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## APPEALS AND LOCAL REVIEW BODY DECISIONS

Report by Head of Communities and Economy

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### 1 PURPOSE OF REPORT

- 1.1 This report informs the Committee of notices of reviews determined by the Local Review Body (LRB) at its meeting in March 2016; and an appeal decision received from Scottish Ministers.

### 2 BACKGROUND

- 2.1 The Council's LRB considers reviews requested by applicants for planning permission, who wish to challenge the decision of planning officers acting under delegated powers to refuse the application or to impose conditions on a grant of planning permission.
- 2.2 The decision of the LRB on any review is final, and can only be challenged through the Courts on procedural grounds.
- 2.3 Decisions of the LRB are reported for information to this Committee.
- 2.4 In addition, this report includes a decision on an appeal which has been considered by Scottish Ministers.

### 3 PREVIOUS REVIEWS DETERMINED BY THE LRB

- 3.1 At its meeting on 8 March 2016 the LRB made the following decisions:

	<b>Planning Application Reference</b>	<b>Site Address</b>	<b>Proposed Development</b>	<b>LRB Decision</b>
<b>1</b>	15/00740/DPP	4 Newmills Road, Dalkeith	Change of use of office to residential (2 flats)	Review upheld Permission granted
<b>2</b>	15/00767/DPP	St Mary's Lodge, Rosewell	Erection of extension to dwellinghouse	Review upheld Permission granted
<b>3</b>	15/00762/DPP	42 Station Road, Roslin	Erection of extension to dwellinghouse	Review upheld Permission granted

4	15/00703/DPP	Former Lugton Inn Site, Old Dalkeith Road, Dalkeith	Erection of 5 dwellinghouses	Review upheld Permission granted
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#### 4 APPEAL DECISIONS

- 4.1 An appeal against a refusal to issue a high hedge notice (15/00876/HH) concerning a hedge at 59 Carlops Road, Penicuik has been dismissed. The applicant's address is 63 Carlops Road, Penicuik. The application was refused on the grounds that there is no adverse effect from the high hedge. A copy of the appeal decision accompanies this report.

#### 5 RECOMMENDATION

- 5.1 The Committee is recommended to note the decisions made by the Local Review Body at its meeting on 8 March 2016 and the 59 Carlops Road, Penicuik appeal decision.

**Ian Johnson**  
**Head of Communities and Economy**

**Date:** 12 April 2016  
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**Background Papers:** LRB procedures agreed on the 26 November 2013.

## High Hedges (Scotland) Act 2013

### Appeal under section 12(1)

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Decision by Mike Croft, a Reporter appointed by the Scottish Ministers

- High hedge appeal reference: HHA-290-3.
- Location of the hedge: 59 Carlops Road, Penicuik, EH26 9HR.
- Owner of the hedge: Mr J McCarthy.
- Appellant's address: 63 Carlops Road, Penicuik, EH26 9HR.
- Application for a high hedge notice 15/00876/HH dated 30 October 2015.
- Appeal by Dr John N Cape against the decision by Midlothian Council that there is no adverse effect from the high hedge.
- Date of site visit by Reporter: 31 March 2016.

Date of appeal decision: 11 April 2016.

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### Decision

1. I confirm the decision by Midlothian Council that there is no adverse effect from the high hedge.

### Reasoning

2. Number 63 is a two-storey detached house, with front and rear gardens, set back about 10 metres from Carlops Road to the south-east. Adjoining number 63's north-eastern boundary is a hard-surfaced pedestrian lane towards two metres wide. Number 59 lies immediately beyond the lane on its north-eastern side. The house there, again two-story detached, is set back some 40 metres from Carlops Road. There is a stone wall on the boundary between number 59 and the lane, and the hedge in question lies next to the wall just within number 59's garden. It extends back from Carlops Road for about 39 metres. It comprises a line of about 23 leylandii trees extending for the whole of that length and, for the 12 metres or so nearest the road, there is also a privet hedge between the leylandii and the wall. The council says that the leylandii are up to about seven metres high, and my observations during my site inspection confirmed that. The heights of the leylandii trees do not vary much along the length of the hedge. The privet is much lower, up to about three metres high.

