

# Development Management Sub-Committee Report

**Wednesday 7 December 2022**

**Application for Planning Permission  
Flat 12 129 High Street, Edinburgh, EH1 1SG**

**Proposal: Retrospective change of use from residential to Short Term Let (sui-generis).**

**Item – Committee Decision  
Application Number – 22/04537/FUL  
Ward – B11 - City Centre**

## **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 is acceptable with regard to 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.

The proposal complies with the relevant policies with the Edinburgh Local Development Plan and SPP. There are no material considerations that outweigh this conclusion. The proposal is acceptable.

## **SECTION A – Application Background**

### **Site Description**

The application site is a two-bedroom, fifth floor flat above commercial premises located on the northern side of High Street. The property shares its access to the street via a communal stair.

High Street is a key thoroughfare, served by public transport routes and benefiting from significant footfall. There are a mix of uses on the street and in the surrounding area including residential, office, retail, restaurants, public houses and tourist attractions. Public transport links are easily accessible from the site.

The application property is part of a category B listed building, 127 and 129 High Street, LB29043, 11/01/1989

The application site is in the Old and New Towns of Edinburgh World Heritage Site and Old Town Conservation area.

### **Description of the Proposal**

The application is for a retrospective change of use from residential to short term let (STL) (sui-generis). No internal or external physical changes are proposed.

### **Supporting Information**

- Planning Statement

### **Relevant Site History**

22/01676/FUL

Flat 12 129 High Street

Edinburgh

EH1 1SG

Change of use from residential to short term let (sui generis) (in retrospect).

Refused

9 June 2022

15/04096/FUL

123 High Street

Edinburgh

EH1 1SG

Modify existing planning consent 03/04038/FUL (10 flats with additional 3 flats).

Granted

7 January 2016

15/04096/LBC

123 High Street

Edinburgh

EH1 1SG

Modify existing planning consent 03/04038/FUL (10 flats with additional 3 flats).

Granted

7 January 2016

### **Other Relevant Site History**

Planning applications relating to the other flats within the stair have been submitted for 'Change of use (retrospective) from residential to short term let (Sui Generis)'.

The status of the applications are pending decision to grant.

Site address and references are:

Flat 1, 129 High Street - 22/01695/FUL

Flat 2, 129 High Street - 22/01697/FUL

Flat 3,129 High Street - 22/01682/FUL  
Flat 4,129 High Street - 22/01685/FUL  
Flat 5,129 High Street - 22/01689/FUL  
Flat 6,129 High Street - 22/01690/FUL  
Flat 7,129 High Street - 22/01693/FUL  
Flat 8,129 High Street - 22/01692/FUL  
Flat 9,129 High Street - 22/01696/FUL  
Flat 10,129 High Street - 22/01801/FUL  
Flat 11,129 High Street - 22/01802/FUL  
Flat 13,129 High Street - 22/04538/FUL

### **Pre-Application process**

Pre-application discussions took place on this application.

### **Consultation Engagement**

No consultations undertaken.

### **Publicity and Public Engagement**

**Date of Neighbour Notification:** 27 September 2022

**Date of Renotification of Neighbour Notification:** Not Applicable

**Press Publication Date(s):** 7 October 2022.

**Site Notices Date(s):** 4 October 2022.

**Number of Contributors:** 4

## **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: 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.

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 does not harm the character of the listed building or its setting. 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."

The Old Town Conservation Area Character appraisal states:

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

As stated previously, there are no external changes proposed. Therefore, the impact on the character and appearance of the conservation area is acceptable. In terms of the character of the conservation area, the proposal will provide accommodation for tourists and individuals visiting the city, within an area of already mixed use. The proposal will not have a negative impact on the character of the conservation area.

**Conclusion in relation to the conservation area**

The proposals are 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:

- Environment Policies, Env 1, Env 3 and Env 6.
- Housing Policy, Hou 7.
- Delivering the Strategy Policy, Del 2
- Transport Policies, Tra 2 and Tra 3.

The non-statutory 'Listed Buildings and Conservation Area' guidance is a material consideration that is relevant when considering policies Env 3 and Env 6.

The non-statutory guidance for Business is a material consideration when considering LDP Policy Hou 7.

### Listed Buildings and Setting

The impact on the setting of the listed building and on the setting of neighbouring listed buildings has been assessed in section a) above which concluded that this would be preserved.

The proposal complies with LDP Policy Env 3.

### Conservation Area

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.

### Proposed Use

The application site is situated in the Urban Area as defined in the LDP.

The main policy that is applicable to the assessment of short term lets is LDP Policy Hou 7 (Inappropriate Uses in Residential Areas), which seeks to protect residential amenity.

The non-statutory Guidance for Businesses states that an assessment of a change of use of dwellings to STCVA will have regard to:

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

The application property forms part of a communal stair, sharing access with twelve other residential units, eleven of which have applied retrospectively for planning permission having been in use as STLs since 2019, and one of which has now applying for planning permission (non-retrospectively) to change its use to an STL.

The retrospective grant of planning permission will ensure that their lawful use will be as STLs. As a sui generis use, this would prevent an individual property from returning to residential use without the benefit of planning permission. As such, the Planning Authority can ensure that any conflict between STL uses, and potential residential uses can be assessed as part of the planning application process.

A previous application for the same proposal at this property was refused in June 2022 (22/01676/FUL) due to there being a property within the stair having a lawful residential use. However, a suspensive condition which has been agreed with the applicant has been attached to each of these permissions to ensure that all the properties enter STL use at the same time and the potential for impacts to neighbouring amenity is avoided. This condition addresses the reason for refusal of the previous application.

