



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

**THURSDAY 31 OCTOBER 2024
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON
AND VIA HYBRID MEETING FACILITY**

Committee Members Present:

Councillor E Allan (Chair)
Councillor D Collins
Councillor K McLeod
Councillor C Yorkston

Advisers to the Local Review Body:

Mr C Grilli, Legal Adviser to the LRB
Mr L Taylor, Planning Adviser to the LRB (Item 1)
Mr P Zochowski, Planning Adviser to the LRB (Items 2 & 3)

Clerk:

Ms F Currie, Committees Officer
Ms E Barclay, Committees Assistant (meeting administrator)

Apologies:

N/A

Declarations of Interest

None

The Clerk advised that the meeting was being held as a hybrid meeting. It was being recorded and webcast live via the Council's website in order to allow the public access to the democratic process in East Lothian. East Lothian Council was the data controller under the Data Protection Act 2018. Data collected as part of the recording would be retained in accordance with the Council's policy on record retention.

Introductory Statement by the Legal Adviser

The Legal Adviser outlined the procedure for the Local Review Body to reach a decision on the planning application before it and reminded them that further advice would be provided on procedure, should they conclude they did not have enough information to determine the application today.

On this occasion it was agreed that Councillor Allan would chair the Local Review Body (LRB).

1. PLANNING APPLICATION NO. 23/00673/PP: PLANNING PERMISSION IN PRINCIPLE FOR THE ERECTION OF 1 HOUSE AND ASSOCIATED WORKS, SOUTHWOOD, NEWBYTH, EAST LINTON EH40 3DU

The Chair invited the Planning Adviser, who had not been involved in the original decision, to present a summary of the planning policy considerations in this case.

The Planning Adviser, Mr Leigh Taylor, provided details of the application, including the property type, location and proposed works.

He advised Members that the planning case officer had outlined in his report that National Planning Framework 4 (NPF4) and the adopted Local Development Plan 2018 (LDP) together comprised the development plan for East Lothian. He set out the planning policies relevant to the application. These were: Policies 6 (Forestry, Woodland & Trees), 7 (Historic Assets & Places) and 17 (Rural Homes) of NPF4. Policies DC 1 (Rural Diversification), DC3 (Replacement Dwelling in the Countryside), DC4 (New Build Housing in the Countryside), DC5 (Housing as Enabling Development), CH1 (Listed Buildings), CH6 (Gardens and Designed Landscapes), NH8 (Trees and Development), DP1 (Landscape Character), DP2 (Design), T1 (Development, Location and Accessibility) and T2 (General Transport Impact) of the adopted LDP 2018. East Lothian Council's Countryside and Coast Supplementary Planning Guidance (SPG) was also material to the determination of the application.

The Planning Adviser summarised the case officer's original assessment of the application against planning policy and considering the comments received from internal and external consultees. He noted that there had been no public objections to the application.

He then outlined the submission made by the applicant's agent in support of the appeal, highlighting its key arguments including the assertion that renovation would ultimately be more expensive than complete replacement.

The Planning Adviser responded to questions from Members. He provided further detail on the likelihood of overlooking as a result of the increase in size and height of the proposed development. He advised that the level of tree planting on the site would continue to provide a degree of privacy. He stated that the details design and construction matters would be controlled by conditions and reminded Members that this was the initial stage of planning permission in principle. He also confirmed that the cost of any potential renovation compared to the cost of a replacement structure was not a planning consideration.

The Chair asked her colleagues to confirm that they had 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. The Chair then invited Members to give their views on the application.

Councillor McLeod said that the site visit had demonstrated the marked difference between this property and its neighbours. He noted that there had been objections from the public and key consultees, that the property could not be seen from the public road, and that the applicant intended to make this property his permanent home. For these reasons, he could not support the officer decision.

