

Minutes

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

10.00 am, Wednesday 27 September 2023

Present: Councillors Beal, Booth, Mattos Coelho, McNeese-Mechan and Mowat.

1. Appointment of Convener

Councillor Booth was appointed as Convener.

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 30 August 2023 as a correct record.

4. Request for Review – 50 (Flat 1) Balfour Street, Edinburgh

Details were submitted of a request for review for change of use from residential to holiday short term let, (in retrospect) at Flat 1, 50 Balfour Street, Edinburgh.
Application Number. 22/05090/FULSTL.

Assessment

At the meeting on 27 September 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, the report of handling and further representations.

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 01,03, Scheme 1, being the drawings shown under the application reference number 22/05090/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:
 - 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)
 - National Planning Framework 4 Policy 1 (Sustainable Places Tackling the climate and nature crises)
 - National Planning Framework 4 (Policy 30 (Tourism))
- 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 applicant indicated that they never used the stairwell and there did not seem to be any external access to the flat.
- The porch area was illustrated which extended out on to the street. The main entrance was also illustrated. The applicant said they were on the ground floor and therefore did not use the stairs, they were only entering into the stairwell.
- One member asked about the applicant's statement and that the applicants said they were an elderly couple – should this be a consideration for the Panel?
- It was explained that in the applicant's supporting statement, the applicants stated that they would not be continuing with this short term let use beyond three years due to their age. Therefore, they would accept a 3 year consent.

- It was explained that, if granted, planning permission would be a personal consent to the applicants because of their circumstances and age. They wanted a temporary consent for a change of use and the property would be operating as a short term let for 3 years. The Panel would have to decide if it felt this was an appropriate use in this location.
- The applicants suggested that the property would be possibly for family use, but they would have income if it was used for a short term let - could this be clarified?
- It was confirmed that their statement stated that they and their family used this as a residence, and in between times it operated as a short term let.
- One member was content to uphold the officer's recommendations because of the information provided. This was an application for a change of use from residential to holiday short term let there was nothing in planning guidance about permitting a provisional change of use.
- If granted, the permission would be permanent and there was no way the Planning Authority could check the management of the property. The reasons for refusal were sound and the officer's decision to refuse the application should be upheld.
- There was agreement with this. One member was not comfortable with the idea that just because the applicant was elderly, it should be permitted for 3 years. This was a good area to live in and the officer's decision should be upheld.
- The suggested three year consent would be similar to a personal consent. Even if the property was well managed, if planning permission was granted, nothing could stop a less scrupulous operator taking over and that would impact on the amenity of neighbours. Therefore, the Panel should refuse the application.

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:

1. The proposal was contrary to Local Development Plan Policy Hou 7 in respect of Inappropriate Uses in Residential Areas, as the use of this property as a short stay let would have a materially detrimental effect on the living conditions and amenity of nearby residents.
2. The proposal was contrary to National Planning Framework 4 Policy 30(e) 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, Notice of Review, Report of Handling and supporting documents, submitted).

5. Request for Review – 63 Brunstane Road South (At Land 29 Metres East Of), Edinburgh

Details were submitted for a request for review for demolition of existing dilapidated buildings and erection of two houses with associated garages at Land 29 Metres East Of 63 Brunstane Road South, Edinburgh. Application No. 22/03084/FUL.

Assessment

At the meeting on 27 September 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, the report of handling and further representations.

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 01-05, Scheme 1, being the drawings shown under the application reference number 22/03084/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:
 - Edinburgh Local Development Plan Policy Des 1 (Design Quality and Context)
 - Edinburgh Local Development Plan Policy Des 3 (Development Design - Incorporating and Enhancing Existing and Potential Features)
 - Edinburgh Local Development Plan Policy Des 4 (Development Design - Impact on Setting)
 - Edinburgh Local Development Plan Policy Des 5 (Development Design - Amenity)
 - Edinburgh Local Development Plan Policy Des 7 (Layout design)
 - Edinburgh Local Development Plan Policy Del 1 (Developer Contributions and Infrastructure Delivery)

Edinburgh Local Development Plan Policy Env 21 (Flood Protection)

Edinburgh Local Development Plan Policy Hou 1 (Housing Development)

Edinburgh Local Development Plan Policy Hou 2 (Housing Mix)

Edinburgh Local Development Plan Policy Hou 3 (Private Green Space in Housing Development)

