

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 100607811-001

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:	Holder Planning		
Ref. Number:		You must enter a Building Name or Number, or both: *	
First Name: *	Robin	Building Name:	
Last Name: *	Holder	Building Number:	139
Telephone Number: *	07585 008650	Address 1 (Street): *	Comiston Road
Extension Number:		Address 2:	
Mobile Number:		Town/City: *	Edinburgh
Fax Number:		Country: *	Scotland
		Postcode: *	EH10 5QN
Email Address: *	robin@holderplanning.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="Mr"/>	You must enter a Building Name or Number, or both: *	
Other Title:	<input type="text"/>	Building Name:	<input type="text"/>
First Name: *	<input type="text" value="Michael"/>	Building Number:	<input type="text" value="18"/>
Last Name: *	<input type="text" value="Cran"/>	Address 1 (Street): *	<input type="text" value="Spring Gardens"/>
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="UK"/>
Mobile Number:	<input type="text"/>	Postcode: *	<input type="text" value="EH8 8HX"/>
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="18 SPRING GARDENS"/>
Address 2:	<input type="text" value="ABBEYHILL"/>
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="EH8 8HX"/>

Please identify/describe the location of the site or sites

Northing	<input type="text" value="674150"/>	Easting	<input type="text" value="327395"/>
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## 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 House to Short Stay Commercial Visitor Accommodation

## 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.

Review Statement attached.

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)

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)

Enforcement Notice Appeal Decision Review Statement

## Application Details

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

22/03161/FUL

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

16/06/2022

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

30/08/2022

## 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 Robin Holder

Declaration Date: 24/11/2022

**APPLICANT: MICHAEL & CHERYL CRAN**

## REVIEW STATEMENT

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Application for a Change of Use from House to Short-Stay Commercial Visitor Accommodation.

18 Spring Gardens, Edinburgh, EH8 8HX

Date: November 2022

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**HolderPlanning**

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## 1.0 INTRODUCTION

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- 1.1 This is an unusual case, with a unique background, and we request that LRB Members give it particularly careful attention.
- 1.2 As we explain below, since the delegated decision to refuse the application, a Scottish Government Appeal Reporter has decided that the short-term let use will not have any harmful impacts on the amenity of neighbours. This conclusion is the opposite of that reached by planning officers on this application and is a very significant material consideration for the LRB to take into account.
- 1.3 Mr & Mrs Cran live in their home in Edinburgh, which is a house and not a flat, and rent it out on a short-term let basis for significantly less than half of the year for the 7 years over which they have rented it. They bought the house with the intention of retiring to it, within the next 2 – 3 years now, and in the meantime frequently live there to be close to their daughter. To make that affordable, they rent the property out some of the time that they are not resident.
- 1.4 None of their closest neighbours, including one with a party wall, object to this arrangement, indeed they wrote letters of support for this application. However, the planning case officer decided that most of these letters of support should not be taken into account because they did not explain why they supported the application. We do not think that was fair because it provided perhaps the best evidence that the use is not a nuisance to those who would be most affected.
- 1.5 However, more weight appears to have been given in the officer's Report of Handling to the objection of a single party, living a number of houses away from 18 Spring Gardens, who has made spurious assertions regarding the use and whose previous complaints led to a misjudged and failed Enforcement action by the Council. As we explain below, Mr and Mrs Cran were very upset by the spurious content of the objection to the planning application and the complaints that led to the enforcement action. That upset was compounded because the Report of Handling made reference to the objector's comments but made no reference Mr and Mrs Cran's submission explaining in detail why that objection was spurious and exaggerated. Their impression, therefore, was that they had not been given a fair hearing.
- 1.6 The complaints from this party began in 2018, which compelled the Council to open its first Enforcement investigation. That investigation was closed with no further action being taken by the Council, we assume because there was no case to answer. A second complaint was made in 2019, which again led to an enforcement investigation and again this was closed with no further action being taken. At that time, the applicant was advised by the Council that that the part-time use as a short-term let did not need planning permission because the use, because of its low level nature, was not materially different to the residential use which was predominant. The complainant, however, persisted and the Council undertook a third enforcement investigation in 2021.
- 1.7 Throughout this period, Mr & Mrs Cran were obviously very upset that a vexatious party was continuing to make complaints which in their view amounted to harassment by proxy, the unwitting proxy being the Council.



