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## **APPEALS AND LOCAL REVIEW BODY DECISIONS**

Report by Head of Communities and Economy

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### **1 PURPOSE OF REPORT**

- 1.1 This report informs the Committee of notices of reviews determined by the Local Review Body (LRB) at its meeting in June 2017; and three appeal decisions received from Scottish Ministers.

### **2 BACKGROUND**

- 2.1 The Council's LRB considers reviews requested by applicants for planning permission, who wish to challenge the decision of planning officers acting under delegated powers to refuse the application or to impose conditions on a grant of planning permission.
- 2.2 The decision of the LRB on any review is final, and can only be challenged through the Courts on procedural grounds.
- 2.3 Decisions of the LRB are reported for information to this Committee.
- 2.4 In addition, this report includes a decision on appeal which has been considered by Scottish Ministers.

### **3 PREVIOUS REVIEWS DETERMINED BY THE LRB**

- 3.1 At its meeting on 13 June 2017 the LRB made the following decisions:

	<b>Planning Application Reference</b>	<b>Site Address</b>	<b>Proposed Development</b>	<b>LRB Decision</b>
<b>1</b>	17/00081/DPP	31 Broomhill Avenue, Penicuik	Extension to dwellinghouse	Permission granted at LRB meeting of 13.06.2017
<b>2</b>	17/00096/DPP	Rosehill, 27 Park Road, Dalkeith	Extension to building and alteration to wall	Permission granted at LRB meeting of 13.06.2017

## **4 APPEAL DECISIONS**

- 4.1 An appeal against a refusal of planning permission for the erection of a retail unit and associated works at land south west of Tesco superstore, Dalkeith has been dismissed. The Reporter appointed by the Scottish Ministers concluded that the proposed development would conflict with policies relating to retail development and landscaping. A copy of the appeal decision accompanies this report.
- 4.2 An appeal against a refusal of listed building consent to remove a 'personal' condition from a grant of consent for the erection of a conservatory at West House, Crichton house, Laird's Entry, Crichton, Pathhead has been upheld and consent granted. The Reporter appointed by the Scottish Ministers concluded that the conservatory attached to the listed building did not detract from the building to a significant degree to justify its removal once the ownership of the property had changed as required by condition 6 of the original grant of listed building consent. A copy of the appeal decision accompanies this report.
- 4.3 An appeal against a refusal of listed building consent for the erection of an extension to building and alterations to wall at Rosehill, 27 Park Road, Dalkeith has been upheld and consent granted. The Reporter appointed by the Scottish Ministers concluded that the extension and alterations to the wall would have a neutral impact on the listed building and would not be detrimental to the Conservation Area and as such is acceptable. A copy of the appeal decision accompanies this report. The associated planning permission was granted by the LRB at its meeting of 13 June 2017.

## **5 RECOMMENDATION**

- 5.1 The Committee is recommended to note the decisions made by the Local Review Body at its meeting in June 2017 and the appeal decisions by Scottish Ministers.

**Ian Johnson**  
**Head of Communities and Economy**

**Date:** 8 August 2017  
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**Background Papers:** LRB procedures agreed on the 13 June 2017.



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Decision by Padraic Thornton, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-290-2039
- Site address: Lands south-west of Tesco superstore, Dalkeith, EH22 3LD.
- Appeal by Mr Bryan Wilson (SC Dalkeith Limited) against the decision by Midlothian Council.
- Application for planning permission 16/00618/DPP dated 8 September 2016 refused by notice dated 12 January 2017.
- The development proposed: Erection of retail unit, formation of access and car parking.
- Date of site visit by Reporter: 14 June 2017

Date of appeal decision: 13 July 2017

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## Decision

I dismiss the appeal and refuse planning permission.

## Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise.
2. Having regard to the provisions of the development plan the main issues in this appeal are whether or not the development complies with policies in relation to retail development, and in relation to landscape including trees.
3. The proposal is to construct a single storey retail unit with a gross floor area of 1630 sq. metres on a site of a little over half a hectare a short distance to the south-east of the roundabout at the junction of the A7 and the A6094 (Eskbank/Bonnyrigg Road). Eighty car parking spaces would be provided to the north-west of the proposed building. The building and the car parking would be located in close proximity to the boundary with the A7 which runs in a cutting along the south-west side of the site. There is a large Tesco store with extensive car parking facilities located a short distance away to the north-east.
4. The current development plan for the area comprises of the Strategic Development Plan for Edinburgh and South East Scotland 2013 (SESPan) and the Midlothian Local Plan 2008. The proposed Midlothian Local Development Plan 2014 is currently with the Scottish Ministers for examination.



Retail policy issues:

5. Policy 3 of the SESPlan sets the strategic context for the retail policies of the local plan. Planning authorities are required to identify town and commercial centres and clearly define their roles. They are also required to support and promote the network of centres identified in a table which contains a hierarchy of centres scaling down from Edinburgh City Centre. Planning authorities are required to promote a sequential approach to the selection of locations for retail proposals and justify any exceptions to this identified in the development plan. The policy relates mainly to development plan provisions and is not directly relevant to consideration of the current application. It does, however, require the adoption of a sequential approach to the choice of retail locations.

6. Paragraph 3.5.5 of the 2008 local plan identifies Midlothian's strategic town centres as Dalkeith, Penicuik and Bonnyrigg. It is stated that shopping policies 2, 4 and 5 are designed to encourage the development of major retail proposals within or on the edge of these town centres. Where no alternative sites are available in these centres major retail development is supported in Straiton Retail Park subject to various criteria. It is stated that major retail proposals will only be considered outside these town centres where it can be shown that there are no suitable sites in the centre and that various criteria can be met. Paragraph 3.5.3 of the plan states that the council was promoting an initiative aimed at revitalising Dalkeith town centre. A draft master plan had been prepared which would cater for around 3,700 sq. metres of retail space in a mixed use development.

7. The site of the proposed development is located within the built up area of Dalkeith but well outside the town centre as indicated on the maps contained in the 2008 local plan. It is also at a considerable distance from the identified town centre of Bonnyrigg and is on the opposite side of the A7 from Bonnyrigg. It is located on the outer edge of the built up area of Dalkeith/Eskbank.

8. Policy SHOP 5 of the current local plan sets out the policy for major retail and commercial leisure development outside strategic town centres and Straiton. It is stated, in the policy, that such development will only be permitted if there are no alternative sites available within, on the edge of or sufficiently close to form an effective extension to the town centre to accommodate the proposed development or meet the identified needs. The policy also requires that such development must satisfy a qualitative or quantitative deficiency which cannot be met within or on the edge of the town centre and the development must not individually or cumulatively undermine the vitality and viability of the existing town centres.

9. Having regard to the size and nature of the town centres of Dalkeith and Bonnyrigg I consider that the proposed development should be assessed as a major retail development although the development plan does not clearly define this. I consider accordingly that policy SHOP 5 is relevant to the proposal. In so far as a need has been identified for the development it is to curtail leakage of expenditure on comparison goods from the Midlothian area. The documentation indicates such leakage although the hierarchy of centres set out in SESPlan would indicate that the strategic plan envisages some of the expenditure being directed towards the higher order centres such as Edinburgh city centre.

10. I am not convinced that the identified need can only be met by a development such as that proposed. The sale of comparison goods does not necessarily require a very large unit with extensive car parking such as is proposed in the current application. If such was the case most town centre sites would be ruled out and the range of town centre retail outlets would be seriously limited. This would be contrary to policy in relation to the promotion and strengthening of town centres. I am not convinced that suitable outlets could not be provided in the town centre of Bonnyrigg or particularly in the larger centre of Dalkeith where I noted a number of vacant units during my inspection of the area. The appellant's calculations indicate a diversion of £1.26 million expenditure on comparison or non-food goods per year from Dalkeith which is estimated to be about 6.8% of annual non-food goods turnover in the town. I consider that the development proposed would be in conflict with policy SHOP 5 as I am not convinced that there are no sites available in the town centres to serve the need and I consider that the development would both individually, and cumulatively with the existing large Tesco store, undermine the vitality and viability of the existing town centres.

