

Development Management Sub Committee

Wednesday 4 August 2021

**Application for Planning Permission 21/02351/FUL
at 1F2 68B Grassmarket, Edinburgh, EH1 2JR.
Change of use from residential to short term business /
holiday accommodation.**

Item number

Report number

Wards

B11 - City Centre

Summary

The proposal is contrary to adopted Edinburgh Local Development Plan policy Hou 7 (Inappropriate Uses in Residential Areas) as it would have a detrimental effect on the living conditions of nearby residents.

Links

[Policies and guidance for this application](#)

LDPP, LEN01, LEN04, LEN06, LHOU07, HES, HESUSE, NSG, NSLBCA, OTH, CRPOLD, NSBUS,

Report

Application for Planning Permission 21/02351/FUL at 1F2 68B Grassmarket, Edinburgh, EH1 2JR. Change of use from residential to short term business / holiday accommodation.

Recommendations

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

Background

2.1 Site description

The site is an early nineteenth century four storey, four bay classical style tenement building situated on the northern side of the Grassmarket.

The premises are category B listed (listing date 14 December 1970, listing reference: 28940).

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

2.2 Site History

19 March 2018 - Listed building consent granted to replace three existing single glazed windows with three double glazed, twelve pane windows and removal of external paintwork (as amended) (application reference: 18/00039/LBC).

16 April 2018 - Planning permission granted to replace three existing single glazed windows with three double glazed, twelve pane windows removal of external paintwork (as amended) (application reference: 18/01075/FUL).

21 February 2020 - an enforcement notice was served on the basis of unauthorised use as a short term let (enforcement reference: 19/00896/ESHORT)

11 January 2021 - Appeal against enforcement notice (appeal reference: 20/00038/ENFORC). The enforcement notice was upheld.

12 February 2021 - The enforcement case for alleged unauthorised change of use was closed on the basis the use had ceased (enforcement reference: 19/00896/ESHORT).

Main report

3.1 Description of the Proposal

The application is for planning permission for the change of use from residential to short term business/holiday accommodation. No alterations are proposed.

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 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states that in considering whether to grant planning permission for development which affects a listed building or its setting, a planning authority shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

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.

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;
- b) the proposals preserve the character and setting of the listed building;
- c) the proposals preserve or enhance the character and appearance of the conservation area;
- d) the proposals harm the Outstanding Universal Value of the defined World Heritage Site;
- e) the development raises any issues in respect of car and cycle parking and
- f) comments raised have been addressed.

a) Principle of the Proposal

The application site is situated in the City Centre as defined in the adopted Edinburgh Local Development Plan (LDP).

The main policy that is applicable to the assessment of short-stay commercial visitor accommodation (SCVA) lets is LDP policy Hou 7 (Inappropriate Uses in Residential Areas) which states that developments, including changes of use which would have a materially detrimental impact on the living conditions of nearby residents, will not be permitted.

The non-statutory Guidance for Businesses states that an assessment of a change of use of dwellings to SCVA will have regard 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 numbers of occupants, the period of use, issues of noise, disturbance and parking demand and
- The nature and character of any services provided.

The guidance states that proposals for a change of use will be assessed in terms of their likely impact on neighbouring residential properties. Factors which will be considered include background noise in the area and proximity to nearby residents.

In connection to short stay lets it states - "The Council will not normally grant planning permission in respect of flatted properties where the potential adverse impact on residential amenity is greatest".

The guidance states that a change of use of flatted properties will generally only be acceptable where there is a private access from the street, except in the case of HMOs.

There has been a number of appeal decisions which have helped to assess whether short stay visitor accommodation is acceptable or not. These appeals are material planning considerations. The main determining issues in these cases relate to the following:

- The location of the property and, in particular, whether it is part of a common stair shared by residents. Typically, appeals are successful where the property has its own private access;
- The frequency of movement and likely disturbance for neighbours, and whether this is likely to be more than a full-time tenant occupying the flat. Generally, the smaller the flat the less likelihood of disturbance to neighbours;
- The impact on the character of the neighbourhood. Again, this often relates to the size of the property and whether anyone renting it for a few days is likely to shop or use local services any differently from a long-term tenant;
- The nature of the locality and whether the property is located within an area of activity such as being on a busy road or near shops and other commercial services. As such, residents would be accustomed to some degree of ambient noise/ disturbance.

Recent appeal decisions stress that the frequent movement by tourists, and other itinerant residents, of baggage along landings and stairwells as well as the necessity for daily servicing of the apartment all lead to a pattern of intense usage of the access stairs and communal areas beyond that which may otherwise be expected from the flat in normal residential use. All of which creates the potential for unacceptable noise and disturbance to existing residents.

