

REVIEW DECISION NOTICE

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

Application for Review by Mr Norman Gray of 54 Geraghty Street Bulli, Australia 2516 of decision to refuse Planning Permission for the change of use of flat to short term holiday let (Retrospective) at Flat 3, Rosebery Place, 8 Main Street, Gullane, EH31 2AN.

Site Address: Flat 3, Rosebery Place, 8 Main Street, Gullane, EH31 2AN

Application Ref: 24/00016/P

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

Date of Review Decision Notice: 24 September 2024

Decision

The ELLRB by a majority of three (3) to one (1) decided to support the case officer and refuse planning permission for the change of use of flat to short term holiday let (Retrospective) at Flat 3, Rosebery Place, 8 Main Street, Gullane, EH31 2AN. for the reasons more particularly set out below.

This Notice constitutes the formal decision notice of the Local Review Body as required by the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.

1. Introduction

The above application for Planning Permission was considered by the ELLRB, at a meeting held on Thursday, 22 August 2024. The Review Body was constituted by Councillor N Hampshire (Chair), Councillor D Collins, Councillor K McLeod and Councillor L Cassini. All four members of the ELLRB had attended a site visit accompanied by the Planning Adviser in respect of this application prior to the meeting.

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

Mr M Mackowiak, Planning Adviser to the LRB
Mr C Grilli, Legal Adviser to the LRB
Ms F Currie, Clerk

2. Proposal

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

2.2. The planning application was registered on 26 January 2024 and the Decision Notice refusing the application is dated 8 March 2024.

2.3. The reason for refusal is more particularly set out in full in the said Decision Notice dated 8 March 2024. The reason for refusal is set out as follows:

- 1 *The holiday let use of the flatted property is incompatible with and harmful to the amenity of the occupants of other flatted properties used as residential dwellings within the residential building of 8 Main Street, Gullane and as such is contrary to part e) of Policy 30 of National Planning Framework 4 and Policy RCA1 of the adopted East Lothian Local Development Plan 2018.*

2.4. The notice of review is dated 1 June 2024.

3. Preliminaries

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

| i. | The drawings accompanying this application are referenced and numbered as follows: <table border="1"> <thead> <tr> <th><u>Drawing No.</u></th> <th><u>Revision No.</u></th> <th><u>Date Received</u></th> </tr> </thead> <tbody> <tr> <td>DWG 01</td> <td></td> <td>05.01.2024</td> </tr> <tr> <td>DWG 02</td> <td></td> <td>26.01.2024</td> </tr> </tbody> </table> | <u>Drawing No.</u> | <u>Revision No.</u> | <u>Date Received</u> | DWG 01 | | 05.01.2024 | DWG 02 | | 26.01.2024 |
|--------------------|---|----------------------|---------------------|----------------------|--------|--|------------|--------|--|------------|
| <u>Drawing No.</u> | <u>Revision No.</u> | <u>Date Received</u> | | | | | | | | |
| DWG 01 | | 05.01.2024 | | | | | | | | |
| DWG 02 | | 26.01.2024 | | | | | | | | |
| ii. | The Application for planning permission registered on 26 January 2024 | | | | | | | | | |
| iii. | The Appointed Officer's Submission | | | | | | | | | |
| iv. | Policies relevant to the determination of the application: National Planning Framework 4 – Policy 7 (Historic Assets and Places); Policy 13 (Sustainable transport); and Part (e) of Policy 30 (Tourism) The adopted East Lothian Local Development Plan 2018: <ul style="list-style-type: none"> - RCA1 (Residential Character and Amenity); - CH2 (Development Affecting Conservation Areas); - T1: (Development Location and Accessibility); - T2: (General Transport Impact) | | | | | | | | | |
| v. | Notice of Review dated 1 June 2024 together with Applicant's Submission with supporting statement and associated documents. | | | | | | | | | |

