

Minutes

The City of Edinburgh Planning Local Review Body (Panel 2)

10.00 am, Wednesday 3 May 2023

Present: Councillors Beal, Booth, Hyslop and Mowat.

1. Appointment of Convener

Councillor Mowat was appointed as Convener for item 4.

Councillor Beal was appointed as Convener for items 5 – 8.

2. Planning Local Review Body Procedure

Decision

To note the outline procedure for consideration of reviews.

(Reference – Local Review Body Procedure, submitted)

3. Minutes

To approve the minute of the Local Review Body (LRB Panel 1) of 22 March 2023 as a correct record.

4. Request for Review – 47 Shandwick Place, Edinburgh

Details were submitted of a request for change of use from Class 1 to Class 3 with ancillary hot food take away and installation of rear mounted kitchen extract flue at 45 - 47 Shandwick Place, Edinburgh. Application Number. 22/02672/FUL.

At the meeting on Wednesday 22 February 2023, it was agreed to continue consideration of the matter for further information from the applicant regarding the potential impact of noise and ventilation on neighbouring properties, the impact of the NPF4 policies 27 and 28, and for a site visit.

The site was visited on 22 March 2023.

The request was considered by the City of Edinburgh Planning Local Review Body (LRB) at a meeting on Wednesday 3 May 2023.

Assessment

At the meeting on 3 May 2023, the LRB had been provided with copies of the notice of review, including a request that the review proceed on the basis of an assessment of the review documents only. The LRB had also been provided with copies of the decision notice and the report of handling and additional information.

The LRB heard from the Planning Adviser who summarised the issues raised and presented the drawings of the development and responded to further questions.

The plans used to determine the application were 01-07, Scheme 1 being the drawings shown under the application reference number 22/02672/FUL on the Council's Planning and Building Standards Online Services.

The LRB, having considered these documents, felt that they had sufficient information before it to determine the review.

The LRB in their deliberations on the matter, considered the following:

- 1) The development plan, including the relevant policies of NPF4 and the Edinburgh Local Development Plan, principally:
 - NPF policy 27 – City, town, local and commercial centres
 - NPF4 policy 28 - Retail
 - Edinburgh Local Development Plan Policy Des 1 (Design Quality and Context)
 - Edinburgh Local Development Plan Policy Des 12 (Alterations and Extensions)
 - Edinburgh Local Development Plan Policy Env 6 (Conservation Areas - Development)
 - Edinburgh Local Development Plan Policy Hou 7 (Inappropriate Uses in Residential Areas)
 - Edinburgh Local Development Plan Policy Ret 9 (Alternative Use of Shop Units - Primary Frontages in the City Centre in Town Centres)
 - Edinburgh Local Development Plan Policy Ret 11 (Alternative Use of Shop Units in Other Locations)
 - City Centre Shopping and Leisure Supplementary Guidance - Policy CC 4
- 2) Relevant Non-Statutory Guidelines.
 - The New Town Conservation Area Character Appraisal
 - Guidance for Listed Buildings and Conservation Areas
- 3) The procedure used to determine the application.
- 4) The reasons for refusal and the arguments put forward in the request for a review.

Conclusion

The LRB considered all the arguments put before it in respect of the proposed planning application and discussion took place in relation to the following issues:

- It was advised that since the application had been refused and submitted as a Local Review, legislative circumstances had changed. Following the coming into force of the Town and Country Planning (General Permitted Development and Use Classes) (Scotland) Miscellaneous Amendment Order 2023 on 31 March 2023, former use classes Retail – class 1 and Professional Services – class 2 were now combined into one class – Class 1A.
- In addition, it was now permitted to change from Class 1A to Class 3 Food and Drink, provided the use would not be situated below any part of a dwelling, or it would result in the change of use of a building or a building unit which was within 1 metre of a residential property.
- Hot food takeaways remain sui generis, but the hot food takeaway element of this change of use was ancillary to the main food and drink function.
- The effect of this change resulted in the change of use of the premises in question now being Permitted Development and not requiring planning permission.
- However, the flue still requires consent as it was a change to the external appearance of the premises within a Conservation Area.
- Clarification was asked about residential property. It was confirmed which properties were residential and that they were some distance away from the property in question.
- It was confirmed that the Panel were considering the flue and impact assessment, on that basis, one panel member was content to grant the application.
- Regarding the discussion at the site visit about a noise impact assessment, would that be appropriate as the actual change of use was permitted development?
- It was confirmed that the change of use was permitted development and therefore it would be unreasonable to ask for a noise survey. The Panel should be assessing the appearance of the flue in terms of the impact on the Conservation Area. Regarding the noise amenity, it would not be possible to control that through planning permission, because the use did not require consent. Noise would be an issue for Environmental Protection. It might be possible to condition it with NR25.
- If the Panel were to impose a condition and if the if report came back confirming that there might be detrimental noise impact and how could this be dealt with, the Panel should make a decision at this meeting. The Report of Handling and the Presentation suggested it was not proportionate.

