



APPLICATION FOR PLANNING PERMISSION 17/00747/DPP, ERECTION OF SCREENING FENCING; ERECTION OF SHED AND RE PAINTING OF EXISTING FENCING (PART RETROSPECTIVE) AT DALKEITH TENNIS CLUB, 5 CEMETERY ROAD, DALKEITH

Report by Head of Communities and Economy

1 SUMMARY OF APPLICATION AND RECOMMENDED DECISION

- 1.1 The application is for the erection of windbreak netting on existing chain link fences; the re-painting of a corrugated steel fence; the erection of a timber storage shed; the erection of a timber lean-to store; and the installation of a gate at Dalkeith Tennis Club, 5 Cemetery Road, Dalkeith. There has been one representation and no consultations were required. The relevant development plan policies are DEV2, DEV8, ENV8 and ENV19 of the Midlothian Local Development Plan 2017. The recommendation is to grant planning permission subject to conditions.**

2 LOCATION AND SITE DESCRIPTION

- 2.1** The application site is a long established tennis club which contains 3 blaes (hardened clay) tennis courts and a small timber pavilion building. To the south the site is bounded by woodland; to the west and north the site is bounded by a modern dwellinghouse, its garden and an area of woodland which is in the same ownership as the house; to the east the site is bounded by a stone boundary wall onto Cemetery Road. The site is situated within Eskbank & Ironmills Conservation Area.
- 2.2** The northern boundary of the tennis club site is bounded by a 4.5m tall chain link fence; at the base of the fence is a 1.85m tall corrugated steel fence. The corrugated steel fence extends along the whole of the western boundary of the site; the 4.5m tall chain link fence extends along a 7m long section of the western boundary, at the north western corner of the site. The corrugated steel fence extends along an 11m long section of the southern boundary. The remainder of the southern boundary is demarcated by a 1.8m tall horizontal boarded timber fence above which is erected a 1.5m tall stretch of ball stop netting. Running parallel to the southern boundary fence, and situated 4.5m north of it is a 43m long 1.8m tall chain link fence which separates the court from

the access path. The eastern boundary of the site is demarcated by a stone boundary wall, running perpendicular to the stone boundary wall and situated approximately 3.5m from the wall is a 1.8m tall horizontal boarded timber fence. The eastern edge of the tennis courts are demarcated by an 11m long section of 4.5m tall chain link fence and a 5.5m long section of 1.8m tall chain link fence; there is a gap of 18m between the 2 fences.

3 PROPOSAL

- 3.1 The supporting statements, drawings and photographs submitted with the application indicate that there are 6 elements to the proposal. The 6 elements are as follows:
- 3.2 Erection of windbreak netting at a high level on the chain link fence along the northern boundary and western boundary of the site. This element of the proposal is retrospective. The netting is 2m tall and is attached via cable ties to the chain link fencing. The supporting statement submitted at the time of validation (22 December 2017) states that the netting is dark green and has been installed in conjunction with the existing pale green netting which was installed in 2014. A subsequent supporting statement submitted on 16 February 2018 seeks to clarify the extent of the consent that is being sought and states that the existing pale green netting will be removed and only the dark green netting will remain. The netting will be folded down at the end of the playing season to protect the fence from wind damage.
- 3.3 Erection of dark green coloured windbreak netting to be attached to the corrugated steel fence along the northern boundary and chain link fencing, where present, along the western, eastern and southern boundaries of the courts. The netting will replace existing pale green coloured netting. The netting will cover from ground level to a height of approximately 1.8m.
- 3.4 The existing corrugated steel fence will be re-painted in dark green.
- 3.5 A timber storage shed measuring 2m wide, 1m deep and 1.65m tall will be erected in the south western corner of the site. The shed will be adjacent to an existing shed of similar dimensions.
- 3.6 A timber lean-to, for storage of blaes/clay will be erected against the timber fence at the east of the site. The lean-to will be 3m wide, 1.5m deep and 2m tall.
- 3.7 A new gate with a keypad entry system will be installed at the entrance on Cemetery Road. The gate will be 1.2m wide and 2m high; and will be finished with dark green coloured galvanised steel.

