

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

10.00 am, Wednesday 17 January 2024

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

1. Appointment of Convener

Councillor Mowat was appointed as Convener.

2. Minutes

To approve the minute of the Local Review Body (LRB Panel 1) of 29 November 2023 as a correct record.

3. Planning Local Review Body Procedure

Decision

To note the outline procedure for consideration of reviews.

(Reference – Local Review Body Procedure, submitted)

4. Request for Review – 16 Abbeyhill Crescent, Edinburgh

Details were submitted of a request for a for review for change of use from dwelling to short term let at 16 Abbeyhill Crescent, Edinburgh. Application No. 23/03871/FULSTL.

Assessment

At the meeting on 17 January 2024, the LRB had been provided with copies of the notice of review, including a request that the review proceed on the basis of an assessment of the review documents and a site inspection. The LRB had also been provided with copies of the decision notice and the report of handling.

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

The plans used to determine the application were 01, 02, 03, Scheme 1 being the drawings shown under the application reference number 23/03871/FULSTL on the Council's Planning and Building Standards Online Services.

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

The Report of Handling noted that the Guidance for Businesses 2023 was also relevant. However, a Judicial Review against the Council ruled on 1 December 2023 that the April 2023 Guidance for Businesses should be reduced, which meant it must be disregarded in consideration of this review.

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

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

Conclusion

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

- The applicant had offered to guarantee good management. As planning authority was there anything the Panel could take into account in respect of this?
- It was explained that the change of use related to the property, not the individual, so if the property was to be sold or managed differently, the planning authority had no control over that. The issue was the use of the property, not the management of it, that would be a licencing issue.
- The applicant had said that this proposal would not lead to a loss of residential accommodation. In planning terms, the previous planning use was residential.

- It was confirmed that the current use of property was residential. If the Panel were minded to approve the change of use to a short term let, the applicant could use the premises as a short term let all year round if they wanted.
- This was a straightforward application, it was not an existing use, so the Panel could determine this according to the legislation that was passed after 5 September 2022, when the Short Term Let Control Area came into force.
- In accordance with legislation, this proposal constituted a deemed change of use, it was therefore necessary to determine it in accordance with the Local Development Plan and also to include NPF4 Policy 30 which dealt with loss of residential use. On that basis alone, the loss of residential use was contrary to the Local Development Plan. There also might be an argument about the impact on amenity. Therefore, the officer's decision to refuse the application was sound.
- There was agreement that the proposals were in breach of LDP Policy Hou 7 and NPF4 Policy 30(e).
- No contrary views were expressed and it was agreed to uphold the officer's decision and refuse the application.

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

Decision

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

Reasons for Refusal:

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

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

5. Request for Review – 1 Duke's Walk, Edinburgh

Details were submitted for a request for review for change of use from residential (Class 9) to short term let (Sui Generis) (in retrospect) at 1 Duke's Walk Edinburgh. Application No. 23/02733/FULSTL.

Assessment

At the meeting on 17 January 2024, the LRB had been provided with copies of the notice of review, including a request that the review proceed on the basis of an assessment of the review documents, holding one or more hearing sessions on specific matters, further written submissions on specific matters and a site inspection. The LRB had also been provided with copies of the decision notice and the report of handling.

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

The plans used to determine the application were 01 – 02, Scheme 1 being the drawings shown under the application reference number 23/02733/FULSTL on the Council's Planning and Building Standards Online Services.

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

The Report of Handling notes that the Guidance for Businesses 2023 was also relevant. However, a Judicial Review against the Council ruled on 1 December 2023 that the April 2023 Guidance for Businesses should be reduced, which meant it must be disregarded in consideration of this review.

