



## ***Local Review Body***

West Lothian Civic Centre  
Howden South Road  
LIVINGSTON  
EH54 6FF

19 February 2020

A meeting of the **Local Review Body** of West Lothian Council will be held within the **Council Chambers, West Lothian Civic Centre, Livingston** on **Wednesday 26 February 2020** at **11:00am**.

For Chief Executive

### **BUSINESS**

#### **Public Session**

1. Apologies for Absence
2. Declarations of Interest - Members should declare any financial and non-financial interests they have in the items of business for consideration at the meeting, identifying the relevant agenda item and the nature of their interest
3. Order of Business, including notice of urgent business, declarations of interest in any urgent business and consideration of reports for information.

The Chair will invite members to identify any such reports they wish to have fully considered, which failing they will be taken as read and their recommendations approved.

4. Confirm Draft Minutes of Meeting of Local Review Body held on Wednesday 06 November 2019 (herewith).

#### **Public Items for Decision**

5. Notice of Review Application No.0742/H/19 - Erection of fence at 11 Clarendon Road, Linlithgow (herewith)

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DATA LABEL: Public

NOTE      **For further information please contact Val Johnston, Tel No.01506 281604 or email [val.johnston@westlothian.gov.uk](mailto:val.johnston@westlothian.gov.uk)**

## CODE OF CONDUCT AND DECLARATIONS OF INTEREST

This form is to help members. It is not a substitute for declaring interests at the meeting.

Members should look at every item and consider if they have an interest. If members have an interest they must consider if they have to declare it. If members declare an interest they must consider if they have to withdraw.

NAME	MEETING	DATE

AGENDA ITEM NO.	FINANCIAL (F) OR NON- FINANCIAL INTEREST (NF)	DETAIL ON THE REASON FOR YOUR DECLARATION (e.g. I am Chairperson of the Association)	REMAIN OR WITHDRAW

The objective test is whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your discussion or decision making in your role as a councillor.

Other key terminology appears on the reverse.

If you require assistance, please ask as early as possible. Contact Julie Whitelaw, Monitoring Officer, 01506 281626, [julie.whitelaw@westlothian.gov.uk](mailto:julie.whitelaw@westlothian.gov.uk), James Millar, Governance Manager, 01506 281695, [james.millar@westlothian.gov.uk](mailto:james.millar@westlothian.gov.uk), Carol Johnston, Chief Solicitor, 01506 281626, [carol.johnston@westlothian.gov.uk](mailto:carol.johnston@westlothian.gov.uk), Committee Services Team, 01506 281604, 01506 281621, [committee.services@westlothian.gov.uk](mailto:committee.services@westlothian.gov.uk)

## **SUMMARY OF KEY TERMINOLOGY FROM REVISED CODE**

### **The objective test**

“...whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your discussion or decision making in your role as a councillor”

### **The General Exclusions**

- As a council tax payer or rate payer or in relation to the council's public services which are offered to the public generally, as a recipient or non-recipient of those services
- In relation to setting the council tax.
- In relation to matters affecting councillors' remuneration, allowances, expenses, support services and pension.
- As a council house tenant, unless the matter is solely or mainly about your own tenancy, or you are in arrears of rent.

### **Particular Dispensations**

- As a member of an outside body, either appointed by the council or later approved by the council
- Specific dispensation granted by Standards Commission
- Applies to positions on certain other public bodies (IJB, SEStran, City Region Deal)
- Allows participation, usually requires declaration but not always
- Does not apply to quasi-judicial or regulatory business

### **The Specific Exclusions**

- As a member of an outside body, either appointed by the council or later approved by the council
- The position must be registered by you
- Not all outside bodies are covered and you should take advice if you are in any doubt.
- Allows participation, always requires declaration
- Does not apply to quasi-judicial or regulatory business

### **Categories of “other persons” for financial and non-financial interests of other people**

- Spouse, a civil partner or a cohabitee
- Close relative, close friend or close associate
- Employer or a partner in a firm
- A body (or subsidiary or parent of a body) in which you are a remunerated member or director
- Someone from whom you have received a registrable gift or registrable hospitality
- Someone from whom you have received registrable election expenses

MINUTE of MEETING of the LOCAL REVIEW BODY held within COUNCIL CHAMBERS, WEST LOTHIAN CIVIC CENTRE, LIVINGSTON, on 6 NOVEMBER 2019.

Present – Councillors George Paul (Chair), Lawrence Fitzpatrick, Stuart Borrowman, William Boyle, Pauline Clark, David Dodds, Charles Kennedy, Tom Kerr and David Tait

1. DECLARATIONS OF INTEREST

No declarations of interest were made.

2. MINUTE

The committee approved the Minute of its meeting held on 9 October 2019. The Minute was thereafter signed by the Chair.

3. NOTICE OF REVIEW APPLICATION NO.0775/FUL/19 - CHANGE OF USE OF PUBLIC OPEN SPACE TO PRIVATE GARDEN GROUND AND ERECTION OF FENCE AT 67 ROWAN DRIVE, BLACKBURN

The committee considered a report (copies of which had been circulated) by the Clerk to the Local Review Body regarding an application to review a decision by the Appointed Person to refuse planning permission for a change of use of public open space to private garden ground and erection of fence at 67 Rowan Drive, Blackburn.

Attached to the report were the Notice of Review and other relevant documents. The documents identified the policies in the development plan and the relevant guidance that had been referred to in the review documents.

The committee decided that the review documents in conjunction with the site visit conducted before the meeting provided sufficient information to enable the review to be determined without any further procedure.

The committee determined the review application in terms of the statutory test, to have regards to the development plan unless material considerations indicated otherwise.

The Local Review Body also took account of the views expressed in the Notice of review documents.

Motion

To refuse the review application and uphold the position of the Appointed Person to refuse planning permission.

- Moved by the Chair and seconded by Councillor Lawrence Fitzpatrick

Amendment

To uphold the review application and grant planning permission because the proposal would not detract from the residential and visual amenity of the area and was therefore not contrary to ENV21 and DES1 of the West Lothian Local Development Plan . The grant of planning would be subject to two conditions; these being (a) Unless otherwise agreed with the planning authority in writing, the fence shall be stained a dark brown within 2 weeks of it being erected; and (b) Notwithstanding the details on the approved plans, the fence shall be erected 2 metres back from the kerb edge.

- Moved by Councillor Pauline Clark and seconded by Councillor David Tait

A roll call vote was taken. The result was as follows :-

Motion

Willie Boyle  
Lawrence Fitzpatrick  
Tom Kerr  
George Paul

Amendment

Stuart Borrowman  
Pauline Clark  
David Dodds  
Charles Kennedy  
David Tait

Decision

Following a roll call vote the amendment was successful by 5 votes to 4 and it was agreed accordingly.



