



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

**THURSDAY 19 SEPTEMBER 2024
VIA THE COUNCIL HYBRID SYSTEM**

Committee Members Present:

Councillor L Allan
Councillor J Findlay
Councillor N Hampshire (Chair)
Councillor J McMillan

Advisers to the Local Review Body:

Ms F Haque, Legal Adviser to the LRB
Ms J Squires, Planning Adviser to the LRB

Clerk:

Ms F Currie, Committees Officer

Others Present:

Ms E Barclay, Committees Assistant (meeting administrator)

Apologies:

N/A

Declarations of Interest

None

The Clerk advised that the meeting was being held as a hybrid meeting, as provided for in legislation; that the meeting would be recorded and made available via the Council's website in order to allow the public access to the democratic process in East Lothian. She noted that the Council was the data controller under the Data Protection Act 2018; that data collected as part of the recording would be retained in accordance with the Council's policy on record retention; and that the webcast of the meeting would be publicly available for up to six months.

The Clerk recorded the attendance of Members by roll call.

Introductory Statement by the Legal Adviser

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

She confirmed that, on this occasion, it had been agreed that Councillor Hampshire would chair the LRB.

The Planning Adviser made some introductory remarks regarding the status of the development plan which covered all of the applications. She advised the LRB members 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 LRB members 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.

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 LRB members' attention to Objective 6 of the new East Lothian Local Economic Strategy which referred to tourism and non-serviced accommodation.

1. PLANNING APPLICATION NO. 23/01160/P: CHANGE OF USE OF FLAT TO SHORT TERM HOLIDAY LET (RETROSPECTIVE), FLAT 2, 7 THE SQUARE, EAST LINTON, EH40 3AD – REVIEW AGAINST DECISION (REFUSAL)

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

The Planning Adviser provided details of the application including the property type, location and letting arrangements.

She noted that the building was Category B listed and lay within the East Linton Conservation Area. This meant that sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 were material to the determination of the application. In line with this legislation, NPF4 Policy 7b (Historic Assets and Places) was also relevant and that LDP Policies CH1 and CH2 had similar provisions.

She advised that the case officer had also considered the following policies as material to the determination of the application: Policies 13 (Sustainable Transport) and 30 (Tourism) of NPF4

and Policies RCA1 (Residential Character and Amenity), T1 (Development Location and Accessibility) and T2 (General Transport Impact) of the adopted LDP 2018.

The Planning Adviser summarised the case officer's original assessment of the application against planning policy and the comments received from internal and external consultees. Referring to the original planning application, she noted that the applicant had not submitted any further representation in respect of the appeal.

The Planning Adviser provided guidance to the LRB members on assessing the main considerations of the case and gave her opinion on the case officer's interpretation of relevant planning policy. She concluded by stating that, in her view, the application should be refused as being contrary to NPF4 Policy 30e due to its adverse effect on residential amenity but not LDP Policy RCA1 as in the original decision, as, in her view this policy did not apply to this site.

She concluded her presentation by reminding the LRB members that, should they decide to grant the application, the planning case officer had provided two suggested conditions. She also suggested an additional condition around use of the garden.

The Planning Adviser responded to questions from Members confirming that both the police and the Council's Antisocial Behaviour Team had advised that no complaints had been received about this property, and there had been no representations. She said that the applicant had stated that this property was also their home and the short term let licence had been granted for home-letting, rather than secondary letting.

She provided advice on how Members might consider the relevance and application of planning policies and whether there were any other matters relevant to the determination. She also replied to further questions on how they might confirm the status of the property as a home, how this might impact the Members' decision-making, and provided advice on potential conditions of planning permission.

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

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

Councillor Allan said that the entrance was easily accessible with a lot of space in hallway; and, in many ways, this was an ideal home. She acknowledged that there was a real need for short term lets but that there needed to be balance between the economic and housing benefits. She was not convinced of the impact on amenity as she felt that disturbance caused by guests would not be an issue in this case.

Councillor Findlay reflected that this was one of several applications he had seen where there had been no complaints from neighbours and there was no evidence of loss of amenity. He appreciated that it was not possible to predict the future; and, for this reason, he did not think that possible future behaviour should be considered. He also noted that as this was the applicant's own home, it would not be going on the market if planning permission was refused. Referring to the economic benefits, he noted the high demand for short term lets, which formed an important part of the market in areas where not all visitors could afford hotel stays. For these reasons, he was minded to support the appeal.

Councillor McMillan agreed that this was a difficult decision but said that, on balance, he was minded to support the case officer's decision. 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.

