

## REVIEW DECISION NOTICE

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Decision by East Lothian Local Review Body (the ELLRB)

Site Address: 17 Dalrymple Loan, Musselburgh, EH21 7DH

Application for Review by Emma Carnegie against decision by an appointed officer of East Lothian Council.

Application Ref: 15/00120/P

Application Drawings: 01A, DWG001, DWG002, DWG003, 02A, 03D AND DWG004

Date of Review Decision Notice – 24<sup>th</sup> September 2015

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### 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 17<sup>th</sup> September 2015. The Review Body was constituted by Councillor Ludovic Broun-Lindsay (Chair), Councillor Donald Grant, Councillor Peter MacKenzie and Councillor Kenny McLeod. All four members of the ELLRB had attended an unaccompanied site visit in respect of this application on 17<sup>th</sup> September 2015.

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

Phil McLean, Planning Adviser  
Morag Ferguson, Legal Adviser  
Fiona Stewart, Clerk.

### **2** Proposal

2.1 The application site is at 17 Dalrymple Place, Musselburgh and is a single storey building that has previously been used as a dance studio. The application sought planning permission for the change of use of the premises from a dance studio (Class 11) to a cafe (Class 3) and for the formation of new windows on the front, the alteration of an existing window to the side, and the installation of a roof vent. The application drawings were included within the Review Papers.

The planning application was originally validated on 18<sup>th</sup> February 2015. It was refused under delegated powers on 26<sup>th</sup> June 2015. The notice of review is dated 24<sup>th</sup> July 2015.

The reason for refusal is set out in full in the Decision Notice and is, in summary, that, the appointed officer considered that the proposed cafe would not have sufficient off-street parking or provision for deliveries such that the use of the premises as a cafe would present a hazard 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 26 <sup>th</sup> June 2015
5	Copy Letters of Objection and Representation
6	Copies of Policies ENV1, DP6, DP22 and T2 of the Adopted East Lothian Local Plan 2008 and Policy 1B of the approved South East Scotland Strategic Development Plan
7	Copy of Consultees' responses and further representation from ELC Environmental Health Officer
8	Set of draft Conditions
9	Notice of Review dated 24 <sup>th</sup> July 2015 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 permission for change of use of the premises to a cafe and for the formation of new windows on the front, the alteration of an existing window to the side, and the installation of a roof vent.

He reminded Members that Planning legislation requires decisions on planning applications to be taken in accordance with development plan policy unless material considerations indicate otherwise. For this application, the development plan consists of the approved Strategic Development Plan for Edinburgh and South East Scotland, known as SESplan, and the adopted East Lothian Local Plan 2008.

He confirmed that the site is within a residential area of Musselburgh, designated under Local Plan policy ENV1. It is also within the designated area of the Battle of Pinkie. He summarised the main policy considerations relevant to the application as being design, amenity, and road safety and identified the key Development Plan policies in relation to these matters as Strategic Development Plan policy 1B and Local Plan policies ENV1, DP6, DP22, and T2, copies of which are with the Review Papers.

He noted that the application was refused by the Appointed Officer on the basis that the proposed cafe would not have a sufficient level of off-street parking for customers or off-street provision for deliveries and therefore would be a road safety hazard, contrary to Local Plan policies T2 and DP22 and advised that the full reasoning for this decision is within the officer's report. He noted that the case officer considered the proposals to be acceptable in other respects, in terms of the principle of the proposed change of use, design, privacy and amenity, subject to conditions covering issues such as odour and noise impacts and details of proposed alterations.

He noted that the applicant's request for a review argues that the site is adjacent to the town centre and it is unfair to require on-site parking provision when similar businesses in the town centre do not have this and many customers are likely to be existing visitors to the town centre. He noted that the applicant would accept a condition preventing the sale of takeaway food. The applicant considered that deliveries would not be required regularly and the timing of these could be controlled by condition.

In terms of consultations, he advised that the Council's Roads Services team recommended refusal of the application on the grounds of road safety due to lack of parking for customers and deliveries. The Environmental Protection Manager recommended conditions to control odour and noise. In respect of refuse collection and waste storage Environmental Protection raised no objections. Historic Scotland advised it did not object in relation to the Battle of Pinkie site.

He confirmed that two representations were received in respect of the application; one advised that the owners of the Caprice Restaurant have no intention of entering into an agreement with the applicant regarding car parking for the cafe and the other raised concerns at the introduction of new windows on south or west elevations. However, he reassured Members that these are not in fact proposed but were errors in the labelling of drawings. This could be controlled by condition for the avoidance of doubt.

One further representation was received in response to the Notice of Review, from the Council's Environmental Health Officer who wished to add a comment from the Scottish Fire and Rescue Service that the bin store would be located at the only exit from the building. Locating them in a secure store would prevent wilful fire raising. Members could impose such a requirement by condition if so minded.

