

REVIEW DECISION NOTICE

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

Application for Review by BJP Properties Ltd (Dunbar) c/o John A Fyall Bsc(Hons)Bld.Eng. C.Build.E, FCABE Per John A Fyall, 12 Beachmont Court, Dunbar EH42 1YF of decision to refuse Planning Permission for erection of 2 houses and associated works at Primrose Cottage Garden, Innerwick, East Lothian.

Site Address: Primrose Cottage Garden, Innerwick, East Lothian

Application Ref: 24/00868/P

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

Date of Review Decision Notice: 24 June 2025

Decision

The ELLRB unanimously agreed to confirm the planning officer's original decision and refuse planning permission for erection of 2 houses and associated works at Primrose Cottage Garden, Innerwick, East Lothian 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, 29 May 2025. The Review Body was constituted by Councillor D Collins (Chair), Councillor A Forrest and Councillor J McMillan. All three members of the ELLRB had attended a site visit 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 to the LRB
Ms F Currie, Clerk

2. Proposal

2.1. The planning application is for review of decision to refuse Planning Permission for erection of 2 houses and associated works at Primrose Cottage Garden, Innerwick, East Lothian

2.2. The planning application was registered on 11 October 2024 and the Decision Notice refusing the application is dated 13 December 2024.

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

Decision Notice dated 13 December 2024. The reasons for refusal are set out as follows:

- 1 *The erection of two houses 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, 12 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 proposed development would, if permitted, result in an increase in traffic movements at the substandard junction of the existing access lane with the classified highway (C165), to the detriment of the safe and free flow of traffic on the public road and the proposal would therefore be contrary to Policies T1 and T2 of the adopted East Lothian Local Development Plan 2018.*
- 3 *The proposed scheme of development for 2 new build houses on this rural site located within the East Lothian countryside would 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 Policy T1 of the adopted East Lothian Local Development Plan 2018.*
- 4 *The proposal would lead to the loss of an area of woodland which forms part of a continuous woodland block continuing to the south of the application site. This woodland forms an attractive backdrop and is important to the landscape setting of the area. Therefore, the proposal would be contrary to Policy 6 of NPF4, Policy 1 of the TWS and Policy NH8 of the ELLDP.*
- 5 *It has not been demonstrated that the site could be developed for the erection of two houses without harm to a European Protected bat species that has been recorded within 500m of the site. The proposal is therefore contrary to Policy 3 of NPF4 and Policy NH4 of the ELLDP.*

2.4. The notice of review is dated 12 March 2025

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>
	MANU LITERATURE 01	-	16.08.2024
	MANU LITERATURE 02	-	16.08.2024
	MANU LITERATURE	-	16.08.2024
	03 JAF/BJP/P/02	B	30.09.2024
	JAF/BJP/P/03	A	30.09.2024
	JAF/BJP/P/04	A	30.09.2024
	JAF/BJP/P/01	A	04.10.2024

ii.	The Application for planning permission registered on 11 October 2024
iii.	The Appointed Officer's Submission
iv.	<p>Policies relevant to the determination of the application:</p> <p><u>National Planning Framework 4 (“NPF4”)</u></p> <ul style="list-style-type: none"> - 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) and 17 (Rural Homes) of NPF4. <p><u>East Lothian Local Development Plan 2018</u></p> <ul style="list-style-type: none"> - Policies DC1 (Rural Diversification), DC4 (New Build Housing in the Countryside), CH1 (Listed Buildings), CH6 (Gardens & Designed Landscapes), DP2 (Design), NH4 (European Protected Species), NH7 (Protecting Soils), NH8 (Trees and Development), NH11 (Flood Risk), T1 (Development Location and Accessibility), and T2 (General Transport Impact) of the adopted East Lothian Local Development Plan 2018 (“LDP”).
v.	Notice of Review dated 12 March 2025 together with Applicant's Submission with supporting statement and associated documents.

- 3.2. 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. **Summary of the Application**

- 4.1. 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 a review of the decision on application seeking planning permission for the erection of 2 houses and associated works.

