

## **REVIEW DECISION NOTICE**

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

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Application for Review by Mr Kerr Blyth on behalf of Mr C MacKechnie and Ms Watmough of 13 Roodwell Cottages, Pressmennan Road, Stenton for review against conditions 1 and 2 of Planning Permission for Alterations, extension to house, formation of dormer and hardstanding area at 13 Roodwell Cottages, Pressmennan Road, Stenton.

Site Address: 13 Roodwell Cottages, Pressmennan Road, Stenton

Application Ref: 20/00989/P

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

Date of Review Decision Notice: 24 June 2021

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### **Decision**

The ELLRB unanimously agreed that the Review should be upheld for the reasons 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, 20 May 2021. The Review Body was constituted by Councillor J McMillan (Chair), Councillor J Williamson, and Councillor J Findlay. All three members of the ELLRB had attended a site visit accompanied by the Planning Advisor in respect of this application prior to the meeting.

1.1. The following persons were also present at the meeting of the ELLRB:-

Ms J Squires, 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 and removal of conditions 1 and 2 of Planning Permission reference number 20/00989/P
- 2.2. The planning application was registered on 30 September 2020 and the decision notice granting the application subject to conditions is dated 13 November 2020.
- 2.3. The conditions and the reason for the conditions are more particularly set out in full in the said Decision Notice dated 13 November 2020. The conditions subject to review are as follows:

*Condition 1*

*The proposed box type dormer proposed for the rear elevation roof slope of the house is not hereby approved. By virtue to its size, scale, design, proportions, massing, predominately zinc clad external finish and position, the proposed 'box type' dormer would appear as a harmfully dominant, intrusive and incongruous feature on the rear (southeast) facing pitched roof slope of the house. It would be harmfully disproportionate to, and result in a gross overdevelopment of, the rear (southeast) facing pitched roof slope. It would not be subservient to, or in keeping with, the character and appearance of the house and would not serve to preserve or enhance, but instead would harm, the special architectural and historic character of the Conservation Area, contrary to Policies CH2 and DP5 of the adopted East Lothian Local Development Plan 2018 and with Scottish Planning Policy: June 2014.*

*Condition 2*

*If approved the proposed 'box type' dormer would set an undesirable precedent for the formation of similar sized dormers on the rear (southeast) facing pitched roof slopes of other houses within the locality. Such change would be collectively out of keeping with, and detrimental to, the character and appearance of the Stenton Conservation Area.*

2.4. The notice of review is dated 10 February 2021.

### 3. Preliminaries

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

i.	<p>The docketed plans and drawings accompanying this application are referenced and numbered as follows:</p> <table border="1" data-bbox="376 1182 1137 1402"> <thead> <tr> <th>Drawing No.</th> <th>Revision No.</th> <th>Date Received</th> </tr> </thead> <tbody> <tr> <td>L(01)001</td> <td>A</td> <td>29.09.2020</td> </tr> <tr> <td>L(01)100</td> <td>A</td> <td>29.09.2020</td> </tr> <tr> <td>L(01)005</td> <td>C</td> <td>06.11.2020</td> </tr> <tr> <td>L(01)006</td> <td>C</td> <td>06.11.2020</td> </tr> <tr> <td>L(01)007</td> <td>B</td> <td>06.11.2020</td> </tr> <tr> <td>L(01)101</td> <td>C</td> <td>06.11.2020</td> </tr> </tbody> </table>	Drawing No.	Revision No.	Date Received	L(01)001	A	29.09.2020	L(01)100	A	29.09.2020	L(01)005	C	06.11.2020	L(01)006	C	06.11.2020	L(01)007	B	06.11.2020	L(01)101	C	06.11.2020
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ii.	The Application for planning permission registered on 30 September 2020 and granted on 13 November 2021																					
iii.	The Appointed Officer's Submission																					

iv.	<p>Policies and legislation relevant to the determination of the application include</p> <ol style="list-style-type: none"> <li>1. South East Scotland Plan (SESPLAN)</li> <li>2. the adopted East Lothian Local Development Plan 2018: <ol style="list-style-type: none"> <li>a. CH2: Development Affecting Conservation Areas</li> <li>b. Policy DP5: Extensions and Alterations to Existing Buildings</li> </ol> </li> <li>3. the Scottish Government's policy on Conservation Areas</li> <li>4. 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997;</li> <li>5. Historic Environment Scotland Interim Guidance on Designation of Conservation Areas and Conservation Area Consent April 2019 and</li> <li>6. East Lothian's Cultural Heritage and Built Environment SPG including Appendix 1 Conservation Area Character Statements.</li> </ol>
v.	<p>Notice of Review dated 10 February 2021 together with Applicant's Submission with supporting statement and associated documents.</p>

#### **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 outlined the background and detailed proposals contained in planning application no. 20/00989/P relating to a semidetached property at 13 Roodwell Cottages, Pressmennan Road, Stenton. While not a listed building, the property was located within Stenton Conservation Area. The original application was for a number of alterations and extensions to the property. These alterations and extensions had been granted permission and were not subject to this review. The original application also included proposals for a dormer. Although the dormer was a significant element of the scheme, on balance, the case officer considered the majority of the proposals were acceptable. The application was approved, with refusal of the dormer by condition, rather than refusing the scheme overall. This appeal was for a review of grant of permission with Conditions imposed.

The Planning Adviser reminded Members that applications should be determined in accordance with the development plan for the area unless material considerations indicate otherwise: in this case the South East Scotland Plan (SESPLAN) and the East Lothian Local Development Plan 2018. Other material planning legislation and policies were: Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997; and the Scottish Government's policy on Conservation Areas as given in Scottish Planning Policy. The applicant in their appeal statement also noted Historic Environment Scotland

Interim Guidance on Designation of Conservation Areas and Conservation Area Consent April 2019 and East Lothian's Cultural Heritage and Built Environment SPG including Appendix 1 Conservation Area Character Statements to be relevant.

