

REVIEW DECISION NOTICE

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

Application for Review by agent, RFA Development on behalf of Paris McCallum, Muirpark Steading, 3 Walker Street, Edinburgh, EH4 8EX of refusal of planning application 23/00514/P for the change of use of traveller pitches for the erection of 1 house and associated works, Land at Muirpark Steadings, Tranent, East Lothian.

Site address: 0.12 hectares within the western part of the site known as Muirpark Steading

Application Ref: 23/00514/P

Date of review decision notice: 21 February 2024

1. Decision

- 1.1 The ELLRB voted to grant planning application 23/00514/P with conditions.
- 1.2 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.

2. Introduction

- 2.1 The ELLRB was constituted by Councillor J Findlay (Chair), Councillor A Forrest, Councillor L Allan and Councillor K McLeod. The above review of the refusal planning application 23/00514/P was considered by the ELLRB at the Local Review Body (LRB) on Thursday 25 January 2024. All four members of the ELLRB had attended a site visit in respect of the application on 25 January 2024.
- 2.2 The following persons were also present at the meeting of the ELLRB:

Ms J Squires, Planning Advisor
Ms F Haque, Legal Adviser/Clerk
Ms F Currie, Clerk

3. Proposal

- 3.1 This application is an appeal against refusal of planning application 23/00514/P for the change of use of gypsy/traveller pitches for the erection of 1 house and associated works, Land at Muirpark Steadings, Tranent, East Lothian.
- 3.2 The planning application was registered on 30 May 2023 and the Decision Notice refusing the planning application is dated 6 September 2023.
- 3.3 The Applicant appealed the refusal of the planning application on 10 October 2023.

4. Preliminaries

- 4.1 In advance of the LRB meeting, members were provided with copies of the following:

1.	Statement of Case: original officer's report for planning application 23/00514/P
2.	Copy of the Decision Notice containing conditions relating to planning application 23/00514/P
3.	Consultation responses
4.	The policies listed below relevant to the determination of the application. 1. Policies DC1, DC4 and DC5 of the adopted East Lothian Local Development Plan 2018 (ELLDP); and

	2. Policy 17 of the National Planning Framework 4 (NPF4).
5.	Applicant's submission
6.	Schedule of Conditions

5. **Findings and conclusions**

- 5.1 The Clerk confirmed that all members of the ELLRB were present and all confirmed that there were no declarations of interest.
- 5.2 The Legal Advisor proceeded to summarise the process for the LRB meeting, confirmed that all attendees had a copy of the papers listed above. The members nominated Councillor F Findlay as chair.
- 5.3 The Members requested that the Planning Advisor summarise the application and the related policy position in respect of this matter.

Planning Advisor's summary

- 5.4 This case is an appeal against refusal of an application for erection of one house and associated works. The reason for refusal were:
- 5.4.1 that the erection of the house in the countryside would be contrary to Policy 17 of NPF4 and Policies DC1 and DC4 of the ELLDP; and
- 5.4.2 that it did not accord with Policy DC5 of the ELLDP as it does not fall into one of the categories where housing in the countryside may exceptionally be supported.
- 5.5 The site is an area of land to the south of the A199 road between Macmerry and Tranent. The site is part of a wider site which was granted permission on appeal for change of use of agricultural land for storage and distribution and use as 4 gypsy Traveller pitches (3 caravans per pitch), erection of amenity block, etc. Planning permission was recently granted for change of use to a house from a subsequently consent utility block on part of land that is adjacent to site this application relates to. The proposal site lies between this said house and another existing house, and is enclosed by stone walls and fencing. Access would be taken through the existing internal driveway.
- 5.6 No representations from members of the public were received.
- 5.7 No objection to the application was sustained from any internal or external consultee, though the Coal Authority and Contaminated Land Officer suggested conditions and the Biodiversity Officer, Flood Officer and Scottish Water made recommendations.
- 5.8 The original case officer set out policies that he considered relevant to the application, and the reasons for refusal of the application. The case officer found the proposal would accord with policies on design and transportation. He considered that subject to imposition of a condition on biodiversity enhancement the proposal would accord with biodiversity policy. However, he found the principle of erection of a house to be in conflict with ELLDP Policies DC1 on rural diversification, DC4 on new build housing in the countryside, and DC5, as well as NPF4 Policy 17. He therefore refused the planning application.
- 5.9 The Applicant notes that Muirpark was historically a large steading, and argues that designation of the land as countryside is outdated. They note that the application site is previously developed, and can accommodate the new home. Historic maps show a previous steading. The application meets design and siting criteria. The land is not in agricultural use. There are no inappropriate or adverse amenity impacts.
- 5.10 The Applicant in their submission considers the Council has not taken on board the reasons the original application for a gypsy travellers site was upheld at appeal by a Reporter.

