

REVIEW DECISION NOTICE

Decision by East Lothian Local Review Body (the ELLRB)

Site Address: Land at Tenterfield Drive, Haddington, East Lothian.

Application for Review by Kenneth Reid Architects against decision by an appointed officer of East Lothian Council.

Application Ref: 15/00835/P

Application Drawing: P(2-)016, DWG001, P(2-)014, P(2-)015, SK101, DWG002, DWG003, P(2-)001, P(2-)004, P(2-)005, P(2-)006, P(2-)010, P(2-)011, DWG004, DWG005, P(2-)002, P(2-)003, P(2-)012 and P(2-)013

Date of Review Decision Notice – 2nd December 2016

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 17th November 2016. The Review Body was constituted by Councillor Willie Innes (Chair), Councillor John Williamson, Councillor Jim Gillies and Councillor Stuart Currie. All four members of the ELLRB had attended an unaccompanied site visit in respect of this application on the morning of 17th November 2016.

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

Emma Taylor, Planning Adviser
Morag Ferguson, Legal Adviser
Fiona Stewart, Clerk.

2 Proposal

2.1 The application site is an area of land on the south side of Tenterfield Drive, Haddington. The planning application is for the erection of three houses with associated works.

The planning application was registered on 5th November 2015 and was refused under delegated powers on 17th June 2016. The notice of review is dated 16th September 2016.

The four reasons for refusal are set out in full in the Decision Notice and are, in summary, that the proposed houses, by virtue of their contemporary design would appear incongruous in their visual relationship with the architectural style of the built form of the area and thus would detract from the character and appearance of the Conservation Area; that, by virtue of their positioning, the proposed houses would be an intrusive and inharmonious form of infill development harmful to the character of the layout of the development at Tenterfield Drive and not in keeping with

their surroundings or location; that the proposed development would be imposing and would encroach on the parkland setting of Tenterfield House and Haddington town wall, which is an intrinsic part of the wider setting of the Haddington Conservation Area and thus would be harmful to the character and appearance of the Conservation Area; and that the development as proposed would harmfully impact on the root protection area of trees covered by a Tree Preservation Order and would lead to the removal of one of these trees, all to the detriment of the positive contribution that they make to the setting of Tenterfield House, Haddington town wall and the character and visual amenity of the Conservation Area, all contrary to policy 1B of the approved South East Scotland Strategic Development Plan and policies ENV4, DP2 and DP7 of the adopted East Lothian Local Plan 2008 and PAN 67: Housing Quality.

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 drawings specified above
2	The application for planning permission
3	The Appointed Officer's Report of Handling
4	A copy of the Decision Notice dated 17 th June 2016
5	Copies of Policies NH5, ENV1, ENV3, ENV4, ENV7, T2, DP2, DP7 and DP22 of the Adopted East Lothian Local Plan 2008 and Policy 1B of SESplan June 2013
6	Copy of Consultation Responses
7	Copy Written Objections and Representations received in response to LRB Notifications, including letter of 15 th October 2016 from AHSS raising legal points of order and applicant's response
8	Conditions to be attached to any grant of planning permission
9	Notice of Review dated 16 th September 2016 with supporting statement and associated documents, including Tree Survey

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. They confirmed that they had access to the planning file in respect of this matter and to all the information that the Appointed Officer had available when reaching the original decision to refuse planning permission, including all drawings and copies of all representations and objections received in respect of the original application.

The Members asked the Legal Adviser to comment on the points of order raised in the letter of 15th October 2016 from AHSS. She confirmed that she did not consider that any of these points precluded the ELLRB considering the matter and reaching a decision.

The Members then 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 relates to an area of land on the south side of Tenterfield Drive, Haddington which the Members visited during their site visit. She advised that the site was originally part of the gardens of Tenterfield House but is now subdivided from Tenterfield House. She noted that there are a number of trees that lie within the site that are the subject of a Tree Preservation Order No. 94.

She summarised the planning history of the area, advising that, in May 2002 planning permission 01/01126/FUL was granted for the 7 houses that have been built on land to the south and west of Tenterfield House. The application that approved the 7 houses was a revised scheme of development, the original proposal for 11 houses, and which was the subject of a planning application 00/00016/FUL, having been withdrawn and thus never determined. She

reminded Members that a summary of the amendments to the original proposal is outlined in the appointed officers report forming part of the Review Documents.

She confirmed that this application now seeks approval for 3 houses on the application site.

She confirmed that the planning application was originally registered on 5th November 2015 and was refused under delegated powers on 17th June 2016. The notice of review is dated 16th September 2016.

She reminded Members that planning legislation requires decisions on planning applications to be taken in accordance with development plan policy unless material considerations indicate otherwise and that the development plan is the South East Scotland Strategic Development Plan and the Adopted East Lothian Local Plan 2008.

She confirmed that the site is within a residential area of Haddington, designated under local plan policy ENV1 and within the Haddington Conservation Area. Tenterfield House is a building listed as being of special architectural or historic interest, Category B. To the south of the site is the category C listed Haddington Town Wall with a walled garden and the Category B listed Old Bank House and its associated curtilage beyond.

She advised that the main policy considerations relevant to the determination of this application are: Policy ENV1 (Residential Character and Amenity), Policy DP7 - infill, backland and garden ground development, Policy ENV3 (Listed Buildings), Policy ENV4 (Development within a Conservation Area) and Policy NH5 (Protected Trees). Also relevant to the determination of the application is Scottish Planning Policy 2014 in respect of safeguarding the setting of the listed buildings and the character and appearance of the Conservation Area.

