

**Enforcement Report into Breach of Control
at
Flat 1
13 Valleyfield Street
Edinburgh
EH3 9LP**

**Development Management Sub-Committee
of the Planning Committee**

Owner/s

Occupier

Reference No: 06/00173/E28

1. Purpose of Report

Breach of Control:

The unauthorised change of use of an office/retail unit to residential use

Recommendation:

It is recommended that the Committee authorise enforcement action requiring the cessation of the unauthorised residential use of this property and the removal of two ventilation duct vents and a boiler vent through the listed front facade and alterations to incorporate two vents and flue.

The Site

Site Description

The property is a ground floor unit in a six storey mixed use building on the south side of Valleyfield Street close to its junction with Leven Street. The approved use of this part of the building is as a commercial unit. The ground floor frontage of this unit forms part of the original C(S) Listed carpet mill building (Item No. 45915, dated 19.02.1999).

The building is category C(S) Listed and has recently been included in the Marchmont and Meadows Conservation Area.

Site History:

26 July 2000 - Planning permission and listed building consent granted for the erection of 41 flats with space to accommodate the Scout headquarters, offices/retail and parking (99/03528/FUL/LBC).

26 September 2001 - Planning permission granted to alter the use of part of the ground floor from retail or office space, to increase provision of off street parking and provide ground floor accommodation for three first floor flats (01/03090/FUL).

16 April 2004 - Planning permission was refused for the change of use of this commercial unit to a studio flat. (04/00561/FUL) The application was refused on the basis of inadequate standard of amenity for future occupiers.

24 April 2006 - Planning Contravention Notice served.

3 May 2006 - Studio visited by an enforcement officer in the company of the owner's agent, at which time the residential tenant was at home.

19 July 2006 - A representation was received on behalf of the owner of the unit from Campbell Associates. This included the following points:

1. The property is fitted out as a studio flat to a high standard;
2. The property complies with the natural lighting provisions within the building regulations;
3. The property was unsuccessfully marketed for office use;
4. An office use would generate more traffic from general public movements and outside parking;
5. There is a demand for this type of property as a residence;
6. Other properties in the street (Nos. 26 and 28) have been converted to flats.

Representations

A complaint was received from a local resident that this property was being used as a flat contrary to the planning permission for this development. Later complaints were received advising that noise could be heard from this unit in a neighbouring flat. Officers from Services for Communities have visited the complainant's property on several occasions between the 16 and the 27 of September 2007 and have witnessed noise coming from the ground floor studio flat and have issued warnings to the occupants of the studio which have been temporarily complied with.

Description of Development

The use of the property has changed from the approved commercial office/retail use to the current unauthorised residential use. Alterations have been made to the listed frontage of the building by the installation of two extract vent ducts and a boiler vent.

3. Officer's Assessment and Recommendations

The Committee needs to consider whether a breach of planning control has taken place and whether the unauthorised development is acceptable, having regard to the provisions of the development plan and other material considerations.

The residential use of the property has been witnessed by Council Officers of two functions and by a member of the public. This amounts to a change of use and is development requiring planning permission, which has not been obtained. Various vents have been cut through the listed front elevation of the building, requiring listed building consent, which has not been obtained. Breaches of planning control have therefore taken place.

The conversion of this unit to a residential use has been previously considered and refused consent (Ref: 04/00561/FUL). The property has been granted a building warrant and a completion certificate has been issued as a commercial unit. A warrant for the conversion to a studio flat has not been granted. The owner's agent advised that he was preparing a fresh application for a change of use to a residence with a supporting statement justifying a fresh consideration of this development. The application has not been received.

The property is surrounded by a large number of flatted tenement properties. The use of the property as a residence is compatible with neighbouring land uses in the area. It is however in a mixed activities zone. The current residential use of this unit has resulted in the loss of the one remaining retail/office unit, leaving just the replacement Scout hall as the only other use within this mixed use development. The building is not in a protected shopping frontage and there is no requirement to retain retail space. The change in use is acceptable in land use policy terms.

