



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

**THURSDAY 25 JANUARY 2024
VIA THE DIGITAL MEETINGS SYSTEM**

Committee Members Present:

Councillor L Allan
Councillor J Findlay (Chair)
Councillor A Forrest
Councillor K McLeod

Advisers to the Local Review Body:

Ms F Haque, 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. Councillor Allan nominated Councillor Findlay, and this was seconded by Councillor McLeod. It was agreed that Councillor Findlay would chair the Local Review Body (LRB) on this occasion.

The Planning Adviser made some introductory remarks on the status of the development plan which was common to all of the applications being considered. She reminded Members that section 25 of the Town and Country Planning (Scotland) Act 1997 required that planning applications be determined in accordance with the development plan unless material considerations indicated otherwise. The decision takers should therefore first consider whether, taking into account the development plan as a whole, the proposal does or does not accord with it. They should then identify all other material considerations – things that had not previously been considered through the development plan – and decide if they were of such weight that they would override the priority which was given to the development plan by statute. The development plan for the area was National Planning Framework 4 (NPF4) and the East Lothian Local Development Plan (LDP).

1. PLANNING APPLICATION NO. 23/00451/P: ERECTION OF PORCH AND FORMATION OF DORMERS, 36 MONKTONHALL TERRACE, MUSSELBURGH EH21 6ES

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 original application had sought planning permission for works including a porch and dormers to the front, side, and rear of the house. Planning permission had been granted for the works; however, a condition was placed on the consent that permission be not granted for the dormer formed on the front roof slope. Most of the works shown in the application therefore had permission and could not now be revisited through this review. The review covered only the matter of the condition preventing construction of the front dormer.

She provided details of the location of the property and its surroundings, as well as the size, style and materials for the proposed dormer.

The Planning Adviser then summarised the case officer's assessment of the application against relevant planning policies, including Policy 14 (Design, Quality and Place), and Policy 16 (Quality homes) of NPF4, and Policy DP5 (Alterations and extension to existing buildings) of the adopted LDP 2018. The case officer had considered the dormer would be contrary to Policy 14 of NPF4 and DP5 of the LDP, as it would be seen in context of the other houses of Monktonhall Terrace, none of which had a front dormer. The dormer would therefore disrupt the form and appearance of the front elevation of roof slopes and would not be in keeping with them. It would have a detrimental impact on the character of the house and the appearance of the surrounding area. The dormer was therefore excluded from planning consent for the development by condition as contrary to NPF4 Policy 14 and ELLDP Policy DP5. The case officer had also noted in his report that it would set an undesirable precedent for neighbouring

properties which, if followed, would be to the detriment of the character and appearance of the surrounding area.

The Planning Adviser then summarised the applicant's submission in which he had argued that the semi-detached building of which his property formed part was the only one of its kind on Monktonhall Terrace, the others being four in a block type with different roof shapes and designs. The red sandstone terrace buildings to the north were completely different. The southern flats though of similar period to his, were of different colours and different positions relative to the street, with no standard street frontage. Therefore, he considered that the proposal was not out of keeping. Furthermore, the size, form, proportion and scale of the proposed dormer was appropriate to the house as it was identical to the approved rear dormer. He considered the dormer was in keeping with the six qualities of successful places. He stated that it used natural materials (the materials detailed on the drawings are slate and upvc) and that the design complemented local architectural styles and would allow his family to remain in the area. The plan would increase the efficiency of the home as further insulation and glazing had been added. Therefore, he considered the proposal was in line with NFP4 Policy 16, as it did not have a detrimental impact on the character of the house and improved its environmental quality. The appellant noted that a front dormer had been approved on a house on this road, so there is existing precedence.

The Planning Adviser said she agreed with the case officer that the proposed dormer would be out of keeping with the existing housing in Monktonhall Terrace. The local architectural style was of monoplane roof slopes, which the proposed dormer would disrupt. The proposal would also, in her view, in combination with the consented dormers, have the effect of altering the massing of this building to the detriment of the building itself and the street scene. This would reduce the sense of place of this building group and the street in general.

She noted the applicant's statement that the proposal would increase the efficiency of his home but that he had not submitted any further information in support of this. The rear dormer although identical had limited visibility from public areas, which the case officer had taken into consideration when approving it. The approved dormer on another house on the street was on an originally single storey building.

