

Application No. 24/00016/P

Proposal : Change of use of flat to Short Term Let (retrospective)

Location: Flat 3, 8 Rosebery Place, Main Street, Gullane, EH31 2AN

Applicant: Norman Gray

Officer Report: 27th February 2024

Decision Type: Application Refused

References: Report of Handling dated 27th February 2024

Applicant Support Statement dated 18th January 2024

Applicant Planning Application dated January 2024

Thank you to members of the LRB for allowing this appeal and for taking the time to consider the information before you.

The main points of this appeal are as follows:-

1. On 7th August 2023 ELC Planning advised that planning permission was not required in this instance. I proceeded on this understanding to consult ELC's Short Term Licensing Policy, instruct and pay for the additional mandatory licensing requirements, an outlay of over £1500 including the fee. I made an STL licence application and notified residents and neighbours over the 21 day consultation period. I believe no objections or representations were made since no copies were sent to me per 6.6 Objections of ELC's Short Term Lets Licensing Policy. On 14th November 2023, I was advised that the original Planning advice was incorrect.
2. The Report of Handling does not consider the information supplied via the Supporting Statement of 18th January 2024 and forming part of the Planning Application of January 2024 pertaining to the length or mid term nature of stays, e.g. most recent mid term stay of 5 months,

previous mid term stays of 31 nights, personal and family use of approx. 50 nights which make the intensity and scale of use indistinguishable from typical residential use and failing to consider this information has lead to incorrect assumptions regarding frequent turnovers changing the nature of comings and goings within the building communal areas. The assumption that shared areas are secure is factually incorrect and therefore, not relevant. Moreover the layout, orientation and construction of the flats is such that there is a low impact on noise within the building.

The assumed level of disturbance caused from carrying luggage twice over a 5 month, 1 month or 6 week period is far less than the current daily activity levels within the building, e.g. ongoing repair work, deliveries, pet care arrangements and daily work, life and leisure activities. From personal experience, long queues on the pavement outside Gullane Superfry, delivery activities for the Co-op and the late night patrons of the Main Course restaurant on a daily/nightly/year round basis are far more impactful to the local amenity and to the residents of 8 Main Street.

Shorter term guests do not typically arrive and depart at unsociable hours. This is part of the contract with the Agent, who also vets the guests to ensure compatibility with the residential nature of the building and respect for neighbours and my home. Check in is set between 2pm and 4pm. Check out is 10am. The housekeeping staff arrive at 10am. For mid term lets, housekeeping is not provided during the stay. We employ a local handyman to carry out checks to the property especially at busier times and during the winter months when the property may lie empty and the weather may pose problems.

3. The representations were surprising to me since I believed none were received following the 3 week STL licence notice period. I have addressed the two objections in this statement.
4. As a responsible host, I was further comforted in terms of amenity by ELC's Short Term Lets Licensing Policy which clearly sets out the objectives of the Policy pertaining to this at 2.3 whereby Licensing will

ensure that 'noise, nuisance or antisocial behaviour is tackled effectively.' The evidence of ELC's Short Term Lets Engagement Exercise (February 2022) also bore this out 'there is little evidence to show that STL premises are causing these problems (antisocial behaviour, noise disturbance, waste issues, car parking problems) or that the issue is significant enough for complaints to be made.'

5. I am not comforted however by the omission from ELC's Short Term Lets Licensing Policy, which does not include ELC's Housing Strategy & Development's policy, stating that planning permission will not be favoured where 'the property is located in the North Berwick Coastal Ward,' thereby disadvantaging any planning application from this Ward. There is no statement within the STL Policy regarding overprovision of STL accommodation in any areas of East Lothian nor has a Control Area been established in recognition of this. This information and that stating that a property should be let for over 5 years previously should be part of ELC's STL Licensing policy, since how would applicants know otherwise? This puts all applicants from the NBCW at a greater disadvantage and all East Lothian applicants operating at less than 5 years are also disadvantaged.
6. ELC's Short Term Lets Licensing Policy makes no reference to a presumption against the granting of planning permission to tenemental/shared main door accommodation but it is, in my opinion, being applied. This is reinforced by the comments of the Chair of the Local Review Body meeting held on 24 April 2024 (2pm at 52 minutes) where, on commenting on an STL appeal, stated 'the issue around this location compared to other locations, if you think this is OK then others would be OK as well. We have a trend in the past where there's shared access to areas, that short term lets could cause conflict and obviously the officer has taken that view as well.'

