

REVIEW DECISION NOTICE

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

Application for Review against decision to refuse Planning Permission by Architecturejfltd on behalf of Mr and Mrs Molloy, c/o Gullane Business Centre, 12a Lammerview Terrace, Gullane for conversion and extension to domestic outbuilding to form 1 house, erection of 2 sheds, formation of 2 vehicle parking spaces and associated works, rear garden of 23 Edinburgh Road, Cockenzie, East Lothian EH32 0XL.

Site Address: 23 Edinburgh Road, Cockenzie, EH32 0XL

Application Ref: 21/00654/P

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

Date of Review Decision Notice: 9 May 2022

Decision

The ELLRB unanimously agreed that the Review should be upheld and planning permission granted subject to conditions 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, 27 January 2022. The Review Body was constituted by Councillor L Bruce (Chair), Councillor N Gilbert, and Councillor J McMillan. All three members of the ELLRB had attended site visit accompanied by the Planning Advisor in respect of this application prior to the meeting.

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

Mr M Mackowiak, 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 the review of the decision to refuse Planning Permission for the conversion and extension to domestic outbuilding to form 1 house, erection of 2 sheds, formation of 2 vehicle parking spaces and associated works, rear garden of 23 Edinburgh Road, Cockenzie, East Lothian EH32 0XL.

2.2. The planning application was registered on 10 June 2021 and the decision notice refusing the application is dated 13 August 2021.

2.3. The condition and the reason for the condition is more particularly set out in full in the said Decision Notice dated 13 August 2021. The condition and reasons for the condition are set out as follows:

- 1 *The conversion and extension of the existing outbuilding to form one house would be a crammed form of infill housing development on a site not capable of accommodating the house without allowing for harmful overlooking of a neighbouring residential property or capable of providing any off street parking. Consequently the conversion and extension of the outbuilding to form 1 house would be an overdevelopment of the site contrary to Policy DP7 of the adopted East Lothian Local Development Plan 2018 and Scottish Planning Policy: June 2014.*
- 2 *Due to its constrained nature, the proposed house resulting from the conversion of the existing outbuilding would fail to provide the future occupants of the proposed house with any private garden ground or amenity space to ensure that they would enjoy sufficient privacy and amenity. Furthermore as the windows in the first floor of the north elevation of the proposed first floor extension would be within 18 metres of the first floor windows of 3 New Street the occupants of the proposed house would not enjoy sufficient privacy and amenity in the bedrooms they would serve contrary to Policy DP7 of the adopted East Lothian Local Development Plan 2018.*
- 3 *As there would be significantly less than 18 metres between the windows of the dormers to be formed on the north elevation roofslope of the first floor component of the extension and the first floor windows in the south elevation of 3 New Street they would allow for harmful overlooking that neighbouring residential property. As the site is not of a size capable of accommodating the formation of a house within the outbuilding without allowing for harmful overlooking the proposal is contrary to Policies DP5 and DP7 of the adopted East Lothian Local Development Plan 2018.*
- 4 *As no on-site parking provision would be provided for the proposed house and as there is no land on which such parking could be provided the occupants of the proposed new house would have to park on New Street. As the site is not of a size capable of providing any off street parking for the proposed house the proposed development would be contrary to Policies DP7 and T2 of the adopted East Lothian Local Development Plan 2018.*

2.4. The notice of review is dated 12 November 2021.

3. **Preliminaries**

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

i.	<p>The drawings accompanying this application are referenced and numbered as follows:</p> <table border="1"> <thead> <tr> <th><u>Drawing No.</u></th> <th><u>Revision No.</u></th> <th><u>Date Received</u></th> </tr> </thead> <tbody> <tr> <td>AD(0)01</td> <td>-</td> <td>21.05.2021</td> </tr> <tr> <td>AL(0)01</td> <td>110521</td> <td>21.05.2021</td> </tr> <tr> <td>AL(0)100</td> <td>100621</td> <td>10.06.2021</td> </tr> </tbody> </table>	<u>Drawing No.</u>	<u>Revision No.</u>	<u>Date Received</u>	AD(0)01	-	21.05.2021	AL(0)01	110521	21.05.2021	AL(0)100	100621	10.06.2021
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ii.	The Application for planning permission registered on 10 June 2021												

