



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

**THURSDAY 20 AUGUST 2020  
VIA SKYPE**

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**Committee Members Present:**

Councillor N Hampshire (Chair)  
Councillor K McLeod  
Councillor J Williamson

**Advisers to the Local Review Body:**

Mr C Grilli, Legal Adviser to the LRB  
Mr M Mackowiak, Planning Adviser to the LRB

**Clerk:**

Ms F Currie, Committees Officer

**Apologies:**

None

**Declarations of Interest**

None

### **Introductory Statement by the Legal Adviser**

The Legal Adviser outlined the procedure for the meeting and the statutory matters which the Local Review Body were required to consider before reaching a decision on the planning application.

Following nominations to chair the meeting, Councillors McLeod and Williamson proposed and seconded Councillor Hampshire. It was therefore agreed that Councillor Hampshire would chair the Local Review Body (LRB) on this occasion.

#### **1. PLANNING APPLICATION NO. 20/00092/P: CHANGE OF USE FROM OPEN SPACE TO DOMESTIC GARDEN GROUND AND ERECTION OF DOMESTIC WORKSHOP (PART RETROSPECTIVE), 56 GALT AVENUE, MUSSELBURGH EH21 8HT**

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 outlined the background and detailed proposals contained in planning application no. 20/00092/P which related to a change of use from open space to domestic garden ground and erection of domestic workshop (part retrospective) at 56 Galt Avenue, Musselburgh. He advised that the site was located within a predominantly residential area as defined by Policy RCA1 of the adopted East Lothian Local Development Plan 2018 and is also situated within the Battle of Pinkie Historic Battlefield Site. Planning permission had been refused on 31<sup>st</sup> March 2020 and a request for review was submitted on 1<sup>st</sup> June.

He reminded Members that Section 25 of the Town and Country Planning (Scotland) Act 1997 required that the application be determined in accordance with the development plan, unless material considerations indicate otherwise. The development plan is the approved South East Scotland Strategic Development Plan (SESplan) and the adopted East Lothian Local Development Plan 2018. Policies CH5 (Battlefields), DP2 (Design) and OS2 (Change of Use to Garden Ground) of the adopted East Lothian LDP 2018 were also relevant to the determination of the application.

The Planning Adviser confirmed that there had been no public objection to the application. He then summarised the planning case officer's assessment of the proposals against material planning considerations noting that the area of land subject of the retrospective change of use was located to the south of the applicants' house. It was rectangular in shape and measured some 9.5 metres by some 4.2 metres. It was bounded to the north by the applicants' house, to the east and south by a high fence and to the west by a brick wall boundary treatment. The case officer's report noted that due to its relatively small size, scale and positioning the change of use of the area of open space to domestic garden ground did not appear incongruous within its landscape setting. Neither had it resulted in an unacceptable loss of visual or recreational amenity or harmed the integrity of a landscaping scheme. On those counts the change of use of the open space to garden ground was not contrary to Policy OS2 of the adopted East Lothian Local Development Plan 2018. The proposed change of use would not harm the integrity of the Battle of Pinkie Battlefield Site consistent with Policy CH5 of the adopted East Lothian Local Development Plan 2018.

The report also confirmed that the proposed workshop building would not give rise to a loss of amenity to any neighbouring residential properties through overlooking or overshadowing. Referring to the location of the applicant's house within Galt Avenue, the case officer noted that the terrace of houses formed a strong and uniform frontage onto Galt Avenue and were readily visible from Galt Avenue. There were no outbuildings within any of the front gardens of the terrace of houses. Therefore the building line created by the front elevations of the terrace of houses was a strong characteristic of this part of the Galt Avenue.

The proposed domestic workshop building would project some 1.8 metres beyond the principle elevation of the applicants' house and the other houses of the terrace. The case officer's assessment was that in that position and with its flat roofed form it would appear incongruous alongside the pitched roof terrace of houses of which the applicant's house was part. It would be harmful to both the setting of the applicant's house and to the terrace of houses on that part of Galt Avenue. Consequently, the proposed building would be inappropriate to its setting and out of keeping with its surroundings. By virtue of its architectural form, size, scale and position the proposed workshop would be harmful to the streetscape of this part of Galt Avenue contrary to Policy DP2 of the LDP 2018.

The Planning Adviser summarised the appellant's submission which noted that various types of front extensions and garages had been built within the locality and that this proposal would not be unsightly or oversized. In his submission, the appellant provided a number of photographs showing various side and front extensions within the locality.

The Chair thanked the Planning Adviser for his summary.