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

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

Conclusion

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

- What was meant by perceived loss of residential accommodation? It was explained that the supporting statement submitted on behalf of HES referred to the perceived loss of residential accommodation. The supporting information noted this application was unique, in terms of ownership, location and context of the proposed short-term use.
- As the property had never been used as residential accommodation, could this be perceived as a loss of residential accommodation? It was confirmed that the supporting documents note it had been used as accommodation for staff of HES, but it had been vacant for periods of time, at least 8 years.
- £51 000 was raised and was that from short term letting? It was advised that this was a retrospective application and the short term let use commenced in August 2021. The figures in the Applicant's supporting documents related to the short term letting use that commenced in August 2021.
- Because this use started before the short term control area had been established, the Panel had to determine if the material change of use had occurred. The applicant's supporting information was submitted in November before the Judicial Review decision, but did not specifically address if a material change of use had taken place. It was for the Panel to make that decision using the Moore Judgement and fact and degree. It was confirmed that this was the case.
- The property had been used intermittently for HES staff in the past, therefore, had been in residential use. There had been a refurbishment in 2021 to facilitate the short term let use. The refurbishment together with the application for planning permission suggested a material change of use.
- The property had residential class use and the applicant was looking to change this to short term let. It was apparent that this would never be a conventional residential property, the Panel should consider this application in terms of NPF4.
- According to fact and degree, there had been a material change of use in terms of the previous use and the proposed use.
- The Legal Officer explained that in planning terms, its established class use was originally residential. In planning terms, it had to be decided if it was used as a residential property, which was its original use and there was no evidence to say that another use intervened.
- It was confirmed that the property had been used intermittently by Historic Scotland staff as a temporary residence, but there was no more detail in the submission documents regarding the use.
- It was helpful to know that a planning application came in for a material change of use, which seemed to acknowledge that there was a change of use.

- In the appeal document, the applicant referred to temporary accommodation being provided. Did the Panel need more information about that to determine this application?
- The supporting documents note that the Lodge had been in public ownership for 164 years. The Panel should seek more information from HES regarding this use.
- The Panel should ask the Applicant about this use, prior to the property being converted to a short term let, how it was used, how frequently and what were the terms of use by employees. Then the Panel could then get a proper opinion on that and then determine whether a change of use had occurred.
- If the property was empty for 8 years and had been in short term use since 2021, it did not give the Panel sufficient information to make a decision. It was necessary to determine the dates it was occupied, the terms of the lease and was it a primary residence.
- After some deliberation, it was agreed that the Panel should ask the applicant prior to this being converted to short term let, how it was used, how frequently and what were the terms of use since 2010 onwards.
- Would it be possible to ask Environmental Protection for more information about noise issues.
- It was confirmed that the Panel did not normally consult Environmental Protection on short term lets, but it would be possible to do so.

Having taken all the above matters into consideration and after much deliberation, the LRB were unable to make a decision and decided to continue consideration of the application for the following additional information from the applicant:

- How was the property used (including – dates it was occupied / how frequently was the property occupied, lengths of stay, etc);
- What terms was it used by employees, i.e. was it occupied under a lease, was there a financial payment; and
- When in use, was the property used as an employee's primary residence, or were they staying there while they worked Edinburgh.

And to request for confirmation from CEC Environmental Protection as to whether it has received any noise complaints since the property began operating as a STL.

Decision

To **CONTINUE** consideration of the application for the following additional information from the applicant:

- How was the property used (including – dates it was occupied / how frequently was the property occupied, lengths of stay, etc);

- What terms was it was used by employees, i.e. was it occupied under a lease, was there a financial payment; and
- When in use, was the property used as an employee's primary residence, or were they staying there while they worked Edinburgh.

And to request for confirmation from CEC Environmental Protection as to whether it has received any noise complaints since the property began operating as a STL.

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

6. Request for Review – 153 Gilberstoun (At Land 17 Metres East Of), Edinburgh

Details were submitted for a request for review for erection of dwelling house at Land 17 Metres East Of 153 Gilberstoun Edinburgh. Application No. 23/02520/FUL.

Assessment

At the meeting on 17 January 2024, the LRB had been provided with copies of the notice of review, including a request that the review proceed on the basis of an assessment of the review documents only. The LRB had also been provided with copies of the decision notice and the report of handling.

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

The plans used to determine the application were 01-03, Scheme 1 being the drawings shown under the application reference number 23/02520/FUL on the Council's Planning and Building Standards Online Services.

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

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

- 1) The development plan, including the relevant policies of the NPF4 and Edinburgh Local Development Plan, principally:
 - Edinburgh Local Development Plan Policy Del 1 (Developer Contributions and Infrastructure Delivery)
 - Edinburgh Local Development Plan Policy Des 1 (Design Quality and Context)
 - Edinburgh Local Development Plan Policy Des 2 (Co-ordinated Development)
 - Edinburgh Local Development Plan Policy Des 3 (Development Design - Incorporating and Enhancing Existing and Potential Features)
 - Edinburgh Local Development Plan Policy Des 5 (Development Design - Amenity)

Edinburgh Local Development Plan Policy Des 8 (Public Realm and Landscape Design)

Edinburgh Local Development Plan Policy Env 18 (Open Space Protection)

Edinburgh Local Development Plan Policy Env 20 (Open Space in New Development)

Edinburgh Local Development Plan Policy Env 22 (Pollution and Air, Water and Soil Quality)

