

Mr Douglas Mack  
8 Plantain Grove  
Lenzie  
Glasgow  
G66 3NE

Mr & Mrs Ivan & Lynne Reilly.  
12 Earlston Place  
Edinburgh  
EH7 5SU

**Decision date: 8 September 2020**

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACTS  
DEVELOPMENT MANAGEMENT PROCEDURE (SCOTLAND) REGULATIONS 2013**

Change of use from shop to 2no. residential units.  
At 12 Earlston Place Edinburgh EH7 5SU

**Application No:** 20/00760/FUL

**DECISION NOTICE**

With reference to your application for Planning Permission registered on 27 February 2020, this has been decided by **Local Delegated Decision**. The Council in exercise of its powers under the Town and Country Planning (Scotland) Acts and regulations, now determines the application as **Refused** in accordance with the particulars given in the application.

Any condition(s) attached to this consent, with reasons for imposing them, or reasons for refusal, are shown below;

**Conditions:-**

**Reasons:-**

1. The proposal is contrary to the Local Development Plan Policy Hou 5 in respect of Conversion to Housing, as the proposed basement level is unsuitable for residential use due to limited access to daylight
2. The proposal is contrary to the Local Development Plan Policy Env 4 in respect of Listed Buildings - Alterations and Extensions, as the proposed windows would adversely affect the character of the listed building.

Please see the guidance notes on our [decision page](#) for further information, including how to appeal or review your decision.

Drawings 01-03, represent the determined scheme. Full details of the application can be found on the [Planning and Building Standards Online Services](#)

The reason why the Council made this decision is as follows:

The proposed change of use to residential accommodation would fail to provide adequate amenity levels for future occupiers due to lack of daylight within the basement flat. The replacement windows would be of an unsympathetic design, to the detriment of the character of the listed building. This is contrary to relevant local development plan policies.

This determination does not carry with it any necessary consent or approval for the proposed development under other statutory enactments.

Should you have a specific enquiry regarding this decision please contact Rory Kyle directly at [rory.kyle@edinburgh.gov.uk](mailto:rory.kyle@edinburgh.gov.uk).

*D R Leech*

**Chief Planning Officer**  
**PLACE**  
**The City of Edinburgh Council**

## NOTES

1. If the applicant is aggrieved by the decision to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within three months beginning with the date of this notice. The Notice of Review can be made online at [www.eplanning.scot](http://www.eplanning.scot) or forms can be downloaded from that website. Paper forms should be addressed to the City of Edinburgh Planning Local Review Body, G.2, Waverley Court, 4 East Market Street, Edinburgh, EH8 8BG. For enquiries about the Local Review Body, please email [localreviewbody@edinburgh.gov.uk](mailto:localreviewbody@edinburgh.gov.uk).

2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.

# Report of Handling

## Application for Planning Permission 20/00760/FUL At 12 Earlston Place, Edinburgh, EH7 5SU Change of use from shop to 2no. residential units.

<b>Item</b>	Local Delegated Decision
<b>Application number</b>	20/00760/FUL
<b>Wards</b>	B14 - Craigentiny/Duddingston

### Summary

---

The proposed change of use to residential accommodation would fail to provide adequate amenity levels for future occupiers due to lack of daylight within the basement flat. The replacement windows would be of an unsympathetic design, to the detriment of the character of the listed building. This is contrary to relevant local development plan policies.

### Links

---

<a href="#">Policies and guidance for this application</a>	LHOU01, LEN04, LHOU05, NSLBCA,
--	--------------------------------

# Report of handling

## Recommendations

---

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

## Background

---

### 2.1 Site description

The property is situated at ground floor and basement levels, within a Victorian tenement, which was listed category C on 19.12.2002 (LB49052).

To the rear, the properties face onto a large electricity sub-station and the side of a bingo hall.

### 2.2 Site History

August 2020 - related listed building application for works refused (20/00758/LBC)

## Main report

---

### 3.1 Description Of The Proposal

This application seeks planning permission for internal and external alterations to convert a shop unit to 2no. residential units.

### 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.

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, it needs to be considered whether:

- a) residential use is acceptable in principle; and
- b) the proposed alterations are appropriate to the character of the listed building.

#### a) Principle

Policy Hou1 provides for the development of housing within the urban area, provided proposals are compatible with other policies in the plan. As part of this application, a noise impact assessment (i) and a daylight assessment (ii) were carried out.

(i) The property is located at street level on a busy road. Overall, the noise impact assessment concluded that daytime noise levels would be acceptable. However, the ground floor level exceeded the recommended limit of 10-15 events over 45dB at night. Given other residential units are in close proximity to the unit and continue to be capable of use, this infringement would not be unacceptable.

