

Minute of Meeting



Local Review Body

Date	Time	Venue
29 August 2017	2.00pm	Council Chambers, Midlothian House, Buccleuch Street, Dalkeith

Present:

Councillor Imrie (Chair)	Councillor Alexander
Councillor Cassidy	Councillor Lay-Douglas
Councillor Montgomery	Councillor Muirhead
Councillor Munro	Councillor Smail

1 Apologies

Apologies received from Councillor Baird and Milligan

2 Order of Business

The order of business was confirmed as outlined in the agenda that had been previously circulated.

3 Declarations of interest

Councillor Muirhead declared non-pecuniary interests in Agenda Items 5.3 – Update on Review Request – Former Arniston Gas Works, Gorebridge 15/00335/PPP - on the grounds that his views on the matter were well known and 5.6 Notice of Review Request – 35 Temple, Gorebridge 17/00275/DPP- on the grounds that he was friends with the parents of the applicant. He would therefore withdraw from the meeting during discussion of both of these items of business.

Councillor Cassidy also declared a non-pecuniary interest in Agenda Item 5.6 Notice of Review Request – 35 Temple, Gorebridge 17/00275/DPP- on the grounds that he knew the applicant. He also intended to withdraw from the meeting during discussion of this item of business.

4 Minutes of Previous Meetings

The Minutes of Meeting of 13 June 2017 were submitted and approved as a correct record.

5 Reports

Agenda No	Report Title	Presented by:
5.1	Decision Notice – 31 Broomhill Avenue, Penicuik [17/00081/DPP].	Peter Arnsdorf
Executive Summary of Report		
With reference to paragraph 5.8 of the Minutes of 13 June 2017, there was submitted a copy of the Local Review Body decision notice upholding a review request from Mr & Mrs C Neil, 31 Broomhill Avenue, Penicuik seeking a review of the decision of the Planning Authority to refuse planning permission (17/00081/DPP, refused on 30 March 2017) for the Erection of an Extension at that address and granting planning permission subject to conditions.		
Decision		
To note the LRB decision notice.		

Agenda No	Report Title	Presented by:
5.2	Decision Notice – Rosehill, 27 Park Road, Dalkeith [17/00096/DPP].	Peter Arnsdorf

Executive Summary of Report

With reference to paragraph 5.9 of the Minutes of 13 June 2017, there was submitted a copy of the Local Review Body decision notice upholding a review request from RT Hutton, Planning Consultant, The Malt Kiln, 2 Factors Brae, Limekilns, Fife seeking on behalf of their client Society of the Sacred Heart, a review of the decision of the Planning Authority to refuse planning permission (17/00096/DPP, refused on 13 April 2017) for the Erection of an Extension to Building and Alteration to Wall at Rosehill, 27 Park Road, Dalkeith and granting planning permission.

Decision

To note the LRB decision notice.

Sederunt

With reference to paragraph 3 above Councillor Muirhead, having declared a non-pecuniary interest in the following item of business, left the meeting at 2.02 pm, taking no part in the discussion thereof.

Councillor Munro joined the meeting at 2.03 pm.

Agenda No	Report Title	Presented by:
5.3	Update on Notice of Review Request Considered at a Previous Meeting – (a) Former Arniston Gas Works Site, Gorebridge [15/00335/PPP]	Peter Arnsdorf

Executive Summary of Report

With reference to paragraph 5.3 of the Minutes of 24 January 2017, there was submitted report, dated 15 August 2017, by the Head of Communities and Economy providing an update on the review request from RFA Ltd, 3 Walker Street, Edinburgh, seeking on behalf of their client Mr A McCulloch, a review of the decision of the Planning Authority to refuse planning permission in principle (15/00335/PPP, refused on 30 June 2015) for the erection of 10 dwellinghouses, formation of access and associated works at the Former Arniston Gas Works, Gorebridge.

The report reminded Members that in attempting to progress the legal agreement to secure the necessary developer contributions required as part of the consent to grant planning permission in principle, it had become apparent that there were outstanding land ownership issues. The report advised that these issues had now been resolved and the legal agreement could now be concluded.

