



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

**TUESDAY 3 AUGUST 2021
VIA THE DIGITAL MEETINGS SYSTEM**

Committee Members Present:

Councillor N Hampshire (Chair)
Councillor J Findlay
Councillor K McLeod

Advisers to the Local Review Body:

Mr C Grilli, Legal Adviser to the LRB
Mr M Mackowiak, Planning Adviser to the LRB

Clerk:

Ms J Totney, Team Manager, Democratic and Licensing

Apologies:

None

Declarations of Interest

None

Introductory Statement by the Legal Adviser

The Legal Adviser explained that today's meeting had been reconvened following a continuation from 15 April 2021 where the LRB discussed the non-determination of the application in relation to Bolton Muir Wood. He advised that the meeting had been continued pending further information, which had now been provided to members with their committee papers. He added that as the meeting was a continuation from 15 April, Councillor Hampshire would remain as the Chair for today's meeting of the Local Review Body (LRB).

Councillor Hampshire welcomed members to the meeting and highlighted that a very important decision was being taken today. He stated that this application is one of the first for a hutting proposal and the decision must be taken correctly as it would reflect on future decisions; he added that many hutting applications were already in the

pipeline. He then handed over to Mr Marek Mackowiak, Planning Adviser, who had no involvement in the original decision and who was also the Planning Adviser at the meeting of the LRB on 15 April, to provide a summary of the current situation.

1. PLANNING APPLICATION NO. 20/00998/P: ERECTION OF HUT, STORE AND ASSOCIATED WORKS (PART RETROSPECTIVE) BOLTON MUIR WOOD, GIFFORD, HADDINGTON

Mr Mackowiak reminded members that the Local Review Body (LRB) heard this planning application on the 15th April 2021 and that at that meeting the committee had decided to defer its decision to allow the applicant to submit further information comprising of a woodland management plan and a site management plan for the entire Bolton Muir Wood area. He pointed out to members that their committee papers contain the previous documentation submitted for this appeal and the further submission from the appointed officer.

Mr Mackowiak drew attention to the further submission, and reported that the appointed officer notes a number of points made by the agent in response to the LRB's request for further information, namely that: it was not possible for the applicant to deliver a woodland management plan and a site management plan for the entire Bolton Muir Wood area; that the agent argues that since these plans involve the use and management of land that is not within the ownership or control of her client it is therefore not reasonable to ask her client to submit such plans for the entire Bolton Muir Wood area when he has no power to deliver this; that in seeking to control the use of land unconnected with that which is the subject of the planning application under consideration, the further information requested by Members of the LRB goes beyond what is necessary to determine whether or not this planning application should be granted permission; the owners of the rest of Bolton Muir would derive no benefit from the granting of consent for the Nolt Wood application and it is unreasonable to seek to impose conditions on their lands in these circumstances; that to impose a planning condition with which it is impossible to comply is undoubtedly ultra vires so it therefore would be irrelevant to planning and therefore beyond the powers of the local planning authority; and confirmed that her client recognises the desire and need to have some assurances about the management of the individual woodlot named 'Nolt Wood'.

In relation to the final point, Mr Mackowiak advised that the applicant's agent has advised that her client would be willing to agree a satisfactorily worded planning condition which encompasses the following points listed below:

- Development of a woodland management plan specific to Nolt Wood, which will include the gradual replacement of non-native conifers with native broadleaf species and scots pine;
- To limit the number of vehicles on site at any one time to two, with exceptions for movement of building materials during construction and ongoing forestry operations for the purposes of woodland management;
- No new fences, hedges or walls on his property's boundary;
- No restrictions on public access, subject to Access Codes being complied with; and
- No commercial letting of the hut.

Mr Mackowiak went on to explain that in addition to the above, the applicant's agent submitted a draft woodland management plan for the individual woodlot named 'Nolt Wood'; that the Council's Biodiversity and Landscape officers have been consulted on

that draft woodland management plan and raise no concerns or objections to it; and that a copy of the draft plan has been submitted as additional information for Members of this LRB.

Mr Mackowiak went on to explain that a suggested schedule of conditions was submitted by the appointed officer for LRB members' consideration and advised that these conditions are relevant should the LRB be minded to uphold the review and grant planning permission. He added that in respect of this planning application, the Council's Biodiversity officer states that she welcomes proposals to enhance and sustainably manage the woodland habitat, and that subject to the suggested conditions numbered ten (10) and twelve (12) being imposed on a grant of planning permission, the proposals do not conflict with Policies NH3 or NH5 of the adopted East Lothian Local Development Plan 2018.

