

REVIEW DECISION NOTICE

Decision by East Lothian Local Council Review Body (the "ELLRB")

Application for review by applicant, Ms Amanda White of Flat 2, 7, The Square, East Linton, EH40 3AD. Planning application 23/01160/P retrospectively sought permission for the change of use of the residential flat of Flat 2, 7, The Square, East Linton, EH40 3AD as a one-bedroom unit of short-term self-catering holiday let and accommodation.

Site address: Flat 2, 7, The Square, East Linton, EH40 3AD

Application: 23/01160/P

Date of Review decision notice: **17 October 2024**

1. Decision

- 1.1 The ELLRB dismissed the appeal and refused planning application 23/01160/P for the reasons more particularly set out below.
- 1.2 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.

2. Introduction

- 2.1 The above application for planning permission was considered by the ELLRB at the LRB meeting held on Thursday 19 September 2024. The ELLRB constituted by Councillor Norman Hampshire (chair), Councillor Jeremy Findlay, Councillor John McMillan and Councillor Liz Allan. All four members of the ELLRB had attended a site visit in respect of the application on 18 September 2024.
- 2.2 The following persons were also present at the meeting of the ELLRB:

Mr J Squires, Planning Advisor
Ms F Haque, Legal Adviser/Clerk
Ms F Currie, Clerk

3. Proposal

- 3.1 This application was for a review of decision to refuse planning permission for the change of use of the residential flat of Flat 2, 7, The Square, East Linton, EH40 3AD as a one bedroom unit of short term self-catering holiday let and accommodation. The applicant appealed the refusal of the planning application on 6 June 2024.

4. Preliminaries

- 4.1 In advance of the ELLRB, members were provided with copies of the following:

1	Statement of Case: original case officer's report for planning application 23/01160/P
2	Copy of the Decision Notice (including reason for refusal) relating to planning application 23/01160/P
3	Copy of consultation responses from (i) ELC Road Services; (ii) ELC Environmental Health; (iii) ELC Anti-Social Behaviour Team; (iv) Police Scotland; (v) ELC Economic Development; and (vi) ELC Housing Strategy & Development

4	Copy of Policies 7 (Historic Assets and Places), 13 (Sustainable Transport) and part (e) of 30 (Tourism) of National Planning Framework 4. Policies RCA1 (Residential Character and Amenity), CH1 (Listed Buildings), CH2 (Development Affecting Conservation Areas), T1 (Development Location and Accessibility) and T2 (General Transport Impact) of the adopted East Lothian Local Development Plan 2018
5	Schedule of Conditions

5. Findings and conclusions

- 5.1 The Clerk confirmed that all members of the ELLRB were present and all confirmed that there were no declarations of interest.
- 5.2 The Legal Advisor proceeded to summarise the process for the LRB meeting, confirmed that all attendees had copies of the papers listed above. The members nominated Councillor N Hampshire as chair for the LRB meeting.
- 5.3 The Planning Advisor summarised the application and the related policy position in respect of this matter.

