



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

**THURSDAY 18 NOVEMBER 2021
VIA THE DIGITAL MEETINGS SYSTEM**

Committee Members Present:

Councillor A Forrest (Chair)
Councillor J Findlay
Councillor N Gilbert

Advisers to the Local Review Body:

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

Other attendees:

Ms J Holland, Senior Solicitor
Ms P Gray, Communications Adviser

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. Councillors Findlay and Gilbert indicated that they would be content for Councillor Forrest to chair the Local Review Body (LRB) on this occasion.

Item 2 was taken first.

2. PLANNING APPLICATION NO. 21/00529/P: REPLACEMENT WINDOWS AT 18 MARINE PARADE, NORTH BERWICK EH39 4LD

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. 21/00529/P at 18 Marine Parade, North Berwick for replacement of 13 timber framed windows with uPVC windows on the front (which is the North) and east side elevations of the building. The existing windows were white painted timber framed sash and case windows. The proposed replacements were white coloured quick slide windows.

The site was located within a residential area of North Berwick Conservation Area, with a public footpath to the east and south, and an area of public open space to the north. The site was also within the North Berwick to Seton Sands Coast Special Landscape Area and within an area designated as Developed Coast in the East Lothian Local Development Plan 2018 (“LDP”). The building was not listed.

The Planning Adviser then reminded Members that applications should be determined in accordance with the development plan for the area unless material considerations indicate otherwise. The most relevant policies of the LDP were Policy CH2 – Development in Conservation Areas, and DP5 – Extensions and alterations to buildings. Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and Scottish Planning Policy were also material considerations in respect of determining applications that affect the character and appearance of a conservation area. She also advised on relevant policy of the recently published draft of National Planning Framework 4 and the Council’s Supplementary Planning Guidance.

The Planning Adviser summarised the case officer’s assessment of the application in which they noted that the house made a positive contribution to North Berwick Conservation Area, with the timber framed windows being a significant component of the house. The house is in a prominent position, with its windows visible from Marine Parade, the open space to the north and the public footpath. The use of uPVC would be a significant change to the existing windows which would harm the character and appearance of the house and consequently the Conservation Area. This would also set an undesirable precedent for similar proposals which would over time collectively harm the Conservation Area. The application was therefore refused as the replacement windows would not preserve the character and appearance of the house nor preserve or enhance North Berwick Conservation Area, contrary to Policy DP5 and CH2 of the

LDP, the Cultural heritage and Built Environment SPG and Scottish Planning Policy, and would set an undesirable precedent.

The Planning Adviser then summarised the applicant's appeal submission which provided evidence to show the difficulty in recognising the change of material due to the distance from public areas, angle of view and surrounding houses. The applicant also provided their justification for the use of the proposed materials, their look, colour, energy efficiency and durability, and how these might be considered to be in line with planning guidance and the Council's own Climate Change Strategy. The applicant also stated that the windows would not set an undesirable precedent as they are of such good design in their detail and construction that the difference between them and timber windows was not distinguishable. The applicant noted that no objection had been received to the proposals and he further stated that the house was not that visible from public areas, and the use of uPVC would not be recognisable due to distance and angle of view.

The Chair thanked the Planning Adviser for her summary.

The Planning Adviser responded to questions from Members on the proposed type and number of windows covered by the application.

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 Findlay stated that as the replacement windows were the same as those currently in place, save for the materials, and that the lower half of the house was hidden from public view, he was minded to uphold the appeal.

Councillor Gilbert noted that the location of the house was quite exposed and that it would likely take a lot of energy to heat it. As the Council had previously declared a Climate Emergency, he considered it important to support this position. The proposed replacement windows were similar in shape and style and, in his opinion, would be more energy efficient and durable. He also noted that there had been no objections to the proposals. He was therefore minded to uphold the appeal.

The Chair said he was not in agreement with his colleagues. He noted that the windows were visible within the conservation area and that it was important to maintain the character and style of the properties within the area. For these reasons, he was minded to uphold the decision of the planning case officer to refuse planning permission.

Decision

The ELLRB agreed, by a majority of two to one, to uphold the appeal and to grant planning permission.

1. PLANNING APPLICATION NO. 21/00549/P: FORMATION OF EARTH BUNDS, MAIN ROAD, MACMERRY, EAST LoTHIAN

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. 21/00549/P at Main Street, Macmerry. The proposal was 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 would be 22m in width, 2.5m at their highest points and variously 231, 129 and 102 meters in length. The proposal was located in an agricultural field to the east of and following the line of an existing road to Adniston.