Decision

- (a) To note the update; and
- (b) To instruct officers to conclude the legal agreement and issue the planning permission in accordance with the decision taken by the LRB at its meeting of 20 October 2015.

Action

Head of Communities and Economy

Sederunt

Councillor Muirhead rejoined the meeting at the conclusion of the foregoing item of business at 2.05 pm.

Agenda No	Report Title	Presented by:
5.4	Update on Notice of Review Request Considered at a Previous Meeting – (b) Land west of the junction of Lugton Brae and Old Dalkeith Road (the former Lugton Inn site), Dalkeith [15/00703/DPP].	Peter Arnsdorf

Executive Summary of Report

With reference to paragraph 5.3 of the Minutes of 24 January 2017, there was submitted report, dated 15 August 2017, by the Head of Communities and Economy providing an update on the review request from Rick Finc Associates Ltd, Melford House, 3 Walker Street, Edinburgh, seeking on behalf of their client Mr J O'Rourke, a review of the decision of the Planning Authority to refuse planning permission (15/00703/DPP, refused on 21 October 2015) for the erection of 5 dwellinghouses on land west of the junction of Lugton Brae and Old Dalkeith Road (the former Lugton Inn site), Dalkeith.

The report reminded Members that the LRB had agreed to uphold the review request and grant planning permission subject to conditions and the prior signing of a legal agreement to secure developer contributions towards, education provision, children's play provision, the Borders Rail Line and town centre improvements.

The report advised that despite repeated attempts to engage with the applicants, a legal agreement to secure the required developer contributions had still not been concluded.

Decision

- (a) To write to the applicant expressing disappointment at the lack of progress and expressing a desire to conclude the legal agreement timeously; and
- (b) To provide a further 2 months for the applicants to conclude the legal agreement, failing which, the LRB would revisit the site and review the application afresh.

Action
Head of Communities and Economy

Agenda No	Report Title	Presented by:
5.5	Notice of Review Requests Considered for the First Time – (a) Unit 33/1, Mayfield Industrial Estate, Mayfield, Dalkeith [17/00390/DPP]	Peter Arnsdorf

Executive Summary of Report

There was submitted report, dated 15 August 2017, by the Head of Communities and Economy regarding an application from Mr J Wynne, Spartan Gym, Unit 33/1, Mayfield Industrial Estate, Mayfield, Dalkeith seeking a review of the decision of the Planning Authority to refuse planning permission (17/00390/DPP, refused on 23 June 2017) for the change of use from general industry (class 5) to bodybuilding gym (class 11) (retrospective) at that address.

Accompanying the Notice of Review Form and supporting statement, which were appended to the report, was a copy of the report of handling thereon, together with a copy of the decision notice.

The Local Review Body had made an accompanied visit to the site on Monday 28 August 2017.

Summary of Discussion

In accordance with the procedures for the Local Review Body, the Planning Advisor gave a brief overview of the review hearing procedures and outlined the background to the case. He then introduced Mr Ludovico Rizza, joint owner of the gym and Mr Douglas Slight of RP Slight and Sons owners of the unit.

Thereafter, oral representations were received firstly from Mr Rizza on behalf of the applicants, then from Mr Slight and finally from Mr Robertson, the local authority Planning Officer; following which they responded to questions from members of the LRB.

Thereafter, the LRB gave careful consideration to the merits of the case based on all the information provided both in writing and in person at the Hearing. Whilst noting the reasons for refusal, the LRB considered that the proposed use was compatible to its location, that it provided employment benefits and opportunities for the community to be involved in sports and keep fit in accordance with the Council's healthy lifestyles objectives; these being viewed as material considerations. The LRB also discussed that whilst there was a desire to see a vacant unit brought back into use, there was also felt to be a need to ensure that its future use remained compatible to its location.

Decision

Having heard from the Planning Advisor, the LRB agreed to uphold the review request, and grant planning permission for the following reason:

The proposed use is compatible to its location within an industrial estate; it provides employment benefits and opportunities for the community to be involved in sports and keep fit which accords with the Council's healthy lifestyles objectives.

subject to the following condition:-

1. The building shall be used as a gymnasium, bodybuilding centre or fitness studio and for no other use, including those uses identified in Class 11 of The Town and Country Planning (Use Classes) (Scotland) Order 1997 or any subsequent replacement or amendment Order relating to the use of land or the Use Classes Order.

