

# Development Management Sub-Committee Report

**Wednesday 7 December 2022**

**Application for Planning Permission  
Flat 11 8 Torphichen Street, Edinburgh, EH3 8JQ**

**Proposal: Change of use (retrospective) from residential to short term let (sui generis).**

**Item – Committee Decision  
Application Number – 22/01787/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 Scottish Planning Policy (SPP). There are no material considerations that outweigh this conclusion. The proposal is acceptable.

## **SECTION A – Application Background**

### **Site Description**

The application site relates to a two-bedroom second floor flat, fronting Torphichen street. Access is gained through a shared entrance hallway. The building comprises eleven other flats - the remaining flats currently have applications pending consideration for change of use from residential to short term lets (STL).

The flat is situated within a B listed building (44923), statutorily listed on 14/12/1970. An early-mid 19th century classical pavilion.

The property is located within the West End Conservation Area and the Old and New Towns of Edinburgh World Heritage Site.

### **Description of the Proposal**

The application is for planning permission for the change of use (retrospective) from residential to short term let (sui generis).

### **Supporting Information**

Planning Statement

### **Relevant Site History**

15/00816/FUL

GF

8 - 12 Torphichen Street

Edinburgh

EH3 8JQ

Change of use from offices to residential apartments partially at lower ground level, and also at ground, first and second floors.

Granted

22 April 2015

### **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 Torphichen Street - 22/01784/FUL

Flat 2 Torphichen Street - 22/01789/FUL

Flat 3 Torphichen Street - 22/01790/FUL

Flat 4 Torphichen Street - 22/01791/FUL

Flat 5 Torphichen Street - 22/01796/FUL

Flat 6 Torphichen Street - 22/01792/FUL

Flat 7 Torphichen Street - 22/01797/FUL

Flat 8 Torphichen Street - 22/01793/FUL

Flat 9 Torphichen Street - 22/01795/FUL

Flat 10 Torphichen Street - 22/01786/FUL

Flat 12 Torphichen Street - 22/01788/FUL

## **Pre-Application process**

There is no pre-application process history.

## **Consultation Engagement**

No consultations undertaken.

## **Publicity and Public Engagement**

**Date of Neighbour Notification:** 26 April 2022

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

**Press Publication Date(s):** 6 May 2022.

**Site Notices Date(s):** 29 April 2022.

**Number of Contributors:** 1

## **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 West End Conservation appraisal states *"The protection of an area does not end with conservation area designation; rather designation demonstrates a commitment to positive action for the safeguarding and enhancement of character and appearance. The planning authority and the Scottish Executive are obliged to protect conservation areas from development that would adversely affect their special character. It is, therefore, important that both the authorities and other groups who have an interest in conservation areas, and residents are aware of those elements that must be preserved or enhanced. The Conservation Area was originally designated in 1980 and amended in 1995*

*The Edinburgh World Heritage Site boundary overlaps the current West End Conservation Area. From Haymarket the boundary runs up Morrison Street to Torphichen Place, where it turns north to meet Torphichen Street and then turns east. After this, the boundary follows Canning Street Lane before skirting the rear of Rutland Square, moving onto Rutland Street up to Princes Street, skirting round the Caledonian Hotel and then following Lothian Road to meet East Fountainbridge. The boundary follows East Fountainbridge up to the West Port where it meets with and follows the boundary of the Old Town Conservation Area on Lady Lawson Street."*

There are no external alterations and the development preserves both the character and appearance of the conservation area. The change of use from a residential premises to a short-term 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 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:

- Local Development Plan Environment Policies, Env 1, Env 3, Env 4 and Env 6.
- Local Development Plan Housing Policy, Hou 7.
- Local Development Plan Delivering the Strategy Policy, Del 2
- Local Development Plan 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 LDP Policies Env 3, Env 4 and Env 6.

The non-statutory Guidance for Business is a material consideration that is relevant when considering LDP Policy Hou 7 and the Edinburgh Design Guidance is a material consideration when considering LDP Policies Tra 2 and Tra 3.

#### **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 the objectives of 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.

### World Heritage Site

The proposed change of use as 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.

