

REVIEW DECISION NOTICE

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

Application for Review by Mr Thomas Dodd 62 Seton Court, Port Seton EH32 0TU, on behalf of Mr Peter Whittle 1 Prod Lane, Baildon, Shipley BD17 5BN, of a decision to refuse Planning Permission for Change of use of flat to holiday let accommodation (retrospective) at 2 Westbay Apartments, 7 Station Hill, North Berwick.

Site Address: 2 Westbay Apartments, 7 Station Hill, North Berwick EH39 4FA

Application Ref: 22/00286/P

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

Date of Review Decision Notice: 26 September 2022

Decision

The ELLRB unanimously agreed to dismiss the appeal and to refuse planning permission for the reasons 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, 18 August 2022. The Review Body was constituted by Councillor N Hampshire (Chair), Councillor N Gilbert, and Councillor D Collins. All three members of the ELLRB had attended a site visit accompanied in respect of this application prior to the meeting.

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

Mr J Squires, Planning Adviser to the LRB
Mr C Grilli, Legal Adviser/Clerk to the LRB
Ms F Currie, Clerk

2. Proposal

2.1. The planning application is for review of decision to refuse Planning Permission for a change of use of flat to holiday let accommodation (retrospective) at 2 Westbay Apartments, 7 Station Hill, North Berwick EH39 4FA.

2.2. The planning application was registered on 10 March 2022 and the Decision Notice refusing the application is dated 22 April 2022.

2.3. The reason for refusal is more particularly set out in full in the said Decision Notice. The reasons for refusal are set out as follows:

1. *The holiday let use of the flatted property is incompatible with and harmful to the amenity of the occupiers of the properties within the residential building of Westbay Apartments and as such is contrary to Policy RCA1 of the adopted East Lothian Local Development Plan 2018.*

2.4. The notice of review is dated 16 May 2022.

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 data-bbox="376 667 544 701">Drawing No.</th> <th data-bbox="544 667 1023 701">Revision No.</th> <th data-bbox="1023 667 1457 701">Date Received</th> </tr> </thead> <tbody> <tr> <td data-bbox="376 701 544 763">DRG 01</td> <td data-bbox="544 701 1023 763">-</td> <td data-bbox="1023 701 1457 763">08.03.2022</td> </tr> <tr> <td data-bbox="376 763 544 869">DRG 02</td> <td data-bbox="544 763 1023 869">-</td> <td data-bbox="1023 763 1457 869">08.03.2022</td> </tr> </tbody> </table>	Drawing No.	Revision No.	Date Received	DRG 01	-	08.03.2022	DRG 02	-	08.03.2022
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DRG 01	-	08.03.2022								
DRG 02	-	08.03.2022								
ii.	The Application for planning permission registered on 10 March 2022									
iii.	The Decision Notice dated 22 April 2022									
iv.	The Appointed Officer's Submission									
v.	<p>Policies of the adopted East Lothian Local Development Plan 2018 relevant to the determination of the application:</p> <ul style="list-style-type: none"> - TC2 (Town and Local Centres); and - CH2 (Development Affecting Conservation Areas). <p>In addition the following provision is also relevant to the determination of the application, namely:-</p> <ul style="list-style-type: none"> - Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997; 									
vi.	Notice of Review dated 16 May 2022 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 outlined the background, and proposals contained in planning application no. 22/00286/P for a change of use of a flat at 2 Westbay Apartments, 7 Station Hill, North Berwick, from residential use to use for holiday let accommodation. The Planning Adviser confirmed that the planning application is retrospective, having been made as a result of enforcement action. The site is a 2 bedroom ground floor flat within a three storey residential building containing 16 flats. 2 Westbay Apartments shares a common entrance and hall, to which there is a secured entry system, with the adjacent ground floor flat at no.1. A communal gated pedestrian vehicular access and rear parking area is shared between all flats. It is also noted that no physical alterations have been made to the property.

The Planning Adviser confirmed that 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 for the area consists of South East Scotland strategic development plan 2013 (known as SESPLAN) and the East Lothian Local Development Plan 2018 (the LDP). The proposal is within North Berwick Conservation Area. Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 requires that in the exercise of planning functions, with respect to any buildings in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. SESPLAN does not contain any relevant policies, though instructs LDPs to have regard to the need to improve quality of life in local communities; it also recognises the importance of tourism to the area.

The Planning Adviser further confirmed that the LDP does not contain any topic specific policy on short term lets but 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. The LDP states that all leisure and tourism related development proposals, including visitor attractions, hotels and holiday accommodation, will be assessed against all relevant Local Development Plan policies. The Planning Adviser confirmed that Policy TC2: Town and Local Centres applies to this site and not Policy RCA1 as set out in the Planning Officer's Report. This policy sets out uses that are acceptable within a town centre which include retailing, business and office use, restaurants, leisure and entertainment as well as residential. Use as short term let is not explicitly supported by this policy. Policy TC2 also provides that proposals that would have a significant environmental impact, particularly on housing, will not be permitted.

The North Berwick Town Centre Strategy Supplementary Guidance is part of the development plan. The Strengths, Weaknesses Opportunities and Threats and Health Check analysis included in this Strategy considers second homes and holiday lets in the town centre to be a weakness; though limited choice of hotels and tourist accommodation was also identified as a weakness. No actions on short term lets were identified in the Strategy.

Policy CH2: Development affecting Conservation areas requires that all development proposals within a Conservation Area, must be located and designed to preserve the special historic character of the Conservation Area. Historic character can include issues such as levels of activity and ambience as well as built elements.

