

MINUTE of MEETING of LOCAL REVIEW BODY of WEST LOTHIAN COUNCIL held within COUNCIL CHAMBERS, LIVINGSTON, on WEDNESDAY 3 SEPTEMBER 2014

Present – Councillor George Paul (Chair), Harry Cartmill, Tom Conn, Lawrence Fitzpatrick, Tom Kerr, Angela Moohan and Greg McCarra

Apologies – Councillor John Muir

Absent – Councillor Willie Boyle

1. ORDER OF BUSINESS, INCLUDING NOTICE OF URGENT BUSINESS

The Chair ruled that Agenda Item 7 would be considered immediately following consideration of the Minute and that Items 6a and 5a would follow in that order.

2. DECLARATIONS OF INTEREST

There were no declarations of interest made.

3. MINUTE

The committee confirmed the Minute of its meeting held on 6 August 2014. The Minute was thereafter signed by the Chair.

4. LOCAL REVIEW BODY SITE VISIT PROCEDURES

The committee considered a report (copies of which had been circulated) by the Chief Solicitor seeking approval for a revised procedure for the Local Review Body (LRB) cases in relation to site visits.

The report advised that the Local Review Body heard and determined applications for review of decisions taken by officers through a Statutory Scheme of Delegations for determining planning applications for local development. Its procedures were largely regulated by statutory rules. As part of those rules, when it first dealt with a case, the LRB required to determine if further information was required before it could make a determination and if any further procedural steps should take place, such as a site visit or a request for additional written information.

Under current procedures if the LRB agreed that a site visit was required it required to take this decision at a formal meeting which required the case to be adjourned to a future meeting for the site visit to take place. A decision on the merits of the case was therefore delayed and the case would then usually be dealt with at two successive meetings.

It had been suggested that a decision on whether a site visit should take place before the first consideration of a case could be delegated to officers in consultation with the Chair. The result would be that cases would often be dealt with at one meeting instead of two and cases would

be dealt with more quickly.

The proposal was legally competent, since by law committee was always able to delegate powers to officers unless Standing Order expressly prevented this from happening, In addition, in the case of the LRB, there was already a delegation to the Chief Solicitor to determine procedures at meetings of the LRB, in consultation with the Chair.

It was proposed that the procedure set out in Appendix 1 attached to the report would come into effect from the meeting scheduled for 29 October 2014.

Therefore it was recommended that the Local Review Body :-

1. Note that the Chief Solicitor had a delegated power to set the procedures for LRB cases, in consultation with the Chair;
2. Agree that with effect from the LRB meeting on 29 October 2014 the procedure set out in Appendix 1 of the report would apply, whereby the Chief Solicitor, through the Clerk to the LRB, shall decide, in consultation with the Chair, if a site visit should be arranged to take place prior to the first hearing of the case and shall make appropriate arrangements where required;
3. Agree that any site visit arranged under the procedure should be an unaccompanied site visit; and
4. Note that the LRB would retain the power to decide for itself in any case if a site visit should take place and if it should be an accompanied or unaccompanied site visit.

### Decision

To approve the terms of the report.

5. NOTICE OF REVIEW - APP NO.0135/FUL/14 - CHANGE OF USE FROM OPEN SPACE TO PRIVATE GARDEN GROUND AND ERECTION OF A BOUNDARY FENCE (IN RETROSPECT) AT LAND AT 12 GOLF COURSE ROAD, LIVINGSTON

The Local Review Body considered a report (copies of which had been circulated) by the Clerk and Legal Adviser to the Local Review Body which related to a Notice of Review for a change of use from open space to private garden ground and erection of a boundary fence at 12 Golf Course Road, Livingston

Attached to the report were the Notice of Review and other relevant review documents and the report identified the policies in the development plan and relevant planning guidance that had been referred to in the review documents.

The Local Review Body considered and took into account all of the review documents placed before it and in doing so noted that it was necessary in

terms of Section 25 of the Town and Country Planning (Scotland) Act 1997 that the Local Review Body had regard to the Development Plan and to determine the review in accordance with the Development Plan unless material circumstances indicated otherwise.

