

## The City of Edinburgh Planning Local Review Body (Panel 2)

10.00 am, Wednesday 29 November 2023

**Present:** Councillors Beal, Booth, Mattos Coelho, McNeese-Mechan and Mowat.

### 1. Appointment of Convener

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Councillor Mattos Coelho was appointed as Convener.

### 2. Minutes

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To approve the minute of the Local Review Body (LRB Panel 1) of 1 November 2023 as a correct record.

### 3. Planning Local Review Body Procedure

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#### **Decision**

To note the outline procedure for consideration of reviews.

(Reference – Local Review Body Procedure, submitted)

### 4. Request for Review – 28 (2F) Drumsheugh Gardens, Edinburgh

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Details were submitted of a request for a review for installation of additional flagpole to front elevation, (in retrospect) at 2F, 28 Drumsheugh Gardens, Edinburgh. Application No. 22/06398/FUL.

#### **Assessment**

At the meeting on 29 November 2023, the LRB had been provided with copies of the notice of review, including a request that the review proceed on the basis of an assessment of the review documents only. The LRB had also been provided with copies of the decision notice and the report of handling.

The LRB heard from the Planning Adviser who summarised the issues raised and presented the drawings of the development and responded to further questions.

The plans used to determine the application were 1-3, Scheme 1 being the drawings shown under the application reference number 22/06398/FUL on the Council's Planning and Building Standards Online Services.

The LRB, having considered these documents, felt that they had sufficient information before it to determine the review.

The LRB in their deliberations on the matter, considered the following:

- 1) The development plan, including the relevant policies of the NPF4 and Edinburgh Local Development Plan, principally:
  - Edinburgh Local Development Plan Policy Des 12 (Alterations and Extensions)
  - National Planning Framework 4 Policy 1 (Sustainable Places Tackling the climate and nature crises)
  - National Planning Framework 4 Policy 7 (Historic Assets and Places)
- 2) Relevant Non-Statutory Guidelines.
  - Guidance for Business
  - Listed Buildings and Conservation Areas
  - The New Town Conservation Area Character Appraisal
  - Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997
  - Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997
- 3) The procedure used to determine the application.
- 4) The reasons for refusal and the arguments put forward in the request for a review.

## **Conclusion**

The LRB considered all the arguments put before it in respect of the proposed planning application and discussion took place in relation to the following issues:

- In terms of consular buildings, was the approach historically different from private businesses?
- The planning advisor explained that for the purpose of a building, there was benefit of recognising the nationality, as opposed to a private business, as any flag being flown other than a national flag might be for advertisement purposes. In terms of legislation, national flags were not banned. It was the flagpole itself as a fixture that was applied for rather than any flag, which would need to be handled under the advertisement regulations, if it was not a national flag.
- The applicant had listed a number of buildings in the area near Drumsheugh Gardens that had flagpoles, however, no images of flagpoles seemed to be available. Were any photos of these flagpoles supplied, as this would give

members a better understanding, even though there was no precedent in planning?

- It was confirmed but there were no photos in the information supplied, it was simply a statement.
- The applicant said that the first flagpole had been there for 40 years, but the Panel was treating it as if it had not been there. There was no issue with the decision on the second flagpole, but there was concern about the first flagpole, whether there was evidence that there was a bracket there. The applicant claimed it had been there for 40 years which predated the requirement for planning permission. The Panel were treating the two flagpoles as part of the same application and having the same status. Was there an alternative way of considering this?
- It was explained that from the evidence provided was correct. The applicant's drawings and photos showed something on the right hand side of the building that was different from what was there before. So, considering taking that bracket off and replacing it with something else, planning permission would be required to replace it with something else. There were two aspects, the visual impact in terms of the listed building and its impact on both the listed building and conservation area's character and appearance and the manner of fixing which was an issue with listed buildings. This would need listed building consent, because the way in which something was fixed to a listed building could affect its fabric.
- Drilling into stone could lead to longer term damage, the installation of multiple fixings into the ashlar principal façade caused unnecessary stone damage and the poor quality of the flag poles failed to preserve or enhance the special architectural character of the listed building. Therefore, it was the overall visual impact on the designation but also the technical impact on designations.
- It had been alluded that the application for the installation of additional flagpole to front elevation, (in retrospect) was only for the second flagpole, was this the case?
- It was confirmed that the application was submitted for the additional flagpole, however the report of handling considered it as the two flagpoles, because the one on the right hand side was different from what had been there before.
- If this application was refused would that mean that the first would also have to be removed?
- It was explained that this would be the case. The pictures of what was there before were slightly unclear, but it was quite clear that what was there now was different from what was there before. Therefore, it did constitute works which required permission. So, the application was considered in terms of both flagpoles.

