

## **REVIEW DECISION NOTICE**

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

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Application for Review, by Gleam Machine Haddington c/o APT Planning & Development per Tony Thomas, 6 High Street, East Linton, East Lothian EH40 3AB of decision to refuse Planning Permission for the erection of car wash facilities and associated works at Land At Former Oaktree Services Haddington East Lothian.

Site Address: Land at Former Oaktree Services Haddington East Lothian

Application Ref: 23/00081/P

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

Date of Review Decision Notice: 6 October 2023

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### **Decision**

The ELLRB by a majority of two to one agreed to up hold the appeal and to grant planning permission subject to conditions for car wash facilities and associated works at Land at Former Oaktree Services Haddington East Lothian 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, 20 July 2023. The Review Body was constituted by Councillor J Findlay (Chair), Councillor A Forrest, and Councillor L Allan. 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:-

Ms J Squires, 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 car wash facilities and associated works at Land at Former Oaktree Services Haddington

East Lothian.

2.2. The planning application was registered on 21 February 2023 and the Decision Notice refusing the application is dated 14 April 2023.

2.3. The condition and the reason for the condition is more particularly set out in full in the said Decision Notice dated 14 April 2023. The reasons for refusal are set out as follows:

- 1 *The proposed car wash facility is a business use that is not directly related to agriculture, horticulture, forestry, infrastructure or countryside recreation. It is therefore a business use that does not have an operational requirement for this countryside location. Neither is it located on an area identified for business use in the LDP and is not a site that is an area identified as employment land. Therefore the proposal conflicts with Policy 26 of NPF4 and Policy DC1 of the adopted East Lothian Local Development Plan 2018.*
- 2 *The proposed car wash facility with office and pump house would not be a form of development that would complement this important gateway location into Haddington. Consequently the car wash facility with office and pump house would not be an appropriate form of development for this prominent roadside location in terms of its positioning and would not complement, but instead would detract from the character of its surrounding, including the adjacent Haddington Retail Development. It would therefore be contrary to Policy 29 of NPF4 and Policies DP1 and DP2 of the adopted East Lothian Local Development Plan 2018.*
- 3 *The siting of the proposed car wash facility in this location would have a negative impact on road safety in the vicinity of the application site and would compromise the capacity of the road network to deal with traffic contrary to Policy T2 of the adopted East Lothian Local Development Plan 2018.*

2.4. The notice of review is dated 8 May 2023.

### 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:		
	<u>Drawing No.</u>	<u>Revision No.</u>	<u>Date Received</u>
	AL(0)01	-	03.03.2023
	AL(0)100	-	07.03.2023
	AL(0)01	-	07.03.2023
ii.	The Application for planning permission registered on 21 February 2023.		
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"> <li>- DC1 - Rural Diversification;</li> <li>- DP1 - Landscape Character;</li> <li>- DP2 - Design;</li> <li>- T2 - General Transport Impact</li> </ul> <p>In addition the following provisions are also relevant to the determination of the application, namely:-</p> <ul style="list-style-type: none"> <li>- National Planning Framework 4 (NPF4): <ul style="list-style-type: none"> <li>o Policy 22 - Flood risk and water management</li> <li>o Policy 26 - Business and industry</li> <li>o Policy 29 - Rural Development</li> </ul> </li> </ul>
v.	Notice of Review dated 8 May 2023 together with Applicant's Submission.

#### **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 informed Members that this case related a review of the decision to refuse planning permission for the erection of car wash facilities and associated works on land at the former Oak Tree Services, Haddington and provided details of the application and its proposed site and surroundings.

Members were reminded that planning applications should be determined in accordance with East Lothian Local Development Plan and National Planning Framework 4 unless material considerations indicated otherwise.

The Planning Adviser noted that two letters of representation were received to the planning application, one objection and one comment. Responses to the application were also received from the Council's Roads Services, Environmental Health, Landscape, and Flooding, as well as from Transport Scotland. The Planning Adviser summarised these responses.

Roads Services had not supported the proposal as they considered it would have a negative impact on road safety due to drivers from the west turning into the site and drivers queuing from the east. In addition, as the major part of the site was part of the adopted road network the applicant would require a Stopping Up Order which was unlikely to be

supported by Roads Services due to the road safety concerns raised.

