

## **REVIEW DECISION NOTICE**

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

---

Application for Review by Geddes Consulting on behalf of Mr Tom Tait c/o Geddes Consulting, Quadrant, 17 Bernard Street, Edinburgh EH6 6PW of decision to refuse Planning Permission for the erection of one (1) house and associated works at Land at the Heugh, North Berwick.

Site Address: Land at the Heugh, North Berwick

Application Ref: 22/00587/P

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

Date of Review Decision Notice: 16 Dec 2022

---

### **Decision**

The ELLRB unanimously agreed to dismiss the appeal and to refuse planning permission for erection of one (1) house and associated works at Land at the Heugh, North Berwick 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, 15 December 2022. The Review Body was constituted by Councillor J Findlay (Chair), Councillor A Forrest, and Councillor C Cassini. All three 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/Clerk to the LRB  
Ms F Currie, Clerk

### **2. Proposal**

2.1. The planning application is for review of decision to refuse Planning Permission for the erection of one (1) house and associated works at Land at the Heugh, North Berwick.

2.2. The planning application was registered on 25 May 2022 and the Decision Notice refusing the application is dated 8 July 2022.

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

Decision Notice dated 8 July 2022. The reasons for refusal are set out as follows:

- 1 *The erection of a house on the application site would be new build housing development in the countryside of East Lothian 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 Policies DC1 and DC4 of the adopted East Lothian Local Development Plan 2018 and with Scottish Government policy guidance regarding the control of new housing development in the countryside given in Scottish Planning Policy: June 2014.*
  
- 2 *The erection of a house 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; and which is not promoted to fund the restoration of a listed building, building of recognised heritage value or significant designated feature of the built or natural environment, the retention of which is desirable. The proposal is therefore contrary to Policy DC5 of the adopted East Lothian Local Development Plan 2018.*
  
- 3 *The erection of a house on the application site would not, by virtue of its architectural form, size, scale, massing and materials, be well integrated into its surroundings and would not be in keeping with the existing group of buildings of the Heugh to the east or to the water tank building known as 'Heugh Reservoir' to the west. In its exposed position where it would sit on the ridge line of the site the proposed house would be readily visible in public views of it. In the views to which it would be seen, and due to its contemporary architectural form and contrasting modern finishes, the proposed house would appear as a harmfully prominent, incongruous and intrusive feature within its exposed landscape setting. It would be markedly at odds with the character and appearance of nearby buildings and would significantly alter the open and natural landscape character of this part of the East Lothian countryside. It would be harmful to the open landscape character of the area, the distinctive landscape setting of the North Berwick Countryside Around Towns area and would harmfully affect the special character of the North Berwick Law Special Landscape Area, contrary to Policies DC8, DC9, DP1 and DP2 of the adopted East Lothian Local Development Plan 2018, the Council's approved Special Landscape Areas Supplementary Planning Guidance and with Scottish Planning Policy: June 2014.*
  
- 4 *The erection of a house on the application site would encroach and close the existing gap between the neighbouring house of Lawrigg West Cottage to the east and the water storage tank facility known as Heugh Reservoir to the west which is listed as being of special architectural or historic interest (Category B). By this encroachment, and due to the infilling of this gap, the proposed house would harmfully disrupt, and draw focus away from, the setting of the listed building named 'Heugh Reservoir' to the west, contrary to Policy CH1 of the adopted East Lothian Local Development Plan 2018 and with Scottish Planning Policy: June 2014.*
  
- 5 *If approved the proposed development would set an undesirable precedent for the development of new houses in the countryside of East Lothian, the cumulative effect of which would be the suburbanisation of the countryside to the detriment of its character and amenity.*

