

REVIEW DECISION NOTICE

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

Application for review by agent, APT Planning and Development, 1 West Road, Whitekirk, Edinburgh, EH42 XA on behalf of applicant, Emily Black correspondence of 1 West Road, Whitekirk, Edinburgh, EH42 XA. Planning application 23/00832/P retrospectively sought permission for the change of use of the residential flat of 8D Kirk Ports, North Berwick as a two bedroom unit of short term self-catering holiday let and accommodation.

Site address: 8D Kirk Ports, North Berwick, East Lothian, EH39 4HL

Application: 23/00832/P

Date of Review decision notice: 19 April 2024

1. Decision

- 1.1 The ELLRB dismissed the appeal and refused planning application 23/00832/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 flat of 8D Kirk Ports, North Berwick as a two bedroom unit of short term self-catering holiday let and accommodation. The applicant appealed the refusal of the planning application on 18 December 2023.

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 23/00832/P
2	Copy of stamped refused drawings relating to planning application 23/00832/P
3	Copy of the Decision Notice (including reason for refusal) relating to planning application 23/00832/P
4	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; and (vi) ELC Housing Strategy & Development

5	Copy of letters from interested parties relating to the planning application 23/00832/P
6	Copy of Policies 7 (Historic Assets and Places), 30 (Tourism) of 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
7	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 This property is a ground floor flat set within a two storey, flatted building accessed via a communal entrance to the front (south) elevation of the building, which provides access to an internal communal stair. There are four flats in the building each accessed from a communal door and stair and no designated parking. The property is located within North Berwick Town Centre as defined by Policy TC2 of the adopted East Lothian Local Development Plan 2018. It is also situated within the North Berwick Conservation Area. The property lies adjacent to the footway on the north side of Kirk Ports.
- 5.5 Planning permission is sought retrospectively for the change of use of the residential ground floor flat to a two-bedroom unit of short term self-catering holiday let accommodation. The property comprises of an open plan living room and kitchen, two bedrooms, a bathroom and hallway. The flat is capable of accommodating/sleeping 4 people. No physical alterations to the flat have been undertaken or are proposed.
- 5.6 This appeal is against refusal of planning permission for change of use to short term let of 8D Kirk Ports, North Berwick. The reason for refusal was that use as a holiday let is 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 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.
- 5.7 The original case officer's report which refers to the following information submitted by the applicant regarding the holiday use of the flat:
- 5.7.1 Typically let by holidaymakers
 - 5.7.2 Has been operating since July 2021
 - 5.7.3 April to September (80% occupancy), 25% occupancy the rest of the year. Some return visits
 - 5.7.4 Current owner lives locally and deals with bin collection weekly
 - 5.7.5 Most visitors stay for a week
 - 5.7.6 Maximum occupancy is 4 people
 - 5.7.7 Property cleaned by a third party between lets
 - 5.7.8 North Berwick Holiday Homes on High Street North Berwick market and clean the property and make arrangements for visitors to collect keys

- 5.7.9 The let contributes to the local economy through their use of local cleaning businesses and by way of recommended places to eat and be active locally; the applicant estimates that guests spend around £30k in the local economy across the tourist season.
- 5.8 To determine the application Section 25 of the Town and Country Planning (Scotland) Act 1997 requires the application to be in accordance with the development plan unless material considerations indicate otherwise. The development plan consists of both National Planning Framework 4 and the adopted East Lothian Local Development Plan 2018.
- 5.9 The original case officer indicated that the Development Plan policies relevant to the determination of the application were National Planning Framework 4 Policies 7 (Historic assets and places) and 30 (Tourism) are relevant to the determination of this application and East Lothian Local Development Plan 2018 policies RCA1 (Residential Character and Amenity), CH2 (Development Affecting Conservation Areas), T1 (Development Location and Accessibility) and T2 (General Transport Impact).
- 5.10 The original case officer reported that five letters of support were received for the application and no letters of objection.
- 5.11 The adopted East Lothian Local Development Plan 2018 does not have a specific policy on the change of use of flats to holiday flats though it states that a range of hotel, guest house and other accommodation attracts visitors and encourages them to stay and benefit the East Lothian economy. Policy 30 of National Planning Framework 4 covers Tourism and states that:
- 5.11.1 Development proposals for the reuse of existing buildings for short term holiday letting will not be supported where the proposal will result in:
- 5.11.1.1 An unacceptable impact on local amenity or the character of a neighbourhood or area; or
- 5.11.1.2 The loss of residential accommodation where such loss is not outweighed by demonstrable local economic benefits.
- 5.12 The Planning Advisor stated that to determine the application, the ELLRB should 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.
- 5.13 The Council's Senior Environmental Health Officer advises 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 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.
- 5.14 The Council's Antisocial Behaviour Team advise that they have had no records of any incidents relating to antisocial behaviour matters at this address and thus they raise no objection to this retrospective planning application.
- 5.15 The use of the application property as a holiday let enables 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. Most users/occupants of the holiday let would have a degree of luggage or other property to take through the communal external entrance and hallway which in itself would lead to a level of disturbance and nuisance not associated with the permanent/long term residential use of the property. This is harmful to the amenity of the occupants of the residential properties within the residential flatted building. It is accepted that permanent residents may also make noise but they tend to keep their luggage in their homes and do not move them with the same frequency as regularly changing guests who arrive and depart sometimes at unsociable hours, and this differs from typical residential circumstances.

