

REVIEW DECISION NOTICE

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

Application for Review by Mr Antonio Iglesias Barrenechea of 83A High Street, Haddington of condition refusing permission for the pergola attached to the west elevation of the applicants' flatted property pertaining to Planning Permission for alterations to roof to provide terraced area, formation of door from window opening, erection of canopy, planter, timber store, shelf and installation of lighting (retrospective) at 83A High Street, Haddington

Site Address: 83A High Street, Haddington

Application Ref: 23/00503/P

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

Date of Review Decision Notice: 25 June 2024

Decision

The ELLRB by a majority of 2 to 1 agreed to uphold the appeal and remove the condition of planning permission pertaining to planning permission for alterations to roof to provide terraced area, formation of door from window opening, erection of canopy, planter, timber store, shelf and installation of lighting (retrospective) at 83A High Street, Haddington 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 (reference 23/00503/P) was considered by the ELLRB, at a meeting held on Thursday, 25 April 2024. The Local Review Body was constituted by Councillor N Hampshire (Chair), Councillor D Collins 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 J Squires, Planning Adviser to the LRB
Mr C Grilli, Legal Adviser to the LRB
Ms M Scott, Clerk

2. Proposal

2.1. The planning application is for review of condition 1 pertaining to Planning Permission (reference 23/00503/P)

2.2. The planning application was registered on 30 June 2023 and the Decision Notice granting the

application subject to conditions is dated 3 November 2023.

- 2.3. The condition subject to this appeal and the reasons for such condition is more particularly set out in the Decision Notice and is summarised below as follows:

“Planning Permission is not hereby granted for the pergola attached to the west elevation of the applicants’ flatted property.

Reason:

The pergola is a covered, permanent structure that allows for the intensification of the use of the external terrace which is harmful to the residential amenity of the neighbouring residential properties of 83 High Street contrary to Policy 14 of NPF4 and Policy DP5 of the adopted East Lothian Local Development Plan 2018.”

- 2.4. The notice of review is dated 2 February 2024.

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>MANU LITERATURE 01</td> <td>-</td> <td>29.06.2023</td> </tr> <tr> <td>DWG 01</td> <td>-</td> <td>29.06.2023</td> </tr> <tr> <td>27021-10</td> <td>B</td> <td>29.06.2023</td> </tr> <tr> <td>27021-11</td> <td>A</td> <td>30.06.2023</td> </tr> </tbody> </table>	<u>Drawing No.</u>	<u>Revision No.</u>	<u>Date Received</u>	MANU LITERATURE 01	-	29.06.2023	DWG 01	-	29.06.2023	27021-10	B	29.06.2023	27021-11	A	30.06.2023
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ii.	The Application for planning permission registered on 30 June 2023															
iii.	The Appointed Officer's Submission															
iv.	<p>Policies relevant to the determination of the application:</p> <p>Policy 7 (Historic assets and places) and 16 (Quality Homes) of National Planning Framework 4 and</p> <p>Policies CH1 (Listed Buildings), CH2 (Development Affecting Conservation Areas), DP2 (Design) and DP5 (Extensions and Alterations to Existing Buildings) of the adopted East Lothian Local Development Plan 2018.</p>															
v.	Notice of Review dated 2 February 2024 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 provided details of the application, property and location and confirmed that the appeal was against a condition of planning permission. The majority of the works outlined in the original application were granted permission and this could not now be revisited through this review. The review covered only the matter of the condition preventing construction of the pergola. The property was situated in Haddington Town Centre and was Category B listed. The site was also within Haddington Conservation Area.

The Planning Adviser summarised the case officer's assessment of the application against relevant planning policy. The case officer had noted Section 59 of the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997 required that in considering whether to grant planning permission for development which affected a listed building or its setting a planning authority shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Section 64 of this Act was also of relevance. The case officer had noted there were four letters of objection to the proposal as a whole. Specifically, that the pergola should be removed from the building; that the application had not requested permission to install the pergola on the owner's property; that the pergola was not consistent with the aesthetic, character and amenity of the surrounding listed buildings; the works resulted in loss of privacy and security; and that the material and form of the pergola was inappropriate. The case officer had pointed out that issues relating to the right to occupy the roof were not planning matters.

The Planning Adviser confirmed that the case officer had considered the rear elevation of the building not to be of the same special architectural or historic interest as the front. They noted that the timber pergola covered the area of the terrace that had stone paving on it. The pergola was not visible from any public view and was not visible in relation to the front elevation of the building. The case officer had therefore considered it did not harm the special architectural or historic interest of the listed building nor the character and appearance of Haddington Conservation Area. The case officer had considered that although views of the terrace were obtained from neighbouring flats, the terrace and fixtures did not have an unacceptable impact on their visual amenity. However, the case officer had considered that the timber frame pergola, being a covered, permanent structure allowed for the intensification of the use of the external terrace, including storage of electrical equipment including a washing machine. This was harmful to the residential amenity of the occupants of other flats within 83 High Street, contrary to Policy 14 of NPF4 and LDP Policy DP5 on Extensions and Alterations to Existing Building. The use of electrical appliances could not in their view be controlled by condition as it was not enforceable. Therefore, a condition was placed on the planning consent to the effect that the pergola was not granted planning consent.

