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Decision date: 25 April 2023

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

Change of use from residential to short-term let.
At 5 Comely Bank Avenue Edinburgh EH4 1EW

Application No: 22/04442/FUL

DECISION NOTICE

With reference to your application for Planning Permission registered on 27 September 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, 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 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
5 Comely Bank Avenue, Edinburgh, EH4 1EW

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

Item – Local Delegated Decision
Application Number – 22/04442/FUL
Ward – B05 - Inverleith

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 property is a ground floor, two-bedroom flat, at 5 Comely Bank Avenue. The properties primary access is gained via a private front door.

Description Of The Proposal

The application seeks planning permission for a change of use from residential to a short term let visitor accommodation (retrospective).

Supporting Information

- Planning statement
- NPF4 Planning statement

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: Not Applicable

Date of Site Notice: Not Applicable

Number of Contributors: 5

Section B - Assessment**Determining Issues**

This report will 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 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.
- LDP Housing Policy Hou 7.
- LDP Transport Policies Tra 2 and Tra 3.

The non-statutory 'Guidance for Businesses' 2023 is a material consideration that is relevant when considering change of use applications.

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 (updated April 2023) 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 located within a residential area, with immediate residential neighbours. The property is accessed via a private front door. The flat is located in a traditional tenement block and has access to the communal garden and stair. Though Comely Bank Avenue does have elements of mixed use where it connects with Comely Bank Road, these uses are not associated with high footfall and do not affect the residential amenity of Comely Bank Avenue itself.

The use as a short term let would allow 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 resident. 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. Further to this the property has access to a communal garden, this increases the risk to the immediate residential amenity. The applicant stated that this access

would be restricted, however, this would not be feasibly enforceable by the planning authority.

A change of use would increase the level of ambient background noise beyond what is reasonably expected by neighbouring residents and will have a significant detrimental 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 accommodation, this will only be supported where the loss is outweighed by demonstrable local economic benefits.

The applicant provided a supporting statement in response to NPF4 which stated that the change of use would not result in the loss of a residential property as the dwelling is a second home. Further to this the development supports the local economy through direct spending at local shops and services.

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 within 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.

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

Zero parking is acceptable as 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. The proposal does not comply with the Development Plan policy NPF 4 policy 30(e) and LDP policy Hou 7.

b) 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 five objections.

A summary of the representations is provided below:

material considerations

- The properties access to the communal garden damages the immediate neighbouring properties. This has been discussed in section A.
- Concern of the effect on residential amenity. This has been discussed in section A.
- The property should be within long term residential use. This has been discussed within Section A.

non-material considerations

- The use as a STL would have detrimental effect on local services.

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

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: 27 September 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 22/04442/FUL

Application Summary

Application Number: 22/04442/FUL

Address: 5 Comely Bank Avenue Edinburgh EH4 1EW

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

Case Officer: Local1 Team

Customer Details

Name: Mr Martin Moss

Address: 2, Comely Bank Place Edinburgh

Comment Details

Commenter Type: Neighbour

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: I live in a ground floor main door flat diagonally across the back greens from the flat (also ground floor) that the application is being made for.

I wish to object because I feel that the neighbourhood benefits from long term residents (rented or owner occupied) and that AirBnB or other short term rental detracts from the social fabric of the neighbourhood.

Comments for Planning Application 22/04442/FUL

Application Summary

Application Number: 22/04442/FUL

Address: 5 Comely Bank Avenue Edinburgh EH4 1EW

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

Case Officer: Local1 Team

Customer Details

Name: Mr Michael Short

Address: 14/5 Comely Bank Avenue Edinburgh

Comment Details

Commenter Type: Neighbour-Residential

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: Unfortunately I have enough problems with people in neighbouring rented flats being loud and noisy till the early hours. Another short term let flat will probably make the matter worse. All the rooms in my property overlook the main street so I cannot escape any noise.

Comments for Planning Application 22/04442/FUL

Application Summary

Application Number: 22/04442/FUL

Address: 5 Comely Bank Avenue Edinburgh EH4 1EW

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

Case Officer: Local1 Team

Customer Details

Name: Ms Deborah Currie

Address: 3/1 Comely Bank Ave Edinburgh

Comment Details

Commenter Type: Neighbour-Residential

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: I live in the flat above no.5 and did not receive a letter asking my views, yet a flat on Comely Bank Road did and they don't live beside it.

I object to this application as although it has a main door flat, it has a door to the main stairway into No 3 which gives them garden access and this garden is shared with all the other owners. As a resident of over 30 years I don't think this dwelling should be considered for short term lets as we then have to share a garden with numerous different people who we don't know. These are residential homes and I thought Edinburgh was trying to reduce this type of let rather than encourage it.

Comments for Planning Application 22/04442/FUL

Application Summary

Application Number: 22/04442/FUL

Address: 5 Comely Bank Avenue Edinburgh EH4 1EW

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

Case Officer: Local1 Team

Customer Details

Name: Ms Ann McDonagh

Address: 3/2 Comely Bank Ave Edinburgh

Comment Details

Commenter Type: Neighbour-Residential

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: I do not wish for this application to be approved. Whilst the property is a main door flat - the occupants do have access to the main stairwell and the shared communal garden. I note that the applicant has stated they will restrict access to the communal areas but I don't see how this can be practically enforced. Having a high turnover of people staying in the property will have an impact on the safety and privacy of those of us who live here as our primary residence - due to the increased footfall and noise.

Comments for Planning Application 22/04442/FUL

Application Summary

Application Number: 22/04442/FUL

Address: 5 Comely Bank Avenue Edinburgh EH4 1EW

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

Case Officer: Local1 Team

Customer Details

Name: Mr Ian Morgan

Address: 51 Comely Bank Road Edinburgh

Comment Details

Commenter Type: Neighbour-Residential

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment:1. I have spoken to the immediate neighbours of this application and they had not received the notice and were unaware of it. Now that the planning dept knows this, I suggest that they either resend the letters or somehow ensure that they have contacted at least the immediately adjacent neighbours and those in the stair above, or the exercise will not have consulted those most impacted.

2. My objection is on grounds of noise and disturbance.

2a. There are seven dogs in the immediate vicinity (including mine) which are all reactive to strangers in the gardens to varying degrees. My dog is fine with people it recognises, but barks it's head off if it sees a stranger in an adjacent garden. The way that sound bounces around the closed "square" of gardens means that having this happen on a continual basis will be a disturbance to everyone.

2b. There are five children in our block who play in the garden. Having a continual stream of strangers in the adjacent garden is a privacy and safety concern.

3. This will make a small negative difference to traffic and parking in the area which are already challenging.

4. This will make a small negative difference to bins and recycling which are already under pressure.

In summary, I don't have an issue with short term lets, but I believe that they are not suited to this kind of high density residential environment.