

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 100655067-001

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.

## 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:	Nicola Allan Associates		
Ref. Number:		You must enter a Building Name or Number, or both: *	
First Name: *	Nicola	Building Name:	Dilston House Cottage
Last Name: *	Allan	Building Number:	
Telephone Number: *		Address 1 (Street): *	Dilston
Extension Number:		Address 2:	
Mobile Number:		Town/City: *	Corbridge
Fax Number:		Country: *	England
		Postcode: *	NE45 5RH
Email Address: *			

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="Mrs"/>	You must enter a Building Name or Number, or both: *	
Other Title:	<input type="text"/>	Building Name:	<input type="text"/>
First Name: *	<input type="text" value="Emma"/>	Building Number:	<input type="text" value="1-1A"/>
Last Name: *	<input type="text" value="Fursman"/>	Address 1 (Street): *	<input type="text" value="Abercromby Place"/>
Company/Organisation	<input type="text" value="Feshiebridge Limited"/>	Address 2:	<input type="text"/>
Telephone Number: *	<input type="text"/>	Town/City: *	<input type="text" value="Edinburgh"/>
Extension Number:	<input type="text"/>	Country: *	<input type="text" value="UK"/>
Mobile Number:	<input type="text"/>	Postcode: *	<input type="text" value="EH36JX"/>
Fax Number:	<input type="text"/>		
Email Address: *	<input type="text"/>		

## 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="1-1A ABERCROMBY PLACE"/>
Address 2:	<input type="text" value="NEW TOWN"/>
Address 3:	<input type="text"/>
Address 4:	<input type="text"/>
Address 5:	<input type="text"/>
Town/City/Settlement:	<input type="text" value="EDINBURGH"/>
Post Code:	<input type="text" value="EH3 6JX"/>

Please identify/describe the location of the site or sites

Northing	<input type="text" value="674379"/>	Easting	<input type="text" value="325565"/>
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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)

Change of use from Class 2 (financial and professional services) to Class 7 (hotels and hostels) and associated alterations.

## 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.

see attached Review Statement

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)

Application forms Location Plan Elevations Basement Plan Ground Floor Plan Planning Statement Grounds for Review  
Statement EDP Proposals Map Land Use Map

## Application Details

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

22/02561/FUL

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

07/11/2022

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

20/09/2023

## 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

## 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: Miss Nicola Allan

Declaration Date: 15/12/2023

## 1 – 1A ABERCROMBY PLACE – EDINBURGH

### THE FACTS

1. On 4<sup>th</sup> November 2021 permission was granted for change of use from offices to 5 flats [21/02195/FUL] at the basement and ground floor 1-1A Abercromby Place (“the Property”).
2. On 7<sup>th</sup> November 2022 planning permission was sought for change of use of from Class 2 (financial and professional) to Class 7 (Hotels and Hostels) [22/05621]. Listed building consent has already been granted for this scheme on 16 February 2023 [22/05620/LBC].
3. The sole reason for refusal of Planning Application 22/05621/FUL is as follows –  
*The proposal would be contrary to LDP Policy Hou 7 in that it would have the potential to have an adverse effect on neighbouring residential amenity by way of noise and disruption from occupiers of the units.*

### THE REPORT OF HANDLING

4. The Report of Handling (“RoH”) records that the area surrounding the Property is “characterised by tenemental buildings, which are predominately residential in nature, with a small number of commercial units at ground floor level. These units mainly serve the day time economy, although there is a restaurant/bar within the vicinity”.
5. In the Assessment the RoH states that the scheme is acceptable in terms of its impact on the Listed Building and the Conservation Area. There are no objections on highways grounds.
6. The RoH then goes on to advise that the Council will make a determination not in accordance with the description of proposed development but in accordance with the officer’s opinion that the scheme is for five separate short term lets which would be *sui generis*.
7. The officer’s reason for concluding that the use would be *sui generis* is “*Critically there are no communal facilities normally associated with hotels, such as the provision of a restaurant or café, or any form of reception or staff presence*”.
8. The discussion within the RoH relevant to the refusal reason is in the section on amenity. It states that the property is in a “predominately residential area...with access to the building via a private front door”. The key conclusion is that “The use as five short term lets would allow visitors to come and go from the premises for inconsistent periods of time on a regular basis throughout the year in a manner which is dissimilar to that of a residential nature. A transient visitor may also have less regard for neighbours amenity than individuals using the property for a longer period”.
9. It is also asserted that the street has a “residential feel” with the property being in close proximity to residential properties including flats above and adjacent. The conclusion being that the development would potentially introduce noise and disturbance to the detriment of neighbouring residential amenity, contrary to LDP Hou 7.

## PLANNING POLICY

10. The NPF4 is noted as being relevant alongside the Edinburgh Local Development Plan (“LDP”). Several policies of the LDP are superseded by equivalent and alternative policies within NPF4.
11. The relevant policies are; NPF4 Policies 1 & 7, LDP Del 2 (City Centre) and EMP10.
12. The non-statutory Guidance for Businesses is also identified in the RoH as a relevant material consideration for STLs. This is not relevant to an aparthotel.

## THE LAW

13. Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022, as follows –  
  
*“aparthotel” means a residential building containing serviced apartments where—*
  - (a) the whole building is owned by the same person,*
  - (b) a minimum number of 5 serviced apartments are managed and operated as a single business,*
  - (c) the building has a shared entrance for the serviced apartments, and*
  - (d) the serviced apartments do not share an entrance with any other flat or residential unit within the building.*
14. Serviced apartments are identified as “providing services to guests (such as housekeeping, reception or laundry)”.
15. In the recent case of *Ralph Averbuch and Others v City of Edinburgh* Lord Braid held that the City of Edinburgh’s Short Term Lets Licensing Policy was unlawful. At paragraph 26 he considered the relationship between the licensing and planning regimes under the 1982 Act and noted the obvious point that the two pieces of legislation were amended around the same time “with the specific intention that the two should regimes should complement each other”.

## THE GROUNDS FOR REVIEW

16. There are factual errors and inconsistencies in the RoH. The officer has failed to assess the planning application in the terms sought and therefore has failed to consider relevant material planning policy and apply it correctly to this scheme.
17. Firstly the application was made for change of use to Class 7 and should have been assessed on that basis. Class 7 includes “Use as a hotel, boarding house, guest house, or hostel where no significant element of care is provided”. Further the decision should be confined to considering the planning application on that basis.
18. This mischaracterisation of the scheme is apparent in the description of development section where the Report says on page 5 “*Critically*, there are no communal facilities...”. Had the application been dealt with on the basis it was made, as a Class 7 use, then different policies would have applied and the planning balance would have been made differently. It should be noted that on 4 October 2022 permission was granted for a 14-bed aparthotel in a townhouse

at 11 Stafford Street<sup>1</sup> as a Class 7 use. This scheme has no communal facilities in terms of reception, café or restaurant.

