

REVIEW DECISION NOTICE

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

Application for Review by Mr Alan Herd at 46A High Street, North Berwick EH39 4HQ decision to refuse Planning Permission for the change of use of flat to short term holiday let (Retrospective) at 46A High Street, North Berwick EH39 4HQ.

Site Address: 46A High Street, North Berwick EH39 4HQ

Application Ref: 23/01254/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 refuse the appeal and refuse planning permission for the change of use of flat to short term holiday let (Retrospective) at 46A High Street, North Berwick EH39 4HQ. 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 3 January 2024 and the Decision Notice refusing the application is dated 14 February 2024.

2.3. The reason for refusal is more particularly set out in full in the said Decision Notice dated .
The reason for refusal are/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 46 High Street, North Berwick 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 10 May 2024.

3. **Preliminaries**

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

i.	<p>The drawings accompanying this application are referenced and numbered as follows:</p> <table border="1"> <thead> <tr> <th data-bbox="387 703 539 734"><u>Drawing No.</u></th> <th data-bbox="683 703 834 734"><u>Revision No.</u></th> <th data-bbox="1026 703 1201 734"><u>Date Received</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="387 763 491 795">DWG 01</td> <td data-bbox="683 763 834 795"></td> <td data-bbox="1026 763 1161 795">30.11.2023</td> </tr> <tr> <td data-bbox="387 795 491 826">DWG 02</td> <td data-bbox="683 795 834 826"></td> <td data-bbox="1026 795 1161 826">30.11.2023</td> </tr> </tbody> </table>	<u>Drawing No.</u>	<u>Revision No.</u>	<u>Date Received</u>	DWG 01		30.11.2023	DWG 02		30.11.2023
<u>Drawing No.</u>	<u>Revision No.</u>	<u>Date Received</u>								
DWG 01		30.11.2023								
DWG 02		30.11.2023								
ii.	The Application for planning permission registered on 3 January 2024									
iii.	The Appointed Officer's Submission									
iv.	<p>Policies relevant to the determination of the application:</p> <p>National Planning Framework 4 – Policy 7 (Historic Assets and Places); Policy 13 (Sustainable transport); and Part (e) of Policy 30 (Tourism)</p> <p>The adopted East Lothian Local Development Plan 2018:</p> <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 10 May 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 second floor flat within a three storey, mid-terrace, flatted building situated on the north side of High Street in North Berwick. The ground floor component of the building contains a shop which is served by a separate entrance door. The flatted building is located within the Town Centre of North Berwick as defined by Policy TC2 of the adopted East Lothian Local Development Plan 2018. It is also within North Berwick Conservation Area. No alterations have been undertaken to the flat, either internally or externally, to facilitate the retrospective 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:

- the flat has been marketed/used for short term lets since April 2018 (since 2015 with a 1 year gap for residential let)
- the minimum length of stay is 2 nights and the maximum length of stay is 28 nights
- the maximum number of visitors in one booking is 5 guests;
- bins/recycling are managed by the applicant;
- the property is advertised on Airbnb and the applicant either meets guests on arrival or guests use the key safe box provided;
- the second floor flat, the subject of this application, shares a communal entrance and stair with the first floor flat located directly beneath it; and
- the applicant's flat does not benefit from a designated parking space but guests travelling by car are advised to park in the public car park at St Andrew Street.

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

The adopted East Lothian Local Development Plan 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.

In his report the case officer correctly stated that in the determination of this application it is necessary to assess the impact of the change of use of the application property to a unit

of holiday let accommodation upon the amenity of the existing neighbouring residential properties.

The Planning Adviser confirmed that the report accurately summarised all comments received from our internal and external consultees.

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

The Planning Adviser noted that the case officer conducted a planning assessment of the proposal and concluded that the officer confirmed that the flatted building of 46 High Street is accessed from High Street to the south or from Forth Street Lane to the north. Within the internal communal hallway of the building there are two separate flights of stairs; one at the southern end of the building (which serves the applicant's flat and the first floor flat located beneath it) and the other at the northern end of the building (which serves two first floor flats). The use of the application property as a holiday let results in a regular turnover of users/occupants of the property. This use changes the nature of comings and goings not only to the application property itself but also within the communal entrance and hallway of the residential building. Most users/occupants of the holiday let would have a degree of luggage or other property to take through the communal external entrance and hallway which in itself would lead to a level of disturbance and nuisance not associated with the permanent/long term residential use of the property. The officer concluded that this is harmful to the amenity of the occupants of the residential properties within the residential flatted building. The officer accepted that permanent residents may also make noise but they tend to keep their luggage in their homes and do not move them with the same frequency as regularly changing guests who arrive and depart sometimes at unsociable hours, and this differs from typical residential circumstances.

The Planning Adviser referred to the case officer report and noted that along with the extra comings and goings of users of the holiday let at check in/check out there is also an additional level of activity not only at the application property but also within the communal entrance and hallway as a result of people regularly accessing both the main building and the application property itself to service/clean it and remove waste and recycling material after each guests stay. This level of additional activity is evidently different to that expected with the permanent/long term use of the flat as a private residence again which is harmful to of the amenity of the occupants of the residential properties within the residential flatted building. Moreover, the case officer report noted that allowing frequently changing guests unfettered access to otherwise secure shared areas changes the actual and perceived

level of security for permanent residents. Whilst permanent residents are likely to have visitors of their own from time to time, those permanent residents would remain in control of security to communal areas. The introduction of frequently changing guests regularly into these secure areas, independent of the owner, would therefore differ from typical residential circumstances. The case officer concluded that given the specific circumstances and location of the application property within the residential building of 46 High Street, North Berwick which contains a number of permanent/long term residences and which shares a communal front and rear entrance with three other residential properties and an internal stairwell with another, 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 residential properties within the residential building of 46 High Street, 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. However, the Planning Adviser said that in his view policy RCA1 does not apply to this location as it lies within the designated North Berwick town centre where a range of uses exists rather than in a predominantly residential area of town where policy RCA1 applies. Policy TC2 does not address short term lets.

