

REVIEW DECISION NOTICE

Decision by East Lothian Local Council Review Body (the “**ELLRB**”)

Application for review by agent Colin Mckendrick of 14a Jessfield Terrace, Edinburgh, EH6 4JP on behalf of applicant, Mr Harendra Pappala of 2-2 Telford Grove, Edinburgh, EH4 2UL.

Planning application 24/00229/P retrospectively sought permission for the change of use of the residential flat of 78C High Street, Dunbar, EH42 1JH as a two bedroom unit of short-term self-catering holiday let and accommodation.

Site address: 78C High Street, Dunbar, EH42 1JH

Application: 24/00229/P

Date of Review decision notice: **20 December 2024**

1. Decision

- 1.1 The ELLRB dismissed the appeal and refused planning application 24/00229/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 21 November 2024. The ELLRB constituted by Councillor Andrew Forrest (chair), Councillor Jeremy Findlay, Councillor Shona McIntosh and Councillor Neil Gilbert. All four members of the ELLRB had attended a site visit in respect of the application on 21 November 2024.
- 2.2 The following persons were also present at the meeting of the ELLRB:

Mr, Marek Mackowiak, Planning Advisor
Ms Fariha Haque, Legal Adviser/Clerk
Ms Fiona Currie, Clerk

3. Proposal

- 3.1 This application was for a review of decision to refuse planning permission for the change of use of the residential flat of 78C High Street, Dunbar, EH42 1JH as a two bedroom unit of short term self-catering holiday let and accommodation. The applicant appealed the refusal of the planning application on 12 September 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 24/00229/P
2	Copy of the Decision Notice (including reason for refusal) relating to planning application 24/00229/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 30 (Tourism) of the National Planning Framework 4. Policies TC2 (Town and Local Centres), CH1 (Listed Buildings), CH2 (Development Affecting Conservation Areas), T1 (Development Location and Accessibility) and T2 (General Transport Impact) of the adopted East Lothian Local Development Plan 2018
5	Schedule of Conditions
6	Stamped refused drawings

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 Forrest 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 property to which this planning appeal relates is located on the third floor of a tenement building, located along Mason's Close, just off the High Street in Dunbar's Town Centre as defined by Policy TC2 of the adopted East Lothian Local Development Plan 2018. The application property is listed as being of special architectural or historic interest (Category B) and is located within the Dunbar Conservation Area. No alterations have been undertaken to the flat, either internally or externally, to facilitate the retrospective change of use. The flat is accessed via a communal entrance door and stairwell. The property shares an entrance and stairwell with three other flats, one of which (no. 78B) also falls under the ownership of the applicant.
- 5.5 The report of handling of this application summarised points made by the applicant in support of their application. Namely that:
- 5.5.1 the flat has been marketed/used for short term lets since September 2017;
 - 5.5.2 the average length of stay 4 - 6 weeks;
 - 5.5.3 the maximum number of visitors in one booking is 4 adults;
 - 5.5.4 bins/recycling are managed by a commercial cleaning company/housekeeper;
 - 5.5.5 the property is advertised on Airbnb, Booking.com and the applicant is a member of the Association of Scotland's Self-Caterers;
 - 5.5.6 guests use the key safe box provided;
 - 5.5.7 the third floor flat, the subject of this application, shares a communal entrance and stairwell;
 - 5.5.8 the flat is used on a short term let basis for holiday makers and local workers; and
 - 5.5.9 a ring doorbell camera has been installed to check guest numbers.
- 5.6 Section 25 of the Town and Country Planning (Scotland) Act 1997 requires that the application be determined in accordance with the development plan, unless material considerations indicate otherwise. The development plan is National Planning Framework 4 (NPF4) and the adopted East Lothian Local Development Plan 2018.
- 5.7 Policies 7 (Historic assets and places) and 30 (Tourism) of NPF4 are relevant to the determination of this application. Policies TC2 (Town and Local Centres), CH1 (Listed Buildings), CH2 (Development Affecting Conservation Areas), T1 (Development Location and Accessibility) and T2 (General Transport Impact) of the adopted East Lothian Local Development Plan 2018 are relevant to the determination of this application.
- 5.8 Material to the determination of the application are sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and NPF4.