- 1.8 It is therefore not an exaggeration to say that they were horrified and distressed when the Council decided to serve an Enforcement Notice in 2022 against the continuation of use as a result of that third complaint, particularly because there had been no material change of circumstances since the Enforcement Officer had advised them that they did not need planning permission.
- 1.9 Given the possible criminal consequences of an Enforcement Notice and their certainty that the allegations against them were unfounded, Mr & Mrs Cran decided (at significant expense) to take professional advice and appeal against the Enforcement Notice advice. They knew that the appeal Reporter would have to consider all of the issues and address in detail the arguments being made by the Council and the objector. They were understandably very relieved when on 18 October 2022, the Reporter upheld the appeal, quashed the Enforcement Notice, and reached the following conclusion in the his Decision (Document 1 – Enforcement Notice Appeal Decision):

***9. The planning authority relies on the intensification of the use of the property for short stay commercial visitor accommodation as the basis for a material change of use having taken place. However, I find that the planning authority's submitted evidence has limited value in supporting this position. The extracts from the Airbnb and VRBO websites only indicate that the property has been used for short stay commercial visitor accommodation. They do not establish the level of bookings which have taken place or that these levels have indeed intensified in the intervening period since August 2019. On this basis, I do not find evidence that an intensification of the use of the property for short stay commercial visitor accommodation has ensued. Therefore, I do not find the intensification of use provides a basis that a material change of use has occurred in this case.***

***10. From my site visit I established that this residential property is a terraced house, as opposed to a flatted property, and as such would normally fall within Class 9 of the Town and Country Planning (Use Classes) (Scotland) Order 1997. Class 9 does not differentiate between people living together as a family in their sole main residence and a family living together in a short term let. In simple terms letting a dwellinghouse, and living in it as a family, for any length of time would normally fit within the description of a Class 9 use.***

***11. The property benefits from a separate front entrance door with no communal internal space linked with neighbouring properties and overall, I find the property to be self-contained. The appellants let the whole property at one time, and it is marketed as accommodating up to eight guests. There is no indication that it has been advertised for or occupied at any point by more than eight guests or as a party or event venue. The current internal layout of the property with three double bedrooms, a single bedroom and single sofa bed would lead me to conclude that eight guests occupying the property as a family is within the normal designed occupancy of the house.***

***12. The planning authority highlights that the shared courtyard could result in direct interaction between guests at Number 18 and surrounding permanent residents resulting in a detriment to amenity and safety. The courtyard runs parallel to the street and while the majority of this space is set behind a wall there is no security gate in place. This allows unrestricted access to the courtyard for residents and visitors and its use by guests***

*visiting number 18 would not therefore reduce the current level of security offered to the residents sharing the courtyard.*

*13. Furthermore Number 18 is located directly across from the vehicular access and open to the road. This layout limits the requirement for guests to pass by the neighbouring properties within the terrace when leaving or returning on foot or in vehicles. I recognise that the other residents are required to pass Number 18 to reach their properties but based on the courtyard layout, lack of secure access and its proximity to the public road I do not consider this to create any significant amenity or safety concerns. In my view families or friends holidaying together tend to leave and return as a group, either on foot or by vehicle, thereby limiting the periods guests spend within the courtyard and further minimising any disruption caused.*

*14. Similar to the appeal property, with the exception of Number 8 Spring Gardens, the remaining properties within the terraced block do not appear to have habitable rooms on the ground floor overlooking the courtyard. This layout would reduce the impact of any activity in the area immediately in front of the appeal property. Number 8 has a single bedroom window facing onto the courtyard. However, it is located approximately 20 metres from the appeal property which I consider provides a sufficient distance to reduce possible disturbance from guests arriving or departing at Number 18.*

*15. It is indicated by the appellants that the vast majority of guests arrive by foot, public transport, or taxi. This may indeed be the case, although guests may also arrive by private vehicle, which could result in two or more vehicles arriving at the property. Visits by the cleaning company are also generally by private vehicle. Guests have access to the internal garage which can accommodate a single car and a further unmarked parking space is located to the front of the property within the courtyard. It is possible that guests may not appreciate the boundaries of the unmarked space, and this could lead to some tension with other residents if a mistake is made. However, I do not find this risk so great, that it would lead to a significant change in the nature of the occupancy of the dwellinghouse. I observed that there is free on street parking available on Spring Gardens and the surrounding streets to accommodate any additional vehicles generated by guests or the cleaning company.”*

1.10 These conclusions from an experienced Reporter, who has very carefully considered the different points of view, are very significant considerations for this Review.

1.11 This is because the refusal of the application was wholly based upon the issue of amenity impact on nearby residents, as referred to in the refusal reason i.e.