4. Findings and Conclusions

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

- 4.2. The Members then asked the Planning Adviser to summarise the planning policy position in respect of this matter. The Planning Adviser advised that the planning application relates to a three-bedroom flat within a three storey mid-terrace flatted building, with accommodation in its roof space, situated on the south side of Rosebery Place in Gullane. The ground floor component of the building contains a shop which is served by its own separate entrance door. The flatted building is within the Local Centre of Gullane as defined by Policy TC2 of the adopted East Lothian Local Development Plan 2018. It is also within Gullane Conservation Area. No alterations have been undertaken to the flat, either internally or externally, to facilitate the change of use. In his report the case officer noted a number of points made by the applicant in support of his application. Namely that:
- (i) the flat has been marketed/used for short term lets since May 2021;
 - (ii) the most common length of stay by guests is 7 nights;
 - (iii) the maximum number of visitors in one booking is 5 guests;
 - (iv) North Berwick Holiday Homes (the appointed letting agency) manages guest arrivals and departures for the check in/check out process;
 - (v) the property is cleaned after each guest stay by an appointed cleaner and that a local person is employed to manage recycling and waste bins for collection days;
 - (vi) there are a total of four flats within the building - two at first floor level and two at second floor level; and
 - (vii) all four residential flats within the building share a communal entrance door and internal stairwell with one another.

The Planning Adviser then summarised the legislative and policy considerations relative to this application with the policy considerations as summarised in paragraph 3.1 iv above. Further the Planning Adviser confirmed that material to the determination of the application is Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

The Planning Adviser then confirmed that there were two written objections received in relation to the application which were summarised within the case officer's report. Noting that Gullane Area Community Council objected to the application on the basis that

- There is shortage of small properties available for permanent residence
- there is no available parking at the property and that the general location is very busy
- the provision of space for up to 5 guests creates the potential for there to be multiple vehicles needing to park.
- the property shares an entry with a number of other flats, creating the potential for disturbance.

The Planning Adviser confirmed that the Council's Senior Environmental Health Officer advised that whilst the normal use of a property would not result in loss of amenity to neighbours, the use of properties for short term holiday let can result in future guests misusing and abusing the property in a manner that is antisocial and can result in a significant impact upon amenity of neighbours. However, the response noted that the Council's Environmental Health Service cannot assume that antisocial behaviour issues will arise and thus cannot impose any enforceable conditions to protect the amenity of neighbours. Further the Council's Antisocial Behaviour Team advised that they have no records of any incidents relating to antisocial behaviour matters at this address and thus they raise no objection to this retrospective planning application. Police Scotland advised that there have been no police incidents at this address within the last 3 years. It was also noted that the Council's Roads Services raised no objection to this retrospective planning application. Accordingly, the proposal does not conflict with NPF4 Policy 13 and with Policies T1 and T2 of the adopted East Lothian Local Development Plan 2018.

It was also noted that the Council's Housing Strategy & Development Service objected to this retrospective planning application. The Council's Economic Development Service Manager submitted comments supporting the application.

