

REVIEW DECISION NOTICE

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

Application for Review by Mr Gordon Shotton of 3 Bayswell Park, Dunbar of Planning Condition forming part of the Decision Notice in relation to formation of decking and hardstanding areas, erection of fencing and pergola 3 Bayswell Park, Dunbar.

Site Address: 3 Bayswell Park, Dunbar EH42 1AE

Application Ref: 21/00425/P

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

Date of Review Decision Notice: 16 November 2021

Decision

The ELLRB unanimously agreed that the Review should be upheld 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, 19 August 2021. The Review Body was constituted by Councillor N. Hampshire (Chair), Councillor L Bruce and Councillor K McLeod. All three members of the ELLRB had attended a site visit accompanied by the Planning Adviser 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 before the ELLRB is for review of condition 1 of Planning Permission forming part of Planning Permission reference number 21/00425/P.
- 2.2. The original planning application was registered on 30 April 2021 and the Decision Notice granting the application subject to conditions is dated 25 June 2021.
- 2.3. The condition subject to review and the reason for the condition is more particularly set out in full in the said Decision Notice dated 25 June 2021 in addition the condition and reasons for the condition are set out as follows:

Condition

Planning permission is not hereby granted for the 0.46m high batten fencing to be attached to the walls enclosing the south, east and west boundaries of the rear garden of the house.

Reason:

1. *In its position attached to and protruding some 0.46m above the top of the existing boundary walls the proposed batten fence would be readily visible in public views from Bayswell Road/North Road. As so attached it would appear as a prominent and alien attachment to the walls that would be visibly different in form and character to the walls. Consequently, in its attachment to and protruding above the boundary walls the proposed batten fence would disrupt the uniformity of the walls and in doing so would harm the character and appearance of the walls and the contribution they make to the character and appearance of the Dunbar Conservation Area. Therefore, the attachment of the batoon fence to the walls would neither preserve nor enhance but would be harmful to the character and appearance of the walls and to the Dunbar Conservation Area contrary to Policies CH2 and DP2 of the adopted East Lothian Local Development Plan 2018 and to Scottish Planning Policy: Revised December 2020.*
2. *If approved the proposed batoon fence would set a harmful precedent for allowing the addition of similar forms of fencing to be erected to enclose the front roadside boundaries of other neighbouring residential properties in the locality, to the greater detriment of the streetscape of Bayswell Road/North Road and the character and appearance of the Dunbar Conservation Area.*

2.4. The notice of review is dated 12 July 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"> - DWG 1 date received 21.04.2021 - 21G1/3 date received 21.04.2021 - DWG 2 date received 30.04.2021 - DWG 3 date received 30.04.2021 - 21G1/4 date received 30.04.2021
ii.	The Application for planning permission registered on 30 April 2021
iii.	The Appointed Officer's Submission
iv.	Policies of the adopted East Lothian Local Development Plan 2018 relevant to the determination of the application: <ul style="list-style-type: none"> - CH2: Development Affecting Conservation Areas - DP2: Design
v.	Notice of Review dated 12 July 2021 together with Applicant's Submission with supporting statement.

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 advised that this application was in relation to the formation of decking and hardstanding areas, erection of fencing and pergola at 3 Bayswell Park Dunbar. The property lies within the designated Dunbar Conservation Area though the property is not a listed building. The proposed works are all to the rear garden and the applicant proposes to install a number of leisure features in the rear garden. The property is unusual in that it is part of a row of red sandstone late Victorian buildings that front onto Bayswell Park with their rear gardens positioned on Bayswell Road which is a busy town road within Dunbar located opposite the entrance to Lauderdale Park. The houses on Bayswell Park are of broadly similar appearance and constructed of local red sandstone which has also been used for the distinctive unifying boundary walls that surround and bisect the rear gardens of the houses. The walls are high, which is appropriate for rear gardens and are provided with a half round red sandstone cope.