19. The second flaw in the RoH is the reference to “self-contained units” which is not a use class. The ‘self-contained units’ could be in use class 7 or use class 9. It is the case that a planning application was submitted and approved in 2021 for the conversion of the Property into five flatted residential properties [21/02195/FUL]. However, the applicant changed its mind and re-submitted for a different use. It should be accepted by the council that the current application seeks planning permission for a change of use from Class 2 (Financial and Professional Services) to Class 7 (Hotels and Hostels) and deal with it on that basis and on its individual merits.
20. It should be noted that subsequent to the submission of Planning Application 22/05621/FUL in November 2022, the Town and Country Planning (General Permitted Development and Use Classes) (Scotland) Miscellaneous Amendment Order 2023 was introduced in March 2023. Class 1 (Shops) and Class 2 (Financial and Professional Services) no longer exist and were replaced by Class 1A (Shops and financial, professional and other services). Consequently, the existing use of the application property, as confirmed in the application description of development, should be adjusted from Class 2 (Financial and Professional Services) to Class 1A (Shops and financial, professional and other services).
21. It is also worth noting that the Town and Country Planning (General Permitted Development and Use Classes) (Scotland) Miscellaneous Amendment Order 2023 allows for a permitted change of use from Class 1A to Class 3 (Restaurants and Cafes) and Class 4 (Business).

#### Principle of development

22. The LDP confirms that tourism is the third biggest source of employment in Edinburgh and that maintaining and developing this key sector in the city's economy relies upon sufficient provision of high-quality tourist accommodation. The tourism study which informed the LDP identified a theoretical demand for 4,000 new hotel rooms to meet predicted growth<sup>2</sup>. The LDP also confirms that the city centre is the preferred location for most visitors but accessible locations with good public transport within the urban area also offer opportunities for new hotel development.
23. The RoH stated that the scheme lacked communal facilities normally associated with hotels (restaurant or café, reception or staff presence) and was therefore for STLs. This is wrong as a matter of fact and fails to appreciate the newly emerging concept of aparthotels as recognised in the licensing regime which is (according to Lord Braid<sup>3</sup>) intended to complement the planning regime. It also misses the evidence in the Planning Statement which clearly sets out the business model for this aparthotel. It states that the aparthotel will provide hybrid accommodation space, similar to a top-class hotel room, with home features. It would offer

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<sup>1</sup> 22/00982/FUL

<sup>2</sup> LDP para.220

<sup>3</sup> In JR1



housekeeping, breakfast and services such as wifi which are equivalent to communal facilities in hotels and demonstrates there will be a staff presence on site. These facilities and presence on site are a material consideration of weight which was not taken into account in the planning balance.

24. The officer plainly attached much weight to the physical layout of the development as opposed to understanding its true nature as an aparthotel. Further the proposed use as an aparthotel can be controlled by condition and the requirement for a management plan setting out the business model would be acceptable to the applicant. This would include provision of services and staff presence.
25. LDP Policy Del 2 (City Centre) supports hotel development in the city centre and Policy EMP 10 permits hotel development “in locations within the urban area with good public transport access to the city”.
26. The Property is in Ward B11 - City Centre. It sits one block south of Queen Street and directly adjacent to the boundary of the city centre on the LDP proposals map in a highly accessible area. It obviously has excellent links to the city centre being within easy walking distance of the core and the main tourist attractions and businesses and with excellent public transport links to the wider urban area<sup>4</sup>.
27. The principle of an aparthotel on this site is in the spirit of LDP Policy Del 2 (City Centre) and fully accords with policy EMP 10.

#### Impact on Amenity

28. The LDP requires the design of new developments to have consideration for the impact on neighbouring properties<sup>5</sup>. In the Report of Handling the officer describes the area as predominately residential with a small number of commercial uses. This is not an accurate description of the area immediately around the Property. The Property sits adjacent to the city centre boundary at the junction of Abercromby Place and Dublin Street. As is common with sites within and adjacent the city centre it has a concentration of commercial and business uses, including restaurants, wine bars, offices and shops.<sup>6</sup>
29. Importantly, the application property is presently in commercial use, falling within Class 1A of the Use Classes Order, with permitted change of use to Class 3 and 4, and is therefore capable of accommodating a range of high activity uses, including a shop or restaurant, without a need for planning permission. Such uses would give rise to a greater degree of activity, noise and disturbance than the proposed apart hotel use. Furthermore, the application property is located in an area where there are a series of established commercial premises that one would

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<sup>4</sup> Bus station 280m, tram 280m and mainline station at Waverley

<sup>5</sup> LDP Des 5 Development Design Amenity.

<sup>6</sup> See Land Use Plan for ease of reference

normally expect to find in a city centre location, including shops, restaurants<sup>7</sup> and bars<sup>8</sup> which are licenced on some days until 24:00. It is a dynamic area and many of these properties could change to other town centre uses as permitted development.

30. It is therefore wrong to characterise the area as having only daytime commercial uses. It follows that the background environment in terms of movement and noise is not simply a quiet residential area.
31. The RoH also asserts that the accommodation would be used by transient visitors having less regard for neighbours. The Planning Statement clearly advises that aparthotels are in effect extended stay hotels that offer more generous accommodation to attract medium or longer stays, often for business use. Had the officer properly understood what was applied for by reference to the Planning Statement he would have appreciated that the scheme was genuinely for an aparthotel. Further had he not made this error of fact, the assessment in terms of impact on the amenity of the area would have been made in a very different way.
32. Policy Hou7 Inappropriate Uses in Residential Areas is the only policy referred to in terms of amenity. It requires new development not to have a *materially* detrimental effect on living conditions of nearby residents. On a proper understanding of the proposal, including an accurate appreciation of the nearby commercial land uses and local baseline environment being not predominantly residential but including evening and night time uses, then the planning balance would be in favour of the development. The aparthotel will attract visitors to Edinburgh who are likely to use the facilities and attractions in the city centre to the south and return to the aparthotel. This use is not likely to generate or materially increase movement or disturbance into the streets to the north. Indeed, the use of the application property as an aparthotel is likely to generate less movement, noise and disturbance than other uses which the property could be lawfully used for without the need for planning permission, including use of the application premises as a restaurant or shop.
33. It is accepted there are residential uses to the west [2 Abercromby Place] and the south [22 Dublin Street] and these would be apparent on a site visit. It is plain from looking at the Property and adjacent ones that the party wall to 22 Dublin Street is onto a common area staircase and not habitable rooms. Therefore the likelihood of disturbance by noise is low.
34. Whilst there is a party wall to 2 Abercromby Place and the aparthotel would be accessed from this street, the common areas (staircases) are in the middle of the Property such that only habitable rooms would back on to the adjacent house. It is also the case that the occupiers of 2 Abercromby Place have not objected to the aparthotel use which indicates they consider noise disturbance to be unlikely.
35. More importantly as can be seen on the submitted plans the aparthotel would be self-contained and not have a shared doorway or common staircase with any other residential uses.

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<sup>7</sup> Little White Pig, Noir Pig, Stac Polly, The Magnum and Karens Unicorn

<sup>8</sup> Star Bar and Gym

Further it would not have any shared courtyard with any other residential uses. Therefore there is little likelihood of disturbance by way of noise from the aparthotel to adjacent or nearby residential uses.

