

**REVIEW DECISION NOTICE**

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

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Application for Review against condition for the erection of Car Port by Mr Andrew Hamilton of Orchard House, Tweeddale Avenue, Gifford EH41 4QN .

Site Address: Orchard House, Tweeddale Avenue, Gifford EH41 4QN

Application Ref: 18/00282/P

Application Drawing: MH/0418/P-01 rev B

DWG1

MH/0418/P-02

Date of Review Decision Notice: 4 June 2019

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**Decision**

The ELLRB unanimously agreed to refuse the application for the reasons given below.

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, 16 May 2019. The Review Body was constituted by Councillor J Williamson (Chair); Councillor F O'Donnell, and Councillor S Kempson. All three members of the ELLRB had attended an unaccompanied 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 P Zochowski, Planning Adviser to the LRB  
Mr C Grilli, Legal Adviser/Clerk to the LRB  
Fiona Stewart, Clerk.

## 2. Proposal

- 2.1. The planning application was for change of use of public open space to form domestic garden ground, erection of 2 sheds, carport, fencing walls and gates and formation of hardstanding areas (part retrospective).
- 2.2. The planning application was registered on 30 April 2018 and the decision notice granting planning permission subject to condition was issued on 5 October 2018
- 2.3. The notice of review against condition 1 of the Planning Permission was dated 29 December 2018.

## 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 Decision Notice dated 5 October 2018
4	The Appointed Officer's Submission
5	<p>SESplan policy 1B The Spatial Strategy: Development Principles East Lothian Local Development Plan 2018 policies:</p> <p>CH2: Development affecting Conservation Areas CH3: Demolition of an Unlisted Building in a Conservation Area</p> <p>DP1: Landscape Character DP2: Design</p> <p>NH8: Trees and Development,</p> <p>OS2: Change of Use to Garden Ground</p>
6	Notice of Review dated 29 December 2018 together with Applicant's Submission with supporting statement and associated documents.

## 4. Findings and Conclusions

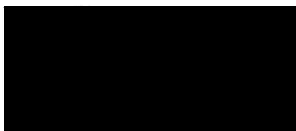
- 4.1. The ELLRB confirmed that the application for a review of a condition of the Planning Permission permitted them to consider the condition afresh and it was open to them to grant it in its entirety, grant it subject to further conditions or to refuse it. They confirmed that they had access to the planning file in respect of this matter and to all the information that the Appointed Officer had available when reaching the original decision to grant planning permission subject to the condition, including all drawings and copies of all representations and objections received in respect of the original application.
- 4.2. 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 this was an appeal against condition 1 on the grant of planning permission for application 18/00282/P. The condition had not approved the erection of a car port on

grounds that in its proposed position it would be harmfully intrusive and exposed within its landscape setting and harmful to the landscape character and appearance of the Gifford Conservation Area. Accordingly the proposed car port was deemed to be contrary to Policy 1B of the SESPlan, policies DP2 Design and CH2 Development Affecting a Conservation Area of the East Lothian Local Development Plan 2018 and SPP 2014. The determining issues in respect of the car port were therefore whether it would be harmfully intrusive within its landscape setting and whether it would be harmful to the character and appearance of the Gifford Conservation Area. The dimensions and proposed materials of the car port were described. Attention was drawn to the Landscape officer's consultation response to the application which made reference to replacement tree planting close to where the car port was proposed and suggests that there would be insufficient space for this replacement tree planting which in turn would affect the screening effect of the trees on the corner of the plot where the car port was proposed. Attention was then drawn to the appellant's submission that stated his intention to plant pleached hornbeam trees for which copies of invoices had also been submitted and it was noted that these had been seen in situ at the site visit earlier that day.

- 4.3. Some questions of clarification were then asked of the Planning Adviser.
- 4.4. The Chair asked his colleagues if they had sufficient information to proceed to determine the application today and they unanimously agreed to proceed. Comments on the application followed.
- 4.5. Councillor Kempson stated that taking account of the approach to Gifford and the setting of the conservation area it is attractive with the trees. The building of the car port would be harmful to the landscape character of the Gifford Conservation Area. Councillor Kempson was minded to support the planning officer's recommendation and refuse the appeal.
- 4.6. Councillor O'Donnell stated that she agreed with Councillor Kempson. The car port would change the character of the area. Councillor O'Donnell accordingly was minded to support the planning officer's recommendation and refuse the appeal.
- 4.7. The Chair agreed with the comments of the other board members. The car port would change the character and would be harmful to the conservation area. Accordingly the Chair was minded to support the planning officer's recommendation and refuse the appeal.

Accordingly, the ELLRB unanimously agreed to refuse the application for the reasons set out in more detail in the original Decision Notice dated 5 October 2018.

The Review Application was accordingly dismissed.



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.