



Our Ref: ep821/let001/DS/ELCLRB

10<sup>th</sup> September 2024

Clerk to the Local Review Body  
East Lothian Council  
Committee Team  
Communications and Democratic Services  
John Muir House  
Haddington  
East Lothian  
EH41 3HA

To whom it may concern,

**24/00575/P - CHANGE OF USE OF FLAT TO SHORT TERM HOLIDAY LET (RETROSPECTIVE) AT FLAT 27, 1 STATION ROAD, NORTH BERWICK, EH39 4AT**

1. We refer to the above application, which was refused by your Council's Planning Department under delegated powers on 30<sup>th</sup> August 2024, and write on behalf of our client, TM Holiday Lettings, to respectfully request that the decision be reviewed by your Council's Local Review Body. The application, which had sought planning permission retrospectively to change the use of a domestic flat to a short term holiday let (used for such purposes since May 2017), was refused for the following reason:

*'1. 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 Station Road 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.'*

Copies of the Planning Application Documents which form an integral part of and should be read in association with this letter/statement are attached as **Documents A(i) to A(vi)**. Copies of the Decision Notice and Planning Officer's Report of Handling are attached as **Documents B & C**.

2. We have set out below extracts from the Planning Officer's Report of Handling within which she explains her reasons and rationale for refusing the application and for disagreeing with the favourable consultation responses received from the Council's Senior Environmental Health Officer, the Council's Antisocial Behaviour Team and Police Scotland – all of whom confirmed that they had no objection to the application and as such supported the granting of planning permission for the continued use of the property as a short term holiday let.

*'The use of the application property as a holiday let enables it to be let out for short duration stays with a minimum stay of 3 nights and with an average occupancy of 67% which results in a higher turnover of people over short time periods, annually. A significant proportion of guest of this accommodation are likely to be holiday related visitors. Such a regular turnover of users/occupants would change the nature of comings and goings not only to the application property itself but also within the communal entrances and internal lift and stairwell of the residential building.'*

3. **Response** - The comings and goings from the application property will not be significantly different whether occupied by permanent residents or holiday guests. No cognisance whatsoever seems to have been given by the Planning Officer to the fact that permanent residents can have vastly different movements depending on their age, status (e.g. student, employment status, retired), leisure interests, family/personal circumstances, health, or just their particular way of living. A healthcare professional, for example, might work shifts coming in at odd times of the day and night; a single person with care needs might be visited by carers several times a day; a pet owner may return on numerous occasions during the day or employ others to do so – all leading to activities with associated disturbances not associated with a short-term holiday let. As noted in the Planning Statement submitted in support of the application (Refer to **Document A(iii)**), only 6 of the 34 units in this block (18%) are in permanent residential use with the balance in use as second homes. The characteristics of second home living will be more akin to short term living than they are to those of permanent residents. It is simply unfair in the assessment of this application to paint the behaviour of holiday guests in the worst imaginable manner and that of a permanent resident in the best possible manner.

*‘Most users/occupants of the holiday let would have a degree of luggage or other property to take through the communal entrances and stair/lift which in itself would lead to a level of disturbance and nuisance not associated with the permanent/long term residential use of the property. Whilst the applicant states the movement of luggage from a vehicle to the flat will take less than 5 minutes on each occasion and will be undertaken via lift or on carpeted floors and would not amount to a level of disturbance even by the wildest stretch. This specific activity would likely be undertaken on a weekly basis, which would be substantially different to the level of activity undertaken in association with a residential flatted property. Guests use of communal areas on such a regular basis with luggage would be harmful to the amenity of the existing residents within the flatted block at 1 Station Road, North Berwick.’*

4. **Response** - The suggestion that the transfer of luggage through the communal areas of the building – an activity which would take place on a maximum of two occasions per week for a duration of less than 5 minutes on each, would have an adverse impact on residential amenity is entirely wrong and therefore misleading. Activities associated with permanently occupied flats (e.g. the weekly shop) are likely to be little different in terms of nuisance creation than the activities associated with luggage transfer. The fact that such movements can be undertaken via a lift and/or carpeted floors enjoying direct access to the floor on which the flat is located further minimises the potential of such nuisances arising in this instance.

*‘Whilst it is accepted that permanent residents may also make noise, this would not be on the same frequency as regularly changing guests who arrive and depart sometimes at unsociable hours. 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 entrances and stairwell as a result of people regularly accessing both the main building of 1 Station Road 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 given most residents would be responsible for disposing of their own waste and recycling and the level of cleaning or servicing of residential flats would not be to the same degree to which a unit of short-term holiday let would require cleaning and servicing. The nature of the use of the property as a short-term holiday let with a greater degree of movement associated would be harmful to the amenity of the occupants of the residential properties within the residential flatted building of 1 Station Road, North Berwick.’*

5. **Response** - As noted in Paragraph 3 above, permanent residents can have vastly different movements depending on their age, status (e.g. student, employment status, retired), leisure interests, family circumstances, health, or just their particular way of living. It is unfair, in the assessment of this application, to place all permanent residents in the same bracket and an assumption applied that they all behave in the same way. That is not and never will be the case. Amongst other things, the Planning Officer claims in her report that permanent residents would be responsible for disposing of their own waste and recycling, and as such, the level of cleaning or servicing activities would be less than that associated with a short term let. We disagree and consider the 1.5 to 2 hour time slot required to clean a flat could actually lead to a lesser level of activities and associated impacts on established residential amenity levels, than were such tasks undertaken by residents. Weight should also be given to the fact that there are many flat owners who use commercial cleaning services and there is no prohibition against them in doing so.

*Moreover, allowing frequently changing guests unfettered access to otherwise secure shared areas changes the actual and perceived level of security for the existing permanent residents. Whilst the 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.'*

6. **Response** – As noted in the Planning Statement submitted with the application, there will be a maximum of two and more often than not only one changeover of guests per week – this is not a ‘frequently changing guest’ scenario. A frequently changing guest scenario occurs in a hotel, bed and breakfast or similar facility where single night stays are offered to customers. This is not the case in this property where the minimum stay is 3 nights and the majority of customers are families. The prospects of guests and permanent residents actually meeting in the communal areas described are considered to be low and the threat to security even less.

*‘As a retrospective application, Flat 27 of 1 Station Road has been in operation for 7 years. Whilst no complaints have been logged by either Police Scotland or ELC’s Anti-Social Behaviour Team, objectors have raised concerns re- noise and disruption to the residential environment in which the holiday let is currently in operation in.’*

7. **Response** - We are surprised and disappointed that the Planning Officer appears to have given no weight whatsoever in her determination of the application to the fact that no complaints or objections have been made about the use of the property for the last seven years by Police Scotland or the Council’s Environmental Health or Anti-Social Behaviour Teams and has instead given significant weight to the content of objections made by third parties. Our client is unaware of any of the incidents referred or alluded to in the letters of objection and has concerns about their nature and authenticity as they have not been supported by any evidence. Erroneous claims made include, inter-alia, the following

- (i) This is not the first short term holiday let in Block 3. Flat 30 was used for such purposes in the past and managed by North Berwick Holiday Homes.
- (ii) Our client attended the AGM on 08<sup>th</sup> February 2024 referred to in the Report of Handling and at no time was any reference made to the issues raised in the letter of objection at that meeting.
- (iii) Our client is unaware of any guests staying in his apartment leaving the ‘main door off the snib’ but is aware of other occupiers doing so as they deal with their waste disposal or are in the process of transferring items to and from their flats.

8. As a consequence of the considerations outlined above and the fact that our client has operated a short term letting enterprise from this property for the past seven years and from two other properties in the block for periods in excess of ten years without any complaints being lodged with any statutory authority, there is no credible evidence in existence to suggest that the continued use of this property for such purposes will result in adverse impacts on residential amenity in the future.
9. We reserve the right to provide additional evidence in support of this review request or to respond to any further submissions from the Planning Officer or third parties in advance of its determination. Please acknowledge receipt and registration of this review request at your earliest convenience.

Yours faithfully



Derek Scott Planning

# List of Documents

**Document A -** Copy of Planning Application submitted to East Lothian Council

A(i) – Covering Letter dated 05<sup>th</sup> June 2024

A(ii) – Planning Application Forms dated 05<sup>th</sup> June 2024

A(iii) – Planning Statement

A(iv) – Location Plan

A(v) – Floor Plan

A(vi) – Access Routes

**Document B –** Decision Notice relating to Planning Application Reference Number 24/00575/P

**Document C –** Report of Handling relating to Planning Application Reference Number 24/00575/P



Our Ref – ep821/let001/05.06.2024/DS

05<sup>th</sup> June 2024

East Lothian Council  
Planning Department  
John Muir House  
Court Street  
Haddington  
East Lothian EH41 3HA

To whom it may concern,

**Change of use from residential flat to short term holiday let (Retrospective) at Flat 27, Royal Apartments, 1 Station Road, North Berwick, East Lothian EH39 4AT (Resubmission of Planning Application Reference Number 23/01509/P)**

Please find attached for your consideration an application seeking planning permission retrospectively for the change of use from a residential flat to a short term holiday let at Flat 27, Royal Apartments, 1 Station Road, North Berwick, East Lothian EH39 4AT. The application involves the resubmission of a previously refused application under the terms of Planning Application Reference Number 23/01509/P on 08<sup>th</sup> March 2024.

The following documents are included in association with the application:

- (i) Planning Application forms and accompanying certificates;
- (ii) Location Plan;
- (iii) Floor Plan;
- (iv) Plan showing access routes to and from the application property; and
- (v) Planning Statement

It is respectfully requested in your Council's consideration of this application that arrangements be made for a Planning Officer to visit the application property in order to develop a proper understanding and appreciation of considerations relevant to its determination. We are led to believe that such a visit did not take place during the assessment of the previous application and as a consequence of that a number of incorrect assumptions were made.

We reserve the right to provide additional information in support of the application in advance of its determination by your Council.

Please acknowledge receipt and registration of the application at your earliest convenience.

Thanking you in anticipation of your assistance.

Yours faithfully

Derek Scott



John Muir House Haddington EH41 3HA Tel: 01620 827 216 Email: [planning@eastlothian.gov.uk](mailto:planning@eastlothian.gov.uk)

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100669612-001

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

## Type of Application

What is this application for? Please select one of the following: \*

- Application for planning permission (including changes of use and surface mineral working).
- Application for planning permission in principle.
- Further application, (including renewal of planning permission, modification, variation or removal of a planning condition etc)
- Application for Approval of Matters specified in conditions.

## Description of Proposal

Please describe the proposal including any change of use: \* (Max 500 characters)

Change of use from residential flat to short term holiday let (Retrospective) at Flat 27, Royal Apartments, 1 Station Road, North Berwick, East Lothian EH39 4AT (Resubmission of Planning Application Reference Number 23/01509/P)

Is this a temporary permission? \*  Yes  No

If a change of use is to be included in the proposal has it already taken place?  
(Answer 'No' if there is no change of use.) \*  Yes  No

Has the work already been started and/or completed? \*

No  Yes – Started  Yes - Completed

Please state date of completion, or if not completed, the start date (dd/mm/yyyy): \*

Please explain why work has taken place in advance of making this application: \* (Max 500 characters)

The property has been in use as a Short Term Holiday Let since May 2017. Client unaware that planning permission was required to use as a short term holiday let when use commenced. Council were aware that it was being used for such purposes but did not advise that planning permission was required.

## Applicant or Agent Details

Are you an applicant or an agent? \* (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

Applicant  Agent

## Agent Details

Please enter Agent details

Company/Organisation:	Derek Scott Planning		
Ref. Number:		You must enter a Building Name or Number, or both: *	
First Name: *	Derek	Building Name:	
Last Name: *	Scott	Building Number:	21
Telephone Number: *	0131 535 1103	Address 1 (Street): *	Lansdowne Crescent
Extension Number:		Address 2:	
Mobile Number:		Town/City: *	Edinburgh
Fax Number:		Country: *	Scotland
		Postcode: *	EH12 5EH
Email Address: *	[REDACTED]		

Is the applicant an individual or an organisation/corporate entity? \*

Individual  Organisation/Corporate entity

## Applicant Details

Please enter Applicant details

Title:	Mr	You must enter a Building Name or Number, or both: *	
Other Title:		Building Name:	c/o Derek Scott Planning
First Name: *	Charles Torquil Hamilton	Building Number:	21
Last Name: *	McInroy	Address 1 (Street): *	Lansdowne Crescent
Company/Organisation	TM Holiday Lettings	Address 2:	
Telephone Number: *		Town/City: *	Edinburgh
Extension Number:		Country: *	United Kingdom
Mobile Number:		Postcode: *	EH12 5EH
Fax Number:			
Email Address: *	[REDACTED]		

## Site Address Details

Planning Authority:

East Lothian Council

Full postal address of the site (including postcode where available):

Address 1:

FLAT 27

Address 2:

1 STATION ROAD

Address 3:

Address 4:

Address 5:

Town/City/Settlement:

NORTH BERWICK

Post Code:

EH39 4AT

Please identify/describe the location of the site or sites

Northing

685258

Easting

354672

## Pre-Application Discussion

Have you discussed your proposal with the planning authority? \*

Yes  No

## Site Area

Please state the site area:

84.91

Please state the measurement type used:

Hectares (ha)  Square Metres (sq.m)

## Existing Use

Please describe the current or most recent use: \* (Max 500 characters)

Property has been used as a short term holiday let since 05th May 2017

## Access and Parking

Are you proposing a new altered vehicle access to or from a public road? \*

Yes  No

If Yes please describe and show on your drawings the position of any existing. Altered or new access points, highlighting the changes you propose to make. You should also show existing footpaths and note if there will be any impact on these.



Are you proposing any change to public paths, public rights of way or affecting any public right of access? \*  Yes  No

If Yes please show on your drawings the position of any affected areas highlighting the changes you propose to make, including arrangements for continuing or alternative public access.

How many vehicle parking spaces (garaging and open parking) currently exist on the application Site?

How many vehicle parking spaces (garaging and open parking) do you propose on the site (i.e. the Total of existing and any new spaces or a reduced number of spaces)? \*

Please show on your drawings the position of existing and proposed parking spaces and identify if these are for the use of particular types of vehicles (e.g. parking for disabled people, coaches, HGV vehicles, cycles spaces).