11. Policy SHOP 7 deals with the issue of the provision of neighbourhood shopping facilities. It could be argued that such neighbourhood facilities are required to serve the existing and proposed residential developments in the area. I accept the appellant's submission that the development is not designed as a neighbourhood shopping facility and in the circumstances I do not consider that policy SHOP 7 is particularly relevant to the application. The policy does not, however, give any support for the development.

12. A full Retail Impact Assessment of the proposal has not been submitted with the application. The appellant relies to a large extent on the assessment submitted with the application for an Aldi shop on the site of the former Mayshade garden centre on the north-west side of the roundabout at the A7/A6094 junction. The appellant submits that this application was supported by the planning authority. He submits that similar considerations apply in the current case. I note that the report on the Aldi application stated that the development proposed was not in conformity with development plan policy in relation to retail development. The recommendation to grant permission was based on the understanding that Class 1 use had been established on the site and a certificate of lawfulness to this effect had been issued. This was considered to be a significant material consideration. Similar considerations do not apply to the current application. I also note that the Aldi application was withdrawn and planning permission was not granted for the development proposed.

13. The Proposed Midlothian Local Development Plan 2014 is currently with Scottish Ministers for examination. This proposed plan is not part of the current development plan but it is a material consideration. Policy TCR 2 of the proposed plan deals with the location of major retail and leisure facilities. It is stated that the sequential approach will be applied to the identified town and commercial centres. (The location of the proposed development is not identified as such a centre). It is stated that the council will support a retail development at an out of centre location in the corridor from Gorebridge/Redheugh to Newtongrange. This should be primarily of a convenience nature and may be in the form of a new town centre at Redheugh. It is stated that the council does not support major retail development at any other out of centre locations. I consider that the development proposed would not be in conformity with the proposed plan. Issues relating to the overall allocation

of lands in the proposed plan for retailing purposes are ones more appropriate for consideration in the plan examination.

14. It is stated in paragraph 4.6.3 of the proposed plan that in Dalkeith the re-development of the post war buildings in the central triangle with modern shops or refurbishment of the existing buildings together with the provision of other uses, improved car parking and further residential development on the upper floors is supported. This indicates potential and need for re-development and investment in the town centre of Dalkeith. I have concluded in paragraph 10 that the proposed development would detract from the vitality and viability of existing town centres such as Dalkeith.

15. Scottish Planning Policy (SPP) promotes a town centre first policy when planning for uses which attract significant numbers of people. A sequential approach is proposed for plan making and development management. The sequential approach requires that locations are considered in order, from town centres down to out of centre locations that are, or can be made, easily accessible by a choice of transport modes. I do not interpret this as indicating that locations removed from town centres may not on occasion be considered suitable. I am not convinced however in the current case that there is a particular demonstrated need for a facility of the nature and scale proposed. In this regard it is submitted by the appellant that the proposed store operator has a similar facility in Straiton Retail Park which is only a short distance away to the north-west of Bonnyrigg. The proposal would not be in conformity with the general thrust of the SPP's promotion of town centres.

#### Landscape Impacts:

16. The site is located on the outer edge of the built up area and is in close proximity to areas identified in the development plan as parts of the green belt with policies for protection. This part of the green belt, which is quiet narrow to the west of the site of the proposed development, is the separation between Bonnyrigg to the south-west and Eskbank/Dalkeith to the north-east. The location, in close proximity to the green belt and countryside, as indicated in the consultation response from the landscape officer of the council, is important when considering the impact of the development on landscape and visual amenity.

17. The lands are currently open and un-developed with a relatively large group of trees in the eastern section and some tree screening along the south-western and north-western site boundaries. The proposed development would occupy almost the entire footprint of the site. The building and carpark would be located in very close proximity to the south-western boundary of the site where the site abuts the A7 which is in a cutting at this location.