The Chair agreed that amenity was the crucial point in this case. He accepted that when someone buys a property in a shared stairway, they have to share those communal areas with neighbours. However, a short term let meant that different people would be coming into these shared spaces every other week. While some people would have no difficulty with this, for others, the possibility of meeting strangers in an enclosed area could be intimidating. He believed that the amenity of neighbours would be impacted, and he agreed with the case officer's decision.

The LRB members confirmed their decision via roll call vote:

L Allan	uphold appeal
J Findlay	uphold appeal
N Hampshire	uphold officer decision + casting vote to uphold officer decision
J McMillan	uphold officer decision

The LRB members then considered the reasons for refusal of the application agreed by a majority (as above) to the removal of reference to Policy RCA1.

Decision

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 with the removal of the words "and Policy RCA1 of the adopted East Lothian Local Development Plan 2018.

2. PLANNING APPLICATION NO. 23/01433/P: CHANGE OF USE OF FLAT TO SHORT TERM HOLIDAY LET (RETROSPECTIVE), 6A FORTH STREET LANE, NORTH BERWICK, EH39 5JB – REVIEW AGAINST DECISION (REFUSAL)

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

The Planning Adviser provided details of the application including the property type, location and letting arrangements, and the reason for refusal.

She noted that the building within the North Berwick Conservation Area but was not listed. This meant that section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 was material to the determination of the application. In line with this legislation, NPF4 Policy 7b (Historic Assets and Places) was also relevant and LDP Policies CH1 and CH2 had similar provisions.

She advised that the case officer had also considered the following policies as material to the determination of the application: Policies 13 (Sustainable Transport) and 30 (Tourism) of NPF4 and Policies TC2 (Town and Local Centres), T1 (Development Location and Accessibility) and T2 (General Transport Impact) of the adopted LDP 2018. The case officer had also noted the provisions of the East Lothian Economic Strategy 2012-22, although this had now been superseded by the 2024-34 Strategy document.

The Planning Adviser summarised the case officer's original assessment of the application against planning policy and considering the comments received from internal and external consultees. She also summarised the submission made by the applicant in support of the appeal, highlighting its key arguments.

The Planning Adviser provided guidance to the LRB members on assessing the main considerations of the case and gave her opinion on the case officer's interpretation of relevant planning policy. She concluded by stating that, in her view, the application should be refused as being contrary to NPF4 Policy 30e due to its adverse effect on residential amenity but not LDP Policy TC2 as in the original decision.

She also addressed the applicant's question around the lawfulness of requiring retrospective planning permission. She advised the LRB members that this likely related to City of Edinburgh Council's decision to introduce short term let control areas. No such areas existed within East Lothian.

She concluded her presentation by reminding the LRB members that, should they decide to grant the application, the planning case officer had provided two suggested conditions.

The Planning Adviser responded to questions from Members providing clarification of the applicant's statements on stair cleaning and their relevance to the application. She confirmed the impact on the classification of the shared stairwell (from residential to mixed use), should planning permission be granted for a change of use for the property, and advised that it would not be possible to add a condition limiting access to certain parts of the shared stairwell. She added that this advice would apply to any property which shared access to a privately or communally owned stairwell, and which was granted a change of use. Replying to a further question, the Planning Adviser denied that applications for properties with such shared access would automatically be refused a change of use. She said that each application should be considered on its individual merits and that East Lothian Council did not have a specific policy on short term lets.

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

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

Councillor 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 to for the Council to make a decision on the number of short term lets which could be supported within the town.

Councillor McMillan commented that North Berwick had previously been nominated as one of the best places to visit and had recently been voted the best place to live in UK by The Sunday Times. Encouraging vibrant town centres, as described in The Sunday Times article, made him want to support the planning case officer's decision. He noted that the property was in a central location within the town, and he referred to the principles of planning policy NPF4 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.

Councillor Allan noted that a decision to refuse the change of use would not result in this property being added to the local housing stock. She agreed with Councillor Findlay's arguments regarding tourism in North Berwick and while there was currently a housing crisis, denying this application would not improve that situation. She was minded to support the appeal.

The Chair said that the reason for refusal had been the effect on the amenity of neighbour properties. While the current resident had no issues, they may not remain at that property in the future and any potential purchaser may be deterred by a short term let in the property below. Equally, if a new resident moves in, they may find it intimidating to meet strangers in an enclosed stairwell. While he accepted the need for short term lets, he said it was important to ensure they did not result in a detriment to permanent residents. He would be supporting the decision of the case officer in respect of planning policy 30 of NPF4, but not policy TC2 of the adopted LDP 2018.

The LRB members confirmed their decision via roll call vote:

L Allan	uphold appeal
J Findlay	uphold appeal
N Hampshire	uphold officer decision + casting vote to uphold officer decision
J McMillan	uphold officer decision

Decision

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 removal of reference to Policy TC2 of the adopted LDP 2018.

