


31 Douglas Marches  
North Berwick  
EH39 5LZ



Clerk to the Local Review Body,  
Committee Team,  
Communications and Democratic Services,  
John Muir House, Haddington,  
East Lothian EH41 3HA.

4-September-2023

App No. 23/00472/P

Dear Sir,

Re: App No. 23/00472/P: Change of use of flat to short term holiday let (Retrospective) at 4 Bramerton Court 27  
Dirleton Avenue North Berwick EH39 4BE: refused

It is my belief that the council has treated my application unfairly and I give notice that I desire a proper review of the decision. You will find a detailed response to the decision and the reasoning provided by the planning department which I received on August 4<sup>th</sup> 2023. In summary my reasons are:

1. The planning department have yet to explain why my permission valid in 2015 has been rescinded without proper notification or discussion
2. The reasoning given to deny permission are vague, general and presumptive. We are promised that our applications will be treated individually and on their merits. There is clear evidence that this is not the case.
3. There is clear evidence that my submission has not been properly assessed. Points are raised which were explained in the original submission
4. Issues are raised which are not in the purview of the applicant and which clearly identify failings at council level for which I am being held to account
5. Having operated with the full permission of the council for over 9 years without comment and complaint the council has failed to provide any evidence to support their presumptive arguments that my visitors are a nuisance. This is manifestly unfair.
6. The council has not taken into account the unique nature of my relationship with the property and residents. Indeed evidence is provide which shows the residents remain unconcerned about the fact that the property is being used as a short term let/family holiday destination
7. While the council provides a one paragraph decision, the case used to come to this decision is full of inaccuracies, contradictions and spurious comments. It is clear from the document that there is significant support for my application but that this is dismissed without comment. The judgement is therefore not balanced.

To assist the review I have created a point-by-point argument such that my responses to each of the comments made can be clearly seen – the points raised by the council are in italics.

I look forward to your response.

Yours Sincerely

Dr John Reglinski



**App No. 23/00472/P: John Reglinski**

**Change of use of flat to short term holiday let at 4 Bramerton Court 27 Dirleton Ave North Berwick EH39 4BE**

For the reasons given in the covering letter, it is my belief that the council has treated my application unfairly and I give notice that I desire a proper review of the decision. I have employed the reasoning and the decision provided by the planning department (in italics) as headers followed by my detailed response in plain text.

**Issues with the REPORT OF HANDLING**

**PROPOSAL**

***Point RH1.*** *Planning permission is retrospectively sought for the change of use of the residential first floor flat of 4 Bramerton Court, 27 Dirleton Avenue, North Berwick as a two bedroom unit of short term self-catering holiday let accommodation.*

For the reasons given below (**RH3**) and in my telephone conversation with the planning department (Mon 7<sup>th</sup> Aug) I consistently disagree that there is a need for a planning application here and even if there were that this should be not be classed as a retrospective planning application.

***Point RH2*** *No alterations have been undertaken to the flat, either internally or externally, to facilitate the retrospective change of use.*

This phrasing of this statement is biased against the application. Apart from ensuring that the property is safe (fire, electrics) and up to standard no alterations are needed or desired.

***Point RH3*** *Proposal Change of use of flat to short term holiday*

*Subsequent to the registration of this application the applicant has confirmed in writing that (i) the flat has been marketed/used for short term lets since 1st April 2015; (ii) the minimum length of stay is 3 nights and the most common length of stay is 7 nights; (iii) the maximum number of visitors in one booking is 4 guests; (iv) cleaning takes place after each stay; (v) the property is managed by North Berwick Holiday Homes and guests can either collect/return keys from their office or use the key safe; (vi) there are 6 flats within the building (2 flats per floor) and that the flat, the subject of this retrospective planning application, is accessed via a shared front entrance door and communal stairwell; and (vii) the flat benefits from a private parking space and otherwise there is off-street parking nearby.*

All the above is correct. However, what is constantly ignored by the council is that indeed the property entered the letting market on April 1<sup>st</sup> 2015 **BUT with the full permission of the council.** The council consistently fails to acknowledge or take into consideration that the proper channels at the time were followed. In April 2015 a request was made to council for permission to let the property. Care was taken to ask if I had complied with all the necessary processes and I was told I had. Once this was all agreed the property was transferred to business rates (Acc No 308742743) on April 1<sup>st</sup> 2015. The description of the property was changed from dwelling to short term let on the valuation notice (ref 420B698AE4). Neither of these changes could have happened without the

permission or knowledge of the council and it is unacceptable that throughout this process the council has not addressed these facts **i.e permission is in place**. Crucially during my request in 2015 I asked if there was anything else I should do and the answer was NO. It must be accepted that I was dealing with an officer of the council and I took him at his word and that the information being given was correct and final. If he was not in a position to make such an assurance he should have referred me to someone who could. There is a failure at council level here for which I am not responsible.

Thus, it is my opinion that the council agreed to the transfer of this property into the short term letting market and I have documents (business rates, valuation) to support this view. What evidence does the council hold to refute this claim?

### **Issues with the DEVELOPMENT PLAN**

**Point DP1.** *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*

*Policies 7 (Historic assets and places), 13 (Sustainable transport) and 30 (Tourism) of NPF4 are relevant to the determination of this application. Policies RCA1 (Residential Character and Amenity), CH2 (Development Affecting Conservation Areas), T1 (Development Location and Accessibility) and T2 (General Transport Impact) of the adopted East Lothian Local Development Plan 2018 are relevant to the determination of this application. Material to the determination of the application is Section 64 of the Planning (Listed Buildings*

Irrespective of how the council views my opinion on whether permission to let was agreed or not (see above), for completeness I will respond to issues and comments under NPF4. Responding to these points in no way suggest that I do not believe I have permission to let.

The only section identified as an issue the summary judgment was section 30. It is notable that the community council did not make a negative comment on this point.

NPF4 was introduced three years after this property entered the letting market. On reading NPF4 I see no mandate which allows the council to retrospectively apply section 30 to this application. I cannot find any mention which allows the backdating NPF4. Indeed the comment made below at **PA3** places doubt on the applicability of NPF4 to this application

**PA3** *The adopted East Lothian Local Development Plan 2018 does not contain a specific policy on the change of use of flats to holiday lets.*

There are clear rules by which new legislation and changes to legislation can be applied. Legislation introduced on a specific date applies from that date forward and does NOT normally extend to periods prior to its introduction without consultation with the partner. Specifically as policy 30 only became active in 2018 the council does not have the right to unilaterally rescind an agreement such as ours which was made in 2015.

When it is necessary to alter legislation (such as the need for a letting licence) which applies to existing partners the council is duty bound to contact the partners. And I quote

*“Businesses have little control over changes in legislation. They should, however, be notified of any changes in legislation before those changes are implemented”*

NPF4 was introduced after I started our business and as such if my business contravened policy 30 in 2018 and the council had an issue with me continuing to trade the council was duty bound to contact me at that time. I received nothing from the council about the impact of NPF4 on my activities and as such I am correct in believing that the council did not want to alter our relationship.

I would add that I had recent contact with valuation board in Edinburgh who, said that he was obliged to inform me of an upcoming change in legislation. The gentleman checked my contact details and then sent me out an advisory. You should note that if policy 30 under NPF4 applied to my business a similar missive should have been received in 2018. Furthermore the above clearly shows that the local authority follows the protocol quoted above. My property is/was listed on the valuation role as a short term let and the council cannot deny that my activity and contact details were available to them. That no contact was made with me regarding NPF4 implies the council was/is happy with the property being let

You will find further comments around NPF4, but from the above it is clear that NPF4 does not apply to this application and as such it unacceptable for you to use any part of it as ground for refusal.

We would all agree that the short term letting market is in turmoil and is currently a highly charged environment. I have been trading since 2015 well before the inception of NPF4. I accept the council is under pressure and as such I would prefer to work with the council in resolving the issues with this application. Consequently from this point forward I will provide a detailed response to the refusal in a manner keeping with a denied planning application.

But the council has to accept that the above (RH1-RH3 & DP1) raises serious issues regarding the records at the council and how the council is dealing with my application for a licence. We have gone beyond the point where the council has the right to just say no. Throughout this process I have provided detailed queries, explanations and paperwork to support my claim. At every step the council has defaulted when asked to confront the fact they did give permission to let. If the above is wrong I require a detailed explanation why I am wrong: crucially an argument that would satisfy a neutral third party.

