

## **REVIEW DECISION NOTICE**

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

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Application for Review by Somner Macdonald Architects on behalf of Mr and Mrs Harley of 59 Forth Street, North Berwick EH39 4JJ of Planning Condition forming part of the Decision Notice in relation to Alterations to house and formation of a third floor roof terrace with decking, balustrading and handrails at 59 Forth Street, North Berwick EH39 4JJ.

Site Address: 59 Forth Street North Berwick

Application Ref: 21/00258/P

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

Date of Review Decision Notice: 16 November 2021

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### **Decision**

The ELLRB unanimously agreed that the Review should be dismissed 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, 19 August 2021. The Review Body was constituted by Councillor N. Hampshire (Chair), Councillor L Bruce and Councillor K McLeod. 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:-

Mr P Zochowski, 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 before the ELLRB is for review of condition 1 of Planning Permission.

2.2. The original planning application was registered on 10 March 2021 and the decision notice granting the application subject to conditions is dated 14 May 2021.

- 2.3. The condition and the reason for the condition is more particularly set out in full in the said Decision Notice dated 14 May 2021. The condition and reasons for the condition are set out as follows:

*Condition*

- 1 *Planning permission is not hereby granted for the roof terrace and associated decking, balustrading and handrails.*

*Reason:*

*In its position on the roof of the three storey house the proposed roof terrace would be readily visible from public views from Forth Street and High Street. By virtue of its architectural form, size, design, proportions, materials and positioning the proposed roof terrace with decking, glazed balustrade and handrails would appear as a harmful and incongruous addition to the roof of the house and out of keeping with the surrounding area. It would be harmful to the character and appearance of the house, the streetscape and to this part of the North Berwick Conservation Area. Furthermore the formation of a roof terrace with glazed balustrade on the roof of the house could set a harmful precedent for the addition of roof terraces on the flat tops of the roof of 11 neighbouring buildings on Forth Street which cumulatively would be harmful to the character and appearance of this part of the North Berwick Conservation Area. The roof terrace and glazed balustrade are therefore contrary to Policies DP5 and CH2 of the adopted East Lothian Local Development Plan 2018 and Scottish Planning Policy: Revised December 2020.*

- 2.4. The notice of review is dated 6 June 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:  <ul style="list-style-type: none"> <li>- 1567-03 rev B dated 02.03.2021</li> <li>- 1567-04 rev A dated 10.03.2021</li> <li>- 1567-05 rev C dated 10.03.2021</li> </ul>
ii.	The Application for planning permission registered on 10 March 2021
iii.	The Appointed Officer's Submission
iv.	Policies of the adopted East Lothian Local Development Plan 2018 relevant to the determination of the application:  <ul style="list-style-type: none"> <li>- CH2: Development Affecting Conservation Areas</li> <li>- DP5: Extensions and Alterations to Existing Buildings</li> </ul>
v.	Letter of Objection from The Architectural Heritage Society of Scotland dated 3 April 2021 together with further notes of objection and support.
vi.	Notice of Review dated 6 June 2021 together with Applicant's Submission with supporting statement.

#### **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 advised that the affected property is a traditional stone built 3 storey detached house with garden ground on Forth Street adjacent to the Abbey Church and grounds. The property is not listed but lies within the designated North Berwick Conservation Area. The decision reached on the application was a mixed decision. Consent was granted for the replacement of windows but condition 1 does not grant consent for the formation of the third floor roof terrace with associated decking, balustrade and handrails on the roof of the house. The proposal to erect a pergola. Therefore this Review is in respect of the Condition 1.

One letter of support and two letters of objection were received. The letters of objection were from a neighbouring property and the other from the Architectural Heritage Society of Scotland East Lothian Cases Panel and in summary these raised the following relevant matters: (i) the proposed roof terrace goes above the intended roofline of the street and surrounds an creates a change in the environment; there are few if any similar developments in the town; (ii) the alterations would fundamentally alter the elevation and roof of the house on both front and rear elevations which essentially changes the traditional appearance of the house which is an integral part of the later Georgian and Victorian development within the conservation area; (iii) the properties on Forth Street retain their character and contribute significantly to the conservation area Allowing this traditional original street frontage to be compromised in the way proposed would introduce an offensively discordant note contrary to Policy CH2; (iv) the proposed roofworks are not in keeping with the architectural character of the building, or the historic character of the conservation area; and (v) it noted that a recent application for a box dormer at 11 Forth Street was refused and was considered to be a matching argument to this proposal. The balustrade would clearly be visible from Forth Street , travelling east down Beach Road and conspicuous to visitors entering the town along Beach Road and from the harbour where the chimneys of 59 Forth Street are clearly silhouetted against the Abbey Church roof.