The Planning Adviser responded to questions from Members on alternatives for siting of the structure, whether this might set a precedent and the purpose for which the ground was originally sold to the applicant.

The Chair asked his colleagues if they were satisfied that they had sufficient information before them to determine the application. They confirmed this to be the case.

The Chair then invited Members to give their opinions.

Councillor McLeod said he would have no concerns about granting this application and commented on the condition of the garden area. Having viewed the property, he considered that it would be impossible for the structure to be sited further back in with the house. He was minded to support the applicant and go against the recommendation of the case officer.

Councillor Williamson said he has looked closely at the site and the surrounding area and in his view there was nowhere else where the workshop could be located. He had observed other extensions and garages in the area and he did not agree with the assessment that this structure would spoil the view of the surrounding properties. For these reasons he could not support the officer's original recommendation to refuse planning permission.

The Chair agreed with his colleagues. He considered the proposal to erect the workshop would not cause any great disruption to the row of houses and there were already many similar structures in the area. He considered it to be acceptable development of the site and would be voting against the officer's recommendation.

## Decision

The ELLRB agreed unanimously to overturn the decision of the Planning Case Officer and to grant planning permission.

### **2. PLANNING APPLICATION NO. 19/01259/P: ERECTION OF 1 HOUSE FOR PARTIAL USE AS PART BED AND BREAKFAST AND ASSOCIATED WORKS, THE BARNES HOUSE, LETHAM MAINS HOLDINGS, LETHAM, HADDINGTON**

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 outlined the background and detailed proposals contained in planning application no. 19/01259/P which related to the erection of 1 house for partial use as part bed and breakfast and associated works. He advised that the application site was located within an area of agricultural land in the countryside at Letham Mains Holdings to the west of Haddington. This area was defined by Policies DC1 (Rural Diversification) and DC8 (Countryside around Towns) of the adopted East Lothian Local Development Plan 2018. The site was within the Letham House Local Garden and Designed Landscape as defined by Policy CH6 (Gardens and Designed Landscapes) of the LDP 2018. Letham House, located some 290m to the north of the application site, was listed as being of special architectural or historic interest (Category B).

He summarised the planning case officer's assessment of the proposals against material planning considerations. He also reminded Members that Section 25 of the Town and Country Planning (Scotland) Act 1997 required that the application be determined in accordance with the development plan unless material considerations indicated otherwise. The development plan was the approved South East Scotland Strategic Development Plan (SEsplan) and the adopted East Lothian Local Development Plan 2018. Policies DC1, DC4 (New Build Housing in the Countryside), DC8, DP1 (Landscape Character), DP2 (Design), T1 (Development Location and Accessibility), T2 (General Transport Impacts), CH1 (Listed Buildings) and CH6 of the LDP were relevant to the determination of the application. Also material to the determination of the application was the Scottish Government's policy on housing and rural development given in Scottish Planning Policy: June 2014, Planning Advice Note 72: Housing in the Countryside and the Supplementary Planning Guidance: Countryside and Coast of the ELLDP 2018.

The Planning Adviser confirmed that there had been 11 public representations to the application and of those 5 raised objections to the proposals and 6 were in support of the proposed development. Those representations were summarised in the case officer's report. He also outlined in some detail the consultation responses received from the Council's Economic Development Service Manager, the Policy and Strategy Manager, the Landscape Officer and from Roads Services. These included concerns regarding the operational requirement for a new build house in the countryside within the context of the bed & breakfast business; that the proposed building did not accord with the character of the area and would appear large and prominent on the site; and that the access would result in the removal of hedgerow and trees. There were also concerns about the suitability of the proposed access road and visibility splay, and that not all of the land required for this currently lay within the control of the applicant.

The case officer noted that whilst Policy DC1 supports new business development in the countryside where there is an operational requirement for a countryside location, this bed and breakfast use did not in itself require the erection of a new house in a countryside location. In addition, the applicant had not provided a Business Plan or put forward a business case for the operation of the bed and breakfast. The officer also noted that the proposed house would not be appropriate to, and would have a harmful impact on the wider landscape setting of Letham House and the open and long lines of trees on the eastern and western boundaries of the application site. It would significantly harm elements justifying the designation of the site as being of local or regional importance and included in historic gardens and designed landscape records.

The officer concluded that there were no material planning considerations within the application that outweighed the fact that the proposed development was contrary to Policies DC1, DC4, DC8, DP1, DP2, T1, T2 and CH6 of the LDP 2018 and Government policy guidance regarding the control of new housing development in the countryside included in Scottish Planning Policy: June 2014.