**Water Supply and Drainage Arrangements**

Will your proposal require new or altered water supply or drainage arrangements? \*  Yes  No

Do your proposals make provision for sustainable drainage of surface water?? \*  Yes  No  
(e.g. SUDS arrangements) \*

Note:-

Please include details of SUDS arrangements on your plans

Selecting 'No' to the above question means that you could be in breach of Environmental legislation.

Are you proposing to connect to the public water supply network? \*

Yes

No, using a private water supply

No connection required

If No, using a private water supply, please show on plans the supply and all works needed to provide it (on or off site).

**Assessment of Flood Risk**

Is the site within an area of known risk of flooding? \*  Yes  No  Don't Know

If the site is within an area of known risk of flooding you may need to submit a Flood Risk Assessment before your application can be determined. You may wish to contact your Planning Authority or SEPA for advice on what information may be required.

Do you think your proposal may increase the flood risk elsewhere? \*  Yes  No  Don't Know

**Trees**

Are there any trees on or adjacent to the application site? \*  Yes  No

If Yes, please mark on your drawings any trees, known protected trees and their canopy spread close to the proposal site and indicate if any are to be cut back or felled.

**Waste Storage and Collection**

Do the plans incorporate areas to store and aid the collection of waste (including recycling)? \*  Yes  No

If Yes or No, please provide further details: \* (Max 500 characters)

Property is located within a building where waste collection and recycling facilities are provided for.

## Residential Units Including Conversion

Does your proposal include new or additional houses and/or flats? \*

Yes  No

## All Types of Non Housing Development – Proposed New Floorspace

Does your proposal alter or create non-residential floorspace? \*

Yes  No

## Schedule 3 Development

Does the proposal involve a form of development listed in Schedule 3 of the Town and Country Planning (Development Management Procedure (Scotland) Regulations 2013 \*

Yes  No  Don't Know

If yes, your proposal will additionally have to be advertised in a newspaper circulating in the area of the development. Your planning authority will do this on your behalf but will charge you a fee. Please check the planning authority's website for advice on the additional fee and add this to your planning fee.

If you are unsure whether your proposal involves a form of development listed in Schedule 3, please check the Help Text and Guidance notes before contacting your planning authority.

## Planning Service Employee/Elected Member Interest

Is the applicant, or the applicant's spouse/partner, either a member of staff within the planning service or an elected member of the planning authority? \*

Yes  No

## Certificates and Notices

CERTIFICATE AND NOTICE UNDER REGULATION 15 – TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND) REGULATION 2013

One Certificate must be completed and submitted along with the application form. This is most usually Certificate A, Form 1, Certificate B, Certificate C or Certificate E.

Are you/the applicant the sole owner of ALL the land? \*

Yes  No

Is any of the land part of an agricultural holding? \*

Yes  No

## Certificate Required

The following Land Ownership Certificate is required to complete this section of the proposal:

Certificate A

# Land Ownership Certificate

Certificate and Notice under Regulation 15 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Certificate A

I hereby certify that –

(1) - No person other than myself/the applicant was an owner (Any person who, in respect of any part of the land, is the owner or is the lessee under a lease thereof of which not less than 7 years remain unexpired.) of any part of the land to which the application relates at the beginning of the period of 21 days ending with the date of the accompanying application.

(2) - None of the land to which the application relates constitutes or forms part of an agricultural holding

Signed: Derek Scott

On behalf of: TM Holiday Lettings

Date: 05/06/2024

Please tick here to certify this Certificate. \*

## Checklist – Application for Planning Permission

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Please take a few moments to complete the following checklist in order to ensure that you have provided all the necessary information in support of your application. Failure to submit sufficient information with your application may result in your application being deemed invalid. The planning authority will not start processing your application until it is valid.

a) If this is a further application where there is a variation of conditions attached to a previous consent, have you provided a statement to that effect? \*

Yes  No  Not applicable to this application

b) If this is an application for planning permission or planning permission in principle where there is a crown interest in the land, have you provided a statement to that effect? \*

Yes  No  Not applicable to this application

c) If this is an application for planning permission, planning permission in principle or a further application and the application is for development belonging to the categories of national or major development (other than one under Section 42 of the planning Act), have you provided a Pre-Application Consultation Report? \*

Yes  No  Not applicable to this application

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

d) If this is an application for planning permission and the application relates to development belonging to the categories of national or major developments and you do not benefit from exemption under Regulation 13 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, have you provided a Design and Access Statement? \*

Yes  No  Not applicable to this application

e) If this is an application for planning permission and relates to development belonging to the category of local developments (subject to regulation 13. (2) and (3) of the Development Management Procedure (Scotland) Regulations 2013) have you provided a Design Statement? \*

Yes  No  Not applicable to this application

f) If your application relates to installation of an antenna to be employed in an electronic communication network, have you provided an ICNIRP Declaration? \*

Yes  No  Not applicable to this application

g) If this is an application for planning permission, planning permission in principle, an application for approval of matters specified in conditions or an application for mineral development, have you provided any other plans or drawings as necessary:

- Site Layout Plan or Block plan.
- Elevations.
- Floor plans.
- Cross sections.
- Roof plan.
- Master Plan/Framework Plan.
- Landscape plan.
- Photographs and/or photomontages.
- Other.

If Other, please specify: \* (Max 500 characters)

Provide copies of the following documents if applicable:

- |  |  |
|--|--|
| A copy of an Environmental Statement. *  | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A |
| A Design Statement or Design and Access Statement. *                                   | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A |
| A Flood Risk Assessment. *   | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A |
| A Drainage Impact Assessment (including proposals for Sustainable Drainage Systems). * | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A |
| Drainage/SUDS layout. *  | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A |
| A Transport Assessment or Travel Plan  | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A |
| Contaminated Land Assessment. *  | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A |
| Habitat Survey. *  | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A |
| A Processing Agreement. *  | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A |

Other Statements (please specify). (Max 500 characters)

Planning Statement

## Declare – For Application to Planning Authority

I, the applicant/agent certify that this is an application to the planning authority as described in this form. The accompanying Plans/drawings and additional information are provided as a part of this application.

Declaration Name: Mr Derek Scott

Declaration Date: 05/06/2024

# **PLANNING STATEMENT**

**Change of use from residential flat to short term holiday let  
(Retrospective)**

at

**Flat 27, Royal Apartments  
1 Station Road  
North Berwick  
East Lothian  
EH39 4AT**

Prepared by

**Derek Scott Planning  
Planning and Development Consultants**



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Tel No: 0131 535 1103  
E-Mail: [enquiries@derekscottplanning.com](mailto:enquiries@derekscottplanning.com)**

On behalf of

**Charles Torquil Hamilton McInroy  
(TM Holiday Lettings)**

# Executive Summary

## Change of use from residential flat to short term holiday let (Retrospective) at Flat 27, Royal Apartments, 1 Station Road, North Berwick, East Lothian EH39 4AT

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- This statement has been prepared by Derek Scott Planning, Chartered Town Planning and Development Consultants on behalf of our client, Mr. Charles **Torquil** Hamilton McInroy (TM Holiday Lettings). It is in support of an application submitted to East Lothian Council seeking planning permission retrospectively to the change of use of a property from a residential flat to a short-term holiday let at Flat 27, Royal Apartments, 1 Station Road, North Berwick, East Lothian EH39 4AT.



*Royal Apartments from Station Road*

- The application property is a flatted residential unit located on the first floor of a 4-5 storey building lying to the south east of the Station Road/Station Hill junction in North Berwick. The property is 1 of 34 flats within the building; occupies a position to the south of the overall block; and is accessed, along with 11 other flats (Nos 23-34 Royal Apartments) via a shared front and back entrance door, an internal communal stair, lift and hallway. A total

of 3 no. flats (Nos 26-28) occupy the first floor level of the building. The area surrounding the site is predominantly residential in nature and lies in close proximity to the train station; to bus stops on Dirleton Avenue and to the town centre. The site also lies within the North Berwick Conservation Area.

- The flat contains two bedrooms (one en-suite), a bathroom, a kitchen and a lounge/dining area with access to an external balcony and has its own allocated parking space within the private car park to the north. No alterations have been undertaken to the flat or are proposed as part of the application to facilitate its continued use as a short-term holiday let.
- The flat has been used for short-term letting purposes since May 2017 and in that period has been occupied, on average, for 67% of the calendar year (245 of 365 nights). It is one of three owned by our client and used for short term holiday letting purposes within the same block. The two other flats owned (Nos. 8 and 10) have been operating as such since 2011/2012 and have recently benefited from Certificates of Lawful Development. Two further flats within the block, which are in separate ownership, have also been granted Certificates of Lawful Development. It is understood from representations previously made to the Council that only 6 of the 34 (18%) units in the block are in permanent residential occupation with the balance in use as second homes.
- An earlier application for the same proposal submitted under Planning Application Reference Number 23/01509/P was refused by the Appointed Planning Officer under delegated powers on the 08<sup>th</sup> March 2024 for the following reason:
  1. *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 Station Road 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.*
- The earlier application referred to was submitted by our client following a complaint lodged with the Council at some point in 2023 by a member of the public concerning the use of the application property and his two other properties within the block as short term letting facilities.
- The Planning Officer cited a number of claims in support of their position that the proposed use was incompatible with and harmful to the amenity of the occupants of other residential properties within the block. Those claims and our responses to them are outlined below.
  - (i) *The regular turnover of users/occupants would change the nature of comings and goings to the property and within the communal area.*

**Response** – The application property has operated for the best part of seven years without complaint. Four other properties within the block have operated without complaint for

periods in excess of ten years. The Council were aware of the properties operating as short-term lets but took no action until a complaint was made from a member of the public. As the minimum length of stay within the property is 3 nights; the average length of stay is 7 nights; and occupancy levels during the last 7 years are 67% (245 nights per annum), it is not accepted that the nature of coming and goings to the property are materially different or in any way more imposing or invasive than those associated with permanent residents.

(ii) *The transfer of luggage and other possessions through the communal areas would lead to a level of disturbance and nuisance not typical of residential use.*

**Response** – Movements to and from the application property will, based on the typical characteristics of guests, take place on a maximum of two occasions during the week but in all likelihood less. The movement of that luggage from a vehicle to the flat will take less than 5 minutes on each occasion and will be undertaken via a lift or/and on carpeted floors remote from the majority of residential properties within the block. That does not constitute a level of disturbance, even by the wildest stretch of the imagination, which can be adjudged to be detrimental to residential amenity.

(iii) *Guests would sometimes arrive and depart at unsociable hours.*

**Response** – It is almost inevitable that guests, permanent residents and second home owners will very occasionally arrive and depart at unsociable hours. However, given that 80% of guests staying in the application property over the past seven years have comprised families and there have been no complaints about disturbances to the statutory authorities in that time no evidence exists to support such claims.

(iv) *There would be extra comings and goings to the property due to servicing and cleaning arrangements.*

**Response** – As with luggage movements, activities associated with servicing and cleaning arrangements will occur at most twice a week but more often than not once a week. They will be undertaken during the day time and will be complete within a 1.5-2 hour period. Such arrangements would be little different in the case of a permanently occupied property benefitting from the services of a cleaner. Indeed, given the occupancy levels stated, the impact would, in all likelihood, be less.

(v) *The use of the flat as a short term let would compromise the security of permanent residents.*

**Response** – The application property has been used as a short-term holiday let since May 2017 and during that time our client is unaware of any breaches of security. No security breaches have been recorded in association with his other properties which he has operated since 2010/2011 either. That is down, in no small part to the strict booking and



management arrangements our client has in place; the clientele he attracts; and the pricing structure he adopts.

- It is of considerable concern that the Planning Officer in their determination of the earlier application, which appears to have taken place without a visit to the application property, has based their decision to refuse on a perception that guests to self-catering holiday accommodation are disrespectful to both the property and the wider neighbourhood within the area with some being portrayed as opportunist criminals. Based on our client's personal experiences during the past 10+ years, those perceptions have not been borne out in reality. In light of the considerations outlined, it is respectfully requested that planning permission be granted for the continued use of the property as a short-term holiday let as applied for.

# PLANNING STATEMENT

**Change of use from residential flat to short term holiday let (Retrospective) at Flat 27, Royal Apartments, 1 Station Road, North Berwick, East Lothian EH39 4AT**

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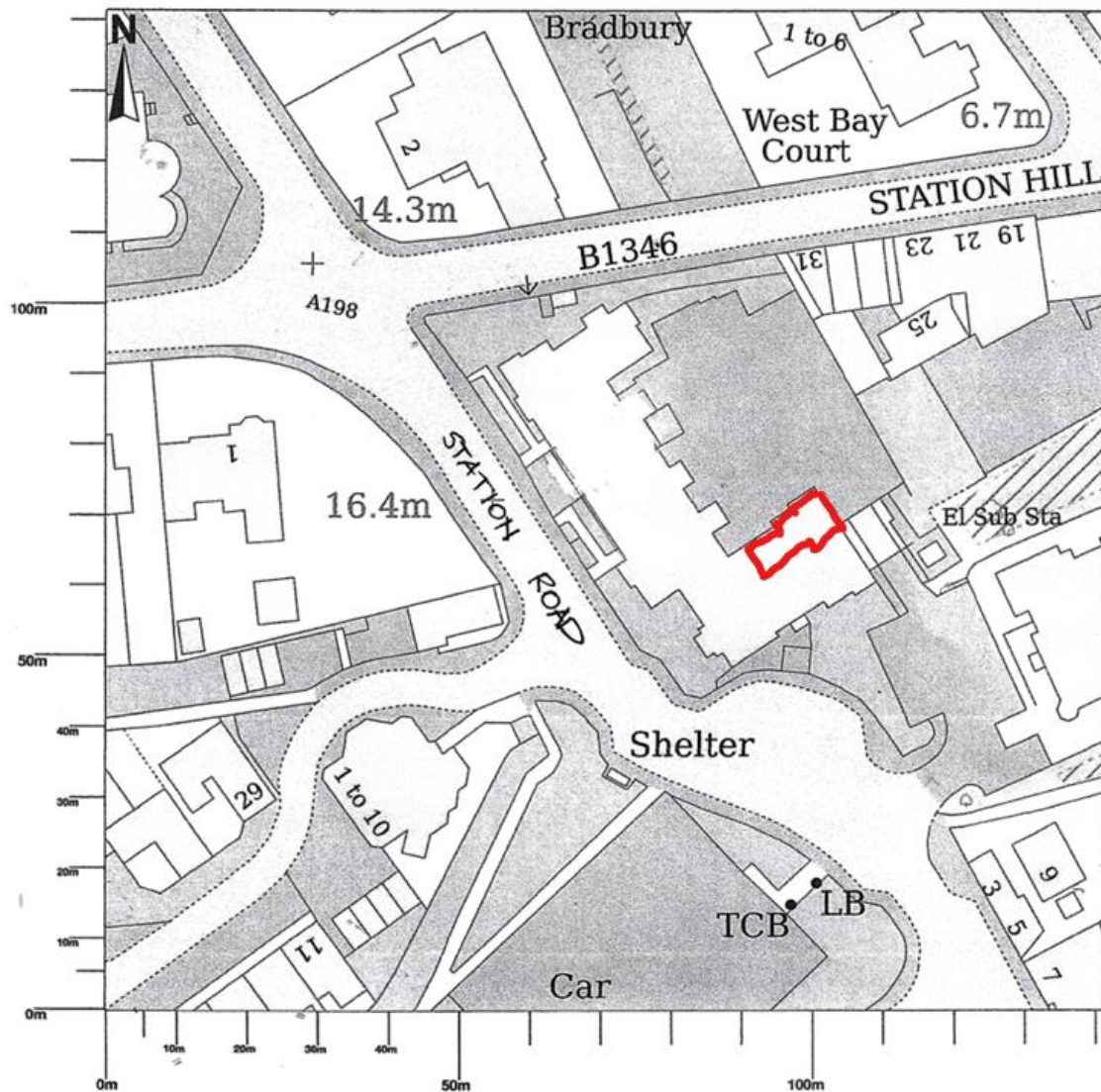
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# PLANNING STATEMENT

