

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 100645859-001

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

Agent Details

Please enter Agent details

| | | | |
|-----------------------|-------------------------|--|-------------------------|
| Company/Organisation: | Gillespie Macandrew LLP | | |
| Ref. Number: | F.06666.1 | You must enter a Building Name or Number, or both: * | |
| First Name: * | Sandy | Building Name: | 5 |
| Last Name: * | Telfer | Building Number: | |
| Telephone Number: * | | Address 1 (Street): * | Atholl Crescent |
| Extension Number: | | Address 2: | Gillespie Macandrew LLP |
| Mobile Number: | | Town/City: * | Edinburgh |
| Fax Number: | | Country: * | United Kingdom |
| | | Postcode: * | EH3 8EJ |
| Email Address: * | | | |

Is the applicant an individual or an organisation/corporate entity? *

Individual Organisation/Corporate entity

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" value="19"/> |
| First Name: * | <input type="text" value="Gregory"/> | Building Number: | <input type="text"/> |
| Last Name: * | <input type="text" value="Favier"/> | Address 1 (Street): * | <input type="text" value="Inveralmond Drive"/> |
| Company/Organisation | <input type="text"/> | Address 2: | <input type="text"/> |
| Telephone Number: * | <input type="text"/> | Town/City: * | <input type="text" value="Edinburgh"/> |
| Extension Number: | <input type="text"/> | Country: * | <input type="text" value="United Kingdom"/> |
| Mobile Number: | <input type="text"/> | Postcode: * | <input type="text" value="EH4 6JX"/> |
| Fax Number: | <input type="text"/> | | |
| Email Address: * | <input type="text" value="REDACTED"/> | | |

Site Address Details

| | |
|---|--|
| Planning Authority: | <input type="text" value="City of Edinburgh Council"/> |
| Full postal address of the site (including postcode where available): | |
| Address 1: | <input type="text" value="19 INVERALMOND DRIVE"/> |
| Address 2: | <input type="text" value="CRAMOND"/> |
| Address 3: | <input type="text"/> |
| Address 4: | <input type="text"/> |
| Address 5: | <input type="text"/> |
| Town/City/Settlement: | <input type="text" value="EDINBURGH"/> |
| Post Code: | <input type="text" value="EH4 6JX"/> |

Please identify/describe the location of the site or sites

| | | | |
|----------|-------------------------------------|---------|-------------------------------------|
| Northing | <input type="text" value="676027"/> | Easting | <input type="text" value="318276"/> |
|----------|-------------------------------------|---------|-------------------------------------|

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)

The erection of a perimeter fence (dark wood) vertical slats along the west, south and north of our property boundary. The installation of electric gates at the top of the drive to Inveralmond Drive.

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.

Please see the attached Supporting Statement

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)

Please see attached List of Documents

Application Details

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

23/00418/FUL

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

01/02/2023

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

04/07/2023

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

If there are reasons why you think the local Review Body would be unable to undertake an unaccompanied site inspection, please explain here. (Max 500 characters)

N/A

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 the agent certify that this is an application for review on the grounds stated.

Declaration Name: pp. 

Declaration Date: 02 October 2023

Gregory Favier.
19 Inveralmond Drive
Edinburgh
EH4 6JX

Decision date: 4 July 2023

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACTS
DEVELOPMENT MANAGEMENT PROCEDURE (SCOTLAND) REGULATIONS 2013**

The erection of a perimeter fence (dark wood) vertical slats along the west, south and north of our property boundary. The installation of electric gates at the top of the drive to Inveralmond Drive.

At 19 Inveralmond Drive Edinburgh EH4 6JX

Application No: 23/00418/FUL

DECISION NOTICE

With reference to your application for Planning Permission registered on 28 February 2023, this has been decided by **Local Delegated Decision**. The Council in exercise of its powers under the Town and Country Planning (Scotland) Acts and regulations, now determines the application as **Refused** in accordance with the particulars given in the application.

Any condition(s) attached to this consent, with reasons for imposing them, or reasons for refusal, are shown below;

Reason for Refusal:-

1. The proposal is contrary to the Local Development Plan Policy Env 12 in respect of trees, as the works are likely to result in unacceptable damage to protected trees or other trees worthy of retention.
2. The proposal is contrary to the Local Development Plan Policy Env 18 in respect of open space, as the works will result in an unacceptable loss of open space.

3. The proposal is contrary to National Planning Framework Policy 20 as it would result in the loss of existing green infrastructure resulting in a deficit in green infrastructure provision.

Please see the guidance notes on our [decision page](#) for further information, including how to appeal or review your decision.

Drawings 01, 0201, 02, represent the determined scheme. Full details of the application can be found on the [Planning and Building Standards Online Services](#)

The reason why the Council made this decision is as follows:

The proposals are acceptable with regards to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. The proposed works to the dwelling will preserve the character and appearance of the conservation area and built features which contribute to character.

Whilst the proposals are compatible with the development plan in terms of the climate and nature crisis, heritage, design, amenity and the green belt, the application will result in an unacceptable loss of open space, and is likely to have a damaging impact on a number of trees that are either protected or worthy of retention without suitable arboricultural justification. The proposals do not comply with the Development Plan and as there are no material considerations that indicate otherwise it is recommended that this application is refused.

This determination does not carry with it any necessary consent or approval for the proposed development under other statutory enactments.

Should you have a specific enquiry regarding this decision please contact James Armstrong directly at james.armstrong@edinburgh.gov.uk.



Chief Planning Officer
PLACE
The City of Edinburgh Council

NOTES

1. If the applicant is aggrieved by the decision to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within three months beginning with the date of this notice. The Notice of Review can be made online at www.eplanning.scot or forms can be downloaded from that website. Paper forms should be addressed to the City of Edinburgh Planning Local Review Body, G.2, Waverley Court, 4 East Market Street, Edinburgh, EH8 8BG. For enquiries about the Local Review Body, please email localreviewbody@edinburgh.gov.uk.

2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.

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Report of Handling

**Application for Planning Permission
19 Inveralmond Drive, Edinburgh, EH4 6JX**

Proposal: The erection of a perimeter fence (dark wood) vertical slats along the west, south and north of our property boundary. The installation of electric gates at the top of the drive to Inveralmond Drive.

**Item – Local Delegated Decision
Application Number – 23/00418/FUL
Ward – B01 - Almond**

Recommendation

It is recommended that this application be **Refused** subject to the details below.

Summary

The proposals are acceptable with regards to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. The proposed works to the dwelling will preserve the character and appearance of the conservation area and built features which contribute to character.

Whilst the proposals are compatible with the development plan in terms of the climate and nature crisis, heritage, design, amenity and the green belt, the application will result in an unacceptable loss of open space, and is likely to have a damaging impact on a number of trees that are either protected or worthy of retention without suitable arboricultural justification. The proposals do not comply with the Development Plan and as there are no material considerations that indicate otherwise it is recommended that this application is refused.

SECTION A – Application Background

Site Description

The application relates to a two storey house located in a predominantly residential area.

The eastern-most section of the application site and driveway are located within an area of designated Open Space, whilst the remaining area of the applications site is located within the Cramond Conservation Area and the Edinburgh Green Belt.

Description Of The Proposal

The proposal seeks planning permission for the erection of perimeter fence around the entirety of the site along with access gates on the southern boundary leading onto Peggy's Mill Road and at the eastern edge of the site adjacent to Inveralmond Drive. The application is in part retrospective as several sections of the fence have already been constructed.

Supporting Information

- Photos 1 - 4
- Title deed extract
- Tree Report and Survey 1
- Tree Report and Survey 2
- Tree work Decision Notice (REF: 22/05658/TCO)
- Ecological Site Survey

Relevant Site History

22/05658/TPO
19 Inveralmond Drive
Edinburgh
EH4 6JX
T9 Horse Chestnut, dead - remove to ground level.
Granted

21 December 2022

Other Relevant Site History

No other relevant site history was identified.

Consultation Engagement

Publicity and Public Engagement

Date of Neighbour Notification: 4 July 2023

Date of Advertisement: 10 March 2023

Date of Site Notice: 10 March 2023

Number of Contributors: 12

Section B - Assessment

Determining Issues

Due to the proposed development falling within a conservation area, this report will first consider the proposals in terms of Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997:

- Is there a strong presumption against granting planning permission due to the development conflicting with the objective of preserving or enhancing the character or appearance of the conservation area?
- If the strong presumption against granting planning permission is engaged, are there any significant public interest advantages of the development which can only be delivered at the scheme's proposed location that are sufficient to outweigh it?

This report will then consider the proposed development under Sections 24, 25 and 37 of the Town and Country Planning (Scotland) Act 1997 (the 1997 Act):

Having regard to the legal requirement of Section 24(3), in the event of any policy incompatibility between National Planning Framework 4 (NPF4) & Edinburgh Local Development Plan 2016 (LDP) the newer policy shall prevail.

Do the proposals comply with the development plan?

If the proposals do comply with the development plan, are there any compelling material considerations for not approving them?

If the proposals do not comply with the development plan, are there any compelling material considerations for approving them?

In the assessment of material considerations this report will consider:

- equalities and human rights;
- public representations; and
- any other identified material considerations.

Assessment

To address these determining issues, it needs to be considered whether:

a) The proposals harm the character or appearance of the conservation area?

The section of the application site which is located within the Cramond Conservation Area is designated within the Conservation Area Character Appraisal as being within the river almond valley section of the spatial structure. The character appraisal highlights the important role which the river valley has in contributing to the conservation area stating:

The section of the Almond valley within the Conservation Area is generally deeply incised and wooded. The sandstone rock structure is clearly visible and forms a significant feature. General views into the valley are contained by this topography as well as the meandering alignment of the river and the screening provided by the woodland extending beyond the ridgeline.

The proposals will not result in harm to the character or appearance of the conservation area as the proposed fences and gates are to be constructed of timber which is a

suitable material; and is in keeping with the wooded character of the immediate surrounding area. The scale of the fence and gates is appropriate as high timber fences similar in form and scale to the proposal are typical of boundary treatments in the surrounding area, and the proposal will not have an adverse impact on views into the valley or the character and appearance of the conservation area.

The orientation of the proposed fences cannot reasonably be controlled by the planning regime.

Conclusion in relation to the conservation area

The works will preserve the special character and appearance of the conservation area.

The proposals are acceptable with regards to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

a) The proposals comply with the development plan?

National Planning Framework 4 (NPF4) was adopted by the Scottish Ministers on 13 February 2023 and forms part of the Council's Development Plan. NPF4 policies supports the planning and delivery of Sustainable Places, Liveable Places and Productive Places and are the key policies against which proposals for development are assessed. Several policies in the Edinburgh Local Development Plan (LDP) are superseded by equivalent and alternative policies within NPF4. The relevant policies to be considered are:

- NPF4 Policy 1
- NPF4 Policy 7d
- NPF4 Policy 7e
- NPF4 Policy 8
- NPF4 Policy 16g
- NPF4 Policy 20
- LDP Design policy Des 12
- LDP Environment policies Env 10, Env 12 and Env 18

The non-statutory 'Listed Building and Conservation Area' guidance and 'Guidance for Householders' are material considerations that are relevant when considering NPF4 policies 1, 7d, 7e and 16g and LDP policy Des 12.