- If the Panel were to impose a condition, could they specify that noise should not exceed a certain level?
- It was confirmed that if the Panel were to apply a condition, they would not ask for a noise impact assessment as well. If the flue became operational and it was breaching noise levels, then Environmental Health could become involved. The standard noise condition could be applied stating that the noise would not exceed NR25.
- It was thought that the site visit was useful, although it was difficult to see the back of this building, however, it was useful to see the surrounding residential properties. The flue would probably not impact on residential amenity. Therefore, the Panel should apply a suitable condition and grant the application.

Having taken all the above matters into consideration, the LRB determined to overturn the decision of the Chief Planning Officer and granted planning permission, subject to conditions, for the reasons that there were Changes to the Town and Country Planning General Permitted Development and Use Classes Scotland Miscellaneous Amendment Order 2023 which came into force on the 31 March 2023. The proposed change of use was now permitted development and did not require planning permission. The proposed flue is acceptable in this location and will not have an adverse impact on the character and appearance of the conservation area in compliance with NPF4 policy 7.

Decision

To not uphold the decision by the Chief Planning Officer and to grant planning permission, subject to conditions.

Reasons:

There were Changes to the Town and Country Planning General Permitted Development and Use Classes Scotland Miscellaneous Amendment Order 2023 which came into force on the 31 March 2023. The proposed change of use was now permitted development and did not require planning permission. The proposed flu was acceptable in this location and would not have an adverse impact on the character and appearance of the conservation area in compliance with NPF4 policy 7.

Condition

1. The design and installation of any plant, machinery or equipment should be such that any associated noise complied with NR25 when measured within any nearby living apartment, and no structure borne vibration was perceptible within any nearby living apartment.

Reason

1. In order to safeguard the amenity of neighbouring residents and other occupiers.

(References – Planning Local Review Body (LRB) of Wednesday 22 February 2023 (item 8); Decision Notice, Notice of Review, Report of Handling and supporting documents, and additional information submitted).

5. Request for Review – 30 Almond Green, Edinburgh

Details were submitted for a request for a review for change of use from residential to short term let (in retrospect) at 30 Almond Green Edinburgh. The entire property was currently used, and had been for the last 8 months, for short term lets. Application Number. 22/04846/FUL.

Assessment

At the meeting on 3 May 2023, the LRB had been provided with copies of the notice of review, including a request that the review proceed on the basis of an assessment of the review documents only. The LRB had also been provided with copies of the decision notice and the report of handling.

The LRB heard from the Planning Adviser who summarised the issues raised and presented the drawings of the development and responded to further questions. It was highlighted to the Panel that the description in the Report of Handling was incorrect. A correct site description was provided and the Panel were asked to disregard the description in the Report of Handling.

The plans used to determine the application were 01 – 02, Scheme 1 being the drawings shown under the application reference number 22/04846/FUL on the Council's Planning and Building Standards Online Services.

The LRB, having considered these documents, felt that they had sufficient information before it to determine the review.

The LRB in their deliberations on the matter, considered the following:

- 1) The development plan, including the relevant policies of the NPF4 and Edinburgh Local Development Plan, principally:
 - NPF4 policy 30 Tourism
 - Edinburgh Local Development Plan Policy Hou 7 (Inappropriate Uses in Residential Areas)
 - Edinburgh Local Development Plan Policy Tra 2 (Private Car Parking)
 - Edinburgh Local Development Plan Policy Tra 3 (Private Cycle Parking)
 - Edinburgh Local Development Plan Policy Del 2 (City Centre)
- 2) Relevant Non-Statutory Guidelines.
 - Guidance for Businesses
- 3) The procedure used to determine the application.

- 4) The reasons for refusal and the arguments put forward in the request for a review.

