



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

**THURSDAY 16 NOVEMBER 2023
VIA THE DIGITAL MEETINGS SYSTEM**

Committee Members Present:

Councillor C Cassini
Councillor J Findlay
Councillor A Forrest (Chair)
Councillor S McIntosh (present for Items 2 – 5)

Advisers to the Local Review Body:

Mr C Grilli, Legal Adviser to the LRB
Ms J Squires, Planning Adviser to the LRB

Clerk:

Ms F Currie, Committees Officer

Apologies:

None

Declarations of Interest

None

Introductory Statement by the Legal Adviser

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

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

Introductory Statement by the Planning Adviser

The Planning Adviser provided some general remarks on the status of the development plan, and the policy position on short term lets, North Berwick Conservation Area and biodiversity which were common to all the applications being considered by the LRB.

She advised that planning permission was required where there was a material change of use from a dwelling house to short term let. Councils could designate Control Areas for short term lets, however East Lothian Council had not done so, and this matter was still under consideration.

She reminded Members that section 25 of the Town and Country Planning (Scotland) Act 1997 required that applications be determined in accordance with the development plan unless material considerations indicated otherwise. The development plan for the area was National Planning Framework 4 (NPF4) and the East Lothian Local Development Plan (LDP). As the application site lay within North Berwick Conservation Area, section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 was also relevant. She outlined the policies within NPF4 which were relevant to determination of the application, including, policies 1, 3, 7 and 30E; and similar provisions within the LDP.

She drew particular attention to NPF4 Policy 30E covering short term lets. This policy included 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 was the proposal must not result in an unacceptable impact on local amenity or the character of a neighbourhood area. The second was that loss of residential accommodation would not be supported unless the loss was outweighed by demonstrable economic benefits. She emphasised that the requirement that there be no unacceptable impact on local amenity, or the character of the neighbourhood should 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.

While there was no specific policy on short term lets within the LDP, it stated that a range of hotel, guest house and other accommodation attracted visitors and encouraged them to stay and benefit the East Lothian economy. The East Lothian Economic Development Strategy 2012-21 identified 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 required a licence. *[Post Meeting Note: It was confirmed, following the meeting, that there was no minimum period for which a property could be let without requirement for a licence.]* The Short Term Let register showed that there were around 90 properties in North Berwick which had, or which had applied for, a licence. The Council's Licensing Team stated that there was a backlog of

around 120 applications in East Lothian which were not yet on the register. Research carried out by Arneil Johnston into the Private Rental Sector in East Lothian in 2022 found 225 short term lets in the North Berwick Area Partnership Area.

The Planning Adviser also reminded Members that the Council had recently declared a Nature Crisis. NPF4 Policy 1 required significant weight to be given to the global climate and nature crisis. Policy 3 aimed to protect biodiversity, reverse biodiversity loss, deliver positive effects from development and strengthen nature networks. The applications before the LRB constituted local development that was non-householder. Policy 3 Part C required that proposals for local development included appropriate measures to conserve, restore and enhance biodiversity proportionate to the nature and scale of development. Where physical measures were not possible, this could include contributions to improvements offsite, or measures to promote the protection local biodiversity to guests.

1. PLANNING APPLICATION NO. 23/00306/P: CHANGE OF USE OF FLAT TO SHORT TERM HOLIDAY LET (RETROSPECTIVE), 3 WEST BAY COURT, NORTH BERWICK

The Chair invited the Planning Adviser, who had not been involved in the original decision, to present a summary of the planning policy considerations in this case.

The Planning Adviser informed Members that the planning application related to a retrospective application for change of use of flat to short term holiday let at 3 West Bay Court, North Berwick. She summarised the details and location of the property, including its site and surrounds, and access to and via communal areas. The applicant had stated that the flat had been marketed and used for short term lets for four years. At the time of application, the applicant had stated the maximum number of guests was four, but in the applicant's appeal submission the number of guests was stated as two.

