

REVIEW DECISION NOTICE

Decision by East Lothian Local Review Body (the ELLRB)

Site Address: Abbey Church, Abbey Road, Dunbar, EH42 1LG

Application for Review by Mr Graeme Armet against decision by an appointed officer of East Lothian Council.

Application Ref: 11/00704/P

Application Drawings: DWG001, DWG002, DWG003, DWG004, DWG005, DWG006, DWG007, DWG008, DWG009, DWG010, DWG011, DWG012, DWG013, DWG014, DWG015, DWG016, DWG017, DWG018, DWG019 and DWG020.

Date of Review Decision Notice – 19th September 2012

Decision

The ELLRB reverses the decision to refuse this application and grants Planning Permission, subject to the condition 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

1.1 The above application for planning permission was considered by the ELLRB, at a meeting held on 30th August 2012. The Review Body was constituted by Councillor Norman Hampshire (Chair), Councillor Jim Gillies and Councillor Tim Day. All three members of the ELLRB had attended an unaccompanied site visit in respect of this application on 29th August 2012.

1.2 The following persons were also present at the meeting of the ELLRB:-

Phil McLean, Planning Adviser (in attendance on Site Visit)
Morag Ferguson, Legal Adviser
Fiona Stewart, Clerk.

2 Proposal

2.1 The proposal is for alterations to the Category B Listed Abbey Church in the centre of Dunbar to form a contemporary three storey house. The application was registered by East Lothian Council's planning service on 26th August 2011 and was refused planning consent by virtue of a Decision Notice dated 23rd March 2012. The reasons for refusal were set out in full in that Decision Notice and are, in summary, that, the proposed house would not preserve or enhance, but rather would be harmful to, the special architectural or historic interest of the listed church building and that the public views of the proposed building would not preserve or enhance, but would be harmful to, the

character and appearance of the Conservation Area, all contrary to the provisions of the development plan. The Applicant has applied to the ELLRB to review the decision to refuse planning consent.

3 Preliminaries

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

1	The drawings specified above
2	The application for planning permission with supporting statement
3	The Appointed Officer's Report of Handling
4	A copy of the Decision Notice dated 13 th April 2012
5	Copies of Policies ENV1C, ENV1D and ENV1G of the Approved Edinburgh and the Lothians Structure Plan 2015
6	Copies of Policies ENV2, ENV3, ENV4, DP6, DP22 and T2 of the Adopted East Lothian Local Plan 2008
7	Copy of the listing for the Abbey Church from Historic Scotland's statutory list
8	Copies of Consultation Responses from ELC's Environmental Protection Officer, Policy and Projects Manager, Transportation Services and Policy and Projects (Landscape) Section and from Historic Scotland (in respect of the Listed Building Consent application) and the Office of Nuclear Regulation
9	Copy of Visual Supporting Information provided by the Applicant
10	Notice of Review dated 3 rd June 2012 and supporting review statement
11	Copy Representations
12	Copy Survey Report from Rentokil
13	Schedule of Proposed Conditions

4 Findings and Conclusions

4.1 The ELLRB confirmed that the application for a review of the original decision 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.

The Members asked the Planning Adviser to summarise the planning policy position in respect of this matter. The Planning Adviser gave a brief presentation to Members advising that application site is at Abbey Church, a listed former church building at the south end of Dunbar High Street, within the Dunbar Conservation Area. The application is for alterations to the building and formation of a dwelling within it. The proposals involve downtaking parts of the walls and roof of the building, and inserting a free-standing box into the remaining shell of the building, to form a single dwelling. Garden ground would be formed within what would remain of the external walls of the former church. A detailed description of the proposed works is contained within the officer's report, and the application drawings within the review papers. He advised Members that some of the works –specifically downtakings – are described in the officer report as not requiring planning permission in themselves, however it is the view of the Planning Adviser that these works are structural alterations that are development and therefore do require planning permission. Accordingly his advice to the ELLRB was that the proposed downtakings should form part of the assessment of the application.

