

REVIEW DECISION NOTICE

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

Application for Review by Ms Christine Donaldson c/o Wood Associates Per Harry Wood 44 Morningside Road Edinburgh EH10 4BF decision to refuse Planning Permission for alterations, change of use of agricultural building to form 1 house and associated works at Ferneylea Steading, Oldhamstocks, East Lothian TD13 5YN

Site Address: Ferneylea Steading, Oldhamstocks, East Lothian TD13 5YN

Application Ref: 23/00950/P

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

Date of Review Decision Notice: 10 October 2024

Decision

The ELLRB unanimously agreed to refuse the appeal and refuse planning permission for alterations, change of use of agricultural building to form 1 house and associated works at Ferneylea Steading, Oldhamstocks, East Lothian TD13 5YN 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, 22 August 2024. The Review Body was constituted by Councillor N Hampshire (Chair), Councillor D Collins, K Macleod and Councillor C Cassini. All 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 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

2.2. The planning application was registered on 19 September 2023 and the Decision Notice refusing the application is dated 10 January 2024

2.3. The reasons for refusal are more particularly set out in full in the said Decision Notice dated

10 January 2024. The reason(s) for refusal are/is set out as follows:

- 1 *As the occupants of the new house would have no outlook from the house and would have no outdoor amenity space this is a building that is not suitable for conversion to a house as it would not give its future occupants the level of amenity that the occupants of a house could reasonably expect to have contrary to Policies DC2 and DP8 of the adopted East Lothian Local Development Plan 2018.*
- 2 *As the new opening to be formed in the east elevation of the proposed house would result in harmful overlooking of the conservatory of the neighbouring house of the Old Farmhouse this proposal is contrary to Policy DP5 of the adopted East Lothian Local Development Plan 2018.*

2.4. The notice of review is dated 10 April 2024.

3. Preliminaries

3.1. The ELLRB members were provided with copies of the following:-

i.	<p>The drawings accompanying this application are referenced and numbered as follows:</p> <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>10.01.2024</td> </tr> <tr> <td>23/798 PO1</td> <td>-</td> <td>10.01.2024</td> </tr> <tr> <td>23/798 PO2</td> <td>A</td> <td>10.01.2024</td> </tr> <tr> <td>23/798 PO3</td> <td>B</td> <td>10.01.2024</td> </tr> <tr> <td>23/798 PO4</td> <td>E</td> <td>10.01.2024</td> </tr> <tr> <td>23/798 PO5</td> <td>-</td> <td>10.01.2024</td> </tr> </tbody> </table>	<u>Drawing No.</u>	<u>Revision No.</u>	<u>Date Received</u>	DWG 01	-	10.01.2024	23/798 PO1	-	10.01.2024	23/798 PO2	A	10.01.2024	23/798 PO3	B	10.01.2024	23/798 PO4	E	10.01.2024	23/798 PO5	-	10.01.2024
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ii.	The Application for planning permission registered on 19 September 2024																					
iii.	The Appointed Officer's Submission																					
iv.	<p>Policies relevant to the determination of the application:</p> <p>National Planning Framework 4:</p> <p>Policies 1 (Tackling the Climate and Nature Crisis), 2 (Climate Mitigation and Adaptation), 3 (Biodiversity), 7 (Historic Assets and Places), 9 (Brownfield, Vacant and Derelict Land and Empty Buildings), 14 (Design, Quality and Place), 16 (Quality Homes), 17 (Rural Homes).</p> <p>The adopted East Lothian Local Development Plan 2018:</p> <p>Policies T1 (Development, Location and Accessibility), T2 (General Transport Impact), DP5 (Alterations and Extensions to Existing buildings), DC 1 (Rural Diversification), DC2 (Conversion of Rural Buildings to Housing), CH4 (Scheduled Monuments and Archaeological sites), DP8 (Design Standards for New Housing Areas), and Policy W3 (Waste Separation and Collection).</p>																					
v.	Notice of Review dated 10 April 2024 together with Applicant's Submission with supporting statement and associated documents.																					