- Irrespective of the decision, could the applicant submit an application for a certificate of lawfulness for what was originally in place?
- The planning advisor indicated that it be after four years. Although they had removed what was there before, removal of something was akin to demolition, unless it was replaced immediately with like for like. If something was removed, then it was no longer there and the evidence showed what was on the right hand side was not what was there before. Then clearly, the consideration should fall on both of them.
- It was confirmed that there were no more questions.
- This was a difficult issue. The applicant thought there was an existing bracket and they were only adding an additional one. There were also a number of other properties nearby which had flagpoles and there was some sympathy for that. Members should only use the information provided. It might have been helpful if the applicant had provided photos of neighbouring properties with flagpoles. However, on balance, there was agreement with the officer's decision, especially with regard to the argument about fixings and damage to listed buildings. Therefore, the Panel should uphold the officer's recommendations and refuse the application.
- One member had no problem with flagpoles, as a number of them existed in the city. But in the report, weight was given to damage to the listed building and its fixing. A replacement with like for like might not have come to the Panel. Also, the location of the flagpole was an issue and the impact on the area. This was a finely balanced case, but the proposal would be preserving the damage to the listed building. Therefore, the Panel should uphold the officer's recommendations.
- There was further agreement with this viewpoint. The proposals were in a listed building and located in a conservation area and would adversely impact these. There were no reasons given in the support statement from the applicant this suggested otherwise. The other properties cited by the applicant were not relevant to the case. Planning decisions were based on what was being presented, not what was there before. Therefore, the Panel should uphold the officer's decision.
- One member was less sure as the two flagpoles added some symmetry and balance to the building. If the Panel were to agree with the officer's recommendations, there might be damage to the stonework if the flagpoles were removed as opposed to leaving it in place.
- As there was no seconder, there was no alternative proposal.
- The Panel should only consider what was being presented, even though the applicant did cite other places with flagpoles. The Panel should uphold the officer's recommendations and refuse the application mainly due to the damage to the historical fabric of the building.

- There were no alternative views expressed.

Having taken all the above matters into consideration and although there was some sympathy for the applicant, the LRB were of the opinion that no material considerations had been presented in the request for a review which would lead it to overturn the determination by the Chief Planning Officer.

### **Decision**

To uphold the decision by the Chief Planning Officer to refuse planning permission.

### **Reasons for Refusal:**

1. The proposals would have a harmful impact on the character and setting of the listed building, contrary to Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and the relevant HES guidance.
2. The proposals were not acceptable with regards to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as the works would not preserve the special character and appearance of the conservation area.
3. The installation of the flagpoles would fail to preserve the character of the listed building and its setting, and fail to preserve the character and appearance of the conservation area, contrary to the Development Plan.

(References – Decision Notice, Notice of Review, Report of Handling and supporting documents, submitted).

## **5. Request for Review – 21 (1F2) Halmyre Street, Edinburgh**

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Details were submitted for a request for review for change of use to short term let (in retrospect) at 1F2, 21 Halmyre Street, Edinburgh. Application No. 23/00340/FULSTL.

### **Assessment**

At the meeting on 29 November 2023, the LRB had been provided with copies of the notice of review, including a request that the review proceed on the basis of an assessment of the review documents only. The LRB had also been provided with copies of the decision notice and the report of handling.

The LRB heard from the Planning Adviser who summarised the issues raised and presented the drawings of the development and responded to further questions.

The plans used to determine the application were 01, 02, Scheme 1 being the drawings shown under the application reference number 23/00340/FULSTL on the Council's Planning and Building Standards Online Services.

The LRB, having considered these documents, felt that they had sufficient information before it to determine the review.

The LRB in their deliberations on the matter, considered the following:

- 1) The development plan, including the relevant policies of the NPF4 and Edinburgh Local Development Plan, principally:  
Edinburgh Local Development Plan Policy Hou 7 (Inappropriate Uses in Residential Areas)  
  
Edinburgh Local Development Plan Policy Tra 2 (Private Car Parking)  
  
Edinburgh Local Development Plan Policy Tra 3 (Private Cycle Parking)  
  
National Planning Framework 4 Policy 1 (Sustainable Places Tackling the climate and nature crises)  
  
National Planning Framework 4 Policy 30 (Tourism)
- 2) Relevant Non-Statutory Guidelines.  
Guidance for Business
- 3) The procedure used to determine the application.
- 4) The reasons for refusal and the arguments put forward in the request for a review.

## **Conclusion**

The LRB considered all the arguments put before it in respect of the proposed planning application and discussion took place in relation to the following issues:

- That some of the information from applicant was not in the papers, could it be clarified where it came from?
- It was explained that it should be in notice of review. The information provided in the presentation in the application for change of use to short term let (in retrospect) was in the report of handling or the decision notice, or in the notice of review.
- There was some confusion as to which properties were being referred to. It appeared that more information than was required had been presented. In the papers there were different addresses and it appeared to be the applicant's error.
- It was explained that statements of case sometimes resembled each other. In translating the statements, sometimes the addresses were not changed by agents. There was an error in the address in the applicant's statement and this had been transposed in error and should be ignored.
- Whether it was now possible for the Panel to move on?
- It was thought that if the Committee was happy to set aside the comments which were not relevant, then they could consider this case.
- The planning advisor indicated that he would check the report of handling rather than applicant's submission. The comments came from the report of handling,

therefore, he presumed the comments were translated properly. For clarity, these points came from the report of handling.

