



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

**THURSDAY 23 APRIL 2015
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON**

Committee Members Present:

Councillor J McMillan (Chair)
Councillor J Gillies
Councillor J Williamson

Advisers to the Local Review Body:

Mr P McLean, Planning Adviser to the LRB (Item1 on the agenda)
Ms E Taylor, Planning Adviser to the LRB (Items 2 and 3 on the agenda)
Mrs M Ferguson, Legal Adviser/Clerk to the LRB

Others Present

Mr D Gay (1 Kilwinning Place, Musselburgh)
Mr S Reynolds (Camptoun Holdings – Applicant)
Mr J Frostwick (Camptoun Holdings – Agent)

Committee Clerk:

Mrs F Stewart

Declarations of Interest

None

Apologies

Councillor W Innes
Councillor T Day

Prior to the commencement of the meeting of the East Lothian Local Review Body (ELLRB), Councillor McMillan was elected to Chair today's meeting by Councillor Williamson and Councillor Gillies. Duly elected, Councillor McMillan welcomed everyone to the meeting and introduced the Members of the ELLRB and the Council Officers present.

For practical purposes, the Chair announced that the applications would be heard in the following order; Camptoun Holdings, 1 Kilwinning Street, Musselburgh and Alderburn Cottage, Drem. The Chair also explained the procedures which would be followed at the meeting.

Morag Ferguson, Legal Adviser, stated that all 3 planning applications were being presented today in the form of written submissions and that a site visit had been carried out for all applications prior to the meeting today. She also advised that a Planning Adviser, who had had no involvement with the determination of the original applications, would provide information on the planning context and background of each application.

**2. REVIEW AGAINST DECISION (REFUSAL)
PLANNING APPLICATION No: 14/00794/PP – PLANNING PERMISSION IN PRINCIPLE FOR THE ERECTION OF ONE HOUSE AT PLOT ADJACENT TO THE EAST OF 15A CAMPTOUN HOLDINGS, NORTH BERWICK**

The Legal Adviser stated that the ELLRB was meeting today to review the above application which had been refused by the Appointed Officer. Members had been provided with written papers, including a submission from the Case Officer and review documents from the applicant. After hearing a statement from a 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 and Members would have to specify what new information was needed to enable them to proceed with the determination of the application. 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. It was open to Members to grant the application in its entirety, grant it subject to conditions or to refuse it.

The Chair invited the Planning Adviser to present a summary of the planning policy considerations in this case.

Emma Taylor, Planning Adviser, advised that the application site was located at Camptoun which was in a countryside location approximately one mile south of Drem and two miles north of Haddington. The site is on the north-west side of the access road leading to Camptoun Steading which was being converted to housing, and is at the end of a row of detached dwellings located alongside this access road. The most recent use of the site was as an agricultural contractor's yard.

The Planning Adviser stated that the application proposed the erection of one house on the site and, as this was for planning permission in principle, no details had been submitted about the design of the proposed house or the layout of the site. An earlier planning application for planning permission in principle had been refused planning permission in July 2011. A Notice of Review of the decision to refuse planning

permission had been considered by the Local Review Body in January 2012 and the decision to refuse the application was upheld.

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. The broad policy context for development in the countryside was provided by policy DC1 of the adopted East Lothian Local Plan 2008 which seeks to restrict development to protect its character, while allowing some limited forms of appropriate development. New-build housing is only allowed where it is a direct operational requirement of an agricultural, horticultural, forestry or other employment use and no appropriate existing building was available. There were no SESplan policies of direct relevance to this proposal.

The Planning Adviser stated that the Case Officer had refused this application for the same two reasons as the previous application, considering that the proposals would be contrary to development plan policy on housing in the countryside, and that approval would set a precedent for further such permissions which cumulatively would have a detrimental impact on the character of the countryside. The applicant's agent had argued in his statement that there were material considerations that outweighed development plan policy. These were said to be the site's existing use, its unique characteristics, and the residential nature of its context. He also did not accept that approval would set a precedent for approving other applications.