Planning Advisor's summary

- 5.4 The Planning Adviser made some introductory remarks regarding the status of the development plan. She advised the ELLRB that section 25 of the Town and Country Planning (Scotland) Act 1997 required planning applications be determined in accordance with the development plan unless material considerations indicated otherwise. In reviewing these cases, the LRB members should first consider whether, taking into account the development plan as a whole, the proposal did or did not accord with it. Having determined this, the ELLRB should then identify any other relevant material considerations and decide if they were of such weight that they would override the priority that was given to the development plan by statute. The development plan for all applications was National Planning Framework 4 (NPF4) and the East Lothian Local Development Plan (LDP) 2018.
- 5.5 The Planning Adviser then summarised the terms of Policy 30e of NPF4 which specifically covered short term lets, and provided guidance on how the tests contained within the policy should be applied. She also drew the ELLRB members' attention to Objective 6 of the new East Lothian Local Economic Strategy which referred to tourism and non-serviced accommodation.
- 5.6 The flat is a one bedroomed ground floor flat within a two storey mid terraced building. The building is bounded to the north and south by residential property, to the east by the rear garden of a neighbouring residential property, and to the west by the public road. There are six flats within the building, all accessed via a communal front entrance door. The communal hallway serving this flat also serves the other ground floor flat within the building. The flat does not have an allocated or private parking space.
- 5.7 The reason for refusal was that holiday let use of the flatted property was considered incompatible with and harmful to the amenity of the occupants of other flatted properties used as residential dwellings within the residential building of 7, The Square, East Linton and as such was contrary to part e) of Policy 30 of National Planning Framework 4 and Policy RCA1 of the adopted East Lothian Local Development Plan 2018.
- 5.8 The building is Category B listed and lies within East Linton Conservation Area. Therefore, sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 apply. Section 59 requires that for proposals affecting 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. Section 64 brings a duty to pay special attention to the desirability of preserving or enhancing the character or appearance of a Conservation Area when determining planning applications within it.

- 5.9 In line with this legislation, NPF4 Policy 7b (Historic Assets and Places) provides that that development proposals for the reuse, alteration or extension of a listed building will only be supported where they will preserve its character, special architectural or historic interest and setting. Part c of this policy provides that development in or affecting conservation areas will only be supported where the character or appearance of the conservation area and its setting is preserved or enhanced. Policies CH1 and CH2 of the LDP have similar provision. The case officer concluded that the proposal did not conflict with these provisions.
- 5.10 In addition to these policies, the case officer considered Policy 13 (Sustainable Transport) and 30 (Tourism) of NPF4 were relevant to the determination of this application. They also considered 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 are relevant to the determination of this application. The case officer noted the provisions of the East Lothian Economic Development Strategy 2012-22, which has now been superseded by East Lothian's Local Economy Strategy 2024-2034. The case officer noted the views of the Senior Environmental Health Officer that while normal use of the property would not result in loss of amenity to neighbours, that use of properties for short term let can result in guests misusing and abusing the property in a manner that's anti-social and can result in significant impact on the amenity of neighbours. However, the environmental health service cannot assume this will arise and so cannot impose any enforceable conditions to protect the amenity of neighbours. The case officer noted that neither the council's anti-social behaviour team nor the police had records of any incidents at this address since letting began in 2021.
- 5.11 The case officer considered that use of the property as a holiday let results in a turnover of people which changes the nature of comings and goings within the communal entrance and hallway. Most visitors would have a degree of luggage. This would lead to a level of disturbance and nuisance not associated with permanent long term residential use of the property which is harmful to the occupants of the other residential properties in this building. The case officer considered there would also be an additional level of activity within the communal entrance and hall because of people regularly accessing both the main building and the property itself to service it and clean it. Allowing guests access to the otherwise secure shared area changes the actual and perceived level of security for permanent residents. The change of use was therefore considered incompatible with and harmful to the amenity of the occupiers of other flats within the building. This was considered contrary to LDP policy RCA one and NPF4 policy 30 part (e).
- 5.12 The case officer noted that the council's housing strategy and development service object to the proposal considering it a significant loss to the residential housing stock, while the council's economic development service manager supported the application due to the value of non-serviced accommodation to East Lothian's economy. The case officer did not consider the economic benefits to outweigh the unacceptable impact on amenity.
- 5.13 The applicant submitted with the original application that she owns the flat with her partner as a home, and they have family in the village. The amount of time she would envisage renting is 60 days at maximum. The applicant did not submit any further representations to the appeal.
- 5.14 The Planning Advisor advised that the ELLRB should first take account of their duty to consider the desirability of preserving listed buildings and their setting and preserving or enhancing the character or appearance of the Conservation Area. As the case officer notes, no alterations to the property have been undertaken or are proposed to the property either internally or externally through this application. As such, there is no physical impact on the listed building or Conservation Area.
- 5.15 The case officer did not refer in their report to the Conservation Area Character Statement for East Linton Conservation Area, which is found in the Cultural Heritage Supplementary Planning Guidance. The guidance notes that the historic core of the village has a range of shops and small hotels, many retaining their original shopfronts. This guidance notes that The Square is at the heart of the village.
- 5.16 Historic character can also include elements such as levels of activity and ambience. For example, a concentration of holiday accommodation can lead to different levels of activity through