He reminded the ELLRB that the Town and Country Planning (Scotland) Act requires decisions on planning applications to be taken in accordance with development plan policy unless material considerations indicate otherwise. The Listed Buildings and

Conservation Areas Act further requires that, in considering whether to grant permission affecting a listed building or its setting a planning authority should have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Furthermore, when exercising Planning functions within Conservation Areas, special attention is paid to the desirability of preserving or enhancing the character or appearance of the area.

He advised the ELLRB that, should planning permission be granted for this proposed development, listed building consent would also be required however this is a separate consent process and is not before the ELLRB today. He confirmed that a listed building consent application was also submitted by the applicant and refused by the Council under expedited procedures. The applicant had a right of appeal to Scottish Ministers against that decision rather than to the Local Review Body, however he had not lodged an appeal. It would be possible for the applicant to make a new application for listed building consent in future.

Turning to development plan policy, he advised that the application site is within the defined Town Centre of Dunbar, where Local Plan policy ENV2 supports uses appropriate to such areas. Changes of use to residential use will only be allowed where the Council is satisfied that the premises have been suitably marketed for all other uses acceptable in principle within a town centre area and no reasonable offers have been received. The site is also within the Dunbar Conservation Area. The development plan seeks to preserve or enhance the character of Conservation Areas, and generally to promote a high quality of design in all development. The key policies in relation to these matters are Structure Plan policies ENV1D and ENV1G, and Local Plan policies ENV4, DP1, and DP2.

He reminded the ELLRB that the building is listed at category B and that development plan policy states that development that would harm the character, appearance or setting of listed buildings will be resisted; relevant policies are Structure Plan policy ENV1C and Local Plan policy ENV3.

He outlined a number of other development plan policies that are relevant to this application, namely:

- Policy DP6 sets out criteria to be met for extensions and alterations to existing buildings, covering matters such as amenity, scale, materials, and privacy.
- Policy T2 of the Local Plan requires new development not to have significant adverse consequences for road safety, while policy DP22 relates to parking standards.

He advised that there are also national policy documents that are relevant to his application, including Scottish Planning Policy, which states that the historic environment should be safeguarded through planning decisions, and the Scottish Historic Environment Policy, which provides further guidance on the historic environment.

He reminded the ELLRB that the appointed officer refused the application for two reasons, set out in full the officer's assessment of the application and the Decision Notice. In summary, the officer considered that the proposals would be harmful to the special architectural or historic interest of the listed building, and would be harmful to the character and appearance of the Conservation Area. She therefore considered the proposals contrary to the development policies designed to safeguard these interests and to national policy. The officer considered the proposals were acceptable in terms of the principle of residential use of the site, and in terms of sunlight and daylight,

residential amenity, road safety, and impacts on trees and shrubs, subject to conditions.

He advised that the applicant's agent has also provided a statement to the review, enclosed as part of the review papers. He summarised his arguments, namely that inadequate consultation was carried out, the Rentokil survey from 2007 was not taken into account and that the well-being of the building and the High Street were not considered. The applicant argues that Scottish Planning Policy and the Scottish Historic Environment Policy provide support for the proposals. He states that restoration of the building would not otherwise be financially viable and the impact of the proposals would be minimal.

He advised that there have been four public representations received in respect of the application, three of which are from local residents who express support for the proposals on the basis that the building would otherwise fall into disrepair, that Dunbar lacks imaginative development like this, that it would improve the street scene and that it would not alter the view from High Street. The other representation was an objection from the Architectural Heritage Society of Scotland, on the basis that the development would destroy the interior of the church, the side and rear walls would be open to the elements and were not designed to cope with the weather and would soon be destroyed.

He confirmed that there were no objections from the Council's Environmental Protection Manager or Head of Transportation subject to conditions. He outlined the terms of the consultation response from the Council's Policy & Projects Manager setting out the policy context for the application and advising that, whilst he has no doubt that a new use for the building is needed, these proposals would not convert the church into another use or respect its listed status. The duntakings would harm its character and unnecessarily remove historic fabric and expose other fabric to the elements. He also considers it would harm the Conservation Area by virtue of permanent removal of sections of roof and walls. He therefore advises that the application is contrary to relevant development plan policy and the Scottish Historic Environment Policy.

