

Development Management Sub Committee

report returning to Committee - Wednesday 21 April 2021

Application for Planning Permission 20/05425/FUL at 37A London Street, Edinburgh, EH3 6LX. Change of use from derelict property to holiday lets (basement and sub-basement).

Item number

Report number

Wards

B11 - City Centre

Recommendations

It is recommended that this application be Granted subject to the details below.

Background information

This application was continued by Committee on 17 March 2021 to clarify the access rights of residents to the garden.

This information is now available and is explained in the main report.

Main Report

Following the Committee meeting, the applicant was asked to provide confirmation via a solicitor's letter of the ownership and access rights to the rear garden. This has now been received from Brodies Solicitors.

The Disposition transferring title from J&B Taylor Funeral Services Limited in favour of Bluemarsch Limited was registered in the General Register of Sasines 21 years ago, but with an earlier date of entry in 1999.

The description of the subjects which were sold to the applicant and of which they are heritable proprietor is as follows:

"the main door property (formerly a dwellinghouse, but now an office) known as and forming 39 London Street and the sunk flats known as and forming 37A London Street together with the backgreen or ground behind the said property and the three cellars in the western division of the area in front of the tenement of which the property forms part".

Bluemarsh Limited, the applicant, owns the ground to the rear of 37A and 39 London Street.

Copies of some of the titles of other proprietors on upper levels of the tenement were also submitted. This shows that these proprietors have no right of ownership in the garden ground and instead only have a right to use the area of ground in question. Their titles in fact do not clearly specify the area over which they have rights but it appears that there is a division of the area of ground to the rear of the tenement standing with Bluemarsh owning and having exclusive use of the garden area immediately to the rear of the property (but possibly not the whole area to the rear) and the upper floor tenement residents have access to the upper part of the garden to the south of the fence line on the proposed site plan. This southern part of the ground is accessed via a path from the rear of the tenement building.

Historic OS maps show a shorter garden to the rear of the property and back up this proposition.

There is some ambiguity with the historic conveyancing in relation to the exact split of ground at the rear but Bluemarsh were disposed the garden ground in 1999 and the sellers at the time had a right to sell it. There is no suggestion in any of the titles that the upper flats own part of the garden.

The fact that the residents in the upper flats have a right to use at least the back part of the garden does then raise the question of interaction between visitors using the four units at sub-basement/basement level and residents of the upper floors. Whilst it is generally acknowledged that visitors stay in short term let accommodation to visit the City and not to use back gardens, the possibility of interaction should be considered. The question is whether this is likely to be more onerous than if the units were residential. On balance, given the limited number of units and the likelihood that visitors would not use the back garden as intensively as a resident, the impact on residential amenity would be limited.

However, to further meet the concerns of objectors, the applicant has removed the sub-basement terrace area which showed a potential sitting out area and the rear doors have been changed to fire doors. Whilst the latter cannot be controlled by Planning, an informative has been added to highlight this is shown on the drawings and is expected to be implemented. Any instances of anti-social behaviour are a matter for the Locality teams potentially working with the Police.

Questions were also raised about a locked gate from the street down to the basement area and the possibility of this area being misused. The applicant has confirmed the gate has not been locked for many years.

The plans have been updated to reflect the correct address of the basement and sub-basement - 37A London Street.

Links

Policies and guidance for this application

LDPP, LHOU07, LEN04, LEN01, LEN06, LTRA02, LTRA03, HES, HESUSE, NSG, NSBUS, CRPNEW,

A copy of the original Committee report can be found in the list of documents at

<https://citydev-portal.edinburgh.gov.uk/idxpa-web/applicationDetails.do?activeTab=documents&keyVal=QKTDEUEWGO800>

or Council Papers online

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