



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

**THURSDAY 30 AUGUST 2018
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON**

Committee Members Present:

Councillor N Hampshire (Chair)
Councillor L Bruce
Councillor S Kempson
Councillor S Currie

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

Ms M Cook and Mr C Gunstone, Applicants (Item 1)
Ms J Wilson, Agent (Item 2)
Mr T Thomas, Agent (Item 3)
Mr N Millar, Planner

Committee Clerk:

Mrs F Stewart

Declarations of Interest

None

Apologies

None

Councillor Hampshire, 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 each of the four planning applications on the agenda prior to the meeting.

1. PLANNING APPLICATION 18/00364/P – REVIEW AGAINST REFUSAL CHANGE OF USE FROM AN EXISTING STUDIO OFFICE TO BECOME A 2-BEDROOM APARTMENT AT TYNINGHAME MILL, EAST LINTON

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.

Leigh Taylor, Planning Adviser, stated that the building which was the subject of this application was located to the south of Tynninghame village, within the Tynninghame Conservation Area and was Category B Listed due to its historic association with the main 'Mill House.' The proposals comprised of an internal reconfiguration to form living accommodation, some external alterations, the erection of fencing and the creation of a hard standing area, all as shown on the plans and elevation drawings.

The Planning Adviser stated that planning applications had to be determined in accordance with the Development Plan unless material considerations indicated otherwise. This Plan comprised of the Strategic Development Plan for Edinburgh and South East Scotland (SDP) and the East Lothian Local Plan 2008. The relevant SDP policies were policy 1B (The Spatial Strategy: Development Principles) and policy ENV3 (Listed Buildings). Members' attention was also drawn to the relevant policies in the proposed Local Development Plan which had been submitted to Scottish Ministers. These policies were CH1, CH2, DP2 and DP5. Also of relevance to the determination of this application was Scottish Planning Policy (June 2014). An application for Listed Building Consent had been submitted separately.

The Planning Adviser stated that, in assessing the planning application, the Case Officer had noted the planning history of the site. No public objections to the application had been received. Consultation with ELC Services including Landscape, Transportation, Contamination and Environmental Health, had resulted in no objections, although in some cases conditions were requested. Officers concluded that the proposal would not harm the character and appearance of the Conservation Area and were satisfied that minor details could be controlled through appropriate conditions. Consultation with SEPA (Scottish Environment Protection Agency) resulted in an objection being made by this Key Agency on the grounds that the building was located within a functional floodplain and not suitable for residential accommodation. The building was within an area classified as medium to high flood risk from river flooding on SEPA flood mapping. The Planning Adviser stated that a Flood Risk Assessment, submitted with the application, concluded that the proposal was at risk of a 1 in 200 year flood event and measures were proposed to protect the building from flooding. SEPA had stated in their response that they did not support the construction of informal flood defences. Scottish Planning Policy (SPP) 2014 stated that the planning system should promote flood avoidance by locating development away from functional flood plains and medium to high risk areas.

The Planning Adviser stated that the Case Officer considered it had not been demonstrated that the proposals would be free from flood risk, nor that it would be safe for ancillary residential accommodation. The Case Officer therefore considered that the proposal was contrary to SPP 2014, Policy DP16 of the adopted Local Plan 2008 and the advice from SEPA. Planning permission was subsequently refused on 19 June 2018.

The Chair thanked the Planning Adviser for his presentation and invited questions from Members. Councillor Currie asked if the proposals were acceptable in all respects except the flooding risk and the Planning Adviser confirmed that was correct. Councillor Bruce sought further clarification and asked at what point a risk became unacceptable. The Planning Adviser replied that the Planning Policy Framework in the Local Plan stated that a 0.1% risk (low-medium) was considered acceptable for most planning proposals. There was also a parameter for medium to high risk which was not advisable for certain types of development.

The Legal Adviser advised Members that, should they reach a decision to uphold the appeal, the application would need to be referred to Scottish Ministers due to the objection submitted by SEPA.