The Planning Adviser advised that the case 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 did not object to the application. The Council's Economic Development Service Manager advised that there are demonstrable local economic benefits delivered by all types of short term holiday lets in East Lothian and that existing provision of this type of accommodation must be retained, protected and supported where there is no demonstrable impact on local amenity, the character of the area or loss of residential accommodation. His comments highlighted that in the particular circumstances of this case

- (i) non-serviced accommodation (short term holiday lets) contribute positively to the local economy (£279m in 2019) and the applicant's flat accounts for 5 bedspaces and a potential annual economic impact of over £113000 and 2.5FTE jobs;
- (ii) there is an increasing number of overnight stays in East Lothian for work purposes (which is expected to increase over the next 10-15 years) such that the loss of short term accommodation is likely to have a significant negative impact on the local tourist economy in monetary and reputational terms.

The case officer concluded that notwithstanding that the change of use of the applicant's flat would not result in the loss of residential accommodation and the local economic benefits associated with the use of the 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 application was refused as the proposal was considered contrary to part e) policy 30 of NPF4 and policy RCA1 of the adopted East Lothian LDP.

The Planning Adviser also commented that should members decide to refuse the application it is his 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 highlighted to members that there was also submission from the appellant in their information pack. The Planning Adviser then summarised the appellant's submission. In their submissions the appellant states that:

- 1) their property has been operating as a Holiday Let since May 2015 long before the National Planning Framework was introduced.
- 2) in the 9 years that the appellant has operated there has been no record of anti-social behaviour or complaints from the neighbour below. This proves that there has been no unacceptable impact on local amenity or character of a neighbourhood.
- 3) there are other properties in North Berwick which are similar to this one that have been granted Planning Approval for STL.
- 4) Section (ii) of the National Planning Framework makes reference to loss of residential accommodation however ELC Housing did not object and stated 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 let since 2015; and (ii) the property has an estimated annual occupancy rate of over 6 months.
- 5) Section (ii) of the National Planning Framework refers to demonstrable local economic benefits. 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 East Lothian Local Development Plan 2018 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. North Berwick has the Marine Hotel which is unaffordable to many families holidaying in the Town and there is a general shortage of cheap holiday accommodation. STL's provide significant financial contribution to the town and help to support Fringe by the Sea, Scottish Open Golf, ELC Tennis Tournament amongst many other events in the town.
- 6) The appellant has an annual occupancy rate of 65% therefore for 35% of the year the flat lies empty. If the flat was to be returned to a residential let, then significantly more traffic in the common stairwell would exist.
- 7) a flat in the High Street was sold recently to a couple from Durham who intend to use it as a holiday home for them and their family. This would result in the property being occupied for circa 6 weeks in the year. The Town exists on tourism and has been well known as a tourist destination for centuries. STL properties maintain the structure of North Berwick and contribute significantly to the growth and economic development and provide affordable accommodation for families.

4.3. Members then asked questions of the Planning Adviser in particular the Chair asked the Planning Adviser to confirm that all other flats within the building were residential, there have been no reports of anti social behaviour from the premises at this time and that there is no control in the future against anti-social behaviour through the planning process and could not withdraw planning permission should the be antisocial behaviour in the future. The Planning Adviser confirmed this position.

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 McLeod commented that the property was in an excellent location and while he

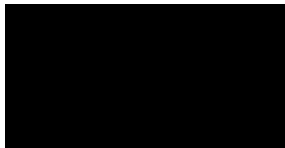
noted there had been no anti-social behaviour in the past it cannot be presumed there will not be in the future. He stated that it was his view it was better to be pro-active as opposed to re-active and felt it was not possible what would happen within the long term. He noted the police report and it was fortunate there had been no issues to date. Ultimately his main concern was the impact on other residents sharing the communal stairway and therefore was minded to support the case officer's decision.

- 4.6. Councillor Collins noted that the property had been operating for nine years with no issues or objections. She noted the narrow staircase and there may be confusion on what staircase could be used but noted that all guests would be met on arrival which would assist visitors. She was of the view that there is a tipping point affecting the local economy and therefore was minded to support the appeal and grant planning permission.
- 4.7. Councillor Cassini stated that she was conflicted with the shared entry. She noted that the entry was not secured and the premises could accommodate up to five persons, which was a large number. This number of occupants could present issues for other residents. Accordingly she was minded on this occasion to support the case officer's recommendation and refuse planning permission.
- 4.8. The Chair confirmed he was of similar mind to Councillor Cassini. He further commented that in the future there could be a large number of people moving around the building and that may cause intimidation around the stairwell to other residents within the building. He accepted that we do need accommodation for visitors to the region but that cannot be at the detriment to the amenity of other within the building. Accordingly, he was 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 support the officer's recommendation to 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 46 High Street, North Berwick 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.