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Decision date: 14 October 2022

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

Section 42 Application for Variation of Condition 1 of Planning Permission ref:
21/04098/FUL to permit Sui Generis use of premises as Student Accommodation and
Short-stay Accommodation for let to non-students at any time of year for a temporary
period of 5 years.

At 1F1-1F12, 2F1-2F22, 3F1-3F17 & 4F18-4F34 555 Gorgie Road Edinburgh EH11
3LE

Application No: 22/03465/FUL

DECISION NOTICE

With reference to your application for Planning Permission registered on 5 July 2022, this has been decided by **Local Fast Track 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:-

Reason for Refusal:-

1. The proposal is contrary to LDP policy Hou 7 (Inappropriate Uses in Residential Areas) as it will have a materially detrimental effect on the living conditions and amenity of student residents.

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

Drawings 01-05, 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 is contrary to the Local Development Plan.

The use of the property as a short stay let will have a materially detrimental effect on the living conditions and amenity of student residents.

In this regard, it does not comply with a Scottish Planning Policy Principle as it will fail to protect the amenity of existing development.

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 Lewis McWilliam directly at lewis.mcwilliam@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

1F1-1F12, 2F1-2F22, 3F1-3F17 & 4F18-4F34, 555 Gorgie Road, Edinburgh

Proposal: Section 42 Application for Variation of Condition 1 of Planning Permission ref: 21/04098/FUL to permit Sui Generis use of premises as Student Accommodation and Short-stay Accommodation for let to non-students at any time of year for a temporary period of 5 years.

Item – Local Fast Track Decision

Application Number – 22/03465/FUL

Ward – B07 - Sighthill/Gorgie

Recommendation

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

Summary

The proposal is contrary to the Local Development Plan.

The use of the property as a short stay let will have a materially detrimental effect on the living conditions and amenity of student residents.

In this regard, it does not comply with a Scottish Planning Policy Principle as it will fail to protect the amenity of existing development.

There are no material considerations that outweigh this conclusion.

SECTION A – Application Background

Site Description

The application property is ELS house, a five storey plus basement former office and showroom building on the south side of Gorgie Road, on the west side of the Water of Leith. The application is for the upper floors of ELS House. The ground and basement floors (a former car showroom) are in separate ownership.

The upper floors have been converted for use as Purpose Built Student Accommodation (PBSA).

The surrounding area is a mix of uses with sheltered housing to the west, an industrial estate to the south west and offices to the north. Residential uses predominate to the north and west.

Description Of The Proposal

Section 42 Application for Variation of Condition 1 of Planning Permission ref: 21/04098/FUL to permit Sui Generis use of premises as Student Accommodation and Short-stay Accommodation for let to non-students at any time of year for a temporary period of 5 years.

Supporting Information

-Planning Statement

Relevant Site History

21/04098/FUL
1F1-1F12, 2F1-2F22, 3F1-3F17 & 4F18-4F34
555 Gorgie Road
Edinburgh
EH11 3LE

Temporary change of use for period of 2 years to permit sui generis use of premises as student accommodation and short-stay accommodation for let to non-students at any time of year.

Granted
1 November 2021

Other Relevant Site History

Other history

27 September 2013 - planning permission granted for change of use of third and fourth floors to student accommodation (application number 13/01256/FUL)

9 November 2016 - planning permission granted for change of use of third and fourth floors to student accommodation (application number 16/04088/FUL)

25 November 2016 - planning permission granted for change of use of first floor to student accommodation (application number 16/04087/FUL)

Adjacent site

4 March 2021 - application for planning permission for erection of mixed-use development comprising residential flats, purpose-built student accommodation, associated car-parking, cycle parking, landscaping and infrastructure; change of use existing car show room to class 1 and class 2 uses (as amended) (application reference 20/00619/FUL).

Consultation Engagement

No consultations.

Publicity and Public Engagement

Date of Neighbour Notification: 15 July 2022

Date of Advertisement: Not Applicable

Date of Site Notice: Not Applicable

Number of Contributors: 0

Section B - Assessment

Determining Issues

Section 42 of the Town and Country Planning (Scotland) Act 1997 (the Act) relates to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.

On such an application the planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and'

(a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly;

(b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.

If an application under Section 42 of the Act is granted it creates a new planning permission with a new default time period for implementation unless otherwise determined. Accordingly, the proposals also require to be determined under Sections 25 and 37 of the Act.

