

# Development Management Sub Committee

Wednesday 22 January 2020

**Application for Planning Permission 19/04099/FUL  
at 2F2 36 Montgomery Street, Edinburgh, EH7 5JY  
Change of use of residential flat to short term commercial  
let.**

**Item number**

**Report number**

**Wards**

B12 - Leith Walk

## Summary

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The proposal does not comply with policy Hou 7 and Env 6 of the Edinburgh Local Development Plan and the Council's Guidance for Businesses. The proposed change of use would have an unacceptable impact on residential amenity and the established character of the area. There are no other material considerations to outweigh this conclusion.

## Links

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[Policies and guidance for this application](#)

LDPP, LHOU07, NSG, NSBUS, OTH, CRPNEW,

# Report

## **Application for Planning Permission 19/04099/FUL at 2F2 36 Montgomery Street, Edinburgh, EH7 5JY Change of use of residential flat to short term commercial let.**

### **Recommendations**

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1.1 It is recommended that this application be Refused for the reasons below.

### **Background**

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#### **2.1 Site description**

The application relates to 2F2, 36 Montgomery Street, Edinburgh. It is a one bedroom, first floor flat which is accessed through a communal door and stair. The area is typified by residential use. The site is surrounded by similar four storey with basement tenements. There is a limited amount of commercial activity at ground floor level.

The building is category B listed (listed on 16 December 1965 Reference: 29943).

This application site is located within the New Town Conservation Area.

#### **2.2 Site History**

There is no relevant planning history for this site.

### **Main report**

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#### **3.1 Description of the Proposal**

The proposal is for a change of use of a residential unit to short term letting accommodation. The residential unit is a first floor, one bedroom flat. Short term letting accommodation is not covered under the Town and Country Planning (Use Classes) (Scotland) Order 1997 and is a sui generis use.

#### **3.2 Determining Issues**

Section 25 of the Town and Country Planning (Scotland) Act 1997 states - Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise.

Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states that in considering whether to grant planning permission for development which affects a listed building or its setting, a planning authority 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.

Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states - special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.

Do the proposals comply with the development plan?

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

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

### **3.3 Assessment**

To address these determining issues, the Committee needs to consider whether:

- a) the use is acceptable in principle;
- b) the proposal will preserve the character and appearance of the New Town Conservation Area;
- c) the proposal will have a detrimental impact on the unique architectural and historical character of the listed building;
- d) the proposal will have a detrimental impact on the amenity of neighbouring residents;
- e) the proposal raises any issues in respect of parking and road safety and
- f) any comments have been addressed.

#### a) Principle of development

The application site is situated in the urban area as defined in the adopted Edinburgh Local Development Plan (LDP). It should be noted that the LDP does not include any policies against the loss of residential use.

The only policy that is applicable to the assessment of short stay commercial lets is policy Hou 7 (Inappropriate Uses in Residential Areas) which states that developments, including changes of use which would have a materially detrimental impact on the living conditions of nearby residents, will not be permitted.

The non-statutory Guidance for Business states that for a change of use to short term commercial visitor accommodation, special regard will be made to the following:

- 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.

The guidance states that change of use in flatted properties will generally only be acceptable where there is a private access from the street, except in the case of HMOs.

In connection to short stay lets it states - *The Council will not normally grant planning permission in respect of flatted properties where the potential adverse impact on residential amenity is greatest.*

There have been a number of appeal decisions which have helped to assess whether a change of use has taken place and whether that change of use is acceptable. There are also currently over 130 planning enforcement cases open in relation to short stay let uses.

There has also been planning appeal decisions against refusals to grant planning permission and certificates of lawfulness for short stay lets. These decisions have typically allowed short term let uses in main door properties or flats with their own private accesses e.g. 11 Stevenson Drive (CLUD-230-2007), 103 Restalrig Road(CLUD-230-2006) and 17 Old Fishmarket Close (PPA-230-2238).

Recent appeal decisions like that at Flat 3F2, 22 Haymarket Terrace (ENA-230-2156) stress that the frequent movement by tourists, and other itinerant residents, of baggage along landings and stairwells as well as the necessity for daily servicing of the apartment all lead to a pattern of intense usage of the access stairs and communal areas beyond that which may otherwise be expected from an apartment of this size. All of which creates the potential for unacceptable noise and disturbance to existing residents.

