



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

**THURSDAY 16 JANUARY 2020
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON**

Committee Members Present:

Councillor J Findlay (Chair)
Councillor K McLeod
Councillor J McMillan

Advisers to the Local Review Body:

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

Other Officers Present:

Mr C Kiely, Planner
Ms L Ritchie, Senior Planner

Clerk:

Ms F Currie, Committees Officer

Apologies:

None

Declarations of Interest

None

Introductory Statement by the Legal Adviser

The Legal Adviser welcomed everyone to the meeting and briefly summarised the procedure. He invited nominations to chair the meeting. Councillor McMillan nominated Councillor Findlay and this was seconded by Councillor McLeod. The Legal Adviser confirmed that Councillor Findlay would chair the Local Review Body (LRB) on this occasion.

1. PLANNING APPLICATION NO. 19/00655/P: ALTERATIONS TO HOUSE, POINTGARRY HOUSE, 20C WEST BAY ROAD, NORTH BERWICK

The Legal Adviser asked the Members if they were satisfied that they had sufficient information before them to determine the application. All three Members confirmed this to be the case. He then outlined the procedure reminding Members that they were required to consider the application afresh and had the option to grant consent, to refuse or to grant consent subject to conditions.

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 indicated that this was a review of planning permission 19/00655/P which sought consent for alterations to a category C listed building located within the designated North Berwick Conservation Area. The application related to the north wing of a large house formerly a hotel subsequently subdivided into three smaller houses. It was a three storey property with its main entrance door positioned on the side of the house. The proposal was for alterations to the house that consisted of the removal of the existing ground floor window to the front of the property, the enlargement of the opening to form a doorway and the installation within that enlarged opening of a glazed door with white painted timber frames. He pointed out that while the application had been made for planning permission and listed building consent, this review related solely to the application for planning permission.

In 2018, a detailed planning application had sought approval for a similar scheme but including the installation of French doors within the enlarged opening. This application was refused in November 2018 and the decision was appealed to the Council's LRB on 16 May 2019 where Members again refused the application for the reasons set out in more detail in the original Decision Notice.

The Planning Adviser informed Members that the current planning application and an associated listed building consent application were refused in August 2019. An appeal was made to the DPEA (The Planning and Environmental Appeals Division) against the listed building consent refusal. This appeal was dismissed on 15 January 2020. In his decision, the Reporter concluded that the proposed alteration would alter the symmetry of the building frontage which would be detrimental to its appearance and would constitute damage to the fabric of the building; it would be detrimental to the appearance of the listed building and would fail to preserve or enhance the character or appearance of the conservation area. In consequence the proposal would be contrary to the relevant legislation and policy CH1 of the adopted East Lothian Local Development Plan (LDP) 2018. He confirmed that the appeal decision was a material planning consideration and a copy had been provided to the Members of the LRB.

Returning to the current planning application, the Planning Adviser stated that one letter of objection had been received from NB Environment Trust stating that the facade was unspoilt and that the enlargement of the window to a door would be a significant change to a listed building in the conservation area. North Berwick Community Council, a consultee on this application, commented that the new door should not have a single pane with a small top window as shown in the drawing but should be subdivided in the style of the current window and the other windows in the facade. He also outlined the relevant planning policies: Policy CH1 Listed buildings; Policy CH2 Development affecting CA's and Policy DP5 Extensions and Alterations to Existing Buildings all of the LDP; and the relevant material considerations including national planning advice contained in SPP 2014; the LDP's Supplementary Planning Guidance Cultural Heritage and the Built Environment and HES guidance Managing Change in the Historic Environment – Windows.

The Planning Adviser summarised the case officer's assessment that the proposed alterations to the size, scale and appearance of the existing window opening would harmfully interrupt the defined symmetry and architectural balance and harmony of the principle west elevation of the building and outlined the reason for refusal of the planning application:

- i. the enlargement of the window opening and the installation of a door within the enlarged opening would appear significantly different to the remaining windows that would continue to exist on the building. Such a change to the size, scale and appearance of that window opening would harmfully interrupt the balanced symmetry of the west elevation of the listed building and would detract from, and be harmful to, the special architectural or historic interest of the listed building. This in turn would neither preserve nor enhance but would be harmful to the character and appearance of this part of North Berwick Conservation Area contrary to Policies CH1 (Listed Buildings), CH2 (Development Affecting Conservation Areas) and DP5 (Extensions & Alterations to Existing Buildings) of the adopted East Lothian Local Development Plan 2018, East Lothian Local Development Plan Supplementary Planning Guidance 2018, Cultural Heritage and the Built Environment and Scottish Planning Policy: June 2014.

