

REVIEW DECISION NOTICE

Decision by East Lothian Local Review Body (the ELLRB)

Site Address: Riverside House, 4 Station Road, East Linton, EH40 3DP

Application for Review by Mr P Burns and Ms R Lowrie against decision by an appointed officer of East Lothian Council.

Application Ref: 15/00886/P

Application Drawings: DWG01 and DWG02.

Date of Review Decision Notice – 19th May 2016

Decision

The ELLRB reverses the decision to refuse this application and grants Planning Permission, subject to the removal of 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 19th May 2016. The Review Body was constituted by Councillor Ludovic Broun-Lindsay (Chair), Councillor John McNeil and Councillor Stuart Currie. All three members of the ELLRB had attended an unaccompanied site visit in respect of this application on the morning of 19th May 2016.

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

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

2 Proposal

2.1 The application site comprises the single storey detached house and garden of Riverside House, 4 Station Road in East Linton.

In August 2015, planning permission (Ref: 15/00387/P) was granted for:

- (i) the change of use of the area of open space to the east side of the house to domestic garden ground for the house of Riverside House;
- (ii) the erection of a single storey pitched roofed building (which has been partly constructed to base level), intended for use as accommodation ancillary to the house of Riverside House; and
- (iii) the erection of a 2 metres high chain link fence that would be positioned between the southern end of the east side elevation of the building and the east boundary of the area of open space the subject of the proposed change of use. It would also extend, for a length of 4.5 metres, along the southern end of the east boundary of the area of open space the subject of the proposed change of use.

Condition 3 of planning permission 15/00387/P states that:

'The building hereby approved shall only be used for ancillary purposes, (not including resident or guest accommodation), incidental to the use and enjoyment of the dwellinghouse that is 'Riverside House', 4 Station Road, East Linton and shall not be used as residential accommodation, a separate dwellinghouse or for any business, trade or other commercial use.'

The reason for the imposition of the condition was stated as:

'To enable the Planning Authority to control the use of the development in the interests of safeguarding the character and residential amenity of the area and that of the dwellinghouse named 'Riverside House', 4 Station Road, East Linton, and in accordance with advice on flood risk given by the Scottish Environment Protection Agency.'

The application 15/00886/P sought planning permission for a variation of condition 3 of planning permission 15/00387/P to enable the provision of occasional guest (family and friends) accommodation within the building approved for ancillary purposes. The amendment being sought is for Condition 3 of planning permission 15/00387/P to read:

'The building hereby approved shall only be used for ancillary purposes incidental to the use and enjoyment of the dwellinghouse that is Riverside House, 4 Station Road, East Linton and shall not be used as separate dwellinghouse or for any business, trade or other commercial use. For the avoidance of doubt, occasional overnight use by non-paying guests is permitted, so long as it does not exceed a total of 30 days in any calendar year.'

- 2.2 The planning application was originally validated on 27th October 2015 and was refused under delegated powers on 10th December 2015. The Applicant has applied to the ELLRB to review the decision to refuse to remove the condition and the Notice of Review is dated 8th March 2016.

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 10 th December 2015
5	Copy of Policies ENV1 and DP16 of the Adopted East Lothian Local Plan 2008 and Policy 1B of the approved South East Scotland Strategic Development Plan
6	Copy of Consultation Response from SEPA and copy of further correspondence with SEPA
7	Photographs of site
8	Location plan and site plan
9	Notice of Review dated 8 th March 2016 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. He advised The Planning Act requires decisions on planning applications to be taken in accordance with development plan policy unless material considerations indicate otherwise. 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 noted that the site is within a residential area of East Linton, designated under local plan policy ENV1. It is also within East Linton Conservation Area. He advised Members that the main policy consideration relevant to the application is the matter of flood risk. The key development plan policy in relation to this matter is Local Plan policy DP16.

He reminded the LRB that the application was refused by the appointed officer on the basis that no information or details had been provided to demonstrate that the building would be free from flood risk so as to be safe for use as occasional guest accommodation and thus variation of Condition 3 of planning permission 15/00387/P to allow for such use would be contrary to Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan), Policy DP16 of the adopted East Lothian Local Plan 2008 and advice on flood risk given by the Scottish Environment Protection Agency. He noted that the full reasoning for this decision is within the officer's report.

