

Notice of Review made under and in terms of section 43A (8) of the Town and Country Planning (Scotland) Act 1997 and regulation 9 of The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013

Applicants: Mr & Mrs Gregory Favier

Applicants address: 19 Inveralmond Drive, Edinburgh EH4 6JX

Application Site: As above

Representative of the Applicant: Sandy Telfer, Partner, Gillespie Macandrew LLP, 5 Atholl Crescent, Edinburgh

Planning Authority: The City of Edinburgh Council

Planning Authority Reference Number: 23/00418/FUL

Proposed Development: The erection of a dark wood perimeter fence with vertical slats along the western, southern and northern boundaries of the residential property located at 19 Inveralmond Drive, Edinburgh EH4 6JX and the installation of electric gates at the top of its access drive

Applicants' Response to Further Written Submission by Mr John Howison

Introduction

The Applicants are pleased to note that the advice in their statement setting out their reasons for submitting their review request (“the Review Request Statement”) would appear to have addressed the concerns of all but one of the persons who submitted objections to their application – Mr John Howison.

Land Ownership

Notwithstanding the clear and unequivocal advice to objectors set out in the Report of Handling and referred to in the Review Request Statement, that “the ownership of land cannot be considered as material to the acceptability of the planning application” and that “disputes regarding land ownership are a private legal matter”, Mr Howison reiterates the advice in his original comments to the Council that part of the Application Site is “amenity land” that has been “sequestered” (sic) by the Applicants.

In his further representation Mr Howison states that “[t]here is no dispute about the property boundary and evidence of the registered accepted land boundary from the Land Register for Scotland has been tabled by the applicant in his request for review (Applicants document no 8)”.

That is factually incorrect. The property boundary is disputed and the Applicants’ Document No. 8 does not provide conclusive evidence of the “registered accepted land boundary”. The Applicants’ application to Registers of Scotland for the first registration of their property in the Land Register of Scotland has not yet been completed. The land certificate showing the indemnified, and potentially non-indemnified, extent of their registered title area has still to be issued. As the Applicants sought to make clear in their Review Request Statement, Document No. 8 comprises an extract from a Registers of Scotland “A level 2” plans report (“the Plans Report”). Its purpose is not, as Mr Howison contends, to confirm the registered extent of the Application Site. Such reports identify any discrepancies between the boundaries of a property as shown on the plan of that property that is presented at first registration and the boundaries of the surrounding properties as shown in the OS map. The issue of shortfall and overlap explained in the Review Request Statement will be addressed by the Keeper. At that point, it will be up to Mr Howison and other residents within the Bovis Estate to decide whether they are concerned enough about the issue to want to challenge the physical v title boundary position in the Courts.

Impact on Nature Conservation

Their potential (and single) planning reason for them doing so, however, according to Mr Howison (in what is essentially the same “detriment of Nature Conservation” argument that he set out in his initial published comments regarding the Applicants’ planning application), is that the fence will prevent local residents from “*maintaining*” the disputed area and thus “*compromise biodiversity in both the treatment of invasive species and disease and the encouragement of natural generation.*”

This advice is based on the erroneous proposition that, having gone to the trouble and expense of fencing off their garden ground, as required, it should be made clear, by Bovis in terms of their title deeds, and committing themselves to implementing a detailed re-planting scheme, the Applicants would thereafter allow “invasive species and disease” to affect the enjoyment of their garden. It also ignores the fact that, if the fence-line remains in place, Mr Howison will have full and free access, should he so wish, to maintain the “shortfall” area of land that is shown in the Plans Report to lie within the red-line boundary of the Applicants’ property, as disclosed on the OS map, but on the other “amenity land” side of their fence. No account appears to have been taken either by Mr Howison of the fact that when implementing an obligation to put a fence-line in place in circumstances where the land that is to be enclosed lies within a wider area of woodland (as is the case at the Application Site) some deviation from a straight-line must be expected, if as many of the existing trees as possible are to be preserved.

On any objective assessment, once these points are considered, the “impact” of the ownership issue raised by Mr Howison in planning terms is immaterial.

