



# Local Review Body Appeal

## REVIEW STATEMENT



**23/00832/P- Change of Use to Short-Term Let (retrospective)  
8d Kirk Ports, North Berwick, EH39 4HL.**

**DECEMBER 2023.**

apt planning &  
development

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Each application must be determined on its own merits, a fundamental bedrock of the planning system, yet the decisions to refuse this application represents an example of the blanket approach taken to short-term let properties in East Lothian and specifically North Berwick.

This property has been successfully let on a commercial and short-term basis for the last 3 years – there have been no complaints or need for Council or Police intervention. It is an ideal sustainable location within easy walking distance of all local amenities, encouraging visitors to walk and not use the private car for every journey.

There have been five letters of support and no objections to this proposed change of use - neighbours in the other properties at 8 Kirk Ports have clearly stated that the holiday let has had **NO IMPACT** on their residential amenity – they support this retrospective change of use **which of course, is no change to them anyway as it is an existing short-term let.**

Even the Council's Senior Environmental Health Officer states that you ***'cannot assume that antisocial behaviour issues will arise'***. Similarly, you cannot control long-term let occupancy and a potential *'bad neighbour'* could have a far greater impact on the amenity of the area over a sustained period of time.

The Council's Economic Development Service Manager advises that ***'there are demonstrable local economic benefits delivered by all types of short-term holiday lets and that existing provision of this type of accommodation must be retained, protected and supported where there is no demonstrable impact on local amenity'***.

Short-Term Holiday Accommodation ensures considerable local economic benefits and with, in this instance, no impact on local or residential amenity.

This is a well-run local business (supported by a well-known local letting agent) that will be put out of business if unsubstantiated assumptions are the basis on which these types of decisions are made;

The recent Local Review Body meeting supported an appeal for a ground floor short-term let at West Bay Court. The property at Kirk Ports displays similar characteristics and is located at a more central location within North Berwick and well suited for holiday accommodation and access to the whole spectrum of local facilities.

## Executive Summary

- a. The Local Review Panel has the advantage of looking at an application with a fresh perspective. It is neither bound by the original decision nor by a strict interpretation of planning policy which **provides a framework for decision making not an absolute.**
- b. National Planning Policy encourages Local Planning Authorities to take a positive approach to development that could contribute to sustainable economic growth. In taking all aspects of the proposal into consideration it is clear that the proposed change of use from residential apartment to short-term let meets these underlying principles. **Using existing properties in a town centre location to generate significant economic benefit.**
- c. **The property at Kirk Ports is an established; well run, short-term holiday let that have no local amenity issues as has been highlighted by letters of support from the neighbouring properties who are permanent residents within the building. They have clearly stated that the holiday let has NO IMPACT on residential amenity.**
- d. There is no evidence of any anti-social behaviour. Neither the Council nor the Police have been required at any point whilst conversely the neighbours support these applications, which to them is simply a continuation of the current situation.
- e. It is a sustainable location, being within easy walking distance of all key local amenities and attractions including the beaches, High Street, local bars and restaurants, the Lodge Gardens and the Seabird Centre (to name but a few), encouraging visitors not to rely on the private car for every journey. Indeed bikes can be rented from the local independent bike shop just a few yards away at the Kirk Ports Car Park whilst Steampunk Coffee, and successful independent coffee outlet is also just a few doors down...two examples of local businesses dependent on the tourism market to ensure their long-term viability.
- f. The property is also within easy walking distance of local bus stops and the train station for trips further afield. Holiday accommodation should be encouraged at a location like Kirk Ports.
- g. Using sweeping unsubstantiated assumptions on the behaviour of short-term let guests as a reason to refuse a planning application is ignoring the risk that longer term tenants can pose as part of a short-assured tenancy. In such instances, the impact is far greater and over a longer period of time. To tar all short-term guests with the same brush **infers that all of us who may use short-term self-catering accommodation are equally reason to refuse planning permission.**
- h. Permanent residents whether owner-occupiers of longer term tenants will have active social lives (involving late nights and early mornings which involves movement, noise and disturbance) or jobs requiring early starts and late finishes.

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- i. Receiving shopping deliveries or unloading their own shopping can be a noisy business whilst the delivery lorry blocks parking etc. To say there is increased activity due to changeover cleaning etc. ignores that fact that many people have cleaners and help on a regular basis...what is the difference ?
- j. It is perhaps more likely that problems can arise from long-term occupancy (ownership or rental) than with short-term lets (and much more difficult to control) and is a reason why until recently short-term lets were not differentiated from residential use.
- k. There is an acknowledged lack of hotels/bed spaces in the area and the loss of the short-term let properties will have a damaging impact on East Lothian's ability to meet the demand of visitors which in turn will have a significant impact on the viability of local businesses which depend on the tourism sector (year-round).
- l. This situation has not been helped by planning permission being granted previously that saw the conversion of The Blenheim Hotel to four luxury homes. **It is surely contradictory to permit the conversion of existing hotel stock yet refuse existing, well-run and popular short-term let properties to continue to operate.**
- m. Similarly the recent Local Review Body granted planning permission for a similar application at West Bay Court (*Planning Reference 23/00306/P*). The Panel was satisfied that the small property was situated on the ground floor limiting the potential for disturbance and conflict. This property displays many of the same characteristics whilst it is actually easier/quicker to access than the West Bay property.
- n. The Kirk Ports property is also in a more central location, within very easy walking distance of all local amenities. It is an ideal location for a short-term let, whilst local residents are fully aware that they live in a central location with the noise and activity (and significant benefits) this brings.
- o. **Local businesses have consistently expressed their support for short-term let applications in North Berwick**, acknowledging the critical role tourism plays in the vitality and viability of North Berwick. Local retailers and restaurants as well as tourist specific destinations are dependent on 12 months of tourism spend. **Many would not be able to continue if there is a noticeable drop in tourism expenditure and activity in the area.**

## INTRODUCTION

1. **apt planning & development** has prepared this Review Statement on behalf of Ms Emily Black with regards to application **23/000832/P** seeking planning permission for change of use of her flat to short term holiday let at **8d Kirk Ports, North Berwick**.

