



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

**THURSDAY 16 MARCH 2017
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON**

Committee Members Present:

Councillor J Goodfellow (Chair)
Councillor J McNeil
Councillor J McMillan

Advisers to the Local Review Body:

Mr I McFarlane, Planning Adviser to the LRB
Ms C Molloy, Legal Adviser/Clerk to the LRB

Others Present

Mr N Millar, ELC Planner
Mr C Kiely, ELC Planner
Mr E Bean, ELC Planner
Mr A Wood, Agent for Application (Item 1)

Committee Clerk:

Mrs F Stewart

Declarations of Interest

None

Apologies

Councillor D Grant
Councillor N Hampshire

Councillor Goodfellow, elected to chair the meeting by his colleagues, welcomed everyone to the meeting. He also introduced his fellow Members, the Planning Adviser and the Legal Adviser present.

Catherine Molloy, Legal Adviser, outlined the procedure for the meeting and advised that site visits for each of the three applications on the agenda today had been carried out. She also advised that, following a presentation from the Planning Adviser, Members would decide if they had sufficient information before them to reach a decision on each application today. Should Members decide they had sufficient information, it was open to them to uphold for the reason given in the Decision Notice or uphold for a different reason. It was also open to them to overturn the original decision with or without conditions.

1. PLANNING APPLICATION 16/00403/P – REVIEW AGAINST CONDITIONS ATTACHED TO THE GRANTING OF PLANNING PERMISSION FOR THE ERECTION OF A STORAGE/DISTRIBUTION BUILDING AT UNIT 20A MACMERY INDUSTRIAL ESTATE, MACMERRY

Iain McFarlane, Planning Adviser, stated that the planning application made clear the intended use of the proposed storage building and Members had had the benefit of seeing the site in context. He also advised that the key consideration for Members in respect of the review was to consider whether or not the Coal Authority's advice and the consequent condition attached to planning permission was proportionate, reasonable and justifiable. Given the mining history of East Lothian and the requirement to consult the Coal Authority if their mapping of it demonstrated that the site was in an area of risk, consultation with them was mandatory in the case of significant development. The purpose of consultation and use of conditions was to minimise the risk of development from subsidence and collapse. Whilst these matters were also for consideration in respect of a building warrant for the development, it was important that the Council worked with consultees to ensure that such risks were minimised.

The Chair invited questions from his colleagues. Councillor McNeil noted from the Coal Authority's letter dated 28 June 2016 that a required Coal Mining Risk Assessment had not been submitted as part of the application. He enquired if such an assessment had since been submitted by the agent and the Planning Adviser replied that there was no assessment included in the papers. Councillor McNeil noted from the Coal Authority's letter of 6 October that 'up-to-date coal mining information' had later been submitted to the Coal Authority and the Planning Adviser advised that this was not necessarily the assessment referred to in their earlier correspondence. He also explained that various reports/information can be submitted but it was the substance of the report/information which was critical. Councillor McNeil also quoted from agent Alan Wood's response to the Coal Authority letter of 16 January 2017, '*In conclusion, we still think that the Coal Authority conditions are perhaps much more aimed at a high cost/risk development, e.g. a housing estate, a high tech office development....where the cost of compensation for collapse of workings would be extremely significant...*' In Councillor McNeil's experience as a Councillor, he could not recall any building collapsing on the industrial estate in Macmerry. He asked the Planning Adviser if, in his view, the Coal Authority were justified in stipulating a condition for this application and the Planning Adviser replied that it was for the LRB members to consider the application on its planning merits. The Planning Officer's view was that it was appropriate to apply the condition. In response to further questions, the Planning Adviser stated that the Coal Authority was instituted in the 1990s and had reshaped the way consultations were carried out after 2009/10. On the risk a company took if it proceeded with construction on this site against advice, the Planning Adviser stated that, in his view, liability in the event of an incident would lie with

the construction company. He also underlined that the Council had a duty to consider all consultee responses.

The Chair stated that the proposed site was surrounded by other modern buildings and asked if the Coal Authority had approved planning consent for these planning applications. The Planning Adviser advised that he did not have this information. The Chair asked if a response had been received from the Coal Authority to the agent's letter dated 9 March 2017 and the Legal Adviser confirmed that no response had been received.

The Chair asked his colleagues if they had sufficient information to proceed to determine the application today and they confirmed that they had. The Chair himself preferred to have more information on the other buildings on the Macmerry Industrial Estate and whether they had received approval from the Coal Authority. The Legal Adviser stated that, if it was the view of Members that the application was continued for further information, they must clearly specify what further information they required and who needed to provide that information. The Chair stated that planning decisions were not made by precedent, each decision was made on its own merits. However, it was important that each decision was made fairly. The Planning Adviser stated that there might be no record of Coal Authority consultations for older planning applications as there was no requirement to seek approval from the Coal Authority prior to 2009. It would also be necessary to have a full understanding of the regulatory regime in place at the time planning applications were submitted. For those reasons, any investigation into earlier planning applications on this site were likely to be lengthy and would necessarily provide the assurance sought. In view of the guidance received from the Planning Adviser, the Chair agreed with his colleagues that the planning application could be determined today.

