

REVIEW DECISION NOTICE

Decision by East Lothian Local Review Body (the ELLRB)

Site Address: Alderburn Cottage, Drem, EH39 5AW

Application for Review by Mr Malcolm Sievwright against decision by an appointed officer of East Lothian Council.

Application Ref: 14/00733/P

Application Drawing: AL(0)100

Date of Review Decision Notice – 11th May 2015

Decision

The ELLRB upholds the decision to refuse planning permission for the reasons given below and dismisses the review.

This Notice constitutes the formal decision notice of the Local Review Body as required by the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.

1 Introduction

1.1 The above application for planning permission was considered by the ELLRB, at a meeting held on 23rd April 2015. The Review Body was constituted by Councillor John McMillan (Chair), Councillor John Williamson and Councillor Jim Gillies. All three members of the ELLRB had attended an unaccompanied site visit in respect of this application on 23rd April 2015.

1.2 The following persons were also present at the meeting of the ELLRB:-

Phil McLean, Planning Adviser (in attendance on Site Visit)
Morag Ferguson, Legal Adviser
Fiona Stewart, Clerk.

2 Proposal

2.1 The application site is an area of ground to the rear of Alderburn Cottage in the Fenton Barns area near Drem. The application seeks permission in principle for a single dwelling with no indicative details provided. The application drawing is included within the Review Papers

The planning application was registered on 5th September 2014 and was refused under delegated powers on 7th November 2014. The Notice of Review is dated 6th February 2015.

The reasons for refusal are set out in full in the Decision Notice and are, in summary, firstly, that the proposed development would be a new build house in the countryside without an operational requirement being demonstrated, which would be contrary to Local Plan Policy DC1. Secondly, that approval would set a precedent for further new dwellings in the countryside, which would cumulatively have a harmful effect on character and amenity. Thirdly, that it has not been demonstrated that the site could be developed without harm to protected trees, contrary to Local Plan policies NH5 and DP14.

The Applicant has applied to the ELLRB to review the decision to refuse planning consent.

3 **Preliminaries**

3.1 The ELLRB members were provided with copies of the following:-

1	The drawing specified above
2	The application for planning permission
3	The Appointed Officer's Report of Handling
4	A copy of the Decision Notice dated 7 th November 2014
5	Copy Letter of Representation
6	Copies of Policies DC1, DP14, NHS and T2 of the Adopted East Lothian Local Plan 2008
7	Copy of Consultation Responses
8	Photographs of the Site
9	Statement regarding status of Main Issues Report
10	Notice of Review dated 6 th February 2015 and supporting statement

4 **Findings and Conclusions**

4.1 The ELLRB confirmed that the application for a review of the original decision permitted them to consider the application afresh and it was open to them to grant it in its entirety, grant it subject to conditions or to refuse it.

The Members asked the Planning Adviser to summarise the planning policy position in respect of this matter. The Planning Adviser gave a brief presentation to Members advising that the application site is an area of ground to the rear of Alderburn Cottage in the Fenton Barns area near Drem. The application seeks permission in principle for a single dwelling with no indicative details provided.

He reminded members that the planning legislation requires decisions on planning applications to be taken in accordance with development plan policy unless material considerations indicate otherwise.

He noted that the site is located in an area outwith an existing settlement and designated as countryside in the adopted Local Plan, thus is subject to the terms of policy DC1. He confirmed that, in such designated areas, policy DC1 generally seeks to restrict development to protect countryside character, while allowing some limited forms of appropriate development. New build housing is normally only permitted under the policy where there is an agricultural or other operational requirement, or as enabling development. He confirmed that a number of other development plan policies are also relevant to the application, particularly in relation to protected trees, transport and road safety, and copies of these policies are with the Review Documents.

He referred Members to the planning history of the site, as summarised in the case officer's report. He also highlighted that Scottish Planning Policy, which contains national policy on a wide range of matters including housing and rural development, is also relevant to this application.