Edinburgh Local Development Plan Policy Hou 1 (Housing Development)

Edinburgh Local Development Plan Policy Hou 3 (Private Green Space in Housing Development)

Edinburgh Local Development Plan Policy Hou 4 (Housing Density)

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

Edinburgh Local Development Plan Policy Tra 4 (Design of Off-Street Car and Cycle Parking)

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

National Planning Framework 4 Policy 2 (Climate mitigation and adaptation)

National Planning Framework 4 Policy 3 (Biodiversity)

National Planning Framework 4 Policy 6 (Forestry, woodland and Trees)

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

National Planning Framework 4 Policy 12 (Zero Waste)

National Planning Framework 4 Policy 14 (Design, quality and place)

National Planning Framework 4 Policy 15 (Local Living and 20 minute neighbourhoods)

National Planning Framework 4 Policy 16 (Quality Homes)

National Planning Framework 4 Policy 18 (Infrastructure First)

National Planning Framework 4 Policy 22 (Flood risk and water management)

2) Relevant Non-Statutory Guidelines.

Listed Buildings and Conservation Areas

Managing Change in the Historic Environment: Setting

3) The procedure used to determine the application.

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

Conclusion

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

- The Panel accepted the new information from the Forestry Commission and agreed that there was information to proceed.
- Would the two shipping containers remain on the site? It was explained that the containers did not sit in the site and did not form part of this application. But it was stated by the applicant that the shipping containers would be removed at some point.
- Whether the entire application site was under the Development Plan Open Space. It was advised that only part of the site to the north was identified as Open Space in the Development Plan, the other area being identified as urban area. The proposed house was located primarily on the urban area, where as the garden and part of the driveway were located in the area identified as Open Space.
- Clarification was requested on the issue regarding the Tree Preservation Order (TPO), was it the case that the original TPO (TPO 193), did include the site and newer one (TPO 205) did not.
- It was confirmed that the previous TPO 193 covered large areas, including the whole of the proposed site. The newer version, TPO 205 dated June 2023 covered specific areas of woodland, and appeared to exclude the site. Details, in plan form, were highlighted to the Panel.
- The garden seemed to be part of designated Open Space land and the paved area of carparking appeared to cut into this. Could these owners claim that this area was now their garden in terms of access?
- It was explained that the proposal would allow an area of open space to become the curtilage of the house., It would become private garden, which meant it could be used for purposes incidental to their enjoyment of the dwelling house. The application proposed a hedge around the curtilage of the property; it would not be publicly accessible land.
- It was advised that not all open space was necessarily owned by the Council.
- There was a narrow strip of land which was currently occupied by the two shipping containers. There seemed to be a piece of ill-defined territory. It was confirmed that there were no details provided on the future for this strip of land. The case officer stated that it was a 6 metre wide strip of land that separated it from Gilberstoun Road.
- What would happen with the containers? It was explained that the papers indicated that the containers were there for the purpose of this development and would be removed thereafter.

- The open space included the road immediately to east of this application. Did it cover any of the area of this application and was there any designated open space within the application area?
- Details were provided of the location of the road in relation to the open space designation and the urban area.
- Open space seemed to be comprised of many aspects and was complex.
- The crucial aspect was LDP Policies Env 18 and Des 2. Most of the garden was in open space. Env 18 gave examples of how open space could be used, but the applicant had not met these tests. There were also concerns about possible problems of coordinated development and other issues, therefore, it was necessary to uphold the officer's recommendations.
- There was agreement with this. Additionally, the increased extent of the house and paving would increase flood risk and there were concerns about flood risk and sustainability.
- Therefore, the Panel agreed to uphold the officer's recommendation and refuse application.

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

Decision

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

Reasons for Refusal:

1. The proposed development failed to comply with LDP Policy Env 18 (Open Space) as it had not been demonstrated that the proposal would meet the tests to justify the loss of this designated Open Space.
2. The proposed development failed to comply with LDP Policy Des 5 as it failed to demonstrate that future occupiers would have an adequate standard of amenity in terms of daylight and immediate outlook.
3. The proposed development failed to comply with NPF4 Policy 22 (Flood Risk and Water Management). The potential risks of flooding had not been understood and addressed.
4. The extent and scale of driveway and parking proposed failed to comply with NPF4 Policy 14 and LDP Policy Des 1 and failed to have a positive impact on the character of the surrounding area.
5. The proposed development failed to comply with LDP Policy Tra 2 (Private Car Parking) as the proposed parking levels exceeded the maximum standards for this development.
6. The location of the plot to the north of Gilberstoun failed to comply with LDP

Policy Des 2 (Co-ordinated Development) as it had the potential to compromise the effective use of adjacent land.

