



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

**THURSDAY 30 NOVEMBER 2023
VIA THE DIGITAL MEETINGS SYSTEM**

Committee Members Present:

Councillor D Collins
Councillor A Forrest (Chair)
Councillor N Gilbert
Councillor K McLeod

Advisers to the Local Review Body:

Mr C Grilli, Legal Adviser to the LRB
Mr P Zochowski, Planning Adviser to the LRB

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 and reminded them that further advice would be provided on procedure, should they conclude they did not have enough information to determine the application today.

The Legal Adviser then invited nominations to chair the meeting. Councillor McLeod nominated Councillor Forrest, and this was seconded by Councillor Collins. It was agreed that Councillor Forrest would chair the Local Review Body (LRB) on this occasion.

1. PLANNING APPLICATION NO. 23/00124/P: REPLACEMENT WINDOWS, ELCHO PLACE HALL, 124 HIGH STREET, COCKENZIE EH32 0DN

The Chair invited the Planning Adviser, who had not been involved in the original decision, to present a summary of the planning policy considerations in this case.

The Planning Adviser informed Members that the planning application related to the replacement of front (south) facing and side (east and west) elevation windows at Elcho Place Hall, 124 High Street, Cockenzie. He provided details of the application site and the size, shape and features of the existing windows. He advised that a previous planning permission had been granted in 2019 for replacement doors and windows in the north, south and east elevations of the building. This planning permission was only partially implemented and remained extant.

He believed the proposed windows in the most recent application would be visibly different from the existing windows. The case officer in his report had noted that this would be in respect of their thicker window frames and non-traditional 'plant-on' rather than through astragals. The Planning Adviser added that the curved windows to the front elevation would also have a visibly different glazing pattern with a wider central pane.

He reminded Members that section 25 of the Town and Country Planning (Scotland) Act 1997 required that the application be determined in accordance with the development plan unless material considerations indicate otherwise. The local development plan was National Planning Framework 4 (NPF4) and the adopted East Lothian Local Development Plan 2018 (LDP). He indicated that the following policies were relevant to this case: Policy 7 of NPF4 and Policies CH2 and DP5 of the LDP. Also material was section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and the Council's adopted Supplementary Guidance on Cultural Heritage and the Built Environment 2018.

The Planning Adviser noted that there had been one letter of objection from the Architectural Heritage Society of Scotland which considered uPVC 'an intrusive modern material which would damage the appearance of the building', expressed concern at the lack of traditional features in the replacement windows and the potential impact on the curve of the main window, and queried the absence of a window condition report or statement.

The Planning Adviser explained that a window condition survey/report was only required where replacement windows were proposed to a listed building. The building the subject of this application was not listed.

He agreed with the case officer's conclusion that the proposed windows did not comply with NPF Policy 7 part d, where proposals affecting a conservation area would only be supported where the character and appearance of the conservation area and its setting was preserved

or enhanced, with relevant considerations being the architectural and historic character of the area and the need to use suitable materials. He also agreed that it did not comply with LDP Policy CH2 which again stated that proposals should accord with the size, proportions and materials of nearby buildings, in this case within a designated conservation area, and, where the building makes a positive contribution to the character of that area, that were the application to be approved it would set an undesirable precedent for the installation of similar windows. Similarly, there was no support from LDP Policy DP5 and the proposal did not comply with any of the three possible exceptions for window replacement outlined in the Supplementary Planning Guidance to the LDP.

The Planning Adviser noted that the applicant's review statement indicated that in their opinion the proposed windows did not have a visibly different appearance, that they could not afford timber windows (not a planning consideration) and noted that their inefficient current windows were not helping with energy costs.

The Planning Adviser concluded his presentation by reminding Members of the options open to them, noting that the applicant already had extant permission for suitable timber framed windows.

In response to questions from Councillor McLeod, the Planning Adviser confirmed that, to his knowledge, planning permission had not been sought for double-glazed windows in the extensions to the existing buildings.

The Chair asked his colleagues to confirm that they had attended the 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 views on the application.

Councillor Gilbert noted that the property already had some uPVC windows and that the proposed windows would be more thermally efficient and lead to energy savings and costs savings for the applicant. He considered that they would also be more weather and climate resistant. In his view, this was a more modern building, not in keeping with other properties in the street and, in addition, some other properties in the street had already been fitted with double glazed windows. For these reasons, he was minded to vote against the case officer's recommendation.

Councillor McLeod observed that with so much mixed glazing on different sides of the building, the proposed replacement windows would enhance building rather than detract from it. Furthermore, the current windows did not appear to be very environmentally friendly. While he noted the previous planning permission, he was of the view that to provide uniformity over the whole building and to bring the glazing up to good standard planning permission should be granted. Accordingly, he was minded to uphold the appeal.