Global climate and nature crisis

Policy 1 of NPF4 prioritises the climate and nature crisis in all decisions. It has been applied together with other policies in NPF4 and the overall intended outcome of NPF4. The proposal will have a neutral impact on sustainability and the environment. On

balance, the proposed development does not conflict with the intended outcomes of NPF4 and thus, complies with NPF4 Policy 1.

Principle of Use

The proposals are acceptable with regards to the green belt as they are ancillary to the existing residential use of the land and would not detract from the landscape quality and/or rural character of the area. However, the eastern section, including the driveway leading from the premises to Inveralmond Drive is designated within the adopted Edinburgh Local Development Plan as being open space and forms part of the Council's existing green infrastructure. The erection of the fence and gates would result in a loss of this designated open space to private garden ground. It has not been demonstrated that any of the five criteria specified in LDP policy 18 have been met which could justify the loss of the open space and the principal of the proposal is therefore unacceptable.

Public representations have raised questions about the ownership of land within the application site. For the avoidance of doubt, the ownership of land cannot be considered as material to the acceptability of the planning application, and disputes regarding land ownership are a private legal matter.

The proposals comply with LDP policy Env 10 and NPF4 policy 8. However, the proposals do not comply with policy Env 18 or NPF 4 policy 20.

Scale, form, design and neighbourhood character

The proposals are of an acceptable scale, form and design and are compatible with the existing dwelling. The proposals will preserve the character and appearance of the conservation area and built features which contribute to character, as detailed in section a) of the assessment.

The proposals comply with NPF4 policies 7d, 7e, 16g)i) and LDP policy Des 12a).

Neighbouring Amenity

With respect to privacy, overlooking, physical impact, overshadowing and loss of daylight or sunlight, the proposals have been assessed against requirements set out in the non-statutory Guidance for Householders. The proposals will not result in any unreasonable loss to neighbouring amenity.

The proposals comply with NPF 4 policy 16g)ii) and LDP Policy Des 12b) and c).

Trees

Information has been provided in relation to trees that are likely be impacted. In addition, application 22/05658/TCO has given permission for the felling of several trees on site. However, the information which has been submitted is insufficient to meet the requirements of BS 5837:2012, and/or to demonstrate that the impact on the trees is acceptable. The proposals may therefore have a damaging impact on a number of trees that are either protected or worthy of retention.

The proposals do not comply with LDP policy Env 12.

Conclusion in relation to the Development Plan

The proposals are compatible with the development plan in terms of the climate and nature crisis, heritage, design, amenity and the green belt. However, the proposal will result in an unacceptable loss of open space and may have a damaging impact on a number of trees that are either protected or worthy of retention without suitable arboricultural justification.

The proposals do not comply with the overall objectives of the Development Plan.

c) There are any other material considerations which must be addressed?

The following material planning considerations have been identified:

Emerging policy context

On 30 November 2022 the Planning Committee approved the Schedule 4 summaries and responses to Representations made, to be submitted with the Proposed City Plan 2030 and its supporting documents for Examination in terms of Section 19 of the Town and Country Planning (Scotland) Act 1997. At this time little weight can be attached to it as a material consideration in the determination of this application.

Equalities and human rights

Due regard has been given to section 149 of the Equalities Act 2010. No impacts have been identified.

Consideration has been given to human rights. No impacts have been identified through the assessment and no comments have been received in relation to human rights.

Public representations

material considerations - objections

- The proposed gates will harm the character and appearance of the of the Conservation Area. - Addressed in Section A.
- The proposed fence will harm the character and appearance of the of the Conservation Area. - Addressed in Section A.
- Impact on neighbouring privacy. The proposal is the for the erection of a fence. - No privacy impacts to neighbours are posed by the development.
- The Trees Survey is inaccurate. - Addressed in Section B.
- Loss of open space. - Addressed in Section B.
- Impact on biodiversity. - Addressed in Section B.
- The application is contrary to development plan policies and to applicable guidance documents. - Addressed in Section B.
- The design of the proposal is unacceptable. - Addressed in Section B.
- Negative impact on road safety. - No road safety impacts are posed by the development.

material considerations - support

- The proposed gates are aesthetically pleasing and fit with the local area. - Addressed in Section A and B.
- The proposed gates provide the applicant with additional privacy and security. - Addressed in Section B.

non-material considerations

- Disputes regarding the ownership of land. - Addressed in Section B.
- Disputes regarding property deeds. - Compliance with property deeds is a private legal matter
- The works will prevent neighbours from accessing part of the site. - Rights of access to land are a private legal matter
- The land ownership form and other parts of the application form are inaccurate or misleading. - The land ownership form is a self-declaration. Should incorrect information have been supplied to the Planning Authority any grant of planning permission may be legally challengeable in the courts. The proposal is assessed on the totality of the information provided. If information is omitted from the application form, but included elsewhere in the submitted information, it is included as part of the application and its assessment.
- The application plans do not accord with what has been built. - Only the development shown on the relevant drawings is assessed. Should other development occur, or have occurred as the application is in retrospect, this may constitute a breach of planning control.
- Works will be within an area designated as a Tree Preservation Area, Conservation Area, and the Green Belt. - Applications are assessed on their merits. That an application site is within a designated area does not by itself impact on the acceptability of an application.
- The application site is within a Special Landscape Area. - Whilst the Lower Almond Special Landscape Area adjacent to the application site, the application does not fall within the area.
- The application is in retrospect. Applications are assessed on their merits. - That an application is made in retrospect does not by itself impact on the acceptability of an application.
- Inadequate neighbour notification. - The council has complied with the relevant legislation regarding neighbour notification.
- The application will make it possible for another planning application to remove more trees to be granted. - Only the works specified as part of the application can be considered as part of this assessment.

Conclusion in relation to identified material considerations

The proposals do not raise any issues in relation to other material considerations identified.

Overall conclusion

The proposals are acceptable with regards to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. The proposed works to the dwelling will preserve the character and appearance of the conservation area and built features which contribute to character.

Whilst the proposals are compatible with the development plan in terms of the climate and nature crisis, heritage, design, amenity and the greenbelt, the application will result in an unacceptable loss of open space which forms part of the Council's green infrastructure and is likely to have a damaging impact on a number of trees that are either protected or worthy of retention without suitable arboricultural justification being provided . The proposals do not comply with the Development Plan and as there are no material considerations that indicate otherwise it is recommended that this application is refused.

Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following;

Reason for Refusal

1. The proposal is contrary to the Local Development Plan Policy Env 12 in respect of trees, as the works are likely to result in unacceptable damage to protected trees or other trees worthy of retention.
2. The proposal is contrary to the Local Development Plan Policy Env 18 in respect of open space, as the works will result in an unacceptable loss of open space.
3. The proposal is contrary to National Planning Framework Policy 20 as it would result in the loss of existing green infrastructure resulting in a deficit in green infrastructure provision.

Background Reading/External References

To view details of the application go to the [Planning Portal](#)

Further Information - [Local Development Plan](#)

Date Registered: 28 February 2023

Drawing Numbers/Scheme

01, 02

**David Givan
Chief Planning Officer**

PLACE
The City of Edinburgh Council

Contact: James Armstrong, Assistant Planning Officer
E-mail: james.armstrong@edinburgh.gov.uk

Appendix 1

Consultations

The full consultation response can be viewed on the Planning & Building Standards Portal.

Appendix 2

Application Certification Record

Case Officer

I have assessed the application against the City of Edinburgh Council's Scheme of Delegation (2023) Appendix 6 – Chief Planning Officer and the Statutory Scheme of Delegation (2023) and can confirm the application is suitable to be determined under Local Delegated Decision, decision-making route.

Case Officer: James Armstrong

Date: 3 July 2023

Authorising Officer

To be completed by an officer as authorised by the Chief Planning Officer to determined applications under delegated powers.

I can confirm that I have checked the Report of Handling and agree the recommendation by the case officer.

Authorising Officer (mRTPI): Lynne McMenemy

Date: 3 July 2023

Mr Donald
The Coachhouse
19 Inveralmond Drive
Edinburgh
EH4 6JX

Application No: 01/02959/FUL

TOWN AND COUNTRY PLANNING (SCOTLAND) ACTS
TOWN AND COUNTRY PLANNING
(GENERAL DEVELOPMENT) (SCOTLAND) ORDERS

DECISION NOTICE

APPLICANT: Mr Donald

With reference to your application registered on 30 July 2001 for planning permission for the following development: -

New house + garage. (Scheme: S2)

At
19 Inveralmond Drive Edinburgh EH4 6JX.

The Council in exercise of its powers under the above Acts and Orders now **GRANTS PLANNING PERMISSION** for the development in accordance with the plan(s) docketed as relative to this permission and the particulars given in the application. Any condition(s) attached to this consent, with the reasons for imposing them, are shown below: -

CONDITIONS:

1. The development hereby permitted shall be commenced no later than five years from the date of this consent.
2. A detailed specification, including trade names where appropriate, of all the proposed external materials shall be submitted to and approved in writing by the Head of Planning & Strategy before work is commenced on site; Note: samples of the materials may be required.
3. The trees on the site shall be protected during the construction period by the erection of chespale fencing, or similar fencing as approved in writing by the Head of Planning & Strategy, at the limit of the canopy spread of the trees; no materials, equipment or buildings shall be stored or located within the protected area, nor shall there be any access through it. The fencing shall be maintained in a secure and upright condition to the satisfaction of the Head of

ANDREW M HOLMES
DIRECTOR

Planning & Strategy.

4. The proposed entrance gates are to be set back 5 metres from the site boundary and are to open inwards.
5. All windows to the upper level corridor on the east elevation shall be fitted with obscure glazing at all times to the satisfaction of the Head of Planning and Strategy.

REASONS:

1. In order to accord with the statutory requirements of the Town and Country Planning (Scotland) Acts.
2. In order to enable the Head of Planning & Strategy to consider this/these matter/s in detail.
3. In order to safeguard protected trees.
4. In order to safeguard the interests of road safety.
5. In order to protect the privacy of adjoining neighbours.

This permission does not carry with it any necessary consent or approval for the proposed development under other statutory enactments.

