

Business Centre G.2 Waverley Court 4 East Market Street Edinburgh EH8 8BG Email: [planning.support@edinburgh.gov.uk](mailto:planning.support@edinburgh.gov.uk)

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100625177-002

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

## Applicant or Agent Details

Are you an applicant or an agent? \* (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

Applicant  Agent

## Agent Details

Please enter Agent details

Company/Organisation:	Suzanne McIntosh Planning Limited		
Ref. Number:		You must enter a Building Name or Number, or both: *	
First Name: *	Suzanne	Building Name:	
Last Name: *	McIntosh	Building Number:	45C
Telephone Number: *	07792230979	Address 1 (Street): *	Bath Street
Extension Number:		Address 2:	Portobello
Mobile Number:		Town/City: *	Edinburgh
Fax Number:		Country: *	United Kingdom
		Postcode: *	EH15 1HB
Email Address: *	smcintoshplan@gmail.com		

Is the applicant an individual or an organisation/corporate entity? \*

Individual  Organisation/Corporate entity

## Applicant Details

Please enter Applicant details

Title:	<input type="text" value="Other"/>	You must enter a Building Name or Number, or both: *	
Other Title:	<input type="text" value="Dr"/>	Building Name:	<input type="text"/>
First Name: *	<input type="text" value="Virginia"/>	Building Number:	<input type="text" value="4"/>
Last Name: *	<input type="text" value="Hobday"/>	Address 1 (Street): *	<input type="text" value="Spylaw House"/>
Company/Organisation	<input type="text"/>	Address 2:	<input type="text" value="Spylaw Street"/>
Telephone Number: *	<input type="text"/>	Town/City: *	<input type="text" value="Edinburgh"/>
Extension Number:	<input type="text"/>	Country: *	<input type="text" value="Scotland"/>
Mobile Number:	<input type="text"/>	Postcode: *	<input type="text" value="EH13 0JU"/>
Fax Number:	<input type="text"/>		
Email Address: *	<input type="text" value="smcintoshplan@gmail.com"/>		

## Site Address Details

Planning Authority:	<input type="text" value="City of Edinburgh Council"/>
Full postal address of the site (including postcode where available):	
Address 1:	<input type="text" value="4 SPYLAW HOUSE"/>
Address 2:	<input type="text" value="25 SPYLAW STREET"/>
Address 3:	<input type="text" value="COLINTON"/>
Address 4:	<input type="text"/>
Address 5:	<input type="text"/>
Town/City/Settlement:	<input type="text" value="EDINBURGH"/>
Post Code:	<input type="text" value="EH13 0JU"/>

Please identify/describe the location of the site or sites

Northing	<input type="text" value="668915"/>	Easting	<input type="text" value="321305"/>
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## Description of Proposal

Please provide a description of your proposal to which your review relates. The description should be the same as given in the application form, or as amended with the agreement of the planning authority: \*  
(Max 500 characters)

Notice of Review for against the refusal of planning permission for the use of the property as a short term let

## Type of Application

What type of application did you submit to the planning authority? \*

- Application for planning permission (including householder application but excluding application to work minerals).
- Application for planning permission in principle.
- Further application.
- Application for approval of matters specified in conditions.

What does your review relate to? \*

- Refusal Notice.
- Grant of permission with Conditions imposed.
- No decision reached within the prescribed period (two months after validation date or any agreed extension) – deemed refusal.

## Statement of reasons for seeking review

You must state in full, why you are seeking a review of the planning authority's decision (or failure to make a decision). Your statement must set out all matters you consider require to be taken into account in determining your review. If necessary this can be provided as a separate document in the 'Supporting Documents' section: \* (Max 500 characters)

Note: you are unlikely to have a further opportunity to add to your statement of appeal at a later date, so it is essential that you produce all of the information you want the decision-maker to take into account.

You should not however raise any new matter which was not before the planning authority at the time it decided your application (or at the time expiry of the period of determination), unless you can demonstrate that the new matter could not have been raised before that time or that it not being raised before that time is a consequence of exceptional circumstances.

A grounds for review document is provided

Have you raised any matters which were not before the appointed officer at the time the Determination on your application was made? \*

Yes  No

If yes, you should explain in the box below, why you are raising the new matter, why it was not raised with the appointed officer before your application was determined and why you consider it should be considered in your review: \* (Max 500 characters)

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review. You can attach these documents electronically later in the process: \* (Max 500 characters)

Drawings as lodged, supporting planning statement, application form, letter on behalf of the applicant, decision notice, report of handling

## Application Details

Please provide the application reference no. given to you by your planning authority for your previous application.

23/01840/STL

What date was the application submitted to the planning authority? \*

26/04/2023

What date was the decision issued by the planning authority? \*

29/08/2023

## Review Procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Can this review continue to a conclusion, in your opinion, based on a review of the relevant information provided by yourself and other parties only, without any further procedures? For example, written submission, hearing session, site inspection. \*

Yes  No

In the event that the Local Review Body appointed to consider your application decides to inspect the site, in your opinion:

Can the site be clearly seen from a road or public land? \*

Yes  No

Is it possible for the site to be accessed safely and without barriers to entry? \*

Yes  No

If there are reasons why you think the local Review Body would be unable to undertake an unaccompanied site inspection, please explain here. (Max 500 characters)

Access into the property will be required

## Checklist – Application for Notice of Review

Please complete the following checklist to make sure you have provided all the necessary information in support of your appeal. Failure to submit all this information may result in your appeal being deemed invalid.

Have you provided the name and address of the applicant?. \*

Yes  No

Have you provided the date and reference number of the application which is the subject of this review? \*

Yes  No

If you are the agent, acting on behalf of the applicant, have you provided details of your name and address and indicated whether any notice or correspondence required in connection with the review should be sent to you or the applicant? \*

Yes  No  N/A

Have you provided a statement setting out your reasons for requiring a review and by what procedure (or combination of procedures) you wish the review to be conducted? \*

Yes  No

Note: You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. You may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

Please attach a copy of all documents, material and evidence which you intend to rely on (e.g. plans and Drawings) which are now the subject of this review \*

Yes  No

Note: Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice (if any) from the earlier consent.

## Declare – Notice of Review

I/We the applicant/agent certify that this is an application for review on the grounds stated.

Declaration Name: Mrs Suzanne McIntosh

Declaration Date: 27/11/2023

# GROUNDS FOR REVIEW

FLAT 4, SPYLAW HOUSE,  
COLINTON, EDINBURGH

DR VIRGINIA HOBDAV

SUZANNE MCINTOSH PLANNING LIMITED

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## 1 INTRODUCTION

- 1.1 Suzanne McIntosh Planning Limited is instructed to lodge a request for review against the refusal of planning permission reference 23/01840/STL for the use of Flat 4, Spylaw House, 25 Spylaw Street, Colinton, Edinburgh as a property for short term let.
- 1.2 An application for planning permission was refused on 29<sup>th</sup> August 2023 for the following reasons:
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 of local amenity and the loss of a residential property has not been justified.*



## 2 SUMMARY OF GROUNDS FOR REVIEW

- 2.1 The Planning Officer in their report of handling concluded that the proposal complied with *'sections 64 and 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as it will preserve or enhance the character or appearance of the conservation area'*. He stated that it *'does not harm the character of the listed building, its setting, or the setting of neighbouring listed buildings.'* An important point for the LRB to note and agree.
- 2.2 However, he concluded that 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 loss of residential accommodation.'*
- 2.3 The LRB is asked to disregard the point in the preceding paragraph and reason no 1 point given that *'residential accommodation'* is not being lost in this case. The property has been in use as a short term let on a part time basis for 7.5 years. The remainder of the time it is used by the applicant when she is in Scotland and her family who study here. Her visits to Scotland are frequent given her family are here.
- 2.4 The intensity of the use of this property is not therefore as you would find in other cases, nor as portrayed or assumed by the case officer. The LRB must therefore consider that the impact on neighbours is not therefore as per a standard full time STL that is in a shared stair scenario and operating 365 days per year with minimum 1 night stays. That is clearly not the case for this property. Each case must be considered on its own merits. The applicant submits that the proposal does not conflict with LDP policy Hou7. A significant number of representations in support of the application have been lodged.
- 2.5 There is no anonymity type issue for neighbours given that the pool of people who stay at the property is small, mostly known to the applicant's booking agent/ manger and the property is self-contained with no shared entrance; it has its own access, staircase and entrance door. The LRB is asked to note these points. A hands on, responsible approach is taken to each let and their frequency is very low.
- 2.6 In addition, for the applicant/ owner to leave the property empty while she is out of the country for work means that it is unattended, the reaction to any issues in the building that require maintenance is



slower and the revenue to fund the costly repairs to the listed building is less. The option to let it out on a low key basis with a manager taking responsibility for bookings and change overs is an option that keeps the building heated and looked after while the owner isn't there.

- 2.7 In addition, the case officer commented that *'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.'*
- 2.8 The LRB is required to consider the proposal in the context of the November 2023 legal challenge in the context of the retrospective application of a requirement for a change of use in the first instance to extant uses pre-short term let control zone coming into being. The applicant is of the widely held view that planning permission was not required for the occasional use of the property as a short term let prior to the control zone in 2022. The courts are yet to conclude on this issue.
- 2.9 Scottish Government Circular 1/2023 states in para 3 Establishing Control Areas: *'a change of use of a dwellinghouse to use for short term lets occurring after a planning authority has designated an area as a control area will be deemed a material change of use and therefore always require planning permission'*.
- 2.10 The City of Edinburgh Control Zone was established on 5.8.22. The exceptions to the application in this context include where the property is the applicant's main residence. This property is the applicant's main residence when living in Edinburgh, while working abroad it clearly isn't but it will be her main residence again when she finishes working abroad and moves back home.
- 2.11 The LRB must note that it is not straightforward to assume that a material change of use is required in this case given that the use that has been ongoing for 7.5 years, it isn't full time and was also operating long before the control zone came into being. There are clear arguments that there has been no material change of use pre-September 2022 to the point of lodging this application.
- 2.12 The implied stringent application of NPF4 policy 30(e) by the planning officer is a matter of judgement. The property was not a full time residential property prior to the control zone and is not a full time residential property now therefore there is no loss of residential incurred by allowing this application.
- 2.13 This Grounds for Review document sets out the nature of the use, the economic benefits of the use and assesses both the impacts of the

proposal on the immediate locale and the building; as well as the wider considerations at play in the city. This report also catalogues the experience in the application process to date and requests that the Local Review Body consider the application 'de novo'.