Reason: *To enable an assessment to be made with regard a proposed use's suitability for its location within an industrial estate.*

Action

Head of Communities and Economy

Sederunt

With reference to paragraph 3 above Councillors Cassidy and Muirhead, having declared non-pecuniary interests in the following item of business, left the meeting at 2.29 pm, taking no part in the discussion thereof.

Agenda No	Report Title	Presented by:
5.6	(b) 35 Temple, Gorebridge [17/00275/DPP]	Peter Arnsdorf

Executive Summary of Report

There was submitted report, dated 15 August 2017, by the Head of Communities and Economy regarding an application from John Gordon, John Gordon Associates Ltd, 3 Dean Acres, Comrie, Dunfermline seeking on behalf of their client Mr A Matthews, a review of the decision of the Planning Authority to refuse planning permission (17/00275/DPP, refused on 17 May 2017) for the installation of replacement windows at 35 Temple, Gorebridge.

Accompanying the Notice of Review Form and supporting statement, which were appended to the report, was a copy of the report of handling thereon, together with a copy of the decision notice.

The Local Review Body had made an unaccompanied visit to the site on Monday 28 August 2017.

Summary of Discussion

Having heard from the Planning Advisor, the LRB then gave careful consideration to the merits of the case based on all the written information provided. In particular, consideration was given to the likely impact of the proposed replacement windows. Whilst the desire to use modern materials was considered on balance to be acceptable, it was felt that the form and design of the proposed replacement windows required to be more in keeping with the character of the existing building and also the buildings setting within the Conservation Area.

Decision

To agreed to uphold the review request, and grant planning permission for the following reason:-

The proposed replacement of timber windows with uPVC is acceptable and reflects a desire to use modern materials. However, it is considered that the design and means of opening shall reflect the character of the house and are sympathetic to its setting in a Conservation Area – the design as submitted is not acceptable.

subject to the following condition:-

1. The proposed design of the windows is not approved. The design and means of opening of the replacement windows shall be approved in writing by the Planning Authority prior to their installation. The windows shall be of a traditional design and means of opening to reflect the character of the house.

Reason: *To ensure the design and means of opening of the windows reflect the character of the house and are sympathetic to its setting in a Conservation Area.*

Action

Head of Communities and Economy

Sederunt

Councillors Cassidy and Muirhead rejoined the meeting at the conclusion of the foregoing item of business at 2.35 pm.

Agenda No	Report Title	Presented by:
5.7	(c) The Abbey Granary, 12 Newbattle Road, Newtongrange [17/00371/DPP]	Peter Arnsdorf
Executive Summary of Report		
There was submitted report, dated 15 August 2017, by the Head of Communities and Economy regarding an application from David Paton Building Consultancy, 13 High Street, Loanhead seeking, on behalf of their client Mr A Mohammed, removal		

of Condition 5 of planning permission 17/00371/DPP, granted on 7 July 2017, for the change of use of public house to a mixed use of public house, restaurant and take away at The Abbey Granary, 12 Newbattle Road, Newtongrange.

Accompanying the Notice of Review Form and supporting statement, which were appended to the report, was a copy of the report of handling thereon, together with a copy of the decision notice.

The Local Review Body had made an unaccompanied visit to the site on Monday 28 August 2017.

Summary of Discussion

Having heard from the Planning Adviser, the LRB then gave careful consideration to the merits of the case based on all the written information provided. In particular, consideration was given to the likely impact of the proposed take away element. Whilst noting the reasons for its refusal, the LRB considered that as it would be ancillary to the main public house/restaurant uses, in this instance it would be an acceptable use in the context of the overall redevelopment of the property, which it was noted had laid vacant for over a year.

Decision

After further discussion, the Local Review Body agreed to uphold the review request and to grant planning permission without Condition 5 as stated in the original decision notice issued on 7 July 2017, viz:-

1. Unless otherwise approved in writing by the Planning Authority, the use hereby permitted shall not open to the public outwith the hours of 11am to 11pm.

