

REVIEW DECISION NOTICE

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

Application for Review by Mr J Brown, c/o John A Fyall, 12 Beachmont Court, Dunbar EH42 1YF
decision to refuse Planning Permission for alterations to flat at 6A The Vennel, Dunbar EH42 1HF.

Site Address: 6A The Vennel, Dunbar EH42 1HF

Application Ref: 23/01173/P

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

Date of Review Decision Notice:

Decision

The ELLRB unanimously agreed to dismiss the appeal and therefore retain Condition 2 from the Planning Permission for Alterations to flat at 6A The Vennel, Dunbar EH42 1HF for the reasons more particularly 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 review of Condition 2 of Planning Permission 23/01173/P was considered by the ELLRB, at a meeting held on Thursday, 29 February 2024. The Review Body was constituted by Councillor A Forrest (Chair), Councillor D Collins and Councillor N Gilbert. All three members of the ELLRB had attended a 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 to the LRB
Ms F Currie, Clerk

2. Proposal

2.1. The planning application was registered on 11 October 2023.

2.2. The planning application is for review of condition 2 set out in Decision Notice dated 27 November 2023 granting planning permission for alteration to flat subject to conditions.

2.3. Condition 2 and the reason for the condition is more particularly set out in full in the said Decision Notice. Condition 2 and reasons for the condition are set out as follows:

“Planning Permission is refused for the double cabrio roof lights proposed to be installed on the south elevation roof slope of the flatted building.

Reason:

By virtue of their modern form, appearance and opening mechanism, and of their size, scale

and positioning the proposed double cabrio roof lights would not be appropriate for this prominent location within the historic core of Dunbar Conservation Area. They would be harmful to the character and appearance of the flatted property, the streetscape of The Vennel and harmful to the character and appearance of this part of the Dunbar Conservation Area contrary to Policy 7 of NPF4 and Policies CH2 and DP5 of the adopted east Lothian Local Development Plan 2018.”

2.4. The notice of review is dated 13 December 2023.

3. **Preliminaries**

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

i.	<p>The drawings accompanying this application are referenced and numbered as follows:</p> <table border="1"> <thead> <tr> <th data-bbox="387 712 539 741"><u>Drawing No.</u></th> <th data-bbox="687 712 839 741"><u>Revision No.</u></th> <th data-bbox="1027 712 1203 741"><u>Date Received</u></th> </tr> </thead> <tbody> <tr><td>25/22/P/BW/02</td><td>-</td><td>03.10.2023</td></tr> <tr><td>25/22/P/BW/01</td><td>-</td><td>03.10.2023</td></tr> <tr><td>25/22/P/BW/03</td><td>-</td><td>03.10.2023</td></tr> <tr><td>25/22/P/BW/04</td><td>-</td><td>03.10.2023</td></tr> <tr><td>25/22/P/BW/06</td><td>-</td><td>03.10.2023</td></tr> <tr><td>25/22/P/BW/07</td><td>-</td><td>03.10.2023</td></tr> <tr><td>25/22/P/BW/08</td><td>-</td><td>03.10.2023</td></tr> <tr><td>25/22/P/BW/09</td><td>-</td><td>03.10.2023</td></tr> <tr><td>25/22/P/BW/015</td><td>-</td><td>03.10.2023</td></tr> <tr><td>25/22/P/BW/05</td><td>A</td><td>09.10.2023</td></tr> <tr><td>25/22/P/BW/09</td><td>A</td><td>09.10.2023</td></tr> <tr><td>25/22/P/BW/11</td><td>B</td><td>11.10.2023</td></tr> <tr><td>25/22/P/BW/21</td><td>B</td><td>11.10.2023</td></tr> <tr><td>25/22/P/BW/17</td><td>A</td><td>11.10.2023</td></tr> <tr><td>MANU LITERATURE 01</td><td>-</td><td>22.10.2023</td></tr> <tr><td>25/22/P/BW/10</td><td>C</td><td>22.10.2023</td></tr> <tr><td>25/22/P/BW/13</td><td>C</td><td>22.10.2023</td></tr> </tbody> </table>	<u>Drawing No.</u>	<u>Revision No.</u>	<u>Date Received</u>	25/22/P/BW/02	-	03.10.2023	25/22/P/BW/01	-	03.10.2023	25/22/P/BW/03	-	03.10.2023	25/22/P/BW/04	-	03.10.2023	25/22/P/BW/06	-	03.10.2023	25/22/P/BW/07	-	03.10.2023	25/22/P/BW/08	-	03.10.2023	25/22/P/BW/09	-	03.10.2023	25/22/P/BW/015	-	03.10.2023	25/22/P/BW/05	A	09.10.2023	25/22/P/BW/09	A	09.10.2023	25/22/P/BW/11	B	11.10.2023	25/22/P/BW/21	B	11.10.2023	25/22/P/BW/17	A	11.10.2023	MANU LITERATURE 01	-	22.10.2023	25/22/P/BW/10	C	22.10.2023	25/22/P/BW/13	C	22.10.2023
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ii.	The Application for planning permission registered on 11 October 2023																																																						
iii.	The Appointed Officer's Submission																																																						
iv.	<p>Policies relevant to the determination of the application:</p> <p>National Planning Framework 4 – Policy 7 (Historic Assets and Places)</p> <p>The adopted East Lothian Local Development Plan 2018:</p> <ul style="list-style-type: none"> - CH2 (Development Affecting Conservation Areas); - DP5 (Extensions and Alterations to Existing Buildings). <p>In addition the following are also relevant to the determination of the application, namely:-</p> <ul style="list-style-type: none"> - section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 - supplementary Planning Guidance on 'Cultural Heritage and the Built Environment' adopted by the Council on 30th October 2018 - Dunbar Conservation Area 																																																						