2.4. The notice of review is dated 4 October 2022

### 3. Preliminaries

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

i.	<p>The drawings accompanying this application are referenced and numbered as follows:</p> <table border="1"> <thead> <tr> <th data-bbox="389 501 544 533"><u>Drawing No.</u></th> <th data-bbox="687 501 836 533"><u>Revision No.</u></th> <th data-bbox="1027 501 1203 533"><u>Date Received</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="389 562 507 591">DWG 001</td> <td data-bbox="743 562 751 591">-</td> <td data-bbox="1027 562 1166 591">25.05.2022</td> </tr> <tr> <td data-bbox="389 591 453 620">PL02</td> <td data-bbox="743 591 759 620">B</td> <td data-bbox="1027 591 1166 620">25.05.2022</td> </tr> <tr> <td data-bbox="389 620 453 649">PL03</td> <td data-bbox="743 620 759 649">A</td> <td data-bbox="1027 620 1166 649">25.05.2022</td> </tr> <tr> <td data-bbox="389 649 453 678">PL04</td> <td data-bbox="743 649 759 678">A</td> <td data-bbox="1027 649 1166 678">25.05.2022</td> </tr> <tr> <td data-bbox="389 678 453 707">PL05</td> <td data-bbox="743 678 759 707">A</td> <td data-bbox="1027 678 1166 707">25.05.2022</td> </tr> <tr> <td data-bbox="389 707 453 736">PL06</td> <td data-bbox="743 707 751 736">-</td> <td data-bbox="1027 707 1166 736">25.05.2022</td> </tr> <tr> <td data-bbox="389 736 517 766">R495 PL01</td> <td data-bbox="743 736 751 766">-</td> <td data-bbox="1027 736 1166 766">25.05.2022</td> </tr> </tbody> </table>	<u>Drawing No.</u>	<u>Revision No.</u>	<u>Date Received</u>	DWG 001	-	25.05.2022	PL02	B	25.05.2022	PL03	A	25.05.2022	PL04	A	25.05.2022	PL05	A	25.05.2022	PL06	-	25.05.2022	R495 PL01	-	25.05.2022
<u>Drawing No.</u>	<u>Revision No.</u>	<u>Date Received</u>																							
DWG 001	-	25.05.2022																							
PL02	B	25.05.2022																							
PL03	A	25.05.2022																							
PL04	A	25.05.2022																							
PL05	A	25.05.2022																							
PL06	-	25.05.2022																							
R495 PL01	-	25.05.2022																							
ii.	The Application for planning permission registered on 25 May 2022																								
iii.	The Appointed Officer's Submission																								
iv.	<p>Policies of the adopted East Lothian Local Development Plan 2018 relevant to the determination of the application:</p> <ul style="list-style-type: none"> <li>- DC1 (Rural Diversification);</li> <li>- DC3 (Replacement Dwellings in the Countryside);</li> <li>- DC4 (New Build Housing in the Countryside);</li> <li>- DC5 (Housing as Enabling Development);</li> <li>- DC8 (Countryside Around Towns);</li> <li>- DC9 (Special Landscape Areas);</li> <li>- DP1 (Landscape Character);</li> <li>- DP2 (Design);</li> <li>- CH1 (Listed Buildings);</li> <li>- CH4 (Scheduled Monuments and Archaeological Sites);</li> <li>- T1 (Development Location and Accessibility); and</li> <li>- T2 (General Transport Impact).</li> </ul> <p>In addition the following provisions are also relevant to the determination of the application, namely:-</p> <ul style="list-style-type: none"> <li>- East Lothian Local Development Plan 2018 Supplementary Planning Guidance Countryside and Coast;</li> <li>- East Lothian Local Development Plan 2018 Supplementary Planning Guidance Special Landscape Areas;</li> <li>- Planning Advice Note 72: Housing in the Countryside; and</li> <li>- Scottish Planning Policy (June 2014).</li> </ul>																								
v.	Notice of Review dated 4 October 2022 together with Applicant's Submission with supporting statement and associated documents.																								

#### **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 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.
- 4.2. 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 a site at The Heugh to the south of North Berwick and seeks permission for a new build residential dwelling. A very similar application had previously been made but subsequently withdrawn before determination, but at the point where the recommendation was known.

The Planning Adviser confirmed the policies relevant to the application as set out in the Planning Officer's Report of Handling however clarified that in his view not all of these policies are appropriate for consideration in the determination of the application. He then confirmed that policy DC 3 is about replacement dwellings and the proposal is not one that replaces an existing dwelling and DC5 Housing as Enabling Development and this proposal is not about enabling development and suggested that these policies be disregarded in the determination of the application. The Planning Adviser then commented that the appellant suggested that Policy DC1 is not relevant. The Planning Adviser then advised that while Policy DC1 does not specifically address a proposal for a house in the countryside and in that respect is not relevant he thought it useful to refer to it in the determination as it sets the policy context where all development in the countryside is permitted and is the basis and logical start point for the suite of countryside policies in the LDP.

The Planning Adviser then confirmed that a total of sixteen objections had been received and were summarised in the officer's report. It was also noted that North Berwick Community Council objected to the application. In addition the following consultees raised no objection: East Lothian Council Access Officer, Waste Services officer, Environmental Health Officer, Biodiversity officer, Contaminated Land officer, Road Services officer (subject to conditions), Archaeology Officer (subject to conditions) and Scottish Water.

The Planning Adviser confirmed that there was no conflict with Policy DP2 Design issues in relation to potential overlooking, loss of daylight and privacy and overshadowing. Although as the application site is outwith the settlement of North Berwick in an area where LDP countryside policies apply the proposed development was considered to be contrary to policies DC1, DC4 and DC5 and Scottish Planning Policy.

The planning adviser then confirmed that application site lies within an area of countryside that is designated under Policy DC8 as Countryside around Towns and Policy DC9 as part of the North Berwick Special Landscape Area. The Landscape officer considered that the proposals were contrary to these policies. She also assessed the submitted Landscape and Visual Impact Assessment which shows the wide and nearly complete visibility of the site within the 1km study area and these comments are contained in the planning officer's report.

The Planning Adviser then noted that the Planning Officer also considered the potential benefits of the low carbon technology proposed in the new house and the retention of material on the site and concluded that environmental benefits associated with these did not outweigh the adverse impact of the proposal on the landscape character and appearance of the area, concluding that there were no material considerations which would justify the grant of planning permission.