**“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.”**

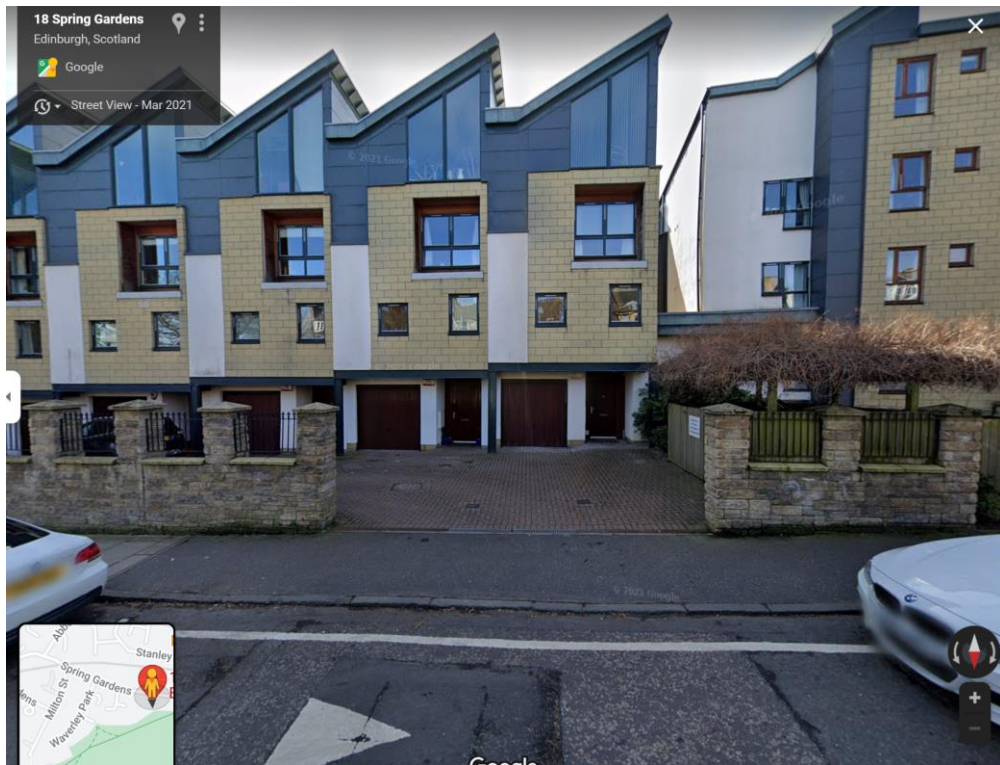
1.12 We can understand that the LRB Members may wish to place weight on the planning officers’ view on this matter, but the officer’s Report of Handling does not suggest that as much depth of consideration was given to issues as that given by the Appeal Reporter. The comments in the Report of Handling give the impression that the officer was of the view

that a short-term let use of virtually any magnitude and nature would materially harm the amenity of neighbours, despite the fact that there was no reliable evidence that such harm was actually occurring. Respectfully, that cannot be right. The Appeal Reporter did consider in detail the specific circumstances of the case, including a site visit to view the property inside and out, and its surroundings. He also asked questions of both the Crans and the Council Officer in order to better understand the precise nature of the use of the house.

- 1.13** We acknowledge that the Council's planning function has resource pressures, but we were disappointed that the planning case officer would not discuss the application with us despite repeated requests.

## 2.0 THE PROPOSAL

- 2.1 The application was submitted by Mr & Mrs Cran in the circumstances of the Council having served an Enforcement Notice (21I00596/ESHORT) alleging that the property has been subject to a material change of use to visitor accommodation. As referred to above, that appeal succeeded and the Enforcement Notice has now been quashed.
- 2.2 Despite this, the Crans wish to secure a planning permission for the proposed use to assist with their forthcoming Short-Term Let Licence application, now required because of the designation of the STL Control Area.
- 2.3 Michael & Cheryl Cran have owned 18 Spring Gardens since 2015. Since 2016 they have made the house available for short-term visitor stays on a commercial basis when they or their family are not living in it.
- 2.4 The frontage of the property is pictured below in a google street view image. No. 18 is the righthand end terrace property, comprising a 4-storey townhouse with its own main front door, private back garden, internal single garage, and one dedicated parking space.



- 2.5 They advertise the property on two well-known and reputable letting websites – AirBnB and VRBO.
- 2.6 The use by guests is not the predominant use of the property i.e. it is occupied by them and their family, or is vacant, significantly more often than it is occupied by guests. This is demonstrated in the following table, which shows the number of nights the property was either occupied by guests, the Crans or was empty since 2019.

