

Business Centre G.2 Waverley Court 4 East Market Street Edinburgh EH8 8BG Email: planning.support@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 100577647-001

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:	Contour Town Planning		
Ref. Number:		You must enter a Building Name or Number, or both: *	
First Name: *	Angus	Building Name:	Flat 1
Last Name: *	Dodds	Building Number:	
Telephone Number: *	0772 987 3829	Address 1 (Street): *	16 St Johns Hill
Extension Number:		Address 2:	
Mobile Number:		Town/City: *	Edinburgh
Fax Number:		Country: *	Scotland
		Postcode: *	EH8 9UQ
Email Address: *	angus@contourtownplanning.com		

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="Other"/>	You must enter a Building Name or Number, or both: *	
Other Title:	<input type="text"/>	Building Name:	<input type="text" value="Unit 2"/>
First Name: *	<input type="text"/>	Building Number:	<input type="text"/>
Last Name: *	<input type="text"/>	Address 1 (Street): *	<input type="text" value="Ruthvenfield Road"/>
Company/Organisation	<input type="text" value="Luxury Lets Scotland Ltd"/>	Address 2:	<input type="text"/>
Telephone Number: *	<input type="text"/>	Town/City: *	<input type="text" value="Inveralmond"/>
Extension Number:	<input type="text"/>	Country: *	<input type="text" value="Scotland"/>
Mobile Number:	<input type="text"/>	Postcode: *	<input type="text" value="PH1 3WB"/>
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="2 CUMBERLAND STREET NORTH EAST LANE"/>
Address 2:	<input type="text" value="STOCKBRIDGE"/>
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="EH3 6SB"/>

Please identify/describe the location of the site or sites

Northing	<input type="text" value="674662"/>	Easting	<input type="text" value="325309"/>
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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 from residential to short-term let visitor accommodation at 2 Cumberland Street North East Lane Edinburgh EH3 6SB

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 all attached supporting appeal documents

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)

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)

- Location Plan; - Planning Statement; - Officer Report of Handling; - Decision Notice; - Supporting Appeal Statement; - Appeal Statement Appendix 1 (Appeal Decision PPA-230-2367); - Appeal Statement Appendix 2 (Appeal Decision PPA-230-2358); - Appeal Statement Appendix 3 (Representation application 21/06633/FUL); - Appeal Statement Appendix 4 (Support email, 3 Cumberland Street North East Lane); - Appeal Statement Appendix 5 (Development Sub-Committee Report 22/01415/FUL).

Application Details

Please provide the application reference no. given to you by your planning authority for your previous application.

21/06633/FUL

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

16/12/2021

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

24/03/2022

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

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

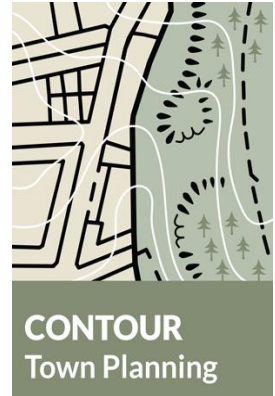
Note: Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, 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 Angus Dodds

Declaration Date: 21/06/2022



City of Edinburgh Planning Local Review Body
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Edinburgh

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21 June 2022

Dear Sir/Madam

Request for review of Planning Application reference 21/06633/FUL at 2 Cumberland Street North East Lane, Edinburgh. EH3 6SB

Contour Town Planning has been asked by Luxury Lets Scotland Ltd to submit a request for a Local Review of the above Planning Application that was refused by City of Edinburgh Council on 24 March 2022

The documents the appellant wishes to provide to support this request for review comprise:

- Location Plan 21/06633/FUL (registered 31 December 2021);
- Planning Statement 21/06633/FUL (registered 31 December 2021);
- Officer Report of Handling 21/06633/FUL (issued 24 March 2022);
- Decision Notice 21/06633/FUL (issued 24 March 2022);
- 210621 Supporting Appeal Statement;
- Appeal Statement Appendix 1 (Appeal Decision PPA-230-2367);
- Appeal Statement Appendix 2 (Appeal Decision PPA-230-2358);
- Appeal Statement Appendix 3 (Representation application 21/06633/FUL);
- Appeal Statement Appendix 4 (Support email, 3 Cumberland Street North East Lane);
- Appeal Statement Appendix 5 (Development Sub-Committee Report 22/01415/FUL).

We look forward to receiving confirmation that this request for review has been accepted, and the Review Panel re-assessing this application in due course.

Yours sincerely

A rectangular box containing a handwritten signature in cursive script that reads "Angus Dodds".

Angus Dodds
Director

2 Cumberland Street North-East Lane, Edinburgh

Local Review Board Appeal Statement

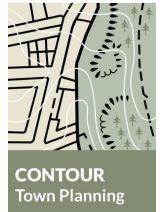


CONTOUR
Town Planning



2 Cumberland Street North-East Lane, Edinburgh

Local Review Board appeal statement



1. Introduction

- 1.1.1. This supporting paper is presented on behalf of the appellant to this local review of the decision to refuse application 21/06633/FUL at 2 Cumberland Street North-East Lane. The decision notice for this application seeking “Change of Use from Residential to Short Term Let Visitor Accommodation” is dated 24 March 2022.
- 1.1.2. Two recently successful appeal decisions, one recently successful planning application decision and a recent email are all cited within this paper. Full copies of these documents are provided as additional appendices 2-5

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2. Matters for Local Review Body consideration

- 2.1.1. The Officer Report of Handling for the application acknowledges that the proposals would not result in any adverse impact on the Listed Building status, the Conservation area status, or the World Heritage Site status of the proposals site. The main matter to be assessed is therefore the proposed use itself.
- 2.1.2. In considering this component of the proposal, the Officer's Report of Handling recognises in pages 5 and 6 that the key material considerations are Adopted Local Development Plan policy HOU7, the Council's non-Statutory Guidance for Businesses, and appeal decisions.
- 2.1.3. Accordingly, the appellant considers that the key paragraphs in the Officer's Report of Handling which directly lead to the only reason for refusal are found at the bottom of page 6. These paragraphs read:

"The application property is a two-bedroom flat. It is located on Cumberland Street North-East Lane. The lane is to the rear of Cumberland Street and it is a relatively quiet and sheltered residential lane. There are residential properties directly above and to the side of the property. Whilst the property has its own private front door it is noted that access to the flat is gained from a cobbled lane and down two flights of stairs. The use of the property as a short term let would likely introduce an increased frequency of movement to the flat at unsociable hours. Baggage would also likely be wheeled across cobbles and up and down the stairs which would add to the potential disturbance to neighbours.

The property also has its own patio area which is located near to where the rear windows of neighbouring properties are located. It is apparent that many of these nearby windows appear to permit light to bedrooms.

Environmental Protection were consulted as part of the assessment of the application. It stated that it was of the opinion that the application cannot be supported due to concerns relating to the potential for surrounding residential amenity to be affected".

- 2.1.4. As noted in the Report of Handling at the top of page 6, appeal decisions are material considerations in determining applications of this kind. In the period after this application was submitted, 2 successful appeals have been made to the Directorate of Planning and Environmental Appeals (DPEA), that are considered relevant to this request for a Local Review. In each case the Reporter's decision letter directly addresses in some depth a number of the issues raised in the key paragraphs of the Officers Report of Handling highlighted above.
- 2.1.5. The first of these was the decision under reference PPA-230-2367 which overturned the refusal of planning application 21/04512/FUL at 1B Fingal Place, Sciennes, Edinburgh for the Change of Use of a residential property to a short-term let. A copy of the full decision letter is attached as **appendix 1**
- 2.1.6. Addressing the overall ambience of the area in that case, the Reporter noted the following:
- "I consider that the normal background noise would be midway between what one would experience in an inner-city environment and a suburban environment. I would not characterise the area as a quiet residential area as the council has done in the report of handling".*
- 2.1.7. In the Planning Statement originally submitted as part of the application for review, paragraphs 2.1.7 to 2.1.12 explain in some detail why the area directly around the Cumberland Street North-East Lane also should not be characterised as sedentary or suburban, but as a relatively dynamic area subject to ongoing change, within the City Centre Council Ward, and only a short distance from Edinburgh city centre itself. This position is well summarised in paragraph 2.1.13 of the Planning Statement.
- 2.1.8. In addressing the issue of stairs, the Reporter further noted the following:

“the flat benefits from its own external door which is accessed by a set of ten stone slab steps. Concerns have been raised in representations regarding noise of suitcases being pulled up and down the steps. There are only 10 steps, so in a worst case this would be audible for only a few seconds. General ambient noise in this area is of a level where this would not give rise to any significant disturbance affecting residential amenity.”

2.1.9. Again, it is not considered by the appellant that this area is so sensitive to noise that occasional movement up and down stairs would be so intolerable to existing nearby residents to constitute any real ‘deterioration in living conditions’. It is also considered significant to stress that as stated in paragraph 3.1.8 of the original planning statement the typical length of stay at the property is between 3 and 5 days; making any disturbance that the movement of suitcases might create an infrequent event.

2.1.10. On the wider issue of ambient noise, the recent successful appeal decision at 7A Jamaica Street Lane (reference PPA-230-2358) is also relevant. A copy of the full decision letter is attached as **appendix 2**. This decision which overturned the refusal of planning application 21/03508/FUL, speaks directly not only to the presence of cobbles, but also to the significance on local amenity of having public houses in the area; a matter that was noted in paragraph 2.1.8 of the Planning Statement originally submitted as part of the current application for review, but which was not referenced in the Officer’s Report of Handling.

2.1.11. In terms that echo the Reporter’s comments in relation to the property at Fingal Place, the Reporter at Jamaica Street Lane noted the following in respect of cobbles, public houses and likely turnover of guests:

“The access lane is at this point paved with setts, and I note the council’s concerns regarding the potential for noise disturbance from wheeled suitcases on this surface. While I accept such noise could arise at the start and end of visitors’ stays, it would cause only a brief and occasional disturbance”.

I accept that the pattern of use of a commercial short-term holiday let may be different from that of a permanent home. Though likely to be occupied for fewer days in the year, there may be more comings and goings when the property is let, particularly in the evening. I consider that only one property (7C Jamaica Street South Lane) has the potential to be significantly affected, but that in reality adverse impacts are unlikely to arise in this case. This is due to the transitional commercial character of the location (in particular the close proximity of a public house), which leads me to conclude that existing levels of background noise in the area are likely to be quite high. I note the objection from the flat above the appeal property, but overall there does not appear to have been a history of numerous complaints over the years this use has been operating. For these reasons I conclude that the proposal would be unlikely to give rise to any significant disturbance to local residents”.

2.1.12. By contrast to the situation at Jamaica Street Lane, on Cumberland Street North-East Lane, the subject property is much closer to a much larger bar (the Cumberland Bar), which unlike the public bar on Jamaica Street West features a large beer garden. The presence of this bar was noted in the Planning Statement as the largest beer garden in the New Town, although this was not cited in the Officer’s Report of Handling as a matter for consideration.