4 BACKGROUND

- 4.1 Planning application 14/00786/DPP granted consent with conditions for the erection of screening fencing; installation of water tank and court watering system and erection of tool shed (part retrospective) at Dalkeith Tennis Club. The works were completed in 2015.
- 4.2 The following applications relate to the neighbouring house (RP9) and its associated woodland (the property of the representor):
- 4.3 Planning application 0593/95 sought consent for the erection of a dwellinghouse. The application was refused.
- 4.4 Planning application sought consent for the erection of a garden hut. Consent was granted subject to conditions. The hut was completed, but has subsequently been demolished.
- 4.5 Planning application 04/00209/FUL sought consent for the erection of a dwellinghouse and guest accommodation. The application was refused and a subsequent appeal was dismissed.
- 4.6 Planning application 06/00702/FUL sought consent for the erection of a dwellinghouse. Consent was granted subject to conditions.
- 4.7 Planning application 08/00541/FUL sought consent for an amended design for the new dwellinghouse approved under planning permission 06/00702/FUL. Consent was granted subject to conditions. The house was erected 2010 to 2011.
- 4.8 Planning application 10/00694/DPP sought consent for the erection of timber decking with storage beneath, erection of boundary fence incorporating a bin store, works to stabilise banking, alterations to path, formation of woodland access steps, and erection of associated guard rails (retrospective). The application was refused by the Committee, but granted consent, subject to conditions, on appeal. The works have been completed.
- 4.9 Planning application 16/00060/DPP sought consent for the erection of outbuilding and fence (retrospective). This application relates to a site to the west of the current application site. Consent was granted subject to conditions. The work was complete at the time of the application.
- 4.10 Planning application 16/00540/DPP sought consent for the erection of potting shed and formation of new access gates. Consent was granted subject to conditions. Work commenced on the potting shed and the design was amended via a subsequent application.
- 4.11 Planning application 17/00652/DPP sought consent for the erection of potting shed (amendment to design approved in terms of planning

permission 16/00540/DPP) (retrospective). Consent was granted subject to conditions. Work was completed late 2017.

- 4.12 The current application has been called to Committee for determination by Councillor Russell. The reason for call-in is that the views of the objector warrant deliberation and debate by the Committee.

5 CONSULTATIONS

- 5.1 No consultations were required.

6 REPRESENTATIONS

- 6.1 The owner/occupants of the neighbouring house (RP9) have submitted nine separate representations (counted as one representation). The representations can be summarised as follows:

- 6.2 16 January 2018 - Neutral representation seeking to clarify that the representors did not request that the tennis club erect dark coloured netting.

- 6.3 24 January 2018 – Objection. The representation states that the representors wish to object to the erection of screening fencing. The points raised are as follows:
- the application was not included on the weekly list sent to Community Councils and Council Members;
 - the application was submitted in September 2017 and was not made valid until December 2017;
 - neighbour notification was received on 11 January with a response due by 1 February. This is not 21 days;
 - clarify that the representors did not request that the tennis club erect dark coloured netting;
 - refers to the 'Report of Handling' for application 14/00786/FUL and to the supporting statement submitted by the tennis club in support of that application;
 - summarises the history of netting on the fence of the tennis club, as recalled by the representors;
 - questions why the netting is required as other tennis clubs and professional tournament venues do not appear to require similar netting;
 - object to the loss of light to the representors' property;
 - object to the loss of views to and from the representors' property;
 - state that the pale green netting should be removed before any further netting is applied;
 - state that whilst the colour of the dark green netting is visually acceptable, the issue is the density;
 - the denser the weave the more light will be obstructed;
 - dense weave creates greater wind resistance which increases the risk of structural failure of the fence; and

