

REVIEW DECISION NOTICE

Decision by East Lothian Local Review Body (the ELLRB)

Site Address: 1 Kilwinning Place, Musselburgh, EH21 7EG

Application for Review by Duncan Gay against decision by an appointed officer of East Lothian Council.

Application Ref: 14/00863/P

Application Drawings: P/1, P/2, P/3 AND EX/1

Date of Review Decision Notice – 11th May 2015

Decision

The ELLRB overturns the decision to refuse planning permission for the reasons given below and grants the application, subject to the conditions set out herein.

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 23rd April 2015. The Review Body was constituted by Councillor John McMillan (Chair), Councillor John Williamson and Councillor Jim Gillies. All three members of the ELLRB had attended an unaccompanied site visit in respect of this application on 23rd April 2015.

1.2 The following persons were also present at the meeting of the ELLRB:-

Emma Taylor, Planning Adviser
Morag Ferguson, Legal Adviser
Fiona Stewart, Clerk.

2 Proposal

2.1 The application site is at 1 Kilwinning Place in Musselburgh and is a fishmongers shop which occupies the ground floor premises of a three storey tenement building located on the corner of Kilwinning Place with High Street in Musselburgh. The upper floors of the building contain residential flats. The application sought planning permission for the change of use of the premises from a shop to a hot food takeaway. The application drawings were included within the Review Papers.

The planning application was originally validated on 7th November 2014. It was reported on the Council's Scheme of Delegation List on 20th November 2014 and was refused under delegated powers on 16th January 2015. The notice of review is dated 4th March 2015.

The reasons for refusal are set out in full in the Decision Notice and are, in summary, that, the appointed officer considered that (i) the applicant had not demonstrated to the Council's satisfaction that the retail use of the premises was no longer viable and (ii) the use of the premises as a hot food takeaway would present a threat to road safety.

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 16 th January 2015
5	Copy Letters of Objection and Representation
6	Copies of Policies ENV2, R3, T2 and DP22 of the Adopted East Lothian Local Plan 2008
7	Copy of Consultees' responses
8	Set of draft Conditions
9	Notice of Review dated 4 th March 2015 and supporting review statement and Appendices

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 permission for change of use of the premises to a hot food takeaway. The intended hours of operation would be 12.00 pm to 14.00pm and 17.00pm to 23.00pm Monday to Friday and 17.00pm to 23.00pm Saturday and Sunday. She confirmed that no external alterations to the property were proposed.

She 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.

She advised that there are no policies of the approved South East Scotland Strategic Development Plan (SESplan) June 2013 relevant to the determination of the application. She noted that the shop is within Musselburgh Town Centre, an area designated by Policy ENV2 of the adopted East Lothian Local Plan, which policy states that, within town centres changes of use of retail units to other town centre uses will only be acceptable where the Council is satisfied that a retail use is no longer viable or the benefits of the proposed use to the viability and vitality of the area outweigh the loss of the shop. She advised that, in practical terms the normal requirements under this policy are evidence of a formal marketing campaign for retail purposes for a minimum period of three months.

She noted that other relevant policy considerations are Policy R3 (Hot Food Outlets), DP22 (Private Parking) and T2 (General Transport Impact) of the adopted East Lothian Local Plan 2008, copies of which are in the Review Papers.

She reminded the LRB that the appointed officer refused this current application for two reasons, set out in full in the report of handling but summarised as (i) the applicant had not demonstrated to the Council's satisfaction that the retail use of the premises was no longer viable and (ii) the use of the premises as a hot food takeaway would present a threat to road safety.

She advised that the applicant's agent provided a statement regarding the marketing of the premises and further details regarding the financial viability of the shop. The applicant's agent also provided a statement regarding the matters of road safety and parking.

She noted that four written objections were made to the application, which included comments about road safety, noise, odour and vibration, illumination of signage and the impact such use would have on the health of the local community. She noted that copies of these objections were in the Review Papers.

She advised that the Council's Environmental Protection Manager considered that any concerns regarding odour, noise and vibration could be controlled through conditions attached to any grant of permission limiting noise and odours. The Council's Roads Services manager advised that parking is restricted at the junction of Kilwinning Place with High Street and is controlled by double yellow lines. He was of the opinion that the type of hot food takeaway proposed and the hours of operation would lead to customers parking indiscriminately in what is a traffic sensitive location and thus would raise traffic safety issues at the junction. On this basis he recommended refusal of the application as it would be contrary to Policies R3, DP22 and T2 of the adopted East Lothian Local Plan 2008.

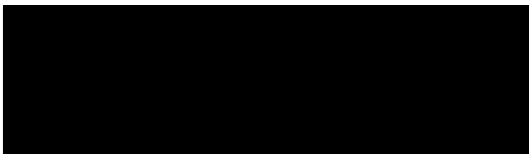
The Planning Adviser summarised the main questions for the ELLRB to consider in reviewing the case, namely whether the proposed use would comply with the policies of the development plan in respect of the loss of the retail unit in Musselburgh Town Centre; whether the proposed use would raise traffic safety issues; 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, she 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 considered that there was a precedent in the area for former retail premises changing use. He agreed that this was a traffic sensitive location but considered that the traffic problems were due to other factors and did not accept that this change of use would significantly impact on the situation. He considered that, if a retail use was not viable, a hot food takeaway was preferable to empty premises. He was satisfied that the conditions proposed would address any issues of noise and odours. Accordingly, he was minded to allow the application. Councillor Gillies agreed with the views of Councillor Williamson on the issue of traffic. Whilst regretting the loss of a valuable retail asset, he was persuaded by the evidence of non-viability produced and thus was also minded to overturn the original decision to refuse planning permission and to grant this application. He also approved the terms of the draft conditions proposed.
- 4.3 Councillor McMillan advised that he had concerns about the noise and traffic impacts that might flow from a change of use to a hot food takeaway. Given the close proximity to residential properties and the traffic sensitive nature of the location, he was minded to uphold the original decision to refuse planning permission.

- 4.4 Accordingly, by a majority of two votes to one, the ELLRB decided that the Review should be upheld and the original decision to refuse this application should be overturned. Planning permission for a change of use to a hot food takeaway is hereby granted, subject to the conditions set out below.



Morag Ferguson
Legal Adviser to ELLRB

Conditions:

- (i) Prior to any use being made of the premises as a hot food takeaway the sound transmission properties of the separating floor between the premises and the existing residential flat above are assessed and the sound insulation properties of the floor upgraded, if necessary, to ensure that airborne sound arising from the hot food takeaway does not exceed NR20 at any Octave Band Frequency when measured in the existing flat above; and**
- (ii) The design and installation of any plant and machinery operated in association with the hot food takeaway use is controlled such that any noise/vibration or structure borne noise emanating from any part of it does not exceed Noise Rating Curve NR20 at any Octave Band Frequency when measured within any neighbouring residential property assuming windows open at least 50mm; and**
- (iii) Any extract equipment to be installed to facilitate the operation of the hot food takeaway be maintained to ensure it continued satisfactory operation and any cooking processes reliant on such ventilation systems cease to operate if, at any time, the extract equipment ceases to operate to function to the satisfaction of the Local Planning Authority.**

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.

