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Decision date: 8 April 2019

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

Change of Use from residential to furnished holiday let (in retrospect)
At Unit 1 108A West Bow Edinburgh EH1 2HH

Application No: 19/00691/FUL

DECISION NOTICE

With reference to your application for Planning Permission registered on 12 February 2019, this has been decided by **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 and Enforced** 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:-

1. The use of the property for the purposes of short stay, commercial visitor accommodation has the potential to have a detrimental impact on the amenity of neighbouring residents. The development is contrary to Policy Hou7 (Inappropriate Uses in Residential Areas) of the Edinburgh Local Development Plan, as it could introduce activities that would cause significant noise and disturbance to other residents of the building.

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 is not in compliance with policy Hou 7 of the Edinburgh Local Development Plan. The change of use will have a significant and detrimental impact on neighbouring residential amenity by virtue of increased noise and disturbance and is unacceptable.

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 Astrid Walker directly on 0131 529 3620.

D R Leech

Chief Planning Officer
PLACE
The City of Edinburgh Council

NOTES

1. If the applicant is aggrieved by the decision of the planning authority 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 appeal to the Scottish Ministers under section 47 of the Town and Country Planning (Scotland) Act 1997 within three months beginning with the date of this notice. The appeal can be made online at www.eplanning.scot or forms can be downloaded from that website and sent to the Planning and Environmental Appeals Division, 4 The Courtyard, Callendar Business Park, FALKIRK FK1 1XR.
2. If permission to develop land is refused or granted subject to conditions, whether by the planning authority or by the Scottish Ministers, 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 any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.

Report of Handling

Application for Planning Permission 19/00691/FUL At Unit 1, 108A West Bow, Edinburgh Change of Use from residential to furnished holiday let (in retrospect)

Item	Delegated Decision
Application number	19/00691/FUL
Wards	B11 - City Centre

Summary

The proposal is not in compliance with policy Hou 7 of the Edinburgh Local Development Plan. The change of use will have a significant and detrimental impact on neighbouring residential amenity by virtue of increased noise and disturbance and is unacceptable.

Links

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

Recommendations

1.1 It is recommended that this application be Refused and Enforced subject to the details below.

Background

2.1 Site description

The application site is located to the south end of West Bow. Grassmarket is located to the west of the site. The area comprises of mixed uses, including shops, hotels, restaurants and residential uses.

The property to which this application relates is located within a Category B listed (ref:LB30192 28/02/1975) four storey three bay Baronial terraced tenement block, with shops at the ground floor. The application property is a one bedroom flat on the first floor of the building which is accessed via a shared stair. There are two flats on the first floor, and two more on each floor above, with six flats in total within the building.

The site is located within the Edinburgh World Heritage Site.

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

2.2 Site History

No planning history.

Main report

3.1 Description Of The Proposal

The application is for the change of use from a residential flat to a short stay commercial visitor accommodation (SSCVA). The site has been leased on this basis since 2015 and by the applicant since 2018.

Supporting Documents

The applicant has submitted the following documents which are available to view via planning and building online services:

-Supporting Planning 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.

Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states - special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.

Section 14 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states - In considering whether to grant consent, special regard must be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. For the purposes of this issue, preserve, in relation to the building, means preserve it either in its existing state or subject only to such alterations or extensions as can be carried out without serious detriment to its character.

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, it needs to be considered whether:

- a) The proposal is acceptable in principle;
- b) The proposal will have an adverse impact on the listed building or the character or appearance of the surrounding conservation area;
- c) Any impacts on equalities and human rights are acceptable;
- d) Any comments from nearby neighbours have been raised and addressed;
- e) Any comments from Community Councils/bodies have been raised and addressed.

a) Acceptable in Principle

Policy Hou 7 seeks to resist developments, including a change of use, which would have a materially detrimental impact on the living condition of nearby residents. The Council's non statutory Guidance for Business notes that in the case of short stay commercial leisure apartments, the Council will not normally grant planning permission in respect of flatted properties where the potential adverse impact on amenity is greatest. It also notes that a change of use of flatted properties will generally only be acceptable where there is a private access from the street.

