

Mr Fouad Alkhamisi.
Flat 4 31 Easter Drylaw Place
Edinburgh
EH4 2QJ

Decision date: 14 April 2023

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

Retrospective change of use from Residential to Short Term Let (sui-generis).
At Flat 8 58 Grassmarket Edinburgh EH1 2LJ

Application No: 22/05332/FULSTL

DECISION NOTICE

With reference to your application for Planning Permission STL registered on 3 November 2022, this has been decided by **Local Delegated Decision**. The Council in exercise of its powers under the Town and Country Planning (Scotland) Acts and regulations, now determines the application as **Refused** in accordance with the particulars given in the application.

Any condition(s) attached to this consent, with reasons for imposing them, or reasons for refusal, are shown below;

Conditions:-

1. No conditions are attached to this consent.

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 use of this dwelling as a short stay let will have a materially detrimental effect on the living conditions and amenity of nearby residents.
2. The proposal is contrary to National Planning Framework Policy 30(e) in respect of Local Amenity and Loss of Residential Accommodation, as the use of this dwelling as a short stay let will result in an unacceptable impact on local amenity and the loss of a residential property has not been justified.

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 James Armstrong directly at james.armstrong@edinburgh.gov.uk.

A handwritten signature in black ink, appearing to read 'James Armstrong', with a long horizontal flourish extending to the right.

Chief Planning Officer
PLACE
The City of Edinburgh Council

NOTES

1. If the applicant is aggrieved by the decision to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within three months beginning with the date of this notice. The Notice of Review can be made online at www.eplanning.scot or forms can be downloaded from that website. Paper forms should be addressed to the City of Edinburgh Planning Local Review Body, G.2, Waverley Court, 4 East Market Street, Edinburgh, EH8 8BG. For enquiries about the Local Review Body, please email localreviewbody@edinburgh.gov.uk.

2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.

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Report of Handling

**Application for Planning Permission STL
Flat 8 58 Grassmarket, Edinburgh, EH1 2LJ**

Proposal: Retrospective change of use from Residential to Short Term Let (sui-generis).

**Item – Local Delegated Decision
Application Number – 22/05332/FULSTL
Ward – B11 - City Centre**

Recommendation

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

Summary

The proposal is acceptable with regard to Section 64 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.

The change of use of this property to a short term let (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 from the loss of residential accommodation and impact on residential amenity.

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 is a three bedroom first floor flat located within a block of flats accessed from Grassmarket. The property shares its access to the street with other properties via communal areas.

Grassmarket is of mixed character, including leisure and entertainment uses, offices, public houses, retail and residential properties. Bus and train links are relatively accessible from the site.

The application site falls within the Old and New Towns World Heritage Site, Old Town Conservation Area and a Local Nature Conservation Site.

Description Of The Proposal

The application is for a change of use from Residential to Short Term Let (STL) (sui-generis). No internal or external physical changes are proposed.

For the avoidance of doubt, planning statements 1 and 2, received during the assessment of the application, outline a proposed pattern of use of the property materially different from the change of use to STL that has been applied for. A further application would need to be made to the planning authority for the proposal described in planning statements 1 and 2 to be assessed.

Supporting Information

- Planning Statement 1
- Planning Statement 2
- Supporting documents 1, 2 and 3.
- Key Safe Photo

Relevant Site History

22/05348/PPP

Flat 8 58 Grassmarket

Edinburgh

EH1 2LJ

Changes of use for my own resident to short term resident.

22/05492/FULSTL

Flat 8 58 Grassmarket

Edinburgh

EH1 2LJ

I started renting this property as short let, no work was required to the building or the flat structure, everything ins remaining as it is.

Other Relevant Site History

No other relevant site history has been identified.

Consultation Engagement

No consultations.

Publicity and Public Engagement

Date of Neighbour Notification: 14 November 2022

Date of Advertisement: 18 November 2022

Date of Site Notice: 18 November 2022

Number of Contributors: 5

Section B - Assessment

Determining Issues

Due to the proposed development falling within a conservation area, this report will first consider the proposals in terms of Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997:

- Is there a strong presumption against granting planning permission due to the development conflicting with the objective of preserving or enhancing the character or appearance of the conservation area?
- 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):

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:

- 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

a) 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 Old Town Conservation Area Character Appraisal emphasises the survival of the original medieval street pattern; the wealth of important landmark buildings; the survival of an outstanding collection of archaeological remains, medieval buildings, and 17th-century town houses; the consistent and harmonious height and mass of buildings; the importance of stone as a construction material for both buildings and the public realm; the vitality and variety of different uses; and the continuing presence of a residential community.

