

REVIEW DECISION NOTICE

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

Application for Review by Dr John Reglinski of 31 Douglas Marches, North Berwick EH39 5LZ of decision to refuse Planning Permission for the Change of use of flat to short term holiday let (Retrospective) at 4 Bramerton Court, 27 Dirleton Avenue, North Berwick.

Site Address: 4 Bramerton Court, 27 Dirleton Avenue, North Berwick

Application Ref: 23/00472/P

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

Date of Review Decision Notice: 15 Dec 2023

Decision

The ELLRB agreed by a majority of 3 to 1 to dismiss the appeal and to refuse planning permission for Change of use of flat to short term holiday let (Retrospective) at 4 Bramerton Court, 27 Dirleton Avenue, 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 4 Bramerton Court, 27 Dirleton Avenue, North Berwick.

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

application is dated 4 August 2023.

2.3. The condition and the reason for the condition is more particularly set out in full in the said Decision Notice dated 4 August 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 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 12 September 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"> <thead> <tr> <th data-bbox="384 853 539 882"><u>Drawing No.</u></th> <th data-bbox="687 853 836 882"><u>Revision No.</u></th> <th data-bbox="1027 853 1203 882"><u>Date Received</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="384 913 491 943">DWG 01</td> <td data-bbox="740 913 751 943">-</td> <td data-bbox="1027 913 1161 943">25.05.2023</td> </tr> <tr> <td data-bbox="384 943 491 972">DWG 02</td> <td data-bbox="740 943 751 972">-</td> <td data-bbox="1027 943 1161 972">21.06.2023</td> </tr> <tr> <td data-bbox="384 972 491 1001">DWG 03</td> <td data-bbox="740 972 751 1001">-</td> <td data-bbox="1027 972 1161 1001">21.06.2023</td> </tr> </tbody> </table>	<u>Drawing No.</u>	<u>Revision No.</u>	<u>Date Received</u>	DWG 01	-	25.05.2023	DWG 02	-	21.06.2023	DWG 03	-	21.06.2023
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DWG 01	-	25.05.2023											
DWG 02	-	21.06.2023											
DWG 03	-	21.06.2023											
ii.	The Application for planning permission registered on 21 June 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"> - Policy 7 (Historic assets and places) - Part (e) of Policy 30 (Tourism) <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"> - Policy RCA1 (Residential Character and Amenity); - CH2 (Development Affecting Conservation Areas) - T1 (Development Location and Accessibility); and - T2 (General Transport Impact). 												
v.	Notice of Review dated 12 September 2023 together with Applicant's Submission 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 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.
- 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 4 Bramerton Court, 27 Dirleton Avenue, North Berwick. The property is a two bedroomed first floor flat within a three-storey building containing six flats sitting within what appears to be communal grounds. Access is via a common hallway and stair. No alterations have been made to the flat. The site is covered by Policy RCA1 of the LDP which seeks to protect residential amenity. The applicant stated at the time of application that the flat had been marketed and used for short term lets since April 2015, that the maximum number of guests was four and that the flat has a private parking space.

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).

The Planning Adviser advised the site subject of this appeal 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 of local biodiversity to guests.

The Planning Adviser noted that three objections and two representations were made to this planning application. The case officer summarised their reasons which included amenity including neighbours, impact on availability of housing stock; that the comments on previous applications made by ELC Economic Development service were flawed and do not take account of the economic effects of long-term residents. The representation refers to the title deeds which state that the flats shall only be used as private dwelling houses and comments on parking provision. It was also noted that the North Berwick Community Council did not comment on this application.

The Case Officer had 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. The recognition in the North Berwick as a seaside town in its Character Statement which would be expected to lead to fluctuating activity levels through the year. Given the levels of applications made and approved so far in North Berwick for short term let, 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 the nature of comings and goings would change, including guests arriving with luggage and at unsociable hours, and visits for cleaning, which would be harmful to the amenity of the occupants of the residential properties within the building. He further considered that 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 Bramerton Court. The case officer did not consider it possible to impose conditions that could control this.

The case officer had noted that the Councils' Housing Strategy and Development service do not object. They do however note that there is significant pressure on supply of 1 and 2 bed properties and there is a need for an increased supply in long term rental properties, particularly in the east. The Council's Economic Development Service Manager however advises that there are demonstrable local economic benefits delivered by short term holiday lets, supplying figures in support of this. The use supports the strategy goals and objectives of the Council's Economic Development Strategy.

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 consider that the effects on amenity are acceptable, and that demonstrable economic benefits outweigh the loss of residential accommodation, the proposal is 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. The Planning Adviser advised that biodiversity enhancement should be included. This enhancement could be secured by condition.

The appellant has submitted a review statement which covers this application. The appellant considers the Council has mishandled his case, resulting in unfairness. He states that the property was removed from the residential market in 2015 with the permission of the Council. For avoidance of doubt, planning consent was not obtained at that time, and is now required. His complaint should be taken forward through different channels and is not relevant to the determination of this appeal. The appellant considers that NPF4 and the LDP policy should not apply to the application as the use of the flat for short term let pre-dates these policies. The Planning Adviser advised that NPF4 and the LDP are the development plan for the area and legislation provides that decisions on planning applications are made in accordance with those plans unless material considerations indicate otherwise.