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 Currie stated that the site visit had been particularly helpful in this case. He understood how SEPA had arrived at their decision and he now had to consider if, having visited the site, that decision was proportionate and reasonable. After due consideration, he had reached the view that the flood risk identified was an acceptable risk. He was also satisfied that a substantial flood assessment commissioned by the applicants would provide them with a degree of protection. He was therefore minded to uphold the appeal.

Councillor Bruce shared the view of his colleague. Having had an opportunity to see the topography of the site, he considered that the low risk of flooding was an acceptable risk. He too was therefore minded to uphold the appeal with a condition attached to the effect that the apartment must remain part of the larger settlement of Tynninghame Mill.

Councillor Kempson was similarly minded. She understood how SEPA had reached its conclusions but, having visited the site, she was in favour of granting planning consent to the proposals.

The Chair agreed with his colleagues. He stated that the building was on the edge of a flood plane and applying a condition which would tie the building to the main mill would protect future building on that site. He also commented that the historic building had been on that site for 200 years and he had observed that the topography of the land ran in a southward direction and not in the direction of this property. He therefore considered that the very small risk of flooding was an acceptable risk and that the proposed development should be allowed to proceed.

Decision

The ELLRB unanimously agreed to overturn the original decision of the Appointed Officer and grant planning permission subject to the following conditions:

1. The timber framing of the windows, doors and panelling to be used to infill the existing window openings in the east end of the front (south) elevation of the building and otherwise as the enclosure of the open ended front (south) elevation part of the building hereby approved shall be painted or stained in accordance with a sample paint or stain to be provided for the inspection and approval of the Planning Authority prior to any paint or stain colour being applied to them. The paint or stain used shall accord with the sample so approved.

Reason:

To safeguard the special architectural or historic interest of the listed building and the character and appearance of the Conservation Area.

2. The timber screen fencing and the timber pedestrian gate hereby approved shall be painted or stained in accordance with a sample paint or stain to be provided for the inspection and approval of the Planning Authority prior to any paint or stain colour being applied to them. The paint or stain used shall accord with the sample so approved.

Reason:

To safeguard the special architectural or historic interest of the listed building and the character and appearance of the Conservation Area.

3. The ancillary residential accommodation hereby approved shall only be used for purposes incidental to the residential use and enjoyment of the dwellinghouse that is 'Tynninghame Mill', Tynninghame, East Linton and shall at no time form a separate residential unit or be used for any business, trade or other commercial use.

Reason:

To enable the Planning Authority to control the use of the development in the interests of safeguarding the character and residential amenity of the area and that of the dwellinghouse named 'Tynninghame Mill', Tynninghame, East Linton.

2. **PLANNING APPLICATION 18/00193/P – REVIEW AGAINST CONDITIONS ALTERATIONS AND EXTENSION TO FLAT TO FORM NEW ENLARGED TOWER VIEWING ROOM AT TUSCULUM, FLAT 5, 3C LINKS ROAD, NORTH BERWICK**

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.

Leigh Taylor, Planning Adviser, advised that the application sought consent for alterations and extensions to an existing top floor flat in order to form a tower viewing room. The alterations included the addition of a single storey pitched roof extension to

replace a smaller pitched roofed tower part on the centre of the building, as well as replacement cope stones to a balcony and replacement downpipe. The flat was within a two and a half storey stone building located within the North Berwick Conservation Area that had been sub-divided to form a number of residential flats.

The Planning Adviser stated that planning policies relevant to the determination of this application were Strategic Development Plan (SDP) policy 1B, and Local Plan 2008 policies ENV4 and DP6. The Case Officer had concluded that the proposed alterations would, by virtue of their scale, form, size, proportions, materials and positioning, be sympathetic to the existing building, and that they would not harm the character and appearance of the building or the surrounding area. Planning permission was therefore granted on 2 April 2018. Condition 1 of this consent required that, notwithstanding the drawings submitted with the application, the windows and door to be formed in the extension 'shall not be aluminium clad in powder coated white colour, but shall instead be of timber frame and astragal construction painted in white'. The applicant had subsequently removed the astragals from the proposals. The Case Officer's reason for applying Condition 1 was to safeguard the character and appearance of the North Berwick Conservation Area, in accordance with Local Plan policies, considering that the proposals would be significantly different to the timber window frames within the remainder of the building.

