

## REVIEW DECISION NOTICE

---

Decision by East Lothian Local Review Body (the ELLRB)

Site Address: Thornfield, Thorntonloch, Near Dunbar, EH42 1QS

Application for Review by Ms Melville against decision by an appointed officer of East Lothian Council.

Application Ref: 08/00578/FUL

Application Drawings: DWG001, DWG002 and DWG003.

Date of Review Decision Notice 3<sup>rd</sup> July 2013

---

### **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 20<sup>th</sup> June 2013. The Review Body was constituted by Councillor John McMillan (Chair), Councillor Willie Innes and Councillor Jim Gillies. All three members of the ELLRB had attended an accompanied site visit in respect of this application on the morning of 20<sup>th</sup> June 2013.

1.2 The following persons were also present at the meeting of the ELLRB:-

Phil McLean, Planning Adviser (in attendance on Site Visit)  
Morag Ferguson, Legal Adviser  
Fiona Stewart, Clerk.

### **2 Proposal**

2.1 The application site is in a countryside location at Thorntonloch, around 2.5 miles east of Innerwick. The application seeks retrospective approval for a change of use of agricultural land to site a mobile home and form a domestic garden and hardstanding area. The mobile home is served by a septic tank and soakaway, however no planning permission is sought for this in the current application and a separate application would therefore be needed. The planning application was originally registered on 8<sup>th</sup> August 2008 and was refused under delegated powers on 7<sup>th</sup> March 2013. The notice of review is dated 1<sup>st</sup> April 2013. The reason for refusal is set out in full in the Decision Notice but, in brief, is that there is no demonstrable need for the siting of a mobile home on the site, the development would be sporadic development in the countryside which is not integrated into and appears visually intrusive, incongruous and exposed in its landscape setting, thus is contrary to Policy ENV3 of the approved Edinburgh and the Lothians Structure Plan 2015 and Policy DC1 of the adopted East Lothian Local Plan 2008. The Applicant has applied to the ELLRB to review the decision to refuse consent to vary the condition in question.

### 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
3	The Appointed Officer's Report of Handling
4	A copy of the Decision Notice dated 7 <sup>th</sup> March 2013
5	Copies of Policy ENV3 and ENV1G of the Approved Edinburgh and the Lothians Structure Plan 2015
6	Copies of Policies DC1, DP2, DP22, T2 and NRG8 of the Adopted East Lothian Local Plan 2008
7	Copy of the consultation responses received from Scottish Water, HSE, Agricultural and Rural Development Consultant, SEPA, ELC's Policy and Projects Manager, Environmental Protection Manager and Transportation Services
8	Copy of representation in respect of application
9	Photographs of site (3)
8	Notice of Review dated 1 <sup>st</sup> April 2013 and supporting statement

### 4 Findings and Conclusions

4.1 The ELLRB confirmed that the application for a review of the original decision permitted them to consider the application afresh and it was open to them to grant it in its entirety, grant it subject to conditions or to refuse it.

The Members asked the Planning Adviser to summarise the planning policy position in respect of this matter. The Planning Adviser gave a brief presentation to Members advising that the site is within an area designated as countryside under Local Plan policy DC1. He confirmed that the broad policy context for development in the countryside is provided by that policy and Structure Plan policy ENV3 and that these policies seek to restrict development in the countryside to protect its character, while allowing some limited forms of appropriate development. Development directly related to agriculture, horticulture, forestry and countryside recreation is acceptable in principle. He confirmed that other business use is acceptable in principle where it is of an appropriate scale and character and, 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, also relevant to this application are the development plan policy on flooding, specifically Local Plan policy DP16 and policies on transport and parking, 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 reminded Members of Local Plan policy NRG2, which requires planning applications with a 4km radius of Torness power station to be referred to British Energy.

He noted that also material to the application is Scottish Planning Policy, which covers a wide range of matters including housing and rural development.

He reminded the ELLRB that the application was refused by the appointed officer on the basis that there was no demonstrable need for the development, which would constitute sporadic development in the countryside, contrary to relevant development plan policies. The officer considered the proposals acceptable in terms of access issues and matters of privacy and residential amenity and stated that the full details of the case officer's assessment are in the report.

He summarised the applicant's basis for a review of the decision, namely that refusal of the application would make her homeless and end her attempts to establish a sheep rearing unit. The mobile home is argued to be essential during lambing periods, and its visual impact is argued to be minimal. It is stated that considerable investment has been made in the site, and the applicant was initially unaware that planning permission was needed. The full details of the applicant's arguments are also in the review papers.

He noted that the Council's rural development consultant advised that there is no viable business conducted from the site but rather a hobby interest. She did not consider there was an animal welfare case for residential accommodation and therefore did not support the application.

The Council's Policy & Projects Manager recommended refusal as the development was contrary to Local Plan policy on development in the countryside. He also noted that at the time of this response, the East Lothian Local Plan 2008 had not yet been adopted and the previous Local Plan 2000 remained in force.

He summarised SEPA's advice that the site lies on the edge of the 1 in 200 year flood risk envelope. It did not object on the basis of the application being for temporary accommodation but stated it would be likely to object to any permanent development. The Council's Transportation service raised no objection but recommended a condition requiring hard surfacing of the access. He confirmed that responses were received from the Council's Environmental Protection service, the Health and Safety Executive, and Scottish Water each raising no objection. He advised that one representation was received from a member of the public, which raised issues of pollution into the Thornton Burn and deliberate flouting of planning laws.

Finally, he 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, flooding, and access and traffic impacts; and 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, he reminded Members that they have the option of seeking further information if necessary before making a decision, either through further written submissions, a hearing session, a further site visit, or a combination of these procedures.

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.

- 4.2 Councillor Gillies confirmed that, having considered all the information presented to him, he could see no reason not to uphold the original decision to refuse planning consent, which decision he considered to be well founded. Councillor Innes noted that development in the countryside is, correctly, tightly controlled. The independent consultant's report has found that there is not a sufficient business case to justify the grant of planning consent for a connected residential development and he was persuaded by this. Councillor McMillan considered that the site visit had been very useful in enabling Members to fully understand the circumstances of this case. While he had some sympathy with the applicant, he could not disregard the consultant's report on the viability of the business and thus would uphold the original decision to refuse to the application.
- 4.3 Accordingly, the ELLRB unanimously agreed that the Review should be dismissed and the original decision to refuse this application should be upheld, for the reasons set out in the original Decision Letter of 7<sup>th</sup> March 2013.

The Review Application was accordingly dismissed.



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

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

**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.