

Development Management Sub-Committee Report

Wednesday 21 August 2024

**Application for Planning Permission STL
40 London Street, Edinburgh, EH3 6LX.**

Proposal: Proposed change of use of former licenced sauna (Sui Generis) to short term let (Sui Generis) at 40 London Street.

**Item – Committee Decision
Application Number – 23/06869/FULSTL
Ward – B11 - City Centre**

Reasons for Referral to Committee

The application has been referred to Development Management Sub-Committee because the application has attracted more than 20 letters in support, and the recommendation is 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 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as it will not harm the listed building, or its setting and 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 have an unacceptable impact on neighbouring amenity. Whilst it is recognised that there is an economic benefit to the City as a whole from the provision of tourist accommodation, in this case it does not outweigh the adverse impact on residential amenity. The proposal does not comply with the Development Plan policy NPF 4 policy 30(e)(i) and LDP policy Hou 7. There are no material considerations that outweigh this conclusion. The proposal is unacceptable.

SECTION A – Application Background

Site Description

The application property is a two-bedroom flat at the basement and sub-basement level of 40 London Street, near the junction with Broughton Street. The property has its own main door access to the front of the property and a set of steps leading up to London Street. There is an access to a shared rear garden. The applicant advises that STL guests would not have access to this garden unless in the case of an emergency. The application property is part of a four-storey tenement block with basement and sub-basement.

The established planning use of the ground floor property (immediately above the application property) is a funeral parlour although it is no longer used as such and has been in a state of disrepair for some 14 years.

The surrounding area has a mixed character with largely residential units to the west of the application property and retail units to the east at basement and ground floor level. There are residential properties on the floors above ground floor level. Beyond the retail units to the east is Broughton Street which is a local centre with a mix of cafes, bars, restaurants and shops.

The property is an A listed building (ref: LB 29260: date of listing 14.12.1965) and is within the New Town Conservation Area and the Old and New Towns of Edinburgh World Heritage Site.

Description of the Proposal

The application is for a change of use from former licenced sauna to short term let (sui generis). No internal or external physical changes are proposed.

Supporting Information

Planning Statement.

Relevant Site History

No relevant site history.

Other Relevant Site History

22/04523/FUL

Change of Use from sauna to two dwellings at 40-41 London Street.
Application granted 01.11.2022.

20/05421/FUL

Change of Use from Funeral Parlour to holiday lets (ground floor) at 39 London Street.
Application refused - 21.04.2021
Appeal dismissed (reference PPA-230-2345) -01.12.2021.

20/05425/FUL.

Change of Use from derelict property to holiday lets (basement and sub-basement) at 37A London Street.

Application refused -21.04.2012
Appeal dismissed (reference PPA-230-3346) - 01.12.2021.

Pre-Application process

Pre-application discussions took place on this application.

Consultation Engagement

Historic Environment Scotland

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

Publicity and Public Engagement

Date of Neighbour Notification: 19 December 2023

Date of Renotification of Neighbour Notification: Not Applicable

Press Publication Date(s): 5 January 2024

Site Notices Date(s): 28 December 2023

Number of Contributors: 26

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 or its setting?

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

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

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

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

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

Conclusion in relation to the listed building

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

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

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

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

The New Town Conservation Area Character Appraisal states that the area is typified by the formal plan layout, spacious stone built terraces, broad streets and an overall classical elegance. The buildings are of a generally consistent three storey and basement scale, with some four storey corner and central pavilions.

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

Conclusion in relation to the conservation area

The proposals 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 policies to be considered are:

- NPF4 Sustainable Places Policy 1.
- NPF4 Historic Assets and Places Policy 7.
- NPF4 Productive Places Tourism Policy 30.
- LDP Housing Policy Hou 7.
- LDP Transport Policies Tra 2 and Tra 3.

The non-statutory 'Listed Buildings and Conservation Area' guidance is a material consideration that is relevant when considering historic assets.

The non-statutory 'Guidance for Businesses' (2024) is a material consideration that is relevant when considering change of use applications.

Listed Buildings, Conservation Area and World Heritage Site

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

Proposed Use

With regards to NPF 4 Policy 1, the proposals do not involve operational development. 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 relates to STL proposals.

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

Amenity

The applicant's planning statement asserts that the application property is in a mixed-use area comprising residential and commercial use, in close proximity to Broughton Street which is a local centre. It states that the footfall to STL use is likely to be less than footfall to the previous use of the licenced sauna. Finally, the statement sets out that the application property has its own main door, only has two bedrooms, and will accommodate no more than four STL guests.

The application property is in an area of mixed use. However, it sits on the boundary of predominantly residential uses to the west and smaller retail units to the east. Above the application property is a former funeral parlour where an application for STLs has been refused (20/05421/FUL - 21.04.2012) and dismissed on appeal (01.12.2021). Residential flats comprise the upper floors -above the former funeral parlour. The three floors above the ground floor are in residential.

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 flat at unsociable hours. The proposed two-bedroom short-term let use would enable visitors to arrive and stay at the premises, for a short period of time on a regular basis throughout the year. 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 neighbouring amenity.

In considering the adjacent properties for use as short stay let accommodation the reporters for appeals at 37a and 39 London Street concluded that the introduction of such as use within this area would have an adverse impact on residential amenity within the area. With regards to amenity on appeal decision PPA-230-3346 on 37A London Street the adjacent part of the basement, the reporter found that the character of the area was more peaceful and residential in character.