18. The proposed building would have a ridge height of about 7.8 metres above floor level and the eaves level would be about 5.9 above same. The building would extend for about 50 metres along the A7 site frontage. I consider that the building would be visually very dominant in views from the A7 and from other vantage points to the west including from the road, car park and open area to the front of the Midlothian Regional Hospital which has been constructed in part of the green belt to the west of the A7. It would also be visually very dominant in views from the pedestrian/cycle path which crosses over the A7 a short

distance to the south-east of the site. I consider that the building and car park, which would be lit at night, would have the effect of significantly reducing the visual separation between Eskbank and Bonnyrigg and the development would be visually obtrusive and out of character in the landscape at this location.

19. I consider that any development on this site should be adequately landscaped in order to assimilate it into the environment. I consider that this would not be possible with the current proposal due to the size of the building and extent of car parking proposed. (I have taken account of the minor reduction in ground level proposed at the A7 roadside frontage of the proposed building in this assessment). I agree with the assessment of the council that the existing screen of trees along the A7 boundary would be unlikely to survive due to its close proximity to the development works proposed. I also noted during my site inspection that the screen is thin and low in the section of the frontage close to the pedestrian/cycle path over the A7. This would provide little screening even if it survived the development works.

20. Policy RP 7 of the development plan states that development will not be permitted where it may adversely affect the quality of the local landscape. The policy also requires that new development maintains the distinctiveness of landscape character. I consider that the development proposed would be visually dominant and discordant on the edge of the built up area, abutting the countryside and green belt. The proposal does not allow for adequate landscaping to assimilate the development into the landscape. The development would accordingly not be in conformity with policy RP 7 of the local development plan.

21. Policy RP 5 of the development plan states that development will not be permitted where it would lead directly or indirectly to the loss of or damage to woodland, groups of trees, trees and hedges which have potential amenity, nature conservation, landscape character, shelter or other value. I consider that the trees along the A7 frontage have significant amenity and landscape value due to the sensitive location at the edge of the built up area as referred to above. I consider that the proposed development would cause significant damage to the trees. I consider accordingly that the development would be in conflict with policy RP 5.

#### Conclusion:

22. I conclude that the proposed development would be in conflict with development plan policies relating to retail development, and to the protection of the landscape and of trees. I consider that overall the development does not accord with the provisions of the plan and there are no material considerations which would still justify granting planning permission.

*Padraic Thornton*

Reporter







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Decision by Stephen Hall, a Reporter appointed by the Scottish Ministers

- Listed building consent appeal reference: LBA-290-2021
- Site address: West House, Crichton House, Laird's Entry, Crichton, Pathhead, Midlothian, EH37 5UX
- Appeal by Gareth Hateley against the decision by Midlothian Council
- Application for listed building consent 16/00857/LBC dated 7 December 2016 refused by notice dated 24 January 2017
- The works proposed: Removal of condition 6 attached to listed building consent 09/00498/LBC to allow the retention of conservatory
- Date of site visit by Reporter: 18 May 2017

Date of appeal decision: 8 June 2017

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## Decision

I allow the appeal and vary listed building consent 16/00857/LBC by deleting condition 6.

## Reasoning

1. The determining issues in this appeal are the effect of the conservatory on the listed building and the ongoing justification for the original planning condition. I have also applied the duty set out in section 14(2) of the Listed Building and Conservation Areas Act to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
2. Crichton House is a category A listed building, described in the statutory listing as a 3-storey L-plan laird's house dating from around 1650, with an 18<sup>th</sup> century 2-storey wing to the west. At some point in the past the east and west wings of the building have been subdivided to form separate dwellings. A substantial hedge now separates the rear gardens of the two properties. .
3. The conservatory to which this appeal relates is attached to the rear (south-east, non-principal) elevation of the west wing. With the exception of the modern conservatory, this elevation appears to have largely retained its original form. It is faced with white harling and appears to have retained its original openings and fenestration, though it is understood that the rooflights are modern.
4. The conservatory, which was consented in 2009, is located to the right of the elevation. It is around 12 square metres in area, has a simple lean-to form, and is constructed of



white-painted timber. Its construction has required very little physical alteration to the fabric of the original house, and would, I consider, be relatively easily reversible. The glazing of the conservatory consists of large panes with relatively thick glazing bars, in contrast to the finer detailing of the original windows.

