

Development Management Sub-Committee Report

Wednesday 8 November 2023

**Application for Planning Permission STL
11 Circus Lane, Edinburgh, EH3 6SU**

Proposal: Proposed change of use from residential house to short-term let (in retrospect).

**Item – Committee Decision
Application Number – 23/03105/FULSTL
Ward – B11 - City Centre**

Reasons for Referral to Committee

Recommendation

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

Summary

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

The change of use of this property to 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 tourist accommodation, in this case it does not outweigh the adverse impact on residential amenity or loss of residential accommodation.

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

SECTION A – Application Background

Site Description

The application property comprises a four-bedroom (136 sqm) mews house at 11 Circus Lane, Stockbridge. The property is set over two floors and has private main door access. The property includes a small walled patio area to the rear which is accessed off the kitchen and a bedroom.

Although the wider Stockbridge area has a mix of commercial uses, Circus Lane is a predominantly residential with limited on-street activity. The street is restricted to one-way traffic.

The application property forms part of a Category B listed building - Circus Lane, numbers 3-15 (odd number), 19-57 (odd numbers) and numbers 6-10 (even numbers), including walls, LB45477, 24/03/1998. The site is located within the New Town Conservation Area and the Old and New Towns of Edinburgh World Heritage Site.

Description of the Proposal

Planning permission is sought for the change of use from residential to short term let. The application is being made in retrospect. No internal or external changes to the property are proposed.

Supporting Information

- Supporting Planning Statement.

This is available to view on the Planning and Building Standards Online Service.

Relevant Site History

No relevant site history.

Other Relevant Site History

23/00093/ESHORT
Pending Decision - 16.02.2023
Enforcement Enquiry

Pre-Application process

There is no pre-application process history.

Consultation Engagement

No consultations undertaken.

Publicity and Public Engagement

Date of Neighbour Notification: 20 July 2023

Date of Renotification of Neighbour Notification: Not Applicable

Press Publication Date(s): 4 August 2023

Site Notices Date(s): 1 August 2023

Number of Contributors: 76

Section B - Assessment

Determining Issues

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

- a) Is there a strong presumption against granting planning permission due to the proposals:
 - (i) harming the listed building or its setting? or
 - (ii) conflicting with the objective of preserving or enhancing the character or appearance of the conservation area?

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

This report will then consider the proposed development under Sections 24, 25 and 37 of the Town and Country Planning (Scotland) Act 1997 (the 1997 Act):

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

Do the proposals comply with the development plan?

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

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

In the assessment of material considerations this report will consider:

- equalities and human rights.
- public representations; and
- any other identified material considerations.

Assessment

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

a) The proposals harm the listed building and its setting.

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

- Managing Change in the Historic Environment: Guidance on the principles of listed buildings
- Managing Change in the Historic Environment: Setting

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

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

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

Conclusion in relation to the listed building

The proposal does not harm the character of the listed building, or its setting. It is therefore acceptable with regard to Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

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

Section 64(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states: "In exercise, with respect to any buildings or other land in a conservation area, of any powers under any of the provisions in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area."

The New Town Conservation Area represents a planned urban concept of European significance with an overriding character of Georgian formality. Stone built terrace houses and tenements, built to the highest standards, overlook communal private gardens; to the rear are lanes with mews buildings, many of which are now in housing use. The importance of the area lies in the formal plan layout of buildings, streets, mews, and gardens and in the quality of the buildings themselves.

There are no external changes proposed. The change of use to a short term let will not have any material impact on the character of the conservation area. The change of use would preserve the appearance of the conservation area.

Conclusion in relation to the conservation area

The proposals are acceptable with regard to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

c) The proposals comply with the development plan.

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 policies to be considered are:

- NPF4 Sustainable Places Policy 1.
- NPF4 Historic Assets and Places Policy 7.
- 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' (2023) is a material consideration that is relevant when considering change of use applications.

Listed Building and Conservation Area

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

Proposed Use

With regards to NPF 4 Policy 1, the proposals do not involve operational development and therefore, 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 (e) specifically relates to STL proposals.

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

The non-statutory Guidance for Businesses (2023) 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.

Amenity:

The application property comprises a terraced, two floor, four-bedroom mews building. The surrounding area is predominantly residential. There is a medium degree of pedestrian activity in the immediate vicinity of the property during daytime hours and low levels during the evening/night. There is a low level of vehicle activity along Circus Lane. The small patio area to the rear is enclosed and would have limited impact on neighbour's amenity.

The applicant's planning statement asserts that the use of the property will have a limited impact on local amenity given the mixed-use character of the area and due to the property's main door access.

Despite the private access, the use of the property as an STL would introduce an increased frequency of movement to the property. The proposed STL use would accommodate up to eight persons and enable multiple 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.

This would be significantly different from the ambient background noise that neighbouring residents might reasonably expect within this residential area 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.

The applicant's planning statement states that if planning permission is refused, the property is likely to remain vacant except for periodic visits by the owner. It is asserted therefore, that no loss of residential will take place, with the economic benefits of the STL use outweighing the owner's alternative plan for the property.

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

Residential occupation of the property would also contribute 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 are no parking requirements for STLs. Cycles could be parked inside the property. The proposals comply with LDP Policies Tra 2 and Tra 3.

Previous Planning Decisions

The submitted planning statement cites a number of previous planning decisions in support of the application, all of which pre-date the introduction of NPF4. Notwithstanding this, each application is assessed on individual merit and context.

Conclusion in relation to the Development Plan

The change of use of this property to a 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 tourist accommodation, in this case it does not outweigh the adverse impact on residential amenity or loss of residential accommodation.