With regard to the impact of the vehicular movements through, and within, the woodland area and the impact and conflict that this may cause with other users within the woodland of Bolton Muir Wood, Mr Mackowiak advised that condition nine (9) of the suggested schedule of conditions states that: Details of the access and parking shall be submitted to and approved in advance by the Planning Authority to show that no more than one parking space shall be occupied and used within the existing surfaced parking area of the woodlot. The details to be submitted shall show that the parking space shall have a length of no more than 6 metres and a width of no more than 2.5 metres.

In closing, Mr Mackowiak highlighted to Members that the appointed officer's further submission requests that members of the LRB consider whether the hut, shed, store and associated works which are the subject of this planning permission should be granted subject to the suggested schedule of conditions; or whether planning permission be refused on the grounds that any vehicle movements through, or within, the woodland area would be harmful to the woodland area and result in conflicts with other users of the woodland area. In making his closing remarks, he advised that notwithstanding all of the information he had just provided, the LRB should be mindful that on the 30 March 2021, planning application 20/00824/P was refused by members of the Local Review Body for the reason being that "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 20182.

Mr Mackowiak concluded by advising members that they have the option of seeking further information or clarification should they consider that necessary.

The Chair invited questions from members.

Councillors Findlay and McLeod asked questions covering Countryside Access codes; the determination of the curtilage of each individual hut; restrictions on vehicular access and the potential installation of locked gates. Mr Mackowiak replied that Access Codes in Scotland are set out in specific documents but are not mandatory or enforceable; the curtilage would be the immediate surroundings of the hut and would not amount to a significant area of woodland and could be set out by way of a planning condition agreed by the Planning officer, with the entire area outwith the curtilage being accessible by the public; and that vehicle access could be restricted by a carefully designed locked gate or similar construction, which would not cause an obstacle to emergency access, and which again could be dealt with by way of a planning condition.

Councillor Hampshire, Chair of the LRB, stated that this is just one application,

although the site had around forty (40) plots advertised, which could result in 40 huts, 40 vehicles, plus tool stores, composting boxes, compostable toilets and ancillary buildings with all of the latter being installed outwith the 30m² area that is set out for huts in the Scottish Government's guidance. He raised concerns about the impact on the surrounding environment and the potential for there to be the appearance of a residential area. His question therefore sought to establish if conditions could be set in relation to Environmental Health approval of compostable toilets and restrictions on the number and type of ancillary buildings. Mr Mackowiak advised that it would be acceptable to have limitations on the size of all ancillary buildings and structures, including temporary structures, adding that every application would be assessed on its own merits but that the cumulative impact of additional huts in the woodland area has to be regarded as a material consideration for proposals.

Councillor Findlay raised a point about a statement made by the applicant's agent in relation to legal rights. Mr Carlo Grilli, Legal Adviser, stated that there is no legal right to have planning permission granted and that it is for the Planning Authority to determine the outcome of the application.

Councillor McLeod indicated that he had been surprised to see that some of the buildings already on the site are of a fixed construction and are not moveable. While happy to be advised in relation to potential conditions, he expressed his support for restricting the number of structures that could be erected in addition to the hut and a compostable toilet.

Councillor Hampshire remarked that compostable toilets are designed to be used by a limited number of people and that to exceed this number is a potential health hazard. He therefore commented that consideration be given to restricting the number of people that can reside in any one hut and also to prevent the area around the hut being used by other people for wild camping. Mr Mackowiak advised that it would be reasonable to consider a condition that would restrict the number of people staying overnight. Mr Grilli clarified that the LRB should be mindful of the definition of wild camping as set out in East Lothian Council's Land Management Rules and advised that camping out near huts in this woodland is outwith the Council's definition of wild camping. Councillor McLeod welcomed restricting the number of people but cautioned against that number being potentially detrimental to families. Councillor Hampshire was of the view that compostable toilets could be used safely by two adults and three children but not by several adults.

Councillor McLeod enquired about restrictions regarding generators in relation to size and noise. Mr Mackowiak advised that there is already a proposed condition for this in the onsite management plan and that this would be the best document to deal with technical issues such as generators and fire risks.

In response to a question from the Chair, all members advised that they had enough information to now be able to make a decision on this application. However, Councillor McLeod advised that this was on the proviso that conditions could be attached; the Chair confirmed it would be possible for the LRB to determine conditions.

Councillor Findlay highlighted that the reason why the meeting had been continued was to create a site management plan which the applicant is stating it is not possible to produce. He stressed that another 30 or 40 hutting applications are anticipated for this site and it remains the case that there is no overall site

management plan. He also highlighted that there could be up to 80 vehicles on the woodland site at any one time on the basis that the applicant has requested two vehicles to be allowed per hut. He stated that he would still be seeking to see a management plan for the whole woodland site and therefore was of the view that there had been no progress since the meeting of the LRB on 15 April. He advised that he would therefore be voting against the granting of planning permission.