I do not believe the Planning Department is of this view and believe the LRB reaches decisions on the specific information before it and not on a 'trend in the past,' or on an assumption of a Planning Officer's view. I am concerned by the Chair's further comments that '..... there will inevitably be a conflict between residents and people in the holiday let meeting in that stairwell and it would be intimidating for a resident living

within that stairwell,' and that decisions are possibly being made on this presumption and not on a fact and degree basis.

As stated earlier, ELC's own Short Term Lets Engagement Exercise did not find any evidence of conflict or intimidation and ELC's STL Policy states its objectives very clearly regarding breaches affecting amenity.

7. NPF430e i) Consultees to this application, ELC Antisocial Behaviour Team, Police Scotland, ELC Road Services and ELC Environmental Health do not support the Planning Officer's view that there is an unacceptable impact on amenity or the character of Gullane's Local Centre or that it is harmful in any way. This is also established by ELC's Short Term Lets Engagement Exercise (February 2022) and informed by ELC's Short Term Let Licensing Policy which states that the objective of ELC Licensing is to protect the amenity by tackling noise, disturbance and antisocial behaviour effectively.

NPF430e (Tourism) is specific to Tourism and as shown, this property is used to accommodate mid term lets by local families, incoming workers and personal and family use for several weeks and months at a time as well as, in the main, golf tourists and therefore the use of this property as a short-term let cannot be categorised as primarily tourist use as defined by this policy.

li) Loss of residential accommodation. As detailed previously, in my opinion and confirmed by Planning by email on 14th November 2023, this is my sole residence and defined by the Civic Government (Scotland) Act 1982 (Licensing of Short Term Lets) as a Home Let and therefore no loss of permanent residence.

Since, there is no loss of long term residential accommodation, the demonstrable local economic benefits as summarised by ELC's Economic Development Service must be considered; namely 'this retrospective planning application 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 NPF4.'

8. The Report of Handling does not give an explanation for refusal on the grounds of Policy RCA1 of the adopted LDP 2018 that I can easily determine from this report. This policy states that 'the predominantly

residential character and amenity of existing or proposed housing areas will be safeguarded from the adverse impacts of uses other than housing and that development incompatible with the residential character and amenity of an area will not be permitted.

As described in the Report of Handling and as defined by Policy TC1 of the LDP 2018, this property is located in the heart of the Local Centre of Gullane in a mixed development area with mixed class uses (including a supermarket, retail outlets, food and drink premises and the services of a pharmacy and a dentist at ground floor level) and, therefore, respectfully RCA1 is not relevant in this specific case since other uses are clearly permitted and well established historically.

9. ELC STL Licensing issued the property with a Short-term Let Licence on 30th May 2024.

With regards to the Proposal. I would respectfully re-highlight, for context, the location of this property; being situated in the heart of Gullane's Local Centre, bounded by ground floor commercial premises to the east and west, namely; Gullane Co-operative Supermarket (7am-10pm), Gullane Superfry fast food outlet (12 noon-11pm), Gullane Antiques (11am-4pm), Hazel Rebecca Interiors (10am-4pm), Gullane Pharmacy (9am-5.30pm), Bespoke Kitchens (10am-4pm), Imma's Gelato (11am-6pm), Gullane Dental Practice (8am-6pm) and The Main Course Restaurant (12.30-11pm). 100 metres from the property is Gullane Golf Club. The property is bounded to the north by St. Andrew's Churchyard (kirk ruins and graveyard). These commercial activities inevitably generate noise and disruption affecting the neighbourhood whilst also improving local amenities, providing job opportunities, encouraging sustainable economic growth and supporting the vibrancy, vitality and visibility of Gullane's Local Centre.