36. The sole reason for refusal is that the proposal *may* have an adverse effect on “neighbouring residential amenity by way of noise”. This is not substantiated on the evidence, whether for an aparthotel or Short Term Lets. As set out above the local area around the Property is mixed commercial and residential with background noise levels above purely residential particularly in the evenings. The use of the Property as an aparthotel with a staff presence and management policy (including noise management plan) would not cause harm to the amenity of the neighbouring residents.
37. It should be noted that Environmental Health were not consulted on this application and there is no evidence available to the planning officer on which to draw the conclusion of potential noise disturbance to neighbouring properties. The RoH makes general assertions about noise but there are no references to the layout and juxtaposition with adjacent residential uses.
38. It is also the case that tourism uses are promoted in and near the city centre under Policy Del 2 and Policy EMP10 positively supports an aparthotel use. Therefore it is incumbent on the Council as decision maker to weigh that positive support in the balance as against any perceived harm. On balance it is clear that an aparthotel will make a positive contribution to the quality and quantity of tourism and business accommodation whilst not harming the amenity of neighbouring properties in a mixed commercial area of the city centre.

#### Sustainability

39. NPF4 Policy 1 attaches significant weight to global climate and nature crises. This scheme is for the productive re-use of an historic building. An aparthotel on the edge of the city centre represents an appropriate land use in terms of providing high quality tourist and/or business accommodation which is highly accessible to the city centre with its tourist facilities and business hub.
40. NPF4 Policy 7 considers the impact of new development on historic assets. This scheme is a significant investment in a listed building in the Conservation Area and this scheme already has Listed Building Consent. It therefore finds support in Policy 7 as confirmed in the Report of Handling.

#### THE ALTERNATIVE SUBMISSION

41. The application was assessed in the Report of Handling as being five units for Short Term Letting. As set out above this is not what was applied for. However even if the scheme were looked at in that way the refusal reason is not adequately substantiated. The sole reason for refusal is based on *potential* for noise disturbance which is not borne out by the evidence and is not supported by any objection from Environmental Health.

42. There can be well managed and poorly managed aparthotels and the same can be said of STLs. The key is that both land uses require meaningful and effective management policies to deal with any short-term issues. Dunpark Property Agents are one and the same as the applicant Feshiebridge Ltd. It is a privately owned regulated letting agent being established for over 28 years in Edinburgh and licensed with Propertymark. Operating predominately in central Edinburgh, it's representatives regularly appear at the licensing committee to secure relevant licenses and are experts on strict management policies and procedures. In essence they will be good neighbours in the city.

## CONCLUSION

43. It appears that the misunderstanding of the scheme as applied for has led to the planning officer not identifying the relevant material considerations and development plan policies in assessing it.
44. It is plain that the application seeks use as an aparthotel with housekeeping services (breakfast, laundry, TV, wifi etc). Whilst there is no definition of aparthotel in planning (it falls within Class 7) this intended use meets the statutory definition of an aparthotel in the licensing regimes.
45. The primary ground for review is that the application should be dealt with as made, for a Class 7 aparthotel, and assessed against the relevant policies of the ELP and NPF4.
46. The ELP recognises the contribution of tourism to the local economy and supports hotels in the city centre and other accessible locations. Further there are no other policies specifically dealing with aparthotels. These attract medium to longer term lets sometimes for business use and contribute to the economy generally and particularly to tourism.
47. If the scheme is properly assessed in terms of the area having mixed residential and commercial uses, including evening and night times, then it would not cause harm by reason of noise.
48. The proposed apart hotel would have its own front door and would not be accessed off a stair where there are other flats and there would be no outside space or communal garden.
49. The application did not attract any objections from statutory consultees or non-statutory consultees. Taken as a whole and assessed against this guidance (which the Report of Handling did not do) the scheme would be acceptable and should be approved with conditions.
50. In the alternative even if the scheme was for STLs it should have been dealt with on its individual merits and properly considered against Hou 7 and the Guidance for Businesses<sup>9</sup>. This advises where the location is mixed as in this case the nature of surrounding land uses (restaurants and bars) and proximity to residential properties should be assessed individually.

MISS NICOLA ALLAN  
BA (Hons) Dip Law MRTPI  
Trinity Chambers

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997**  
**PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) (SCOTLAND)**  
**ACT 1997**

**TOWN AND COUNTRY PLANNING USE CLASSED ORDER (SCOTLAND)**

**APPLICATIONS FOR PLANNING AND LISTED BUILDING CONSENT FOR**  
**CHANGE OF USE FROM CLASS 2 (FINANCIAL AND PROFESSIONAL SERVICES)**  
**TO CLASS 7 (HOTELS AND HOSTELS) AND ASSOCIATED BUILDING**  
**ALTERATIONS**

**1 & 1A ABERCROMBY PLACE, EDINBURGH**

**NOVEMBER 2022**

## 1.0 Introduction

Felsham Planning and Development is planning adviser to Feshiebridge Ltd. We are instructed to submit applications for planning and listed building consent for change of use from Class 2 (Financial and Professional Services) to Class 7 (Hotels and Hostels).

The context for assessing the application is the grant of consent for applications Ref 21/02195/FUL and 21/02171/LBC for change of use from Class 2 (Financial and Professional Services) to Class 9 (Housing) granted on 4 November 2021. This application makes minimal changes to that extant consent and the key issue will be the functioning and management of the Class 7 use.

In our submission, the development complies with the Planning (Listed Building and Conservation Areas) Scotland Act 1997 as it preserves the character and setting of the listed building and preserves and enhances the character and appearance of the conservation area. The proposal is acceptable in this location and is of an appropriate scale, form and design. The proposal will have no material impact upon the amenity of neighbouring residents and will provide an adequate residential environment for future occupants

There are no material planning considerations which outweigh this conclusion.

Accordingly, we have submitted in support of this application:-

- Completed Listed Building application form
- Completed Planning application form
- Landownership certificates
- Site location plan, and
- Relevant drawings.

## 2.0 Assessment

The Town & Country Planning Act requires planning applications to be determined in accordance with the Development Plan unless material considerations indicate otherwise.

The House of Lords in its judgement in the City of Edinburgh Council v Secretary of State for Scotland case 1998 (SLT120) ruled that if a proposal accords with the Development Plan and no other material considerations indicate that it should be refused, planning permission should be granted. It ruled that:

*Although priority must be given to the Development Plan in determining a planning application, there is built in flexibility depending on the facts and circumstances of each case.*

This judgement sets out a clear approach to determining a planning application and clarifies how the development should be used:

1. Identify any provisions of the Development Plan that are relevant to the decision.
2. Interpret them carefully looking at the aims and objectives of the plan as well as the detailed wording of policies.
3. Consider whether or not the proposal accords with the Development Plan.
4. Identify and consider relevant material considerations for and against the proposal.

5. Assess whether these considerations warrant a departure from the Development Plan.

The determining authority must first consider whether the proposal accords with the development plan. It is important to consider not only the detailed wording of policy, but the aims and objectives of the policy maker. If a proposal is considered to accord with the development plan, it follows that consent should be granted unless any site specific matters preclude consent.

The House of Lords has ruled that material considerations must satisfy two tests:

1. They must be planning considerations, in other words, they must have consequences for the use and development of land or the character of the use of the land; and
2. They must be material to the circumstances of the case and they must relate to the proposed development.

