

Minutes

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

10.00 am, Wednesday 20 March 2024

Present: Councillors Beal, Booth, Mattos Coelho and Mowat.

1. Appointment of Convener

Councillor Mattos Coelho was appointed as Convener.

2. Minutes

To approve the minute of the Local Review Body (LRB Panel 2) of 21 February 2024 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 – 1 Duke's Walk, Edinburgh

Details were submitted of 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.

At the meeting of 17 January 2024, the Panel agreed 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.

The application was also continued to request confirmation from CEC Environmental Protection as to whether it has received any noise complaints since the property began operating as a STL.

The application and the additional information were considered by the City of Edinburgh Planning Local Review Body (LRB) at a meeting on Wednesday 20 March 2024.

Assessment

At the meeting on 20 March 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 is 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 means 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:

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)

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)

- 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:

- Could it be confirmed that the property was occupied between 1998 and 2011 as the primary residence?
- It was confirmed that the Holyrood Park Gardener resided in the property from the summer of 1998 to the summer of 2011.
- Could further information be provided about the annual profit for each individual cottage which was referred to in the Applicant's Appeal Statement.
- It was explained that there were no additional details regarding this.
- There were no additional questions.
- There was clear evidence that the property was previously occupied and had been in residential use. The reason it had been empty was due to Historic Environment Scotland's current policy. There were no reasons the property could not be occupied as a primary residence. It was against NPF4 Policy 30 (e) part (ii), therefore, the Panel should uphold the officer's decision.
- One member took an opposite view. Considering the economic benefits, this was a particular property which had been used as a short term let by Historic Environment Scotland since August 2021. It had previously been empty since 2011, the refurbishment works were undertaken with the specific purpose of making the property suitable for short-term holiday lets as a means of generating an income. The information provided satisfied the demonstrable local economic benefits required by NPF4 Policy 30(e) part (ii).
- For many cases, it was difficult to justify the economic benefits against the loss of residential accommodation. Here, it might be the case that the economic benefit outweighed the loss of residential accommodation.
- One member wanted to support the officer's recommendations.
- There was agreement with the members who wished to overturn the officer's recommendations. There were economic benefits demonstrated by Historic Environment Scotland and the proposal would preserve the building.

- It was proposed to overturn the officer's recommendations because there were demonstrable local economic benefits which outweighed the NPF4 Policy 30(e) part (ii). The proposal was acceptable given the information provided.
- One member sought to uphold the officer's decision for the reasons set out in the report of handling, that the loss of residential property had not been justified. However, there was no seconder for this proposal.

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

Decision

To not uphold the decision by the Chief Planning Officer and to grant planning permission as the proposal was not contrary to National Planning Framework 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.

(References – Local Review Body of 17 January 2024 (item 5); Decision Notice, Notice of Review, Report of Handling, supporting documents and additional information, submitted).

Dissent

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

5. Request for Review – 10 (Flat 8) Blair Street, Edinburgh

Details were submitted for a request for review for change of use of flat to short term let (In retrospect) at Flat 8, 10 Blair Street, Edinburgh. Application No. 23/03653/FULSTL.

Assessment

At the meeting on 20 March 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 visit. 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 23/03653/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 is 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 means 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:
 - 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)
 - 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)
- 2) Relevant Non-Statutory Guidelines.
 - Listed Building and Conservation Area Guidance
 - Guidance for Businesses (January 2024)
- 3) The procedure used to determine the application.
- 4) The reasons for refusal and the arguments put forward in the request for a review.

Conclusion

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

- In their Statement the applicant noted the property at 10 Blair Street had been used for longer term stays, how long was this?
- It was advised that there were no details regarding the length of the longer stays referenced in papers.
- Internet connectivity in the Old Town was discussed, but it was noted that this was not a material consideration in the determination of the application.

