

## **REVIEW DECISION NOTICE**

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

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Application for review by applicant, Mr David Rodger, The Lodge, 2E, East Road, North Berwick, EH39 4HN. Planning application 23/01214/P retrospectively sought permission for the change of use of the residential flat of 2E, East Road, North Berwick, EH39 4HN as a three bedroom unit of short-term self-catering holiday let accommodation.

Site address: 2E, East Road, North Berwick, EH39 4HN

Application: 23/01214/P

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

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### **1. Decision**

- 1.1 The ELLRB dismissed the appeal and refused planning application 23/01214/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 2E, East Road, North Berwick, EH39 4HN as a three bedroom unit of short term self-catering holiday let and accommodation. The applicant appealed the refusal of the planning application on 20 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 23/01214/P
2	Copy of stamped refused drawings relating to planning application 23/01214/P
3	Copy of the Decision Notice (including reason for refusal) relating to planning application 23/01214/P
4	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

5	6 objections
6	Copy of Policies 7 (Historic Assets and Places), 13 (Sustainable Transport) and 30 (Tourism) of National Planning Framework 4. Policies RCA1 (Residential Character and Amenity), CH1 (Listed Buildings), CH2 (Development Affecting Conservation Areas), CH6 (Gardens and Designed Landscape), T1 (Development Location and Accessibility) and T2 (General Transport Impact) of the adopted East Lothian Local Development Plan 2018
7	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 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 2 East Road, 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.
- 5.7 The flat is a three bedroomed first floor flat within a building containing three flats accessed via a shared entrance door and internal communal stair well. Guests have access to a common area for bins. The building is with the Lodge Gardens, with further residential dwellings to the east, and with a private access to Kirk Ports to the west, where there is parking associated with the flat. This consists of a private parking garage suitable for one car. This was stated to be included on the application form, and the Council's Asset and Regulatory Manager did not object to the proposal on that basis. There is a basement associated with the flat which does not form part of this application.
- 5.8 There were six objections to this application. Reasons given included the reduction in housing stock for long term lets, that North Berwick is less buoyant out of season with streets partially unoccupied and adverse effects on neighbours and the community.

- 5.9 The building is Category B listed and lies within North Berwick 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.
- 5.10 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 noted that no alterations have been undertaken to the flat and none are proposed. They therefore concluded that the proposal did not conflict with these provisions.
- 5.11 In addition to these policies, the case officer considered Policy 13 (Sustainable Transport) and 30 (Tourism) of NPF4 relevant to the determination of the application. They also considered LDP policies RCA1 (Residential Character and Amenity), T1 (Development Location and Accessibility) and T2 (General Transport Impact) relevant to the determination of this application.
- 5.12 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. Both documents identify tourism as a strength of the East Lothian economy.
- 5.13 The case officer considered that as roads services did not object and the short term let use would not have a materially different parking demand to residential use, that the proposal does not conflict with transport policies.
- 5.14 The case officer noted the views of the Council's Senior Environmental Health Officer that while normal use of the property would not result in loss of amenity to neighbours, short term let use can result in misuse which can have significant impact on neighbour's amenity. 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.
- 5.15 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, stairwell, garden ground and parking areas of the residential building and curtilage. Movement of luggage and increase of activity for cleaning would lead to a greater level of disturbance and nuisance than would long term residential use of the property. Levels of perceived and actual security would also change. The case officer considered this harmful to residential amenity, contrary to NPF4 Policy 30(e)(i) and LDP Policy RCA1.
- 5.16 For NPF4 Policy 30(e)(ii), the case officer noted 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 Manger advises there are demonstrable local economic benefits from the use.
- 5.17 The applicant has submitted material addressing points raised in objection. In summary they state that amenity is improved with regular occupation of the building through short term let. The property was purchased as a family holiday home and there is therefore no loss of housing stock through rental. The property is not affordable for most first-time buyers. The property is let all year round, retaining vibrancy and community. If it stood empty this would be apparent and could attract undesirable elements. The applicant questions whether there is a housing crisis in North Berwick given the number of new homes built there.

