

## **REVIEW DECISION NOTICE**

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

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Application for Review by Miss Susan Ralston of 29 Pithead Heights, Prestonpans EH32 9FW of decision to refuse Planning Permission for change of use of public open space to domestic garden ground (retrospective) at 17 and 29 Pithead Heights, Dolphingstone, Prestonpans EH32 9FW.

Site Address: 17 and 29 Pithead Heights, Dolphingstone, Prestonpans EH32 9FW

Application Ref: 23/00864/P

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

Date of Review Decision Notice:

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### **Decision**

The ELLRB by a majority of two (2) to one (1) decided to dismiss the appeal and refuse planning permission for change of use of public open space to domestic garden ground (retrospective) at 17 and 29 Pithead Heights, Dolphingstone, Prestonpans EH32 9FW 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, 29 February 2024. The Review Body was constituted by Councillor A Forrest (Chair), Councillor Neil Gilbert and Councillor D Collins. All three members of the ELLRB had attended a site visit in respect of this application prior to the meeting.

1.1. The following persons were also present at the meeting of the ELLRB:-

Mr M Mackowiak, Planning Adviser to the LRB  
Mr C Grilli, Legal Adviser to the LRB  
Ms F Currie, Clerk

### **2. Proposal**

2.1. The planning application is for review of decision to refuse Planning Permission for change of use of public open space to domestic garden ground (retrospective) at 17 and 29 Pithead Heights, Dolphingstone, Prestonpans EH32 9FW.

2.2. The planning application was registered on 28 August 2023 and the Decision Notice refusing the application is dated 20 October 2023.

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

- 1 *The loss of the area of landscaped open space and the erection of the bin store is harmful to the character and visual amenity of this part of the residential area and would if approved set a harmful precedent that would result in visual harm that would further harm the integrity of the landscaped amenity open space. For this reason the change of use of the area, bin store and slab base are contrary to Policy 14 of NPF4 and policies OS2 and DP2 of the adopted East Lothian Local Development Plan 2018.*

2.4. The notice of review is dated 11 December 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:																											
	<table border="1"> <thead> <tr> <th><u>Drawing No.</u></th> <th><u>Revision No.</u></th> <th><u>Date Received</u></th> </tr> </thead> <tbody> <tr> <td>DWG 01</td> <td>-</td> <td>27.07.2023</td> </tr> <tr> <td>DWG 02</td> <td>-</td> <td>27.07.2023</td> </tr> <tr> <td>DWG 03</td> <td>-</td> <td>08.08.2023</td> </tr> <tr> <td>DWG 04</td> <td>-</td> <td>08.08.2023</td> </tr> <tr> <td>DWG 05</td> <td>-</td> <td>08.08.2023</td> </tr> <tr> <td>PHOTO 01</td> <td>-</td> <td>08.08.2023</td> </tr> <tr> <td>PHOTO 02</td> <td>-</td> <td>08.08.2023</td> </tr> <tr> <td>DWG 06</td> <td>-</td> <td>08.08.2023</td> </tr> </tbody> </table>	<u>Drawing No.</u>	<u>Revision No.</u>	<u>Date Received</u>	DWG 01	-	27.07.2023	DWG 02	-	27.07.2023	DWG 03	-	08.08.2023	DWG 04	-	08.08.2023	DWG 05	-	08.08.2023	PHOTO 01	-	08.08.2023	PHOTO 02	-	08.08.2023	DWG 06	-	08.08.2023
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ii.	The Application for planning permission registered on 28 August 2023																											
iii.	The Appointed Officer's Submission																											
iv.	<p>Policies relevant to the determination of the application:</p> <p>National Planning Framework 4 – Policy 14 (Design, Quality and Place)</p> <p>The adopted East Lothian Local Development Plan 2018:</p> <ul style="list-style-type: none"> <li>- Policy OS2 (Change of Use to Garden Ground) and</li> <li>- Policy DP2 (Design) of the adopted East Lothian Local Development Plan 2018.</li> </ul>																											
v.	Notice of Review dated 11 December 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 appeal relates to two small areas of formerly landscaped open space adjacent to the rear gardens of the properties of 17 and 29 Pithead Heights in Prestonpans. They are located within a predominately residential area as defined by Policy RCA1 of the adopted East Lothian Local Development Plan 2018. The two areas of landscaped open space are between the fences enclosing the rear gardens of the houses and the adjacent access road for the development. The two areas were formerly part of the landscaping of part of a wider landscape and drainage area of the whole development site.

