

REVIEW DECISION NOTICE

Decision by East Lothian Local Review Body (the ELLRB)

Site Address: 15 Balfour Street, North Berwick, EH39 4JY

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

Application Ref: 12/00464/P

Application Drawings: DWG001 and DWG002.

Date of Review Decision Notice – 9th January 2013

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 20th December 2012. The Review Body was constituted by Councillor Jim Goodfellow (Chair), Councillor Jim Gillies and Councillor John Williamson. All three members of the ELLRB had attended an unaccompanied site visit in respect of this application on the morning of 20th December 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 application site is a second floor flat in a three storey mid-terraced property. The proposal is for replacement of five timber framed sash and case windows in the front elevation of the property and the replacement of four timber framed sash and case windows in the rear elevation of the property, all with double glazed sash and case type white UPVC framed windows. The application was registered by East Lothian Council's planning service on 6th June 2012 and was refused planning consent by virtue of a Decision Notice dated 3rd August 2012. The reason for refusal was set out in full in that Decision Notice and is, in summary, that, the proposed windows would not preserve the positive contribution that the timber windows make to the special architectural or historic interest of the Conservation Area, 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
3	The Appointed Officer's Report of Handling
4	A copy of the Decision Notice dated 3 rd August 2012
5	Copies of Policy ENV1D of the Approved Edinburgh and the Lothians Structure Plan 2015
6	Copies of Policies ENV4 and DP8 of the Adopted East Lothian Local Plan 2008
7	Copy of Objection received from AHSS
8	Notice of Review dated 30 th October 2012 and supporting review statement

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 application seeks the replacement of the five windows on the front elevation and four windows in the rear elevation of the property. The existing windows are all timber-framed single-glazed sash and case windows, while the proposed replacements would be double-glazed sash and case PVCu windows. He advised that the proposed replacement windows on the rear elevation would not retain the existing 2 over 2 glazing pattern but instead would have a 1 over 1 pattern while the proposed replacement windows on the front elevation would retain the existing 1 over 1 glazing pattern, i.e. without a vertical astragal. Decorative horns are proposed, which are not present on 8 of the 9 existing windows.

He reminded members that the planning legislation 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 legislation further requires that, when exercising planning functions within Conservation Areas, special attention should be paid to the desirability of preserving or enhancing the character or appearance of the area.

The Planning Adviser confirmed that the site is within a predominantly residential area, designated under local plan policy ENV1, and within the North Berwick Conservation Area. The building is not listed. He advised that the main policy considerations are design and impact on the Conservation Area.

He reminded members that 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 and pointed them to the key policies in relation to these matters, namely Structure Plan policy ENV1D and Local Plan policy ENV4.

In addition, he advised that Local Plan policy DP8 relates specifically to replacement windows and states that replacement windows in Conservation Areas must preserve or enhance the area's special architectural or historic character. This will normally mean that they should retain the proportions of the window opening, the opening method, colour, construction material of frames, and glazing pattern. He drew members' attention to the three exceptions provided for in the policy: firstly multiple glazing where there is no visible difference, secondly where a building does not positively contribute to the area's character, and thirdly where the window cannot be seen from a public place.

He advised that also relevant to the application are national policy documents, 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. It is stated within Scottish Planning Policy that development that would have a neutral effect on the character and appearance of a Conservation Area (i.e. would do no harm) should be treated as one that preserves that character or appearance.

He confirmed that the application was refused by the appointed officer on the basis that the proposed windows on the front elevation would not preserve the positive contribution that the existing traditional timber-framed sash and case windows make to the special architectural or historic interest of the Conservation Area. Consequently the proposals were considered contrary to relevant development plan policies and to Scottish Planning Policy. The reasoning for this decision is set out in full in the officer's report, which report also details that the officer considered that the proposed replacement windows on the rear of the building would be acceptable in terms of policy DP8 part (iii) as they would not have an appreciable effect on the character and appearance of the Conservation Area. Policy DP8 part (iii) relates to instances where windows are not visible from a public place, although the Planning Adviser reminded members that, on the site visit, it was clear that these windows can in fact be seen from public vantage points to the west. The officer's report also notes that permission was granted in the 1980s for aluminium windows in several properties in this terrace, under the policies applicable at that time but there are no records of permissions for any PVCu windows on this terrace.

The Planning Adviser summarised the applicant's request for a review, which states that the windows are to be replaced due to significant degradation of the timber frames and also poor thermal performance of single glazing. Attention is drawn to the design of the proposed replacements, which are argued to have a traditional appearance, which will match the colour and style of the existing windows. It is therefore argued that the visual impact will be neutral. PVCu is also argued to be a 'sustainable' material. The applicant's submission also refers to two other planning applications within North Berwick. One of these – at 4 Bramerton Court – was for a change from aluminium to PVCu windows. Having consulted the application file, the Planning Adviser confirmed that in the other case – at 9 Westgate – timber windows were in fact proposed on the front elevation.

There were no consultations carried out on the application by the case officer. One representation was received from the Architectural Heritage Society of Scotland. It objected on the basis that PVCu windows would be out of place in a Conservation Area, and it highlighted a number of negative aspects of PVCu as a material.

The Planning Officer summarised the main questions for the ELLRB to consider in reviewing the case, namely, whether the proposed development would comply with the policies of the development plan in respect of design and impacts on the Conservation Area, with or without any conditions, whether there are any other material considerations that should be taken into account, and whether any of these outweigh the provisions of the development plan in this case?

Finally, 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 Williamson commented that this was a street that, while in the Conservation Area, was not visible from any recognised vantage points. In addition, the building itself is not listed and does not appear to be of any particular significance. In light of all this, he considered that it was unduly onerous to insist on timber windows for this property and he was minded to grant this application.
- 4.3 Councillor Gillies confirmed that he was concerned that any departure from the development plan policy in respect of this property could set a precedent for other flats in this building or in the street more widely. In light of this, he was minded to refuse permission for the replacement windows to the front of the property

Councillor Goodfellow concurred with the views of Councillor Gillies relating to possible precedent and confirmed that he was also minded to refuse planning permission.

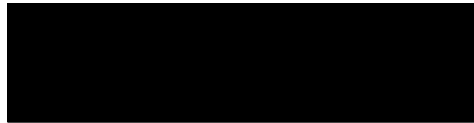
All members were, however, satisfied that the replacement windows to the rear of the property were acceptable in terms of part (iii) of Policy DP8 and wished to grant permission for these. After discussion, it was agreed that the ELLRB would overturn the original decision to refuse planning permission for the replacement windows, subject to a condition that planning consent would not be granted for the replacement windows on the front elevation of the building.

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 proposals subject to the following condition:-

1 Planning permission is not hereby granted for the five replacement windows proposed for the front (east) elevation of the flat.

Reason:

Due to their prominence and non-traditional UPVC frames the five replacement windows proposed for the front elevation of the building would not preserve the positive contribution the traditional timber framed sash and case windows of the flatted buildings of Balfour Street make to the special architectural or historic interest of the Conservation Area and, consequently, these proposed five replacement windows are contrary to Policy ENV1D of the approved Edinburgh and the Lothians Structure Plan 2015, Policies ENV4 and DP8 of the adopted East Lothian Local Plan 2008 and Scottish Planning Policy: February 2010.



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.

