

Ms Nhung Hoang.
3 Flat 5, Dalry Gait
Edinburgh
United Kingdom
EH11 2AU

Decision date: 23 August 2019

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACTS
DEVELOPMENT MANAGEMENT PROCEDURE (SCOTLAND) REGULATIONS 2013**

Change of use of residential flat to short term commercial let.
At Flat 2 5 Dalry Gait Edinburgh EH11 2AU

Application No: 19/02382/FUL

DECISION NOTICE

With reference to your application for Planning Permission registered on 24 June 2019, this has been decided by **Local Delegated Decision**. The Council in exercise of its powers under the Town and Country Planning (Scotland) Acts and regulations, now determines the application as **Refused** in accordance with the particulars given in the application.

Any condition(s) attached to this consent, with reasons for imposing them, or reasons for refusal, are shown below;

Conditions:-

Reasons:-

1. The proposal is contrary to adopted Edinburgh Local Development Plan Policy Hou 7 in respect of Inappropriate Uses in Residential Areas, as the proposed use has the potential to adversely affect the residential character and amenity of the area.

Please see the guidance notes on our [decision page](#) for further information, including how to appeal or review your decision.

Drawings 01;02, represent the determined scheme. Full details of the application can be found on the [Planning and Building Standards Online Services](#)

The reason why the Council made this decision is as follows:

The proposal does not comply with the Edinburgh Local Development Plan and the Council's Guidance for Businesses. The proposed change of use would have an unacceptable impact on residential amenity and the established character of the area. There are no other material considerations to outweigh this conclusion.

This determination does not carry with it any necessary consent or approval for the proposed development under other statutory enactments.

Should you have a specific enquiry regarding this decision please contact Robert McIntosh directly on 0131 529 3422.



Chief Planning Officer
PLACE
The City of Edinburgh Council

NOTES

1. If the applicant is aggrieved by the decision to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within three months beginning with the date of this notice. The Notice of Review can be made online at www.eplanning.scot or forms can be downloaded from that website. Paper forms should be addressed to the City of Edinburgh Planning Local Review Body, G.2, Waverley Court, 4 East Market Street, Edinburgh, EH8 8BG. For enquiries about the Local Review Body, please email localreviewbody@edinburgh.gov.uk.

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 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 accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.

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Report of Handling

Application for Planning Permission 19/02382/FUL At Flat 2, 5 Dalry Gait, Edinburgh Change of use of residential flat to short term commercial let.

Item	Local Delegated Decision
Application number	19/02382/FUL
Wards	B07 - Sighthill/Gorgie

Summary

The proposal does not comply with the Edinburgh Local Development Plan and the Council's Guidance for Businesses. The proposed change of use would have an unacceptable impact on residential amenity and the established character of the area. There are no other material considerations to outweigh this conclusion.

Links

<u>Policies and guidance for this application</u>	LDPP, LHOU07, NSG, NSBUS,
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Report of handling

Recommendations

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

Background

2.1 Site description

The application relates to flat 2, 5 Dalry Gait, Edinburgh. It is a ground floor flat which is accessed through a communal door and stair.

2.2 Site History

There is no relevant planning history for this site.

Main report

3.1 Description Of The Proposal

The application is for planning permission for the change of use of a ground floor residential flat to a short term commercial let. The flat has three bedrooms in total, 2 double and one single. It will provide accommodation for up to six people, over short term stays of between 2-9 nights.

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 comply with the development plan?

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

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3.3 Assessment

To address these determining issues, it needs to be considered whether:

- a) the principle of change of use is acceptable in this location;
- b) the proposal raises any issues in respect to road users; and

c) any comments have been addressed.

a) Principle of development

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. This 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.

There have been a number of appeal decisions which have helped to assess whether a change of use has taken place and whether that change of use is acceptable. Since July 2018, more than 200 new enforcement cases have been opened and while 140 are ongoing, 23 enforcement notices have been served, ten have been appealed and all ten have been upheld by Scottish Government reporters. There have been legal challenges in respect of the reporters' decisions at Chancelot Terrace and Baxter's Place. Both of which have been withdrawn.

