



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

**THURSDAY 20 MAY 2021
VIA THE DIGITAL MEETINGS SYSTEM**

Committee Members Present:

Councillor J McMillan (Chair)
Councillor J Findlay
Councillor J Williamson

Advisers to the Local Review Body:

Mr C Grilli, Legal Adviser to the LRB
Ms J Squires, 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 Findlay and Williamson proposed and seconded Councillor McMillan. It was therefore agreed that Councillor McMillan would chair the Local Review Body (LRB) on this occasion.

1. PLANNING APPLICATION NO. 20/00989/P – ALTERATIONS, EXTENSION TO HOUSE, FORMATION OF DORMER AND HARDSTANDING AREA, 13 ROODWELL COTTAGES, PRESSMENNAN ROAD, STENTON, DUNBAR EH42 1TE

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. 20/00989/P relating to a semidetached property at 13 Roodwell Cottages, Pressmennan Road, Stenton. While not a listed building, the property was located within Stenton Conservation Area. The original application was for a number of alterations and extensions to the property. These alterations and extensions had been granted permission and were not subject to this review. The original application also included proposals for a dormer. Although the dormer was a significant element of the scheme, on balance, the case officer considered the majority of the proposals were acceptable. The application was approved, with refusal of the dormer by condition, rather than refusing the scheme overall. This appeal was for a review of grant of permission with Conditions imposed.

The Planning Adviser reminded Members that applications should be determined in accordance with the development plan for the area unless material considerations indicate otherwise: in this case the South East Scotland Plan (SESPAN) and the East Lothian Local Development Plan 2018. Other material planning legislation and policies were: Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997; and the Scottish Government's policy on Conservation Areas as given in Scottish Planning Policy. The applicant in their appeal statement also noted Historic Environment Scotland Interim Guidance on Designation of Conservation Areas and Conservation Area Consent April 2019 and East Lothian's Cultural Heritage and Built Environment SPG including Appendix 1 Conservation Area Character Statements to be relevant.

The Planning Adviser summarised the planning case officer's assessment of the proposals with particular reference to the dormer. She outlined the size, scale and materials to be used, as well as the impact on the existing building and surroundings. She noted that the case officer considered that while the dormer windows would not cause harmful overlooking nor loss of sunlight or daylight to any adjacent properties, the dormer would be harmfully disproportionate to and result in a gross overdevelopment of the roof slope. It would not be subservient to or in keeping with the original house. Due to its size, scale, design, proportions, massing, predominantly zinc clad external finish and position, it would be a radical alteration to the rear elevation of the house that would appear as harmfully dominant, intrusive and incongruous feature

on the roof slope, occupying almost all of its length. The proposal would also be readily visible from the public area of the footpath to the south west of no. 14 Roodwell Cottages which gave access to the Crofts.

The dormer would be radically different from the smaller sized, traditionally designed pitched roof dormers approved on the rear elevations of 2, 3 and 5 Roodwell Cottages. It would not be in keeping with the character and appearance of the house, the streetscape, and would harm the special architectural and historic character of the Conservation Area. This was contrary to Policies of the adopted East Lothian LDP namely Policy CH2: Development in Conservation Areas and Policy DP5: Extensions and Alterations to Existing Buildings; as well Scottish Government Policy on development within a Conservation Area set out in Scottish Planning Policy 2014. In addition, the case officer considered the proposed dormer would set an undesirable precedent for the formation of similar sized dormers on the rear slopes of other houses within the streetscape, which would be collectively detrimental to the Conservation Area.

The Planning Adviser summarised the grounds for review put forward by the applicant which sought the removal of Conditions 1 and 2 of the planning permission as they considered they were not competent in relation to Scottish Government Circular 4/1998 "The Use of Conditions in Planning Permissions". This Circular stated that conditions can enable many development proposals to go ahead where it would otherwise have been necessary to refuse planning permission. They should only be imposed when they are necessary, relevant to planning, relevant to the development, enforceable, precise and reasonable in all other respects. She outlined the conditions as stated in the planning permission.

She outlined the applicant's arguments that Condition 2 was not precise as it was not clear what they must do to comply. She indicated that the case officer had verbally informed her that there had been an error in the composition of the decision notice; the intention was that the first sentence of Condition 1 namely "The proposed box type dormer proposed for the rear elevation roof slope of the house is not hereby approved" be the Condition, with the remainder of that condition and condition 2 being the reasons for refusal. The planning service therefore accepted that Condition 2 did not meet the tests of Circular 4/1998 but instead gave a further reason for the imposition of Condition 1.