Councillor McLeod expressed some sympathy for the applicant given that they were somewhat held hostage by the requirement for a wider woodland management plan and a site management plan. He favoured attaching robust conditions and determining the application at today's meeting of the LRB.

Councillor Hampshire made it clear that he would have much preferred to be making a decision with woodland and site management plans in place along with Scottish Government and Planning Authority policies for managing woodland. However, in the absence of these, and given that the Scottish Government have taken the decision to support huts in the countryside, he commented that there is the potential in future for a similar application to be presented to the Planning Committee with an appeal thereafter to the Scottish Government if planning permission is refused. He advised that the impact of this is that East Lothian Council could lose control of any conditions that would be attached to applications for huts in the countryside. Councillor Hampshire stated that he would therefore support the application if adequate conditions and controls are attached. He outlined the requirement for the following conditions, in addition to those suggested by the appointed officer:

- The area of the hut should not exceed the Scottish Government guidance of 30m²;
- The distance of any ancillary buildings (including compostable toilets) must be at a distance from the hut as agreed by the Planning officer following a site visit;
- Ancillary buildings to be limited to a compostable toilet and a maximum of two other structures, all to be within close proximity to the hut with all the ancillary buildings having a total additional area of a maximum of 6m² with the exact location of the ancillary buildings being determined by the site management plan;
- A limit to be placed on the number of people who can stay in the hut overnight;
- No camping or other accommodation to be permitted on the site of the hut;
- No tents or other temporary ancillary structures to be erected outside the huts
- All buildings and structures, including ancillary structures are to be erected on pads with no drilling down into the ground permitted; any existing structures erected on concrete will require to be removed; and
- All owners of all the different sites are to be encouraged to come together to create a joined up management plans.

Councillor Findlay asked about conditions in relation to the number of vehicles and energy generators, suggesting that the latter should be solar powered. Councillor Hampshire advised that he would be supportive of a condition that allowed no diesel or petrol generators to be on site. Councillor McLeod indicated his support for a condition restricting vehicles to one per hut.

Turning back to the point raised about the curtilage area, all three members of the LRB advised that they would support a curtilage area of 3 metres from the hut. Mr Grilli stated that this should be dealt with as part of the site management plan and not as a formal condition set by the Planning Authority.

The following conditions were therefore added to the list of those being requested by the LRB Members:

- Motor vehicles to be restricted to one per hutting plot;
- No solid fuel, fossil fuel, petrol or diesel generators or mains powered utilities to be on site, only solar powered generators to be permitted; and
- The curtilage of the property is to be set as part of the site management plan.

Further debate among members established that there is already a Planning officer condition that would prevent commercial letting of the hut. All members advised that they were ready to move to the vote on this item.

Councillor McLeod approved the planning application subject to conditions already suggested by the Planning Officer and those requested by the LRB [as detailed above at the bullet points].

Councillor Findlay advised that he felt somewhat conflicted as while he agreed with imposing robust conditions it remained his view that an overall management plan was required. He therefore voted against the granting of planning permission.

Councillor Hampshire stated that he would approve the granting of planning permission subject to the Planning officer's suggested conditions and those put forward today by members of the LRB [as detailed above at the bullet points].

The Legal Adviser summarised the LRB members' verbal conditions and confirmed that the Planning officer conditions, as included in the meeting papers, would be attached to the planning permission and that the wording of these would be amended to include the verbal conditions requested at today's meeting by the LRB. He advised that the Planning officer would appropriately word the final conditions, to fully reflect the LRB's verbal conditions. He advised that the final version of the conditions would be issued to the LRB members for agreement after which they would be detailed in full in the Decision Notice that would be issued to the applicant, and included in the minute of today's meeting.

Decision

The East Lothian Local Review Body agreed by a majority to uphold the appeal and to grant planning permission for planning application 20/00998/P subject to all of the undernoted conditions [the final wording of which have been provided post-meeting]:

Conditions:

1. The hut hereby approved shall be used solely for intermittent recreational accommodation (i.e. not as a principal residence). For the avoidance of doubt, the hut shall not be rented out or used as an independent residential unit, as a holiday let accommodation or for any business, trade or commercial use. It shall not be

occupied for a single overnight stay longer than 12 continuous weeks in any calendar year and shall not be occupied for overnight stays for 28 days thereafter.

Reason:

To enable the Planning Authority to control the use of the development in the interests of safeguarding the character, integrity and appearance of the woodland area and the character and amenity of the landscape of the area.