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

The Planning Adviser summarised the case officer's assessment of the application against relevant planning policy. The Case Officer had noted legislation and policy on Conservation Areas but had not offered an assessment of whether the proposal preserved or enhanced the Conservation Area. However, the Planning Adviser considered that as there were no physical alterations involved in the proposal there was no detriment in terms of the built environment. Similarly, given the levels of applications made and approved so far in North Berwick, this proposal would not in the Planning Adviser's view cause harm to the character of the Conservation Area either alone or cumulatively.

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

the density of short term lets in North Berwick combined with a constrained housing market, especially of 1 and 2 bed properties. The Council's Economic Development Service Manager, however, advised that there were demonstrable local economic benefits delivered by short term holiday lets.

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 explained that if the ELLRB Members considered that the effects on amenity were acceptable, and that demonstrable economic benefits outweighed the loss of residential accommodation, the proposal was acceptable under Policy 30E. However, economic benefit should not be weighed against residential amenity, which must be considered separately.

No biodiversity enhancement had been included in the application as required by NPF4 Policy 3. The Planning Adviser considered that this should have been included in a manner proportionate to the application. If it was not possible to make any changes to the property or surroundings to improve biodiversity, contributions to offsite improvements should have been considered, or provision of information on protecting the biodiversity of the area supplied to guests. This enhancement could be secured by condition.

The Planning Adviser then summarised the applicant's review statement which noted that the property had been successfully let on a short-term basis for 4 years with no need for Council or police intervention. This was backed up by responses from the Police and the Council's Anti-Social Behaviour Team. The applicant had included letters in support from neighbours who stated that the holiday lets did not affect their residential amenity. The Planning Adviser noted that these were not received as representations to the planning application so the identity of the senders could not be verified by the planning authority, however considered there was no reason to think they were not genuine. The applicant had noted that long term occupancy could also give rise to amenity issues. He considered that issues with short term let guests were by their nature short term and that high quality small flats such did not have the problems that 'party flats' could. There was therefore no unacceptable effect on residential amenity.

The applicant had noted and commended the views of the Council's Economic Development Service Manager on economic benefit. He had also noted that other local businesses depended on tourism expenditure and activity in the area. The applicant had argued the demonstrable economic benefits outweighed the effect on residential amenity. The Planning Adviser reminded the ELLRB that economic benefit should only be weighed against loss of housing stock, not impact on amenity.

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

The Planning Adviser stated that in her view the key issues for ELLRB Members to consider were firstly whether the proposal preserved or enhanced North Berwick Conservation Area, and secondly, whether there was unacceptable harm to residential amenity contrary to NPF4 Policy 30E and LDP Policy RCA1. Then, if there was not, whether any economic benefits outweighed the loss of residential accommodation.

The Planning Adviser concluded her presentation by reminding Members of the options open to them and that, should they be minded to grant planning permission, suggested conditions had been provided by the planning case officer.

The Planning Adviser and the Legal Adviser responded to questions from Members. They addressed the issue of maximum occupancy and the process for complaints, confirming that any complaint would need to be reviewed and corroborated. It would be challenging for officers to take forward enforcement and verify the position for guests taking overnight stays who may have introduced more guests to the premises. Discussions could be had with the owner around these complaints, but enforcement may be challenging if this was infrequent. The Planning Adviser and Legal Adviser also confirmed that it would be for the applicant to determine whether rental of the property would be undertaken on a seasonal or year-round basis.

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

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

Councillor Findlay considered that there were policies in the National Planning Framework which supported this application. In addition, the location of the property was important in considering the impact on amenity. He commented that the property was on the ground floor and the location and layout of the common entrance to the property was such that, in his opinion, would cause little disturbance to other residents of the building. He also noted that there had been no objections to the application from occupants of the building. On that basis, he did not consider there to be any negative impact on amenity, and he was minded to uphold the appeal.

Councillor Cassini agreed with the points made by Councillor Findlay. In particular, she supported the view that, as the property was on the ground floor and considering the location of the main entrance and flat door, there would be minimal impact on other residents from guests using the property. Accordingly, she was minded on this occasion to uphold the appeal.

