



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

**THURSDAY 16 MAY 2019
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON**

Committee Members Present:

Councillor J Williamson (Chair)
Councillor J McMillan (Items 2-4)
Councillor F O'Donnell
Councillor S Kempson

Advisers to the Local Review Body:

Mr P Zochowski, Planning Adviser to the LRB
Mr C Grilli, Legal Adviser to the LRB

Others Present

Mr M Mackowiack, ELC Planner
Mr A Hamilton, Applicant, Item 1
Mr K MacDonald, Agent, Item 2
Mr T Thomas, Agent, Item 3
Mr S Reynolds, Applicant, Item 4

Committee Clerk:

Mrs F Stewart

Declarations of Interest

Councillor McMillan declared an interest in Item 1 on the agenda, Orchard House, Gifford, due to involvement he had had with Gifford Community Council.

Apologies

None

Councillor Williamson, 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 all four planning applications on the agenda prior to the meeting.

Sederunt: Councillor McMillan left the Chamber for the following item.

**1. PLANNING APPLICATION 18/00282/P – REVIEW AGAINST CONDITION
ERECTION OF CAR PORT AT ORCHARD HOUSE, TWEEDDALE AVENUE,
GIFFORD**

The Chair invited the Planning Adviser, who had had no involvement in the original decision, to present a summary of the planning policy considerations in this case.

The Planning Adviser stated that this planning application was for a change of use of public open space to form domestic garden ground, erection of 2 sheds, car port, fencing, walls and gates and formation of hardstanding areas (part retrospective). The application had been approved with the exception of the car port which was the subject of a condition stating that, in its proposed position, the car port would be harmful to the landscape character and appearance of the Gifford Conservation Area. The proposed car port was therefore contrary to Policy 1B of the SESPlan policies, DP2 (Design) and CH2 (Development affecting a Conservation Area) of the Local Development Plan and Scottish Planning Policy 2014.

The Planning Adviser stated that the determining issues in respect of the car port were whether it would be harmfully intrusive within its landscape setting and whether it would be harmful to the character and appearance of the Gifford Conservation Area. The proposed car port would be 8.4m wide, 5.2m long and 2.2m to eaves level and 4.7m to the height of the pitched roof. It would have 3 solid walls and an open front elevation and be constructed of a brick basecourse and timber walls with a pitched slate roof and would be able to accommodate three vehicles.

The Planning Adviser advised that the Council's Landscape Officer's response to the consultation on the application referred to replacement tree planting close to where the car port was proposed and suggested that there would not be sufficient space for the required replacement tree planting to maintain the treed boundary of the site at the junction with Tweeddale Avenue, which in turn would affect the screening effect of the trees on the corner.

The appellant had indicated in his appeal submission that he intended to plant pleached hornbeam trees and this has now been done. The appellant had also provided purchase confirmation of trees for the site.

The Chair thanked the Planning Adviser for his presentation and invited questions. Councillor O'Donnell asked if the car port would be situated on land at the present elevation and the Planning Adviser replied that the car port would be sited at the level of the existing driveway to facilitate access for cars. The Chair enquired if the original application had been for pleached trees, was it likely to have made a material difference to the Case Officer's report. The Planning Adviser replied that as pleached trees had less of a screening effect it was unlikely that they would have been supported by the Landscape Officer. Cllr Kempson queried the variety of trees planted

and whether there was a difference in the height to which they reached and the Planning Adviser replied that although not an expert on trees, as both varieties of tree were fruit trees, it was likely they would grow to a similar height. He added that pleached trees are usually trimmed to maintain their shape before they reach their full height. The Chair also asked if the pleached trees could be an acceptable alternative to the trees originally proposed and the Planning Adviser responded that this was a matter of judgement but that in the view of the Council's Landscape Officer pleached trees were not appropriate. Councillor Kempson asked if the car port could be converted to living accommodation in the future and the Planning Adviser stated that an application for this could be submitted at a future date.

The Chair asked his colleagues if they had sufficient information to proceed to determine the application today and they agreed they had. Comments on the application followed.

Councillor Kempson stated that the approach road to Gifford is very attractive and, in her view, the proposed car port would intrude significantly on the landscape and be harmful to the Conservation Area. She was therefore minded to support the Case Officer's decision not to grant the application.

Councillor O'Donnell agreed with her colleague. She considered that the proposed car port would be very visible on the approach road to Gifford and would change the character of the landscape. She was not against a car port in principle and she noted that Officers had suggested alternative designs. She would therefore support the Case Officer's decision.

The Chair stated that he concurred with both of his colleagues. He considered that the proposals would have a detrimental impact on the amenity of the area. He had also noted that alternative designs had been suggested to the applicant.

