

## East Lothian Council Local Review Body

Reference LRB20260122 01 2400768

### Review Decision Notice

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

Site Address: Seaton Mains, Longniddry EH32 0PG

Application for Review by Mr Paul Calvesbert, Southsea Leisure Park, Melville Road, Southsea, Hampshire PO4 9TB

Application: Section 42 application to remove condition 2 of planning permission 18/00104/P

Application Ref: 24/00768

Application Drawing: Please refer to the Drawings/Plans detailed at 3.1.1

All members of the ELLRB attended a site visit prior to the meeting. Date of Review Decision Notice: 18 February 2026

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### **Decision**

The ELLRB the ELLRB unanimously decided to partly uphold the appeal and to vary condition 2 of planning permission 18/00104/P as applied for under section 42 planning application at Seton Mains, Longniddry EH32 0PG for the reasons more particularly set out below.

#### **1. Introduction**

- 1.1. 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 2013.
- 1.2. The ELLRB reviewed the determination of the above application for planning permission at a meeting held on Thursday, 22 January 2026. The ELLRB was attended by Councilors N. Hampshire (Chair), J. McMillan and D. Collins and A. Forrest. The following persons were also present at the meeting of the ELLRB: Mr L Taylor, Planning Adviser to the ELLRB; Mr C Grilli, Legal Adviser to the ELLRB and Ms M. Scott, Clerk.

#### **2. Proposal**

- 2.1. The section 42 planning application had been made to remove condition 2 of planning permission 18/00104/P. The section 42 planning application was registered on 27 November 2024 and the Decision Notice refusing the application is dated 8 August 2025.
- 2.2. The reasons for the refusal is more particularly set out as follows:

1. *Not completing the flood protection measures required by Condition 2 and the removal of Condition 2 of planning permission 18/00104/P would result in necessary flood protection measures not being implemented as required and thus the development including the only access point to the properties on the west side of the culvert bridge would be at risk from flooding. Accordingly, the removal of Condition 2 of planning permission 18/00104/P is contrary to Policy 22 of NPF4 and Policies NH11 and T2 of the ELLDP.*

2.3. The applicant has requested that the ELLRB review the decision and submitted a notice of review dated 7 November 2025.

### 3. **Preliminaries**

3.1. The ELLRB members were provided with copies of the following:-

3.1.1. The drawings accompanying this application are referenced and numbered as follows:

<u>Drawing No.</u>	<u>Revision No.</u>	<u>Date Received</u>
PHOTO 01	-	19.07.2024
PHOTO 02	-	19.07.2024
A011/0150/002	A	27.11.2024

3.1.2. The said section 42 planning application registered on 27 November 2024 together with said Decision Notice.

3.1.3. The Appointed Officer's Submission.

3.1.4. The said Notice of Review together with Applicant's Submission with supporting statement and associated documents

3.1.5. The National Planning Framework 4 (NPF4) Policies relevant to the determination of the application, which were as follows:

- Policy 1 (Tackling the climate and nature crises),
- Policy 2 (Climate Mitigation and adaptation),
- Policy 3 (Biodiversity),
- Policy 4 (Natural places),
- Policy 7 (Historic assets and places), and
- Policy 22 (Flood risk and water management)

3.1.6. The adopted East Lothian Local Development Plan 2018 (LDP) policies relevant to the determination of the application, which were as follows:

- Policy NH11 (Flood Risk);
- Policy CH4 (Scheduled Monuments and Archaeological Sites);
- Policy CH5 (Battlefields);
- Policy DC9 (Special Landscape Areas); and
- Policy T2 (General Transport Impact).

3.2. The ELLRB members noted the relevant policies identified.

3.3. The ELLRB members noted that there was one public representation to the application

received.