### *CR Comments on the representation*

#### **Op: Opening remarks**

The comments below indicate that the person or persons giving comment just do not like the fact that properties are used for short term lets. This is their prerogative. There are many things happening in and around East Lothian that I am not happy about. However, it is not clear if these comments come from a single person or are an amalgamation of comments. For ease I am going to respond to the comments (i)-(xi) as if they were delivered by a single person

Does the person commenting in this section hold the view that there should be no short term lets in North Berwick? I doubt it and from what the council reports in this document (see (vi) below) it sees

this as an important area for commercial growth. As such, I think everyone would agree that there has to be a suite of properties in the short term letting market in the North Berwick area.

I have been operating for nearly a decade without comment or complaint. We are not new to the letting market and all I am asking is to continue operation. Thus the question at the heart of this is: should my property be allowed to be included in the cohort of properties in the short term letting market or not. I am an individual and I am making an application on its own merits. I am not concerned with the wider debate. Thus, during this part of the application process I expected questions and comments specific to my planning application. This seems not to be the case and I think it is unfair to refuse planning consent based on a suite of general objections some of which are very vague especially in a heated discussion about short term lets in the media etc. Fairness must not be sacrificed to satisfy a vocal cohort.

There is evidence of over generalisation in the questions below which create the view that I am personally responsible for issues relating to the short term market. Again this is highly unfair. Also I spent a significant amount of time on the application and as such it is not unreasonable to expect the respondents to read (see below) the documentation and make comments specific to my application rather expand into general complaints which is generating some heat in many areas.

#### **REPRESENTATION**

*The main grounds of objection are:*

*(i) the short term holiday let sector has given rise to unwelcome impacts upon neighbours and has had a serious adverse effect upon the housing market;*

This is an example of the generalisation I discussed above. The property has been in the letting market for nearly a decade **with permission of the council**. This is time enough for me to demand that respondent provide evidence to support the accusation that during this period my activities **specifically at flat 4** have led to “unwelcome impacts on the neighbours”. The tenor of the comment suggests that by now an incident of this nature should have occurred and it hasn’t.

It is appropriate to quote the Council's Antisocial Behaviour Team and police Scotland who indicate there have been no such events in nearly 10 years....

*“advise that they have had no records of any incidents relating to any antisocial behaviour matters at this address and thus they raise no objection to this retrospective planning application.*

*Police Scotland advise that there have been no police incidents at this address and thus they raise no objection to this retrospective planning application.*

The impression given by the respondent is that all residents are angels and all visitors are antisocial. This opinion cannot be sustained. We occupied the property in 2015. To my knowledge since then the police have been called to mediate in a heated public parking dispute [REDACTED]. The animosity between these groups prevails to this day and it is pertinent to point out that they would not talk to each other when repairs to the common access were needed. Both asked me to mediate. In the belief that this

message is “in confidence” at this stage I have attached two e-mails from that period to the foot of this document to prove my point. I would ask that these be redacted if you are circulating this document. The emails hint at other issue to which I am not party but are actually relevant to my point that all neighbours are not saints living in blissful harmony

There was also significant disruption [REDACTED]  
[REDACTED]  
[REDACTED] For different reasons the tenant has now departed.

My point here is that in the everyday living, disputes arise between residents too. These are just two that I am privy to. Over the same time period (9 years) no complaints (NONE) have been made about my activities at flat 4. You will see below that we have had response form a neighbour [REDACTED]. He **has not** mention point (i) as a serious issue and as such it can be demonstrated that our record is clean. We have effectively served a 9 year probationary period which is sufficient to convince any fair person that there is no “unwelcome impacts on the neighbours” and as such this **comment (i) has no relevance**. Having had an unblemished record for so long should at least afford me the right to a licence. I would however happily agree to a stipulation that action would be taken if visitors cause a disturbance.

*(ii) the housing stock for long term lets has been reduced and properties are increasingly being bought for investment purposes rather than as homes;*

Again this is another example of over generalisation and I refer to my comment about NPF4 (DP1 above). The question is phrased in the past tense and as such the key moment in the discussion about flat 4 is April 2015.

The property was purchased in 2015. At this time the housing stock was increasing at a rapid rate. Ferrygate was under construction as was West mains Farm. Dandara had just been approved. “Affordable” housing was being built. There were over 300 homes being constructed in North Berwick. As such at the exact moment the council allowed my property to enter the letting market the stock was not being reduced but was increasing massively – when **the council allowed Flat 4 to be reassigned to letting** it made absolutely **no impact** on the housing situation. Curiously, if I am not mistaken there were complaints about the number of houses being built at the time!!! Such is the fickle nature of the public. If anything the housing market was quite depressed from 2014 to 2017 while these estates were being built. Furthermore the uptake of the quota of “affordable housing” included in the planning of the developments performed poorly and a number of properties were acquired by the council to ensure they were occupied. As such the council housing stock also increased during this period. The view that there was insufficient accommodation around 2015 is false. The assertion that holding Flat 4 as a holiday let prevented anyone from obtaining a home in 2015 is false.

Thus it can be shown that moving the property to short term letting in 2015 had no impact on the market. It is unfair to map the circumstance and agreements made under rules agreed in 2015 onto the situation in 2023. The property has not been in the housing stock for quite some time and it cannot be regarded as contributing to the current situation. Indeed the question is phrased in the past tense and as such the key moment in the discussion about flat 4 is April 2015.

Finally here. In the documentation supplied I explained in detail how we came to buy the property. It is obvious that the respondent has not read the documentation or has chosen to ignore it as the throwaway line about investment may apply elsewhere, to other applicants, but does not apply here. Flat 4 was bought outright in 2015 in anticipation of my retirement which occurred in 2016. We moved to north Berwick on a permanent basis in 2017. The property market in North Berwick is active and having the second home allowed us time to search for an appropriate house, realise our capital and be in a position to buy a permanent home, significantly in the town. In the end we needed to use the property ourselves as there was a gap between the sale of our Glasgow home and the availability of our NB home. We needed the property again in 2018 when my young son returned from an ex-pat position in the USA and it is likely that we might need it again if my elder son accepts an ex-pat position in India. We have an old Chinese friend (UK passport holder) from our student days living in Hong Kong considering exiting the province and we have offered his family the property should they become temporarily homeless.

I would concede that final result of our move is that Flat 4 is now also an investment. But is that a crime? **Significantly it is not a buy to let** (something I object to) and it is not let for the whole year. Critical to this argument: I am not an absent investor who lives outside east Lothian. I am a resident of the town, I am active in the town volunteering and like the respondent I want the town to thrive. We make good use of the flat ourselves and are routinely around the property doing gardening or arranging remedial work with the other residents. I am the treasurer of the blocks finances (Appendix 2) and although I do not live at the premises I have position of responsibility within the residents and owners and they have my contact details. Is this the behaviour of a callous, indifferent investor?

*(iii) house prices for small town centre properties have increased making it very difficult for lower income locals, especially the young, to afford property in the town and the housing market has become less diverse;*

This is another example of over generalisation. It is also a similar question to those above but with some judicial rephrasing. The respondent is trying to give the impression that there are multiple objections by asking the same question using a different approach.

Again any answer to this question has to be viewed through the prism of what was happening during 2015-2017. When we bought the property these was more affordable houses than ever. My purchasing the property and using it for short term lets did not affect the market. There was a surplus of houses to buy. Indeed the property was bought for an agreed price without any bidding as there was little interest in it. That there was no competition for it at sale is clear evidence that no third party was disadvantaged. Shortly after we purchased the house the tenant in No 2 gave up his tenancy and move to a council property on the Ferrygate estate. Further evidence that there was a surplus of accommodation at the time.

