

## **REVIEW DECISION NOTICE**

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

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Application for Review by APT Planning and Development on behalf of Mr Stirling Stewart c/o APT Planning and Development, 6 High Street, East Linton EH40 3AB for refusal of Planning Permission for Change of use of open space to outdoor seating for servery/takeaway (class 3) for a temporary period of 3 years and formation of hardstanding areas at 26 Victoria Road, North Berwick EH39 4JL

Site Address: 26 Victoria Road, North Berwick EH39 4JL

Application Ref: 20/01241/P

Application Drawing: Please refer to the Drawings/Plans detailed at 3.1 (i)

Date of Review Decision Notice: 09 July 2021

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### **Decision**

The ELLRB unanimously agreed that the Review should be dismissed for the reasons set out 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**

The above application for Planning Permission was considered by the ELLRB, at a meeting held on Thursday, 17 June 2021. The Review Body was constituted by Councillor A Forrest (Chair), Councillor S Kempson and Councillor N Gilbert. All three members of the ELLRB had attended an unaccompanied site visit in respect of this application prior to the meeting.

1.1. 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  
Ms F Currie, Clerk

#### **2. Proposal**

2.1. The planning application is for planning permission for change of use of open space to outdoor seating for servery/takeaway (class 3) for a temporary period of 3 years and formation of hardstanding areas at 26 Victoria Road, North Berwick EH39 4JL

2.2. The planning application was registered on 14 December 2020 and the decision notice refusing the application is dated 5 February 2021.

2.3. Reasons for refusal are more particularly set out in the Decision Notice dated 5 February 2021.

2.4. The notice of review is dated 3 May 2021.

### 3. Preliminaries

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

i.	The drawings accompanying this application are referenced and numbered as follows: <ul style="list-style-type: none"> <li>- SPECIFICATION</li> <li>- AI(0)100 Rev. B</li> </ul>
ii.	The Application for planning permission registered on 14 December 2020
iii.	The Appointed Officer's Submission
iv.	Policies and legislation relevant to the determination of the application: <ul style="list-style-type: none"> <li>- adopted East Lothian Local Development Plan 2018 <ul style="list-style-type: none"> <li>• EMP2: Operational Harbours</li> <li>• OS1: Protection of open Space;</li> <li>• CH1: Listed Buildings</li> <li>• CH2: Development affecting a conservation area;</li> <li>• DC6: Development in the Coastal Area;</li> <li>• DC9: Special Landscape Areas and</li> <li>• DP2: Design</li> <li>• T1: Development Location and Accessibility</li> <li>• T2: General Transport Impact</li> </ul> </li> <li>- Sections 59 of the Planning(Listed Buildings and Conservation Areas) (Scotland) Act 1997</li> <li>- Scottish Planning Policy Revised 2020 <ul style="list-style-type: none"> <li>• Scottish Government Policy on development affecting a listed building or its setting</li> <li>• Scottish Government Policy on development within a conservation area</li> </ul> </li> </ul>
v.	Notice of Review dated 3 May 2021 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 planning application 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 conditions, including all drawings and copies of all representations and objections received in respect of the original application. They also confirmed they had received and reviewed the Applicant's Submission and further representations made in connection within this appeal before the ELLRB today.

- 4.2. The Members then asked the Planning Adviser to summarise the planning policy position in respect of this matter. The Planning Adviser introduced the application and advised that the application was for change of use of public open space to the south of the former coastguard station now used as restaurant and takeaway called the Rocketeer and located on Anchor Green, the harbour promontory at the north part of Victoria Road to use as outdoor seating for the Rocketeer between the months of March to October each year for a temporary period of 3 years. Permission was also sought for the formation of hardstanding areas on the strips of land along the north south and west sides of the building. Permission was also sought in retrospect for hard surfacing of the strip of land to the southwest of the Rocketeer from the entrance of the building to the east side of Victoria Road which was surfaced using a different material to that approved by the grant of planning permission 17/00746/P.

In 2020, to allow for physical/social distancing measures tables and chairs were temporarily allowed on this part of Anchor Green.

The Planning Officers report of handling noted that the application must be determined in accordance with the development plan unless material considerations indicate otherwise. SPP was a material consideration in respect of guidance on determining applications that affect a listed building or its setting and effect on the character and appearance of a conservation area.

