

## **REVIEW DECISION NOTICE**

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

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Application for Review by Mrs Karen Skinner of The Promenade 30 High Street, Cockenzie East Lothian EH32 0HP of the decision to refuse Planning Permission for Change of use of flat to short term holiday let (Retrospective) at 5 The Promenade, Port Seton, East Lothian EH32 0DF.

Site Address: 5 The Promenade, Port Seton, East Lothian EH32 0DF

Application Ref: 23/00499/P

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

Date of Review Decision Notice: 30 October 2023

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### **Decision**

The ELLRB by majority agreed to uphold the appeal and to grant planning permission for use of flat to short term holiday let (Retrospective) at Land at 5 The Promenade, Port Seton, East Lothian EH32 0DF for the reasons more particularly set out below.

This Notice constitutes the formal decision notice of the Local Review Body as required by the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.

### **1. Introduction**

The above application for Planning Permission was considered by the ELLRB, at a meeting held on Thursday, 5 October 2023. The Review Body was constituted by Councillor J Findlay, Councillor D Collins and Councillor A Forrest (Chair). All three members of the ELLRB had attended a site visit accompanied by the Planning Adviser in respect of this application prior to the meeting.

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

Mr M Mackowiak, Planning Adviser to the LRB  
Mr C Grilli, Legal Adviser/Clerk to the LRB  
Ms F Currie, Clerk

### **2. Proposal**

2.1. The planning application is for review of decision to refuse Planning Permission for the use of flat to short term holiday let (Retrospective) at Land at 5 The Promenade, Port Seton, East Lothian EH32 0DF.

2.2. The planning application was registered on 12 May 2023 and the Decision Notice refusing the application is dated 21 June 2023.

2.3. The condition and the reason for the condition is more particularly set out in full in the said Decision Notice dated 21 June 2023. The reasons for refusal are set out as follows:

- 1 *The holiday let use of the flatted property is incompatible with and harmful to the amenity of the occupants of other flatted properties used as residential dwellings within the residential building of The Promenade, Port Seton, Prestonpans 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..*

2.4. The notice of review is dated 12 July 2023.

### 3. Preliminaries

3.1. The ELLRB members were provided with copies of the following:-

i.	The drawings accompanying this application are referenced and numbered as follows:  <table border="1"> <thead> <tr> <th><u>Drawing No.</u></th> <th><u>Revision No.</u></th> <th><u>Date Received</u></th> </tr> </thead> <tbody> <tr> <td>DWG 01</td> <td>-</td> <td>09.05.2023</td> </tr> <tr> <td>DWG 02</td> <td>-</td> <td>09.05.2023</td> </tr> <tr> <td>DWG 03</td> <td>-</td> <td>15.05.2023</td> </tr> </tbody> </table>	<u>Drawing No.</u>	<u>Revision No.</u>	<u>Date Received</u>	DWG 01	-	09.05.2023	DWG 02	-	09.05.2023	DWG 03	-	15.05.2023
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DWG 03	-	15.05.2023											
ii.	The Application for planning permission registered on 12 May 2023												
iii.	The Appointed Officer's Submission												
iv.	Policies of the adopted East Lothian Local Development Plan 2018 relevant to the determination of the application:  <ul style="list-style-type: none"> <li>- RCA1 (Residential Character and Amenity)</li> <li>- T1 (Development Location and Accessibility); and</li> <li>- T2 (General Transport Impact).</li> </ul> <p>In addition the following provisions are also relevant to the determination of the application, namely:-</p> <ul style="list-style-type: none"> <li>- National Planning Framework 4 Part(e) of Policy 30 (Tourism)</li> </ul>												
v.	Notice of Review dated 12 July 2023 together with Applicant's Submission and associated documents.												

### 4. Findings and Conclusions

4.1. The ELLRB confirmed that the application for a review of the planning application permitted them to consider the application afresh and it was open to them to grant it in its entirety, grant it subject to conditions or to refuse it. They confirmed that they had access to the planning file in respect of this matter and to all the information that the Appointed Officer had available when reaching the original decision to grant planning permission subject to conditions, including all drawings and copies of all representations and objections received in respect of the original application. They also confirmed they had received and reviewed the Applicant's Submission and further representations made in connection within this appeal before the ELLRB today.