7. The proposed development failed to comply with NPF4 Policy 3 (Biodiversity). The proposal failed to assess the existing habitat value of the site and its role in a wider green network.
8. The proposal failed to comply with NPF4 Policy 6 (Forestry, Woodland and Trees) and the Edinburgh Design Guidance as insufficient information had been submitted to assess how the proposals would impact on protected trees.

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

7. Request for Review – 61 (Flat 1) Hopetoun Street, Edinburgh

Details were submitted for a request for review for change of use to short term let for 42 weeks of the year at Flat 1, 61 Hopetoun Street Edinburgh. Application No. 23/03582/FULSTL.

Assessment

At the meeting on 17 January 2024, the LRB had been provided with copies of the notice of review, including a request that the review proceed on the basis of an assessment of the review documents and holding one or more hearing sessions on specific matters. The LRB had also been provided with copies of the decision notice and the report of handling.

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

The plans used to determine the application were 01 – 02, Scheme 1 being the drawings shown under the application reference number 23/03582/FULSTL on the Council's Planning and Building Standards Online Services.

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

The Report of Handling notes that the Guidance for Businesses 2023 was also relevant. However, a Judicial Review against the Council ruled on 1 December 2023 that the April 2023 Guidance for Businesses should be reduced, which meant it must be disregarded in consideration of this review.

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

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

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

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

National Planning Framework 4 Policy 30 (Tourism)

2) Relevant Non-Statutory Guidelines.

None

3) The procedure used to determine the application.

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

Conclusion

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

- One member indicated that they might require more information but was content to commence deliberation at present.
- As this was a retrospective application, for change of use to short term let for 42 weeks of the year, firstly it had to be determined if there had been a material change of use.
- If there was no material change of use here, what were the options? It was confirmed that if the Panel determined that there was no change of use, that would be the decision of the Panel and it would remain as a residential property. However, if the Panel determined that there had been change of use to short term let, then the Panel would need to determine if this use was acceptable.
- It was thought that according to the statement of appeal, the property had been used as a short term let for nearly 10 years.
- The Legal Officer explained that the Panel had to determine, firstly, had there been a material change of use and secondly, did that material change of use occur more than 10 years ago with intensity of use, without interruption. If it did, this did not require planning permission as it was its lawful use. The Panel should then assess the application in terms of planning terms against the material plan, whether it should it get granted planning permission or not.
- There was evidence from the applicant to indicate the change of use was for less than 10 years. It was reasonable for the Panel to state that the applicant had not given evidence for deemed consent. The Panel were assessing this not from the perspective of certificate of lawfulness but from the perspective of planning permission.
- The change of use to short term let was for only 42 weeks of the year. Planning permission was only needed for secondary lettings, was this secondary letting as it was for only 42 weeks of the year.? It was explained that the applicants

said that they lived in Wales, they had family in Scotland to visit and other members of the family used the property too. This seemed to be a second home.

- This was quite an awkward application, the applicant stated that they had plans to move to the City, but 10 years had passed and they did not seem to be the case. It was a financially beneficial for the applicant, but the change of use would have an impact on residential use and neighbourhood amenity. It was not possible to foresee how the property would be managed.
- It was necessary to determine the change of use first as this was retrospective.
- The statement said that it had not been used for entirely 10 years there was no further evidence and no idea about the intensity of use. The property did not seem to have been used continuously and intensely used as a short term let for 10 years, therefore, there had been a change of use.
- It was not appropriate for the Panel to comment about the personal circumstances of the applicant, but to determine the application in planning terms and had there been a change of use. The use had occurred for a substantial period of the year. There were issues regarding arrivals, numbers and activity. Management of the property not something the planning authority could control. There might be small parties and amenity issues.
- From the notification from the agency who were running short term lets, it was clear that this was a change of use and it was not an established use as it was less than 10 years. It was evident that there had been a material change of use and it was now necessary to determine the suitability of this, applying the Development Plan.
- On a point of order, it was necessary to address the request for a hearing. The Convener explained that this had been dealt with at the start of the meeting, but the members again confirmed that there was no need for a hearing.
- This proposal would not be acceptable, as there was a communal stair and a loss of residential accommodation. Therefore, the Panel should uphold the officer's decision.
- There was a discrepancy in the information in the supporting documents. The applicant said if they were not given planning permission, they would not be selling the property or using it for residential purposes, but one of the parents of one of the applicants said they could not continue with the property, if not able to let the property. Was this a material consideration? The Panel should consider the application in terms of NPF4 Policy 30 (e). It was confirmed that the property would remain as residential use if the Panel did not grant planning permission for change of use.
- If approval was granted, the applicant said they would keep the flat as they intended to reside in the City. If they came back, would they need to apply for another change of use from short term let to residential use. It was explained

that this application was for a change of use to Short Term Let (sui generis) and if the Panel was to grant permission, the applicant would have to apply for change of use to residential should the applicant, in the future, wish to reside in the premises as their home.