- 5.11 The Applicant states that the site is not appropriate or attractive as a destination for mobile travellers, stating there are lower levels of occupancy across the Lothians and Scotland after covid, that the operation of travellers pitches is not viable currently.
- 5.12 The site is part of an established cluster of rural homes, the proposal causes no harm, is not agricultural land nor isolated, and justifies a departure from policy.
- 5.13 The Applicant argues that the council has not taken sufficient account of Policy DP7 on infill development.
- 5.14 In relation to the first reason for refusal, the Applicant considers that the site is a brownfield site but has transformed from a rural holding to relating much more to Tranent.
- 5.15 The Applicant considers that benefits of the development in relation to biodiversity policy, and NPF4 Policies 14 – 16 on sustainable transport, and design strengthen the case for the proposals.
- 5.16 In the 'Rebuttal' section of the Applicant's submission, the Applicant argues that the site is not consistent with the definition of countryside contained in the ELLDP. The Applicant considers the proposal is acceptable under in NPF4 Policy 17a, as it falls into at least 4 of the categories. The appellant considers rural development policies of NPF4 are not compatible with ELLDP policies. The proposal is also supported by NPF4 Policy 9 which states that development proposals that result in the sustainable reuse of brownfield land will be supported.
- 5.17 The Applicant therefore considers that the proposal accords with the development plan.
- 5.18 The Planning Advisor agrees mostly with the case officer's consideration of which policies are relevant.
- 5.19 The Planning Advisor agreed with the original case officer that the proposal meets the terms of Policy DP1 and 2 of the ELLDP on design, and policies in NPF4 13, 14, 15 and 16 which are intended to ensure that development proposals improve the quality of the area in which they are located and contribute to local living. The Planning Advisor also agreed that it meets the terms of ELLDP Policies T1 and T2 on transport issues.
- 5.20 The original case officer lists policy on soil as being relevant but does not discuss this further. The Applicant considers this may have been included in error. The Planning Advisor states that under John Hutton Institute (JHI) strategic mapping, the soil is considered to be Class 2, which is prime. NPF4 Policy 5 on soils provides that development proposals on prime agricultural land will only be supported where it is for essential infrastructure or small scale development directly linked to a rural business, farm or croft, food processing facilities or renewable energy generation. ELLDP Policy NH7 contains similar policy. No site specific survey evidence has been submitted on whether the soil is prime or not. Given the JHI mapping, the onus would be on the Applicant to show that it is not. As members of the ELLRB saw this morning the site is not in agricultural use and there may according to the Contaminated Land Officer be some level of contamination. It is also located between two existing houses which may make agricultural use more difficult. You may consider these to be relevant material considerations that override the provisions of the policy protecting prime agricultural land.
- 5.21 The Planning Advisor agrees with the applicant that the reason for refusal should not have referred to Scottish Planning Policy, which had at that point been superseded by NPF4.
- 5.22 The Planning Advisor disagreed with the original case officer that the proposal would have a neutral impact in terms of NPF Policy 1. Policy 1 states that significant weight will be given to the global climate and nature crisis. In terms of biodiversity the current value of the site is low, as noted by the biodiversity officer, and enhancement would be easily achievable through creation of garden ground in line with NPF Policy 3.
- 5.23 However, creation of a new house will inevitably lead to further greenhouse gas emissions. NPF4 Policy 2 Climate Change Mitigation and Adaptation is therefore relevant. This policy states that

development proposals will be sited and designed to minimise lifecycle greenhouse gas emissions as far as possible. The applicant has not shown that lifecycle greenhouse gas emissions have been minimised through siting and design, for example through choice of materials. In the Planning Advisor's view this can be achieved through imposition of the Council's standard condition on climate emissions. This is among the conditions suggested by the case officer should the application be approved.