The applicant's statement confirms that access to the shared rear garden for STL guests is for emergency use only, and the applicant would accept a condition restricting access completely, if required. However, a planning condition in this instance is not enforceable.

The potential for noise described above would be significantly different from the ambient background noise that neighbouring residents might reasonably expect and will have a significantly detrimental effect on the living conditions and amenity of nearby residents. The proposal does not comply with NPF 4 policy 30 (e) part (i) and LDP policy Hou 7.

Loss of residential accommodation

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.

Planning permission and listed building consent was granted for the change of use from sauna to create two duplex flats at basement and sub-basement level in 2022 (reference 22/04523/FUL and 22/04499/LBC). Works have been carried out in line with these consents however, the residential use consented has not been initiated.

Given the above, there is no loss of residential use. Therefore, NPF4 policy 30(e) part (ii) is not applicable in this instance.

Car Parking

There is no off-street car parking available within the site. The site is accessible by public transport. There are no cycle parking standards for STLs. Bikes could be parked within the property if required. The proposals comply with policies Tra 2 and Tra 3.

Conclusion in relation to the Development Plan

The change of use of this property to an STL will have an unacceptable impact on neighbouring amenity. There is no loss of residential accommodation. Whilst it is recognised that there is an economic benefit to the city as a whole from the provision of tourist accommodation, in this case it does not outweigh the adverse impact on residential amenity. The proposal does not comply with the Development Plan policy NPF 4 policy 30 (e) (i) and LDP policy Hou 7.

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.

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.

Benefits of the proposal

Comments made in support of the application outlined that use of this vacant property for STLs will support local businesses, create local jobs and provide additional tourist accommodation for the local area.

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.

Whilst it is recognised that the proposed STL use will provide benefit for tourism in Edinburgh and for local businesses, this does not outweigh the unacceptable amenity impact it will have on nearby residents.

Public representations

Twenty-six public representations have been received. Four are objections and 22 are letters of support.

A summary of the representations is provided below:

material considerations -objections

- Negative impact on residential amenity. Addressed in c) above.
- Negative impact on housing stock. Addressed in c) above.
- May cause parking problems. Addressed in c) above.

non-material considerations -objections

- Will cause litter problems. The applicant should agree a waste strategy with CEC's Waste Services.
- Will cause anti-social behaviour. This is a matter for Police Scotland.
- There is sufficient holiday accommodation in the area. All applications must be considered on their individual merits.

material considerations -in support

- Good for local business and employment. Addressed in d) above.
- There is no loss of housing. Addressed in c) above.
- Will boost tourism. Addressed in d) above.

non-material considerations -in support

- Not enough STLs available. Each application must be assessed on its individual merits.

Conclusion in relation to identified material considerations

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

Overall conclusion

The proposal complies with Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as it will not harm the listed building, or its setting and 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 have an unacceptable impact on neighbouring amenity. Whilst it is recognised that there is an economic benefit to the City as a whole from the provision of tourist accommodation, in this case it does not outweigh the adverse impact on residential amenity. The proposal does not comply with the Development Plan policy NPF 4 policy 30(e)(i) and LDP policy Hou 7. There are no material considerations that outweigh this conclusion. The proposal is unacceptable.

Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following: -

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 4 Policy 30(e)(i) in respect of Local Amenity as the use of this property as a short term let will result in an unacceptable impact on local amenity.

Background Reading/External References

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

Further Information - [Local Development Plan](#)

Date Registered: 18 December 2023

Drawing Numbers/Scheme

01, 02

Scheme 1

David Givan
Chief Planning Officer
PLACE
The City of Edinburgh Council

Contact: Lesley Porteous, Planning Officer
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Appendix 1

Summary of Consultation Responses

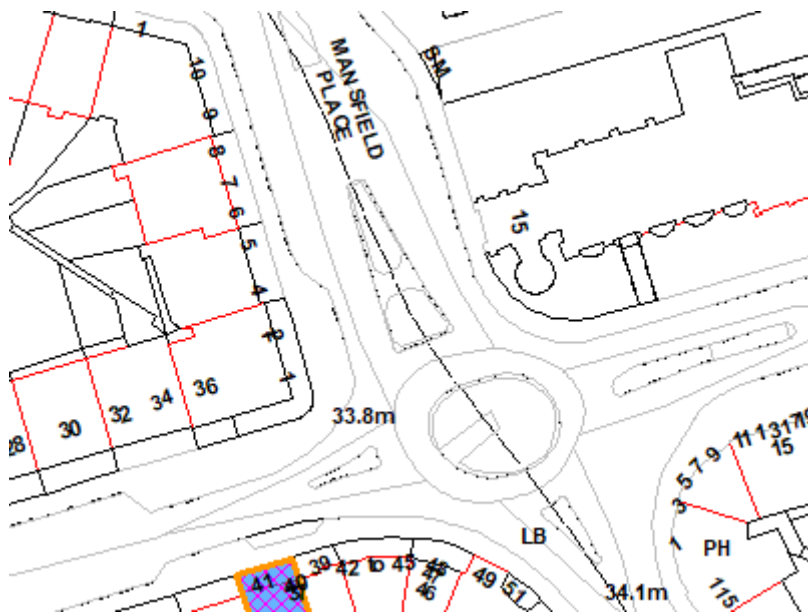
NAME: Historic Environment Scotland

COMMENT: No comments.

DATE: 3 April 2024

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

Location Plan



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