The decision reached on the application was a mixed decision. The proposal to erect a pergola and the formation of a timber deck in the northeast corner of the garden and the proposal for an area of hardstanding were deemed appropriate to their surroundings, would have no harmful effect on the conservation area and were granted planning permission. However the proposed batten fence to be attached to the interior of the existing high walls enclosing the south, east and west boundaries of the rear garden was not granted permission and this formed condition 1 of the overall approval. This Review is therefore to consider Condition 1 and the non-approval of the proposal to erect a batten timber fence that would protrude 0.46m above the height of the existing stone boundary walls enclosing the south, east and west boundaries of the rear garden of the house.

- 4.3. The Planning Officer's report noted that the application must be determined in accordance with the development plan unless material considerations indicate otherwise. The relevant policies of the East Lothian Local Development Plan 2018, which were considered in the determination of the application, were Policy CH2 Development Affecting a Conservation Area and Policy DP2 Design. Both consider the effect of any proposed development on the area in which the property is located and in the case of policy CH2 that is the effect on the special architectural or historic character or appearance of this part of the Dunbar Conservation Area. In addition Scottish Planning Policy is a material consideration in respect of guidance on determining applications that affect the character and appearance of a conservation area and requires that a Planning Authority has regard to the desirability of preserving or enhancing the character and appearance of a conservation area in determining an application within a conservation area. In this respect, the officer considered that the rear garden walls of the properties on Bayswell Park are prominent

and attractive features that contribute positively to the character and appearance of this part of the conservation area. It was also noted that there were no houses in the vicinity of the applicant's house that have timber fences enclosing their roadside boundaries. Owing to the protrusion above the wall of 0.46m the fences would be readily visible in a prominent location and would be visibly different in form and character to the walls. The officer considered this would be a disruption to the uniformity of the walls that would harm the character and appearance of the walls and the contribution they make to the character and appearance of the conservation area. A second reason for the condition is given as that, if approved, the batten fencing would set a harmful precedent for allowing similar forms of fencing in the locality to the greater detriment of the streetscape of Bayswell Road/North Road and to the character and appearance of the conservation area.

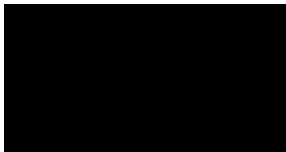
There were no representations received to the application.

- 4.4. The applicant has submitted a letter dated 28 June in support of the Review. In this letter the applicant: (i) draws attention to the quality timber proposed to be used which he states will age and silver in time blending in to its landscape tying in with timber used in an existing extension to the house and at the back of the garage; (ii) suggests that planting could soften its appearance further; (iii) suggests that an increase in height to the east and west boundary walls would increase privacy for those on both sides while noting that privacy is currently dealt with by planting; and (iv) states that each case should be considered on its merits rather than being judged on what others may do in the future.
- 4.5. The Members then raised questions pertinent to the application which the planning advisor responded to.
- 4.6. 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.
- 4.7. Councillor McLeod at the site visit he had noted there were various huts in the back gardens. He further commented that there were no properties overlooking the back garden and directly adjacent was a main road and a park. He acknowledged there was a slope meaning there was a drop up to the proposed fencing. He further noted that due to the drop in levels it would remain possible to see what was over the other side of the wall. Councillor McLeod stated that on this occasion he found it difficult to object to the application and accordingly was minded to go against the Planning Officers decision and was minded to support the applicant.
- 4.8. Councillor Bruce commented that he agreed with his colleague Councillor McLeod. He was of the view that this was a back garden and as such there should be an expectation of a level of privacy. The house is a significant height above the street due to the slope. It was his view that while there would be an impact created for allowing this appeal he was of the view that the impact was not of a significant or harmful nature to cause detriment to the conservation area. Accordingly he was minded to support the application and go against the Planning Officer's decision.

4.9. The Chair commented that his view was similar to his colleagues. He further commented that the fence would have an impact as would anything that was placed in the garden. Therefore he was of the view that the screening created by the fencing would create a lesser impact, was not excessive and would be an improvement to the area. Accordingly he was minded to support the application and go against the Planning Officer's decision.

Accordingly, the ELLRB unanimously decided that the Review should be upheld and Condition 1 of the Planning Permission should be removed.

Planning Permission is accordingly amended and condition 1 is hereby deleted and removed.



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.