Edinburgh Local Development Plan Policy Hou 4 (Housing Density)

Edinburgh Local Development Plan Policy Hou 6 (Affordable Housing)

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 Tra 4 (Design of Off-Street Car and Cycle Parking)

National Planning Framework 4 Policy 1 (Sustainable Places Tackling the climate and nature crises)

National Planning Framework 4 Policy 2 (Climate mitigation and adaptation)

National Planning Framework 4 Policy 3 (Biodiversity)

National Planning Framework 4 Policy 4 (Natural Places)

National Planning Framework 4 Policy 7 (Historic Assets and Places)

National Planning Framework 4 Policy 9 (Brownfield, vacant and derelict land)

National Planning Framework 4 Policy 14 (Design, quality and place)

National Planning Framework 4 Policy 15 (Local Living and 20 minute neighbourhoods)

National Planning Framework 4 Policy 16 (Quality Homes)

National Planning Framework 4 Policy 20

National Planning Framework 4 Policy 22 (Flood risk and water management)

2) Relevant Non-Statutory Guidelines.

Listed Buildings and Conservation Areas

Edinburgh Design Guidance

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

Managing Change in the Historic Environment: Setting

- 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:

- Clarification was requested about the phasing of the development. This was an application for the demolition of an existing dilapidated piggery building and the erection of two houses with associated garages. Was this a phased development site?
- The Planning Advisor explained that Affordable Housing (AH) in its consultation response referred to a 2019 planning consent for 10 houses, which fell below the threshold for affordable housing contributions. However, the 2019 application was originally for 19 units, and subsequently amended to 10 units in 2022. AH confirmed that this was the same applicant and landowner the site for the now proposed application shared the same access. AH stated that this was clearly a phased residential development with a total of 12 units, and no provision for affordable housing amounting to 25 % of these units had been made, in accordance with affordable housing policy.
- A Panel member queried that planning permission was granted to convert the steading and outbuildings to form 10 dwelling houses in 2006. Planning permission was then granted to vary this existing consent to provide two additional residential units, increasing the number of newly formed units from 10 to 12 in 2014. Why did AH not ask for contribution?
- The Planning Advisor explained that there was then a different Development Plan and AH policy. Now, it was being considered under current policies and guidance. The applicant argued that contributions should not be invoked as it was not a phased development. And even if it was considered to be a phased development the applicant was that one of the units from the 2014 consent had not been built and therefore one of the two now proposed units was already consented, so the total number of new units from the 2022 consent and the current proposal only amounted to 11 units, and therefore under the threshold for the affordable housing policy to be applied.
- The developer said that the current application was for only one additional unit, therefore, did this fall below the threshold? The Planning Advisor confirmed that the additional unit was part of wider site to the West and not to the East.
- Planning permission was granted for 10 houses in 2022, so was it the 2019 application that took three years to get to be concluded? It was confirmed that this was the case.

- That permission was granted to build one house, which was never built, but now they said if they built 2 houses, they could not afford to make an AH contribution.
- The developer claimed that the physical on-site contribution was impossible and the financial contribution would exceed the development value of the site. The Planning Advisor explained that the applicant was stating that on the basis of mathematics this was the case, there were 2 houses proposed and in terms of numbers, physically it could not be done, as affordable housing policy required a 25% provision.
- It was thought that AH asked for a commuted sum, they did not ask for a number on site. It was confirmed that one of the letters from AH recommended that a commuted sum was the most appropriate method of contribution. It would be calculated according to AH housing guidance.
- Whether the developer had submitted a surface water management plan and had they been asked for a commuted sum? The Planning Advisor confirmed that they had not submitted a surface water management plan. In terms of the Affordable Housing contribution, they had been asked for this, but were disputing that they should make an affordable housing contribution.
- The commuted sum would have to be prepared in accordance with the district value and the valuation and confirmation was sought as to whether this had been done and sent them. Was the information available about the figure for the commuted sum? The Planning Advisor advised that they did not know if the applicant had been sent this information.
- Regardless, the applicant was disputing the principle of making an affordable housing contribution.
- The proposal was contrary to LDP policy Hou 6 (Affordable Housing) as the application site formed part of a phased residential development of 12 units in total and no provision for affordable housing amounting to 25 % of these units had been made. Was there a definition of phased development? The applicant said it was not a phased development as they built the site over a number of years and there had been changes to the LDP during that time.
- It was confirmed there was not a definition of phased development and it was open to interpretation. There had been a number of changes to this development area over the preceding years, including changes to the greenbelt, and different policy and guidance.
- Whether the current LDP plan was implemented in 2016? The Planning Advisor confirmed that was the case.
- This application was in accordance with planning guidance except for AH policy. It was possible to regard this as phased development and there were two adjacent sites. It was under 20 units, therefore, the authority would be seeking a commuted sum. The Panel could agree this application subject to the commuted

sum being accepted and a water surface management plan being produced. Would this be competent?