Councillor Yorkston said he was conflicted. While he acknowledged the rationale put forward by officers, he was also in agreement with the points raised by Councillor McLeod. The property is removed from the road and shielded by trees, and he welcomed the idea of reusing materials, where possible. However, he would have preferred a more detailed survey of the possibility and potential issues around retaining the existing property and he would like to see conditions applied to ensure the proposed footprint of any new structure would not exceed what was proposed. That being said, he noted that this would become the family home and that, as well as recycling of materials, there would be replanting. On that basis, he would be minded to support the appeal.

Councillor Collins said that she had been similarly conflicted and had been worried that the proposed structure would overlook its neighbours and look out of place. However, at the site visit it had been clear to her that the colours would blend with the surroundings and the trees were quite substantial and would prevent overlooking. She felt that this was a well thought out plan and that the cottage there at present was well past its best as a result of deterioration due to its age. She was minded to support the appeal.

The Chair acknowledged the importance of visiting sites and seeing things first hand when making these decisions, as they not only impacted the immediate area but had relevance for East Lothian as a whole. She agreed with her colleagues that the current building looked past its best and was in stark contrast to neighbouring properties. She thought the plans for a new structure were interesting and while she appreciated that planning officers had an abundance of caution, on this occasion she would be happy to see this proposal approved.

The Planning Adviser indicated that, if Members were minded to grant planning permission, the planning case officer had provided a list of suggested conditions. He also reminded Members that detailed design matters would be agreed at a later stage.

The LRB members confirmed their decision via roll call vote. They agreed, unanimously, to uphold the appeal and grant planning permission in principle, subject to the conditions proposed by the planning case officer.

Decision

The ELLRB agreed unanimously, to uphold the appeal and grant planning permission in principle, subject to conditions.

2. PLANNING APPLICATION NO. 24/00575/P: CHANGE OF USE OF FLAT TO SHORT-TERM HOLIDAY LET (RETROSPECTIVE), FLAT 27, 1 STATION ROAD, NORTH BERWICK EH39 4AT

The Chair invited the Planning Adviser, who had not been involved in the original decision, to present a summary of the planning policy considerations in this case.

The Planning Adviser, Mr Zochowski, provided details of the application, property, location and the operating arrangements for the short term let business.

He reminded Members that the application must be determined in accordance with the development plan unless material considerations indicated otherwise. The development plan consisted of the East Lothian Local Development Plan (LDP) 2018, together with National Planning Framework 4 (NPF4). Members should first consider all relevant planning policies then look at any material considerations that may outweigh the policy implications before arriving at their conclusion.

He indicated that the planning case officer had considered the following planning policies as being relevant to the determination of the application: Policy 7 (Historic Assets & Places), Policy 13 (Sustainable Transport) and Policy 30 (Tourism) of NPF4. As well as Policies RCA1 (Residential Character and Amenity), CH2 (Development Affecting Conservation Areas), T1 (Development, Location and Accessibility) and T2 (General Transport Impact) of the adopted LDP 2018.

The Planning Adviser summarised the case officer's original assessment of the application against planning policy and considering the comments received from internal and external consultees. He also directed Members to the ten public objections to the application, summarised within the planning case officer's report.

The Planning Adviser outlined the submission made by the applicant in support of the appeal, highlighting its key arguments. He also directed Members to three further representations which had been submitted in response to the planning appeal, these included comments from North Berwick Environment & Heritage Trust.

He concluded his presentation by reminding Members that it was open to them to review the case in full and either agree with the decision taken by the planning case officer for the reasons given, or to come to a different determination, in which case draft conditions were available should they be required.

The Planning Adviser responded to questions from Members. He referred to the information provided by the applicant on accessing the property and advised that while there was no one available locally to address any issues, there was a telephone number although it was not clear if this was manned 24/7. The Legal Adviser added that these matters would be dealt with under the short term let licensing regime and were not planning considerations.