The Access Gate

Mr Howison also has an issue with the design of the access gate that the Applicant’s have put forward for approval as part of their Application. He finds its proposed wooden structure to be “visually intrusive” and would prefer that it be made instead of “open wrought iron”. This is a matter of individual taste.

Mr Howison rejects the advice from the case officer that the 2001 Permission is still extant. The point that the Applicants understand Mr Howison to make, is that if, as he contends, the 2001 Permission is not extant, it follows that it cannot be relied upon as authority supporting the construction of the access gate.

To be clear. The Applicants' position, supported by affidavit evidence from the previous owner of the Application Site's sons, is that the 2001 Permission is extant and it would be thus open to the them to construct an access gate on reliance of it. However, notwithstanding that primary position, the Applicants also made the point in their Review Request Statement that the grant of the 2001 Permission (extant or otherwise) in itself was relevant to their Application because it demonstrated that the principle of a gate being erected across the access drive of 19 Inveralmond Drive, had already been accepted by the Council. The Applicants made the straightforward point that the 2001 Permission had authorised "the installation of a gate across the driveway" on condition that it was "set back a distance of 5 metres from the edge of the title boundary and opened inwards", which is precisely the type of gate that they have applied to the Council for planning permission to erect. That point is not dependant on the 2001 Permission still being extant. It is the fact that the principle of a gate (of the sort that the Applicants have asked for planning permission to put in place) being erected across their driveway has been previously accepted by the Council, that is relevant.

Loss of Designated Open Space

Mr Howison has misunderstood the Applicants' position in relation to the issue of whether the case officer was correct to identify part of the Application Site as designated open space.

Mr Howison draws the Local Review Body's attention to the fact that the document referred to as "Document No. 3" on the productions list is not part of the docketed plans approved as part of the grant of the 2001 Permission. The Applicant agrees that the plan attached to Document 3 does not represent the area within the Application Site to which the 2001 Permission attaches. But the Review Request Statement did not hold them out as such. It is specifically referred to in the list of documents as a "location plan".

Having made this point, Mr Howison then goes on (with what would appear to be an apparent non sequitur) to advise the Local Review Board that, as a consequence of this apparent defect in the Document No. 3 plan, it follows that the Applicants' "suggestion that the Poppledote Area has been accepted by the Council through the grant of the 2001 Permission [as not forming part of designated open space] is unsound."

Again, to be clear. The Applicants drew the Council's attention to the fact that planning permission for residential had previously been granted on part of an area of the overall Application Site that the case officer had concluded was designated open space. They did so for the simple (and what they had assumed would be accepted to be obvious) reason that with the principle of its development for housing having been previously found by the Council

to be acceptable, it followed that the area in question could no longer reasonably be expected to be covered by an open space policy which protected it from development.

But as the Applicants pointed out in their Review Request Statement, whether the Council accepts the foregoing point or not, is immaterial to the outcome of the Local Review Body's ultimate determination of the Application so far as the issue of alleged loss of designated open space. This is because the fundamental point that the Applicants make in relation to the loss of designated open space issue is that no part of the Application Site is shown as designated open space in the Proposals Map. The points that Mr Howison seeks to make in relation to this issue are, therefore, irrelevant.

Conclusion

For the reasons outlined above, the Applicants respectfully request that no weight is afforded to Mr Howison's further representations.