- Admittedly, there would be a communal stair, however, LDP Policy Hou 7 could not be used as a reason for refusal as it had been in use for nearly 9 years and there were no complaints. No evidence existed that change would occur if planning permission was granted, the property would come into the licencing regime and there would regulate use. The development had taken place some time ago, there was no loss of residential use, no impact on amenity and planning permission should be granted. This proposal received a seconder.
- Another member disagreed as there was a clear loss of residential accommodation and if planning permission was granted, the permission remained with the property not the individual.
- One member agreed with the above viewpoint. They sympathised with the circumstances of the applicant, however, thought that the Panel should determine the application on planning grounds. There would be impact on amenity and the current good management could change if the planning use were to change. Shared stairs tended to have a significant impact on the amenity of neighbours and there would be a loss of residential use. The applicant said that if not successful, the property would lie empty, however, this could not be confirmed. Therefore, the Panel should refuse the application.
- There was agreement with this viewpoint. Although there was sympathy with the situation of the applicant, there were planning issues to consider. Management of the property was not a factor. There was shared space, loss of amenity, no restriction on how people used this property, the flat was in a residential area and there would be a loss of residential accommodation. This member was content to support the above motion.

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

Motion

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

Reasons for Refusal:

1. The proposal was contrary to Local Development Plan Policy Hou 7 in respect of Inappropriate Uses in Residential Areas, as the use of this property as a short term let would have a materially detrimental effect on the living conditions and amenity of nearby residents.
2. The proposal was contrary to National Planning Framework 4 Policy 30(e) in

respect of Local Amenity and Loss of Residential Accommodation, as the use of this dwelling as a short term let would result in an unacceptable impact on local amenity and the loss of a residential property had not been justified.

- moved by Councillor Booth, seconded by Councillor Beal.

Amendment

To not uphold the decision by the Chief Planning Officer and to grant planning permission for the reason that there was not a loss of residential accommodation, there was no impact on amenity and the proposals were not contrary to Local Development Plan Policy Hou 7.

- moved by Councillor Mowat, seconded by Councillor Mattos Coelho.

Voting

For the Motion - 3

For the Amendment - 2

(For the Motion: Councillors Beal, Booth and McNeese-Mechan.)

(For the Amendment: Councillors Mattos Coelho and Mowat.)

Decision

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

Reasons for Refusal:

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

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

8. Request for Review – 16 (4F2) Johnston Terrace, Edinburgh

Details were submitted for a request for review for change of use from residential to short term let (in retrospect) at 4F2 16 Johnston Terrace, Edinburgh. Application No. 23/03876/FULSTL.

Assessment

At the meeting on 17 January 2024, the LRB had been provided with copies of the notice of review, including a request that the review proceed on the basis of an assessment of the review documents, holding one or more hearing sessions on specific

matters and a site inspection. The LRB had also been provided with copies of the decision notice and the report of handling.

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

The plans used to determine the application were 01 – 02, Scheme 1 being the drawings shown under the application reference number 23/03876/FULSTL on the Council's Planning and Building Standards Online Services.

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

The Report of Handling notes that the Guidance for Businesses 2023 was also relevant. However, a Judicial Review against the Council ruled on 1 December 2023 that the April 2023 Guidance for Businesses should be reduced, which meant it must be disregarded in consideration of this review.

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

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

Conclusion

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

- This application for change of use from residential to short term let (in retrospect) was prior to May 2022, it was necessary to decide on whether there had been a material change of use first, before considering the impact of the proposals.

