

# Development Management Sub-Committee Report

**Wednesday 26 April 2023**

**Application for Planning Permission  
2 & 4 Canning Street Lane, Edinburgh, EH3 8ER**

**Proposal: Change of use from residential to serviced apartments (sui-generis).**

**Item – Committee Decision  
Application Number – 22/04304/FUL  
Ward – B11 - City Centre**

## **Reasons for Referral to Committee**

The application is subject to a petition with 31 signatories in support of the application. Consequently under the Council's Scheme of Delegation the application must be determined by the Development Management Sub-Committee as the recommendation is for refusal.

### **Recommendation**

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

### **Summary**

The proposal complies with 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.

The change of use will have an unacceptable impact on neighbouring amenity. The loss of the residential accommodation has not been justified. Whilst it is recognised that there is an economic benefit to the city as a whole from the provision of visitor accommodation in this case it does not outweigh the adverse impact on residential amenity or the loss of residential accommodation.

The proposal does not comply with the Development Plan policy NPF 4 policy 30(e) and LDP policy Hou 7. There are no material considerations that outweigh this conclusion. The proposal is unacceptable.

## **SECTION A – Application Background**

### **Site Description**

The application site comprises two adjacent mews buildings on the northern side of Canning Street Lane comprising 10 residential flats. Canning Street Lane itself is predominately residential in character, though a mix of uses are present in the lane including offices, privately let parking garages, and private car parking and refuse storage areas associated with offices that front onto Canning Street. The surrounding area contains a mix of different uses, including offices, retail, cafes/restaurants and hotels. Public transport links are easily accessible from the site.

The application property is part of a category C listed building, 1-11 (Inclusive Nos) Canning Street Lane And 2 Canning Street, Atholl House, (LB46521, listed on 27 October 1999)

The application site is in the West End Conservation area.

### **Description of the Proposal**

The application is for the change of use of the 10 residential flats to Short Term Let (STL) (sui-generis) use. Nine out of ten of the flats have been used as STLs since 2017, whilst flat 2/1 Canning Street has been in residential use. As such the application is partially in retrospect. No internal or external physical changes are proposed.

### **Supporting Information**

- Planning Statement
- Management Statement
- Planning Statement Regarding NPF4

These documents are available to view on the Planning and Building Standards Online Service.

### **Relevant Site History**

15/04834/FUL

2 - 4 Canning Street Lane

Edinburgh

EH3 8ER

Change of use from offices to residential apartments and alterations to suit, alter one window to form door and alter one door to form window.

Granted

10 December 2015

15/04832/LBC

2 - 4 Canning Street Lane

Edinburgh

EH3 8ER

Internal alterations to create new residential apartments, alter one window to form door and alter one door to form window.

Granted

2 December 2015

16/01608/FUL

2 - 4 Canning Street Lane

Edinburgh

EH3 8ER

Change of use of 3 parking garages to residential and external alterations.

Granted

30 May 2016

### **Other Relevant Site History**

Planning applications relating to the each of the flats within the buildings for 'Change of use (retrospective) from residential to short term let (Sui Generis)' were refused on 25 May 2022, excluding flat 4, 4 Canning Street Lane, for which an application for a 'Change of use (retrospective) from residential to short term let (Sui Generis)' was withdrawn on 17 November 2022.

Site address and references are:

Flat 1, 2 Canning Street Lane - 22/01706/FUL

Flat 2, 2 Canning Street Lane - 22/01708/FUL

Flat 3, 2 Canning Street Lane - 22/01709/FUL

Flat 4, 2 Canning Street Lane - 22/01710/FUL

Flat 5, 2 Canning Street Lane - 22/01711/FUL

Flat 6, 2 Canning Street Lane - 22/01712/FUL

Flat 1, 4 Canning Street Lane - 22/01713/FUL

Flat 2, 4 Canning Street Lane - 22/01717/FUL

Flat 3, 4 Canning Street Lane - 22/01715/FUL

Flat 4, 4 Canning Street Lane - 22/01832/FUL

### **Pre-Application process**

Pre-application discussions took place on this application.

### **Consultation Engagement**

No consultations undertaken.

### **Publicity and Public Engagement**

**Date of Neighbour Notification:** 12 September 2022

**Date of Renotification of Neighbour Notification:** Not Applicable

**Press Publication Date(s):** 16 September 2022

**Site Notices Date(s):** 13 September 2022

**Number of Contributors: 1**

## **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 24, 25 and 37 of the Town and Country Planning (Scotland) Act 1997 (the 1997 Act):

Having regard to the legal requirement of Section 24(3), in the event of any policy incompatibility between National Planning Framework 4 (NPF4) & Edinburgh Local Development Plan 2016 (LDP) the newer policy shall prevail.

Do the proposals comply with the development plan?

