



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

**THURSDAY 31 JULY 2023
VIA THE DIGITAL MEETINGS SYSTEM**

Committee Members Present:

Councillor D Collins (Chair)
Councillor S McIntosh
Councillor J McMillan

Advisers to the Local Review Body:

Ms F Haque, Legal Adviser to the LRB
Mr M Mackowiak, 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 applications before it and reminded them that further advice would be provided on procedure, should they conclude they did not have enough information to determine an application today.

The Legal Adviser reminded Members that this meeting was to consider the planning application continued from the Local Review Body meeting on 15th June. The same Members were present and Councillor Collins would remain in the Chair. At the Legal Adviser's request, the Members confirmed that they had attended the site visit and had reviewed all of the papers.

1. PLANNING APPLICATION NO. 22/01120/P: ERECTION OF 1 HOUSE AND ASSOCIATED WORKS, LAND WEST OF HOPRIG MAINS FARMHOUSE, GLADSMUIR, MACMERRY, EAST LOTHIAN

The Chair invited the Planning Adviser, who had had no involvement in the original decision, to present a summary of the planning policy considerations in this case.

The Planning Adviser reminded members that, at the previous LRB meeting on the 15th June, a deferral of this appeal was agreed in order to allow the Council's agricultural and rural consultant to submit their comments. The consultant submitted his report to the Council on 30th June, following a review of information submitted by the applicant. On 6th July, the consultant was asked to consider Policy 17 of National Planning Framework 4 in his report, in particular Policy 17 (vi) which concerned single homes for the retirement succession of a viable farm holding. His report was updated on 11th July and included an addendum covering that specific issue.

The Planning Adviser informed members that the appeal was against non-determination of a planning application for the erection of 1 house and associated works, at Hoprig Mains Farmhouse. He outlined details of the site, the proposed house, and the proposed demolition of existing buildings. He summarised the Planning Statement which indicated that the owner of Hoprig Mains Farm was resident within Hoprig Mains Farmhouse and that the farm was operated by the owner's son who resided with his partner within a cottage at Hoprig Mains Farm Cottages, located to the southwest of Hoprig Mains Farm complex. The farm was operated within a sole trader capacity and there were no other employees. The owner currently provided periodic operational support during busy sowing and harvest seasons.

Operations in the main involved the arable farming of 250 acres of land, with off-site contractual commitments involving the farming of 340 acres of land, and seasonal support towards the farming of a further 250 acres of land on two neighbouring farms respectively. The applicant was the eldest son of the farm owner (Mr John Meikle) and currently lived off site. It was Mr John Meikle's intention to reduce his involvement in the farm business and the applicant intended to return to the farm along with his partner and child in order to provide the operational support currently provided by his father. Such support would involve the operation of farm machinery and vehicles and administrative tasks. The submitted statement went on to assert that, further to the owner's reduced involvement in the farm business, the applicant's permanent presence on the farm would become necessary to provide operational support on the grounds of safety. The statement further informed that no suitable dwelling or building capable of conversion

existed on site and that the operational requirements presented for the applicant and his family to live on site justified the requirement for a new house at this location.

The Council's Roads Services had raised no objection to the application, being satisfied that the proposed house could be safely accessed and provided an acceptable amount of on-site parking, and would not therefore be contrary to Policies T1 and T2 of the adopted East Lothian Local Development Plan 2018. The Council's Environmental Protection Manager, and Flooding and Structures Manager, were consulted on the application and made no comment. Scottish Water made no objection to the application. The Coal Authority had no objection to the proposal subject to the imposition of planning conditions. No public objections or representations to the application have been received.

The Planning Adviser stressed that the planning application was still to be determined. 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 indicated otherwise.

The development plan is National Planning Framework 4 (NPF4) and the adopted East Lothian Local Development Plan 2018 (ELLDP). Policies that were relevant to the determination of this planning application were:

NPF4 Policy

- 1 (Tackling the climate and nature crises)
- 2 (Climate mitigation and adaptation),
- 3 (Biodiversity),
- 9 (Brownfield, vacant and derelict land and empty buildings),
- 14 (Liveable Places),
- 15 (Local living and 20 minute neighbourhoods),
- 16 (Quality Homes), 17 (Rural Homes) and 29 (Rural development)

East Lothian LDP 2018

- DC1 (Rural Diversification),
- DC4 (New Build Housing in the Countryside),
- DC5 (Housing as Enabling Development),
- DP1 (Landscape Character),
- DP2 (Design),
- T1 (Development Location and Accessibility),
- NH8 (Trees and Development),
- T2 (General Transport Impact).

