

Notice of Review – Statement of Appeal

Planning Application: 13/00851/PP

Planning Permission in Principle (PPP) for the erection of one house on plot at 51 The Village, Archerfield, Dirleton

1. Introduction

1.1 The appellants wish to seek a review by the Local Review Body (LRB) of the above application and provide justification in the following Notice of Review.

1.2 The Decision Notice (dated 5/12/13) stated the following two reasons for refusal:

Reason 1 – No case has been made for the building of the proposed new house in the countryside to meet agriculture, horticulture or forestry need. No other operational need has been advanced to justify the erection of the proposed new house. Consequently and because the proposed new house would constitute sporadic development in the countryside this proposal is contrary to policy DC1 of the adopted East Lothian Local Plan 2008.

Reason 2 – If approved the proposed development would set an undesirable precedent for the unjustified development of new houses in the countryside at Archerfield, the cumulative effect of which would be to the detriment of the character and amenity of The Village, Archerfield and to this part of the East Lothian countryside.

2. Appellants' Response to Reason for Refusal 1

2.1 In the Planning Statement submitted in support of the application the appellants put forward the following justification, which has been erroneously paraphrased in the Planner's report. The basis of this justification is that:

2.2 The Village, Archerfield, is a growing village with associated infrastructure. It has a definite urban fabric (as defined in the adopted Local Plan) and is now well on the way to being a small settlement with over 133 dwelling units, including the recently approved 40 new houses and 20 flats in addition to the 73 already built, or approved. It will soon have a residential population of approximately 400 people in its own right. It consists of urban infrastructure e.g. foul sewerage and drinking water systems, adoptable standard roads and footpaths, urban style street lighting and full gas, electric and telephone services.

2.3 If The Village was treated in planning terms as a small village settlement, as we believe it should be, the more relevant planning policies, as opposed to DC1, could then be used to regulate its development. For example, Policy DP7: Infill, Backland and Garden Ground development could be used in support of this

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proposal as the appellants site is the only site which is big enough for another plot to be developed as infill / garden ground, as the plot to existing house footprint data submitted with the application shows.

2.4 Notwithstanding its currently 'adopted' status, inherited Policy DC1 is now more than 6 years old and is in need of review. It requires more contextual detail and relevance for locations such as Archerfield where a small settlement now undoubtedly exists. More importantly, it needs to be revised in line with the Scottish Government's published 2010 national planning policy, which is a material consideration in this appeal. No supplementary planning guidance on rural housing has been brought forward by ELC since the publication of the SPP more than 3 years ago, which is unusual when compared to the action of other rural planning authorities who have brought revised policies forward for rural housing.

2.5 Approved Scottish Planning Policy (SPP), paras 92-96, covers national policy and objectives regarding rural development. We would refer to paragraph 94 in particular (*Production 1*), which states that:

"Development Plans should support more opportunities for small scale housing development in all rural areas, including new clusters and groups, extensions to existing clusters and groups, replacement housing, **plots on which to build individually designed houses**, holiday homes, **and new build** or conversion housing which is linked to rural businesses or would support the formation of new businesses by providing funding."

2.6 The applicants simply wish to follow this SPP policy and provide an individually designed house of high quality in keeping with the wider Archerfield environment and quality of the area. At this stage Planning Permission in Principle only is being sought and a fully designed building would be the subject of a follow-up detailed application should this appeal be successful.

2.7 For the Council planners to say that the house would constitute "sporadic" development in the countryside is far from the mark when there is a significant cluster of dwellings there already. The Village currently consists of 73 dwellings, with a further 60 dwelling units planned following the recent planning decisions for the estate taken in June of 2013. The plot at 51 The Village is very well integrated with the existing footprint of other dwellings in the Village. No planning objections have been made by any consultees or neighbours. Consequently, this proposal would be successful in any other small village of similar scale in East Lothian under policy DP7.