## SITE CHARACTERISTICS, BACKGROUND AND PLANNING HISTORY

2. The property is a two-bed ground floor flat. Access is almost immediately off the shared entrance to the building which consists of three further flats (one on the ground floor and two on the first floor) all of which are in residential use and all of which have written letters supporting the planning application. 8d Kirk Ports is a high quality, small holiday let property which does not attract large groups (so called party-flats) likely to create noise/disturbance in the area.
3. We can confirm that:
  - The flats have been marketed and used as short-term lets for 3 years;
  - The minimum length of stay is 5 days, the maximum length of stay is 28 days – most guests stay for one week;
  - The maximum number of visitors in one booking is four guests;
  - The property are managed by **North Berwick Holiday Homes** a well-know and reputable local company specialising in these types of properties. They are responsive to any problems (maintenance etc.) as well as vetting/checking potential guests before accepting bookings and helping with check-in procedures. The fact that many booking are repeat guests highlights the quality of the properties and the operation of the business.
  - **The flat is in an ideal location, close to all local attractions and amenities including Steampunk Coffee, Law Cycles and Alandis Ice Cream Parlour, each independent businesses, each located on Kirk Ports and each equally dependent on a thriving tourist market in North Berwick. The situation is perfectly encapsulated as you walk along Kirk Ports itself.**

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APPLICATION 23/000832/P

4. Application **23/000832/P** was validated on 27<sup>th</sup> July 2023.
5. The Officer Report prepared in determining the application acknowledges the following:
  - a. The East Lothian Development Strategy 2012-22 identifies tourism as one of the strengths of the East Lothian Economy and a source of employment opportunities in the future;
  - b. The adopted East Lothian Development Plan 2018 states that a range of hotel guest house and other accommodation attracts visitors and encourages them to stay and benefit the economy of East Lothian;
6. The retrospective change of use of the flat to a holiday let provides accommodation within North Berwick that attracts visitors and encourages them to stay in East Lothian, which supports the existing long established business and benefits the wider economy of East Lothian.
7. In addition:
  - a. The Council's **Roads Services** and **Antisocial Behaviour Team** raise no objection to the (retrospective) planning applications;
  - b. **Police Scotland** state that there have been no police incidents at any of the addresses and raise no objection to the (retrospective) planning applications;
  - c. The Council's **Economic Development Service Manager** supports these planning applications.
8. The application was refused on the 29<sup>th</sup> September 2023. A single reason for refusal was given and we address this below.
9. Any appeal to the local review body must be lodged within three months of the determination of the application. As such these appeals have been lodged in advance of the 29<sup>th</sup> December deadline.

## REASON FOR REFUSAL

The holiday let use of the flatted property is incompatible with and harmful to the amenity of the occupants of the properties used as residential dwellings within the residential building of 8 Kirk Ports, 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. .

10. Policy 30 of National Planning Policy framework 4 states that proposals will not be supported if they mean an “*unacceptable impact on local amenity or the character of the neighbourhood or area*” or if the loss of residential accommodation isn't outweighed by demonstrable, local economic benefits.
11. Policy RCA1: Residential Character and Amenity states that the predominately residential character and amenity of existing or proposed housing areas will be safeguarded from the adverse impacts of uses other than housing. Development incompatible with the residential character and amenity of an area will not be permitted.
12. There is **no basis** on which to make the assertion that the holiday let use of the property is ‘*incompatible with and harmful to the amenity of the occupiers of the properties within the residential building*’. **This is proven by the fact that the huge majority of short-term lets have co-existed with their residential neighbours for many many years;**
13. The neighbours in the adjacent properties have clearly stated their support for the application and that there is **NO IMPACT** on their amenity or enjoyment of their own property;
14. Even the Council's Senior Environmental Health Officer states that you ‘**cannot assume that antisocial behaviour issues will arise**’ which is exactly what the reason for refusal has done!
15. It is just as likely that a short-assured tenancy tenant or permanent resident could be a bad neighbour whilst that problem would be difficult to resolve and potentially a much longer-term issue. Similarly it is a draconian approach to suggest that all short-term guests are a problem. By its very nature, if there was a problem it would be ‘*short-term*’ whilst we must reiterate, there has never been a problem with this property and the neighbours support this application.

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16. By taking such a stance, the Council is effectively tarring everyone who uses short-term let accommodation with the same brush – surely the exception does not prove the rule and the damaging economic implications of this unilateral approach will have far greater negative impacts than the occasional poos guest. As above, a bad long-term tenant or owner occupier is a far more concerning situation given how much more difficult it is to resolve.
17. The Council's **Economic Development Service Manager** advises 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.
18. How do you measure a demonstrable impact on local amenity ? What if an owner occupier brought a set of drums or an electric guitar and started practicing at all hours of the day and night. The impact could be significant yet a law abiding holiday maker is going to be prevented from utilising this ideally located se property to visit North Berwick and surrounding area.
19. Short-term let guest effectively act as if the property is their residence and this has been the recognised use for a number of years. This is not the situation of party flats in North Berwick but high-quality reputable accommodation options for visitors to North Berwick and East Lothian, many of whom are repeat guests and who spend time and money in the area supporting businesses and jobs yet we have decided upon a course of action to discriminate against a whole group of visitors/tourists (and property owners/businesses).
20. In the particular circumstances of this case it is stated that;
  - the property will provide high quality tourist accommodation attracting visitors to North Berwick and the surrounding area providing economic benefit;
  - there is a demonstrable economic benefit to having a wide range of accommodation types in East Lothian with the tourism sector contributing £155m to the local economy in 2021 and supporting 10% of the workforce;
  - visitors staying overnight in non-serviced accommodation contributed £60.1m to the local economy in 2021 and the majority of visitors to East Lothian are repeat visitors;
  - non-serviced accommodation (short term holiday lets) contributes positively to the local economy (£279m in 2019).
  - there is an increasing number of overnight stays in East Lothian for work purposes (which is expected to increase over the next 10-15 years) such that the loss of short-term accommodation is likely to have a significant negative impact on the local tourist economy in monetary and reputational terms.