- 5.16 Along with the extra comings and goings of users of the holiday let at check in/check out there is 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. This level of additional activity is evidently different to that expected with the permanent/long term use of the flat as a private residence again which is harmful to of the amenity of the occupants of the residential properties within the residential flatted building.
- 5.17 Moreover, allowing frequently changing guests unfettered access to otherwise secure shared areas changes the actual and perceived level of security for permanent residents. Whilst permanent residents are likely to have visitors of their own from time to time, those permanent residents would remain in control of security to communal areas. The introduction of frequently changing guests regularly into these secure areas, independent of the owner, would therefore differ from typical residential circumstances.
- 5.18 Given the specific circumstances and location of the application property within the residential building 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 ground floor flat as a two bedroom unit of short term self-catering holiday let accommodation is 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 is contrary to part e) of Policy 30 of National Planning Framework 4.
- 5.19 The original case officer also quoted Policy RCA1 of the adopted East Lothian Local Development Plan 2018 and determined that the proposal was contrary to that policy too. However, the Planning Advisor's view was that policy RCA1 does not apply to this location as it lies within the designated North Berwick town centre where a range of uses exists rather than in a predominantly residential area of town where policy RCA1 applies. Policy TC2 does not address short term lets.
- 5.20 It is noted that although the property lies within the North Berwick 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 is located in the Planning Advisor's opinion no changes are proposed that would impact on the conservation area therefore Policy 7 Historic Assets and Places does not require to be considered in detail.
- 5.21 The Council's Road Services raise 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.
- 5.22 The next assessment is 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 National Planning Framework 4.
- 5.23 The Council's Housing Strategy & Development Service objected to this retrospective application as the use of the property as a short term let is considered a significant loss as the property is located in North Berwick and is considered an adaptable property; the short term let is not considered long term established; and the occupancy rates are less than 6 months per year.
- 5.24 The Council's Economic Development Service Manager advises that there are 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 is no demonstrable impact on local amenity, the character of the area or loss of residential accommodation. In the particular circumstances of this case it is stated that:

The operation of short-term holiday letting is a bonafide business activity that contributes to employment and economic benefit in East Lothian. The proposal provides high-quality tourist accommodation attracting visitors to North Berwick and the surrounding area providing economic benefit.

- 5.24.1 There is a demonstrable economic benefit to having a wide range of accommodation types in East Lothian, with the tourism sector contributing £155m to the local economy in 2021 and supporting 10% of the workforce. Visitors staying overnight in non-serviced accommodation contributed £60.1m to the local economy in 2021, a figure which has been rising year on year. The majority of visitors to East Lothian are repeat visitors, 81%, and rely on good availability of high-quality accommodation year on year to facilitate this.
- 5.24.2 Non- serviced accommodation (short term holiday lets) contributes positively to the local economy (£279m in 2019), this property accounts for 4 bedspaces and a potential annual economic impact of £90,908 and 2FTE jobs. This is borne out by the supporting information provided by the applicant.
- 5.24.3 Non- serviced accommodation (short term holiday lets) contributes positively to the local economy (£279m in 2019), this property accounts for 4 bedspaces and a potential annual economic impact of £90,908 and 2FTE jobs. This is borne out by the supporting information provided by the applicant.