### Principle of development

The application site is situated in the Urban Area and City Centre Retail Core, 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 SCVA will have regard to:

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

The application property is located on the corner of Torphichen Street and Torphichen Place. The character of the immediate area is primarily commercial, with elements of short term lets and low levels of residential. Torphichen Street is a busy thoroughfare, with high ambient noise levels. Vehicular traffic is considerable throughout the day. The level of amenity is that of a busy mixed-use area. The nature of the vicinity is one in which STL use can be supported in principle.

The property forms part of a larger apartment building, previously in commercial use. It shares access with eleven other units, each of which has applied retrospectively for planning permission, to regularise their use as STLs.

The combination of residential use and STL use within a shared stair can have negative impacts on neighbouring residential amenity. However, in these circumstances there are no nearby neighbours to be impacted, as all the units within the stair are already in short term use.

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.

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 already 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.

#### Parking standards

There is no off street car parking available within the site and no immediate on street parking available nearby. The site is highly accessible by public transport via tram, train and bus.

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

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

The change of use of this property to a STL will not be materially detrimental 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 Conservation Area. The proposal complies with the Development Plan. There are no material considerations that outweigh this conclusion.

#### **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 Draft National Planning Framework has been consulted on but has not yet been adopted. As such, little 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*

- The change of use would detrimentally affect growth, community and place. With emphasis on the World Heritage Site. This is addressed within section 'B and C'
- Increase in congestion and reduced quality of life in the immediate community. This is addressed within section C
- Risk of unnecessary damage to historic structures. This is addressed within section 'A'
- Detrimental effect on amenity and the living conditions of nearby residents. This is addressed within section C
- *non-material considerations*
- The application is under separate ownership, and not owned by the management company which has submitted the applications
- Aspects of joint responsibility in listed buildings and conservation areas are diminished by the increase of short-term occupants.
- Loss of affordable housing. This is not a material consideration under the current LDP. While City Plan 2030 represents the settled will of the Council, it has not come into effect. As such, little weight can be attached to it as a material consideration in the determination of this application.
- The proposals contradict Edinburgh Council's Local Development Plan policies DES1 and DES5. These policies are not applicable to a change of use.



## **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 West End Conservation Area.

The proposal complies with the relevant policies within the LDP and the SPP as it will contribute to sustainable development. 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;

1. No conditions attached to this permission.

## **Background Reading/External References**

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

**Further Information - [Local Development Plan](#)**

**Date Registered: 31 March 2022**

## **Drawing Numbers/Scheme**

01, 02 A

Scheme 1

**David Givan**  
**Chief Planning Officer**  
**PLACE**  
**The City of Edinburgh Council**

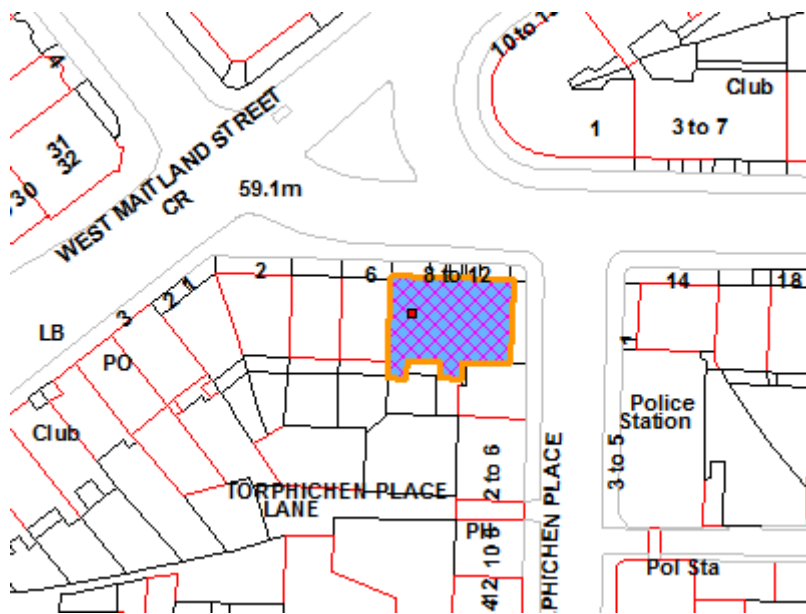
Contact: Benny Buckle, Assistant Planning Officer  
E-mail: [benny.buckle@edinburgh.gov.uk](mailto:benny.buckle@edinburgh.gov.uk)

## Appendix 1

### Summary of Consultation Responses

No consultations undertaken.

### Location Plan



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