

REVIEW DECISION NOTICE

Decision by East Lothian Local Review Body (the ELLRB)

Site Address: The Old Manse, 20 Westgate, North Berwick, EH39 4AF

Application for Review by Mr and Mrs Niznik against decision by an appointed officer of East Lothian Council.

Application Ref: 16/00108/P

Application Drawings: DWG01, DWG02, DWG03 and DWG04

Date of Review Decision Notice – 22nd September 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 15th September 2016. The Review Body was constituted by Councillor Norman Hampshire (Chair), Councillor John McNeil, Councillor Jim Goodfellow and Councillor David Berry. All four members of the ELLRB had attended an unaccompanied site visit in respect of this application on 15th September 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 site is a house and its garden ground located in a prominent corner position within North Berwick Town Centre, a mixed use area as defined by Policy ENV2 of the Adopted East Lothian Local Plan 2008. It is also within North Berwick Conservation Area.

The application seeks planning permission retrospectively for a fence that has been erected along the south west roadside boundary of the site.

The planning application was validated on 23rd February 2016 and was refused planning permission on 8th April 2016. The Notice of Review is dated 5th July 2016.

The reason for refusal is set out in full in the Decision Notice and is, in summary, that, by its positioning, form and appearance, the fence is an intrusive and incongruous feature that does not complement the locality and does not preserve or enhance the character and appearance of the North Berwick Conservation Area, all contrary to the provisions of the development plan.

The Applicants have 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 8 th April 2016
5	Copy of Letter of Objection
6	Copies of Policy 1B of the approved South East Scotland Strategic Development Plan and Policies ENV4 and DP2 of the Adopted East Lothian Local Plan 2008
7	Photographs of the applicant's property and its surroundings
8	Notice of Review dated 5 th July 2016 and supporting statement, 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 retrospective permission for the erection of a timber fence some 1m in height that has been erected atop the roadside boundary wall of the site. The top of the fence measures some 1.86m in height from ground level.

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.

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, by its positioning, form and appearance, the fence is an intrusive and incongruous feature that does not complement the locality and does not preserve or enhance the character and appearance of the North Berwick Conservation Area. 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 the fence was similar to another fence in the vicinity of the application site and that, once weathered, it would blend in with the stone wall to which it is affixed.

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, having seen the fence on the site visit, he agreed that it is intrusive and incongruous and didn't preserve or enhance the character and appearance of the Conservation Area. Accordingly, he was minded to uphold the original decision to refuse planning consent. Councillor Berry agreed with this view and noted that, with the exception of number 16, all the other gardens in the vicinity of the application site are open in character. Given that this is an important view of the Conservation Area for people arriving in North Berwick by train, he considered that it was particularly important that the character and appearance of the Conservation Area was not compromised. Accordingly, he was also minded to apply policy DP8 and refuse planning permission.
- 4.3 Councillor McNeil agreed with his fellow Members as did Councillor Hampshire who felt that this was an inappropriate addition in a prominent and highly visible site in the Conservation Area. Both Members were 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 8th April 2016. The ELLRB also agreed that, should the fence not be removed within 28 days of the date of this Decision Notice, enforcement action should be initiated to effect its removal.

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.