



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

**THURSDAY 20 JUNE 2013
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON**

Committee Members Present:

Councillor J McMillan (Chair)
Councillor W Innes
Councillor D Berry
Councillor J Gillies

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 K Dingwall, Principal Planner
Ms S Greaves, Planner
Ms C Molloy, Senior Solicitor
Mr W Middlemass, Applicant (Item 1)
Mr C Miles, Agent (Item 1)
Mr T Thomas, Agent (Item 2)
Mr M Andrews, Representing applicant, Wemyss and March Estate (Item 2)
Ms J Melville, Applicant (Item 3)
Ms S Melville, Applicant (Item 3)
Mr B Porteous, Applicant (Item 4)
Mr C Porteous, Applicant (Item 4)
Mr G Turnbull (Item 4)

Committee Clerk:

Mrs F Stewart

Declarations of Interest

None

The Chair welcomed all present to today's East Lothian Local Review Body (ELLRB) meeting and introduced Members, the Legal Adviser and the Planning Adviser. The Chair also advised that, for procedural reasons, Item 3 on the agenda would be heard after Item 4.

The Legal Adviser outlined the procedure for today's meeting, advising that Item 1 would be a preliminary procedure for Members to consider before reviewing the Appointed Officer Decisions on the three planning applications in Items 2, 3 and 4. After hearing a statement from the Planning Adviser summarising the planning issues on each of these applications, Members would have to decide if they had sufficient information to reach a decision on each application today. If they did not, the matter would be adjourned for further written representations or for a hearing session. Should Members decide they had sufficient information before them, the matter would be discussed and a decision reached on whether to uphold or overturn the decision of the Appointed Officer in respect of each application. If any applications were granted, Members had the right to attach Conditions to the consent. Site visits had been carried out prior to the meeting on all three applications to be determined. Councillor Berry was unable to attend the site visit for Item 3 and would therefore not take part in consideration of this Item.

PRELIMINARY PROCEDURE

1. REVIEW AGAINST DECISION (REFUSAL) PLANNING APPLICATION No: 11/00234/P – Erection of wind turbine on land at Markle Mains Farm.

The Legal Adviser stated that the documents that accompanied the Notice of Review in respect of the above application contained new information on a number of issues, which information was not before the Appointed Officer when this application was originally determined. The three items of new material were 2 Zone of Theoretical Visibility Diagrams, the Noise Assessment and photomontages. She advised Members that the guidance under which Local Review Bodies are to be held states that *'New material will only be permitted where the party can demonstrate that it could not have been introduced earlier in the process, or that it arises as a consequence of exceptional circumstances.'* As the applicant had not demonstrated either of these tests had been satisfied in this case, her advice, therefore, as Legal Adviser to the LRB, was that this new material should not be admitted. The applicant's agent had argued that this information did not fall foul of this rule as it was new material but did not relate to a new matter. In an effort to move matters forward, the parties had agreed to submit this issue to the LRB for a preliminary decision only on the issue of whether the LRB wished to consider the material in question. The Papers before Members included correspondence between the parties and copies of the relevant legislation and guidance. It was open to Members to decide today if they wished to admit the new information.

Councillor Innes stated that he was most comfortable accepting the advice of the Legal Adviser.

Councillor Berry requested further clarification on the reason why the new information had not been accepted and the Legal Adviser responded, saying that the aforesaid documents did not meet the tests set out in the legislation and guidance. She stated that, in an email from the LRB clerk to the agent on 20 December 2012, each of the documents constituting new information was assessed in turn and she summarised

the agent's response for Members. However, she made it clear that she was not stating that Members could not accept the new material. It was open to the LRB to accept the new material if it considered that it would assist in the determination of this matter.

Councillor Berry commented that the Local Review Body proceedings were still relatively new and therefore he was minded not to make a decision strictly on legal terms. He was in favour of accepting the documents and argued for leniency and flexibility in the interpretation of the legislation.