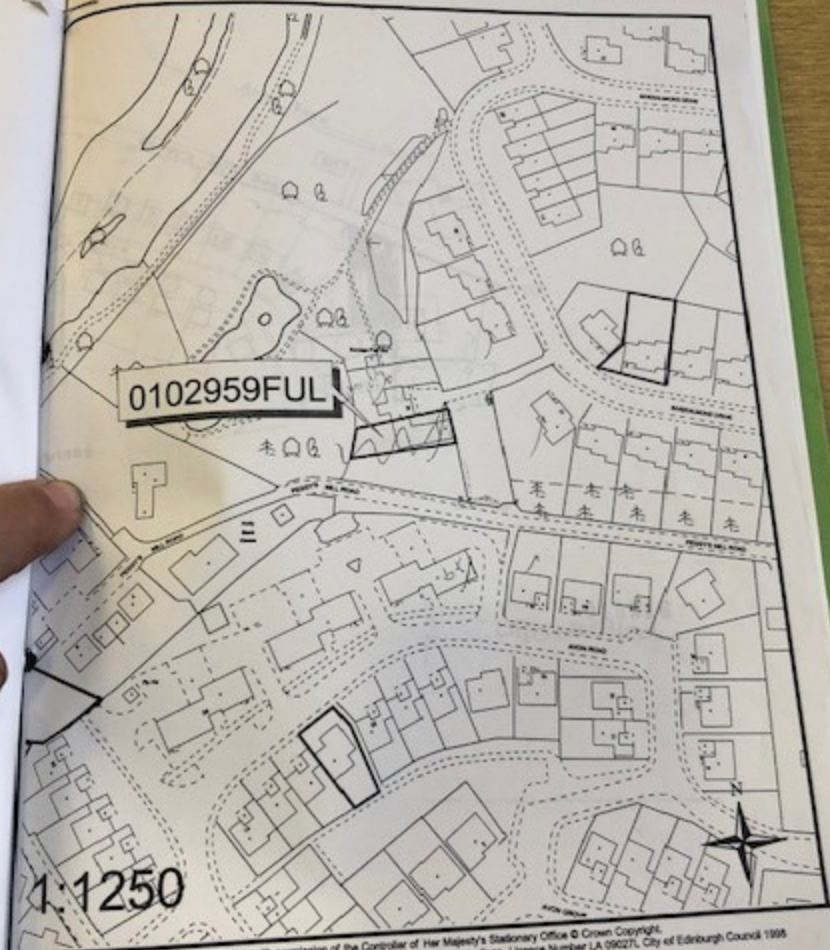
7 October 2002

Alan Henderson

Alan Henderson, Head of Planning and Strategy

FURTHER INFORMATION

If you have a specific enquiry regarding the development please contact the Planning Department on 0181 529 3710 (Fax 0181 529 3711). If you have an enquiry on a general matter please contact Customer Services on 0181 529 4028 or 4029.



0102959FUL

1:1250

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PLANNING APPLICATION
The City Development Department - Planning

From: James Armstrong <James.Armstrong@edinburgh.gov.uk>

Sent: 29 August 2023 17:50

To: Sandy Telfer <Sandy.Telfer@gillespiemacandrew.co.uk>

Cc: Lynne McMenemy <Lynne.McMenemy@edinburgh.gov.uk>

Subject: RE: Mr & Mrs Gregory Favier - 19 Inveralmond Drive, Edinburgh - Planning Application 23/00418/FUL [GM-LIVE.FID2838116]

Good evening Mr Telfer,

Thank you for your email, apologies for my delayed response.

As elaborated upon in the report of handling, the application was refused as it did not comply with the development plan, contravening Local Development Plan Policy Env 12 in respect of trees and Local Development Plan Policy Env 18 in respect of Open Space.

Taking the points of your email in turn:

1. Whilst the extant 2001 permission (reference 01/02959/FUL) is material to application 23/00418/FUL, it was not included in the report of handling as when making an assessment against the development plan it has little bearing on the acceptability of the application. Open Space is defined in the Local Development Plan and its Proposals Map. The Open Space Audit 2016 does not form part of the Development Plan.
2. It would not be appropriate for me to speculate on the views of the Local Review Body as to the materiality of any unilateral undertaking proposed should a review of my decision be sought by your clients. This would be a matter for the Local Review Body to consider.
3. The application was viewed as unacceptable in relation to Local Development Plan Policy Env 12 in respect of trees as the nature of the application was such that the proposals were likely to have a damaging impact on trees worthy of retention. As your clients did not supply sufficient information regarding the trees and other aspects of the proposed development I was not satisfied that the proposed works would not have a damaging impact on the trees in question, nor that the works were necessary for good arboricultural reasons.
4. On 19.04.2023 and 05.05.2023 your clients were provided with details of the information it would be necessary to provide as part of the tree survey.

I hope that the above points of clarification are helpful. I would remind you that should you intend to request a review of the decision this will need to be made via e-planning within three months of the issue of the decision.

Best regards,

James Armstrong (he/him)
Planning Assistant
The City of Edinburgh Council
Email: James.Armstrong@edinburgh.gov.uk
www.edinburgh.gov.uk



From: Sandy Telfer <Sandy.Telfer@gillespiemacandrew.co.uk>
Sent: Tuesday, August 29, 2023 12:38 PM
To: James Armstrong <James.Armstrong@edinburgh.gov.uk>
Subject: RE: Mr & Mrs Gregory Favier - 19 Inveralmond Drive, Edinburgh - Planning Application 23/00418/FUL [GM-LIVE.FID2838116]

Dear Mr Armstrong

I refer to my undernoted email.

I am in the course of preparing an application for a review request and need the information that I requested from you, to inform that application.

I appreciate that in terms of the Council's performance standards that you have 10 working days in which to respond but I should be grateful if you would confirm that you will be providing me with a substantive response and let me know when you intend to provide it.

Thanks

Sandy Telfer
Partner
for and on behalf of Gillespie Macandrew LLP

GILLESPIE MACANDREW

5 Atholl Crescent
Edinburgh EH3 8EJ
0131 221 6663
07977 352 940
www.gillespiemacandrew.co.uk



From: Sandy Telfer
Sent: 20 August 2023 20:21
To: james.armstrong@edinburgh.gov.uk
Subject: Mr & Mrs Gregory Favier - 19 Inveralmond Drive, Edinburgh - Planning Application 23/00418/FUL

Dear Mr Armstrong

I am instructed by Mr & Mrs Favier who promoted the subject application for retrospective planning permission, which you refused under delegated powers on 4th July 2023.

In your decision letter you advise the applicants that if they have any specific enquiries regarding your decision they should contact you direct. Please treat this email as a direct and specific enquiry regarding your decision.

You gave two reasons for your refusal.

The first was that the erection of the fence as a means of enclosing what Mr & Mrs Favier understand on the basis of legal advice to be their own private garden ground would result in an "unacceptable loss of open space".

The second was that the fence would be "likely to have a damaging impact on a "number of trees that are either protected or worthy of protection"

Dealing first with the issue of loss of open space. The planning file for 19 Inveralmond Drive (see attached) confirms that the area of ground within the eastern section of the application site which is covered by the Open Space designation is the subject of a 2001 planning permission for a residential development. Council reference 01/02959/FUL refers. No pre-commencement conditions were attached to this permission. I am advised that there is historic evidence on the ground in the form of a drainage trench within the planning unit which was dug on reliance of the permission prior to the expiry of the time limit for its implementation. The permission, therefore, has been lawfully and validly implemented and is thus still extant. There is no mention of this planning permission in your Report of Handling. At the very least this raises issues of whether the Open Space Audit 2016 which includes this eastern section needs to be amended to exclude this area. Do you accept that the existence of this permission is a relevant material consideration which it would be open to the LRB to take into account if an application for review is submitted?

You will be aware from the drawings submitted in support of the subject application that the eastern boundary of the application site is already fenced off.. The Open Space Audit 2016 and the Council's Open Space Strategy together confirm that there are several enclosed private gardens within the City that are covered by the Open Space policy

protection. It follows, therefore, that open space does not have to be “public” open space in order for it to be covered by the designation and the associated policy protection. In your view, and in the context of a S43A (8) review application, would the submission of a unilateral undertaking of the sort mentioned above together with a reference to the foregoing points concerning enclosed private garden ground constitute relevant material considerations for the LRB to take into account?

Turning now to the issue of the adverse tree impact. You draw a distinction between trees that are protected under TPO – 30 and trees that are not covered by the TPO but are “worthy of protection.”

Dealing firstly with the trees that are covered by the TPO. The application site is labelled “W2” in the TPO. Schedule 1 lists the type of trees within the W2 area that are protected. Can you please confirm which of the protected trees is it that in your view were likely to be adversely affected by the fencing?

Trees worthy of protection. The tree survey that was submitted with the application categorised the trees within the application site in terms of their quality and value using the BS5837 Tree Categorisation in Tree Surveys. Four categories are identified – A, B, C and U. Can you confirm please (i) which of those four categories do you regard as being “worthy of protection”, (ii) how many trees not covered by the TPO did you identify as being worthy of protection and likely to be affected by the fencing and (iii) where precisely within the application site those trees that you regarded as being worthy of protection are located?

Finally, can you please also confirm what it was precisely about the two tree surveys that were submitted in support of the application that in your view did not comply with the BS5837: 2012 standard?

I look forward to hearing from you.

Yours sincerely,
Sandy Telfer
Partner
for and on behalf of Gillespie Macandrew LLP

GILLESPIE MACANDREW

5 Atholl Crescent
Edinburgh EH3 8EJ
0131 221 6663
07977 352 940

www.gillespiemacandrew.co.uk



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The Council has endeavoured to scan this eMail message and attachments for computer viruses and will not be liable for any losses incurred by the recipient.

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Return Address
City of Edinburgh Council
Waverley Court
4 East Market Street
EH8 8BG

Delivered by



P00000001/0000001

Owner/Occupier
19 Inveralmond Drive
Edinburgh
EH4 6JX



31400B

Date: 22 December 2022

Case Ref: 22/00838/EOPDEV

P00000001/000001

Owner/Occupier
19 Inveralmond Drive
Edinburgh
EH4 6JX



31400B

Dear Owner/Occupier

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) (SCOTLAND) ACT 1997

**PLANNING ENFORCEMENT INVESTIGATION: 22/00838/EOPDEV - 19
INVERALMOND DRIVE**

The planning authority have received an enquiry regarding the erection of a boundary fence on communal land at 19 Inveralmond Drive.

I have had sight of photographs of the fence and can now set out the planning position in respect of the matter. The erection of the fence constitutes development as described under Section 26 of the Town and Country Planning (Scotland) Act 1997 (as amended). The fence does not benefit from permitted development rights. An application for planning permission is therefore required. As there is currently no grant of planning permission in place, a breach of planning control has occurred.

I must stress that no further work should take place until a grant of planning permission is obtained. Any further work is at the your own risk.

Concern has been raised that the works are taking place directly on top of a live badger sett. The matter has been referred to Nature.Scot for their attention and I understand that Police Scotland are investigating the enquiry.

Please can you contact me on peter.martin@edinburgh.gov.uk to discuss this matter and to arrange a site visit. It may help my investigation if you can provide any relevant information, plans/drawings, dimensions and photographs of the works that have taken place.

Please also complete the enclosed Planning Contravention Notice (PCN) and return by email to peter.martin@edinburgh.gov.uk within 21 days from the date of this letter. If you are unable to reply by email, please return the completed PCN by post to the address below.



P000N

P00000001/000001/1/7

IMPORTANT NOTE: failure to respond to this notice and any requested access not being provided will require the authority to conduct unannounced site visits to the property to gather evidence. In addition, the use of formal powers as prescribed within the above Act, including the seeking of a warrant to enter the property and the serving of an enforcement notice, will be considered.

If you wish to discuss this matter further, please contact me on peter.martin@edinburgh.gov.uk

Yours sincerely

Peter Martin

Planning officer



P000N

IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY
TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
PLANNING CONTRAVENTION NOTICE
ISSUED TO:

| |
|--|
| 19 Inveralmond Drive Edinburgh EH4 6JX |
|--|

ISSUED BY:

The City of Edinburgh Council (“the Council”) as planning authority for the purposes of Section 125 of the Town and Country Planning (Scotland) Act 1997 (“The Act”).