During this period there has also been planning appeal decisions against refusals to grant planning permission and certificates of lawfulness for short stay let uses. These decisions have typically allowed short term let uses in main door properties or flats with their own private accesses e.g. 11 Stevenson Drive (CLUD-230-2007), 103 Restalrig Road (CLUD-230-2006) and 17 Old Fishmarket Close (PPA-230-2238).

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The issue of short term lets was the subject of a report to the Corporate Policy and Strategic Committee on 14 May 2019 - 'Short Term Letting in Edinburgh Update'. This report explained that a Short Term Lets Virtual Team has been created to co-ordinate action using existing powers across several services with a team leader from Planning acting as a day to day manager.

In terms of the current proposals, it should be noted that the current Edinburgh Local Development Plan (LDP) does not include any policies against the loss of residential use. Therefore the only policy that is applicable is policy Hou 7 which does not support developments, including a change of use, which would have a materially detrimental effect on the living conditions of nearby residents.

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On the balance of probability, there could be the potential for disturbance to the established residential character of the area and a detrimental impact on residential amenity.

In the appeal decision for 19 Old Fishmarket Close, the Reporter highlighted *"there is an important distinction to draw between external ambient noise, which is a characteristic of a city centre location such as this, and sources of noise and disturbance from within the building itself."* The Reporter added *"the occupiers of residential flats on Old Fishmarket Close would be accustomed to some degree of ambient noise/ disturbance, and I consider it would be unrealistic to expect otherwise in such a location"*.

In addition, the Reporters in the appeals for certificates of lawfulness at Stevenson Drive and Restalrig Road both highlighted the units were on busy roads with much activity. This does not apply here.

Whilst this application site is near the city centre, it is a relatively quiet residential street and there is the potential to create disturbance from the level of activity created by short term letting. Even though this is a ground floor property, it is not a main door flat and the proposal could adversely impact the established residential character of the area and neighbouring residential amenity. The proposals do not comply with LDP policy Hou 7 and the non-statutory Guidance for Businesses.

b) Car Parking and Road Safety

The Council's Edinburgh Design Guidance does not include any parking standards for this sui generis use.

The Roads Authority were consulted as part of the assessment of the application. They have responded that they have no objections to the proposal.

The car parking and traffic issues are satisfactory.

The proposal complies with LDP Policy Tra 2.

c) Public Comments

None received.

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

3.4 Conditions/reasons/informatives

Reasons:-

1. The proposal is contrary to adopted Edinburgh Local Development Plan Policy Hou 7 in respect of Inappropriate Uses in Residential Areas, as the proposed use has the potential to adversely affect the residential character and amenity of the area.

Risk, Policy, compliance and governance impact

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

Equalities impact

5.1 The equalities impact has been assessed as follows:

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

Consultation and engagement

6.1 Pre-Application Process

There is no pre-application process history.

6.2 Publicity summary of representations and Community Council comments

No representations have been received.

Background reading / external references

- To view details of the application go to
- [Planning and Building Standards online services](#)

Statutory Development

Plan Provision

Date registered 24 June 2019

Drawing numbers/Scheme 01;02

Scheme 1

David R. Leslie
Chief Planning Officer
PLACE
The City of Edinburgh Council

Contact: Robert McIntosh, Planning Officer
E-mail:robert.mcintosh@edinburgh.gov.uk Tel:0131 529 3422

Links - Policies

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

Consultations

Roads and Transportation

No objections to the application subject to the following being included as conditions or informatives as appropriate:

1. In accordance with the Council's LTS Travplan3 policy, the applicant should consider developing a Travel Plan including provision secure cycle parking, public transport travel passes, a Welcome Pack, a high-quality map of the neighbourhood (showing cycling, walking and public transport routes to key local facilities), timetables for local public transport.

Note:

The proposed development retains the existing 2 car parking spaces.

Environmental protection- No response.

END

4/10/19

Dear Sir / Madam,

Re: Local Review Body appeal – representation in support of proposals
(Ref: 19/00133/REVREF)

Site: Flat 2, 5 Dalry Gait, Edinburgh

Description: Change of use of residential flat to short-term commercial let.

I am writing in relation to the above planning appeal to be considered by the Council's Local Review Body.

Having read the Report of Handling, it indicates to me that the reason the application was initially refused was because of the likely adverse impact would have on neighbouring occupiers of Dalry Gait.