- 5.9 The case officer report confirmed that no representations have been received in relation to this application for planning permission.
- 5.10 The adopted East Lothian Local Development Plan 2018 does not contain a specific policy on the change of use of flats to holiday lets. However, part e) of Policy 30 (Tourism) of NPF4 states that:
Development proposals for the reuse of existing buildings for short term holiday letting will not be supported where the proposal will result in:
5.10.1 an unacceptable impact on local amenity or the character of a neighbourhood or area; or
5.10.2 the loss of residential accommodation where such loss is not outweighed by demonstrable local economic benefits.
- 5.11 Relevant to the determination of this appeal is Policy TC2 (Town and Local Centres) of the ELLDP 2018 which supports a range of changes of uses in principle. Proposals that have a significant environmental impact, particularly on housing will not be supported.
- 5.12 In the report of handing the case officer correctly stated that in the determination of this application it is necessary to assess the impact of the change of use of the application property to a unit of holiday let accommodation upon the amenity of the existing neighbouring residential properties or the character of the neighbourhood or area. In the report the case officer accurately summarised all comments received from our internal and external consultees.
- 5.13 The Council's Senior Environmental Health Officer advised that whilst the normal use of a property would not result in loss of amenity to neighbours, the use of properties for short term holiday let can result in future guests misusing and abusing the property in a manner that is antisocial and can result in a significant impact upon amenity of neighbours. However, the response noted that the Council's Environmental Health Service cannot assume that antisocial behaviour issues will arise and thus cannot impose any enforceable conditions to protect the amenity of neighbours.
- 5.14 The Council's Antisocial Behaviour Team advised that they have no records of any incidents relating to antisocial behaviour matters at this address and thus they raise no objection to this retrospective planning application.
- 5.15 Police Scotland advised that there have been no police incidents at this address and thus they raise no objection to this retrospective planning application.
- 5.16 The Council's Roads Services raised no objection to this retrospective planning application. Accordingly, the proposal does not conflict with Policies T1 and T2 of the adopted East Lothian Local Development Plan 2018.
- 5.17 The Council's Housing Strategy & Development Service did not object to this retrospective application. The Council's Economic Development Service Manager submitted comments supporting the application.
- 5.18 The case officer conducted a planning assessment of the proposal and concluded that the use of the application property as a holiday let results in a regular turnover of users/occupants of the property. This use changes the nature of comings and goings not only to the application property itself but also within the communal entrance and hallway of the residential building. Most users/occupants of the holiday let would have a degree of luggage or other property to take through the communal external entrance and hallway which in itself would lead to a level of disturbance and nuisance not associated with the permanent/long term residential use of the property. The officer concluded that this is harmful to the amenity of the occupants of the residential properties within the residential flatted building of 78 High Street irrespective of whether they live in the properties on a permanent basis or not. The officer accepted that permanent residents may also make noise, but this would not be at the same frequency as regularly changing guests who arrive and depart sometimes at unsociable hours, and thus differs from typical residential circumstances.

- 5.19 The officer also noted that this level of additional activity is evidently different to that expected with the permanent/long term use of the flat as a private residence again which is harmful to the amenity of the existing occupants of the residential properties within the residential flatted building of 78 High Street, Dunbar.
- 5.20 Moreover, the case officer report noted that allowing frequently changing guests unfettered access to otherwise secure shared areas changes the actual and perceived level of security for permanent residents. Whilst permanent residents are likely to have visitors of their own from time to time, those permanent residents would remain in control of security to communal areas. The introduction of frequently changing guests regularly into these secure areas, independent of the owner, would therefore differ from typical residential circumstances.
- 5.21 The officer concluded that given the specific circumstances and location of the application property within the residential building named, which contains another permanent/long term residences which shares a communal entrance, internal stair and hallway, the retrospective change of use of the applicant's third floor flat as a two bedroom unit of short term self-catering holiday let accommodation is incompatible with and harmful to the amenity of the occupiers of the residential properties within the residential building of 78 High Street. By having an unacceptable impact on local amenity, the proposal is contrary to part e) of Policy 30 of NPF4 and contrary to Policy TC2 of the adopted ELLDP 2018.
- 5.22 The officer confirmed that since no alterations have been undertaken to the property, either internally or externally, to facilitate the retrospective change of use and none are proposed through this application therefore the proposal does not have a detrimental impact on the special architectural or historic interest of the listed building or on the character and appearance of this part of the Conservation Area. The officer concluded that on these considerations, the proposal would not conflict with Policy 7 of NPF4 or with Policies CH1 or CH2 of the adopted ELLDP 2018.
- 5.23 The officer also assessed the impact of the change of use on the loss of residential accommodation where such loss is not outweighed by demonstrable local economic benefits as is stated in part e) of Policy 30 of NPF4. The Council's Housing Strategy & Development Service did not object to the application as the change of use of this property from a long term residential dwelling to a short term let was not considered a significant loss to residential housing stock because it has been let for 5 years or more.
- 5.24 The Council's Economic Development Service Manager advised that there are demonstrable local economic benefits delivered by all types of short term holiday lets in East Lothian and that existing provision of this type of accommodation must be retained, protected and supported where there is no demonstrable impact on local amenity, the character of the area or loss of residential accommodation.
- 5.25 The case officer concluded that the local economic benefits associated with the use of the applicant's third floor flat operating as a two bedroom unit of short term self-catering holiday let accommodation does not outweigh the unacceptable impact on local amenity. Therefore, the change of use is not in accordance with the Development Plan and there are no material planning considerations that outweigh the fact that the change of use is not in accordance with the Development Plan.
- 5.26 In your information pack you have a submission from the applicant who made a number of points as listed below.
- 5.26.1 their property has been operating as a Holiday Let since September 2017 long before the National Planning Framework was introduced.
- 5.26.2 In the 7 years that they have been operating there has been no record of anti-social behaviour or complaints from the neighbour below. This proves that there has been no unacceptable impact on local amenity or character of a neighbourhood.
- 5.26.3 Section (ii) of the National Planning Framework makes reference to loss of residential accommodation however ELC Housing did not object to the application because the property has been a short term let since 2017; and the property has an estimated annual occupancy rate of over 6 months.