- 2.14 The length of time the property has been in use as accommodation for short term let is explained in the document. The way the operation is managed, the reasons why the property is let out and the layout and setting of the property are all covered. The potential alternative uses were it not to be used in this way and taking into account the listed status of the building, the economic benefits of the use, the limited occupation as an STL are all explained.
- 2.15 A drawing detailing the layout of the property is provided and the photograph at the start shows the upper, lighter green door on the frontage which is the sole access to the property.

### **3 RELEVANT BACKGROUND**

- 3.1 Important to this LRB review is the experience of the applicant in the CEC planning process and the need to ensure this case is heard and considered 'de novo' while providing a fair and impartial hearing for the applicant.
- 3.2 A separate document prepared by the applicant's husband and lodged with the review details a summary of her experience and impacts the issues have had at the hand by an elected member of CEC.
- 3.3 The elected member, a senior politician from the labour group in Edinburgh, chose to share his own screenshots of the applicant's design team's copyright protected drawing and publicise the application on his own social media on his terms without her consent.
- 3.4 He lifted copyright and GDPR protected information from the planning portal, reworded the application description to provide his own description calling it Airbnb and chose to publicise to the internet the applicant's work place location.
- 3.5 His actions, which are at odds with the council's own Planning Privacy statement/ GDPR policy, are currently being investigated by the Information Commissioner and the conduct of that councillor by the Ethical Standards Commissioner.
- 3.6 From that point in June 2023, when this happened, a number of things have transpired that have tainted the applicant's view of the Edinburgh planning process. Her photograph was circulated to thousands of people on that councillor's social media threads, her workplace location and her sons' school were revealed on that councillor's discussion threads. She was called 'tax evading scum' by one follower and racist remarks were made by another. Forgive her for being wary of CEC and how this LRB review will be considered but she is ultimately very worried about the implications of lodging a request for review and whether that councillor will start up his campaign against her again and what influence he will have on the LRB process. Your assurance is required that the LRB will act appropriately.
- 3.7 In addition, an MSP has come forward with an account of the meeting of Colinton Community Council where this application was discussed and the attempts by the councillor to sway the meeting against the proposal.

## **4 THE SITE AND LOCATION**

- 4.1 The appeal site is part of Spylaw House which is an historic building located also known as 25 Spylaw Park, Colinton. The building is a category B listed building located within Spylaw Park, Colinton. Number 4 is an upper ground 2-bedroom apartment with direct access to the exterior and no shared stair. The building is located within the Colinton Conservation Area.
- 4.2 The main house dates from 1773 and is a 2 storey building with an attic and basement. Its form is L plan and has a former snuff mill dating from 1650, to the rear.
- 4.3 The principal elevation of Spylaw House faces onto Spylaw Park (west elevation) is an attractive elevation in an Adam style: 3 bay centrepiece, regular pattern of fenestration, coursed sandstone rubble, attractive perron to the front entrance which provides the sole and main entrance to Flat 4 only and is not shared with any other property. The rear elevation of the building fronts onto the Water of Leith. The listing describes the building as having been converted into a number of flats, each with very few interior features remaining.
- 4.4 The building was originally the house of James Gillespie, a notable Edinburgh historical figure. The applicants purchased the property in 2016 and have used it as a short term let since then.
- 4.5 Number 4 has two generous sized bedrooms, a living room has a double aspect window overlooking Spylaw Park, kitchen and bathroom. Car parking is available adjacent to the property. Colinton Village is a few minutes walk away and offers a selection of shops, a small Co-op supermarket where guests can buy everything they would need for their stay. It is open daily from 7am - 10pm. There is also an Italian restaurant, Dante's, a coffee shop and 2 pubs. The flat has the potential to accommodate up to 6 people but most bookings have been for far fewer than that.

## 5 SHORT TERM LET CONTROL AREA

- 5.1 Section 17 of the Planning (Scotland) Act 2019 introduced powers for local authorities to designate Short-term Let Control Areas. The purpose of control areas is to help manage high concentrations of secondary letting (where it affects the availability of residential housing or the character of a neighbourhood); restrict or prevent short-term lets in places or types of building where it is not appropriate; and help local authorities ensure that homes are used to best effect in their areas.
- 5.2 Edinburgh City Council's designation of the whole of the city as a Short Term Let Control Area came into effect on 5th September 2022. The use of the application site pre-dates the STL control area coming into effect and extends back a significant number of years.
- 5.3 Looking to Circular 1/2023 (May 2023) 'Short Term Lets and Planning' we note that it states in paragraph 4.3 that *'Section 26B is not retrospective, meaning that the designation of a control area does not, in itself, retrospectively deem any previous change of use of a dwellinghouse to use for short term lets within that area to be a material change of use. Section 26B applies where a change of use of a dwellinghouse occurs after designation of a control area.'*
- 5.4 The use of the property as a short term let did not require planning permission prior to the control zone date given that it's use was not a material change of use from the use as a flat. The use of the flat for short term let purposes for such a restricted number of guests is no different and generates no issues for the locale that are different from an owner occupied flat. The flats in this stair are clearly not however owner occupied.
- 5.5 There has therefore been no automatic material change of use as CEC implies. This application seeks to continue to use the property as a short term let.

## 6 PLANNING CONSIDERATIONS

- 6.1 Section 25 of the Town and County Planning (Scotland) Act 1997 states that “where in making any determination under the planning act regard is to be had to the Development Plan, the determination shall be in accordance with the plan unless material considerations indicate otherwise”.

### DEVELOPMENT PLAN – NPF4

- 6.2 The Development Plan relevant to the current planning application includes the Edinburgh Local Development Plan (2016). Also now forming part of the development plan is NPF4. NPF4 was approved by the Scottish Parliament on 11 January 2023. All applications must now be considered against the relevant policies contained within NPF 4 in addition to policies of the Edinburgh Local Development Plan (LDP).
- 6.3 NPF 4 contains a specific policy on short term lets, Policy 30(e), which states:

*Development proposals for the reuse of existing buildings for short term holiday letting will not be supported where the proposal will result in:*

- i. An unacceptable impact on local amenity or the character of a neighbourhood or area; or*
- ii. The loss of residential accommodation where such loss is not outweighed by demonstrable local economic benefits.*

- 6.4 In this case the proposal does not result in a negative impact on local amenity or character of the building or the local area. No complaints have been received about guests. The unit is small and cannot accommodate large groups. In addition, the high host rating enjoyed by the owner comes as a result of diligent work in the provision of the high standard of accommodation as well as ensuring that the visitor enjoys a peaceful stay.
- 6.5 The separate entrance to the unit means that other occupier of the flats within the building are not disturbed by visitors any more than they would be by permanent occupants of the flat. In addition, the flat is only let out 40% of the year and maintained to a high standard. Guests are provided with comprehensive information prior to their stay as to how to find and access the property and what is expected of them while using the accommodation. The continued use of the

short term let is therefore compatible with the locale. It has been operational since 2016 without issue.

- 6.6 With respect to criterion (ii) the value of tourism to Scotland's economy cannot be understated. Detailed information relating to visitor numbers and spending patterns can be found on the Visit Scotland website. This notes that in 2019 (i.e. pre-pandemic) residents of Great Britain accounted for 13.8 million overnight stays in Scotland, with a total spend of £3,200 million. Of this 22.2% (i.e., 3.06 million overnight stays and £710 million of spend) was in Edinburgh and Lothian. Visitors from outwith the UK added a further 27.4 million overnight stays in Scotland and spent £2,500 million. Even in 2021 (post-pandemic) the average international visitor to Scotland spent a total of £958 over a 15.8 day trip, with a daily expenditure of around £60.

#### DEVELOPMENT PLAN – EDINBURGH LDP

- 6.7 The site is located within the current City of Edinburgh Local Development Plan 2016 within the Urban Area and in the Colinton Conservation Area.
- 6.8 A key policy consideration in the LDP is that of Hou7. This policy sets out that "*Developments, including changes of use, which would have a materially detrimental effect on the living conditions of nearby residents, will not be permitted*". The intention of the policy is firstly, to preclude the introduction or intensification of non-residential uses incompatible with predominantly residential areas and secondly, to prevent any further deterioration in living conditions in more mixed use areas which nevertheless have important residential functions.
- 6.9 The proposal has not had a detrimental impact upon amenity of the locale in its past 7.5 years of operation. That will not change. The property is accessed separately, is self-contained, situated in a large, traditional listed building. It is important that the building is occupied to secure its future. The level of use as an STL is around 40% of the year. The rate of occupancy is not high because the property is used by the family when they are in Edinburgh, the resultant impacts are therefore much lower. Responsible advertising, letting, communication and checking processes are all in place to ensure that the use operates smoothly without undue impacts on the other flats in the building.

- 6.10 The Edinburgh Local Development Plan 2016 sets out it's number 1 aim is to support the growth of the city economy; this will inevitably include both traditional and newer types of business in the city.
- 6.11 The council will assert that there is no evidence of local economic benefits from use of a property as a short-term let which outweigh the loss of residential accommodation in the context of the recognised need for housing in Edinburgh. However, that argument fails because this has not been in residential use for 7.5 years, it is not a new proposal. To bring responsible operators into a situation where they allege that an established use becomes unlawful by virtue of it not having been in operation for more than 10 years as opposed to having been lawful prior to the date of commencement of the new regulations brings thousands of people into a scenario where they are in breach of planning procedures through no fault of their own. It also jeopardises the city's tourism economy by restricting the market forces that determine whether a business is successful or not in a free market economy and brings control into an area where it ought not to be.
- 6.12 Policy Env3 and Env4 deal with Listed Buildings. Policy Env3 states that Development within the curtilage or affecting the setting of a listed building will be permitted only if not detrimental to the architectural character, appearance or historic interest of the building, or to its setting. The operation of this unit would not impact upon its physical features, and presents to risk to the quality of the listed building. Instead, it's use as short term let accommodation both enables many more people to visit, appreciate and learn about the building.
- 6.13 Furthermore, the investment in the property as a commercial venture ensure that there are resources available to tend to matters requiring maintenance in a timely and historically accurate way. Thereby conserving the character of the building for future generations.
- 6.14 Finally, paragraph 220 of the LDP acknowledges that tourism is the biggest source of employment in Edinburgh, providing jobs for over 31,000 people. Whilst there is not a specific LDP policy relating to the jobs created through the required care, maintenance and upkeep of properties, the economic benefits are a material planning consideration.



