

REVIEW DECISION NOTICE

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

Application for Review by Dr Harriet Miles of 6 Barnshot Road, Edinburgh EH13 0DH of decision to refuse Planning Permission for the change of use of flat to short term holiday let (retrospective).

Site Address: 2A Forth Street Lane, North Berwick EH39 4JB

Application Ref: 23/00471/P

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

Date of Review Decision Notice: 6 March 2024

Decision

The ELLRB by a majority of two (2) to one (1) decided to refuse the appeal and to refuse planning permission for change of use of flat to short term holiday let (retrospective) for the reasons more particularly set out below.

This Notice constitutes the formal decision notice of the Local Review Body as required by the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.

1. Introduction

The above application for Planning Permission was considered by the ELLRB, at a meeting held on Thursday, 29 February 2024. The Review Body was constituted by Councillor A Forrest (Chair), Councillor D Collins and Councillor N Gilbert. All three members of the ELLRB had attended a site visit in respect of this application prior to the meeting.

1.1. The following persons were also present at the meeting of the ELLRB:-

Mr M Mackowiak, Planning Adviser to the LRB
Mr C Grilli, Legal Adviser to the LRB
Ms F Currie, Clerk

2. Proposal

2.1. The planning application is for review of decision to refuse Planning Permission.

2.2. The planning application was registered on 7 August 2023 and the Decision Notice refusing the application is dated 20 October 2023.

2.3. The reason for refusal is more particularly set out in full in the said Decision Notice dated 20 October 2023. The reason for refusal is set out as follows:

1 *The holiday let use of the flatted property is incompatible with and harmful to the*

amenity of the occupants of the flatted property used as a residential dwelling within the residential building of 2 Forth Street Lane, North Berwick and as such is contrary to part e) of Policy 30 of National Planning Framework 4 and Policy RCA1 of the adopted East Lothian Local Development Plan 2018.

2.4. The notice of review is dated 21 November 2023.

3. **Preliminaries**

3.1. The ELLRB members were provided with copies of the following:-

i.	<p>The drawings accompanying this application are referenced and numbered as follows:</p> <table border="1"> <thead> <tr> <th data-bbox="375 629 544 667"><u>Drawing No.</u></th> <th data-bbox="544 629 1018 667"><u>Revision No.</u></th> <th data-bbox="1018 629 1455 667"><u>Date Received</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="375 689 544 728">ELN33</td> <td data-bbox="544 689 1018 728">-</td> <td data-bbox="1018 689 1455 728">28.06.2023</td> </tr> <tr> <td data-bbox="375 750 544 788">DWG 01</td> <td data-bbox="544 750 1018 788">-</td> <td data-bbox="1018 750 1455 788">01.08.2023</td> </tr> </tbody> </table>	<u>Drawing No.</u>	<u>Revision No.</u>	<u>Date Received</u>	ELN33	-	28.06.2023	DWG 01	-	01.08.2023
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ELN33	-	28.06.2023								
DWG 01	-	01.08.2023								
ii.	The Application for planning permission registered on 7 August 2023									
iii.	The Appointed Officer's Submission									
iv.	<p>Policies relevant to the determination of the application:</p> <p>National Planning Framework 4:</p> <p>Policy 7 (Historic Assets and Places); and Part (e) of Policy 30 (Tourism).</p> <p>The adopted East Lothian Local Development Plan 2018:</p> <ul style="list-style-type: none"> - Policy RCA1 (Residential Character and Amenity); - CH2 (Development Affecting Conservation Areas) - Policy T1: Development Location and Accessibility - Policy T2: General Transport Impact 									
v.	Notice of Review dated 21 November 2023 together with Applicant's Submission with supporting statement and associated documents.									

4. **Findings and Conclusions**

4.1. The ELLRB confirmed that the application for a review of the planning application permitted them to consider the application afresh and it was open to them to grant it in its entirety, grant it subject to conditions or to refuse it. They confirmed that they had access to the planning file in respect of this matter and to all the information that the Appointed Officer had available when reaching the original decision to grant planning permission subject to conditions, including all drawings and copies of all representations and objections received in respect of the original application. They also confirmed they had received and reviewed the Applicant's Submission and further representations made in connection within this appeal before the ELLRB today.