- 5.24 The original case officer considered the proposal against ELLDP Policies DC1 Rural Diversification, DC4 on New Build Housing in the Countryside. The Planning Advisor agreed that these policies are relevant and that the proposal is contrary to Policies DC1 and DC4 as it is not for one of the uses listed. The Applicant has argued that this site should not be considered as countryside so countryside policies should not apply. In the planning led system, which policies apply to which land is decided through the Local Development Plan process. The forum for dispute on whether or not the land is countryside is that process. Once the ELLDP is adopted the matter is settled. Proposals in areas shown as countryside, as this site is, must then be considered with regard to relevant countryside policies. This also means that Policy DP7 on Infill should not be applied, as the Applicant argues it should be, as the policy specifically states it does not apply to countryside areas.
- 5.25 The original case officer considered the proposal contrary to Policy NPF4 Policy 17 on rural homes. This policy aims to encourage, promote, and facilitate the delivery of more high quality, affordable and sustainable rural homes in the right location. Policy 17 first provides that to be supported, a development should be suitably scaled and designed to be in keeping with the character of the area. Both the Applicant and the case officer appear to agree this to be the case, as does the Planning Advisor. The policy then gives a list of situations where a new home in a rural area should be supported. Only one of the items need apply for the development to be acceptable. The original case officer considered that the proposal did not fall into any of the categories.
- 5.26 The Applicant considers it falls under the following categories of Policy 17a and therefore be acceptable. Category (iii) is reuse of a redundant or unused building. As this proposal does not reuse a building it does not in the Planning Advisor's view fit into this category.
- 5.27 Category (vi) is for a single home for the retirement succession of a viable farm holding. The Applicant has not put forward any evidence that the proposal is related to retirement succession for a viable farm holding.
- 5.28 Category (viii) where it is for reinstatement of a former dwelling house or is a one for one replacement of an existing permanent house. There is no former dwelling house or existing permanent house on this site to reinstate or replace and therefore the application does not fall within this category.
- 5.29 Category (ii) is for the reuse of brownfield land where a return to a natural state has not or will not happen without intervention. Both parts of this policy are important, firstly that it is brownfield land, secondly whether or not it will return to a natural state without intervention. NPF4 defines brownfield land as previously developed land. This land has a gravel surface but has no built development, and in the Planning Advisor's view does not constitute brownfield land. It is the Planning Advisor's view that even if considered brownfield land, the land will return to its natural state without intervention and so does not fall into Category (ii).
- 5.30 The Applicant argues Policy 9 on brownfield land supports the proposal. In the Planning Advisor's view the position regarding brownfield land as it applies specifically to rural homes is set out in Policy 17 as above, and the general policy towards brownfield land in Policy 9 should not override the policy specifically relevant to the case in Policy 17. In any event, in the Planning Advisor's opinion, the site should not be considered as brownfield land due to the lack of operational development that has taken place on the site.
- 5.31 The original case officer also refused the application as against ELLDP Policy DC5. The Applicant argued that Policy DC5 is not relevant. The Planning Advisor would agree with the Applicant on this matter. Policy DC5 provides for situations where housing may be allowed as enabling

development as an exception to the presumption against general purpose new build housing in the countryside set out in Policy DC4. Here the Applicant has made no claim that the house is enabling development. As this is not such a case, Policy DC5 cannot be applied, other than to note that Policy DC5 does not lend the proposal any support as the proposal is not for enabling development.

- 5.32 The Planning Advisor advised that it is open to the ELLRB to uphold the appeal, or to refuse it for the reasons given by the original case officer or any valid planning reason. The Planning Advisor further stated that should the ELLRB be minded to refuse the application for the reasons given by the original case officer, they should remove the reference to Scottish Planning Policy, which is no longer in force.
- 5.33 The original case officer has also suggested conditions should the ELLRB be minded to uphold the appeal which the Planning Advisor would recommend. Proposed Condition 3 on finishing materials appears to have omitted a word or two at the end of the reason. The Planning Advisor stated that the ELLRB may wish to add wording to make the 'satisfactory appearance' followed by "the area, site or building".