He noted that the application was refused by the appointed officer for three reasons. Firstly, that the proposed development would be a new build house in the countryside without an operational requirement being demonstrated, which would be contrary to Local Plan Policy DC1. Secondly, that approval would set a precedent for further new dwellings in the countryside, which would cumulatively have a harmful effect on character and amenity. Thirdly, that it has not been demonstrated that the site could be developed without harm to protected trees, and the application was therefore contrary to Local Plan policies NH5 and DP14. He confirmed that the case officer considered the proposals acceptable in other respects, including privacy and amenity, sunlight and daylight, traffic, and road safety, subject to conditions being imposed to control such matters.

He noted that the applicant's request for a review argues that the site is within a settlement and therefore Local Plan policy DP7 should apply and that the proposals would comply with this policy. It is also argued that compliance with policy DP7 would mean there would be no issue of precedent. He advised that it is the applicant's case that any impact on protected trees should be left to a detailed planning application; however appropriate building technologies would allow a suitable development in this respect. It is also argued that the development would contribute to maintaining a 5-year housing land supply and that it complies with the overall aims and objectives of the Strategic Development Plan.

With regard to consultation responses, he advised that the the Council's Roads Services raised no objections but recommended conditions regarding improvements to the junction with the public road and sufficient parking provision. The Environmental Protection Manager made no comments. The Landscape Officer advised that protected trees would be likely to be affected by the formation of an access to the site. It was recommended that a tree constraints plan be provided by the applicant. The Principal Policy Planner advised that Interim Guidance on Housing Land Supply was not relevant to the application as Fenton Barns was not a defined settlement in the Local Plan. Scottish Environment Protection Agency objected to the proposal to connect to the failing Fenton Barns Sewage Treatment Works and recommended other options be considered. Finally, he noted that one public objection was received although this did not give any grounds for objecting.

He summarised the main questions for the LRB to consider in reviewing the case as whether the proposed development would comply with the policies of the development plan in terms of development in the countryside, protected trees, and road safety; and whether there are any other material considerations that should be taken into account, and whether any of these outweigh the provisions of the development plan in this case?

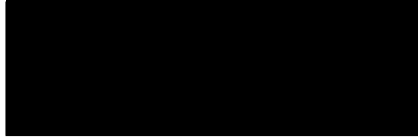
Finally, he reminded Members that they have the option of seeking further information if necessary before making a decision, either through further written submissions, a hearing session, a further site visit, or a combination of these procedures.

The Chair asked the members to consider whether they had sufficient information to enable them to proceed to make a decision in respect of this matter. All members considered that they did have sufficient information. Accordingly, the decision of the ELLRB was that they would proceed to reach a decision at this meeting.

- 4.2 Councillor Gillies considered that the Review Papers and the site visit had given a full picture of what was being proposed and the nature of the site at present. He considered that, regardless of the views of the applicant, the site is designated as being in the countryside at present and thus policy DP7 does not apply. The site is subject to the terms of policy DC1; the application does not meet any of the criteria set out in that policy and he can see no reason to reach a different conclusion from that of the Appointed Officer. Councillor Williamson also considered that the site is correctly allocated under policy DC1, albeit it is close to other buildings. However, he found no reason to depart from that policy and thus he was minded to refuse planning permission.
- 4.3 Councillor McMillan considered that the definition of what constitutes a settlement and the application of policy DC1 may need to be reviewed by the Planning Authority in the next Local Development Plan. He considered that the nature of this particular site and the surrounding buildings was such that he would support the grant of planning permission in this case. Accordingly he was minded to overturn the original decision to refuse planning permission.

- 4.4 Accordingly, the ELLRB decided, by a majority of two votes to one, that the Review should be dismissed and the original decision to refuse this application should be upheld, for the reasons set out in the original Decision Letter of 7th November 2014.

The Review Application was accordingly dismissed.



**Morag Ferguson
Legal Adviser to ELLRB**

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Notification to be sent to applicant on determination by the planning authority of an application following a review conducted under section 43A(8)

Notice Under Regulation 21 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.

- 1 If the applicant is aggrieved by the decision of the planning authority to refuse permission or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.

- 2 If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.