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21. Therefore, the Council's Economic Development Service Manger **supported** this planning application stating that the change of use of the flat to short-term holiday let accommodation 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.
22. This statement is **objective** and **qualified** in its support for the application;
23. The case officer concludes that the '*local economic benefits do not outweigh the unacceptable impact on local amenity*'.
  - The case officer has not specified at what point the economic benefits outweigh the unacceptable impacts – **where is the tipping point ?**
  - At what point is the economic benefits associated with tourism expenditure (**expenditure that underpins the viability of many of North Berwick's businesses**) more important than the **chance** of a bad customer at **this property where there is no history of poor guest behaviour and the neighbouring property owners (owner occupiers) supported the application.**
  - The case officer report cites '*luggage or other property*' taken through the communal entrance leading to a level of disturbance'. Permanent residents come and go on a regular basis (if not more a regular basis) and may take golf clubs, shopping, transport luggage etc. at any time of the day and night.
  - We accept that guest changeover elicits movement and activity, but the existing permanent neighbours have stated that this does not create any amenity issue **and local residents are just as likely to have cleaners, gardeners, deliveries and regular comings and goings.**
  - There are also recent decisions (Edinburgh and East Lothian) concerning short-term lets with the main determining issues in these cases including:
    - The frequency of movement and disturbance for neighbours and whether it is likely to be more than a full-time tenant occupying the flat. **Generally the smaller the flat the less likelihood of disturbance to neighbours;**
    - This is a two bedroom flats – **the impact is negligible;**
  - The officer goes to make an assumption that holiday makers will come and go sometimes at antisocial hours. We would assert that that this is not necessarily the case and that permanent residents can work different hours/ shift patterns/ take business trips at odd hours and also go on holidays at odd hours;
24. This is a **subjective** and **unqualified** statement.

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- Another determining issue in the recent appeal decisions included - The size of the property and whether anyone renting it for a few days is likely to use it any differently from a long term tenant.
- The case officer refers to '*unfettered access*' leading to actual/perceived level of security for permanent residents. The holiday let is managed by a reputable local company and again we believe that this has been significantly overstated. **The fact that the neighbouring properties have written in support of the proposal clearly demonstrates that the current use of the properties is not having any material impact on their own enjoyment of Kirk Ports as their permanent residence.**
- Furthermore for this property and many others, the history of short-term lets operating side by side with everyday residential use with no history or evidence of conflict or complaint amply demonstrates that there is no issue with short-term let properties alongside peoples' homes.

## SUMMARY

26. Planning policies provide a framework within which to determine applications for planning permission **not a definitive position and policies cannot possibly apply to all circumstances.**
27. By adopting a blanket approach to short-term let properties with shared entrances etc. the determination of this application fails to take account of the individual merits of the application – that of a high quality property, with no history of incidents and support from neighbouring owners.
28. This goes against the fundamental principles of planning. In looking at the individual benefits of this short term letting business and taking a balanced in the context of all the influencing factors...every application determined on its merits.
29. The case officer concludes that the *'local economic benefits do not outweigh the unacceptable impact on local amenity'* yet does not qualify this statement in any way. An assessment must surely be made between a well-run high quality small scale holiday let business and the benefits it brings to North Berwick against the negligible and unproven chance that a paying guest could possible cause some disturbance and despite the fact that over the past three years this has not happened and the neighbouring properties support these this appeal.
30. This is not a party flat, but a well-run small scale holiday home popular with guests and neighbours alike and experiencing many repeat guest visits and at an ideal location for holiday accommodation, close to all amenities and encouraging non-car borne travel.
31. On this basis, the conclusion of any reasonable assessment must surely be that on balance the positives of this property contributing to the supply of holiday accommodation in North Berwick outweigh any potential (and unlikely) risk of there being a problem with short-term let guests.
32. It is also important to acknowledge that permanent residents, either owner-occupiers or long-term tenants can be equally problematic but far more difficult to control and create a much more long term problem.
33. Unsurprising a range of local businesses continue to support the use of short-term let properties in North Berwick acknowledging the importance of the tourist related spend to the town. In this instance these businesses include Law Cycles, Steampunk and Alandia, all located on Kirk Ports and all dependent on the tourism market highlighting the role and importance properties like 8d Kirk Ports plays in maintaining a vital and viable town centre.

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34. In many ways tourists spend more money locally than a local resident who may work in Edinburgh and actually spend little money in local shops, using online options and Edinburgh outlets instead of the local shops.
35. Local residents are less likely to eat out and use other facilities as often as those people visiting and trying to get the full North Berwick/East Lothian experience in a short space of time. Understandably, holiday-makers budget to spend accordingly including meals out, and other tourist related destinations (Seabird Centre, golf courses etc.).
36. Whilst we fully appreciate the concerns and real impacts that short-term lets can have on an area, there is not a proliferation in North Berwick (compared to some areas of Edinburgh) nor is this property a so called party-flat in any way shape or form.
37. North Berwick has not been designated a controlled zone nor is this likely to happen in the near future. Short-term lets (for business or pleasure) have co-existed successfully with their owner occupier neighbours for many many years whilst contributing to the local economy.
38. This is an application/appeal for retrospective planning – granting planning permission for Kirk Ports does not enable any change to the current situation – a situation that is acceptable and welcomed by all concerned. Finally it is misleading to suggest that the loss of this property from the wider housing market has a significant impact on the availability of homes in the area. One small apartment has no material impact on supply.

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July 2023

Dear Sir/Madam,

## Application for Change of Use of flat to Short-Term Let 8D Kirk Ports, North Berwick, EH39 4HL

With regards to the above, **apt planning & development ltd.** is pleased to submit an application on behalf of the owner Ms Emily Black seeking planning permission for a change-of-use to permit the use of the property as a short-term let holiday property. There is no planning history for the Kirk Ports property which is marketed as The Wee Bunker ([www.weebunker.com](http://www.weebunker.com)).

