

REVIEW DECISION NOTICE

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

Application for review by applicant, Mrs Karen Baird, 6 Market Square, Melrose, TD6 9PN. Planning application 23/01433/P retrospectively sought permission for the change of use of the residential flat of 6A Forth Street Lane, North Berwick EH39 4JB as a two bedroom unit of short-term self-catering holiday let accommodation.

Site address: 6A Forth Street Lane, North Berwick, EH39 4JB

Application: 23/01433/P

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

1. Decision

- 1.1 The ELLRB dismissed the appeal and refused planning application 23/01433/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 review of decision to refuse planning permission for the change of use of the residential flat of 6A Forth Street Lane, North Berwick as a two bedroom unit of short term self-catering holiday let accommodation. The applicant appealed the refusal of the planning application on 28 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 23/01433/P
2	Copy of the Decision Notice (including reason for refusal) relating to planning application 23/01433/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 TC2 (Town and Local Centres), 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 two bedroomed first floor flat within a three storey building comprising numbers 4, 6A and B Forth Street lane. The building is bounded to the north by parking spaces, to the south by no. 3 Forth Street Lane, to the east by garden ground and to the west by the road. The communal hallway serves this flat and the flat above, the ground floor flat having its own entrance. The flat does not have an allocated or private parking space.
- 5.7 The building is within North Berwick Conservation Area but is not listed. Therefore, Sections 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 applies. 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.
- 5.8 In line with this legislation, NPF4 Policy 7b Historic Assets and Places 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 as no alterations have taken place the proposal does not conflict with these policies.
- 5.9 In addition to these policies, the case officer considered NPF4 Policies 13 (Sustainable Transport) and 30 (Tourism) are relevant. He also considered LDP policies TC2 (Town and Local Centres), T1 (Development Location and Accessibility) and T2 (General Transport Impact) of the adopted East Lothian Local Development Plan 2018 relevant.

- 5.10 The case officer noted the provisions of the East Lothian Economic Development Strategy 2012-22 identifying tourism as a strength of the East Lothian economy. This has now been superseded by East Lothian's Local Economy Strategy 2024-2034. Objective 6 of this strategy is "To promote a successful, accessible, and sustainable tourism sector that provides quality experiences and benefits our local communities". Action in this strategy includes supporting the delivery of the Local Housing Strategy to ensure the housing system delivers economic development, which may include actions to stimulated short term let accommodation.
- 5.11 When considering the proposal against NPF4 Policy 30 on amenity of short term lets, 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, use 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, as the environmental health service cannot assume this will arise, they cannot impose any enforceable conditions to protect the amenity of neighbours. The case officer noted that neither the council's antisocial behaviour team nor the police had records of any incidents at this address since letting began in 2021.
- 5.12 The case officer considered that use of the property for short term let would change the nature of comings and goings within the communal entrance and internal stair. 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 property in this building. There would also be additional activity for servicing and cleaning. Allowing guests access to the otherwise secure shared area, independent of the owner, would change 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 occupants of other flats within the building. This was considered contrary to LDP policy RCA one and NPF4 policy 30(e).
- 5.13 The case officer noted that the Council's housing strategy and development service does not consider that the change of use is a significant loss to the housing stock, while the Council's economic development service manager considers there are demonstrable local economic benefits. The case officer did not consider the economic benefits to outweigh the unacceptable impact on amenity and refused the application for the reasons given.
- 5.14 The applicant submitted that the reasons for refusal laid out in the case officer's report appear to be based on what 'might or may be' harmful to the neighbouring property, rather than based on the evidence of the previous 8 years. The applicant states that they have not incurred a single complaint or cross word in that time. The applicant notes there is:
- 5.14.1 no objection from the public;
 - 5.14.2 no objection from the neighbours of the flats above or below;
 - 5.14.3 no objection from Council Anti-social behaviour team or Police Scotland;
 - 5.14.4 no objection from road services; and
 - 5.14.5 support from the Council's Economic development Service.
- 5.15 The flat above is not owner occupied but on long term let, so the people coming and going are not consistent. The layout of the building means that the front door of the above flat is hidden from view of the front door of the applicant's property. The building is solid with very little sound transmission. The upstairs resident benefits from the applicant cleaning and maintaining the hall and the applicant states the resident is happy to state she has no complaints around disturbance, noise or security. As there are only two bedrooms there is no space for noisy parties. There is little waste left in the flat, and the applicant cleans the flat themselves so there is no cleaning company coming and going.
- 5.16 The applicant had also commented in their application that the courts have found that it was unlawful to ask people to apply for retrospective planning permission, so questions why this is going ahead in East Lothian.
- 5.17 The applicant states that if permission is refused the flat will be empty when they are not using it which means les spending by visitors. The applicant states they believe they are contributing to North Berwick community by letting the flats when not using it themselves.