Reason: *In order to allow the Planning Authority to assess any impact that extended opening hours could have on the amenity of the surrounding area.*

2. Notwithstanding the plans hereby approved, details of the proposed ventilation system shall be submitted to the Planning Authority for prior written approval. Development shall thereafter be carried out in accordance with the approved details or such alternatives as may be agreed in writing with the Planning Authority.
3. The design and installation of any ventilation system, plant or equipment and associated noise shall comply with noise rating curves (NR30) when measured within any nearby living apartment between 7am and 10pm and noise rating curves (NR25) between 10pm and 7am elsewhere.
4. No amplified music or sound reproduction equipment used in association with the use hereby approved shall be audible at the boundary of any nearby residential properties.

Reason for conditions 2 - 4: *To safeguard the amenity of the surrounding area.*

Action
Head of Communities and Economy

Agenda No	Report Title	Presented by:
5.8	(d) Land 100m South of Glenarch Lodge, Melville Road, Dalkeith [17/00267/DPP]	Peter Arnsdorf

Executive Summary of Report

There was submitted report, dated 15 August 2017, by the Head of Communities and Economy regarding an application from Eskbank Design Studio Ltd, 7 Newbattle Road, Eskbank, Dalkeith seeking on behalf of their client Mr C Douglas, a review of the decision of the Planning Authority to refuse planning permission (17/00267/DPP, refused on 2 June 2017) for the erection of three dwellinghouses at land 100m south of Glenarch Lodge, Melville Road, Dalkeith.

Accompanying the Notice of Review Form and supporting statement, which were appended to the report, was a copy of the report of handling thereon, together with a copy of the decision notice.

The Local Review Body had made an unaccompanied visit to the site on Monday 28 August 2017.

Summary of Discussion

Having heard from the Planning Adviser, who responded to Members questions, the LRB gave careful consideration to the merits of the case based on all the written information provided. In particular, consideration was given to the proposed access arrangements, the anticipated ground conditions given the outstanding objection from the Coal Authority and potential road safety issues arising from the location of the site, and whether or not these issues could be addressed by way of appropriate conditions.

After discussion, Councillor Montgomery, seconded by Councillor Cassidy, moved to uphold the review request and to grant planning permission subject to the conditions detailed in the report, together with additional conditions covering the access arrangements and extension of the 30mph speed limit; resolution of the outstanding objection to the planning application from the Coal Authority; and appropriate developer contributions.

As an amendment, Councillor Muirhead, seconded by Councillor Lay-Douglas, moved to dismiss the review request and to refuse planning permission for the reasons detailed in the case officers report.

On a vote being taken, two Members voted for the amendment and four for motion which accordingly became the decision of the meeting.

Decision

To agreed to uphold the review request, and grant planning permission for the following reason:-

The proposed development is within the built up area of Dalkeith where there is a presumption in favour of appropriate development. The proposed three dwellinghouses by means of their siting, form and design will be compatible with their location and provide an attractive development at a key gateway location into Dalkeith.

subject to

- (a) the prior signing of a legal agreement to secure developer contributions towards, education provision, the Borders Railway Line and children's play provision. The legal agreement to be concluded within 6 months of the resolution to grant planning permission, if the agreement is not concluded the review will be reported back to the LRB for reconsideration. The legal agreement to be concluded prior to the issuing of the LRB decision;
- (b) resolution of the outstanding objection to the planning application from the Coal Authority prior to any grant of planning permission being issued. The applicant shall be required to submit a Coal Mining Risk Assessment for consideration by the Coal Authority, and only once the Coal Authority is satisfied that appropriate measures can be taken to mitigate the historical coal legacy issues on the site will the planning permission be issued; and
- (c) the following condition:-
 - 1. Development shall not begin until samples of materials to be used on external surfaces of the buildings; hard ground cover surfaces; means of enclosure and ancillary structures have been submitted to and approved in writing by the planning authority. The external walls of the houses shall be finished in natural stone, wet dash render, zinc, larch or timber cladding Development shall thereafter be carried out using the approved materials or such alternatives as may be agreed in writing with the planning authority.