As stated previously, there are no external 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 are acceptable with regard to section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

b) 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:

- 7. • NPF4 Sustainable Places Tackling the climate and nature crises Policies 1 and
- NPF4 Productive Places Tourism 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.

In connection 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

The application property is accessed via shared communal areas and is located within an area of mixed character. There is a high degree of activity in the immediate vicinity of the property at any time, though the shared communal areas within the block of flats are typically quiet.

The use of the property as an STL would introduce an increased frequency of movement to the property and into the stair. The proposed three bedroom 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 guests would not come and go frequently throughout the day and night, and transient visitors may have less regard for neighbours' amenity than individuals using the property as a principal home.

The additional servicing that operating a property as an STL requires compared to that of a 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.

This would be significantly different from the ambient background noise that 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 property 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.

In Planning Statement 1 the applicant outlines that as the property is to be marketed to people visiting the city for a scientific or educational purpose, this will be of benefit to businesses in the city. Planning Statements 1 and 2 however also outline a use of the application property where the property would continue to function as the principal home of a permanent tenant who would sublet the entire dwelling as a short term let for a period of more than 90 days a year. The use proposed in planning statements 1 and 2 is materially different to the change of use proposed by the application. Only the use proposed by the application can be assessed.

The use of the property as an STL would result in the loss of residential accommodation, which given the recognised need and demand for housing in Edinburgh it is important to retain, where appropriate.

Furthermore, residential occupation of the property also contributes to the economy, in terms of providing a home and the spend in relation to the use of the property as a home, 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 or cycle parking. This is acceptable as there are no parking requirements for STLs.

The proposal complies with LDP Policies Tra 2 and Tra 3.

Conclusion in relation to the Development Plan

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 loss of residential accommodation. The proposal does not comply with the Development Plan policy NPF 4 policy 30(e) and LDP policy Hou 7.

c) 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. Public representations have raised the issue of an impact on persons living nearby with protected characteristics, as the block of flats that the property is located within places a restriction on who may inhabit properties within the block based on their age, and alleges that elderly residents have been negatively impacted by the historic use of the application property for Short Term Lets. This impact is noted and considered as part of the assessment.

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:

5 objections

material considerations in objection

- Impact on residential amenity. Addressed in Sections B and C.
- Loss of residential accommodation. Addressed in Section B.
- Impact on the local community. The change of use of one property to STL use will not have a significant impact on the local community. Addressed in Section B.
- The property is located in the Old and New Towns World Heritage Site. Addressed in Section B.
- Impact on the Conservation Area. Addressed in Sections A and B.

non-material considerations

- Impact on the maintenance of the building.
- Loss of tax revenue.
- Sufficient STLs in the local area.
- Impact on resident's safety.

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 Section 64 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.

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 the adverse impact from the loss of residential accommodation and impact on residential amenity. 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

1. No conditions are attached to this consent.

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 use of this dwelling as a short stay let will have a materially detrimental effect on the living conditions and amenity of nearby residents.
2. The proposal is contrary to National Planning Framework Policy 30(e) in respect of Local Amenity and Loss of Residential Accommodation, as the use of this dwelling as a short stay let will result in an unacceptable impact on local amenity and the loss of a residential property has not been justified.

Background Reading/External References

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

Further Information - [Local Development Plan](#)

Date Registered: 3 November 2022

Drawing Numbers/Scheme

01, 02

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

Consultations

No consultations undertaken.

Comments for Planning Application 22/05332/FULSTL

Application Summary

Application Number: 22/05332/FULSTL

Address: Flat 8 58 Grassmarket Edinburgh EH1 2LJ

Proposal: I would like to apply for short-term letting planning permission for the flat addressed 58/8 Thomsons Court, which is currently used for long term let.

Case Officer: Improvement Team

Customer Details

Name: Dr Alison Whyte

Address: 15 Roseneath Place Edinburgh

Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: The proposed use as short term let accommodation does not comply with the residential nature of tenement buildings.

The high turnover of visitors will cause extreme disturbance and the transient visitors will have an adverse effect on long standing residents, amenities and resident safety and privacy.

The current housing crisis is also not helped by STL properties, and they have already had a devastating effect on our communities and housing stock.