Therefore, the Council's Economic Development Service Manger supports this planning application stating that the change of use of the flat to short term holiday let accommodation supports the strategic goals and objectives of the Economic Development Strategy 2012-2022 and the intent and outcomes of part (e) of Policy 30 of National Planning Framework 4.

- 5.25 However, the original case officer concluded that the local economic benefits associated with the use of the applicant's ground floor flat operating as a two bedroom unit of short term self-catering holiday let accommodation does not outweigh the unacceptable impact on local amenity. Therefore, the change of use is not in accordance with the Development Plan and there are no material planning considerations that outweigh the fact that the change of use is not in accordance with the East Lothian Local Development Plan 2018.
- 5.26 The applicant submitted a review statement which is in your pack. The applicant case can be summarised as:
 - 5.26.1 Using an existing property such as this in a town centre generates significant economic benefit
 - 5.26.2 The let is established and well-run with no anti social behaviour and the neighbouring residents say it has no impact on residential amenity
 - 5.26.3 The property is in a sustainable location close to local attractions and businesses that support visitors that should be encouraged in this type of location
 - 5.26.4 The risk that long term tenants can pose as part of a short assured tenancy is being ignored and assumptions should not be made about the behaviour of short term guests
 - 5.26.5 Permanent residents lives could involve comings and goings at different hours with associated disturbance
 - 5.26.6 Deliveries to any property can cause noise and activity and it is not clear that there is increased activity due to a holiday let
 - 5.26.7 Long term occupancy can be even more likely to create problems
 - 5.26.8 The acknowledged lack of bedspace and loss of short term let property will harm local business that depend on tourism
 - 5.26.9 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
 - 5.26.10 A similar application at West Bay Court was granted planning permission by the Local Review Body whereas Kirk Ports is a more central location
 - 5.26.11 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.
- 5.27 The Planning Advisor's advice on the general point of this being a well run short term let is that it should be noted that this may not always be the case in future. Once granted the flat can be managed in any way that is compatible with the terms of their licence and any conditions on planning consent.

- 5.28 Policy 30E of the National Planning Framework 4 specifically covers short term lets. It includes two criteria which must both be met for the use of an existing building as a short term let to be supported. The first is that the proposal must not result in an unacceptable impact on local amenity or the character of a neighbourhood area and the second test is whether or not the loss of residential accommodation is outweighed by demonstrable economic benefits.
- 5.29 In terms of Policy 30E, the Planning Advisor stated that the ELLRB should first consider whether there is unacceptable harm to residential amenity, which is also relevant for East Lothian Local Development Plan 2018 Policy RCA1. On amenity the appellant has given information on house rules. If impact on amenity is acceptable, then the test of whether the demonstrable economic benefits outweigh the loss of residential accommodation should be applied.
- 5.30 The Planning Advisor stated that should the ELLRB decide to allow the appeal the original case officer has suggested conditions limiting the number of guests and record keeping which the ELLRB may wish to consider applying to any grant of permission. Similar controls have been introduced by the DPEA in other cases in Scotland.
- 5.31 The Planning Advisor further stated that should the ELLRB decide to refuse the application that it was his advice that it would be refused for the same reasons given in the original refusal dated 29 September 2023 but 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.

Discussion and vote

- 5.32 The Chair invited questions for the Planning Officer.
- 5.33 Councillor Forrest queried if there would be any way of confirming that there were only 4 people in the property. He gave the example that if there were more people, by the time this is checked, some of the individuals in the property may have moved. The Planning Advisor stated that this could be monitored by way of the advertisement. He also stated that if there were more people and the Council would visit but this may not be on the same day, as such, the Council may not be able to react to such circumstances quickly. Councillor Forrest voted to support the original case officer's decision to refuse planning permission. 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 original case officer's decision.
- 5.34 Councillor McIntosh did not have any questions. She agreed with the original 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 original case officer, and his assessment on loss of amenity.
- 5.35 The Chair asked whether if planning permission was granted, if the applicant would need to apply for a Licence and who would enforce if there was a breach of the Licence conditions. The Legal Adviser confirmed that a short-term let licence would still need to be obtained and 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. The Chair stated as there were no objections, he voted in favour of granting the appeal.
- 5.36 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 original 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.