



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

**THURSDAY 21 MARCH 2024
VIA THE DIGITAL MEETINGS SYSTEM**

Committee Members Present:

Councillor J Findlay (Chair)
Councillor A Forrest
Councillor S McIntosh

Advisers to the Local Review Body:

Ms F Haque, Legal Adviser to the LRB
Mr P Zochowski, Planning Adviser to the LRB

Clerk:

Ms F Currie, Committees Officer

Apologies:

Councillor L Allan

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 Forrest nominated Councillor Findlay, and this was seconded by Councillor McIntosh. It was agreed that Councillor Findlay would chair the Local Review Body (LRB) on this occasion.

1. PLANNING APPLICATION NO. 23/00832/P: CHANGE OF USE OF FLAT TO SHORT TERM HOLIDAY LET AND FLAT (RETROSPECTIVE), 8D KIRK PORTS, NORTH BERWICK EH39 4HL

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 provided details of the application, property and location and confirmed that the appeal was against refusal of planning permission for change of use to short term holiday let. The reason for refusal was that use as a holiday let was incompatible with and harmful to the amenity of the occupants of other flatted properties used as residential dwellings within the residential building of 8 Kirk Ports, North Berwick and as such was contrary to part E of Policy 30 of National Planning Framework 4 and Policy RCA 1 of the adopted East Lothian LDP 2018. He also drew attention to the information submitted by the applicant in relation to their original application, as summarised in the case officer's report. The report had also noted that five letters of support were received for the application and no letters of objection.

The Planning Adviser reminded Members that section 25 of the Town and Country Planning Scotland Act 1997 required that the application be determined in accordance with the development plan unless material considerations indicate otherwise. The development plan consisted of both National Planning Framework 4 (NPF4) and the adopted East Lothian Local Development Plan (LDP) 2018. The case officer had indicated that the relevant policies were: Policies 7 (Historic assets and places) and 30 (Tourism) of NPF4; and Policies RCA1 (Residential Character and Amenity), CH2 (Development Affecting Conservation Areas), T1 (Development Location and Accessibility) and T2 (General Transport Impact) of adopted LDP.

The Planning Adviser summarised the case officer's assessment of the application against relevant planning policy. He noted that the adopted LDP did not have a specific policy on the change of use of flats to holiday flats though 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. NPF Policy 30 of NPF4 covered Tourism and stated 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.*

To determine the application, it was necessary to first assess the impact of the change of use of the application property to a unit of holiday let accommodation on the amenity of the existing neighbouring residential properties. The case officer had considered the comments provided

by the Council's Senior Environmental Health Officer 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 could result in future guests misusing and abusing the property in a manner that is antisocial and could result in a significant impact upon amenity of neighbours. However, the Council's Environmental Health Service could not assume that antisocial behaviour issues would arise and thus could not impose any enforceable conditions to protect the amenity of neighbours.

The Council's Antisocial Behaviour Team had no records of any incidents relating to antisocial behaviour matters at the address and raised no objection to the application. Police Scotland advised that there had been no police incidents at the address and similarly raised no objection to the application.

The case officer had concluded that the use of the application property as a holiday let enabled it to be let out for short stays resulting in a turnover of people over short time periods. Such a regular turnover of users/occupants would change 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. There was 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 building and the application property itself to service/clean it and remove waste and recycling material after each guests stay. Moreover, allowing frequently changing guests unfettered access to otherwise secure shared areas would change the actual and perceived level of security for permanent residents. This level of activity was evidently different to that expected with the permanent/long term use of the flat as a private residence.

Given the specific circumstances and location of the application property within the residential building which contained a number of permanent/long term residences which shared a communal entrance, internal stair and hallway, the retrospective change of use of the applicant's ground floor flat as a two bedroom unit of short term self-catering holiday let accommodation was therefore incompatible with and harmful to the amenity of the occupiers of the properties within the residential building named. By having an unacceptable impact on local amenity, the proposal was contrary to part e) of Policy 30 of NPF4.