4. Findings and Conclusions

- 4.1. The ELLRB confirmed that the application for a review of the planning application permitted them to consider the application afresh and it was open to them to grant it in its entirety, grant it subject to conditions or to refuse it. They confirmed that they had access to the planning file in respect of this matter and to all the information that the Appointed Officer had available when reaching the original decision to grant planning permission subject to conditions, including all drawings and copies of all representations and objections received in respect of the original application. They also confirmed they had received and reviewed the Applicant's Submission and further representations made in connection within this appeal before the ELLRB today.
- 4.2. The Members then asked the Planning Adviser to summarise the planning policy position in respect of this matter. The Planning Adviser advised that the planning application relates to a building on the eastern side of the steading of Ferneylea Farm, located south-east of the settlement of Oldhamstocks. The building is located within the countryside as defined by Policy DC1 of the adopted East Lothian Local Development Plan 2018. The building is part of a larger former steading roughly set in a rectangular formation, centred around a courtyard area. The building is bounded to the east by an access track which leads into the central courtyard of the steading beyond which is the residential property of the Old Farmhouse. The building the subject to this application is currently unused and vacant and has been for a number of years.

In 2006 planning permission (REF: 06/01337/FUL) was sought for the conversion of the building the subject of this application to form ancillary residential accommodation to be used in association with The Old Farmhouse, Ferneylea. Whilst the Council as Planning Authority had resolved to grant planning permission for the application, that application was withdrawn in November 2012 subject to the prior conclusion of a S75 which was designed to prevent the building from being used as a separate dwellinghouse and to ensure that the use of the building would at all times remain ancillary to the residential use of the dwellinghouse The Old Farmhouse.

The Planning Adviser confirmed that this application and appeal seeks planning permission for the change of use of the same steading building to form two-bedroom house with associated infrastructure.

A number of alterations to the existing building are required in order to facilitate the proposed change of use, namely:

1. the northern gable end of the building and some 6m or so of the eastern and western elevation walls are proposed to be demolished to provide adequate parking for the proposed house.
2. a number of new window and door openings are proposed to be formed within it.
3. A total of 14 rooflights are proposed on the roof of the building. 4 rooflights are proposed on the western roof face. An atrium style roof light comprising of 8x Velux windows is proposed centrally on the eastern roof face and 2x additional roof lights are proposed further south on the eastern roof face.

Section 25 of the Town and Country Planning (Scotland) Act 1997 (as amended) requires that the application be determined in accordance with the development plan unless material considerations indicate otherwise. The development plan is National Planning Framework 4 ('NPF4') and the adopted East Lothian Local Development Plan 2018

('ELLDP 2018'). Also, material to the determination of this application is East Lothian Council's Farm Steading Design Supplementary Planning Guidance (SPG) 2018 and Design Standards for New Housing Areas SPG (May 2020),

The Planning Adviser noted that there were 3 letters of objection received to this application. The main grounds of objection have been summarised in the case officer report which is included in this appeal information pack.

Subsequent to the registration of this application, revised application forms and plans were submitted to amend inaccuracies within the initial submission, namely regarding the red line boundary, site coverage & ownership and water supply and drainage connections. The applicant's agent has provided title deeds relating to the eastern range steading, which state that there is a right of connection to the private water supply. Capacity issues surrounding this private water supply would be a civil matter and would need to be addressed by the collective group serviced by this water supply and the applicant.

In his report the case officer accurately summarised all comments received from our internal consultees. Whilst no objections were raised the Planning Adviser highlighted the following point, namely that owing to the close proximity of surrounding buildings to the north, east and south of the proposed parking area, that parallel parking in the proposed parking space may be difficult, even for the most experienced of drivers and that the access lane would always need to be accessible for turning vehicles.

The Planning Adviser summarised the case officer's planning assessment of the proposal who concluded that:

1. the building is an existing rural building that is substantially intact then the principle of the conversion of it to a house is not contrary to Policies 9,12, 16 and 17 of NPF4 and with Policies DC1 of the adopted East Lothian Local Development Plan 2018
2. The slight increase in ridge height by some 30cm, paired with the use of slate rather than the existing corrugated roofing material would create a similar appearance to that of the surrounding steading ranges. Therefore, the new proposed roof would be of a scale, design, proportion that would be in keeping with the character of the steading development, the wider residential and rural character of the area.
3. On balance and subject to their overall positioning, the proposed windows and door openings, roof lights and Velux windows serving the internal courtyard would not appear as prominent or incongruous features on the building.
4. By virtue of their form, size, scale, proportions and materials, the proposed alterations to the building to facilitate its use as a house and the formation of hardstanding and erection of a bin shed would be appropriate to and would not be harmful to the character and appearance of the building or to the wider steading of which it is a part.