It appears to the Council that there may have been a breach of planning control in respect of the land described in Schedule below.

1. The breach of planning control which may have occurred is specified in Schedule 2 below.
2. This notice is served on you as a person who:
 - (a) is the owner or occupier of the land or has any other interest in it; or
 - (b) is carrying out operations in, on, over or under the land or is using it for any purpose.
3. In exercise of their powers under Section 125 (2) and (3) of the Act the Council requires you, so far as you are able, to give them the following information in writing within twenty-one days, beginning with the day on which this notice is served on you:
 - a. the nature of your interest in the premises/land;
 - b. the names and addresses of any other person known to you who has an interest in the premises/land;
 - c. the names and addresses of any persons known to you who have used or are using the premises/land in connection with the suspected breach of planning control specified in Schedule 2;
 - d. the date on which the suspected breach of planning control specified in Schedule 2 was carried out/commenced;
 - e. the nature of any activities being carried out on the premises/land;
 - f. details of any planning permission for any use or operations of the premises/land;
 - g. any reasons why, in your view, planning permission is not required in respect of the suspected breach of planning control specified in Schedule 2.
4. If you wish to make:



P000N

- a. an offer to apply for planning permission, in retrospect; or
- b. an offer to refrain from carrying out the use/uses referred to in Schedule 2; or
- c. an offer to undertake remedial work to have the unauthorised development removed/relocated; or
- d. any other representations about this notice,

representatives of the Council will consider them if within 21 days from the day on which this notice is served on you. Information must be provided by 12 January 2023. You must make such an offer or representation in writing to Planning & Building Standards, Place, City of Edinburgh Council, Waverley Court, 4 East Market Street, Edinburgh EH8 8BG.

Or by contacting the case officer at peter.martin@edinburgh.gov.uk within 21 days.

Dated: 22 December 2022

Signed:

Peter Martin

On behalf of:

**Chief Planning Officer
Place
City of Edinburgh Council
Waverley Court
4 East Market Street
Edinburgh
EH8 8BG**



P000N

SCHEDULE 1

Land to which the notice relates

**19 Inveralmond Drive
Edinburgh
EH4 6JX**

SCHEDULE 2

Alleged breach of planning control

Alleged unauthorised development - erection of a boundary fence on communal land.

WARNING

1. It is an **offence** to fail, without reasonable excuse, to comply with any requirement of this notice within twenty-one days beginning with the day on which it was served on you. The maximum penalty on conviction of this offence is a fine of £5,000. Continuing failure to comply following a conviction will constitute a further offence.
2. It is also an **offence** knowingly or recklessly to give information, in response to this notice, which is false or misleading in a material particular. The maximum penalty on conviction of this offence is a fine of £10,000.



P000N

ADDITIONAL INFORMATION

3. If you fail to respond to this notice, the Council may take further action in respect of the suspected breach of planning control. In particular, they may issue an enforcement notice, under section 127 of the Act, requiring the breach, or any injury to amenity caused by it, to be remedied.
4. If the Council serve a stop notice, under section 140 of the Act, section 143 (5) (b) of the Act provides that should you otherwise become entitled (under section 143) to compensation for loss or damage attributable to that notice, no such compensation will be payable in respect of any loss or damage which could have been avoided had you given the Council the information required by this notice, or had you otherwise cooperated with the Council when responding to it.

- d. the date on which the suspected breach of planning control specified in Schedule 2 was carried out/commenced;

- e. the nature of any activities being carried out on the premises/land;

- f. details of any planning permission for any use or operations of the premises/land;

- g. any reasons why, in your view, planning permission is not required in respect of the suspected breach of planning control specified in Schedule 2;



P000N

Signed

Name in print

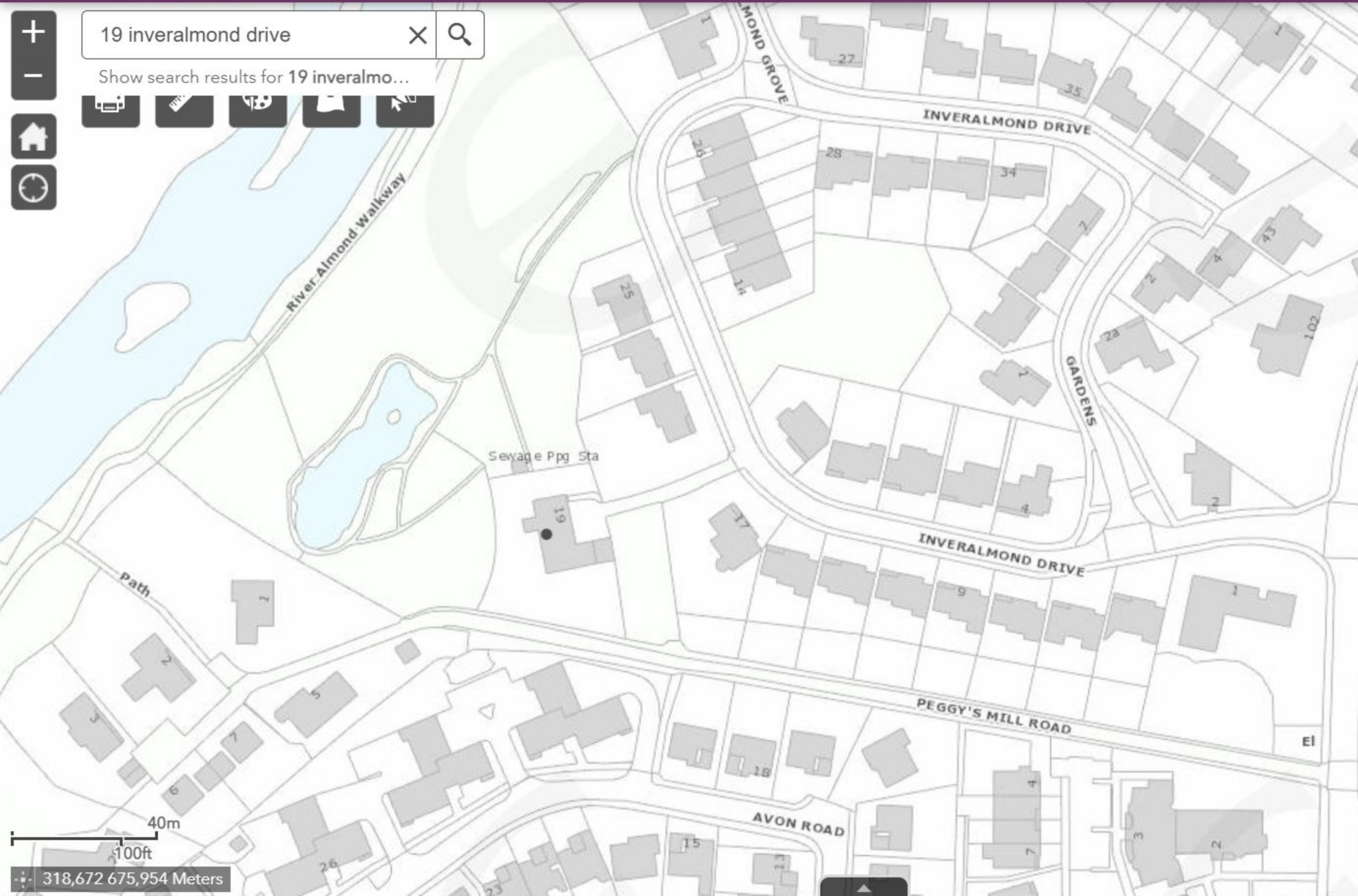
Date

P00000001/000001/7/7



19 inveralmond drive X Q

Show search results for 19 inveralmo...



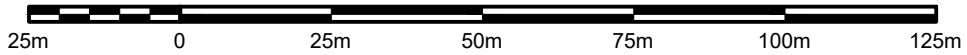
40m
100ft
318,672 675,954 Meters



SITE LOCATION PLAN

1:1250

1:1250



DRAWING TITLE:
LOCATION PLAN

PROJECT:
MR & MRS FAVIER
19 INVERALMOND DRIVE
EDINBURGH
EH4 6JX

Scale
1:1250@A4 DO NOT SCALE

| | | |
|---------------------|----------------------|-------------------------|
| Drawn CGY | Checked GF | Date 15/02/23 |
|---------------------|----------------------|-------------------------|

IN-AL(00)01



Request Number **5240522MID**
Report Number **PRR0501240522MID**
Subjects **19, INVERALMOND DRIVE, EDINBURGH, EH4 6JX**

Part 1 Suitability of Submitted Plan and/or Bounding Description for Registration

The submitted plan and/or bounding description meets the Keepers requirements for registration

If the plan submitted is a new plan prepared for use with the deed inducing registration, you should satisfy yourself that the subjects depicted thereon accurately reflect the legal title to the property as narrated in the prior title deeds.

Part 2 Comparison with the Ordnance Survey (OS) Map

The boundaries do not coincide with those on the OS Map. Please see print.

The extent of the subjects shown on your plan has been plotted and tinted pink and blue on the attached extract from the OS map for your assistance.

This extent creates both an overlap and a shortfall between the subjects and the features depicted on the OS map. In respect of the overlap, the defined extent of the subjects as depicted on the current edition of the OS map appears to be as tinted pink and yellow on the extract.

The area tinted blue would appear to fall out with this defined extent.

In respect of the shortfall, the extent of the subjects as depicted on the current edition of the OS map appears to include the area tinted yellow on the extract, which falls within the defined boundaries of the subjects.

I refer you to <https://kb.ros.gov.uk/land-and-property-registration/pre-registration/reports> for further information.

