

## **REVIEW DECISION NOTICE**

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

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Application for Review by Montgomery Empire LTD, per Mr Alan Montgomery 9 Clanranald Avenue Prestonpans EH32 9FP of decision to refuse Planning Permission for Change of use of flat to short term holiday let at 35E Edinburgh Road, Musselburgh

Site Address: 35E Edinburgh Road, Musselburgh

Application Ref: 25/00150/P

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

Date of Review Decision Notice: 25 September 2025

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### **Decision**

The ELLRB unanimously agreed to dismiss the appeal and refuse Planning Permission for change of use of flat to short term holiday let at 35E Edinburgh Road, Musselburgh 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 25/00150/P for Planning Permission for change of use of flat to short term holiday let at 35E Edinburgh Road, Musselburgh was considered by the ELLRB, at a meeting held on Thursday, 21 August 2025. The Review Body was constituted by Councillor N Hampshire (Chair), Councillor D Collins; Councillor L Allan 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 P 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 Planning Permission for Change of use of flat to short term holiday let at 35E Edinburgh Road, Musselburgh and was registered on 17 February 2025.

2.2. The Decision Notice refusing the application was dated 11 April 2025.

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

1. *The holiday let use of the flat property is incompatible with and harmful to the amenity of the occupiers of the properties within the residential building of 35 Edinburgh Road,*

*Musselburgh 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 24 June 2025

### **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><tr><td><u>Drawing No.</u></td><td><u>Revision No.</u></td><td><u>Date Received</u></td></tr><tr><td>DWG 1</td><td>-</td><td>17.02.2025</td></tr><tr><td>MID70909</td><td>-</td><td>17.02.2025</td></tr></table>	<u>Drawing No.</u>	<u>Revision No.</u>	<u>Date Received</u>	DWG 1	-	17.02.2025	MID70909	-	17.02.2025
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DWG 1	-	17.02.2025								
MID70909	-	17.02.2025								
ii.	The Application for planning permission registered on 17 February 2024									
iii.	The Appointed Officer's Submission									
iv.	<p>Policies relevant to the determination of the application:</p> <p>Policy 13 (Sustainable transport), and Part (e) of Policy 30 (Tourism) of National Planning Framework 4 (NPF4)</p> <p>Policies Policy RCA1 (Residential Character and Amenity), T1 (Development Location and Accessibility) and T2 (General Transport Impact) of the adopted East Lothian Local Development Plan 2018</p>									
v.	Notice of Review dated 24 June 2025 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 refuse planning permission 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.

#### **Planning Adviser's Summary**

4.2. The Members then asked the Planning Adviser to summarise the planning policy position in respect of this matter. The Planning Adviser advised that the case today is a full review of the refusal of the change of use of a top floor flat at 35E Edinburgh Road Musselburgh to a short-term holiday let. This was a retrospective application. The flat is accessed by

both a shared front and back door and an internal communal stair and hallway located within a tenement comprising of six flats of which only this flat is used as a short term let. In June 2024, an application seeking a certificate of lawfulness (Ref: 24/00068/CLU) was refused for the use of the flat of 35E Edinburgh Road, Musselburgh as a short term holiday let for the reason being that it has not been demonstrated that the use of the flat as a short term holiday let is not a material change of use that does not require planning permission or that the flat has been in use as a short term holiday let for a continuous period of 10 years or more. The decision to refuse application 24/00068/CLU was appealed to the DPEA and dismissed by the reporter on 25th November 2024 concluding that the use of the flat was a material change of use which required planning permission for it. Planning permission is now retrospectively sought for the change of use of the residential top floor flat of 35E Edinburgh Road, Musselburgh as a three bedroomed unit of short-term self-catering holiday let accommodation.

Some flats that are short term lets 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 since September 2022 and therefore does not qualify and requires planning permission to operate. The way it is operated at present is that up to 6 persons can stay in the property at any one time for 2 to 28 days. There is a key safe for access, bins etc are managed by the applicant, the flat is cleaned between stays and has an occupancy rate of 87% for the year.