3. Appellants' Response to Reason 2

3.1 On the issue of precedent the appellants respond that the proposal would not establish a bad precedent as very few properties have the character and scale of

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garden ground for an additional plot as at 51 The Village. Instead, we would argue that a precedent has already been set by the decision in June 2013 to approve an additional 40 new houses and 20 flats at Archerfield, none of which complied with Policy DC1. All were departures to the adopted Local Plan. This was acknowledged in the minutes of that meeting (*Production 2*).

3.2 At the planning committee meeting in July 2013 to decide the Caledonian Heritable Ltd applications for an additional 40 houses, a number of councillors including the Convenor made the comment that “Policy DC1 was designed to protect the countryside but that development within Archerfield was different” (actual words of Convenor as taken from the Minutes of meeting - *Production 2*). Housing sites (Ref numbers 13/00002/P to 13/00012/P) that were contained within the Archerfield development area were all approved unanimously.

3.3 A further dwelling on a site outwith the Archerfield development area was also approved (13/00006/P) subject to agreement for use as holiday accommodation. Therefore, some 40 additional houses were approved as a departure to Policy DC1 on 18/6/2013. The 40 houses did not have financial justification; only the 20 flats were justified in financial terms according to the Planner’s report prepared for that meeting. Nor did the proposed houses meet an operational requirement of agriculture, forestry or horticultural or employment use, and so they did not comply with Part (1b) of Policy DC1. These recent decisions obviously set a significant precedent to housing development in Archerfield, much more so than this proposal, which is very modest in comparison.

3.4 Furthermore, when considering the relevance of the issue of precedent we would emphasise that planning policy states that each and every application should be “treated on its merits” and the case for development has to be made each time. The merits of each application will usually be quite different. The uniqueness of the garden site at 51 The Village, which is in effect ‘an infill site’ means that the plot’s footprint relationship to the main residence should rule out any danger or possibility of “setting an undesirable precedent” as referred to in the Planning Officers’ reason for refusal. There is very little danger of “cumulative effect” being set from this kind of development in Archerfield as the garden ground of other properties in The Village is not big enough; a point acknowledged by the planning case officer who visited the site and general area.

3.5 Although DC1 may be the adopted policy, it is now out of date (written in 2005/6 and adopted two years later). It predates, by some considerable time, the more up to date guidance on rural housing in the Scottish Planning Policy as mentioned above. This was issued on February 2010. Councillors have said Policy DC1 does not relate well to the Archerfield area, as it is there to protect traditional countryside, not a growing village with a distinctive urban fabric and infrastructure.

4. Conclusion

4.1 We would reiterate the following main points:

- The garden ground at 51 The Village is much larger than most of the other Village gardens. There would be a more than adequate area of garden ground retained for the residents within the curtilage of both 51 and the new Plot 51a. The important point is that the substantial garden at 51 the Village is 'a one off' and of a scale and character that could easily absorb a new house at an appropriate, modest, scale.
- In terms of "setting an undesirable precedent", we would refer to the precedent that has already been set by the decisions of the June 2013 planning committee for a further 40 new houses at Archerfield including one outwith the previously approved master plan area.
- We would also state there have been no specific objections to this proposal, either from neighbours or the Archerfield developers who were both consulted, or the Council's Transportation department or the relevant Utility companies.
- Finally, whilst this proposal may be considered technically to be a departure to the 2008 adopted Local Plan, it is in line with the 2010 published Scottish Government Planning Policy, which should be given considerable material weight in the determination of the appeal.

4.2 For these reasons we respectfully request that this appeal be supported.

Supporting Documents

The following documents have been referred to in this Notice and are put forward for scrutiny by the Local Review Panel.

