

Dual Scan Ltd.
Mr Luke Barnes.
South View
Ormiston Hall
Ormiston
EH35 5NJ

Decision date: 13 October 2022

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

Change of use from residential to short-term let (STL).
At 405 Webster's Land Edinburgh EH1 2RX

Application No: 22/02967/FUL

DECISION NOTICE

With reference to your application for Planning Permission registered on 3 June 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:-

1. The proposal is contrary to Local Development Plan policy Hou 7 in respect of Inappropriate Uses in Residential Areas, as the use of the property as a short stay let will have a materially detrimental effect on the living conditions and amenity of nearby residents.

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:

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 Lesley Porteous directly at lesley.porteous@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.

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Report of Handling

Application for Planning Permission 405 Webster's Land, Edinburgh, EH1 2RX

Proposal: Change of use from residential to short-term let (STL).

**Item – Local Delegated Decision
Application Number – 22/02967/FUL
Ward – B11 - City Centre**

Recommendation

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

Summary

The proposal is acceptable with regard to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as it will preserve the character or appearance of the conservation area.

The proposal does not comply with the relevant policy of the development plan as it would have a materially detrimental effect on the living conditions and amenity of nearby residents. It does not comply with the objectives of SPP, as it will not contribute towards sustainable development and a sustainable community. There are no material considerations that outweigh this conclusion.

SECTION A – Application Background

Site Description

The application site is a one bedroom flat on the first floor at 405 Webster's Land in the West Port. The property shares its access to West Port via a communal stair and a secure gated access.

Webster's Land is a large residential development comprising around 116 individual flats. It is in a mixed use area just off the Grassmarket. The Grassmarket has a high concentration of cafes, restaurants and bars. Public transport links are easily accessible from the site.

The site lies within the Old Town Conservation Area and the World Heritage Site.

Description Of The Proposal

The application is for a change of use from residential to short term let (sui-generis). No internal or external physical changes are proposed. The applicant has advised that the property has been used as a short term let since 2017. 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.

Consultation Engagement

No consultations.

Publicity and Public Engagement

Date of Neighbour Notification: 13 October 2022

Date of Advertisement: 24 June 2022

Date of Site Notice: 24 June 2022

Number of Contributors: 3

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

- Managing Change in the Historic Environment: Setting

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.

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.

There are no external changes proposed. Therefore, the impact on the appearance of the conservation area is acceptable. In terms of the character of the conservation area, the proposal will provide accommodation for tourists and individuals visiting the city, within an area of already mixed use. The proposal will not have a negative impact on the character of the conservation area.

Conclusion in relation to the conservation area

The proposals are 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 policies Env 1 and Env 6.

- LDP Housing policy Hou 7.
- LDP Transport policies Tra 2 and Tra 3.
- LDP Delivering the Strategy policy Del 2.

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

The non-statutory 'Guidance for Businesses' is a material consideration that is relevant when considering policy Hou 7.

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 a). 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- World Heritage Sites states that development which would harm the qualities which justified the inscription of the Old and New Towns of Edinburgh as World Heritage Sites or would have a detrimental impact on the site's setting will not be permitted.

The applicant has stated that there will be no external alterations to the building. The proposed change of use as short stay let does not affect the reasons for the inscription of the World Heritage Site, nor its sense of place and community.

The proposal complies with LDP policy Env 1.

Proposed Use and Principle of Development

The application site is situated in the urban area as defined in the adopted Edinburgh Local Development Plan (LDP) 2016.

The main policy that is applicable to the assessment of short-stay commercial visitor accommodation (SCVA) 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.

The non-statutory Guidance for Businesses sets out a number of criteria that are considered in an assessment of the materiality of a change of use of dwellings to an STL:

- 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.

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 SVCA properties, the economic benefits are a material planning consideration.

The one-bedroom property is on the first floor of a large residential block of five storeys. The entrance door of the flat is connected to the shared entrance gate by a series of external walkways that are linked by internal stairways. These are communal.

The property is in a residential block and is a part of a 116-unit development. The use of the property as a short term let would have the potential to introduce an increased frequency of movement to the flat and in the communal stairways at unsociable hours. The proposed one bedroom short stay use would enable two or more 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. This would be significantly different from the ambient background noise that residents might reasonably expect. There is the added risk of a potential detrimental impact on the sense of community and less interest in maintaining and cleaning the stairwell due to temporary occupation.

The location of the flat, being in a residential block, surrounded by a high number of residential units, creates a situation where such a use could bring additional noise and disturbance immediately outside the flat and in the shared stairwells.

Scottish Planning Policy encourages a mix of uses in town centres to support their vibrancy, vitality and viability throughout the day and into the evening. The site lies within the City Centre and policy Del 2 reflects SPP by stating it supports a use or a mix of uses appropriate to the location of the site, its accessibility characteristics and the character of the surrounding area. However, the promotion of mixed uses has to be balanced with the need to ensure residential amenity is protected. In this case, there is likely to be a negative impact on residential amenity.

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

The proposal will have a materially detrimental effect on the living conditions and amenity of nearby residents. Therefore, it does not comply with LDP policy Hou 7.

Parking Standards

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 off street car parking available within the site. As the site is in the heart of the Old Town car use is discouraged. The site is accessible to public transport links. There is no cycle parking standards for SCVA's. Bikes could be parked within the property if required. The proposals comply with policies Tra 2 and Tra 3.

Conclusion in relation to the Development Plan

The proposal does not comply with LDP Policy Hou 7 as the change of use of this property to a short-term visitor let would materially harm neighbouring amenity. There are no material considerations that would justify approval.

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 all thirteen principles outlined within Paragraph 29 of the SPP as it would not protect the amenity of existing development. The proposal will therefore not contribute to sustainable development.