## **LOCAL REVIEW BODY**

**APPLICATION NO. 0742/H/19 – ERECTION OF FENCE AT 11 CLARENDON ROAD, LINLITHGOW, EH49 67AN**

## **REPORT BY CLERK AND LEGAL ADVISER TO THE LOCAL REVIEW BODY**

### **A PURPOSE OF REPORT**

This report describes the documents and other matters relevant to the consideration by the Local Review Body of this application for review of a decision by the Council's Appointed Person to refuse planning permission for the erection of fence at 11 Clarendon Road, Linlithgow

### **B REVIEW DOCUMENTS**

The following documents form the review documents for consideration by the Local Review Body and are circulated to members with this report:

1. The Notice of Review submitted by the applicant, dated 2 February 2020. This also includes a supporting statement.
2. A location plan (from the online case file);
3. Photographs of the proposed changes (from the online case file);
4. The Handling Report, prepared by the Planning Case Officer, dated 14 November 2019.
5. The Decision Notice, issued by the Appointed Person, dated 14 November 2019

Two representations were received in relation to the planning application; one was from the council's Transportation Services who had no objection to the proposal; the second was from a resident of 20 Clarendon Road, Linlithgow commenting on the open plan design of the housing scheme.

The applicant has stated in the review application that they consider that the Local Review Body could decide the review case by an assessment of the review documents and a site inspection.

### **C DEVELOPMENT PLAN POLICIES AND PLANNING GUIDANCE**

The application for planning permission was assessed in terms of Local Development Plan Policy DES1 (Design Principles), ENV24 (Conservation Area) and ENV25 (Linlithgow Palace and Pell and High Street Riggs. The council's Supplementary Guidance on House Extension and Alteration Design was also taken into consideration.

The Appointed Person was of the opinion that the location of the fence would result in adverse impacts on the visual amenity of the streetscene, does not enhance the appearance of the existing house and does not reflect the character of the neighbourhood. The proposal was considered contrary to West Lothian council's Local Development Plan's Policies DES1, ENV24, and ENV25 due to the height and location of the fence having a significant effect of the appearance of the property and visual amenity of the streetscene.

In addition the Appointed Person considered the proposal to be contrary to the council's House Extension and Alteration Design Guide which states that "in front gardens, wall and fences should not generally exceed one metre in height".

#### **D PLANNING CONDITIONS, LEGAL AGREEMENTS AND GOOD NEIGHBOUR AGREEMENTS**

The Appointed Person has confirmed that if the Local Review Body is minded to grant planning permission that no conditions would be required.

Lesley Montague, Managing Solicitor, West Lothian Civic Centre

Tel No. 01506 284730, [Lesley.montague@westlothian.gov.uk](mailto:Lesley.montague@westlothian.gov.uk)

Date: 26 February 2020



## **DECISION NOTICE REFUSAL OF PLANNING PERMISSION**

Town and Country Planning (Scotland) Act 1997, as amended

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West Lothian Council, in exercise of its powers under the Town & Country Planning (Scotland) Act 1997 (as amended), **refuses full planning permission for the development described below**, and in the planning application and docquetted plan(s).

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**APPLICATION REFERENCE** 0742/H/19

**PROPOSAL** Erection of a fence

**LOCATION** 11 Clarendon Road, Linlithgow, West Lothian, EH49 6AN, (GRID REF: 300536, 676789)

**APPLICANT** Ms and Mr Orla and Paul Bennett-Valentine, 11 Clarendon Road, Linlithgow, EH49 6AN

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The above **local application was determined by an officer appointed by the council in accordance with its scheme of delegation**. Please see the advisory notes for further information, including how to request a review of any conditions.

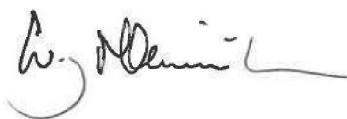
Docquetted plans relative to this decision are identified in Annex 1, Schedule of Plans.

**Dated:**  
**14.11.2019**

**Craig McCorriston**  
**Head of Planning, Economic Development and Regeneration**

**West Lothian Council  
West Lothian Civic Centre  
Howden South Road  
Livingston  
EH54 6FF**

**Signature:**



DATA LABEL: PUBLIC

**The council in exercise of its powers under the Town and Country Planning (Scotland) Act 1997 (as amended) refuses planning permission for planning application 0742/H/19, for the reason(s) set out as follows:**

- 1 The location of the fence will have an adverse impact on the visual amenity and appearance of the streetscene. The proposed fence does not enhance the appearance of the existing house and does not reflect the character of the neighbourhood.

This proposal is considered contrary to West Lothian Council's Local Development Plan's Policies DES1, ENV24, ENV25 and guidelines outlined within the House Extension and Alteration Design Guide.

**ADVISORY NOTES TO DEVELOPER**

***How to challenge the council's Decision***

*If your application was determined under delegated powers as a local application by an officer appointed by the council and you disagree with the council's decision on your application, or one or more of the conditions attached to the decision, you can apply for a review by the council's Local Review Body. If the application was heard at a committee and in any other case you can seek an appeal of that decision to the Government's Directorate for Planning and Environmental Appeals. You can find information on these processes and how to apply for a review, or to appeal, here: <http://www.westlothian.gov.uk/article/2078/Decisions-Reviews-and-Appeals>*

***If the decision of the council is overturned by the Local Review Body or the Directorate for Planning and Environmental Appeals, the developer of the land should be made aware of the following notes.***

***Notification of the start of development***

*It is a legal requirement that the person carrying out this development must notify the planning authority prior to work starting on site. The notification must include full details of the name and address of the person carrying out the development as well as the owner of the land and must include the reference number of the planning permission and the date it was granted. If someone is to oversee the work, the name and contact details of that person must be supplied. The relevant form is available online on the council web site under Planning and Building Standards. Please ensure this form is completed and returned accordingly.*

***Notification of completion of development***

*The person who completes this development must, as soon as practicable after doing so, give notice of completion to the planning authority. The relevant form is available online on the council web site under Planning and Building Standards. Please ensure this form is completed and returned accordingly.*

***Contaminated land procedures***

*In the event that contamination is found at any time when carrying out the approved development that was not previously identified, work on site shall cease and the issue shall be reported in writing to the planning authority immediately. The developer is required to follow the councils Supplementary Planning Guidance Development of land potentially affected by contamination. This document provides developers and their consultants with information on dealing with the planning process in West Lothian when development is proposed on land which is suspected of being affected by contamination. This document and further guidance is provided via the Councils web pages at <http://www.westlothian.gov.uk/article/2220/Contaminated-Land>*