The Chair disagreed with the views put forward by his colleagues. He referred to his personal experience of living in a flat, and while he noted the applicant's arguments that there was also impact from residential use, he took the view that the impact was of a different nature to short-term letting. He maintained that there would be increased noise from comings and goings in the common areas when guests were arriving and leaving with suitcases. As a result, he agreed with the case officer's assessment of the application and accordingly was minded to dismiss the appeal.

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

Decision

The ELLRB agreed, by majority, to uphold the appeal and to grant planning permission subject to the following conditions:

1. The property shall be let for overnight occupation by a maximum of four persons at any one time.

Reason: To ensure that the terms of the lets protect occupants of nearby residential properties from noise/disturbance.
2. A register of the date and number of occupants for each let shall be maintained for the property

by the owner/letting agent and shall be available at all reasonable times for inspection, on request, by the Planning Authority.

Reason: To ensure compliance with condition 1.

Sederunt: Councillor McIntosh joined the meeting.

The Planning Adviser repeated her introductory comments for the benefit of Councillor McIntosh.

2. PLANNING APPLICATION NO. 23/00307/P: CHANGE OF USE OF FLAT TO SHORT TERM HOLIDAY LET (RETROSPECTIVE), 5 WEST BAY COURT, NORTH BERWICK

The Chair invited the Planning Adviser, who had not been involved in the original decision, to present a summary of the planning policy considerations in this case.

The Planning Adviser informed Members that the planning application related to a retrospective application for change of use of flat to short term holiday let at 5 West Bay Court, North Berwick. She summarised the details and location of the property, including its site and surrounds, and access to and via communal areas. The applicant had stated that the flat had been marketed and used for short term lets for four years. At the time of application, the applicant had stated the maximum number of guests was four, but in the applicant's appeal submission the number of guests was stated as two.

She advised Members that their decision on application 23/00306/P was now a material consideration.

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

The Planning Adviser summarised the case officer's assessment of the application against relevant planning policy. The Case Officer had noted legislation and policy on Conservation Areas but had not offered an assessment of whether the proposal preserved or enhanced the Conservation Area. However, the Planning Adviser considered, for the reasons set out in the previous application, the character of the Conservation Area to be preserved.

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

The case officer had noted that the Councils' Housing Strategy and Development service did not support this application due to the density of short term lets in North Berwick combined

with a constrained housing market, especially of 1 and 2 bed properties. The Council's Economic Development Service Manager, however, advised that there were demonstrable local economic benefits delivered by short term holiday lets.

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 explained that if the LRB Members considered that the effects on amenity were acceptable, and that demonstrable economic benefits outweighed the loss of residential accommodation, the proposal was acceptable under Policy 30E. However, economic benefit should not be weighed against residential amenity, which must be considered separately.

No biodiversity enhancement had been included in the application as required by NPF4 Policy 3. The Planning Adviser considered that this should have been included in a manner proportionate to the application. This enhancement could be secured by condition.

The Planning Adviser then summarised the applicant's review statement which noted that the property had been successfully let on a short-term basis for 4 years with no need for Council or police intervention. This was backed up by responses from the Police and the Council's Anti-Social Behaviour Team. The applicant had included letters in support from neighbours who stated that the holiday lets did not affect their residential amenity. The Planning Adviser noted that these were not received as representations to the planning application so the identity of the senders could not be verified by the planning authority, however considered there was no reason to think they were not genuine. The applicant had noted that long term occupancy could also give rise to amenity issues. He considered that issues with short term let guests were by their nature short term and that high quality small flats such did not have the problems that 'party flats' could. There was therefore no unacceptable effect on residential amenity.

The applicant had noted and commended the views of the Council's Economic Development Service Manager on economic benefit. He had also noted that other local businesses depended on tourism expenditure and activity in the area. The applicant had argued the demonstrable economic benefits outweighed the effect on residential amenity. The Planning Adviser reminded the LRB that economic benefit should only be weighed against loss of housing stock, not impact on amenity.