Councillor Gillies was also in favour of accepting the new material on the basis that Local Review Body legislation is relatively new.

The Chair, Councillor McMillan, considered that the Council had a duty, under good practice, to conduct all reviews fairly and effectively and felt there was no prejudice in erring on the side of caution here. He was therefore in favour of the new material being admitted as part of the Review Documents.

Decision

The ELLRB agreed by a majority of votes that the new material submitted with the Notice of Review dated 6 December 2012 in respect of the above application should be accepted and placed before the LRB on a future date to assist Members in determining this appeal. The Legal Adviser stated that proceedings would now commence and a subsequent meeting and site visit would be arranged.

REVIEWS

2. REVIEW AGAINST DECISION (REFUSAL) PLANNING APPLICATION 12/00810/P – Change of use of hotel/guest house and land (class 7) to form 1 house with ancillary residential accommodation and domestic garden ground at Greencraig, Aberlady.

The Clerk introduced the application and the Chair invited the Planning Adviser to present a summary of the issues relating to this application.

The Planning Adviser stated that the site was in a countryside location one mile west of Aberlady and that the application was seeking approval for a change of use; no physical alterations or works in the grounds were proposed. The site was within an area designated as countryside under Local Plan policy DC1. This policy, together with Structure Plan policy ENV3, seeks to restrict development in the countryside to protect its character, while allowing some limited forms of appropriate development. The Local Plan contains a policy specifically on the loss of hotel accommodation, policy TOUR4, which seeks to avoid the loss of hotel accommodation, unless it has been demonstrated that reasonable efforts have been made to retain the property in use as a hotel.

The Planning Adviser summarised relevant transport and parking policies and advised that the site was within a designated Area of Great Landscape Value and was a listed wildlife site, and close to a Special Protection Area and Site of Special Scientific Interest. In terms of planning history, two previous applications for a change of use of the property to a house had been refused in 2003 and 2005. Today's application had been refused by the appointed officer on the basis that it had not been demonstrated that reasonable efforts had been made to retain the property

in use as a hotel and therefore proposals were considered to be contrary to Local Plan policy TOUR4.

The Planning Adviser advised that the applicant's request for a review argued that reasonable efforts had been made to retain the building in use as a hotel, and that this was no longer practical. Information in support of this position was included in the applicant's submission before Members. The applicant also claimed that the building was originally built as a house and its design was most suited to that use. In respect of Consultation responses, the Council's Economic Development Manager had objected to the application on the basis of the importance of tourism and golf to the local economy, which the existing use of the property supports, and the lack of marketing of the site. The Council's Transportation service raised no objections and no other consultations were carried out. No public representations had been received.

The Chair advised that it was now for Members to decide if they had sufficient information to determine the application. After discussion, Members agreed unanimously that they had sufficient information to proceed with the application today.

Councillor Berry stated that it was a matter of regret that this application was before the LRB today as he considered that Green Craig had been an asset to East Lothian. In his view, it was important to retain accommodation of this high standard to attract visitors to East Lothian, especially as a number of hotels in the county had closed in recent years. He requested further information concerning the financial performance of Green Craig presented in the applicant's Review Statement and the Planning Adviser confirmed that, although figures showed the business had operated at a loss, the Appointed Officer had considered that that in itself was not sufficient reason to approve the application. Councillor Berry considered that the site was too important a location to lose for a hotel, especially one as unique as Green Craig, and could not accept that all options had been exhausted. He was therefore minded to support the Appointed Officer's decision to refuse the application.

Councillor Innes took the opposing view to Councillor Berry, stating that he was sympathetic towards the application. He considered that the applicant had amply demonstrated his commitment to the hotel operation by running the business at a loss since 2002. The applicant had not indicated that they intended to sell the property and so it would still be available for accommodation. A number of other hotels in the county had closed and become derelict; that would not be the case with Green Craig. He also accepted that the owners had tried to achieve their operational goals. He was therefore minded to overturn the decision of the Appointed Officer.

