

REVIEW DECISION NOTICE

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

Application for Review of a decision to refuse planning application 23/00824/P by agent, Houghton Planning Ltd, Whins Road, Alloa, Clacks, Scotland, FK10 3RF (the “Agent”) on behalf of Ruth Shiraz, 2 Cottisford Close, Littleover, Derby, England, DE23 3SL (the “Applicant”). Planning application 23/00824/P retrospectively sought permission for the change of use of the residential top floor flat of Flat 4, 133 New Street, Musselburgh, EH21 6DH to a three bedroom unit of short term self-catering holiday let accommodation. The original case officer refused planning permission on 13 October 2023.

Site address: Flat 4, 133 New Street, Musselburgh, EH21 6DH

Application 23/00824/P

Date of Review decision notice: 20 February 2024

1. Decision

- 1.1 The ELLRB unanimously agreed to dismiss the appeal and to refuse planning application 23/00824/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 ELLRB at a meeting held on Thursday 25 January 2024. The ELRB constituted by Councillor J Findlay (Chair), Councillor A Forrest, Councillor L Allan and Councillor K McLeod. All four members of the ELLRB had attended a site visit in respect of the application on 25 January 2024.
- 2.2 The following persons were also present at the meeting of the ELLRB:

Ms J Squires, Planning Advisor
Ms F Haque, Legal Adviser/Clerk
Ms F Currie, Clerk

3. Proposal

- 3.1 This application is for review of decision to refuse planning permission for the change of use of the residential top floor flat of Flat 4, 133 New Street, Musselburgh, EH21 6DH to a three bedroom unit of short term self-catering holiday let accommodation. The Applicant appealed the refusal of the planning application on 23 October 2023.

4. Preliminaries

In advance of the LRB meeting, members were provided with copies of the following:

1	Statement of Case: original officer’s report for planning application 23/00824/P
2	Copy of the Decision Notice (including reason for refusal) relating to planning application 23/00824/P
3	Copy of consultation responses from (i) ELC Road Services; (ii) ELC Environmental Health; (iii) ELC Anti-Social Behaviour Team; (iv) Police Scotland; and (v) ELC Housing Strategy & Development
4	Copy of the nine representations received to planning application 23/00824/P

5	Copy of Policies 13 (Sustainable transport) and part (e) of Policy 30 (Tourism) of National Planning Framework 4 (NPF4) and Policies RCA1 (Residential Character and Amenity), T1 (Development Location and Accessibility) and T2 (General Transport Impact) of the adopted East Lothian Local Development Plan 2018 (ELLDP)
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 F Findlay as chair.
- 5.3 The Members requested that the Planning Advisor summarise the application and the related policy position in respect of this matter.

Planning Advisor's summary

- 5.4 This appeal is against refusal of planning permission for change of use to short term let of Flat 4, 133 New Street, Musselburgh. The reason for refusal was that use as a holiday let is incompatible with and harmful to the amenity of the occupants of other flatted properties used as residential dwellings within the residential building 133 New Street, and as such is contrary to part E of Policy 30 of NPF4 and Policy RCA1 of the adopted ELLDP.
- 5.5 This flat is a three bed top floor flat within a two and a half storey building. The flat is accessed via a communal entrance giving onto an internal communal stair. There are a total of six flats within the stair. No physical alterations are proposed.
- 5.6 The planning application form states there is one parking space. It is in primarily residential area as defined by Policy RCA1 of the East Lothian Local Development plan. It overlooks Fisherrow Sands, to the north and an area of car parking to the south. The flat is close to Fisherrow Harbour. A licence has been applied for and was as at 23 January still in the process of being determined.
- 5.7 The Applicant stated in a Planning Statement submitted with the application on 20 July 2023 that the owner has let the flat on short term let since taking ownership in September 2022, the comments in this paragraph are from the Planning Statement. The Planning Statement says the maximum number of guests is six. There is residents parking under the building, with 42 shared spaces for visitors outside. The Planning Statement includes house rules for guests, which include no pets, parties, quiet after 11, no smoking in the flat. The Planning Statement considers NPF4 Policy 13 on Sustainable Transport, and Policy 30 on tourism are likely to be relevant as well as LDP policy RCA1, T1 and T2, which concern sustainable location and transport. The planning statement states that the applicant is unaware of any noise or antisocial behaviour issues that have arisen as a result of the use of the flat for short term let. Turnover of guests is relatively infrequent at this property as most people stay for at least a week, often longer. Changeover and cleaning are usually in the day. Most guests come with a rucksack or small suitcase. The number of comings and goings is no greater than it would be if let to a group of young professionals who have friends etc. there. The absence of complaints overall, reported in East Lothian's consultation on short term let control area, should be noted to the ELLRB. The proposal therefore complies with Policies RCA1 and Policy 30 Part e (1). For Policy 30 part 2, the Planning Statement argues that compared to the total number of houses in Musselburgh the loss of one flat to the housing supply is negligible. A Report for the Association of Scotland's Self Caterers and Professional Association of self caterers and the VisitScotland factsheet were submitted in support of the application. These show the economic benefits of short term let. The Planning Statement considered that the proposal complies with policy on sustainable transport.

