

REVIEW DECISION NOTICE

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

Application for Review of a decision to refuse planning application 23/00722/P by Juliette Kumar of KLE Property Ltd 139/6 New Street, Musselburgh, EH21 6DH (the “Applicant”). Planning application 23/00722/P retrospectively sought permission for the change of use of the residential top floor flat of Flat 6, 139 New Street, Musselburgh, EH21 6DH to a three bedroom unit of short term self-catering holiday let accommodation. The original case officer refused planning permission on 6 October 2023.

Site address: Flat 6, 139 New Street, Musselburgh, EH21 6DH

Application 23/00722/P

Date of Review decision notice: 21 February 2024

1. Decision

- 1.1 The ELLRB unanimously agreed to dismiss the appeal and to refuse planning application 23/00722/P for the reasons more particularly set out below.
- 1.2 This Notice constitutes the formal decision notice of the Local Review Body as required by the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.

2. Introduction

- 2.1 The above application for planning permission was considered by the ELLRB at the LRB meeting held on Thursday 25 January 2024. The ELLRB constituted by Councillor J Findlay (Chair), Councillor A Forrest, Councillor L Allan and Councillor K McLeod. All four members of the ELLRB had attended a site visit in respect of the application on 25 January 2024.
- 2.2 The following persons were also present at the meeting of the ELLRB:

Ms J Squires, Planning Advisor
Ms F Haque, Legal Adviser/Clerk
Ms F Currie, Clerk

3. Proposal

- 3.1 This application is for review of decision to refuse planning permission for the change of use of the residential top floor flat of Flat 6, 139 New Street, Musselburgh, EH21 6DH to a three bedroom unit of short term self-catering holiday let accommodation. The applicant appealed the refusal of the planning application on 20 October 2023.

4. Preliminaries

- 4.1 In advance of the ELLRB, members were provided with copies of the following:

1	Statement of Case: original case officer's report for planning application 23/00722/P
2	Copy of the Decision Notice (including reason for refusal) relating to planning application 23/00722/P
3	Copy of consultation responses from (i) ELC Road Services; (ii) ELC Environmental Health; (iii) ELC Anti-Social Behaviour Team; (iv) Police Scotland; (v) ELC Economic Development; and (vi) ELC Housing Strategy & Development
4	Copy of the five representations received to planning application 23/00722/P.

5	Copy of Part (e) of Policy 30 (Tourism) of National Planning Framework 4 (“NPF4”) and Policies RCA1 (Residential Character and Amenity), T1 (Development Location and Accessibility) and T2 (General Transport Impact) of the adopted East Lothian Local Development Plan 2018 (ELLDP).
6	Schedule of Conditions

5. **Findings and conclusions**

- 5.1 The Clerk confirmed that all members of the ELLRB were present and all confirmed that there were no declarations of interest.
- 5.2 The Legal Advisor proceeded to summarise the process for the LRB meeting, confirmed that all attendees had copies of the papers listed above. The members nominated Councillor F Findlay as chair for the LRB meeting.
- 5.3 The Members requested that the Planning Advisor summarise the application and the related policy position in respect of this matter.