The Planning Adviser summarised the main questions for the LRB to consider in reviewing the case are whether the proposed development would comply with the policies of the Development Plan in respect of the proposed use, design, amenity, and road safety and 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 MacKenzie considered that the lack of dedicated parking was the key issue in this case. However, he considered that, as the site was less than 100 metres from the main shopping street in Musselburgh, it was likely that people would access this property on foot, having already found somewhere to park their vehicles. He didn't consider that the lack of off-street parking was a sufficiently strong reason to refuse this application and accordingly, he was minded to allow the application. Councillor Grant agreed that there was adequate parking provision within walking distance of the property. Whilst he considered that parking for delivery vehicles might be an issue, he was satisfied that this could be dealt with by means of a condition. He was minded to overturn the original decision to refuse planning permission and to grant this application, subject to appropriate conditions.
- 4.3 Councillor McLeod also agreed that the majority of customers were likely to arrive on foot given the central location of the property and did not consider that the lack of dedicated parking was sufficient justification to refuse this application. Councillor Broun-Lindsay concurred with the views of his colleagues. The ELLRB considered the draft Conditions that had been provided in the Review Papers and, having considered matters, added further conditions excluding Class 1 use without a further planning application and requiring details of the entrance gates to be approved.

- 4.4 Accordingly, the ELLRB unanimously 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 cafe is hereby granted, subject to the conditions set out below.



**Morag Ferguson**  
**Legal Adviser to ELLRB**

**Conditions:**

- 1 Any plant and equipment associated with the use and operation of the cafe hereby approved shall be designed and constructed so that noise emanating there from shall not exceed NR25 at any Octave Band Frequency when measured in any neighbouring residential property, assuming windows open at least 50mm.

Reason: To ensure the use of the premises as a cafe does not harm the amenity of nearby residential properties.

- 2 Details of the extraction system to be used, including efflux velocities of stack emissions and any odour control measures to be implemented in the form of primary, secondary and tertiary treatments, shall be submitted to and approved in writing by the Planning Authority prior to the operation of the premises as a café.

Reason: To ensure the use of the premises as a cafe does not harm the amenity of nearby residential properties.

- 3 Any extract equipment associated with the use and operation of the café hereby approved shall be maintained to ensure its continued satisfactory operation and any cooking processes reliant on such extract systems shall cease to operate if, at any time, the extract equipment ceases to function to the satisfaction of the Planning Authority.

Reason: To ensure the use of the premises as a cafe does not harm the amenity of nearby residential properties.

- 4 The opening hours of the cafe hereby approved shall be restricted to 0900 to 1800 hours on Mondays to Sundays inclusive.

Reason: To restrict the hours of opening to that which is applied for in the interests of safeguarding the amenity of neighbouring residential properties.

- 5 The external face of the timber frames of the windows hereby approved shall be painted, stained or treated with a timber preservative of a colour to be approved in writing by the Planning Authority prior to its use in the development, and thereafter the

colour of paint, stain or timber preservative used for the external surface of the timber frames of the windows shall accord with the details so approved.

Reason: In the interests of safeguarding the character and appearance of the area.

- 6 Prior to the commencement of development on the site, a Construction Traffic Method Statement designed to minimise the impact of the movements and activity of construction traffic in the vicinity of the application site shall be submitted to and approved by the Planning Authority and shall include any recommended mitigation measures for the control of construction traffic including the hours of construction work, which shall, as may be applicable, be implemented prior to the commencement of development and during the period of development works being carried out on the application site.

Reason: To minimise the impact of construction traffic on the local road network.

- 7 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 as amended (or any order revoking and re-enacting that Order with or without modification), no change of use to class 1 shop use (as defined in the Town and Country Planning (Use Classes) (Scotland) Order 1997, or any order revoking and re-enacting that Order with or without modification) shall take place without planning permission being granted on an application made to the planning authority.

Reason: To allow the planning authority to control future changes of use that would otherwise be permitted development, in the interests of road safety.

8. Notwithstanding the labelling of the elevations on drawing number 03D, no window shall be formed on the south elevation of the building without planning permission being granted on an application made to the planning authority.

Reason: For the avoidance of doubt, due to the incorrect labelling of the north elevation on drawing 03D, and to avoid impact on the privacy and amenity of neighbouring properties.

9. No development shall commence until such time as full details of the proposed new entrance gate and fixed fence panel as indicated on drawing number 03D have been submitted to and approved in writing by the planning authority. Such details shall include details of proposed materials and colours of paint, stain or timber preserve to be used. The development shall thereafter be carried out in accordance with the approved details unless otherwise agreed in writing with the planning authority.

Reason: In the interests of safeguarding the character and appearance of the area.

**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.