

REVIEW DECISION NOTICE

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

Application for Review by TM Holiday Lettings c/o Derek Scott Planning Per Derek Scott 21 Lansdowne Crescent Edinburgh EH12 5EH of decision to refuse Planning Permission for the change of use of flat to short-term holiday let (Retrospective) at Flat 27, 1 Station Road, North Berwick EH39 4AT

Site Address: Flat 27, 1 Station Road, North Berwick, EH39 4AT

Application Ref: 24/00575/P

Application Drawing: Please refer to the Drawings/Plans detailed at 3.1 (i)

Date of Review Decision Notice: 23 December 2024

Decision

The ELLRB by majority of three (3) to one (1) decided not to support the appeal and refuse planning permission for the change of use of flat to short-term holiday let (Retrospective) at Flat 27, 1 Station Road, North Berwick EH39 4AT for the reasons more particularly set out below.

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.

1. Introduction

The above application for Planning Permission was considered by the ELLRB, at a meeting held on Thursday, 31 October 2024. The Review Body was constituted by Councillor E Allen (Chair), Councillor C Yorkston, Councillor D Collins and Councillor K McLeod. All four members of the ELLRB had attended a site visit in respect of this application prior to the meeting.

1.1. The following persons were also present at the meeting of the ELLRB:-

Mr Mr Zochowski, Planning Adviser to the LRB
Mr C Grilli, Legal Adviser to the LRB
Ms F Currie, Clerk

2. Proposal

2.1. The planning application is for review of decision to refuse Planning Permission for the change of use of flat to short-term holiday let (Retrospective) at Flat 27, 1 Station Road, North Berwick EH39 4AT.

2.2. The planning application was registered on 6 June 2024 and the Decision Notice refusing the application is dated 30 August 2024.

2.3. The reason for refusal is more particularly set out in full in the said Decision Notice dated 30

August 2024. The reason for refusal is set out as follows:

- 1 *The holiday let use of the flatted property is incompatible with and harmful to the amenity of the occupants of other flatted properties used as residential dwellings within the residential building of 1 Station Road and as such is contrary to part e) of Policy 30 of National Planning Framework 4 and Policy RCA1 of the adopted East Lothian Local Development Plan 2018.*

2.4. The notice of review is dated 10 September 2024.

3. **Preliminaries**

3.1. The ELLRB members were provided with copies of the following:-

i.	<p>The drawings accompanying this application are referenced and numbered as follows:</p> <table border="1"> <thead> <tr> <th style="text-align: left;"><u>Drawing No.</u></th> <th style="text-align: left;"><u>Revision No.</u></th> <th style="text-align: left;"><u>Date Received</u></th> </tr> </thead> <tbody> <tr> <td>DWG 01</td> <td style="text-align: center;">-</td> <td>14.06.2023</td> </tr> <tr> <td>DWG 02</td> <td style="text-align: center;">-</td> <td>14.06.2023</td> </tr> <tr> <td>DWG 03</td> <td style="text-align: center;">-</td> <td>14.06.2023</td> </tr> </tbody> </table>	<u>Drawing No.</u>	<u>Revision No.</u>	<u>Date Received</u>	DWG 01	-	14.06.2023	DWG 02	-	14.06.2023	DWG 03	-	14.06.2023
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DWG 03	-	14.06.2023											
ii.	The Application for planning permission registered on 6 June 2024												
iii.	The Appointed Officer's Submission												
iv.	<p>Policies relevant to the determination of the application:</p> <p>National Planning Framework 4:</p> <ul style="list-style-type: none"> - Policy 7 (Historic Assets and Places) - Policy 13 (Sustainable Transport); and - Policy 30 (Tourism) <p>The adopted East Lothian Local Development Plan 2018 policies:</p> <ul style="list-style-type: none"> - RCA1 (Residential Character and Amenity) - CH2 (Development Affecting Conservation Areas) - T1 (Development, Location and Accessibility) and - T2 (General Transport Impact). 												
v.	Notice of Review dated 10 September 2024 together with Applicant's Submission with supporting statement and associated documents.												

4. **Findings and Conclusions**

4.1. The ELLRB confirmed that the application for a review of the planning application permitted them to consider the application afresh and it was open to them to grant it in its entirety, grant it subject to conditions or to refuse it. They confirmed that they had access to the planning file in respect of this matter and to all the information that the Appointed Officer had available when reaching the original decision to grant planning permission subject to conditions, including all drawings and copies of all representations and objections received

in respect of the original application. They also confirmed they had received and reviewed the Applicant's Submission and further representations made in connection within this appeal before the ELLRB today.