The Council's Landscape officer advised that he had no objections to removal of certain trees and shrubs within the site, but advised that two sycamores to the west of the church should be retained.

The Planning Adviser advised the ELLRB that Historic Scotland were consulted on the proposals but their comments have been treated by the case officer as relating to the listed building consent application and this is why they have not been circulated with the review papers relating to the planning application. However, their comments are material to the application and as such he proposed that it was appropriate to take them into account. Having consulted with the Legal Adviser, it was considered appropriate that these comments be made available to the ELLRB and a copy of the response was circulated to Members. The Planning Adviser particularly noted that Historic Scotland stated that the principle of dissecting the building and building a house within its exposed shell would be a retrograde conservation step, stripping the building of much of its fabric, character and meaning. It stated that to deliberately ruin a building that is capable of restoration is at significant odds with Government policy on the historic environment. It also noted that it supported a previous scheme that was proposed by the same architect.

The Planning Officer summarised the main questions for the ELLRB to consider in reviewing the case, namely:

- Whether the proposals comply with development plan policy in respect of town centres, listed buildings, conservation areas, and road safety; and
- Whether there are any other material considerations that should be taken into account, such as national policy, and whether any of these outweigh the provisions of the development plan in this case.

Finally, he reminded the ELLRB of the legal requirement to have special regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses, and to pay special attention is paid to the desirability of preserving or enhancing the character or appearance of the Conservation Area. He reminded Members that they have the option of seeking further information if necessary before making a decision, either through further written submissions, a hearing session, a further site visit, or a combination of these procedures.

The Chair asked the members to consider whether they had sufficient information to enable them to proceed to make a decision in respect of this matter. All members considered that they did have sufficient information. Accordingly, the decision of the ELLRB was that they would proceed to reach a decision at this meeting.

- 4.2 Councillor Hampshire commented that this was a particularly difficult application to determine. The building has been an eyesore in Dunbar town centre for many years and there have been a number of proposals to redevelop it although none have ever progressed. The building is clearly deteriorating in condition and the longer this continues, the less chance there is of the building being brought back into use. However, this proposal causes him some concern as the exposure of the wooden columns will lead to deterioration over time and these may then need to be removed. The remaining modular box structure would then be fully exposed and would, in his view, be entirely inappropriate for this location. Accordingly, he was minded to uphold the original decision to refuse this application.
- 4.3 Councillor Day confirmed that, having reviewed this application carefully, he was minded to overturn the original decision to refuse planning permission and support this application. Whilst he accepted that the church is a Category B listed building, he considered that it was necessary to take a realistic and balanced approach to any planning application brought forward. As this building has been vacant for 40 years and has fallen into a considerable state of disrepair, this indicated to him that its future use and viability in its present state are extremely limited. Within that context, he welcomed this innovative and exciting application. Whilst he noted that the Architectural Heritage Society raised concerns that this application would essentially destroy the building, he considered that the most important aspect of this building is the front elevation which would be retained in this scheme. In his view the church as it stands is neither a building of great beauty or of significant design in itself, so he believes the incorporation of a modern design will enhance its architectural merit and provide a compelling narrative between the two.

Councillor Gillies concurred with the views of Councillor Day and confirmed that he was also minded to overturn the original decision to refuse planning permission.

The Legal Adviser circulated a list of suggested conditions to be attached to the grant of planning permission and the Members agreed that the permission should be granted subject to these conditions.

- 4.4 Accordingly, the ELLRB members, by a majority of two to one, concluded that the original decision to refuse planning permission should be overturned and that planning permission should be granted for the alterations subject to the following conditions:-

- 1 No development shall take place on site unless and until final site setting out details have been submitted to and approved by the Planning Authority.

The above mentioned details shall include a final site setting-out drawing to a scale of not less than 1:200, giving:

- a. the position within the application site of all elements of the proposed development and position of adjoining land and buildings;
- b. finished ground and floor levels of the development relative to existing ground levels of the site and of adjoining land and building(s). The levels shall be shown in relation to an Ordnance Bench Mark or Temporary Bench Mark from which the Planning Authority can take measurements and shall be shown on the drawing; and
- c. the ridge height of the proposed house shown in relation to the finished ground and floor levels on the site.

