



**MINUTES OF THE MEETING OF THE
LOCAL REVIEW BODY**

**THURSDAY 30 MAY 2024
VIA THE COUNCIL HYBRID SYSTEM**

Committee Members Present:

Councillor L Allan (Convener)
Councillor D Collins
Councillor A Forrest

Advisers to the Local Review Body:

Mr C Grilli, Legal Adviser to the LRB
Mr M Mackowiak, Planning Adviser to the LRB

Clerk:

Ms M Scott, Committees Officer
Ms E Barclay, Democratic Services Assistant (Meeting Administrator)

Apologies:

N/A

Declarations of Interest

None

Introductory Statement by the Legal Adviser

The Legal Adviser outlined the procedure for the Local Review Body to reach a decision on the planning application before it and reminded them that further advice would be provided on procedure, should they conclude they did not have enough information to determine the application today.

On this occasion it was agreed that Councillor Allan would chair the Local Review Body (LRB).

1. PLANNING APPLICATION NO. 23/00938/P: CHANGE OF USE OF FLAT FROM RESIDENTIAL TO A MIXED USE OF RESIDENTIAL AND SHORT TERM LET (RETROSPECTIVE), 114A HIGH STREET, DUNBAR, EH42 1JJ - REVIEW AGAINST DECISION (REFUSAL)

The Chair invited the Planning Adviser, who had not been involved in the original decision, to present a summary of the planning policy considerations in this case.

The Planning Adviser provided details of the application, property and location, and outlined the reason for refusal of planning permission.

He referred to relevant legislation and policy: sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, NPF4 Policy 7 Historic Assets and Places and Policy CH2 of the LDP 2018 and TC2 Of the adopted East Lothian Local Development Plan 2018. He added that Policies 7 (Historic assets and places) and 30 (Tourism) of NPF4 were relevant to the determination of this application. Policies CH1 (Listed Buildings), CH2 (Development Affecting Conservation Areas), CH5 (Battlefields), T1 (Development Location and Accessibility) and T2 (General Transport Impact) of the adopted East Lothian Local Development Plan 2018 were also relevant.

The Planning Adviser explained that the adopted East Lothian LDP did not contain a specific policy on the change of use of flats to holiday lets. However, part e) of Policy 30 (Tourism) of NPF4 stated 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.

The case officer had stated that in the determination of this application it was 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 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 was antisocial and could result in a significant impact upon amenity of neighbours. However, the response noted that the Council's Environmental Health Service could not assume that antisocial behaviour issues would arise and thus could not impose any enforceable conditions to protect the amenity of neighbours. The Council's Antisocial Behaviour Team advised that they had no records of any incidents relating to antisocial behaviour at this address and thus they raised no objection to the application. Police Scotland advised that there had been no police incidents at this address and thus they raised no objection to this retrospective planning application. The Council's Roads Services raised no objection to this retrospective planning application. Accordingly, the proposal did not conflict with Policies T1 and T2 of the adopted

East Lothian Local Development Plan 2018. The Council's Housing Strategy & Development Service objected to this retrospective application and the Council's Economic Development Service Manager submitted comments supporting the application.

The Planning Adviser provided a summary of the case officer's planning assessment and concluded that the use of the application property as a holiday let resulted in a regular turnover of users/occupants of the property which changed 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 which would lead to a level of disturbance and nuisance not associated with the permanent/long term residential use of the property. He added that this was 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 this differed from typical residential circumstances.

The officer had also noted that along with the extra comings and goings of users of the holiday let at check in/check out there would also be 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 guest's stay. The case officer's report noted that allowing frequently changing guests unfettered access to otherwise secure shared areas changed the actual and perceived level of security for permanent residents. Whilst permanent residents were likely to have visitors of their own from time to time, those permanent residents would remain in control of security to communal areas.

