

REVIEW DECISION NOTICE

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

Application for Review by Mr David McMillan c/o RFA Development Planning, Melford House, 3 Walker Street, Edinburgh EH3 7JH of decision to refuse Planning Permission for the erection of one (1) house and associated works at Land adjacent to former Willow Rise Stenton.

Site Address: Land adjacent to former Willow Rise Stenton

Application Ref: 22/01201/P

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

Date of Review Decision Notice: 18 July 2023

Decision

The ELLRB unanimously agreed to dismiss the appeal and to **REFUSE PLANNING PERMISSION** for the erection of one (1) house and associated works at Land adjacent to former Willow Rise, Stenton for the reasons more particularly 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, 15 June 2023. The Review Body was constituted by Councillor D Collins (Chair), Councillor J McMillan, and Councillor S McIntosh. 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 one (1) house and associated works at Land adjacent to former Willow Rise, Stenton.

2.2. The planning application was registered on 18 November 2022 and the Decision Notice refusing the application is dated 20 January 2023.

2.3. The condition and the reason for the condition is more particularly set out in full in the said Decision Notice dated 20 January 2023. The reasons for refusal are set out as follows:

- 1 *As 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 proposal is not for enabling development and is not a replacement dwelling in the countryside therefore the proposal is contrary to Policies DC1, DC3 and DC4 of the adopted East Lothian Local Development Plan 2018 and Government policy guidance regarding the control of new housing development in the countryside expounded in Scottish Planning Policy: June 2014.*
- 2 *The proposed development would have an unacceptable adverse impact on the historic interest of the parkland which forms an integral part of the setting of the category A listed Whittingehame House. As a form of development that would be harmful to the setting of the Category A Listed building the proposed house, triple garage and associated works is contrary to section 59 of the Planning (Listed Buildings and Conservation Areas Act) 1997, Scottish Planning Policy: June 2014 and Policy CH1: Listed Buildings of the adopted East Lothian Local Development Plan 2018 and Historic Environment Scotland Managing Change in the Historic Environment guidance notes relating to 'Setting'*
- 3 *The proposal would have a significant negative impact on the Inventory garden and designed landscape and the parkland setting of the house. Therefore the proposal is contrary to Policy CH6: Gardens and Designed Landscapes of the adopted Development East Lothian Local Plan 2018 and Scottish Planning Policy: June 2014.*
- 4 *The proposal would harm the parkland landscape character of the area and conflicts with guidelines within the Statement of Importance for Whittingehame to Deuchrie Special Landscape Area (SLA 8). The development is not located to minimise the adverse impacts on the landscape and there are no public benefits which outweigh this consideration. The proposal is therefore contrary to Policy DC9: Special Landscape Areas and Policy DP1: Landscape Character of the adopted East Lothian Local Development Plan 2018.*
- 5 *The site lies within land that is categorised as Prime Agricultural Land. The proposal represents the loss of a significant area of Prime Agricultural Land to a residential land use and is therefore contrary to Policy NH7: Protecting Soils of the East Lothian Local Plan 2018.*
- 6 *The current proposed driveway route is unacceptable in respect of adverse impact on trees. The proposal is contrary to Policies NH8: Trees and Development of the adopted East Lothian Local Development Plan 2018.*
- 7 *The overall appearance of the house is of a large modern house designed without reference to its historic context. This design would be more appropriate within a modern housing estate and fails to understand the context of the designed landscape and the built structures within the Whittingehame estate. In this context the proposed house is inappropriate to its setting and out of keeping with its surroundings contrary to Policies DP1 and DP2 of the adopted East Lothian Local Development Plan 2018.*