Change of use from residential flat to short term holiday let (Retrospective) at Flat 27,  
Royal Apartments, 1 Station Road, North Berwick, East Lothian EH39 4AT

## 1. INTRODUCTION

- 1.1 This statement has been prepared by Derek Scott Planning, Chartered Town Planning and Development Consultants on behalf of our client, Mr. Charles **Torquil** Hamilton McInroy (TM Holiday Lettings). It is in support of an application submitted to East Lothian Council seeking planning permission retrospectively to the change of use of a property from a residential flat to a short-term holiday let at Flat 27, Royal Apartments, 1 Station Road, North Berwick, East Lothian EH39 4AT.



*Location Plan*

## 2. DESCRIPTION OF APPLICATION SITE AND PROPOSAL

2.1 The application property is a flatted residential unit located on the first floor of a 4-5 storey building lying to the south east of the Station Road/Station Hill junction in North Berwick. The property is 1 of 34 flats within the building; occupies a position to the south of the overall block; and is accessed, along with 11 other flats (Nos 23-34 Royal Apartments) via a shared front and back entrance door, an internal communal stair, lift and hallway. A total of 3 no. flats (Nos 26-28) occupy the first floor level of the building. The area surrounding the site is predominantly residential in nature and lies in close proximity to the train station; to bus stops on Dirleton Avenue; and to the town centre. The site also lies within the North Berwick Conservation Area.

2.2 The flat contains two bedrooms (one en-suite), a bathroom, a kitchen and a lounge/dining area with access to an external balcony and has its own allocated parking space within the car park to the north. No alterations have been undertaken to the flat or are proposed to facilitate the continued use of the property as a short-term holiday let.



*Existing Floor Plan*



*Lounge*



*Dining Area*



*Kitchen*



*Bedroom 1*



*Bedroom 2*



*Kitchen*



*Balcony & View from Balcony with car park below*



*Front & Rear Access Arrangements to Building*

2.3 As noted, the planning application seeks permission retrospectively to use the flat as holiday accommodation. It has been used for such purposes since May 2017 and is one of three owned by our client and used for short term holiday letting purposes within same block. The two other flats owned by our client (Nos. 8 and 10) have been operating as such since 2011/2012 and have recently benefited from Certificates of Lawful Development granted under the following application reference numbers:

**23/01501/CLU** - Flat 8, 1 Station Road, North Berwick – Granted 21<sup>st</sup> March 2024

**23/01508/CLU** - Flat 10, 1 Station Road, North Berwick – Granted 13<sup>th</sup> March 2024

A further two flats within the block which are in separate ownership were also granted Certificates of Lawful Development under the terms of application reference numbers **23/01094/CLU** and **23/01511/FUL** on 17<sup>th</sup> November 2023 and 13<sup>th</sup> March 2024.

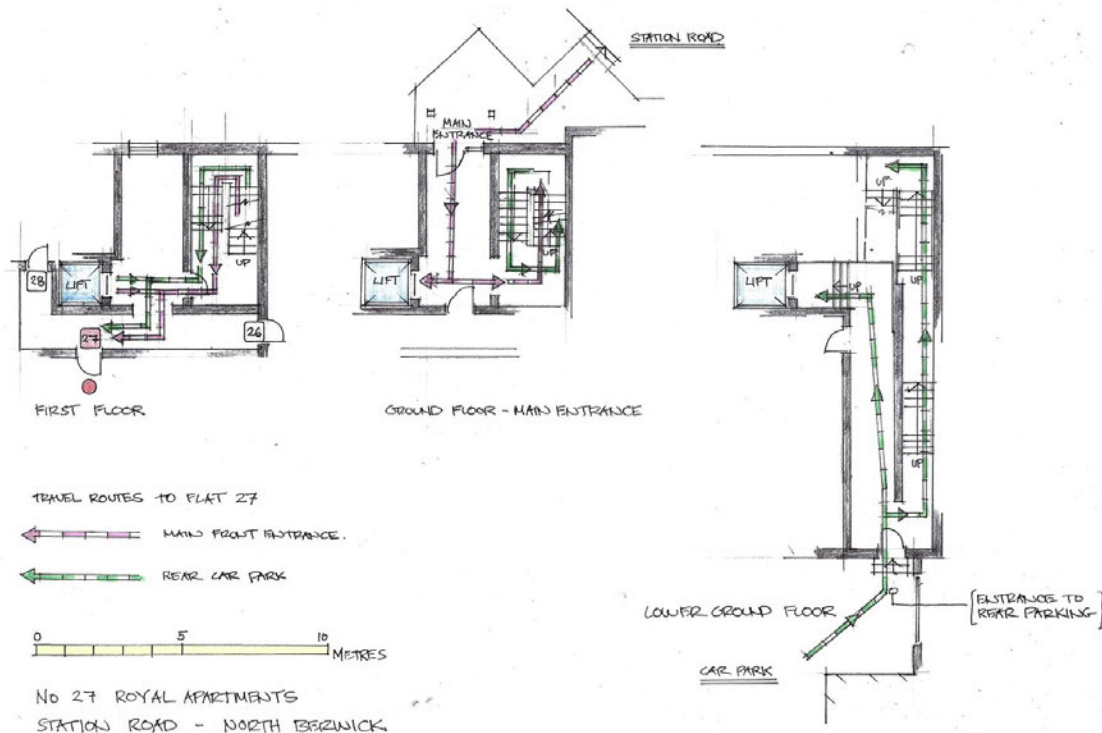
2.4 A previous application seeking planning permission to change the use of the application property (Flat 27, 1 Station Road, North Berwick) submitted under the terms of Planning Application Reference Number 23/01509/P was refused by the Council under delegated powers on 08<sup>th</sup> March 2024 for the following reason:

1. *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 Station Road 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.*

2.5 Copies of the Decision Notice and Report of Handling relating to the application referenced are attached as **Documents 1 & 2**. The reason for the refusal of the previous application (**23/01509/P**) is addressed further in Section 3.

2.6 Outlined below is a list of key characteristics associated with the short-term holiday let:

- (i) Our client’s focus is to offer high quality accommodation to UK and International based tourists coming to and staying in North Berwick.
- (ii) The property has been marketed and used for short term letting purposes since May 2017 and, insofar as our client is aware, has not been the subject of any complaints until 2023.
- (iii) Whilst the flat has a maximum capacity for five guests, the majority of stays comprise between 2 and 4 individuals. Approximately 80% of stays involve families with approximately 20% involving golfers.
- (iv) The average length of stay is 7 nights although packages of 3 to 90 nights are offered.
- (v) During the past seven years, the property has been occupied for an average of 245 nights per annum (67% occupancy levels)
- (vi) The property benefits from a dedicated parking space within the development from which direct access to the flat is achievable. The vast majority of guests (95+%) arrive by car with occasional bus and train arrivals. Our client either meets guests on arrival or they use the key safe box provided.
- (vii) Guests arriving by car will access the building through the rear door and proceed to the first floor via the lift or stairs – the latter being carpeted. No other residential properties are directly passed enroute to the application property although the entrances, stairs and lifts are shared with other flats in this part of the block (Nos 23-34). Access arrangements are detailed in the diagrams below which are also attached as **Document 3**.



*Diagram showing access arrangements to application property*

- (viii) Guests are only likely to use the front door off Station Road when accessing facilities within the town (e.g. shopping, eateries, public transport, beach etc.) on foot.
- (ix) Cleaning operations inclusive of bed changes, bins and recycling take place during day time following the departure of guests and as required for longer stays. Generally speaking, such operations take place on a maximum of 2 times per week but usually only once when occupied. They are of 1.5-2 hours duration.
- (x) The property is advertised on Airbnb, Trip Advisor and on our client's own website ([www.theroyalapartment.co.uk](http://www.theroyalapartment.co.uk)).



*Communal entrances and stairs are carpeted*

2.7 Outlined below are the arrangements our client has in place for the operation and management of the short-term letting accommodation:

- (i) The number of guests accepted within the property is limited to a maximum of 5 with stays limited to a minimum of 3 nights and a maximum of 90 nights.
- (ii) The ID of all guests is verified. This is undertaken through online platforms with additional security and a vetting process required to be completed by guests prior to



booking. The property will not be available for ‘*events*,’ and will not be available to book for other occasional events such as stag or hen parties or similar.

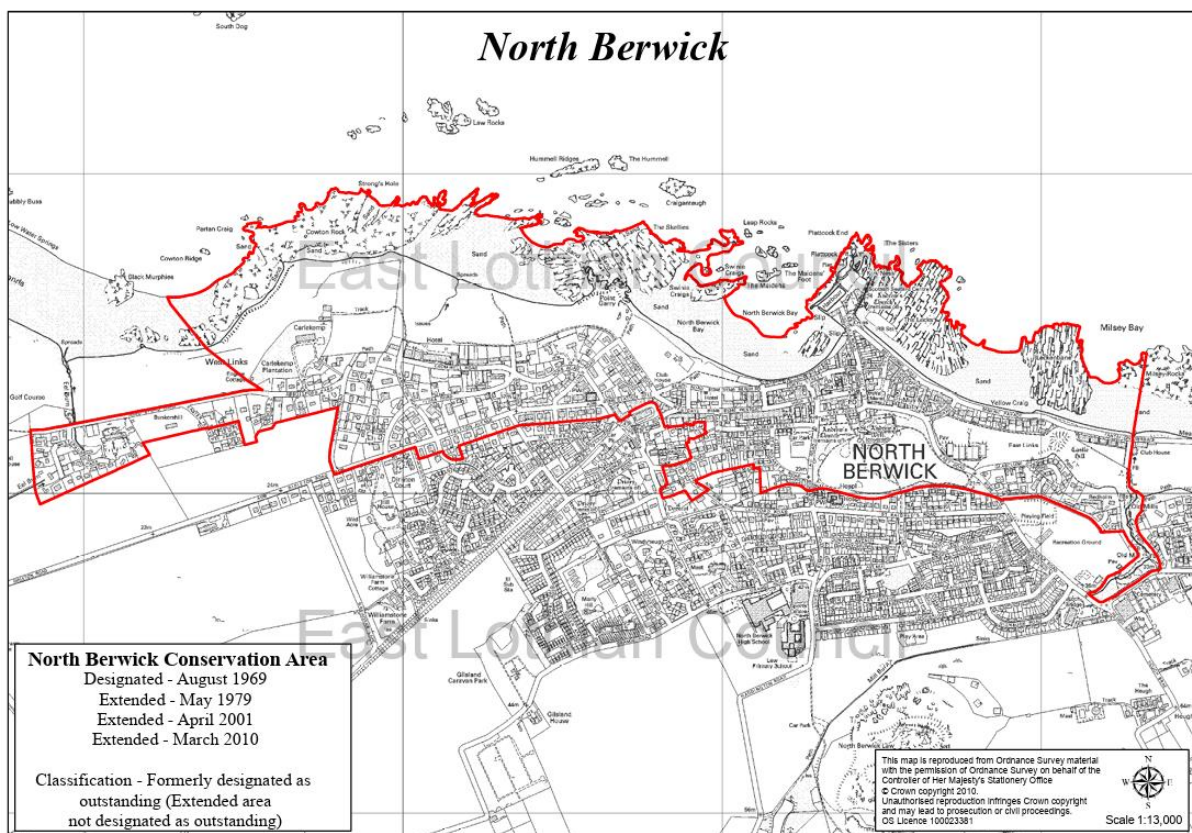
- (iii) Guests must sign up to a list of house rules as part of the reservation process forming part of the terms and conditions of the service. The rules are set up to ensure that guests are respectful and do not have an adverse impact on the residential amenity enjoyed by neighbouring properties.
- (iv) Smoking within the property is prohibited.
- (v) No pets are allowed.
- (vi) Our client or a representative is always available to respond to queries or address issues if required. Contact numbers and email addresses are shared with guests for use during their stay.
- (vii) Our client has appropriate building and liability insurance, interlinked smoke detectors, electrical safety certificate, legionella risk assessment, fire risk assessment and management protocol.

### 3. ASSESSMENT OF DEVELOPMENT PROPOSALS

3.1 Section 25 of the Town and Country Planning (Scotland) Act 1997 (as amended) (hereinafter referred to as 'The Act') states that:

*'where in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the development plan unless material considerations indicate otherwise.'*

As the application site lies within the North Berwick Conservation Area, the decision maker is also required under the terms of Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area.



