

## **Notice of Review: 27 Eskview Grove, Dalkeith Determination Report**

Report by Chief Officer Place

### **1 Purpose of Report**

- 1.1 The purpose of this report is to provide a framework for the Local Review Body (LRB) to consider a 'Notice of Review' for the change of use from dwellinghouse (ground floor flat) to short-term let (retrospective) at 27 Eskview Grove, Dalkeith.

### **2 Background**

- 2.1 Planning application 23/00620/DPP for the change of use from dwellinghouse (ground floor flat) to short-term let (retrospective) at 27 Eskview Grove, Dalkeith was refused planning permission on 24 November 2023; a copy of the decision is attached to this report.
- 2.2 The review has progressed through the following stages:
- 1 Submission of Notice of Review by the applicant.
  - 2 The Registration and Acknowledgement of the Notice of Review.
  - 3 Carrying out Notification and Consultation.

### **3 Supporting Documents**

- 3.1 Attached to this report are the following documents:
- A site location plan (Appendix A);
  - A copy of the notice of review form and supporting statement (Appendix B). Any duplication of information is not attached;
  - A copy of the case officer's report (Appendix C);
  - A copy of the decision notice, excluding the standard advisory notes, issued on 24 November 2023 (Appendix D); and
  - A copy of the key plans/drawings (Appendix E).
- 3.2 The full planning application case file and the development plan policies referred to in the case officer's report can be viewed online via [www.midlothian.gov.uk](http://www.midlothian.gov.uk).

### **4 Procedures**

- 4.1 In accordance with agreed procedures, the LRB:

- Have determined to undertake a site visit (only elected members attending the site visit can participate in the determination of the review); and
  - Have determined to progress the review by written submissions.
- 4.2 The case officer's report identified that there were no consultations required and no representations received.
- 4.3 The next stage in the process is for the LRB to determine the review in accordance with the agreed procedure:
- Identify any provisions of the development plan which are relevant to the decision;
  - Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies;
  - Consider whether or not the proposal accords with the development plan;
  - Identify and consider relevant material considerations for and against the proposal;
  - Assess whether these considerations warrant a departure from the development plan; and
  - State the reason/s for the decision and state any conditions required if planning permission is granted.
- 4.4 In reaching a decision on the case the planning advisor can advise on appropriate phraseology and on appropriate planning reasons for reaching a decision.
- 4.5 Following the determination of the review the planning advisor will prepare a decision notice for issuing through the Chair of the LRB. A copy of the decision notice will be reported back to the LRB for noting.
- 4.6 A copy of the LRB decision will be placed on the planning authority's planning register and made available for inspection online.

## **5 Conditions/Enforcement**

- 5.1 The nature of the proposal is such that it is considered that no conditions would be required if the LRB is minded to grant planning permission.
- 5.2 If the LRB dismisses the review, the unauthorised use will be required to cease. In this case the applicant will be asked to comply with this requirement within two months of the LRB decision. However, the failure to cease the unauthorised use will result in the Council having to consider issuing an enforcement notice to resolve the breach of planning control.