***Liaison with the Coal Authority***

*As the proposed development is within an area which could be subject to hazards from current or past coal mining activity, the applicant is advised to liaise with the Coal Authority before work begins on site, to ensure that the ground is suitable for development.*

*Any activities which affect any coal seams, mine workings or coal mine entries (shafts) require the written permission of the Coal Authority. Failure to obtain such permission constitutes trespass, with the potential for court action. The Coal Authority is concerned, in the interest of public safety, to ensure that any risks associated with existing or proposed coal mine workings are identified and mitigated.*

*To contact the Coal Authority to obtain specific information on past, current and proposed coal mining activity you should contact the Coal Authority's Property Search Service on 0845 762 6848 or at **[www.groundstability.com](http://www.groundstability.com)**.*

### **Advisory note to developer - General**

*Please note that it is the developer's responsibility to ensure that all relevant consents and certificates are in place prior to starting work on site and that it is the developer's responsibility to speak with service authorities to ensure safe connection is possible to allow the development to proceed.*

### **Annex 1, Schedule of Plans - 0742/H/19**

Docquetted Number	Drawing Description	Drawing Number
1	Location Plan	--
2	Site Plan	--
3	Photograph	--
4	Fencing Details	--
5	Photograph	--



## HANDLING REPORT

<b>Ref. No.:</b>	0742/H/19	<b>Email:</b>	rachael.lyall@westlothian.gov.uk
<b>Case Officer:</b>	Rachael Lyall	<b>Tel No.:</b>	01506 281110
<b>Ward:</b>	Linlithgow	<b>Member:</b>	Tom Conn Tom Kerr David Tait

<b>Title</b>	Erection of a fence(Grid Ref: 300536,676789) at 11 Clarendon Road, Linlithgow, West Lothian,EH49 6AN
<b>Application Type</b>	Local Application
<b>Decision Level</b>	Delegated Powers
<b>Site Visit</b>	13.08.2019
<b>Recommendation</b>	Refuse Permission
<b>Decision</b>	Refuse Permission
<b>Neighbour Notification</b>	Neighbour notification procedures have been carried out correctly - case officer verification. YES
<b>Advertisement</b>	N/A

## Description of Proposals

Erection of a fence.

## Site History

No relevant site history.

## Representations

1 Representations were received for this application.

This is a summary of the representations received. The full documents are contained in the application file.

One representation with a general comment;  
- Concerns over the impact on the open plan design of housing estate.

## Consultations

This is a summary of the consultations received. The full documents are contained in the application file.

Consultee	Objection?	Comments	Planning Response
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Transportation	N/A	The proposed locations of the fences are outwith the visibility splay at the junction and would therefore not interfere with the sightlines.	N/A

### Policies Considered

Policy Title	Policy Text
DES1 - Design Principles	<p>All development proposals will require to take account of and be integrated with the local context and built form. Development proposals should have no significant adverse impacts on the local community and where appropriate, should include measures to enhance the environment and be high quality in their design. Development proposals which are poorly designed will not be supported. When assessing development proposals, the developer will be required to ensure that:</p> <ul style="list-style-type: none"> <li>a. there is no significant adverse impact on adjacent buildings or streetscape in terms of layout, scale, massing, design, external materials or amenity;</li> <li>b. there is no significant adverse impact on landscape character, built heritage, habitats or species including European sites, biodiversity and Protected Species nor on amenity as a result of light, noise, odours, dust or particulates;</li> <li>c. the proposed development is accessible for all, provides suitable access and parking, encourages active travel and has no adverse implications for public safety;</li> <li>d. the proposal includes appropriate integrated and accessible infrastructure, open space, green infrastructure and landscaping;</li> <li>e. sustainability issues are addressed through energy efficient design, layout, site orientation and building practices;</li> <li>f. the development does not result in any significant adverse impact on the water environment as required by the Water Framework Directive and related regulations and as appropriate, mitigation to minimise any adverse effects is provided;</li> <li>g. there are no significant adverse effects on air quality (particularly in and around Air Quality Management Areas), or on water or soil quality and, as appropriate, mitigation to minimise any adverse effects is provided; and</li> <li>h. risks to new development from unstable land resulting from past mining activities are fully assessed and, where necessary, mitigated prior to development.</li> </ul> <p>Where appropriate, developers will be required to produce masterplans, design statements and design guides in support of their proposals. Development proposals must also accord with other relevant policies and proposals in the development plan and with appropriate supplementary guidance.</p>

ENV24 - Conservation Area (Demolitions)	<p>Within Conservation Areas, new development will not be permitted which would have any adverse effect on their character and appearance. Proposals must have regard to the desirability of preserving or enhancing the character and appearance of the Conservation Area and will require appropriate high standards of design, materials, siting and implementation. When assessing applications for the demolition of unlisted buildings in Conservation Areas, the council will give careful consideration to the merits of the building and its contribution to the character and appearance of the Conservation Area. In circumstances where the building is of no architectural or historic value, makes no material contribution to the Conservation Area, and where its early removal would not detract from the character and appearance of the Conservation Area, demolition would not ordinarily be resisted. However, where a building is considered to be of value, either in itself or as part of a group, there will be a presumption in favour of its retention, restoration for the current or another appropriate use. In these circumstances, demolition to facilitate new development will only be permitted where it can be shown that one or more of the following criteria can be satisfied: a. the condition of the existing building is such that its repair and re-use is not economically viable. Supporting evidence, including a full economic appraisal, evidence that grant aid is not able to meet any funding deficit and evidence of marketing for a period of five years must be submitted to the council as planning authority; or b. demolition and replacement will result in significant economic benefit for the community and the conservation area will be enhanced as a result of the development; or c. there is no alternative location for the development; or d. it can be demonstrated that the proposals allow for the immediate future use of the site which enhances the character or appearance of the Conservation Area. Where planning permission and conservation area consent is granted, appropriate conditions will be applied to ensure that demolition does not take place in advance of the letting of a contract for the construction of a replacement building or alternative means of treating the cleared site having been agreed.</p>
ENV25 - Linlithgow Palace and Peel and H	<p>There is a presumption against development which would have an adverse effect on the amenity, outlook, character or setting of the Palace and Peel at Linlithgow. Developments within 800m of the Palace and Peel will be assessed for their potential effects. Development will not be permitted in the riggs off Linlithgow High Street. Exceptions may be made for developments which are small scale and are ordinarily incidental to the enjoyment or use of the principal property. In all cases, these must respect the existing rigg pattern, boundary walls and character of the area.</p>

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## **Policy Assessment**

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This application has been assessed against the following policies;  
West Lothian Council's Local Development Plan, Policy DES1 (Design Principles),  
West Lothian Council's Local Development Plan, Policy ENV 24 (Conservation Areas),  
West Lothian Council's Local Development Plan, Policy ENV 25 (Linlithgow Palace and Pell  
and High Street Riggs),  
West Lothian Council Supplementary Guidance on House Extension and Alteration Design.

