



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

**THURSDAY 17 FEBRUARY 2022
VIA THE DIGITAL MEETINGS SYSTEM**

Committee Members Present:

Councillor J Findlay (Chair)
Councillor F O'Donnell
Councillor J Williamson

Advisers to the Local Review Body:

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

Other attendees:

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 Local Review Body to reach a decision on the planning application before it. He also asked the Members to confirm that they had viewed all of the documentation which had been available to the planning case officer during his consideration of the application. All members did so.

The Legal Adviser then invited nominations to chair the meeting. Councillors O'Donnell and Williamson indicated that they would be content for Councillor Findlay to chair the Local Review Body (LRB) on this occasion.

1. PLANNING APPLICATION NO. 21/01069/P: CHANGE OF USE OF WOODLAND AREA TO DOMESTIC GARDEN GROUND, ERECTION OF GARDEN ROOM AND FORMATION OF PATIO AREA (RETROSPECTIVE), THE CLOCKHOUSE, CARBERRY COURTYARD, WHITECRAIG, EAST LOTHIAN EH21 8PY

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. 21/01069/P at the Clockhouse, Carberry Courtyard, Whitecraig. He set out in detail the proposals contained within the application and provided details of the site and surroundings. He also highlighted that this was an appeal against non-determination of the original application.

He 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 Development Plan (SESplan) and the adopted East Lothian Local Development Plan 2018 (LDP). While none of the policies approved by SESplan were relevant to this application, the most relevant policies of the LDP were: CH6 (Gardens and Designed Landscapes); DC7 (Development in the Edinburgh Green Belt); OS2 (Change of use to Garden Ground); DP2 (Design); and NH8 (Trees and Development).

The Planning Adviser summarised the case officer's assessment of the application which noted that the proposed area of woodland that was the subject of the retrospective change of use was predominantly rectangular in shape and was used as additional garden ground to serve the applicant's property, The Clockhouse. Two neighbouring residential properties had been retrospectively granted planning permission to change the use of former open space/woodland to domestic garden ground. In the officer's view, the retrospective change of use in this instance would be no different to what had already been retrospectively granted to the neighbouring residential properties. Furthermore, the case officer concluded that owing to its size, form and positioning the proposed garden room would not give rise to a harmful loss of sunlight or daylight to any neighbouring residential properties and would not result in harmful overlooking of the neighbouring properties.

Turning to the consultation process, the Planning Adviser noted that no public letters of objection have been received in relation to the application. Historic Environment Scotland had been consulted on the application but did not have any comments to make on the proposals.

The Council's Landscape Team were also consulted on the application however their response was received on the same day as the appeal against non-determination. The Landscape Team's main concern related to any change of use of woodland to garden ground. In their opinion this appeared contrary to the Scottish Government's Policy on Control of Woodland Removal as this policy did not support a change of use from woodland. In their response, the Landscape Team emphasised that an area defined as woodland may or may not have trees; woodlands could consist of other elements such as areas of open ground. However, once it is changed to garden ground, the woodland definition was lost forever and Scottish Forestry would no longer have control over tree removal and tree replacement. The Landscape Team therefore would not support the change of use to garden ground as this appeared contrary to policy NH8. They also raised concerns regarding the Council's liability should it grant permission for structures to be placed under the crown spread of trees. They stated that granting permission for garden buildings under mature trees would set an unwelcome precedent for similar proposals and could lead to the incremental loss of trees.

The Planning Adviser summarised the conclusions of the case officer's assessment in which he noted that in this instance there was no proposal to remove trees and that other properties within the former steading had previously been granted planning permission for the change of use of woodland to garden ground. For these reasons, in the officer's opinion, it would be unreasonable in this instance to refuse to grant planning permission for the change of use and garden room on the grounds that such proposals would result in the loss of any trees. The case officer had concluded that, given these considerations, the retrospective change of use of woodland to domestic garden ground, formation of a terrace area and the proposed garden room were consistent with Policies CH6, DC7, OS2, DP2 and NH8 of the adopted East Lothian Local Development Plan 2018.

The Planning Adviser then turned to the applicant's appeal submission which confirmed that the main reason for seeking a review was that the applicants had been given no feedback on the progress of their application and that they wished to receive a decision and a justification for that decision.

The Planning Adviser concluded his presentation by reminding Members that, should they be minded to grant planning permission, they could impose any conditions they considered reasonable. In such circumstances, he suggested that they may wish to consider a condition which removed permitted development rights.

The Planning Adviser also responded to questions from Members on potential conditions relating to fencing and trees; clarified the definition of 'permitted development' and its implications; and confirmed that there were no significant differences between this application and one for a neighbouring property which had previously been granted planning permission.

Addressing the question of the management of trees and potential liability for damage, the Legal Adviser confirmed that as the trees were not on Council land, any grant of planning permission would not bring forward any liability on the part of the Council to manage or accept responsibility for damaged caused by the trees. He recommended that management of the trees not be including in any potential planning conditions but rather via the application of a Tree Preservation Order (TPO) or some other means. He deferred offering any further advice to the LRB until it had made its decision.

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 views on the application.

Councillor O'Donnell said she had been surprised to hear that an area of private garden ground was also designated as woodland. Having viewed the site, the patio area, the size of the proposed garden room and neighbouring gardens, she thought that the proposals were sympathetic to the listed building and that there would be no adverse impact on the surrounding area or woodland. Taking everything into account, and subject to the condition on permitted development and a TPO, she was minded to grant planning permission.

Councillor Williamson said that the site visit had provided useful context for what constituted woodland and what was garden ground. In this case it was a woodland garden surrounded by trees. He considered the application to be reasonable and not likely to have an adverse impact on neighbouring residents. He was minded to grant planning permission subject to the caveats outlined by Councillor O' Donnell.

The Chair concurred with his colleagues. He noted that the size of the garden was appropriate to the size of the house and he also agreed with his colleagues' remarks regarding conditions and a TPO. He was minded to support the appeal.

The Legal Adviser noted that Members had given their unanimous approval of planning permission, subject to a condition relating to permitted development, as suggested by the Planning Adviser. He further noted that the Members had requested additional protections for trees on the site either through an additional planning condition or through a TPO. The Legal Adviser undertook to clarify the competency of such a condition and to finalise the terms of the formal Decision Notice, and the most appropriate option for preservation of trees, in discussion with Members.

Decision

The ELLRB agreed unanimously to grant planning permission for this application, subject to conditions, the terms of which to be finalised in discussion with Members and the Planning Authority.

Signed

Councillor Jeremy Findlay
Chair of Local Review Body (Planning)