

## **REVIEW DECISION NOTICE**

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

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Application for Review by Sonia Browse Architects LLP, on behalf of Mr Pat Cesari c/o Sonia Browse Architects, 13 Bellfield Lane, Portobello, Edinburgh EH15 2BL of decision to refuse Planning Permission for the Erection of 1 house and associated works, Site Adjacent to West Cottage, Fenton New Mains Road, Fenton Barns, East Lothian

Site Address: Site Adjacent to West Cottage, Fenton New Mains Road, Fenton Barns, East Lothian

Application Ref: 23/00209/P

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

Date of Review Decision Notice: 11 January 2024

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### **Decision**

The ELLRB unanimously agreed to dismiss the appeal and refuse planning permission for the erection of 1 house and associated works, at site adjacent to West Cottage, Fenton New Mains Road, Fenton Barns, 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, 30 November 2023. The Review Body was constituted by Councillor A Forrest (Chair), Councillor K McLeod, Councillor D Collins and Councillor N Gilbert. All four 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 P Zochowski, 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, at site adjacent to West Cottage, Fenton New Mains Road, Fenton Barns, East Lothian.
- 2.2. The planning application was registered on 22 March 2023 and the Decision Notice refusing the application is dated 10 May 2023.
- 2.3. The reasons for refusal are more particularly set out in full in the said Decision Notice dated 10 May 2023. The reasons for refusal are as follows:

- 1 *The erection of a house on the application site would be new build housing development in the countryside of East Lothian on land which is not allocated for housing development, is not brownfield land where a return to a natural state will not happen without intervention, does not reuse a redundant or unused building, and for which a need to meet the requirements of the operation of an agricultural, horticultural, forestry, countryside recreation, or other business, leisure or tourism use has not been demonstrated, and which is not proposed as affordable housing development of an existing rural settlement. The proposal is therefore contrary to Policy 17 of NPF4 and Policies DC1 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 erection of a house on the application site would be new build housing development in the countryside of East Lothian for which a desirable primary use supported in principle by criterion b of Policy DC1 and with benefits that outweigh the normal presumption against new build housing in the countryside has not been demonstrated; and which is not an appropriate use of a historic environment asset or promoted to fund the restoration of a listed building, building of recognised heritage value or significant designated feature of the built or natural environment, the retention of which is desirable. The proposal is therefore contrary to Policy 17 of NPF4 and Policy DC5 of the adopted East Lothian Local Development Plan 2018.*
- 3 *The proposed house is of a design, scale, form, materials and finish inappropriate to its setting and out of keeping with its surroundings contrary to Policies 14, 16 and 29 of NPF4 and Policies DP1 and DP2 of the adopted East Lothian Local Development Plan 2018.*
- 4 *It has not been demonstrated that the site could be developed for the erection of one house without harm to the trees within the site and the tree immediately adjacent to the eastern boundary or their removal. Thus, the principle of the erection of a house on the site is contrary to Policy 6 of NPF4 and Policy NH8 of the adopted East Lothian Local Plan 2018.*