v.	Notice of Review dated 13 December 2023 together with Applicant's Submission with supporting statement and associated documents.
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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 planning application relates to review of the decision on planning application 23/01173/P which sought planning permission for the replacement of the existing uPVC windows of the flat with timber framed replacement windows; ii)The installation of 4 roof lights onto the rear south elevation roof slope of the flatted building ; iii)The installation of 3 roof lights onto the north elevation roof slope of the flatted building; iv)The installation of two extract outlets and waste pipes onto the side (west) elevation of the flatted building; v)The installation of an extract vent to the north elevation roof slope; and vi)The re-location of the existing soil vent pipe on the south elevation roof slope of the flatted building. The application was granted planning permission with conditions including condition 2 [as more particularly set out at 2.3 of this Decision Notice]. This appeal is for the removal of Condition 2.

The property to which this appeal relates is a first floor flat set within a two storey flatted building located on the north side of The Vennel, Dunbar. It is located within a predominantly residential area as defined by Policy RCA1 of the adopted East Lothian Local Development Plan 2018. It is also located within the Dunbar Conservation Area. The property is bounded to the north by an access road, to the east and west by neighbouring residential properties and to the south by the public road of The Vennel.

The case officer in his report conducted a planning assessment of the proposal. He stated that Section 25 of the Town and Country Planning (Scotland) Act 1997 requires that the application be determined in accordance with the development plan, unless material considerations indicate otherwise. The development plan is National Planning Framework 4 (NPF4) and the adopted East Lothian Local Development Plan 2018. Material to the determination of the application is Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 requires that a planning authority must have regard to the desirability of preserving or enhancing the character or appearance of a conservation area in exercising its responsibilities in the determination of any application for planning permission for development affecting a conservation area. Policy 7 (Historic Assets and Places) of NPF4 is relevant to the determination of this application. Policies CH2 (Development Affecting Conservation Areas) and DP5 (Extensions and Alterations to Existing Buildings) of the adopted East Lothian Local Development Plan 2018 are also relevant to the determination of this application. The report also noted that material to the

determination of the application is Supplementary Planning Guidance (SPG) on 'Cultural Heritage and the Built Environment' adopted by the Council on 30th October 2018. The SPG expands on policies that are set out in the East Lothian Local Development Plan 2018 and provides policy guidance on replacement windows in buildings which are in a conservation area. The policy guidance set out in the SPG states that the replacement of a window in a building in a conservation area must preserve or enhance the area's special architectural or historic character. This will normally mean that the proportions of the window opening, the opening method, colour, construction material of frames and glazing pattern should be retained. The only exceptions to this will be:

- i) Multiple glazing where there is no visible difference between that proposed and the original style of window;
- ii) If the building itself does not contribute positively to the character of the Conservation Area and where a change in window design would have no impact on the character of the Conservation Area; and
- iii) If the windows cannot be seen from a public place.