Questions and comments

- 5.34 The Chair invited questions for the Planning Officer.
- 5.35 Councillor McLeod stated that his worry with this application was that another similar application would come for the wider site. He queried if there could be a condition somewhere that there would be no further housebuilding within that site. The Legal Advisor confirmed that this was not possible, any conditions placed in this planning application would be relevant to the site that the planning application relates. The Planning Advisor commented that it is not possible to do this, as it is not possible to stop people from applying for planning permission.
- 5.36 Councillor Forrest referred to the Applicant's statement, where it states that "Reason 2 appears to assume that a new house is not a suitable 'primary use' in this location despite a relatively recent (2022) previous consent." Councillor Forrest queried if the previous consent relates to this application or if it was for something else. The Planning Advisor stated that this is likely referring to the house next door, which was approved as a utility block in relation to the traveller's site and then received as an application for a change of use to a house which was approved. The Planning Advisor explained where this house is located relative to the application site. Querying if this consent was by the Council or by the Scottish Government (via a reporter), the Planning Advisor confirmed that it was the Council.
- 5.37 Councillor Forrest also asked about comments from Scottish Water, where they say they have sufficient capacity but there is no public waste. He queried if there was anywhere for drain water to run off. The Planning Advisor confirmed that drain water would be dealt with sustainable urban drainage on site, that Scottish Water stated that they should investigate a private water disposal but did not recommend any conditions. The Planning Advisor confirmed that there was a proposed condition around flooding in the schedule of conditions.
- 5.38 Councillor Allan did not have any questions.
- 5.39 The Chair commented that there were no traveller's caravans when the ELLRB visited the site. The Chair asked for confirmation that there have been traveller caravans on the site in the past. Councillor McLeod confirmed that there had been.
- 5.40 The Chair commented that there was mention of rights of access at the site visit, the only access currently is passed the existing house. Querying if a condition can be put on any permission that a right of access is created. The Planning Advisor stated that the Applicant has ownership over the whole site and so it is up to themselves as to how a right of access is organised. If the site was sold, it would be for the subsequent owner to either negotiate with the current owner over the site owned by them, a right of access or seek planning permission for access via the A199.

The vote

- 5.41 The Chair confirmed that all members of the ELLRB had attended the site visit on 25 January 2024; and (2) that they all had enough information to make a decision for the appeal.
- 5.42 Councillor McLeod stated that he had previously commented that it looked well as traveller site in the past, however things have changed and moved on. As it is separate part of the site and enclosed, he found it hard to find an objection to this application. His questions in relation to rights of access were covered off in the discussion. As such, taking the case on its merit, Councillor McLeod did not see any reason to refuse the planning application and voted against the original case officer's decision to refuse the application and allowed the appeal.
- 5.43 Councillor Allan said that the site visit was very helpful, she was also previously concerned about the access and that these concerns had been addressed in the discussions. Councillor Allan saw no reason to refuse planning application and voted against the original case officer's decision to refuse the application and allowed the appeal.
- 5.44 Councillor Forrest noted that the Applicant states that it is not part of the countryside and commented that he still thinks it is countryside. He noted the Planning Advisor's comments re agricultural soil in **[paragraph 5.20 above], and it could revert.** While considering each case on its own merit, he was concerned about the precedent that granting this planning application could set. As such, he agreed with the original case officer's decision and refused the planning application.
- 5.45 The Chair commented that this is countryside and potentially agricultural land, he was unsure that if left in this nature, if it would go back to what it was originally. He stated that it has already been used for non-agricultural purposes, which is why he had asked if there were traveller caravans on there in the past. He did not think given the surrounding houses, that it would be inappropriate to build another house on the site, particularly as having a garden would support diversity. The Chair voted against the original case officer's decision to refuse the application and allowed the appeal.
- 5.46 The Legal Advisor mentioned if the ELLRB would like to consider the conditions proposed by the original case officer.
- 5.47 The Planning Advisor also reiterated comments in paragraph 5.34 above. Councillor McLeod confirmed that he wished to impose the conditions and commented that he would prefer the amendment to read "Reason: To ensure the satisfactory appearance of the area." The Chair commented that he was happy with this amendment and with the conditions. Councillor Allan confirmed that she considered them to be reasonable conditions.
- 5.48 As such the ELLRB granted the planning application 23/00514/P with the following conditions:-
- 5.48.1 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.
- 5.48.2 No development shall take place on site unless and until final site setting out details have been submitted to and approved by the Planning Authority. The above mentioned details shall include a final site setting-out drawing to a scale of not less than 1:200, giving:
- 5.48.2.1 the position within the application site of all elements of the proposed development and position of adjoining land and buildings;
- 5.48.2.2 finished ground and floor levels of the development relative to existing ground levels of the site and of adjoining land and building(s). The levels shall be shown in relation to an Ordnance Bench Mark or Temporary Bench Mark from which the Planning Authority can take measurements and shall be shown on the drawing; and

5.48.2.3 the ridge height of the proposed house and garage shown in relation to the finished ground and floor levels on the site.