The Local Review Body then considered whether the review documents provided sufficient information to enable the review to be determined and whether further representation or further information was needed. It also took account of the views expressed in the Notice of Review and it agreed that no further written representation was required.

It then also considered whether further procedural steps should be adopted to determine the review. The Local Review Body decided that it would be necessary for an unaccompanied site visit to take place before it would proceed to determination. This would allow members to assess the impact on visual and residential amenity, and the potential loss of open space.

#### Decision

Agreed that an unaccompanied site visit to the proposed site would be necessary with only the elected members, Legal Adviser and Planning Adviser to be in attendance, and with the arrangements delegated to the Clerk and Legal Adviser

6. NOTICE OF REVIEW - APP NO.0003/FUL/14 - CHANGE OF USE TO FORM CAFE (CLASS 3) AT UNIT 9, TARTRAVEN PLACE, EAST MAIN INDUSTRIAL ESTATE, BROXBURN

Councillors Cartmill, Kerr and Moohan left the meeting before consideration of this item of business since they had not taken part in the Local Review Body's previous consideration of the case.

The Local Review Body considered a report (copies of which had been circulated) by the Clerk and Legal Adviser to the Local Review Body which related to a Notice of Review for a change of use to form a café at Unit 9, Tartraven Place, East Mains Industrial Estate, Broxburn.

Attached to the report were the Notice of Review and other relevant review documents and the report identified the policies in the development plan and relevant planning guidance that had been referred to in the review documents.

The Local Review Body considered and took into account all of the review documents placed before it and in doing so noted that it was necessary in terms of Section 25 of the Town and Country Planning (Scotland) Act 1997 that the Local Review Body had regard to the Development Plan and to determine the review in accordance with the Development Plan unless material circumstances indicated otherwise.

The Local Review Body then considered whether the review documents provided sufficient information to enable the review to be determined and whether further representation or further information was needed. It also

took account of the views expressed in the Notice of Review and it agreed that no further written representation was required.

It was also noted that the review had been subject to consideration at a previous meeting of the Local Review Body when it had agreed that an unaccompanied site visit was to be conducted; this took place on the 3 September 2014. The Local Review Body concluded that it now had sufficient information to enable it to determine the application.

The Local Review Body accepted that the development was contrary to the development plan for the reasons given by the Appointed Person. However having reached a decision that the development was contrary to the development plan, the LRB went on to consider whether there were material considerations meaning that the application for review should nevertheless be granted.

The Local Review Body had regard to all the information in the review documents. In weighing the material considerations it had particular regard to the absence of objections from the businesses operating in the industrial estate, the slight and unlikely potential impact on town centre businesses, the personal circumstances of the applicants and indications of support from nearby businesses and customers using the business.

Therefore after assessing and balancing the relevant considerations the LRB decided that the relevant material considerations were sufficient to mean that the application should be decided contrary to the development plan. Therefore the decision of the Local Review Body was that the application for review should be granted and the decision by the Appointed Person reversed. It also decided that conditions should be attached to the permission, a draft of which had been attached to the report. It agreed that the first condition should be attached to the grant of planning permission. It agreed that a condition regarding operating hours was required, but delegated to the Clerk, in consultation with the Chair, a decision on those hours to align the opening of the business with other businesses on the industrial estate. It also decided that the grant of planning permission should be personal to these applicants.

### Decision

1. Agreed that the LRB now had sufficient information to allow it to determine the application
2. Agreed that although the development was contrary to the development plan there were material considerations which justified it being granted
3. Agreed to uphold the review application and grant planning permission with the planning permission to be made personal to these applicants
4. Agreed that the conditions included with the report were required, subject to the following changes:-
  - (a) Fixing the hours of business in relation to Condition 2 was delegated to the Clerk in consultation with the Chair, taking into account the operating hours of the business carried on in the same premises

(b) The reason given for imposing restrictions on operating hours would reflect the need to reflect the operating hours of the industrial estate