

Stefano Smith Planning.
FAO: Stefano Smith
58 Dean Path
Edinburgh
EH4 3AU

Ms Lindsay Callander.
Blaiket Mains
Crocketford Road
Dumfries
DG2 8QW

Decision date: 25 October 2022

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

Change of Use from a Flat (sui generis) to Short-term Let (sui generis) (in retrospect).
At 44 Jordan Lane Edinburgh EH10 4QX

Application No: 22/02875/FUL

DECISION NOTICE

With reference to your application for Planning Permission registered on 31 May 2022, 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:-

1. The proposal is contrary to Local Development Plan policy Hou 7 in respect of Inappropriate Uses in Residential Areas, as the use of the property 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 01,02, 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:

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 Lesley Porteous directly at lesley.porteous@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.

Report of Handling

**Application for Planning Permission
44 Jordan Lane, Edinburgh, EH10 4QX**

Proposal: Change of Use from a Flat (sui generis) to Short-term Let (sui generis) (in retrospect).

**Item – Local Delegated Decision
Application Number – 22/02875/FUL
Ward – B10 - Morningside**

Recommendation

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

Summary

The proposal is acceptable with regard to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as it will preserve the character or appearance of the conservation area.

The proposal does not comply with the relevant policy of the development plan as it would have a materially detrimental effect on the living conditions and amenity of nearby residents. It does not comply with the objectives of SPP, as it will not contribute towards sustainable development and a sustainable community. There are no material considerations that outweigh this conclusion.

SECTION A – Application Background

Site Description

The application property is a self-contained one-bed apartment set within the ground floor of a four-storey Victorian tenement at 44 Jordan Lane, Morningside. The property has its own main access door on to Jordan Lane. It has direct access to a communal garden from the kitchen to the rear.

Jordan Lane is predominantly residential. The immediate surrounding area contains a mix of uses including shops, cafes, restaurants and bars. The property is a two-minute walk from Morningside Road which is a key thoroughfare into the city centre and an important bus route. The property is very close to the town centre of Bruntsfield/Morningside as identified in the Local Development Plan (LDP) 2016..

The application site is located in the Morningside Conservation Area.

Description Of The Proposal

The application seeks planning permission for a change of use from residential to a short term let visitor accommodation. It is a retrospective application because the short term let use has been operating since 2018.

Supporting Information

Planning statement.

Relevant Site History

No relevant site history.

Other Relevant Site History

No other relevant planning site history.

Consultation Engagement

No consultations.

Publicity and Public Engagement

Date of Neighbour Notification: 25 October 2022

Date of Advertisement: 24 June 2022

Date of Site Notice: 24 June 2022

Number of Contributors: 2

Section B - Assessment

Determining Issues

Due to the proposed development falling within a conservation area, this report will first consider the proposals in terms of Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997:

- Is there a strong presumption against granting planning permission due to the development conflicting with the objective of preserving or enhancing the character or appearance of the conservation area?
- 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 character or appearance of the conservation area?

The Morningside Conservation Area Character Appraisal emphasises that the architectural character of the conservation area is largely composed of Victorian and Edwardian villas and terraces which form boundaries to extensive blocks of private open space. The villa streets are complemented by the profusion of mature trees, extensive garden settings, stone boundary walls and spacious roads. The villas which are in variety of architectural styles are unified by the use of local building materials.

There are no external changes proposed. Therefore, the impact on the appearance of the conservation area is acceptable. 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.

b) 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 policy Env 6
- LDP Housing policy Hou 7
- LDP 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 policy Env 6.

The non-statutory 'Guidance for Businesses' is a material consideration that is relevant when considering policy Hou 7.

Conservation Area

The impact on the character and appearance of the conservation area has been considered above in a). 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 and Principle of Development

The application site is situated in the urban area as defined in the adopted Edinburgh Local Development Plan (LDP) 2016.

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 sets out a number of criteria that are considered in an assessment of the materiality of a change of use of dwellings to an STL:

- 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.

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 property is a ground floor flat accessed via a main door opening directly on to Jordan Lane. It is a one bedroom property- with a box room - on the ground floor of a four storey flatted block.

The property is in a residential street formed mainly of tenements. The use of the property as a short term let would have the potential to introduce an increased frequency of movement to the flat and in the street at unsociable hours. The proposed one bedroom short stay use would enable two or more visitors to arrive and stay at the premises for a short period of time on a regular basis throughout the year in a manner dissimilar to that of permanent residents. There is also no guarantee that guests would not come and go frequently throughout the day and night and transient visitors may have less regard for neighbours' amenity than long standing residents. This would be significantly different from the ambient background noise that residents might reasonably expect and may impact on community cohesion and neighbours' sense of security.

The location of the flat, on the ground floor, surrounded by a high number of residential units, creates a situation where such a use would instead bring additional noise and disturbance immediately outside the flat in the residential street.

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

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

Parking Standards

There is controlled parking on Jordan Lane where residents permits are required.. The site is highly accessible by public transport. There is no cycle parking standards for SCVAs. Bikes could be parked within the property if required. 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 outweigh this conclusion.

c) 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 Paragraph 29 of SPP. It would not protect the amenity of existing development nor contribute to a sustainable community and, therefore, will not contribute to sustainable development.

Emerging policy context

The Draft National Planning Framework 4 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.

