



Wood Associates
44 Morningside Road
Edinburgh EH10 4BF

**The Clerk to the Local Review Body
Committee Team
Communications and Democratic Services
East Lothian Council
John Muir House
Haddington
East Lothian
EH41 3HA**

19th November 2024

Dear Clerk to the Local Review Body

**Re Planning Application reference No 24/00417/P – New House Ferneylea,
Oldhamstocks, Innerwick, East Lothian TD13 5YN**

In response to the refusal of the above planning application dated 23rd August 2024 I submit the following supporting information as part of the application to request that the case is reviewed under section 43A of the Town and Country Planning (Scotland) Act 1997.

Items stated in refusal document and response to each item as set out below:-

Item 1. The refusal notice states the application site would be new building in the countryside and on land that is not allocated for development. The Scottish Government Planning Appeal notice dated 30th of October 2008 (appendix 1) confirmed that the area of the site as applied for is classed as a domestic garden, not agricultural land as the planning case officer states he assumes as it 'has the appearance of agricultural land'. Appearance is not fact.

Item 2. The refusal states no applicable reason for allowing development in the countryside has been provided, following on from my answer to point 1 we do not consider the land to be agricultural but is a rear garden and as such we suggest no reason need be provided.

Item 3. We suggest that the addition of a single house undermining special strategy and causing a significant increase in private car use is something of an exaggeration.

Item 4. As defined above the application site is classed as garden area by The Scottish Government and not Prime Agricultural Land. As stated in the email by Neil Miller

Planning Officer ELC dated 29th November 2022, he confirms that the application site is garden ground. (Appendix 2)

Conclusion. The case officer's opinion is therefore at total variance to the Scottish Government Reporter who granted change of use from agricultural to garden ground. We believe that the Scottish Government decision takes precedence.

The applicant has stated that if there is any doubt on this matter he will be determined to take this matter to the Court of Session.

Yours sincerely

A large black rectangular redaction box covering the signature area.

Harry Wood

APPENDIX 1

Directorate for Planning and Environmental Appeals

Appeal Decision Notice

T: 01324 696 400
F: 01324 696 444
E: dpea@scotland.gsi.gov.uk



Decision by Edward Hitchings, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: P/PPA/210/169
- Site address: The Old Farmhouse, Ferneylea, Oldhamstocks, East Lothian TD13 5YN
- Appeal by Mr & Mrs M A Young against the decision by East Lothian Council
- Application for planning permission 07/00318/FUL received on 19 April 2007 (revised form) refused by notice dated 9 January 2008
- The development proposed is the change of use of agricultural land to form domestic garden ground, the erection of a domestic garage & store and pond formation (part retrospective)
- Application drawings: FL/3, 05-016-001, 002 & 003
- Date of site visit by Reporter: 29 September 2008

Date of appeal decision: 30 October 2008

Split Decision

I dismiss the appeal and refuse planning permission as it relates to a domestic garage & store and pond formation.

I allow the appeal and grant planning permission, in part retrospective, as it relates to the change of use of agricultural land to form domestic garden ground, subject to the following condition:

1. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 as amended (or any order revoking and re-enacting that Order with or without modification), no development of the type specified in Schedule 1, Part 1, Classes 3 & 4 of the Order shall be undertaken within the area hereby approved for use as garden ground and which area of land is delineated hatched blue on the submitted plan FL/3.

(Reason: to protect the landscape character of an Area of Great Landscape Value.)

Background

This proposal is substantially retrospective in that the domestic garage has been completed and the footings of the garden store are in place. These building works have taken place within the area proposed for additional garden ground, which is not now separated from the original garden area behind the house, so that to this extent the change of use to garden ground is also retrospective. The area of the proposed pond, sited within land that is intended to retain its agricultural status, has been excavated and a bank formed at its lower eastern end. However, this excavation was dry at the time of my site visit.

Reasoning

1. The determining issues in this appeal are: (1) whether the proposal accords with policies DC1 & DC4 of the East Lothian Local Plan (LP); and notwithstanding (2) whether approval or refusal is justified by other material considerations.

The Pond

2. The appellants' case indicates that they no longer wish to proceed with the creation of the pond. Nevertheless, it forms part of the refused application that is the subject of this appeal. During my site visit, I also noted that, broadly within the area delineated on the submitted plans, the ground has been excavated and a bank built up to well above ground level on the lower side. There was no detail of the pond formation submitted with the application. The minimum detail that I would require would be the ground contouring, source of water, means of retaining water and drainage provision. Without a good source and through flow of water there could be a risk of stagnation and consequent harm to the living conditions of the nearby residents from smell or insects.

3. I conclude that, in the absence of adequate information, this aspect of the appeal should be dismissed.

Garden Extension

4. The site of the extended garden is part of a small paddock in a gap in a linear group of houses and agricultural buildings. The new garden area would be between the existing garden of the Old Farmhouse and the garden of the adjacent house. In this position, I see no objection in principle to a domestic garden use of the area hatched blue on the submitted plan. The existing garden is of modest size. In this countryside location the garden, as extended, would not be excessively large.

5. However, the garden site would be within a line of buildings on the sloping crest of a prominent ridge within an Area of Great Landscape Value (AGLV). Many of the buildings are on the skyline as seen from the vicinity of the village of Oldhamstocks about 800 metres to the northwest. There are also views into the site from the road to the east and the local access road on the north side of the site. The existing gap has an agricultural hedge on its northern side, but lacks the mature trees that help to soften and partly absorb the nearby buildings including the Old Farmhouse itself. For these reasons, I agree with the council that a condition removing permitted development rights for garden buildings and other features is necessary. This condition would allow the council to retain control of such development and, if appropriate, to grant permission subject to conditions, such as additional landscaping.

