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Decision date: 2 May 2024

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

Change the apartment from residential to short term let (in retrospect).
At Flat 7 7 High Riggs Edinburgh EH3 9BW

Application No: 23/05301/FULSTL

DECISION NOTICE

With reference to your application for Planning Permission STL registered on 9 February 2024, 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 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 and Loss of Residential Accommodation, as the use of this property

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 change of use of this property to an STL will have unacceptable impact on neighbouring amenity. The loss of 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 tourist accommodation, in this case it does not outweigh the adverse impact on residential amenity. The proposal does not comply with NPF 4 policy 30(e) or LDP policy Hou 7. There are no material considerations which 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 Lizzi Smyth directly at lizzi.smyth@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 Flat 7 7 High Riggs, Edinburgh, EH3 9BW

Proposal: Change the apartment from residential to short term let (in retrospect).

**Item – Local Delegated Decision
Application Number – 23/05301/FULSTL
Ward – B11 - City Centre**

Recommendation

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

Summary

The change of use of this property to an STL will have unacceptable impact on neighbouring amenity. The loss of 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 tourist accommodation, in this case it does not outweigh the adverse impact on residential amenity. The proposal does not comply with NPF 4 policy 30(e) or LDP policy Hou 7. There are no material considerations which outweigh this conclusion. The proposal is unacceptable.

SECTION A – Application Background

Site Description

The application property is a three-bedroom flat on the top floor of a modern tenement block on the south side of High Riggs. It shares its access to the street with the eight other residential properties in the block via a common stairwell. This block forms part of a larger development; six adjoining blocks comprising 66 residential flats and a further building of 20 flats which faces onto Lauriston Street and has been operated as an apart-hotel by the applicant since its construction.

In addition to the property considered as part of this application, concurrent planning applications have been submitted for Flats 1, 2 and 4 for their change of use to short term lets (in retrospect). Planning references: 23/05275/FULSTL, 23/05277/FULSTL and 23/05296/FULSTL respectively. The applicant has also submitted three concurrent applications for Certificates of Lawfulness (Existing) for Flats 5, 8 and 9 for their use as

short term lets. Planning references: 23/05270/CLESTL, 23/05271/CLESTL AND 23/05273/CLESTL respectively.

It is also noted that the applicant has submitted a further six applications for Certificates of Lawfulness for other properties in different blocks which are part of the same development.

The site is located on a partly pedestrianised street, which is mostly residential in nature. The surrounding streets have a more commercial nature with use including bars, shops and restaurants. Public transport links are highly accessible from the site.

Description Of The Proposal

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

Supporting Information

A planning statement has been submitted in support of the application.

Relevant Site History

No relevant site history.

Other Relevant Site History

23/05275/FULSTL - Flat 1 7 High Riggs, application for change of use from residential to short term let (in retrospect). Awaiting decision.

23/05277/FULSTL - Flat 2 7 High Riggs, application for change of use from residential to short term let (in retrospect). Awaiting decision.

23/05296/FULSTL - Flat 4 7 High Riggs, application for change of use from residential to short term let (in retrospect). Awaiting decision.

23/05270/CLESTL - Flat 5 7 High Riggs, application for a Certificate of Lawfulness to confirm existing use as short term let. Awaiting decision.

23/05271/CLESTL - Flat 8 7 High Riggs, application for a Certificate of Lawfulness to confirm existing use as short term let. Awaiting decision.

23/05273/CLESTL - Flat 9 7 High Riggs, application for a Certificate of Lawfulness to confirm existing use as short term let. Awaiting decision.

23/00051/ESHORT - Enforcement enquiry into alleged unauthorised change of use of Flat 2 7 High Riggs to a short term let. Planning contravention notice issued March 2023. Case still ongoing.

Consultation Engagement

No consultations.

