

East Lothian Council Local Review Body

Reference LRB20260219 01 2500743P

Review Decision Notice

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

Site Address: Paddock Southwest of Elder Cottage, Congalton Gardens, North Berwick, EH39 5JP

Application for Review by Ms Carrie McDonald, c/o APT Planning & Development, Per Tony Thomas, 1 West Road Whitekirk EH42 1XA

Application: Erection of One House & Associated Works

Application Ref: 25/00743/P

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: 26/03/2026

Decision

The ELLRB upheld the original decision of the Planning Officer to refuse planning application 25/00743/P as applied, for erection of one house and associated works, Paddock Southwest of Elder Cottage, Congalton Gardens, North Berwick, EH39 5JP

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, 19 February 2026. The ELLRB was attended by Councillors N. Hampshire (Chair), J. Findlay, N. Gilbert and A. Forrest. The following persons were also present at the meeting of the ELLRB: Mr P. Zochowski, Planning Adviser to the ELLRB; Miss T. Murray, Legal Adviser to the ELLRB and Ms M. Scott, Clerk.

2. Proposal

- 2.1. The planning application had been made for erection of one house and associated works at Paddock Southwest of Elder Cottage, Congalton Gardens, North Berwick, EH39 5JP. The planning application was registered on 21 July 2025 and the Decision Notice refusing the application is dated 29 October 2025.
- 2.2. The reasons for the refusal are more particularly set out as follows:

1. *As the existing rural livery business is not a viable rural business, there is no essential need for a worker to live permanently on-site. In the absence of any such direct operational requirement or justified supporting case for the erection of a new house on the application site, the principle of such proposed development on the site is inconsistent with national, strategic and local planning policy and guidance concerning the control of development of new build houses in the countryside. Therefore, the principle of the new build house in this location is contrary to Policy 17 of NPF4 and Policy DC4 of the adopted East Lothian Local Development Plan 2018.*
2. *The proposed new house would not be located in a sustainable location or within a 20-minute neighbourhood and would not contribute to local living within an existing settlement. Notwithstanding that it would eliminate the applicant's commute back and forth to the site, the proposed new house would result in an increased number of non-public transport journeys associated with the domestic use of the house at a time when the Scottish Government is requiring a reduction in private car use to help combat climate change and reduce carbon emissions contrary to Policies 1, 2, 13, 15 and 16 of NPF4 and T1 of the adopted East Lothian Local Development Plan 2018.*
3. *The erection of a house would result in the loss of Class 1, prime agricultural land, albeit on a small-scale contrary to Policy 5 of NPF4 and Policy NH7 of the adopted East Lothian Local Development Plan 2018.*

2.3. The applicant has requested that the ELLRB review the decision and submitted a notice of review dated 9 December 2025.

3. Preliminaries

3.1. The ELLRB 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>
DWG 01	-	11.07.2025
DWG 02	-	11.07.2025
DWG 03	-	11.07.2025
GBCM/0625/D-01	-	11.07.2025
J01309.1.P1	-	11.07.2025
MANU LITERATURE 01	-	21.07.2025
GBCM/0625/SP-01	B	21.07.2025
J01309.1.P1	A	21.07.2025

3.1.2. The said section 42 planning application registered on 21 July 2025 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 5 (Soils),
Policy 7 (Historic assets and places),
Policy 13 (Sustainable Transport),
Policy 14 (Design, Quality, and Place)
Policy 15 (20-Minute Neighbourhoods),
Policy 16 (Quality Homes) and
Policy 17 (Rural Homes)

- 3.1.6. The adopted East Lothian Local Development Plan 2018 (LDP1) policies relevant to the determination of the application, which were as follows:

Policy DC4 (New Build Housing in the Countryside);
Policy DP1 (Landscape Character);
Policy DP2 (Design);
Policy CH6 (Gardens and Designed Landscape);
Policy NH5 (Biodiversity and Geodiversity Interests, including Nationally Protected Species);
Policy NH7 (Protecting Soils);
Policy W3 (Waste Separation and Collection);
Policy T1(Development Location and Accessibility) and
Policy T2 (General Transport Impact).

- 3.2. The ELLRB noted the relevant policies identified.