The case officer had also quoted Policy RCA1 of the adopted LDP and determined that the proposal was contrary to that policy too. However, the Planning Adviser was of the view that policy RCA1 did not apply to this location as it lay within the designated North Berwick town centre where a range of uses existed, rather than in a predominantly residential area of town where policy RCA1 applied. It was noted that although the property lay within the North Berwick conservation area, the Planning Adviser considered that no changes were proposed that would impact on the conservation area therefore Policy 7 Historic Assets and Places did not require to be considered in detail.

The Council's Road Services had raised no objection to this retrospective planning application. Accordingly, the proposal did not conflict with Policies T1 and T2 of the adopted LDP.

The next assessment was the impact of the change of use on the loss of residential accommodation, where such loss was 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 objected to this retrospective application. The use of the property as a short term let was considered a significant loss as the property was in North Berwick and was considered an adaptable property; the short term let was not considered long term established; and the occupancy rates were less than 6 months per year.

The Council's Economic Development Service Manager advised that there were 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 was no demonstrable impact on local amenity, the character of the area or loss of residential accommodation. Referring to the circumstances of this case, the Council's Economic Development Service Manager had supported this planning application. In his view, the change of use of the flat to short term holiday let accommodation supported the strategic goals and objectives of the Economic Development Strategy 2012-2022 and the intent and outcomes of part e) of Policy 30 of NPF4.

However, the case officer had concluded that the local economic benefits associated with the use of the applicant's ground floor flat operating as short-term self-catering holiday let accommodation did not outweigh the unacceptable impact on local amenity. Therefore, the change of use was not in accordance with the Development Plan and there were no material planning considerations that outweighed that fact.

The Planning Adviser then summarised the applicant's appeal submission which included the following points:

- Using an existing property such as this in a town centre generated significant economic benefit.
- The let was established and well-run with no anti-social behaviour and the neighbouring residents say it had no impact on residential amenity.
- The property was in a sustainable location close to local attractions and businesses that supported visitors and that should be encouraged in this type of location.
- The risk that long-term tenants could pose as part of a short, assured tenancy was being ignored and assumptions should not be made about the behaviour of short-term guests.
- Permanent residents' lives could involve comings and goings at different hours with associated disturbance.
- Deliveries to any property could cause noise and activity and it was not clear that there was increased activity due to a holiday let.
- Long term occupancy could be even more likely to create problems.
- The acknowledged lack of bedspace and loss of short term let property would harm local business that depend on tourism.
- The former Blenheim hotel was converted to residential use which lost tourist bedspace. Contradictory to allow its conversion and refuse an existing well run popular short term let to continue to operate.
- A similar application at West Bay Court was granted planning permission by the Local Review Body whereas Kirk Ports was a more central location.
- Local businesses support short term let businesses and are financially dependent on 12 months of tourism spend; fears for their future if reduced tourism activity and spend in the area.

The Planning Adviser concluded his presentation by providing advice to Members on the application of Policy 30E. He indicated that should they decide to allow the appeal the case officer had suggested conditions limiting the number of guests and record keeping which they may wish to consider applying to any grant of permission. Similar controls had been introduced by the DPEA in other cases in Scotland.

Should Members decide to refuse the application he advised that it should be for the same reasons given in the original refusal dated 29 September 2023 amended to remove the words '*and Policy RCA1 of the adopted East Lothian Local Development Plan 2018*' thus the refusal would be against Policy 30 of NPF4 only.

In response to questions from Members, the Planning Adviser acknowledged that monitoring of maximum guest numbers would be difficult and that while Planning Enforcement would investigate, it may not be possible for them to do so immediately. He confirmed that an application for a short-term let licence had been made but that a decision was still pending.

Replying to further questions from the Chair, the Legal Adviser confirmed that even if planning permission was granted, the applicant must apply for a short term let licence. She agreed to check the position relating to enforcement of any breach of the conditions of the licence and how this might relate to any conditions of planning permission and enforcement action.

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.

