

## **REVIEW DECISION NOTICE**

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

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Application for Review by Gordon Brown c/o Apt Planning & Development Limited, 6 High Street, East Linton against decision by an appointed officer of East Lothian Council

Site Address: Gateside, Hill Road, Gullane

Application Ref: 18/00299/P

Application Drawing: TREE REPORT

SUPPORT STATEMENT

WINDOW DETAILS

AL(0)100

AL(0)01 Rev A

AL(0)02 Rev A

AL(0)101 Rev A

Date of Review Decision Notice: 15 October 2018

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### **Decision**

The ELLRB following a split vote and the Chair using his casting vote made the decision to approve planning permission subject to conditions for the reasons given below and upholds the review.

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**

1.1. The above application for planning permission was considered by the ELLRB, at a meeting held on Thursday, 30 August 2018. The Review Body was constituted by Councillor N Hampshire (Chair); Councillor L Bruce, Councillor S Kempson and Councillor S Currie. All four members of the ELLRB had attended an accompanied site visit in respect of this application prior to the meeting.

1.2. 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/Clerk to the LRB  
Fiona Stewart, Clerk.

## 2. Proposal

- 2.1. The planning application was for the erection of house and associated works.
- 2.2. The planning application was registered on 6 April 2018 and was refused under delegated powers on 25 May 2018. The Notice of Review is dated 2 July 2018.

2.3. The reasons for refusal are set out in full in the Decision Notice and are, in summary, that:

2.3.1 The subdivision of the large garden would result in the loss of a characteristic feature of the Gullane Hill area as described in the Gullane Conservation Area Character Statement. Such garden subdivision would undermine and therefore be harmful to the character and appearance of the Conservation Area. Furthermore in its scale, layout and density, the proposed house would not be sympathetic to its surroundings and would not respect, but would be disruptive of the characteristic layout and density of the built form of this part of Nisbet Road and of the Gullane Hill part of the Conservation Area. Consequently, it would neither preserve nor enhance but would be harmful to the character and appearance of the Conservation Area. Accordingly, the proposed development is contrary to Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan), Policies ENV4 and DP7 of the adopted East Lothian Local Plan 2008, the Scottish Historic Environment Policy Statement: June 2016 and Scottish Planning Policy: June 2014.

2.3.2 If approved the proposal would set an undesirable precedent for similar types of development in the Gullane Hill part of the Gullane Conservation Area. The cumulative effect of such development would neither preserve nor enhance but would be harmful to the character and appearance of the Gullane Conservation Area.

2.3.3 It has not been demonstrated that the proposed house could be built without significant detriment to the existing trees and shrubs that are an important landscape feature of the Gullane Hill part of the Gullane Conservation Area. More of the trees both on and adjacent to the site would be impacted by the development than included for removal in the proposals and the proposed development does not conform to British Standard BS5837:2012 'Trees in relation to design, demolition and construction'.

Given the proximity of the trees on the site to the proposed house, including the large significant beech trees, and the lack of unshaded and usable garden ground proposed within the site, the trees to be retained would come under significant pressure for felling and tree work to try to create usable amenity space, improve light into the building and to address concerns over perceived safety.

Therefore the proposals were not consistent with Policies DP14 (Trees on or adjacent to Development Sites) or NH5 (Protected Trees) of the adopted East Lothian Local Plan 2008.

### 3. Preliminaries

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

1	The drawings specified above
2	The Application for planning permission registered on 6 April 2018
3	The Appointed Officer's Report of Handling
4	A copy of the Decision Notice dated 25 May 2018
5	Copies of the Strategic Development Plan Policy 1B (The Spatial Strategy: Development Principles), Local Plan 2008 policies ENV1 (Residential Amenity), ENV4 (Development within Conservation Areas), DP1 (Landscape and Streetscape Character), DP2 (Design), DP7 (Infill, Backland Garden Ground Development), DP14 (Trees on or Adjacent to Development Sites), DP22 (Private Parking), NH5 (Protected Trees), T1 (Development Location and Accessibility) and T2 (General Transport Impact), and proposed Local Development Plan 2018 policies RCA1 (Residential Character and Amenity), DP1 (Landscape Character), CH2 (Development Affecting Conservation Areas), DP2 (Design), DP7 (Infill, Backland and Garden Ground Development), NH8 (Trees and Development) and T2 (General Transport Impact)
6	Notice of Review dated 2 July 2018 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 original decision 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 refuse planning permission, including all drawings and copies of all representations and objections received in respect of the original application.

4.2. The Members then asked the Planning Adviser to summarise the planning policy position in respect of this matter. The Planning Adviser gave a brief presentation to Members advising that planning permission was originally sought for the erection of a detached house in the rear garden of Gateside. Access would be formed from Nisbet Road and the appearance of the house would be as shown on the accompanying plans and elevation drawings. The property of Gateside is located between Hill Road and Nisbet Road and sits within the Gullane Conservation Area. Surrounding the property are various other residential dwellings set within large garden grounds relating to the original mansion house style, with some examples of cottages of smaller scale in between. Relevant to the determination of this application is Policy 1B of the Strategic Development Plan for Edinburgh and South East Scotland, and Local Plan 2008 policies ENV1, ENV4, DP1, DP2, DP7, DP13, DP22, NH5, T1 and T2 together with all other policies listed in the table at 3.1.5 above.