2. The hut hereby approved shall not be made available for commercial rent unless otherwise approved in writing by the Planning Authority.

Reason:

To enable the Planning Authority to control the use of the development in the interests of safeguarding the character, integrity and appearance of the woodland area and the character and amenity of the landscape of the area.

3. The hut hereby approved shall not be connected to mains water, grid electricity or sewerage. Moreover, no fossil fuel power generators shall be used within the application site.

Reason:

To ensure that the hut is a simple, low impact building that is removable with little or no trace at the end of its life in the interests of the local environment.

4. Within two months from the date of this planning permission details of the operation of the composting toilets and details for waste management shall be submitted to, and approved in writing by, the Planning Authority prior to their use. The operation of the hut shall thereafter be carried out in strict accordance with the details so approved.

Reason:

In the interests of the local environment.

5. The foundations for the hut hereby approved shall be padstones or such other non-permanent foundation approved in writing by the Planning Authority placed directly on the existing ground level and material. No change shall take place to the foundation method unless otherwise approved in writing by the Planning Authority.

Reason:

To ensure that no solid permanent foundations are formed.

6. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 as amended by The Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2011 or by any other statutory instrument amending, revoking or re-enacting the 1992 Order, no fencing, walls, gates or other means of boundary enclosure shall be erected within or outwith the application site without the prior permission of the Planning Authority.

Reason:

In the interests of safeguarding the character, integrity and appearance of the woodland area and the character and visual amenity of the landscape of the area.

7. Within 1 month of the date of the grant of this planning permission the external untreated timber tool shed, compost store building and raised planters hereby

approved shall be painted or stained in a dark brown or dark green colour in accordance with a sample colour to be submitted to and approved in advance by the Planning Authority. The paint or stain used shall accord with the sample so approved.

Reason:

To reduce the visual impact of the retrospective structures in the interests of safeguarding the character, integrity and appearance of the woodland area and the character and amenity of the landscape of the area.

8. In the event that the hut, sheds, store buildings or raised planters hereby approved become obsolete or redundant they, together with any other development, shall within two months be removed from the application site and the land made good to the satisfaction of the Planning Authority.

Reason:

In the interests of safeguarding the character, integrity and appearance of the woodland area and the character and amenity of the landscape of the area.

9. Details of the access and parking shall be submitted to and approved in advance by the Planning Authority to show that no more than one parking space shall be occupied and used within the existing surfaced parking area of the woodlot. The details to be submitted shall show that the parking space shall have a length of no more than 6 metres and a width of no more than 2.5 metres. Development shall thereafter be carried out in accordance with the details so approved.

Reason:

In the interests of the landscape character of the woodland and to limit the amount of vehicular traffic within the woodland area.

10. Prior to the commencement of development hereby approved, a Species Protection Plan (for breeding birds) and a timetable for the implementation of mitigation and protection measures, shall be submitted to and approved in writing by the Planning Authority. The mitigation and protection measures shall thereafter be implemented in strict accordance with the timetable so approved.

Reason:

In the interests of nature conservation.

11. The hut hereby approved shall be erected in compliance with the following requirements:
 - (i) prior to the erection of the hut a plan shall be submitted detailing the root protection areas for the trees adjacent to the location of it;
 - (ii) details of any trees to be removed to facilitate the hut, including details of replacement planting to mitigate for the loss of any existing trees within the site, shall be submitted;
 - (iii) the flue associated with the hut hereby approved shall not be located directly beneath the canopy spread of any tree within the site;

- (iv) no trees within the site shall be damaged, uprooted, felled or lopped or interfered with in any manner without the prior written consent of the Planning Authority; and
- (v) details of any other planting to be carried out within the woodlot shall be submitted prior to any new or additional planting being undertaken.

Reason:

In order to prevent damage to trees within the woodland area which are important to the character and appearance of the landscape of the area.

12. Within three months from the date of this planning permission, a Site Management Plan and a Woodland Management Plan shall be submitted to and approved in advance by the Planning Authority. The Site Management Plan shall show all components of development, and those components of development shall be located as close as is reasonably practicable to the hut hereby approved. The submitted Plans shall include a timetable for their implementation. Thereafter the approved Site and Woodland Management Plans shall be updated every 5 years for the written approval of the Planning Authority. The updated Site Management Plan shall include details of any hut, sheds, store buildings or other components of development that have been removed in accordance with the requirements of condition 8 above.

The Site and Woodland shall thereafter be managed in accordance with the Site Management Plan and the Woodland Management Plan so approved.

Reason:

In the interests of safeguarding the character, integrity and appearance of the woodland area and the character and amenity of the landscape of the area.

Signed

Councillor Norman Hampshire
Chair of Local Review Body (Planning)