Environmental Health had raised concerns about emission of spray from the site. The Landscape Officer had sought protection for trees on site, avoidance of use of spiny hedging species and a condition to prevent advertising boards. They had also sought re-location of the buildings noting that the retail park was designed to minimise visual impact on this view which the officer considered important.

The Planning Adviser then summarised the planning case officer's assessment of the application against planning policy. They had noted that the proposal was located in the countryside and was not of a type that was supported by Policy DC1 of the LDP as there was no operational requirement for a countryside location, nor NPF4 Policy 26 as it had not been shown there were no suitable alternative business or employment sites. They found some support for the proposal in NPF4 Policy 29 which sought to encourage rural economic activity. However, they did not find that it met that policy's requirements on design, as they considered the site was an attractive gateway into Haddington, and the proposal would detract from its character. They also considered it contrary to LDP Policies DP1 and DP2 on Landscape Character and design. Due to its effect on road safety, they considered it contrary to Policy T2 of the LDP.

The proposal was therefore refused for the reasons more particularly set out in the Decision Notice, namely principle of the use, siting and design, and road safety.

The Planning Adviser then turned to the applicant's Review Statement in which they stated that this was an ideal location for this use as it was, in their view, a dilapidated brownfield site on the fringe of the recently completed Haddington Retail Park. The use would not conflict with any surrounding land use, nor were there any nearby houses. The business would benefit from customers to the retail park, hospital and others. The statement added that existing customers travelled from Haddington to Dunbar which was not very sustainable. Addressing the reasons for refusal, the applicant stated that no one would conclude that this site was located in the countryside. Policy DC1 and Policy 26 should be put to one side and the benefits of the proposal considered. The service was needed, would provide jobs and contribute to local living.

The applicant did not consider the site an attractive green gateway site into Haddington due to its characteristics. The retail park had already compromised the sense of arrival. The proposal was in keeping with the character of the area as it backed onto a filling station. The proposals would improve the existing site and its landscaping would aid its integration into the area.

The applicant considered that the site could be accessed safely, referring to their submitted Transport Statement. This stated that the road was not at capacity and the increase in volume of cars would be negligible. The location next to the roundabout was not considered problematic as traffic was slow and sightlines sufficient. Queuing traffic was unlikely as the site was long and people would not join the queue if the wait was that long. The applicant would agree to a road safety audit as a condition of permission to allay concerns and, if necessary, install mitigation. They considered that signage and land arrangements could be implemented to ensure this was enforced.

The applicant stated that there had been strong support in the area for this proposal, and provided an appendix of numerous comments made to an article in the East Lothian Courier on Facebook, mostly supportive. However, the Planning Adviser observed that

these should not be afforded the same status as representations made to the planning application as there was no way to verify them.

The Planning Adviser agreed that the policies applied by the case officer were relevant. In addition, she considered that NPF4 Policies 1, 2, 3 and 14 should also have been considered and set out her reasoning for this. She noted that the applicant had not provided a systematic assessment of how the proposal was designed and sited to minimise lifecycle greenhouse gas emissions, nor how biodiversity had been enhanced. It was therefore not clear that the requirements of this policy had been met. It was the Planning Service's current practice to address greenhouse gas emissions by use of a condition requiring a report and subsequent implementation. She considered that it would also be possible to secure biodiversity enhancements through a condition of any planning permission in this case.

The Planning Adviser considered the reasons given for refusal to be the determining issues with this application. As to the principle of the use, this use was not acceptable under DC1 or Policy 26, though Policy 29 gave some support. For the second reason for refusal, she agreed that the site was part of an important gateway into Haddington and that this proposal did not meet design policies, including NPF Policy 14. The Road Services officer did not support the application on road safety grounds, having considered the Transport Statement, and she would defer to their expertise in this matter.

As a sui generis use, the need for a serviced car wash in Haddington had not been considered through the development plan. This was therefore a material consideration. She do not consider that this outweighed the provisions of the development plan.