Councillor Collins was of a similar opinion to her colleagues. She noted that the proposed replacement windows would vastly improve energy efficiency and uniformity, uPVC would last longer than wood in that location and this was not a listed building. For these reasons, she was minded to vote against the case officer's recommendation.

The Chair said it was always useful to view the site and he agreed that the building currently had a mix of glazing types. However, he did not consider that the existing uPVC enhanced the look of the building and he felt that the proposed replacement windows would detract further. According, he would be upholding the case officer's decision to refuse planning permission.

The members of the LRB confirmed their decision via roll call vote. They agreed by a majority of three to one to uphold the appeal and to grant planning permission.

Decision

The ELLRB agreed, by majority, to uphold the appeal and to grant planning permission.

2. PLANNING APPLICATION NO. 23/00600/P: REPLACEMENT WINDOWS AND DOORS, 1 MARKETGATE, ORMISTON, EH35 5LS

The Chair invited the Planning Adviser, who had not been involved in the original decision, to present a summary of the planning policy considerations in this case.

The Planning Adviser informed Members that the planning application related to the replacement windows and doors at 1 Marketgate, Ormiston. He provided details of the application site and advised that the proposal was for replacement uPVC windows where the existing windows were timber. Earlier this year, the applicant had been granted planning permission for uPVC windows, where they were not visible from a public place, and for double glazed timber framed windows and doors where they were visible from a public place within the conservation area. However, he had subsequently submitted this application for uPVC double glazing throughout which was the subject of this appeal.

He reminded Members that section 25 of the Town and Country Planning (Scotland) Act 1997 required that the application be determined in accordance with the development plan unless material considerations indicate otherwise. The local development plan was National Planning Framework 4 (NPF4) and the adopted East Lothian Local Development Plan 2018 (LDP). The case officer had identified the following policies as being relevant to this case: Policies 7, 14 and 16 of NPF4 and Policies CH2 and DP5 of the LDP. Also material was the Council's adopted Supplementary Guidance on Cultural Heritage and the Built Environment 2018.

The Planning Adviser noted that there had been three letters of objection, including one from the Architectural Heritage Society of Scotland. In summary, they identified that the property was part of the historic farm, the buildings of which enhanced the character of the conservation area; the windows were visible from public places; introducing uPVC would damage the strong visual contribution which the property made to the conservation area; the proposal was contrary to the Council's planning policies; uPVC was not a like for like replacement; and the proposal would harm the character of both the building and the surrounding area – more so since the applicant had previously accepted timber frames under a previous planning permission; no justification had been provided for the change now proposed and no window or heritage survey had been submitted.

Considering these points, the case officer had noted that the applicant did not have to justify the changes proposed. However, the Planning Adviser commented that NPF4 Policy 7 stated that development proposals with a potentially significant impact on historic assets or places should be accompanied by an assessment which was based on an understanding of the cultural significance of the historic asset and/or place. The issue here was how one judged what was a significant impact.

The windows were clearly visible from a public place. Its existing timber windows were a part of the architectural character of the property and the property made a significant positive contribution to the wider Ormiston Conservation Area. The main determining issue was therefore the detailed design of the windows and the material from which they were made.

The case officer had reported that because of their thicker frames and non-traditional astragals they would be visibly different in appearance from the windows they would replace and that this difference would be such that it would not preserve the positive contribution the traditional timber framed sash and case windows and doors made to the architectural character and appearance of the property or to the special architectural or historic interest of the Ormiston Conservation Area. As a result, and notwithstanding that the replacement windows and doors proposed for the north and west elevation of the house were acceptable, the whole application had been refused.

The Planning Adviser agreed that the proposed windows would be visibly different for the reasons provided by the case officer (thicker frames, non-traditional astragals in terms of profile and being plant on rather than through astragals and a wider spacing between the panes of glass and the different material of construction) and that, for these reasons, the windows could be considered to be harming rather than preserving the character of the conservation area.

The Planning Adviser then summarised the review submission provided by the applicant's agent which asserted that uPVC windows were less expensive, that they performed better and were more durable than timber windows, that the windows were intended to look exactly the same as the existing, that they would look the same from a distance and for that reason the character of the area was not lost or changed. The submission also noted that a previous appeal decision by the Local Review Body overturned a similar refusal for replacement windows, also by the same manufacturer as this proposal, at a location in North Berwick. In relation to this point, the Planning Adviser reminded Members that all applications had different circumstances and affected the character of a different conservation area and against sometimes different planning policy and guidance.