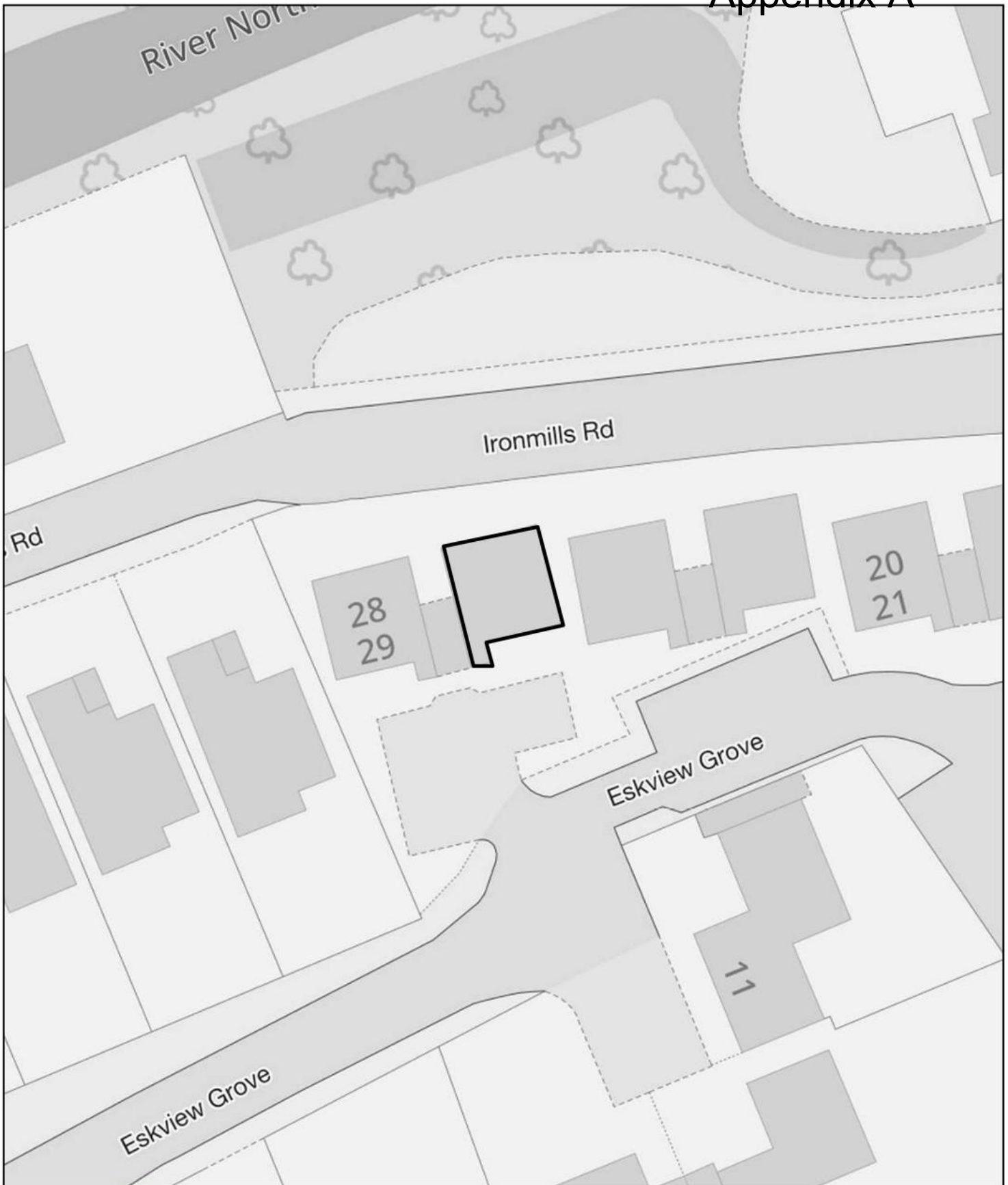
## **6 Recommendations**

- 6.1 It is recommended that the LRB:
- a) determine the review; and
  - b) the planning advisor draft and issue the decision of the LRB through the Chair

**Peter Arnsdorf**  
**Planning, Sustainable Growth and Investment Manager**

**Date:** 26 January 2024  
**Report Contact:** Whitney Lindsay, Planning Officer  
[Whitney.Lindsay@midlothian.gov.uk](mailto:Whitney.Lindsay@midlothian.gov.uk)

**Background Papers:** Planning application 23/00620/DPP available for inspection online.



**Planning Service  
Place Directorate**  
Midlothian Council  
Fairfield House  
8 Lothian Road  
Dalkeith  
EH22 3AA

Change of use from dwellinghouse to short-term let  
(retrospective) at 27 Eskview Grove, Dalkeith, EH22 1JW

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File No: 23/00620/DPP

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Fairfield House 8 Lothian Road Dalkeith EH22 3ZN Tel: 0131 271 3302 Fax: 0131 271 3537 Email: [planning-applications@midlothian.gov.uk](mailto:planning-applications@midlothian.gov.uk)