The application site measures approx. 800sqm and is located nearly 1km west of Innerwick. The site is an area of unmanaged tree and grassed land which historically was used as a cottage garden for the row of Smithy Cottages of which the applicant's house is a part. The site lies within an area defined as woodland within the adopted Tree and Woodland Strategy (TWS) for East Lothian. The application site is within the countryside as defined by Policy DC1 of the adopted East Lothian Local Development Plan 2018 and also falls within the Thurston Manor Walled Garden Local Garden and Designed Landscape area. Access to the site would be via a private road which joins the C122 public road. This access road also serves Innerwick Cemetery and the residential property of The East Lodge.

The Planning Adviser notes that in the report the case officer accurately described the application site and its surroundings including landscape and natural features that are present in the locality. The case officer report also provided information on the previously refused outline planning permission (01/00256/OUT) for the erection of a house with associated garage on the application site.

The current application sought planning permission for the erection of two houses within the application site with associated vehicular access and hardstanding areas. The proposed semi-detached houses would be single storey in height. The application drawings indicate that the proposed houses would be designed to emulate the size and form of traditional farm cottages. The submitted plans, elevation drawings and further information regarding the proposed building is included in your information packs.

The Planning Adviser confirmed that Section 25 of the Town and Country Planning (Scotland) Act 1997 requires that the application for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The development plan is the adopted National Planning Framework 4 (NPF4) and the adopted East Lothian Local Development Plan 2018. The Planning Adviser confirmed that the case officer's report correctly listed all policies of NPF4 and LDP that are relevant to this application and noted that these policies are included in the members' information pack.

The planning adviser advised that the application site is in a countryside location within East Lothian and it is not identified in the adopted East Lothian LDP as being within a settlement and the Local Development Plan does not allocate the land of the site for housing development. The case officer noted in his report that the principle of the erection of residential building on the application site must be assessed against national, strategic and local planning policy relating to the control of new housing development in the countryside.

The Planning Adviser noted that the case officer fully assessed the proposal against all criteria of Policy 17 of NPF4 (Rural Homes) and concluded that this policy does not support the proposal. The Planning Adviser then confirmed that he would only mention the most relevant requirements of the said policy: development proposals for new homes in rural areas will be supported where the development is:

- i) on a site allocated for housing within the Local Development Plan (LDP);
- ii) reuses brownfield land where a return to a natural state has not or will not happen without intervention;
- iii) reuses a redundant or unused building;
- iv) is demonstrated to be necessary to support the sustainable management of a viable rural business or croft, and there is an essential need for a worker to live permanently at or near their place of work;
- v) is for a single home for the retirement succession of a viable farm holding;
- vi) is for the subdivision of an existing residential dwelling; the scale of which is in keeping with the character and infrastructure provision in the area; or
- vii) reinstates a former dwelling house or is a one-for-one replacement of an existing permanent house;

The case officer also assessed the proposal against the requirements of Policy DC1 of the current LDP which sets out specific criteria for new development in the countryside, stating that there will be support in principle for new development where it is for agriculture,

horticulture, forestry or countryside recreation; or other businesses that have an operational requirement for a countryside location, including tourism and leisure uses. The Planning adviser confirmed that the application was also assessed against the requirements of Policy DC4 (New Build Housing in the Countryside). This policy sets out specific criteria for the erection of new build housing in the countryside and allows for new build housing development in the countryside where the Council is satisfied that a new house is a direct operational requirement of an agricultural, horticultural, forestry or other employment use. Policy DC4 also allows for other small scale housing proposals that form a logical addition to an existing small scale rural settlement where they are promoted for affordable housing and evidence of need is provided and the registered affordable housing provider will ensure that the dwelling(s) will remain affordable for the longer term.

The Planning adviser noted that the case officer's report accurately summarised comments from the council's internal consultees and objections from members of the public. Further the Planning Adviser confirmed that copies of the comments and objections formed part of the information already before members.