## OTHER MATERIAL CONSIDERATIONS - City Plan 2030

- 6.15 Turning next to the provisions of the City Plan 2030, there is also relevance to policy Hou7. This policy, and its applicability has been reviewed below, however at the time of this application the City Plan 2030 has yet to be formally adopted and as such carries considerably less weight as a material consideration.
- 6.16 Hou 7 Loss of Housing outlines that “Proposals which would result in the loss of residential dwellings through demolition or a change of use will not be permitted, unless in exceptional circumstances, where it would provide necessary community facilities without loss of amenity for neighbouring residents”.
- 6.17 Hou 7 goes onto to explain “Over the last decade...significant increase in the use of residential properties for short-term lets, reducing the number of homes available. In some areas this has resulted in the dilution of the resident population... commercial uses can have a detrimental impact on the amenity of residents, particularly where there is a high density of people occupying one building with communal areas... the change of use of a residential unit will only be permissible in exceptional circumstances”. It is proposed however, that this site represents such circumstances where an exact policy position cannot be comfortably applied.

## STL LICENSING POLICY

- 6.18 City of Edinburgh Council Short Term Let Licensing Policy highlights a number of matters to be considered in relation to new short term let properties.
- 6.19 The Council note that tenemental accommodation, or those with a shared main door, are unsuitable for secondary STL due to their character, location and risk of creating undue nuisance. This property has direct access to outside areas and no shared accommodation.
- 6.20 The operation of the unit for this purpose does not create the levels of nuisance the council are concerned about.
- 6.21 The Council guidance notes that they may take certain factors into account when determining whether an application for secondary letting in tenement or shared main door accommodation be granted as an exception to its policy Factors which maybe considered include: Neighbours consent/support, Length of time previously operated, Frequency of bookings or intensity of use of

accommodation, System to prevent neighbour concerns, Low level of complaints. All of which are applicable here.

- 6.22 The property is subject to a strict and well managed operating guide. This guide would ensure that check-in and check-out arrangements present no adverse impacts regarding noise or disruption. The guide would also provide guests with detailed information on the conduct required in the building and wider area.
- 6.23 The property is carefully managed even prior to guests' arrival. The property is carefully marketed, and as such guests can be vetted by reviews. Outwith the need to minimise disruption to others, it is in the interest on the owner to retain the luxury standard and setting that the property is marketed upon.
- 6.24 The property provides 2 bedrooms, allowing up to 6 guests per night. This has been carefully considered so as to mimic the movement and capacity of its use as a residential unit. The size, finish and layout of the property all promote it as peaceful accommodation. Large groups are not permitted and guidance is given as to conduct within and when accessing the property.
- 6.25 The owner has received such a positive feedback rating from about the unit. Comment is often made about the high standard of finish and professionalism of the operation.

## **7 CONCLUSION**

- 7.1 The proposal has been in operation for 7.5 years without the alleged impacts the council fears. It makes a contribution to the Edinburgh tourism economy and provides a unique setting and form of accommodation. For the reasons outlined in this report consent ought to be granted as the proposal complies with NPF4 and the Edinburgh LDP.
- 7.2 In addition, it is unreasonable to withhold planning permission on the basis of a policy change to operators who have been operating responsibly for significant periods of time, prior to that change.
- 7.3 Each review is considered on its own merits and in this case the unique factors are the low levels of occupancy, the absence of any shared accommodation with other flats, the responsibility of the operator and the lack of complaints thus far.
- 7.4 We respectfully request that the review concludes that planning permission is granted.

*Suzanne C McIntosh MRTPI HonFRIAS  
27.11.23*

# Copyright

Copyright in respect of architecture, gives the author of the drawings economic rights, protecting the ownership of drawings and enabling control over the use of the drawings. The purpose of copyright law is to prevent others from exploiting such material without the permission of the original author of the work. Uses of copyright work require permission from the original author.

## When is copyright effective?

Copyright protection is automatic under the Copyright, Designs and Patents Act 1988 for original architectural works. This is underlined by the changes to the Intellectual Property Act 2014. Dependent upon the type of design work and whether or not it warrants being a “registered design” as may apply to unique building components, 3D or systems, it is worth considering protecting designs under this legislation in addition to Copyright infringement. The following link gives comprehensive guidance to businesses in respect of ownership of design: <https://www.gov.uk/government/publications/changes-to-design-law-business-guidance>.

Copyright protection extends for the lifetime of the author and for a further period of 70 years from the end of the calendar year in which the author dies.

There are other forms of legislation that would protect creative work such as patents, design rights, trademarks etc.

## Who owns copyright?

The ownership of the copyright in architectural works will reside with the author of the work, unless the work is created by an employee in the course of his employment, in which case the employer would own the copyright. The copyright may be assigned to another in writing. Another alternative is to issue a licence to use the architectural works.

## Extent of copyright protection

Copyright protection extends to plans, designs, sketches, prints, diagrams, working drawings, final drawings, artistic presentations, notes and any building constructed therefrom.

## Good practice

It is good practice and common commercial practice to take steps to protect one's copyright. The Institute publishes a Conditions of Engagement which can be downloaded from the CIAT website ([ciat.org.uk](http://ciat.org.uk)), and this can be used to assist members in administering their contract with their clients. This includes a section on copyright, which endeavours to protect

the members' copyright whilst enabling your client to utilise the services as the member has intended.

It is also good practice to mark the document with the copyright symbol © followed by the date and your name and details as a warning not to copy the work, although this isn't legally necessary in the UK.

Members are well advised to insert a copyright clause on their drawings as a matter of routine, explaining that the copyright in the drawing remains vested in the Member. This would also be an opportunity to quote any non-sequiturs such as matters involving scaling the drawing, checking dimensions etc. dependent on the service provided.

## Infringements

Copyright gives the author exclusive rights to copy and issue copies of the work. If any third party copies the work without the author's authority it is likely to amount to an infringement of copyright.

It should be understood that whilst all efforts should be made to protect your design from being copied on other sites, your client has in effect “purchased” the right to use the design for the particular project for which you have made an agreement.

## Licence

The author may grant a licence to a third party to enable him to reproduce the work under the terms of an agreement. The Institute's Conditions of Engagement make provision for this.

## Court actions

If a case of copyright infringements is proven, the court can apply the following measures:

- compensation awarded for loss of financial income from the work, usually measured by reference to what would have been a fair licence fee or an account of profits earned
- injunction to prevent any further breach of copyright
- order for materials breaching copyright to be delivered up/ destroyed

## Sources of reference

<https://www.gov.uk/government/publications/changes-to-design-law-business-guidance>

[www.hmso.gov.uk/acts/acts1988/Ukpga\\_19880048\\_en\\_1.htm](http://www.hmso.gov.uk/acts/acts1988/Ukpga_19880048_en_1.htm) to view the Copyright, Design and Patents Act 1988.

[www.hmso.gov.uk/copyright/guidance/guidance\\_notes.htm](http://www.hmso.gov.uk/copyright/guidance/guidance_notes.htm)  
Guidance notes on copyright issued by Her Majesty's Stationery Office.

[www.patent.gov.uk](http://www.patent.gov.uk) — UK Patent Office

[www.intellectual-property.gov.uk](http://www.intellectual-property.gov.uk) — Intellectual Property information from government

[www.copyrightservice.co.uk/copyright/p01\\_uk\\_copyright\\_law](http://www.copyrightservice.co.uk/copyright/p01_uk_copyright_law)

Most of these sites also include other links, which may be helpful.

The RIBA offers its members the following guidance and has kindly given CIAT its permission to pass the information on to its members:

### Copyright

The RIBA Planning Policy Group has consulted Marcus Harling and Briony Thomas of Burges Salmon Solicitors, who advise:

'There are no special rules relating to copyright on the Internet, and protection of drawings and other material is governed by ordinary copyright law.'

Remember that planning authorities have a statutory right to:

- copy and publish material in connection with any planning application
- make material relating to planning applications available for public inspection

### Recommendations to architects

- Include a statement of permitted use on all drawings. For example, "This (plan/drawing) has been produced for (client) for the (project) and is submitted as part of planning application (application number/relating to site name) and is not intended for use by any other person or for any other purpose."
- Include the architect's name and logo on all drawings and make sure that all work carries a copyright statement, for example, "© (name of copyright owner [UK], date of creation)"
- Put a watermark through all drawings – this could be the architect's name or logo.
- Wherever possible, supply the drawings in electronic format and in a "read only" mode. This will mean that there is no scope for distortion of drawings through the scanning process and allows control over inclusion of watermarks, copyright statements etc.

### Recommendations to Planning Authorities

- Include a statement on the website that copying/ downloading/use of drawings in any form will be an infringement of copyright
- Make access to all architectural drawings 'read only' (if possible).

## Accuracy

The planning inspectorate intends to electronically transmit planning application drawings to its inspectors. On the question of potential inaccuracies caused by this Clive Newberry QC, planning barrister and member of the Planning Policy Group, advises:

There is a possibility that an inaccurately digitally formatted plan may result in a "substantial alteration". The "substantial alteration" test is based on whether the permission as granted represents a "substantial alteration" of what had been proposed by the application. (See: *Wheatcroft [Bernard] Ltd v Secretary of State for the Environment* [1982] JPL 37.)

## Recommendations

1. The architect should state clearly on the plans that only the original drawings should be relied on.
2. Planning authorities posting plans on their websites should inform the public that:
  - plans are liable to distortion in transmission to the web
  - measurements scaled from plans cannot be guaranteed to be accurate
  - reliance must be placed on the originals, which are available for inspection
3. The planning inspectorate should publish a similar warning on plans on its website, and should give clear guidance to inspectors that only the original drawings submitted with an application or appeal should be the basis for a determination."

## END

This copy revised and updated October 2014. It supersedes all previous versions of this document.

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## Data Protection Privacy Notice

### Planning & Building Standards



#### 1) Overview

The City of Edinburgh Council provides a range of Planning & Building Standards Services because the law says that we must do this.

The services we provide are in the following areas:

- Building standards
- Development Management
- Planning Strategy & forward planning

To deliver these Planning & Building Standards services we need to collect, store, use, share and dispose of personal information. This is known as data processing.

When we collect personal data, we must tell you why we need it, and what we will do with it. This information is called a privacy notice.

This privacy notice explains how we process your personal information for the purposes of providing Planning & Building Standards Services. If this privacy notice changes in any way, we will place an updated version on this page. By regularly reviewing this page you will ensure that you are always aware of what information we collect, how we use it and under what circumstances, if any, we share it with others.

In processing personal information, The City of Edinburgh Council must comply with the EU General Data Protection Regulation and the Data Protection Act 2018. We refer to this as data protection legislation.

