

REVIEW DECISION NOTICE

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

Application for review by applicant, Mrs Jennifer Burton, 19A High Street, Haddington, EH41 3ES. Planning application 23/01496/P retrospectively sought permission for the change of use of the residential flat of 19A High Street, Haddington, EH41 3ES as a two bedroom unit of short-term self-catering holiday let and accommodation and local worker accommodation.

Site address: 19A High Street, Haddington, EH41 3ES

Application: 23/01496/P

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

1. Decision

- 1.1 The ELLRB dismissed the appeal and refused planning application 23/01496/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 19A High Street, Haddington, EH41 3ES as a two bedroom unit of short term self-catering holiday let and accommodation and local worker accommodation. The applicant appealed the refusal of the planning application on 21 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 23/01496/P
2	Copy of stamped refused drawings relating to planning application 23/01496/P
3	Copy of the Decision Notice (including reason for refusal) relating to planning application 23/01496/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	Copy of Policies 7 (Historic Assets and Places), 13 (Sustainable Transport) and 30 (Tourism) of National Planning Framework 4. Policies TC2 (Town and Local Centres), CH1 (Listed Buildings), CH2 (Development Affecting Conservation Areas), CH4 (Scheduled Monuments and Archaeological Sites), T1 (Development Location and Accessibility) and T2 (General Transport Impact) of the adopted East Lothian Local Development Plan 2018
6	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 and worker 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 19 High Street, Haddington, and as such was contrary to part e) of Policy 30 of National Planning Framework 4 and Policy TC2 of the of the LDP.
- 5.7 The flat is a two bedroomed first floor flat within a four storey building. The building is bounded to the east and west by residential property on the upper floors, and by a hot foot take away and pharmacy to the east and west, by residential property to the south and to the north by Haddington High Street. The ground floor of the building consists of retail premises. To the south lies a further residential property. There are three flats within this part of the building, all accessed via a communal front entrance door and stair. There is a communal garden and entry shared between the three flats, to which occupants of the residential property to the rear also have access. The case officer has stated in their report that the garden is not offered to guests and does not form part of the application.
- 5.8 The building is Category B listed and lies within Haddington Conservation Area. The building lies on archaeological site MEL6592. 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 7(b) 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 as no physical alterations are proposed the proposal did not conflict with these provisions, nor with LDP Policy CH4 which seeks to protect archaeological interest.
- 5.10 In addition to these policies, the case officer considered Policy 13 (Sustainable Transport) and 30 (Tourism) of NPF4 are relevant to the determination of this application. They also considered 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 to be 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 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 in 2022.
- 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, stairwell and close. There would be a level of disturbance and nuisance not associated with permanent long term residential use of the property including from movement of luggage, and movement at unsocial hours, which is harmful to the amenity of other residents in the building and potentially could impact other nearby residential properties.
- 5.12 The case officer considered there would also be an additional level of activity within the communal entrance and garden as a result of people regularly accessing both the main building and the property itself and for cleaning and removal of waste. Allowing guests access to the otherwise secure shared area changes the actual and perceived level of security for permanent residents, further reducing amenity. 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 therefore considered contrary to NPF4 policy 30 part E, and also LDP Policy TC2.
- 5.13 The case officer noted that the Council's Roads services did not object and therefore considered the proposal consistent with Policy 13 of NPF4, and TC1 and TC2 of the LDP.
- 5.14 The case officer in their report states that the Council's housing strategy and development service did not consider this a significant loss to the residential housing stock while the Council's economic development service manager advises there are demonstrable local economic benefits. However, the response from this housing service states that they do consider it a significant loss.
- 5.15 The case officer concluded that the local economic benefits did not outweigh the unacceptable impact on amenity and therefore refused the application as contrary to Policy 30 of NPF4 and Policy TC2 of the LDP.
- 5.16 In their submission the applicant states that neighbours were not consulted, and state that this suggests that a presumption of rebuttal for flatted property has been applied, which they state was ruled unlawful by Lord Braid in Judicial Review. The Planning Advisor confirmed that statutory neighbour notification was carried out in the usual way. The applicant considers that the case officer's view that short term let use is harmful to amenity is wrong. The applicant notes that previously they had tenants that worked shifts, who would often leave before 6 am and return

after 11 pm. The applicant considers that the assumption that short term let use creates more traffic in the stair is false. The applicant further disputes that a change of use has taken place, considering that no more people ever stay there than a small family. Guests do not pass any other flat to access this flat. The flat is professionally managed and cleaned by the applicant's own companies. The owners and residents of 19 High Street are working to secure the block against people coming into the garden and leaving waste. The applicants feel the neighbours are happier having short term let in the property than having tenants.

