

REVIEW DECISION NOTICE

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

Application for Review by Mr Christian Poziemski of 111 High Street, North Berwick EH39 4HB decision to refuse Planning Permission for the change of use of flat to short term holiday let (retrospective) at 8 Forth Street Lane, North Berwick EH39 4JB.

Site Address: 8 Forth Street Lane, North Berwick EH39 4JB

Application Ref: 23/01051/P

Application Drawing: Please refer to the Drawings/Plans detailed at 3.1 (i)

Date of Review Decision Notice: 25 June 2024

Decision

The ELLRB unanimously agreed to dismiss the appeal and refuse planning permission for the change of use of flat to short term holiday let (retrospective) at 8 Forth Street Lane, North Berwick EH39 4JB for the reasons more particularly set out below.

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.

1. Introduction

The above application for Planning Permission was considered by the ELLRB, at a meeting held on Thursday, 25 April 2024. The Review Body was constituted by Councillor N Hampshire (Chair), Councillor D Collins and Councillor S McIntosh. All three members of the ELLRB had attended a site visit accompanied by the Planning Adviser in respect of this application prior to the meeting.

1.1. The following persons were also present at the meeting of the ELLRB: -

Mr J Squires, Planning Adviser to the LRB
Mr C Grilli, Legal Adviser to the LRB
Ms M Scott, Clerk

2. Proposal

2.1. The planning application is for review of decision to refuse Planning Permission

2.2. The planning application was registered on 19 September 2023 and the Decision Notice refusing the application is dated 6 November 2023.

2.3. The reason for refusal is more particularly set out in full in the said Decision Notice dated 6 November 2023. The reason for refusal is set out as follows:

- 1 *The holiday let use of the flatted property is incompatible with and harmful to the amenity of the neighbouring flatted property used as a residential dwelling within the residential building and as such is contrary to part e) of Policy 30 of National Planning Framework 4 and Policy RCA1 of the adopted East Lothian Local Development Plan 2018.*

2.4. The notice of review is dated 22 January 2024

3. **Preliminaries**

3.1. The ELLRB members were provided with copies of the following: -

i.	The drawings accompanying this application are referenced and numbered as follows: <table border="1"> <thead> <tr> <th><u>Drawing No.</u></th> <th><u>Revision No.</u></th> <th><u>Date Received</u></th> </tr> </thead> <tbody> <tr> <td>DWG 01</td> <td></td> <td>12.09.2023</td> </tr> <tr> <td>DWG 02</td> <td></td> <td>12.09.2023</td> </tr> </tbody> </table>	<u>Drawing No.</u>	<u>Revision No.</u>	<u>Date Received</u>	DWG 01		12.09.2023	DWG 02		12.09.2023
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DWG 01		12.09.2023								
DWG 02		12.09.2023								
ii.	The Application for planning permission registered on 19 September 2023									
iii.	The Appointed Officer's Submission									
iv.	Policies relevant to the determination of the application: Policies 7 (Historic assets and places), 13 (Sustainable transport) and part (e) of Policy 30 (Tourism) of National Planning Framework 4; and 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. Further material to the determination of the application is: Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997; and North Berwick Conservation Area									
v.	Notice of Review dated 22 January 2024 together with Applicant's Submission with supporting statement and associated documents.									

4. **Findings and Conclusions**

- 4.1. The ELLRB confirmed that the application for a review of the planning application permitted them to consider the application afresh and it was open to them to grant it in its entirety, grant it subject to conditions or to refuse it. They confirmed that they had access to the planning file in respect of this matter and to all the information that the Appointed Officer had available when reaching the original decision to grant planning permission subject to conditions, including all drawings and copies of all representations and objections received in respect of the original application. They also confirmed they had received and reviewed the Applicant's Submission and further representations made in connection within this appeal before the ELLRB today.
- 4.2. The Members then asked the Planning Adviser to summarise the planning policy position in respect of this matter. The Planning Adviser provided details of the application, property

and location, and outlined the reason for refusal of planning permission.

