



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

**THURSDAY 17 NOVEMBER 2016
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON**

Committee Members Present:

Councillor W Innes (Chair)
Councillor S Currie
Councillor J Gillies
Councillor J Williamson

Advisers to the Local Review Body:

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

Others Present

Ms K Slater, ELC Planner
Mr K Reid, Applicant and Agent (Item 2 on agenda)

Committee Clerk:

Mrs F Stewart

Declarations of Interest

None

Apologies

None

Councillor Innes, elected to chair the meeting by his colleagues, welcomed everyone to the meeting and introduced Members of the East Lothian Local Review Body (ELLRB) and Council Officials to those present.

The Chair stated that there were two planning applications and that site visits had been carried out prior to the meeting. He outlined the procedure for the meeting and advised that the Planning Adviser would begin by providing background information for each application. Members had been provided with a submission from the Case Officer and review documents from the applicant. Members had also been given access to the planning file for each application. After hearing from the Planning Adviser, 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, they would proceed to discuss an application and a vote would be taken on whether to uphold or overturn the decision of the Appointed Officer. It was also open to Members to grant an application subject to conditions.

1. PLANNING APPLICATION 15/01030/P – REVIEW AGAINST DECISION (REFUSAL): VARIATION OF CONDITION 5 OF PLANNING PERMISSION 14/00586/P TO ALLOW CHANGES TO THE MATERIALS OF THE WINDOWS AND DOORS FROM TIMBER TO UPVC (RETROSPECTIVE) AT PLOT 54 THE VILLAGE, ARCHERFIELD, DIRLETON.

Emma Taylor, Planning Adviser, presented a summary of the relevant planning policy considerations in this case. She stated that the application related to house plot 54 at Archerfield by the grant of planning permission 01/00504/FUL. This plot was positioned to the west side of what is to be the 'village green' open space element of the 73 houses component of the Archerfield development.

The Planning Adviser outlined the complex planning history for this part of the Archerfield development and advised that planning permission 14/00586/P had been granted for the erection of 3 houses which included house plot 54. Condition 5 of planning permission 14/00586/P requires that the frames of windows and patio doors of those 3 houses be of timber construction and stained a colour to be approved by the Planning Authority. This condition was designed to ensure that the external appearance of these houses would not be harmful to the character and appearance of the area, which is part of an Area of Great Landscape Value.

The Planning Adviser stated that works to erect the house on plot 54 were well advanced and planning permission was now retrospectively sought for the white UPVC framed windows, patio doors and external doors that have been installed in the house, and thus for the variation of Condition 5 of planning permission 14/00586/P. She advised that the Planning Act requires decisions on planning applications to be taken in accordance with development plan policy unless material considerations indicate 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 site was within the Archerfield Estate, a housing and leisure development within the countryside near Dirleton and the main policy considerations relevant to the application were design impacts on the development. The key policies in relation to these matters are Strategic Development Plan policy 1B and Local Plan policies DP2 and NH4.

The application had been refused by the Appointed Officer on the basis that the use of a UPVC material for the construction of the frames of the windows, patio doors and external doors of the house and garage, and the use of a plain glazed design for them, was harmful to the design integrity of the other 73 houses on the development. The Planning Adviser stated that no consultations had been carried out by the Case Officer and that one public representation to the application had been received.

The Chair thanked the Planning Adviser for her presentation. He then asked his fellow Members if they had sufficient information to proceed to determine this application today and they unanimously agreed to proceed.

The Chair invited comments from Members.

Councillor Currie stated that the site visit had been helpful, enabling him to see that a considerable number of homes on the Archerfield development had windows and doors which did not comply with the original specification for windows. Whilst in his view, planning policy ought to be observed, he considered that a test of reasonableness needed to be applied. He explained that the position in cases such as this was that a home could be built with timber windows and doors to meet planning regulations and then, after 6 months, they could be changed under permitted development rights without any intervention of the Council. In this case, if the ELLRB rejected the appeal, the applicant would incur costs of many thousands of pounds to replace his UPVC windows and doors with timber frames and yet, after 6 months, could remove them and replace with the fittings of his choice, as planning permission would not be required. He therefore considered that a commonsense approach in this case would be to uphold the appeal and grant planning permission retrospectively.

Councillor Williamson also remarked on the various types of windows and doors clearly visible on homes in Archerfield and agreed with the view of his colleague. As the windows and doors could be replaced under permitted development rights, he was minded, in this case, to allow the windows and doors as applied for. Councillor Gillies was similarly minded.