In response to the applicant's review submission, a further objection had been made countering the claims in relation to the difference between timber windows, which the objector would have liked to see retained, and uPVC windows which the objector was opposed to.

The Planning Adviser concluded his presentation by reminding Members of the options open to them - whether they agreed that the reasons for refusal were correct, noting that the applicant already had permission for suitable timber framed windows, or whether the decision should be overturned and allowed.

The Planning Adviser responded to questions from Members on the proposed astragals, whether they would be visually similar to the existing and whether a particular type of astragal could be specified in a condition of any planning permission.

The Chair asked his colleagues to confirm that they had attended the 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 views on the application.

Councillor McLeod noted the importance of taking each case on its own merits. During the site visit he had observed that the front of the house was clearly visible to the public and that other properties nearby had wooden frame windows. He felt that uPVC windows in a front aspect would adversely affect the character of the conservation area. Accordingly, he was minded to uphold the case officer's decision.

Councillor Gilbert commented that it was quite obvious that this was conservation area and that the front windows and door of the property were easily visible to the public. He noted

that the applicant already had planning permission for wooden framed windows and, for those reasons, he was minded to refuse application.

Councillor Collins acknowledged that applicant's attempt to make the replacements look similar to the existing. However, the property was in a conservation area and the applicant already had planning permission for wooden framed windows. She was of the view that replacing with uPVC would adversely affect the character of building and the surrounding conservation area. Accordingly, she was minded to support the case officer's decision to refuse the application.

The Chair commented that the property was clearly visible within the high street and the wider conservation area, and to introduce uPVC would, in his opinion, create a problem. If the proposal had been for wooden frames he may have had a different view, however, on the basis of this application, he would be voting to uphold the case officer's decision.

The members of the LRB confirmed their decision via roll call vote. They agreed unanimously to dismiss the appeal and to refuse planning permission.

Decision

The ELLRB agreed, unanimously, to dismiss the appeal and to refuse planning permission for the reasons set out in the planning case officer's report.

3. PLANNING APPLICATION NO. 23/00209/P: ERECTION OF 1 HOUSE AND ASSOCIATED WORKS, SITE ADJACENT TO WEST COTTAGE, FENTON NEW MAINS ROAD, FENTON BARNES, EAST LoTHIAN

The Chair invited the Planning Adviser, who had not been involved in the original decision, to present a summary of the planning policy considerations in this case.

The Planning Adviser informed Members that the planning application related to the erection of 1 house and associated works on a site adjacent to West Cottage, New Fenton Mains Road, Fenton Barnes. He provided details of the site and its surroundings and of the proposals outlined in the application.

He reminded Members that section 25 of the Town and Country Planning (Scotland) Act 1997 required that the application be determined in accordance with the development plan unless material considerations indicate otherwise. The local development plan was National Planning Framework 4 (NPF4) and the adopted East Lothian Local Development Plan 2018 (LDP). The case officer had identified the following policies as being relevant to this case: Policies 1, 2, 3, 5, 14, 15, 16, 17 and 29 of NPF4 and Policies DC1, DC4, DC5, DP2, NH7, NH8, T1 and T2 of the LDP. While he agreed that all the stated policies were relevant to this application, he noted that the interpretation of some of these policies differed between the case officer and the applicant's agents.

The Planning Adviser noted that there had been a total of 20 representations to the application – 14 in support, 5 objecting and one commenting. Although all were valid objections it was noted that 7 of the letters of support were from outwith East Lothian. One objection was from an organisation, the Architectural Heritage Society of Scotland. The letters of representation had been summarised in the case officer's report. He also noted that there had been 7 consultation responses – with no objections noted from the Council's Environmental Health officer, Contaminated Land Officer and the Archaeology/Heritage Officer.

The Council's Planning Policy Officer had noted that NPF4 Policy 17 and LDP Policies DC1 and DC4 did not support the application. The Council's Roads Officer had stated that the proposals were in line with LDP Policy T2 subject to a redesign to accommodate a double length driveway. The Council's Landscape Officer had stated that the development was unlikely to be undertaken without harm to the trees that were important on the site. [The trees were now correctly identified as subject to a Tree Preservation Order which was a material consideration in the determination of the application.] Lastly, Scottish Water had raised no objection but commented that private treatment options for waste would be required in the absence of any public Scottish Water waste water infrastructure.