The Planning Adviser noted that the case officer conducted a planning assessment of the proposal and concluded that the use of the application property as a holiday let results in a regular turnover of users/occupants of the property. This use changes the nature of comings and goings not only to the application property itself but also within the communal entrance and hallway of the residential building. The officer concluded that this change is harmful to the amenity of the occupants of the residential properties within the residential flatted building. The officer also noted that along with the extra comings and goings of users of the holiday let at check in/check out there is also an additional level of activity not only at the application property but also within the communal entrance and hallway as a result of people regularly accessing both the main building and the application property itself to service/clean it and remove waste and recycling material after each guests stay. This level of additional activity is evidently different to that expected with the permanent/long term use of the flat as a private residence again which is harmful to of the amenity of the occupants of the residential properties within the residential flatted building. Moreover, the case officer report noted that allowing frequently changing guests unfettered access to otherwise secure shared areas changes the actual and perceived level of security for permanent residents. The officer concluded that given the specific circumstances and location of the application property within the residential flatted building of 8 Main Street, Gullane which contains a number of permanent/long term residences which share a communal entrance and stairwell, the retrospective change of use of the applicant's second floor flat as a three bedroom unit of short term self-catering holiday let accommodation is incompatible with, and harmful to, the amenity of the occupiers of the properties within the residential flatted building. By having an unacceptable impact on local amenity, the proposal is contrary to part e) of Policy 30 of NPF4 and with Policy RCA1 of the adopted East Lothian Local Development Plan 2018. However, the Planning Adviser said that in his view policy RCA1 does not apply to this location as it lies within the designated Gullane local centre where a range of uses exists rather than in a predominantly residential area of town where policy RCA1 applies. Policy TC2 does not address short term lets. The officer also assessed the impact of the change of use on the loss of residential accommodation where such loss is not outweighed by demonstrable local economic benefits as is stated in part e) of Policy 30 of NPF4. The Council's Housing Strategy & Development Service stated that the change in use of this property from a long term residential dwelling to a short term let is considered a significant loss because (i) the property is located within the North Berwick ward (where there is already a high percentage of short term lets); and (ii) the property has not been in use as a short term let for more than 5 years. Accordingly, the Council's Housing Strategy & Development Service object to this retrospective planning application. The Council's Economic Development Service Manager supported the application and advised that there are demonstrable local economic benefits delivered by all types of short-term holiday lets in East Lothian and that existing provision of this type of accommodation must be retained, protected and supported where there is no demonstrable impact on local amenity, the character of the area or loss of residential accommodation. The case officer concluded that the local economic benefits associated with the use of the applicant's second floor flat operating as a three-bedroom unit of short term self-catering holiday let accommodation does not outweigh the unacceptable impact on local amenity. Therefore, the change of use is not in accordance with the Development Plan and there are no material planning considerations that outweigh the fact that the change of use is not in accordance with the Development Plan. The Planning Adviser confirmed that the application was refused as the proposal was contrary

to part e) policy 30 of NPF4 and policy RCA1 of the adopted East Lothian LDP.

The Planning Adviser commented that should Members decide to refuse the application it would be their advice that it would be refused for the same reasons given in the original refusal dated 14th February 2024 amended to remove the words '*and Policy RCA1 of the adopted East Lothian Local Development Plan 2018*' thus the refusal would be against Policy 30 part e) of NPF4 only.

The Planning Adviser then confirmed that in the information pack members have a submission from the appellant who made a number of points including:

1. On 7th August 2023 the Council's Planning Service advised that planning permission was not required in this instance but on 14th November 2023, they were advised that the original Planning advice was incorrect.
2. The Report of Handling does not consider the information supplied via the Supporting Statement of 18th January 2024 and forming part of the Planning Application of January 2024 pertaining to the length or mid term nature of stays, e.g. most recent mid term stay of 5 months, previous mid term stays of 31 nights, personal and family use of approx. 50 nights which make the intensity and scale of use indistinguishable from typical residential use and failing to consider this information has lead to incorrect assumptions regarding frequent turnovers changing the nature of comings and goings within the building communal areas.
3. Long queues on the pavement outside Gullane Superfry, delivery activities for the Co-op and the late night patrons of the Main Course restaurant are far more impactful to the local amenity and to the residents of 8 Main Street.
4. Shorter term guests do not typically arrive and depart at unsociable hours. For mid term lets, housekeeping is not provided during the stay.
5. The representations were surprising to me since I believed none were received following the 3 week Short Term Let licence notice period.
6. There appears to be a presumption against the granting of planning permission to tenemental/shared main door accommodation. The applicant is concerned that decisions are possibly being made on this presumption and not on a fact and degree basis.
7. Most of the Council's internal and external consultees did not support the Planning Officer's view that there is an unacceptable impact on amenity or the character of Gullane's Local Centre or that it is harmful in any way.
8. NPF4 Policy 30e (Tourism) is specific to Tourism and the use of this property as a short-term let cannot be categorised as primarily tourist use as defined by this policy.
9. In terms of Policy 30 e ii) the loss of residential accommodation. As detailed previously, in my opinion and confirmed by Planning by email on 14th November 2023, this is my sole residence and defined by the Civic Government (Scotland) Act 1982 (Licensing of Short Term Lets) as a Home Let and therefore no loss of permanent residence. Since, there is no loss of long term residential accommodation, the demonstrable local economic benefits as summarised by Council's Economic Development Service must be considered;
10. The Report of Handling does not give an explanation for refusal on the grounds of Policy RCA1 of the adopted LDP 2018. As described in the Report of Handling and as defined by Policy TC1 of the LDP 2018, this property is located in the heart of the Local Centre of Gullane in a mixed development area with mixed class uses and, therefore, RCA1 is not relevant in this specific case since other uses are clearly permitted and well established historically.
11. The Council's Short-term Let Licensing issued the property with a Short-term Let

