

## **REVIEW DECISION NOTICE**

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

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Application for Review by Mrs Patricia Sharp c/o Environment & Planning Scotland Ltd per John Campbell, Nisbet Stables, Coldstream Road, Duns TD11 3HU of decision to refuse Planning Permission for the alterations and change of use of bank to form 1 flat at 12 Westgate, North Berwick EH39 4AF

Site Address: 12 Westgate, North Berwick EH39 4AF

Application Ref: 22/00233/P

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

Date of Review Decision Notice: 1 November 2022

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### **Decision**

The ELLRB unanimously agreed to dismiss the appeal and refuse planning permission 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, 6 October 2022. The Review Body was constituted by Councillor J Findlay, Councillor, K McLeod and Councillor C Yorkston. 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 L Taylor, Planning Adviser to the LRB  
Mr C Grilli, Legal Adviser/Clerk to the LRB  
Ms B Crichton, Clerk

### **2. Proposal**

1.1. The planning application is for review of decision to refuse Planning Permission for the alterations and change of use of bank to form 1 flat, 12 Westgate, North Berwick EH39 4AF (Planning Reference Number 22/0233/P).

- 1.2. The planning application was registered on 8 March 2022 and the Decision Notice refusing the application is dated 6 May 2022.
- 1.3. The reasons for refusal are more particularly set out in full in the Decision notice dated 6 May 2022 and detailed below as follows:
1. *The proposed scheme of development would result in the loss of a ground floor Class 2 commercial premises within North Berwick Town Centre where there is no evidence that the premises is no longer viable as a town or local centre use, contrary to Policy TC2 of the adopted East Lothian Local Development Plan 2018.*
  2. *The proposed scheme of development would result in a loss of residential amenity to the occupiers of the existing neighbouring residential property and would fail to provide the occupants of the proposed residential property with an acceptable level of residential amenity contrary to Policy DP5 of the adopted East Lothian Local Development Plan 2018.*
- 1.4. The notice of review is dated 27 July 2022.

### 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:																											
	<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>1141-PL-06</td> <td>-</td> <td>24.02.2022</td> </tr> <tr> <td>18/683/03</td> <td>-</td> <td>24.02.2022</td> </tr> <tr> <td>DWG 01</td> <td>-</td> <td>02.03.2022</td> </tr> <tr> <td>18/683/02</td> <td>A</td> <td>04.03.2022</td> </tr> <tr> <td>18/683/02</td> <td>B</td> <td>04.03.2022</td> </tr> <tr> <td>1141-PL-01</td> <td>-</td> <td>08.03.2022</td> </tr> <tr> <td>1141-PL-04</td> <td>-</td> <td>08.03.2022</td> </tr> <tr> <td>1141-PL-07</td> <td>-</td> <td>08.03.2022</td> </tr> </tbody> </table>	<u>Drawing No.</u>	<u>Revision No.</u>	<u>Date Received</u>	1141-PL-06	-	24.02.2022	18/683/03	-	24.02.2022	DWG 01	-	02.03.2022	18/683/02	A	04.03.2022	18/683/02	B	04.03.2022	1141-PL-01	-	08.03.2022	1141-PL-04	-	08.03.2022	1141-PL-07	-	08.03.2022
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ii.	The Application for planning permission registered on 8 March 2022																											
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"> <li>- Policy TC2 (Town and Local Centres);</li> <li>- Policy CH1 (Listed Buildings)</li> <li>- Policy CH2 (Development Affecting Conservation Areas)</li> <li>- Policy DP5 (Extensions and Alterations to Existing Buildings);</li> <li>- Policy T1 (Development Location and Accessibility); and</li> <li>- Policy T2 (General Transport Impact) and</li> <li>- SPG Design Standards for New Housing Areas.</li> </ul> <p>In addition the following are also relevant to the determination of the application, namely:-</p> <ul style="list-style-type: none"> <li>- South East Scotland Development Plan (SESplan); and</li> <li>- the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.</li> </ul>
v.	<p>Notice of Review dated 27 July 2022 together with Applicant's Submission with supporting statement and associated documents.</p>

#### **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 outlined the proposals contained in planning application no. 22/00233/P. He set out in detail the proposals contained within the application and provided details of the site and surroundings. There had been eleven objections and one letter of support.