2.1.13. In terms of the concerns raised in the Report of Handling regarding the potential use of the patio area, it seems instructive to turn again to the appeal decision at 1B Fingal Place. In considering similar concerns on the part of the Planning Authority in this instance, the Reporter noted the following:

“The council is concerned that the external area at the bottom of the stairs could be used as private amenity space as it provides sufficient space to accommodate a table and chairs. However, in my opinion it is unlikely that, when presented with such an array of activities that are in the vicinity of the appeal site and more appealing outdoor amenity facilities in the form of surrounding parks which are a stone’s throw away, the visitors who are only staying for a limited time would prefer to sit underneath a set of stairs, below a pavement with no views”.

- 2.1.14. Similarly at the subject property being reviewed, while it cannot be ruled out, it does seem unlikely that many visiting guests would choose to use a space below pavement level with a north facing aspect, no view and very limited direct sunlight. Intensive use in this manner does seem very unlikely when the largest beer garden in the New Town is only yards from the property, and when both George V Park and, in due course, outdoor amenity space as part of the 2.44 hectare redevelopment of the RBS headquarters to the north are less than 300 metres away.
- 2.1.15. The key matter for reflection which gets to the heart of the overall assessment and synthesizes all of the above relates to the concerns of the Environmental Protection team on the potential for the proposals to affect surrounding residential amenity. This concern leads to the single reason for refusal which cites the likelihood of the proposals to have a “materially detrimental effect on living conditions”.
- 2.1.16. In this regard it seems important to stress that the short-term let use only began here in June 2021. Since that time the short term let use has been operated under a series of strict ‘house-rules’ set out at the top of page 5 of the originally submitted planning statement. It also seems important to stress that unlike the example on Jamaica Street Lane, none of the adjacent properties raised any objections to the proposals through the planning application process.
- 2.1.17. Interestingly, one of the submitted representations from an address notes historical use of the outdoor courtyard area by ‘residents’ for social gatherings. This perhaps suggests that the outdoor area has been used by permanent residents in this manner in a period that pre-dates the use of the property as a short-term let. The representation in question is reproduced as **appendix 3** and notes:
- “This property has an outdoor courtyard and this space has historically been used by residents for large social gatherings which produce a lot of noise (in the form of shouting and loud music), litter and bottles left in the street, and generally anti-social behaviour... This is often late at night, and because the properties in the lane actually face out to the rear of the properties on Royal Crescent where most people on Royal Crescent and Fettes Row have their bedrooms, this anti-social activity is very disruptive for nearby residents trying to sleep... In the past, our household has asked residents of this property to lower the volume of their music and shouting when they’ve entertained, but this has had no effect”.*
- 2.1.18. Given there may be a long and unwelcome history of social gatherings on the patio area, it is unclear why the short-term let use of the property might be likely to introduce any new deterioration in living conditions for neighbouring residential properties. Indeed, given the property only accommodates 4 people as a maximum, and visiting guests are less likely to know so many people locally as to organise ‘large social gatherings’ on the patio space, the change to a short-term let use may be considered as an improvement where such social gatherings are considered less likely.
- 2.1.19. While no immediate neighbouring properties made representations to the planning application during the determination period, in the period since the decision notice was issued, the neighbours next door have sent an email in support of this request for a local review (**appendix 4**) stating the following:
- “We have been next door neighbours throughout the period that David has been operating 2 Cumberland Street North-East Lane as a short term let. To date we have had no issues with any of his guests or more generally in living next door to a short-term let - subject to David’s management controls for the property”*
- 2.1.20. In the recent past the Council has taken a different view on the likelihood of adverse amenity issues arising from a small, two-bedroom property being operated as a short-term let property in an area where some activity is to be expected. In the period since the application on Cumberland Street North-East Lane was refused, there have been two Development Sub-Committee meetings, in which 7 separate applications for the change of use of residential properties to short-term let use have been approved. These successful applications have included a mixture of one and two bedroom properties in different parts of the city, some with private outdoor amenity space, some without.

2.1.21. Application reference 22/01415/FUL at 1 Salisbury Mews seems a useful example to reflect upon. Unlike the subject property at Cumberland Street North-East Lane this property is outside the City Centre Ward but is still in an area where activity and some ambient noise should be expected. In assessing the key relevant factors in this case the Officer's Report of Handling (**appendix 5**) notes:

“This is a two bedroom property suitable for four persons and the likelihood of disturbance to neighbours is low. The property is currently being used as a short term let. Whilst any planning permission cannot be conditioned in terms of number of occupants, it is unlikely it will be used for large numbers of visitors which may impact on neighbours' amenity. The applicant has advised that the property has been used for short term lets since 2016. Access to neighbouring gardens has been raised in the public comments. Gardens in Salisbury Mews include a few which are open to the street and where there are no boundary treatments to restrict access. The proposal will not change the existing situation in terms of the adjacent garden which is open to the street and where access to the garden is not restricted by a boundary wall, fence or hedge”.

2.1.22. While the example at Salisbury Mews has no private outdoor space, there is, in theory, the potential for guests to use outdoor space in a manner that could adversely impact on neighbouring residential amenity. In this example however, the Officer's Report of Handling links 'likelihood' for disturbance to the size of the property. This is also one of the four main determining factors highlighted in the Officer's Report of Handling for the appeal property on Cumberland Street North-East Lane; however, no real assessment is undertaken in the Officer's Report of Handling of what this might mean for the likely functioning of the property, and the likely impact on neighbouring residential properties. It is considered that this is an important matter that should be taken into account when assessing the subject proposal against policy HOU7.

3. Conclusion

- 3.1.1. This is a small 2-bedroom property, located a short distance from the city centre of a capital city, in an area that plays host to a public house with a large beer garden, and a number of other local commercial uses. The key policy to determine whether such a use is acceptable is Adopted Local Development Plan HOU7 which will act as a block to proposals that will result in materially detrimental effects on the living conditions of nearby residents.
- 3.1.2. In recent planning applications and appeal decisions, a number of matters raised in the Officer's Report of Handling for this property have been examined in detail. When considered through the prism of whether these might be 'likely' materially detrimental effects to pass the tests set out in policy HOU7, none have warranted refusal of the respective planning applications or dismissal of the respective appeals.
- 3.1.3. Given the narrow focus of this policy assessment is concentrated on the likely material impact of the ongoing use on the living conditions of nearby residents, it is respectfully requested that the Local Review Board considers how reasonable it would be to conclude that such a use in this central location is actually unacceptable.

DRAFT

Angus Dodds MRTPI
Director

angus@contourtownplanning.com



CONTOUR
Town Planning

Contour Town Planning.
FAO: Angus Dodds
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EH8 9UQ

Luxury Lets Scotland Ltd.
Unit 2 Ruthvenfield Road
Inveralmond
PH1 3WB

Decision date: 24 March 2022

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

Change of use from residential to short-term let visitor accommodation.
At 2 Cumberland Street North East Lane Edinburgh EH3 6SB

Application No: 21/06633/FUL

DECISION NOTICE

With reference to your application for Planning Permission registered on 31 December 2021, 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 Local Development Plan Policy Hou 7 in respect of Inappropriate Uses in Residential Areas, as the use of this dwelling as a short stay let will have a materially detrimental effect on the living conditions and amenity of nearby residents.

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

Drawings 01, 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 complies with Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as it will not harm the listed building or its setting and it will preserve or enhance the character or appearance of the conservation area.

However, the proposal will have a materially detrimental effect on the living conditions and amenity of nearby residents and therefore it does not comply with LDP policy Hou 7. It also does not comply with the SPP as it will not contribute towards sustainable development. Therefore, the recommendation is to refuse planning permission.

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 at robert.mcintosh@edinburgh.gov.uk.



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.

2 Cumberland Street North East Lane, Edinburgh

Retrospective change of use of residential flat to short-term visitor accommodation: Planning Statement



CONTOUR
Town Planning



2 Cumberland Street North East Lane, Edinburgh

Retrospective change of use of residential flat to short-term visitor accommodation: Planning Statement



1. Introduction

- 1.1.1. Contour Town Planning has been asked to provide a planning statement in support of this planning application. The proposal is to retrospectively change the use of the basement flat known as 2 Cumberland Street North East Lane, Edinburgh, from a residential property to a short-term rental property providing visitor accommodation.
- 1.1.2. The proposed visitor accommodation is considered a sui generis use, while the original residential use of the flat is also a sui generis use. The recent Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021 confirms that in certain areas, planning permission will be required for such a change. Given central Edinburgh is anticipated as being such an area, the current application is being made to formalise this change and secure the benefit of planning permission.
- 1.1.3. For the avoidance of doubt, the change of use proposed under this application will result in no physical changes to the interior or exterior of this building necessitating planning permission or listed building consent in their own right.
- 1.1.4. The purpose of this report is firstly to set out the context for this planning application by describing the setting and history of the property that is subject to this planning application, and then looking at how the property is currently managed as visitor accommodation. A review is then undertaken of all relevant planning policies and guidance, with an assessment made as to how these can all be addressed satisfactorily.
- 1.1.5. It is our contention that the proposed change of use of this property will provide it with a sustainable function going forward that can contribute to Edinburgh's important tourist economy and reputation as a business destination. Such a change is considered appropriate today both to the character of the building and the character of the neighbouring area.

2. Property Description and Surroundings

- 2.1.1. The 2-bedroom basement property is located on Cumberland Street North East Lane, a largely (though not exclusively) residential street in the Second New Town of Edinburgh, less than 1 kilometre from Waverley Station. The property lies within the City Centre Ward and is also within the Old Town/New Town World Heritage Site, the New Town Gardens Historic Garden/Designed Landscape, and the New Town Conservation Area.
- 2.1.2. The property is understood to date from around the early 1820's when it was designed by Thomas Brown to conform with the second New Town plan, first devised in 1801-2 by the architects Robert Reid and William Sibbald. The building does not appear to be completed on Kirkwood's 1817 map of the city, but does appear as completed on Kay's 1826 Post Office Directory plan of Edinburgh. Today it forms part of a B-listed group (4-34A Cumberland Street and 2-12B Cumberland Street North East Lane).
- 2.1.3. In comparison to the rather grander Great King Street and Royal Circus, which were designed on a more monumental scale to act as the principal streets of the second New Town, Cumberland Street and its associated lanes were originally designed to offer more affordable property in the New Town to skilled tradespeople. As a result, the buildings on Cumberland Street that form part of the designated grouping are formed of three storeys with a basement. All are finished in ashlar Craigleith sandstone, in common with the rest of the New Town.
- 2.1.4. Historic Environment Scotland's listing reference to the Second New Town, notes that it represents "*a significant surviving part of one of the most important and best-preserved examples of urban planning in Britain*". This building and others in the surrounding streets help to preserve the unique and largely domestic Georgian character of Edinburgh's New Town, where it's distinctive, elegant and human-scale urban design can still be enjoyed. Edinburgh's planned built form is of course one of the reasons the city continues to be such a popular place for people to visit and spend time.
- 2.1.5. The property at 2 Cumberland Street North-East Lane is accessed via its own private doorway. The doorway itself is set back from the pavement edge and accessed via a small private terrace all of which lies behind cast-iron railings that also form part of the listing. For the avoidance of doubt, this property shares no semi-private areas with neighbouring properties at all. All of the properties above it are accessed directly from Cumberland Street on the other side of the building. This arrangement takes place along the length of the street as each of numbers 1-12B Cumberland Street North-East Lane are formed as the basements of the properties on Cumberland Street. The fall in height between the Street and the Lane however, allows properties on the Lane to enjoy their own direct, on-street main door accesses.
- 2.1.6. There are no properties directly across the Lane from number 2. The falling topography means that land across the road from the flat is garden ground to numbers 16-22 Royal Crescent. This garden ground lies behind a rubble construction sandstone wall and has no intervisibility at all with 2 Cumberland Street North East Lane.
- 2.1.7. Outside the property, metered on-street parking is available on the south side of Cumberland Street, along with permit holder's spaces on the Lane itself and further along the north side of the Street. Within 200 metres (a 3-minute walk of the property) bus stops are available in both directions for the 8,13, 23 and 27 bus routes, connecting the property directly with points in the north and south of the wider city. The property is 15 minutes on foot from Waverley station, and only 9 minutes on foot from the nearest tram stop on St Andrews Square, connecting the property with the airport and, in due course, Leith.
- 2.1.8. Within an approximately 3-minute walk of the property there is an impressive range of services available. These include: 2 supermarkets (Tesco Express and Margiotta, Dundas Street), 1 pub (the Cumberland Bar is just around the corner and features the largest beer garden in the New Town), a barber's and a bakery. Within 500 metres there is a post office and an even greater range of shops, cafes, bars and

restaurants. Canonmills, Broughton Street, Stockbridge and the city centre are all an easy walk from the property.