Financial Year	Bookings	Guest Nights	Cran Nights	Empty Nights	% Guest Nights
2019 - 2020	25	117	151	97	32.1%
2020 - 2021	0	0	171	194	0%
2021 - 2022	21	97	85	183	26.6%

- 2.7 It should be noted that Mr & Mrs Cran’s daughter is now living in Edinburgh, and it is the Cran’s intention to spend more time at Spring Gardens, to be close to her, than in previous years. The number of guests staying will therefore decrease accordingly. Their current intention is to live there permanently when they retire in 2 - 3 years.
- 2.8 Following the enforcement investigation by the Council in 2019, the owners have adopted a policy of restricting the letting use of the property to less than that occurring in 2019/2020 (i.e. less than 32% of nights per year). They also now do not let the property on Edinburgh Rugby International weekends. **In the future, the applicant therefore does not intend to rent the property for any more nights/year than in 2019/2020, and would be content to accept a planning condition restricting guest nights to no more than 120 guest nights per year.**
- 2.9 Michael and Cheryl Cran are scrupulous in their management of the letting of the property, observing all rules and regulations to the letter, and making all efforts to ensure that there is little or no opportunity for guests to disturb neighbours in any way.
- 2.10 The AirBnB and VRBO websites for the property can be viewed on the following links:  
[https://www.vrbo.com/en-gb/p1894878?noDates=true&uni\\_id=3608113](https://www.vrbo.com/en-gb/p1894878?noDates=true&uni_id=3608113)  
[https://www.airbnb.co.uk/rooms/8624109?adults=8&federated\\_search\\_id=4ab15299-1fe1-4e6a-8aff-15d7067b2334&source\\_impression\\_id=p3\\_1650612255\\_YqgSBTcUOqX4DqPV](https://www.airbnb.co.uk/rooms/8624109?adults=8&federated_search_id=4ab15299-1fe1-4e6a-8aff-15d7067b2334&source_impression_id=p3_1650612255_YqgSBTcUOqX4DqPV)
- 2.11 The websites include clearly stated house rules, including the following:
- No parties or events.
  - No smoking inside the house, garden, balcony or front courtyard.
  - Noise to be kept to a minimum, especially at night.
  - Minimum age of primary renter not less than 25 years.
- 2.12 The owners also monitor activity at the front of the property via a CCTV camera.
- 2.13 The nature of the house and the rental price is such that the vast majority of guests are family groups visiting Edinburgh for a normal holiday.
- 2.14 The nature of the property is also such that guests can access the house with no disturbance to neighbours. The fact that it is a house and not a flat and has its own front door means that there is no interaction with neighbours in a shared stairway. Although

there is a shared outside courtyard to the front of the property, 18 Spring Gardens is the first property accessed from that courtyard, and therefore guests do not have to walk past other houses in the terrace. The house is an end terrace so only has one party wall. All of the properties in the terrace have double glazing and should not therefore be materially impacted by any minor levels of noise that might arise as guests arrive/depart.

- 2.15 The property has two private car parking spaces allocated to it, one within the internal garage. This minimises the risk that guests arriving with cars would impact on neighbour parking, within the courtyard and beyond.
- 2.16 Consequently, there is no reason to think that the use of the property by guests should lead to any material impact on neighbours, and certainly no more than if the house was permanently occupied on a long-term basis – in fact such impacts would likely be greater if the house was occupied on a permanent basis.
- 2.17 In April 2022 the applicants canvassed their 4 immediate neighbours in the courtyard for their opinion of the use of the property. All of the responses stated that there had been no nuisance at all and were happy with the way in which the use was managed. More recently, the applicants have contacted these neighbours again and their immediate neighbour has given support for this application, as has one other in the development. An additional neighbour has said they would not object if the use was restricted to the current owners and be on a temporary basis with lettings restricted to a set number of days, and the applicants are content for such restrictions to be imposed in respect to this application.
- 2.18 The Crans have also contacted 7 other neighbours within 20 metres of their property, and 5 of these neighbours have indicated their full support for this application and 2 have not replied.
- 2.19 The Crans are aware of one resident in the group of houses (not an adjacent or close neighbour), who they consider to be unreasonable and, on some occasions, aggressive. They assume that this person is the source of a complaint to the Council that led to the Enforcement Notice and previous Enforcement investigations. They are quite happy to provide further information in respect to that unreasonable behaviour if necessary.
- 2.20 However, perhaps that is unnecessary now that an independent Reporter has carefully considered the objection by that party, and agrees that the use does not result in any material harm to local residential amenity.
- 2.21 In granting permission, the applicant is content for one or both of the following conditions to be applied to the permission:
  - It is a temporary permission granted for 3 years.
  - That the property is occupied by guests on a commercial basis for no more than 120 nights/year (i.e. less than a third of the year).
- 2.22 The Report of Handling says that a temporary permission is inappropriate for a short-term let, but without explaining why. In our considerable experience of development management, we cannot think of any reason to justify that conclusion. In fact, it is precisely the kind of situation where the planning authority may consider such a

restriction, so that it may consider a possible application for an extension to the time limit in the knowledge of its impact over that period.

