



THE CITY OF EDINBURGH COUNCIL

Business Centre G.2 Waverley Court 4 East Market Street Edinburgh EH8 8BG Email: planning.support@edinburgh.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 100630048-001

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)

[X] Applicant [] Agent

Applicant Details

Please enter Applicant details

Form fields for Applicant Details including Title, Name, Address, and Contact Information.

Site Address Details

Planning Authority:

City of Edinburgh Council

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

Address 1:

42 LADYSMITH ROAD

Address 2:

BLACKFORD

Address 3:

Address 4:

Address 5:

Town/City/Settlement:

EDINBURGH

Post Code:

EH9 3EU

Please identify/describe the location of the site or sites

Northing

670866

Easting

326109

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)

Creation of a Hard Surface in front of property with space for two cars to park side by side. The area was previously a mixture of shrubs and heathers.

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.

I believe that judgements made have been inconsistent, and a subjective interpretation of policies applied, with arguably inappropriate application of policy criteria leading to the refusal of the application. Of the five reasons for refusal, four make statements that are subjective judgements, which I believe do not reflect actuality. The remaining one has measurable criteria which had previously been cleared with the roads department without objection. We have satisfied the requirements.

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)

1) Summary of Rationale for Local Review, which includes a timeline of the process and an item by item response to the Decision Notice.

Application Details

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

22/05759/FUL

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

15/11/2022

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

03/05/2023

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 David Lynch

Declaration Date: 12/07/2023

1. Summary of rationale for Local Review of Planning Decision.

1. I believe that judgements made have been inconsistent, and a subjective interpretation of policies applied, with arguably inappropriate application of policy criteria leading to the refusal of the application. Of the five reasons for refusal, four make statements that are subjective judgements, which I believe do not reflect actuality. The remaining one has measurable criteria which had previously been cleared with the roads department without objection. We have satisfied the requirements.
2. Two of the five apply National Planning Framework 4 (NPF4), which was only adopted in February 2023, beyond the target date for a decision on an application submitted in November 2022 for works completed in August 2022. While NPF4 was to be taken into consideration, it was only to be used in an advisory capacity in assessing this proposal. Despite these guideline requirements having been interpreted subjectively in the refusal, I submit that we have essentially satisfied NPF4 in general and the specific requirements to the extent that they apply to our works.
3. Another two subjectively apply the Edinburgh Local Development Plan 2016 (LDP), using criteria appropriate to new Developments and Development of Existing buildings through alteration and extensions, requiring that the design and form, choice of materials and positioning are compatible with the character of the existing building. I contend that we also meet these requirements to the extent that they are applicable to a hard surface created within the curtilage of the property.
4. The fifth statement of non-compliance cites the non-statutory Guidelines for Householders in terms of proximity to a junction, width of access and depth of driveway, and are measurable criteria. The proposed location, with respect to the junction was cleared with the Roads department, twice, before commencing work, as was the 6m x 5.5m driveway area, to which they had no objections. The planned surface dimensions also were the same as the driveway of no. 40, next door, which was granted a Certificate of Lawfulness. Additionally, in terms of proximity to the junction, planning permission was granted in 2003 for a parking area in this location.
5. It can be argued that this planning application should not have been required in the first place due to possible misapplication of Section 26 (1) of the Town and Country Planning (Scotland) Act 1997, to define the works as a development that required planning permission without taking into account Section 26 (2) (d), which provides exceptions to Section 26 (1) including works within the curtilage of a dwelling. I contend that the proposals complied with all the provisions of Article 3, Schedule 1, Part 1, Class 3C and Class 8 of the Town and Country Planning Act (General Permitted Development) (Scotland) Order 1992, as amended, and therefore constituted 'permitted development' and that the refusal to grant a Certificate of Lawfulness (Existing) on 10th October 2022 was, with hindsight, arguably not correct and not consistent with other opinions we had received both from within and from outwith the Planning Department.

It is perhaps worth noting here that we have, throughout this long process, sought to do the right thing; seeking and taking advice from Planning and Roads departments, to ensure we complied with Planning Regulations. The fact that it is now sixteen months since we began the process and the situation remains unresolved has caused us considerable stress and anxiety. Having been informed by everyone at the time, that our plan constituted a Permitted Development, we submitted our Certificate of Lawfulness application. Our contractor then had a cancellation and offered to start our job early. Naively, as it turns out, we gave the go ahead to start, as we were expecting the certificate imminently.

The outcome is described in the process timeline below.

2. Process Timeline

I have compiled a timeline of the process so far, which is presented here for your information.