Councillor Gillies was also sympathetic towards the application, stating it was clear that the business was no longer profitable in the present economic climate.

The Chair referred to East Lothian Council's Economic Development report which stated that *'Council policy was to retain visitor accommodation and only to permit change where it is no longer feasible.'* He considered that, in this case, the word 'viable' may be more appropriate than 'feasible'. He also pointed out that the applicant's Review Statement stated that the applicant had no wish to sell the property and that a change of use would allow the property to be let on a medium to long term basis. He was therefore minded to overturn the decision of the Appointed Officer.

Decision

The ELLRB agreed, by a majority of 3 to 1, to reject the original decision and grant planning permission for the change of use of hotel/guest house and land (class 7) to form 1 house with ancillary residential accommodation and domestic garden ground at Green Craig, Aberlady.

The Clerk advised that a formal Decision Notice would be issued within 21 days.

4. REVIEW AGAINST DECISION (REFUSAL) PLANNING APPLICATION 12/00955/P – Replacement windows (Retrospective) at 4 Colvin Street, Dunbar

The Clerk introduced the application and the Chair invited the Planning Adviser to present a summary of the issues relating to this application.

The Planning Adviser stated that the application site was a two storey terraced house and that the application was seeking retrospective permission for the installation of ten new tilt and turn PVC windows, replacing the timber sash and case windows previously installed. He also advised Members that roof windows that had been observed on the site visit had been approved in an earlier application along with a rear extension.

The Planning Adviser stated that the site was within a predominantly residential area, designated under Local Plan policy ENV1, and within the Dunbar Conservation Area although the building was not listed. He advised that the Development Plan seeks to preserve or enhance the character of Conservation Areas, and generally to promote a high quality of design in all development. The key policies in relation to these matters were Structure Plan policy ENV1D and Local Plan policy ENV4. In addition, Local Plan policy DP8 which relates specifically to replacement windows, states that *'replacement windows in a Conservation Area must preserve or enhance the area's special architectural or historic character'*. The full text of all policies was provided with the submission papers. Also relevant to the application were national policy documents, including Scottish Planning Policy and Scottish Historic Environment Policy.

The Planning Adviser stated that the application had been refused by the Appointed Officer on the basis that 9 of the 10 PVC windows did not preserve the positive contribution that the previous timber-framed sash and case windows made to the special architectural or historic interest of the Conservation Area. Consequently, the application was considered contrary to relevant development plan policies and to Scottish Planning Policy. The request for a review had stated that the new windows were more energy efficient, more in keeping than any other property in the area and that other properties in the area had PVC windows or doors not in keeping. There had been no consultations carried out by the Appointed Officer and only one representation had been received from a neighbouring resident. In response to the Notice of Review, one further representation had been received from the neighbouring resident.

The Chair advised that it was now for Members to decide if they had sufficient information to determine the application. After discussion, Members agreed unanimously to proceed with the application today.

Councillor Innes had noted from the site visit and from the applicant's submission that a number of properties in the locality had PVC windows. He enquired if any other permissions for PVC windows had been granted for properties in the area and the Planning Adviser replied that he was not aware of any; PVC windows installed in these properties were presumably not authorised. Councillor Innes observed that, clearly, a number of properties did not comply with planning regulations, but this did not justify other home owners disregarding planning regulations. In his view, the building was in an attractive part of Dunbar where the front elevation of the building was important. He was therefore unable to agree to the installation of PVC windows to the front of the house.

Councillor Gillies had sympathy with the applicant but planning policies clearly state that PVC is not acceptable in this property. He therefore would vote to uphold the Appointed Officer's decision.

Councillor Berry also had sympathy with the applicant as, in his view, PVC windows were a more practical solution for properties close to the sea and, visually, he considered that there was little difference. He would therefore be in favour of overturning the Appointed Officer's decision and supporting the application.

