



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

**THURSDAY 26 SEPTEMBER 2013
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON**

Committee Members Present:

Councillor J Goodfellow (Chair)
Councillor J McNeil
Councillor T Day
Councillor D Grant

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 C Miles, Agent (Item 1)

Committee Clerk:

Mrs F Stewart

Declarations of Interest

None

Apologies

Councillor S Currie

Councillor Goodfellow, who was elected to chair today's East Lothian Local Review Body (ELLRB) meeting, welcomed all present to the meeting.

The Legal Adviser advised that Councillor Currie had been unable to join the site visit party and had therefore tendered his apologies for today's meeting. All Members present had carried out site visits for the three applications being reviewed today.

The Legal Adviser introduced the Members of the Local Review Body and briefly outlined the procedure for today's meeting. She advised that, after hearing a statement from the Planning Adviser summarising the planning policy issues for each of the applications, Members would 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. Decision Notices would be issued within 21 days.

**1. REVIEW AGAINST DECISION (REFUSAL)
PLANNING APPLICATION No: 11/00234/P – ERECTION OF ONE WIND
TURBINE AT MARKLE MAINS FARM, EAST LINTON**

The Legal Adviser introduced the planning application and invited the Planning Adviser to present a summary of the planning policy issues relating to this application.

The Planning Adviser advised that the application site was in a countryside location around 1.5 miles to the west of East Linton and that the application was for a single 100kW wind turbine of three-bladed horizontal axis design, 36.7m to the hub, with a blade diameter of 20.9m, giving a total height to blade tip of 47.1m. He also stated that the Notice of Review was dated 6 December 2012 and had not come before the LRB sooner due to an initial dispute over whether new material could be accepted.

The Planning Adviser stated that the Planning Act requires decisions on planning applications to be taken in accordance with development plan policy unless material considerations indicated otherwise. He also pointed out that there had been a change to the development plan since the delegated decision had been taken on this application; the Edinburgh and the Lothians Structure Plan had been superseded by the Strategic Development Plan for South East Scotland (SESplan). He explained the relevance of the SESplan policies and stated that the broad policy context for development in the countryside was provided by Local Plan policy DC1 which seeks to restrict development in the countryside to protect its character, while allowing some limited forms of appropriate development. This policy contains a number of criteria to be satisfied relating to visual and landscape impact as well as impacts on nearby uses, and policy NRG3 on renewable energy development seeks to weigh the benefits of renewable energy against the impact on the local environment. The Planning Adviser also outlined a number of other development plan policies in relation to other issues potentially relevant to the application and cited other documents, including the Scottish Planning Policy and the Council's wind turbine planning guidance document and its 2011 supplementary landscape capacity study.

The Planning Adviser confirmed that the appointed Officer had refused the application for two reasons, both set out in full in the Case Officer's report, and he briefly summarised the Officer's assessment of the application. The applicant's agent had provided a statement to the review and supporting documents arguing that the proposals would not have a harmful impact on the landscape or views. The Planning Adviser summarised the arguments put forward and advised that the Case Officer had submitted a statement in response to this. In terms of noise, the Case Officer indicated that, following the submission of the new noise assessment, he had been advised by the Environmental Protection Manager that acceptable levels of residential amenity could be secured by use of a planning condition. In respect of Consultee comments, there were no objections from the Council's Head of Transportation or Biodiversity Officer, or from the Civil Aviation Authority, Ministry of Defence or Historic Scotland. The Planning Adviser clarified the position of Dunpender Community Council and advised that there were 145 objections to the original application, 29 letters of support and 2 representations neither supporting nor objecting. Further representations had been received from 16 parties in response to the Notice of Review and the agent had responded to the further representations. Members had had the opportunity to read all the correspondence.

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 Tim Day stated that after careful consideration of the submissions from both parties and with the benefit of the site visit, he was minded to refuse the application. He was disappointed that the Council's wind turbine planning guidance document and its 2011 supplementary landscape capacity study had been disregarded by the applicant. He was also disappointed that the applicant had not engaged with Council planning officers earlier in the process, particularly when the Council's Guidance states that a wind turbine of this height, in this location, would dominate and have a detrimental impact on the landscape. He did, however, accept that the noise could be controlled by a Condition attached to consent, if the application was granted.

Councillor Grant referred to the Council's Guidance on wind turbines which categorises wind turbines in term of height into four categories, Typology A, B, C and D. The Guidance then states that there were no development opportunities for Typology A and B wind turbines in this area of East Lothian and only limited development opportunity for Typology C wind turbines. As the proposed wind turbine (47m) fell into category B (>42m and <65m high), it was clearly in breach of the Guidance. He also disagreed with the applicant's assertion in his Appeal Statement that the proposed turbine would not '*be exposed and dominating in its landscape setting*'. Having carried out the site visit, he considered that from key viewpoints, the wind turbine would be harmful and intrusive, as stated in the Case Officer's report. He did, however, concur with Councillor Day that the noise impact could be controlled by a Condition to consent, if granted.

