

Development Management Sub-Committee Report

Wednesday 17 April 2024

**Application for Planning Permission STL
119 Montgomery Street, Hillside, Edinburgh**

Proposal: Change of Use from Office to Short Term Let in retrospect.

**Item – Committee Decision
Application Number – 23/04763/FULSTL
Ward – B12 - Leith Walk**

Reasons for Referral to Committee

The application has been referred to the Development Management Sub-Committee because it has received 22 comments in support, and the application is being recommended for refusal. Consequently, under the Council's Scheme of Delegation, the application must be determined by the Development Management Sub Committee.

Recommendation

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

Summary

The change of use of this property to a Short Term Let (STL) will have an unacceptable impact on neighbouring amenity contrary to policy Hou 7 and NPF 4 policy 30(e)(i).

Notwithstanding the description of proposal referring to the change of use from office, the use of the property is considered to be residential given the site history and enforcement notice on the property. On this basis, the loss of the residential accommodation has not been justified. Whilst it is recognised that there is an economic benefit to the City as a whole from the provision of visitor accommodation in this case it does not outweigh the loss of residential accommodation or the adverse impact on residential amenity.

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

SECTION A – Application Background

Site Description

The application site is a two-bedroom ground floor flat located on the corner of Montgomery Street and East Montgomery Place. The property has its own main door access to the street and is located above and below other flatted dwellings. The application property is within an area of predominantly residential character, typically featuring a low degree of activity during the day and night, though this occasionally increases when the nearby Montgomery Street Park is in peak usage.

Public transport links are highly accessible from the application site.

Description of the Proposal

The description of proposal seeks a retrospective change of use of the 97 sqm property from Class 4 office to STL with two bedrooms, however the application is understood to be for a change of use from a flatted dwelling to STL.

The proposed use commenced in March 2023. As stated in the relevant site history, planning permission was granted for the conversion of the office to form two residential properties, one at the ground floor and the other at the lower ground floor, reference 21/02515/FUL. Works commenced in line with the approved applications and the conversion was completed in January 2023. For the avoidance of doubt, it is only proposed to convert the ground floor flat to short term let use, and no internal or external physical changes are proposed.

Supporting Information

Planning Statement

Relevant Site History

21/02515/FUL

119 Montgomery Street

Edinburgh

EH7 5EX

Application for change of use from class 2 office to class 9 residential (2 flats).

Granted

10 June 2021

21/02515/VARY

119 Montgomery Street

Edinburgh

EH7 5EX

Non-Material Variation application to 21/2515/FUL. Window profiles slightly amended for fire escape windows and additional clerestory added to side elevation. uPVC door and timber fence added to side elevation for security and privacy to lower ground floor flat.

VARIED

1 December 2022

Other Relevant Site History

The application property is subject to enforcement action, case reference: 23/00224/ESHORT. The relevant enforcement notice was upheld at appeal, case reference: ENA-230-2260.

1 East Montgomery Place is subject to enforcement action, relating to the unauthorised use of the property for short-term letting, case reference, 22/00814/ESHORT. An enforcement notice was served on 31.05.2023.

Pre-Application process

There is no pre-application process history.

Consultation Engagement

No consultations undertaken.

Publicity and Public Engagement

Date of Neighbour Notification: 19 October 2023

Date of Renotification of Neighbour Notification: Not Applicable

Press Publication Date(s): Not Applicable

Site Notices Date(s): Not Applicable

Number of Contributors: 24

Section B - Assessment

Determining Issues

This report will 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 comply with the development plan.**

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

The relevant NPF4 and LDP 2016 policies to be considered are:

- NPF4 Sustainable Places Tackling the climate and nature crises Policy 1.
- NPF4 Productive Places Tourism Policy 30.
- Local Development Plan Housing Policy, Hou 7.
- Local Development Plan Transport Policies, Tra 2 and Tra 3

The non-statutory Guidance for Businesses (2024) is a material consideration that is relevant when considering LDP Policy Hou 7 and NPF4 Policy 30 and the Edinburgh Design Guidance is a material consideration when considering LDP Policies Tra 2 and Tra 3.

Proposed use

With regards to NPF 4 Policy 1, the proposed change of use does not involve operational development resulting in physical changes to the property. The proposals will have a negligible impact on the global climate and nature crisis.