- It was agreed there had been a material change of use from the statement of appeal.
- It was evident that this was a property that the applicant was applying for a short term let and it had been used in a change of use since May 2022. Given the supporting document, it was stated that this was a good idea for it to be short term let, so there had been a change of use.
- Regarding suitability, this was near visitor attractions and it was built as a tenement. Had all other flats in the tenement been granted planning permission for short term lets, or were they being occupied by residents?
- The planning advisor explained that this information was not available as it had not been submitted with the papers.
- It would be possible for the department to check if applications for short term lets had been made, and granted, but the Panel would have to continue the application. It was agreed that this would not be necessary.
- It was confirmed that there were no more questions from the members.
- It was thought that clearly this was busy mixed area, but LDP Policy Hou 7 was also concerned with preventing any deterioration in living conditions in mixed use areas. It was fortunate that people still lived in the city centre. This area was busy, but it did have a residential function. The proposals would impact on amenity in terms of an increased number of people in the vicinity. This had been a short term lets since 2022. The amenity issue was borderline, but the loss of residential use was clear, therefore, the Panel should uphold the officer's decision to refuse the application.
- This was a top floor flat and other flats would be affected. The proposals were in breach of LDP Policy Hou 7, there were amenity issues and there would be a loss of residential accommodation. There was a requirement for dwellings throughout the City. Additionally, there was no tangible economic benefit to offset the loss of residential use, therefore, the Panel should uphold the officer's decision.
- This property was in the city centre and was in a mixed use area. From the objections and review documents, this was quite generic, therefore, it was necessary to consider this in detail. It was a top floor flat and there was loss of residential use. This was a secondary let, there was a material change of use from residential to short term let and there would be impact on amenity, because of the communal stair and also a loss of residential use.
- The Panel agreed to uphold the officer's recommendations and refuse the application.

Having taken all the above matters into consideration and although there was some sympathy for the applicant, the LRB were of the opinion that no material considerations

had been presented in the request for a review which would lead it to overturn the determination by the Chief Planning Officer.

Decision

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

Reasons for Refusal:

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

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

9. Request for Review – 32 Old Church Lane, Edinburgh

Details were submitted for a request for review for change of use from residential (Class 9) to short term let (Sui Generis) at 32 Old Church Lane, Edinburgh. Application No. 23/02726/FULSTL.

Assessment

At the meeting on 17 January 2024, the LRB had been provided with copies of the notice of review, including a request that the review proceed on the basis of an assessment of review documents, holding one or more hearing sessions on specific matters, further written submissions on specific matters and a site inspection. The LRB had also been provided with copies of the decision notice and the report of handling.

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

The plans used to determine the application were 01 – 02, Scheme 1 being the drawings shown under the application reference number 23/02726/FULSTL on the Council's Planning and Building Standards Online Services.

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

The Report of Handling noted that the Guidance for Businesses 2023 was also relevant. However, a Judicial Review against the Council ruled on 1 December 2023 that the April 2023 Guidance for Businesses should be reduced, which meant it must be disregarded in consideration of this review.

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

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

Conclusion

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

- This application was for the change of use from residential (Class 9) to short term let (Sui Generis). The use had not commenced yet.
- It was agreed there was sufficient information to determine the application.
- Regarding the net present value, had the figures provided been verified?
- The Planning Advisor explained that the figures were included in the supporting documents submitted on behalf of Historic Environment Scotland, but not independently verified.
- In the Statement of Appeal, it was stated that the property had been used intermittently by HES staff who held residence as part of a colleague key keeper package associated with their employment. Do we have any information as to what a colleague key keeper package associated is and is that relevant if it states HES staff held residence, does that mean it used as a residential dwelling?
- The planning advisor explained that there was no further information provided within the submission regarding the colleague key keeper package.
- There was only one ground for refusal, which was loss of residential use NPF4 Policy 30(e).

- Whether the economic case outweighs the loss or residential accommodation had to be determined. Despite its past use, the property could be used for residential accommodation in the future.
- This had not been used as a dwelling place. It was located in the park and publicly owned, it was a different proposition from flats or tenements. This member did not agree that it could become residential accommodation in the future as it was publicly owned by Historic Environment Scotland and they had not received permission from the Scottish Government to sell it.
- There was agreement with this viewpoint. It was possible to see the financial case. It would be possible to reinvest the income received to preserve listed buildings.
- It was thought that ownership was not an issue. The planning use was residential and the Applicant noted in their submission that the lawful use was residential. Therefore, in terms of planning, there was a loss of residential use. The Panel should, therefore, uphold the officer's recommendations.
- NPF4 Policy 30 (e) referred to the loss of residential use only being justified if there was an economic case to outweigh it. There is an economic case to outweigh it. The Applicant would require permission from the Scottish Government to allow them to let the property for residential use, the property hadn't previously been used for long-term residential use, this proposal saved taxpayer money and enables reinvestment, therefore, they had made the economic argument. The Panel should overturn the officer's recommendations as the proposals were not contrary to NPF4 policy 30 (e).
- One member disagreed with this and thought that the Panel should uphold the officer's recommendation. The economic case was not made and there were significant economic benefits to residential use.

