

REVIEW DECISION NOTICE

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

Application for Review by APT Planning & Development on behalf of Mr Steven Lyons c/o APT Planning & Development, 6 High Street East Linton for refusal of Planning Permission for relating to the erection of 1 house and associated works in the garden ground of 51 St Baldred’s Road, North Berwick.

Site Address: 51 St Baldred’s Road, North Berwick

Application Ref: 20/01252/P

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

Date of Review Decision Notice: 30 August 2021

Decision

The ELLRB unanimously agreed that the Review should be dismissed and planning permission refused 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, 17 June 2021. The Review Body was constituted by Councillor A Forrest (Chair), Councillor S Kempson, and Councillor N Gilbert. All three 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 P. Zochowski, 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 for erection of 1 house and associated works on garden ground of 51 St Baldreds Road, North Berwick.
- 2.2. The planning application was registered on 27 November 2020 and the decision notice refusing the application is dated 22 January 2021.
- 2.3. The reasons for refusal of the Planning application are more particularly set out in full in the said Decision Notice dated 22 January 2021. The reasons for refusal are set out as follows:
 - 2.3.1. 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 crammed form of infill housing development not appropriate to its place and harmfully at odds with the characteristic pattern and the density of the layout of the houses and gardens of St Baldreds 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.
 - 2.3.2. 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.
 - 2.3.3. If approved the proposal would set an undesirable precedent for similar types of development in backland positions on the south side of St Baldreds 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.
- 2.4. The notice of review is dated 31 March 2021.

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"> - 1333 06 - 1333 07 - 1333 08 - 1333 01 Rev. B - 1333 02 Rev. E - 1333 09 - 1333 05 Rev. B - 1333 10
ii.	The Application for planning permission registered on 27 November 2020
iii.	The Appointed Officer's Submission
iv.	<p>Legislation, Policies, and Guidance 2018 relevant to the determination of the application</p> <p>The adopted East Lothian Local Development Plan 2018 policies:</p> <ul style="list-style-type: none"> - RCA1: Residential Character and Amenity - DP1: Landscape Character - DP2: Design - DP7: Infill, Backland and Garden Ground Development - T1: Development, Location and Accessibility - T2: General Transport Impact <p>Scottish Government's Planning Advice Note 67: Housing Quality</p>
v.	Notice of Review dated 31 March 2021 together with Applicant's Submission with supporting statement and associated documents including further representations.

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 refuse planning permission, 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 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. 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 Planning 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. The main issues were: (i) the effects that the proposed house would have on the amenity of neighbouring properties in respect of overlooking, overshadowing, etc. (ii) 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 (iii) having the potential to set a precedent for further similar development.

The Planning Adviser summarised the Planning 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 Planning 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 Planning 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. The Planning Adviser also referred to the Planning 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 Planning 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 applicant's agent commented that 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.

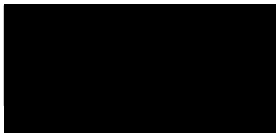
The Planning Adviser then drew members' attention to the 2 further representations

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.

- 4.3. 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.
- 4.4. 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. .
- 4.5. 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.
- 4.6. 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.

Accordingly, the ELLRB unanimously decided that the Review should be dismissed and Planning Permission refused 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.