The Chair noted that the North Berwick Coastal Ward contained 58% of the total number of short-term lets in East Lothian. While North Berwick had many short-term lets, he thought that the number had reduced in the last year, since the introduction of licensing. He noted that there was support for this application from local business owners and one local resident. He was not convinced that there was a negative impact on amenity, and therefore he would be supporting the appeal.

Councillor McIntosh said she agreed with the case officer's assessment of the impact on residential amenity. She noted that the door of other ground floor flat was directly opposite this property and that this would be disruptive for the residents. While she acknowledged her colleague's point, she pointed out that properties could change hands and new residents may not hold the same views. In addition, she was not convinced that a level of local economic benefit had been demonstrated which might outweigh the impact on housing. She would be supporting the decision of the case officer, and his assessment on loss of amenity.

Councillor Forrest confirmed that he would also be supporting the officer decision. He was concerned that any future owners of the business may not run things as professionally and it was difficult to predict future impact on residents. He was also concerned about the risk of anti-social behaviour. For the present, he felt that it would be almost impossible to avoid a level of noise disturbance from guests' comings and goings. He concluded that the key issue for him was one of amenity and, for that reason, he would be supporting the officer's decision.

The LRB members confirmed their decision via roll call vote. They agreed by a majority to uphold the decision of the planning case officer to refuse planning permission. They also agreed to the amendment of the reason for refusal to remove the words '*and Policy RCA1 of the adopted East Lothian Local Development Plan 2018*'.

Decision

The ELLRB agreed, by majority, to refuse planning permission for the reason set out in the original decision notice, as amended.

2. PLANNING APPLICATION NO. 23/00825/P: CHANGE OF USE OF FLAT TO SHORT TERM HOLIDAY LET AND FLAT (RETROSPECTIVE), 9D STANLEY ROAD, GULLANE EH31 2AD

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 provided details of the application, property and location and confirmed that the appeal was against refusal of planning permission for change of use to short term holiday let. The holiday let use of the flatted property was incompatible with and harmful to the amenity of the occupants of other flatted properties used as residential dwellings within the residential building of 9 Stanley Road, Gullane and as such is contrary to part E of Policy 30 of National Planning Framework 4 and Policy RCA 1 of the adopted East Lothian LDP 2018. He also drew attention to the information submitted by the applicant in relation to their original application, as summarised in the case officer's report. The report had also noted that one letter of support was received for the application and no letters of objection. Gullane Community Council also submitted comments.

The Planning Adviser reminded Members that section 25 of the Town and Country Planning Scotland Act 1997 required that the application be determined in accordance with the development plan unless material considerations indicate otherwise. The development plan consisted of both National Planning Framework 4 (NPF4) and the adopted East Lothian Local Development Plan (LDP) 2018. The case officer had indicated that the relevant policies were: Policies 7 (Historic assets and places) and 30 (Tourism) of NPF4; and Policies RCA1 (Residential Character and Amenity), CH2 (Development Affecting Conservation Areas), T1 (Development Location and Accessibility) and T2 (General Transport Impact) of adopted LDP.

However, in the Planning Adviser's view policy RCA1 did not apply to this location as it lay within the designated Gullane Local Centre where a range of uses existed rather than in a predominantly residential area of the village where policy RCA1 did apply. Policy TC2 Town and Local Centres applied instead and did not contain reference to short term lets.

The Planning Adviser summarised the case officer's assessment of the application against relevant planning policy. He noted that the adopted LDP did not have a specific policy on the change of use of flats to holiday flats though 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. NPF Policy 30 of NPF 4 covered Tourism and stated 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.*

To determine the application it was necessary to first assess whether the fact that the property was located within Gullane Conservation Area had any effect in terms of NPF Policy 7 Historic Assets and Places and taking into account Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 which required 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. As no alterations to the property were proposed it could be considered that there was no harm to the historic area.

LDP 1 policy TC2 allowed a range of uses in a town or local centre but gave no specific guidance to short term lets. Turning to NPF4 Policy 30 Tourism part E it was necessary to first assess the impact of the change of use of the application property to a unit of holiday let accommodation on the amenity of the existing neighbouring residential properties.

