

REVIEW DECISION NOTICE

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

Application for Review by Haddington Estates Limited, c/o APT Planning & Development, 6 High Street, East Linton EH40 3AB for of decision to refuse Planning Permission for erection of 1 house and associated works, land west of Liberty Hall, Letham, Haddington, East Lothian.

Site Address: Land west of Liberty Hall, Letham, Haddington, East Lothian

Application Ref: 22/00135/P

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

Date of Review Decision Notice: 8 December 2022

Decision

The ELLRB agreed by a majority to dismiss the appeal and to refuse planning permission 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 November 2022. The Review Body was constituted by Councillor J McMillan (Chair), Councillor L Allan, and Councillor D Collins. All three members of the ELLRB had attended a site visit accompanied by the Planning Adviser in respect of this application prior to the meeting.

1.1. The following persons were also present at the meeting of the ELLRB:-

Mr M Mackowiak, 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 the erection of 1 house and associated works, land west of Liberty Hall, Letham, Haddington, East Lothian.
- 2.2. The planning application was registered on 3 February 2022 and the Decision Notice refusing the application is dated 17 May 2022.
- 2.3. The reason for refusal of planning permission is more particularly set out in full in the said Decision Notice dated 17 May 2022. The reasons for refusal are summarised as follows:

1. *The building on the application site of a house would be new build housing development in the countryside of East Lothian for which a need to meet the requirements of the operation of an agricultural, horticultural, forestry or other employment use or a justifying scheme of rural diversification has not been demonstrated. The principle of the building of a house on the application site is therefore contrary to Policies DC1 and DC4 of the adopted East Lothian Local Development Plan 2018 and Scottish Government Policy Statement Designing Streets, and Planning Advice Note 67: Housing Quality.*

2.4. The notice of review is dated 16 August 2022.

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> <table border="1"> <thead> <tr> <th>Drawing No.</th> <th>Revision No.</th> <th>Date Received</th> </tr> </thead> <tbody> <tr> <td>2158-02-C</td> <td>-</td> <td>03.02.2022</td> </tr> <tr> <td>2158-03-A</td> <td>-</td> <td>03.02.2022</td> </tr> <tr> <td>2158-04</td> <td>-</td> <td>03.02.2022</td> </tr> </tbody> </table>	Drawing No.	Revision No.	Date Received	2158-02-C	-	03.02.2022	2158-03-A	-	03.02.2022	2158-04	-	03.02.2022
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2158-02-C	-	03.02.2022											
2158-03-A	-	03.02.2022											
2158-04	-	03.02.2022											
ii.	The Application for planning permission registered on 3 February 2022												
iii.	The Appointed Officer's Submission												
iv.	<p>Policies of the adopted East Lothian Local Development Plan 2018 relevant to the determination of the application:</p> <ul style="list-style-type: none"> - Policies DC1 (Rural Diversification); - DC4 (New Build Housing in the Countryside); - DP2 (Design); - T1 (Development Location and Accessibility); - Policy NH8 (Trees and Development);and - T2 (General Transport Impact). <p>In addition the following are also relevant to the determination of the application, namely:-</p> <ul style="list-style-type: none"> - Scottish Government Policy Statement Designing Streets, and Planning Advice Note 67: Housing Quality; 												
v.	Notice of Review dated 16 August 2022 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 outlined the background, location and detailed proposals contained in planning application no. 22/00135/P. The Planning Adviser also advised that in 2006 planning application (Ref: 05/00973/FUL) was refused for the erection a house and a double garage, for the change of use of vacant land for the keeping of horses and the erection of a stable block. The main reason for refusal was that the proposal would constitute sporadic new build housing development in the countryside of East Lothian for which a need to meet the requirements of the operation of an agricultural, horticultural, forestry or other employment use or a justifying scheme of rural diversification has not been demonstrated. Further again in 2006 planning application, (Ref 06/00766/FUL), for the erection of a house and garage on the site was refused. The reasons for refusal were broadly similar to the previously rejected scheme. This refusal was subject to an appeal, (Ref: P/PPA/201/156), to the Department of Planning and Environmental Appeals (DPEA). This planning appeal was dismissed in July 2007. In their decision, the Reporter confirmed that due to the absence of any justification on grounds of operational requirement or rural diversification the proposal was not supported by the East Lothian Local Plan.

Planning permission is again sought for a new house and detached garage to be built on the site, being part of the same site the subject of the refusals of planning permissions from 2005 and 2006 (5/00973/FUL and 06/00766/FUL). The now proposed house would be positioned on the northern part of the site, where the site fronts the unclassified road. The house would be a detached, traditionally designed single storey new home with an L shaped footprint and a pitched roof with first floor accommodation within its roof space. A detached double garage would be positioned to the south east of the proposed house. Access to the site would be taken from the public road to the north and via an access driveway. The existing post and wire fence boundaries of the site would be retained and no new boundary treatment is proposed. The rear boundary of the site is bound by a burn/ditch which runs in an east/west direction. The land within the application site to the north of the burn/ditch is mainly rough, grassed ground. It is within this northern part of the site that the proposed house, double garage and driveway would be contained. The application site does not include this burn or land to its south comprising a large wooded area, although these fall within the ownership of the applicant.