Reason: To enable the Planning Authority to control the development of the site in the interests of the amenity of the area.

5.48.3A schedule and/or samples of all of the external finishing materials and finishing colours to be used in the external finishes of the house and garage hereby approved shall be submitted to and approved in writing by the Planning Authority prior to their use in the development. Thereafter, the external finishing materials and colours used shall accord with the schedule and samples so approved.

Reason: To ensure the satisfactory appearance of the area.

5.48.4 Prior to the occupation of the house hereby approved the vehicular access, turning and parking arrangements shall be laid out and made available for use, as shown in docketed drawing no. 23029-PO1 rev C and thereafter the access, turning and parking areas shall be retained for such uses, unless otherwise approved in writing by the Planning Authority.

Reason: To ensure the provision of an acceptable standard of vehicular access, turning and parking in the interests of road safety.

5.48.5 Prior to the commencement of development a scheme of intrusive investigations shall be carried out on site to establish the risks posed to the development by past shallow coal mining activity. All remedial stabilisation works and/or mitigation measures to address land instability arising from shallow coal mining legacy shall be implemented on site in full in order to ensure that the site is made safe and stable for the development proposed. All remedial works shall be carried out in accordance with authoritative UK guidance.

Prior to the occupation of the development, or it being taken into beneficial use, a signed statement or declaration prepared by a suitably competent person confirming that the site has been made safe and stable for the approved development shall be submitted to and approved in advance in writing by the Planning Authority in consultation with the Coal Authority. This document shall confirm the completion of the remedial works and any mitigating measures necessary to address the risks posed by past coal mining activity.

Reason: To ensure that adequate remediation of coal mining legacy on the site has been undertaken prior to the occupation of the flatted building hereby approved.

5.48.6 Prior to the commencement of development, to ensure that the site is clear of contamination, a Geo-Environmental Assessment shall be carried out and the following information shall be submitted to and approved by the Planning Authority:

5.48.6.1 Phase I - A preliminary investigation incorporating a desk study, site reconnaissance, development of a conceptual model and an initial risk assessment.

5.48.6.2 Phase II - Incorporating a site survey (ground investigation and sample analysis) and risk evaluation. It is required if the Phase I investigation has indicated that the site is potentially contaminated and the degree and nature of the contamination warrants further investigation.

5.48.6.3 Phase III - Where risks are identified, a Remediation Strategy should be produced detailing and quantifying any works which must be undertaken in order to reduce the risks to acceptable levels.

Should remedial works be required then, prior to any residential units being occupied, a Validation Report shall be submitted to and be approved by the Planning Authority confirming that the works have been carried out in accordance with the Remediation Strategy.

The presence of any previously unsuspected or unforeseen contamination that becomes evident during the development of the site shall be brought to the attention of the Planning

Authority. At this stage, further investigations may have to be carried out to determine if any additional remedial measures are required.

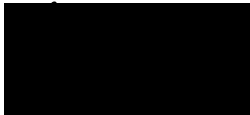
Reason: To ensure that the site is clear of contamination and that remediation works are acceptable prior to the occupation of the house hereby approved.

5.48.7 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 technology for all new buildings, where feasible and appropriate in design terms, and new car charging points and infrastructure for them, 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.

5.48.8 Prior to the commencement of development, details of measures to protect and enhance biodiversity on the application site shall be submitted to and approved by the Planning Authority. The measures as so approved shall be implemented prior to any use being made of the agricultural building hereby approved and shall thereafter be retained, unless otherwise approved in writing by the Planning Authority.

Reason: In the interests of protecting and enhancing biodiversity on the site and within the surrounding area.



Fariha Haque
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.