

## REVIEW DECISION NOTICE

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Decision by East Lothian Local Review Body (the ELLRB)

Site Address: Site of Former Lime Kiln, East Saltoun, East Lothian

Application for Review by Mr John Heron against decision by an appointed officer of East Lothian Council.

Application Ref: 12/00644/P

Application Drawings: DWG00, DWG002, DWG003, DWG004, DWG5, DWG006, 7805\_106, 7805\_102, 7805\_105, 7805\_103 and 7805\_104

Date of Review Decision Notice – 28<sup>th</sup> February 2013

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### **Decision**

The ELLRB upholds the decision to refuse planning permission for the reasons given below and dismisses the review.

This Notice constitutes the formal decision notice of the Local Review Body as required by the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.

### **1 Introduction**

1.1 The above application for planning permission was considered by the ELLRB, at a meeting held on 21<sup>st</sup> February 2013. The Review Body was constituted by Councillor Jim Goodfellow (Chair), Councillor Willie Innes, Councillor Tim Day and Councillor John Williamson. All four members of the ELLRB had attended an unaccompanied site visit in respect of this application on 14<sup>th</sup> February 2013.

1.2 The following persons were also present at the Review Body:-

Phil McLean, Planning Adviser  
Morag Ferguson, Legal Adviser  
Fiona Stewart, Clerk.

The Applicant, his Agent and the Case Officer were present as observers.

### **2 Proposal**

2.1 The proposal is to construct a house and workshop on a site that previously formed part of the site of a former lime kiln. The site is in the countryside to the east of East Saltoun. The applicant currently uses the site for storage purposes in connection with his joinery business. The application for planning permission

was registered with the Planning Authority on 5<sup>th</sup> September 2012 and was refused consent in terms of a decision notice dated 2<sup>nd</sup> November 2012 on the basis that (a) the building of a house and workshop on the site would be sporadic new build housing development in the countryside for which no operational requirement had been demonstrated, all contrary to Policies ENV3 of the Edinburgh and the Lothians Structure Plan 2015 and DC1 of the East Lothian Local Plan 2008, and to guidance contained in Scottish Planning Policy: February 2012; (b) if approved, the proposed development would set an undesirable precedent for development in the East Lothian countryside to the detriment of its rural character and amenity; and (c) the proposed house is not designed for its place in the countryside and is thus contrary to Policies ENV1G of the said Structure Plan and DC1 and DP2 of the said Local Plan and to advice contained in Planning Advice Note 72.

### 3 Preliminaries

3.1 The ELLRB members were provided with copies of the following:-

1	The drawings specified above
2	The application for planning permission and supporting documents
3	The Appointed Officer's Report of Handling
4	A copy of the Decision Notice dated 2 <sup>nd</sup> November 2012
5	Copies of Policies ENV3 and ENV1G of the Approved Edinburgh and the Lothians Structure Plan 2015
6	Copies of Policies DC1, DP2, DP22 and T2 of the Adopted East Lothian Local Plan 2008
7	Copy of Consultation Responses from East Lothian Council's Transportation Department (x2) and Environmental Protection Manager and from Scottish Water
8	Copy of Representation received in respect of Application
9	Notice of Review dated 19 <sup>th</sup> December 2012
10	Applicant's Statement of Grounds of Review with supporting documents
11	Set of Conditions

3.2 The Planning Adviser advised Members that the application site is in a countryside location around 1km to the east of East Saltoun, adjacent to a small cluster of residential and commercial buildings. It forms part of the site of a former lime kiln, and is presently in use for storage, although there does not appear to be any planning permission for that use. He advised that the application proposes the erection of one detached house, a separate workshop building, and associated parking and driveway areas along with a new septic tank and soakaway. However, he advised that no details of these are included within the application drawings and it therefore appears that a further application for these would be required to enable the development to proceed. He reminded Members that planning legislation requires decisions on planning applications to be taken in accordance with development plan policy unless material considerations indicate otherwise.

He advised that the site is within an area designated as countryside under Local Plan policy DC1. The broad policy context for development in the countryside is provided by that policy and Structure Plan policy ENV3, which seek to restrict development in the countryside to protect its character, while allowing some limited forms of appropriate development. He summarised that new-build housing is only allowed where it is a direct operational requirement of an agricultural, horticultural, forestry or other employment use, and no appropriate existing building is available. Business use is acceptable in principle where it is of an appropriate scale and character. In all cases, a number of criteria must be satisfied in terms of visual and landscape impact, access and servicing, and impacts on nearby uses.

He advised that development plan policies on design, specifically Structure Plan policy ENV1G and Local Plan policy DP2, which seek to ensure a high quality of design in all new development are also relevant to this application as are the development plan's transport and parking policies, specifically Local Plan policies T2 and DP22, which seek to ensure new development does not have adverse consequences for road safety and is served by sufficient private parking.

Finally, he confirmed that national policy documents, including SPP (Scottish Planning Policy), which covers a wide range of matters including housing and rural development, and Planning Advice Note 72 on Housing in the Countryside, are also relevant. He confirmed that, included within the review papers, is a letter from the Scottish Government's chief planner on the subject of occupancy restrictions on rural housing.

He advised that the site has some relevant planning history. A previous application for a house on the site was refused by the Council and then dismissed on appeal in 2006. A further application for a house and workshop in 2011 was also refused by the Council.

The Planning Adviser reminded the LRB that this current application was refused by the appointed officer for three reasons. Firstly, it was considered that the proposals would represent sporadic new build housing in the countryside, without a demonstrated operational requirement. They were therefore considered to be contrary to Development Plan policies on development in the countryside, and to Scottish Planning Policy. Secondly, it was considered that the development would set a precedent for further houses or workshops in the East Lothian countryside, the cumulative effect of which would be a detrimental impact on the character and amenity of the countryside. Finally, the third reason for refusal was that the proposed design of the dwelling was not considered by the appointed officer to be designed for its place in the countryside and it was therefore considered contrary to relevant development plan policies and to Planning Advice Note 72. The reasoning for the original decision is set out in full in the case officer's report.