As an aside here. I now live on the Walker estate (old west mains farm). I believe that there are almost 300 houses here. On my street there are **ONLY** two couples who hail from North Berwick. I am unusual in that I originate from Portobello and have retired back to the east coast. Most of my neighbours are incomers (I like to think I am returner). If there were issues with housing stock in 2016-2018 why were the new builds allowed to sell to people from outside east Lothian. These

houses did not go to locals either – my first neighbour was from Norfolk! My point here is that if I were to sell there is no guarantee that a north Berwick resident will be the successful bidder. Indeed there is no evidence to suggest that the holiday homes being sold are being bought by locals and the underlying theme of this question – controlling the housing market – is out with the gift of the council. The answer to this will become evident soon, but I would suggest that the grey pound i.e. people retiring to North Berwick will have the capacity to purchase houses released from the letting market and the youth and low income residents will still find accommodation unaffordable. The council takes every opportunity to promote North Berwick as a destination and a consequence of this, is problem raised here.

What has happened around the new estates (Walker, Cala, Cruden, etc) i.e. that the new properties built between 2015 and 2020 were bought by incomers to East Lothian, shows that despite the laudable wishes being expressed in all these comments about the housing stock, without rent control or affirmative action regarding sales/letting the council is powerless to control the housing market. Long ago the council stopped being the sole and main source of rental properties. We all agree that this was a mistake. Relying on private people like me (investors incidentally – *pace* point (ii)) to provide rental accommodation is also a problem because I can't guarantee that if the property entered that market that it would be let to the groups under discussion. The law applies to me too and it would be illegal to say "locals only". To be honest the council needs to work with the Scottish government to come up with a stock of house which it can control, not make it look like private citizens are the main problem.

*(iv) the reduction of affordable letting premises is a considerable problem within certain employment sectors and for temporary staff;*

Another example of the generalisation. Again a same question just rephrased. The respondent is trying to give the impression that there are multiple objections by asking the same question using a different approach. Youth has been replaced here by temporary workers

What I have written in (iii) applies here except for temporary workers.

Unless the council is going to institute some form of rent control in North Berwick and interfere in letting conditions of long lets (deposits and length of lease) it is powerless to alter the issues around this problem for what it describes as "certain employment sectors". I would also point out that to accurately reply to this comment one has to first be told what "certain employment sectors" are. In an official document such as this questions and comments should not be as vague as this and this is an example of unfairness in the process.

As for temporary workers. My property has been let to temporary workers in the past and remains available to them (a reasonable cheaper rate is offered for this). In the past it has been used by employees of EDF while they inspected Torness. It would seem that the short term letting market is, contrary to the implications of point (iv), a go-to sector when temporary workers are in East Lothian and staying for a period of a few months. North Berwick Holiday homes have already negotiate a seven week let under this auspices for next year which is now under threat. The short term letting market is an ideal place to find a place to stay at a reasonable price which significantly does not require a lease or deposit and the council acknowledges this. Properties such as mine are of real



value to companies doing business in east Lothian and I quote the Council's Economic Development Service Manager response to my application

*there is an increasing number of overnight stays in East Lothian for work purposes (which is expected to increase over the next 10-15 years) such that the loss of short term accommodation is likely to have a significant negative impact on the local tourist economy in monetary and reputational terms.*

This is an example of a point being raised by the respondent as an objection believing it is criticism when in fact it is an example of the worth of the short term letting market to the industrial economy of East Lothian a comment which is confirmed by the planning authority's response

*(v) short term lets and second homes are not principal residences and every short term let property reduces the housing stock;*

Another example of generalisation. It the same question as above but just rephrased. Again the respondent is trying to give the impression that there are multiple objections by asking the same question using a different approach

I have made numerous replies to similar questions above and the history behind my activities. As with all regulations and licences changes can be made. BUT in arena such as this it is not fair to do it retrospectively. It is evident that the council is in some difficulty over short lets and it seems reasonable for those of in the market with unblemished records to continue trading and for new entrants to the arena to be judge by newer rules. This would be the fair option and would meet the council's obligations under the new rules. Furthermore, I would not be adverse to the council placing a restriction on my property such that it can only be sold as a dwelling and not a business. This would mean that the property would revert to a residence in a few years (I am 67). This would satisfy the criticism above to all involved.

*(vi) comments on previous applications for short term lets made by ELC Economic Development Services have been flawed as they have been based on national tourist survey data that is out of date;*

I do not see the relevance of this comment to my application. The respondent is again making a general comment. This is an issue that respondent needs to take up with the council as I am powerless to make policy.

It is fair that individuals remain anonymous but it can create issues. Is the person making this comment just a member of the public who has access to anecdotal information or is (s)he a member of a profession or pressure group with key knowledge. You have not informed me which makes this an unfair question and as such I must defer to the council documents which are supportive and which state.

- (i) the property will provide high quality tourist accommodation attracting visitors to North Berwick and the surrounding area providing economic benefit;*
- (ii) there is a demonstrable economic benefit to having a wide range of accommodation types in East Lothian with the tourism sector contribution £155m to the local economy in 2021 and supporting 10% of the workforce;*

- (iii) *non-serviced accommodation (short term holiday lets) contribute positively to the local economy (£279m in 2019) and the applicant's flat accounts for 4 bedspaces and a potential annual economic impact of £89,000 and 2FTE jobs;*
- (iv) *there is an increasing number of overnight stays in East Lothian for work purposes (which is expected to increase over the next 10-15 years) such that the loss of short term accommodation is likely to have a significant negative impact on the local tourist economy in monetary and reputational terms.*

It concludes by saying

*Therefore, the Council's Economic Development Service Manger supports this planning application stating that the change of use of the flat to short term holiday let accommodation supports the strategic goals and objectives of the Economic Development Strategy 2012-2022 and the intent and outcomes of part e) of Policy 30 of NPF4.*

I see this as strong and fulsome rebuttal to a somewhat vague comment which simply says it disagrees with the council without giving any supporting information.

.

*(vii) the tourism survey data grossly overstated the positive impact of STLs while taking no account of the negative impact of the loss of housing and permanent residents and thus there can be no demonstrable evidence that the economic case for STLs outweighs the requirement for local housing;*

Again this is basically point (vi) repeated with a little of points (ii)-(iv). Again I would argue this is another issue that respondent needs to take up with the council as I am powerless to make policy. I do not see how this is a pertinent objection to my application. Where is the specific question or point regarding specifically to flat 4. How am I, an individual, able to settle this disagreement.

Again I would defer to the council who state

- (i) *the property will provide high quality tourist accommodation attracting visitors to North Berwick and the surrounding area providing economic benefit;*
- (ii) *there is a demonstrable economic benefit to having a wide range of accommodation types in East Lothian with the tourism sector contribution £155m to the local economy in 2021 and supporting 10% of the workforce;*
- (iii) *non-serviced accommodation (short term holiday lets) contribute positively to the local economy (£279m in 2019) and the applicant's flat accounts for 4 bedspaces and a potential annual economic impact of £89,000 and 2FTE jobs;*

In the absence of any supporting information from the respondent one has to accept that the councils view is more convincing and that this comment is irrelevant to MY application.

*(viii) there are concerns and issues relating to the loss of this two bedroomed property from the housing stock - this is a quiet residential area within the town where disturbance, anxiety, annoyance, reduced security and disruption will be caused by increased arrivals and departures for short stay visitors;*

After a short hiatus points (vi) & (vii) we arrive here which is just a rephrasing of question (i) and the amalgamation of (ii) through (v).

The phrasing here is specifically designed to suggest that there is something special about the environs of Direlton avenue which marks it different to other places in North Berwick. I would argue that the entirety of North Berwick is a quiet residential area. This comment applies to almost every part of the town. If this comment is allowed to stand we would have no short term lets.

I repeat. This property was removed from the residential market in 2015 **with the permission of the council**. It cannot be viewed as a loss within the current situation in North Berwick around short term lets. Also in the near decade of operation there is no evidence disturbance, anxiety, annoyance, reduced security and disruption. [REDACTED]

[REDACTED] I also draw your attention to the following phrase (below) which is made by the council

*From PA7 However, it is stated that the Council's Environmental Health Service **cannot assume that antisocial behaviour issues will arise** and thus cannot impose any enforceable conditions to protect the amenity of neighbours.*

Thus this comment has no merit.

As to the increased arrivals and departures of visitors. This is a spurious comment of no validity. I asked if the council had made a site visit and they [REDACTED] said she was unable to say as the case worker was unavailable (that she didn't have access to her charges files is a disgrace). How am I to construct an argument here if the council can't provide the information needed? Access to my property has minimal impact on only one of the residents (my immediate next door neighbour). Again the respondent makes a throwaway comment with no evidence. Aspects of this are addressed in my submission and the nature of this question suggests that the respondent has not read the submission properly. This is extremely disappointing and shows a lack of objectivity and fairness in dealing with an individual request such as mine.