*North Berwick Conservation Area*

3.2 In the context of Section 25 referred to above, it is worth referring to the House of Lord's Judgement on the case of the City of Edinburgh Council v the Secretary of State for Scotland 1998 SLT120. It sets out the following approach to deciding an application under the Planning Acts:

- *identify any provisions of the development plan which are relevant to the decision;*
- *interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies;*
- *consider whether or not the proposal accords with the development plan;*

- *identify and consider relevant material considerations, for and against the proposal; and*
- *assess whether these considerations warrant a departure from the development plan.*

3.3 The relevant development plan for the area comprises National Planning Framework 4 (NPF4) and the East Lothian Local Development Plan (ELLDP). Other material considerations relevant to the determination of the application include the Planning History related to the property as referenced in Paragraph 2.4 above.

#### **National Planning Framework 4 (NPF4)**

3.4 National Planning Framework 4 (NPF4) was adopted by Scottish Ministers on 13<sup>th</sup> February 2023 and contains 33 no. policies against which applications for development proposals now require to be assessed. Section 24(3) (i) of the Town and Country Planning (Scotland) 1997 Act states that *‘in the event of any incompatibility between a provision of the National Planning Framework and a provision of a local development plan, whichever of them is the later in date is to prevail.’* This means that if there is anything in the East Lothian Local Development Plan that is deemed to be incompatible with a comparable provision in NPF4, it is the provision in NPF4 that is to be taken into consideration by the Council in its decision-making, with the LDP policy in question being treated as having been effectively superseded. In a letter dated 8<sup>th</sup> February 2023 dealing with the transitional arrangements for NPF4, the Minister for Planning and the Chief Planner of Scotland gave the following advice to decision-makers in relation to the application of NPF4:

*‘Section 25 of the 1997 Act requires that decisions are made in accordance with the development plan unless material considerations indicate otherwise. **Application of planning judgement to the circumstances of an individual situation remains essential to all decision making, informed by principles of proportionality and reasonableness. It is important to bear in mind NPF4 must be read and applied as a whole. The intent of each of the 33 policies is set out in NPF4 and can be used to guide decision-making. Conflicts between policies are to be expected. Factors for and against development will be weighed up in the balance of planning judgement.**’ (highlighting added)*



Within the context described above, the following policies within NPF4 are of prime importance in the determination of the application:

- Policy 1** – Sustainable Places
- Policy 7** – Historic Assets and Places
- Policy 13** – Sustainable Transport
- Policy 30** – Tourism

#### **Policy 1 – Sustainable Places**

3.5 The intent of Policy 1 in NPF4 on *‘Sustainable Places’* is *‘to encourage, promote and facilitate development that addresses the global climate emergency and nature crisis.’* The use of the

property, which is in a highly sustainable location in terms of its accessibility via foot, bicycle and public transport, as a short-term holiday let, will not have an adverse impact on the global climate and nature crises.

#### **Policy 7 – Historic Assets and Places**

- 3.6 The intent of Policy 7 on ‘*Historic Assets and Places*’ is to ‘*protect and enhance historic environment assets and places, and to enable positive change as a catalyst for the regeneration of places.*’ As no alterations have been undertaken to the property or are proposed to facilitate its ongoing use as a short-term holiday letting facility, there are no adverse impacts on the character or appearance of North Berwick Conservation Area and as a consequence of this the proposal accords with the terms of Policy 7.

#### **Policy 13 – Sustainable Transport**

- 3.7 The intent of Policy 13 in NPF4 on ‘*Sustainable Transport*’ is ‘*to encourage, promote and facilitate developments that prioritise walking, wheeling, cycling and public transport for everyday travel use and reduce the need to travel unsustainably.*’ As noted previously, the application site is in a highly sustainable location and accessible via a choice of modes of transport including on foot, by cycle and by public transport (bus and rail based) thus comfortably meeting the requirements of Policy 13.

#### **Policy 30 – Tourism**

- 3.8 The intent of Policy 30 in NPF4 on ‘*Tourism*’ is ‘*to encourage, promote and facilitate sustainable tourism development which benefits local people, is consistent with our net zero and nature commitments, and inspires people to visit Scotland.*’ The policy, in its entirety, states the following:

- a) *Development proposals for new or extended tourist facilities or accommodation, including caravan and camping sites, in locations identified in the LDP, will be supported.*
- b) *Proposals for tourism related development will take into account:*
  - i. *The contribution made to the local economy;*
  - ii. *Compatibility with the surrounding area in terms of the nature and scale of the activity and impacts of increased visitors;*
  - iii. *Impacts on communities, for example by hindering the provision of homes and services for local people;*
  - iv. *Opportunities for sustainable travel and appropriate management of parking and traffic generation and scope for sustaining public transport services particularly in rural areas;*
  - v. *Accessibility for disabled people;*
  - vi. *Measures taken to minimise carbon emissions;*
  - vii. *Opportunities to provide access to the natural environment.*
- c) *Development proposals that involve the change of use of a tourism-related facility will only be supported where it is demonstrated that the existing use is no longer viable and that there is no requirement for alternative tourism-related facilities in the area.*

- d) *Proposals for huts will be supported where the nature and scale of the development is compatible with the surrounding area and the proposal complies with relevant good practice guidance.*
- e) ***Development proposals for the reuse of existing buildings for short term holiday letting will not be supported where the proposal will result in:***
  - 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.*** (Highlighting added)

3.9 Part 2 (e) of Policy 30 is directly relevant to the application and is taken to mean that proposals for using buildings as short-term holiday lets will be considered acceptable in principle where:

- (i) *The use will not impact adversely on local amenity or the character of a neighbourhood or area; or*
- (ii) *The loss of residential accommodation is outweighed by demonstrable local economic benefits.*

#### ***Impact on Amenity***

3.10 The Planning Officer, in their assessment of the earlier application (Planning Application Reference Number 23/01509/P) concluded that the proposal was incompatible with and harmful to the amenity of the occupants of other flatted properties used as residential dwellings within the wider accommodation block (Refer to **Documents 1 & 2**). In arriving at this conclusion the Planning Officer did not make a request to visit or to gain access to the application property.

3.11 The Planning Officer's reasons for arriving at the conclusion referred to is outlined within a number of Paragraphs contained within Pages 4 and 5 of the Report of Handling on that application (See **Document 2**). We have set out below in blue the relevant paragraphs referred to with our responses following.

*The Council's Senior Environmental Health Officer advises 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 lets 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, it is stated 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 Council's Antisocial Behaviour Team advise that they have had no records of any incidents relating to any anti-social behaviour matters at this address and thus they raise no objection to this retrospective planning application.*

*Police Scotland advise that there have been no police incidents at this address (having checked their records over the last three years) and thus they raise no objection to this retrospective planning application.*

**Response** – Whilst it is accepted that the normal use of a property would not result in a loss of amenity to neighbours, it is equally the case that the normal use of the property as a short-term holiday let would not result in a loss of amenity to neighbours either. As noted previously the application property has been operating as a short-term holiday let since 2017. There are four other holiday lets within the block (2 owned by our client) which have been operating for periods in excess of ten years. Our client only became aware that planning permission was required to use his properties as short term holiday lets following an approach from the Council’s Planning Department in 2023 who had received an allegation from a member of the public. Our client believes that the allegation referred to may have come from an individual in the block who has a personal vendetta against him. In any event it is evidently clear that the four other properties referred to have operated without complaint for periods in excess of 10 years and the application property for a period in excess of 7 years without any complaints having been lodged with the Council. It seems very odd and quite inappropriate in the context of the history described that it can now be concluded that the continued use of the property would have an adverse impact on residential amenity.

*The flatted building of 1 Station Road, to which the applicant's flat is contained within can be accessed from Station Road to the west or from the private carpark to the east. The building has both lift and stair provision. From the rear entrance, the lift or stairs can be taken up to the first floor. The entrance from Station Road leads directly to the first-floor level where the applicant's property is located, along with a number of other residential flatted properties. The applicant confirms that in total, there are 8 flats on the first-floor level alone.*

**Response** – Whilst there are eight flats on the first floor level of the building, only three of those flats (Nos 26-28) are directly accessible from the access arrangements existing off the Car Park and from Station Road. This would have been evident had the Planning Officer visited the property and gained access to the block.

*The use of the application property as a holiday let enables it to be let out for short duration stays resulting in a turnover of people over short time periods with a significant proportion of occupants likely to be holiday related visitors. Such a regular turnover of users/occupants would change the nature of comings and goings not only to the application property itself but also within the communal entrances and internal lift and stairwell 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 entrances and stair/lift which in itself would lead to a level of disturbance and nuisance not associated with the permanent/long term residential use of the property. This is harmful to the amenity of the occupants of the residential properties within the residential flatted building of 1 Station Road, North Berwick. Whilst it is accepted that permanent residents may also make noise, this would not be on the same frequency as regularly changing guests who arrive and depart sometimes at unsociable hours, and this differs from typical residential circumstances.*

**Response** – Whilst it is accepted that most users/occupants of the holiday let would take luggage to the property via the communal entrances and stair/lift, such movements would only take place during arrivals and departures at maximum frequencies of twice a week but more likely once a week given that the average length of stay is at least seven days. The movement of

luggage referred to takes no longer than five minutes and is undertaken via a lift or on carpeted stairs/corridors thus minimising any associated noise disturbance.

The noise associated with such movements will be little different to a residential occupier taking home the weekly shop – actions which, generally speaking, are not undertaken by holiday guests, who, notwithstanding the facilities available within the property prefer to eat out in North Berwick's many fine restaurants and other eateries.

*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 entrances and stairwell as a result of people regularly accessing both the main building of 1 Station Road 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 of 1 Station Road, North Berwick.*

**Response** – It is highly unlikely that guests staying in the holiday let will access or exit the property more frequently than permanent residents. On balance and adopting a sensible measured approach, it is considered that the comings and goings from the property are unlikely to be significantly different between permanent residents and holiday guests. On the latter note, permanent residents can have vastly different movements depending on their age, status (e.g. student, employment status, retired) leisure interests, family circumstances, health, or just their way of living. Healthcare professionals for example might work shifts coming in at odd times of the day and night; a single person with care needs might be visited by carers several times a day; a pet owner may return on numerous occasions during the day or employ others to so – all leading to activities not associated with a short-term holiday let. Many permanent residents would also have deliveries from the likes of Amazon and takeaways at all times of the day and night indeed in all probability far in excess of people staying on holiday.

As far as cleaning/servicing arrangements are concerned, these as noted previously, take place following the departure of and prior to the arrival of guests. At most (based on 3-night stays) they will take place twice a week but would generally take place once a week (average stay is 7 nights). The cleaning and servicing arrangements associated with the property, which are undertaken within a 1.5-2 hour slot during the day time are no different in nature to cleaning activities undertaken in a privately occupied apartment where such services are engaged.

*Moreover, allowing frequently changing guests unfettered access to otherwise secure shared areas changes the actual and perceived level of security for the existing permanent residents. Whilst the 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.*

**Response** – Given the booking arrangements our client has in place and the prices being charged for the accommodation offered, it is not unreasonable to expect the guest clientele to be one that is respectful to their surroundings. Five properties within the block have been operated as short term holiday lets for the past 7-11 years during which time period there has not been a

single security breach or complaint lodged with either the Council or the Police. That being the case, the Planning Officer's concerns about security and the portrayal of visitors to the apartment as effectively criminals are entirely unfounded.

*As a retrospective application, Flat 27 of 1 Station Road is currently in operation and has been for a number of years. Whilst no complaints have been logged by either Police Scotland or ELC's Anti-Social Behaviour Team, objectors have raised concerns re- noise and disruption to the residential environment in which the holiday let is currently in operation in.*

**Response** – Whilst objectors may well have raised concerns about noise and disruption in responding to the current planning application, the point of significance in this instance is that there is no evidence demonstrating that any complaints have been made about any incidents arising from the use of the application property or the four other short term lets within the block of accommodation, four of which have been operating for 10-11 years and the application property for 7 years. In such circumstances we would question the authenticity of the complaints being made to the previous application and the weight given to those objections in the determination of the application by the Planning Officer.

*Given the specific circumstances and location of the application property within the residential building of 1 Station Road, North Berwick which contains a number of permanent/long term residences and which shares a communal front and rear entrance, stairwell, lift and hall with others, 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 residential properties within the residential building of 1 Station Road, North Berwick. 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.*

**Response** – It is with regret to note that the assessment of our client's earlier application seems to have been tarred with the same brush as many others within the Council area where a general presumption against the use of properties for short-term letting purposes in cases involving the use of shared access arrangements has been adopted. Little if any consideration appears to have been given to the principle that all applications should be considered on their own merits. In this particular instance, the application property and four others within the wider block of accommodation have been operating as short term holiday lets for significant periods of time (7-11 years) without any complaints having been made with the relevant authorities (Police Scotland and East Lothian Council). That may, in part, be due to the access arrangements associated with this particular property which can be accessed without disturbance to neighbours; in part to the management of the property by our client; and in part by the nature of the clientele attracted to it. The suggestion that the continued use of the property as a short term holiday let as applied for in the application being incompatible with and harmful to the amenity of occupiers of other residential properties in the accommodation block, is, in our opinion, entirely unfounded.

- 3.12 As a consequence of the factors outlined, the proposal is considered to be entirely compliant with the terms of Policy 30 (2) (e) (i) in NPF4.