As a resident of Dalry Gait, I have had no grounds to make any complaint to The City of Edinburgh Council for any of the premises operating as short-term holiday lets in the vicinity. There are already numerous coming and goings amongst the 70 or so properties within the development.

The use of the ground floor flat for short-term holiday lets (as proposed) has not had an adverse impact on my living conditions as the Council has assumed in their decision-making and I do not consider that it would, if allowed.

As a resident of Dalry Gait, it is my opinion that the appeal should therefore be allowed.

I would be grateful if these comments could be considered as part of the appeal.

Kind Regards,

DANIEL ANDERSON



Address: 2/2 Dalry Gait , Edinburgh EH11 2AU Scotland

Business Centre G.2 Waverley Court 4 East Market Street Edinburgh EH8 8BG Tel: 0131 529 3550 Fax: 0131 529 6206 Email: planning.systems@edinburgh.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 100178690-002

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

Agent Details

Please enter Agent details

Company/Organisation:

Ref. Number:

You must enter a Building Name or Number, or both: *

First Name: *

Building Name:

Last Name: *

Building Number:

Telephone Number: *

Address 1 (Street): *

Extension Number:

Address 2:

Mobile Number:

Town/City: *

Fax Number:

Country: *

Postcode: *

Email Address: *

Is the applicant an individual or an organisation/corporate entity? *

Individual Organisation/Corporate entity

Applicant Details

Please enter Applicant details

Title:	<input type="text" value="Ms"/>	You must enter a Building Name or Number, or both: *	
Other Title:	<input type="text"/>	Building Name:	<input type="text" value="Flat 5"/>
First Name: *	<input type="text" value="Nhung"/>	Building Number:	<input type="text" value="3"/>
Last Name: *	<input type="text" value="Hoang"/>	Address 1 (Street): *	<input type="text" value="Dalry Gait"/>
Company/Organisation	<input type="text"/>	Address 2:	<input type="text"/>
Telephone Number: *	<input type="text"/>	Town/City: *	<input type="text" value="Edinburgh"/>
Extension Number:	<input type="text"/>	Country: *	<input type="text" value="Scotland"/>
Mobile Number:	<input type="text"/>	Postcode: *	<input type="text" value="EH11 2AU"/>
Fax Number:	<input type="text"/>		
Email Address: *	<input type="text" value="REDACTED"/>		

Site Address Details

Planning Authority:	<input type="text" value="City of Edinburgh Council"/>
Full postal address of the site (including postcode where available):	
Address 1:	<input type="text" value="FLAT 2"/>
Address 2:	<input type="text" value="5 DALRY GAIT"/>
Address 3:	<input type="text"/>
Address 4:	<input type="text"/>
Address 5:	<input type="text"/>
Town/City/Settlement:	<input type="text" value="EDINBURGH"/>
Post Code:	<input type="text" value="EH11 2AU"/>

Please identify/describe the location of the site or sites

Northing	<input type="text" value="673093"/>	Easting	<input type="text" value="323936"/>
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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)

Change of use of residential flat to short term commercial let

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.

Please see attached statement

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)

No assessment was made of the existing impact the change of use has on neighbouring occupiers

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)

Appeal Statement, Floor Plan

Application Details

Please provide details of the application and decision.

What is the application reference number? *

19/02382/FUL

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

24/06/2019

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

23/08/2019

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

Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may select more than one option if you wish the review to be a combination of procedures.

Please select a further procedure *

Holding one or more hearing sessions on specific matters

Please explain in detail in your own words why this further procedure is required and the matters set out in your statement of appeal it will deal with? (Max 500 characters)

To explain in person the minimum impact the use as a commercial holiday let would have on the existing residents

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 Craig Miles

Declaration Date: 09/09/2019

Proposal Details

Proposal Name	100178690
Proposal Description	LRB Planning Appeal for AirB&B
Address	FLAT 2, 5 DALRY GAIT, EDINBURGH, EH11
	2AU
Local Authority	City of Edinburgh Council
Application Online Reference	100178690-002

Application Status

Form	complete
Main Details	complete
Checklist	complete
Declaration	complete
Supporting Documentation	complete
Email Notification	complete

Attachment Details

Notice of Review	System	A4
Appeal Statement	Attached	A4
Decision Notice	Attached	A4
Report of Handling	Attached	A4
Site Plan	Attached	A4
Notice_of_Review-2.pdf	Attached	A0
Application_Summary.pdf	Attached	A0
Notice of Review-002.xml	Attached	A0

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In addition, the proposed use would enable new 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 residents. There is also 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 long standing residents.