- It was confirmed that the imposition of a condition regarding the provision of an affordable housing commuted sum may be inappropriate as the Panel would be giving consent, when it was understood that the applicant was disputing the requirement for an affordable housing contribution and this might not be forthcoming. A condition of this type would probably not be regarded as appropriate, enforceable and reasonable. However, the Panel could continue the application and ask for further information from the applicant about providing a commuted sum.
- The Panel required a commuted sum and the surface water management plan. To achieve this, continuation might be a more appropriate way forward. The applicant should be given the figures and have an opportunity to produce something more concrete. If this conformed to the policy, then consent might be granted, if it did not comply, then the application could be refused.
- If the Panel were to refuse this, the applicant could submit another application. Would the fee be waived if they did this? The Planning Advisor confirmed there would be no fee for the first return application for the site, but this needed to be submitted within one year of the refusal.
- There was concern that if the Panel approved this application, they might create a precedent for developers to build housing in sections to avoid their affordable housing contributions. Therefore, this should be continued to allow a commuted sum to be negotiated.
- The presentation of this application as being unrelated to the other buildings and not in phases did not stand up. It was not productive to continue for discussions for a commuted sum if the developer thought they should not pay this.
- It was agreed that this was part of a phased development and the affordable housing policy should be implemented. This policy was in place before the first application and 25% affordable housing was required. Significantly, the developer did not submit an agreement to a commuted sum. It was necessary to uphold the officer's recommendation and refuse the application.
- The applicant should make a contribution to affordable housing. The applicant's argument that this was not a phased development was not viable and they seemed to be trying to avoid their responsibilities. The city needed affordable housing and it was necessary to ensure that developers delivered on this. The applicant did not take that opportunity to engage on issue of the commuted sum. Therefore, the Panel should uphold officer's recommendations and refuse the application.
- It was thought to continue the application to allow the commuted sum to be worked out and for a surface water management plan to be submitted. The city

needed both affordable housing and housing of all types. There should be a message sent out that developers had responsibilities and should pay their dues and there was a development plan in place. However, there was also a need for new housing, so, the developers should be given the opportunity to take the correct action.

Having taken all the above matters into consideration and although there was some sympathy for the applicant and two of the members were in disagreement, 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.

Motion

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

Reasons for Refusal:

1. The proposal was contrary to LDP policy Hou 6 (Affordable Housing) as the application site formed part of a phased residential development of 12 units in total and no provision for affordable housing amounting to 25 % of these units has been made.
2. The proposal was contrary to NPF 4 policy 16 e) (Quality Homes) as no contribution to the provision of affordable homes on the site for 25% of the total number of homes has been made.

- moved by Councillor McNeese-Mechan, seconded by Councillor Beal.

Amendment

To continue consideration of the application to allow a commuted sum to be worked out and for the applicant to provide a surface water management plan.

- moved by Councillor Mowat, seconded by Mattas Coelho.

Voting

For the Motion - 3

For the Amendment - 2

(For the Motion: Councillors Beal, Booth and McNeese-Mechan.)

(For the Amendment: Councillors Mattos Coelho and Mowat.)

Decision

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

Reasons for Refusal:

1. The proposal was contrary to LDP policy Hou 6 (Affordable Housing) as the application site formed part of a phased residential development of 12 units in total and no provision for affordable housing amounting to 25 % of these units has been made.

2. The proposal was contrary to NPF 4 policy 16 e) (Quality Homes) as no contribution to the provision of affordable homes on the site for 25% of the total number of homes has been made.

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

6. Request for Review – 6 (Flat 12) Commercial Wharf, Edinburgh

Details were submitted for a request for review to allow permission to continue to use residential apartment for short-term letting at Flat 12, 6 Commercial Wharf, Edinburgh. Application No. 22/04892/FUL.

