



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

**THURSDAY 17 NOVEMBER 2022
VIA THE DIGITAL MEETINGS SYSTEM**

Committee Members Present:

Councillor J McMillan (Chair)
Councillor L Allan
Councillor D Collins

Advisers to the Local Review Body:

Mr C Grilli, Legal Adviser to the LRB
Mr M Mackowiak, Planning Adviser to the LRB

Other attendees:

Clerk:

Ms F Currie, Committees Officer

Apologies:

None

Declarations of Interest

None

Introductory Statement by the Legal Adviser

The Legal Adviser outlined the procedure for the Local Review Body to reach a decision on the planning application before it. He also asked the Members to confirm that they had viewed all of the documentation which had been available to the planning case officer during his consideration of the application. All members did so.

The Legal Adviser then invited nominations to chair the meeting. Councillors Collins and Allan proposed and seconded Councillor McMillan to chair the Local Review Body (LRB) on this occasion.

1. PLANNING APPLICATION NO. 22/00135/P: ERECTION OF 1 HOUSE AND ASSOCIATED WORKS, LAND WEST OF LIBERTY HALL, LETHAM, HADDINGTON, EAST LoTHIAN

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 outlined the proposals contained in planning application no. 22/00135/P for the erection of 1 house and associated works. He set out in detail the proposals contained within the application and provided details of the site and surroundings. He also summarised the planning history of the site and the reasons for refusal of previous planning applications in 2005 and 2006.

He reminded Members that applications should be determined in accordance with the development plan for the area unless material considerations indicate otherwise: in this case the South East Scotland Development Plan (SESplan) and the adopted East Lothian Local Development Plan 2018 (LDP). He outlined the most relevant policies of the LDP, which were: DC1 (Rural Diversification); DC4 (New Build Housing in the Countryside); DP2 (Design); T1 (Development Location and Accessibility); T2 (General Transport Impact); and NH8 (Trees and Development). Also material to the determination of the application was the planning history of the site and the decision to refuse planning permission for the erection of a house and a double garage on the site from 2005 and 2006 and the subsequent decision by the DPEA to dismiss an appeal ref: P/PPA/201/156 for that house.

The Planning Adviser summarised the case officer's assessment of the application which confirmed that the site was in a countryside location characterised by low density dispersed built form within an agricultural landscape. The site was not identified in the adopted LDP as being within a settlement and the LDP had not allocated the land of the site for housing development. The case officer had noted that the proposed house, double garage and driveway would be positioned on the northern part of the site which was the part of the application site not covered by trees. It would be readily visible from public views from the road to the north of the site and would be seen from the neighbouring house, garage and driveway at Barrel Cottage. The case officer had confirmed that, by virtue of their size, architectural form, positioning and materials, the proposed house and garage would not have a significant adverse impact on the rural character and amenity of the area. Similarly, it would not give rise to harmful overlooking or harmfully overshadow any neighbouring property or land. The proposed house would not lead to any detrimental loss of privacy to any surrounding residential properties, and would have sufficient private amenity ground and land for parking and turning of vehicles.

The case officer had also assessed whether or not the proposals were acceptable with regard to their impact on the character and appearance of the open countryside of East Lothian and, if not, whether there were any other material planning considerations that would outweigh this conflict with the development plan. He noted that Policy DC1 of the LDP stated that development in the countryside, including changes of use or conversions of existing buildings could be supported in principle where they were for:

- a) agriculture, horticulture, forestry, infrastructure or countryside recreation; or
- b) other businesses that have an operational requirement for a countryside location, including tourism and leisure uses.

Also relevant to this proposal was Policy DC4 of the LDP which stated that new build housing development would only be supported in the countryside out with the constrained coast where there was no available existing house or no appropriate existing building suitable for conversion to a house in the locality and:

(i) In the case of a single house, the Council was satisfied that it was a direct operational requirement of a viable agricultural, horticultural, forestry, countryside recreation or other business, leisure or tourism use supported in principle by Policy DC1. Policy DC4 also stated that the Council would obtain independent advice from an Agricultural and Rural Advisor on whether there was a direct operational requirement for an associated house.

Despite arguments put forward by the applicant, the case officer concluded that Liberty Hall was not within a settlement of any scale identified within the adopted LDP and, as such, the application should be assessed against Policies DC1 and DC4. The case officer noted that no case had been made for the proposed house to meet an agriculture, horticulture or forestry need. Furthermore, no other operational need had been advanced to justify the erection of a house on the application site in this countryside location.