Production 1 - Scottish Planning Policy, paragraphs 92-96

Production 2 - Council approved Minutes from Planning Committee of 18/6/2013

Production 3 - Sun Path Diagram showing plot

Tom Hardie (Agent)

9 January 2014

RURAL DEVELOPMENT

92. The planning system has a significant role in supporting sustainable economic growth in rural areas. By taking a positive approach to new development, planning authorities can help to create the right conditions for rural businesses and communities to flourish. The aim should be to enable development in all rural areas which supports prosperous and sustainable communities whilst protecting and enhancing environmental quality.
93. The character of rural areas and the challenges they face vary greatly across the country, from remote and sparsely populated regions to pressurised areas of countryside around towns and cities. The strategy for rural development set out in the development plan should respond to the specific circumstances in an area whilst reflecting the overarching aim of supporting diversification and growth of the rural economy. Development plans should promote economic activity and diversification in all small towns and rural areas, including development linked to tourism and farm diversification, whilst ensuring that the distinctiveness of rural areas, the service function of small towns and the natural and cultural heritage are protected and enhanced. Developments which provide employment or community benefits should be encouraged, particularly where they involve the imaginative and sensitive re-use of previously used land and buildings. Planning authorities should also support and promote opportunities for environmental enhancement and regeneration in rural areas, particularly areas of previous mining and industrial activity.
94. The requirement for development plans to allocate a generous supply of land to meet housing requirements, including for affordable housing, applies equally to rural and urban areas. Development plans should support more opportunities for small scale housing development in all rural areas, including new clusters and groups, extensions to existing clusters and groups, replacement housing, plots on which to build individually designed houses, holiday homes and new build or conversion housing which is linked to rural businesses or would support the formation of new businesses by providing funding. Opportunities to replace rundown housing and steadings, and to provide limited new housing along with converted rehabilitated buildings, should be supported where the new development is designed to fit in the landscape setting and will result a cohesive grouping. Modernisation and steadying conversion should not be constrained within the original footprint or height limit unless there are compelling design or conservation reasons for doing so.
95. The aim is not to see small settlements lose their identity nor to suburbanise the Scottish countryside but to maintain and improve the viability of communities and to support rural businesses. In more accessible and densely populated rural areas most new development should be in or adjacent to settlements. In less populated areas, small scale housing and other development which supports diversification and other opportunities for sustainable economic growth whilst respecting and protecting the natural and cultural heritage should be supported in a range of locations. In these areas, new housing outwith existing settlements may have a part to play in economic regeneration and environmental renewal. All new development should respond to the specific local character of the location, fit in the landscape and seek to achieve high design and environmental standards, particularly in relation to energy efficiency. Planning authorities should apply proportionate standards to access roads to enable small developments to remain viable.
96. It is essential that rural communities have reasonable access to good quality services. Major facilities are usually concentrated in larger settlements, and wherever possible they should be accessible by a range of transport modes including public transport. However, planning authorities should be realistic about the availability or likely availability of alternatives to access by car as not all locations, particularly in remoter areas, can be served by public transport.

- 5 Prior to the commencement of development, the applicant shall appoint a Travel Plan Co-ordinator in consultation with the Planning Authority. The Travel Plan Co-ordinator shall be in post at least prior to any use being made of the hotel hereby approved. The Travel Plan Co-ordinator shall implement, promote and deliver the range of measures contained in the Travel Plan that is docketed to this approval of matters specified in conditions.

Reason:

In the interests of ensuring sustainable travel patterns in respect of the leisure and tourism development hereby approved.

- 6 Prior to the commencement of development, an independent road safety audit of the design of the proposed new junction with the A198 road shall be completed and any findings included within the final design of the new junction.

The new junction shall thereafter be completed in accordance with the findings of the independent road safety audit and prior to any use being made of the hotel hereby approved.

Reason:

In the interests of road safety.

- 7 No work shall be carried out on the site unless and until an effective vehicle wheel washing facility has been installed in accordance with details to be submitted to and approved by the Planning Authority prior to its installation. Such facility shall be retained in working order and used such that no vehicle shall leave the site carrying earth and mud in their wheels in such a quantity which causes a nuisance or hazard on the road system in the locality.

Reason

In the interests of road safety.

