

Development Management Sub-Committee Report

Wednesday 21 August 2024

**Application for Planning Permission STL
3 Tron Square, Edinburgh, EH1 1RR.**

Proposal: Retrospective change of use from residential (Sui Generis) to short-term let (Sui Generis) for three months per annum (June-August).

**Item – Committee Decision
Application Number – 23/04425/FULSTL
Ward – B11 - City Centre**

Reasons for Referral to Committee

The application has been referred to the Development Management Sub-Committee because the application has attracted a petition in support with more than 20 signatures and the recommendation is to refuse. 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 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 for three months of the year from June to August, 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 site is a two bedroom flat at 3 Tron Square, adjacent to the Cowgate. The property has its own main door entrance. It shares access to the Cowgate via a courtyard area and a communal gate and footpath.

Tron Square comprises three 4-storey blocks. It is entirely residential.

The application property is a category B listed building (LB29229, 14.12.1970).

The application site lies within the Old Town Conservation Area and the Old and New Towns of Edinburgh World Heritage Site.

Description of the Proposal

The application is for retrospective change of use from residential to short term let (sui generis) for three months of the calendar year (June to August). No internal or external physical changes are proposed.

Supporting Information

Covering letter.

Relevant Site History

22/04793/FUL

3 Tron Square

Edinburgh

EH1 1RR

Retrospective change of use from a flatted dwelling to short term let.

Refused

12 April 2023

Other Relevant Site History

No other relevant planning site history.

Pre-Application process

There is no pre-application process history.

Consultation Engagement

No consultations undertaken.

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: 3

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:

The application is in retrospect. The application form states that the operation of the property as a short term let commenced in September 2021. This is prior to 5 September 2022, when the Edinburgh short term let control area came into effect. As the designation does not have a retrospective effect it is necessary to consider whether the use of the property as a commercial short term let is a material change of use.

Granting planning permission would change the use from a residential dwelling to STL. The use of the property as an STL, as a result of the granting of planning permission, would constitute a material change in the use of the property under Section 26 of the Town and Country Planning (Scotland) Act 1997, given the associated characteristics of STL use in this location and property type.

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

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

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

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

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

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

Conclusion in relation to the listed building

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

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

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

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

The 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.

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

Conclusion in relation to the conservation area

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

c) The proposals comply with the development plan?

National Planning Framework 4 (NPF4) was adopted by the Scottish Ministers on 13 February 2023 and forms part of the Council's Development Plan. NPF4 policies supports the planning and delivery of Sustainable Places, Liveable Places and Productive Places and are the key policies against which proposals for development are assessed. Several policies in the Edinburgh Local Development Plan (LDP) are superseded by equivalent and alternative policies within NPF4. The relevant policies to be considered are:

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

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

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

Listed Buildings, Conservation Area and Edinburgh 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 relate to STL proposals.

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

Amenity

The applicant has submitted a supporting letter. The letter states that Tron Square is situated on a busy thoroughfare between the Royal Mile and the Cowgate and it does not have a quiet residential setting.

The application property is located within Tron Square which is set back from the Cowgate. The character of the immediate area is entirely residential. Access to the property is gained via a pedestrian courtyard and communal gate that is overlooked by a large number of flats within Tron Square. The use of this property as an STL from 1 June to 31 August each year, would introduce an increased frequency of movement to the property and the shared courtyard entrance area and communal gate. The proposed two bedroom STL use would enable visitors to arrive and stay at the premises for a short period of time on a regular basis for three months in the year (June to August) every year, in a manner dissimilar to that of permanent residents. There is no guarantee that guests would not come and go frequently throughout the day and night, and transient visitors may have less regard for neighbours' amenity than individuals using the property as a principal home.

The additional servicing that operating a property as an STL requires compared to that of a residential use is also likely to result in an increase in disturbance, further impacting on neighbouring amenity. However, this would be of lesser impact as it is likely that servicing would be conducted during the daytime.

The potential for noise to be generated as described would be significantly different from the ambient background noise that neighbouring residents in a residential development with shared courtyard 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

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.

The applicant's supporting letter states that as the proposed STL use is for three months of the year only (June to August) and will remain in residential use for nine months, then residential use is not lost.

The application is seeking use as short term let for three months only from 1 June to 31 August each year. The established planning use of the property will remain as residential use for the remaining nine months of the year so no residential accommodation will be lost. NPF 4 policy 30 (e) part (ii) is not applicable to this application.

Car Parking

There is no car parking available at the property. This is acceptable and there is no requirement for cycle parking for STLs. The proposal complies with policies Tra 2 and Tra 3.

The proposals comply with LDP 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 for three months of the year from June to August, 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 property for STLs will retain local jobs e.g. cleaning, property management, laundry services and hospitality.

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.

Public representations

Three representations were received. Two objections. One petition in support with 25 signatures.

A summary of the representations is provided below:

material considerations -objections

- Negative impact on residential amenity. Addressed in c) above.
- Three months for STL use is too long. Addressed in c) above.

material considerations -in support

- No negative impact on residential amenity. Addressed in c) above.
- Temporary STL use retains the property as a residential dwelling. Addressed in c) above.
- Retains local jobs eg. cleaning, property management, laundry services and hospitality. Addressed in d) above.
- Appearance of listed building is preserved. Addressed in a) above.
- Appearance of conservation area is preserved. Addressed in b) above.

non-material considerations -in support

- NPF 4 Policy 27 supports and encourages development in city centres. The application must be assessed against relevant policies.
- STL use will ensure the building is maintained.

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 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 for three months of the year from June to August, 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;

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 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: 14 September 2023

Drawing Numbers/Scheme

01, 02

Scheme 1

David Givan
Chief Planning Officer
PLACE
The City of Edinburgh Council

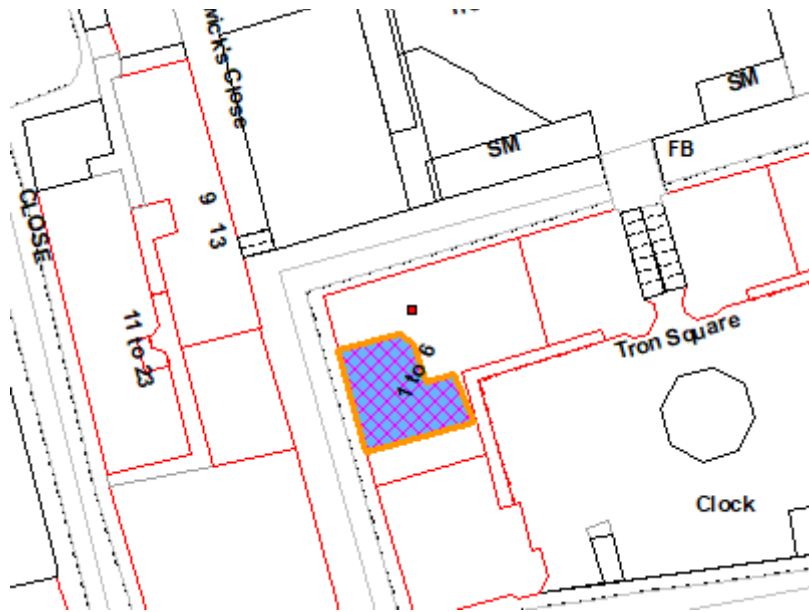
Contact: Lesley Porteous, Planning Officer
E-mail: lesley.porteous@edinburgh.gov.uk

Appendix 1

Summary of Consultation Responses

No consultations undertaken.

Location Plan



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