- 2.4. The notice of review is dated 9 August 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_1F-01	04	02.03.2023
	AL_EL_01	04	02.03.2023
	AL_EL_03	04	02.03.2023
	AL_EL_04	03	02.03.2023
	AL_EX_1F_01	03	02.03.2023
	AL_EX_EL_01	03	02.03.2023
	AL_EX_EL_03	03	02.03.2023
	AL_EX_GF_01	03	02.03.2023
	AL_EX_RF_01	03	02.03.2023
	AL_EX_SE_01	03	02.03.2023
	AL_EX_SE_03	03	02.03.2023
	AL_EX_SE_04	03	02.03.2023
	AL_EXT_01	01	02.03.2023
	AL_GF_01	04	02.03.2023
	AL_RF_01	04	02.03.2023
	AL_S_01	02	02.03.2023
	AL_SE_01	04	02.03.2023
	AL_SE_02	04	02.03.2023
	AL_SE_03	04	02.03.2023
	AL_SE_04	04	02.03.2023
	S_1F_01	03	02.03.2023
	S_EL_01	03	02.03.2023
	S_EL_03	03	02.03.2023
	S_EX_1F_01	03	02.03.2023
	S_EX_EL_01	03	02.03.2023
	S_EX_EL_03	03	02.03.2023
	S_EX_GF_01	03	02.03.2023
	S_EX_RF_01	03	02.03.2023
	S_EX_SE_01	03	02.03.2023
	S_EX_SE_03	03	02.03.2023
	S_EX_SE_04	03	02.03.2023
	S_GF_01	03	02.03.2023
	S_RF_01	03	02.03.2023
	S_SE_01	03	02.03.2023
	S_SE_03	03	02.03.2023
	S_SE_04	03	02.03.2023
	SK 002	02	02.03.2023
	SK 003	02	02.03.2023
	SK 004	02	02.03.2023
	SK 005	02	02.03.2023
	SK 006	02	02.03.2023
	SK 007	02	02.03.2023
	SK 008	02	02.03.2023
	SK 009	02	02.03.2023
	AL_EL_04	03	20.03.2023
	AL_EX_EL_02	02	20.03.2023
	AL_EX_EL_04	02	20.03.2023
	AL_EX_SE_05	02	20.03.2023
	AL_SE_05	03	20.03.2023
	S_EL_02	02	20.03.2023
	S_EL_04	02	20.03.2023
	S_EX_SE_05	02	20.03.2023
	AL_EL_02	03	22.03.2023

ii.	The Application for planning permission registered on
iii.	The Appointed Officer's Submission
iv.	<p>Policies relevant to the determination of the application:</p> <p>National Planning Framework 4 (NPF4):</p> <ul style="list-style-type: none"> <li>- Policy 1 (Tackling the climate and nature crises);</li> <li>- Policy 3 (Biodiversity);</li> <li>- Policy 5 (Soils);</li> <li>- Policy 6 (Forestry, woodland and trees);</li> <li>- Policy 13 (Sustainable transport);</li> <li>- Policy 14 (Design, quality and place);</li> <li>- Policy 16 (Quality Homes), Policy</li> <li>- 17 (Rural Homes); and</li> <li>- Policy 29 (Rural Development).</li> </ul> <p>the adopted East Lothian Local Development Plan 2018:</p> <ul style="list-style-type: none"> <li>- DC1 (Rural Diversification);</li> <li>- DC4 (New Build Housing in the Countryside);</li> <li>- DC5 (Housing as Enabling Development);</li> <li>- DP2 (Design);</li> <li>- NH7 (Protecting Solis);</li> <li>- NH8 (Trees and Development);</li> <li>- DP1 (Landscape Character);</li> <li>- DP2 (Design);</li> <li>- T1 (Development Location and Accessibility); and</li> <li>- T2 (General Transport Impact).</li> </ul>
v.	Notice of Review dated 9 August 2023 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 advised that the planning application relates to the erection of 1 house and associated works on a site adjacent to West Cottage, New Fenton Mains Road, Fenton Barns. 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 with 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 subsequently identified as being 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.

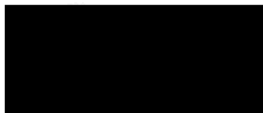
He also drew Members' attention to a current Planning Enforcement investigation relating to alleged unauthorised works on the site including work to trees and the dropping of waste material on the site. He advised that, if action was required following the investigation it would be appropriate for the 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).

- 4.3. Members then asked questions of the Planning Adviser. 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.
- 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 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.
- 4.6. 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.
- 4.7. 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.
- 4.8. 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.

Accordingly, the ELLRB unanimously decided to dismiss the appeal and refuse planning permission for the reasons set out within this decision notice together with the additional reasonings for refusal as suggested by the Planning Adviser's.

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.