6. PLANNING APPLICATIONS NOS. 13/00002/P TO 13/00012/P (11 APPLICATIONS): KINGS CAIRN, ARCHERFIELD LINKS, DIRLETON

Reports had been submitted in relation to Planning Applications Nos.13/00002/P to 13/00012/P (11 applications). Mr McFarlane presented an overview of these applications, summarising the key points. He advised Members of a difference regarding application no.13/00006/P, erection of 1 house, which had to be considered slightly separately as it referred to a site that was outwith the area previously identified for housing and needed to be considered in that context. The proposed decision set out in each report was for refusal of the application. Mr McFarlane advised Members that if weight was to be given to the economic circumstances of the case, then the Council should be satisfied that this had been appropriately and accurately assessed.

Mr McFarlane and Mr Dingwall, Principal Planner, responded to questions from Members regarding school capacities and the requirement of the Council's Head of Education for phasing of the development to ensure that there would be capacity at Dirleton Primary School; the hotel development and classification of current visitor accommodation; and the requirement for affordable housing provision at the Council's standard of 25%.

Mr Glen addressed the Committee on behalf of Caledonian Heritable, the applicant. He informed Members that they were under financial pressure, like all businesses. The previous application for large houses on large plots was not now viable due to the downturn; as a result these applications for smaller properties had been proposed. He detailed alterations to the initial plans, current facilities on site and visitor numbers. Archerfield was a 5 star destination, attracting repeat business and benefiting the whole of East Lothian. It also brought a high media profile to the area. Partnerships were being developed in the fields of hospitality and horse racing. Archerfield had created around 1,000 jobs and provided opportunities for local school leavers. He indicated that the requirement of development phasing recommended by the Education Authority was impossible to accept because of the housing market. He asked the

Committee to support these applications, but if it did, to remove the phasing restrictions.

Mr Glen answered questions from Members regarding visitor numbers/duration of stay and the phasing of completion criteria. Mr McFarlane clarified that phasing had been stipulated by the Education Authority to enable them to plan the expansion of the local schools.

Local Member Councillor Day stated he had called these applications off the Scheme of Delegation List because of the substantial departure from the planning permission previously granted. He had huge respect for the Planning Officers however as the Planning Committee, Members needed to consider the wider issues. Given the financial situation at present Members needed to do all they could to support and promote business growth. This was a high quality business which would create a huge number of jobs. Due to the economic situation the application previously approved for 27 houses was no longer viable. With regards to the enabling development aspect, de facto hotel accommodation was provided on site albeit this was not all in one building. He would not be supporting the officer's recommendation for refusal for these applications, except for application no. 13/00006/P for the single plot. In respect of this latter application, he could see no material reason to go against the recommendation in that case.

Local Member Councillor Goodfellow remarked that the objections seemed to be concentrated on the non-provision of the 245 bedroom hotel however as already alluded to there was visitor accommodation on site, albeit in a different guise. He disagreed with other objections regarding loss of exclusivity and traffic concerns. In relation to protection of the dunes, there was a wire fence that restricted access to the beach; it was imperative that this was not breached - if the Committee decided to grant planning permission an appropriate condition should be included. He realised that this would be overturning Policy DC1 in respect of application 13/00006/P however there had been no objections on that policy basis. He would, on balance, be supporting these applications.

Local Member Councillor Berry commented that the development at Archerfield had been ongoing for some time and he was on record as objecting to earlier applications. However, he had visited Archerfield and had been hugely impressed. The template of what constituted a hotel was debatable. He questioned if this application was a necessary part of ensuring the continued success of Archerfield. Clearly the types of houses originally planned were no longer viable. His inclination was to support these applications. In relation to the coastal strip he agreed with Councillor Goodfellow; it was vital to ensure this was protected. He also felt further discussion regarding affordable housing and education provision was required.