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 (LDP) together with National Planning Framework 4. The Planning Adviser confirmed the planning policies as summarised in 3.1(iv) above were relevant to the determination of the application. He then confirmed that the LDP does not contain specific policies on short term lets but NPF 4 Policy 30 and its part e) is relevant. LDP 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 Planning Adviser summarised objection and consultation responses noting that one objection has been received which states that it is on behalf of five of the six residents within the tenement building and is summarised in thirteen points in the case officer report. There was no representation from the Community Council. Of the consultees responses the Environmental health Officer advised that while use of the property as a short term let can result in guests misusing/abusing the property in an antisocial way, it cannot be assumed that antisocial behaviour will arise and there are no enforceable conditions that can be recommended to protect the amenity of neighbours. The Council Anti-Social Behaviour team have no records of incidents relating to anti-social behaviour and have no objection though Police Scotland refer to four incidents at the address in the last three years. Road Services have no objection. The Council Economic development officer advises that the Local Economic Strategy advises that tourism is one of the strengths of the local economy and the LDP supports a range of tourism accommodation but that all tourism proposals require to be assessed against all relevant LDP policies. The Housing Strategy officer considers that a change on use from a long-term residential property to a short term let is a significant loss because the property is not an established short term let and accordingly objects to the application.

In determining the application, the case officer considered that the comings and goings of

users of the holiday let along with those servicing the property is different to those of permanent long-term use of the flat as a private residence which is harmful to the amenity of the occupants of the residential properties at 35 Edinburgh Road. There would also be an impact on actual/perceived security for permanent residents. By having unacceptable impact, the proposal was considered to be contrary to Part e) of Policy 30 of NPF4 and Policy RCA1 of the LDP1.

Looking at material considerations that could outweigh the development plan policies the case officer noted that the Economic Development officer supports the application as tourism and tourist accommodation of all types benefit the local economy, and that 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 and provides figures on the estimated benefits to the economy. He considers that it supports the goals and objectives of the Economic Strategy and the intent and outcomes of part e of Policy 30. However, the case officer was of the view that this does not outweigh the unacceptable impact on local amenity and that accordingly the change of use is not supported by Development Plan policy and there are no material considerations that indicate otherwise.

The Planning Adviser then summarised the points raised within the Applicant's review submission. These can be summarised as:

- Planning permission is only required where there has been a material change of use and as the property has been operating since 2022 he believes that it is not a breach of the Civic Government Scotland Act.
- the judicial review of the CEC Short term lets is relevant.
- Licensing committee stipulations on the property have been adhered to.
- Details of where there is disagreement with the objector and states that he has acted with consideration for neighbours throughout and manages the flat well.

### **Member's Questions**

- 4.3. There were no questions from Members.

### **Comments and Decision**

- 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 McLeod had noted on the site visit that there was no secure door to the communal stair, however, the flat had a Ring doorbell. He commented on the noise made by the main door banging shut and the impact on neighbours. He said that his opinion of this application was in line with his views on similar flats and he would be supporting the decision of the planning case officer.
- 4.6. Councillor Allan said that she agreed with the planning officer's decision and with the comments made by Councillor McLeod. This was clearly a residential block; the increased noise would impact neighbours; and it was not an appropriate location for a short term let.
- 4.7. Councillor Collins said that she was normally sympathetic to these applications, but this was the first occasion where there had been incidents attended by police. She had noted on the site visit that the rear garden was small and that people smoking or drinking may

prevent residents from using this communal space. She would be supporting the planning officer's decision.

- 4.8. The Chair said he was of a similar view. He commented that the communal stairwell provided access to all of the flats and when one became a short term let, the communal area also became a commercial space. However, the applicant had no legal right to convert a communal space to commercial use. He also stated that the loss of amenity for residents was unacceptable. He would be supporting the planning officer's decision.

Accordingly, the ELLRB unanimously agreed to dismiss the appeal and refuse planning permission for the reasons more particularly set out in the Planning Officer's Report of Handling.

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.