### The Proposals

The purpose of this application is to seek a change of use from a residential apartment to a short term let property. As the images below illustrates, the property provides very high quality visitor accommodation with a simple layout and a very high level of fixtures and fittings. It is let directly and through North Berwick Holiday Homes which have stringent conditions around the letting of properties to protect the property and amenity of any neighbours.

The Applicant is the owner of the property, and the property comprises an existing 2 bedroom flat at ground floor level (capacity for four guests). It is a small property ensuring that there will be minimal movement and activity with the property being let by a single family/couple and not subject to large groups. The site is accessed from Kirk Ports through a shared private secure entrance serving four properties with 8D having an access immediately off the ground floor hallway. The ground floor property consists of a kitchen living area, shower room and two double/twin bedrooms.





The site is located within North Berwick's Town Centre, with the access to the property facing south onto Kirk Ports, one street back from North Berwick High Street. There are other residential properties close by though the property faces south over the Old Parish Church and graveyard. Immediately to the west and rear of the building is a commercial property (Turnbull's Home Hardware) whilst the site to the east is the rear of the former County Hotel (currently vacant) used for service access and beer garden/outdoor space for guests.

No's 3, 5, 7 and 9 Kirk Ports are on the opposite side of the road set behind a high stone wall and accessed via a private driveway on the south side of the properties. They are set back from Kirk Ports and benefit from a very private setting.



As you would expect given its town centre location, the property at Kirk Ports is set amongst a mix of permanent and short-term let properties, shops, restaurants, central post office, the town's main bus terminus and local church. The location is highly accessible with the beach, harbour and High Street within minutes and bus and rail access retrospectively on the doorstep and within 10 minutes' walk.

## Policy Considerations

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 consists of the recently Adopted National Planning Framework 4 (NPF4) and the adopted East Lothian Local Development Plan 2018 (LDP). Should conflict arise between policies contained in the two documents, the NPF (as the more recently adopted policy document) takes precedence.

There is no development proposed as part of this application, simply the change of use of an existing property to permit short-term holiday use. In terms of NPF4 and LDP policies relating to climate change, biodiversity etc. there is no change to the existing situation and therefore with the exception of the owner/operator being mindful of recycling and reducing waste those policies are not relevant to this proposal.

Similarly in terms of sustainable transport and road safety/capacity etc. the property essentially retains its pseudo residential use and will have less impact than an everyday residential use. It is unlikely that the property will be let for 365 days a year and the pattern of use will be less intensive than that of the everyday comings and goings of a residential property.

**NPF Policy 7 – Historic Assets and Places** – Part (d) assesses the impact development may have on the Conservation Area. There will be no change to the relationship the property has with the North Berwick Conservation Area.

**Policy 15 – Local Living & Policy 25 – Community Wealth building** - Kirk Ports is a central location within North Berwick. The mix of uses, including tourism is an integral part of the character of North Berwick with many businesses depending on expenditure from tourists to maintain their viability. Tourism also contributes significantly to the character and atmosphere of North Berwick, throughout the year and especially from April to October.

The use of Kirk Ports as a short-term holiday let makes a contribution to this tourism spend whilst also contributing to other local services whether tradesmen (plumber, electrician, joiner etc.) and changeover services (cleaning etc.).

**Policy 26 Business & Industry and Policy 27 – City, Town, Local and Commercial Centres** – both as a single entity and as part of the wider tourism and leisure offer in the North Berwick area, short-term let properties contribute hugely to the vitality and viability of North Berwick. The use is wholly compatible with other town centre uses and in this instance is surrounded by a mix of uses (retail, hotel, community space and residential) typifying the character of town centre living whilst contributing to the vitality and viability that planning policy is in place to protect and promote.

**Policy 30 – Tourism** – the policy supports tourism related uses at appropriate locations. 8D Kirk Ports is within the designated North Berwick Town Centre and close to a wide range of tourism and town centre related uses. As noted above, the specific and cumulative contribution of tourism (including short-term let properties) to the local economy (and East Lothian economy) is vitally important whilst this ground floor apartment also enables access for disabled guests without the need to climb stairs etc.

Given that this is a ground floor property (offering quick and easy access to the property) in a town centre location with a mix of surrounding uses, the proposed continued use of the property for short-term let is appropriate and compatible. It is in an area where visitors and residents alike will expect activity from the surrounding mix of uses. It is not a wholly residential area.

## East Lothian Local Development Plan

**TC2 – Town and Local Centres** – tourism and leisure uses are compatible with town centre areas and as above contribute significantly to the vitality and viability of the centres. The use of the Kirk Ports property for short term holiday let use will continue to contribute to the overall tourism expenditure in North Berwick.

**Policy RCA1 (Residential Character and Amenity)** – this is an ongoing short-term let use at a town centre location. Kirk Ports would not be characterised as a residential area. It has a genuine mix of uses in the near vicinity including The County Hotel, Turnbull's Home Hardware, Steampunk, and the Alandis Ice Cream Parlour on the corner with Quality Street. The area will experience activity, noise, low-level disturbance throughout the day and evening and throughout the year.

Since the property has been offered as a short-term let (June 2021) it has proved a popular option for visitors to North Berwick. Over this two year period there have been no complaints or conflicts with any neighbouring properties/uses and tourism and residential uses continue to exist side-by-side in town centre locations.

**CH2 (Development Affecting Conservation Areas) and CH4 (Scheduled Monuments and Archaeological Sites)** - as we have outlined above, these proposals will not alter the current situation with regards to the Conservation Area and will therefore preserve its character and appearance.



Whilst planning permission for the provision of short-term let accommodation continues to evolve, we are of the opinion that the property at Kirk Ports can continue to be operated as a short-term let without any unacceptable impacts whilst it continues to contribute to the overall tourism and leisure sector in North Berwick.