We clearly state that short stays are not encourage (they are made prohibitively expensive). There has been NO one night stays. Thus the disruption alluded to just doesn't occur. The property is a four bed and is in the letting market as a 4 bed. Unless there are children the capacity is not reached and typically we have couples or three golfers. Thus traffic at the site is within the norms expected for the residence.

Is the respondent suggesting that the additional trip up/down the stair at the beginning and end of the let constitutes major disruption? This is nonsense. Significant to this argument is that the property is not excessively popular especially in winter (you have the booking details). For the sake of argument I would gauge that %occupation throughout the year is roughly 75% shared between family (25%) and paying guests (50%). As such I can argue that the occupants of flat 4 use the communal space less than normal residents. The slight increase in activity on the stair once a week are offset by the days that the flat is vacant when no one uses the communal space for weeks. I would argue and the details of the various lets clearly show that flat 4 makes less use of the access than the normal residents.

I will concede that this is an issue in central Edinburgh with year round visitors on extremely short stays. It does not apply to Flat 4. This is a good example of over generalisation when someone sees a problem which they think can be transferred to their argument. It is not relevant to my property and this comment has no real merit.

The hypothetical problems of ingress and egress by visitors is routinely mentioned in the East Lothian courier over the past few months as a reason for refusal – this is becoming a serious point which needs tested. So what metrics exist which give us an informed view of what happens around a communal residence. It's something which is entering folklore and it needs to be challenged/tested by the planning dept. Considering my unblemished record I think it's fair to demand that the council prove this point rather than make unsubstantiated and presumptive comments.

*(ix) there are likely to be issues relating to recycling and bin management commonly associated with the operation of a short term let business and there is likely to be disruption in communal bin storage and recycling areas, driveway/parking and garden areas along with associated noise impacts;*

Again this is a spurious comment of no merit. To be honest I am not sure what point is being made here so I will make some comments.

Visitors are no different to residents some are fastidious in there recycling and others are not. Issue regarding bin management etc apply to both residents and visitors. What evidence is there that the visitors to our property are any different to the residents of North Berwick? It is true that one set of visitors may miss a collection date but that is also true of many residents in north Berwick. Why does the respondent feel is necessary to suggest that again residents are angels and visitors are a nuisance. It is notable that the respondent uses the word likely which has no real definition with the scope of this application. Has it happened yet.... No. I reiterate that the property has been let for nearly a decade and there has yet to be a complaint. I think we have gone beyond likely and are now in territory best described as unlikely

Again I find that I have to complain that the respondent has not read the submission or looked at the drawings (there is a specific directive about bins in the planning documents). The property has a private bin storage area in the car port so there is no issue with storage. If they miss a collection it does not inconvenience anyone as the rubbish is not in a public space. Removing the bins to the street is not an activity restricted to the visitors. The other 5 occupants perform a similar action at least once a week but I doubt they make less noise performing this duty than the visitors. On reflection this point has the feeling of desperation as it really makes no sense. Alternatively it shows that the planning department have been negligent in their assessment.

*(x) this application is for another holiday home to be used to make money with no regard to the neighbours and the objector questions what measures are in place to ensure that neighbours will not be disturbed; and*

I find this remark little offensive. I appreciate that the respondent has the right to remain anonymous. But that does not give them the right to make factually incorrect remarks which question my character. I would point out here that the word "another" is used. This implies that the respondent has commented on other applications and has made other complaints of a similar nature. It's as if they don't care about the merits of an individual application such as mine and are just blanketing the council with the same objection. This I feel runs counter to the rules set down in planning that people should be fair.

The income from the property is very small. The councils asked for and was supplied with the figures by allowing this comment it is clear that my documentation has not been inspected properly. If I wanted to make serious money from the property I would put it into the long term letting market. That way I could avoid paying, agents fees, cleaning bills, business tax, avoid utility bills, avoid paying for annual safety checks etc etc. There is a general opinion that people who operate short term lets are awash with profit. I would not know about the other owners all I can say is that this is not true for us and I supplied financial statements to prove it.

To imply that I have no regard for my neighbours is an insult. The residents of Bramerton Court have full knowledge of me (including contact details), I am on first name terms with them (Appendix 3) and they are aware the flat is let. I always introduce myself to new tenants most recently [REDACTED]. They know it is marketed through north Berwick holiday homes and if there is an issue they can contact them or me. In 9 seasons no problems have arisen. I am treasurer of the communal fund (appendix 2) and I am involved in building maintenance and general works (Appendix 2). I would argue that I have more to do with the block than the tenants [REDACTED] who rent their properties. I am fully engaged with my co-owners and take my responsibilities at the block seriously.

*(xi) if planning permission is to be granted it should be made a condition that HMRC is informed.*

Again I find this remark a little offensive. I appreciate that the respondent has the right to remain anonymous. But that does not give them the right to suggest, even in an oblique way, that I am guilty of tax evasion.

Again my dealings with HMRC were dealt with in my submission, but seem to have gone unread. All taxable funds are declared to HMRC and have been every year since 2015.

There is sense here that, as someone with a small business I do not pay enough into central funds. Maybe there is a point here and I might actually agree. But we pay what is requested to the various authorities and I can do no more under the current arrangements. If the council wants a greater share of our small income from the property all it needs to do is ask by increasing taxes and local levies. I personally think that the licence fee is a good idea. It always seemed to me that apart from the business rates the local authority takes little else from this sector. Indeed while the business rates cover my obligations to the centre and the £300 will cover the admin fees for the license, the council is still not taking any money from me to offset the additional impact of visitors. Others may complain but I want my town to be kept clean and look good and the impact of tourists cannot be underestimated. I routinely pay a ~1+ euro tourist tax when travelling abroad. East Lothian, like all

of the UK does not entertain such tax, but maybe they should ensure that they too get a bit of surplus from the letting market. If you are not prepared to levy a charge on tourists in some way (directly on them or indirectly on me) please don't complain that you are not getting a fair share of my funds

### **Concluding remarks to this section**

The respondent gives the impression that (s)he has made eleven points. But points (ii)-(v) are essentially the same point. I apologise if my responses to these are repetitive but there is usually only one answer to a given question and I felt it important to respond to the points individually. Points (vi) and (vii) are not really pertinent to my application as they do not carry a point that is properly within my purview to answer (I have offered comment). Point (viii) is just an amalgamation of (i) with (ii)-(v)

You can see that I have made strenuous and detail comments on the "eleven" points and I think I have proved beyond any doubt that none of the points raised can be used to prevent planning being approved.

**Representations received from a person.**

It is clear that this is a neighbour. I do not have a problem with this and only mention as it affects the phrasing of my reply. Indeed what is not said is more interesting than what is.

**RP1. Title deeds** That ..... *the title deeds state that "the numbers one to six Bramerton Court shall be used only as private dwelling houses each for the occupation of only one family"*

This is true. I would venture that something similar is in the deeds of every short term. The purpose of a planning application is to get deeds amended or adjusted and this application is in that vein. No doubt the subdivision of large properties into flats, shops into dwellings and vice versa need planning permission and this application is no different. Indeed Bramerton Court would not exist unless someone obtained permission to change the use of the old Bramerton Hotel.

But on this point, if approved, I would prefer that the wording of the deeds NOT be changed and that I am just given an exception: a permission to let. It is my intention that when the property is sold in the years to come (probably to cover our care needs) it is sold as a dwelling not a business. Should the person purchasing the property want to continue letting, let them come to an accommodation with the council for themselves.

*Point 2. "that nothing may be done on the said garden ground, parking areas, carport forecourt and drying area or in the said houses or carports erected or to be erected thereon that may be deemed a nuisance or occasion a disturbance to the co-proprietors or their tenants or assignees or neighbouring proprietors".*

I refer to my points above in that we have been operating a short term let from the property for 9 seasons without comment or complaint. I have proved beyond reasonable doubt (see above) that our visitors are not a nuisance or cause disturbance.

