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Decision date: 23 May 2024

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

Change of use application for short term let as used for 5 years.
At 4F 15 James' Court 493 Lawnmarket Edinburgh EH1 2PB

Application No: 23/04902/FULSTL

DECISION NOTICE

With reference to your application for Planning Permission STL registered on 25 October 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 unacceptable 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 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. The loss of the residential accommodation has not been justified. 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 adverse impact on residential amenity. The proposal does not comply with the Development Plan policy NPF 4 policy 30(e) and LDP 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 Alex Wilson directly at alex.wilson@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
4F, 15 James' Court, 493 Lawnmarket**

Proposal: Change of use application for short term let as used for 5 years.

**Item – Local Delegated Decision
Application Number – 23/04902/FULSTL
Ward – B11 - City Centre**

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. The loss of the residential accommodation has not been justified. 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 adverse impact on residential amenity. The proposal does not comply with the Development Plan policy NPF 4 policy 30(e) 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, fourth floor flat, situated within an 5-storey tenement located via an entrance pend (James Court) to the northern side of Lawnmarket. The flat is accessed via a shared main door access, located along the close, with the common stair used by four other flats. The immediate area is mixed use in nature with commercial uses typically occupying the ground floor with residential

properties above. There is a high volume of pedestrian movements in the area due to its relationship with tourist activity.

The dwelling forms part of a category 'B' listed building (LB48245) designated on the 14/12/1970.

The property is located within the Old Town Conservation Area and the Old and New Towns of Edinburgh World Heritage Site. Public transport links are readily accessible from the property.

Description Of The Proposal

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

Supporting Information

The applicant has provided a planning statement in support of the application, screenshots of the online listing, income and booking records.

Some of the evidence submitted in support of the application is not publicly available for viewing on the Council's planning portal because it contains third-party personal details or commercially sensitive information. This is in line with the Council's usual practice.

Relevant Site History

No relevant site history.

Other Relevant Site History

23/04900/CLESTL

1F 15 James' Court

493 Lawnmarket

Edinburgh

EH1 2PB

Certificate of Lawfulness Existing Short Term Let

The Property has been in use since January 2014 continuously as a short term let.

Pending decision

23/04901/FULSTL

2F 15 James' Court

493 Lawnmarket

Edinburgh

EH1 2PB

Planning application

Change of use application for short term let as used for 9 years.

Pending decision

23/04925/CLESTL

3F 15 James' Court

493 Lawnmarket
Edinburgh
EH1 2PB
Certificate of Lawfulness Existing Short Term Let
Flat in short term let use.

Pending decision

23/04903/CLESTL
5F 15 James' Court
493 Lawnmarket
Edinburgh
EH1 2PB
Certificate of Lawfulness Existing Short Term Let
Property is in existing use as a short term let.

Pending decision

Consultation Engagement
No consultations.

Publicity and Public Engagement

Date of Neighbour Notification: 2 November 2023
Date of Advertisement: 10 November 2023
Date of Site Notice: 10 November 2023
Number of Contributors: 0

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

The application is in retrospect. The operation of the property as a short term let is stated to have commenced on 26 July 2018. 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.

On the basis of the application form, the description of development, drawings and supporting information it is considered that the proposals constitute a material change of use under Section 26 of the Town and Country Planning (Scotland) Act 1997.

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 states: "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. Therefore, the proposal does not conflict with the objective of preserving or enhancing 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 and NPF4 policy 30.

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 listed building, its setting and the setting of the neighbouring listed building 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.

World Heritage Site

LDP policy Env 1- World Heritage Sites states that development which would harm the qualities which justified the inscription of the Old and New Towns of Edinburgh as World Heritage Sites or would have a detrimental impact on the site's setting will not be permitted.

The application proposes no external alterations to the building. The proposed change of use as short stay let does not affect the reasons for the inscription of the World Heritage Site.

The proposal complies with LDP policy Env 1.

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.

Amenity

Whilst the property is located in a busy mixed-use area that has high levels of commercial and tourist activity, it is accessed via a shared communal front door and shared residential stair.

The applicant's planning statement notes that the application site is in a mixed use area with few residential properties nearby. The statement asserts that a low number of comings and goings of guests or cleaners is unlikely to cause any discernible impact to neighbours and this is reduced further by the ambient noise level of the adjacent busy streets. It is stated that there have been no complaints of noise or of any other issues.

Furthermore, the planning statement notes that the property is within a block where all other properties are short term let apartments. Whilst Planning Permission and Certificates of Lawfulness applications have been submitted for other properties in the building these are currently awaiting determination, therefore the established planning status of these properties is as residential accommodation. At this point in time these STLs are unauthorised, therefore no material weight can be attached to them.

The use of this property as an STL would introduce an increased frequency of movement to the property and through the shared stair, 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.

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.

On balance, the noise generated by the proposed use would be significantly different from the ambient background noise that neighbouring residents might reasonably expect, and consequently will have a significantly detrimental effect on their living conditions and amenity. There could also be a negative impact on community cohesion and residents' safety.

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 planning statement comments that because of the property's central location, there is a high level of demand for the property for short term letting purposes and as a result there is a significant economic benefit to businesses in the immediate area and the local economy.

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.

Furthermore, 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).

Parking Standards

No parking spaces are proposed. This is acceptable as there are no parking requirements for STLs.

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

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. The Council is currently considering the recommendations and modifications required to the Proposed City Plan 2030. It is the intention that the modifications will be considered by the Council before the end of June 2024. 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 proposed modifications have been fully considered.

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

No public representations were received.

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. The loss of the residential accommodation has not been justified. 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 adverse impact on residential amenity. The proposal does not comply with the Development Plan policy NPF 4 policy 30(e) 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 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 unacceptable 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: 25 October 2023

Drawing Numbers/Scheme

01, 02

Scheme 1

David Givan
Chief Planning Officer
PLACE
The City of Edinburgh Council

Contact: Alex Wilson, Assistant Planning Officer
E-mail:alex.wilson@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: Alex Wilson

Date: 8 May 2024

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): Damian McAfee

Date: 22 May 2024