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

The Planning Adviser stated that in her view the key issues for LRB Members to consider were firstly whether the proposal preserved or enhanced North Berwick Conservation Area, and secondly, whether there was unacceptable harm to residential amenity contrary to NPF4 Policy 30E and LDP Policy RCA1. Then, if there was not, whether any economic benefits outweighed the loss of residential accommodation. The use of flat 3 as short term let accommodation was also a material consideration and Members should consider whether the granting of permission for a second short term let in the same building would have an unacceptable impact on the amenity of other residents.

The Planning Adviser concluded her presentation by reminding Members of the options open to them and that, should they be minded to grant planning permission, suggested conditions had been provided by the planning case officer.

The Planning Adviser and the Legal Adviser responded to questions from Members. They provided some additional background on the calculation of economic benefit and confirmed that management of refuse and recycling could be controlled by condition.

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

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

Councillor McIntosh was supportive of the case officer's position. She noted that while there may be different impacts from residential use as opposed to short term lettings she considered that the impact of short term lettings would be detrimental on the amenity of neighbours within the building. She also noted that while there were currently letters of support from neighbours this did not mean that future occupiers of the properties would be supportive. She then considered the impact on housing and was of the view that the loss of housing outweighed the economic benefit. Accordingly, she was minded to support the case officer's recommendation and refuse the appeal.

Councillor Cassini agreed with the points made by Councillor McIntosh and was of the view that due to the layout of the building and the location of this property being on the first floor there would be a detrimental impact on the amenity of the residents. She also noted that that, as there was already a short term let on the ground floor, the cumulative effect of an additional short term let within the building would create an unacceptable detriment to amenity. Accordingly, she was minded to support the case officer's assessment and refuse this appeal.

Councillor Findlay was of the view that the location of the property was important in considering the impact on amenity. He commented that, notwithstanding the location of this property being on the first floor, he was mindful that there had been letters of support and no objections from other residents within the building. He was therefore of the view that the use of the property as a short term let would not adversely impact the amenity of the residents. Accordingly, he was minded to uphold the appeal.

The Chair noted the position of his colleagues and was also of the view that this proposal would have a detrimental effect on the amenity of the residents within the other properties. He noted the case officer's report and concurred with the assessment therein. Accordingly, he was minded to dismiss the appeal.

The members of the LRB confirmed their decision via roll call vote with a majority of three to one in favour of dismissing the appeal and refusing planning permission.

Decision

The ELLRB agreed, by majority, to dismiss the appeal and to refuse planning permission for the reason set out in the planning case officer's report.

3. PLANNING APPLICATION NO. 23/00308/P: CHANGE OF USE OF FLAT TO SHORT TERM HOLIDAY LET (RETROSPECTIVE), 6 WEST BAY COURT, NORTH BERWICK

The Chair invited the Planning Adviser, who had not been involved in the original decision, to present a summary of the planning policy considerations in this case.

The Planning Adviser informed Members that the planning application related to a

retrospective application for change of use of flat to short term holiday let at 6 West Bay Court, North Berwick. She summarised the details and location of the property, including its site and surrounds, and access to and via communal areas.

She advised Members that their decision on applications 23/00306/P and 23/00307/P were now material considerations.

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

The Planning Adviser summarised the case officer's assessment of the application against relevant planning policy. The Case Officer had noted legislation and policy on Conservation Areas but had not offered an assessment of whether the proposal preserved or enhanced the Conservation Area. However, the Planning Adviser considered, for the reasons set out in the previous application, the character of the Conservation Area to be preserved.

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

The case officer had noted that the Councils' Housing Strategy and Development service did not support this application due to the density of short term lets in North Berwick combined with a constrained housing market, especially of 1 and 2 bed properties. The Council's Economic Development Service Manager, however, advised that there were demonstrable local economic benefits delivered by short term holiday lets.

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 explained that if the LRB Members considered that the effects on amenity were acceptable, and that demonstrable economic benefits outweighed the loss of residential accommodation, the proposal was acceptable under Policy 30E. However, economic benefit should not be weighed against residential amenity, which must be considered separately.