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

- Negative impact on residential amenity. Addressed in b) above.
- Not in accordance with Scottish Planning Policy on 'Socially Sustainable Places'. Addressed in c) above.
- Negative impact on parking. Addressed in b) above.
- Negative impact on community and security. Addressed in b) above.
- Increase in litter. The applicant should agree a waste strategy with CEC Waste Services.

non-material considerations

- Worsens Edinburgh's housing crisis. 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.
- Does not accord with Scottish Government Housing Policy on More Homes. The application has to be assessed against the Strategic and Local Development Plans.
- Housing should be for local people. This is not a material 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 is acceptable with regard to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as it will preserve the character or appearance of the conservation area.

The proposal does not comply with the relevant policy of the development plan as it would have a materially detrimental effect on the living conditions and amenity of nearby residents. It does not comply with the objectives of SPP, as it will not contribute towards sustainable development and a sustainable community. There are no material considerations that outweigh this conclusion.

Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following;

1. The proposal is contrary to Local Development Plan policy Hou 7 in respect of Inappropriate Uses in Residential Areas, as the use of the property 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 May 2022

Drawing Numbers/Scheme

01,02

Scheme 1

David Givan
Chief Planning Officer
PLACE
The City of Edinburgh Council

Contact: Lesley Porteous, Planning Officer
E-mail: lesley.porteous@edinburgh.gov.uk

Appendix 1

Consultations

No consultations undertaken.

Comments for Planning Application 22/02875/FUL

Application Summary

Application Number: 22/02875/FUL

Address: 44 Jordan Lane Edinburgh EH10 4QX

Proposal: Change of Use from a Flat (sui generis) to Short-term Let (sui generis) (in retrospect).

Case Officer: Lesley Porteous

Customer Details

Name: Miss Karen Williamson

Address: 43 Jordan Lane Edinburgh

Comment Details

Commenter Type: Neighbour

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: Jordan Lane is in a residential area; with property much sought after by individuals and families for homes to buy or rent, contributing to the immediate community and bringing wider benefits for the city. Short term lets do not bring these benefits and overall can act to detract from city services at cost to the area.

Comments for Planning Application 22/02875/FUL

Application Summary

Application Number: 22/02875/FUL

Address: 44 Jordan Lane Edinburgh EH10 4QX

Proposal: Change of Use from a Flat (sui generis) to Short-term Let (sui generis) (in retrospect).

Case Officer: Lesley Porteous

Customer Details

Name: Mr Stewart McNair

Address: 14/5 Canaan Lane Edinburgh

Comment Details

Commenter Type: Neighbour

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: We object to this development:

- 1). The development is contrary to the Scottish Government Housing policy on More homes - "everyone has a quality home that they can afford and that meets their needs"[1]
- 2). The development is contrary to Scottish Planning Policy on "socially sustainable places" and "supporting delivery of accessible housing".[2]
- 3). The development would have unacceptable impacts on neighbourhood amenity.

Applications for short term visitor accommodation (Airbnb type rentals) are usually rejected on amenity grounds (3). PLACE believes Scottish Government Policy already exists to reject applications on the basis of the impact on housing availability (1), plus community cohesion and accessible housing grounds (2).

Scottish Government Policy is listed as a material consideration under "Planning Circular 3/2013: Development management procedures, possible material considerations".[3]

Edinburgh has a housing crisis, and accessible housing crisis[4]. The Strategic Housing Investment Plan states the rapid growth in short term lets is creating further pressure on supply, rent levels and house prices in some areas as properties are purchased for short term let rather than long term rent or owner occupation.[5]

To demonstrate the scale of the problem, independent research for the Scottish Government finds 12.78% of all City Centre dwellings are listed as entire-property short-term lets on Airbnb alone.[6]

In the Old Town, one in four properties are listed on Airbnb.[7] Very few have planning authorisation. Short-term letting affects the ability of the area to function as a "socially sustainable place".

It has been concluded at thirty-three (and rising) DPEA planning appeals, that short-term lets have a materially detrimental impact on the living conditions for close neighbours⁸, such as in this case.

Significant impacts on neighbours include: increased antisocial behaviour, noise, disruption, intrusion by a frequent turnover of strangers, loss of community, loss of security and impacts on bins and parking.[8] [Main door properties only] - Main door properties have been found unacceptable for short-term letting when they are close to other residential properties and / or share communal spaces as in tenements [9],[10],[11],[12],[13],[14].

[1] <https://www.gov.scot/policies/more-homes/>

[2] <https://www2.gov.scot/Resource/0045/00453827.pdf>

[3] <https://www.gov.scot/publications/planning-series-circular-3-2013-development-management-procedures/pages/12/>

[4] <https://www.equalityhumanrights.com/en/publication-download/housing-and-disabled-people-scotlands-hidden-crisis>

[5] <https://democracy.edinburgh.gov.uk/mgConvert2PDF.aspx?ID=10135>

[6] <https://www.gov.scot/publications/short-term-lets-consultation-regulatory-framework-scotland-analysis-consultation-responses/>

[7] <https://www.theguardian.com/technology/2020/feb/20/revealed-the-areas-in-the-uk-with-one-airbnb-for-every-four-homes>

[8] <https://docs.google.com/document/d/1MV0-bfYx8B3bkCjF0i16ksV9QytfUmP4RGEevRAXEP8/edit>

[9] <https://www.dpea.scotland.gov.uk/CaseDetails.aspx?ID=120999>

[10] <https://www.dpea.scotland.gov.uk/CaseDetails.aspx?ID=120857>

[11] <https://www.dpea.scotland.gov.uk/CaseDetails.aspx?id=120050>

[12] <https://www.dpea.scotland.gov.uk/CaseDetails.aspx?ID=120492>

[13] <http://dpea.scotland.gov.uk/CaseDetails.aspx?ID=120047>

[14] <https://www.russell-cooke.co.uk/media/1039650/2012-ewca-civ-1202.pdf>