

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

10.00 am, Wednesday 21 February 2024

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

1. Appointment of Convener

Councillor Beal was appointed as Convener.

2. Minutes

To approve the minute of the Local Review Body (LRB Panel 2) of 17 January 2024 as a correct record.

3. Planning Local Review Body Procedure

Decision

To note the outline procedure for consideration of reviews.

(Reference – Local Review Body Procedure, submitted)

4. Request for Review – 111 (1F3) Brunswick Street, Edinburgh

Details were submitted of a request for review for retrospective change of use of flat to short term let (sui generis) for 52 weeks in a calendar year at 1F3, 111 Brunswick Street, Edinburgh. Application No. 23/05156/FULSTL.

Assessment

At the meeting on 21 February 2024, the LRB had been provided with copies of the notice, including a request that the review proceed on the basis of an assessment of the review documents, a site inspection and holding one or more hearing sessions on specific matters. The LRB had also been provided with copies of the decision notice and the report of handling.

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

The plans used to determine the application were 01, Scheme 1 being the drawings shown under the application reference number 23/05156/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 Report of Handling notes that the Guidance for Businesses 2023 is also relevant. However, a Judicial Review against the Council ruled on 1 December 2023 that the April 2023 Guidance for Businesses should be reduced, which means it must be disregarded in consideration of this review.

Therefore, 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:
 - National Planning Framework 4 Policy 1 (Sustainable Places Tackling the climate and nature crises)
 - National Planning Framework 4 Policy 30 (Tourism)
 - Edinburgh Local Development Plan Policy Hou 7 (Inappropriate Uses in Residential Areas)
 - Edinburgh Local Development Plan Policy Tra 2 (Private Car Parking)
 - Edinburgh Local Development Plan Policy Tra 3 (Private Cycle Parking)
- 2) Relevant Non-Statutory Guidelines.
 - Guidance for Businesses (January 2024)
- 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 regarding the slide that showed kitchen dining area and whether this a six-occupant property?
- It was confirmed that the submission documents for application for the retrospective change of use of the property from residential to short term let (sui generis) stated there was a maximum of six occupancy.
- Was there any evidence to show how long this was used as a short term let in retrospect?

- It was explained that the application documents stated that the short term let commenced in August 2022. There was nothing to indicate that it had ceased since then.
- How could six people fit into this property as there were two double rooms and it was not possible to see how two more people could fit in there.
- It was advised that there was nothing in the application document to confirm how people would stay in the property, however, there were house rules which stated there was a maximum number.
- It was thought that numbers in a property would be regulated by licencing, the Panel's role was to look at the change of use and suitability. It should be clarified if numbers were a relevant consideration as that matter could be controlled elsewhere.
- The legal advisor indicated that those matters were controlled mainly by Licensing and were out with the scope of Planning. This was not totally immaterial and in the past the Reporter had taken account of such matters, however, this was mainly the concern of the licensing regime.
- Clarification was asked about the planning appeals, concerned with numbers. Were they prior to the introduction of the licencing regime?
- The legal advisor indicated that some of them might have been considered before it came into force fully, prior to the control area and prior to the licensing regime. There were a few cases where the Reporter sought to impose planning conditions. It was questionable how easy would it be to impose such conditions, this was certainly more easily controlled by licensing.
- One member indicated that for clarification, she wanted to see plans of the room, not the total number of people.
- It was confirmed that there were no further questions.
- The Panel should assess whether there had been material change of use. This was a tenemental stair, the character was mainly residential and this was a new use. Round the corner it was much more mixed use on Leith Walk, however, this particular area was largely residential. The Panel should consider the impact on neighbours as there was a common stair, LDP Policy Hou 7 and NPF4 Policy 30 e (i) and (ii) applied and there was no reason to overturn the officer's decision,
- There was agreement with this. The appeal submission stated there was no impact on amenity, however, there was a shared common stair, this was a very residential street and there was no parking in the area. There were issues for people in tenements with noise reverberating.

- This property had shared residential stairs, there were 3 floors of flats and there were no reasons to overturn the officer's recommendations. It was agreed to uphold the officer's decision to 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 term 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 property as a short term let would result in an adverse 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 – 6 Coltbridge Gardens, Edinburgh

Details were submitted for a request for review for change of use from residential to short term let (Sui Generis). The proposal was for the entire house, which was secondary property (in retrospect) at 6 Coltbridge Gardens, Edinburgh. Application No. 23/03776/FULSTL.

