

REVIEW DECISION NOTICE

Decision by East Lothian Local Review Body (the ELLRB)

Site Address: 25 Balfour Street, North Berwick, EH39 4JY

Application for Review by Mrs Tait against decision by an appointed officer of East Lothian Council.

Application Ref: 12/00750/P

Application Drawings: DWG001 and DWG002.

Date of Review Decision Notice – 22nd March 2013

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 21st March 2013. The Review Body was constituted by Councillor Norman Hampshire (Chair), Councillor Jim Gillies and Councillor Ludovic Broun-Lindsay. All three members of the ELLRB had attended an unaccompanied site visit in respect of this application on the morning of 21st March 2013.

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 ground floor flat in a three storey flatted property. An application for planning permission for the replacement of three timber framed sash and case windows in the front elevation of the property and three timber framed sash and case windows in the rear elevation of the property, all with double glazed sash and case type white PVCu framed windows, was granted in July 2011 (Planning Ref 11/00631/P) subject to a condition that stated that the three windows in the front elevation could not be replaced. Notwithstanding this condition, the applicant then replaced all six windows with PVCu framed replacements. An application for variation of the condition was subsequently submitted and was registered by East Lothian Council's planning service on 18th September 2012. This application was refused planning consent by virtue of a Decision Notice dated 13th November 2012. The reason for refusal was set out in full in that Decision Notice and is, in summary, that, the proposed windows, by virtue of their PVCu frames, 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 consent to vary the condition in question.

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 13 th November 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 the Decision Notice, Officer Report and drawings for Planning Application 11/00631/P
8	Notice of Review dated 24 th January 2013 and supporting 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 essentially seeks retrospective permission for the replacement of the three windows on the front 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 form and glazing pattern of the new windows is similar to those they replaced; the key difference is in the framing material which is PVCu.

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 condition was imposed 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. 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. Indeed, a recent application for PVCu windows at 15 Balfour Street was refused by a Planning Officer and this decision was upheld by the Local Review Body in December 2012.

The Planning Adviser summarised the applicant's request for a review, which states that the windows were replaced due to degradation of the original timber frames leading to draughts and heat loss. The agent explains that it was advised that permission had been approved in 2011 and PVCu windows were installed on both front and rear elevations, with the issue of a condition refusing permission for the front windows not having been raised. The agent argues that, although the examples of non-timber windows referred to in the officer's report pre-date the current Local Plan, they do set a precedent for non-timber windows to be acceptable in the area. It is also argued that the windows will not have any negative impact on the area or building as they match the original windows in all respects other than material. They are therefore argued to have at worst a neutral effect on the building and the Conservation Area.

There were no consultations carried out on the application by the case officer and no representations were received.

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 Hampshire confirmed that the Local Plan policies that protect East Lothian's Conservation Areas are particularly important policies and should only be departed from in exceptional circumstances. While he accepted that the style of the replacement windows was not markedly different from the originals, their construction material clearly put them at odds with the terms of Local Plan policy DP8. He did not consider that any case had been made to justify a departure from this policy and thus he upheld the original decision to refuse to vary the condition.
- 4.3 Councillor Broun-Lindsay confirmed that he was also aware of the importance of the policies relating to the protection of the Conservation Areas but he accepted that there were other 'non-compliant' windows in the area but noted that these pre-dated the current policies. While he accepted that the replacement windows were of an attractive appearance at present, he had concerns about the durability of the appearance of PVCu and noted it was a clear breach of

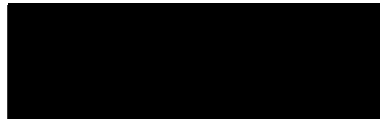
policy DP8. In all the circumstances, he was minded to refuse permission for the replacement windows to the front of the property

Councillor Gillies concurred with the views of Councillors Hampshire and Broun-Lindsay and confirmed that he was also minded to refuse planning permission.

- 4.4 Accordingly, it was the unanimous decision of the ELLRB members that the original decision to refuse permission for the variation of Condition 2 attached to Planning Permission ref 11/00631/P should be upheld for the following reason:-

Due to their prominence on the front elevation of the building of which the applicant's flat forms part the 3 replacement windows, due to their UPVC frames, do 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 they are therefore 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 2012.

The Review Application was accordingly dismissed



Morag Ferguson
Legal Adviser to ELLRB

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

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.