The applicant has submitted supporting documents stating the recent appeal decision at Johnston Terrace sets a precedent for allowing short stay lets in shared stairs. However, the Reporter's decision was based on the very close proximity to the Esplanade and parking for coaches outside. Therefore, the Reporter decided that the occupiers are already used to the noise. Additionally, it was pointed out that most of the flats within the building were operating on a short term lets basis even though they are not authorised.

It is acknowledged that Grassmarket is a busy central location and residents would be accustomed to some degree of ambient noise/ disturbance from outside. However, the residential properties nearby and within these stairs are located on the upper floors, which are isolated to a degree from the noise associated with the ground floor uses and the street traffic around.

The change of use proposed of the proposed property for the proposed SVCAs would mean that there would be direct interaction between users of the short term letting accommodation and long term residents of the surrounding residential properties as the property forms part of a shared stair.

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. Concerns raised by objectors, emphasise concerns relating to buzzers being pressed for access, the noise of suitcases going up and down and visitors arriving at unsociable hours.

This would be significantly different from the ambient background noise that residents are no doubt used to. The proposed change of use could instead bring noise and disturbance directly into the stairwells and properties in which they live.

Environmental Protection has stated it cannot fully support the application due to concerns regarding the proposals potential impact upon neighbouring residential amenity. Additionally, Environmental Protection has confirmed that a complaint has been received in the past specifically about anti-social noise being caused by guests staying at this property when being occupied during a short-term-let. On the balance of probability, there could be the potential for disturbance to the living conditions of neighbouring occupiers and a detrimental impact on residential amenity.

Tourism is important to the Edinburgh economy and the provision of short stay lets helps to meet accommodation demands. However, this has to be balanced with the need to ensure existing communities are not affected to an unacceptable degree in terms of noise and disturbance. In this case, the impact on residential amenity is deemed to be unacceptable and the benefits to tourism do not outweigh this.

Scottish Planning Policy encourages a mix of uses in town centres to support their vibrancy, vitality and viability throughout the day and into the evening. The site lies within the City Centre and policy Del 2 reflects SPP by stating it supports a use or a mix of uses appropriate to the location of the site, its accessibility characteristics and the character of the surrounding area. However, the promotion of mixed uses has to be balanced with the need to ensure residential amenity is protected. In this case, there is likely to be a negative impact on residential amenity.

The proposal is contrary to LDP policy Hou 7 as it cannot be demonstrated that the proposal will not have a materially detrimental impact on the living conditions of nearby residents.

b) Impact on Listed Building

Section 59 (1) of the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997 states:

"In considering whether to grant planning permission for development which affects a listed building or its setting, a planning authority or the Secretary of State, as the case may be, shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."

Policy Env 4 (Listed buildings- Alterations and Extensions) states that proposals to alter or to extend listed buildings will be permitted where those alterations are justified; would not result unnecessary damage to historic structures or diminution of its interests; and where any additions would be in keeping with other parts of the building.

Historic Environment Scotland's (HES) guidance note Managing Change in the Historic Environment: Re-use and Adaptation of Listed buildings, sets out the principles that apply to altering historic buildings. It stresses that changes may be required to find a new use for a listed building. The guidance advises that changes to specific assets and their context should be managed in a way that protects the historic environment and that careful consideration is required to avoid harming the building's special interest. It recognises that listed buildings will be adapted for new uses and that small-scale alterations will be required.

The applicant has not submitted any changes to the floor plans or any internal alterations to the existing property. In this case, there is no overriding need to find a new use for the property as residential use is viable.

There is no proposal for key boxes in the application but these may require listed building consent depending on the location.

The proposal will preserve the character and setting of the listed building and accord with section 59 of the Planning (Listed Buildings and Conservation Area) (Scotland) Act 1997. It also complies with Env 4 of the LDP and HES managing Change guidance.

c) Old Town Conservation Area

Section 64(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states:

"In exercise, with respect to any buildings or other land in a conservation area, of any powers under any of the provisions in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area."

LDP policy Env 6 (Conservation Areas - Development) states that development within a conservation area will be permitted which preserves or enhances the special character and appearance of the conservation area and which is consistent with the relevant character appraisal.

The Old Town Conservation Area Character Appraisal identifies the key characteristics of this part of the Old Town as:

"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".

There are no external alterations proposed to the building. The surrounding area is vibrant and has a large variety of different uses. The proposal complies with LDP policy Env 6 and the Old Town Conservation Area Character Appraisal.

d) World Heritage Site

LDP Policy Env 1 states development which would harm the qualities which justified the inscription of the Old and New Towns of Edinburgh and/or the Forth Bridge as World Heritage Sites or would have a detrimental impact on a Site's setting will not be permitted.