- 2.1.9. Notwithstanding the protected status of much of the second New Town, the area immediately around the property and its wider neighbourhood, can perhaps be characterised as one where activity and change in the built environment is common-place, and where significant new mixed-use development is anticipated soon.
- 2.1.10. In the last two decades, along the lanes behind the east end of Cumberland Street, many of the original non-domestic mews properties have been converted to a residential use, or where these have been incrementally demolished in earlier decades, they have been redeveloped recently to provide a residential use. A sample selection of successful planning applications for this type of development includes: 20/03874/FUL for the erection of a new mews house; 12/00173/FUL for the erection of a new mews house; 02/02899/FUL for the erection of 3 mews houses; and, 20/05832/FUL for the erection of a new mews house.
- 2.1.11. In September this year City of Edinburgh Council approved planning application 20/03034/FUL by Orion Capital Managers and Ediston for the demolition of existing buildings and the erection of a mixed-use development comprising residential, hotel, office and other commercial functions with associated landscaping and other ancillary works.
- 2.1.12. The planning application site for this development covers the area that was formerly occupied by a piecemeal mix of industrial buildings, the Royal Patent Gymnasium and the St Bernards football Ground in the 19th and earlier 20th Centuries, before most of the site was redeveloped by the RBS in the 1970's and 1980's. The closest point between the property at 2 Cumberland Street North East Lane and the 2.44 hectare redevelopment site is less than 50 metres. In detail, the planning permission on this site allows for the erection of 349 residential units, a 116 bedroom hotel, a 9820 sqm office block, a 990sqm gym and a 242 sqm retail unit along with parking and landscaping.
- 2.1.13. Given all of the foregoing, it is considered that the small two-bedroom property at Cumberland Street North East Lane needs to be understood in its immediate context; a dynamic and well-connected area close to the city centre where planning permission for hundreds of new residential units granted in recent months will help to reinforce its character as being largely residential, but with the ability to absorb a broad mix of uses.

3. Ongoing Management of the Property

3.1. Ongoing management measures

- 3.1.1. Under current proposals a separate licence application covering specific management measures looks likely to be required to be made in order to operate the property as visitor accommodation beyond Spring 2024. It seems appropriate in this planning statement to detail the arrangements that the applicant already has in place to ensure safe and responsible hosting.
- 3.1.2. The applicant's focus is on providing responsibly managed visitor accommodation. This is already reflected in the detailed management arrangements and conditions of use that they have established for the property. Servicing of the flat is provided by the property management company Logan Property. Logan Property comprises a team of 16 that provides industry-recognised high quality property management across Edinburgh. As a consequence, it is well aware of the need for servicing of flats to be both efficient and respectful of neighbouring residential properties.
- 3.1.3. In the circumstances, servicing of the flat therefore takes place according to a timetable established by Logan Property that is largely restricted to office hours. Towels and linens are removed off-site for cleaning and drying which takes place as a single trip using conventionally sized vehicles. All equipment required by cleaners is either stored within the property or can be brought to the property in a single trip. Similarly, the delivery and collection of linens and towels take place as single deliveries. In this way, 'user conflict' between those servicing the flat and the occupants of neighbouring properties can be minimised.
- 3.1.4. To date there have been no neighbourhood amenity issues with this property, but the management infrastructure is already in place to ensure that should these arise they can be addressed swiftly. Logan Property is proactive in liaising with neighbouring properties to establish and maintain good relations, and to offer neighbouring properties an immediate point of contact available 24/7. Accordingly, contact details are made available to neighbouring properties so any issues can be immediately addressed.
- 3.1.5. As a means of mitigating against the potential for anti-social behaviour at the point of booking, Logan Property as a matter of course, undertakes a careful identity check and carefully scrutinises a potential guests' previous review history. This offers a level of pre-booking screening that is more rigorous than would be found if booking a hotel, B and B or guesthouse. Potential guests are required to have submitted their full name, address and contact number, as well as verified ID before they can book. Those that haven't, are requested to do so or are otherwise unable to make a reservation. Guests must also have had no negative feedback in their profiles from stays at previous properties.
- 3.1.6. Where certain reservation requests trigger 'red flags', (such as where guests have not provided any introduction or background with their request to stay), procedures are in place to vet these requests further. Such potential guests will be asked to elaborate on their reason for travel and the group with whom they are travelling with. Logan Property may decide to decline the request if they are not satisfied with the nature of the guests' response.
- 3.1.7. To date, the management arrangements that are already in place have resulted in there being no complaints to the City of Edinburgh Council in terms of the use of this property as short-term let visitor accommodation. Similarly, there have been no call-outs from Police Scotland in relation to this property since it has operated as a short-term let.
- 3.1.8. Notwithstanding the central location of the property, the applicants want to encourage longer-term holiday lets to minimise the number of turnovers at the property, and by extension to minimise any impact on neighbouring properties. As a result, average stays here are between 3 and 5 nights.
- 3.1.9. Logan Property does not accept stag or hen parties and specify the following property rules in the online background 'folder' that is provided in advance of all arrivals in order to prevent any adverse impact to neighbouring properties:

- No loud music or external music devices are permitted. Music can be played using the supplied Sonos system only
- Notwithstanding the central location of the area, noise is to be minimised outside the property, to ensure neighbours are not disturbed by the departure and return to the property by guests.
- Use of the outdoor seating area and any socialising in this area is strictly proscribed after 10pm. (This allows the timing of its use to align with the Council licensed hours of the Cumberland Bar's large beer garden around the corner).
- No smoking within the property
- No banging or slamming of doors
- Clear instructions on the use and location of public waste facilities (recycling/general waste etc) for the property, including acceptable timings for their use.
- No pets
- A strict maximum of 4 guests at the property at any given time

3.2. Future Management arrangements

- 3.2.1. As noted above, the Scottish Government is proposing to bring in a licensing scheme for short-term let visitor accommodation properties, with applications for these expected as being required by existing operators by no later than April 2023. The future licensing regulations are designed to ensure that local Authorities have greater control over properties let out as visitor accommodation. Until that time however, there are currently safeguards already in place and those which could readily be put in place, to ensure that the property owners' conditions of use set out above will be adhered to. These will then mitigate against any potential for adverse impacts on neighbouring residential properties.
- 3.2.2. At the most basic level, the online booking systems routinely used to arrange and confirm short-term lets, allows both hosts and guests to screen each other through the inbuilt review system. The review system is mutually beneficial as it provides reassurance to each party; both that properties will be clean and well managed, and that guests will be well-behaved and respectful of the property. Under the review mechanism, at the end of every short-term letting, both parties are empowered to assess and review each other for the quality of the property and the behaviour of the guests respectively. Where as in this case, the host has clearly set out rental conditions such as eg.banning pets from the property, any breach of such conditions will result in a poor review which in turn will impact on the guests' ability to make further rentals in the future.
- 3.2.3. While not a matter that could be controlled through a planning condition, the applicant would be happy to volunteer entering into a good neighbour agreement with the Council covering important matters that could impact on the character of the area which could help to formalise the management procedures already set out above. The final detail of such an agreement would need to be negotiated with the Planning Authority. However it could include a commitment that a review will be posted for each guest staying in the property after their visit has ended, acknowledging where they had adhered to the individual 'house rules', and also recognising where this had not taken place; to ensure that this would be noted in their booking history going forward. The terms of such a formal good neighbour agreement could appear on the property listing, so all potential guests were aware of their requirements as guests to meet the good behaviour standards set out by the applicants and expected by the Council.

4. Policy Context

4.1.1. As noted above, this property had a commercial function until quite recently. Nevertheless, at the time of writing the status of the property is as a residential property. Commentary on the policy context for the change of use of residential accommodation to short-term let visitor accommodation is presented below.

4.1.2. National and local planning policies for Edinburgh typically deal with tourism as a whole rather than focussing on such changes of use in particular. Separate non-statutory guidance on change of use for business has also been produced. Both policies and guidance are therefore examined in this section of the planning statement.

4.2. Development Plan Context

4.2.1. Under Section 25 of the Town and Country Planning (Scotland) Act 1997 (as amended), the determination of planning applications is to be made in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan does not include either the National Planning Framework for Scotland 3 (NPF3 (2014)), or the current Scottish Planning Policy (SPP (2014)), which do not have the status of Development Plan for planning purposes.

4.2.2. The City of Edinburgh sits within the SESplan strategic development plan area. Accordingly, the Development Plan for this area currently comprises SESplan (SESplan (2013)) and the Adopted Edinburgh Local Development Plan (LDP (2016)).

4.3. SESplan Strategic Development Plan (Adopted June 2013)

4.3.1. Within its Vision, SESplan notes (paragraph 13) that “the key sectors of financial and business services, higher education and the commercialisation of research, energy, tourism, life sciences, creative industries, food and drink and enabling (digital) technologies are central to the regional economy.”

4.3.2. The SESplan chapter on economic growth follows up on this statement (paragraph 96) where it states that “The following sectors are considered to be of strategic importance to the economy of the SESplan area: financial and business services, higher education and the commercialisation of research, energy, tourism, life sciences, creative industries, food and drink and enabling (digital) technologies

4.3.3. Paragraph 98 of SESplan examines the hierarchy of the network of centres across the SESplan region. In this regard it recognises the important role that Edinburgh plays as a service centre within Scotland and beyond. It notes that “Edinburgh City Centre is the largest centre and is positioned at the top of the network of centres. It performs a broad range of regional and national functions including shopping, office, leisure, culture, tourism and government and competes with other regional centres in Scotland and the North of England”.

