

## **REVIEW DECISION NOTICE**

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

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Application by Mrs Julie McNairn of The Clock Tower, Carberry Courtyard, Musselburgh for review of deemed refusal of Planning Permission due to non-determination for the change of use of woodland area to domestic garden ground, erection of garden room and formation of patio area (retrospective) at The Clockhouse, Carberry Courtyard, Whitecraig EH21 8PY

Site Address: The Clockhouse, Carberry Courtyard, Whitecraig EH21 8PY

Application Ref: 21/01069/P

Date of Review Decision Notice: 9 May 2022

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### **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, 17 February 2022. The Review Body was constituted by Councillor J Findlay (Chair), Councillor F O'Donnell, and Councillor J Williamson. All three members of the ELLRB had attended 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 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 review on the basis of deemed refusal due to non-determination of application for Planning Permission for the change of use of woodland area to domestic garden ground, erection of garden room and formation of patio area (retrospective) at The Clockhouse, Carberry Courtyard, Whitecraig EH21 8PY

2.2. The planning application was submitted to the Planning Authority on 15 September 2021.

2.3. The notice of review is dated 4 December 2021.

### 3. Preliminaries

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

i.	The Application for planning permission registered on 15 September 2021
ii.	The Appointed Officer's Submission
iii.	<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"> <li>- CH6: Gardens and Designed Landscapes</li> <li>- DC7: Development in the Edinburgh Green Belt</li> <li>- OS2: Change of use to Garden Ground</li> <li>- DP2: Design</li> <li>- NH8: Trees and Development</li> </ul>
iv.	Notice of Review dated 4 December 2021.

### 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 prior to the deemed refusal 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 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 appeal is against the failure of the Council to determine this application for planning permission within the prescribed time period. Since the appeal against non-determination has been lodged, the Planning Service of the Council is unable to determine the application as this responsibility now rests with the Local Review Body.

The property to which this application relates is a two storey, mid-terrace house with associated garden ground, which is part of the west range of the quadrangle of buildings that comprise the converted stable block of Carberry Tower Stables (which is a category B listed building). The property is located in the countryside at Carberry, within the Carberry Tower Garden and Designed Landscape and the Edinburgh Green Belt. The property is bounded to the north and south by neighbouring residential properties, to the east by a courtyard and to the west by woodland.

Planning permission is sought retrospectively for the change of use of an area of woodland in a position immediately to the rear (west) of the house for use as domestic garden ground for the house and the formation of a paved patio area within the area of woodland the subject of the change of use. Planning permission is also sought for the erection of a single

storey, mono-pitched roof garden room within the area of woodland the subject of the change of use.

The case officer's report notes that the proposed area of woodland that is the subject of the retrospective change of use is predominantly rectangular in shape and is used as additional garden ground to serve the applicant's property. The case officer notes that the neighbouring residential properties of 'Doocot' and 'Factor's House' were retrospectively granted planning permission to change the use of former open space/woodland to domestic garden ground (planning references for these applications are 13/00683/P and 19/01232/P). In the case officer's view, the retrospective change of use in this instance would be no different to what has already been retrospectively granted to these neighbouring residential properties. In their assessment, the case officer concludes that owing to its size, form and positioning the proposed garden room would not give rise to a harmful loss of sunlight or daylight to any neighbouring residential properties and would not result in harmful overlooking of the neighbouring properties.

No public letters of objection were received in relation to the application and Historic Environment Scotland were consulted on the application but did not have any comments to make on the proposals.

The Council's Landscape team were consulted on the application. However, their response to this application was received on the same day as the appeal against non-determination. The case officer's report notes that the main concern from the Council's Landscape Team is about any change of use of woodland to garden ground. In their opinion this appears contrary to the Scottish Government's Policy on Control of Woodland Removal as this policy does not support a change of use from woodland. In their response the Landscape Team emphasises that an area defined as woodland may or may not have trees, woodlands can consist of other elements such as areas of open ground. However once it is changed to garden ground the woodland definition is lost forever and Scottish Forestry no longer have control over tree removal and tree replacement. The Landscape team would therefore not support the change of use to garden ground as this appears contrary to policy NH8. In their response the Landscape team states that granting permission for garden buildings under mature trees would set an unwelcome precedent for similar proposals and could lead to the incremental loss of trees.