The Planning Adviser confirmed that the property was located within the North Berwick Conservation Area and referred to relevant legislation and policy: section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, NPF4 Policy 7 Historic Assets and Places and Policy CH2 of the LDP 2018. She also noted that the Conservation Area Character Statement for North Berwick Conservation Area was found in the Cultural Heritage Supplementary Planning Guidance.

The Planning Adviser noted that the case officer had not offered an assessment of whether the proposals preserved or enhanced the Conservation Area. However, as there were no physical alterations involved in the proposal there was no detriment in terms of the built environment. She commented that historic character could include issues such as levels of activity and ambience as well as built elements. However, the recognition in the North Berwick Conservation Area character statement of the areas expansion as a seaside resort suggested that some level of holiday accommodation was likely to be expected and that seasonal fluctuations in activity would accord with that character. The Planning Adviser noted that there were 1,431 dwellings within the conservation area boundary, 137 of which had licensing applications granted. Given the recognition in the Conservation Area Character Statement, it was the Planning Adviser's view that the addition of one further holiday unit would not cause harm to the character of the Conservation Area.

The case officer had also noted that the property was within North Berwick Town Centre as defined by Policy TC2 of the LDP but had not offered any assessment of the proposal against that policy. The purpose of LDP Policy TC2 was to ensure that changes of use would not compromise the town centre's vibrancy, vitality and viability. NPF4 Policy 27 also supported proposals that enhanced and improved the vitality and viability of city, town and local centres, including proposals that increased the mix of uses. The Planning Adviser noted that use as a short term let could contribute to viability through spending, as noted by the Economic Development Manager, however occupancy was also likely to be seasonal which would reduce vitality and vibrancy during times the property was not let.

The Planning Adviser referred to the North Berwick Town Centre Strategy Supplementary Guidance. The analysis included in the Strategy considered second homes and holiday lets in the town centre to be a weakness, though limited choice of hotels and tourist accommodation was also identified as a weakness. The Town Centre Walk and Talk had scored different elements: housing and community had scored low as the range of housing was considered very restricted, being mostly higher priced properties. One of the main reasons identified by respondents was the presence of holiday/second homes, which removed housing stock. However, no actions on short term lets were identified in the Strategy.

The Planning Officer then considered the planning case officer's assessment of Policy 30 Part E of NPF4. She reminded Members that to meet the terms of NPF4 Policy 30E, there should be no unacceptable effects on residential amenity, and the local economic benefits should outweigh the loss of residential accommodation. The case officer had noted the views of the Senior Environmental Health officer that short-term holiday let use could result in guests misusing and abusing the property in a manner that was antisocial and could result in significant impact upon the amenity of neighbours. The case officer had considered that the nature of comings and goings in the communal areas, disturbance associated with luggage, additional activity associated with cleaning and removal of waste, as well as impact on security were detrimental to amenity of the neighbouring first floor flat,

contrary to NPF4 Policy 30 of NPF4 as well as Policy RCA1. However, it was the Planning Adviser's view that Policy RCA1 did not apply to this site.

The Planning Adviser then considered the case officer's assessment of the second test of Policy 30, noting the views of the Council's Housing Strategy & Development Service which considered the loss of this flat would be a significant loss to housing supply. He noted the views of the Council's Economic Development Service Manager that there were demonstrable local economic benefits delivered by all types of short-term holiday lets in East Lothian. The Planning Adviser noted that the case officer had then weighed the economic gains against amenity, which was in her view an incorrect application of Policy 30E as impact on amenity was a stand-alone test. Economic benefit should only be weighed against loss of housing supply.

It was noted that no representations from the public were made to this planning application. The Council's Road Services Manager had no objection having considered the lack of designated parking.

The Planning Adviser then provided a summary of the applicant's submission. The applicant had noted that the need for planning permission for use as a short term let depended on whether there had been a material change of use, which was a matter of fact and degree. The applicant contended that the case officer was incorrect when he stated that as there was no license or planning permission in place for 8A Forth Street Lane, the neighbouring flat to the applicant's, that flat 8A was in residential use. The applicant considered the use could be lawful if no material change of use had taken place which he considered had not been established.