Gillespie Macandrew LLP

Agents for the Applicants

5 Inveralmond Drive,
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5 October 2023

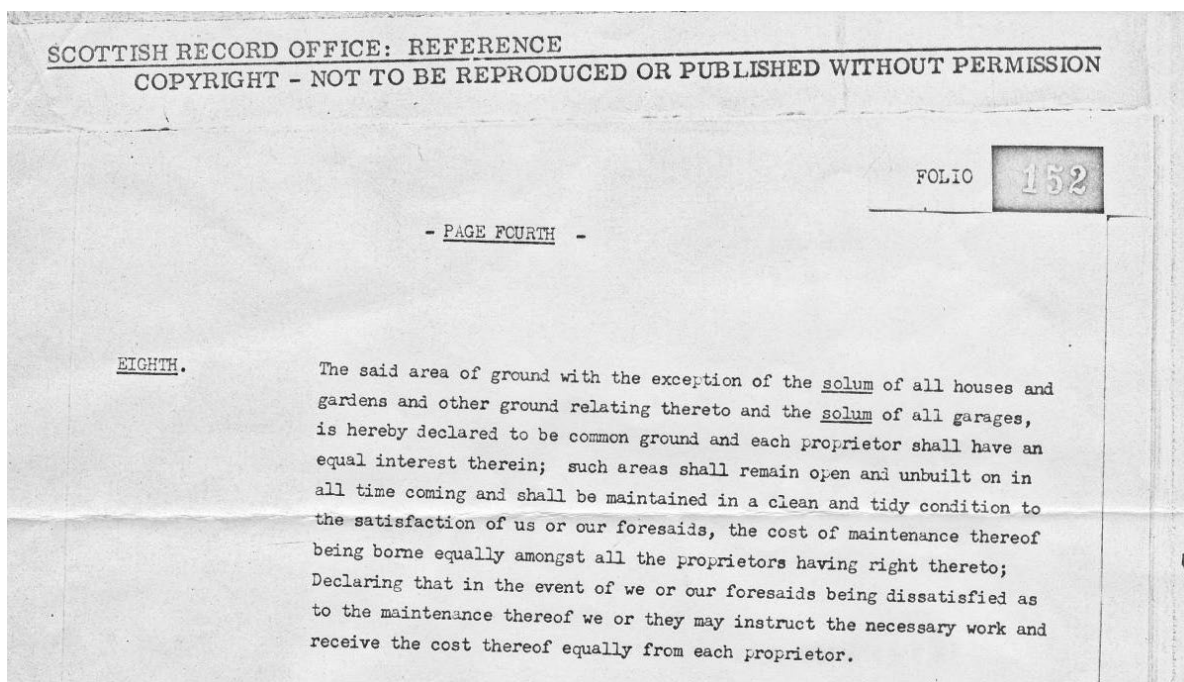
Local Review Body,
City of Edinburgh Council

Sirs,

19 Inveralmond Drive, Notice of Local Review No 23/00418/Ful- Further written submission by John Howison, 5 Inveralmond Drive.

I refer to your letter of 3 October informing me that the refusal of planning consent at 19 Inveralmond Drive has been referred to you and that you will undertake a Local Review. I stand by my objection about the development already recorded on the CEC Planning Portal but would want to make the following additional comments in relation to the Report on Handling and the Applicants Statement setting out reasons for requiring the review.

By way of background, I have lived in Inveralmond Drive since 1976 and for a number of years I was friends with Ken Donald, the previous occupant of 19 Inveralmond Drive. Mr Donald was the design architect for Bovis' Development of the Inveralmond Estate. He purchased 19 Inveralmond Drive from Bovis, which was carved out from the Salveson Estate land and not included in the Development. In addition to building and selling the houses, Bovis also provided by deed that the owners of the houses, but not 19 Inveralmond Drive, would also be responsible for and have equal interests in the amenity land within the former Salveson Estate which was not included within the several house plots. I reproduce below an extract from that deed (referred to in my objection) for ease of reference.



Following the completion of the site an informal association of the residents was formed to consider how the amenity land, including the area to the west of the housing and bordering the

River Almond. This needed to be considered as Bovis would stop maintaining this land after all of the houses had been sold. In 1976 the residents collectively met and resolved that the land should be maintained with minimum intervention to allow it to revert to a natural and sustainable state. Other than the areas covered by the schedules to the Tree Preservation Order the ground was generally grassland. This maintenance regime has been actively followed by the residents who have allowed the grassland to naturally seed and grow into woodland. They have also cut back vegetation to keep pathways free, felled and removed diseased trees affected by Dutch elm disease, removed trees which presented a clear and immediate danger to the resident or visitors to the area and eradicated outbreaks of Japanese Knotweed. The residents have also accommodated the use of the land by the wider neighbourhood with access, in addition to that from Inveralmond Drive, open onto Peggys Mill Road and the River Almond Walkway.