The Planning Adviser concluded her presentation by noting that the case officer had provided suggested conditions which should be applied should the Members wish to allow the appeal; and these conditions were, in her view, appropriate. In addition, she recommended a condition to secure biodiversity enhancement and the Council's standard condition on carbon emissions, as previously mentioned. She would also recommend a condition requiring a Road Safety Audit, as the applicant had offered.

- 4.3. Members then raised questions with the Planning Adviser which the Planning Adviser responded to including providing advice that Road Services could not provide any mitigation measures for vehicles turning left out of the site or turning left into the site and queueing on the A199. Road Services had provided no comment on whether they could enforce a right hand turn into/out of the site. The Road Services officer had commented on driver decisions and conflict and had indicated that it would not be possible to design the entrance in a way to prevent drivers entering/exiting the 'wrong' way.

The Planning Adviser confirmed that, while site layout drawings had been submitted for the rear of the site, these were not available to view. She added that any enforcement issues would be for colleagues within Planning Enforcement to determine but, at present, there were no enforcement cases ongoing against the applicant. She agreed that it would be reasonable to add a condition on signage requesting that waiting drivers switch off their engines, and perhaps asking the operator to report on this aspect.

The Chair asked about a condition asking for a structural survey in relation to the bund. In reply to further questions, the Planning Adviser said it had not been demonstrated through the application that the bund was capable of withstanding the operations and the Council's Flooding & Structures officer had not commented on this aspect. Planning permission

should not be granted if Members were in any doubt about this. However, a condition could be added to planning permission asking for work to be done to ensure the stability of the bund. She indicated that whether any such work on the bund would require access from neighbouring land, and therefore permission from the landowner, would be a question for a civil engineer.

- 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 Forrest commented that he felt the site visit had been very helpful. He did not think the site was wrong for the purpose (of a car wash) but he had concerns about how drivers would enter/exit the site. From a road safety point of view, he did not think the site was appropriate and for this reason he would not be supporting application.
- 4.6. Councillor Allan said she was also concerned about road safety but felt that the design of the entrance/exit would address these problems. The proposal would provide a local service for people currently having to travel to Dunbar and would take some of the traffic away by keeping the service local. While she would be interested in the view of a civil engineer, she felt the issues could be resolved and she was minded to support the application.
- 4.7. The Chair said he did not consider the site to be a countryside location and he felt that the entrance into Haddington had already been spoiled. He acknowledged the concerns about road safety but noted that there were a number of places, such as the Jet station on the Haddington bypass, where the right turn into the site seems to work well. He felt that signage regarding switching off engines and a structural survey should be conditions of planning permission, but he was minded to support the application.

Accordingly, the ELLRB, by a majority of two to one (2:1), decided to uphold the appeal and to grant planning permission subject to the following conditions:

1: Commencement

The development hereby approved shall begin before the expiration of 3 years from the date of this permission.

*Reason: Pursuant to Section 58 of the Town and Country Planning (Scotland) Act 1997 as amended.*

2: Glazed panels

Prior to any use being made of the of car wash facility hereby approved its north boundary shall be fully enclosed by glazed panels, other than for vehicle access and egress points. Details of the height, physical form and positioning of the glazed panels shall be submitted to and approved by the Planning Authority prior to their erection and the erected glazed panels shall be in accordance with the details so approved. Thereafter the glazed panels shall remain in place unless otherwise approved by the Planning Authority.

*Reason: To prevent spray from use of the proposed car wash facility entering the public road and footpath of the A199 Road in the interests of pedestrian and road safety.*

### 3: Visibility splay

The proposed access shall be laid out in accordance with details approved in writing by the Planning Authority prior to any development commencing. A visibility splay of 4.5 metres by 90 metres shall be provided and maintained on the eastern side of the proposed access such that there shall be no obstruction to visibility above a height of 1.05 metres measured from the adjacent carriageway level within the area defined below:-

- a) A line 4.5 metres long measured along the access road from the nearside edge of the main road carriageway.
- b) A line 90 metres long measured along the nearside edge of the main road carriageway from the centre of the access road in both directions.
- c) A straight line joining the termination of the above two lines.

Visibility from a point 2.5 metres from the A199 at the site egress to the exit road centreline of the Oak Tree roundabout shall be maintained.

