

REVIEW DECISION NOTICE

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

Application for Review by Balfour Beatty Homes for formation of earth bunds at Main Road, Macmerry.

Site Address: Main Street, Macmerry, East Lothian

Application Ref: 21/00549/P

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

Date of Review Decision Notice: 29 November 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, 18 November 2021. The Review Body was constituted by Councillor A Forrest (Chair), Councillor N Gilbert, and Councillor J Findlay. 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:-

Ms J Squires, Planning Adviser to the LRB
Mr C Grilli, Legal Adviser to the LRB
Ms F Currie, Clerk

2. Proposal

2.1. The planning application is for review of decision to refuse Planning Permission for formation of bund at Main Street Macmerry

2.2. The planning application was registered on 17 May 2021 and the Decision Notice refusing the application is dated 9 July 2021.

2.3. The reasons for refusal are more particularly set out in full in the said Decision Notice dated 9 July 2021. The reasons for the condition are set out as follows:

Reason:

1. *As the proposed bunds are not proposed for agriculture, horticulture, forestry or countryside recreation and nor are they proposed for a businesses that has an operational requirement for a countryside location, including tourism and leisure uses then the principle of forming the bunds is contrary to Policy DC1 of the adopted East Lothian Local Development Plan 2018.*
2. *The proposed earth bunds would have an adverse visual impact on the landscape character and appearance of this part of the East Lothian countryside contrary to Policies DP1 and DP2 of the adopted East Lothian Local Development Plan 2018 and with Scottish Planning Policy: Revised December 2020.*
3. *The proposed earth bunds would lead to an unacceptable loss of prime agricultural land, contrary to Policy NH7 of the adopted East Lothian Local Development Plan 2018 and Scottish Planning Policy: Revised December 2020.*
4. *The granting of planning permission for the 3 earth bunds would set a precedent for a form of development that other developers would seek to use to dispose of soil waste from development sites to divert it from landfill. This could result in the formation of unsightly earth mounds within the East Lothian Countryside that would individually and cumulatively harm the landscape character of the East Lothian countryside contrary to Policies DP1 and DP2 of the adopted East Lothian Local Development Plan 2018*

2.4. The notice of review is dated 8 September 2021.

3. Preliminaries

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

i.	The drawings accompanying this application are referenced and numbered as follows: <table border="1" style="margin-left: 20px;"> <thead> <tr> <th style="text-align: left;"><u>Drawing No.</u></th> <th style="text-align: left;"><u>Revision No.</u></th> <th style="text-align: left;"><u>Date Received</u></th> </tr> </thead> <tbody> <tr> <td>E11606/505</td> <td style="text-align: center;">-</td> <td>19.05.2021</td> </tr> <tr> <td>E11606/510</td> <td style="text-align: center;">-</td> <td>19.05.2021</td> </tr> <tr> <td>E11606/511</td> <td style="text-align: center;">-</td> <td>19.05.2021</td> </tr> </tbody> </table>	<u>Drawing No.</u>	<u>Revision No.</u>	<u>Date Received</u>	E11606/505	-	19.05.2021	E11606/510	-	19.05.2021	E11606/511	-	19.05.2021
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E11606/510	-	19.05.2021											
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ii.	The Application for planning permission registered on 17 May 2021												
iii.	The Appointed Officer's Submission												
iv.	Policies of the adopted East Lothian Local Development Plan 2018 relevant to the determination of the application: <ul style="list-style-type: none"> - Policy DC1 (Rural Diversification), - NH7 (Protection of Soils), - DP1 (Landscape Character) and - DP2 (Design) 												
v.	Notice of Review dated 8 September 2021 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 the site is at Main Street, Macmerry and lies to the northwest of the village, and the proposal is for the formation of three earth bunds. Two of the bunds would be along the western boundary of the field, the other to the north. The bunds will be 22m in width, 2.5m at their highest points and variously 231, 129 and 102 meters in length. The proposal is located in an agricultural field to the east of and following the line of an existing road to Adniston. The track to the west and north is a right of way, while the section to the north is also part of Core Path 455.

The land is shown on the John Hutton Institute mapping as being prime agricultural land. A site allocated in the East Lothian LDP for housing lies generally to the southwest of this proposal. A Planning Application (reference number 18/01086/PM) for 122 houses and 50 flats has recently been granted on that site and development has commenced. The bunds will be formed of excess soil and sub-soil taken from this development site. The separation of the two sites ranges from some 30m at the southern end to over 200m at the north.

Planning applications should be determined in accordance with the development plan for the area unless material considerations indicate otherwise. The development plan for this area consists of SESPLAN and the East Lothian Local Development plan 2018.

In the Report of handling the case officer did not consider that there were any policies within SESPLAN relevant to this application. The relevant Local Development plan policies were considered to be:

- Policy DC1 (Rural Diversification),
- NH7 (Protection of Soils),
- DP1 (Landscape Character) and
- DP2 (Design)

The case officer considered that Scottish Planning Policy was also relevant, in particular paragraph 80 which states that development on prime agricultural land should not be permitted except where it is essential as part of the settlement strategy or to meet an established need, small scale development linked to a *rural* business or for the generation of renewable energy or extraction of minerals. These criteria are reflected in LDP Policy NH7: Protection of Soils. The Planning Adviser also stated that Scottish Planning Policy also notes that Scotland has a zero waste policy.

