



Strategic Place Planning

Report of Handling by Development Management Manager

Site Address:	5 Westfield Terrace, Aberdeen, AB25 2RU
Application Description:	Change of use of lower ground floor to short term let accommodation (sui generis) with maximum occupancy of 4 people
Application Ref:	231206/DPP
Application Type:	Detailed Planning Permission
Application Date:	6 October 2023
Applicant:	Mr Malcolm Duckworth
Ward:	Hazlehead/Queen's Cross/Countesswells
Community Council:	Queen's Cross and Harlaw

DECISION

Refuse

APPLICATION BACKGROUND

Site Description

The application site comprises the lower ground floor of a granite-built residential dwellinghouse, in a residential area falling within the Rosemount Place and Westburn Conservation Area. The building is 1½ storey in form on its northwest facing principal elevation and, due to the slope of the site, its southeast facing rear elevation is 2½ storey in form. The site adjoins numbers 7 and 7A Westfield Terrace to the southwest. 3 Westfield Terrace is adjacent to the property to the northeast.

The lower ground floor comprises two bedrooms, a bathroom, a kitchen, a living room, a utility room and storage. Whilst there is a staircase which leads to the upper floor of the dwelling, it is understood that this is not used and the door between the ground floor and the lower ground floor is locked. The lower ground floor is accessed from a door to the rear garden on the rear elevation by the east side of the property. It is understood that the lower ground floor is being used exclusively by short term let occupants and that the floors above are used solely as a dwelling. The information submitted states the lower ground floor has been in use as short term let accommodation since 2020 and that prior to this, it was in use as a 'mainstream flat for 36 years'. There are no building warrant records with respect to the formation of the unit in the lower ground floor. There is also no evidence or planning records to confirm this, nor does the internal layout – which includes an internal connection to the upper floor suggest that such an arrangement has been formalised.

Relevant Planning History

None.

APPLICATION DESCRIPTION

Description of Proposal

Detailed planning permission is sought for the change of use of the lower ground floor to short term let (STL) accommodation with a maximum occupancy of four people at any given time. The formation of the short term let unit would effectively sub-divide the dwellinghouse into a residential dwelling over the ground and first floors, which would be accessed from the front door of the property, and a lower ground floor short term let unit, which would be accessed from the door on the rear elevation via a path to the side of the property.

The application states that occupants would stay for a minimum of two nights, and would be able to park using a residential parking permit. The STL accommodation would be cleaned after each booking and waste would be disposed of in the residential bins.

Amendments

None.

Supporting Documents

All drawings and supporting documents listed below can be viewed on the Council's website at:

<https://publicaccess.aberdeencity.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=S1R8HNBZG6600>

- Planning Supporting Information Checklist
- Supporting Letter (Prepared by Ryden)

CONSULTATIONS

ACC - Environmental Health – No response received.

ACC - Roads Development Management Team – No objection –The existing and proposed do not have associated parking and thus there is no net detriment. As the site is within a Controlled Parking Zone, there is no scope for indiscriminate parking.

ACC - Waste and Recycling – No objection – The development is classified as commercial and therefore receives a business waste collection. General advice regarding commercial waste requirements has been provided.

Queen's Cross and Harlaw Community Council – No response received.

REPRESENTATIONS

None.

MATERIAL CONSIDERATIONS

Legislative Requirements

Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that where making any determination under the planning acts, regard is to be had to the provisions of the Development Plan; and, that any determination shall be made in accordance with the plan, so far as material to the application, unless material considerations indicate otherwise.

Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 requires the planning authority to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

Development Plan

National Planning Framework 4

- Policy 1 (Tackling the Climate and Nature Crises)
- Policy 2 (Climate Mitigation and Adaptation)
- Policy 3 (Biodiversity)
- Policy 13 (Sustainable Transport)
- Policy 14 (Design, Quality and Place)
- Policy 30 (Tourism)

Aberdeen Local Development Plan 2023

- Policy H1 (Residential Areas)
- Policy D1 (Quality Placemaking)
- Policy D2 (Amenity)
- Policy R5 (Waste Management Requirements for New Developments)
- Policy T2 (Sustainable Transport)
- Policy VC2 (Tourism and Culture)

Aberdeen Planning Guidance

- Short-term Lets

Other National Policy and Guidance

Scottish Government publications:

- Circular 1/2023: Short-Term Lets and Planning
- Short Term Lets: Business and regulatory impact assessment (November 2021)
- Research into the impact of short-term lets on communities across Scotland (October 2019)

EVALUATION

The Short-term Lets Aberdeen Planning Guidance states that *'All planning applications for [short term let accommodation] will be treated on their own merits and will be assessed in line with relevant Development Plan policies and any other material considerations.'* These policies are set out throughout this evaluation.

Provision of Short Term Let Accommodation and Impacts on Character and Amenity

Paragraph (e) of Policy 30 (Tourism) of NPF4 states:

e) Development proposals for the reuse of existing buildings for short term holiday letting will not be supported where the proposal will result in:

- An unacceptable impact on local amenity or the character of a neighbourhood or area; or

- The loss of residential accommodation where such loss is not outweighed by demonstrable local economic benefits.

Impact on the Character and Amenity of the Area

The application site is zoned on the Proposals Map of the Aberdeen Local Development Plan 2023 (ALDP) under Policy H1 (Residential Areas). Policy H1 states that proposals for non-residential uses will be supported if:

1. they are considered complementary to residential use; or
2. it can be demonstrated that the use would cause no conflict with, or any nuisance to, the enjoyment of existing residential amenity.

In terms of the impact on the character of the immediate surrounding area, despite its central location within the city and the high density of the streets elsewhere in Rosemount, Westfield Terrace is characterised by dwellinghouses which are set back from the road and its relatively quiet residential nature, including low levels of traffic and footfall. The grant of planning permission for the change of use of the lower ground floor to STL accommodation would intensify the use of the site and result in transient persons accessing the property, presenting an increase in activity and coming and goings, compared to its existing use. Given the scale and intensity of the use in its context, and notwithstanding the adverse impact on residential amenity set out below, the use of the lower ground floor by non-residential occupants would not significantly change the general character of the surrounding area. However, it is accepted that with respect to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, as no external alterations proposed, the character and appearance of the area would be preserved and, thus the proposal would have no material impact on the character and appearance of Rosemount Place and Westburn Conservation Area.

Policy 14 (Design, Quality and Place) of National Planning Framework 4 (NPF4) requires development to be *'Healthy: Supporting the prioritisation of women's safety and improving physical and mental health'*. This includes (in Appendix D 'Six Qualities of Successful Places' of NPF4) *'designing for lifelong wellbeing through ensuring spaces, routes and buildings feel safe and welcoming e.g. through passive surveillance'*. The qualities of successful places referred to in Policy D1 (Quality Placemaking) of the ALDP seek development to be safe and pleasant, in terms of avoiding unacceptable impacts on adjoining uses, including invasion of privacy. Policy D2 (Amenity) of the ALDP seeks residential developments to ensure occupiers are afforded adequate levels of privacy and noise.

It is considered that the change of use of the lower ground floor of this building to STL accommodation could result in increased harm to the amenity of the neighbouring properties, beyond that which would typically be expected from a property in mainstream residential use, if it were to have an impact from the following:

- The disturbance of privacy and the perceived impact on safety by transient persons unknown to neighbouring residents.
- If it was possible for noise to arise from customer activities within the unit and in the curtilage, particularly in the quieter, more sensitive late evening, and early morning periods – especially if used as a 'party flat'.