- The Convener confirmed that the Panel had enough information to determine the application.
- Could it be confirmed that it been used as a short term let since 2021?
- It was explained that the papers stated it had been used since April 2001 as a short term let.
- What was the previous use of the property?
- It was advised that the Report of Handling confirms the current lawful use of the property was for residential accommodation.
- It was not relevant how the property was managed. It was the case that part of this street was very noisy, but that was not sufficient to claim it was not suitable for residential accommodation.
- There would be a loss of residential accommodation and there was a shared stair, therefore there would be an impact on amenity, Therefore, the Panel should uphold the decision by the officer.
- There was some information in the submitted Statement stating how busy this location was and whether it was suitable for residential accommodation. However, there was concern that if the Panel accepted the argument that being located in a busy area would override NPF4 Policy 30 e (ii), in this case, it was saying that certain properties were not suitable for long term residential use.
- There were insufficient economic benefits to override the loss of residential accommodation. Therefore, the Panel should uphold the officer's recommendations.
- There was agreement with this, there was an objection from an immediate neighbour and according to the new guidance for business approved in January, if a property had access to a communal stair, it would be unlikely that the change of use would be supported. There was no evidence to suggest that there should be deviation from this guidance, therefore, there was support to uphold the officer's decision.
- There was agreement with the previous comments and there was nothing to overturn 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 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.

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

6. Request for Review – 138 (Flat 8) Calton Road, Old Town, Edinburgh

Details were submitted for a request for review for use of flat for short-term let use (Sui Generis) and residential flat (in retrospect). This property is available for letting all year at Flat 8, 138 Calton Road, Old Town, Edinburgh. Application No. 23/04907/FULSTL.

Assessment

At the meeting on 20 March 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, 02, Scheme 1 being the drawings shown under the application reference number 23/04907/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 is 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 means 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:

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

National Planning Framework 4 Policy 30 (Tourism)

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)

- 2) Relevant Non-Statutory Guidelines.
Guidance for Businesses (January 2024)
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:

- Clarification was sought as to whether the application for the retrospective change of use from residential to short term let (sui generis) was an application for a full time use as a short term let use, or was it proposed to be used as a second home, as there was reference in the appeal documents indicating that it was used as second home for part of the year.
- It was confirmed that the papers stated that the property was used as a second home for short periods of time.
- Confirmation was sought as to whether the when the Short Term Let Use commenced. It was advised that the application form noted the use commenced on in 2019, prior to the Short Term Let Control Area coming into force.
- There were no more questions.
- The only issue was whether this was being used as second home for some of the year, then there would still be a question mark over the loss of residential use. The application title did not specify this, it specified a change of use to a short term let. There were no objections from within this block and it was well managed, but if planning permission was granted, there was nothing to stop the ownership from changing and the management could also change, with significant impact on neighbours. According to the Guidance for Businesses (2024), for properties in a common stair, short term lets tended not to be

supported and there was an objection from a neighbour from a nearby block. Therefore, there was no reason to overturn the officer's decision.

- There was agreement with the previous comments. This was a common stair and there were flats off the same stair. The management of the property could not be a consideration as there could be a change of ownership. There was no reason to overturn the officer's recommendations. The Panel should uphold the officer's recommendations.

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.

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

Reasons for Refusal:

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

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

7. Request for Review – 79 (Flat 1) George Street, Edinburgh

Details were submitted for a request for review for retrospective change of use of flat to short term let (sui generis) for 52 weeks in a calendar year at Flat 1, 79 George Street, Edinburgh. Application No. 23/04927/FULSTL.

Assessment

At the meeting on 20 March 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 1, Scheme 1 being the drawings shown under the application reference number 23/04927/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 is 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 means 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:
 - 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)
 - 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)
- 2) Relevant Non-Statutory Guidelines.
 - Listed Building and Conservation Area Guidance
 - Guidance for Businesses (January 2024)
- 3) The procedure used to determine the application.
- 4) The reasons for refusal and the arguments put forward in the request for a review.

Conclusion

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

- There seemed to be no other history of this flat in the papers, the Panel could only see the current application for the retrospective change of use of flat to short term let (sui generis) for 52 weeks in a calendar year.

- It was confirmed that the only other relevant site history was the listed building consent granted in 2004 for the refurbishment and conversion and the associated planning permission granted in 2005.
- The key to this case was Flat three. These were flats (sui-generis) over restaurants on a fairly busy street. Would the Panel take a different decision if the four flats in the shared stair were all in short-term let use and would the Panel take a different decision if there was one flat that remained in residential use? It would be advantageous to have that additional information.
- There was some sympathy for continuation, it would be advantageous to get clarification on Flat three. The residents had not objected but the Panel should get clarity on the impact of the proposals on Flat three. The general character of area was fairly busy and commercial, and the impact of the short term let would be on the common stair. Therefore, the Panel should clarify if Flat three was residential or not.
- Regarding continuation, it was necessary to consider NPF4 Policy 30(e) part (ii) for the impact on local amenity and the loss of a residential property.
- The Panel should continue consideration of the application.

