

REVIEW DECISION NOTICE

Decision by East Lothian Local Review Body (the ELLRB)

Site Address: 3A Dirleton Avenue, North Berwick, EH39 4AX

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

Application Ref: 16/00121/P

Application Drawings: DWG001, DWG002, DWG03 and DWG04

Date of Review Decision Notice – 20th June 2016

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 16th June 2016. The Review Body was constituted by Councillor Jim Goodfellow (Chair), Councillor Stuart Currie and Councillor John McMillan. All three members of the ELLRB had attended an unaccompanied site visit in respect of this application on 16th June 2016.

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

Emma Taylor, Planning Adviser (in attendance on Site Visit)
Morag Ferguson, Legal Adviser
Fiona Stewart, Clerk.

2 Proposal

2.1 The application property is a ground floor flat in a two storey, semi-detached, flatted building located within North Berwick Conservation Area. The application seeks permission for the replacement of the six windows of the flat – four of the windows are in the front (north) elevation of the flat, whilst the other two are in the east side and rear (south) elevations of the flat.

The existing windows of the flat are all white painted, single glazed, timber framed windows with a sash and case opening method. The proposed replacement windows would be of the same size, proportions and colour as the windows which they would replace but the proposed replacement windows would all be double glazed, UPVC framed and would be of a modern casement style with a bottom hung opening method.

The planning application was validated on 15th February 2016 and refused planning permission under delegated powers on 4th April 2016. The notice of review is dated 8th April 2016.

The reason for refusal is set out in full in the Decision Notice and is, in summary, that, the windows proposed on the publicly visible north elevation of the property, by virtue of their PVCu

frame and modern casement style, would be harmful to the character and appearance of the flat, of the flatted building and of this part of the North Berwick Conservation Area, all 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 4 th April 2016
5	Copy of Consultation Response from North Berwick Community Council
6	Copies of Policy 1B of the approved South East Scotland Strategic Development Plan and Policies ENV1, ENV4 and DP8 of the Adopted East Lothian Local Plan 2008
7	Copy of email correspondence between the Case Officer and the applicant's agent
8	Photographs of the applicant's property and its surroundings
9	Notice of Review dated 8 th April 2016 and supporting drawings 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 permission for the replacement of six windows to the front, rear and side elevations of the property. The original windows were all timber-framed single-glazed sash and case windows, while the proposed replacements would be double glazed, casement style PVCu windows.

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. 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.

She advised that the site is within a residential area of North Berwick, designated under Local Plan policy ENV1, and within the North Berwick Conservation Area. The building is not listed. She confirmed that the main policy considerations relevant to this matter are design and impacts on the Conservation Area. In particular, she 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. She noted that the key policies in relation to these matters are Strategic Development Plan policy 1B and Local Plan policy ENV4.

In addition, she confirmed 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. He explained that 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. Three exceptions are provided for: firstly multiple glazing where there is no visible difference in appearance, 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.

She advised that, also relevant to the application are national policy documents, including Scottish Planning Policy, which states that the planning system should promote the care and protection of the historic environment, and the Scottish Historic Environment Policy, which provides further guidance on the historic environment. It is stated within Scottish Planning Policy that proposals that do not harm the character or appearance of a Conservation Area should be treated as preserving that character or appearance.

She reminded the LRB that the application was refused by the appointed officer on the basis that the proposed replacement windows on the front elevation would be harmful to the character and appearance of the flat, the building, and the Conservation Area, due to their PVCu frames and different style. The application was therefore considered to be contrary to the relevant development plan policies and the reasoning for this decision is set out in full in the officer's report.

She advised that the request for a review stated that there are PVCu windows in surrounding properties and a number of photographs are provided to illustrate this point.

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, 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 Goodfellow advised that he had considered the terms of the relevant Local Plan Policies and, in particular, Policy DP8. In his view, the wording of that policy afforded the LRB a degree of discretion to allow replacement windows in a Conservation Area, even where there was a proposed change in material as long as the appearance of the new windows was not visibly different to those being replaced. However, he considered that the proposed windows in this case would not meet this test, being different in style and appearance from the current wooden windows. Accordingly, he was minded to uphold the original decision to refuse planning consent. Councillor Currie agreed that it was possible to have windows of a different material that looked similar to the original windows but that this was not the case here as the replacement windows would look markedly different to the original windows. Accordingly, he was minded to apply policy DP8 and refuse planning permission.
- 4.3 Councillor McMillan felt that the terms of Policy DP8 needed to be considered in the context of each application. This property is in a prominent and highly visible site in the Conservation Area and he considered that there is a significant difference in appearance between the current and the proposed windows. He further considered that the proposed windows would have a detrimental impact on the character of the Conservation Area, the flatted building and the flat itself. Thus he was minded to uphold the original decision to refuse planning permission.

- 4.4 Accordingly, the ELLRB agreed unanimously that the Review should be dismissed and the original decision to refuse this application should be upheld, for the reason set out in the original Decision Letter of 4th April 2016.

The Review Application was accordingly dismissed.



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.