- Notwithstanding the errors in the paperwork from the applicant and perhaps the planners, it was still possible to determine this case with reference to the relevant policies LDP Policy Hou 7 and NPF4 Policy 30. The only question was a comment from the applicant that as the property at 21 Halmyre Street was below the minimum size for a one bedroom flat, those minimum standards were for new buildings and did not apply to existing buildings for residential use.
- It was confirmed but there were a number of historic properties in the city that were small but popular in the market. Those standards could not be applied retrospectively.
- Because of the confusion in the paperwork, could it be confirmed that there was a communal garden in the flat as well as a shared stairwell.
- It was explained but there was a communal garden as well as a shared space, however, guests were not allowed access to the garden.
- It was the case that there was a shortage of housing in the city. People in existing flats which were now below the minimum standard for size, would not want to be informed that there were too small.
- It was thought this case was clear cut. It failed on LDP policy Hou 7 and evidence suggested that tenements were not suitable for short term lets. This was a small flat, unlikely to be used for parties. However, considering the argument that it could not be used for short term let, it should be noted that there was a need for all types of properties in the city for residents such as young professionals. This was residential, therefore, NPF4 Policy 30 (e) (ii) applied. Regarding the statement from the applicant that planning permission was being denied across the board, this was untrue as all applications were determined on their merits. Some had been refused and some granted. The Panel should uphold the officer's recommendations and refuse the application.
- It was thought that the Edinburgh Design Guidance was relevant in this case. Although this was a well-managed property, this was also not relevant as planning permission went with the dwelling not the management of it. There was also the issue of shared spaces, although the communal garden might not be an issue. For the reasons stated, the Panel should uphold the officer's decision and refuse the application.
- It was confirmed that there was no alternative proposal.

Having taken all the above matters into consideration and although there was some sympathy for the applicant, the LRB were of the opinion that no material considerations had been presented in the request for a review which would lead it to overturn the determination by the Chief Planning Officer.

## **Decision**

To uphold the decision by the Chief Planning Officer to refuse planning permission.

**Reasons for Refusal:**

1. The proposal was contrary to Local Development Plan Policy Hou 7 in respect of Inappropriate Uses in Residential Areas, as the use of this property as a short term let would have a materially detrimental effect on the living conditions and amenity of nearby residents.
2. The proposal was contrary to National Planning Framework 4 Policy 30(e) in respect of Local Amenity and Loss of Residential Accommodation, as the use of this dwelling as a short term let would result in an unacceptable impact on local amenity and the loss of a residential property had not been justified.

(Reference – Decision Notice, Notice of Review, Report of Handling and supporting documents, submitted)

## **6. Request for Review – 10 (Flat 2) Hillcoat Loan, Edinburgh**

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Details were submitted for a request for review for use as a short-term let - the apartment had been operated as a short-term commercial visitor accommodation since 2017 (in retrospect) at Flat 2, 10 Hillcoat Loan, Edinburgh. Application No. 22/06124/FULSTL.

**Assessment**

At the meeting on 29 November 2023, the LRB had been provided with copies of the notice of review, including a request that the review proceed on the basis of an assessment of the review documents only. The LRB had also been provided with copies of the decision notice and the report of handling.

The LRB heard from the Planning Adviser who summarised the issues raised and presented the drawings of the development and responded to further questions.

The plans used to determine the application were 01 – 03, Scheme 1 being the drawings shown under the application reference number 22/06124/FULSTL on the Council’s Planning and Building Standards Online Services.

The LRB, having considered these documents, felt that they had sufficient information before it to determine the review.

The LRB in their deliberations on the matter, considered the following:

- 1) The development plan, including the relevant policies of the NPF4 and Edinburgh Local Development Plan, principally:
  - Edinburgh Local Development Plan Policy Hou 7 (Inappropriate Uses in Residential Areas)
  - Edinburgh Local Development Plan Policy Tra 2 (Private Car Parking)
  - Edinburgh Local Development Plan Policy Tra 3 (Private Cycle Parking)



National Planning Framework 4 Policy 1 (Sustainable Places Tackling the climate and nature crises)

National Planning Framework 4 Policy 30 (Tourism)

- 2) Relevant Non-Statutory Guidelines.  
Guidance for Business
- 3) The procedure used to determine the application.
- 4) The reasons for refusal and the arguments put forward in the request for a review.