4.4. Edinburgh Local Development Plan (LDP) (Adopted November 2016)

4.4.1. Part 1 of the written statement of the Adopted LDP does not contain any planning policies and deals instead with site specific proposals providing an overarching narrative to explain the spatial strategy. As part of this narrative, paragraph 56 states that “the strength of Edinburgh’s economy is based on a range of key sectors, for example tourism, financial services, life sciences and higher education”.

4.4.2. Part 2 of the LDP contains planning policies, although none that deal specifically with proposed changes of use of residential properties to visitor accommodation. Indeed overall, part 2 of the Adopted LDP makes relatively few references to tourism within any of its policies.

4.4.3. While not directly relevant to the determination of this planning application, the supporting text for Policy Emp10 ‘Hotel Development’ provides some useful narrative setting out the need for visitor accommodation in the city:

“Tourism is the third biggest source of employment in Edinburgh, providing jobs for over 31,000 people. Maintaining and developing this key sector in the city’s economy relies upon sufficient provision of high-quality tourist accommodation. In 2006 a study looking at tourist accommodation demand and supply was commissioned by the Council and others. The study identified the particular importance of hotels to generating economic benefit from growth in tourism and satisfying the main sources of demand for accommodation. The study identified a theoretical requirement for 4,000 new hotel rooms in Edinburgh by 2015 to help meet predicted growth in demand. The city centre is the preferred location for most visitors, but accessible locations with good public transport accessibility within the urban area also offer opportunities for new hotel development”.

4.4.4. The policy in the Adopted LDP which is considered most relevant to this application at this time is policy HOU7 ‘Inappropriate uses in residential areas’. This notes:

“...developments, including changes of use, which would have a materially detrimental effect on the living conditions of nearby residents, will not be permitted”

4.4.5. The policy goes on to explain that its intention is to

“preclude the introduction or intensification of non-residential uses incompatible with predominantly residential areas and secondly, to prevent any further deterioration in living conditions in more mixed use areas which nevertheless have important residential functions. This policy will be used to assess proposals for the conversion of a house or flat to a House in Multiple Occupation (ie. for five or more people). Further advice is set out in Council Guidance”

4.4.6. The area around Cumberland Street, while predominantly residential, is also characterised by a healthy mixture of uses, reflecting its role as an exemplar living district for over 200 years. One of the best-known bars in the New Town is just around the corner to the south, and its large beer garden (the largest in the New Town area), is less than 50 metres from the front door of this property. To the north, the largest redevelopment site in the New Town in two centuries is also less than 50 metres away and will feature a diverse range of uses, as well as substantial residential development. A small and well-managed property functioning as a short-term let in this location adds further welcome texture to the neighbourhood, and has the potential to be an important asset to the city in the future, as it will offer a rare opportunity for visitors that want to ‘live like locals’ (an increasingly popular visitor aspiration) to experience what life is really like living in one of “the most important and best-preserved examples of urban planning in Britain”.

4.5. Council Guidance

4.5.1. The City of Edinburgh Council does not have any statutory Planning Guidance that is considered to be relevant to this application. However as noted in policy HOU7 it has published non-statutory guidance to support its LDP policies.

4.5.2. Amongst the suite of such guidance, the most relevant appears to be the Guidance for Householders. The earliest iteration of this Guidance was produced in 2012, but it has been updated periodically ever since. The latest version of the Guidance has just been republished and dates from November 2021.

4.5.3. The Guidance for Business contains some detailed discussion on changes of use from residential to short-term commercial visitor accommodation, as well as on changes of use in flatted properties. This guidance has been referenced both in recent planning applications and in recent appeal decisions. At present the content of this guidance would constitute a material planning consideration.

4.5.4. The guidance notes the following in terms of short-term commercial visitor accommodation: *“The change of use from a residential property to short term commercial visitor accommodation may require planning permission. In deciding whether this is the case, regard will be had to:*

- *The character of the new use and of the wider area*

- *The size of the property*
- *The pattern of activity associated with the use including numbers of occupants, the period of use, issues of noise, disturbance and parking demand, and*
- *The nature and character of any services provided.*

4.5.5. The same section then goes on to examine amenity as an issue that will need to be considered for such applications. It 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 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 residential amenity is greatest"

4.5.6. A further statement specifically on flatted properties is made on page 7 of the document where it notes:

"Change of use in flatted properties will generally only be acceptable where there is a private access from the street"

4.5.7. As regards the property at Cumberland Street North East Lane, which is centrally located, enjoys its own access, and is just around the corner from a busy public house that generates background noise throughout the day and into the evening, it is considered that the change of use proposed here is in accordance with the non-statutory Guidance.

4.6. National Planning Policy Context

4.6.1. As noted above, NPF3 (2014) and SPP (2014) do not have the status of forming part of the Development Plan but are relevant material considerations for all planning applications. National planning policy and advice currently comprises: the National Planning Framework for Scotland 3 (2014); Scottish Planning Policy (2014 (Revised December 2020)).

4.7. The National Planning Framework for Scotland 3 (NPF3)

4.7.1. NPF3 represents a spatial expression of the Scottish Government's aspirations for sustainable economic growth in Scotland over the next 20-30 years. It sets out at the national level, the Scottish Government's strategy for the country's development, in terms of how we are to develop our environment and includes development proposals identified as schemes of national importance. Whilst it is not prescriptive, NPF3 will form a material consideration when determining applications and, as such, will be a consideration in determining the application for any proposed development.

4.7.2. Of particular relevance to this proposal therefore is paragraph 1.7 of the document which recognises tourism as one of Scotland's key economic sectors, as well as page 12 of the document which states *that "Edinburgh is one of Europe's most important centres for financial services and tourism, and the world's foremost festival city"*. Further, page 13 of the document goes on to note that *"Within Edinburgh, the city centre, the waterfront, West Edinburgh and South-East Edinburgh will be a focus for growth. The city centre is the civic, cultural, tourism and commercial hub, with its world-renowned built heritage as a key asset"*. Finally, in the section 'Further key actions', the document notes that *"Planning authorities will support VisitScotland's Tourism Development Framework in their development plans"*.

4.8. Scottish Planning Policy (SPP)

4.8.1. Scottish Planning Policy (SPP) (2014) is a statement of Scottish Government policy on land use planning.

4.8.2. Where relevant to the current proposals, SPP recognises tourism as one of the “key sectors for Scotland with particular opportunities for growth”.

5. Appeal Decisions

- 5.1.1 In a number of recent applications for the change of use of a residential property to short-term let visitor accommodation, the Council has referenced recent appeal decisions as material considerations in their assessments. The following paragraphs consider firstly the key determining matters that have been identified by the Council from recent appeal decisions by the DPEA and then assesses the current proposals against these issues. The main determining issues in these cases relate to the following:
- *The location of the property and 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.*
 - *These appeals have also found that short stay visitor accommodation units can be acceptable in predominately residential areas.*
- 5.1.2 In terms of the issue of a private access, this property does not share a common stair and has its own front door with direct access to the street.
- 5.1.3 As noted above it is also useful to recognise that the average duration of stay for those enjoying this small, two-bedroom property as a short term let is between 3 and 5 days. Given the multitude of amenities and excellent transport connections available within relatively close proximity of the property, it doesn't seem unreasonable to expect that a full-time owner or tenant might also be expected to have a more active movement pattern than those living in quieter and wholly residential parts of the city. The central location of the property would certainly be understood by anyone buying or renting this property as a residential property. Weighing up all these factors reasonably, it is not considered that the potential movement and activity of those staying in this small property as a short-term let would be very different from those that might be live here permanently.
- 5.1.4 This is a relatively small property located on the edge of the city centre in Scotland's capital city. It seems reasonable to speculate that guests staying here as a short-term let may wish to take advantage of its location and the relative abundance of options nearby (including the Cumberland Bar around the corner) to go out for meals and drinks, but to otherwise shop in a reasonably conventional fashion. The property is not considered large enough to be likely to trigger large orders for delivered food or groceries. It seems more reasonable to expect that guests might use the nearby Tesco Metro and Margiotta stores on Dundas Street (both approximately 3 minutes away on foot) to buy provisions. In summary their dining behaviour may occasion them to leave the property more than an owner or tenant, (hence removing them from the property for long spells), while their shopping behaviour is likely to be much the same as that of an owner or tenant.
- 5.1.5 As noted elsewhere in this report, the presence of the Cumberland Bar around the corner means that generations of residents at the east end of Cumberland Street have become used to a degree of ambient noise and disturbance. In this context a small and well-managed property such as this seems highly unlikely to introduce or intensify adverse amenity impacts to the surrounding neighbourhood.

6. Conclusions

The regulatory context for short-term letting in Scotland is changing. As has been rehearsed by both the Scottish Government and City of Edinburgh Council in recent times, there is now an appetite by policy makers to see the sector become better regulated. Such regulation is supported by the applicant who seeks a determination of this planning application as a prelude to applying for a licence once the procedure for doing so has been confirmed

The wording of City of Edinburgh Council's adopted LDP policy HOU7 and its supporting Guidance, means, that very few of the city's currently operating short-term let properties appear likely to be able to secure planning permission, and by extension a licence. The small number of properties that do have the potential to meet the existing policies therefore have an important future contribution to make to the city's tourism landscape. Such properties if located in appropriate locations and settings and managed according to best practice, can play an important role in diversifying the visitor accommodation offer across the city. These can continue to provide a small quantum of specialist accommodation that can complement hotels, hostels, Guest Houses and Bed and Breakfasts, and offer a different type of 'authentic' accommodation for visitors who would like to 'live like a local', or for whom conventional accommodation is not appropriate.

In the Scottish context, Edinburgh occupies a unique position in terms of its attraction to ever-growing numbers of tourists. Evidence from the last decade suggests that additional supply of tourist accommodation across the city is quickly taken up by increased demand, meaning that healthy occupancy rates can be maintained by a range of different visitor accommodation providers. Overall, the property at 2 Cumberland Street North East Lane can add positively to that choice and mix, by offering visitors what will shortly be a very rare opportunity to 'live like a local' in an area that is internationally renowned as an exemplar of early 19th Century domestic-scale urban design.

Under the management arrangements already in place, it is considered that there will be no adverse impact on either the amenity of neighbouring residential properties or the character of this internationally important neighbourhood, such as to warrant refusal of this planning application.

Taking all the foregoing into account, it is hoped that Officers will be able to support this application, as it is considered to successfully address Local Development Plan policy HOU7 and its supporting Guidance. There are not considered to be any policy matters that would warrant refusal of this application, and accordingly it is respectfully requested that this application be recommended for approval.

Angus Dodds MRTPI
Director

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CONTOUR
Town Planning

Report of Handling

Application for Planning Permission

2 Cumberland Street North East Lane, Edinburgh, EH3 6SB

Proposal: Change of use from residential to short-term let visitor accommodation.

Item – Local Delegated Decision

Application Number – 21/06633/FUL

Ward – B11 - City Centre

Recommendation

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

Summary

The proposal complies with Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as it will not harm the listed building or its setting and it will preserve or enhance the character or appearance of the conservation area.

However, the proposal will have a materially detrimental effect on the living conditions and amenity of nearby residents and therefore it does not comply with LDP policy Hou 7. It also does not comply with the SPP as it will not contribute towards sustainable development. Therefore, the recommendation is to refuse planning permission.