Conclusion

The LRB considered all the arguments put before it in respect of the proposed planning application and discussion took place in relation to the following issues:

- The proposed change of use from residential to short term let would cause an impact on residential amenity, but of a minimal nature. From a planning perspective, the Panel could not take into account the management of the property but was there might be an argument for a personal permission being granted.
- It was confirmed that personal consent should only be used in extreme circumstances, according to Scottish Government Guidance for compassionate reasons, such as disability requirements. Permission went with the building, not with the applicant, who could potentially operate 365 days a year. The Panel had to ask if this was an appropriate use in this location.
- It was asked about reasons about refusal as NPF4 had since come into effect and it was thought that the Panel should uphold the officer's decision and perhaps include NPF4 Policy 30 b) iii and e) ii.
- It was confirmed that the appropriate paragraphs of NPF4 Policy 30 could be included, if required.
- The applicant stated that the property was a considerable distance from the city centre, however, this was a very residential neighbourhood, the proposed use was inappropriate and the guidance and policy was clear. On this basis, the Panel should uphold the officer's recommendations.
- There was sympathy with the applicant, as there were no complaints from neighbours, and it was a well-run establishment. But this was a residential area, planning permission went with the property, the applicant might sell the property at a future date and new management might take over. The Panel had to determine the application in planning terms and should refuse the application.
- It was agreed to uphold the officer's decision. This property was in a residential area and the proposal represented a change of use, and it should return to residential use.

Having taken all the above matters into consideration, and although there was some sympathy for the applicant, the LRB were of the opinion that no material considerations had been presented in the request for a review which would lead it to overturn the determination by the Chief Planning Officer.

Decision

To uphold the decision by the Chief Planning Officer to refuse planning permission.

Reasons for Refusal:

The proposal was contrary to the Development Plan and NPF4 Policy 30 Tourism, paragraphs b) iii and e) ii, and LDP Policy Hou 7 in respect of Inappropriate Uses in Residential Areas, as the use of the property as a short stay let would result in the loss of residential accommodation and would have a materially detrimental effect on the living conditions and amenity of nearby residents.

(Reference – Decision Notice, Notice of Review, Report of Handling and supporting documents, submitted)

6. Request for Review – 4A Cumberland Street North-West Lane, Edinburgh

Details were submitted for a request for a review for retrospective change of use from flatted dwelling to short term let at 4A Cumberland Street North-West Lane, Edinburgh. Application Number. 22/04795/FUL.

Assessment

At the meeting on 3 May 2023, the LRB had been provided with copies of the notice of review, including a request that the review proceed on the basis of an assessment of the review documents only. The LRB had also been provided with copies of the decision notice and the report of handling.

The LRB heard from the Planning Adviser who summarised the issues raised and presented the drawings of the development and responded to further questions.

The plans used to determine the application were 01 – 02, Scheme 1 being the drawings shown under the application reference number 22/04795/FUL on the Council's Planning and Building Standards Online Services.

The LRB, having considered these documents, felt that they had sufficient information before it to determine the review.

The LRB in their deliberations on the matter, considered the following:

- 1) The development plan, including the relevant policies of the NPF4 and Edinburgh Local Development Plan, principally:
 - NPF4 policy 30 Tourism
 - Edinburgh Local Development Plan Policy Env 1 (World Heritage Sites)
 - Edinburgh Local Development Plan Policy Env 3 (Listed Buildings - Setting)
 - Edinburgh Local Development Plan Policy Env 6 (Conservation Areas - Development)
 - Edinburgh Local Development Plan Policy Hou 7 (Inappropriate Uses in Residential Areas)

Edinburgh Local Development Plan Policy Tra 2 (Private Car Parking)

Edinburgh Local Development Plan Policy Tra 3 (Private Cycle Parking)

Edinburgh Local Development Plan Policy Del 2 (City Centre)

2) Relevant Non-Statutory Guidelines.

Guidance for Businesses

Managing Change in the Historic Environment – Setting

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

3) The procedure used to determine the application.

4) The reasons for refusal and the arguments put forward in the request for a review.

Conclusion

The LRB considered all the arguments put before it in respect of the proposed planning application and discussion took place in relation to the following issues:

- Confirmation was requested if there was access to the shared corridor of the block.
- It was confirmed that there was access directly into the living /dining room of the premises. There was also access from the communal hallway. With reference to the layout plan, it could be seen there was a main door to the wider block which would also provide access into the premises.
- There was sympathy for the applicant as it was a well-managed property. However, on planning grounds, there would be potential for there to be impact on the residential buildings and there was access to the common stair and there was a private garden. There would be significant impact on amenity. There was also NPF4 to be considered and the potential loss of residential accommodation. The Panel should therefore uphold the officer's decision.
- The property had shared access, there was the potential for noise impact and impact on neighbouring amenity. The Panel should base their decision on planning grounds, and as it was in breach of a number of policies, the decision should be to uphold the officer's recommendations.
- The property was in a residential location and the proposed retrospective change of use was in breach of policy guidelines.