3. The test to be applied in this case, as specified in section 6(5)(a) of the Act, is "whether the height of the high hedge adversely affects the enjoyment of the domestic

property which an occupant of that property could reasonably expect to have". Reasonable enjoyment of a domestic property can have a number of different components, and the appellant in this case raises several matters. The components go beyond those covered in some detail in the publication "*Hedge Height and Light Loss*" (2005) written by the Building Research Establishment (BRE).

4. The appellant is concerned about the effect of the leylandii hedge on light levels to a front bedroom. He says that there is virtually no view of the sky though the bedroom's side window because of the hedge and, although he once had a view from there over the top of the hedge to the hills, very little light now comes into the window and the direct view is of a wall of unattractive hedging. I saw for myself that the hedge indeed tends to fill the view through that window: one needs to get very close indeed to the window before any sky can be seen through it. But I also saw, very much as pointed out by the council, that the side window is not the bedroom's main window: it has a larger window in the front main wall providing daylight, sunlight and more distant views, and that larger window is an important source of reasonable enjoyment of the bedroom.

5. The appellant calculates from the BRE publication that the "action hedge height" for the hedge in question, in relation to the bedroom's side window, is 4.7 metres, with a need for a further reduction below that height to allow for future growth. However, it is important to my mind that that assessment does not take into account the benefit that is derived from the larger front window to the same room. I accept that there may be some loss of light to the landing and stairs, through a part-glazed door immediately opposite the side window, but light levels to the landing and stairs might not be particularly good even with a lower hedge.

6. The appellant also complains that the light to his dining room at the rear of the house, as seen through double patio doors, and to the adjacent kitchen as seen through its window, is also reduced because of the hedge. I agree that there is some light reduction to these rooms, but the hedge is very much to one side in the views from the relevant windows. Those views include the full length of the appellant's garden, his garden fence, a house beyond the garden and his garage on the side of the garden furthest from the hedge. I do not believe that there is a loss of reasonable enjoyment in this respect. The rooflights to the dining room assist to a degree in enhancing light levels to the dining room.

7. I also made observations from the appellant's study window at the front of his house. From here the hedge is very much to one side of the view and it does not extend very far forward in the view. I do not see the appellant's reasonable enjoyment being affected in this respect.

8. The appellant also says that there is a loss of light to his garden, especially the rear garden. He asserts that the early morning sun is completely cut out, to the detriment of what grows in the back garden. My assessment is that there will indeed be some over-shadowing as a result of the hedge to the appellant's garden, but the effect in this respect will be limited to the summer months and then only very early in the mornings. The sunlight lost as a result of the hedge will be a very small proportion of the overall amount of sunlight received in the garden, and I would not expect, nor did I see, any adverse effect on plant growth in the garden. I agree with the council's Landscape Officer that the hedge is

“somewhat dominant” but I am not satisfied that the amount of dominance is sufficient to be regarded as a loss of reasonable enjoyment

9. Bringing these threads together, I am not satisfied that, even in combination, the various matters I refer to above mean that the hedge at its present height affects the enjoyment of the appellant’s property in the terms of the Act.

10. The Scottish Government’s “*Guidance to Local Authorities*” (2014) on the 2013 Act refers to a number of matters – beyond the reasonable enjoyment of neighbours’ domestic properties – that may be relevant in high hedge cases. The appellant refers to one matter that does not relate directly to his property and that is his contention that the hedge overhangs the lane, making the lane inconvenient and dark. I saw that there is indeed some overhanging, but the hedge growth over the lane is for the most part above the head height of passers-by, and I do not consider there is any material loss of convenience or safety for them.

11. I have taken account of all the other matters raised, but none of them is as important as the matters I deal with above.

*Mike Croft*

Reporter