The case officer had considered the comments provided by the Council's Senior Environmental Health Officer 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 could result in future guests misusing and abusing the property in a manner that is antisocial and could result in a significant impact upon amenity of neighbours. However, the Council's Environmental Health Service could not assume that antisocial behaviour issues would arise and thus could not impose any enforceable conditions to protect the amenity of neighbours.

The Council's Antisocial Behaviour Team had no records of any incidents relating to antisocial behaviour matters at the address and raised no objection to the application. Police Scotland advised that there had been no police incidents at the address since 2020 and similarly raised no objection to the application.

The Council's Road Services raised no objection to this retrospective application and noted that the property was situated within a block of flats where residents/visitors are required to park on the street, which is considered appropriate for this property. They also state that any increased parking demand was likely to even out throughout the year resulting in no noticeable difference in overall car parking demand. Accordingly, the proposals did not conflict with Policy 13 of NPF4 or with Policies T1 and T2 of the adopted LDP.

The case officer had concluded that the use of the application property as a holiday let enabled it to be let out for short stays resulting in a turnover of people over short time periods. Such a regular turnover of users/occupants would change 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. There was 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 building and the application property itself to service/clean it and remove waste and recycling material after each guests stay. Moreover, allowing frequently changing guests unfettered access to otherwise secure shared areas would change the actual and perceived level of security for permanent residents. This level of activity was evidently different to that expected with the permanent/long term use of the flat as a private residence.

Given the specific circumstances and location of the application property within the residential building which contained several permanent/long term residences which shared a communal entrance, internal stair and hallway, the retrospective change of use of the applicant's ground floor flat as short-term self-catering holiday let accommodation was therefore incompatible with and harmful to the amenity of the occupiers of the properties within the residential building named. By having an unacceptable impact on local amenity, the proposal was contrary to part e) of Policy 30 of NPF4.

The Planning Adviser noted that although the property lay within the conservation area where the planning authority must pay special attention to the desirability of preserving or enhancing the character or appearance of the area in which the building was located, in his opinion, no changes were proposed that would impact on the conservation area therefore Policy 7 Historic Assets and Places did not require to be considered in detail.

The Council's Road Services had raised no objection to this retrospective planning application. Accordingly, the proposal did not conflict with Policies T1 and T2 of the adopted LDP.

The next assessment was the impact of the change of use on the loss of residential accommodation, where such loss was 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 objected to the application as the change in use of this property from a long term residential dwelling to a short term let was considered a significant loss because (i) the property was in the North Berwick Coastal Ward; (ii) the property was a one bed which was in high demand; (iii) the applicant had stated that the flat would be rented out on a long term basis, in the event that planning permission for a short term let was refused, which would

be a significant contribution to the housing system. The Planning Adviser noted that the applicant subsequently stated in his appeal statement that the property would not be a long term let and would not be occupied.

The Council's Economic Development Service Manager had advised that there were 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 was no demonstrable impact on local amenity, the character of the area or loss of residential accommodation. Referring to the circumstances of this case, the Council's Economic Development Service Manager had supported this planning application. In his view, the change of use of the flat to short term holiday let accommodation supported the strategic goals and objectives of the Economic Development Strategy 2012-2022 and the intent and outcomes of part e) of Policy 30 of NPF4.

However, the case officer had concluded that the local economic benefits associated with the use of the applicant's ground floor flat operating as short-term self-catering holiday let accommodation did not outweigh the unacceptable impact on local amenity. Therefore, the change of use was not in accordance with the Development Plan and there were no material planning considerations that outweighed that fact.

The Planning Adviser then summarised the applicant's appeal submission which included the following points:

- no alterations were to be made to the property and as a result no change to the character or appearance of the area.
- residents support the application and the short term let was not harmful to the amenity of the occupants of other flats in the block.
- the property had one bedroom therefore was an affordable holiday let of benefit to visitors with lower incomes.
- the loss to residential accommodation was not a major impact.
- all visitors spend money in the local area benefiting the local economy.
- there could be a greater chance of disturbance if there was an anti-social tenant there much longer.
- no issues or objections from ASB team, police or road services
- guests that use the accommodation arrived in the afternoon and there was little noise generated from the flat
- guests did not use the garden.
- no impact to security of the stair or communal areas
- no harm to amenity of occupiers or harmful impact on the local amenity
- Gullane did not attract rowdy adults rather it attracts mature persons for walking holidays or those who wish to use the beach. Gullane was not overwhelmed by tourists.

