

## **REVIEW DECISION NOTICE**

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

---

Application for Review by Castle Park Golf & Leisure LLP c/ o APT Planning & Development, 1 west Road, Whitekirk EH42 1XA decision to refuse Planning Permission for erection of 1 house and associated works at land adjacent to Castlepark Golf Club, Yester, Gifford

Site Address: Land adjacent to Castlepark Golf Club, Yester, Gifford

Application Ref: 21/01599/P

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

Date of Review Decision Notice: 25 June 2024

---

### **Decision**

The ELLRB unanimously agreed to uphold the appeal and grant planning permission subject to conditions for erection of 1 house and associated works at land adjacent to Castlepark Golf Club, Yester, Gifford 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 (reference 21/01599/P) was considered by the ELLRB, at a meeting held on Thursday, 25 April 2024. The Local Review Body was constituted by Councillor N Hampshire (Chair), Councillor D Collins and Councillor S McIntosh. All three members of the ELLRB had attended a site visit accompanied by the Planning Adviser in respect of this application prior to the meeting.

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

Mr J Squires, 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

2.2. The planning application was registered on 31 January 2022 and the Decision Notice refusing the application is dated 30 October 2023.

2.3. The reason for refusal is more particularly set out in full in the said Decision Notice dated 6 November 2023. The reason for refusal is set out as follows:

1 The erection of a house on the application site would be new build housing development in the countryside of East Lothian for which:

- (i) it has not been demonstrated to be necessary to support the sustainable management of a viable rural business, or that there an essential need for a worker to live permanently at the site; and
- (ii) a need to meet the requirements of the operation of a viable agricultural, horticultural, forestry, countryside recreation, or other business, leisure or tourism use has not been demonstrated.

The proposal is therefore contrary to Policies 16 and 17 of National Planning Framework 4 and DC1 and DC4 of the adopted East Lothian Local Development Plan 2018.

2.4. The notice of review is dated 29 January 2024.

### 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>
	21.1984-SK01	-	21.12.2021
	20036-PL(31)004	-	21.12.2021
	20036-PL(2-)100	-	21.12.2021
	20036-PL(2-)102	-	21.12.2021
	20036-PL(2-)300	-	21.12.2021
	20036-PL(31)001	-	21.12.2021
	20036-PL(31)002	-	21.12.2021
	20036-PL(31)003	-	21.12.2021
	20036-PL(2-)053	A	10.01.2022
	20036-PL(2-)050	A	10.01.2022
	20036-PL(2-)051	A	10.01.2022
	20036-PL(2-)052	A	10.01.2022
	20036-PL(2-)054	A	10.01.2022
	20036-PL(2-)200	A	10.01.2022
	20036-PL(2-)201	A	10.01.2022
	20036-PL(2-)101	A	14.01.2022
	20036-PL(2-)001	B	31.01.2022
	20036-PL(2-)002	C	31.01.2022
	20036-PL(2-)003	C	31.01.2022
	20036-PL(2-)004	B	31.01.2022
	20036-PL(2-)003	01	25.05.2022
ii.	The Application for planning permission registered on 31 January 2022		
iii.	The Appointed Officer's Submission		

iv.	<p>Policies relevant to the determination of the application:</p> <p>Policies 1 (Tackling the climate and nature crises), 2 (Climate mitigation and adaptation), 3 (Biodiversity), 7 (Historic assets and places), 14 (Design, quality and place), 16 (Quality homes) and 17 (Rural homes), 22 (Flood risk and water management) of National Planning Framework 4; and</p> <p>Policies DC1 (Rural Diversification), DC4 (New Build Housing in the Countryside), CH6 (Gardens and Designed Landscapes), DP1 (Landscape Character), DP2 (Design), T1 (Development Location and Accessibility) and T2 (General Transport Impact) of the adopted East Lothian Local Development Plan 2018.</p>
v.	<p>Notice of Review dated 29 January 2024 together with Applicant's Submission with supporting statement and associated documents.</p>

#### 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 provided details of the application, property and location, and outlined the reason for refusal of planning permission.

The Planning Adviser summarised the case officer's assessment of the application against relevant planning policy. She noted that the case officer had considered the proposal to be acceptable in terms of design, and in terms of Yester Designed Landscape, and so would not conflict with Policies 7 and 14 of NPF4, nor LDP Policies DP1, DP2 or CH6 which concern design and Designed Landscapes. The case officer had noted that the Council's Environmental Health Officer did not object to the application but suggested a condition to address potential contamination of the site, should permission be granted. The Council's Civil Engineer (Flooding) advised that drainage proposals were acceptable subject to testing and suggested a condition should permission be granted. The Council's Road Services did not object. The case officer had considered that subject to imposition of the condition on actions to reduce carbon emissions the proposal would conform to NPF4 Policies 1 and 2 of NPF4 on climate mitigation.

