

Izat Arundell.
FAO: Eilidh Izat
12B Geocrab
Isle Of Harris
HS3 3HB

Porteous Studio.
FAO: Jack Arundell
12B Geocrab
Isle Of Harris
HS3 3HB

Decision date: 28 November 2023

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

Change of use to short term let (in retrospect).
At 2 Porteous' Pend Edinburgh

Application No: 23/05137/FULSTL

DECISION NOTICE

With reference to your application for Planning Permission STL registered on 27 September 2023, this has been decided by **Local Delegated Decision**. The Council in exercise of its powers under the Town and Country Planning (Scotland) Acts and regulations, now determines the application as **Refused** in accordance with the particulars given in the application.

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

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 adverse impact on local amenity and the loss of a residential property has not been justified

Please see the guidance notes on our [decision page](#) for further information, including how to appeal or review your decision.

Drawings 01, 02, represent the determined scheme. Full details of the application can be found on the [Planning and Building Standards Online Services](#)

The reason why the Council made this decision is as follows:

The proposal complies with section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as it will preserve or enhance the character or appearance of the conservation area.

The change of use of this property to a Short Term Let (STL) will result in a loss of the residential accommodation and a negative impact to neighbouring amenity. Whilst it is recognised that there is an economic benefit to the City as a whole from the provision of visitor accommodation in this case it does not outweigh the loss of residential accommodation or the impact to neighbouring amenity. The proposal does not comply with Development Plan policy NPF4 policy 30(e) and LDP plan policy Hou 7. There are no material considerations that outweigh this conclusion. The proposal is unacceptable.

This determination does not carry with it any necessary consent or approval for the proposed development under other statutory enactments.

Should you have a specific enquiry regarding this decision please contact James Armstrong directly at james.armstrong@edinburgh.gov.uk.



Chief Planning Officer
PLACE
The City of Edinburgh Council

NOTES

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

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

Report of Handling

**Application for Planning Permission STL
2 Porteous' Pend, Edinburgh,**

Proposal: Change of use to short term let (in retrospect).

**Item – Local Delegated Decision
Application Number – 23/05137/FULSTL
Ward – B11 - City Centre**

Recommendation

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

Summary

The proposal complies with section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as it will preserve or enhance the character or appearance of the conservation area.

The change of use of this property to a Short Term Let (STL) will result in a loss of the residential accommodation and a negative impact to neighbouring amenity. Whilst it is recognised that there is an economic benefit to the City as a whole from the provision of visitor accommodation in this case it does not outweigh the loss of residential accommodation or the impact to neighbouring amenity. The proposal does not comply with Development Plan policy NPF4 policy 30(e) and LDP plan policy Hou 7. There are no material considerations that outweigh this conclusion. The proposal is unacceptable.

SECTION A – Application Background

Site Description

The application site is a one bedroom ground floor flat with it's own main door access located off a courtyard area (Porteous' Pend) that is accessed via a pend to the south of the Grassmarket. The courtyard is shared with other residential properties.

Porteous' Pend is of predominantly residential character. Though the courtyard area is in close proximity to the busy and mixed use Grassmarket, the level of activity in the courtyard itself is low, and the area is significantly insulated from the noise created by nearby uses outside the courtyard by the urban form of the area.

The application property is located within the Old Town Conservation Area and Edinburgh Old and New Towns World Heritage Site.

Description Of The Proposal

The application is for the retrospective change of use of the property from residential to short term let (sui generis) (STL). No internal or external physical changes are proposed.

Supporting Information

Planning Statement

Relevant Site History

17/00463/FUL
2 Porteous' Pend
Edinburgh

Change of use and alteration from a double garage to a residential studio apartment
Granted

13 April 2017

Other Relevant Site History

No other relevant site history was identified.

Consultation Engagement

No consultations.

Publicity and Public Engagement

Date of Neighbour Notification: 28 November 2023

Date of Advertisement: 3 November 2023

Date of Site Notice: 3 November 2023

Number of Contributors: 2

Section B - Assessment

Determining Issues

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

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

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

This report will then consider the proposed development under Sections 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

a) The proposals harm the character or appearance of the conservation area?

Section 64(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states:

"In exercise, with respect to any buildings or other land in a conservation area, of any powers under any of the provisions in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area."

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

As stated previously, there are no external changes proposed. The change of use will not impact on the character or appearance of the conservation area.

Conclusion in relation to the conservation area

The proposals comply with 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 NPF4 and LDP 2016 policies to be considered are:

- NPF4 Sustainable Places Tackling the climate and nature crises Policy 1.
- NPF4 Productive Places Tourism Policy 30.
- NPF4 Historic Assets and Places Policy 7.
- Local Development Plan Housing Policy, Hou 7.
- Local Development Plan Transport Policies, Tra 2 and Tra 3

The non-statutory Listed Building and Conservation Area Guidance is a material consideration when considering NPF 4 Policy 7.