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## **Officer Assessment**

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This application looks to receive planning permission for the erection of a fence a 11 Clarendon Road. The proposed fence is to surround the garden boundary on three sides and will be erected at a height of 2m, located adjacent to the footway and in front of the principal elevation of the house. The fence is to be constructed of pressure treated wood, posts and vertical slats.

FENCE A - Replacing existing fence between the neighbouring property at no.9 Clarendon Road and the applicant's rear garden and is approximately 14m in length.

FENCE B - Replacing an existing fence and gate which are damaged and will be approximately 6.5m in length/

FENCE C - Replacing a screen of hedging which is to be cut and reduced with the fencing to be installed in front of the hedge and will be approximately 11m in length. Due to the property being located on a corner plot, fence C will be located beside a public footpath.

It is to be noted that although there are several high fences which have been erected throughout the Linlithgow area, this proposed fence will have a significant effect on the on the appearance of the existing property and the surrounding housing development.

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## **Conclusions and Reasons for Decision**

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West Lothian Council's advises in the House Extension and Alteration Design Guide states that "in front gardens, walls and fences should not generally exceed one metre in height". Therefore these proposed works are contrary to this guidance.

Additionally, the location of the fence will result in adverse impacts on the visual amenity of the streetscene, does not enhance the appearance of the existing house and does not reflect the character of the neighbourhood.

Therefore, this proposal is considered contrary to West Lothian Council's Local Development Plan's Policies DES1, ENV24, ENV25 and guidelines given on House Extension and Alteration Design, due to the height and location of the fence having a significant effect on the appearance of the property and the visual amenity of the streetscene and it is therefore recommended that this application is refused.

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## **List of Review Documents**

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Drawings Schedule:



Docquetted Number	Drawing Description	Drawing Number
1	Location Plan	--
2	Site Plan	--
3	Photograph	--
4	Fencing Details	--
5	Photograph	--

Other relevant documents: N/A

West Lothian Local Development;

Case Officer – Rachael Lyall

Date – 14.11.2019





West Lothian Civic Centre Howden South Road Howden Livingston EH54 6FF Tel: 01506 280000 (for general enquiries) Email: [planning@westlothian.gov.uk](mailto:planning@westlothian.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 100230360-001

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

## Applicant Details

Please enter Applicant details

Title:	<input type="text" value="Ms"/>	You must enter a Building Name or Number, or both: *	
Other Title:	<input type="text"/>	Building Name:	<input type="text"/>
First Name: *	<input type="text" value="Orla"/>	Building Number:	<input type="text" value="11"/>
Last Name: *	<input type="text" value="Bennett"/>	Address 1 (Street): *	<input type="text" value="Clarendon Road"/>
Company/Organisation	<input type="text"/>	Address 2:	<input type="text"/>
Telephone Number: *	<input type="text" value=""/>	Town/City: *	<input type="text" value="Linlithgow"/>
Extension Number:	<input type="text"/>	Country: *	<input type="text" value="United Kingdom"/>
Mobile Number:	<input type="text"/>	Postcode: *	<input type="text" value="EH49 6AN"/>
Fax Number:	<input type="text"/>		
Email Address: *	<input type="text" value=""/>		

## Site Address Details

Planning Authority:

West Lothian Council

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

Address 1:

11 CLARENDON ROAD

Address 2:

Address 3:

Address 4:

Address 5:

Town/City/Settlement:

LINLITHGOW

Post Code:

EH49 6AN

Please identify/describe the location of the site or sites

Northing

676789

Easting

300536

## 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)

(A) Replace existing delapidated fence (A) between neighbours at No. 9 Clarendon Road. Neighbours participating in the boundary fence replacement with wooden fence & posts - vertical slats with maximum height of 2 metres. (B) Replace fence and gate damaged beyond repair during storm & removed for safety (temporary trellis insitu at present). (C) Trim hedge (existing height over 2M)& reduce height. Install fence with same materials & height as Fence A&B. This will fully enclose back garden.

## 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 attached/uploaded document - Statement of Review in the supporting documents section

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)

Statement of Review

## Application Details

Please provide details of the application and decision.

What is the application reference number? \*

0742/H/19

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

17/07/2019

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

14/11/2019

## 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

Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may select more than one option if you wish the review to be a combination of procedures.

Please select a further procedure \*

By means of inspection of the land to which the review relates

Please explain in detail in your own words why this further procedure is required and the matters set out in your statement of appeal it will deal with? (Max 500 characters)

Statement of Review explains why a site inspection is important

In the event that the Local Review Body appointed to consider your application decides to inspect the site, in your opinion:

Can the site be clearly seen from a road or public land? \*

☒ Yes ☐ No

Is it possible for the site to be accessed safely and without barriers to entry? \*

☒ Yes ☐ No

## Checklist – Application for Notice of Review

Please complete the following checklist to make sure you have provided all the necessary information in support of your appeal. Failure to submit all this information may result in your appeal being deemed invalid.

Have you provided the name and address of the applicant?. \*

☒ Yes ☐ No

Have you provided the date and reference number of the application which is the subject of this review? \*

☒ Yes ☐ No

If you are the agent, acting on behalf of the applicant, have you provided details of your name and address and indicated whether any notice or correspondence required in connection with the review should be sent to you or the applicant? \*

☐ Yes ☐ No ☒ N/A

Have you provided a statement setting out your reasons for requiring a review and by what procedure (or combination of procedures) you wish the review to be conducted? \*

☒ Yes ☐ No

Note: You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. You may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

Please attach a copy of all documents, material and evidence which you intend to rely on (e.g. plans and Drawings) which are now the subject of this review \*

☒ Yes ☐ No

Note: Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice (if any) from the earlier consent.

## Declare – Notice of Review

I/We the applicant/agent certify that this is an application for review on the grounds stated.

