

REVIEW DECISION NOTICE

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

Application for Review by Mr Stuart McLean of Flat 3, 8 Quality Street, North Berwick decision to refuse Planning Permission for a change of use of a residential flat to a short term holiday let (retrospective) at Flat 3, 8 Quality Street, North Berwick.

Site Address: Flat 3, 8 Quality Street, North Berwick

Application Ref: 22/001161/P

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

Date of Review Decision Notice: 20 March 2023

Decision

The ELLRB unanimously agreed to dismiss the appeal and to refuse planning permission for a change of use of a residential flat to a short term holiday let (retrospective) at Flat 3, 8 Quality Street, North Berwick 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 Planning Permission was considered by the ELLRB, at a meeting held on Thursday, 16 March 2023. The Review Body was constituted by Councillor D Collins (Chair), Councillor A Forrest, and Councillor N Gilbert. All three members of the ELLRB had attended a site visit accompanied by the Planning Adviser in respect of this application prior to the meeting.

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

Mr L Taylor, Planning Adviser to the LRB
Mr C Grilli, Legal Adviser/Clerk to the LRB
Ms R Crichton, Clerk

2. Proposal

2.1. The planning application is for review of decision to refuse Planning Permission for a change of use of a residential flat to a short term holiday let at Flat 3, 8 Quality Street, North Berwick.

2.2. The planning application was registered on 18 October 2022 and the Decision Notice refusing the application is dated 2 December 2022.

2.3. The condition and the reason for the condition is more particularly set out in full in the said Decision Notice dated 2 December 2022. The reasons for refusal are set out as follows:

- 1 *The holiday let use of the flatted property is incompatible with and harmful to the amenity of the occupiers of the properties within the residential building of 8 Quality Street, North Berwick and as such is contrary to Policy RCA1 of the adopted East Lothian Local Development Plan 2018.*

2.4. The notice of review is dated 16 December 2022

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="389 674 539 703">Drawing No.</th> <th data-bbox="687 674 837 703">Revision No.</th> <th data-bbox="1027 674 1206 703">Date Received</th> </tr> </thead> <tbody> <tr> <td data-bbox="389 734 491 763">DWG 01</td> <td data-bbox="740 734 751 763">-</td> <td data-bbox="1027 734 1161 763">18.10.2022</td> </tr> <tr> <td data-bbox="389 766 491 795">DWG 02</td> <td data-bbox="740 766 751 795">-</td> <td data-bbox="1027 766 1161 795">18.10.2022</td> </tr> <tr> <td data-bbox="389 797 491 826">DWG 03</td> <td data-bbox="740 797 751 826">-</td> <td data-bbox="1027 797 1161 826">18.10.2022</td> </tr> </tbody> </table>	Drawing No.	Revision No.	Date Received	DWG 01	-	18.10.2022	DWG 02	-	18.10.2022	DWG 03	-	18.10.2022
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DWG 01	-	18.10.2022											
DWG 02	-	18.10.2022											
DWG 03	-	18.10.2022											
ii.	The Application for planning permission registered on 18 October 2022												
iii.	The Appointed Officer's Submission												
iv.	<p>Policies of the adopted East Lothian Local Development Plan 2018 relevant to the determination of the application:</p> <ul style="list-style-type: none"> - RCA1 (Residential Character and Amenity) - CH2 (Development Affecting Conservation Areas); - T1 (Development Location and Accessibility); and - T2 (General Transport Impact). <p>In addition the following provisions are also relevant to the determination of the application, namely:-</p> <ul style="list-style-type: none"> - National Planning Framework 4 (NPF4) Policy 30 (Tourism); and 												
v.	Notice of Review dated 16 December 2022 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 advised that that the appeal related to a review against refusal of planning permission for application no. 22/01161/P for a change of use of a residential flat to a short term holiday let at Flat 3, 8 Quality Street, North Berwick. He advised that at the time of decision, the Development Plan for East Lothian comprised the South East Scotland Strategic Development Plan 2013 and the Local Development Plan 2018, but since this time there had been a material change in circumstances regarding applicable planning policy. The National Planning Framework 4 (NPF4) for Scotland came into effect when it was adopted on the 13th February 2023, and the development plan for East Lothian now comprised the NPF4 together with the existing Local Development Plan 2018.

Relevant to the determination of this application was NPF4 Policy 30 on Tourism, and Local Development Plan Policies RCA1, CH2, T1, and T2 remained applicable.