SECTION A – Application Background

Site Description

The application site relates to No. 2 Cumberland Street North East Lane. It is a 2 bedroom basement flat to the rear of Cumberland Street.

It is part of a B listed building. NT 25312 74659, 15/07/1965.

The site lies within the New Town Conservation Area and the World Heritage Site.

Description Of The Proposal

The application is for planning permission for the change of use of a residential flat to a short term visitor let accommodation.

Supporting Information

Planning Statement.

Relevant Site History

No relevant site history.

Consultation Engagement

Environmental Protection

Publicity and Public Engagement

Date of Neighbour Notification: 24 March 2022

Date of Advertisement: 14 January 2022

Date of Site Notice: 14 January 2022

Number of Contributors: 7

Section B - Assessment

Determining Issues

Due to the proposals relating to a listed building(s) and being within a conservation area, this report will first consider the proposals in terms of Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (the "1997 Heritage Act"):

- a) Is there a strong presumption against granting planning permission due to the proposals:
- (i) harming the listed building or its setting? or
 - (ii) conflicting with the objective of preserving or enhancing the character or appearance of the conservation area?
- b) If the strong presumption against granting planning permission is engaged, are there any significant public interest advantages of the development which can only be delivered at the scheme's proposed location that are sufficient to outweigh it?

This report will then consider the proposed development under Sections 25 and 37 of the Town and Country Planning (Scotland) Act 1997 (the 1997 Act):

If the proposal is in accordance with the development plan the determination should be to grant planning permission unless material considerations indicate otherwise?

If the proposal is not in accordance with the development plan the determination should be refuse planning permission unless material considerations indicate otherwise?

In the assessment of material considerations this report will consider:

- the Scottish Planning Policy presumption in favour of sustainable development, which is a significant material consideration due to the development plan being over 5 years old;
- equalities and human rights;

- public representations; and
- any other identified material considerations.

Assessment

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

a) The proposals harm the listed building and its setting?

The following HES guidance is relevant in the determination of this application:

- Managing Change in the Historic Environment: Guidance on the principles of listed buildings
- Managing Change in the Historic Environment: Setting
- Managing Change in the Historic Environment: Interiors

Managing Change in the Historic Environment: Interim Guidance on the principles of listed building consent sets out the principles for assessing the impact of a development on a listed building.

Managing Change in the Historic Environment: Setting sets out the principles that apply to developments affecting the setting of historic assets or places including listed buildings and conservation areas. It includes factors to be considered in assessing the impact of a change on the setting.

Managing Change in the Historic Environment: Interiors sets out the principles that apply to altering the interiors of historic buildings and states that the interior makes a substantial contribution to the special architectural or historic interest of a building.

There are no external or internal alterations proposed. As such, the proposal will not have an adverse impact on or cause harm to the listed building. The setting of the listed building and the setting of neighbouring listed buildings will be unaffected by the proposal.

Conclusion in relation to the listed building

The proposal complies with Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as it will not harm the listed building or its setting.

b) The proposals harm the character or appearance of the 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."

The New Town Conservation Area Character appraisal states *The New Town, constructed between 1767 and 1890 on the glacial plain to the north of the Old Town, contains an outstanding concentration of planned ensembles of ashlar-faced, world-class, neo-classical buildings, associated with renowned architects, including John and Robert Adam, Sir William Chambers, and William Playfair. Contained and integrated*

with the townscape are gardens, designed to take full advantage of the topography, while forming an extensive system of private and public open spaces. It covers a very large area, is consistent to an unrivalled degree, survives virtually intact and constitutes the most extensive surviving example of neo-classical town planning in the world.

The Conservation Area ranks as one of the most important in the United Kingdom, in terms of both its architectural, urban planning and historic interest. Its significance is reflected in the extensive number of Statutory Listed Buildings, the number of tourists that visit the area, and its international recognition as part of the UNESCO designated Old and New Towns of Edinburgh World Heritage Site.

There are no external alterations and the development preserves both the character and appearance of the conservation area. The change of use from a two-bedroom domestic flat to a short-term holiday let will not have any material impact on the character of the conservation area. The change of use would preserve the appearance of the conservation area.

Conclusion in relation to the conservation area

The proposals comply with Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

c) The proposals comply with the development plan?

The development plan comprises the Strategic and Local Development Plans. The relevant policies of the adopted Edinburgh Local Development Plan (LDP) to be considered are:

Environment Policies, Env 1, Env 3, Env 4 and Env 6.
Housing Policy, Hou 7.
Transport Policies, Tra 2 and Tra 3

The non-statutory Listed Building and Conservation Area Guidance and the non-statutory Guidance for Businesses are material considerations that are relevant when considering LDP policies.

Listed Buildings and setting

LDP Environment policy Env 4 (Listed Buildings - Alterations and Extensions) seeks to ensure that proposals to alter or extend a listed building are justified; that there will be no unnecessary damage to historic structures or diminution of its interest; and that additions are in keeping with other parts of the building.

LDP Environment policy Env 3 (Listed Buildings - Setting) states that development affecting the setting of a listed building will be permitted only if not detrimental to the appearance or character of the building, or to its setting.

The impact on the listed building, its setting and the setting of neighbouring listed buildings has been assessed in section a) above which concluded that the special architectural and historic interest of the building would not be harmed and the setting of

the listed buildings would be preserved. As the proposal complies with the statutory test, it therefore also complies with LDP policies Env 3 and Env 4.

Conservation Area

LDP Policy Env 6 (Conservation Areas - Development) states that development within a conservation area will be permitted if it preserves or enhances the special character or appearance of the conservation area and is consistent with the relevant conservation area character appraisal and demonstrates high standards of design and utilises materials appropriate to the historic environment.

The impact on the character and appearance of the conservation area has been considered above in b). It was concluded that the change of use would not have any material impact on the character of the conservation area and would preserve the appearance of the conservation area.

The proposal complies with LDP Policy Env 6.

World Heritage Site

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

The applicant has confirmed that there will be no external alterations to the building. The change of use of one flat from residential to short term let will not harm the setting of the World Heritage Site.

The proposal complies with LDP policy Env 1.

Proposed Use

The application site is situated in the urban area 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.

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.

These appeals have also found that short stay visitor accommodation units can be acceptable in predominately residential areas.

Paragraph 220 of the LDP acknowledges that tourism is the biggest source of employment in Edinburgh, providing jobs for over 31,000 people. Whilst there is not a specific LDP policy relating to the jobs created through the required care, maintenance and upkeep of SVCA properties, the economic benefits are a material planning consideration.

The application property is a two bedroom flat. It is located on Cumberland Street North East Lane. The lane is to the rear of Cumberland Street and it is a relatively quiet and sheltered residential lane. There are residential properties directly above and to the side of the property. Whilst the property has its own private front door it is noted that access to the flat is gained from a cobbled lane and down two flights of stairs. The use of the property as a short term let would likely introduce an increased frequency of movement to the flat at unsociable hours. Baggage would also likely be wheeled across cobbles and up and down the stairs which would add to the potential disturbance to neighbours.

The property also has its own patio area which is located near to where the rear windows of neighbouring properties are located. It is apparent that many of these nearby windows appear to permit light to bedrooms.

Environmental Protection were consulted as part of the assessment of the application. It stated that it was of the opinion that the application cannot be supported due to concerns relating to the potential for surrounding residential amenity to be affected.

The proposal will have a materially detrimental effect on the living conditions and amenity of nearby residents and therefore the proposal does not comply with LDP policy Hou 7.

Parking standards

LDP policy Tra 2 - Private Car Parking encourages low car provision where a development is accessible to public transport stops and that existing off-street car parking spaces could adequately accommodate the proposed development.

LDP policy Tra 3 - Private Cycle Parking supports development where proposed cycle parking and storage provision complies with the standards set out in Council Guidance.

There is no off street car parking available within the site however there is metered on street parking available nearby. The site is highly accessible by public transport.

There is no cycle parking standards for SCVA's. Bikes could be parked within the property or within the patio area of the property if required.

The Roads Authority had no comments to make on the application.

The proposals comply with policies Tra 2 and Tra 3.

Conclusion in relation to the Development Plan

The proposal does not comply with LDP Policy Hou 7 as the change of use of this property to a short-term visitor let would materially harm neighbouring amenity. There are no material considerations that would justify approval.

d) There are any other material considerations which must be addressed?

The following material planning considerations have been identified:

SPP - Sustainable development

Scottish Planning Policy (SPP) is a significant material consideration due to the LDP being over 5 years old. Paragraph 28 of SPP gives a presumption in favour of development which contributes to sustainable development. Paragraph 29 outlines the thirteen principles which should guide the assessment of sustainable development.

The proposal does not comply with all thirteen principles outlined within Paragraph 29 of the SPP as it would not protect the amenity of existing development. The proposal will therefore not contribute to sustainable development.

Emerging policy context

The Draft National Planning Framework 4 is being consulted on at present and has not been adopted. As such, little weight can be attached to it as a material consideration in the determination of this application.

While City Plan 2030 represents the settled will of the Council, it has not yet been submitted to Scottish Ministers for examination. As such, little weight can be attached to it as a material consideration in the determination of this application.

Equalities and human rights

Due regard has been given to section 149 of the Equalities Act 2010. No impacts have been identified.

Consideration has been given to human rights. No impacts have been identified through the assessment and no comments have been received in relation to human rights.

Public representations

A summary of the representations is provided below:

material considerations

- Would impact upon residential amenity. This is addressed in section C
- Impact on parking. This is addressed in section C
- Does not comply with the policies contained within the SPP. This is addressed in section D.
- Impact on littering and waste. The proposal will not have a material impact on levels of waste and littering

non-material considerations

- Loss of residential accommodation. This is not a material consideration under the current LDP. While City Plan 2030 represents the settled will of the Council, it has not yet been submitted to Scottish Ministers for examination. As such, little weight can be attached to it as a material consideration in the determination of this application.

Overall conclusion

The proposal complies with Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as it will not harm the listed building or its setting and it will preserve or enhance the character or appearance of the conservation area.

However, the proposal will have a materially detrimental effect on the living conditions and amenity of nearby residents and therefore it does not comply with LDP policy Hou 7. It also does not comply with the SPP as it will not contribute towards sustainable development. Therefore, the recommendation is to refuse planning permission.

Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following;

Reasons

1. The proposal is contrary to Local Development Plan Policy Hou 7 in respect of Inappropriate Uses in Residential Areas, as the use of this dwelling as a short stay let will have a materially detrimental effect on the living conditions and amenity of nearby residents.

Background Reading/External References

To view details of the application go to the [Planning Portal](#)

Further Information - [Local Development Plan](#)

Date Registered: 31 December 2021

Drawing Numbers/Scheme

01

Scheme 1

David Givan
Chief Planning Officer
PLACE
The City of Edinburgh Council

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

Appendix 1

Consultations

NAME: Environmental Protection

COMMENT: The main issues of concern from short-term lets relate to the impacts they can have on neighbouring residential amenity mostly by way of internal and external noise.