The following consultees did not object to the planning application subject to planning conditions:

- 1) The Council's Senior Environmental Health Officer;
- 2) The Council's Contaminated Land Officer; and
- 3) The Council's Flooding and Structures Department; Scottish Water were also consulted on the application and raised no objection

Those who advised against the proposal included:

- 1) The Council's Landscape Officer – advised that the site lies within an area defined as woodland within the adopted Tree and Woodland Strategy (TWS) for East Lothian. The proposal would lead to the loss of this woodland area. The woodland of the site forms a continuous woodland block continuing to the south. This woodland forms an attractive backdrop and biodiversity corridor and is important to the amenity of the area. The Landscape officer advised that the loss of this woodland would be contrary to Policy 6 of NPF4, Policy 1 of the TWS and Policies CH6 and NH8 of the adopted LDP.
- 2) The Council's Biodiversity Officer – advised that there is a record of a European Protected bat species being within 500m of the site. The bats may use the woodland proposed for removal for commuting or roosting and therefore the removal of this woodland could result in a reduction in the biodiversity which could detrimentally impact the protected bats. Policy 3 of NPF4 states that development proposals will contribute to the enhancement of biodiversity, including where relevant, restoring degraded habitats and building and strengthening nature networks and the connections between them. The officer advised the proposal is contrary to Policy 3 of NPF4 and Policy NH4 (European Protected Species) of the East Lothian LDP.
- 3) The Council's Roads Officer referred to the comments made on the previously refused application which noted that existing junction of the lane with the public road lies on downhill gradient with a blind crest approximately 90m to the north. Given this the access has relatively poor visibility to the north and does not meet the normal requirements for a visibility splay of 2.5m by 160m. In some circumstances the visibility splay can be relaxed if the public road topography and alignment results in traffic being significantly less than the national speed limit (60

mph). However, the existing junction although in use does not fall into this category. The Council's Roads Officer advised that the issues identified as part of the assessment of the previously refused planning application remain a concern for this current planning application. He therefore objected to the proposal as it would result in a road safety hazard contrary to Policies T1 and T2 of the adopted LDP.

After carrying out a comprehensive planning appraisal of the planning application the Case Officer concluded that the proposed scheme of development is not in accordance with the Development Plan and there are no material planning considerations that outweigh the fact that the proposed scheme of development is not in accordance with the Development Plan. The Planning Adviser then summarised the reasons for refusal of the application and in addition to the reasons for refusal of planning permission requested members to consider criterion 7 of Policy DP2 (Design) of the adopted East Lothian LDP. Policy DP2 (7) states that the design of all new development, with the exception of changes of use and alterations and extensions to existing buildings, must retain physical or natural features that are important to the amenity of the area or provide adequate replacements where appropriate. The Planning Adviser considered that the proposed scheme of development would lead to the loss of the trees which are important to the amenity of the area without any adequate replanting in place. Therefore, the proposal may also be considered to be contrary to Policy DP2 point 7 of the adopted LDP.

The Planning Adviser noted that within the second reason for refusal there was reference to the old number of the adopted highway. This public road was re-numbered at some point in the past and the correct number for the road is C122.

The Planning Adviser then directed members to the submission from the appellant's agent, which includes additional information, planning correspondence between the agent and the ELC Planning Service as well as a rebuttal against reasons for refusal of the planning permission.

The Planning Agent then provided summary of the main points raised by the agent. The points include:

- 1) The report of handling erroneously states that the site is part of a larger field identified as Prime Agricultural Land. (if needed to know - nearby field is class 3.1).
- 2) On NPF4 Policy 17 (Rural Homes) – the site should be seen as overgrown 'Redundant Domestic Garden Ground' 'no longer in use, offering a potential advantage to aid to reducing pressure on greenfield development of prime agricultural land. As such the site should be viewed as the 'Rural' equivalent of a 'brownfield' site. Existing garden was included with purchase of Primrose Cottage, Smithy Row but never used by tenants of the cottage. The plot remains as original with a timber fence & gate and the once decorative Leylandii trees and numerous various self-seeded trees & bushes.
- 3) On Policy DC1: Rural Diversification of the current LDP: this policy should not apply as it refers to businesses not dwellings. The agent said that Policy DC1 fails to recognise and accept the fact that nowadays very few houses in the countryside of the county are now occupied or needed for those directly involved with agriculture, horticulture, forestry or tourism.
- 4) On Policy DC4: New Build Housing in the Countryside: the Policy promotes small scale affordable housing proposals in rural locations. The applicant was open to