No biodiversity enhancement had been included in the application as required by NPF4 Policy 3. The Planning Adviser considered that this should have been included in a manner proportionate to the application. This enhancement could be secured by condition.

The Planning Adviser then summarised the applicant's review statement which noted that the property had been successfully let on a short-term basis for 4 years with no need for Council or police intervention. This was backed up by responses from the Police and the Council's Anti-Social Behaviour Team. The applicant had included letters in support from neighbours who stated that the holiday lets did not affect their residential amenity. The Planning Adviser noted that these were not received as representations to the planning application so the identity of the senders could not be verified by the planning authority, however considered

there was no reason to think they were not genuine. The applicant had noted that long term occupancy could also give rise to amenity issues. He considered that issues with short term let guests were by their nature short term and that high quality small flats such did not have the problems that 'party flats' could. There was therefore no unacceptable effect on residential amenity.

The applicant had noted and commended the views of the Council's Economic Development Service Manager on economic benefit. He had also noted that other local businesses depended on tourism expenditure and activity in the area. The applicant had argued the demonstrable economic benefits outweighed the effect on residential amenity. The Planning Adviser reminded the LRB that economic benefit should only be weighed against loss of housing stock, not impact on amenity.

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

The Planning Adviser stated that in her view the key issues for LRB Members to consider were firstly whether the proposal preserved or enhanced North Berwick Conservation Area, and secondly, whether there was unacceptable harm to residential amenity contrary to NPF4 Policy 30E and LDP Policy RCA1. Then, if there was not, whether any economic benefits outweighed the loss of residential accommodation. The use of flat 3 as short term let accommodation was also a material consideration and Members should consider whether the granting of permission for a second short term let in the same building would have an unacceptable impact on the amenity of other residents.

The Planning Adviser concluded her presentation by reminding Members of the options open to them and that, should they be minded to grant planning permission, suggested conditions had been provided by the planning case officer.

The Legal Adviser reiterated that the decisions on previous applications 23/00306/P (to grant) and 23/00307/P (to refuse) were both material considerations.

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

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

Councillor Cassini was of the view that due to the layout of the building, the location of this property being on the first floor and the comings and goings of guests being greater than those of residents, there would be a detrimental impact on the amenity of the residents. Accordingly, she was minded to support the case officer's assessment and refuse this appeal.

Councillor Findlay commented that his views on this application were similar to those on the previous case. He was mindful that there had been letters of support and no objections from other residents within the building. He was therefore of the view that the use of the property as a short term let would not adversely impact the amenity of the residents. Accordingly, he was minded to uphold the appeal.

Councillor McIntosh considered that the impact of short-term lettings would have an unacceptable impact on the amenity of residents within the building, and an unacceptable

impact on the availability of housing in North Berwick. Accordingly, she was minded to support the case officer's recommendation and refuse the appeal.

The Chair noted the position of his colleagues and was also of the view that this proposal would have a detrimental effect on the amenity of the residents within the other properties. He concurred with the case officer's assessment and was minded to dismiss the appeal.

The members of the LRB confirmed their decision via roll call vote with a majority of three to one in favour of dismissing the appeal and refusing planning permission.

Decision

The ELLRB agreed, by majority, to dismiss the appeal and to refuse planning permission for the reason set out in the planning case officer's report.

4. PLANNING APPLICATION NO. 23/00455/P: CHANGE OF USE OF FLAT TO SHORT TERM HOLIDAY LET (RETROSPECTIVE), 1 CREEL COURT, NORTH BERWICK

The Chair invited the Planning Adviser, who had not been involved in the original decision, to present a summary of the planning policy considerations in this case.

The Planning Adviser informed Members that the planning application related to a retrospective application for change of use of flat to short term holiday let at 1 Creel Court, North Berwick. She summarised the details and location of the property, including its site and surrounds, and access to and via communal areas. According to the applicant, the property had been operating as a short term let for nine years and the maximum number of guests was four.