2.4. The notice of review is dated 23 March 2023

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 data-bbox="389 394 549 427"><u>Drawing No.</u></th> <th data-bbox="687 394 847 427"><u>Revision No.</u></th> <th data-bbox="1027 394 1214 427"><u>Date Received</u></th> </tr> </thead> <tbody> <tr> <td>MH-LOC 01</td> <td>-</td> <td>27.10.2022</td> </tr> <tr> <td>PL-02</td> <td>A</td> <td>27.10.2022</td> </tr> <tr> <td>MH-PL-03</td> <td>A</td> <td>27.10.2022</td> </tr> <tr> <td>MH-PL-04</td> <td>A</td> <td>27.10.2022</td> </tr> <tr> <td>MH-PL-05</td> <td>A</td> <td>27.10.2022</td> </tr> <tr> <td>MH-PL-06</td> <td>B</td> <td>03.11.2022</td> </tr> <tr> <td>MH-PL-07</td> <td>B</td> <td>03.11.2022</td> </tr> <tr> <td>MH-PL-08</td> <td>B</td> <td>03.11.2022</td> </tr> <tr> <td>PL-01</td> <td>B</td> <td>03.11.2022</td> </tr> <tr> <td>MH-SP-01</td> <td>B</td> <td>18.11.2022</td> </tr> <tr> <td>MH-SP-02</td> <td>B</td> <td>18.11.2022</td> </tr> <tr> <td>MH-SP-03</td> <td>B</td> <td>18.11.2022</td> </tr> <tr> <td>MH-SP-04</td> <td>A</td> <td>18.11.2022</td> </tr> <tr> <td>MH-SP-05</td> <td>-</td> <td>18.11.2022</td> </tr> <tr> <td>MH-SP-06</td> <td>-</td> <td>18.11.2022</td> </tr> </tbody> </table>	<u>Drawing No.</u>	<u>Revision No.</u>	<u>Date Received</u>	MH-LOC 01	-	27.10.2022	PL-02	A	27.10.2022	MH-PL-03	A	27.10.2022	MH-PL-04	A	27.10.2022	MH-PL-05	A	27.10.2022	MH-PL-06	B	03.11.2022	MH-PL-07	B	03.11.2022	MH-PL-08	B	03.11.2022	PL-01	B	03.11.2022	MH-SP-01	B	18.11.2022	MH-SP-02	B	18.11.2022	MH-SP-03	B	18.11.2022	MH-SP-04	A	18.11.2022	MH-SP-05	-	18.11.2022	MH-SP-06	-	18.11.2022
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ii.	The Application for planning permission registered on 18 November 2022																																																
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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"> - DC1 (Rural Diversification); - DC3 (Replacement Dwellings in the Countryside); - DC4 (New Build Housing in the Countryside); - DC5 (Housing as Enabling Development); - DC9 (Special Landscape Areas); - CH1 (Listed Buildings); - CH6 (Gardens and Designated Landscapes); - DP2 (Design); and - T2 (General Transport Impact) - NH7 (Protecting Soils) - NH8 (Trees and Development) - NH10 (Sustainable Drainage Systems) <p>In addition the following policies from National Planning Framework 4 (“NPF4”) are also relevant to the determination of the application, namely:-</p> <ul style="list-style-type: none"> - Policy 1 Tackling the climate and nature crises - Policy 2 Climate mitigation and adaptation - Policy 3 Biodiversity - Policy 4 Natural places - Policy 5 Soils - Policy 6 Forestry, woodland and trees - Policy 7 Historic assets and places - Policy 9 Brownfield, vacant and derelict land and empty buildings - Policy 13 Sustainable transport - Policy 14 Design, quality and place - Policy 15 Local Living and 20 minute neighborhoods - Policy 16 Quality homes - Policy 17 Rural Homes - Policy 29 Rural development <p>In addition to the above the following were also relevant to the determination of this application: Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and the Scottish Government’s policy on development affecting a listed building given in Scottish Planning Policy: June 2014. The case officer also considered the HES guidance: Managing Change ‘Setting’ as relevant in the determination of the application, along with the Special Landscape Areas SPG of the adopted East Lothian Local Development Plan 2018</p>
v.	<p>Notice of Review dated 23 March 2023 together with Applicant’s Submission with supporting statement and associated documents.</p>

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 planning application relates to a review of the decision to refuse planning permission for the erection of 1 house and associated works on the land adjacent to former Willow Rise, Whittingehame. The application site was located to the east of Whittingehame House – a category A Listed Building - and was within the Whittingehame House Designed Landscape.

