

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 100616774-001

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:	Ferguson Planning Ltd		
Ref. Number:		You must enter a Building Name or Number, or both: *	
First Name: *	Sam	Building Name:	37 ONE
Last Name: *	Edwards	Building Number:	37
Telephone Number: *	07854009657	Address 1 (Street): *	George Street
Extension Number:		Address 2:	
Mobile Number:		Town/City: *	Edinburgh
Fax Number:		Country: *	Midlothian
		Postcode: *	EH2 2HN
Email Address: *	sam@fergusonplanning.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="Other"/>	You must enter a Building Name or Number, or both: *	
Other Title:	<input type="text" value="Mr and Mrs"/>	Building Name:	<input type="text"/>
First Name: *	<input type="text" value="Gail and Simon"/>	Building Number:	<input type="text" value="14"/>
Last Name: *	<input type="text" value="Downes"/>	Address 1 (Street): *	<input type="text" value="Brandywell Road"/>
Company/Organisation	<input type="text"/>	Address 2:	<input type="text" value="Abernethy"/>
Telephone Number: *	<input type="text"/>	Town/City: *	<input type="text" value="Perth"/>
Extension Number:	<input type="text"/>	Country: *	<input type="text" value="Scotland"/>
Mobile Number:	<input type="text"/>	Postcode: *	<input type="text" value="PH2 9GY"/>
Fax Number:	<input type="text"/>		
Email Address: *	<input type="text" value="c/o sam@fergusonplanning.co.uk"/>		

## 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="1A GLENOGLE ROAD"/>
Address 2:	<input type="text" value="STOCKBRIDGE"/>
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="EH3 5JQ"/>

Please identify/describe the location of the site or sites

Northing	<input type="text" value="674886"/>	Easting	<input type="text" value="324521"/>
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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 (retrospective) from residential to short term let use (sui generis)

## 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.

Please refer to the supporting statement enclosed.

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)

New Information: Brodies Legal Opinion for ASSC; ASSC FOI Request. There was limited opportunity to discuss the determination of the application with the officer. All the information is already freely available in the public domain, but it has been presented to respond to the matters raised by the officer in the report of handling, which accompanies the refusal notice.

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)

For the Appeal: Appeal Statement and Appendix 1 - Brodies Legal Opinion for ASSC; Appendix 2 - ASSC FOI Request. From Previous Application: CEC Decision Notice and Officer's Report of Handling; Location Plan; Planning Statement; Management Statement, Floor Plan and Site Photos.

## Application Details

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

22/03432/FUL

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

04/07/2022

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

07/11/2022

## 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

Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may select more than one option if you wish the review to be a combination of procedures.

Please select a further procedure \*

By means of inspection of the land to which the review relates

Please explain in detail in your own words why this further procedure is required and the matters set out in your statement of appeal it will deal with? (Max 500 characters)

A site visit is encouraged so that members of the LRB can understand the character of the property and site location, as we do not believe that one was not undertaken by the case officer.

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: Mrs Sam Edwards

Declaration Date: 06/02/2023



## APPEAL STATEMENT

# CHANGE OF USE FROM RESIDENTIAL TO SHORT TERM LET PROPERTY (IN RETROSPECT)

1A GLENOGLE ROAD, EDINBURGH, EH3  
5JQ

FEBRUARY 2023

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## EXECUTIVE SUMMARY

- The appellant is seeking a review of the officer's decision to refuse application 22/03432/FUL by delegated decision on 7 November 2022 which sought consent for "Change of use from residential to short-term let property (in retrospect)" at 1A Glenogle Road, Edinburgh, EH3 5JQ.
- The appellant disagrees with the conclusions reached by officers in relation to their policy assessment of the proposals. It is considered that by not undertaking a site visit, the officer has not given sufficient weight to the specific size, orientation and local characteristics of the property location. Insufficient weight has also been applied to significant material considerations, in support of this application.
- In contrast to the officer's report, we consider the proposals are compliant with Policy Hou 7 and will have no adverse impact on neighbouring amenity.
- The property has its own private main door access and there will be no direct interaction of guests with other residential neighbours.
- The proposal will not result in the loss of residential use, as the property has been in use as a STL for over 6 years. Prior to that, it has spent most of its historic lifetime in use as a licensed grocery shop.
- There have never been complaints relating to the use of the property as a STL. Immediate neighbouring properties have not objected to the retrospective change of use.
- The unique location of the property relative to other colony flats provides significant mitigation against all the concerns raised by way of refusal. Permitting this application will therefore set no precedent for STL applications in the colonies, given it is so unlike any of the other flats nearby.
- Maximum occupancy does not exceed 2 people due to the appellants booking terms, insurance and can also be enforced through the licensing regime.
- There are numerous decisions where other CEC Officers have stated that where STL flats are this small, the potential impact is not materially different from a residential use and have granted consent (i.e., the opposite conclusion).
- The property serves an important gap in the tourist and local accommodation market, which cannot be serviced by hotels or guests houses and provides a significant local economic benefit.

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## 1. INTRODUCTION

- 1.1 This statement is submitted on behalf of Mr and Mrs Downes (the appellants) and sets out the grounds of appeal against the decision of the City of Edinburgh Council (CEC) to refuse planning application LPA ref: 22/03432/FUL by delegated decision on 7 November 2022.
- 1.2 The detailed planning application sought consent for “*Change of use from residential to short-term let property (in retrospect)*” at 1A Glenogle Road, Edinburgh, EH3 5JQ.
- 1.3 CEC’s only reason for refusal of the application was:
  1. The proposal is contrary to Local Development Plan Policy Hou 7 in respect of Inappropriate Uses in Residential Areas, as the property as a short stay let will have a materially detrimental effect on the living conditions and amenity of nearby residents.
- 1.4 Other than the reasons for refusal above, the other consultees that responded, raised no objections.
- 1.5 There were 6 letters of support in favour of the application, and 2 objections from the public. One further representation, listed as an objection but wasn’t, purely made a statement about the ownership of the property. We have addressed these 2 objections in Section 3.
- 1.6 On all other grounds the application was considered acceptable as stated by the officer in their report:
  - The site is accessible by public transport.
  - There are no external or internal alterations proposed. As such, the proposal will not have an adverse impact on or cause harm to the listed building and is compliant with Policy Env 3.
  - The change of use from a one-bedroom domestic studio flat to a short-term holiday let (STL) will not have any material impact on the character of the conservation area and is compliant with Policy Env 6.
  - The location of the property is convenient for local services and will generate footfall and income for local businesses.
- 1.7 The remaining sections in this appeal statement comprise:
  - A description of the appeal site and the proposals (Section 2).



- The appellant’s grounds for appeal (Section 3)
- Material considerations in favour of the appeal proposals (Section 4)
- Summary of the appellant’s case (Section 5)

1.8 This appeal statement should be read in the context of all supporting evidence documents submitted as appendices to this appeal statement, and all those from the previous planning application which are listed below:

Appendix	Appeal Document Description
1	Brodies Legal Opinion provided to the ASSC 2018
2	ASSC FOI Request - Details of ASB complaints relating to STLs
Relevant Documents from Original Application	
Author	Author
CEC Decision Notice and Officers Report	CEC
Location Plan	Appellant
Planning Statement	Ferguson Planning
Management Statement	Appellant
Floor Plan	Appellant
Site Photos	Ferguson Planning

1.9 The appellant was very disappointed that the planning officer did not undertake a site visit to assess the location for themselves in person. This is considered particularly remiss given the focus of the reason for refusal, and we would strongly encourage members to undertake a site visit as part of their own assessment of the appeal. The appellant, Mr Downes, recently met with their Ward Councillor Max Mitchell at the property to discuss the application refusal. He also suggested a site visit by the Local Review Body would be of benefit to understand the property’s unique location and given that the planning officer had not done so.

1.10 This appeal is made to the Local Review Body on the basis it was a local application, which was determined by delegated powers. For the reasons outlined in this statement, we conclude that the development is in accordance with relevant development plan policy and supported by significant material considerations. On that basis, we respectfully request that the LRB allow this appeal.

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## 2. THE PROPOSAL

- 2.1 The proposal is retrospective to change the use of the ground floor property at 1A Glenogle Road from residential to short-term let use (sui generis), the location of which is shown in Figure 1 below.



Figure 1: Location of 1A Glenogle Road

- 2.2 The property at 1A Glenogle Road has been used to provide short term holiday accommodation, since June 2016 and is operated by Mr Downes who has a five-star host status with key booking platforms. Mr Downes is a senior health care professional and Mrs Downes is a Managing Director of an Edinburgh law firm. As such both appellants take their social responsibility and professional standards very seriously.
- 2.3 The property is accessed from a private main door directly from the street. The access is not shared with any other properties and guests do not have to pass any other residential properties to enter. There is no outdoor seating or garden area.
- 2.4 The property is a small studio flat (44sqm), and comprises one double bedroom, living area, fully fitted kitchen and shower room. Pictures of the internal layout are provided below in Figures 2-4.

# FERGUSON PLANNING



Figure 2: Open plan bedroom with fitted double bed, dining, living area.



Figure 3: Alternative view of bedroom area with door to bathroom

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Figure 4: Alternative view of open plan bedroom, dining, kitchen area

- 2.5 The property is situated, at the west end of the colonies, closest to Stockbridge High Street. It is important to make the distinction that this property is unique in style relative to the rest of the colonies buildings, facing directly onto Glenogle Road, rather than part of a terraced row on one of the side streets - a direct result of its historic retail use. The property was the former colony shop.
- 2.6 There is a property above, 33 Hugh Miller Place, but this is also owned by the applicant and has a separate access via steps on Hugh Miller Place. There is a property attached to the west, 1 Glenogle Place, again with a separate entrance but this is not owned by the applicant.
- 2.7 There are no residential properties on the opposite side of Glenogle Road as shown in Figures 5 and 6 below and Location Plan enclosed. There is therefore no interaction with other residential properties. Opposite the property, there is a pedestrian thoroughfare and open space, which joins Saxe Coburg Place, inviting existing activity on the street.

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Figure 5: View of property looking along Glenogle Road - no residential uses opposite.



Figure 6: View of property looking east on Glenogle Rd showing entrance sitting in isolation.

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## Neighbouring Uses

- 2.8 Whilst the area is largely residential to the north of Glenogle Road, the south is comprised of commercial uses including the Glenogle Swim Centre (public swimming baths), Edinburgh Academy secondary school and offices at Tanfield and Dundas House. The road outside the front of the property is a popular vehicle and pedestrian thoroughfare, with people visiting the swimming baths, residents parking, office staff, and with tourists utilising the connection from Stockbridge to the Water of Leith walkway, at Glenogle Place.
- 2.9 The property is also only a short distance to the amenities of the designated town centre of Stockbridge (250m to the south - 3-minute walk), bars and restaurants on Henderson Row (320m - 5 minute walk) and local shops and cafes at Canonmills (600m - 7 minute walk). Stockbridge provides a wide range of uses, including hotels, public houses, shops, cafes, and restaurants, alongside residential on the upper floors. It is a bustling thriving high street, and a popular location with tourists who visit for its interesting shops and restaurants, regular weekend market, or to explore Inverleith Park and the Water of Leith path. Stockbridge is regularly identified as a must-visit to tourists, who are looking to “live like a local” whilst they are visiting the city.

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### 3. GROUNDS OF APPEAL

#### CEC's Reason for Refusal

- 3.1 *"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".*

#### Appellant's Response

- 3.2 The supporting text to Policy Hou 7 in the LDP states that the "intention of the policy is firstly, to preclude the introduction 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 [our underlined emphasis].
- 3.3 The property lies in an area of the city which could be defined as 'predominantly residential', albeit on the very edge of a mixed-use / commercial area. The case is therefore, whether the introduction of the non-residential use is incompatible.
- 3.4 The purpose of this appeal statement is to demonstrate that the proposal is compatible, as it does not represent a significant or unacceptable risk to residential amenity. This is a retrospective application and therefore the absence of any impact upon living conditions, can be evidenced by the fact that there have been no complaints to CEC relating to the use of the property for STL use and associated noise since the property started operating in June 2016. The appellants have a good relationship with their neighbours too, who have been supportive of the use and how it is managed.
- 3.5 We believe this case should be treated as a unique exception by Members to any concerns they may have about the impact of STLs upon the residential nature of the colonies more generally, given the position of the property, and its unique set of characteristics which we go onto explain in more detail below. We therefore do not believe that support for this case, sets any precedent for other applications in the colonies and each would need to be determined on their merits.
- 3.6 We also respond to each of the comments that the officer raises in their report to justify their refusal of the application in line with Policy Hou 7. These are highlighted in bold text, and our response is below.



- 3.7 *The use of this property as a short term let would have the potential to introduce an increased frequency of movement to the flat, and to the area in front of the flat at unsociable hours.*
- 3.8 The officer does not support this statement with any factual evidence. Whereas the applicant has demonstrated that they have operated the STL for over 6 years, without complaint. There has been no weight attributed to this existing evidence within the officer's assessment.
- 3.9 Further evidence to refute the officer's assumption is available via Brodies, who produced a Legal Opinion for the ASSC in 2018 (Appendix 1) which considers whether short stay occupation, necessarily has different planning considerations/impacts. Whilst they noted that cases will need to be assessed on their individual merits, they did note that short stay occupation does not necessarily equate to greater movements of people, or different times of movement. Their view, which we would agree with is that *"more permanent residents can have vastly different movements of people or different times of movement. More permanent residents can have vastly different movements depending on their employment, leisure interests, family circumstances, health etc. For example, an off shore worker might occupy his/her house for a few weeks and then work off-shore for a few weeks; a family with teenage children might enter and leave the house many times during the day and night; a single person with care needs might be visited by carers several times a day. Users of a self-catering property and therefore unlikely to exhibit markedly different characteristics to more permanent residents. Disruptive or anti-social behaviour is just as likely in residential use as self-catering use"*.
- 3.10 Given the multitude of amenities and excellent transport connections available within relatively proximity of the property, it's highly likely that an owner or tenant might also have a more active movement pattern than those living in quieter, more suburban residential parts of the city.
- 3.11 The size of the property has also not been reflected in the officer's assessment as a mitigating factor in reducing disturbance. Given how small the property is, it is highly unlikely that neighbours will notice 1-2 guests max arriving and leaving the property, with the number of other residential properties in the area, in addition to general footfall on the street. Particularly so, as the guests do not have to directly pass any other residential doors or windows to access the property. Due to its position, neither is the entrance to the property overlooked by any residential neighbours. The entrance is also off a main road, where ambient background noise from pedestrians and vehicles is already present. We struggle to see how

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movement in and out of this property would be detectable to adversely affect neighbouring amenity.

