

REVIEW DECISION NOTICE

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

Application for Review by Mr Gary Anderson of 11 Harvey Avenue, Wallyford EH21 8FA for of decision to refuse Planning Permission for change of use of open space to garden ground, formation of decked area, erection of summerhouse and fencing (retrospective), 11 Harvey Avenue, Wallyford EH21 8FA.

Site Address: 11 Harvey Avenue, Wallyford EH21 8FA

Application Ref: 22/00352/P

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

Date of Review Decision Notice: 8 December 2022

Decision

The ELLRB unanimously agreed to uphold the decision of the Planning Officer and to refuse planning permission for the reasons 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, 17 November 2022. The Review Body was constituted by Councillor J McMillan (Chair), Councillor L Allan, and Councillor D Collins. All three members of the ELLRB had attended a site visit accompanied by the Planning Adviser in respect of this application prior to the meeting.

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

Mr M Mackowiak, Planning Adviser to the LRB
Mr C Grilli, Legal Adviser/Clerk to the LRB
Ms F Currie, Clerk

2. Proposal

- 2.1. The planning application is for review of decision to refuse Planning Permission for change of use of open space to garden ground, formation of decked area, erection of summerhouse and fencing (retrospective), 11 Harvey Avenue, Wallyford EH21 8FA..
- 2.2. The planning application was registered on 28 March 2022 and the Decision Notice refusing the application is dated 30 May 2022.
- 2.3. The reason for refusal of planning permission is more particularly set out in full in the said Decision Notice dated 17 May 2022. The condition and reasons for refusal are summarised

as follows:

1. *The fence that has been erected sits directly adjacent to the north side of the footway and has therefore subsumed what had been an area of open space into the garden of the applicant's house. This has been undermined and negates the contribution that area of open space made to the landscape setting of this part of the modern housing development, Furthermore, the fence by being 1.8m in height and positioned hard up against the footway is a dominating feature that does not respect but is harmful to the visual amenity of the area. The fence together with the summerhouse and decking are inappropriate in terms of their positioning, on what was an area of public open space. They disrupt and do not respect the design and layout of this part of the housing development and have resulted in the loss of the area of open space which was part of the landscape setting of the housing development contrary to Policies OS2 and DP2 of the adopted East Lothian Local Development Plan 2018.*

2.4. The notice of review is dated 29 August 2022.

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: <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Drawing No.</th> <th style="text-align: left;">Revision No.</th> <th style="text-align: left;">Date Received</th> </tr> </thead> <tbody> <tr> <td>1403/LP</td> <td style="text-align: center;">-</td> <td>24.03.2022</td> </tr> <tr> <td>1403/1</td> <td style="text-align: center;">-</td> <td>28.03.2022</td> </tr> </tbody> </table>	Drawing No.	Revision No.	Date Received	1403/LP	-	24.03.2022	1403/1	-	28.03.2022
Drawing No.	Revision No.	Date Received								
1403/LP	-	24.03.2022								
1403/1	-	28.03.2022								
ii.	The Application for planning permission registered on 3 February 2022									
iii.	The Appointed Officer's Submission									
iv.	Policies of the adopted East Lothian Local Development Plan 2018 relevant to the determination of the application: <ul style="list-style-type: none"> - DP2 (Design); - OS2 (Change of use to Garden Ground) 									
v.	Notice of Review dated 29 August 2022 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 outlined the background, location and detailed proposals contained in planning application no. 22/00352/P in relation to 11 Harvey Avenue, Wallyford EH21 8FA.

The Planning Adviser commented that the house the subject of this application is part of a modern housing development approved in October 2017 by planning permission for the erection of 185 houses and associated works. The approved layout includes roadside boundary treatments including walls and hedges. The applicant's house faces on to the public road of Harvey Avenue to the east. To the north and west are areas of garden ground and neighbouring residential properties. The rear garden of the applicant's house is enclosed to the south by a 1.8 meters high brick wall with piers. That wall is separated from the public footway by an area of open space. Planning permission was sought in retrospect for a change of use of open space to domestic garden ground. The area of land the subject of the change of use is irregular in shape and measures approx. 46 square metres. It forms a part of a larger area of open space to the south of the applicant's house that was approved by the grant of planning permission in 2017 (application (ref: 17/00384/AMM)).