The relevant Local Plan Policy is *Env 4 - Listed Buildings - Alterations and Extensions*, which states:

*Proposals to alter or extend a listed building will be permitted where:-*

- a) those alterations or extensions are justified;*
- b) will not cause any unnecessary damage to historic structures or diminution its interest and*
- c) where any additions are in keeping with other parts of the building.*

Regard must also be had to the Scottish Government's statement on planning policy contained within SPP (Revised). Paragraph 137 states that the planning system should:

*Enable positive change in the historic environment which is informed by a clear understanding of the importance of heritage affected....change should be sensitively to avoid or minimise adverse impacts on the fabric and setting of the asset and ensure that its special characteristics are protected, conserved and enhanced*

Paragraph 141 deals with listed buildings and states:

*...the materials...scale and setting...of any development which will affect the setting of a listed building...should be appropriate to the character and appearance of the building...*

Therefore, SPP has clarified the policy test, which is development appropriate to the listed building. The Local Plan contains a presumption in favour of alterations subject to no damage or reduction in the interest of the building and those alterations being in keeping with the building. In our view, the nature of the proposed changes does not impact on the character of the listed building.

Section 59 (1) of the Planning (Listed Building and Conservation Areas)(Scotland) Act 1997 states:

*"In considering whether to grant planning permission for development which affects a listed building or its setting, a planning authority or the Secretary of State, as the case may be, shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."*

Historic Environment Scotland's (HES) Managing Change in the Historic Environment guidance note on the use and adaptability of listed buildings is applicable. It states that:

*for a building to remain in use over the long term, change will be necessary. This reflects changes over time in how we use our buildings and what we expect from them. The listed buildings in Scotland reflect a wide range of our history and culture, they contribute to our well-being culturally, socially and economically. We can't have these benefits without caring for these buildings. We need to make sure they have a long term future if we want to benefit from them in the long term A building's long-term future is at risk when it becomes hard to alter and adapt it when needed. Proposals that keep buildings in use, or bring them back into use, should be supported as long as they do the least possible harm. Once a building is empty or underused its long term future is immediately at risk*

*Decisions about listed buildings should always focus on the qualities that make them important - their special interest. Lots of things can contribute to a building's special interest, but the key factor when we're thinking about making changes will be its overall historic character. The best use of a listed building is often going to be the one for which it was designed. Keeping a building in the same use helps us to understand what the building was originally designed for. It can also help to protect any associations and special meanings that the building has - part of its intangible value.*

The property is currently utilised as an estate agents offices. However, the building is no longer fit for the applicants needs and has not been regularly used throughout the pandemic. A suitable use for the property must now be found.

Having regard to the House of Lords methodology we note:

**Identify any provisions of the Development Plan that are relevant to the decision** –the listed buildings test in policy ENV 4 is that there should be no unnecessary damage to the historic structure or reduction in interest. The proposal is for a change of use to develop an apart hotel. There is an extant consent for change of use to residential and the proposal makes minimal changes to that extant consent.

**Interpret them carefully looking at the aims and objectives of the plan as well as the detailed wording of policies** – the aims and objectives of the development plan that are relevant to this proposal are to protect listed buildings from harm. This proposal complies with those aims and objectives.

**Consider whether or not the proposal accords with the Development Plan** – any assessment of what is appropriate should consider what has previously been permitted. The Report of Handling for Application Ref 21/02195/FUL, in assessing the change from Class 2 to Class 9 (Housing) stated:

*The site falls within the defined urban area. The applicant has stated that the property was originally designed to be in residential use, before it was converted, presumably in the 19th century when the extension to formed to the front of the building. The proposal will take the building back into residential use. The most publicly visible elevations of the building will remain largely untouched externally. The large windows and details on the later 19th century shop front extension will remain.*

*The only proposed external alterations are to the basement level which shall not be overly noticeable, the insertion of small rooflights to the flat roof of the shopfront and the installation of slim line glazing to the existing shopfront windows. It is noted that there are other examples*



*of rooflights on properties nearby. From the outside the only visible internal change will be the additional element of walls internally behind the four existing windows on the principal elevation of the building.*

*The two windows which permit unobscured views to the internals of the building will remain unobscured. The two windows that shall provide light to the proposed flats will therefore be of a broadly comparable size to that of nearby properties. This shall ensure that there will be no requirements for large curtains or obscure glazing throughout the large windows and the character and appearance of the conservation area shall be maintained. The proposal will protect and enhance the defined conservation area and complies with LDP policy Env 6 and the defined conservation area character appraisal.*

The application proposal is for a variation to the nature of the use permitted by application ref 21/02195/FUL. The principle of change of use to residential use with associated building alterations has been judged to be acceptable. The determining issue is how the currently proposed use will differ from the permitted use and what the impacts the surrounding area will be.

In summary, policy requires that proposals should preserve and enhance the character and appearance of the conservation area, should not harm the listed building and should demonstrate high standards of design and use materials appropriate to the area. This is a small variation of an existing consent for change of use. The issue will be the difference in the functioning of the permitted Class 9 use and the now proposed Class 7 use.

Within Class 7 (Hotels and Hostels) Aparthotels is a hybrid living space furnished in the style and luxury associated with a top-class hotel room, while providing the convenience associated with a well-equipped home.

These are luxury apartments that have all the convenience of a hotel. The benefit of an Aparthotel is that it is considered a medium or longer term stay whereas hotels are great for the short term but soon lose their appeal. Extended stay hotels try to create a home away from home atmosphere, but with the independence offered by your own kitchen and laundry facilities.

The aparthotel offers boutique hotel luxury and style while granting occupants such home features as your own room, a living room, kitchenette and laundry facilities.

Typical hotels are generally limited to the hotel room with an ensuite bathroom on the assumption and convenience that occupants will be spending most of their time outside the room. A compact living area is provided that can serve in the short term but becomes cramped during longer stays.

Aparthotels offer a 24/7 concierge, daily maid turn-down, daily in-room breakfast or a personal chef. At an Aparthotel you can seamlessly switch between self-catering or chef-prepared meals, options that would be mutually exclusive in a studio apartment or standard hotel.

The Aparthotel offers room service or the convenience of ordering a takeaway. Separate living spaces makes it really convenient during family vacations or business trips when more time is spent in the

accommodation. They typically offer a lounge area, daily housekeeping, a kitchen with a full set of crockery and wifi, all wrapped in a highly attractive and cost-effective package.

### **Material Considerations**

Planning Policy aims to secure economic stability and growth through appropriate and sustainable development. This proposal creates opportunities for increasing tourism and employment opportunities in Edinburgh. The provision of additional accommodation to the area supports the tourism and business market and caters for a need for accommodation that does not function on a temporary transient nature but provides a “home from home” accommodation structure that fulfils a market demand.

### **3.0 Conclusions**

The proposal preserves the character of the listed building and it is appropriate to the listed building because it is in keeping with the style of the building and architectural details of the building remain unchanged and there will be limited alterations to its external fabric.

Therefore, the proposal accords with the key development policy and satisfies the terms of section 25 of the Planning Act, and listed buildings and advertisement consent should be granted.

