

# Development Management Sub-Committee Report

Wednesday 29 June 2022

**Application for Planning Permission**  
**46 Cumberland Street, Edinburgh, EH3 6RG**

**Proposal: Change of Use from residential to short-term let (Sui Generis) (in retrospect)**

**Item – Committee Decision**  
**Application Number – 22/01239/FUL**  
**Ward – B11 - City Centre**

## Reasons for Referral to Committee

Given the significance of the issue of short-term lets to the public interest at present, the Chief Planning Officer considers this application should be decided by Committee.

### Recommendation

It is recommended that this application be **Granted** subject to the details below.

### Summary

The proposal harms neither the listed building, its setting or the conservation area. It is therefore acceptable with regard to Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. It complies with the development plan. The proposal will preserve the special architectural and historical interests of the listed building and the setting of neighbouring listed buildings. The character and appearance of the conservation area will be preserved. There are no transport issues. There are no material considerations that outweigh this conclusion. The proposal is acceptable.

## SECTION A – Application Background

### Site Description

The application site is a main door ground floor flat in a stone terrace on the north side of Cumberland Street between Dundas Street and St Vincent Street. It has two-bedrooms and has no semi-private shared areas with neighbouring properties.

The street is predominantly residential as is the surrounding area although there are other uses such as shops in the wider surrounding area. Bus routes are nearby on Dundas Street and the city centre is within walking distance.

The property is a Category A listed Building (ref: LB28614; date of listing 10 November 1966) in a terrace of A listed buildings (36-62B (even numbers) Cumberland Street and 1,2,4,6,7,7A and 8 North West Cumberland Street Lane, including railings).

The application property is in the New Town Conservation Area (Second New Town of Edinburgh).

It is also within the Old Town/New Town World Heritage Site (Northern New Town) and the New Town Gardens Historic Garden/Designed Landscape.

### **Description Of The Proposal**

The application seeks permission to change the residential use to a short term let for visitor accommodation, i.e., to a holiday let use. The two bedrooms would provide for four guests to stay.

No internal or external physical changes are proposed.

The applicant has advised that the property has been used as a short term let since 2015. Therefore, the application is retrospective.

### **Supporting Information**

Planning Statement

#### **Relevant Site History**

No relevant site history.

#### **Other Relevant Site History**

No other relevant planning site history.

#### **Pre-Application process**

There is no pre-application process history.

#### **Consultation Engagement**

No consultations undertaken.

#### **Publicity and Public Engagement**

**Date of Neighbour Notification:** 23 March 2022

**Date of Renotification of Neighbour Notification:** Not Applicable

**Press Publication Date(s):** 1 April 2022;

**Site Notices Date(s):** 29 March 2022;

**Number of Contributors:** 1

## Section B - Assessment

### Determining Issues

Due to the proposals relating to a listed building(s) and being within a conservation area, this report will first consider the proposals in terms of Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (the "1997 Heritage Act"):

a) Is there a strong presumption against granting planning permission due to the proposals:

- I. harming the listed building or its setting? or
- II. conflicting with the objective of preserving or enhancing the character or appearance of the conservation area?

b) If the strong presumption against granting planning permission is engaged, are there any significant public interest advantages of the development which can only be delivered at the scheme's proposed location that are sufficient to outweigh it?

This report will then consider the proposed development under Sections 25 and 37 of the Town and Country Planning (Scotland) Act 1997 (the 1997 Act):

If the proposal is in accordance with the development plan the determination should be to grant planning permission unless material considerations indicate otherwise?

If the proposal is not in accordance with the development plan the determination should be refuse planning permission unless material considerations indicate otherwise?

In the assessment of material considerations this report will consider:

- the Scottish Planning Policy presumption in favour of sustainable development, which is a significant material consideration due to the development plan being over 5 years old;
- equalities and human rights;
- public representations; and
- any other identified material considerations.

### Assessment

To address these determining issues, it needs to be considered whether:

#### a) The proposals harm the listed building and its setting?

The following HES guidance is relevant in the determination of this application:

- Managing Change in the Historic Environment: Guidance on the principles of listed buildings
- Managing Change in the Historic Environment: Setting
- Managing Change in the Historic Environment: Interiors

Managing Change in the Historic Environment: Interim Guidance on the principles of listed building consent sets out the principles for assessing the impact of a development on a listed building.

Managing Change in the Historic Environment: Setting sets out the principles that apply to developments affecting the setting of historic assets or places including listed buildings and conservation areas. It includes factors to be considered in assessing the impact of a change on the setting.

Managing Change in the Historic Environment: Interiors sets out the principles that apply to altering the interiors of historic buildings and states that the interior makes a substantial contribution to the special architectural or historic interest of a building.

There are no external or internal alterations proposed. As such, the proposal will not have an adverse impact on or cause harm to the listed building. The setting of the listed building and the setting of neighbouring listed buildings will be unaffected by the proposal. Adapting the use of the building for short term letting will ensure its continued use.