Emerging policy context

The Draft National Planning Framework 4 has been consulted on but has not yet 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

A summary of the representations is provided below:

material considerations

- Negative impact on residential amenity. Addressed in b) above.
- Negative impact on community. Addressed in b) above.
- Negative impact on cleaning and maintenance of stairwell. Addressed in b) above.
- Contradicts policy Hou 7 of the LDP. Addressed in b) above.
- Negative impact on the World Heritage Site. Addressed in b) above.
- Encourages waste issues. The applicant should have an agreement with CEC's Waste Services.

non-material considerations

- Too many short term lets in the area. Each application has to be considered on its individual merits.
- Reduces housing stock. This is not a material consideration under the current LDP. 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.
- Contradicts policies Des 1 and Des 5 of the LDP. The application must be assessed against the relevant policies of the LDP. These are not relevant policies.
- Pushes up house prices. This is a commercial consideration not covered by planning policy.

Conclusion in relation to identified material considerations

The proposal does not raise any other material considerations.

Overall conclusion

The proposal is acceptable with regard to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as it will preserve the character or appearance of the conservation area.

The proposal does not comply with the relevant policy of the development plan as it would have a materially detrimental effect on the living conditions and amenity of nearby residents. It does not comply with the objectives of SPP, as it will not contribute towards sustainable development and a sustainable community. There are no material considerations that outweigh this conclusion.

Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following;

1. The proposal is contrary to Local Development Plan policy Hou 7 in respect of Inappropriate Uses in Residential Areas, as the use of the property as a short stay let will have a materially detrimental effect on the living conditions and amenity of nearby residents.

Background Reading/External References

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

Further Information - [Local Development Plan](#)

Date Registered: 3 June 2022

Drawing Numbers/Scheme

01, 03

Scheme 1

David Givan
Chief Planning Officer
PLACE
The City of Edinburgh Council

Contact: Lesley Porteous, Planning Officer
E-mail: lesley.porteous@edinburgh.gov.uk

Appendix 1

Consultations

No consultations undertaken.

Comments for Planning Application 22/02967/FUL

Application Summary

Application Number: 22/02967/FUL

Address: 405 Webster's Land Edinburgh EH1 2RX

Proposal: Change of use from residential to short-term let (STL).

Case Officer: Lesley Porteous

Customer Details

Name: Mr Paul Burrows

Address: 509 Webster's Land Edinburgh

Comment Details

Commenter Type: Neighbour

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: There are already more short term lets in Webster's Land than is compatible with the development being a residential property and adding more will significantly impact on the quality of life for those who are long term residents. It should not be the purpose of planning to turn a residential development into a hotel.

Comments for Planning Application 22/02967/FUL

Application Summary

Application Number: 22/02967/FUL

Address: 405 Webster's Land Edinburgh EH1 2RX

Proposal: Change of use from residential to short-term let (STL).

Case Officer: Lesley Porteous

Customer Details

Name: Dr The Architectural Heritage Society of Scotland

Address: 15 Rutland Square, Edinburgh EH1 2BE

Comment Details

Commenter Type: Amenity Body

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: The AHSS Forth & Borders Cases Panel has examined the proposals for the change of use to short-term let in a tenement within the Old Town Conservation Area, and objects.

- 1) The proposals only relate to one property within the tenement, which is accessed from a shared stair. This would have a detrimental impact on the residential amenity of neighbouring properties, and limits the future of the flats not included within the application.
- 2) The change of use would contribute to the unsustainable growth of the short term let (STL) sector in Edinburgh. The economic benefits of tourism for Edinburgh are clear, and we celebrate the role that our architectural heritage plays in this sector. However, the current rising rate of STLs threatens the sense of place and community which are part of the city's attraction, and this is especially acute in the World Heritage Site.
- 3) Scottish Government Research has highlighted the links between STLs and the negative impacts of reduced availability of affordable housing, congestion and reduced quality of life through noise and disturbance (People, Communities and Places, October 2019, pp. iv-v)
- 4) With particular reference to architectural heritage the responsibility for the care and maintenance of communal areas and aspects of joint responsibility in listed buildings and conservation areas is diminished by the increase of short-term occupants.

The change of use does not respect the building's location in the World Heritage Site, and would increase the negative impacts caused by the growth of STLs in Edinburgh.

The proposals contradict Edinburgh Council's Local Development Plan policies DES1 (Sense of place), DES5 (amenity of neighbours/refuse and recycling facilities), and HOU7 (Materially detrimental effect on the living conditions of nearby residents). We therefore object to the application.

Comments for Planning Application 22/02967/FUL

Application Summary

Application Number: 22/02967/FUL

Address: 405 Webster's Land Edinburgh EH1 2RX

Proposal: Change of use from residential to short-term let (STL).

Case Officer: Lesley Porteous

Customer Details

Name: Mrs Elspeth Wills

Address: 3 Browns Place Edinburgh

Comment Details

Commenter Type: Residents Association

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: With the full support of the Old Town Community Council, GRASS the local community group for the area wishes to object strongly to the above application.

The area around the West Port is densely tenemented and the whole community is decimated by the inexorable rise of STLs. All the usual objections of late night noise, littering etc stand.

Although the building is modern it was built by a developer to meet the need for rented accommodation. That need is more than justified today where most property is unaffordable thanks to STLs pushing house prices up.

STLs bring few benefits to the local economy or community as most visitors stay for only 2-3 nights to have fun in the city centre.

The property is on the edge of the World Heritage site.

Loss of income to the Council who maintains essential services such as rubbish collection free of charge.

Housing should be seen as a place for people to live in not as an investment.

We urge that this and all STL applications are turned down.

Yours sincerely

Elspeth Wills

GRASS and OTCC Planning