5. Policy RP24 of the Midlothian Local Plan allows for extensions to listed buildings only where their siting, scale, design, materials and detailing do not detract from the original character of the building. The Historic Environment Scotland guidance note on extensions notes that most historic buildings can be extended sensitively, but extensions should: protect the character and appearance of the building; be subordinate in scale and form; be located on a secondary elevation; and be designed in a high-quality manner using appropriate materials.
6. Applying these policy tests, I note that the conservatory is located on the secondary frontage of the subordinate and more recent part of the building. Its modest size and simple form render it a clearly subordinate feature on this elevation. The transparency of the design means that the original façade of the building remains clearly visible. It has been built using traditional materials and has had minimal impact on the physical fabric of the original building. A substantial hedge largely screens the conservatory from the garden of the east wing of the house, from which the more imposing older part of Crichton House would be viewed and appreciated.
7. The conservatory is located on a previously unaltered elevation of the house, but I do not find this fact in itself places the development in contravention of any policy. Rather, the Historic Environment Scotland guidance suggests extensions are best located on secondary frontages such as this. While I acknowledge that the detailing of the glazing bars fails to match the fenestration of the original house, overall I consider that the retention of the conservatory would not have a significant impact on the historic interest of the building. I conclude that the policy tests set out in paragraph 5 above have been met, and that the conservatory extension serves to preserve the building and its features of architectural and historic importance.
8. Circular 4/1998 relates to the use of conditions in planning permissions, but I consider it also to be of relevance to listed building consents. The appellant argues that condition 6 of the 2009 consent is contrary to the provisions of the circular due to its being unenforceable, unreasonable, not relevant to planning and ultra vires. I consider that, because conditions run with the land, and in this case condition 6 does not say who is to remove the conservatory, that condition 6 is therefore enforceable against subsequent occupiers.
9. Paragraph 92 of the circular states that personal conditions will scarcely ever be justified in the case of permanent buildings. The conservatory is of relatively lightweight construction, but it does nevertheless have the characteristics of a permanent building. I agree that it is generally unsatisfactory to require an authorised permanent structure to be removed following a change in ownership. However, the exact circumstances pertaining at the time of the 2009 application are not before me. On balance I am prepared to accept that exceptional reasons may have existed at the time to justify the unusual use of a personal condition in this case.
10. However, I have already found that the conservatory complies with the policy and statutory tests applying to extensions to listed buildings. I therefore take the view that

condition 6 of the 2009 consent is unnecessary in terms of Circular 4/1998 because it would not have been necessary to refuse the application had the condition not been imposed. For this reason I conclude that listed building consent 16/00857/LBC should be varied by the removal of condition 6.

11. I have found no evidence of discrimination or bias by the planning authority that would suggest the council may be in contravention of the Human Rights Act 1998.

*Stephen Hall*  
Reporter





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Decision by Steve Field, a Reporter appointed by the Scottish Ministers

- Listed building consent appeal reference: LBA-290-2022
- Site address: Rosehill, 27 Park Road, Dalkeith, Midlothian, EH22 3DH
- Appeal by The Society of the Sacred Heart against the decision by Midlothian Council
- Application for listed building consent 17/00092/LBC, dated 16 February 2017, refused by notice dated 13 April 2017
- The works proposed: extension to building and alteration to wall
- Application drawings: listed in the schedule at the end of this notice
- Date of site visit by Reporter: 3 July 2017

Date of appeal decision: 12 July 2017

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## Decision

I allow the appeal and grant listed building consent subject to the condition below. Attention is also drawn to the advisory note at the end of this notice.

Condition: prior to the commencement of development, samples of the proposed stone and slate and detailed specifications of the door, rainwater goods, rooflights and gated opening in the boundary wall shall be submitted for the consideration and written approval of the planning authority. Thereafter, the development shall take place only in accordance with any written consent provided.

*Reason: in order to protect the appearance and character of the listed building and conservation area.*

## Reasoning

1. The determining issue in this appeal is whether the proposed extension would preserve the listed building. I am required to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

2. As Rosehill is situated in a conservation area, I am also required to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area.

