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Per Agent

Decision date: 28 March 2023

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

Change of use from residential to short term let.
At 1 Well Court Edinburgh EH4 3BE

Application No: 22/05184/FULSTL

DECISION NOTICE

With reference to your application for Planning Permission STL registered on 13 October 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. No conditions are attached to this consent.

Reason for Refusal:-

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.
2. The proposal is contrary to National Planning Framework Policy 30(e) in respect of Local Amenity and Loss of Residential Accommodation, as the use of this dwelling

as a short stay let will result in an unacceptable impact on local amenity and the loss of a residential property has not been justified.

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

Drawings 01,02a, 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 James Armstrong directly at james.armstrong@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 STL
1 Well Court, Edinburgh, EH4 3BE**

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

**Item – Local Delegated Decision
Application Number – 22/05184/FULSTL
Ward – B05 - Inverleith**

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.

The change of use of this property to an STL will have an unacceptable impact on neighbouring amenity. The loss of the residential accommodation has not been justified. Whilst it is recognised that there is an economic benefit to the City as a whole from the provision of visitor accommodation in this case it does not outweigh the adverse impact on amenity or the loss of residential accommodation.

The proposal does not comply with the Development Plan policy NPF 4 policy 30(e) and LDP policy Hou 7. There are no material considerations that outweigh this conclusion. The proposal is unacceptable.

SECTION A – Application Background

Site Description

The application site is a three bedroom, first, second and third floor flat located in the south eastern corner of Well Court, to the north of the Water of Leith. The property has its own main door access, though this access passes through outdoor shared amenity space.

Well Court and the surrounding area are of predominantly residential character. Bus links are relatively accessible from the site.

The application site is located within the Dean Conservation Area, Old and New Towns World Heritage Site, and the New Town Gardens and Dean Historic Garden Designed Landscape.

The application property is part of a Category A Listed Building (Dean Path and Damside, 1-54 Well Court including Woodbarn Hall and Clock Tower, LB29900, 15/06/1965.

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

- Cover letter
- Supporting Statement
- NPF4 Planning Statement

Relevant Site History

11/02161/FUL

1F

1 Well Court

Edinburgh

EH4 3BE

Change of use from office to residential..

Granted

8 August 2011

14/01913/FUL

1F

1 Well Court

Edinburgh

EH4 3BE

Change of use from office to residential comprising formation of 1 three bedroom flat. Enlarge existing windows on north and south elevations (as amended to delete all external alterations).

Granted

24 June 2014

14/04129/LBC

1 Well Court

Edinburgh

EH4 3BE

Alter existing mezzanine level to form new bedroom with a new glazed partition (as amended)

Granted

19 November 2014

14/04927/LBC
1 Well Court
Edinburgh
EH4 3BE

Alterations to the attic to form a bedroom with en-suite shower room, retaining a portion of the attic structure. Enlarge attic window opening on north elevation to match existing on the ground floor and extend the mezzanine.

Granted

13 January 2015

14/01661/LBC
1F
1 Well Court
Edinburgh
EH4 3BE

Form new stair opening, form new access to proposed en-suite in tower and new stair access to proposed bedroom in attic (as amended).

Granted

27 June 2014

11/02161/LBC
1F 1 Well Court
Edinburgh
EH4 3BE

Minor internal alterations (as amended)

Granted

13 September 2011

Other Relevant Site History

No other relevant site history has been identified.

Consultation Engagement

No consultations.

Publicity and Public Engagement

Date of Neighbour Notification: 24 October 2022

Date of Advertisement: 28 October 2022

Date of Site Notice: 28 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 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

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

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

- o Managing Change in the Historic Environment: Guidance on the principles of listed buildings
- o 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, its setting, or the setting of neighbouring 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."

The Dean Conservation Area Character Appraisal emphasises the distinctive village character of the streetscape within Dean Village, the heritage of high quality buildings, the limited range of building materials, the predominance of residential uses, and the importance of the Water of Leith and its corridor.

As stated previously, there are no external changes proposed. Therefore, the impact on the character and appearance of the conservation area is acceptable.

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?

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 supports 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 Tackling the climate and nature crises 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 Buildings, Conservation Area and World Heritage Site

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

Proposed Use

With regards to NPF 4 Policy 1, the proposed change of use does not involve operational development resulting in physical changes to the property. 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.

In connection to short term 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".