The case officer had then considered the principle of a new house in this countryside location and the requirements of Policy 17 of NPF4, Policy DC1 and Policy DC4 of the LDP 2018. The case officer had considered that the main issue was whether or not there was a direct operational requirement for a house that derived from the business. The case officer had noted the information provided by the applicant in their Design and Access Statement in support of this need. The Council's Agricultural and Rural Development Consultant advised that the golf club business was not sufficiently financially robust to support the proposed development and therefore it was not demonstrated that the business was viable

and required a home for a manager or staff on site and that similar businesses operated without onsite accommodation. The case officer had considered that the applicant had not provided evidence to show that other security measures could not be used. They found that as the business had not been demonstrated to be viable and without operational justification of need for it, the principle of the house was contrary to Policy 17 of NPF4 and Policy DC1 and DC4 of the LDP and consequently also Policy 16 of NPF4.

The Planning Adviser noted that two objections had been received to the application.

She then provided a summary of the applicant's submission. It stated that the accommodation would house the owners, their children and guests or staff members to support the golf club. The development of 26 holiday lodges on the adjacent site amplified the requirement for an onsite presence. Therefore, the proposal accorded with Policy 17 of NPF4 and LDP Policy DC4. The house would help to attract and secure staff and provide around the clock security. Furthermore, the growth of Castle Park Golf Club aligned with the Council's Economic development and tourism strategies.

The applicant was of the view that the proposal confirmed to Policy 17 of NPF4 as it would re-use an existing brownfield site which had no realistic prospect of returning to a natural state without intervention; and it would support the sustainable management of a viable rural business. The applicant submitted a letter from their accountants in support of this statement.

The Planning Adviser summarised the further representation made in relation to the appeal and the response to the comments by the applicant.

The Planning Adviser then set out her views on the case. She agreed with the case officer that the policies on design were met. The case officer had not mentioned that the proposal lay within the Lammer Law, Hopes to Yester Special Landscape Area. Policy DC9 of the LDP required that development within such areas accorded with their Statement of Importance. She considered that the proposal did conform to the Statement of Importance and did not harm the SLA. She also agreed with the applicant and case officer that there was no harm to the Yester Designed Landscape.

Furthermore, she agreed with the applicant that the proposal conformed to Policy 17 and Policy 16 of NPF4. In terms of LDP Policy DC4, she agreed with the case officer that the operational justification for a house in terms of security had not been demonstrated. I also agreed with the case officer in accepting the advice of the Council's agricultural and rural development consultant on the viability of the business. The applicant had argued that in addition to the business being viable now, the lodges would enhance the justification for permanent onsite presence as well as enhancing viability. However, it was not certain that the lodges would be built, and if they were, that they would be run as part of the same business. The proposal therefore did not, in her view, conform to LDP Policy DC4.

- 4.3. 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.
- 4.4. Councillor Collins noted that this was a very busy golf course, and that the applicant was clearly very enthusiastic about his plans for the site and business. She commented that no properties situated around the site had a line of site to this property and this raised issues around safety and security in a rural setting. She also felt that the proposal would support this rural business and enhance local employment opportunities. For these reasons she

would be supporting the appeal.

- 4.5. Councillor McIntosh agreed that the site visit had been useful and that the issue was whether it was necessary to have someone on site. She felt that it was appropriate and, that the economic assessment had been unusually strict and had not considered the potential benefits to people's wellbeing provided by the golf club. She also felt that the proposed design of the building would sit well within the landscape, and she was minded to support the appeal.
- 4.6. The Chair agreed with his colleagues that this was a good rural business and he added that it was important to support local employment opportunities. He also agreed that the proposed design would fit into landscape well and, for these reasons, he would be supporting the appeal.

Accordingly, for the reasons more particularly set out in this Decision Notice the ELLRB unanimously decided to uphold the appeal and grant planning permission subject to the following conditions:

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.

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:

- a. the position within the application site of all elements of the proposed development and position of adjoining land and buildings.
- b. 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 Benchmark or Temporary Benchmark from which the Planning Authority can take measurements and shall be shown on the drawing; and
- c. the ridge height of the proposed house 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.

