

# Development Management Sub Committee

Wednesday 23 September 2020

**Application for Planning Permission 20/02790/FUL  
at 1F1 16 Johnston Terrace, Edinburgh, EH1 2PR.  
Change of use of apartment from residential to short term  
business/holiday accommodation.**

**Item number**

**Report number**

**Wards**

B11 - City Centre

## Summary

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The proposal is contrary to the policies contained in the adopted Edinburgh Local Development Plan. The proposed change of use would have an unacceptable impact on residential amenity. There are no other material considerations to outweigh this conclusion.

## Links

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[Policies and guidance for this application](#)

LDPP, LDEL02, LHOU07, LEN06, LEN04, NSG, NSBUS, NSLBCA, OTH, CRPOLD,

# Report

## **Application for Planning Permission 20/02790/FUL at 1F1 16 Johnston Terrace, Edinburgh, EH1 2PR. Change of use of apartment from residential to short term business/holiday accommodation.**

### **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 1F1 16 Johnston Terrace, Edinburgh. It is a two bedroom, first floor flat which is accessed through a communal door and stair. The property is five storeys with a ground floor level in use for commercial purposes.

The site lies adjacent to commercial uses, a hostel and places of worship. To the east of the site is four storey tenement buildings with residential use on the upper floors and commercial use at ground level. To the west, is the grounds of Edinburgh Castle.

The building is category B listed (listed on 14 December 1970 Reference: LB29194) and lies within the World Heritage Site.

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

#### **2.2 Site History**

The site has the following planning history:

29 October 2014 - Alter existing flat to relocate kitchen to existing bedroom accessed off lounge and form new bedroom within existing kitchen. - Permission not required (14/04164/LBC)

### **Main report**

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

The application is to change the use of apartment from residential to short term business/ holiday let accommodation

### 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 change of use is acceptable in this location;
- b) the proposal will preserve the character and appearance of the Old Town Conservation Area;
- c) the proposal will preserve the architectural and historical character of the listed building;
- d) the proposal raises any issues in respect of parking and road safety and
- e) any comments have been addressed.

#### a) Principle of development

The site is within the city centre where Edinburgh Local Development Plan (LDP) policy Del 2 (City Centre) permits development which retains and enhances its character, attractiveness, vitality and accessibility and contributes to its role as a strategic business and regional shopping centre and Edinburgh's role as a capital city. The policy requires uses or a mix of uses appropriate to the location of the site, its accessibility and the character of the surrounding area.

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.

It should be noted that the LDP does not include any policies against the loss of residential use.

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 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). There are also currently 66 planning enforcement cases open in relation to short stay let uses.

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 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 living conditions of neighbouring occupiers and a detrimental impact on residential amenity.

In the appeal decision for 19 Old Fishmarket Close, where planning permission was refused, 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 street with varying uses present, there is the potential to create disturbance from the level of activity created by short term letting. The flat in question is located on first floor level, it is not a main door flat and the proposal could adversely impact on neighbouring residential amenity. The proposals do not comply with LDP policy Hou 7.

In terms of policy Del 2, the use is compatible with the mixed use nature of the area.

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

Section 64(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states:

"In exercise, with respect to any buildings or other land in a conservation area, of any powers under any of the provisions in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that 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 Old Town Conservation Area Character Appraisal emphasises the survival of the original medieval street pattern; the wealth of important landmark buildings; the survival of an outstanding collection of archaeological remains, medieval buildings, and 17th-century town houses; the consistent and harmonious height and mass of buildings; the importance of stone as a construction material for both buildings and the public realm; the vitality and variety of different uses; and the continuing presence of a residential community.

The proposal does not involve alterations to the building and will therefore not have an impact on the appearance of the conservation area. In addition, there is a range of uses evident in the immediate vicinity including a hostel, churches and shops. In the context of the existing variation present, the proposal will not impact on the character of this part of the conservation area.

Due to the small-scale nature of the proposal, there is no requirement to assess the impact on the Outstanding Universal Value of the Old and New Towns of Edinburgh World Heritage Site.

The proposal therefore accords with LDP policy Env 6.

### c) Character of the Listed Building

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

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

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 an 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.