Part 3 Exclusive Registered Areas Which Compete with the Subjects

The subjects are not affected by any existing exclusive registered Areas

Part 4 Shared Registered Areas Which Affect the Subjects

The subjects are not affected by any existing shared registered areas

Part 5 Additional Registered Interests Which Affect the Subjects

Additional Registered Interests

The following Cadastral Units affect the subjects:

- MID005115/05/1972GR (tree preservation order)

Please consult ScotLIS or contact Customer Services if you require further information of this Cadastral Unit.
customer.services@ros.gov.uk



LAND REGISTER OF SCOTLAND



19, INVERALMOND DRIVE, EDINBURGH, EH4 6JX

Survey scale 1:1250

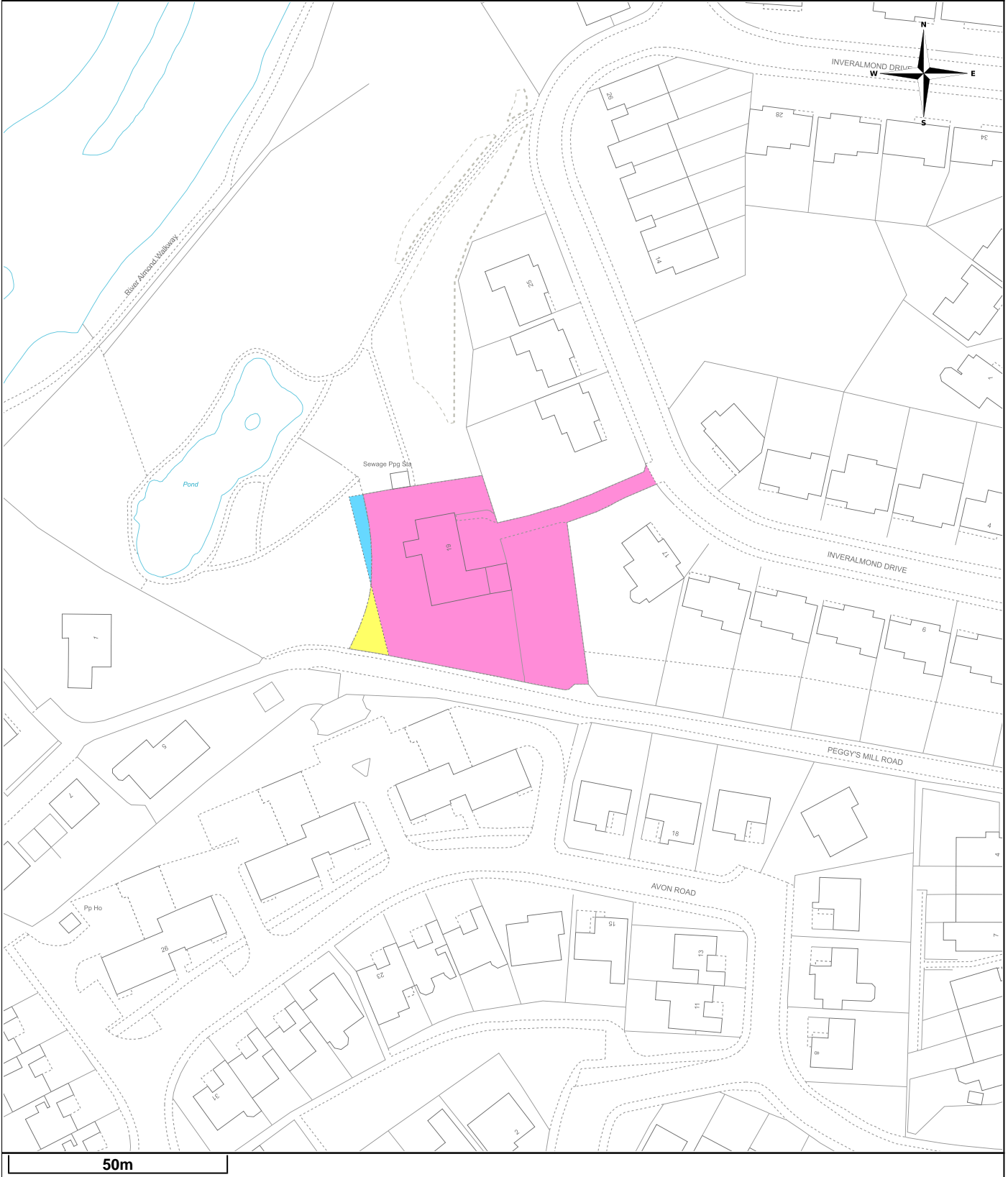
Print scale 1:1250 @ A4

24/02/2022

REQUEST NUMBER 5240522MID

318177 675891 318407 676155

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GILLESPIE MACANDREW

Planning Review Submission on behalf of Gregory Favier

Planning reference: 23/00418/FUL

| List of Documents | |
|--------------------------|--|
| No. | Document |
| 1. | Decision notice dated 4 July 2023 |
| 2. | Report of Handling by case officer |
| 3. | Photocopy of Planning Permission 01/02959/FUL dated 7 th October 2002 and relative location plan |
| 4. | Email dated 29th August 2023 from the case officer to Applicant's agent regarding Document No. 3 |
| 5. | Letter dated 22nd December 2022 to the Applicant from the Council confirming the need for planning permission |
| 6. | Screenshot of the Application Site as shown on the City Atlas |
| 7. | Location Plan showing the boundaries of the Application Site submitted with planning application |
| 8. | Register of Scotland Plans Report |
| 9. | Proposals Plan showing the line of the existing and proposed fencing |
| 10. | Extract from 1972 Feu disposition by Bovis ifo Mr K Donald referencing existing fence on southern boundary |
| 11. | Photograph of existing fencing on southern boundary sent to the Council |
| 12. | July 2022 Tree Survey Report |
| 13. | Decision Notice dated 21 December 2022 - Prior Notification 22/05658/TCO for Treework within a Conservation Area |
| 14. | Updated Tree Survey dated 24th May 2023 |
| 15. | Emails exchanges dated 3rd July 2023 between the case officer and the Applicants |
| 16. | Arboricultural Impact Study by TD Tree and Land Services Limited (August 2023) |
| 17. | Screenshot of the Edinburgh Local Development Plan Northwest Proposals Map showing the Application Site |

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

Date of the Notice of the Decision to which the Review is Required: 4th July 2023

Statement setting out the Applicants' reasons for requiring the local review body to review the case

Introduction

This statement sets out

- (i) the reasons given by the case officer for refusing to grant planning permission for the development proposal;
- (ii) the Applicant's reasons for requiring the local review body to review the case;
- (iii) the matters which the Applicant intends to raise in the review;
- (iv) by what procedure (or combination of procedures) mentioned in regulation 13(4) the Applicant considers the review should be conducted; and
- (v) the documents materials and evidence which the Applicant intends to rely on in the review.

Reasons for Refusal

In the decision notice dated 4th July 2023 (see Document No. 1), the case officer gave the following reasons for refusing the Application:

1. The proposal is contrary to the Local Development Plan Policy Env 12 in respect of trees, as the works are likely to result in unacceptable damage to protected trees or other trees worthy of retention ("**the First Refusal Reason**");
2. The proposal is contrary to the Local Development Plan Policy Env 18 in respect of open space, as the works will result in an unacceptable loss of open space. ("**the Second Refusal Reason**"); and
3. The proposal is contrary to National Planning Framework Policy 20 as it would result in the loss of existing green infrastructure resulting in a deficit in green infrastructure provision ("**the Third Refusal Reason**").

In relation to the First Refusal Reason the case officer in his Report of Handling (see Document No. 2) gave the undernoted explanation (with the Applicants' emphasis) for his decision:

"Information has been provided in relation to trees that are likely be impacted. In addition, application 22/05658/TCO has given permission for the felling of several trees on site. However, the information which has been submitted is insufficient to meet the requirements

*of BS 5837:2012, and/or to demonstrate that the impact on the trees is acceptable. The proposals **may** therefore have a damaging impact on a number of trees that are either protected or worthy of retention.”*

In relation to the Second Refusal Reason and the Third Refusal Reason in his Report of Handling, the case officer gave the undernoted explanation (again with the Applicants’ emphasis) for his decision:

*“**The proposal seeks planning permission for the erection of perimeter fence around the entirety of the site** along with access gates on the southern boundary leading onto Peggy’s Mill Road and at the eastern edge of the site adjacent to Inveralmond Drive. The application is in part retrospective as several sections of the fence have already been constructed.”*

*“The proposals are acceptable with regards to the green belt as they are ancillary to the existing residential use of the land and would not detract from the landscape quality and/or rural character of the area. However, **the eastern section, including the driveway leading from the premises to Inveralmond Drive is designated within the adopted Edinburgh Local Development Plan as being open space and forms part of the Council’s existing green infrastructure. The erection of the fence and gates would result in a loss of this designated open space to private garden ground.** It has not been demonstrated that any of the five criteria specified in LDP policy 18 have been met which could justify the loss of the open space and the principal of the proposal is therefore unacceptable.”*

*“The proposals are compatible with the development plan in terms of the climate and nature crisis, heritage, design, amenity and the green belt. However, **the proposal will result in an unacceptable loss of open space and may have a damaging impact on a number of trees that are either protected or worthy of retention without suitable arboricultural justification.**”*

Reasons for Requiring Review

The Applicants require a review of the terms of the decision and the related report of handling on the grounds that in relation to:

- (i) the First Refusal Reason, the officers involved in the handling of the Application:
 - (one) misunderstood the law in relation to permitted development rights as regards (a) the sections of fencing along the southern and western boundaries of the Application Site which were already in place when the

Application was submitted and (b) the sections of fencing along the northern boundary and part of the eastern boundary of the Application Site which have not yet been erected,

and

- (ii) the Second Reason for Refusal and the Third Reason for Refusal, the officers:
 - (one) failed to have proper regard to the fact that in relation to the area of designated open space, the Council had previously granted planning permission 01/02959/FUL (see Document No. 3) for the erection of a dwelling house (“**the 2001 Permission**”), which, by the case officer’s own acknowledgement (see Document No. 4), is still extant;
 - (two) misdirected themselves by concluding that the Applicant sought “planning permission for the erection of [a] perimeter fence around the area of designated open space (see Document No. 2); and
 - (three) misdirected themselves by concluding that the eastern section of the Application Site and the driveway are designated in the Local Development Plan Proposals map as protected open space.

Matters to be Raised

As the case officer has correctly pointed out in his Report of Handling, “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” (see page 5 of Document No. 2). Whilst that is indeed the case, given that a significant number of objectors have raised this as an issue with the Council, and the fact that, as a matter of procedure, this submission will be published on the planning register, the Appellants wish to take this opportunity to explain their position.

Requirement for Planning Permission

The requirement by the Council for the Applicants to obtain planning permission was notified to them on 22nd December 2022 (see Document No. 5). The alleged breach of planning control was described as the “erection of a boundary fence on communal land”. The advice given was that as “the fence does not benefit from permitted development rights”, retrospective planning

permission was required for the work. No explanation was provided by officers as regards why that conclusion concerning permitted development rights was drawn.

The point to note is that regardless of whether permitted development rights do or do not apply, any alleged dispute as regards the ownership of the land over which a section of the fence-line has been constructed, is not a relevant consideration in the determination of the Application.

Ownership of the Application Site

That fundamental relevancy point, notwithstanding, several of the objections published on the Council's planning portal have focused on (i) the issue of land ownership and the alleged encroachment by the Applicants into an area located to the southwest of the Application Site, which the objectors describe as "common amenity land", and (ii) the impact of that encroachment on the statutory ownership certification requirement.

Dealing firstly with the ownership of the alleged common amenity land.

A screenshot from the City of Edinburgh Council Atlas ("**the City Atlas**") is enclosed with the Application (see Document No. 6). This shows the extent of what the Council itself understands to be the area of land comprising the Application Site. It will be noted that the outline of the area of land identified in the City Atlas as 19 Inveralmond Drive, Edinburgh, is precisely the same as the area of land shown on the location plan submitted with the Application (see Document No. 7).

It will be noted that on both plans the western boundary of the Application Site follows a curved line. It is the Applicants' position that this curved line reflects the actual physical line of the western boundary of their garden and thus the extent of the area of land along that boundary, which has been occupied by the owners of the Application Site since 1972, when the title to the property was first broken off from the larger Bovis owned estate at Cramond.

As the Report of Handling confirms, public representations have raised questions about the ownership of a small pocket of land located in the southwest corner of the Application Site. According to objectors, this area forms part of woodland located to the west of the Application Site that is owned in common by the owners of the nearby Bovis built properties. However, according to the legal advice which the Applicants received at the time when they purchased their property, by application of the principle of prescriptive possession, the land forms part of their private garden. The City Atlas supports the Applicants' position.