The Scottish Government published "Short Term lets, planning guidance for hosts and operators". This gives relevant guidance on material considerations for short term lets

which include guest access to communal areas, guest arrival and departure times. The guidance notes impact on amenity for neighbours is likely to be greater in a tenement, apartment building or similar. Impacts on residents in flatted buildings include reduction of physical security of the building, and actual and perceived increased risks to permanent residents from guest access to communal areas. The guidance notes the high turnover of guests in short term lets increases the chance of some people wilfully or negligently failing to behave appropriately. Parking and waste disposal can also be relevant. Greater numbers of people than would be usual for a residential household can amplify these issues. Relevant cumulative impacts noted in the guidance include availability of affordable housing for local residents, the impact of seasonal variation in numbers of people in the area, and different activities of guests compared to residents.

The East Lothian Economic Development Strategy identifies tourism as one of the strengths of the East Lothian economy and a source of employment opportunities in the future.

The planning officer considered the determining factor here to be the impact of use as a holiday let on the amenity of existing residential property within Westbay apartments. Identified impacts included the regular turnover of occupants which they considered would change the nature of comings and goings to the application property and communal areas with a level of disturbance and nuisance from luggage movement not associated with long term use. Service and cleaning, and removal of waste, would increase activity levels. Frequently changing guests would reduce the actual and perceived level of security.

The case officer therefore considered that due to the location of the property within a residential building containing long term residents who share communal parking, pend access and shared main entrance and internal hall, use as a holiday let is incompatible with and harmful to the amenity of the occupiers, and was therefore contrary to Policy RCA1. As a clarification, the policy that applies to this site is TC2 not RCA1 however TC2 contains a similar provision protecting existing housing. The material reason for refusal therefore would therefore have been the same.

The Planning Adviser confirmed that thirteen (13) representations were made on the application. One was neutral and one was in support of the application though gave no reason for this. The Planning Adviser then summarized the issues raised by objectors on amenity grounds and wider issues.

Issues raised by objectors on amenity included: security; parking; alleged anti-social behavior; Impact of not having full time neighbours including social isolation and change of character of the block; and effect on communal facilities.

Objection made on wider issues included: too many holiday lets in North Berwick; reduction in supply of rented housing for permanent residents with consequent difficulties in maintaining services due to lack of workers; reduction in hotel accommodation and associated jobs; large number of empty properties in North Berwick in the winter; and effect on community spirit in North Berwick.

North Berwick Community Council was consulted and objected due to loss of amenity and security for neighbours. The Council's environmental health and roads services raised no issues. The Council's Anti-Social Behaviour team checked their records back to 1 January 2020 and did not find any record of calls from Westbay Apartments. Police Scotland were consulted but did not respond.

The Planning Adviser then summarized the appellant's submissions for appeal. The appellant submits that the planning department has not taken a consistent approach to similar applications. The successful letting history of the property has not been taken into account, with undue emphasis on exaggerated objections. The appellant believes that setting of precedent is a reason for the refusal and that each application should be considered on its own merits. The appellant stated that they had purchased the property for their own holiday use, with letting benefitting the economy of the town, the alternative being leaving the property empty for much of the year. The appellant states their research suggested a shortage of holiday accommodation in North Berwick when they bought the property, and they believe that still to be the case today. The appellant notes the general support for tourism in the East Lothian's Economic Development Strategy and the LDP. The appellant states that the proposed use supports businesses and the wider economy. The appellant considers that around half of the apartments in the building are not used full time. The appellant states they have notices in the flat regarding dogs, noise and respect for the neighbours. They have given the neighbours contact numbers for any issues, but have had less than five incidents reported in seven years. The appellant notes the Council have received no reports of anti-social behaviour, and the police have not responded to the application. An incident last year mentioned by objectors was not to do with their let. Guests move luggage in via the patio doors, which are also used by the cleaners, who do not therefore enter through communal areas.

The Planning Adviser further advised that the on security issues, the appellant notes that their apartment shares an entrance with one other flat. In any development of this type, there will be numerous individuals and organisations that have unaccompanied access to flats and there is no reason to suppose holiday guests or letting agent staff would pose a greater risk. The appellant considers that their application was not considered separately from an application for another similar proposal in the same building.

A further submission from an objector states that they consider there is no shortage of holiday accommodation in North Berwick other than when there are major golf championships on. Properties have been bought up during the covid pandemic, increasing house prices and pricing people out of the housing market. They consider there are enough holiday lets in North Berwick, to the detriment of community spirit.

The Planning Adviser finally noted that the appellant had stated they would accept restrictions to protect amenity.

- 4.3. The Planning Adviser responded to a question from the Chair advising that the new legislation on Short Term Lets, due to come into force in October 2022, did not impact on the determination of this application.
- 4.4. The Chair asked his 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 Gilbert commented on the common entrance way and garden and the lack of any physical barrier within these shared areas. He agreed with the view of the planning officer that there would be a significant impact on other residents and that this would be in contravention of planning policy. He was minded to uphold the decision of the planning officer to refuse planning permission.

- 4.6. The Chair noted the close proximity to the communal area, the shared access and car parking arrangements. He also believed that the presence of holiday visitors would have an adverse impact on the amenity of residents within the development and he expressed concern about holiday lets being operated without adequate controls where landlords were not in attendance. He did not consider this property to be an appropriate choice for a holiday let and he would be voting to uphold the planning officer's decision to refuse planning permission.
- 4.7. Councillor Collins was concerned that the property had not been well managed as a holiday let and she concurred with her colleague's views regarding loss of amenity and disturbance to neighbours. She was minded to uphold the officer's decision to refuse planning permission.

Accordingly, the ELLRB unanimously decided to dismiss the appeal and to refuse planning permission for this application, for the reasons set out in the Decision Notice, subject to the inclusion of reference to policy TC2 in place of policy RCA1.

Planning Permission is accordingly 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.