Consultation responses had been received from the Council's Roads Services and Environmental Services. No public representations had been received.

The Chair invited questions for the Planning Adviser. Councillor Williamson asked if there had been any change to planning policies since July 2011 when the first application had been refused, and October 2014 when the second application had been received and the Planning Adviser replied that there had been no change. The Planning Adviser also confirmed for Members that the Main Issues Report (MIR) was still purely a consultative document. The Chair then asked his fellow Members if they wished to proceed to determine this application today and they unanimously agreed to proceed.

Councillor Williamson stated that he had found the site visit very helpful as it had provided a context for the statements contained in the submissions. However, he considered that the proposal to build a house in this location was contrary to the relevant planning policies and, since there had been no change to the policies since 2011, he found no reason to overturn the decision of the Case Officer.

Councillor Gillies agreed that, since there had been no change to the planning policies since 2011, he too would vote to uphold the decision of the Case Officer.

Councillor McMillan stated that the key issue for him was whether or not the land on which the house would be built was a settlement. According to policy DC1 it was not and the proposal was therefore contrary to planning policy. However, he considered that the definition of a settlement may need to be reviewed by the Planning Authority in the next Local Development Plan. Whilst he recognised the need for planning policies to protect the countryside, in this case, he considered that a house on this site would improve the amenity of the area. He was therefore minded to overturn the decision of the Case Officer.

Decision

The ELLRB agreed by a majority of 2:1 to uphold the original decision to refuse the application for the reasons given in the Decision Notice dated 11 November 2014:

The Legal Adviser stated that a Decision Notice would be issued within 21 days.

3. REVIEW AGAINST DECISION (REFUSAL) PLANNING APPLICATION No: 14/00863/P – CHANGE OF USE OF SHOP (CLASS 1) TO HOT FOOD TAKEAWAY AT 1 KILWINNING PLACE, MUSSELBURGH

The Legal Adviser introduced the above application which had been refused by the Appointed Officer. She advised that a site visit had been carried out prior to the meeting and Members had received written papers, including a submission from the Case Officer and review documents from the applicant. 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. It was open to Members to grant the application in its entirety, grant it subject to conditions or to refuse it.

The Chair invited the Planning Adviser to present a summary of the planning policy considerations in this case.

Emma Taylor, Planning Adviser, stated that the application site was a fishmongers shop which occupies the ground floor premises of a three storey tenement building on the corner of Kilwinning Place with the High Street, Musselburgh. Permission was being sought for the change of use of the premises from a shop to a hot food takeaway and no external alterations to the premises were being proposed. The intended hours for the operation would be 12.00 to 14.00 hrs and 17.00 to 23.00 hrs Monday to Friday and 17.00 to 23.00 hrs Saturday and Sunday.

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. There were no policies of the approved South East Scotland Strategic Development Plan (SESplan, June 2013) relevant to the determination of the application. She advised that the shop was within Musselburgh Town Centre, an area designated by Policy ENV2 of the adopted East Lothian Local Plan. This policy states that within town centres, changes of use of retail units to other town centre uses would only be acceptable where the Council was satisfied that a retail use is no longer viable or that the benefits of the proposed use outweighed the loss of the shop. In practical terms, the normal requirements under this policy were evidence of a formal marketing campaign for a minimum period of three months. Other relevant policy considerations were Policy R3 (Hot Food Outlets, DP22 (Private Parking) and T2 (General Transport Impact) of the adopted East Lothian Local Plan 2008.

The Planning Adviser stated that the application had been refused for two reasons, the Case Officer considering that the applicant had not demonstrated to the Council's satisfaction that the retail use of the premises was no longer viable and that the use of premises as a hot food takeaway would present a threat to road safety. The

applicant's agent had provided a statement regarding the marketing of the premises and information on the financial viability of the shop. Four written objections to the application included comments about road safety, noise, odour and vibration, illumination of signage and the impact such use would have on the health of the local community. In respect of Consultee comments, the Council's Environmental Protection Manager advised that any concerns regarding odour, noise and vibration could be controlled through conditions attached to any grant of permission, limiting noise and odours. The Council's Roads Services Manager advised that parking is restricted at the junction of Kilwinning Place with the High Street, but was concerned that the kind of hot food takeaway business proposed would raise traffic safety issues at the junction. On this basis, he recommended refusal of the application as it would be contrary to Policies R3, DP22 and T2 of the adopted East Lothian Local Plan 2008.