Assessment

At the meeting on 27 September 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 and further written submission on specific matters. The LRB had also been provided with copies of the decision notice, the report of handling and further representations.

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, 03, Scheme 1, being the drawings shown under the application reference number 22/04892/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:
 - 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)
 - National Planning Framework 4 Policy 1 (Sustainable Places Tackling the climate and nature crises)
 - National Planning Framework 4 Policy 7 (Historic Assets and Places)
 - National Planning Framework 4 (Policy 30 (Tourism))

2) Relevant Non-Statutory Guidelines.

Guidance for Businesses

Listed Buildings and Conservation Areas

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

Managing Change in the Historic Environment: Setting

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 applicant had referred to timescales and the reason for delay in the application to allow permission to continue to use the residential apartment for short-term letting being processed - could this be clarified?
- It was confirmed that the procedure for the application was not considered as part of the review. The applicant claimed that NPF4 came in to force after this application was made, it was unreasonable that these policies were being applied and the applicant claimed he had no opportunity to respond to this. However, the Panel was duty bound to consider the application under current legislation and the members had to take into account NPF4 as well as the Local Development Plan (LDP).
- LDP Policy Hou 7 was also a reason for refusal at the time of the application.
- There was some sympathy for the applicant regarding the delay for determination of the application, however there would be negative impact on the amenity of neighbours. Even if the Panel considered the LDP Plan only, the Panel would refuse the application as the property shared a main door entrance and staircase with the other flats in the block. Guidance was clear and the proposals would affect neighbouring amenity. The Panel was required to determine the application on the basis of current legislation, therefore, NPF4 Policy 30 e (ii) also applied.
- There was agreement with viewpoint. This was a residential neighbourhood and this was an example of a flat in a shared stair for which planning policies were applicable. Therefore, the Panel should agree to uphold the officer's recommendations and refuse the application.

Having taken all the above matters into consideration and although there was some sympathy, 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:

1. The proposal was contrary to Local Development Plan Policy Hou 7 in respect of Inappropriate Uses in Residential Areas, as the use of this property as a short stay let would have a materially detrimental effect on the living conditions and amenity of nearby residents.
2. The proposal was contrary to National Planning Framework 4 Policy 30(e) 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).

7. Request for Review – 42 Ladysmith Road, Edinburgh

Details were submitted for a request for review for formation of an area of hard standing to accommodate a new driveway that will allow two cars to park parallel to one another. The driveway was paved with Tobermory Teguela Hydropave to provide a porous surface. (IN RETROSPECT) at 42 Ladysmith Road, Edinburgh. Application No. 22/05759/FUL.

Assessment

At the meeting on 27 September 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, the report of handling and further representations.

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 – 05, Scheme 1, being the drawings shown under the application reference number 22/05759/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:
Edinburgh Local Development Plan Policy Des 1 (Design Quality and Context)
Edinburgh Local Development Plan Policy Des 12 (Alterations and Extensions
National Planning Framework 4 Policy 1 (Sustainable Places Tackling the climate and nature crises)
National Planning Framework 4 Policy 14 (Design, quality and place)
National Planning Framework 4 Policy 16 (Quality Homes)
- 2) Relevant Non-Statutory Guidelines.
Guidance for Householders
- 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:

- If the Panel was to refuse the application for the formation of an area of hard standing to accommodate a new driveway that would allow two cars to park parallel to one another, how long did the applicant have to rectify the situation and what would happen next?
- It was explained that if the Panel were to refuse the application, it would be passed to the Enforcement Team, who would start the enforcement process. Enforcement would decide what would be a reasonable time to rectify the situation and would serve an enforcement notice. The applicant would have the opportunity to appeal the Enforcement Notice.
- That the applicant had removed over 40 cubic meters of soil and vegetation. In doing this, they had installed Tobermory Teguela Hydropave paving, which was permeable and there was a lot less land to accommodate water overflow.
- It was confirmed that the surface area was not dissimilar, but the applicant had removed a substantial amount of depth, a big portion of the land had been removed, therefore, this would affect drainage.
- That this large structure had not been granted permission - it was a driveway that was previously granted permission.
- It was explained that it had previously been a car run-in for a single car that had been given planning permission.