The application site has no direct access from the street. The property is accessed via a communal entrance and stair. There will be direct interaction between users of the short term letting accommodation and long term residents of the surrounding residential properties.

The principle of the development is considered unacceptable. The potential impact on neighbours is explored in more detail in section d).

#### b) Character and appearance of the New Town Conservation Area

LDP policy Env 6 (Conservation Areas - Development) states that development within a conservation area will be permitted which preserves or enhances the special character and appearance of the conservation area and which is consistent with the relevant character appraisal.

The New Town Conservation Area Character Appraisal highlights the important role of the varied commercial/residential character of the New Town in contributing to the character of the conservation area. The site is located to the north of Royal Terrace and Hillside Crescent and to the east of Elm Row. The New Town Character Appraisal on page 32 notes that this area retains substantial residential use. This area, though busy, is characterised by residential use, with commercial use focused around Leith Walk to the north.

Although the proposal does not involve any alterations to the building and will therefore not have an impact on the appearance of the conservation area, it will erode the predominately residential nature of the area. This will have a negative impact on the character of the conservation area and it is therefore considered the proposal is contrary to LDP policy Env 6.

#### c) Character of the Listed Building

LDP Policy Env 4 (Listed Buildings - Alterations and Extensions) states that proposals to alter a listed building will be permitted where those alterations are justified; will not result unnecessary damage to historic structures or result in a diminution of the building's interest; and any additions would be in keeping with other parts of the building.

No alterations are proposed and there will therefore be no harm to the listed building. It should be noted that there is no requirement to seek a new beneficial use for this building as it is not under threat.

The proposal preserves the architectural and historical character of the listed building and its setting and complies with LDP policy Env 4.

#### d) Amenity of Neighbouring Residents

Adopted LDP policy Hou 7 (Inappropriate Uses in Residential Areas) states that developments, including changes of use which would have a materially detrimental impact on the living conditions of nearby residents, will not be permitted.

The proposed use would enable new individuals 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 also 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 long standing residents.

On the balance of probability, there could be the potential for disturbance to the established residential character of the area and a detrimental impact on residential amenity.

In the appeal decision for 19 Old Fishmarket Close, the Reporter highlighted *"there is an important distinction to draw between external ambient noise, which is a characteristic of a city centre location such as this, and sources of noise and disturbance from within the building itself."* The Reporter added *"the occupiers of residential flats on Old Fishmarket Close would be accustomed to some degree of ambient noise/ disturbance, and I consider it would be unrealistic to expect otherwise in such a location"*.

Whilst this application site is near the city centre, on a relatively busy residential street, there is the potential to create disturbance from the level of activity created by short term letting. The flat in question is located on an upper level, it is not a main door flat and the proposal could adversely impact the established residential character of the area and neighbouring residential amenity. The proposals do not comply with LDP policy Hou 7 and the non-statutory Guidance for Businesses.

#### e) Parking and Road Safety

LDP policy Tra 2 (Private Car Parking) states that planning permission will be granted for development where proposed car parking provision complies with and does not exceed the parking levels set out in Council Guidance.

LDP policy Tra 3 (Private Cycle Parking) states that planning permission will be granted for development where proposed cycle parking and provision complies with standards set out in Council Guidance.

The Council's Edinburgh Design Guidance does not include any parking standards for this sui generis use.

It is noted, however, that the applicant proposes no off street parking provision for the site and whilst no cycle parking is proposed, the property is located within a city centre location with nearby access to public transport provision.

The proposal complies with LDP Policy Tra 2 and Tra 3.

#### e) Public Comments

##### **Material representations - objections**

- character of area being eroded away - addressed in 3.3 d)

##### **Non-material representations**

- Too many Airbnb's - this is a commercial consideration which is not covered by current planning policy

#### Conclusion

The proposal does not comply with policy Hou 7 of the Edinburgh Local Development Plan and the Council's Guidance for Businesses. The proposed change of use would have an unacceptable impact on residential amenity and the established character of the area. There are no other material considerations to outweigh this conclusion.

It is recommended that this application be Refused for the reasons below.

### **3.4 Conditions/reasons/informatives**

#### **Reasons:-**

1. The proposal is contrary to the Local Development Plan Policy Hou 7 in respect of Inappropriate Uses in Residential Areas, as it would have an unacceptable impact on residential amenity and the established character of the area
2. The proposal is contrary to Local Development Plan policy Env 6 in that it will erode the residential character of the area and is contrary to the New Town Conservation Area Character Appraisal. This will have a detrimental impact on the character of the conservation area.

