

Development Management Sub-Committee Report

Wednesday 10 May 2023

**Application for Planning Permission
1F4 125 Constitution Street, Edinburgh, EH6 7AE.**

Proposal: Change of use (retrospective) from flat to short-term let apartment (Sui Generis).

**Item – Local Delegated Decision
Application Number – 22/03457/FUL
Ward – B13 - Leith**

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.

It has not been sufficiently demonstrated that local economic benefits of the short term let (STL) use outweigh the loss of the residential accommodation and therefore the proposal does not comply with NPF 4 policy 30(e) part (ii).

However, the site is uniquely located within an existing guest house where access to the flat is taken past the reception area. This means that the impact of the short term let use would essentially be masked by the surrounding 12 rooms within the guest house. Residential properties in the vicinity of the guest house will already be used to the noise levels of the guest house activity. The proposal is acceptable with regard to amenity and the character of the area.

On balance, whilst the proposal does not fully comply with NPF 4 policy 30 (e) part (ii), it is recognised that there is a degree of economic benefit in STL use and in this instance, the use is compatible with the surrounding area, particularly the STL use operating within an existing guest house and will not have a detrimental impact on residential amenity.

Overall, the proposal complies with the provisions of the Development Plan.

SECTION A – Application Background

Site Description

The application site relates to a first floor flat at Flat 4 125 Constitution Street, Leith. The property has three bedrooms, a sitting /dining room and kitchen/breakfast room. The application property is on one level and is effectively embedded within an operational existing guest house- Pillar's House Bed and Breakfast. The application property is accessed via a main door off Constitution Street, which is shared with the guest house. To gain entry specifically to flat 4 access is through the reception area of the guest house. There is a private flat adjacent to flat 4 which is occupied by the manager of the guest house. The guest house has 12 individual rooms which occupy the remainder of the building.

This section of Constitution Street is mixed use in character. There is a semi-derelict church to the north, an office and warehouse to the west on the other side of Constitution Street. There is a block of flats to the south.

The application property is located within a category B listed building. LB 27233 dated 23/9/1995.

The site lies within the Leith Conservation Area.

Description of the Proposal

The application is for a change of use from residential to short term let (sui generis). No internal or external physical changes are proposed. The applicant has advised that the property has been used as a short term let since 2013. Therefore, the application is retrospective.

Supporting Information

Planning Statement.
National Planning Framework 4 Planning Statement.

Relevant Site History

No relevant site history.

Other Relevant Site History

No other relevant planning 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: 18 July 2022

Date of Renotification of Neighbour Notification: Not Applicable

Press Publication Date(s): 22 July 2022

Site Notices Date(s): 19 July 2022

Number of Contributors: 0

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 24, 25 and 37 of the Town and Country Planning (Scotland) Act 1997 (the 1997 Act):

Having regard to the legal requirement of Section 24(3), in the event of any policy incompatibility between National Planning Framework 4 (NPF4) & Edinburgh Local Development Plan 2016 (LDP) the newer policy shall prevail.

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:

- 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) Compliance with Planning Legislation on Listed Buildings and Conservation Areas

Setting of Listed Buildings

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."

Historic Environment Scotland's document 'Managing Change in the Historic Environment - Setting' states;

"Setting' is the way the surroundings of a historic asset or place contribute to how it is understood, appreciated and experienced."

The document states that where development is proposed it is important to:

- *identify the historic assets that might be affected;*
- *define the setting of each historic asset; and*
- *assess the impact of any new development on this".*

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 harms neither the listed building or its setting. It is therefore acceptable with regard to Sections 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 Leith Conservation Area Character Appraisal emphasises the area's unique and complex architectural character, the concentration of buildings of significant historic and architectural quality, the unifying effect of traditional materials, the multiplicity of land use activities, and the importance of the Water of Leith and Leith Links for their natural heritage, open space and recreational value

There are no external alterations proposed. The change of use from a flat to an STL 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 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?

National Planning Framework 4 (NPF4) was adopted by the Scottish Ministers on 13 February 2023 and forms part of the Council's Development Plan. NPF4 policies support the planning and delivery of Sustainable Places, Liveable Places and Productive Places and are the key policies against which proposals for development are assessed. Several policies in the Edinburgh Local Development Plan (LDP) are superseded by equivalent and alternative policies within NPF4.

The relevant NPF4 and LDP 2016 policies to be considered are:

- NPF4 Sustainable Places Policies 1 and 7.
- NPF4 Productive Places Tourism Policy 30.
- 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 historic assets.

The non-statutory 'Guidance for Businesses' is a material consideration that is relevant when considering change of use applications.

Listed Building and Conservation Area

There are no external or internal works proposed and as such there will not be a significant impact on historic assets and places. The proposal complies with NPF 4 Policy 7.

Proposed Use

With regards to NPF 4 Policy 1, the proposals do not involve operational development. The proposals will have a negligible impact on the global climate and nature crisis.

NPF 4 Policy 30 seeks to encourage, promote and facilitate sustainable tourism development which benefits local people, is consistent with our net zero and nature commitments, and inspires people to visit Scotland. Criterion 30 (b) and (e) specifically relate to STL proposals.

LDP Policy Hou 7 (Inappropriate Uses in Residential Areas), seeks to protect residential amenity.

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

Amenity

The property is on the first floor of a three-storey building which also accommodates Pillars House Bed and Breakfast and a private flat occupied by the guest house manager. There are no other private flats in the building and the guest house comprises 12 separate rooms. All the properties/guest rooms are accessed from the one main door off Constitution Street. There is no external amenity space.