The property is located in the North Berwick Coastal Ward, the most visited area of East Lothian. 147,000 visitors alone for two events held in July and August 2023. (Scottish Golf Open 72,517 visitors and Fringe By The Sea 74,750 visitors) allowing indigenous micro businesses such as this to positively impact local employment, the local economy and livelihoods and highlighted by the recent approval of ELC'S Ten Year Economy Strategy 2024-2034 which celebrated the recognition of 'East Lothian as a high quality visitor destination.'

Furthermore, recent research commissioned by Visit Scotland estimates that Golf Tourism (visitors playing and watching major events) is estimated to be worth £300 million annually to the Scottish economy. The majority of our tourist visitors being golfers playing in East Lothian or watching or working at the Scottish Golf Open held near Gullane.

The Proposal states that the owner seeks change of use of the property to short term holiday let. The use of the word 'holiday' does not appear in the relevant legislation, the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 since the Scottish government recognises that short-term let accommodation covers a wide range of uses other than holidays. As previously advised via the Supporting Statement of 18th January 2024, this specific property offers mid term rentals, i.e. flexible residential housing for locals and incoming workers seeking a temporary home and as evidenced by the most recent stay of 5 months by a local Gullane resident/family while their property was undergoing renovation.

When queried about the possible requirement for Planning Permission, ELC Planning Department confirmed this was not the case for this specific property via email on 7 August 2023 (copy attached).

On the advice that Planning permission was not required in this particular case, I can confirm that all additional mandatory licensing requirements were put in place (EPC rating, Fire Safety, Gas testing, EICR, PAT testing, Legionella testing, enhanced insurance cover and scaled Floor Plan), a licence applied for and the fee paid. The costs, you will note, are not inconsiderable for an indigenous micro business such as this. The additional costs, thereafter, of Pre-application and Planning taking the total cost to over £2500.

The Proposal includes information supplied within the planning application of January 2024 but does not include information provided in the applicants Supporting Statement dated 18th January 2024, reflecting the use of this property as non serviced, self catering, mid term accommodation to local people in need of a home from home, for example, the latest occupants made use of the accommodation from 11 November 2023 to 13 April 2024 to enable them to project manage renovations to their home; that is 5 continuous months and, therefore, in use as the guests home for that period and no different from residential use. Stays of 4-6 weeks have been advised for home moves; stays have been advised for incoming hospitality workers employed at the Scottish Open and so on. None of these scenarios were included in the

Report of Handling including personal and immediate family use of approx. 6-8 weeks per year, neither of which constitute use as a short-term let as family and immediate family use are excluded from the STL definition.

The Report moves to a section referred to as Development Plan: The Report references Policies 7 (Historic assets and places), Policy 13 (Sustainable transport), Policy CH2 (Development affecting Conservation Areas), Policy T1 (Development location and accessibility), Policy T2 (General transport impact) and Section 64 (Listed Buildings and Conservation Areas Scotland Act 1997). The Planning Officer finds that none of the above are applicable to the determination of this proposal.

The Report of Handling does not identify Policies TC1 and TC2 of the LDP 2018. Policy TC1 states “a sequential town centre first approach will be applied where appropriate to retail, commercial, leisure, office and other development proposals that would attract significant footfall. Policy TC2 states “with a Local or Town Centre , uses that will be acceptable in principle include retailing, business and office use, restaurants, leisure and entertainment and the principle of a change of use from one of those to another will be supported.”

A key aim of the Planning system (adopted LDP 2018) is to ensure that development of Local Centres supports their vibrancy, vitality and visibility.

The Report of Handling makes no reference to ELC’s Short Term Licensing Policy 2022 which is relevant, with particular reference to Section 2.3 the objectives of the Policy and Section 9, Planning Considerations or to The Civic Government (Scotland) Act 1982 (Licensing of Short Term Lets) which is also relevant.

With reference to Representation: Two objections are noted. It should also be noted that ELC’s Short Term Let Policy states at 6.6 ‘any objections or representations cannot be treated confidentially. The Council will acknowledge the objection or representation and a copy will be sent to the applicant or their representative.’ Since the 21 day period for objections or representations for this property passed in September 2024, I can only conclude that none were received at that time and therefore, the representations came as a surprise. I have repeatedly asked for confirmation of this since 11 March 2024 but no reply has been received.

