

REVIEW DECISION NOTICE

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

Application for Review by Julian Frostwick on behalf of Mr and Mrs Herd of Craigour, Broadgait, Gullane against refusal of Planning Permission for the erection of One House and Associated Works.

Site Address: Craigour, Broadgait, Gullane

Application Ref: 18/00591/P

Application Drawing: AL(0)100 Revision A;

AL(0)01

AL(0)02

TREE SURVEY

Date of Review Decision Notice: 7 December 2018

Decision

The ELLRB following a vote made the decision to uphold the review and approve planning permission subject to conditions for the reasons given below.

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 November 2018. The Review Body was constituted by Councillor W Innes (Chair); Councillor J Findlay, and Councillor N Gilbert. 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 erection of the erection of One House and Associated Works.
- 2.2. The planning application was registered on 11 June 2018 and was refused under delegated powers on 26 July 2018. The notice of review is dated 30 August 2018.
- 2.3. The reasons for the condition are set out in full in the Decision Notice and are, in summary, that:

The placing of a house on the application site would result in the loss of trees from 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 and would undermine and erode the purpose and integrity of Tree Preservation Order No. 135.

Moreover, it has not been demonstrated that the proposed house could be built without significant detriment to the existing trees and shrubs that are an important landscape feature of this part of Broadgait and within the wider landscape setting of Gullane, and which are protected by Tree Preservation Order No. 135. More of the trees on the site would be impacted by the development than included for removal in the proposals and the proposed development does not conform to British Standard BS5837:2012 'Trees in relation to design, demolition and construction'.

Given the proximity of the trees on the site to the proposed house, including the large significant sycamore and lime trees, and the lack of unshaded and usable garden ground proposed within the site, the trees to be retained would come under significant pressure for felling and tree work to try to create usable amenity space, improve light into the building and to address concerns over perceived safety.

Therefore, the proposals conflict with Policies DP14 (Trees on or Adjacent to Development Sites), NH5 (Protected Trees) and DP7 (Infill, Backland and Garden Ground Development) of the adopted East Lothian Local 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 registered on 11 June 2018
3	The Appointed Officer's Report of Handling
4	A copy of the Decision Notice dated 26 July 2018
5	Local Plan 2008 policies: DP2 (Design) DP7 (Infill, Backland and Garden Ground Development), DP14 (Trees on or Adjacent to Development Sites) DP22 (Private Parking) NH5 (Protected Trees) T2 (General Transport Impact) Proposed Local Development Plan policies: RCA1 (Residential Character and Amenity) DP2 (Design) DP7 (Infill, Backland and Garden Ground Development) NH8 (Trees and Development) T2 (General Transport Impact)
6	Notice of Review dated 30 August 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 decision to refuse planning permission 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 grant planning permission subject to the condition, 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 second item today is a review against the refusal of planning permission 18/00591/P that sought consent for the erection of a detached dwelling within the garden ground of Craigour, Broadgait, Gullane. The application site is located within a predominantly residential area of Gullane. It also contains a number of trees protected by Tree Preservation Orders 135. Relevant to the determination of this application were Local Plan 2008 policies DP2, DP7, DP14, NH5 and T2. Also relevant were at that time proposed LDP policies RCA1, DP2, DP7, NH8 and T2. The planning application proposed to construct a two storey detached house accessible via the existing entrance from Broadgait. In considering the proposal, Officers also noted the planning history of the site whereby one three separate occasions (these being December 2014, March 2017 and June 2017), applications for planning permission have been submitted seeking consent for a new

dwelling. Through discussions on these applications, each one was subsequently withdrawn before being determined. In 2016, ELC secured a Tree Preservation Order (TPO 135) for a number of trees within the application site and adjacent plots. ELC has previously consented to the felling of trees T617, T618, T619, and T620. It was however a condition that replanting was carried out. This has been provided on the site although the locations of these replacement trees were not agreed with ELC. To allow for the proposed new house, two additional protected trees would require felling (T621 and T622). Consultation with ELC Landscape resulted in an objection to the proposal. ELC Landscape do not consider the removal of T622 to be acceptable in order to accommodate the new house, being contrary to policy DP14 which sets out the reasons when tree removal may be acceptable (including where development contributes more to the good planning of an area than the retention of the trees)

ELC Landscape also raised concerns over the impact of the proposal on trees T611 and T612 and 6 other tagged trees which could be damaged during the construction process. In particular T611 and T612 could be damaged by large vehicles accessing the site and, relating to most of these trees (5/6 which are grade A under relevant British Standard) through proposed excavations in the root protection areas. These matters were not felt to be addressed through the Technical Report submitted with the application. ELC Landscape also raised general concerns over the cumulative loss of trees on the site both as a result of the current proposal and from previous felling of four protected trees covered by TPO 135. Furthermore, laying of services required to serve the new house could have further implications for protected trees as a general principle, nothing should be built in the root protection area of these trees. Officers concluded that whilst the proposed dwelling would not have a detrimental impact on the amenity of neighbouring properties, the placing of a house in this location would have significant impact upon the group of trees on the site that are visually significant as a group within this site, and also contribute significantly to the landscape and visual amenity of this part of Gullane.