The Planning Adviser concluded her presentation by reminding Members that it was open to them to retain the condition or to remove it. If they supported the removal of the condition, it was open to them to allow the dormer subject to appropriate conditions.

In response to questions from Members, the Planning Adviser confirmed that planning permission had been granted for dormers to the side and rear of the property, as part of this application. She also advised that any installation of Velux windows, as a potential alternative to a dormer, would likely require separate planning permission.

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 Forrest stated that having viewed the site, he agreed with the decision of the planning officer. The proposed dormer would adversely affect the current street view and would set an unhelpful precedent. He was minded to support the original decision of the planning officer and would make no change to the condition of planning permission.

Councillor McLeod noted that the dormer on the house next door was well sheltered from view, as was a similar dormer on a nearby property. He considered that the proposed dormer

would be out of character with its surroundings, and he agreed with the original decision of the planning officer and would not propose to make any change to the condition of planning permission.

Councillor Allan said she also agreed with the planning officer. While she could understand the need for additional space and light, she did not think that the proposed dormer would be in keeping with surrounding buildings and would be too prominent. She was minded to support the original decision of the case officer and to make no change to the condition of planning permission.

The Chair agreed with his colleagues and with the original decision of the planning officer. He was of the view that the condition of planning permission should remain unchanged.

The Legal Adviser confirmed that the LRB members had agreed unanimously to refuse the appeal and to make no change to the condition of planning permission.

Decision

The ELLRB agreed unanimously to refuse the appeal and to make no change to the condition of planning permission.

2. PLANNING APPLICATION NO. 23/00514/P: CHANGE OF USE OF GYPSY/TRAVELLER PITCHES FOR ERECTION OF 1 HOUSE AND ASSOCIATED WORKS, LAND AT MUIRPARK STEADING, TRANENT, EAST LOTHIAN

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 this case was an appeal against refusal of an application for erection of one house and associated works. She outlined the reasons for refusal and provided details of the site and its surroundings. She advised that recently permission had been granted for a change of use to a house from a utility block on adjacent land. The proposal site lay between this house and another existing house and was enclosed by stone walls and fencing. Access would be taken through the existing internal driveway.

She confirmed that no representations had been received from members of the public and there had been no objections to the application from any internal or external consultee. However, the Coal Authority and Contaminated Land Officer had suggested conditions and the Biodiversity Officer, Flood Officer and Scottish Water had made recommendations.

The Planning Adviser summarised the case officer's assessment of the proposals against relevant planning policies. The case officer had found that the proposal would accord with policies on design and transportation. He had considered that subject to imposition of a condition on biodiversity enhancement, the proposal would accord with biodiversity policy. However, he had found the principle of erection of a house to be in conflict with LDP Policies DC1, DC4 and DC5, as well as NPF4 Policy 17. He therefore refused the application for the reasons set out in the original decision notice.

The Planning Adviser then turned to the applicant's submission which noted that Muirpark was historically a large steading and argued that designation of the land as countryside is outdated. The application site was previously developed and could accommodate the new home and the proposals met design and siting criteria. The land was not in agricultural use and there were no inappropriate or adverse amenity impacts. The applicant considered that the Council had not taken on board the reasons the original application for a gypsy travellers' site was

upheld at appeal by the Reporter. The applicant stated that the site was not appropriate or attractive as a destination for mobile travellers and that the operation of travellers' pitches was not currently viable. The applicant went on to argue that the case officer had not taken sufficient account of LDP policy DP7 and the benefits of the proposals in terms of NPF4 policies 14-16. The applicant's submission provides rebuttal of the case officer's assessment of the proposals against relevant planning policy. It argues that the site was not consistent with the definition of countryside contained in the LDP. The proposal was acceptable under NPF4 Policy 17a, as it fell into at least 4 of the categories. The proposal was also supported by NPF4 Policy 9. The applicant therefore considered that the proposal accorded with the development plan.