Planning permission was sought retrospectively for: (i) the change of use of the 2 areas of landscaped public open space to be incorporated as additional garden ground for those properties on which to store bins; and (ii) the erection of a timber clad bin store onto each of the areas of open space. The bin store adjacent to 17 Pithead Heights measures some 1.4-metre in height, 1.8m in length and 0.8m in depth. The bin store adjacent to 29 Pithead Heights, measures some 1.5m in height, 1.6m in length and 0.8m in depth. The second bin has a green roof.

The Planning Adviser confirmed that Section 25 of the Town and Country Planning (Scotland) Act 1997 requires that the application be determined in accordance with the development plan unless material considerations indicate otherwise. The development plan is the approved National Planning Framework 4 (NPF4) which was adopted by The Scottish Government on the 13th February 2023 and the adopted East Lothian Local Development Plan 2018. The relevant policy contained within NPF4 consist of policy 14 (Design, Quality and Place). Policies OS2 (Change of use to Garden Ground) and DP2 (Design) of the ELLDP are relevant to the determination of the application.

The Planning Adviser then confirmed that a single objection was received in relation to this application. The main grounds of objection included, communal/shared open space with landscape planting throughout, that cost of maintenance is paid by all residents through a factor, the units are not visually attractive and takes away from the appearance of the street, allowing people to erect these will set an unwanted precedent for the street with already a number of unauthorised erections and changes of uses and combined would look awful ,there has been removal of plans and shrubs. The objector also commented that they did not understand how anyone can extend garden using land they do not own and noted that only a small number of houses were consulted, whereas all houses on the estate should be consulted.

The case officer stated in his report that all planning matters were assessed within the assessment of this application, non-planning matters were addressed where applicable. In terms of the cost/money paid to factor to maintain, this is not a planning matter and is not a material consideration in the determination of this planning application. Land ownership is not a planning matter and thus, not considered as part of this application. In relation to the above representation relating to consultations to neighbours, East Lothian Council as Planning Authority only consult neighbours within a 20m radius of the application site, in this case of both sites. In the case officer's planning assessment the change of use of the areas of landscaped open space and the erection of the bin stores does not harm the residential amenity of any neighbouring residential properties.

The case officer considered Policy OS2 of the adopted East Lothian LDP. This policy states that the change of use of open space to garden ground will be supported if it would not result in unacceptable loss of visual or recreational amenity or harm the integrity of a landscaping scheme, or set a precedent that if followed would do so. The change of use of the areas of landscaped open space has been to facilitate the formation of hard surfaced bin stores on those areas of land. Whilst the existing timber fence and gate between the areas of landscaped open space and the rear garden of the applicant's house have been retained, those areas are used to store the bins as alternatives to the bins being stored within the rear gardens of the applicant's properties. The applicant's properties and the small areas of landscaping comprising the application site are part of a recently built housing development. The landscaped areas of open space are part of the wider landscaping across the development and form part of the drainage of the wider development site. These areas of landscaped open space were provided to soften the impact of, and therefore to enhance, the visual amenity of the development. The change of use of the small areas of open space and the formation of hard surfaced bin stores on them, individually and cumulatively undermines the integrity of the scheme of landscaping implemented within the development and harms the character and the visual amenity of the larger residential development. The case officer concluded that by being located outwith the gardens of the properties the formation of the bin storage areas and the erection of bin stores on them is inappropriate to their setting. They are therefore harmful to the character and visual amenity of this part of the residential area and would if approved set a harmful precedent that would result in visual harm that would further harm the integrity of the landscaped open space. The change of use of the landscaped areas of open space and the retention of the bin stores on them by being harmful to the character and visual amenity of this part of the residential area are contrary to Policy 14 of the NPF4 and Policies OS2 and DP2 of the adopted East Lothian Local Development Plan 2018. It is noted that there are other areas of landscaped open space that have undergone an unauthorised change of use and have erected a bin store of similar on them, or have removed the intended landscaping and placed slab work down to place bins on them. No planning application for these other areas at Pithead Heights has been received and therefore these remain unauthorised and do not form a precedent or material consideration relevant to the determination of this planning application. The officer report stated that the proposals do not accord with the Development Plan and there are no material considerations that outweigh their discordance with the development plan. The change of use and erection of bin stores and their associated base at 17 and 29 Pithead Heights are unauthorised and a breach of planning control. The timber bin stores and associated slab base shall be removed and the area returned to its former landscaped form within 2 months of the date of this decision. Should this action not be taken then enforcement action will be taken to secure their removal with the period for compliance with the enforcement notice being 2 months.

