

## REVIEW DECISION NOTICE

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Decision by East Lothian Local Review Body (the ELLRB)

Site Address: 4 Colvin Street, Dunbar, EH42 1HE

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

Application Ref: 12/00955/P

Application Drawings: DWG001, 21213-PL-01 and 21213-PL-02.

Date of Review Decision Notice – 3<sup>rd</sup> July 2013

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### **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 20<sup>th</sup> June 2013. The Review Body was constituted by Councillor John McMillan (Chair), Councillor Willie Innes, Councillor Jim Gillies and Councillor David Berry. All four members of the ELLRB had attended an unaccompanied site visit in respect of this application on the morning of 20<sup>th</sup> June 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 two storey terraced house. The application seeks retrospective permission for the installation of ten new tilt and turn PVCu windows, replacing timber sash and case windows that were previously installed. The application was registered by East Lothian Council's planning service on 5<sup>th</sup> December 2012 and was refused under delegated powers on 1<sup>st</sup> February 2013. The notice of review is dated 29<sup>th</sup> April. The reason for refusal was set out in full in the Decision Notice and is, in summary, that, nine of the proposed windows would not preserve the positive contribution that the previous 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 1 <sup>st</sup> February 2013
5	Photographs of site and of surrounding area
6	Copies of Policies ENV4 and DP8 of the Adopted East Lothian Local Plan 2008
7	Copy of Public Objections received and further Representations from one objector
8	Notice of Review dated 29 <sup>th</sup> April 2013 and supporting review statement and photographs

#### 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 retrospective permission for the replacement of nine of the ten windows at the property; five on the front (east) elevation, one on the south elevation and three on the rear (west) elevation. The original windows were all timber-framed single-glazed sash and case windows, while the replacements are tilt and turn PVCu 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 Dunbar 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 nine replacement windows would not preserve the positive contribution that the previous traditional timber-framed sash and case windows made 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 replacement window on the ground floor rear of the building would be acceptable as it would not have an appreciable effect on the character and appearance of the Conservation Area as it is not readily visible from public view.

The Planning Adviser summarised the applicant's request for a review, which states that the new windows are more energy efficient, that they are more in keeping than other windows in the surrounding area and that other properties in the surrounding area already have PVCu windows installed. The Planning Adviser confirmed that he was unaware of any of these windows having received planning permission so could only surmise that they were unauthorised replacements.

There were no consultations carried out on the application by the case officer. Two representations were received; one from the Architectural Heritage Society of Scotland, which 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 and one from a neighbouring resident who objected on the basis that he had been required to install wooden sash and case windows in his own property.

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 Innes commented that he understood why the applicant felt aggrieved at the refusal of his planning application; it was clear that there were a number of PVCu windows in the immediate vicinity, albeit that these are unauthorised. However, he was of the view that the fact that certain owners have breached the planning rules does not justify further breaches. He was less concerned about the rear elevation of this property as he considered it was not readily visible but agreed with the appointed officer that the front elevation was an important elevation and should be preserved to maintain the character of this particular part of Dunbar. Councillor Gillies confirmed that, whilst he had some sympathy with the applicant, he was concerned that any departure from the development plan policy in respect of this property could set a precedent for properties in the street or more widely. In light of this, he was minded to refuse permission for the replacement windows to the front of the property. Councillor Berry considered it unreasonable to insist on timber framed windows in exposed coastal locations where PVCu was a more practical material. Whilst he considered some properties in the Conservation Area to be historic in character, others were more modern in style and, in his opinion, it was not reasonable to refuse planning permission in this case.
- 4.3 Councillor McMillan was also sympathetic to the applicant but felt that the terms of Policy DP8 had to take precedence.

All members were, however, satisfied that the three replacement windows to the rear of the property and the one on the south elevation 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 five replacement windows on the front elevation of the building.

- 4.4 Accordingly, the ELLRB members, by a majority of three 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 property.

**Reason:**

Due to their prominence and non-traditional PVCu 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 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.