The Planning Adviser confirmed that, as part of their comments on the application, residents had indicated that there would be a cost to them as a result of any damage caused by guests. He also indicated that as the building was relatively modern there was likely to be a factor in place to manage such matters. The Legal Adviser confirmed that, from a legal point of view, all property owners in the block would be liable for an equal share of any costs.

Replying to further questions, the Legal Adviser indicated that any issues around the content of the title deeds or ownership of the property would not prevent Members from granting planning permission. Any such matters would have to be pursued by residents via action through the civil court. He added that any guests would be deemed to have permission from owner and would be allowed to use property to the extent set out by the owner.

The Legal Adviser and Planning Adviser reminded Members of the tests set out in Policy 30 of NPF4, firstly, around local amenity and, secondly, around loss of residential accommodation and whether this was outweighed by economic benefit.

The Chair asked her colleagues to confirm that they had 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.

The Chair then invited Members to give their views on the application.

Councillor Yorkston said that his main concern was the loss of amenity, whether for one or more neighbours, in what was originally intended as a residential property. While he noted that there were other short term lets in the building which had been operating for 10 years, and this had been operating for 7 years, he was still minded to support the original decision of the planning case officer to refuse planning permission.

Councillor McLeod agreed with Councillor Yorkston. He accepted that tourism contributed to the local economy, however, the amenity and security of residents was his main concern. He would be supporting the planning case officer's decision.

Councillor Collins observed that in the 7 years of operation there had been no anti-social behaviour or police reports relating to this short term let, but she also noted the issues raised in the objections to the application. She said the property was near to the train station and any noise from comings and goings would be minimised by the carpets in the communal areas. She did not agree that it would change the character of the building as it had already been running for 7 years, and anyone moving into the building would be aware of its existence. She would be supporting the appeal.

The Chair said she was conflicted by this application. She accepted that the short term let had been running for 7 years with no problems reported and that this was an ideal location for holidaymakers. However, she was also mindful that there was currently a shortage of 1- and 2-bedroom flats, particularly in North Berwick. Getting the balance right was difficult and while she wished to support tourism, she was persuaded by the arguments put forward by Councillors Yorkston and McLeod.

The LRB members confirmed their decision via roll call vote. They agreed, by a majority, to confirm the original decision of the planning case officer to refuse planning permission for the reasons set out in the original decision notice. Councillor Collins voted to uphold the appeal.

Decision

The ELLRB agreed, by a majority, to confirm the original decision of the planning case officer to refuse planning permission for the reasons set out in the original decision notice.

3. PLANNING APPLICATION NO. 24/00741/P: ERECTION OF 1 HOUSE, GARAGE AND ASSOCIATED WORKS, LAND AT NEWMAINS, WHITEKIRK, NORTH BERWICK, EAST LOTHIAN

The Chair invited the Planning Adviser, who had not been involved in the original decision, to present a summary of the planning policy considerations in this case.

The Planning Adviser, Mr Zochowski, provided details of the application, location, and proposed works. He noted that no public objections had been received nor were there any objections from statutory consultees. He drew Members' attention to the planning support statement provided by the applicant detailing the background and unique circumstances of the case.

He reminded Members that the application must be determined in accordance with the development plan unless material considerations indicated otherwise. The development plan consisted of the East Lothian Local Development Plan (LDP) 2018, together with National Planning Framework 4 (NPF4). Members should first consider all relevant planning policies then look at any material considerations that may outweigh the policy implications before arriving at their conclusion.

He indicated that the planning case officer had considered the following planning policies as being relevant to the determination of the application: DC 1 (Rural Diversification), DC4 (New Build Housing in the Countryside), DC5 (Enabling Development), DP2 (Design), NH7 (Protecting Soils), NH8 (Trees and Development), T1 (Development Location and Accessibility) and T2 (General Transport Impact) of the adopted LDP 2018. As well as Policies 1 (Sustainable Places), 3 (Biodiversity), 5 (Soils), 6 (Forestry Woodland and Trees), 13 (Sustainable Transport), 14 (Liveable Places), 16 (Quality Homes), 17 (Rural Homes) and 29 (Rural Development) of NPF4.

