

## **REVIEW DECISION NOTICE**

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

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Application for Review by Mr Kenny Erskine c/o Scott Allan 36 Wallace Avenue, Wallyford, East Lothian EH21 8BZ of decision to refuse Planning Permission for side, front and first floor extensions to house and erection of garage at Cour Cottage, Congalton, North Berwick, EH39 5JP.

Site Address: Cour Cottage, Congalton, North Berwick, EH39 5JP

Application Ref: 24/00837/P

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

Date of Review Decision Notice: 10 March 2025

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### **Decision**

The ELLRB agreed by a majority of 3:1 to uphold the appeal and to grant planning permission for side, front and first floor extensions to house and erection of garage at Cour Cottage, Congalton, North Berwick, EH39 5JP 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, 23 January 2025. The Review Body was constituted by Councillor A Forrest (Chair), Councillor D Collins, Councillor N Gilbert and Councillor K McLeod. 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 L Taylor, Planning Adviser to the LRB  
Mr C Grilli, Legal Adviser to the LRB  
Ms F Currie, Clerk

### **2. Proposal**

2.1. The planning application is for review of decision to refuse Planning Permission for side, front and first floor extensions to house and erection of garage at Cour Cottage, Congalton, North Berwick, EH39 5JP

2.2. The planning application was registered on 16 August 2024 and the Decision Notice refusing the application is dated 21 October 2024.

2.3. The condition and the reason for the condition is more particularly set out in full in the said

Decision Notice dated 21 October 2024. The reasons for refusal are set out as follows:

1. *The proposed extensions would, by their size, massing and floor area, be a dominant and incompatible addition to the built form of the existing house. By being bigger than the existing footprint of the house, the proposed extensions would not appear as an integral part of the original cottage but instead would be an addition to it that would significantly overwhelm it. Therefore due to its much larger form, size, scale, massing and proportions, the proposed extensions would not be of a size, form, proportion and scale appropriate to the existing house, would not be subservient to it and therefore would not be either in keeping with or complementary to it contrary to Policies 14 and 16 of NPF4 and Policy DP5 (Extensions and Alterations to Existing Buildings) of the adopted East Lothian Local Development Plan 2018.*
2. *Due to the size and scale of the proposed extensions the effect of them would be tantamount to the creation of a new house in the countryside. That new house would not be a like for like replacement for the existing house and no case has been made for a new house to meet an agriculture, horticulture or forestry need. No other operational need has been submitted which justifies the transformation of the existing house by the addition to it of the proposed extensions. Assessed on the basis that through the resultant radical transformation of the size, form, character and appearance of the existing house the proposed extensions are tantamount to the creation of a new house in the countryside the proposals are also contrary to Policy 17 of NPF4 and Policies DC3 and DC4 of the ELLDP 2018.*
3. *Owing to its size and position the proposed garage would be harmful to the setting of the house and harmful to the character and appearance of the surrounding area contrary to Policies 14 and 16 of NPF4 and Policy DP2 of the adopted ELLDP 2018.*

2.4. The notice of review is dated 9 November 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>2024-59-000</td> <td>-</td> <td>08.08.2024</td> </tr> <tr> <td>2024-59-002B</td> <td>-</td> <td>16.08.2024</td> </tr> <tr> <td>2024-59-001A</td> <td>-</td> <td>18.10.2024</td> </tr> <tr> <td>2024-59-003B</td> <td>-</td> <td>18.10.2024</td> </tr> </tbody> </table>	<u>Drawing No.</u>	<u>Revision No.</u>	<u>Date Received</u>	2024-59-000	-	08.08.2024	2024-59-002B	-	16.08.2024	2024-59-001A	-	18.10.2024	2024-59-003B	-	18.10.2024
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2024-59-001A	-	18.10.2024														
2024-59-003B	-	18.10.2024														
ii.	The Application for planning permission registered on 16 August 2024															
iii.	The Appointed Officer's Submission															

iv.	Policies relevant to the determination of the application are:  policies 14 (Design Quality and Place), 16 (Quality Homes), 17 (Rural Homes) of National Planning Framework 4; and  policies DC3 (Replacement Dwellings in the Countryside), DC4 (New Build Housing in the Countryside), DP2 (Design), DP5 (Extension and Alterations to Existing Buildings), T2 (General Transport Impact) of the adopted east Lothian Local Development Plan 2018.
v.	Notice of Review dated 9 November 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 refuse planning permission, 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 a review against the refusal of planning permission for application 24/00837/P at Cour Cottage, Congalton, North Berwick. Planning permission was sought for the erection of extensions to the side, front and first floor, and the erection of a detached garage. The existing property is a detached single storey two bedroom cottage which has previously had some extensions added. It is located adjacent to the B1347 to the south of Congalton House, North Berwick.

The Planning Adviser then summarised the policies that are relevant to determination of this application (see paragraph 3(iv) of this Decision Notice.

The Planning Adviser confirmed that no representations from members of the public were made during the application process.

