



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

**THURSDAY 17 JUNE 2021
VIA THE DIGITAL MEETINGS SYSTEM**

Committee Members Present:

Councillor A Forrest (Chair)
Councillor N Gilbert
Councillor S Kempson

Advisers to the Local Review Body:

Mr C Grilli, Legal Adviser to the LRB
Mr P Zochowski, 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 options available to the Local Review Body in reaching a decision on the planning applications before it.

The Legal Adviser then invited nominations to chair the meeting and Councillors Gilbert and Kempson proposed and seconded Councillor Forrest. It was therefore agreed that Councillor Forrest would chair the Local Review Body (LRB) on this occasion.

1. PLANNING APPLICATION NO. 20/01241/P – CHANGE OF USE OF OPEN SPACE TO OUTDOOR SEATING FOR SERVERY/TAKEAWAY (CLASS 3) FOR A TEMPORARY PERIOD OF 3 YEARS AND FORMATION OF HARDSTANDING AREAS, 26 VICTORIA ROAD, NORTH BERWICK EH39 4JL

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 in detail the proposals contained in planning application no. 20/01241/P relating to 26 Victoria Road North Berwick for the change of use of open space to outdoor seating for servery / takeaway (class 3) for a temporary period of 3 years and formation of hardstanding areas. The proposals affected an area of land mostly to the south of the former coastguard station now used as a restaurant and takeaway called the Rocketeer and located on Anchor Green the harbour promontory to the north of Victoria Road but also included a strip of land to the north south and west side of the building and a strip of land leading from the building to the east side of Victoria Road.

He noted that, in 2020, to allow for physical/social distancing measures tables and chairs had been temporarily allowed on this part of Anchor Green. The current application was registered on 14 December 2020 and refused on 5 February 2021.

The Planning Adviser reminded Members that applications should be determined in accordance with the development plan for the area unless material considerations indicated otherwise. He advised that the most relevant policies of the East Lothian Local Development Plan 2018 (LDP) were listed in the case officer report and had been considered in the determination of the application. Scottish Planning Policy was a material consideration in respect of guidance on determining applications that affect a listed building or its setting and effect on the character and appearance of a conservation area.

He summarised the 45 representations received to the original application which had included 26 objections and 19 letters of support, and the responses from Consultees. He noted material considerations relating to benefit for business and Scottish Government guidance on support for businesses during the pandemic. He advised that the application had been refused for the reasons outlined in the Decision Notice dated 5 February 2021; in summary that the proposals were contrary to LDP polices OS1, CH2, DC6, DC9 and DP2.

The Planning Adviser summarised the additional statement of response from the planning case officer confirming that privately owned open space was classed as open

space for planning policy purposes; that the use of the land was unauthorised and that should planning permission be refused then enforcement action would be required.

The Planning Adviser then considered the grounds for review put forward by the agent for the applicant. In summary, the applicant submitted that there was no measurable or significant impact on the character or setting of the North Berwick Conservation Area or on the nearby Special Landscape Area (SLA). No heritage amenity or traffic/transport concerns, that nothing proposed was unsightly, only the paving was permanent and that it was a popular destination that encouraged people to interact more with the surroundings. The applicant also noted that the tables and chairs would not be for the exclusive use of Rocketeer patrons but for use by anyone; that the site was not included within the SLA, that the proposals did not have any permanent visual or physical impact on it and that there was no loss of open space.

The Planning Adviser concluded by referring to the further representations received in relation to the review. He reminded Members that in reviewing the application and taking account of all consultee responses and other submissions, it was open to them to take a different view from the case officer or to seek further information, if necessary. Should they be minded to approve the application, the case officer had provided a suggested schedule of conditions.

The Chair thanked the Planning Adviser for his summary.

The Planning Adviser responded to questions from Members. He said he was not aware of any problems reported while the current arrangements had been operating during the pandemic and he expected that these arrangements would reduce as the restriction level reduced within East Lothian. He confirmed that any issues relating to incorrect paving finishes would be addressed if the application was approved and, while he was not aware of any enforcement action having been taken to date, it could be progressed at any time. He also advised that the grass area at the Green was maintained by the Council's Amenity Services for the general benefit of the town and that they would likely undertake any remediation work to address damage. However, he could not say how this might be agreed with the applicant/land owner.

The Legal Adviser provided additional information in relation to Scottish Government guidance on support for businesses during the pandemic, specifically flexibility in planning rules. He confirmed that, if planning permission was refused, enforcement action would be taken as soon as was practicable. In relation to the cost of maintenance of the grass area and any remediation work, he advised that a sum could be requested under a section 75 agreement or an upfront payment agreed as part of a section 69 agreement; and this matter could be addressed by way of conditions, should planning permission be granted. He was not able to advise on current land ownership or the existing arrangement with Amenity Services.

The Chair asked his colleagues to confirm if they had attended a site visit and 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 Kempson said that the site visit had been helpful in showing the impact of the tables and chairs on the site; she had noted in particular the damage to the grass and the generally detrimental impact on the area around the site. She said that there were plenty of places for people to sit and eat their takeaway food within a short distance of the restaurant without spoiling the approach to an interesting and iconic

area of the town. Referring to photos provided by the applicant, she concluded that if the number of tables and chairs was increased they would have an even greater impact on the area. For these reasons, she would be upholding the original decision to refuse planning permission.