(ii) The ground floor flat does not have any daylighting issues, and would provide adequate levels of daylight for occupiers. However, the basement level flat, with an arrangement of only 2x external windows would not provide a reasonable quality of daylight. The occupiers of this unit would have access to a restricted and inadequate level of light within the property, contrary to Policy Hou5 (Conversion to Housing) of the local development plan..

Overall, the proposal would fail to provide a reasonable standard of amenity for future occupiers due to inadequate daylight.

#### b) Listed Building

The removal of the cast iron vertical safety balusters from the existing windows at basement level would have a neutral impact to the character of the listed building - the windows are well concealed at basement level on the western gable. However, at the front, the installation of hardwood frame, sash and case window units would be an unsympathetic addition to the building. The style and form of the units, with frames of a heavy and clumsy profile and incongruous opening method for that particular part of the building, would be detrimental to the historical and architectural character of the listed building.

The nature of the external works are unacceptable and would negatively impact on the character of the listed building.

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 5 in respect of Conversion to Housing, as the proposed basement level is unsuitable for residential use due to limited access to daylight
2. The proposal is contrary to the Local Development Plan Policy Env 4 in respect of Listed Buildings - Alterations and Extensions, as the proposed windows would adversely affect the character of the listed building.

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

---

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

## **Equalities impact**

---

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

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

## **Consultation and engagement**

---

### **6.1 Pre-Application Process**

There is no pre-application process history.

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

No representations have been received.

## **Background reading / external references**

---

- **To view details of the application go to**
- [Planning and Building Standards online services](#)

## Statutory Development

<b>Plan Provision</b>	Edinburgh LDP
<b>Date registered</b>	27 February 2020
<b>Drawing numbers/Scheme</b>	01-03, Scheme 1

David R. Leslie  
Chief Planning Officer  
PLACE  
The City of Edinburgh Council

Contact: Rory Kyle, Trainee Planner  
E-mail: rory.kyle@edinburgh.gov.uk

## Links - Policies

---

### **Relevant Policies:**

LDP Policy Hou 1 (Housing Development) sets criteria for assessing the principle of housing proposals.

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

LDP Policy Hou 5 (Conversion to Housing) sets out the criteria for change of use of existing buildings to housing.

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

# Appendix 1

## Consultations

---

No Consultations received.

END

Business Centre G.2 Waverley Court 4 East Market Street Edinburgh EH8 8BG Email: [planning.support@edinburgh.gov.uk](mailto:planning.support@edinburgh.gov.uk)

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100235228-004

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

## Applicant or Agent Details

Are you an applicant or an agent? \* (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

Applicant  Agent

## Agent Details

Please enter Agent details

Company/Organisation:	F.E.M Building Design		
Ref. Number:		You must enter a Building Name or Number, or both: *	
First Name: *	Douglas	Building Name:	
Last Name: *	Mack	Building Number:	8
Telephone Number: *	07966201299	Address 1 (Street): *	Plantain Grove
Extension Number:		Address 2:	Lenzie
Mobile Number:		Town/City: *	Glasgow
Fax Number:		Country: *	Scotland
		Postcode: *	G66 3NE
Email Address: *	douglas@femdesign.co.uk		

Is the applicant an individual or an organisation/corporate entity? \*

Individual  Organisation/Corporate entity

## Applicant Details

Please enter Applicant details

Title:	<input type="text" value="Other"/>	You must enter a Building Name or Number, or both: *	
Other Title:	<input type="text" value="Mr &amp; Mrs"/>	Building Name:	<input type="text"/>
First Name: *	<input type="text" value="Ivan &amp; Lynne"/>	Building Number:	<input type="text" value="12"/>
Last Name: *	<input type="text" value="Reilly"/>	Address 1 (Street): *	<input type="text" value="Earlston Place"/>
Company/Organisation	<input type="text"/>	Address 2:	<input type="text"/>
Telephone Number: *	<input type="text"/>	Town/City: *	<input type="text" value="Edinburgh"/>
Extension Number:	<input type="text"/>	Country: *	<input type="text" value="Scotland"/>
Mobile Number:	<input type="text"/>	Postcode: *	<input type="text" value="EH7 5SU"/>
Fax Number:	<input type="text"/>		
Email Address: *	<input type="text" value="REDACTED"/>		

## Site Address Details

Planning Authority:	<input type="text" value="City of Edinburgh Council"/>
Full postal address of the site (including postcode where available):	
Address 1:	<input type="text" value="12 EARLSTON PLACE"/>
Address 2:	<input type="text"/>
Address 3:	<input type="text"/>
Address 4:	<input type="text"/>
Address 5:	<input type="text"/>
Town/City/Settlement:	<input type="text" value="EDINBURGH"/>
Post Code:	<input type="text" value="EH7 5SU"/>

Please identify/describe the location of the site or sites

Northing	<input type="text" value="674433"/>	Easting	<input type="text" value="327231"/>
----------	-------------------------------------	---------	-------------------------------------

## Description of Proposal

Please provide a description of your proposal to which your review relates. The description should be the same as given in the application form, or as amended with the agreement of the planning authority: \*  
(Max 500 characters)

Change of use from shop to 2no. residential units.

