



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

**THURSDAY 24 OCTOBER 2013
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON**

Committee Members Present:

Councillor T Day (Chair)
Councillor J Gillies
Councillor J McMillan
Councillor P MacKenzie

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 Middlemass, (Item 1)
Mr C Miles (Item 1)
Mrs S Dodds (Item 2)

Committee Clerk:

Mrs F Stewart

Declarations of Interest

None

Apologies

None

Councillor Day, who had been elected to chair today's East Lothian Local Review Body (ELLRB) meeting, welcomed all present to the meeting. He then proceeded to introduce the LRB Members, Legal Adviser and Planning Adviser.

The Legal Adviser stated that the LRB would be considering two planning applications and briefly outlined the procedure for today's meeting. She advised that Members had received written papers, including a submission from the Case Officer and review documents from the applicant, and had carried out a site visit for both applications. 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: 12/00278/P – ERECTION OF ONE WIND TURBINE AT ABBEY MAINS, HADDINGTON

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 stated that the application site was in a countryside location around 1.5 miles to the east of Haddington and the application was for a single 50kW wind turbine of three-bladed horizontal axis design, 24.6m to the hub, with a blade radius of 9.6m, giving a total height to blade tip of 34.2m. He advised 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 to Members that there had been a change to the development plan since the delegated decision had been taken on this application; the Strategic Development Plan for South East Scotland (SESplan) had replaced the Edinburgh and the Lothians Structure Plan. He advised there were no SESplan policies of direct relevance to this proposal but briefly outlined policies 1B and 10, which were of some limited relevance.

The Planning Adviser advised 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. Local Plan policy on renewable energy development weighed the benefits of renewable energy generation against the impact on the local environment and features of interest and sought to protect valued landscape features. The key policy was NRG3, which requires proposals to be assessed in terms of landscape character, visual impact, noise, shadow flicker and cumulative impacts. A number of other development plan policies which were potentially relevant to the application were outlined. Other relevant documents included the Scottish Planning Policy, the Government's onshore wind turbines guidance and the Council's wind turbine planning guidance document.

The Planning Adviser stated that the Council's planning guidance document on lowland wind turbines provided detailed guidance on relevant planning policies and their implications, expanding on the provisions of the development plan. This revised document incorporates the findings of the 2011 Supplementary Landscape Capacity Study which identifies the site as being within the 'Agricultural Plain – sub area 1: East' landscape character area, where it advises there are very limited opportunities to accommodate typology C turbines, but these should be below 30m.

The Planning Adviser advised that the Appointed Officer had refused the application for two reasons, as set out in the Case Officer's assessment of the application. He had considered that the proposals were contrary to the recommendations of the Council's Supplementary Landscape Capacity Study and that the turbine would appear as a highly exposed and obtrusive skyline feature that would have a harmful landscape impact. The Case Officer considered this latter impact would be contrary to relevant local and national policies and planning guidance, and he did not consider the benefits of the turbine as a renewable source of energy would outweigh this impact. The applicant's agent had provided a statement to the review which argued that the turbine would not be detrimental to the area and maintained that its visual impact was reduced by the proposed siting behind the farm buildings.

In respect of Consultee comments, the Planning Adviser stated that no objections had been received from the Council's Environmental Protection Manager, Head of Transportation or Biodiversity Officer, or from the Civil Aviation Authority or National Air Traffic Services. The Council's Archaeology Officer recommended a planning condition. The Council's Landscape Officer had advised that the proposals did not comply with the Supplementary Landscape Capacity Study and that there might be impacts on the Garleton Hills Area of Great Landscape Value and views of the Hopetoun Monument, as well as cumulative visual impacts. No Landscape and Visual Impact Assessment had been submitted by the applicant.

Finally, the Planning Adviser stated that 28 objections were received to the original application. Members had had the opportunity of reading these and the points raised were also summarised in the Case Officer's report.

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 MacKenzie noted that the Council's Guidance document had identified the area as Agricultural Plain. On the evidence before him and having attended the site visit, he considered that the proposed wind turbine would, in this exposed area, appear intrusive. He therefore supported the Case Officer's findings and would vote to uphold the decision to refuse this application.

Councillor McMillan agreed with his colleague. His own main concern was the impact of the proposed wind turbine on the landscape, particularly in the views between the Garletons in the west and Traprain Law. Having also considered the Council's Guidance on wind turbines and the Landscape Officer's comments, he advised that he would vote to uphold the Case Officer's decision.

Councillor Gillies was similarly minded. He considered that the proposals were contrary to Scottish Government Guidelines and the Council's Guidance on wind turbines and therefore he too would be upholding the original decision.