He summarised the report from the case officer which included the main issues relevant to this application; a detailed description of the proposal and main policy considerations. The case officer had considered whether the principle of the proposed building of a new house on the application site in a countryside location was consistent with national, strategic and local planning policy relating to the control of new housing development in the countryside. The officer's report noted that the erection of a house on the site must be assessed against development plan policies 17 (Rural homes) of NPF4 and policy DC4 (New Build Housing in the Countryside) which related to the control of new housing development in the countryside. The report emphasised that the key issues for consideration were whether:

- i) the proposed house is demonstrated to be necessary to support the sustainable management of a viable rural business or croft, and there is an essential need for a worker (including those taking majority control of a farm

- business) to live permanently at or near their place of work in accordance with NPF4 policy 17; and
- ii) there is a direct operational requirement for that house to support that existing agricultural use in accordance with Policy DC4 of the ELLDP.

The Planning Adviser went on to summarise the main points made by the Rural Advisor (consultant) in his report. The Rural Advisor had reviewed the documentation provided by the applicant and acknowledged that, while there had been a greater level of information provided with the re-submitted application, the underlying issues remained very similar. These were:

1. The relationship between the size and scale of the business and the operational need of the business for labour to live on site.
2. The level of accommodation available to the business.
3. Whether the retirement of Mr Meikle senior was a factor in determining the application in terms of provision for retiring farmers.
4. The viability of the farm business in light of the proposed labour regime.

The Rural Advisor report also included the following observations and comments:

- 1) the labour requirement as set out in the report produced by Davidson & Robertson was identified as 4.1 but the reality was that modern arable businesses operated with much lower labour requirements – a business of this size and scope required somewhere in the region of two labour units.
- 2) By living on site the applicant would be able to provide more frequent support for more minor activities without which the business might have to employ additional labour for a longer period of time. The issue remained whether this was a material consideration in cost terms or whether it was largely an issue of convenience. An 8 mile commute, while more onerous than living on site, was relatively small in commuting terms.
- 3) There were 4 properties linked to the family. Two of these properties might have provided a diversified income stream, which was important to the business viability as it provided some insurance against the ebb and flow of agricultural profits. However, they could also provide a level of accommodation for someone in the family and this was a workable but potentially unattractive option.
- 4) The Meikle family was reliant to quite a high degree on the contracting income to maintain its current level of profit.
- 5) Policy 17 stated that a house for a retiring farmer will be supported. This policy clearly helped the application but it was still a finely balanced decision. There was still accommodation within the control of the family / business that could be utilised for a farm worker. The Rural Advisor's view was that two dwellinghouses was a reasonable requirement. If a home to provide for retirement succession was included then this became a requirement for 3 houses, against the current 4 that were within the control of the family / business. The reliance of the business on contracting income and the operational need for a worker to reside on site when they were required for the farm work for only a small proportion of the year, were the factors that weakened the applicant's case considerably.

The Planning Adviser turned to the applicant's submission and response to the Rural Advisor's report. The applicant's planning agent had raised the following points:

- 1) The Rural Advisor had confirmed that they were satisfied with the viability of the business, therefore satisfying part of the policy which requires a viable agricultural use.