- 5.8 Nine representations were made to this planning application, one on behalf of two people. Seven objected and the other two raised concerns. Reasons for objection included:
- disruption;
 - irregular comings and goings, including at anti social hours;
 - compromised security including concern that there could be risk to elderly residents who may be vulnerable;
 - incorrect disposal of rubbish;
 - unsuitability of short term let use;
 - noise from shouting, doors, suitcases;
 - short term let use brings in people who do not care about the residents or properties;
 - anti-social and suspicious behaviour;
 - people smoking and talking loudly outside the front doors; and
 - significant effects on amenity and health.
- 5.9 One representation stated they had left their home in Edinburgh as there were only holiday lets in the tenement, destroying the community.
- 5.10 East Lothian Council's Road Services Asset and Regulatory Manager has no objection. The Councils Protective Services do not object but note that use of for short-term holiday let can result in future guests in the accommodation misusing and abusing the property in a manner that is antisocial and can result in significant impact upon amenity of neighbours. Environmental Health cannot assume this will occur however, and cannot impose any enforceable conditions to protect amenity of neighbours.
- 5.11 The Anti-Social Behaviour Register had nothing on the register for this address though there were other cases on New Street, and no police incidents were reported.
- 5.12 East Lothian Councils' Housing Strategy and Development note that East Lothian has high housing need with limited supply. The object to the application as Musselburgh is part of a constrained housing system, and housing need outstrips supply; there is an existing concentration of short term lets in the area; the property is not an established short term let.
- 5.13 Housing further note research carried out for Edinburgh Council found that residential use of 3 bed properties in Edinburgh Eastern constituency brought in an annual gross value added of almost twice that of short term let use.
- 5.14 The Councils Economic Development Manager was consulted but did not respond.
- 5.15 The original case officer noted that change of use to holiday accommodation attracts visitors and encourages them to stay in East Lothian, supporting the wider economy of East Lothian. The original case officer considered that short term lets resulted in turn over of people over short time periods, changing the nature of comings and goings to the property itself and the communal areas. Visitors would have luggage and may come and go at antisocial hours, leading to a level of disturbance not associated with long term residential use, harming the amenity of residents. Cleaning and maintenance needs also increases activity levels. Allowing frequently changing guests access to otherwise secure areas changes the actual and perceived level of security for residents. The property at 133 New Street contains a number of long term residents who share a communal entrance, stair and hallway. The case officer therefore considered the use incompatible with their amenity, contrary to Policy 30E of NPF4 and RCA1 of the ELLDP.
- 5.16 The Applicant submitted a review statement with their appeal. The comments in this paragraph are from the review statement. The Applicant states the applicant was surprised at the issues being raised having had no direct complaints from neighbours. The review statement reiterates that permanent residents can also come and go with varying levels of impact. Permanent residents can also use services such as cleaners, and also have deliveries. No issues have been reported by the Police or Antisocial behaviour team. Comments submitted by objectors should be treated with caution. No concerns about noise or security were raised to the applicant. The source may not have been the short term let and no evidence has been put forward that it is. Anti social behaviour is related to the use of the harbour car park for anti social activities. The age of

the residents is not relevant. Permanent residents may also keep odd hours. Waste is taken away by the cleaners. Strangers entering a building is common. The alleged affects on health from short term lets are 'fake news' with no evidence. The review statement reiterates and expands on points previously made in relation to turnover of guests, luggage, and overall visits to the property. The Applicant notes that granting a temporary consent would be possible if there is doubt on amenity.