The Planning Adviser then provided a summary of the detailed statement put forward by the applicant in support of his appeal. This included highlighting that an award winning business was already established on site; that the applicant's wished to downsize while retaining their business; that the proposed house was no out of keeping with the mix of surrounding dwelling sand would be predominantly for business use rather than a private home. They argued that some of the quoted planning policy was generic rather than site specific and that the case officer had erroneously assessed aspects of their proposals. They also contended that the site was not part of 'open countryside' and that Letham House and the site did not form part of a designated garden or landscape. Finally, the applicant disagreed with the comments submitted by Roads Services regarding access and the visibility splay.

It was noted that one letter of objection had been submitted in relation to the appeal. It stated that during the summer the trees concealed Letham House but this was not the case during the half year when the trees were bare. The letter also called in question the examples supplied with the appeal to support the proposed height of the Barns House.

The Chair thanked the Planning Adviser for his summary.

The Planning Adviser responded to questions from Members regarding widening of the vehicular access road and visibility splay, and whether there was sufficient justification given for building a new house in the countryside to use as a bed and breakfast.

The Legal Adviser also clarified points relating to whether refusal of the appeal could preclude the existing house continuing as a bed and breakfast business and whether a condition could be added to any planning permission to ensure that the new house operated as a bed and breakfast.

The Chair asked his colleagues if they were satisfied that they had sufficient information before them to determine the application. They confirmed this to be the case.

The Chair then invited Members to give their opinions.

Councillor Williamson indicated that he could find no reason to go against the recommendation of the planning case officer or the reasons for refusal stated in the original decision.

Councillor McLeod observed that if the new house had been proposed for the opposite side of the road he would have had concerns but in its current location there would be no overlooking and it would be screened by trees. He also noted that this was a well-established business with a proven track record. He could find no reason to refuse the application and would be voting against the officer's recommendation. However, he would be seeking to include a condition that the house must be used as a bed and breakfast.

The Chair said there was no doubt that this was a successful 5 star business and that it could see further success even after downsizing. However, the location of the new house was within the countryside and the proposals were, in his view, contrary to policy DC1. He was also about the precedent that may be set for other parts of the county. He concluded that he could not support the application and would be voting in favour of the officer's recommendation.

### **Decision**

The ELLRB agreed by a majority of two for and one against to uphold the decision of the planning case officer to refuse planning permission for the following reasons:

1. The proposal to erect a house on the site with no operational requirement for a countryside location is contrary to Policies DC1 and DC4 of the adopted East Lothian Local Development Plan 2018, and Scottish Government policy guidance regarding the control of new housing development in the countryside given in Scottish Planning Policy: June 2014.
  2. The addition of the large 2 storey house with its formal access drive and large garden to the Letham Mains Smallholdings area would be disruptive to the distinctive settlement pattern of the area. The proposed house would appear large and prominent sitting further north than the other buildings and in full view from the core path 109 to the north and from the access road contrary to Policies DP1, DP2 and DC8 of the ELLDP 2018 and contrary to the advice given in the Countryside and Coast SPG of the ELLDP 2108.
  3. The impact of the proposed development on the wider landscape setting of Letham House and the open and long lines of trees on the eastern and western boundaries of the application site significantly harm elements justifying the designation of the site as being of local or regional importance and included in historic gardens and designed landscape records. Consequently the proposed development is contrary to policies CH1 and CH6 of the adopted East Lothian Local Development Plan 2018.
  4. The proposed access does not meet the requirements of the Council's Road Services therefore the proposal is not consistent with Policy T2 of the ELLDP 2018.
- 3. PLANNING APPLICATION NO. 19/01082/P: CONVERSION OF FORMER SAWMILL BUILDING TO FORM 1 HOUSE WITH DOMESTIC WORKSHOP AND ASSOCIATED WORKS, NUNRAW BARNS OLD SAWMILL, GARVALD, GIFFORD, EAST LOTHIAN**

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 outlined the background and detailed proposals contained in planning application no. 19/01082/P which related to the conversion of a former sawmill building to form 1 house with domestic workshop and associated works at Nunraw Barns Old Sawmill, Garvald. He advised that a design statement had been submitted in support of the application which stated that the stone built former farm buildings were originally associated with the Nunraw Tower situated nearby. It was also asserted that planning permission was granted for a similar proposal for the conversion of a modern brick building (Ref: 17/01189/P) to residential use at another farm in East Lothian. That planning application, it was stated, set a precedent that was relevant to this application.