- 2) LDP Policy DC4 did not explicitly state that it was a requirement that was deemed an absolute necessity to reside on the business land, it instead stated that an applicant must satisfy that it was a direct operational requirement of a viable agricultural use. The Rural Advisor had already agreed that there was an operational requirement (expectation that there was a labour requirement of 2 units – which in this case would be the applicant and his brother, however they continued to contend that there was an operational requirement of 4.1 units.) and they have also agreed it was a viable business
- 3) Support to Mr Thompson’s statement that the grain drying operation in particular would benefit from an onsite presence especially given the long hours grain driers operate and their requirement for frequent monitoring.
- 4) the commuting time between the Applicant’s address, and the business was onerous, which in the planning agent’s opinion could have negative impacts on the operation side of the farm business. An 8 mile commute is a 2 hour 40 minute walk, and we could not assume that Mr Meikle could always attend his place of work by private vehicle. NPF4 placed an emphasis on climate change, sustainability and local living, whilst it was hard to apply the principle of local living to rural areas, NPF4 Policy 17: Rural Homes stated that proposals would be supported where there was an essential need to live permanently at or near their place of work. This would also assist in meeting the aims of Policy 13 Sustainable Transport which sought to reduce the need to travel unsustainably, Policy 14 sought to support the efficient use of resources that would allow people to live and work in the same area.
- 5) the requirement to hire additional labour for the business could have a negative impact on business viability. This was not an issue of ‘convenience’ and was in fact an issue on business viability and future proofing its finances. The Rural Advisor acknowledged that by not living on site Mr Meikle may have to employ additional workers.
- 6) In terms of the existing dwellings within the farm - It was correct that rent from these properties would provide additional funds to the business, loss of these tenants could have an impact on the business viability, both the LDP and NPF4 were supportive on diversification to rural businesses
- 7) As set out in the appellant’s Statement of Case, these cottages were already occupied and under long term secure tenancies (which were in excess of 25 years), they were also not of a sufficient size for the Applicant and his family. It would also not be reasonable to expect the Applicant to evict his long term tenants, especially in the midst of the cost of living and housing crisis, where there was already a shortage of affordable housing with the local area.
- 8) the business had diversified to secure its future viability, this was supported both by local and national planning policy and was not an issue when considering the business viability under Policy DC4 of the LDP. There would still be a requirement to live on site to ensure the successful operation of both the farm business and the contracting, which was based at Hoprig Mains Farm. In addition, the Greaves West & Ayre statement advised that as much as “all elements of the business were important” the “turnover and profit made from the farming activities far outweighed the other elements
- 9) Laurence Gould had already stated that they believed there to be a labour requirement of 2 units on the site, which would consist of the Applicant and his brother (Davidson and Robertson had set out that they considered there to be a labour requirement of 4.1). This response did not dispute that there was an operational requirement for the new dwelling. The Rural Advisor’s response did

not consider that the future income of the business could increase, due to growth of the contracting business or the business diversifications, which would increase the requirement of the applicant to be able to live on site.

- 10) Mr John Meikle was retiring, he resided in Hoprig Mains Farmhouse and intended to remain in his dwelling. His dwelling was not in the ownership of the business and would remain his private residence.
- 11) There was therefore clear support from Policy 17 for a new single dwelling on the farm holding to accommodate his son (the applicant) who would be taking over his father's duties and would assist in running the day- to-day operations of the farm business and would therefore require accommodation on the site.
- 12) As previously stated, there was no existing accommodation on the farm holding available to the applicant.
- 13) We disputed that the Farm was reliant on the contracting income, as the Davidson & Robertson Operational Needs Assessment confirmed that the farm was profitable through the arable/cereal farming. The contracting element of the business was a diversification of the farm business, which was supported by both national and local planning policy. This does not dispute the operational need to reside on site, as the base of the contracting arm of the farm is still at Hoprig Mains. We disagree that 'both of these factors weaken the applicant's case considerably',

The Planning Adviser concluded his presentation by reminding members that they had the option of seeking further information, if necessary.

There were no questions from Members.

The Chair asked her colleagues to confirm that they had previously 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.

Councillor McMillan said he would welcome the Chair's views on her experiences as a farmer.

The Chair summarised her background in farming and her experiences in running a 100 acre farm over the past 17 years. She outlined the range of work undertaken across the year, including sowing, harvesting and grain drying, maintenance of machinery, and the time and effort involved in this work. Turning to the application, she considered that the report from Laurence Gould was light on detail compared to the report by Davidson Robertson Rural, on behalf of the applicant. She referred to the books used for calculations, particularly the Farm Management Handbook, and she agreed with the assessment of 4.1 units (people). She commented that farmers were often chasing the weather and that this could give rise to health and safety issues as a result of long hours and the intensive nature of the work. She also noted that using one of the existing houses on the farm would remove income from the business, and farming businesses needed financial buffers to absorb unplanned costs.