The officer had concluded their report by stating 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 was incompatible with and harmful to the amenity of the occupiers of the properties within the said residential building. By having an unacceptable impact on local amenity, the proposal was contrary to part e) of Policy 30 of NPF4. The case officer also quoted Policy RCA1 of the adopted LDP and determined that the proposal was contrary to that policy.

The Planning Adviser then set out his views on the case. He felt policy RCA1 did not apply to this location as it lay within the designated Dunbar town centre where a range of uses existed rather than in a predominantly residential area of town where policy RCA1 applied and policy TC2 did not address short term lets.

The officer had also assessed the impact of the change of use on the loss of residential accommodation where such loss was not outweighed by demonstrable local economic benefits as is stated in part e) of Policy 30 of NPF4. The Council's Housing Strategy & Development Service advised they objected to the application as the change of use of this property from a long-term residential dwelling to a short term let was considered a significant loss. The Council's Economic Development Service Manager advised that there were 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 was no demonstrable impact on local amenity, the character of the area or loss of residential accommodation.

The case officer had concluded that 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 did not outweigh the unacceptable impact on local amenity. Therefore, the change of use was not in accordance with the Development Plan and there were no material planning considerations that outweighed that fact. 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 made Members aware should they decide to allow the appeal the case officer had suggested conditions they may wish to consider applying.

The Planning Adviser then provided a summary of the applicant's submission and summarised the further representation made in relation to the appeal and the response to the comments by the applicant.

The Chair asked her colleagues to confirm that they had attended the site visit and if they were satisfied that they had sufficient information before them to determine the application. They confirmed this to be the case.

The Chair then invited Members to give their views on the application.

Councillor Forrest noted that within the report it stated neighbours would also come and go from their property, but he didn't feel it would be the same timescales as visitors who were renting the short term let as they would be on holiday and coming back much later. He felt it was more general noise rather than antisocial behaviour that would be the main problem with this property as even if anti-social behaviour was reported the visitors would have left by the time the police or an anti-social behaviour team visited the property.

Councillor Collins stated she found the site visit very informative and noticed the first 9 steps up to the front door were stone. She also found this application unique as the property owner would be residing in the property when it wasn't being let out so on that basis, she felt the owner would be more careful about who they were letting the property out to. Councillor Collins stated there had been no objections and no antisocial behaviour in the two years the property had been run this way and therefore she would be voting to uphold the appeal.

The Chair agreed with Councillor Collins statements adding that as the neighbouring property was on the floor above, they would not be disturbed by any comings and goings. Also, as the applicant would reside within the property when it was not being let out, all rubbish and recycling would be dealt with as usual.

The LRB members confirmed their decision via roll call vote. They agreed, by majority vote, to uphold the appeal.

Decision

The ELLRB agreed, by majority vote, to uphold the appeal of the applicant and grant planning permission subject to conditions.

2. PLANNING APPLICATION NO. 23/01409/P: CHANGE OF USE OF FLAT TO SHORT TERM HOLIDAY LET (RETROSPECTIVE), 1B MANSFIELD PLACE, MUSSLEBURGH, EH21 7DN - REVIEW AGAINST DECISION (REFUSAL)

The Chair invited the Planning Adviser, who had not been involved in the original decision, to present a summary of the planning policy considerations in this case.

The Planning Adviser provided details of the application, property and location, and outlined the reasons for refusal of planning permission.

He referred to relevant policies and legislation; Policy 30 (Tourism) of NPF4 and policies RCA1 (Residential Character and Amenity), T1 (Development Location and Accessibility) and T2 (General Transport Impact) of the adopted East Lothian Local Development Plan 2018.

He noted that no written objections had been received in relation to the application. He summarised the comments made by the Council's Senior Environmental Health Officer and noted that the Council's Antisocial Behaviour Team had no record of any incidents relating to antisocial behaviour at the address and thus raised no objection to the application. Police Scotland also advised that there had been no police incidents at this address within the last 3 years. The Council's Roads Services also raised no objection to the application. Accordingly, the proposal did not conflict with Policies T1 and T2 of the adopted East Lothian Local Development Plan 2018. The Council's Housing Strategy & Development Service objected to this retrospective application. The Council's Economic Development Service Manager submitted comments supporting the application.