Officers concluded that whilst consent has been granted for works to remove trees protected by the Tree Preservation Order to fell in total four trees on the site over a number of years, it was a condition of these works that replacement trees were planted in similar locations. Whilst the site now appears to be relatively open and capable of accommodating the new house, once all the replacement planting is carried out as required, these replacement trees (together with others to be retained under the TPO 135) will come under significant pressure for pruning and eventual felling. This is due to the lack of useable unshaded garden ground to serve the proposed new dwelling and in attempts to allow more light to enter the building.

In conclusion, Officers determined that it had not been demonstrated through adequate technical details that the proposed development could be carried out without damage to or loss of protected trees which are required to be retained on the site, and that the site could accommodate a dwelling without significant amenity issues. Planning permission was refused on the 26th July 2018

- 4.3. Councillor Gilbert commented that the area had been a green area for a considerable time and if permitted would be detrimental to the area. The current trees have not been planted in a similar area as required in the legislation but were planted with a view of making this application easier. Therefore he was minded to refuse this application.

- 4.4. Councillor Findlay was of the view that there was only one tree at issue here which was the Himalayan Birch. He did not feel this was an indigenous tree to the Gullane area and that its stature was insignificant in this situation. He further commented that if it were replaced or replanted within the site he saw no detrimental effect. Councillor Findlay was accordingly minded to uphold the appeal subject to conditions.
- 4.5. The Chair commented that while trees are important in this case he was minded to agree with Councillor Findlay. Accordingly he was minded to approve the appeal subject to conditions.

Accordingly, following a vote with two members for the application and one against the ELLRB decided that the appeal should be upheld and planning permission approved subject to the condition set out below:

Conditions:

1. 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 house 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. Prior to the new house hereby approved being brought into use, the vehicle access, turning and parking arrangements for the new house and the formation of the new vehicular access and parking arrangements for the existing house of Craighour shall have been formed in their entirety and made available for use as shown on drawing no. AL(0)100 Rev A docketed to this grant of planning permission, and thereafter the access, turning and parking areas for the existing and proposed houses shall be retained for such uses and kept free from obstruction.

Prior to any use being made of the existing vehicular access and the proposed vehicular access hereby approved a visibility splay of at least 2.5 metres by 70 metres in both directions as defined by: a) a line 2.5 metres long measured along the access road from the nearside edge of the main road carriageway; b) a line 70 metres long measured along the nearside edge of the main road carriageway from the centre of the access road in both directions and c) a straight line joining the termination of the above two lines, shall be provided for each of the two vehicular accesses and thereafter the visibility splay at each of the two vehicular accesses shall be maintained. No obstruction shall lie within each of the visibility splays above a height of 1.05 metres measured from the level of the carriageway of the adjacent public road.

Prior to any use being made of the existing vehicular access and the proposed vehicular access hereby approved the first 2 metres of land measured from the back edge of the adjacent carriageway of the public road and of the full width of each of the two accesses shall be hardsurfaced and thereafter retained as such.

No use shall be made of the driveways for the new house hereby approved or the driveway for the house of Craigour if any gates erected across the junction of those driveways with the public road are installed so as to open outwards towards the adjacent public road.

Reason: To ensure a safe means of access and a satisfactory level of car parking and turning provision to serve the house hereby approved and the existing house of Craigour in the interests of road safety.

- 3 A schedule of materials and finishes, including the colour(s) of such finishes, for the roof, walls, windows and external doors of the house has been submitted to and approved in advance in writing by the Planning Authority prior to the use of such materials and finishes in the development hereby approved, and thereafter the materials and finishes used shall accord with the details so approved.

Reason: To enable the Planning Authority to control the materials, finishes and colour to be used to achieve a development of good quality and appearance in the interest of the visual amenity of the area.

- 4 Details and a sample(s) of the surface materials of the hardstanding areas in the form of the driveway and footpaths of the new house hereby approved and the new driveway of the existing house of Craigour also hereby approved shall be submitted to and approved in advance in writing by the Planning Authority prior to their use in the development hereby approved. Thereafter, the surfacing materials used to surface the driveways and footpaths shall accord with the details and sample(s) so approved.

Reason: In the interests of safeguarding the character and visual amenity of the area.

- 5 Prior to the occupation of the house hereby approved a 1.8 metres high close boarded timber fence shall be erected on the north boundary of the site, extending from the east boundary of the site to the east side of the two on-site parking spaces, in accordance with details shown for it on drawing no. AL(0)100 Rev A docketed to this grant of planning permission. Thereafter, that length of 1.8 metres high close boarded timber fencing shall be retained in situ at that height, unless replaced with an alternative means of boundary enclosure (i.e. fence, wall, hedge) that would be of equal height, length and as solid or dense in form as the fence it has replaced. Such alternative boundary enclosure shall be erected or maintained in place in accordance with details of it to be submitted for the prior inspection and approval of the Planning Authority. That alternative means of enclosure shall thereafter remain in place in accordance with such details approved unless otherwise approved in writing by the Planning Authority. If the alternative means of enclosure is hedging, then in the event that such hedging dies, is removed, or becomes seriously damaged or diseased within a period of 10 years following its approval it shall be replaced in the next planting season with new hedging of similar size and species unless otherwise approved in writing by the Planning Authority.