The Planning Adviser then confirmed that Planning permission was subsequently refused with the reasons for refusal being more particularly set out in the Decision Notice dated 8 July 2022:

The Planning Adviser then considered the appellant's submissions which outlines the case for the proposed house to be granted permission and summarised the appellant's case as follows:

- The Council's adopted Local Development Plan is not in keeping with national guidance nor other adjacent council areas planning policies for the countryside.
- The Council's approach to housing in the countryside is to place unnecessary restrictions contrary to both national policy and guidance; limited weight should therefore be given to Policy DC4.
- There would be no adverse impact on the North Berwick Law SLA or on the setting of the B listed water tank.
- There has been insufficient consideration of material considerations which are considered to outweigh any perceived non-compliance with the adopted LDP.
- The proposed development is sustainable development in line with Scottish Planning Policy.

The Planning Adviser then advised that it is a matter for the Council to interpret the characteristics of its rural area and to apply appropriate planning policies that meets its circumstances in line with the broad guidance in Scottish Planning Policy. In this respect the Council sets out where development is permitted in the countryside through DC1, and through DC4 explains where new housing development will be supported. New housing in the countryside can be delivered through the conversion of existing rural buildings or as affordable housing or as a requirement arising from another rural use. New market housing, other than through conversion which retains the character of the countryside, is not supported and this is justified by the proximity of the East Lothian countryside to larger settlements and a concurrence with Scottish Planning Policy to direct housing development towards existing settlements where sustainable transport options are available. The Planning Adviser commented that it is for other Councils to assess their own areas and develop their own planning policies to suit the particular characteristics of their rural areas therefore the only relevant plan policies for you to consider in this case are those of the East Lothian Local Development Plan 2018.

The Planning Adviser concluded by confirming that it is now open to the Local Review Body members to look at the application afresh and to refuse the application, either for the reasons previously made or for other planning reasons; to grant the application or to grant the application with conditions. The Planning Adviser then advised that should the

members be minded to refuse then they should omit reason for refusal 2 that refers to DC5.

- 4.3. 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.
- 4.4. Councillor Forrest commented that the site visit was very helpful. He raised concerns about being able to take construction vehicles to the site in the event this application was approved. He commented that there are times where he would support building in the countryside where there was justification but he could not support a new build in the countryside where there was no other purpose than simply to build a house. Accordingly, he confirmed he was minded to support the Planning Officer's decision and to refuse this appeal.
- 4.5. Councillor Cassini agreed entirely with Councillor Forrest's comments and further stated that as the main effect of this application is to construct a new build house she was of the view this would be harmful to the character of the area as this would stand out on its own. Accordingly she could not support the appeal and would be minded to refuse the appeal and support the officer's recommendations.
- 4.6. The Chair agreed with the position taken by his colleagues and was minded to support the officer's decision on this occasion.

Accordingly, the ELLRB unanimously decided to refuse the appeal for the reasons set out below:

- 1 *The erection of a house on the application site would be new build housing development in the countryside of East Lothian 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 Policies DC1 and DC4 of the adopted East Lothian Local Development Plan 2018 and with Scottish Government policy guidance regarding the control of new housing development in the countryside given in Scottish Planning Policy: June 2014.*
- 2 *The erection of a house on the application site would not, by virtue of its architectural form, size, scale, massing and materials, be well integrated into its surroundings and would not be in keeping with the existing group of buildings of the Heugh to the east or to the water tank building known as 'Heugh Reservoir' to the west. In its exposed position where it would sit on the ridge line of the site the proposed house would be readily visible in public views of it. In the views to which it would be seen, and due to its contemporary architectural form and contrasting modern finishes, the proposed house would appear as a harmfully prominent, incongruous and intrusive feature within its exposed landscape setting. It would be markedly at odds with the character and appearance of nearby buildings and would significantly alter the open and natural landscape character of this part of the East Lothian countryside. It would be harmful to the open landscape character of the area, the distinctive landscape setting of the North Berwick Countryside Around Towns area and would harmfully affect the special character of the North Berwick Law Special Landscape Area, contrary to Policies DC8, DC9, DP1 and DP2 of the adopted East Lothian Local Development Plan 2018, the Council's approved Special Landscape Areas Supplementary Planning Guidance and with Scottish Planning Policy: June 2014.*
- 3 *The erection of a house on the application site would encroach and close the existing gap*

*between the neighbouring house of Lawrigg West Cottage to the east and the water storage tank facility known as Heugh Reservoir to the west which is listed as being of special architectural or historic interest (Category B). By this encroachment, and due to the infilling of this gap, the proposed house would harmfully disrupt, and draw focus away from, the setting of the listed building named 'Heugh Reservoir to the west, contrary to Policy CH1 of the adopted East Lothian Local Development Plan 2018 and with Scottish Planning Policy: June 2014.*

- 4 *If approved the proposed development would set an undesirable precedent for the development of new houses in the countryside of East Lothian, the cumulative effect of which would be the suburbanisation of the countryside to the detriment of its character and amenity.*

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.