- 3.12 The officer's comment re unsociable hours, also reflects a personal assumption and is not reflective of the facts. The appellants have a booking condition which only allows for guest entry or departure between the hours of 7am and 9pm. This is a further safeguard, to mitigate any potential impact and the appellant would be happy to accept a planning condition to this effect.
- 3.13 The officer has produced no evidence to support their claim to the contrary. We therefore do not consider that this provides any substantive reason for refusal in the face of the case provided by the appellant above.
- 3.14 *Although the property is not located within a Colonies Street, it is on the very end of one with a separate flatted unit above. The property is near residential flats as is the nature of all colony developments.***
- 3.15 The officer contradicts themselves, both stating it is not within a colonies street and yet that it has a similar nature to the colony development by being near other flats. We argue that the unique nature of this property means that it is unlike any of the typical colony development in the area, with good reason.
- 3.16 The buildings at Bridge Place and 1A Glenogle were in fact originally built as shops to provide goods and services for the residents, as can be seen in Figure 8 below. It does not sit on any of the typical colony terrace lanes. It faces directly onto Glenogle Road.
- 3.17 The 'Edinburgh Collected Memories' website indicates that the shop traded as a licensed grocers for approximately 28 years under 'John R Linton'. Prior to that it had traded as the Elmslie Grocery Store. The appellants title deeds for the property confirm that a shop was still trading in February 1993.
- 3.18 In February 2001, planning permission was granted to change the use of the shop to a house (Reference 01/00580/FUL and 01/00580/LBC). The appellants bought the property in 2006 and have rented it since 2016. The majority of the building's life, has therefore been spent in commercial use.
- 3.19 It was purposely designed therefore to sit as a standalone building, facing away from the other residential buildings. The officer's statement does not provide any appreciation of the unique setting of the property, and we consider this to be remiss, as it is a significant factor in why we consider this appeal should be allowed, given it provides substantial mitigation against impacts on neighbouring amenity.

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Figure 7: Historic photo of 1A Glenogle Road, Stockbridge - Built as the local shop which traded from 8.30am to 10.00pm (Source: <https://www.edinburghcollected.org/memories/8742>)

- 3.20 *The property fronts onto Glenogle Road which is not an overly busy thoroughfare. Vehicular access from Glenogle Road to Stockbridge was closed off several years ago. Consequently, it is only used for local access and ambient noise levels are relatively low, particularly in the evening.*
- 3.21 If the officer had visited the site, they would have noted that Glenogle Road is in fact a popular and well-used vehicle and pedestrian thoroughfare.
- 3.22 In addition to residents' traffic, the proximity to the Glenogle Swimming Pool (less than 20m away) means there is a regular flow of people past the property, visiting the pool and associated facilities, which is open from 7am to 9pm during the week and 8am to 3pm on weekends.
- 3.23 The entrance to offices and parking areas at Tanfield and Dundas House offices (500m away) also means that there is a regular pedestrian and vehicle flow during the working day, with people arriving via Glenogle Road from Stockbridge on the bus or driving in from the north. It is also regularly used as short cut for vehicles between Canonmills and Inverleith, avoiding traffic on Inverleith Row.
- 3.24 Neither does the officer acknowledge that the colonies are a popular tourist destination in themselves, as well as being a connection from Stockbridge to the

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Water of Leith walkway, at Glenogle Place. The Stockbridge Colonies feature on a large number of walking tours including [Stockbridge Walking Tour \(Self-Guided\), Edinburgh, Scotland \(gpsmycity.com\)](#), [Edinburgh-Scotland Tour - Food Lover's Half Day Walking Tour of Stockbridge \(toursbylocals.com\)](#), [2023 Private 3-hour Walking Tour - Dean Village and Stockbridge, Edinburgh \(tripadvisor.com\)](#), [Around Town: Stockbridge \(edinburghexpert.com\)](#), [How to experience Edinburgh like a local. A guide to Stockbridge \(scotlanditineraryplanning.com\)](#), [New Town & Hidden Secrets Private Tour - Edinburgh Unwrapped, Hidden Treasures Tour - Walking Tours | Edinburgh | Scotland \(localeystours.co.uk\)](#)

- 3.25 The Royal Botanic Gardens is one of Edinburgh's busiest visitor attractions with 893,263 visitors (Source: Moffat centre visitor attraction monitor, Glasgow Caledonian University, 2019) and is a 5 minute walk away from the property. Glenogle Road is used to by tourists to access the Royal Botanic Gardens either by this road or via the footbridge over the Water of Leith accessed by Glenogle Place which is a Stockbridge Colonies resident road. Further The Grange Club is the regular home of the Scotland national cricket team and is adjacent to the Edinburgh Academy Sports Club, home of Edinburgh Academical, Scottish premier rugby club. Both sporting venues attract a large following of supporters and are a 3-minute walk from the property with many supporter cars parking on Glenogle Road on fixture dates.
- 3.26 The appellant has excellent relationships with the Royal Botanic Gardens and features on their preferred accommodation supplier list for weddings, events and gardening courses and the property is also used by Fettes school for teaching staff accommodation and parent visits.
- 3.27 The closure of the vehicular access to Stockbridge is irrelevant, as it is now so historic. There is still a regular flow of pedestrian and vehicular traffic, particularly during the day. Residents will therefore already be used to a degree of transient and ambient background activity. It would be very difficult for anyone to detect 1-2 people entering or existing this property, in a manner that was any different to that of a full-time resident, against this context.
- 3.28 We accept that if the property were located down one of the colony terraces with no through road, perhaps such movement could be considered more conspicuous and the officer's assessment would be fairer, but in this case their account does not accurately represent the true picture or acknowledge the properties unique setting. The fact that the property faces onto the main road is a significant benefit in this respect, which has not been accounted for.

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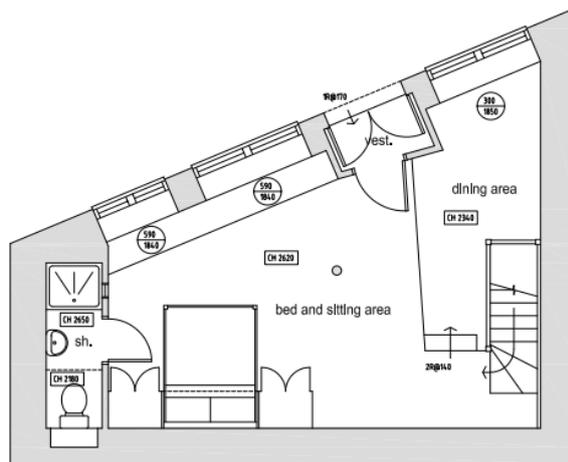
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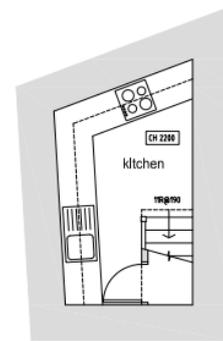
3.29 *The proposed one-bedroom short stay use would enable two or more visitors to arrive and stay at the premises for a short period of time on a regular basis throughout the year in a manner dissimilar to that of permanent residents.*

3.30 We would strongly contest the officer's assumption that "two or more guests" could stay in the property. This is factually incorrect.

3.31 The floor plan below, clearly shows that property is a small studio flat. It has an open plan, bedroom, living and dining area at ground floor, with a small kitchen in the basement. The space is modest and could not practically or physically accommodate any more than 2 people.



ground floor plan 1:50 @A3



basement plan 1:50 @A3



3.32 Given this layout, the appellant finds that typically, most guests are single or couples. In the period 1 January 2022 to present, there have been 101 guest stays, of which 21% were sole occupancy and 79% were double. Maximum occupancy never exceeds 2 people. Further the appellant has a condition of booking which guests must accept prior to proceeding that the apartment's maximum occupancy is 2 guests.



- 3.33 This use would not be dissimilar to the property being let on a full-time basis to a single professional with a visiting partner or full-time couple, and therefore we disagree that the manner of occupation would be any different to that of permanent residents.
- 3.34 The case officer provides no further justification or evidence for this assertion in their statement, and we have justified above why it is incorrect.
- 3.35 Furthermore, the officer makes no reference to the new licensing scheme. This will require all short-term lets to comply with mandatory conditions, including maximum occupancy, and will ensure by being legally enforceable, that no more than 2 people can stay in the property at any time. A condition of the new licensing scheme is that hosts should have adequate home and public liability insurance. The appellant has always operated with these insurances in place, and they are also based upon a maximum occupancy of 2 guests.
- 3.36 *There is no guarantee that guests would not come and go frequently throughout the day and night and transient visitors may have less regard for neighbour's amenity than long standing residents. This would be significantly different from the ambient background noise that residents might reasonably expect.*
- 3.37 As above, we do not consider this to be a justified reason for refusal, and the Council has provided no evidence to support this claim.
- 3.38 As a property, renovated to a high standard, it provides quality accommodation, for guests who wish to stay in the city, with the amenities of a home, and live like residents in the city for extended periods of stay. Such guests will be more inclined to treat the property like their own home and therefore be respectful of the surrounding neighbours. The appellants also vet each guest booking to ensure that they will be appropriate for the flat, given it is in their interest to maintain high standards and good relationships with their neighbours, as so many bookings are received based on excellent reviews and referrals. Further on the booking platform the appellant uses, only guests with positive reviews are allowed to stay. The global booking platform will not allow guests who have no reviews or negative reviews to book this property. This safeguard is integral to the appellants highest regard for their social and neighbourhood responsibilities.
- 3.39 An FOI request was submitted by the ASSC to CEC to understand the reported incidences of anti-social behaviour attributed to holiday lets from 2018 to 2021, as well as making a comparison with ASB in other types of housing tenure. Those results, included in full at Appendix 2 are outlined in the ASSC response to CEC's

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draft STL guidance. They clearly show that complaints against holiday lets are low, when viewed in comparison to other types of housing tenure. We therefore do not believe the Council have supported their claim that transient visitors have less regard for neighbouring amenity, and that this is not a valid reason for refusal considering the evidence presented by the FOI request.

Please note the date range for 2021 is 1 Jan to 31 Aug 2021. 'Not recorded' are cases where no tenure has been recorded opposed to those where the Housing Officer has recorded 'Unknown'.

Tenure Type	2018	2019	2020	2021	Total
City of Edinburgh Council	294	200	206	118	818
Housing Association	16	7	15	10	48
Owner Occupied	70	53	54	38	215
Private Rent	126	58	76	37	297
Private Sector Leasing scheme	12	3	5	7	27
Unknown	783	1153	1117	827	3880
Not Recorded	155	152	97	67	471
<b>Total</b>	<b>1456</b>	<b>1626</b>	<b>1570</b>	<b>1104</b>	<b>5756</b>

	Short Term Let			
	2018	2019	2020	2021
Owner Occupied	1	1	1	
Private Rent	4	8	8	6
Unknown	1	50	19	1
<b>Total</b>	<b>6</b>	<b>59</b>	<b>28</b>	<b>7</b>

3.40 Similar findings were reported by the ASSC Report '[More than Just Housing](#)' which found that the frequency of antisocial behaviour complaints in each key destination local authority (including Edinburgh) is negligible compared to the number of available properties and occupancy levels. Therefore, the evidence concludes that anti-social behaviour is not a problem which is exacerbated by the presence of STR.

3.41 The area is busy throughout the day and residents will already be accustomed to an existing level of ambient background noise from pedestrian and vehicle movements. The officer has no evidence to support a claim that the proposal would increase disturbance to a level that is significantly different from the ambient background noise that residents might reasonably expect, and our evidence outlined above (lack of complaints in over 6 years, restricted hours of check-in and departure, maximum occupancy, size and location of flat) would confirm that this is not the case. This is not considered a justified reason for refusal.

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

3.43 The benefit of this proposal is that is it submitted in retrospect. The effect on the living conditions of neighbouring properties has therefore already been tested for over 6 years (since June 2016). During this time there have been no complaints from neighbours, either directly or indirectly to either the Police or City of Edinburgh Council. This has not been mentioned or considered by the planning officer which is remiss given this is clear evidence of how the STL operates.

3.44 No objections have been raised by any immediate neighbours and the Council notified 36 neighbouring residents as part of the planning application. The applicant also consulted with all immediate neighbours prior to submission by written letter, and no-one responded or raised any concerns about the proposals.

3.45 Only two objections listing material planning considerations were received during the consultation process – both of whom appear to live in neighbouring properties in Marchmont on the south side of the city, some 2 miles away. The legitimacy and weight that should be applied to their concerns, is therefore questionable.

Neighbour Address	Comment
14/3 Roseneath Place	No specific reference to issues which have occurred at the property. Concerns raised: Impact on residential community Guests bringing suitcases and standing outside to socialise. Safety of children playing in the streets with strangers at the end of the street
15 Roseneath Place, Edinburgh	No specific reference to issues which have occurred at the property. Concerns raised: High turnover of visitors will cause disturbance. Impact of transient visitors on long standing residents

3.46 Neither of the objectors raise any issue with specific incidents at the property. As we have already outlined above, we see no evidence presented by either the Council or objectors, which has indicated that the coming and going of guests to this



property will cause any greater disturbance to neighbouring residents than a full-time resident. Concerns raised about the loss of a residential community do not seem to reflect that this is one property of several hundred in the Stockbridge colonies. The residential community will not be diluted in any meaningful way by the granting of permission for continued STL use of the property. We would strongly contest any assertion that guests pose a threat to neighbouring children. Most other residents, passing pedestrians and visitors to the city will all be strangers to this objector and their children. This is a spurious claim without qualification and should have no bearing on Members decision. It is perhaps more revealing of the objectors clear anti-STL standpoint in general.