Further the case officer also included Policy DC2 of the ELLDP 2018 as part of his planning assessment. It is noted that Policy DC2 supports the conversion of rural buildings to housing where the building is suitable for the proposed use. Therefore, notwithstanding that the principle of the conversion of the building to a house is supported by Policy 17 of NPF4 and 108 Policy DC1 of the adopted East Lothian Local Development Plan 2018, the officer, in accordance with Policy DC2, needed to assess whether the building is suitable for its conversion to a house and whether the future occupants of the new house would enjoy sufficient amenity. He also considered Policy DP5 of the ELLDP which requires that alterations or extensions to a building, must not be harmful to the residential amenity of neighbouring properties through loss of privacy from overlooking, or from loss of sunlight or daylight.

On the matter of amenity Policy DP8 of the adopted East Lothian Local Development Plan states that the principles of the Council's supplementary planning guidance Design Standards for New Housing Areas must be incorporated into the design of all new developments. The aim should be to ensure all occupants have the same (or very similar) levels of amenity such as outlook, privacy and private space.

On issue of overlooking

There would be 3 window openings formed almost centrally in the western (rear) elevation of the building. Two high-level windows would serve the living/dining room and the other would serve a passageway connecting the living /dining space to the ground floor bedroom. These windows would face onto the central courtyard which falls outwith the control of the applicant and as such, a separation distance of 9m between these proposed windows of the eastern steading range and the garden boundary of the western steading range would not be achievable in this instance. In addition, there would not be an 18m separation distance between the windows proposed on the western (rear) elevation of the steading conversion and the eastern (front) elevation of the existing steading to the west. To overcome any issues of overlooking from those windows, it is proposed that the windows be high level windows with a sill height of 1.8m above finished floor level. At such a height they would not allow for any overlooking of the courtyard to the west or any windows of the neighbouring house.

The 4x roof lights proposed on the western roof scape would be some 18 metres in distance from any directly facing windows and thus, this would be a sufficient distance in prevent harmful overlooking. The east elevation of the building is located some 5.7m away from the west elevation of the Old Farmhouse. There is one existing door opening in that elevation at present and no existing window openings. To facilitate the proposed change of use it is proposed to infill the bottom part of the existing door opening to form a window and to install an obscurely glazed window within the east elevation wall. Due to the position of that window and as it would be obscurely glazed it would not allow for harmful overlooking of the Old Farmhouse to the east. It is proposed to install a total of 10 roof lights on the east elevation roof slope of the building, 8 of which would serve the internal courtyard. Given their height above the courtyard the proposed roof lights to be installed above it would not allow for harmful overlooking. The 2 other roof lights to be installed onto the east facing roof slope of the building would face towards and be within 9m of the curtilage of The Farmhouse to the east. However, the part of the curtilage of that neighbouring house onto which they would face is not private garden but is instead a parking area for that house. Therefore the 2 roof lights would not lead to any significant reduction in privacy for neighbouring residential properties, through overlooking of any windows or private garden area of that neighbouring house. It is also proposed to form a new large door opening in the east (front) elevation of the building which would allow access for the occupants of the proposed house into the new internal courtyard to be formed within it from the adjacent lane. That new opening would be formed in a position opposite the conservatory attached to the south side of the Old Farmhouse at a distance of less than 9m. The case officers report states that whilst the solid timber sliding door to be installed within this new opening would prevent any harmful overlooking from the courtyard when shut, when open views would be possible from that internal courtyard into the conservatory of the Old Farmhouse. Further the report states that this would harm the residential amenity of the occupants of that neighbouring house. Therefore, as there would be harmful overlooking of the neighbouring house the proposal is contrary to Policy DP5 of the adopted East Lothian Local Development Plan 2018.