Amenity

The application property has its own main door access, though this access passes through outdoor shared amenity space. There is a low to moderate degree of activity in the immediate vicinity of the property at any time.

The use of the property as an STL would introduce an increased frequency of movement to the property. The proposed three bedroom STL use would enable 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 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 individuals using the property as a principal home. The private garden area associated with the property is also of concern, as it has the capacity to amplify amenity impacts on neighbours.

The additional servicing that operating a property as an STL requires compared to that of a residential use is also likely to result in an increase in disturbances, further impacting on neighbouring amenity. However, this would be of lesser impact as it is likely that servicing would be conducted during the daytime.

This would be significantly different from the ambient background noise that neighbouring residents might reasonably expect and will have an unacceptable effect on the living conditions and amenity of nearby residents. The proposal does not comply with NPF 4 policy 30(e) part (i) and LDP policy Hou 7.

Loss of residential accommodation

NPF 4 policy 30 (e) part (ii) requires that where there is a loss of residential property this will only be supported where the economic benefits of the proposals are outweighed by demonstrable local economic benefits.

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 outlining the location of the property as popular with tourists, as being of benefit to local shops, letting agencies, tourist attractions, restaurants and the wider economy. Additionally, the planning statement notes that the proposal will not result in a loss of residential accommodation because the application is retrospective.

However, the use of the property 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. The retrospective nature of the application does not change that the property's lawful use is as a residential property.

Furthermore, 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, as well as by making 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 arising from the STL use. As such, the proposal does not comply with NPF 4 30(e) part (ii).

Parking standards

There is no motor vehicle or cycle parking. This is acceptable as there are no parking requirements for STLs.

The proposal complies 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 have an unacceptable impact on neighbouring amenity. The loss of the residential accommodation has not been justified. Whilst it is recognised that there is an economic benefit to the City as a whole from the provision of visitor accommodation in this case it does not outweigh the impact on amenity or loss of residential accommodation. The proposal does not comply with the Development Plan policy NPF 4 policy 30(e) and LDP policy Hou 7.

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

A summary of the representations is provided below:

3 objections
1 neutral

material considerations in objection

- Contrary to City Plan 2030 Policy Hou 7. Addressed in section D.
- Impact on residential amenity. Addressed in section C.
- Loss of residential accommodation. Addressed in section C.
- Impact on the use of recycling bins. Suitable recycling facilities are provided for the proposed use.
- Too many STLs in the area resulting in a negative impact on the community. The use of one residential property as a STL will not have a significant impact on the local community.

non-material considerations

- Price of the STL accommodation offered.

- Motivations of the developer.
- Incompatible with Scottish Planning Policy.
- The density of STLs in the area cause anti-social behaviour.

Conclusion in relation to other material considerations

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

Overall conclusion

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

The change of use of this property to an STL will have an unacceptable impact on neighbouring amenity. The loss of the residential accommodation has not been justified. Whilst it is recognised that there is an economic benefit to the City as a whole from the provision of visitor accommodation in this case it does not outweigh the the adverse impact on amenity or the loss of residential accommodation. The proposal does not comply with the Development Plan policy NPF 4 policy 30(e) and LDP policy Hou 7. There are no material considerations that outweigh this conclusion. The proposal is unacceptable.

Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following;

Conditions

1. No conditions are attached to this consent.

Reasons

Reason for Refusal

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.
2. The proposal is contrary to National Planning Framework Policy 30(e) in respect of Local Amenity and Loss of Residential Accommodation, as the use of this dwelling as a short stay let will result in an unacceptable impact on local amenity and the loss of a residential property has not been justified.

Background Reading/External References

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

Further Information - [Local Development Plan](#)

Date Registered: 13 October 2022

Drawing Numbers/Scheme

01,02a

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

Contact: James Armstrong, Assistant Planning Officer
E-mail: james.armstrong@edinburgh.gov.uk

Appendix 1

Consultations

No consultations undertaken.

Comments for Planning Application 22/05184/FULSTL

Application Summary

Application Number: 22/05184/FULSTL

Address: 1 Well Court Edinburgh EH4 3BE

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

Case Officer: Improvement Team

Customer Details

Name: Mr Roy Brady

Address: 1 Well Court Damside Edinburgh

Comment Details

Commenter Type: Neighbour

Stance: Customer made comments neither objecting to or supporting the Planning Application

Comment Reasons:

Comment: My wife and I are the owners of 1 Well Court and we did not make this application. We have owned this flat for 18 years and do not rent it out on either a short term or long term basis. We do not want our neighbors to think that we are asking for planning permission to do so. The flat above ours, the address of which is Well Court Hall sometimes referred to as 1F1 Well Court, has been rented on a short term basis for a number of years now. We have no objection whatsoever to the owners of Well Court Hall being granted planning permission to continue to do so. However, we hope that in the future this mistake will be rectified so we receive planning permission notifications and so will the owners of Well Court Hall.