The Applicants wish to point out to objectors that the line of the fence that has been constructed along the western boundary of their garden, actually excludes a small pocket of woodland lying immediately to the northwest of the Application Site that the Keeper of the Registers of Scotland has confirmed lies within the Applicants' title area.

A copy of the illustrated extract from the Registers of Scotland "A level 2" plans report (such reports show any discrepancies (overlaps/shortfalls) between the relevant title plan presented to the Keeper on a first registration of a property and the OS map, is submitted with this Application (see Document No. 8).

The blue area shown on the submitted extract, although owned (but not possessed) by the Applicants in terms of their title, lies on the other side of the fence-line and thus effectively forms part of the communal woodland. When the extent of this excluded "shortfall" area of woodland held under the Applicants' title is deducted from the extent of the yellow shaded "overlap" area of land to the southwest, the difference in terms of net area is de minimus.

Given that the need for and indeed the entitlement of a family in the position of the Applicants to have the security of a fence around their property appears to be accepted by objectors, it is hoped that they give this particular point due consideration.

Put simply, what would be the point in removing the fence posts and re-aligning them along the western boundary so that the fence strictly followed the line of the title boundary (with all the attendant disruption to the woodland that that would cause) when all that would be achieved would be that the area to the southwest of the re-aligned fence would become "communal" woodland whilst the area to its northwest would become private garden ground.

Ownership Certification

Turning now to the issue of ownership certification. Two complaints are made. The first is that, as part of the Application Site is owned by a company, the company's name and registered office address should have been disclosed in the land ownership section of the application form and the second (and related) issue is that because of their alleged interest in the common amenity land, the Bovis householders whose properties are subject to a 1972 deed of conditions should also have been disclosed as the owners in common of that area.

Again, dealing with each complaint in turn.

On 4th November 2022, the Applicants purchased in their own names, from the executor of its previous owner, Mr Kenneth Donald, the property known as and forming The Coach House at No 19 Inveralmond Drive, Edinburgh under exception of the section of the garden to which the

2001 Permission attaches. This remaining area of the garden ground was purchased by the Appellants at the same time as they purchased the house but, unlike the house, title to it was not taken in their own names but rather in the name of their wholly owned Company, Poppledot Limited ("**the Poppledot Area**"). This was done to facilitate the possible future sale of the Poppledot Area for residential development. These two areas collectively comprise the Application Site.

Whilst, technically, given the fact that, as a matter of law, Poppledot Limited has its own separate legal persona, it ought to have been identified on the ownership certificate section of the Application form as a part owner of the Application Site, the Applicants were unaware of that requirement. They apologise for that technical oversight – one which would have been rectified if they had identified Poppledot on the Application form as an owner of part of the Application Site and notified themselves, as directors of the Company, that they were submitting the Application.

The Applicants' position in relation to the ownership of the alleged area of common amenity land (and thus the need or otherwise to refer to the Bovis householders in the land certificate section of the Application form) is set out above.

Existing fencing

On taking entry to their new home, and as the parents of two young children, the Applicants saw it as essential for their children's safety and for the family's security, that the entirety of their property should be enclosed by a fence. The access drive was already surrounded by an existing 2 metres high mature hedge on one side and a 2 metres high fence on the other whilst the entire length of the eastern boundary was enclosed by an existing 2 metres high fence. All that they needed to do, therefore, to complete the enclosure of their garden was to erect fencing along the full extent of its southern, western, and northern boundaries and along part of its eastern boundary and place a gate across its access drive. This is all disclosed on the "Proposal Plan" showing the fencing and entrance gate elevations (see Document No.9).

The point for the local review body ("LRB") to note is that, contrary to the understanding of the case officer, the Applicants were not, and are not, seeking to erect fencing "around the entirety" of their property. The access drive is already effectively enclosed, as is the majority of the Poppledot Area.

Title Conditions

Two elements of the Application Site title are relevant to both the objectors' comments and the Application.

The first is that 19 Inveralmond Drive is not regulated by the deed of conditions that several objectors have brought to the attention of the Council. Thus, whilst this deed prohibits the owners of the surrounding "Bovis" built properties from building fences, gates or walls at the front of their properties, it does not prevent the Applicants from doing so. It is also a relevant material consideration that the Applicants, through the 2001 Permission, already have planning permission to erect a gate across their access drive. This means that it is open to them to put a gate in place across their access in accordance with the terms of the 2001 Permission.

The second title point for the LRB to note is that the 1972 feu disposition granted by the housebuilder, Bovis, to Mr Kenneth Donald, imposed an obligation on Mr Donald and his successors in title (now the Applicants) to maintain "the open board fencing already erected on the southern boundary" of the Application Site (see Document No. 10).

Permitted Development Rights and the need or otherwise for Planning Permission

As the Applicants have pointed out, no explanation was ever provided by officers as regards why it had been concluded that permitted development rights did not apply to the fencing and that, consequently, planning permission was required for the work involved in its erection.

By the time this advice was given to the Applicants on 22nd December 2022, fencing had already been erected along the southern and western boundaries. Only the section of the fencing along the northern boundary and part of the eastern boundary of the Application Site and the erection of a gate across the access drive into it, required (and still requires) to be completed to provide full secured enclosure.

At the point at which they instructed their fencing contractor to commence work, the Applicants' understanding of the law was (and remains) that, even in a conservation area, it was open to them to enclose their garden with a fence without the need to obtain an express planning permission from the Council to carry out the work, save in circumstances where the proposed fence was in excess of 1 metre in height and located within 20 metres of a road (see paragraph 2(b) in Class 7 (Sundry Minor Operations) of Part 2 of Schedule 1 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1997 ("**the 1997 Order**").

(The planning issue behind this 1 metre restriction is road safety and the need to protect sight lines at junctions).

To the extent, therefore, that the 2 metres high fence-line, which the Applicants proposed to put in place lay within 20 metres of a road (this would apply to the entire southern section of the fence-line that ran parallel with, and the western section of it that lay within 20 metres of, Peggysmill Road) they would require express planning permission from the Council. However, this 1 metres height restriction does not apply in circumstances where the property owner is "maintaining" (which includes replacing) an existing fence which whilst it may be located within 20 metres of a road is greater than 1 metre in height. Provided the new fence is the same height as the old one that it is intended to replace, planning permission is not required (see paragraph 2 (c) in Class 7 (Sundry Minor Operations) set out in Part 2 of Schedule 1 of the 1997 Order.

Although much of this fencing along the southern boundary of the Application Site had either fallen or been removed from by the time the Applicants took entry to their new property, they sent photographs to the case officer which demonstrated that all they were essentially doing along this boundary was replacing "like with like" (see Document No.11).

As the Applicants were replacing the fencing along the southern boundary of their property with fencing of the same height as the original "open board fencing" referred to in their title deeds, it followed, that so far as they were concerned, they did not need to obtain express planning permission for the work.

It followed that the same held in respect of the entire section of the fence-line that was proposed for the northern boundary and part of the eastern boundary of the Application Site. As no part of those sections of the fence-line lie within 20 metres of either Inveralmond Drive or Peggysmill Road, express planning permission is not required for the work there either.

This leaves the first 20 metres section of fencing that was proposed to be put in place (and has now been put in place) along the western boundary of the Application Site and the access gate.

Dealing with each in turn.

As this section of the fence-line at the southwest corner of the Application Site does not lie next to a junction (meaning that there is no sight-line issue and thus no safety concern from a planning perspective) it was debatable whether the work involved in putting this 20 metres section in place could reasonably be regarded as a "material operation" constituting

development requiring planning permission – especially, if it is accepted, (as the Applicant would respectfully suggest is the case) that the work involved in constructing the remainder of the fence-line comprising the southern boundary section, the western boundary section (beyond the first 20 metres from Peggysmill Road) and the northern boundary and part eastern boundary sections, benefitted from permitted development rights.

So far as the electronic access gate is concerned, planning permission is only required because the proposed location of the gate lies within 20 metres of Inveralmond Drive, otherwise it too would be permitted development. But even without the benefit of permitted development rights, the Applicants' position is that planning permission for its construction is still not be needed.

This is because in addition to authorising the construction of a house on the Poppledote Area of the Application Site, the 2001 Permission also permits the Applicants to construct an access gate across the driveway into their property from Inveralmond Drive. Condition No. 4 of the 2001 Permission provides that:

“The proposed entrance gates are to be set back 5 metres from the site boundary and are to open inwards”.

The “Proposal Plan” submitted with the Application showing the proposed fencing and entrance gate elevations (see Document No.8), confirms that the entrance gates are set back 5 metres from the site boundary and that they open inwards. The construction of the electronic gate, therefore, already has planning permission.

Taken together, the Applicants were of the view ahead of instructing the work that, subject to the undernoted comments regarding tree preservation, they were entitled (i) to construct fencing along the entirety of the southern, western, northern and part eastern boundaries of their property on the basis that the work involved was either covered by permitted development rights or (in the case of the first 20 metres of the section placed along the western boundary) did not constitute development requiring planning permission and (ii) put the electronic entrance gate in place across their access on the basis that their proposal was authorised under the 2001 Permission. That remains their position.

That said, they accept that they have not challenged the decision by the Council to insist that a planning permission be submitted in the Courts. They would, however, expect the LRB when carrying out their review, to provide reasons why, in its view, officers were entitled to conclude that permitted development rights do not apply to the erection of the fence and that the entrance gate cannot be built out on reliance of the 2001 Permission.

Tree Preservation

Regardless of whether permitted development rights apply to the fencing work, the Applicants have always been aware of the need to consider whether the work involved in putting the fencing in place would affect the trees growing on and near to the proposed fence-line.

Certain species of trees growing on the Application Site and the surrounding woodland area are protected by the City of Edinburgh (Inveralmond) Tree Preservation Order 1971 (**"the TPO"**).

The First Schedule to the TPO confirms that the Application Site lies within an area of woodland referred to in the schedule as "W2". The TPO confirms that within this area the following species of trees are not to be "cut down, topped or wilfully destroyed" without the prior written consent of the Council:

"Beech, Sycamore, Norway Maple, Norway Spruce, Sitka Spruce, Scots Pine, Corsican Pine, Birch, Horse Chestnut, and Laburnum."

The Application Site also lies within the Cramond Conservation Area. This means that the prior notification procedure under S172 (3) of the Town and Country Planning (Scotland) Act 1997 and the Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas (Scotland) Regulations 2010 would apply in respect of the species of trees growing in and around the immediate environs of the Application Site which are not covered by the TPO.

Tree Survey Report

Prior to instructing the fencing work, the Applicant had obtained a tree survey report from a qualified arborologist which confirmed both the species and location of the stems of the trees growing within the Application Site and its immediate environs (see Document No. 12). The report specifically referred to British Standard BS5837:2012 in its heading. It contained a Google Earth screenshot of the Application Site on which the locations of the stems of the 41 trees that had been surveyed, were overlaid. It also categorised the trees for quality in accordance with the BS5837:2012 Cascade Chart for Tree Quality (**"the July 2022 Tree Survey Report"**).

The conclusion which the Applicants drew from the July 2022 Tree Survey Report was that no trees would require to be cut down, topped or in any way materially damaged as a result of the work involved in erecting the new fence-line along the southern and western boundaries of the Application Site.