The Planning Adviser reminded Members that Section 25 of the Town and Country Planning (Scotland) Act 1997 required that the application be determined in accordance with the development plan unless material considerations indicated otherwise. The development plan was the approved South East Scotland Strategic Development Plan (SESplan) and the adopted East Lothian Local Development Plan 2018. Policies DC2 (Conversion of Rural Buildings to Housing), DC9 (Special Landscape Areas), DP2 (Design), DP5 (Extensions and Alterations to Existing Buildings) and T2 (General Transport Impact) of the adopted LDP 2018 were relevant to the determination of the application. Also material to the determination of the application was Scottish Planning Policy: June 2014 and Planning Advice Note 72: Housing in the Countryside.

No letters of objection to the application were submitted. Two letters of support were received, stating that the building in question will in the fullness of time become derelict and at present is an eyesore. It is also stated that the proposal would allow a local family to remain in the village and that the footprint will not increase with the rebuild.

The Planning Adviser summarised the case officer's assessment of the proposals against material planning considerations. It was noted that the detailed works of alteration to facilitate the proposed conversion of the building would be sympathetic to the architectural form and character of the sawmill building. The area the subject of the proposed change of use of agricultural land to garden ground and hardstanding area was relatively small in size and scale. In its association with the building the use of the surrounding land as garden ground for the proposed house would not appear intrusive, incongruous or exposed in its landscape setting. The officer assessed that on those matters the proposals are consistent with Policies DP2 and DP5 of the LDP 2018.

The case officer also confirmed that the proposed development would not adversely affect existing residential amenity and therefore it complied with Policy DP5. The Council's Planning Policy Officer had confirmed that this proposal was unlikely to harm the openness and 'wild land' character of the Special Landscape Area. Neither would it detract from the landscape character of the Danskine to Whitecastle Special Landscape Area consistent with Policy DC9.

Notwithstanding all of the above, the Planning Adviser reminded members that the principle of the conversion of this building in the countryside to a house must be considered against the other policies of the LDP 2018; namely Policy DC2 (Conversion of Rural Buildings to Houses). Nunraw Barns was not identified in the adopted LDP as being a settlement. By being specifically covered by Policy DC1, the application site was identified as being within a countryside location. Policy DC2 supported the conversion of appropriate buildings in the countryside to a house where the existing building was:

- (i) worthy of retention by virtue of its architectural or historic character;

- (ii) the building is physically suitable for its intended use and any extensions or alterations are compatible with and should not harm any significant architectural or historic features;
- (iii) The building must stand substantially intact and shall not require significant demolition in order to be converted.

The officer noted that, in this instance, the building was substantially intact and did not require significant demolition to facilitate its conversion.

The steading buildings of Nunraw Barns were a complex of single-storey and two-storey buildings, largely converted to housing or had planning permission to do so. The existing original steading buildings all had rubble sandstone walls and architectural features that made the buildings of architectural or historic merit. Together they formed a tight grouping of traditional buildings of architectural merit typical of rural buildings found in other parts of the countryside of East Lothian.

The Council's Planning Policy and Strategy Manager had been consulted on the proposal and stated that the former sawmill building was a type of building replicated in many areas. It was of brick construction, and had little or no architectural merit. It was not at all attractive. Its appearance was at odds with the historic stone buildings of the former steading buildings of Nunraw Barns.

On the above considerations, the case officer concluded that the proposal for the change of use of the brick built former sawmill building to form 1 house was contrary to Policy DC2 of the adopted LDP

The case officer had considered the agent's assertion that the grant of a previous, similar planning permission had set a precedent for this application. However, he advised that all applications must be assessed on their own merits and, in that particular case (permission 17/01189/P) it was concluded that the buildings that were to be converted into the proposed houses were of architectural merit and worthy of retention.

The Planning Adviser then summarised the applicant's case. It noted that the old sawmill was constructed in the 1950s to facilitate the construction of the A listed Sancta Maria Abbey. Timber used in the construction of the abbey was processed on this site along with elements of stonework. Like the abbey the building was of a load bearing brick construction. Workshops of similar construction and function (rendered brick walls and asbestos roofing) were included in the Abbey's listing document. They were deemed worthy of listing as they 'serve the working life of the abbey community' much like the sawmill building at Nunraw Barns. Therefore, the Old Sawmill had cultural and historic links to the Sancta Maria Abbey and the community at Nunraw Barns.