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

- 3.4. The ELLRB noted that the landscape officer looked at the wider landscape and concluded that there would be minimal impact but that that a scheme of landscaping would be required and should be a condition in the event of approval but deferred to others on heritage considerations. HES has noted the presence of nearby scheduled monuments but has made no comment on the application other than to say it should be determined in accordance with national and local policy on development affecting the historic environment. The Council Archaeology/Heritage officer was consulted but did not provide a response. The biodiversity officer supplied a detailed response requiring a condition to detail biodiversity enhancement prior to commencement of development in the event that permission was granted. In respect of matters related to potential contamination of land the Councils Environmental Compliance officer recommends a condition be attached to any grant of permission with regards land contamination. Neither Waste Services, Road Services nor Flooding and Structures had any objections. The Anti-Social behaviour team noted that they had no records of any incidents in the last 3 years. Police Scotland raised no comment – though the officer noted that the applicant had noted a case of hare coursing in a nearby farmer's field. Scottish Water has no objection but advised the applicant to investigate private treatment options for wastewater.

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 ELLRB then asked the Planning Adviser to summarise the planning policy position in respect of this matter. The Planning Adviser advised the application site at Congalton is a location that is firmly within the rural area of East Lothian and where a market garden business operated until permission was granted in 2017 for a change of use for the keeping of horses with a stable, floodlit arena and associated works. The site of the application is a small fenced off field facing the entrance off the B1347.

This application proposed the erection of a two-storey house and garage sited 45m from and facing towards the entrance off the road. It would be a 4-bedroom detached house of single storey but with an upper mezzanine centrally positioned floor and pitched roof. The case officers report provides further details on the size of the house and on the proposed external materials which are dark grey concrete roof tiles, black upvc rainwater goods, walls of white render on render boards and pewter coloured composite horizontal cladding and grey upvc windows and doors and a 2.1m high flue to the rear roof slope. Three parking spaces are proposed out with the enclosed curtilage around the house as indicated on the plan.

The officers report summarised the submitted supporting statement which provides details on the livery business. Included in this is that the retirement livery business started in 2018 and accommodates 5-7 horses generating income through livery fees for caring for the horses. It also states that living on site is required as horses require 24/7 care alongside everyday security and welfare. It also states that no further horses can be accommodated on site without the applicants living on site. The reason for a house is stated as because the horses require 24/7 care, and an adjacent house would be easier to reach the horses when required. It also states that all other livery yards in East Lothian have owners living on site.

Both parts of the development plan seek to direct housing towards existing settlements but can allow some housing in the countryside provided it meets the criteria in NPF Policy 17 and LDP policy DC4. The most relevant part of Policy 17 is part v) that can permit a house in the countryside if it 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. The preamble to Policy 4 explains that the LDP has a general presumption against new housing in the countryside but, exceptionally, a new house may be justified on the basis of an operational requirement of a rural business. The policy states that in the case of a single house the Council must be satisfied that it is 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.

The Council obtained independent advice from an Agricultural and Rural Adviser on whether there is a direct operational requirement for an associated house. The reason behind this policy is to ensure that houses in the countryside, which the plan does not support, do not appear alongside any rural business; the Council has to be satisfied that the business is viable before permanent accommodation can be permitted. Prior to that the preamble explains, temporary accommodation may be granted.

The applicant submitted a supporting statement that sought to justify the house to support the existing livery business. This was examined by the Council's independent Agricultural and

Rural Development Consultant (letter from Laurence Gould Rural Business Solutions) who advises that to be a viable business it should generate a reasonable living for one person on minimum wage as well as provide for any investment required, and provide a level of return on the capital investment associated with the site as well as costs associated with building any new house. Income from another job unrelated to the business cannot be taken into consideration in the assessment which should relate to that of the rural business only. Based on the information submitted the adviser concluded that there is a considerable gap between the current performance of the livery business and what is considered a viable business. It would not generate enough profit to make a reasonable living for one person on a minimum wage as well as provide for any investment required and provide a level of return on the capital investment associated with the site as well as costs associated with building any new house. Therefore, the livery business could not be considered a viable business. In his opinion the fact that the applicant held down a full-time job while operating this business from a distance further weakened the case for an operational need for a new house. The case officer therefore concluded that the principle of a new build house in this location was contrary to Policy 17 and DC4. The officer also considered that the development of the site would result in the permanent loss of Class 1 agricultural land contrary to Policy 5 of NPF4 and Policy NH7 of LDP1.