This proposal should be objected immediately to help preserve our community, conservation area and resident safety.

Comments for Planning Application 22/05332/FULSTL

Application Summary

Application Number: 22/05332/FULSTL

Address: Flat 8 58 Grassmarket Edinburgh EH1 2LJ

Proposal: I would like to apply for short-term letting planning permission for the flat addressed 58/8 Thomsons Court, which is currently used for long term let.

Case Officer: Improvement Team

Customer Details

Name: Ms Margaret Nicholson

Address: Flat 27 Thomsons Court 58 Grassmarket Edinburgh

Comment Details

Commenter Type: Neighbour-Residential

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: I object to the further use of flats in the block for short term letting.

There are several already.

The chief problem for the neighbours is noise from party groups or other visitors coming purely for recreational stays.

We already have a major noise problem from the street which lasts all night in summer and till 3.30 or 4am at other times of the year.

The character of the neighbourhood is already slanted towards hotels but this is not a hotel, it is a residential block with mixed owners and tenants, many elderly residents and some children. If permission is given for owners to let on a short term basis it will rapidly come to resemble a hotel and be unsuitable for the amenity housing it was designed to be.

I am on the fourth floor and have no direct experience of the flat in question but I understand from the immediate neighbours that short term letting has already taken place under the applicant's tenure and caused them disturbance.

Comments for Planning Application 22/05332/FULSTL

Application Summary

Application Number: 22/05332/FULSTL

Address: Flat 8 58 Grassmarket Edinburgh EH1 2LJ

Proposal: I would like to apply for short-term letting planning permission for the flat addressed 58/8 Thomsons Court, which is currently used for long term let.

Case Officer: Improvement Team

Customer Details

Name: Mr Nicholas Cumming

Address: 7/8 Castle Wynd South EDINBURGH

Comment Details

Commenter Type: Neighbour-Residential

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: Living in this area I can attest to an over provision of STL already operating. My building of twelve flats has seven keylocks on railings. Many other properties are the same. The constant use of properties as STL s is destroying this community

Comments for Planning Application 22/05332/FULSTL

Application Summary

Application Number: 22/05332/FULSTL

Address: Flat 8 58 Grassmarket Edinburgh EH1 2LJ

Proposal: I would like to apply for short-term letting planning permission for the flat addressed 58/8 Thomsons Court, which is currently used for long term let.

Case Officer: Improvement Team

Customer Details

Name: Mrs Elspeth Wills

Address: 3 Brown's Place, Edinburgh EH1 2HX

Comment Details

Commenter Type: Residents Association

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: This property is partly sheltered accommodation and is therefore unsuitable for use as STLs. with the full support of the Old Town Community Council GRASS (Grassmarket Residents Association) wishes to object to this application.

The Old Town Community Council wishes to object to this new applications.

Our grounds of objection are as follows:

Shortage of housing to buy or rent is a real issue throughout Edinburgh as acknowledged by both by the current and 2030 national planning guidelines. This is particularly true of the Old Town where the voters' roll has fallen to its lowest level ever and one in three properties is now a STL. The proliferation of STLs has damaging effects not only on neighbours (Hou 7) and on building maintenance but on whole communities. Judging by the neighbour notification list there are still a few residents surviving in the area.

STLs bring few benefits to the local economy or community as most visitors stay for only 2-3 nights to have fun in the city centre.

Many properties are at the heart of the World Heritage site.

Loss of income to the Council who maintains essential services such as rubbish collection free of charge. Housing should be seen as a place for people to live in not as an investment.

We urge that this and all STL applications are turned down.

Yours sincerely

Elspeth Wills

Chair GRASS

Comments for Planning Application 22/05332/FULSTL

Application Summary

Application Number: 22/05332/FULSTL

Address: Flat 8 58 Grassmarket Edinburgh EH1 2LJ

Proposal: I would like to apply for short-term letting planning permission for the flat addressed 58/8 Thomsons Court, which is currently used for long term let.

Case Officer: Improvement Team

Customer Details

Name: Mr Darren Todd

Address: 160 Dundee Street Edinburgh

Comment Details

Commenter Type: Other

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment:(Housing Officer) Hillcrest Homes would like to formally object to the short term letting of the property on the grounds that this is amenity housing and Hillcrest have a policy of over 55s only in the building.

The flat in the past has caused a great amount of noise and upset to some of our clients who are aged 90 + in the past.

The block and environment does not lend itself to short term lets