- 5.17 On the matter of economic benefit balanced against loss of residential accommodation, the Applicant considers that if there is a housing shortage in Musselburgh, it is not caused by short term lets. They refer to comments of East Lothians Economic Development Manager on the application for let at 139 New Street, which advises that there are demonstrable local economic benefits delivered by all types of short term let.
- 5.18 The Planning Advisor's advice is the issue for planning is the effect of the material change from residential to short term let use. Once granted, the flat can be managed in any way that is compatible with the terms of their licence and any conditions on planning consent.
- 5.19 The Planning Advisor agrees with the Applicant and the original case officer that policy on transport is met. There is no specific policy on short term lets within the ELLDP however it states that a range of hotel, guest house and other accommodation attracts visitors and encourages them to stay and benefit the East Lothian economy. The East Lothian Economic Development Strategy 2012-21 identifies tourism as of the strengths of the East Lothian economy, and a source of employment opportunities. Policy RCA1 which seeks to protect residential amenity is relevant.
- 5.20 Policy NPF4 Policy 30E specifically covers short term lets. It includes two criteria which must both be met for the use of an existing building as a short term let to be supported. The first is that the proposal must not result in an unacceptable impact on local amenity or the character of a neighbourhood area, and is similar to the test of ELLDP Policy RCA1. On amenity the Applicant has given information on house rules. However, if permission is granted the property could be operated in any way within the law that is compatible with its licence and any planning conditions.
- 5.21 The second test of Policy 30E is whether or not the loss of residential accommodation is outweighed by demonstrable economic benefits. In terms of Policy 30E, the ELLRB should first consider whether there is unacceptable harm to residential amenity, which is also relevant for LDP Policy RCA1. On amenity the appellant has given information on house rules. If impact on amenity is acceptable, then the test of whether the demonstrable economic benefits outweigh the loss of residential accommodation should be applied.
- 5.22 Impacts on amenity and character should not however be weighed against economic benefit. Economic benefit should only be weighed against the effect of loss of residential accommodation.
- 5.23 The original case officer has suggested conditions limiting the number of guests and record keeping. Similar controls have been introduced by the DPEA in other cases in Scotland.

Questions and comments

- 5.24 The Chair requested the Clerk to check if the objections were from individuals who resided in the block of flats where the site is located. The Clerk confirmed that some of the objections were from residents within the stair and some from local residents.
- 5.25 The Chair invited questions for the Planning Officer.
- 5.26 Councillor Forrest commented that his questions would be a repetition of the questions proposed in the previous item heard in the LRB meeting being refusal of planning application 23/00722/P, for the change of use of a residential flat to a short term self-catering holiday let accommodation.

Please see relevant comments below from the review notice for planning application 23/00722/P (please note references to the report by City of Edinburgh Council are also noted in the Applicant's submission):

“Councillor Forrest had a question about the economic perspective. He queried that when this is considered if we are looking at “apples against pears”. He is unsure if this comparison helps at all and wonders if it is necessary. The Planning Advisor responded that there were two tests; (1) for residential amenity and (2) the members need to think of the demonstrable economic benefits compared to the loss of housing supply. The information that the Housing Department in their objection to the proposal, referred to a work by City of Edinburgh Council that looked at the benefits of short term lets and compared that to residential use. Planning Advisor commented that the Members may take a view that this is not a fair comparison either as the owner may not let the flat out or keep it as an investment. The Planning Advisor stated that it is up to the members to decide if the test is met, if the impacts on amenity are acceptable.”

5.27 Councillor Allan did not have any further comments, she considered this appeal to be similar to that of planning application 23/00722/P. In considering planning application 23/00722/P, Councillor Allan had commented that as someone who uses short term lets on holidays, she agrees that they are a positive but there may be things on the other hand in relation to housing strategy. There are pros and cons to consider in relation to this appeal.

5.28 Councillor McLeod also had no questions and noted the comments above.

The vote

5.29 The Chair confirmed that all members (1) had attended the site visit on 25 January 2024; and (2) that they all had enough information to make a decision on the appeal.

5.30 The Chair also stated that members may also want to consider the conditions which had been proposed, should the members be minded to uphold the review.

5.31 Councillor Forrest said that he was considering amenity, especially considering that there are a steep flight of stairs to get into the building itself. He stated that this increases the chances of suitcases being dropped, increased noise, albeit it may not be intentional. After the initial set of stairs there are stairs to get into the block. He thinks the amenity will suffer. At the site visit it was confirmed that the flat did not have access to the underground garage so Councillor Forrest did not use this as a consideration.

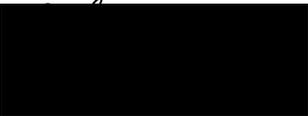
5.32 Councillor Allan stated that she agreed with the original case officer’s decision to refuse planning permission and fellow members of the ELLRB.

5.33 Councillor McLeod stated that he agreed with the comments made by fellow members of the ELLRB and the original case officer’s decision to refuse planning permission.

5.34 The Chair confirmed that he agreed with the comments made by fellow members of the ELLRB and the original case officer’s decision to refuse planning permission.

Accordingly, the ELLRB unanimously decided 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.