the year, including lack of activity in the off-season. There can also be a lack of signs of occupation within buildings in the off-season, which can adversely affect the character or appearance of the Conservation Area. Lack of occupation could be noticeable with this flat, being on the ground floor in the heart of the Conservation Area. However, if this is the applicants home as stated, it may be that letting it while the applicant is away reduces the time that it is empty. This would overall improve the appearance and character of the Conservation Area.

- 5.17 Nine short term let licences have been granted in East Linton's Conservation Area, mostly in the historic core of the village. The Economic Development Manager has not commented on whether short term lets in the village could impact on the viability of the small hotels which are noted in the Conservation Area Character Statement and are part of its character. The Planning Advisor stated that the ELLRB may consider that if there is such an effect it could potentially harm the character of the Conservation Area. That the hotels are noted in the Statement however does mean that the presence of visitors is recognised as part of the character of the Conservation Area.
- 5.18 In terms of amenity, the Planning Advisor agreed with the case officer that Policy 30(e) is relevant. She considered there would be an unacceptable impact on local amenity arising from the characteristics of use of the property by short term visitors, including their access to and overlooking of the communal hall and garden. This will be harmful to resident's amenity due to a change in levels of disturbance, and on levels of security arising from the guests themselves and also potentially guest pets such as dogs which the applicant does not state are excluded.
- 5.19 The case officer considered loss of amenity to be contrary to LDP Policy RCA1 as well, and this was included in the reason for refusal. The Planning Advisor did not consider that policy RCA1 applies, as the site is shown instead as being in East Linton Local Centre.
- 5.20 Therefore, NPF4 Policy 27 City, town, local and commercial centres and LDP Policy TC2 Town and Local Centres therefore apply. In terms of the amenity requirements in these policies, policy 27(c) states that proposals for non-retail uses will not be supported if further provision of these services will undermine the character and amenity of the area, and gives examples of uses that may do so. It does not mention short term lets in particular. LDP Policy TC2 provides that proposals that would have a significant environmental impact, particularly on housing, will not be permitted. The Planning Advisor considered that this policy is intended to prevent harm from e.g. excessive odour or late night noise, rather than all adverse impacts on amenity. This is because some increased levels of disturbance are to be expected within town and local centres in comparison to predominantly residential areas. She did not therefore consider the proposal to be contrary to this part of Policy TC2.
- 5.21 The Planning Advisor considered that with regard to amenity impacts, the proposal is contrary to NPF4 Policy 30 Part E, due to increased disturbance and security issues, which will adversely affect the amenity of residents. She did not consider it contrary to LDP Policy RCA1, which does not apply to this site; nor to the amenity requirements of either NPF4 Policy 27; nor LDP Policy TC2. The Planning Advisor stated that if the ELLRB refused the application that reference to LDP Policy RCA1 be removed from the reason for refusal.
- 5.22 The second part of Policy 30(e) requires weighing the loss of residential accommodation against demonstrable economic benefit. The Planning Advisor stated that the ELLRB should therefore consider whether the economic benefits demonstrated outweigh the loss of housing stock. If they did, the proposal does not conflict with Policy 30(e) part 2. If the economic benefits do not outweigh the loss of housing stock, the proposal is contrary to NPF30(e) Part 2. Economic benefit should not be weighed against residential amenity, however.
- 5.23 The Planning Advisor was not aware of any guidance as to how to balance loss of housing stock against economic benefit. However, given the Scottish Government's declaration of a Housing Emergency and level of housing need within East Lothian, the Planning Advisor would accord loss of housing stock considerable weight. The Planning Advisor noted that the Council's Housing Strategy and Development Service object to the proposal considering it a significant loss. The council's Economic Development Manager supported the application setting out the benefits of non-serviced accommodation to the East Lothian economy.