Having taken all the above matters into consideration and although one of the members was in disagreement, the LRB determined to overturn the decision of the Chief Planning Officer and granted planning permission as the proposal was not contrary to National Planning Framework 4 Policy 30(e) part (ii) in respect of Loss of Residential Accommodation as the economic benefits of the proposal outweighed the loss of residential accommodation.

Decision

To not uphold the decision by the Chief Planning Officer and to grant planning Permission, subject to conditions.

Reason

The proposal was not contrary to National Planning Framework 4 Policy 30(e) part (ii) in respect of Loss of Residential Accommodation as the economic benefits of the proposal outweighed the loss of residential accommodation.

Conditions:-

1. The development to which this permission related must be begun not later than the expiration of three years beginning with the date on which this permission was granted. If development had not begun at the expiration of this period, the planning permission lapses.

Reasons:-

1. To accord with Section 58 of the Town and Country Planning (Scotland) Act 1997.

Informatives

1. No development should take place on the site until a 'Notice of Initiation of Development' had been submitted to the Council stating the intended date on which the development was to commence. Failure to do so constituted a breach of planning control under section 123(1) of the Town and Country Planning (Scotland) Act 1997.
2. As soon as practicable upon the completion of the development of the site, as authorised in the associated grant of permission, a Notice of Completion of Development must be given in writing to the Council.

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

Dissent

Councillor Booth asked that his dissent be recorded in respect of the above decision.

10. Request for Review – 406 Webster's Land, Edinburgh

Details were submitted for a request for review for change of use from residential to short term let (in retrospect) at 406 Webster's Land, Edinburgh. Application No. 23/03777/FULSTL.

Assessment

At the meeting on 17 January 2024, the LRB had been provided with copies of the notice of review, including a request that the review proceed on the basis of an assessment of review documents, holding one or more hearing sessions on specific matters and a site inspection. The LRB had also been provided with copies of the decision notice and the report of handling.

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

The plans used to determine the application were 01 – 02, Scheme 1 being the drawings shown under the application reference number 23/03777/FULSTL on the Council's Planning and Building Standards Online Services.

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

The Report of Handling notes that the Guidance for Businesses 2023 was also relevant. However, a Judicial Review against the Council ruled on 1 December 2023 that the April 2023 Guidance for Business should be reduced, which meant it must be disregarded in consideration of this review.

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

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

Conclusion

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

- Had a material change of use from residential to short term use taken place and was there sufficient information to confirm this? The information provided seemed to be explicit to confirm this short term use.
- The Panel agreed that this was the case.
- The Panel had to consider should this application for a change of use from residential to short term let (sui-generis) be granted, considering the impact on residential amenity.

- The applicant noted in their submission document that city dwellers wanted more deliveries than people on holiday, was there any evidence for that in terms of surveys included with the submission?
- The Planning Advisor confirmed that there was no evidence supplied to support this, it was in the comments included in the supporting statement, in the agent's submission documents.
- One member was happy to uphold the officer's recommendations. There was also concern that the one-bedroom flat could be rented out to four people. This was indicative of wider issues in the city, this was a very compact site, with lots of communal areas, with people coming and going. Flats in the centre were needed and there would be a loss of residential accommodation.
- A one bedroom flat used for four people was an intensification and contributed to a material change of use, rather than two people which would be the norm for this type of residential property.
- One member shared the concerns for the use of the one bedroom flat and disputed the assertion by the applicant that the housing shortage was not caused by short term lets. Therefore, the Panel should uphold the officer's decision.
- There was agreement with this. There were also the communal walkways in this development which could cause noise and the impact on neighbours could be significant. Notwithstanding the fact that no complaints had been made about the running of the short term let to date and this property was well managed, the planning authority could not control the management of the property. The principle of this application was contrary to the Local Development Plan and the Panel should uphold the officer's decision and refuse the application.
- There was agreement with this. The Panel was in agreement that this was a material change of use, as evidenced by the intensification of the use of the flat. The supporting statement showed this was changed to a short term let, this was contrary to the Local Development Plan and there were no extenuating circumstances. There was no reason why the Panel should not apply the relevant LDP Policies, uphold the officer's decision and refuse the application.