With regard to the first part of NPF4 Policy 30E regarding residential amenity and character of the neighbourhood, the appellant notes he has let the property since 2015 and there has been no impact on local amenity or the character of the neighbourhood. The Council has not provided any evidence that the visitors are a nuisance or have led to unwelcome impacts on neighbours. The reason for refusal is therefore based on nebulous opinion. The police and anti-social behaviour unit have no record of complaints. No specific instances of issues in the communal space have been raised through representation. Short stays are discouraged and there are no overnight stays. Access to the property has minimal impact on only one resident. As occupancy is around 75% (split between family and paying guests) the occupants use the communal space less than normal residents would. The slight increase in activity on the stair once a week is offset by days that the flat is vacant. Long term residents also go up and down stairs with bulky goods. Guests have fewer commercial visitors such as mail and deliveries, all of which are non-residents. Long term residents can also have cleaners, and disputes with each other. He also notes parking provision is adequate.

The appellant reiterates these comments with regard to LDP Policy RCA1 noting that the use of the flat has not affected the character of the area or residents nor have there been any

instances of guests misusing or abusing the property.

The second part of Policy 30E requires the loss of residential accommodation to be outweighed by demonstrable local economic benefits. On housing stock issues, he notes his flat was purchased in 2015 at a time housing stock in North Berwick was increasing, so did not prevent anyone from obtaining a home. There is no evidence that holiday homes in North Berwick would be bought by low income or young people. The housing market in North Berwick is affected by retirees buying there which keeps prices unaffordable for those groups. Private individuals should not be relied on to provide rental accommodation. There is no control over who private long-term rentals are let to, so it cannot be assumed the flat would otherwise be available to certain employment sectors or temporary staff. However, the flat has previously been let by him to temporary workers. The Economic Development Service Manager recognises the value of short-term accommodation for workers in his response. The appellant considers the views of the Economic Development Service Manager on the economic benefits of short term lets to be convincing.

The appellant considers that those such as him with unblemished records should be allowed to continue trading. The Council has not taken account of his unique relationship with the property and residents. He states that he would accept a condition such that the flat can only be sold as a dwelling and not a business. The Planning Adviser advised that she did not consider it possible to place such a condition on permission. This is because it is not reasonable to condition something that would require to be considered through application for planning permission in the future, namely the return to use as a private dwelling house. The appellant discusses issues with the deeds to the property which is not a planning matter.

The North Berwick Environment and Heritage Trust made further submissions, considering that local amenity would be harmed, and 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 appellant responded through further submissions, considering the focus of the Trusts submission is not sufficiently on his application but on the wider short term let situation. None of the immediate neighbours have raised amenity issues. There are no wider amenity issues as the block is screened by a high hedge and parking is self-contained. If there are issues the licence to let can be revoked. The appellant does note however that tourists in general have a demonstrable impact on the town, including its parks, bins, public toilets and car parks. The appellant states however that North Berwick needs a short term let market and anecdotally the sector is contracting. The appellant considers the council's economic figures may be inflated but that the figures in the report for City of Edinburgh Council cited by the Trust are not transferrable to North Berwick either. There is no doubt short term lets are a major contributor to the economy.

The Planning Adviser summarised the key issues to consider which are 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 demonstrable economic benefits outweigh the loss of residential accommodation.

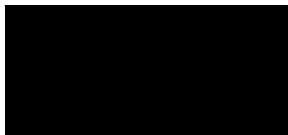
The appellant offered to arrange for a formal layout of parking spaces in the communal area, subject to agreement with other owners. On this point the Planning Adviser would advise that use of a condition is not appropriate to secure this as the land concerned is not within the appellant's control. It is therefore unreasonable. It is noted however that roads services have

not objected.

- 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 case officer's position. She notes that the communal area where the property is situated represented a small space with the doors to other properties within the building being close to each other. Accordingly, she was of the view that amenity would be impacted and was minded to support the Planning Officer's recommendation and refuse the appeal.
- 3.6. Councillor Findlay commented that he was of the view that the loss of amenity in this case is driven by the residents within the building and impact on them. Given there was no objections received in relation to other residents within the building then he did not feel that their amenity was detrimentally impacted by the use of the property as a Short Term Let. Accordingly, he was of the view that he did not believe there was a detrimental effect to amenity therefore was minded to support the applicant.
- 3.7. Councillor Cassini commented that in her view there was a difference between those occupying properties as residential accommodation and those who use the property as a Short Term Let. She was of the view that the use of the property as a short term let with continually changing occupants/guests along with the impact of the open stairway within the building would affect the residential amenity of the building. For the reasons more particularly set out in the Planning Officer's report she was minded to refuse this application.
- 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 commented that noise travels and is of the view that there is a different level and type of noise dependent on the use of the property. He was therefore of the view that this change in noise would be detrimental to the amenity of the residents within the building. There will be impact and noise detrimental to the amenity of other residents. Accordingly, he agreed with the Planning Officer's assessment of the application and would be minded to dismiss the appeal.

Accordingly, the ELLRB decided by majority of 3 to 1 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.