3. PLANNING APPLICATION NO. 23/01214/P: CHANGE OF USE OF FLAT TO SHORT TERM HOLIDAY LET (RETROSPECTIVE), 2E EAST ROAD, NORTH BERWICK, EH39 4HN – REVIEW AGAINST DECISION (REFUSAL)

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

The Planning Adviser provided details of the application including the property type, location and letting arrangements and the reason for refusal of planning permission. She noted that there had been six objections to this application.

She advised that the building was Category B listed and lay within the North Berwick Conservation Area. This meant that sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 were material to the determination of the application. In line with this legislation, NPF4 Policy 7b (Historic Assets and Places) was also relevant and LDP Policies CH1 and CH2 had similar provisions.

She advised that the case officer had also considered the following policies as material to the determination of the application: Policies 13 (Sustainable Transport) and 30 (Tourism) of NPF4 and Policies RCA1 (Residential Character and Amenity), T1 (Development Location and Accessibility) and T2 (General Transport Impact) of the adopted LDP 2018.

The Planning Adviser summarised the case officer's original assessment of the application against planning policy and considering the comments received from internal and external consultees. She summarised the submission made by the applicant in support of the appeal,

highlighting its key arguments. She also drew attention to two further representations from the Council's Local Housing Strategy team and the North Berwick Environment and Heritage Trusts.

She provided guidance to the LRB members on assessing the main considerations of the case and gave her opinion on the case officer's interpretation of relevant planning policy. She concluded by stating that, in her view, the application should be refused as being contrary to NPF4 Policy 30e Part 1 and LDP Policy RCA1, and NPF4 Policy 30e Part 2, in that the loss to housing stock outweighed the economic benefits demonstrated.

She concluded her presentation by reminding the LRB members that, should they decide to grant the application, the planning case officer had provided two suggested conditions. She also provided advice on additional conditions around parking, arrivals/departures and other management issues.

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.

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

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

Councillor 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.

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.

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.

The Chair 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.

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.

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. [Councillor Findlay voted against.]

Decision

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.

4. PLANNING APPLICATION NO. 23/01496/P: CHANGE OF USE OF FLAT TO SHORT TERM LET FOR BOTH HOLIDAYMAKERS AND SHORT-TERM WORKERS (RETROSPECTIVE), 19A HIGH STREET, HADDINGTON, EH41 3ES – REVIEW AGAINST DECISION (REFUSAL)

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

The Planning Adviser provided details of the application including the property type, location and letting arrangements and the reason for refusal of planning permission.

She noted that the building was Category B listed and lay within the Haddington Conservation Area. This meant that sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 were material to the determination of the application. In line with this legislation, NPF4 Policy 7b (Historic Assets and Places) was also relevant and LDP Policies CH1 and CH2 had similar provisions.

She advised that the case officer had also considered the following policies as material to the determination of the application: Policies 13 (Sustainable Transport) and 30 (Tourism) of NPF4 and Policies TC2 (Town and Local Centres), T1 (Development Location and Accessibility) and T2 (General Transport Impact) of the adopted LDP 2018.

The Planning Adviser summarised the case officer's original assessment of the application against planning policy and considering the comments received from internal and external consultees. She summarised the submission made by the applicant in support of the appeal, highlighting its key arguments. She also drew attention to two further representations and the applicant's response to these additional comments.

She provided guidance to the LRB members on assessing the main considerations of the case and gave her opinion on the case officer's interpretation of relevant planning policy. She concluded by stating that, in her view, the application should be refused as being contrary to NPF4 Policy 30e part 1 due to its adverse effect on residential amenity. However, she did not agree that it was contrary to LDP Policy TC2 as in the original decision. In addition, she considered the application contrary to NPF4 Policy 30E part 2 as in her view the economic benefits did not outweigh the loss of housing stock.

She concluded her presentation by reminding the LRB members that, should they decide to grant the application, the planning case officer had provided two suggested conditions.

The Planning Adviser responded to questions from Members on the response from the Local Housing Strategy Team, the maximum number of guests permitted at the property and whether the garden area was communally owned or if it contained a public right of way.

The Chair also asked for confirmation that transient workers were not covered within the short term let legislation. The Legal Adviser thought that this was correct but said she would check the position.

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

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

Councillor 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.

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.

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.

The Chair 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.

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.

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 would be happy to explore this matter further.

The LRB members confirmed their decision via roll call vote:

L Allan	uphold appeal
J Findlay	uphold appeal
N Hampshire	uphold officer decision + casting vote to uphold officer decision
J McMillan	uphold officer decision

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.

Decision

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.

Signed

Councillor Norman Hampshire
Chair of Local Review Body (Planning)