Lastly, the Planning Adviser referred Members to the submission from the applicant's agent. It argued that the applicants were an older couple with increasing mobility concerns and who had two objectives in applying for this planning permission. Firstly, they wished to create a more accessible route and entrance from the street to the house both in terms of a shorter distance, and involving less steps. The proposed alteration would create a direct level/ramped access from the entrance gate at West Bay Road to the proposed door location, with only a single step from the external paved area into the house. Secondly, the applicants wished to create a more direct and accessible route from the house to their only private garden space. The proposed alteration would achieve this by having direct connection from their kitchen to the external terrace area.

The Chair thanked the Planning Adviser for his summary and invited questions from Members.

Councillor McLeod asked whether there had been any request to create a new access point through the small wall surrounding the patio area. The Planning Adviser confirmed that there were no proposals for demolition of any part of the wall.

Councillor McMillan enquired whether equal weight had been given to the North Berwick Conservation Area character statement compared with other planning policies. The Legal Adviser said that while the character statement had not been given the same

weight as policies CH1 and CH2, for example, it was a material consideration in the determination of the application.

The Chair asked whether the recent decision of the Scottish Government's Planning and Environmental Appeals Division (DPEA) had any bearing on this process. The Planning Adviser informed him that while this appeal had considered similar matters to those in the planning appeal, the Local Review Body was not bound by the DPEA decision in any way.

Councillor McMillan said he had some sympathy for the applicants in seeking this alteration. However, the weight of evidence provided by the planning officer in relation to the symmetry of the building and the impact on the historical character of the conservation area had made it clear how important it was to maintain the current architectural balance. He therefore supported the officer's recommendation to refuse planning permission.

Councillor McLeod echoed Councillor McMillan's comments. He said he had looked at other houses nearby and he was of the view that the frontage of this building would be drastically altered as a result of the proposals. For this reason he was minded to accept the officer's recommendation in this case.

The Chair had nothing to add to his colleague's remarks and said that he accepted the recommendation of the planning officer.

The Legal Adviser confirmed that the Members had reached a unanimous decision to refuse the appeal.

Decision

The ELLRB agreed to uphold the decision of the case officer to refuse the application for the following reason:

1. The enlargement of the window opening and the installation of a door within the enlarged opening would appear significantly different to the remaining windows that would continue to exist on the building. Such a change to the size, scale and appearance of that window opening would harmfully interrupt the balanced symmetry of the west elevation of the listed building and would detract from, and be harmful to, the special architectural or historic interest of the listed building. This in turn would neither preserve nor enhance but would be harmful to the character and appearance of this part of North Berwick Conservation Area contrary to Policies CH1 (Listed Buildings), CH2 (Development Affecting Conservation Areas) and DP5 (Extensions & Alterations to Existing Buildings) of the adopted East Lothian Local Development Plan 2018, East Lothian Local Development Plan Supplementary Planning Guidance 2018, Cultural Heritage and the Built Environment and Scottish Planning Policy: June 2014
2. **PLANNING APPLICATION NO. 19/00472/P: ALTERATIONS, EXTENSION AND CHANGE OF USE OF BANK BUILDING TO FORM 1 HOUSE, ERECTION OF OFFICE (CLASS 2), FORMATION OF VEHICULAR ACCESS AND ASSOCIATED WORKS AT 12 WESTGATE, NORTH BERWICK**

The Legal Adviser outlined the procedure reminding Members that they were required to consider the application afresh and had the option to grant consent, to refuse or to grant consent subject to conditions.

The Chair asked his colleagues if they were satisfied that they had sufficient information before them to determine the application. They confirmed this to be the case.

The Chair then 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 stated that this was a review against the refusal of planning permission 19/00472/P for the alterations, extension and change of use of the bank building to form 1 house, the erection of an office (class 2) and the formation of a vehicular access and associated works. The site was within North Berwick Town Centre and the alterations and extension to the building would comprise:

- i. the change of use of the ground floor part of the original stone listed building from a bank (class 2) to residential;
- ii. the demolition of the existing single storey flat roofed part of the bank building (class 2);
- iii. the erection of a two storey extension, with a lower basement level as a replacement for the existing single storey extension which is to be removed. The basement and first floor of the proposed extension are both to be entirely for residential use, while the ground floor of the proposed extension is to be predominantly in residential use with a commercial office being provided within the front part of the ground floor of the extension; and
- iv. the widening of an existing access to enable the formation of a vehicular access off Westgate.