There were 45 representations 26 raising objection and 19 in support. Main issues of objection included loss of open space to private commercial activity, detrimental impact on conservation area, intrusive use disrespectful to the setting of the memorial cross, use of inappropriate materials, increase in traffic and litter, loss of grass to hardstanding, business not suited to such expansion, additional harmful clutter. Issues in support included it would be an enjoyable outdoor space in which to eat, the space is little used anyway, good for tourism, no loss of open space arguably it will be improved, no harm caused to cross, support local business/jobs. North Berwick Community Council objected in the strongest terms to the proposed change of use of open space to outdoor seating area on the grounds that the open space with its monument is an iconic part of the town and was affected by its use during covid crisis which was tolerable then but should not become any more permanent.

Road Services had no objections. Environmental health require it to be closed at 9.00pm which the applicant is agreeable to. However, Environmental Protection advise that the kitchen and toilet provision is insufficient to support the proposals for an outdoor area. On the historic environment Historic Environment Scotland had no comment to make and the Council's archaeology officer had no objection.

The Planning Officer then assessed the impact on the open space and character of the conservation area and subsequently any material considerations that could be taken into account. These included the potential benefit to the Rocketeer, as a business, including potential to create additional jobs and Scottish Government guidance to support local businesses to continue to operate during the current Covid pandemic, though it is clear that this application was seeking the siting of tables and chairs to continue beyond the current exceptional circumstances of the pandemic.

Taking all this in to consideration the application was refused for the reasons given in the Decision Notice. In summary this was on the basis of conflict with East Lothian Local Development Plan 2018 policies OS1:Protection of Open Space; CH2:Development

affecting a Conservation Area; DC6:Development in the Coastal Area; DC9: Special Landscape Areas and DP2: Design.

The case officer has also submitted an additional statement which amongst other things notes that current use of the land is unauthorised and that if refused by the Local Review Body enforcement action to cease the use and restore the land would be undertaken.

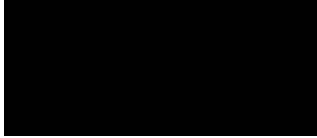
The Review Statement submitted by APT Planning and Development on behalf of the applicant. In summary the applicant submits that there is no measurable or significant impact on the character or setting of the North Berwick Conservation Area or on the nearby Special Landscape Area (SLA), which is overstated in the officers report, nor any heritage amenity or traffic transport concerns, that nothing proposed is unsightly, only the paving is permanent and it is a popular destination that encourages people to interact more with the surroundings and notes that the tables and chairs would not be for the exclusive use of Rocketeer patrons but for use by anyone. It further notes that the site is not included within the SLA and does not have any permanent visual or physical impact on it and that there is no loss of open space.

That summarises the case and it is open to the ELLRB in reviewing the application and taking account of all consultee responses and other submissions to take a different view from the case officer; or seek further information should you feel it is necessary.

- 4.3. The Members then raised the questions pertinent to the application which the planning advisor and where relevant the legal advisor responded to.
- 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 Kempson stated that she was surprised at the site visit by the impact of on the streetscape and amenity of the area and was of the view it was very detrimental. She noted that there had been considerable harm and damage caused to the grass. She also commented there was already sufficient benches and seating areas for public to eat their carry out without spoiling the amenity of the area. Accordingly, she was minded to refuse the application and support the Planning Officer's decision.
- 4.6. Councillor Gilbert commented that he mainly agreed with Councillor Kempson that this was unsympathetic but was also sympathetic to the current challenges for recovery from COVID-19 on local businesses. On balance, however, Councillor Gilbert was minded to refuse the application and support the Planning Officer's decision.
- 4.7. The Chair commented that he agreed with his colleagues and the tables and chairs catch the eye. Further he agrees the condition of the grass is worn down affecting the amenity of the area. He had also considered the point made by Councilor Gilbert in relation to supporting local businesses and was of the view that this has already been done. He finally noted that the set-up of the area was such that, while suggested to be open to all it was likely that the public perception would be that it was only for use by the applicant's customers. He was, therefore, minded to refuse the application and support the Planning Officer's decision.

Accordingly, the ELLRB unanimously decided that the Review should be dismissed for the reasons more particularly set out in the Planning Officer's Report and noted that enforcement action should be undertaken as soon as practicable.

Planning Permission is accordingly 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.