Decision

The ELLRB unanimously agreed to uphold the original decision of the Planning Officer to refuse the application and rejected the appeal for the reason stated in the Decision Notice dated 5 October 2018, namely:

1. In its proposed position, the carport would be harmfully intrusive and exposed within its landscape setting, harmful to the landscape character and appearance of the Gifford Conservation Area. Accordingly the proposed carport is contrary to Policy 1B of the South East Scotland Strategic Development Plan (SESplan), Policies DP2 and CH2 of the adopted East Lothian Local Plan 2018, and with Scottish Planning Policy: June 2014.

Sederunt: Councillor McMillan returned to the Chamber.

2. PLANNING APPLICATION 18/00962/P – REVIEW AGAINST REFUSAL ALTERATIONS TO HOUSE COMPRISING ENLARGEMENT OF WINDOW TO FORM FRENCH DOORS AND ASSOCIATED EXTERNAL WORKS AT POINTGARRY HOUSE, 20C WEST BAY ROAD, NORTH BERWICK

The Chair invited the Planning Adviser, who had had no involvement in the original decision, to present a summary of the planning policy considerations in this case.

The Planning Adviser, stated that this application sought consent for alterations to a category C listed building located within the designated North Berwick Conservation Area. The property at 20C West Bay Road was a large house, subsequently subdivided into three smaller houses. The applicant's home was a three storey property at the north wing of the building with its main entrance door positioned at the side of the house.

The Planning Adviser advised that the proposed alterations to the house were the enlargement of an existing window to the north of the west side of the front elevation of the building. Although application was made for planning permission and Listed Building Consent, it was the application for planning permission that was being appealed. A separate process of appeal to the DPEA was required for Listed Buildings Consent.

The Planning Adviser stated that North Berwick Community Council had objected to the proposal on the grounds that the alteration would destroy the symmetry of the whole building and would have a significant impact on the appearance of the building in the Conservation Area. Relevant planning policies were Policy 1B of the SESplan; policy CH1 Listed Buildings; Policy CH2 Development Affecting Conservation Areas and Policy DP5 Extensions and Alterations to Existing Buildings all of the East Lothian Local Development Plan 2018 (LDP). Relevant material considerations included national planning advice contained in Scottish Planning Policy (SPP) 2014; LDP Supplementary Planning Guidance Cultural Heritage and the Built Environment approved by Council in September 2018. The reason for refusal of the application were given in the Decision Notice included in the papers.

The Chair thanked the Planning Adviser for his presentation and invited questions. Councillor O'Donnell stated that she was not unsympathetic to the reasons why the applicant wished to make the proposed alterations. She sought clarification from the Planning Adviser on planning policy with regard to access to the property and was advised that Listed Building Consent would always be required for such alterations. The Planning Adviser also advised on the approximate distance from the main road to the window. Councillor McMillan enquired if it was the symmetry of the building which was protected rather than the view and the Planning Adviser confirmed that as a listed building that was correct although the view within a Conservation Area was also important. The Chair asked if planning consent would still be required if a ramp was placed at the front door to ease access. The Planning Adviser confirmed that Listed Building Consent would be required, as the ramp would be attached to the front door of the building.

The Chair asked his colleagues if they had sufficient information to proceed to determine the application today and they agreed they had. Comments on the application followed.

Councillor Kempson stated that the property was a most attractive symmetrical building and, in her view, the proposals would spoil the architectural character of the building. She was therefore minded to support the original decision of the Case Officer.

Councillor McMillan stated that enlarging the window to form French doors would significantly change the appearance of the property and he supported the original decision.

Councillor O'Donnell noted that planning policy DP5 (Extensions and Alterations to Existing Buildings), states alterations must be of a size, form, proportion and scale appropriate to the existing building. She considered that the proposed French doors did not meet this criteria and therefore also supported the original decision.

The Chair agreed with the Case Officer's reasons for refusal.

Decision

The ELLRB unanimously agreed to refuse the application for the reason stated in the Decision Notice dated 8 November 2018, namely:

- 1 The enlargement of the window opening and the installation of French Doors within the enlarged opening would appear significantly different to the remaining windows that would continue to exist on the building. Such a change to the size, scale and appearance of that window opening would harmfully interrupt the balanced symmetry of the west elevation of the listed building and would detract from, and be harmful to, the special architectural or historic interest of the listed building. This in turn would neither preserve nor enhance but would be harmful to the character and appearance of this part of North Berwick Conservation Area contrary to Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan) and with Policies CHI (Listed Buildings), CH2 (Development Affecting Conservation Areas) and DP5 (Extensions & Alterations to Existing Buildings) of the adopted East Lothian Local Development Plan 2018, East Lothian Local Development Plan Supplementary Planning Guidance 2018, Cultural Heritage and the Built Environment and Scottish Planning Policy: June 2014

3 PLANNING APPLICATION 18/01116/P – REVIEW AGAINST REFUSAL ALTERATIONS TO AND CHANGE OF USE FROM OFFICE (CLASS 2) TO HOT FOOD TAKE AWAY (SUI GENERIS) AT 43 QUALITY STREET, NORTH BERWICK

The Chair invited the Planning Adviser, who had had no involvement in the original decision, to present a summary of the planning policy considerations in this case.