- the applicants should submit an assessment of light levels prepared by a suitably qualified professional.
- 6.4 12 February – Objection. A further objection was submitted via the Council's online planning facility. The points raised are as follows:
- querying what is being applied for as the drawings and supporting statement say different things;
 - querying the quality of the information submitted;
 - the information supplied is contradictory;
 - clarify that the representors did not request that the tennis club erect dark coloured netting;
 - questions why the netting is required as other tennis clubs and professional tournament venues do not appear to require similar netting;
 - the netting has a detrimental impact on the character of the conservation area;
 - the netting has a detrimental impact on distant views of the site;
 - the representors' house was built on established garden ground;
 - it is unclear what is being applied for;
 - loss of light and amenity to upper floor bedroom and ground floor living space which represents a breach of human rights;
 - netting has not always been in place at the tennis club. There was a period in the 1990's when no netting was in place and the netting is a modern product that would not have been available in the 1960's; and
 - the representors' outbuilding (referred to as a potting shed) does not overshadow their property.
- 6.5 12 February – Objection. A further version of the above objection was submitted via email. The text was the same; the objection was supported by photographs.
- 6.6 22 February – Objection. The points raised are as follows:
- the representors note that the tennis club state that the netting is required due to increased levels of light due to the reduction of trees and shrubs on the representors' property;
 - a mature tree (a Sycamore tree protected by a Tree Preservation Order) on the representors' property died following herbicide being applied to a tree stump at the tennis club and the herbicide passing through a shared root network; and
 - the shrubs removed were below the line of the existing solid fencing.
- 6.7 26 February – Objection. The points raised are as follows:
- querying the tennis club's motivation for offering to fold down the netting during the close season;
 - the netting does not stop sunlight shining in the eyes of the players due to the fact that the netting is north of the courts;

- the tennis club removed a tree, without authorisation; and thereby increased light levels on the courts; and
- the tennis club have previously asked the representors to remove trees on their land to increase light levels.

6.8 26 February – Objection. The points raised are as follows:

- a pathologist’s report, commissioned by the representors following the initial signs of the Sycamore tree failing, has been submitted. The report states that the tree’s condition is consistent with damage by a chemical agent capable of being transported within the tree’s vascular system. The report states that it is possible that an herbicide applied to a tree stump on the tennis club site and translocated to the representors’ tree via a shared root network. The report also notes that the affected tree was displaying symptoms of poor health prior to the herbicide being applied; and
- if the tennis club takes down the netting and waits 2 or 3 years this would allow existing bamboo plants on the representors’ property to grow to sufficient height to provide a green screen, thereby negating the need for the netting.

6.9 26 February – Objection. In support of the above objection an email was submitted with photographs of the bamboo plants.

6.10 27 February – Neutral representation stating that the netting does not enhance the conservation area.

6.11 In addition to the representations detailed above there has also been correspondence between the representors and the planning authority on a number of procedural issues. The issues raised are as follows:

- the application was not included on the weekly list sent to Community Councils and Council Members;
- two supporting documents that were originally indexed as “Accompanying Letter/Note/Email” were re-indexed to “Supporting Statements” by the case officer on 25 January 2018. The representors noticed this on 31 January 2018 and wished to clarify that they had additional time to comment on the documents;
- the planning authority confirmed the amended call-in procedure that would be adopted to address the initial absence of the application from the weekly list; and
- the representors sought confirmation as to when Council Members would be notified of the application.

7 PLANNING POLICY

7.1 The development plan is comprised of the Edinburgh and South East Scotland Strategic Development Plan (June 2013) and the Midlothian Local Development Plan 2017. The following policies are relevant to the proposal:

- 7.2 Policy **DEV2: Protecting Amenity within the Built-Up Area** states that development will not be permitted where it would have an adverse impact on the character or amenity of a built-up area.
- 7.3 Policy **DEV8: Open Spaces** states that the Council will seek to protect and enhance identified open spaces (the site of the Tennis Club being one such space). Development will not be permitted in these areas that would:
- A. Result in a permanent loss of the open space; and/or
 - B. Adversely affect the accessibility of the open space; and/or
 - C. Diminish the quality, amenity or biodiversity of the open space; and/or
 - D. Otherwise undermine the value of the open space as part of the Midlothian Green Network or the potential for the enhancement of the open space for this purpose.
- 7.4 Policy **ENV8: Protection of River Valleys** requires development within the river valley protection areas of the Rivers North Esk, South Esk and Tyne to have a specific locational need for the development, and where this is established, development must demonstrate that it will not have an adverse impact either on the landscape and conservation value of the valleys or impede potential public access opportunities.
- 7.5 Policy **ENV19: Conservation Areas** states that development will not be permitted within or adjacent to conservation areas where it would have any adverse effect on its character or appearance.

8 PLANNING ISSUES

- 8.1 The main issue to be determined is whether the proposal accords with development plan, unless material planning considerations indicate otherwise. The representation received is a material consideration. While the application incorporates a number of elements the contentious element of the application is the erection of the windbreak netting at a high level on the chain link fence along the northern boundary and western boundary of the site. This element of the proposal will be considered first, the assessment of the remaining elements follows.

Why is planning permission required?

- 8.2 Section 26 of the Town and Country Planning (Scotland) Act 1997 defines development as being “the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land”. The issue of netting being attached to the tennis club fence was first raised in a planning enforcement enquiry in 2014. At the time the planning authority viewed the netting that had been erected and considered it to be development. For the sake of clarity it is beneficial

to understand the process by which the planning authority reached this decision.

- 8.3 The netting is a commercially produced product that is available from various sports equipment suppliers; it is supplied in a finished state with eyelets already attached and no alteration is required prior to erection. The netting at the tennis club is attached to an existing fence via cable ties. The erection of the netting does not require any professional skills and does not constitute a building operation. The erection of the netting does however materially affect the appearance of the fence and the planning authority therefore considers the erection of the netting to be “other operations”.
- 8.4 Having determined that the operations constituted development the planning authority requested that the tennis club seek retrospective permission for the operations. Planning application 14/00786/DPP was submitted as a result of the enforcement process. Consent was granted and the approved netting (2 layers of pale green coloured netting) remained in place, and unaltered, until June 2017 when a 3rd layer of dark green netting was erected. As the additional layer materially affected the appearance of the fence the planning authority considered this to constitute development and a retrospective application was requested. The planning authority acknowledges that attaching the netting to an existing fence via cable ties could be considered to be a minor operation that does not constitute development; however having previously considered the operation to constitute development it is in the interests of consistent decision making to take a further application for planning permission.

Need for the development

- 8.5 The representors have queried whether the netting is necessary to allow the playing of tennis; they have stated that they are unaware of any other tennis clubs or venues that have similar netting. Some planning policies, for example those relating to development in the countryside, do require an applicant to demonstrate why there is a specific requirement for the proposed development at that location; however in general the planning system does not consider the issue of why a proposed development is required. The application site is situated within the built-up area of Dalkeith and Eskbank and policy DEV2 provides support for the principle of development within existing and future built-up areas. There is therefore no requirement for the applicant to demonstrate why the proposed development is required and the necessity, or otherwise, for the netting is not a factor in the assessment of the application. Assessment of the acceptability of the netting must be assessed on its impact on character and amenity.

