

## **REVIEW DECISION NOTICE**

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

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Application for Review by APT Planning & Development on behalf of Mr Tom Gleeson c/o APT Planning & Development 1 West Road, Whitekirk EH42 1XA of decision to refuse Planning Permission for the Change of use of flat to short term holiday let (Retrospective) at 5 West Bay Court, North Berwick.

Site Address: 5 West Bay Court, North Berwick

Application Ref: 23/00307/P

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

Date of Review Decision Notice: 15 December 2023

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### **Decision**

The ELLRB agreed by a majority to dismiss the appeal and to refuse planning permission for Change of use of flat to short term holiday let (Retrospective) at 5 West Bay Court, North Berwick for the reasons more particularly set out below.

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

### **1. Introduction**

The above application for Planning Permission was considered by the ELLRB, at a meeting held on Thursday, 16 November 2023. The Review Body was constituted by Councillor A. Forrest (Chair), Councillor J. Findlay, Councillor S. McIntosh, and Councillor C. Cassini. All four 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:-

Ms J. Squires, 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 Change of use of flat to short term holiday let (Retrospective) at 5 West Bay Court, North Berwick.

2.2. The planning application was registered on 5 April 2023 and the Decision Notice refusing the application is dated 19 May 2023.

2.3. The reasons for refusal are set in the said Decision Notice dated 19 May 2023 and are as follows:

- 1 *The holiday let use of the flatted property is incompatible with and harmful to the amenity of the occupiers of the properties within the residential building of West Bay Court, 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.*

2.4. The notice of review is dated 4 August 2023

### 3. Preliminaries

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

i.	<p>The drawings accompanying this application are referenced and numbered as follows:</p> <table border="1" data-bbox="384 813 1206 969"> <thead> <tr> <th data-bbox="384 813 679 846"><u>Drawing No.</u></th> <th data-bbox="679 813 1023 846"><u>Revision No.</u></th> <th data-bbox="1023 813 1450 846"><u>Date Received</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="384 875 679 904">5WB-PL01</td> <td data-bbox="679 875 1023 904">A</td> <td data-bbox="1023 875 1450 904">24.03.2023</td> </tr> <tr> <td data-bbox="384 904 679 934">5WB-PL03</td> <td data-bbox="679 904 1023 934">A</td> <td data-bbox="1023 904 1450 934">31.03.2023</td> </tr> <tr> <td data-bbox="384 934 679 963">5WB-PL02</td> <td data-bbox="679 934 1023 963">A</td> <td data-bbox="1023 934 1450 963">05.04.2023</td> </tr> </tbody> </table>	<u>Drawing No.</u>	<u>Revision No.</u>	<u>Date Received</u>	5WB-PL01	A	24.03.2023	5WB-PL03	A	31.03.2023	5WB-PL02	A	05.04.2023
<u>Drawing No.</u>	<u>Revision No.</u>	<u>Date Received</u>											
5WB-PL01	A	24.03.2023											
5WB-PL03	A	31.03.2023											
5WB-PL02	A	05.04.2023											
ii.	The Application for planning permission registered on 5 April 2023												
iii.	The Appointed Officer's Submission												
iv.	<p>Policies of the National Planning Framework 4 relevant to determination of this application are as follows:</p> <ul style="list-style-type: none"> <li>- Policy 7 (Historic assets and places)</li> <li>- Part (e) of Policy 30 (Tourism)</li> </ul> <p>Policies of the adopted East Lothian Local Development Plan 2018 relevant to the determination of the application:</p> <ul style="list-style-type: none"> <li>- Policy RCA1 (Residential Character and Amenity);</li> <li>- CH2 (Development Affecting Conservation Areas)</li> <li>- T1 (Development Location and Accessibility); and</li> <li>- T2 (General Transport Impact).</li> </ul>												
v.	Notice of Review dated 4 August 2023 together with Applicant's Submission with and associated documents.												

## **Findings and Conclusions**

- 3.2. 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 refuse planning permission, 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.
- 3.3. 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 retrospective application for change of use of flat to short term holiday let at 5 West Bay Court, North Berwick. The Property is a first floor flat within a 2-storey building containing 6 flats at the junction of Station Hill and West Bay Road in North Berwick. To the north and west the site is bounded by the grounds of flats which appear to be in residential use and is in a mainly residential area covered by Policy RCA1 of the LDP which seeks to protect residential amenity.

Each flat has a parking space in an open garage area under balconies of upper flats of the northern part of the building, accessed via a gravelled area which appears to be shared between all the flats. The building sits within gardens which again appear to be communal. Once within the building, access to the flat is via a shared front entrance door and communal hallway. The applicant stated that the flat has been marketed and use for short term let for four years. At the time of application the appellant stated that the maximum number of guests was four, but in the appellant's appeal submission the number of guests is stated to be two.

The Planning Adviser noted that the members of East Lothian Local Review Body were minded to grant Change of Use to a short term let in relation to 3 West Bay Court, North Berwick and as such members should consider whether the granting of permission for a second short term let in the same building has an effect on amenity which is unacceptable, as well as the effect on amenity of the use for this flat alone.