Firstly “the use of applicant’s flat as a short term holiday let has caused major problems in the past.” No explanation is provided. As has been advised to the

Planning Department my contact details, both telephone and email, have been provided to our immediate neighbours (we correspond regularly regarding ongoing communal repairs, the garden and stair lighting funds). My son who often stays at the property has made himself known to all our neighbours also. North Berwick Holiday Homes are an immediate, 24 hour, local point of contact. In 3 plus years, no major problems have been advised to me, my son, the agent, Police Scotland or ELC's AntiSocial Behaviour Team.

On the second point, namely "the letting company who manage the property is very dilatory, especially regarding recycling and refuse collection which affects the people who live here sharing the communal garden." We have found North Berwick Holiday Homes (the letting agent) to be extremely professional, knowledgeable and hardworking. I can only assume that this point refers to an issue in June 2021 regarding an overflowing general refuse bin. North Berwick Holiday Homes took immediate action and after thorough investigation, it transpired that a neighbouring business had placed food waste into the bin belonging to the property. (The other owners having locks on their bins as this has happened to them also). There has been no reoccurrence and no further action has been necessary.

Thirdly, "the atmosphere is changing as more properties in this block are allowed to operate as short term lets." I respectfully signpost the Panel to ELC's STL Register, updated weekly on the Council website. There are no other properties in this block operating as a short term let.

The fourth, fifth and sixth points relate to the fairness and appropriateness of a communal front door, hallway and stairwell and the possibility of high noise levels and a perceived security risk. There is no doubt there is a communal front door, communal rear entrance, hallway and stairwell and there is the possibility of noise, however, there has never been any report of such issues directly or indirectly. As regards security, neither the communal front door nor communal rear entrance have been secured, day or night, since I moved into the flat in October 2017. This has not changed and therefore the building block is not secure.

The last point worries me greatly and I respectfully wish to re-highlight my disappointment that ELC Planning would publish and, therefore, be seen to support a vexatious complaint such as this "short term lets kill the community and should not be allowed." Please note that ELC's Short Term Lets Licensing Policy states that 'vexatious objections or representations will not be

considered,' yet ELC Planning Department have allowed this comment to be reported via the Council website and open to publication by the local Press, thereby publicising my personal details including the property address, my name and my overseas location to not only those who hold this ideological view but to others also. This indeed happened and has caused much stress.

Gullane Area Community Council view this proposal as unfortunate based on a loss of permanent residence. I respectfully highlight that there is no loss of a residence since this property is defined by Scottish legislation (the Civic Government (Scotland) Act (Licensing of Short Term Lets) as a Home Let, that means "using all or part of your own home for short term lets whilst you are absent." This includes, for example, while you are away for work purposes but the property remains your home. I respectfully point out that when I return (plus 4 family members and dog) from working away at the end of my temporary contract, I do expect to reside in my own home. GACC makes further comment on parking and the potential for disturbance. As stated earlier in the Report of Handling, Road Services raise no objection to this proposal. Neither Police Scotland nor ELC's Antisocial Behaviour Team raise objections to the proposal with regards to any actual disturbance in over 3 years of operating. If disturbances were to occur in the future, this would, respectfully, fall under the remit of Licensing, specifically, ELC's Short Term Let Licensing Policy which states at 2.3 that the objective of the policy is 'ensuring that noise, nuisance or antisocial behaviour is tackled effectively.'

Planning Assessment: The opening section of the Assessment describes my home and references ELC's Economic Development Strategy 2012-2022 which clearly identifies tourism as one of the strengths of East Lothian's economy now and in the future. It could also be reported that the availability of jobs in East Lothian is one of the lowest of all Local Authorities in Scotland and the loss of indigenous, micro businesses such as this has a direct impact on this. In the first instance properties such as this directly impact the employment of 11 local people as employed by the Letting Agent.

The report identifies that "the change of use of the property to a holiday let provides accommodation within Gullane that attracts visitors and encourages them to stay in East Lothian , which supports the existing long established business and benefits the wider economy of East Lothian."

The report moves then to NPF4 Policy 30e; namely a proposal will not be supported when there is 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 and goes on to make mention of Policy RCA1 but I can find no further reference to this policy in the Report and how it is applicable in this case, however, it is quoted as grounds for refusal.