The Planning Adviser summarised the case officer's assessment of the application against relevant planning policy. The case officer had assessed the application first on the principle of development in a countryside location against national and local planning policy and then on design matters including the effect on the mature trees on the site. He had concluded that the proposal should be refused for the following reasons:

- it was contrary to NPF policy 17 and policy DC1 and DC4 of the adopted LDP;
- that the proposed house was not proposed to enable the restoration of a historic building asset or another desirable asset contrary to Policy 17 and adopted LDP policy DC5;
- that its design scale form materials and finish was inappropriate to its setting and out of keeping with its surroundings therefore contrary to Policy 14, 16 and 29 of NPF and DP1 and DP2 of the adopted LDP; and
- that it had not been demonstrated that the site could be developed for one house without harm to the trees, both in the site and immediately adjacent to the eastern boundary of the site, contrary to Policy 6 of NPF and NH8 of the adopted LDP.

The Planning Adviser then summarised the review statement submitted by the applicant's agent and architect. He noted that their interpretation of policy differs from that of the case officer, and they had sought a more flexible approach to the interpretation of a number of matters. Their statement included the following points:

- The application site was a previously developed site, capable of accommodating a new home, in keeping with its surroundings and adjacent to other residential properties.
- The application met key design and siting criteria and policy considerations.
- It would not be sporadic and isolated development in the countryside instead would sit comfortably with other properties at Fenton Barns.
- It complied with NPF Policy 17 requirements for a house in a rural area to be suitably scaled, sited and designed in keeping with the character of the area.
- The site would reuse brownfield land and be appropriate in terms of its location, access, and environmental impacts.
- The proposed development would not compromise any aspect of the East Lothian countryside complying with the aims and objectives of planning policies which were written to avoid inappropriate and unsympathetic development in countryside locations.
- Planning must be about working together to deliver appropriate outcomes for an application site. The proposed house would be a beautiful and sustainable addition to the area and accorded with policy 17.
- The site was a vacant and derelict plot, not prime agricultural land.
- Trees on the site could be preserved with bespoke foundation design which could be made the subject of a condition.

The Planning Adviser noted that 2 further representations had been received in response to the appeal. These were further objections from people who have previously made

representation. The applicant's agent had also responded resting their case on the appeal statements submitted.

He also drew Members' attention to a current Planning Enforcement investigation relating to alleged unauthorised works on the site including work to trees and the dropping of waste material on the site. He advised that, if action was required following the investigation it would be appropriate for the Council to serve a Wasteland Notice as a way of dealing with the condition of the site. Alleged unauthorised tree work would be addressed separately.

The Planning Adviser concluded his presentation by reminding Members of the options open to them. Should they choose to refuse the application, his advice was that they do so for the same reasons given in the original decision notice, with amendment of the reference to 'Scottish Planning Policy' with 'NPF4' and adding reference to the fact that the trees on site were now subject to a Tree Protection Order (TPO). He also pointed out that, if Members were minded to grant planning permission, suggested conditions had been provided by the case officer.

The Planning Adviser responded to question from Councillor Gilbert providing further information on the proposed construction materials, with particular reference to their colour and the likelihood of them weathering/fading over time.

The Chair asked his colleagues to confirm that they had attended the 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 views on the application.

Councillor Collins commented that the sycamore trees were quite old, and any work done on the site would affect their roots and those of the tree on the other side of the plot. She was also concerned about the proposed scale and building materials, which were, in her view, nothing like those of the surrounding development. She noted that the proposed house would not be supporting agriculture or any rural business but would be a new build in the countryside. For these reasons, she would be supporting the case officer's decision to refuse the application.

Councillor Gilbert stated that he had similar concerns about the application: that it would be a new build in countryside; that the design and materials would not be in keeping with the surrounding development; and that the work would cause damage to the trees on the site. He also noted that this was effectively a two-storey building and the surrounding buildings were all single storey. For these reasons, he would be supporting the case officer's decision.

Councillor McLeod also referred to the potential for the building to cause damage to the trees which were now covered by a TPO. He concurred with his colleagues' remarks on other aspects of the proposals and said he would be supporting the case officer's decision to refuse the application.

The Chair commented on the importance of the site visit in bringing to life the information within the reports and other appeal documentation. He said he would have difficulty in seeing a way of developing this site without damaging the trees and for that reason he would be supporting the case officer's decision.

The members of the LRB confirmed their decision via roll call vote. They agreed unanimously to dismiss the appeal and to refuse planning permission. They also accepted the revisions to the reasons for refusal as suggested by the Planning Adviser.

Decision

The ELLRB agreed, unanimously, to dismiss the appeal and to refuse planning permission for the reason set out in the planning case officer's report, subject to the amendments suggested by the Planning Adviser.

Signed

Councillor Andrew Forrest
Chair of Local Review Body (Planning)