Having taken all the above matters into consideration and although there was some sympathy for the applicant, the LRB were of the opinion that no material considerations had been presented in the request for a review which would lead it to overturn the determination by the Chief Planning Officer.

Decision

To uphold the decision by the Chief Planning Officer to refuse planning permission.

Reasons for Refusal:

The proposal was contrary to the Development Plan and NPF4 Policy 30 Tourism, paragraphs b) iii and e) ii, and LDP Policy Hou 7 in respect of Inappropriate Uses in Residential Areas, as the use of the property as a short stay let would result in the loss of residential accommodation and would have a materially detrimental effect on the living conditions and amenity of nearby residents.

(References – Decision Notice, Report of Handling, Notice of Review and supporting documents, submitted).

7. Request for Review – 89 (Flat 20) Holyrood Road, Edinburgh

Details were submitted of a request for a review for change of use from private residential to short term commercial letting at Flat 20, 89 Holyrood Road, Edinburgh. Application Number. 22/04909/FUL.

Assessment

At the meeting on 3 May 2023, the LRB had been provided with copies of the notice of review, including a request that the review proceed on the basis of an assessment of the review documents only. The LRB had also been provided with copies of the decision notice and the report of handling.

The LRB heard from the Planning Adviser who summarised the issues raised and presented the drawings of the development and responded to further questions.

The plans used to determine the application were 01 – 02, Scheme 1 being the drawings shown under the application reference number 22/04909/FUL on the Council's Planning and Building Standards Online Services.

The LRB, having considered these documents, felt that they had sufficient information before it to determine the review.

The LRB in their deliberations on the matter, considered the following:

- 1) The development plan, including the relevant policies of the NPF4 and Edinburgh Local Development Plan, principally:
 - NPF4 policy 30 Tourism
 - Edinburgh Local Development Plan Policy Hou 7 (Inappropriate Uses in Residential Areas)
 - Edinburgh Local Development Plan Policy Tra 2 (Private Car Parking)
 - Edinburgh Local Development Plan Policy Tra 3 (Private Cycle Parking)
 - The Draft National Planning Framework 4 Policy 30(e)

NPF4 Sustainable Places Tackling the climate and nature crises Policy 1.

NPF4 Productive Places Tourism Policy 30 (e).

NPF4 Historic Assets and Places Policy 7.

- 2) Relevant Non-Statutory Guidelines.
Guidance for Businesses
- 3) The procedure used to determine the application.
- 4) The reasons for refusal and the arguments put forward in the request for a review.

Conclusion

The LRB considered all the arguments put before it in respect of the proposed planning application and discussion took place in relation to the following issues:

- Could it be confirmed that an application was granted in same block for a certificate of lawfulness rather than a planning application?
- It was confirmed that a certificate of lawfulness may have been granted in the same block. It was also advised that if evidence is provided that a use has been operating for 10 years, a certificate of lawfulness could be applied for, which confirmed the use was lawful.
- This application for the proposed change of use from private residential to short term commercial letting, was noticeable by the large level of objections, therefore, there seemed to be some problems in this block from short term lets.
- The nature of these objections referred to the issues the applicant was trying to overcome. There were amenity issues, there were no reasons for an exemption to policy, it was a residential flat and this use could represent a loss of use of residential accommodation. The Panel should uphold the officer's decision and impose the relevant provision of NPF4 Policy 30.
- The applicant had stated that as one of the flats in the block had received permission, that this one should be as well. However, there was no case for using precedence as an argument when considering planning applications, and this other property had been operating for 10 years, therefore it had de facto permission. It was necessary to consider this application on its own merits and to also add NPF4 Policy 30, b) iii on tourism-related development.
- There was agreement with this viewpoint, with the addition of the relevant paragraph of NPF4 Policy 30, and that the Panel should refuse the application.
- It was agreed that this was a permanent change of use, there might be a change of management in future, and it was in breach of planning policy in terms of LDP Policy Hou 7. Therefore, the Panel should uphold the officer's recommendations.

Having taken all the above matters into consideration, the LRB were of the opinion that no material considerations had been presented in the request for a review which would lead it to overturn the determination by the Chief Planning Officer.