He provided an overview of the area, and advised that the flat was located within the town centre and conservation area of North Berwick, with a mixture of commercial premises and residential flats in the vicinity, and a car park to the rear of the building. The property was on the first floor of a three-storey unlisted building, with access via a communal entrance from Melbourne Street. The accommodation was proposed to comprise one bedroom, a kitchen, and a living room, with access to a ground floor store. He noted the Planning Officer's report of handling in which they stated that the flat was within an RCA1 area, and the principal material consideration for determining the application was the impact of the short term holiday let on the amenity of occupants of the existing residential properties within the building.

Turning to the consultation process, the Planning Adviser noted that the Roads Team, Antisocial Behaviour Team, and Police Scotland made no objection. The Senior Environmental Health Officer advised that the potential for impact on amenity resulting from a short term holiday let was different to that of a residential property, however they also advised that it could not be assumed that the holiday let use would generate issues and therefore it was not appropriate to seek to condition aspects of the proposal. He noted that two external representations had been received, with concerns regarding: the incompatibility of a short term let operating within a residential block; the shared communal entrance, stairwell and bin store, with noise being likely; expensive equipment being stored in the communal hallway and issues of security; and the management of recycling and waste from guests. North Berwick Community Council also objected to the application due to the communal entrance.

The Planning Adviser summarised the Planning Case Officer's assessment of the application, which had concluded that there would be a detrimental impact of the short term holiday let on the amenity of existing residential properties due to: the frequency of guests changing the comings and goings both in the flat itself and the communal areas; guests often having luggage meaning a level of noise and disturbance would be likely; there being additional activity associated with the cleaning of the property, including recycling and waste, not typical with residential use; and guests would have access to communal areas which would change the actual and perceived security.

He noted that planning permission had been refused with the reasons for refusal being contrary to Policy RCA1 and the LDP 2018. Due to the material change in planning policy, further consultation with the council's Economic Development Team and Housing Strategy Team was carried out. The Economic Development Team acknowledged the benefits for short term lets to the economy and tourism sector and supported the application. The Housing Strategy Team objected to the proposal due to the incompatibility with the amenity of existing residential properties, and in relation to the housing market where they stated that the property would be better providing longer term rental accommodation. The Planning Officer confirmed in response to these comments that the local economic benefits of the short term let did not outweigh the potential impact of the amenity of existing residential properties and therefore concluded that the original refusal should be upheld.

The Planning Adviser then turned to the applicant's appeal submission which had listed the following reasons for appeal:

- The incompatibility of a short term let with residential not being an issue as had operated as holiday let since 2005, before applicant acquired it. The property sat within a mixed block, and there had been no complaints from neighbours;
- The applicants maintained the property to a high standard and actively worked with other owner/occupiers regarding upkeep and improvement of communal areas;
- Guests could take advantage of the many facilities within North Berwick, and the owners actively promoted use of local businesses;
- Short term let holiday accommodation could be expected in the town centre, with a number of other short term lets operating in the mainly flatted accommodation in the area, therefore having limited impact on the housing stock;
- Noise and disturbance was not likely as has been stated in the Planning Officer's report, as owners had strict guest criteria (including no dogs, smokers, or children under 5) and were able to vet guests prior to staying. There had been no complaints or issues raised with owners, community representatives, or Police Scotland;
- There was a self-check-in service for guests;
- Owners lived locally and were able to manage the property effectively including managing waste and recycling;
- There was a store available for guests for large luggage or equipment;
- The equipment stored in communal hallways was against health & safety and fire regulations;
- Guests coming and going may be less than that of residents, as tourists were usually out and about exploring the town; and
- Concern over pre-determination of short term let applications.

4.3. The Planning Adviser and Legal Adviser responded to questions from Members.

4.4. The Chair asked her 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 agreed with the Planning Officer's decision to refuse the application, as he believed operation of the short term let would affect the amenity of the current residents.
- 4.6. Councillor Forrest was also minded to uphold the Planning Officer's decision. He felt that use of the stairwell and store by guests would lead to disturbance of current residents.
- 4.7. The Chair agreed that the positioning of the store was awkward and use by guests would affect the amenity of other residents and was minded to uphold the Planning Officer's decision.

Accordingly, the ELLRB unanimously decided to refuse the appeal for the reasons more particularly set out in the Planning Officer's Report.

Planning Permission 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.