He informed Members that a separate application for listed building consent had been sought for the part demolition, alterations and extension to the building, alterations to the boundary wall and associated works. This application was also refused in July 2019 and an appeal against this refusal was lodged to the Planning and Environmental Appeals Division (DPEA). The appeal was dismissed in December 2019 and the Reporter concluded that the proposal would remove a subservient extension that was part of a listed building with special architectural features that reflected those of the adjoining listed building. It would be replaced by an overly dominant building with varying and distinctly different features to those of the adjoining listed building. This would detract from the special architectural and historic interest of the listed building. It would also adversely affect the setting of the adjacent listed building. The proposed replacement building would make for a tight fitting, overly dominant and awkward addition to this part of the conservation area. The Planning Adviser confirmed that this appeal decision was a material planning consideration and a copy had been provided to the Members of the LRB.

Returning to the application before the LRB, he outlined the relevant planning policies: TC2 (Town and Local Centre); CH1 (Listed Buildings); CH2 (Development Affecting Conservation Areas); DP2 (Design), DP5 (Extensions and Alterations to Existing Buildings); DP7 (Infill, Backland and Garden Ground development); T1 (Development locations and accessibility); and T2 (General Transport Impact) of the adopted LDP 2018. Also material to the determination of the application were sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and the Scottish Government's policy on development affecting the setting of a listed building and development within a conservation area given in Scottish Planning Policy: June 2014.

The Planning Adviser confirmed that 26 letters of representation to the application had been received of which 19 were letters from members of the public with objections to the planning application. There were 7 letters of support to the application, including 5 letters from members of the public who were resident out with the town. North Berwick Community Council objected to the planning application both on the grounds of loss of office space and loss of amenity. Historic Environment Scotland neither supported nor objected to the proposal but their advice sought to ensure that the new proposal was subservient to the listed building. The Council's Economic Development and Strategic Investment Manager objected to the proposal on the grounds that it would result in the loss of town centre commercial space. He added that all of the comments from consultees and members of the public had been summarised in the planning officer's report and had been made available to the Members.

He advised Members that the planning officer's report had assessed the proposals and concluded that there were no material planning considerations that outweighed the fact that the proposed scheme of development was contrary to Policies CH1 (Listed Buildings), CH2 (Development Conservation Areas), TC2 (Town and Local Centre), DP5 (Extensions and Alterations to Existing Buildings) and DP7 (Infill, Backland and Garden Ground Development) of the adopted LDP 2018 and Scottish Planning Policy: June 2014. Accordingly, the application had been refused for the following reasons:

- i. The proposed scheme would result in the loss of a ground floor Class 2 commercial premises within North Berwick Town Centre where there was no evidence that the premises were no longer viable as a town or local centre use, contrary to Policy TC2 of the adopted East Lothian Local Development Plan 2018.
- ii. The proposed extension would by virtue of its size, scale, alignment and height not be subservient to the existing listed building and as such would be harmful to the architectural and historic character of the listed building and the character and appearance of the North Berwick Conservation Area contrary to Policies CH1 and CH2 of the adopted East Lothian Local Development Plan 2018 and Scottish Planning Policy: June 2014.
- iii. The proposed vehicular access and hardstanding area would be intrusive and incongruous changes to the character and appearance of the streetscape of Westgate and of the North Berwick Conservation Area. Therefore the proposals would neither preserve nor enhance but would be harmful to the character and appearance of the Conservation Area, contrary to Policy CH2 of the adopted East Lothian Local Development Plan 2018 and Scottish Planning Policy: June 2014.
- iv. The proposed development would not be subservient to or complement the existing building and would result in an unacceptable loss of residential amenity to the occupiers of neighbouring residential properties by virtue of direct overlooking and loss of daylight. Therefore the proposal is contrary to Policy DP5 of the adopted East Lothian Local Development Plan 2018.
- v. The occupants of the proposed house would not be afforded an acceptable level of privacy and amenity. Therefore the proposal is contrary to Policy DP7 of the adopted East Lothian Local Development Plan 2018.

The Planning Adviser indicated that a further submission had been received from the applicant's agent which had included: A Brief History and Analysis of the site, Design and Access Statement, Daylight and Sunlight Report, Heritage Impact Assessment and Commercial Viability report. He highlighted that the last two documents - Heritage Impact Assessment and Commercial Viability report - were not before East Lothian Council when planning application 19/00472/P was originally determined. The agent's submission had also clarified that the proposals achieved full compliance with the BRE guide in respect of protecting the sunlight amenity of both neighbouring properties on either side of the application site. Also, the agent had confirmed that his client was not seeking to 'delist' the property.

The Planning Adviser concluded by drawing Members' attention to two further representations received from members of the public following notification of the appeal. These comments mainly reiterated the objections previously made at the planning application stage. However, they also objected to the additional documents submitted post refusal being taken into consideration by the LRB. In particular, these representations highlighted that the submitted viability report should have been undertaken prior to the original application's submission and not as a consequence of a refusal.

The Chair thanked the Planning Adviser for his comprehensive summary and invited questions from Members.