## Type of Application

What type of application did you submit to the planning authority? \*

- Application for planning permission (including householder application but excluding application to work minerals).
- Application for planning permission in principle.
- Further application.
- Application for approval of matters specified in conditions.

What does your review relate to? \*

- Refusal Notice.
- Grant of permission with Conditions imposed.
- No decision reached within the prescribed period (two months after validation date or any agreed extension) – deemed refusal.

## Statement of reasons for seeking review

You must state in full, why you are seeking a review of the planning authority's decision (or failure to make a decision). Your statement must set out all matters you consider require to be taken into account in determining your review. If necessary this can be provided as a separate document in the 'Supporting Documents' section: \* (Max 500 characters)

Note: you are unlikely to have a further opportunity to add to your statement of appeal at a later date, so it is essential that you produce all of the information you want the decision-maker to take into account.

You should not however raise any new matter which was not before the planning authority at the time it decided your application (or at the time expiry of the period of determination), unless you can demonstrate that the new matter could not have been raised before that time or that it not being raised before that time is a consequence of exceptional circumstances.

The grounds of appeal relate to the absence of any consultation process. Had the Planning Officer communicated his concerns it would have been possible to propose alternative solutions. Normally when an application narrowly fails due to insufficient daylight, the applicant would be given the opportunity to provide calculations demonstrating that the Average Daylight Factor met minimum criteria.

Have you raised any matters which were not before the appointed officer at the time the Determination on your application was made? \*

Yes  No

If yes, you should explain in the box below, why you are raising the new matter, why it was not raised with the appointed officer before your application was determined and why you consider it should be considered in your review: \* (Max 500 characters)

There was no opportunity for consultation given by the Planning Officer during the Planning process.

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review. You can attach these documents electronically later in the process: \* (Max 500 characters)

Planning Appeal Statement and Composite Vertical Sky Component Calculation Front elevation photo Rear elevation photo

## Application Details

Please provide the application reference no. given to you by your planning authority for your previous application.

20/00760/FUL

What date was the application submitted to the planning authority? \*

27/02/2020

What date was the decision issued by the planning authority? \*

08/09/2020

## Review Procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Can this review continue to a conclusion, in your opinion, based on a review of the relevant information provided by yourself and other parties only, without any further procedures? For example, written submission, hearing session, site inspection. \*

Yes  No

In the event that the Local Review Body appointed to consider your application decides to inspect the site, in your opinion:

Can the site be clearly seen from a road or public land? \*

Yes  No

Is it possible for the site to be accessed safely and without barriers to entry? \*

Yes  No

## Checklist – Application for Notice of Review

Please complete the following checklist to make sure you have provided all the necessary information in support of your appeal. Failure to submit all this information may result in your appeal being deemed invalid.

Have you provided the name and address of the applicant?. \*

Yes  No

Have you provided the date and reference number of the application which is the subject of this review? \*

Yes  No

If you are the agent, acting on behalf of the applicant, have you provided details of your name and address and indicated whether any notice or correspondence required in connection with the review should be sent to you or the applicant? \*

Yes  No  N/A

Have you provided a statement setting out your reasons for requiring a review and by what procedure (or combination of procedures) you wish the review to be conducted? \*

Yes  No

Note: You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. You may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

Please attach a copy of all documents, material and evidence which you intend to rely on (e.g. plans and Drawings) which are now the subject of this review \*

Yes  No

Note: Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice (if any) from the earlier consent.

## **Declare – Notice of Review**

I/We the applicant/agent certify that this is an application for review on the grounds stated.

Declaration Name: Mr Douglas Mack

Declaration Date: 07/12/2020



6 December 2020

**REQUEST FOR REVIEW OF PLANNING DECISION Ref: 20/00760/FUL**

APPLICATION:

The original application was for change of use from a shop into two residential units, one at ground floor and one at lower ground floor, at 12 Earlston Place Edinburgh EH7 5SU.