- 5.18 The Planning Advisor advised the ELLRB to first take account of the ELLRB's duty to consider the desirability of preserving or enhancing the character or appearance of the Conservation Area.
- 5.19 The case officer stated that no alterations to the property have been undertaken or are proposed to the property either internally or externally.
- 5.20 The case officer did not refer in their report to the Conservation Area Character Statement for North Berwick Conservation Area, which is found in the Cultural Heritage Supplementary Planning Guidance.
- 5.21 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. However, there is recognition in the North Berwick Conservation Area character statement of the areas expansion as a seaside resort which suggests that some level of holiday accommodation is likely to be expected. Seasonal fluctuations in activity would therefore accord with that character. The Planning Advisor's view was that the different activity levels associated with the addition of one further holiday unit would not cause harm to the character of the Conservation Area. Therefore, in the Planning Advisor's view the Conservation Area would not be harmed by the proposal.
- 5.22 In terms of amenity, the Planning Advisor agreed with the case officer that NPF4 Policy 30(e) is relevant. She considered there would be an unacceptable impact on amenity of the other flat in the stair arising from the characteristics of use of the property by short term visitors from their access to the communal entrance and stair. This will be harmful to residential amenity due to a change in levels of disturbance, and levels of security arising from the guests themselves and potentially guest pets such as dogs. As to the applicant's comments on the upstairs flat being rented out, no distinction is made in NPF4 policy 30(e) as to the tenure of the of residential accommodation in terms of protection of amenity of residents. Stair cleaning and maintenance undertaken by the applicant is done by them voluntarily and is not a matter that could be conditioned. The Planning Advisor's view was that this should not therefore be taken into account in the decision. The current upstairs resident has experience of living in the building, and of how the flat is currently managed. However, both the management of the flat under consideration, and the upstairs occupant could change. Therefore, the Planning Advisor advised the ELLRB to give greater weight on the potential impact on amenity arising from the physical layout of the building than to the reported opinion of the current upstairs resident.
- 5.23 The second part of Policy 30(e) requires weighing the loss of residential accommodation against demonstrable economic benefit. As the Council's Housing Strategy and Development Service do not consider this a significant loss to the housing stock, and the Council's Economic Development Manager states there are demonstrable economic benefits, the proposal does not conflict with Policy 30(e)(ii).
- 5.24 In considering NPF4 Policy 30, the Planning Advisory did not agree with the case officer that economic benefit should have been weighed against amenity, as effect on amenity is a standalone test. The Planning Advisory did agree with the case officer's conclusion that the proposal is contrary to Part (e)(i) of Policy 30, due to increased disturbance and security issues, which will adversely affect the amenity of the residents of the upstairs flat, and potentially those of the flat below.
- 5.25 In terms of town centre policy, NPF4 Policy 27(a) 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. However, residential use may be acceptable in above ground floor locations. This proposal does not seek change to but rather from residential use. The main aim of both policies is to maintain the centre's vibrancy, vitality and viability.
- 5.26 As noted by the Economic Service Manager, use for short term let may result in more spending in town services such as restaurants than residential use, supporting vibrancy. However, it is also

likely to result in less year-round activity and may cumulatively affect the balance of viability of different types of shops, also affecting vitality and viability. While there may be an effect cumulatively, determining when this point has been reached would require further evidence and would be better addressed through considering short term control zones. The Planning Advisor did not consider this single proposal alone would affect vitality and viability.