Evidence gathered by the council has demonstrated that the use of flats for the purposes of short stay commercial visitor accommodation (SSCVA) within stairs shared by other residents has the greatest potential to impact on the level of amenity that would be expected and associated within a residential development.

The flat which is the subject of this application is a one bed unit, situated on the 1st floor of a communal stair, with other flats sharing the stair and access off West Bow. The agent has advised that the property has been being used as a SSCVA since 2018 by the applicant, and since 2015 by a previous owner. This application seeks to authorise the current use to allow the rental of the property for short stay commercial visitor accommodation. The flat has only one bedroom and a sofa bed arrangement meaning that it can only be leased to a maximum of four persons at any one time.

The use of residential units for the purposes of SSCVA introduces activities and has characteristics that are not normally associated within residential properties. Although the flat is small, and would be unsuitable for larger groups, the proposal would have the potential to significantly and adversely affect the amenity of neighbouring residents; the turnover frequency would inevitably result in guests arriving and departing, often with luggage, and potentially at the weekend and in the evenings, creating noise and disturbance within the context of a communal stair.

There is the possibility that some of the guests would fail to show the same level of consideration for residential amenity that is normally found amongst people that occupy properties as their main place of residence, resulting in the potential for the development to constitute an undesirable and inappropriate change to the characteristics of the stair.

The proposal is therefore considered contrary to Policy Hou7 and the Council's Guidance for Business as it would result in an unacceptable impact on the living conditions of nearby residents.

b) Listed Building and Conservation Area

There are no physical alterations proposed to the property. The proposal would not therefore have any detrimental impact on the listed building or the character and appearance of the conservation area.

c) Equalities and Human Rights

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

d) Comments

A summary of the comments received:

Objection

- Shortage of full time permanent residential accommodation.

There is no policy presumption against the loss of residential units contained within the development plan, although as stated in section 3.a, above Policy Hou7 seeks to prevent development that would have a detrimental impact on neighbouring residential amenity.

- Massive increase in short term commercial visitor accommodation in the area.
- The application is an attempt to circumnavigate any future curtailment to short term lets or changes in legislation.
- Such proposals compromise the planning approach to the Old Town.

Planning permission is required for a change of use to a short stay commercial leisure apartment. Applications will be assessed on their own merits and in accordance with the relevant Edinburgh Local Development Plan Policies and relevant Council non statutory guidance at the time of application. Any development in breach of the relevant planning legislation will be subject to further investigation by Planning Enforcement.

Planning Legislation, the Edinburgh Local Development Plan, relevant Council non statutory guidance and the Conservation Appraisal for the Old Town all seek to preserve or enhance the character of the conservation area.

- Harmful impact on the local community, the character of the shared stairs on the street and the amenity of the area.

These comments have been addressed in section 3.3. (a)

e) Grassmarket Residents Association

The Grassmarket Residents Association have raised the following objections:

- The application is contrary to the Council's Guidance for Business which states that a change of use in flatted properties will generally only be acceptable where there is a private access.
- The application is contrary to policy Hou 7 as the property is accessed of a shared communal stair.
- Other issues include the pattern of activity, noise and disturbance to neighbours and the character of the area.
- The Grassmarket area has been flooded by Air B&Bs and other short term lets in recent years with attendant increase of waste disposal, late night noise as well as a general loss of amenity and reduction in the size of the permanent population.

These issues have been addressed in section 3. a above.

- This application, if successful, means the loss of yet another residential flat in the area.

There is no policy presumption against the loss of residential units contained within the development plan, although as states in section 3. a above, Policy Hou7 seeks to prevent development that would have a detrimental impact on neighbouring residential amenity.

The Old Town Community Council have objected on the following grounds:

- Loss of residential accommodation to short term holiday lets.