In this instance, the impact on amenity from the change of use of the lower ground floor to STL accommodation would arise from the impact on safety and security, either actual or perceived, and the potential disturbance of privacy to the upper floor dwelling as a result of the occupants sharing

their residential curtilage solely with the transient persons staying in the STL, as well as the cleaners. The occupants of the STL unit would furthermore need to cross through both the front and rear curtilage to access the STL unit. Thus, the use of this space by frequently changing transient persons staying on a non-residential basis, unknown to the occupants of the upper storey dwelling would have an adverse impact on the amenity through the loss of privacy and a sense of safety and security, either actual or perceived.

In terms of noise impact, based on the layout of the building, an internal door would be the only internal division between the residential use and the short term let unit. Whilst with the maximum occupancy proposed being four persons, it is unlikely that the property would be used for the hosting of parties or other events of an anti-social nature. Without any acoustic measures (noting it is currently part of the same property), the short term let would nevertheless be very likely to have an adverse impact on the amenity afforded to the residential dwelling in the upper floors in terms of noise from the occupants of the short term let in terms of comings and goings of transient persons, cleaners as well as there being four occupants, which is a relatively high number for the size of the two-bedroom short term let unit.

With respect to the adjoining residential properties to the southwest, (7 and 7A Westfield Terrace), given the STL accommodation is located at the lower ground floor level, it is understood that the wall between the STL accommodation and the adjacent dwelling is a structural stone wall given the age and character of the building and thus it is unlikely that short term let accommodation would adversely affect the amenity of those adjacent properties in terms of noise.

Whilst applying a condition to block up the door with the upper floor to totally separate the upper floor and lower ground floor uses to address the noise concerns has been considered, it is understood that a building warrant is required for the conversion of the lower ground floor into a separate unit, it does not have this and there is no certainty that it would necessarily be granted. As such, based on the proposed layout, this proposal would adversely affect the amenity afforded to the upper storey residential dwelling as it would share its private garden with the transient persons of the short term let accommodation and because it would be likely to result in adverse noise levels and disturbance.

Considering the requirements of Policy 14 of NPF4 and D1 of the ALDP, which require proposals to be designed for lifelong wellbeing through ensuring spaces, routes and buildings feel safe, as well as development to be safe and pleasant. The proposal would therefore adversely affect the residential amenity of the surrounding area, in conflict with Policies 14 (Design, Quality and Place) of NPF4 and Policies H1 (Residential Areas), D1 (Quality Placemaking) and D2 (Amenity) of the ALDP. The proposal would furthermore conflict with Policy 30 (Tourism) e) i) of NPF4 in that the proposal is for the reuse of an existing property for short term holiday letting, which would have an unacceptable impact on local amenity.

In determining this application, due consideration has been given to the current fact that the applicant is, and the intention is that they would continue to be, both the owner and resident of the upper storey dwelling as well as the owner and operator of the short term let unit, and thus in this arrangement the conflict between the residential and short term let uses would be within the control of the applicant. The aforementioned conflicts between the residential use and the short term let use would arise if the owner and operator of the short term let was to no longer reside in the upper floor dwelling or if the short term let unit was to be sold off or managed independently of the resident of the upper floor dwelling. Detailed consideration has thus been given as to whether it would be competent to apply a legal agreement or a planning condition for a personal permission or to require the owner of the short term let to be resident in the upper floor dwelling above. Scottish Government Planning Circular 4/1998 states that:

'Unless the permission otherwise provides, planning permission runs with the land and conditions imposed on the grant of planning permission will bind successors in title and it is seldom desirable to provide otherwise.'

It furthermore states that:

'There are occasions relating, for example, to strong compassionate or other personal grounds, where the planning authority is minded to grant permission for the use of a building or land for some purpose which would not normally be allowed. In such a case the permission may be made subject to a condition that it shall ensure only for the benefit of a named person- usually the applicant.'