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE      100653625-001

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

## Applicant or Agent Details

Are you an applicant or an agent? \* (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

Applicant  Agent

## Applicant Details

Please enter Applicant details

Title:	<input type="text" value="Mr"/>	You must enter a Building Name or Number, or both: *	
Other Title:	<input type="text"/>	Building Name:	<input type="text"/>
First Name: *	<input type="text" value="Colin"/>	Building Number:	<input type="text" value="27"/>
Last Name: *	<input type="text" value="Peckham"/>	Address 1 (Street): *	<input type="text" value="Eskview Grove"/>
Company/Organisation:	<input type="text"/>	Address 2:	<input type="text"/>
Telephone Number: *	<input type="text"/>	Town/City: *	<input type="text" value="Dalkeith"/>
Extension Number:	<input type="text"/>	Country: *	<input type="text" value="Scotland"/>
Mobile Number:	<input type="text"/>	Postcode: *	<input type="text" value="EH22 1JW"/>
Fax Number:	<input type="text"/>		
Email Address: *	<input type="text"/>		

## Site Address Details

Planning Authority:

Midlothian Council

Full postal address of the site (including postcode where available):

Address 1:

27 ESKVIEW GROVE

Address 2:

Address 3:

Address 4:

Address 5:

Town/City/Settlement:

DALKEITH

Post Code:

EH22 1JW

Please identify/describe the location of the site or sites

Northing

667494

Easting

332875

## Description of Proposal

Please provide a description of your proposal to which your review relates. The description should be the same as given in the application form, or as amended with the agreement of the planning authority: \*

(Max 500 characters)

The application was for home letting, short term letting of our own home when we are not using it. Details of Home Letting Application provided previously below: Further to home letting licensing application which is completed, planning consent is required. Primary Contact: Colin Peckham Date Started: 21/09/2023 Proposal Reference 100644613

## Type of Application

What type of application did you submit to the planning authority? \*

- Application for planning permission (including householder application but excluding application to work minerals).
- Application for planning permission in principle.
- Further application.
- Application for approval of matters specified in conditions.

What does your review relate to? \*

Refusal Notice.

Grant of permission with Conditions imposed.

No decision reached within the prescribed period (two months after validation date or any agreed extension) – deemed refusal.

## Statement of reasons for seeking review

You must state in full, why you are seeking a review of the planning authority's decision (or failure to make a decision). Your statement must set out all matters you consider require to be taken into account in determining your review. If necessary this can be provided as a separate document in the 'Supporting Documents' section: \* (Max 500 characters)

Note: you are unlikely to have a further opportunity to add to your statement of appeal at a later date, so it is essential that you produce all of the information you want the decision-maker to take into account.

You should not however raise any new matter which was not before the planning authority at the time it decided your application (or at the time expiry of the period of determination), unless you can demonstrate that the new matter could not have been raised before that time or that it not being raised before that time is a consequence of exceptional circumstances.

See supporting documents.

Have you raised any matters which were not before the appointed officer at the time the Determination on your application was made? \*

Yes  No

If yes, you should explain in the box below, why you are raising the new matter, why it was not raised with the appointed officer before your application was determined and why you consider it should be considered in your review: \* (Max 500 characters)

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review. You can attach these documents electronically later in the process: \* (Max 500 characters)

Single PDF supplied, including arguments and statements from neighbours and local residents, as the denial of planning permission does not appear to be based on the evidence specific to this application, or perhaps that evidence was missed in the original decision. Please note that the neighbour and local residents support statements were not previously supplied, the fact that they supported the application was clearly stated. These documents then augment that original statement.

## Application Details

Please provide the application reference no. given to you by your planning authority for your previous application.

