



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

**THURSDAY 5 OCTOBER 2023  
VIA THE HYBRID DIGITAL MEETINGS SYSTEM**

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**Committee Members Present:**

Councillor A Forrest (Chair)  
Councillor D Collins  
Councillor J Findlay

**Advisers to the Local Review Body:**

Mr C Grilli, Legal Adviser to the LRB  
Mr M Mackowiak, Planning Adviser to the LRB

**Clerk:**

Ms F Currie, Committees Officer

**Apologies:**

None

**Declarations of Interest**

None

## **Introductory Statement by the Legal Adviser**

The Legal Adviser outlined the procedure for the Local Review Body to reach a decision on the planning application before it and reminded them that further advice would be provided on procedure, should they conclude they did not have enough information to determine the application today.

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

### **1. PLANNING APPLICATION NO. 23/00499/P: CHANGE OF USE OF FLAT TO SHORT TERM HOLIDAY LET (RETROSPECTIVE), 5 THE PROMENADE, PORT SETON, PRESTONPANS, EAST LOTHIAN EH32 0DF**

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

The Planning Adviser informed Members that the case related to application no. 23/00499/P; a review of the decision to refuse retrospective planning permission for a change of use from a flat to a short term holiday let. He provided details of the application, its site and surroundings, and details of the letting arrangements in place since the short-term let business began in May 2021.

He advised that section 25 of the Town and Country Planning (Scotland) Act 1997 required that the application must be determined in accordance with the development plan unless material considerations indicated otherwise. The development plan was National Planning Framework 4 (NPF4) and the adopted East Lothian Local Development Plan (LDP) 2018. Policy 30 (Tourism) of NPF4 was 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 LDP 2018 were also relevant to the determination of this application.

The Planning Adviser noted that there had been no public objections to this application and that the case officer's report had accurately summarised all comments received from internal and external consultees. The Council's Senior Environmental Health Officer who had advised 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 let could result in future guests misusing and abusing the property in a manner that was antisocial and could result in a significant impact upon amenity of neighbours. However, the officer had also noted that it was 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 Council's Antisocial Behaviour Team, Road Services and Police Scotland had all raised no objection to this planning application.

In his report, the case officer had confirmed that the property shared 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 served the applicant's ground floor flat as well as the other ground floor flat within the building. However, as was brought up in the appellant's submission, the case officer had failed to mention that the flat had its own private back door entrance leading to a public path. This entrance was independent of the main communal access to the property. The applicant had claimed that this back entrance was favoured by the guests.

Nevertheless, the case officer had considered that the use of the 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 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 had concluded that this aspect of the proposed scheme would be harmful to the amenity of the occupants of the residential properties within the residential flatted building named 'The Promenade'. While the case officer accepted that permanent residents may also make noise, the disturbance caused by regularly changing guests, arriving and departing sometimes at unsociable hours, would differ from typical residential circumstances. Along with the extra comings and goings of guests, there would be additional activity resulting from cleaners, etc., accessing the communal entrance and hallway, and the property itself. 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 case officer had also stressed that allowing frequently changing guests unfettered access to otherwise secure shared areas and facilities, changed 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 circumstances mentioned above and location of the property, the proposed change of use to a short-term self-catering holiday let accommodation was 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 was contrary to part e(i) of Policy 30 of NPF4 and with Policy RCA1 of the adopted East Lothian Local Development Plan 2018.

The Planning Adviser then summarised the case officer's assessment of the impact of the change of use on the loss of residential accommodation, where such loss was not outweighed by demonstrable local economic benefits, as stated in part e (ii) of Policy 30 of NPF4. The Council's Housing Strategy & Development Service had advised that they did not support this application as the change in use of this property, from a long-term residential dwelling to a short term let, was considered a significant loss and contrary to the priorities set out in the Local Housing Strategy.

The Council's Economic Development Service Manager had advised that there were 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 should be retained, protected and supported where there was no demonstrable impact on local amenity, the character of the area or loss of residential accommodation. He had outlined some of the specific economic benefits derived from short term holiday lets and confirmed that the application supported 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.

However, the case officer concluded that the local economic benefits associated with the use of the property as short term, self-catering holiday let accommodation did not outweigh the unacceptable impact on local amenity. Therefore, the change of use was not in accordance with the Development Plan and there were no material planning considerations that outweighed the fact that the change of use was not in accordance with the Development Plan.

The Planning Adviser concluded his presentation by confirming that planning permission had been refused for the reason set out in the decision notice.

The Planning Adviser and the Legal Adviser responded to questions from Members. The Legal Adviser stated that the licensing of short-term lets would be separate, and this regulation would relate solely to licensing matters, including potential conditions. Planning matters would be for the planning service to monitor and action. He also advised that, currently, the number of short-term lets was being recorded and identified by the Council's Licensing Team. The team had received a significant amount of applications which it was currently processing and, at present, it was not possible to say with accuracy how many short-term lets were in the area.

The Planning Adviser confirmed that the application for planning permission had been submitted as part of the licensing process and that there had been no complaints about the property. He advised that it was let out for around 150 days per annum and that it benefited from a shared parking area which appeared to be private.

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

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

Councillor Collins noted that the applicant had acted promptly to submit applications for the relevant permissions in line with new licensing arrangements. She considered renting for 156 days per year to be light usage and she noted that there had been no complaints raised and there were no communal areas for short-term let residents to congregate and potentially cause problems. She pointed out that any issues could be dealt with through the short-term licencing arrangements. She also considered it likely that the short-term let residents would favour the separate rear entrance for access. She concluded that, as all applications should be considered on their own merits, she did not believe this would be setting a precedent, and she was minded to grant planning permission.

Councillor Findlay referred to the requirement for planning permission to assess the potential impact of the short-term let on the amenity of neighbouring properties. He commented that, in his view, the absence of complaints meant that there had been no adverse impact. He also noted that the total number of short-term lets in the local area, as calculated in October 2022, was a very small percentage of the private rented sector, and significantly less than some other areas of the county. As such, he considered there to be no adverse impact on the private rented sector in the local area. For these reasons, he was minded to allow the appeal.

The Chair said he had appreciated the opportunity to view the location and the access within the shared stair. He said that although there had been no complaints, he felt that there was potential for increased noise levels within the stair late at night from guests coming and going. He also questioned whether guests would choose the rear entrance for access, as the key to the property was located by the front door. He concluded that, in his view, there was the possibility of an adverse impact on the amenity of other residents, and, for this reason, he would be upholding the original decision of the case officer.

The members of the LRB confirmed their decision via roll call vote. They also agreed that the planning permission should be subject to the conditions set out by the case officer in his submission.

**Decision**

The ELLRB agreed, by majority, to uphold the appeal and 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.

Signed .....

Councillor Andrew Forrest  
Chair of Local Review Body (Planning)