The non-statutory Guidance for Business (April 2023) is a material consideration that is relevant when considering LDP Policy Hou 7 and the Edinburgh Design Guidance is a material consideration when considering LDP Policies Tra 2 and Tra 3.

Conservation Area and World Heritage Site

The impact on the setting of the listed building and on the setting of neighbouring listed buildings has been assessed in section a). 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 proposed change of use does not involve operational development resulting in physical changes to the property. The proposals will have a negligible impact on the global climate and nature crisis.

NPF 4 Policy 30 seeks to encourage, promote and facilitate sustainable tourism development which benefits local people, is consistent with our net zero and nature commitments, and inspires people to visit Scotland. Criterion 30 (e) specifically relate to STL proposals.

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

The non-statutory Guidance for Businesses (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 use of this property as an STL would introduce an increased frequency of movement to the property, requiring visitors to pass through the pend and into the shared courtyard area, enabling 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. There may also be an impact to neighbouring resident's safety and community cohesion. Whilst it is noted that the courtyard area is not in the ownership of the applicant, public comments note that visitors to the property will regularly gather in the courtyard, with associated amenity impacts for neighbours.

It is noted however that the amenity impacts of the proposal on neighbours is to a degree mitigated by the one bedroom size of the property, and the likelihood that the additional servicing that operating a property as an STL requires compared to that of a residential use would be conducted during the daytime.

On balance, the proposed use would have an unacceptable impact on residents that are living in proximity to the property, representing a significant detrimental effect on their living conditions and amenity as the noise generated by the proposed use would be significantly different from the ambient background noise that neighbouring residents might reasonably expect, particularly at night. 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 accommodation, 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 current lawful use of the property is for residential accommodation. Consequently, the use of the property as an STL would result the loss of this residential accommodation, which given the recognised need and demand for housing in Edinburgh it is important to retain, where appropriate.

Further, it is important to recognise that residential occupation of the property contributes to the economy, in terms of providing a home and the spend in relation to the use of the property as a home, including the use of local services and resultant employment, as well as by making contributions to the local community.

In this instance, it has not been sufficiently demonstrated that the loss of the residential accommodation is outweighed by demonstrable local economic benefits. As such, the proposal does not comply with NPF 4 30(e) part (ii).

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

The following material planning considerations have been identified:

Emerging policy context

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

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.

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

Two objections to the application were received. A summary is provided below:

material considerations in objection

Negative impact to neighbouring amenity (privacy). Assessed in section b).

Negative impact to neighbouring amenity (security). Assessed in section b).
Incidents of littering. Suitable refuse and recycling facilities are provided within the property.
Loss of residential accommodation. Assessed in section b).

non-material considerations

Incidences of anti-social behaviour.

Conclusion in relation to identified material considerations

The 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 section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as it will preserve or enhance the character or appearance of the conservation area.

The change of use of this property to a Short Term Let (STL) will result in a loss of the residential accommodation and a negative impact to neighbouring amenity. Whilst it is recognised that there is an economic benefit to the City as a whole from the provision of visitor accommodation in this case it does not outweigh the loss of residential accommodation or the impact to neighbouring amenity. The proposal does not comply with Development Plan policy NPF4 policy 30(e) and LDP plan 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;

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 adverse impact on local amenity and the loss of a residential property has not been justified

Background Reading/External References

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

Further Information - [Local Development Plan](#)

Date Registered: 27 September 2023

Drawing Numbers/Scheme

01, 02

Scheme 1

David Givan
Chief Planning Officer
PLACE
The City of Edinburgh Council

Contact: James Armstrong, Planning Officer
E-mail: james.armstrong@edinburgh.gov.uk

Appendix 1

Consultations

No consultations undertaken.

Appendix 2

Application Certification Record

Case Officer

I have assessed the application against the City of Edinburgh Council's Scheme of Delegation (2023) Appendix 6 – Chief Planning Officer and the Statutory Scheme of Delegation (2023) and can confirm the application is suitable to be determined under Local Delegated Decision, decision-making route.

Case Officer: James Armstrong

Date: 27 November 2023

Authorising Officer

To be completed by an officer as authorised by the Chief Planning Officer to determined applications under delegated powers.

I can confirm that I have checked the Report of Handling and agree the recommendation by the case officer.

Authorising Officer (mRTPI): Lynsey Townsend

Date: 28 November 2023

Comments for Planning Application 23/05137/FULSTL

Application Summary

Application Number: 23/05137/FULSTL

Address: 2 Porteous' Pend Edinburgh

Proposal: Change of use to short term let (in retrospect).

Case Officer: Improvement Team

Customer Details

Name: Mr Gareth Gibson

Address: 3/1 Porteous Pend 25 Grassmarket Edinburgh

Comment Details

Commenter Type: Neighbour-Residential

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: To Edinburgh Council,

Porteous' Pend is a small cul-de-sac / courtyard situated just off Grassmarket. Owing to the large buildings between the Pend and Grassmarket, it is remarkably not noisy in my home. Given how central the location is, too, with a large gate covering the entranceway to the Pend, it is quite a safe and secure little area, and a very nice place to call home.