Comments for Planning Application 22/05184/FULSTL

Application Summary

Application Number: 22/05184/FULSTL

Address: 1 Well Court Edinburgh EH4 3BE

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

Case Officer: Improvement Team

Customer Details

Name: Dr Amy Dyce

Address: 2a Dean Path Edinburgh

Comment Details

Commenter Type: Neighbour-Residential

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: As a neighbour that shares infrastructure with homes in Well Court, I am concerned that short term lets are negatively impacting local services and the community through infrastructure misuse.

Some practical examples:

- the recycle bins that serve both Well Court and Dean Path are often full of inappropriate material (e.g. landfill refuse), presumably left by short-term let occupants who don't understand that they are specifically for recycling, and not general waste (as there are general waste bins very close by which could just as easily be used).

- Often bags and boxes of glass recycling are left outside, beside the entrance to Well Court / beside the recycling bins. As local residents know to put their glass out in the specific council boxes on specific days, presumably this is also short term let visitors that are not aware of the waste management system. The glass gets left for days/weeks and is sometimes smashed across the road and pavements, creating a health & safety hazard.

In addition, I am also concerned in general about the density of short term let properties in Dean Village, and its potential negative impact on the area (i.e., the erosion of community; the potential for anti-social behaviour; and significant decline in residential housing availability).

Comments for Planning Application 22/05184/FULSTL

Application Summary

Application Number: 22/05184/FULSTL

Address: 1 Well Court Edinburgh EH4 3BE

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

Case Officer: Local1 Team

Customer Details

Name: Mr R M

Address: XX Main Street, Ratho EH28 8RB

Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: I have read through the application and the supporting document for the application for change of use from a residential to commercial (ie airbnb) property and wish to object on the following grounds:

With reference to the Edinburgh Local Development Plan (LDP), specifically Policy Hou 7, my understanding was that the policies were to preclude the introduction / intensification of non-residential uses across the city. Notwithstanding the fact this applicant has been running the property as an Airbnb rental since 2016 ("with an average rating of 4.97" as they are keen to state), the fact remains that housing in Edinburgh is in short supply, precisely as a result of developments like these.

It is for this reason that I am drawn to one of the arguments put forward by Montagu Evans on behalf of the applicant, in which they state that the "ability for the property to operate as a short term let will not negatively impact upon residential amenity, and will assist in providing alternative accommodation to those visiting Edinburgh for a number of nights, or on a monthly basis [sic]". Given the fact that the property is currently listed at £550/night on Airbnb (excluding service charges) I'd like to know how many folks can afford a monthly rent of >£16.5k/month. There is no doubt that this is for holidaymakers only.

Furthermore, this is a property that appears to have been taken off the market specifically for the purpose of its being turned into a short-term let by a commercial developer. The supporting documentation states that the applicant has owned the property for the past seven years, and states it has been listed on Airbnb for six.

This planning application should be refused on the basis of the fact that it reduces housing

availability and makes implausible claims regarding the alleged benefits it would bring to any potential long-term tenants.

Comments for Planning Application 22/05184/FULSTL

Application Summary

Application Number: 22/05184/FULSTL

Address: 1 Well Court Edinburgh EH4 3BE

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

Case Officer: Improvement Team

Customer Details

Name: Lord Cockburn Association

Address: 1 Trunks Close, 55 High Street, Edinburgh EH1 1SR

Comment Details

Commenter Type: Amenity Body

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: This appears to be a shared access context. This requires further clarification.

It is our view that in this residential shared stair/access context the proposed change of use is not in accordance with Policy Housing 7 'Inappropriate Uses in Residential Areas' as it would have a materially detrimental effect on the living conditions of other residents of the main door accessed residential stair, and so should not be permitted.

In addition, the proposed change of use is not supportive of either Scottish Government Housing policy on More homes - "everyone has a quality home that they can afford and that meets their needs" or Scottish Planning Policy on "socially sustainable places" and "supporting delivery of accessible housing".