### **Conclusion in relation to the listed building**

The proposal harms neither the listed building, its setting or the conservation area. It is therefore acceptable with regard to Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

### **b) The proposals harm the character or appearance of the 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."

The New Town Conservation Area represents a planned urban concept of European significance with an overriding character of Georgian formality. Stone built terrace houses and tenements, built to the highest standards, overlook communal private gardens; to the rear are lanes with mews buildings, many of which are now in housing use. The importance of the area lies in the formal plan layout of buildings, streets, mews and gardens and in the quality of the buildings themselves.

In terms of the character of the conservation area, the proposal will provide accommodation for tourists and individuals visiting the city, within a wider mixed use area close to the city centre. The proposal will not have a negative impact on the character of the conservation area.

There are no external alterations and the development preserves both the character and appearance of the conservation area. The change of use from a two-bedroom domestic flat to a short-term holiday let (STL) will not have any material impact on the character of the conservation area. The proposed change of use would preserve the appearance of the conservation area.

## **Conclusion in relation to the conservation area**

The proposal does not harm the conservation area. Therefore, it is acceptable with regard to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

### **c) The proposals comply with the development plan?**

The development plan comprises the Strategic and Local Development Plans. The relevant Edinburgh Local Development Plan 2016 (LDP) policies to be considered are:

- LDP Environment policies LDP Environment policy Env3, Env 4, Env 6, Env 1
- LDP Delivering the Strategy policy Del 2
- LDP Housing policy Hou 7
- LDP Transport policies Tra 2, Tra 3

The non-statutory 'Listed Buildings and Conservation Area' guidance is a material consideration that is relevant when considering policies Env 4 and Env 6.

#### Listed Buildings and setting

LDP Environment policy Env 4 (Listed Buildings - Alterations and Extensions) seeks to ensure that proposals to alter or extend a listed building are justified; that there will be no unnecessary damage to historic structures or diminution of its interest; and that additions are in keeping with other parts of the building.

LDP Environment policy Env 3 (Listed Buildings - Setting) states that development affecting the setting of a listed building will be permitted only if not detrimental to the appearance or character of the building, or to its setting.

The impact on the listed building, its setting and the setting of neighbouring listed buildings has been assessed in section a) above which concluded that the special architectural and historic interest of the building would not be harmed and the setting of the listed buildings would be preserved. As the proposal complies with the statutory test, it therefore also complies with LDP policies Env 3 and Env 4.

#### Conservation Area

LDP Policy Env 6 (Conservation Areas - Development) states that development within a conservation area will be permitted if it preserves or enhances the special character or appearance of the conservation area and is consistent with the relevant conservation area character appraisal and demonstrates high standards of design and utilises materials appropriate to the historic environment.

The impact on the character and appearance of the conservation area has been considered above in b). It was concluded that the change of use would not have any material impact on the character of the conservation area and would preserve the appearance of the conservation area.

The proposal complies with LDP Policy Env 6.

## World Heritage Site

LDP Policy Env 1 states development which would harm the qualities which justified the inscription of the Old and New Towns of Edinburgh and/or the Forth Bridge as World Heritage Sites or would have a detrimental impact on a Site's setting will not be permitted.

The inscription reasons are set out in the Edinburgh World Heritage Site Management Plan as follows:

The Old and New Towns of Edinburgh World Heritage Site (WHS) met two criteria - Criterion (ii) - Have exerted great influence, over a span of time or within a cultural area of the world, on developments in architecture, monumental arts, or town planning and landscape design. The successive planned extensions of the New Town, and the high quality of its architecture, set standards for Scotland and beyond, and exerted a major influence on the development of urban architecture and town planning throughout Europe, in the 18th and 19th centuries.

Criterion (iv) - Be an outstanding example of a type of building or architectural ensemble or landscape which illustrates (a) significant stage(s) in human history.

The proposed change of use as short stay let does not affect the reasons for the inscription and therefore meets policy Env 1. In addition, the Management Plan notes the importance of the value of the WHS to tourism industry and business community and stresses the importance of sustainable tourism. The proposal will not have a detrimental impact on the Outstanding Universal Value of the World Heritage Site.

The proposal complies with LDP Policy Env 1.

## Principle of development

The main policy that is applicable to the assessment of short stay lets (STLs) is LDP 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. There are no policies relating specifically to the loss of housing stock or the control of short stay lets in the current LDP.

The non-statutory Guidance for Businesses states that an assessment of a change of use of dwellings to short stay lets will have regard to:

- 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.

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 has been a number of appeal decisions which have helped to assess whether short stay letting is acceptable or not. These appeals are material planning considerations. The main determining issues in these cases relate to the following:

- The location of the property and, in particular, whether it is part of a common stair shared by residents. Typically, appeals are successful where the property has its own private access;
- The frequency of movement and likely disturbance for neighbours, and whether this is likely to be more than a full-time tenant occupying the flat. Generally, the smaller the flat the less likelihood of disturbance to neighbours;
- The impact on the character of the neighbourhood. Again, this often relates to the size of the property and whether anyone renting it for a few days is likely to shop or use local services any differently from a long-term tenant;
- The nature of the locality and whether the property is located within an area of activity such as being on a busy road or near shops and other commercial services. As such, residents would be accustomed to some degree of ambient noise/ disturbance.

