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Decision by Frances M McChlery, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-230-2324
- Site address: 1F1 16 Johnston Terrace, Edinburgh, EH1 2PR
- Appeal by Mrs Mary Patton against the decision by City of Edinburgh Council
- Application for planning permission reference 20/0279/FUL dated 17 July 2020 refused by notice dated 25 September 2020
- The development proposed: change of use of apartment from residential to short term business/holiday accommodation
- Date of site visit by Reporter: not applicable

Date of appeal decision: 14 April 2021

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## Decision

I allow the appeal and grant planning permission. Attention is drawn to the advisory note at the end of this notice.

## Reasoning

1. I have not visited the site for the purposes of this appeal. It was considered during the Covid pandemic restrictions on unnecessary travel, social contact, and entering premises. The area is well known to me, and I have long and varied experience of tenemental living in Glasgow and Edinburgh. I reminded myself of the physical circumstances of the building and the immediate locality using internet resources. I asked the appellant to arrange for photographs of the flat and the common close, giving the council the opportunity to comment on what they showed. The council made no comments. Given this evidence, I decided that I had sufficient information about the physical circumstances and that it was unnecessary for me to inspect the premises in person in order to reach a determination.
2. I am aware that the legal framework for the regulation of short term lets is about to change. The Planning (Scotland) Act 2019 introduced a new section 26A into the Town and Country Planning (Scotland) Act 1997, introducing additional means of planning regulation of this use. This measure is in force for the purposes of the making of regulations, and draft regulations have been made. However, this is still at the early stages of implementation. In particular, the council has not indicated to me that they have any particular plans for the use of these powers in due course which I should take into account. I therefore determine this appeal on the basis of the current regulatory position.



3. This appeal concerns a two bedroom, first floor Edinburgh Old Town tenement flat accessed through a common close. The tenement block lies on the corner of Johnstone Terrace, which is the main road around the south side of Edinburgh Castle Rock, and Castle Wynd, which is a steep set of typical Edinburgh stairs leading between Johnston Terrace and Castlehill, close to the entrance to the Castle Esplanade. The flat is located on the other side of the building from the Wynd with its living room and kitchen windows looking out over Johnstone Terrace, and the bedroom windows overlook the yard of the neighbouring building. The close door is elevated from street level, and accessed by an external stone staircase. The basement /ground floor level houses a small shop. The building is 'B' listed for historic and architectural interest, and lies within the Old Town Conservation Area, and the Old and New Towns of Edinburgh World Heritage Site. The non statutory part of the list entry describes the special interest as "Towering tenement built on steeply falling ground, maintaining tradition of Old Town architecture."
4. There is a tourist hostel immediately across the street. The street block of which the tenement building forms part is mixed use, including the tourist attraction 'the Scotch Whisky Experience', and there are various restaurants, bars and cafes in the general locality. The Castle Wynd steps are a means of access to the Castle and the other tourist attractions on Castlehill throughout the year, including parties from touring coaches which can be parked along Johnstone Terrace. The Wynd steps and Johnston Terrace pavement are also used for queues for people going to the Festival Tattoo during August. About 200 metres to the east, along Johnston Terrace, is the Edinburgh Festival Hub, a large church converted into a conference and events venue.
5. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. It is also necessary to have regard to sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, as amended. Both of these require special regard to be had to the effect of proposals on aspects of the historic environment. Here I agree with the council that as there will be no physical change to the building, there is no aspect of the proposals which would affect the special interests of any listed buildings or their settings, or the conservation area or world heritage site.
6. Having regard to the development plan, the main issues in this appeal are whether the proposed use complies with policies DEL 2 and HOU 7 of the adopted Edinburgh Local Development Plan, and if not, whether there are any material considerations which would weigh in favour of grant of permission. The principal concern is the potential effect on residential amenity and 'living conditions'. I agree with the council that no other significant policy or planning issues arise.
7. Policy Del 2 'City Centre' says  
*"Development which lies within the area of the City Centre as shown on the Proposals Map will be permitted which retains and enhances its character, attractiveness, vitality and accessibility and contributes to its role as a strategic business and regional shopping centre and Edinburgh's role as a capital city. The requirements in principle will be for:*

- a) *comprehensively designed proposals which maximise the potential of the site in accordance with any relevant development principles, development brief and/or other guidance*
- b) *a use or a mix of uses appropriate to the location of the site, its accessibility characteristics and the character of the surrounding area...*

*Housing as part of mixed use development will be encouraged on appropriate sites to help meet housing need and create strong, sustainable communities."*

8. Policy HOU 7 'Inappropriate Uses in Residential Areas' says  
*"Developments, including changes of use, which would have a materially detrimental effect on the living conditions of nearby residents, will not be permitted."*
9. This was a retrospective planning application. The appellant says that she has run the flat as a short term holiday let since March 2015. She also says that most of the flats in the immediate locality are used for this purpose, and in particular, she says that only one of the flats in the close, on one of the upper floors, is still used as a permanent residence. She says there have never been any complaints about the conduct of any visitors to her premises. There has been no evidence from the council to contradict these points. In particular, I accept that the main use of the close is for now for short term lets.
10. The legal cases on the planning implications of short term lets of 'mainstream' residential property have endorsed decisions of planning authorities recognising a distinction between the usual patterns of use of premises as a permanent residence, as opposed to use for transient persons using the premises for short term lets. However, the degree of the distinction which may arise, and the implications, are matters of fact and degree in each case.
11. In approaching how these cases should be considered in Edinburgh I have also had regard to the council's non statutory policy document "Guidance for Businesses" (2018). This advises that in deciding whether planning permission is required for a change of use to short term commercial visitor accommodation, regard will be had to the character of the new use and of the wider area, the size of the property, the pattern of activity associated with the use including numbers of occupants, the period of use, issues of noise, disturbance and parking demand, and the nature and character of any services provided.
12. In deciding how to approach the application the council took account of other recent cases determined by DPEA reporters in Edinburgh. From these, the kind of factors to be considered include the potential loss of the sense of security from the use of the close by numbers of strangers, any patterns of antisocial behaviour from short term visitors, the frequency of change, the size and nature of any groups who might use the premises, the degree of increased disturbance beyond the general norm from frequent arrivals and departures, noisy wheeled luggage, or daily servicing visits.
13. There is also an important but more nebulous effect which can give concern to residents, which is loss of sense of community and neighbourliness, and mainstream

