



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

**THURSDAY 15 MARCH 2018
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON**

Committee Members Present:

Councillor B Small (Chair)
Councillor L Bruce
Councillor F O'Donnell

Advisers to the Local Review Body:

Mr L Taylor, Planning Adviser to the LRB
Mr C Grilli, Legal Adviser/Clerk to the LRB

Others Present

None

Committee Clerk:

Mrs F Stewart

Declarations of Interest

None

Apologies

Councillor Trotter

Councillor Small, elected to chair the meeting by his colleagues, welcomed everyone to the meeting of the East Lothian Local Review Body (ELLRB).

A site visit had been carried out for the one planning application on the agenda prior to the meeting.

**1. PLANNING APPLICATION 17/00528/P – REVIEW AGAINST DECISION
CHANGE OF USE OF AGRICULTURAL LAND TO DOMESTIC GARDEN
GROUND, ERECTION OF FENCING AND WALL (PART RETROSPECTIVE)
AT 1 AND 2 ROSE BANK, SETON MAINS, LONGNIDDRY**

The Chair invited the Planning Adviser, who had had no involvement in the original decision, to present a summary of the planning policy considerations in this case.

The Planning Adviser stated that the planning application related to land approximately 0.14 ha. in area which previously lay beyond the eastern garden boundaries of residential properties known as 1 and 2 Rose Bank, Seton Mains. This land was designated in the East Lothian Local Plan 2008 as being within a DC1 (countryside) area, outside the defined settlement boundary of Seton Mains. This small settlement, situated between Port Seton and Longniddry, was surrounded by agricultural land which provided clearly defined settlement edges. The change of use occurred when an area of this land was brought into use as garden ground at both 1 and 2 Rose Bank. A new post and wire fence had been erected to define a new eastern garden boundary and a new 2m high rubble wall had been erected to separate the plots.

The Planning Adviser advised that the two dwellings had been the subject of planning application 05/00156/FUL, granted in April 2005. This application had proposed building the dwellings within the eastern edge of the red boundary line. The land to the east of this was in the ownership of the applicant but was intended to remain outside the gardens of both 1 and 2 Rose Bank. The Case Officer had considered that the plots were able to accommodate the buildings, access and parking, and that the plots provided adequate garden ground. Planning permission had been granted subject to the land, which is the subject of this application, remaining as agricultural land, as it was important to retain a separation between the new dwellings, the settlement edge, and the field beyond. A condition had been attached to the planning consent to ensure that a post and wire fence was erected on the eastern edge to define the garden boundary and to prevent encroachment of garden ground into the countryside.

The Planning Adviser advised that the Case Officer had determined, that whilst the post and wire fencing itself did not conflict with Local Plan Policy, the change of use of the agricultural land to domestic garden ground had resulted in a prejudicial encroachment into the countryside, with harmful impact on landscape character and visual amenity, contrary to policy DC1 of the Local Plan 2008. The Case Officer had also considered that the erection of a rubble wall beyond the established garden grounds (within land subject to this application) was an unacceptable and intrusive addition to the landscape of the eastern edge of Seton Mains, and was out of keeping with the character of the area, contrary to policy DC1 and DP2 of the Local Plan 2008. The proposal would also set a precedent for further encroachment into the countryside. A previous application (14/00494/P) for a change of use of agricultural land to domestic garden ground at Plot 2 (northernmost) had been refused by Officers

and enforcement action was taken. Officers also recommended enforcement action if the review today was not upheld. A further application (16/00058/P) for a change of use to domestic garden ground for both plots (a larger area than the application being considered today) was also refused by Officers, a decision that was upheld by the Local Review Body in September 2016.

Finally, the Planning Adviser stated that the Examination Report on the proposed Local Development Plan (LDP) had now been issued. The LDP had been subject to a previously unresolved representation regarding the boundary of Seton Mains settlement and this representation has now been resolved. There had been no material change in planning policy terms since this application was determined and the Reporter for the LDP had agreed with East Lothian Council that the defined settlement boundary of Seton Mains should be maintained and that proposals for encroachment of garden ground into the open countryside should be resisted.

The Chair invited questions for the Planning Adviser.

Councillor O'Donnell asked, in the event that the Case Officer's decision was upheld today, if the applicant would have access to the ground outside the defined settlement boundary and the Planning Adviser replied that there would be no restrictions to access; the principle was that the land could not be used as garden ground. Councillor O'Donnell also sought clarification on what evidence was needed by local authorities before a planning application could be refused on the grounds of adverse precedent. She also asked if it was possible to impose a condition prohibiting construction on the land outwith the boundary of the plots and the Planning Adviser confirmed that it was open to Members to impose such a condition. In response to further questions, the Planning Adviser stated that Scottish Planning Policy seeks to only allocate land for development which would not result in the loss of character to the area. Residential developments in the countryside were generally considered unacceptable.

Councillor Bruce enquired if decisions with regard to 'visual amenity' were simply judgement calls and the Planning Adviser replied that judgement was based on an assessment of planning policy DP1 and DP2. Councillor Bruce asked if the Case Officer's decision was based on the relationship between the size of the properties and the area of land, and the Planning Adviser stated that, when assessing planning applications, an Officer will assess if the application complies with design policies and consider if the area of garden ground is appropriate.

The Chair noted the footprint of the properties within the garden area and received clarification from the Planning Adviser on the boundary lines shown on the plans.

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

Councillor O'Donnell stated that the planning advice not to alter the defined boundary of the garden was compelling and she was concerned that upholding the review would set a precedent. Having established that the applicant would still have access to the land beyond the boundary of the garden, Councillor O'Donnell was minded to uphold the original decision of the Case Officer.

Councillor Bruce agreed with his colleague. As the proposals were contrary to planning policy, he too was minded to uphold the original decision.

The Chair was similarly minded. He had not been persuaded to disregard planning policy and had concerns regarding the retrospective nature of the application. He stated that the family would still have access to the land beyond the garden boundary.

Decision

The ELLRB unanimously agreed to uphold the decision of the Planning Officer for the reasons set out in the original Decision Notice dated 13 October 2017.

Signed

Councillor B Small
Convener of Local Review Body (Planning)