3.47 In addition to tourism, the accommodation is regularly used by Stockbridge Colonies residents as overflow accommodation to their properties for their extended families / visitors and the appellant regularly advertises a very popular, reduced Stockbridge resident rate for this property. Therefore, the proposal has a beneficial impact on the living conditions and amenity of nearby residents.

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#### 4. MATERIAL CONSIDERATIONS IN FAVOUR OF THE APPEAL PROPOSALS

##### Other STL Approvals

- 4.1 Whilst all proposals are considered on their merits, we believe the STL applications detailed below, demonstrate that a different (and more positive) approach has been taken to the assessment of the impact of the STL use on the local area by the planning officers at CEC. We have identified cases where an opposite conclusion has been drawn by officers in their recommendations for approval, when presented with largely identical circumstances to those at 1A Glenogle Road. We ask that members of the LRB apply a fair and consistent approach.

Address / Application Ref	Description of Property	Reason for Approval / Compliance with Hou 7
41 Barony Street (21/02615/FUL)  Approved August 2021	Ground floor main door two-bedroom flat in a four-storey tenement within the New Town.  CEC officer describes the area as being 'mainly residential street, albeit with other uses nearby'.	"The property is self-contained and there is no rear access. Any visitors/guests staying in the flat would, therefore, not meet residents in the communal areas of the tenement such as the stair or garden".  "The small size of the flat and the curtilage means there is limited potential for large groups to gather. This <u>reduces the likelihood of any anti-social behaviour</u> arising which may disrupt neighbours...Overall, although the turnover of occupants may be more frequent, <u>it is unlikely the pattern of use of the property will be so significantly different to</u>

# FERGUSON PLANNING



		<p><u>impact on residential amenity”.</u></p>
<p>46 Cumberland Street (22/01239/FUL)</p> <p>Approved June 2022</p>	<p>Main door two-bedroom ground floor flat in terraced row.</p> <p>CEC officer describes the area as “predominantly residential as is the surrounding area, although there are other uses such as shops in the wider area”.</p>	<p>“<u>The property has its own access and there is no access to semi-private or communal gardens. Any outside noise conflicts will be from the road outside to the front.</u> Cumberland Street is <u>mainly a residential street although there are two key thoroughfares, Dundas Street and St. Stephen Street/St. Vincent Street, at either end.</u> <u>There is, therefore, some low-level ambient background noise and activity”.</u></p> <p>“This is a two-bedroom property suitable for four persons and <u>the likelihood of disturbance to neighbours is low.</u> The property is currently being used as a short term let. Whilst any planning permission cannot be conditioned in terms of number of occupants, it is unlikely it will be used for large numbers of visitors which may impact on neighbours' amenity”.</p>

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<p>41 Cumberland Street (21/06621/FUL)</p> <p>Approved February 2022</p>	<p>A ground floor one-bedroom flat in a four storey and basement residential tenement.</p> <p>CEC Officer says, "Cumberland Street is primarily residential in character however other commercial uses are evident"</p>	<p>"In terms of internal noise, <u>the size of the unit is small, containing only one bedroom and potential impact is unlikely to be materially different from a residential use.</u> Given the nature of the locality and the size of the unit, the change of use will not impact on residential amenity".</p>
<p>46 Patriothall (21/06792/FUL)</p> <p>Approved March 2022</p>	<p>A ground and first floor two-bedroom property, with three storeys of residential flatted properties above.</p> <p>CEC officer says, "the immediate area around the site is residential in character"</p>	<p>"<u>The size of the unit is relatively small containing two bedrooms</u> and has its own private access. Its location near to Hamilton Place minimises the level of interaction with other residential properties. In light of the above, <u>whilst a level of noise is likely from guests arriving and leaving the property it is not anticipated that this gives rise to a significant disturbance to residents</u>"</p>
<p>78 Spring Gardens, Abbeyhill (22/00884/FUL)</p> <p>Approved July 2022</p>	<p>A main door ground floor two-bedroom flat at the western end of a three storey block.</p> <p>CEC officer says, "The street is predominantly residential, and the surrounding area is mainly residential.</p>	<p>"In this case the property has its own front entrance access and no direct access to garden/communal ground. Although the property is in a predominantly residential area, it is approximately</p>

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	<p>London Road is 300m away and is a key thoroughfare”</p>	<p>300 metres from a main thoroughfare and an area of mixed uses including commercial and retail uses. Consequently, there is already a degree of activity nearby” and <u>“This is a two-bedroom property suitable for four persons and the likelihood of disturbance to neighbours is low” and “There will be no adverse impact on residential amenity”</u></p>
<p>1B Fingal Place (PPA-230-2367)</p>	<p>A basement level one-bedroom flat with private outdoor amenity space.</p>	<p>“Usually in considering material change of use proposals, an assessment has to be made as to the likely impact of a proposal, against the baseline of the lawful use. <u>The appeal flat has one bedroom, one lounge, one bathroom, and is relatively modest in size. It would therefore be incapable of satisfactorily accommodating large groups of individuals and would be more suited to use by single occupants, couples or small families at the most. It is highly unlikely that for a property of this size, there would be a noticeable difference</u></p>

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		<p><u>in the average daily number of occupants' movements in and out of the property between the lawful use and the proposed use. These factors in my view significantly reduce the likelihood of disturbance arising from guests whether inside, or outside the flat".</u></p>
--	--	---

4.2 This list is by no means exhaustive, and other examples could have been provided. In all these decisions, it has been established that a property of one-two bedrooms size will not result in a pattern of use that will be significantly different to residential use of the property which thereby reduces the likelihood of disturbance. These examples show that the size of the property has been a significant factor in permitting the above applications in residential locations, under the same LDP Policy and guidance.

4.3 Given the very similar circumstances of the successful cases above, it is our view that it is unreasonable to refuse 1A Glenogle Road, as it contradicts the above decisions. The application should be supported as there will be no adverse impact on residential amenity, compliant with Policy Hou 7, and Members should uphold consistency of decision making across the city.

**Economic Benefits of the Short Term Let Sector**

4.4 Whilst the officer notes that economic benefits are a material consideration, we do not consider the officer then went onto given this any weight in their decision. We do not consider the Council recognise the real impact of the loss of well-managed STLs such as this one, in their decision making, and the effect on tourism trade going forward.

4.5 In June 2018, the Association of Scotland's Self-Caterers (ASSC) commissioned a report entitled 'Far More Than Just Houses: The Benefits of the Short-Term Rental (STR) Sector to Scotland'. It identifies that:

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- STR is a major component of Scotland's growing tourism offering, making a substantial contribution to the tourist economy.
- In 2016, there were 14.45 million tourism trips to Scotland.
- Estimates from Visit Scotland show that approximately 17% of all tourist visitors stay in self-catering accommodation and will play an important role in accommodating ever-increasing number of visitors to and within Scotland.
- In Edinburgh and Lothians, the proportion of all trips as self-catering trips is at 36%.

4.6 In May 2022 Airbnb commissioned a Scottish Local Authorities Economic Analysis report (BIGGAR Economics) which reported:

- By 2019, £676 million Gross Value Added (GVA) and 33,500 jobs were supported by Airbnb across Scotland
- Scotland is the 3rd most preferred overnight trip destination in the UK.
- The pandemic has had a severe impact on tourism – confidence is returning but it remains below pre-pandemic levels.
- Inbound tourism to the UK isn't expected to recover until 2026, with Scotland now more reliant on increasing its competitiveness as a domestic tourism destination.
- Airbnb contributes to the Scottish tourism sector by providing flexibility in visitor accommodation supply to facilitate peaks in demand and large events like the Edinburgh Festival
- The combined economic shocks of the pandemic, rising energy costs and the Russian invasion of Ukraine have led to a sharp increase in the cost of living which is forecast to continue into 2023/2024
- Stringent licensing and planning schemes could further reduce Airbnb's economic impact by between £32 million and £133 million which would cost between 1,740 and 7,190 jobs across Scotland.
- In Edinburgh a 10% fall in Nights and 3% fall in Guest Spending would lose £6.2 million GVA and 340 job losses. A 25% fall in Nights and a 4% fall in Guest Spending would lose £13.7 million GVA and 740 job losses. A 50% fall in Nights would lose £25.6 million in GVA and 1,390 job losses.

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4.7 In August 2022, the ASSC published a number of facts about Short-Term Letting in Edinburgh stating that:

- Self-catering generates £867m across Scotland.
- In Lothian self-catering is worth £71m to the local economy

4.8 Not only do self-catering properties offer incomes and livelihoods for their owners, but they create benefits to local suppliers, cafes, pubs, restaurants, gift shops, and tour operators both in the management of the STL, and by attracting a greater number of visitors to the local area. The impact of the loss of STLs in years to come should not be underestimated in the decisions which are taken now.

#### National Planning Framework 4

4.9 NPF4 is due to be adopted on 13 February 2023. We have therefore addressed Policy 30 (Part e) for completeness.

4.10 Policy 30 (Part e) says that *“Development proposals for the reuse of existing buildings for short term holiday letting will not be supported where the proposal will result in:*

- i. An unacceptable impact on local amenity of the character of the neighbourhood or area; or*
- ii. The loss of residential accommodation where such loss is not outweighed by demonstrable local economic benefits.*

4.11 We have demonstrated in earlier parts of this appeal statement why we do not consider there will be an unacceptable impact on local amenity. The proposals are therefore compliant with part e (i).

4.12 As noted previously, the property has been in commercial use for most of its lifetime. The property was converted from a commercial shop use to residential use. Whilst in use as a full-time residency before renting by the appellant. It has since been in STL use for over 6 years and there is therefore no present loss of residential accommodation.

4.13 Nevertheless, we consider there are demonstrable local economic benefits, and these have been highlighted already above, which outweigh any perceived loss. The proposals are therefore compliant with part e (ii) and Policy 30 in full.

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## 5. CONCLUSIONS

5.1 The submitted appeal, supported by this statement, seeks the Local Review Body's approval to "Change of use from residential to short-term let property (in retrospect)" at 1A Glenogle Road, Edinburgh.

5.2 For the reasons outlined in this statement and summarised below we believe the LRB should allow this appeal because:

- The property has its own private access off a main road, and main door, there will be no direct interaction of guests with other residential neighbours.
- The change of use will not currently result in the loss of residential use, as the property has been in use as a STL for over 6 years. Prior to that, it has spent most of its historic lifetime in use as a licensed grocery shop.
- This is a retrospective application and therefore evidence that there have been no complaints to CEC relating to the use of the property for short term lets and associated noise since the property started operating in June 2016. Neighbouring properties have made no objection to the proposed change of use.
- The unique location of the property relative to other colony flats has not been given any weight by the officer, which is remiss, as this provides significant mitigation against all the concerns raised by way of refusal. Permitting this application will therefore set no precedent for STL applications in the colonies, given it is so unlike any of the other flats nearby.
- Maximum occupancy would not exceed 2 people and can be enforced through the licensing regime.
- There are numerous other decisions where the officer and Reporters have clearly stated that where STL flats are this small, the potential impact is unlikely to be materially different from a residential use and have granted consent. We ask that Members apply the same consistency and fair approach to this decision.
- The property serves an important gap in the tourist and local accommodation market, which cannot be serviced by hotels or guests houses and provides a significant local economic benefit.

5.3 In contrast to the officer's report, we consider the proposals are compliant with Policy Hou 7 and will have no adverse impact on neighbouring amenity. There are

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also several material planning considerations that weigh in its favour. We respectfully request that this appeal is therefore allowed by the Local Review Body on that basis and that consistency is applied with other decisions that have been made recently by the local authority and DPEA.

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**Client Contact:** Fiona Campbell, Chief Executive, ASSC  
**Brodies Contact:** Neil Collar, Head of Planning Law  
**Subject:** Self-catering – requirement for planning permission  
**Date:** 2/03/2018

## 1 Introduction

- 1.1 You requested advice on the requirement for planning permission for self-catering.
- 1.2 This advice is general in nature. The individual circumstances of a specific self-catering unit might raise different issues requiring separate advice. For example, the permitted use of a new build property might depend on the terms of the planning permission; a conversion of an existing building will depend on the nature of the previous use, particularly if it was non-residential. If the same operator owns adjacent properties, there could be a debate whether the use is assessed in relation to all the properties together or separately.

## 2 Requirement for planning permission – material change of use

- 2.1 There is a statutory requirement for planning permission to be obtained for “development” (Town and Country Planning (Scotland) Act 1997, section 28).
- 2.2 There are 2 aspects to “development”: physical changes (eg. building works) and material changes of use (TCPSA section 26). This Opinion focuses on the use aspect, but it should be noted that any external works to a property might require planning permission.
- 2.3 There is no statutory definition of “material change of use”. Whether any change is material, and therefore requires planning permission, is a question of fact and degree for the planning authority to decide.

## 3 Planning status of self-catering use

- 3.1 The planning status of self-catering use is unclear, with conflicting appeal decisions.
- 3.2 The nub of the issue is whether there is any difference between residential use on the one hand and self-catering use on the other. As the courts have previously indicated that planning powers should only be used for planning purposes, only planning considerations should be taken into account. The commercial element in self-catering use should therefore be irrelevant. Indeed, that commercial element is broadly similar to a residential property being occupied by a tenant paying rent. The principal difference is the nature of the

occupation, with self-catering use generally involving a series of short stay occupiers.