The rules of planning regarding comment and reply are difficult when comments are passed from people identified as being an individual and I will try not to suggest I know who this person is. But, again as mentioned above, there have been issues between the residents [REDACTED]. We have a neighbour who is very quick to complain and is capable of escalation complaints to levels which cause significant harm. Had there been any incidents of visitors causing nuisance or disturbances which required attention they would have complained here. It is thus highly instructive that comments from the neighbour do not mention any events relating to the activities of my visitors **SPECIFICALLY NO MENTION IS MADE OF ISSUES IN THE COMMUNAL SPACE (see objections below)**. The absence of such complaints is further definitive evidence that nothing untoward has happened at the property in the past nine years and we have never given the neighbours cause for complaint.

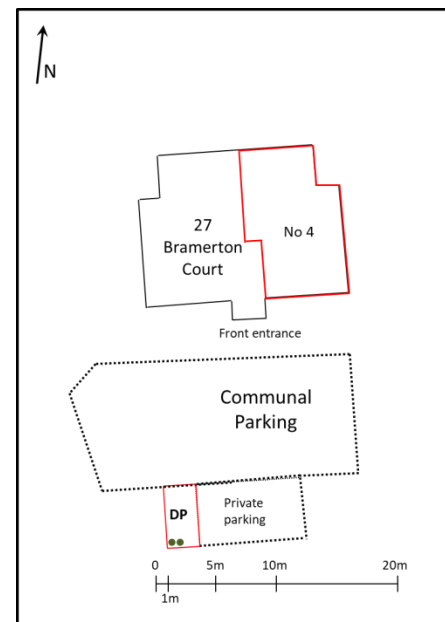
*Point 3 The representor therefore questions the legitimacy of the use of the property as a short term holiday let.*

I would remind the planning board that I approached the council for permission let in 2015 and this was granted. As such it was a legitimate. While I still dispute the need to apply for planning I would argue that the discussion here is important to maintain my legitimacy in the eyes of all parties.

**Point 4.** *although the submitted planning application form indicates that there are 8 parking spaces within the site - there is only six carports associated with the flatted building of number 27 and that the other car ports are owned by numbers 29 and 29A. The representor states that whilst the applicant owns one car port associated with the flatted building of number 27, any on-site parking for residents and visitors is within the common courtyard where there is no designated markings.*

Parking has been a topic of some heat over the years in the block. Indeed it has been reason that the police were called to the property to mediate between [REDACTED]. There was really no reason for this matter to have escalated that far as there is ample parking and allowing my neighbours use of the space when the sons visit is not unreasonable in my opinion.

I have pasted an image of the communal parking area into this document and a copy of a scale diagram in the planning document to help with the discussion.



Key to the argument is the use of the communal parking. From left to right in the picture the ports are allocated to flat 6, flat 5, flat 2 and flat 4 (my property). Thus four spaces in front of the property are allocated to the residents for private use. 29 and 29A own the car ports just out of shot on the right on their property. These are immaterial to the argument. So instead of 6 car ports the respondent mentioned we only have 4 (shown in the planning diagram) which need to be considered. From the scale diagram you can see (based on the width of my car port) that if people park perpendicular to the property there is space for 5-6 cars in front of the building, with it being



possible for one other to be parked parallel to the building on the southern edge of the parking lot. In the image you can just see the tail of car in this much favoured position.

Thus it is clear that Bramerton court has somewhere between 9 to 12 spaces depending on whether people park efficiently (not normally) or as they please. But crucially we have significantly more space than suggested in the comment. You are welcome to visit the site to decide for yourself

Thus the suggestion there is insufficient parking cannot be sustained. Currently [REDACTED] the tenant in [REDACTED] does not own a vehicle so at this juncture there is plenty of space. But obviously this situation may not prevail. If there is any issue with parking it is the fact that the owner of [REDACTED] who stores belongings in his car port and is unable to park his car in the designated area. I have never had an issue or problem with parking and it would seem the other residents feel the same and he has never been challenged over this behaviour. Furthermore his preferred parking position is parallel to the property, thus occupying two parking spaces. Overall he commands **three** parking spaces at the property (1 personal and 2 communal). Again there is never a problem and again he has never been challenged on this either. So while I am happy to explain the parking I would be disappointed if this negative comment is being made by the owner of [REDACTED] as he is a major contributor to the putative parking issues being complaining about.

Finally on this point. I am involved organising repairs to the building and general works and if this is a serious issue I will agree to circulate the block to discuss marking the ground. I am not a liberty to make an assurance on this action myself until the majority agree, but if it is the planning department wish it will be a simple process to arrange a formal layout.

You can see that I have again made detail comments on these points and again I think I have proved beyond any doubt that none of the points raised can be used to prevent planning being approved.

**PLANNING ASSESSMENT (PA)**

The planning assessment contributes three summaries.

Of key importance are the phrases

**PA1** *“The East Lothian Economic Development Strategy 2012-22 identifies tourism as one of the strengths of the East Lothian economy”*

**PA2** *The change of use of the residential flat to a holiday let provides holiday accommodation within North Berwick that attracts visitors and encourages them to stay in East Lothian, which supports the existing long established business and benefits the wider economy of East Lothian.*

**PA3** *The adopted East Lothian Local Development Plan 2018 does not contain a specific policy on the change of use of flats to holiday lets.*

These three statements favour my application. There is support for Flat 4 remaining in the letting market. Why have these been dismissed without reason

**PA4** *The adopted East Lothian Local Development Plan 2018 states that all leisure and tourism related development proposals, including visitor attractions, hotels and holiday accommodation, will be assessed against all relevant Local Development Plan policies.*

This statement would seem to be negative BUT since the property left the residential market in 2015. It cannot be seen as part of a development plan unless it was the councils stated aim in 2018 was to retrospectively change the letting market. The council made no representations to me about short term letting in 2018 and as such my situation is not covered by LDP 2018. Since the debacle around letting is current it has to be accepted that this comment has no bearing on my application.

BUT what I find curious is that just above in the planning refusal (**PA3**) I find this statement made by the planning department specifically about the LDP

*The adopted East Lothian Local Development Plan 2018 does not contain a specific policy on the change of use of flats to holiday lets.*

There seems to be some confusion within the council regarding whether the LDP applies to my application! How am I, as respondent expected to navigate the planning process if the people adjudicating my application do not themselves properly understand the guidelines (or at least give that impression) and create confusion within their own assessment?

**PA5** *Development proposals for the reuse of existing buildings for short term holiday letting will not be supported where the proposal will result in:*

- (i) *An unacceptable impact on local amenity or the character of a neighbourhood or area; or*

Throughout this document I have provided a volume of information and evidence which shows that moving this property into the letting market in 2015 had no impact on local amenities or the character of the neighbourhood and despite the council repeating this phrase in its many forms

none of the respondents have provide a clear example of this. It is also open to debate if NPF4 has retrospective powers embedded in it. You should note that the neighbours were asked for objections and none were returned which could be included under this topic. One has to accept that the views and opinions (or lack of) of the neighbours on this matter must outweigh the presumptive, nebulous opinion of the council. The council has to concede this point.

- (ii) *The loss of residential accommodation where such loss is not outweighed by demonstrable local economic benefits.*

Again I have repeatedly addressed this point. The property left the residential market in 2015 at a time when there was a surplus of accommodation and as such it move into the letting market cannot be considered a loss as it was replaced by more desirable properties. Also **the council agreed to the transfer to letting** confirming that they did not see it as a loss. That they have not been in contact with me to reverse their judgement in 2015 I have to believe that the remain happy with our relationship

**PA6 Policy RCA1 (Residential Character and Amenity) of the adopted East Lothian Local Development Plan 2018 states that the predominantly residential character and amenity of existing or proposed housing areas will be safeguarded from the adverse impacts of uses other than housing. Development incompatible with the residential character and amenity of an area will not be permitted.**

This is a statement from 2018. Again decisions were made on this property in 2015. I note that specifically in this paragraph the “amenity of existing or proposed housing areas will be safeguarded”. But of course in 2015 flat four was in the letting market which means it did not exist in the list of residences alluded to. It is clear from the wording here that the council had no intention of making retrospect decisions on properties already in the letting market. This is further confirmed by the fact that I received no communication from the council in 2018 that my permission to let was in any danger.