A site allocated in the LDP for housing lay generally to the southwest of this proposal. A Planning application [18/01086/PM] for 122 houses and 50 flats was recently granted on that site and development had commenced. The bunds would be formed of excess soil and sub-soil taken from this development site. The separation of the two sites ranged from some 30m at the southern end to over 200m at the north.

The Planning Adviser reminded Members that planning applications should be determined in accordance with the development plan for the area unless material considerations indicate otherwise. The most relevant policies of the LDP were Policy DC1 (Rural Diversification), NH7 (Protection of Soils), DP1 (Landscape Character) and DP2 (Design). Scottish Planning Policy was also a material consideration, in particular paragraph 80 which stated 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 were reflected in LDP Policy NH7: Protection of Soils.

The Planning Adviser summarised the case officer's assessment of the application with particular reference to Policy DC1 and his view that this proposal did not fall into one of the accepted categories within this policy. The applicant had not put forward a case for the need for the bunds other than to dispose the unwanted soil. The case officer also noted that where the formation of such bunds had been accepted elsewhere in East Lothian, it had taken place within the residential site boundary as part of the development, e.g. for noise attenuation or landscaping. This was not the case here. The case officer considered that there was therefore no justification for a countryside location.

The case officer further considered 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 considered they would appear alien, unnatural and intrusive due to their height and width. The case officer concluded that the proposals were contrary to LDP policies DP1 and DP2 on design and landscape character. The case officer further considered that if this method of disposing of unwanted soil was 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 noted that the application was not for a proposal contained in the LDP, was not part of the settlement strategy, was not linked to an existing rural business or house, and was not related to renewable

energy or minerals. He therefore considered 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 for the reasons outlined in the decision notice.

The Planning Adviser then summarised the applicants appeal submission. The applicant stated that the bunds would be well landscaped to integrate them into the surrounding landscape and avoid detrimental visual impact, respecting the character and built form of Macmerry. The alternative to this proposal was to landfill the 15,000 cubic meters of material elsewhere, using 1,600 lorry loads, which they stated would cause global warming, as well as having a substantial impact on the volume of traffic using local roads, causing noise nuisance. The applicant also stated that the proposal would have no adverse effect on the natural or built environment and would not increase flood risk.

The Applicant reiterated that once completed the bunds would be landscaped to ensure their integration into the surrounding landscape and so would not adversely affect visual amenity. They suggested a mown footpath along the top of the bunds could be used as a walkway which could assist in linking East Lothian's Green Networks. The applicant stated that the formation of a footpath could be secured by condition. In addition, the bunds would be close to the border of the agricultural field; an area considered to have limited agricultural potential. They contended that loss of the agricultural land was negligible when compared to the environmental benefits including potential future ecosystems and avoidance of depositing the material in nearby landfill. The applicant claimed there was 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 stated that ELC could control the landscaping and planting of bunds so if future applications were considered unsightly such applications could be refused. The applicant also drew 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 did 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 had been 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 statutory nuisance procedures, while impact on private views is not a material consideration. Since the application, a further representation had 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 reiterating arguments regarding landscaping of the proposed bunds and indicating that dust during construction could be minimised by use of control measures. The applicant concluded that the bunds would form a pleasing backdrop to the residential scheme, would result in increased ecological activity and promote wilding along a country walk route.

The Planning Adviser concluded her presentation by providing advice on possible conditions, should members be minded to grant permission for the application.

The Chair thanked the Planning Adviser for her summary.

The Planning Adviser replied to questions from Members on the amount of material used to create the bunds, alternative uses and methods of disposals of such materials and how similar materials were disposed of on other sites within the county.

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 observed that the bunds seemed to be unusual and in his view, an attempt by the applicant to push the problem of disposal of materials to one side. He was also of the view that this would set an unwelcome precedent. He suggested that the materials might be reused elsewhere and, for these reasons, he was minded to uphold the decision of the planning case officer to refuse planning permission.

Councillor Findlay agreed with his colleague and added that he could see no justification for the bunds. Accordingly, he was minded to support the decision of the planning case officer to refuse planning permission.

The Chair concurred with the comments of both Councillors. He could not see how the bunds could be sympathetically integrated into the landscape in a way that would allow them to appear natural. He agreed with the view of the planning case officer that the bunds would appear alien to their surroundings. Accordingly, he was minded to dismiss the appeal.

Decision

The ELLRB agreed unanimously to dismiss the appeal and to refuse planning permission for the reasons set out in the original decision notice.

Signed

Councillor Andrew Forrest
Chair of Local Review Body (Planning)