The property faces north and has a four storey tenement 15.15 metres immediately across the street from it. Two north facing windows supply the only natural light into the studio. On a visit to the flat during the month of May at around 9.00am it was found that the occupant felt it necessary to have additional electric lighting on in the main living area. The flat does not therefore comply with the conversion of shops to residential use guidance as this states "units with insufficient daylight will be unacceptable". The daylighting guidance states that for a flat to have adequate amenity, daylighting and sunlight it is expected to have a dual aspect to both front and rear. This flat does not and the only windows it has face north. The tenement across the road means that there is an external obstruction greater than 25 degrees above the horizon. The use of this unit as a residence therefore fails to comply with the daylighting guidance. The building is listed and alterations to increase the available window area to the only external wall, being the principal front elevation, would not be considered acceptable.

The ventilation ducts and the boiler vent placed through the main front wall of this building are considered to have a detrimental affect on the special character of this listed frontage and are not compatible with the character of the original building.

The property has been fitted out with an open plan kitchen to the main living area and has a separate bathroom. The property may be marketable as a

residence and have sufficient light to comply with the natural lighting provisions within the building regulations. An office use may or may not generate more public movement and infringe on other residential users. This does not however override other planning considerations about its current use.

The owner's agent in his statement indicated that the property had been unsuccessfully marketed for office use. Details were not provided as to how the property was marketed and for how long. He also referred to two other properties in the street which had been converted to flats. Both of these properties are located on the other side of the street and have dual aspects including windows to their southern elevation. They were considered acceptable and had been granted the necessary planning permission for a change of use.

The current residential use does not comply fully with Policy Hou 5 of the Edinburgh City Local Plan, Policy H3 of the Central Edinburgh Local Plan and the non-statutory guidance on shop conversions and daylighting, as a satisfactory residential environment cannot be achieved. The alterations to the listed front elevation do not comply with Policy CD19 of the Central Edinburgh Local Plan. It is recommended that authorisation is given to take enforcement action to remedy the breaches of planning control.

Alan Henderson

Alan Henderson
Head of Planning and Strategy

Contact/tel	Ian Williams on 0131 529 3752
Ward affected	Ward 32 - Tollcross (OLD)
Local Plan	Central Edinburgh Local Plan
Statutory Development Plan Provision	Edinburgh and Lothians Structure Plan 2015
File	AF
Date Complaint Received	15 March 2006

Planning Policy

The property is located in the central area of the Edinburgh City Local Plan and in the mixed activities zone in the Central Edinburgh Local Plan.

Relevant Planning Policy and guidance

Policy Hou 5 (Conversion to Housing) in the Edinburgh City Local Plan states: Planning permission will be granted for the change of use of existing buildings in non-residential use to housing, provided: a satisfactory residential environment can be achieved; housing would be compatible with nearby uses; appropriate open space, amenity and car parking standards are met; and the change of use is acceptable having regard to other policies in this plan including those that seek to safeguard or provide for important or vulnerable uses.

Policy CD2 (Listed Buildings) in the central Edinburgh Local Plan sets out criteria for assessing proposals affecting listed buildings and seeks to safeguard their character and setting.

Policy CD19 (Building Alterations) in the central Edinburgh Local Plan sets out criteria for assessing alterations affecting listed buildings and seeks to ensure that such works do not damage their special character and that they are compatible with the character of the original building.

Policy H2 (Housing Development) in the central Edinburgh Local Plan sets out criteria for assessing proposals for housing within the Mixed Activities Zone.

Policy H3 (Housing - Conversion of Non-Residential Buildings) in the central Edinburgh Local Plan sets out criteria for assessing, the change of use of suitable non-residential buildings to housing.

The non-statutory guideline on 'Shops - Conversion to residential use', states under amenity guidelines:

1. Amenity Guidelines (applicable city-wide); where rooms face onto a public street, privacy from pedestrians should be considered within the design solution; units with insufficient daylight will be unacceptable; and the majority of apartments should fully meet daylight requirements.