Looking at clause i) in the first instance. The Report of Handling finds, after consultation with the Senior Environmental Health Officer, that future guests may cause impact. I would respectfully point out that that any potential future misuses can be handled by Licensing as is their remit (ELC Short Term Let Policy Section 2.3 Objectives) which includes antisocial behaviour, complaints, compliance and enforcement to name a few. The Officer also states that it cannot be assumed that antisocial misuse will arise. None has arisen as previously noted.

Police Scotland and ELC's Road Services raise no objections.

In addition, ELC's Short Term Lets Engagement Exercise (Feb 2022) concluded 'there is little evidence to show that STL premises are causing these problems (antisocial behaviour, noise disturbance, waste issues, car parking problems) or that the issue is significant enough for complaints to be made.'

The Report repeats a description of the property and details a set of statements which are not specific to this particular case. The Report of Handling, respectfully, fails to include the nature of mid-term stays detailed in the Supporting Statement of 18th January 2024 which have been submitted, for example, the stay of local residents from 11 November 2023 to 13 April 2024, that is a stay of 5 continuous months and not evidently different to residential use and therefore, the statement stating that the application property used as a 'holiday let' exclusively results in high turnover of guests over a short time period is not accurate.

Respectfully, the statements listed are general in nature and for example, the paragraph pertaining to secure shared areas is factually incorrect. In my opinion, this report is not a fact and degree assessment of this specific property since the information provided has not been incorporated but rather a generalised collection of statements applied to many shared access properties across the County.

The Planning Assessment concludes that this property is incompatible with and harmful to the amenity of the occupiers of the properties within the residential

flatted building based on assumptions and inaccuracies within the Report of Handling.

Please note, I have queried the use of the word harmful since this would imply that harm has or will occur and this is not supported. The word harmful does not appear in relation to the wording of NFP430e or Policy RCA1. No reply has been received to date.

Moving to item ii) loss of residential accommodation. I still await a response from ELC Planning for further clarification on this matter (email 11 March 2024). In this specific case, the report omits to take into account that this is a Home Let as defined by the Civic Government (Scotland) Act 1982 (Licensing of Short Term Lets) and therefore relevant and since by that definition, there is no loss of residential accommodation, I fail to understand how this is applicable. Please refer to ELC's Short Term Lets Policy 2022, Section 5.1, Type of Licence.

The comments made by the Council's Housing Strategy and Development Service fail to recognise that there is no loss of a residential dwelling, for the reason above, i.e. this is a Home Let, 'using all or part of your own home while you are absent, for example, while you are away for work purposes but the property remains your home.'

On a further point, and I still await a response from Planning (email 11 March 2024), which STL Licensing have referred to Planning. I have highlighted that ELC's Short Term Lets 2022 Licensing Policy (Amended 12 October 2022) makes no reference to ELC's Housing and Development's policy which states that they will not favour planning applications 'where the property is located in the North Berwick Coastal Ward.' Any STL planning and licence application, therefore, from within the North Berwick Coastal Ward will not be favoured by Housing and Development leaving those seeking planning permission at considerable disadvantage.

Disappointingly, the detailed information supplied by ELC's Economic Development Service Manager is not given any weight by the Report of Handling as it states that the loss of residential accommodation is not outweighed by demonstrable local economic benefits. However, since there is no loss of residential accommodation, I believe the economic impacts are extremely valuable. The tourism sector contributing £155m to the East Lothian economy in 2021 and supporting 10% of the workforce. This proposal provides high quality accommodation attracting repeat visitors and supports stays in

East Lothian for work, local needs and tourism thus supporting the strategic goals and objectives of the Economic Development Strategy 2012-22 and the intent and outcomes of NPF4 30e Tourism. Furthermore, mid term stays, personal and family use treating the property as their home inevitably contributes to the local economy in the same way as a full time resident.

Thank you for considering this appeal. Respectfully, the Report of Handling was a very difficult document to comprehend and I hope that you are in agreement that I have provided sufficient information regarding the objections, perceived harm to amenity, the assumption of a loss of residence and the tangible positive benefit to the local economy and uphold this appeal.