#### Data controller

Data controllers are the organisations or individuals that determine how your personal information will be processed. By law, data controllers must pay a fee to register with the UK Information Commissioner who is the data protection regulator within the UK.

The City of Edinburgh Council data controller registration number: Z5545409.

#### 2) Data Collection and personal data categories

The personal information we hold about you about the provision of Planning & Building Standards services is collected in a variety of ways. We will collect information from you in paper and online forms, by telephone, email, CCTV and in conversation with a member of our staff. We will also collect information from one or more of our partners agencies such as Police Scotland, the Scottish Court Service and NHS Lothian and Voluntary Sector organisations working with the Council.

When we collect and process your personal information, we are committed to the principles set out in data protection legislation.

#### Data protection principles

We only collect information that we need

We keep your personal information secure.

We don't keep your information for longer than we need to

We tell you why we need your information and what we will do with it

We collect accurate information and, where necessary, keep it up to date

We don't use your information for a different reason than the one we have told you about. The exception to this is if we must do so by law e.g. For the purposes of providing Child Protection and Safeguarding Services.

#### Personal data categories

We process personal data and special category data.

Personal data is information which can be used to identify you such as your

- Name
- address
- date of birth

Special category data is information that reveals

- racial or ethnic origin
- data concerning health and sex life
- religious or philosophical beliefs

### 3) Purpose of processing personal information

Processing personal information about the provision of Planning & Building Standards Services allows us to provide those services and fulfil our legal responsibilities, such as investigating traders who breach the law, inspecting food business food hygiene arrangements and licensing a wide range of licensed activities in Edinburgh.

On occasions, we may keep your personal information within the Council's archives for evidential and historical reasons, or use it for research and statistical purposes.

It will sometimes be necessary to process personal information to prevent and detect crime, to comply with legal orders, and to provide information in accordance with a person's rights.

The Council will only process your personal information when it is lawful to do so.

#### Reasons

Data processed by the Council about Planning & Building Control services is processed because:

- It is required by law
- It is necessary to provide a Council service which is part of our public task.

Section 21 of the Council's Register of Processing sets out the Planning & Building Control activities that involve the collection and use of personal information and the reason why we can process your information lawfully.

If we require your permission to process your personal information, we will ask you. If you wish to withdraw your consent, you can do so through contacting the Council's Information Rights Team.

#### 4) Information Sharing

To provide you with good quality services and to meet our legal obligations, we will sometimes share your personal information between teams within the Council, and with external partners and agencies involved in delivering services on our behalf.

The Council may also provide personal information to third parties, but only where it is necessary, either to comply with the law or where permitted under data protection legislation.

Organisations who we may share your information with include

- Scottish Water
- Neighbours who are notified of your application

We will only share your information with partners or suppliers who have sufficient measures and procedures in place to protect your information and can meet their legal obligations under data protection legislation. These requirements will be set out in contracts or information sharing agreements.

We will not share your information for marketing purposes, unless you have specifically given us with permission to do so.

#### Details of transfers to third country and safeguards

Your information will normally be stored and processed on servers based within the European Economic Area. While it may sometimes be necessary to transfer personal info overseas, any transfers will be in full compliance with data protection legislation.

#### 5) Retention periods and your rights

##### Retention periods

We will not keep your information for any longer than it is needed, and will dispose of both paper and electronic records in a secure way. The length of time we need to keep information collected for providing Planning & Building Standards services varies will depend on the purpose for which it is collected. The Council has a Record Retention Schedule which sets out how long we keep records and the reason why.

You have rights under data protection legislation including:

- Right to be informed about how we collect and use your personal information through privacy notices such as this.
- Right to request information we hold about you. This is known as a subject access request and is free of charge. We must respond within one month, although this can be extended to three months if the information is complex.
- Right to rectification. You are entitled to have your information rectified if it is factually inaccurate or incomplete. We must respond to your request within one month. If we



decide to take no action, we will tell you why and let you know about your right of complaint to the UK Information Commissioner.

- Right to erasure. You have the right to ask us to delete your information or stop using it. It will not always be possible for us to comply with your request, for example if we have a legal obligation to keep the information. If we decide to take no action, we will tell you why and let you know about your right of complaint to the UK Information Commissioner.
- Right to restrict processing. You have the right to restrict how your data is processed in certain circumstances, for example if the information is not accurate. If a restriction is applied, we can retain just enough information to ensure that the restriction is respected in future. If we decide to lift a restriction on processing we must tell you.
- Right to object. You can object to your information being used for profiling, direct marketing or research purposes.
- Right to automated decision making and profiling, to reduce the risk that a potentially damaging decision is taken without human intervention.

Whilst a right to data portability exists under data protection legislation, because we process information for Planning & Building Standards Services as part of our public task or because of legal obligations, you cannot ask us to transfer this information to another data controller so they can use it.

#### Collecting Information Automatically

We use cookies to collect data automatically when you are using our website. The cookies page on the Website gives further information about this. No other Planning & Building Standards Services information is collected automatically.

To make a subject access request, or to exercise any of your rights, please contact Information Rights Team.

## 6) Incidents, complaints and comments

### Data Protection incident

If you are concerned about what we do with your data, or think something has gone wrong, for example if you have received correspondence from the Council which is not addressed to you, contact the Council's Data Protection Officer to report a data protection incident.

### Complaints and comments

If you wish to make a complaint or comment about how we have processed your personal information, you can do so by writing to the Council's Data Protection Officer.

If you are still unhappy with how the council have handled your complaint, you may contact

UK Information Commissioner's Office, Wycliffe House  
Water Lane, Wilmslow, Cheshire, SK9 5AF  
Tel: 08456 30 60 60 | Website: [www.ico.gov.uk](http://www.ico.gov.uk) (external link)

## 7) Data Protection Officer

The Council must appoint a Data Protection Officer to make sure it is complying with data protection legislation. The Council's Data Protection Officer is:

Kevin Wilbraham, Information Governance and Strategic Complaints Manager  
Information Governance Unit, City of Edinburgh Council  
Waverley Court – 2.1, 4 East Market Street  
Edinburgh  
EH8 8BG  
E-mail: [information.compliance@edinburgh.gov.uk](mailto:information.compliance@edinburgh.gov.uk)  
Tel: 0131 469 6200

Business Centre G.2 Waverley Court 4 East Market Street Edinburgh EH8 8BG Email: [planning.support@edinburgh.gov.uk](mailto:planning.support@edinburgh.gov.uk)

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100625177-001

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

## Type of Application

What is this application for? Please select one of the following: \*

- Application for planning permission (including changes of use and surface mineral working).
- Application for planning permission in principle.
- Further application, (including renewal of planning permission, modification, variation or removal of a planning condition etc)
- Application for Approval of Matters specified in conditions.

## Description of Proposal

Please describe the proposal including any change of use: \* (Max 500 characters)

APPLICATION FOR PLANNING PERMISSION FOR THE USE AS A SHORT TERM LET

Is this a temporary permission? \*

Yes  No

If a change of use is to be included in the proposal has it already taken place?  
(Answer 'No' if there is no change of use.) \*

Yes  No

Has the work already been started and/or completed? \*

No  Yes – Started  Yes - Completed

## Applicant or Agent Details

Are you an applicant or an agent? \* (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

Applicant  Agent

## Agent Details

Please enter Agent details

Company/Organisation:	Suzanne McIntosh Planning Limited		
Ref. Number:		You must enter a Building Name or Number, or both: *	
First Name: *	Suzanne	Building Name:	
Last Name: *	McIntosh	Building Number:	45C
Telephone Number: *	07792230979	Address 1 (Street): *	Bath Street
Extension Number:		Address 2:	Portobello
Mobile Number:		Town/City: *	Edinburgh
Fax Number:		Country: *	United Kingdom
		Postcode: *	EH15 1HB
Email Address: *	smcintoshplan@gmail.com		
Is the applicant an individual or an organisation/corporate entity? *			
<input checked="" type="checkbox"/> Individual <input type="checkbox"/> Organisation/Corporate entity			

## Applicant Details

Please enter Applicant details

Title:	Other	You must enter a Building Name or Number, or both: *	
Other Title:	DR	Building Name:	40
First Name: *	VIRGINIA	Building Number:	
Last Name: *	HOBDAY	Address 1 (Street): *	Our Haven Way
Company/Organisation		Address 2:	Georgetown
Telephone Number: *		Town/City: *	Grand Caymen
Extension Number:		Country: *	Caymen Islands
Mobile Number:		Postcode: *	
Fax Number:			
Email Address: *	[REDACTED]		

## Site Address Details

Planning Authority:

City of Edinburgh Council

Full postal address of the site (including postcode where available):

Address 1:

4 SPYLAW HOUSE

Address 2:

25 SPYLAW STREET

Address 3:

COLINTON

Address 4:

Address 5:

Town/City/Settlement:

EDINBURGH

Post Code:

EH13 0JU

Please identify/describe the location of the site or sites

Northing

668915

Easting

321305

## Pre-Application Discussion

Have you discussed your proposal with the planning authority? \*

Yes  No

## Site Area

Please state the site area:

90.00

Please state the measurement type used:

Hectares (ha)  Square Metres (sq.m)

## Existing Use

Please describe the current or most recent use: \* (Max 500 characters)

For the past 7 years the property has been in use as a short term let

## Access and Parking

Are you proposing a new altered vehicle access to or from a public road? \*

Yes  No

If Yes please describe and show on your drawings the position of any existing, altered or new access points, highlighting the changes you propose to make. You should also show existing footpaths and note if there will be any impact on these.

Are you proposing any change to public paths, public rights of way or affecting any public right of access? \*  Yes  No

If Yes please show on your drawings the position of any affected areas highlighting the changes you propose to make, including arrangements for continuing or alternative public access.

How many vehicle parking spaces (garaging and open parking) currently exist on the application Site?

How many vehicle parking spaces (garaging and open parking) do you propose on the site (i.e. the Total of existing and any new spaces or a reduced number of spaces)? \*

Please show on your drawings the position of existing and proposed parking spaces and identify if these are for the use of particular types of vehicles (e.g. parking for disabled people, coaches, HGV vehicles, cycles spaces).

**Water Supply and Drainage Arrangements**

Will your proposal require new or altered water supply or drainage arrangements? \*  Yes  No

Do your proposals make provision for sustainable drainage of surface water?? \*  Yes  No  
(e.g. SUDS arrangements) \*

Note:-

Please include details of SUDS arrangements on your plans

Selecting 'No' to the above question means that you could be in breach of Environmental legislation.

