

REVIEW DECISION NOTICE

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

Application for Review by Mr John Millar c/o Helen Lucas Architects Ltd Per Hannah Bowers 31-35 Marchmont Road Edinburgh United Kingdom EH9 1HU of decision to refuse Planning Permission in principle for the erection of 1 house and associated works, Southwood, Newbyth, East Linton EH40 3DU.

Site Address: Southwood, Newbyth, East Linton EH40 3DU

Application Ref: 23/00673/PP

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

Date of Review Decision Notice: 17 December 2024

Decision

The ELLRB unanimously agreed to support the appeal and grant planning permission in principle for the erection of 1 house and associated works, Southwood, Newbyth, East Linton EH40 3DU subject to conditions 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, 31 October 2024. The Review Body was constituted by Councillor E Allen (Chair), Councillor C Yorkston, Councillor D Collins and Councillor K McLeod. All four members of the ELLRB had attended a site visit in respect of this application prior to the meeting.

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

Mr L Taylor, 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 in principle for the erection of 1 house and associated works, Southwood, Newbyth, East Linton EH40 3DU.

2.2. The planning application was registered on 20 June 2023 and the Decision Notice refusing the application is dated 15 May 2024.

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

15 May 2024. The reasons for refusal are/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 on land which is not allocated for housing development, is not brownfield land where a return to a natural state will not happen without intervention, does not reuse a redundant or unused building, and for which a need to meet the requirements of the operation of an agricultural, horticultural, forestry, countryside recreation, or other business, leisure or tourism use has not been demonstrated, and which is not proposed as affordable housing development of an existing rural settlement. The proposal is therefore contrary to Policies DC1 and DC4 of the adopted East Lothian Local Development Plan 2018.*
- 2 *The proposed house would not: i) be a like for like replacement of a dwelling recently rendered uninhabitable by unforeseen circumstances; ii) replace an existing dwelling with lawful use rights as such (not the plot of a previous, now demolished house) that the Council accepts that due to the construction of the building it is incapable of retention for habitation and that all reasonable efforts have been made to maintain the building; or iii) be similar in size, scale and massing to the original. Therefore, the proposal does not comply with either criteria (i) or (ii) of Policy DC3 of the adopted East Lothian Local Development Plan 2018.*
- 3 *As the principle of a replacement house is contrary to Policies DC3, DC4 and DC5 of the adopted East Lothian Local Development Plan and does not accord with its tailored approach to rural housing, then the principle of the replacement house is contrary to Policies 16 and 17 of NPF4.*

2.4. The notice of review is dated 18 July 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>
	1259-SWN 001	P1	14.06.2023
	1259-SWN 100	P1	14.06.2023
	1259-SWN 120	P1	14.06.2023
	1259-SWN 211	P1	14.06.2023
	1259-SWN 224	P1	14.06.2023
	1259-SWN 500	P1	14.06.2023
	1259-SWN 501	P1	14.06.2023
	1259-SWN 220	P2	04.08.2023
	1259-SWN 221	P2	04.08.2023
	1259-SWN 300	P2	04.08.2023
	1259-SWN 200	P3	04.08.2023
	1259-SWN 210	P2	04.08.2023
	1259-SWN 222	P2	04.08.2023
1259-SWN 223	P2	04.08.2023	
1259-SWN 205	P1	24.04.2024	
ii.	The Application for planning permission registered on		
iii.	The Appointed Officer's Submission		

iv.	<p>Policies relevant to the determination of the application:</p> <p>National Planning Framework 4:</p> <ul style="list-style-type: none"> - Policy 6 (Forestry, Woodland and Trees) - Policy 7 (Historic Assets and Places) - Policy 17 (Rural Homes) <p>The adopted East Lothian Local Development Plan 2018 policies:</p> <ul style="list-style-type: none"> - 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). <p>East Lothian Council's Countryside and Coast Supplementary Planning Guidance (SPG) was also material to the determination of the application</p>
v.	<p>Notice of Review dated 18 July 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 advised that the planning application relates to Planning permission in principle sought for the erection of one house and associated works at Southwood, Newbyth, near East Linton. The application site forms part of a small group of houses located at Newbyth near Binning Wood, within an area of ancient woodland. The application site is adjacent to two other residential properties, East Lodge and Birkhill. These properties share an access entrance from the public road. The application site contains the main property named Southwood and a separate cottage, both of which are single storey detached houses set within large garden grounds. The main house has white walls, exposed stone gable and pantile roof. The site also contains a number of other structures namely a garage, summerhouse and lean-to wood store.

Mature tree planting and other vegetation provide a large amount of screening from neighbouring properties and public roads. The Planning Adviser noted that it has been used as a holiday home by the applicant.

The Planning Adviser then commented that the application site sits within the Newbyth House Local Garden and Designed Landscape and adjacent to but outwith the Tynninghame Inventory Gardens and Designed Landscape to the east of the public road.