Reason: In the interests of preserving the amenity of the neighbouring property of Craigour to the north.

- 6 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended by The Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2011, or any subsequent

Order amending, revoking or re-enacting that Order, no windows or other glazed openings including roof windows shall be formed at first floor or attic level within the northwest elevation wall of the house hereby approved other than those already shown for that elevation.

Reason: In the interests of safeguarding the privacy and amenity of the neighbouring residential property of Craighour to the north.

- 7 Other than those trees to be removed from the application site as denoted on drawing no. 18521/2 of the Tree Survey and Arboricultural Implication Assessment report (dated June 2018) docketed to this grant of planning permission, no trees or bushes, which are to be retained on the site, shall be damaged or uprooted, felled, lopped or topped without the prior written consent of the Planning Authority.

Reason: To ensure the retention of vegetation important to the appearance and environment of the development.

- 8 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 a suitably qualified and experienced Arboriculturist and confirmed in writing by the Planning Authority. The temporary protective fencing shall be erected in the positions shown for it on drawing no. 18521/2 of the Tree Survey and Arboricultural Implication Assessment report (dated June 2018) docketed to this grant of planning permission, and thereafter the temporary protective fencing shall be retained in situ until completion of development. 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: (i) no vehicular or plant access; (ii) No raising or lowering of the existing ground level; (iii) No mechanical digging or scraping; (iv) No storage of temporary buildings, plant, equipment, materials or soil; (v) No hand digging; (vi) No lighting of fires; (vii) No handling discharge or spillage of any chemical substance, including cement washings. Planning of site operations should 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

Reason: To ensure the retention of vegetation important to the landscape character and appearance and environment of the development and their protection in the interests of safeguarding the landscape character of the area.

- 9 A landscape planting scheme for the planting of replacement trees and hedges on the site to mitigate for the loss of trees from the site shall be submitted for the prior written approval of the Planning Authority prior to the commencement of development on the site. Any replacement tree and hedge planting shall be carried out in the first planting and seeding season following the occupation of the house or the completion of the development, whichever is the sooner, and in the event that any such new trees and hedges die, are removed or become seriously damaged or diseased they shall be replaced in the next planting season with others of similar size and species, unless the Planning Authority give written consent to any variation.

Reason: To ensure appropriate replacement tree planting on the site in the interests of the landscape character of the area.

- 10 No development shall take place on site until a person who, through relevant education, training and experience, has gained recognised qualifications and expertise in the field of

trees in relation to construction, has been employed by the developer to inspect and monitor any work in close proximity of trees on the site, in accordance with section 4.9 (Arboricultural Supervision) of the Tree Survey and Arboricultural Implication Assessment report (dated June 2018) docketed to this grant of planning permission, and including, but not exclusively, the installation of the tree protection fencing and the construction of the driveways, parking and turning areas, hardstanding areas and the installation of services. All tree work shall be carried out in accordance with BS3998: 1989 'Recommendations for Tree Work' and must be approved in writing by the Planning Authority before work is carried out.

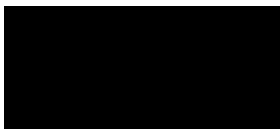
Reason: To ensure the retention of vegetation important to the landscape character and appearance and environment of the development and their protection in the interests of safeguarding the landscape character of the area.

- 11 Prior to the commencement of development on the site, details for the construction, including the use of a cellweb material, of the parking/turning area within the root protection areas of trees T611 and T612, the new driveway to serve the existing house of Craigour, and the hardstanding areas across the width of the existing vehicular access and the proposed vehicular access, as required by condition 2, shall be submitted to and approved in writing in advance by the Planning Authority, and thereafter the construction of the parking/turning area, driveway and the hardstanding areas at the existing and proposed vehicular accesses shall accord with the details so approved.

Reason: To ensure the retention of vegetation important to the landscape character and appearance and environment of the development and their protection in the interests of safeguarding the landscape character of the area.

- 12 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended by The Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2011, or any subsequent Order amending, revoking or re-enacting that Order, no development of the types specified in Part 1 of Schedule 1 of the Order or in any statutory instrument revoking and/or re-enacting that Part of the Order shall be undertaken on the new house hereby approved, or on any part of the application site, other than the development shown on the drawings docketed to this planning permission, unless with the prior approval of the Planning Authority.

Reason: In the interests of the retention of vegetation important to the landscape character and appearance and environment of the development and their protection in the interests of safeguarding the landscape character of the area.



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.