The Planning Adviser provided a summary of the case officer's planning assessment which concluded that the use of the application property as a holiday let resulted in a regular turnover of users/occupants of the property which changed 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 and would lead to a level of disturbance and nuisance not associated with the permanent/long term residential use of the property. He added that this was harmful to the amenity of the occupants of the residential properties. The officer accepted that permanent residents may also make noise, but the noise/disturbance created by short-term guests differed from typical residential circumstances.

The officer had also noted that there would also be 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 guest's stay. The case officer report noted that allowing frequently changing guests unfettered access to otherwise secure shared areas changed the actual and perceived level of security for permanent residents. Whilst permanent residents were likely to have visitors of their own from time to time, those permanent residents would remain in control of the security of communal areas. The officer had concluded their report by stating the retrospective change of use of the applicant's ground floor flat was incompatible with and harmful to the amenity of the occupiers of the properties within the residential building and therefore was contrary to part e) of Policy 30 of NFP4 and with Policy RCA1 of the adopted East Lothian Local Development Plan 2018.

The officer also assessed the impact of the change of use on the loss of residential accommodation where such loss was not outweighed by demonstrable local economic benefits as was stated in part e) of Policy 30 of NPF4. The Council's Housing Strategy & Development Service had objected to the application as the change of use of this property from a long-term residential dwelling to a short term let was considered a significant loss as the property was located in Musselburgh with a concentrated number of short-term lets. The Council's Economic Development Service Manager had advised that there were 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 was no demonstrable impact on local amenity, the character of the area or loss of residential accommodation. His comments also highlighted the particular circumstances of this case.

The case officer had concluded that the local economic benefits associated with the use of the flat as short-term holiday let accommodation did not outweigh the unacceptable impact on local amenity. Therefore, the change of use was not in accordance with the Development Plan and there were no material planning considerations that outweighed that fact. The application was refused as the proposal was contrary to part e policy 30 of NPF4 and policy RCA1 of the adopted East Lothian LDP

The Planning Adviser then provided a summary of the applicant's submission and summarised the further representations made in relation to the appeal and the response to the comments by the applicant.

The Chair asked her colleagues to confirm that they had attended the site visit and if they were satisfied that they had sufficient information before them to determine the application. They confirmed this to be the case.

The Chair then invited Members to give their views on the application.

Councillor Forrest felt that as the Edinburgh Festival was coming up and the property was located so close to Edinburgh, this could cause significant comings and goings and disturbance to permanent residents.

Councillor Collins understood the concerns of Councillor Forrest but highlighted the property had been running as a short term let for seven years without any problems. Furthermore, it did not have a security entry so there was no loss to security and the flat had allocated parking. She was therefore minded to uphold the appeal.

The Chair explained that each case was looked at individually and the loss of housing stock was often mentioned. However, seasonal workers also needed a place to stay. She added that as the property had been run as a short term let since 2017, she was also minded to support the appeal.

The LRB members confirmed their decision via roll call vote. They agreed, by majority, to uphold the appeal and to grant planning permission subject to the conditions suggested by the planning case officer.

Decision

The ELLRB agreed, by majority, to uphold the appeal and to grant planning permission subject to conditions.

3. PLANNING APPLICATION NO. 23/01388/P: ERECTION OF FURNITURE MAKING STUDIO (CLASS 4) AND ASSOCIATED WORKS, BOLTON MUIR WOOD, GIFFORD, EAST LOTHIAN - REVIEW AGAINST DECISION (REFUSAL)

The Chair invited the Planning Adviser, who had not been involved in the original decision, to present a summary of the planning policy considerations in this case.