As the application property is embedded within the guest house, there is already a degree of activity surrounding it. The impact of this STL use would essentially be masked by the occupants of the 12 guest rooms located around the building. Although there is a private flat adjacent to the application property the current occupant has an interest in the operation of the guest house. The character of the surrounding area in Constitution Street is fairly mixed. Despite the proximity of residential uses to the south of the building in which the application property sits, the impact on residential amenity will be no greater than that which currently exists due to the existence of the guest house. The application property has no private or public amenity space. The STL use is acceptable with regards to neighbouring amenity and the character of the area.

The proposal complies with NPF 4 30(e) part (i) and LDP policy Hou 7.

Loss of residential accommodation

Paragraph 220 of the LDP acknowledges that tourism is the biggest source of employment in Edinburgh, providing jobs for over 31,000 people. The use of the property by guests and the required maintenance and upkeep of STL properties are likely to result in a level of job creation and spend within the economy which can be classed as having an economic benefit.

The applicant has provided a planning statement which confirm how the application property is uniquely located inside an existing guest house which would be unsuitable for conventional residential use. The statement lists direct local economic benefits which the short term let use brings, including cleaning fees, meet and greet charges and income for the local launderette.

The property is embedded within an existing guest house with access taken past the reception area. The level of amenity for any stand-alone residential property would be compromised by the access through a commercial business. The historic use of the property has been residential and therefore the use of the property now as an STL would result in the loss of residential accommodation, which given the recognised need and demand for housing in Edinburgh it is important to retain, where appropriate.

It is accepted that the use of the property by guests will likely result in some economic benefit locally, and that there will be some positive impact on the local economy. However, residential occupation of the property also contributes to the economy, in terms of providing a home and the spend in relation to the use of the property as a home, including the use of local services and resultant employment, and the ability to make contributions to the local community.

In this instance, it has not been sufficiently demonstrated that the loss of the residential accommodation is outweighed by demonstrable local economic benefits. As such, the proposal does not comply with NPF 4 30(e) part (ii).

Parking Standards

There is no on-street parking available. This is acceptable and there is no requirement for cycle parking for short term lets.

The proposal complies with LDP Policies Tra 2 and Tra 3.

Conclusion in relation to the Development Plan

It has not been sufficiently demonstrated that local economic benefits of the STL use outweigh the loss of the residential accommodation and therefore the proposal does not comply with NPF 4 policy 30(e) part (ii).

However, the site is uniquely located within an existing guest house where access to the flat is taken past the reception area. This means that the impact of the short term let use would essentially be masked by the surrounding 12 rooms within the guest house. Residential properties in the vicinity of the guest house will already be used to the noise levels of the guest house activity. The proposal is acceptable with regard to amenity and the character of the area.

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Overall, the proposal complies with the provisions of the Development Plan.

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

The following material planning considerations have been identified:

Emerging policy context

City Plan 2030 represents the settled will of the Council, and it has been submitted to Scottish Ministers for examination. As such, limited 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

No representations have been received.

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 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.

It has not been sufficiently demonstrated that local economic benefits of the STL use outweigh the loss of the residential accommodation and therefore the proposal does not comply with NPF 4 policy 30(e) part (ii).

However, the site is uniquely located within an existing guest house where access to the flat is taken past the reception area. This means that the impact of the short term let use would essentially be masked by the surrounding 12 rooms within the guest house. Residential properties in the vicinity of the guest house will already be used to the noise levels of the guest house activity. The proposal is acceptable with regard to amenity and the character of the area.

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Overall, the proposal complies with the provisions of the Development Plan.

Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following;

Conditions

1. There are 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: 7 July 2022

Drawing Numbers/Scheme

01

Scheme 1

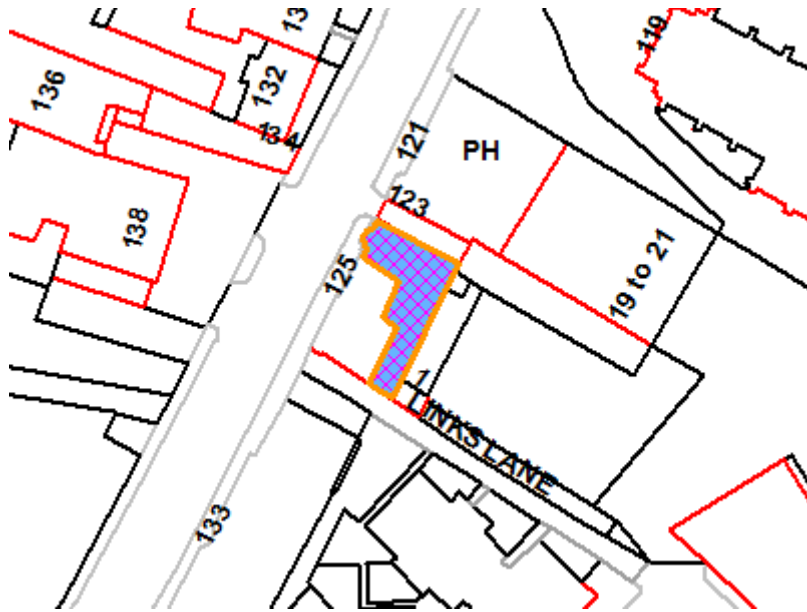
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Summary of Consultation Responses

No consultations undertaken.

Location Plan



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