Two subsequent letters from the applicant and a response from the case officer were also summarised.

The Planning Adviser concluded his presentation by reminding Members that, on the general point of this being a well-run short term let, it should be noted that this may not always be the case in future. Once granted, the flat could be managed in any way that was compatible with the terms of their licence and any conditions on planning consent. He indicated that should they decide to allow the appeal the case officer had suggested conditions limiting the number of guests and record keeping which they may wish to consider applying to any grant of permission. Similar controls had been introduced by the DPEA in other cases in Scotland.

Should Members decide to refuse the application he advised that it should be for the same reasons given in the original refusal dated 29 September 2023 amended to remove the words

'and Policy RCA1 of the adopted East Lothian Local Development Plan 2018' thus the refusal would be against Policy 30 of NPF4 only.

The Legal Adviser confirmed that, in relation to the point raised in the previous application, a short-term let licence could also include conditions relating to maximum occupancy and any breach would be enforced by the police. A similar condition could be added to any grant of planning permission with any breaches being dealt with by the Planning Enforcement team. Action could be taken by one or both authorities.

In response to questions from Members, the Planning Adviser confirmed that the applicant had stated that guests were not permitted to use the garden area. However, unless the garden door had a lock, this would be difficult to enforce. He also confirmed that, to his understanding, the top two flats within the block were both short-term lets.

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.

The Chair commented that, unlike North Berwick, Gullane did not have an over-supply of short-term lets. He also felt that there was sufficient affordable accommodation as a result of new house building in recent years. In comparison to the local hotels, all of which were 4 star or above, short term lets could offer a more affordable type of holiday accommodation. He also noted the one of the neighbours within the stair resident was supportive of the application and that the other flat on the second floor was also a short-term let. For these reasons, he would be upholding the appeal.

Councillor McIntosh said that she would again be supporting the case officer as she agreed that amenity was compromised by this short-term let. Contrary to her colleague, she felt that the loss of housing was significant as there was a general lack of one-bedroom flats within the county. She remained unconvinced that economic benefits outweighed any loss of housing and pointed to research which suggested that permanent residents spent more residents staying in short-term-let accommodation. She would be upholding the officer's decision.

Councillor Forrest said that economic benefits varied between areas. He agreed that there was a shortage of one-bedroom properties and that developers were not building many new properties of this size, which would mean that this would be a loss of accommodation. He also noted the position of the flat on the second floor and felt that this would have an impact on amenity. He would be supporting the decision of the planning case officer.

The LRB members confirmed their decision via roll call vote. They agreed by a majority to uphold the decision of the planning case officer to refuse planning permission. They also agreed to the amendment of the reason for refusal to remove the words *'and Policy RCA1 of the adopted East Lothian Local Development Plan 2018'*.

Decision

The ELLRB agreed, by majority, to refuse planning permission for the reason set out in the original decision notice, as amended.

3. PLANNING APPLICATION NO. 23/01010/P: REPLACEMENT WINDOWS AND DOOR, 11 FORTH STREET, NORTH BERWICK EH39 4HX

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 provided details of the application confirming that the property was located within the North Berwick Conservation Area. Planning permission had been sought for the replacement of 4 windows and a door within the north elevation. The existing windows were of timber frame construction and their frames were painted white in colour, the existing door was also of timber construction, painted white. It was proposed to replace the 4 windows with uPVC framed windows that would have white coloured frames. The glazing pattern of the proposed replacement windows would replicate the glazing pattern of the existing windows. It was proposed to replace the existing timber door with a white painted, uPVC door with associated uPVC framed fan light.