He then advised that the applicant's request for a review argues that the proposals represent rural diversification, and the redevelopment of a brownfield site. Development of an 'infill' site is argued to be acceptable. It is stated that the proposals would benefit the applicant's business in terms of fuel costs, carbon footprint, and security, and that they would allow for expansion of the business, working relationships with neighbouring businesses, and overall benefits to the rural economy. It is stated that there is an operational

requirement as the proposals are suited to the site and the house is a 'requirement' of the applicant. The application is therefore considered by the applicant to be consistent with relevant Development Plan policy on rural development and with SPP. The applicant argues that approval would not set a precedent because the site is within a cluster of buildings and is brownfield in nature. In terms of design, the applicant contends that the scale of the development and its proposed materials would be in keeping with existing development in the area and therefore comply with relevant Development Plan policy on design. The applicant draws the LRB's attention to a planning officer's report on an application at Lawhead Farm near Tynninghame in support of this position. It is also argued that the proposed design takes into account comments on previous design proposals but the case officer did not properly consider the current proposal on its own merits. Finally, the applicant argues that the case officer did not fully consider all potential material considerations.

Turning to consultation responses, he confirmed that Scottish Water advised that Hopes Water Treatment Works has capacity to serve the development, and confirmed that there are no public sewers in the vicinity of the site. The Council's Transportation service advised that it had no objections subject to a suitable visibility splay being secured through a legal agreement. The Council's Environmental Protection service advised that it recommended conditions regarding noise assessments. These would cover noise emanating from the existing commercial premises nearby, and also noise from the proposed new workshop. Members were asked to note that the case officer considered the recommended condition regarding an assessment of noise from neighbouring uses would be unreasonable on the basis that noise from this development is already controlled through conditions on its own planning permission. Finally, he advised that one representation was received from Scottish Power Energy Networks, which initially objected but subsequently removed its objection.

The Planning Adviser then summarised the main questions for the LRB to consider in reviewing the case as:

- Whether the proposed development would comply with the policies of the development plan in respect of development in the countryside, design, and traffic impacts;
- Whether there are any other material considerations that should be taken into account, and whether any of these outweigh the provisions of the development plan in this case?

Finally, the Planning Adviser reminded Members that they have the option of seeking further information if necessary.

The Chair asked the members to consider whether they had sufficient information to enable them to proceed to make a decision in respect of this matter. All members considered that they did have sufficient information. Accordingly, the decision of the ELLRB was that they would proceed to reach a decision at this meeting.

#### **4 Findings and Conclusions**

- 4.1 Councillor Day advised that this had been a difficult review because he had sympathy for the applicant and his desire to build a house and workshop on the Lime Kiln site. However, he considered that the key test is whether this application complies with Policy DC1 of the Local Plan. He considered that Policy DC1 quite rightly sets a very high bar for new developments in countryside locations, and considered that the LRB should be very careful in considering applications which have the potential to create a precedent. Whilst part 1 (b) of DC1 allows for a new build if it can be proved that the house is a direct operational requirement of an agricultural, horticultural, forestry or other employment use, in terms of this application he could not see that the applicant's need to build a house on this site constitutes a direct operational requirement. Reluctantly, he was therefore minded to refuse this appeal, but would suggest that the applicant may wish to engage in the development process for the next local plan. Councillor Williamson stated that it was clear from the site visit that the site was brownfield. He considered that the proposed development of the site would represent an improvement on the current situation. He found it difficult to see alternative uses that would be more suitable for the site and, on balance, considered that there was a sufficiently strong case to depart from the terms of Policy DC1 in this case. On the design issue, he considered that there was little architectural merit in the surrounding buildings and that the applicant had made changes to address concerns raised. On balance, he was minded to overturn the original decision to refuse permission in this case.
- 4.2 Councillor Innes agreed that this was a difficult case but considered that there was a need for the public to have confidence that Local Plan policies would be consistently applied. Although he agreed that it was difficult to perceive the site as being part of the true countryside, this is its designation in terms of the Local Plan and Policy DC1 applies as a consequence. It is his view that this is perhaps an incorrect designation and this is something that the applicant might take up through the creation of the new Local Plan. However, the current position is that Policy DC1 applies and he could not see any material consideration that outweighed the terms of the policy so he was minded to uphold the original decision to refuse permission. Like Councillor Williamson, he did not have a concern with the proposed design of the development as he considered there was a mix of styles on the site at present. Councillor Goodfellow summed up and advised that he agreed with Councillors Day and Innes. Although Policy DC1 is a high bar, it is the means by which the countryside in East Lothian is protected from inappropriate development and he considered it correct to apply it in this case. He also confirmed that he had no concerns with the design of the proposed development and it was agreed that this reason for refusal should not be upheld.

- 4.3 Accordingly, the ELLRB, by a majority of three votes to one, agreed that the Review should be dismissed and the original decision to refuse this application should be upheld, for the first two reasons set out in the original Decision Letter of 2<sup>nd</sup> November 2012. The Review Application was accordingly dismissed.



**Morag Ferguson**  
**Legal Adviser to ELLRB**

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997**

**Notification to be sent to applicant on determination by the planning authority of an application following a review conducted under section 43A(8)**

**Notice Under Regulation 21 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.**

- 1 If the applicant is aggrieved by the decision of the planning authority to refuse permission or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.
  
- 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 the 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 in accordance with Part V of the Town and Country Planning (Scotland ) Act 1997.