4.2. The Members then asked the Planning Adviser to summarise the planning policy position in respect of this matter. The Planning Adviser advised that the planning application relates to the change of use of a two bedroom flat at 2A Forth Street Lane, North Berwick to a two bedroom unit of short-term self-catering holiday let accommodation. The property to which this application relates is a second floor flat with associated roof terrace set within a three storey, flatted building accessed via a communal entrance. 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 Planning Adviser confirmed that in the planning officer's report they noted a number of points made by the applicant in support of her application. Namely that:

- (i) the property has been used as a holiday let from February 2019;
- (ii) the minimum stay is 2 nights and the maximum stay is 1 month;
- (iii) the maximum occupancy of the property is 4 people;
- (iv) the property is cleaned by a local business after each guest;
- (v) the cleaner also deals with any recycling and rubbish;
- (vi) the property is managed by the applicant using Airbnb and guests let themselves into the property using a lockbox and are sent check-in instructions prior to their stay;
- (vii) the property is popular and booked mainly with short term 2-3 day lets over the summer. The applicant notes they do not let the property in November, December and January as historically there have been few bookings in the winter months. The applicant notes they use the property themselves;
- (viii) the property is popular between April and October for golfing events, fringe by the sea and the property is often used for local weddings. Furthermore, the applicant notes several guests rebook the property;
- (ix) the property is popular with couples, families, golfers and the applicant notes the property is dog friendly;
- (x) guests are mainly from Scotland and England but the applicant notes guests have come as far afield as Europe and USA with several guests having made multiple bookings;
- (xi) the property is marketed on Airbnb and the applicant is a 'super host';
- (xii) the use of the property as a holiday let contributes to the local economy;
- (xiii) the applicant notes the ground floor of the building features a commercial property with one flat on the first floor level and the applicants' flat on the second floor;
- (xiv) the flat shares a communal access with the flat below but has its own door at the foot of the internal stairs to the second floor on the first floor landing;
- (xv) there is no parking available but if required the applicant directs guests to local car parks.

The Planning Adviser stated that 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. He then confirmed the relevant policies as set out in 3(iv) of this Decision Notice. Further the Planning Adviser confirmed that 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.

The planning officer's report noted four objections which were received in relation to the application. Two of these objections were received from the same objector. In summary, the main grounds of objection are:

- i) The flat has no noise impact resistance, it does not comply with Building Standards Regulations. The fitted laminate flooring has caused damage to the ceiling of the flat below;
- ii) An objector notes that they hear when users of the flat move around, particularly in rooms which have had laminate flooring fitted;
- iii) The washing machine has no isolation member below it. The whole flat shakes when it is on;
- iv) The flat can be overcrowded as it states it is suitable for 6 people. The flat only has 2 bedrooms suitable for 4 persons total. The other 2 people are accommodated in the living room on a sofa bed;
- v) An objector raises concern regarding security as guests leave the common entrance door open;
- vi) Guests use the stair roof as a terrace which is accessed by an internal stair. Artificial grass has been laid on the roof and there is no fire resistance. Guests often smoke on the terrace and an objector has found cigarettes and bottles dropped from the terrace which is a fire danger and danger to life and limb;
- vii) Guests use any bin and do not respect recycling policy;
- viii) Communal doors/gates being left open/unlocked is a particular concern to an objector and their family

Planning Adviser noted that the planning officer in their report had noted that the alleged non-compliance of the flat with Building Standards Regulations, concerns regarding the safety of the roof terrace are not material consideration in the determination of this planning application. However, if an objector is concerned regarding these comments, then they can make contact with the Council's Building Standards Department to investigate accordingly.

Further the Planning Adviser commented that the noise generated from the use of a washing machine is not a material consideration in the determination of this planning application and that the comments received noting that guests do not use the correct recycling bins are not material considerations in the determination of this application.

It was also noted that the applicant had confirmed in writing, subsequent to the registration of the application, that the flat has a maximum occupancy of 4 people.

The Planning Adviser then advised that this application seeks retrospective planning

permission for the change of use of a two-bedroom, second floor flat to a two-bedroom unit of holiday let accommodation. The holiday let comprises of an open plan living room/kitchen, two bedrooms, bathroom, hallway and a roof terrace which is accessed internally via a narrow stair which leads to a small window opening. The flat is capable of sleeping/accommodating 4 people.

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.

Relevant to the determination of this appeal is Policy RCA1 (Residential Character and Amenity) of the adopted East Lothian Local Development Plan 2018. This policy 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 his report the case officer correctly stated that 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.

In his report the case officers accurately summarised all comments received from our internal and external consultees.

The Council's Senior Environmental Health Officer advised 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, the response noted 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 advised that they have 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 advised that there have been no police incidents at this address and thus they raise no objection to this retrospective planning application.

The Council's Roads Services raised 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 Council's Housing Strategy & Development Service objected to this retrospective application.

The Council's Economic Development Service Manager submitted comments supporting

the application.

The planning officer conducted a planning assessment of the proposal and concluded that the use of the application property as a holiday let results in a regular turnover of users/occupants of the property. This use changes 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. The officer concluded that this is harmful to the amenity of the occupants of the residential properties within the residential flatted building. The officer 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.

The Planning Officer also noted that 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 main 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 of the amenity of the occupants of the residential properties within the residential flatted building. Moreover, the Planning Officer report noted that 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.

