

REVIEW DECISION NOTICE

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

Application for Review by Lochinvar Developments Ltd, 25 Fisherrow Industrial Estate, Newhailes Road Musselburgh EH21 6RU, on behalf of Mr G and Mrs T Paton, of decision to refuse Planning Permission for the replacement windows and doors at 1 Marketgate, Ormiston, East Lothian EH35 5LS.

Site Address: 1 Marketgate, Ormiston, East Lothian EH35 5LS

Application Ref: 23/00600/P

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

Date of Review Decision Notice: 15 January 2024

Decision

The ELLRB by unanimous decision decided to refuse planning permission for replacement windows and doors at 1 Marketgate, Ormiston, East Lothian EH35 5LS 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, 30 November 2023. The Review Body was constituted by Councillor A Forrest (Chair), Councillor K McLeod, Councillor D Collins and Councillor N Gilbert. All four 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 is for review of decision to refuse Planning Permission for replacement windows and doors at 1 Marketgate, Ormiston, East Lothian EH35 5LS.

2.2. The planning application was registered on 5 June 2023 and the Decision Notice refusing the application is dated 28 July 2023.

2.3. The reason for refusal is more particularly set out in full in the said Decision Notice dated 28 July 2023. The reason for refusal is as follows:

- 1 *The proposed replacement uPVC framed windows to be installed in the south and east elevations of the house with their thicker frames and non traditional astragals would be visibly different in appearance to the windows they would replace. Therefore the loss of the existing windows and doors and their replacement with the uPVC framed windows and doors would be harmful to the character and appearance of the building and to the character and appearance of this part of the Ormiston Conservation Area contrary to Policy 7 of NPF4, Policies CH2 and DP5 of the adopted East Lothian Local development Plan 2018 and contrary to the Council's supplementary Planning Guidance on 'Cultural Heritage and Built Environment'.*

2.4. The notice of review is dated 31 August 2023.

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 data-bbox="357 815 507 846"><u>Drawing No.</u></th> <th data-bbox="651 815 801 846"><u>Revision No.</u></th> <th data-bbox="995 815 1168 846"><u>Date Received</u></th> </tr> </thead> <tbody> <tr> <td>DWG 01</td> <td>-</td> <td>30.05.2023</td> </tr> <tr> <td>DWG 02</td> <td>-</td> <td>30.05.2023</td> </tr> <tr> <td>DWG 03</td> <td>-</td> <td>30.05.2023</td> </tr> <tr> <td>DWG 04</td> <td>-</td> <td>30.05.2023</td> </tr> <tr> <td>DWG 05</td> <td>-</td> <td>30.05.2023</td> </tr> <tr> <td>DWG 06</td> <td>-</td> <td>30.05.2023</td> </tr> <tr> <td>MANU LITERATURE 01</td> <td>-</td> <td>05.06.2023</td> </tr> <tr> <td>MANU LITERATURE 02</td> <td>-</td> <td>05.06.2023</td> </tr> </tbody> </table>	<u>Drawing No.</u>	<u>Revision No.</u>	<u>Date Received</u>	DWG 01	-	30.05.2023	DWG 02	-	30.05.2023	DWG 03	-	30.05.2023	DWG 04	-	30.05.2023	DWG 05	-	30.05.2023	DWG 06	-	30.05.2023	MANU LITERATURE 01	-	05.06.2023	MANU LITERATURE 02	-	05.06.2023
<u>Drawing No.</u>	<u>Revision No.</u>	<u>Date Received</u>																										
DWG 01	-	30.05.2023																										
DWG 02	-	30.05.2023																										
DWG 03	-	30.05.2023																										
DWG 04	-	30.05.2023																										
DWG 05	-	30.05.2023																										
DWG 06	-	30.05.2023																										
MANU LITERATURE 01	-	05.06.2023																										
MANU LITERATURE 02	-	05.06.2023																										
ii.	The Application for planning permission registered on 5 June 2023																											
iii.	The Appointed Officer's Submission																											
iv.	<p>Policies relevant to the determination of the application:</p> <p>National Planning Framework 4:</p> <ul style="list-style-type: none"> - Policy 7: Historic Assets and Places; - Policy 14: Design, Quality and Place; and - Policy 16: Quality Homes). <p>The adopted East Lothian Local Development Plan 2018 policies:</p> <ul style="list-style-type: none"> - CH2: Development Affecting Conservation Areas; - DP5: Extensions and Alterations to Existing Buildings. <p>In addition the following 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: Revised January 2020 - supplementary Planning Guidance on 'Cultural Heritage and the Built Environment' 																											
v.	Notice of Review dated 31 August 2023 together with Applicant's Submission with supporting statement and 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 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 planning application relates to the replacement windows and doors at 1 Marketgate, Ormiston. He provided details of the application site and advised that the proposal was for replacement uPVC windows where the existing windows were timber. Earlier this year, the applicant had been granted planning permission for uPVC windows, where they were not visible from a public place, and for double glazed timber framed windows and doors where they were visible from a public place within the conservation area. However, he had subsequently submitted this application for uPVC double glazing throughout which was the subject of this appeal.

