

REVIEW DECISION NOTICE

Decision by East Lothian Local Review Body (the ELLRB)

Site Address: 1 Market View, Tranent, EH33 1GA

Application for Review by Mr Barry Nisbet against decision by an appointed officer of East Lothian Council.

Application Ref: 12/00378/P

Application Drawings: DWG001, DWG002, DWG003 and DWG004.

Date of Review Decision Notice – 8th November 2012

Decision

The ELLRB upholds the decision to refuse planning permission for the reasons given below and dismisses the review.

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 25th October 2012. The Review Body was constituted by Councillor Ludovic Broun-Lindsay (Chair), Councillor Willie Innes, Councillor Donald Grant, Councillor John McMillan and Councillor Peter MacKenzie. All five members of the ELLRB had attended an unaccompanied site visit in respect of this application on 25th October 2012 before the meeting of the ELLRB.

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
Alison Smith, Clerk.

2 Proposal

2.1 The application site is at 1 Market View, Tranent and the proposal is for the erection of a detached garage in front of the house with the remaining area in front of the house to be surfaced in tarmac to form a vehicle turning area. The planning application was registered by East Lothian Council's planning service

on 3rd May 2012 and was refused planning consent under delegated powers virtue of a Decision Notice dated 2nd July 2012. The notice of review was received on 23rd August 2012. The reason for refusal is set out in full in the Decision Notice and is, in summary, that, the proposed garage would, by its position, size and height, be a prominent and intrusive feature harmfully disruptive of the open aspect of the immediately surrounding area. 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
3	The Appointed Officer's Report of Handling
4	Copy of the Decision Notice dated 2 nd July 2012
5	Copy of Policy ENV1G of the Approved Edinburgh and the Lothians Structure Plan 2015
6	Copy of Policy ENV1 of the Adopted East Lothian Local Plan 2008
7	Copy of Consultation Response from ELC's Transportation Services section
8	Set of photographs of application site and surrounding area
9	Notice of Review dated 20 th August 2012 and supporting appeal statement
10	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 the site is within a predominantly residential area, designated under Local Plan policy ENV1. The main policy considerations are design and road safety although any impact on residential amenity is also a relevant consideration.

He confirmed that the development plan policy seeks to generally promote a high quality of design in all development. Key policies in this regard are Structure Plan policy ENV1G, and Local Plan policy DP2. The development plan policies on transport seek to ensure that development does not have adverse road safety consequences and can be safely accessed; policies T1 and T2 are the relevant policies in this regard.

The Planning Adviser confirmed that application was refused on the basis that the proposed garage would harm the character and appearance of the area by disrupting the open relationship of the applicant's house and the neighbouring house with the area of open space immediately to the south. The reasoning for this decision is set out in full in the case officer's report, which also notes that the officer considered the impact of the development to be acceptable in terms of road safety, privacy and amenity.

The Planning Adviser summarised the applicant's grounds for a review, stating that he understands that, if the hedge bounding the property was to be allowed to grow to around 2m in height, then the proposals might be looked on more favourably. Rather than waiting until this occurs the applicant requests that the ELLRB approve the application but with a suspensive condition that would prevent work being carried out until the hedge was at an appropriate height. The Planning Adviser also noted that the applicant has supplied amended plans with his Notice of Review that show a reduced height for the garage, and a slight repositioning away from the roots of the hedge.

The Planning Adviser noted that there were no public representations received in respect of the application. One consultation response was received from the Council's Transportation Division, which raised no objections but recommended that the area of hard surfacing to be formed in front of the house be secured by planning condition.

He then summarised the main questions for the ELLRB to consider in reviewing the case as:

- Whether the proposed development would comply with the policies of the development plan in respect of design and road safety, with or without any conditions?
- Whether there are any other material considerations that should be taken into account in their decision?

Finally, he reminded Members that they have the option of seeking further information if necessary before making a decision, either through further written submissions or a hearing session, or a combination of these procedures.

The Chair asked the members to firstly consider whether they had sufficient information to enable them to proceed to make a decision in respect of this matter.

Councillor Broun-Lindsay asked the Planning Adviser whether there were any conditions in the original planning consent for the development that restricted the height of the hedge. This information was not available within the Review Papers but, on reflection, Councillor Broun-Lindsay considered that he could reach a decision without this information. All other members agreed 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 Mackenzie noted that the site visit had been very useful in confirming the beauty of the suburban landscape at this location. He considered that the proposed garage would intrude on this landscape and, as this would be contrary to the terms of policies ENV1G and DP2, he would uphold the original decision to refuse this application. Councillor McMillan noted that there had been no objection from the current owners of the neighbouring property but considered that, in the long term, this development would have a negative impact on the open aspect and the residential amenity. Accordingly, he too was minded to uphold the original decision to refuse this application.

4.3 Councillor Innes took a contrary view. He considered that the views both to and from the property would be obscured when the hedge grew up to a height of 2 metres and there would then be no planning justification to refuse this application. He considered that a suspensive condition prohibiting development until the hedge had reached such a height was a suitable and practical means of addressing the issue and would be minded to grant this application subject to the imposition of such a condition. Councillor Grant supported this position and considered that, with the imposition of such a suspensive condition, he could support this application.

Councillor Broun-Lindsay considered that he could only take a decision based on what currently existed. He had no way of knowing what the hedge might look like in the future or what the effect of the hedge would then be. He also considered that the proposed garage would break the built edge of the development. On balance he would prefer that the applicant wait for the hedge to reach an appropriate height and reapply for planning consent at that time. Accordingly, he confirmed that he was minded to uphold the original decision to refuse for the reasons set out in the original Decision Notice.

4.4 Accordingly, the ELLRB agreed, by a majority of three to two, that the Review should be dismissed and the original decision to refuse this application should be upheld, for the reasons set out in the original Decision Letter of 2nd July 2012. The Review Application was accordingly dismissed.



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.