Declaration Name: Ms Orla Bennett

Declaration Date: 02/02/2020

# STATEMENT OF REVIEW

Proposed Fencing around Rear Garden  
11 Clarendon Road, Linlithgow

January 2020

## Introduction

11 Clarendon Road is located on a corner plot in a residential area of Linlithgow. The site is located outwith Linlithgow's Conservation Areas. The setting on the corner plot means the house lacks private ground as all garden areas are within view of the street (Clarendon Road) on both sides, with the only visual protection being a few existing plants.

The applicants Ms and Mr Orla and Paul Bennett-Valentin have small children, and the open nature of their rear garden gives concern to the safety of children playing in the garden. They propose to erect a 2m high timber fence around their rear garden area to provide a safe private area for their children to play in.

## Submitted Planning Application

Orla and Paul submitted a planning application ref 0742/H/10 for the proposed fence to West Lothian Council in July 2019. The application was refused in November 2019. The Handling Report included the following comments:

### Visibility Splays & Transportation

- "The proposed locations of the fences are outwith the visibility splay at the junction and would therefore not interfere with the sightlines" – (Transportation had no objection to the proposals)

### Relationship of Fence to Principal Elevation, Front Garden and Road

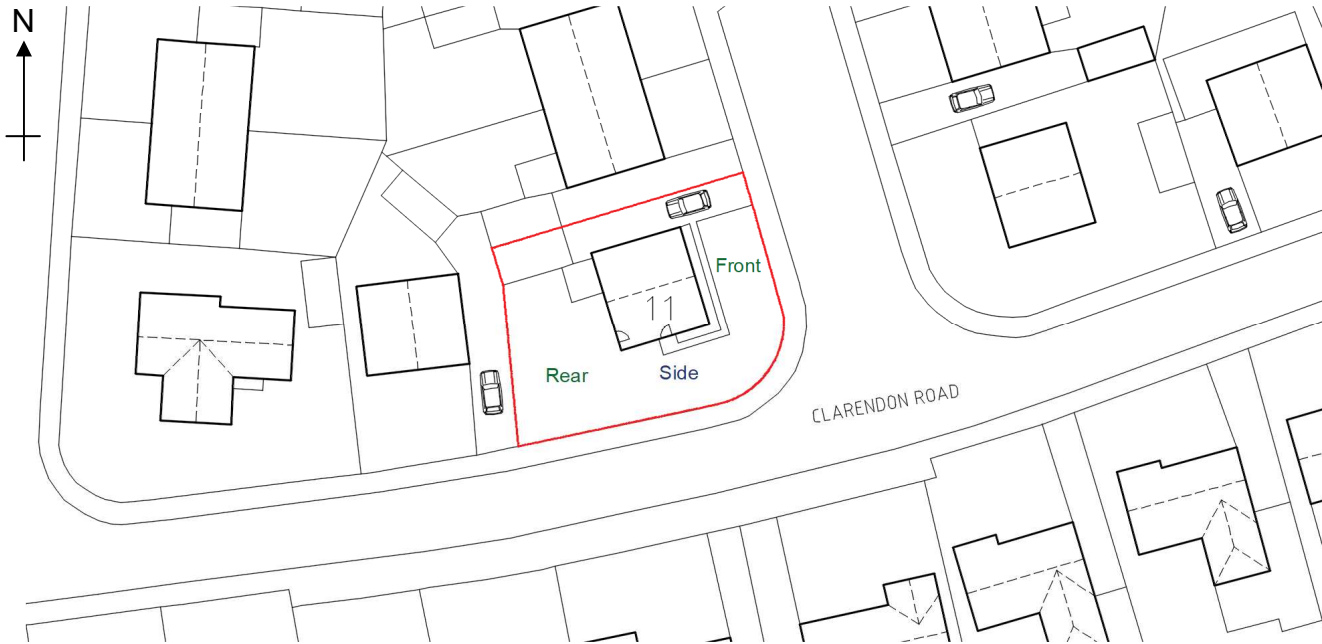
- "The proposed fence is to surround the garden boundary on three sides and will be erected at a height of 2m, located adjacent to the footway and in front of the principal elevation of the house" – (We dispute the Planning Department's interpretation of the 'principal elevation', and the next pages explain why the location of the 'principal elevation' has been misinterpreted).
- "West Lothian Council's advice in the House Extension and Alteration Design Guide states that "in front gardens, walls and fences should not generally exceed one meter in height" – (as above, we dispute the Planning Department's interpretation of the 'front garden', and the next pages explain further why the proposals do not affect the front garden or Principal Elevation).

### Effect on Appearance of the Existing House and Surrounding Housing Development

- "This proposed fence will have a significant effect on the on the appearance of the existing property and the surrounding housing development" – (This document includes photos of examples in the Clarendon Road estate and elsewhere in Linlithgow in which fences have been erected at the edge of the pavement without harming the appearance of the existing property or the surrounding development. We highlight those precedents and do not believe it is reasonable to restrict the applicant's ability to fence around their rear garden for this reason).
- "Therefore, this proposal is considered contrary to West Lothian Council's Local Development Plan's Policies DES1, ENV24, ENV25 and guidelines given on House Extension and Alteration Design" – (We believe the application to be in line with Council policy as explained in the next pages. Furthermore ENV24 and ENV25 do not apply as the site is not in a Conservation Area).



Photograph of 11 Clarendon Road – Front (East) Elevation As Existing



Site Plan As Existing



Information Submitted with Planning Application

The following information was submitted with the original Planning Application:

**Further details re: proposed Garden Fence on boundary**

Attached see sample picture of proposed wood fence, style and materials.

As mentioned previously, proposed garden fence will surround rear garden boundary on 3 sides at the height of 2 metres.

The fence slats will be vertical, single side with space approx. 1.5cm between each slat to allow air flow etc.

The “good side” of fence will face outwards (as seen in the sample picture attached).

