

REVIEW DECISION NOTICE

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

Application for review by applicant, Brian Reid of 3 Esk Glades, Dalkeith, Midlothian, EH22 1V2. Planning permission is retrospectively sought for the change of use of the residential second floor flat of 9D Stanley Road, Gullane as a one bedroom unit of short term self-catering holiday let accommodation.

Site address: 9D Stanley Road, Gullane, East Lothian, EH22 1UZ

Application: 23/00825/P

Date of Review decision notice: 19 April 2024

1. Decision

- 1.1 The ELLRB dismissed the appeal and refused planning application 23/00825/P for the reasons more particularly set out below.
- 1.2 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.

2. Introduction

- 2.1 The above application for planning permission was considered by the ELLRB at the LRB meeting held on Thursday 21 March 2024. The ELLRB constituted by Councillor J Findlay (Chair), Councillor A Forrest, Councillor S McIntosh. All three members of the ELLRB had attended a site visit in respect of the application on 21 March 2024.
- 2.2 The following persons were also present at the meeting of the ELLRB:

Mr P Zochowski, Planning Advisor

Ms F Haque, Legal Adviser/Clerk

Ms F Currie, Clerk

3. Proposal

- 3.1 This application is for review of decision to refuse planning permission for the change of use of the residential second floor flat of 9D Stanley Road, Gullane as a one bedroom unit of short term self-catering holiday let accommodation. The applicant appealed the refusal of the planning application on 5 January 2024.

4. Preliminaries

- 4.1 In advance of the ELLRB, members were provided with copies of the following:

1	Statement of Case: original case officer's report for planning application 23/00825/P
2	Copy of the Decision Notice (including reason for refusal) relating to planning application 23/00825/P
3	Copy of consultation responses from (i) ELC Road Services; (ii) ELC Environmental Health; (iii) ELC Anti-Social Behaviour Team; (iv) Police Scotland; (v) ELC Economic Development; (vi) ELC Housing Strategy & Development; and (vii) Gullane Area Community Council
4	Copy of the representations received to planning application 23/00832/P

5	Copy of Policies 7 (Historic Assets and Places), 13 (Sustainable Transport) and Part(e) of Policy 30 (Tourism) of the National Planning Framework 4, Policies RCA1 (Residential Character and Amenity), CH2 (Development Affecting Conservation Areas), T1 (Development Location and Accessibility) and T2 (General Transport Impact) of the adopted East Lothian Local Development Plan 2018
6	Schedule of Conditions

5. **Findings and conclusions**

- 5.1 The Clerk confirmed that all members of the ELLRB were present and all confirmed that there were no declarations of interest.
- 5.2 The Legal Advisor proceeded to summarise the process for the LRB meeting, confirmed that all attendees had copies of the papers listed above. The members nominated Councillor J Findlay as chair for the LRB meeting.
- 5.3 The Members requested that the Planning Advisor summarise the application and the related policy position in respect of this matter.

Planning Advisor's summary

- 5.4 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 Local Development Plan 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.
- 5.5 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 original 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 East Lothian Local Development Plan 2018.
- 5.6 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.
- 5.7 The Planning Adviser summarised the original 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:
- 5.7.1 Development proposals for the reuse of existing buildings for short term holiday letting will not be supported where the proposal will result in:
- 5.7.1.1 An unacceptable impact on local amenity or the character of a neighbourhood or area;
or

- 5.7.1.2 The loss of residential accommodation where such loss is not outweighed by demonstrable local economic benefits.
- 5.8 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.
- 5.9 LDP 1 policy TC2 this 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.
- 5.10 The original 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.
- 5.11 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.
- 5.12 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.
- 5.13 The original 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.
- 5.14 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.
- 5.15 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.

- 5.16 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.
- 5.17 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.
- 5.18 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.
- 5.19 However, the original 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.
- 5.20 The Planning Adviser then summarised the applicant's appeal submission which included the following points:
 - 5.20.1 no alterations were to be made to the property and as a result no change to the character or appearance of the area.
 - 5.20.2 residents support the application and the short term let was not harmful to the amenity of the occupants of other flats in the block.
 - 5.20.3 the property had one bedroom therefore was an affordable holiday let of benefit to visitors with lower incomes.
 - 5.20.4 the loss to residential accommodation was not a major impact.
 - 5.20.5 all visitors spend money in the local area benefiting the local economy.
 - 5.20.6 there could be a greater chance of disturbance if there was an anti-social tenant there much longer.
 - 5.20.7 no issues or objections from ASB team, police or road services
 - 5.20.8 guests that use the accommodation arrived in the afternoon and there was little noise generated from the flat
 - 5.20.9 guests did not use the garden
 - 5.20.10 no impact to security of the stair or communal areas
 - 5.20.11 no harm to amenity of occupiers or harmful impact on the local amenity
 - 5.20.12 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.
- 5.21 Two subsequent letters from the applicant and a response from the original case officer were also summarised.

- 5.22 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.
- 5.23 The Planning Advisor stated that 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.
- 5.24 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.

Discussion and vote

- 5.25 The Chair invited questions for the Planning Officer.
- 5.26 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.
- 5.27 Councillor McIntosh said that she supported the original case officer as she agreed that amenity was compromised by this short-term let. She thought 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 original case officer's decision.
- 5.28 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 upholding the decision of the original case officer.
- 5.29 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 ELLRB 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'.

Accordingly, the ELLRB agreed to refuse the appeal for the reasons more particularly set out in the original case officer's Decision Notice, as amended.

Planning permission is hereby refused.



Fariha Haque
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.