The Planning Adviser, stated that the application sought planning permission for alterations to and the change of use from office class 2 to hot food takeaway at 43 Quality Street North Berwick.

The Planning Adviser stated that the premises were located on the corner of Forth Street and Quality Street and had white rendered walls. The relevant planning policies were the East Lothian Local Development Plan 2018, TC2 (Town Centres), TC4 (Hot Food Outlets), CH2 (Conservation Areas), DP5 (Alterations and Extensions) and T2 (General Transport Impact). He also advised that 13 written objections to this application had been received, as well as a number of further representations. Concerns raised included parking issues, noise levels (especially at night), food smells due to the proposed extraction system and litter. North Berwick Community Council were opposed to the change of use and believed it was not a good location for

a take-away business. They also highlighted road safety concerns due to increased traffic.

The Planning Adviser advised Members that they must consider whether the proposed take-away business and proposed alterations were acceptable at this location. The change of use was acceptable in principle, providing it was environmentally acceptable and complied with planning policies. He also advised that the cowl, which formed part of the original application, was no longer proposed. The Council's Environmental Health department had advised that there was potential for the proposals to result in undesirable odours, but did not object to the application if it was subject to appropriate conditions. The Transportation Service had objected to the proposal, believing that it would have a detrimental impact on the junction at this location and lead to irresponsible parking. The Transportation Service stated that the proposed takeaway use at this site would be likely to result in irresponsible parking next to a busy junction and create a hazard to pedestrians and other road users in a heavily trafficked area. The appellants, in their review statement, addressed the reasons for refusal on traffic grounds, stating that there may be concerns over road safety and congestion at the east end of North Berwick but that these would be exacerbated by a hot food outlet. He claimed that patterns of behaviour were well established in the town and that illegal parking can be dealt with by the usual enforcement mechanisms.

The Chair thanked the Planning Adviser for his presentation and invited questions. Councillor O'Donnell stated that businesses should not be held responsible for the irresponsible parking of drivers. She enquired if no premises with double yellow lines outside would be granted consent for a take-away and the Planning Adviser replied that each application was considered on its own merits. Councillor O'Donnell also asked if the applicants could take any action which would mitigate against cars being parked outside the premises and was advised that Road Services would have taken all options into account in its response. The Planning Adviser also provided clarification on the position of the replacement device to the cowl and on parking enforcement. In response to another question from the Chair, Carlo Grilli, Service Manager for Legal and Procurement, advised that planning decisions were made irrespective of ownership of a property.

The Chair asked his colleagues if they had sufficient information to proceed to determine the application today and they agreed they had. Comments on the application followed.

Councillor Kempson stated that the site visit had proved useful in showing how busy the junction was and how narrow the pavement was outside the premises. In her experience, there was often irresponsible driving and parking outside takeaway businesses and, at this location, the consequences could be very serious indeed. She was therefore not inclined to support this application.

Councillor McMillan was concerned that there would be a risk to public safety, particularly to pedestrians, at busy periods. Potential environmental risks had also been highlighted in the papers. While he would normally always wish to support local businesses, he considered that there were sufficient concerns highlighted to refuse the application.

Councillor O'Donnell stated that it was very unfortunate that there were issues which could prevent a business coming into North Berwick. However, she found it difficult to ignore the report from Road Services and would therefore support the Officer's decision.

The Chair stated that he was in agreement with his colleagues. The issue with traffic and parking was an important one and he would have to support the original decision.

Decision

The ELLRB unanimously agreed to refuse the application for the reason stated below:

- 1 The proposed hot food takeaway use would be likely to lead to irresponsible parking and waiting outside the premises, including on double yellow lines, on the footway or double parking. Such irresponsible parking would exacerbate the problem of limited visibility to the right for drivers of vehicles emerging from Forth Street, could result in congestion, and overall would result in a hazard to pedestrians and other road users in a heavily trafficked area. On this consideration the proposed development is contrary to Policies TC4 and T2 of the adopted East Lothian Local Development Plan 2018.

4 PLANNING APPLICATION 18/01107/PP – REVIEW AGAINST REFUSAL PLANNING PERMISSION IN PRINCIPLE FOR THE ERECTION OF ONE HOUSE AND GARAGE AT ANNFIELD, 14 CAMPTOUN HOLDINGS, NORTH BERWICK

The Chair invited the Planning Adviser, who had had no involvement in the original decision, to present a summary of the planning policy considerations in this case.

