumstance where this is unavoidable, expert advice must be sought to ensure that a suitable engineering design which takes into account all the relevant safety and environmental risk factors, including mine gas and mine-water. Your attention is drawn to the Coal Authority Policy in relation to new development and mine entries available at:
www.gov.uk/government/publications/building-on-or-within-the-influencing-distance-of-mine-entries

Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires a Coal Authority Permit. Such activities could include site investigation boreholes, excavations for foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Failure to obtain a Coal Authority Permit for such activities is trespass, with the potential for court action.

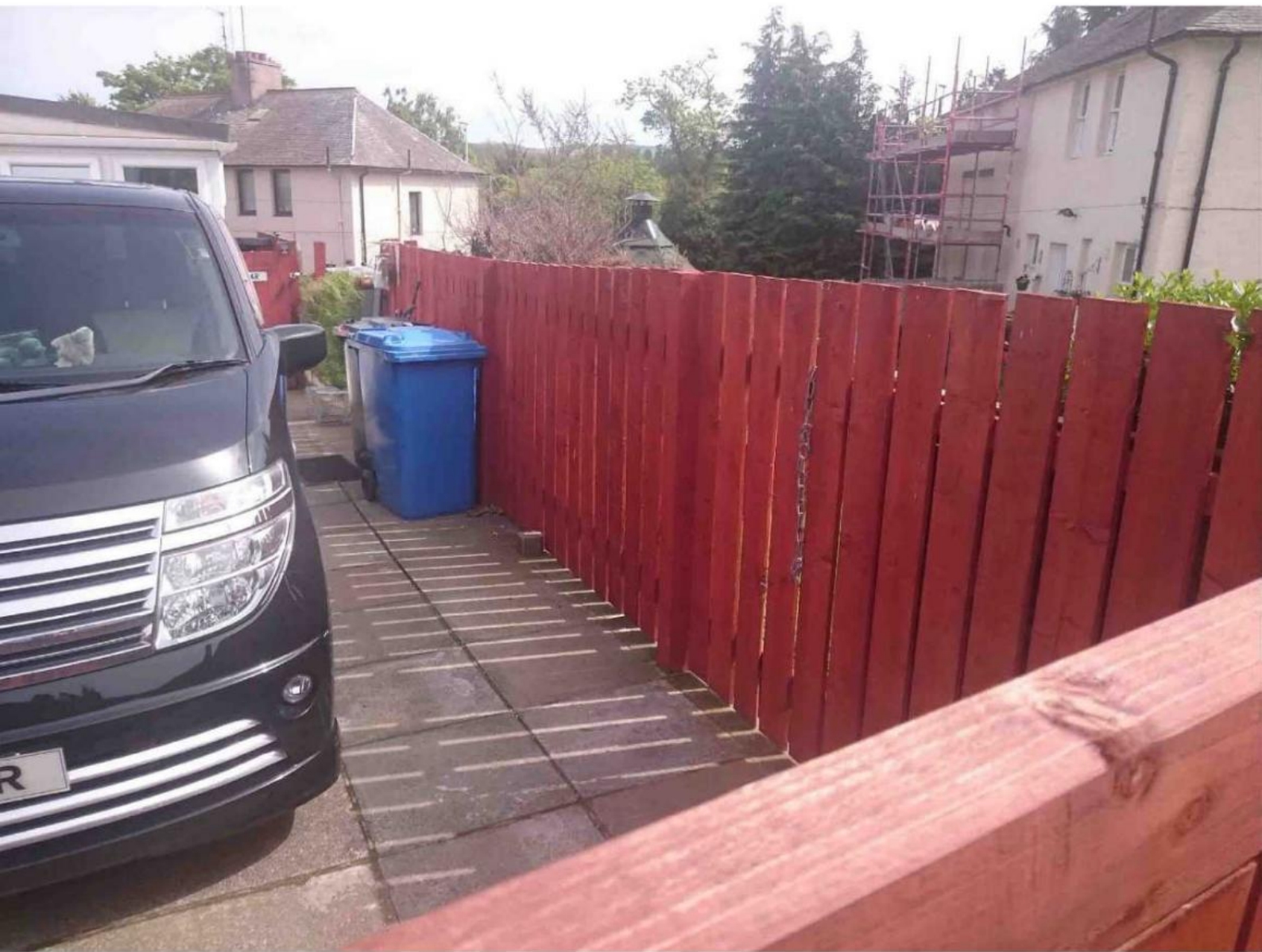
If any coal mining features are unexpectedly encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848. Further information is available on the Coal Authority website at:
www.gov.uk/government/organisations/the-coal-authority

Informative Note valid from 1st January 2021 until 31st December 2022

REFUSED
22.00248.DPP
29.07.2022



REFUSED
22.00248.DPP
29.07.2022



REFUSED
22.00248.DPP
29.07.2022



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22.00248.DPP
29.07.2022