- Regarding the enforcement process, had the applicant been given permission to carry out any works on this site and if it was upheld, would they have to return it to its original state.
- It was confirmed that in October 2022, there was a house extension with a car run and renewal of consent was granted. It was unclear if the extension had been implemented and if this was the case the applicant would potentially have a car run in perpetuity. However, in considering what was being presented, the Authority would require the land to be returned to its original form.
- It was thought that the extent of this work was significant and there was surprise that there were no comments from neighbours. It seemed to be a takeover of some of the public street. Additionally, it was wider than the original car run-in, there was concern about the amount of soil removed and about the impact of the water run off around neighbouring properties as Ladysmith Road. The Panel should uphold the officer's recommendations and the applicant should return the area to its original state, as closely as possible.
- One member agreed about the lack of letters from neighbours, who perhaps did not think the works would be issue. The Panel should uphold the officer's recommendations and refuse the application.
- There was agreement with this. The purpose of regulations was to prevent individuals from breaching planning policies, and these works were an example of this. There were also transport issues, the applicant had built this driveway without regard to policies and the Panel should uphold the decision for refusal.
- It was difficult when a property owner had commenced works and the enforcement process would be implemented, however, it was thought that this was an egregious intervention. The owner was not taking over the public street, as the works were in their front garden, however, they had installed a very visible run in. The Panel should uphold officer's recommendations and take enforcement action.
- There was agreement with this viewpoint. It would be disruptive and expensive to restore the situation, but this could have been remedied before the applicant carried out the works. There was sympathy regarding the expense to rectify their problem, but there were policies in place and the applicant should have submitted the application before carrying out to works.
- One member indicated that what they had previously referred to was not the excavation of the front garden, but to the wider access where there would be area where neighbours' vehicles would access. They did not refer to the depth of the works but the width.

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:

1. The retrospective works did not comply with NPF4 Policy 16g as the works would have a detrimental effect on the character of the home and surrounding area; would not be acceptable in terms of size, design, and materials; and would have a detrimental effect on neighbouring properties.
2. The retrospective works did not comply with LDP policy Des 12 as the works would not be in keeping with the existing building or character of the wider area; would not be acceptable in terms of scale, form, design.
3. The retrospective works did not comply with NPF4 Policy 14c as the works would be poorly designed and inconsistent with the six qualities of successful places as the works did not retain the sense of place or sustainable environment of the area.
4. The retrospective works did not comply with LDP policy Des 1 as the works would be an inappropriate design which is damaging to the character and appearance of the surrounding area.
5. The retrospective works did not comply with the Guidance for Householders as the depth of the driveway is too shallow; the width of the access was too wide; and the distance from the junction was unsuitable.

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

8. Request for Review – 21B Strathearn Road, Edinburgh

Details were submitted for a request for review for change of use from HMO to short-term let at 21B Strathearn Road, Edinburgh. Application No. 22/05083/FULSTL.

Assessment

At the meeting on 27 September 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 and a site inspection. The LRB had also been provided with copies of the decision notice, the report of handling and further representations.

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 22/05083/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:
 - 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)
 - National Planning Framework 4 Policy 1 (Sustainable Places Tackling the climate and nature crises)
 - National Planning Framework 4 Policy 7 (Historic Assets and Places)
 - National Planning Framework 4 (Policy 30 (Tourism))
- 2) Relevant Non-Statutory Guidelines.
 - Guidance for Businesses
 - Listed Buildings and Conservation Areas
 - Marchmont, Meadows and Bruntsfield Conservation Area
- 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 it could be confirmed that there was no access to the rear from this flat.
- It was confirmed that the statement from the applicant said there was little amenity space to the rear, so this would suggest they had access. Access was gained via a private front door entrance and stair. There seemed to be access to the exterior from the stairwell. The applicant indicated that there was a limited amount of amenity space. Regarding the back of the property, there was a small area of outdoor space at the rear, so there was access to external space.