Planning Advisor’s summary

- 5.4 The reason for refusal was that use as a holiday let is incompatible with and harmful to the amenity of the occupants of other flatted properties used as residential dwellings within the residential building 139 New Street, and as such is contrary to part E of Policy 30 of NPF 4 and Policy RCA of the adopted ELLDP.
- 5.5 This flat is a top floor flat with a balcony within a two and a half storey building in a stair of 6 flats. The flat is accessed via a communal entrance giving onto an internal common stair, shared by 6 flats, one of which, no. 4, has received a Certificate of Lawfulness for use for short term let. The key box is in the communal bin area. No physical alterations are proposed.
- 5.6 The building is in primarily residential area as defined by Policy RCA1 of the ELLDP. It overlooks Fisherrow Sands, to the north and an area of car parking to the south. The flat is close to Fisherrow Harbour. A licence has been applied for and was as at 23rd January still in the process of being determined.
- 5.7 The Applicant stated at the time of the original application that the flat has been used for short term lets since December 2019; the minimum stay is 3 nights and the most common stay length between 5 and 10 nights; the maximum number of guests is 5; waste is removed by ELC waste management services and the flat is cleaned after each stay. There is one allocated underground parking space and 42 shared visitor parking spaces. A management company oversee the day to day management of the let and maintenance, and a cleaning company cleans the property. As far as the Applicant is aware, no direct complaints have been made to them in relation to noise, littering or anti social behaviour.
- 5.8 The flat is let both to tourists and short term workers. The Applicant’s Planning Statement submitted with the application on 28 June 2023 considers NPF4 Policy 13 on Sustainable Transport, and Policy 30 on tourism are likely to be relevant as well as ELLDP policy RCA, T1 and T2, which concern sustainable location and transport. The Applicant’s Planning Statement states that the Applicant is unaware of any noise or antisocial behaviour issues that have arisen as a result of the use of the flat for short term let. Turnover of guests is relatively infrequent at this property. Changeover and cleaning are usually in the day. Most guests come with a rucksack or small suitcase. The number of comings and goings is no greater than it would be if let to a group of young professionals who have friends etc. there.
- 5.9 The absence of complaints about short term lets overall, reported in East Lothian’s consultation on short term let control area, is noted. The Applicant therefore considers the proposal complies with ELLDP Policies RCA 1 and NPF4 Policy 30 Part e(1). For part 2, the planning statement argues that compared to the total number of houses in Musselburgh the loss of one flat to the housing supply is negligible. A Report for the Association of Scotland’s Self Caterers and

Professional Association of self caterers and the VisitScotland factsheet were submitted in support of the application. The Applicant's Planning Statement refers to work for Edinburgh Council showing the benefit of short term lets. Together these show the economic benefits of short term let. The planning statement considered that the proposal complies with policy on sustainable transport.

- 5.10 Five objections were made to the planning application. Reasons for objection included:
- disruption including buzzing and knocking other flat doors;
 - increased comings and goings, including at anti social hours;
 - compromised security including concern that there could be risk to elderly residents who may be vulnerable;
 - incorrect disposal of waste;
 - noise including from suitcases;
 - strangers in communal areas;
 - short term let use brings in people who do not care about the residents or properties
 - police incidents and anti-social behaviour;
 - existing case law in East Lothian prohibiting holiday lets on common stairs;
 - damage to common parts;
 - the flat has a balcony and music is occasionally played at night; and
 - significant effects on amenity and health.
- 5.11 The Councils Road services Asset and Regulatory Manager has no objection. The Councils Protective Services do not object but note that use for short-term holiday let can result in future guests in the accommodation misusing and abusing the property in a manner that is antisocial and can result in significant impact upon amenity of neighbours. Environmental Health cannot assume this will occur however, and cannot impose any enforceable conditions to protect amenity of neighbours.
- 5.12 The Anti Social Behaviour Register had nothing on the register for this address but it should be noted that Fisherrow car park nearby is a locus of anti-social behaviour. No police incidents of anti social behaviour were reported.
- 5.13 The Councils Economic Development Manager supports the proposal for change of use as the operation of short term holiday lets contributes to employment and economic benefit in East Lothian. It provides high quality tourist accommodation. He considers the economic benefit is demonstrable, giving figures on the overall benefit of tourism and for non serviced accommodation.
- 5.14 East Lothian Councils' Housing Strategy and Development department note that East Lothian has high housing need with limited supply. The object to the application is because Musselburgh is part of a constrained housing system, and housing need outstrips supply; there is an existing concentration of short term lets in the area; the property is not an established short term let.
- 5.15 Housing further note research carried out for Edinburgh Council's found that residential use of 3 bed properties in Edinburgh Eastern constituency brought in an annual gross value added of almost twice that of short term let use.
- 5.16 The original case officer noted that change of use to holiday accommodate attracts visitors and encourages them to stay in East Lothian, supporting the wider economy of East Lothian. The case officer considered the impact of change of use on the amenity of existing residential properties. He considered that that short term lets resulted in turn over of people over short time periods, changing the nature of comings and goings to the property itself and the communal areas. Visitors would have luggage and may come and go at antisocial hours, leading to a level of disturbance not associated with long term residential use, harming the amenity of residents. Cleaning and maintenance needs also increases activity levels. Allowing frequently changing guests access to otherwise secure areas changes the actual and perceived level of security for residents. The property at 139 New Street contains a number of long term residents who share a communal entrance, stair and hallway. The case officer therefore considered the use

