

REVIEW DECISION NOTICE

Decision by East Lothian Local Review Body (the ELLRB)

Site Address: 1 and 2 Rosebank, Seton Mains, Longniddry, EH32 0PG

Application for Review by Mr A Mohammed against deemed refusal.

Application Ref: 16/00058/P

Application Drawings: 'Figure 1 – Photographic viewpoints 1 – 3', 'Figure 2 – Photographic viewpoints 4 – 6', 'Figure 3 – planning policy and landscape context', 'Location Plan' and Drawing Number SK-01.

Date of Review Decision Notice – 22nd September 2016

Decision

The ELLRB refuses 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 15th September 2016. The Review Body was constituted by Councillor Norman Hampshire (Chair), Councillor John McNeil, Councillor Jim Goodfellow and Councillor David Berry. All four members of the ELLRB had attended an unaccompanied site visit in respect of this application on 15th September 2016.

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 roughly rectangular shaped area of land to the east of two new houses that have been erected on the south eastern edge of Seton Mains, near Longniddry. The application seeks permission for the change of use of this land from its current designation as agricultural ground to domestic garden ground for the two new houses.

In September 2014 planning permission 14/00494/P was refused retrospectively for the change of use of the agricultural land to the east of the southernmost house of the two new houses, to garden ground for two reasons:

- That granting consent would establish a precedent; and
- The change of use would be an intrusive and incongruous encroachment beyond the well defined edge of the settlement and as such would be harmful to the character and visual and amenity of the landscape of the east of Seton Mains.

The current application site includes the area of land previously refused planning permission (14/00494/P) for the change of use agricultural land to garden ground.

The planning application was originally validated on 8th March 2016. As the application had not been determined by 7th May 2016, the statutory 2 month time period within which planning applications should be determined, the applicant applied to the ELLRB to review the deemed refusal following the non determination of this planning application. The notice of review is dated 11th July 2016.

3 Preliminaries

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

1	Notice of Review dated 11 th July 2016 with supporting statement and Landscape and Visual Appraisal
2	The application for planning permission
3	Copies of 5 application drawings noted above
4	Appointed Officer's Statement of Case
5	Copy of Consultation Response from East Lothian Council's Landscape Officer
6	Copies of Policy 1B of the approved South East Scotland Strategic Development Plan and Policy DC1 of the Adopted East Lothian Local Plan 2008
7	Copy of Informative Note issued by the Coal Authority
8	Schedule of Conditions

4 Findings and Conclusions

4.1 The ELLRB confirmed that the application for a review of the deemed refusal of the application 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 reminding them that planning legislation requires decisions on planning applications to be taken in accordance with development plan policy unless material considerations indicate otherwise.

She advised that, whilst the two new houses are within the settlement boundary of Seton Mains, this rectangular shaped area of land is located in an area outwith the existing settlement and 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.

She advised the LRB that, in the applicant's request for review, it is argued that the proposal fully aligns with extant and emerging policy and guidance (as demonstrated in supporting documentation). It is argued that there is clear policy support for such development of this scale and nature, as indicated in the East Lothian Local Plan Policy DC1 Part 2(f) and Part 5. Furthermore the applicant argues that a settlement boundary line within a Local Plan does not constitute a "well-defined settlement boundary or landscaped edge". Furthermore, there is no evidence such a proposal would create an adverse precedent.

Turning to consultation responses, she advised that the Landscape Officer advised that extending the garden ground of the houses in the way proposed would be beneficial to the creation of an improved landscape setting as sensitively planted native trees would soften the built form of the two new houses and reduce their visual impact on the open countryside. It was recommended that a landscape planting plan be submitted and made a condition of a grant of

planning permission. No other consultation responses were sought or received and there were no public objections or representation received to the application.

The Planning Officer summarised the main questions for the ELLRB to consider in reviewing the case, namely, whether the proposed development would comply with the policies of the development plan in respect of development in the countryside, 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 Berry considered that this was an unusual case and that the current settlement boundary was not particularly clear. Whilst the two new houses were originally designed to be smaller and more proportionate with their respective plots, he considered that the various amendments to the design had now resulted in houses that seem too big for their plots. However, he considered that this was not the concern of the planning authority and he did not see this as a justification from departing from the terms of policy DC1. Accordingly, he was minded to apply policy DC1 and refuse planning permission. Councillor McNeil agreed with this reasoning and would also vote to refuse planning permission.
- 4.3 Councillor Goodfellow considered that he may have been more sympathetic to an application for a small strip of additional garden ground but considered that this encroachment into the countryside was excessive and did not consider that it justified a departure from policy DC1. Councillor Hampshire had a contrary view; he considered that this application offered an opportunity to strengthen the settlement boundary through a condition requiring a planted strip. He considered that this would reduce the visual impact of the new houses when viewed from the east and would better contain the settlement. He was minded to grant planning permission subject to a condition to this effect.
- 4.4 The ELLRB decided, by a majority of three votes to one, to refuse this application for planning permission for the following reason:

The effect of the change of use of the agricultural land to residential garden ground would be a prejudicial encroachment of the current settlement boundary into the countryside that serves as the defined edge and setting of Seton Mains, in a manner harmful to the landscape character and visual amenity of the landscape to the east of Seton Mains. There are no special circumstances that would justify such an expansion of Seton Mains into land that is not identified for residential use and development. Accordingly, the proposal is not consistent with Policy DC1 of the adopted East Lothian Local Plan 2008.

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.