iii.	The Appointed Officer's Submission
iv.	<p>Policies of the adopted East Lothian Local Development Plan 2018 relevant to the determination of the application:</p> <ul style="list-style-type: none"> - RCA1: Residential Character and Amenity - CH2: Development Affecting Conservation Areas - DP2: Design - DP5: Extensions and Alterations to Existing Buildings - DP7: Infill, Backland and Garden Ground Development - T1: Development Location and Accessibility - T2 - General Transport Impact <p>In addition the following provisions are also relevant to the determination of the application, namely:-</p> <ul style="list-style-type: none"> - Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997; - Scottish Government's policy on development within a conservation area given in Scottish Planning Policy: June 2014; and - Supplementary Planning Guidance (SPG) on 'Cultural Heritage and the Built Environment' adopted by the Council on 30th of October 2018.
v.	Notice of Review dated 12 November 2021 together with Applicant's Submission with supporting statement and associated documents including further representation and the applicant's response to these,.

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 the review relates to a review of the decision to refuse to grant Planning Permission for the conversion of 2-storey semi-detached house of 23 Edinburgh Road and its garden ground located within Cockenzie and Port Seton Conservation Area.

The application site is rectangular in shape and measures some 682 m² in size. The house at 23 Edinburgh Road is oriented to face south and abuts a former school building, now in use as the Cockenzie Business Centre, located to the west. To the south of the house is its front garden ground with pedestrian access from Edinburgh Road. The northern part of the site constitutes the rear garden ground of the house at 23 Edinburgh Road and provides vehicle parking for that house with a vehicular access from New Street.

A small detached outbuilding is located in the northeast corner of the rear garden adjacent

to the northern boundary of the application site. That building is in use as storage associated with the existing house and is accessed from its garden ground to the south. The site is enclosed to the east by a stone boundary wall. To the southeast of the site is the residential property of Duncan Cottage and to the northeast is the house at 16 New Street, Cockenzie.

The outbuilding which is the subject of the proposed conversion is finished in stone and has a flat roof. It is approximately 9 meters in length, 4.5 meters in width and 2.6 meters in height. A tank compound projects approximately 1.2 meters from its flat roof. Its south elevation includes two door openings and two window openings. There are a further three small windows within the north elevation onto New Street and one window opening on the west elevation. It is proposed that the house resulting from the conversion of the outbuilding would front directly on to New Street.

The Planning Officer's report includes an accurate and detailed description of the works that would be required to facilitate the conversion of the outbuilding into a dwellinghouse. The Planning Advisor highlighted that the proposed house would have a new asymmetrical pitched gabled roof to a ridge height of some 7 meters from ground level to provide roof space accommodation and composed of a steep north roof slope pitch featuring 2 dormers and a longer gradual south roof slope pitch featuring 2 dormers, photovoltaic panels and a flue. The heightened and new external walls of the proposed house would be finished in lime render with some use of buff sandstone on window surrounds, skews and copes. The pitched roof would be finished in reclaimed welsh slate.

A small area of garden ground approximately 2.7m by 8.5m would be enclosed to the south of the outbuilding for use by the occupants of the new house to be formed within it. That area of garden would be enclosed by a 0.9 meters high stone wall topped with Alhambra screening to a height of 1.8 meters.

The proposed two parking spaces forming part of the Planning Application se would be formed within part of the garden that would remain as garden ground of 23 Edinburgh Road. These vehicle parking spaces would be to the north of that existing house and would be accessed through the existing driveway.

Section 25 of the Town and Country Planning (Scotland) Act 1997 requires that the application be determined in accordance with the development plan, unless material considerations indicate otherwise.

The Planning Officer's report confirms that the application received no public objections. Relevant Council services were consulted on this application.