Are you proposing to connect to the public water supply network? \*

Yes

No, using a private water supply

No connection required

If No, using a private water supply, please show on plans the supply and all works needed to provide it (on or off site).

**Assessment of Flood Risk**

Is the site within an area of known risk of flooding? \*  Yes  No  Don't Know

If the site is within an area of known risk of flooding you may need to submit a Flood Risk Assessment before your application can be determined. You may wish to contact your Planning Authority or SEPA for advice on what information may be required.

Do you think your proposal may increase the flood risk elsewhere? \*  Yes  No  Don't Know

**Trees**

Are there any trees on or adjacent to the application site? \*  Yes  No

If Yes, please mark on your drawings any trees, known protected trees and their canopy spread close to the proposal site and indicate if any are to be cut back or felled.

**Waste Storage and Collection**

Do the plans incorporate areas to store and aid the collection of waste (including recycling)? \*  Yes  No

If Yes or No, please provide further details: \* (Max 500 characters)

The flat uses the separation bins provided to every property, in addition cleaners will remove waste off site.

## Residential Units Including Conversion

Does your proposal include new or additional houses and/or flats? \*

Yes  No

## All Types of Non Housing Development – Proposed New Floorspace

Does your proposal alter or create non-residential floorspace? \*

Yes  No

## Schedule 3 Development

Does the proposal involve a form of development listed in Schedule 3 of the Town and Country Planning (Development Management Procedure (Scotland) Regulations 2013) \*

Yes  No  Don't Know

If yes, your proposal will additionally have to be advertised in a newspaper circulating in the area of the development. Your planning authority will do this on your behalf but will charge you a fee. Please check the planning authority's website for advice on the additional fee and add this to your planning fee.

If you are unsure whether your proposal involves a form of development listed in Schedule 3, please check the Help Text and Guidance notes before contacting your planning authority.

## Planning Service Employee/Elected Member Interest

Is the applicant, or the applicant's spouse/partner, either a member of staff within the planning service or an elected member of the planning authority? \*

Yes  No

## Certificates and Notices

CERTIFICATE AND NOTICE UNDER REGULATION 15 – TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND) REGULATION 2013

One Certificate must be completed and submitted along with the application form. This is most usually Certificate A, Form 1, Certificate B, Certificate C or Certificate E.

Are you/the applicant the sole owner of ALL the land? \*

Yes  No

Is any of the land part of an agricultural holding? \*

Yes  No

Do you have any agricultural tenants? \*

Yes  No

## Certificate Required

The following Land Ownership Certificate is required to complete this section of the proposal:

Certificate E

# Land Ownership Certificate

Certificate and Notice under Regulation 15 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Certificate E

I hereby certify that –

(1) – No person other than myself/the applicant was the owner of any part of the land to which the application relates at the beginning of the period 21 days ending with the date of the application.

(2) - The land to which the application relates constitutes or forms part of an agricultural holding and there are no agricultural tenants

Or

(1) – No person other than myself/the applicant was the owner of any part of the land to which the application relates at the beginning of the period 21 days ending with the date of the application.

(2) - The land to which the application relates constitutes or forms part of an agricultural holding and there are agricultural tenants.

Name:

Address:

Date of Service of Notice: \*

(4) – I have/The applicant has taken reasonable steps, as listed below, to ascertain the names and addresses of the other owners or agricultural tenants and \*have/has been unable to do so –

Signed: Suzanne McIntosh

On behalf of: DR VIRGINIA HOBDAV

Date: 26/04/2023

Please tick here to certify this Certificate. \*



## Checklist – Application for Planning Permission

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Please take a few moments to complete the following checklist in order to ensure that you have provided all the necessary information in support of your application. Failure to submit sufficient information with your application may result in your application being deemed invalid. The planning authority will not start processing your application until it is valid.

a) If this is a further application where there is a variation of conditions attached to a previous consent, have you provided a statement to that effect? \*

Yes  No  Not applicable to this application

b) If this is an application for planning permission or planning permission in principle where there is a crown interest in the land, have you provided a statement to that effect? \*

Yes  No  Not applicable to this application

c) If this is an application for planning permission, planning permission in principle or a further application and the application is for development belonging to the categories of national or major development (other than one under Section 42 of the planning Act), have you provided a Pre-Application Consultation Report? \*

Yes  No  Not applicable to this application

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

d) If this is an application for planning permission and the application relates to development belonging to the categories of national or major developments and you do not benefit from exemption under Regulation 13 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, have you provided a Design and Access Statement? \*

Yes  No  Not applicable to this application

e) If this is an application for planning permission and relates to development belonging to the category of local developments (subject to regulation 13. (2) and (3) of the Development Management Procedure (Scotland) Regulations 2013) have you provided a Design Statement? \*

Yes  No  Not applicable to this application

f) If your application relates to installation of an antenna to be employed in an electronic communication network, have you provided an ICNIRP Declaration? \*

Yes  No  Not applicable to this application

g) If this is an application for planning permission, planning permission in principle, an application for approval of matters specified in conditions or an application for mineral development, have you provided any other plans or drawings as necessary:

- Site Layout Plan or Block plan.
- Elevations.
- Floor plans.
- Cross sections.
- Roof plan.
- Master Plan/Framework Plan.
- Landscape plan.
- Photographs and/or photomontages.
- Other.

If Other, please specify: \* (Max 500 characters)

Provide copies of the following documents if applicable:

A copy of an Environmental Statement. \*

Yes  N/A

A Design Statement or Design and Access Statement. \*

Yes  N/A

A Flood Risk Assessment. \*

Yes  N/A

A Drainage Impact Assessment (including proposals for Sustainable Drainage Systems). \*

Yes  N/A

Drainage/SUDS layout. \*

Yes  N/A

A Transport Assessment or Travel Plan

Yes  N/A

Contaminated Land Assessment. \*

Yes  N/A

Habitat Survey. \*

Yes  N/A

A Processing Agreement. \*

Yes  N/A

Other Statements (please specify). (Max 500 characters)

## Declare – For Application to Planning Authority

I, the applicant/agent certify that this is an application to the planning authority as described in this form. The accompanying Plans/drawings and additional information are provided as a part of this application.

Declaration Name: Mrs Suzanne McIntosh

Declaration Date: 26/04/2023

## Payment Details

Online payment: [REDACTED]

Payment date: [REDACTED]

Created: [REDACTED]

# SUPPORTING PLANNING STATEMENT

APPLICATION FOR PLANNING  
PERMISSION FOR USE AS A  
SHORT TERM LET

FLAT 4 SPYLAW HOUSE,  
25 SPYLAW STREET, COLINTON

DR VIRGINIA HOBDAV

SUZANNE MCINTOSH PLANNING LIMITED

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## **CONTENTS**

### SUMMARY

### 1. INTRODUCTION

### 2. THE SITE AND LOCATION

### 3. SHORT TERM LET CONTROL AREA

### 4. THE PROPOSAL

### 5. PLANNING CONSIDERATIONS

### 6. CONCLUSION

## **1 INTRODUCTION**

- 1.1 Suzanne McIntosh Planning Limited is instructed to make an application for planning permission for the use of Flat 4, Spylaw House, 25 Spylaw Street, Colinton, Edinburgh as a property for short term let.
- 1.2 This statement sets out the nature of the use, the economic benefits of the use and assesses both the impacts of the proposal on the immediate locale and the building; as well as the wider considerations at play in the city.
- 1.3 The use of the property as accommodation for let, the unique arrangement and setting of the property, the potential alternative uses were it not to be used in this way and taking into account the listed status of the building, the economic benefits of the use, the limited occupation as an STL must all be taken into account in the consideration of this application.
- 1.4 A drawing detailing the layout of the property is provided and the photograph below shows the upper, lighter green door on the frontage which is the sole access to the property.



## **2 THE SITE AND LOCATION**

- 2.1 The application site is part of Spylaw House which is an historic building located also known as 25 Spylaw Park, Colinton. The building is a category B listed building located within Spylaw Park, Colinton. Number 4 is an upper ground 2-bedroom apartment with direct access to the exterior and no shared stair. The building is located within the Colinton Conservation Area.
- 2.2 The main house dates from 1773 and is a 2 storey building with an attic and basement. Its form is L plan and has a former snuff mill dating from 1650, to the rear.
- 2.3 The principal elevation of Spylaw House faces onto Spylaw Park (west elevation) is an attractive elevation in an Adam style: 3 bay centrepiece, regular pattern of fenestration, coursed sandstone rubble, attractive perron to the front entrance which provides the sole and main entrance to Flat 4 only and is not shared with any other property. The rear elevation of the building fronts onto the Water of Leith. The listing describes the building as having been converted into a number of flats, each with very few interior features remaining.
- 2.4 The building was originally the house of James Gillespie, a notable Edinburgh historical figure. The applicants purchased the property in 2016 and have used it as a short term let since then.
- 2.5 Number 4 has two generous sized bedrooms, a living room has a double aspect window overlooking Spylaw Park, kitchen and bathroom. Car parking is available adjacent to the property. Colinton Village is a few minutes walk away and offers a selection of shops, a small Co-op supermarket where guests can buy everything they would need for their stay. It is open daily from 7am - 10pm. There is also an Italian restaurant, Dante's, a coffee shop and 2 pubs. The flat has the potential to accommodate up to 6 people but most bookings have been for far fewer than that.

### **3 SHORT TERM LET CONTROL AREA**

- 3.1 Section 17 of the Planning (Scotland) Act 2019 introduced powers for local authorities to designate Short-term Let Control Areas.
- 3.2 The purpose of control areas is to: Help manage high concentrations of secondary letting (where it affects the availability of residential housing or the character of a neighbourhood); Restrict or prevent short-term lets in places or types of building where it is not appropriate; and help local authorities ensure that homes are used to best effect in their areas.
- 3.3 Within this control area, planning permission is always required for the change of use of an entire dwellinghouse, that is not a principal home, to a short-term let (STL).
- 3.4 Edinburgh City Council's designation of the whole of the city as a Short Term Let Control Area came into effect on 5th September 2022.
- 3.5 It is understood that the majority of STLs in Edinburgh tend to be in tenemental buildings and as such use of a common stair can result in impacts for neighbours. This proposal is not in that type of scenario.
- 3.6 Edinburgh operates as a single housing market. There are high levels of demand and need for affordable housing which have been identified through an analysis of housing need and demand. Most properties operating as STLs were or are residential dwellings and any residential dwelling not being used for that purpose reduces the availability of housing in Edinburgh. Would this property, if not in use as an STL contribute to affordable housing. Most probably not – it is located within one of the most affluent and desirable areas in the city and would command a property value of close to £400k.
- 3.7 A licensing scheme, The Civic Government (Scotland) Act 1982 (Licensing of Short term Lets) Order 2021 has now been approved requiring that, from July 2024, all STLs obtain a licence. The licensing scheme is complimentary to the control area and does not provide any regulation over the number of STLs or allow consideration of planning matters. The licence will be applied for separately after the planning permission is granted.