A 1.83m high close boarded timber fence has been erected to the south and west to enclose the area of open space and the existing boundary wall to the south (side) of the applicant's house. A gate opening has been formed within the existing south boundary wall to provide access from the applicant's rear garden to the enclosed area of land now in use as domestic garden ground.

The Planning Adviser then confirmed that Planning permission was further sought retrospectively for the formation of decked area to the west of the area of open space and for the erection of a summerhouse on that decked area. The summerhouse that has been erected is constructed in timber and has a flat roof finished in single ply membrane. It is some 2.8 meters in height from the level of the decked area and has a footprint of some 16 square meters. It features a window on its west elevation and sliding glazed doors on the north elevation. The Planning Adviser then highlighted the relevant policies for consideration.

The Planning Adviser noted that due to their positioning in relation to neighbouring residential properties the formed decked area and erected summerhouse do not give rise to a loss of amenity to any neighbouring residential properties through overlooking or overshadowing. The applicant's house and garden occupy a prominent corner site of the housing development and is readily visible from public views. The housing development is set within a landscaped setting which serves to soften the impact of the housing and other components of development. Part of this landscape setting is derived from the area of public open space located to the south of the applicant's house. The area of open space the subject of the proposed change of use forms part of a larger area of open space approved for the housing development. The purpose or function of that area of open space is to ensure that the 1.8m high boundary enclosures of the rear garden of the applicant's house, like the other houses on the north side of that area of open space were set back and separated from the public footway. Such a separation of the 1.8m high boundary enclosures from the public footway softens the appearance of those boundary enclosures and therefore is part of the landscape setting of this part of the modern housing development. The fence that has been erected sits directly adjacent to the north side of the footway and has therefore subsumed what had been an area of open space into the garden of the applicant's house. Thus the function of that area of open space – to separate the boundary enclosure of the rear garden from the footway - has been undermined and

negates the contribution that area of open space made to the landscape setting of this part of the housing development. Accordingly, the case officer assessed the constructed fence and the summerhouse and concluded that the loss of the area of open space is contrary to Policy OS2 of the adopted East Lothian Local Development Plan 2018

Furthermore the fence by being 1.8m in height and positioned hard up against the footway is a dominating feature that does not respect but is harmful to the visual amenity of the area. The fence together with the summerhouse and decking are inappropriate in terms of their positioning, on what was an area of public open space. They disrupt and do not respect the design and layout of this part of the housing development and have resulted in the loss of the area of open space which was part of the landscape setting of the housing development contrary to Policy DP2 of the adopted East Lothian Local Development Plan 2018. Therefore in conclusion the loss of the area of open space and the erection of the fence, summerhouse and associated decking on it is harmful to the character, appearance and amenity of this part of the housing development contrary to Policies OS2 and DP2 of the adopted East Lothian Local Development Plan 2018. There are no material planning considerations that outweigh the fact that they are contrary to the Development Plan.

The Planning Adviser confirmed that unless otherwise approved by the members the change of use of open space, the erected fence, summerhouse and associated decking would all be unauthorised and are therefore a breach of planning control.

The Planning adviser then summarised the reasons for refusal followed by the appellant's arguments in their submission.

- 4.3. The Planning Adviser replied to questions raised by the Chair.
- 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. The Chair commented that all matters like this are difficult to determine. He further commented that having visited the site today and having received an explanation of open space he was able to appreciate the benefit around the estate of retaining areas of open space. Therefore, he was minded to support the decision of the Planning Officer and refuse the appeal for the reasons set out in the Planning Officer's Report.
- 4.6. Councillor Allan agreed with the comments of the Chair and for the same reasons acknowledged that open space areas make a difference to the overall area within the estate. Accordingly, she was also minded to support the decision of the Planning Officer and refuse the appeal for the reasons set out in the Planning Officer's Report.
- 4.7. Councillor Collins commented that she had initially be torn when she had originally reviewed the papers. However, following the site visit she was of the view that this took away from the look of the area and if everyone else within the estate did the same there would be a significant loss of amenity. Accordingly, she was also minded to support the decision of the Planning Officer and refuse the appeal for the reasons set out in the Planning Officer's Report.

Accordingly, the ELLRB unanimously decided to dismiss the appeal and uphold the decision of the Planning Officer and refuse planning permission for the reasons set out in the Planning Officer's report.

Planning Permission is accordingly refused.



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.