The report confirmed that no public letters of objection have been received in relation to the application.

The Planning Adviser referred to the report of handling of the application and set out the main reasons for refusal of the double cabrio roof lights.

The Planning Adviser then referred to the submission from the appellants agent. The Planning Adviser confirmed that this additional information clarifies that the proposed Velux Cabrio has an extending balcony and has an upper window which opens exactly the same as the conservation windows do. Also the agent submits that the installation of the proposed windows will not be detrimental to the appearance of the area as the historic character of the locality has changed significantly due to demolition and new built in the recent years. Within the locality there are examples of non-conservation roof lights installed and non-traditional forms of construction including nearby blocks of residential buildings and the nearby new modernistic building (the former Amusement Arcade Site app 21/00889/P). The rendered new houses to the right and left of the subject building and at the end of and along Lamer Street, with the exception of the two original buildings that can be seen in the original/existing pictures submitted with this appeal, have all but obliterated any previously true portrayal of what the form and function of the original buildings were. The agent also refers to a different approved planning application for alterations to a building located within the Dunbar Conservation Area. The agent included the relevant excerpt from Planner's Report of 12th April 2022 referred to in the approved application for 22/00175/P - 11 Bayswell Park, Dunbar which deemed the roof window as not being detrimental to Dunbar Conservation Area contrary to Policy 7 of NPF4 and Policies CH2 and DP5 of the adopted East Lothian Local Development Plan 2018.

The agent suggests that the Approved Proposal in Bayswell Park has identical relationship with adjacent buildings and roof windows and, the approved window which was even described as Velux Cabrio is identical to the one refused through the application ref 23/01173/P. The Planning Adviser concluded by confirming to the Local review Body that through the condition planning permission was refused for the double cabrio roof lights and not a single cabrio rooflight (Velux SK19).

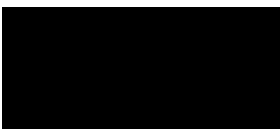
- 4.3. Members then asked questions of the Planning Adviser and Legal Adviser. This included whether or not it would be possible to stipulate and put forward a condition that the

application could be varied so that there was only a single rooflight and not the double which had been proposed. The members were advised that if a single rooflight were acceptable the applicant would need to discuss this with planning officers so the proposal could be appropriately reviewed and assessed and therefore could not form part of this decision.

- 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 Gilbert stated that the site visit was useful and it was obvious there would be a big glass panel in the centre. He felt this proposal was too large and incongruous with the setting. He commented that the appellant should consider discussing a single rooflight/window proposal with planning officers. Accordingly he was minded to dismiss the application.
- 4.6. Councillor Collins commented that in travelling between site visits she was able to see the same window which the appellant had proposed. She commented that having seen this she was of the view that this was twice the size of what was already in place for surrounding properties. She also felt there was merit in the appellant discussing a single rooflight/window solution with the planning authority.
- 4.7. The Chair commented that where it was position it would clearly be a large window in contrast to the surrounding area. Therefore he would be minded to dismiss the appeal and support the reasons for the condition as more particularly set out in the planning officer's report of handling.

Accordingly, the ELLRB unanimously agreed to dismiss the appeal and therefore retain Condition 2 as set out in the Decision Notice dated 27 November 2023 (application reference: 23/01173/P) and for the reasons stated within said Decision Notice and such reasons as more particularly set out in the Planning Officer's report of handling.

Planning Permission for the double cabrio roof lights proposed to be installed on the south elevation roof slope of the flatted building is hereby refused.



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.