## **4 THE PROPOSAL**

- 4.1 This application seeks to continue to use the property as a short term let. The current operation has been ongoing since 2016. The property is used as a STL for around 150 nights a year – 40% of the year. Bookings are made through multiple platforms eg Airbnb, VRBO, Tripadvisor etc. Visitors come to the property from the rest of the UK, Europe and USA/ Canada in the main. Depending on the season the price per night varies from £130 to £250. The rating on eg Airbnb where most bookings come from is a 5 star Superhost given the positive feedback from visitors.
- 4.2 Guests receive instructions as to how to get into the flat, prior to their booking. A key safe is located at the front door. The flat is serviced after each of the bookings ends. Good communication is maintained with guests and checks are undertaken by the cleaning staff.
- 4.3 The Planning (Scotland) Act 2019 outlined the ability for Planning Authorities to designate short term let control area, within which properties operated for short term accommodation provision would require a change of use permission.
- 4.4 Edinburgh City Council have since designated such a control area on 5th September 2022, and as such this application is submitted for permission for continuation of the long established use. The use has been ongoing for 7 years without issue.
- 4.5 It is therefore necessary to make the planning application for change of use and then apply for the STL licence.



## 5 PLANNING CONSIDERATIONS

- 5.1 Section 25 of the Town and County Planning (Scotland) Act 1997 states that “where in making any determination under the planning act regard is to be had to the Development Plan, the determination shall be in accordance with the plan unless material considerations indicate otherwise”.

### DEVELOPMENT PLAN – NPF4

- 5.2 The Development Plan relevant to the current planning application includes the Edinburgh Local Development Plan (2016). Also now forming part of the development plan is NPF4. NPF4 was approved by the Scottish Parliament on 11 January 2023. All applications must now be considered against the relevant policies contained within NPF 4 in addition to policies of the Edinburgh Local Development Plan (LDP).
- 5.3 NPF 4 contains a specific policy on short term lets, Policy 30(e), which states:

*Development proposals for the reuse of existing buildings for short term holiday letting will not be supported where the proposal will result in:*

- i. An unacceptable impact on local amenity or the character of a neighbourhood or area; or*
- ii. The loss of residential accommodation where such loss is not outweighed by demonstrable local economic benefits.*

- 5.4 In this case the proposal does not result in a negative impact on local amenity or character of the building or the local area. No complaints have been received about guests. The unit is small and cannot accommodate large groups. In addition, the high host rating enjoyed by the owner comes as a result of diligent work in the provision of the high standard of accommodation as well as ensuring that the visitor enjoys a peaceful stay.
- 5.5 The separate entrance to the unit means that other occupier of the flats within the building are not disturbed by visitors any more than they would be by permanent occupants of the flat. In addition, the flat is only let out 40% of the year and maintained to a high standard. Guests are provided with comprehensive information prior to their stay as to how to find and access the property and what is expected of them while using the accommodation. The continued use of the short term let is therefore compatible with the locale. It has been operational since 2016 without issue.

- 5.6 With respect to criterion (ii) the value of tourism to Scotland's economy cannot be understated. Detailed information relating to visitor numbers and spending patterns can be found on the Visit Scotland website. This notes that in 2019 (i.e. pre-pandemic) residents of Great Britain accounted for 13.8 million overnight stays in Scotland, with a total spend of £3,200 million. Of this 22.2% (i.e., 3.06 million overnight stays and £710 million of spend) was in Edinburgh and Lothian. Visitors from outwith the UK added a further 27.4 million overnight stays in Scotland and spent £2,500 million. Even in 2021 (post-pandemic) the average international visitor to Scotland spent a total of £958 over a 15.8 day trip, with a daily expenditure of around £60.
- 5.7 In addition to the above, in 2018, the Association of Scotland's Self Caterers (ASSC) produced a report titled 'Far More Than Just Houses: The Benefits of the Short-Term Rental Sector to Scotland'. That research demonstrated that short-term letting is a major component of Scotland's growing tourism offering, making a substantial contribution to the tourist economy. It made the argument that the STL sector cannot be blamed for exacerbating the housing crisis as other longstanding issues are of far greater significance eg the number of empty properties in Scotland, or the failure of governments to deliver sufficient levels of affordable housing. In relation to anti-social behaviour in Scotland, the number of recorded complaints are negligible in comparison to the number of self-catering units/properties let and cannot be identified as a source of the problem if it exists.
- 5.8 A further report, prepared by Biggar Economics on behalf of AirBnB noted that stringent licensing (and planning) schemes could reduce Airbnb's economic impact by between £32 million and £133 million, which would cost between 1,740 and 7,190 jobs across Scotland. There is therefore a wider economic impact at stake in the council's decisions.
- 5.9 The facts about short-term letting in Edinburgh specifically were set out by the ASSC in August 2022 where they noted that revenue, and world-class experiences offered to guests. To be such an essential part of Scotland's tourism mix is even more remarkable for our sector, which generates £867m per year, when most self-caterers operate small or micro businesses. Our professional self-caterers are diligent and considerate business owners who are too often unfairly

maligned. They do not, for example, 'hollow out communities', as some have claimed, but rather are part of local communities across Scotland and have been for many, many years".

- 5.10 In the specific context of Policy 30(e) of NPF 4, on 7 February 2023, Fiona Campbell (Chief Executive of the ASSC) gave oral evidence to the Scottish Parliament's Local Government, Housing and Planning Committee. The ASSC supplied the Committee with a substantial piece of written evidence to supplement their contribution to the oral session. There is a need now for all elected politicians to take an evidence-based approach to understand the impact of these regulations, or appreciate the contribution that tourism brings to local economies across Scotland.
- 5.11 Serious concerns have also been raised in Edinburgh in relation to the International and Fringe Festivals and the ability of the city to provide accommodation to meeting the demands of these important festivals to the city's economy. It is suggested that £30 million in revenue could be lost as performers struggle to find places to stay.
- 5.12 The contribution to employment from short-term letting linked tourism in the UK varies considerably across regions. Around 383,000 jobs, or 77% of this employment, is generated in rural locations, with the remaining 113,000 in urban areas. The regional employment figures highlight key rural destinations such as the Southwest, Wales, and Scotland, which require greater levels of employment to cope with demand. In Scotland alone it is estimated that some 67,000 jobs are dependent upon the short-term letting industry. This will include staff and the many letting agencies and cleaners, builders, painters and decorators, plumbers, electricians etc.

- 5.13 The site is located within the current City of Edinburgh Local Development Plan 2016 within the Urban Area and in the Colinton Conservation Area.
- 5.14 A key policy consideration in the LDP is that of Hou7. This policy sets out that “Developments, including changes of use, which would have a materially detrimental effect on the living conditions of nearby residents, will not be permitted”. The intention of the policy is firstly, to preclude the introduction or intensification of non-residential uses incompatible with predominantly residential areas and secondly, to prevent any further deterioration in living conditions in more mixed use areas which nevertheless have important residential functions.
- 5.15 The proposal has not had a detrimental impact upon amenity of the locale in its past 7 years of operation. That will not change. The flat is accessed separately, is self-contained, situated in a large, traditional listed building. It is important that the building is occupied to secure its future. The owners live abroad and would rather it was occupied as opposed to empty. The level of use as an STL is around 40% of the year. The rate of occupancy is not high, the resultant impacts are therefore much lower. Responsible advertising, letting, communication and checking processes are all in place to ensure that the use operates smoothly without undue impacts on the other flats in the building.
- 5.16 The Edinburgh Local Development Plan 2016 sets out it's number 1 aim is to support the growth of the city economy; this will inevitably include both traditional and newer types of business in the city.
- 5.17 The council will assert that there is no evidence of local economic benefits from use of a property as a short-term let which outweigh the loss of residential accommodation in the context of the recognised need for housing in Edinburgh. However, that argument fails because this has not been in residential use for 7 years, it is not a new proposal. To bring responsible operators into a situation where they allege that an established use becomes unlawful by virtue of it not having been in operation for more than 10 years as opposed to having been lawful prior to the date of commencement of the new regulations brings thousands of people into a scenario where they are in breach of planning procedures through no fault of their own. It also jeopardises the city's tourism economy by restricting the market forces that determine whether a business is successful or not in a free market economy and brings control into an area where it ought not to be.

- 5.18 Policy Env3 and Env4 deal with Listed Buildings. Policy Env3 states that Development within the curtilage or affecting the setting of a listed building will be permitted only if not detrimental to the architectural character, appearance or historic interest of the building, or to its setting. The operation of this unit would not impact upon its physical features, and presents no risk to the quality of the listed building. Instead, its use as short term let accommodation both enables many more people to visit, appreciate and learn about the building.
- 5.19 Furthermore, the investment in the property as a commercial venture ensure that there are resources available to tend to matters requiring maintenance in a timely and historically accurate way. Thereby conserving the character of the building for future generations.
- 5.20 Finally, paragraph 220 of the LDP acknowledges that tourism is the biggest source of employment in Edinburgh, providing jobs for over 31,000 people. Whilst there is not a specific LDP policy relating to the jobs created through the required care, maintenance and upkeep of SVCA properties, the economic benefits are a material planning consideration.

#### OTHER MATERIAL CONSIDERATIONS - City Plan 2030

- 5.21 Turning next to the provisions of the City Plan 2030, there is also relevance to policy Hou7. This policy, and its applicability has been reviewed below, however at the time of this application the City Plan 2030 has yet to be formally adopted and as such carries considerably less weight as a material consideration.
- 5.22 Hou 7 Loss of Housing outlines that "Proposals which would result in the loss of residential dwellings through demolition or a change of use will not be permitted, unless in exceptional circumstances, where it would provide necessary community facilities without loss of amenity for neighbouring residents".
- 5.23 Hou 7 goes on to explain "Over the last decade...significant increase in the use of residential properties for short-term lets, reducing the number of homes available. In some areas this has resulted in the dilution of the resident population... commercial uses can have a detrimental impact on the amenity of residents, particularly where there is a high density of people occupying one building with communal areas... the change of use of a residential

unit will only be permissible in exceptional circumstances". It is proposed however, that this site represents such circumstances where an exact policy position cannot be comfortably applied.