On the balance of probability, there could be the potential for disturbance to the established residential character of the area and a detrimental impact on residential amenity.

In the appeal decision for 19 Old Fishmarket Close, the Reporter highlighted *"there is an important distinction to draw between external ambient noise, which is a characteristic of a city centre location such as this, and sources of noise and disturbance from within the building itself."* The Reporter added *"the occupiers of residential flats on Old Fishmarket Close would be accustomed to some degree of ambient noise/ disturbance, and I consider it would be unrealistic to expect otherwise in such a location"*.

In addition, the Reporters in the appeals for certificates of lawfulness at Stevenson Drive and Restalrig Road both highlighted the units were on busy roads with much activity. This does not apply here.

Whilst this application site is near the city centre, it is a relatively quiet residential street and there is the potential to create disturbance from the level of activity created by short term letting. Even though this is a ground floor property, it is not a main door flat and the proposal could adversely impact the established residential character of the area and neighbouring residential amenity. The proposals do not comply with LDP policy Hou 7 and the non-statutory Guidance for Businesses.

b) Car Parking and Road Safety

The Council's Edinburgh Design Guidance does not include any parking standards for this sui generis use.

The Roads Authority were consulted as part of the assessment of the application. They have responded that they have no objections to the proposal.

The car parking and traffic issues are satisfactory.

The proposal complies with LDP Policy Tra 2.

c) Public Comments

None received.

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

3.4 Conditions/reasons/informatives

Reasons:-

1. The proposal is contrary to adopted Edinburgh Local Development Plan Policy Hou 7 in respect of Inappropriate Uses in Residential Areas, as the proposed use has the potential to adversely affect the residential character and amenity of the area.

Risk, Policy, compliance and governance impact

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

Equalities impact

5.1 The equalities impact has been assessed as follows:

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

Consultation and engagement

6.1 Pre-Application Process

There is no pre-application process history.

6.2 Publicity summary of representations and Community Council comments

No representations have been received.

Background reading / external references

- To view details of the application go to
- [Planning and Building Standards online services](#)

Statutory Development

Plan Provision

Date registered 24 June 2019

Drawing numbers/Scheme 01;02

Scheme 1

David R. Leslie
Chief Planning Officer
PLACE
The City of Edinburgh Council

Contact: Robert McIntosh, Planning Officer
E-mail:robert.mcintosh@edinburgh.gov.uk Tel:0131 529 3422

Links - Policies

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

Consultations

Roads and Transportation

No objections to the application subject to the following being included as conditions or informatives as appropriate:

1. In accordance with the Council's LTS Travplan3 policy, the applicant should consider developing a Travel Plan including provision secure cycle parking, public transport travel passes, a Welcome Pack, a high-quality map of the neighbourhood (showing cycling, walking and public transport routes to key local facilities), timetables for local public transport.

Note:

The proposed development retains the existing 2 car parking spaces.

Environmental protection- No response.

END



Athena Planning

Chartered Town Planners & Development Professionals

Planning Appeal Statement

Relating to

Flat 2, 5 Dalry Gait,
Edinburgh, EH11 2AU

For

The Change of Use of a residential property to a short-term
commercial let

Reference

19/02382/FUL

By Craig Miles MRTPI

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Reference 19/02382/FUL

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6. Conclusion
 - Suggested Conditions

