

REVIEW DECISION
NOTICE

Decision by East Lothian Local Review Body (the ELLRB)

Site Address: Unit 20 A Macmerry Industrial Estate, Macmerry

Application for Review by S.A Fairgrieve Limited against decision by an appointed officer of East Lothian Council.

Application Ref: 16/00403/P

Drawings No: DWG003, DWG001, DWG002

Date of Review Decision Notice- 3 April 2017

Decision

The ELLRB upheld the review and agreed to remove Condition One from planning consent granted on 28 October 2016.

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 16th March 2017. The Review Body was constituted by Councillor Jim Goodfellow (Chair), and Councillor John MacNeill. All four members of the ELLRB had attended an unaccompanied site visit in respect of this application on 16th March 2017.

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

Iain Macfarlane, Planning Adviser (in attendance on Site Visit)
Catherine Molloy, Legal Advisor
Fiona Stewart Clerk

2 Proposal

The application site is located within Macmerry Industrial Estate, to the east of the village of Macmerry. It is within an established area of industrial and business use that is defined as such by Policy BUS1 of the adopted East Lothian Local Plan 2008.

Planning permission is sought for the erection of a building on the application site. The building would be used for storage and distribution, a use within Class 6 of the Town and Country Planning (Use Classes) (Scotland) Order 1997.

The proposed building would measure 20.1 metres in length and 12.5 metres in width. It would have a height of 6.7 metres high to the ridge of its pitched roof. The eaves would have a height of 5 metres. The roof and upper course of the elevations of the building would be constructed of goosewing grey coloured Kingspan trapezoidal insulated sheeting. The lower course of the elevations would be constructed of Forterra (Thermalite) Evalast plain grade blocks. One personnel door would be inserted

in each of the north and south elevations and a further one to the rear elevation. Four large roller shutter doors would be inserted within the front elevation.

The application was registered on 2 June 2016 and granted planning permission under delegated powers on 28th October 2016.

The conditions attached to the planning permission were as follows

1 Prior to the commencement of development

- a) A scheme of intrusive site investigations for the site shall be submitted to and approved by the planning Authority, following consultation with the Coal Authority. The scheme shall be designed to establish the exact situation regarding coal mining legacies that arise on the site
- b) The scheme of intrusive site investigations for the site shall be undertaken in accordance with the details so approved
- c) A report of findings from the intrusive site investigation including details of any gas monitoring shall be submitted to and approved by the planning authority following consultation with the coal authority. The report shall recommend any mitigation measures required to ensure that the application site can be made safe and stable for the proposed development
- d) Any remedial works identified in the report of findings shall be fully undertaken

REASON

To ensure that it is demonstrated that the application site is, or can be, made safe and suitable for the proposed development

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
3	The Appointed Officer's Report of Handling
4	A copy of the Decision Notice dated 28 October 2016
5	Copy of Policy 1B of the approved South East Scotland Strategic Development Plan
6	Copies of Policies BUS2 and DP2 of the Adopted East Lothian Local Plan 2008
7	Copy of Representation received from 1) the Coal Authority and 2) Roads Services
8	Schedule of Suggested Conditions
10	Notice of Review dated 16 January 2017 and supporting review statement and drawings

4 Findings and Conclusions

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.

The Members asked the Planning Adviser to summarise the planning proposal. The Planning Adviser advised that the key consideration in respect of the review was to consider whether or not the Coal Authority's advice and the consequent conditioning of the planning permission is related to the planning permission and is proportionate, reasonable and justifiable, relative to the development.

The Planning Advisor stated that given the mining history of East Lothian and the requirement to consult the Coal Authority if their mapping of it demonstrates that the site is in an area of risk, consultation with them is mandatory in the case of significant development. The purpose of the consultation and use of conditions where advised is to minimise the risk of development

and people from subsidence or collapse.

The Planning Advisor pointed out that whilst these matters are also for consideration in respect of a building warrant for the development, it is important that the Council works with consultees to ensure such risks are minimised, and that is the reason for the use of the condition as is set out in the planning officer's report.

The Planning Advisor also outlined for clarity that the Coal Authority advice is that where a proposal is for an extension of relatively small scale, or for very small developments or for a change of use, consultation is usually not necessary and standing advice is issued to the applicant instead. In this instance the development is of a scale that required consultation and the Coal Authority's advice has been followed.

The Planning Advisor also clarified questions from Members regarding liability in terms of ownership of the unit and professional advice sought by the applicant. The Planning Adviser also clarified queries on the meaning of "intrusive" and explained the concept of boreholes.

Councillor McNeil stated that the applicant would incur costs in the region of £10,000 to fulfil the condition requested by the Coal Authority and other developers on this site may not have had this additional expense. The application was for a storage unit on a gap site surrounded by other buildings and it had been established in the course of the meeting that if building went ahead it would be at no risk to the Council. Councillor McNeil stated that that the applicant was a new business coming to East Lothian and the Council needed to encourage new businesses. He would therefore vote to overturn the original decision of the Case Officer and to remove Condition One to planning consent.

Councillor McMillan stated that it was important to look at the evidence and, in his view, they had seen evidence at the site visit. He was not a local Member but had seen the Macmerry Industrial Estate expand over recent years. He considered that they had to weigh two things, risk and opportunity. He stated that there was always an element of risk in East Lothian and this had been investigated by the developer and the Council. Ultimately, he would base his view on the comments of the agent for the application and the DLM Mining Consultants report, both of which go a long way to mitigate any adverse consequences. As spokesman for Economic Development, he could see a business opportunity here and, if the applicant was willing to accept the risk and the Council's building control officers inspected the plans, he considered that the risk could be mitigated and managed. He too, therefore, would vote to overturn the original decision of the Case Officer to remove Condition One to planning consent.

The Chair stated that the site visit had been very useful and had allowed them to see that there were other buildings surrounding the application site. He considered that that was significant in terms of evidence. If the application had been for a housing development, it would have demanded an intrusive site investigation. However, as it was for a warehouse, he considered that any issues could be addressed by Building Control. He was also mindful of the applicant accepting the risk and he therefore would uphold the appeal and overturn the original decision.

- 4.4 Accordingly, the ELLRB unanimously decided that the Review should be upheld and the original decision to grant this application should be upheld subject to the removal of Condition 1 as set out above on the basis that the Condition requested by the Coal Authority was too onerous and other buildings in the area had been constructed with no evidence of harm.



11 Catherine Molloy
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.