- 2.23 In terms of restricting the occupation by guests to no more than 120 days/year, the Report of Handling states that such a condition would be unenforceable. Although we accept that such a condition, like many analogous conditions that planning authorities apply, would require to be monitored, but that does not mean it would be unenforceable. A straightforward approach would be for the applicant to be required to provide the Council with an annual account of guest stays, supported by evidence that this was accurate.

## 3.0 PLANNING ASSESSMENT

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- 3.1 The principal policy for the consideration of this planning application is Policy HOU 7 of the Edinburgh Local Development Plan, which states the following:

**Policy Hou 7 Inappropriate Uses in Residential Areas**

**Developments, including changes of use, which would have a materially detrimental effect on the living conditions of nearby residents, will not be permitted.**

- 3.2 Paragraph 234 of the LDP provides further explanation of Policy HOU 7, as follows:

***“The intention of the policy is firstly, to preclude the introduction or intensification of non-residential uses incompatible with predominantly residential areas and secondly, to prevent any further deterioration in living conditions in more mixed use areas which nevertheless have important residential functions. This policy will be used to assess proposals for the conversion of a house or flat to a House in Multiple Occupation (i.e. for five or more people). Further advice is set out in Council Guidance.”***

- 3.3 We note the content of the Edinburgh Council Guidance for Business (2021), which sets out the following guidance:

***“Short Term Commercial Visitor Accommodation***

*The change of use from a residential property to short term commercial visitor accommodation may require planning permission. In deciding whether this is the case, regard will be had 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.”*

- 3.4 From the underlined words above, it is clear this provides guidance on deciding whether planning permission is required rather than giving guidance on assessing applications themselves. Consequently, it is not relevant to the determination of this application and, respectfully, the Report of Handling is incorrect to say that it is.

- 3.5 Policy HOU 7 is straightforward in its terms, i.e. a proposal for a change of use from a house to a short-term commercial let should be permitted unless there is a **“materially detrimental impact on the living conditions of neighbours”**.

We have indicated the conclusions of the Reporter on the Enforcement Notice Appeal in the introduction to this statement in respect to the impact on the living conditions of neighbours, where he reaches the conclusive view that there are no materially detrimental impacts. That view is shared by near neighbours, including one with a party wall to 18 Spring Gardens.



## 4.0 CONCLUSION

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- 4.1 We respectfully request that the LRB grant planning permission for the following reasons:
- Since the application was refused, an Appeal Reporter, after lengthy and careful consideration, has concluded that the change of use would not have a harmful impact on the residential amenity of the area. We acknowledge that this conclusion is in direct contradiction of the reason for refusal of the application, but in our view is based on a more comprehensive assessment of the issues than is apparent from the officer's Report of Handling, including a thorough site visit, and where questions were asked of the Mr & Mrs Cran and the Council Officer.
  - We acknowledge that the Council is concerned about the proliferation of short-term lets in the City, but we assume that does not mean a 'total ban', and that there is acknowledgement that some short-term lets are acceptable in circumstances where there is no conflict with planning policies. The Crans are thoughtful and diligent hosts, who liaise frequently with their near neighbours on any issues that may arise. Those neighbours do not consider the use to be of any nuisance whatsoever.
  - In recognition of any remaining concerns the Council may have, the applicant is happy to accept conditions to the permission, as explained in this statement i.e. a temporary permission for 3 years and/or a limitation on the number of days the property can be let to no more than 120/year.
- 4.2 The circumstances of this case are unusual and unique, with an experienced Appeal Reporter having considered the issue of 'amenity impacts' in considerable detail since the refusal of planning permission by the Council. As his conclusion was in the context of an Enforcement Notice, planning permission has not yet been granted per se, and so the Crans have lodged this Review to regularise the position.
- 4.3 Granting planning permission will not in any way undermine the Council's objective to ensure that only well-managed and appropriate properties are used for short-term lets. This property is not a flat and is not used for events that might lead to inappropriate behaviour or noise. Quite the contrary, it is very carefully managed and monitored to ensure that there is little, if any, possibility of disturbance to neighbours. They provide clear house rules for their guests in this regard and have regular communication with their neighbours to keep on top of any minor issues that may arise.
- 4.4 Mrs Cran intends retiring from her work in England in 2 -3 years' time, and the couple can then return to Scotland where they look forward to living permanently at 18 Spring Gardens.