The Chair advised that Members had received the applicant's Notice of Review and supporting documents together with the Council's submission. Members had also had full access to the planning files for each application.

Councillor McNeil stated that the applicant would incur costs in the region of £10,000 to fulfil the condition requested by the Coal Authority and other developers on this site may not have had this additional expense. The application was for a storage unit on a gap site surrounded by other buildings and it had been established in the course of the meeting that if building went ahead it would be at no risk to the Council. Councillor McNeil stated that the applicant was a new business coming to East Lothian and the Council needed to encourage new businesses. He would therefore vote to overturn the original decision of the Case Officer and to remove Condition One to planning consent.

Councillor McMillan stated that it was important to look at the evidence and, in his view, they had seen evidence at the site visit. He was not a local Member but had seen the Macmerry Industrial Estate expand over recent years. He considered that they had to weigh two things, risk and opportunity. He stated that there was always an element of risk in East Lothian and this had been investigated by the developer and the Council. Ultimately, he would base his view on the comments of the agent for the application and the DLM Mining Consultants report, both of which go a long way to mitigate any adverse consequences. As Council spokesman for Economic Development, he recognised a business opportunity and, if the applicant was willing to accept the risk and the Council's building control officers inspected the plans, he considered that the risk could be mitigated and managed. He too, therefore, would vote to overturn the original decision of the Case Officer and to remove Condition One to planning consent.

The Chair stated that the site visit had been very useful and had allowed them to see that there were other buildings surrounding the application site. He considered that that was significant in terms of evidence. If the application had been for a housing development, it would have demanded an intrusive site investigation. However, as it was for a warehouse, he considered that any issues could be addressed by Building Control. He was also mindful of the applicant accepting the risk and he therefore would uphold the appeal and overturn the original decision.

Decision

The ELLRB unanimously agreed to overturn the original decision of the Case Officer and remove Condition One from planning consent granted on 28 October 2016.

Statement of Reasons: Members considered that the Condition requested by the Coal Authority was too onerous and other buildings in the area had been constructed with no evidence of harm.

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

2. PLANNING APPLICATION 16/00701/P - REVIEW AGAINST DECISION (REFUSAL) ALTERATIONS AND EXTENSION TO BUILDING, ERECTION OF FENCING AND FORMATION OF HARDSTANDING AREA AT 11 FIDRA AVENUE, DIRLETON

Iain McFarlane, Planning Adviser, advised that the main determining considerations in respect of this application were whether Members considered the proposed extension would be harmful to the Conservation Area and the architectural interest of the B listed building. Members were therefore advised to take account of the integrity of the original design and appearance of the building and its context, including its immediate neighbour and the other similar houses. He also stated that the symmetry of this particular duo of houses, and the extent to which this has or has not been retained was important and a further consideration was whether the proposal was seen to result in an undue loss of historic fabric of the building.

In respect of the design, the Planning Adviser stated that modern extensions to historic houses can be appropriate in principle and it was important that Members were content with how successful the juxtaposition of new and old was in this particular case and not whether their own taste in design empathised or not with the proposal. He added that it was important that any extension to a historic building was distinct in some way from the original to allow the history of the building to be understood. The Planning Adviser also advised that an appeal in respect of Listed Building Consent was currently with the Scottish Government.

Questions from Members followed.

The Chair noted that the applicant had referred to a similar property in Gullane, asking why an extension to that house had been acceptable and yet the applicant's proposals were not. The Chair also asked if the property referred to was within a Conservation Area. The Planning Adviser replied that the Gullane property was C Listed whilst the property which was the subject of the application was B Listed. The Adviser had circulated drawings of houses of a similar period and design in Gullane and pointed out that, in each case, the siting of the extension was to the rear of the build and well contained in the site. The extension designs were also striking and contemporary, in sharp contrast to the older buildings.

The Chair referred to correspondence from Historic Environment Scotland on the proposals and asked if Members could assume that this organisation was now comfortable with the proposals. The Planning Adviser stated he could not confirm this and advised that Historic Scotland had said only that they had no further comment to make on the proposals. He also clarified the remit of Historic Scotland for Members.

The Chair enquired if plans for an extension across the back of the property would make the application more acceptable and the Planning Adviser replied that symmetry was a key part of the integrity of the house.

Councillor McNeil enquired if the applicant would be required to remove the hardstanding area should the review be refused today and the Planning Adviser replied that the applicant could submit an application for the garage, fencing and gate separately. In response to further questioning, the Planning Adviser identified each of the elevations of the house on the plan and confirmed that the proposed extension could be seen from the road.

The Chair asked if it was open to the ELLRB to uphold the Case Officer's decision in part and the Planning Adviser advised that, while it was possible in certain circumstances to refuse part of an application, it was not appropriate in this case as the extension was a major part of the application.

There being no further questions, the Chair 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.