The Planning Adviser stated that she agreed with the case officer's assessment in terms of Policies DP1 and 2 of the LDP on design, and Policies T1 and T2 of the LDP on transport issues. Also, policies in NPF4 13, 14, 15 and 16 which were intended to ensure that development proposals improved the quality of the area in which they were located and contributed to local living. She noted that the case officer listed policy on soil as being relevant but did not discuss this further. The appellant considered this may have been included in error. The Planning Adviser noted that the soil is assessed as Class 2. She considered the application of relevant planning policy and whether there may be any relevant material considerations that could override the provisions of planning policy protecting prime agricultural land.

The Planning Adviser set out where she disagreed with the case officer on his assessment of planning policy, referring in particular to NPF4 Policies 1, 2, 3 and 17 and LDP Policies DC1, DC4 and DC5, and where issues might be addressed through the imposition of conditions, should planning permission be approved. She highlighted the opposing view of the case officer and the applicant on whether the site should be considered as countryside. She pointed out that, in the plan led system, which policies apply to which land was decided through the Local Development Plan process. The forum for dispute was that process. Once the LDP was adopted the matter was settled. Proposals in areas shown as countryside, as this site was, must be considered with regard to relevant countryside policies.

She noted a similar disagreement between the case officer and applicant regarding the application of policies on brownfield land. NPF4 Policy 17 defined brownfield land as previously developed land. This land had a gravel surface but had no built development, and in her view did not constitute brownfield land. She added that even if considered brownfield land, the land would return to its natural state without intervention and so did not fall into Category 2 of the policy. She stated that the position regarding brownfield land as it applied specifically to rural homes was set out in Policy 17 of NPF4, and the general policy towards brownfield land in Policy 9 should not override this. In any event, she said that the site should not be considered as brownfield land due to the lack of operational development that had taken place on the site.

She noted that the case officer had also refused the application as against LDP Policy DC5. The applicant had argued that Policy DC5 was not relevant, and she agreed with this view. Policy DC5 could not be applied, other than to note that this policy did not lend the proposal any support as the proposal was not for enabling development.

The Planning Adviser concluded her presentation by reminding Members that it was open to them to uphold the appeal, or to refuse it for the reasons given by the case officer or any valid planning reason. Should Members be minded to refuse the application for the reasons given by the case officer, she advised the removal of the reference to Scottish Planning Policy, as this was no longer in force. Should Members be minded to uphold the appeal, the case officer had suggested conditions; although proposed Condition 3 required additional wording to make it clear whether the 'satisfactory appearance' referred to the area, site or building.

The Planning Adviser and Legal Adviser responded to questions from Members relating to conditions of planning permission, previous permissions granted for the site; issues around rainwater drainage and right of access to the site from the main road (A199).

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 McLeod said he was aware of the history of the site and he referred to house building in the area in recent years. He had some concern about the possibility of future applications for housing on the site and he had noted the advice regarding right of access to the site. On balance, he was minded to uphold the appeal and to grant planning permission.

Councillor Allan said she had found the site visit helpful and while she had some concerns about access to the property, she acknowledged the advice given by officers. She could see no reason to refuse the application and was therefore minded to uphold the appeal.

Councillor Forrest said that, in his view, the site was in the countryside and could potentially be returned to prime agricultural land, if not developed. He was concerned that to grant planning permission could set an unhelpful precedent and was therefore minded to support the original decision of the planning officer.

The Chair noted Councillor Forrest's view regarding the site being in the countryside, but he considered it unlikely that the site could be returned to prime agricultural land. He noted the previous use as a gypsy/traveller site and was minded to uphold the appeal.

The Legal Adviser asked the LRB members to review the suggested conditions of planning permission provided by the case officer. The Planning Adviser reiterated her suggestion of a small change to the reason for condition 3 to read: "To ensure the satisfactory appearance of the area."

The Legal Adviser confirmed that the LRB members had agreed, by a majority of three to one, to uphold the appeal and to grant planning permission subject to the conditions recommended by the planning officer and including the suggested revision to condition 3.

Decision

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

1. The development hereby approved shall begin before the expiration of 3 years from the date of this permission.

Reason:

Pursuant to Section 58 of the Town and Country Planning (Scotland) Act 1997 as amended.

2. No development shall take place on site unless and until final site setting out details have been submitted to and approved by the Planning Authority.