In considering this application, Officers noted the planning history of the site. Two letters of objection were received during the public consultation process. In assessing the proposal, Officers concluded that the proposal would have an unacceptable impact on the character of the Gullane Conservation Area through both the subdivision of the plot, and the scale, layout and density of the proposed house which was deemed to not be sympathetic to its surroundings and be disruptive to the built form of that area. It was also

concluded that the proposal could not be built without significant impact upon existing trees, which are an important landscape feature of the conservation area. Finally, it was concluded that the proposal if granted would set an undesirable precedent for similar types of development in the Gullane Conservation Area. Planning permission was subsequently refused on the 25th May 2018

- 4.3. Councillor Bruce commented that when considering the application he could not see any reason to disagree with the officer recommendation as this development would appear to be overdevelopment on the site and therefore he was minded to refuse the appeal.
- 4.4. Councillor Currie considered whether or not the impact from the building would be detrimental to the Gullane conservation area and took into consideration that there are other properties in the area which have been further sub-divided with properties built within the larger site. This building would not be totally out of character in the area and the view on protection of the Conservation Area in this case appears to be subjective. Accordingly Councillor Currie was minded to uphold the appeal subject to conditions.
- 4.5. Cllr Kempson agreed with Councillor Bruce and was of the view that this would be overdevelopment and would be minded to refuse this application.
- 4.6. Cllr Hampshire looking at the area, in general, the additional development taken place had occurred in the rear garden and there is a mix of where these developments are located within these gardens with some in the North and others in the South. He considered that the conservation area is attractive due to the mix of architecture. The trees to be removed are not substantial or would cause a loss to the conservation area. Accordingly he was minded to support the application subject to conditions.

Accordingly, following a split decision with two members for the application and two against the Chair exercised his casting vote and the ELLRB decided that the appeal should be upheld and planning permission approved subject to the conditions set out below:

**Conditions:**

**1. Site Setting Out Details:**

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:

- a. the position within the application site of all elements of the proposed development and position of adjoining land and buildings;
- b. 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 Bench Mark or Temporary Bench Mark from which the Planning Authority can take measurements and shall be shown on the drawing; and
- c. the ridge height of the proposed buildings; 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.

#### 2. External Finishes:

A detailed specification and samples, including colours, of all external finishes of the roof and walls of the house hereby approved shall be submitted to and approved by the Planning Authority prior to the use of the finishes in the development. Thereafter the external finishes used shall accord with the details so approved.

Reason:

To ensure the development is of a satisfactory appearance in the interest of the character and appearance of the area.

#### 3. Colour of fence and Gates:

The fences and gates hereby approved shall be a painted or stained a colour or colour to be submitted to and approved by the Planning Authority. Thereafter the fences and gates shall be painted the colour(s) so approved unless otherwise agreed in writing by the Planning Authority.

Reason:

To safeguard the character and appearance of the Conservation Area.

#### 4. Hard surfaces:

Samples of the surface finishes to be used to surface the hardstanding areas to be used as driveway, vehicle parking, footpaths and patios shall be provided for the inspection and approval of the Planning Authority prior to the use of such ground surfacings within the development, and thereafter, the ground surfacings used shall accord with the samples so approved.

Reason:

In the interests of the character and appearance of the area.

#### 5. Obscure glazing

Prior to the occupation of the house hereby approved the 3 roof windows on the rear (north) elevation of the house shall be obscurely glazed in accordance with a detail of the obscure glazing to be submitted to and approved by the Planning Authority.

Reason:

To safeguard the residential amenity of the neighbouring residential property to the north.

#### 5. Tree Retention

No trees or shrubs, which are to be retained on the site, shall be damaged or uprooted, felled, topped, lopped or interfered with in any manner without the previous written consent of the Planning Authority.

Reason:

In the interests of safeguarding the landscape character of the area and the character and appearance of the Conservation area.

## 7. Tree Protection and Construction Exclusion Zone

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, approved by the arboriculturist and confirmed in writing by the Planning Authority. The fencing shall be fixed in to 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 retained on and adjacent to the site, and approved in writing by the Planning Authority.

All weather notices shall 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 formation of walls or related foundations
- \_ 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 shall 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.

Details of any trenches or services in the fenced off areas shall require the prior consent of the Planning Authority and all trenches shall be dug and backfilled by hand and any tree roots encountered with a diameter of 25mm or more shall be left unsevered.

Any surfacing within the Root Protection Area shall be carried out in strict accordance with section 7.4 of BS5837: 2012 "Trees in relation to design, demolition and construction - Recommendations".

Holes for fence posts shall be dug and backfilled by hand and repositioned as required to minimise damage to tree roots. Any tree roots encountered with a diameter of 25mm or more shall be left unsevered.

Reason:

In the interests of safeguarding the landscape character of the area and the character and appearance of the Conservation area.

## 8. Tree Work

All tree work shall be carried out in accordance with BS3998:2010 'Recommendations for Tree Work' and must be approved in writing by the Planning Authority before work is carried out.

No development shall take place on site until a person who has, through relevant education, training and experience, gained recognised qualifications and expertise in the field of trees in relation to construction, been employed by the developer to monitor:

- \_ the installation and position of the temporary protective fencing
- \_ operations relating to the surface treatments of the driveway and parking areas within the tree root protection areas
- \_ tree removals
- \_ fence construction within the tree root protection areas.

Reason:

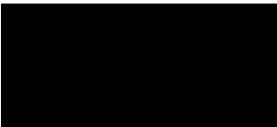
To safeguard the health and vitality of the trees In the interests of safeguarding the landscape character of the area and the character and appearance of the Conservation area.

#### 9. Construction Access

The only construction access to the site shall be taken along the line of the proposed driveway and temporary protective fencing should be erected at the edges of the proposed drive in accordance with figure 2 of BS5837: 2012 – "Trees in relation to design, demolition and construction ~ Recommendations" for the duration of construction work on site in order to minimise damage to the existing trees.

Reason:

To safeguard the trees in the interests of preserving the character and appearance of the Conservation Area.



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.