

## **REVIEW DECISION NOTICE**

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

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Application for Review by Mr William Donaldson c/o Wood Associates, Per Harry Wood, 44 Morningside Road, Edinburgh Lothian EH10 4BF decision to refuse Planning Permission for the erection of house, garage and associated works at land at rear of Old Farmhouse, Ferneylea, Oldhamstocks, Innerwick, TD13 5YN.

Site Address: Land at rear of Old Farmhouse, Ferneylea, Oldhamstocks, Innerwick, TD13 5YN

Application Ref: 24/00417/P

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

Date of Review Decision Notice: 7 March 2025

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### **Decision**

The ELLRB unanimously decided to reject the appeal and refuse planning permission for erection of house, garage and associated works at land at rear of Old Farmhouse, Ferneylea, Oldhamstocks, Innerwick, TD13 5YN for the reasons more particularly 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, 27 February 2025. The Review Body was constituted by Councillor N Hampshire (Chair), Councillor D Collins, Councillor L Allan and Councillor A Forrest. All four 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 P Zochowski, Planning Adviser to the LRB  
Mr C Grilli, Legal Adviser to the LRB  
Ms F Currie, Clerk

### **2. Proposal**

2.1. The planning application is for review of decision to refuse Planning Permission

2.2. The planning application was registered on 25 June 2024 and the Decision Notice refusing the application is dated 23 August 2024.

2.3. The condition and the reason for the condition is more particularly set out in full in the said

Decision Notice dated 23 August 2024. The reason(s) for refusal are/is set out as follows:

- 1 *The erection of a house with associated garage on the application site would be new build housing development in the countryside of East Lothian on land which is not allocated for housing development, is not brownfield land, does not reuse a redundant or unused building, and 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 Policy 17 of NPF4 and Policies DC1 and DC4 of the adopted East Lothian Local Development Plan 2018.*
- 2 *The erection of a house with associated garage and works 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 not been demonstrated; The proposal is therefore contrary to Policy DC5 of the adopted East Lothian Local Development Plan 2018.*
- 3 *The proposed scheme of development for a house on this rural site located within the East Lothian countryside does not meet these circumstances specified in Policy 17 of NPF4 or DC4 of the adopted East Lothian Local Development Plan 2018 and would effectively undermine the spatial strategy of the LDP and result in an increased number of non-public transport journeys at a time when the Scottish Government is requiring a reduction in private car use to help combat climate change and reduce carbon emissions. As such the proposal is contrary to Policies 13, 15 and 17(b) of NPF4 and T1 of the adopted East Lothian Local Development Plan 2018.*
- 4 *The proposal would result in the loss in an area of Prime Agricultural Land to a residential land use which would not be consistent with Policy 5 of NPF4 or Policy NH7 of the adopted East Lothian Local Plan 2018.*

2.4. The notice of review is dated 19 November 2024.

### 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:		
	<u>Drawing No.</u>	<u>Revision No.</u>	<u>Date Received</u>
	24/777 P 04	A	27.05.2024
	24/777 P 05	-	27.05.2024
	24/777 P 02	A	14.06.2024
	24/777 P 03	A	14.06.2024
	DWG 01	-	25.06.2024
	24/777 P 01	C	25.06.2024
	FL/3	-	19.11.2024
ii.	The Application for planning permission registered on 25 June 2025		
iii.	The Appointed Officer's Submission		

iv.	<p>Policies relevant to the determination of the application:</p> <p>Policies 1 (Tackling the climate and nature crises), 3 (Biodiversity), 5 (Soils), 6 (Forestry, woodland and trees), 13 (Sustainable transport), 14 (Design, quality and place), 15 (20 Minute Neighbourhoods), 16 (Quality Homes), 17 (Rural Homes) and 29 (Rural Development) of NPF4 and</p> <p>Policies DC1 (Rural Diversification), DC4 (New Build Housing in the Countryside), DC5 (Housing as Enabling Development), DP2 (Design), NH7 (Protecting Soils), NH8 (Trees and Development), T1 (Development Location and Accessibility), and T2 (General Transport Impact) of the adopted East Lothian Local Development Plan 2018</p>
v.	<p>Notice of Review dated 19 November 2024 together with Applicant's Submission with supporting statement and associated documents.</p>

#### **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 refuse planning permission, 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 advised that the planning application relates to full review of an application for a new build house in the countryside at Ferneylea near Oldhamstocks. The application site at Ferneylea is adjacent to a house known as Longwood and to the rear of the old farmhouse. A two storey house and garage is proposed with its building line aligned with the house at Longwood. Access is to be taken from the access road close to the boundary with Longwood and is noted in the submitted supporting statement as aiming to provide a uniform frontage to the road while architecturally picking up features from the existing farmhouse.