In making their planning assessment of the proposal, the case officer noted that the proposed extensions, when taken together, would mean that the existing floor area of the building would change from approximately 74 square metres to approximately 156 square metres, with the two-bedroom cottage becoming a 5 bedroom two storey house. Due to the scale and extent of the extensions and alterations, the case officer deemed that it was tantamount to new build development in the countryside, therefore applying policy DC4. No evidence was provided to satisfy the requirements of this policy in relation to the need for new housing in the countryside, and was therefore deemed contrary to policy DC4. In applying policy DP2, the case officer highlighted in their report the need for development to be well integrated into its surroundings and respect the landscape character of the location and surroundings. The existing house is, as noted by the case officer, of modest scale and sits well within its rural setting. In applying policy DP5, the case officer highlighted the need for extensions to existing building to be subservient to and in-keeping with the original, particularly where the existing building has

architectural merit. The case officer determined that the proposed extensions and alterations, which would include raising the ridge height and erection of detached garage, would not be of a scale or form that would be subservient to the existing building, nor would they integrate well into the locality in which the building sits. The proposed alterations would radically alter the size, proportions and architectural form of the existing building, and would be a dominant and incompatible addition to the built form of the existing house, not appearing as an integral part of it, but rather they would overwhelm it. The house would, if extended in this manner, be fundamentally different to the character and form of the original house, and would be contrary to policy DP5 of the LDP 2018 and NPF4 policies 14 and 16. This would also cause it to have a much greater visual impact on the setting and landscape of the area, contrary to policy DP2 of the LDP 2018. The Planning Adviser confirmed that planning permission was refused with the three reasons for refusal set out in the decision notice.

The Planning Adviser then referred to the appellant's submission confirming they included statements in response to the reasons for refusal, and to certain parts of the case officer's report. The Planning Adviser summarised the submission confirming that the statement challenges the application of policy DC4 (New Build Housing in the Countryside) as not being applicable to this development. The submission also includes details of how the proposal has been designed to meet climate change policy, and how the materials selected would compliment the setting and existing building. The appellant's submission also includes diagrams showing the change in overall floor space when taking into account the house, any extensions and outbuildings on the site as a whole.

- 4.3. Members then asked the questions of the Planning Adviser and he confirmed that the case officer had made his assessment on the basis of the proposals submitted, which had been presented as an extension, meaning that the original house would remain. However, the case officer had taken the view that the extent of the proposed changes was similar to building a new house and that was why he applied Policy DC4 when assessing the application.

In addition, the Chair asked about the implications for planning permission should the existing house not be retained, and the extension became a new build house. The Legal Adviser confirmed that if the application incorporated the current building, it could constitute a material change if that building were to fall down. In those circumstances, there would have to be a conversation with the planning officer on potential options, whether a further application needed to come forward and the content of any alternative proposals. The Planning Adviser also added that the opinion of a structural engineer would be required to determine whether original parts of the house would be retained. The planning case officer had looked at the plans and the original walls appeared to be in the same position in the proposed new extension. Should the Members be minded to overturn the case officer's decision there was a suggested condition (No. 3) which required structural details to be submitted on these proposals, although mainly in relation to fencing. However, this additional information would allow officers to put appropriate planning controls in place to ensure that the proposals complied with the planning consent.

- 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.

- 4.4.1. Councillor Gilbert said that having seen what was proposed on the plans and at site visit, he felt that the debate hinged on the size of proposed new property. He stated that, in his opinion, the current 2-bedroom property was no longer fit for purpose and the proposed design and alignment of the development plans seemed perfectly

acceptable. He would therefore be minded to go against the original decision of the planning case officer and upholding the appeal.

- 4.4.2. Councillor McLeod agreed that the existing house was not fit for purpose, and that the proposals would enhance area with no concerns about impact as there were no near neighbours. He was also in favour of the L-shaped design and its alignment within the application site. As he now understood that part of the existing house would remain, he felt that the proposals would enhance the property. He was also minded to vote against the officer's original decision.
- 4.4.3. Councillor Collins noted that this 1920s house and surrounding buildings were in a poor state of repair and needed to move with the times. She did, however, want to ensure that the proposals represented an extension to the existing property and that the original building would be kept. She noted that there were no near neighbours and that the development would not be obtrusive to anyone nearby. She said she would be supporting the appeal as the proposals would enhance the area and, if no action was taken, the condition of the house would deteriorate.
- 4.4.4. The Chair agreed that the site visit had been useful, that the house was in a poor state of repair and that something should be done. However, he was of the view that the extension was too big and not subservient to the original house. He felt that the applicant could have provided proposals more in keeping with the area and, for these reasons, he would be supporting the decision of the planning case officer.

Accordingly, the ELLRB by majority of 3 to 1 agreed to uphold the appeal and grant planning permission for side, front and first floor extensions to house and erection of garage at Cour Cottage, Congalton, North Berwick, EH39 5JP subject to the conditions below, for the reasons more particularly set out within this Decision Notice.

Conditions applicable to this Planning Consent:

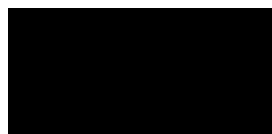
- i. The development hereby approved shall begin before the expiration of 3 years from the date of this permission.

Reason: Pursuant to Section 58 of the Town and Country Planning (Scotland) Act 1997 as amended.

- ii. The outbuilding hereby approved shall only be used for purposes incidental to the residential use and enjoyment of the dwellinghouse of Cour Cottage and shall at no time be used for any business, trade or other commercial use.

Reason: To enable the Planning Authority to control the use of the development in the interests of safeguarding the character and residential amenity of the area and that of the dwellinghouse of Cour Cottage.

Planning Permission is hereby 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.