

## **REVIEW DECISION NOTICE**

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

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Application for Review by Mrs Sharon Clark c/o 1 Creel Court, North Berwick of decision to refuse Planning Permission for the Change of use of flat to short term holiday let (Retrospective) at 1 Creel Court, North Berwick.

Site Address: 1 Creel Court, North Berwick

Application Ref: 23/00455/P

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

Date of Review Decision Notice: 15 Dec 2023

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### **Decision**

The ELLRB agreed by casting vote of the Chair to dismiss the appeal and to refuse planning permission for Change of use of flat to short term holiday let (Retrospective) at 1 Creel 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 1 Creel Court, North Berwick.

2.2. The planning application was registered on 30 June 2023 and the Decision Notice refusing the application is dated 25 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 25 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 11 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="384 815 544 848"><u>Drawing No.</u></th> <th data-bbox="683 815 836 848"><u>Revision No.</u></th> <th data-bbox="1027 815 1203 848"><u>Date Received</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="384 875 491 904">DWG 01</td> <td data-bbox="740 875 751 904">-</td> <td data-bbox="1027 875 1161 904">27.04.2023</td> </tr> <tr> <td data-bbox="384 904 491 934">DWG 02</td> <td data-bbox="740 904 751 934">-</td> <td data-bbox="1027 904 1161 934">28.06.2023</td> </tr> <tr> <td data-bbox="384 934 491 963">DWG 03</td> <td data-bbox="740 934 751 963">-</td> <td data-bbox="1027 934 1161 963">28.06.2023</td> </tr> <tr> <td data-bbox="384 963 491 992">DWG 04</td> <td data-bbox="740 963 751 992">-</td> <td data-bbox="1027 963 1161 992">30.06.2023</td> </tr> </tbody> </table>	<u>Drawing No.</u>	<u>Revision No.</u>	<u>Date Received</u>	DWG 01	-	27.04.2023	DWG 02	-	28.06.2023	DWG 03	-	28.06.2023	DWG 04	-	30.06.2023
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ii.	The Application for planning permission registered on 30 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"> <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>- Policy TC2 (Town Centres)</li> <li>- CH2 (Development Affecting Conservation Areas)</li> <li>- T1 (Development Location and Accessibility); and</li> <li>- T2 (General Transport Impact).</li> <li>- North Berwick Town Centre Strategy Supplementary Guidance</li> </ul>															
v.	Notice of Review dated 11 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 1 Creel Court, North Berwick. is a first floor two-bedroom flat within a three storey flatted building with three flats on both first and second floors. It is located within North Berwick Town Centre as defined by Policy TC2 of the LDP. The property is bounded to the north by Creel Court where there is shared private parking. To the south lies North Berwick High Street which has commercial properties at ground floor and residential property above. The flat is accessed via a communal entrance giving onto an internal communal stair. No physical alterations have been made. The applicant states that the property has been operating as a short term let for nine years and the maximum number of guests is four.

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 before you 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. The case officer summarised their reasons which included amenity and security issues for residents, lack of evidence that short term lets in North Berwick provide a local economic benefit that outweighs the requirement for housing, impacts on the character and amenity of the local area due to the overabundance of short term let property, and impacts on the housing market and housing stock, with one objector stating there were 708 households on the Council's housing waiting list for North Berwick.

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. 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. There are two other properties in Creel Court which either have a short term let licence or for which a licence has been applied. Given the levels of applications made and approved so far, both in North Berwick and in Creel Court in particular, 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 which seek to protect residential amenity. Policy TC2 on Town Centres also contains policy protecting housing from significant environmental impact. The case officer had noted that while guests do not have to walk past other flats the hall and stairway was nonetheless shared. The nature and timing of comings and goings would change, with movement of luggage and access for cleaning creating disturbance and reducing actual and perceived security. This would be harmful to amenity, contrary to LDP Policy RCA 1 and NPF4 Policy 30 Part E. The case officer did not consider it possible to impose conditions that could control this.