Councillor Gilbert agreed with his colleague that this was an unsympathetic development which was already having a harmful impact on the local environment. However, he also recognised the importance of supporting businesses in North Berwick and across East Lothian to recover from the impact of the pandemic. On balance, and very narrowly, he said he would be upholding the original decision to refuse planning permission.

The Chair agreed with his colleagues. He had noted on the site visit that the tables and chairs caught the eye while walking towards the harbour and that the grass area where they were located was worn down. While he acknowledged the need to support businesses affected by COVID-19 he felt that this had been done throughout the pandemic. He agreed that there were other places for people to sit in the area and elsewhere and he did not think that the public would make use of the tables and chairs for general use as the perception would be that they were only for restaurant customers. This would therefore result in a loss of amenity. He would be upholding the decision of planning officers to refuse planning permission.

Decision

The ELLRB agreed unanimously to dismiss the appeal and to refuse planning permission for the reasons set out in the original Decision Notice, which were:

1. The proposed change of use of the area of public amenity open space to use as an outdoor seating area in association with the existing restaurant/servery/takeaway business of 'The Rocketeer' at 26 Victoria Road would result in an unacceptable harmful impact, detrimental to the recreational function of the area of amenity open space and would significantly compromise the visual amenity and landscape character of the area, contrary to Policy OS1 of the adopted East Lothian Local Development Plan 2018.
2. The proposed change of use of the area of public amenity open space to use as an outdoor seating area in association with the existing restaurant/servery/takeaway business of 'The Rocketeer' at 26 Victoria Road would result in the temporary loss of an area of amenity open space that makes a significant positive contribution to the landscape character of this gateway approach to the harbour promontory and as a result would be significantly harmful to the landscape character and appearance of this part of the North Berwick Conservation Area, contrary to Policy CH2 of the adopted East Lothian Local Development Plan 2018 , and with Scottish Government guidance on development affecting a conservation area given in Scottish Planning Policy (Revised December 2020).
3. The proposed hardstanding areas to the north, south and west sides of the building of 26 Victoria Road, by virtue of their modern appearance and uniformity and their positioning around all sides of the building, would be out of keeping with the character and appearance of the surface finishes of the area, and as unsympathetic areas of hardstanding would be harmful to the landscape character of the area and of this part of the North Berwick Conservation Area, contrary to Policies DP2 and CH2 of the adopted East Lothian Local Development Plan 2018, and with Scottish Government guidance on

development affecting a conservation area given in Scottish Planning Policy (Revised December 2020).

4. As unsympathetic development that would have a harmful impact on the landscape character and visual amenity of the area and of this part of the North Berwick Conservation Area, the proposed change of use of the area of amenity open space to use as an outdoor seating area would also have a detrimental impact on the setting of this part of the North Berwick to Seton Sands Special Landscape Area, and the public benefits of the proposed development would not clearly outweigh any adverse impact on the setting of the Special Landscape Area. Accordingly, the proposed change of use of the land to use as an outdoor seating area would be contrary to Policy DC9 of the adopted East Lothian Local Development Plan 2018.
5. As development contrary to Policies OS1, CH2, DP2 and DC9 of the adopted East Lothian Local Development Plan 2018, the proposed development would also be harmful to this part of the East Lothian coastal area and contrary to Policy DC6 of the adopted East Lothian Local Development Plan 2018.

2. PLANNING APPLICATION NO. 20/01252/P – ERECTION OF 1 HOUSE AND ASSOCIATED WORKS, GARDEN GROUND OF 51 ST BALDRED'S ROAD, NORTH BERWICK

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, location and detailed proposals contained in planning application no. 20/01252P relating to the erection of 1 house and associated works in the garden ground of 51 St Baldred's Road, North Berwick. The application had been registered on 27 November 2020 and was refused on 22 January 2021.

He reminded Members that planning applications should be determined in accordance with the development plan for the area unless material considerations indicated otherwise. He noted that the case officer had considered that no strategic development plan policies were relevant to the determination of the application. The relevant policies of the East Lothian Local Development Plan 2018 (LDP) were contained in the officer's report with the policies on which refusal was based being: LDP policies DP1 Landscape Character; DP2 Design; and DP7 Infill, Backland and Garden Ground Development. A further material consideration on which refusal was based was the advice contained in national Planning Advice Note 67 Housing Quality.

The Planning Adviser outlined the concerns raised in the 6 representations received on the original application; 2 from the same neighbouring property. The main issues were the effects that the proposed house would have on the amenity of neighbouring properties in respect of overlooking, overshadowing, etc. That it would be an over development of the site, overly dominant (being of two storey), unsympathetic to its surroundings, not in keeping with the appearance and density of the locality and having the potential to set a precedent for further similar development. He advised that North Berwick Community Council had also objected in the strongest terms and raising similar concerns.