# Report of Handling

**Application for Planning Permission  
1 - 1A Abercromby Place, Edinburgh, EH3 6JX**

**Proposal: Change of use from Class 2 (financial and professional services) to Class 7 (hotels and hostels) and associated alterations.**

**Item – Local Delegated Decision  
Application Number – 22/05621/FUL  
Ward – B11 - City Centre**

## **Recommendation**

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

## **Summary**

The proposal is unacceptable by virtue of it being contrary to LDP Policy Hou 7, as it would have a detrimental impact on residential amenity.

With regard to Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, the proposal would be acceptable as it would be compatible with and has special regard to the desirability of preserving the building and the character and appearance of the conservation area. There are no material considerations which outweigh this conclusion.

## **SECTION A – Application Background**

### **Site Description**

The application site relates to the ground and basement floors of 1-1A Abercromby Place, Edinburgh. It is a category B, Listed building. William Cuthbertson and James Dobson, 1809, with later 19th century alterations. It has an advanced pilastered later 19th century shop front spanning bays at the principal floor, with scrolled brackets supporting mutuled cornice; recessed glazed door at centre, with geometric plate glass windows in remaining bays. The property is currently in use as an estate agents.

The surrounding area is characterised by tenemental buildings, which are predominately residential in nature, with a small number of commercial units at ground

floor level. These units mainly serve the day time economy, although there is a restaurant and a bar/restaurant within the vicinity.

The property is a Statutorily B Listed Building (1970), located within the New Town Conservation Area..

### **Description Of The Proposal**

The application is a change of use from a Class 1A to a Class 7 to include internal and external alterations.

Whilst the description of development is to change the use to a Class 7 use, the Council does not consider this to be an accurate reflection of the proposal. It considers the correct description is a change of use from Class 7 to five short term let apartments. This will be examined and assessed in the following report of handling.

### **Relevant Site History**

22/05620/LBC

1 - 1A Abercromby Place

Edinburgh

EH3 6JX

Alterations associated with change of use from Class 2 (financial and professional services) to Class 7 (hotels and hostels).

Granted

16 February 2023

21/02195/FUL

1 - 1A Abercromby Place

Edinburgh

EH3 6JX

Change existing offices into 5 residential flats.

Granted

4 November 2021

21/02171/LBC

1 - 1A Abercromby Place

Edinburgh

EH3 6JX

Alter existing offices and return property to residential use, creating 5 flats.

Granted

4 November 2021

### **Other Relevant Site History**

No other relevant site history.

### **Consultation Engagement**

Roads Authority.

Environmental Protection

## Publicity and Public Engagement

**Date of Neighbour Notification:** 20 September 2023

**Date of Advertisement:** 9 December 2022

**Date of Site Notice:** 9 December 2022

**Number of Contributors:** 5

## 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**

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

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

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

- Managing Change - Conservation Areas.
- Managing Change - Interiors

### **Impact on Listed Building**

The proposal will not have a detrimental impact on the historical architectural features and will therefore not adversely impact on the special architectural or historic interest of the listed building.

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

The proposal will not impact on the special architectural or historic interest of the listed building and is acceptable with regards to Section 14 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

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

The proposed changes represent minor alterations to the application site. By virtue of their size, location and suitable materials, the works would not have a detrimental impact on the character and appearance of the conservation area.

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

The proposal has regard to the desirability of preserving or enhancing the character or appearance of the conservation area. The proposal is acceptable with regards 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 NPF4 and LDP policies to be considered are:

- NPF4 Policies 1 and 7.
- LDP Housing Policy Hou 7.
- LDP Developer Contributions Policy Del 1.

The non-statutory Guidance for Businesses and non-statutory Listed Buildings and Conservation Area guidance are material considerations that are relevant when considering the aforementioned policies.

### Historic Assets & Scale, Form and Design

In terms of the physical alterations, the changes would represent acceptable alterations to the application site. By virtue of their modest nature, the works would not have a detrimental impact on the character and appearance of the host property or the surrounding area.

This complies with NPF4 Policy 7.

### Description of Development

The application description is for a Class 7 use, however the plans depict a layout that is representative of short term lets, which are sui generis. Each unit is distinct, has the facilities that would be expected in a self contained flat and is separate from its neighbours. Critically, there are no communal facilities normally associated with hotels, such as the provision of a restaurant or cafe, or any form of reception or staff presence.

Therefore, despite the position of the applicant that the proposal falls within a Class 7 use, the assessment will be made to reflect the Council's opinion that the use would form five separate short term lets

### Amenity

The proposed property is situated in a predominately residential area with varied levels of vehicular and pedestrian traffic. Access to the building is via a private front door.

The use as five short term lets would allow visitors to come and go from the premises for inconsistent periods of time on a regular basis throughout the year in a manner dissimilar to that of a residential nature. A transient visitor may also have less regard for neighbours' amenity than individuals using the property for a longer period. Although there are commercial uses within the immediate area, the street also has a residential feel, with the application site being in close proximity to residential properties, including flats above and adjacent to the site.

The introduction of the development would have the potential to introduce noise and disturbance, to the detriment of neighbouring residential amenity.

The proposal is contrary to LDP Policy Hou 7.

### Roads Authority

The Roads Authority was consulted in relation to the application and returned no objections providing a tram contribution is met.

This would comply with LDP Policy Del 1.

### **Conclusion in relation to the Development Plan**

The proposal is contrary to LDP Hou 7 due to the potential impact on neighbouring residential amenity.

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

The following material planning considerations have been identified:

Emerging policy context

On 30 November 2022 the Planning Committee approved the Schedule 4 summaries and responses to Representations made, to be submitted with the Proposed City Plan 2030 and its supporting documents for Examination in terms of Section 19 of the Town and Country Planning (Scotland) Act 1997. At this time little weight can be attached to it as a material consideration in the determination of this application.

Independent economic impact assessment

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

The Economic Report shows that there are positive economic impacts from the use of properties for both residential use and short-term let use. The Report found that in general the gross value added (GVA) effects are greater for residential uses than short-term lets across all property types and all areas. However, given it is considering generalities rather than the specifics of this individual case, only limited weight can be attached to it as a material consideration in the determination of this application.

Equalities and human rights

Due regard has been given to section 149 of the Equalities Act 2010. No impacts have been identified.

Consideration has been given to human rights. No impacts have been identified through the assessment and no comments have been received in relation to human rights.

Public representations

Five comments were received (Three in objection, two in a neutral stance).

Material -

Out of character; this is addressed in section c).



Traffic; this is addressed in section c).  
Noise; this is addressed in section c).

### **Conclusion in relation to identified material considerations**

These have been addressed.

#### **Overall conclusion**

The proposal is unacceptable by virtue of it being contrary to LDP Policy Hou 7, as it would have a detrimental impact on residential amenity. With regard to Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, the proposal would be acceptable as it would be compatible with and has special regard to the desirability of preserving the building and the character and appearance of the conservation area. There are no material considerations which outweigh this conclusion.

### **Section C - Conditions/Reasons/Informatives**

The recommendation is subject to the following;

#### **Reason for Refusal**

1. The proposal would be contrary to LDP Policy Hou 7 in that it would have the potential to have an adverse effect on neighbouring residential amenity by way of noise and disruption from occupiers of the units.