He noted that the planning case officer's report of handling had accurately described the site, its surroundings, and the proposed house with its associated infrastructure. The case officer had also set out the planning history of the adjoining site which was known as Willow Rise (formerly the Old Schoolmasters House). The Planning Adviser provided a detailed summary of that site's planning history, including previous applications and an enforcement investigation. He advised that in June 2020, planning permission was refused for application 20/00169/P - the erection of 1 house, triple garage and associated work on the site of the former Old School Master's House (now known as Willow Rise), Whittingehame. This refusal was appealed to the Scottish Government and, in January 2021, the appeal was allowed and planning permission was granted for the proposed house and associated works. In making the decision, the Reporter had acknowledged that the proposed house did not accord with Policy DC3 of the adopted East Lothian Local Development Plan 2018, as there was not a house on the site at the time the application was made. However, the fact that there had previously been a house on the site and therefore the site was a brownfield site together with the benefit of removing unsightly structures from the site which was within a designed landscape were sufficient material considerations that justified overturning the refusal of planning permission. The works on the consented house had since commenced and the planning permission remained live.

The Planning Adviser explained that the application under consideration – 22/01201/P - had been made by the same applicant that submitted planning application 20/00169/P. The site boundary partially overlapped the south boundary of the site, the subject of planning permission 20/00169/P, in two small areas. However, the house and triple garage were located out with the boundary of the current application site. The proposed house would be located approx. 70 meters away from the north eastern corner of the site that was approved in 2021. The site of application 22/01201/P was considerably larger than the site of application 20/00169/P and measured approximately 193m in depth (east to west) and 131m in width at it widest. The site narrowed to 21.5m on the west boundary where it met the road.

He then turned to the relevant planning policies as outlined in the case officer's report of handling, namely: Policies DC1 (Rural Diversification), DC3 (Replacement Dwelling in the

Countryside), DC4 (New Build Housing in the Countryside), DC5 (Housing as Enabling Development), DC9 (Special Landscape Areas), CH1 (Listed Buildings), CH6 (Garden and Designed Landscapes), DP2 (Design), T2 (General Transport Impact), NH7: Protecting Soils, NH8 (Trees and Development) and NH10: SUDS of the adopted East Lothian Local Development Plan 2018. Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and the Scottish Government's policy on development affecting a listed building given in Scottish Planning Policy: June 2014. The case officer also considered the HES guidance: Managing Change 'Setting' as relevant in the determination of the application, along with the Special Landscape Areas SPG of the adopted East Lothian Local Development Plan 2018. In his original report, the case officer had acknowledged that Revised Draft National Planning Framework 4 (NPF4) had been published by the Scottish Government on 8th November 2022, and that it must be approved by the Scottish Parliament before it could be adopted by Scottish Ministers. The existing National Planning Framework 3 and Scottish Planning Policy 2014 would remain in place until NPF4 had been adopted by Scottish Ministers. The Planning Adviser reminded members that NPF4 was adopted on 13th February 2023. However, this application had been refused on 20th January 2023; prior to the commencement of NPF4.

In his report, the planning case officer had summarised 16 letters in support of the application and one comment received from a member of the public. He had also included a detailed summary of comments submitted by Historic Environment Scotland (HES) who were the statutory consultees for category A listed buildings. The HES submission had raised a number of concerns about the harmful impacts of the proposed new house on the historic parkland and the setting of the category A listed Whittingehame House. Consequently, HES had objected to the application considering it to be harmful to the setting of Whittingehame House; and having a significant adverse impact on the Whittingehame Inventory garden and designed landscape.

The Planning Adviser confirmed that the application had been refused for the reasons set out in the decision notice and he outlined these reasons for members.

He then summarised the very detailed appeal submission provided by the applicant. This submission highlighted that the applicant disagreed with the reasons for refusal of planning permission. It also stated that the application was processed without due consideration of all the available evidence and was unbalanced in terms of material considerations. The submission stated that the Council had used SPP 2014 as its reference point in relation to the adopted Local Development Plan 2018 policies, and as a material consideration in its own right as part of this decision. However, transitional arrangements issued by the Chief Planner confirmed that SPP 2014 was no longer Scottish Planning Policy, and its provisions were therefore nullified. The applicant also noted that the Council had taken no account of NPF4. For clarity, the Planning Adviser highlighted that the Chief Planner's letter stated "NPF3 and SPP will no longer represent Scottish Ministers' planning policy and should not therefore form the basis for, or be a consideration to be taken into account, when determining planning applications on or after 13th February."