#### STL LICENSING POLICY

- 5.24 City of Edinburgh Council Short Term Let Licensing Policy highlights a number of matters to be considered in relation to new short term let properties.
- 5.25 The Council note that tenemental accommodation, or those with a shared main door, are unsuitable for secondary STL due to their character, location and risk of creating undue nuisance. This property has direct access to outside areas and no shared accommodation.
- 5.26 The operation of the unit for this purpose does not create the levels of nuisance the council are concerned about.
- 5.27 The Council guidance notes that they may take certain factors into account when determining whether an application for secondary letting in tenement or shared main door accommodation be granted as an exception to its policy Factors which maybe considered include: Neighbours consent/support, Length of time previously operated, Frequency of bookings or intensity of use of accommodation, System to prevent neighbour concerns, Low level of complaints. All of which are applicable here.
- 5.28 The property is subject to a strict and well managed operating guide. This guide would ensure that check-in and check-out arrangements present no adverse impacts regarding noise or disruption. The guide would also provide guests with detailed information on the conduct required in the building and wider area.
- 5.29 The property will be carefully managed even prior to guests' arrival. The property will be carefully marketed, and as such guests can be vetted by reviews. Outwith the need to minimise disruption to others, it is in the interest on the owner to retain the luxury standard and setting that the property is marketed upon.
- 5.30 The property provides 2 bedrooms, allowing up to 6 guests per night. This has been careful considered so as to mimic the movement and capacity of its use as a residential unit. The size, finish and layout of the property all promote it as peaceful accommodation. Large groups are not permitted and guidance is given as to conduct within and when accessing the property.

- 5.31 The owner has received such a positive feedback rating from about the unit. Comment is often made about the high standard of finish and professionalism of the operation.

## **6 CONCLUSION**

- 6.1 The proposal has been in operation for 7 years without the alleged impacts the council fears. It makes a contribution to the Edinburgh tourism economy and provides a unique setting and form of accommodation. For the reasons outlined in this report consent ought to be granted as the proposal complies with NPF4 and the Edinburgh LDP.
- 6.2 In addition, it is unreasonable to withhold planning permission on the basis of a policy change to operators who have been operating responsibly for significant periods of time, prior to that change. Each planning application is considered on its own merits and in this case the unique factors are the low levels of occupancy, the absence of any shared accommodation with other flats, the responsibility of the operator and the lack of complaints thus far.
- 6.3 We respectfully request that planning permission is granted.

*Suzanne C McIntosh MRTPI HonFRIAS*

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Caymen Islands

**Decision date: 29 August 2023**

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

For use as a short term let (in retrospect).  
At 4 Spylaw House 25 Spylaw Street Edinburgh EH13 0JU

**Application No: 23/01840/FULSTL**

**DECISION NOTICE**

With reference to your application for Planning Permission STL registered on 8 June 2023, this has been decided by **Local Delegated Decision**. The Council in exercise of its powers under the Town and Country Planning (Scotland) Acts and regulations, now determines the application as **Refused** in accordance with the particulars given in the application.

Any condition(s) attached to this consent, with reasons for imposing them, or reasons for refusal, are shown below;

**Reason for Refusal:-**

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



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

Drawings 01 - 02, represent the determined scheme. Full details of the application can be found on the [Planning and Building Standards Online Services](#)

The reason why the Council made this decision is as follows:

The proposal complies with sections 64 and 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as it will preserve or enhance the character or appearance of the conservation area, and does not harm the character of the listed building, its setting, or the setting of neighbouring listed buildings.

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 loss of residential accommodation.

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

This determination does not carry with it any necessary consent or approval for the proposed development under other statutory enactments.

Should you have a specific enquiry regarding this decision please contact Sean Christie directly at [sean.christie@edinburgh.gov.uk](mailto:sean.christie@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](http://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](mailto:localreviewbody@edinburgh.gov.uk).

2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.

# Report of Handling

**Application for Planning Permission STL  
4 Spylaw House, 25 Spylaw Street, Edinburgh**

**Proposal: For use as a short term let (in retrospect).**

**Item – Local Delegated Decision  
Application Number – 23/01840/FULSTL  
Ward – B08 - Colinton/Fairmilehead**

## **Recommendation**

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

## **Summary**

The proposal complies with sections 64 and 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as it will preserve or enhance the character or appearance of the conservation area, and does not harm the character of the listed building, its setting, or the setting of neighbouring listed buildings.

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 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 comprises an upper ground floor, two-bedroom flatted dwelling at Spylaw House, 25 Spylaw Street, Colinton. The property has private main door access. There are other residential units located above and below the property.

Spylaw House is situated within Spylaw Public Park and is bordered by dense woodland and open parkland. The Water of Leith is located directly to the rear of the building. The only neighbouring units are within Spylaw House itself.

The site is within the Colinton Conservation Area. The application property forms part of a Category B listed building - 25 Spylaw Street, Spylaw House, LB28124, 14/07/1966.

## **Description Of The Proposal**

Planning permission is sought for the retrospective change of use from residential to short term let (sui generis). No internal or external works are proposed.

## **Supporting Information**

- NPF4 Supporting Planning Statement

## **Relevant Site History**

No relevant site history.

## **Other Relevant Site History**

No other relevant site history.

## **Consultation Engagement**

No consultations.

## **Publicity and Public Engagement**

**Date of Neighbour Notification:** 29 August 2023

**Date of Advertisement:** 16 June 2023

**Date of Site Notice:** 16 June 2023

**Number of Contributors:** 27

## **Section B - Assessment**

### **Determining Issues**

Due to the proposals relating to a listed building(s) and being within a conservation area, this report will first consider the proposals in terms of Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (the "1997 Heritage Act"):

- a) Is there a strong presumption against granting planning permission due to the proposals:
  - (i) harming the listed building or its setting? or
  - (ii) conflicting with the objective of preserving or enhancing the character or appearance of the conservation area?
  
- b) If the strong presumption against granting planning permission is engaged, are there any significant public interest advantages of the development which can only be delivered at the scheme's proposed location that are sufficient to outweigh it?

This report will then consider the proposed development under Sections 24, 25 and 37 of the Town and Country Planning (Scotland) Act 1997 (the 1997 Act):

Having regard to the legal requirement of Section 24(3), in the event of any policy incompatibility between National Planning Framework 4 (NPF4) & Edinburgh Local Development Plan 2016 (LDP) the newer policy shall prevail.

Do the proposals comply with the development plan?

If the proposals do comply with the development plan, are there any compelling material considerations for not approving them?

If the proposals do not comply with the development plan, are there any compelling material considerations for approving them?

In the assessment of material considerations this report will consider:

- equalities and human rights;
- public representations; and
- any other identified material considerations.

## **Assessment**

### **a) The proposals harm the listed building and its setting?**

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

- Managing Change in the Historic Environment: Guidance on the principles of listed buildings
- Managing Change in the Historic Environment: Setting

Managing Change in the Historic Environment: Interim Guidance on the principles of listed building consent sets out the principles for assessing the impact of a development on a listed building.

Managing Change in the Historic Environment: Setting sets out the principles that apply to developments affecting the setting of historic assets or places including listed buildings and conservation areas. It includes factors to be considered in assessing the impact of a change on the setting.

There are no external or internal alterations proposed. As such, the proposal will not have an adverse impact on or cause harm to the listed building. The setting of the listed building and the setting of neighbouring listed buildings will be unaffected by the proposal.

### **Conclusion in relation to the listed building**

The proposal does not harm the character of the listed building, or its setting. It is therefore acceptable with regard to Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

### **b) The proposals harm the character or appearance of the conservation area?**

Section 64(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states: "In exercise, with respect to any buildings or other land in a conservation area, of any powers under any of the provisions in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area."

The Colinton Conservation Area Character Appraisal emphasises the high quality architecture, the predominant use of traditional building materials, the strong sense of place derived from the containment within a rural setting, and the prominent views to the Pentland Hills.

There are no external changes proposed. The change of use from a residential premises to a short term let will not have any material impact on the character of the conservation area. The change of use would preserve the appearance of the conservation area.

### **Conclusion in relation to the conservation area**

The proposals are acceptable with regard to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

### **c) The proposals comply with the development plan?**

National Planning Framework 4 (NPF4) was adopted by the Scottish Ministers on 13 February 2023 and forms part of the Council's Development Plan. NPF4 policies supports the planning and delivery of Sustainable Places, Liveable Places and Productive Places and are the key policies against which proposals for development are assessed. Several policies in the Edinburgh Local Development Plan (LDP) are superseded by equivalent and alternative policies within NPF4. The relevant policies to be considered are:

- NPF4 Sustainable Places Policy 1.
- NPF4 Historic Assets and Places Policy 7.
- NPF4 Productive Places Tourism Policy 30.
- LDP Housing Policy Hou 7.
- LDP Transport Policies Tra 2 and Tra 3.

The non-statutory 'Listed Buildings and Conservation Area' guidance is a material consideration that is relevant when considering historic assets.

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

### Listed Building, Conservation Area and World Heritage Site

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

### Proposed Use

With regards to NPF 4 Policy 1, the proposals do not involve operational development and therefore, 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 relates 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 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 application property has private main door access and forms part of Spylaw House, located within Spylaw Park. There are other residential flats located above and below the application property. There is a low degree of activity in the immediate vicinity of the property.

The applicant's supporting planning statement asserts that there will be a limited impact on local amenity due to the property's private main door access and size (two-bedroom) as well as the instructions provided by guests prior to arrival. It is also stated that there have been no complaints regarding the property's previous seven years of STL operation.

The use of the property as an STL would, however, introduce an increased frequency of movement to the property. The proposed STL use would enable visitors to arrive and stay at the premises for a short period of time on a regular basis throughout the year in a manner dissimilar to that of permanent residents. There is no guarantee that guests would not come and go frequently throughout the day and night, and transient visitors may have less regard for neighbours' amenity than individuals using the property as a principal home.

The additional servicing that operating a property as an STL requires compared to that of a residential use is also likely to result in an increase in disturbances, further impacting on neighbouring amenity.

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

Loss of residential accommodation:

NPF 4 policy 30 (e) part (ii) requires that where there is a loss of residential property this will only be supported where the 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.

The applicant's supporting statement asserts that the use of the property for STL purposes will bring economic benefits. The statement refers to the general benefits of STL accommodation, including its contribution to Scotland's tourism economy and how the loss of such accommodation may impact the viability of the Edinburgh's festivals. It is also argued, that as the STL use is well established (having been in operation by the current owner for seven years), the change of use will not result in a loss of residential accommodation.