The Planning Adviser clarified that the conservatory has a solid wall that would prevent any overlooking from the proposed atrium. However, the proposed atrium would be very close (circa 5m) to from the existing windows at ground floor and first floor level of the

neighbouring Old Farmhouse and therefore there would be harmful overlooking of the neighbouring house.

On the matter of outlook with the exception of the internal courtyard glazing, all other ground floor windows of the proposed house would be required to be either a) obscurely glazed, or b) high level windows that would not allow for any outlook from them. Those measures are required to ensure that window and door openings of the proposed house would not give rise to overlooking of any neighbouring residential properties. As a result of these measures, the proposed house would have no ground floor windows that would allow any views or outlook from the rooms including the kitchen, living room and ground floor bedroom. Therefore, the occupants of the new house would not have any outlook from the principal rooms of the house and would not have the same level of amenity as the occupants of most other houses in East Lothian contrary to the Design Guide for New Housing Areas and therefore to Policy DP8 of the adopted East Lothian Local Development Plan 2018.

Furthermore, the only useable private amenity space for the occupants of the proposed house would be the 10sqm internal courtyard. That indoor courtyard which would also be used for cycle parking, would be accessed via the large sliding doors on the eastern (front) elevation of the house. Those doors when open would allow views from the neighbouring house and from the adjacent access track into it and thus it would be an area that would not have any degree of privacy. When those sliding doors were closed that area would be a small indoor area that would function more as a room than as an area of outdoor space. Therefore, there would be no useable outdoor amenity space for the occupants of the proposed new house to use. Therefore, the occupants of the proposed house not having the same level of amenity as the occupants of other houses in East Lothian. This is again contrary to the Design Guide for New Housing Areas and therefore to Policy DP8 of the adopted East Lothian Local Development Plan 2018

In conclusion whilst the proposals would see the conversion of an existing vacant building that may otherwise fall into further disrepair, as the occupants of the new house would have no outlook from the house, would have no outdoor amenity space and would result in harmful overlooking of the conservatory of the neighbouring house of the Old Farmhouse this is a building that is not suitable for conversion to a house as it would not give its future occupants the level of amenity that the occupants of a house could reasonably expect to have contrary to Policies DC2 and DP8 of the adopted East Lothian Local Development Plan 2018.

The conversion of the building to a house would be contrary to Policies DC2, DP5 and DP8 of the adopted East Lothian Local Development Plan and its Supplementary Planning Guidance the Design Guide for New Housing areas.

The Planning Adviser also advised Members that in their information pack there is a submission from the applicant's agent who made a number of points including a clarification that the Conservatory walls of The Old Farmhouse facing The Steading are solid masonry walls **therefore there will not be any overlooking from the courtyard area.**

On outlook and residential amenity

The proposal is to create an atrium space of approx. 9sqm which can be opened up fully on warm/sunny days and will form an internal courtyard garden covered in glass on colder days. The proposal to form the roof over this area entirely in rooflights that can be opened fully or partially as weather allows will provide a space where plants can grow and provide an outlook for adjacent rooms at ground floor level. At the upper level the bedroom has

plenty of outlook from Velux windows.

There is a further 33sqM of space has to provide space at the North/East side of the building. This is primarily for a car space to comply with ELC parking standards but if for example this amenity space was to be used as a play area during the daylight hours it is conceivable that the car would be away as the owner/driver could be at work. To state that there is no outdoor amenity space is therefore simply another example of where statements made in the planning refusal are simply not correct.

In addition, the property is in a very rural location surrounded by farmland and with distant views to the sea and with right to roam legislation in place the occupants could enjoy plenty of opportunity to experience outdoor space as soon as they step out their door.

The agent made a comparison to a small terrace property that potentially would provide approx. 39sqm of amenity space which would be acceptable for ELC planners.

The agent draws attention to the lack of affordable housing in East Lothian and the fact that the proposed conversion would result in a reuse of the vacant building. Both are supported by planning policy.

On Drainage and water supply - evidence was provided in the land title documents that the owners of the property have rights to connect to an existing septic tank. They also state that fresh water is available within the premises from the same water source i.e. from a private water source.