- 3.3 The question is therefore whether short stay occupation necessarily has different planning considerations/ impacts. Short stay occupation involves people living in the property, just for shorter periods. However, that does not necessarily mean the nature/ impacts of the occupation are different. There are not necessarily greater movements of people, or different times of movement. More permanent residents can have vastly different movements depending on their employment, leisure interests, family circumstances, health, etc. For example, an off shore worker might occupy his/ her house for a few weeks and then work off-shore for a few weeks; a family with teenage children might enter and leave the house many times during the day and night; a single person with care needs might be visited by carers several times a day. Users of a self-catering property are therefore unlikely to exhibit markedly different characteristics to more permanent residents. Disruptive or anti-social behaviour is just as likely in residential use as self-catering use. Servicing of self-catering accommodation is also not a differentiator, as some residential occupiers use cleaners on a regular basis, especially if the occupier is in poor health. From this analysis, it is difficult to identify a planning reason why self-catering use is different in nature from other forms of residential use.
- 3.4 This is illustrated by the Blackfriars Road, Glasgow planning appeal (ENA-260-2066), in which the Reporter held that a change of use from residential to student accommodation was not a material change of use.
- 3.5 A different approach is to ask whether short stay occupation is residential use. It is possible that there may be non-planning caselaw which could be relevant - I have not investigated that at this stage. The point would be that a short stay occupier is not living in the property, but is only visiting for a short period. However, as discussed above, it's arguable that there is no planning difference, as the impacts are broadly similar. Even if there is a change of use, it is arguable the change is not material.
- 3.6 It is interesting to note that the Scottish Government acknowledged that it may be acceptable to use seasonal and holiday occupancy conditions for holiday chalet developments (Circular 4/1998: the use of conditions in planning permissions, para 111-113). The purpose of those conditions is to prevent permanent residential use. The clear implication is that the condition is required because the change of use would not otherwise require planning permission, ie. it would/ might not be a material change of use.

#### **4 Court decisions**

- 4.1 I am not aware of any Court of Session decisions which are directly relevant.
- 4.2 In the absence of Scottish court decisions, it is accepted practice to refer to English court decisions, as the relevant planning legislation is similar.
- 4.3 The English Court of Appeal held in *Moore v Secretary of State for Communities and Local Government* [2012] EWCA Civ 1202 that it was not correct to say either that using a dwelling for commercial holiday lettings would never amount to a material change of use or that it would always amount to a material change of use. Rather, in each case it would be a matter of fact and degree and would depend on the characteristics of the use as holiday accommodation.
- 4.4 The *Moore* case is helpful because it confirms that use for holiday lettings is not necessarily a material change of use. Unfortunately, it leaves scope for differences of opinion in individual cases.

- 4.5 The approach of the Court in *Moore* is consistent with the approach taken by the courts to all exercises of planning judgment, in which the courts will only interfere if the decision is perverse or irrational.
- 4.6 In *Moore*, the Court upheld the inspector's decision that there had been a material change of use (the inspector is the equivalent in England and Wales of the Reporter). However, the key issue for the inspector was the use of the property by non pre-formed groups of people, for example a yoga group of 15 people, which distinguished it from occupation by single households or larger family groups. Although size is not necessarily determinative, this decision shows that different factors might apply to larger properties.
- 4.7 It is also useful to note the circumstances of the previous court decisions mentioned in Moore:
- 4.7.1 *Blackpool Borough Council v Secretary of State for the Environment* (1980) 40 P & CR 104 – no material change of use where a house was used by the owner as a second home for holidays by himself and his family, by members of his office staff, and by “family groups” who paid rent. There were lettings at a rent for 10 out of 18 weeks in the four month holiday season; for the remainder of the year the premises were left empty.
- 4.7.2 *Gravesham BC v Secretary of State for the Environment* (1984) 47 P. & C.R. 142 - a holiday chalet for which permission for occupation was restricted to the months March to November was a dwelling-house.
- 4.7.3 *Moore v Secretary of State for the Environment, Transport and the Regions* (1999) 77 P. & C.R. 114 – the outbuildings of a large country house had been converted into ten single self-contained units of residential accommodation for the purpose of holiday lettings – the Court of Appeal held that the only conclusion available to the Secretary of State was that the units were in use as single dwelling houses, notwithstanding the fact they were let as holiday accommodation.
- 4.8 In *R. (on the application of RLT Built Environment Ltd) v Cornwall Council* [2016] EWHC 2817 (Admin) the English High Court upheld a planning policy requiring new housing to be restricted to occupancy as a principal residence, to address the problem of second or holiday homes. That suggests that self-catering use could give rise to planning considerations beyond amenity impacts. However, it would be difficult for housing shortages to be used as an issue in an enforcement action unless the local development plan contains specific policies acknowledging a housing shortage.

## 5 Planning appeal decisions

- 5.1 Planning appeal decisions by Scottish Government reporters are not binding precedents, but can provide useful indications of the approach to be taken. If a more comprehensive Opinion is required, I can undertake a detailed review of planning appeal decisions. I mention below the key appeal decisions that I am aware of.
- 5.2 Two conflicting appeal decisions, both for properties in Edinburgh, highlight the lack of certainty/ clarity on the planning status of self-catering use.

### 5.3 Eyre Place, Edinburgh (ENA-230-2107)

5.4 In this case the Reporter held that the use of a flat for short term visitor accommodation involved a material change of use. However, his explanation is largely contained in the following 3 sentences, which does not appear to take into account the frequent arrivals and departures by some permanent residents:

“However other factors indicate the change of use is material. The high density and layout of the block, which requires guests to the appeal flat to share access and a common landing with permanent residents, increases the likelihood of conflict. The apparently short term nature of the lets and frequency of turnover indicates a pattern of use involving frequent arrivals and departures, and a lifestyle dissimilar to that of a permanent resident.”

### 5.5 Pirniefield Grove, Edinburgh (CLUD-230-2003)

5.6 The Reporter granted a certificate of lawful use for proposed use of dwellinghouse as holiday lets, concluding that use for holiday lets did not involve a material change of use. He took account of the various court decisions mentioned above.

## 6 Use Classes Order

6.1 The Use Classes Order (UCO) is often used in assessing whether there is a material change of use.

6.2 The UCO specifies 11 classes of use. Within each class are listed uses of a broadly similar character. Provided both uses are in the same use class, a change from one use to another does not involve “development” and, therefore, no planning permission is required (TCPSA section 26(20(f)).

6.3 If the uses are not in the same use class, or any use class, planning permission is only required if the change is material.

### 6.4 Class 9 Houses

6.5 Class 9 refers to:

***Use—***

***(a) as a house, other than a flat, whether or not as a sole or main residence, by—***

***(i) a single person or by people living together as a family, or***

***(ii) not more than 5 residents living together including a household where care is provided for residents;***

***(b) as a bed and breakfast establishment or guesthouse (not in either case being carried out in a flat), where at any one time not more than 2 bedrooms are, or in the case of premises having less than 4 bedrooms 1 bedroom is, used for that purpose.***

6.6 Flats are excluded from class 9, and are discussed separately below.

- 6.7 The wording of class 9 makes it difficult to determine whether a house used for self-catering purposes is a class 9 use.
- 6.8 Paragraphs (a) and (b) appear to identify different uses. The implication is that a use within either paragraph is a class 9 use.
- 6.9 Paragraph (a) refers to use as a “house”. It explains that need not be “as a sole or main residence”, which means that class 9 does not require full time residential occupation. Further flexibility is provided with the statement that the occupier can be a single person, a family, or up to 5 residents living together. If the self-catering use satisfies these thresholds, the issue is whether a self-catering use has separate characteristics from use as a house.
- 6.10 The mention in paragraph (b) of bed and breakfast/ guesthouse use further confuses the situation, as neither bed and breakfast or guesthouse is defined. Although the intention might have been to include only buildings with live-in operators, that is not mentioned explicitly in paragraph (b). However, the numeric limits achieve that objective, as those prevent use of all the bedrooms for short stay purposes – if there are less than 4 bedrooms, only 1 can be used for short stay purposes; if there are more than 4 bedrooms, only 2 can be used.
- 6.11 It could be argued that paragraph (b) is intended to include an element of commercial use which would otherwise be excluded from paragraph (a), but paragraph (a) does not explicitly exclude commercial use. A contrary argument is that paragraph (b) was required because a family renting out a room for bed and breakfast would fall outwith paragraph (a), as the house would no longer just be occupied by a family, but might not necessarily be described as residents living together.
- 6.12 This analysis of class 9 might be a red herring: even if self-catering use is not within class 9, a change of use from class 9 to self-catering use only requires planning permission if the change is “material”.

## **7 Flats**

- 7.1 As mentioned above, class 9 does not include flats. However, the principal issue is whether there has been a material change of use.

## **8 Conclusion**

- 8.1 The decision in *Moore* confirms that whether or not self-catering use involves a material change of use depends on the facts and circumstances of each case. Although there was a material change of use in that case, that related to the large size of the property. The other court cases involved situations where there was no material change of use. The recent reporter’s decision in Pirniefield Grove, Edinburgh also held there was no material change of use; the earlier reporter’s decision in Eyre Place, Edinburgh held there had been a material change of use. Reasonable arguments can therefore be made that self-catering use does not involve a material change of use.

## **9 Procedural issues**

- 9.1 Generally the planning status of self-catering use will arise as an issue where a council threatens enforcement action in response to complaints from neighbours. If an enforcement notice is served, an appeal

can be submitted to the Scottish Ministers on the grounds that there is no breach of planning control as there has been no material change of use. The Eyre Place case is an example of an unsuccessful appeal.

- 9.2 The property owner can apply for a certificate of lawfulness, either to confirm that a proposed self-catering use does not require planning permission, or that the existing use is lawful because there has been no material change of use (or that the change occurred more than 10 years ago and cannot be the subject of enforcement action). If the council refuse to grant the certificate of lawfulness, there is a right of appeal to the Scottish Ministers. The Pirniefield Grove case is an example of a successful appeal.
- 9.3 In general councils will not serve an enforcement notice while a certificate application/ appeal is in process. A certificate application can therefore be a pro-active response to a threat of enforcement action, although the same arguments can be used in an appeal against an enforcement notice, so there is no necessity to apply for a certificate.
- 9.4 If there is no threat of enforcement action, an application for a certificate is unlikely to be necessary, unless the property is being sold and some certainty is required. An unsuccessful certificate application/ appeal might result in enforcement action which would otherwise not have occurred unless/ until a complaint by a neighbour.
- 9.5 A reporter's decision on an enforcement notice appeal or certificate appeal can be challenged in the Court of Session. However, it seems likely that the Scottish judges would follow a similar approach to the English Court of Appeal in *Moore*, and refuse to provide any additional guidance on when self-catering use is a material change of use, leaving it to a case-by-case decision. Legal action is therefore unlikely to result in a useful test case.

## 10 Summary

- 10.1 In my view, reasonable arguments can be made that self-catering use does not involve a material change of use from residential use. That has been the outcome in individual cases decided by appeal reporters/ inspectors and upheld by the courts. It is also impliedly supported by the statements in the Scottish Government Circular 4/1998. However, it does depend on the individual circumstances, and there are decisions to the contrary by appeal reporters/ inspectors.
- 10.2 If a property does not have express planning permission for self-catering use, there is no necessity to obtain a certificate of lawfulness, unless the planning authority proposes to take enforcement action.

## **ASSC RESPONSE TO CITY OF EDINBURGH COUNCIL CONSULTATION ON SHORT-TERM LET PLANNING GUIDANCE FOR EDINBURGH**

Founded in 1978, the Association of Scotland's Self-Caterers (ASSC) are the leading source of knowledge on short-term letting and holiday homes in Scotland and are the only trade body representing the interests of the traditional self-catering sector. We represent over 1,700 members, operating tens of thousands of self-catering properties throughout Scotland, from city centre apartments to rural cottages, to lodges and chalets, to castles. The ASSC commits its members to maintaining the principles of "quality, integrity, cleanliness, comfort, courtesy and efficiency" and to offering visitors to Scotland consistently high standards within their self-catering properties.

### **INTRODUCTION**

The ASSC welcomes the opportunity to respond to City of Edinburgh Council's consultation on short-term let planning guidance. As the main trade association for the self-catering sector in Scotland, the ASSC hopes that our expertise and insight can help inform the approach taken by the Council. We have always strived to work collaboratively and proactively with both local and national government stakeholders to ensure a balanced and proportionate outcome for all. We wish to make clear that the ASSC is not averse to regulation; but we do challenge policies that are pursued while lacking a firm evidence base which will damage the livelihoods of our members.

### **OUR RESPONSE**

It is with considerable regret that there is once again a presumption of bad practice attributed to the short-term letting sector by City of Edinburgh Council. The proposed planning policy is unfair, disproportionate and discriminatory, setting criteria that amounts to a de-facto ban on short-term letting despite all assurances to the contrary. By identifying only a small number of limited circumstances where short-term lets are to be permitted, for example those with a main door in an area that is "commercial" in character, this will mean that the vast majority of short-term lets will be refused, leading to an exodus of small tourist accommodation businesses, severely impacting the local economy which depends on tourism.

Overall, the ASSC believes that the proposed planning policy should be rejected on the following grounds:

- It is disproportionate in nature, lacks coherence and balance, and relies on assertions and anecdotes rather than a firm evidence base;
- It will harm Edinburgh's tourism related economy at a time when it should be supported to recover, and will all but remove a key source of accommodation that is imperative to the viability of the Festivals; and
- It fails to properly consider the economic impact of the draft policy which will cost jobs and livelihoods in a sector that provides a £70m annual boost to the city.<sup>1</sup>

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<sup>1</sup> ASSC, *Economic Impact of the Self-Catering Sector to the Scottish Economy* (2021). Url: <https://www.assc.co.uk/wp-content/uploads/2021/09/Economic-Impact-Study%E2%80%9393Scotland.pdf>

We have set out our response to the specific consultation questions below.

#### **Q4 – The character of the new use and of the wider area**

##### **ASSC Response: STRONGLY DISAGREE**

- City of Edinburgh Council: *“Where the location is wholly commercial in character and there are no residential properties nearby, adverse impacts on amenity are less likely. This means it is more likely short-term lets (STLs) can be supported in such locations.”*

The Council should identify and highlight the areas within the city which are described as “wholly commercial in character”.

- City of Edinburgh Council: *“Where the location is mixed in character (residential / commercial) regard will be had to those residential properties nearby and therefore there is a presumption against granting planning permission.”*

This statement by the Council overlooks the fact that in such mixed locations, a proportion of short-term lets can be positive. Thus, a balanced approach is necessary, as opposed to a lop-sided attitude against granting permission. The positive effect of short-term lets adding to the character of an area can be seen in the likes of Easter Road, with regeneration having been driven and supported by quality short-term lets in the vicinity.