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

Decision

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

Reasons for Refusal:

1. The proposal was contrary to Local Development Plan Policy Hou 7 in respect of

Inappropriate Uses in Residential Areas, as the use of this property as a short term let would have a materially detrimental effect on the living conditions and amenity of nearby residents.

2. The proposal was contrary to National Planning Framework 4 Policy 30(e) in respect of Local Amenity and Loss of Residential Accommodation, as the use of this property as a short term let would result in an unacceptable impact on local amenity and the loss of a residential property had not been justified.

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

11. Request for Review – 2 (Flat 1) Wintermill Square, Edinburgh

Details were submitted for a request for review for change of use of existing flat to short-term letting (in retrospect) at Flat 1 2 Wintermill Square, Edinburgh. Application No. 23/02672/FULSTL.

Assessment

At the meeting on 17 January 2024, the LRB had been provided with copies of the notice of review, including a request that the review proceed on the basis of an assessment of review documents and a site inspection. The LRB had also been provided with copies of the decision notice and the report of handling.

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

The plans used to determine the application were 01, Scheme 1 being the drawings shown under the application reference number 23/02672/FULSTL on the Council's Planning and Building Standards Online Services.

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

The Report of Handling noted that the Guidance for Businesses 2023 was also relevant. However, a Judicial Review against the Council ruled on 1 December 2023 that the April 2023 Guidance for Businesses should be reduced, which meant it must be disregarded in consideration of this review.

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

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

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

National Planning Framework 4 Policy 30 (Tourism)

2) Relevant Non-Statutory Guidelines.

None

3) The procedure used to determine the application.

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

Conclusion

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

- This was a retrospective change of use from residential to short term let (sui generis), so had a material change of use occurred? After construction, this flat was purchased and had been used as a short term let ever since. As this unit had never been used as a residential use, did that have bearing on the Panel's decision?
- The Legal Advisor explained that in terms of this position, the Panel should consider what use this block was developed as, what was its permitted use, and had the use it had been put to been going on for 10 or more years.
- There had been some cases at the Development Management Sub-Committee where some uses had never been taken up. Planning law stated that because the use was never taken up, it was decided that this type of use never occurred. Residents also said that they were concerned with this usage. As this property had only been occupied as a short term let, how should this be weighted?
- The Legal Advisor explained that the difference in the cases referred to was that there was another use in place prior, i.e. permission was granted, then changed from office to residential use. In this instance, the development was new and built as a residential development, in accordance with the planning permission. This was the distinction. And the use as a short term let had not been in continuous use for 10 or more years.
- Previously, the Panel had taken cognisance of whether there was any outdoor amenity space. Was there anything to show that there was a patio or balcony in this property? The Planning Advisor confirmed that the papers from the applicant showed a small patio area outside, which was private. There was also outside communal space.
- Whether the Patio could contain up to 6 people if the weather permitted.

- The Planning Advisor explained that there was two double bedrooms and a small patio area. Although the patio area was small, it may be able to accommodate 6 people.
- A material change of use had taken place. This property was built as residential and given the guidance provided from the Legal Advisor, it's legal use was residential and a change of use had taken place. This not a large property, but had shared access with residential properties.
- There was agreement with these comments.
- There was some narrative in the supporting documents that this was a mixed use area. However, this property was located underneath other residential properties and was set back from the road near the river. Just because there were other uses in the vicinity, this was clearly located in a flatted development. This was clearly a change of use from a residential property. Given the supporting documentation, it was clear how it would be used, it would be a material change of use from residential to short term let. It was now possible to determine it against the Development Plan.
- There was agreement with the officer's recommendation.
- The property had a common stair, there was an area outside, there was potential disturbance to neighbours and this was a residential flat. There was no reason to overturn the officer's decision.
- There was agreement with this. The claim that this was a mixed use area was overstated, it was located on the Water of Leith, north of this property was a quiet area, it was natural green corridor, it was a walkway and was not heavily used. There were other uses to the south of the property. The officer's report indicated that this area was going through changes with a number of applications for residential properties. The balcony area and shared access would impact on residential amenity and there would be a loss of residential use. Its lawful use was residential.
- Once it had been established that there had been a change of use, it was difficult to grant this application. This was a quiet area, but there was active wildlife. This was an area moving from mixed use to being more residential in character. It was not thought that the existence of various uses south of the site was sufficient to overturn the officer's recommendations. NPF4 Policy 30 was breached. The Panel was in agreement that the proposal was contrary to the Local Development Plan. Therefore, they should uphold the officer's recommendations.

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

Decision

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

Reasons for Refusal:

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

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