She noted that three objections had been received to this application. The case officer had summarised the reasons which included, amenity and security issues for residents, lack of evidence that short term lets in North Berwick provided a local economic benefit that outweighed 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 in North Berwick.

The Planning Adviser summarised the case officer's assessment of the application against relevant planning policy. The case officer had noted legislation and policy on Conservation Areas but had not offered an assessment of whether the proposal preserved or enhanced the Conservation Area. However, the Planning Adviser considered that as there were no physical alterations involved in the proposal there was no detriment in terms of the built environment. There were two other properties in Creel Court which either had a short term let licence or for which a licence had been applied. Given the levels of applications made and approved so far in North Berwick, this proposal would not in the Planning Adviser's view cause harm to the character of the Conservation Area either alone or cumulatively.

The case officer had then considered Policy 30 Part E of NPF4, and Policies RCA1 and TC2 of the LDP. He had considered that while guest did not have to walk past other flats, the hall and stairway were nonetheless shared. There would be extra levels of activity, including guests arriving with luggage and at unsociable hours, and for cleaning, creating disturbance and reducing actual and perceived security. This would be harmful to amenity and contrary to LDP Policy RCA1 and NPF4 Policy 30E. The case officer had not considered it possible to impose conditions that could control this.

The case officer also considered NPF4 Policy 27 and LDP Policy TC2 which related to acceptable uses within town centres. The Planning Adviser addressed these and also referred to the North Berwick Town Centre Strategy Guidance which was part of the development plan. Reading the plan as a whole, she considered use as a short term let to be acceptable in this first floor, backland town centre location.

The case officer had noted that the Councils' Housing Strategy and Development service did not object to this application, however they stated that there was a need and increased supply in long-term rental housing, especially in the east of the county, with significant pressure on supply of 1 and 2 bed properties. The Council's Economic Development Service Manager also advised that there were demonstrable local economic benefits delivered by short term holiday lets.

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 explained that if the ELLRB Members considered that the effects on amenity were acceptable, and that demonstrable economic benefits outweighed the loss of residential accommodation, the proposal was acceptable under Policy 30E. However, economic benefit should not be weighed against residential amenity, which must be considered separately.

No biodiversity enhancement had been included in the application as required by NPF4 Policy 3. The Planning Adviser considered that this should have been included in a manner proportionate to the application. If it was not possible to make any changes to the property or surroundings to improve biodiversity, contributions to offsite improvements should have been considered, or provision of information on protecting the biodiversity of the area supplied to guests. This enhancement could be secured by condition.

The Planning Adviser then summarised the applicant's review statement which noted that the property had been operating successfully without complaint for over 9 years and was only rented out for around 10 weeks per year. The applicant had noted pre-application advice from the planning service that their application would not necessarily be rejected because it had a common stairwell and felt misled as this then was the primary reason for refusal. However, this was not relevant to the determination of the application on its merits. In addition, the applicant referred to a judgement by Lord Baird stating that the Council policy was unlawful. [This referred to the court case brought on Petition of Averbuch for judicial review of the City of Edinburgh Council's short term let policy.] The Planning Adviser informed Members that this was not relevant as the Council did not have a short term let policy or planning guidance applicable to short term lets.

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

The Planning Adviser stated that in her view the key issues for ELLRB Members to consider were firstly whether the proposal preserved or enhanced North Berwick Conservation Area, and secondly, whether there was unacceptable harm to residential amenity contrary to NPF4 Policy 30E and LDP Policies RCA1 and TC2. Then, if there was not, whether any economic benefits outweighed the loss of residential accommodation.

The Planning Adviser concluded her presentation by reminding Members of the options open to them. Should they be minded to grant planning permission, suggested conditions had been provided by the planning case officer and they might also consider a condition on biodiversity enhancement.

The Planning Adviser and the Legal Adviser responded to a question from Councillor Findlay. They indicated that every application was considered on its individual merits and that East Lothian Council did not have a short term let policy or planning guidance applicable to short term lets.