This tranquillity and security, however, is jeopardised by the short-term-let properties located in the Pend, which are over half the units here. The other half being long-term residents like me, who have to suffer them.

The people who stay in the Pend on a short-term basis are typically here on holiday, and are here to have fun. This means visitors like those staying at Number 2, "Porteous Studio," often play music loudly late into the night, right below my bedroom. Visitors also congregate in the courtyard late at night to smoke, and assuming they are drunk (or just loud Americans) they talk together, laugh, shout, sometimes fight right below my bedroom window. Being a courtyard too, their voices and their music echoes throughout the Pend. This happens regularly, not just on weekends which I could understand, but on weekdays, without any notice that tonight I will not be getting much sleep. Noise complaints have led to ZERO results. As a resident of Edinburgh who works 9 to 5, and sometimes even earlier, it is rather unacceptable, and the rude awakenings are damaging to my health and overall well-being. Added to that, the tourists who stay often seem to have very early flights to catch, meaning they often drag their suitcases along the cobblestones clippity-clop, clippity-clop at ungodly hours of the day. Long term residents like me do not make such noise on such a regular basis. Being short term residents, too, there is little use in me going down and confronting them for their excessive noise, because I can guarantee that in a couple of days it will be some new strangers who are here to party and keep me awake, and I am unwilling to confront each and every one. Particularly since this could in fact be quite dangerous for me if they are

drunk and dead-set on not having their fun curtailed. Likewise, I do not think it should be the police's job to come around again and again to teach tourists how to pretend to be civilised. This leads on to the second problem with Porteous Studio and the others in the Pend being used as Short Term Lets: they do not care. The residents who stay in these properties are only here for a couple of nights and then they will be off again, never to come back. Why treat this place where people live with respect? On many occasions I have politely requested these tourists to "please put your cigarettes in the bin" rather than nilly-willy all over the courtyard. Naturally it doesn't work, and the courtyard is constantly full of cigarette butts. Myself and an older gentleman I've seen a few times have taken it upon ourselves to sweep clean the Pend every couple of weeks. Why should we? Why should these tourists get to treat the place where we live with such little respect. It would be great if we could collect all of the cigarette butts and deposit them in the perpetrators luggage before they leave.

There is also the aforementioned gate that covers the entrance way to the Pend, which helps our security and stops people casually wondering into our courtyard off of Grassmarket to urinate or vomit. The majority of short-term-letters don't seem to care that it is kept closed. In fact it probably spoils their convenience of getting in and out. The security of the Pend seemingly being of no consequence to them so they ignore the sign to keep the gate closed. As with noise complaints, there is seemingly little use in confronting each short-term-letter about respecting the Pend, as in a couple of days it will be a different set of uncouth slob in residence who will do the exact same thing.

Admittedly, Porteous Studio is a tiny little apartment, I believe with only 1 room, and I doubt it is large enough to house a family, or a single occupant comfortably. It probably lends itself to being a short-term-let venue, or a barber. However, the Proprietor should be in some way responsible or accountable to the permanent residents of Porteous Pend. If their decision to rent out this space to tourists and holiday-makers has a negative impact on the tranquillity, health, and security of the permanent residents here, should that not be addressed? It could be such a great place to live; convenient, quiet, secure, and close-knit, but instead I feel my desire for the "quiet enjoyment of my home" comes in 2nd place to the revenue generated by tourists coming to this city.

I don't know what the solution is, but I thank you for giving me the opportunity to voice my concerns and frustrations.

Much Appreciated,

Gareth

Comments for Planning Application 23/05137/FULSTL

Application Summary

Application Number: 23/05137/FULSTL

Address: 2 Porteous' Pend Edinburgh

Proposal: Change of use to short term let (in retrospect).

Case Officer: James Armstrong

Customer Details

Name: Ms OLD TOWN ASSOCIATION

Address: 1 Trunks Close, 55 High Street, Edinburgh EH1 1SR

Comment Details

Commenter Type: Amenity Body

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: Use as a short-term let will remove this property from the housing stock and deny potential residents a home.

The property shares access with other residential property.

The property shares common space with its neighbours.

Use of a flat as a short-term let leads to a sense of insecurity as residents do not know who they will encounter on their common stair.

Users of short-term lets are often noisy and active at anti-social hours, including arriving and leaving with luggage at all hours.

Use as a short-term let leads to a lack of security as guests often leave access doors open.

In contrast, users of short-term lets have been known to secure the door to the common stair, locking residents out of their homes.

Users of short-term lets are often careless about the use of household appliances, leading to flooding and other nuisances.

Users of short-term lets are unaware of local regulations and often leave rubbish on the stair and misuse recycling bins.