While the draft guidance focuses on the perceived negatives associated with short-term letting, this type of property can actually improve a shared stair. Indeed, operators have an incentive to ensure this is the case. With the competition to maintain standards, holiday let owners often spend money more frequently on additional property maintenance than they would on their own property. Their guests spend money in local food shops, cafes, gift shops, restaurants, tourist attractions etc – many of which would simply be unviable without visitor spending.

- City of Edinburgh Council: *“Where the street has a quiet nature or low ambient noise levels (particularly at night-time), STL will not generally be supported.”*

A well-managed professional self-catering unit should not cause a problem for the local community. However, if short-term lets will be supported in busier areas, perhaps in the aforementioned “commercial” locations, then they are more likely to be found in flatted dwellings which of course, are unsupported by the Council. This underlines the incoherence in the draft policy. Taken in full, this criteria begs the question: how many short-term letting properties will be left in Edinburgh that meet the requirements?

Moreover, this section is further undermined by the assumption that all guests staying in short-term lets are tourists. This does not reflect the broad range of guests that short-term lets support: those travelling on business, corporate relocation, those shifting between homes, local families needing temporary accommodation during renovations, families visiting relatives, hosting film companies, and those requiring accessible accommodation. These are the same types of people who would be found in such communities in any case. The Council do not appear to understand the diversity of those who stay within short-term lets and their importance to many social and economic factors beyond tourism.

Finally, a de-facto ban on short-term lets – a form of accommodation that consumers increasingly prefer in order to ‘live like a local’ – will create knock-on problems for businesses in our local communities, such as cafes, restaurants, laundrettes, cleaning companies etc, who all depend on the economic footfall.

- City of Edinburgh Council: *“It should be noted, once a short-term let is granted planning permission, the Council cannot control how it is used, for example by restricting numbers of occupants, or by setting limits on how a property is let. Planning permission is granted to property rather than individuals, which means that property can change hands and be operated in a different way than was intended by the applicant for planning permission. Because of this, when considering the pattern activity associated with a use, only limited regard can be had to how an applicant intends to manage that.”*

We believe that the concerns expressed here are largely unfounded. The Council’s short-term let licensing scheme stipulates that an applicant will have to re-apply each year. Evidence of anti-social behaviour relating to that property would be a valid reason for refusal.

#### **Q5 – The size of the property**

##### **ASSC Response: STRONGLY DISAGREE**

What evidence does the Council hold to support the supposition contained in this section? Neither the size or number of rooms is an indication of increased potential for noise and disturbance – other factors, including but not limited to, the age of a property or the thickness of walls, are more likely to influence this. On a more basic level, we do not believe this is a planning consideration so should not form part of the Council’s guidance.

#### **Q6. The pattern of activity associated with the use**

##### **ASSC Response: STRONGLY DISAGREE**

This section is yet another instance of the presumption of bad practice against our sector that runs through this proposed guidance. Moreover, with matters such as noise and disturbance, this pertains to licensing and is not a planning consideration. This part of the guidance goes beyond planning and is largely pointless in nature when there is existing anti-social behaviour legislation the Council can utilise to tackle any perceived issues in the city.

Operators want harmonious relationships with neighbours and the local community – it is not in their interest to allow any anti-social behaviour in their business. For instance, the Antisocial Behaviour Notices (Houses Used for Holiday Purposes) (Scotland) Order 2011 granted local authorities the power to deal specifically with the problem of antisocial behaviour in properties let for holiday use. However, this needs to be enforced, as the Cabinet Secretary for Housing Shona Robison MSP stated: “We expect all relevant authorities to use the powers available to them to deal with antisocial behaviour”.<sup>2</sup>

In any case, instances of anti-social behaviour emanating from self-catering properties is extremely rare. An FOI was requested from 32 local authorities by the ASSC about the reported incidences of

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<sup>2</sup> Shona Robison MSP, in [answer to Parliamentary Question S6W-03022](#), 01/10/21.

anti-social behaviour (ASB) attributed to holiday lets from 2018 to 2021, as well as making a comparison with ASB in other types of housing tenure.

33997

How many ASB complaints has the Council had against each of the tenures listed below - for the years 2018 to 2021.

City of Edinburgh Council  
Private Sector Leasing  
Owner Occupied  
Private Rent  
Housing Association  
Unknown.  
Short Term Lets

Please note the date range for 2021 is 1 Jan to 31 Aug 2021. 'Not recorded' are cases where no tenure has been recorded opposed to those where the Housing Officer has recorded 'Unknown'.

Tenure Type	2018	2019	2020	2021	Total
City of Edinburgh Council	294	200	206	118	818
Housing Association	16	7	15	10	48
Owner Occupied	70	53	54	38	215
Private Rent	126	58	76	37	297
Private Sector Leasing scheme	12	3	5	7	27
Unknown	783	1153	1117	827	3880
Not Recorded	155	152	97	67	471
<b>Total</b>	<b>1456</b>	<b>1626</b>	<b>1570</b>	<b>1104</b>	<b>5756</b>

	Short Term Let			
	2018	2019	2020	2021
Owner Occupied	1	1	1	
Private Rent	4	8	8	6
Unknown	1	50	19	1
<b>Total</b>	<b>6</b>	<b>59</b>	<b>28</b>	<b>7</b>

The data received by the ASSC for Edinburgh City Council is set out in the table which demonstrates that complaints against holiday lets remain low, especially when viewed in comparison to other types of housing tenure.

- City of Edinburgh Council: *"...existing residents of flats within stairs are particularly affected by the pattern of activity which often results from STL. Guests of the short-term let properties can arrive late at night and make noise and cause disturbance in a way which residents of that stair would not, given they will know of the impacts that they have on one another and be able to manage those impacts in a neighbourly way. Examples of disturbance include bumping suitcases up stair and using washing machines in the middle of the night."*

This is not an accurate or realistic description of activity and behaviours those residing in flats within stairs. For example, what evidence does the Council hold that guests in short-term rentals are more

inclined to use washing machines in the middle of the night compared to someone residing in their own home, an individual renting from a private or social landlord, or a shift worker for instance? Moreover, if “bumping suitcases” up a stair in a tenement property is an issue of noise and disturbance, surely the Council should then provide consideration to granting planning permission to ground floor flats?

On this issue, we refer you to the legal opinion provided by Brodies LLP to the ASSC in November 2022 on planning requirements for short-term letting which is relevant to the pattern of use associated with this form of accommodation:

*“In determining the materiality of the change, the question is whether short stay occupation necessarily has different planning considerations/ impacts. Short stay occupation involves people living in the property, just for shorter periods. However, that does not necessarily mean the nature/ impacts of the occupation are different. There are not necessarily greater movements of people, or different times of movement. More permanent residents can have vastly different movements depending on their employment, leisure interests, family circumstances, health, etc. For example, an offshore worker might occupy his/ her house for a few weeks and then work off-shore for a few weeks; a family with teenage children might enter and leave the house many times during the day and night; a single person with care needs might be visited by carers several times a day. Users of a self-catering property are therefore unlikely to exhibit markedly different characteristics to more permanent residents. Disruptive or anti-social behaviour is just as likely in residential use as self-catering use. Servicing of self-catering accommodation is also not a differentiator, as some residential occupiers use cleaners on a regular basis, especially if the occupier is in poor health.”<sup>3</sup>*

#### **Q7. The nature and character of any services provided**

##### **ASSC Response: STRONGLY DISAGREE**

- City of Edinburgh Council: *“Where there is access to a communal garden which can be used by existing residential properties, or where there is a garden that would form part of the curtilage of an STL and would be in close proximity to residential gardens, STLs will generally not be supported.”*

This again demonstrates the disproportionate scope of the proposed policy – just how many applications would be supported if they have to adhere to this guidance?

The planning hurdles for operators to overcome appear insurmountable. This will have a devastating impact for those involved in the self-catering sector in terms of their job and livelihood but will also entail a materially negative consequence for other related industries – including major events such as the Festivals, the hospitality sector, and the wider economy. A more holistic approach is desperately needed, one which comprehends an understanding of the economic impact and the major contracting accommodation threat to the Festivals in particular.

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<sup>3</sup> Brodies LLP Report on: Planning requirements for short term holiday letting. Prepared for: The Association of Scotland's Self-Caterers (ASSC). Date: 10/11/2022.

## **Q8. Other comments**

We have five additional comments to make on the proposed guidance, and related matters, as set out below:

- (a) Timing of the draft planning guidance consultation;
- (b) Overall policy intention of the City of Edinburgh Council on short-term lets;
- (c) Relationship between short-term lets planning and licensing policy;
- (d) Threat to The Edinburgh Festival Fringe due to reduced accommodation;
- (e) Established Use; and
- (f) ASSC's short-term let policy recommendations.

### **(a) Timing**

The revised timeframe for the licensing of short-term let properties requires all applications to have been submitted to the Council by 1 October 2023 and for planning permission to have been obtained by that date (or for an application to be pending). However, following the recent designation of the short-term let control area, this draft planning guidance is undergoing a consultation which will run until 22 December 2022.

We maintain that there must be a proper and rigorous examination of the consultation responses from stakeholders, as well as to reflect on the consultation overall, before a report is prepared and put to committee level. Notwithstanding the delay to licensing, this is a very tight timeframe to properly consider the consultation responses, make any changes to the draft guidance, and then allow operators to prepare for and submit planning applications before the October 2023 deadline.

### **(b) Policy intention**

The Council needs to be clear in their policy intention: does the proposed guidance, in conjunction with licensing and the planning control area, amount to a de-facto ban on short-term letting within Edinburgh? Under these proposals, existing operators would have to meet the following restrictive criteria to receive planning consent: not be in a shared/communal stair; not be sharing a communal back garden; and not be in a residential area. It sets an incredibly high bar for the vast majority of self-caterers in the city which is why we request clarity in your overall policy intention. Indeed, this high bar may account for the lacklustre uptake of current applications of planning consent to date.

The ASSC is not averse to regulation but anything taken forward must strike the correct balance between community interest and supporting the local economy. The proposed guidance further tips the balance in favour of the former while not paying adequate attention to the latter.

### **(c) Relationship between planning and licensing**

While this consultation concerns planning, we have found that there is duplication in the proposals – much of the rationale being provided for the revised policies is already covered by the licensing scheme. For instance, on anti-social behaviour, noise and disturbance, and control over properties once planning permission has been granted. While the two issues are separate, they cannot be viewed in complete isolation and the Council must ensure that they are not duplicating policies which are part of the licensing scheme.

#### **(d) Risk to the Edinburgh Festival Fringe**

It has been estimated that 18,000 people working at the Fringe require over 400,000 bed nights around the dates of the Fringe. Moreover, approximately 120,000 visitors from outside of Scotland attended the Fringe in 2022. Short-term lets provide a crucial component of the city's accommodation infrastructure alongside more traditional options like hotels.

Both the Council's proposed planning and licensing policies will have significant unintended consequences for the wider tourism and visitor economy, especially surrounding the Festival season. The Council has been warned by festival organisers that short-term let regulations pose "a very serious threat", with a shortage of rooms inevitably driving up prices even higher.<sup>4</sup> Concerns have also been expressed to the Scottish Government about the danger to the Festivals.<sup>5</sup>

For the professional self-catering sector, there are 1,396 self-catering units on non-domestic rates in Edinburgh – **all are potentially facing closure due to restrictive policies**. The availability of short-term let accommodation stock in Edinburgh, not only for visitors but artists and those working at the Festivals in August, will be dramatically reduced.

Even at the most conservative estimate, it would seem that less than 10% of existing self-catering accommodation providers have submitted a planning application. We infer two possible reasons: first, operators are leaving the market due to the stringent nature of planning and licensing policy; and second, operators are waiting to see what, if any, changes may be made by the Council or Scottish Government to prevent an accommodation blackhole during Festival season 2023.

It is also of considerable concern that, despite the relatively low level of planning applications, over half of those still await a decision. This may imply that we are seeing a new policy approach that simply cannot be met within a reasonable timeframe to allay significant repercussions on the tourism sector and the Festivals in 2023.

The Festivals bring in approximately £350m to the economy but they are also worth much more than that; Edinburgh is a world-leading cultural capital with its unique welcoming and inclusive hospitality. However, the Council, and the city as a whole, risks serious reputational damage if we cannot house those working and visiting Edinburgh for the Festival and Fringe. That is why we need to revisit the proposed short-term let planning guidance, as well as related regulations.

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<sup>4</sup> The Times, 'Holiday let changes 'will mean shortage of beds for festivals', 21/11/22. Url: <https://www.thetimes.co.uk/article/holiday-let-changes-will-mean-shortage-of-beds-for-festivals-7pvdssmzf>

<sup>5</sup> Meeting between Neil Gray, Minister for Culture, Europe & International Development with Shona McCarthy and Benny Higgins (Edinburgh Festival Fringe), 22 September 2022. Url: <https://www.gov.scot/binaries/content/documents/govscot/publications/foi-eir-release/2022/11/foi-202200322587/documents/foi-202200322587---information-released/foi-202200322587---information-released/govscot%3Adocument/FOI%2B202200322587%2B-%2BInformation%2Breleased.pdf>

### **(e) Established Use**

It is our recommendation that within a Short-term Let Control Area, planning permission should be granted:

1. Where extensive refurbishment of a long-term empty dwellinghouse is proposed to bring the building back into active use.
2. The proposal is for the upper floor(s) above a commercial unit.
3. It is an **established short-term secondary let property** in a long-established dwellinghouse.

**‘Established short-term secondary let property’** means:

A dwellinghouse that has been trading as a short-term secondary let property before the first date of the first approval at a Council Committee meeting proposing the establishment of a short-term let Control Area.

Supporting evidence should be required to be submitted as part of the application to demonstrate that the dwellinghouse was trading as a short-term let before the committee date, this evidence might include the following:

- receipts for guests staying at the property;
- extracts from business accounts;
- Reports from the accommodation provider channel manger/platform; or
- Evidence of payment of non-domestic rates as a self-catering unit.