Councillor McNeil stated that the site visit had convinced him that the proposed wind turbine would dominate the landscape in this area of open countryside. While he understood the desire for energy generation from renewable sources, he firmly believed that this had to be weighed against the impact on the local environment. Commenting that the application need not have come before the LRB had the applicant complied with the Council's Guidelines or consulted planning officials

earlier in the process, he stated that he would not be overturning the original decision to refuse this application.

The Chair, Councillor Goodfellow, concurred with his colleagues. In his view, a wind turbine 47m in height was considerably outside the Council's wind turbine planning Guidance. He too, therefore, would vote to uphold the original decision of the Appointed Officer to refuse this application on the grounds that it would have a harmful impact on the environment and contravene the Council's policies and guidance relevant to this application. He also concurred that noise could be controlled by Condition.

Decision

The ELLRB unanimously agreed to uphold the Appointed Officer's decision to refuse this application for the first reason stated in the original Decision Notice but to remove the second reason for refusal. The ELLRB's Decision would also reflect that the Strategic Development Plan for South East Scotland (SESplan) was approved on 27 June 2013, replacing the Edinburgh and the Lothians Structure Plan.

Reason for refusal:

1. Due to the harmful impact it would have on the landscape the proposed wind turbine is contrary to Policies DC1 (Part 5) and NRG3 and of the adopted East Lothian Local Plan 2008, Policies 1B and 10 of the approved Strategic Development Plan for South East Scotland (SESplan), the key considerations of landscape impact and impact on public views to and from landmark features of Planning Guidance for the Location and Design of Wind Turbines in the Lowland Areas of East Lothian: December 2010 and the terms of the East Lothian Supplementary Landscape Capacity Study for smaller Wind Turbines.

2. REVIEW AGAINST DECISION (REFUSAL) PLANNING APPLICATION No: 13/00124/P - REPLACEMENT OF 8 WINDOWS AT 18 HOPETOUN TERRACE, GULLANE

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

The Planning Adviser advised that the application site was a two-storey mid-terraced house and that the application was for the replacement of 8 windows; 7 on the front and 1 to the rear. The existing windows were timber sash and case while the proposed replacements would be PVC sliding sash windows. The proposals would also alter the glazing pattern of three of the existing windows.

The Planning Adviser stated that the Planning Act required decisions on planning applications to be taken in accordance with development plan policy unless material considerations indicated otherwise. He pointed out that there had been a change to the development plan since the delegated decision was taken on this application: the Strategic Development Plan for South East Scotland (SESplan) had replaced the Edinburgh and the Lothians Structure Plan. He advised that there were no policies within the Strategic Development Plan of direct relevance to this application, although policy 1B states that Local Development Plans should have regard to conserving and enhancing the built environment. The site was within a predominantly residential area, designated under Local Plan policy ENV1 and within the Gullane conservation area, although the building was not listed.

The Planning Adviser stated that the main policy considerations were design and impacts on the Conservation Area. Local Plan policy ENV4 seeks to preserve or enhance the character of Conservation Areas and policy DP8 relates specifically to replacement windows. Also relevant to the application were Scottish Planning Policy (SPP) and the Scottish Historic Environment Policy. The application had been refused by the Appointed Officer on the basis that the use of PVC as a window material on the front elevation would adversely affect the building and Conservation Area, and that the change in glazing pattern proposed for some of the windows would also be harmful. These harmful impacts were considered contrary to relevant development plan policy and SPP. The reasoning for the decision was set out in full in the Case Officer's report.

Finally, the Planning Adviser advised that the applicant's request for a review had stated that the existing windows were inefficient and had a poor visual appearance, and that permission had been given for PVC windows at 12 Hopetoun Terrace. It also argued that timber windows were more expensive than PVC, not draught proof and had low thermal performance, and claimed that the proposals did not compromise the character of the building or the Conservation Area.

No consultations were carried out on the application by the Case Officer and one representation had been received from the Architectural Heritage Society of Scotland, which was summarised by the Planning Adviser.

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 McNeil described Hopetoun Terrace as a very attractive early Victorian Street and stated that, on the site visit, he had observed replacement UPVC windows had been installed in other properties in the street. He therefore sympathised with the applicant, who was correctly seeking planning permission for changes while others appeared to have disregarded planning regulations. However, the Appointed Officer had decided that the proposals for the seven replacement windows for the front of the house would be harmful to the character and appearance of the house in its Conservation Area setting and were contrary to the Council's planning policies. He would therefore be upholding the decision of the Appointed Officer.

Councillor Grant stated that he had found the site visit helpful, and had noted that the majority of houses on both sides of Hopetoun Terrace had white painted timber framed sash and case windows. He therefore upheld the view of the Appointed Officer and would vote to uphold his original decision. He had no objection to a replacement UPVC window to the rear of the house which was not in public view.

