

REVIEW DECISION NOTICE**Decision by East Lothian Local Review Body-(the ELLRB)**

Site Address: 13 Dundas Avenue, North Berwick

Application for Review by Mr Craig Thomson against decision by an appointed officer of East Lothian Council to impose Condition in Decision Notice.

Application Ref: 16/00879/P

Application Drawing: DWG02; DWG04; DWG00; DWG05; DWG06; DWG07; DWG08

Date of Review Decision Notice: 29 June 2017

1 Introduction

1.1 The above application for planning permission was considered by the ELLRB, at a meeting held on Thursday, 15 June 2017. The Review Body was constituted by Councillor N Hampshire (Chair); Councillor W Innes, Councillor J McMillan, Councillor S Kempson, and Councillor B Small. All five members of the ELLRB had attended an unaccompanied site visit in respect of this application on the morning of Tuesday, 13 June 2017.

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

Iain McFarlane, Planning Adviser
Carlo Grilli, Legal Adviser
Fiona Stewart, Clerk

2 Proposal

2.1 The planning application is for the extension to house, formation of dormers and raised decking with handrails.

The planning application was registered on 10 November 2016 and was granted subject to conditions under delegated powers on 17 January 2017. The notice of review is dated 20 March 2017.

The reasons for imposing Condition 1 of the Decision Notice dated 17 January 2017 are set out in full in the Decision Notice and are, in summary, in order to safeguard the privacy and amenity of the neighboring residential property of 11 Dundas Avenue to the west.

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 17 January 2017
5	Notice of Review dated 20 March 2017 together with Applicant's Submission with supporting statement and associated documents.

4 Findings and Conclusions

- 4.1 The ELLRB confirmed that the application for a review of Condition 1 of the original decision permitted them to only consider the condition and to accept it 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 impose the condition, including all drawings and copies of all representations and objections received in respect of the original application.

The Members then asked the Planning Adviser to summarise the planning policy position in respect of this matter. The Planning Adviser advised Members that Condition 1 of planning consent to this application for an extension reflected the Case Officer's concern over windows overlooking the garden to the west of the property. This condition stated that, prior to any use being made of the rear extension, the windows to be formed at ground floor level in the west side elevation wall of it should be obscurely glazed to protect the amenity of the garden to the west of the property. The boundary with this property was presently formed by a low timber fence in combination with vegetation of varying height.

- 4.2 Councillor McMillan stated that the site visit had been very helpful in this case and he had also read the applicant's evidence to support the review. He acknowledged that there was an element of overlooking the neighbouring garden but he was satisfied that there was a reasonable relationship between the neighbours. He would therefore uphold the review and vote to remove Condition 1 from planning consent.
- 4.3 Councillor Small took the view that steps could be taken in future if there was any discontent with the windows overlooking the neighbouring garden. He too would therefore vote to remove Condition 1 of planning consent.
- 4.4 Councillor Innes took a contrary view. He stated that the applicant had privacy in his garden and the same courtesy should therefore be extended to his neighbour. Furthermore, he did not feel that the imposition of obscure glazing would be detrimental to the kitchen's appearance. He would therefore support the inclusion of the decision by the Case Officer.
- 4.5 Councillor Kempson agreed with Councillor Innes. She wondered if the neighbour appreciated how high the kitchen window would be and held the view that obscurely glazed windows would still allow sufficient light and outlook. She too would therefore support the decision of the Case Officer.
- 4.6 Councillor McMillan referred to the applicant's evidence in support of the review where he asked if an alternative condition could be considered as a compromise, should the Authority still consider there was insufficient screening. He asked if the LRB could request an alternative condition and the Planning Adviser advised that it was feasible to consider another condition but a high fence, as suggested by the applicant, could be detrimental to the neighbour in another way. The Legal Adviser agreed stating that Members would need to consider the impact such a condition would have.
- 4.7 The Chair, Councillor Hampshire stated that this application had received consent and the extension would already be overlooking the neighbour's garden. He added that consent had also been given for the decking and that there would always be screening between the gardens. He therefore considered that clear glazing in the windows would be of no further detriment to the neighbouring home than already exists. He was therefore minded to remove Condition 1 from planning consent.

Decision

The ELLRB agreed by a majority of 3:2 to remove Condition 1 shown on the Decision Notice granting planning permission dated 17 January 2017. Condition 2 remains.

The Review Application was accordingly upheld.


 Carlo Grilli
 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.