The Planning Adviser then summarised the submission from the appellant including statement from Goodson Associates in support of this appeal.

The appellants submission states that they asked Barratt Homes for their permission to erect the bin store and they never said that permission would be required from East Lothian Council. The appellant's bin store has drainage and planting (green roof) to keep in within the surrounding landscape. Almost all neighbours have their bins on slabs on this part of the landscape.

Goodson Associates supporting statement raises the following points:

- 1) The bin storage areas were formed by the developer and housebuilder Barrat Homes prior to occupation. Applicants were not made aware that planning permission had not been obtained by the developer.
- 2) Planning Advice Note 65 defines open space as “vegetated land or structure” and “other paved or hard landscaped areas with a civic function”. The agent argues that the placement of paving spaces and a small timber bin store within the landscape strip does not constitute a material change of use, in that the finished appearance still falls within the description of open space given in PAN65.
- 3) The landscape strip is used extensively for the storage and placement of bins.
- 4) The minor nature of the paving slabs and timber store are insignificant within the context of the completed housing development. Also the development that has taken place (hardstanding and structure) still falls within what is considered acceptable under PAN65
- 5) Bins for the joint applicants are placed neatly and do not oversail footpaths. Elsewhere, bins are either placed directly on the footpath or partly overlap the footpath, which is considered obstructive to safe passage of pedestrians, cyclists and wheelchairs.
- 6) In many instances bins have been placed directly onto the landscape strip without any hardstanding. This is damaging to topsoil and drags soil onto a public footpath
- 7) The hardstanding consists of concrete paving slabs placed on granular subbase that are set flush with the footpath
- 8) The bin structure consists of a small timber housing which is ungated and which has been sympathetically planted across the top face to create a pleasing finish.

The Planning Adviser concluded by referring members of the Local Review Body to a representation from a local resident. In this representation they ask if the applicant has any evidence to support the alleged statement from Barratts. They also note that they were told by Barratts that they were not even allowed to take out plants that were within their front garden and their boundary line. Because they had been paid for as part of the factor fees paid by all residents. They are surprised Barratts have said plants in the communal spaces don't have the same principle. They stated that to increase gardens size by adopting additional land for free doesn't seem fair. And that plants are more attractive than bins for everyone else to look at.

- 4.3. Members then asked questions of the Planning Adviser and the Planning Adviser responded accordingly.
- 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 stated that it was very helpful to be on the site visit as this was also the date for collecting recycling bins and gave a good indication of what the area looked like on a bin collection day. She commented that the while bins were everywhere around the residential area she noted that the boxes created by the applicant were quite neat and using the same type of wood as adopted for the fencing in that area. She noted that a total of fifteen residents appeared to have put down the stone slabs for their bins and felt this was a good idea. She commented that, in her opinion, if this was not done the bins may cause an obstruction in the area. She stated she was minded to up hold the appeal on the basis that there could be a standard design adopted across the area.
- 4.6. Councillor Gilbert commented that having visited the site it was obvious that this area was supposed to be open space and that plants had been removed to provide bin storage. He commented that if all were to adopt this approach there would be no standard design as

each property may do things differently. He was also concerned about a precedent this may set. He was therefore minded to refuse the appeal and up hold the Planning Officer's decision.

- 4.7. The Chair commented that there is a development plan set out by the developers and approved by planning and this sets out the standards of what is expected within developments. He commented that while this arrangement was nicely set out he was concerned what others may do to other areas of open space. He was of the view that there was sufficient room in the estate for bins without this structure and he did not wish to set a precedent in connection with utilisation of open space accordingly he was minded to support the Planning Officer's decision and dismiss the appeal.

Accordingly, the ELLRB by majority of two (2) to one (1) decided to support the Planning Officer's decision and dismiss the appeal and refuse planning permission for the reasons set out more particularly set out in the Planning Officer's Report.

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.