Section 25 of the Town and Country Planning (Scotland) Act 1997 requires that the application be determined in accordance with the development plan, unless material considerations indicate otherwise. Also material to the determination of the application is the planning history of the site and the decision to refuse planning permission for the erection of a house and a double garage on the site from 2005 and 2006 and the subsequent decision by the DPEA to dismiss an appeal ref: P/PPA/201/156 for that house.

The Planning Adviser then summarised the consultation process and confirmed that the case officer accurately summarised four letters of objection that were received in respect of this application.

Further in case officer's report they confirmed that the site is in a countryside location characterised by a low density dispersed built form within an agricultural landscape. It was also confirmed that the application site is not identified in the adopted Local Development

Plan as being within a settlement and that the LDP does not allocate the land of the site for housing development.

As it is proposed through this current application the house, double garage and driveway would be positioned on the northern part of the application site which is the part of the application site not covered by trees. In their positions the proposed house, double garage and driveway would be readily visible from public views from the public road to the north of the site and would be seen in relation to the neighbouring house, garage and driveway at 'Barrel Cottage'. The case officer confirmed that by virtue of their size, architectural form, positioning, and materials the proposed house and garage would not have a significant adverse impact on the rural character and amenity of the area. The case officer assessed the proposal and concluded that owing to its design and positioning the proposed house would not give rise to harmful overlooking or harmfully overshadow any neighbouring property or land. The proposed house would not lead to the detrimental loss of privacy to any surrounding residential properties. Also the house would have sufficient private amenity ground around it for the enjoyment of its occupants and would have sufficient land for the parking and turning of vehicles.

The Planning Adviser confirmed that the Council's Contaminated Land Officer has commented that due to the nature of the proposed development (new residential accommodation), should the proposal be supported, further information would be required to determine the ground conditions and potential contamination issues impacting on the site. As such a condition has been suggested to ensure this, in the event that the planning application is approved.

The case officer assessed whether or not the erection of the house and associated development on the application site is acceptable, with due regard to its impact on the character and appearance of the Open Countryside of East Lothian and, if not, whether there are any other material planning considerations that outweigh this conflict with the development plan. The Planning Adviser then quoted Policies DC1 and DC4 of the adopted East Lothian LDP.

The Planning Adviser then stated that the applicant had submitted a supporting statement noting that the proposal is within a 'gap' site in the Hamlet of Liberty Hall and has submitted photographic evidence to show that the site was once residential. Regarding that, the case officer pointed out that, Liberty Hall is not within a settlement of any scale identified within the adopted East Lothian Local Development Plan 2018. Nor is it allocated for development. Instead the application site is within the countryside. The photographic evidence submitted by the applicant shows an extended row of cottages (additions to the existing Barrel Cottage) fronting the road. However, there is no physical evidence of these former cottages visible on site. Therefore and as Liberty hall is not within a settlement of any scale identified within the adopted LDP this application stands to be assessed against Policies DC1 and DC4 of the adopted East Lothian Local Development Plan 2018.

No case has been made for the proposed house to meet an agriculture, horticulture or forestry need. No other operational need has been advanced to justify the erection of a house on the application site in this countryside location. The case officer report emphasised that Policy DC1 and DC4 are in place to protect East Lothian's countryside. The development of new house and double garage on the site would, if approved, set an unwanted precedent for the development of new houses in the countryside and the cumulative effect of which would result in a detrimental impact on the rural character and amenity of the open countryside. The officer noted that whilst the proposed house, double garage and driveway would be positioned on the northern part of the application site which

is the part of the site not covered by trees, the land is part of a long established Ancient Woodland with Liberty Southwood directly to the south of the proposed site.

The Council Policy and Projects Officer provided comments on the application and pointed to Policy NH8 of the East Lothian Local Development Plan that states that development will only be permitted where, in the case of woodland, its loss is essential to facilitate development that would achieve significant and clearly defined additional public benefits in line with the Scottish Governments Policy on Control of Woodland Removal. In particular the loss of Ancient Woodland will not be supported. In this regard, the applicant has stated in their Design Statement submitted with the application that the woodland to the south is mature and in need of maintenance, and there are a number of derelict / abandoned items strewn throughout but is essentially a healthy and attractive backdrop. The supporting statement informs that the development of a home on the application site will not impact on the integrity of the woodland. However, no information has been submitted to support this assertion in terms of an arboricultural statement or Tree Report. Since it has not been demonstrated that the proposal would not harm the adjacent Ancient Woodland it is not consistent with Policy NH8 of the adopted East Lothian Local Development Plan 2018.

The Planning Officer then summarised that in conclusion, the proposals are considered not to be in accordance with the provisions of the stated relevant Development Plan policies and there are no material considerations which outweigh that the proposal does not accord with the Development Plan.

The Planning Adviser then highlighted the applicant's submission in particular, the applicant's planning agent addressed in detail all three reasons for refusal of the application.

