

## **REVIEW DECISION NOTICE**

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

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Application for Review by Mr Neil Arnott of 12 Station Row, Macmerry, Tranent EH33 1PD for refusal of Planning Permission for Change of surfacing of grassed open space to hardstanding and resurfacing of footpath (Retrospective).

Site Address: 12 Station Row, Macmerry, Tranent EH33 1PD

Application Ref: 20/00660/P

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

Date of Review Decision Notice: 17 June 2021

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### **Decision**

The ELLRB by majority agreed that the Review should be up held subject to conditions 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 Wednesday, 15 April 2021. The Review Body was constituted by Councillor N Hampshire (Chair), Councillor, J Findlay and Councillor K McLeod. All three members of the ELLRB had attended an unaccompanied site visit in respect of this application prior to the meeting.

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

Mr M Mackowiak, Planning Adviser to the LRB  
Mr C Grilli, Legal Adviser/Clerk to the LRB  
Ms J Totney, Clerk

#### **2. Proposal**

- 2.1. The planning application is for review of the decision of Planning Officer to refuse Planning Permission for Change of surfacing of grassed open space to hardstanding and resurfacing of footpath (Retrospective) at 12 Station Road, Macmerry, Tranent EH33 1PD.
- 2.2. The planning application was registered on 4 September 2020 and the decision notice refusing the application is dated 3 November 2020.
- 2.3. The reasons for refusal of the Planning Permission are more particularly set out in full in the said Decision Notice dated 3 November 2020. The reasons for refusal are set out as follows:

- 1 *The change in appearance of the section of the footpath and grass verge is at odds with, has interrupted and has disrupted the uniformity of the strong linear frontage that the terrace of houses, the footpath and grass verge display and therefore the character of this part of Macmerry. By merging the footpath and grass verge into one larger hardsurfaced area this is development that is inappropriate for its positioning, that does not respect or complement the site's context as part of a wider grass verge and footpath, giving it a strong visual relationship with the applicant's house that is overly domestic in character. It is therefore a form of development that is harmful to the visual amenity of the area and therefore to the character and appearance of the area contrary to Policy DP2 of the adopted East Lothian Local Development Plan 2018*
- 2 *The granting of planning permission for the resurfacing of the footpath and the change of the grassed area of public open space to a hardsurfaced area associated with the house at 12 Station Row would establish a precedent making it difficult for the Council, as Planning Authority, to resist changes of materials to other parts of the public footpath, and changes of use to other parts of the grassed strip of open space, to the detriment of the character and appearance of the wider the area.*

2.4. The notice of review is dated 21 January 2021.

### 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:  - DWG01 - DWG02
ii.	The Application for planning permission registered on 4 September 2020
iii.	The Appointed Officer's Submission
iv.	Policies of the adopted East Lothian Local Development Plan 2018 relevant to the determination of the application:  - DP2: Design - DP5: Extensions and Alterations to Existing Buildings
v.	Notice of Review dated 21 January 2021 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 explained that the application site covers an area of some 40 square meters and is composed of two roughly equal areas of land that form a section of a public footpath that runs adjacent to the front elevation of the applicant's house at 12 Station Row and an area of public open space located between the footpath and the A199 public road. He advised that the appointed planning case officer confirms that the area of grassed open space which is the subject of the application is a part of the roadside verge of the A199 public road. It was formerly laid in grass and was a part of an existing larger grassed strip of land located between the cottages of Station Row and the public road. The grass has been uplifted on that area of open space and a hard surface formed in paving blocks (mono-block pavements). In addition, the case officer confirms that the grass verge is in the council's ownership and that the footpath outside no 12 Station Row is owned by the applicant.

The Planning Adviser stated that Section 25 of the Town and Country Planning (Scotland) Act 1997 requires that this application be determined in accordance with the development plan, unless material considerations indicate otherwise and that Policy DP2 (Design) of the adopted East Lothian Local Development Plan 2018 is relevant to the determination of the application. He added that there are no public objections to this application and no objections from the Council's Amenity Officer. However, although the Council's Roads Services confirmed the status of the area of open space as part of the public road and confirmed that works undertaken on that area of public road did not benefit from a required permission from East Lothian Council as roads authority, they objected to the laying of the mono block surfacing on that area of land and confirmed that the footpath is not adopted by the Council for management and maintenance purposes. With regard to Policy DP2, he advised that Policy DP2 (Design) of the adopted East Lothian Local Development Plan 2018 states amongst other things, that development must be appropriate to its location in terms of its positioning, size, form, massing, proportion and scale and use of a limited palette of materials and colours that complement its surroundings.