In the case officer's assessment it is noted that in this instance there is no proposal to remove trees and that other properties within the former steading have previously been granted planning permission for the change of use of woodland to garden ground. For these reasons, in the case officer's opinion, it would be unreasonable in this instance to refuse to grant planning permission for the change of use and garden room on the grounds that such proposals would result in the loss of any trees.

The case officer's report concludes that given the above considerations the retrospective change of use of woodland to domestic garden ground, formation of a terrace area and the proposed garden room are consistent with Policies CH6, DC7, OS2, DP2 and NH8 of the adopted East Lothian Local Development Plan 2018.

The Planning Adviser then turned to the applicant's appeal submission which confirmed that the main reason for seeking a review was that the applicants had been given no feedback on the progress of their application and that they wished to receive a decision and a justification for that decision.

The Members will note that the case officer has not supplied any suggested conditions. However, in the event that the LRB is minded to approve the application you may impose any reasonable planning conditions. In particular, the Members may wish to consider a condition that would remove permitted development rights from the application site –

*Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended by Part 1 of the Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2011), or of any subsequent Order amending, revoking or re-enacting the 1992 Order, other than the one garden room and patio hereby approved no other buildings or structures, including fences, walls, gates or any other means of enclosure shall be erected or hardsurfaces formed within the area of garden ground the subject of the retrospective change of use without the consent of the Planning Authority.*

*Reason: To safeguard the character and appearance of the landscape setting of the cottage named 'The Clockhouse' and the Carberry Tower Garden and Designed Landscape.*

- 4.3. The Members then raised questions pertinent to the application, which the planning advisor responded to. The questions related to potential conditions relating to fencing and trees; clarified the definition of 'permitted development' and its implications; and confirmed that there were no significant differences between this application and one for a neighbouring property which had previously been granted planning permission.
- 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 O'Donnell commented that she had been surprised to hear that an area of private garden ground was also designated as woodland. Having viewed the site, the patio area, the size of the proposed garden room and neighbouring gardens, she thought that the proposals were sympathetic to the listed building and that there would be no adverse impact on the surrounding area or woodland. Taking everything into account, and subject to the condition on permitted development and a TPO, she was minded to grant planning permission.
- 4.6. Councillor Williamson commented that he felt the site visit was useful for context of what is considered to be woodland and what is considered to be garden ground. In his view what is proposed is reasonable and not interfering with neighbors' properties or rights. He was therefore minded to support the applicant and grant the application subject to imposing a condition relating to permitted development rights and a further condition to protect the trees within the garden area.
- 4.7. The Chair agreed with his colleagues' comments and was minded to support the application and grant planning permission subject to imposing a condition relating to permitted development rights and a further condition to protect the trees within the garden area.

Accordingly, the ELLRB unanimously decided that the Review should be upheld and Planning Permission Granted subject to the following conditions:

1. *Notwithstanding the provisions of the Town and Country Planning (General Permitted*

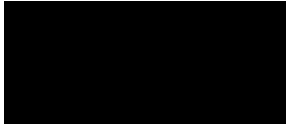
*Development) (Scotland) Order 1992 (as amended by Part 1 of the Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2011), or of any subsequent Order amending, revoking or re-enacting the 1992 Order, other than the one garden room and patio hereby approved no other buildings or structures, including fences, walls, gates or any other means of enclosure shall be erected or hardsurfaces formed within the area of garden ground the subject of the retrospective change of use without the consent of the Planning Authority.*

*Reason: To safeguard the character and appearance of the landscape setting of the cottage named 'The Clockhouse' and the Carberry Tower Garden and Designed Landscape.*

2. *No trees within the land the subject of the change of use hereby approved shall be felled, topped, lopped or interfered with in any manner without the previous written consent of the Planning Authority.*

*Reason: To ensure the retention of trees in the interests of safeguarding the landscape character and amenity of the area.*

Planning Permission is accordingly granted.



**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.