

## REVIEW DECISION NOTICE

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Decision by East Lothian Local Review Body (the ELLRB)

Site Address: Flat 6, Elder Court, Elder Street, Tranent, EH32 1EN

Application for Review by Mrs M Scott against decision by an appointed officer of East Lothian Council.

Application Ref: 15/00211/P

Application Drawings: DWG001, DWG002, DWG003 and DWG004

Date of Review Decision Notice – 22<sup>nd</sup> September 2016

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### Decision

The ELLRB overturns the decision to refuse planning permission for the reasons given below and grants the application.

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 15<sup>th</sup> 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 15<sup>th</sup> 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 an attic flat in a two storey building located in a residential area of Tranent and also within Tranent Conservation Area. The application seeks retrospective planning permission for the replacement of the six windows of the flat. The windows that have been replaced were all timber framed windows. The replacement windows are PVCu framed windows of a similar design.

The planning application was validated on 16<sup>th</sup> March 2015 and refused planning permission under delegated powers. Due to an administrative error, the original decision notice was incorrect and a corrected Decision Notice was issued to the applicant on 8<sup>th</sup> June 2016. The notice of review is dated 6<sup>th</sup> July 2016.

The reason for refusal is set out in full in the Decision Notice and is, in summary, that, by virtue of their PVCu frames, the proposed windows would neither preserve nor enhance the character and interest of the Conservation Area, all contrary to Policy 1B of the approved South East

Scotland Strategic Development Plan and Policies ENV4 and DP8 of the adopted East Lothian Local Plan 2008 and that granting retrospective planning consent for such windows would establish a precedent that would make it difficult for the Planning Authority to refuse future applications of this nature in this part of the Conservation Area.

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 8 <sup>th</sup> June 2016
5	Copy of Policy 1B of the approved South East Scotland Strategic Development Plan
6	Copies of Policies ENV4 and DP8 of the Adopted East Lothian Local Plan 2008
7	Copy of Representation received from AHSS
8	Notice of Review dated 6 <sup>th</sup> July 2016 and supporting review statement 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 replacement of six windows of a flatted property. The existing windows that are to be replaced are doubled-glazed timber windows and the proposed replacements would have the same glazing pattern but would be made from PVCu. She advised that the site is within a residential area of Tranent, designated under local plan policy ENV1, and within the Tranent Conservation Area. The main policy considerations relevant to the application are design and impacts on the Conservation Area.

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. The key policies in relation to these matters are Strategic Development Plan policy 1B and Local Plan policy ENV4. In addition, he identified Local Plan policy DP8, which 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. 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, 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 reminded Members that copies of all these policies are with the Review Papers.

She also noted that there are national policy documents which are relevant to this application, including Scottish Planning Policy and the Scottish Historic Environment Policy. 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 noted that the application was refused by the appointed officer on the basis that the proposed replacement windows would be harmful to the character and appearance of the Conservation Area due to their PVCu frames, being of a different material and a slightly different

thickness than the original windows. The application was therefore considered to be contrary to the relevant development plan policies.

She summarised the basis of the request for a review, which argues that the replacement windows are required for protection from the elements and for energy efficiency, that the site is in a part of the Conservation Area where there are a variety of window styles and materials and that the difference between the new windows and the replacement windows are so minimal as to not be noticeable, and that new windows would be more attractive.

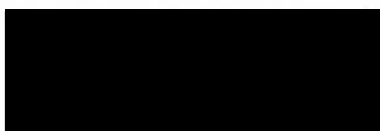
She confirmed that there were no consultations carried out on the application by the case officer and one representation received from the Architectural Heritage Society of Scotland, who objected to the application.

In summary, she advised that 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, including in respect of design and impacts on the Conservation Area 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, 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 McNeil noted that there was a great variety in styles of windows in the vicinity of the application site. He considered that the differences between the replacement windows and the original windows were minimal and are not visible. In the circumstances, he considered that their impact on the character and appearance of the Conservation Area would be very limited. On balance, he was minded to allow the application. Councillor Berry agreed. He considered that there were mitigating factors in this application; the flat is an attic flat and, combined with the minimal difference in appearance, he considered that the replacement windows are not detrimental to appearance or character of the building, the street or the Conservation Area. He Thus he was also minded to overturn the original decision to refuse planning permission and to grant this application.
- 4.3 Councillor Goodfellow concurred with the views of his colleagues. He considered that there was no distinct difference in the appearance of the replacement windows and that they preserve the character and appearance of the building and the Conservation Area. Councillor Hampshire agreed; this is a modern building in an area with a mixture of window styles. He saw no visible difference in these replacement windows therefore he considered there was no detriment to the character and appearance of the Conservation Area.
- 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 the windows is hereby granted.



**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.