There is no policy presumption against the loss of residential units contained within the development plan, although as states in section 3. a above, Policy Hou7 seeks to prevent development that would have a detrimental impact on neighbouring residential amenity.

- Tenement buildings are particularly inappropriate for these uses. Both for the visitor and particularly for the remaining residents. It is hard to express the extent of amenity loss endured by people who may have lived on their stair a long time, to face a constant procession of frequently noisy or inconsiderate visitors.

These issues have been addressed in section 3. a above.

- Difficulty faced by owners who must share common parts with a business in obtaining home insurance, and in organising maintenance and common repairs etc.

This is not a material planning consideration.

- Particularly we oppose any such changes of use away from residential whilst there is ongoing action by CEC and the Scottish Government, to regulate this problem.

The proposal has been assessed above in accordance with the current framework of planning policy, as set out in section 3. a above.

The Old Town Association have raised the following objections:

- There is now an appalling shortage of genuine residential accommodation in the Old Town much exacerbated by the recent 'airBnB phenomenon'. We believe that this would breach established LDP policies especially HOU 7

There is no policy presumption against the loss of residential units contained within the development plan, although as states in section 3. a above, Policy Hou7 seeks to prevent development that would have a detrimental impact on neighbouring residential amenity.

- A common stair is private property, albeit shared amongst the community that is a tenement. Allowing a constant stream of strangers, frequently inconsiderate or sometimes even rowdy in this private space is not acceptable.

The impact on residential amenity is set out in section 3. a above.

- Approving this would effectively legitimatise what has now been recognised as an unacceptable use of a home. It would be inappropriate to grant this at the present time, and we oppose all changes of use away from residential whilst there are changes of legislation in the pipeline

The proposal has been assessed above in accordance with the current framework of planning policy, as set out in section 3. a above.

Conclusion

The proposal is not in compliance with policy Hou 7 of the Edinburgh Local Development Plan. The change of use would have the potential to create a significant, detrimental impact on neighbouring residential amenity by virtue of increased noise and disturbance caused by the high turnover of visitors associated with this type of use and is therefore, unacceptable.

It is recommended that this application be Refused and Enforced subject to the details below.

3.4 Conditions/reasons/informatives

Reasons:-

1. The use of the property for the purposes of short stay, commercial visitor accommodation has the potential to have a detrimental impact on the amenity of neighbouring residents. The development is contrary to Policy Hou7 (Inappropriate Uses in Residential Areas) of the Edinburgh Local Development Plan, as it could introduce activities that would cause significant noise and disturbance to other residents of the building.

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

Two letters of representation have been received from nearby residents, objecting to the application.

The Old Town Association, Grassmarket Residents Association and the Old Town Community Council have also objected to the application.

Background reading / external references

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

Statutory Development

Plan Provision

The Edinburgh Local Development Plan and the relevant non statutory guidance.

Date registered

12 February 2019

Drawing numbers/Scheme

01, 02

Scheme 1

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

Contact: Astrid Walker, Planning Officer
E-mail:astrid.walker@edinburgh.gov.uk Tel:0131 529 3620

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.

The Old Town Conservation Area Character Appraisal emphasises the survival of the original medieval street pattern; the wealth of important landmark buildings; the survival of an outstanding collection of archaeological remains, medieval buildings, and 17th-century town houses; the consistent and harmonious height and mass of buildings; the importance of stone as a construction material for both buildings and the

public realm; the vitality and variety of different uses; and the continuing presence of a residential community

Appendix 1

Consultations

Waste and Fleet Services

Waste and Fleet Services would not expect to be the service provider for the collection of waste as this appears to be a commercial holiday let development.

Therefore, we will not provide a service as this is not household waste. Arrangements must be put in place to ensure that their waste is removed and disposed of legally. The Waste (Scotland) Regulations 2012 require that they also put in place to segregate paper, card, metals, plastics, glass and food for recycling. All waste bins will require to be stored off street and presented only during collection windows. An alternative may be to appoint a cleaning contractor who can remove the different materials to a different location; -there are implications to the latter, e.g. the contractor may need a waste carriers' licence, and so we recommend they seek guidance from SEPA if that is their preferred course of action.

