

REVIEW DECISION NOTICE

Decision by East Lothian Local Review Body (the ELLRB)

Site Address: Peartree Nursery, Meadowpark, Haddington, EH41 4DS

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

Application Ref: 13/00299/P

Application Drawing: 436-01

Date of Review Decision Notice – 30th October 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 24th October 2013. The Review Body was constituted by Councillor Tim Day (Chair), Councillor John McMillan, Councillor Jim Gillies and Councillor Peter MacKenzie. All four members of the ELLRB had attended an accompanied site visit in respect of this application on the morning of 24th October 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 the Pear Tree Nursery, located at 32 Meadowpark, Haddington. The application seeks the deletion of a condition of a previous planning permission (ref 07/01161/FUL), which condition restricts the use of the flat roof of a single storey rear extension to emergency use only. The current application seeks deletion of this condition so that the area can be used as an outdoor space for the nursery. No physical works are proposed in the application. The site's planning history is summarised in the case officer's report, which is with the Review Documents.

2.2 The planning application was originally validated on 30th April 2013 and was refused under delegated powers on 28th June 2013. The Applicant has applied to the ELLRB to review the decision to refuse to remove the condition and the Notice of Review is dated 27th August 2013.

3 Preliminaries

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

1	The drawing specified above
2	The application for planning permission
3	The Appointed Officer's Report of Handling
4	A copy of the Decision Notice dated 28 th June 2013
5	Copy of Policy ENV1 of the Adopted East Lothian Local Plan 2008
6	Copy of Consultation Responses (2) from the Council's Environmental Protection Manager
7	Letter from Applicant dated 4 th June 2013
8	Copy of Objection received and further Representations from one objector
9	Copy of further representation from Applicant
10	Notice of Review dated 27 th August 2013 and supporting review statement and petition

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 The Planning Act requires decisions on planning applications to be taken in accordance with development plan policy unless material considerations indicate otherwise. He advised that there are no policies within the Strategic Development Plan of direct relevance to this application and that, in terms of the Local Plan, the site is within a predominantly residential area designated under policy ENV1, and is also within the Haddington conservation area. He noted that the main policy consideration is therefore the impact on the amenity of neighbouring uses. Policy ENV1 states that residential character and amenity will be safeguarded from the adverse impacts of other uses and the Planning Adviser reminded Members that the full text of this policy is provided within the Review Documents.

The Planning Adviser advised that the application was refused by the appointed officer on the basis that deletion of the relevant condition to allow use of the balcony by the nursery would generate noise that would be harmful to the amenity of neighbouring residential properties, thus the appointed officer considered that the proposal was contrary to Local Plan policy ENV1. He advised that the reasoning for this decision is set out in full in the officer's report, which states that it accords with advice from the Council's Environmental Protection Manager.

He noted that the Applicant's Notice of Review states that she had pre-application discussions that indicated the application might be accepted but that there may be a trial period. The Applicant also points out that a sound-proof fence has recently been installed at considerable expense; that the number of children using the nursery's outdoor space would not be increased - the only change would be that under 2s would use the balcony instead of being taken to the garden. A supportive petition with 52 signatories was submitted with the Notice of Review.

He noted that the appointed officer carried out a consultation with the Council's Environmental Protection Manager, who advised that the application would have the potential to generate noise outwith the application site that could adversely affect the amenity of neighbouring residential properties. He also advised that the noise barrier that has been erected would not attenuate noise from the balcony. The Planning Adviser reminded Members that one objection was received to the original application from a neighbouring resident, raising issues of residential amenity and privacy. One letter of support was also received. In response to the Notice of Review, one further objection has been received, again objecting on the basis of noise nuisance. The applicant has responded to this objection, refuting the points made. These letters are in the Review Documents.

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 residential amenity, 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 McMillan stated that he understood why the neighbouring resident might feel apprehensive about possible noise from the flat roof area but that he was not convinced that such a noise, if it arose, would have an adverse impact on neighbouring properties. He was minded to overturn the original decision to refuse to remove the condition but would favour a limit on the period for which the area might be used to seek to balance the wish of the Applicant to use her property to its full extent and the concerns of neighbours. Councillor MacKenzie considered that it should be possible for educational institutions to co-exist with residential neighbours; this is the situation in towns across Scotland. He stated that he didn't consider the noise of young children to be inappropriate in residential areas and thus was not persuaded that removal of the condition would be contrary to Policy ENV1. Councillor Gillies concurred with Councillor MacKenzie and didn't consider that there would be a significant or adverse noise impact from the use of the area in question.
- 4.3 Councillor Day had some sympathy with the concerns of the objector but found the site visit useful in confirming his view that the use of the area would not contribute greatly to existing noise in the area. He was also minded to overturn the original decision but to impose some restriction on the period that the area may be used.

All Members then agreed that the original condition would be removed from Planning Permission 07/01161/FUL but that it would be replaced by the condition below, limiting use of the flat roof area to 90 minutes in the morning and 90 minutes in the afternoon. The Members noted that the remaining conditions attaching to Planning Permission 07/01161/FUL would remain in force.

- 4.4 Accordingly, the ELLRB members unanimously decided that the original decision to refuse planning permission for refusal of condition 5 of Planning Permission 07/01161/FUL should be overturned and that this condition should be removed but replaced with the following condition:-
- 5 The doors to be installed in the flat roofed wall head dormer positioned on the east elevation roof slope of the western part of the extension hereby approved and the roof terrace, gate and staircase of the extension shall be used for emergency access/escape purposes and for the use of children under 2 years of age only for a maximum period of 90 minutes each morning that the nursery is open, from 10.00am to 11.30am, and for a maximum period of 90 minutes each afternoon that the nursery is open, between 2.00pm and 5.00pm.

Reason:

In the interests of protecting the residential amenity 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.