***Loss of Residential Accommodation – demonstrable local economic benefits***

- 3.13 Part 2(e) (ii) of Policy 30 in NPF 4 requires the loss of residential accommodation to be outweighed by demonstrable local economic benefits. In responding to this particular element of the policy we would cite in support of the application the following considerations as outlined on Pages 6 & 7 of the Planning Officer's Report of Handling (Refer to **Document 2**):

*The Council's Housing Strategy & Development Service state that the change in use of this property from a long-term residential dwelling to a short term let is not a significant loss because (i) the property has been a short-term holiday let for 5 years or more; and (ii) the property is not considered adaptable. Accordingly, the Council's Housing Strategy & Development Service raise no objection to this retrospective planning application.*

*The Council's Economic Development Service Manager advises 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.*

*In the particular circumstances of this case it is stated that (i) the aggregate economic benefit from short terms lets as vital element in the supply of visitor bedstock within the County and the provision of a sustainable and resilient supply of overnight holiday accommodation is key to delivering the Council's strategic priority of being "Scotland's leading coastal, leisure and food & drink destination"; (ii) based on primary research commissioned by the Council there is a demonstrable economic benefit to having a wide range of accommodation types in East Lothian with the tourism sector contribution £155m to the local economy in 2021 and supporting 10% of the workforce; (iii) visitors staying overnight in non-serviced accommodation contributed £60.1m to the local economy in 2021 and the majority of visitors to East Lothian are repeat visitors; (iv) non-serviced accommodation (short term holiday lets) contributes 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 2 FTE jobs; (v) the proposal provides high-quality tourist accommodation attracting visitors to North Berwick and the surrounding area providing economic benefit; and (vi) 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. Therefore, the Council's Economic Development Service Manger supports this retrospective planning application stating that the change of use of the flat to short term holiday let accommodation 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.*

*However, and notwithstanding that the change of use of the applicant's flat would not result in the loss of residential accommodation, 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.*

- 3.14 Having assessed the application proposals against the terms of all relevant policies within NPF4 and applying the principles of proportionality and reasonableness advocated by the Planning

Minister and Chief Planner in their letter dealing with the transitional arrangements for NPF4 (referred to previously in Paragraph 3.4), the proposals, when ‘viewed in the round’ are compatible and should therefore be supported.

### East Lothian Local Development Plan

3.15 The East Lothian Local Development Plan was adopted by East Lothian Council on 27<sup>th</sup> September 2018. The application site lies within the North Berwick Settlement Envelope in an area designated as predominantly residential. Policies within the Local Development Plan which are of relevance to the determination of the application include the following:

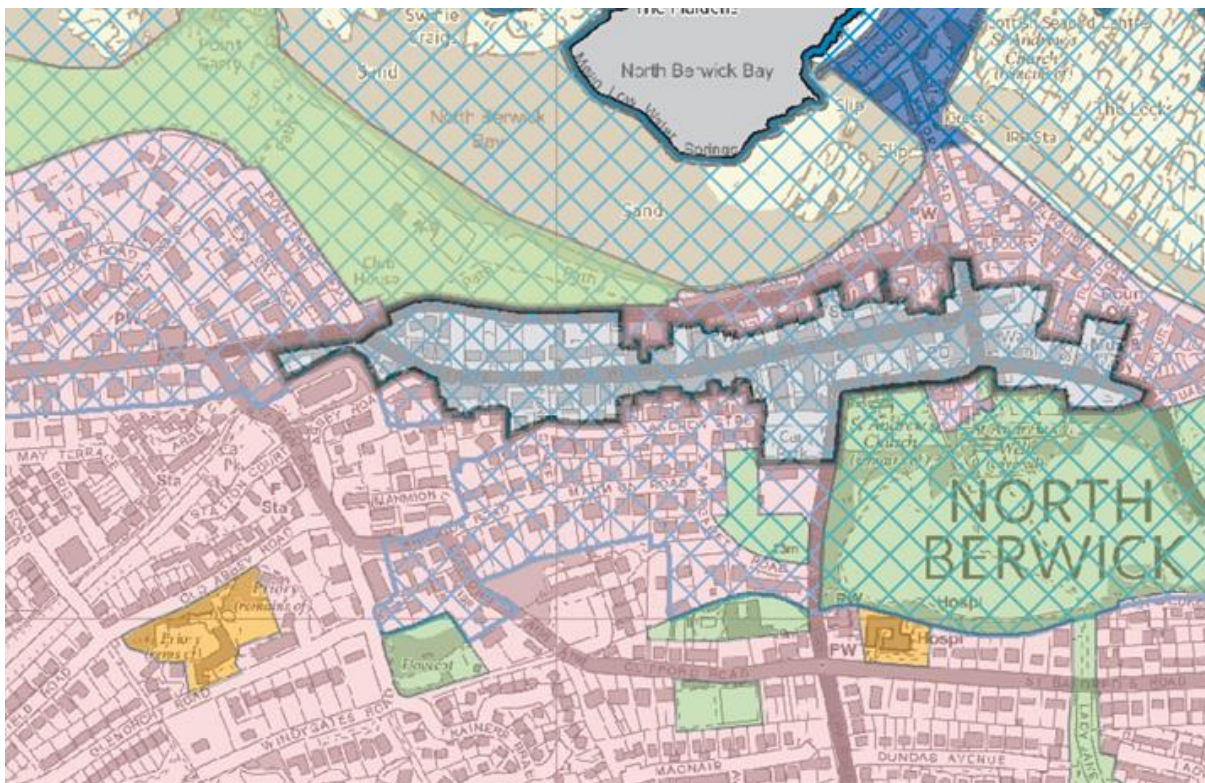


**Policy RCA1** – Residential Character and Amenity

**Policy CH2** – Development Affecting Conservation Areas

**Policy T1** – Development Location and Accessibility

**Policy T2** – General Transport Impact



*Extract from East Lothian Local Development Plan – Proposals Map for North Berwick*

3.16 **Policy RCA1** on ‘Residential Character and Amenity,’ states the following:

*‘The predominantly residential character and amenity of existing or proposed housing areas will be safeguarded from the adverse impacts of uses other than housing. Development incompatible with the residential character and amenity of an area will not be permitted. Proposals for new development will be assessed against appropriate local plan policies. In the*

*case of infill, backland and garden ground development, this will include assessment against Policy DP7.'*

3.17 As noted in our response to Policy 30 (e) (i) in NPF4 previously, we do not consider or accept that a property which has been in use for over seven years as a short term holiday let, during which time the statutory bodies responsible received no complaints about impacts on residential amenity levels enjoyed by other occupiers in the block, is incompatible with the residential character and amenity of the area. The layout of the accommodation block, in this particular instance, inclusive of the access arrangements to it, ensures that the patterns of occupation and activities undertaken by guests are, in general terms, little different to those associated with permanent residents.

3.18 **Policy CH2** on '*Development Affecting Conservation Areas,*' states the following:

*'All development proposals within or affecting a Conservation Area or its setting must be located and designed to preserve or enhance the special architectural or historic character or appearance of the Conservation Area. Proposals for new development should accord with the size, proportions, orientation, alignment, density, materials, and boundary treatment of nearby buildings and public and private spaces. Parking requirements of new developments must accord with the Council's adopted parking standards unless it can be demonstrated that a reduced level of parking (which in exceptional circumstances could be no parking provision) will achieve positive townscape benefits without compromising road safety.'*

*The Council will set out in supplementary planning guidance more detailed policies on the circumstances in which it would support proposals for alterations to shop fronts, external security, external wall treatment and the display or installation of advertisements in Conservation Areas.'*

3.19 As noted in our response to Policy 7 in NPF4 previously, there are no adverse impacts on the character or appearance of North Berwick Conservation Area arising from the proposal as no alterations have been undertaken to the property or are proposed to it to facilitate its ongoing use as a short-term holiday letting facility. As a consequence of this, the proposal does not conflict with the terms of Policy CH2.

3.20 **Policy T1** on '*Development Location and Accessibility,*' states the following:

*'New developments shall be located on sites that are capable of being conveniently and safely accessed on foot and by cycle, by public transport as well as by private vehicle, including adequate car parking provision in accordance with the Council's standards. The submission of Travel Plans may also be required in support of certain proposals.'*

3.21 As noted in our responses to Policies 1 & 13 in NPF4 the application site is in a highly sustainable location and accessible via a choice of modes of transport including on foot, by cycle and by public transport (bus and rail based). The property is also provided with its own dedicated parking space thereby making it accessible and conveniently so by car. As confirmed by the Council's Roads Services Department in commenting on the previous application, the use of the flat as a short-term let would not have a materially different parking demand to that generated by the residential use of the same property.

3.22 Policy T2 on ‘*General Transport Impact*,’ states the following:

*New development must have no significant adverse impact on:*

- *Road safety;*
- *The convenience, safety and attractiveness of walking and cycling in the surrounding area;*
- *Public transport operations in the surrounding area, both existing and planned, including convenience of access to these and their travel times;*
- *The capacity of the surrounding road network to deal with traffic unrelated to the proposed development; and*
- *Residential amenity as a consequence of an increase in motorised traffic.*

*Where the impact of development on the transport network requires mitigation this will be provided by the developer and secured by the Council by planning condition and / or legal agreement where appropriate.’*

3.23 The terms of our response to Policy T1 in Paragraph 3.21 above are equally applicable to the terms of Policy 2. In short, the use of the flat as a short term let would not have a materially different impact on movements to and from the properties compared to its use as a mainstream residential property.

3.24 Having assessed the proposed development against the terms of the East Lothian Local Development Plan and viewed all policies ‘*in the round*,’ it is considered to be compliant with all of its provisions. Having previously concluded that the proposals are compliant with all policies in the National Planning Framework 4 (NPF4) it then follows that the application proposals are compliant with the terms of the development plan

#### **Other material considerations**

3.25 As noted previously, Section 25 of the Town and Country Planning (Scotland) Act 1997 (as amended) requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise. The other key consideration in the determination of this application relates to the Planning History pertaining to the property which has already been referred to and commented upon in preceding paragraphs. According to the Planning Officer’s Report of Handling, there were 10 no. objections to that earlier application. Representations raised and our responses to them are outlined below:

*i) Concerns are raised about the adverse effects of short-term holiday lets in the town, individually and cumulatively.*

**Response** – As the nature of the concerns or adverse effects referred to have not been specified in the Report, it is difficult to respond to this point.

*ii) House prices of small-town centre properties have increased making it difficult for locals (young or on low income) to purchase property with short-term lets extending beyond town centre locations in recent times.*

**Response** – Whilst it is acknowledged that it is difficult for young or low-income locals to purchase a property in North Berwick, those difficulties cannot be solely attributed to the number of short-term holiday lets within the town. There are a number of considerations at play including the number of second homes existing. According to point (ix) below, there are less than six permanent residents within the Royal Apartments (1 Station Road). That equates to less than 18% of the overall numbers in the block. It cannot be assumed that the return of the application property to residential use would result in the property being acquired for occupation by a young or low-income person in the area. It is also worth re-emphasising that the Council's Housing Strategy & Development Service stated in their consultation response on that earlier application *'that the change in use of this property from a long-term residential dwelling to a short term let is not a significant loss because (i) the property has been a short-term holiday let for 5 years or more; and (ii) the property is not considered adaptable.'*

iii) *The flat should be retained as a residential property for residential use.*

**Response** – The comments made in response to Point (ii) above are equally applicable to Point (iii)

iv) *East Lothian Council through the development management process need to fully and carefully consider the wider adverse effects of this business use and associated activity on both immediate residential neighbours and the wider community.*

**Response** – Similar to Point (i) above it is difficult to respond to this point as the nature of the concerns or adverse effects referred to have not been specified in the Report.

v) *The short-term let sector has given rise to unwelcome impacts upon neighbours, the wider locality and has serious impacts on local housing markets.*

**Response** – The application property has operated as a short term let without complaint for the best part of the past seven years. Four other properties within the block have operated for over ten years without complaint and now benefit from Certificates of Lawful Development. That being the case, there is no credible evidence existing that the short-term letting properties within the Royal Apartments have given rise to unwelcome impacts upon neighbours or on the wider locality. Housing market considerations have been responded under point (ii)

vi) *In this particular case, objectors have raised concerns about anti-social behaviour, noise generated by guests at night/unsocial hours and lack of care and respect guests have for communal areas.*

**Response** – The authenticity of such objections are highly questionable given that the property has operated for the best part of seven years without a single complaint being lodged with the Council or Police Scotland. In short there is no evidence of anti-social behaviour, noise disturbances or a lack of care or respect from guests towards permanent residents or communal areas.

vii) *Objectors state that the higher turnover of people inclusive of guests and cleaning services within a residential building and associated curtilage changes the nature of*

*communal and shared areas. This can be disruptive and harmful to residential amenity particularly if these movements are at night, or at unsocial hours.*

**Response** – As noted on a number of occasions previously, the use of the property and the access arrangements existing within that property are unlikely to lead to a significantly different pattern or turnover of movements attributed to guests or cleaning services to that associated with permanent residential accommodation.

viii) *The carrying of luggage and/or sports equipment through communal areas on a regular basis can be harmful to the fabric of the building which can have momentary implications for all residents on an equal basis.*

**Response** – The internal maintenance arrangements associated with property is not a material planning consideration.

ix) *The lack of neighbours and the fractured community in this block is unacceptable. Less than six permanent residents remain in this large block of flats, and they will be detrimentally impacted by isolation and intimidation by other owners to pay for communal works and manage refuse and recycling.*

**Response** – The number of ‘second homes’ within the apartment block is a consideration over which our client has no control. Notwithstanding this, it is worth noting that there is a Factor for the whole building (34 no. apartments) who ensures that payment for any communal works is shared equally amongst all owners.

x) *Frequently changing guests' impact upon the security of the building. The flatted building is located within a busy area and guests leaving communal doors open, further reduces the security of the building.*

**Response** – No evidence has been presented by objectors which demonstrates or proves that the use of our client’s property as a short term let compromises the security of other flat owners in the block.

xi) *The property was not designed for use as a hotel or serviced apartments for rent. Nor is the building's current design appropriate for STL in respect of its principal features (communal areas and services and secure environment).*

**Response** – Four properties within the block have operated as short term lets for periods in excess of 10 years and the application property has operated as such for the best part of 7 years with access provided via the communal areas.

xii) *Precedent would indicate that short term let applications with similar characteristics to this application have been refused planning permission such as the cases of West Bay Court and West Bay Apartments.*

**Response** – All planning applications should be assessed on their own individual merits. The characteristics of the properties at West Bay Court and West Bay Apartments will not be identical to those at the Royal Apartments.

*xiii) The application for the change of use of a flatted dwelling to form a short term holiday let would set precedent, if approved.*

**Response** – As noted above, all applications must be considered on their individual merits. To the best of our knowledge there are no further apartments within the accommodation block, beyond those already identified, which have been operating for the best part of 7 years without complaint.

*xiv) The applicant is running a business within this development, owning or managing a further three short term lets, all subject to certificate of lawfulness applications.*

**Response** – Our client has never hidden the fact that he operates a short term letting business consisting of 4 no. properties (3 owned and 1 managed) within the accommodation block and 3 other properties from other locations in East Lothian. He has been operating this business since 2011. The Council has been aware of that and have, until now, allowed him to continue doing so.

