

Development Management Sub Committee

Wednesday 31 July 2019

**Application for Planning Permission 19/01531/FUL
At 9 Briery Bauks, Edinburgh, EH8 9TE
Proposed change of use from residential to commercial
short term residential lets.**

Item number

Report number

Wards

B15 - Southside/Newington

Summary

The proposal does not comply with 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

[Policies and guidance for this application](#)

LDPP, LHOU07, NSG, NSBUS,

Report

Application for Planning Permission 19/01531/FUL At 9 Briery Bauks, Edinburgh, EH8 9TE Proposed change of use from residential to commercial short term residential lets.

Recommendations

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

Background

2.1 Site description

Briery Bauks is a residential street with 2 storey terraced properties of a contemporary design. Being located in the South Side of the city, it is in close proximity to the city centre. The wider area is characterised by tenemental properties many with commercial businesses occupying the ground floor. The application site is a three bedroom mid - terraced property and has a garden to the front and rear. The property is accessed directly via the main street.

2.2 Site History

18 January 2019 - An enforcement enquiry was submitted for an alleged unauthorised change of use from residential to short stay commercial visitor accommodation (application number 19/00046/ECO). This is pending the outcome of the planning application. The complaint related to lack of planning permission for the use rather than amenity issues such as noise and disturbance.

Main report

3.1 Description Of The Proposal

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

The application is retrospective as it was established through the enforcement case that the property is already being occupied as short term accommodation. The property was bought in June 2018 and following renovations has been used for short term accommodation since January 2019. The business is operated through Airbnb.

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.

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 principle change of use is acceptable in this location;
- b) the proposal raises any issues in respect to road users; and
- c) any comments have been addressed.

a) Principle of development

The current planning case law position in respect of the use of properties as short stay commercial visitor accommodation (SSCVA) in England, Scotland and Wales is set down in the English and Welsh Court of Appeal Judgement *Sheila Moore v Secretary of State for Communities and Local Government & Suffolk District Council 2012 EWCA CIV 1202*. This judgement held that the use of a residential premises for short term holiday lets could be a material change of use, with the question of materiality being one of fact and degree. This requires an assessment of factors such as the number of separate lets in any given period of time, number of individuals occupying the premises, the turnover of new individuals arriving and departing the premises; and the question as to whether the proposed operations would involve a change in character to such an extent that there may be disturbance to established residential character and amenity.

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. Since July 2018, 126 new enforcement cases have been opened and while 71 are ongoing, 22 enforcement notices have been served, eight have been appealed and all eight have been upheld by Scottish Government reporters. There have been legal challenges in respect of the reporters' decisions at Chancelot Terrace and Baxter's Place. Chancelot Terrace was withdrawn and Baxter's Place is due to be heard in the Court of Session.

During this period there has also been planning appeal decisions against refusals to grant planning permission and certificates of lawfulness for short stay let uses. 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).

The issue of short term lets was the subject of a report to the Corporate Policy and Strategic Committee on 14 May 2019 - 'Short Term Letting in Edinburgh Update' This report explained that a Short Term Lets Virtual Team has been created to co-ordinate action using existing powers across several services with a team leader from Planning acting as a day to day manager.

In terms of the current proposals, it should be noted that the current Edinburgh Local Development Plan (LDP) does not include any policies against the loss of residential use. Therefore the only policy that is applicable is policy Hou 7 which does not support developments, including a change of use, which would have a materially detrimental effect on the living conditions of nearby residents.

The Council's non-statutory Guidance for Businesses gives advice on when a change of use has taken place but in connection to short stay lets only states*the Council will not normally grant planning permission in respect of flatted properties where the potential adverse impact on residential amenity is greatest.*

The application site has direct access from the street and there will be no direct interaction between users of the short term letting accommodation and long term residents of the surrounding residential properties. The property provides accommodation for up to five people so the development could accommodate smaller groups of people and have the potential to cause some noise disturbance.

In addition, 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. The proposed minimum of three nights per booking could result in a turnover of guests around 120 times each year. 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"*.