## Appeal Decision Notice

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Decision by Euan McLaughlin, a Reporter appointed by the Scottish Ministers

- Enforcement notice appeal reference: ENA-230-2217
- Site address: 18 Spring Gardens, Abbeyhill, Edinburgh, EH8 8HX
- Appeal by Mr Michael Cran and Mrs Cheryl Cran against the enforcement notice dated 28 March 2022 served by The City of Edinburgh Council
- The alleged breach of planning control: without planning permission, the material change of use of the property from a residential property to short stay commercial visitor accommodation
- Date of site visit by Reporter: 18 October 2022

Date of appeal decision: 16 November 2022

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### Decision

I allow the appeal and direct that the enforcement notice dated 28 March 2022 be quashed.

### Preliminary matters

This appeal was sisted on 1 June 2022 to allow for the submission of a planning application. Planning application 22/02161/FUL was registered on 16 June 2022 for “Change of use from house to short stay visitor accommodation.” The application was refused with the decision issued on 30 August 2022.

On 12 September 2022 it was confirmed with all parties that this appeal would progress.

The appellants have directed me to an error within the enforcement notice where the property is described as a “flat” in section 4. Section 2 of the notice provides an accurate description of the property and I find this single reference to a “flat” within section 4 of the notice does not impact on its overall validity.

### Reasoning

1. The appeal property is a four-storey townhouse which forms the end plot of a terrace set back from the road within a private shared courtyard. The property has an internal garage with a further unmarked parking space located within the courtyard. To the rear is a private garden for exclusive use of the dwelling which backs onto Holyrood Park. The appeal property comprises of four bedrooms on the ground and first floors. A kitchen, dining and lounge area is located on the second floor with the third floor containing an office and further living space. The ground floor bedroom is at the rear of the property and no occupied rooms face onto the courtyard at ground level.

2. While an application for planning permission has been submitted for a change of use, and subsequently refused, the appellants have not modified their grounds of appeal

and remain resolute that a breach of planning control has not occurred. Notwithstanding the outcome of this application process, I am required to consider the enforcement notice appeal and the various grounds presented by the appellants.

3. The appeal against the enforcement notice was made on the following grounds as provided for by section 130(1) of the Town and Country Planning (Scotland) Act 1997:
- Ground b) that the matters which, by virtue of section 128(1) (a) have been stated in the notice have not occurred;
  - Ground c) those matters (if they occurred) do not constitute a breach of planning control;
  - Ground d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;
  - Ground e) the copies of the enforcement notice were not served as required by section 127;
  - Ground f) the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case maybe, to remedy any injury to amenity which has been caused by any such breach; and
  - Ground g) that any period specified in the notice in accordance with section 128(9) falls short of what should reasonably be allowed.

#### Ground b)

4. All parties agree that the property has been let on a commercial and short-term basis since 2015 and on that foundation the matters which are detailed in the enforcement notice have occurred.

5. The appeal on ground b) would only fail if the use of the property for short stay commercial visitor accommodation is considered a material change of use and therefore a breach of planning control under ground c). I deal with that matter in more detail below.

#### Ground c)

6. As the property is being used intermittently for short stay commercial visitor accommodation, for ground c) to succeed it must be demonstrated that this use does not constitute a breach of planning control. The appellants maintain that there has been no change in circumstances since the planning authority found, twice before, that this use did not represent a material change of use.

7. Based on the information before me I understand the relevant background matters to be:

- The appeal property was first advertised for short stay commercial visitor accommodation in November 2015, with the first booking occurring in early 2016.
- On 12 February 2019, the investigation under 18/00584/ECOU was closed with the planning authority concluding that the occasional let for short stay commercial visitor accommodation was incidental to the established use of the property. The level of short stay commercial letting used to establish this position is not before me.
- The appellants indicate that for the fiscal year 2019/2020 the property was occupied for short stay commercial visitor accommodation for 117 nights (32.1%) and as a single-family residence for 151 nights (41.3%). It was unoccupied for the remainder of the year.

- On 12 August 2019 in relation to enforcement case 19/00476/ESHORT, the planning authority confirmed that based on seven bookings between 12 February 2019 and 01 August 2019 that there was no material change in the operation of the house and that no breach of planning control had occurred.
- During the fiscal year 2020/2021 the property was exclusively used as a single-family residence.
- For the fiscal year 2021/2022 the property was occupied for short stay commercial visitor accommodation for 97 nights (26.6%) and as a single-family residence for 85 nights (23.3%). It was unoccupied for the remainder of the year.
- Enforcement case 21/00596/ESHORT was opened on 30 November 2021. This determined that a material change of use had occurred as the planning authority found the property to be more intensively occupied for short-term letting than when previously investigated.
- Through these periods the minimum length of booking was three nights with the appellants records showing since 2019 the average individual booking was for 4.6 nights.