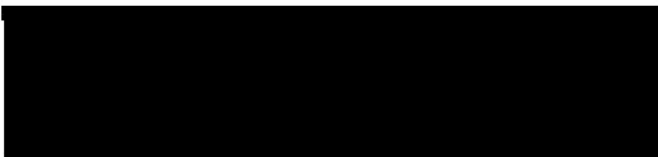
## Summary

In assessing the proposed changes at 8D Kirk Ports against both national and local planning policy the key issues can be summarised as follows:

- There are not physical changes proposed – there is no impact on the existing built environment, conservation area or nearby scheduled ancient monument;
- Kirk Ports is located within North Berwick Town Centre and is surrounded by a mix of commercial, residential and community uses.
- The site is close to all the key attractions and amenities of North Berwick including local restaurants, cafés, the beach and local attractions (Seabird Centre etc.);
- This is a ground floor property. The property is accessed directly off the ground floor hallway, minimising any potential for conflict with the other properties in the building;
- Short-term let properties are an integral and important part of the mix and choice of holiday accommodation in North Berwick and East Lothian as a whole. The contribution of the sector to the local economy cannot be underestimated and on balance the positive aspects of this proposal outweigh any potential concerns.

It is our opinion that the proposal achieves the key aims and objectives of planning policy whilst also meeting the aspirations of the applicants in continuing their short-term holiday let business. Given the above we conclude that the proposal at 8D Kirk Ports accords with relevant planning policy.

Kind regards

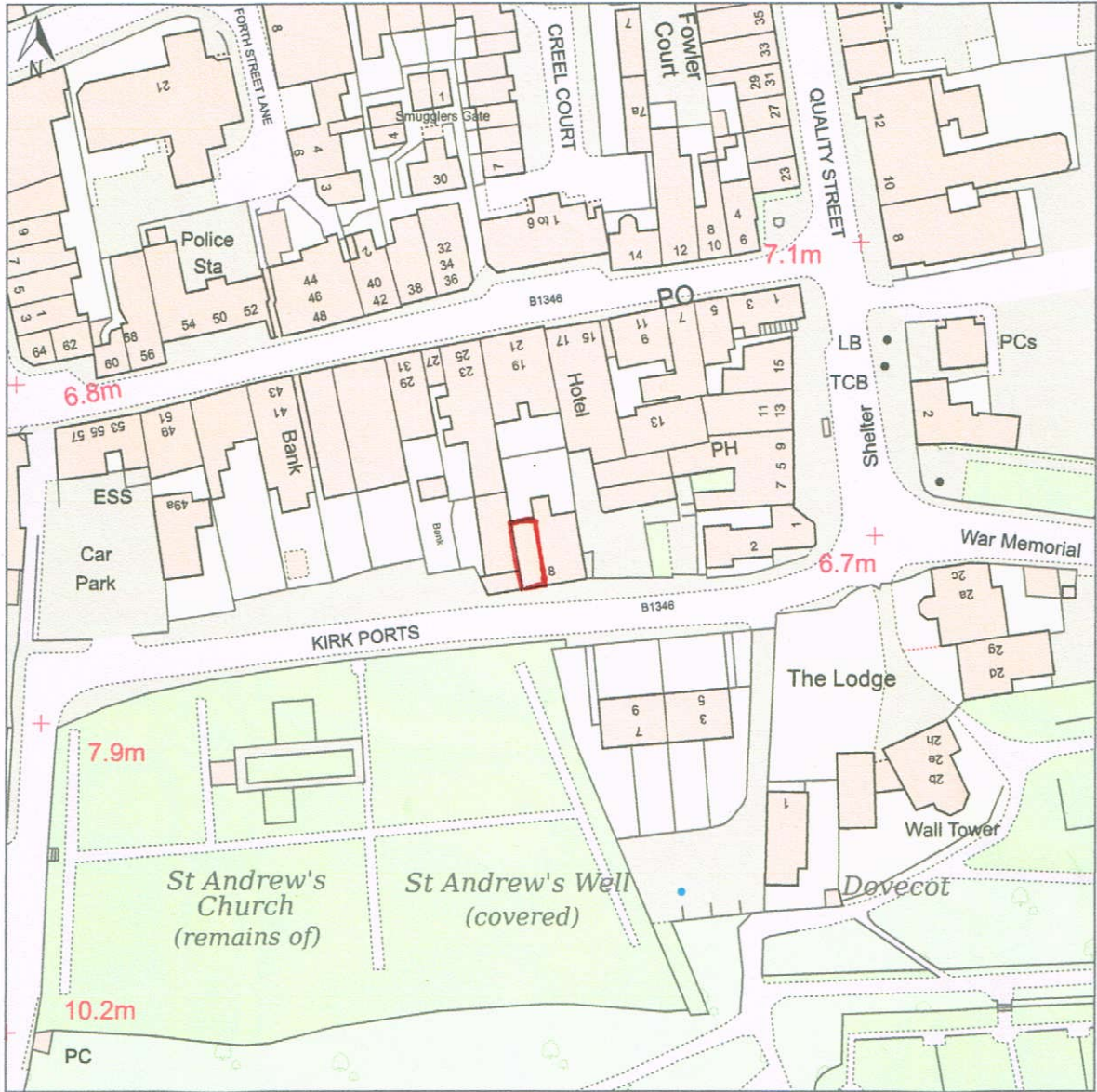


**Tony Thomas**  
**Director**

8D, KIRK PORTS, NORTH BERWICK, EAST LoTHIAN, EH39 4HL

UPRN: 138056399

HMLR Title No:



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Scale: 1:1250

Paper Size: A4

Notes:



**ALL DIMENSIONS TO BE CONFIRMED ON SITE PRIOR TO CONSTRUCTION**

All new works, products and processes are to be in accordance with the relevant British Standards and manufacturers guidance

A smoke alarm in the principal habitable room should be sited such that no point in the room is more than 7.5M from the nearest smoke alarm in the case of circulation areas, no point within the circulation space should be sited more than 7.5M from the nearest smoke alarm

No point in the kitchen should be more than 5.3M from the nearest heat detector  
Smoke Alarms should be sited no more than 7M from the door to a living room or kitchen and no more than 3M from every bedroom door

Confirmation of completion and validation of any environmental remedial measures are to be submitted in a timely manner, to allow for reviewing, prior to the submission of completion certificate, if applicable.