Decision

To uphold the decision by the Chief Planning Officer to refuse planning permission.

Reasons for Refusal:

The proposal was contrary to:

1. Local Development Plan Policy Hou 7 in respect of Inappropriate Uses in Residential Areas, as the use of this dwelling as a short stay let would have a materially detrimental effect on the living conditions and amenity of nearby residents.
2. National Planning Framework Policy 30(e) and (b) iii in respect of Local Amenity and Loss of Residential Accommodation, as the use of this dwelling as a short stay let would result in an unacceptable impact on local amenity and the loss of a residential property had not been justified.

(References – Decision Notice, Report of Handling, Notice of Review and supporting documents, submitted).

8. Request for Review – 178 Pleasance, Edinburgh

Details were submitted of a request for a review for change of use from residential to short-term holiday accommodation at 178 Pleasance, Edinburgh. Application Number. 22/05431/FULSTL.

Assessment

At the meeting on 3 May 2023, the LRB had been provided with copies of the notice of review, including a request that the review proceed on the basis of an assessment of the review documents only. The LRB had also been provided with copies of the decision notice and the report of handling.

The LRB heard from the Planning Adviser who summarised the issues raised and presented the drawings of the development and responded to further questions.

The plans used to determine the application were 01A, 02 Scheme 1 being the drawings shown under the application reference number 22/05431/FULSTL on the Council's Planning and Building Standards Online Services.

The LRB, having considered these documents, felt that they had sufficient information before it to determine the review.

The LRB in their deliberations on the matter, considered the following:

- 1) The development plan, including the relevant policies of the NPF4 and Edinburgh Local Development Plan, principally:

NPF4 policy 30 Tourism

Edinburgh Local Development Plan Policy Hou 7 (Inappropriate Uses in Residential Areas)

Edinburgh Local Development Plan Policy Tra 2 (Private Car Parking)

Edinburgh Local Development Plan Policy Tra 3 (Private Cycle Parking)

The Draft National Planning Framework 4 Tourism Policy 30 (e).

- 2) Relevant Non-Statutory Guidelines.
Guidance for Businesses
- 3) The procedure used to determine the application.
- 4) The reasons for refusal and the arguments put forward in the request for a review.

Conclusion

The LRB considered all the arguments put before it in respect of the proposed planning application and discussion took place in relation to the following issues:

- Whether all the surrounding properties were residential.
- It was confirmed that this was a residential development, but it was unclear if there were any other neighbouring short-term lets.
- It was clear that on the floor plan, the neighbouring property would have an adjacent bedroom and there were other bedrooms above in the top floor flats. There was the potential for noise impact in the front garden next to the adjacent bedroom window, and the potential impact on amenity would be significant. Therefore, the Panel should uphold the officer's recommendations.
- There was sympathy for the applicant as there was student accommodation opposite, but the majority of this side of the street was residential. There was also a significant difference between noise from student accommodation and that produced by short-term lets. There would be significant noise impact and it might be appropriate to add NPF4 Policy 30 b) iii, as it would impact on the community.
- This situation was more finely balanced, it was not a property being used solely for short-term lets and there was a flexibility of use that the applicant had detailed. The economic benefit argument came in, the individual had bought this property to enable them to stay in the city and it did create economic benefit. However, the Panel had to weigh that against amenity impact and with the other policy provisions. This was not as straightforward as the previous applications, but on balance, the Panel should uphold the officer's recommendations and refuse the application.

- There was agreement with this viewpoint and some sympathy, as there was student accommodation opposite, however, there would be significant impact on residential amenity.

Having taken all the above matters into consideration, and although there was some sympathy for the applicant, the LRB were of the opinion that no material considerations had been presented in the request for a review which would lead it to overturn the determination by the Chief Planning Officer.

Decision

To uphold the decision by the Chief Planning Officer to refuse planning permission.

Reasons for Refusal:

The proposal was contrary to:

1. Local Development Plan Policy Hou 7 in respect of Inappropriate Uses in Residential Areas, as the use of this dwelling as a short stay let would have a materially detrimental effect on the living conditions and amenity of nearby residents.
3. National Planning Framework 4 Policy 30 e) and b) iii, in respect of Local Amenity and Loss of Residential Accommodation, as the use of this dwelling as a short stay let would result in an unacceptable impact on local amenity and the loss of a residential property had not been justified.

(References – Decision Notice, Report of Handling, Notice of Review and supporting documents, submitted).