*xv) Granting permission would lead to a legal breach of title deeds. Deeds prevent the use of the flats as any use other than a residential home for one family only. The objector states that anyone staying in a flat for short term holiday let uses don't have the legal rights of access.*

**Response** – Our client does not agree that the use of the property represents a legal breach of his title deeds. In any event this is not a relevant material consideration in the determination of the application.

3.26 None of the points raised in opposition to the previous application provide credible support justifying its refusal.

3.27 Having assessed the application proposal against the terms of the development plan and all other material considerations we are firmly and unequivocally of the view that the application, which seeks planning permission to use the property as a short-term holiday let, should be granted planning permission.

## 4. SUMMARY AND CONCLUSIONS

4.1 The application proposals and the key benefits associated with them are summarised below:

- This statement has been prepared by Derek Scott Planning, Chartered Town Planning and Development Consultants on behalf of our client, Mr. Charles **Torquil** Hamilton McInroy (TM Holiday Lettings). It is in support of an application submitted to East Lothian Council seeking planning permission retrospectively to the change of use of a property from a residential flat to a short-term holiday let at Flat 27, Royal Apartments, 1 Station Road, North Berwick, East Lothian EH39 4AT.
- The application property is a flatted residential unit located on the first floor of a 4-5 storey building lying to the southeast of the Station Road/Station Hill junction in North Berwick. The property is 1 of 34 flats within the building; occupies a position to the south of the overall block; and is accessed, along with 11 other flats (Nos 23-34 Royal Apartments) via a shared front and back entrance door, an internal communal stair, lift and hallway. A total of 3 no. flats (Nos 26-28) occupy the first floor level of the building. The area surrounding the site is predominantly residential in nature and lies in close proximity to the train station; to bus stops on Dirleton Avenue and to the town centre. The site also lies within the North Berwick Conservation Area.
- The flat contains two bedrooms (one en-suite), a bathroom, a kitchen and a lounge/dining area with access to an external balcony and has its own allocated parking space within the private car park to the north. No alterations have been undertaken to the flat or are proposed as part of the application to facilitate the continued use of the property as a short-term holiday let.
- The flat has been used for short-term letting purposes since May 2017 and in that period has been occupied, on average, for 67% of the calendar year (245 of 365 nights). It is one of three owned by our client and used for short term holiday letting purposes within same block. The two other flats owned (Nos. 8 and 10) have been operating as such since 2011/2012 and have recently benefited from Certificates of Lawful Development. Two further flats within the block, which are in separate ownership, have also been granted Certificates of Lawful Development. It is understood from representations previously made to the Council that only 6 of the 34 (18%) units in the block are in permanent residential occupation with the balance in use as second homes.
- An earlier application for the same proposal submitted under Planning Application Reference Number 23/01509/P was refused by the Appointed Planning Officer under delegated powers on the 08<sup>th</sup> March 2024 for the following reason:
  - (i) *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 Station Road 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.*



- The earlier application referred to was submitted by our client following a complaint lodged with the Council at some point in 2023 by a member of the public concerning the use of the application property and his two other properties within the block as short term letting facilities.
- The Planning Officer cited a number of claims in support of their position that the proposed use was incompatible with and harmful to the amenity of the occupants of other residential properties within the block. Those claims and our responses to them are outlined below.

(i) *The regular turnover of users/occupants would change the nature of comings and goings to the property and within the communal area.*

**Response** – The application property has operated for the best part of seven years without complaint. Four other properties within the block have operated without complaint for periods in excess of ten years. The Council were aware of the properties operating as short-term lets but took no action until a complaint was made from a member of the public. As the minimum length of stay within the property is 3 nights; the average length of stay is 7 nights; and occupancy levels during the last 7 years are 67% (245 nights per annum), it is not accepted that the nature of comings and goings to the property are materially different or in any way more imposing or invasive than those associated with permanent residents.

(ii) *The transfer of luggage and other possessions through the communal areas would lead to a level of disturbance and nuisance not typical of residential use.*

**Response** – Movements to and from the application property will, based on the typical characteristics of guests, take place on a maximum of two occasions during the week but in all likelihood less. The movement of that luggage from a vehicle to the flat will take less than 5 minutes on each occasion and will be undertaken via a lift and/or on carpeted floors remote from the majority of residential properties within the block. That does not constitute a level of disturbance, even by the wildest stretch of the imagination, which can be adjudged to be detrimental to residential amenity.

(iii) *Guests would sometimes arrive and depart at unsociable hours.*

**Response** – It is almost inevitable that guests, permanent residents and second home owners will very occasionally arrive and depart at unsociable hours. However, given that 80% of guests staying in the application property over the past seven years have comprised families and there have been no complaints about disturbances to the statutory authorities in that time no evidence exists to support such claims.

(iv) *There would be extra comings and goings to the property due to servicing and cleaning arrangements.*

**Response** – As with luggage movements, activities associated with servicing and cleaning arrangements will occur at most twice a week but more often than not once a week. They will be undertaken during the daytime and will be complete within a 1.5-

2 hour period. Such arrangements would be little different in the case of a permanently occupied property benefitting from the services of a cleaner. Indeed, given the occupancy levels the impact would, in all likelihood, be less.

(v) *The use of the flat as a short-term let would compromise the security of permanent residents.*

**Response** – The application property has been used as a short-term holiday let since May 2017 and during that time our client is unaware of any breaches of security. No security breaches have been recorded in association with his other properties which he has operated since 2010/2011 either. That is down, in no small part, to the strict booking and management arrangements our client has in place; the clientele he attracts and the pricing structure he adopts.

- It is of considerable concern that the Planning Officer in their determination of the earlier application, which appears to have taken place without a visit to the application property, has based their decision to refuse on a perception that guests to self-catering holiday accommodation are disrespectful to both the property and the wider neighbourhood within the area with some being portrayed as opportunist criminals. Based on our client's personal experiences during the past 10+ years those perceptions have not been borne out in reality.

4.2 In light of the considerations outlined, it is respectfully requested that planning permission be granted for the continued use of the property as a short-term holiday let as applied for. We reserve the right to provide additional information in support of this application, and to respond to any representations submitted in support of or in opposition to it in advance of its determination.

Signed

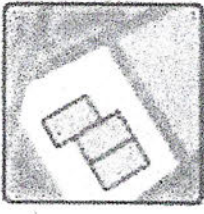


Derek Scott

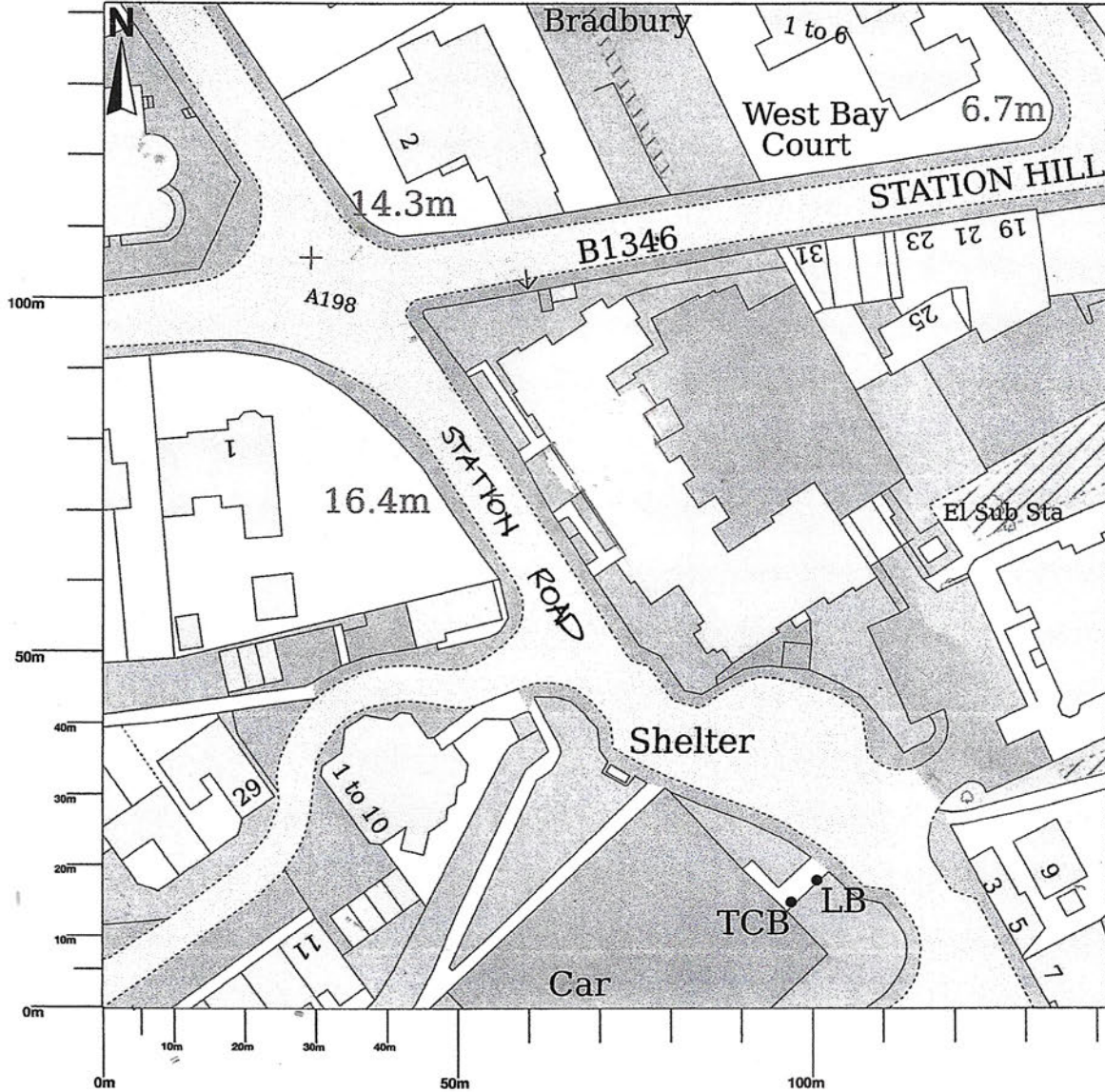
Date 05<sup>th</sup> June 2024

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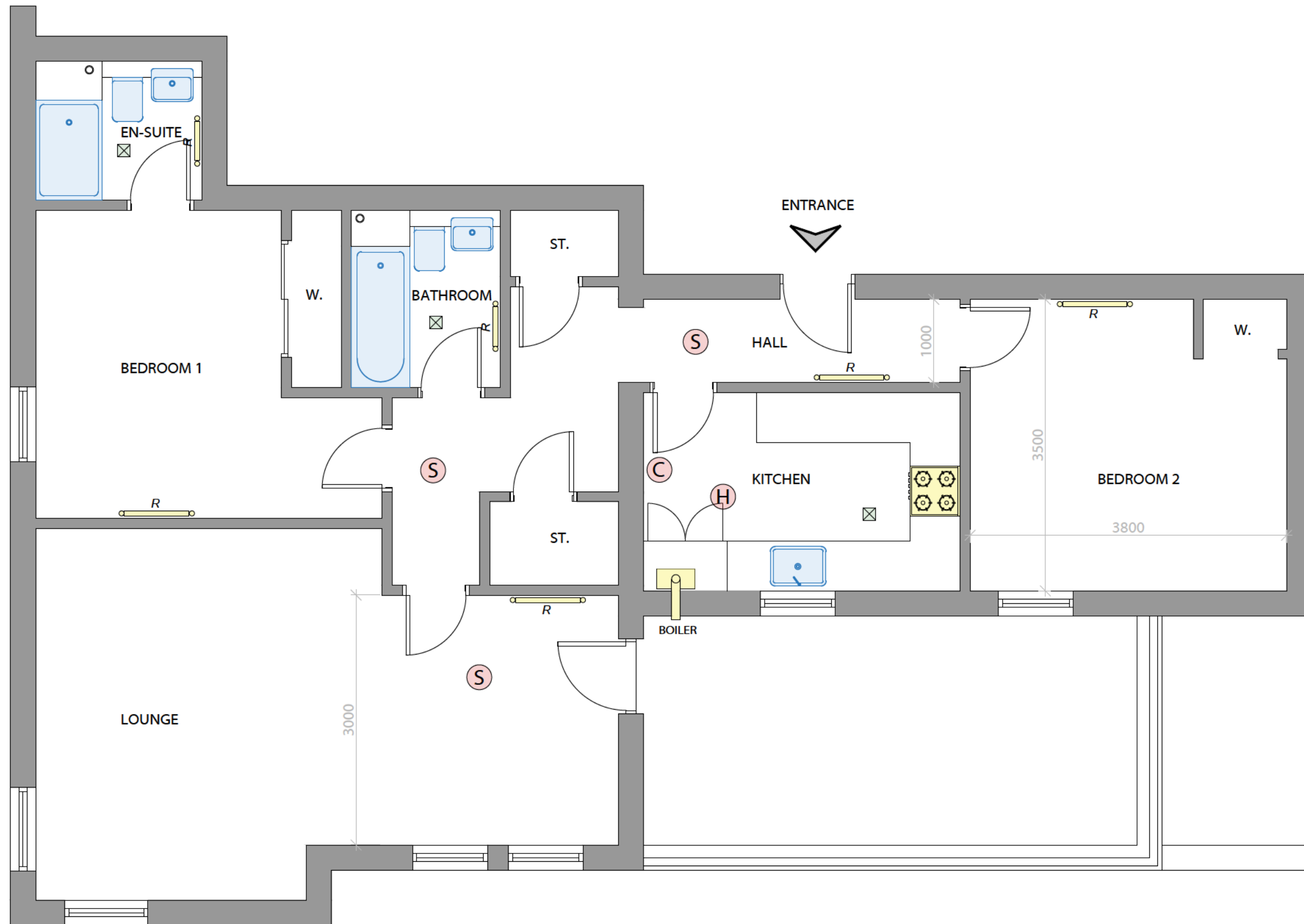
**1/10, Station Road, North Berwick, EH39 4AT**