All fixed heating systems shall be capable of maintaining a temperature of at least 21°C in at least 1 apartment and 18°C elsewhere when the outside temperature is minus 1°C.

Electrical installation should be designed, constructed, installed and tested in accordance with the recommendations of BS 7671:2008, as amended and certified only by a person or company having membership to S.E.L.E.C.T or N.I.C.E.I.C or similar Electrical schemes recognised by The Local Authority

Air Permeability (tightness) testing to be undertaken and results submitted with completion submission.

**Contact Local Authority Water Board to confirm the drainage connection to the existing system is granted prior to installation**



CLIENT: Mr & Mrs Black

PROJECT: 8D Kirk Ports  
North Berwick  
EH39 4HL

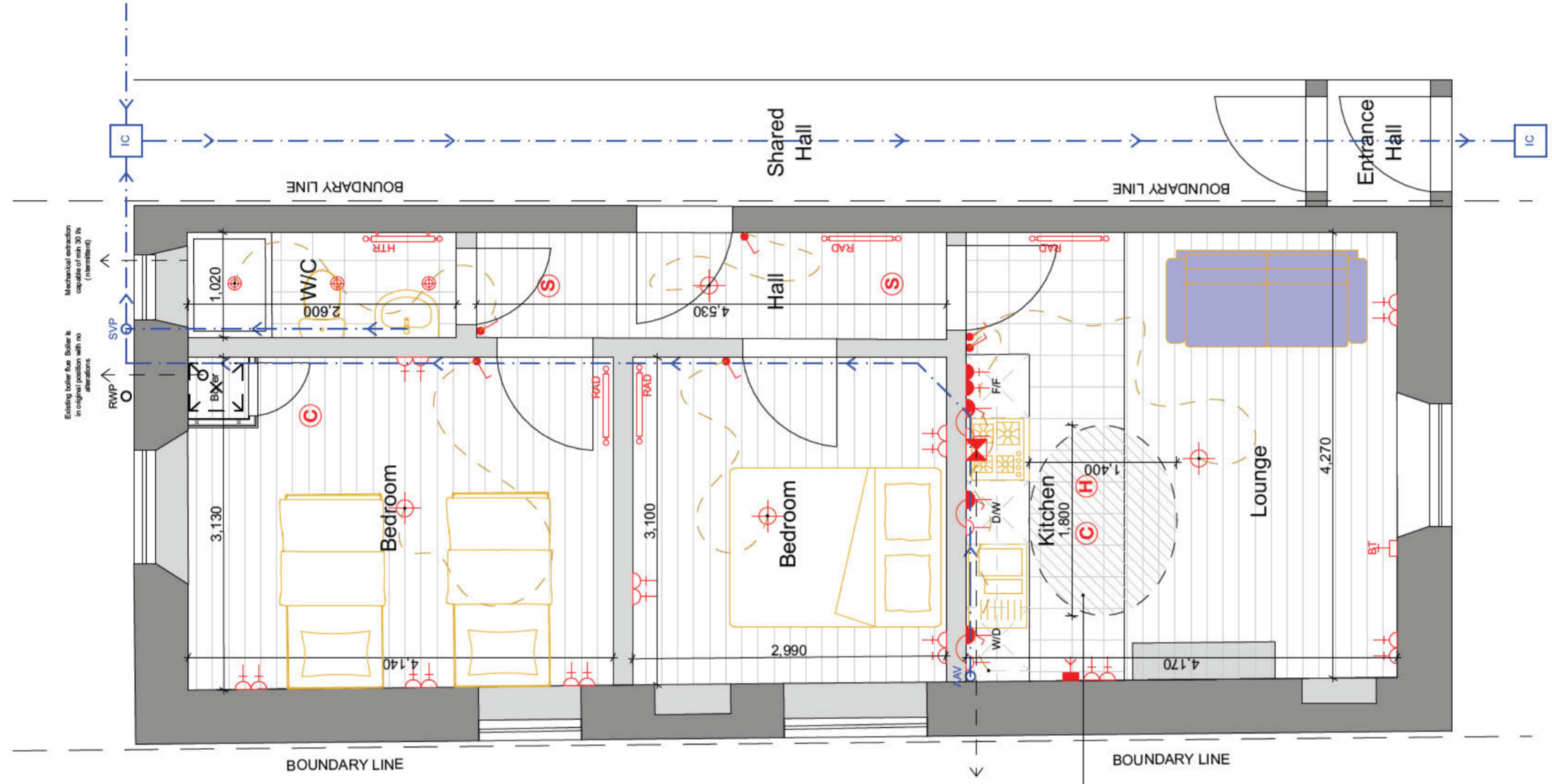
TITLE: Floor Plan

SCALE @A2	PRINTED DATE	DRAWN	CHECKED
1:50	12/20	SRB	

No. B  
REV. B

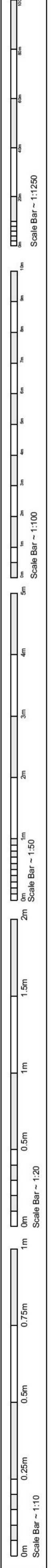
**ELECTRICAL KEY**

- Double switched socket outlet (600mm above FFL)
- Double switched socket outlet (1000mm above FFL)
- External Double switched socket outlet (600mm above FFL)
- Double switched socket outlet (at floor level)
- Switched four outlet (1000mm above FFL)
- Low level unswitched socket outlet with four above
- Unswitched socket outlet (1000mm above FFL)
- Unswitched socket outlet (600mm above FFL)
- Data connection socket outlet (600mm above FFL)
- Single shower socket outlet (1000mm above FFL)
- Single AMP socket outlet (600mm above FFL)
- External door bell push (1100mm above FFL)
- 1/2/3 way light switch (1000mm above FFL)
- 1/2/3 way change light switch (1000mm above FFL)
- Cable mounted pendant light fitting
- Recessed ceiling mounted downlighter
- Ceiling mounted LED strip light fitting
- Normal wall light
- External fixture with top and down light
- Recessed extract fan fixed to outside wall
- Recessed, wall mounted (with battery backup), ceiling mounted heat detector
- Recessed, wall mounted (with battery backup), ceiling mounted carbon monoxide detector
- Fire alarm bell
- P Camera
- Receptor
- Heat/Smoke Detector
- Under floor heating controller
- Transformer for under floor heating
- Electrical consumer unit and meter (1350-1600mm above FFL)