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Planning Appeal Statement

Flat 2, 5 Dalry Gait, Edinburgh, EH11 2AU

1. Executive Summary

- 1.1 This Appeal Statement is submitted on behalf of the applicant Ms Nhung Hoang against the decision of The City of Edinburgh Council (the Planning Authority) to refuse planning permission for the change of use of a residential property at Flat 2, 5 Dalry Gait, Edinburgh, EH11 2AU to a short-term commercial let on 23 August 2019 (planning application reference 19/02382/FUL).
- 1.2 The reason for the refusal was that in the Council's opinion because "*the proposed use has the potential to adversely affect the residential character and amenity of the area*" contrary to Policy Hou 7 in respect of Inappropriate Uses in Residential Areas of the adopted Edinburgh Local Development Plan.
- 1.3 In response to this decision, set in the Planning Policy considerations this Statement will demonstrate that the proposed change of use could be carried out in a manner that:
 - A. Would not materially affect the living conditions of nearby residents through the imposition of planning conditions controlling the management and timescale of the proposals.
 - B. The loss of a single flat on the entire development of Edinburgh Gait to a short-term holiday let would not adversely affect the residential character of the area.
- 1.4 The Local Review Body, having set-out in detail below the matters affecting the change of use will be respectfully requested to allow the Appeal to provide one main door property to be used as a holiday-let, subject to a range of restrictive conditions detailed in this statement because there are no other material considerations which could warrant the decision being upheld.

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Planning Appeal Statement

Flat 2, 5 Dalry Gait, Edinburgh, EH11 2AU

2. Background

- 2.1 The appellant lives in Flat 5, 3 Dalry Gait, Edinburgh. She bought Flat 2 in November 2018 and has since let it on occasion for short-term holiday let accommodation.
- 2.2 The letting process involves online booking and given that the owner of the appeal site lives directly across, all guests are met personally on arrival to ensure disturbance to other residents.
- 2.3 The appellant was advised that the use of premises as a short-term commercial let may require planning permission and on her own accord made an application to The City of Edinburgh Council to ensure lets were compliant with planning legislation. Ms Hoang has no prior knowledge of the planning system or the process involved in obtaining planning permission and has sought legitimate to regularise the use of the premises.
- 2.4 An application was submitted and validated by the Planning Authority on 24 June 2019 – reference 19/02382/FUL. The appellant provided a brief statement explained that:
- The property was on the ground floor of the building and is accessed via a communal entrance
 - That the lets are generally between 2 and 9 nights at a time
- 2.5 The statement crucially never stated that the appellant lives in Flat 5, 3 Dalry Gait, Edinburgh, directly across and would manage the letting process herself.
- 2.6 The appellant and owner - Ms Nhung Hoang – also advised that she was a successful business woman before she retired with her excellent ability to manage customers and stakeholders' satisfaction. She operates a systematic method to manage her customers. All bookings from Airbnb are reviewed by the owner before she decides to serve the guest. The review is based on the credibility of the guests (through user rating system by Airbnb). The approach to managing which lets the flat on a short-term basis is critical because it limits the potential for noise and disturbance to neighbours (including herself) and limits any detrimental impact to her own residential property (the subject of the appeal). Through this management process, it is considered that guests do not have a detrimental impact on neighbouring amenity. The existing reviews for the premises on the Airbnb system already demonstrates the kindness of served guest - who should be welcomed in Edinburgh.

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Planning Appeal Statement

Flat 2, 5 Dalry Gait, Edinburgh, EH11 2AU

3. Appeal Site

- 3.1 Dalry Gait for was formed following the demolition of a large Cash and Carry building in the early 2000's. Planning permission was granted for 77 residential units (Ref: 00/02360/FUL).
- 3.2 The appeal site is a ground-floor 3 bedroomed flat located off Dalry Road, Edinburgh. It is accessed within a few metres of the main communal entrance door to 5 Dalry Gait.
- 3.3 The rear of the building backs onto Haymarket Train Station. The rear elevation is approximately 13 metres from the actual railway line used 24 hours per day, 7 days per week.
- 3.4 To the front of the building is a large communal parking area to service a total of 77 properties and beyond the entrance from Dalry Road. There is no private amenity space associated with the premises.
- 3.5 The appeal site in effect provides 'city centre' living by its location. It is not an idyllic sub-urban peaceful retreat, rather it is a high-density urban location situated next to a railway line and amongst 76 other closely-knit residential units. The noise and associated visitor, owner, vehicular and pedestrian movement is already high compared to sub-urban locations. The occupiers of residential flats on Dalry Gait would be accustomed to some degree of ambient noise / disturbance as a result of its location.