## **Conclusion**

The LRB considered all the arguments put before it in respect of the proposed planning application and discussion took place in relation to the following issues:

- The Planning Adviser indicated that he had a clarification to make regarding the Report of Handling and at the details of the notes of review, it was clear that in the Report of Handling there was an error in the site description in relation to the address. It referred to the address in Clermiston, rather than Portobello and that the description of the property itself was incorrect. He had discussed this with the relevant planning officers and legal. The consideration in terms of the Report of Handling and that delegated decision was whether that would have made a material difference to the outcome. It was clearly an error, however, the delegated decision would have remained the same because of the considerations of the property. Members had the opportunity to review the case in full.
- Whether this shared stairwell led into one of the flats at 10 Hillcoat Loan?
- It was confirmed that the plans indicated the property line within the development. It was possible to see the promenade to the beach, the block plan showing the adjacent property, the access, the footprint of the flat and communal access. The floor plan showed individual flat access to the stairwell. There would be one person using the door and ground floor to the access and one person using the stairway.
- There was still some confusion as it seemed to be on same level.
- Reference was made to the right hand side was a building, the floor plan element on the left hand side and the floor plan of the building in the middle, which was the actual building relating to the application.
- It was explained where the flat was located and where the communal entrance was located. Reference was made to the door and entrance. There was a corridor to the flat and a stairwell to that would serve the flat above. This was a separate building to the right hand side, it was cojoined, but was a separate building and had separate access.

- It looked like there was a door into the neighbouring flat and it appeared that this communal stair would be shared by three dwellings.
- Although they adjoined, the floor plan showed this as a building that was accessed off the staircase. It was possible to see the access to the building.
- Referring to the applicant's statement, that they needed this short term let financially. But if they were to let it out on a long term basis, it would not be affordable, as they would be looking for an excessive amount of money which would not be affordable for most potential tenants.
- It was confirmed that this was not material.
- The applicant stated that because he applied before the new legislation was in place, this legislation should not be applied.
- It was explained that the Panel should not be considering that. The main argument given was that the court ruled that the legislation was unlawful, however, that ruling applied to licencing legislation, not the relevant planning legislation regarding short term lets.
- Whether this property was affordable or not, and how affordability was determined, if this was let on the long term market should be considered. Was there any information on that and was there anything that would prevent the applicant from letting it on a long term basis which dealt with the applicant's concern?
- The planning advisor indicated but there was nothing in the legislation to say this that it could not be let for a long term rental or residence.
- It was confirmed that there were no more questions.
- There was a considerable amount of information provided and the Panel had to consider it. Even though the argument was framed about affordable housing, there was a housing crisis in the city in all sectors, someone might want to live in a flat in Portobello and there was nothing that stopped converting the property to a long term let. That dealt with the applicant's concern about his financial issues.
- The applicant had set out this information from the Association of Short Term lets. It was necessary to pay cognisance to the economic argument, set out in NPF4, but there was nothing to indicate that this property was exceptional. There was sometimes a return from short term lets. This would not be substantially outweighed if it was a short term let rather than a long term let. There was nothing to say that this case was exceptional with reference to NPF4 Policy 30 (e) (ii) and there was nothing to override policy.
- There was agreement with these points. The applicant had made the economic case, however one member was not persuaded of the economic benefits of a short term let. The issue was about the dwelling not the person or management. There was some sympathy with the applicant, as this common stair was only shared with the applicant's property, so that would be slightly different. But if the

property was sold, there would still be a shared stairwell. Therefore, the Panel should uphold the officer's decision.

- There was further agreement with this. Referring to the argument made by the applicant about the judicial review, that there could not be a presumption against short term lets in tenements, was not true. The ruling was against the licensing regime, these were decisions for the Planning Authority and this was a Planning Local Review Body, therefore, the guidance was clear in this respect. This was a clear case the officer's decision was sound and the Panel should uphold it.
- There was no alternative position, therefore, the Panel agreed to uphold the officer's decision and refuse the application.

Having taken all the above matters into consideration and although there was some sympathy for the applicant, the LRB were of the opinion that no material considerations had been presented in the request for a review which would lead it to overturn the determination by the Chief Planning Officer.

### **Decision**

To uphold the decision by the Chief Planning Officer to refuse planning permission.

### **Reasons for Refusal:**

1. The proposal was 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 would have a materially detrimental effect on the living conditions and amenity of nearby residents.
2. The proposal was 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 would result in an unacceptable impact on local amenity and the loss of a residential property had not been justified.

(References – Decision Notice, Report of Handling, Notice of Review and supporting documents, submitted).

## **7. Request for Review – 9 Hugh Miller Place, Edinburgh**

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Details were submitted for a request for review for change of use from a residential property to a short term let (in retrospect) at 9 Hugh Miller Place, Edinburgh. Application No. 23/02576/FULSTL.

### **Assessment**

At the meeting on 29 November 2023, the LRB had been provided with copies of the notice of review, including a request that the review proceed on the basis of an assessment of the review documents only. The LRB had also been provided with copies of the decision notice and the report of handling.