The Planning Adviser advised that the case officer had considered that the proposal would not meet the terms of LDP Policy DP5, which included in part 1 that development must not result in a loss of amenity with neighbouring uses or be harmful to existing residential amenity through loss of privacy from overlooking, or from loss of sunlight or daylight. The case officer had also considered the pergola contrary to Policy 14 of NPF4 which provided that development proposals that were detrimental to the amenity of the surrounding area

or inconsistent with the six qualities of successful places would not be supported.

The Planning Adviser then summarised the applicant's submission. This provided information on the history of the roof terrace and stated that there were hazards from falling slates, stones and gutters to those using the terrace. The pergola was installed to safeguard the applicants from falling hazards. Dismantling the pergola would introduce risk to the health and safety of neighbouring residents. The pergola protected the roof by channelling rain and snow into a gutter. The applicant stated that noise could be mitigated by the structure of the pergola and its felted roof, and its removal would not result in less noise. The applicant also contended that the noise level of the washing machine fell within permissible limits in Scotland and that they had submitted audit test information, however its format could not be accepted.

- The applicant considered that the pergola complied with Policy DP5 of the LDP as it is not dominant; it was smaller in scale than the remainder of the flat and building and complemented them. It was not at the front of the listed building and was not visible from the street. The applicant considered that the pergola facilitated safe enjoyment of the exterior space.
- In terms of NPF Policy 14 the applicant considered that pergola enhanced the quality of the urban locale including for health and safety and noise considerations. It met the 'healthy' quality of successful places by improving safety of the area and so supporting time spent outdoors. It met the 'pleasant' quality by safeguarding against falling objects, protecting from the elements, offering shade and shelter, and serving as a noise barrier. It supported the 'sustainable' quality by allowing use of the outdoor space even when weather was poor, and the 'adaptable' quality by protecting the property.
- The appellant considered the pergola was a design of merit that aligned with the six qualities of successful places, and therefore complied with Policy 14 of NPF4. The pergola did not result in loss of amenity of neighbouring uses or harm existing residential amenity.

The Planning Adviser then summarised the further representations received from third parties and noted that the applicant had responded to the matters raised by reference to the case officer's report.

The Planning Adviser then provided comments on the case. She advised Members that they should first consider whether removing the condition to allow retention of the pergola would preserve the listed buildings or their settings or any features of special architectural or historic interest which they possess, and whether this would preserve or enhance Haddington Conservation Area. The second key issue on which the pergola was refused by condition was the issue of amenity. She advised that Members should consider whether the proposal met the terms of NPF4 Policy 14 in terms of amenity not being detrimental to the surrounding area and was consistent with the six qualities of successful places. They should also consider whether any amenity issues were acceptable in line with either LDP Policies DP5 or TC2.

4.3. 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.

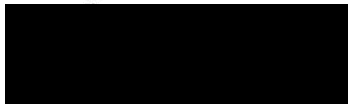
4.4. The Chair said it had been useful to see the site. It had been clear that the building

alongside the property was in a poor state of repair and there were signs of material falling onto the area where people were trying to enjoy outside space. The pergola would provide added safety to those using the area and it was not visible from public areas, and therefore did not contravene planning policy relating to conservation areas. For these reasons, he would be upholding the appeal.

- 4.5. Councillor McIntosh agreed with the point regarding the impact on the conservation area and that the pergola would not be harmful. While she sympathised with residents regarding the fabric of the neighbouring building, she had reservations that Members were being asked to make a planning decision because a third party had failed to maintain their roof to a reasonable standard. She was not convinced this was a good enough reason to allow such a large structure as the pergola. She agreed with the case officer's assessment that the intensification of use of the area caused by the pergola was harmful to the amenity of the occupants of other flats, and she would be minded to support the condition remaining in place.
- 4.6. Councillor Collins agreed with the previous comments about safety and the difficulties in resolving the building maintenance issue. She asked whether it would be appropriate to add a condition that put spikes or other security measures on the pergola but was advised that this could not be included as it had not formed part of the original planning application. Nevertheless, she was minded to uphold the appeal.

Accordingly, the ELLRB by majority of 2 to 1 decided to uphold the appeal and remove the condition more particularly set out at paragraph 2.3 of this Decision Notice for the reasons more particularly set out in this Decision Notice.

The condition is hereby removed, and Planning Permission is hereby amended.



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.