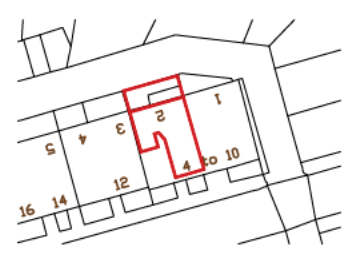
The application property has its own front door access which is a positive aspect in that it is not a shared access, however the access sits within a basement below other residential properties and their windows.

Short term lets generally involve a regular flow of visitors entering and exiting the property sometimes with suitcases. In this situation there is the potential for the visitors to cause external noise by way of wheeled suitcases rattling on road cobbles, cases banging on the steps and from voices in the early and late hours as visitors arrive and depart. There are also noise concerns relating to guests standing outside the property to congregate to smoke which could cause noise and also smoke to enter adjacent property windows.

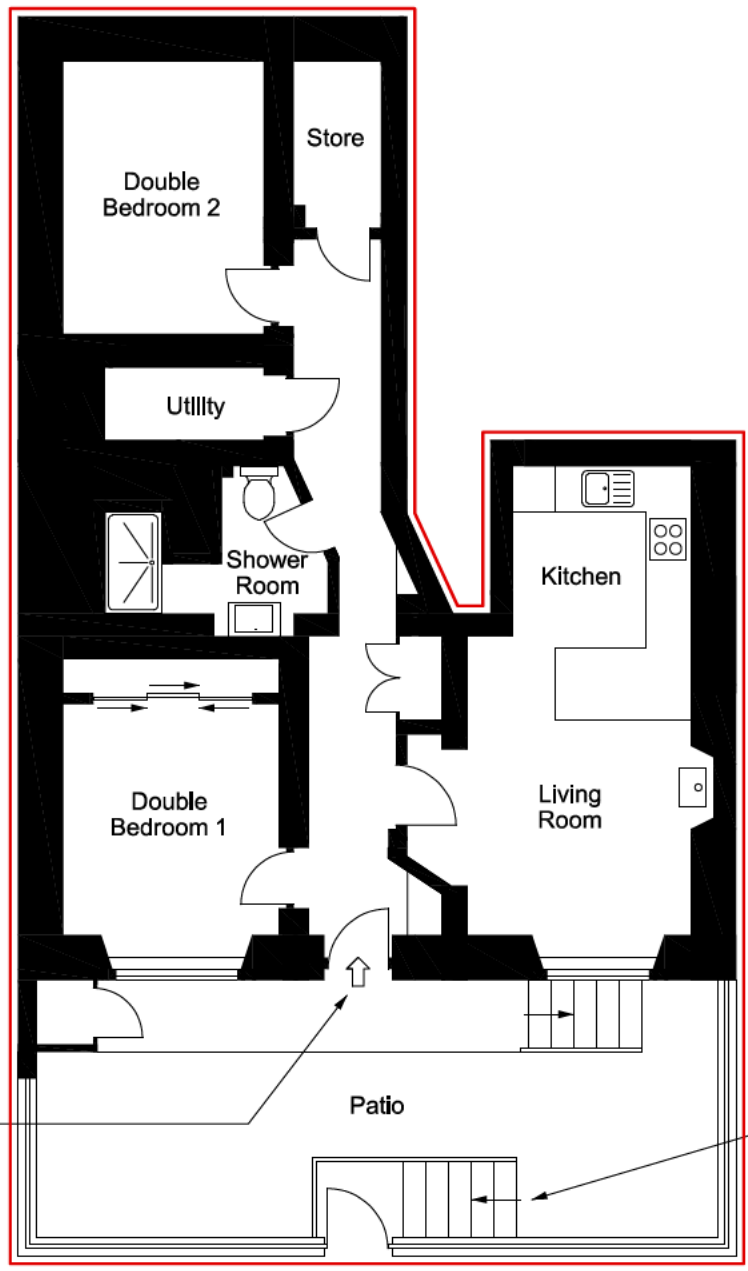
By way of internal noise, the Council has previously received complaints from neighbours situated adjacent to, above and below short term lets relating to loud music, banging noise and shouting being audible within the adjacent residential properties.

The applicant has advised in their supporting information that there have been no amenity or noise concerns relating to the application property as it is actively managed by a professional letting firm. However, there remains concerns that a short term let in this position (i.e. below residential properties) has the potential to cause detrimental amenity impacts by way of noise which will be difficult to control by the associated letting agent

Environmental Protection is therefore of the opinion that this application cannot be supported due to concerns relating to the potential for surrounding residential amenity to be affected.



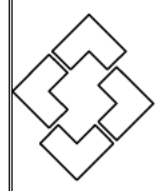
SCALE 1:1250



Entrance To Flat

Stairs Up To Street

Ground Floor



SquareFoot

2 Cumberland Street North East Lane,
Edinburgh,
Midlothian, EH3 6SB

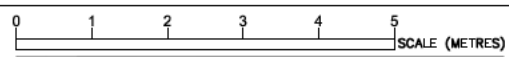
EXISTING/
PROPOSED
FLOOR PLAN

SCALE 1:100
PRINT AT A4

PLANS DRAWN:
DEC 2021



CHANGE OF USE FROM RESIDENTIAL TO
SHORT-TERM LET





Appeal Decision Notice

Decision by Fortune Gumbo, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-230-2367
- Site address: 1B Fingal Place, Sciennes, Edinburgh, EH9 1JX
- Appeal by The Grassum Consultancy Limited against the decision by City of Edinburgh Council
- Application for planning permission 21/04512/FUL dated 24 August 2021 refused by notice dated 26 November 2021
- The development proposed: Change of use from a residential property to a commercial short term visitor self-catering accommodation
- Application drawings: Site Plan, Floor Plan
- Date of site visit by Reporter: 18 March 2022

Date of appeal decision: 13 April 2022

Decision

I allow the appeal and grant planning permission. Attention is drawn to the two advisory notes at the end of the notice.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The development plan comprises of the City of Edinburgh Local Development Plan (LDP) and the Edinburgh and South East Scotland Strategic Development Plan. There are no strategic policies which are relevant to this proposal and I therefore confine my findings to the sole LDP policy relied on by the council. The appellant has not identified any other relevant policy. It is common cause between the parties that in the absence of specific LDP policies relating to short-term lettings, the only relevant LDP policy is Hou 7 'Inappropriate Uses in Residential Areas'. It is indeed the only policy cited in the reason for refusal. Having regard to the provisions of the development plan, the main issues in this appeal are the principle of the change of use, and whether the proposed use would be detrimental to residential amenity.

2. Policy Hou 7 safeguards against developments, including changes of use, which would have a materially detrimental effect on the living conditions of nearby residents. The accompanying explanatory text makes clear that the policy applies to mixed use areas with an important residential function, as well as predominantly residential areas.

3. The first issue before me is whether changing the flat's primary and lawful use from residential to commercial short term visitor self-catering accommodation would be acceptable 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 as set out in the council's report of handling.

4. According to the council, the proposed use would entail large numbers of visitors staying at the premises for a short period of time on a regular basis throughout the year. This, the council argues, would be in a manner which is dissimilar to that of permanent residents. I consider below whether any such differences would indicate that the proposed use would be incompatible with neighbouring residential uses.
5. The Meadows is an area which has large pedestrian footfall comprising primarily of the students who reside in the Newington Pollock Halls, Argyle Place, Chalmers Crescent, Sciennes Road and surrounding roads. I noted that there were a mix of uses in the vicinity of the appeal site especially on Argyle Place with a variety of commercial uses on the ground floor, including bars and a yoga studio with residential uses on the upper floors. Running parallel to Fingal Place is a relatively busy A road, A700/Melville Drive which is separated from Fingal place by a road verge and pedestrian footpaths. To the north of the A700/Melville Drive is the Meadows Park which at the time of my visit was well patronised.
6. I consider that given the nature of this location, the occupiers of the residential flats on Fingal Place would be accustomed to some degree of ambient noise or disturbance. On my site visit I observed that there was high background noise from the traffic and the park. I accept that the latter noise could have been as a result of the relatively warmer and sunny weather and therefore inviting to outdoors pursuits in the park opposite the appeal site. In addition, there was construction works going on a couple of doors away from the appeal property and a major demolition further down the road. Notwithstanding these unique set of circumstances, I consider that the normal background noise would be midway between what one would experience in an inner-city environment and a suburban environment. I would not characterise the area as a quiet residential area as the council has done in the report of handling.
7. The building is set in the basement level and benefits from a direct access from the road. The access is obtained from an original or historic staircase formed of ten stone slab steps, leading to a small landing area on the front of the only external door. There does not appear to be concerns that noise generated from within the property causes disturbance to neighbours. The external staircase which is the only means of access to and egress from the flat is for the sole use of the occupants and is not shared with any of the adjoining flats. The area to the front is small but can be used as private amenity space.
8. The council is concerned that the external area at the bottom of the stairs could be used as private amenity space as it provides sufficient space to accommodate a table and chairs. However, in my opinion it is unlikely that, when presented with such an array of activities that are in the vicinity of the appeal site and more appealing outdoor amenity facilities in the form of surrounding parks which are a stone's throw away, the visitors who are only staying for a limited time would prefer to sit underneath a set of stairs, below a pavement with no views.
9. Usually in considering material change of use proposals, an assessment has to be made as to the likely impact of a proposal, against the baseline of the lawful use. The appeal flat has one bedroom, one lounge, one bathroom, and is relatively modest in size. It would therefore be incapable of satisfactorily accommodating large groups of individuals and would be more suited to use by single occupants, couples or small families at the most. It is highly unlikely that for a property of this size, there would be a noticeable difference in the average daily number of occupants' movements in and out of the property between the lawful use and the proposed use. These factors in my view significantly reduce the likelihood of disturbance arising from guests whether inside, or outside the flat.

10. As set out above, the flat benefits from its own external door which is accessed by a set of ten stone slab steps. Concerns have been raised in representations regarding noise of suitcases being pulled up and down the steps. There are only 10 steps, so in a worst case this would be audible for only a few seconds. General ambient noise in this area is of a level where this would not give rise to any significant disturbance affecting residential amenity.

11. The council's non-statutory 'Guidance for Business' though not a development plan policy is a material consideration. The guidance states that, amongst other criteria, an assessment of a change of use to short-term letting should consider the character of the proposed use within its spatial context; pattern of use including the number of occupants; periods of use; noise and disturbance; and parking demand. With respect to flatted properties, the guidance says that, change of use will generally only be acceptable where there is a private access from the street. The proposal satisfies this criterion. Other than the parking demand, I have addressed all these criteria in my assessment above. The council has no concerns about the parking demand arising from the proposal. Based on the relatively central location of the appeal site within easy reach of the historical and city centre of Edinburgh and its proximity to the central universities, I have no reason to take a different view.

12. Given also the nature of this location, type of access arrangements, size of the property as outlined in preceding paragraphs, I am satisfied that the flat could be used for short-term holiday letting without any materially detrimental effects on the living conditions of nearby residents. I therefore find the proposal accords with LDP policy Hou 7.

Other Matters

13. The appeal site is a category B listed building which is located within the Marchmont, Meadows and Bruntsfield Conservation Area. I am required by Section 14(2) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 to 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. In addition, as the property is located within a conservation area, section 64(1) of the same act requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the area. There are no proposed physical alterations to the building. I therefore agree with the council that in this case, the proposed change of use would not have an effect on the historic or special interest of the listed building or on the character and appearance of the conservation area.