- 4.2. The Members then asked the Planning Adviser to summarise the planning policy position in respect of this matter. The Planning Adviser advised the members that as they had seen on the site visit that morning, the two bedroom first floor flat is accessed by both a shared front and back door, an internal communal stair and hallway in which a lift is also available. It is part of Block 3 along with 11 other residential flats. The application is retrospective and the property has been operating as a short term let since 2017. Four flats within the overall Royal Apartments complex do have Certificates of Lawfulness to operate as short term lets because they were able to demonstrate that this use had been operative for a period of a minimum of ten years. The property in question has only operated as a short term let for 7 years and therefore does not qualify and would require planning permission to operate. The way it is operated at present is that up to 5 persons can stay in the property at any one time for a minimum of 3 nights.

The application must be determined in accordance with the development plan unless material considerations indicate otherwise. The Development Plan consists of the East Lothian Local Development Plan 2018 together with National Planning Framework 4.

The Planning Adviser then stated to the members that they should first consider all relevant planning policies then look at any material considerations that may outweigh the policy implications before arriving at your conclusion. The Report of Handling provides the case officer's report and in it on p4 and 5 it summarises the applicant's submitted Planning Statement a full copy of which is available at pages 77 to 106 in your pack. The case officer considered that the following planning policies are relevant to the determination of the application: NPF4 Policy 7 Historic Assets and Places; Policy 13 Sustainable Transport; Policy 30 Tourism, and ELLDP policies RCA1 Residential Character and Amenity; CH2 Development affecting conservation areas; T1 Development Location and Accessibility; T2 General Transport Impact.

The Planning Adviser confirmed that ten objections were received and are summarised on p9 and 10 of the case officer's report. The Planning Adviser noted that there was no representation from the Community Council. It was further noted that additional information was provided on the granted Certificates of Lawfulness which confirms that Block 3 in which this flat is situated does not have any lawful short term let use. The officer also confirms that a site visit was undertaken. Of the consultees that responded it is noted that there was no objection from the Senior Environmental Health Officer, the Council's Anti-Social behaviour team, Police Scotland or Road Services. There were detailed responses from Economic Development and Housing and Strategy.

Among the material considerations is the East Lothian Economic Development Strategy which states that tourism and tourist accommodation of all types benefits the local economy. The LDP does not contain specific policies on short term lets but NPF 4 Policy 30 is relevant and its part e) 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 1) an unacceptable impact on local amenity or the character of a neighbourhood or area; or 2) The loss of residential accommodation where such loss is not outweighed by demonstrable local economic benefits.

The East Lothian Local Development Plan policy RCA 1 safeguards residential character and amenity in existing housing areas from the adverse impacts of uses other than housing. Development incompatible with the residential character and amenity of an area will not be permitted. The case officer then explains that the regular turnover of guests at the accommodation, which is 67% occupied throughout the year, would change the nature of comings and goings including within the hallway stairs and lift particularly when associated luggage etc was taken into account. The applicant disagrees and considers that the level of usage of the stairs would not be significantly different from that of other residents and that the movement of luggage etc would take less than 5 minutes noting that carpets in the hallway reduce noise impact. The case officer then addresses other visitors such as cleaning staff and those undertaking refuse removal and recycling as additional visits to the property causing a degree of harm to the amenity of the block. It was also noted that the actual and perceived level of security could be adversely affected and that while no complaints have been logged by Police Scotland or the ASB team in the last three years, objectors have raised concerns re noise and disruption to the residential environment of the building. The applicant's agent disagrees and gives little weight to objector's issues while noting the lack of complaints to authorities.

In respect of the local economy the Economic Development Officer report that tourist accommodation helps support the local economy and that there are demonstrable economic benefits delivered by short term lets which should be supported where there is no demonstrable impact on local amenity, the character of the area or loss of residential accommodation. Figures are provided for the economic benefit to the local economy from a short term let. The Planning Adviser noted that Objectors dispute such figures but Economic Development stand by them.

The Planning Adviser then turned to Housing Strategy and Development and confirmed that they do not consider this property to be a significant loss of a long term residential dwelling to a short term let because it has been a short term let for 5 years or more and is not considered adaptable hence raise no objection.