3. The occupation of the house hereby approved shall be restricted to a person(s) solely or mainly employed in the leisure and tourism business of Castle Park Golf Club, Gifford, or the dependent of such a person.

Reason:

To comply with the Council's Policy for the erection of new houses in the countryside.

4. Prior to the commencement of development a detailed specification and, if requested, samples, of all external finishes to be used in the proposed development, including the materials to be used to surface the hard standing areas, shall be submitted to and approved by the Planning Authority. The

external finishes used in the development shall conform to the details so approved.

Reason:

To ensure the development is of a satisfactory appearance in the interest of the landscape character of the area.

5. Prior to the occupation of the house hereby approved, the access and the parking area shown on docketed drawing no. 20036-PL(2-)004 Revision B shall have been formed and made available for use, and thereafter the access and parking area shall be retained for such uses unless otherwise approved in advance in writing by the Planning Authority.

Reason:

To ensure that adequate and satisfactory provision is made for access, parking and turning in the interests of road safety.

6. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended by The Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2011, no development of the types specified in Part 1 of Schedule 1 of the Order or in any statutory instrument revoking and/or re-enacting that Part of the Order shall be undertaken on the new house hereby approved, or on any part of the application site, other than the development shown on the drawings docketed to this planning permission, unless with the prior approval of the Planning Authority.

Reason:

In the interests of safeguarding the character, integrity and appearance of the development and the visual amenity of the landscape of the area.

7. 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:

- (i) A Preliminary Investigation incorporating a Phase I Desk Study (including site reconnaissance, development of a conceptual model and an initial risk assessment); and
- (ii) A Phase II Ground Investigation (if the Desk Study has determined that further assessment is required), comprising the following:
  - A survey of the extent, scale and nature of contamination, and reporting on the appropriate risk assessment(s) carried out with regards to Human Health, the Water Environment and Gas Characteristic Situation as well as an updated conceptual model of the site;
  - An appraisal of the remediation methods available and proposal of the preferred option(s).

The Desk Study and Ground Investigation must be undertaken by suitably qualified, experienced and competent persons and must be conducted in accordance with the relevant guidance and procedures.

If it is concluded by the Reporting that remediation of the site is not required, then Parts 2 and 3 of this Condition can be disregarded.

8. Prior to any works beginning on site (and where risks have been identified), a detailed Remediation Statement should be produced that shows the site is to be brought to a condition suitable for the intended use by the removal of unacceptable risks to all relevant and statutory receptors. The Statement should detail all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. It should also ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in

relation to the intended use of the land following development; and

9. Following completion of the measures identified in the approved Remediation Statement; a Verification Report should be submitted that demonstrates the effectiveness of the remediation carried out.

Reason:

To ensure that the site is clear of contamination and that remediation works are acceptable.

10. In the event that unexpected ground conditions (contamination) are encountered at any time when carrying out the permitted development, work on site shall cease and the issue shall be reported to the Planning Authority immediately. At this stage a Site Investigation and subsequent Risk Assessment may have to be carried out, if requested by the Planning Authority. It may also be necessary to submit a Remediation Strategy should the reporting determine that remedial measures are required. It should also be noted that a Verification Report would also need to be submitted confirming the satisfactory completion of these remedial works.

Reason:

To ensure that the site is clear of contamination.

11. Prior to the commencement of development, the results of tests of percolation and infiltration rates for the soakaways to serve the development shall be submitted to the Planning Authority. On receipt on those test results and also prior to the commencement of development the precise detail of the soakaways including their size shall be submitted to and approved by the Planning Authority and the development shall be carried out in accordance with the approved details.

Reason:

In order to prevent flooding from insufficient drainage.

12. 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 the new building, where feasible and appropriate in design terms, and the provision of one electric car charging point and infrastructure for it, 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:

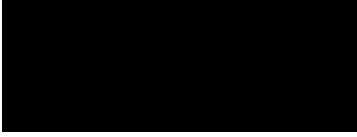
To minimise the environmental impact of the development.

13. No development shall take place unless a scheme of measures including timescales for delivery to protect and enhance biodiversity on the application site has been submitted to and approved by the Planning Authority. The measures approved shall thereafter be implemented in accordance with the scheme 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.

Planning Permission is hereby granted.



**Carlo Grilli**  
**Legal Adviser to ELLRB**



**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997****Notification to be sent to applicant on determination by the planning authority of an application following a review conducted under Section 43A (8)**

Notice Under Regulation 21 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.

- 1 If the applicant is aggrieved by the decision of the planning authority to refuse permission or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.
  
- 2 If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland ) Act 1997.