

REVIEW DECISION NOTICE

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

Application for Review by Mrs Mary Anne Donkin on behalf of The Dunbar Crew, 19 Silverburn Drive, Penicuik, Midlothian EH26 9AQ decision to refuse Planning Permission for change of use of flat from residential to a mixed use of residential and short term let (retrospective) at 114A High Street, Dunbar EH42 1JJ.

Site Address: 114A High Street, Dunbar EH42 1JJ

Application Ref: 23/00938/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 by majority of 2 to 1 agreed to support the appeal and grant Planning Permission for change of use of flat from residential to a mixed use of residential and short term let (retrospective) at 114A High Street, Dunbar EH42 1JJ subject to conditions 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 23/00938/P for change of use of flat from residential to a mixed use of residential and short term let (retrospective) at 114A High Street, Dunbar EH42 1JJ was considered by the ELLRB, at a meeting held on Thursday, 29 February 2024. The Review Body was constituted by Councillor L Allen (Chair), Councillor D Collins and Councillor A Forrest. 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 M Mackowiak, 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 change of use of flat from residential to a mixed use of residential and short term let (retrospective) at 114A High Street, Dunbar EH42 1JJ and was registered on 5 October 2023.

2.2. The Decision Notice refusing the application was dated 1 December 2023.

2.3. The reason for refusal more particularly set out in full in the said Decision Notice and set out as follows:

“The holiday let use of the flatted property is incompatible with and harmful to the amenity of the occupants of other flatted properties used as residential dwellings within the residential building of 114 High Street, Dunbar 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 .23 February 2024

3. **Preliminaries**

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

i.	<p>The drawings accompanying this application are referenced and numbered as follows:</p> <table border="1"> <thead> <tr> <th data-bbox="387 712 539 741"><u>Drawing No.</u></th> <th data-bbox="687 712 839 741"><u>Revision No.</u></th> <th data-bbox="1027 712 1206 741"><u>Date Received</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="387 770 496 799">DWG 01</td> <td data-bbox="743 770 756 799">-</td> <td data-bbox="1027 770 1161 799">15.08.2023</td> </tr> <tr> <td data-bbox="387 799 496 828">DWG 02</td> <td data-bbox="743 799 756 828">-</td> <td data-bbox="1027 799 1161 828">11.09.2023</td> </tr> </tbody> </table>	<u>Drawing No.</u>	<u>Revision No.</u>	<u>Date Received</u>	DWG 01	-	15.08.2023	DWG 02	-	11.09.2023
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DWG 01	-	15.08.2023								
DWG 02	-	11.09.2023								
ii.	The Application for planning permission registered on 5 October 2023									
iii.	The Appointed Officer's Submission									
iv.	<p>Policies relevant to the determination of the application:</p> <p>Policy 7 (Historic Assets and Places); Policy13 (Sustainable transport); and part (e) of Policy 30 (Tourism) of National Planning Framework 4</p> <p>Policies RCA1 (Residential Character and Amenity), CH1 (Listed Buildings), CH2 (Development Affecting Conservation Areas), T1 (Development Location and Accessibility) and T2 (General Transport Impact) of the adopted East Lothian Local Development Plan 2018</p>									
v.	Notice of Review dated 23 February 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 advised that the property to which this

planning appeal relates to a first floor flat within a three-story mid-terrace building, with accommodation in its roof space, situated on the west side of High Street in Dunbar. The flat building is located within the Town Centre of Dunbar as defined by Policy TC2 of the adopted East Lothian Local Development Plan 2018. It is within Dunbar Conservation Area, and it is listed as being of special architectural or historic interest (Category B).

The Planning Adviser confirmed that the case officer noted a number of points made by the applicant in support of her application. Namely that:

- (i) the flat has been marketed/used for short term lets since 2022 and has been let by friends since July 2023.
- (ii) over the past year the applicant's flat has been used for short term lets for 86 days (i.e. 12 weeks) and used for residential stays for the remainder (i.e. some 40 weeks) of the year;
- (iii) the most common length of stay is 2 nights, and the average length of stay has been 3.6 nights.
- (iv) the maximum number of visitors in one booking is 4 guests.
- (v) recycling and/or bins are managed by the applicant as is the cleaning of the flat between stays.
- (vi) the check in/check out process is managed by the applicant on occasions and otherwise guests can use the safe key box provided.
- (vii) there are a total of 3 flats within the building - two at second floor level and one at first floor level.
- (viii) the applicant's flat, the subject of this retrospective planning application, is located on the first-floor level and is accessed via a shared front entrance door and internal communal stair; and
- (ix) the flat has no designated parking space but guests are advised that there is restricted parking along the High Street and free parking within the nearby car park serving Dunbar Leisure Pool.

The Planning Adviser confirmed that Section 25 of the Town and Country Planning (Scotland) Act 1997 requires that the application be determined in accordance with the development plan, unless material considerations indicate otherwise. The development plan is National Planning Framework 4 (NPF4) and the adopted East Lothian Local Development Plan 2018. Material to the determination of the application are Section 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and NPF4. Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states that in considering whether to grant planning permission for development which affects a listed building or its setting a planning authority shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Also material to the determination of the application is Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states that a planning authority must have regard to the desirability of preserving or enhancing the character or appearance of a conservation area in exercising its responsibilities in the determination of any application for planning permission for development affecting a conservation area. The Planning Adviser highlighted the policies relevant to the determination of this application.

The Planning Adviser confirmed that in the determination of this application it is necessary to assess the impact of the change of use of the application property to a unit of holiday let accommodation upon the amenity of the existing neighbouring residential properties. The report summarised all comments received from our internal and external consultees. The Council's Senior Environmental Health Officer advised 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 response noted that 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.