Reason:

To enable the Planning Authority to control the development of the site in the interests of the amenity of the area.

- 2 Prior to the occupation of the house hereby approved the proposed parking arrangements and the pedestrian access footpath from Abbey Road to the north of the site shall have been formed and made available for use as shown in docketed drawing titled 'Proposed Plans' and thereafter the parking area and pedestrian access footpath shall be retained for such uses.

Reason:

To ensure a safe means of pedestrian access and a satisfactory level of off-street parking in the interests of road safety.

- 3 No development shall be carried out until a schedule of materials and finishes and samples of such finishes have been submitted to and approved in writing by the Planning Authority for the roof, external walls, window frames, door frames, external doors and terraces of the house hereby approved. Thereafter, only those materials and finishes approved by the Planning Authority shall be used as the external materials and finishes of the house hereby approved.

If the timber of the two timber terraces and their steps hereby approved is to be painted or stained a colour or finished in a timber preservative, a sample(s) of that paint, stain or timber preservative shall be submitted to and approved in advance in writing by the Planning Authority, and the colour of the paint, stain or timber preservative applied to the timber of the two timber terraces and their steps shall accord with the sample(s) so approved.

If the metal of the balustrades of any of the terraces hereby approved are to be painted or coloured, a sample(s) of that paint or colouring shall be submitted to and approved in advance in writing by the Planning Authority, and the colour applied to the metal balustrades shall accord with the sample(s) so approved.

Samples of the materials to be used to surface the hardstanding areas to be used as paved patio, footpaths and vehicular parking and turning areas shall be submitted to and approved by the Planning Authority prior to their use in the development and thereafter the materials used shall accord with the samples so approved.

Reason:

To ensure that the external finishes are appropriate in the interest of safeguarding the character and appearance of the Conservation Area and the special architectural or historic interest of the listed building of the Abbey Church.

- 4 The two sycamore trees that are to the west of the church building between it and the west boundary wall shall be retained and shall not be damaged or uprooted, felled, lopped, or topped or interfered with in any manner without the prior written consent of the Planning Authority.

No development shall take place on site until temporary protective fencing has been erected to protect the two sycamore trees. Details of the exact positioning of such temporary protective fencing shall be submitted to and approved in advance in writing by the Planning Authority.

The temporary protective fencing shall comprise standard scaffold poles as uprights driven into the ground avoiding tree roots, with 3 standard scaffold poles as horizontal rails (top, middle and bottom), all with weld mesh wired to uprights and rails. It should be 2.3 metres in height, erected prior to works commencing and kept in good condition throughout the works, all in accordance with Figure 2 of British Standard 5837: 2005 'Trees in Relation to Construction'.

Once erected the temporary protective fencing shall be retained in place until works on the application site have been completed and all plant and machinery associated with those works have been removed from the site.

Within the fenced off areas the existing ground level shall neither be raised nor lowered, no materials, temporary buildings, plant, machinery or surface soil shall be placed or stored and no herbicides shall be used.

Care should be taken when planning site operations to ensure that wide or tall loads, or plant with booms, jib and counterweights can operate without coming into contact with any retained trees.

Material that will contaminate the soil e.g. concrete/mortar mixing, diesel oil, paints, solvents and vehicular washings, should not be discharged within 10 metres of any tree trunk. It is essential that allowance be made for the slope of the ground so that such damaging materials cannot run towards retained or new trees.

Fires should not be lit in a position where their flames can extend to within 5 metres of tree foliage, branches or trunk, and due cognisance must be taken of wind speed and direction prior to and during operations.

Details of any trenches or services in the fenced off areas shall be submitted to and approved in advance in writing by the Planning Authority, and all trenches shall be dug and backfilled by hand and any tree roots encountered with a diameter of 25mm or more shall be left unsevered.

Reason:

To ensure the retention of trees important to the landscape character and appearance of the area and their protection in the interests of safeguarding the landscape character of the area.



Morag Ferguson
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.