The LRB heard from the Planning Adviser who summarised the issues raised and presented the drawings of the development and responded to further questions.

The plans used to determine the application were 01, 02, 03, Scheme 1 being the drawings shown under the application reference number 23/02576/FULSTL on the Council's Planning and Building Standards Online Services.

The LRB, having considered these documents, felt that they had sufficient information before it to determine the review.

The LRB in their deliberations on the matter, considered the following:

- 1) The development plan, including the relevant policies of the NPF4 and Edinburgh Local Development Plan, principally:
  - Edinburgh Local Development Plan Policy Hou 7 (Inappropriate Uses in Residential Areas)
  - Edinburgh Local Development Plan Policy Tra 2 (Private Car Parking)
  - Edinburgh Local Development Plan Policy Tra 3 (Private Cycle Parking)
  - National Planning Framework 4 Policy 1 (Sustainable Places Tackling the climate and nature crises)
  - National Planning Framework 4 Policy 7 (Historic Assets and Places)
  - National Planning Framework 4 Policy 30 (Tourism)
- 2) Relevant Non-Statutory Guidelines.
  - Guidance for Business
  - Listed Buildings and Conservation Area
  - Managing Change in the Historic Environment: Guidance on the principles of listed building consent.
  - Managing Change in the Historic Environment: Setting
- 3) The procedure used to determine the application.
- 4) The reasons for refusal and the arguments put forward in the request for a review.

## **Conclusion**

The LRB considered all the arguments put before it in respect of the proposed planning application and discussion took place in relation to the following issues:

- Previously there were 6 month letting contracts for students. Were these no longer available and was this the right kind of legislation for a 6 monthly let.
- It was confirmed that for private letting rather than short term lets, the legislation used to be for a minimum of 6 months short term tenancy, but this legislation had changed. Regarding private lettings it was different and was now more flexible, but no further advice could be given in terms of letting legislation.

- What was the definition of short term lets, in terms of longer terms letting and what was the difference between short term and long term lets in terms of legislation?
- The planning advisor stated that he had no additional information regarding the legislation for private tenancies. Regarding short term let legislation, the definition was set in government legislation, which was displayed. The question was whether how they operated if it was a short term let. This was a short term let, the applicant said they were operating in a certain way. If a short term let was granted planning permission, then permission went with the property. However, new owners could change the hours of operation and granting planning permission in this case could enable it to be used for any type of short term let.
- The applicant was clear this property at 9 Hugh Miller Place was well run, it was not used as a AirBnB style holiday let. The Panel were determining planning issues, not the use of the property and if they were to grant this application for change of use from a residential property to a short term let (in retrospect), it could be used by a different owner in a different way. It was necessary to look at the impact on the property, the neighbours and the loss of residential use. This was an overwhelmingly residential area and there were a number of objections from neighbours. Therefore, the Panel should uphold the officer's recommendations.
- There was agreement with the above point of view. In addition, it was possible that the applicant could consider letting on a more long-term basis, rather than as a short term let. Therefore, it was necessary to uphold the officer's decision.

Having taken all the above matters into consideration, the LRB were of the opinion that no material considerations had been presented in the request for a review which would lead it to overturn the determination by the Chief Planning Officer.

## **Decision**

To uphold the decision by the Chief Planning Officer to refuse planning permission.

## **Reasons for Refusal:**

1. The proposal was 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 would have a materially detrimental effect on the living conditions and amenity of nearby residents.
2. The proposal was 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 would result in an unacceptable impact on local amenity and the loss of a residential property had not been justified.

(References – Decision Notice, Report of Handling, Notice of Review and supporting documents, and Further Representations submitted).

## 8. Request for Review – 1 Industrial Road, Edinburgh

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Details were submitted for a request for review for change of use to short term let at 1 Industrial Road Edinburgh. Application No. 23/00341/FULSTL.

### Assessment

At the meeting on 29 November 2023, the LRB had been provided with copies of the notice of review, including a request that the review proceed on the basis of an assessment of the review documents only. The LRB had also been provided with copies of the decision notice and the report of handling.

The LRB heard from the Planning Adviser who summarised the issues raised and presented the drawings of the development and responded to further questions.

The plans used to determine the application were 01 - 02, Scheme 1 being the drawings shown under the application reference number 23/00341/FULSTL on the Council's Planning and Building Standards Online Services.

The LRB, having considered these documents, felt that they had sufficient information before it to determine the review.

The LRB in their deliberations on the matter, considered the following:

- 1) The development plan, including the relevant policies of the NPF4 and Edinburgh Local Development Plan, principally:
  - Edinburgh Local Development Plan Policy Hou 7 (Inappropriate Uses in Residential Areas)
  - Edinburgh Local Development Plan Policy Tra 2 (Private Car Parking)
  - Edinburgh Local Development Plan Policy Tra 3 (Private Cycle Parking)
  - National Planning Framework 4 Policy 1 (Sustainable Places Tackling the climate and nature crises)
  - National Planning Framework 4 Policy 30 (Tourism)
- 2) Relevant Non-Statutory Guidelines.
  - Guidance for Business
- 3) The procedure used to determine the application.
- 4) The reasons for refusal and the arguments put forward in the request for a review.

