



**MINUTES OF THE MEETING OF THE
LOCAL REVIEW BODY**

**THURSDAY 16 MARCH 2023
VIA THE DIGITAL MEETINGS SYSTEM**

Committee Members Present:

Councillor D Collins (Chair)
Councillor A Forrest
Councillor N Gilbert

Advisers to the Local Review Body:

Mr C Grilli, Legal Adviser to the LRB
Mr L Taylor, Planning Adviser to the LRB

Other attendees:

Ms P Gray, Communications Adviser

Clerk:

Ms B Crichton, Committees Officer

Apologies:

None

Declarations of Interest

None

The Legal Adviser outlined the procedure for the Local Review Body to reach a decision on the planning application before it. He also asked the Members to confirm that they had viewed all of the documentation which had been available to the Planning Case Officer during their consideration of the application. All members did so.

The Legal Adviser then invited nominations to chair the meeting. Councillors Gilbert and Forrest indicated that they would be content for Councillor Collins to chair the Local Review Body (LRB) on this occasion.

1. PLANNING APPLICATION NO. 22/01161/P: CHANGE OF USE OF FLAT TO SHORT TERM HOLIDAY LET (RETROSPECTIVE), FLAT 3, 8 QUALITY STREET, NORTH BERWICK EH39 4HP

The Chair invited the Planning Adviser, who had had no involvement in the original decision, to present a summary of the planning policy considerations in this case.

The Planning Adviser advised Members 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 13 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.

The Planning Adviser and Legal Adviser responded to questions from Members. Responding to a question from Councillor Gilbert, the Legal Adviser said that NPF3

had no direct reference to tourism as a consideration. Under NPF4, from a planning perspective tourism now had a slightly higher weighting and standing as a consideration, and proposals within NPF4 could be seen as material considerations in coming to a determination if Members felt they outweighed the reasons for refusal. Responding to questions from Councillor Collins, he advised that a list was being compiled of the short term lets in the area through the planning and licensing regimes. However, the requirement to apply for a licence for a short term let had been delayed until 1 October 2023, and therefore the list may not be complete. Officers did not have information to indicate how often the property was let out.

Councillor Collins asked whether there would be a need to apply for planning permission for a change of use if, as was stated by the appellant, it had been used as a holiday let for more than ten years. Mr Grilli advised its continuous use as a holiday let for more than ten years would have to be evidenced; if this could be evidenced, the applicants could apply for a Certificate of Lawfulness, as an operation running for over ten years had a presumption that planning permission had been granted. The applicant had submitted application for determination, and the Planning Adviser said he was not aware of an application having been made for a Certificate of Lawfulness.

The Chair asked her colleagues to confirm that they had attended the site visit and if they were satisfied that they had sufficient information before them to determine the application. They confirmed this to be the case.

The Chair then invited Members to give their views on the application.

Councillor Gilbert agreed with the officer decision to refuse the application, as he believed operation of the short term let would affect the amenity of the current residents.

Councillor Forrest would also vote to uphold the officer refusal. He felt that use of the stairwell and store by guests would lead to disturbance of current residents.

Councillor Collins agreed that the positioning of the store was awkward and use by guests would affect the amenity of other residents.

The Convener then moved to a roll call vote, and Members unanimously confirmed their vote to support the officer decision to refuse planning permission.

Decision

The ELLRB agreed unanimously to refuse planning permission for the reasons set out above and in the original decision notice.

Signed

Councillor Donna Collins
Chair of Local Review Body (Planning)