The Planning Adviser reminded Members that section 25 of the Town and Country Planning Scotland Act 1997 required that the application be determined in accordance with the development plan unless material considerations indicate otherwise. The development plan consisted of both National Planning Framework 4 (NPF4) and the adopted East Lothian Local Development Plan (LDP) 2018. The case officer had indicated that the relevant policies were Policies 7 (Historic Assets and Places), 14 (Liveable Place), and 16 (Quality Homes), of NPF4 and Policies CH2 (Development Affecting Conservation Areas) and DP5 (Extensions and Alterations to Existing Buildings) of the adopted LDP.

Material to the determination of the application was Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and National Planning Framework 4 (NPF 4). Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 required that a planning authority must have regard to the desirability of preserving or enhancing the character or appearance of a conservation area in exercising its responsibilities in the determination of any application for planning permission for development affecting a conservation area. Development within conservation areas and proposals out with which will impact on its appearance, character or setting, should preserve or enhance the character and appearance of the conservation area.

Also, material to the determination of the application was supplementary Planning Guidance (SPG) on 'Cultural Heritage and the Built Environment' adopted by the Council in October 2018. The SPG expanded on policies set out in the LDP and provided policy guidance on replacement windows in buildings in a conservation area. The policy guidance set out in the SPG stated that the replacement of a window in a building in a conservation area must preserve or enhance the area's special architectural or historic character. This would normally mean that the proportions of the window opening, the opening method, colour, construction material of frames and glazing pattern should be retained. The only exceptions would be: multiple glazing where there was no visible difference between that proposed and the original style of window; if the building itself did not contribute positively to the character or the Conservation Area and where a change in window design would have no impact on the character of the Conservation Area; and if the window could not be seen from a public place.

Two written letters of representation had been received in relation to the application, both of which give their support to the proposals.

The Planning Adviser summarised the case officer's assessment of the proposals against planning policy. Policy CH2 of the adopted LDP stated that all development proposals within or affecting a Conservation Area or its setting must be located and designed to preserve or enhance the special architectural or historic character or appearance of the Conservation Area. The north elevation of the property was readily visible in public views from Forth Street. The uPVC windows as proposed would be constructed of a new non-traditional material but would otherwise replicate the glazing pattern of the existing windows. The proposed door

would be different in terms of materials and proportions, as well as being higher which would result in a reduced height for the fanlight above. The glass in the fanlight would be obscured but with a visibly different profile to the existing. Doormongery would be gold coloured whereas when built the properties had dark coloured handles and letterboxes which is a more traditional appearance.

The case officer had been of the view that this would not preserve the positive contribution the timber framed windows and door made to the character and appearance of the house and to the character and appearance of this part of the North Berwick Conservation Area and therefore would be harmful to the character and appearance of the house, the terrace of houses of which it was a part and to the wider character and appearance of this part of the North Berwick Conservation Area. The case officer had gone on to state that if approved, the proposed replacement windows would set an undesirable precedent for the installation of similarly designed uPVC framed windows within the public elevations of other buildings and properties within the locality. Over time such change would be collectively out of keeping with, and detrimental to, the character and appearance of this part of the North Berwick Conservation Area.

The Planning Adviser agreed with the case officer's views.

He then turned to any material considerations that should be considered in determining the application afresh, the applicant had noted the presence of other uPVC windows in Forth Street. The case officer stated that these must be unauthorised and would be a matter for Planning Enforcement to investigate, thus he did not consider this to be a valid material consideration.

The Planning Adviser summarised the applicant's appeal statement which included the following comments:

- The existing windows were dated and draughty. Replacements would improve the energy efficiency of the property through improved u values and a higher quality fitting.
- The windows would therefore help towards meeting net zero.
- The proposed uPVC windows could be utilised for a greener future and would help the house to be well insulated in future.
- The proposed windows would be finished to a 'woodgrain' effect to blend in with existing windows.

The Planning Adviser concluded his statement by informing Members that, should they decide to allow the appeal, the case officer had suggested a condition that should be applied. However, should Members decide to refuse the application, he advised that it could be refused for the same reasons given in the original refusal dated 26 October 2023.