- constructive negotiation with ELC but no response was given.
- 5) On Policies T1 (Development Location and Accessibility) and T2 (General Transport Impact) The agent noted that the Innerwick Cemetery at the far end of the track has unlimited public access, not only during interments or visitation but at any time, therefore the increased traffic movements incurred by the two cottages would be, unknown and even if so, at maximum, represent minimal, if at all, increased risk. However, ELC Roads Department have highlighted a potential confirmed and defined problematic risk to public safety to those using this public access to the Cemetery.
 - 6) On Policies 13, 15 and 17(b) of NPF4 and Policy T1 of the adopted East Lothian Local Development Plan 2018: the agent suggested that there is no evidence that the proposed 2 new homes in this rural location would result in an increased number of non-public transport journeys. In order to substantiate this reason for refusal the mode of working and particular practices and needs of occupants would have to be stated and related to those of the East Lodge, the farmer as well as those who use the cemetery.
 - 7) The subject submission is neither prime agricultural land nor part of a continuous block of woodland as the woodland referred to stops at the South boundary fence of the Redundant Domestic Garden Ground. The agent said that the site is Redundant Domestic Garden Ground with no legally enforceable restrictions or other controls over planting or weeding.
 - 8) On Policy 3 of NPF4 and Policy NH4 of the LDP. The Council's Biodiversity officer stated that a European Protected bat species has been recorded within 500m of the site. The agent conducted his own checks of National Bat Records along with advice available from Bat Conservation Trust (Scotland) and the location within 500m referred to resulted in no returns for any areas within or adjacent to the subject site. The agent said that it is not unreasonable to ask for the supply of a copy or at least have sight of the ELC Record referred to.

The Planning adviser then concluded by reminding members that they have the option of seeking further information if necessary.

5. Member's Questions

- 5.1. Members then asked questions of the Planning Adviser
- 5.2. Councillor Forrest asked whether the small wall that runs around the application site was under any protection. It was then confirmed that this wall is included as part of the listing of the building opposite which is Category C Listed therefore the wall would also be part of that listing.
- 5.3. Councillor Forrest then asked whether all trees within that area were native species. It was then confirmed that not all trees were native to the area although there were some native species in that area.
- 5.4. Councillor McMillan then noted that there is a question posed in the applicant's submission about the definition of countryside and rural. Councillor McMillan stated that he was of the view this brought into question the designation of what is seen as development in the countryside given there is no ELC legal definition of countryside in any context. He then asked the Planning Adviser to provide some comment on this position. The Planning Adviser clarified that the adopted LDP included policy DC1 and part of the adopted LDP was the proposals map. Within the proposals map there was an allocation of policy DC1

so anything that is covered by this allocation was considered to be countryside in planning terms.

- 5.5. Councillor McMillan then raised a question around the appellant's suggestion that the current LDP was out of date, seeking clarification of the status of the LDP as it had been approved by Scottish Government and was the official planning document with the NPF 4 framework subsequently imposed above it as the planning policy. It was clarified that the LDP was adopted in 2018 and it was still the current adopted local development plan and until such time as the Plan was revoked or subsequently replaced that was the guidance followed unless there was anything newer which may contradict it such as NPF4 which would take precedence over the LDP.
- 5.6. Councillor McMillan also noted that the Planning Adviser had mentioned that the appellant had in their submission mentioned the housing crisis. He then sought clarification that his understanding of the housing crisis was correct. He stated that the local housing crisis was not simply about planning sites. It was about funding, homelessness and so on. It would be taken into consideration today and balanced against DC1 and DC4. He also noted reference to the tree and woodland strategy which was relevant to this review. He also sought clarification of the Planning Adviser's comments on the LDP and sites in rural settlements that are available for further development if those sites were coming forward. The Planning Adviser confirmed that in the village of Innerwick there was an allocated site within the current LDP for housing.
- 5.7. Councillor McMillan also sought clarification from Planning Adviser on a point raised by the applicant. Houses that have been given planning permission and have been established for some time may well be used by people who since COVID are working from home. Providing a house where people might be working in it is not deemed appropriate under DC1 or DC4. For development in the countryside, it needed to be proved that any subsequent work was essential rather than hybrid working. The LRB was looking at this application for a house and not for people working from home. The Planning Adviser confirmed this statement.