On seeing the houses in Fidra Avenue on the site visit, Councillor McMillan was persuaded to uphold the decision of the Case Officer. He considered that the extension would be incongruous in size, form, proportion and scale and therefore contrary to policy DP6.

Councillor McNeil noted that the houses in Fidra Avenue had been built by the Council in 1919 and described them as beautiful houses in a beautiful village. He stated that the Council had a duty to protect them and he was therefore minded to uphold the decision of the Case Officer to refuse the application.

The Chair stated that he had found the site visit valuable and had also looked at the homes in Gullane referred to by the applicant, as well as the plans circulated by the Planning Adviser. He agreed that the homes in Gullane were similar to the applicant's property and had modern extensions. While that was relevant to the decision the ELLRB had to make today, two important points had to be considered; the homes in Gullane were C Listed and the applicant's property was B Listed (a higher level), and the extensions in Gullane were hidden from view. He stated that the Council was very fortunate to have B Listed houses built as Council houses and it would be difficult to give approval to any development which would detract from the character of such houses. He agreed with the Case Officer that the proposed extension would not serve to enhance the character and appearance of the house and would be contrary to policy 1B.

Decision

The ELLRB unanimously agreed to uphold the decision of the Case Officer to refuse the application for the reason stated in the Decision Notice dated 18 November 2016.

1. The proposed extension would not, due to its position on the east side and rear (south) elevations of the house, be in keeping with the symmetrically designed, and distinctively unaltered, east side and rear (south) elevations of the house or of the adjoining house of 12 Fidra Avenue to the east to which the pair of houses are seen as one. It would be markedly at odds with the architectural design and layout of the built form of the group of similarly designed houses, which are listed as being of special architectural or historic interest (Category B). It would not serve to preserve or enhance, but instead, would harm the character, integrity and appearance of the house as a building listed of special architectural or historic interest. It would be harmful to the character and appearance of this part of the Dirleton Conservation Area contrary to Policy 1B (The Spatial Strategy: Development Principles) of the approved South East Scotland Strategic Development Plan (SESplan) and Policies ENV3, ENV4 and DP6 of the adopted East Lothian Local Plan 2008 and with Scottish Planning Policy: June 2014.

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

3. PLANNING APPLICATION 16/00730/P – REVIEW AGAINST DECISION (REFUSAL) PROPOSED DEMOLITION OF EXISTING GARAGE AND EXTENSION TO MAKE WAY FOR NEW 2-STOREY EXTENSION AT 20 BURNSIDE, HADDINGTON

Iain McFarlane, Planning Adviser, advised that Members should give due consideration to the integrity of the original design of the house. Whilst this was of particular importance with historic properties, it was also significant when considering newer ones, particularly if the house formed part of a wider grouping of houses of a particular style. The Planning Adviser also stated that, whilst how a design looks on elevation was important, roofscape was also a key consideration, particularly if it was considered to be prominent in public views. He also stated that Members might wish to consider the proposals in the context of other alterations/extensions in the area.

The Planning Adviser stated that the Case Officer had considered that the roof of the proposed extension would be incongruous with the existing form of the house and therefore harmful to the character and appearance of the area, contrary to Policy DP6. It was for Members to decide if this was the case. He reminded Members that matters of taste should not take precedence over due consideration of whether or not the design was appropriate to the building and its place.

The Chair sought further clarification on the terms of Policy DP6 from the Planning Adviser and then proceeded to ask his fellow Members if they had sufficient information to determine this application today. They unanimously agreed to proceed.

Councillor McNeil stated that, having had the benefit of the site visit and studied the plans for the proposed extension, he considered that the proposals would look incongruous against the neighbouring property. He was therefore minded to uphold the Case Officer's decision to refuse planning consent.

Councillor McMillan had expected to see a number and variety of extensions in the area of the application site and had been surprised to find this was not the case. Having gained an appreciation of the impact the proposals would have at this location and studied the submissions, particularly Policy DP6, he was also minded to support the original decision of the Case Officer to refuse the application.

The Chair stated that it was evident on the site visit that a number of other properties with extensions had been designed in such a way that their mono-pitched roofs were integrated with the roof slopes of the property they had been added to. In his view, therefore, the Case Officer had been correct in his judgement that a mono-pitched roof on this property would look incongruous.

Decision

The ELLRB unanimously agreed to uphold the original decision of the Case Officer to refuse the application for the reason stated in the Decision Notice of 29 November 2016.

1. By virtue of its hipped roof form and lack of integration with the mono-pitched roof slope of the existing property, the proposed extension would be a prominent, imposing and obtrusive physical feature on the side elevation of the property. It would not be in keeping with the simple mono-pitched roof form of the property, and would be markedly at odds with the architectural design and layout of the built form of the row of similarly distinctively styled houses within this part of Burnside, the streetscape and the area as a whole, contrary to Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan) and Policy DP6 of the adopted East Lothian Local Plan 2008.

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

Signed

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Councillor J Goodfellow
Convener of Local Review Body (Planning)