14. Objections raised in representations to the application referred to the lack of affordable residential accommodation and prevalence of short term let properties. However, no further evidence of this issue has been provided and currently, there are no development plan policies specific to the control of short-term lettings. Policy Hou 7 is focused on amenity issues rather than any broader matters relating to the wider land use planning framework. In the absence of any policy or evidential basis for considering these issues further, these are not the issues which my decision turns on.

Conclusions

15. I conclude, for the reasons set out above, that the proposed development accords overall with the relevant provisions of the development plan and that there are no material considerations which would still justify refusing to grant planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

Fortune Gumbo

Reporter

Advisory notes

1. **The length of the permission:** This planning permission will lapse on the expiration of a period of three years from the date of this decision notice, unless the development has been started within that period (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).
2. **Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).



Appeal Decision Notice

Decision by Stephen Hall, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-230-2358
- Site address: 7A Jamaica Street South Lane, Edinburgh, EH3 6HG
- Appeal by Elizabeth Graham against the decision by City of Edinburgh Council
- Application for planning permission 21/03508/FUL dated 15 July 2021 refused by notice dated 29 September 2021
- The development proposed: Change of use of dwelling to commercial short term holiday let
- Application drawing: Location Plan (Revised Red Line)
- Date of site visit by Reporter: 12 January 2022

Date of appeal decision: 26 January 2022

Decision

I allow the appeal and grant planning permission.

Preliminaries

1. The appellant has highlighted a minor error in the site boundary as illustrated on the plan originally accompanying the planning application. I have considered this appeal on the basis of the reduced amended boundary as illustrated on a plan submitted with the appeal, and which appears to reflect the appellant's actual ownership. I am satisfied that this amendment has no significant effect on the consideration of this appeal.
2. The appellant states that the use as a commercial short term holiday let has been ongoing since 2015. The council does not dispute this, and I am therefore satisfied that this is the case.
3. A separate appeal (PPA-230-2359) has been made in relation to the refusal of a parallel application for the change of use of the neighbouring property (7B Jamaica Street South Lane) to a commercial short term holiday let.

Reasoning

4. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise.
5. The development plan for the appeal site is the Edinburgh Local Development Plan. Having regard to the provisions of the development plan the main issue in this appeal is the effect on the amenity of nearby residents.
6. Policy Hou7 of the plan resists changes of use that would have a materially detrimental effect on the amenity of nearby residents. The council has also issued a

guidance document for businesses, which includes advice around changing residential property to short term commercial visitor accommodation. Although non-statutory, and therefore not part of the development plan, the guidance assists in the interpretation of Policy Hou7. It states that proposals will be assessed in terms of their likely impact on neighbouring residential properties, with considerations to include background noise in the area and proximity to nearby residents. The guidance goes on to resist proposals in flatted properties, which are characterised as having the greatest potential adverse impact on residential amenity. A separate section on flatted properties states that changes in the use of such properties will generally only be acceptable where there is a private access from the street.

7. The appeal property occupies the lower ground floor of what is apparently a converted town house fronting onto Heriot Row. The property is accessed down a short lane passing between some garages and a residential property at 7C Jamaica Street South Lane. This lane joins onto Jamaica Street South Lane at its eastern end, close to its junction with Jamaica Street.

8. Jamaica Street South Lane has a largely quiet residential character, whereas Jamaica Street contains mostly commercial uses, including a public house on the corner of Jamaica Street South Lane, studios and offices. Nearby is Howe Street, which is one of the major thoroughfares of Edinburgh's New Town. The entrance to the lane leading to the appeal property is located at the transition point between these commercial and residential areas.

9. It seems most likely to me that visitors staying at 7A Jamaica Street South Lane would mainly arrive and leave the property via Jamaica Street, as this would be the quickest route to the city centre and commercial attractions of Howe Street. I would not therefore expect any noticeable increase in disturbance to the residents of Jamaica Street South Lane as a whole.

10. Of some possible concern is the individual property at 7C Jamaica Street South Lane. Visitors to the appeal property must walk alongside number 7C, and directly pass its front door. The access lane is at this point paved with setts, and I note the council's concerns regarding the potential for noise disturbance from wheeled suitcases on this surface. While I accept such noise could arise at the start and end of visitors' stays, it would cause only a brief and occasional disturbance.

11. I accept that the pattern of use of a commercial short term holiday let may be different from that of a permanent home. Though likely to be occupied for fewer days in the year, there may be more comings and goings when the property is let, particularly in the evening. I consider that only one property (7C Jamaica Street South Lane) has the potential to be significantly affected, but that in reality adverse impacts are unlikely to arise in this case. This is due to the transitional commercial character of the location (in particular the close proximity of a public house), which leads me to conclude that existing levels of background noise in the area are likely to be quite high. I note the objection from the flat above the appeal property, but overall there does not appear to have been a history of numerous complaints over the years this use has been operating. For these reasons I conclude that the proposal would be unlikely to give rise to any significant disturbance to local residents.

12. I note the statement in the council's guidance that permission will not normally be granted in respect of flatted properties, but in this case, the property has its own front door, and as discussed above, I consider adverse impacts on residential amenity would be

minimal. The separate statement in the guidance that changes of use of flats will be acceptable where there is a private access from the street would appear to offer support for the proposal.

13. For the above reasons, I therefore conclude that there would be no materially detrimental effect on the amenity of nearby residents, and that the proposal complies with Policy Hou7 of the local development plan, and with the plan as a whole.

14. I am also conscious that only two rooms of the property receive natural (north-facing) light, making it somewhat less suitable as a permanent home than typical Edinburgh flats.

15. I have had regard to the fact that the property forms part of a category A listed building, and is located within the New Town Conservation Area. Because no changes are proposed to the external appearance or physical fabric of the building, I consider that these designations would be unaffected.

16. I therefore conclude, for the reasons set out above, that the proposed development accords overall with the relevant provisions of the development plan and I have identified no material considerations which would still justify refusing to grant planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

Stephen Hall

Reporter

Comments for Planning Application 21/06633/FUL

Application Summary

Application Number: 21/06633/FUL

Address: 2 Cumberland Street North East Lane Edinburgh EH3 6SB

Proposal: Change of use from residential to short-term let visitor accommodation.

Case Officer: Robert McIntosh

Customer Details

Name: Ms Judith Norkin

Address: 17 1f1 Royal Crescent Edinburgh

Comment Details

Commenter Type: Neighbour-Residential

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: The proposed change of use should not be approved because changing the use has a very high potential to interfere with the neighbouring properties' use and enjoyment of their own homes.

This property has an outdoor courtyard and this space has historically been used by residents for large social gatherings which produce a lot of noise (in the form of shouting and loud music), litter and bottles left in the street, and generally anti-social behaviour.

This is often late at night, and because the properties in the lane actually face out to the rear of the properties on Royal Crescent where most people on Royal Crescent and Fettes Row have their bedrooms, this anti-social activity is very disruptive for nearby residents trying to sleep.

In the past, our household has asked residents of this property to lower the volume of their music and shouting when they've entertained, but this has had no effect.

I think that this application change of use should not be granted because the raucous behaviour is a standard and well-documented behaviour for AirBnB properties.

If you grant this change of use, you are basically giving the property owner permission to impose their commercial activity and the poor behaviour of guests whose interests are not usually aligned with the residents, to behave however they wish and create problems for the permanent residents.

Please deny this application. Thank you.

Subject: 2 Cumberland Street North East Lane
From: Megan Brown <meganrosebrown29@gmail.com>
Date: 18/06/2022, 12:25
To: angus dodds <angus@contourtownplanning.com>

Hello,

We have been next door neighbours throughout the period that David has been operating 2 Cumberland Street North East Lane as a short term let. To date we have had no issues with any of his guests or more generally in living next door to a short-term let - subject to David's management controls for the property.

Best wishes, Tommy and Megan
3 Cumberland Street North East Lane

Development Management Sub-Committee Report

Wednesday 15 June 2022

**Application for Planning Permission
1 Salisbury Mews, Edinburgh, EH9 1QL**

Proposal: Change of use of residential mews building to short term let (in retrospect).

**Item – Committee Decision
Application Number – 22/01415/FUL
Ward – B15 - Southside/Newington**

Reasons for Referral to Committee

Given the significance of the issue of short-term lets to the public interest at present, the Chief Planning Officer considers this application should be decided by Committee

Recommendation

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

Summary

The proposal harms neither the listed building, its setting or the conservation area. It is therefore acceptable with regard to Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. It complies with the development plan. The proposal will preserve the special architectural and historical interests of the listed building and the setting of neighbouring listed buildings. The character and appearance of the conservation area will be preserved. There are no transport issues. There are no material considerations that outweigh this conclusion. The proposal is acceptable

SECTION A – Application Background

Site Description

The application property is a mews house situated off Salisbury Road and behind Newington Road. It is a one and a half storey element attached to a two-storey stone building which is a rear off-shoot of a stone terrace fronting Newington Road. There are two bedrooms, a main door access and no shared public or exclusive private garden. An allocated private parking space is available in Salisbury Mews.

A mix of uses are found in the immediate and surrounding area. Newington Road contains commercial uses, mostly but not wholly, at ground floor level, and is a busy main thoroughfare with frequent bus services. Salisbury Road also contains a few business/commercial uses Residential use is found above the shop units and makes up much of the land use being more predominant in the side streets. Some of the residential units function as student accommodation.

The property is in South Side Conservation Area. Blacket Conservation Area abuts South Side Conservation Area at the Salisbury Mews lane.

The building is attached to a B listed building on Newington Road and as such is classed as being listed. It is part of the block that includes 67-81 Newington Road which is listed under 39-47 (Odd Nos), 53-73 (Odd Nos) Newington Road and 4 East Newington Place (Ref: LB29406; date of listing: 14 December 1970). It is also adjacent to the B listed Building at 75-115 (Odd Nos) Newington Road and 55 Salisbury Road (Ref: LB29407; date of listing 14/12/1970).

Description Of The Proposal

The application seeks planning permission for a change of use from residential (Class 9) to a short term holiday let (sui generis use). The two bedrooms would provide for four guests to stay.

No external changes are proposed to the building.

The property is already operating as a short term let having operated as a short term let since summer 2016 and, therefore, this application is retrospective.

Supporting Information

Relevant Site History

No relevant site history.

Other Relevant Site History

Pre-Application process

There is no pre-application process history.

Consultation Engagement

No consultations undertaken.

Publicity and Public Engagement

Date of Neighbour Notification: 1 April 2022

Date of Renotification of Neighbour Notification: Not Applicable

Press Publication Date(s): 8 April 2022;

Site Notices Date(s): 5 April 2022;
Number of Contributors: 12

Section B - Assessment

Determining Issues

Due to the proposals relating to a listed building(s), this report will first consider the proposals in terms of Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997:

- Is there a strong presumption against granting planning permission due to the development harming the listed building or its setting?
- If the strong presumption against granting planning permission is engaged, are there any significant public interest advantages of the development which can only be delivered at the scheme's proposed location that are sufficient to outweigh it?