In addition, the Reporters in the appeals for certificates of lawfulness at Stevenson Drive and Restalrig Road both highlighted the units were on busy roads with much activity. This does not apply here.

Whilst this application site is near the city centre, it is a quiet residential street and there is the potential to create disturbance from the level of activity created by short term letting. Notwithstanding the fact this is a main door property, the proposal would adversely impact the established residential character of the area and residential amenity. The proposals do not comply with LDP policy Hou 7 and the non-statutory Guidance for Businesses.

b) Car Parking and Road Safety

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

The property has no parking spaces. There is existing on-street car parking. The site is well served by public transport.

The car parking and traffic issues are satisfactory.

The proposal complies with LDP Policy Tra 2.

c) Public Comments

Material Comments

- residential amenity
- noise and disturbance late at night

These material issues have been addressed in section 3.3 (a).

Non-material comments

- properties being given to tourists
- communities being eroded away
- too many Airbnbs
- set a precedent for more properties to become short term lets
- transitory population detrimental to established communities
- taxi fumes reduces air quality
- community cohesion
- shortages of accommodation

Conclusion

The proposal does not comply with 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 the proposed use has the potential to adversely affect the residential character and amenity of the area.

Financial impact

4.1 The financial impact has been assessed as follows:

There are no financial implications to the Council.

Risk, Policy, compliance and governance impact

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

Equalities impact

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

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

8.1 Pre-Application Process

Pre-application discussions took place on this application.

8.2 Publicity summary of representations and Community Council comments

Following the neighbour notification a total of 8 representations were received objecting to the proposal. These included comments from Southside Community Council.

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

Background reading/external references

- 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

8 April 2019

Drawing numbers/Scheme

1-3,

Scheme 1

David R. Leslie

Chief Planning Officer

PLACE

The City of Edinburgh Council

Contact: Jennifer Zochowska, Senior Planning Officer

E-mail:jennifer.zochowska@edinburgh.gov.uk Tel:0131 529 3793

Links - Policies

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.

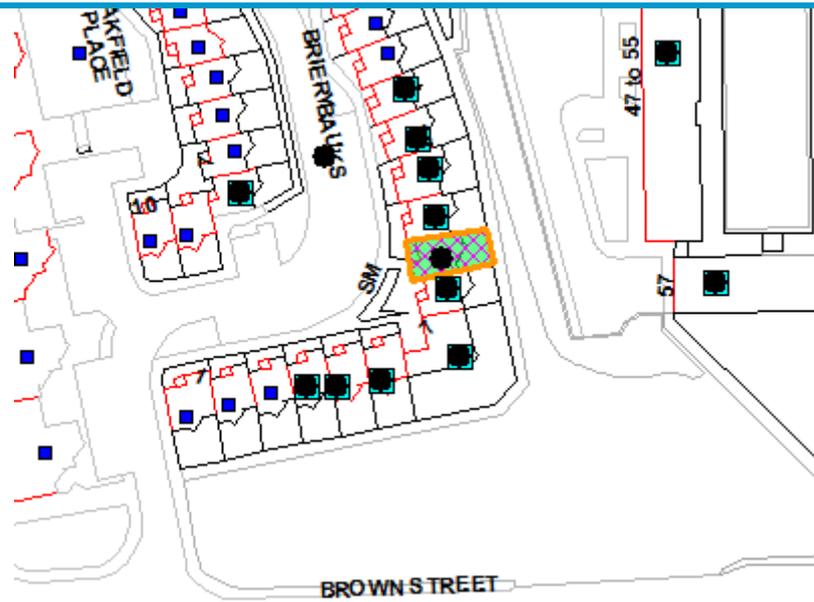
Appendix 1

**Application for Planning Permission 19/01531/FUL
At 9 Briery Bauks, Edinburgh, EH8 9TE
Proposed change of use from residential to commercial
short term residential lets.**

Consultations

No consultations undertaken.

Location Plan



© Crown Copyright and database right 2014. All rights reserved. Ordnance Survey License number 100023420
END