Even if accept this point, I would add that we are applying for change of use and not a development. The character of the property will not change. During the past 9 years the use of Flat 4 has not affected the character of the area nor has it affected the ambiance of the residents. Indeed my activities at the property as treasurer of the community fund introduced a certain momentum which led to the exterior re-painting, gardening and driveway repairs. As an owner I have been a positive force in the block. Finally here, the council asked the residents for objections; only one replied and on this point made no references to changes in character or amenity were made. To prove my point I specifically asked the neighbour underneath my property [REDACTED] if she has been affected by my lets and she replied no! (see appendix 3). It is worth pointing out that even the senior environment officer concedes that there is no loss of amenity (see PA8). The objection is unfounded.

**PA7 In the determination of this application it is necessary to assess the impact of the change of use on the amenity of the existing residential properties contained within the residential flatted building to which the applicant's flat forms a part.**

There has been no adverse impact. The property has been in the letting market for 9 seasons with no complaint or comment. Any impact as a result of change of use happened in 2015. The relationship between me and the other owners came to equilibrium many years ago. Thus in relation to the application there will be no on-going change and there will be no impact. If one looks at the comments above from respondents you will find that they are very general. Only the comment on parking which is vigorously disputed makes any reference to my property ( [REDACTED] ) has no issue with my visitors (see appendix 3). Again it is worth pointing out that even the senior environment officer concedes that there is no loss of amenity (see PA87)

As mentioned in the previous comment my involvement with the block can only be seen as positive. I am actively involved in maintenance and act as treasurer of the local community fund (Appendix 2).

**PA8** *The Council's Senior Environmental Health Officer advises that whilst the normal use of a property would not result in loss of amenity to neighbours, the use of properties for short term holiday lets can result in future guests misusing and abusing the property in a manner that is antisocial and can result in a significant impact upon amenity of neighbours. However, it is stated that the Council's Environmental Health Service cannot assume that antisocial behaviour issues will arise and thus cannot impose any enforceable conditions to protect the amenity of neighbours.*

Again the length of time that the property has been in the letting market makes it is possible to respond to the concerns here. I restate that there have been no instance guests misusing and abusing the property in a manner that is antisocial. Indeed I have shown that within the same time frame the permeant residents have created more issues that the visitors [REDACTED]. The council has to concede that when guest behave better than the residents refusal based on this comment is unacceptable. Bear in mind that there are much more long term, lasting implications when relations break down between residents.

The Council's Antisocial Behaviour Team advise that they have had no records of any incidents relating to any antisocial behaviour matters at this address and thus they raise no objection to this retrospective planning application.

Police Scotland advise that there have been no police incidents at this address and thus they raise no objection to this retrospective planning application.

Having been letting for 9 years with an unblemished record the onus is on the council to provide support for their point of view. I have provided a surfeit of information to prove that the point being made is unfounded. That the council is unable to give a single example of a problem over the past nine years means that the balance of this argument lies in my favour.

**PA9** *The applicant's property is a two bedroom flat located at first floor level within the three storey residential flatted building of 27 Dirleton Avenue which contains a total of 6 residential properties (2 flats per floor). The property the subject of this retrospective application shares a communal front entrance door with five other residential properties within the flatted building and an internal communal stair with three other residential properties within the flatted building. The existing hallway serving the applicant's first floor flat also serves one other first floor flat within the building.*

*The use of the application property as a holiday let would enable it to be let out for short stays resulting in a turnover of people over short time periods with a significant proportion of occupants likely to be visitors. Such a regular turnover of users/occupants would change the nature of comings and goings not only to the application property itself but also within the communal entrance, internal stair and hallway of the residential building. Most users/occupants of the holiday let would have a degree of luggage or other property to take through the communal external entrance, internal stair and hallway which in itself would lead to a level of disturbance and nuisance not associated with the permanent/long term residential use of the property which is harmful to the amenity of the occupants of the residential properties within the residential flatted building of Bramerton Court, 27 Dirleton Avenue, North Berwick. It is accepted that permanent residents may also make noise but they tend to keep their luggage in their homes and do not move them with the same frequency as regularly changing guests who arrive and depart sometimes at unsociable hours, and this differs from typical residential circumstances.*

I will concede that this is an issue in central Edinburgh with year round visitors on extremely short stays. It does not apply to Flat 4. This is an example of an argument someone sees which they think can be transferred to their sphere of interest. The problem with this argument is that it is used as an overarching comment without any regard to the exact specific situation being analysed. It is fair to remind the planning department that I am an individual making an individual application and what happens in the wider sector, especially in this regard, does not apply to my application.

In preparation for my response, I asked a [REDACTED] from the planning department if anyone have visited the property. She was unable to say giving a rather evasive excuse of the case workers paternity leave. As the line manager she should have had access to the information and she should have shared this information. She has yet to tell me. This is yet another example of the council lack of transparency and unfairness. She also could not confirm that due public notice had been given about the changes in legislation (see DP1). To this day I am awaiting a message from here identifying where the council advertised the changes. Another example of failure at council level.

I would point out that the planning documents did not require any detailed information on the stairs and as such their knowledge of the situation is poor if the property has not been visited (which I have to assume). The property is accessed from the first floor landing. The residents of Flats 1 and 2 do not share any of the steps on this stair. It is six feet from the door to the stair. Thus, visitors to my property do not encroach on the spaces used by the residents of Flats 1 & 2. As a first floor landing there is no need to infringe on the area upstairs around the doors of Flats 5 & 6. The stair is a single flight (~5 m in length) which can be traversed in minutes meaning it is extremely rare to meet anyone on the stair. I know I have lived there

It is being suggested that the additional trip up/down the stair at the beginning and end of the let constitutes major disruption. This is nonsense. Once the additional use of the stairwell by the visitors has been completed they behave like normal people coming and going with light bags. Even the residents carry bulky items up and down the stairs. It is notable that my visitors will not receive mail or packages and as such their activities on the stairs will be offset by a lack of commercial visitors such as the postman, sales people, delivery trucks, guests (all of whom are "strangers"). We have a bizarre situation were the council is blocking permission based on two trips up a stair.

Secondly from the booking sheets one can see that the property is not excessively popular especially in winter (you should have the booking details to hand). I have not calculated the year end occupation but it is somewhere between 50-75% For the sake of argument I would gauge that

%occupation throughout the year is at a maximum 75% shared between family and paying guests. This means that for 80-90 days there is absolutely no traffic on the stairs what so-ever. Even if we suggest that these 80 days are worth only 1 trip out of the flat every day a cumulative total of 80 trips up and down the stairs. These trips needs to be included in you calculation and thus at 2 extra trips a week, we have a balance of 40 weeks activity. Think about this calculation. My visitors are in the communal space for a remarkably short period and on fewer days that implied. How can this objection be reasonable? The metrics (not opinion) don't support it.

You can see that this anecdotal argument that visitors are a nuisance based on their activity on the communal stairs can be a proved to be unfounded. My argument shows that for flat 4 (SPECIFICALLY FOR FLAT 4 and no other in town) visitors use the communal space less NOT MORE than normal residents. The slight increase in activity on the stair once a week are offset by the days that the flat is vacant when no one uses the communal space for weeks.

Again I remind the reader of two points:

1. *From PA8 However, it is stated that the Council's Environmental Health Service cannot assume that antisocial behaviour issues will arise and thus cannot impose any enforceable conditions to protect the amenity of neighbours.*
2. I specifically asked the neighbour underneath my property [REDACTED] if she has been affected by my lets and she replied no! (see appendix 3).