The Roads Services advised that no off-street parking is to be provided for the proposed house. The driveway to the west side of the proposed house would continue to serve as the only access to the two proposed vehicle parking spaces that are to be formed within the rear garden ground of the house at 23 Edinburgh Road for use by the occupants of that existing house. As there is no space to provide a parking space for the proposed house and as any parking demand would have to be accommodated on New Street the Council's Road Services cannot support the application and recommend that the application be refused planning permission.

The Planning Officer considered all the relevant policies of the LDP and concluded that the proposal did not comply with Policies: DP5 (Extensions and Alterations to Existing

Buildings); DP7 (Infill, Backland and Garden ground Development); T1 (Development Location and Accessibility); and T2 (General Transport Impact). As such the Planning Officer's report includes 4 reasons for refusal of this application and in the report notes in conclusion there are no material planning considerations that outweigh the fact that the proposed development is contrary to Policies DP5, DP7, T1 and T2 of the adopted East Lothian Local Development Plan 2018.

The Planning Advisor then summarised the points raised in the Applicant's submission including:

- 1) The officer's planning assessment contains an inaccuracy - although the north part of the site (the back garden to 23 Edinburgh Rd.) provides vehicular access from New Street, most of the area is laid to lawn and does not include parking spaces for the house.
- 2) we share the available parking spaces on New Street with our neighbours
- 3) By creating 2 new parking spaces within the back garden of 23 Edinburgh Rd., the creation of a new house on New Street will not increase the demand for parking on New Street
- 4) The Cockenzie Business Centre, our commercial neighbour to the West, is a Victorian school building. This was built with large windows set high in the walls to allow in lots of daylight, but which offer no views of the outside at all. The cill heights prevent overlooking and the ground floor windows are also fitted with obscure glass.
- 5) Although small, the new garden area will actually have a good degree of privacy and will function well as an outdoor extension to the living space without creating a significant maintenance burden.
- 6) Number 3 New Street, the property immediately opposite our proposed new dwelling, is offset to it. The west most first floor window, to their bedroom, is at an oblique angle to the nearest proposed new window. It is a dormer window set into a pitched roof with slated cheeks. This means that it has an angled line of sight to the bedroom across the street and could not constitute harmful overlooking. The other window is the bathroom window which is obscured. The distance across the street between the existing houses and the proposed new dwelling is the same as all the other houses opposite each other in the rest of the lane. Many of these have dormer extensions with windows right on the building line. Respectful privacy is readily maintained at this level of proximity by the use of blinds and curtains.
- 7) Within the context of the close knit urban streetscape the new development would not constitute crammed infill housing as much as a continuation of the residential nature of the rest of the street. The existing flat roofed outbuilding with its boxed in water tank on top currently makes very little architectural sense in the lane.

The Planning Advisor noted that members had been supplied with suggested conditions in the event that the members are minded to approve the application.

- 4.3. The Planning Adviser then responded to questions from Members on designated and on-street parking and the potential impact on access and parking capacity in the adjacent street; concerns about potential overlooking of neighbouring properties; and the present condition and appearance of the outbuilding.
- 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. The Chair commented that the site visit was enlightening and assisted in providing clear context for considering this application. He then moved to the Planning Officer's reasons for refusal. He commented that in connection with Parking he understood the basis for the Roads Authority's response but given the proposal would create two new spaces within 23 Edinburgh Road, Cockenzie and given this would effectively create two additional parking spaces he had no concerns with impact on parking. In relation to the overlooking of other properties he noted that the whole street was built close to each other with neighbours being overlooked. He noted that no neighbours had objected to the proposal. He concluded by stating that taking everything into account he was not of the view that this proposal would cause concern to residents accordingly he was minded to overturn the Planning Officer's decision and grant planning permission subject to conditions.
- 4.6. Councillor Gilbert agreed with the comments of Councillor Bruce. He also noted that there had been no objections to the application from neighbours. He commented that in the context of the rest of New Street he did not see this proposed building as being any more crammed and overlooking already exists in the area. It was his view that the new home would be an improvement to New Street as he was of the opinion that the existing structures are incongruous and detrimental to the area. Accordingly, he was minded to uphold the appeal and grant planning permission subject to conditions.
- 4.7. Councillor McMillan agreed with his colleagues' comments and stated that when on the site visit he noted that it was a busy area. He was of the opinion that this new house would add to the quaintness and nature of New Street. He was not of the view that the overlooking issue would adversely affect the building and felt that the application would improve the area. Accordingly, he was minded to uphold the appeal and grant planning permission subject to conditions.

