

04 November 2025

OBJECTION RESPONSE

The Clerk to the Moray Local Review Body
Legal and Committee Services
Moray Council
Council Offices
High Street
Elgin
Moray IV30 1BX

Ref: 25/00923/APP
Site: Ivy Cottage, Mid Street, Kingston, Fochabers, IV32 7NR
Proposal: Appeal to the Retrospective application
for the erection of a timber fence, gate, and painting of
external walls

Introduction

This appeal is submitted under Section 43A of the Town and Country Planning (Scotland) Act 1997 on behalf of Mr David Anderson, following the refusal of the retrospective application for the erection of a timber fence and gate at Ivy Cottage, Mid Street, Kingston.

We respectfully request that the Local Review Body review and overturn the decision of the appointed officer. The refusal is founded on a misinterpretation of Policy DP1 (Development Principles) and a failure to consider the site context, road status, and factual evidence.

Grounds of Appeal

1. Misapplication of Policy DP1 – Road Safety

The sole reason for refusal asserts that the fence “restricts visibility... giving rise to conditions detrimental to road safety.” This conclusion is demonstrably flawed for the following reasons:

Historic Precedent and Context

The former boundary hedge, which exceeded 3 metres in height, stood for over two decades without a single recorded incident, complaint, or enforcement notice. The replacement fence, at 1.6–1.8 metres, represents a significant reduction in height and bulk. It is logically impossible to claim that visibility has been made worse where a taller, denser hedge previously existed.

Private, Unadopted Road

Mid Street is a private unadopted road, not maintained or adopted by the Roads Authority. It serves only the immediate residents and their visitors. Road users are inherently familiar with the layout, driveways, and turning characteristics. The application of adopted-road visibility splays (2.4 × 5.0 m) is wholly disproportionate to this quiet residential lane.

No Evidence of Harm

MLDP Policy DP1(ii)(c) requires that a proposal must not cause demonstrable harm to road safety. There is no such evidence. The Council’s position relies on assumption rather than fact, contrary to both the policy and the long-established principle that conjecture cannot constitute material harm.

Proportionality and Reasonableness

The Transportation Manager's suggestion that the fence be reduced to 1.0 m is disproportionate. This would destroy privacy and security for a speculative gain in visibility on a road used almost exclusively by residents travelling at walking pace.

The refusal therefore represents a misapplication of Policy DP1 and a failure to assess proportionality within context.

2. Design, Character and Conservation Area Compliance

The fence is built from timber, a traditional material historically used across Kingston. Its anthracite grey finish is neutral and recessive, avoiding visual dominance. Numerous examples within the Kingston Conservation Area include higher rendered or block walls exceeding 2 m in height. The fence is therefore wholly consistent with established character.

Policy EP9 (Conservation Areas) requires preservation or enhancement of character; it does not prohibit contemporary boundary improvements. The fence is visually lighter, tidier, and more sustainable than the unmanaged hedge it replaced, thus meeting the intent of Policy EP9.

3. Residential Amenity, Privacy and Security

The appointed officer's assessment failed to give appropriate weight to Policy DP1(i), which requires protection of amenity and quality of life.



The hedge removal was a practical domestic improvement, providing usable garden space and reducing maintenance demands.

The fence enables the installation of secure gates, essential for privacy and family safety. This is a crucial aspect that should be considered in the review process.

The planning system must balance technical matters with the right to quiet enjoyment of property under both local policy and Article 8 of the European Convention on Human Rights. The fence achieves this balance responsibly and proportionately.

4. Proportionality and the Role of the Local Review Body

This is not a speculative or commercial development; it is a modest domestic boundary improvement replacing a larger and more opaque hedge. The refusal is disproportionate in planning terms and inconsistent with how similar boundaries within Kingston have been treated.

Councillors of the Local Review Body are respectfully asked to consider:

- The absence of any recorded safety incident during or prior to the works.
- The private nature of Mid Street and the negligible public impact.
- The clear amenity, security, and well-being benefits for the applicant and family.

For these reasons, the decision of the appointed officer should be set aside and planning permission granted.

Conclusion

The refusal of application 25/00923/APP was based on an over-interpretation of road-safety policy without reference to proportionality or context. The fence represents an improvement to visual appearance, domestic security, and overall amenity. It accords fully with:

Policy DP1 – Development Principles (amenity and transportation – no demonstrable harm shown);

Policy EP9 – Conservation Areas (character preserved and enhanced);

Policy EP2 – Biodiversity (no ecological harm).

Accordingly, we request that the Local Review Body uphold this appeal and grant retrospective planning permission.

We trust that the above information is satisfactory at this stage and we look forward to hearing from you soon.

Yours sincerely



Ashley Keenon
Director

For and on Behalf of AK architecture