Environmental Protection

The property is located at first floor level above an existing retail unit and is the first residential property accessed via a communal stairwell. The stair is accessed directly from West Bow. There are residential properties located above the application unit.

Environmental Protection have concerns that formalising the use of this property as a short-term let would likely lead to increased noise affecting the neighbouring residential amenity. This could be in the form of guest using the common stair and potential through noise within the flat such as music noise.

Therefore, Environmental Protection recommends the application is refused due to the likely adverse impacts it would have on existing residential amenity.

Transport Development

No objection to the development.

END

Comments for Planning Application 19/00691/FUL

Application Summary

Application Number: 19/00691/FUL

Address: Unit 1 108A West Bow Edinburgh EH1 2HH

Proposal: Change of Use from residential to furnished holiday let

Case Officer: Astrid Walker

Customer Details

Name: Mrs Elspeth Wills

Address: 3 Brown's Place EDINBURGH

Comment Details

Commenter Type: Residents Association

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: I am writing on behalf of the Grassmarket Residents' Association (GRASS) to object to the above planning application on the following grounds.

Our main reason for objection is the the application contravenes the Council's own policy as stated in its Guidance for Business 'Change of use in flatted properties will generally only be acceptable where there is a private access from the street,' (HOU7) This property is on a shared communal stair in a three storey building Other issues to be taken into consideration include the pattern of activity, noise and disturbance to neighbours and the character of the area. The Grassmarket area has been flooded by AirB&Bs and other short term lets in recent years with attendant increase in issues of waste disposal, late night noise etc as well as a general loss of amenity and reduction in the size of the permanent population.

This application, if successful, means the loss of yet another residential flat in the area

We trust that you will see fit to turn down this application and others like it.

Yours sincerely

Elspeth Wills

on behalf of GRASS

Comments for Planning Application 19/00691/FUL

Application Summary

Application Number: 19/00691/FUL

Address: Unit 1 108A West Bow Edinburgh EH1 2HH

Proposal: Change of Use from residential to furnished holiday let

Case Officer: Astrid Walker

Customer Details

Name: Mr samuel Piacentini

Address: 4f1 86 West Bow Edinburgh

Comment Details

Commenter Type: Neighbour

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: I strongly object to this application as it will have a detrimental impact on the Residential Community and lived Environment. I have lived in the Area for over 25 years. and in the last 20 years I have witnessed the severe decline of the full-time permanent resident population within the Old Town due to the dramatic increase in transient visitors who are being accommodated by a massive increase of short term letting properties through platform sites such as Airbnb .This application seeks to circumvent any future curtailment of Airbnb and Inforced legislation by the Council. The City has an over abundance of visitor Accommodation What the Old Town lacks is full-time permanent resident Accommodation. I respectfully ask you seriously consider my comments.

Comments for Planning Application 19/00691/FUL

Application Summary

Application Number: 19/00691/FUL

Address: Unit 1 108A West Bow Edinburgh EH1 2HH

Proposal: Change of Use from residential to furnished holiday let

Case Officer: Astrid Walker

Customer Details

Name: Mr Richard Parry

Address: 86/12 West Bow Edinburgh

Comment Details

Commenter Type: Neighbour-Residential

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: I object to this proposal as being detrimental to the residential amenity of this sensitively-located street on which I live. The importance of retaining a core of long-term residents (either tenants or owner-occupiers) is I believe increasingly recognised by the City. Applications for changes of use from residential to furnished holiday lets can, if approved, lead rapidly to a tipping-point that irreversibly changes the character of the streets on the street and compromises the planning approach to the Old Town. I believe that demand for furnished holiday lets should be met in ways other than changes of use at this address.