The case officer's report had emphasised that Policy DC1 and DC4 were in place to protect East Lothian's countryside. The development of a new house and double garage on the site would, if approved, set an unwanted precedent for the development of new houses in the countryside and the cumulative effect of which would result in a detrimental impact on the rural character and amenity of the open countryside.

The case officer had also assessed the proposals against policy NH8 of the LDP. The proposed house, double garage and driveway would be positioned on the northern part of the application site; the part of the site not covered by trees. However, the land was part of a long established Ancient Woodland with Liberty Southwood directly to the south of the proposed site. The Council Policy and Projects Officer provided comments on the application and pointed to Policy NH8 of the LDP that stated that development will only be permitted where, in the case of woodland, its loss was essential to facilitate development that would achieve significant and clearly defined additional public benefits in line with the Scottish Government's Policy on Control of Woodland Removal. In particular the loss of Ancient Woodland would not be supported.

The applicant had stated that the woodland to the south was mature and in need of maintenance and that the development of a home on the application site would not impact on the integrity of the woodland. However, no information had been submitted to support this assertion in terms of an arboriculture statement or Tree Report. Since it had not been demonstrated that the proposal would not harm the adjacent Ancient Woodland, the case officer had considered that it was not consistent with Policy NH8.

In conclusion, the case officer's report stated that the proposals were considered not to be in accordance with the provisions of the stated relevant Development Plan policies and there were no material considerations which outweighed that the proposal did not accord with the Development Plan.

The Planning Adviser then turned to the applicant's appeal submission which highlighted a number of points relevant to the assessment of this application. In particular the planning agent addressed in detail all three reasons for refusal of the application. In respect of reason 1 (policy DC1), the agent argued that the area was characterised by a number of homes, that the proposals would not amount to a damaging precedent; the criteria of policies DC1 and DC4 were too restrictive when applied in this case and that the proposals would have no harmful impacts on the countryside. On reason 2 (policy DC4), the agent did not accept that granting planning permission would set a harmful precedent and argued that the proposed high quality development was sensitive to its surroundings and was on a site that played no integral role in its countryside setting. Finally, on reason 3 (policy NH8), he asserted that the site was not within a wooded area, the design and layout specifically took into consideration the woodland to the south and the development would not have any negative impacts on it. He therefore argued that it was unnecessary for land out with the site and unaffected by the development to be surveyed. In conclusion, the agent's statement highlighted that the site at Liberty Hall provided an opportunity to develop a high quality addition to an existing hamlet and wider cluster of residential properties; that the new home would formalise the eastern edge of the row of properties and would occupy a relatively enclosed site; and that the development would enhance the overall character and setting of Liberty hall in removing an untidy and vacant plot and replacing it with an attractive family home appropriate to the character and appearance of its surroundings.

The Planning Adviser advised that one further representation had been received and he summarised the comments contained therein. He concluded his presentation by reminding Members that they had the option to seek additional information, if required.

The Planning Adviser responded to questions from Members on the use of an adjacent field, the impact of any proposed development on nearby watercourses and woodland and the definition of operational and locational need as set out in planning policy DC1.

The Chair asked his colleagues to confirm that they had attended the site visit and if they were satisfied that they had sufficient information before them to determine the application. They confirmed this to be the case.

The Chair then invited Members to give their views on the application.

Councillor Allan stated that, with regret, and having considered relevant planning policies, she could not uphold the appeal. She was concerned that a precedent would be set and she did not think that the proposals would fit with policies DC1 and DC4. She was minded to support the planning officer's original decision and to refuse planning permission for the reasons set out in his report.

Councillor Collins said that, in her view, the land was not fit for agricultural use; at the site visit she had noted that it was boggy, contained clay loam and would be difficult to use. She thought that the land might be worth more to the nearby livery if retained as a field but, if approval were granted for the proposed development, she did not consider that this would create a precedent given the limited potential uses for the land. She also felt that if a house were built on this land it may have a benefit in protecting the nearby woodland, more so than if the land was left

undeveloped. On consideration of all of these matters, she was minded to uphold the appeal and to grant planning permission.

The Chair agreed with the general comments made by Councillor Collins, however he was not convinced that a house in this area would be necessary nor add value. He was also concerned about the cumulative effect of development in this area. He stated that had there been an operational requirement for the house then he may have supported the application, however this was not the case. On balance, he was minded to support the decision of the planning officer, particularly in relation to policy DC1, and to refuse planning permission.

Decision

The ELLRB agreed, by a majority, to uphold the decision of the planning officer and to refuse planning permission for the reasons set out in the original decision notice.

