

REVIEW DECISION NOTICE

Decision by East Lothian Local Review Body (the ELLRB)

Site Address: 117 Millhill, Musselburgh EH21 7RP

Application for Review by Mr Gerald O'Hara against decision by an appointed officer of East Lothian Council.

Application Ref: 13/00129/P

Application Drawings: DWG001,002, 003 AND 004

Date of Review Decision Notice – 4th December 2013

Decision

The ELLRB upholds the decision to refuse planning permission for the reasons given below and dismisses the review.

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

- 1.1 The above application for planning permission was considered by the ELLRB, at a meeting held on 28th November 2013. The Review Body was constituted by Councillor David Berry (Chair), Councillor John McNeil and Councillor Michael Veitch. All Members of the ELLRB had attended an unaccompanied site visit in respect of this application on the morning of 28th November 2013.
- 1.2 The following persons were also present at the Review Body:-
Phil McLean, Planning Adviser (also in attendance on site visit)
Morag Ferguson, Legal Adviser
Fiona Stewart, Clerk.

The Applicant was not present.

2 Proposal

- 2.1 The proposal is for the erection of a 1.8 metre high timber lap panel fence to sit on top of a stone wall and inside the metal railings on each of the north and west boundaries of the rear garden of the house at 117 Millhill, Musselburgh. The application is retrospective. The Applicant is the current owner of the property, which is a semi-detached house forming part of the substantial property known as Redhouse. Redhouse is listed as being of special architectural or historic interest (Category B) and the application site is within the Musselburgh Conservation Area. The planning application was originally validated on 31st May 2013 and was refused under delegated powers on 26th July 2013. At that time, the fencing had been erected. The Applicant applied to the ELLRB to review that decision. The notice of review is dated 11th October 2013.

Listed Building Consent will also be required for the works; however this is a separate consent process and is not a matter for the ELLRB.

3 Preliminaries

3.1 The ELLRB members were provided with copies of the following:-

1	The drawings specified above
2	The application for planning permission
3	The Case Officer's Report of Handling
4	A copy of the Decision Letter dated 26 th July 2013
5	Copies of Policy 1B of the Approved Southeast Scotland Strategic Development Plan (SESplan)
6	Copies of Policies ENV1, ENV3, ENV4 and DP2 of the Adopted East Lothian Local Plan 2008
7	Copy of the letters of objection and representation in respect of this application
8	Site photographs
9	Notice of Review dated 11 th October 2013 with accompanying statement of case and photographs
10	Photographs showing the fence and views to and from the site
11	Copy of email correspondence between the Appointed Officer and the applicant

4 Findings and Conclusions

4.1 The ELLRB confirmed that the application for a review of the original decision 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. The Members asked the Planning Adviser to summarise the planning policy position in respect of this matter. The Planning Adviser gave a brief presentation to Members reminding them that planning legislation requires decisions on planning applications to be taken in accordance with the Development Plan unless material considerations indicate otherwise. The Listed Buildings and Conservation Areas Act further requires that, in considering whether to grant permission affecting a listed building or its setting, a planning authority should 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. Furthermore, when exercising planning functions within conservation areas, special attention is to be paid to the desirability of preserving or enhancing the character or appearance of the area.

He advised that SESplan Policy 1B expects Local Development Plans to protect built and cultural heritage. He confirmed that, in terms of the Local Plan, the site is within a predominantly residential area, designated under policy ENV1. Local Plan Policies ENV3 and ENV4 provide guidance on protection to listed buildings and conservation areas, respectively and Policy DP2 requires a high standard of design. He confirmed that Scottish Planning Policy is also relevant to this application and this states that the historic environment should be safeguarded through planning decisions.

He advised that the application was refused by the Appointed Officer for three reasons; harmful impact on the setting of the listed building of Redhouse, by obscuring views of it, impact on the Conservation Area, due to the appearance of the fence and precedent and the potential for cumulative harm to the Conservation Area. Thus, he confirmed, the application was considered contrary to relevant Development Plan Policy and to Scottish Planning Policy. He confirmed that the full reasoning for the decision is set out in the Case Officer's report. He noted that the Case Officer considered the development acceptable in terms of daylight and sunlight impacts on neighbouring properties.

The Planning Adviser noted that the applicant's request for a review states that the part of the building closest to the fence is a modern addition to Redhouse and only this part of the building is obscured. The applicant also advises that the fence is intended to provide privacy to the garden and that it is intended to stain or paint it in keeping with foliage. Further, the applicant advises that the current height of the wall and the railings on it are from 1989, rather than historic. Finally, the applicant states that precedent is not an issue as there is only one adjoining property where a similar development is possible.

The Planning Adviser noted that there were no consultations carried out on the application by the Case Officer. Objections were received from four local residents and the Architectural Heritage Society of Scotland and Members have copies of these with Review Documents. Matters raised in these objections include the visual appearance of the fence, along with a number of other matters that are not material planning considerations.

Finally, the Planning Adviser noted that the the main questions for the ELLRB to consider in reviewing the case are, whether the proposed development would comply with the policies of the Development Plan in respect of amenity, listed buildings, conservation areas, and design, whether there are any other material considerations that should be taken into account and whether any of these outweigh the provisions of the Development Plan in this case.

- 4.2 Councillor McNeil noted that the Applicant had purchased a property that was historic in nature and was situated in a prominent position in the Musselburgh Conservation Area. Accordingly, he was, or should have been aware, that there would be restrictions on what could be done to that property, both in terms of planning law and in the title deeds. Whilst he appreciated the Applicant's wish for privacy in the rear garden, he considered that the cultivation of trees or bushes would be more suitable to achieve this and that the fence is visually intrusive and out of keeping with the character of the area. He also agreed that it obscured part of Redhouse, to the detriment of that building's setting. Finally, he agreed that it was important not to set a precedent for other incongruous boundary treatments in the Conservation Area. Accordingly, he was minded to uphold the original decision to refuse planning permission for the fencing. Councillor Veitch agreed with Councillor McNeil's assessment of the position regarding the impact on Redhouse and on the character and appearance of the Conservation Area. He was less convinced by the precedent argument but, taking account of the other reasons for refusal, he also agreed with the original decision to refuse planning permission. Councillor Berry noted that there is always a degree of subjectivity in deciding whether a development is intrusive or incongruous but he considered that this is a sensitive site and that the fence makes a significant impact to the detriment of the listed building of Redhouse. Whilst he appreciated that Redhouse had been altered and extended in the past, he considered that these alterations were sympathetic to the character and setting of the original building and it remained worthy of protection from inappropriate development. He agreed with his colleagues and would uphold the original decision to refuse planning permission.
- 4.3 Accordingly, the ELLRB unanimously agreed that the Review should be dismissed and the original decision to refuse this application should be upheld, for the first two reasons set out in the original Decision Letter and by a majority of two to one that the third reason for refusal was also upheld. The fencing is accordingly unauthorised development and the ELLRB confirmed that East Lothian Council's planning enforcement officer should commence enforcement action to have this removed should the Applicant not do so within a reasonable period.
- 4.4 The Review Application was accordingly dismissed.



Morag Ferguson
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.