The Planning Adviser also confirmed that the Council's Antisocial Behaviour Team advised that they have no records of any incidents relating to antisocial behaviour matters at this address and thus they raise no objection to this retrospective planning application. Police Scotland advised that there have been no police incidents at this address and thus they raise no objection to this retrospective planning application. In addition the Council's Roads Services raised 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. It was noted that the Council's Housing Strategy & Development Service objected to this retrospective application and that the Council's Economic Development Service Manager submitted comments supporting the application.

It was noted by the Planning Adviser that the case officer conducted a planning assessment of the proposal and concluded that the use of the application property as a holiday let results in a regular turnover of users/occupants of the property. This use changes 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. The officer concluded that this is harmful to the amenity of the occupants of the residential properties within the residential flatted building. The officer 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. Further, the officer also noted that 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 main 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 the amenity of the occupants of the residential properties within the residential flatted building.

Moreover, the case officer report noted that 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. The officer concluded that given the specific circumstances and location of the application property within the residential building named, which contains another permanent/long term residences which shares a communal entrance, internal stair and hallway, the retrospective change of use of the applicant's first floor flat as a two bedroom unit of short term self-catering holiday let accommodation is incompatible with and harmful to the amenity of the occupiers of the properties within the

said residential building. By having an unacceptable impact on local amenity, the proposal is contrary to part e) of Policy 30 of NPF4. The case officer also quoted Policy RCA1 of the adopted LDP and determined that the proposal was contrary to that policy too. However, in my view policy RCA1 does not apply to this location as it lies within the designated Dunbar 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.

The officer also assessed 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 NPF4. The Council's Housing Strategy & Development Service advised they object to the application as the change of use of this property from a long term residential dwelling to a short term let is considered a significant loss as the property is located in Dunbar with a concentrated number of short term lets; the stl is not considered long term established and the annual occupancy rate is low.

The Council's Economic Development Service Manager advised 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. His comments highlighted that in the particular circumstances of this case.

- (i) non-serviced accommodation (short term holiday lets) contribute positively to the local economy (£279m in 2019) and the applicant's flat accounts for 4 bedspaces and a potential annual economic impact of £90,908 and 2FTE jobs.
- (ii) there is an increasing number of overnight stays in East Lothian for work purposes (which is expected to increase over the next 10-15 years) such that the loss of short-term accommodation is likely to have a significant negative impact on the local tourist economy in monetary and reputational terms.

The case officer concluded that the local economic benefits associated with the use of the applicant's first 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 Development Plan.

The application was refused as the proposal was considered contrary to part e policy 30 of NPF4 and policy RCA1 of the adopted East Lothian LDP.

In your information pack you have a submission from the appellant who made a number of points including

- 1) Reviews showing the guests positively rate this visitor accommodation.
- 2) The Council's Economic Development Manager supports this planning application.
- 3) The council's Environment Health Service cannot assume that antisocial behaviour will arise and thus cannot impose any enforceable conditions to protect the amenity of neighbours. The appellant notes that this conclusion is at odds with the Antisocial Behaviour Team and Police Scotland advice that confirming that during the period of use of as a stl there have been no records of antisocial behaviour.
- 4) Unlike Edinburgh, Dunbar is not 'stag/hen part town' and the guests have all been ordinary short break visitors who have respected the property and show respect for the neighbours.

- 5) The flat is on the first floor and there are no residents on the ground floor therefore neighbours on the second and third floor will not be disturbed by the guests. None of the neighbours have objected to this application.
 - 6) The assertion of the case officer that allowing frequently changing guests unfettered access to otherwise secure shared areas changes the actual and perceived level of security for the existing permanent residents is not accurate. The security of the shared area has not been compromised as the exterior door to the communal flatted area is not controlled by an entry system. It is disappointing that this is not acknowledged in the report.
 - 7) The appellant has some doubt if this and other STL planning applications are considered on its own merits. The applicant is not aware of the Council granting a licence to any flat that has main door entrance to a communal flatted area. If that was the case and there is a general approach to refuse this type of applications, then the applicant would expect a refund of the paid application fee.
- 4.3. The Chair asked her 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 Forrest confirmed that his concern was regarding amenity and the coming and going of people utilising the property as a short term let. These individuals would be out and about in the local area and travelling to Edinburgh when they stay for short period. It is the general noise that is created by this use that he is concerned about more than any anti-social behaviour. Accordingly he was of the view there would be a detrimental impact on amenity and was minded to refuse the application and support the planning officer's recommendation.
- 4.5. Councillor Collins commented that at the site visit she noted the first nine steps leading to the premises were stone and the stairs leading to the upper levels were wooden. Given this she felt there would be minimised effect on amenity. Further she noted that in this application the applicant was also utilizing the premises as a residence and therefore would be more careful as to the type of residents who they allowed to occupy the premises. She was of the view there would be little disturbance to the other flats and therefore was minded to support the appeal.
- 4.6. The Chair agreed with her colleague Councillor Collin's comments. She commented that the stone steps would have minimal impact on amenity as the applicant utilised the premises they would be more careful as to dealing with rubbish and recycling. She was therefore minded to support the appeal.

Accordingly, the ELLRB by majority of 2 to 1 agreed to uphold the appeal and grant planning permission subject to the following conditions:

1. the property shall be let for overnight occupation by a maximum of four persons at any one time. Reason: To ensure that the terms of the lets protect occupants of nearby residential properties from noise/disturbance.
2. A register of the date and number of occupants for each let shall be maintained for the property by the owner/letting agent and shall be available at all reasonable times for inspection, on request, by the Planning Authority. Reason: To ensure compliance with condition 1.

Planning Permission is hereby granted.



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.