Assessment

At the meeting on 21 February 2024, the LRB had been provided with copies of the notice of review, including a request that the review proceed on the basis of an assessment of the review documents only. The LRB had also been provided with copies of the decision notice and the report of handling.

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

The plans used to determine the application were 01, 02, being the drawings shown under the application reference number 23/03776/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 Report of Handling notes that the Guidance for Businesses 2023 is also relevant. However, a Judicial Review against the Council ruled on 1 December 2023 that the April 2023 Guidance for Businesses should be reduced, which means it must be disregarded in consideration of this review.

Therefore, 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:
 - National Planning Framework 4 Policy 1 (Sustainable Places Tackling the climate and nature crises)
 - National Planning Framework 4 Policy 30 (Tourism)
 - Edinburgh Local Development Plan Policy Hou 7 (Inappropriate Uses in Residential Areas)
 - Edinburgh Local Development Plan Policy Tra 2 (Private Car Parking)
 - Edinburgh Local Development Plan Policy Tra 3 (Private Cycle Parking)
- 2) Relevant Non-Statutory Guidelines.
 - Guidance for Businesses (January 2024)
- 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:

- What additional information was there?
- It was confirmed that the additional information was the comments of support that were appended to the Appeal Statement. They were not formal representations to the application, or further representations in respect of the appeal, but they were included as part of the Appeal Statement.
- Clarification was requested about the applicant proposing a temporary planning permission for 12 months and how would this work?
- The Legal Advisor explained that it could be competent in certain situations, it was not a case that it was not possible, but whether it was appropriate. The Planning Circular explained when a temporary consent of that nature might be appropriate and would apply.
- It was advised that according to 'Planning Circular 4/1998: the use of conditions in planning permissions', the reason for granting a temporary permission can never be that a time-limit is necessary because of the effect of the development on the amenity of the area.

- The Planning Authority controlled requests for short term lets for the reasons of amenity and loss of housing. If this was not a permanent loss of a residential property and the alternative was the property being empty, granting planning permission may be appropriate in this case.
- The Legal Advisor explained that the Panel could request further information from the Applicant and from Officers on this proposal. This was a matter for the LRB to consider.
- If the Panel were to grant planning permission, for the retrospective change of use from residential dwelling to short term let accommodation (Sui Generis), then that permission stayed with the property. There was nothing to stop the owner from passing the property on to a different operator who might be less reputable and there could be more impact on neighbours.
- It was confirmed that this was correct, the planning permission stayed with the land and the property.
- It was agreed that there were no further questions.
- It would be possible to seek further information from the Applicant to justify why a temporary consent for a change of use for 12 months would be justified and if there were special circumstances in this instance.
- This property had its own entrance and own garden. It was unusual that the immediate neighbours had written to say that they supported this proposal.
- If refused, the Applicant could resubmit a different application. The Planning Circular provided clear guidance that although a temporary permission was legal, it should only be considered in special circumstances. Although this was a well-run short term let, the issue was about land use, not the management of the property. The applicant could sell the property to a different operator and this could cause problems for amenity. There would be a loss of residential accommodation if the Panel were to grant consent. Therefore, there were no strong reasons to overturn the officer's recommendations.
- It was thought that this was a quiet area. Considering the management of the operation of the property, that was a matter for Licensing, not a planning issue. The property could be transferred to a different owner and could be managed differently. Regarding the temporary planning permission, the Panel had to consider the same criteria in any case for planning permission, there would still be loss of residential accommodation and a detrimental effect on amenity. There were no reasons to overturn the officer's decision.
- One member wanted a continuation as there were no amenity issues. Even if it was the case that if the property changed ownership and it could be problematic, it was necessary to determine the reasoning behind the applicant's proposal for a compromise. Regarding the compromise, this would only be a temporary use and it would not be a permanent loss of accommodation as it would still maintain

the property. The Panel should continue consideration of this application to get that information.

- Another member supported continuation of the matter because this would still be a residence and it was necessary to get clarification from the applicant.
- One member wanted to refuse the application. It was open to the applicant to set out in their application why they thought a compromise was appropriate, but they did not. The applicant could make a new application, but by refusing this specific application the Panel would be refusing what was presented.