There are four objections to the application which are summarised by the case officer in their report of handling. It is noted that some matters raised are civil matters that do not affect the determination of the application. The case officer assessed in detail the potential for overlooking, overshadowing and loss of amenity to neighbouring properties and concluded that a condition would be required to ensure no overlooking and additional planning controls would require to be put in place to prevent any such overlooking in future. No harmful loss of sunlight or overshadowing were found.

The Planning Adviser commented that of the consultee responses the Environmental Health Officer and Road Services officer raised no objection with the Contaminated land officer requiring conditions in the event of approval.

The Planning Adviser stated that this application must be determined in accordance with

the development plan unless material considerations indicate otherwise. The Development Plan consists of the East Lothian Local Development Plan 2018 together with National Planning Framework 4 read and applied together.

The Planning Adviser confirmed that policies referred to by the case officer in their report relative to the Development Plan are relevant to this application and confirmed that members have been provided with copies of these policies.

The Planning Adviser confirmed that notwithstanding the fact that the land was granted on appeal as domestic garden ground in 2007 it lies within the East Lothian countryside as defined by the LDP and in determining the application it is countryside policies that apply including DC4 New Building in the Countryside. The site is not allocated for development. Both NPF4 and the LDP seek to direct housing towards existing settlements but allow some housing in the countryside provided it meets the criteria in Policy 17 and DC4. For the reasons given in the case officers report it does not meet any of the criteria. A similar assessment of policy 17 part a and DC1 and DC5 has the same result and when assessed against the transport policies 17 part b and policy 15 the case officer could not find any support. Policy 16 f outlines the limited circumstances where a non allocated site may be developed for housing but the officer found no circumstances that apply in this case. NPF policy 5 seeks to protect prime quality agricultural land and this field is designated as such which is not consistent with policy 5 or NH7. The officer found no material considerations that outweigh the fact that the proposed development does not accord with the Development Plan. These are reflected in the four reasons for refusal in the decision notice.

The Planning Adviser then stated that members in reviewing the application should also take cognisance of the applicants submitted statement along with the application and the applicant's submission in your pack. The planning adviser then summarised that the applicant places emphasis on the fact that the site was granted permission on appeal to be used as domestic garden not agricultural land. The Planning Adviser then commented that this does not remove the fact that planning permission is required for a house and requires to be assessed against the development plan and that the site lies within the countryside of East Lothian.

- 4.3. Members then asked questions of the Planning Adviser. The Planning Advisor responded to a question regarding the classification of the land and while it is used as garden ground does it remain as countryside as identified within LDP? The Planning Adviser advised that the land is domestic garden land but is classified as countryside land in the local development plan therefore Countryside Policies that would apply to application.
- 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. Councillor Forrest commented that the site visit was helpful. He noted it was a tight site for the size of house proposed. Having considered planning documentation and having visited the site he was not supportive of the application and was minded to refuse planning permission and support the case officer's decision.
- 4.6. Councillor Allan agreed with her colleague. She stated that she found the site visit helpful to provide context for what the proposal may look like. She noted that there was no building already there and therefore was in agreement with the case officer's position and was

minded to refuse the application.

4.7. Councillor Collins agreed with her colleagues and commented that as there are no buildings being converted she felt this application was a new build within the countryside and therefore was minded to support the case officer and refuse the application.

4.8. The Chair was of a similar mind as colleagues. He noted that this was garden ground but is currently within the countryside and therefore considered under policy as countryside land. He agreed with the case officer's assessment and was minded to refuse planning permission.

Accordingly, the ELLRB unanimously decided to reject the appeal and refuse planning permission for the reasons more particularly set out in the Case Officer's Report.

Planning Permission is hereby 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.