FENCE A – Length approx. 14 metres

FENCE B – Length approx. 6.5 metres

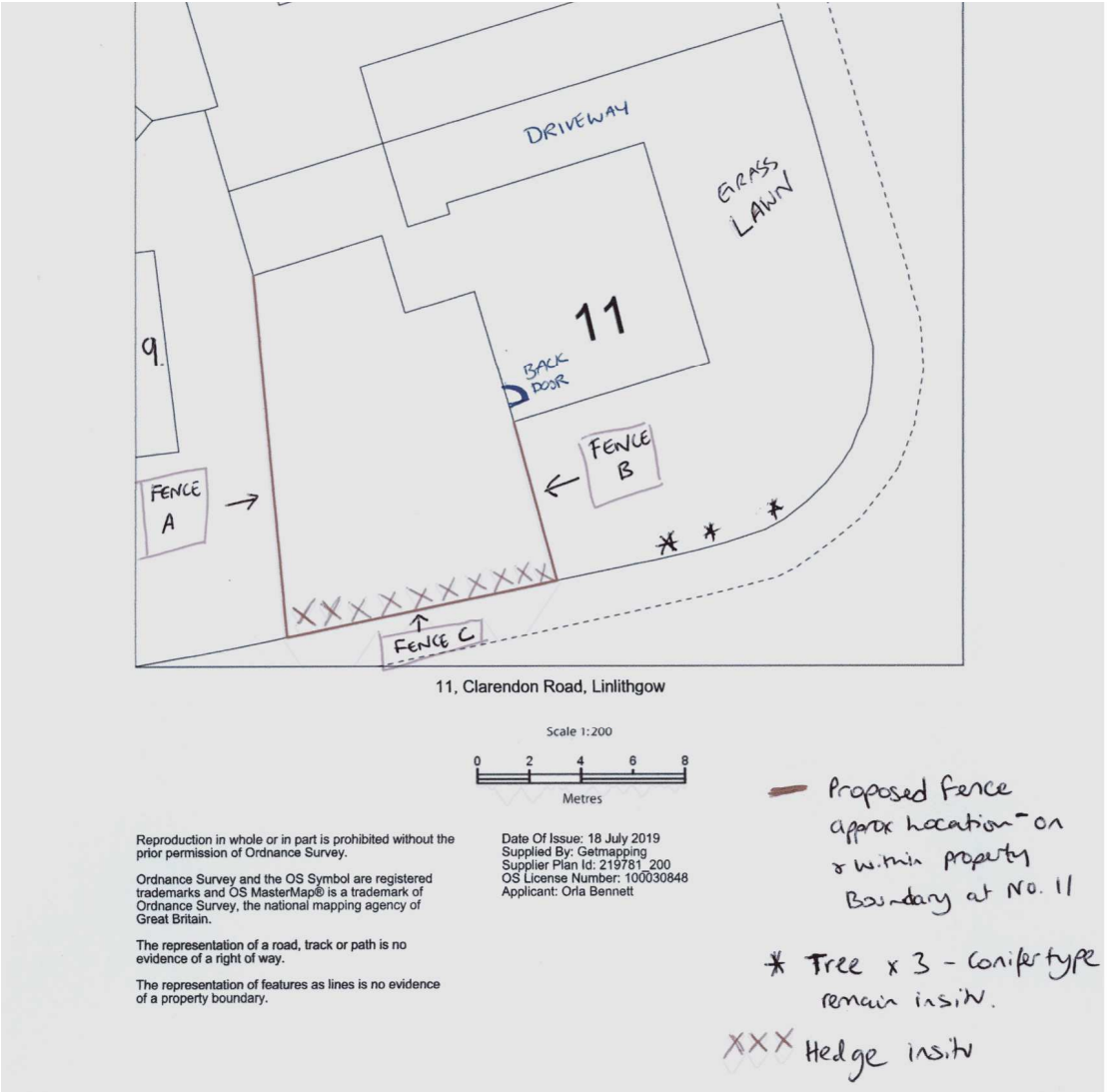
FENCE C – Length approx. 11 metres

All fences same height at 2 metre

Description of Proposals



Photos showing locations of Proposed fencing as Existing



Annotated Site Plan As Proposed showing locations of fences A, B & C



Sample picture of proposed wood fence, as referenced in 'Description of Proposals'



# Relationship of Proposed Fence to Front Garden and Principal Elevation

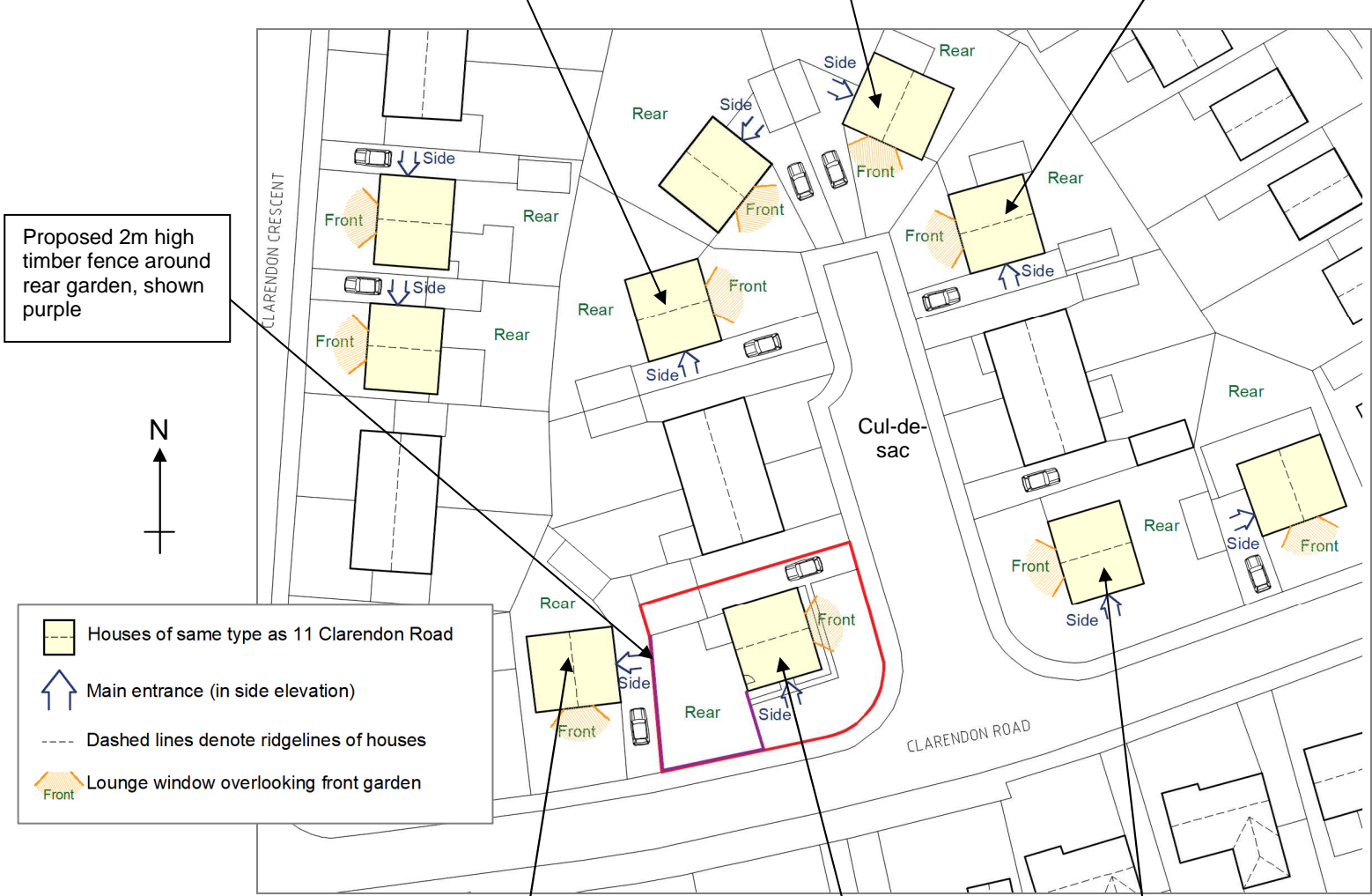
In its assessment of the existing Planning Application, the Planning Department considered the principal elevation of 11 Clarendon Road to be the South elevation of the house, and the front garden therefore to be to the South of the house. This is a misinterpretation. The principal elevation is in fact the East elevation of the house, and the front garden is to the East of the house. This is clarified by the following factors:

## Basis for defining the Principal Elevation

Scottish Government Planning Circular 1/2012 notes the following:

- The term principal elevation is used to identify the “front” of a dwellinghouse.
  - Having established the principal elevation, the rear elevation will be the elevation opposite the principal elevation.
  - Side elevations will link the principal and rear elevation.
  - The principal elevation is a reference to the elevation of the original dwellinghouse which by virtue of its design or setting, or both, is the principal elevation. Where it is not immediately obvious, a combination of the following factors should be used to identify the principal elevation:
    1. location of main door
    2. windows
    3. relationship to road
    4. boundary treatment
    5. architectural ornamentation
  - There can only be one principal elevation. It is based on the design of the original dwelling.
- 1. Location of Main Door:** The plan to the right highlights in yellow every house of the same house type as 11 Clarendon Road within the vicinity. In **every** instance the main entrance is located in the Side Elevation. As such it is an architectural feature of the house type that the entrance door is in the Side Elevation, and so for 11 Clarendon Road it is the clear architectural intention that the South Elevation should equally be read as the Side Elevation. 11 Clarendon Road’s rear door is on the rear West elevation, which is by definition opposite the Principal (East) Elevation.
  - 2. Location of Windows:** The plan to the right highlights with an orange splay the location of the Lounge window in every house of the same house type. In **every** instance the Lounge window is in the front elevation which overlooks the front garden. It is therefore the clear architectural intention that the front garden is to the East of 11 Clarendon Road, and that the elevation with the Lounge window should be read as the Front Elevation
  - 3. Relationship to Road:** The orientation of 11 Clarendon Road predominantly addresses the cul-de-sac in the same way as all the other houses of the same type in the cul-de-sac (as in each case the driveway location, front Lounge window and ridge direction are all directed toward the cul-de-sac). As such the house should be considered first and foremost in its relationship to the cul-de-sac, not the main road.
  - 4. Boundary Treatment:** There is an existing boundary fence to the West (rear) of 11 Clarendon Road, but not to the North. This reinforces the point that the West is the rear elevation, and so the front elevation would be opposite the rear elevation (ie the East elevation)
  - 5. Architectural Ornamentation:** In each house of same type as 11 Clarendon Road, a grid of 3x3 decorative bricks adjacent to the front Lounge window and facing the road helps define the front of the house. The same is true for 11 Clarendon Road, with these decorative bricks facing East.

With consideration of the above points it is clear that the East elevation of 11 Clarendon Road is the Principal Elevation, and that the Front Garden is to the East of the house. Therefore the proposed fence is in the rear garden, and is not in front of the Principal Elevation. Any objections based on the relationship of fencing to front gardens and principal elevations are therefore unjustified.



Houses of same type as 11 Clarendon Road – in all cases gable elevation is Principal Front Elevation



Effect on Appearance of Existing House and Surrounding Development



Existing cul-de-sac street scene, with 11 Clarendon Road shown on the left

In its assessment of the existing Planning Application, the Planning Department considered that the proposed fence would adversely affect the appearance of the existing property and the surrounding housing development. We do not believe this to be the case for the following reasons:

- The Principal elevation for the house is the East elevation facing the cul-de-sac as discussed in the previous page. The new fence would not have any impact on the appearance of the house when viewed from the Principal Elevation or front garden as it is far behind the front elevation of the house (in fact it is as far back as to be in line with the rear elevation of the house)
- The proposed fence would not have any impact on the streetscene of the cul-de-sac, which is the road the Principal Elevation addresses and is the streetscene which 11 Clarendon Road visually relates to (only the side elevation of the house faces the main section of Clarendon Road).
- While the fence will of course be visible when viewed from the side elevation, there are dozens of examples in Linlithgow (including elsewhere in Clarendon Road) where full height fences are located directly adjacent to the pavement without harming the character or appearance of the street scene. Such fences are essential for providing privacy, safety and security for private gardens. The applicant provided 69 such photos to West Lothian Council Planning Department on 15<sup>th</sup> September 2019. For reference and further clarity we have included three of the clearest examples of fencing in a similar setting and design to the proposals at 11 Clarendon Road to the right of this page.

The above notes demonstrate that the proposals will not harm the appearance of the house or streetscene of the cul-de-sac which the house addresses, that the fence around the rear garden would not harm the appearance of the surrounding development, and that there are nearby precedents for fencing next to the pavement on side elevations which do not harm the street scene. As such the approval of the proposals at 11 Clarendon Road would be in line with Council Policy and consistent with these other precedents.



Existing fencing adjacent to pavement at 5 Clarendon Road, Linlithgow



Existing fencing adjacent to pavement in Laverock Park, Linlithgow



Existing fencing adjacent to pavement at Friars Way, Linlithgow

- 27 -

## Lack of Existing Usable Private Ground

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Planning Guidance on usable Private Ground is provided in **WLC Supplementary Guidance – Residential Development Guide**. Without fencing around the perimeter of the rear garden, the site layout at 11 Clarendon Road does not comply with the following guidance from the Residential Development Guide (p35-36):

- “It is important that all detached, semi-detached and terraced houses are provided with an enclosed private garden. Gardens should satisfactorily reflect the size and type of dwelling proposed, the size of plot and the general character of the area in which the development is located.”
- “They should be functional and capable of providing adequate private space, reasonably level (not having a gradient exceeding 25 degrees), not overlooked by others, suitable for sitting out, children’s play, the drying of laundry, the storage of household refuse and also have some capacity for facilitating an extension of the property at a future date.”
- “It should only include ground that has been adequately screened, usually to the rear and side of the property, and driveways and vehicle hard standings should be excluded from the calculation.”