The applicant's submission went on to provide a rebuttal of all 7 reasons for refusal. The applicant also referred to NPF4 and a number of its policies which, in his opinion, the proposal complied with. The planning case officer had also provided a further assessment of NPF4. The Planning Adviser summarised the arguments put forward by both the applicant and case officer in relation to the key policies highlighted, which were:

- Policy 9 - Brownfield, Vacant and Derelict Land

- Policy 17 - Rural Homes
- Policy 29 - Rural Development
- Policy 4 – Natural Places
- Policy 5 – Soils
- Policy 6 – Forestry, Woodland and Trees

It noted that the applicant had not addressed Policy 7 – Historic Assets and Places.

The applicant's submission also included additional letters of support from three companies involved in the previous work on the site. These letters included further information regarding the sequence of the historic work on the site of the Old Schoolmasters House, ground condition and drainage on the said site, and quality of agricultural land on the site.

The Planning Adviser concluded his summary of the case by outlining the revised reasons for refusal set out in the planning case officer's additional statement. The original seven reasons for refusal, with the exception of condition 5, were considered appropriate and had been amended to take account of now adopted NPF4 policies where appropriate. The original reason 5, relating to prime agricultural land, was replaced with a reason relating to NPF4 Policy 5 Soils. Reasons 8-10 were in addition and required in relation to NPF4 Policy 3 (Biodiversity), Policy 13 (Sustainable transport part b), Policy 15 Local Living and 20 minute neighbourhoods and Policy 16 Quality homes, part F.

The Planning Adviser also reminded members that they had the option of seeking further information.

- 4.3. The Planning Adviser responded to questions from Councillor McIntosh. He confirmed that the planning permission for application 20/00169/P on the adjacent site remained live and, should this application be granted, there was the possibility of having two houses with 2 triple garages on these sites. He added that there was no mechanism to revoke the previous planning permission and confirmed that the replacement of a previous dwelling related to application 20/00169/P and not the application before the LRB today.
- 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 McMillan said that members had been presented with a large amount of evidence, of which the site visit had been a key part. He disagreed with the applicant's assessment of the policies within NPF4 as they related to community need and sustainable, viable development. He noted the references, in both the planning officer's and applicant's submissions, to local characteristics and said that these had been demonstrated very clearly during the site visit and were worth protecting. He expressed disappointment that planning permission had been granted for the other site but noted that the house on that site would be less prominent and less visible. He agreed with the views of Historic Environment Scotland (HES) that allowing a new build, modern house in this location would destroy the historic and local characteristics of the site and surroundings, and that what was proposed was simply not in the right place. He was satisfied that the terms of NPF4 had been fully considered, and he fully supported the officer's refusal of planning permission.
- 4.6. Councillor McIntosh agreed with Councillor McMillan. She had found the site visit constructive in showing the characteristics of both sites. She noted the pastoral character

of the location and the idyllic views, as well as important heritage which, in her view, should be preserved. She said that due weight should be given to the comments and objections raised by HES, particularly in relation to potential damage to the roots of the historic trees. She considered that the applicant's only justification - that this proposal constituted a replacement dwelling - did not stand up to logic, as there was already permission for a replacement build on the adjacent site and preparatory work had begun. For these and other reasons, she supported the planning officer's decision.

- 4.7. The Chair said that her comments would relate mainly to aspects of NPF4. She was of the view that there had never been a dwelling on the proposed site and therefore what was proposed was a new build rather than a replacement. Furthermore, the location of the site was agricultural land and since the 1940s had been used to grow cereals and to graze livestock. She noted that the eucalyptus trees, only 4 of which remained from planting in the 1880s, had adapted to their surroundings over time and had been given their own genus. Such unique trees required protection; the plans to put a driveway over the roots would crush them and destroy the trees. She considered that the proposals within the application were not complementary to the existing architecture of Whittingehame House; and that the site itself was in the countryside rather than part of a settlement. For all these reasons and those stated by colleagues, she supported the planning officer's refusal of the application.

