



**MINUTES OF THE MEETING OF THE  
LOCAL REVIEW BODY**

**THURSDAY 18 APRIL 2013  
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON**

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**Committee Members Present:**

Provost L Broun-Lindsay (Chair)  
Councillor J Goodfellow  
Councillor J Williamson  
Councillor J McMillan

**Advisers to the Local Review Body:**

Mr P McLean, Planning Adviser to the LRB  
Mrs M Ferguson, Legal Adviser/Clerk to the LRB

**Others Present:**

Mr R Holder, Agent for the application  
Mr A Hamilton, Applicant  
Mr D Hamilton, Applicant  
Ms C Molloy, ELC Senior Solicitor

**Committee Clerk:**

Mrs F Stewart

**Declarations of Interest**

None

The Convener welcomed all present to today's East Lothian Local Review Body (ELLRB).

**1. REVIEW AGAINST DECISION (REFUSAL)  
PLANNING APPLICATION No: 11/00851/PP – Erection of a Class 1 retail store with car parking, servicing, landscaping and associated works on land at Mid Road Industrial Estate, Prestonpans**

The Clerk introduced the Members on today's Local Review Body. She also introduced herself, the independent Planning Adviser, who had not been involved in the original decision, and the Committee Clerk. She advised that all of the Members had carried out a site visit and outlined the procedures which would be followed at today's meeting.

The Clerk advised that Members first had to decide if they had sufficient information before them in the Review documents to determine the application today. To assist them in their deliberations, the Planning Adviser would make a statement on the application. Should Members consider that any matter was not addressed adequately in the documents, they could request further written submissions. Alternatively, they could adjourn today's meeting and request a Hearing Session, specifying what further information they required and from whom.

The Clerk advised Members that it was open to them to uphold the decision of the Case Officer for the original reason, or for another reason. If they were minded to overturn the Case Officer's decision, she would circulate a Schedule of Conditions for discussion.

The Planning Adviser presented a brief summary of the proposals and relevant issues, stating that this was a particularly complex application for the Local Review Body. He advised that Members had been provided with copies of the key Local Plan and Structure Plan policies and that the application drawings had been included in the papers.

The Planning Adviser stated that this application was for planning permission in principle for a class 1 retail store plus associated works and the existing building was to be demolished to make way for the development. The application had been originally validated on 26 September 2011 and had been refused under delegated powers on 10 December 2012. He advised that the Planning Act required decisions on planning applications to be taken in accordance with development plan policy unless material considerations indicated otherwise. The part of the site containing the access and junction improvements was within a Conservation Area and, therefore, special attention had to be paid to the desirability of preserving or enhancing the character or appearance of the area. He also explained the relevance of the development plan policies and referred to other policy documents material to the application. He then summarised the consultation responses received on the application, copies of which were in the review papers, and advised that no public representation had been made.

Finally, the Planning Adviser turned to the arguments presented by the parties to the Review. He stated that the application had been refused by the appointed officer on the basis that the proposed retail use of the site was contrary to policies BUS1 and R1 of the adopted Local Plan, which seeks to retain the land for business or general industrial use. A brief summary of the officer's assessment was also given. The

applicant's request for a review had argued that the case officer considered the proposals acceptable in all respects other than loss of employment land and had pointed out that no public objections had been received. The main point of disagreement between the parties was claimed by the applicant to be the viability of subdividing and redeveloping the site for smaller units, the applicant arguing that it would be economically unviable to refurbish or redevelop the site for business or industrial use and therefore no scheme complying with development plan policies could proceed. It was also suggested by the applicant that Council officers had misinterpreted the evidence presented on the matter of viability.

The Chair invited questions from Members.

Councillor McMillan, Cabinet Spokesperson for Economic Development, requested clarification on a number of matters and was advised by the Planning Adviser that viability of re-using the site for employment purposes was a key area of dispute. The Adviser also confirmed that only a relatively small number of properties near the application site required to be given notice of the planning application and advised that there was no evidence of a named operator for the retail unit.

Councillor McMillan enquired if there was a definition of the word 'viability' contained in the Review documents and was advised by the Planning Adviser that there might not be a definitive explanation in planning terms, with financial appraisals being put forward by the applicant and comments being made on these by other parties, Members had to make their own assessment on this issue based on the evidence before them. If any issue was not clear, Members could request further information.

Both Councillor Goodfellow and Councillor Williamson considered that they had sufficient information before them to reach a decision today.

Councillor McMillan indicated that he would like to explore the subject of viability further. Having visited the site, there were still issues for him about whether it could be developed in any other way. He therefore requested further information from the Case Officer, the Senior Estates Officer who was the consultee on this point and the applicant or agent. He also stated that he would like to question all parties on points of viability at a future Hearing Session.

## **Decision**

The ELLRB agreed to adjourn today's meeting for a Hearing Session on a future date which Hearing will specifically explore further information on the following matters:

1. The financial viability or otherwise of possible alternative uses of the site, in particular business or industrial use.
2. The financial viability or otherwise of possible sub-division of the existing building for alternative uses, in particular business or industrial use.