Comments for Planning Application 19/00691/FUL

Application Summary

Application Number: 19/00691/FUL

Address: Unit 1 108A West Bow Edinburgh EH1 2HH

Proposal: Change of Use from residential to furnished holiday let (in retrospect)

Case Officer: Astrid Walker

Customer Details

Name: Ms OLD TOWN ASSOCIATION

Address: 21 Carlyle Place, Edinburgh EH7 5SR

Comment Details

Commenter Type: Amenity Body

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: OLD TOWN ASSOCIATION

9/00691/FUL 1- 108A West Bow C/U residential to furnished holiday let

We strongly object to this proposal.

There is now an appalling shortage of genuine residential accommodation in the Old Town much exacerbated by the recent 'airBnB phenomenon'

We believe that this would breach established LDP policies especially HOU 7

A common stair is private property, albeit shared amongst the community that is a tenement.

Allowing a constant stream of strangers, frequently inconsiderate or sometimes even rowdy in this private space is not acceptable.

Approving this would effectively legitimatise what has now been recognised as an unacceptable use of a home.

It would be inappropriate to grant this at the present time, and we oppose all changes of use away from residential whilst there are changes of legislation in the pipeline

OTA Planning Secretary

Comments for Planning Application 19/00691/FUL

Application Summary

Application Number: 19/00691/FUL

Address: Unit 1 108A West Bow Edinburgh EH1 2HH

Proposal: Change of Use from residential to furnished holiday let (in retrospect)

Case Officer: Astrid Walker

Customer Details

Name: Mr Planning Secretary Old Town Community Council

Address: Flat 4, 112 Canongate, Edinburgh EH8 8DD

Comment Details

Commenter Type: Community Council

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: OLD TOWN COMMUNITY COUNCIL

9/00691/FUL 1- 108A West Bow Change of Use residential to furnished holiday let

The Community Council strongly object to this proposal.

There exists in the Old Town an extreme lack of available residential accommodation mostly due to rapid attrition of the stock by usage as short term and holiday lets.

Consenting this change of use would be in direct breach of LDP policy Hou 7

Tenement buildings are particularly inappropriate for these uses. Both for the visitor and particularly for the remaining residents. It is hard to express the extent of amenity loss endured by people who may have lived on their stair a long time, to face a constant procession of frequently noisy or inconsiderate visitors.

Not to mention the additional difficulty faced by owners who must share common parts with a business in obtaining home insurance, and in organising maintenance and common repairs etc.

To grant consent would effectively condone the illegitimate use of this dwelling, and mean the permanent loss of what should be a home.

Particularly we oppose ANY such changes of use away from residential whilst there is ongoing action by CEC and the Scottish Government, to regulate this problem.

Sincerely, OTCC Planning Secretary

From: Gina Bellhouse
Sent: 25 Sep 2019 10:27:10 +0000
To: Local Review Body;Aidan McMillan
Subject: FW: 1900691FUL.docx108a West Bow - 19/00125/REVREF

Hi Aidan,

Please can you add the response below from Environmental Protection to the LRB papers for West Bow on 30th Oct.

It should also be forwarded to the appellant for their information.

Many thanks,
Gina

From: Andrew Campbell
Sent: 18 September 2019 12:01
To: Astrid Walker <Astrid.Walker@edinburgh.gov.uk>
Subject: 1900691FUL.docx108a West Bow - 19/00125/REVREF

Dear Astrid,

Environmental Protection's original response to the 19/00691/FUL application is still valid. We have checked our database and there have been no complaints logged since that consultation response was sent.

Kind regards

Andrew Campbell | Environmental Health Officer | Environmental Protection | Housing and Regulatory Services | Directorate of Place | The City of Edinburgh Council | East Neighbourhood Centre 2.03, 101 Niddrie Mains Road, Edinburgh, EH16 4DS | 0131 469 5160 | 0777 0582 997 | andrew.campbell@edinburgh.gov.uk