The Planning Adviser summarised the planning case officer's assessment of the application which had noted the effects on neighbouring properties and the existing property and the amenity to be enjoyed by the new house. The case officer had noted its acceptability in terms of Road Services requirements, no harmful loss of sunlight or amount of daylight received by neighbouring houses and no harmful overlooking of neighbouring garden ground to the houses on Dundas Avenue or to no. 49 to the east. However, taking into account its wider impact on the surrounding area, the case officer had concluded that the proposed house, by virtue of its height and its position would be an inharmonious and overly dominant form of infill development that would appear overbearing to neighbouring residential property, would appear as an unsympathetic and discordant form of infill development within the streetscape, and would be an overdevelopment of the site. Furthermore, it would be out of keeping with and harmful to the density and pattern of development of the built form of the surrounding area, and would set an undesirable precedent for other such forms of harmful backland development. Consequently, the proposed development would be contrary to LDP policies DP1, DP2 and DP7 and the advice on designing for place given in Planning Advice Note 67: Housing Quality and these formed the reasons for refusal of planning permission.

He also referred to the case officer's additional statement of response to the review which addressed matters relating to the determination of different infill development proposals, the application of policy DP7, and that, if approved, the development would be likely to set a precedent for other such forms of backland development on the south side of St Baldred's Road.

The Planning Adviser then summarised the applicant's grounds for review which were submitted by the agent for the applicant. These concentrated on the areas of agreement in the officer's report and noted that the garden that formed the application site was larger than its neighbours and larger than other garden ground that had been allowed to be developed elsewhere on St Baldred's Road and in North Berwick. The proposed house would form an attractive family home designed to be as far as possible carbon neutral that had been designed to respond to the specific site characteristics. The applicant contended that the house would not be readily visible from public spaces, would not dominate its immediate neighbours and would fit comfortably in its context with the local residential character and was in compliance with Policies DP2 and DP7. Furthermore, it was not accepted that a precedent for future development would be set as garden ground sizes in other nearby rear gardens were smaller than the application site.

The Planning Adviser drew members' attention to the 2 further representations submitted in response to the review and which took issue with some of the points in the applicant's review statement. Amongst these, was an inaccuracy in a drawing that failed to show the kitchen extension at 7 Dundas Avenue which had a window overlooking the application site and concerns about the level of screening provided by the trees as shown on drawings provided by the applicant. The applicant's agent submitted a further response which restated the suitability of the proposed development, acknowledged that the kitchen extension to no 7 Dundas Avenue was not shown due to an omission but that it did not materially change the situation.

The Planning Adviser concluded by reminding Members of the options available to them and that, should they be minded to approve the application as a result of this review, the case officer had provided a suggested schedule of conditions.

The Chair thanked the Planning Adviser for his summary.

The Planning Adviser replied to a question from the Chair, confirming that Road Services required that car parking provision included sufficient room for a car to exit a property onto the road in a forward gear. The Road Services officer was satisfied that this requirement had been met.

The Chair asked his colleagues to confirm if they had attended a site visit and 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 Gilbert said he had considered the case thoroughly and noted the many positives and negatives. However, in his view, there were more negatives than positives; the proposals represented a cramped form of infill development not appropriate to the location; and such development would set an undesirable precedent in the area. He would have no hesitation in upholding the original decision to refuse planning permission.

Councillor Kempson felt that the proposals were a very cramped form of infill development. She observed that the COVID-19 pandemic had shown the value of garden ground and having two houses on this site would mean that neither would have sufficient garden or leisure grounds. Furthermore, she considered that the proposals were not in keeping with the surrounding area and would be detrimental to the streetscape and to the amenity of the existing houses. For these reasons, she was minded to refuse planning permission.

The Chair noted the volume of information provided on this application and how helpful it had been to visit the site. He agreed with previous remarks regarding the cramped nature of the development within the site. As a family home, he considered the proposed house to be too cramped and he was also concerned about the possibility of overlooking. He would be upholding the original decision to refuse planning permission.

Decision

The ELLRB agreed unanimously to dismiss the appeal and to refuse planning permission for the reasons set out in the original Decision Notice, which were:

1. By its contained backland position and the higher density that would result from its additional built form, a house erected on the site would be a substantial intrusion into its setting and a cramped form of infill housing development not appropriate to its place and harmfully at odds with the characteristic pattern and density of the layout of the houses and gardens of St. Baldred's Road. Consequently the proposed development is contrary to Policies DP1, 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 have an overbearing effect on the garden of the house of 7 Dundas Avenue, and in this the proposed development would have an unacceptable impact on the amenity of the residents at 7 Dundas Avenue, contrary to Policies DP2 and DP7 of the adopted East Lothian Local Development Plan 2018.

3. If approved the proposal would set an undesirable precedent for similar types of development in backland positions on the south side of St. Baldred's Road, which would be harmful to the characteristic pattern and density of development of this part of North Berwick. The cumulative effect of such development would neither preserve nor enhance but would be harmful to the character and appearance of the area.

The Legal Adviser confirmed that, in relation to planning application 20/01241/P (Agenda Item 1), enforcement action would be progressed as soon as was practicable.

Signed

Councillor Andrew Forrest
Chair of Local Review Body (Planning)