Thus it would seem that unless the council can generate information about antisocial behaviour on the stairs, by their own admission, they cannot enforce this point

**PA10** *Along with the extra comings and goings of users of the holiday let at check in/check out there would also be an additional level of activity not only at the application property but also within the communal entrance, internal stair and hallway as a result of people regularly accessing both the main building of Bramerton Court, 27 Dirleton Avenue, North Berwick and the application property itself to service/clean it and remove waste and recycling material. This level of additional activity would be evidently different to that expected with the permanent/long term use of the flat as a private residence again which is harmful to the amenity of the occupants of the residential properties within the residential flatted building of Bramerton Court, 27 Dirleton Avenue, North Berwick.*

Again this is nonsense. True we have cleaning staff provided by North Berwick holiday Homes but they use the equipment in the property. If anything the cleaning staff's activity, once a week is less than say the postman or a delivery driver. They are always the same people (just like the postman) and they arrive in a branded van. To complain about the cleaners is similar to complaining about the postman. Furthermore, many elderly or busy individuals in North Berwick hire cleaners to clean their properties. There is no difference between a cleaner cleaning Flat 4 as a result of visitors or a private arrangement between a resident and a weekly cleaner such as ClenTech. If my cleaning arrangements constitute an infringement of the rules are the council going to quote NFP4 to forbid flat residents from hiring CleanTech as this activity allows strangers on the stairs. NFP4 As an aside, many years ago the owner of [REDACTED] made a reasonable complaint that the communal stairs were not being cleaned. He was/is correct here and it was agreed that the various floors would clean their

respective areas once a month i.e. the stair would be cleaned once every two weeks. I believe that [REDACTED] still cleans his stair. I engaged a company (GR cleaning services) to perform this duty and they visit the building once a month – they also clean my windows and as an add on I have them clean the windows in the communal door as no one would accept responsibility for this. Is it now forbidden under NPF4 to allow this practice to continue as it brings strangers onto the stairs?

Arguments such the one being proposed do not make sense. There is a surfeit of people appearing on our stairs to perform routine and non-routine tasks and an additional trip by a guest visiting the property makes no difference.

We also have the issue with waste. How can it be that the waste management of the visitors is any different to the residents? How do the residents get their rubbish to the street if they do not use the stairs?

***PA11** Moreover, allowing frequently changing guests unfettered access to otherwise secure shared areas and facilities changes the actual and perceived level of security for permanent residents.*

Again I don't know whether this comment is made as a result of a site visit or not and my complaint on the inability of the council to provide information stands. There are no secure areas in the halls. There is a locked cupboard with the junction boxes for electricity and internet and that is it. The residents do not have items outside their properties. The front door is locked – we do not have an open stair and you need two keys to access the property. I really think this is a poor argument and it suggests that the planning department has not crossed the threshold. Could the council please be specific and get the details correct

***PA12** Given the specific circumstances and location of the application property within the residential building of Bramerton Court, 27 Dirleton Avenue, North Berwick which contains a number of permanent/long term residences which share a communal entrance, internal stair and hallway, the change of use of the applicant's first floor flat as a two bedroom unit of short term self-catering holiday let accommodation is incompatible with, and harmful to, the amenity of the occupiers of the properties within the residential building of Bramerton Court, 27 Dirleton Avenue, North Berwick. By having an unacceptable impact on local amenity, the proposal is contrary to part e) of Policy 30 of NPF4 and with Policy RCA1 of the adopted East Lothian*

Local Development Plan 2018. You will not be surprised to hear that I disagree with this view. Over the past nine years none of the points raised above have been identified as a cause for concern. There is no disruption to the other residents, there is no excessive use of the stairs, there are no personal items in the hall. While you have made comments on this point you have provided no detail on the harm being caused. There are no reported incidents over the past 9 years. You should note that the council has asked for objections to my application and **NONE** of the residents raised any concern over this point and it is unreasonable to put what you think might happen over the reality of the situation i.e. what has occurred over the past 9 years, which is **NOTHING**. Indeed the resident most affected by activity makes no objection (appendix 3). After 9 years of unblemished record this is an unfounded comment,

Again I repeat the comment from the Council's Environmental Health Service PA8 who states

*The CEHS “cannot assume that antisocial behaviour issues will arise and thus cannot impose any enforceable conditions to protect the amenity of neighbours”.*

The council would seem to be in dispute with itself and it is clear that there is no consensus within the council.

**PA 13** *It is now necessary to assess the impact of the change of use on the loss of residential accommodation where such loss is not outweighed by demonstrable local economic benefits as is stated in part e) of Policy 30 of NPF4.*

*The Council's Housing Strategy & Development Service state that the change in use of this property from a long term residential dwelling to a short term let is not a significant loss because (i) the proposed is located on the first floor and is not considered adaptable; and (ii) the property has previously been available to seasonal workers and has been a holiday let for over 5 years with occupancy rates over 6 months. Accordingly, the Council's Housing Strategy & Development Service raise no objection to this retrospective planning application.*

### **I repeat the councils own statement in support of my application**

*The Council's Economic Development Service Manager advises that there are demonstrable local economic benefits delivered by all types of short term holiday lets in East Lothian and that existing provision of this type of accommodation must be retained, protected and supported where there is no demonstrable impact on local amenity, the character of the area or loss of residential accommodation. In the particular circumstances of this case it is stated that*

- (i) the property will provide high quality tourist accommodation attracting visitors to North Berwick and the surrounding area providing economic benefit;*
- (ii) there is a demonstrable economic benefit to having a wide range of accommodation types in East Lothian with the tourism sector contribution £155m to the local economy in 2021 and supporting 10% of the workforce;*
- (iii) non-serviced accommodation (short term holiday lets) contribute positively to the local economy (£279m in 2019) and the applicant's flat accounts for 4 bedspaces and a potential annual economic impact of £89,000 and 2FTE jobs;*
- (iv) there is an increasing number of overnight stays in East Lothian for work purposes (which is expected to increase over the next 10-15 years) such that the loss of short term accommodation is likely to have a significant negative impact on the local tourist economy in monetary and reputational terms.*

### **I would like to stress the following point**

***Therefore, the Council's Economic Development Service Manger supports this planning application stating that the change of use of the flat to short term holiday let accommodation supports the strategic goals and objectives of the Economic Development Strategy 2012-2022 and the intent and outcomes of part e) of Policy 30 of NPF4.***

It now seems curious that the council now follows up such a strong comment which is supported with key details with this:



**PA 14** *However, and notwithstanding that the change of use of the applicant's flat would not result in the loss of residential accommodation, the local economic benefits associated with the use of the applicant's first floor flat operating as a two bedroom unit of short term self-catering holiday let accommodation does not outweigh the unacceptable impact on local amenity.*

*Therefore, the change of use is not in accordance with the Development Plan and there are no material planning considerations that outweigh the fact that the change of use is not in accordance with the Development Plan.*

Considering the strength of the previous comment and comments elsewhere (e.g. PA 1, 2, 3 & 13) which provides significant support for my application, it is inconceivable that these can be set aside so swiftly in a cavalier manner by an unsupported, presumptive statement such as the above. This does not seem fair – where is the evidence: where are the key phrases from the LDP. The supporting statement is so thorough why does the negative statement lack the same thoroughness. The planning authority promises that applications will be treated fairly? Is this a balance argument – I don't think so. Indeed just above the council freely admits that:

*PA3 The adopted East Lothian Local Development Plan 2018 does not contain a specific policy on the change of use of flats to holiday lets.*

Now again I point out that the comment being discussed here is about the LDP (as reference in the question and no other document). From the councils own words it can be shown that the point being made here does not stem from LDP and as such the point being made is fatally flawed. I examined the 2022 LDP on the councils web site (be aware that again this is the cited document and no other is applicable here). I also used using the Adobe acrobat tool to search for specific references to short term lets using a wide variety of key words and could find no reference to the topic and their negative impact especially under guidance actions 2 (local Plan policies and proposals). Considering the definitive nature of the statement I expect to find a clear statement in the LDP which supports rejection and it's not there. Thus it would seem that view that this application is not in accordance with the LDP is a statement quite far from the mark and another example of the council being unaware of its own documentation. The rules of planning are clear objections have to be correct and this one is not.

But exactly what does the respondent mean by “unacceptable impact”. I have clearly demonstrated that the impact of my activities is negligible. Without explicit examples even this comment cannot have the same weight as the fulsome supportive comment above.

In case I have made a small error I would point out that there are frequent statements which support local tourism (see page 41ff). Also I remind the planning authority that my let is registered as a small business with the council (██████████) and that as a small business I am also offered some protection under the LDP. This is also irrefutable. Thus when the council says that there is “no material planning considerations” they are in error. The key word used here is “**NO**”. There are exceptions and in that regard the council is most definitely wrong.

*PA 15 The application property of 4 Bramerton Court, 27 Dirleton Avenue, North Berwick as a holiday let is unauthorised and a breach of planning control. Enforcement action will be taken to ensure the cessation of the holiday let use with the period for compliance with the enforcement notice being three months.*

I disagree with this. Irrespective of this planning document, permission to let this property was agreed in 2015. I have documents sent from the council which clearly designate the property as a short term let. Thus it was authorised and I have paperwork to prove this. While I am making this application to correct the record I would state that the council has not been in contact with me to formally notify me that they had an issue with me using this as a let prior to pausing my license application? This is yet another example of the council selective memory to create an opinion which favours their argument.