The above-mentioned details shall include a final site setting-out drawing to a scale of not less than 1:200, giving:

- a. the position within the application site of all elements of the proposed development and position of adjoining land and buildings;

b. finished ground and floor levels of the development relative to existing ground levels of the site and of adjoining land and building(s).

The levels shall be shown in relation to an Ordnance Bench Mark or Temporary Bench Mark from which the Planning Authority can take measurements and shall be shown on the drawing; and c. the ridge height of the proposed house and garage shown in relation to the finished ground and floor levels on the site.

Reason: To enable the Planning Authority to control the development of the site in the interests of the amenity of the area.

3. A schedule and/or samples of all of the external finishing materials and finishing colours to be used in the external finishes of the house and garage hereby approved shall be submitted to and approved in writing by the Planning Authority prior to their use in the development. Thereafter, the external finishing materials and colours used shall accord with the schedule and samples so approved.

Reason: To ensure the satisfactory appearance of the site.

4. Prior to the occupation of the house hereby approved the vehicular access, turning and parking arrangements shall be laid out and made available for use, as shown in docketed drawing no. 23029-PO1 rev C and thereafter the access, turning and parking areas shall be retained for such uses, unless otherwise approved in writing by the Planning Authority.

Reason: To ensure the provision of an acceptable standard of vehicular access, turning and parking in the interests of road safety.

5. Prior to the commencement of development a scheme of intrusive investigations shall be carried out on site to establish the risks posed to the development by past shallow coal mining activity. All remedial stabilisation works and/or mitigation measures to address land instability arising from shallow coal mining legacy shall be implemented on site in full in order to ensure that the site is made safe and stable for the development proposed. All remedial works shall be carried out in accordance with authoritative UK guidance.

Prior to the occupation of the development, or it being taken into beneficial use, a signed statement or declaration prepared by a suitably competent person confirming that the site has been made safe and stable for the approved development shall be submitted to and approved in advance in writing by the Planning Authority in consultation with the Coal Authority. This document shall confirm the completion of the remedial works and any mitigating measures necessary to address the risks posed by past coal mining activity.

Reason

To ensure that adequate remediation of coal mining legacy on the site has been undertaken prior to the occupation of the flatted building hereby approved.

6. Prior to the commencement of development, to ensure that the site is clear of contamination, a Geo-Environmental Assessment shall be carried out and the following information shall be submitted to and approved by the Planning Authority:

- Phase I - A preliminary investigation incorporating a desk study, site reconnaissance, development of a conceptual model and an initial risk assessment.
- Phase II - Incorporating a site survey (ground investigation and sample analysis) and risk evaluation. It is required if the Phase I investigation has indicated that the site is potentially contaminated, and the degree and nature of the contamination warrants further investigation.
- Phase III - Where risks are identified, a Remediation Strategy should be produced detailing and quantifying any works which must be undertaken in order to reduce the risks to acceptable levels.

Should remedial works be required then, prior to any residential units being occupied, a Validation Report shall be submitted to and be approved by the Planning Authority confirming that the works have been carried out in accordance with the Remediation Strategy.

The presence of any previously unsuspected or unforeseen contamination that becomes evident during the development of the site shall be brought to the attention of the Planning Authority. At this stage,

further investigations may have to be carried out to determine if any additional remedial measures are required.

Reason:

To ensure that the site is clear of contamination and that remediation works are acceptable prior to the occupation of the house hereby approved.

7. Prior to the commencement of development, a report on the actions to be taken to reduce the Carbon Emissions from the build and from the completed development shall be submitted to and approved in writing by the Planning Authority. This shall include the provision of renewable technology for all new buildings, where feasible and appropriate in design terms, and new car charging points and infrastructure for them, where feasible and appropriate in design terms. The details shall include a timetable for implementation. Development shall thereafter be carried out in accordance with the report so approved.

Reason: To minimise the environmental impact of the development.

8. Prior to the commencement of development, details of measures to protect and enhance biodiversity on the application site shall be submitted to and approved by the Planning Authority. The measures as so approved shall be implemented prior to any use being made of the agricultural building hereby approved and shall thereafter be retained, unless otherwise approved in writing by the Planning Authority.

Reason:

In the interests of protecting and enhancing biodiversity on the site and within the surrounding area.