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

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

In the assessment of material considerations this report will consider:

- 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 or its setting?**

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

- Managing Change in the Historic Environment: Guidance on the principles of listed buildings
- 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 does not harm the character of the listed building, its setting, or the setting of neighbouring listed buildings. It is therefore acceptable with regard to Section 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 West End Conservation Area Character appraisal states:

"The West End Conservation Area Character Appraisal emphasises that the area is characterised by mixed, residential commercial buildings. The central section of the conservation area is a major modern financial area consisting of modern offices. The Georgian and Victorian tenements within the area are mainly 4-6 storeys, and constructed of stone with pitched, slated roofs."

As stated previously, there are no external or internal changes proposed. Therefore, the impact on the character and appearance of the conservation area is acceptable.

### **Conclusion in relation to the conservation area**

The proposals comply with Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

### **c) The proposals comply with the development plan.**

National Planning Framework 4 (NPF4) was adopted by the Scottish Ministers on 13 February 2023 and forms part of the Council's Development Plan. NPF4 policies supports the planning and delivery of Sustainable Places, Liveable Places and Productive Places and are the key policies against which proposals for development are assessed. Several policies in the Edinburgh Local Development Plan (LDP) are superseded by equivalent and alternative policies within NPF4.

The relevant NPF4 and LDP 2016 policies to be considered are:

- NPF4 Sustainable Places Policies 1 and 7.
- NPF4 Productive Places Policy 30.
- 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 historic assets.

The non-statutory 'Guidance for Businesses' is a material consideration that is relevant when considering change of use applications.

#### Listed Buildings, Conservation Area, and World Heritage Site

There are no external or internal works proposed and as such there will not be a significant impact on historic assets or places. The proposal complies with NPF 4 Policy 7.

#### Proposed Use

With regards to NPF 4 Policy 1, the proposed change of use does not involve operational development resulting in physical changes to the property. The proposals will have a negligible impact on the global climate and nature crisis.

NPF 4 Policy 30 seeks to encourage, promote and facilitate sustainable tourism development which benefits local people, is consistent with our net zero and nature commitments, and inspires people to visit Scotland. Criterion 30 (b) and (e) specifically relate to STL proposals.

LDP Policy Hou 7 (Inappropriate Uses in Residential Areas), seeks to protect residential amenity.

The non-statutory Guidance for Businesses states that an assessment of a change of use of dwellings to a short term let will have regard to:

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

With regards to short term lets it states, "The Council will not normally grant planning permission in respect of flatted properties where the potential adverse impact on residential amenity is greatest".

## *Amenity*

Canning Street Lane is predominately residential in character, though a mix of uses are present in the lane, resulting in a low to moderate degree of activity in the immediate vicinity of the properties at any time. The change of use of the 10 properties to STLs would introduce an increased frequency of movement to the shared entrances facing onto Canning Street Lane. The proposed STL use would enable 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 no guarantee that visitors would not come and go frequently throughout the day and night.

The additional servicing that operating the properties as STLs would require compared with that of residential use is also likely to result in an increase in disturbances, further impacting on neighbouring amenity. However, this would be of lesser impact as it is likely that servicing would be conducted during the daytime.

Overall, the proposal would result in a significantly different level of ambient background noise than which neighbouring residents might reasonably expect and will have an unacceptable effect on the living conditions and amenity of nearby residents. The proposal does not comply with NPF 4 policy 30(e) part (i) and LDP policy Hou 7.

## *Loss of residential accommodation*

NPF 4 policy 30 (e) part (ii) requires that where there is a loss of residential accommodation, this will only be supported where the loss is outweighed by demonstrable local economic benefits.

Paragraph 220 of the LDP acknowledges that tourism is the biggest source of employment in Edinburgh, providing jobs for over 31,000 people. The use of the property by guests and the required maintenance and upkeep of STL properties are likely to result in a level of job creation and spend within the economy which can be classed as having an economic benefit.

The applicant has provided a planning statement outlining the economic benefits of the proposed change of use of the properties, describing how short term lets benefit the economy in general, and how the applicant's wider business, partially dependent on the proposed change of use, benefits the economy.

The planning statement also asserts that the application will not result in a loss of residential accommodation for nine of the ten flats within the mews buildings, as these have been in serviced apartment use for over five years, and as these apartments have only been used as STLs since the physical works consented in 2015 and 2016 (references: 15/04834/FUL and 16/01608/FUL), which cumulatively enabled the conversion of the two mews buildings, were undertaken.

However, given that the physical works associated with planning applications 15/04834/FUL and 16/01608/FUL have occurred, it is necessary to understand the permission as having been implemented, and the lawful use of the two mews buildings as residential. The proposals therefore result in a loss of residential accommodation.

The economic benefits of the application need to be considered in the context of the loss of residential accommodation, which given the recognised need and demand for housing in Edinburgh it is important to retain where appropriate. Furthermore, weight also needs to be given to the economic impact of the residential occupation of the properties, which also would contribute to the economy, in terms of providing homes and the associated spend in relation to the use of the properties for homes, including the use of local services and resultant employment, as well as by making contributions to the local community.

In this instance it has not been sufficiently demonstrated that the loss of the residential accommodation is outweighed by demonstrable local economic benefits arising from the STL use. As such, the proposal does not comply with NPF 4 30(e) part (ii).

