

REVIEW DECISION NOTICE

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

Application for Review by Christopher Thomson Design on behalf of Mr Kenneth Walker, 14 Rhodes Cottages, Lime Grove, North Berwick EH39 5NL of decision to refuse Planning Permission (Application Ref: 22/01125/P) for the erection of garden room and formation of decked area (retrospective) at 14 Rhodes Cottages, Lime Grove, North Berwick.

Site Address: 14 Rhodes Cottages, Lime Grove, North Berwick

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

Date of Review Decision Notice: 14 July 2023

Decision

The ELLRB unanimously agreed to dismiss the appeal and to refuse planning permission for the erection of garden room and formation of decked area (retrospective) at 14 Rhodes Cottages, Lime Grove, North Berwick for the reasons more particularly 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, 15 June 2023. The Review Body was constituted by Councillor D Collins (Chair), Councillor J McMillan, and Councillor S McIntosh. 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 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 of decision to refuse Planning Permission for the erection of garden room and formation of decked area (retrospective) at 14 Rhodes Cottages, Lime Grove, North Berwick EH39 5NL.
- 2.2. The planning application was registered on 7 October 2022 and the Decision Notice refusing the application is dated 16 December 2022.
- 2.3. The condition and the reason for the condition is more particularly set out in full in the said Decision Notice dated 16 December 2022. The reasons for refusal are set out as follows:

- 1 *The garden room due to its close positioning to the house and of its size and scale relative to the size and scale of the applicant's house and garden is inappropriate to its rear garden setting contrary to Policy DP2 of the adopted East Lothian Local Development Plan 2018 and with Scottish Government policy guidance regarding the control of new housing development in the countryside given in Scottish Planning Policy: June 2014.*
- 2 *The garden room with associated decking due to its positioning in relation to the house and of its size and scale, masks and draws focus away from that listed building in views from the public footpath and golf course. It is therefore a form of development that is harmful to the setting of a listed building the garden room and associated decking is also harmful to the character and appearance of the wider area. The garden room with associated decking are contrary to Policy DC5 of the adopted East Lothian Local Development Plan 2018, Scottish Planning Policy: June 2014 and Scottish Ministers' policy on the historic environment as given in The Historic Environment Policy For Scotland (HESP)*

2.4. The notice of review is dated 13 March 2023

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>DWG 01</td> <td>-</td> <td>05.10.2022</td> </tr> <tr> <td>001</td> <td>-</td> <td>05.10.2022</td> </tr> <tr> <td>002</td> <td>-</td> <td>05.10.2022</td> </tr> </tbody> </table>	<u>Drawing No.</u>	<u>Revision No.</u>	<u>Date Received</u>	DWG 01	-	05.10.2022	001	-	05.10.2022	002	-	05.10.2022
<u>Drawing No.</u>	<u>Revision No.</u>	<u>Date Received</u>											
DWG 01	-	05.10.2022											
001	-	05.10.2022											
002	-	05.10.2022											
ii.	The Application for planning permission registered on 7 October 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"> - DP2 (Design); - CH1 (Listed Buildings); <p>In addition the following provisions are also relevant to the determination of the application, namely:-</p> <ul style="list-style-type: none"> - National Planning Framework 4 Policies 7 (9Historic Assets and Places) and 16 (Quality) 												
v.	Notice of Review dated 13 March 2023 together with Applicant's Submission with 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.
- 4.2. The Members then asked the Planning Adviser to summarise the planning policy position in respect of this matter. The Planning Adviser provided details of the site and surroundings, confirming that although the property was not within a conservation area, it was however listed as being of special architectural or historic interest (Category B) as part of a group of properties at 7-14 Rhodes Farm Cottages. He then outlined the size and specification of the garden room and decked area referred to in the application.

The Planning Adviser stated that when the application was considered the development plan for East Lothian consisted of the approved South East Scotland and Strategic Development Plan (SESplan) and the adopted East Lothian Local Development Plan (LDP) 2018. There were no relevant policies of the approved SESplan relevant to the determination of this application. However, policies CH1 (Listed Buildings), and DP2 (Design) of the LDP 2018 were relevant to the determination of the application. Also material to its determination was Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, Scottish Ministers' policy on the historic environment as given in The Historic Environment Policy for Scotland (HEPS): April 2019 and Scottish Planning Policy (SPP) 2014. However, he reminded members that the SPP 2014 now no longer applied due to the approval of the National Planning Framework 4 (NPF4) on the 13th February 2023.

The Planning Adviser then summarised five objections received to this application. The main grounds of objection were:

- (i) The garden room was too large and overwhelmed the garden and the adjacent cottage. The design of the garden room had no relationship with the vernacular architecture of the B listed cottages;
- (ii) The difference in ground levels meant the decking sat at a higher level and would allow for overlooking;
- (iii) The garden room was in open view from the Glen Golf Course and obscured the view of the end of the cottage;
- (iv) The garden room cut out light to the communal path;
- (v) It had been built to use as a holiday let;
- (vi) The building blocked light into neighbouring windows.