The Planning Adviser, stated that the application sought planning permission in principle for the erection of a dwelling house and garage on a site at Camptoun Holdings near Drem that lies within the countryside as designated by the East Lothian Development Plan. Similar applications for a house on this site had been refused by the Council previously in 2000, 2011, and this decision was subsequently upheld at the Local Review Body (LRB) in 2011 and again in 2014, with a subsequent appeal to the LRB in 2015.

The Planning Adviser stated that no objections to the application had been received and one letter of support had been submitted. He also summarised the comments received from Consultees; Road Services and Scottish Water raised no objection; and both the Council's Contaminated Land Officer and Landscape Officer made recommendations should the application be approved. Relevant to the determination of this application were the development in the countryside policies of the East Lothian Local Development Plan 2018 (LDP), specifically policies DC1 (Rural Diversification); Policy DC4 (New Build Housing in the Countryside) and Policy DC5 (Housing as Enabling Development). Also of relevance were LDP policies DC9 (Special Landscape Areas) and DP2. The LDP became the adopted plan for East Lothian on 27 September 2018.

In considering the application the Planning Officer had concluded, in line with her pre application response, that the application was not supported by Policy DC1 in that it was not justified by any agricultural or employment use. She also considered that the

application was not supported by Policy DC4 nor DC5 and that there were no exceptional circumstances that would justify the setting aside of policies DC1, DC4 or DC5 and that it was not therefore able to be supported under national or local plan policy.

Material considerations considered by the Planning Officer included SPP 2014 (national policy) and the location of the property within a cluster of residential properties as part of the Camptoun Holdings, but not defined as a settlement on the LDP map. The Planning Officer refused the application as it was contrary to planning policy and, if approved, would set an undesirable precedent for the development of new houses in the countryside, to the detriment of its character and amenity.

In his review submission the appellant had offered several material considerations which would, in his opinion, justify the application. They included the current derelict state of the site, the definition of cluster and the location of the site. He also cited the wrongful use of the word 'suburbanisation' as a reason for the Council's refusal.

In conclusion, the Planning Adviser stated that the determining issues in this application were whether it met policy requirements and whether there were any other material considerations that should be taken into account.

The Chair thanked the Planning Adviser for his presentation and invited questions. In response, the Planning Adviser provided clarification on the plans and advised that previous applications would have been refused against similar development plans of the Council's previous planning policy. Broadly speaking, Camptoun was classified as being in the countryside and policies were in place to protect the countryside from development. The Legal Adviser, added that this application needed to be judged on its own merits and previous decisions were not relevant to this application. On being asked to comment on the word 'suburbanisation', the Planning Adviser replied that the applicant argued that his proposals would not be a suburb in the same way as there are suburbs in cities. Councillor McMillan noted that the site was derelict on the site visit and asked if the clearing of the site would be viewed as environmental betterment. The Planning Adviser replied that Officers would always consider environmental betterment and could issue a statutory notice on land if it was deemed harmful to the amenity of the surrounding area.

The Chair asked his colleagues if they had sufficient information to proceed to determine the application today and they agreed they had. Comments on the application followed.

Councillor Kempson found it difficult to reach a decision on this application since the site, in its present condition, was unattractive. However, she had been persuaded by the discussion which had taken place that the argument for setting a precedent was a strong one. She would therefore support the original decision of the Planning Officer.

Councillor McMillan agreed that arriving at a decision on this application was difficult. However, he did consider that the present condition of the site would have an undesirable impact on neighbours and the environment. On balance, therefore, he was minded to uphold the appeal.

Councillor O'Donnell stated that the East Lothian Local Development Plan had been many years in preparation and had been widely consulted upon. As this plan had

been approved in September 2018, she was minded to adhere to the Council's planning policy and refuse the application.

The Chair was also minded to refuse the application, noting that the proposed house was not related to any employment in the area.

Decision

The ELLRB agreed by a 3:1 majority to refuse the application for the reasons set out in the Decision Notice dated 20 December 2018, namely:

1. The erection of a house on the application site would be new build housing development in the countryside of East Lothian 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 erection of a house 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 been demonstrated; and which is not promoted to fund the restoration of a listed building, building of recognised heritage value or significant designated feature of the built or natural environment, the retention of which is desirable. The proposal is therefore contrary to Policy DC5 of the adopted East Lothian Local Development Plan 2018.

3. If approved the proposed development would set an undesirable precedent for the development of new houses in the countryside of East Lothian, the cumulative effect of which would be the suburbanisation of the countryside to the detriment of its character and amenity.

Signed

Councillor J Williamson
Convener of Local Review Body (Planning)