- 5.17 In addition, the applicant has submitted letters of support they state to be from owners of a neighbouring property, and from the current working contractor guests. The letter from the owners state that they are happy with the operation of the property as short term let. That from the contractor states that they prefer accommodation with cooking facilities and accommodation such as this is invaluable. These have not been verified these but there is no reason to suppose they are not as stated.
- 5.18 In response to the appeal the Housing Service reiterated their objection to the application, noting the Scottish Government had declared a Housing Emergency in May 2024, and that the housing system in East Lothian is highly pressurised.
- 5.19 In response the applicant notes this response contradicts the Officers Report and questions what has changed. The applicant notes that East Lothian does not have a planning control zone. The applicant reports a conversation with the case officer where it was stated that no residents had been spoken to. The Planning Advisor advised that it is not normal development management practice to speak to neighbours, but to rely on written comments. The applicant considers this implies the impact on residents is assumed, rather than evidenced. The applicant states they spoke to neighbours and gathered support for the appeal, only to be presented with a new second reason for objection from the Council's Housing Service. The applicant states that it is clear no research was done in the original rejection and the further representation is seemingly driven by anti-short term let rhetoric. The applicant states they are in contact with neighbours and deal with issues quickly. They have had no complaints from neighbours about guests. Problems that arise from guests can also arise from long-term tenants, which has happened in their flat. The applicant states that noise from the flat upstairs was one of the reasons they moved from long to short term let. The applicant states it is unlikely the property will go back to housing as probably they will use it for themselves and friends.
- 5.20 The Planning Advisor stated that the ELLRB should first take account of 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. 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, the Planning Advisor agreed with the case officer that there is no physical impact on the Conservation Area or listed building itself.
- 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 a Conservation Area.
- 5.22 The case officer did not refer in their report to the Conservation Area Character Statement for Haddington Conservation Area, which is found in the Cultural Heritage Supplementary Planning Guidance. This Statement notes the townscape quality is enhanced by the many narrow openings leading out of the High Street. It notes that all the main streets have a vertical mix of uses ensuring that it is a focus of activity at night as well as during the day. Activity at night is therefore part of the character of the Conservation Area. The Statement notes that most upper floors are occupied, which is part of its character.
- 5.23 Lack of occupation of the flat would not accord with the character, however, as this flat is let to workers seasonal or longer term vacancy is less likely, with the applicant stating the flat has achieved an occupancy rate of 75%. The Planning Advisor agreed with the case officer that the

proposal does not harm the Conservation Area, nor conflict with policy on the historic environment.

- 5.24 In terms of amenity, the Planning Advisor agreed with the case officer that Policy 30(e) is relevant. She considered that there would be an unacceptable impact on amenity arising from the characteristics of the property and its use by short term visitors, including movement of people and luggage, and security issues with access to the stairway and close. She was also not sure it would be possible to keep guests out of the garden.
- 5.25 The Planning Advisor agreed with the case officer that NPF4 Policy 27 City, town, local and commercial centres and LDP Policy TC2 Town and Local Centres are relevant. The case officer considered loss of amenity to be contrary to LDP Policy TC2, and this was included in the reason for refusal. 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. The Planning Advisor did not therefore consider the proposal to be contrary to this part of Policy TC2.
- 5.26 NPF4 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. The examples are hot food takeaways, betting offices or high interest money lending premises. It does not mention short term lets in particular and it did 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, which is likely to relate to changes of use of shops.
- 5.27 The Planning Advisor considered that with regard to amenity impacts, the proposal is contrary to NPF4 Policy 30(e), due to increased disturbance and security issues, which will adversely affect the amenity of residents. The applicant notes that a resident of one of the other flats in the building supports the applicant, however, planning permission is not time limited, and the decision maker should consider the potential effects on amenity arising from physical relationship of this flat with other flats over the views of one current resident. Even if the current resident of one of the other flats finds amenity acceptable, it does not mean that future residents would. The planning boundary does not include the garden, and use of this area by guests, if it is not a public area, is not part of this planning application. Given the layout of the property, the Planning Advisor did not consider it would be possible to impose an enforceable condition to prevent use of the garden by guests.
- 5.28 The Planning Advisor did not however consider the proposal contrary to the amenity requirements of either NPF4 Policy 27; nor LDP Policy TC2.
- 5.29 The second part of Policy 30(e) requires weighing the loss of residential accommodation against demonstrable economic benefit. As noted above the Council's Housing Strategy and Development Service did originally object to the proposal considering it a significant loss. This is not a change of position but was not reflected accurately by the case officer. The Economic Development Manager sets out the benefits arising from short term holiday lets. Both responses were in the ELLRB's pack. 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. If the ELLRB considered the economic benefits to outweigh the loss of housing stock, the proposal would comply with Policy 30(e)(ii). If not, it would be contrary to this policy. However, the Planning Advisor stated that the ELLRB should only weigh economic benefit against loss of residential accommodation and not against amenity which is a separate test.
- 5.30 In terms of town centre policy, NPF4 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 gives uses acceptable in principle within a town centre, which does not include short term lets. However residential use may be acceptable in above ground floor locations. The main aim of both policies is to maintain the centre's vibrancy, vitality

