

REVIEW DECISION NOTICE

Decision by East Lothian Local Review Body (the ELLRB)

Site Address: Play Park, Bothwell Gardens, Dunbar EH42 1PZ

Application for Review by Bothwell Gardens Proprietors' Association against decision by an appointed officer of East Lothian Council.

Application Ref: 14/00943/P

Application Drawings: DWG001, DWG002, DWG003 and DWG004

Date of Review Decision Notice – 7th December 2015

Decision

The ELLRB reverses the decision to refuse this application and grants Planning Permission, subject to the condition set out below.

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 19th November 2015. The Review Body was constituted by Councillor Norman Hampshire (Chair), Councillor Willie Innes, Councillor Jim Goodfellow and Councillor Stuart Currie. All four members of the ELLRB had attended an accompanied site visit in respect of this application on the morning of 19th November 2015.
- 1.2 The following persons were also present at the meeting of the ELLRB:-

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

2 Proposal

- 2.1 The application site is a toddlers' play park at Bothwell Gardens, Dunbar which was installed as a condition (condition 5) of planning permission 00/00811/FUL for the erection of the 40 houses at Bothwell Gardens. Permission is sought for the deletion of condition 5 of planning permission 00/00811/FUL to allow for the removal of the play park and the laying to grass of the area of land.
- 2.2 The planning application was originally validated on 17th April 2015 and was refused under delegated powers on 23rd June 2015. The Applicant has applied to the ELLRB to review the decision to refuse to remove the condition and the Notice of Review is dated 7th September 2015.

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 23 rd June 2015
5	Copy of Policies C2 and C3 of the Adopted East Lothian Local Plan 2008
6	Copy of Consultation Responses (2) from the Council's Principal Amenity Officer
7	Photographs of existing play park
8	Location plan and site plan
9	Notice of Review dated 7 th September 2015 and supporting review 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 Planning Act requires decisions on planning applications to be taken in accordance with development plan policy unless material considerations indicate otherwise. She advised that there are no policies within the Strategic Development Plan of direct relevance to this application and that, in terms of the Local Plan, the site is within a residential area of Dunbar designated under Local Plan policy ENV1. The main policy consideration relevant to the application is that of amenity and the provision of adequate play facilities for the residents of the housing development at Bothwell Gardens in accordance with Policy C2 of the adopted East Lothian Local Plan 2008.

She advised that the application was refused by the appointed officer on the basis that the play park is easily accessible to the residents of Bothwell Gardens and provides a local facility for residents with young children. Therefore, the appointed officer considered that the loss of the play facility would be to the detriment of the amenity of future residents of the Bothwell Gardens housing development.

She outlined the applicants' request for a review, which states that the request to remove the play area was overwhelmingly approved by the Bothwell Gardens Proprietors' Association, the body responsible for managing the common areas of the Bothwell Gardens development including the play area in question. This was made following consideration of a number of factors, the ongoing costs for inspecting and insuring the facility and replacement to meet safety requirements; the installation of the Ashfield Play Park on the south side of Lochend Road which, it is argued, means that the toddlers play park is now no longer required, the new facility being equidistant to the toddler play park from the Bothwell Gardens main access road; and that the Bothwell Gardens properties are bungalow style detached houses most suited to an older clientele with the result being the majority of householders of Bothwell Gardens are senior citizens.

She advised that the Council's Principal Amenity Officer was consulted on the application. He advised that the larger play park that has been built on the south side of Lochend Road is within the catchment of the houses of Bothwell Gardens and that, if that large play park had been in existence when planning permission 00/00811/FUL was determined then rather than the provision of a new play park, a financial contribution would have been sought from the developer towards play park provision for the houses of Bothwell Gardens.

She summarised the main questions for the LRB to consider in reviewing the case, namely:

Whether the removal of the play park would comply with the policies of the development plan in respect of amenity and in particular with Policy C2 of the adopted East Lothian Local Plan 2008?

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, she 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 Hampshire noted that, when this play park was originally constructed, there were very few similar facilities in the vicinity. However, as time has passed and other developments have taken place, a new and larger play park has been constructed nearby and the Council would not now require two facilities in such close proximity. He sympathised with the applicants as he had seen problems with small play parks that were not used and which fell into disrepair, becoming a liability to those residents who are responsible for their upkeep. He was minded to overturn the original decision to refuse to remove the condition. Councillor Currie considered that if there was no alternative play facility in the area he would have a concern about the amenity of the area. However, the properties at Bothwell Gardens are in the catchment area for the new play park and so he considered that there would be no loss of amenity should this small facility be removed. He was encouraged to hear that the residents proposed to use the area as green space and considered that this would itself contribute to the amenity of the area.
- 4.3 Councillor Innes also accepted the appellants' case. He was particularly persuaded by the views of the Council's Principal Amenity Officer when he stated that the play park had become 'effectively redundant'. He was also minded to overturn the original decision but to impose a condition requiring the landscaping of the area in order that it continues to contribute to the amenity of the area.

Councillor Goodfellow dissented with the opinion that, although not currently used, the small play park would be a valuable amenity for future residents of Bothwell Gardens. He considered that, although the new facility is only 150 metres away, this is a significant distance for younger children and the proximity of the current facility is still of value. He would uphold the original decision to refuse permission for the removal of the condition in question.

- 4.4 Accordingly, the ELLRB members decided, by three votes to one, that the original decision to refuse planning permission for refusal of condition 5 of Planning Permission 00/00811/FUL should be overturned and that this condition should be removed but replaced with the following condition:-

Within the first planting and seeding season following the removal of the play park the area of land shall be landscaped in accordance with details to be submitted to and approved in writing in advance by the Planning Authority and thereafter the landscaping shall accord with the details so approved. Any trees, shrubs or plants which within a period of five years from the removal of the play park die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with other of similar size and species, unless the Planning Authority gives written consent to any variation.

Reason:

In order to ensure the implementation of a landscaping scheme to enhance the appearance of the development in the interests of the amenity of the area.



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.