

## **REVIEW DECISION NOTICE**

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

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Application for Review by Ms Fiona Mitchell of 15 Mayfield Place, Musselburgh against refusal of Planning Permission for design changes to the scheme of development the subject of planning permission 18/00832/P, at 15 Mayfield Place, Musselburgh, EH21 6HS

Site Address: 15 Mayfield Place, Musselburgh, EH21 6HS

Application Ref: 19/00240/P

Date of Review Decision Notice: 21 November 2019

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### **Decision**

The ELLRB unanimously agreed to uphold the original decision of the Planning Officer to refuse the application and rejected the appeal 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, 24 October 2019. The Review Body was constituted by Councillor F O'Donnell (Chair), Councillor S Kempson, Councillor K Mackie and Councillor K McLeod. All four members of the ELLRB together with the Planning Adviser had attended a site visit accompanied by the applicant in respect of this application prior to the meeting.

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

Mr M Mackowiak, Planning Adviser to the LRB  
Mr C Grilli, Legal Adviser to the LRB  
Ms Fiona Currie, Clerk.

### **2. Proposal**

2.1. The planning application sought planning permission for design changes to the scheme of development which is the subject of planning permission 18/00832/P, at 15 Mayfield Place, Musselburgh, EH21 6HS. The design changes consist of:

- 2.1.1. A reduction in the width of the dormer window serving bedroom 3 to 1.4 metre, instead of the 2.37 metre, wide dormer window previously approved;
- 2.1.2. The installation of a vertically aligned UPVC window to serve the shower room instead of the horizontally aligned UPVC window previously approved; and
- 2.1.3. The installation of a clear glazed dormer window serving bedroom 3 instead of the obscure glazed window required by condition 1 of Planning Permission 18/00832/P
- 2.2. The planning application was registered on 14 March 2019 and was refused under delegated powers on 17 May 2019. The notice of review against the planning officer's decision is dated 31 July 2019.
- 2.3. The reasons for refusal are set out in full in the Decision Notice and are in summary, that:
- 2.3.1. The dormer window serving bedroom 3, without obscure glazing, allows for direct overlooking of the neighbouring garden serving the occupants of 13 Mayfield Place, resulting in an unacceptable loss of privacy and amenity to those occupants. The development is therefore contrary to Policy DP5 of the East Lothian Local Development Plan 2018.

### **3. Preliminaries**

- 3.1. The ELLRB members were provided with copies of the following:-

1.	The following plans / drawings: <ul style="list-style-type: none"> <li>• Drawing No: 1863/004PL-V      Rev H</li> <li>• Drawing No: 1863/017PL-V</li> <li>• Drawing No: 1863/006PL-V      Rev H</li> <li>• Drawing No: 1863/001            Rev A</li> </ul>
2.	The Application for planning permission registered on 14 March 2019
3.	The Decision Notice refusing to grant permission dated 17 May 2019
4.	The Appointed Officer's Submission
5.	Policy DP5 (Alterations and Extensions) of the East Lothian Local Development Plan 2018
6.	Notice of Review dated 31 July 2019 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 decision to refuse planning permission 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 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 the application sought a variation to the design approved under Planning Permission 18/00832/P. In August 2018 planning permission (Ref: 18/00832/P) was sought for the formation of a dormer in the rear elevation roof of the house. The proposed dormer

would span the full width of the house and would facilitate the extension of the property to form two additional bedrooms and a bathroom. Given the layout of the neighbouring garden, the dormer would feature a window to the large double bedroom which would be within 9 metres of the boundary of the neighbouring garden and as such would detrimentally impact on the amenity of the neighbouring property. To overcome this the applicant's agent confirmed to the Planning Case Office that the applicant would accept a condition imposed on the grant of planning permission to require that the larger bedroom be obscure glazed. Planning Permission was subsequently granted in October 2018. Condition 1 of Planning Permission 18/00832/P states:

"Prior to any use being made of the dormer hereby approved the windows serving the shower room and bedroom 3 shall all be obscure glazed in accordance with a sample of the obscure glazing to be submitted to and approved by the Planning Authority in advance of their use on the dormer. The obscure glazing of those windows shall accord with the sample so approved and thereafter they shall remain obscurely glazed unless otherwise approved by the Planning Authority

Reason:

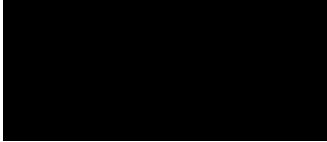
In order to safeguard the privacy and amenity of the adjoining residential property of no 13 Mayfield Place"

A dormer has since been formed in the rear elevation roof of the house. The windows serving bedroom 3 has not been obscure glazed in accordance with the requirements of condition 1 of planning permission 18/00832/P.

Further only Policy DP5 of the East Lothian Local Development Plan 2018 is relevant to this application and in terms of the Planning Officer's Report they have found that the proposal is contrary to this policy.

- 4.3. The Chair asked her colleagues if they had sufficient information to proceed to determine the application today and they unanimously agreed to proceed. Comments on the application followed.
- 4.4. Councillor McLeod stated that the neighbouring garden was a peculiar shape and noted that the main issue was in relation to the requirement for obscure glazing. He was therefore minded to support the original decision of the Planning Officer and refuse the application..
- 4.5. Councillor Kempson stated that in her belief in the circumstances the window should be obscured and was also minded to support the original decision of the Planning Officer and refuse the application.
- 4.6. Councillor Mackie was also minded the original decision of the Planning Officer and refuse the application.
- 4.7. The Chair stated that she was in agreement with her colleagues. The removal of the obscure glazing does not comply with policy DP5 of the East Lothian Local Development Plan and for the installation of a window would present a glaring loss of privacy and amenity to the neighbouring property. Accordingly she would support the original decision of the Planning Officer and refuse the application.

Accordingly, the ELLRB decided unanimously that the Review should be refused and to uphold the original decision to refuse this application should be up held, for the reasons set out in the original Decision Notice of 17 May 2019.



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.