- 5.18 The applicant would be happy to address conflict at the garages and noise and disturbance by preventing guests parking at the garage and restricting arrival and departure times. The applicant has also offered further mitigation for amenity impacts, including appointment of a local management agent as detailed was detailed in the ELLRB's pack.
- 5.19 In further submissions the Council's Housing Strategy and Development service respond that the Scottish Government have declared a housing emergency, and that the housing system within East Lothian is highly pressured and there is a need to retain and provide more homes.
- 5.20 An objector, North Berwick Environment and Heritage Trust (NBEHT), provided further submissions. They provide a copy of recently commissioned research into the economic impact of short term let and residential properties, previously provided to all councillors. This research found that residential use of a three bedroomed property such as this would provide economic benefit to the local economy over half again as much as short term let. The objector considers this research more reliable than that of the Council's Economic Service Manager as it is based on more recent, local data. NBEHT was concerned about the effect of lack of housing on availability of hospitality workers in the town, and note the large number of properties not used as a principal residence. They consider amenity issues cannot be satisfactorily address as there is no on-site management.
- 5.21 The Planning Advisor stated that the ELLRB should first take account the duty to consider the desirability of preserving listed buildings and their setting, and preserving or enhancing the character or appearance of the Conservation Area. No physical alterations to the building are proposed through this application, either internally or externally.
- 5.22 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.
- 5.23 Historic character can include elements such as levels of activity and ambience as well as changes to the buildings themselves. 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, both in the Conservation Area and individual buildings, 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 different activity levels associated with the addition of one further holiday unit would not in the Planning Advisor's view cause harm to the character of the Conservation Area, though cumulatively there is a point at which it would do so.
- 5.24 In terms of amenity, in considering NPF4 Policy 30, the Planning Advisor did not agree with the case officer that economic benefit should have been weighed against amenity, as effect on amenity is a standalone test. However, she did agree with their conclusion that the proposal is contrary to Part(e)(i) of this policy, due to increased disturbance and security issues, which will adversely affect the amenity of the residents of the other flats in the building. She also agreed that it is contrary to LDP Policy RCA1.
- 5.25 Policy 30(e)(ii) required weighing the loss of residential accommodation against demonstrable economic benefit. The Planning Advisor noted that the Council's Housing Strategy and Development Service objected to the proposal considering it a significant loss. The council's Economic Development Manager has set out the benefits of non-serviced accommodation to the East Lothian economy. An objector, the NBEHT, also submitted information which purports to show the economic benefits of short term let are not as great as the Council's adviser considers, and compares them with the benefits of residential use. Policy 30 does not specifically require comparison with residential use, and it cannot be certain what the applicant will do with the property if consent is not granted.
- 5.26 The Planning Advisor stated that the ELLRB should decide whether it considers the economic benefits demonstrated outweigh the loss of housing stock. The Planning Advisor stated that if it

does not, the proposal is also contrary to Policy 30(e)(ii). In considering Policy 30(e), the ELLRB should weigh economic benefits only against loss of residential accommodation, and not harm to amenity, which is a separate policy test.

- 5.27 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. Roads services did not object to the application. Although the applicant included the parking space in their application and is now offering to remove guests access to it, roads services do not count garage spaces as parking. The Planning Advisor did not in her view change their response.
- 5.28 The Planning Advisor considered that the applicant should be refused as contrary to NPF4 Policy 30(e)(i) and LDP Policy RCA1 due to its adverse effect on residential amenity, and Policy 30(e)(ii) in that the loss to the housing stock outweighs the economic benefits demonstrated. The Planning Advisory did not consider there are any other material considerations which would override this.
- 5.29 The case officer has provided two conditions, which they recommend should the application be approved. The suggested planning conditions limits the number of guests to 6, and for a register to be kept so this can be enforced. However, the licence is for 7 people, so the Planning Advisor stated that the ELLRB may wish to restrict this to 7 people in line with the licence.
- 5.30 The applicant suggests they would be happy to place a restriction on parking and departures and arrivals. The Planning Advisor considered restrictions on parking at the garage could be secured by condition, however, it would not be possible to enforce restrictions on the times that guests left the property, nor on management issues such as providing a contact to neighbours, restriction of pets, or employing local management.

#### **Discussion and vote**

- 5.31 The Chair invited questions for the Planning Officer.
- 5.32 The Planning Adviser responded to questions from Members on the number of short term lets in The Lodge, the maintenance of the building, and she confirmed that currently the property could be used as a long-term rental.
- 5.33 Councillor Findlay felt conflicted by various aspects of this application, one of which was the differing view on economic benefit put forward by the North Berwick Environment Heritage Trust. He noted in particular a point made that if the application was refused the property could be used to house hospitality workers but observed that if the application was refused it could have a negative impact on tourism and the hospitality industry. However, he also noted the complaints from neighbours and that no clear effort had been made to resolve these. Therefore, on this occasion, he was minded to support the case officer and to refuse the appeal.
- 5.34 Councillor Allan said that the difference here was the type of property and that, if the application were refused, the property would be likely to come back into mainstream use. She also felt that the loss of this as a residential property would be a real shame as it was a wonderful location, and very different to the two previous applications. She was minded to support the case officer.
- 5.35 Councillor McMillan noted the comments of the Planning Adviser and said that vibrancy and community were very important. He echoed Councillor Findlay's remarks on the report on economic benefit and agreed that there was a need to look at this issue in more depth. On balance, this case was one in which he would be supporting the case officer's decision.
- 5.36 Councillor Hampshire observed that the outdoor area around the property was a public area and very busy. For permanent residents in the building, it was important to keep private areas private and that it must be annoying when strangers entered these areas resulting in harmful impacts. He did not consider this property suitable for use as a short term let and would be supporting the case officer's decision.

- 5.37 The LRB members confirmed their decision via roll call vote, and they agreed unanimously to uphold the original decision of the planning case officer to refuse planning permission.
- 5.38 The members then considered the reasons for refusal of the application. The Planning Adviser asked if members would wish to add an additional reason for refusal, to that set out in the original decision notice, regarding the loss of housing, i.e. that the proposal would be contrary to Policy 30e Part 2 of NPF4. The LRB members agreed by a majority of 3:1, to the amended reasons for refusal.

The LRB agreed unanimously to confirm the original decision of the planning case officer to refuse planning permission. They also agreed by a majority of 3:1, that the refusal should be for the reasons set out in the original decision notice but with the addition of reference to Policy 30e Part 2 of NPF4.

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.

