

Development Management Sub-Committee Report

Wednesday 22 November 2023

**Application for Planning Permission STL
169 Gilmore Place, Edinburgh, EH3 9PW**

**Proposal: Retrospective change of use from restaurant (Class 3) and
takeaway to short term let (Sui Generis).**

**Item – Committee Decision
Application Number – 23/04466/FULSTL
Ward – B10 - Morningside**

Reasons for Referral to Committee

The application is subject to a petition with 24 signatories in support of the application. Consequently, under the Council's Scheme of Delegation the application must be determined by the Development Management Sub-Committee as the recommendation is for refusal.

Recommendation

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

Summary

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 loss of residential accommodation or 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. There are no material considerations that outweigh this conclusion. The proposal is unacceptable.

SECTION A – Application Background

Site description

The application site is a ground floor one bedroom flat located below other residences on the southern side of Gilmore Place. The property has its own access to the street.

The section of Gilmore Place that the application site is located on is of predominantly residential character, though a mix of different uses including offices, retail, restaurants, and a church are in proximity of the application site. Public transport links are easily accessible from the site.

The application site is in the Marchmont, Meadows and Bruntsfield Conservation Area.

Description of the Proposal

The description of proposal seeks a retrospective change of use from restaurant and takeaway to STL. As stated in the relevant site history, planning permission was granted in July 2021 for the conversion of the restaurant and takeaway to form three residential properties, reference 21/02427/FUL. As stated in the supporting statement, works commenced in line with the approved application and the conversion was completed in June 2020.

The supporting statement outlines that following completion of the works, the property has since been used exclusively as an STL, and that it therefore follows that the residential use consented by application 21/02427/FUL has not been taken up.

However, in accordance with Section 27(1) of the Town and Country Planning (Scotland) Act 1997, and the relevant case law, Caledonian Terminal Investments Ltd v Edinburgh Corp [1970] S.L.T. 362 and Doonin Plant Ltd v Scottish Ministers [2011] CSOH 3, the works associated with 21/02427/FUL have progressed sufficiently that the restaurant and takeaway use has ceased, and sufficient work and change has been done to achieve as a matter of fact the change of use to residential.

The existing lawful use of the property is as a flatted dwelling and a change of use to short term let is proposed. For the avoidance of doubt, no internal or external physical changes are proposed.

Supporting Information

- Supporting Statement

Relevant Site History

21/02427/FUL
169 - 173 Gilmore Place
Edinburgh
EH3 9PW
Convert from restaurant to 3x flatted dwellings.
Granted
6 July 2021

Other Relevant Site History

Planning applications in close proximity to the application site have been submitted for retrospective changes of use to short term let (Sui Generis).

Site addresses and references are:

- 23/04469/FULSTL, 171 Gilmore Place
- 23/04471/FULSTL, 173 Gilmore Place

Planning applications at and in close proximity to the application site for retrospective changes of use to short term let (Sui Generis) have previously been refused.

Site addresses and references are:

- 22/04800/FUL, 169 Gilmore Place
- 22/04801/FUL, 171 Gilmore Place
- 22/04802/FUL, 173 Gilmore Place

Pre-Application process

There is no pre-application process history.

Consultation Engagement

No consultations undertaken.

Publicity and Public Engagement

Date of Neighbour Notification: 29 September 2023

Date of Renotification of Neighbour Notification: Not Applicable

Press Publication Date(s): 6 October 2023

Site Notices Date(s): 3 October 2023

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

To address these determining issues, it needs to be considered whether:

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 Marchmont, Meadows and Bruntsfield Conservation Area Character Appraisal emphasises the well proportioned Victorian tenemental perimeter blocks with Baronial detailing and the substantial area of the open parkland formed by the Meadows and Bruntsfield Links.

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.

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 NPF 4 Policy 7.

The non-statutory Guidance for Businesses is a material consideration that is relevant when considering LDP Policy Hou 7 and NPF4 Policy 30. and the Edinburgh Design Guidance is a material consideration when considering LDP Policies Tra 2 and Tra 3.

Conservation Area

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 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 (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 (2023) states that an assessment of a change of use of dwellings to an STL 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 and character

The proposed short term let is located within a three and a half storey flatted block. The property has its own main door access and is located within an area of predominantly residential character that features a moderate degree of activity during the day and a low degree of activity at night.

The use as an STL would result in an increased frequency of movement to the property, establishing a pattern of movement to and from the property dissimilar to that of a how the property would be used if it were occupied by a permanent resident. A transient visitor may also have less regard for neighbours' amenity than individuals using the property as a principal home, with resultant negative amenity impacts, particularly at night.

However, with regard to page 9 of the Guidance for Businesses, it is recognised that the amenity impacts of the application are to a degree mitigated by the small size of the property, that the property has its own main door access to the street, that the section of Gilmore Place the property is located on is a comparatively busy thoroughfare during the day, and that there is a high likelihood that the additional servicing of the property necessitated by the change of use would be conducted during the daytime.

