

REVIEW DECISION NOTICE

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

Application for Review by Hallhill Developments Limited per EMA Architecture and Design ,42 Charlotte Square, Edinburgh, EH2 4HQ against decision (refusal) by an appointed officer of East Lothian Council

Site Address: Land at North East of Spott Roundabout, Dunbar, East Lothian

Application Ref: 17/00292/P

Application Drawings: Drawing No. 17_00292_P
Drawing No. 12023(OS)001-B;
Drawing No. 12023_OS_002;
Drawing No. 12023_PL_001_C;
Drawing No. 12023_PL_002_C
Drawing No. 12023_PL_003_B
Drawing No. 12023_PL_010_A; and
Drawing No. 12023_REP_001_C

In addition to the above drawings the applicant submitted the following drawings to Scottish Ministers. These drawings altered the sculpture layout and allowed the sculpture to be viewed in the context of the overall development.

Drawing No. 12023(PL)003 - E (dated 18/6/18);

Drawing No. 12023(PL)004 - A (dated 22/6/18);

Drawing No. 12023(PL)002 – E (dated 18/6/18).

Date of Review Decision Notice: 16 October 2018

Decision

The ELLRB, subject to Scottish Ministers Consent and such consent has been given, unanimously overturned the decision to refuse planning permission for the reasons given below and upholds 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, 16 November 2017. The Review Body was constituted by Councillor N Hampshire (Chair); Councillor S Currie, Councillor J Findlay and Councillor S Kempson, All four 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:-

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

2. Proposal

2.1. The planning application is for erection of sculpture, formation of footpath, mound and associated works on an area of land at North East of Spott Roundabout, Dunbar, East Lothian.

2.2. The planning application was registered on 12 April 2017 and was refused under delegated powers on 1 June 2017. The notice of review is dated 7 September 2017.

2.3. The reasons for refusal are set out in full in the Decision Notice and are, in summary, that the siting of the proposed sculpture, mound and footpaths could result in inappropriate parking which would interfere with the safety and free flow of traffic on the A1 Trunk Road. Therefore given the potential hazard inappropriate parking could cause on the A1 Trunk Road the proposed development would detrimentally impact upon highway safety in this area contrary to Policy T2 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 was registered on 12 th April 2017
3.	The Appointed Officer's Report of Handling dated 1 June 2017
4.	A copy of the Decision Notice dated 9 June 2017
5.	Copies of the Strategic Development Plan Policy 1B (The Spatial Strategy: Development Principles) and policies DP2 (Design), ENV7, and T2 of the adopted East Lothian Local Plan 2008
6.	Notice of Review dated 7 September 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.
- 4.2. The Chair asked Members if they had sufficient information to proceed to determine the application today and they confirmed that they had.
- 4.3. The Members were advised by the Legal Advisor that should Members be minded to overturn the decision of the Case Officer to refuse the application, it was open to them to propose a change to the proposals. The application would then require to be referred to Scottish Ministers for approval to proceed.
- 4.4. The Members then asked the Planning Adviser to summarise the planning policy position in respect of this matter. The Planning Adviser advised that permission was being sought for the erection of an artwork on an area of land to the north off the A1 Trunk Road. The proposed steel sculpture was a 5-meter high bear symbolising Dunbar's association with the environmentalist John Muir who was born in in Dunbar. It was also proposed to form two pedestrian connections from the footpath of the northern side of the A1 trunk road to provide pedestrian access to the proposed sculpture. The Planning Adviser further stated that this planning application had been submitted to satisfy a condition attached to planning permission for the erection of 525 houses on land at Halhill, Dunbar. He also advised that two objections had been received in relation to the bear structure application and Dunbar Community Council had expressed concerns. The application had been refused by the Case Officer as he considered that the proposed development would have a detrimental impact on highway safety in the area, contrary to policy T2 of the adopted East Lothian Local Plan 2008.
- 4.5. Councillor Findlay stated that he had at first been surprised that the application had been refused, but on further scrutiny, when he noted the pedestrian paths on the A1, he had changed his view. He was in favour of having the sculpture erected but on the condition that the connecting footpaths were re-routed through the adjacent field for safety reasons.
- 4.6. Councillor Kempson stated that in her view, the sculpture could present a distraction for motorists using the A1 and therefore pose a danger. She was therefore minded to uphold the decision of the Case Officer to refuse the application.
- 4.7. Councillor Currie was in favour of the bear sculpture being erected but was of the view that the proposed footpaths for members of the public, linking the sculpture to the A1 would also encourage motorists to park on the A1 which would be dangerous. He therefore considered that a new pathway would be a more viable option. Councillor Currie stated that the sculpture had merit from a tourism point of view and cited the successful Kelpies structure and the Angel of the North. He was therefore minded to overturn the decision of the Case Officer to refuse the application. However, stressed that approval would have to be on the condition that footpaths connecting the structure with the A1 would be re-routed.

- 4.8. The Chair stated that this proposal had elicited a range of opinions in the community and this was to be expected as all artwork provokes an opinion. He advised that the artist commissioned to deliver the sculpture was a well-known Scottish artist who had designed the famous Kelpies. He was also mindful that the sculpture would provide Dunbar with a further connection to John Muir and would make more people aware of his achievements. However, he agreed with his colleagues that the proposed footpath was unacceptable. He was therefore minded to grant planning consent on the condition that the connecting path was routed through the retail park to allow safe access to the sculpture for the general public.

Accordingly, the ELLRB agreed by a majority of 3:1 to overturn the original decision of the Planning Officer and following referral to the Scottish Ministers planning permission is granted subject to the following conditions:

1. Prior to the commencement of development, full details of the treatment and colour of the steel finishing material of the sculpture shall be submitted to and approved in writing by the Council. Thereafter development shall be undertaken in accordance with the details so approved.

Reason:

In the interests of preserving the character and appearance of the area.

2. Prior to the sculpture being erected the footpath links from the sculpture to the existing footway network must be constructed to a standard which has been submitted and approved by the Planning Authority, after consultation with Transport Scotland as Trunk Roads Authority.

Reason:

To ensure that there will be no distraction to drivers on the trunk road and that the safety of the traffic on the trunk road will not be diminished

3. No development shall take place until fencing has been erected in a manner and position to be agreed with the Planning Authority, after consultation with Transport Scotland, as the Trunk Roads Authority. The fencing shall be provided and maintained by the developer or subsequent owner of the land along the boundary of the site with the trunk road.

Reason:

To ensure that there will be no distraction to drivers on the trunk road and that the safety of the traffic on the trunk road will not be diminished

16 October 2018



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.