These appeals have also found that short stay visitor accommodation units can be acceptable in predominately residential areas.

Paragraph 220 of the LDP acknowledges that tourism is the biggest source of employment in Edinburgh, providing jobs for over 31,000 people. Whilst there is not a specific LDP policy relating to the jobs created through the required care, maintenance and upkeep of STL properties, the economic benefits are a material planning consideration.

In this case the property has its own access and there is no access to semi-private or communal gardens. Any outside noise conflicts will be from the road outside to the front. Cumberland Street is mainly a residential street although there are two key thoroughfares, Dundas Street and St. Stephen Street/St. Vincent Street, at either end. There is, therefore, some low level ambient background noise and activity. The question is whether the conversion of this unit to a short term let will make that materially worse and so adversely impact on residential amenity.

This is a two bedroom property suitable for four persons and the likelihood of disturbance to neighbours is low. The property is currently being used as a short term let. Whilst any planning permission cannot be conditioned in terms of number of occupants, it is unlikely it will be used for large numbers of visitors which may impact on neighbours' amenity. The applicant has advised that the property has been used for short term lets since 2015. On the balance of probability, there will be no adverse impact on residential amenity and the proposal complies with LDP policy Hou 7.

## Neighbouring Amenity

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

This has been considered above under heading Principle of development and it was concluded that there would be no adverse impact on residents.

Anti-social behaviour such as noise disturbance can be dealt with through relevant legislation, such as by Police Scotland or Environmental Health Acts.

## Transport and Parking

LDP policy Tra 2 - Private Car Parking encourages low car provision where a development is accessible to public transport stops and that existing off-street car parking spaces could adequately accommodate the proposed development.

LDP policy Tra 3 - Private Cycle Parking supports development where proposed cycle parking and storage provision complies with the standards set out in Council Guidance.

There is no vehicle parking and no cycle parking. Zero parking is acceptable and there is no requirement for cycle parking for short term lets.

The proposal complies with policies Tra 2 and Tra 3.

## **Conclusion in relation to the Development Plan**

The proposal complies with the development plan. It will preserve the special architectural and historical interests of the listed building and the setting of neighbouring listed buildings. The character and appearance of the conservation area will be preserved. The principle of the development is acceptable as it contributes to Edinburgh's strategic and regional role as a capital city and will not result in an unreasonable impact on neighbouring amenity. There are no transport issues.

### **d) There are any other material considerations which must be addressed?**

The following material planning considerations have been identified:

#### SPP - Sustainable development

Scottish Planning Policy (SPP) is a significant material consideration due to the LDP being over 5 years old. Paragraph 28 of SPP gives a presumption in favour of development which contributes to sustainable development. Paragraph 29 outlines the thirteen principles which should guide the assessment of sustainable development.

The proposal complies with Paragraph 29 of SPP. It will contribute to the economy and will make efficient use of existing infrastructure including supporting the nearby local centre (Dundas Street), nearby town centre (Stockbridge) and the City Centre. The application property is well placed for access to bus routes and within walking and cycling distance of facilities and infrastructure.

### Emerging policy context

The Draft National Planning Framework 4 NPF 4 has been consulted on but has not yet been adopted. Therefore, little weight can be attached to it as a material consideration in the determination of this application.

While City Plan 2030 represents the settled will of the Council, it has not yet been submitted to Scottish Ministers for examination. As such, little weight can be attached to it as a material consideration in the determination of this application.

### Equalities and human rights

Due regard has been given to section 149 of the Equalities Act 2010. No impacts have been identified.

Consideration has been given to human rights. No impacts have been identified through the assessment and no comments have been received in relation to human rights.

### Public representations

A summary of the representations is provided below:

#### *material considerations*

None.

#### *non-material considerations*

Noise - internal. This is not a material planning consideration.

Compliance with Building Standards. This is not a material planning consideration. The Building Regulations are separate from planning legislation.

### **Conclusion in relation to identified material considerations**

The proposals do not raise any issues in relation to other material considerations identified.

### **Overall conclusion**

The proposal harms neither the listed building, its setting or the conservation area. It is therefore acceptable with regard to Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. It complies with the development plan. The proposal will preserve the special architectural and historical interests of the listed building and the setting of neighbouring listed buildings. The character and appearance of the conservation area will be preserved. The principle of the development is acceptable as it will not result in an unreasonable impact on neighbouring amenity. There are no transport issues. There are no material considerations that outweigh this conclusion. The proposal is acceptable.

## Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following;

### Informatives

It should be noted that:

1. The development hereby permitted shall be commenced no later than the expiration of three years from the date of this consent.
2. No development shall take place on the site until a 'Notice of Initiation of Development' has been submitted to the Council stating the intended date on which the development is to commence. Failure to do so constitutes a breach of planning control, under Section 123(1) of the Town and Country Planning (Scotland) Act 1997.

### Background Reading/External References

To view details of the application go to the [Planning Portal](#)

**Further Information - Local Development Plan**

**Date Registered: 15 March 2022**

### Drawing Numbers/Scheme

01.

Scheme 1

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Appendix 1

### Summary of Consultation Responses

No consultations undertaken.

# Location Plan



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