The case officer noted that the site is within an area covered by Policy DC1 of the ELLDP. This policy supports new development where it is for agriculture, horticulture, forestry or countryside recreation; or other businesses that have an operational requirement for a

countryside location, including tourism and leisure uses. This proposal does not fall into one of these categories. The applicant has not put forward a case for the need for the bunds other than to dispose the unwanted soil. The case officer notes that where the formation of such bunds has been accepted elsewhere in East Lothian, it has taken place within the residential site boundary as part of the development, e.g. for noise attenuation or landscaping. This is not the case here. The case officer considers that there is therefore no justification for a countryside location.

The case officer further considers that due to the location, size and scale of the bunds, as well as the rising topography, and open nature of the site, the bunds would be readily visible from the A199 road and the associated footpath, as well as from the core paths and rights of way to the north and west of the site. The case officer considers they would appear alien, unnatural and intrusive due to their height and width. The case officer therefore considers the proposal to be contrary to LDP policies DP1 and DP2 on design and landscape character. The case officer further consider that if this method of disposing of unwanted soil is accepted here it would set a precedent that could result in further formation of bunds in the countryside which would collectively cause harm to its landscape and visual amenity.

In respect of Policy NH7 Protection of soils, the case officer notes that the application is not for a proposal contained in the LDP, is not part of the settlement strategy, is not linked to an existing rural business or house, and is not related to renewable energy or minerals. They therefore consider the proposal contrary to this policy and Scottish Planning Policy paragraph 80. The case officer did not consider the reduction in lorry trips would outweigh these considerations.

The application was therefore refused as it is not for a countryside use listed in Policy DC1 and is therefore contrary to that policy; it was considered to have adverse landscape and visual impact such that it does not meet the terms of LDP policies on design DP1 and DP2; it will lead to the loss of prime agricultural land and is not for a use for which that is acceptable, contrary to LDP Policy NH7 and Scottish Planning Policy; and the granting of permission would set a precedent for other similar applications which cumulatively would harm landscape character contrary to LDP policies on design.

A supporting statement was submitted by the applicant with the planning application. The applicant stated bunds will be well landscaped to integrate them into the surrounding landscape and avoid detrimental visual impact, respecting the character and built form of Macmerry. The applicant stated that the alternative to this proposal is to landfill the 15,000 cubic meters of material elsewhere, using 1,600 lorry loads, which they state would cause global warming, as well as having a substantial impact on the volume of traffic using local roads, causing noise nuisance.

The applicant stated the proposal would have no adverse effect on the natural or built environment and would not increase flood risk.

The Applicant in their appeal statement reiterates that once completed the bund will be landscaped to ensure its integration into the surrounding landscape and so will not adversely affect visual amenity. They suggest a mown footpath along the top of the bund could be used as a walkway which could assist in linking East Lothian's Green Networks. The applicant states the formation of a footpath could be secured by condition.

The applicant states that the bund is close to the border of the agricultural field, and is considered to be an area that has limited agricultural potential. They contend that loss of

the agricultural land is negligible when compared to the environmental benefits including potential future ecosystems and avoidance of depositing the material in nearby landfill. The applicant claims there is no restriction on the farmer/landowner undertaking similar works to create a woodland area which would likewise remove the field margins from agricultural production.

On precedent, the applicant states that ELC can control the landscaping and planting of bunds so if future applications were considered unsightly such an application could be refused.

The applicant draws attention to the key aim of Scottish Government policy of reducing greenhouse gas emissions, reflected in Scottish Planning Policy, Scottish Statutory climate change targets and the theme within the LDP of supporting sustainable development and reducing carbon emissions. The applicant considers that the alternative is removal of the material from site by lorry which will have a substantial impact on greenhouse gas emissions as well as volume of traffic on local roads, with consequent noise, vibration and general disturbance. The applicant does not offer any formal traffic impact assessment of the proposed alternative, nor any comparative assessment of the greenhouse gas impact of the proposed solution in comparison with the suggested alternative or with other alternatives for disposal or re-use of the soil which may be available.

One objection was made to the application, on grounds of the potential noise and dust nuisance at their nearby residence, as well as objecting to the location on farmland. One representation was also made, also raising the issue of dust and loss of views at their residence. The case officer did not consider noise and dust to be material planning considerations for this application but rather could be dealt with through statutory nuisance procedures, while any impact on private views is not a material consideration. Since the application a further representation has been made raising issues of the appearance of the bunds in the landscape, visual amenity from their house, dust, and impact on visual amenity of families, cyclists and dog walkers in the area.

The applicant has responded to the objections raised. Regarding loss of private view, they note that this is not a material consideration, but notwithstanding this consider the bunds will blend into the landscape. Regarding dust, the applicant acknowledges there have been issues from the related development site but states this will not arise with the bund. Dust during construction will be minimised by use of control measures. The applicant states the bund will form a pleasing backdrop to the residential scheme, will result in increased ecological activity and promote wilding along a country walk route.

- 4.3. The Members then raised the questions pertinent to the application which the planning advisor responded to.
- 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 commented that the bund would seem unusual. He was of the view that this was an attempt from the applicant to push a problem to the side. He was also of the view that this was a dangerous precedent to set. Accordingly for those and the reasons stated within the Planning Officers report he was minded to refuse this appeal.
- 4.6. Councillor Findlay agreed with Councillor Gilbert's comments. He then added that he could

see no justification for the bund. Accordingly he was minded to support the determination of the Planning Officer and refuse the appeal.

- 4.7. The Chair commented that he agreed with his colleagues and could not see there being a smooth integration of the bund into the landscape. The bund would always appear alien to the area and he could not imagine it would ever appear natural with it always appearing to be man-made. Accordingly he was minded to support the determination of the Planning Officer and refuse the appeal.

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