

REVIEW DECISION NOTICE

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

Application for Review by Mr Gary Macpherson and Anna Smith c/o Apt Planning & Development Per Tony Thomas 1 West Road Whitekirk EH42 1XA of decision to refuse Planning Permission for the erection of 1 house, garage, and associated works at Land at Newmains, Whitekirk, North Berwick, East Lothian

Site Address: Land at Newmains, Whitekirk, North Berwick, East Lothian

Application Ref: 24/00741/P

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

Date of Review Decision Notice: 23 December 2024

Decision

The ELLRB by majority of three (3) to one (1) decided to support the appeal and grant planning permission subject to conditions for the erection of 1 house, garage, and associated works at Land at Newmains, Whitekirk, North Berwick, East Lothian 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 Mr Zochowski, 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 for the erection of 1 house, garage, and associated works at Land at Newmains, Whitekirk, North Berwick, East Lothian.

2.2. The planning application was registered on 12 July 2024 and the Decision Notice refusing the application is dated 2 September 2024.

2.3. The reason for the refusal is more particularly set out in full in the said Decision Notice dated 2 September 2024. The reasons for refusal are set out as follows:

1. *The erection of a house with associated garage 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 16 and 17 of NPF4 and Policies DC1 and DC4 of the adopted East Lothian Local Development Plan 2018.*
2. *The erection of a house and associated garage on the application site would be new build housing development in the countryside of East Lothian for which a desirable primary use supported in principle by criterion b of Policy DC1 and with benefits that outweigh the normal presumption against new build housing in the countryside has not been demonstrated; The proposal is therefore contrary to Policy DC5 of the adopted East Lothian Local Development Plan 2018.*
3. *The erection of a house and associated garage on the application site would be new build housing development in the countryside of East Lothian which would be sited on prime agricultural land and the erection of a house with associated garage is not development that is directly linked to a rural business, farm or croft or for essential workers of a rural business to live onsite and thus is not an appropriate development for the countryside which is supported by either Policy 5 of NPF4 or Policy NH7 of the adopted East Lothian Local Development Plan 2018. The proposal is therefore contrary to Policy 5 of NPF4 and Policy NH7 of the adopted East Lothian Local Development Plan 2018.*

2.4. The notice of review is dated 16 September 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>
	DWG 01	-	12.07.2024
	23/483/01	-	12.07.2024
	23/483/02	-	12.07.2024
	PL/001	B	12.07.2024
	PL/002	C	12.07.2024
	PL/003	A	12.07.2024
	PL/004	A	12.07.2024
	PL/005	A	12.07.2024
	PL/006	A	12.07.2024
	PL/007	A	12.07.2024
ii.	The Application for planning permission registered on 12 July 2024		

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 1 (Tackling the climate and nature crises), - Policy 3 (Biodiversity), - Policy 5 (Soils), - Policy 6 (Forestry, woodland and trees), - Policy 13 (Sustainable transport), - Policy 14 (Design, quality and place), - Policy 16 (Quality Homes), - Policy 17 (Rural Homes) and - Policy 29 (Rural Development) <p>The adopted East Lothian Local Development Plan 2018 policies:</p> <ul style="list-style-type: none"> - DC1 (Rural Diversification), - DC4 (New Build Housing in the Countryside), - DC5 (Housing as Enabling Development), - DP2 (Design), - NH7 (Protecting Soils), - NH8 (Trees and Development), - T1 (Development Location and Accessibility), and - T2 (General Transport Impact)
v.	Notice of Review dated 16 September 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 members that the planning application relates to a part of a much larger field on the west side of Newmains Farm near Whitekirk. On this west side of the A198 lie two traditionally designed small single storey detached cottages with white painted render and pitched roofs, one with orange pantiles and the other with grey slate. These two houses are adjacent to the A198 one behind the other with direct access from the road via a short private road. From their design the houses look to have been constructed in the early 20th century. These houses and the site are quite visible in the landscape on the approach from the south which is open but much

less so on the approach from the north where a wood screens them from view.