The Planning Officer's report noted that the application must be determined in accordance with the CH2 Development Affecting a Conservation Area and Policy DP5 Extensions and Alterations to Existing Buildings of the East Lothian Local Development Plan 2018. In addition Scottish Planning Policy was also material consideration in respect of guidance on determining applications that affect the character and appearance of a conservation area and requires that a Planning Authority has regard to the desirability of preserving or enhancing the character and appearance of a conservation area in determining an application within a conservation area.

The Planning Officer's report assessed that the proposed roof terrace would not allow for harmful overlooking of any neighbouring properties and in that respect was not contrary to Policy DP5. It then considered the architectural and historic character of Forth Street which has a variety of architecture with front elevations of properties retaining their traditional character which make a significant contribution to the character of this part of the North Berwick conservation area. The report states that none of the houses/buildings in Forth Street have a roof terrace or modern style balustrading on their roofs. It then considers

the visibility of the proposed glazed balustrade and handrails (along with any furniture or structures that may be placed on the terrace) which it considers would be visible in public views along Forth Street, and from a gap between buildings from a public position in High Street, concluding that the roof terrace would be an incongruous addition to the roof of the house out of keeping with other roofs in the street. This forms the basis for the wording of the condition 1 which does not grant permission for the roof terrace and associated decking, balustrading and handrails which would be harmful to the character and appearance of North Berwick conservation area. Furthermore, it could set a precedent for the addition of rooftop terraces on flat rooftops of roofs of neighbouring buildings which cumulatively would be harmful to the character and appearance of the North Berwick conservation area contrary to policies DP5 and CH2 of the East Lothian Local Development Plan 2018.

The applicant's agent Somner MacDonald Architects has made a submission to the Review in respect of the officer's report and makes the following summarised points: (i) attention is drawn to the applicant's supporting statement submitted with the original application that explains the limits of enjoyment of the applicant's existing rear garden ground which led them to making this application; (ii) the assessment of whether a proposal harms the architectural or historic character of a conservation area is largely subjective; there have been many contemporary changes and alterations to traditional buildings which can be viewed from a public place where the principle has been accepted; (iii) as Forth Street is regarded as having a variety of architectural forms and an eclectic character this would imply that more contemporary forms of change and the introduction of forms of change which do not already exist might be appropriate; (iv) 4 photos of the building from various public places are submitted and we looked at these this morning; (v) the planning officer had assessed that no buildings in Forth Street have roof terraces therefore these are not part of the established character. Contemporary roof terraces are not unknown in the North Berwick conservation area. It is pointed out that there are a number of roof terraces at traditional properties elsewhere within the North Berwick conservation area and 6 photos are supplied showing examples seen from Beach Road and west beach and Melbourne Terrace; and (vi) The detail of the proposal would have minimum impact on the house, would not be harmfully prominent obtrusive or dominant and should not have been regarded as contrary to planning policy.

- 4.3. The Members then raised questions pertinent to the application 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 Bruce commented that the site visit had been useful to envisage the proposal and see what is already in situ. Councillor Bruce noted that other extensions are either towards the rear or side of buildings and there are no other extensions to roof top areas. He further commented that the current extensions visible set a precedent that the profile of the building is retained. He was therefore of the view that this application if approved would be a significant change to the area and he had not seen anything from the site visit or through the submissions which would convince him to form a view different from the Planning Officer. Accordingly he was minded to refuse the appeal and support the decision of the Planning Officer.
- 4.6. Councillor McLeod agreed with the comments of Councillor Bruce and was therefore also minded to refuse the appeal and support the decision of the Planning Officer.
- 4.7. The Chair commented that he agreed with his colleagues' comments and was of the view that having been on the site visit the proposal is different from what is already in place and

would destroy the nature of the area. Accordingly he was also minded to refuse the appeal and support the decision of the Planning Officer.

Accordingly, the ELLRB unanimously decided that the Review should be dismissed and Condition 1 of the Planning Permission should remain for the reasons more particularly set out in the Planning Officer's Report.

The Review is 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.