The location is within North Berwick Town Centre. NPF4 Policy 27 supports proposals that enhance and improve the vitality and viability of city, town and local centres, including proposals that increase the mix of uses. Policy TC2 Town and Local Centres applies to this site. This policy notes acceptable uses within a town centre, which does not include short term lets. However, leisure use is included and the policy accepts residential use in backland or above ground floor locations such as this.

The North Berwick Town Centre Strategy Supplementary Guidance is part of the development plan. This guidance notes a number of issues for North Berwick Town Centre including (paragraph 7.4) "relatively high number of holiday lets that are not occupied all year round in the town centre". The SWOT and Health Check analysis included in the Strategy considers second homes and holiday lets in the town centre to be a weakness; though limited choice of hotels and tourist accommodation was also identified as a weakness. The Town Centre Walk and talk scored different elements: housing and community scored low as the range of housing was considered very restricted, being mostly higher priced properties. One of the main reasons identified by respondents was the presence of holiday/second homes, which removes housing stock. No actions on short term lets were identified in the Strategy, however.

The case officer had then considered whether loss of residential accommodation is outweighed by demonstrable economic benefit. The Councils' Housing Strategy and Development service do not object to this proposal. However, they do note that there is a need for an increased supply in long term rental housing particularly in the east of the county, with significant pressure on supply of 1 and 2 bed property. 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 and noting that the proposal aligns with the strategic 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. 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 this policy. 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. Biodiversity enhancement should be included as noted in the previous cases. This enhancement could be secured by condition.

The appellant has submitted in their appeal that the business has been operating successfully without complaint for over nine years, and only operates for around 10 weeks in a year. They do not allow stag and hen parties but cater to families and golfers. The appellant notes pre-application advice from the planning service that their application would not necessarily be rejected because it had a common stairwell and feels misled as this then was the primary

reason for refusal. The applicant feeling misled is not relevant to the determination of the application on its merits. In addition, the applicant refers to a judgement by Lord Baird stating that the Council policy is unlawful. This was considered to refer to a court case brought on Petition of Averbuch for judicial review of the City of Edinburgh Council's short term let policy. This is not relevant as the Council does not have a short term let policy or planning guidance applicable to short term lets.

The North Berwick Environment and Heritage Trust made further submissions considering that local amenity would be harmed, and that consideration of amenity should look beyond 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 then summarised that the key issues for the members to consider 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 TC2, and there is not, then whether any economic benefits outweigh the loss of residential accommodation.

- 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 Findlay commented that North Berwick is a tourist destination and there are a number of Short Term Let applications being taken forward in North Berwick. There is no current Planning Policy on this matter set out by the Planning Authority and he feels that this area would benefit from policy being put in place. Notwithstanding this, in this case he was of the view that the location of the property within the communal stair and access means that no other residents' doors would be passed within the building. He also noted that there were no objections from residents and the Community Council only made general objection to Short Term Lets. Accordingly, he was of the view that in relation to this application he did not believe there was a detrimental effect to amenity therefore was minded to support the applicant.
- 3.6. Councillor Cassini commented that in her view as this property was above a shop there would be less impact on overall amenity to neighbors. On basis of the economic development report she was of the view there would be more spend at shops within North Berwick and in relation to this application would support economic development over housing. She then commented that if this application is approved by the Board today, she would also seek a condition regarding management of recycling and waste from the property. She then commented that for these reasons she was minded to approve this application.
- 3.7. Councillor McIntosh stated that she was supportive of the case officer's position. She notes that the while there may be different impacts from residential use as opposed to Short Term Lettings, she was minded that the impact would be detrimental on the amenity of neighbours within the building. She noted that other neighbours within the block had personal effects, such as plants, within the communal area and felt that this may not be maintained should the application be approved. 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.

- 3.8. 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 having stayed in a flat anything that occurs at the entrance of the property will have an impact on other residents. There will be impact and noise detrimental to the amenity of other residents. 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 casting vote of the Chair to dismiss the appeal and refuse planning permission for the reasons more particularly set out in the Planning Officer's Report and the Planning Adviser's presentation detailed within this Decision Notice.

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.