

Clerk to the Local Review Body
Committee Team
Communications and Democratic Services
John Muir House
Haddington EH41 3HA

Mr C Mackay
39 Dalrymple Loan
Musselburgh
EH21 7DJ
7th March 2024

Dear sir,

Request for Review under s43A Town and Country Planning (Scotland) Act 1997

App No: 23/01409/P 1b, Mansfield Place, Musselburgh, EH21 7DN

Thank you for your decision of 2 February 2024, naturally I was very disappointed in the decision. I, therefore, wish to request a review of the decision under s43A of the Town and Country Planning (Scotland) Act 1997, (“the 1997 Act”).

The 1997 Act states at s43A (8):

“(8) Where a person so appointed -

- (a) Refuses an application for planning permission or for consent, agreement or approval,
- (b) Grants it subject to conditions, or
- (c) Has not determined it within such period as may be prescribed by regulations or a development order or within such extended period as may at any time be agreed upon in writing between the applicant and the person so appointed.

The applicant may require the planning authority to review the case.”

The decision to refuse the application is based on the National Planning Framework 4, Policy 30 (Tourism) part (e) (“the NPF4-30(e)”):

“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 the 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.”

The decision goes on to state the application has been refused under NPF4-30(e) part (i) above and list various reasons, including extra coming and goings, arrival at unsociable hours and moving luggage, all of which make it incompatible and harmful to the amenity of the occupants of the other flatted properties.

Reason for Review

The property has been used as a short-term holiday since 2017, incident and complaint free, with no adverse effect or affect to the occupants of the other flatted properties. Indeed, I was

pleased to see the decision recognises there has been no objection to the application raised by not only, any of the residents of the other flatted properties, but also no objections raised by the councils Anti-Social Behaviour Team, Police Scotland nor Road Services while the Council Economic Development supports the application.

Moreover, The Council's Senior Environmental Health Officer recognises "... 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 the amenity of neighbours. However, it is stated 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"

Taking each of the assumptions used against the application given by the decision in turn:

1/ "Change the nature of coming and goings..."

The guests enter the communal entrance to property and immediately arrive at the premises, they do not pass any other flatted property. When they are in occupation they treat the property as their home, they leave in the morning and return once they have toured the sites of East Lothian. This level of activity is much the same as the occupier of any of the other dwellings leaving their property and returning after completing their business. Indeed, a resident of the other flatted properties may make several entrances to and exits from their property throughout the day, whereas as a tourist is not likely to return to a rented property until their day touring is complete.

This is not a change in the nature of coming and goings and is not harmful (mentally or physically) to the other occupiers, their enjoyment of their property nor amenity.

2/ Disturbance and nuisance caused by luggage.

The guests bring their luggage into the dwelling once, and likewise vacate with it once. I have yet to meet a tourist who leaves a property (hotel or otherwise) with their luggage each day, carries it around all day and returns with it at night. As the decision recognises, this level of activity is akin to a resident in any of the other properties, for example returning from the local supermarket laden with their weekly provisions.

This is certainly not harmful (mentally or physically) to the amenity or enjoyment of the other residents of the flatted dwellings.

3/ Servicing of the property - additional activity

The decision recognises that the property is serviced after each guest, normally weekly. The property is cleaned, waste and recycling removed. This is no different from the activity carried by an owner/ occupier or long-term tenant of any other property. Each resident of the other flatted dwellings within the property will clean, remove waste and recycling, perhaps on a daily basis, this is a much higher level of activity than is actually carried out in the property.

This activity is most certainly not harmful (mentally or physically) to the amenity and enjoyment of the other flatted dwellings.

4/ Security

The decision raises concerns regarding the security of the otherwise secure communal areas. Whilst it is recognised that there may be an element of risk, this is a similar level of risk as to that of a visitor to dwelling 1A who is unknown to the resident of 1C or 1D, 1C nor 1D do not have any control as to who visits 1A. The visitor to 1B (the property in question) is as likely to cause a security breach as the visitor to 1A, 1C or 1D.

This does not change the security level of the dwelling (perceived or actual).

Conclusion

It may be helpful to recap on the property in question.

The property (1B) is within a flatted building of four separate dwellings, two on ground level and two on the first floor.

1B is approached by a communal entrance, visitors pass no other dwelling in their approach to 1B.

1B is let out to holiday makers from the same household, predominantly families, on a short-term basis.

1B is a clean and well-maintained property.

This property is not a “party flat” and has never been let to occupants from multiple households

There have been no objections to the application from the council's partners.

There have been no objections raised to the applications by any of the residents of the three other dwellings.

There has been no incident nor complaint in the previous six years.

No occupant of any of the three remaining dwellings have experienced harm to themselves nor to the general amenity. Their enjoyment of their own dwelling remains unaffected, and they are content for the current use to continue. The Council’s own Senior Environmental Health Officer warns that assumptions regarding the future behaviour cannot be made.

I request this decision be reconsidered, and to assist in reaching an amicable resolution I would suggest that conditions to the approval of the application be made (although the Environmental Health Service cannot impose any enforceable condition).

I look forward to receiving the results of your review of this application, please do not hesitate to contact me if you require any further information. Should the review result in the continued refusal I would be happy to receive details of the appeal process.

Yours faithfully,