This planning application is a detailed application for a third house to be located behind the second house, furthest from the road. From the Existing Site Plan drawing members will note that this new house and double garage would occupy a footprint broadly similar to that of the existing two houses combined and be provided with a separate new access road adjacent to the existing one. The house would be larger than either of the others and would be a one and a half storey house with two communal living rooms on the ground floor and four bedrooms two of which would be at first floor.

The Planning Adviser confirmed that no objections were received nor are there any objections from consultees.

The Planning Adviser then directed members to the applicant's submission and in particular noted they had submitted a 'planning supporting statement' with the application which explained the backstory to the applicants which it is suggested is a unique set of circumstances worthy of further consideration. It also points out that in their opinion the proposal would have no significant impact on the wider landscape setting and relates well to the cluster of existing farm buildings of a type not uncommon in the local area. It acknowledges that planning policy normally places strict restrictions on new housing in the countryside but suggests that Policy 16 of NPF4 supports high quality affordable housing in the right locations. It is also acknowledged that the site is part of a field of prime quality soil but that the loss of such land for a house and drive would be negligible.

The Planning Adviser then confirmed that the application must be determined in accordance with the development plan unless material considerations indicate otherwise. The Development Plan consists of the East Lothian Local Development Plan 2018 together with National Planning Framework 4. The Report of Handling, set out the following planning policies as relevant to the determination of this planning application:

ELLDP policies DC1 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

NPF4 Policy 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

The Planning Adviser noted that generally, the LDP directs new development towards existing settlements where facilities and public transport exist, unless there is a specific requirement for a countryside location. Its DC1-5 policies outline the particular circumstances in more detail as to what types of development might be supported in the countryside. Further, generally, NPF4 also directs development towards existing settlements but also supports sustainable development in the right place taking into account biodiversity and climate change, quality housing and sites that do not impact on nature and soils and where the development is suitably scaled, sited and designed to be in keeping with the character of the area, sited to reduce car dependency and pays attention to local architectural styles. All development must be consistent with the six qualities of successful places namely that they are Healthy, Pleasant, Connected, Distinctive, Sustainable and Adaptable.

In terms of this application the Planning Adviser confirmed he would agree with the policies that the case officer identified. He advised that it is not so much the design of the new house but its location that is the main determining issue.

The Planning Adviser confirmed that members should first consider whether the need identified by the agent for the house is supported by any planning policy or if there are material considerations that can be given sufficient weight that might indicate otherwise. Only if members considered there was support would members then consider whether the design of the house also meets policy requirements or not.

The Planning Adviser then stated that in the report of handling the case officer found that planning policy did not support the development of a house at this location and therefore the application was refused for the following reasons:

1. The development would be new build housing in the countryside on land that fails to meet any policy exception contained in NPF Policies 16 Quality Homes and 17 Rural Homes and LDP 2018 policies DC1 and DC4
2. The proposed housing development is not a use that would satisfy LDP policy DC5 Enabling Development, and
3. The proposed housing development would be on prime quality agricultural land and the erection of a house and garage is not development that is directly linked to a rural business, farm or croft or for essential workers of a rural business to live onsite and thus is not an appropriate development for the countryside contrary to NPF policy 5 Soils and ELLDP Policy NH7 Protecting Soils

The Planning Adviser then directed members to the appellant's agents Review Statement and summarised it as follows:

- The applicants have particular circumstances which should be taken into account.
- The design is appropriate, the site can be accessed safely and the loss of prime quality soil would be minimal.

The Planning Adviser concluded by advising members that it was now open to them to review the case and either agree with the decision taken by the case officer for the reasons given or to come to a different determination.

- 4.3. Members then asked questions of the Planning Adviser. The Planning Adviser responded by stating 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.
- 4.4. The Chair asked her 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 gave her observations on the site of the proposed house. While she accepted that it was grade 1 agricultural land, she considered that the proposed application site was located within 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.

- 4.6. 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.
- 4.7. 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.
- 4.8. 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.