She confirmed to the ELLRB that this application was refused by the appointed officer for four reasons. Firstly, in their design and contemporary detailing the proposed three houses would not preserve or enhance, but would detract from, the character and appearance of the Conservation Area; secondly, the proposed three houses would be an intrusive and inharmonious form of infill development that would be harmful to the character and layout of the streetscape of Tenterfield Drive; thirdly, the proposed development would be imposing and disruptive features that would encroach on the parkland setting of Tenterfield House and Haddington Town wall, which is an intrinsic part of the wider setting of Haddington Conservation Area nor would the proposed development preserve the setting of Tenterfield House or Haddington Town Wall nor the character and appearance of the Conservation Area; and, finally, the development as proposed would harmfully impact on the root protection area of trees protected by a Tree Preservation Order and result in the removal of one of them, all to the detriment of the positive contribution they make to the setting of the setting of Tenterfield House, Haddington Town Wall and the character and visual amenity of the Conservation Area.

She advised that the applicant's request for a review argues that all the additional information requested from the planning officer was submitted, which they took as an indication that the proposals were likely to be supported. They dispute that the houses would be an intrusive or inharmonious form of infill development and argue that these would fit within the streetscape of Tenterfield Drive. Nor do they agree that the proposed houses would encroach onto the parkland setting of the listed buildings of Tenterfield House or the Town Wall. With regards the protected tree, the applicant asserts that the Tree Survey submitted in respect of the application has been ignored by ELC and that the management of the trees would be improved as a result of the development adjacent to them.

Turning to consultation responses, the Planning Adviser confirmed that the landscape advice from the Council's Policy & Projects officer was that there are concerns about the impact of the development on the protected trees. The officer's view is that the tree report that was submitted by the applicant did not take into account all the relevant factors necessary to ensure a complete and thorough assessment had been undertaken to reach the conclusion that the health and vitality of those trees could be safeguarded. With regards the tree that is identified in the tree report to be removed, the officer raise no issues with this provided a replacement tree is planted. The Council's Roads services raise no objection to the proposal subject to a number of

conditions being satisfied. The Council's Service Manager for Flood Prevention confirms that a culvert passes through the site and that surface water and foul pipes associated with the development at Victoria Park are connected to Scottish Water sewers at Tenterfield Drive. Scottish Environmental Protection Agency raise no objections to the proposal provided no development takes place on top of or immediately adjacent to the culverted watercourse or drain. It is the stated intention of the applicant to re-route the culvert on the site. The Council's Archaeology Officer advises that the application site lies within the grassland formerly associated with Tenterfield House and is bounded to the south by the Category C listed remains of Haddington Town Wall. Accordingly the Council's Archaeology Officer recommends a 'Programme of Works' to mitigate the impacts of the development upon the the Historic Environment. This matter could be controlled by a condition of the grant of planning permission. The Planning Adviser confirmed that copies of all these responses were provided in the Review Documents

There were 26 letters of representation received to the application which are summarised in the Officers Report and copies of these are in the planning file, to which Members have access.

The Planning Adviser summarised the main questions for the ELLRB to consider in reviewing the case are whether the proposed development would comply with the policies of the development plan in respect of infill development and in particular on the impact it would have on the Haddington Conservation Area, on the setting of the nearby listed buildings and on the protected trees; 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.

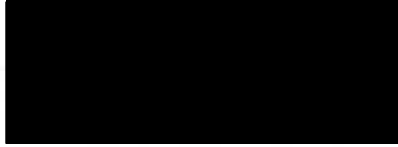
Finally, she reminded Members that they have the option of seeking further information if necessary before making a decision, either through further written submissions, a hearing session, a further site visit, or a combination of these procedures.

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 Currie considered that the Review Documents and the site visit had given a useful context for what was being proposed. In particular, the site visit had helped to persuade him of the likely impact of the development on the Town Wall and protected trees. While he noted that there were opposing views on the possible impact on the trees, he considered that he had to err on the side of caution as, if damage was done to the trees, it would then be too late to rectify this. Taking all of this into account, he could not support the application. Councillor Williamson agreed with the views of Councillor Currie and considered that, whilst the existing seven houses are visually unobtrusive, given their positioning, the proposed houses would be highly visible and thus visually intrusive in this setting. Thus he was minded to refuse planning permission. Councillor Gillies had also found the site visit useful and he was also concerned that the risk of damage to the trees was such that he was not minded to grant planning permission.
- 4.3 Councillor Innes considered that the site visit had been important in demonstrating the quality of the environment. There are three listed structures in the immediate vicinity as it is clearly an important area of Haddington. He noted that the planning history had consistently maintained the position that development in the area proposed would not be supported due to adverse impact on the setting of Tenterfield House and saw no reason to depart from that position. He considered that the proposed development would be highly visible from the road and thus visually intrusive, having a detrimental impact on the area. He considered that the protected trees made a valuable contribution to the character and appearance of the area and was not prepared to risk the consequences to these trees should the Landscape Officer's concerns be correct. Taking all matters into account, he was not prepared to support this application.

- 4.4 Accordingly, the ELLRB decided unanimously 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 17th June 2016.

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.