The Chair thanked the Planning Adviser for this presentation and invited questions. Councillor Bruce enquired if there were any exemptions in planning policy in relation to the height of windows or if windows subject to the policy had to be visible from ground level. The Planning Adviser replied that there were no exemptions on grounds of height; if a window was visible to the public from any distance it was classed as a visible window.

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

Councillor Currie stated that the only issue with this application was the materials to be used. He had viewed the extension from a variety of angles and, as everything had been approved (except the astragals, which had since been withdrawn from the application by the applicant), he was minded to uphold the appeal.

Councillor Bruce stated that a revised condition was suggested in the appendix to the applicant's Planning Enquiry Form. He was content to uphold the appeal subject to the revised condition which removed the astragals but retained the requirement for timber window and door frames. Councillor Kempson took the same view.

The Chair noted the proposed change to Condition 1 and he too was content to uphold the appeal subject to this change.

Decision

The ELLRB unanimously agreed to uphold the appeal and agreed a revised Condition 1 to planning consent as follows:

1. Notwithstanding that which is stated on docketed drawings the frames of the windows and door to be formed within the proposed extension hereby approved shall not be aluminium clad in a powder coated white colour but

instead shall have timber frames painted in a white colour. Prior to the commencement of development details of the timber framed windows and door shall be submitted to and approved by the Planning Authority. Development thereafter shall be carried out in accordance with the details so approved.

3. PLANNING APPLICATION 18/00299/P – REVIEW AGAINST REFUSAL ERECTION OF HOUSE AND ASSOCIATED WORKS AT GATESIDE, HILL ROAD, GULLANE

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 application sought consent for the erection of a detached dwelling house to the south of Gateside, Hill Road, Gullane. The property was located between Hill Road and Nisbet Road, within the Gullane Conservation Area. The appearance of the house would be as shown on the plans and elevation drawings with access from Nisbet Road. Surrounding the property were various other residential dwellings set within large garden grounds relating to the original mansion house style, with some examples of cottages of smaller scale.

The Planning Adviser advised that the planning policies relevant to the determination of this application were policy 1B of the Strategic Development Plan for Edinburgh and South East Scotland, and Local Plan 2008 policies ENV1, ENV4, DP1, DP2, DP7, DP13, DP22, NH5, T1 and T2. In considering the application, the Case Officer had noted the planning history of the site. Two letters of objection had been received during the public consultation process.

The Planning Adviser stated that, in assessing the proposal, the Case Officer concluded that the proposal would have an unacceptable impact on the character of the Gullane Conservation Area, both in terms of the subdivision of the plot, and the scale, layout and density of the proposed house, which was deemed to not be sympathetic to its surroundings. He also considered that the proposal could not be built without a significant impact upon existing trees which were an important landscape feature of the Conservation Area. Furthermore, the proposal, if granted, would set an undesirable precedent for similar types of development in the Gullane Conservation Area. Planning permission was subsequently refused on the 19 May 2018.

The Chair thanked the Planning Adviser for his presentation and invited questions. Councillor Currie asked why an application such as this was not deemed acceptable by planners when there were similar developments in the locality. The Planning Adviser replied that, material to each application, was the size and proposed subdivision of the plot and constraints unique to each property. Councillor Bruce asked if there were any Tree Protection Orders (TPOs) in force on this property and was advised that there were none.

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

Councillor Bruce stated that he could see no reason to disagree with the decision of the Case Officer, particularly as the property was in the Conservation Area. He was therefore minded to uphold the original decision to refuse the application. Councillor Kempson was similarly minded and stated that the proposals would change the character of the area.

Councillor Currie stated it had been difficult to reach a decision on this application. There had been similar developments on Hill Road and he needed to judge how imposing the applicant's proposals were in the context of existing developments. He accepted that the proposals would have an impact, but he had to form a judgement to what degree. He understood that the application was not in accordance with planning policy but, equally, similar developments had received approval. It was his considered view that the proposals would not be completely out of character with neighbouring properties and he was therefore minded to uphold the appeal.