### Parking Standards

There is no motor vehicle parking and no cycle parking. This is acceptable as there are no parking requirements for STLs.

The proposal complies with LDP Policies Tra 2 Private Car Parking, and Tra 3 Private Cycle Parking.

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

The change of use of these properties to STLs will have an unacceptable impact on neighbouring amenity. The loss of the residential accommodation has not been justified. Whilst it is recognised that there is an economic benefit to the City as a whole from the provision of visitor accommodation, in this case it does not outweigh the adverse impact on residential amenity or loss of residential accommodation. The proposal does not comply with the Development Plan policy NPF 4 policy 30(e) and LDP policy Hou 7.

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

The following material planning considerations have been identified:

#### Emerging policy context

City Plan 2030 represents the settled will of the Council, and it has been submitted to Scottish Ministers for examination. As such, limited 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:

1 objection

A petition in support of the application with 31 signatures.

#### *material considerations in objection*

- Impact on the historic character of the World Heritage Site and the Conservation Area. Addressed in Section C.
- Impacting on the local community. The change of use will not have a significant impact on the functioning of the local community.
- Impact on nearby residential amenity. Addressed in Section C.
- Loss of residential accommodation. Addressed in Section C.
- The proposal will result in all flats accessed by the shared stairs being used as short term lets. The refusal of the application will remove any potential amenity conflict resulting from unlawful STL uses in the communal stairs.

#### *material considerations in support*

- The development will provide accommodation for tourists, benefit the economy, and provide employment. Addressed in Section C.
- The application site is in a busy commercial area. Addressed in Section C.
- Impact on nearby residential amenity. Addressed in Section C.

#### *non-material considerations*

- Lack of a difference between this and previous applications at the property.
- The quality visitor accommodation to be provided.
- The application is similar to an apart-hotel.

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

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

### **Overall conclusion**

The proposal complies with sections 64 and 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as it will preserve or enhance the character or appearance of the conservation area, and does not harm the character of the listed building, its setting, or the setting of neighbouring listed buildings.

The change of use of this property to an STL will have an unacceptable impact on neighbouring amenity. The loss of the residential accommodation has not been justified. Whilst it is recognised that there is an economic benefit to the City as a whole from the provision of visitor accommodation in this case it does not outweigh the adverse impact on residential amenity or the loss of residential accommodation. The proposal does not comply with the Development Plan policy NPF 4 policy 30(e) and LDP policy Hou 7. There are no material considerations that outweigh this conclusion. The proposal is unacceptable.

## **Section C - Conditions/Reasons/Informatives**

The recommendation is subject to the following.

### **Conditions**

### **Reasons**

#### **Reason for Refusal: -**

1. The proposal is contrary to Local Development Plan Policy Hou 7 in respect of Inappropriate Uses in Residential Areas, as the short stay let use will have a detrimental effect on the living conditions and amenity of nearby residents.
2. The proposal is contrary to National Planning Framework 4 Policy 30(e) in respect of Local Amenity and Loss of Residential Accommodation, as the short stay let use will result in an unacceptable impact on local amenity and the unjustified loss of residential accommodation.

### **Background Reading/External References**

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

### **Further Information - Local Development Plan**

**Date Registered: 29 August 2022**

### **Drawing Numbers/Scheme**

01, 02, 03, 04, 05

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

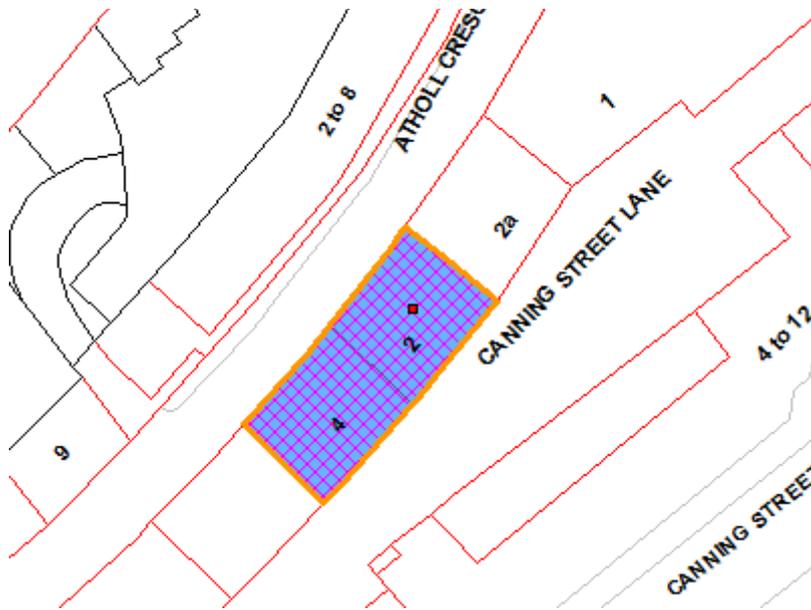
Contact: James Armstrong, Assistant Planning Officer  
E-mail: james.armstrong@edinburgh.gov.uk

Appendix 1

**Summary of Consultation Responses**

No consultations undertaken.

**Location Plan**



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