Councillor Day stated that he had found this a difficult appeal as he understood the applicant's motivation to fit UPVC windows given the cost savings and performance benefits. The key issue for him was whether, under Policy DP8 of the 2008 Local Plan, the building contributed positively to the Conservation Area and whether or not a change to the design of the windows would have an impact on the character of the Conservation Area. Having considered the matter, he had concluded that the use of UPVC would have an impact on the Conservation Area and would set an unwelcome precedent. He did not consider that breaches of planning control on other properties nearby justified supporting this proposal. He would therefore be upholding the decision of the Appointed Officer.

The Chair concurred with his colleagues, stating that, in his view, the proposed replacement windows would not preserve the positive contribution the existing windows made to the character and appearance of the building. He agreed that the proposed replacement window to the rear of the house was acceptable as it was not in public view. He also noted that photos supplied by applicants of other properties were not helpful if their addresses were not provided.

Decision

The ELLRB unanimously agreed to uphold the Decision of the Appointed Officer for the reasons set out in the original Decision Notice, subject to the following amendments:

- The Strategic Development Plan for South East Scotland (SESplan) replaced the Edinburgh and the Lothians Structure Plan on 27 June 2013; and
- The change to the glazing pattern affects three of the windows and not four as stated in the original Decision Notice.

3. REVIEW AGAINST DECISION (REFUSAL) PLANNING APPLICATION No: 13/00327/P – REPLACEMENT WINDOWS AND DOORS AT 6 THE VENNEL, DUNBAR

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

The Planning Adviser stated that the application site was a ground floor flat in a two storey building and that the application was seeking permission for the replacement of five windows – two to the front, two to the rear and one to the side - and two doors, one to the front and one to the rear. The existing windows have timber sash and case frames while proposed replacements would be PVC sliding sash windows to the front and PVC casement windows to the side and rear elevation. Existing timber doors would be replaced with a timber door to the front and a PVC door to the rear.

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. The legal and policy context were the same as for item 2 on the agenda.

The Planning Adviser stated that the application had been refused by the Appointed Officer on the basis that four of the five proposed replacement windows and the proposed replacement rear door would be harmful to the character and appearance of the building and the Conservation Area, and would therefore be contrary to relevant development plan policies. The Case Officer considered that one of the five windows, located on the rear of the property, was not in public view and therefore its replacement, as proposed, would accord with relevant policies. The Case Officer also considered that the proposed replacement timber front door was acceptable.

The Planning Adviser stated that the applicant's request for a review stated that the existing windows were inefficient and had a poor visual appearance. It also stated that windows in the adjacent building and many other properties in the area contained PVC in a variety of styles. The effect of the proposals on the Conservation Area was therefore argued to be neutral at worst, with the only change of note stated

to be the material itself. It also argued that timber windows were more expensive than PVC, not draught proof, and achieved lower thermal performance. Furthermore, it stated that the rear parking court was private, there were no objections from local residents and the one objection received was argued to be based on a general dislike of PVC rather than detailed knowledge of the area.

No consultations had been carried out on the application by the Case Officer. One representation had been received from the Architectural Heritage Society of Scotland, which objected on the basis that the proposals would appear noticeably different to the existing windows, would contrast with the remaining windows on the first floor of the building, and would appear out of place in the Conservation Area.

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 Grant stated that he had had difficulty with this appeal for a number of reasons, particularly since he observed on the site visit that there were other houses in the vicinity with UPVC windows and newer houses nearby with UPVC windows. He had also noted that, at the rear of the site, the adjacent house had a UPVC conservatory. However, having carefully considered all the information provided, he would have to agree with the reasoning and decision of the Appointed Officer.

Councillor Day also sympathised with the applicant. As with the previous application, he understood his motivation to fit UPVC given the cost savings and performance benefits. The key question for him had been whether, under Policy DP8 of the 2008 Local Plan, the building contributed positively to the Conservation Area and whether or not a change in the window design would have an impact on the character of the area. He had concluded that, in this case, the use of UPVC would not have a harmful impact on the Conservation Area, given the number of new buildings around the applicant's property that already have UPVC windows. He would therefore vote to overturn the decision of the Appointed Officer and to grant this application.

Councillor McNeil considered that the use of UPVC as a material was the issue in this case. The Local Plan policy is clear on this matter and he could see no reason to depart from it. Accordingly, he would vote to uphold the original decision to refuse planning permission in this case.

Councillor Goodfellow considered that the proposed replacement windows to the front of the building would be harmful to the character and appearance of the building and would therefore vote to uphold the decision of the Appointed Officer. He would, however, have found the proposed use of UPVC to the rear of the building acceptable.

Members discussed the matter further and considered a number of options open to them including the possibility of a split decision.

Decision

The ELLRB agreed by a majority of 3:1 to uphold the decision of the Appointed Officer for the reasons set out in the original Decision Notice, with the following amendment:

- The Strategic Development Plan for South East Scotland (SESplan) has replaced the Edinburgh and the Lothians Structure Plan.