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

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

Councillor Findlay commented that North Berwick was a tourist destination and there were a number of short term let applications being taken forward in the town. He noted that there was no current planning policy on this matter, set out by the Planning Authority, and he felt that this area would benefit from a 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 meant 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 and therefore was minded to support the application.

Councillor Cassini commented that, in her view, as this property was above a shop there would be less impact on overall amenity to neighbours. 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 added that, if the application was approved by the LRB, she would seek a condition regarding management of recycling and waste from the property. Accordingly, she was minded to approve the application.

Councillor McIntosh stated that she was supportive of the case officer's position. She noted that the while there may be different impacts from residential use as opposed to short term lettings, she believed that the impact would be detrimental to 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, was minded to support the case officer's recommendation and refuse the appeal.

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 occurred at the entrance of the property would have an impact on other residents. There would be impact and noise detrimental to the amenity of other residents. Accordingly, he agreed with the case officer's assessment of the application and was minded to dismiss the appeal.

The members of the LRB confirmed their decision, by casting vote of the Chair, to dismiss the appeal and refuse planning permission.

Decision

The ELLRB agreed, by casting vote of the Chair, to dismiss the appeal and to refuse planning permission for the reason set out in the planning case officer's report.

5. PLANNING APPLICATION NO. 23/00472/P: CHANGE OF USE OF FLAT TO SHORT TERM HOLIDAY LET (RETROSPECTIVE), 4 BRAMERTON COURT, 27 DIRLETON AVENUE, NORTH BERWICK

The Chair invited the Planning Adviser, who had not been involved in the original decision, to present a summary of the planning policy considerations in this case.

The Planning Adviser informed Members that the planning application related to a retrospective application for change of use of flat to short term holiday let at Flat 4, Bramerton Court, 27 Dirleton Avenue, North Berwick. She summarised the details and location of the property, including its site and surrounds, and access to and via communal areas, and private parking arrangements. According to the applicant, the property had been operating as a short term let since April 2015 and the maximum number of guests was four.

She noted that three objections and two representations (both from the same person) had been received on this application. The case officer had summarised the grounds for objection which included, impacts on amenity for neighbours, impacts on availability of housing stock, and that the comments on previous applications by the Council's Economic Development Service were flawed and did not take account of the economic effects of long-term residents.

The Planning Adviser summarised the case officer's assessment of the application against relevant planning policy. The case officer had noted legislation and policy on Conservation Areas but had not offered an assessment of whether the proposal preserved or enhanced the Conservation Area. However, the Planning Adviser considered that as there were no physical alterations involved in the proposal there was no detriment in terms of the built environment. Given the levels of applications made and approved so far in North Berwick, this proposal would not in the Planning Adviser's view cause harm to the character of the Conservation Area either alone or cumulatively.

The case officer had then considered Policy 30 Part E of NPF4, and Policies RCA1 and TC2 of the LDP. He had considered that while guest did not have to walk past other flats, the hall and stairway were nonetheless shared. There would be extra levels of activity, including guests arriving with luggage and at unsociable hours, and for cleaning, creating disturbance and reducing actual and perceived security. This would be harmful to amenity and contrary to LDP Policy RCA1 and NPF4 Policy 30E. The case officer had not considered it possible to impose conditions that could control this.

The case officer had noted that the Councils' Housing Strategy and Development service did not object to this application, however they stated that there was a need and increased supply in long-term rental housing, especially in the east of the county, with significant pressure on supply of 1 and 2 bed properties. The Council's Economic Development Service Manager also advised that there were demonstrable local economic benefits delivered by short term holiday lets.

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 explained that if the ELLRB Members considered that the effects on amenity were acceptable, and that demonstrable economic benefits outweighed the loss of residential accommodation, the proposal was acceptable under Policy 30E. However, economic benefit should not be weighed against residential amenity, which must be considered separately.

No biodiversity enhancement had been included in the application as required by NPF4 Policy 3. The Planning Adviser considered that this should have been included in a manner proportionate to the application. If it was not possible to make any changes to the property or

surroundings to improve biodiversity, contributions to offsite improvements should have been considered, or provision of information on protecting the biodiversity of the area supplied to guests. This enhancement could be secured by condition.