- 5.27 The case officer considered loss of amenity to be contrary to LDP Policy TC2 as well, and this was included in the reason for refusal. This policy 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 such as might arise from town centre uses, 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. NPF4 Policy 27 City, town, local and commercial centres Part c also provides for amenity, stating 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, which are hot food takeaways, betting offices or high interest money lending premises. It does not mention short term lets in particular and it does not seem to the Planning Advisor that short term let use would affect the character of the area in way that this policy seeks to avoid. Therefore, the Planning Advisor did not consider that the proposal conflicts with NPF4 Policy 27 or LDP Policy TC2.
- 5.28 The Planning Advisor 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. She noted that Roads Services do not object to the proposal, considering there are no likely changes to parking demands.
- 5.29 The Planning Advisor considered that the applicant should be refused as contrary to NPF4 Policy 30(e)(i) due to its adverse effect on residential amenity, but not LDP Policy TC2 as in the original decision. She did not consider there are any other material considerations which would override this.
- 5.30 The applicant questions why when the courts have found it unlawful to seek retrospective planning permission, that East Lothian is doing so. The Planning Advisor believed this is likely to refer to Edinburgh Council's designation of a short term let control area. The short term let control area would have led to planning permission being required for short term let where there was no material change of use. This is not the case here, as material change of use has taken place.
- 5.31 The case officer has provided two conditions, which he recommends should the application be approved, on limiting the number of guests to 4, and to keep a register of lets to allow this to be checked.

Discussion and vote

- 5.32 The Chair invited questions for the Planning Officer.
- 5.33 Councillor Findlay querying the comment around not being able to consider the voluntary cleaning by the applicant and whether, if an external party did the cleaning, this could be considered. The Planning Advisor confirmed that the ELLRB could not put a condition on to oblige the applicant to continue cleaning the stairwell. Councillor Findlay further queried if these comments could be used to consider the amenity matters, due to cleaners coming and going. The Planning Advisor could take this factor into account for amenity but could not place this on as a condition, if the ELLRB considered the upstairs resident to obtain benefit from this.
- 5.34 Councillor Hampshire queried that as the property would change from residential to commercial use, if the staircase would then become partly commercial and would be mixed use. The Planning Advisor confirmed that this was correct and there would be a change of use to part of the stairwell. Councillor Findlay queried if a change of use to the stairwell would apply for all change of use applications or just this one. The Planning Advisor confirmed that if it was a privately owned or commonly owned stairwell then this would be the case.

- 5.35 Councillor Allan asked if all prospective short term lets with a shared entrance will be denied planning permission. The Planning Advisor stated that they would each be considered on their own merit.
- 5.36 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.
- 5.37 Councillor Findlay said that similar to the previous application, there had been no complaints from neighbours and there was no evidence of loss of amenity. While he understood the reasoning in the report about people coming and going with suitcases, he felt that this was overstated. He also noted that if the change of use was refused, this property would not go back into the local housing stock. He added that North Berwick had a vibrant tourism economy, and at some point, in the near future, it would become necessary for the Council to make a decision on the number of short term lets which could be supported within the town. He voted in favour of the appeal.
- 5.38 Councillor McMillan stated that North Berwick was nominated one of the best places to visit and he wanted to encourage tourism. However, he stated that the sense of place that caused him to support the officer's decision. NPF4 talks of the influence of persons to have an influence over where they live. He agreed with Councillor Findlay on the number of short term lets and the need to provide feedback to the Scottish Government of the impact on tourism. However, on balance, he was minded to support the planning case officer given potential impact on the vibrancy, amenity and character of the area. He voted in support of the case officer's original decision.
- 5.39 Councillor Allan stated that if refused that this would not add to the housing stock, nor would it help with the housing crisis. She agreed with the Councillor Findlay that the tourism industry must also be helped. She voted in favour of the appeal.
- 5.40 Councillor Hampshire stated that the reason for the original refusal was due to the effect on the amenity. While the current neighbours have commented that there have been no issues, this may not always be the neighbour for this property. He further commented that future buyers of neighbouring properties may be put off by the short-term let being in the applicant's property and also people in the building may be intimidated by the different people coming and going. He accepted that there is a need for short-term lets but they should not be in the detriment to those who would like their own quiet residential home. However, on balance, he voted in support of the case officer's original decision with the removal of TC2 as recommended by the Planning Advisor.
- 5.41 The ELLRB members confirmed their decision via roll call vote. The ELLRB agreed by a majority, following application of the Chair's casting vote, to confirm the original decision of the planning case officer to refuse planning permission for the reasons set out in the original decision notice but with the removal of reference to Policy TC2 of the adopted LDP 2018.

Accordingly, the ELLRB refused 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.