Councillor McLeod asked about the legal ownership and access to the rear garden and about the number of on-street parking spaces which might be lost by the proposed changes to vehicular access at the front of the property.

The Planning Adviser explained that while relevant to the deliverability of the proposals the legal title and burdens were not material considerations in the planning appeal. He also confirmed that the Council's Transportation officers had not objected to potential loss of on-street parking and this was not a reason for refusal of the application.

Councillor McMillan asked several questions regarding the location of the property in relation to the commercial centre of the town, the listed status of the building and its history.

The Planning Adviser said that while he accepted that the commercial core of the town was some distance away there was no defined boundary and the surrounding area was described as mixed use. He confirmed that the building was listed and that while it had been used a house many years ago most recently it had been used as commercial/office staff and was currently designated as such.

In response to a further question from Councillor McMillan, he advised that there was no evidence to show that the applicant had undertaken a marketing campaign to promote commercial use of the property.

Replying to a question from the Chair, the Planning Adviser stated that the Daylight and Sunlight Report had been presented at the time of the original planning application. He said it was very detailed and thorough but it did conclude that the proposals would have an impact on the available daylight to some of the neighbouring properties. He added that following assessment of the report, the conclusion of the planning officer had been that the extension would be so close to neighbouring properties that it would adversely affect their residential amenity.

The Chair said he would speak first in the debate as there were a number of issues which concerned him. He felt that by building the extension so close to neighbouring Blenheim House it would have an adverse impact by restricting daylight to the properties on that side. While he accepted that 12 Westgate was not particularly attractive, it was a listed building and, in any case, it was not for the LRB to take a view on attractiveness. In relation to the garden to the north of the property, he noted that the windows at the rear would look directly into garden and would therefore result in a loss of amenity. In addition, he did not think that the development proposals were in keeping with the locality and he believed that the proposed extension would not be subservient to the existing building. For these reasons, he was minded to refuse planning permission.

Councillor McMillan said he agreed with all of the Chair's comments. He thanked the applicant and agent and noted that the site visit had been extremely helpful. From the point of view of supporting a vibrant town centre, he considered that the first reason for refusal of the original application was also his main reason for continuing to support the planning officer's recommendation. He observed that while he was generally supportive of innovative architectural proposals, in terms of height and design he had to agree with the planning officer that the proposals would be harmful to the historic architectural character of the building. He also felt that vehicular access was an interesting point and that the removal of some on-street parking would not preserve or enhance the High Street. Lastly, he agreed with the fourth reason for refusal of the original application; that the proposals would result in unacceptable loss of residential amenity for neighbouring residents. He concluded by stating that while he shared some of the aspirations for this site, on balance, agreed with officer's recommendation to refuse planning permission.

Councillor McLeod said that after very careful consideration he intended to go against the recommendation of the planning officer. He believed that the proposals would be attractive and would enhance the property and the surrounding area, and he was of the view that 12 Westgate was out with the boundary of the High Street. He was therefore minded to grant planning permission.

The Chair noted that it was a majority decision in favour of the officer's recommendation and that, accordingly, the appeal was refused.

Decision

The ELLRB agreed, by a majority, to uphold the decision of the case officer to refuse the application for the following reasons:

1. The proposed extension would by virtue of its size, scale, alignment and height not be subservient to the existing listed building and as such would be harmful to the architectural and historic character of the listed building and the character and appearance of the North Berwick Conservation Area contrary to Policies CHI and CH2 of the adopted East Lothian Local Development Plan 2018 and Scottish Planning Policy: June 2014.
2. The proposed vehicular access and hardstanding area would be intrusive and incongruous changes to the character and appearance of the streetscape of Westgate and of the North Berwick Conservation Area. Therefore the proposals would neither preserve nor enhance but would be harmful to the character and appearance of the Conservation Area, contrary to Policy CH2 of the adopted East Lothian Local Development Plan 2018 and Scottish Planning Policy: June 2014.
3. The proposed scheme of development would result in the loss of a ground floor Class 2 commercial premises within North Berwick Town Centre where there is no evidence that the premises is no longer viable as a town or local centre use, contrary to Policy TC2 of the adopted East Lothian Local Development Plan 2018.
4. The proposed development would not be subservient to or complement the existing building and would result in an unacceptable loss of residential amenity to the occupiers of neighbouring residential properties by virtue of direct overlooking and loss of daylight. Therefore the proposal is contrary to Policy DP5 of the adopted East Lothian Local Development Plan 2018.
5. The occupants of the proposed house would not be afforded an acceptable level of privacy and amenity. Therefore the proposal is contrary to Policy DP7 of the adopted East Lothian Local Development Plan 2018.

Signed

Councillor J Findlay
Chair of Local Review Body (Planning)