Norman Gray

May 2024

Environment Reception
To: Noman Gray >

PLANNING PERMISSION
1 PAGE

07/08/2023

Adm74719 Short term let Flat 3, 8 Roseberry Place Gullane

Good morning,

As the property is your primary residence then planning permission would not be required in this instance.

If you have any further enquires contact environment@eastlothian.gov.uk

You will appreciate that the content of this email is an expression of officer opinion only which is based on desk top study and is given without prejudice to any decision taken by the Council in respect of any forthcoming application for planning/listed building/ advertisement permissions

Regards
Bruce Murray
Planning Technician

-----Original Message-----

From: Noman Gray [REDACTED]
Sent: 04 August 2023 09:01
To: Environment Reception <environment@eastlothian.gov.uk>
Subject: Re: Planning Permission for short term let

[You don't often get email from [REDACTED] Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

Your ref : 24/00016/P

Our ref: 100656552-001

18th January 2024

Location: Flat 3, 8 Rosebery Place, Main Street, Gullane, EH31 2AN

Proposal: Change of use to Short Term Let accommodation (retrospective)

Please find attached:-

1. Floor plan at scale 1:50
2. Photographs of communal areas including garden area
3. Supporting statement. This is to be read in conjunction with the statement previously provided via application 100656552-001.

Supporting statement :-

1. How often will the flat be used as short term let accommodation per year?

The flat is mixed use, for example since 9/11/23 until 1/4/24 the flat is being utilised by a local Gullane family (from 8 Rosebery Place) carrying out renovations to their home. That is a continuous let of 142 nights and does not fall into the category of 'holiday' let.

In May/June 2023 the flat was occupied for 31 continuous nights to a family waiting to move into their new home. For the last 3 years, two continuous weeks during the July Scottish Golf Open, have been a mixture of temporary hospitality workers and golf tourists.

Our personal family use is around 6-8 weeks per year (when we return from Australia to visit).

The total let nights for 2023 was 210 nights (including 65 consecutive nights as noted above). We really want to emphasise that Short Term Let covers a wide range of scenarios. There will always be a demand for short term accommodation to support the requirements for temporary workers, visiting families, family circumstances and the tourism industry. 'Holiday let' does not accurately describe the function of this accommodation.

2. How many people can it accommodate?

The flat accommodates 5 people across 3 bedrooms (1 single and 2 double twin). Pets are not permitted and the visitors are vetted by North Berwick Holiday Homes as our agent.

3. Will it be let to groups or people from the same household?

There is a mix of visitor types; long let's have been from the one family; tourists are in the main from the same family. Bookings are vetted by NBHH as to the purpose of the trip and the nature of the group.

4. How often will the property be let per week and what would the average length of stay of guests be?

The shortest let is 4 nights for 2023 and the longest 65 in 2023 (continuing to April 2024); with another 31 night stay May/June 2023 to a local family. Tourists/Golfers stay on average 7 nights. At the peak times of July and August, during the Golf Open, Fringe by the Sea, Edinburgh Fringe and coinciding with the school holidays, there is one booking per week. Outwith this period, there is one booked visit every 2/3 weeks.

It is not our intention to over promote the property as this is our sole owned property and it is let while we are working overseas until July 2027. We feel the property being used is more beneficial to the local economy. There is no economic benefit to the community as an unused 'residential' 3 bed flat located in the top 3 most visited places in East Lothian either in generating income in the locality or supporting local employment.

5. Is it cleaned after every let and is this by a commercial cleaning company?

It is cleaned after every let by the cleaners employed directly by North Berwick Holiday Homes, who live locally. The cleaning occurs between the hours of 10am and 4pm and is usually complete by 2pm. A local person is also employed to ensure that the bins are kerbside for collection and returned to the storage area. We directly employ a local handyman to maintain the property in our absence. He makes weekly checks and more often in periods of extreme weather to ensure no damage has taken place. We contribute to the common repairs, stair lighting and garden funds annually and have email contact with all 3 of our neighbours who are able to contact us directly or through NBHH.

6. How long has the property operated as a 'holiday let.'

It has operated as **Short Term let accommodation** since May 2021.

Norman Gray

17/1/24