Licence on 30th May 2024. With regards to the Proposal. I would respectfully re-highlight, for context, the location of this property; being situated in the heart of Gullane's Local Centre, bounded by ground floor commercial premises to the east and west. These commercial activities inevitably generate noise and disruption affecting the neighbourhood whilst also improving local amenities, providing job opportunities, encouraging sustainable economic growth and supporting the vibrancy, vitality and viability of Gullane's Local Centre.

12. The Report of Handling does not identify Policies TC1 and TC2 of the LDP 2018. Policy TC1 states "a sequential town centre first approach will be applied where appropriate to retail, commercial, leisure, office and other development proposals that would attract significant footfall. Policy TC2 states "with a Local or Town Centre , uses that will be acceptable in principle include retailing, business and office use, restaurants, leisure and entertainment and the principle of a change of use from one of those to another will be supported." A key aim of the Planning system (adopted LDP 2018) is to ensure that development of Local Centres supports their vibrancy, vitality and viability.
13. With reference to Representations: Two objections are noted. "the use of applicant's flat as a short term holiday let has caused major problems in the past." No explanation is provided. My son who often stays at the property has made himself known to all our neighbours also. North Berwick Holiday Homes are an immediate, 24 hour, local point of contact. In 3 plus years, no major problems have been advised to me, my son, the agent, Police Scotland or Council's AntiSocial Behaviour Team. On the second point, namely "the letting company who manage the property is very dilatory, especially regarding recycling and refuse collection which affects the people who live here sharing the communal garden." The applicant disagrees as they consider North Berwick Holiday Homes (the letting agent) to be extremely professional, knowledgeable and hardworking. Thirdly, "the atmosphere is changing as more properties in this block are allowed to operate as short term lets." I respectfully signpost the Panel to Council's Short-term Let Register, updated weekly on the Council website. There are no other properties in this block operating as a short term let. The fourth, fifth and sixth points relate to the fairness and appropriateness of a communal front door, hallway and stairwell and the possibility of high noise levels and a perceived security risk. There is no doubt there is a communal front door, communal rear entrance, hallway and stairwell and there is the possibility of noise, however, there has never been any report of such issues directly or indirectly. As regards security, neither the communal front door nor communal rear entrance have been secured, day or night, since the applicant moved into the flat in October 2017.
14. Gullane Area Community Council view this proposal as unfortunate based on a loss of permanent residence. The applicant respectfully highlights that there is no loss of a residence since this property is defined by Scottish legislation (the Civic Government (Scotland) Act (Licensing of Short Term Lets) as a Home Let, that means "using all or part of your own home for short term lets whilst you are absent." This includes, for example, while you are away for work purposes but the property remains your home. The applicant intends to return from working away at the end of their temporary contract, they do expect to reside in their own home. GACC makes further comment on parking and the potential for disturbance. As stated earlier in the Report of Handling, Road Services raise no objection to this proposal.
15. The report of handling identifies that "the change of use of the property to a holiday let provides accommodation within Gullane that attracts visitors and encourages them to stay in East Lothian , which supports the existing long established business and benefits the wider economy of East Lothian." It also mentions Policy RCA1 but the applicant was unable to find any further reference to this policy in the Report and how it is applicable in this case, however, it is quoted as grounds for refusal.

16. The Report repeats a description of the property and details a set of statements which are not specific to this particular case. In my opinion, this report is not a fact and degree assessment of this specific property since the information provided has not been incorporated but rather a generalised collection of statements applied to many shared access properties across the County.