- September 2014 Telephone discussion with Planning Department Task Team and South Area Office of Roads Department regarding our proposal for 6m x 5.5m two car driveway in current location: Roads had no objection to location or dimensions. We did not proceed with the works at this time due to ill health.
- 22nd March 2022 Email to Roads requesting confirmation that there were no objections to the proposed location and dimensions of the driveway and that it should be suitable for consideration as a permitted development.
- 25th March 2022 Reply from Roads department, stating no objection from a roads point of view and they believed the works would be classified as permitted development under Planning but it would be worthwhile confirming this by contacting them at Planning Response.
- 7th April 2022 I requested confirmation from Planning Response by email and, in reply to my email, they said I should submit the Certificate of Lawfulness proposal to obtain a formal and legal view from Planning.
- 28th April 2022** I submitted an application for a Certificate of Lawfulness (Proposed) which was registered as valid: ePlanning Ref 100543901-001, Planning Ref 22/01927/CLP.
Target date for decision was 27th June 2022
- 7th June 2022 Received a request from Planning Official A to confirm the Hard surface is porous in accordance with the regulations for Permitted Development. This was confirmed by return. It was noted in the confirmation request that the works had commenced but there was no suggestion that our works were not a Permitted Development, nor that a CLP was not acceptable.
- 21st June 2022 Communication from Planning Official B stating that
a) CLP is not applicable as the work has now commenced, and
b) the extent of excavation in his judgement constituted development in planning terms. This was the first time it was suggested that our planned works might not be a Permitted Development.
- 28th Jun 2022 Following discussions with Planning Official B regarding the process of withdrawal of CLP and submission of Planning Application, 22/01927/CLP is withdrawn.
- 29th June 2022 A full planning application was submitted and registered as having been received: ePlanning ref 100579357-001, Planning dept. ref. is 22/03379/FUL.
- 7th July 2022 Communication from Planning Official C stating that:
"On checking your online application ref: 100579357-001 you have completed the wrong type of application, Planning permission, you require a certificate of lawfulness as your property is a single dwelling. Can you please fill out the attached application save and email back to me and I will amend and add to the system. This will allow me to move the application forward."
Forms for application for Certificate of Lawfulness (Existing) were provided. This appeared to confirm our belief that the works were a Permitted Development.

- 21st July 2022 New CLE submitted and confirmation of receipt and registration of 22/03379/CLE, Certificate of Lawfulness (Existing) and payment of fees received.
Target date for Decision Notice set for 19th September 2022.
- 10th Oct 2022 Decision Notice on 22/03379/CLE received: Application refused by Planning Official B. The report of handling states the following:
"These works were the subject of an earlier application for a certificate of lawfulness for proposed development (reference number 22/01927/CLP). However, the works were commenced prior to the determination of the application. As such the proposal was in retrospect and a Certificate could not be issued.
At that time the applicant was informed of that position. They were also advised that: " the extent of the engineering works required; to excavate the embankment, upon which the house stands, and to reduce the original land level to that of the adjoining public road, constitutes development in planning terms."
As such the applicant was advised to submit a planning application for the proposed works. However, an application for a certificate of lawfulness for existing development has been submitted."
- This decision notice implied that I deliberately ignored Planning Official B's planning advice and submitted a CLE application whereas, ***I had submitted a planning application and been told that it was not required and that a CLE was the required application type***; I had fully followed the new instructions given to me by the Planning Department.
- 27th Oct 2022 Received an email from Planning Official A apologising for mistakes made to date in the process, and advising that a full planning application was indeed required.
- 15th Nov 2022 Another Planning Application was submitted and confirmation of receipt of Planning Application: ePlanning ref 100606444-001, Planning dept. ref. is 22/05759/FUL. Target date set for the application was 14th January 2023.
- 3rd May 2023** Decision notice ref. 22/05759/FUL; permission refused after considerable correspondence with Planning Official D.
- 12th July 2023 Request for Local Review submitted.

3. Item by Item response to decision notice

These are the five non-conformances of the Planning Decision 22/05759/FUL, 3rd May 2023, and my response to each.

Reason for Refusal:-

1. The retrospective works do not comply with NPF4 Policy 16g as the works would have a detrimental effect on the character of the home and surrounding area; would not be acceptable in terms of size, design, and materials; and would have a detrimental effect on neighbouring properties.

Response:-

i) NPF4 was only adopted in February 2023, which was beyond the target date for a decision on an application submitted in November 2022, for works completed in August 2022. While NPF4 was to be taken into consideration, it was only to be used in an advisory capacity in assessing this proposal.