The Planning Adviser then summarised the applicant's review statement. The applicant considered that the Council had mishandled his case, resulting in unfairness. He stated that the property was removed from the residential market in 2015 with the permission of the Council. The Planning Adviser clarified that planning consent had not been obtained at that time and was now required. She further advised that the applicant's complaint should be taken forward through different channels and was not relevant to the determination of the application.

The applicant considered that NPF4 and the LDP 2018 policies should not apply as the use of the flat as a short term let pre-dates these policies. The Planning Adviser reminded Members that NPF4 and the LDP were the development plan for the area and that legislation required that decisions on planning applications must be made with those plans unless material considerations indicated otherwise.

The applicant provided comments on the report of handling, the development plan, representations and the planning assessment. The appellant noted that he had let the property since 2015 and there had been no impact on local amenity or the character of the neighbourhood. He maintained that the Council had not provided any evidence that the visitors were a nuisance or had led to unwelcome impacts on neighbours. The police and anti-social behaviour unit had no record of complaints. No specific instances of issues in the communal space had been raised through representation. Referring to the level of occupancy, he noted that the occupants used the communal space less than normal residents would. He noted that parking provision was adequate.

He commented on the issues of pressures on housing stock, and the impact of short term lets on the wider housing market whether through purchase or long-term rental. The applicant considered the views of the Economic Development Service manager on the economic benefits of short term lets to be convincing.

The applicant considered that those such as him with unblemished records should be allowed to continue trading. The Council had not taken account of his unique relationship with the property and residents. The appellant also discussed issues with the deeds to the property which were not planning matters.

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

The applicant responded, stating that the focus of the Trust's submission was not sufficiently on his application but on the wider short term let situation. None of the immediate neighbours had raised amenity issues. There were no wider amenity issues as the block was screened by a high hedge and parking was self-contained. He did accept that tourists in general had a demonstrable impact on the town, including its parks, bins, public toilets and car parks. However, he argued that North Berwick needed a short term let market and anecdotally the sector was contracting. He considered the Council's economic figures to be inflated and that the figures in the report for City of Edinburgh Council, cited by the Trust, were not transferrable to North Berwick.

The Planning Adviser stated that in her view the key issues for ELLRB Members to consider were firstly whether the proposal preserved or enhanced North Berwick Conservation Area, and secondly, whether there was unacceptable harm to residential amenity contrary to NPF4

Policy 30E and LDP Policies RCA1 and TC2. Then, if there was not, whether any economic benefits outweighed the loss of residential accommodation.

The Planning Adviser concluded her presentation by reminding Members of the options open to them. Should they be minded to grant planning permission, suggested conditions had been provided by the planning case officer and they might also consider a condition on biodiversity enhancement.

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

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

Councillor McIntosh stated that she was supportive of the case officer's position. She noted that the communal area where the property was 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 she was minded to support the case officer's recommendation and refuse the appeal.

Councillor Findlay was of the view that the loss of amenity in this case was driven by the residents within the building and the impact on them. Given that there had been no objections received from other residents in the building, he did not feel that their amenity had been detrimentally impacted by the use of the property as a short term let. Accordingly, he was minded to support the appeal.

Councillor Cassini considered that there was a difference between residential use and use as a short term let. She was of the view that 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 set out in the case officer's report, she was minded to refuse this application.

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 travelled, and he considered that there would be a different level and type of noise dependent on the use of the property. He was of the view that this change in noise would be detrimental to the amenity of residents in the building. He agreed with the case officer's assessment of the application and was minded to dismiss the appeal.

The members of the LRB confirmed their decision, by a majority of three to one, to dismiss the appeal and refuse planning permission.

Decision

The ELLRB agreed, by majority, to dismiss the appeal and to refuse planning permission for the reason set out in the planning case officer's report.

Signed

Councillor Andrew Forrest
Chair of Local Review Body (Planning)