- 4.2. The Members then asked the Planning Adviser to summarise the planning policy position in respect of this matter. The Planning Adviser advised that the planning application relates to a review of the decision on application seeking retrospective planning permission for the change of use of a two bedroom ground floor flat to a two bedroom unit of holiday let accommodation. The holiday let comprises of two bedrooms, a kitchen, a living room and a bathroom. The ground floor flat is capable of accommodating 4 people. The property is part of a two-storey flatted building located within a predominantly residential area as defined by Policy RCA1 of the adopted East Lothian Local Development Plan 2018.

The building is bounded to the north by a public footpath and an area of open space beyond, to the east and west by neighbouring residential properties and to the south by a private car park.

Subsequent to the registration of this application the applicant's agent has confirmed in writing that (i) the flat has been marketed for short term lets since May 2021; (ii) the minimum length of stay is 3 nights and the average length of stay is 4 nights; (iii) the maximum number of visitors in one booking is 4 guests; (iv) cleaning takes place after each stay; (v) a key safe is used for guests on arrival/departure; (vi) there are 4 flats within the building (2 flats per floor) and that the flat, the subject of this planning application, is accessed via a shared front entrance door and communal hallway; and (vii) the flat benefits from a shared parking area

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 Local Development Plan 2018. Policy 30 (Tourism) of NPF4 is relevant to the determination of this application. Policies RCA1 (Residential Character and Amenity), 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.

There were no public objections to this application and the case officer's report accurately summarised all comments received from our internal and external consultees. The Planning Adviser noted that the Council's Senior Environmental Health Officer advised that the use of properties for short term holiday let could result in future guests misusing and abusing the property in a manner that is antisocial and could result in a significant impact upon amenity of neighbours. However, the Officer also noted that it is not possible to assume that antisocial behaviour issues would arise and thus they could not impose any enforceable conditions to protect the amenity of neighbours. The Planning Adviser then confirmed that the Council's Antisocial Behaviour Team, Road Services and Police Scotland raised no objection to this planning application.

In his report the case officer confirmed that the property the subject of this application shares a communal front entrance door, including access to an internal communal stair, with three other residential properties within the flatted building. The existing communal hallway serves the applicant's ground floor flat as well as the other ground floor flat within the building. However, the officer failed to mention that the flat has its own private back door entrance leading to a public path. This entrance is independent of the main communal access to the property. The appellant in their submission claims that this back entrance is favoured by the guests.

Nevertheless, the case officers report noted that 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 occupants would change the nature of comings and goings not only to the application property itself but also within the communal entrance and hallway of the residential building. Most occupants of the holiday let would have a degree of luggage to take through the communal external entrance and hallway which would lead to a level of disturbance and nuisance not associated with the permanent (long term) residential use of the property. The case officer concluded that this particular aspect of the proposed scheme would be harmful to the amenity of the occupants of the residential properties within the residential flat building named 'The Promenade'. The case officers report 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. Along with the extra comings and goings of users of the holiday let at arrivals and departures there would also be an additional level of activity not only at the application property but also within the communal entrance and hallway as a result of people regularly accessing both the main building and the application property itself to 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 the case officer considered that this would be harmful to the amenity of the occupants of the remaining residential properties within the building. The officer also stressed that allowing frequently changing guests unfettered access to otherwise secure shared areas and facilities, changes the actual and perceived level of security for permanent residents. The introduction of frequently changing guests regularly into these secure areas, independent of the owner, would differ from typical residential circumstances. The officer considered that given the specific circumstances mentioned above and location of the application property the proposed change of use to a 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 named 'The Promenade'. By having an unacceptable impact on local amenity, the proposal is contrary to part e(i) of Policy 30 of NPF4 and with Policy RCA1 of the adopted East Lothian Local Development Plan 2018.