### **Personal statement**

I feel that I should be allowed to make a final personal statement.

My irritations with the circumstance leading up to this application are well made above. I seem to be punished for failings at council level. Engagement with council officers has been very poor with individuals in the various departments blaming their colleagues for the paucity of information and support. Failings are routinely put down to some unnamed person in another department. My view as resident of east Lothian is that if I contact the COUNCIL what is said by the council official is the truth and if the officer does not have the authority to speak to a topic or if it's not in his/her purview then I should be made aware of that and I should be told to speak to other council members. My situation today stems from a failing in council in 2015 when I was given assurances which the council is refusing keep (RH3) but more worryingly accept ANY blame for.

We bought the property in 2015 as explained above. We have never been absentee owners and made a real effort to be known to the other residents and owners. We have never hidden the fact that the property is in the short let market, and we have always made it absolutely clear that if there is an issue at the flat that the residents can contact us or north Berwick holiday homes at any time. The residents held a meeting in the Nether Abbey some years ago to arrange the painting and repairs to the external fabric of the property and it was decided to set up a communal fund rather than have the property factored. Since I was retired and almost every present in North Berwick I was asked to act as treasurer on the account (Bank of Scotland Appendix 2). [REDACTED] were/are the other signatures (2 required) to the account. To this day I have performed administrative work on behalf of the tenants. The external painting was completed as result of the meeting. With [REDACTED] I help organise the biannual hedge trimming (it is too high for us) on Dirleton Ave and again I arrange payment. There was a somewhat difficult situation when it came to arranging the repairs to the drive but again I was central to the task being completed not just by arranging payment but by acting as an intermediary between two of people who just won't talk to each other ([REDACTED]). When it comes to collecting funds and bills its left to me to arrive at the sum that should be deposited in the account. After checking the balance I typically I round up the request such that we maintain a small float for simple purchases such as bulbs for the stairwell. My point here is simple. For many short lets there is deep animosity

and distrust between the tenants and the person letting. It is understandable when the person letting the property does not interact with his neighbours in a constructive way. But, this is not so here (hence my repeated request to be treated as an individual case). The other owners know me, communicate with me and we work together to maintain the property. We live in a modern world when sometimes we don't see our neighbours for days. In a strange way although I live elsewhere my relationship with Bramerton Court is similar to a neighbour who is rarely seen but who maintains his property, responds to neighbours requests and pays his share of community bills without question. This is as much as many of us would wish from a neighbour. It sets me apart from many of the other applicants for a short term license.

Finally, when the planning department circulate the particulars of proposals they ask for objections. They never seek supporting information or if they do it's not with the same vigour. The focus is what is said i.e. objections: not what is not said: tacit support. Usually there are many people involved and it is reasonable for the planning department to view the objections and arrive at a consensus. But here, there is myself and five other units. In many ways it is not too much trouble to specifically ask the residents if they agree with what is written in Policy 30. It is doubtful that the residents were made aware of policy 30 and the council did not specifically ask them about it. So in this regard while the council uses a broad brush, presumptive, approach to the implementation of policy they really don't have a balanced view of the residents true opinion about it: specifically ingress and egress of visitors. They are in effect using experience elsewhere to arrive at a position in my application. As such I specifically asked [REDACTED] (co signature to the business account) owner of the property below mine: one which would be most affected by my activities, if he had any issues with Policy 30. His reply (appendix 3) demonstrates that neither he nor his tenant have an issue with me letting the property. If one now adds the fact that another tenant has made a formal reply but has not made any specific comments on stair access you can see that residents do not agree with the council's position here and as such the refusal based on Policy 30 has to fail.

**The main REASON FOR REFUSAL:**

*The holiday let use of the flatted property is incompatible with and harmful to the amenity of the occupants of other flatted properties used as residential dwellings within the residential building of Bramerton Court, 27 Dirleton Avenue, North Berwick and as such is contrary to part e) of Policy 30 of National Planning Framework 4 and Policy RCA1 of the adopted East Lothian Local Development Plan 2018.*

This is a curious statement as just a few pages up the council writes

*Therefore, the Council's Economic Development Service Manger supports this planning application stating that the change of use of the flat to short term holiday let accommodation supports the strategic goals and objectives of the Economic Development Strategy 2012-2022 and the intent and outcomes of part e) of Policy 30 of NPF4.*

Can someone explain how it is that council offers two conflicting statements within the same document? Once again we see conflict in the council. On more than one occasion the council makes points which it undermines such as the one above and comments on the development plan. It postulates scenarios and then says that it's not pertinent to infer what might happen. Where is the sense in all this?

In the recent judgement by Lord Braid in Edinburgh on a directly related subject where

*“the case centred on a presumption against allowing entire flats within tenement blocks to be used as holiday lets unless their owners could demonstrate why they should be exempt”*

<https://www.scottishlegal.com/articles/edinburgh-councils-short-term-letting-policy-ruled-unlawful-by-court-of-session-judge>

Lord Braid ruled that the presumption was unlawful and that the lack of provision for temporary licences and requirement for some hosts to supply floor coverings went beyond the council's powers.

What Lord Braids judgement on short term lets clearly demonstrated is that presumptive arguments such as the one use to deny my planning permission fail when tested within a legal framework unless there are demonstrable reasons. You can see from the above that the planning authority have not provided any clear examples to support for their decision. Indeed they seem to be in conflict with themselves providing contradictory information.

If one now adds in my key points

1. Through my business documents and valuation documents that the council did give permission for the let and they have not given notice that it has been withdrawn.
2. The council itself makes a strong argument to allow the application.
3. I have demonstrated over the past 9 years that I have been a honest and good operator with an unblemished record
4. That much of the income from the letting circulates within East Lothian via the use of local services
5. That I am known to and have a key role as treasurer within the community at Bramerton court
6. There is support within the block to allow my application.

It is clear that I am an atypical owner of a short term let, someone who can be used as a model example of good practice. These fact must outweigh the council use of a weak conflicted presumptive argument to make its case. I ask that the planning decision is reversed

I offer the planning authority a solution: If the planning authority and council remains concerned about my short term let but has the good grace to concede my arguments, I would remind it that the terms of the license would allow them to halt my activities should problems arise in the future. This seems an equitable solution to this discussion as it holds me to my comments above. The planning authority can allow this appeal in the full knowledge that if they are proved right there is a mechanism to rectify the situation.

[REDACTED]

[REDACTED]

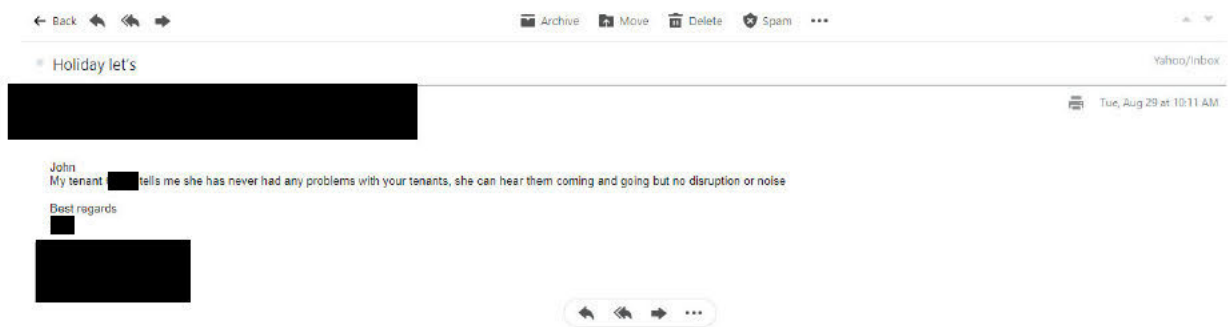
[REDACTED]

[REDACTED]

Appendix 2



### Appendix 3



*From PA7 However, it is stated that the Council's Environmental Health Service cannot assume that antisocial behaviour issues will arise and thus cannot impose any enforceable conditions to protect the amenity of neighbours.*