The applicant had considered the views of the Council's EHO that there may be amenity issues to be a generic comment which did not address the risk from this particular application. There had been no objection from the Council's anti-social behaviour team or the police, despite the short term let being operational since 2021. The applicant noted there was no objection from the property owner of 8A Forth Street. The applicant felt that the case officer had not properly considered the existing amenity of the individual property which was between the beach and the centre of the busy tourist High Street, above a public house and close to other commercial businesses. The applicant noted that the impact of regulars and visitors to the pub and smoking area caused more disturbance, nuisance and noise to both properties regardless of use, than short term let use.

Referring to the reason for refusal of planning permission, the applicant has suggested that the Local Review Body also consider the following:

- Actual local benefits of the proposal
- The applicant being a small local business.
- Lack of amenity concerns raised by the owner of the other property.
- Lack of amenity objection from the EHO, roads, or police
- Location of the property in the centre of North Berwick above a public house which closed between 11pm and 1 a.m.
- In terms of security, the entrances to external steps and common hallway were not locked and security had not been raised as an issue.

The applicant in their submissions concluded that the amenity impacts were not unacceptable and outweighed by economic and tourism benefits. The applicant had also cited potential barriers to the property being suitable to first time buyers and those with accessibility requirements. The applicant therefore considered the proposal acceptable

under both tests of Policy 30 of NPF4, as well as RCA1 of the LDP.

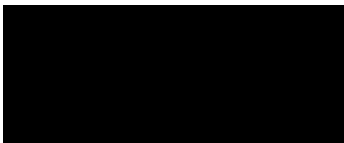
The Planning Adviser concluded that, in her view, the key considerations for Members were, firstly, whether the proposal preserved or enhanced North Berwick Conservation area. Secondly, whether the proposal met the terms of NPF4 Policy 30E and the section of LDP Policy TC2 which protected housing from environmental impact. She reiterated that Policy 30E contained two tests. The first was that there should be no unacceptable impact on local amenity or the character of a neighbourhood or area. The second was whether the loss of residential accommodation was outweighed by demonstrable local economic benefits. Economic benefits should not be weighed against loss of amenity.

She provided further information on the status of short term let licence application for the flat at 8 Forth Street Lane and confirmed that as no licence application had been made for use of 8A Forth Street Lane as short term let, its potential use as such had been passed to the Council's planning enforcement officer for investigation. In the meantime, it was reasonable to assume that the lawful use of 8A Forth Street Lane was residential.

- 4.3. The Chair asked his colleagues if they had sufficient information to proceed to determine the application today and they unanimously agreed to proceed. Comments on the application followed.
- 4.4. Councillor Councillor McIntosh said that during the site visit the close proximity of the doors to the two flats and the narrow passageway had been very noticeable. When considering this application, she said it was important to remember that properties may change ownership and, as such, she agreed with the case officer's assessment that the change of use would represent an unacceptable loss of amenity. She would be supporting the case officer's decision.
- 4.5. Councillor Collins agreed that it was a very small communal lobby. She noted that it was above a pub and that there would be noise, however, as there was no documentary evidence confirming the neighbouring property's use as a short term let, it must be treated as a residential unit. Therefore, she agreed that there would be loss of amenity and she would be supporting the case officer's decision.
- 4.6. The Chair said that the site visit had been helpful to see the proximity of the two doorways and narrowness of the hallway. He felt that comings and goings would be more noticeable and that residents could be alarmed at meeting strangers in such a small space. He would therefore be supporting the case officer's decision in relation to part (e) of Policy 30 of NPF4 and Policy RCA1 of the LDP.

Accordingly, the ELLRB unanimously decided to dismiss the appeal and refuse planning permission for the reasons more particularly set out in the Planning Officer's report of handling.

Planning Permission is hereby refused.



Carlo Grilli
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.