The Chair opened questions for the Planning Adviser by asking for clarification on the regulation governing the minimum period a business should be advertised for sale before a change of use would be considered. The Planning Adviser explained that it was not the length of time a business was on the market which was pertinent but whether the Planning Officer was given sufficient information to make a decision on the application. Councillor Williamson, Local Member, enquired if the ELLRB could ask the applicant if any other fishmongers had shown an interest in the business. The Legal Adviser replied that Members were at liberty to request this information and she referred them to the marketing strategy the applicant had provided in his supporting documents.

The Chair stated that Members now had to decide whether they had enough information to proceed to determine the application today. He was satisfied that he did have enough information and pointed out that the premises could still be sold as a shop and not necessarily as a takeaway business. The other Members agreed that they too had enough information to proceed today.

Councillor Williamson stated that a number of other retail units on Musselburgh High Street had changed to takeaways and seemed to be viable businesses. He was aware that there were concerns about inappropriate parking as parking was currently unregulated. However, he considered there would be more space for parking in the evenings and, on balance, he would prefer to see another viable business rather than empty premises. He was therefore minded to overturn the Case Officer's decision and have noise, odours and traffic issues governed by Conditions.

Councillor Gillies commented that it would be disappointing to lose the last retail fishmonger on the east side of Musselburgh, but equally, he would prefer not to see another empty retail unit in the town. He would therefore vote to overturn the decision of the Case Officer and grant permission for a change of use.

Councillor McMillan noted that the applicant had been advised by his chartered accountant to either change the business or cease trading, and that his property agent had reported a lack of interest in the property as a retail outlet which depended on high footfall. However, he considered that the premises could attract a specialist business. He had concerns over a takeaway business in this residential area with the resulting noise and parking issues. He was therefore minded to support the Case Officer's decision to refuse the application.

Decision

The ELLRB agreed by a majority of 2:1 to overturn the original decision to refuse planning permission, subject to the 3 Conditions recommended by the Case Officer.

- (i) Prior to any use being made of the premises as a hot food takeaway the sound transmission properties of the separating floor between the premises and the existing residential flat above are assessed and the sound insulation properties of the floor upgraded, if necessary, to ensure that airborne sound arising from the hot food takeaway does not exceed NR20 at any Octave Band Frequency when measured in the existing flat above; and
- (ii) The design and installation of any plant and machinery operated in association with the hot food takeaway use is controlled such that any noise/vibration or structure borne noise emanating from any part of it does not exceed Noise Rating Curve NR20 at any Octave Band Frequency when measured within any neighbouring residential property assuming windows open at least 50mm; and
- (iii) Any extract equipment to be installed to facilitate the operation of the hot food takeaway be maintained to ensure it continued satisfactory operation and any cooking processes reliant on such ventilation systems cease to operate if, at any time, the extract equipment ceases to operate to function to the satisfaction of the Local Planning Authority.

The Legal Adviser stated that a Decision Notice would be issued within 21 days.

**1. REVIEW AGAINST DECISION (REFUSAL)
PLANNING APPLICATION No: 14/00733/PP – PLANNING PERMISSION IN PRINCIPLE FOR THE ERECTION OF ONE HOUSE AT ALDERBURN COTTAGE, DREM**

The Legal Adviser introduced the above application which had been refused by the Appointed Officer. She advised that a site visit had been carried out prior to the meeting and Members had received written papers, including a submission from the Case Officer and review documents from the applicant. 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. It was open to Members to grant the application in its entirety, grant it subject to conditions or to refuse it.

