

REVIEW DECISION NOTICE

Decision by East Lothian Local Review Body (the ELLRB)

Site Address: Plot 54, The Village, Archerfield, Dirleton EH39 5HT

Application for Review by Mrs D Jeromson against decision by an appointed officer of East Lothian Council.

Application Ref: 15/01030/P

Application Drawings: 868-01, DWG01, DWG02, DWG45, DWG50 and DWG51

Date of Review Decision Notice – 2nd December 2016

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 17th November 2016. The Review Body was constituted by Councillor Willie Innes (Chair), Councillor John Williamson, Councillor Jim Gillies and Councillor Stuart Currie. All four members of the ELLRB had attended an unaccompanied site visit in respect of this application on 17th November 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 detached two storey house currently under construction located in the residential area that forms part of the Archerfield development. The application seeks retrospective planning permission for the removal of Condition 5 of Planning Permission 14/00586/P to enable replacement of all the windows and glazed doors of the property with PVCu windows and door frames. The windows and door frames required under the said Condition 5 are timber framed.

The planning application was validated on 23rd March 2016 and refused planning permission under delegated powers on 20th May 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 and plain glazed design, the proposed windows and doors would be harmful to the strong characteristic design and the established design integrity of the neighbouring houses resulting in this property appearing harmfully dominant and intrusive within

its landscape setting, and thus being harmful to the character and appearance of the landscape of the area and of the Area of Great Landscape Value of which the application site forms part, all contrary to Policy 1B of the approved South East Scotland Strategic Development Plan and Policies DP2 and NH4 of the adopted East Lothian Local 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:-

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| 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 20 th May 2016 |
| 5 | Copy of Policy 1B of the approved South East Scotland Strategic Development Plan |
| 6 | Copies of Policies ENV3, DP2 and NH4 of the Adopted East Lothian Local Plan 2008 |
| 7 | Copy of Representation dated 11th April 2016 |
| 8 | Schedule of Suggested Conditions |
| 9 | Photographs of the site under construction |
| 10 | Notice of Review dated 10 th August 2016 and supporting review statement and drawings |

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. They confirmed that they had access to the planning file in respect of this matter and to all the information that the Appointed Officer had available when reaching the original decision to refuse planning permission.

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 variation of a condition that requires the windows and glazed doors of the property to be of a timber framed construction. The proposed replacement windows would have a plain glazing pattern and would be made from PVCu, as would the glazed door frames.

She noted that there is a complex planning history for this part of the Archerfield development with changes to the number of houses to be built on the village green and changes to the positioning of those houses on their plots through the submission and approval of a number of planning applications. However, she advised that planning permission 14/00586/P was granted for the erection of 3 houses on the land on the west side of the village green which includes house plot 54. The design of the three houses as approved by the grant of planning permission 14/00586/P are modified versions of the house types approved by the grant of planning permission 01/00504/FUL originally. They retain the traditional form and external finish and architectural detailing of the houses approved by the grant of planning permission 01/00504/FUL. Condition 5 of planning permission 14/00586/P requires that the frames of windows and patio doors of those 3 houses be of timber construction and shall be stained a colour to be approved by the planning authority. She noted that the purpose behind condition 5 is stated to be ensuring that the external appearance of the houses to be built on those plots would not be harmful to the character and appearance of the area, which is part of an Area of Great Landscape Value.

She advised Members that works to erect the house on plot 54 are well advanced. Planning permission is now retrospectively sought for the white UPVC framed windows, patio doors and external doors that have been installed in the house, and thus for the variation of Condition 5 of planning permission 14/00586/P.

She noted that the planning application was validated on 23rd March 2015 and refused planning permission under delegated powers on 22nd May 2016. The notice of review is dated 11th August 2016.

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. She advised that, 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.

She noted that the site is within the Archerfield estate, a housing and leisure development within the countryside near Dirleton. The main policy considerations relevant to the application are design impacts on the housing and leisure development and on the Area of Great Landscape Value and that the key policies in relation to these matters are Strategic Development Plan policy 1B and Local Plan policies DP2 and NH4.

She reminded the ELLRB that the application was refused by the appointed officer on the basis that the use of a PVCu material for the construction of the frames of the windows, patio doors and external doors of the house and garage to be built on plot 54 and the use of a plain glazed design for them is harmful to the strong characteristic design and the established design integrity of the other houses of the 73 house development at Archerfield contrary to Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan) and Policies DP2 and NH4 of the adopted East Lothian Local Plan 2008.

She confirmed that no consultations were carried out by the case officer and that one public representation to the application was received, a copy of which is with the Review Papers.

She summarised the main questions for the ELLRB to consider in reviewing the case as whether the windows, patio doors and external doors comply with the policies of the development plan in respect of design, 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 Currie noted that the site visit had been helpful in demonstrating that there was a variety of finishes of window frames in the vicinity of the application site. He considered that these had probably been installed by owners utilising the Permitted Development Rights that they now had. In the circumstances, and particularly given the Permitted Development Rights that would shortly apply to this property, he considered it unreasonable to require the installation of timber framed windows that would then be lawfully replaced with the PVCu windows that the applicant wished to install. While he appreciated the Appointed Officer's position and did not dispute that he was technically correct in the decision he reached, he considered that the practical effect of the Permitted Development Rights and the likely outcome in this case outweighed the provisions of the development plan. Accordingly, he was minded to allow the application. Councillor Williamson agreed as did Councillor Gillies.
- 4.3 Councillor Innes concurred with the views of his colleagues. While he considered that the originally prescribed windows and door frames were more attractive and in keeping with the development as a whole, he considered it would be unreasonable to require the applicant to install windows that would immediately then be removed. The Members of the ELLRB considered the terms of the proposed condition relating to glazing patterns but decided not to

impose this in this case given the position with Permitted Development Rights and the variety of window styles already installed in the vicinity.

- 4.4 Accordingly, the ELLRB unanimously decided that the Review should be upheld and the original decision to refuse this application should be overturned. Condition 5 of Planning Permission 14/00586/P is hereby varied to the effect that PVCu windows with a plain glazing pattern are permitted in respect of Plot 54.



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.