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

- 1) Planning Officers to confirm the planning history for Flat 3;
- 2) Planning Officers to check the electoral role for Flat 3;
- 3) Planning Officers to confirm any information regarding Council Tax payments for Flat 3 with Revenue and Benefits; and
- 4) The Applicant to confirm any information regarding the use of Flat 3.

Decision

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

- 1) Planning Officers to confirm the planning history for Flat 3;
- 2) Planning Officers to check the electoral role for Flat 3;
- 3) Planning Officers to confirm any information regarding Council Tax payments for Flat 3 with Revenue and Benefits; and
- 4) The Applicant to confirm any information regarding the use of Flat 3.

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

8. Request for Review – 79 (Flat 2), George Street, New Town, Edinburgh

Details were submitted for a request for review for retrospective change of use of flat to short term let (sui generis) for 52 weeks in a calendar year at Flat 2, 79 George Street, New Town, Edinburgh. Application No. 23/04931/FULSTL.

Assessment

At the meeting on 20 March 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 1, Scheme 1 being the drawings shown under the application reference number 23/04931/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 is 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 means 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:
 - 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)
 - 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)
- 2) Relevant Non-Statutory Guidelines.
 - Listed Building and Conservation Area Guidance

Guidance for Businesses (January 2024)

- 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 one of three linked applications, from the same applicant and that was apparent from the papers. There was overall agreement that because of the similarities with the other applications, this application would be continued.
- The Planning Advisor confirmed that the property in relation to this presentation was located in the same block as the previous application and it had the same points of consideration which had already been discussed.

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

- 1) Planning Officers to confirm the planning history for Flat 3;
- 2) Planning Officers to check the electoral role for Flat 3;
- 3) Planning Officers to confirm any information regarding Council Tax payments for Flat 3 with Revenue and Benefits; and
- 4) The Applicant to confirm any information regarding the use of Flat 3.

Decision

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

- 1) Planning Officers to confirm the planning history for Flat 3;
- 2) Planning Officers to check the electoral role for Flat 3;
- 3) Planning Officers to confirm any information regarding Council Tax payments for Flat 3 with Revenue and Benefits; and
- 4) The Applicant to confirm any information regarding the use of Flat 3.

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

9. Request for Review – 79 (Flat 4) George Street, New Town, Edinburgh

Details were submitted for a request for review for retrospective change of use of flat to short term let (sui generis) for 52 weeks in a calendar year at Flat 4, 79 George Street, New Town, Edinburgh. Application No. 23/04934/FULSTL.

Assessment

At the meeting on 20 March 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 1, Scheme 1 being the drawings shown under the application reference number 23/04934/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 is 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 means 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:
 - 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)
 - 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)
- 2) Relevant Non-Statutory Guidelines.
 - Listed Building and Conservation Area Guidance

Guidance for Businesses (January 2024)

- 3) The procedure used to determine the application.
- 4) The reasons for refusal and the arguments put forward in the request for a review.

Conclusion

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

- The Planning Advisory confirmed that this property was also located in the same block as the previous two properties and this had the same points for consideration that would be discussed in this presentation. Therefore, it was not necessary to hear the presentation.
- Therefore, the Panel agreed to continue consideration of the application.

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

- 1) Planning Officers to confirm the planning history for Flat 3;
- 2) Planning Officers to check the electoral role for Flat 3;
- 3) Planning Officers to confirm any information regarding Council Tax payments for Flat 3 with Revenue and Benefits; and
- 4) The Applicant to confirm any information regarding the use of Flat 3.

Decision

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

- 1) Planning Officers to confirm the planning history for Flat 3;
- 2) Planning Officers to check the electoral role for Flat 3;
- 3) Planning Officers to confirm any information regarding Council Tax payments for Flat 3 with Revenue and Benefits; and
- 4) The Applicant to confirm any information regarding the use of Flat 3.

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

10. Request for Review – Hillwood Cottage, Harvest Road, Newbridge Edinburgh

Details were submitted for a request for review to erect 3x houses at Hillwood Cottage, Harvest Road, Newbridge. Application No. 23/02032/FUL.

Assessment

At the meeting on 20 March 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 01-10, Scheme 1 being the drawings shown under the application reference number 23/02032/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.