Importantly, for the purpose of this Application, the July 2022 Tree Survey Report also concluded that a section of overgrown leyland cypress hedge that is located on the northern boundary and on part of the eastern boundary of the Application Site (a species of tree not protected under the TPO) should be “removed to ground level” for safety reasons. The stems of these trees were tagged with the numbers “T25-32”, which the plan attached to the July 2022 Tree Survey Report confirmed as being located in and around the environs of the area of the Application Site on which the sections of the fence-line along its northern boundary and part of its eastern boundary were proposed to be erected.

Although leyland cypress trees are not protected by the TPO, the Applicants tree expert advised them that, given the fact that the Application Site was located within a conservation area, they would still have to apply to the Council for consent to remove them under the prior notification procedure set out in the 2010 Regulations. In addition to addressing the safety issue, the removal of these trees would allow the sections of the fence-line along the northern boundary and part of the eastern boundary of the Application Site to be put in place.

The relevant prior notification application form seeking consent for the removal of the leyland cypress hedge was submitted to the Council on 11th November 2022 and validated under reference number 22/05658/TCO.

Following submission of the prior notification application, the Applicants instructed their fencing contractor to put the fencing in place along the southern and western boundaries of their garden. Their thinking was that the Council’s consent for the removal of the leyland cypress hedge would be in place by the time work on the fencing of the northern boundary and part of the eastern boundary was ready to commence.

In the event, the tree removal consent was issued by the Council to the Applicants on 21st December 2021 (“**the Conservation Area Tree Consent**”) (See Document No. 13).

Site Visit

The fencing work started in or around the first weeks in December 2022. This provoked an immediate reaction from several local residents, who complained to the Council that the section of the fencing that had been erected at the southwest corner of the Application Site had taken in and enclosed an area of “communal land”.

For the reasons set out above in the section of this submission dealing with ownership matters, this assertion was not accepted by the Applicants.

By the time enforcement and tree officers attended the Application Site on 22nd December 2022 to carry out an inspection, much of the southern boundary and western boundary sections of the fence-line had already been erected. The entire section of the fence along the southern boundary of the Application Site had been completed as had most of the section along the western boundary. All the fence posts needed to complete the remainder of the western boundary section were already in place on the ground with only the “slats” still to be fitted.

For the purposes of the Application, it is important for the LRB to understand what happened next “on the ground” as this explains why the planning application was rejected on the grounds of deficiencies in the July 2022 Tree Survey Report and steps which the Applicants have taken to address those deficiencies in the information submitted in support of this Application.

Advice concerning the section of the fence-line already erected

Two officers from the Council attended the site visit. At the time they attended, the Applicants’ fencing contractor was on-site. The sections of the new fencing that were already in place were inspected. The tree officer advised the Applicants that in her opinion some of the fence posts which had been embedded in the ground to support the slatted fencing had been placed too close to the tree stems. The tree officer was asked by the Applicants if she wanted the offending posts to be removed and re-positioned further away from the tree stems. She was advised by the Applicants that as their fencing contractor was on-site, the work could be carried out immediately. The advice given by the tree officer in response to that query was that the fence posts should not be removed because any potential damage to the affected trees’ root systems would already have been done. According to the tree officer, if the posts were to be removed at this stage, “it could cause more damage to the trees.”

The tree officer was then asked, given her direction that the posts should remain in place, if the remaining slats could be fitted. The advice given was an unequivocal, “Yes”. On the basis of that advice, and on reliance of the Conservation Area Tree Consent, the Applicants instructed their fencing contractor to complete the section of fencing on the western boundary that day on the basis that the remaining sections along the northern boundary and part of the eastern boundary would be put in place later in the week.

The point for the LRB to note is that what the Applicants took from that advice was that whilst the tree officer would have preferred that the location of the fence post pots had been agreed before the work involved in putting the posts in place and erecting the fence-line had been carried out, the Council was nonetheless content to allow the fence and the fence posts that

had already been erected along the southern and western boundaries of the Application Site to remain in place on the basis that potentially more damage to the tree roots would be caused by their removal and re-positioning.

Breach of Planning Control

However, on following day (22nd December 2022), the Applicants received an emailed letter from the Council's enforcement officer (see Document No. 5) advising that:

"The planning authority have received an enquiry regarding the erection of a boundary fence on communal land at 19 Inveralmond Drive. I have had sight of photographs of the fence and can now set out the planning position in respect of the matter. The erection of the fence constitutes development as described under Section 26 of the Town and Country Planning (Scotland) Act 1997 (as amended). The fence does not benefit from permitted development rights. An application for planning permission is therefore required. As there is currently no grant of planning permission in place, a breach of planning control has occurred. I must stress that no further work should take place until a grant of planning permission is obtained. Any further work is at your own risk."

The LRB is asked to note that no explanation was provided in the emailed letter as regards why officers had concluded that the erection of the fence did not benefit from permitted development rights.

On receipt of this letter, the Applicants immediately instructed their fencing contractor to cease work. As a result, the sections of the fence-line along the northern boundary and part of the eastern boundary and the access gate into the Applicant's driveway are still not in place.

The Planning Application

The Applicants also accepted the enforcement officer's opinion (without taking legal advice) that the work required planning permission and set about preparing their planning application.

This was submitted to the Council on 5th April 2023. The application included the July 2022 Tree Survey Report and the Conservation Area Tree Consent. It also contained the Proposals drawing showing the location of the sections of the boundary where the fence-line was already in place and the remaining sections along the northern boundary and part of the eastern boundary where the fence-line had still to be erected.

Tree Impact Information

On 19th April 2023, the Applicants received, via the case officer, the following advice from another tree officer within the Council:

“With regards to the application for erection of a fence at 19 Inveralmond Drive, I can confirm that will initially need the tree survey data to be more clearly mapped. We are looking for the position of all trees to be accurately mapped onto the site map showing the proposed fence. This will allow us to assess the impact of the fence. We will also need the map to show which parts of the fence have already been erected and which have not.

With regard to the design and implementation of the fence, we would be looking for this to be arboriculturally sensitive to minimise the impact on trees. We would be looking for the following:

- No postcrete/concrete should touch the soil at any point, as it alters the pH of the soil which is highly damaging to trees. If these materials are to be used then an impermeable barrier will be needed in the fence posts pits to prevent contact with the soil. A temporary impermeable ground cover will be needed in the area where cement mixing takes place to prevent spillage contaminating the soil;*
- The fence design will need to be flexible in terms of post placement so that they can be moved to accommodate tree roots; and*
- If any tree pruning needs to be carried out to accommodate the fence then this should be specified in the application.”*

In addition to this advice the case officer advised the Applicants in a follow up email that:

“the tree report should specify the category of each tree and the plans need to show where each fence post is to be positioned.”

At this point the Applicants and their tree expert were confused. So far as they were concerned, the drawings which accompanied the Applicant’s planning permission had shown which sections of the fence had already been completed and which had still to be put in place. Over and above that a tree officer from the Council had already carried out a site visit and had advised the Applicants that the sections of the fence, which had already been completed, could remain in place because any potential damage to the root systems caused by the digging of the fence post pits would already have been done and more damage could be caused if the posts were to be removed. And so far as the sections of the fence-line that had still to be completed was concerned, the Applicants had taken the view that the issue of tree impacts in relation to the erection of fencing along those sections had already been addressed through the grant of the Conservation Area Tree Consent, a copy of which had been submitted in support of their planning application.

Further advice was sought, therefore, from the case officer as regards what further information was required by the Council’s tree officer. The response to this request was sent to the Appellants by the case officer on 5th May 2023 is set out below for ease of reference:

"We need a clearer map. To assess the impact of the proposed fence we need mapping with a high degree of accuracy and detail. We would be looking for:

- A good quality base map showing site features clearly – given the extensive tree cover, an aerial photograph is unlikely to provide enough clarity;*
- A closer zoom which allows each individual tree shape and label to be clearly seen and distinguished. This will allow greater accuracy in plotting trees in relation to other site features;*
- The root protection areas customised for the environment – they will often not be circular or symmetrical, depending on the surrounding ground constraints;*
- The proposed development marked on the map – this should include the location of both the fence and the fence posts. That part of the fence that has already been installed should be distinguished on the map from the part that has not been installed; and*
- A key which makes all map content clear."*

Because all of the proposed fence installation is likely to be within root protection areas, we will need an arboricultural method statement detailing how this will be carried out in a way that is sensitive to the trees. This should include:

- The depth of the fence posts, the method by which they will be secured in the ground and some flexibility in the design allowing the fence posts to be moved to accommodate major roots;*
- If any cement /postcrete is to be used there should be a statement on how mixing and installation will be carried out in a way which prevents those material from coming into contact with any uncovered ground;*
- Any pruning that will need to be carried out; and*
- A designated area for the storage of material/equipment that is outwith the root protection areas. This should be accompanied by a statement that no materials or equipment will be stored within the root protection areas."*

On 3rd July 2023 an updated tree survey report, which the Appellants hoped would address the points raised by the tree officer was submitted to the Council (see Document No. 14).

Unfortunately, so far as the Council was concerned, the updated information still did not comply with its requirements. The feedback which the Applicants received from the case officer was that the information it contained still failed to provide the additional information which had been requested by the tree officer.

An emailed plea from the Applicants to the case officer on 3rd July 2023 for further clarification as regards what precisely was required by the tree officer by way of further information and for further time to produce the information once that requested clarification was provided, went unheeded (see Document No. 15). By that time the decision to refuse the planning application had already been taken by the case officer.

Further Supplementary Tree Report

Following receipt of the decision notice the Applicants took legal advice and instructed a fresh tree survey report. This was prepared by a different tree expert from the one who had prepared the previous tree reports which had been submitted in support of their planning and Conservation Area Tree Consent applications. The new tree expert has the facilities to prepare the “good quality base map” requested by the tree officer, which was not the case with the Company which the Applicants had previously instructed.

The fresh report entitled “Arboricultural Impact Assessment” was prepared in August 2023 (“**the August 2023 Tree Report**”) is submitted with this Application (see Document No. 16).

The August 2023 Tree Report specifically looked at the impact on the trees located in the environs of the sections of fence-line that have still had to be erected along the northern section and part of the eastern section of the Application Site.

In addition to identifying the species and conditions of the tree within this area, the document contains sections (supported by drawings) dealing specifically with the following matters:

- Tree Constraints (including the tree quality categories;
- Recommended Tree Works;
- A Tree Protection Plan (dealing with identified root protection areas); and
- An Arboricultural Protection Method Statement (showing the proposed method of ground screw foundation implementation).

The following extracts from the August 2023 Tree Report are of particular relevance.

The following Tree Removals are recommended:

“In total one individual tree, T13 and one tree group, G2, require removal due to their condition. One tree group, G1, is recommended for removal to facilitate the proposed development and as part of long term sound arboriculture.

Tree T13 is a standing dead habitat pole, however, due to site safety, its removal is recommended. The stem may be cut up to form a dead wood pile on site, to still serve as habitat for a variety of species.

Tree group G1 is a group of leylandii forming an overgrown hedge. Due to lack of management apart from crown-lifting to create clearance of approx. 3m in height on site, no works have been conducted. The most eastern stems are in direct conflict with the existing wall, and damage to both trees and the wall was observed. Due to their proximity to the house and the lack of

management in the past, it is recommended to remove these specimen and replant elsewhere on site with more appropriate species.