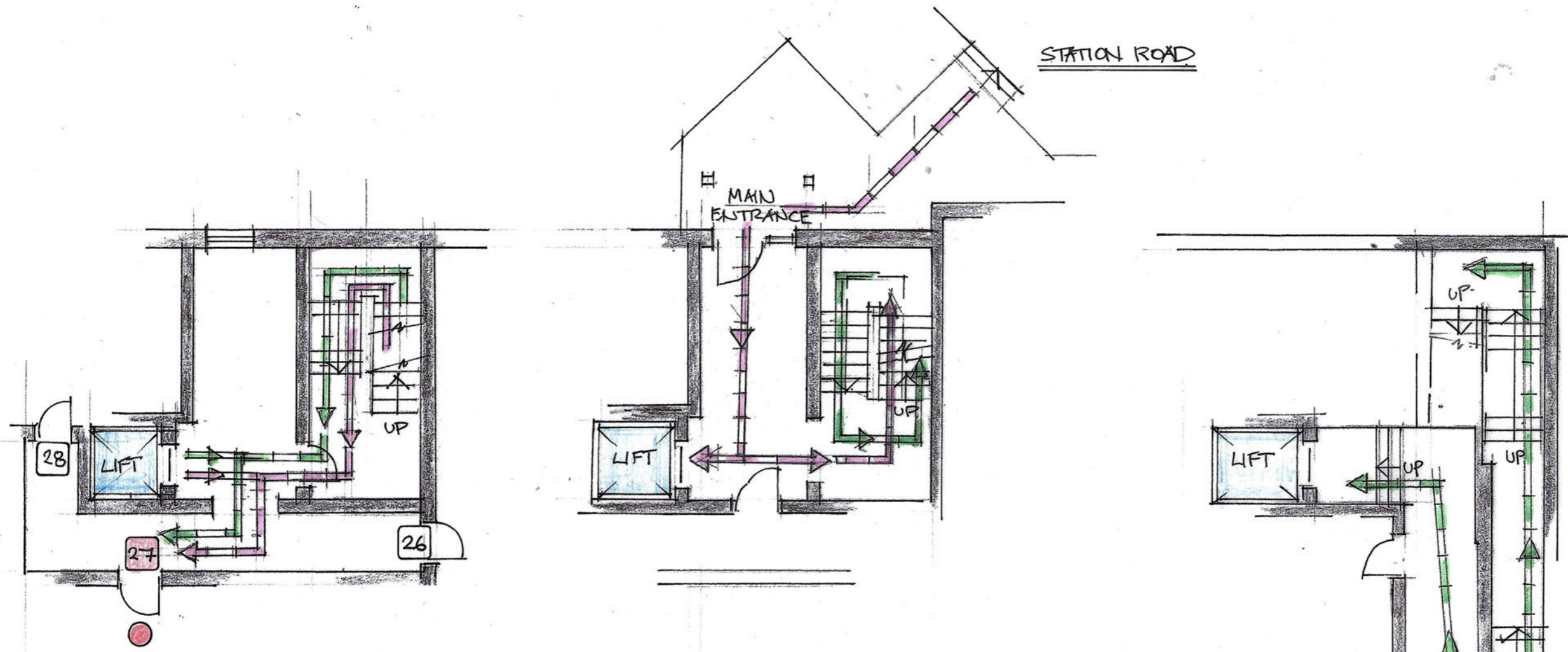
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- C CARBON MONOXIDE
- S SMOKE DETECTOR
- H HEAT DETECTOR
- R RADIATOR
- FAN

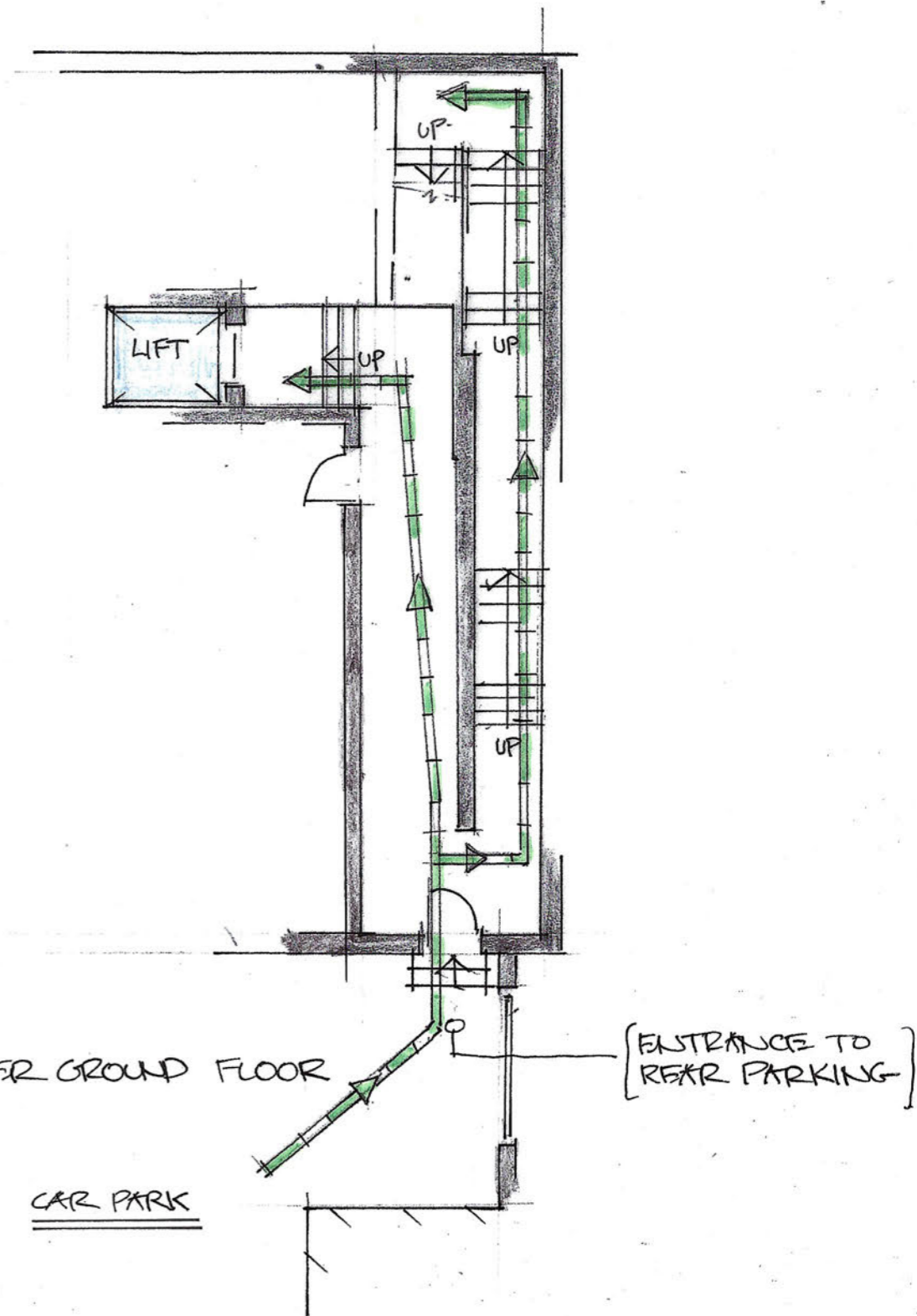


FLAT 27  
 ROYAL APARTMENTS  
 LINKS ROAD  
 NORTH BERWICK  
 JAN 2024



FIRST FLOOR

GROUND FLOOR - MAIN ENTRANCE



LOWER GROUND FLOOR

ENTRANCE TO REAR PARKING

CAR PARK

TRAVEL ROUTES TO FLAT 27

← MAIN FRONT ENTRANCE

← REAR CAR PARK



No 27 ROYAL APARTMENTS  
STATION ROAD - NORTH BERZWICK

App No. 24/00575/P

**EAST LoTHIAN COUNCIL  
DECISION NOTICE**

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997  
TOWN AND COUNTRY PLANNING  
(DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND) REGULATIONS 2013**

**TM Holiday Lettings**  
**c/o Derek Scott Planning**  
**Per Derek Scott**  
21 Lansdowne Crescent  
Edinburgh  
EH12 5EH

**APPLICANT: TM Holiday Lettings**

With reference to your application registered on 6th June 2024 for planning permission under the above mentioned Acts and Regulations for the following development, viz:-

**Change of use of flat to short term holiday let (Retrospective)**

at  
**Flat 27**  
**1 Station Road**  
**North Berwick**  
**EH39 4AT**

East Lothian Council as the Planning Authority in exercise of their powers under the above-mentioned Acts and Regulations hereby **REFUSE PLANNING PERMISSION** for the said development.

The reasons for the Council's refusal of planning permission are:-

- 1 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 Station Road 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.

The report on this application is attached to this Decision Notice and its terms shall be deemed to be incorporated in full in this Decision Notice.

Details of the following are given in the application report:

- the terms on which the Planning Authority based this decision;
- details of any variations made to the application in terms of Section 32A of the Town and Country Planning (Scotland) Act 1997.

The plans to which this decision relate are as follows:

<u>Drawing No.</u>	<u>Revision No.</u>	<u>Date Received</u>
DWG 01	-	05.06.2024
DWG 02	-	05.06.2024
DWG 03	-	05.06.2024

**30th August 2024**



Keith Dingwall  
Service Manager - Planning  
(Chief Planning Officer)

## NOTES

If the applicant is aggrieved by the decision to refuse permission for the proposed development, the applicant may require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within three months from the date of this notice. The notice of review should be addressed to the Clerk to the Local Review Body, Committee Team, Communications and Democratic Services, John Muir House, Haddington, East Lothian EH41 3HA.

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 5 of the Town and Country Planning (Scotland) Act 1997.



# OFFICER REPORT

**20th August 2024**

App No. **24/00575/P**

Application registered on **6th June 2024**  
Target Date **5th August 2024**

Proposal	<b>Change of use of flat to short term holiday let (Retrospective)</b>	SDELL	Y
		CDEL	N
Location	<b>Flat 27 1 Station Road North Berwick EH39 4AT</b>	Bad Neighbour Development	N

APPLICANT: **TM Holiday Lettings**

Is this application to be approved as a departure from structure/local plan? N

**c/o Derek Scott Planning  
Per Derek Scott  
21 Lansdowne Crescent  
Edinburgh  
EH12 5EH**

DECISION TYPE:

**Application Refused**

## PLANNING ASSESSMENT

The application property is a flatted dwelling located on the first floor of a five-storey flatted building which occupies a prominent position at the junction of Station Road and Station Hill in North Berwick.

The flat is accessed via a shared front & back entrance door, an internal communal stair and hallway. The flatted building is located within a predominantly residential area as defined by Policy RCA1 of the adopted East Lothian Local Development Plan 2018 ('ELLDP 2018'). It is also located within the North Berwick Conservation Area.

The property is bounded to the north and south by neighbouring properties of the wider flatted building complex, to the east by an area of private car parking servicing the flatted buildings and to the west by the public road of Station Road.

The first floor flat comprises of two bedrooms (one of which has an en-suite), a bathroom, a kitchen and a lounge with access to an external balcony. The flat also has its own allocated private parking space. The applicant's flat is 1 of 34 flats within the building as a whole. The flatted complex is split into a number of individual blocks of flats, each of these blocks has

their own individual stairwell, hallway entrance and lift. The application property along with a further 11 flats (nos. 23 - 34) share a front and rear entrance door, communal stairwell, lift and hallway and are known as 'Block 3'. All 11 flats within Block 3 are in residential use.

## PLANNING HISTORY

An application for retrospective planning permission was submitted for the change of use of the same flat (Flat 27, 1 Station Road) under ref: 23/01509/P in January 2024. The application was refused in June 2024 for the reason that "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 Station Road 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. " That decision was not appealed or taken to the Local Review Body.

## APPLICATION

Planning permission is again sought retrospectively for the change of use of this two bedroomed residential flat at Flat 27, 1 Station Road, North Berwick to a two -bedroom unit of short-term self-catering holiday let accommodation. No alterations have been undertaken to the flat, either internally or externally, to facilitate the retrospective change of use.

Proposals remain the same as previously submitted under planning application ref: 23/01509/P. The only difference in this submission is that a Planning Statement has been submitted in support of the application.

The Planning Statement is summarised below:

- o The flat has been used as a unit of short term holiday let accommodation since May 2017;
- o Within that period, the flat has been occupied for an average of 67% of the calendar year (approx. 245 nights annually);
- o Other flatted properties (nos. 1, 8, 10 & 17) within the wider flatted complex have obtained certificates of lawfulness for use as short term holiday lets under refs: 23/01508/CLU, 23/01510/CLU, 23/01094/CLU & 23/01511/CLU).
- o The applicant's agent asserts that only 6 of the 34 (18%) units in this block are in permanent residential use with the balance in use as second homes;
- o The previous application which was refused under ref: 23/01509/P was submitted following the investigation of an enforcement case;
- o In reference points within the previous Officer's Report, the applicant states:
  - i) As the minimum length of stay is 3 nights and the average length of stay is 7 nights, the applicant does not accept that the nature of comings and goings to the property are materially different or in any way more imposing or invasive that those associated with permanent residents;
  - ii) Movements to and from the application property will, based on the typical characteristics of guests, take place on a maximum of two occasions during the week...the movement of luggage from a vehicle to the flat will take less than 5 minutes on each occasion

and will be undertaken via lift or on carpeted floors...this would not amount to a level of disturbance even by the wildest stretch.

iii) It is inevitable that guests and permanent residents will very occasionally arrive and depart at unsociable hours. Though given 80% of guests staying in the application property over the past 7 years comprises of families, there has been no complaints about disturbance to statutory authorities... and no evidence exists to support such claims;

iv) As with luggage movements, activities associated with servicing and cleaning arrangements will occur at most, twice a week, but more often than not once a week. They will be undertaken during the day time and will be complete within a 1.5 - 2 hour period. Such arrangements would be little different in the case of permanently occupied properties benefitting from the services of a cleaner;

v) Since the property commenced as a unit of short-term holiday let accommodation, the applicant is unaware of any security breaches. No security breaches have been recorded in association with the application's other properties due to strict booking and management arrangements etc.

vi) It is of considerable concern that the Planning Officer in their determination of the earlier application appears not to have undertaken a site visit to the application property; and

vii) Has based their decision to refuse planning permission on a perception that guests to self-catering holiday accommodation are disrespectful to both the property and the wider neighbourhood, with the area being portrayed as opportunist criminals.