Based on the advice from the Council's Legal Service, the Planning Service does not identify competent means of applying such a condition or legal agreement. The application of a legal agreement or a condition to prevent the short term let accommodation from being sold or operated independently of the dwelling or to limit the permission to the applicant would not meet the tests for planning conditions set out in Scottish Government Planning Circular 4/1998: The Use of Planning Conditions or Scottish Government Planning Circular 3/2012: Planning Obligations and Good Neighbour Agreements on the grounds that it would be unreasonable. Planning Circular 3/2012 states with respect to the obligations imposing restrictions on the use of land or buildings: *'can be intrusive, resource-intensive, difficult to monitor and enforce and can introduce unnecessary burdens or constraints.'* A condition or legal agreement could put a severe limitation on the freedom of the owner to dispose of his property as it could put a significant burden on the property as it would involve the site having to be owned and used as both a short term let unit and a dwelling at the same time by the applicant. It could place significant financial strain on the owner, make it difficult to sell the property and affect their right of freedom to relocate. A legal agreement would be unduly onerous given the permission would have been granted for a temporary period of five years (for separate reasons which are explained below). There are furthermore no known strong personal or compassionate grounds for this proposal which would justify such a condition or legal agreement that would justify a personal permission condition, which would also be required in order to meet the requirements of Scottish Government Planning Circular 4/1998.

As such, the proposed change of use of the lower ground floor to short term let accommodation would conflict with the Development Plan, specifically Policies 30(e)(i) and 14 of NPF4 and Policies H1, D1 and D2 of the ALDP. This is due to the conflict between the proposed change of use of the lower ground floor to short term let accommodation and the residential use above in that it the proposed short term let accommodation would adversely affect the residential amenity afforded to the dwelling. As noted above, there are no competent planning controls in terms of a legal agreement or a condition to overcome the conflicts with the Development Plan. There is therefore no option but to refuse planning permission.

It is requested in the Supporting Letter that a discontinuance condition could be applied to address this matter so that the issue of amenity can be considered in the future. Such a condition would not be sufficient as these issues and conflict with the Development Plan would arise during the time in which it has been granted, irrespective of if it were to cease operation at some stage in the future.

Provision of Short Term Let Tourist Accommodation and Local Economic Benefits

Policy VC2 (Tourism and Culture) of the ALDP states that:

'Proposals for new, or expansion of existing, visitor attractions and facilities capable of strengthening the appeal and attraction of Aberdeen to a wide range of visitors will be supported.'

Proposals should complement existing visitor facilities and be sequentially located in the city centre, or on a site allocated for that use in this Plan, unless activity and locality specific issues demonstrate that this is impracticable.'

The change of use of the ground floor of this property to STL accommodation would offer a different type of visitor accommodation to hotels and guesthouses that could be more attractive for certain visitors, particularly families and business travellers / contract workers who could be staying in the city for several weeks.

The Scottish Government's publication on 'Short Term Lets: Business and regulatory impact assessment' from November 2021 states:

- *'Short-term lets make an important contribution to the tourist economy because they can:*
- *offer visitors a unique tourist experience through a host's local knowledge, increasing the attractiveness of Scotland as a place to visit,*
- *offer accommodation in places not served by hotels and hostels, for example, and therefore help with dispersal of visitors from "hotspot" areas,*
- *offer more affordable accommodation, helping to attract tourists that may have a lower budget, and*
- *provide additional capacity to accommodate tourist or other visitor demand in areas with a high demand over a short period of time (for example, to accommodate tourists during the Edinburgh Festival or the Open golf tournament).'*

The Short-term Lets Aberdeen Planning Guidance states that *'there is currently limited evidence on the local economic benefits of STLs in Aberdeen and this makes it difficult to undertake a detailed assessment of STL proposals against NPF4 policy 30. More such evidence may emerge over time.'* It does, however, acknowledge that given STLs are generally expected to be used by tourists and / or business travellers, it is envisaged that businesses in the local tourism and hospitality sectors may experience some economic benefits as STL occupants are likely to use the services of these sectors. This is supported in general terms by the Scottish Government's 'Research into the impact of short-term lets on communities across Scotland' publication, produced in October 2019.

