



**MINUTES OF THE MEETING OF THE
LOCAL REVIEW BODY**

**THURSDAY 24 OCTOBER 2019
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON**

Committee Members Present:

Councillor F O'Donnell (Chair)
Councillor S Kempson
Councillor K Mackie
Councillor K McLeod

Advisers to the Local Review Body:

Mr C Grilli, Legal Adviser to the LRB
Mr M Mackowiak, Planning Adviser to the LRB

Other Council Officers Present:

Mr C Kiely, Planning Officer

Clerk:

Ms F Currie, Committees Officer

Apologies:

None

Declarations of Interest

None

Councillor O'Donnell, elected to chair the meeting, welcomed everyone to the East Lothian Local Review Body (ELLRB).

A site visit had been carried out for the planning application prior to the meeting.

1. PLANNING APPLICATION No: 19/00240 - DESIGN CHANGES TO THE SCHEME OF DEVELOPMENT THE SUBJECT OF PLANNING PERMISSION 18/00832/P, 15 MAYFIELD PLACE, MUSSELBURGH, EAST LOTHIAN

The Chair invited the Planning Adviser, who had had no involvement in the original decision, to present a summary of the planning policy considerations in this case.

The Planning Adviser informed Members that the review related to a refusal of planning application 19/00240/P which had sought permission for design changes to the scheme approved under planning permission 18/00832/P (the formation of a dormer in the rear elevation of the property at 15 Mayfield Place, Musselburgh). Prior to the permission being granted, the Case Officer had contacted the Planning Agent to advise him that the proposed dormer would include a bedroom window (serving bedroom 3) that would be within 9 metres of the boundary of the neighbouring rear garden and as such would result in unacceptable overlooking of the garden at 13 Mayfield Place. To overcome this adverse impact, the Agent accepted a planning condition that would require the bedroom window to be obscure glazed. A dormer was subsequently constructed but it was not formed in accordance with the approved drawings under the granted permission. In addition, the window serving bedroom 3 was not obscure glazed in accordance with the requirements of condition 1 of the said planning permission. Subsequently, planning application 19/00240/P was submitted and sought approval of design changes including a reduction in the width of the window serving bedroom 3, a vertically rather than horizontally aligned bathroom window and clear glazing for the window of bedroom 3.

The Planning Adviser summarised the objection received from the resident of No. 13 regarding the removal of any condition requiring the shower room window and window to bedroom 3 being obscurely glazed. No other objections were received.

Members were reminded that planning applications must be determined in accordance with the Development Plan unless material considerations indicated otherwise. The Members were also referred to the relevant policy - DP5 (Extensions and Alterations to Existing Buildings) of the adopted East Lothian Local Development Plan (2018) is relevant to the determination of the application. This Policy stated that all alterations and extensions must be well integrated, in keeping with the original building and must not result in a loss of amenity, including loss of privacy from overlooking.

The Planning Adviser then summarised the Planning Case Officer's assessment. He had noted that the dormer's design was reflective of the architectural form of the existing dormer at the front of the house, as well as other dormers within other houses in this locality. He had concluded that the dormer as it had been built was not harmful to the character and appearance of the house or the character and appearance of the surrounding area. However, with regards to privacy and amenity, the dormer's windows faced onto the applicant's rear garden as well as the neighbouring garden of No. 13. The window serving bedroom 3 was approx. 5 metres from the boundary with No.13, shorter than the Council's normal standard of 9 metres, and the clear glazing of the window resulted in an unacceptable loss of privacy and amenity by way of increased overlooking to the neighbouring property at No. 13.

The Planning Adviser outlined the detail of the Planning Agent's submission which highlighted that there were numerous dormer windows within the locality that overlooked adjacent gardens and that this set a precedent for the application to be considered acceptable. It also pointed out that the re-designed dormer window faced the mid-ground of the garden at No. 13 and did not, in the Agent's view, look directly into a property. In response to whether a precedent had been set, the Case Officer was unaware of a dormer having been granted planning permission in this development, where it overlooked a neighbouring garden at a distance of only 4.9 metres. The Planning Adviser then summarised the submission made by the neighbour at No. 15 which noted the following:

- The agent previously confirmed in writing that his clients are agreeable to the window serving bedroom 3 to be obscurely glazed
- The agent should submit pictures taken from inside bedroom 3 to support his claim that when looking straight ahead, the window in question provides views of the mid-ground of the garden to No 13 Mayfield Place.
- The agent's claim about the mid-ground overlooking is not correct as demonstrated by photographs attached to this submission. These pictures in her opinion demonstrate that the only area where there is privacy is at the very top and bottom of her garden.

Summing up, the Planning Adviser said that the main question to consider was whether the proposed development would comply with Policy DP5. In particular, whether the lack of obscure glazing in the window serving bedroom 3 resulted in loss of privacy to the adjoining property at No 13 that caused harm contrary to Policy DP5.

In response to questions from the Members, the Planning Adviser clarified the purpose of the appeal and reminded Members that the issue was not the proximity of the house to the boundary but the proximity of the window and whether this resulted in a loss of privacy by overlooking. He explained that the vinyl covering fitted to obscure the glass of window 3, which had been noted during the site visit, had not been submitted for vetting by the Planning Case Officer and, as such, it was not possible to determine whether it met the required standards. However he confirmed that, if Members were minded to refuse the appeal, the vinyl covering could remain if a sample were submitted and approved.

The Chair asked her colleagues if they had sufficient information to proceed to determine the application and they agreed that they had. She then asked them indicate whether they supported the Case Officer's original recommendations.

Councillor McLeod thanked the Planning Adviser for his helpful clarification of the issues and said he was minded to support the Case Officer's recommendations.

Councillor Mackie said she too supported the Case Officer's recommendations.

Councillor Kempson also supported the Case Officer's recommendations. She commented that the window should have been obscure glazed at the outset and, in her view, the fact that a vinyl covering had subsequently been added supported this assertion.

The Chair concurred with her colleagues in supporting the Case Officer's recommendations. She considered that the clear glazing of the window constituted a loss of amenity and a loss of privacy that was contrary to Policy DP5.

Decision

The ELLRB unanimously upheld the decision of the Case Officer to refuse the application for the following reasons:

1. The dormer window serving bedroom 3, without obscure glazing, allows for direct overlooking of the neighbouring garden serving the occupants of No. 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 development Plan 2018.

Signed

Councillor F O'Donnell
Chair of Local Review Body (Planning)