Allowing for that, the statement that the works would have a detrimental effect on neighbouring properties, is a subjective interpretation of Policy 16g (i), and one which is not borne out by the fact that not one of the twelve neighbours notified of the proposal raised an objection to, or commented on the Planning Application (Existing). In addition, many of the closest, and therefore most likely affected, neighbours have paid compliments on appearance of the finished works.

The Report of Handling states that the works do comply with 16g (ii) in that it does not have detrimental effect on the neighbouring properties in terms of physical impact, overshadowing or overlooking.

I therefore respectfully request that this reason for refusal be overruled.

Reason for Refusal:-

2. The retrospective works do not comply with LDP policy Des 12 as the works would not be in keeping with the existing building or character of the wider area; would not be acceptable in terms of scale, form, design.

Response:-

ii) DES 12 is applicable to “alterations and extensions to existing buildings” to ensure the choice of materials and positioning are compatible with the character of the existing building and is essentially similar to NPF4 16g (i) above.

Arguably to apply it to the provision of a hard surface within the curtilage of a dwelling house may not be appropriate; it is a subjective interpretation of DES 12(a), which requires that “alterations and extensions to existing buildings which in their design and form, choice of materials and positioning are compatible with the character of the existing building” should be granted planning permission.

Even if it was considered applicable to the driveway, the interpretation of DES 12(a) is not in accord with neighbourhood sentiment, as evidenced by the fact that there were no complaints or adverse comments from the neighbours.

There are nine neighbouring houses on the south side of Ladysmith Road, six of which (excluding no. 42) have driveways. Four have driveways at the front, opening on to Ladysmith Road, of which two are 6m in access width, and two have driveways at the rear accessing Observatory Green, only two have no driveway; so the

driveway at no. 42 is not out of keeping with the character of the immediate neighbourhood and the wider area.

It is also noted in the Report of Handling that we fully comply with DES 12 (b) & DES 12 (c).

I therefore respectfully request that this reason for refusal be overruled.

Reason for Refusal:-

3. The retrospective works do not comply with NPF4 Policy 14c as the works would be poorly designed and inconsistent with the six qualities of successful places as the works do not retain the sense of place or sustainable environment of the area.

Response:-

iii) As above, NPF4 was only adopted in February 2023, which was beyond the target date for a decision on an application submitted in November 2022, for works completed in August 2022. While NPF4 was to be taken into consideration, it was only to be used in an advisory capacity in assessing this proposal.

Notwithstanding that, in terms of sustainability, the hard surface directly impacts water management in a positive way through the incorporation of porous materials for the driveway hardstanding, and will indirectly contribute towards climate mitigation to reduce the emissions of greenhouse gasses by providing for the installation of an off-road electric vehicle (EV) charging port.

To suggest that, in terms of Policy 14(c), the works were poorly designed and inconsistent the six qualities of successful places is a subjective judgement: the design and materials employed are of a high standard, in keeping with the neighbourhood, and not detrimental to the amenity of the surrounding area.

In addition it should be noted that more than 50% of the garden ground removed consisted of paving slabs, concrete path and steps, and terraced retaining walls of the original landscaping. The shrubs removed were overgrown and scheduled for removal irrespective of the driveway construction. Thus the extent of green infrastructure removed is not as great as assessed in the refusal and therefore has less negative impact on the environmental amenity of the area than suggested.

I therefore respectfully request that this reason for refusal be overruled.

Reason for Refusal:-

4. The retrospective works do not comply with LDP policy Des 1 as the works would be an inappropriate design which is damaging to the character and appearance of the surrounding area.

Response:-

iv) DES 1 states that "Planning permission will not be granted for poor quality or inappropriate design or for proposals that would be damaging to the character or appearance of the area around it, particularly where this has a special importance".

The driveway design and quality is wholly appropriate, and does not damage the character of the area around it. Ladysmith road is not within a conservation area, nor has it protected features and characteristics.

DES 1 also states that "This policy applies to all new development, including alterations and extensions". It could be argued that this driveway is not a

Development according to section 26 (2) (d) of the Town and Country Planning (Scotland) Act 1997, which states that “the use of any buildings or other land within the curtilage of a dwelling house for any purpose incidental to the enjoyment of the dwelling house as such” shall not be taken for the purposes of this Act to involve **development** of the land”. As such, application of DES 1 could be considered inappropriate in this instance.

