

REVIEW DECISION NOTICE

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

Application for Review by Miss Katherine Seale of 8 Bellfield Avenue, Musselburgh, East Lothian EH21 6QU of decision to refuse Planning Permission for the change of use of flat to short term holiday let (retrospective).

Site Address: 1B Shorthope Street, Musselburgh EH21 7DB

Application Ref: 23/00714/P

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

Date of Review Decision Notice:

Decision

The ELLRB by a majority of two (2) to one (1) decided to dismiss the appeal and refuse planning permission for the 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 19 July 2023 and the Decision Notice refusing the application is dated 8 September 2023.

2.3. The condition and the reason for the condition is more particularly set out in full in the said Decision Notice dated 8 September 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 1 Shorthope Street, Musselburgh 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 31 October 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="389 674 539 703"><u>Drawing No.</u></th> <th data-bbox="687 674 837 703"><u>Revision No.</u></th> <th data-bbox="1027 674 1203 703"><u>Date Received</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="389 734 491 763">DWG 01</td> <td data-bbox="743 734 751 763">-</td> <td data-bbox="1027 734 1161 763">13.07.2023</td> </tr> <tr> <td data-bbox="389 766 491 795">DWG 02</td> <td data-bbox="743 766 751 795">-</td> <td data-bbox="1027 766 1161 795">19.07.2023</td> </tr> </tbody> </table>	<u>Drawing No.</u>	<u>Revision No.</u>	<u>Date Received</u>	DWG 01	-	13.07.2023	DWG 02	-	19.07.2023
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DWG 01	-	13.07.2023								
DWG 02	-	19.07.2023								
ii.	The Application for planning permission registered on 19 July 2023									
iii.	The Appointed Officer's Submission									
iv.	<p>Policies and legislation relevant and material 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, policies:</p> <ul style="list-style-type: none"> - RCA1 (Residential Character and Amenity); - CH1 (Listed Buildings) - CH2 (Development Affecting Conservation Areas) - CH5 (Battlefields) - T1: Development Location and Accessibility - T2: General Transport Impact <p>Legislation material to consideration of this application:</p> <ul style="list-style-type: none"> - Section 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 									
v.	Notice of Review dated 31 October 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 property that this planning application relates to is a one bedroom flat located at first floor level within a three storey flatted building which contains a commercial business at ground floor level which fronts onto High Street. There is a communal entrance and garden accessed via a secure gate from Shorthope Street which provides access to an internal communal stair. The flatted building contains 4 flats, including the applicants' property. The property is located within Musselburgh Town Centre as defined by Policy TC2 of the adopted East Lothian Local Development Plan 2018. The building is also listed as being of special architectural or historic interest (Category C). Planning permission was sought retrospectively for the change of use of the said residential property to a one bedroom unit of short term self-catering holiday let accommodation. The Planning Adviser noted that no alterations have been undertaken to the flat, either internally or externally, to facilitate the proposed change of use.

The Planning Adviser then summarised the case officer's report as follows:

- (i) the property has been marketed/used as a short term holiday let since July 2022;
- (ii) there is a 2 night minimum stay and a maximum stay of 28 days;
- (iii) the property can accommodate a maximum of 4 people;
- (iv) the recycling is disposed of after each stay and is managed by the applicant or a cleaner. The property is cleaned after each guest check-out and rubbish is disposed of in the bins provided in the property;
- (v) stays are managed through Airbnb and the guests check-in through a self-check-in system, details of which are provided on the Airbnb booking.
- (vi) Access to the property is through a coded gate and then keys to the property are accessed via a lock box with a code provided to guests;
- (vii) during the 'high season' (April - October) there is a 97% occupancy rate with an occupancy rate of 75% between November and March. The busiest time for bookings is August;
- (viii) at the time of submission of the application there were 6 bookings for 2024 and the applicant confirmed that they do not take bookings for 2025. The applicant noted the property was consistently booked until December 2023;
- (ix) The property is typically let to couples and some families and occasionally to workers working in the local area
- (x) the applicant notes guests travel from all over the world but the majority are from Europe and America although the property is well used by Scottish guests as well with return guests;
- (xi) the property is marketed on Airbnb and the applicant is not a member of any industry bodies or accreditation schemes but is a registered landlord;
- (xii) the short term letting of the property benefits the local economy as the applicant hires a cleaner who cleans the property 2-3 times a week and also hires a local window cleaning company who clean the windows monthly. Guests also shop and eat locally on the High Street;