The Planning Adviser provided details of the application and location and outlined the planning history of the site. The proposed workshop building would be rectangular in shape measure some 28.7 metres long, some 15.2 metres wide and some 5.3 metres high to the ridge of its pitched roof form above ground level. The proposed building would have a series of roof windows formed within the upper part of its north facing pitched roof slope and 20 solar panels formed within the upper part of its south facing pitched roof slope. The application was supported by a Planning Statement, an Arboricultural Impact Assessment and a Transport Statement.

The case officer report confirmed that there were no public objections to the application and three letters from members of the public were received in support of the proposal. A letter of support was also received from Humble, East & West Saltoun and Bolton Community Council.

The Planning Adviser stated the development plan is National Planning Framework 4 (NPF4) and the adopted East Lothian Local Development Plan 2018. Policies 3 (Biodiversity), 6 (Forestry, woodland and trees), 9 (Brownfield, vacant and derelict land and empty building), 13 (Sustainable transport), 14 (Design, quality and place), 26 (Business and Industry) and 29 (Rural Development) of NPF4 were relevant to the determination of this application. Policies DC1 (Rural Diversification), NH3 (Protection of Local Sites and Areas), NH5 (Biodiversity and Geodiversity Interests, including Nationally Protected Species), DP1 (Landscape Character), DP2 (Design), NH8 (Trees and Development), T1 (Development Location and Accessibility) and T2 (General Transport Impacts) of the adopted East Lothian Local Development Plan 2018 were also relevant to the determination of the application.

The Planning Adviser provided a summary of the case officers consultation process and felt his report accurately summarised all comments received from internal and external consultees. There were no objections received from the Council's Senior EHO, Contaminated Land officer and from Forestry Commission Scotland. The Forestry Commission had noted that nine trees within the site were proposed to be removed and thus consideration should be given to replacement planting. The Council's Biodiversity Officer, Landscape Officer and Road Services also provided comments on the proposal. The Council's Biodiversity Officer noted that the application was not accompanied by an ecological survey and advised that the proposed development was within the Bolton Muir Local Biodiversity Site which would have both direct and indirect impacts on trees and the adjacent woodland. The Biodiversity Officer advised that, since the adoption of NPF4, the importance of ecological survey work to inform planning applications was increasingly important. Accordingly, the Biodiversity Officer objected to the planning application stating that the proposal would negatively impact the Bolton Muir Local Biodiversity Site, contrary to Policies 3 and 9 of NPF4 and Policies NH3 and NH5 of the adopted East Lothian Local Development Plan 2018. The Council's Landscape Officer advised that 9 trees were to be felled to facilitate the proposals, 6 of which were located at the vehicular entrance to the site to enhance visibility splay from and to the adjacent B6355 public road and 3 of which were to be removed to facilitate access and turning areas within the site. The Landscape Officer advised that development within areas of ancient woodland was not supported, and that the proposal conflicted with Policy 6 of NPF4 and with Policy NH8 of the adopted East Lothian 10 Local Development Plan 2018. The Landscape Officer also noted that the development within areas of ancient woodland was not supported by the Council's draft Tree and Woodland Strategy. The Council's Road Services advised that the vehicular access to the site would be taken from the B6355 public road and would make use of an existing private gated access point into the woodland area. They advised that this public road was a single carriageway rural road with a 60mph national speed limit and had a relatively straight alignment at the point of the access whereby relatively high speeds could occur. The Council's Road Services Officer advised that a full 4.5 metres by 215 metres visibility splay was required. This requirement was based on the nature of the business operation and the associated likely number and type of vehicle movements to and from the business, with particular reference to heavy vehicles. The Road Service Officer confirmed that the proposal was contrary to Policy 13 of NPF4 and Policies T1 and T2 of the current East Lothian LDP.

The case officer had considered all of the above comments and representations and concluded that the proposal was contrary to Policies 3, 6, 9, 13, 14, 26 and 29 of NPF4 and contrary to Policies DC1, NH3, NH5, DP1, DP2, NH8, T1 and T2 of the adopted East Lothian Local Development Plan 2018.