In addition, stating that the works would have an inappropriate design and be damaging to the character and appearance of the surrounding area is again a subjective judgement that is not reflected in the absence of objections or comments to the planning application approval process, nor in the compliments on the completed works received from our neighbours. Also, as noted in ii) above, it is similar in design, character and appearance to that of neighbouring properties.

I therefore respectfully request that this reason for refusal be overruled.

Reason for Refusal:-

5. The retrospective works do not comply with the Guidance for Householders as the depth of the driveway is too shallow; the width of the access is too wide; and the distance from the junction is unsuitable.

Response:-

v) This objection cites three guideline criteria with which Householders should observe: proximity to the junction with Eva Place; width of the access; and depth of the driveway.

The proximity to the junction is less than the 15 metres suggested in the guidelines, however two contacts with roads department, in 2015 and 2022, seeking assurances that the proposal was acceptable both confirmed that there was no objection to the proposed location of the driveway, the access from the driveway is not onto a Trunk road, a Classified road, nor a bus route and as such complies with Class 8 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992. In addition they considered that, from a road safety point of view, being opposite to Eva Place junction gives enhanced visibility of vehicles with clear lines of sight of vehicles and other road users entering and exiting Ladysmith Road. Furthermore, Planning permission had previously been granted for a parking space in this position in 2003.

With regards to the width and depth of the opening, these were chosen as matching those of the permitted development at no. 40, and were also not objected to by the roads department.

The depth of 5.5m is acknowledged in the report of handling as a “minimal infringement” of the guidelines.

I therefore respectfully request that this reason for refusal be overruled.

[Please note that, in order overcome the access width objection, I offered to modify the proposal such that we would close off the existing separate access to the house and divert it so that the 6m opening included the sole entrance access to the property from the hard surface parking area.

I was advised that the offer was made too late in the process to be accepted.

I remain willing to apply this modification if it would facilitate planning approval of the works]

Additional information on refusal of CLE.

22/03379/CLE, 10th October 2022

As I consider it material to the overall discussion on this Planning process, I have included a discussion of the refusal of the Certificate of Lawfulness (Existing) here for completeness and also because, in hindsight, it should have been challenged at the time, but as noted elsewhere we were anxious to follow instructions from the Planning Department.

Reason for Refusal:-

The proposed development represents development as defined by section 26 of the Town and Country Planning (Scotland) Act 1997. The development is also in excess of what could be permitted under the provisions of Article 3(1), Schedule 1, Part 1, Class 3C of the Town and Country Planning (General Permitted Development)(Scotland) Order 1992. Therefore, planning permission is required for these works.

Response:-

i) Article 3(1), Schedule 1, Part 1, Class 3C of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 provides for;

'The provision within the curtilage of a dwelling house of a hard surface for any purpose incidental to the enjoyment of that dwelling house or the replacement in whole or in part of such a surface.'

ii) The Planning officer stated that "those provisions do not permit excavation works merely the provision of a hard surface."

And that "The extent of the works here represent significant excavation works to form a surface upon which vehicles could safely park."

Further that "the works represent engineering works, as defined in section 26 of the Town and Country Planning (Scotland) Act 1997, the definition of works requiring planning permission."

iii) **I contend that:** the proposed hard surface should have been classed as a permitted development as the construction employed Tobermore Tegula Hydropave permeable paving, laid upon pea gravel, granite sand and a type 1 base, to provide a porous surface as required by section 3C (3). Also the formation of vehicular access in connection to the hard surfacing element is permitted development under Class 8,

"The formation, laying out and construction of a means of access to a road which is not a trunk road or a classified road, where that access is required in connection with development permitted by any class in this Schedule other than Class 7", as access to the road will not be from a trunk road or classified road, nor on a bus route.

To argue that the Class 3C provisions do not encompass any excavation works seems disingenuous as it would imply that any landscaping of a garden would require planning permission.

In referring to section 26 (1) for the definition of "engineering works" to be classed as "development" and therefore requiring planning permission, it has overlooked section 26 (2) (d) which states that "the use of any buildings or other land within the curtilage of a dwelling house for any purpose incidental to the enjoyment of the dwelling house as such" "shall not be taken for the purposes of this Act to involve **development** of the land". I have so far been unable to find the regulation that defines when the amount of material removed becomes classified as "engineering works".

Given the above, it could be argued that the CLE was valid and should have been approved. (Note that when the 1st full planning application was made, the receiving Planning Official considered that a full planning application was not necessary, and instructed me to submit a CLE (Certificate of Lawfulness (Existing)) as the work was within the curtilage of a single dwelling house.)