

REVIEW DECISION NOTICE

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

Application for Review by Mr Craig Proudfoot of One Foot Square, Flat 9, 3 Trinity Crescent, Edinburgh EH5 3ED on behalf of applicant KRA of decision to refuse Planning Permission in Principle for the erection of 2 houses and associated works at Tenterfield Drive, Haddington, East Lothian.

Site Address: Tenterfield Drive, Haddington, East Lothian

Application Ref: 18/00615/PP

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

Date of Review Decision Notice: 7 July 2021

Decision

The ELLRB unanimously agreed 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, 22 August 2019. The Review Body was constituted by Councillor N Hampshire (Chair), Councillor N Gilbert, Councillor S Kempson, and Councillor J Williamson. All four members of the ELLRB had attended an unaccompanied site visit in respect of this application prior to the meeting.

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

Mr M Mackowaik, 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 of decision to refuse Planning Permission in Principle for the erection of 2 houses and associated works at Tenterfield Drive, Haddington, East Lothian.
- 2.2. The planning application was registered on 9 October 2018 and the decision notice refusing the application is dated 7 December 2018.
- 2.3. The reasons for refusal are more particularly set out in full in the said Decision Notice dated 7 December 2018 and are summarized below as follows:

Reasons for Refusal

1. *Two houses, by virtue of their position, would be an intrusive and inharmonious form of infill development harmful to the character of layout of development of the streetscape of Tenterfield Drive and would not be in keeping with their surroundings or appropriate to their location. The development would result in a loss of valuable open space which contributes positively to the parkland setting of the area. Consequently the proposed houses are contrary to Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan), Policies OS1, CH2, CH6, DP2 and DP7 of the adopted East Lothian Local Development Plan 2018 and the advice on designing for place given in Planning Advice Note 67: Housing Quality.*
2. *The proposed development would be a disruptive feature that would encroach on the parkland setting of Tenterfield House Garden and Designed Landscape and the listed buildings of Tenterfield House and Haddington Town wall which is an intrinsic part of the wider setting of Haddington Conservation Area. The proposed development does not preserve the setting of Tenterfield House or Haddington Town Wall nor does it preserve or enhance the character and appearance of the Conservation Area, but is instead harmful to the setting of Tenterfield House and Haddington Town Wall and the character and appearance of Haddington Conservation Area. Consequently it is contrary to Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan), Policies CH1, CH2, CH6, DP2 and DP7 of the adopted East Lothian Local Development Plan 2018 and the advice on designing for place given in Planning Advice Note 67: Housing Quality*
3. *The applicant has not properly assessed the impact of the proposed development on protected trees close to and with the application site. The development would harmfully impact on the root protection area of a number of trees which are covered by a Tree Preservation Order and would be likely to result in their removal. The change of the site to residential use is also likely to result in pressure to remove trees in the future due to amenity concerns. The loss of trees as a result of the development would have a detrimental impact on the parkland setting of the setting of Tenterfield House, the Garden and Designed Landscape, Haddington Town Wall and the character and visual amenity of the Conservation Area contrary to Policies, CH1, CH2, CH6, DP2, DP7 and NH8 of the adopted East Lothian Local Plan 2018 and the advice on designing for place given in Planning Advice Note 67: Housing Quality.*
4. *The application has not fully addressed the potential for bats to be present in the trees that are likely to be damaged by the proposed development. The application has not demonstrated compliance with Policies NH4 and NH5 of the East Lothian Local Development Plan 2018.*

2.4. The Notice of Review is dated 4 March 2019.

3. Preliminaries

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

i.	<p>The drawings accompanying this application are referenced and numbered as follows:</p> <ul style="list-style-type: none"> - P2(2-)010 Rev D - P2(2-)100 Rev C - P2(2-)200 Rev B - P2(2-)300
ii.	The Application for planning permission registered on 9 October 2018
iii.	The Appointed Officer's Submission
iv.	<p>Policies relevant to the determination of the application are as follows:</p> <ul style="list-style-type: none"> - Policy 1B (The Spatial Strategy: Development Principles) of the Strategic Development Plan for Edinburgh and South East Scotland (SESPlan). - the East Lothian Local Development Plan 2018 (LDP) policies RCA1 (Residential Character and Amenity), DP7 (Infill, Backland and Garden Ground Development), OS1 (Protection of Open Space), DP1 (Landscape Character), DP2 (Design), CH1 (Listed Buildings), CH2 (Development Affecting Conservation Areas), CH4 (Scheduled Monuments and Archaeological Sites), CH6 (Garden and Designed Landscapes), NH4 (Protected Species), NH5 (Biodiversity and Geodiversity Interests, including Nationally Protected Species), NH8 (Trees and Development), T1 (Development Location and Accessibility) and T2 (General Transport Impact). <p>Also material to the determination of the application were:</p> <ul style="list-style-type: none"> - Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, - the Scottish Government's policy on development affecting listed buildings given in Scottish Planning Policy: June 2014, - Historic Environment Scotland (HES) Policy Statement June 2016, - national guidance 'Managing Change in the Historic Environment – Setting' and - LDP Supplementary Planning Guidance: Cultural Heritage and the Built Environment Supplementary Planning Guidance adopted in October 2018 which contains the Haddington Conservation Area Character Statement.
v.	Notice of Review dated 4 March 2019 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 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 when reaching the original decision to grant planning permission subject to conditions, 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 today.
- 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 this application related to an area of land on the south side of Tenterfield Drive in Haddington and planning permission in principle was being sought for the erection of 2 houses and associated works. The site was within a residential area of Haddington and within the Haddington Conservation Area. It was bounded to the north by Tenterfield Drive, beyond which was Category B listed Tenterfield House and its grounds; and to the south by a section of the old Haddington Town Wall (Category C listed). There were a number of mature trees both on and adjacent to the site protected by a Tree Preservation Order (TPO). He noted that the application site and the proposed houses on it, would be positioned on ground higher than the land to the south and east. In this elevated position any houses would be visible from Dunbar Road as well as from Tenterfield Drive.