Given that the proposal would comprise a tourism facility that would not be in the city centre, the proposal would have tensions with Policy VC2 (Tourism and Culture) of the ALDP. In assessing the magnitude of this tension, it is acknowledged that the site is in close proximity to the businesses and amenities of the Rosemount Place Town Centre, it is less than 100m from a bus stop to the city centre and an approximate 600m walking distance to the city centre. The site thus provides sustainable and public transport links to the city centre and is in close proximity to a Town Centre. Acknowledging its sustainable location and accessibility to the city centre, the scale of the proposal, and that there are currently few properties in STL use in the area, on balance, the proposal would not undermine the sequential spatial strategy to direct visitor facilities into the city centre by any significant degree, in compliance with the aims of Policy VC2 (Tourism and Culture) of the ALDP. As such, the tension with this policy is not to a degree whereby it constitutes a reason to refuse the application.

The Short-term Let Aberdeen Planning Guidance states although the most recent Housing Need and Demand Assessment (HNDA) has demonstrated a need for new open market housing in Aberdeen, and that there is also a significant need for more affordable housing, there is not

currently understood to be any significant additional pressure placed on local housing need by the conversion of existing residential accommodation to STLs in the city. This in Aberdeen is different from other areas of Scotland (such as in Edinburgh and the Highlands and Islands). It is therefore considered that the loss of residential accommodation resulting from the change of use of the lower ground floor to STL accommodation would not have had any significant impact on local housing need. As such, the STL use is generally compliant with the aims of Policy 30(e)(ii) of NPF4. However, it is recognised that housing need and demand can be subject to significant change over time, as demonstrated by such matters being periodically reviewed and quantified through Housing Need and Demand Assessments and addressed through the Development Plan process. In relation to the duration of planning permissions for Short Term Lets, the Scottish Government Circular 1/2023 (Short-Term Lets and Planning) notes that:

'4.14 Planning authorities can impose a condition when granting planning permission to require the permitted use to be discontinued after a specified period – this is known as “planning permission granted for a limited period”.

4.15 Planning authorities may consider applying a discontinuation condition of 10 years, or such other time period as they consider appropriate, when granting planning permission for short term letting in a control area (or outside, if they see fit).'

The grant of planning permission for the change of use of the lower ground floor to STL accommodation on a permanent basis would result in the permanent loss of residential accommodation in a sustainable location in a residential area. The Short-term Lets Aberdeen Planning Guidance states that *'As such, planning permissions to change the use of existing residential accommodation to STLs will generally only be granted for a time-limited period. This will normally be for a period of five years and this will be controlled through the imposition of a condition on the planning permission'*. It has been requested in the Supporting Letter that such a condition should instead be considered for a time-limited period of ten years. However, had the Planning Authority been minded to grant planning permission, consent would have been granted for a time-limited period of five years, the time period between the publication of HNDAs. Notwithstanding every planning application is assessed on its own merits, the time limit of five years has been applied to the vast majority of short-term lets that have been approved by Aberdeen City Council where they would remove residential accommodation. The Scottish Government Circular 1/2023 states that planning authorities may consider applying such conditions for a time period as they consider appropriate. As such, a condition to require the permitted use to be discontinued after five-year time period would have been applied:

- To ensure that local housing need, demand and supply can be considered for any future applications for the continued use of the property as an STL;
- To allow for the site to be automatically returned to residential use upon the expiry of the permission (unless a new consent is granted in the meantime); and
- To further consider the demonstrable local economic benefits of its use as an STL at the time of any further planning application.