### Conclusion

The LRB considered all the arguments put before it in respect of the proposed planning application and discussion took place in relation to the following issues:

- As with the applicant's previous property the property at 1 Industrial Road fell below the standards for new build in terms of space, but was it not the case that there were no reasons that it could not now be used for residential properties.

- It was confirmed that the guidance applied to new build properties, not for historic properties.
- What was opposite this property and was in the immediate locality of it?
- It was explained that along the main road, there were a number of guest houses and bed and breakfast establishments. These had been there for some time. Their premises did back on to Industrial Road, so the applicant might use the rear yards. Some gardens may be used for guests, there were quite high walls, so it was difficult to know. Along the Main Street, there was a prevalence of guest houses, the appellant had listed a number of these and there were also a few workshops. However, this was a predominantly residential area, it was clear from the pattern of the colonies, that was an established property type in the city.
- There were no further questions.
- One member reiterated their comments that this was a mainly residential area, with some businesses. There had been a number of objections from neighbours and the local Community Council pointing out their concerns, regarding impact on amenity and loss of residential accommodation. Both of the reasons given for refusal were sound, therefore, the Panel should refuse this application for change of use to short term let.
- The Panel was asked to consider the location of an area when considering short term lets. This area was very tight, these were examples of unlisted houses in the colonies which were small and modest. They had originally been workers' houses of Edinburgh for much needed housing. Now, colony living was quite particular, people lived close together and the neighbours were aware of what activities were taking place. The Panel should reflect from neighbours' comments, there was a sense of community and this was intruding on the character of the area. As it being an appropriate use, it could be used for a different purpose if passed on to another owner. Therefore, the officer's case had been made.
- There was agreement with the above comments. In this case Edinburgh Design Guidance was irrelevant. The officer's decision was based on the dwelling, not the person. This was clearly a residential area and the Panel should uphold the officer's recommendations.
- One member was slightly unsure, the applicant did not share a stair with another property, but a good point had been made that the residents lived closely together and the proposals would be impactful on the area. Therefore, they agreed with the other members.
- There was a lot of provision of similar accommodation in the area, which did not need an extra short term let. There was agreement with the views given, there were no alternative view expressed. therefore, the Panel should uphold the officer's recommendation and refuse the application.

Having taken all the above matters into consideration and although there was some sympathy for the applicant, the LRB were of the opinion that no material considerations had been presented in the request for a review which would lead it to overturn the determination by the Chief Planning Officer.

### **Decision**

To uphold the decision by the Chief Planning Officer to refuse planning permission.

### **Reasons for Refusal:**

1. The proposal was 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 would have a materially detrimental effect on the living conditions and amenity of nearby residents.
2. The proposal was 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 would result in an adverse impact on local amenity and the loss of a residential property had not been justified.

(References – Decision Notice, Report of Handling, Notice of Review and supporting documents, and Further Reps and Response from Applicant submitted).

## **9. Request for Review – at 73B Leamington Terrace, Edinburgh**

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Details were submitted for a request for review for change of use from residential to short term let at 73B Leamington Terrace, Edinburgh. Application No. 22/06071/FULSTL.

### **Assessment**

At the meeting on 29 November 2023, the LRB had been provided with copies of the notice of review, including a request that the review proceed on the basis of an assessment of the review documents and a site inspection. The LRB had also been provided with copies of the decision notice and the report of handling.

The LRB heard from the Planning Adviser who summarised the issues raised and presented the drawings of the development and responded to further questions.

The plans used to determine the application were 01 - 02, Scheme 1 being the drawings shown under the application reference number 22/06071/FULSTL on the Council's Planning and Building Standards Online Services.

The LRB, having considered these documents, felt that they had sufficient information before it to determine the review.

The LRB in their deliberations on the matter, considered the following:

- 1) The development plan, including the relevant policies of the NPF4 and Edinburgh Local Development Plan, principally:



Edinburgh Local Development Plan Policy Hou 7 (Inappropriate Uses in Residential Areas)

Edinburgh Local Development Plan Policy Tra 2 (Private Car Parking)

Edinburgh Local Development Plan Policy Tra 3 (Private Cycle Parking)

National Planning Framework 4 Policy 1 (Sustainable Places Tackling the climate and nature crises)

National Planning Framework 4 Policy 7 (Historic Assets and Places)

National Planning Framework 4 Policy 30 (Tourism)

2) Relevant Non-Statutory Guidelines.

Guidance for Business

Listed Buildings and Conservation Areas

Marchmont, Meadows & Bruntsfield Conservation Area Character Appraisal

3) The procedure used to determine the application.