He reminded Members that section 25 of the Town and Country Planning (Scotland) Act 1997 required that the application be determined in accordance with the development plan unless material considerations indicate otherwise. The local development plan was National Planning Framework 4 (NPF4) and the adopted East Lothian Local Development Plan 2018 (LDP). The case officer had identified the following policies as being relevant to this case: Policies 7, 14 and 16 of NPF4 and Policies CH2 and DP5 of the LDP. Also material was the Council's adopted Supplementary Guidance on Cultural Heritage and the Built Environment 2018.

The Planning Adviser noted that there had been three letters of objection, including one from the Architectural Heritage Society of Scotland. In summary, they identified that the property was part of the historic farm, the buildings of which enhanced the character of the conservation area; the windows were visible from public places; introducing uPVC would damage the strong visual contribution which the property made to the conservation area; the proposal was contrary to the Council's planning policies; uPVC was not a like for like replacement; and the proposal would harm the character of both the building and the surrounding area – more so since the applicant had previously accepted timber frames under a previous planning permission; no justification had been provided for the change now proposed and no window or heritage survey had been submitted.

Considering these points, the case officer had noted that the applicant did not have to justify the changes proposed. However, the Planning Adviser commented that NPF4 Policy 7 stated that development proposals with a potentially significant impact on historic assets or places should be accompanied by an assessment which was based on an understanding of the cultural significance of the historic asset and/or place. The issue here was how one judged what was a significant impact.

The windows were clearly visible from a public place. Its existing timber windows were a part of the architectural character of the property and the property made a significant positive contribution to the wider Ormiston Conservation Area. The main determining issue

was therefore the detailed design of the windows and the material from which they were made. The case officer had reported that because of their thicker frames and non-traditional astragals they would be visibly different in appearance from the windows they would replace and that this difference would be such that it would not preserve the positive contribution the traditional timber framed sash and case windows and doors made to the architectural character and appearance of the property or to the special architectural or historic interest of the Ormiston Conservation Area. As a result, and notwithstanding that the replacement windows and doors proposed for the north and west elevation of the house were acceptable, the whole application had been refused.

The Planning Adviser agreed that the proposed windows would be visibly different for the reasons provided by the case officer (thicker frames, non-traditional astragals in terms of profile and being plant on rather than through astragals and a wider spacing between the panes of glass and the different material of construction) and that, for these reasons, the windows could be considered to be harming rather than preserving the character of the conservation area.

The Planning Adviser then summarised the review submission provided by the applicant's agent which asserted that uPVC windows were less expensive, that they performed better and were more durable than timber windows, that the windows were intended to look exactly the same as the existing, that they would look the same from a distance and for that reason the character of the area was not lost or changed. The submission also noted that a previous appeal decision by the Local Review Body overturned a similar refusal for replacement windows, also by the same manufacturer as this proposal, at a location in North Berwick. In relation to this point, the Planning Adviser reminded Members that all applications had different circumstances and affected the character of a different conservation area and against sometimes different planning policy and guidance.

In response to the applicant's review submission, a further objection had been made countering the claims in relation to the difference between timber windows, which the objector would have liked to see retained, and uPVC windows which the objector was opposed to.

- 4.3. Members then asked questions of the Planning Adviser including whether the drawings within the applicant's submission demonstrated astragals which could then be taken into consideration as part of the submission. The Planning Adviser confirmed that in his view the pictures brought the submission closer to an acceptable application but stated there remained concerns which had been raised within his submission. There was also potentially difference from the photograph and the drawings and should members be minded to grant they may wish to consider an condition to ensure the astragals are included.
- 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 commented that he could clearly see that other buildings in the vicinity had wooden frames. The application before him in his view if approved would be out of character for this conservation area and as such he was minded to refuse the appeal and support the Planning Officer decision.
- 4.6. Councillor Gilbert stated that it was obvious this was within a conservation area and the

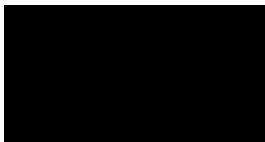
windows and doors are clearly viewed by public. He noted there was already an existing consent to have a wooden framed windows. Accordingly, he was minded to refuse the appeal and support the Planning Officers decision.

4.7. Councillor Collins noted there was potential attempt to look similar but on basis that this is within conservation area and to protect historical interest in the area was minded to refuse the appeal and support the Planning Officers decision.

4.8. The Chair commented that the site visit was useful and it was clear that the proposed application would be detrimental to the amenity of the area and therefore was minded to refuse the appeal and support the Planning Officers decision.

Accordingly, the ELLRB unanimously decided to support the Planning Officer's decision and refuse the appeal for the reasons more particularly set out within the Planning Officer's report.

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.