Floor Plan (1:50)

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# OFFICER REPORT

**26th September 2023**

App No. **23/00832/P**

Application registered on **27th July 2023**

Target Date **26th September 2023**

Proposal	<b>Change of use of flat to short term holiday let (Retrospective)</b>	SDELL	N
		CDEL	N
Location	<b>8D Kirk Ports North Berwick East Lothian EH39 4HL</b>	Bad Neighbour Development	N

APPLICANT: **Ms Emily Black**

Is this application to be approved as a departure from structure/local plan?/N

**c/o APT Planning & Development  
Per Tony Thomas  
1 West Road  
Whitekirk  
East Lothian  
EH42 1XA**

DECISION TYPE:

**Application Refused**

## PLANNING ASSESSMENT

The property to which this application relates is a ground floor flat set within a two storey, flatted building accessed via a communal entrance to the south elevation of the building. The property is located within the North Berwick Town Centre as defined by Policy TC2 of the adopted East Lothian Local Development Plan 2018. It is also situated within the North Berwick Conservation Area.

The building is bounded to the north by a commercial property at ground level and residential situated above, to the east by a public house and its associated ground, to the south by the public road of Kirk Ports and to the west by a commercial property.

Planning permission is sought retrospectively for the change of use of the residential ground floor flat of 8D Kirk Ports, North Berwick as a two-bedroom unit of short term self-catering holiday let accommodation.

No alterations have been undertaken to the flat, either internally or externally, to facilitate the proposed change of use.

Subsequent to the registration of the application the applicant has confirmed in writing that:

The application is made retrospectively and information has been submitted by the applicant confirming that (i) the property has been operating as a unit of short term self-catering holiday let accommodation since July 2021; (ii) there is no minimum length of stay however, most visitors stay for 1 week; (iii) the maximum occupancy is 4 people; (iv) the property is cleaned by a third party in between lets. Guests are asked to use the recycling bins and white sack available. The owner (who lives locally) personally manages the weekly collection by the Council from the street; (v) Guests collect the keys to the property from North Berwick Holiday Homes (NBHH) office or from an after hours key safe located at the NBHH office on High Street, North Berwick; (vi) The property is busy from April to September (approximately 80% occupancy) the rest of the year much less (approximately 25% occupancy); (vii) There are 8 bookings from October 2023 to October 2024 with no further bookings as yet; (viii) The property is typically let by holiday makers, generally couples and small families as well as single guests or couples who have family close by; (ix) In the time the applicant has operated they have had 6 returning visitors, with visitors ranging from USA to UK and Ireland; (x) The property is marketed through NBHH and the owners are not members of any industry bodies or schemes; (xi) The holiday let contributes to the local economy as the applicant uses NBHH to market and clean the property, the applicant also uses a local business for laundry services as well as recommending their favourite restaurants, local walks, activities. The applicant also uses local business for maintenance of the property and estimates their guests spend around £30,000 in the local economy across the tourist season; (xii) the applicant notes 2 flats exist n the ground floor and 2 exist on the first floor of the flatted building; and (xiii) there is a communal access for the 4 properties within the building and there is no designated parking.

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.

Policies 7 (Historic assets and places) and 30 (Tourism) of NPF4 are relevant to the determination of this application. Policies RCA1 (Residential Character and Amenity), CH2 (Development Affecting Conservation Areas), 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.

Material to the determination of the application is Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 requires that a planning authority must pay special attention to the desirability of preserving or enhancing the character or appearance of the area in which the building is located.

A total of 5 letters of support have been received in relation to the application. No letters of objection have been received.

This application seeks 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 an open plan living room and kitchen, two bedrooms, a bathroom and hallway. The flat is capable of accommodating/sleeping 4 people.

The East Lothian Economic Development Strategy 2012-22 identifies tourism as one of the strengths of the East Lothian economy and a source of employment opportunities in the future and the adopted East Lothian Local Development Plan 2018 states that a range of hotel, guest house and other accommodation attracts visitors and encourages them to stay and benefit the economy of East Lothian. The adopted East Lothian Local Development Plan 2018 states that all leisure and tourism related development proposals, including visitor attractions, hotels and holiday accommodation, will be assessed against all relevant Local Development Plan policies.

The retrospective change of use of the residential flat to a holiday let provides holiday accommodation within North Berwick that attracts visitors and encourages them to stay in East Lothian, which supports the existing long established business and benefits the wider economy of East Lothian.

The adopted East Lothian Local Development Plan 2018 does not contain a specific policy on the change of use of flats to holiday lets. However, part e) of Policy 30 (Tourism) of NPF4 states that:

Development proposals for the reuse of existing buildings for short term holiday letting will not be supported where the proposal will result in:

- (i) An unacceptable impact on local amenity or the character of a neighbourhood or area; or
- (ii) The loss of residential accommodation where such loss is not outweighed by demonstrable local economic benefits.

Policy RCA1 (Residential Character and Amenity) of the adopted East Lothian Local Development Plan 2018 states that the predominantly residential character and amenity of existing or proposed housing areas will be safeguarded from the adverse impacts of uses other than housing. Development incompatible with the residential character and amenity of an area will not be permitted.

In the determination of this application it is necessary to assess the impact of the change of use of the application property to a unit of holiday let accommodation upon the amenity of the existing neighbouring residential properties.

The Council's Senior Environmental Health Officer advises 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 can result in future guests misusing and abusing the property in a manner that is antisocial and can result in a significant impact upon amenity of neighbours. However, it is stated that the Council's Environmental Health Service cannot assume that antisocial behaviour issues will arise and thus cannot impose any enforceable conditions to protect the amenity of neighbours.