- 3.4. The ELLRB Members noted that Scottish Environment Protection Agency and the Council's Road Services made no objection.
- 3.5. The ELLRB Members noted that consultation was also undertaken with the Council's Structures, Flooding and Street Lighting Team and the response confirmed that the site remains at risk from flooding as shown on SEPA flood mapping. They also stated that the reduction in flood risk at the only access point to the site was extremely important. At the time of their site visit, the Team Manager noted that the three relief pipes were not visible due to the burn being blocked at the location of the pipes, and that there was backing up of water. In their response to the consultation, they stated that they would not object to the removal of the permeable paving element of condition 2 as it would not be of significant benefit to reducing flood risk. They also stated that the removal of condition 2 entirely was not supported as the following elements of the condition would still be required as they are necessary flood protection measures:
- Installation of trash screen upstream of the pipes and culvert crossing
  - Installation of the concrete base wall, head wall and wing walls to house the trash screen
  - Metal handrail for the steps
  - Bank stabilisation works

#### **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 with 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 application site contains a single residential dwelling and is located in an area of predominantly residential properties at Seton Mains, to the east of Longniddry. The site is within the Battle of Prestonpans designation and the Seton Sands Coastal Special Landscape Area. The Seton Burn flows through the area of Seton Mains and is culverted in places. The application site and parts of the surrounding area are shown on SEPA flood maps as being at risk from flooding (river and surface water).

This application sought the removal of condition 2 regarding the upgrading of a culverted bridge crossing to ensure road safety and flood protection. These works were to be carried out at a culverted bridge crossing the access driveway which provides access to the applicant's property and three other houses. Planning permission for the residential property was originally approved under application 07/00792/FUL. A condition was applied to that planning permission as a pre-commencement condition requiring upgrading of the culverted bridge for road safety and flood prevention measures.

A further planning application for the variation of a separate planning condition was subsequently submitted under reference 18/00104/P. This sought permission to retain a

window that had already been formed which was not part of the original permission. Planning permission was granted retrospectively subject to conditions, and this led to the re-imposition of all the conditions that had originally been applied at the time of the 2007 application, as well as some additional conditions.

The works required to upgrade the culverted bridge became condition 2 of that re-issued planning permission on the 2018 application.

The application under review sought to remove the following requirements of condition 2:

- omit the provision of a galvanised screen, and its associated walls at the 600mm diameter pipe;
- omit a handrail to the steps and allow for the steps in the different form and arrangement that they have been laid out
- omit bank stabilisation works around the three relief pipes
- omit permeable block surfacing to the culverted bridge crossing

The Planning Adviser then advised the members that applicant submitted a Supporting Statement with the application setting out their reasons as to why the condition has not been complied with. These were:

- The galvanized screen and associated works cannot be installed due to the inability to gain entry to the neighbouring property or land
- The culvert has never been blocked or had to have debris removed
- Surface water flow is now at a much lesser rate
- The handrail was not installed, which was an oversight but to mitigate this, the wall down to the culvert has been built higher than required
- Upstream terram was not fitted due to the banks not being within their ownership
- Planting of laurels has been carried out on the boundary of land under their ownership to stabilise the bank to the west
- Permeable paving was not installed due to AOD level set by SEPA to adhere to. Services such as gas, electricity, water etc. were shallow and the paving could not be installed.
- Three relief pipes have been installed and previously signed off by ELC

The planning adviser confirmed that applications are to be determined in accordance with the Development Plan, which comprises of the National Planning Framework 4 for Scotland and the Local Development Plan 2018 and set out the relevant policies.

The planning officer's assessment stated that the main consideration of this application, with regards to national and local policy and guidance, was whether the removal of condition 2 was acceptable in relation to the flood risk, and the safe access to the approved house and three other properties which share the access. The planning officer noted that, whilst the documentation submitted with the application sought to show that works to the culverted bridge had already been carried out in an acceptable manner, the planning officer's report highlighted that the works did not comply with the drawings which were docketed to the original permission. Following relevant consultation the planning officer concluded that the removal of condition 2 would result in necessary flood protection measures, that were required by the Council at the time of the grant of permission for the original application, not being implemented.

The planning officer concluded that the removal of condition 2 would be contrary to Policy 22 of the NPF4 and policies NH11 and T2 of the LDP 2018.

The planning officer concluded that the proposal would not be contrary to NPF4 policies and LDP 2018 policies regarding any impacts on the Battle of Prestonpans designation or the Special Landscape Area designation.

Planning permission was refused with the reason as stated in the decision notice

During the application process, the planning officer had requested additional information from the applicant based on the information submitted, in particular the Supporting Statement. These were:

- evidence that any other current or historic relevant landowners have either recently or historically declined his request for access to undertake the work required by Condition 2 of planning permission 18/00104/P;
- evidence of correspondence with East Lothian Council Engineer agreeing to the omission of the work to the culvert crossing; and
- confirm the applicant's or others ownership of the land

The planning officer had not received the requested information at the time of writing their report of handling for the application.