The combination of residential use and short term let use within a shared stair can have negative impacts on neighbouring residential amenity. The provision of outdoor amenity space in STL use, in this case a private balcony, can have similar negative impacts on neighbours. However, in this instance there are no neighbours within the stair or proximity to the balcony that could be impacted as all the applications are to enter STL use at the same time.

The character of High Street is of a busy thoroughfare, with considerable pedestrian footfall and vehicle traffic passing along the street. The application site is directly above two public houses that operate into the early hours, and in close proximity to a range of leisure and night-time uses, which contribute to high ambient noise levels in the street during the daytime and night-time.

In these circumstances, despite the presence of residential properties on High Street and in the surrounding area, the impact of the STL use is acceptable given the background noise levels from uses that exist within the vicinity of the application property.

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.

The proposal will provide accommodation for tourists and individuals visiting the city, within an area of mixed use. The proposal will not prejudice or inhibit the activities of any nearby employment use and will have no adverse effect on residential amenity. It will not adversely affect the vitality of the city centre and its role as a strategic business centre, regional shopping centre and capital city.

The proposal complies with LDP Policies Hou 7 and Del 2.

#### World Heritage Site

The proposed change of use to a short stay let does not affect the reasons for the inscription of the World Heritage Site.

The proposal complies with LDP Policy Env 1.

#### Parking Standards

There is no vehicle parking and no cycle parking. Zero parking is acceptable as there is no requirement for cycle parking for STLs. Cycles could be parked inside the property.

The proposals comply with LDP Policies Tra 2 and Tra 3.

### **Conclusion in relation to the Development Plan**

The change of use of this property to an STL will not be of significant detriment to neighbouring amenity and is acceptable in this location within the city centre. It will not harm the listed building or its setting and will preserve the character and appearance of the Old Town Conservation Area. The proposal complies with the Development Plan.

**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 all thirteen principles outlined within paragraph 29 of the SPP. The proposal will therefore contribute to sustainable development.

Emerging policy context

The Revised Draft National Planning Framework 4 was laid before the Scottish Parliament on 08 November 2022 for approval. As it has not completed its parliamentary process, only limited weight can be attached to it as a material consideration in the determination of this application.

The Planning Committee considered the objections received to City Plan 2030 on 30th November 2022. At this time 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 negatively impact on residential amenity. Addressed in Section C.
- Rising number of short term lets in the area threatens the sense of place and community and local economy. Addressed in Section C.
- Impact on traffic congestion. Addressed in Section C.
- Impact on maintenance of listed buildings and/or buildings in a conservation area. Addressed in Section C.
- Impact on World Heritage Site's special characteristics of history and place. Addressed in Section C.
- Contradicts LDP policies. Addressed in Section C.
- Lack of differentiation between this and a previous application at the same property. Addressed in Section C.



### *non-material considerations*

- The property could not change to other uses after changing use to STL without Planning Permission.
- Shortage of housing.
- 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.

### **Conclusion in relation to identified material considerations**

None of the identified material considerations outweigh the proposals compliance with the Development Plan.

### **Overall conclusion**

The proposal is acceptable with regard to 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.

The proposal complies with the relevant policies within the local development plan and the SPP. There are no material considerations that outweigh this conclusion. The proposal is acceptable.

## **Section C - Conditions/Reasons/Informatives**

### **Conditions**

The recommendation is subject to the following.

1. Notwithstanding the grant of retrospective planning permission for the use of property Flat 12- 129 High Street, Edinburgh shall cease as a short stay let until such time as planning permission 22/01695/FUL Flat 1 - 129 High Street, Edinburgh has been implemented in full as a short stay let. Confirmation shall be submitted in writing to the Planning Authority that the use granted under permission 22/04537/FUL has been taken up.

### **Reasons: -**

1. In order to protect residential amenity.

### **Background Reading/External References**

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

### **Further Information - Local Development Plan**

**Date Registered: 9 September 2022**

**Drawing Numbers/Scheme**

01, 02

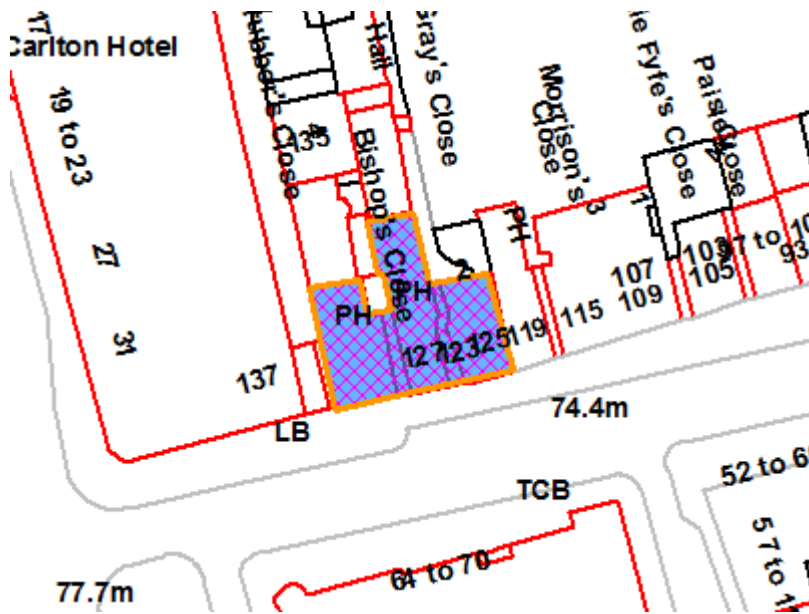
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## Summary of Consultation Responses

No consultations undertaken.

### Location Plan



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