

Mr Mark Kerr.
237 Morningside Road
Edinburgh
EH10 4QU

Decision date: 25 April 2023

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

Short term let (in retrospect).
At 6A Canaan Lane Edinburgh EH10 4SY

Application No: 22/05767/FULSTL

DECISION NOTICE

With reference to your application for Planning Permission STL registered on 22 November 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;

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 - 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:

The change of use of this property to a Short Term Let (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 tourist accommodation in this case it does not outweigh the adverse impact on residential 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.

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 Benny Buckle directly at benny.buckle@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
6A Canaan Lane, Edinburgh, EH10 4SY**

Proposal: Short term let (in retrospect).

**Item – Local Delegated Decision
Application Number – 22/05767/FULSTL
Ward – B10 - Morningside**

Recommendation

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

Summary

The change of use of this property to a Short Term Let (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 tourist accommodation in this case it does not outweigh the adverse impact on residential 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 relates to a two-bedroom, ground floor flat at 6A Canaan Lane. Access is gained via private front door entrance. The property is located within the Morningside conservation area.

Description of The Proposal

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

Supporting Information

- Planning Statement
- Planning Statement NPF4

Relevant Site History

No relevant site history.

Other Relevant Site History

No further relevant site history.

Consultation Engagement

No consultations.

Publicity and Public Engagement

Date of Neighbour Notification: 25 April 2023

Date of Advertisement: 9 December 2022

Date of Site Notice: 9 December 2022

Number of Contributors: 3

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 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 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 Morningside Conservation Area Character appraisal states: *"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 alterations. 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 Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

b) 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 Policy 1.
- NPF4 Productive Places Tourism Policy 30.
- NPF4 Historic Assets and Places Policy 7.
- Local Development Plan Housing Policy, Hou 7.
- Local Development Plan Transport Policies, Tra 2 and Tra 3

The non-statutory Listed Building and Conservation Area Guidance is a material consideration when considering NPF4 Policy 7.

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.

Conservation Area

The impact on the character and appearance of the conservation area has been considered above in section 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 NPF4 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 property is located within a predominantly residential mixed-use area, accessed via a private ground floor entrance. The dwelling is in close proximity to residential properties, a small architecture firm and a boutique hotel. The properties situation is primarily residential to the rear of the boutique hotel.

The use as a STL would allow multiple parties of visitors to come and go from the premises for inconsistent periods of time on a regular basis throughout the year in a manner dissimilar to that of permanent residents. When staying at the property, guests can come and go frequently throughout the day and night impacting on the amenity of

immediate residential occupants. Temporary visitors are likely to have less regard for the local amenity.

The proposed use would increase the ambient background noise levels beyond what residents would reasonably expect within the immediate and local area. The increase in frequency of movement to the flat at unpredictable hours would damage the amenity of the immediate neighbours and adjacent properties.

The proposal will have an unacceptable impact 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 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.

However, having the property in residential use would also contribute to the economy, through the use of a variety of local services and employment opportunities across the City. Long term residents also have the ability to make consistent and long-term contributions to the local community.

The proposal would result in the loss of residential accommodation. There is a recognised need and demand for housing in Edinburgh, therefore, it is important to retain the existing supply where appropriate.

The applicant provided a statement that commented that the change of use would support the local economy via direct support of local businesses and that a loss of accommodation would see the loss of employment associated with the boutique hotel that runs the accommodation.

In this instance, it has not been 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 are no parking requirements 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 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 tourist accommodation, in this case, it does not outweigh the adverse impact on residential 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.

c) 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

The application received three public representations, three supporting. A summary of the representations is provided below:

material considerations in support

- A change in use would have no effect to the amenity of the immediate area. The effect of a change of use has been discussed within section B.

non-material considerations

- Each property has a dedicated parking space.
- The owner is a good neighbour and runs the short term let well.

Conclusion in relation to other material considerations

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

Overall conclusion

The change of use of this property to a Short Term Let 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 tourist accommodation in this case it does not outweigh the adverse impact on residential 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

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: 22 November 2022

Drawing Numbers/Scheme

01 - 02

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

Appendix 1

Consultations

No consultations undertaken.

Comments for Planning Application 22/05767/FULSTL

Application Summary

Application Number: 22/05767/FULSTL

Address: 6A Canaan Lane Edinburgh EH10 4SY

Proposal: Short term let (in retrospect).

Case Officer: Improvement Team

Customer Details

Name: Mr William Bennett

Address: 2 Canaan Lane Edinburgh

Comment Details

Commenter Type: Member of Public

Stance: Customer made comments in support of the Planning Application

Comment Reasons:

Comment: Speaking as a close neighbour to the property I have had absolutely no negative effects with regards to noise or privacy from the short term rental of 6A Canaan Lane. Furthermore, family members and friends have used the apartment and Lane Hotel when they've been visiting with its being in an especially convenient location and knowing what a well maintained property it is.

Comments for Planning Application 22/05767/FULSTL

Application Summary

Application Number: 22/05767/FULSTL

Address: 6A Canaan Lane Edinburgh EH10 4SY

Proposal: Short term let (in retrospect).

Case Officer: Improvement Team

Customer Details

Name: Mr Alan Thomson

Address: Lee Boyd Ltd 6D Canaan Lane Edinburgh

Comment Details

Commenter Type: Neighbour

Stance: Customer made comments in support of the Planning Application

Comment Reasons:

Comment: We are aware that Mark Kerr, owner of the Lane Hotel is seeking permission to use his property at 6A Canaan Lane as a short term let and has applied to the council to gain the required license.

We have no objections to this as a co-owner in the courtyard where 6A is accessed. The property has been in residential use for some time and in the last 4 years has provided accommodation for long and short-term rentals and hotel accommodation, connected to the Lane Hotel.

Mark and his team are very good neighbours, as are the other residential occupants of the courtyard. We are all used to the comings and goings of different occupants to both 6A and 6C and there is dedicated parking spaces allocated to each of the properties.

The prospect of Mark renting 6A as a short term let is perfectly acceptable to Lee Boyd as a neighbour. Given the recent use of the property, this change in status should have no impact on us or the courtyard.

Comments for Planning Application 22/05767/FULSTL

Application Summary

Application Number: 22/05767/FULSTL

Address: 6A Canaan Lane Edinburgh EH10 4SY

Proposal: Short term let (in retrospect).

Case Officer: Improvement Team

Customer Details

Name: Mr Tim Visser

Address: 6c Canaan Lane Edinburgh

Comment Details

Commenter Type: Neighbour

Stance: Customer made comments in support of the Planning Application

Comment Reasons:

Comment: 6A Has successfully operated as a short term let apartment for the last 5 years without any issues managed by Mr Kerr.

There has been no nuisance in the mews, and the guests are always very respectful of the parking area.

It has been an upstanding contribution to the area, and the local economy.