In relation to Condition 1, she advised that the applicant had argued that it was not necessary as the dormer would not result in an unacceptable impact on the character and appearance of the house itself nor Stenton Conservation Area, and was therefore not needed in order to safeguard the character and appearance of the house and Stenton Conservation Area as the reason for the condition stated. Furthermore, the application site was within an area that forms an exception to the consistent uniformity of form and materials within the village, and it did not make a significant contribution to the special architectural or historic interest of Stenton Conservation Area. The applicant did not consider that the roof of the dwelling was 'readily visible' from public areas to the extent that the dormer would harm the special architectural and historic character of the Conservation Area. The path was not a key viewpoint within the village. As a result the proposal was not contrary to Policy CH2 of the LDP. In his view, the dormer also accorded with Policy DP5 as it was subservient to the original building in terms of materials and form, and complementary to the original building in terms of its design and materials.

In conclusion, the applicant contended that condition 1 was not reasonable as it effectively nullified the benefit of planning permission, contrary to the guidance of

Circular 1998/4, and that it resulted in the development being substantially different to that comprised in the application. Facilitating the reorganisation of living spaces within the building was the sole purpose of obtaining the planning permission, and that if the dormer was not built, bedrooms could not be built in the roof space as there was insufficient light and activity space to comply with building regulations.

The Planning Adviser closed by reminding Members that it was open to them to dismiss the appeal, allow the appeal, or to rewrite the Condition as originally intended or otherwise.

The Chair thanked the Planning Adviser for her summary.

The Planning Adviser responded to questions from Members. She provided information on the reduction in the amount of zinc to be used on the dormer, whether the property's visibility from a neighbouring path should be a material consideration in the appeal and the architectural merit of the property itself. She also confirmed that, to her knowledge, there was no discretion offered in planning policies CH2 and DP5 to take account of COVID-19 and the potential need for extensions to residential properties to provide home working spaces.

The Chair confirmed that a site visit had taken place attended by all three members of the LRB. He asked his colleagues to confirm 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 Findlay stated that one of his concerns had been the use of zinc on the dormer, however, he was reassured to see that the amount of zinc had been reduced. He noted that that dormer would be at the back of the property and, while visible from the footpath, one would have to look carefully to see it through the foliage. On balance, he proposed to allow the appeal as he felt that the conditions were not appropriate.

Councillor Williamson said he had walked around the immediate area prior to viewing the site and he had walked up the footpath to the nearby houses. He had observed that a number of neighbouring properties had extensions and some also had dormers to the rear. He welcomed the proposed reduction in zinc usage and he noted that there would be no overlooking or loss of daylight or sunlight to neighbouring properties. He therefore saw no reason to refuse the appeal.

The Chair concurred with the views of his colleagues. He said that the site visit had persuaded him that the proposals would not adversely affect the conservation area. He did not think that the dormer would be incongruent or adversely impact on the character of the property or the surrounding area. He said that due to the impact of COVID-19 and changes to working and home life it was important to show that policies could be flexible enough to adapt to changing needs. He agreed that the appeal should be upheld.

Decision

The ELLRB agreed unanimously to uphold the appeal and to discharge both conditions of the previously granted planning permission.

2. PLANNING APPLICATION NO. 20/01284/P – EXTENSION TO HOUSE, HEIGHTENING PART OF ROOF, FORMATION OF RAISED PLATFORM WITH STEPS, HANDRAILS, ERECTION OF DOUBLE GARAGE AND GATE AT NOUSTER COTTAGE, GARLETON, HADDINGTON EH41 3SJ

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. 20/01284/P relating to the extension to the house at Nouster Cottage, West Garleton, heightening part of the roof, formation of a platform and erection of a double garage and gate. 5 trees and some hedging will be removed to allow this. The Notice of Review was submitted on 13 March 2021.

She reminded Members that planning applications should be determined in accordance with the development plan for the area unless material considerations indicated otherwise. The case officer considered there were no relevant policies within the South East Scotland strategic development plan 2013 but the following East Lothian Local Development Plan 2018 (LDP) policies were relevant: Policy DC1 Rural Diversification; Policy DC9 Special Landscape Areas; Policy CH6 Gardens and Designed Landscapes; Policy DP2 Design; and Policy DP5; extensions and alterations to existing buildings. In addition, the case officer had considered Scottish Government policy as set out in Scottish Planning Policy 2014 to be material to the application. Supplementary Planning Guidance on Special Landscape Areas was also available.

The Planning Adviser then summarised the planning case officer's assessment of the application. The case officer had considered that the heightening of the existing flat roofed component, the formation of raised platform, the erection of a garage and repositioning of the existing timber access gate had all complied with policy. That there would be no harmful overlooking or loss of sunlight or daylight to the neighbouring residential property from these or indeed any part of the proposal. He also noted that the Council's Roads Services and Environmental Health Service had raised no objection, and that one public representation had been received, which was in support of the planning application.

