

REVIEW DECISION NOTICE

Decision by East Lothian Local Review Body (the “**ELLRB**”)

Application for Review by David Paton Building Consultancy on behalf of Mr and Mrs Chatham of 6 The Hawthorns, Gullane against decision by an appointed officer of East Lothian Council.

Site Address: 6 The Hawthorns, Gullane

Application Ref: 16/00973/P

Application Drawings: DWG1

16-018-002 Revision no. A

Date of Review Decision Notice: 21 September 2017

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 Thursday, 21 September 2017. The Review Body was constituted by Councillor J McMillan (Chair); Councillor L Bruce, and Councillor J Findlay, All three members of the ELLRB had attended an unaccompanied site visit in respect of this application prior to the meeting.

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

Paul Zochowski, Planning Adviser
Carlo Grilli, Legal Adviser
Fiona Stewart, Clerk.

2. Proposal

- 2.1. The planning application is for Planning Permission in Principle for the erection of one house at 6 The Hawthorns, Gullane.
- 2.2. The planning application was registered on 2 December 2016 and was refused under delegated powers on 2 June 2017. The notice of review is dated 1 August 2017.
- 2.3. The reasons for refusal are set out in full in the Decision Notice and are, in summary, that the placing of a house on the western part of the application site that, due to their visual significance as a group with the other trees within the wider landscape setting of Gullane, make a significant positive contribution to the landscape setting and amenity of the area, and thus their removal from the site would have a detrimental visual impact on the landscape character and appearance of the area. Consequently the principle of the erection of a house on the application site conflicts with Policies DP7, DP14 and NH5 of the adopted East Lothian Plan 2008, and with Scottish Planning Policy: June 2014.

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 2 June 2017
5	Copies of Policy 1B (The Spatial Strategy: Development Principles) of the approved South East Scotland Strategic Development Plan (SES Plan) and Policies DP7, DP14 and NH5 of the adopted East Lothian Plan 2008
6	Notice of Review dated 1 August 2017 together with Applicant's Submission with supporting statement and associated documents.

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. It was also noted that within the Notice of Review the applicant had included a written request for a hearing. The ELLRB confirmed it was at their discretion whether a hearing would be permitted/required. Having considered the position the ELLRB confirmed that a hearing would not be necessary as the ELLRB had sufficient information before them to decide this matter.

- 4.2. 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 this was an application for planning permission in principle with a location shown for a house on the site in an area that was planted with trees that were the subject of a Tree Preservation Order. It was likely that a house could be satisfactorily designed for this location within the site but the main determining factor was that the placing of a house on the western part of the application site would result in the loss of trees and on the advice of the Council's Landscape Officer the trees were important in the wider landscape. This had formed the reason for refusal of the application, that the trees, due to their visual significance as a group in conjunction with the other trees within the wider landscape setting of Gullane, make a significant positive contribution to the landscape setting and amenity of the area, and thus their removal from the site would have a detrimental visual impact on the landscape character and appearance of the area.

The Members then asked questions to the Planning Advisor for further clarifications. The Members asked whether or not there was a requirement under a Tree Preservation Order (TPO) to have the trees replanted if they were removed, or died. The ELLRB was advised that unless an application was received from the applicant to the contrary then there would be an obligation for the trees to be replanted although it was noted that on occasions with group TPOs the replanting may not be in exactly the same location as the previous tree had been provided the overall character of the area was preserved. In addition, Members asked whether it was possible for the Local Authority to step in to secure the management or replanting of trees which were in poor order and protected by a TPO. The Planning Advisor confirmed that responsibility for the management of the trees subject to a TPO lay with the owner but that the Council can inspect the trees and ask for replacement planting if required and further that in a group TPO it did not preclude the Local Authority requesting replanting of trees in slightly different areas from where the trees are at present if there were good reasons to do so.

Members commented that they were aware that a further TPO to the west of the application site is currently under consultation. The members were advised that this TPO had been advertised and had received some objections therefore was unconfirmed at this stage and a decision on it would be for the Planning Committee to take in due course. Members were also advised and they noted that this future TPO would not affect the application site and as it remained to be determined was not to be considered as part of this appeal.

- 4.3. Councillor McMillan noted (i) Policy NH5: Protected Trees; (ii) Policy DP7: Infill, Backland and Garden Ground Development; and (iii) DP14: Trees on or Adjacent To Development Sites. He commented that having had a full viewing on site he was able to recognise why the applicant may wish to have a house on the garden grounds. Looking at the wider setting he had been taken by the visual impact of the wider setting of Gullane. Councillor McMillan confirmed that he had read and considered the statement from the expert on the trees submitted with the Review Notice. Having considered the matter and on balance of the evidence provided Councillor McMillan agreed with the planning officers opinion on the visual amenity of the trees.
- 4.4. Councillor Bruce agreed with Councillor McMillan and referring to Policy DP7 part 4 felt that the trees were an important natural and physical feature. He noted that there was a beautiful view from the golf course and the trees were part of it. Councillor Bruce confirmed that he was refusing the appeal.

- 4.5. Councillor J Findlay was of the view that there would remain some existing trees in the area which would remain covered within the ambit of the various TPOs currently affecting the area. As a consequence Councillor Findlay did not feel the loss of the particular trees within the application site would be a detrimental loss due to the remaining trees left in the surrounding area and commented that a house might improve the situation if the same number of trees as those cut down were replaced and he would recommend this. Accordingly Councillor Findlay confirmed that he was supporting the appeal.

Accordingly, the ELLRB decided 2 to 1 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 dated 2 June 2017.

The Review Application was accordingly dismissed.

Carlo Grilli
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.