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 decision taker should therefore first consider whether, taking into account the development plan as a whole, the proposal does or does not accord with it. He or she should then identify all other material considerations – this means things that have not previously been considered through the development plan – and decide if they are of such weight that they override the priority which is given to the development plan by statute. The development plan for the area is National Planning Framework 4 (NPF4) and the East Lothian Local Development Plan (LDP).

This application site lies within North Berwick Conservation Area. Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 gives a general duty as respects conservation areas. This duty requires that in exercising its planning functions, the planning authority shall pay special attention to the desirability of preserving or enhancing the character or appearance of the area in which the building or land is located. If any proposed development would conflict with that objective, there will be a strong presumption against the grant of planning permission.

Policy 7 of NPF4 Historic Assets and Places provides that Development proposals in or affecting conservation areas will only be supported where the character and appearance of the conservation area and its setting is preserved or enhanced. Policy CH2 of the LDP has similar provision. The Conservation Area Character Statement for North Berwick Conservation Area is found in the Cultural Heritage Supplementary Planning Guidance. This notes that the town expanded following its popularity as a seaside resort.

Planning permission is required where there is a material change of use from a dwelling house to short term let. Councils may designate Control Areas for short term lets, however this Council has not done so, and this matter is still under consideration.

NPF4 contains Policy 30E which specifically covers short term lets. This policy includes two criteria which must both be met for the use of an existing building as a short term let to be supported. The first test is the proposal must not result in an unacceptable impact on local amenity or the character of a neighbourhood area. The second is that loss of residential accommodation will not be supported unless the loss is outweighed by demonstrable economic benefits. The requirement that there be no unacceptable impact on local amenity, or the character of the neighbourhood should therefore be considered as a stand-alone test. Impacts on amenity and character should not be weighed against economic benefit. Economic benefit should only be weighed against the effect of loss of residential accommodation. There is no specific policy on short term lets within the LDP however it states that a range of hotel, guest house and other accommodation attracts visitors and encourages them to stay and benefit the East Lothian economy. The East Lothian Economic Development Strategy 2012-21 identifies tourism as one of the strengths of the East Lothian economy, and a source of employment opportunities.

Since the 1 October 2023 all properties let for more than 5 weeks a year require a licence. The Short Term Let register shows that there are around 90 properties in North Berwick which have, or which have applied for, a licence. Licensing state that there is backlog of around 120 applications in East Lothian overall which are not yet on the register. Research carried out by Arneil Johnston into the Private Rental Sector in East Lothian in 2022 found there 225 short term lets in the North Berwick Area Partnership Area.

The Council has recently declared a Nature Crisis. NPF4 Policy 1 requires significant weight to be given to the global climate and nature crisis. Policy 3 aims to protect biodiversity, reverse biodiversity loss, deliver positive effects from development and strengthen nature networks. These applications constitute local development that is non-householder. Policy 3 Part C requires that proposals for local development include appropriate measures to conserve, restore and enhance biodiversity proportionate to the nature and scale of development. Where physical measures are not possible, this could include contributions to improvements offsite, or measures to promote the protection local biodiversity to guests.

The Planning Adviser noted that three objections were made to this planning application including one from the North Berwick Environment and Heritage Trust. The grounds for objection were summarised by the case officer but included impacts on neighbours, impact on housing stock and the cumulative effects of three units in a single block of six. North Berwick Community Council also objected to this application due to the potential for disruption for permanent residents of the building.

The Case Officer noted legislation and policy on Conservation Areas but did not offer an assessment of whether the proposal preserves or enhances the Conservation Area. As there are no physical alterations involved in the proposal there is no detriment in term of the built

environment. Historic character can include issues such as levels of activity and ambience as well as built elements. One objector considered that out of season it is obvious the town is less buoyant due to short term lets in general. This effect would have potential to cumulatively harm character of a Conservation Area. However, the recognition in the North Berwick Conservation Area character statement of the areas expansion as a seaside resort suggests that some level of holiday accommodation is likely to be expected and that seasonal fluctuations in activity would accord with that character. Given the levels of applications made and approved so far in North Berwick, this proposal would not in the Planning Adviser's view cause harm to the character of the Conservation Area either alone or cumulatively.

The case officer then considered Policy 30 Part E of NPF4, and Policy RCA1 of the LDP. He considered that there would be extra levels of activity, including guests arriving with luggage and at unsociable hours, and for cleaning, which would be harmful to the amenity of the occupants of the residential properties within the building. Allowing short term guests access to otherwise secure shared areas would change the actual and perceived security of residents. He considered this incompatible with and harmful to the amenity of occupiers of properties within West Bay Court, individually and cumulatively with the two other flats in the building subject to separate applications and appeal. The case officer did not consider it possible to impose conditions that could control this.

