

**REVIEW DECISION NOTICE**

Decision by East Lothian Local Review Body (the “**ELLRB**”)

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Application for Review by Chris Gunstone of The Mill, Main Street, Tynninghame against decision by an appointed officer of East Lothian Council

Site Address: Tynninghame Mill, East Linton

Application Ref: 18/00364/P

Application Drawing: Drawing No 045 L(EX) 01 rev C  
Drawing No 045 L(EX) 02 rev A  
Drawing No 045 L(EX) 03 rev B  
Drawing No 045 L(PL) 01 rev C  
Drawing No 045 L(PL) 02 rev D  
Drawing No 045 L(PL) 03 rev E

Date of Review Decision Notice: 29 October 2018

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**Decision**

The ELLRB unanimously overturned the decision to refuse planning permission for the reasons given below and upholds 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 Thursday, 30 August 2018. The Review Body was constituted by Councillor N Hampshire (Chair); Councillor L Bruce, S Kempson and Councillor S Currie. All four members of the ELLRB had attended an accompanied site visit in respect of this application prior to the meeting.

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

Mr L Taylor, Planning Adviser to the LRB  
Mr C Grilli, Legal Adviser/Clerk to the LRB  
Fiona Stewart, Clerk.

## 2. Proposal

- 2.1. The planning application is for the change of use from an existing studio office to become a 2-bedroom apartment at Tynninghame Mill, East Lothian.
- 2.2. The planning application was registered on 30 April 2018 and was refused under delegated powers on 19 June 2018. The notice of review is dated 28 June 2018.
- 2.3. The reason for refusal is set out in full in the Decision Notice and is, in summary, that it has not been demonstrated that the building would be free from flood risk so as to be safe for use as ancillary residential living accommodation and thus to allow for such use would be contrary to Policy DP16 of the adopted East Lothian Local Plan 2008 and to Scottish Planning Policy: June 2014.

## 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 registered on 30 April 2018
3	The Appointed Officer's Report of Handling
4	A copy of the Decision Notice dated 19 June 2018
5	Copies of the Strategic Development Plan Policy 1B (The Spatial Strategy: Development Principles) and Local Plan 2008 policies ENV3 (Listed Buildings), ENV4 (Development Affecting Conservation Areas), DP2 (Design) and DP6 (Alteration and Extensions to Existing Buildings).
6	Notice of Review dated 28 June 2018 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 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, 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 gave a brief presentation to Members advising that the proposal comprised of internal reconfiguration to form the living accommodation, some external alterations, the erection of fencing and creation of hard standing area, all as shown on the accompanying plans and elevation drawings. The building is located to the south of Tynninghame village within the Tynninghame Conservation Area. It is also Category B Listed due to its historic association with the main 'Mill House' as being of special architectural or historic interest. The conversion to form residential accommodation resulted in fairly significant changes being made. Planning applications must be determined in accordance with the Development Plan unless material considerations indicate otherwise. For East Lothian, the Development Plan comprises of

the Strategic Development Plan for Edinburgh and South East Scotland (SDP), and the East Lothian Local Plan 2008. The following SDP policies are relevant:

- Policy 1B (The Spatial Strategy: Development Principles). The following Local Plan 2008 policies are relevant:
- ENV3 (Listed Buildings)
- ENV4 (Development Affecting Conservation Areas)
- DP2 (Design)
- DP6 (Alteration and Extensions to Existing Buildings)

Members will also note that the proposed Local Development Plan (as modified following examination) has been submitted to Scottish Ministers stating the Council's intention to adopt the plan. Relevant policies within the LDP 2018 are:

- CH1 (Listed Buildings)
- CH2 (Development Affecting Conservation Areas)
- DP2 (Design)
- DP5 (Extensions and Alterations to Existing Buildings)

Also of relevance to the determination of this application being reviewed is Scottish Planning Policy (June 2014). An application for Listed Building Consent was submitted separately.