100644613

What date was the application submitted to the planning authority? \*

22/09/2023

What date was the decision issued by the planning authority? \*

29/11/2023

## Review Procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Can this review continue to a conclusion, in your opinion, based on a review of the relevant information provided by yourself and other parties only, without any further procedures? For example, written submission, hearing session, site inspection. \*

Yes  No

In the event that the Local Review Body appointed to consider your application decides to inspect the site, in your opinion:

Can the site be clearly seen from a road or public land? \*

Yes  No

Is it possible for the site to be accessed safely and without barriers to entry? \*

Yes  No

## Checklist – Application for Notice of Review

Please complete the following checklist to make sure you have provided all the necessary information in support of your appeal. Failure to submit all this information may result in your appeal being deemed invalid.

Have you provided the name and address of the applicant?. \*

Yes  No

Have you provided the date and reference number of the application which is the subject of this review? \*

Yes  No

If you are the agent, acting on behalf of the applicant, have you provided details of your name and address and indicated whether any notice or correspondence required in connection with the review should be sent to you or the applicant? \*

Yes  No  N/A

Have you provided a statement setting out your reasons for requiring a review and by what procedure (or combination of procedures) you wish the review to be conducted? \*

Yes  No

Note: You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. You may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

Please attach a copy of all documents, material and evidence which you intend to rely on (e.g. plans and Drawings) which are now the subject of this review \*

Yes  No

Note: Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice (if any) from the earlier consent.

## Declare – Notice of Review

I/We the applicant/agent certify that this is an application for review on the grounds stated.

Declaration Name: Mr Colin Peckham

Declaration Date: 10/12/2023



Colin & Norma Peckham  
27 Eskview Grove  
Dalkeith  
EH22 1JW

Dear Sir/Madam,


Please find the relevant documents relating to the home letting licencing application to Midlothian council, planning department.

Notes relating to this application:

- This is our **primary home** in the UK though we travel extensively for work. For the last five years we have allowed short term lets during the periods we are away for work (typically 4 - 8 weeks at a time).
- The property is a **main door property** with both **assigned and guest parking**, and we do not use our space when we are away.
- There have been **no physical changes** made to the structure of any part of the property, nor are any planned.
- We have **excellent relations with all our neighbours**, and always connect with them when we are home, and we have long since exchanged contact details with them (two of the other three homes in the cluster are owner-occupied and one is long term let). Several of our immediate neighbours have actually let our property while we've been away for their visiting friends and relatives, and in one case while their own property across the street was having building work done.
- We **do not permit one night lets** at any time.
- We allow a **maximum of two adults and two children** in the property.
- We have **strict noise/nuisance terms** in place for any guests.
- We have **never had a complaint** or objection from a neighbour (or anyone else).
- We have **never had an enforcement order**, or a law enforcement visit.
- We have agreements in place to manage all **refuse and recycling collections** when we are not home.
- We engage private **maintenance** to maintain the garden, and engage a local cleaning company to clean while we are away.
- We have appointed **keyholders** for when we're not home who live in the area for emergencies, and we have an exterior security camera for added safety.
- We have **excellent reviews** from guests who have used the property.

We hope you will find this helpful in reaching your decision, and thank you for your time,

Yours sincerely



Colin Peckham

## Application for review of planning Reg No 23/00620/DPP

Mrs Norma Peckham  
27 Eskview Grove  
Dalkeith  
EH22 1JW

We strongly believe that this decision is not supported by the reasons given in the planning refusal.

The reasons for the Council's decision are set out below:

- 1. The proposal is contrary to Policy DEV2 of the Midlothian Local Development Plan and Policy 30 parts b and e of the NPF4, as the use of the flatted dwelling as a short stay let will have a materially detrimental impact on the living conditions and amenity of nearby residents*
- 2. The change of use of the flatted dwelling to a short term let will result in the loss of residential accommodation where there is a high demand for residential accommodation and also results in an unacceptable impact on local amenity and the character of the area.*
- 3. The use of the flatted dwelling as a short term let for 4 residents will put additional pressure on the limited number of existing on-street parking spaces and may lead to inconsiderate or illegal parking to the detriment of road safety. This pressure for parking spaces will have a significant detrimental impact on the character and amenity of the surrounding area and is therefore contrary to policy DEV2 of the adopted Midlothian Local Development Plan and Policy 30 parts b and e of NPF4.*