The Planning Adviser then summarised two further representations which had been submitted from the residents of neighbouring flats. These representations raise 2 points:

- 1) The overflowing general waste bin for the flat has often been left in that state and taken out at appropriate times for emptying and recycling has never been done for that flat
- 2) The objector suggests that there is a security aspect to short term lets as they have seen strangers in the communal garden which has not happened before this flat was offered as Short-term Let.

There is also a representation submitted by the Council's Economic Development and Regeneration Service Manager. This representation highlighted the fact that the Council's Local Economy Strategy was adopted in April 2024 and reiterated the previously made comments in support of the application.

The Planning Adviser then addressed the appellant's response to the above representations.

Regarding the refuse control measures – the appellant is aware of two incidents – the first as a result of a neighbouring commercial property misusing the general waste collection bin allocated to the property and the second a recent overfill (source unknown). Whilst these incidents are regrettable the appellant has spoken with the Property Manager at NBHH to ensure there is no reoccurrence.

The appellant also highlighted that during the midterm let of 5 plus months (November 2023 to mid April 2024), the occupants most certainly carried out refuse and recycling tasks.

In terms of a security aspect – the appellant noted that Rosebery Terrace comprises 12 dwellings over 3 blocks served by their own main door and rear entrances. The rear communal garden areas are shared across all 12 properties and the commercial properties at ground floor level who also have access to the garden. The communal garden area is accessible to all who wish to enter since the buildings are not secure.

The appellant reiterated that the case for upholding the appeal is strongly based on the intents and outcomes of NPF4 30 (Tourism) Parts a) and b), and that the proposal received further support from Council's Economic Development and Regeneration Service Manager.

Finally, the appellant confirmed that the Council provided the property with a Short-Term Licence for Secondary Letting, later changed to Home Let. However, it is the opinion of the applicant that the 3 year Licence has been granted possibly in bad faith since it offers him zero certainty.

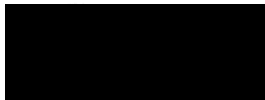
- 4.3. Members then asked questions of the Planning Adviser. Councillor Collins asked whether there could be a condition imposed on any consent to prevent guests from using the communal garden. The Planning Adviser confirmed this was possible but was of the view it would be very difficult to enforce such condition.

- 4.4. The Chair asked his colleagues if they had sufficient information to proceed to determine the application today and they unanimously agreed to proceed. Comments on the application followed.
- 4.5. Councillor Cassini stated she was considering this matter on its own merits. Considering the objections to this application it is clear this application is not compatible with retaining amenity for other residents and notes disquiet on meeting strangers on a regular basis within the building. She also noted that with up to five guests visiting there would be limited car parking. Accordingly, she was minded to support the case officer's decision to refuse planning permission
- 4.6. Councillor Collins stated that she was conflicted with the communal garden area, however she was of the view that the type of guests attracted to this area would be golfing groups and unlikely to cause nuisance as these types of groups are likely to return. She also noted that the applicants letting agents had a good reputation for managing properties well. She was therefore minded to grant planning permission.
- 4.7. Councillor McLeod's view was the impact on other residents sharing the communal stairway and therefore was minded to support the case officer's decision.
- 4.8. The Chair noted that there was secluded area around the stairwell where other residents could encounter strangers which may be intimidating to the residents of the building. He also noted the communal garden and had concerns over the impact on the residents as those on holiday may behave differently from those permanently residing in the building. He was therefore minded to support the case officer's decision and refuse planning permission.

Accordingly, the ELLRB by majority of three (3) to one (1) decided to refuse the appeal and refuse planning permission 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 8 Main Street, Gullane and as such is contrary to part e) of Policy 30 of National Planning Framework 4*

Planning Permission is hereby refused.



Carlo Grilli
Legal Adviser to ELLRB

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997**Notification to be sent to applicant on determination by the planning authority of an application following a review conducted under Section 43A(8)**

Notice Under Regulation 21 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.

- 1 If the applicant is aggrieved by the decision of the planning authority to refuse permission or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.

- 2 If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.