The Chair, Councillor Day, stated that the Council had put considerable resources into preparing and publishing detailed guidance on the siting of wind turbines and this proposal was contrary to that guidance. In his view, a wind turbine 34m in height, in this location, would dominate the landscape and clearly have a detrimental impact. He therefore agreed that the application should be refused.

Decision

The ELLRB unanimously upheld the decision of the Appointed Officer to refuse this application for the reasons set out in the original Decision Notice dated 24 May 2013.

2. REVIEW AGAINST DECISION (REFUSAL) PLANNING APPLICATION No: 13/00299/P – DELETION OF CONDITION 5 OF PLANNING PERMISSION 07/01161/FUL

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 seeks the deletion of a condition of a previous planning application. This condition restricts the use of the flat roof of a single storey extension to emergency use only and the current application seeks to delete this condition so that the balcony area can be used as an outdoor space for the nursery. No physical works were proposed in the application.

The Planning Adviser advised that the Planning Act requires decisions on planning applications to be taken in accordance with development plan policy unless material considerations indicated otherwise. There were no policies within the Strategic Development Plan of direct relevance to this application. In terms of the Local Plan, the site was within a predominantly residential area, designated under policy ENV1, and was also within the Haddington Conservation Area. The main policy consideration was impact on the amenity of neighbouring uses. Policy ENV1 states that residential character and amenity will be safeguarded from the adverse impacts of other uses and the full text of this policy was provided within the papers.

The Planning Adviser stated that the application was refused by the Appointed Officer on the basis that deletion of the relevant condition to allow use of the balcony by the nursery would generate noise that would be harmful to the amenity of neighbouring residential properties. The application was therefore considered contrary to Local Plan policy ENV1 and the reasoning for this decision was set out in full in the officer's report. The applicant's request for a review states that a sound-proof fence had recently been installed at considerable expense and the number of children using the nursery's outdoor space would not be increased; the only change would be that under 2s would use the balcony instead of being taken to the garden. A petition with 52 signatories was submitted with the request for review, in support of the request. One consultation had been carried out on the application by the Case Officer, with the Council's Environmental Protection Manager who had advised that the application had the potential to generate noise outwith the site that could adversely affect residential amenity. He further advised that the noise barrier that had been erected would not attenuate noise from the balcony.

Finally, the Planning Adviser advised that one objection was received to the original application from a neighbouring resident, raising issues of residential amenity and privacy and one letter of support was also received. In response to the Notice of Review, one further objection had been received, again objecting on the basis of noise nuisance. The applicant had responded to this objection, refuting the points made.

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 McMillan, after seeking clarification on a number of matters from the Planning Adviser, stated that he did not anticipate noise from children on the balcony was likely to reach unacceptable levels. However, out of respect to neighbours, he proposed that the time spent on the balcony could be limited by a means of a condition.

Councillor MacKenzie did not agree that use of the balcony might have an adverse effect on the amenity of the neighbouring residential properties, as stated in the Officer's report. In his view, a residential area should be able to sit alongside educational establishments; such arrangements existed throughout East Lothian and across Scotland. He had also observed on the site visit that the nursery was enclosed by a fence and screened by trees and bushes. He was therefore in favour of allowing the balcony to be used but was willing to discuss limits for use.

Councillor Gillies had no objection to children being allowed outside on the balcony and he too was willing to discuss limits on the time the balcony could be in use.

The Chair, Councillor Day, stated that he had found the site visit very helpful. He had sympathy with the objector, but, in his view, children on the balcony did not constitute a noise nuisance. He also considered that there was a need to balance residential amenity with the needs of the nursery.

Having established that all Members were in favour of the nursery having limited use of the balcony, the Chair considered proposals for hours of use and the LRB agreed to limit the use of the balcony to 90 minutes in the morning and 90 minutes in the afternoon by children under 2 years of age.

Decision

The ELLRB unanimously agreed that the original decision to refuse planning permission for refusal of condition 5 of Planning Permission 07/01161/FUL should be overturned and that this condition should be removed and replaced with the following condition:

5. The doors to be installed in the flat roofed wall head dormer positioned on the east elevation roof slope of the western part of the extension hereby approved and the roof terrace, gate and staircase of the extension shall be used for emergency access/escape purposes and for the use of children under 2 years of age only for a maximum period of 90 minutes each morning that the nursery is open, from 10.00am to 11.30am, and for a maximum period of 90 minutes each afternoon that the nursery is open, between 2.00pm and 5.00pm.