

REVIEW DECISION NOTICE

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

Application for Review by Mr and Mrs Doyle of Battleblent House, Edinburgh Road, West Barns against refusal of Planning Permission in Principle for the erection of four (4) houses and garages to the rear of the property at Battleblent House.

Site Address: Battleblent House, Edinburgh Road, West Barns EH42 1TS

Application Ref: 17/00313/PP

Application Drawing: DWG 083.IFI-P-001 rev B

DWG 083.IFI-P-001 rev G

DWG 97/1a

Date of Review Decision Notice: 29 April 2019

Decision

The ELLRB unanimously agreed to uphold the original decision of the Planning Officer to refuse the application and rejected the appeal 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, 21 February 2019. The Review Body was constituted by Councillor L Bruce (Chair); Councillor F O'Donnell, and Councillor S Kempson. All three 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 P Zochowski, 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 planning permission in principle for the erection of four (4) houses and garages to the rear of the property at Battleblent House.
- 2.2. The planning application was registered on 25 April 2017 and was refused under delegated powers on 11 September 2018. The notice of review is dated 29 October 2018.
- 2.3. The reasons for the refusal are set out in full in the Decision Notice and are, in summary, that:
- 2.3.1 The erection of four houses on the site is, in principle, contrary to Part 1(b) of Policy DC1 of the adopted East Lothian Local Plan 2008, and Scottish Government policy guidance regarding the control of new housing development in the countryside given in Scottish Planning Policy: June 2014.
- 2.3.2 If approved the proposed development would set an undesirable precedent for the development of new houses elsewhere in the East Lothian countryside. Moreover, it would narrow the gap between the area of land that remains in a countryside designation between the settlements of West Barns and Belhaven. The cumulative effects of which would result in a detrimental impact on the rural character and amenity of the countryside of East Lothian.
- 2.3.3 It has not been demonstrated that the design and layout of a four house development could ensure the incorporation of the mature trees that make a significant positive contribution to the visual amenity of the area. Accordingly, the proposals are contrary to Policy DP14 of the adopted East Lothian Local Plan 2008.
- 2.3.4 The proposed development may place buildings and persons at flood risk. Accordingly the proposals are contrary to Policy DP16 of the adopted East Lothian Local Plan 2008 and to 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 25 April 2017
3	The Appointed Officer's Report of Handling
4	A copy of the Decision Notice dated 11 September 2018
5	SESplan Policy 1B The Spatial Strategy Development Principles East Lothian Local Plan 2008 policies DC1 Development in the Countryside and undeveloped coast; DP7 Infill, Backland and Garden Ground Development, DP14: Trees on or Adjacent to Development Sites policy DP16: Flooding, policyT1: Development Location and Accessibility East Lothian Local Development Plan 2018 policies DP7: Infill, Backland and Garden and Ground Development and NH11: Flood Risk
6	Notice of Review dated 29 October 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 refuse the grant of 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 that planning permission in principle was being sought to build four houses to the rear of Battleblent House, a distinctive and substantial property dating from 1860, located to the east of the grounds of West Barns Primary School in the countryside, east of West Barns. The Planning Adviser stated that Section 25 of the Town and Country Planning (Scotland) Act 1997 requires that the application be determined in accordance with the Development Plan, unless material considerations indicate otherwise. The officer's report that was completed before the East Lothian Local Development Plan (LDP) was adopted made reference to East Lothian Local Plan 2008 policies which no longer applies and has been superseded by the LDP adopted in September 2018. The current Development Plan against which the reviewed application should be determined comprises the Strategic Development Plan for Edinburgh and South East Scotland (SDP1), and the East Lothian Local Development Plan 2018. Policy 1B of SDP1 is relevant as are the Development in the Countryside policies of the LDP which allow housing development in only very specific circumstances. Policy DC8 (Countryside Around Towns) does not permit development that would harm the objectives of the specific countryside around towns area which in this case are i) protection of the landscape setting of the settlements of West barns and Belhaven ii) prevention of coalescence of the settlements of West barns and Belhaven to retain their distinctive identities and iii) provision of green networks and recreation – potential for better integration and provision of green networks for both wildlife and people.

Relevant material considerations include Scottish Planning Policy 2014 which seeks to direct housing development towards existing settlements and acknowledges that in accessible, pressured rural areas a more restrictive approach to new housing development is appropriate, and NH11 Flooding.

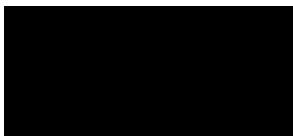
The Planning Adviser advised that there were no public objections to the application. However, Dunbar Community Council and West Barns Community Council, as consultees to this planning application, did not support the application. Summarising other Consultee responses, the Planning Adviser stated that the Environmental Health Officer had no comment to make on the proposal and Road Services had stated that there would need to be two car parking spaces within the boundary of each property. The Landscape Officer had considered that the proposals would be detrimental to the the setting of the building and had identified that the mature trees are important to the visual amenity of the area and supported their retention and had requested an arboricultural report to show tree constraints and allow an assessment of the risk to trees from potential development. Whilst Scottish Water had raised no objection, they pointed out that there was currently insufficient capacity in the Dunbar Waste Water Treatment works to service the proposed development. They would review their decision if planning permission was granted. SEPA (Scottish Environment Protection Agency) had objected to the proposals on the grounds of lack of information on flood risk. A Flood Risk Assessment was commissioned by the

applicants and this was reviewed by SEPA, who confirmed that they would maintain an objection unless drawings are amended to show that the proposed property boundaries were set back from the culvert to an appropriate distance. The Council's Structures and Flooding Officer recommended that the house, positioned within the one metre protection zone of the culvert, should be moved, but did not recommend refusal on the grounds of flood risk. He also noted that the Scottish Environment Protection Agency flood risk maps show that the site is within a medium risk area of flooding.

The Planning Adviser advised that, should Members grant planning permission, the Council had to notify Scottish Ministers, as the decision would have been made against advice from a Scottish Government department. The Scottish Government would then make a decision on the application.

- 4.3. The Members noted the request of the applicant to provide a verbal representation to the Committee and on this occasion the applicant was permitted to do so. Following this the Members adjourned to further consider the information before them.
- 4.4. The members confirmed that they now had had sufficient information to make their decision.
- 4.5. Councillor O'Donnell commented that the site visit had been very helpful. After consideration it was her view that the representations from the applicant did not add anything further to the information already before the Local Review Body. This area is designated as land under the Countryside around Towns policy and it is important to ensure natural boundaries. In addition it was noted that there remained a flood risk identified as medium by SEPA. Accordingly for the above and the other reasons mentioned within the Officers Report Councillor O'Donnell was minded to refuse the appeal and refuse planning permission.
- 4.6. Councillor Kempson agreed with Councillor O'Donnell and was minded to support the planning officer's decision and refuse the planning permission.
- 4.7. The Chair commented that the boundaries for the Countryside around Towns are clearly set out in the local development plan and this site fell within it. In addition the application was contrary to Policy NH11 in the Local Development Plan. Accordingly for the above and the other reasons mentioned within the Officers Report the Chair was minded to support the Planning Officer's original decision and refuse the appeal.

Accordingly, the ELLRB unanimously agreed to uphold the original decision of the Planning Officer to refuse the application for the reasons set out in the Planning Officer's Decision Notice dated 11 September 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.