1. a) **Our neighbours support our use of the property** in this way, and not once in the 5 years that we have been using it in this way have we had a complaint from anyone. Please see below statements from several of our neighbours.

b) the home in question is a main door of a duplex unit. **This is not a block of flats.** The only other property in the same duplex unit also has a separate main door entrance (and supports our application!). There are no shared hallways, doors or intercoms between the properties.
2. It is **irrational** to argue that use of the dwelling for short term lets will result in the **loss of residential accommodation**, as the very purpose of a **HOME LETTING** application is for the use of your OWN home when you're not in it. Denying that does not increase available housing stock, since the dwelling is ALREADY somebody's home. Insisting that we do long term lets on this property would have the effect of rendering us homeless! We do not have another home to move to. We travel extensively for work, but are rarely if ever away for more than 60 days. We contend that it is also illogical to argue that it results in an unacceptable impact on local amenities or character. We have been doing this since 2018, and no such effect has been observed or reported in our area.
3. First, we limit to 2 adults (effectively one family at most). Second, it is **manifestly and demonstrably untrue that there is not enough parking**, or that this will create more parking pressure on others. **These units have parking bays** associated with them which are simply never used by anyone other than the residents in the cul-de-sac. There is ALWAYS parking available, especially since we do not use our space as we have sold our car (for the time being). For most of the time Norma has owned the property, she has had a car, and since she bought the property in Oct 1995 she has NEVER ONCE not been able to park legally, in her parking space, at the door. Not once in 18 years. Further (although we did not ask them to address it), in their statements, some of our neighbours have also attested to this. There are almost always at least 3 available spaces at the door.

Finally, to argue that pressure is created on local amenities is also unreasonable, since these would be used by whoever was in the property, be they short term or long term residents, or indeed, ourselves, since Colin or Norma live in the property as our primary (indeed, only) residence in the UK for several months each year.

We request that this denial of planning permission be overturned. We believe that the reasons given for denying planning permission in this case can not be rationally applied to the circumstances specific to this application.

## MIDLOTHIAN COUNCIL

### DEVELOPMENT MANAGEMENT PLANNING APPLICATION DELEGATED WORKSHEET:

**Planning Application Reference:** 23/00620/DPP

**Site Address:** 27 Eskview Grove, Dalkeith

**Site Description:**

The application site is located within a primarily residential area situated within the conservation area. The application site comprises a ground floor flatted dwelling within a two-storey detached building.

The application dwelling is finished in a brick with a slate pitched roof and painted blue timber framed, double glazed windows. There is a slate roof canopy between the application building and neighbouring flatted dwelling building which covers the access footpath and connects to two buildings.

Neighbour dwellinghouses within the local area vary in style and material finish.

**Proposed Development:** Change of use from dwellinghouse to short-term let (retrospective)

**Proposed Development Details:**

Retrospective planning permission is sought for the change of use from flatted dwelling to Short Term Let (STL). No internal or external physical changes are proposed as part of the current planning application. The applicant has advised that the property has been used as a STL since 2018.

**Background (Previous Applications, Supporting Documents, Development Briefs):** Planning history sheet checked.

No relevant planning history.

**Consultations:**

No consultations required.

**Representations:**

No representations received.

**Relevant Planning Policies:**

The development plan is comprised of National Planning Framework 4 (2023) and the Midlothian Local Development Plan 2017. The following policies are relevant to the proposal:

National Planning Framework 4 (NPF4)

**Policy 1 Tackling the climate and nature crises;** sets out to encourage, promote and facilitate development that addresses the global climate emergency and nature crisis.

**Policy 2 Climate mitigation and adaptation;** sets out to encourage, promote and facilitate development that minimises emissions and adapts to the current and future impacts of climate change.

**Policy 7 Historic assets and places;** sets out to protect and enhance historic environment assets and places, and to enable positive change as a catalyst for the regeneration of places.