Therefore, consideration shall be given to the proposed change to the condition and any other conditions attached, in particular whether:

- i) the proposed change to the condition would result in a development that is in accordance with the plan; or
- ii) an alternative condition or conditions would result in a development that is in accordance with the plan; and
- iii) there are any material considerations that outweigh the conclusions in respect of i) and ii) above

Assessment

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

a) 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 policy Hou 7

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

a) Proposed Use

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

The main policy that is applicable to the assessment of short-stay let accommodation 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 states that an assessment of a change of use of dwellings to short stay lets will have regard to:

- The character of the new use and of the wider area;
- The size of the property;
- The pattern of activity associated with the use including numbers of occupants, the period of use, issues of noise, disturbance and parking demand; and
- The nature and character of any services provided.

The proposal seeks to vary condition 1 of planning permission 21/04098/FUL to allow apartments in the building the option to be rented as short term lets (STL) in addition to their lawful use as student accommodation for five years. This previous permission granted a temporary consent for these purposes for two years.

The submitted information refers to the intention of this application being to enable a contract between the applicant and City of Edinburgh Council to provide temporary accommodation for households assessed as being homeless in Edinburgh.

It is stated that for this purpose, stays in accommodation of this type are typically for 5 months though some can be significantly higher or lower than this. In addition, that the short stay provision proposed would not be used as a holiday let.

The intentions of the scheme are recognised. However, the specific management and operation of the STL use cannot be controlled under the scope of this planning application and it is not enforceable through planning legislation. Granting planning permission would allow potential for use of any rooms to be rented as a short term let for varying length of time and purpose.

Students may typically have differing patterns of activity to that of more permanent residents. Furthermore, it is acknowledged the PBSA is currently located adjacent to a busy arterial route where a degree of background ambient noise may be expected internally.

This notwithstanding, there would be a reasonable expectation for an appropriate living environment to be achieved in students' place of residence to adequately meet their needs (studying, sleeping etc). As students typically stay in accommodation for much of

the year, it should be considered whether a more mixed use involving short stay accommodation could impact on their amenity.

The apartments in the building are in near proximity to each other and many share communal facilities such as a lounge, kitchen and dining space. This close relationship between rooms will result in increased likelihood of direct interaction between the two uses.

The use of rooms for STL accommodation (where the purpose and length of stay is not controllable through planning legislation) would give rise to an increase potential for frequency of movement to these floors at unsociable hours.

Transient visitors may have less regard for the residential amenity of neighbours in the building than students given the more permanent nature of the PBSA use. For example, students would typically stay at a facility during term time over the course of a year as opposed to the high turnover over visitors that can occur with STLs.

This would give the potential for significantly different levels of ambient background noise within the building through increased comings and goings than students might reasonably expect.

In regard to wider area, the site is beside a residential flatted development to the west and the area beyond this is mainly residential in character.

However, the building faces a busy arterial road and access to the apartments will be unchanged with no direct interaction with surrounding local residents. In consideration of this, it is not anticipated that there would be a material impact on the amenity of residents out with the building from the mixed use to a greater degree than the existing lawful student use.

In regard to transport, there is near access to bus stops on Gorgie Road and there is access to communal car parking near the site.

It is acknowledged the previous consent on-site granted temporary use of the apartments for short term let and / or students throughout the year.

It should also be noted that this submission was in response to conditions in the PBSA market caused by coronavirus where a greater degree of flexibility was afforded under planning due to these circumstances.

There is a differing context now and this previous permission should not set precedence for the acceptability of this current Section 42 application.

In light of the above, the proposal will have a materially detrimental effect on the living conditions and amenity of student residents. It does not comply with LDP policy Hou 7.

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 outweigh this conclusion.

b) 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.

Conclusion in relation to identified material considerations

The proposal does not raise any other material considerations.

Overall conclusion

The proposal is contrary to the Local Development Plan.

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.

In this regard, it does not comply with a Scottish Planning Policy Principle as it will fail to protect the amenity of existing development.

There are no material considerations that outweigh this conclusion.

Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following;

Reason for Refusal

1. The proposal is contrary to LDP policy Hou 7 (Inappropriate Uses in Residential Areas) as it will have a materially detrimental effect on the living conditions and amenity of student residents.

Background Reading/External References

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

Further Information - [Local Development Plan](#)

Date Registered: 5 July 2022

Drawing Numbers/Scheme

01-05

Scheme 1

David Givan
Chief Planning Officer
PLACE
The City of Edinburgh Council

Contact: Lewis McWilliam, Planning Officer
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Appendix 1

Consultations

No consultations undertaken.