Accordingly the LRB members, agreed, by a majority of three (3) to one (1), to support the appeal for the reasons set out above and to grant planning permission subject to the following conditions:

1 – Time Condition

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 – Site Setting Out

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:

- the position within the application site of all elements of the proposed development and position of adjoining land and buildings;
- finished ground and floor levels of the development relative to existing ground levels of the site and of adjoining land and building(s). The levels shall be shown in relation to an Ordnance Benchmark or Temporary Bench Mark from which the Planning Authority can

take measurements and shall be shown on the drawing; and

- the ridge height of the proposed development 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 – Materials

Prior to their use on site, full details (including samples where requested) of materials and finishes to be used to externally clad the roof and walls of the house, for the windows, doors and any ground surfacing on the site shall be submitted to and approved in writing by the Planning Authority.

The development shall thereafter be implemented in accordance with the approved details.

Reason:

To allow the consideration of details yet to be submitted and control the materials used on the site in the interest on visual amenity.

4 – Access, Parking and Turning

Prior to the occupation of the house hereby approved, the access, parking and turning areas shown on docketed drawing no. PL/002 Rev C shall have been formed and made available for use, and thereafter the access, parking and turning areas shall be retained for such uses unless otherwise approved in advance in writing by the Planning Authority.

Furthermore, the driveway shall be (i) permeable to reduce water run-off, and any run-off should be directed away from the road; (ii) the first 2m of the driveway should be hard formed and as the driveway connects directly to the carriageway, the first two metres will remain part of the adopted road and should be constructed to footway standard in asphalt; and (iii) the gradient of the driveway should be a maximum of 10%, and there should be an accessible path (maximum gradient 5%), from the driveway to an external door to the house.

Reason:

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

5 – EV Charging

Prior to the occupation of the house hereby approved a 7kW rated Type 2 electric vehicle charging point for at least one car and infrastructure for it shall be installed and available for use and thereafter shall be retained for use, unless otherwise agreed by the Planning Authority.

Reason:

To minimise the environmental impact of the development.

6 – Geo-Environmental Assessment

Part 1

Prior to any site development works a suitable Geo-Environmental Assessment must be carried

out, with the Report(s) being made available to the Planning Authority for approval. It should include details of the following:

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

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

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

Part 2

Prior to any works beginning on site (and where risks have been identified), a detailed Remediation Statement should be produced that shows the site is to be brought to a condition suitable for the intended use by the removal of unacceptable risks to all relevant and statutory receptors. The Statement should detail all works to be undertaken, proposed remediation objectives and remediation criteria as well as details of the procedures to be followed for the verification of the remedial works. It should also ensure that the site will not qualify as contaminated land under Part2A of the Environmental Protection Act 1990 in relation to the intended use of the land following development. The Statement must be submitted to the Planning Authority for approval.

Part 3

The approved Remediation Statement must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out the agreed remediation. Following completion of the measures identified in the approved Remediation Statement, a Validation Report should be submitted that demonstrates the effectiveness of the remediation carried out. It must be approved by the Planning Authority prior to occupation of the new development.

Part 4

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

If no 'unexpected' ground conditions are encountered during the development works, then this

should be confirmed to the Planning Authority prior to the use of the new development.

Reason:

To ensure that the site is clear of any contamination found to be present prior to the use of the house approved.

7 – Biodiversity Enhancement

Prior to commencement of development, details of measures to protect and enhance biodiversity on the application site shall be submitted to and approved by the Planning Authority. The measures as so approved shall be implemented prior to any use being made of the agricultural building hereby approved and shall thereafter be retained, unless otherwise approved in writing by the Planning Authority.

Reason:

In the interests of protecting and enhancing biodiversity on the site and within the surrounding area.

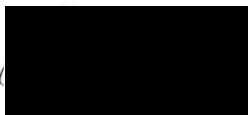
8 – Carbon Emissions

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 advance 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 car 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.

Planning Permission is hereby granted.



Carlo Grilli
Legal Adviser to ELLRB

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

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

- 1 If the applicant is aggrieved by the decision of the planning authority to refuse permission or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.

- 2 If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.