### **Policy 30: Tourism**

Part b) Proposals for tourism related development will take into account:

- i. The contribution made to the local economy;
- ii. Compatibility with the surrounding area in terms of the nature and scale of the activity and impacts of increased visitors;
- iii. Impacts on communities, for example by hindering the provision of homes and services for local people;
- iv. Opportunities for sustainable travel and appropriate management of parking and traffic generation and scope for sustaining public transport services particularly in rural areas;
- v. Accessibility for disabled people;
- vi. Measures taken to minimise carbon emissions;
- vii. Opportunities to provide access to the natural environment.

Part e) Development proposals for the reuse of existing buildings for short term holiday letting will not be supported where the proposal will result in:

- i. An unacceptable impact on local amenity or the character of a neighbourhood or area; or
- ii. The loss of residential accommodation where such loss is not outweighed by demonstrable local economic benefits.

The relevant policies of the adopted **Midlothian Local Development Plan 2017** are:

**Policy DEV2: Development within the Built-up Area** states that development will not be permitted within existing and future built-up areas where it is likely to detract materially from the existing character or amenity of the area.

**Policy ENV19: Conservation Areas** states that development will not be permitted within or adjacent to conservation areas where it would have any adverse effect on its character or appearance.

### **Planning Issues:**

The main planning issue to be considered is whether or not the proposal complies with the development plan policies and, if not, whether there are any material planning considerations which would otherwise justify approval.

The application property has its own main door access which is located on the western elevation; there is a door on the elevation to provide access to the upper

flatted dwelling and two single doors opposite the application door that provides access to the two neighbouring flatted dwellings. The main doors for the application property and three neighbouring flats are all accessed via the same narrow path. There is a low degree of activity in the immediate vicinity of the property at any time.

The use of the flatted property as a short term let would introduce an increased frequency of movement to the flat. The proposed two-bedroom short stay use would enable visitors to arrive and stay at the premises for a short period of time on a regular basis throughout the year in a manner dissimilar to that of permanent residents. There is no guarantee that guests would not come and go frequently throughout the day and night and transient visitors may have less regard for neighbours' amenity than individuals using the property as a principal home. The additional servicing that operating a property as a short term let requires compared to that of a residential use is also likely to result in an increase in disturbances, further impacting on neighbouring amenity.

The applicant noted within the supporting statement that the property is only advertised to be let out by a maximum of two adults and two children. Whilst the appellant's efforts to minimise instances of disturbance through the reduced of adults is acknowledged, there is no guarantee that any future owner would adhere to the same standard or that the current owner would change standard, currently in operation. Furthermore, it is not considered to be reasonable or enforceable to attach a condition restricting occupancy.

The applicant submitted a supporting statement outlining the number of visitors and days the property was let out; between September 2022 and August 2023 a total of 50 bookings; the number of occupants per booking is not noted and the number of days the property was occupied ranges from 2 to 12. Given the potential for a minimum of 2-night stays for up to 4 visitors at one time there would be greater opportunities for disturbance to surrounding residential properties than one might expect from established residents.

The use of the flatted dwelling as a short term let would be significantly different from the ambient background noise that neighbouring residents might reasonably expect and will have a significantly detrimental effect on the living conditions and amenity of nearby residents. Therefore, the change of use to a short term let does not comply with policy DEV2 of the Midlothian Local Development Plan and Policy 30 parts b and e of the draft NPF4.

Whilst not wholly relevant in this particular instance, due to the applicant occupying the property on an infrequent basis, it is noted that the demand for Midlothian Council housing waiting list is significant at 4468 housing applications; 906 in Dalkeith alone. The change of use of the flatted dwelling to a short term let results in the loss of residential accommodation for permanent residents within Midlothian which also results in an unacceptable impact on local amenity and the character of the area, which is contrary to Policy 30 part e of the draft NPF4.