Reason 1 – policy DC1

- 1) The area is characterised by a substantial number of homes and buildings roughly clustered around Liberty Hall. As the case officer report acknowledges, the application site neighbours homes to the east and west. There would be no encroachment or urbanisation of the area as a result of this application being granted planning permission.
- 2) The planning assessment contained within the officer report acknowledges that the proposals comply with policy in terms of design and amenity with no concerns over the impacts on neighbouring properties nor are there any other technical/practical concerns such as transportation impacts etc.
- 3) The report states that Policies DC1 and DC4 are in place to protect East Lothian's countryside yet earlier in the report, the case officer states that by virtue of their size, architectural form, positioning, and materials the proposed house and garage would not have a significant adverse impact on the rural character and amenity of the area ("On the matter of its design the proposed house would not be contrary to Government advice on the design of new housing development in the countryside given in Planning Advice Note 67"). Surely both these things cannot be true. Development per se does not equate to unacceptable or damaging impacts. On this basis, the proposals cannot lead to a damaging precedent.
- 4) Throughout the Planning Support Statement, we acknowledged that the proposal cannot accord with the provisions of Policies DC1 and DC4. The criteria is so specific and restrictive that this type of development cannot accord. What we do state is that the site displays different characteristics to a typical countryside location, being part of the cluster of homes and buildings at Liberty Hall.
- 5) The objective of restrictive policies is to prevent harm yet the case officer report states that the proposals are acceptable in all aspects other than the fact that they do not comply with the specific criteria of the policy.

- 6) Whilst we acknowledge that the proposals cannot comply with Policies DC1 and DC4, we also believe that these policies should have been considered in the context of the intended outcome not conflicting with the objectives of the policy which is to protect the countryside from harmful development.
- 7) The proposed new home at Liberty Hall will have no detrimental impacts on the Countryside (or neighbouring properties). DC1 And DC4 should be acknowledged but do not have to be applied just because it is so. They should not be the key determining consideration in this instance.

REASON 2 – policy DC4

- 1) The agent does not accept that by granting planning permission in this instance it will set an 'undesirable precedent' for how future applications are decided;
- 2) The proposed house is entirely specific to this application and the unique opportunity that this site provides;
- 3) Developing the site into an attractive, high quality, sustainable family home would set, and should be welcomed as, a positive precedent – the site is not isolated, already being part of a wider setting including the cluster of homes and properties in the Liberty Hall area;
- 4) The proposed design is not only sensitive to the characteristics of the local area but will also enhance its immediate setting; and
- 5) The site **plays no integral** role to the countryside setting and the proposal would have no detrimental impact on the Liberty Hall area or even the more immediate vicinity.

Reason 3 – policy NH8

- 1) The application site is not within a wooded area; The Woodland is located to the south of the application site. The design and layout specifically took into consideration the woodland to the south a desire not to impact it in any way.
- 2) We have consistently stated that the proposals will not have any negative impacts on the woodland to the south and the site plan and layout clearly illustrate that development is on the northern portion of the site therefore avoiding the wooded area.
- 3) It would therefore be unnecessary and unreasonable to insist on land outwith the application site and unaffected by development to be surveyed. The development will not impact on the wooded area to the south and was designed specifically with this in mind.

In its conclusion, the statement submitted by the agent highlighted that (i) the site at Liberty Hall provides the opportunity to develop a high quality addition to an existing hamlet and wider cluster of residential properties. The new home would formalise the eastern edge of the row of properties and would occupy a relatively enclosed site; and they contend that residential development at this site would enhance the overall character and setting of Liberty Hall in removing an untidy and vacant plot and enabling the development of an attractive, modest family home, appropriate to the character and appearance of its setting and surroundings.

- 4.3. The Planning Adviser responded to queries raised by the ELLRB members.
- 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 Allan commented that, with regret, having consideration of the policies she was unable to support the appeal. She was concerned there may be precedent set and it was not clear how this proposal would fit with Policies DC1 and DC4 of the adopted East Lothian Local Development Plan 2018. Accordingly she was minded to support the decision of the Planning Officer and refuse the appeal for the reasons set out in the Planning Officer's Report.

- 4.6. Councillor Collins stated that in her opinion the land was not fit for agricultural use, at the site visit it was noted it was boggy and would be unable to do anything with the land. She noted that the land may be considered to be worth more to the nearby livery if retained as a field but may not be economical for the land owner to retain it as such. She also felt that if a house were built on this land that may have a benefit in protecting the woodland located near the proposed development. She did not consider this would create a precedent. Accordingly on consideration she was minded to support and uphold the appeal.
- 4.7. The Chair noted and agree with the general comments made by Councillor Collins however he was not convinced that a house in this area would be necessary nor add value. He also commented that had there been an operational requirement for the house then he may have supported the application however as this was not the case on balance he was minded to support the decision of the Planning Officer and refuse the appeal for the reasons set out in the Planning Officer's Report

Accordingly, the ELLRB by a majority decided to dismiss the appeal and to refuse planning permission for the reasons 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.