### **(f) ASSC short-term let policy recommendations**

These changes on short-term let planning policy come at the worst possible moment for our sector which has yet to fully rebound from the effects of Covid-19 but who are now facing the impact of an increased regulatory burden as well the cost-of-living crisis. The absence of any form of economic analysis underpinning these draft planning proposals is deeply concerning.

The ASSC recently undertook a survey of over 1,100 self-catering operators throughout Scotland concerning the costs associated with licensing and planning policies. In terms of the respondents from Edinburgh, who are mainly engaged in secondary letting, over two-thirds (67%) were considering leaving the sector.<sup>6</sup> Interestingly, of those who might sell their property as a result, 98% say it won't be available for affordable housing.

**Therefore, this planning consultation is an issue of critical importance and we therefore strongly recommend that the Council take cognisance of the views of business and tourism stakeholders to reassess their plans before it is too late.**

The ASSC suggests the following policy recommendations:

- Provide a moratorium on all short-term let planning applications;
- Include ‘grandfather rights for ‘established’ short-term let businesses;

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<sup>6</sup> ASSC Survey of 1,148 short-term let businesses across Scotland, November 2022. Further details are available upon request.

- Do not approve the proposed short-term let planning policy which will result in a de-facto ban in planning terms;
- Review the licensing approach to remove rebuttable presumption against the granting of a licence to a flat dwelling, which will result in a de-facto ban in licensing terms;
- That the Council provides a detailed assessment of the economic impact of their planning proposals;
- Leave the control of short-term letting in the city to licensing in the immediate term; and
- Take a permissive approach whereby all current operators are afforded a licence in year one of the scheme's operation.

**FIONA CAMPBELL**  
**CEO, ASSOCIATION OF SCOTLAND'S SELF-CATERERS**  
**DECEMBER 2022**

To whom it may concern.

**Applicant's Management Statement – 1A Glenogle Road, Edinburgh**

**Background**

We own the above property and have operated it for short term let use since June 2016.

1A Glenogle Road sits directly on Glenogle Road. The property was previously the colonies shop and sits out-with the traditional colony streets. It is at the gable end of a terrace row and totally unique.

The building does not share an entrance with any other building. The locals have been very supportive of us using this property for short term lets, as the building is kept in very good condition and looks smart. The arrival and departure of guests does not affect the locals or cause any issues due to where the building sits. Many bookings have been received from colony residents who do not have the space to have visitors to stay over, including family and friends.

**Experience**

Simon Downes has spent 20 years in hospitality including 10 years as General Manager of 4 and 5star hotels and castles. In my current role I am a Senior Commercial Support Partner managing over 303 care homes. With this background, we manage the short term let use of 1a Glenoagle Road with a highly professional attitude and as a result have been an Airbnb Superhost since joining this platform and starting to host in 2016.

Superhost eligibility is assessed each quarter and we have been assessed for the last 6 years and never missed being awarded this status each quarter. This programme recognises the best in hospitality. The Superhost programme celebrates and rewards Airbnb's top -rated and most experienced hosts.

A Superhost is someone who goes above and beyond in their hosting duties and is a shining example of how a host should be. To earn Superhost status you typically have received positive reviews, be responsive and avoid cancellations where possible. To date, based on 295 reviews for 1A Glenogle Road we have received a 5 star rating.

## **Letting management process**

vetting: We use Airbnb booking settings to filter guests.

Guests will always need to meet the following requirements before they can book:-

- . Confirmed email address and phone number
- . Write an introductory message
- . Provide payment information
- . Recommended by other hosts. Require guests to have recommendations from other hosts and no negative reviews,
- . Agree to my House Rules
- . Max 2 people allowed to use 1A Glenogle Road

We set strict house rules which are:

- Not suitable for children (2-12)
- Not suitable for infants (under 2)
- No pets allowed
- No smoking allowed
- No events allowed
- No early check-ins allowed (1A Glenogle Road is 3pm)
- No late check outs allowed (guests must depart by 11am on date of departure)
- No luggage storage facilities allowed out with guest stay dates and check in / check out times.

These house rules are also published on the Airbnb platform in the Guest Information sections for both apartments and printed copies are in the Guest Information folder which is in each of the properties.

## **Key handover**

Keys are accessed by a key safe. The key safe is Police Preferred 'Supra C500 Pro Key' and the key codes are changed regularly. Keys are deposited back in the key safe by the guests on their departure days.

## **Dealing with noise**

We have never had any noise or disturbance complaints at 1a Glenogle Road. This has been the case since we started short-term letting in June 2016.

## **Security, Fire & Insurance**

- . 1A Glenogle Road is accessed direct from Glenogle Road and is non shared access through a private entrance way and vestibule. There is a yale and mortice lock to the front double doors and a further door into the apartment which has a yale lock on.
- . The property is protected by interlinked smoke and heat alarms, have fire blankets and fire extinguishers.

- Emergency and fires safety notifications are on the Airbnb website and printed in the Guest Information folders in each apartment.
- The property is fully insured, with holiday lettings insurance and public liability insurance. The public liability is £5 million per property. Additional cover is provided by Airbnb through its Air Cover programme which has \$1 million USD liability insurance and \$1 million damage protection insurance.

### **Property Management process**

- All bookings are managed and vetted by Simon Downes through Airbnb.
- Turnaround cleaning and linen changes are made by a professional cleaning company BNB Cleaning. They remove and dispose of all rubbish from the property and clean the apartment to a very high standard. BNB Cleaning also supply hotel contract standard linen from Fishers laundry at each changeover.
- The property is maintained to a very high standard and are maintained by Simon Downes or nominated contractors which include out of hours emergency contractors.

### **Neighbour notification**

We sent out a neighbour notification several weeks in advance of this application to all our immediate neighbours (9 properties). We received no negative feedback or concerns about the proposed retrospective application to continue using the property for short term let use.

We hope this information illustrates we run a professional short term let operation.

Yours faithfully,

Two blacked-out signatures, one on the left and one on the right, both appearing to be handwritten names.

**Simon and Gail Downes**  
**Property Owners and Managers**

# F E R G U S O N P L A N N I N G

Ferguson Planning Ltd  
37 ONE  
37 George Street  
Edinburgh  
EH2 2HN  
E: sam@fergusonplanning.co.uk  
M: 07854009657

City of Edinburgh Council  
Development Management  
Waverley Court  
4 East Market Street  
Edinburgh  
EH8 8BG

30 June 2022

Via E-Planning Ref: 100560952

Dear Sir/ Madam,

## APPLICATION FOR CHANGE OF USE (RETROSPECTIVE) FROM RESIDENTIAL TO SHORT TERM LETS (SUI-GENERIS) 1A GLENOGLE ROAD, EDINBURGH, EH3 5JQ

We write on behalf of the applicants, Mr and Mrs Downes, owner and property managers of 1A Glenogle Road, in support of a planning application for the following:

*"Change of use (retrospective) from residential to short term let use (sui generis)"*

The application has been submitted electronically via E-Planning (references above) along with the following supporting information.

Submission Documents	Consultant
Covering Letter	Ferguson Planning Ltd
E-Planning Forms and Certificates	Ferguson Planning Ltd
Site Location Plan	Promap
Floor Plans (As Existing/Proposed)	SquareFoot
Management Statement	Mr and Mrs Downes

#### GALASHIELS

Shiel House, 54 Island Street  
Galashiels TD1 1NU  
T: 01896 668 744

#### EDINBURGH

37 One George Street  
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## SITE LOCATION AND SURROUNDING AREA

The property at 1A Glenogle Road has been used to provide high quality visitor accommodation, since June 2016. The ground floor studio flat is accessed from a private main door and vestibule on Glenogle Road. The access is not shared with any other properties. The entrance is shown in the photograph in Figure 1 below.



Figure 1: Photo of entrance to 1A Glenogle Road

The property is a studio flat, and comprises one double bedroom, living area, fully fitted kitchen and shower room. Pictures of the internal layout are provided with the planning submission.

The building is Category B listed, as part of a wider group listing comprising Glenogle Road, Glenogle Park (The Colonies), 1-33 (Inclusive) Hugh Miller Place. Historic Environment Scotland's Statement of Special Interest states that the colonies, "forms the best of one of several schemes for workers housing built by co-operative housing associations and private speculators in the 1850s and 1860s". The property was originally used as a shop to provide goods and services for the local colonies' residents.

The property is situated, at the west end of the colonies development, closest to Stockbridge High Street. It is important to make the distinction that this property is unique in style relative to the rest of the colonies buildings, facing directly onto Glenogle Road, rather than part of a terraced row on one of the side streets - a direct result of its historic retail use. There is a property above, accessed from Hugh Miller Place, but this is also owned by the applicant. There are no residential properties on the opposite side of Glenogle Road. The interaction with other

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residential properties is therefore limited. Opposite the property, there is a pedestrian thoroughfare and open space, which joins Saxe Coburg Place, inviting existing activity on the street. This context is shown on the photographs of the area, submitted with the application.

The area is largely residential, except for the Glenogle Swim Centre (public swimming baths). However, the road outside the front of the property is a popular vehicle and pedestrian thoroughfare, with people visiting the swimming baths, residents parking, and with tourists utilising the connection from Stockbridge to the Water of Leith walkway, at Glenogle Place. It is, also only a short distance to the amenities of the designated town centre of Stockbridge (250m to the south - 3-minute walk), bars and restaurants on Henderson Row (320m - 5 minute walk) and local shops and cafes at Canonmills (600m - 7 minute walk). Stockbridge provides a wide range of uses, including hotels, public houses, shops, cafes, and restaurants, alongside residential on the upper floors. It is a bustling thriving high street, and a popular location with tourists who visit for its interesting shops and restaurants, regular weekend market, or to explore Inverleith Park and the Water of Leith path. Stockbridge is regularly identified as a must-visit to tourists, who are looking to "live like a local" whilst they are visiting the city.

The property is also located within easy reach of the wider city centre and its facilities. It is a short walk to Princes Street (20 minutes) and within easy reach of key tourist attractions including the Royal Botanic Gardens (10-minute walk), Dean Village (2-minute walk) Scottish National Gallery of Modern Art (30-minute walk) and Edinburgh Castle (30-minute walk).

The nearest bus stop is 250m (3-minute walk) to the south of the property on Raeburn Place. It is also only a short walk away from Haymarket Railway Station (30 minutes) creating easy access to the rest of the city and the airport for guests. The flat is therefore an ideal location for visitor accommodation and the flats are very popular with visitors to the city.

## **THE APPLICANT**

The use of the ground floor studio flat as a short term let is managed by the applicants through Airbnb. Simon Downes has 20 years' experience in hospitality including 10 years as a General Manager of 4- and 5-star hotels. They are an Airbnb 'Superhost' and have been since joining the platform and starting to host guests at 1A Glenogle Road in 2016. The superhost programme celebrates and rewards Airbnb's top rated and most experienced hosts, with a superhost being someone who goes above and beyond in their hosting duties and is a shining example of how a host should be. To date, based on 295 reviews for 1A Glenogle Road, they have received a 5-star rating.

We have provided a separate statement by the applicants in support of this application, to demonstrate that the short term let is safe and well managed. This includes strict house rules, and vetting procedures. The applicant does not allow guests to host events. Turnaround,

cleaning, and linen changes are made by a professional cleaning company, who remove and dispose of all rubbish from the property and clean the apartment to a very high standard.

In due course, the Council will be able to ensure the fitness of applicants to provide property for short term lets, and appropriate management procedures are in place, through the licensing scheme which the applicant will be required to comply with from 1 April 2023 as an existing host. The new licensing scheme will require all short-term lets to comply with mandatory conditions including day to day management only being carried out by the holder of the license, maximum occupancy, safety, and insurance standards being met. This will provide further safeguards in terms of impact upon residential amenity, and therefore the existence of the licensing scheme and professional management of the property by the applicant should be a material consideration in the Council's assessment of the application.

## THE PROPOSAL

The purpose of this application is to permit the continued use of the property for short term let use. Under the recent legislation approved by the Scottish Parliament, all existing hosts and operators must apply for a license to operate a short term let by 1 April 2023, to ensure they are safe and the people providing them are suitable. Where the premises is in a 'short term let control area', the applicant must have made an application for planning permission, or already have planning permission before they apply for a license.

The City of Edinburgh Council have recently approved a 'Short Term Let Control Area' (Planning Committee 23 Feb 2022), subject to approval of Scottish Government. Once designated, likely Spring 2022, this confirms that all proprietors wishing to use their properties within Edinburgh City Centre as short term lets would require planning permission for a 'change of use' to do so, unless their property has been in use for more than 10 years.

Short term lets are defined within the Scottish Government's Planning Circular 1/2021 (Short Term Let Control Areas) as a dwellinghouse where:

- Sleeping accommodation is provided to one or more persons for one or more nights for commercial consideration.
- No person to whom sleeping accommodation is provided is an immediate family member of the person by whom the accommodation is being provided.
- The accommodation is not provided for the principal purpose of facilitating the provision of work or services to the person by whom the accommodation is being provided or to another member of that person's household.
- The accommodation is not provided by an employer to an employee in terms of a contract of employment or for the better performance of the employee's duties, and
- The accommodation is not excluded accommodation e.g., hotel or aparthotel.

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The subject property meets the above definition, as we demonstrate in this letter. The flat has been used for short term lets since June 2016 and so does not meet the necessary 10 years. It also does not form excluded accommodation. A full planning application seeking permission for a (retrospective) change of use from residential use to short term let is therefore being submitted.

## PLANNING POLICY CONTEXT

### Development Plan

Section 25 of the Town and Country Planning (Scotland) Act 1997 states: 'Where in making any determination under the planning acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise.'

Within this context, the Development Plan covering the property comprises the:

- SESplan Strategic Development Plan (2013); and
- Edinburgh Local Development Plan (2016)

As the proposals are not of a strategic nature, we have not considered the SDP policies in further detail. However, we note it lends support for tourism uses. The SESplan vision is that *"By 2032, the Edinburgh City Region is a healthier, more prosperous and sustainable place which continues to be internationally recognised as an outstanding area in which to live, work and do business"*.