The inscription reasons are set out in the Edinburgh World Heritage Site Management Plan as follows:

The Old and New Towns of Edinburgh World Heritage Site (WHS) met two criteria -

Criterion (ii) - Have exerted great influence, over a span of time or within a cultural area of the world, on developments in architecture, monumental arts, or town planning and landscape design. The successive planned extensions of the New Town, and the high quality of its architecture, set standards for Scotland and beyond, and exerted a major influence on the development of urban architecture and town planning throughout Europe, in the 18th and 19th centuries.

Criterion (iv) - Be an outstanding example of a type of building or architectural ensemble or landscape which illustrates (a) significant stage(s) in human history.

The use of the property as short stay visitor accommodation does not affect the reasons for the inscription and therefore meets policy Env 1.

e) Transport

Policies Tra 2 (Private Car Parking) of the LDP sets out the requirement for private car parking. The car parking standards are contained in the Edinburgh Design Guidance.

The zero car parking provision is acceptable. The application property is well served by public transport and within walking or cycling distance of local amenities and many tourism venues.

There is no requirement for cycle parking.

The proposal complies with LDP policies Tra 2.

f) Public comments

Material Comments: Objection:

- Loss of amenity - addressed in 3.3 a)
- Noise and disruption - addressed in 3.3 a)
- Privacy and security of the common stair is infringed by the coming and going of strangers - addressed in 3.3 a)
- This application is against the Policy Housing 7 'Inappropriate Uses in Residential Areas' - addressed in 3.3 a)
- The development is contrary to Scottish Planning Policy on "socially sustainable places" - addressed in 3.3 a)
- Undermines any balanced economic model for the tourism sector addressed in 3.3a)
- Negative environmental impact - addressed in 3.3 a)
- Short-term letting businesses are incompatible with tenement buildings and cause severe disruption to residents - addressed in 3.3a)
- Damage the historic environment with key boxes leaching to the doorways of listed buildings and ornate railings across the World Heritage Site - addressed in 3.3 b)

Non- Material Comments: Objection:

- Too many properties in Edinburgh are allowed to be short term let - there are currently no policies restricting the number of short stay lets.
- Rises rent and house prices - this is not a material planning consideration.
- Example of recent appeal at Johnston Terrace should not be taken as a precedent - there is no precedent in planning law.
- Dangerous for elderly occupiers - this is not a material planning consideration.
- Intimidation when pleaded with guests and the owners for quiet and respect - this is a matter for Police Scotland.
- Litter and other waste left in the building for the residents to clean up - this relates to the management of the property which the planning system cannot control.

- The owner has second AIRBNB in the same building without planning permission - this is not a material planning consideration.
- Leaving the pend gate open thereby compromising our security and encouraging revellers to use our pend as a toilet - this relates to the management of the property which the planning system cannot control.
- Residents are forced out to move from the city centre - this is not a material planning consideration.
- A tenement stair is not commercial property - this is not a material planning consideration.
- Lack of regulation of SLTs creating safety hazard for other residents - this is not a material planning consideration. A new licensing system is being brought in to address this issue.
- These premises are residential and should be maintained as such - there are currently no policies on loss of residential use.
- Housing shortage in Edinburgh - there are currently no policies on loss of residential use and housing shortages are addressed in housing allocations.
- Sets a precedent for more properties to become short term lets - there is no precedent in planning law
- The development is contrary to emerging policies in the City Plan - 9A - Protecting the loss of Edinburgh's homes to other uses - the draft plan has not been published yet and this is therefore not material.
- Anti-social behaviour - this is a matter for Police Scotland.
- The development is contrary to the Scottish Government Housing policy on More Homes - there are currently no policies on loss of residential use and this policy does not address change of use to short term lets.
- Difficulties of shared maintenance - this is not a material planning consideration.

Community Council: Objection:

The Old Town Community Council

- Objects in principle to any extension of short term letting in the Old Town.

Material Comments: Support:

- Self-catering unit is extremely unlikely to have material effect on the amenity of the area.
- We need tourism and a variety of accommodation. Sustainable and responsible tourism should be encouraged.
- Disruptive or anti-social behaviour is just as likely in residential use as self-catering use.
- The incremental disturbance from normal activity of people using a short-term let is relatively immaterial.
- The main entrance and vennel is used for commercial access from several businesses already at all hours without detriment impact.
- Holiday accommodation will not impact on privacy in the area, the appearance, noise, etc as these are already influenced by the other amenities.

- The Grassmarket and Royal Mile are also within walking distance of nearly all of the city's key tourist sights which means that tourists are unlikely to bring cars into the city centre which has to be a positive thing from an environmental perspective.
- Short term let flats should be able to operate in such a busy tourist area.
- Massive boost to the local economy - supports local business.