2. PLANNING APPLICATION NO. 21/00352/P: CHANGE OF USE OF OPEN SPACE TO DOMESTIC GARDEN GROUND, FORMATION OF DECKED AREA, ERECTION OF SUMMERHOUSE AND FENCING (RETROSPECTIVE), 11 HARVEY AVENUE, WALLYFORD, EH21 8FA

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 outlined the proposals contained in planning application no. 22/00352/P in which permission was sought retrospectively for a change of use of open space to domestic garden ground, formation of a decked area and erection of a summerhouse and fencing. He set out in detail the proposals contained within the application and provided details of the site and surroundings.

He reminded Members that applications should be determined in accordance with the development plan for the area unless material considerations indicate otherwise: in this case the South East Scotland Development Plan (SESplan) and the adopted East Lothian Local Development Plan 2018 (LDP). He outlined the most relevant policies of the LDP, which were: Policy OS2 (Change of use to Garden Ground); and DP2: (Design).

The Planning Adviser noted that no public letters of objection had been received in relation to the application. He then summarised the case officer's assessment of the application with particular reference to policies OS2 and DP2. Regarding policy OS2, the case officer had noted that a change of use of public open space to garden ground would be supported where it would not result in unacceptable loss of visual or recreational amenity or harm the integrity of a landscaping scheme, or set a precedent that if followed would do so. Due to their positioning in relation to neighbouring residential properties the formed decked area and erected summerhouse did not give rise to a loss of amenity to any neighbouring residential properties through overlooking or overshadowing.

It was also noted that, the applicant's house and garden occupied a prominent corner site of the housing development and was readily visible from public views. The housing development was set within a landscaped setting which served to soften the impact of the housing and other components of development. Part of this landscape setting was derived from the area of public open space located to the south of the applicant's house. Furthermore, the area of open space the subject of the proposed change of use

formed part of a larger area of open space approved for the housing development. The purpose or function of that area of open space was 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 softened the appearance of those boundary enclosures and therefore was part of the landscape setting of this part of the modern housing development.

The fence that had been erected sat directly adjacent to the north side of the footway and had 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 - had been undermined and negated the contribution that area of open space made to the landscape setting of this part of the housing development. Accordingly, the case officer had assessed the constructed fence and the summerhouse and concluded that the loss of the area of open space was contrary to policy OS2.

Furthermore, the fence by being 1.8m in height and positioned hard up against the footway was a dominating feature that did not respect but was harmful to the visual amenity of the area. The fence together with the summerhouse and decking were inappropriate in terms of their positioning, on what was an area of public open space. They disrupted and do not respect the design and layout of this part of the housing development and had 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.

Therefore, the case officer had concluded that the loss of the area of open space and the erection of the fence, summerhouse and associated decking on it was harmful to the character, appearance and amenity of this part of the housing development contrary to policies OS2 and DP2 of the adopted LDP. There were no material planning considerations that outweighed the fact that they were contrary to the Development Plan. The application had been refused for the reason set out in the original decision notice.

The change of use of open space, the erected fence, summerhouse and associated decking were all unauthorised and were therefore a breach of planning control.

The Planning Adviser then turned to the applicant's appeal submission which argued that the title deeds of the property did not state that the land in question must be used as open space. The applicant also stated that, when purchasing the property, he had not been given a development plan detailing which areas of land were classed as open space throughout the development. In relation to the fence and summerhouse, he asserted that both met the requirements of permitted development legislation – as per the Government website.

The Planning Adviser concluded his presentation by reminding Members that they had the option of seeking further information, if required.

The Planning Adviser responded to questions from Members on ownership of the land, its designation as open space within the wider housing development and the planning requirements relating to any change of use of the land, fencing and erection of a summerhouse. He also confirmed that the planning service would provide advice on all of these matters, when approached by an applicant.

The Chair asked his colleagues to confirm that they had attended the site visit and if they were satisfied that they had sufficient information before them to determine the application. They confirmed this to be the case.

The Chair then invited Members to give their views on the application.

The Chair commented that all matters like these were difficult to determine. He added that having visited the site and having heard the 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 planning permission.

Councillor Allan agreed with the comments of the Chair and acknowledged that open space areas made a difference to the overall feel of the area within the estate. Accordingly, she was also minded to support the decision of the planning officer.

Councillor Collins said she was initially torn when reviewing this application. However, following the site visit, she came to 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.

Decision

The ELLRB agreed unanimously to uphold the decision of the planning officer and to refuse planning permission for the reasons set out in the officer’s report.

Signed

Councillor John McMillan
Chair of Local Review Body (Planning)