This report will then consider the proposed development under Sections 25 and 37 of the Town and Country Planning (Scotland) Act 1997 (the 1997 Act):

Do the proposals comply with the development plan?

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

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

In the assessment of material considerations this report will consider:

- the Scottish Planning Policy presumption in favour of sustainable development, which is a significant material consideration due to the development plan being over 5 years old;
- equalities and human rights;
- public representations; and
- any other identified material considerations.

Assessment

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

a) The proposals harm the listed building and its setting?

The following Historic Environment Scotland (HES) guidance is relevant in the determination of this application:

- Managing Change in the Historic Environment: Guidance on the Principles of Listed Building Consent
- Managing Change in the Historic Environment: Setting

- Managing Change in the Historic Environment: Interim Guidance on the principles of listed building consent sets out the principles for assessing the impact of a development on a listed building.
- Managing Change in the Historic Environment: Setting sets out the principles that apply to developments affecting the setting of historic assets or places including listed buildings and conservation areas. It includes factors to be considered in assessing the impact of a change on the setting.

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."

There are no external or internal alterations proposed. As such, the proposal will not have an adverse impact on or cause harm to the listed building. The setting of the listed building and the setting of neighbouring listed buildings will be unaffected by the proposal.

Conclusion in relation to the listed building

The proposal will not harm the listed building, its setting or the setting of the adjacent listed buildings. It is therefore acceptable with regard to Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

b) The proposals harm the character or appearance of the 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."

South Side Conservation Area Character Appraisal emphasises the harmonious scale, massing and materials and the significance of key institutional buildings within the area. Spatial Structure in this part of the conservation area is typified by larger block sizes and a degree of uniformity and solidity. This uniformity is broken on the east side of Newington Road by Georgian tenements set back from the pavement and a terrace of individual houses on the opposite side of the street. A key element of the architectural character is a continuing variety and diversity of architectural styles throughout this area. Newington Road is one of the conservation area's key shopping streets.

No external alterations are proposed and, therefore, the proposal will preserve and will not harm the appearance of the conservation area. The change of use from a two-bedroom domestic flat, albeit in retrospect, to a short term holiday let (STL) will not have any material impact on the appearance of the conservation area and, as such, would preserve its appearance.

The character of the conservation area is one of mixed uses and including busy shopping and trafficked streets. The application property sits behind such a road beside residential properties located in a lane. As the property has been operating as a short term let since 2016, it is currently contributing to the character of the conservation area. The change of use will have a neutral effect on the character of the conservation area and as such its character will be preserved and not harmed.

Conclusion in relation to the conservation area

The proposal does not harm the conservation area. Therefore, it is acceptable with regard to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

c) The proposals comply with the development plan?

The development plan comprises the Strategic and Local Development Plans. The relevant Edinburgh Local Development Plan 2016 (LDP) policies to be considered are:

- LDP Environment policies Env 3, Env 4 and Env 6
- LDP Housing policy Hou 7
- LDP Transport policies Tra 2, Tra 3.

The non-statutory 'Listed Buildings and Conservation Area' guidance is a material consideration that is relevant when considering policies Env 4 and Env 6. The non-statutory Guidance for Businesses is relevant when considering policy Hou 7.

Listed Buildings and setting

LDP Environment policy Env 3 (Listed Buildings - Setting) states that development affecting the setting of a listed building will be permitted only if not detrimental to the appearance or character of the building, or to its setting.

LDP Environment policy Env 4 (Listed Buildings - Alterations and Extensions) seeks to ensure that proposals to alter or extend a listed building are justified; that there will be no unnecessary damage to historic structures or diminution of its interest; and those additions are in keeping with other parts of the building.

The impact on the listed building, its setting and the setting of neighbouring listed buildings has been assessed in section a) above which concluded that the special architectural and historic interest of the building would not be harmed, and the setting of the listed buildings would be preserved. As the proposal complies with the statutory test, it therefore also complies with LDP policies Env 3 and Env 4.

Conservation Area

LDP Policy Env 6 (Conservation Areas - Development) states that development within a conservation area will be permitted if it preserves or enhances the special character or appearance of the conservation area and is consistent with the relevant conservation area character appraisal and demonstrates high standards of design and utilises materials appropriate to the historic environment.

The impact on the character and appearance of the conservation area has been considered above in b). It was concluded that the change of use would not have any material impact on the character of the conservation area and would preserve the appearance of the conservation area.

The proposal complies with LDP Policy Env 6.

Principle of development

The main policy that is applicable to the assessment of short-stay lets (STLs) 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. There are no policies relating specifically to the loss of housing stock or the control of short stay lets in the current LDP.

The non-statutory Guidance for Businesses states that an assessment of a change of use of dwellings to short stay lets 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.

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".

There has been a number of appeal decisions which have helped to assess whether short stay letting 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.

These appeals have also found that short stay visitor accommodation units can be acceptable in predominately residential areas.

Paragraph 220 of the LDP acknowledges that tourism is the biggest source of employment in Edinburgh, providing jobs for over 31,000 people. Whilst there is not a specific LDP policy relating to the jobs created through the required care, maintenance and upkeep of STL properties, the economic benefits are a material planning consideration.

In this case the property has its own access and does not have any private outdoor amenity space. The front door takes access almost directly from the kerbside in Salisbury Mews.

Any outside noise conflicts will be from the main thoroughfare of Newington Road and the parking area in the Mews lane. Due to the location of the property near a busy key city route consisting of mixed uses including commercial and entertainment and leisure uses, there is already a degree of background activity and ambient noise levels. Salisbury Mews is a quiet street situated behind busier and noisier streets. The question is whether the conversion of this unit to a short term let will make that materially worse and so adversely impact on residential amenity.

This is a two bedroom property suitable for four persons and the likelihood of disturbance to neighbours is low. The property is currently being used as a short term let. Whilst any planning permission cannot be conditioned in terms of number of occupants, it is unlikely it will be used for large numbers of visitors which may impact on neighbours' amenity. The applicant has advised that the property has been used for short term lets since 2016. Access to neighbouring gardens has been raised in the public comments. Gardens in Salisbury Mews include a few which are open to the street and where there are no boundary treatments to restrict access. The proposal will not change the existing situation in terms of the adjacent garden which is open to the street and where access to the garden is not restricted by a boundary wall, fence or hedge.

There will be no adverse impact on residential amenity and the proposal complies with LDP policy Hou 7.

Neighbouring Amenity

Policy Hou 7 (Inappropriate Uses in Residential Areas) states that developments, including changes of use, which would have a materially detrimental effect on the living conditions of nearby residents, will not be permitted.

This has been considered above under heading Principle of Development and it was concluded that there would be no adverse impact on residents.

Anti-social behaviour such as noise disturbance can be dealt with through relevant legislation, such as by Police Scotland or Environmental Health Acts.

Transport and Parking

LDP policy Tra 2 - Private Car Parking encourages low car provision where a development is accessible to public transport stops and that existing off-street car parking spaces could adequately accommodate the proposed development.

LDP policy Tra 3 - Private Cycle Parking supports development where proposed cycle parking and storage provision complies with the standards set out in Council Guidance.

There is one dedicated vehicle parking space and no cycle parking. The parking space is an existing parking space and there is no requirement for cycle parking for short term lets. Bicycles could be parked inside the property if required.

The proposal complies with policies Tra 2 and Tra 3.

Conclusion in relation to the Development Plan

The proposal complies with the development plan. It will preserve the special architectural and historical interests of the listed building, its setting and the setting of neighbouring listed buildings. The character and appearance of the conservation area will be preserved. The principle of the development is acceptable as it contributes to Edinburgh's strategic and regional role as a capital city and will not result in an unreasonable impact on neighbouring amenity. There are no transport issues.

d) There are any other material considerations which must be addressed?

The following material planning considerations have been identified:

SPP - Sustainable development

Scottish Planning Policy (SPP) is a significant material consideration due to the LDP being over 5 years old. Paragraph 28 of SPP gives a presumption in favour of development which contributes to sustainable development. Paragraph 29 outlines the thirteen principles which should guide the assessment of sustainable development.

The proposal complies with Paragraph 29 of SPP. It will contribute to the economy and will make efficient use of existing infrastructure including supporting the Nicolson Street/Clerk Street Town Centre.

Emerging policy context

The Draft National Planning Framework 4 is being consulted on at present and has not been adopted. As such, little weight can be attached to it as a material consideration in the determination of this application.

While City Plan 2030 represents the settled will of the Council, it has not yet been submitted to Scottish Ministers for examination. As such, little weight can be attached to it as a material consideration in the determination of this application.

Equalities and human rights

Due regard has been given to section 149 of the Equalities Act 2010. No impacts have been identified.

Consideration has been given to human rights. No impacts have been identified through the assessment and no comments have been received in relation to human rights.

Public representations

A summary of the representations is provided below:

material considerations - objections

- loss of housing stock. Addressed in section c) under heading Principle of Development.
- neighbouring and residential amenity. Addressed in section c) under heading Principle of Development and Neighbouring Amenity.
- inappropriate use in residential area. Addressed in section c) under heading Principle of Development and Neighbouring Amenity.

material considerations - support comments

- economic benefit to businesses and employment. Addressed in section c) under heading Principle of Development.
- neighbouring amenity - behaviour of guests. Addressed in section c) under headings Principle of Development and Neighbouring Amenity.

non-material considerations

- under provision of homes in Edinburgh. There is a five year land supply for housing in the City's planning authority area. Therefore, this is not a material planning consideration for this application.
- homelessness. This is not a material planning consideration.
- housing costs. This is not a material planning consideration.
- transient population. This is not a material planning consideration.
- Edinburgh residents want homes to be priorities over holiday lets. This is not a material planning consideration.
- Security - background checks of guests/visitors. This is not a material planning consideration.
- costs of tourist accommodation. This is not a material planning consideration.

Conclusion in relation to identified material considerations

The proposals do not raise any issues in relation to other material considerations identified.

Overall conclusion

The proposal harms neither the listed building, its setting or the conservation area. It is therefore acceptable with regard to Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. It complies with the development plan. The proposal will preserve the special architectural and historical interests of the listed building and the setting of neighbouring listed buildings. The character and appearance of the conservation area will be preserved. There are no transport issues. There are no material considerations that outweigh this conclusion. The proposal is acceptable.

Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following;

Informatives

It should be noted that:

1. The development hereby permitted shall be commenced no later than the expiration of three years from the date of this consent.
2. No development shall take place on the site until a 'Notice of Initiation of Development' has been submitted to the Council stating the intended date on which the development is to commence. Failure to do so constitutes a breach of planning control, under Section 123(1) of the Town and Country Planning (Scotland) Act 1997.

Background Reading/External References

To view details of the application go to the [Planning Portal](#)

Further Information - [Local Development Plan](#)

Date Registered: 22 March 2022

Drawing Numbers/Scheme

01.

Scheme 1

David Givan
Chief Planning Officer
PLACE
The City of Edinburgh Council

Contact: Jackie McInnes, Planning officer
E-mail: jackie.mcinnnes@edinburgh.gov.uk

Appendix 1

Summary of Consultation Responses

No consultations undertaken.

Location Plan



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