

Dismissal of Review to remove conditions from a grant of Planning Permission

Town and Country Planning (Scotland) Act 1997

Local Review Body
Tuesday 22 February 2022
Item No 5.1

Local Review Body: Review of Planning Application Reg. No. 21/00745/DPP

John Gordon Associates Ltd
3 Dean Acres
Comrie
Dunfermline
KY12 9XS

Midlothian Council, as Planning Authority, having considered the review of the application by Mr and Mrs Badger, 8 St. Davids Avenue, Dalkeith, EH22 3FF, which was registered on 22 November 2021 in pursuance of their powers under the above Act, hereby **dismiss your review to remove conditions** from your permission to carry out the following proposed development approved 21 October 2021:

Installation of replacement windows and doors at 8 Saint Davids Avenue, Dalkeith, EH22 3FF in accordance with the application and the following plans:

<u>Drawing Description</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Location Plan	5153/LP 1:1250	08.09.2021
Proposed Elevations	5153/2 1:100	08.09.2021
Illustration/Photograph (existing)	5153/1 1:100	08.09.2021
Proposed Window Details	625872	08.09.2021
Proposed Door Details	625871	08.09.2021
Proposed Window Details	625870	08.09.2021
Proposed Door Details	625867	08.09.2021

Subject to the following conditions:

1. Notwithstanding the plans hereby approved, the replacement windows within the front elevation are hereby not approved.
2. The door as proposed is not hereby approved, it shall be of timber construction in a colour to be approved in writing by the planning authority.

Reason for conditions 1 and 2: The introduction of uPVC within the front elevation will result in an adverse visual impact upon the character and appearance of the dwellinghouse and conservation area, which is contrary to policy ENV19 of the adopted Midlothian Local, Development Plan and Historic Environment Scotland policy and guidance. This part of the housing

development was designed to incorporate traditional materials in order to integrate it in to the existing conservation area and the use of non-timber windows and door on the front elevation would significantly undermine that design approach.

The Local Review Body (LRB) considered the review of the planning application at its meeting of 10 January 2022.

In reaching its decision the LRB gave consideration to the following development plan policies and material considerations:

Midlothian Local Development Plan 2017 Policies:

1. Policy DEV2 - Protecting amenity within the built-up area; and
2. Policy ENV19 - Conservation Areas.

Material considerations:

1. The individual circumstances of the proposal;
2. Historic Environment Scotland Policy Statement 2016; and
3. Scottish Planning Policy.

In determining the review the LRB concluded:

The windows proposed on the front elevation will result in an adverse visual impact on the character and appearance of the dwellinghouse and conservation area contrary to policy ENV19 of the adopted Midlothian Local Development Plan 2017 and as such dismiss the review to remove the conditions from the original grant of planning permission. However, in reaching its decision the LRB confirmed that it would support replacement UPVC windows/door on the front elevation if they were of the same design and style as the existing (and matched those of the other dwellinghouses in the street) and of a standard which cannot be differentiated from timber frames when viewed from a public vantage point.

Dated: 10/01/2022



Peter Arnsdorf
Planning Manager (Advisor to the Local Review Body)
Place
Midlothian Council

On behalf of:
Councillor R Imrie
Chair of the Local Review Body
Midlothian Council

NOTICE TO ACCOMPANY REFUSAL ETC.

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Notification to be sent to applicant on refusal of planning permission or on the grant of permission subject to conditions, or

Notification to be sent to applicant on determination by the planning authority of an application following a review conducted under section 43A(8)

1. If the applicant is aggrieved by the decision of the planning authority to refuse permission for 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 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.

Advisory note:

If you have any questions or enquiries regarding the Local Review Body procedures or this decision notice please do not hesitate to contact Peter Arnsdorf, Planning Manager via peter.arnsdorf@midlothian.gov.uk



**The Coal
Authority**

Any Planning Enquiries should be directed to:

Planning and Local Authority Liaison

Direct Telephone: 01623 637 119 (Planning Enquiries)

Email: planningconsultation@coal.gov.uk

Website: www.gov.uk/coalauthority

INFORMATIVE NOTE

The proposed development lies within an area that has been defined by the Coal Authority as containing potential hazards arising from former coal mining activity at the surface or shallow depth. These hazards can include: mine entries (shafts and adits); shallow coal workings; geological features (fissures and break lines); mine gas and former surface mining sites. Although such hazards are seldom readily visible, they can often be present and problems can occur in the future, particularly as a result of new development taking place.

It is recommended that information outlining how former mining activities may affect the proposed development, along with any mitigation measures required (for example the need for gas protection measures within the foundations), is submitted alongside any subsequent application for Building Warrant approval (if relevant).

Any form of development over or within the influencing distance of a mine entry can be dangerous and raises significant land stability and public safety risks. As a general precautionary principle, the Coal Authority considers that the building over or within the influencing distance of a mine entry should be avoided. In exceptional circumstance where this is unavoidable, expert advice must be sought to ensure that a suitable engineering design which takes into account all the relevant safety and environmental risk factors, including mine gas and mine-water. Your attention is drawn to the Coal Authority Policy in relation to new development and mine entries available at:

www.gov.uk/government/publications/building-on-or-within-the-influencing-distance-of-mine-entries

Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires a Coal Authority Permit. Such activities could include site investigation boreholes, excavations for foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Failure to obtain a Coal Authority Permit for such activities is trespass, with the potential for court action.

If any coal mining features are unexpectedly encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848. Further information is available on the Coal Authority website at:

www.gov.uk/government/organisations/the-coal-authority

Informative Note valid from 1st January 2021 until 31st December 2022