Furthermore, in considering the NPF as a whole and the significant weight given to the climate crisis the officer concluded that a new house at this site would not be well served by public transport and would be contrary to policies 1,13,15 and 16 of NPF4 and T2 of LDP1.

Having considered the submitted supporting statement the officer was also of the view that there were no material considerations that outweigh the fact that the proposal was not in accordance with the development plan.

Accordingly, three reasons for refusal were given essentially that as the business was not a viable rural business there is no direct operational requirement or justified supporting case for the erection of a new house; that the proposed house was not in a sustainable location resulting in an increased number of non-public transport journeys, and that the house would result in the loss of prime quality agricultural land. It was therefore contrary to policies 1, 2, 5, 13, 15, 16 and 17 of NPF and policies T1, NH7 and DC4 of LDP1.

The Planning Adviser summarised the applicant's position that they operate a specialised livery business for ageing, unwell, and injured horses, which is appropriately located and provides a valued service to the community, and they remain fully committed to its development despite currently holding other employment. They maintain that living on site would allow the business to expand, generating increased income sufficient to support at least one full-time and one part-time role, while enabling them to respond swiftly to emergencies, reduce their current 10-mile round-trip, and improve overall site security. They note that no public objections were received and argue that the unique operational needs of this niche equine service justify an exception to the policies cited in the refusal. The applicants contend that the decision relied on an overly restrictive interpretation of policy and that the specific circumstances of this case warrant a more flexible, holistic assessment that recognises the wider benefits of establishing and supporting a specialised rural business.

5. ELLRB Question

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

- 5.1. The Planning Advisor answered questions from the ELLRB, providing information on the company the Council uses to advise on rural business solutions, confirmed the land is currently used for an equestrian livery and is not agricultural and stated both the business viability and restricting countryside housing developments were equally important. The

Planning Advisor made the ELLRB aware they could not reduce the size of the redline boundary and a decision would have to be reached on the application as presented, if however the applicant put in a new application a restriction on the number of houses that could be built within that boundary could be implemented through a Section 75 agreement but this would not stop anyone else from putting in a planning application to build within the grounds. The Planning Advisor also confirmed it was implied within the agricultural report that if the business was stronger, the Planning Advisor would have supported the application. The Planning Advisor also provided information on the previous house that was granted permission within Congalton Gardens.

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 Forrest stated he had information from the site visit and the document pack and would be supporting the officer's decision.

6.2.2. Councillor Findlay stated from looking at accounts the business had been viable for four out of the five years and felt if they were able to increase the turnover of the business it would improve their ability to pay interest and pay back capital and in a short period of time would become a viable business. He also felt the business was almost charitable in the sense they are dealing with elderly and ill horses which is not normal for a livery therefore he would give some leeway on the viability of the business. Councillor Findlay expressed there was a need for someone to be on site and didn't think the reasoning of loss of agricultural land was applicable therefore he would be voting against the officer's decision and supporting the application.

6.2.3. Councillor Gilbert stated he was satisfied the business was an established rural enterprise which had been operating since 2018 providing specialist retirement and livery services requiring close supervision and did not feel it should be judged solely on current financial thresholds. He added there were no technical objections on design, landscape, roads or heritage grounds and the loss of agricultural land was modest therefore subject to the appropriate conditions including an occupancy tie to the business he would be minded to support the applicant.

6.2.4. The Chair noted that he understood anyone who was putting their horse into the facility would feel more comfortable if there was someone living on site, however he had concerns regarding the size of the area identified to create the on-site house and would not be comfortable supporting the application with the area of land identified to accommodate it.

7. Decision

Accordingly, a roll call vote was taken, resulting in a tie amongst the ELLRB on the application. The Chair exercised the casting vote to uphold the Planning Officer's decision, whereby the Chair's vote was carried.

Planning Permission is hereby refused.



Tanya Murray
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.