4. Planning Policy Considerations

- 4.1 The Report of Handling states that there are no planning policies within the Edinburgh Local Development Plan against the loss of a residential use. In fact, there are no planning policies to provide any specific criteria for considering change of use applications to commercial holiday lets.
- 4.2 The Council's decision to refuse planning permission in the context of planning policy was entirely based on Policy Hou7 of the Edinburgh Local Development Plan.
- 4.3 The statements detailed in the Report of Handling about amenity are generic statements based upon conjecture and not fact within this application. There is no reason to assume that the presumed justification for refusal will occur within the confines of these premises as stated and there is no reason to assume in the same respect that established

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Flat 2, 5 Dalry Gait, Edinburgh, EH11 2AU

residents/owners who occupy premises will not engage in what could be described as anti-social behaviour. Living within dense blocks of flats does require a degree of acceptability of your neighbours' behaviour and as such determining if this use is a change of character is dubious. The same complaint has been lodged at student accommodation throughout the city for many years.

- 4.4 The planning officer concluded that the appeal site and the surrounding area is a “...*quiet residential street*” no assessment is made to qualify that conclusion. In my opinion, it is located alongside a railway line, it forms part of a high-density development and the ground floor flat fronts onto a communal parking area to service 77 properties whereby vehicles are continually coming and going. It is located directly adjacent to the “City Centre” and “Town Centre” defined on the Proposal Map of the Edinburgh Local Development Plan.
- 4.5 As part of the consideration of a similar recent appeal at 17 Old Fishmarket Close, Edinburgh, the Reporter appointed by Scottish Ministers stated that the interpretation of Policy H7 should be:
- “...the use of the flat as a holiday let would necessarily be unacceptable in principle. Policy Hou 7 does not preclude such a use outright; the policy test for the acceptability or otherwise of the proposal should therefore principally be based on whether the use would be materially detrimental to the amenity of other residents.”*
- 4.6 This means making an informed judgement about the level of amenity presently enjoyed by adjoining properties, and then consider if the nature of commercial short term letting would be materially detrimental to them. No informed consideration or judgement has been made.
- 4.7 The planning authority are attempting to make a judgement upon the “*materially detrimental effect*” the development may have on the living conditions of nearby residents – having never visited the premises when they are occupied or having spent any period of time at the property to consider existing movement or the impact on noise and disturbance to make any informed judgement.
- 4.8 The informed judgements come from those already living at 5 Edinburgh Gait and the adjoining properties. As part of the planning application process, neighbours were notified of the planning application for the proposed Change of Use – no objections were raised from neighbouring occupiers. Similarly, as far as the appellant is aware, no complain has ever been made as a result of noise and disturbance at Flat 2, 5 Dalry Gait, Edinburgh.

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Planning Appeal Statement

Flat 2, 5 Dalry Gait, Edinburgh, EH11 2AU

- 4.9 The Report of Handling highlights circumstances as part of dismissed applications and appeals in which noise and movements are the reasons for refusal, but these decisions relate to premises that are not occupying the ground floor. In this instance, the entrance to the flat door is within 5 metres from the main entrance to the building. It is situated beyond a common lift, distinctly separate from the access into Flat 2. The appellant also lives in the flat directly across from the property which is the subject of this appeal. The other ground floor flat is let on a short-term basis.
- 4.10 There are at least 20 out of the 77 residential units operating for short term holiday lets. By the entrance to the development planning and fronting onto Dalry Gait, permission was granted for 166-bedroomed student accommodation building in 2011 (11/02165/FUL). The development has been completed and is fully occupied. Clearly the site is not just simply a “quiet residential area.”
- 4.11 The Report of Handling also makes reference to “The Council’s non-statutory Guidance for Business” as part of the decision-making process. This document, as far as I am aware, has not been subject to public consultation; it is not explicitly part of the Development Plan.
- 4.12 Yet, the Report of Handling seems to include this Guidance as some form of material consideration which is attributed weight as part of the decision-making process. It has no material weight in the planning decision making process – it is a guidance note for businesses making a planning application to The City of Edinburgh Council.
- 4.13 Irrespective of its status, the guidance states that: *“In the case of short stay commercial leisure apartments, the Council will not normally grant planning permission in respect of fatted properties where the potential adverse impact on residential amenity is greatest.”*
- 4.14 The greatest impact would be a commercial holiday let on the upper floor of the building. In this instance, the appeal site forms a ground floor flat within close proximity to the communal entrance and the appellant lives directly across. The impact on residential amenity would be limited. As discussed, the operational period can also be controlled by condition.
- 4.15 The officer notes several times in the report that the proposal has *“the potential to create disturbance”* and not a certain *“materially detrimental effect on the living condition of nearby residents”* as required by the only relevant planning policy (Hous 7). There is no certainly to make this judgement that there would be a detrimental effect. Having no objections to the application from neighbouring residents and there being no complains about the