The Planning Officer concluded that given the specific circumstances and location of the application property within the residential building named, which contains another permanent/long term residences which shares a communal entrance, internal stair and hallway, the retrospective change of use of the applicant's second 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 said residential building. 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.

The Planning Officer also assessed 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 advised they object to the application as the change of use of this property from a long-term residential dwelling to a short term let is considered a significant loss as the property is located in North Berwick with a concentrated number of short term lets; the short term let is not considered long term established and the annual occupancy rate is low. The Council's Economic Development Service Manager advised 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.

The Planning Adviser then confirmed that the Planning Officer concluded that the local economic benefits associated with the use of the applicant's first floor flat operating as a one 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 Planning Adviser then made reference to the appellant's appeal submissions and summarised these to the members. The submission stated that:

- Flat no2 Forth Street Lane which is the flat below 2A is not a permanent/ long term residence but a second property / holiday home. The owner's permanent address is elsewhere in Scotland. The owner sometimes spends several weeks at a time away from the property during which time their property is either unoccupied or used by their family and friends. When they do come, like the guests to our property at 2A they have to bring their own luggage, shopping etc.
- Flat 2, the property below flat 2A, is regularly used by family and friends of the owner when the owner is not resident therefore the owner is not in control of security to communal areas such as the gate being left open.
- There are only 2 properties, No 2 and 2A sharing the common entrance, unlike in many tenemental properties where there are a large number of properties. The use of both is not, for the reasons stated, dissimilar given the use of No 2 is not a permanent/long term residence but rather a second property/holiday home.

The appellant in their submission submits that it is not justified to refuse consent in this instance and determine that the use of 2A is incompatible with and harmful to the amenity of the occupants of the other flatted property, and as such contrary to part e) of policy 30 of National Planning Framework and Policy RCA1 of the adopted East Lothian Local Development Plan 2018.

The Planning Adviser also confirmed that the appellant also challenges the Council's Housing Strategy and Development Service statement in which 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 with a concentrated number of short term lets: the short term let is not considered long term established: and the annual occupancy rate is low." The appellant refers to Michael Wilkie Assessor Valuation Joint Board assessment of the property from November 2022 which provided a non-domestic rating revaluation 2023 of £6000. In his assessment information about occupancy and availability were submitted and these met the Council's thresholds for a non-domestic rating, I would therefore contest the statement that the annual occupancy rate is low.

The Planning Adviser then brought to the member's attention representation from the objector to this application. This is from the co-owner of flat no2 which is located below the applicants flat. The objector in their representation confirms their previous objections to the application. They also wanted to address some of the points made by the appellant in their statement. The Planning Adviser then summarised these points:

- It is not accurate to claim that we rarely visit and stay. We try to stay 1 week in 3 and a minimum 1 week a month with longer stays on school holidays. My daughter who is the second owner and her family stay regularly. Parent of my daughter's husband stay every over month. We also occasionally allow close friends or relatives to stay.
- We do not let the flat out and have no desire to do so.

- The living room area in Flat 2A has no impact noise insulation and does not appear to comply any more with the current building standards for noise insulation. For STLs or Long term lets the standards require that no hard floors are permitted on timber joisted floors only carpeted with underlay, especially when built or altered pre-Building Standard requirements. Even standard walking about is noisy. We have asked about suitable impact sound insulation to be fitted but the owner does not wish to do so.
- The problem is the common entrance door for which guests have only one key set. So they don't want to close the doors as they can't leave without taking the key set with them. The door entry system does not appear to work for flat 2A.
- The majority of guests only appear to stay for the minimum 2-night stay which means a large turnaround.
- Applicant states that we bring everything when we come. This is not correct, as this is our second home much is left and available resulting in us only requiring to bring a change of clothing and washed bedding

The Planning Adviser concluded their presentation.

- 4.3. Members then asked questions of the Planning Adviser which were duly responded to.
- 4.4. The Chair asked his colleagues if they had sufficient information to proceed to determine the application today and they unanimously agreed to proceed. Comments on the application followed.
- 4.5. Councillor Collins confirmed that this was an awkward case with a second home underneath. The occupants would not be in permanent residence and given the short term let would be beneficial to the economy she was minded to support the application.
- 4.6. Councillor Gilbert commented that there was a communal stairway which would bring forward a level of disturbance and permanent residents would have more care in use. He was minded to agree with the Planning Officer and refuse the application.
- 4.7. The Chair commented that it came down to Amenity. He commented that there was no noted anti-social behaviour but given the type of use as a short term let those occupying move on before any action could be investigated. He noted that ultimately for him it came down to an impact on amenity and therefore he was also minded to support the Planning Officer and refuse the application.

Accordingly, the ELLRB by majority of two (2) to one (1) decided to refuse the appeal for the reasons more particularly set out in the Planning Officer's report.

Planning Permission is hereby refused.



Carlo Grilli
Legal Adviser to ELLRB

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

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

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

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

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