



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

**THURSDAY 21 FEBRUARY 2019  
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON**

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**Committee Members Present:**

Councillor L Bruce (Chair)  
Councillor S Kempson  
Councillor F O'Donnell

**Advisers to the Local Review Body:**

Mr P Zochowski, Planning Adviser to the LRB  
Mr C Grilli, Legal Adviser to the LRB

**Others Present**

Mr N Millar, ELC Planner  
Mr M Mackowiack, ELC Planner  
Mr and Mrs Doyle - Applicants, Item 1  
Mr A Dodds – Agent, Item 2

**Committee Clerk:**

Mrs F Stewart

**Declarations of Interest**

None

**Apologies**

None

Councillor Bruce, 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 both planning applications on the agenda prior to the meeting.

**1. PLANNING APPLICATION 17/00313/PP – REVIEW AGAINST REFUSAL  
PLANNING PERMISSION IN PRINCIPLE FOR THE ERECTION OF FOUR  
HOUSES AT BATTLEBENT HOUSE, WEST BARNS, DUNBAR**

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.

Paul Zochowski, Planning Adviser, stated that the role of the LRB was to consider the planning application '*de novo*', reviewing the application afresh. He advised that planning permission in principle was being sought to build four houses to the rear of Battlebent 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 indicated otherwise. The Case 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Plan (LDP) was adopted, made reference to East Lothian Local Plan 2008 policies which no longer applied and had been superseded by the LDP adopted in September 2018. The current Development Plan against which the reviewed application should be determined comprised the Strategic Development Plan for Edinburgh and South East Scotland (SDP1), and the East Lothian Local Development Plan 2018. Policy 1B of SDP1 was relevant as were 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 included 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. This is the approach taken through the East Lothian LDP and NH11 Flooding. The Countryside Around Towns policy at West Barns/Dunbar contributed to the objectives of protecting the landscape setting of settlements, the prevention of coalescence of settlements to retain distinctive identities as separate communities and the provision of green networks for wildlife and people.

The Planning Adviser stated that the Case Officer had noted the planning history of the site, dating from 1995, in his report. He also 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 setting of the building and had identified that the mature trees were important to the visual amenity of the area and supported their retention. He had also 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. The Agency's letter of 18 May 2018 highlighted their concerns and advised it would maintain an objection unless drawings were 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 SEPA flood risk maps show that the site was within a medium risk area of flooding. The Planning Officer, in his report, had concluded that the proposed development might place buildings and persons at flood risk.

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.

The Chair thanked the Planning Adviser for his presentation and invited questions. In response to one question, the Planning Adviser advised that land between West Barns and Belhaven was classed as countryside and not urban. Members advised that other questions had received answers on the site visit.

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

The applicant, Mr Doyle, asked for permission to address the Members and this was granted. He stated that there were details in the Planning Adviser's statement which, in his view, contradicted the facts. Two examples he gave related to the risk of flooding and the positioning of the culvert. He also addressed each of the four reasons for the Case Officer's refusal of the application. The applicant also stressed that his property was within the boundary of West Barns and was not situated between West Barns and Dunbar.

Councillor O'Donnell enquired if there was information on trees which Members had not received and was advised by the Planning Adviser that the Landscape Officer had received the tree report but that it did not contain the information she required to assess whether the trees would be harmed. Councillor O'Donnell asked the applicant if he had evidence which was not included in the papers for the meeting and the applicant stressed that this was an outline planning application, and that more detailed information, such as a tree survey, was in his view not required at this stage.

Members agreed to have an adjournment to consider the applicant's comments.

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

Councillor O'Donnell stated that it had been important to adjourn and consider the information provided by the applicant. However, having given due consideration to the information before her, she was minded to support the original decision of the Case Officer and refuse the application. She added that, while not everyone might agree with the Local Development Plan, it was important, in her view, for separate communities to retain distinctive identities.