DECISION:

The decision was to refuse planning permission due to 'the proposed basement level being unsuitable for residential use due to limited access to daylight'. As no other reasons were provided, it must be assumed that the decision was solely based on this one factor.

GROUNDINGS FOR APPEAL:

Primarily the grounds of appeal relate to the absence of any consultation process. Had the Planning Officer communicated his concerns it would have been possible to propose alternative solutions.

Normally when an application narrowly fails due to insufficient daylight, the applicant would be given the opportunity to provide calculations demonstrating that the Average Daylight Factor met minimum criteria.

Alternatively the plans could have been modified to incorporate borrowed light from the stairwell, and or, to allow for the creation of a new window aperture to the rear elevation.

ARGUMENT:

For the purposes of this appeal, it will be sufficient to demonstrate that the available daylight, as provided by the existing windows, is in indeed sufficient. The council's own publication, Edinburgh Design Guidance (2020) quotes minimum requirements of 1.5% ADF for living areas and 1.0% ADF for sleeping areas.

To that end, advice was sought from a colleague who is familiar with lighting requirements. A copy of their comments/calculations are provided below.

CONCLUSION:

As it has been demonstrated that the Planning Department's recommended daylighting levels have been met, and as the Planning Officer provided no other reasons for refusing the application, the Review Board should not uphold his decision.

## 12 Earlston Place Edinburgh

It was noted that the obstruction (i.e. the tenement at № 9 Earlston Place) illustrated in the original Daylighting Assessment occupies only 22% of the available horizon. Therefore it was decided to consider whether including the remaining part of the horizon would demonstrate sufficient daylight. Additionally, the BRE ADF formula was employed to see if the results produced would satisfy the planning authority's requirements.

### Composite Vertical Sky Component Calculation

- The original Daylighting Assessment shows an angle of 29° to the principal obstruction, which occupies 40° of the horizon (west sector).
- Restricting the horizontal plane to 140° instead of 180° compensates for the reduction in the available daylight due to the acute angle, leaving two sectors of 50° to be accounted for.
- The sector facing southwest was found to have an angle of 22° to the relevant obstruction and the sector facing northwest was found to have an angle of 19°.

Method: the sectors are first expressed as a % of the restricted horizontal plane, then applied as weighing factors to the respective angles of obstruction, the sum of which gives a weighted average.

The 40° sector forms 28.6% of the 140° horizon, whilst the two 50° sectors form 35.7% each.

Calculation:

$$29 \times .286 = 8.3$$

$$22 \times .357 = 8.1$$

$$19 \times .357 = \underline{6.8}$$

23.2 being the composite angle, which is within the required range

### Building Research Establishment formula for Average Daylight Factor

$$DF = \frac{\theta N W F T}{A(1-R^2)} \%$$

$\theta$  is the angle of visible sky in degrees

N is the orientation weighted daylight factor 0.77 (north) 1.2 (south)

W is the glazed area of the window (m<sup>2</sup>)

F is the factor for timber frames (patent glazing) 0.85

T is the diffuse visible transmittance of the glazing 0.8 (standard value)

A is the total area of the room surfaces: ceiling, floor, walls and windows (m<sup>2</sup>)

R is the average reflectance of all the room surfaces 0.5 (standard value)

Calculation:

$$\frac{61 \times .985 \times 3.77 \times .85 \times .8}{114 \times .75} = 1.8\% \text{ ADF, which exceeds minimum requirements}$$

NOTES

*The above Daylight Calculations were based on the plans, measurements and other information provided*

*The chimney stack at 9 Earlston Place was ignored for the purposes of calculating the visible sky in degrees*

*Orientation is west, therefore the mean value between north and south was used*

*When calculating the total area of room surfaces, the kitchen and entry hall recesses were not considered*

## Proposal Details

Proposal Name	100235228
Proposal Description	Change of use from shop to 2no. residential units
Address	12 EARLSTON PLACE, EDINBURGH, EH7 5SU
Local Authority	City of Edinburgh Council
Application Online Reference	100235228-004

## Application Status

Form	complete
Main Details	complete
Checklist	complete
Declaration	complete
Supporting Documentation	complete
Email Notification	complete

## Attachment Details

Notice of Review	System	A4
Planning Appeal Statement and Composite Vertical Sky Component Calculation	Attached	Not Applicable
Front elevation photo	Attached	Not Applicable
Side elevation photo	Attached	Not Applicable
Notice_of_Review-2.pdf	Attached	A0
Application_Summary.pdf	Attached	A0
Notice of Review-004.xml	Attached	A0



FRESH MARKET



PRETTY WOMAN

12