Reason: *To ensure the quality of the development is enhanced by the use of quality materials to reflect its setting in accordance with policies RP20 and DP2 of the Midlothian Local Plan, policies DEV2, DEV5 and DEV6 of the Proposed Midlothian Local Plan and national planning guidance and advice.*

- 2. Unless otherwise approved in writing by the Planning Authority, the stone walls around the boundary of the site, including the wall along Melville Road, shall be repaired within 12 months of the commencement of development, using lime based mortar and matching natural stone. The height and form of the wall shall be as existing.

Reason: To ensure that appropriate and traditional materials are used in the repair of this stone wall.

3. The visible infill in the gabion baskets hereby approved shall be infilled with natural stone to match the existing walls along the site frontage to Melville Road.

Reason: To promote visual cohesion in the area; to ensure that the gabion baskets are in keeping with the existing stone walls in the area.

4. Unless otherwise agreed in writing, the garage doors hereby approved shall be of roller shutter design.

Reason: To ensure there is adequate room a car in the vehicular manoeuvre area when these doors to be open; in the interests of road safety.

5. Development shall not begin until a scheme to deal with any contamination of the site and/or previous mineral workings has been submitted to and approved in writing by the planning authority. The scheme shall contain details of the proposals to deal with any contamination and/or previous mineral workings and include:
 - i. the nature, extent and types of contamination and/or previous mineral workings on the site;
 - ii. measures to treat or remove contamination and/or previous mineral workings to ensure that the site is fit for the uses hereby approved, and that there is no risk to the wider environment from contamination and/or previous mineral workings originating within the site;
 - iii. measures to deal with contamination and/or previous mineral workings encountered during construction work; and
 - iv. the condition of the site on completion of the specified decontamination measures.

Before any part of the site is occupied for residential purposes, the measures to decontaminate the site shall be fully implemented as approved by the planning authority.

Reason: To ensure that any contamination on the site is adequately identified and that appropriate decontamination measures are undertaken to mitigate the identified risk to site users and construction workers, built development on the site, landscaped areas, and the wider environment.

7. Development shall not begin until a scheme of hard and soft landscaping works has been submitted to and approved in writing by the planning authority. Details of the scheme shall include:

- i existing and finished ground levels and floor levels for all buildings and roads in relation to a fixed datum;
- ii existing trees, landscaping features and vegetation to be retained; removed, protected during development and in the case of damage, restored;
- iii proposed new planting in communal areas and open space, including trees, shrubs, hedging and grassed areas;
- iv location and design of any proposed walls, fences and gates, including those surrounding bin stores or any other ancillary structures. The details shall include a trespass proof fence along the eastern boundary;
- v schedule of plants to comprise species, plant sizes and proposed numbers/density;
- vi programme for completion and subsequent maintenance of all soft and hard landscaping. The landscaping in the open spaces shall be completed prior to the houses on adjoining plots are occupied;
- vii drainage details and sustainable urban drainage systems to manage water runoff (not within 10 metres of any railway infrastructure);
- viii proposed car park configuration and surfacing;
- ix proposed footpaths; and
- x proposed cycle parking facilities.

All hard and soft landscaping shall be carried out in accordance with the scheme approved in writing by the planning authority as the programme for completion and subsequent maintenance (vi). Thereafter any trees or shrubs removed, dying, becoming seriously diseased or damaged within five years of planting shall be replaced in the following planting season by trees/shrubs of a similar species to those originally required.

Reason: *To ensure the quality of the development is enhanced by landscaping to reflect its setting in accordance with policies RP20 and DP2 of the Midlothian Local Plan, policies DEV2, DEV5, DEV6, DEV7 and DEV9 of the Proposed Midlothian Local Plan and national planning guidance and advice.*

- 8. Unless otherwise agreed in writing by the Planning Authority, the window serving the lounge on the west elevation of the corner house as shown on drawing no. 6 shall be obscurely glazed prior to the occupation of the house. The obscure glazing shall not be replaced with clear glass without the prior written approval of the Planning Authority.

Reason: *In order to minimise overlooking and protect the privacy of the occupants of this property.*

Action

Head of Communities and Economy

The meeting terminated at 2.56 pm.