The Planning Adviser then considered the assessment of the application provided by the appointed planning case officer. The case officer had noted that the applicant's house is part of a long terrace of single storey houses that front onto the A199 public road and are readily visible from that public road. The houses have no front garden and are bounded by a 3m wide public footpath. Beyond the footpath is a 2.5m wide grassed strip that separates the footpath from the public road. The terrace of houses, the footpath and the grassed strip together provide a strong linear, uniform frontage to the streetscape of this part of Macmerry and are an inherent character of it. This is distinctly different in appearance to the domestic character and appearance of other houses in the vicinity that have clearly distinguishable front gardens. The area of mono-blocked surfacing extends across the 3m wide footpath and the 2.5m wide grass verge between the front of the applicant's house and the public road. He stated that it is the case officer's view that this new hard surface has noticeably altered the character and appearance of the footpath and the grass verge to the front of the applicant's house, giving it a domestic driveway appearance more akin to the front garden of a house. The case officer had concluded that the change in appearance of this section of the footpath and grass verge has interrupted and disrupted the uniformity of the strong linear frontage that the terrace of houses, the footpath and grass verge display and therefore the character of this part of Macmerry. By merging the footpath and grass verge into one larger hard surfaced area this is development that is inappropriate for its positioning and does not respect or complement the site's context as part of a wider grass verge and footpath, thereby giving it a strong visual relationship with the applicant's house that is overly domestic in character. It is therefore a form of

development that is harmful to the visual amenity of the area and therefore to the character and appearance of the area.

The Planning Adviser also noted that if planning permission were to be granted for the mono block this could present difficulties for the planning authority in resisting further applications for such development, the cumulative effect of which would be the gradual erosion of the larger grassed strip of open space and a harmful impact on the character and appearance of the wider area. The case officer concluded that the proposal is contrary to Policy DP2 of the adopted East Lothian Local Development Plan 2018.

The Planning Adviser then referred to the submission from the applicants and pointed out that the applicants discussed some repair proposals relating to the footpath with a representative of the Council's Roads Services in 2019 and were told that as the owners of this section of the footpath they were responsible for its maintenance. As a result of this discussion the applicants were under the impression that it is permissible to change the surface of the footpath from tarmac to mono blocks. Additionally, the applicants claim that they were told that the council maintains the grassed verge as a courtesy, which made them believe that they also owned that area as well. Their statement confirms that they never planned to use the hard surfaced area as parking as it is opposite a traffic island and marked cycleway. The applicants emphasise that they tried to create a neat and permanently tidy area to the front of their cottage and agree with the case officer that this development has interrupted the linear flow of the grass verge. However, they feel that it has added to the betterment and symmetry of the row, since artificial grass and cobbles have already been laid out at the other end of the row. The applicants disagree with the case officer's comment about the resurfaced verge and footpath being too domestic. They note that this new surface type has not stopped an increased number of pedestrians using it as a crossing point in conjunction with the traffic island.

- 4.3. The Members then raised the questions pertinent to the application including service access, the ownership of the grassed open space, and the reinstatement of the mono-block following any service access that is required in the future all of which the planning advisor responded to.
- 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 McLeod on the high quality of the work that had been carried out but wondered about potential future issues if the council require access to services, particularly in relation to who would be responsible for lifting the mono-block and whether it would be reinstated thereafter. He indicated that he would be supportive of granting planning permission for both the grassed open space and the footpath on the proviso that the council's transportation service can remove the mono-block for access.
- 4.6. Councillor Findlay commented on the fact that the work had been carried out without planning permission and could set a precedent for other households to undertake similar changes and then apply retrospectively for planning permission. He stated that he was supportive of granting planning permission for the footpath but not in respect of the grassed verge.
- 4.7. The Chair that he did not see the work as detracting from the character and appearance of the area but he did have concerns about the grassed area in relation to service access as the

mono block would not be reinstated by the Council after any works. He indicated that he would be supportive of granting planning permission for both the grassed open space and the footpath, on the basis that the council can ask for the mono block to be removed if access is required and that it would subsequently be replaced with grass, regardless of the fact that planning permission had been granted.

Accordingly, the ELLRB by a majority decided that the Review should be upheld and to grant Planning Permission for the change of surfacing of the grassed open space and the footpath subject to the following conditions:

1. No use shall be made at any time of the hardsurfaced area of former grassed roadside verge hereby approved for the parking of vehicles.

Reason

In the interest of road safety

2. The resurfaced area of public footpath hereby approved shall at no time be subject to any use other than that of public footpath

Reason

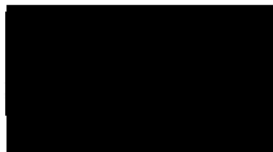
To ensure that the existing public footpath running east and west through the application site and adjacent to the A199 public road is retained

3. The Roads Authority shall, if deemed to require repair of which the Roads Authority is responsible for, be entitled to carry out an appropriate repair to the area resurfaced in terms of this planning permission with whatsoever materials are deemed appropriate by the Roads Authority.

Reason

To ensure that the Roads Authority are capable of complying with their obligations to maintain and suitably repair road verges and public footpaths.

Planning Permission is accordingly 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.