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 Des 1 (Design Quality and Context)

Edinburgh Local Development Plan Policy Des 3 (Development Design - Incorporating and Enhancing Existing and Potential Features)

Edinburgh Local Development Plan Policy Des 4 (Development Design - Impact on Setting)

Edinburgh Local Development Plan Policy Des 5 (Development Design - Amenity)

Edinburgh Local Development Plan Policy Des 7 (Layout design)

Edinburgh Local Development Plan Policy Del 1 (Developer Contributions and Infrastructure Delivery)

Edinburgh Local Development Plan Policy Env 10 (Development in the Green Belt and Countryside)

Edinburgh Local Development Plan Policy Env 12 (Trees)

Edinburgh Local Development Plan Policy Env 16 (Species Protection)

Edinburgh Local Development Plan Policy Env 21 (Flood Protection)

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 3 (Private Cycle Parking)

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

National Planning Framework 4 Policy 3 (Biodiversity)

National Planning Framework 4 Policy 4 (Natural Places)

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

National Planning Framework 4 Policy 9 (Brownfield, vacant and derelict land)

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 17 (Rural Homes)

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

- 2) Relevant Non-Statutory Guidelines.
Development in the Countryside and Green Belt
- 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 agreed to accept the new information.
- There were a few points in the appeal papers from the applicant to be clarified. There was apparently 7 minutes to walk to the primary school, was there any justification for this claim?
- It was confirmed that there was only the information which was presented in the papers. The applicants had made a statement about walking distance.
- There was no LDP proposals map was included in the papers. Could it be confirmed if this site was identified in the LDP as being in both the Green Belt and the Countryside. This was evident from the key shown on the LDP extract.

The Planning Advisor tabled the LDP extract for this area and highlighted that the site was outside the area identified as Green Belt, but it does sit within the area identified as Countryside.

- The Arboricultural Report stated a number of 64 trees on site, which seemed somewhat low, was there any comment on that?
- The Planning Advisor showed the images of the tree layout as included in the Arboricultural Report. The tree report was included in the papers, and it showed the classification of each of the trees. 50% of them were Category A and B, which were reasonable specimens. However, Category C trees were not considered to be so important. The image showed where the proposed properties might be overlaid, which appeared to be quite densely wooded areas.
- It was explained that in the comments in the Report of Handling, the officer stated there was no justification to remove these trees, some were A and B category and would require removal to facilitate development. The Tree Report stated it had not seen the specific location for the development, it had probably been overlaid at a later date not by the appellant's arboricultural officer that compiled the tree report. There were no details of which trees would require to be removed to facilitate the development. The Tree Report also noted details of tree root protection, given that this was a densely wooded area. From the image it was possible to see the Category A and B trees and where development was proposed to be located.
- There were no more questions.
- If this proposal was a marginal case, there might a case to make here, but it failed on so many policies of the Local Development Plan. LDP Policies Env 10 and 12 on Greenbelt and Countryside and Trees were the key policies to consider. LDP Policy Env 10 was clear that there were some reasons to justify where development in the green belt and countryside was acceptable, but no attempt had been made in the application to do this. Policy Env 12 stated that if the impact on trees was marginal, it might be considered, but it was not. Therefore, the decision was sound and should be upheld.
- There was overall agreement with this, the Panel should uphold the officer's recommendations. There were no alternative views.

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

1. The proposal was contrary to the Local Development Plan Policy Env 10 in respect of Development in the Green Belt and Countryside, as it did not meet the relevant criteria for residential development in this countryside location.

2. The proposal was contrary to NPF 4 policy 9 b) (Brownfield, vacant and derelict land) as the residential use of this greenfield site was not supported in principle by policies in the LDP.
3. The proposal was contrary to NPF 4 policy 15 (Local Living and 20 minute neighbourhoods) as the proposal would not contribute towards local living as the residential development would not have good local access to range of sustainable transport, local facilities or services.
4. The proposal was contrary to NPF 4 policy 17 (Rural Homes) as the new homes were not located on land designated for housing in the LDP and did not meet the relevant circumstances where this land use would be supported.
5. The proposal was contrary to the Local Development Plan Policy Env 12 in respect of Trees, as the proposal would have a damaging and unjustified impact on the trees in the site.

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

11. Request for Review – 44 (Flat 6) Learmonth Avenue, Edinburgh

Details were submitted for a request for review for change of use from flatted dwelling to short-term let, (in retrospect) at Flat 6 44 Learmonth Avenue, Edinburgh. Application No. 23/03725/FULSTL.