#### **Background Reading/External References**

To view details of the application go to the [Planning Portal](#)

**Further Information - [Local Development Plan](#)**

**Date Registered: 24 November 2022**

#### **Drawing Numbers/Scheme**

01-05

Scheme 1

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

Contact: Conor MacGreevy, Planning Officer  
E-mail: [conor.macgreevy@edinburgh.gov.uk](mailto:conor.macgreevy@edinburgh.gov.uk)

## Appendix 1

### **Consultations**

NAME: Roads Authority.

COMMENT: No objections subject to the following being included as conditions or informatives as appropriate;

1. The applicant will be required to contribute the net sum of £ £7,478 (based on proposed 7 hotel rooms and existing use of 308sqm office in Zone 1) to the Edinburgh Tram in line with the approved Tram Line Developer Contributions report. The sum to be indexed as appropriate and the use period to be 10 years from date of payment.

Please see the consultation for more information.

DATE: 6 January 2023

NAME: Environmental Protection

COMMENT: On objections.

Please see the consultation for more details.

DATE: 17 March 2023

The full consultation response can be viewed on the Planning & Building Standards Portal.

## 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: Conor MacGreevy

Date: 13 September 2023

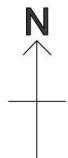
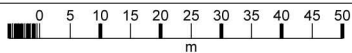
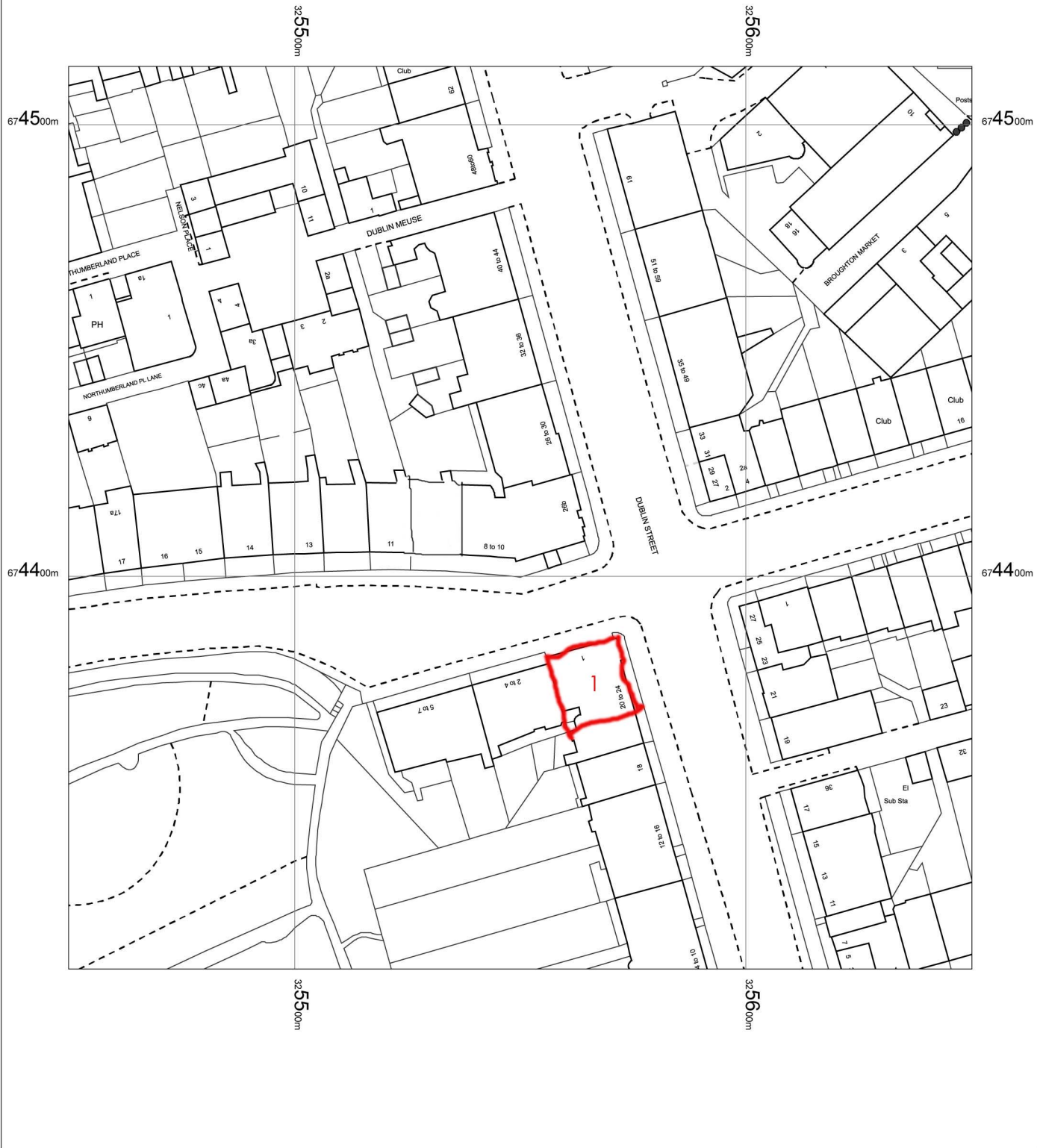
#### **Authorising Officer**

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): Alan Moonie

Date: 13 September 2023

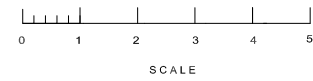


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[www.nicolsondigital.com](http://www.nicolsondigital.com)