The case officer report then moved on 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 ii) of Policy 30 of NPF4. The Council's Housing Strategy & Development Service advised that they do not support this application as the change in use of this property, from a long term residential dwelling to a short term let, is considered a significant loss and contrary to the priorities set out in the Local Housing Strategy. In particular, they stated that

- the property consists of a two bedroom flat in the Preston/Seton/Gosford area;
- the property is located on the ground floor and is considered adaptable;
- the property is used as a short term let only and is not a long term established short term let (which means it has not been let for over 5 years from date of application); and
- the annual occupancy rate is below 6 months per annum

The Council's Economic Development Service Manager advised 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. The Council's Economic Development Service Manger confirmed that this planning application 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

In his report the case officer considered the response from the Council's Economic Development Service and concluded that the local economic benefits associated with the use of the applicant's property 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.

4.3. The members then raised the following questions which were responded to by the Planning Adviser and Legal Adviser:

4.3.1. Councillor Collins asked whether licensing was "overseeing the regulation of short term lets?" The Legal Adviser responded by stating that the licensing would be separate and would regulate in so far as these were licensing matters however planning matters would be for the planning service to monitor and action.

4.3.2. Councillor Forrest asked how many short term lets were in this area. The Legal advisor responded by stating that currently the number of Short Term Lets is being recorded and identified by Licensing. At present that the Licensing Team have received a significant amount of applications which it is currently processing and at present it is not possible to say with accuracy how many short term lets are in this area.

4.3.3. Councillor Forest also asked if the car park was public or private. The Planning Adviser confirmed that the flat benefits from a shared parking area and that it appeared to be private parking.

4.4. The Chair asked his colleagues if they had sufficient information to proceed to determine the application today and they unanimously agreed to proceed. Comments on the application followed.

4.5. Councillor Collins commented that she had noted that the applicant had brought forward this application by themselves and wanted to continue to trade compliantly. She considered 156 days per year usage as light usage. She also noted that there had been no complaints and was of the view that there was little communal area to cause nuisance as there was option to access the property directly from the back door of the property. She also felt that occupants would primarily use the back door as their primary access when staying at the property. She then commented that as all applications should be considered on their own merits she did not believe this would be setting a precedent. Accordingly she was minded to approved the application subject to the conditions suggested by the Planning Officer.

4.6. Councillor Findlay noted that there had been no complaints relating to the operation of this premises as a Short Term Let to date and in his opinion the alternative use as a Short Term Let would not diminish the amenity of the area. He also considered that this application would not create a significant impact of ability to provide residential accommodation in the Preston Seaton Gosford area. Accordingly, he was minded to approve the application

subject to the conditions suggested by the Planning Officer.

- 4.7. The Chair commented that the site visit was very helpful. He had concerns that there was potential for those using the property for a short term let could create unwanted noise in communal areas when coming to and from the property especially later at night. He did not agree with colleagues that the rear entrance would be commonly used and was of the view that most using the property as a Short Term Let would at least initially require to access this from the main street. He considered this would have an adverse affect on the amenity of others within the tenement block and accordingly he was minded to refuse the application and support the Planning Officer's decision

Accordingly, the ELLRB decided by majority of 2:1 to grant planning permission subject to the following conditions:

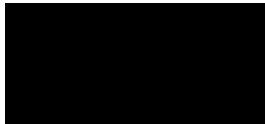
- 1 *The property shall be let for overnight occupation by a maximum of four persons at any one time.*

*Reason: To ensure that the terms of the lets protect occupants of nearby residential properties from noise/disturbance.*

2. *A register of the date and number of occupants for each let shall be maintained for the property by the owner/letting agent and shall be available at all reasonable times for inspection, on request, by the Planning Authority.*

*Reason: To ensure compliance with condition 1.*

Planning Permission is hereby granted.



**Carlo Grilli**  
**Legal Adviser to ELLRB**

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997****Notification to be sent to applicant on determination by the planning authority of an application following a review conducted under Section 43A(8)**

Notice Under Regulation 21 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.

- 1 If the applicant is aggrieved by the decision of the planning authority to refuse permission or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.
  
- 2 If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland ) Act 1997.