- Reference was made to the retrospective nature of the application. The application was for retrospective planning permission for the change of use from residential (HMO) to short term let. It was explained that the property was previously an HMO.
- One member was curious about the access. The stair appeared to have access to that yard at back. Was it the case that these windows were looking in the yard were entirely from this property. It seemed that no one was overlooking it except people in this property,
- The first floor unit was the only one overlooking the rear. It was a two storey property. The property in question was a first story, four-bedroom flat, extending across the two buildings below. Due to its location, there might be some oblique angled views from the adjacent tenements. Directly overlooking that small space was the ground floor commercial units and the upper floor short term let.
- Whether on the front view there were commercial properties including a lawyer's office.
- It was confirmed that the property sat in a parade of commercial units. Access was gained via private front door entrance and stair.
- There was some sympathy for the applicant as the property was on a main road, located on a main route, with a number of neighbours. This was a quiet street, and the property was next door to residential properties. This proposal would remove a residential property from the housing stock and NPF4 30 (e) was relevant, and this was a predominantly residential area, LDP Policy Hou 7 should also apply. The panel should uphold the officer's recommendations and refused the application.
- It was thought this for this type of situation, it may be appropriate to allow the short term let for the reason that the main door did not share any access or share a garden with a terrace of a patio with residential property. Additionally, as this was a stone built building, the noise would be contained. People were unlikely to use the external yard, and this might not be the type of situation that would not have an adverse effect on the neighbours.
- The Panel had determined these in the past and there had been retrospective applications, but now there was a new system. There was evidence that there was disturbance to amenity from the letters of representation. Another concern was that this was an HMO, but HMO'S were residential properties and were providing affordable accommodation in the private sector. This was important to students and for people starting out renting. This property had operated for many years as an HMO, there was evidence of impact on residential amenity and the loss of HMO accommodation. The City needed this type of accommodation and the Panel should uphold the officer's recommendations and refuse the application.

- There was agreement with this viewpoint. It was clear from the comments that there was residential impact, there had been roof parties, and the case for amenity for neighbouring residential properties had been made. Planning guidance for short term lets indicated that a factor to be considered was the size of the property. This was a prime example of a flat that could use for as a party flat and which would disturb the neighbours. The Panel should uphold the officer's recommendation and refuse application.
- One member indicated that she was happy to go with the majority and agreed the need to retain HMO's.

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:

1. The proposal was 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 would have a materially detrimental effect on the living conditions and amenity of nearby residents.
2. The proposal was 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 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).

9. Request for Review – 3 (3F1) Warrender Park Terrace, Edinburgh

Details were submitted for a request for review for application for change of use from sui-generis flat to short-term let at 3F1, 3 Warrender Park Terrace, Edinburgh. Application No. 22/04952/FULSTL.

Assessment

At the meeting on 27 September 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 and a site inspection. The LRB had also been provided with copies of the decision notice, the report of handling and further representations.

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, being the drawings shown under the application reference number 22/04952/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:
 - 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)
 - National Planning Framework 4 Policy 1 (Sustainable Places Tackling the climate and nature crises)
 - National Planning Framework 4 (Policy 30 (Tourism))
- 2) Relevant Non-Statutory Guidelines.
 - Guidance for Businesses
 - Listed Buildings and Conservation Areas
 - Managing Change in the Historic Environment: Guidance on the principles of listed building consent.
 - Managing Change in the Historic Environment: Setting
- 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 confirmed that no new information was to be considered.
- One member was confused as the application was for a change of use from residential to short term let (sui generis). It was residential use, therefore, why was sui generis a factor?

- It was explained that this was change of use from residential to short term let. A flat was defined in Scottish Government Planning Use Classes Order as sui generis, it was not a house, but the use was residential.
- One member agreed with the officer's recommendation to refuse the application. This could be busy stair and there was no wider economic benefit to change this property to a short term let.
- There was agreement with this viewpoint. Regarding the appeal, the applicant quoted the recent judicial review regarding the decision about the Council as a licencing authority, but the Panel was here to determine a planning application, as the planning authority. The guidance stated it was not appropriate to have a short term let in a flatted development, in most cases.
- To provide further clarification, reference was made to HMO's, which were dealt with by Licencing and there was a separate licensing regime. It was important to clarify that these were separate entities. Planning was about use, it was not about suitability, or management of the property. It had to be considered if this use was appropriate in this location, and the planning guidance was clear in this respect.
- The applicant had indicated that there were other HMO's in this stair. This area was a popular space for HMO's for student housing and there was a shortage of student housing. Therefore, the Panel should uphold the officer's recommendations and refuse the application.
- There was agreement with this viewpoint and it was agreed to uphold the officer's recommendations and refuse the application.

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:

1. The proposal was 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 would have a materially detrimental effect on the living conditions and amenity of nearby residents.
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(References – Decision Notice, Report of Handling, Notice of Review, supporting documents and further representations, submitted).