The Planning Adviser then commented that in the case officer's report, the case officer had noted that the building did not have a bathroom or kitchen and as such could not be used as separate accommodation to the house at present. Furthermore, the use of the garden room as a holiday let would require planning permission. Any application submitted would be assessed and determined on its own merits in accordance with the development plan unless material planning considerations indicated otherwise. After

conducting a thorough planning assessment, the case officer concluded that the proposal did not comply with Policy CH1 (Listed Buildings) and Policy DP2 (Design) of the adopted LDP. Planning permission was therefore refused for the reasons set out in the original decision notice.

The Planning Adviser then reiterated his earlier point that the SPP 2014 no longer applied following the approval of the NPF4 in February 2023. As a result, NPF4 Policy 7 Historic Assets and Places was now relevant to the determination of this application. Policy 7a, stated that development proposals with a potentially significant impact on historic assets or places would be accompanied by an assessment which was based on an understanding of the cultural significance of the historic asset and/or place. The assessment should identify the likely visual or physical impact of any proposals for change, including cumulative effects and provide a sound basis for managing the impacts of change. Proposals should also be informed by national policy and guidance on managing change in the historic environment, and information held within Historic Environment Records. The Planning Adviser concluded that there was no incompatibility between Policy 7 of NPF4 and Policy CH1 (Listed Buildings) of the current LDP.

The Planning Adviser then summarised the submission provided by the applicant which aimed to address the main objections to this application. The applicant stated:

1. The garden room was only marginally bigger than the room that was previously there. The area of decking had not increased at all.
2. The garden room did not obscure the view of the end of the cottages. Indeed from the 2nd fairway on the golf course the only building that obscured the view of the cottages was one built by our next door neighbour.
3. The garden room was in keeping with the building the applicant demolished and various other buildings within the Rhodes Cottages neighbouring buildings.
4. The garden room did not affect any light going into the applicants' neighbour's windows.
5. The garden room was never built to be a holiday let and will never be used as such. It is a seating area for leisure use of the owners of the cottage.
6. The trees were never cut back to enable construction. The applicant trimmed the trees recently in conjunction with their neighbours to cut back on pigeon droppings in the garden.
7. No one had used the room as yet and there would never be rowdy behaviour or unpleasant smells as had been suggested.
8. When the cottage was purchased it was in a state of disrepair and the garden room and associated decking were not fit for purpose. The applicant apologised for not seeking planning, stating it was an oversight on their part. Their builders did not realise planning was required due to the size of the outbuilding and that they were replacing what was already there with something similar in size.
9. There were a number of garden rooms/buildings within the Rhodes Cottages neighbouring buildings which were of a similar form and structure plus the garden room was not in a Conservation Area.
10. The applicant indicates that they have invested a considerable amount in building this garden room and associated landscaping which [in their opinion] has been considerably improved.
11. The garden room height is 2500mm and has an area less than 30 sq. m. in line with Planning guidelines.

The Planning Adviser concluded his presentation by summarising the further

representation against the planning appeal, which had raised similar points to those previously summarised in the case officer report. He also reminded members that they had the option of seeking further information, if necessary.

- 4.3. The Planning Adviser responded to questions from Members. He confirmed that the garden room appeared to be higher than the 2.5 metres stated by the applicant. However, regardless of its size, it would require planning permission as the cottage was a Listed Building and the garden room would not be covered by permitted development rights. He advised that he had been unable to locate any planning applications for similar structures on neighbouring properties and that there had been numerous objections to this planning application.
- 4.4. The Chair asked her 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 McIntosh said that the site visit had been very helpful in viewing the garden room against the setting of the Listed Buildings and their architecture. She found the garden room to be unsympathetic to the surrounding built environment and quite dominant; particularly when its height was compared to the height and slope of the roofs of the cottages. She considered it to be harmful to the architectural heritage of the Listed Buildings and was minded to refuse the application.
- 4.6. Councillor McMillan echoed his colleague's remarks and noted the very detailed report and reasons for refusal, all of which were emphasised when viewing the site. He commented on the location and character of the cottages and said that, in his view, the garden room was completely out of keeping with its surroundings. He noted the objections raised and that the applicant's submission gave no clear reason why the garden room should be considered suitable within this site. After reviewing all of the evidence, he concluded that the planning case officer had been right to refuse this application and he was minded to refuse the application.
- 4.7. The Chair agreed with both her colleagues. She said that the size and scale of the garden room was inappropriate and did not fit with the architecture of the cottages. She also noted that during the site visit it had been clear that the structure blocked light to the neighbouring cottage windows and garden. Furthermore, the raised decking area would allow overlooking and would result in a loss of privacy for neighbours. While not used as a holiday let itself, she noted that the garden room was available for use by anyone staying at the cottage and this would result in strangers looking into the neighbouring garden. She therefore agreed with the officer's original decision to refuse planning permission.

Accordingly, the ELLRB unanimously decided to refuse the appeal for the reasons more particularly set out in the case officer's original Decision Notice.

Planning Permission is hereby 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.