Furthermore, the case officer considered whether or not there were material considerations in this case that outweighed this conflict with the Development Plan. A material consideration was the previous planning history of the site. In that respect, planning permission was granted for the erection of 3 holiday homes within the site but was not implemented. However, those 3 holiday homes were smaller, in both their sizes and footprints, in comparison to the now proposed furniture making studio building. Moreover, unlike the current application, the 3

holiday homes did not require the removal of all the trees within the site. Therefore, the impact of the proposed furniture making studio building would be significantly greater, in terms of its built form and visual prominence, than the approved scheme of development for the 3 holiday homes within this part of the site. Consequently, the fact that permission had previously been granted for the 3 holiday homes was not a material planning consideration that outweighed the fact that the proposed building would be contrary to the development plan. Another material consideration was the supporting statement submitted by the applicant that the proposal would contribute to the vitality and diversity of the East Lothian rural economy and specifically in the Gifford area creating new employment opportunities (approx. up to 10 jobs) and helping to create a wood workers' area of excellence. The case officer had acknowledged that the Council's Economic Development Service Manager supported the proposal. However, the case officer concluded that the local economic benefits associated with the proposal were not a material planning consideration that outweighed the fact that the proposed building was contrary to the development plan.

The case officer had concluded his report stating that the proposed furniture making studio building and its associated works was not in accordance with the Development Plan and there were no material planning considerations that outweighed the fact that the proposal was not in accordance with the Development Plan and was contrary to the aforementioned policies.

The Planning Adviser then provided a summary of the applicant's submission and the further representation made in relation to the appeal.

The Planning Adviser and Legal Adviser responded to questions from Members relating to the visibility splay requirements set out by Roads Services and whether a condition could be added to any grant of planning permission regarding the enhancement/enlargement of the entrance and requirement for removal of trees.

The Chair asked his colleagues to confirm that they had attended the site visit and if they were satisfied that they had sufficient information before them to determine the application. They confirmed this to be the case.

The Chair then invited Members to give their views on the application.

Councillor Collins said she had found the site visit helpful. She noted that trees were a significant issue and that the applicant had confirmed the large 150-year-old tree would not be taken down and the trees which would be removed were only around 10 - 15 years old. She noted the mention of an alternative location for the business, but that any property of the size required would be extremely expensive. She highlighted the applicant's intention to use solar panels, air source heat pumps and that the business would be providing employment opportunities for 10 people. For these reasons, she would be supporting the application. However, she agreed that the entrance remained a problem and asked if this was something that could be worked on after the application was approved.

The Legal Adviser confirmed once the application was approved it would be as stated and could not be altered afterwards.

Councillor Forrest agreed that the site visit had been helpful and that it was a good business. However, he felt that this was the wrong location for it. At the site visit, he had found it difficult to exit the site onto the main road even though there were not many cars on the road. For these reasons he would be supporting the officer's recommendation.

The Chair also found the site visit incredibly useful and was pleased to see it was very close to the Chippendale International School of Furniture. She felt that having a business that tapped into that talent was so important. She did not think the road would be a huge issue.

and looking into the care that had gone into the building itself, she would be very much in favour of the application.

The LRB members confirmed their decision via roll call vote. They agreed, by majority, to uphold the appeal and to grant planning permission subject to the conditions suggested by the planning case officer.

Decision

The ELLRB agreed, by majority, to uphold the appeal and to grant planning permission subject to conditions.

4. PLANNING APPLICATION NO/ 23/01237/P: EXTENSION TO HOUSE, 44 GARDINER ROAD, PRESTONPANS, EH32 9QE – REVIEW AGAINST DECISION (REFUSAL)

The Chair invited the Planning Adviser, who had not been involved in the original decision, to present a summary of the planning policy considerations in this case.

The Planning Adviser provided details of the application, property and location, and outlined the reasons for refusal of planning permission.