He further commented that nearby South Lodge is a detached Category B Listed building of special architectural interest together with associated quadrant walls and gatepiers. The other neighbouring property named Birkhill is unlisted but is also a single storey detached property. Planning permission was sought to replace both the main house and cottage with a part two storey part single storey detached modern building with large glazing panels. Some of the materials used in Southwood were proposed for reuse in the building of the new property. The case officer for the application outlined in their report of handling that the National Planning Framework for Scotland 4 and the Local Development Plan 2018 together comprise the Development Plan for East Lothian, and this was used to determine the application. The Planning Adviser then set out the relevant policies used to determine the application, which are more particularly set out at 3.1(iv) above.

The Planning Adviser then confirmed that the case officer consulted various internal Council Services and external agencies. Matters relating to landscape and transport were deemed to be controllable through appropriately worded planning conditions, should the application have been granted. It was noted that an objection was raised by the Council's Planning Policy Team on the grounds that the proposal was contrary to both the NPF4 and LDP 2018 policy. No public representations to the application were received. In applying policy DC1, the case officer highlighted that the property is within a countryside location and that new development in such a location can be supported where it is for agriculture, horticulture, forestry, infrastructure or countryside recreation. Proposals may also be supported where there is a demonstrable operational requirement for a countryside location, including tourism and leisure uses. As the proposal did not form part of any such land use, it was concluded that it did not comply with policy DC1.

The Planning Adviser stated that policy DC3 supports the principle of replacement dwellings in the countryside but proposals must meet the two policy criteria:

- The dwelling must be a like for like replacement of a property recently rendered uninhabitable due to unforeseen circumstances, such as accidental fire damage
- Replace an existing dwelling that the Council accepts, due to the construction of the building, is incapable of retention for habitation, and that all reasonable efforts have been made to maintain the building.

The Planning Adviser further confirmed that the case officer stated that during the consideration of the application, further information was provided by the agent acting on behalf of the owner, namely an Existing Condition Statement. This statement provided details of the existing issues structural problems that would need to be addressed, namely sub-standard construction, lack of thermal insulation, cracking in render potentially as a result of no wall ties, dampness, rotting window frames etc. The agent's report states that it would be challenging to address these issues, and that the property presented difficult and unhealthy living conditions for its inhabitants. The case officer determined that information supplied did not satisfy criteria (ii) of policy DC3 as although efforts have been made to maintain the building, it was not deemed to be in such a poor state of repair that it was no longer suitable for habitation.

Furthermore, the case officer also noted that no costings had been provided with the application, with no indication of the likely demolition cost in comparison to the replacement of the property.

Within their report, the case officer also noted that, whilst this is an application for permission in principle where detailed design matters would normally be considered through a separate detailed planning application, completed drawings had been submitted to show the property that had been designed as a replacement for Southwood. It was noted that there would be an approximately 17% increase in overall floorspace, with the new building being part single and part two storey modern construction. This was deemed to not be a like for like replacement and therefore contrary to criteria (i) of policy DC3.

Policy DC4 was applied to this development as it was deemed to be relevant to new build housing in the countryside. Development of this type can be supported where there is no appropriate existing building that is suitable for conversion to a house. Criteria (i) states that it must be as a direct operational requirement of a viable agricultural, horticulture, forestry, countryside recreation or other business, leisure or tourism use that is supported in principle by policy DC1. As the proposal did not meet the criteria of this policy, it was deemed to be contrary to DC4.

Policy DC5 (enabling development) was also deemed applicable as it relates to criterion b of policy DC1. DC5 can support new development in the countryside in exceptional circumstances. However as with policy DC1, any proposal must be in relation to a business that has an operational requirement for a countryside location. Enabling development can also be to fund the restoration of a listed building or other building of recognised heritage value. As the proposal did not form an enabling development scheme, it did not comply with policy DC5.

Due to the adoption of NPF4, transitional arrangements are in place to help support decision-making on planning applications. In cases where there is conflict between NPF4 policy and LDP policy, whichever of the two is the more recent policy, that one is to prevail. As stated by the case officer, in the consideration of this application, policy 17 did prevail. The case officer stated that, in relation NPF4 policy 17 which offers some support for new build housing in rural areas where it meets specific criteria (i) to (viii), Local Development Plans should set out a tailored approach to rural housing. However, the case officer concluded that, whilst policy 17 of the NPF4 was relevant, LDP policy was still applicable and relevant to the determination of the application as it sets out a tailored approach to replacement or new housing in the countryside, which policy 17 promotes. The proposed dwelling would not be of a similar size, scale or massing as the existing house.

In respect of policies CH1 (Listed Buildings) and CH6 (Gardens and Designed Landscapes), the case officer concluded that, together with consultation with Historic Environment Scotland, the proposal would not cause harm to the setting of the category B listed South Lodge, would not have any significant impacts upon the Local Garden and Designed Landscape of Newbyth House, which is now mainly ancient woodland plantation or the nearby Inventory Garden and Designed Landscape of Tynninghame House.