On parking - there were concerns regarding parking and turning into the parking space. The agent produced a drawing using standard vehicle turning radius that demonstrates that there is ample space to turn a car into the parking space in these proposals.

Further THREE representations were submitted by the local residents. These raised the following issues:

1. The property is entirely surrounded by private land.
2. It is questionable if the property has rights to connect to the existing septic tank. Any such right belonged to The Old Farmhouse and should have remained there after the steadings owner sold it and divided the property. It should not have been duplicated to newly created, second property, increasing the potential burden on the tank. The representators highlighted that the septic tank is very old and may be at capacity and if it overflows, it will do so via the first inspection hatch, which lies in one of the objectors properties.
3. The private water supply is already overloaded the point of failure in times of highest demand, and neither the owner nor the applicant has even approached the existing users for agreement.
4. The appeal is still using the wrong property boundary and as such, still developing land that does not belong to the owner or the applicant. The appeal drawings show a line through the lane between the steadings and The Old Farmhouse The 'verge' to that lane does not belong to the owner of the steadings and does not currently physically exist. A gap between the old farmhouse and the steadings measures 3.8m not nearly 6 as indicated on the submitted plans.
5. The point of the proposed courtyard doors opening directly onto the road between the steadings and The Old Farmhouse has not been addressed. This is a busy lane, particularly in spring and summer when the field beyond is used extensively. Atrium Space is too small too for amenity purposes.
6. Issues of overlooking. The room labelled as utility, which is our kitchen has a clear view through the courtyard garden and into the master bedroom from the lounge. the Old farmhouse sits above the steadings allowing a clear view directly into their lounge into

bedroom 2. At the upper level the bedroom windows face directly into the objectors TV room, which is their main living area both during the day and in the evenings. In addition, all 4 proposed Velux windows on western roof elevation will afford views into the objectors upstairs windows facing The Steading.

7. The space at the end of the property, which is 33sqm, in reality is a car park. With the property being in a rural location all the surrounding houses have 2 cars. There is no on-street parking as you would find in a typical terraced house. Turning circle - Parking - To try and allow the parking to be used the approach has been swapped over to drive across private land that isn't owned by the applicant. The architect/applicant states that the proposed parking area could be used as a play area. However, this space is immediately adjacent to the lane running between The Steading and The Old Farmhouse, a lane which provides vehicular access to 3 properties.
8. The agent has produced a drawing in support of their assertion that there is ample space to turn a car into the proposed parking space. The objector points out that this single parking space will be the only area in which a car can be parked, as it is on land which forms part of The Steading. Should the owner or future owners wish to have visitors to their property there is no other parking available on Ferneylea. All access roads, lanes and yards are on land owned by the objector and are for access only.
9. A non-residential use of the steading building would be preferable.

4.3. Members then asked questions of the Planning Adviser. The Chair noted that in the applicant's submission access to the parking area was going to come in from the north gable end of the site. He noted that the driveway was not in the ownership of the applicant and questioned whether they would need permission from the owner of the driveway to use. The Planning Officer confirmed that this was correct and the Legal Adviser clarified that this would be the case provided there were not already appropriate access rights granted within the title deeds.

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 the site visit was very informative. She noted that the access would only be through the narrow access lane and this lane would also provide access to fields behind the site. She noted that any construction would utilise this lane making it impassable. She commented that in terms of the design she thought this may be more suitable to an office but did not view this as a liveable home. She raised concerns about the water supply and questioned whether a new septic tank would be required to accommodate the users of this building if approved. Accordingly, she was minded to agree with the case officer and refuse the application.

4.6. Councillor McLeod agreed with Councillor Collins and was also minded to to agree with the case officer and refuse the application.

4.7. Councillor Cassini agreed with her colleagues. She commented that there were so many issues with the proposal including access and overlooking. Accordingly, she was minded to agree with the case officer and refuse the application

4.8. The Chair commented that he was normally supportive of proposals to convert redundant

farm buildings. However, in this case following the site visit he believed the case officer's assessment was correct and would uphold the case officer's assessment and recommendations. Accordingly, he was minded to refuse the application.

Accordingly, the ELLRB unanimously decided to refuse the appeal and refuse planning permission for the reasons set out more particularly within the case 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.