6. Findings and Conclusion

- 6.1. 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.
- 6.2. Councillor Forrest commented on the usefulness of the site visit. It was a mature piece of woodland on the site and there were some trees that had been there for more than 50 years, and perhaps over 100 years. He then commented that the small wall on the site would need to be partially removed to create an entrance. In his view when considering the application, he felt the proposed fence along with need to remove part of the wall would be out of kilter with the location. He then confirmed that the biggest issue for him with the application was the loss of the existing woodland which currently provided a good trail for both mammals and birds. Accordingly, he was minded to support the officers original decision and refuse this application.
- 6.3. Councillor McMillan commented on the challenges of assessing planning policy against the desire of people to live in the countryside. He referred to the beauty of the location where the site had become part of the landscape with the woodland area merging into the tree boundary of the field. He said that reading all of the appeal documents had raised questions

for him around his understanding of countryside and appropriate development. However, he was conscious of the dangers presented by the road scape, including limited visibility and extra traffic. Furthermore, he felt that having a house opposite East Lodge and near the entrance to the cemetery would be inappropriate and incongruent. He noted that addressing the housing crisis was not just about providing houses but doing so in the right places. He felt he had sufficient competent and reliable evidence to reach a decision, and he would be supporting the case officer's original decision, especially in relation to policies DC1 and DC4.

- 6.4. The Chair thanked the planning advisor and the agent for their submissions for this application. She noted that the site visit was extremely helpful. She then addressed each point of refusal. She noted that the first point for refusal was the direction of two houses seen as a new building in the countryside. She commented that the application did not reuse any redundant or unused buildings because there are none there and nothing that would meet the requirements for operation as an agricultural, horticultural, forestry countryside, recreation or leisure or tourism. Accordingly, she confirmed that she would agree that this would be a new build within the countryside on policy 17 of the NPF4 and DC 1 and DC 4 of the adopted LDP. She then moved to the second point of refusal and commented that in her view there would be an increase in traffic movements. She also noted that there was the new wind farm resettlement coming up nearby which would increase traffic vastly for cement wagons, lorries, cars, etc. linked with the wind farm redevelopment. She noted that the sight lines for that area were not sufficient and commented that due to the hedges and other foliage during the summer when there are funerals coming to the adjacent site there is a need to be guided out of the area. She considered there was not a safe way to leave the sight and also agreed that it is contrary policies T1 and T2, of the adopted LDP and would create an increase in car journeys as there was little public transport serving that area. She acknowledged the lack of public transport required more car trips and therefore by increasing car use it would be contrary policies 13, 15 and 17 of NPF4. She then moved onto the proposal leading to a loss of an area of woodland. She commented that she had some local knowledge of the area and according to the maps of the area there has been an established woodland as far back as 1790. From the site visit she was confident that the sycamores on the site would be between 100 to 150 years old she also noted the other species present including ash, poplars and hazel. She also noted that any garden that had been there was a small allotment and not the whole site, and that the area was boggy and subject to flooding. Accordingly, she was of the view that proposal would be contrary to policy 6 of NPF 4 and policy 1 of TWS as there would be the loss of an established woodland from this proposal. She was therefore minded to agree with her fellow Members and support the planning officer's recommendation to refuse planning permission.

7. Decision

Accordingly, the ELLRB unanimously decided to confirm the decision of the Planning Officer and refuse planning permission for the reasons set out within the original decision.

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.