6. In a final submission the appellants now believe that the use of this garden area does not need permission, because of the period that they claim that it has been used as part of the garden area of the Old Farmhouse. This lawful use issue is not before me, and my decision should not be taken as expressing any view on this separate matter.

7. The council would wish me to withhold permission until the conclusion of a Section 75 agreement designed to prevent any future development of a house(s) on the land that is the subject of the change of use to a garden. I see no purpose in such an agreement, because any such development would require the grant of planning permission, and is therefore subject to normal planning control.

8. I conclude that, subject to the recommended condition, the garden extension would comply with the development plan, in particular LP policies DC1 & DC4.

Garage and Store

9. As noted above, this is a prominent skyline site in an AGLV. I observed that the completed garage is on the skyline as seen from the northwest and is also in a prominent position as seen from the roads to the east and north. However, I take the view that the double garage is well related to the existing house and, if restricted by condition to domestic use, is a reasonable requirement for a property of this size. Its impact on the AGLV landscape is significant, but this could be ameliorated in time by additional landscaping, including tree planting, that could be the requirement of a planning condition.
10. The garden store would be a continuation of the garage building. It would be set at a lower level on the sloping site, but its width and height above ground level would be similar to the garage part of the building. It would be about 25% longer than the garage section and would also be seen on the crest of the ridge, where it would compound the impact of the garage on the AGLV landscape. Unlike the garage, I am not persuaded that a garden store of this size is justified by the size of the garden, and, therefore, its impact on the landscape over and above that of the garage would not be acceptable.
11. I have considered whether the building would adversely affect the living conditions of the occupiers of the adjoining dwelling, The Rowan Trees, through overlooking and loss of privacy. The garage has only one small window facing in that direction and it is obscure glazed. A condition could be imposed to ensure that this obscure glazing is retained in perpetuity. The store would also have no significant effect on the privacy of this adjoining dwelling because it would be at a lower level and the intervening fence would provide adequate screening.
12. Local residents also raised other concerns, including access to maintain an underground water pipeline that it is claimed runs under the garage/store, and the septic tank and drainage system of The Rowan Trees. The grant of planning permission does not derogate from any legal rights that neighbours may enjoy over the appeal site, so that these are not material planning considerations in this case.
13. The appellants drew my attention to other buildings within the same group that had been permitted. However, I noted that these were lower down the slope and in the main viewpoints, particularly from the village, have a less prominent position in the landscape.
14. I conclude that the garden storage section of the proposed building would cause unjustified harm to the character and appearance of the AGLV, contrary to the development plan in particular LP policies DC1 & DC4. However, the section of the building containing the double garage would be acceptable, and subject to additional landscaping, the retention of obscure glazing on the south side, and the preclusion of commercial use, would comply with these policies.
15. As shown on the submitted plans, the combined garage/store building with internal steps and a slim internal partition would require some redesign for the garage to stand alone. Therefore, I have concluded that for me to grant the garage, but to refuse the store is not practicable.



Edward Hitchings
Reporter



APPENDIX 2

From: [REDACTED]
Date: 29 November 2022 at 11:18:20 GMT
To: [REDACTED]
Subject: Fwd: Planning enquiry Ref: DEV73128; The Old Farmhouse, Ferneylea, Oldhamstocks

Sent from my iPhone

Begin forwarded message:

From: [REDACTED]
Date: 29 November 2022 at 10:40:38 GMT
To: [REDACTED]
Subject: Planning enquiry Ref: DEV73128; The Old Farmhouse, Ferneylea, Oldhamstocks

Dear Malcom,

Our Ref: DEV73128; Formation of garden track at The Old Farmhouse, Ferneylea, Oldhamstocks.

Thank you for your letter and enclosed site plan drawing with regards to the above enquiry.

I note from our records that planning permission 07/00318/FUL was granted, on appeal, for the retrospective change of use of agricultural land to garden ground (for use as additional garden ground serving the house named 'The Old Farmhouse') on 30th October 2008. I have attached a copy of the Appeal Decision Notice for your information.

Condition 1 of planning permission states that:

'Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended, no development of the type specified

in Classes 3 and 4 of Part 1 of Schedule 1 of the Order or in any statutory instrument revoking or re-enacting those Parts shall be undertaken within the area of land hereby approved for use as garden ground and which area of land is delineated in cross-hatched blue on the docketed site plan FL/3, unless with the prior approval of the Planning Authority.

Reason: In the interests of safeguarding the character and visual amenity of the countryside area'.

Accordingly, and providing that the proposed 'garden track' is either (i) a hard surface made of porous materials; or (ii) provision is made to direct run off water from the hard surface to a permeable or porous area or surface within the curtilage of the dwelling, then the proposed 'garden track' is permitted development in accordance with Class 3C of The Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2011.

Kind regards

Neil

Neil Millar | Planner | Planning Delivery | East Lothian Council | John Muir House |
Haddington EH41 3HA

 Visit our website at
www.eastlothian.gov.uk

Email Disclaimer - East Lothian Council

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the sender and ensure it is deleted and not read copied or disclosed to anyone else. It is your responsibility to scan this email and any attachments for computer viruses or other defects. East Lothian