*Reason: In the interests of road safety.*

### 4: Road Safety Audit

The proposed access roads, footways, cycleways and any related external roadworks shall be subject to an independent Road Safety Audit within 1 year of operation commencing. The extent of the audit shall include the Oak Tree Roundabout given its proximity to the proposal site as the proposed access and egress will introduce interactions with and to it. This process must be completed through Stages 2, 3 & 4 (Detailed Design, Post Opening Audit and Post Opening Audit + 12 months). The audit process shall be undertaken in accordance with GG119 Road Safety Audits, or as amended by latest version. The scope and timing of matters to be considered within Road Safety Audit shall be agreed with the planning authority in advance and prior to undertaking the audit.

*Reason: in the interests of road safety*

### 5: Tree protection

The area of existing trees detailed on the 'Block Plan' drawing numbered AL(0)100 shall be retained on the site.

No development shall take place on site until temporary protective fencing in accordance with Figure 2 of British Standard 5837\_2012 "Trees in relation to design, demolition and construction" has been installed, approved by the arboriculturist and confirmed in writing by the Planning Authority. The fencing must be fixed in to the ground to withstand accidental impact from machinery, erected prior to site start and retained on site and intact through to completion of development. The position of this fencing shall be positioned outwith the Root Protection Area (RPA) as defined by BS5837:2012 for all trees retained on and adjacent to the site, and approved in writing by the Planning Authority.

All weather notices should be erected on said fencing with words such as "Construction exclusion zone - Keep out". Within the fenced off areas creating the Construction Exclusion Zones the following prohibitions must apply:-

- \_ No vehicular or plant access
- \_ No raising or lowering of the existing ground level
- \_ No mechanical digging or scraping
- \_ No storage of temporary buildings, plant, equipment, materials or soil
- \_ No hand digging
- \_ No lighting of fires
- \_ No handling discharge or spillage of any chemical substance, including cement washings

Planning of site operations should take sufficient account of wide loads, tall loads and plant with booms, jibs and counterweights (including drilling rigs), in order that they can operate without coming into contact with retained trees.

*Reason*

*To safeguard trees important to the wider amenity of the area*

6: Scheme of Landscaping

Prior to the commencement of development a scheme of landscaping shall be submitted to and approved in writing by the Planning Authority which shall include full details of all new tree and shrub sizes, species, habitat, siting, planting distances and a programme of planting within the application site. Thereafter the scheme of landscaping shall be carried out in accordance with that approved landscaping scheme unless otherwise agreed by the Planning Authority.

All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the completion of the development or occupation of any house hereby approved, whichever is the sooner. Any trees or plants which die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar species and final size, unless the Planning Authority gives written consent to any variation.

*Reason*

*To ensure establishment of a landscape scheme that improves the amenity and biodiversity of the area.*