Councillor Kempson stated that the site visit had been very important in helping her to assess all aspects of the application. She had also read the submissions and had been concerned that SEPA's independent report had stated that the positioning of the culvert could, in the future, present a flood risk. She also supported planning policy DC8 which states that any new development must not harm the landscape setting or the objectives for the countryside around towns designation. She would therefore not be upholding the appeal.

The Chair agreed with his colleagues. He stated that the Council had an obligation to enforce local boundaries where they are drawn. He had also been concerned that SEPA had objected to the application, assessing the development site as a medium flood risk. He too, therefore, was minded to support the decision of the Case Officer to refuse the application against LDP policies DC8 and NH11 of the East Lothian Development Plan 2018.

## **Decision**

The ELLRB unanimously agreed to uphold the original decision of the Planning Officer to refuse the application for the reasons set out in the Decision Notice dated 11 September 2018.

## **2. PLANNING APPLICATION 18/01028/P – NON-DETERMINATION ERECTION OF ONE HOUSE AND ASSOCIATED WORKS ON LAND AT WHIM LODGE, 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.

Paul Zochowski, Planning Adviser, stated that the role of the LRB was to consider the planning application '*de novo*', reviewing the application afresh. He advised that the application was for the erection of one house and associated works in the garden ground of a C-listed building dating from c1900, located in the Gullane Conservation Area. 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 Development Plan was the approved Southeast Scotland Strategic Development Plan (SESplan) and the adopted East Lothian Local Development Plan 2018. The following policies were relevant to the determination of the application: SESplan Policy 1B (Spatial Strategy: Development Principles); ELLDP policies CH1 (Listed Buildings) and CH2 (Development Affecting Conservation Areas). Policy CH1 states that new

development must not harm the architectural or historic character of a Listed Building and policy CH2 states that all development proposals within a Conservation Area must be located and designed to preserve or enhance the special character or appearance of the Conservation Area. It also states that proposals for new development should accord with the size, proportion, density, materials and boundary treatment of nearby buildings. In addition, the Council's parking standards require that new developments do not compromise road safety. Also material to the determination of the application was Scottish Government guidance given in Scottish Planning Policy: June 2014.

The Planning Adviser stated that the character statement for the Gullane Conservation Area states that: few opportunities remain for infill development within the Gullane Hill area; the low-density character of this area will be protected; any new development must integrate into the existing pattern of built development and the removal of trees to facilitate development will not normally be acceptable.

The Planning Adviser advised that the applicants had submitted a number of previous applications for this address dating from 2009 and this was the third application for a house at this site. He also summarised the representations received, four of which were in favour of the proposals and six had objected. The Gullane Community Council had indicated that it was not in favour of the proposals.

The Planning Adviser reminded those present that this application had not been refused; it was an appeal against non-determination by the Council. He stated that a similar planning application from the applicant had been refused by the Council in 2017 due to the effect the development would have on the Conservation Area and for being contrary to planning policies. Those were the same grounds upon which a refusal would have been submitted by the Case Officer for this application and in this regard he referred to the Officer's Assessment Report on Handling contained within the papers.

The Chair thanked the Planning Adviser for his presentation. He also invited questions and 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 O'Donnell stated that she was familiar with the Gullane area and, in her view, the proposed development would be harmful to the Gullane Hill area and would not contribute in a positive way to the Gullane Conservation Area. The proposals were also contrary to the Council's planning policy. She was therefore minded to refuse the application.

Councillor Kempson was also minded to refuse the application. She considered that the proposals would be harmful in the low density area of Gullane Hill. She also considered that it was important to preserve the number of homes with large gardens which she described as the heart and lungs of the community.

The Chair concurred with his colleagues. He stated that the application was contrary to SESplan policy 1B, LDP policies DP2 (Design) DP7 (Infill, Backland and Garden Ground Development) CH1 Listed Buildings, CH2: Development in Conservation

Areas as well as NH8 (Trees and Development). The application was also contrary to Scottish Planning Policy: 2014.

**Decision**

The ELLRB unanimously agreed to refuse the application as the proposals were contrary to the Council's planning policies.

Signed .....

Councillor L Bruce  
Convener of Local Review Body (Planning)