The Planning Adviser then provided a summary of previous planning applications in the area that were relevant to the current application, including the 7 houses now built and occupied at Tenterfield Drive. He indicated that these houses were permitted on the basis that they were largely concealed from public view by Tenterfield House and existing trees and because of their less visible location to the rear of Tenterfield House. The Planning Adviser then informed Members that the review against refusal required to be determined in accordance with the relevant policies of the Strategic Development Plan for Edinburgh and South East Scotland (SESPlan) and the East Lothian Local Development Plan 2018 (LDP).

The Planning Adviser then referred to the 19 written objections received, of which Members had received copies, and he summarised the consultation responses. He referred to objections raised due to the proposal's potential significant and adverse impact upon the setting of the B listed Tenterfield House, the character of that part of Haddington Conservation area and the Tenterfield House designed landscape of local or regional importance. There were also concerns about the permanent change and loss of the view of the parkland, historic listed town walls and mature TPO trees. It was noted that the Tree Survey and Arboriculture Report was dated 2016, had not been updated and did not adequately assess the impact of the development on the trees or whether bats may currently use the trees for foraging or roosting.

The Officers Report considered Policy DP7 of the adopted LDP and the applicant's view is that the site, 'does not form part of any recreational amenity for the area' and 'that as a result of the development there will be no material loss of open space important to the character of the area'. The report concluded that there would clearly be a loss of open space within the site boundary through the development of any house and its associated private garden ground and parking spaces. However, the proposed development would

not allow for harmful overlooking or loss of privacy and in this respect would comply with Policies DP2 and DP7.

The Planning Adviser summarised the reasons for refusal as set out in the Officer's Report. The proposal would be an intrusive and inharmonious form of infill development harmful to the character and surroundings of Tenterfield Drive, and that it would be a disruptive feature that would not preserve or enhance the parkland setting of Tenterfield House and the wider features of Haddington Conservation Area. The applicant had not properly assessed the impact of the proposed development on protected trees close to and within the application site and the application had not fully addressed the potential for bats to be present in the trees that were likely to be damaged by the proposed development. However, the applicant had argued that the proposal would not have a significant adverse impact on the integrity of the adjacent listed buildings or their settings. It was the applicant's view that Tenterfield House now only relates to its immediate grounds and its setting and character were not significantly influenced by the landscaping of the application land. The proposal had been appropriately located to preserve both the historic and contemporary character of the conservation area. The proposals embodied a harmonious form of infill development that would enhance the character of the setting and satisfy the conditions set out in Policy DP7. The proposal would accord with Policy DP1 - the proposed development establishes a harmonious relationship with its natural setting and is respectful of the trees on and around the site. The future welfare of the adjacent trees would benefit from the proposal with the implementation of an appropriate Tree Management Plan. With regard to the issue of the potential effect on bats within the trees the applicant requested that if the LRB was minded to grant planning permission in principle this could be addressed by a planning condition.

The Planning Adviser summarised the main questions for the LRB to consider in reviewing the case: whether the proposed development would comply with the policies of the development plan in respect of infill development and in particular on the impact it would have on the Haddington Conservation Area, on the setting of the nearby listed buildings and on the TPO trees; and whether there were any other material considerations that should be taken into account.

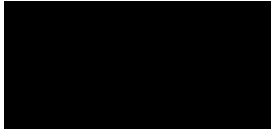
- 4.3. The Members then raised the questions pertinent to the application and in response the Planning Adviser provided clarification on the positioning of the proposed houses, the impact on the nearby trees and on access for the existing development.
- 4.4. The Chair asked his colleagues if they had sufficient information to proceed to determine the application today and they unanimously agreed to proceed. Comments on the application followed.
- 4.5. Councillor Gilbert said he understood why the application had been refused by officers. The site was small, north-facing and heavily shaded and the trees nearby would be heavily trimmed. For those reasons he would be supporting refusal of the application.
- 4.6. Councillor Kempson said it was important to preserve green space and the proposed development was a risk to some of the mature trees as the roots were likely to extend much further into the proposed site than had been initially thought. She added that the value of mature trees should not be underestimated and with so many being lost to disease it was more important than ever to preserve others from damage. She was therefore minded to refuse the application.

4.7. Councillor Williamson agreed with the previous comments. It was a small site which was overshadowed by large mature trees. He saw no reason to disagree with the reasons for refusal and he would be upholding the original decision by the Case Officer.

4.8. The Chair concurred with his colleagues. The site at present was very attractive, it enhanced the conservation area and it should be protected. He said it was almost impossible to build on this site and not damage the tree roots, and if those mature trees were lost it would have a huge impact on the area. He would be supporting the recommendation to refuse the application.

Accordingly, the ELLRB unanimously decided that the Review should be dismissed and upheld the decision of the Planning Officer for the reasons more particularly set out in the Planning Officer's Report.

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.