

# Development Management Sub Committee

Wednesday 6 June 2018

**Application for Planning Permission 18/00654/FUL  
At Flat 8, 19 Old Fishmarket Close, 190 High Street  
Change of Use from residential Airbnb to Commercial  
Furnished Holiday Let (in retrospect).**

Item number	4.7
Report number	
Wards	B11 - City Centre

## Summary

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The proposal does not comply with the development plan or the non-statutory guidelines as the change of use to short stay commercial visitor accommodation (SSVCA) would result in an adverse impact on the residential amenity of the existing residents.

## Links

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[Policies and guidance for this application](#) LDPP, LHOU07, NSG, NSBUS,

# Report

## **Application for Planning Permission 18/00654/FUL At Flat 8, 19 Old Fishmarket Close, 190 High Street Change of Use from residential Airbnb to Commercial Furnished Holiday Let (in retrospect).**

### **Recommendations**

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1.1 It is recommended that this application be Refused for the reasons below.

### **Background**

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#### **2.1 Site description**

The application site is a modern building located on the east side of Old Fishmarket Close. At the ground floor is a restaurant with residential flats at the upper level. The residential flats are accessed from a shared door located to the rear of the building.

The site lies within the World Heritage Site.

This application site is located within the Old Town Conservation Area.

#### **2.2 Site History**

29 December 2000 - Planning permission granted for new flatted housing incorporating cafe/restaurant and office space (as amended) (99/01793/FUL).

### **Main report**

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#### **3.1 Description Of The Proposal**

The application is for a retrospective change of use from residential to short stay commercial visitor accommodation. The accommodation is one of four residential flats located on the fourth floor and comprises a sitting/dining room, kitchen, two bedrooms and a bathroom. The unit measure 58 square metres. Access is from a communal stair.

No internal or external alterations are proposed.

#### Supporting Statements

The following document has been submitted in support of the application and is available to view on the Planning and Building Standards Online Services:

- Planning, Design and Access statement.

### 3.2 Determining Issues

Section 25 of the Town and Country Planning (Scotland) Act 1997 states - Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise.

Do the proposals harm the character or appearance of the conservation area? If they do, there is a strong presumption against granting of permission.

Do the proposals comply with the development plan?

If the proposals do comply with the development plan, are there any compelling reasons for not approving them?

If the proposals do not comply with the development plan, are there any compelling reasons for approving them?

### 3.3 Assessment

To address these determining issues, the Committee needs to consider whether:

- a) the proposed use is acceptable in principle in this location;
- b) the impact on the conservation area and listed building;
- c) any impacts on equalities or human rights are acceptable; and
- d) the representations have been addressed.

#### a) Principal of Use

The permitted use of the property is as a residential flat. Flats do not fall within a defined use within the Town and Country Planning (Scotland) (Use Classes) Order 1997 and are 'sui generis'. Therefore any material change of use away from residential would require planning permission. A determining factor in the assessment of this application is whether the change in use of the flat from residential accommodation to short stay commercial visitor accommodation (SSCVA), not using the property as their principal home, is material.

Enforcement notices were served on several premises alleged to have been operating as SSCVA by both the City of Edinburgh Council and Glasgow City Council. Two appeals against these notices have been considered and determined by the Directorate for Planning and Environmental Appeals (DPEA) in respect of flatted properties at 2/5 Eyre Place, Edinburgh, and 1/3 332 Gallowgate, Glasgow.

Both appeal decisions specifically highlight the manner in which certain factors combine to form a change of use. These factors include the short term nature of the lets, guests being able to access shared and common areas within the buildings, and a frequency of turnovers indicating a pattern of frequent arrivals and departures and a lifestyle dissimilar to that of a permanent resident.

The current planning case law position in respect of the use of properties as short stay commercial visitor accommodation (SSCVA) in England, Scotland and Wales is set down in the English and Welsh Court of Appeal Judgement *Sheila Moore v Secretary of State for Communities and Local Government & Suffolk District Council* 2012 EWCA CIV 1202. This judgement held that the use of a residential premises for short term holiday lets could be a material change of use, with the question of materiality being one of fact and degree. An analysis of such fact and degree requires an assessment of factors such as the number of separate lets in any given period of time, number of individuals occupying the premises, the turnover of new individuals arriving and departing the premises; and the question as to whether the proposed operations would involve a change in character to such an extent that there may be disturbance to established residential character and amenity.

In terms of the development plan, the Edinburgh Local Plan (LDP) Policy Hou 7 - Inappropriate Uses in Residential Areas, states that uses which may be materially detrimental to the living conditions of nearby residents will not be permitted. The Council's Guidance for Businesses advises, in relation to the consideration of proposals for the establishment of short term commercial visitor accommodation, regard will be had to:

- the character of the new use and of the wider area;
- the size of the property;
- the pattern of activity associated with the use including number of occupants, the period of use, issues of noise, disturbance and parking demand; and
- the nature and character of any services provided.

The application property is a two bedroom flat located on the fourth floor. The flat is accessed via a shared stair where eight other residential flats are present. A SSCVA at the upper floor of this flatted block would result in an adverse impact on the residential amenity of the residents. The proposals would enable individuals 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 resident. Individuals residing in the premises would have access to areas of communal provision including a shared landing/hallway and staircase. Combined with the potential for a high level of turnover, the resultant effect of such operations would be a disturbance to the established residential character of the building which would have detrimental impact on residential amenity.