Transport and Accessibility

Policy 13 (Sustainable Transport) on NPF4 and Policies T2 (Sustainable Transport) of the ALDP promote and encourage the use of sustainable and active modes of travel where possible, as opposed to private vehicle trips. The site is under 30m from the nearest bus stop on the southwest side of Craigie Loanings, which has three bus routes running north and west and thus the development would be within 400m of the nearest bus stop, in accordance with Policy T2 of the ALDP. The application property is c.600m from the city centre boundary and is close to the

amenities and businesses of the Rosemount Place Town Centre. It is anticipated that many of the customers staying at the property on a short-term basis would be tourists or business travellers arriving using public transportation. Given on-street parking in the area is controlled by way of a Controlled Parking Zone, the proposal would have a negligible impact on parking provision in the area and the local transport network. Whilst the proposed change of use conflicts with the Development Plan for the reasons set out earlier in this evaluation, the proposal is compliant with Policies 13 of NPF4 and T2 and T3 of the ALDP.

Waste Storage and Collection

Policy 12 (Zero Waste) of NPF4 and Policy R6 (Waste Management Requirements for New Development) of the ALDP both require developments that generate waste and/or recyclables to have sufficient space for the appropriate storage and subsequent collection of that waste and recyclable materials. It is understood that the business owner can pay a financial contribution towards the collection of the waste, via a business waste contract with the Council in lieu of not paying Council Tax. Therefore, waste and recyclables generated by the customers of the property can be adequately stored and collected and an advisory note has been added for the applicant to be aware of in relation to entering into the required business waste contract. Whilst the proposed change of use conflicts with the Development Plan for the reasons set out earlier in this evaluation, the waste storage and collection arrangements would be in accordance with Policies 12 of NPF4 and R6 of the ALDP.

Tackling the Climate and Nature Crises and Biodiversity

Policy 1 (Tackling the Climate and Nature Crises) of NPF4 requires significant weight to be given to the global climate and nature crises in the consideration of all development proposals. Policy 2 (Climate Mitigation and Adaptation) of NPF4 requires development proposals to be designed and sited to minimise lifecycle greenhouse gas emissions as far as possible, and to adapt to current and future risks from climate change. Policy 3 (Biodiversity) of NPF4 requires proposals for local development to include measures to conserve, restore and enhance biodiversity, proportionate to the nature and scale of development.

The development, comprising the change of use of the lower ground floor of this dwelling, is sufficiently small-scale such that it would not have any material impact on the global climate and nature crises, climate mitigation and adaptation, nor are there any opportunities that can be identified to minimise greenhouse gas emissions given the nature of the proposal. Therefore, whilst the proposed change of use conflicts with the Development Plan for the reasons set out earlier in this evaluation, it is compliant with Policies 1 and 2 of NPF4, and although it would not include measures to enhance biodiversity, which would have minor tensions with Policy 3 of NPF4, the proposal is a change of use, small-scale and does not offer the opportunity for meaningful biodiversity enhancements. The tension with Policy 3 thus does not constitute a reason to refuse this planning application.

DECISION

Refuse

REASON FOR DECISION

The proposed change of use of the lower ground floor to short term let accommodation would adversely affect the residential amenity afforded to the upper floor residential dwelling on the basis that it would adversely affect the sense of security and privacy afforded to the occupants of that dwelling. The proposal therefore conflicts with Policies 30 (Tourism and Culture) and 14 (Design,

Quality and Place) of National Planning Framework 4 and Policies H1 (Residential Areas), D1 (Quality Placemaking) and D2 (Amenity) of the Aberdeen Local Development Plan 2023.

Whilst the applicant is currently the owner and resident of the upper storey dwelling and would intend to be the owner and operator of the proposed short term let accommodation at lower ground floor level, the conflicts between uses would arise if the owner were to no longer reside the upper storey dwelling or if the short term let accommodation were to be operated independently of the resident of that dwelling. A competent legal agreement or planning condition to restrict the occupation or ownership of the two uses to overcome this conflict with the Development Plan cannot be identified because such a condition would be unreasonable and could place a significant burden on both the property and subsequently the owner. There is thus no option but to refuse planning permission.