**Post Meeting Note: The date for Hearing Session was set for Tuesday 21 May 2013**





**MINUTES OF THE MEETING OF THE  
LOCAL REVIEW BODY**

**THURSDAY 21 MAY 2013  
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON**

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**Committee Members Present:**

Provost L Broun-Lindsay (Chair)  
Councillor J Williamson  
Councillor J McMillan

**Advisers to the Local Review Body:**

Mr P McLean, Planning Adviser to the LRB  
Mrs M Ferguson, Legal Adviser/Clerk to the LRB

**Others Present**

Mr R Holder, Applicant's Agent (Holder Planning)  
Mr D Hamilton, Applicant  
Dr M Robertson, Applicant's Adviser  
Mr A Cliff  
Mr I McFarlane, Appointed Officer

**Committee Clerk:**

Mrs F Stewart

**Declarations of Interest**

None

**1. REVIEW AGAINST DECISION (REFUSAL)  
PLANNING APPLICATION No: 11/00851/PP**

Erection of a Class 1 retail store with car parking, servicing, landscaping and other associated works on land at Mid Road Industrial Estate, Prestonpans

Agent: Holder Planning

The Convener welcomed all present to today's East Lothian Local Review Body (ELLRB) Hearing Session.

The Clerk stated that today was a continuation of the Local Review Body meeting on 18 April 2013 in respect of the above planning application. The application had been continued to today's Hearing Session to further explore the financial viability or otherwise of possible alternative employment uses of the site or of possible subdivision of the existing building for alternative employment uses. Since the last meeting, Hearing Statements from the Applicant, the Council's Senior Estates Officer and Appointed Officer had been exchanged between the parties and copies issued to Members.

The Clerk advised that Councillor Goodfellow, who sat on the Local Review Body at its meeting in April, was unable to be present today. However, the meeting was still quorate and could therefore proceed. She also advised that the Hearing Session Rules provided that the Local Review Body would set the procedure for today's meeting. Members had discussed this matter and indicated that they would like to hear a brief summary of the Statements from the Appointed Officer and the agent for the Applicant. This would be followed by questions from the Members, who would then consider if they had sufficient information to reach a decision on the application today.

The Appointed Officer advised that his Statement had been informed by the submission received from the Council's Senior Estates Officer which had provided greater clarity over the viability of the site. On that basis, it was for Members to consider whether this viability issue was of sufficient weight to justify a departure from the relevant Local Plan policies. The Appointed Officer had originally refused the application, as Class 1 retail use of the site as a supermarket would prejudice the local supply of available land for business and industrial uses contrary to the objectives of policy BUS 1 of the Adopted East Lothian Local Plan 2008.

Mr Robin Holder, agent for the Applicant, introduced Dr Robertson to summarise the three Development Appraisals carried out by Rydens. He stated that the first Appraisal, on a new build project on the site, carried out in 2011, had concluded that the project would lose money and be unviable. A more recent Appraisal, examining the option of refurbishing the present building and selling on to the market, was also found to be unviable. A third Appraisal, refurbishment followed by retention and lease of 15 years, had been found to be slightly more viable, but was still expected to generate a £300,000 loss. Finally, he stated that this was not a site which a developer or occupier was likely to invest in for future use.

Mr Holder urged Members to make a positive decision on the application. He referred to the Local Plan being presently under review and suggested that early 2016 could be a realistic date for the adoption of the new Local Development Plan. He therefore respectfully requested that the future of this site did not remain undecided for a further 3 years. He added that this application would create jobs and benefit the people in Prestonpans. Addressing the concern that granting Planning Permission to this application would set a precedent, he stated that, in some respects

the proposal was not fully contrary to the terms of the Local Plan as the site was not currently contributing to the supply of available land for business as its state of repair and the costs of redevelopment made it effectively unavailable for business use.

Councillor McMillan stated that he had found the Statements and photographs provided by Bankhead Land Ltd very helpful. He asked the applicant to confirm that no marketing plan on this site had proved to be successful in recent years and Dr Robertson advised that the owners had been seeking a purchaser/developer since 2009. Mr Holder made the point that, if anyone was to succeed in developing this site, it would be the team assembled by his client today. Councillor McMillan asked the Appointed Officer if Mr Holder's estimate of early 2016 for the adoption of the new Local Development Plan accorded with his own estimate and Mr McFarlane agreed that 2016 was not an unreasonable timescale.

The Chair asked Councillor McMillan and Councillor Williamson if they each now had sufficient information to reach a decision today and both agreed that they did. A discussion of the application followed.

Councillor McMillan stated that he considered the test of viability very important as he was concerned about the lack of land for economic development. However, he was not minded to see this site remaining in its current, undeveloped state for a further 2-3 years. In his view, this would be detrimental to the community. Also, given the weight of evidence presented, it was clear that this land would not be used for industry.

Councillor Williamson concurred with Councillor McMillan. As a result of the site visit he had carried out and the further Statement from the Senior Estates Officer, he considered that it would be better to see the site developed for retail use than to remain in its current derelict state and he was therefore minded to overturn the original decision and grant Planning Permission.

The Chair stated that he had found the site visit very helpful and accepted that, in the present economic situation, it was unlikely that any development complying with the current Local Plan would materialise. He stated that he respected the importance of the Local Plan and in normal circumstances would not approve an application that is contrary to its terms. However, taking into account all the representations made in this application, he had concluded that there was sufficient uniqueness to this site for the terms of the Local Plan to be set aside on this occasion, although he understood why the Case Officer had reached the original decision. He considered that the material consideration of the lack of viability of any future use for business purposes was sufficient to justify reaching a decision that was contrary to the terms of the Local Plan.

The Clerk advised that the Planning Adviser had drawn up a proposed Schedule of Conditions. The Conditions were circulated to Members and Mr Holder and his team for perusal. The Planning Adviser then summarised the terms of the Conditions.

Mr Holder, on behalf of his client, indicated that he was content with the Conditions as they were drafted.

## **Decision**

The ELLRB unanimously agreed to overturn the original decision to refuse the application and granted Planning Permission subject to the Conditions presented by the Planning Adviser, all for the reasons set out above.