Accordingly, the ELLRB unanimously decided to refuse the appeal for the reasons set out below:

1. *The application site is greenfield land in a natural state, is not allocated for development in the LPD nor is it supported by policies in the LDP. There is no building on this site and there has never been a dwelling on this site therefore there can be no replacement dwelling. As 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 proposal is not for enabling development and is not a replacement dwelling in the countryside therefore the proposal is contrary to Policies DC1, DC3 and DC4 of the adopted East Lothian Local Development Plan 2018 and NPF4 policies Policy 9 Brownfield, vacant and derelict land and empty buildings part b) and all parts of Policy 17 Rural homes.*
2. *The proposed development would have an unacceptable adverse impact on the historic interest of the parkland which forms an integral part of the setting of the category A listed Whittingehame House. As a form of development that would be harmful to the setting of the Category A Listed building the proposed house, triple garage and associated works is contrary to section 59 of the Planning (Listed Buildings and Conservation Areas Act) 1997, Policy CH1: Listed Buildings of the adopted East Lothian Local Development Plan 2018, NPF4 Policy 7 c) and Historic Environment Scotland Managing Change in the Historic Environment guidance notes relating to 'Setting'.*
3. *The proposal would have a significant negative impact on the Inventory Garden and designed landscape and the parkland setting of the house. Therefore, the proposal is contrary to Policy CH6: Gardens and Designed Landscapes of the adopted Development East Lothian Local Plan 2018 and NPF4 Policy 7 i).*
4. *The proposal would harm the parkland landscape character of the area and conflicts with guidelines within the Statement of Importance for Whittingehame to Deuchrie Special Landscape Area (SLA 8). The development is not located to minimise the adverse impacts on the landscape and there are no public benefits which outweigh this consideration. The loss of*

1.75ha of countryside to residential use will unacceptably harm the natural environment. The proposed development, by nature of its location within Whittingehame to Deuchrie Special Landscape Area, its siting, design, materials and size would harm the estate and the wider landscape. There are no social, environmental or economic benefits which outweigh this conclusion. The proposal is therefore contrary to Policy DC9: Special Landscape Areas and Policy DP1: Landscape Character of the adopted East Lothian Local Development Plan 2018 and NPF4 Policy 4 Natural Places parts a) and d).

5. *Policy NPF4 Policy 5 a) supports development which is in accordance with the mitigation hierarchy by first avoiding and then minimising the amount of disturbance to soils on undeveloped land. The mitigation hierarchy requires development to avoid, minimise, restore and offset the impact on soil. The proposal develops the whole site, does not include any restoration or offsetting of impact, and is therefore contrary to NPF4 Policy 5 Soils part a).*
6. *The current proposed driveway route is unacceptable in respect of adverse impact on trees as it will lead to damage to their roots leading to damage to their health and structural stability and ultimately the historic parkland trees would be lost. The proposal is contrary to Policies NH8: Trees and Development of the adopted East Lothian Local Development Plan 2018 and NPF4 Policy 6 Forestry, woodland and trees part b).*
7. *The overall appearance of the house is of a large modern house designed without reference to its historic context. This design would be more appropriate within a modern housing estate and fails to understand the context of the designed landscape and the built structures within the Whittingehame estate. In this context the proposed house is inappropriate to its setting and out of keeping with its surroundings contrary to Policies DP1 and DP2 of the adopted East Lothian Local Development Plan 2018 and Policy 14 Design, quality and place a), b) and c).*
8. *The proposal does not accord with a number of spatial and environmental policies within the LDP and NPF4 and is not a sustainable form of development or in a suitable location to mitigate the climate impact. The proposal would significantly harm the natural environment and is contrary to NPF4 policy 1 and NPF4 policy 2 a).*
9. *The proposal includes a large house, large garaging and extensive driveway and roundabout and proposes to change the use of the entire 1.75ha of greenfield to residential use. The proposal is contrary to NPF4 policy 3 which requires biodiversity enhancements and a nature based solution amongst other considerations.*
10. *The application site is outwith the existing settlements and is not served by a public road, segregated cycle route or adopted footway. NPF4 and the LDP seek to locate new dwellings in locations which encourage local living and interconnectivity, active travel to local services including public transport. The occupants and visitors to the dwelling will be reliant upon vehicular access and this is not in accordance with Policy 13 Sustainable transport part b), Policy 15 Local Living and 20 minute neighbourhoods and Policy 16 Quality homes part f)*

Planning Permission is hereby 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.