He advised that Section 25 of the Town and Country Planning (Scotland) Act 1997 required that the application be determined in accordance with the development plan, unless material considerations indicated otherwise. The development plan was the adopted National Planning Framework 4 (NPF4) and the adopted East Lothian Local Development Plan 2018. Policies 14 (Design, Quality and Place) and 16 (Quality Homes) of NPF4 and Policy DP5 (Extensions and Alterations to Existing Buildings) of the adopted East Lothian Local Development Plan were relevant to the determination of this application. No public letters of objection had been received in relation to this application.

The Planning Adviser provided a summary of the case officer's assessment of the application. The case officer had looked at the size, position of the proposed windows and confirmed that the proposal would not allow for harmful overlooking of any neighbouring properties. Also, owing to its size, form and positioning the garden room did not give rise to a harmful loss of daylight to any neighbouring residential properties. On those matters of amenity, the proposed extension would not be contrary to Policy DP5 of the adopted East Lothian Local Development Plan 2018.

The case officer had then considered if the proposal, due to its architectural form, size, scale and positioning was appropriate for its attachment to the house. Policy 14 of NPF4 stated that development proposals that were poorly designed, detrimental to the amenity of the surrounding area would not be supported. Policy 16 of NPF4 stated that householder development proposals would be supported where they did not have a detrimental impact on the character or environmental quality of the surrounding area in terms of size, design and materials and did not have a detrimental effect on neighbouring properties in terms of physical impact, overshadowing or overlooking. Policy DP5 of the East Lothian LDP stated that an extension must be of size, form, proportion and scale appropriate to the existing house, and must be subservient to and either in keeping with or complementary to the existing house. The preamble to Policy DP5 also stated that the amount of accommodation must be relative to plot size, including the area of garden ground remaining.

The applicant's house occupied a generously sized corner plot, and it had a front garden area, which in part was used for the parking of vehicles, a large side garden with a smaller rear garden. The case officer concluded that the proposed extension would largely fill the garden

area to the side (northeast) elevation of the house and would also extend along the northeast boundary and into the rear garden. The combined footprint of both components of the proposed extension together with the existing outbuilding that was located in the rear garden would result in the loss of the majority of the side and rear gardens of the house and they would no longer be available for use as amenity space, for the occupants of the house. Moreover, the case officer rightly noted that the proposed extension would have a footprint that would be disproportionately large compared to the footprint of the applicant's house and to neighbouring houses in Gardiner Road. Consequently, the proposed extension would not be of a size or scale that would be appropriate to or in keeping with the existing house and instead would be an overdevelopment of the house. This would have a detrimental impact on the character and environmental quality of the home and surrounding area contrary to Policies 14 and 16 of NPF4 and Policy DP5 of the adopted East Lothian Local Development Plan 2018.

The Planning Adviser then provided a summary of the applicant's submission in relation to this appeal.

There were no questions for the Planning Adviser.

The Chair asked her colleagues to confirm that they had attended the site visit and if they were satisfied that they had sufficient information before them to determine the application. They confirmed this to be the case.

The Chair then invited Members to give their views on the application.

Councillor Forrest said he had found the site visit helpful for perspective. He agreed with the case officer that it would be an overdevelopment of the site.

Councillor Collins had also found the site visit helpful. She could see why the applicant wanted the extension, but she agreed that it would be an overdevelopment of the building.

The Chair was also in agreement with her colleagues that the plans would be an overdevelopment of the site. While she had sympathy for the applicant and understood trying to make use of the space, she felt that the proposal needed to be reassessed as it was far too large.

The LRB members confirmed their decision via roll call vote. They agreed unanimously to support the original decision of the planning officer.

Decision

The ELLRB agreed unanimously to support the original decision of the planning officer to refuse planning permission for the reasons set out in the original decision notice.

Signed

Councillor Liz Allan
Chair of Local Review Body (Planning)