No public objections were received to the application. Consultation with ELC Services including Landscape, Transportation, Contamination and Environmental Health resulted in no objections although in some cases conditions were requested. In assessing the planning application, Officers concluded that the proposal would not harm the character and appearance of the Conservation Area. Detailed matters could be controlled through appropriate conditions. Consultation with SEPA resulted in an objection being made by this Key Agency on the grounds that the building is located within the functional floodplain being at risk of a 1 in 200 year flood event and that the site is at significant risk from flooding and not suitable for residential accommodation. Consultation with ELC Flooding confirmed agreement with the reasons for SEPA's objection. The building is within an area classified as medium to high flood risk from river flooding as shown on SEPA flood mapping. A Flood Risk Assessment has been submitted with the application and concludes that the proposal is at risk of a 1 in 200 year flood event. Measures were proposed to protect the building from flooding. Scottish Planning Policy 2014 states that the planning system should promote flood avoidance by locating development away from functional flood plains and medium to high risk areas. SEPA also confirmed in their response that they do not support the construction of informal flood defences.

As such, Officers determined that it had not been demonstrated that the proposal would be free from flood risk, nor that it would be safe for ancillary residential accommodation. The proposal was deemed contrary to SPP 2014, Policy DP16 of the adopted Local Plan 2008 and the advice from SEPA. Planning permission was subsequently refused on the 19th June 2018

- 4.2. Councillor Currie was of the view that the site visit allowed opportunity to identify the issues from SEPA and if SEPA were to attend a site visit then they would have allowed a discussion on whether the application is proportionate. While Councillor Currie recognises the views of the Planning Officer and the right of SEPA to put forward the objections he would be minded to uphold the appeal subject to the proposed conditions.

- 4.3. Councillor Bruce agreed to Councillor Currie and based his decision on the topography of the site. Accordingly he would be minded to uphold the application subject to the proposed conditions
- 4.4. Councillor Kempson agreed with both Councillors Currie and Bruce and was minded to approve the application subject to the proposed conditions.
- 4.5. Councillor Hampshire was also in agreement this is a historical building and is on the edge of the flood plan and the convention of this as an ancillary building to the main dwelling/building. The topography of the site would require that there would need to be a significant flood for there to be a risk and therefore he was minded to approve the application subject to the proposed conditions.

Accordingly, the ELLRB decided unanimously that the application should be approved and should be referred to Scottish Ministers for approval. The Scottish Ministers confirmed that they will not take action in this matter. Accordingly planning permission is hereby granted subject to the following conditions:

1. The timber framing of the windows, doors and paneling to be used to infill the existing window openings in the east end of the front (south) elevation of the building and otherwise as the enclosure of the open ended front (South) elevation part of the building hereby approved shall be painted or stained in accordance with a sample paint or stain to be provided for the inspection and approval of the Planning Authority prior to any paint or stain colour being applied to them. The paint or stain used shall accord with the sample so approved.

Reason:

To safeguard the special architectural or historic interest of the listed building, and the character and appearance of the Conservation Area.

2. The timber screen fencing and the timber pedestrian gate hereby approved shall be painted or stained in accordance with a sample paint or stain to be provided for the inspection and approval of the Planning Authority prior to any paint or stain colour being applied to them. The paint or stain used shall accord with the sample so provided.

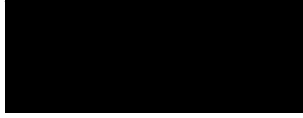
Reason:

To safeguard the special architectural or historic interest of the listed building, and the character and appearance of the Conservation Area.

3. The ancillary residential accommodation hereby approved shall only be used for purposes incidental to the residential use and enjoyment of the dwellinghouse that is 'Tynningame Mill', Tynningame, East Linton and shall at no time form a separate residential unit or be used for any business, trade or other commercial use.

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 'Tynningame Mill', Tynningame, East Linton



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.