Walking around the site, the Chair advised that he had seen a wide range of developments. The additional development here had been in the rear garden to the north whilst in neighbouring properties, the additional development had been to the south. He had some concern over the trees which would be lost but was satisfied that a condition attached to consent would ensure that trees were planted to replace those that were lost. He was therefore minded to uphold the appeal.

Decision

The ELLRB agreed to uphold the appeal by 3:2 with the casting vote of the Chair subject to the following conditions:

1. Site Setting Out Details:

No development shall take place on site unless and until final site setting out details have been submitted to and approved by the Planning Authority.

The above mentioned details shall include a final site setting-out drawing to a scale of not less than 1:200, giving:

- a. the position within the application site of all elements of the proposed development and position of adjoining land and buildings;
- b. finished ground and floor levels of the development relative to existing ground levels of the site and of adjoining land and building(s). The levels shall be shown in relation to an Ordnance Bench Mark or Temporary Bench Mark from which the Planning Authority can take measurements and shall be shown on the drawing; and
- c. the ridge height of the proposed buildings; shown in relation to the finished ground and floor levels on the site.

Reason:

To enable the Planning Authority to control the development of the site in the interests of the amenity of the area.

2. External Finishes:

A detailed specification and samples, including colours, of all external finishes of the roof and walls of the house hereby approved shall be submitted to and approved by

the Planning Authority prior to the use of the finishes in the development. Thereafter the external finishes used shall accord with the details so approved.

Reason:

To ensure the development is of a satisfactory appearance in the interest of the character and appearance of the area.

3. Colour of fence and Gates:

The fences and gates hereby approved shall be a painted or stained a colour or colours to be submitted to and approved by the Planning Authority. Thereafter the fences and gates shall be painted the colour(s) so approved unless otherwise agreed in writing by the Planning Authority.

Reason:

To safeguard the character and appearance of the Conservation Area.

4. Hardsurfaces:

Samples of the surface finishes to be used to surface the hardstanding areas to be used as driveway, vehicle parking, footpaths and patios shall be provided for the inspection and approval of the Planning Authority prior to the use of such ground surfacings within the development, and thereafter, the ground surfacings used shall accord with the samples so approved.

Reason:

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

5. Obscure glazing

Prior to the occupation of the house hereby approved the 3 roof windows on the rear (north) elevation of the house shall be obscurely glazed in accordance with a detail of the obscure glazing to be submitted to and approved by the Planning Authority.

Reason:

To safeguard the residential amenity of the neighbouring residential property to the north.

6. Tree Retention

No trees or shrubs, which are to be retained on the site, shall be damaged or uprooted, felled, topped, lopped or interfered with in any manner without the previous written consent of the Planning Authority.

Reason:

In the interests of safeguarding the landscape character of the area and the character and appearance of the Conservation area.

7. Tree Protection and Construction Exclusion Zone

No development shall take place on site until temporary protective fencing in accordance with Figure 2 of British Standard 5837_2012 "Trees in relation to design, demolition and construction" has been installed, approved by the arboriculturist and confirmed in writing by the Planning Authority. The fencing shall be fixed in to the ground to withstand accidental impact from machinery, erected prior to site start and retained on site and intact through to completion of development. The position of this fencing shall be positioned outwith the Root Protection Area (RPA) as defined by BS5837:2012 for all trees retained on and adjacent to the site, and approved in writing by the Planning Authority.

All weather notices shall be erected on said fencing with words such as "Construction exclusion zone - Keep out". Within the fenced off areas creating the Construction Exclusion Zones the following prohibitions must apply:-

- No vehicular or plant access
- **No raising or lowering of the existing ground level**
- **No formation of walls or related foundations**
- No mechanical digging or scraping
- No storage of temporary buildings, plant, equipment, materials or soil
- No hand digging
- No lighting of fires
- No handling discharge or spillage of any chemical substance, including cement washings

Planning of site operations shall take sufficient account of wide loads, tall loads and plant with booms, jibs and counterweights (including drilling rigs), in order that they can operate without coming into contact with retained trees.

Details of any trenches or services in the fenced off areas shall require the prior consent of the Planning Authority and all trenches shall be dug and backfilled by hand and any tree roots encountered with a diameter of 25mm or more shall be left unsevered.

