



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

**THURSDAY 19 NOVEMBER 2015  
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON**

---

**Committee Members Present:**

Councillor N Hampshire (Chair)  
Councillor W Innes  
Councillor J Goodfellow  
Councillor S Currie

**Advisers to the Local Review Body:**

Ms E Taylor, Planning Adviser to the LRB  
Mrs M Ferguson, Legal Adviser/Clerk to the LRB

**Others Present**

Mr J Maxwell, Chair, Bothwell Gardens Proprietors' Association  
Mr A MacKay, Vice Chair, Bothwell Gardens Proprietors' Association

**Committee Clerk:**

Mrs F Stewart

**Declarations of Interest**

None

**Apologies**

Councillor D Grant

Councillor Hampshire was elected to chair today's meeting by Councillors Innes, Goodfellow and Currie. Duly elected, Councillor Hampshire welcomed everyone to the meeting.

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

**1. REVIEW AGAINST DECISION (REFUSAL)  
PLANNING APPLICATION No: 14/00943/P – REMOVAL OF CONDITION 5  
OF PLANNING PERMISSION 00/00811/FUL AT PLAY PARK ADJACENT  
TO BOTHWELL GARDENS, DUNBAR**

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 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 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.

The Chair invited the Planning Adviser, who had had no involvement in the original decision, to present a summary of the planning policy considerations in this case.

Emma Taylor, Planning Adviser, stated that the application site was 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 was being sought for the deletion of condition 5 to allow for the removal of the play park and the laying to grass of the area of land.

The Planning Adviser stated that the Planning Act requires decisions on planning applications to be taken in accordance with development plan policy unless material considerations indicated otherwise. The development plan consists of the approved Strategic Development Plan for Edinburgh and South East Scotland, known as SESplan, and the adopted Local Plan 2008.

The Planning Adviser advised that the site was within a residential area of Dunbar designated under local plan policy ENV1. The main policy consideration relevant to the application was 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 stated that the application had been refused by the Appointed Officer on the basis that the play park was easily accessible to the residents of Bothwell Gardens and provided a local facility for residents with young children. The loss of the play facility, therefore, would be to the detriment of the amenity of future residents of the Bothwell Gardens housing development.

The applicants' request for a review to allow the removal of the play area had been overwhelmingly approved by the Bothwell Gardens Proprietors' Association, the body responsible for managing the common areas of the Bothwell Gardens development. The request was made for 3 reasons; the ongoing costs for inspecting and insuring the facility and replacement to meet safety requirements, the installation of the Ashfield Playpark at Lochend Road and the fact that the majority of householders of Bothwell Gardens were senior citizens. The Council's Principal Amenity Officer was consulted on the application and had advised that the larger play park built on the south side of Lochend Road was within the catchment of the houses of Bothwell Gardens.

The Chair asked his fellow Members if they now had sufficient information to proceed to determine this application today and they unanimously agreed to proceed. He opened the debate recalling that, when the application for the housing development at Bothwell Gardens had come before the Planning Committee originally, there had been little in the way of play park facilities in that location. If the Ashfield Play Park had been in place at that time, he considered that a play park at Bothwell Gardens would not have been necessary. He noted that the occupants of the houses in Bothwell Gardens were now predominantly older people and was concerned that parks, if not used, become abused. He was therefore satisfied that there was now no requirement to have a play park at Bothwell Gardens and intended to vote to overturn the decision of the Appointed Officer, thereby removing Condition 5 from the consent for this application.

Councillor Currie noted that the Council's Principal Amenity Officer had stated that the Ashfield Play Park was within the catchment area for homes in Bothwell Gardens. Play park facilities would therefore still be readily available if the play park at Bothwell Gardens was removed. Councillor Currie also questioned the high cost of upkeep of the Bothwell Gardens play park if the facility was not being used and was confident that the Bothwell Gardens Residents would landscape the area should today's appeal be upheld. He too was therefore minded to vote for Condition 5 to be removed from the consent for this application.

Councillor Innes stated that he accepted the case put forward by the applicants. He also considered that there was compelling evidence to support their case in the Council's Amenity Service consultation response which stated that '*a facility exists that will adequately service the needs of Bothwell Gardens making their facility effectively redundant*'. He added that it was clear the facilities had not been neglected and had been well maintained, but residents were advising that the facilities were no longer being used. He would therefore also vote to overturn the original decision of the Appointed Officer.

Councillor Goodfellow took a different view. He advised that play areas were required in terms of the current East Lothian Local Plan and, while there were currently elderly occupants in the homes at Bothwell Gardens, ownership changes. He also stated that play park facilities at a distance of 150m from Bothwell Gardens was a considerable distance for toddlers to walk. Councillor Goodfellow also considered that the Bothwell Park play park added amenity to the area and he was minded therefore to uphold the decision of the Case Officer.

## **Decision**

The ELLRB agreed by a majority vote 3:1 to overturn the decision of the Appointed Officer to refuse the application, subject to the following condition:

1. 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.

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