

# Development Management Sub-Committee Report

**Wednesday 7 August 2024**

**Application for Planning Permission STL  
31 Bernard Street, Edinburgh, EH6 6SH**

**Proposal: Change of Use from office to short term holiday let; new glass canopy over garden area.**

**Item – Committee Decision  
Application Number – 23/03970/FULSTL  
Ward – B13 - Leith**

## **Reasons for Referral to Committee**

The application has been referred to the Development Management Sub-Committee because it is subject to a petition in support of the application with 22 signatories, and it is being recommended for refusal. Consequently, under the Council's Scheme of Delegation, the application must be determined by the Development Management Sub Committee.

## **Recommendation**

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

## **Summary**

The proposal complies with sections 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, however it does not comply with section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as it will result in harm to the listed building.

Whilst the proposal is acceptable with regard to the climate and nature crisis, the conservation area and transport matters, the proposed works will result in an unacceptable impact to the listed building, and the change of use will result in an unacceptable impact to neighbouring amenity. The proposal does not comply with LDP policy Hou 7, and NPF4 policies 7(c) and 30(e)(i). The application is not in accordance with the development plan. There are no material considerations that outweigh this conclusion. The proposal is unacceptable.

## **SECTION A – Application Background**

### **Site Description**

The application site is a three-bedroom ground floor flat located on the southern side of Bernard Street. The property forms part of the three storey stone built tenement block of a traditional style. The front elevation features grey sandstone with polished dressings. The rear elevation features coursed and squared rubble. The flat the application relates to has its own access to the street and features a private courtyard area to the rear of the property which is overlooked by the rear windows of neighbouring residential properties and features a hot tub. The applicant advises the flat is let to a maximum of six persons at a time.

Bernard Street is of mixed character, featuring residential properties as well as a number of commercial units, including a public house and a bar across the road, and a restaurant on the ground floor of the building to the immediate south east of the application property. There is a moderate to high degree of activity to the front of the property at any time. This is as a result of the high level of vehicular traffic passing along the street. This results in a moderate to high levels of ambient noise levels in Bernard Street during the day and moderate levels at night. Carpet Lane, to the rear of the property, is also of mixed character, however this area features a low degree of activity and noise during the day and at night.

Public transport links are highly accessible from the site.

The application property is part of a category A listed building, 27-31 (odd no.'s) Bernard Street and 1 Seaport Street with gate piers and railings, LB26821, 14/12/1970.

The application site is in the Leith Conservation Area.

### **Description of the Proposal**

The proposal is for a retrospective change of use from Class 4 office to STL, and the installation of a glass canopy and flat felt roof, which together cover the rear garden courtyard area. The applicant indicates in their planning statement that the operation of the property as a short term let commenced in December 2021, and as such the change of use is retrospective. Part of the flat felt roof has already been installed, and as such this part of the proposed works is applied for in retrospect. The other works detailed have not been undertaken, and as such are not applied for in retrospect.

### **Supporting Information**

Supporting Statement  
Planning Statement  
Terms and Conditions  
Title Plan  
Photos 01-14

These are available to view on the Planning and Building Standards Online Service.

### **Relevant Site History**

23/03969/CLPSTL  
31 Bernard Street  
Edinburgh  
EH6 6SH  
Change of Use from office to short term holiday let.  
Refused  
24 June 2024

22/06246/FULSTL  
31 Bernard Street  
Edinburgh  
EH6 6SH  
Change of use from residential flat to a short-term holiday let (in retrospect).  
Refused  
4 August 2023

20/01037/VARY  
31 Bernard Street  
Edinburgh  
EH6 6SH  
Non-Material variation to 20/01037/FUL.  
VARIED  
23 March 2021

20/01037/FUL  
31 Bernard Street  
Edinburgh  
EH6 6SH  
Application for change of use from an office to a residential flat (sui generis)  
Granted  
7 May 2020

21/00143/LBC  
31 Bernard Street  
Edinburgh  
EH6 6SH  
Reinstate existing blocked up door and window at rear of building. (as amended)  
Granted  
26 March 2021

20/01058/LBC  
31 Bernard Street  
Edinburgh  
EH6 6SH  
Application for change of use from an office to a residential flat (sui generis).  
Granted  
13 May 2020

92/01670/FUL  
31 Bernard Street  
Edinburgh  
EH6 6SH  
Change of use from dwelling to office  
Refused  
13 January 1993

### **Other Relevant Site History**

No other relevant site history was identified.

### **Pre-Application process**

There is no pre-application process history.

### **Consultation Engagement**

Historic Environment Scotland

Refer to Appendix 1 for a summary of the consultation response.

### **Publicity and Public Engagement**

**Date of Neighbour Notification:** 29 September 2023

**Date of Renotification of Neighbour Notification:** Not Applicable

**Press Publication Date(s):** 6 October 2023

**Site Notices Date(s):** 3 October 2023

**Number of Contributors:** 8

## **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: Setting
- Managing Change in the Historic Environment: Extensions

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.