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

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

The following material planning considerations have been identified:

Independent economic impact assessment

An independent economic impact assessment was commissioned by the Planning Service, and this resulted in a report on the Economic Impact of Residential and Short-Term Let Properties in Edinburgh (the Economic Report). This was reported to Planning Committee on 14 June 2023. The Committee noted that the findings of the report are one source of information that can be considered when assessing the economic impacts of short-term let planning applications and that given the report is considering generalities rather than the specifics of an individual case, it is likely that only limited weight can be attached to it as a material consideration when making planning application decisions. The study considered the economic impact of various types of properties in Edinburgh if used as a residential property as opposed to being used for short-term holiday lettings.

The Economic Report shows that there are positive economic impacts from the use of properties for both residential use and short-term let use. The Report found that in general the gross value added (GVA) effects are greater for residential uses than short-term lets across all property types and all areas. However, given it is considering generalities rather than the specifics of this individual case, only limited weight can be attached to it as a material consideration in the determination of this application.

Emerging policy context

City Plan 2030 represents the settled will of the Council, and it has been submitted to Scottish Ministers for examination. As such, limited weight can be attached to it as a material consideration in the determination of this application.

Equalities and human rights

Due regard has been given to section 149 of the Equalities Act 2010. No impacts have been identified.

Consideration has been given to human rights. No impacts have been identified through the assessment and no comments have been received in relation to human rights.

Public representations

A total of 76 representations were received (44 objections and 32 supporting comments). A summary of the representation is provided below:

material considerations

- Negative impact on local amenity due to noise disturbance and antisocial behaviour.
- Disruption associated with the commercial servicing of the apartment.
- Negative impact on local and city-wide housing availability and affordability. Addressed in part c).
- Negative impact on the character of the conservation area/setting of the listed building. Addressed in part a/b).
- Negative impact on the residential character/sense of community in the local area. Addressed in part c).
- The size of the property is larger than the typical surrounding units and would likely lead to noise disturbance. Addressed in part c).
- The change of use would result in a loss of residential accommodation. Addressed in part c).
- Negative impact on the parking available for local residents. Addressed in part c).
- STL accommodation brings economic benefit to homeowners. Addressed in part c).
- The STL use will bring economic benefit to local businesses (including tradespeople, local artists, and servicing companies). Addressed in part c).
- The property is self-contained and has private main door access. The amenity impacts will be limited. Addressed in part c).
- The STL use will not disrupt the character of the wider area, with other commercial uses located nearby. Addressed in part c).
- STL use has less of an environment impact than hotel use. Addressed in part c).
- The property will sit empty for much of the year if planning permission is not granted, meaning there will be no loss of residential accommodation. Addressed in part c).

non-material considerations

- Previous applications on Circus Lane have been rejected. Each application is assessed on its own merits.
- STL operators are less likely to maintain the property/shared spaces. Not a material consideration.

- The change of use will set a precedence for future commercial units in the area. Each application is assessed on its own merits.
- The property is well managed, high-quality accommodation. Not a material consideration.
- Allegations made against the applicant's/agents' character. Not a material consideration.
- Negative impact relating to improper waste disposal/littering etc... A Waste Management Plan would have to be agreed with CEC Waste Services.

Conclusion in relation to identified material considerations.

Identified material considerations have been assessed above and do not raise issues which outweigh the conclusion in relation to the development plan.

Overall conclusion

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

The change of use of this property to a 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 tourist accommodation, in this case it does not outweigh the adverse impact on residential amenity or loss of residential accommodation.

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

Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following.

Conditions

Reasons

Reason for Refusal: -

1. The proposal is contrary to Local Development Plan Policy Hou 7 in respect of Inappropriate Uses in Residential Areas, as the use of this dwelling as a short term 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 term let will result in an unacceptable impact of 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: 20 July 2023

Drawing Numbers/Scheme

01

Scheme 1

David Givan
Chief Planning Officer
PLACE
The City of Edinburgh Council

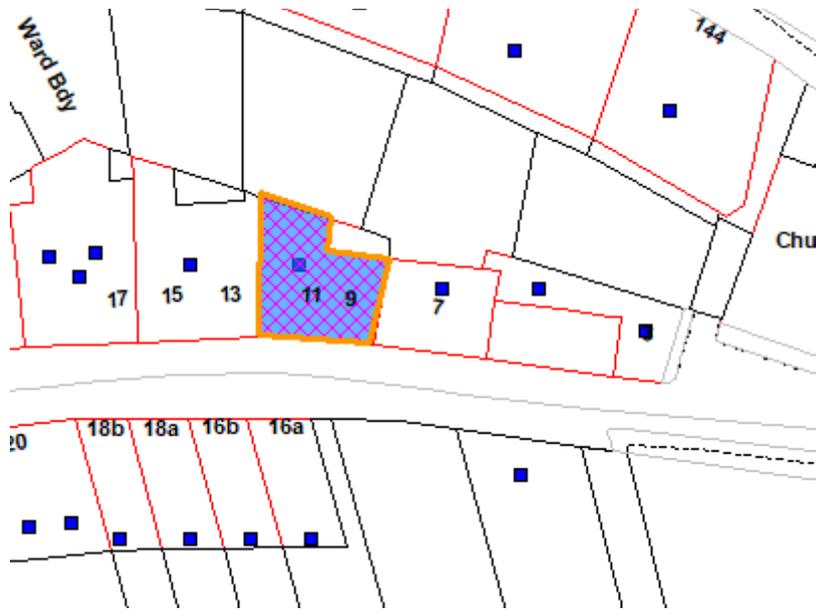
Contact: Sean Christie, Assistant Planning Officer
E-mail: sean.christie@edinburgh.gov.uk

Appendix 1

Summary of Consultation Responses

No consultations undertaken.

Location Plan



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