The Planning Adviser said that, in terms of the application, he agreed with the policies that the case officer had identified. His advice to Members was that it was not so much the design of the new house but its location that was the main determining issue. Members should first consider whether the need identified by the agent for the house was supported by any planning policy or if there were material considerations that could be given sufficient weight that might indicate otherwise. Only if they considered there was support would they then consider whether or not the design of the house also met policy requirements. He then summarised the case officer's original assessment of the application against the identified planning policies.

The Planning Adviser summarised the submission made by the applicant's agent in support of the appeal, highlighting its key arguments.

He concluded his presentation by reminding Members that it was open to them to review the case in full and either agree with the decision taken by the planning case officer for the reasons given, or to come to a different determination.

The Planning Adviser responded to questions from Members. He stated that based on the information provided, it seemed that the game keeper worked on a number of different farms, and it was one of these that was offering the land for the proposed house. He also confirmed that the family had previously lived in a cottage on the farm but had outgrown it.

The Chair asked her colleagues to confirm that they had 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.

The Chair then invited Members to give their views on the application.

Councillor Collins gave her observations on the site of the proposed house. While she accepted that it was grade 1 agricultural land, she considered it to be an awkward area to work and the ground was quite boggy. She felt that planning policy did not give sufficient importance to the role of game keepers in farm and land management, and she outlined some of the key aspects of this work. She pointed to the offer of land for a house from the farmer as a demonstration of the importance of having the game keeper living as close as possible to the land he is helping to manage. She also noted that the family had been part of the community for a long time and wanted to stay there. She said that she would be supporting the appeal on the basis that game keeping was an integral part of the agricultural uses mentioned in policies DC1 and DC4.

Councillor Yorkston commented that there had been one or two similar applications recently. While he sympathised with the family outgrowing their previous accommodation, he was concerned that the application would set a precedent and what the implications of this might be for future applications. For this reason, he could not support the appeal; and would be supporting the officer's decision in this case.

Councillor McLeod said that he considered every case on its own merit. The property was hidden from the main road, cars slowed down around the access point because of the bend in the road, and there had been no public objections to the application. He accepted that work commitments were an issue and noted that the family had outgrown their previous home. While he acknowledged that the proposal did not align with the current LDP, he felt that this situation may change in the near future. For those reasons, he would be supporting the appeal.

The Chair agreed that each application should be taken on its own merits. She said that Councillor Collins' remarks had been useful. She said that East Lothian was a rural county and that jobs connected to and of benefit to the countryside had a huge amount of merit. If the land on the site was difficult to farm, then it could potentially be a suitable place to build a house. She felt that the plans were sympathetic and that it would be ideal for the family to be based there. She would therefore be supporting the appeal.

The LRB members confirmed their decision via roll call vote. They agreed, by a majority, to uphold the appeal and to grant planning permission. Councillor Yorkston voted to uphold the officer's original decision.

The clerk noted that there were no suggested conditions put forward by the planning case officer. The Planning Adviser confirmed this to be the case and advised that it was for Members to decide if conditions should be applied.

Councillor McLeod said he would like to see a condition stipulating that the family must remain resident in the property for at least 10 years. However, he accepted that this may not be legally binding.

The Legal Adviser suggested that he and the Planning Adviser would consider what might be appropriate and work with the planning agent for the applicant to agree the terms of the conditions. These would then be brought to members for their formal agreement, via e-mail. The Members agreed to this proposal.

The planning agent for the applicant confirmed that his clients would be happy to accept a number of standard planning conditions.

Decision

The ELLRB agreed, by a majority, to uphold the appeal and grant planning permission, subject to conditions to be agreed at a later date.

Signed

Councillor Liz Allan
Chair of Local Review Body (Planning)