It was also the applicant's opinion that the historic and cultural links this building had to the community at Nunraw were not considered while determining this application. The proposed dwelling would be of high quality design and would significantly improve the appearance of the existing structure whilst providing a modern energy efficient unique home. Bringing this building back into use would improve the amenity for neighbouring local residents by safeguarding a building in their community which was at risk of deterioration.

A letter of support was submitted from the Abbot of Nunraw Abbey highlighting that over the years this building had played its part in providing various needs in the life of the Nunraw community. The letter also emphasised that a new home in place of what was a building that was gradually falling into disrepair would prolong the usefulness and life of that which had played a significant role in the community's life at Nunraw



Abbey and the surrounding area. One further representation had been received from a member of the public also emphasising the old sawmill's connection with the Abbey and its construction.

The Planning Adviser concluded his summary of the case and invited questions from Members.

The Chair thanked the Planning Adviser for his summary.

The Planning Adviser responded to a question from the Chair regarding the historical significance of the building in relation to the Abbey and whether this had been adequately considered in the original assessment of the application.

The Chair asked his colleagues if they were satisfied that they had sufficient information before them to determine the application. They confirmed this to be the case.

The Chair then invited Members to give their opinions.

Councillor Williamson said that the building in its present form was an eyesore and that without the proposal to convert it into a house it would deteriorate even further. He had no hesitation in overturning the decision to refuse planning permission and suggested the inclusion of plaque highlighting the building's historical link with the Abbey.

Councillor McLeod said he had looked at similar conversions in the area and had no objections to this application. He agreed with his colleague's comments and he would be going against the recommendation of the planning case officer.

The Chair confirmed that he had also looked at similar conversions in the local area and that these added to the attractiveness of the hamlet. He agreed that the building was currently an eyesore and, while he acknowledged the importance of policy DC1, he gave particular weight to the information provided by the Abbot regarding the old sawmill's links with the Abbey and its listed buildings. He would be going against the officer's recommendation and voting to grant planning permission.

The Legal Adviser drew Members' attention to the suggested conditions provided by the planning case officer and indicated that he would have to investigate the possibility of adding a condition specifying the erection of a plaque.

The Members' approved the suggested conditions and noted that further advice would be forthcoming on the additional condition.

*Post Meeting Note:*

*Following further consideration and review of relevant legislation, the Legal Adviser established that it would not be possible to impose a condition requiring the erection of a plaque.*

**Decision**

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

**Condition 1**

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Prior to any site development works a suitable Geo-Environmental Assessment must be carried out, with the Report(s) being made available to the Planning Authority for approval. It should include details of the following:

- A Preliminary Investigation incorporating a Phase I Desk Study (including site reconnaissance, development of a conceptual model and an initial risk assessment);
- A Ground Investigation comprising a survey of the extent, scale and nature of contamination, and an updated conceptual model of the site. It is required if the Desk Study has indicated that the site is potentially contaminated and the degree and nature of the contamination warrants further investigation;
- An appraisal of the remediation methods available and proposal of the preferred option(s).

The site investigation and risk assessment must be undertaken by suitably qualified, experienced and competent persons and must be conducted in accordance with the Environment Agency's Contaminated Land Report 11, Model Procedures for the Management of Land Contamination, CLR11.

If it is concluded by the written report that remediation of the site is not required, then Parts 2 and 3 of this Condition can be disregarded.

Prior to any works beginning on site (and where risks have been identified), a detailed Remediation Statement should be produced that shows the site is to be brought to a condition suitable for the intended use by the removal of unacceptable risks to all relevant and statutory receptors. The Statement should detail all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. It should also ensure that the site will not qualify as contaminated land under Part2A of the Environmental Protection Act 1990 in relation to the intended use of the land following development. The Statement must be submitted to the Planning Authority for approval.

Following completion of the measures identified in the approved Remediation Statement, a Validation Report should be submitted that demonstrates the effectiveness of the remediation carried out. It must be approved by the Planning Authority prior to commencement of the new use of the land.

Reason: in the interest of the health and safety of potential occupiers of the proposed dwelling.

**Condition 2**

In the event that contamination is found at any time when carrying out the approved development that was not previously identified, work on site shall cease and the issue shall be reported to the Planning Authority immediately. At this stage further investigative works and risk assessments may have to be carried out to determine if any additional remedial measures are required. Should further remedial measures be required, then these will be carried out and validated prior to any development recommencing on the site.

Reason: in the interest of the health and safety of potential occupiers of the proposed dwelling.

Signed .....

Councillor N Hampshire  
Chair of Local Review Body (Planning)