8. From this overview it is understandable that the appellants consider that letting the property on the same basis as was previously considered acceptable by the planning authority does not represent a breach of planning control. While I note this position, the past decisions by the planning authority do not constitute a certificate of lawfulness for the activity which occurred at that time or since August 2019. It is within the planning authority's power to make a revised assessment based on the level of activity they have identified since 2019.

9. The planning authority relies on the intensification of the use of the property for short stay commercial visitor accommodation as the basis for a material change of use having taken place. However, I find that the planning authority's submitted evidence has limited value in supporting this position. The extracts from the Airbnb and VRBO websites only indicate that the property has been used for short stay commercial visitor accommodation. They do not establish the level of bookings which have taken place or that these levels have indeed intensified in the intervening period since August 2019. On this basis, I do not find evidence that an intensification of the use of the property for short stay commercial visitor accommodation has ensued. Therefore, I do not find the intensification of use provides a basis that a material change of use has occurred in this case.

10. From my site visit I established that this residential property is a terraced house, as opposed to a flatted property, and as such would normally fall within Class 9 of the Town and Country Planning (Use Classes) (Scotland) Order 1997. Class 9 does not differentiate between people living together as a family in their sole main residence and a family living together in a short term let. In simple terms letting a dwellinghouse, and living in it as a family, for any length of time would normally fit within the description of a Class 9 use.

11. The property benefits from a separate front entrance door with no communal internal space linked with neighbouring properties and overall, I find the property to be self-contained. The appellants let the whole property at one time, and it is marketed as accommodating up to eight guests. There is no indication that it has been advertised for or occupied at any point by more than eight guests or as a party or event venue. The current internal layout of the property with three double bedrooms, a single bedroom and single sofa bed would lead me to conclude that eight guests occupying the property as a family is within the normal designed occupancy of the house.

12. The planning authority highlights that the shared courtyard could result in direct interaction between guests at Number 18 and surrounding permanent residents resulting in a detriment to amenity and safety. The courtyard runs parallel to the street and while the majority of this space is set behind a wall there is no security gate in place. This allows unrestricted access to the courtyard for residents and visitors and its use by guests visiting Number 18 would not therefore reduce the current level of security offered to the residents sharing the courtyard.

13. Furthermore Number 18 is located directly across from the vehicular access and open to the road. This layout limits the requirement for guests to pass by the neighbouring properties within the terrace when leaving or returning on foot or in vehicles. I recognise that the other residents are required to pass Number 18 to reach their properties but based on the courtyard layout, lack of secure access and its proximity to the public road I do not consider this to create any significant amenity or safety concerns. In my view families or friends holidaying together tend to leave and return as a group, either on foot or by vehicle, thereby limiting the periods guests spend within the courtyard and further minimising any disruption caused.

14. Similar to the appeal property, with the exception of Number 8 Spring Gardens, the remaining properties within the terraced block do not appear to have habitable rooms on the ground floor overlooking the courtyard. This layout would reduce the impact of any activity in the area immediately in front of the appeal property. Number 8 has a single bedroom window facing onto the courtyard. However, it is located approximately 20 metres from the appeal property which I consider provides a sufficient distance to reduce possible disturbance from guests arriving or departing at Number 18.

15. It is indicated by the appellants that the vast majority of guests arrive by foot, public transport, or taxi. This may indeed be the case, although guests may also arrive by private vehicle, which could result in two or more vehicles arriving at the property. Visits by the cleaning company are also generally by private vehicle. Guests have access to the internal garage which can accommodate a single car and a further unmarked parking space is located to the front of the property within the courtyard. It is possible that guests may not appreciate the boundaries of the unmarked space, and this could lead to some tension with other residents if a mistake is made. However, I do not find this risk so great, that it would lead to a significant change in the nature of the occupancy of the dwellinghouse. I observed that there is free on street parking available on Spring Gardens and the surrounding streets to accommodate any additional vehicles generated by guests or the cleaning company.

16. This case is unusual in that since the enforcement notice was served, planning permission for change of use to short stay commercial visitor accommodation has been applied for and refused. Normally such an outcome would confirm that there is a material change of use involved and that the continuation of such a use would be a breach of planning control. However, within the auspices of the enforcement notice appeal process I am still required to assess whether the property's use for short stay commercial visitor accommodation, on the basis of fact and degree, constitutes a material change.

17. Notwithstanding the submission of the planning application the appellants maintain their stance that no change of use has occurred. Taking account of the appellants' grounds of appeal I am of the view that the submission of the planning application was made in an effort to overcome the enforcement notice, rather than accepting that a material change has taken place. Its submission and the subsequent outcome are therefore not a defining consideration in the determination of this appeal.