Publicity and Public Engagement

Date of Neighbour Notification: 13 February 2024

Date of Advertisement: Not Applicable

Date of Site Notice: Not Applicable

Number of Contributors: 1

Section B - Assessment

Determining Issues

This report will 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 proposal is for the change of use from a private residential dwelling to a short term let (STL) in retrospect. The applicant states the current use has been in place since 01/04/2017.

The application has been submitted in retrospect. The applicant has confirmed on the application form that the operation of the property as a short stay let commenced in April 2017. This is prior to 5 September 2022, which is when the Edinburgh short-term let control designation 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 stay 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 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:

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.
- Local Development Plan Housing Policy, Hou 7.
- Local Development Plan Transport Policies, Tra 2 and Tra 3

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

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 use of this property as an STL would introduce an increased frequency of movement to the property 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 throughout the day and night, and transient visitors may have less regard for neighbours' amenity than individuals using the property as principal home.

Whilst the commercial character of the area to the north of the site, namely Lauriston Street, may sufficiently mitigate the impact of the proposed use to neighbouring residents living outside the shared stair, the proposed use would have an unacceptable impact on residents living in the stair. The noise generated by the proposed use would be significantly different from the ambient background noise that neighbouring residents living within the building might reasonably expect, and consequently will have a significant detrimental effect on their living conditions and amenity. There could also be a negative impact on community cohesion and residents' safety.

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 a lesser impact as it is likely that servicing would be conducted during the daytime.

Consideration has been given to the fact that seven of the nine properties in the block have applied for either planning permission, or a certificate of lawfulness, for short term letting use in retrospect simultaneously, and therefore the amenity impacts could be mitigated by granting consent for all properties under consideration concurrently. However, as two flats remain in residential use, the proposed STL uses would have a detrimental impact on their amenity.

There is an ongoing enforcement case in relation to another property in the block which is managed by the same applicant, 23/00051/ESHORT. In this, the complainant highlights the negative impact the short term let use has had on residential amenity, as well as a number of other matters which are not material planning considerations.

This 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 economic benefit.

The current lawful use of the property is for residential accommodation. Consequently, the use of the property as an STL would result in the loss of this residential accommodation which, given the recognised need and demand for housing in Edinburgh, 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 policy 30(e) part (ii).

Transport

There proposals do not include any additional parking, which is acceptable as there are no parking requirements for STLs. Cycles could be parked inside the property.

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

b) 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.

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

One representation was received in respect of the application, which was an objection. A summary of the representation is provided below:

material considerations in objection

- There is an ongoing enforcement case in relation to a property in STL use in the same building. Assessed in section a).
- The proposals will result in a loss of residential accommodation. Assessed in section a).
- The proposals will have a negative impact on residential amenity. Assessed in section a).

non-material considerations

- The proposal contravenes the deed of conditions for the property.
- The appellant has an outside influence on the Residents' Association due to the number of properties they control.
- The proposals will result in higher maintenance and upkeep costs which will have to be borne by residents.
- Approving the proposal will embolden the applicant to take over the whole development.
- The proposals will result in improper recycling and overloading of bins.
- The appellant does not currently contribute fairly to shared costs.
- There is a tribunal in the Housing and Property chamber currently underway against the property factor.

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 change of use of this property to an STL will have unacceptable impact on neighbouring amenity. The loss of 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 tourist accommodation, in this case it does not outweigh the adverse impact on residential amenity. The proposal does not comply with NPF 4 policy 30(e) or LDP policy Hou 7. There are no material considerations which 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 Policy 30(e) in respect of Local Amenity and Loss of Residential Accommodation, as the use of this property 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: 9 February 2024

Drawing Numbers/Scheme

01-02

Scheme 1

David Givan
Chief Planning Officer
PLACE
The City of Edinburgh Council

Contact: Lizzi Smyth, Assistant Planning Officer
E-mail: lizzi.smyth@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: Lizzi Smyth

Date: 19 March 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): Elaine Campbell

Date: 2 May 2024