NPF 4 Policy 30 seeks to encourage, promote, and facilitate sustainable tourism development which benefits local people, is consistent with our net zero and nature commitments, and inspires people to visit Scotland. Criterion 30 (e) specifically relate to STL proposals.

LDP Policy Hou 7 (Inappropriate Uses in Residential Areas) seeks to protect residential amenity.

The non-statutory Guidance for Businesses (2024) states that an assessment of a change of use of dwellings to an STL will have regard to:

- The character of the new use and of the wider area.
- The size of the property.
- The pattern of activity associated with the use including numbers of occupants, the period of use, issues of noise, disturbance, and parking demand and
- The nature and character of any services provided.

Amenity

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

The proposed use in this predominantly residential location is not in-keeping with the character of the area and would have an unacceptable impact on the amenity of residents that are living in proximity to the property as the noise generated by the proposed use would be significantly different from the ambient background noise that neighbouring residents might reasonably expect, particularly at night.

The additional servicing that operating a property as an STL requires compared to that of a residential use is also likely to result in an increase in disturbance, further impacting on neighbouring amenity. However, this would be of lesser impact as it is likely that servicing would be conducted during the daytime.

On balance, the proposed change of use would increase the level of ambient background noise beyond what might be reasonably expected by neighbouring residents, and therefore have a significant detrimental effect on their living conditions and amenity. The proposal does not comply with NPF 4 policy 30(e) part (i) and LDP policy Hou 7.

Loss of residential accommodation

The supporting statement outlines that following completion of the works associated with planning application 21/02515/FUL, the property has since been used exclusively as an STL, and that it therefore follows that the residential use consented has not been taken up.

However, in accordance with Section 27(1) of the Town and Country Planning (Scotland) Act 1997, and the relevant case law, *Caledonian Terminal Investments Ltd v Edinburgh Corp* [1970] S.L.T. 362 and *Doonin Plant Ltd v Scottish Ministers* [2011] CSOH 3, the works associated with 21/02515/FUL have progressed sufficiently that the office use has ceased, and sufficient work and change has been done to achieve as a matter of fact the change of use to residential.

Given the above, the planning status of the property is considered to be as a flatted dwelling. Therefore, the application is assessed as a proposed change of use from residential to short term let, resulting in the loss of one flatted dwelling.

NPF 4 policy 30 (e) part (ii) requires that where there is a loss of residential accommodation, this will only be supported where the loss is outweighed by demonstrable local economic benefits.

Paragraph 220 of the LDP acknowledges that tourism is the biggest source of employment in Edinburgh, providing jobs for over 31,000 people. The use of the property by guests and the required maintenance and upkeep of STL properties are likely to result in a level of job creation and spend within the economy which can be classed as having an economic benefit. The Planning Statement references a report that concludes that short term lets in general are of benefit the tourist industry in Edinburgh, however the planning statement does not refer in detail to what the economic benefits of this specific proposal may be.

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

The proposed change of use would result in a loss of residential accommodation, which, as there is a recognised need and demand for housing in Edinburgh, it is critical to retain existing supply of where appropriate. In this instance, it has not been sufficiently demonstrated that the loss of the residential accommodation is outweighed by demonstrable local economic benefits. As such, the proposal does not comply with NPF 4 30(e) part (ii).

Parking Standards

No car parking and no cycle parking is proposed. This is compliant with the standards described in the Edinburgh Design Guidance. No significant impact to public transport is identified.

The proposals comply with LDP Policies Tra 2 and Tra 3.

Conclusion in relation to the Development Plan

The change of use of this property to an STL will have an unacceptable impact on neighbouring amenity. The loss of the residential accommodation has not been justified. Whilst it is recognised that there is an economic benefit to the City as a whole from the provision of visitor accommodation in this case it does not outweigh the loss of residential accommodation or the adverse impact on residential amenity. The proposal does not comply with the Development Plan policy NPF 4 policy 30(e) and LDP policy Hou 7.

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

The following material planning considerations have been identified:

Emerging policy context

On 5 April 2024, the Planning and Environmental Appeals Division published its report into the examination of the Proposed City Plan 2030 and supporting documents in terms of Section 19 of the Town and Country Planning (Scotland) Act 1997. The Council is currently considering the recommendations and modifications required to the Proposed City Plan 2030. It is the intention that the modifications will be considered by the Council before the end of June 2024. At this time in the context of the consideration of this particular application limited weight can be given to the relevant policies of City Plan 2030 until the proposed modifications have been fully considered.