The Planning Adviser reminded Members that applications should be determined in accordance with the development plan for the area unless material considerations indicated otherwise: in this case, the South East Scotland Development Plan (SESplan); the adopted East Lothian Local Development Plan 2018 (LDP); and the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. The Planning Adviser also outlined the most relevant policies of the LDP, which were: TC2 (Town and Local Centres); CH1 and CH2 (Development Affecting Conservation Areas); T2 (Transport Impact); and DP5 (Conversion of an Existing Building); and the SPG Design Standards for New Housing Areas.

The Planning Officer had considered the proposal under Policy TC2, which required marketing evidence to be provided to demonstrate the building was no longer viable for town centre commercial use. The applicant had provided marketing information, and the

case officer sought the views of the Economic Development Team and a report from the District Valuer (DV). The DV report concluded that the property value was around £400,000, and considered that seeking offers over £595,000 had been excessive. The property had not sold during the marketing exercise. After seeking clarification from the applicant on aspects of the marketing, and the number of offers made remaining undisclosed, the case officer had stated that the marketing exercise was not reasonable. They determined that it had not been demonstrated that acceptable marketing of the property had been carried out, nor that the property was no longer viable as a town centre commercial premises, and concluded that the application was contrary to Policy TC2.

Regarding Policy DP5, the Planning Officer had concluded that a sufficient level of amenity would not be afforded to the occupants of the newly-formed residential property or the neighbouring property, despite an attempt to protect privacy by blocking up of windows and use of opaque glazing. There would be no windows on the northern elevation except for the bay window fitted with opaque glazing; most rooms would have only a single south-facing aspect. There would only be garden ground to the front, which was not considered private space. The proposal was therefore considered to be contrary to Policy DP5.

The Planning Officer had concluded that the proposed exterior works would not significantly detrimentally impact the character or the category B listed building or the North Berwick conservation area; the application was therefore not deemed to be contrary to Policies CH1 or CH2.

It was noted that no objection had been made by the Roads Service because the requirement for parking at a residential property was calculated at less than that of the building when used as a bank. On-street parking had been available during the commercial use, and therefore the Planning Officer concluded that the proposal was not contrary to Policy T2.

The Planning Adviser then turned to the applicant's appeal submission and confirmed that the applicant sought to prove that appropriate marketing evidence had been provided that made comparison with nearby properties in relation to their value. They also sought to challenge the meaning of viability within the policy in relation to whether the property should remain as commercial. Further, they challenged the application of Policy DP5 and the impacts the proposal were deemed to have upon amenity. They challenged the use of the term 'scheme of development' within the case officer's report and the decision notice on the application.

#### 4.3. The Planning Adviser replied to questions raised by members including:

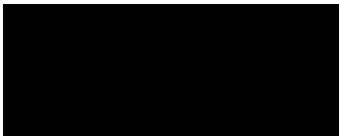
- 4.3.1. whether a similar report taking into account the property's commercial value had been produced in 2018 prior to the purchase of the property for £225,000 as a commercial premises. The Planning Adviser advised that he was not aware of such a report, and only the current DV report had been taken into account by the Planning Officer.
- 4.3.2. whether the price paid for a property in relation to its value would be relevant in terms of viability, as a business plan would take this into account. The Planning Adviser advised that any uplift potential and redevelopment costs had been taken into account by the DV. He advised that the LDP included definitions of viability and

vitality, and an element of judgement was required, but it had been felt that the property was not marketed at a reasonable cost compared to its actual market value.

- 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 McLeod felt that there were possible business opportunities in North Berwick, and the property should be used for this purpose. He supported the original decision of the Planning Officer.
- 4.6. Councillor Yorkston also supported the original decision of the Planning Officer and felt there was potential for business use on the thriving high street.
- 4.7. The Chair also supported the original decision of the Planning Officer due to concerns over the privacy of neighbouring gardens. He also agreed that the property still had commercial viability.

Accordingly, The ELLRB agreed unanimously to dismiss the appeal and to refuse planning permission for this application, for the reasons set out in the original decision notice.

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.