3. PLANNING APPLICATION NO. 23/00722/P: CHANGE OF USE OF FLAT TO SHORT TERM HOLIDAY LET (RETROSPECTIVE), FLAT 6, 139 NEW STREET, MUSSELBURGH EH21 6DH

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 this was an appeal against refusal of planning permission for a change of use of flat to short term holiday let. She outlined the reason for refusal as set out in the original decision notice and provided details of the property, location and short term let business use. She confirmed that a short term let licence had been applied for and was, at the time of this meeting, still in the process of being determined.

The applicant had indicated that they were unaware of any noise or antisocial behaviour issues arising from the use of the flat for short term lets. Turnover of guests was relatively infrequent at this property. Changeover and cleaning were usually done during the day and most guests arrived with a rucksack or small suitcase. The absence of complaints about short term lets overall, reported in East Lothian's consultation on short term let control area, was noted. The applicant therefore considered that the proposal complied with LDP Policies RCA 1 and NPF4 Policy 30 Part e(1). For part 2 of Policy 30, the planning statement argued that compared to the total number of houses in Musselburgh the loss of one flat to the housing supply was 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 also referred to work undertaken for Edinburgh Council showing the benefit of short term lets. Together these demonstrated the economic benefits of short term lets. The planning statement also considered that the proposal complied with policy on sustainable transport.

The Planning Adviser stated that five objections had been made to the planning application and she summarised the comments which included: disruption from buzzing and knocking

other flat doors; increased comings and goings, and at anti-social hours; compromised security and potential risk to elderly residents who may be vulnerable; incorrect disposal of waste; short term let use bringing in people who did 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; disturbance from the balcony and music occasionally played at night; and significant effects on amenity and health.

She noted that the Council's Road Services Asset and Regulatory Manager had no objection. The Council's Protective Services did not object but noted that use for short term holiday let could result in future guests in the accommodation misusing and abusing the property in a manner that was antisocial and could result in significant impact upon amenity of neighbours. However, it could not be assumed that this would occur, and it would not be possible to impose any enforceable conditions to protect amenity of neighbours. The Council's Anti-Social Behaviour Team had nothing on their register. No police incidents of anti-social behaviour had been reported.

The Council's Economic Development Manager had been consulted but did not respond. The Council's Housing Strategy and Development Team noted that East Lothian had a high housing need with limited supply. They objected to the application as Musselburgh was part of a constrained housing system, and housing need outstripped supply. They added that there was an existing concentration of short term lets in the area; and the property was not an established short term let. They also provided further research carried out for Edinburgh Council which had found that residential use of 3 bed properties in Edinburgh Eastern constituency had brought in an annual GVA of almost twice that of short term let use.

The Planning Adviser summarised the case officer's assessment of the application. He had noted that change of use to holiday accommodation attracted visitors and encouraged them to stay in East Lothian, supporting the wider economy of East Lothian. The case officer had also considered the impact of change of use on the amenity of existing residential properties. He had considered that short term lets resulted in turnover 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 increased activity levels. Allowing frequently changing guests access to otherwise secure areas changed the actual and perceived level of security for residents. The property at 139 New Street contained a number of long-term residents who shared 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 LDP.

The Planning Adviser then summarised the applicant's review statement. The applicant had reiterated several points, including that no direct complaints had been made to the management company or themselves concerning noise, litter or anti-social behaviour. The review statement also reiterated points relating to additional comings and goings (e.g. cleaners), no issues having been reported by the Police or Council; concerns about safety and security of residents within the shared stairway. It noted that people entering and leaving did not need to pass close to the doors of other flats, while noise mitigation was good as it was a modern building. Furthermore, short term lets in common stairs were not prohibited in East Lothian. The applicant had confirmed that guests must arrive before 10pm; and had noted that residents could also come and go at anti-social hours. The applicant added that granting a temporary consent would be possible if there was any doubt about the possible impact on amenity. The applicant considered that if there was a housing shortage in Musselburgh, it was not caused by short term lets as the numbers were low. The applicant did not intend to let the property on a long-term basis so it would remain empty for long periods otherwise. Their statement referred 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 in support of the appeal.