The Council's Antisocial Behaviour Team advise that they have had no records of any incidents relating to antisocial behaviour matters at this address and thus they raise no objection to this retrospective planning application.

Police Scotland advise that there have been no police incidents at this address and thus they raise no objection to this retrospective planning application.

The Council's Road Services raise no objection to this retrospective planning application. Accordingly, the proposal does not conflict with Policies T1 and T2 of the adopted East Lothian Local Development Plan 2018.

The applicant's property is a two-bedroom flat located at ground floor level within a two-storey flatted building which contains two flats at ground and first floor level respectively. There is a communal entrance to the front (south) elevation of the building, which provides access to an internal communal stair.

The use of the application property as a holiday let enables 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 users/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 users/occupants of the holiday let would have a degree of luggage or other property to take through the communal external entrance and hallway which in itself would lead to a level of disturbance and nuisance not associated with the permanent/long term residential use of the property. This is harmful to the amenity of the occupants of the residential properties within the residential flatted building. It is 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 check in/check out there is also 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 building and the application property itself to service/clean it and remove waste and recycling material after each guests stay. This level of additional activity is evidently different to that expected with the permanent/long term use of the flat as a private residence again which is harmful to the amenity of the occupants of the residential properties within the residential flatted building.

Moreover, allowing frequently changing guests unfettered access to otherwise secure shared areas changes the actual and perceived level of security for permanent residents. Whilst permanent residents are likely to have visitors of their own from time to time, those permanent residents would remain in control of security to communal areas. The introduction of frequently changing guests regularly into these secure areas, independent of the owner, would therefore differ from typical residential circumstances.

Given the specific circumstances and location of the application property within the residential building which contains a number of permanent/long term residences which share a communal entrance, internal stair and hallway, the retrospective change of use of the applicant's ground floor flat as a two bedroom unit of 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. By having an unacceptable impact on local amenity, the proposal is contrary to part e) of Policy 30 of NPF4 and with Policy RCA1 of the adopted East Lothian Local Development Plan 2018.

It is now necessary 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) of Policy 30 of NPF4.

The Council's Housing Strategy & Development Service advise they object to this retrospective application as the use of the property as a short term let is considered a significant loss as the property is located in North Berwick and is considered an adaptable property; the short term let is not considered long term established; and the occupancy rates are less than 6 months per year.

The Council's Economic Development Service Manager advises 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. In the particular circumstances of this case it is stated that:

- o The operation of short-term holiday letting is a bonafide business activity that contributes to employment and economic benefit in East Lothian. The proposal provides high-quality tourist accommodation attracting visitors to North Berwick and the surrounding area providing economic benefit.
- o There is a demonstrable economic benefit to having a wide range of accommodation types in East Lothian, with the tourism sector contributing £155m to the local economy in 2021 and supporting 10% of the workforce. Visitors staying overnight in non-serviced accommodation contributed £60.1m to the local economy in 2021, a figure which has been rising year on year. The majority of visitors to East Lothian are repeat visitors, 81%, and rely on good availability of high-quality accommodation year on year to facilitate this.
- o Non- serviced accommodation (short term holiday lets) contributes positively to the local economy (£279m in 2019), this property accounts for 4 bedspaces and a potential annual economic impact of £90,908 and 2FTE jobs. This is borne out by the supporting information provided by the applicant.
- o An increasing number of overnight stays in East Lothian are for work purposes, e.g. major events, servicing major infrastructure. This is expected to increase over the next 10-15 years as more nationally significant infrastructure is developed or decommissioned in East Lothian. In this context, the loss short term accommodation is likely to have significant negative impact on the local tourist economy in monetary and reputational terms.

Therefore, the Council's Economic Development Service Manger supports this planning application stating that the change of use of the flat to short term holiday let accommodation 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.

However the local economic benefits associated with the use of the applicant's ground floor flat 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.



The application property of 8D Kirk Ports, North Berwick as a holiday let is unauthorised and a breach of planning control. Enforcement action will be taken to ensure the cessation of the holiday let use with the period for compliance with the enforcement notice being three months.

REASONS FOR REFUSAL:

- 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 8 Kirk Ports, 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.

LETTERS FROM

[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

26th September 2023

App No. 23/00832/P

**EAST LoTHIAN COUNCIL  
DECISION NOTICE**

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997  
TOWN AND COUNTRY PLANNING  
(DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND) REGULATIONS 2013**

**Ms Emily Black  
c/o APT Planning & Development  
Per Tony Thomas  
1 West Road  
Whitekirk  
East Lothian  
EH42 1XA**

**APPLICANT: Ms Emily Black**

With reference to your application registered on 27th July 2023 for planning permission under the above mentioned Acts and Regulations for the following development, viz:-

**Change of use of flat to short term holiday let (Retrospective)**

**at  
8D Kirk Ports  
North Berwick  
East Lothian  
EH39 4HL**

East Lothian Council as the Planning Authority in exercise of their powers under the above-mentioned Acts and Regulations hereby **REFUSE PLANNING PERMISSION** for the said development.

The reasons for the Council's refusal of planning permission are:-

- 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 8 Kirk Ports, 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.

The report on this application is attached to this Decision Notice and its terms shall be deemed to be incorporated in full in this Decision Notice.

Details of the following are given in the application report:

- the terms on which the Planning Authority based this decision;
- details of any variations made to the application in terms of Section 32A of the Town and Country Planning (Scotland) Act 1997.

The plans to which this decision relate are as follows:

<u>Drawing No.</u>	<u>Revision No.</u>	<u>Date Received</u>
DWG 01	B	24.07.2023
DWG 02	-	26.07.2023

**29th September 2023**



Keith Dingwall  
Service Manager - Planning

## NOTES

If the applicant is aggrieved by the decision to refuse permission for the proposed development, the applicant may require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within three months from the date of this notice. The notice of review should be addressed to the Clerk to the Local Review Body, Committee Team, Communications and Democratic Services, John Muir House, Haddington, East Lothian EH41 3HA.

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 5 of the Town and Country Planning (Scotland) Act 1997.