Tree Group G2 are throughout topped leylandii monoliths, standing at approx. 1.5m to 2m height. Their removal and replacement with appropriate species is recommended."

The following "Effects on Protected and Designated Features" are identified:

"• Tree preservation orders (TPO) - The proposed development would result in a loss of TPO trees [NOTE: THIS IS AN ERROR. IT STEMS FROM THE FACT THAT THE AUTHOR OF THE REPORT HAD ERRONEOUSLY ASSUMED THAT THE APPLICATION SITE WAS COVERED BY A "BLANKET TPO" COVERING EVERY SPECIES OF TREE WITHIN IT, WHEN IN FACT THAT IS NOT THE CASE]

• Conservation area (CA) - The proposed development would result in a loss of trees within a CA

• Ancient woodland - The proposed development would not result in negative effect on ancient woodland

• Veteran trees - The proposed development would not result in a loss/pruning of veteran trees

• Community forest - The proposed development would not result in a loss/pruning of trees within a designated community forest

• Deciduous woodland - The proposed development would not result in a loss/pruning of trees within a designated deciduous woodland

• Woodland pasture and parkland - The proposed development would not result in a loss/pruning within designated woodland pasture and parkland

• Traditional orchards - The proposed development would not result in a loss/pruning within designated traditional orchards."

The following recommendations are made in terms of ground protection, special mitigation and tree protective fencing whilst the fencing work is completed:

“The area surrounding the trees to be retained will require access within their root protection areas to erect the fence. Tree protective fencing may therefore be limited to the areas excluded from the works and may consist of a form as shown in the drawings in Appendix 3

The tree stems should still be protected from any harm, but given the nature of the construction, no heavy machinery etc is to be expected on site. Therefore, it is deemed appropriate and sufficient, to instruct construction personnel to take care.

Arboricultural Supervision is recommended for the erection of the fence, as this will invade several root protection areas.

The foundation of the fencing posts will be formed by ground screws, as shown in the method statement in Appendix 3.

As construction works will take place within the RPAs of surrounding trees, appropriate ground protection will be in place.

For footfall only, a 100-150mm layer of woodchip with plywood boards of suitable thickness on top are deemed sufficient temporary ground protection.”

The re-planting of the following “appropriate species” is recommended:

“Appropriate, native species for this site are, eg.

- Bird cherry (Prunus padus)*
- Elder (Sambucus nigra)*
- wild cherry (Prunus avium)*
- Hazel (Corylus avellana)*

A mix of Elder, Hazel and Bird cherry could be planted as a flowering hedgerow, accommodating the fence, while the wild cherry could be planted as single trees towards the eastern aspect of the site. This could offset the proposed removals on site.”

The following protection measures are proposed for the retained trees:

“The measures set out in Drawing 3 entitled “Tree Protection” set out in Appendix 3 will be in place prior to any commencement of the development involving the removal of Tree T13 and the removal of Groups G1 and G2:

- Installation of appropriate temporary ground protection;*
- Ground screws to be used for foundation of fencing posts;*
- To ensure site safety and monitor the trees’ vitality, annual hazard and condition surveys for a minimum period of 8 years post construction are recommended;*
- All tree works are carried out to the standards defined in the BS 3998: 2010; and*
- Recommendations for tree work to be undertaken by arborists with the appropriate insurance and qualifications and approved contractors of the Arboricultural Association.”*

The only item of information which the tree officer requested which is not specifically included in the August 2023 Report, is a plan showing the proposed precise location of the fence post pots. The view taken by the author is that this is a matter that can be fully and more appropriately addressed by way of the imposition of a planning condition (particularly given the fact that it is the intention to use ground screws to install the fence posts rather than concrete pots) which requires that the fence posts are installed in the ground using ground screws and are located (under arboricultural supervision) at a distance of not less than a metre from the stems of the retained trees tagged with the number T28-T33.

Against that background, the Applicants wish to confirm to the LRB that if planning permission is granted, they will accept a condition requiring them to implement all the recommendations that are made in the August 2023 Tree Report concerning:

- ground protection, special mitigation (including the use of ground screws to support the fence posts that are installed at a distance of not less than 1 metre from the stems of the retained trees tagged with numbers T28-T33 on the Tree Protection Plan drawing under arboricultural supervision) and tree protective fencing whilst the fencing work is being carried out; and**

- **the re-planting of appropriate replacement species once the fencing is in place.**

With this additional information concerning tree impact and protection in place, it is respectfully submitted that the LRB now has sufficient information before it to allow it to safely conclude on the part of the Council that the work involved in erecting the last sections of the fence-line within the Application Site will not result in unacceptable damage to protected trees or other trees worthy of retention and thus accords with the provisions of Local Development Plan Policy Env 12.

The Access Gate

The Applicants' position in relation to the access gates has been explained. Their property already has the benefit of the 2001 Permission which is still extant (see below) and which authorises the installation of a gate across the driveway provided it is set back a distance of 5 metres from the edge of the title boundary and open inwards. This mirrors precisely what the Applicants have asked the Council for permission to construct in terms of their planning application save that it is proposed to be opened and closed remotely rather than by hand.

So far as they are concerned, they are entitled as parents of young children to have a secure access into their driveway. This is especially the case given the length of the driveway and the relatively secluded location of their residence.

The only issue which the case officer appeared to have with the access gate is that it enclosed an area of public open space – a matter which shall now be addressed.

Loss of Designated Open Space

As advised in the section of this submission setting out the reasons for refusal of the Applicants' planning application, the case officer decided that permission for the erection of the section of the fence located along part of the eastern boundary of and the access gates was because it would allegedly "result in a loss of this designated open space to private garden ground."

This is because in the view of the case officer "*the eastern section (of the Application Site i.e. the Poppledote Area) including the driveway... is designated within the Edinburgh Local Development Plan as being open space*"

For the reasons set out below this view is disputed. The Poppledote Area and the driveway self-evidently form part of the Applicant's private garden. The land is not protected open space.

The LRB in considering this issue are asked to have regard to the following points:

- the driveway is already enclosed on both sides by means of a hedge on the one side and a fence on the other and provides a private access to the Appellant's residence and solely to the Appellant's residence;
- contrary to the understanding of the case officer, the Appellants do not propose to erect a fence along the eastern boundary of the Poppledot Area because a 2 metres high fence is already in place along the entire extent of that eastern boundary – a fact that is disclosed on the Proposal plan (see Document No. 9);
- the development of the Poppledot Area for residential development (and by implication the use of part of it as private garden ground) has also been accepted by the Council through the grant of the 2001 Permission. When the case officer was asked by the Applicants to explain why no reference was made to the 2001 Permission in the "Relevant Site History" section in the Report of Handling (see Document No. 2), the case officer replied in an email dated 29th August 2023 as follows:

"Whilst the extant 2001 permission (reference 01/02959/FUL) is material to application 23/00418/FUL, it was not included in the report of handling as when making an assessment against the development plan it has little bearing on the acceptability of the application. Open Space is defined in the Local Development Plan and its Proposals Map. The Open Space Audit 2016 does not form part of the Development Plan."

The LDP Proposals Map for the Northwest of the City (covering Cramond), however, categorically shows that the Poppledot Area and the driveway are not shown shaded green (being the colour employed in the Proposals Map legend to denote designated open space). It is respectfully submitted that the case officer has misdirected himself and thus the Council on this important point. A screenshot of the relevant section of the LDP Proposals Map is with the documents (see Document No. 17).

For the foregoing reasons, it is respectfully submitted that the case officer misdirected himself by concluding that the Poppledot Area and the driveway within the Application Site constitute designated open space and are thus protected from development by application of Local Development Plan Policy ENV 18.

For the same reasons, it follows that the Poppledot Area and the driveway within the Application Site are also not part of the City's "existing green infrastructure and that the

erection of fencing and an access gate at 19 Inveralmond Drive will not result in a deficit of green infrastructure within the City. If the foregoing points are accepted, it follows too that the proposed development is not contrary to NPF4 Policy 20, as found by the case officer.

Other Material Considerations – Objector Comments

The Applicants have considered the following comments from the objectors that:

- (i) the slatting in the fence-line that has already been constructed along the southern and western boundaries has been placed “on the inside” facing towards the Applicants’ house rather than outwards towards the woodland, and
- (ii) vehicular gates have been placed in the southern boundary section of the fence-line.

Dealing with each point in turn.

As the case officer pointed out in his Report of Handling the precise configuration of the fence is not a matter with which the Council should be concerned. Nonetheless, having considered matters further, the Applicants accept this criticism and will accept a condition which requires them to place slatting on both sides of the fenceline along the southern boundary of the Application Site.

The Applicants had made it clear in their Proposals drawing that they intended to place vehicular gates at the southern boundary section of the fence. However, having considered matters further in the light of the upset caused, they confirm that they will be prepared to accept a condition requiring that these gates be removed.

Review Procedure

The Applicants are happy to rest on written submissions, and, if necessary, an accompanied site visit.

Conclusion

On the basis that the requested explanation concerning (i) the applicability or otherwise of permitted development rights to the erection of the fence and (ii) the relevance or otherwise of the 2001 Permission to the access gate will be provided, with the position being taken that the Council stands by its position that planning permission for both the fencing and the access gate is indeed required, the LRB is respectfully requested to set aside the case officer’s

reasons for refusal, conclude that the Applicants' proposals comply with the development plan, and grant them:

- (i) retrospective planning permission for the fencing that is already in place along the southern and western boundaries of the Application Site;
- (ii) planning permission for the work involved in constructing fencing along the northern boundary and part of the eastern boundary of the Application Site; and
- (iii) consent to the removal of the trees referred to in the August 2023 Tree Report and the placement of fence posts in accordance with the mitigation measures contained therein; and
- (iv) planning permission for the work involved in constructing a wooden electronic entrance gate.

Sandy Telfer

Partner, Gillespie Macandrew LLP

Agent for the Applicants

Documents Materials and Evidence

1. Decision Notice dated 4th July 2023;
2. Report of Handling by case officer;
3. Photocopy of Planning Permission 01/02959/FUL dated 7th October 2002 and relative location plan;
4. Email dated 29th August 2023 from the case officer to Applicant's agent regarding Document No. 3
5. Letter dated 22nd December 2022 to the Applicant from the Council confirming the need for planning permission
6. Screenshot of the Application Site as shown on the City Atlas
7. Location Plan showing the boundaries of the Application Site submitted with planning application
8. Register of Scotland Plans Report
9. Proposals Plan showing the line of the existing and proposed fencing
10. Extract from 1972 Feu disposition by Bovis ifo Mr K Donald referencing existing fence on southern boundary

11. Photograph of existing fencing on southern boundary sent to the Council
12. July 2022 Tree Survey Report
13. Decision Notice dated 21st December 2022 - Prior Notification 22/05658/TCO for Treework within a Conservation Area
14. Updated Tree Survey dated 24th May 2023
15. Emails exchanges dated 3rd July 2023 between the case officer and the Applicants
16. Arboricultural Impact Study by TD Tree and Land Services Limited (August 2023)
17. Screenshot of the Edinburgh Local Development Plan Northwest Proposals Map showing the Application Site