However, the case officer had considered that the principle component of the scheme comprised the proposed one and a half storey extension to the north and west of the house. He noted the requirements of Policy DP5 that alterations and extensions must be well integrated into their surroundings; and must be of a size, form, proportion and scale appropriate to the existing house, and must be subservient to and either in keeping with or complementary to the existing house. He considered that the existing house was well contained due to its backland location and the boundary enclosures of the garden and therefore did not consider it readily visible in public views, and so the extension would not detract from the character and appearance of the area. He had considered that it would comply with LDP Policies DC9 and CH6 as he did not consider it would harm the Garleton Hills Special Landscape Area or the locally designated Garden and Designed Landscape of West Garleton.

However, in relation to Policy DP5, the case officer noted that the proposed extension would add a further 8 rooms, 2 bathrooms and a hallway to an existing 3 bedroom house. He considered that the character of the existing house derived from its small size and scale and that the extension would, by its larger size, massing and floor area, be a dominant addition to the built form of the existing house. He considered the extension would significantly overwhelm it and would not be subservient to it, therefore contrary to Policy DP5. He further considered that due to its size and scale, it would be

tantamount to the creation of a new house in the countryside, which without appropriate justification is contrary to Policy DC1 on rural diversification as well as Scottish government policy guidance regarding new housing development in the countryside as set out in Scottish Planning Policy. The application for planning permission was therefore refused.

The Planning Adviser then summarised the applicant's grounds for review. The applicant had stated that the extension would create an innovative family home and an appropriate addition to the application site. The existing extensions were of limited aesthetic quality, the current house was inefficient, and the proposals were a significant enhancement. The applicant stated that this was very clearly not a new house in the countryside, and there could be no concerns over precedent due to the specific characteristics of the site including the overall plot size, negligible visibility, consolidation of existing buildings, and others. Taking into account the removal of outbuildings and the conservatory the proposed floor area was an increase of only a third. The new roofline was identical to that of the existing building, and the design balanced the integration of the existing property with the extension. The plentiful space within the plot to accommodate the reworked home, would not lead to any negative impacts on neighbours or the wider landscape setting.

With regard to the reasons for refusal, the applicant submitted that that the existing house had suffered unsympathetic extension and these proposals incorporated the existing building and provided it with a coherent identity. There was no loss of amenity to neighbours. The completed home would occupy a small proportion of the site; the extension was compatible as it maintained residential use, represented an overall increase in floor area of only around 30%; and its materials and finishes were consistent and in keeping with the existing property and properties in the immediate vicinity. The applicant also highlighted the provision of DP5 that development that did not meet the given criteria may be acceptable where it brought other positive planning and design benefits. He stated that reworking and extension of the existing building would bring about significant design benefit. The applicant reiterated that the proposals did not constitute a new house in the countryside as it was already an established home at West Garleton. He also considered Policy DC1 was not relevant as it applied to changes of use or conversions of existing buildings, which this was not.

The Planning Adviser reminded Members that, should they be minded to allow the appeal, the case officer had recommended a condition to restrict the use of the garage to avoid its use for residential or business use. She added that, in her view, the Members may also wish to consider including conditions to replace the trees and hedging in the interest of retaining the biodiversity and landscape interest of the site; retention of trees and/or hedging to provide screening; securing an appropriate archaeological investigation prior to works commencing; and restrictions on the use of security lighting.

The Chair thanked the Planning Adviser for her summary.

The Planning Adviser responded to questions from Members. She advised that had the house been destroyed through unintended consequences, for example a fire, planning policy would support a replacement property being built where the proposal was like for like. She also confirmed that any proposals under permitted development would have to be no more than 10% of the original size of the property. Replying to a query about external security lighting, she stated that it may be possible to add a condition requesting that this lighting be angled in such a way as to avoid impacting neighbouring properties. Finally, she confirmed the relevant planning policies and terms of the planning assessment, as outlined in the case officer report.

The Chair confirmed that a site visit had taken place attended by all three members of the LRB. The Chair asked his colleagues to confirm 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 site visit had been helpful in adding further context to the case officer assessment and he noted that the only real issue related to whether or not the proposed extension was subservient to the original house. In his view, what was proposed was not significantly larger than the present footprint and the shape and roof pitches were in keeping with the existing property. He noted that it was not classed as a new build but as an extension. He said he was content with the condition regarding use of the garage and he would be supportive of additional conditions relating to retention/replacement of trees and hedging and an archaeological survey being carried out in advance of any works. On this basis, he would uphold the appeal.

Councillor Findlay referred to the requirements of policy DP5 but noted that in this case the original cottage had been extended previously and what was there at present was not particularly attractive. In addition, the proposals before them were not massively larger than the existing house. He agreed with the condition that the garage should not be converted for residential use, and he suggested that any security lighting be angled away from neighbouring properties. He was not hugely concerned about the archaeological survey but would support this condition if it was the consensus from other Members. Overall, he was in favour of allowing the appeal.