As the proposal was contrary to local development plan policies on housing in the countryside, it was deemed to be contrary to NPF4 policies 16 and 17 as well, and consequently the application was refused planning permission. The Planning Adviser then directed the members to the reasons for refusal.

The Planning Adviser then turned to the appellant's submission and confirmed appellant's submission challenges the reasons for refusal, in particular the application of NPF4 policy 17 in relation to its prevalence over LDP 2018 policies. Their argument states that, as already confirmed in the report of handling, as the more recent of the two, NPF4 policy 17 must prevail. They are of the opinion that the policy supports rural housing and that when applied correctly to this proposal, it can be supported. As part of the appellant's submission, they challenge the conclusion that the building is still suitable for habitation, and that the proposal does comply with policy DC3. Indicative costings have now been provided to compare a renovation of the existing property to complete replacement. This shows that renovation would ultimately be more expensive than complete replacement. The appellant is of the opinion that the decision to refuse planning permission should be overturned primarily for these reasons.

- 4.3. Members then asked questions of the Planning Adviser and in response to questions the Planning Adviser 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.
- 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 McLeod said that the site visit had demonstrated the marked difference between this property and its neighbours. He noted that there had been no 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.
- 4.6. 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.
- 4.7. 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.
- 4.8. 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.

Accordingly, the ELLRB unanimously decided to support the appeal and grant planning permission in principal for the erection of 1 house and associated works, Southwood, Newbyth, East Linton EH40 3DU for the reasons set out within this decision notice and 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. The submission for approval of matters specified in conditions of this grant of planning permission in principle in accordance with the timescales and other limitations in section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended) shall include details of the siting, design and external appearance of the house, the means of access to it and the means of any enclosure of the boundaries of the site and those details shall accord with the following principles of development for the site:
 - a. The house shall be no higher than two storeys in height, and the ridge of its roof shall be no higher than that shown on indicative drawing No: 1259-SWN 220 Rev: P2 dated 04/08/2023.
 - b. The house shall be designed with a mono-pitched roof clad with a standing seam zinc and its walls shall be finished predominantly with a render and red brick to ground floor and timber cladding to the upper floor unless otherwise approved by the Planning Authority.
 - c. The house shall be provided with parking spaces within the curtilage of the house at a rate of 5 habitable rooms or fewer - 1 parking space or 6 or more habitable rooms - 2 parking spaces.
 - d. The means of enclosing the boundaries of the site shall be shown and the house shall not be occupied until the approved means of enclosure has been erected or planted.

Reason: To ensure that adequate and satisfactory provision is made for the accommodation of vehicles clear of the highways in the interests of road safety, and to enable the Planning Authority to control the development in the interests of safeguarding the character and appearance of the area and the privacy and amenity of neighbouring residential properties and of occupiers of the new house.

3. No development shall take place on site until temporary protective fencing in accordance with Figure 2 of British Standard 5837_2012 "Trees in relation to design, demolition and construction" has been installed, and confirmed in writing by the Planning Authority. The fencing must be fixed into the ground to withstand accidental impact from machinery, erected prior to site start and retained on site and intact through to completion of development. The position of this fencing shall be positioned outwith the Root Protection Area (RPA) as defined by BS5837:2012 for all trees and approved in writing by the Planning Authority.

All weather notices should be erected on said fencing with words such as "Construction exclusion zone - Keep out". Within the fenced off areas creating the Construction Exclusion Zones the following prohibitions must apply:-

- No vehicular or plant access

- No raising or lowering of the existing ground level
 - No mechanical digging or scraping
 - No storage of temporary buildings, plant, equipment, materials or soil
 - No hand digging
 - No lighting of fires
 - No handling discharge or spillage of any chemical substance, including cement washings.
- Planning of site operations should take sufficient account of wide loads, tall loads and plant with booms, jibs and counterweights (including drilling rigs), in order that they can operate without coming into contact with retained trees.

Reason: In order to form Construction Exclusion Zones around retained trees and protect retained trees from damage.

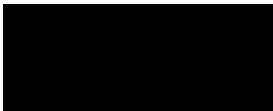
4. Only the existing driveway shall be used for construction access with the addition of temporary ground protection to protect the surrounding trees' roots from compaction by heavy construction machinery.

Reason: In order to form Construction Exclusion Zones around retained trees and protect retained trees from damage.

5. Within three months of the date of this consent, details of an EV charging facility shall be submitted to and approved in writing by the Planning Authority. The details shall include a timetable for implementation. The approved EV charging facility shall thereafter be installed and made available for use in accordance with the details so approved. The approved EV charging facility shall thereafter be retained, unless otherwise approved in writing by the Local Planning Authority.

Reason: In the interests of promoting sustainable travel and the environment.

Planning Permission in Principle 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.