

REVIEW DECISION NOTICE

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

Application for Review by Lowland Planning Associates on behalf of Mr Joe Tree, 12 Hawthornbank Place, Edinburgh EH6 4GH in relation to Planning Application for the Erection of hut and shed (Part Retrospective) at Bolton Muir Wood, Gifford.

Site Address: Bolton Muir Wood, Gifford

Application Ref: 20/00824/P

Application Drawing: Please refer to the Drawings/Plans detailed at 3.1 (i)

Date of Review Decision Notice: 30 March 2021

Decision

The ELLRB agreed by a majority that the Review should be dismissed for the reasons set out 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

The above application for Planning Permission was considered by the ELLRB, at a meeting held on Thursday, 10 March 2021. The Review Body was constituted by Councillor N. Hampshire (Chair), Councillor N Gilbert, and Councillor J Findlay. All three members of the ELLRB had attended a site visit accompanied by the Planning Advisor in respect of this application prior to the meeting.

1.1. The following persons were also present at the meeting of the ELLRB:-

Ms J Squires, Planning Adviser to the LRB
Mr C Grilli, Legal Adviser/Clerk to the LRB
Ms F Currie, Clerk

2. Proposal

2.1. The planning application is for review against the Planning Authority to determine the application for planning permission within the prescribed time period.

2.2. The planning application was registered on 10 August 2020 and validated on 24 August 2020. The determination deadline was 23 October 2020.

2.3. The notice of review is dated 19 December 2020.

3. Preliminaries

3.1. The ELLRB members were provided with copies of the following:-

i.	The drawings accompanying this application are referenced and numbered as follows: <ul style="list-style-type: none">- Site plan dated 23 July 2020- Location Plan dated 14 July 2020- Hut Design Showing Plans Sections and Elevations dated 23 July 2020- Composting Toilet Drawings: Drawing number A100- Block Plan Showing Blue Line and Red Line Curtilage dated 23 July 2020
ii.	The Application for planning permission registered on 10 August 2020 and the application determination deadline was 23 October 2020.
iii.	The Appointed Planning Officer's Submission
iv.	<p>Policies</p> <p>Policies of the adopted East Lothian Local Development Plan 2018 relevant to the determination of the application:</p> <ul style="list-style-type: none">- DC1: Rural Diversification- NH3: Protection of Local Sites and Areas- NH5: Biodiversity and Geodiversity Interests, including Nationally Protected Species- NH8: Trees and Development- T2: General Transport Impact- DP1: Landscape Character- DP2: Design <p>Scottish Government's definition of a hut (as stated on page 73) set out in Scottish Planning Policy: Revised December 2020; and</p> <p>New hutting developments – Good practice guidance on the planning, development and management of huts and hutting sites' published by Reforesting Scotland's Thousands Huts Campaign in February 2016.</p>
v.	Notice of Review dated 19 December 2020 together with Applicant's Submission with supporting statement and associated documents including further representation and the applicant's response to these,.

4. Findings and Conclusions

4.1. The ELLRB confirmed that the application for a review of the planning application 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 including all drawings and copies of all representations and objections received in respect of the original application. They also confirmed they had received and reviewed the Applicant's Submission and further representations made in connection within this appeal before the ELLRB.

- 4.2. The Members then asked the Planning Adviser to summarise the planning policy position in respect of this matter. The Planning Adviser advised that the review relates to appeal against non-determination of a part retrospective planning application for a hut and shed at Bolton Muir Wood, subject of planning application number 20/00824/P. The woodlot which contains the proposal is located between Gifford and East Saltoun within the southern part of Bolton Muir Wood. Bolton Muir Wood is designated as countryside within the LDP, and is a Local Biodiversity Site as well as being included in NatureScots Inventory of Ancient Woodland.

The hut has an internal footprint of just under 30 metre squared, is of a contemporary design using a timber frame, and is green with softwood walls and a corrugated metal roof. The applicant states that the materials used are as sustainable as possible. In terms of services, water is not piped. The running of businesses (of any kind) is strictly prohibited within any Hutting site. The appellants intend to ensure that all the habitats on their land are protected.

A Planning Statement and Ecological Report were submitted with the application. The Planning Statement describes hutting policy and how the proposal accords with this. The applicant has confirmed that the proposed hut will be used for leisure and recreational purposes only. The submitted Ecological Report contains a Phase 1 habitat survey and finds no harm to protected species including the badger setts on site.

Planning applications should be determined in accordance with the development plan for the area unless material considerations indicate otherwise. The Development Plan for East Lothian Area is the South East Scotland Strategic Development Plan (known as SESPLAN) and the adopted East Lothian Local Development Plan 2018 (LDP).

In his submission, the Council's appointed planning officer noted that there are no relevant SESPLAN policies. He notes the LDP is silent on hutting development specifically.

Material to the application is Scottish Planning Policy which contains the definition of a 'hut', namely a simple building used intermittently as recreational accommodation (i.e. not a principal residence); having an internal floor area of no more than 30m²; constructed from low impact materials; generally not connected to mains water, electricity or sewerage; and built in such a way that it is removable with little or no trace at the end of its life. Huts may be built singly or in groups." Also material is Reforesting Scotland's good practice guidance 'New Hutting Developments'. This guidance sets out the low impact, ecologically sustainable and affordable ethos of hutting and how development should respect this.