The non-statutory guideline on 'Daylighting, Sunlight and Privacy' in section A (Daylighting and Overshadowing) advises:

- To ensure a sufficient quality in respect of adequate amenity, daylighting and sunlighting, it is expected that dwelling units shall be dual aspect to front and rear. Any proposal for single aspect flats or aspects to front and side would need to be justified as an exception, indicating how adequate amenity, daylighting and sunlighting will be achieved.

In section B (Sunlight) it advises:

Where possible, and consistent with other policies and guidelines, dwellings should be orientated to take advantage of sunlight, to provide a pleasant living environment and to maximise passive solar gain. Interiors in which the occupants have a reasonable expectation of direct sunlight should receive at least 25% of probable sunlight hours; at least 5% should be received during the winter months (23 September to 21 March). As a rule of thumb when a main living room window is to be used to provide sunlight it should face within 90 degrees of south and external obstructions should not be higher than 25 degrees above the horizon.

Appendix A

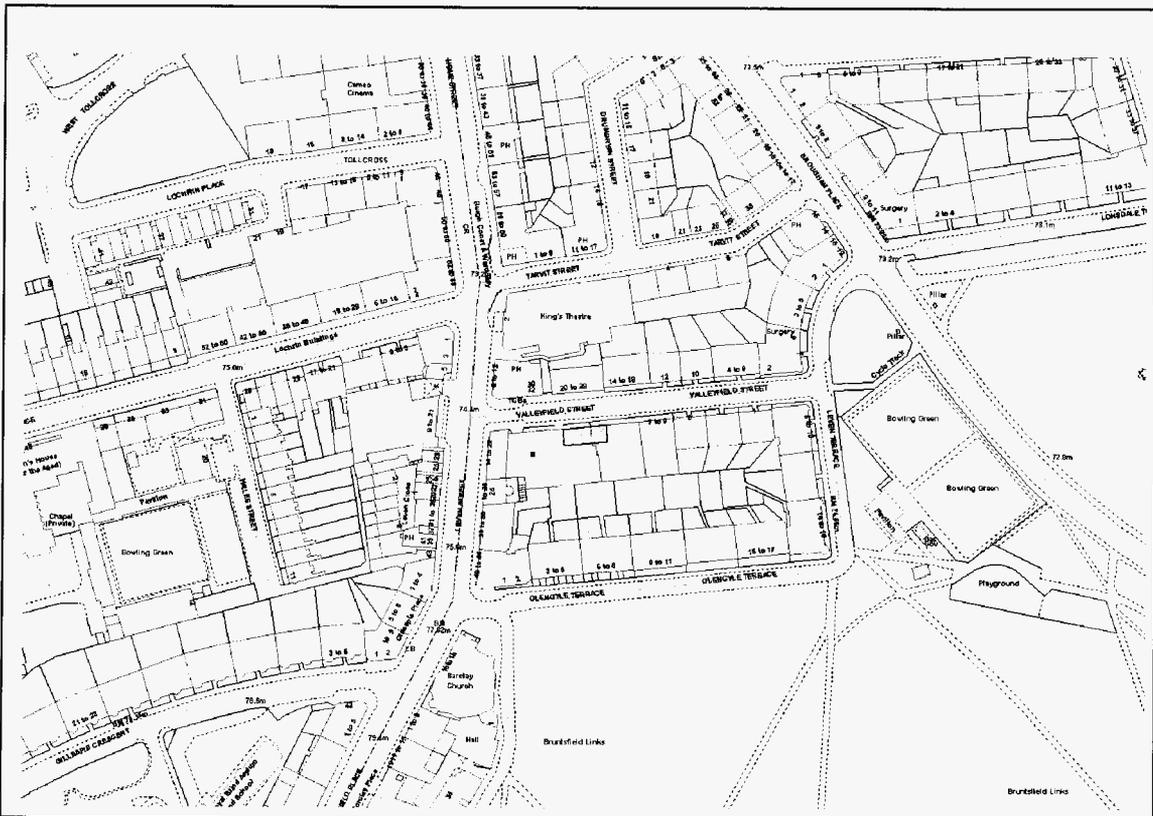


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Location Plan



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