### **Financial impact**

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#### **4.1 The financial impact has been assessed as follows:**

There are no financial implications to the Council.

### **Risk, Policy, compliance and governance impact**

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**5.1** Provided planning applications are determined in accordance with statutory legislation, the level of risk is low.

### **Equalities impact**

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#### **6.1 The equalities impact has been assessed as follows:**

The application has been assessed and has no impact in terms of equalities or human rights.

### **Sustainability impact**

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#### **7.1 The sustainability impact has been assessed as follows:**

This application is not subject to the sustainability requirements of the Edinburgh Design Guidance.

### **Consultation and engagement**

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#### **8.1 Pre-Application Process**

There is no pre-application process history.

#### **8.2 Publicity summary of representations and Community Council comments**

Following the neighbour notification a total of 4 representations were received objecting to the proposal.

A full assessment of the representations can be found in the main report in the Assessment section.

## Background reading/external references

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- To view details of the application go to
- [Planning and Building Standards online services](#)
- [Planning guidelines](#)
- [Conservation Area Character Appraisals](#)
- [Edinburgh Local Development Plan](#)
- [Scottish Planning Policy](#)



**Statutory Development  
Plan Provision**

The site lies within the urban area of the Edinburgh  
Local Development Plan.

**Date registered**

29 October 2019

**Drawing numbers/Scheme**

01,

Scheme 1

**David R. Leslie**

Chief Planning Officer

PLACE

The City of Edinburgh Council

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**Links - Policies**

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**Relevant Policies:**

**Relevant policies of the Local Development Plan.**

LDP Policy Hou 7 (Inappropriate Uses in Residential Areas) establishes a presumption against development which would have an unacceptable effect on the living conditions of nearby residents.

**Relevant Non-Statutory Guidelines**

**Non-statutory guidelines** 'GUIDANCE FOR BUSINESSES' provides guidance for proposals likely to be made on behalf of businesses. It includes food and drink uses, conversion to residential use, changing housing to commercial uses, altering shopfronts and signage and advertisements.

**Other Relevant policy guidance**

**The New Town Conservation Area Character Appraisal** states that the area is typified by the formal plan layout, spacious stone built terraces, broad streets and an overall classical elegance. The buildings are of a generally consistent three storey and basement scale, with some four storey corner and central pavilions.



# Appendix 1

**Application for Planning Permission 19/04099/FUL  
At 2F2 36 Montgomery Street, Edinburgh, EH7 5JY  
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let.**

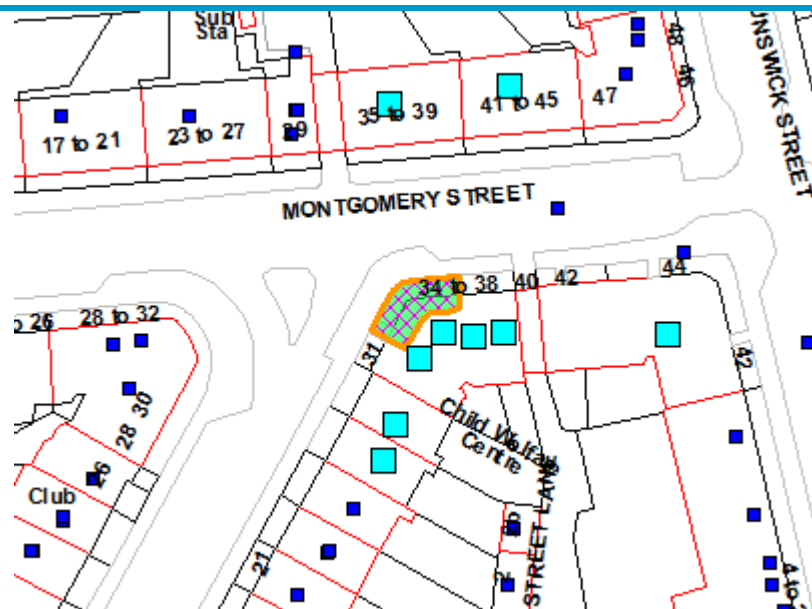
## Consultations

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No consultations undertaken.

## Location Plan

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