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Flat 2, 5 Dalry Gait, Edinburgh, EH11 2AU

operating the premises as a commercial holiday let previously, clearly indicate a lack of detrimental effects.

- 4.16 Nevertheless, potential affects could be controlled by condition by limiting the number of nights within a year and having a temporary permission can control the time and operations of a commercial let. This has not been considered as part of any planning assessment.
- 4.17 The loss of a single flat amongst 77 residential units would not adversely affect the character or indeed appearance of this urban area given that the other 76 properties would remain in residential use. A large proportion of them are already used for short term holiday lets and the development is alongside a 166-bed student accommodation building.

5. Material Considerations

A. The premises are only occupied 'a third of the time'

- 5.1 Airbnb's own statistics for Edinburgh indicates that average occupancy rate of Edinburgh of 31.6%. It can be concluded that the premises would not be occupied at all for 68.4% of the time.

<http://insideairbnb.com/edinburgh/?neighbourhood=&filterEntireHomes=false&filterHighlyAvailable=false&filterRecentReviews=false&filterMultiListings=false>

B. Edinburgh Tourism spend not realised

- 5.2 The average expenditure per day, per tourist is £97.63 according to the "Edinburgh Numbers" publication by City of Edinburgh Council in 2018.

http://www.edinburgh.gov.uk/downloads/download/1965/edinburgh_by_numbers_2018

- 5.3 It also states that as part of the "**Key Facts**" that in 2018, visitors staying overnight spent over £117 per person per day. This was up on the same period as last year by around £10. This is anticipated to increase. Based on an average occupancy of only 31.6% per year, the premises would contribute around £70,00 per year through tourism spent into the local economy.

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C. Allowing the appeal enables a degree of control by The City of Edinburgh Council

5.4 Permitting the appeal allows a degree of control over short-term commercial lets. The suggested condition would be a temporary consent for a two-year period. It would require a register of guests and dates to be kept, and required to be managed and supervised by the appellant living directly across from the appeal site.

6. Conclusion

6.1 The submitted Appeal, supported by this Statement, seeks to overturn the planning officer's decision to refuse Planning Permission for a short-term commercial let and consent be granted for the proposal.

6.2 The property is a ground floor flat, next to the communal entrance to the building. The owner (and manager) lives directly across and there have no objections to the planning application submitted. The wider development which the appeal site occupies is already used by for least 20 short term holiday let units. Also alongside the site is a 166-bedroomed student accommodation building. Owing to its location, and the existing uses alongside the site and that the it could be appropriately management close-by - it is considered that the proposal is not contrary to Policy Hou7 of the Edinburgh Local Development Plan LDP owing to the limited impact the proposed change of use would have on neighbouring residents. The appellant does not consider conditions to be necessary to enable the enable, however if the Local Review Body wish to control the operations of the development, the appellant is agreeable to restrictive planning conditions limiting the operational time and management of the short-term commercial let (detailed below).

6.3 The Local Review Body is therefore respectfully requested to allow the appeal.

Suggested Conditions to manage amenity

The management of amenity can be controlled through a temporary permission attached to a planning condition and other restrictive conditions as suggested below:

1. This planning permission will lapse on the expiration of a period of two years from the date of this decision notice.

Reason: To maintain the availability of the site as short term holiday tourist accommodation and to regulate and control the development of land and buildings

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Planning Appeal Statement

Flat 2, 5 Dalry Gait, Edinburgh, EH11 2AU

2. The short-term commercial let hereby approved shall at all times be managed and supervised by the owner of Flat 5, 3 Dalry Gait, Edinburgh unless written permission of the Planning Authority has been granted.