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

### d) 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 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 comments - objections**

- Support of planning reporter that proposed use is not appropriate in tenement property - addressed in section 3.3 a)
- Proposal contrary to local and national policy - Addressed in all sections
- Impact on listed building and conservation area -addressed in section 3.3 b and 3.3 c)

- Proposal lies in a World Heritage Site - addressed in 3.3 b)
- Impact on neighbouring amenity - addressed in 3.3 a)
- Impact on area through loss of character and community - assessed as part of sections 3.3 a) and b)

### **Non-material comments**

- Continued use for short term accommodation during planning process - This matter cannot be materially assessed as part of assessing the merits of the planning application. Any unauthorised use may be a matter for planning enforcement to investigate separately
- Adequate provision of hostels and hotels, over provision of Air B n B properties - this is a commercial consideration which is not covered by current planning policy
- Loss of housing stock - the LDP does not include any policies against the loss of residential use.
- Impact on house prices - this matter cannot be materially assessed as part of this planning application.
- Fire and safety standards - this matter cannot be materially assessed as part of this planning application and may be a building standards issue.
- Impact on property insurance and title deeds - this is a private, civil or legal matter and therefore does not form part of the material assessment under this planning application.
- Use leads to an over capacity of people in the city - this matter cannot be materially assessed as part of this planning application.
- Contrary to SPP on New Homes - this is an application for change of use and this policy is not directly relevant. There is no LDP policy in relation to the loss of homes

### **Conclusion**

The proposal does not comply with policy Hou 7 of the Edinburgh Local Development Plan. The proposed change of use would have an unacceptable impact on residential amenity. 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.

## **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**

Nine objection comments have been received.

## **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**

Policies - Edinburgh Local Development Plan - Urban Area

### **Date registered**

17 July 2020

### **Drawing numbers/Scheme**

01, 02,

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 Del 2 (City Centre) sets criteria for assessing development in the city centre.

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.

LDP Policy Env 6 (Conservation Areas - Development) sets out criteria for assessing development in a conservation area.

LDP Policy Env 4 (Listed Buildings - Alterations and Extensions) identifies the circumstances in which alterations and extensions to listed buildings will be permitted.

## **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.

**Non-statutory guidelines** 'LISTED BUILDINGS AND CONSERVATION AREAS' provides guidance on repairing, altering or extending listed buildings and unlisted buildings in conservation areas.

## **Other Relevant policy guidance**

**The Old Town Conservation Area Character Appraisal** emphasises the survival of the original medieval street pattern; the wealth of important landmark buildings; the survival of an outstanding collection of archaeological remains, medieval buildings, and 17th-century town houses; the consistent and harmonious height and mass of buildings; the importance of stone as a construction material for both buildings and the public realm; the vitality and variety of different uses; and the continuing presence of a residential community

# Appendix 1

**Application for Planning Permission 20/02790/FUL  
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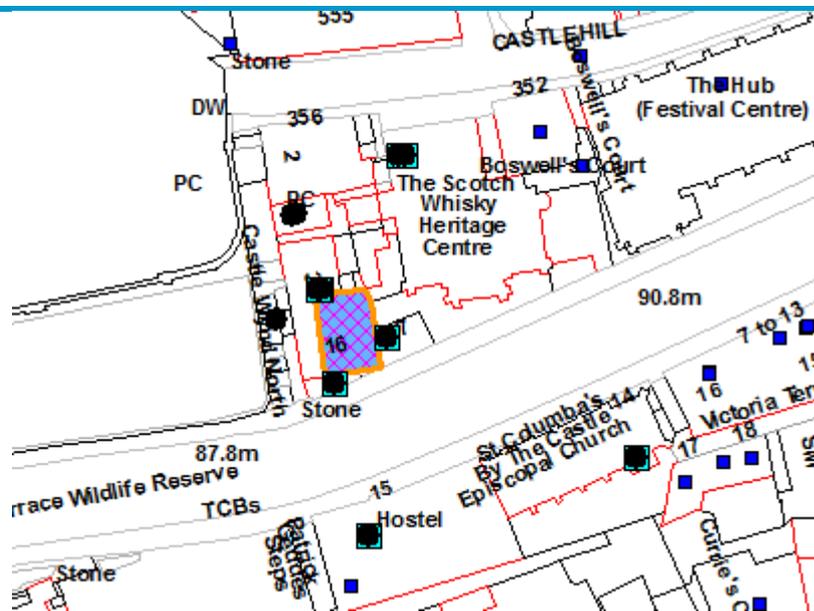
## Consultations

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No consultations undertaken.

## Location Plan

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