18. Overall, I find that the evidence presented by the planning authority on the pattern and intensity of bookings since 2019 fails to demonstrate an intensification of use has occurred. Even when balanced against the refusal of the planning application my assessment of the level of bookings, associated cleaning activity, self-contained nature of the property and parking arrangements leads me to conclude that this level of activity would not be materially different to that of a normal dwellinghouse of this size. On this basis, the use of the property for short stay commercial visitor accommodation would not result in a material change to the existing residential character of the dwellinghouse. I therefore conclude that the use of the property for short stay commercial visitor accommodation would be incidental to the use of the property as a Class 9 dwellinghouse. The appeal on ground c), and therefore ground b), succeeds.

#### Ground d)

19. For ground d) to succeed it must be demonstrated that the enforcement notice was issued out with the statutory time limits that enforcement action could be taken. The appellants state that the planning authority is barred from taking further enforcement action due to the previous decision in 2019 and no supporting evidence of intensification of use being presented. The appellants do not expand further on this assertion and have not directed me to specific supporting legislation. As set out above the letters from the planning authority in 2019 are not certificates of lawfulness so I find no reason that the planning authority is barred from raising further enforcement action.

20. The property was first advertised for short stay commercial visitor accommodation in November 2015. On 28 March 2022, the enforcement notice was issued. Consequently, I find that the notice has been issued within 10 years of the date on which the alleged breach began and within the statutory limits contained in section 124(3) of the Town and Country Planning (Scotland) Act 1997. The appeal would have failed on ground d).

#### Ground e)

21. For ground e) to succeed it must be demonstrated that the enforcement notice has not been served on the relevant parties or within the prescribed timescale. In accordance with section 127(2)(b) of The Town and Country Planning (Scotland) Act 1997 the notice is to be served "on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice." The planning authority has confirmed that it is not its general practice to serve enforcement notices on the mortgage provider even where they may have a financial interest.

22. Section 127(3) of the same Act requires a notice to be served:

- (a) not more than 28 days after its date of issue, and
- (b) not less than 28 days before the date specified in it as the date on which it is to take effect.

23. The enforcement notice is dated 28 March 2022. The planning authority confirms that the enforcement notice addressed to the "Owner, Occupier and Lessee" was hand delivered to 18 Spring Gardens, Edinburgh, EH8 8HX on 29 March 2022. A further copy of the notice was sent to the appellants at their home address on the same day. The appellants have confirmed that they received the hand delivered notice when attending 18 Spring Gardens on 30 March 2022. The enforcement notice takes effect on 2 May 2022. I am therefore satisfied that it was delivered within the time limits set by the Act. The appeal would have failed on ground e).

### Ground f) and Ground g)

24. As I have quashed the enforcement notice I have not considered grounds f) and g).

### Other Matters

25. The planning authority refer me to two previous appeal decisions; ENA-230-2129 and ENA-230-2210 which are before me in full. These decisions relate to residential flats which do not fall under Class 9 and therefore differ from the appeal property. In any case I have judged this appeal on its own merits, and I am not bound to reach the same conclusion as those reporters did in each of those separate decisions.

26. On 5 September 2022, The City of Edinburgh Council designated the whole of the council area as a Short-term Let Control Area for the purposes of Section 26B of the Town and Country Planning (Scotland) Act 1997. My understanding is that the designation, which renders any short-term letting use a material change of use, does not apply retrospectively to any such activity already carried out before 5 September. The planning authority does not rely on the designation in determining that planning permission is required and consequently I do not find it impacts on my assessment of whether a breach has occurred.

### Representations

27. I have received a representation from a local resident setting out their concerns regarding the impact of the use of the appeal property. These concerns relate to the pattern of use and resulting increase in noise, traffic, access issues and disturbances impacting on the amenity of the area. Specific incidents are also detailed and extracts from CCTV footage submitted in support of the claims. The appellants refute these assertions as unfounded and provide a number of representations from neighbouring residents within the terrace in support of the use of the property for short stay commercial visitor accommodation.

28. The purpose of this appeal decision is to establish whether the use of the property for short stay commercial visitor accommodation constitutes a material change of use. I have therefore only taken account of the representations insofar as they confirm the use of the property for short stay commercial visitor accommodation occurs, which is not disputed.

### **Conclusion**

29. I find that the property has been used for short stay commercial visitor accommodation but that this use does not represent a material change of use. For the reasons I have given above I find that the appeal succeeds on ground b) and ground c). I have taken all matters raised in this case into account but there are none which would lead me to alter my conclusions.

*Euan McLaughlin*

Reporter