The current lawful use of the property is, however, for residential accommodation. Consequently, the use of the property now as an STL would result in a loss of residential accommodation, which given the recognised need and demand for housing in Edinburgh is important to retain, where appropriate.

Furthermore, residential occupation of the property also contributes to the economy, in terms of providing a home and the spend in relation to the use of the property as a home, including the use of local services and resultant employment, as well as by making contributions to the local community.

In this instance it has not been sufficiently demonstrated that the loss of the residential accommodation is outweighed by demonstrable local economic benefits arising from the STL use. As such, the proposal does not comply with NPF 4 30(e) part (ii).

#### Parking Standards

There 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 a 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.

#### **d) There are any other material considerations which must be addressed?**

The following material planning considerations have been identified:

#### 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.

#### 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

In total 27 representations were received. This included 16 supporting comments (4 of which were blank) and 11 objections. A summary of the representations is provided below:

##### *material considerations*

- The accommodation will bring economic benefit through visitor spend both locally and city-wide. Addressed in part c).
- The proposed STL unit contributes to the variety of tourist accommodation available in the city. Addressed in part c).
- The proposal complies with the relevant policies of NPF4 and the Edinburgh LDP. Addressed in part c).
- Negative impact on city-wide housing availability and affordability. Addressed in part c).
- Negative impact on local community. Addressed in part c).
- Negative impact on neighbouring residential amenity. Addressed in part c).

### *non-material considerations*

- The STL is well managed/responsibly operated and without complaint during its previous operation. Not a material consideration.
- The property is only operated as a STL for part of the year. The property is currently operated around 40% of the year, this constitutes a material change of use and is assessed as such.
- As other forms of tourist accommodation exist, further STLs are not required. Every proposal is considered on its own merit.

### **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 proposal complies with sections 64 and 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as it will preserve or enhance the character or appearance of the conservation area, and does not harm the character of the listed building, its setting, or the setting of neighbouring listed buildings.

The change of use of this property to a 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 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;

### **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 of 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: 8 June 2023**

## **Drawing Numbers/Scheme**

01 - 02

Scheme 1

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

Contact: Sean Christie, Assistant Planning Officer  
E-mail: [sean.christie@edinburgh.gov.uk](mailto:sean.christie@edinburgh.gov.uk)

Appendix 1

## **Consultations**

No consultations undertaken.

## Appendix 2

### **Application Certification Record**

#### **Case Officer**

I have assessed the application against the City of Edinburgh Council's Scheme of Delegation (2023) Appendix 6 – Chief Planning Officer and the Statutory Scheme of Delegation (2023) and can confirm the application is suitable to be determined under Local Delegated Decision, decision-making route.

Case Officer: Sean Christie

Date: 1 August 2023

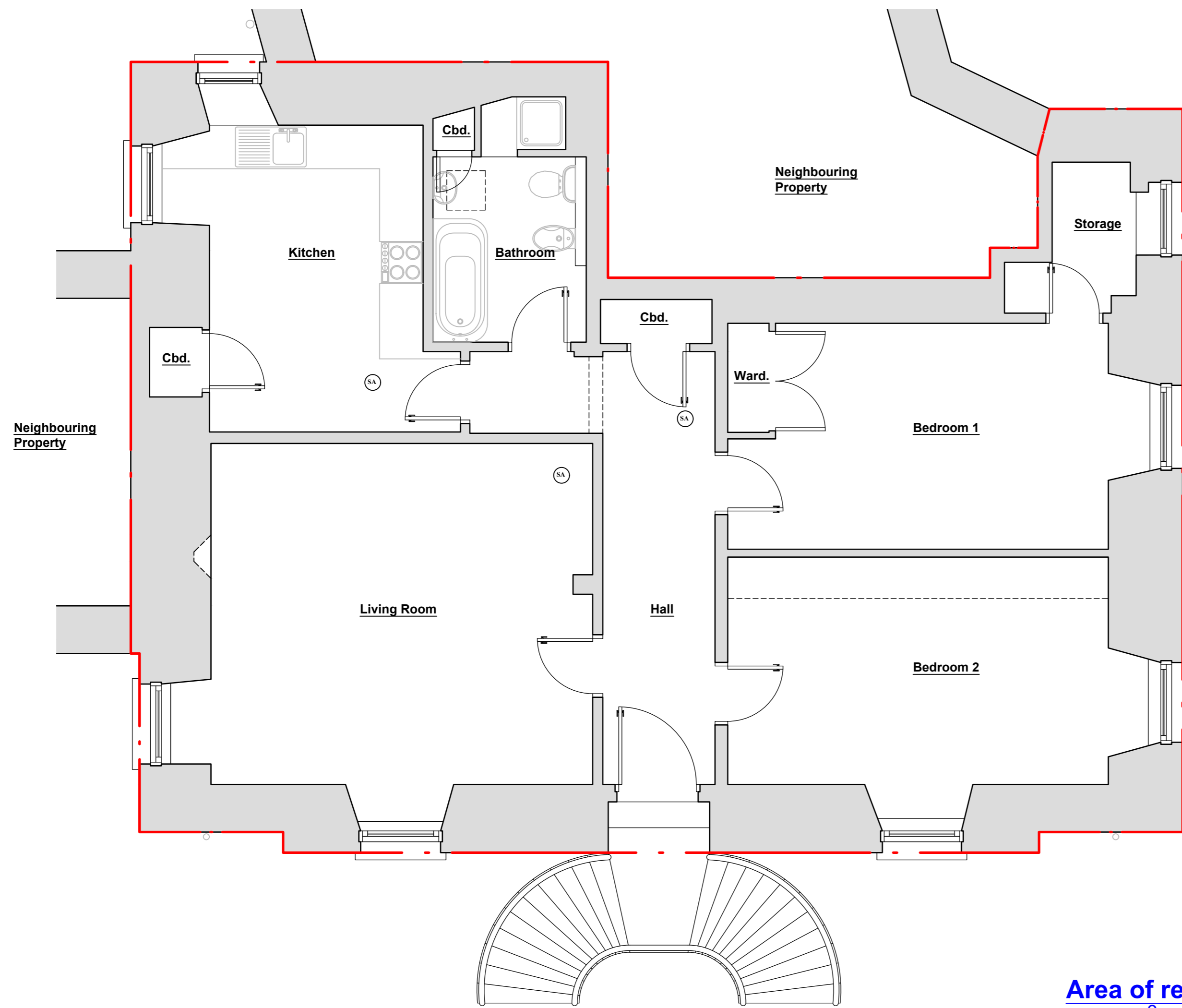
#### **Authorising Officer**

To be completed by an officer as authorised by the Chief Planning Officer to determined applications under delegated powers.

I can confirm that I have checked the Report of Handling and agree the recommendation by the case officer.

Authorising Officer (mRTPI): Elizabeth McCarroll

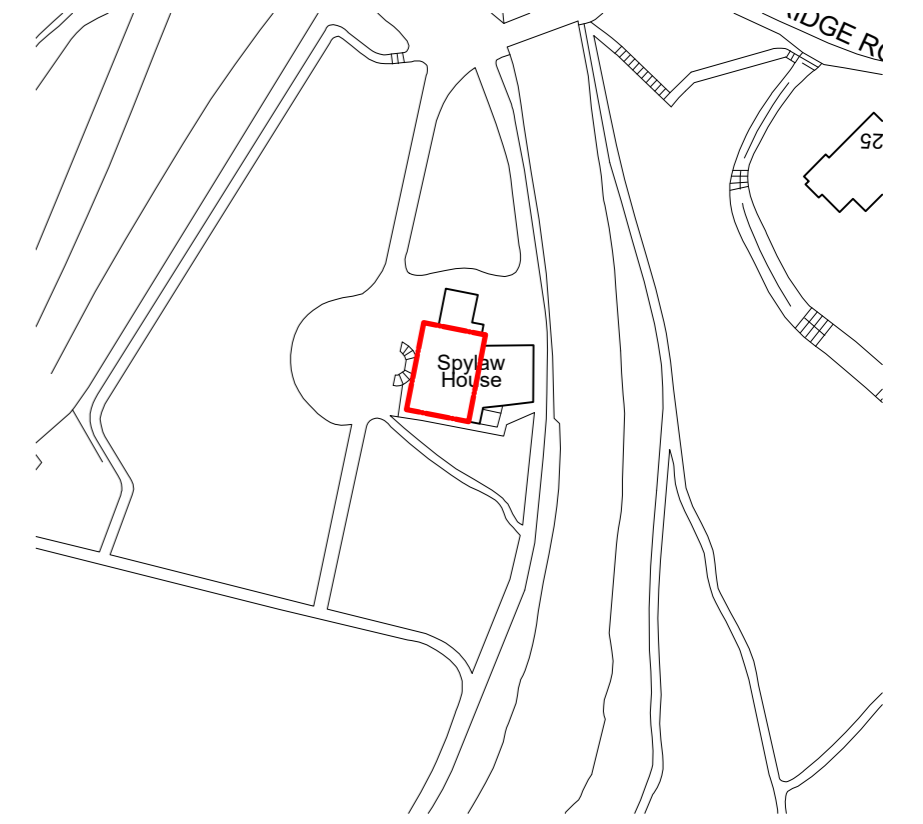
Date: 29 August 2023



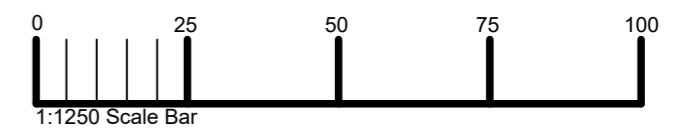
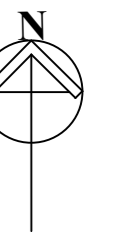
**1:50 SCALE EXISTING FLOOR PLAN**

**Area of red line boundary - 137.8m<sup>2</sup>**

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**1:1250 SCALE LOCATION PLAN**



NO.	DATE	DESCRIPTION

REVISIONS

<b>CLIENT</b> Dr Virginia Hobday	<b>PROJECT</b> Change of use to short term let at: Spylaw House, Flat 4, Edinburgh, EH13 0JX	
	<b>DATE</b>	February 2023
<b>DRAWING TITLE</b> Existing Floor Plan	<b>DRAWN</b>	MH
	<b>SCALE</b>	1:50 @ A2

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<b>JOB NO.</b>	<b>DRAWING NO.</b>
<b>23/02</b>	<b>ex1</b>
<b>REVISION</b>	<b>A</b>

**AS EXISTING DRAWING**