and viability. As noted by the Economic Service Manager, holiday guests are likely to have different patterns of spending from residents, which can support the viability of some businesses, though he has not addressed whether there are different spending patterns of workers. It is difficult to tell what the overall effect on vitality and viability of the town centre is, taking into account the likely greater spending (and potentially activity) of tourists in comparison to residents, but also the fact that there are more likely to be periods where the property is empty. 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 and the proposal is therefore acceptable under town centre policy.

- 5.31 The Planning Advisor agreed with the case officer that the proposal meets development plan policy regarding transport.
- 5.32 In summary, the Planning Advisor agreed with the original decision that the application should be refused as contrary to NPF4 Policy 30(e)(i) due its adverse effect on residential amenity. The Planning Advisor did not agree that it is contrary to LDP Policy TC2. She also considered that it is also contrary to NPF Policy 30E part 2 as in her view the economic benefits do not outweigh the loss of housing stock. The Planning Advisor did not consider there to be any other material considerations which would override this.
- 5.33 The Planning Advisor stated that if the ELLRB are minded approving the appeal, the case officer has recommended that the planning condition limits the number of guests to 3. The short term let licence is for four guests, which the applicant states may be accepted where they are from the same family, and the ELLRB may wish to consider this. A second suggested condition is for the keeping of a register to ensure this is done.

Discussion and vote

- 5.34 The Chair invited questions for the Planning Advisor.
- 5.35 Councillor McMillan admitted to feeling conflicted with this application. He had noted that the staircase was cramped and that access from the high street was dark and he had concerns about the lighting. He also pointed to the shared staircase and through access to the rear of another property. He noted that there had been no issues with antisocial behaviour at the property but that there were problems in the high street. He also accepted the point about the need for accommodation for transient workers. However, having weighed all of the evidence and considered this against planning policy, with the possible risk to the amenity of neighbours and the potential contribution of longer term residents who would contribute to the community, he was minded to support the decision of the case officer.
- 5.36 Councillor Findlay said that he was also conflicted. He agreed that the entrance was less than desirable and, despite being given assurances, he continued to have concerns about the lighting. However, this property was professionally managed by a company who manage other properties and he was not convinced that this property would add to the local housing stock if it were not used as a short term let. He pointed to the letter of support from the neighbour and despite the argument for considering the views of future neighbours, he felt it was necessary to consider what was happening now. The accommodation was needed to house workers involved in building essential facilities and, for this reason, he was minded to uphold the appeal.
- 5.37 Councillor Allan acknowledged that there was a housing crisis across whole of UK. However, visiting this property had raised concerns about the stairs and lighting, which she felt were unsuitable for children or the elderly. As well as the need for permanent housing, it was necessary to consider the number of workers coming into the area who needed short to medium term accommodation, and for whom hotels and B&Bs were not appropriate. She was therefore minded to uphold the appeal.
- 5.38 Councillor Hampshire commented on the issue of loss of amenity. In his view, the fact that the current neighbour supported the short term let did not mean that this would always be the case going forward. He agreed that the property was situated off a very narrow close and that it could

be intimidating to meet strangers in such a space. He believed that a short term let should have its own entrance and should not require contact with neighbouring properties. As this property did not have its own entrance he would be supporting the decision of the case officer.

- 5.39 The Legal Adviser provided the definition of guests within a short term let and confirmed that while short term workers could be covered, longer term workers (where the property becomes their principal home) may not be, and it may be that a lease under the Private Housing (Tenancies) (Scotland) Act 2016 would be more appropriate. Properties under the 2016 Act with workers may also require a House of Multiple Occupation (HMO). Councillor McMillan further queried what timescales would cause an arrangement to not be a short term let and fall into the 2016 Act, the Legal Advisor confirmed that this is something she would need to explore further.
- 5.40 Councillor McMillan agreed that there may be a need to explore this issue more widely but that it would not change his decision on this case. The Chair also acknowledged that consideration of this issue more generally, at a later date, would be helpful. The Legal Adviser said she can explore this matter further.
- 5.41 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. The LRB members agreed by a majority (as above) to the amended reasons for refusal.
- 5.42 The LRB 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 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.