Independent economic impact assessment

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

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

Equalities and human rights

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

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

Public representations

The application received 2 comments in objection and 22 comments in support. A summary of the representations are provided below:

material considerations in objection

- The proposal will result in a loss of residential accommodation. Assessed in section a).
- Negative impact on the local community. Assessed in section a).
- The proposal is incompatible with local and national planning policy. Assessed in section a).
- The proposal is contrary to City Plan 2023 Assessed in section b).

- Negative Impact to neighbouring amenity. Assessed in section a).
- Negative impact to the character of the area. Assessed in section a).
- The local economic benefits do not outweigh the loss of housing. Assessed in section a).
- Negative Impact to local services (public transport). Assessed in section a).

material considerations in support

- Short term lets are good for the economy in general. Assessed in section a).
- The property is suitable for use as a short term let. Assessed in section a).
- Lack of impact to neighbouring amenity. Assessed in section a).
- The proposed use would enable more tourists to visit the city. Assessed in section a).
- The proposed short term lets is good for the local economy. Assessed in section a).
- The proposal will not result in a loss of residential accommodation. Assessed in section a).

non-material considerations

- The proposal will result in increased rental costs in Edinburgh.
- Incorrect land ownership certificate submitted.
- Construction of a fence without permission that is not included on the application plans.
- The property complies with the relevant regulations.
- The proposed short term let will increase tax revenue.
- The current management regime of the short term let.
- The good character of the property owner.
- The proposal will stop foreign owned hotels from benefiting from tourism in Edinburgh.
- Short term lets are better than alternatives at hosting visitors.
- Historic incidences of illegal parking.
- Negative Impact to local services (waste).

Conclusion in relation to identified material considerations.

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

Overall conclusion

The change of use of this property to an STL will have an unacceptable impact on neighbouring amenity. The loss of the residential accommodation has not been justified. Whilst it is recognised that there is an economic benefit to the City as a whole from the provision of visitor accommodation in this case it does not outweigh the loss of residential accommodation or the adverse impact on residential amenity. The proposal does not comply with the Development Plan policy NPF 4 policy 30(e) and LDP policy Hou 7. There are no material considerations that outweigh this conclusion. The proposal is unacceptable.

Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following.

Conditions

Reasons

Reason for Refusal: -

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

Background Reading/External References

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

Further Information - Local Development Plan

Date Registered: 22 September 2023

Drawing Numbers/Scheme

01, 02

Scheme 1

David Givan
Chief Planning Officer
PLACE
The City of Edinburgh Council

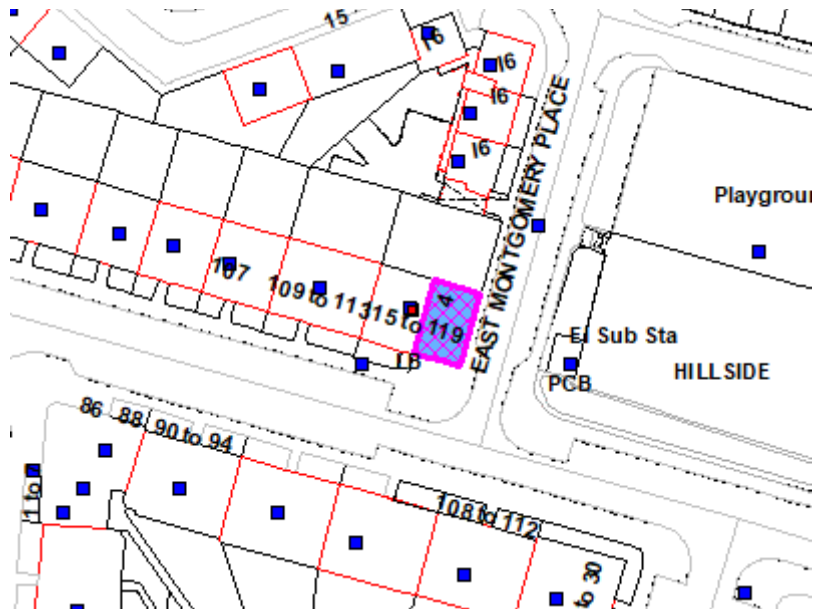
Contact: James Armstrong, Planning Officer
E-mail: james.armstrong@edinburgh.gov.uk

Appendix 1

Summary of Consultation Responses

No consultations undertaken.

Location Plan



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