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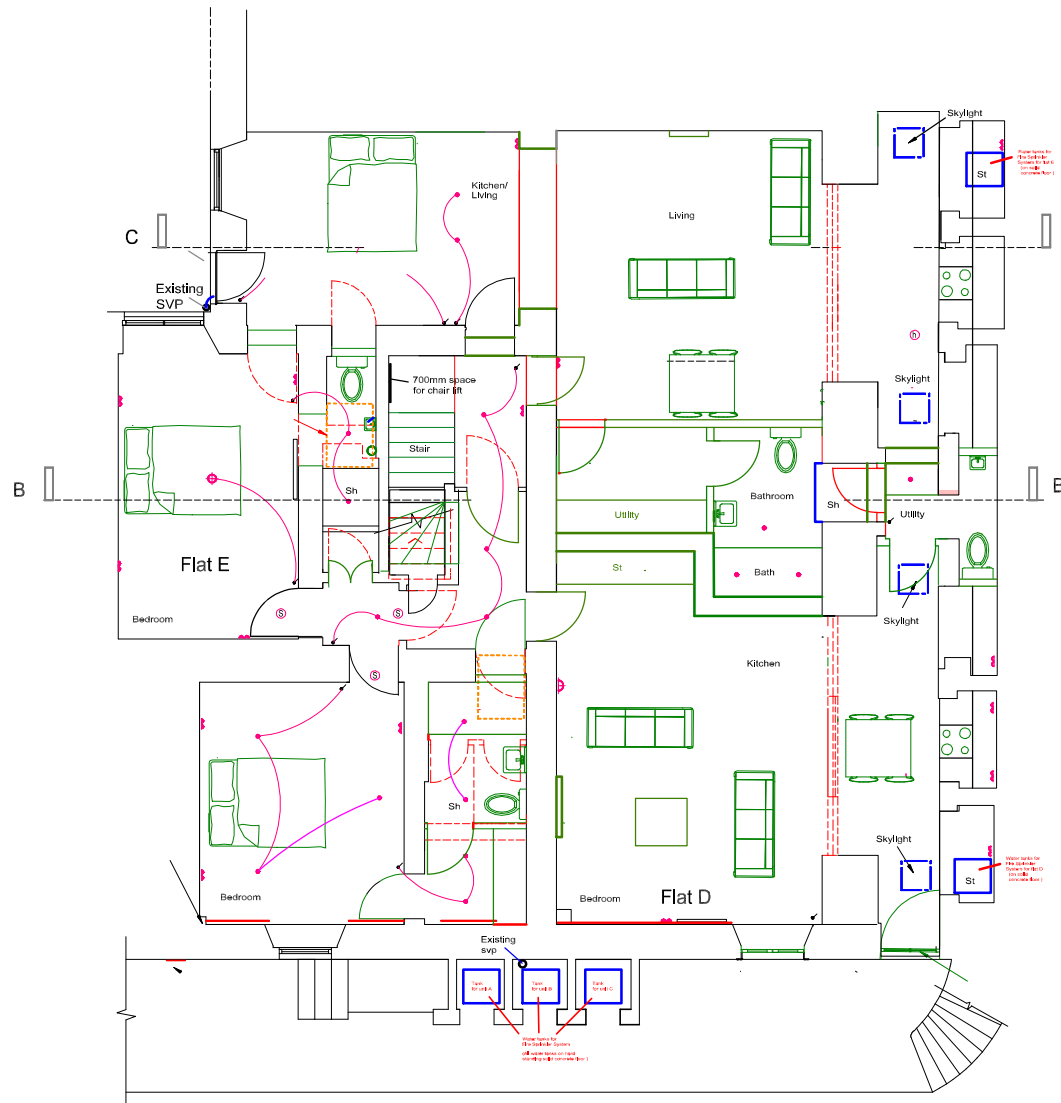
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GENERAL NOTES

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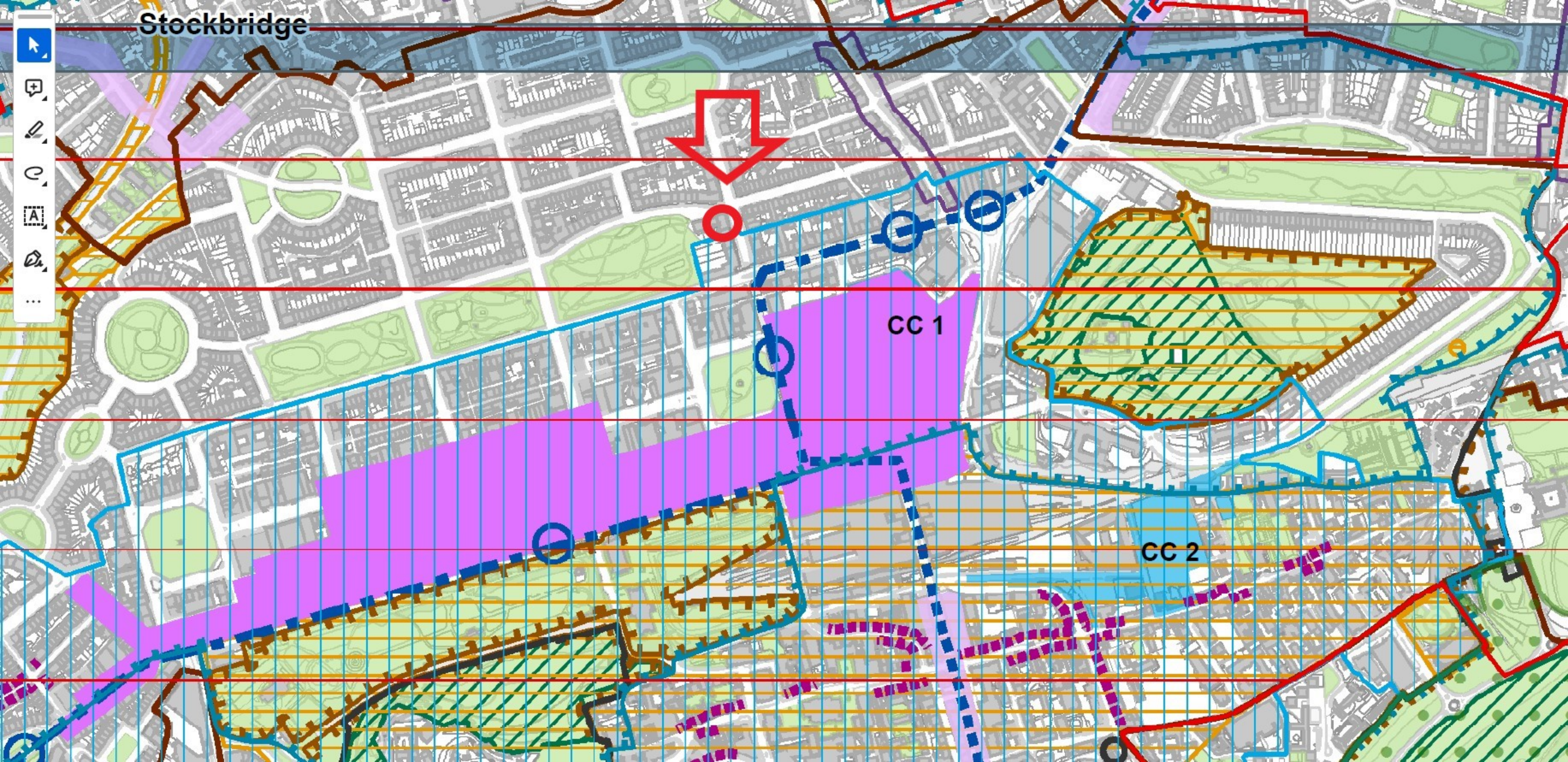
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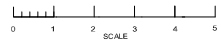
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	New build
	Demolish
	Existing

CRICHTON  
**WOOD**  
ARCHITECTS

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Drawing 366 SK10q	Basement Floor Plan
Date 05/04/21	The Courtyard, Binny House, Eddlemachen Tel: 07917 108244

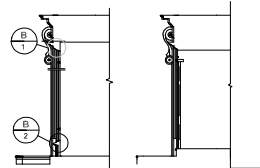
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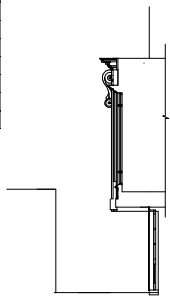