## 7: Biodiversity

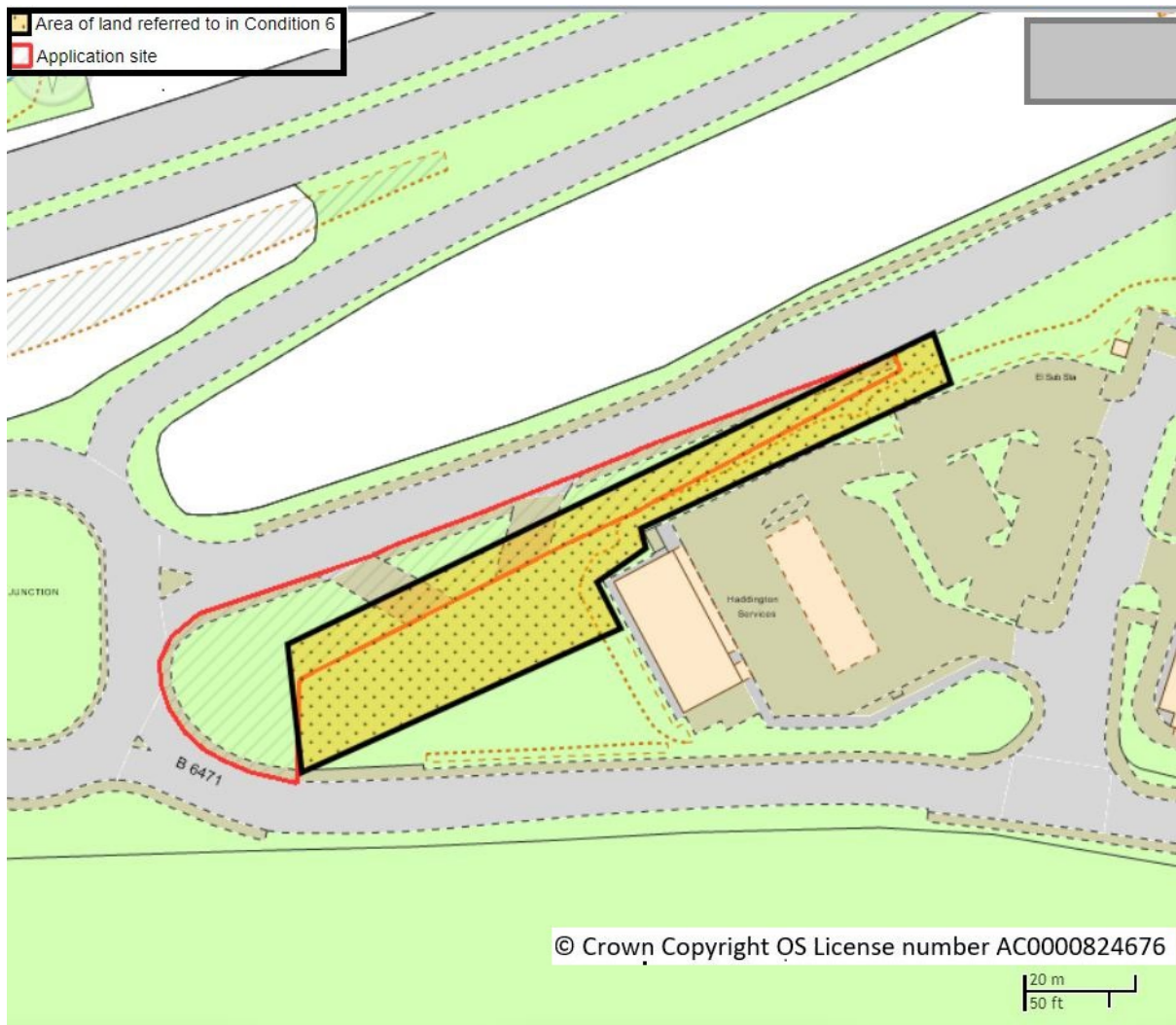
Prior to the commencement of development, the developer shall submit for approval in writing by the Planning Authority, details on the proposed Biodiversity Enhancement scheme for the site. Thereafter, no development shall take place except in strict accordance with the approved scheme.

*Reason: to secure biodiversity enhancement in compliance with National Planning Framework 4 Policy 3.*

## 8: Land stability

No development shall take place unless a report has been submitted to and approved by the planning authority to demonstrate that the formation and operation of the car wash will not compromise the stability of the land to the south of the site, marked in orange and dotted black on the plan below.

*Reason: to ensure the development does not affect the stability of land to the south.*



9: Climate

Prior to the commencement of development, a report on the actions to be taken to reduce the carbon emissions from the build and from the completed development shall be submitted to and approved in writing by the Planning Authority. This shall include the provision of renewable energy for all new buildings where feasible and appropriate in design terms. The details shall include a timetable for implementation. Development shall thereafter be carried out in accordance with the report so approved.

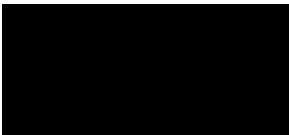
*Reason: to minimise the environmental impact of the development*

10: Signage

No development shall take place until a plan showing signage requesting car drivers to switch off their engines while waiting for the car wash has been submitted to and approved by the planning authority. This signage shall be installed prior to the opening of the proposal to customers, and thereafter maintained as approved, unless otherwise agreed by the planning authority.

*Reason: to seek to avoid unnecessary energy use.*

Planning Permission is hereby granted.



**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.