Impact on sunlight to house

- 8.6 When assessing the impact of developments on sunlight and daylight to neighbouring properties Midlothian Council relies on the guidance set out in the Building Research Establishment's (BRE) publication "Site Layout Planning for Daylight and Sunlight". The guidance assumes that the structure being assessed is solid; the assessments have therefore been carried out on the basis of a worst case scenario that is more severe than the actual situation on site.
- 8.7 The BRE guidance suggests that assessments should be carried out for all main living rooms if they have a window facing within 90 degrees of due south; kitchens and bedrooms are considered to be less important although "care should be taken not to block too much sun". The impact of the netting on the south and west elevations of the representors' house has been assessed; these elevations contain the main windows which serve the property's living space and bedroom. The windows on the east and north elevations do not face within 90 degrees of due south and therefore no assessment is required for these elevations.
- 8.8 If a room faces within 90 degrees of due south and no obstruction (measured in a vertical section perpendicular to the window) from a new development subtends an angle of more than 25 degrees to the horizontal then the window will receive adequate levels of sunlight. Due to the orientation of the house the windows on the west elevation are almost perpendicular to the fence and therefore the fence has no impact on a 25 degree test for these windows. The south facing rooflight that serves the bedroom is on the upper floor of the house and passes a 25 degree test in relation to the fence bounding the tennis club; the test indicates that any fence at the tennis club would need to be 6.2m in height for it to subtend a 25 degree line for the bedroom window. The ground floor windows on the south elevation are significantly overshadowed by the overhanging eaves of the house and were therefore not assessed. The assessed windows receive acceptable levels of sunlight and therefore the impact on the amenity of the house, from loss of sunlight, is not significant.
- 8.9 The layout and window dimensions; and floor levels used for these calculations were taken from the approved building warrant drawings. The approved planning drawings were not used due to the fact that the design of the house was amended during construction; while the amendments were approved as non-material variations, when the finished building was viewed by the case officer, no amended drawings were submitted for planning purposes.

Impact on daylight to house

- 8.10 Daylight is the combination of direct and indirect sunlight. It includes direct sunlight, diffuse sky radiation and light reflected by landforms and buildings. For elevations that are parallel to an obstruction, e.g. the

south elevation, the 25 degree test can also be used to indicate whether a window will receive adequate levels of daylight. As the bedroom window passes a 25 degree test it can be considered to receive adequate levels of daylight. For windows that are perpendicular to an obstruction, e.g. the west elevation, the relevant test is a 45 degree test. For this test a line at 45 degrees is projected from the top of the obstruction towards the window being assessed. All of the windows on the west elevation pass a 45 degree test. The house receives acceptable levels of daylight and therefore the impact on the amenity of the house, from loss of daylight, is not significant.

Impact on sunlight and daylight to garden

- 8.11 The land on which the representors' house was built has a long history as residential garden ground; historically the land was used as garden ground for the lodge house associated with the cemetery, which is located on the eastern side of Cemetery Road. The area of established garden ground measures approximately 305 square metres. The representors own a large area of woodland to the west of the established garden ground, while some of this ground is being used by the representors as garden ground the land has not been the subject of a change of use application.
- 8.12 The house has a footprint of approximately 150 square metres. The house and its associated circulation space occupy the majority of the area of established garden ground; any loss of amenity from overshadowing from the netting is insignificant when compared to the fact that the majority of the garden space has been developed. While it is acknowledged that there is overshadowing of the area of woodland to the west of the established garden ground, the levels of amenity expected for an area of woodland are significantly less than that expected for garden ground. The impact of the netting on approved garden space is minimal.

Overbearing presence of fence and netting

- 8.13 The fence and netting have a combined height of 3.8m. In addition the finished floor level of the house is 1m lower than the base of the fence; furthermore the house is raised approximately 0.8m above the surrounding ground to the west. In many cases a structure of this height and level changes of the type seen at the representors' property would result in an overbearing presence with a detrimental impact on the amenity of occupants. In the case of the representors' property the design of the house and the layout of the land associated with it mean that the fence and netting do not appear as an overbearing structure. The house has been designed to maximise the open views of the valley to the north and west, and this ensures that the fence and netting does not appear as an overbearing structure.

Impact on conservation area

- 8.14 The netting is an undeniably modern feature and it is of an obviously functional appearance. When viewed from Cemetery Road the netting is clearly associated with the tennis club and therefore does not appear out of context with its immediate surroundings. The netting does not have a detrimental impact on the character of the conservation area when viewed from Cemetery Road. The netting is visible in views from the north and north west; most obviously from Ironmills Park but also in fleeting glimpses from trains crossing the Glenesk Viaduct. The level of visibility depends on the time of year, the netting is most visible in winter months, while in summer the trees on the representors' land offer greater screening. In these views the netting is seen in the wider context of the settlement of Dalkeith and Eskbank; while it is undoubtedly visible it does not appear significantly out of character with the surrounding area.