- 5.24 The applicant has stated that this is their home, and it is let while they are not there however has not provided any evidence such as affidavits from neighbours to support this. Their licence has been granted for home letting rather than secondary letting. If this is indeed the applicants home refusal of permission would not add to the housing supply. In that case economic benefit would outweigh the loss of residential accommodation, as there would be no loss. However, housing do object so the ELLRB may consider that further evidence of it being their main home is required if the ELLRB were minded to allow the appeal on this basis.
- 5.25 In terms of policy towards local centres, Policy 27a notes that development proposals that enhance and improve the vitality and viability of local centres, including proposals that increase the mix of uses, will be supported. LDP policy TC2 notes uses acceptable in principle within a local centre, which does not include short term lets. The main aim of this policy is to maintain the centre's vibrancy, vitality and viability. The policy seeks to avoid changes of use to residential from a ground floor town or local centre use for this reason. However here, the current recognised use is residential, rather than a town centre use that has clearly higher levels of activity such as a shop. The applicant states they are seeking to let the property when they themselves are not there. This is likely overall to be positive for the vitality and viability of the local centre. Although short term lets are not mentioned as an acceptable use under overall, the Planning Advisor considered that the proposal did not conflict with NPF4 Policy 27 or LDP Policy TC2.
- 5.26 The Planning Advisory agreed with the case officer that NPF4 Policy 13 (Sustainable Transport) and LDP Policies T1 (Development Location and Accessibility) and T2 (General Transport Impact) are relevant. The Planning Advisor noted that Roads Services did not object to the proposal, considering there are no likely changes to parking demands.
- 5.27 The Planning Advisor considered that the applicant should be refused as contrary to NPF4 Policy 30E due to its adverse effect on residential amenity, but not LDP Policy RCA1 as in the original decision, as this policy does not apply to this site. The Planning Advisor did not consider there are any other material considerations which would override this.
- 5.28 The Planning Advisor stated that if the ELLRB were minded allowing the appeal, the case officer recommended two conditions. The first would limit the number of guests to 2, and the second provide for keeping a register of lets to allow this to be checked. The Planning Advisor noted also that the planning boundary does not include the garden and as such use of this by guests is not included in the application. She also stated that the ELLRB may wish to impose a condition aimed at preventing use of the garden by guests. If the ELLRB's reason for allowing the appeal includes that the property is the appellants home, it would be possible to condition consent to be valid only while that remains the case.

Discussion and vote

- 5.29 The Chair invited questions for the Planning Officer.
- 5.30 Councillor Findlay queried if there had been any complaints from other residents in the building. The Planning Advisor confirmed that the police and the anti-social behaviour team confirmed that there had been no complaints since it was let. Councillor Findlay also queried whether it would be expected for the Applicant to provide evidence that this was their home. The Planning Advisor stated that if it was determining for the appeal, the ELLRB could request for this information but confirmed that this information had not been requested and it is not required as part of the application.
- 5.31 Councillor McMillan queried how a planning officer would gauge a "material" matter and if there was any case law that would assist with gauging what factors were material. The Planning Advisor stated that a planning officer should go through the development plan to check that it complies with the policies, this may be a balance of two different policies. However, there may be certain policies e.g. amenity, that must be complied with for an application to be compliant with the development plan. Once the policies in the development plan have been checked, then

the officer would check if there is anything in the development plan process that has not been considered which would be relevant for determining the application.