3. Rosehill is a nineteenth century, 2-storey, asymmetrical, gabled villa set back from but fronting Park Road. It is built of sandstone with a slate roof. A number of extensions



were added during the period 1984 – 2012, largely to accommodate use of the building as a care home. The building is category 'C' listed.

4. As well as the proposed extension, the listed building application also relates to a proposal to create a new, gated pedestrian opening in the stone wall that bounds the site to the north-west. This opening would replace an existing opening that would be closed off by the proposed extension. The detailing of this operation can be addressed by condition. This part of the proposed development has not been contested by the planning authority and, based on my observations, I agree that this aspect of the proposed development would preserve the listed building. My consideration below, therefore, focuses on the proposed extension.

5. The proposed store extension would be attached to the south-west gable of a large extension to Rosehill built in 1995 to provide care home accommodation. Considerable thought was clearly given to ensuring that the care home extension complements the key features of the original building with use of traditional materials, choice of roof pitch and skew treatments and specification of doors, windows, and rainwater goods all drawing from the design of the nineteenth century villa. The proposed extension that is the subject of this appeal would be constructed with stone walls, slate roof, rainwater goods and door and doorway treatment to match the care home extension. The design also incorporates two rooflights in the south-east elevation which are unobtrusive and small in scale. I consider these design details to be acceptable features of the proposed extension. What is at issue, therefore, is whether the location, scale and form of the proposed extension have an acceptable impact on the listed building.

6. The roof design of the proposed store extension would not follow that of the care home extension in that what is proposed is a flat roof with slated sides pitched to mirror the 1995 extension. This is a similar arrangement to that used on extensions to the north-west and south-west elevations of the original Rosehill villa. I note that these extensions were built before the building was listed but they do, nonetheless, provide part of the context for the proposed extension and, in that context, the proposed extension would not look out of place.

7. Furthermore, the scale of the proposed store extension is modest in relation to the care home extension to which it would be connected and to the building complex overall. Viewed from the car park to St David's Church, it would be partly obscured by the existing stone wall and set against the higher and wider gable of the care home. It would not be visible in views to the principal elevation of Rosehill facing south-east onto Park Road; nor would it be visible from King's Park to the north-east as it would be screened by the care home extension.

8. Finally, the proposed extension would be physically remote from the original part of Rosehill that attracted the category 'C' listing so would not detract from the architectural features of special interest referred to in the listed building designation.

9. Overall, I consider that the proposals would have a neutral impact on the listed building and would, therefore, preserve the special architectural features of the building and its setting.

10. This part of the Eskbank and Ironmills Conservation Area is characterised by large Victorian merchants' villas, of which Rosehill is one, set in extensive, well-treed gardens. Other distinct features are views to St. John's Church and across King's Park to the town centre. The small size of the proposed extension, particularly in relation to the extended Rosehill building complex, and the limited public views to the site lead me to conclude that it would preserve the appearance and character of the conservation area.

11. I have considered Midlothian Local Plan policies RP24 Listed Buildings and RP22 Conservation Areas as they relate to extensions but the policies do not alter my conclusions. I have also considered Scottish Planning Policy 2014, Historic Environment Scotland's Policy Statement, 2014 and Historic Environment Scotland's guidance on Managing Change in the Historic Environment – Extensions, 2010 and nothing in these documents leads me to a different view.

12. The reasons for refusal of the listed building consent include reference to the impact that the proposed store would have on the amenity of adjoining parts of the care home. These are matters for any appeal against the refusal of planning permission and not matters I can address through this listed building appeal.

13. I have considered all the other matters raised but there are none which would lead me to alter my conclusions.

*Steve Field*

Reporter

### **Schedule of plans**

1. 2738/01/A – Existing Plan and South-west Elevation
2. 2738/04 – Proposed Plans, Elevations and Section
3. 2738/05 – Location Plan
4. 2738/06 – Block Plan
5. 2738/17 – Roof Plan of Rosehill Development

### **Advisory note**

**The length of the consent:** This listed building consent will last only for three years from the date of this decision notice, unless the works have been started within that period. (See section 16 of the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997 (as amended))