Conclusion regarding netting

- 8.15 Having considered the impact of the netting on the amenity of the neighbouring property and on the character of the conservation area the impact of the netting is not significant enough to warrant refusal of the application. The applicant has submitted additional information seeking to clarify the number of layers of netting that will be attached to the fence and to clarify what will be removed. In the interests of clarity it would be reasonable to condition that only a single layer is erected and to clarify which product will be used.
- 8.16 The applicants and the representors have reached agreement that a section of the netting will be taken down each year during the club's close season; while this spirit of good neighbourliness is welcomed by the planning authority it would not be reasonable to condition this. The netting has been assessed as being acceptable when erected and there is therefore no valid planning reason to condition its dismantling for part of the year. Any damage caused to the structural integrity of the fence due to keeping the netting in place during high wind conditions is a private legal matter between the parties involved and is not a material planning consideration.

Other elements of the proposal

- 8.17 The erection of the netting at low levels within the tennis club grounds will not have a detrimental impact on the character and amenity of the area. The re-painting of the fence will not have a detrimental impact on the character and amenity of the area. The shed and timber lean-to are in keeping with the scale and character of other structures within the grounds of the tennis club and will not have a detrimental impact on the character and amenity of the area. The installation of a new gate will be visible within the streetscape of Cemetery Road; in order to ensure that its design and colour do not have a detrimental impact on the character

of the area it would be reasonable to condition that details of the design and colour are submitted, and approved by the planning authority, prior to installation.

Procedural Issues

- 8.18 The application was registered on 22nd December 2017. The office was closed between Christmas and New Year and due to an administrative backlog the details were not updated on the Council's case management system until 9th January; this meant that the application was outwith the 2 week cycle used to generate the weekly lists that are sent to Community Councils and elected members. This issue was brought to the attention of the planning authority by the representors. The planning authority acknowledged the inconvenience caused and included the application details on the weekly list published 5th February 2018, with a brief explanatory note.
- 8.19 The delay in including the application on a weekly list also meant that elected members had missed the opportunity to call the application to committee within the 1 month window specified in the scheme of delegation. To address this the application was circulated to members using the notification procedure set out in the scheme of delegation.

9 RECOMMENDATION

- 9.1 That planning permission be granted for the following reason:

The proposal relates to an established use at the application site and will not have a significant detrimental impact on either the amenity of the neighbouring property or the character of the surrounding area. The proposal therefore complies with policies DEV2, DEV8, ENV8 and ENV19 of the Midlothian Local Development Plan 2017.

Subject to the following conditions:

1. Consent is hereby granted for the attachment of a single layer of windbreak netting at a high level to the existing chain link fence. The height of the netting, as installed, shall not exceed 3.8 metres when measured from ground level within the curtilage of the tennis club. Details of the colour and specification of the windbreak netting shall be submitted to and approved by the planning authority within one month of the date of this permission. Unless otherwise approved in writing by the planning authority the approved single layer of windbreak netting shall be erected within one month of the details being approved.

Reason: *For the sake of clarity*

2. Prior to the installation of the new gate details of the design and colour shall be submitted to and approved in writing by the planning

authority. Thereafter development shall comply with the approved details.