After much discussion the Panel was unable to reach a decision. The LRB decided to continue consideration of the matter for further information from the applicant to justify why a temporary planning permission for the change of use from residential to short term let (Sui Generis) for 12 months would be a suitable compromise and the purpose of the temporary permission.

Motion

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 term 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 term let would result in an adverse impact on local amenity and the loss of a residential property had not been justified.

- moved by Councillor Beal, seconded by Councillor Booth.

Amendment

To **CONTINUE** consideration of the matter for further information from the applicant to justify why a temporary planning permission for the change of use from residential to short term let (Sui Generis) for 12 months would be a suitable compromise and the purpose of the temporary permission.

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

Voting

For the Motion - 2

For the Amendment - 3

(For the Motion: Councillors Beal and Booth.)

(For the Amendment: Councillors Mattos Coelho, McNeese-Mechan and Mowat.)

Decision

To **CONTINUE** consideration of the matter for further information from the applicant to justify why a temporary planning permission for the change of use from residential to short term let (Sui Generis) for 12 months would be a suitable compromise and the purpose of the temporary permission.

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

6. Request for Review – 13 (1F3) King's Stables Road, Edinburgh

Details were submitted for a request for review, for retrospective change of use to short term let at 1F3, 13 King's Stables Road, Edinburgh. Application No. 23/04960/FULSTL.

Assessment

At the meeting on 21 February 2024, the LRB had been provided with copies of the notice of review, including a request that the review proceed on the basis of an assessment of the review documents only. The LRB had also been provided with copies of the decision notice and the report of handling. The LRB heard from the Planning Adviser who summarised the issues raised and presented the drawings of the development and responded to further questions.

The plans used to determine the application were 01, 02, Scheme 1, being the drawings shown under the application reference number 23/04960/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 Report of Handling notes that the Guidance for Businesses 2023 is also relevant. However, a Judicial Review against the Council ruled on 1 December 2023 that the April 2023 Guidance for Businesses should be reduced, which means it must be disregarded in consideration of this review.

Therefore, 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:
 - 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)
 - Edinburgh Local Development Plan Policy Hou 7 (Inappropriate Uses in Residential Areas)
 - Edinburgh Local Development Plan Policy Tra 2 (Private Car Parking)

- 2) Relevant Non-Statutory Guidelines.
Guidance for Businesses (January 2024)
Listed Building and Conservation Area Guidance
- 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:

- How many residential properties were there in the same stairwell for this application for the retrospective change of use of the property from residential to short term let and were any of these short term lets?
- It was explained that information was not available within the application or appeal documents. This was a shared stairwell, but it was not known how many properties were accessed from that stair.
- The property shared access with other residential properties, could it be clarified which ones were residential and which were short term lets?
- It was confirmed that planning did not have that information, in terms of how many properties were residential and how many were short term lets.
- The Convener confirmed that there were no further questions.
- Planning did not have information on other properties in the stair, but it was a shared stair and these have most impact on neighbours. There was also the issue of the loss of residential accommodation and reference was made to NPF4 Policy 30 e (ii). It stated that short term lets were not supported where the loss of residential accommodation was not outweighed by the economic benefit. Therefore, the Panel should uphold the officer's decision. There was also the issue of the shared stair and the impact on residential accommodation. LDP Policy Hou 7 and NPF4 Policy 30 e) applied in this case.
- There was agreement with that. The appeal documents noted this area was populated with tourists, it was also populated with residents. The Panel should uphold the officer's recommendations.
- It was thought this application submission was quite interesting. The Grassmarket was busy, but there were lots of residents in this area. This was Kings Stables Road which faced a bank or greenery and this area was quite quiet.

- Two-bedroom flats were popular for starting out with or for downsizing, it was necessary to look at where the population wanted to live. The city needed two-bedroom flats, especially in this area of town.
- There was concern with the argument that because it was busy there should be less concern with loss of residential accommodation.
- There was agreement with this, the area could be busy at some points, but this was Kings Stables Road, there would be a loss of residential accommodation and there had been no economic case made. Therefore, the Panel should uphold the officer's recommendations.

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 term 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 property as a short term let would result in an adverse 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 – 13 (Flat 7) Kimmerghame Terrace, Edinburgh

Details were submitted for a request for review for use of flat both as residential and short-term let (Sui Generis) for 5 months annually (in retrospect) at Flat 7, 13 Kimmerghame Terrace, Edinburgh. Application No. 23/04355/FULSTL.