Having regards to the above, it is considered that the proposed change to a short stay commercial property at upper floor level would be contrary to Policy Hou 7 and the non-statutory planning guidance for businesses.

#### b) Conservation Area and Listed Building

No physical alterations are proposed. There will be no impact on the Conservation Area or Listed Building.

#### c) Equalities and human rights

This application was assessed in terms of equalities and human rights. No impact was identified.

## d) Public Comments

### Material Representation - Objection

- Loss of residential properties to short term holiday lets - this is addressed in section 3.3 (a).
- Breach established LDP policies - this is addressed in section 3.3 (a).
- Shortage of residential accommodation in the Old Town - this is addressed in section 3.3 (a).

### **Community Council**

The Old Town Community Council objected on the following grounds:

- The change of use is in breach of Policy Hou 7 of the LDP - this is addressed in section 3.3 (a).
- loss of residential accommodation - this is addressed section 3.3 (a).
- loss of amenity to the existing residents - this is addressed in section 3.3 (a).

### Conclusion

In conclusion, the proposal is contrary to the Local Development Plan Policy Hou 7 in respect of Inappropriate Uses in Residential Areas and the non-statutory guidance for Businesses as the change to short stay commercial visitor accommodation (SSVCA) would result in an adverse impact on the residential amenity of the existing residents.

It is recommended that this application be Refused for the reasons below.

### **3.4 Conditions/reasons/informatives**

#### **Reasons:-**

1. The proposal is contrary to the Local Development Plan Policy Hou 7 in respect of Inappropriate Uses in Residential Areas and the non- statutory guidance for Businesses as the change to short stay commercial visitor accommodation would result in an adverse impact on the residential amenity of the residents.

### **Financial impact**

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#### **4.1 The financial impact has been assessed as follows:**

There are no financial implications to the Council.

### **Risk, Policy, compliance and governance impact**

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**5.1** Provided planning applications are determined in accordance with statutory legislation, the level of risk is low.

## **Equalities impact**

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### **6.1 The equalities impact has been assessed as follows:**

The application has been assessed and has no impact in terms of equalities or human rights.

## **Sustainability impact**

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### **7.1 The sustainability impact has been assessed as follows:**

This application is not subject to the sustainability requirements of the Edinburgh Design Guidance.

## **Consultation and engagement**

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### **8.1 Pre-Application Process**

There is no pre-application process history.

### **8.2 Publicity summary of representations and Community Council comments**

The application was advertised on the 2 March 2018 and three letters of representation were received all objecting. These include comments from The Old Town Community Council and the Old Town Association.

A full assessment of the representations can be found in the main report in the Assessment section.

## **Background reading/external references**

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- To view details of the application go to
- [Planning and Building Standards online services](#)
- [Planning guidelines](#)
- [Conservation Area Character Appraisals](#)
- [Edinburgh Local Development Plan](#)
- [Scottish Planning Policy](#)

**Statutory Development  
Plan Provision**

Edinburgh Local Development Plan - Central Area.

**Date registered**

14 February 2018

**Drawing numbers/Scheme**

01-03,

Scheme 1

**David R. Leslie**

Chief Planning Officer

PLACE

The City of Edinburgh Council

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**Links - Policies**

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**Relevant Policies:**

**Relevant policies of the Local Development Plan.**

LDP Policy Hou 7 (Inappropriate Uses in Residential Areas) establishes a presumption against development which would have an unacceptable effect on the living conditions of nearby residents.

**Relevant Non-Statutory Guidelines**

**Non-statutory guidelines** 'GUIDANCE FOR BUSINESSES' provides guidance for proposals likely to be made on behalf of businesses. It includes food and drink uses, conversion to residential use, changing housing to commercial uses, altering shopfronts and signage and advertisements.

# Appendix 1

**Application for Planning Permission 18/00654/FUL  
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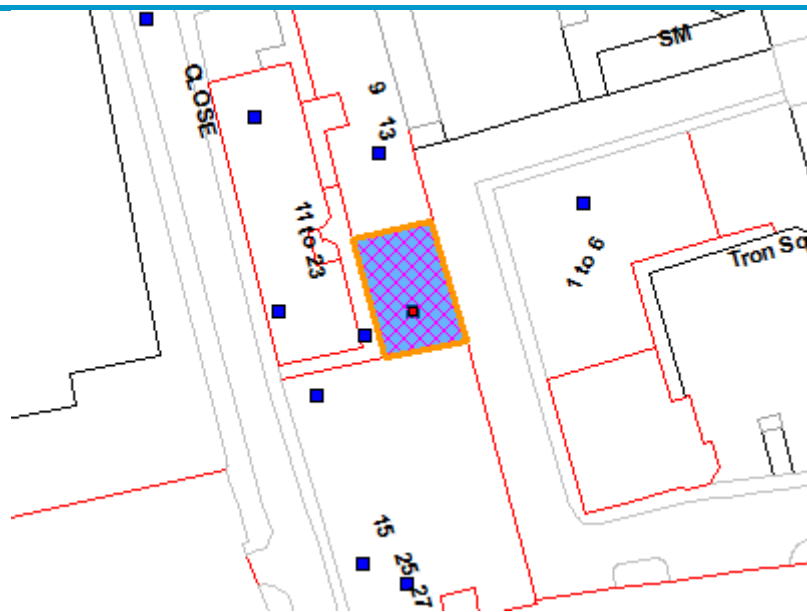
## Consultations

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No Consultations received.

## Location Plan

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