In response to questions from Members, the Planning Adviser said that it was not specified in the officer report whether the replacement windows were single or double glazed, but he felt that, on balance, the new windows were likely to be double-glazed. He advised that the applicant had not addressed the reason why they had not opted for replacement timber frames. He was aware of issues relating to water shrinkage and cost, but no specific reasons were stated in this case. He confirmed that partial approval was an option if Members were minded to approve only one element of the application.

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

Councillor Forrest said it was always difficult when trying to visualise the impact on the conservation area. However, in this case, it was easier as there were already subtle changes

within the locality. He agreed with the planning case officer and would be supporting the original decision.

Councillor McIntosh said this was a case that, for her, had required careful thought. While she would always support progress towards net zero targets and the circular economy, she was concerned that there seemed to be an assumption that uPVC was better for environment when this was not necessarily the case. Her research had also suggested that that uPVC windows would not necessarily be warmer or more draught proof. For these reasons, she would be supporting the decision of the case officer.

The Chair noted that there were already replacement windows and doors in nearby properties. He also felt that the buildings, of which the application property formed a part, did not sit well within the conservation area. He was of the view that the replacement windows proposed were double glazed and would therefore assist energy efficiency. While he was more supportive of the proposal for replacement windows rather than the door, he felt that people should be allowed to take steps to improve warmth within their homes and he would be voting to uphold the appeal.

The LRB members confirmed their decision via roll call vote. They agreed by a majority to uphold the decision of the planning case officer to refuse planning permission.

Decision

The ELLRB agreed, by majority, to refuse planning permission for the reasons set out in the original decision notice.

4. PLANNING APPLICATION NO. 23/01012/P: REPLACEMENT WINDOWS AND DOOR, 15 FORTH STREET, NORTH BERWICK EH39 4HX

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 provided details of the application confirming that the property was located within the North Berwick Conservation Area. Planning permission had been sought for the replacement of 4 windows and a door within the north elevation. The existing windows were of timber frame construction and their frames were painted white in colour, the existing door was also of timber construction, painted white. It was proposed to replace the 4 windows with uPVC framed windows that would have white coloured frames. The glazing pattern of the proposed replacement windows would replicate the glazing pattern of the existing windows. It was proposed to replace the existing timber door with a white painted, uPVC door with associated uPVC framed fan light.

The Planning Adviser reminded Members that section 25 of the Town and Country Planning Scotland Act 1997 required that the application be determined in accordance with the development plan unless material considerations indicate otherwise. The development plan consisted of both National Planning Framework 4 (NPF4) and the adopted East Lothian Local Development Plan (LDP) 2018. The case officer had indicated that the relevant policies were Policies 7 (Historic Assets and Places), 14 (Liveable Places), and 16 (Quality Homes), of NPF4 and Policies CH2 (Development Affecting Conservation Areas) and DP5 (Extensions and Alterations to Existing Buildings) of the adopted LDP.

Material to the determination of the application was Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and National Planning Framework 4 (NPF 4). Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act

1997 required that a planning authority must have regard to the desirability of preserving or enhancing the character or appearance of a conservation area in exercising its responsibilities in the determination of any application for planning permission for development affecting a conservation area. Development within conservation areas and proposals out with which will impact on its appearance, character or setting, should preserve or enhance the character and appearance of the conservation area.

Also, material to the determination of the application was supplementary Planning Guidance (SPG) on 'Cultural Heritage and the Built Environment' adopted by the Council in October 2018. The SPG expanded on policies set out in the LDP and provided policy guidance on replacement windows in buildings in a conservation area. The policy guidance set out in the SPG stated that the replacement of a window in a building in a conservation area must preserve or enhance the area's special architectural or historic character. This would normally mean that the proportions of the window opening, the opening method, colour, construction material of frames and glazing pattern should be retained. The only exceptions would be: multiple glazing where there was no visible difference between that proposed and the original style of window; if the building itself did not contribute positively to the character or the Conservation Area and where a change in window design would have no impact on the character of the Conservation Area; and if the window could not be seen from a public place.