incompatible with and harmful to their amenity, contrary to Policy 30E of NPF4 and RCA1 of the ELLDP.

- 5.17 The Applicant also submitted a review statement with the appeal. The Applicant reiterates that no direct complaints have been made to the management company or themselves concerning noise, litter or anti-social behaviour. The review statement reiterates that permanent residents can also come and go with varying levels of impact. Permanent residents can also use services such as cleaners, and also have deliveries. No issues have been reported by the Police or Antisocial behaviour team.
- 5.18 This paragraph contains comments from the Applicant's review statement. The Applicant states that comments submitted by objectors should be treated with caution. The Applicant's review statement addresses concerns raised by objectors. The appellant notes that although there is a shared entrance and stair, people entering and leaving do not need to pass close to the doors of other flats, while noise mitigation is good as it is a modern building. Short term lets in common stairs are not prohibited in East Lothian. No incidents of noise, nuisance, police incidents or anti-social behaviour has been reported to the applicant. No evidence has been submitted to support these allegations which should therefore be given no weight. As for the flat having a balcony and music being occasionally played at night, this is no different to what happens with other flats in the building. The flat overlooks the harbour carpark, which is notorious for noise and anti social behaviour. Strangers come into the building for deliveries and services and is common with residential use also. As to unsociable hours, guests must arrive before 10pm; residents can also come and go at anti social hours. Security is not compromised as the stairwell door is locked and keys provided only to vetted guests. Waste, if being disposed incorrectly, can be dealt with by management, and this can equally happen with long term residents.
- 5.19 The Applicant's review statement reiterates and expands on points previously made in relation to turnover of guests, luggage, and overall visits to the property. The Applicant notes that granting a temporary consent would be possible if there is doubt on amenity.
- 5.20 On the matter of economic benefit balanced against loss of residential accommodation, the Applicant considers that if there is a housing shortage in Musselburgh, it is not caused by short term lets as the numbers are low. The Applicant does not intend to let the property on a long term basis so it would remain empty for long periods otherwise. The Applicant's review statement refers to the comments of the Economic Development and Regeneration Manager on economic benefit. The Report for the Association of Scotland's Self Caterers and VisitScotland factsheet were also submitted.
- 5.21 The Planning Advisor reminded the ELLRB of initial comments on the status of the development plan. The Planning Advisor agrees with the Applicant and the original case officer that policy on transport is met. There is no specific policy on short term lets within the ELLDP however it states that a range of hotel, guest house and other accommodation attracts visitors and encourages them to stay and benefit the East Lothian economy. The East Lothian Economic Development Strategy 2012-21 identifies tourism as of the strengths of the East Lothian economy, and a source of employment opportunities.
- 5.22 The Planning Advisor's view is that the most relevant policies are ELLDP, Policy RCA1 which seeks to protect residential amenity and NPF4, Policy 30E, which specifically covers short term lets. Policy 30E includes two criteria which must both be met for the use of an existing building as a short term let to be supported. The first is that the proposal must not result in an unacceptable impact on local amenity or the character of a neighbourhood area, and is similar to the test of ELLDP Policy RCA1. The second test of Policy 30E is whether or not the loss of residential accommodation is outweighed by demonstrable economic benefits.
- 5.23 In terms of Policy 30E, the Planning Advisor stated that members should first consider whether there is unacceptable harm to residential amenity, which is also relevant for ELLDP Policy RCA1. The Applicant has given information on house rules. Bear in mind that if permission is granted the property could be operated in any way within the law that is compatible with its licence and any planning conditions. If impact on amenity is acceptable, then the test of whether the demonstrable economic benefits outweigh the loss of residential accommodation should be

applied. Impacts on amenity and character should not however be weighed against economic benefit. Economic benefit should only be weighed against the effect of loss of residential accommodation.