Managing Change in the Historic Environment: Extensions sets out the principles that apply to extending historic buildings.

Whilst the glass canopy and flat felt roof are located in a secondary location at ground floor level, the installation acts effectively as an enclosure for the majority of the rear outdoor garden area. The scale, form and design of both structures clutter the open space between the rear wall of the listed building and the stone boundary wall. Furthermore, the proposals do not make use of high-quality materials. The additions are unsympathetic to the character of the building and do not take cues from the design or materials of the existing building as is recommended by Historic Environment Scotland guidance.

## **Conclusion in relation to the listed building**

The proposal will result in harm to the character and setting of the listed building. It is therefore not 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 Leith Conservation Area Character Appraisal emphasises the area's unique and complex architectural character, the concentration of buildings of significant historic and architectural quality, the unifying effect of traditional materials, the multiplicity of land use activities, and the importance of the Water of Leith and Leith Links for their natural heritage, open space, and recreational value.

In terms of the appearance of the conservation area, the proposed alterations will for the most part not be visible from the public realm, being heavily obscured by the large stone wall that fronts onto Carpet Street. In terms of the character of the conservation area, there are several historic examples of the enclosure of the rear elevations of the set of buildings that the application site is part of, and the existence of open space to the rear of the building cannot be said to define the spatial pattern of the area. Consequently, the proposal preserves 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 (January 2024) is a material consideration that is relevant when considering LDP Policy Hou 7.

The Edinburgh Design Guidance is a material consideration when considering LDP Policies Tra 2 and Tra 3.

#### Listed Buildings and Conservation Area

The impact on the setting of the listed building and on the setting of neighbouring listed buildings has been assessed in section a). The impact on the Leith Conservation Area is assessed in section b). Whilst there will not be a negative impact to the conservation area, there will be a negative impact to the listed building.

The proposal does not comply with NPF4 Policy 7(c).

#### Global climate and nature crisis

Policy 1 of NPF4 prioritises the climate and nature crisis. It has been applied together with other policies in NPF4 and the overall intended outcome of NPF4. The proposal will have a neutral impact on sustainability and the environment. On balance, the proposed development does not conflict with the intended outcomes of NPF4 and thus, complies with NPF4 Policy 1.

#### Proposed Use

NPF4 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.

#### *Amenity*

Whilst it is acknowledged that the former commercial use generated a degree of footfall to and from the property, the use of this property as a short term let would have the potential to introduce an increased frequency of movement to the property at unsociable hours. The proposed three-bedroom short-term let use would enable up to six visitors stay at the premises, for a short period of time on a regular basis throughout the year. There is no mechanism to control the frequency of guest arrivals and departures, and transient visitors may have less regard for neighbouring amenity.

Whilst it is unlikely that the amenity impacts of the STL use would be significantly different to what neighbouring residents might expect to the front of the property, as the property has its own access and there is a moderate to high level of ambient background noise here, the amenity impacts of the use of the rear courtyard area are likely to be significant. The hot tub and outdoor seating area are likely to encourage a particularly intense use of the rear courtyard area by guests. Comments from a neighbour note the negative impact that the use of this outdoor space for short-term letting has had on their amenity, stating that the use of the hot tub, with associated amplified music and loud conversations between guests commonly continue late into the night, resulting in disturbance.

The glass canopy and flat felt roof are described by the applicant as a mitigation measure to reduce the amenity impact of the use of the rear courtyard area by guests. However, given the large size of the property, the relatively high attractiveness of the courtyard area to guests, the proximity of neighbouring flatted dwellings with windows immediately overlooking the courtyard, and the lack of complete coverage of the whole courtyard area by the covering (the section drawings show that where the glass canopy and the flat felt roof meet, this area will be filled by guttering), the proposed mitigation measure is considered insufficient to reduce the amenity impacts of the proposal to the extent that they would be acceptable. Conversely, covering over the courtyard may increase the intensity of use of this area by providing additional shelter to guests from the weather.

It is recognised that the amenity impacts of the application are in part reduced by the likelihood that the additional servicing of the property necessitated by the change of use would be conducted during the daytime.

On balance, the proposed change of use would increase the level of ambient background noise to the rear of the property beyond what might be reasonably expected by neighbouring residents and will have a significant detrimental effect on their living conditions and amenity. The proposal does not comply with NPF 4 policy 30(e) part (i) and LDP policy Hou 7.

#### *Loss of residential accommodation*

NPF4 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.

The proposed change of use from office to STL does not result in the loss of residential accommodation.

Whilst planning permission and listed building consent were granted for the change of use of the property from an office to residential in 2020 (references: 20/01037/FUL and 20/01037/VARY), and for further works at the property in 2021 (reference: 21/00143/LBC) and works have been carried out in line with these consents, the residential use was never instituted. Instead, the office passed directly into STL use, and this current application seeks to regularise the change of use.

For the reasons above, NPF4 policy 30(e) part (ii) is not applicable in this instance.