The Planning Adviser reminded Members of her initial comments on the status of the development plan. She agreed with the applicant and the case officer that policy on transport was met. There was no specific policy on short term lets within the LDP however 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. In her view, the most relevant planning policies were Policy RCA1 which sought to protect residential amenity and NPF4, Policy 30E, which specifically covered short term lets. Policy 30E 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 was that the proposal must not result in an unacceptable impact on local amenity or the character of a neighbourhood area and was similar to the test of LDP Policy RCA1. The second test of Policy 30E was whether or not the loss of residential accommodation was outweighed by demonstrable economic benefits. She outlined how the tests should be applied.

The Planning Adviser concluded her presentation by reminding Members that, if they were minded to uphold the appeal, the case officer had suggested conditions limiting the number of guests and record keeping which they may wish to consider. Similar controls had been introduced by the DPEA in other cases in Scotland.

The Planning Adviser responded to questions from Members. She outlined the tests in relation to residential amenity; and considering demonstrable economic benefit against loss of housing supply. She also confirmed that there was another short term let within the same block. In response to a question on the representations received, the Clerk confirmed that objections received from interested parties included those who lived in close proximity to the property.

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 Legal Adviser asked the LRB members to consider the suggested conditions of planning permission as part of their comments, should they be minded to grant planning permission.

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

Councillor Forrest said that his main focus was residential amenity. He noted the difficulties of encouraging residents to report complaints due to the transient nature of short term lets. He considered that noise and disturbance in the stair was impossible to avoid, and that residential amenity would be adversely affected. He would be supporting the original decision of the planning officer.

Councillor McLeod agreed with his colleague's views on the impact on residential amenity and, for that reason, he would be supporting the original decision of the planning officer.

Councillor Allan referred to the comments provided by the Council's Housing Team who stated that the economic benefits provided by short term lets did not currently outweigh the loss of residential accommodation in East Lothian. For this reason, she would be supporting the original decision of the planning officer.

The Chair agreed with his colleagues' regarding the impact on residential amenity. However, he understood the economic development point of view and the need, more

generally, to balance all of these issues when considering short term lets. On this occasion, he would be supporting the original decision of the planning officer.

The Legal Adviser confirmed that the LRB members had agreed unanimously to uphold the decision of the planning case officer to refuse planning permission.

Decision

The ELLRB agreed, unanimously, to refuse the appeal and to refuse planning permission for the reasons set out in the original decision notice.

4. PLANNING APPLICATION NO. 23/00824/P: CHANGE OF USE OF FLAT TO SHORT TERM HOLIDAY LET (RETROSPECTIVE), FLAT 4, 133 NEW STREET, MUSSELBURGH EH21 6DH

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 this was an appeal against refusal of planning permission for a change of use of flat to short term holiday let. She outlined the reason for refusal as set out in the original decision notice and provided details of the property, location and short term let business use. She confirmed that a short term let licence had been applied for and was, at the time of this meeting, still in the process of being determined.

The applicant had indicated that they were unaware of any noise or antisocial behaviour issues arising from the use of the flat for short term lets. Turnover of guests was relatively infrequent at this property. Changeover and cleaning were usually done during the day and most guests arrived with a rucksack or small suitcase. The absence of complaints about short term lets overall, reported in East Lothian's consultation on short term let control area, was noted. The applicant therefore considered that the proposal complied with LDP Policies RCA 1 and NPF4 Policy 30 Part e(1). For part 2 of Policy 30, the planning statement argued that compared to the total number of houses in Musselburgh the loss of one flat to the housing supply was 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 also referred to work undertaken for Edinburgh Council showing the benefit of short term lets. Together these demonstrated the economic benefits of short term lets. The planning statement also considered that the proposal complied with policy on sustainable transport.

The Planning Adviser stated that nine representations had been made to the planning application and she summarised the comments which included: disruption; increased comings and goings, and at anti-social hours; compromised security and potential risk to elderly residents who may be vulnerable; incorrect disposal of waste; short term let use bringing in people who did not care about the residents or properties; anti-social and suspicious behaviour; and significant effects on amenity and health. One representation had stated that they had left their home in Edinburgh as there were only holiday lets in the tenement, which had destroyed the community.

