



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

**THURSDAY 28 NOVEMBER 2013
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON**

Committee Members Present:

Councillor D Berry (Chair)
Councillor J McNeil
Councillor M Veitch

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 N Millar, Planner

Committee Clerk:

Mrs F Stewart

Declarations of Interest

None

Apologies

Councillor W Innes
Councillor D Grant

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

**1. REVIEW AGAINST DECISION (REFUSAL)
PLANNING APPLICATION No: 13/00129/P – ERECTION OF FENCING TO
RAILINGS (RETROSPECTIVE) AT 117 MILLHILL, MUSSELBURGH**

The Legal Adviser introduced the planning application and 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. A site visit had also been carried out. After hearing a statement from the Planning Adviser summarising the planning policy issues, Members would decide if they had sufficient information to reach a decision 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. She then invited the Planning Adviser to present a summary of the planning policy considerations in this case.

The Planning Adviser stated that the property on the application site was part of a building known as Redhouse which is a category B listed building and was within the Musselburgh Conservation Area. The application, which was originally validated on 31 May 2013 and subsequently refused under delegated powers, was seeking retrospective permission for the installation of a timber fence on top of an existing low stone wall to the rear of the property. He advised that the Planning Act required decisions on planning applications to be taken in accordance with development plan policy unless material considerations indicated otherwise. He outlined further requirements of the Listed Buildings and Conservation Areas Act when dealing with applications affecting a listed building or its setting, or within Conservation Areas.

The Planning Adviser pointed out that listed building consent would also be required for the works, however this was a separate consent process and was not for consideration by the ELLRB. He also outlined the planning policies relevant to this application, stating that SESplan policy 1B expects Local Development Plans to protect built and cultural heritage. In terms of the Local Plan, he advised that the site was within a predominantly residential area, designated under policy ENV1. Policies ENV3 and ENV4 provided protection to listed buildings and Conservation Areas respectively and policy DP2 required a high standard of design. Also relevant to the application was Scottish Planning Policy which states that the historic environment should be safeguarded through planning decisions.

The Planning Adviser confirmed that the application had been refused by the Appointed Officer for three reasons; the first refers to harmful impacts on the setting of the listed building, by obscuring views of it, the second reason refers to impacts on the Conservation Area, due to appearance of the fence and the third reason refers to the question of precedent and the potential for cumulative harm to the Conservation Area. The application was considered contrary to relevant development plan policy and to Scottish Planning Policy. The Officer had considered the development acceptable in terms of daylight and sunlight impacts on neighbouring properties.

The Planning Adviser summarised that the applicant's request for a review states that the part of the building closest to the fence is a modern addition, and only this part of the building is obscured. The fence was intended to provide privacy to the

garden, and the applicant intends to stain or paint it in keeping with foliage. The current height of the wall and the railings on it are stated to be from 1989, rather than historic, and in terms of precedent, it was argued that this would only apply to the one adjoining property.

Finally, the Planning Adviser stated that no consultations had been carried out on the application by the Case Officer. Objections had been received from 4 local residents plus the Architectural Heritage Society of Scotland and this correspondence was included in the Members' papers. Matters raised included the visual appearance of the development, as well as a number of other matters that were not material planning considerations.

The Planning Adviser responded to a number of questions from Members relating to statements contained in the applicant's letter dated 20 August 2013. The Chair noted from the letter that the applicant was willing to stain or paint the fence in keeping with the foliage and asked if taking this action was likely to change the decision of the Case Officer. The Planning Adviser replied that, as it had been open to the Case Officer to grant the application with a Condition to this effect, he presumed that it would not have changed the decision of the Appointed Officer.

The Chair stated that the LRB had to assess if the reasons for refusal were valid and the Planning Adviser reminded Members that they should consider the application afresh from first principles taking account of development plan policy and any material considerations. They could therefore approve the application, refuse it for the same reasons as the Appointed Officer, or refuse it for other reasons.

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 stated that the applicant would have known that his property was in a Conservation Area at the time of purchase and that restrictions would apply to changes to the property or its setting. He noted from the applicant's letter that the wall and railings were not historic, but nonetheless, the property was in a Conservation Area, located behind the historic Town Hall and close to the river bank where there was a cobbled path regularly used by pedestrians. Planting trees or bushes could be used as an alternative to provide privacy. He therefore considered that the fencing should be removed and would vote to uphold the decision of the Appointed Officer.

Councillor Veitch stated that the first reason for refusal was key for him; it stated that the panel fence has a prominent and intrusive physical presence and was harmful to the setting of the building. In his view, this statement would hold true no matter what colour the fencing was. In relation to the second reason, he agreed that staining the fence might make the fencing less intrusive in appearance, but he considered that the fencing would still be harmful to the special architectural and historic character of the Conservation Area. Councillor Veitch was less convinced by the third reason for refusal, as most of the surrounding properties were modern.

The Chair was minded to agree with both of his colleagues. He stated that he was convinced by all three reasons for refusal given in the Case Officer's report. He referred to the symmetry of the building, saying that it looked particularly unbalanced with one part of the property with a fence and the other part without. He also

considered that the previous alterations to the building had been in keeping with the original.

Decision

The ELLRB unanimously agreed to refuse the application for the first two reasons set out in the original Decision Notice dated 26 July 2013. The third reason for refusal was upheld by a majority of 2:1. A Decision Notice would be issued within 21 days.