



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

**THURSDAY 15 FEBRUARY 2018
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON**

Committee Members Present:

Councillor N Hampshire (Chair)
Councillor S Currie
Councillor J Findlay
Councillor S Kempson

Advisers to the Local Review Body:

Mr L Taylor, Planning Adviser to the LRB
Mr C Grilli, Legal Adviser/Clerk to the LRB

Others Present

Ms C Samuel, Applicant (Item 1)

Committee Clerk:

Mrs F Stewart

Declarations of Interest

None

Apologies

None

Councillor Hampshire, elected to chair the meeting by his colleagues, welcomed everyone to the meeting of the East Lothian Local Review Body (ELLRB).

A site visit had been carried out for both planning applications prior to the meeting.

1. PLANNING APPLICATION 16/01035/P – REVIEW AGAINST CONDITION 9 OF PLANNING PERMISSION FOR 11a LETHAM MAINS HOLDINGS, HADDINGTON

The Planning Adviser stated that the first application was a review against Condition 9 of planning consent 16/01035/P at 11A Letham Mains Holdings, Haddington. A planning application had been submitted for the erection of a single storey detached dwelling house of contemporary architectural style within the land owned by the applicant and in use as a Plant Nursery Business. The Planning Adviser added that the site was largely screened from the adjacent road by existing hedgerows with the exception of the access point and the high point of the adjacent road. It was also largely screened from the south and west by existing planting.

The Planning Adviser stated that, in considering the application, the Case Officer had determined that the building height and positioning within the site, away from the eastern boundary, were acceptable for the site and countryside surroundings. The proposal was considered to contrast in a complimentary manner with existing, more traditional dwellings to the south and compliant with Strategic Development Plan Policy 1b and with Local Plan 2008 Policy DC1. The Case Officer had made his decision based on evidence submitted in support of the need for the dwelling, in association with the existing business. However, the permission was subject to a number of conditions including sample materials and external finishing. A condition to remove permitted development rights was also added, to which this review relates.

The Chair invited questions from Members. Councillor Currie assumed that if restrictions were removed, any future plans of the applicant would still be subject to building control and building warrants. He asked the Planning Adviser if the only difference between having Condition 9 attached to the consent and not having the condition was that in one instance a planning application would need to be submitted, and for the other, no application would be required. The Planning Adviser confirmed that Councillor Currie's understanding was correct and advised that the reason the Case Officer had included Condition 9 was likely to be because new dwellings in the countryside were subject to tighter controls. The Chair asked if the applicant could apply for planning permission if she wished to extend the building and the Planning Adviser confirmed that the applicant could submit another planning application if she wished.

The Chair asked Members if they had sufficient information to proceed to determine the application today and they confirmed that they had.

Councillor Bruce stated that he supported the Case Officer's decision to include Condition 9 and Councillor Kempson agreed, stating that it was important to safeguard the countryside. Councillor Currie considered that Condition 9 had been included in the planning consent for a purpose and had not been convinced that it should be removed. He added that development in the countryside was a sensitive issue and the guidance to Councillors was to exercise control in this area.

The Chair was similarly minded to his colleagues.

Decision

The ELLRB unanimously agreed to uphold the original decision of the Planning Officer to include Condition 9 in planning consent 16/01035/P and rejected the appeal.

2. PLANNING APPLICATION 16/00563/P – REVIEW AGAINST DECISION (REFUSED) CHANGE OF USE OF OPEN SPACE TO DOMESTIC GARDEN GROUND AND ERECTION OF FENCING (RETROSPECTIVE) AT 13 CALEDONIAN CRESCENT, PRESTONPANS EH32 9GF

The Planning Adviser stated that this application sought a change of use of open space to domestic garden ground and the erection of a fence. The land to which this retrospective application related was in the ownership of no.13. The property was a two storey detached dwelling of modern design located in a prominent corner position on Caledonian Crescent within the wider Mid Road Prestonpans site. The Planning Adviser stated that the site was a generally open plan development with limited examples of boundary walls and fences within it and the 1.8m timber fence which had been erected enclosed an area of previously open ground. In considering the application, the Case Officer had determined that the combined effect of the change of use together with the erection of a fence was harmful to the character and appearance of the area. The proposal was therefore considered contrary to Local Plan 2008 Policy DP2 and permission was refused.

The Planning Adviser stated that no objection had been received from the Council's Highways Department and that landowner debates were not a material planning consideration.

The Chair opened questions for the Planning Adviser asking if the land enclosed by the fence had been sold to the applicant and included in his title deeds. The Planning Adviser confirmed that the applicant owned the land and that it was included in the title deeds. The Chair noted from the applicant's submission that the area enclosed by the fence had been intended by the developer to be open space but had been sold to the applicant. The Planning Adviser stated that it was common for people to own land designated as open space.

Councillor Currie, who had viewed Google Earth photos of the property before and after the erection of the fence, stated that it appeared the applicant owned the land but was not free to do as he chose with his land. He asked if it would make a difference if the applicant lowered the height of the fence and was advised by the Planning Officer that each application was considered on its own merits. Councillor Currie asked if the reason for refusal of the application was the fence or the loss of the open ground and was advised by the Planning Adviser that it was the combined effect of both.

The Chair stated that this appeal suggested that, in future, planning consent should be more specific, clearly stating whether the responsibility for land was being given to an area of residents or one individual. He considered that, in this case, either the developer had wrongly sold the land or there had been insufficient clarity in the planning consent.

The Chair asked Members if they now had sufficient information to proceed to make a decision today and they agreed that they had.

Councillor Currie stated that someone either owns land or they don't. The applicant has the responsibility of maintaining the land and should not have the liability without the benefit. He considered that open space should not be sold to an individual and was minded to uphold

the appeal. He also pointed out that there were other fences and hedges bordering garden ground in the neighbourhood.

Councillor Kempson, having had ownership of the land clarified, agreed with Councillor Currie and was also minded to uphold the appeal. She stated that the land belonged to the house at No 13 and the owner was justified in fencing it.

Councillor Bruce was similarly minded and considered that an anomaly had occurred in this case. In his view, if the garden area at No 13 was designated open space, it should have been the responsibility of all owners in the area.

Decision

The ELLRB unanimously agreed to overturn the original decision of the Planning Officer and grant planning permission.

Signed

Councillor N Hampshire
Convener of Local Review Body (Planning)