4) The reasons for refusal and the arguments put forward in the request for a review.

## Conclusion

The LRB considered all the arguments put before it in respect of the proposed planning application and discussion took place in relation to the following issues:

- There was a question about outdoor space. It was not possible to see from the photos whether there was any shared space at the front of the property at 73B Leamington Terrace.
- It was confirmed that it could be seen that the property sat to the front of the building.
- It was explained that in terms of the layout, it was possible to see the outline of the property. According to the footprint within the building, there seemed to be no access to the back of the property and there was a small area at the front of the property. Basement flats usually had some open space at the front. This was a small basement flat at street level.
- It was not possible to tell if there were outdoor seats.
- The planning advisor stated that this was the case. When considering basement flats, some owners tried to make usable space, sometimes it was about access to the property that prevented seating, but this was the choice of the owners.
- There were no more questions and no more comments.

- It was thought that the case been made by the officer. The applicant was using the size of the property to claim that it was not big enough to live in. This was not an issue, it could be used for a single professional or young couple. For the reasons stated, the Panel should uphold the officer's recommendations and refuse the application for the change of use from residential to short term let.

Having taken all the above matters into consideration, the LRB were of the opinion that no material considerations had been presented in the request for a review which would lead it to overturn the determination by the Chief Planning Officer.

### **Decision**

To uphold the decision by the Chief Planning Officer to refuse planning permission.

### **Reasons for Refusal:**

1. The proposal was 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 would have a materially detrimental effect on the living conditions and amenity of nearby residents.
2. The proposal was 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 would result in an adverse impact on local amenity and the loss of a residential property had not been justified.

(References – Decision Notice, Report of Handling, Notice of Review and supporting documents, and Further Representations submitted).

## **10. Request for Review – 1 (1F) Nelson Street, Edinburgh**

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Details were submitted for a request for review for change of use for a short term let (in retrospect) at 1F, 1 Nelson Street, Edinburgh. Application No. 23/03432/FULSTL.

### **Assessment**

At the meeting on 29 November 2023, the LRB had been provided with copies of the notice of review, including a request that the review proceed on the basis of an assessment of the review documents only. The LRB had also been provided with copies of the decision notice and the report of handling.

The LRB heard from the Planning Adviser who summarised the issues raised and presented the drawings of the development and responded to further questions.

The plans used to determine the application were 01 - 02, Scheme 1 being the drawings shown under the application reference number 23/03432/FULSTL on the Council's Planning and Building Standards Online Services.

The LRB, having considered these documents, felt that they had sufficient information before it to determine the review.

The LRB in their deliberations on the matter, considered the following:

- 1) The development plan, including the relevant policies of the NPF4 and Edinburgh Local Development Plan, principally:  
Edinburgh Local Development Plan Policy Hou 7 (Inappropriate Uses in Residential Areas)  
  
Edinburgh Local Development Plan Policy Tra 2 (Private Car Parking)  
  
Edinburgh Local Development Plan Policy Tra 3 (Private Cycle Parking)  
  
National Planning Framework 4 Policy 1 (Sustainable Places Tackling the climate and nature crises)  
  
National Planning Framework 4 Policy 7 (Historic Assets and Places)  
  
National Planning Framework 4 Policy 30 (Tourism)
- 2) Relevant Non-Statutory Guidelines.  
Guidance for Business  
  
Listed Buildings and Conservation Areas  
  
The New Town Conservation Area Character Appraisal  
  
Managing Change in the Historic Environment: Guidance on the principles of listed building consent.  
  
Managing Change in the Historic Environment: Setting
- 3) The procedure used to determine the application.
- 4) The reasons for refusal and the arguments put forward in the request for a review.

## **Conclusion**

The LRB considered all the arguments put before it in respect of the proposed planning application and discussion took place in relation to the following issues:

- It was confirmed that there were no questions.
- As with previous applications, there were concerns about the management and use of the property at 1 Nelson Street. Even if it was well managed now, and there were longer-term tenants in place, if the Panel granted planning permission, there was nothing to stop it being turned into an AirBnB. The Panel should uphold the officer's recommendations and refuse the application for change of use for a short term let (in retrospect).
- There was agreement with this viewpoint. The decision of the Panel at this meeting would not stop the applicant letting the property on a 6 monthly basis and there was no reason to overturn the officer's decision.

- There was agreement with both the previous comments. This was a bigger flat than some of the previous applications and it had the potential for parties. If the applicant opted to keep it empty, that was their decision. The members of the Panel were in agreement to uphold the officer's decision.

Having taken all the above matters into consideration and although there was some sympathy for the applicant, the LRB were of the opinion that no material considerations had been presented in the request for a review which would lead it to overturn the determination by the Chief Planning Officer.

### **Decision**

To uphold the decision by the Chief Planning Officer to refuse planning permission.

