

REVIEW DECISION NOTICE

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

Application for Review by Mr Peter Oliver c/o Sue Oliver, Dragonlea, Dirleton, North Berwick EH39 5EP on behalf of decision to refuse Planning Permission for the change of use of flat to short term holiday let (retrospective) at 12D Bush Terrace, Musselburgh.

Site Address: 12D Bush Terrace, Musselburgh EH21 6DF

Application Ref: 23/01289/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 12D Bush Terrace, Musselburgh EH21 6DF 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 (reference 23/01289/P) 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 3 November 2023 and the Decision Notice refusing the application is dated 21 December 2023.

2.3. The reason for refusal is more particularly set out in full in the said Decision Notice dated 21 December 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 of 12 Bush Terrace, 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 1 February 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>30.10.2023</td> </tr> <tr> <td>DWG 02</td> <td>-</td> <td>03.11.2023</td> </tr> </tbody> </table>	<u>Drawing No.</u>	<u>Revision No.</u>	<u>Date Received</u>	DWG 01	-	30.10.2023	DWG 02	-	03.11.2023
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DWG 01	-	30.10.2023								
DWG 02	-	03.11.2023								
ii.	The Application for planning permission registered on 3 November 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; and</p> <p>Policies RCA1 (Residential Character and Amenity), and T2 (General Transport Impact) of the adopted East Lothian Local Development Plan 2018.</p>									
v.	Notice of Review dated 1 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 provided details of the application, property and location, and outlined the reason for refusal of planning permission.

The Planning Adviser summarised the case officer's assessment of the application against relevant planning policy. The case officer had considered NPF4 policy 30 (Tourism) and policy RCA1 (Residential Character and Amenity) and T2 (General Transport Impact) to be relevant. They had considered the impact of the change of use on amenity of

neighbouring properties and the views of the Council's Environmental Health Officer that use of property for short term let could lead to guests misusing the property in an anti-social way. However, the Council's Anti-Social Behaviour Team and the police had no records of any anti-social behaviour at the property. The Council's Road Services did not object to the change of use. The case officer had considered, however, that there would be harm to the amenity of occupants of the other flats in the building due to changed comings and goings, transport of luggage, access of communal areas for cleaning. Allowing frequently changing guests into communal areas would change the actual and perceived security of residents. The case officer had therefore considered the proposal contrary to NPF4 Policy 30E part 1 and LDP Policy RCA1.

The case officer had noted that the Council's Housing Strategy and Development Service had no objection as, although this was a 2 bedroomed flat in Musselburgh, the property was a long term established let (since 2017). The Council's Economic Development Service Manager had supported the application advising that there were demonstrable local economic benefits from all types of short-term holiday lets in East Lothian. While noting the position of the two Council services, the case officer had not stated whether they considered the loss of residential accommodation to be outweighed by demonstrable local economic benefits.

No public letters of objection were received in relation to the application.

The Planning Adviser summarised the applicant's submission which noted that there had been no objections from residents in the time the flat had been let; there were no objections from Police Scotland, the Council's Anti-Social Behaviour Team, Roads Services or the Housing Strategy and Development Service Manager. The Council's Economic Development Service Manager considered that short term lets were an asset. The use provided employment and holiday accommodation. The owner returned to the flat often, and intended to return permanently in four years so there would be no residential letting of the flat. The extended minimum let period of the flat (7 nights or more) would reduce footfall in the communal stairway.

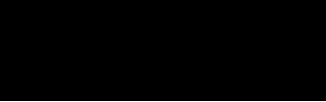
The Planning Adviser provided her views on the case. She stated that the key issue was whether the proposal met the terms of NPF4 Policy 30E which specifically covered short term lets, and LDP Policy RCA1 which aimed to protect residential character and amenity. She reminded Members that Policy 30E contained two criteria which must both be met for proposals for short term let to be supported. The first was that there should be no unacceptable impact on local amenity or the character of a neighbourhood or area, which was similar to the provisions of LDP Policy RCA1. 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 but against loss of residential accommodation.

- 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. The Chair said that the site visit had been useful. There were a number of flats which were access via the stairwell, and, in his view, it was inevitable that there would be conflict between residents and those using the short term let and that this could be intimidating for residents. He did not consider this to be a suitable property for a short term let and he would not be supporting the appeal.

- 4.5. Councillor Collins was sympathetic to the applicant who had been running their business for seven years with no problems or objections noted. In her view, there would not be as much disturbance to other residents in the stairwell as might be expected, and she queried the current level of letting per year and its likely impact on residential amenity.
- 4.6. Councillor Councillor McIntosh also had some empathy for the applicant who had been running their business for a number of years. However, she felt it important to consider the issue of amenity as a whole. While conflict might be quite rare, when speaking to people in general who lived next to short term lets, her sense was that they were unsettled by the comings and goings and by not knowing their neighbours. She therefore agreed that there would be an unacceptable loss of amenity and she was minded to support case officer's original decision.

Accordingly, the ELLRB by majority of 2 to 1 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.