

Contour Town Planning.
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Decision date: 20 May 2022

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

Retrospective change of use from residential to short-term let apartment (sui generis).
At 26 Barony Street Edinburgh EH3 6NY

Application No: 22/01089/FUL

DECISION NOTICE

With reference to your application for Planning Permission registered on 7 March 2022, 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 7 in respect of Inappropriate Uses in Residential Areas, as the existing rear access to communal garden has the potential to interfere with the amenity of other occupiers.

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

Drawings 01., 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 proposal does not comply with policy Hou 7 in the Edinburgh Local Development Plan. The existing rear access door to communal garden has the potential interfere with the amenity of other occupiers of the building. The change of use to a short stay let is therefore unacceptable and there are no material considerations that outweigh this conclusion.

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 Laura Marshall directly at laura.marshall@edinburgh.gov.uk.



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 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.

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
26 Barony Street, Edinburgh, EH3 6NY

Proposal: Retrospective change of use from residential to short-term let apartment (sui generis).

Item – Local Delegated Decision
Application Number – 22/01089/FUL
Ward – B11 - City Centre

Recommendation

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

Summary

The proposal does not comply with policy Hou 7 in the Edinburgh Local Development Plan. The existing rear access door to communal garden has the potential interfere with the amenity of other occupiers of the building. The change of use to a short stay let is therefore unacceptable and there are no material considerations that outweigh this conclusion.

SECTION A – Application Background

Site Description

The application site is a one-bedroom ground floor flat set over two floors and is located on Barony Street with its own main door access from the pavement. The property forms part of a four-storey tenement and has lower ground floor access to the rear communal garden. The property was previously a ground floor commercial unit before its conversion to residential.

Barony Street is mainly in residential use. The property is within walking distance to Broughton Street, a local centre as defined in the Edinburgh Local Development Plan map.

The site lies within the New Town Conservation Area.

Description Of The Proposal

The proposal is for retrospective planning permission for a change of use from residential to short stay let (STL).

No external or internal physical alterations are proposed.

Supporting Information

- Supporting Statement

Relevant Site History

No relevant site history.

Other Relevant Site History

No other relevant site history.

Consultation Engagement

No Consultations.

Publicity and Public Engagement

Date of Neighbour Notification: 16 March 2022

Date of Advertisement: 25 March 2022

Date of Site Notice: 25 March 2022

Number of Contributors: 0

Section B - Assessment

Determining Issues

Due to the proposed development falling within a conservation area, this report will first consider the proposals in terms of Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997:

- Is there a strong presumption against granting planning permission due to the development conflicting with the objective of preserving or enhancing the character or appearance of the conservation area?
- 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):

Do the proposals comply with the development plan?

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

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

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 character or appearance of the conservation 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.

Conclusion in relation to 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 one-bedroom domestic flat to a short-term let will not have any material impact on the character of the conservation area. The change of use would preserve the appearance of 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.

b) 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 policy Env 6
- LDP Housing policies Hou 7

Principle

The main policy that is applicable to the assessment of short-stay lets (STL) lets 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 control of short stay commercial visitor accommodation (STL) in the current Local Development Plan (LDP).

The non-statutory Guidance for Businesses states that an assessment of a change of use of dwellings to STL 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.

The guidance states that a 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 has been a number of appeal decisions which have helped to assess whether short stay visitor accommodation 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.

The supporting statement does not indicate how long the property has been used as a short-term let. However, there is no record of planning permission for this and the use requires be considered as a new proposal under current policies.

The proposed one-bedroom short stay use would enable two or more related or unrelated visitors 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.

The property has the benefit of own main door access from the pavement. However, the property on the lower ground floor has a rear access door to communal garden and this has potential to interfere with the amenity of other occupiers of the building. The Supporting Statement states that the rear door would be locked. This does not provide sufficient reassurance that access to the rear garden would be prohibited. Controlling rear access to the garden would not meet all the six tests of an effective planning condition under Circular 4/1998 in terms of monitoring and enforcing. In addition, controlling rear access to the garden is a fire safety issue.

Barony Street is overwhelmingly in residential use and character. The supporting statement states that a number of properties on Barony Street are in short stay let use. However, each application for a short stay let is assessed on own merits. The site is a short walking distance from Broughton Street which has a mix of uses, including pubs, restaurants, shops and hairdressers. The application site is relatively sheltered from a degree of ambience noise. It is therefore expected that existing residents would be accustomed to low background noise during day and evening times. The potential access to the rear garden means that a frequent turnover of two or more related or unrelated visitors has the potential to disturb nearby residents.

The Supporting Statement states that the property would be used by two adults with children. It is expected that a turnover of two or more related or unrelated visitors on a frequent basis would shop or use local services more abundantly than a long-term tenant and accordingly, would contribute more to the economy.

Car and cycle parking is not included within the proposals, and this is acceptable. The site is within walking distance to nearby public transport and amenities.

Conservation Area

There are no external alterations and the development preserves both the character and appearance of the conservation area. The proposal complies with LDP policy Env 6.

Conclusion in relation to the Development Plan

Despite the small size of the property and befitting from its own main door access, the rear access door to communal garden has the potential to interfere with the amenity of other occupiers of the building in terms of noise. The principle of a change of use to a short stay let is therefore unacceptable as it will have a materially detrimental effect on the living conditions of nearby residents. The proposal does not comply with LDP policy Hou 7.

c) 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 does not comply with Paragraph 29 of SPP in terms of protecting the amenity of existing residents.

Emerging policy context

The Draft National Planning Framework 4 is being consulted on at present and has not been adopted. As such, 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

No comments were received.

Conclusion in relation to identified material considerations

The other material considerations have been addressed and there are no new material issues to resolve.

Overall conclusion

The proposal does not comply with policy Hou 7 in the Edinburgh Local Development Plan. The existing rear access door to communal garden has the potential interfere with the amenity of other occupiers of the building. The change of use to a short stay let is therefore unacceptable and there are no material considerations that outweigh this conclusion. It is recommended that the application be refused.

Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following;

Reasons

1. The proposal is contrary to the Local Development Plan Policy Hou 7 in respect of Inappropriate Uses in Residential Areas, as the existing rear access to communal garden has the potential to interfere with the amenity of other occupiers.

Background Reading/External References

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

Further Information - [Local Development Plan](#)

Date Registered: 7 March 2022

Drawing Numbers/Scheme

01.

Scheme 1

David Givan
Chief Planning Officer
PLACE
The City of Edinburgh Council

Contact: Laura Marshall, Planning Officer
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Appendix 1

Consultations

No consultations undertaken.