Assessment

At the meeting on 21 February 2024, 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 and the report of handling. The LRB heard from the Planning Adviser who summarised the issues raised and presented the drawings of the development and responded to further questions.

The plans used to determine the application were 01, 02, Scheme 1, being the drawings shown under the application reference number 23/04355/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 Report of Handling notes that the Guidance for Businesses 2023 is also relevant. However, a Judicial Review against the Council ruled on 1 December 2023 that the April 2023 Guidance for Businesses should be reduced, which means it must be disregarded in consideration of this review.

Therefore, 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:
 - National Planning Framework 4 Policy 1 (Sustainable Places Tackling the climate and nature crises)
 - National Planning Framework 4 Policy 30 (Tourism)
 - Edinburgh Local Development Plan Policy Hou 7 (Inappropriate Uses in Residential Areas)
 - Edinburgh Local Development Plan Policy Tra 2 (Private Car Parking)
 - Edinburgh Local Development Plan Policy Tra 3 (Private Cycle Parking)
- 2) Relevant Non-Statutory Guidelines.
 - Guidance for Businesses (January 2024)
 - Edinburgh Design Guidance
- 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:

- How long had the property been used as a short term let?
- It was confirmed that the use commenced in June 2022.
- Regarding the legal question, one of the representations stated that the proposed use for the retrospective change of use of the property from residential to short term let for five months of the year, ran counter to deeds of all the properties. What was the legal position on that?

- The Legal Advisor advised that matters in respect of the title deeds were totally distinct from planning and it was not relevant to the planning considerations of the application.
- The Legal Advisor explained that it was not a relevant matter in the determination of the planning application. The Panel should be considering the Development Plan. If the Panel granted planning permission and if the title deeds became an issue, it would be a separate legal matter.
- It was noted that the application for change of use was only for 5 months of the year.
- It was queried as to whether the 5 month aspect would have an impact on whether a material change of use had taken place and did the proposal comply with the Development Plan and guidance. The Panel would have to consider the pattern of use, if it complied with the Development Plan and should NPF4 Policy 30 apply.
- The Legal Advisor indicated that it would depend on the degree of use and the intensity of use. These factors had to be considered in assessing whether enough change of use had taken place and whether there had been a material change of use or not.
- It was confirmed that there were no further questions.
- This was a residential building, its use was not in keeping with its construction. There were also security issues, objections from neighbours, underground parking and the risk of a number of people gaining access. The Panel should therefore uphold the officer's decision.
- There was agreement with the above. The let being for only 5 months of the year was only one factor, this area was entirely residential, this was a new use and there were representations from neighbours. There had been a material change of use and this did not seem to comply with non-statutory guidance. Additionally, this would impact on the amenity of neighbours and there would be a loss of residential accommodation. The Panel should therefore uphold the officer's recommendations.
- It was thought that the concerns of neighbours could be controlled by Licencing. There did not seem to be a material change of use, nor was there a loss of residential accommodation as it was still being used as a residence for 7 months of year. It was only a change of use for part of the year.
- There was no economic case to justify the change of use, the management of the property could change as the property could be sold to another party. The 5 month aspect was a management issue and the property was being used as a short term let. There was no way to enforce any conditions and there would be a loss of residential accommodation. There was no reason not to uphold the officer's recommendations.

- There were no reasons not to agree with the above comments. Also, there were a large number of objections, therefore the Panel should uphold the officer's recommendations.
- As there was broad agreement, it was agreed that the Panel should uphold the officer's recommendations and 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 dwelling as a short term 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 term let would result in an adverse impact on local amenity and the loss of a residential property had not been justified.

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

8. Request for Review – 14 Lampacre Road, Edinburgh

Details were submitted for a request for review for proposed construction of a new house at 14 Lampacre Road, Edinburgh. Application No. 23/02897/FUL.

Assessment

At the meeting on 21 February 2024, 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 and the report of handling. The LRB heard from the Planning Adviser who summarised the issues raised and presented the drawings of the development and responded to further questions.

The plans used to determine the application were 01-04, Scheme 1, being the drawings shown under the application reference number 23/02897/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.