Two written letters of representation had been received in relation to the application, both of which give their support to the proposals.

The Planning Adviser summarised the case officer's assessment of the proposals against planning policy. Policy CH2 of the adopted LDP stated that all development proposals within or affecting a Conservation Area or its setting must be located and designed to preserve or enhance the special architectural or historic character or appearance of the Conservation Area. The north elevation of the property was readily visible in public views from Forth Street. The uPVC windows as proposed would be constructed of a new non-traditional material but would otherwise replicate the glazing pattern of the existing windows. The proposed door would be different in terms of materials and proportions, as well as being higher which would result in a reduced height for the fanlight above. The glass in the fanlight would be obscured but with a visibly different profile to the existing. Doormongery would be gold coloured whereas when built the properties had dark coloured handles and letterboxes which is a more traditional appearance.

He then turned to any material considerations that should be considered in determining the application afresh, the applicant had noted the presence of other uPVC windows in Forth Street. The case officer stated that these must be unauthorised and would be a matter for Planning Enforcement to investigate, thus he did not consider this to be a valid material consideration.

The case officer noted that the changes proposed to the windows and doors would, by their non-traditional construction material be a harmful change that would not preserve the character and appearance of the house and the conservation area. As such they would be contrary to Policy 7 Historic Assets and Places), 14 (Liveable Places) and 16 Quality Homes of NPF4 and policies CH2 (Development Affecting Conservation Areas) and policy DP5 Extensions and Alterations to existing buildings and to the Council's Supplementary Planning Guidance on Cultural Heritage and the Built Environment. The case officer also stated that if approved, the proposed replacement windows would set an undesirable precedent for the installation of similarly designed uPVC framed windows within the public elevations of other buildings and properties within the locality. Over time such change would be collectively out of keeping with, and detrimental to, the character and appearance of this part of the North Berwick Conservation Area.

The Planning Adviser agreed with the case officer's assessment of the application.

The Planning Adviser then summarised the applicant's appeal statement which included the following comments:

- There were a number of other properties in North Berwick conservation area that have had replacement windows and doors in uPVC (a number of these were listed in the submission.)
- There was little visible difference between woodgrain effect uPVC and natural wood.
- Only the general appearance not necessarily materials should be the measure for replacement windows and doors.
- The property is severely affected by winter winds and rain due to its close location to the sea.
- uPVC windows require less maintenance.
- Forth Street was a through route rather than a tourist stop
- The Council's Climate Change Strategy wanted East Lothian's homes and buildings to be net zero and energy efficient and the Council's Local Housing Strategy wanted to improve energy efficiency of domestic buildings with the challenge of adaptation for older buildings highlighted.

The Planning Adviser concluded his statement by informing Members that, should they decide to allow the appeal, the case officer had suggested a condition that should be applied. However, should Members decide to refuse the application, he advised that it could be refused for the same reasons given in the original refusal dated 26 October 2023.

There were no questions for the Planning Adviser.

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

Councillor McIntosh stated that the core issues were the same as the previous appeal and her views on this application were also the same. She added that in terms of the visual differences between the existing and proposed replacements was more apparent in the door, but both could be viewed from street level. She reiterated her view that she didn't think the case had been made that uPVC was the only option to improve energy efficiency and she felt that the reasons for maintaining the character of the conservation area were powerful. She would be supporting the decision of the planning case officer.

Councillor Forrest said he aligned with the comments made by Councillor McIntosh and would be supporting the decision of the planning case officer.

The Chair indicated that his position was also the same as in the previous appeal and, in addition, he noted that there was support from neighbours for the proposed changes. He would therefore be supporting the appeal.

The LRB members confirmed their decision via roll call vote. They agreed by a majority to uphold the decision of the planning case officer to refuse planning permission.

Decision

The ELLRB agreed, by majority, to refuse planning permission for the reasons set out in the original decision notice.

Signed

Councillor Jeremy Findlay
Chair of Local Review Body (Planning)