

REVIEW DECISION NOTICE

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

Application for Review by J&S Thomson Developments Limited, c/o EC Design Architectural Services, 21 Poplar Park, Port Seaton for the refusal of Planning Permission for the erection of one house and associated works at land to the South of 33 South Crescent, Prestonpans.

Site Address: Land to the South of 33 South Crescent, Prestonpans

Application Ref: 19/00116/P

Application Drawing: Drawing Number: ex-01;

Drawing Number: ex-02;

Drawing Number: loc-01;

Drawing Number: pr-01;

Drawing Number: pr-02;

Drawing Number: pr-03;

Drawing Number: pr-04;

Drawing Number: pr-05; and

Drawing Number: pr-06

Date of Review Decision Notice: 17 August 2020

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, 20 June 2019. The Review Body was constituted by N. Hampshire (Chair), Councillor L Bruce, Councillor N Gilbert, and Councillor S Kempson. All four 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 sought planning permission for the erection of one house and associated works at land to the south of 33 South Crescent, Prestonpans.
- 2.2. The planning application was registered on 4 February 2019 and the decision notice refusing planning permission was issued on 29 March 2019.
- 2.3. The Notice of Review against the decision to refuse Planning Permission was dated 29 April 2019.

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 4 February 2019
3	The Appointed Officer's Submission
4	East Lothian Local Development Plan 2018 policies: DP2 (Design) DP7 (Infill, Backland and Garden Ground Development) RCA 1 (Residential Character and Amenity); NH8 (Trees and Development); and T1 and T2 (General Transport Impact)
5	Notice of Review dated 29 April 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 site was approximately 264 square

metres of land located to the south of the house and garden of 33 South Crescent and to the west of the house and garden at 1 Polwarth Crescent Prestonpans. Consent was sought for a single storey house to be positioned centrally on the site, with its west elevation aligned with the front west elevation of the existing house at 33 South Crescent. The site was within an area of housing originally constructed as local authority housing in the 1930s with later additions in the 1950s, and many of the corner locations within the surrounding area had small areas, often triangular in shape, that were still provided as public open space. The site itself was formerly part of a larger garden belonging to 33 South Crescent that was sold into separate ownership in 2006. Three objections to the development had been received from local residents on grounds including an increase in parking demand in the area, a reduction in visibility on the street for vehicle movements and setting an undesirable precedent for similar infill garden ground development. In addition there was an objection by the Coal Authority on grounds that no Coal Mining Risk Assessment Report had been submitted.

The Planning Adviser stated that the main determining issue was whether the proposed house would fit well into the surrounding townscape. The site was an infill site and to satisfy policy DP2 it had to be well designed and integrated into its surroundings, and to satisfy DP7, must, by its scale, design and density be sympathetic to its surroundings and not an overdevelopment of the site. The Case Officer had considered issues of overlooking to and from neighbouring properties and concluded that the proposal was satisfactory in terms of overlooking to its south (front) west (side) and east (side) but that the proposed north elevation would face the house at 33 South Crescent causing harmful overlooking. However this could be mitigated by raising the existing 1.8m fence or by provision of obscure glass in the kitchen window.

The Planning Adviser summarised the responses received from Consultees and highlighted that the Coal Authority had objected to the application, as no Coal Mining Risk Assessment report had been submitted, and the proposal fell within a defined Development High Risk Area where there were coal mining features and hazards which needed to be considered. The applicant advised that he was not asked to submit this as supplementary information and has stated that he was willing to provide such a report if required. The Case Officer did not draw this to the attention of the applicant because he considered that there was a clear refusal on other grounds. The Planning Advisor then advised that if Members were minded to disregard the first reason for refusal, it would still be competent to require the applicant to submit another application and address the mining situation.

The Planning Advisor then finished by stating that the Case Officer's report states that the proposed house would be inharmonious with the surrounding area because it would project significantly beyond the building line of the house on the north side of Polwarth Crescent to the east of the site. In addition, a house on the corner plot would be prominent in public views from South Crescent, Polwarth Crescent and Polwarth Terrace and a detached house would be different from other forms of housing in the surrounding area. The applicant, in his review documents, stated that the plot was a vacant piece of land adjacent to two private

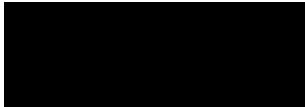
dwellings and densely overgrown. He also stated that the proposal would provide a much needed new small single storey two bedroom starter home in the area. Off street parking and the provision to utilise an existing dropped kerb and access gate would be provided.

- 4.3. The members then asked questions of the Planning Advisor. The Planning Adviser responded to these questions. In addition the Legal Advisor advised the Committee that it is a requirement that the site is safe to build on and is a pre-requisite for any planning decision therefore it would not be advised that the members approve this subject to a suitable Coal Authority Report being obtained.
- 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 Gilbert stated that did not find the proposed development inharmonious in character and he considered it waste land which would deteriorate in appearance over time. He was also satisfied there would be adequate on road parking available. His only concern was that the proposals could not proceed without a Coal Authority Report confirming that it was safe to build on this land.
- 4.6. Councillor Kempson stated that the proposals would deliver be a large footprint of a building on a small piece of land which would be out of keeping in the area. She suggested that the plot could in the future be cultivated as a garden or allotment. She therefore supported the original decision of the Case Officer to refuse the application.
- 4.7. Councillor Bruce agreed with Councillor Kempson. He considered that the proposals would be prominent in its setting and, in context, other garden corners appear to have been preserved. He too was minded to refuse the application.
- 4.8. The Chair stated that, in his view, the development of a house on this site would be acceptable. He considered that the plot was big enough for the proposed development and that it would not be unduly prominent in this location. However, he would be unable to support the application today due to there being no risk assessment carried out by the Coal Authority.

Accordingly, the ELLRB unanimously agreed to uphold the original decision of the Planning Officer to refuse the application and rejected the appeal for the following reason:

1. The site is within a Coal Authority Development High Risk Area and a Coal Mining Risk Assessment Report has not been submitted by the applicant. Consequently the applicant has failed to demonstrate that the proposed development would not place buildings or persons at risk from past mining related activities.

Accordingly, the application was refused



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.