For the site to have no fencing around the rear garden would not comply with the above recommendations. The provision of fencing around the rear garden as shown in the proposed drawings is essential for ensuring the level of privacy and security required in compliance within this guidance.

## Compliance with Further West Lothian Council Planning Policies

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The proposals are in compliance with Section 13 of the **WLC Supplementary Guidance document ‘House Extension and Design Guide’**, which includes the following notes:

- “Fences and walls, particularly in front gardens, can have a significant effect on the appearance of the property and surroundings. When erected beside driveways or on the corner of the street, they can also have an impact on sightlines and traffic safety” – (we note that Transportation have confirmed proposals have no impact on visibility, and we have shown in preceding pages that the proposals will not significantly affect the appearance of the property and surroundings as it is well set back from front elevation and cul-de-sac street scene)
- “In front gardens, walls and fences should not generally exceed one metre in height, and in rear gardens they should not exceed two metres.” – (Fence is not in front garden, and does not exceed 2m in rear garden)
- “Materials should usually be timber or a material that complements the character of the property and neighbourhood.” – (Proposals comply with this requirement)

The proposals are in compliance with Policy DES1 of the **WLC Local Development Plan** as follows:

- “Development proposals should have no significant adverse impacts on the local community and where appropriate, should include measures to enhance the environment and be high quality in their design” – (we note that privacy is increased to improve amenity of 11 Clarendon Road, and streetscene/appearance is not adversely affected)
- “When assessing development proposals, the developer will be required to ensure that there is no significant adverse impact on adjacent buildings or streetscape in terms of layout, scale, massing, design, external materials or amenity” – (the materiality and scale is appropriate and similar to other nearby precedents, and streetscene/amenity not adversely affected)

## Conclusions

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We have demonstrated in this Statement of Review that the proposals should be approved for the following reasons:

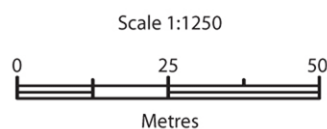
- The house is not in a Conservation Area
- The setting on the corner plot lacks fenced private ground for children to play in and is therefore not in compliance with Residential Development Guide – the proposals intend to remedy this
- Transportation have confirmed the proposed fence locations are outwith visibility splays at junctions and would therefore not interfere with sightlines
- The fence will not be erected in front of the Principal Elevation of the house (which faces the cul-de-sac) – it is set well back on the side elevation so as to be in line with the rear elevation
- The fence will not be erected in the front garden of the house – it is located around the rear garden
- The height of the fence does not exceed 2m, so is in compliance with the WLC ‘House Extension and Design Guide’
- The proposals will not have a significant effect on the appearance of the building, the streetscene or the surrounding housing development as it does not impact the view of the building or garden areas from the predominant cul-de-sac elevation
- There are many examples of houses on nearby similar sites in which fencing has been erected adjacent to the pavement to enclose a rear garden – many of these examples are much closer to the front elevation than the proposals at 11 Clarendon Road
- Materiality and design of the fence is appropriate for the context and in keeping with nearby examples
- The proposals will greatly benefit the amenity of the house by providing safe enclosed garden space for children to play in safely without visibility and access from the main road







11, Clarendon Road, Linlithgow, EH49 6AN



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The representation of features as lines is no evidence of a property boundary.

Date Of Issue: 18 July 2019  
 Supplied By: Getmapping  
 Supplier Plan Id: 219781\_1250  
 OS License Number: 100030848  
 Applicant: Orla Bennett



**From:** [Ashwood, Donald](#)  
**To:** [Douglas, Nancy](#)  
**Subject:** RE: 0742-H-19 - Your advice please - [OFFICIAL]  
**Date:** 27 September 2019 14:30:34

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**DATA LABEL: OFFICIAL**

Nancy,

Roads & Transportation would have no objections to this application.

The proposed locations of the fences are outwith the visibility splay at the junction and would therefore not interfere with the sightlines.

Hope this helps.

Regards.

Donald Ashwood  
Technician : Development Management & Transportation Planning  
West Lothian Council  
Operational Services  
Roads & Transportation  
Whitehill Service Centre  
4 Inchmuir Road  
Whitehill Industrial Estate  
BATHGATE  
West Lothian  
EH48 2EP  
Phone No. : 01506-282328  
Email : [donald.ashwood@westlothian.gov.uk](mailto:donald.ashwood@westlothian.gov.uk)

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**From:** Douglas, Nancy  
**Sent:** 27 September 2019 09:07  
**To:** Ashwood, Donald  
**Subject:** 0742-H-19 - Your advice please - [OFFICIAL]

**DATA LABEL: OFFICIAL**

Morning Donald,  
Happy Friday!

As Chris is off today I would be much obliged if you could give me a quick reply on this one please, as I should have sent this to Chris before now.

The applicant is wishing to erect a fence to the front of her property which is on a main access road into the estate in Linlithgow.

Ref: 0742/H/19

## **West Lothian Council - Data Labels:**

**OFFICIAL - Sensitive:** Contains Personal or Business Sensitive Information for authorised personnel only

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20 Clarendon Road

LINLITHGOW

EH49 6AN

13 August 2019

West Lothian Council

Development Management

EH54 6FF

Dear Sirs

**Planning application, 11 Clarendon Road**

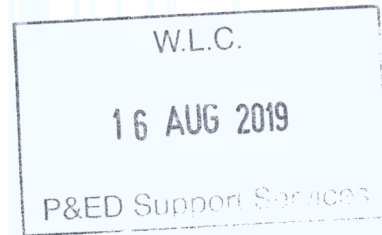
This letter is less of a complaint than a question about the rules laid down when Manse Road Estate was built in the early 1960s.

I always understood that the ruling from the Council then was that the estate should be open plan, and that there were to be no hedges or fences facing the road. This rule has largely been followed, apart from an unattractive high fence at No 5, presumably put up with seeking permission. This fence completely destroys the open plan design of the road.

Has the original ruling now been overturned?

Yours sincerely

Myra W Lawson



0742/H/19  
Nancy



## **Draft Conditions – for App No.0742/H/19**

**The reason(s) why the council made this decision is (are) as follows:**

**This permission is granted subject to the following conditions:-**

- (1) Unless stated otherwise, the proposed fence hereby approved shall be stained in a dark brown colour in which the colour is to be retained in perpetuity unless otherwise agreed in writing with the planning authority.

Reason: In the interests of visual amenity"