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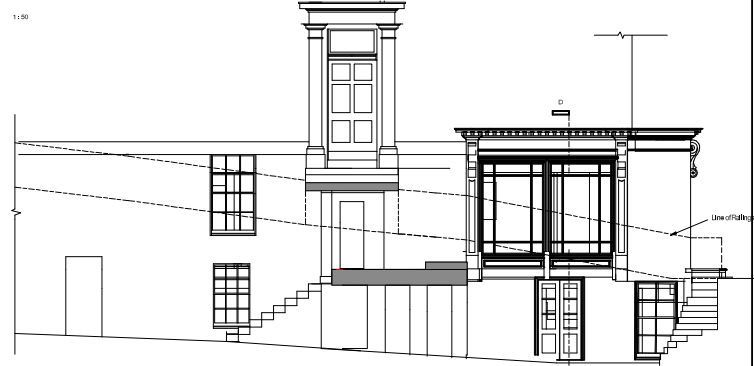
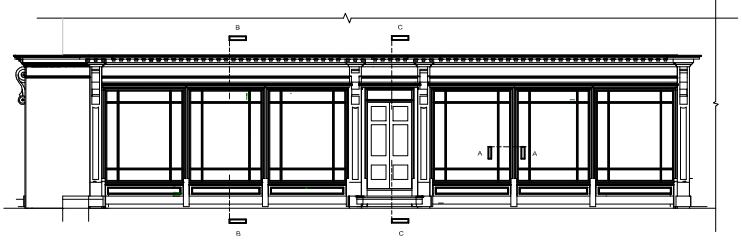
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■	Brick
■	Block
■	Stone
■	Timber
■	Clay Tiles
■	Asphalt Tiles
■	Gravel
■	Grass
■	Water
■	Soil
■	Foundation
■	Basement
■	Garage
■	Driveway
■	Path
■	Stair
■	Ramp
■	Roof
■	Wall
■	Floor
■	Ceiling
■	Window
■	Door
■	Staircase
■	Handrail
■	Lighting
■	Planting
■	Other



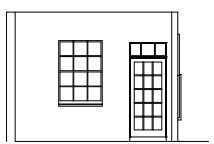
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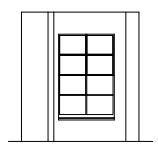
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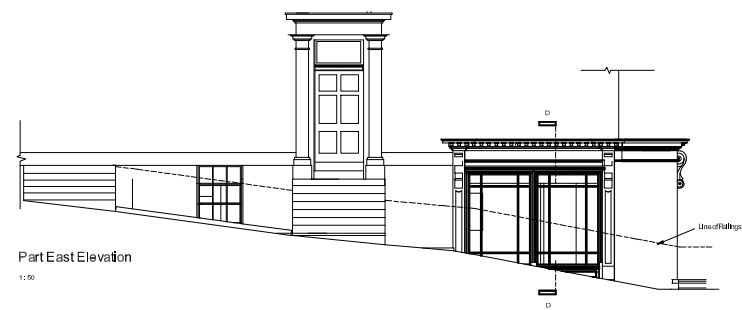
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West EI Rear Exit  
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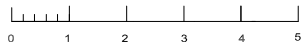
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GENERAL NOTES		
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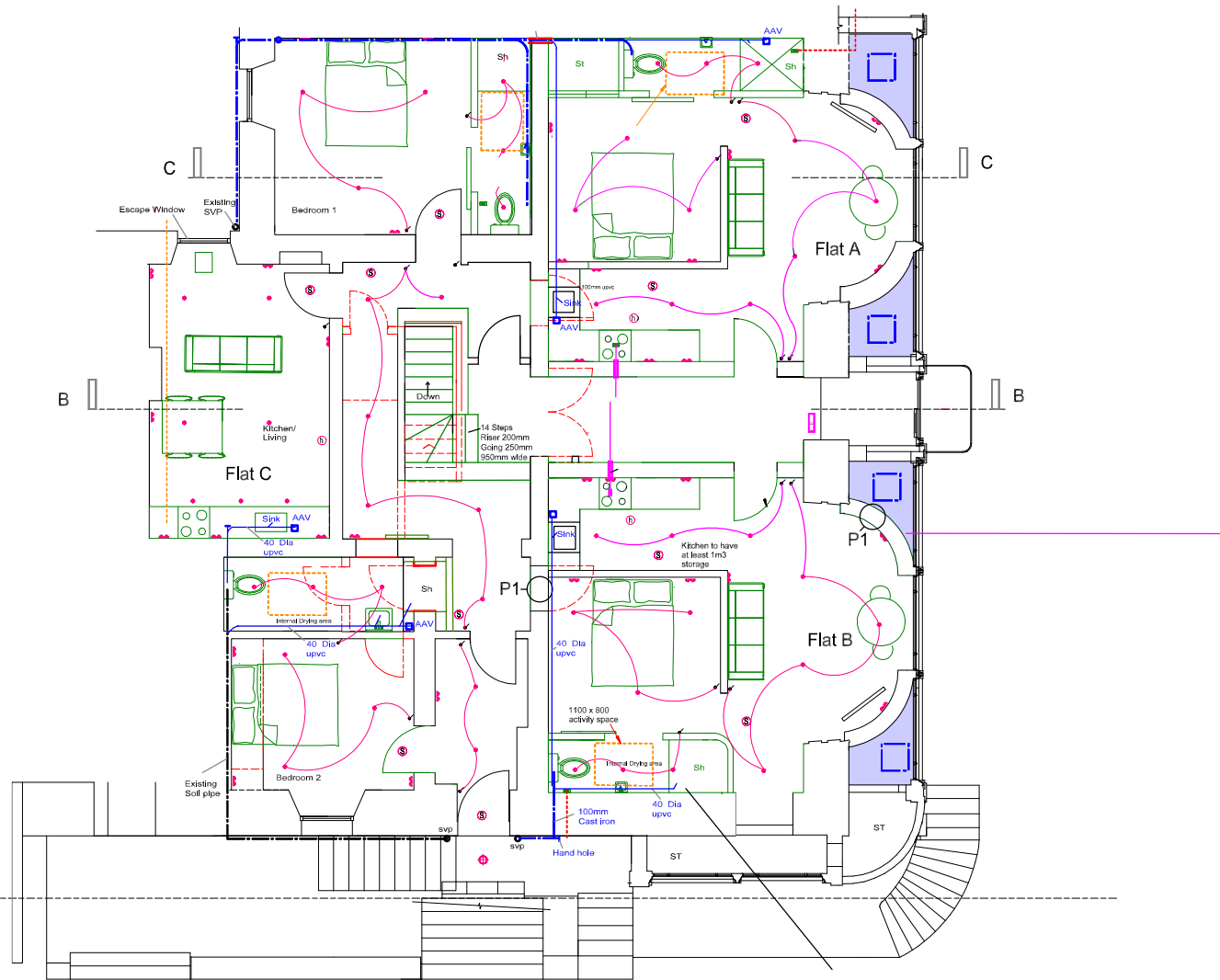
CRICHTON  
WOOD

Project	1 / Abercromby Place
Drawing	Warrant Elevations
Date	The Crichton Wood House, 1/ Abercromby Place, Glasgow, G1 1 1 1





SCALE



Ground Floor Plan

1:50

LINE KEY	
	New Duct
	Over Floor
	Cast In

GENERAL NOTES

REV	NOTES	DATE

CRICHTON  
WOOD  
ARCHITECTS

Project 306 1 Abercromby Place  
 Drawing 366 SKILL Ground Floor Plan  
 Date 05/04/21 The Courtyard, Bony House, Eidsnesschan Tel: +07817 10244



- BARS/RESTAURANTS
- COMMERCIAL
- APARTHOTEL

Dublin Meuse

Broughton Market

Dublin St

Albany

Abercromby Pl

Abercromby Pl

Dublin St

Posts

Sub Sta