In concluding, the case officer stated that notwithstanding that the change of use would not result in the loss of residential accommodation and the local economic benefits associated with the use these matters do not outweigh the unacceptable impact on local amenity and found that the holiday let use was therefore contrary to part e) i of Policy 30 and Policy RCA 1 of the adopted LDP, noting that the implication of this would be that the enforcement action would be taken to ensure the cessation of the holiday let use with the period of compliance being one month.

The Planning Adviser then turned to the applicant's review submission in which as noted, they take issue with the officers report in terms of the weight afforded to the extent and frequency of guests comings and goings including with associated luggage, of the holiday let; with the extent and amount of any disruption caused by cleaning and waste removal services; and suggest that not enough weight was given to the lack of complaints to authority's such as the police, ASB team and Environmental health and disputes the incidents referred to in objectors letters which they claim are not substantiated by evidence.

The Planning Adviser then confirmed to the members that at page 125 of the packs there are further representations including from the North Berwick Environment and Heritage Trust in support of the case officers original report and incorporating a report by MKA Economics on North Berwick published in July 2024. It is noted that this report does not

address the application under review in any specific detail and provides only background information on the issue of short term lets and their effect on the local economy in the North Berwick area.

- 4.3. Members then asked questions of the Planning Adviser. The Planning Adviser supported by the Legal Adviser responded to the questions. The initial question the Planning Adviser referred to the information provided by the applicant on accessing the property and advised that while there was no one available locally to address any issues, there was a telephone number although it was not clear if this was manned 24/7. The Legal Adviser added that these matters would be dealt with under the short term let licensing regime and were not planning considerations.

The Planning Adviser in response to a further question confirmed that, as part of their comments on the application, residents had indicated that there would be a cost to them as a result of any damage caused by guests. He also indicated that as the building was relatively modern there was likely to be a factor in place to manage such matters. The Legal Adviser confirmed that, from a legal point of view, all property owners in the block would be liable for an equal share of any costs.

Replying to further questions, the Legal Adviser indicated that any issues around the content of the title deeds or ownership of the property would not prevent Members from granting planning permission. Any such matters would have to be pursued by residents via action through the civil court. He added that any guests would be deemed to have permission from owner and would be allowed to use property to the extent set out by the owner.

The Legal Adviser and Planning Adviser reminded Members of the tests set out in Policy 30 of NPF4, firstly, around local amenity and, secondly, around loss of residential accommodation and whether this was outweighed by economic benefit.

- 4.4. The Chair asked her colleagues if they had sufficient information to proceed to determine the application today and they unanimously agreed to proceed. Comments on the application followed.
- 4.5. Councillor Yorkston said that his main concern was the loss of amenity, whether for one or more neighbours, in what was originally intended as a residential property. While he noted that there were other short term lets in the building which had been operating for 10 years, and this had been operating for seven (7) years, he was still minded to support the original decision of the planning case officer to refuse planning permission.
- 4.6. Councillor McLeod agreed with Councillor Yorkston. He accepted that tourism contributed to the local economy, however, the amenity and security of residents was his main concern. Accordingly, he was minded to would be supporting the planning case officer's decision.
- 4.7. Councillor Collins observed that in the seven (7) years of operation there had been no anti-social behaviour or police reports relating to this short term let, but she also noted the issues raised in the objections to the application. She said the property was near to the train station and any noise from comings and goings would be minimised by the carpets in the communal areas. She did not agree that it would change the character of the building as it had already been running for seven (7) years, and anyone moving into the building would be aware of its existence. Accordingly, she was minded to support the appeal.

4.8. The Chair said she was conflicted by this application. She accepted that the short term let had been running for seven (7) years with no problems reported and that this was an ideal location for holidaymakers. However, she was also mindful that there was currently a shortage of 1- and 2-bedroom flats, particularly in North Berwick. Getting the balance right was difficult and while she wished to support tourism, she was persuaded by the arguments put forward by Councillors Yorkston and McLeod and accordingly was minded to support the original decision of the planning case officer to refuse planning permission.

Accordingly, agreed, by a majority of three (3) to one (1), to confirm the original decision of the planning case officer and refuse planning permission for the reasons more particularly set out in the original decision notice.

Planning Permission is hereby refused.



Carlo Grilli
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.