He summarised the applicant's request for a review on the basis that it is appropriate and valid for SEPA to resist residential development in floodplains. If people live in a floodplain, they will potentially be subject to great disruption and possible danger in the event of a flood, and will possibly not have alternative accommodation to resort to. The circumstances of this case are completely different, where family and friends are only sleeping over occasionally, and can be stopped from doing so in the event of a potential flood. There would have to be torrential rain for many days for this to happen, and an imminent flood would be quite apparent. As far as the applicant is aware, the site in question has not flooded in living memory, and it should also be noted that there are numerous nearby residential properties subject to this very low flooding risk. Therefore they suggest that such a risk does not exist. He noted that the variation to the condition is only seeking "occasional" guest and family use for no more than 30 days a year. The applicant states that he would observe weather conditions, river levels and the SEPA flood alert website. If there was any prospect of flooding, then guests would not be permitted to occupy the building.

He advised the Members that, in terms of consultations, the Scottish Environment Protection Agency objected to the proposed variation of condition 3 of planning permission 15/00387/P on the grounds that it may place buildings and persons at flood risk contrary to Scottish Planning Policy: June 2014.

He advised that SEPA confirmed that, as was stated in its consultation response to previous planning application 15/00387/P, its initial objection to the proposed building was removed on confirmation of use of it as a studio/store, which would be of a low vulnerability use and a small scale development. SEPA also confirmed that it recommended a condition as imposed on planning permission 15/00387/P that the building should not be used for residential purposes and that any change of use of the building would require a Flood Risk Assessment (FRA) to be made in favour of it. In addition, SEPA states that the information previously provided to show levels of the site relative to the River Tyne were not to Ordnance Datum but, when considered against the historic flood information for the area, it would indicate that the site is likely to be at flood risk during the 0.5% annual probability event. SEPA notes that no submission of a Flood Risk Assessment has been made in the submission of this planning application and states that a FRA may only serve to demonstrate the site is unsuitable for the proposed use.

He advised that, under the provisions of The Town and Country Planning (Notification of Applications) (Scotland) Direction 2009, due to the objection from SEPA, a government agency, Scottish Ministers must be notified if the LRB were minded to grant planning permission prior to any decision being issued.

He summarised the main questions for the LRB to consider in reviewing the case are:

Whether the proposed variation of Condition 3 of planning permission 15/00387/P would comply with the policies of the development plan in respect of flood risk?

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 Broun-Lindsay noted that, in his view, the key issue for the ELLRB was whether SEPA's objection had sufficient merit to justify refusal of the application to amend condition 3. He considered that the site visit had been informative in demonstrating that there were a number of homes already built on the flood plain. Given this and the fact that the proposed property would be used only for occasional overnight use, he considered that the SEPA objection was not proportionate and would be minded to overturn the original decision to refuse to amend this condition.
- 4.3 Councillor McNeil also accepted the appellants' case. He was particularly persuaded by the site visit and the fact that this property would not be a permanent or separate dwelling house. He considered that, in the event of flooding, any overnight guests would have alternative accommodation within Riverside House and would not therefore be at risk.

Councillor Currie considered that, in his opinion, SEPA's objection had the hallmarks of a standard response given to any application within a designated flood plain area. He did not consider it reasonable to rely on this as a reason to refuse this application given that there are permanent dwellings already located in the flood plain at East Linton. Taking account of this local knowledge, he would be minded to overturn the original decision to refuse and would grant permission to amend condition 3 as proposed by the applicant.

- 4.4 Accordingly, the ELLRB members decided unanimously, that the original decision to refuse planning permission for variation of condition 3 of Planning Permission 15/00387/P should be overturned and that this condition should be removed but replaced with the following condition:-

The building hereby approved shall only be used for ancillary purposes incidental to the use and enjoyment of the dwellinghouse that is Riverside House, 4 Station Road, East Linton and shall not be used as separate dwellinghouse or for any business, trade or other commercial use. For the avoidance of doubt, occasional overnight use by non-paying guests is permitted, so long as it does not exceed a total of 30 days in any calendar year.

Reason:

To enable the Planning Authority to control the use of the development in the interests of safeguarding the character and residential amenity of the area and that of the dwellinghouse named 'Riverside House', 4 Station Road, East Linton.



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.