The case officer noted that the Councils' Housing Strategy and Development service do not support this application due to the density of short term lets in North Berwick combined with a constrained housing market, especially of 1 and 2 bed properties. The Council's Economic Development Service Manager however advises that there are demonstrable local economic benefits delivered by short term holiday lets. Although his figures in support of this are made on the basis of 4 guests he notes the benefits to the East Lothian economy of short term let accommodation overall are substantial.

To meet the terms of NPF4 Policy 30E, there should be no unacceptable effects on residential amenity, AND the local economic benefits should outweigh the loss of residential accommodation. The Planning Adviser advised that if Members considered that the effects on amenity are acceptable, and that demonstrable economic benefits outweigh the loss of residential accommodation, the proposal would be acceptable under Policy 30E. However economic benefit should not be weighed against residential amenity, which must be considered separately.

No biodiversity enhancement has been included in the application as required by NPF4 Policy 3. As a local development, this should be included in a manner proportionate to the application. If it is not possible to make any changes to the property or surroundings to improve biodiversity, contributions to offsite improvements may be possible, or provision of information on protecting the biodiversity of the area supplied to guests. This enhancement could be secured by condition.

In the appellant's review statement he submits that the property has been successfully let on a short term basis for 4 years with no need for council or police intervention. This is backed up by responses from the Police and the Councils Anti-Social Behaviour team. The appellant includes letters in support from neighbours who state that the holiday lets do not affect their residential amenity. The Planning Adviser noted that as these were not received as representations to the planning application the identity of the senders could not be verified by the planning authority, however there was no reason to think they were not genuine. The appellant notes that long term occupancy could also give rise to amenity issues, in that permanent residents can also for example come and go at anti-social hours from their work or

social lives, or play musical instruments. He considers that issues with short term let guests are by their nature short term and that high quality small flats such as this do not have the problems that 'party flats' can do. There is therefore no unacceptable effect on residential amenity.

The appellant notes and commends the views of the Council's Economic Development Service Manager on economic benefit. He also notes that other local businesses depend on tourism expenditure and activity in the area.

The appellant argues the demonstrable economic benefits outweigh the effect on residential amenity. The Planning Adviser reminded Members that economic benefit should only be weighed against loss of housing stock, not impact on amenity.

In a further submission, North Berwick Environment and Heritage Trust consider that local amenity would be harmed, not just the amenity of the stairwell. They considered that the figures offered by the Economic Development Service Manager are misleading as they do not take into account the economic benefits of alternative uses of the flat as a permanent let.

The Planning Adviser advised that in her view the key issues to be considered are firstly whether the proposal preserves or enhances North Berwick Conservation area, and secondly, whether there is unacceptable harm to residential amenity contrary to NPF4 Policy 30E and LDP Policy RCA1, and if there is not, whether any economic benefits outweigh the loss of residential accommodation.

The Planning Adviser noted that if Members were minded to grant consent the case officer had advised on conditions to limit the number of guests. The condition stated by the case officer is to limit the number to 4 guests. However, the appellants statement says that apartment 5 has a maximum booking number of 2 guests. If you wish to place such a condition on the capacity of the flat can be checked.

It is open to you to refuse the application, either for the reasons given by the case officer or for other planning reasons, to grant the application or to grant the application with conditions.

- 3.4. 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.
- 3.5. Councillor McIntosh stated that she was supportive of the Planning Officer's position. She noted that while there may be different impacts from residential use as opposed to Short Term Lettings she was minded that the impact of Short Term Lettings would be detrimental on the amenity of neighbors within the building. She also noted that while there were currently letters of support from neighbours this did not mean that future occupiers of the properties would be supportive. She then considered the impact on housing and was of the view that the loss of housing outweighed the economic benefit. Accordingly, she was minded to support the Planning Officer's recommendation and refuse the appeal.
- 3.6. Councillor Cassini agreed with the points made by Councillor McIntosh and was of the view that due to the layout of the building and the location of this property being on the first floor there would be a detrimental impact on the amenity of the residents. She also noted that that as there was already a short term let on the ground floor the cumulative effect of an additional Short Term Let within this building would create an unacceptable detriment to the amenity. Accordingly, she was minded on this occasion to support the Planning

Officer's assessment and was minded to refuse this appeal.

- 3.7. Councillor Findlay commented that he was of the view that the location of the property was important in considering the impact on amenity. He commented that notwithstanding the location of this property being on the first floor he was mindful that there had been letters of support and no objections from other residents within the building. He was therefore of the view that the use of the property as a Short Term Let would not adversely impact the amenity of the residents as was demonstrated by the said letters of support. Accordingly, he was minded to support the appeal.
- 3.8. The Chair noted the position of his colleagues and was also of the view that this would have a detrimental effect on the amenity of the residents within the other properties. He also noted the Planning Officer's report and concurred with the assessment therein. Accordingly, he agreed with the case officer's assessment of the application and would be minded to dismiss the appeal.

Accordingly, the ELLRB decided by majority of three to one to dismiss the appeal and refuse planning permission for the reasons more particularly set out in the Planning Officer's Report

Planning Permission is hereby refused.



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

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

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

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