It goes on to state that, *"the high quality built and natural environment of the SESplan area underpins its desirability as a place to live, work, do business and visit and can contribute to improving health and wellbeing"*. It also states that key sectors of which tourism is one, *"are central to the regional economy"*.

We assess the proposals in line with the relevant Local Development Plan policies below. Other items relevant to the planning assessment, forming 'material considerations' include:

- CEC Guidance for Businesses (Updated 2021)
- Recent DPEA decisions relating to short term lets
- Emerging City Plan 2030

## ASSESSMENT OF PROPOSALS – DEVELOPMENT PLAN

### Site Specific Policies

Within the City of Edinburgh Council's Local Development Plan (LDP) (2016) the property is located within the defined 'Stockbridge Colonies Conservation Area' and general 'Urban Area'.

There is no specific policy relating to the proposed use as commercially managed short term let or holiday accommodation. However, as the flat is an existing residential property (by permitted use) in the city centre, the key policy is Policy Hou 7 (Inappropriate Uses in Residential Areas).

As there are no physical alterations proposed to the property, we consider that the heritage designations would be unaffected and therefore there would be no conflict with the development plan in this regard.

### Principle of Proposed Development

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

Policy Hou 7 states that, *"Developments, including changes of use, which would have a materially detrimental effect on the living conditions of nearby residents, will not be permitted."*

The supporting text states that the intention of the policy is to preclude the introduction of non-residential uses incompatible with predominantly residential areas, and to prevent any further deterioration in living conditions in more mixed-use areas which nevertheless have important residential functions [our underlined emphasis].

**Assessment** - The property lies in an area of the city which could be considered '*predominantly residential*'. However, as we highlight above the unique circumstances of the property's position on the street, the on-street main door access and the lack of residential dwellings opposite, limits any interaction between guests and long-term residents.

Glenogle Road is a popular pedestrian and vehicular thoroughfare, and so there is already a degree of existing activity on the street. The property is also a very short distance from Stockbridge Town Centre, where commercial and footfall generating uses are already well established (including other short term lets, hotels and guest houses), and the Council have already approved other short term let uses in comparably residential areas. The assessment is therefore focussed upon whether the use is incompatible with the residential nature of the area.

As described above, and within the separate management statement, the short term let is professionally run as demonstrated by the applicant's superhost status on Airbnb. The applicant provides strict house rules to guests as a condition of booking. As the flat is well managed by the applicant, this provides a further safeguard regarding residential amenity.

The applicant's letting management process, also means that there have been no complaints to CEC or enforcement activity relating to the flats use for short term lets, in more than six years that they have been used for this purpose. The applicant has consulted all immediate neighbours in advance of the submission of the application, and none have responded or raised any concerns. This should be a material consideration in the Council's assessment of the application.

Given the compact nature of the studio flat and with only one double bed, the maximum occupancy is limited to two people, but most likely to be couples or solo travellers. The layout

of the flat and the applicant's house rules, ensures maximum occupancy does not extend beyond this and therefore what would be typical of traditional residential use of the property. This will also be controlled by the future licensing scheme. It is therefore considered that the use is compatible with the residential area, as it will have no greater impact than the existing residential use and does not represent an unacceptable risk to residential amenity.

This judgement is supported by several recent applications for short term let use, which the Council have granted in similar areas. The facts and circumstances of this proposal, closely mirror those where changes of use have been granted, as we set out below.

#### **41 Barony Street (Ref 21/02615/FUL)**

The property is a ground floor main door flat in a tenement within the New Town. The context is similar, in that the officer characterises the wider area as being predominantly residential albeit with other uses nearby. We have underlined relevant parts for emphasis.

In the report prepared by CEC, the planning officer confirms that, *"The property is self-contained and there is no rear access. Any visitors/guests staying in the flat would, therefore, not come into contact with residents in the communal areas of the tenement such as the stair or garden".* They continue, *"The small size of the flat (two-bedroom) and the curtilage means there is limited potential for large groups to gather. This reduces the likelihood of any anti-social behaviour arising which may disrupt neighbours...Overall, although the turnover of occupants may be more frequent, it is unlikely the pattern of use of the property will be so significantly different to impact on residential amenity".* It was concluded, that, *"Based on the criteria established above, the proposal complies with LDP Policy Hou 7".*

#### **10A Blenheim Place (21/06615/FUL)**

A lower ground floor flat in a converted terraced dwellinghouse with residential uses directly above it. The officer says, *"The entrance for the ground floor property is directly above the entrance door to the application property. Any outside noise conflicts will be from the road outside to the front or the roads and parking areas to the rear of the building. Due to the location of the property near two main thoroughfares and in an area of mixed uses including commercial and entertainment and leisure uses, there is already a degree of activity."* And *"This is a two-bedroom property...it is unlikely it will be used for large numbers of visitors which may impact on neighbour's amenity"* and *"On the balance of probability, there will be no adverse impact on residential amenity and the proposal complies with LDP policy Hou 7."*

#### **46 Patriothall (21/06792/FUL)**

The officer's report says, *"appeals have found that short stay visitor accommodation units can be acceptable in predominantly residential areas"* and that *"The immediate area around the site is mainly residential in character. However, whilst the lane is primarily residential in character, it is located near to Stockbridge town centre...It is therefore considered that there is an existing level*

*of ambient noise from the operation of these nearby commercial uses". It was concluded that, "given the nature of the locality and the size of the unit, the change of use will not result in an unreasonable impact on residential amenity".*

#### **41 Cumberland Street (21/06621/FUL)**

A ground floor flat with residential use above and below. Officer says, "Cumberland Street is primarily residential in character however other commercial uses are evident" and "In terms of internal noise, the size of the unit is small, containing only one bedroom and potential impact is unlikely to be materially different from a residential use".

#### **1B Fingal Place (PPA-230-2367)**

A basement level flat with private outdoor amenity space. The reporter stated that, "Usually in considering material change of use proposals, an assessment has to be made as to the likely impact of a proposal, against the baseline of the lawful use. The appeal flat has one bedroom, one lounge, one bathroom, and is relatively modest in size. It would therefore be incapable of satisfactorily accommodating large groups of individuals and would be more suited to use by single occupants, couples or small families at the most. It is highly unlikely that for a property of this size, there would be a noticeable difference in the average daily number of occupants' movements in and out of the property between the lawful use and the proposed use. These factors in my view significantly reduce the likelihood of disturbance arising from guests whether inside, or outside the flat".

Based on the very similar circumstances of the cases above, to the proposal for 1A Glenogle Road, both in terms of the character of the area, and the size of the property (1 bed studio), it is our view that similar conclusions should be drawn about these proposals in terms of their acceptability.

It has been established by all these decisions, that a property of this size will not result in a pattern of use that will be significantly different to residential use of the property which thereby reduces the likelihood of disturbance. Furthermore, the Council should give significant weight to the very fact that there have been no complaints in six years of operation as a short term let to date. As this is a retrospective application, in effect it has already been demonstrated that there will be no deterioration in living conditions, and like these other applications, the proposal is therefore considered compliant with LDP Policy Hou 7.

## **ASSESSMENT OF PROPOSALS - MATERIAL CONSIDERATIONS**

### **CEC Guidance for Businesses (November 2021)**

The Council has issued a guidance document for businesses, which includes advice around changing residential property to short term lets. Although non-statutory, it assists in the interpretation of Policy Hou 7 above. The guidance contains four criteria for determining whether planning permission is required for a change of use to short term let:

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- 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.

It goes on to state, that, *“proposals for a change of use will be assessed in terms of their likely impact on neighbouring residential properties. Factors which will be considered include background noise in the area, and proximity to nearby residents”*.

It also says that *“the Council will not normally grant planning permission in respect of flatted properties where the potential adverse impact on residential amenity is greatest”* and that a *“change of use in flatted properties, will generally only be acceptable where there is a private access”*.

**Assessment** - It is determined that planning permission is required for the change of use to short term let, as confirmed by the recent publication of Planning Circular 01/2021.

The assessment of impact upon neighbouring residential amenity is considered above under Hou 7. Whilst the application is for a flatted property, it is accessed via its own private door at ground floor, directly from the street. This door is not shared by any other uses. Given this, we consider the proposals are supported by the guidance and there will be no conflict with neighbouring residential uses in terms of access.

## **Recent DPEA decisions relating to short term lets**

It is noted that several recent appeal decisions have been issued concerning proposals for short term lets. These appeals are material planning considerations and in recent decision making, CEC have considered that the main determining issues in these cases are:

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

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

**Assessment - 1. Access** - The property occupies a highly sustainable location in Edinburgh City Centre, within easy walking distance to all local attractions and amenities.

The flat has its own private access and keys are accessed by a key safe, in a police-preferred 'Supra C500 Pro Key' safe. Guests will therefore be able to let themselves in on arrival, and will not be gathering externally to the property, further safeguarding neighbouring amenity.

In the successful appeal case (PPA-230-2238) relating to a two-bedroom flat at 17 Old Fishmarket Close, the Reporter found it, *"particularly significant that the flat benefits from its own external door. This would substantially reduce the scope for the arrival and departure of guests to disturb the occupiers of other flats. This is recognised by the council's non-statutory guidance referred to above. Given also the nature of this city centre location, as outlined in paragraphs 11 and 12 above, I am satisfied that the flat could be used for short-term holiday letting without any materially detrimental effects on the living conditions of nearby residents"*.

Given the similar circumstances, it follows in line with the appeal decision above, that the proposed change of use at Glenogle Road, would also have no materially detrimental effects on the living conditions of nearby residents under these criteria.

**Assessment - 2. Size of Property and Frequency of Movement** - The flat is a one-bedroom studio apartment. The applicant stipulates a maximum occupancy of two people within the property, in keeping with the expected levels of a residential property of this size.

The applicant operates strict house rules for all the apartments that they manage, as outlined in the accompanying management statement. These are published on the Airbnb platform, and printed copies are in the guest information folder within the property. They do not allow smoking, pets, or parties and events.

The size of the property means it would be incapable of accommodating large groups, such as stag or hen parties and therefore becoming a 'party flat'. Instead, it is most suited to use by long stay corporate guests, couples or single travellers. This significantly reduces the risk of disturbance arising from anti-social behaviour which would impact on neighbours' amenity.

Indeed, this view is supported by the Reporter in reference to the appeal at 17 Old Fishmarket Close (PPA-230-2238). In this case, he confirms that, *"The flat which is the subject of this appeal has two bedrooms, one bathroom, and is relatively modest in size. It would therefore be incapable of satisfactorily accommodating large groups of individuals and would be more suited to use by single occupants, couples or families. This in my view reduces, to some extent, the*

*likelihood of regular disturbance arising from anti-social behaviour by guests inside, or outside the entrance to the flat”.*

There are unlikely to be no more significant comings and goings than would be expected with ordinary residential use, such as people leaving for work or social reasons every day. This is a fact confirmed by recent decisions on short term let applications, issued by both the Council and the Scottish Government, highlighted throughout this statement. Given the multitude of amenities and excellent transport connections available within relatively proximity of the property, it's likely that an owner or tenant might also have a more active movement pattern than those living in quieter, more suburban residential parts of the city.

**Assessment - 3. Impact on Character of the Neighbourhood** - The size of the flat and the fact that it is laid out for normal residential use with a bedroom, living area, kitchen and bathroom, means it is highly likely that guests will use this largely in the same way as long-term residents.

There is a neighbouring Co-op and Sainsbury's supermarket on Raeburn Place, less than a 5-minute walk from the property, which provides a convenient location for guests undertaking food shopping, as well as several independent food shops.

As occupants will not be permanently resident, however, they are also likely to rely on local restaurants to a greater extent than a full-time occupant, thereby providing an economic benefit for the neighbourhood and ensuring the livelihood of local businesses.

This is acknowledged by the Officer in relation to the recent consent for short term let at 41 Barony Street (21/02615/FUL), who states that, *“Those renting out the flat may be more likely to use local facilities such as cafes and restaurants more frequently than long term residents but there are kitchen facilities available, and any differences would be unlikely to have any adverse impacts”.*

We therefore do not consider there will be any adverse impact on the character of the neighbourhood, rather a positive benefit for the reasons noted above.

**Assessment - 4. Nature of Locality and Current Activity in the Area** - As shown above, the pattern of activity does not facilitate the type of visitor numbers that would generate any excessive noise either inside or outside the property to the disturbance of the rest of Glenogle Road or neighbouring streets, where there are other residents.

Indeed, the property is carefully managed by the applicant to ensure that problems of anti-social behaviour are avoided and there have been no complaints of noise or disturbance relating to this property over the six years this use has been operating.

It is therefore our view that the continued use of the flats for short term lets will result in no more than a minimal disturbance to residential neighbours above any other type of residential use and would therefore have no materially detrimental effects on the living conditions of nearby residents.

### **Emerging City Plan 2030**

City Plan 2030 recognises that there is strong growing visitor demand and limited availability in Edinburgh City Centre. The property is a popular visitor facility in a very busy location, well located for Edinburgh's commercial attractions. The continued use of this flat to provide visitor accommodation contributes positively to the Council's broad policy objectives for the vitality of the city centre.

To accompany consultation on City Plan 2030, CEC commissioned a Commercial Needs Study (2019) of the Edinburgh Visitor Accommodation Sector. The market model projections undertaken to inform this report forecast that there is capacity for 7,890 new hotel bedrooms in Edinburgh by 2030, including 2,750 under construction or confirmed. Whilst there are no figures provided for the demand for short term lets, these numbers clearly show a substantial demand for tourist accommodation which this proposal could continue to satisfy as it does at present.

Whilst there is not a specific LDP policy relating to the jobs created through the required care, maintenance and upkeep of short term let properties, a recent successful application (21/04825/FUL) for short term let use at 19 Kings Stables, states that the economic benefits are a material planning consideration. The officer in this instance, references Paragraph 220 of the LDP which acknowledges that tourism is the biggest source of employment in Edinburgh, providing jobs for over 31,000 people.

The applicant has outlined in their supporting statement that they employ a professional cleaning company to provide turnaround cleaning and linen. They also partner and support local bars, restaurants, and tourist attractions by actively promoting them to guests to enhance their experience in Edinburgh as detailed on their Airbnb page and in the guest handbook within the property.