The Chair invited the Planning Adviser to present a summary of the planning policy considerations in this case.

Phil McLean, Planning Adviser, stated that the application site was an area of ground to the rear of Alderburn Cottage in the Fenton Barns area near Drem and that the application was seeking permission in principle for a single dwelling with no indicative details provided. Members were reminded that the Planning Act required decisions on planning applications to be taken in accordance with development plan policy unless material considerations indicated otherwise.

The Planning Adviser advised that the site was located in an area outwith an existing settlement but rather designated as countryside in the adopted Local Plan under policy DC1. 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 was normally only permitted under the policy where there was agricultural or other operational requirement or as enabling development. A number of other development plan policies were also relevant to the application in relation to protected trees, transport and road safety. The application had been refused by the Appointed Officer for three reasons; the proposed development would be a new build house in the countryside, approval would set a precedent for further new dwellings in the countryside and it had not been demonstrated that the site could be developed without harm to protected trees. The applicant's request for a review argued that the site was within a settlement and therefore Local Plan policy DP7 applies, which the proposals would comply with. This, the applicant believed, removed the issue of precedent. It was also argued that the development would contribute to maintaining a 5-year housing land supply and that it complied with the overall aims and objectives of the Strategic Development Plan.

In respect of consultation responses, the Planning Adviser stated that the Council's Roads Services had raised no objections, but had recommended conditions regarding improvements to the junction with the public road, and sufficient parking provision. The Environmental Protection Manager had made no comments and the Landscape Officer had advised that protected trees would be likely to be affected by the formation of an access to the site.

The Principal policy Planner had 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. One public objection was received though this did not give any grounds for objecting. No further representations had been received in response to the Notice of Review.

The Chair opened questions by enquiring if the Scottish Environment Protection Agency's objection to the proposal to connect to the failing Fenton Barns Sewage Treatment Works would mean that the applicant would have to find an alternative sewage solution, should the application be granted. The Legal Adviser replied that, in the event that the application was granted, she had received recommended Conditions from the Case Officer which would address this matter. Councillor Williamson sought clarification on whether the site previously formed part of the garden area of Alderburn Cottage and whether it had always been the intention to apply for a house on this site when permission was sought for the subdivision of the original cottage. The Planning Adviser stated that details of the application to subdivide the house had not been provided to the LRB but he understood that the present application site was originally garden ground for Alderburn Cottage, and also confirmed that there had been a previous application for a house on the same application site, which had been withdrawn. Councillor Williamson enquired if the terms of policy DC7, referred to by the applicant, were relevant to the application. The Planning Adviser quoted from policy DC7 (Infill, Backland and Garden Ground Development) and read the conditions under which the sub division of garden ground would be supported. In his view, this policy would be relevant and should be applied if the site was within a defined settlement rather than a DC1 area.

The Chair stated that Members now had to decide whether they had enough information to proceed to determine the application today and they unanimously agreed to proceed.

Councillor Gillies stated that, as the proposal was contrary to policy DC1 of the adopted East Lothian Local Plan 2008, he would vote to uphold the decision of the Appointed Officer to refuse the application. Councillor Williamson stated that he had found it difficult to reach a conclusion on this application, but had decided not to support the proposal as it did not comply with planning policy DC1. However, he considered that planning policy on settlements may need to be reviewed when consultations take place on future planning policy.

Councillor McMillan considered that the Case Officer had correctly identified the application site as land in the countryside in accordance with Policy DC1 of the adopted East Lothian Local Plan. However, having visited the site and observed the surrounding buildings, he would have argued that this was a gap site and voted to overturn the decision of the Case Officer. He also considered that the definition of what constitutes a settlement may need to be reviewed by the Local Planning Authority in the next Local Development Plan.

Decision

The ELLRB agreed by a majority of 2:1 to uphold the decision of the Appointed Officer to refuse the application for the reasons stated in the original Planning Decision notice dated 7 November 2014.

The Legal Adviser stated that a Decision Notice would be issued within 21 days.