- 5.26.4 Section (ii) of the National Planning Framework refers to demonstrable local economic benefits. The East Lothian Economic Development Strategy 2012-22 identifies tourism as one of the strengths of the East Lothian economy and a source of employment opportunities in the future and the adopted East Lothian Local Development Plan 2018 states that a range of hotel, guest house and other accommodation attracts visitors and encourages them to stay and benefit the economy of East Lothian. Dunbar has a number of hotels which are unaffordable to many families holidaying in the Town and there is a general shortage of cheap holiday accommodation. Short term lets provide significant financial contribution to the town and help to support Dunbar by the Sea, Scottish Open Golf, ELC Tennis Tournament amongst many other events nearby.
- 5.26.5 The property has an annual occupancy rate of 80% therefore for 20% of the year the flat lies empty. If the flat was to be returned to a residential let, then significantly more traffic in the common stairwell would exist.
- 5.26.6 On average the applicant's property attracts around 15 lets throughout the year. Most of these lets are contractors and occasionally families.
- 5.26.7 East Lothian Council used the property for temporary accommodation when one of the council tenants required temporary accommodation. Another example provided by the applicant is of a local couple who stayed in the property when their home was drying out after being flooded.
- 5.26.8 There are two public houses nearby with the noise coming from them being significant on occasions.
- 5.26.9 There is only one flat that is affected by foot traffic in the common stairwell.
- 5.26.10 It has been reported that with the continuing loss of affordable holiday accommodation the properties that exist can put up their prices. Potential customers are looking for cheaper accommodation in the North of England and elsewhere, therefore the reduction in short term lets is already having an impact on the local economy.

Discussion and vote

- 5.27 The Chair invited questions for the Planning Officer.
- 5.28 Councillor McIntosh queried whether there is an amount of time before a site does not require planning permission and is there is an automatic a change of use. She noted that the site had been in use since 2017. The planning advisor confirmed that where there is use for a period, a certificate of lawful use may be applied for. Comments from Councillors Forrest and Findlay and their understanding was that a certificate of lawful use can be applied for after 10 years, planning advisor confirmed this to be the case.
- 5.29 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.
- 5.30 The ELLRB members confirmed their decision via roll call vote.
- 5.31 Councillor Gilbert commented this was rather similar to applications that been presented in previous LRBs. He commented that a key factor was that there are other permanent residents in the tenement, and they may "clash" with the short term let. Councillor Gilbert voted to support the original case officer's decision.
- 5.32 Councillor Findlay commented that the majority of the Council's consultees had not objected to the application and that this came down to the effect on the amenity. He commented that in his view, this was a predominantly commercial area, not purely residential and that this should be taken into account. There had been no complaints and there was no evidence of extra noise. He said that there would be no loss in housing as the property had been a short term let for several years. He further stated that Dunbar Community Council had recently sent written correspondence to complain that the reduction in the number of short term lets was having an impact on the community. Councillor Findlay voted to support the appeal.
- 5.33 Councillor McIntosh is generally supportive of the policy where the LRB look at the amenity of other people in the flat. She does not think it comes down to noise levels only and how many

times someone is coming in and out of the stairs. She thinks there is an amenity that occurs from getting to know one's neighbours. Councillor McIntosh voted to support the case officer's original decision.

5.34 Councillor Forrest stated that each case should be considered on an individual basis. He was curious as to why there was now a ring doorbell at the premises to monitor who was going in and out and why this had been installed. He stated that if he was staying as a neighbour of the premises, he would wonder whether there would be any point in reporting difficulties with those in the premises as they would only be there short term. He valued the loss of amenity, especially from the continuous comings and goings. Councillor Forrest supported the original case officer's decision.

Accordingly, the ELLRB agreed 3 to 1 to refuse the appeal for the reasons more particularly set out in the original case officer's Decision Notice.

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.