- (xiii) the applicant notes the income from the property is used as part of their main living income and it also covers the fees and costs of running the Airbnb

The Planning Adviser then confirmed 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. He then commented on policies relevant for considering this application all of which are listed at 3.1(iv) of this Decision Notice and summarised the terms of these policies.

The Planning Adviser then confirmed that no public letters of objection had been received in relation to the application.

The Planning Adviser then confirmed 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.

The Planning Adviser then summarised the consultee responses and confirmed that:

- 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 Adviser then noted that in his report the case officer conducted a planning assessment which focused on compliance of the proposal with part e of Policy 30 (Tourism) and Policy RCA1 (Residential Character and Amenity) of the LDP. He considered the comments received from the Council's internal and external consultees and concluded that that given the specific circumstances and location of the application property within the residential building named, which contains a number of permanent/long term residences which share a communal entrance, internal stair and

hallway, the retrospective change of use of the applicant's first floor flat as a one 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 case 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 Musselburgh where a substantial need for long term 1 bed properties exists and the short term let is not considered to be long term established. The application was refused as the proposal was contrary to part e policy 30 of NPF4 and policy RCA1 of the adopted East Lothian LDP

The Planning Adviser then summarised the submission by the applicant that aims to address the points made by the case officer in his report. These are as follows:

- The check-in & check out times are within working hours and therefore do not disturb the residents with their luggage which generally is limited to one bag per person.
- The residents of flat 1C stated they have never heard any commotion or noise with people coming and going or from the flat itself. Flat 1C is the closest flat.
- The guests are out most of the time, they generally leave in the morning and come back for the afternoon or evening. This is the same amount of activity a long term resident would make, if not less.
- Only since I have been involved in the flat the security improved. Before me, there was no security and the garden communal space was actually highly unsafe. The property before the applicant took ownership was highly unsecure. There used to be people from the streets come into the garden and use it as their own. Since I took the ownership of the flat I cleaned the garden and installed the coded gate to improve security. I highly disagree the security threat my Airbnb guests pose. The guests who are approved to book have high Airbnb ratings. The appellant disagrees with the statement included in the officer report which suggests that the actual and perceived level of security changes due to visiting guests who have unfettered access to otherwise secure shared areas. The appellant said that this is untrue and based on conjecture.

- 4.3. Members then asked questions of the Planning Adviser with Councillor Collins asking how many Short Term Lets were currently noted to be in Musselburgh.
- 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 stated that there were no public objections to this application and given this was situated directly above a shop she was of the view that the loss of amenity would be negligible. She also noted that there was now a coded lock on door. Accordingly she was minded to support the appeal.
- 4.6. Councillor Gilbert was of the view that this came down to loss of amenity and as there was a shared communal access felt that this loss of amenity was unacceptable. He also

commented that in his view if this property was available for long term let there would be greater benefits to the community. Accordingly he was minded to uphold the Planning Officers decision and refuse the appeal

4.7. The Chair also felt this came down to amenity. He noted that it would not always be possible to guarantee the timing of arrivals and departures of guests and felt that the impact on amenity was unacceptable. Accordingly he was minded to uphold the Planning Officers decision and refuse the appeal.

Accordingly, the ELLRB by majority of two (2) to one (1) decided to uphold the decision of the Planning Officer and refuse the appeal for the reasons set out within the original decision notice.

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.