Therefore, 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:
 - 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)
 - Edinburgh Local Development Plan Policy Des 1 (Design Quality and Context)
 - 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 Policy Env 21 (Flood Protection)
 - Edinburgh Local Development Plan Policy Hou 1 (Housing Development)
 - Edinburgh Local Development Plan Policy Hou 4 (Housing Density)
 - Edinburgh Local Development Plan Policy Tra 2 (Private Car Parking)
- 2) Relevant Non-Statutory Guidelines.
 - Edinburgh Design Guidance
- 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 the Flood Risk and Surface Water Management Plan was included in the papers for the application for the proposed construction of a new house.
- Was there a scale of the two gardens, to quantify how wide each bit of garden would be as they would be fronting onto the road?
- It was explained that the block plan had a scale attached to it and the new garden ground for the existing property would be to the front of the property.
- The officers cited in the report that this area had been subject to flooding after heavy rain and was this concern?
- It was advised that the Flooding Report was not submitted with the original application and flooding matters were mentioned in some of the representations.

- On the basis that the principle of the application was not acceptable, Officers did not request information to demonstrate that the development would not have an adverse impact on localised flooding issues. A Flood Risk and Surface Water Management Plan had been submitted with the application for Review, but it had not been reviewed by council professionals. The conclusion from the Flooding Report was that no flooding issues would be caused by the development.
- It was explained that the floorspace of the proposed property was 154 square metres and it was a four bedroom house. The Edinburgh Design Guidance had minimum floorspace standards of 91 square metres for units of three or more bedrooms. This was a four bedroom house and the minimum standard was 91 square metres.
- It was asked whether the other plans, including the Streetscape Plan were to scale?
- It was confirmed but the Streetscape Plan should be to scale, as the officers would have checked it during the consideration of the application.
- This proposal was a big intervention to the street. There was no reason not to uphold the officer's recommendations, this was out of character with the area, was contrary to LDP Policy Des 1 and the setting was an issue. The design itself was incongruous with other properties in the area.
- There was broad agreement with this. Moving this property forward to make it more deferential to the surrounding area would impact on the other residential properties. There would be a number of families affected. Although efforts had been made to reduce the impact on adjacent properties, it was incongruous. For the reasons for refusal given, it was not possible to support this application.
- There was agreement with the other speakers that the proposal was not appropriate for this site. In particular LDP Policy How 4 on density showed this was not appropriate. Additionally, the development did not comply with the other LDP Policies in terms of design, quality and context and impact on setting.
- There was agreement with the previous comments.
- The Panel 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. It had not been demonstrated that the development would not adversely affect the potential to increase local flooding issues, contrary to LDP Policy Env 21.

2. The proposal would diminish the level of external amenity space enjoyed by occupiers of the existing dwelling to an unacceptable degree. This was contrary to NPF Policy 14 and LDP Policies Hou 4.
3. The proposal would constitute an unsympathetic and incongruous addition to the surrounding area, failing to respect the built form and spaces between buildings. This was contrary to NPF 4 Policy 14, NPF 4 Policy 16 and LDP Policies Hou 1, Hou 4, Des 1 and Des 4

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

9. Request for Review – 2 Pennywell Place, Edinburgh

Details were submitted for a request for review for change of use from dwelling to short term let at 2 Pennywell Place, Edinburgh. Application No. 23/04211/FULSTL.

Assessment

At the meeting on 21 February 2024, 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 and the report of handling. The LRB heard from the Planning Adviser who summarised the issues raised and presented the drawings of the development and responded to further questions.

The plans used to determine the application were 01, 02, 03, Scheme 1, being the drawings shown under the application reference number 23/04211/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 Report of Handling notes that the Guidance for Businesses 2023 is also relevant. However, a Judicial Review against the Council ruled on 1 December 2023 that the April 2023 Guidance for Businesses should be reduced, which means it must be disregarded in consideration of this review.

Therefore, 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:
 - National Planning Framework 4 Policy 1 (Sustainable Places Tackling the climate and nature crises)
 - National Planning Framework 4 Policy 30 (Tourism)
 - Edinburgh Local Development Plan Policy Hou 7 (Inappropriate Uses in Residential Areas)

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

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

- 2) Relevant Non-Statutory Guidelines.
Guidance for Businesses (January 2024)
- 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:

- How long had this property been used as a short term let?
- It was explained that the submission documents stated that it was retrospective change of use and the Design and Access Statement noted the property had been used as a short term let for the past 12 months. The application was submitted on the 6 September 2023, on this basis the use commenced once the Short-Term Let Control Area was in place.
- This was quite a new build, how long had it been in place? It was advised that the date of construction was not something that was submitted, but this was a relatively new development.
- It was confirmed that there were no more questions.
- This development was part of the regeneration scheme of Penneywell and Muirhouse. The Panel should determine this as with any other application.
- The application was submitted after the Control Area came into force, it did not appear to be retrospective prior to 5 sept 2022. It was a clear loss of housing. The area was very residential, fairly quiet and with some local amenities. This area was inappropriate for this type of development and there were letters from residents. The Panel should support the officer's recommendations.
- There was support for these comments. There was no economic benefit, the management of the property was not relevant and it could change. Local Development Plan (LDP) Policy Hou 7 applied and there would be loss of residential accommodation.
- There was agreement with this. The idea that the use came into being before the Short Term Let Control Area was moot. The Panel did not need to make a fact and degree assessment. There was a material change of use in a mainly residential area.

- The applicant appeared to have misinterpreted the ruling by Lord Braid. Each case had to be taken on its merits on a fact and degree assessment. This was contrary to the LDP and NPF4 policy 30 e (i) and (ii), LDP Policy Hou 7 and the new Guidance for Business which was approved in January 2024. The officer's decision was sound and should be upheld.
- It was agreed to uphold the officer's decision and 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 dwelling as a short term 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 term let would result in an adverse 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).

10. Request for Review – 25 Spylaw Street (4 Spylaw House), Edinburgh

Details were submitted for a request for review for use as a short term let (in retrospect) at 4 Spylaw House, 25 Spylaw Street, Edinburgh. Application No. 23/01840/FULSTL.

The decision notice for this Local Review is due to be issued.

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

11. Request for Review – 141 Whitson Road, Edinburgh

Details were submitted for a request for review for change of use to short term let (In retrospect) at 141 Whitson Road, Edinburgh. This was dealt with by the Chief Planning Officer under delegated powers. Application No. 23/04195/FULSTL.

Assessment

At the meeting on 21 February 2024, the LRB had been provided with copies of the notice of review, including a request that the review proceed on the basis of an assessment of the review documents only. The LRB had also been provided with copies of the decision notice and the report of handling. The LRB heard from the Planning Adviser who summarised the issues raised and presented the drawings of the development and responded to further questions.

The plans used to determine the application were 01, Scheme 1, being the drawings shown under the application reference number 23/04195/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 Report of Handling notes that the Guidance for Businesses 2023 is also relevant. However, a Judicial Review against the Council ruled on 1 December 2023 that the April 2023 Guidance for Businesses should be reduced, which means it must be disregarded in consideration of this review.

Therefore, 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:
 - National Planning Framework 4 Policy 1 (Sustainable Places Tackling the climate and nature crises)
 - National Planning Framework 4 Policy 30 (Tourism)
 - Edinburgh Local Development Plan Policy Hou 7 (Inappropriate Uses in Residential Areas)
 - Edinburgh Local Development Plan Policy Tra 2 (Private Car Parking)
 - Edinburgh Local Development Plan Policy Tra 3 (Private Cycle Parking)
- 2) Relevant Non-Statutory Guidelines.
 - Guidance for Businesses (January 2024)
- 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:

- Did the property have independent access? It was explained that access to the property was from the ground floor only.

- It was confirmed that there were no further questions.
- This application for change of use to short term let (In retrospect) was unusual. There was some concern about the potential impact on the adjoining properties. However, the owners of the property lived upstairs and this proposal provided a good, alternative type of provision. Regarding amenity impact, there wouldn't be any as there had been numerous letters of support and the upstairs owners managed the property.
- It was noted that the property could change hands and be operated in a different way, although it was currently well managed and owned by the residents upstairs, this could change with a new owner. The Panel should, therefore, uphold the officer's decision.
- There were a number of issues highlighted by this case, as well as the wider issue of providing people with short term lets. This case was difficult, it was an atypical use and planning policy was not flexible enough to reflect that. Planning was concerned with the land use, not the manner of use. There was sympathy with the owners, however there were insufficient policy reasons to overturn the officer's decision.
- There was sympathy for the good management of the property, but planning policy and legislation did not have that flexibility. A new owner could operate the property differently and the Panel had to consider this. There would be little economic benefit, there would be a loss of residential accommodation and there was no reason to overturn the officer's recommendations.
- One member proposed an alternative view, noting that if these two properties were connected by an internal stairway the Panel would be looking at this in a different way. However, this proposal received no support.

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 term 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 and supporting documents, submitted).