Any surfacing within the Root Protection Area shall be carried out in strict accordance with section 7.4 of BS5837: 2012 "Trees in relation to design, demolition and construction - Recommendations".

Holes for fence posts shall be dug and backfilled by hand and repositioned as required to minimise damage to tree roots. Any tree roots encountered with a diameter of 25mm or more shall be left unsevered.

Reason:

In the interests of safeguarding the landscape character of the area and the character and appearance of the Conservation area.

8. Tree Work

All tree work shall be carried out in accordance with BS3998:2010 'Recommendations for Tree Work' and must be approved in writing by the Planning Authority before work is carried out.

No development shall take place on site until a person who has, through relevant education, training and experience, gained recognised qualifications and expertise in the field of trees in relation to construction, been employed by the developer to monitor:

- the installation and position of the temporary protective fencing
- operations relating to the surface treatments of the driveway and parking areas within the tree root protection areas
- tree removals
- fence construction within the tree root protection areas.

Reason:

To safeguard the health and vitality of the trees in the interests of safeguarding the landscape character of the area and the character and appearance of the Conservation area.

9. Construction Access

The only construction access to the site shall be taken along the line of the proposed driveway and temporary protective fencing should be erected at the edges of the proposed drive in accordance with figure 2 of BS5837: 2012 – "Trees in relation to design, demolition and construction ~ Recommendations" for the duration of construction work on site in order to minimise damage to the existing trees.

Reason:

To safeguard the trees in the interests of preserving the character and appearance of the Conservation Area.

**4 PLANNING APPLICATION 18/00315/P – REVIEW AGAINST REFUSAL
INSTALLATION OF REPLACEMENT WINDOWS AND DOORS AT 11
ELCHO TERRACE, ABERLADY**

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 application sought consent for the installation of replacement windows and doors on various elevations at 11 Elcho Terrace, Aberlady, a single storey semi-detached house located within the Aberlady Conservation Area. He advised that the planning policies relevant to the determination of this application were SDP policy 1B, Local Plan 2008 policies ENV4 and DP8, and Scottish Planning Policy 2014. The proposal sought to replace existing brown timber framed windows with white uPVC windows, and the replacement of timber framed and panelled doors with mostly glazed white uPVC doors.

The Planning Adviser stated that the application had been refused by the Case Officer on the grounds that the proposal would, by virtue of the size, scale, proportion, opening method and construction material of replacement windows frames and front door, be detrimental to the character and appearance of the Aberlady Conservation Area, contrary to Local Plan 2008 policies ENV4 and DP6 and Scottish Planning Policy 2014. Policy DP8 of the Local Plan 2008 states that the replacement of windows will only be permitted where the design and construction does not harm the character and appearance of the building and its surroundings, and for buildings in conservation areas, the replacement windows had to preserve or enhance the special architectural or historic character.

The Chair thanked the Planning Adviser for his presentation and invited questions. Councillor Currie stated that, on the site visit, he could see homes being constructed in the field next to the applicant's property. He understood that the window frames on these houses would not be timber and presumed that the field was not in the Conservation Area. The Planning Adviser confirmed that the field was outwith the Conservation Area.

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

The Chair stated that Councillors have a duty to protect Conservation Areas as much as possible. However, on the site visit, it was clear that almost half the properties in this street had uPVC window frames, some possibly without consent, but others would have been installed before the Conservation Area had been established (prior to 2001). In view of this, he found it difficult to strictly enforce current planning policy to this particular property. He was therefore minded to uphold the appeal.

Councillor Bruce had also observed a number of properties in the street which had uPVC window frames. With this in mind, and the fact that the property in question was located at the end of the street and not in the centre of the Conservation Area, he considered that the proposed replacement windows would not have a detrimental impact on the Conservation Area. Councillor Kempson agreed with this view.

Councillor Currie was of the view that common sense needed to be applied in this case. Dozens of homes in the neighbouring field were being constructed using uPVC window frames and doors. He was therefore minded to uphold the appeal and gave the applicants credit for engaging with the planning process.

Decision

The ELLRB unanimously agreed to uphold the appeal.

Signed

Councillor N Hampshire
Convener of Local Review Body (Planning)