The Chair noted his colleagues' comments and said he had also considered the proposals carefully against the relevant planning policies. He did not think that what was proposed would result in a loss of amenity or that it would be harmful to the site or surroundings. The size, proportion and scale would also be in keeping with the existing house. After careful consideration, he said he would uphold the appeal. However, he asked officers to give advice to the applicant regarding retention/replacement of trees and he agreed that an archaeological survey should be undertaken prior to any works. He also hoped that the applicant would take on board the comments made regarding security lighting.

The Legal Adviser noted that Members were all in agreement regarding the condition relating to an archaeological survey. He sought clarification on whether all three Members were in agreement about conditions relating to security lighting and preventing the garage being converted for residential use. All Members agreed to these conditions.

The Legal Adviser indicated he would formulate the wording of the conditions in consultation with the Planning Adviser and include these in the formal Decision Notice.

Decision

The ELLRB agreed unanimously to uphold the appeal and to grant planning permission subject to the following conditions:

1. Archaeological survey

No development shall take place on the proposed site until the applicant has undertaken and reported upon a programme of archaeological work (Archaeologically monitored strip of all groundworks) in

accordance with a written scheme of investigation which has been submitted by the applicant (or their agent) and approved by the planning authority.

Reason

To facilitate an acceptable archaeological investigation of the site.

2. Tree Retention and Protection

Only the five trees and two sections of hedgerow indicated in red on the drawing titled 'Proposed Site Plan' numbered 216-GA-010 rev C shall be removed during the course of development. All remaining trees and hedges shall be retained, and protected during development. No development shall take place on site until temporary protective fencing in accordance with Figure 2 of British Standard 5837_2012 "Trees in relation to design, demolition and construction" has been installed, approved and confirmed in writing by the Planning Authority. The fencing must be fixed in to the ground to withstand accidental impact from machinery, erected prior to site start and retained on site and intact through to completion of development. The position of this fencing shall be positioned outwith the Root Protection Area (RPA) as defined by BS5837:2012 for all trees and approved in writing by the Planning Authority.

All weather notices should be erected on said fencing with words such as "Construction exclusion zone - Keep out". Within the fenced off areas creating the Construction Exclusion Zones the following prohibitions must apply:-

- No vehicular or plant access
- No raising or lowering of the existing ground level
- No mechanical digging or scraping
- No storage of temporary buildings, plant, equipment, materials or soil
- No hand digging
- No lighting of fires
- No handling discharge or spillage of any chemical substance, including cement washings

Planning of site operations should take sufficient account of wide loads, tall loads and plant with booms, jibs and counterweights (including drilling rigs), in order that they can operate without coming into contact with retained trees.

Reason

In order to form Construction Exclusion Zones around retained trees and protect retained trees from damage.

3. Planting Plan, Timescale and Replacement planting

No development shall take place unless a scheme of landscaping has been submitted to and approved in writing by the Planning Authority, and is implemented thereafter as approved. The scheme shall provide details of replacement tree and hedge planting including plant sizes, species, habitat, siting, planting distances and a programme of planting. The scheme shall include indications of all existing trees and hedgerows on the land, details of any to be retained, and measures for their protection in the course of development.

All planting comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the commencement of the development. Any trees or plants which die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar species and final size, unless the Planning Authority gives written consent to any variation. No trees or shrubs, detailed in the approved landscaping plans to be retained on the site, with the exception of pruning of hedges and fruit trees in line with good tree management, shall be damaged or uprooted, felled, topped, lopped or interfered with in any manner without the previous written consent of the Planning Authority.

Reason:

To ensure the retention and replacement of trees and hedging in the interests of biodiversity and landscape amenity

4. Replacement Planting

No development shall take place until a scheme of replacement planting of the five trees and length of hedging shown in red on the drawing numbered 216-GA-010 docketed hereto has been submitted to, and approved in writing by, the Planning Authority. The scheme shall provide details of the tree sizes, species, siting, planting distances and a programme of planting.

All planting comprised in the approved details of landscaping shall be carried out in the first planting season following the completion commencement of the development and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Planning Authority gives written consent to any variation.

Reason:

To ensure the replacement of trees and hedging in the interests of the biodiversity and landscape interest of the area

5. Lighting

No external light shall be installed at the property unless prior to its installation, details of the siting and design of the proposed light have been submitted to and approved by the planning authority in writing.

Reason:

To safeguard the amenity of the occupants of nearby residential properties from light pollution.

Signed

Councillor John McMillan
Chair of Local Review Body (Planning)