## DEVELOPMENT PLAN

Section 25 of the Town and Country Planning (Scotland) Act 1997 (as amended) 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 ELLDP 2018.

Policies 7 (Historic Assets and Places), 13 (Sustainable Transport) and 30 (Tourism) of NPF4 are relevant to the determination of this application. Policies RCA1 (Residential Character and Amenity), CH2 (Development Affecting Conservation Areas), T1 (Development Location and Accessibility) and T2 (General Transport Impact) of the adopted ELLDP 2018 are relevant to the determination of this application.

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 requires that a planning authority pay special attention to the desirability of preserving or enhancing the character or appearance of the area in which the building is located.

## REPRESENTATIONS

A total of ten objections have been received in respect of this application. The main grounds of objection are:

- i) The Supporting Statement submitted on behalf of the applicant raises and relies upon a number of irrelevances including the existence of a number of flats nearby where Certificates of Lawful Use have been issued. The applicant in this case cannot demonstrate lawful use and the existence of others has no effect on the merits of this particular case.
- ii) If approved, this flat would be the first Short Term [Holiday] Let (STL) in Block 3 of 1 Station Road.
- iii) The same objections would have been raised to the numerous Certificate of Lawfulness applications as submitted by this applicant, though the objector was informed that these objections would not carry the same weight or be considered in the same way as objections to applications for planning permission.
- iv) Each application is determined on its own merits and in accordance with the Development Plan, unless material circumstances indicate otherwise. The Supporting Statement fails to show that the previous case was determined other than in accordance with the development plan.
- v) NPF4 is the most up to date policy framework and is highly relevant. The change of use of this flat to form a unit of short-term holiday let accommodation is not acceptable in accordance with Policy 30 of NPF4. Not only will the flat be lost as needed housing stock, whether for rent or purchase, but its use for tourism would also not contribute to the local economy to outweigh the loss of housing stock.
- vi) The figures previously relied upon by ELC Economic Development in support of the assumed contribution to the economy are not correct. They are not based on locally derived data and exaggerate the position. A report by MKA Economics based on the local North Berwick data from May 2024 and published in July 2024 shows that a two-bedroom residential property will contribute £17,580 to the local economy and generate 0.46 jobs while a short term let will contribute £11,592 to the economy and create 0.79 jobs. These figures are based on actual local data and it is quite incorrect for old figures based on Scotland to be used by Economic Development.
- vii) An objector states that the Planning Statement's implied justification that this application should be granted partially on the grounds that Royal Apartments has four other short term holiday lets is in itself objectionable.
- viii) Such a regular turnover of different occupants changes the nature of coming and goings within the shared entrances and communal areas, along with the external private ground of Royal Apartments which can have a disruptive impact upon permanent residents being harmful to their amenity.
- ix) The use of the property as a STL entails a significant variation from the character and intensity of normal residential activity.

- x) With the property being occupied on average by 35 different groups or families of up to 5 people a year, there would be a minimum of 70 changes, 69 more than one long term resident, therefore the use as a STL would not be minor and is materially different.
- xi) Having renters come and go changes the nature of Royal Apartments, a place which is very much considered as the objector's home.
- xii) One objector states that they would have no objection to long term residents.
- xiii) Precedent would indicate that STL applications with similar characteristics to this application have been refused planning permission such as the cases of West Bay Court and West Bay Apartments.
- xiv) The Supporting Statement notes that the STL has not attracted complaints. One objector advises that this is false as they have complained on numerous occasions to the occupants of the flat when subjected to noise and anti-social behaviour.
- xv) Another objector states that they have complained to the owner of no.27 in respect of a number of issues connected to guest behaviour. The objector notes that such complaints wouldn't have merited complaints to the Police or the Council.
- xvi) Other objectors note that they have raised concerns about anti-social behaviour and noise generated by guests at night/unsocial hours and lack of care and respect that guests have for communal areas.
- xvii) One objector states that their buzzer is rung frequently presumably from guests who have forgotten their keys.
- xviii) One objector states that there is no point in complaining about disturbance given the occupants would have vacated prior to any action being taken. The use of the property as such does sometimes cause a disturbance (i.e. kids running around).
- xix) The recent residents AGM held on 8th February 2024 highlighted concerns of drunk foreign golfers returning to Royal Apartments in the early hours of the morning who were unable to obtain access. Raised voices are said to have woken several residents up, making them feel anxious and vulnerable. The objector notes that the owner was in the south of England at the time.
- xx) Having parties, noise makers and renters who just want their money's worth are not what one objector thought could form as part of this property.
- xxi) A lack of evidence of bad behaviour is not evidence of good behaviour.
- xxii) Frequently changing guests' impact upon the security of the building. The flatted building is located within a busy area and guests leaving communal doors open, further reduces the security of the building with objectors stating that the building security is constantly compromised, often with large groups renting the property and leaving the main door off the snib, presumably because they don't all have keys. Objectors state that they have complained about this on a number of occasions.

xxiii) The property was not designed for use as a hotel or serviced apartments for rent. Nor is the building's current design appropriate for STL use in respect of its principal features (communal areas and services and secure environment).

xxiv) Objectors state that the higher turnover of people inclusive of guests and cleaning services within a residential building and associated curtilage changes the nature of communal and shared areas. This can be disruptive and harmful to residential amenity particularly if these movements are at night, or at unsocial hours.

xxv) The carrying of luggage and/or sports equipment through communal areas on a regular can be harmful to the fabric of the building which can have momentary implications for all residents on an equal basis.

xxvi) One objector states that they do not require the services of a cleaner, nor do other owners when in residence, other than an elderly neighbour who requires a high level of care.

xxvii) The Planning Consultant mentions that the Planning Officer didn't undertake a site visit. Several objectors, having sought clarification from the case officer, assert that a site visit was undertaken.

in response to some of the objections:

There have been a total of 4 Certificate of Lawfulness applications granted at Royal Apartments inclusive of Flats 1, 8, 10 and 17 for short term holiday let use under refs: 23/01094/CLU, 23/01511/CLU, 23/01510/CLU, 23/01509/P. These applications were granted as the applicant was able to demonstrate that the properties had been in continuous operation as short-term holiday let accommodation for a period of 10 years or more and were thus lawful in accordance with sections 124 and 150 of the Town and Country Planning (Scotland) Act 1997 (as amended). The planning history is relevant in the determination of this application, in so far as ascertaining that no consent has been obtained for STL use within Block 3.

In the determination of a planning application, representations which raise matters considered as material to the determination of a planning application would be taken into consideration. Matters to be determined within a Certificate of Lawfulness application are solely matters of evidential fact and law, with the onus of proof on the applicant, there is no requirement for an application under section 150 or 151 to be publicised under the provisions of sections 34 or 35 of the '1997 Act (as amended).

In this instance the case officer undertook a site visit on 22nd November 2023 at 12pm and was accompanied by the applicant. Site photos were taken, and there is an email trail between the case officer and the applicant arranging the site inspection.

COMMUNITY COUNCIL

No comments received.

PLANNING ASSESSMENT

This application seeks retrospective planning permission for the change of use of a two-bedroomed flatted dwelling to a two-bedroomed unit of holiday let accommodation. The holiday let sleeps a total of 5 people.

The East Lothian Economic Development Strategy 2012-22 identifies tourism as one of the strengths of the East Lothian economy and a source of employment opportunities in the future and the adopted East Lothian Local Development Plan 2018 states that a range of hotel, guest house and other accommodation attracts visitors and encourages them to stay and benefit the economy of East Lothian. The adopted ELLDP states that all leisure and tourism related development proposals, including visitor attractions, hotels and holiday accommodation, will be assessed against all relevant Local Development Plan policies.

The change of use of this residential flat to a holiday let would provide accommodation within North Berwick that attracts visitors and encourages them to stay in East Lothian, which in turn supports the existing long-established business and benefits the wider economy of East Lothian.

The adopted ELLDP 2018 does not contain a specific policy on the change of use of flats to holiday lets. However, part e) of Policy 30 (Tourism) of NPF4 states that:

Development proposals for the reuse of existing buildings for short term holiday letting will not be supported where the proposal will result in:

- (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.

Policy RCA1 (Residential Character and Amenity) of the adopted ELLDP 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. Development incompatible with the residential character and amenity of an area will not be permitted.

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 short-term holiday let accommodation on the amenity of the existing neighbouring residential properties.

The Council's Senior Environmental Health Officer was consulted as part of this application and raised no objection to this retrospective planning application.

The Council's Antisocial Behaviour Team were consulted as part of this application and raise no objection to this retrospective planning application.

Police Scotland raise no objection to this retrospective planning application.

Flat 27, 1 Station Road is contained within a residential flatted building and can be accessed from Station Road to the west or from the private carpark to the east. The building has both lift and stair provision. From the rear entrance, the lift or stairs can be taken up to the first floor. The entrance from Station Road leads directly to the first-floor level where the applicant's property is located, along with two other residential flatted properties. All flats within this particular residential block are in lawful residential use in planning terms.

The use of the application property as a holiday let enables it to be let out for short duration stays with a minimum stay of 3 nights and with an average occupancy of 67% which results

in a higher turnover of people over short time periods, annually. A significant proportion of guests of this accommodation are likely to be holiday related visitors. Such a regular turnover of users/occupants would change the nature of comings and goings not only to the application property itself but also within the communal entrances and internal lift and stairwell 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 entrances and stair/lift which in itself would lead to a level of disturbance and nuisance not associated with the permanent/long term residential use of the property. Whilst the applicant states the movement of luggage from a vehicle to the flat will take less than 5 minutes on each occasion and will be undertaken via lift or on carpeted floors and would not amount to a level of disturbance even by the wildest stretch. This specific activity would likely be undertaken on a weekly basis, which would be substantially different to the level of activity undertaken in association with a residential flat property. Guests use of communal areas on such a regular basis with luggage would be harmful to the amenity of the existing residents within the flat block at 1 Station Road, North Berwick.

Whilst it is accepted that permanent residents may also make noise, this would not be on the same frequency as regularly changing guests who arrive and depart sometimes at unsociable hours. 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 entrances and stairwell as a result of people regularly accessing both the main building of 1 Station Road 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 given most residents would be responsible for disposing of their own waste and recycling and the level of cleaning or servicing of residential flats would not be to the same degree to which a unit of short-term holiday let would require cleaning and servicing. The nature of the use of the property as a short-term holiday let with a greater degree of movement associated would be harmful to the amenity of the occupants of the residential properties within the residential flat building of 1 Station Road, North Berwick.

Moreover, allowing frequently changing guests unfettered access to otherwise secure shared areas changes the actual and perceived level of security for the existing permanent residents. Whilst the 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.

As a retrospective application, Flat 27 of 1 Station Road has been in operation for 7 years. Whilst no complaints have been logged by either Police Scotland or ELC's Anti-Social Behaviour Team, objectors have raised concerns re- noise and disruption to the residential environment in which the holiday let is currently in operation in.

Given the specific circumstances and location of the application property within the residential building of 1 Station Road, North Berwick which contains a number of permanent/long term residences and which shares a communal front and rear entrance, stairwell, lift and hall with others, 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 residential properties within the residential building of 1 Station Road, North Berwick. 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 ELLDP 2018.

The Council's Road Services raised no objection, being satisfied that proposals do not conflict with Policy 13 of NPF4 or with Policies T1 and T2 of the adopted ELLDP 2018.

As set out above, no alterations have been undertaken to the property, either internally or externally, to facilitate the retrospective change of use and none are proposed through this application. Accordingly, the proposal does not have a detrimental impact on the character and appearance of this part of the North Berwick Conservation Area. On this consideration, the proposal does not conflict with Policy 7 of NPF4 or with Policy CH2 of the adopted ELLDP 2018 on matters relating to development within Conservation Areas.

In assessing the impact of the change of use of a flatted dwelling to form a short-term holiday let, part e) of Policy 30 of NPF4 states that the loss of residential accommodation must be outweighed by demonstrable local economic benefits to be compliant in policy terms. The Council's Housing Strategy & Development Service state that the change of use of this property from a long-term residential dwelling to a short term let is not a significant loss because (i) the property has been a short-term holiday let for 5 years or more; and (ii) the property is not considered adaptable. Accordingly, the Council's Housing Strategy & Development Service raise no objection to this retrospective planning application.

The Council's Economic Development Service Manager advises that despite criticism from objectors, there are demonstrable local economic benefits delivered by all types of short-term holiday lets in East Lothian and that the 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.

In the particular circumstances of this case it is stated that (i) the aggregate economic benefit from short term lets as vital element in the supply of visitor bedstock within the County and the provision of a sustainable and resilient supply of overnight holiday accommodation is key to delivering the Council's strategic priority of being "Scotland's leading coastal, leisure and food & drink destination"; (ii) based on primary research commissioned by the Council there is a demonstrable economic benefit to having a wide range of accommodation types in East Lothian with the tourism sector contribution £155m to the local economy in 2021 and supporting 10% of the workforce; (iii) visitors staying overnight in non-serviced accommodation contributed £60.1m to the local economy in 2021 and the majority of visitors to East Lothian are repeat visitors; (iv) non-serviced accommodation (short term holiday lets) contributes 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 2 FTE jobs; (v) the proposal provides high-quality tourist accommodation attracting visitors to North Berwick and the surrounding area providing economic benefit; and (vi) 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.

ELC's Economic Development Team advise contrary to objections, the underlying data in which the in their assessment of the above, is locally derived and has been collected on behalf of the Council for over 10 years by an organisation that also provides this data to many other

local authorities. It is the most reliable visitor economy data source for East Lothian and is updated annually.

The Council's Economic Development Service Manger supports this retrospective planning application stating that the change of use of the flat to short term holiday let accommodation 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.

However, and notwithstanding that the change of use of the applicant's flat would not result in the loss of residential accommodation, 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.

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 Station Road 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. No material planning considerations outweigh this conflict with the Development Plan.

The application property of Flat 27, 1 Station Road, North Berwick as a holiday let is unauthorised and a breach of planning control. Enforcement action will be taken to ensure the cessation of the holiday let use with the period for compliance with the enforcement notice being one month.

#### REASON FOR REFUSAL

- 1 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 Station Road 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.

#### LETTERS FROM

[REDACTED]

[REDACTED]

20th August 2024