Assessment

At the meeting on 20 March 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 - 04, Scheme 1 being the drawings shown under the application reference number 23/03725/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 is 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 means 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:

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

National Planning Framework 4 Policy 30 (Tourism)

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)
- 2) Relevant Non-Statutory Guidelines.

Guidance for Businesses (January 2024)
- 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:

- When did the short term let commence for this application for change of use from flatted dwelling to short-term let, (in retrospect)?
- It was confirmed that the Short Term Let Use commenced on 1 July 2022, just prior to the Short Term Let Control Area coming into force.
- That any issues with the Title Deeds had not to be considered respect of this planning application?
- It was explained that the Title Deeds were not a planning consideration.
- There were no more questions.
- There was a common stair, this was in a residential area and management of the property was not a consideration as there could be a change of owner. The proposal was in breach of LDP Policy Hou 7 in terms of residential accommodation and it was taking up accommodation that could be used for longer term use. Therefore, the Panel should uphold the officer's recommendations.
- There was agreement with the previous comments, the applicant said there was no impact on residential amenity, but the 15 objections from neighbours indicated this was not the case. This application was fairly straightforward.

- The appellant’s statement about 20 minute neighbourhoods, could suggest that this property should not be a short term let, but should be residential accommodation. Therefore, the Panel should uphold the officer’s recommendation.

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 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 would 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 would result in an adverse impact on local amenity and the loss of a residential property has not been justified.

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

12. Request for Review – 31 London Street, Edinburgh

Details were submitted for a request for review for change of use from residential to short term let (in retrospect) at 31 London Street, Edinburgh. Application No. 23/03896/FULSTL

Assessment

At the meeting on 20 March 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 - 02 A, Scheme 1 being the drawings shown under the application reference number 23/03896/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 is 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 means 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:
 - 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)
 - 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)
- 2) Relevant Non-Statutory Guidelines.
 - Listed Building and Conservation Area Guidance
 - Guidance for Businesses (January 2024)
 - The New 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 appellant stated that the judicial review said it was now unlawful for the Council to require the applicant apply to for retrospective planning permission if they had been trading prior to 2022. Was it the case that this was not accurate?
- It was confirmed if the use was operating prior to the Short Term Let Control Area coming into force of 5 September 2022, there was still a requirement for planning permission for a change of use from residential to use as a short term

let. Therefore, the Panel had to consider if a material change of use had taken place under Section 26 of the 1997 Act, that was a matter of fact and degree.

- The applicant stated that they had been operating for nearly 10 years as a short term let. It was confirmed that, according to the application form, the change of use from residential to short term let (in retrospect), commenced in January 2014.
- It was confirmed that there had been no complaints from neighbours, according to the Report of Handling.
- If the applicant had been trading for 10 years continually, did they require planning permission and at what point did that 10 trading years come into force. Was it at the point when they submitted the application or was it at the point of determination?
- It was confirmed that the applicant had said they had been in operation since January 2014, Planning received this application in 2023 and the applicant submitted the review in December 2023. Therefore, they had not, at that point, been operating for 10 years.
- It was advised that should the applicant submit a certificate of lawful use, they had to provide evidence they had been using the premises for that specific use continually for 10 years. It was confirmed that the onus was on the applicant to provide sufficient information if they were to apply for a certificate of lawful use. The evidence they produced might make for a different decision. It was not the case that the decision made today would be part of the material consideration, if the evidence was sufficient from the applicant that it had been operating continuously as a Short Term Let for 10 years. Planning would have to take into account all the evidence and they would have to balance the two aspects.
- Could the Panel ask for proof of these 10 years of operation?
- It was explained that the Panel were making a decision based on the evidence in front of them. The applicant had applied for change of use from residential to short term let. If the Panel thought that there was insufficient evidence that a change of use had occurred and more information was required, the Panel should ask for that, but if they were content that change of use had occurred and was in operation, they then should decide that change of use was acceptable. The 10 year aspect was not a relevant in terms of the planning application before them.
- It was confirmed that there were no more questions.
- There was a private access and individual stair, but there was an objection from a resident in number 33, who was probably sharing the same block. Considering NPF4 Policy 30, as to whether there was a loss of residential accommodation, there was no evidence of the economic benefits outweighing

that, therefore, the Panel should uphold the officer's recommendations on that ground.

- There was agreement with the above comments, this was mostly residential accommodation and LDP Policy Hou 7 was also relevant. Although there was no common stair, it was a quiet residential area and people coming and going would affect the other residents. Therefore, the Panel 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.

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

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