She noted that the Council's Road Services Asset and Regulatory Manager had no objection. The Council's Protective Services did not object but noted that use for short term holiday let could result in future guests in the accommodation misusing and abusing the property in a manner that was antisocial and could result in significant impact upon amenity of neighbours. However, it could not be assumed that this would occur, and it would not be possible to impose any enforceable conditions to protect amenity of neighbours. The Council's Anti-Social

Behaviour Team had nothing on their register. No police incidents of anti-social behaviour had been reported.

The Council's Economic Development Manager had been consulted but did not respond. The Council's Housing Strategy and Development Team noted that East Lothian had a high housing need with limited supply. They objected to the application as Musselburgh was part of a constrained housing system, and housing need outstripped supply. They added that there was an existing concentration of short term lets in the area; and the property was not an established short term let. They also provided further research carried out for Edinburgh Council which had found that residential use of 3 bed properties in Edinburgh Eastern constituency had brought in an annual GVA of almost twice that of short term let use.

The Planning Adviser summarised the case officer's assessment of the application. He had noted that change of use to holiday accommodation attracted visitors and encouraged them to stay in East Lothian, supporting the wider economy of East Lothian. The case officer had also considered the impact of change of use on the amenity of existing residential properties. He had considered that short term lets resulted in turnover 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 need also increased activity levels. Allowing frequently changing guests access to otherwise secure areas changed the actual and perceived level of security for residents. The property at 139 New Street contained a number of long-term residents who shared 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 LDP.

The Planning Adviser then summarised the applicant's review statement. In it, the applicant had expressed surprise at the issues raised having had no direct complaints from neighbours. The review statement also reiterated points relating to additional comings and goings (e.g. cleaners), and that no issues had been reported by the Police or Council. There had been no evidence put forward to show that the short term let was the source of the problems raised by residents. The age of residents was not relevant and permanent residents could also come and go at anti-social hours. The applicant added that granting a temporary consent would be possible if there was any doubt about the possible impact on amenity. The applicant considered that if there was a housing shortage in Musselburgh, it was not caused by short term lets as the numbers were low. They referred to the comments of the Economic Development and Regeneration Manager regarding a short term let application at 139 New Street which stated that there were demonstrable local economic benefits delivered by all types of short term let.

The Planning Adviser reminded Members of her initial comments on the status of the development plan. She agreed with the applicant and the case officer that policy on transport was met. There was no specific policy on short term lets within the LDP however 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. In her view, the most relevant planning policies were Policy RCA1 which sought to protect residential amenity and NPF4, Policy 30E, which specifically covered short term lets. Policy 30E 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 was that the proposal must not result in an unacceptable impact on local amenity or the character of a neighbourhood area and was similar to the test of LDP Policy RCA1. The second test of Policy 30E was whether or not the loss of residential accommodation was outweighed by demonstrable economic benefits. She outlined how the tests should be applied.

The Planning Adviser concluded her presentation by reminding Members that, if they were minded to uphold the appeal, the case officer had suggested conditions limiting the number of guests and record keeping which they may wish to consider. Similar controls had been introduced by the DPEA in other cases in Scotland.

In response to a question from the Chair, the Clerk confirmed that the representations received were from individuals who lived locally. There were no other questions.

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 Forrest said that residential amenity was even more of an issue with this application, due to the location of the property within the stair. He was concerned about noise disturbance and did not consider the use of the underground car park to be a mitigating factor. He also offered a general comment on the desirability of purpose-built accommodation for short term lets but accepted that this was unlikely and short term lets in residential settings would always be an issue.

Councillor Allan agreed with her colleague's remarks and was also minded to support the original decision of the planning officer.

Councillor McLeod also echoed his colleagues' views. He believed that there were similar considerations in this, and the previous application and he was minded to support the original decision of the planning case officer.

The Chair also concurred with his colleagues and was minded to support the original decision of the planning officer.

The Legal Adviser confirmed that the LRB members had agreed unanimously to uphold the decision of the planning case officer to refuse planning permission.

Decision

The ELLRB agreed, unanimously, to refuse the appeal and to refuse planning permission for the reasons set out in the original decision notice.

Signed

Councillor Jeremy Findlay
Chair of Local Review Body (Planning)