

REVIEW DECISION NOTICE

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

Application for Review by Mr Altar Mohammed against decision by an appointed officer of East Lothian Council

Site Address: 1 and 2 Rose Bank, Seton Mains, Longniddry

Application Ref: 17/00528/P

Application Drawing: DWG1; SK-01 Rev C; DWG2; DWG3; and DWG4

Date of Review Decision Notice: 15 October 2018

Decision

The ELLRB unanimously 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, 15 March 2018. The Review Body was constituted by Councillor B Small (Chair); Councillor L Bruce, and Councillor F O'Donnell. All three members of the ELLRB had attended an accompanied 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:-

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

2. Proposal

- 2.1. The planning application is for the change of use of Agricultural Land to Domestic Garden Ground and Erection of Fencing and Stone Wall (Retrospective).
- 2.2. The planning application was registered on 16 August 2017 and was refused under delegated powers on 13 October 2017. The notice of review is dated 9 January 2018.
- 2.3. The reasons for refusal are set out in full in the Decision Notice and are, in summary, that:
- 2.3.1. The effect of the change of use of the agricultural land to residential garden ground would be a prejudicial encroachment of the well-defined settlement boundary that is an intrusive and incongruous encroachment of the residential use of Seton Mains into the countryside that serves as the defined edge and setting of Seton Mains, in a manner harmful to the landscape character and visual amenity of the landscape to the east of Seton Mains. There are no special circumstances that would give justification for such expansion of Seton Mains onto land that is not identified for residential use and development. Accordingly the proposal is not consistent with Policy DC1 of the adopted East Lothian Local Plan 2008.
- 2.3.2. To grant planning permission for the change of use would establish a precedent whereby it would be difficult for the Council, as Planning Authority, to refuse to grant planning permission for other encroachment of the settlement of Seton Mains into the countryside that conflicts with the Council's planning policies for the control of development in the countryside.
- 2.3.3. By virtue of its positioning, height, form and finish the 2.0 metres high rubble stone wall that has been erected along the dividing boundary between the gardens of the two houses of 1 and 2 Rose Bank and which extends from the eastern approved edge of those gardens to the east boundary of the land in the ownership of the applicant is an intrusive addition to the landscape of the eastern edge of Seton Mains that is out of keeping with and harmful to the landscape character of the area, and contrary to Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan) and Policies DC1 (Part 5) and DP2 of the adopted East Lothian Local Plan 2008.

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 registered on 16 August 2017
3	The Appointed Officer's Report of Handling
4	A copy of the Decision Notice dated 13 October 2017
5	Copies of Policy 1B (The Spatial Strategy: Development Principles) of the approved South East Scotland Strategic Development Plan (SES Plan) and Policies ENV1, DC1 and DP2 (Design) of the adopted East Lothian Local Plan 2008.
6	Notice of Review dated 9 January 2018 together with Applicant's Submission with supporting statement and associated documents.

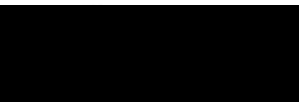
4. Findings and Conclusions

- 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.
- 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 the whole of Seton Mains is covered by Policy ENV1. He stated that, in determining this application, Officers considered that the effect of the change of use from agricultural land to residential garden ground would be a prejudicial encroachment of the residential use of Seton Mains into the countryside.
- 4.3. Councillor O'Donnell confirmed that she would be concerned in setting a precedent, and as the residents could still have use of this area, but not as garden ground, she supported the Planning Officer's decision and accordingly was minded to refuse the appeal.
- 4.4. Councillor Bruce agreed with Councillor O'Donnell's comments and was supportive of the Planning Officer's decision. He too was therefore minded to refuse the appeal.
- 4.5. Councillor Small (Chair) then commented that the family would still have access to the land and could use this in other ways. He noted that this application had been submitted in relation to works already carried out and therefore this application was seeking retrospective consent. He stated that policies were in place for a reason and, unless there is justified reason presented, this body should not be expected to approve actions retrospectively. As there are clear policies in place, and insufficient evidence in these circumstances to overturn the decision of the Planning Officer, he too was minded to uphold the Planning Officer's decision to refuse the appeal.

Accordingly, the ELLRB unanimously agreed to uphold the original decision to refuse the application for the reasons set out in the original Decision Notice of 13 October 2017.

The ELLRB also instructed that an Enforcement Notice was issued requiring the applicant to cease the use of the land as domestic garden ground and to remove the stone wall dividing the properties between the extended garden grounds, returning the land to its former status.

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.