In terms of character, when viewed cumulatively with other change of use to STL applications in the area, most notably at 171 and 173 Gilmore Place (application references 23/04469/FULSTL and 23/04471/FULSTL respectfully), the proposal will result in a significantly different pattern of usage and will erode the established predominance of residential uses in the area.

On balance, the proposed change of use would increase the level of ambient background noise beyond what is reasonably expected by neighbouring residents, have a significant detrimental effect on the living conditions and amenity of nearby residents and erode the established character of the area. 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.

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.

It is important to recognise that having the property within residential use also contributes to the economy, using local services and fulfilling employment opportunities across the City. Long term residents can also make consistent and long-term contributions to the local community.

The proposed change of use would result in a loss of residential accommodation, which as there is a recognised need and demand for housing in Edinburgh, it is critical to retain the existing supply of 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.

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 visitor accommodation in this case it does not outweigh the loss of residential accommodation or 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.

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.

Independent economic impact assessment

An independent economic impact assessment was commissioned by the Planning Service, and this resulted in a report on the Economic Impact of Residential and Short-Term Let Properties in Edinburgh (the Economic Report). This was reported to Planning Committee on 14 June 2023. The Committee noted that the findings of the report are one source of information that can be considered when assessing the economic impacts of short-term let planning applications and that given the report is considering generalities rather than the specifics of an individual case, it is likely that only limited weight can be attached to it as a material consideration when making planning application decisions. The study considered the economic impact of various types of properties in Edinburgh if used as a residential property as opposed to being used for short-term holiday lettings.

The Economic Report shows that there are positive economic impacts from the use of properties for both residential use and short-term let use. The Report found that in general the gross value added (GVA) effects are greater for residential uses than short-term lets across all property types and all areas. However, given it is considering generalities rather than the specifics of this individual case, only 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 two objections. A petition in support of the application with 24 signatures was also received. A summary of the representations is provided below:

material considerations

- The proposal would result in a loss of residential accommodation. Assessed in section b).
- The proposal would not result in a loss of residential accommodation. Assessed in section b).
- The proposal is non-compliant with the development plan. Assessed in section b).
- The proposal is non-compliant with City Plan 2030. Assessed in section c).
- The proposal would change the character of the area. Assessed in section b).
- Negative impact on the amenity of neighbouring residents. Assessed in section b).
- Positive impact to local businesses, the local economy, employment, and the tourism industry. Assessed in section b).
- Lack of impact to neighbouring amenity. Assessed in section b).
- Location is appropriate for short term lets. Assessed in section b).

non-material considerations

- The proposal would result in an increase in rental prices in the area.
- Negative impact to local services (Waste).
- Negative impact to local services (Public Transport).
- The proposed short term let use will ensure the property is well maintained.

Conclusion in relation to identified material considerations.

Identified material considerations have been assessed above and do not raise issues which outweigh the conclusion in relation to the development plan.

Overall conclusion

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 loss of residential accommodation or 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. 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.

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 term 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 term let will result in an adverse 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: 15 September 2023

Drawing Numbers/Scheme

01, 02

Scheme 1

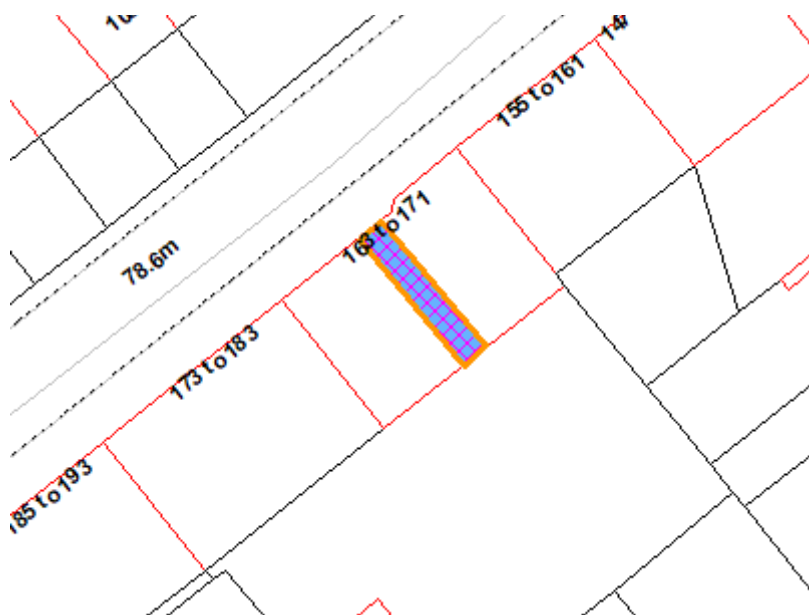
David Givan
Chief Planning Officer
PLACE
The City of Edinburgh Council

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

Summary of Consultation Responses

No consultations undertaken.

Location Plan



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