The Report on Handling:

Although described as Neighbour Residential, I and other objectors similarly described - William Anderson at 20 Inveralmond Drive, Neil Mearns at 2 Inveralmond Gardens and Dr Mark-Paul Buckingham at 25 Inveralmond Drive - are beneficial occupiers/contractual custodians of the amenity area and should be referred to as neighbours only in relation to that part of the site which bounds the amenity area and as occupiers of that part of the site which is outwith the property boundary of 19 Inveralmond Drive.

The RoH states (page 5, Principles of use and page 7, non material considerations) that disputes regarding land ownership are a private legal matter. There is no dispute about the property boundary and evidence of the registered accepted land boundary from the Land Register for Scotland has been tabled by the applicant in his request for review (Applicants document no 8). The proposed western fence line shown in the application clearly strays from the boundary into the amenity area and would prevent the residents from maintaining the sequestered section of the amenity land. The impact of this would be to compromise biodiversity in both the treatment of invasive species and disease and the encouragement of natural generation. This is a material consideration.

The Applicants Statement (regrettably the Applicants statement is not paginated so reference will be taken from the headings or subheadings therein):

“Reasons for requiring review” (ii) (one)- the assertion that the 2001 consent is still extant is erroneous. Sandy Telfer’s e-mail of 20 August 2023 (doc 4) avers that the consent is extant with reliance on an historic drainage trench within the planning unit. (See below my final para relating to the Applicants statement). This given without confirmation that the drainage was part of the development within the docketed plans, when the trench was dug and whether it could conceivably be regarded as a substantial start to the development rather than just normal management of the land. It cannot be taken that Mr Armstrong’s response of 29 August (also doc 4) represents the CEC definitive decision on whether the 2001 consent is still valid.

“Ownership of the application site” - the City Atlas is not a definitive statement of land boundaries and excepting where the base plan is actively updated by OS, simply shows historic land features. The claim of prescriptive possession of the amenity area section out with their boundary is absurd. Since the land was not enclosed or used by Mr Donald nor did he seek to exclude others from the land, it could be more convincingly argued that the woodland area of

Mr Donalds Garden now by prescriptive possession formed part of the amenity area, being actively managed within the maintenance regime for the amenity land agreed by the residents.

The Applicant's statement that the proposed western fence line lies inside the Applicants plot and not on the boundary is not relevant, but serves to confirm the deviance between the proposed fence line and the ownership boundary. The set-off between yellow (residents land) and blue (the applicants land) is not a legitimate suggestion as it does not address the residents' obligations and rights under the Bovis deed.

“Ownership Certification” - The Applicants in registering their title would have been clearly aware of the extent of their land ownership.

“Access Gate” and “Loss of Designated Open Space” - The applicant makes reference to the 2001 approved application for the erection of a new dwelling house and his document no 3 refers. This consent granted on 2 October 2002 required the development to be undertaken in accordance with the docketed plans. These plans are not recorded on the CEC Planning Portal, but paper copies are no doubt still held by CEC. It should be noted, however that the accompanying plan in document no 3 is not part of the docketed plans and indeed misrepresents the area of the 2001 site. In fact, the site for that development lies bounded north/south between the no 19 driveway and Peggy's Mill Road and is bounded east/west by the fence line with 17 Inveralmond drive and the end of the garage block of no 19 and forms the eastern part only of the current application site. This can be ascertained from documents in the planning portal pertaining to the 2008 refused planning consent for the site and including the SG reporter's decision report. The area of land shown in document no 3 with the 2001 decision letter would involve the demolition of the lounge, part of the house and the garage block of no 19 and is clearly erroneous. Accordingly, the applicant's suggestion that the Poppledote Area has been accepted by the Council through the grant of the 2001 permission is unsound. Moreover, Mr Donald sought the new house referred to in the 2001 permission as a new home for himself and his wife, Margaret. After the sad death of his wife, Mr Donald took no practical steps to make a substantial start to the development and this consent should now be considered as lapsed.

I stand ready to provide any additional information which you may determine might assist you in your review.

Yours faithfully,

John Howison OBE