### **Reasons for Refusal:**

1. The proposal was 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 would have a materially detrimental effect on the living conditions and amenity of nearby residents.
2. The proposal was 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 would result in an unacceptable impact of local amenity and the loss of a residential property had not been justified.

(References – Decision Notice, Report of Handling, Notice of Review and supporting documents, submitted).

## **11. Request for Review – 154 South Gyle Wynd, Edinburgh**

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Details were submitted for a request for review for use of property as short term let at 154 South Gyle Wynd, Edinburgh. Application No. 23/00042/FULSTL.

### **Assessment**

At the meeting on 29 November 2023, the LRB had been provided with copies of the notice of review, including a request that the review proceed on the basis of an assessment of the review documents and one or more hearing session on specific matters. The LRB had also been provided with copies of the decision notice and the report of handling.

The LRB heard from the Planning Adviser who summarised the issues raised and presented the drawings of the development and responded to further questions.

The plans used to determine the application were 01, 02, Scheme 1 being the drawings shown under the application reference number 23/00042/FULSTL on the Council's Planning and Building Standards Online Services.

The LRB, having considered these documents, felt that they had sufficient information before it to determine the review.

The LRB in their deliberations on the matter, considered the following:

- 1) The development plan, including the relevant policies of the NPF4 and Edinburgh Local Development Plan, principally:  
Edinburgh Local Development Plan Policy Hou 7 (Inappropriate Uses in Residential Areas)  
  
Edinburgh Local Development Plan Policy Tra 2 (Private Car Parking)  
  
Edinburgh Local Development Plan Policy Tra 3 (Private Cycle Parking)  
  
National Planning Framework 4 Policy 1 (Sustainable Places Tackling the climate and nature crises)  
  
National Planning Framework 4 Policy 30 (Tourism)
- 2) Relevant Non-Statutory Guidelines.  
Guidance for Business
- 3) The procedure used to determine the application.
- 4) The reasons for refusal and the arguments put forward in the request for a review.

## **Conclusion**

The LRB considered all the arguments put before it in respect of the proposed planning application and discussion took place in relation to the following issues:

- Considering the argument by the applicant regarding the second Judicial Review against the council to address the blanket ban in place for change of use to short term let, there were frequent references to the second Judicial Review, not to the first one. The first review concerned licencing, the second concerned planning. The Authority had not received the judgment regarding the Second Judicial Review. Could it be clarified that the application was for a retrospective application or for a potential future application. If respective use was in place before new legislation, did they have an impact and did the Panel still have to determine it in terms of the present policies and procedures?
- It was confirmed that the Authority did not yet have the judgment on the second Judicial Review. The advice given by legal colleagues was that the Council should not hold up its current business on the basis of that, but it should proceed as normal.
- It was explained that with regard to the issue of the application for use of property as short term let at 154 South Gyle Wynd being retrospective or not, the description suggested it was not retrospective. It was implicit that it appeared to be in operation at the moment. Whether it was in operation before the legislation was in place, the council position was that if the use was ongoing and was not the lawful or established use of the property, either by being in existence for 10 years, or by dint of a grant of planning permission, then

planning permission was required. It should be considered under the relevant policies as it was outlined in the report of handling.

- All of these homes in the immediate vicinity had front and back gardens, they may be or not be used presently by the owners. From the photos displayed, there was nothing to say they were being used. They had gardens and/or patios in the rear and gardens in the front. Was there any further information on that?
- The planning advisor stated that there was a garden area to the rear of the property and there was some communal parking. Photos of the elevation were displayed. There was a vehicle access pend and car parking to the rear. The garden area seemed to be a mainly parking area with some possible amenity space also. Other properties also had front gardens.
- That there was the potential for people to be sitting out and creating noise.
- There were no further questions or comments.
- It was thought that everything had been explained satisfactorily, therefore, the Panel should uphold the officer's recommendations. There was no justification why this property could not be used for residential use and no benefit for it being used as a short term let.
- No alternative views were expressed so the Panel would be upholding the officer's recommendations and refusing the application.

Having taken all the above matters into consideration the LRB were of the opinion that no material considerations had been presented in the request for a review which would lead it to overturn the determination by the Chief Planning Officer.

### **Decision**

To uphold the decision by the Chief Planning Officer to refuse planning permission.

### **Reasons for Refusal:**

1. The proposal was contrary to Local Development Plan Policy Hou 7 in respect of Inappropriate Uses in Residential Areas, as the use of this property as a short stay let would have a materially detrimental effect on the living conditions and amenity of nearby residents.
2. The proposal was contrary to National Planning Framework 4 Policy 30(e) in respect of Local Amenity and Loss of Residential Accommodation, as the use of this dwelling as a short stay let would result in an unacceptable impact on local amenity and the loss of a residential property had not been justified.

(References – Decision Notice, Report of Handling, Notice of Review and supporting documents, submitted).