Accordingly, the ELLRB unanimously decided that the Review should be upheld and for the reasons set out above Planning Permission should be granted subject to conditions.

Planning Permission is accordingly granted subject to the following conditions:

Conditions

1. Site Setting Out No development shall take place on site unless and until final site setting out details have been submitted to and approved by the Planning Authority. The above mentioned details shall include a final site setting-out drawing to a scale of not less than 1:200, giving: a. the position within the application site of all elements of the proposed development and position of adjoining land and buildings; b. finished ground and floor levels of the development relative to existing ground levels of the site and of adjoining land and building(s). The levels shall be shown in relation to an Ordnance Bench Mark or Temporary Bench Mark from which the Planning Authority can take measurements and shall be shown on the drawing; and c. the ridge height of the proposed; shown in relation to the finished ground and floor levels on the site. Reason: To enable the Planning Authority to control the development of the site in the interests of the amenity of the area.
2. External Finishes Samples of the materials to be used in the external finishes of the development hereby approved will be submitted to the Planning Authority for its prior approval, prior to their use in the development. Only those materials approved by the Planning Authority will be used in the external finishes of the development hereby approved. Reason: To ensure that the external finishes are appropriate in the interest of protecting the amenity of the Conservation Area.

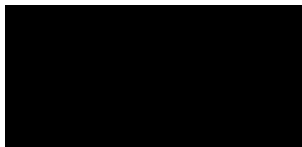
3. Hardsurface Finishes Samples of the surface finishes to be used to surface the hardstanding areas to be used as driveway, vehicle parking, patios and footpaths shall be provided for the inspection and approval of the Planning Authority prior to the use of such ground surfacings within the development, and thereafter, the ground surfacings used shall accord with the samples so approved. Reason: In the interests of the character and appearance of the Conservation Area.

4. Access and Parking Prior to the house hereby approved being brought into use the proposed vehicular access, turning and parking arrangements to serve the house at 23 Edinburgh Road shall be laid out as shown for them in docketed drawing no.AL(0)100 rev 10D621, and thereafter the access, turning and parking areas shall be retained for such uses. Reason: To ensure the provision of an acceptable standard of vehicular access, turning and parking for the house at 23 Edinburgh Road in the interests of road safety.

5. Obscure Glazing - North Elevation Dormers Prior to the occupation of the house hereby approved the windows to be formed within the north elevation of the two dormers to be formed on the north (front) elevation roof slope, both serving bedrooms, shall be obscurely glazed in accordance with a sample of the obscure glazing to be submitted to and approved by the Planning Authority in advance of its use on the house. The obscure glazing of the windows shall accord with the sample so approved. Thereafter the windows to be formed within the north elevation of the two dormers to be formed on the north (front) elevation roof slope of the house shall continue to be obscurely glazed unless otherwise approved by the Planning Authority. Reason: To safeguard the privacy and residential amenity of the neighbouring properties to the north of the application site.

6. Fencing Erected Prior to the occupation of the house hereby approved the 0.9 meters high stone wall topped with Alhambra screening to a height of 1.8 meters will have been erected as detailed on docketed drawing no. AL(0)100 rev 10D621 and on the length of the south boundary of the application site as also shown on that docketed drawing, and thereafter all of that fencing shall remain in place unless otherwise approved by the Planning Authority. Reason: To safeguard the privacy and amenity of the occupiers of the house hereby approved and the privacy and amenity of the neighbouring properties to the south.

7. Flue Coloured The finishing colour of the flue to be installed on the south elevation roof slope of the house hereby approved shall match as closely as possible the colour of the surface of the roof or wall on which it would be installed. There shall be no variation therefrom unless with the prior approval of the Planning Authority. Reason: In the interests of safeguarding the character and appearance of the building and the character and visual amenity of the Conservation Area



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.