Councillor Currie stated this was a world class facility, and the pride of East Lothian. He made reference to the ongoing issue of the hotel. He appreciated Councillor Berry's point about the definition of a hotel. In relation to the coastal strip he assumed that Landscape Officers patrolled these areas. He expressed concern about imposing the phasing criteria put forward by the Education Authority. He stated it was important that this development as an entity was completed; this would be a better position for East Lothian as a county. He would be supporting the applications.

Councillor Broun-Lindsay remarked that this was a longstanding and evolving situation. Archerfield House was originally supposed to have been the golf club house; it would have been wasted as such. He believed in essence that there was a deconstructed hotel on the site. A 245 bed hotel would have been a substantial building and would not

have enhanced the general environment. He was supportive of these applications going forward and disagreed with the Planning Officer's recommendations.

The Convener brought the discussion to a close. Policy DC1 was designed to protect the countryside, but this was different - these application sites were contained within the Archerfield development. He referred to initial objections when this development had been first mooted, stating these had been proved wrong; this site was excellent. He noted the arguments about non-delivery of the hotel, but the type of accommodation provided was better; different and exclusive. Regarding comments about application no. 13/00006/P for the single house, he felt there was justification to allow this unless the property was to be used as holiday accommodation. Archerfield was a major boost to the local economy. If the Committee went against the report recommendations and granted planning permission Members would be making the right decision for East Lothian. He would be supporting these applications and he recommended to Members that the Committee went against the recommendations for all the reports. He asked officers for guidance.

The Corporate Legal Adviser, Morag Ferguson, advised that in the past the Committee had taken a decision in principle to grant planning permission subject to conditions to be agreed by officers in conjunction with the Convener and Local Members.

Mr McFarlane clarified that this would also be subject to a legal agreement to meet requirements for the developer contributions for affordable housing, phasing in relation to the requirements of the Council's Head of Education and for application 13/00006/P that the new house be used only as holiday accommodation.

The Convener moved that in the absence of any Members speaking against his suggestion, that all report recommendations be rejected and all applications be approved subject to (i) conditions to be agreed between officers and the applicant in conjunction with the Convener and Local Members, and (ii) the satisfactory conclusion of a legal agreement designed to a) secure from the applicant a financial contribution to the Council towards additional educational accommodation, b) secure from the applicant the provision of affordable housing, and c) in respect of planning application 13/00006/P to restrict use of the house solely to holiday accommodation, be put to the vote.

Decisions

- (i) **No. 13/00002/P: Erection of 4 houses, garages and associated works (Site 9)**
For approval of the application - 14 votes, against - none
- (ii) **No. 13/00003/P: Erection of 2 houses, garages and associated works (Site 10)**
For approval of the application - 14 votes, against - none
- (iii) **No. 13/00004/P: Erection of 5 houses, garages and associated works (Site 11)**
For approval of the application - 14 votes, against - none
- (iv) **No. 13/00005/P: Erection of 5 houses, garages and associated works (Site 12)**
For approval of the application - 14 votes, against - none
- (v) **No. 13/00006/P: Erection of 1 house and associated works (Site 13)**
For approval of the application - 13 votes, against - 1 vote
Approved subject to agreement on the use of the property as holiday accommodation

- (vi) No. 13/00007/P: Erection of 4 houses, garages and associated works (Site 3)**
For approval of the application - 14 votes, against - none
- (vii) No. 13/00008/P: Erection of 4 houses, garages and associated works (Site 4)**
For approval of the application - 14 votes, against - none
- (viii) No. 13/00009/P: Erection of 4 houses, garages and associated works (Site 5)**
For approval of the application - 14 votes, against - none
- (ix) No. 13/00010/P: Erection of 3 houses, garages and associated works (Site 6)**
For approval of the application - 14 votes, against - none
- (x) No. 13/00011/P: Erection of 4 houses, garages and associated works (Site 7)**
For approval of the application - 14 votes, against - none
- (xi) No. 13/00012/P: Erection of 4 houses, garages and associated works (Site 8)**
For approval of the application - 14 votes, against - none