The streets surrounding the application property are predominantly residential, the size of the properties mean that the majority of the properties are likely to be family residences. While it is acknowledged that a 2 bedroom flat could potentially be

occupied by 2 parents and 1 adult child, all with their own vehicles and potentially additional work vehicles, this would be an uncommon scenario. The most common scenario would be for a property of this size to be the base for 1 or 2 cars. The current on-street parking would need to accommodate this.

Occupation of the short term let property by 4 visitors not living as a family unit raises the possibility of 4 vehicles being based at the property. This number of vehicles cannot be accommodated within the application site. This number of vehicles puts significant additional pressure on the demand for on-street parking spaces. There is a high demand for on-street which can have a significant detrimental impact on the amenity of local residents, often leading to arguments and inconsiderate parking. Furthermore, it is noted that the property would be occupied on a short-term basis with occupants and vehicle movements frequently changing. Therefore, the proposed change of use would place additional pressure on the current limited on-street parking spaces.

Overall, all relevant matters have been taken into consideration in determining this application. It is considered that the proposal does not accord with the principles and policies of the adopted Midlothian Local Development Plan 2017 and the draft NPF4 and is not acceptable in terms of all other applicable material considerations. Therefore, it is recommended that the application is refused.

**Recommendation:** Refuse planning permission.



## Refusal of Planning Permission

Town and Country Planning (Scotland) Act 1997

**Reg. No. 23/00620/DPP**

Mrs Norma Peckham  
27 Eskview Grove  
Dalkeith  
EH22 1JW

Midlothian Council, as Planning Authority, having considered the application by Mrs Norma Peckham, 27 Eskview Grove, Dalkeith, EH22 1JW, which was registered on 2 October 2023 in pursuance of their powers under the above Acts, hereby **refuse** permission to carry out the following proposed development:

### **Change of use from dwellinghouse to short-term let (retrospective) at 27 Eskview Grove, Dalkeith, EH22 1JW**

In accordance with the application and the following documents/drawings:

<u>Document/Drawing.</u>	<u>Drawing No/Scale</u>	<u>Dated</u>
Floor Plan with dimensions		02.10.2023
Location Plan	1:1250	02.10.2023
Supporting statement		02.10.2023

The reasons for the Council's decision are set out below:

- 1. The proposal is contrary to Policy DEV2 of the Midlothian Local Development Plan and Policy 30 parts b and e of the NPF4, as the use of the flatted dwelling as a short stay let will have a materially detrimental impact on the living conditions and amenity of nearby residents*
- 2. The change of use of the flatted dwelling to a short term let will result in the loss of residential accommodation where there is a high demand for residential accommodation and also results in an unacceptable impact on local amenity and the character of the area.*
- 3. The use of the flatted dwelling as a short term let for 4 residents will put additional pressure on the limited number of existing on-street parking spaces and may lead to inconsiderate or illegal parking to the detriment of road safety. This pressure for parking spaces will have a significant detrimental impact on the character and amenity of the surrounding area and is therefore contrary to policy DEV2 of the adopted Midlothian Local Development Plan and Policy 30 parts b and e of NPF4.*



Dated 24 / 11 / 2023

A handwritten signature in black ink, consisting of the letters 'D' and 'R' written in a cursive, stylized manner.

.....  
Duncan Robertson  
Lead Officer – Local Developments  
Fairfield House, 8 Lothian Road, Dalkeith, EH22 3ZN



**The Coal  
Authority**

**Any Planning Enquiries should be directed to:**

Planning and Local Authority Liaison

Direct Telephone: 01623 637 119

Email: [planningconsultation@coal.gov.uk](mailto:planningconsultation@coal.gov.uk)

Website: [www.gov.uk/coalauthority](http://www.gov.uk/coalauthority)

**Development Low Risk Area- STANDING ADVICE**

The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848.

Further information is also available on the Coal Authority website at:  
[www.gov.uk/government/organisations/the-coal-authority](http://www.gov.uk/government/organisations/the-coal-authority)

Standing Advice valid from 1st January 2023 until 31st December 2024

27 Eskview Grove  
Ground Floor



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