

REVIEW DECISION NOTICE

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

Application for Review by Mr Craig Mackay of 39 Dalrymple Loan, Musselburgh EH2 7DJ 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 1B Mansfield Place, Musselburgh EH21 7DN

Site Address: 1B Mansfield Place, Musselburgh EH21 7DN

Application Ref: 23/01409/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 1B Mansfield Place, Musselburgh EH21 7DN 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 23/01409/P for change of use of flat from residential to a mixed use of residential and short term let (retrospective) at 1B Mansfield Place, Musselburgh EH21 7DN 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 1B Mansfield Place, Musselburgh EH21 7DN and was registered on 6 December 2023.

2.2. The Decision Notice refusing the application was dated 2 February 2024.

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 1 Mansfield Place, Musselburgh 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 .21 March 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" data-bbox="387 674 1203 801"> <thead> <tr> <th data-bbox="387 674 683 712"><u>Drawing No.</u></th> <th data-bbox="683 674 1018 712"><u>Revision No.</u></th> <th data-bbox="1018 674 1449 712"><u>Date Received</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="387 734 683 763">DWG 01</td> <td data-bbox="683 734 1018 763">-</td> <td data-bbox="1018 734 1449 763">30.11.2023</td> </tr> <tr> <td data-bbox="387 763 683 801">DWG 02</td> <td data-bbox="683 763 1018 801">-</td> <td data-bbox="1018 763 1449 801">06.12.2023</td> </tr> </tbody> </table>	<u>Drawing No.</u>	<u>Revision No.</u>	<u>Date Received</u>	DWG 01	-	30.11.2023	DWG 02	-	06.12.2023
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DWG 01	-	30.11.2023								
DWG 02	-	06.12.2023								
ii.	The Application for planning permission registered on 6 December 2023									
iii.	The Appointed Officer's Submission									
iv.	<p>Policies relevant to the determination of the application:</p> <p>Part (e) of Policy 30 (Tourism) of National Planning Framework 4</p> <p>Policies RCA1 (Residential Character and Amenity), 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 21 March 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 application relates is a ground floor flat with associated garden ground set within a two storey, flatted building accessed via a communal entrance. The property is located within a predominantly residential area as defined by Policy RCA1 of the adopted East Lothian

Local Development Plan 2018. In his report the case officer noted a number of points made by the applicant in support of their application. Namely that:

- (i) The property has been used as short-term holiday let accommodation since 2017;
- (ii) the flat can accommodate 4 guests;
- (iii) the flat is let to member of the same household only;
- (iv) on average the applicant accommodates 30 bookings per calendar year and on average accommodates 3 bookings per month, with the summer months noted as being busier than the winter months;
- (v) the flat is let on average 2 weeks in the summer months and 1 week in the winter months; (vi) the average length of stay is 5 days; and
- (vi) the flat is cleaned after each let by the applicant.

There are 4 flats within the building including the applicant's flat, the subject of this retrospective planning application. All the flats are accessed via a shared front entrance door, a shared hallway, and a communal stairwell. It is noted there is access to the rear garden from the kitchen of the applicants' flat.

The Planning Adviser confirmed the legislation and policies applying to this planning matter including 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.

The Planning Adviser confirmed that there were no written objections received in relation to the application and the case officer's report summarised all comments received from our internal and external consultees. It was noted 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 and Police Scotland advised that there have been no police incidents at this address within the last 3 years.

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.

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 of 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 the flatted building, 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 ground 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 and with Policy RCA1 of the adopted East Lothian Local Development Plan 2018.

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 Musselburgh with a concentrated number of short terms 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 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 Development Plan.

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

The Planning Adviser then summarised appellant's submission on this appeal:

- 1) except for the Housing Officer there were no objections from the remaining consultees
 - 2) there were no objections from any of the residents of the remaining flats
 - 3) the guests enter the communal entrance to property and immediately arrive at the premises. The guests pass no other dwelling in their approach to 1B
 - 4) The guests behaviour is much the same as the occupier of any of the other dwellings. The guests level of activity is akin to a resident of any other properties e.g. returning from the local supermarket with their weekly provisions
 - 5) The property is serviced after each guest, normally weekly. This is no different from the activity carried by an owner or occupier or long-term tenant of any other property. This activity is not harmful to the amenity and enjoyment of the other flatted dwellings
 - 6) With regards to the security within the communal areas. There may be an element of risk, but this is a similar level of risk as to that of a visitor to other dwellings.
 - 7) The property is not a party flat and has never been let to occupants from multiple households
- 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 particularly given proximity to Edinburgh there will be large disturbance around the time of the Edinburgh Festival 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 that the property had been running successfully for seven years without any issues. She commented that had there been issues over this period it would have been clear. She also considered there would be no loss of security in this matter. She confirmed that she was therefore minded to support the appeal.
- 4.6. The Chair confirmed that all applications need to be considered on their own merits. She commented that in considering Short Term Lets she had considered the potential of loss of housing but also balanced off with the need to consider economic benefits of short term lets. In this case she noted that there had been no issues over the seven years that the short term let had operated for. Accordingly she was minded to support the application and uphold 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:

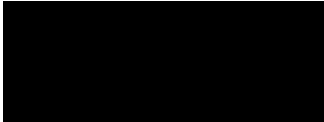
1. the property shall be let for overnight occupation by a maximum of four persons at any one time.

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.