The Planning Adviser summarised the planning case officer's assessment of the proposals with particular reference to the dormer. She outlined the size, scale and materials to be used, as well as the impact on the existing building and surroundings. She noted that the case officer considered that while the dormer windows would not cause harmful overlooking nor loss of sunlight or daylight to any adjacent properties, the dormer would be harmfully disproportionate to and result in a gross overdevelopment of the roof slope. It would not be subservient to or in keeping with the original house. Due to its size, scale, design, proportions, massing, predominantly zinc clad external finish and position, it would be a radical alteration to the rear elevation of the house that would appear as harmfully dominant, intrusive and incongruous feature on the roof slope, occupying almost all of its length. The proposal would also be readily visible from the public area of the footpath to the south west of no. 14 Roodwell Cottages which gave access to the Crofts.

The case officer considered that the dormer would be radically different from the smaller sized, traditionally designed pitched roof dormers approved on the rear elevations of 2, 3 and 5 Roodwell Cottages. It would not be in keeping with the character and appearance of the house, the streetscape, and would harm the special architectural and historic character of the Conservation Area. This was contrary to Policies of the adopted East Lothian LDP namely Policy CH2: Development in Conservation Areas and Policy DP5: Extensions and Alterations to Existing Buildings; as well Scottish Government Policy on development within a Conservation Area set out in Scottish Planning Policy 2014. In addition, the case officer considered the proposed dormer would set an undesirable precedent for the formation of similar sized dormers on the rear slopes of other houses within the streetscape, which would be collectively detrimental to the Conservation Area.

The Planning Adviser summarised the grounds for review put forward by the applicant which sought the removal of Conditions 1 and 2 of the planning permission as they considered they were not competent in relation to Scottish Government Circular 4/1998 "The Use of Conditions in Planning Permissions". This Circular stated that conditions can enable many development proposals to go ahead where it would otherwise have been necessary to refuse planning permission. They should only be imposed when they are necessary, relevant to planning, relevant to the development, enforceable, precise and reasonable in all other respects. She outlined the conditions as stated in the planning permission.

She outlined the applicant's arguments that Condition 2 was not precise as it was not clear what they must do to comply. She indicated that the case officer had verbally informed her that there had been an error in the composition of the decision notice; the intention was that the first sentence of Condition 1 namely "The proposed box type dormer proposed for the rear elevation roof slope of the house is not hereby approved" be the Condition, with the remainder of that condition and condition 2 being the reasons for refusal. The planning service therefore accepted that Condition 2 did not meet the tests of Circular 4/1998 but instead gave a further reason for the imposition of Condition 1.

In relation to Condition 1, she advised that the applicant had argued that it was not necessary as the dormer would not result in an unacceptable impact on the character and appearance of the house itself nor Stenton Conservation Area, and was therefore not needed in order to safeguard the character and appearance of the house and Stenton

Conservation Area as the reason for the condition stated. Furthermore, the application site was within an area that forms an exception to the consistent uniformity of form and materials within the village, and it did not make a significant contribution to the special architectural or historic interest of Stenton Conservation Area. The applicant did not consider that the roof of the dwelling was 'readily visible' from public areas to the extent that the dormer would harm the special architectural and historic character of the Conservation Area. The path was not a key viewpoint within the village. As a result the proposal was not contrary to Policy CH2 of the LDP. In his view, the dormer also accorded with Policy DP5 as it was subservient to the original building in terms of materials and form, and complementary to the original building in terms of its design and materials.

In conclusion, the applicant contended that condition 1 was not reasonable as it effectively nullified the benefit of planning permission, contrary to the guidance of Circular 1998/4, and that it resulted in the development being substantially different to that comprised in the application. Facilitating the reorganisation of living spaces within the building was the sole purpose of obtaining the planning permission, and that if the dormer was not built, bedrooms could not be built in the roof space as there was insufficient light and activity space to comply with building regulations.

- 4.3. The Members then raised the questions pertinent to the application which the planning advisor responded to. She provided information on the reduction in the amount of zinc to be used on the dormer, whether the property's visibility from a neighbouring path should be a material consideration in the appeal and the architectural merit of the property itself. She also confirmed that, to her knowledge, there was no discretion offered in planning policies CH2 and DP5 to take account of COVID-19 and the potential need for extensions to residential properties to provide home working spaces.
- 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 Findlay stated that one of his concerns had been the use of zinc on the dormer, however, he was reassured to see that the amount of zinc had been reduced. He noted that that dormer would be at the back of the property and, while visible from the footpath, one would have to look carefully to see it through the foliage. On balance, he proposed to allow the appeal as he felt that the conditions were not appropriate.
- 4.6. Councillor Williamson said he had walked around the immediate area prior to viewing the site and he had walked up the footpath to the nearby houses. He had observed that a number of neighbouring properties had extensions and some also had dormers to the rear. He welcomed the proposed reduction in zinc usage and he noted that there would be no overlooking or loss of daylight or sunlight to neighbouring properties. He therefore saw no reason to refuse the appeal.
- 4.7. The Chair concurred with the views of his colleagues. He said that the site visit had persuaded him that the proposals would not adversely affect the conservation area. He did not think that the dormer would be incongruent or adversely impact on the character of the property or the surrounding area. He said that due to the impact of COVID-19 and changes to working and home life it was important to show that policies could be flexible enough to adapt to changing needs. He agreed that the appeal should be upheld.

Accordingly, the ELLRB unanimously agreed to uphold the Review and to discharge and remove Conditions 1 and 2 from the Planning Permission.

Accordingly, Planning Permission application number 20/00989/P 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.