## Parking

No parking is proposed. This is in compliance with the standards described in the Edinburgh Design Guidance.

The proposals comply with LDP Policies Tra 2 and Tra 3.

## **Conclusion in relation to the Development Plan**

Whilst the proposal will not result in a loss of residential accommodation, complying with NPF4 Policy 30(e)(ii), and is acceptable with regard to the climate and nature crisis, the conservation area and transport matters, the proposed works will result in an unacceptable impact to the listed building, and the change of use will result in an unacceptable impact to neighbouring amenity. The proposal does not comply with LDP policy Hou 7 and NPF4 policies 7(c), and 30(e)(i). The application is not in accordance with the development plan.

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

The following material planning considerations have been identified:

#### Emerging policy context

On 5 April 2024, the Planning and Environmental Appeals Division published its report into the examination of the Proposed City Plan 2030 and supporting documents in terms of Section 19 of the Town and Country Planning (Scotland) Act 1997. On 27 June 2024, the Council accepted the recommendations and modifications required to the Proposed City Plan 2030. The Proposed City Plan 2030 has now been submitted to Scottish Ministers for their final consideration. At this time in the context of the consideration of this particular application limited weight can be given to the relevant policies of City Plan 2030 until the adoption of the plan.

#### Economic benefits

Public representations in support of the application state that the proposal is likely to result in greater local economic benefits than the continued use of the property as an office.

It is recognised in paragraph 220 of the LDP 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. However, in this instance, the economic impacts of the proposal are not considered to outweigh the report's conclusion with respect to the development plan as a whole, and in particular, the impacts on amenity.

#### 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

Five public comments in support of the application, one objection to the application and a petition in support of the application with 22 signatures were received. A summary of the representations is provided below:

#### *material considerations in support*

Positive impact to local businesses. Assessed in section d).  
Lack of negative amenity impact to neighbouring residents. Assessed in section c).  
Conditional support for the glass canopy as a mitigation measure. Assessed in section c).

#### *material considerations in objection*

Negative impact to neighbouring amenity. Assessed in section c).

#### *non-material considerations*

The quality of the visitor accommodation provided.  
The management regime.

### **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 sections 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, however it does not comply with section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as it will result in harm to the listed building.

Whilst the proposal is acceptable with regard to the climate and nature crisis, the conservation area and transport matters, the proposed works will result in an unacceptable impact to the listed building, and the change of use will result in an unacceptable impact to neighbouring amenity. The proposal does not comply with LDP policy Hou 7, and NPF4 policies 7(c) and 30(e)(i). The application is not in accordance with the development plan. 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 property 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, as the use of this property as a short term let will result in an adverse impact on local amenity.
3. The proposal is contrary to National Planning Framework Policy 7(c) as the proposal will result in harm to the listed building, not complying with section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

## Background Reading/External References

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

## Further Information - Local Development Plan

**Date Registered: 26 September 2023**

## Drawing Numbers/Scheme

01, 02A

Scheme 1

**David Givan**  
**Chief Planning Officer**  
**PLACE**  
**The City of Edinburgh Council**

Contact: James Armstrong, Planning Officer  
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## Appendix 1

### Summary of Consultation Responses

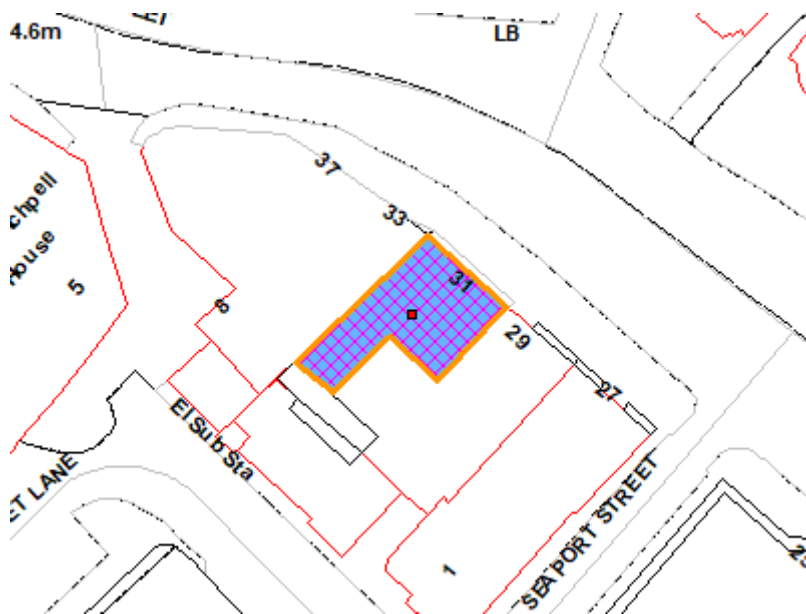
NAME: Historic Environment Scotland

COMMENT: No comments or objections.

DATE:

The full consultation response can be viewed on the [Planning & Building Standards Portal](#).

### Location Plan



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