The Chair commented that living on site would mean that there would be no commute at the end of a very long day and would offer added security on site, to help reduce the risk of thefts which were becoming more common on farms. Encouraging young children into farming was also important and having the family living on the farm would be of benefit to all family members. She was of the view that the proposals fitted with NPF4; and that they would involve development of a brownfield site and supporting a viable business.

She noted that there had been no objections to the proposals and she was minded to support the application.

Councillor McIntosh thanked the Chair for her comments which she had found very helpful. She was not supportive of commuting by car and she agreed that there was also justification for the proposals from a health and safety perspective. Considering the human rights aspects, she felt that farmers had a right to family life and privacy and that it was important to have a rural economy that worked for people. She was of the view that the proposals were supported by NPF4. She also noted that the Council's Rural Advisor had not offered any evidence for his assessment of 2 units (people), compared to the Farming Management Handbook calculation of 4.1 units. She had found the rebuttal provided by the applicant's consultant more convincing and she agreed with the need for flexibility in staffing numbers. For these reasons, she was happy to support the application.

The Chair agreed with Councillor McIntosh regarding the applicant's rebuttal of the Rural Advisor's assessment, and said that she would have expected a more detailed response from Laurence Gould.

Councillor McMillan had also found the Chair's experience of farming helpful. Referring to policy DC4 and NPF4, he noted that one of the key issues was around need. He emphasised the importance of experienced workers and their role in the development of the rural economy. He said that the Chair had helpfully illustrated the calculation and need for 4.1 units (people). He also acknowledged the role of housing policy and economic development strategy; noting that this was a successful family business and that the contracting aspect of the business and any future diversification would help to keep the business viable. He said it had been useful to have read and heard a range of expert views. In his view, having the applicant living on site, someone who is part of the business and committed to keeping it viable, was an essential need. As a result, he would be supporting the application.

The members of the LRB confirmed their decision via roll call vote.

Decision

The ELLRB agreed, unanimously, to uphold the appeal and to 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 Bench Mark or Temporary Bench Mark from which the Planning Authority can take measurements and shall be shown on the drawing; and
c. 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.

3. A 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 development in the interest of safeguarding the character and appearance of the area.

4. Samples of the surface finishes to be used to surface the hardstanding areas to be used as driveway, vehicle parking and footpaths shall be provided for the inspection and approval of the Planning Authority prior to the use of such ground surfacings within the development, and thereafter, the ground surfacings used shall accord with the samples so approved.

Reason:

In the interests of the character and appearance of the area.

5. 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. 04B titled 'Site Plan' 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.

6. No development shall take place until a scheme of landscaping has been submitted to and approved in writing by the Planning Authority. The scheme shall provide details of: the height and slopes of any mounding on or recontouring of the site including SUDS basin/ponds details; tree and shrub sizes, species, habitat, siting, planting distances and a programme of planting. The scheme shall include indications of all existing trees and hedgerows on the land, details of any to be retained, and measures for their protection in the course of development.

All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the occupation of the buildings or the completion of the development, whichever is the sooner, and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Planning Authority gives written consent to any variation. No trees or shrubs, detailed in the approved landscaping plans to be retained on the site, shall be damaged or uprooted felled, topped, lopped or interfered with in any manner without the previous written consent of the Planning Authority

Reason:

In order to ensure the implementation of a landscaping scheme to enhance the appearance of the development in the interests of the amenity 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:

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

o 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.

o 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 use of the site.

8. Prior to the commencement of any part of the development hereby approved a scheme of intrusive site investigations to establish exact nature of coal mining legacy features and to establish the risks posed to development approved by past coal mining activity shall be submitted for Planning Authority consideration and approval in writing.

Where the findings of the intrusive site investigations identify that coal mining legacy on the site poses a risk to surface stability, no development shall commence until remedial stabilisation works to address land instability have been implemented on site in full in order to ensure that the site is made safe and stable for the development approved.

All intrusive site investigations and 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.

9. 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 electric vehicle 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.

Signed

Councillor Donna Collins
Chair of Local Review Body (Planning)