Reason: *To safeguard the appearance of the surrounding area.*

Ian Johnson
Head of Communities and Economy

Date: 27 March 2018

Application No: 17/00747/DPP

Applicant: Mr John Slater, Dalkeith Tennis Club, c/o 19
Thornycroft, Dalkeith

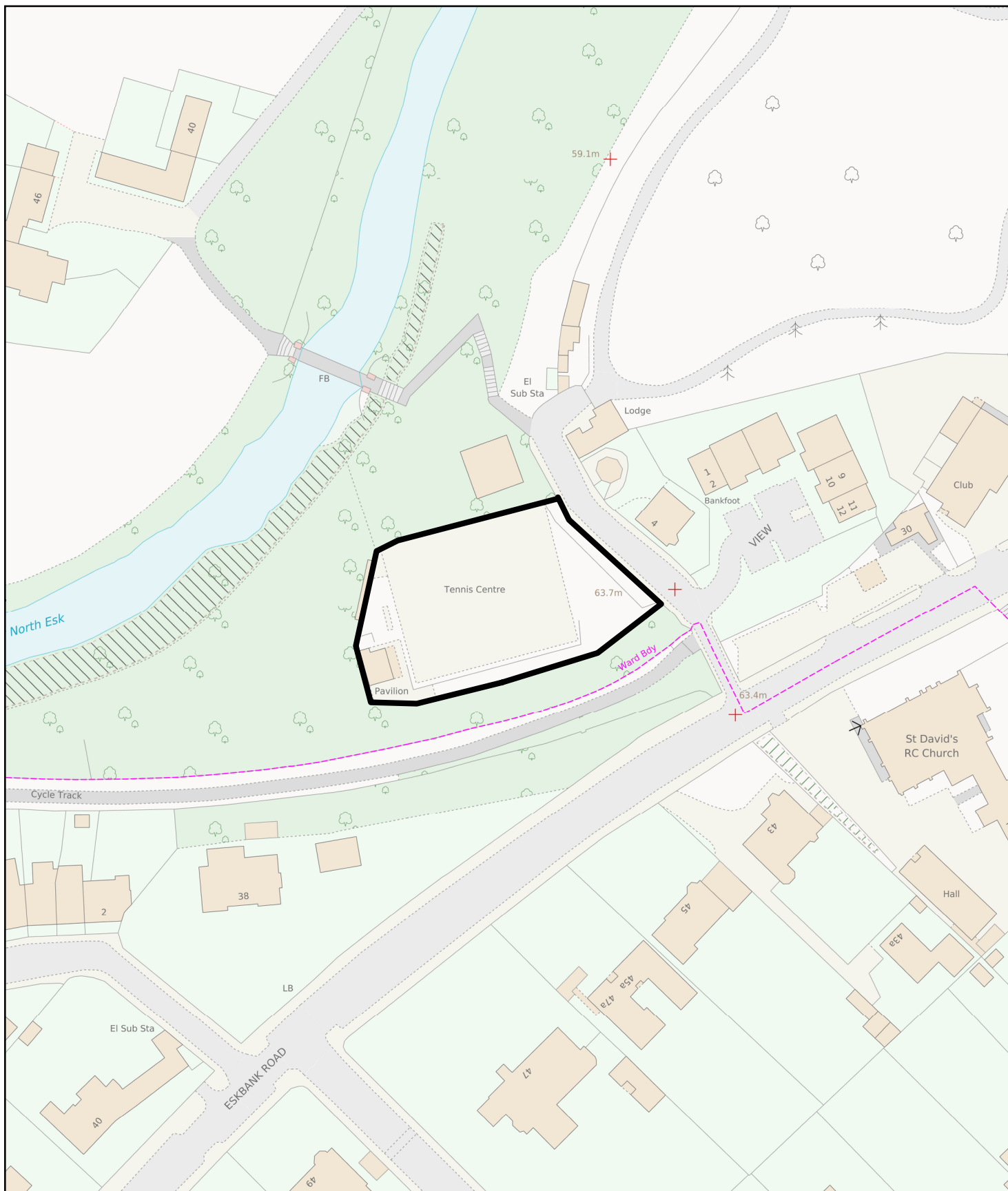
Agent: None

Validation Date: 22 December 2017

Contact Person: Graeme King

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Background Papers: None



**Education, Economy
& Communities**
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Erection of screening fencing; erection of shed and re painting of existing fencing (part retrospective) at Dalkeith Tennis Club, 5 Cemetery Road, Dalkeith

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