Non-Material Comments: Support:

- The owner goes out of her way to ensure the communal stairs are well kept and maintained.
- Short let should be promoted.
- Flexible and affordable accommodation for different people.
- Freedom of use your property as you wish.
- Planning permission is not required.
- It will not reduce housing crisis.
- Good for community.
- Short-term letting is a relatively minor inconvenience.
- Short term let are very important for Edinburgh and will play a key role in getting us out of this pandemic.

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 (Inappropriate Uses in Residential Areas) as it would have a detrimental effect on the living conditions of nearby residents.

Financial impact

4.1 The financial impact has been assessed as follows:

There are no financial implications to the Council.

Risk, Policy, compliance and governance impact

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

Equalities impact

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

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

8.1 Pre-Application Process

There is no pre-application process history.

8.2 Publicity summary of representations and Community Council comments

The scheme has received a total of 567 representations, 287 objecting and 280 supporting the application. In certain cases, the wrong option has been chosen therefore a number of objectors/supporters have been amended. Within those objections, a number of associations have raised their objections.

The Old Town Community Council has objected.

Background reading/external references

- 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 - Urban Area

Date registered

13 May 2021

Drawing numbers/Scheme

01,

Scheme 1

David Givan

Chief Planning Officer

PLACE

The City of Edinburgh Council

Contact: Weronika Myslowiecka, Planning Officer

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Links - Policies

Relevant Policies:

Relevant policies of the Local Development Plan.

LDP Policy Env 1 (World Heritage Site) protects the quality of the World Heritage Site and its setting.

LDP Policy Env 4 (Listed Buildings - Alterations and Extensions) identifies the circumstances in which alterations and extensions to listed buildings will be permitted.

LDP Policy Env 6 (Conservation Areas - Development) sets out criteria for assessing development in a conservation area.

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 Government Guidance on Historic Environment.

Managing Change in the Historic Environment: Use and Adaptation of Listed Buildings sets out Government guidance on the principles that apply to enable the use, the reuse and adaptation of listed buildings.

Relevant Non-Statutory Guidelines

Non-statutory guidelines 'LISTED BUILDINGS AND CONSERVATION AREAS' provides guidance on repairing, altering or extending listed buildings and unlisted buildings in conservation areas.

Other Relevant policy guidance

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

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 21/02351/FUL At 1F2 68B Grassmarket, Edinburgh, EH1 2JR Change of use from residential to short term business / holiday accommodation.

Consultations

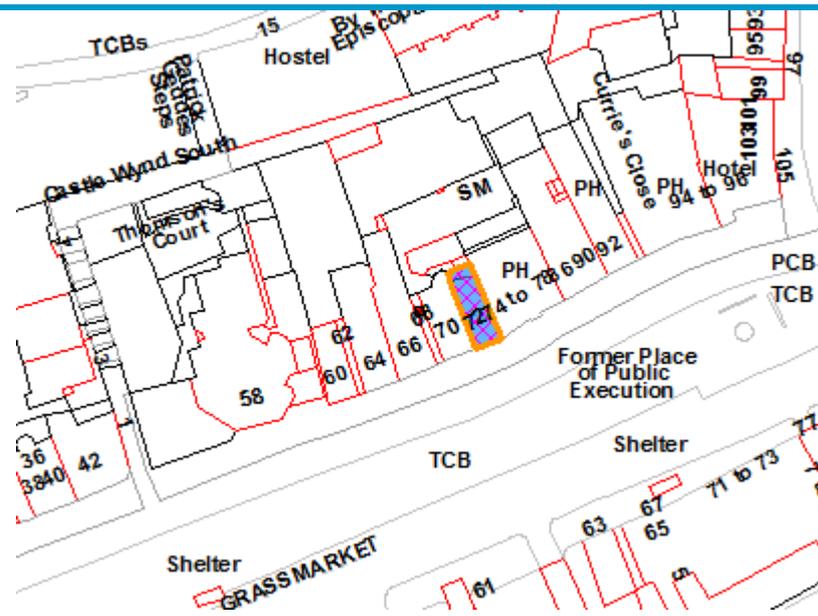
Environmental Protection

The main issues Environmental Health have with short- term lets is the impacts they can have on neighbouring residential amenity. This can be from a regular flow of visitors entering and exiting the property with suitcases. This property is accessed via a common door and common stair, so this is an issue. The other noise concern we have is the noise being generated by guests. However this can vary, but nevertheless there can be guests that stay over who can cause issues with playing loud music, banging around, shouting, or making noise outside if smoking. The applicant has confirmed that the property has been historically used as a short-term-let. Environmental Health have received a complaint specifically about anti-social noise being caused by guests staying at this property when being occupied during a short-term-let. This case was further investigated by the then Community Safety Team who were responsible for following up complaints of anti-social behaviour.

It is noted that there are no floorplans or elevations submitted with this application.

Environmental Protection recommend this application is refused due to the likely adverse impacts the use would have on neighbouring residential amenity.

Location Plan



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