Councillor Innes strongly disagreed with Councillor Berry. He stated that people living in Conservation Areas enjoyed a different status but that there were responsibilities which came with that. He would therefore be supporting the Appointed Officer's decision.

The Chair stated that, while he had sympathy for the applicant, he was concerned that they should observe the Council's position on replacement windows clearly outlined in policy DP8.

The Planning Adviser advised Members that it was open to them to grant permission for the installation of PVC windows to the rear and side of the building but not the front.

Decision

The ELLRB agreed by a majority decision to overturn the refusal of the application subject to permission not being granted for the windows to the front of the building. The Clerk advised that a formal Decision Notice would be issued within 21 days.

Sederunt: Councillor Berry left the meeting

3. REVIEW AGAINST DECISION (REFUSAL) PLANNING APPLICATION 08/00578/FUL – Change of use of agricultural land for the siting of a mobile home including formation of domestic garden and hardstanding area (retrospective) at Thornfield, Thornton Loch.

The Clerk introduced the application and the Chair invited the Planning Adviser to present a summary of the issues relating to this application.

The Planning Adviser stated that the application was seeking retrospective approval for a change of use of agricultural land in a countryside location at Thorntonloch, 2.5 miles east of Innerwick. He advised that the site was within an area designated as countryside under Local Plan policy DC1 which, together with Structure Plan policy ENV3, seeks to restrict development in the countryside to protect its character, while

allowing some limited forms of appropriate development. Development directly related to agriculture and horticulture was acceptable in principle while other business use was acceptable in principle where it was of an appropriate scale and character. In all cases, a number of criteria had to be satisfied in terms of visual and landscape impact. Structure Plan ENV1G and Local Plan policy DP2, which seek to ensure a high quality of design in new development, were also relevant to this application.

The Planning Adviser advised that the application had been refused by the Appointed Officer on the basis that there was no demonstrable need for the development, which constituted sporadic development in the countryside, contrary to relevant development plan policies. The applicant's request for a review had argued that refusal of the application would make her homeless and end her attempts to establish a sheep rearing unit. The mobile home was argued to be essential during lambing periods and its visual impact was argued to be minimal.

In respect of the Consultation responses, the Council's rural development consultant had advised that there was no viable business conducted from the site but rather a hobby interest and therefore did not support the application. The Council's Policy and Projects Manager had also recommended refusal while SEPA did not object on the basis of the application being for temporary accommodation. A further four consultees raised no objection. One representation had been received from a member of the public which raised issues of pollution into the Thornton Burn and deliberate flouting of planning laws.

The Chair advised that it was now for Members to decide if they had sufficient information to determine the application. After discussion, Members agreed unanimously to proceed with the application today.

Councillor Gillies, having visited the location and taken into account the arguments in the submissions, could not approve the siting of a caravan as requested by the applicant. He would therefore be upholding the decision of the Appointed Officer.

Councillor Innes stated that the test was to establish if there was a viable business proposal demonstrated in this application. Given the evaluation by an independent consultant, and on the evidence of what could be seen on the site visit, he was not convinced that there was. Planning policy did allow for a business opportunity to be developed, but to succeed on that basis, it was his view that a much stronger business case would have to be put forward. He would therefore not be supporting the application.

Councillor McMillan had found the site visit very interesting. However, having given the matter serious consideration, he would be supporting the decision of the Appointed Officer due to the weakness of the business case, and the siting and temporary nature of the mobile home.

Decision

Members of the ELLRB unanimously agreed to uphold the decision to refuse planning permission for the reasons set out in the Decision Notice dated 7 March 2013:

'There is no demonstrable need for the siting of a mobile home including the formation of a domestic garden and hardstanding area on the site. The development results in sporadic development in the countryside, which is not integrated into and appears visually intrusive, incongruous and exposed within its landscape setting and

is harmful to the character and appearance of the landscape of the area. The siting of a mobile home including the formation of a domestic garden and hardstanding area on the site is therefore, 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 Clerk advised that a formal Decision Notice would be issued within 21 days.