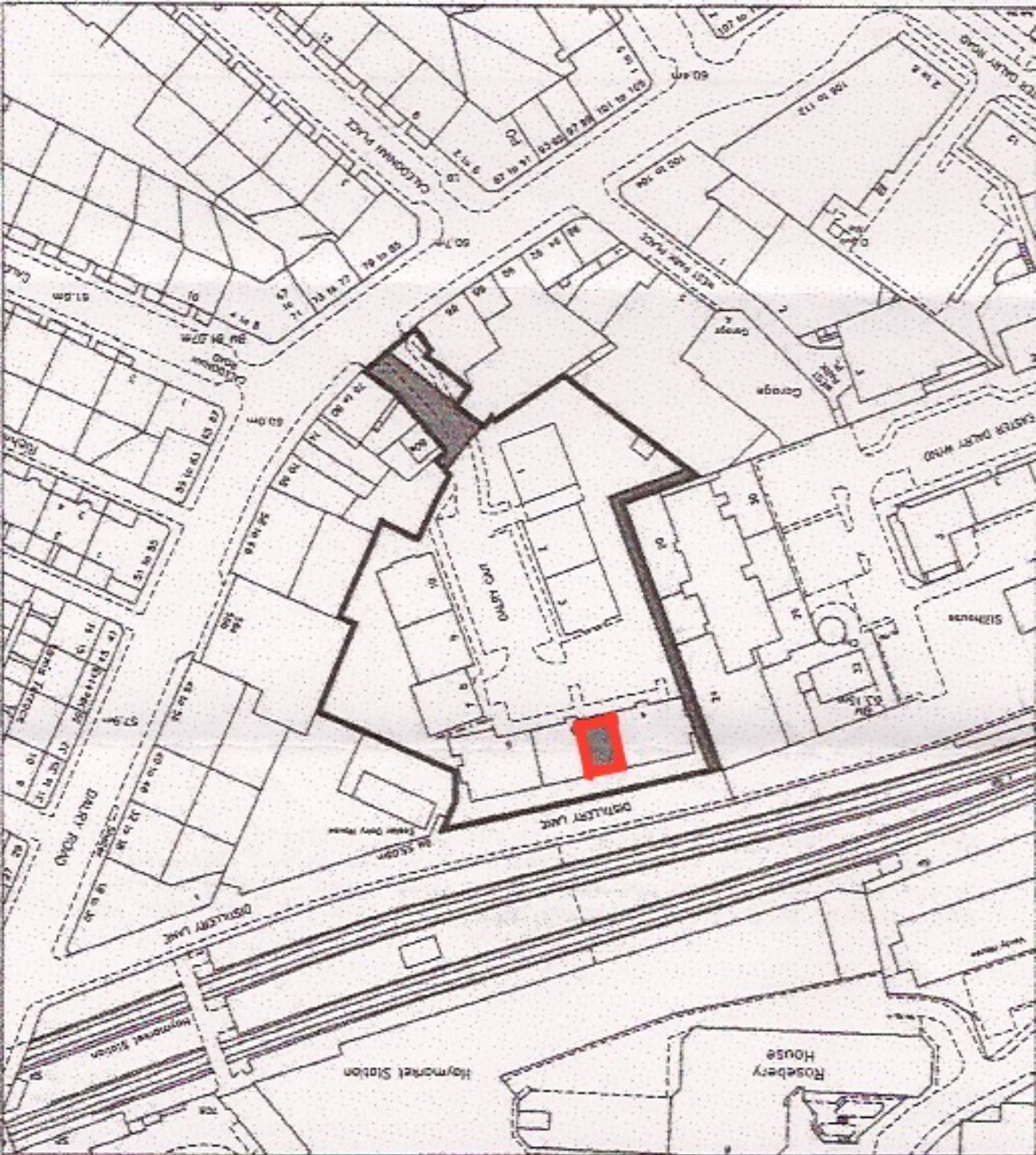
Reason: To enable the Planning Authority to regulate and control the development of land and buildings.

3. A register of all guests using the short-term commercial let shall be kept, including dates and durations of each stay by each guest, and the register shall be made available for inspection by the Local Planning Authority at 48 hours' notice.


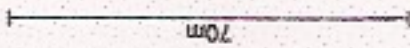
Reason: To maintain the availability of the site as short term holiday tourist accommodation and to regulate and control the development of land and buildings.

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