The Councils Policy and Projects Manager's response highlights that Scottish Planning Policy supports huts in a rural setting to promote enhanced leisure accommodation however it should also be ensured that the natural environment and landscape qualities of the area are protected. Taking into account the wording of national planning policy, the response notes the principle of development does not conflict with LDP Policy DC1 on rural diversification as the hut is a leisure or countryside recreation use.

The Council's Roads and Environmental Health Services were consulted and do not object to the proposal. Forestry Commission Scotland were consulted and do not object. The Council's Biodiversity Officer notes that Bolton Muir Wood Local Biodiversity Site is designated due to habitat connectivity and ancient woodland indicator species, being noted for an assemblage of moth, butterflies and orchid species and does not object to the proposal however recommends conditions. Subject to these conditions the appointed

officer considers the proposals do not conflict with LDP policies NH3 or NH5, which aim to protect biodiversity.

LDP Policy NH8 Trees and Development contains a strong presumption in favour of protecting East Lothian's woodland resources and states that the loss of ancient woodland will not be supported. The Landscape Officer advises that the proposal is designed to fit within and retain the existing woodland and subject to conditions on transport of materials of construction within the plot and positioning of the chimney flue raises no objection.

The appointed planning officer considers that neither the hut nor the shed would appear as a harmfully dominant, intrusive or incongruous feature within the landscape setting and not harmful to the landscape character and visual amenity of the area, and the buildings could be removed without trace.

The appointed planning officer notes Bolton Muir Wood now contains 18 individual woodlots, each with a hardcore area big enough for more than one car. Vehicular access to the woodlot is via an existing gated forestry track leading from the B6368, with an area of hardcore at the entrance to the woodlot. He considers the combined amount of cars that could be parked within each of the woodlots could harmfully impact on the character and appearance of the wood as well as being likely to result in conflict between car users and walkers and cyclists. He submits that if permission is granted, a condition requiring submission and approval of car parking details showing no more than one space be imposed.

The appointed planning officer therefore considers that subject to conditions listed in the schedule supplied the proposals do not conflict with LDP policy.

Humbie, East and West Saltoun and Bolton Community Council object as the proposal is not in keeping with the Council's ambition to protect East Lothian's biodiversity and countryside designations, will have adverse impact on ancient woodland, and the potential restriction of public access to Bolton Muir Woods, given the size of developments proposed and the likelihood that many other developments will follow on neighbouring plots. If permission is granted, they request conditions preventing car parking in the forest for the safety of walkers and for the benefit of wildlife; no fences; no additional sheds or facilities; restrictions on connections to utilities; restrictions on the usage of huts in particular for overnight stays; and controls on removal of trees. They also note that hut sites are usually managed by a community trust or club to manage disposal of waste, control vehicle movements, minimise the impact of development and to develop and implement a biodiversity management plan for the woodland as a whole.

4.3. The Members then raised the questions pertinent to the application which the planning advisor responded to.

4.3.1. Councillor Findlay asked whether or not a condition not to run the property as a business would extend to letting of the premises? It was confirmed that this would apply to lettings.

4.3.2. Councillor Gilbert asked how easy would it be to implement a condition that required transportation of materials to construct the building to be non-vehicular within the woodland? The Planning Advisor stated that the ethos around the structures should allow this to be delivered relatively simply although it is likely that vehicles would be needed to bring the materials to the boundary of the woodland.

- 4.3.3. Councillor Gilbert also noted that if there were more than one car per unit then there could be challenges in the area and concern over safety for other individuals using the woodland area. He asked if approved could there be a condition imposed to restrict vehicle movements in the area. The Planning Advisor responded by confirming that a planning condition should be reasonable in the circumstance and while it is understood that the applicants have a legal right of access to their plot they would see no reason why a condition could not be imposed on the basis of safety for other users.
- 4.3.4. The Chair noted that there were more plots sold on-site although this application is for one hut. He asked if there was any provision to prevent more huts being developed on the larger site as there may be larger groups which would make it challenging to control. He was advised that this application can only be considered on the merits of this application and future applications would need to be determined on their own merits should such applications come forward.
- 4.4. The Chair asked his colleagues if they had sufficient information to proceed to determine the application today. They noted that they would have liked more details from the applicant on car parking arrangements at the site but notwithstanding this felt they had sufficient information to proceed. Comments on the application followed.
- 4.5. Councillor Gilbert commented that DC1 of the LDP did not permit development in the countryside however the subject of this application was a permitted exception to policy DC1 and therefore would be minded to approve this application although would require clear and detailed conditions.
- 4.6. Councillor Findlay stated that his concern was relating to vehicular access in the area. The prospect of car and other vehicle movements in the area while other members of the public are walking and enjoying the woodland area was a potential health and safety concern. The applicant has not addressed vehicular parking or access concerns and therefore was therefore minded to refuse the application.
- 4.7. The Chair commented that this application was not acceptable in this woodland and in his opinion this application is detrimental to the countryside and the wildlife that is in it. This proposal is unacceptable and as submitted is contrary to policy DC1. He further commented that on the site visit he noted that there was not simply evidence of a hut on site but evidence of more development. He was minded to refuse the application.

Accordingly, the ELLRB by a majority of two to one (2:1) decided that the Review should be refused.

Reason

The proposed hut and associated shed, by virtue of its impact on biodiversity and on vehicle movements within Bolton Muir Wood, would be harmful to the countryside, contrary to Policy DC1 of the adopted East Lothian Local Development Plan 2018.

Planning Permission is accordingly refused.



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.