The Planning Adviser then summarised the appellant's statement to support this review stating that the appellant's position as set out in their original Supporting Statement submitted with the planning application has not changed. The appellant has provided some additional comments on a number of aspects of the case including finished levels of nearby properties in relation to the culvert and commentary on correspondence between themselves and Council officers. The appellant refutes the reason for refusal, has requested evidence from ELC of flooding at the property, and provided copies of email correspondence between themselves and a number of Council officers. They remain of the opinion that the Council has previously accepted the works to the culvert were sufficient. The planning officer has provided a further statement to the Local Review Body following the appellant's submission, and this is dated 7<sup>th</sup> January 2026. The planning officer confirms that the condition to upgrade the culvert has not been discharged by the Council, and that contrary to the appellants interpretation of correspondence from the Structures, Flooding and Street Lighting Team, the remainder of the works to the culvert were still required to be carried out.

## **5. Members Question**

The Chair then invited questions for the Planning Adviser from the members

- 5.1. Councillor McMillan asked whether there was anything more that the appellant or applicant could do around gaining permission in terms of the recommended condition. The Planning Adviser noted that the land issue is disputed by the appellant's agent. Unfortunately this remains an issue under debate at present.
- 5.2. The Chair then raised a question with the planning adviser. He noted that at the site visit three pipes were visible and were at higher level to the run of the burn. There was no handrail down to the burn or any grate. Can you confirm my understanding that all of these works should have been completed prior to commencement. The Planning Adviser confirmed that this was a pre-commencement condition and has not been fully complied with at the time and noting the property is now complete on site.
- 5.3. The Chair continued by stating that upstream banking stabilisation mesh was to be put onto the area of the pipes, but these stabilisation works do not appear to have been carried out is that correct? The Planning Adviser confirmed that there were stabilisation works required at several points and his understanding is these have not been carried out.

## **6. Consideration of the Application**

- 6.1. The ELLRB then considered if there was sufficient information before them to consider the review without further procedure. The ELLRB determined that it did have sufficient information and proceeded to determine the review.
- 6.2. Comments on the application followed.

- 6.2.1. Councillor McMillan stated that the site visit had been instrumental and helpful providing evidence to base his decision. The approach to the development looked interesting, the bridge structure looked strong, and he was clear that if the structures and flooding officers are not insisting on permeable coverings then this may be something he would consider. However, he was really concerned when looking at the steps on the east side with no step tread or handrail. This he felt should have been in the condition. He was concerned with trunks of trees and logs around this could increase potential for flooding. He then referred to the policy intent stated under Flood Risk and water management. On that basis he would be supporting the planning officer's original decision but may be minded to remove the condition requiring the permeable coverings as he was of the view that while this area needs to be maintained it does not need to be in the condition required by the planning condition.
- 6.2.2. Councillor Forrest commented it had been a comprehensive report, and the site visit was very useful. He felt the handrails were required as there is a greater danger to falling and no safe way to get on or off it. He looked and could see debris and felt the guard is needed and would not take long for the valley to fill. He would be supporting the planning officer's decision.
- 6.2.3. The Chair was surprised the applicant was trying to remove this condition because if they wanted to protect their properties, they have a duty to ensure the burn is maintained by preventing debris falling into it. He was minded to support the officer recommendation not to remove condition 2.

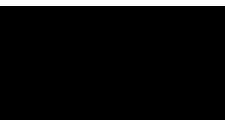
## **7. Decision**

Accordingly, the ELLRB unanimously decided to uphold the appeal in part. The ELLRB Members confirmed that Condition 2 would remain in force but agreed to omit the requirement to provide permeable block surfacing to the culverted bridge crossing to meet the obligations under condition 2 of planning permission 18/00104/P at Seton Mains, Longniddry EH32 0PG. The reason for this is more particularly set out within the Planning Officer's Report and this Decision Notice.

The works required to meet requirements of Condition 2 are now as stated below:

- provision of a galvanised screen, and its associated walls at the 600mm diameter pipe;
- a handrail to the steps and allow for the steps in the different form and arrangement that they have been laid out
- bank stabilisation works around the three relief pipes

Planning Permission is hereby granted in part.



**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.