The Chair stated that, in his opinion, the original decision of the Case Officer had been the correct decision, as windows and doors which complied with planning policy were more desirable. He described it as regrettable that permitted development rights had not been removed at the time consent was granted. However, as it had not been removed, he considered that it would be unreasonable to ask the applicant to replace his doors and windows. He was sympathetic towards the objection which had been received but, applying a test of reasonableness, he would agree with his colleagues and uphold the appeal.

The Legal Adviser advised that there was one proposed condition in the event that the appeal was upheld. This stipulated that details of astragals to be applied to windows and doors should be submitted to the Planning Authority for approval in the interests of safeguarding the design integrity of the houses of The Village in an Area of Great Landscape Value. Members considered the terms of the condition and Councillors Currie, Williamson and Gillies agreed to reject the condition. The Chair held the view that the condition had merit but recognised he was in the minority.

Decision

The ELLRB unanimously agreed to overturn the original decision of the Planning Officer and uphold the appeal, granting planning permission to change the materials

of the windows and doors from timber to UPVC (retrospectively). Members also rejected 3:1 the Condition suggested by the Case Officer in the event that planning permission was granted.

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

2. PLANNING APPLICATION 15/00835/P – REVIEW AGAINST DECISION (REFUSAL): ERECTION OF 3 HOUSE AND ASSOCIATED WORKS AT TENTERFIELD DRIVE, HADDINGTON

Ms Taylor, Planning Adviser, presented a summary of the planning policy considerations in this case. She stated that the application related to an area of land on the south side of Tenterfield Drive, Haddington which was originally part of the gardens of Tenterfield House but was now subdivided from Tenterfield House. A number of trees within the site were the subject of a Tree Preservation Order (TPO) No. 94.

The Planning Adviser stated that planning permission 01/01126/FUL had been granted in May 2002 for the 7 houses built on land to the south and west of Tenterfield House. The application that approved the 7 houses was a revised scheme of development that had initially proposed 11 houses and was the subject of planning application 00/00016/FUL that was withdrawn and thus never determined. A summary of the amendments to the original proposal was outlined in the Appointed Officer's report before the ELLRB. This application was now seeking approval for 3 houses on the application site. 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 is the South East Scotland Strategic Development Plan (SESplan) and the Adopted East Lothian Local Development Plan.

The Planning Adviser advised that the site was within a residential area of Haddington, designated under local plan policy ENV1 of the local plan and was within the Haddington Conservation Area. Tenterfield House was a building listed as being of special architectural or historic interest Category B and to the south of the site was the category C listed Haddington Town Wall.

The main policy considerations relevant to the determination of this application were: 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 application was Scottish Planning Policy 2014 in respect of safeguarding the setting of the listed building and the character and appearance of the Conservation Area.

The Planning Adviser stated that this application had been refused by the Appointed Officer for four reasons: firstly, in their design and contemporary detailing, the proposed 3 houses would not preserve or enhance 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 of the streetscape of Tenterfield Drive; thirdly, the proposed development would be imposing and disruptive features would encroach on the parkland setting of

Tenterfield House; and the final reason for refusal was that the proposed development would harmfully impact on the root protection area of TPO trees on the site and result in the removal of one of them. The applicant's request for a review had argued that they had submitted all of the additional information requested by the Case Officer which they took as an indication that the proposals were likely to be supported. The applicant disputed that the houses would be an intrusive or inharmonious form of infill development, claiming that they would fit within the streetscape of Tenterfield Drive. The applicant also did not agree that the proposed houses would encroach onto the parkland setting of Tenterfield House and claimed that the tree survey submitted in respect of the application had been ignored by ELC. Furthermore, they considered that the management of the trees would be improved by the development adjacent to them.

The Planning Adviser summarised the consultation responses. The Council's Policy & Projects Officer had concerns about the impact of the development on the trees covered by the TPO and considered that the tree report submitted by the applicant had not taken into account all the relevant factors necessary to ensure a complete and thorough assessment. The Council's Roads Services raised no objection to the proposal subject to a number of conditions being satisfied and the Council's Service Manager for Flood Prevention clarified the position regarding a culvert which passes through the site. It was the intention of the applicant to re-route the culvert on the site and the Manager raised no objection to this. The Council's Archaeology Officer had advised that the application site lay within grassland formerly associated with Tenterfield House and was bounded to the south by the Category C listed remains of Haddington Town Wall. Accordingly the Council's Archaeology Officer recommended a Programme of Works to mitigate the impacts of the development upon the Historic Environment. This matter could be controlled by a condition of the grant of planning permission.

There were 26 letters of representation received to the application which were summarised in the Officers Report. Copies of 8 Further Representations were included in the ELLRB papers.