housing stock, as permanent residents give way to transient uses. Several of the objections to this application, including a local resident, expressed this type of concern. I do not minimise the importance of this adverse effect, but I take the view that this aspect is best addressed by the planning authority at the strategic level of particular neighbourhoods. The forthcoming legislation will further enable the council to regulate this aspect. In this case, from the evidence, it would appear that there is very little of the original patterns of residence or community in the close left.

14. I now go on to consider the particular circumstances of this location. In doing so, it is of course the case that because of the Covid 19 pandemic, this area will have been very much quieter than usual from about March 2020 to date. The flat has also not been available for let for much this period for the same reason. I approach this case on the assumption that in the foreseeable future society, including tourism, will reactivate and that the patterns of use which I describe below will return on a similar basis as the years before the pandemic.
15. Having regard first of all to the external context, this tenement sits at a busy nexus, within a normally very busy location. Edinburgh, including the Castle, is an international tourist destination throughout the year, and the numbers of visitors and their implications will reach heightened levels during the Edinburgh Festival period, when the Castle Esplanade is used for the Tattoo. The appellant says that most car resident parking nearby has recently been removed by the council and changed to coach parking to accommodate tour buses, which cause noise, pollution, and disturbance. She mentions the disturbance caused by the erection of the Tattoo staging and seating each year, including the use of the street for workmen's facilities, and the use of the street by Tattoo customers. She highlights the many tourist facilities and bars and restaurants in the vicinity. I accept this evidence as an accurate portrayal of the environmental impact of surrounding uses. I would consider that a permanent resident of any of the flats in this building could reasonably be expected to accommodate themselves to the consequential heightened ambient levels of street noise. I would judge that against that background, the experience of people arriving and departing, coming and going in and out of the close, and the visits of housekeeping staff, would be marginally less noticeable to residents than they would be in other quieter locations.
16. A reporter considering another short term lets case recently has observed that noise disturbance from outside a tenement building will be substantially less intrusive than noise arising inside the building. This is clearly the case, so it is helpful to consider what level of interior disturbance might arise from the proposed use. The interior photographs show a well decorated but compact two bedroom flat, with a small separate toilet and bathroom, a narrow hall, a larger living room, with a small kitchen off that room. I doubt that it would be the first choice of anybody looking for a 'party flat', and as mentioned above, there seem to have been no instances of unruly use here. The patterns of lets supplied by the appellant for 2019, the last 'normal' year, have shown that the property has been regularly used throughout the year, the most usual group being 4 persons, but with a number of lets to parties of 2, with a few instances of a single tenant or a party of 5. The stays are of varied length, mostly from 2 to 5 nights, and there has been a pattern of between 6 and 7 separate lets each month. It is clearly a successful and well used enterprise, but there is also a lot of frequent change taking place in the persons using the close.

17. I would surmise that there must be quite a bit of incidental noise generated by the traffic of visitors in the close, and that the level of disturbance would be somewhat more than would normally be encountered in a close mostly occupied by permanent residents. If there are other short term lets in the close, as there seem to be, this issue may be multiplied. The question is whether it is reasonable to expect a permanent resident of this close to put up with that here. Even though we are considering interior noise, so busy are the surroundings outside, that I take the view that any resident already has to live with much higher levels of surrounding disturbance than would be expected elsewhere, some of which will be experienced inside their houses. I consider that the visitor related noise in the close here would not be significantly more disturbing than levels of background exterior noise which will be regularly experienced inside. I conclude that in this instance permitting this change of use would not cause a materially detrimental effect on the living conditions of residents at this location.
18. Drawing these circumstances together, I consider that this flat is a well used and relatively unproblematic visitor facility in a very busy tourist location, well located for Edinburgh's tourist attractions. Accordingly, I consider that the proposed use of this flat would contribute positively to the council's broad policy objectives for the vitality of the City centre. Policy DEL 2 recognises that housing may coexist with other uses. I conclude that the proposed use would be in accordance with policy DEL 2. As I have concluded above that the proposed use would not cause a materially detrimental effect on any residents in the circumstances of this case, it follows that the proposal would also accord with policy HOU 7. I therefore conclude that the proposed development accords overall with the relevant provisions of the development plan.
19. I have carefully considered all the other matters brought to my attention, including the concerns of those who objected. I have not identified any other material considerations which would lead me to the view that this application should be refused. I conclude that planning permission for change of use should be granted in this case. The council has not suggested any conditions or planning agreements, and I have not identified any matters requiring conditions.

*Frances M McChlery*

Reporter

### Advisory Note

1. The length of the permission: This planning permission will lapse on the expiration of a period of three years from the date of this decision notice, unless the development has been started within that period (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).