- 5.24 The original case officer has suggested conditions limiting the number of guests and record keeping. Similar controls have been introduced by the DPEA in other cases in Scotland.

Questions and comments

- 5.25 The Chair invited questions for the Planning Officer.
- 5.26 Councillor Forrest had a question on the economic perspective. He queried that when this is considered if we are looking at “apples against pears”. He is unsure if this comparison helps at all and wonders if it is necessary. The Planning Advisor responded that there were two tests; (1) for residential amenity and (2) the members need to think of the demonstrable economic benefits compared to the loss of housing supply. The information that the Housing Department in their objection to the proposal, referred to a report by City of Edinburgh Council that looked at the benefits of short term lets and compared that to residential use. The work supplied by the economic development manager which was submitted just looks at the benefit of short lets alone and not what would have happened if it was occupied. Planning Advisor commented that the Members may take a view that this is not a fair comparison either as the owner may not let the flat out or keep it as an investment. The Planning Advisor stated that it is up to the members to decide if the test is met, if the impacts on amenity are acceptable.
- 5.27 The Chair queried that at the beginning of the Planning Advisor’s section, she commented that there was another short term let on the same stairwell. The Planning Advisor confirmed that there was. The Chair queried where the objection came from, if they were from people of the stairwell, the area etc. The Clerk confirmed that some of the representations were local and some were from residents within the stair.
- 5.28 Councillor Allan did not have any questions. She commented that as someone who uses short term lets on holidays, she agrees that they are a positive but there may be things on the other hand in relation to housing strategy. There are pros and cons to consider in relation to this appeal.
- 5.29 Councillor McLeod had no questions. He commented that he had asked the Council officer about access at the site visit.

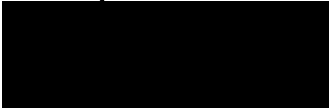
The vote

- 5.30 The Chair confirmed that all members (1) had attended the site visit on 25 January 2024; and (2) that they all had enough information to make a decision for the appeal.
- 5.31 The Legal Advisor stated that members may also want to consider the conditions which had been proposed, should the members be minded to uphold the review.
- 5.32 Councillor Forrest said that he was considering amenity, he had reviewed the representations and objections. He stated that there was a difficulty to report issues with guests, especially if the person in question leaves the following day. By the time it is reported to the management committee and/or the police, the guest may have already left. He commented that as it is a top floor flat, regardless of how careful people are, they will make a noise. He thinks that the amenity will be affected and voted to support the original case officer’s decision to refuse planning permission and that the site should not be a short term let.
- 5.33 Councillor McLeod stated that he agreed with Councillor Forrest. He voted to support the original case officer’s decision to refuse planning permission.
- 5.34 Councillor Allan stated that looking at one of the points stated by the ELC Housing Strategy and Development department was that the local economic benefits are currently not outweighing the loss of housing in East Lothian. She voted to support the original case officer’s decision to refuse planning permission. She cited her concern for the loss of residential accommodation.

5.35 The Chair agreed with the other members of the ELLRB. He commented that he agreed with Councillor Forrest's observations that this is closely linked to the amenity of the other residents of the block. He also understood the economic development point of view and stated that as a general comment, the Council must be careful about short term lets, ensuring that there are some for tourism purposes. Agreed that for this particular appeal, the amenity of the residents would be severely affected. He voted to support the original case officer's decision to refuse planning permission.

Accordingly, the ELLRB unanimously decided to refuse the appeal for the reasons more particularly set out in the original case officer's Decision Notice.

Planning permission is hereby refused.



Fariha Haque
Legal Adviser to ELLRB

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Notification to be sent to applicant on determination by the planning authority of an application following a review conducted under Section 43A(8)

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

- 1 If the applicant is aggrieved by the decision of the planning authority to refuse permission or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.

- 2 If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.