

**REVIEW DECISION NOTICE**

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

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Application by Alandas, c/o Apt Planning & Development 6, High Street, East Linton EH40 3AB for Review against refusal of Planning Permission alterations to and change of use from office (class 2) to hot food take away (sui generis) at 43 Quality Street, North Berwick.

Site Address: 43 Quality Street, North Berwick

Application Ref: 18/01116/P

Application Drawing: MANU LITERATURE 1

MANU LITERATURE 2

MANU LITERATURE 3

AD(0)01

AL(0)01

Date of Review Decision Notice: 10 December 2019

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**Decision**

The ELLRB unanimously agreed to refuse the application for the reasons given 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**

1.1. The above application for planning permission was considered by the ELLRB, at a meeting held on Thursday, 16 May 2019. The Review Body was constituted by Councillor J Williamson (Chair); Councillor J McMillan, Councillor F O'Donnell, and Councillor S Kempson. All four members of the ELLRB had attended an unaccompanied site visit in respect of this application prior to the meeting.

1.2. 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  
Fiona Stewart, Clerk.

## 2. Proposal

- 2.1. The planning application sought planning permission for alterations to and the change of use from office class 2 to hot food takeaway at 43 Quality Street North Berwick.
- 2.2. The planning application was registered on 5 November 2018 and the decision notice granting planning permission subject to condition was issued on 3 January 2019
- 2.3. The notice of review against refusal of the planning application was dated 4 March 2019 2019.

## 3. Preliminaries

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

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| 1 | The drawings specified above  |
| 2 | The Application for planning permission registered on 5 November 2018   |
| 3 | The Decision Notice dated 3 January 2019  |
| 4 | The Appointed Officer's Submission  |
| 5 | SESplan policy 1B The Spatial Strategy: Development Principles<br>East Lothian Local Development Plan 2018 policies as follows:<br><br><ul style="list-style-type: none"> <li>- TC2: (Town and Local Centers)</li> <li>- TC4: (Hot Food Outlets)</li> <li>- CH2: (Development affecting Conservation Areas)</li> <li>- DP5: (Extensions and Alterations to Existing Buildings)</li> <li>- T2: (General Transport Impact)</li> </ul> |
| 6 | Notice of Review dated 4 March 2019 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 decision to refuse Planning Permission 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 the condition, including all drawings and copies of all representations and objections received in respect of the original application.
- 4.2. The Members then asked the Planning Adviser to summarise the planning policy position in respect of this matter. The Planning Adviser gave a brief presentation to Members advising that the premises were located on the corner of Forth Street and Quality Street and had white rendered walls. The relevant planning policies were the East Lothian Local Development Plan, TC2 (Town Centres), TC4 (Hot Food Outlets), CH2 (Conservation Areas), DP5 (Alterations and Extensions) and T2 (General Transport Impact). He also advised that 13 written objections to this application had been received, as well as a number of further representations. Concerns raised included parking issues, noise levels

(especially at night), food smells due to the proposed extraction system and litter. North Berwick Community Council were opposed to the change of use and believed it was not a good location for a take-away business. They also highlighted road safety concerns due to increased traffic.

The Planning Adviser advised Members that they must consider whether the proposed take-away business and proposed alterations were acceptable at this location. The change of use was acceptable in principle, providing it was environmentally acceptable and complied with planning policies. He also advised that the cowl, which formed part of the original application, was no longer proposed. The Council's Environmental Health department had advised that there was potential for the proposals to result in undesirable odours, but did not object to the application if it was subject to appropriate conditions. The Roads Department had objected to the proposal, believing that it would have a detrimental impact on the junction at this location and lead to irresponsible parking. The Case Officer stated that the proposed takeaway use at this site would be likely to result in irresponsible parking next to a busy junction and create a hazard to pedestrians and other road users in a heavily trafficked area. The appellants, in their review statement, addressed the reasons for refusal on traffic grounds, stating that there may be concerns over road safety and congestion at the east end of North Berwick but that he did not consider that these would be exacerbated by a hot food outlet. He claimed that patterns of behaviour were well established in the town and that illegal parking can be dealt with by the usual enforcement mechanisms.

- 4.3. Some questions of clarification were then asked of the Planning Adviser.
- 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 Kempson stated that that the site visit had proved useful in showing how busy the junction was and how narrow the pavement was outside the premises. In her experience, there was often irresponsible driving and parking outside takeaway businesses and, at this location, the consequences could be very serious indeed. She was therefore not inclined to support this application.
- 4.6. Councillor McMillan was concerned that there would be a risk to public safety, particularly to pedestrians, at busy periods. Potential environmental risks had also been highlighted in the papers. While he would normally always wish to support local businesses, he considered that there were sufficient concerns highlighted to refuse the application.
- 4.7. Councillor O'Donnell stated that it was very unfortunate that there were issues which could prevent a business coming into North Berwick. However, she found it difficult to ignore the report from Road Services and would therefore support the Officer's decision.
- 4.8. The Chair stated that he was in agreement with his colleagues. The issue with traffic and parking was an important one and he would have to support the original decision.

**Decision**

The ELLB unanimously agreed to refuse the application for the reason stated below:

- 1 The proposed hot food takeaway use would be likely to lead to irresponsible parking and waiting outside the premises, including on double yellow lines, on the footway or double parking. Such irresponsible parking would exacerbate the problem of limited visibility to the right for drivers of vehicles emerging from Forth Street, could result in congestion, and overall would result in a hazard to pedestrians and other road users in a heavily trafficked area. On this consideration the proposed development is contrary to Policies TC4 and T2 of the adopted East Lothian Local Development Plan 2018.

The Review Application was accordingly dismissed.



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.