### **SUMMARY**

The continued use of 1A Glenogle Road for short term lets will continue to contribute to the attractiveness and vitality of Edinburgh as a capital city and provide much needed tourist accommodation.

The size of the property, being a small studio flat, the specifics of the private main-door access arrangements, the unique position of the property in respect to other neighbours and professional management of the flat by the applicant means the proposed change of use will not give rise to any detrimental impact on amenity or the deterioration in living conditions.

# F E R G U S O N P L A N N I N G

Indeed, this has been the case since June 2016, given the lack of complaints, for as long as the short term let use has operated to date, which should be a material consideration in the Council's assessment of this application. The principle of development is therefore acceptable in accordance with Policy Hou 7.

Whilst it is acknowledged that each planning application is different and must therefore be considered on its own merits, recent approvals of short term let in similar circumstances, highlighted throughout this statement, are considered to set a clear precedent for the acceptability of such use in this location. They must be a material consideration in the Council's assessment of this proposal. It is considered that the proposal accords with relevant adopted policy of the Local Development Plan and is supported by other material considerations. It is respectfully requested that planning permission is granted.

The relevant planning application fee of £600, has been paid directly by the applicant. We look forward to receiving confirmation that the application has been validated. In the meantime, if you have any queries regarding the enclosed documents, please do not hesitate to contact Sam Edwards ([sam@fergusonplanning.co.uk](mailto:sam@fergusonplanning.co.uk)).

Yours faithfully,

A black rectangular redaction box covers the signature area. Below the box, the handwritten signature of Sam Edwards is visible.

Ferguson Planning

Ferguson Planning Ltd.  
FAO: Sam Edwards  
37 ONE  
37 George Street  
Edinburgh  
EH2 2HN

Mr Simon And Mrs Gail Downes.  
14 Brandywell Road  
Abernethy  
Perth  
PH2 9GY

**Decision date: 7 November 2022**

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

Change of use (retrospective) from residential to short-term let use (Sui Generis).  
At 1A Glenogle Road Edinburgh EH3 5JQ

**Application No:** 22/03432/FUL

**DECISION NOTICE**

With reference to your application for Planning Permission registered on 4 July 2022, this has been decided by **Countersign**. 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 01,02, 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](mailto:lesley.porteous@edinburgh.gov.uk).



**Chief Planning Officer**  
**PLACE**  
**The City of Edinburgh Council**

## NOTES

# Report of Handling

**Application for Planning Permission  
1A Glenogle Road, Edinburgh, EH3 5JQ**

**Proposal: Change of use (retrospective) from residential to short-term let use (Sui Generis).**

**Item – Countersign  
Application Number – 22/03432/FUL  
Ward – B05 - Inverleith**

## **Recommendation**

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

## **Summary**

The proposal is acceptable with regards to Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as it will not harm the listed building or its setting and it will preserve or enhance the character or appearance of the conservation area.

However, 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 relates to an end-terrace ground floor studio flat in the Stockbridge Colonies at 1A Glenogle Road. The property has one bed/sitting area with a kitchen in the basement. It has its own main door access on to Glenogle Road.

Glenogle Road is within a predominantly residential area. The property is at the southern end of one of the rows of terraced colony houses off Glenogle Road (Hugh Miller Place). No 33 Hugh Miller Place is above the application property but has its access from the colony street. The nearest shops, cafes and restaurants are a five minute walk away in Stockbridge. Public transport links are accessible from Stockbridge to the west and Canonmills which is a ten minute walk away to the east.

The application property is one of a group of category B listed buildings. LB 50523, 11/10/73.

The site lies within the Stockbridge Colonies Conservation Area.

### **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 2016. Therefore, the application is retrospective.

### **Supporting Information**

Planning Statement.

### **Relevant Site History**

01/00580/FUL  
1A Glenogle Road  
Edinburgh  
EH3 5JQ  
Form house from shop (as amended)  
Granted  
18 October 2001

### **Other Relevant Site History**

No other relevant planning site history.

### **Consultation Engagement**

No consultations.

### **Publicity and Public Engagement**

**Date of Neighbour Notification:** 18 July 2022

**Date of Advertisement:** 22 July 2022

**Date of Site Notice:** 22 July 2022

**Number of Contributors:** 9

## **Section B - Assessment**

### **Determining Issues**

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

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

- (i) harming the listed building or its setting? or
- (ii) conflicting with the objective of preserving or enhancing the character or appearance of the conservation area?

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

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

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

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

In the assessment of material considerations this report will consider:

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

## **Assessment**

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

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

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

- Managing Change in the Historic Environment: Interim Guidance on the principles of listed building consent.
- Managing Change in the Historic Environment: Setting.

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

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

There are no external or internal alterations proposed. As such, the proposal will not have an adverse impact on or cause harm to the listed building. The setting of the listed building and the setting of neighbouring listed buildings will be unaffected by the proposal.

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

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

**b) The proposals harm the character or appearance of the conservation area?**

Section 64(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states:

"In exercise, with respect to any buildings or other land in a conservation area, of any powers under any of the provisions in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area."

The Colony Conservation Areas Character Appraisals emphasise the historic importance and unique architectural form of the Colony developments in Edinburgh. They are typified by their enclosed setting, their small scale layout, high quality workmanship, detailed control of design and pedestrian emphasis.

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

**Conclusion in relation to the conservation area**

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

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

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

- LDP Environment policies Env 3 and Env 6.
- LDP Housing policy Hou 7.
- LDP Transport policies Tra 2 and Tra 3.

The non-statutory 'Listed Buildings and Conservation Area' guidance is a material consideration that is relevant when considering policies Env 3 and Env 6.

The non-statutory Guidance for Businesses is relevant when considering policy Hou 7.

Listed Buildings and Setting

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

## Conservation Area

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

The proposal complies with LDP Policy Env 6.

## Proposed Use

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 STL properties, the economic benefits are a material planning consideration. The location of the application property is convenient for local services and will generate footfall and income for local businesses. However, this is unlikely to be dissimilar from that provided by a permanent residential use.

The use of this property as a short term let would have the potential to introduce an increased frequency of movement to the flat, and to the area in front of the flat, at unsociable hours. Although the property is not located within a Colonies street, it is on the very end of one, with a separate flatted unit above. The property fronts on to Glenogle Road which is not an overly busy thoroughfare. Vehicular access from Glenogle Road to Stockbridge was closed off several years ago. Consequently, it is only used for local access and ambient noise levels are relatively low, particularly in the evening. Moreover, the property is in close proximity to residential flats, as is the nature of all Colonies developments. 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 and may also have a negative impact on community cohesion.

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 on-street parking available. This is acceptable and there is no requirement for cycle parking for short term lets.

The proposal complies with policies Tra 2 and Tra 3.

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

The proposal 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.

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

The following material planning considerations have been identified:

#### SPP - Sustainable development

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

The proposal 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 objections*

- Negative impact on residential amenity. Addressed in c) above.
- Doesn't comply with the residential nature of the Colonies. Addressed in c) above.
- Erodes communities. Addressed in c) above.
- Does not comply with LDP policy Hou 7. Addressed in c) above.

#### *non-material objection*

- There are three short term let units in this block, not just one. This application has to be assessed on its merits.

#### *material comments of support*

- No negative impact on residential amenity. Addressed in c) above.
- Has own main door access. Addressed in c) above.
- It is very convenient for services. Addressed in c) above.
- Will generate footfall and income for local businesses. Addressed in c) above.

#### *non-material comments of support*

- The property is responsibly managed. This is not a material planning consideration.

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

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

### **Overall conclusion**

The proposal is acceptable with regards to Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as it will not harm the listed building or its setting and it will preserve or enhance the character or appearance of the conservation area.

However, 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: 4 July 2022**

### **Drawing Numbers/Scheme**

01,02

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

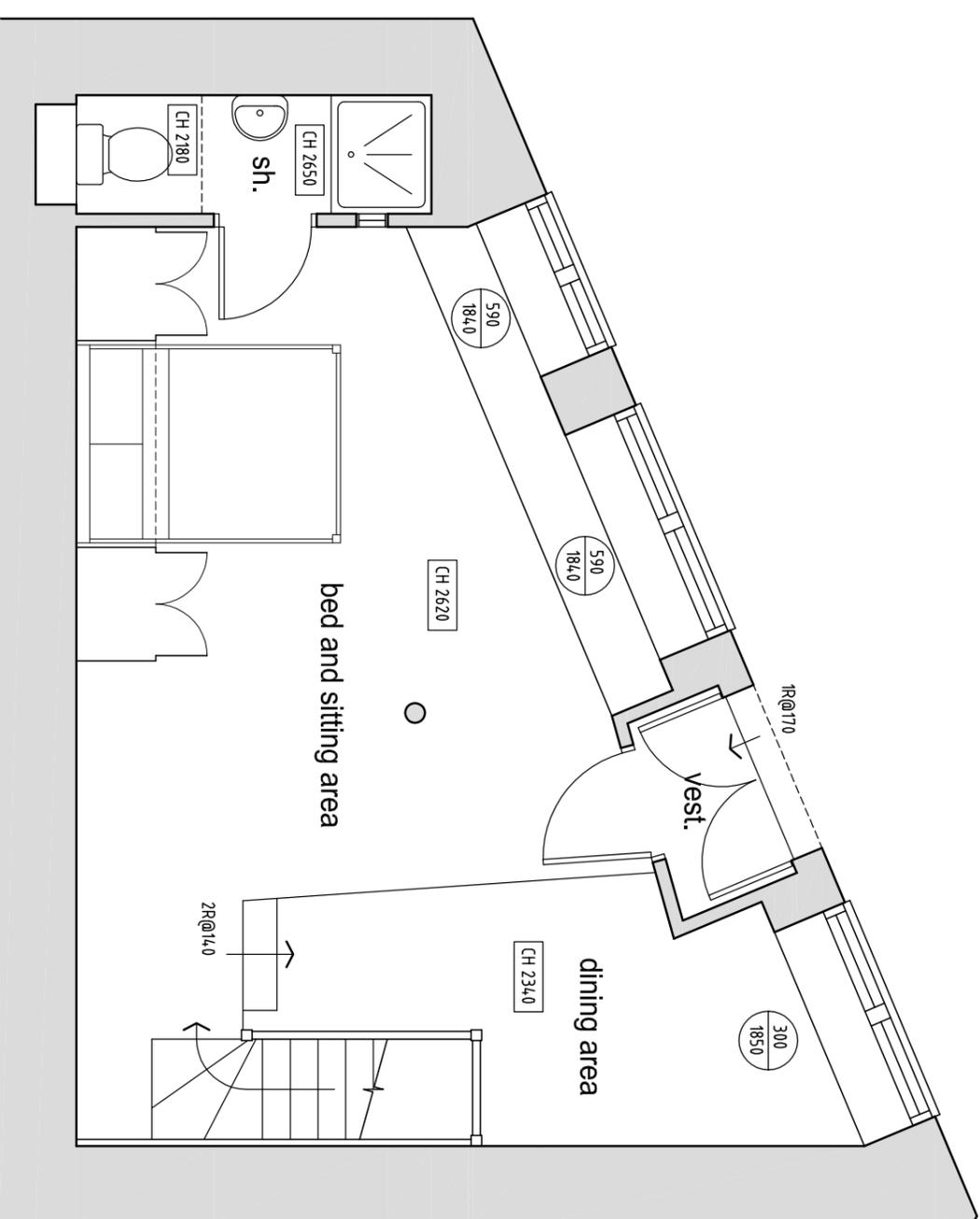
**Consultations**

No consultations undertaken.

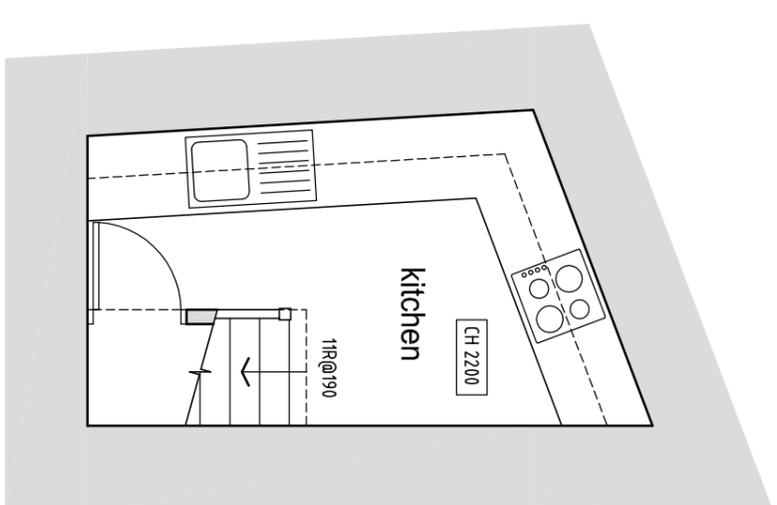
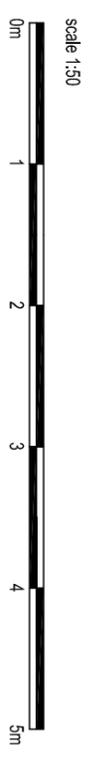
Areas		
GIA	Sq Ft	Sq M
Ground Floor	388	36
Basement	86	8

**Key:-**

-  floor to cill height
-  cill to head height
-  floor to ceiling height



ground floor plan 1:50 @A3



basement plan 1:50 @A3



Only scale for planning purposes.  
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Title  
1A Glenogle Road  
Edinburgh  
EH3 5JQ  
for  
Simon Downes

Date 27/04/22 Scale A3



3 Marchfield Park,  
Edinburgh EH4 5BW  
07720 634 835  
info@squarefootmedia.co.uk

View of property east along Glenogle Road



View of property west along Glenogle Road



View opposite the property of pedestrian walkway to Saxe Coburg Place





Living and dining area (entrance door to left of picture)



Bedroom and seating area



Bedroom area and doorway to bathroom



Kitchen area

Location Plan  
1A Glenogle Road and 33 Hugh Miller Place



**Promap**

LANDMARK INFORMATION

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Plotted Scale - 1:1250. Paper Size – A4