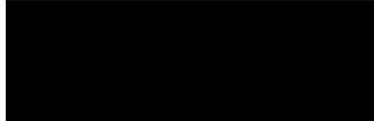
- 5.32 Councillor Hampshire stated that it is important to have conditions that are enforceable, and it would be difficult to know when a person is there, if a property is a part time home etc. Querying if they may be able to have a condition along these lines. The Planning Advisor stated that they could review this, for example if it is not an individual's home, then they would be expected to pay Business Rates on the property as opposed to Council tax. The neighbours could also confirm if the individual is no longer living there. Council Hampshire stating that someone could state that they were living in the property part time, pay Council Tax but not actually live there. The Planning Advisor commenting that this would be tax evasion, HMRC would be interested, and the Council will have to assume that individuals will obey the law.
- 5.33 Councillor Hampshire confirmed the comments from the anti-social behaviour team around the amenity of neighbours, anti-social behaviour, and that the ELLRB cannot predict what may happen in the future with anti-social behaviour and other incidents.
- 5.34 Councillor Allan queried that as this was the applicant's home, if the ELLRB refused the application, that it would not add to the housing stock. The Planning Advisor confirmed that if this is indeed their home then it would not add to the housing stock as they are living there.
- 5.35 Councillor Hampshire queried what happens in the circumstances where a property, used as a home, has a planning permission to be a short term let and is later sold but not used as a home. The Planning Advisor stated that a condition could be put on the planning permission for it to be used as a home.
- 5.36 Councillor McMillan stated that there have been some licensing cases which have been granted a licence for a period, subject to review, to allow monitoring of how the premises is let, managed and assessment of any environmental issues. While Councillor McMillan was not looking for such a condition to be put in place, he queried the general possibility of putting something like this in a planning permission. The Planning Advisor confirmed that this is not what had been applied for.
- 5.37 Councillor Hampshire confirmed that the reason for the case officer's refusal was around amenity. The Planning Advisor confirmed that this was the case and there would be an impact to the level of security and disturbance.
- 5.38 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.
- 5.39 The ELLRB members confirmed their decision via roll call vote.
- 5.40 Councillor Allan commented that the entrance was easily accessible and there was a lot of space in the hallway. She said she was in two minds about this and that there is a need for short-term lets, that there must be a balance between the economic and housing elements. With regards to the amenity, she had observed many older buildings where movement with suitcases would cause a problem. She did not deem that to be the case here. Councillor Allan voted in favour of the appeal.
- 5.41 Councillor Findlay stated that there had been no complaints from neighbours and no loss of amenity at this stage. He said that he did not believe that they could take into account potential future instances. Another factor he considered was that this property would not go back into the housing market. He stated that there was a huge demand for short-term lets and that these were a big part of the tourism industry. He voted in favour of the appeal.
- 5.42 Councillor McMillan stated that it is important that the Council does encourage tourism. He agreed with the need to encourage tourism but felt that the impact on amenity and on the character of the area should be considered. He noted the shared garden and shared stairway

but disagreed with Councillor Allan's view that there was a lot of space. He believed that allowing the change of use would be detrimental to the amenity and character of the building and the area and these had been the material factors in his decision. He voted in support of the original case officer's decision.

- 5.43 Councillor Hampshire stated that amenity was the crucial point in the application. He stated that when a short-term let is introduced, there are changes in the people using the property. While some may enjoy meeting new people, there may be circumstances where it may be intimidating for some people. He was of the view that the short-term let would be detrimental for the people living in the stair well. He voted in support of the case officer's original decision.
- 5.44 As there was a tie, Councillor Hampshire as chair, had the casting vote, voting in favour of the original case officer's decision. The ELRRB also agreed (except for Councillor Allan) by majority to the amendment of the reason for refusal to remove the words 'and Policy RCA1 of the adopted East Lothian Local Development Plan 2018'.

Accordingly, the ELLRB agreed to refuse the appeal for the reasons more particularly set out in the original case officer's Decision Notice, as amended.

Planning permission is hereby refused.



Fariha Haque
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.