The Chair thanked the Planning Adviser for her presentation and asked if Members had any questions.

The Chair referred to a letter received from Mr Dodd on behalf of The Architectural Heritage Society of Scotland (AHSS) raising legal issues in respect of this application and sought legal advice. The Legal Adviser advised that the applicant had been given an opportunity to respond to this letter and his response was included in the ELLRB papers. The Legal Adviser addressed the 3 legal matters which had been raised: firstly, she advised that Kenneth Reid was both the applicant and agent for this application; secondly, on the applicant not identifying the site clearly, she advised that Members needed to satisfy themselves that they were considering the correct site; and thirdly, she advised that the maps formed part of the applicant's submission and it was for Members to assess how much weight to attach to them.

The Legal Adviser also stated that Kenneth Reid had raised the issue of Members having access to all planning documents and she was able to reassure the applicant that Members had been given access to all of the information in the original planning file. The applicant had also asked if his application should have been classed as a non-determination and the Legal Adviser advised that, had the application been considered a non-determination, the outcome would have been the same in that the LRB would be considering it and therefore the application had not been prejudiced in any way.

The Chair asked his colleagues if they now had sufficient information to proceed to determine this application today and they unanimously agreed to proceed.

Councillor Currie stated that it had been helpful to visit the site after reviewing all the planning documents, particularly for assessing the positioning of the proposed development and for being able to see the Conservation Area. Turning to the grounds for refusal, he noted that the Case Officer had considered that the proposed development would not be appropriate to the location, and after visiting the site, he was inclined to agree. In his view, the proposals would have a significant adverse impact on the area and pose a risk to the trees covered by the TPO. He was therefore in favour of upholding the original decision of the Case Officer.

Councillor Williamson stated that the site visit had been helpful in providing a context for the proposed development. In his view, the new houses already on the site were visually unobtrusive but he considered that the 3 houses proposed would be an intrusive form of in-fill development and would have a detrimental impact on the Conservation Area. He would therefore vote to uphold the original decision of the Case Officer and endorsed her four reasons for refusal.

Councillor Gillies had also found the site visit useful and was concerned about the potential damage which could be caused to the trees on site. He was therefore minded to uphold the original decision of the Case Officer.

The Chair stated that the site visit had enabled him to appreciate the whole environment into which the proposed development would be placed. On site he had been impressed by the natural beauty of the area and had been struck by the majesty of the trees. In his view, the proposed development would be visible from the main road and he considered this would be harmful to the character of the area. He noted the planning application history for this site and agreed with the Case Officer's original decision and the decision made in 2002 (Planning Application 01/01126/FUL). He would therefore not be supporting the appeal.

Decision

The ELLRB unanimously agreed to reject the appeal and to uphold the original decision of the Case Officer for the reasons stated in the Decision Notice dated 17 June 2017. These were:

1. In their design and contemporary detailing the proposed houses and the works associated with them would appear incongruous in their visual relationship with the architectural style of the built form of the area and would not preserve or enhance but would detract from the character and appearance of the Conservation Area, contrary to Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan), Policies ENV4, DP2 and DP7 of the adopted East Lothian Local Plan 2008 and planning advice on designing new housing for place given in Planning Advice Note 67: Housing Quality.
2. The proposed houses by virtue of their positioning would be an intrusive and inharmonious form of infill development harmful to the character of layout of development of the streetscape of Tenterfield Drive and would not be in keeping with their surroundings or appropriate to their location. Consequently the proposed houses are contrary to Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan), Policies ENV4, DP2 and DP7 of the adopted East Lothian Local Plan 2008 and the advice on designing for place given in Planning Advice Note 67: Housing Quality.

3. The proposed development would be imposing and disruptive features 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. The proposed development does not preserve the setting of Tenterfield House or Haddington Town Wall nor does it enhance the character and appearance of the Conservation Area, but is instead harmful to the setting of Tenterfield House and Haddington Town Wall and the character and appearance of Haddington Conservation Area. Consequently, it is contrary to Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan), Policies ENV3, ENV4, DP2 and DP7 of the adopted East Lothian Local Plan 2008 and the advice on designing for place given in Planning Advice Note 67: Housing Quality.
4. The development as proposed would harmfully impact on the root protection area of Tree Preservation Order trees on the site and result in the removal of one of them all to the detriment to the positive contribution they make to the setting of Tenterfield House, Haddington Town Wall and the character and visual amenity of the Conservation Area contrary to policies ENV3, ENV4, DP2 DP7 and NH5 of the adopted East Lothian Local Plan 20008 and the advice on designing for place given in Planning Advice Note 67: Housing Quality.

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