

**Enforcement Report into Breach of Control  
at  
9 Featherhall Avenue  
Edinburgh  
EH12 7TG**

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

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**Owner/s**

**Occupier**

**Reference No:** 05/00627/E39

**1. Purpose of Report**

**Breach of Control:**

Failure to comply with condition 6, attached to planning permission 00/01948/FUL, as granted on appeal, restricting occupancy to persons 55 years and over.

**Recommendation:**

That enforcement action is taken to secure compliance with the condition

**The Site**

**Site Description**

The site comprises a block of 11 flats to the east of properties fronting the eastern side of Featherhall Avenue, to the south of properties fronting the southern side of St John's Road, and to the north of properties fronting the northern side of Featherhall Grove. Access to the site from Featherhall Avenue is by way of a paved driveway approximately 4.5m in width.

## **Site History:**

January 2001 - Planning permission was refused for the erection of a flatted development for the elderly due to it not being in sympathy with its surroundings, and due to overlooking and overshadowing. (00/01948/FUL)

July 2001 - The above application was allowed on appeal. This was subject to a number of conditions including implementation of entrance details, car parking spaces, cycle parking spaces, and obscure glass in 4 windows facing east. The occupation of the development was also restricted to people over the age of 55 to justify the low number of parking spaces provided.

February 2004 - Planning permission was granted for the erection of porches and conservatories at the site.(03/04399/FUL)

June 2004 - Planning permission was refused for alterations to the flatted block to erect front glazed roof housing for access to the stair due to it not making a positive contribution to the overall quality of the environment. (04/00987/FUL)

February 2006 - Planning permission was refused to rescind condition 6 of planning approval 00/01948/FUL which limited occupation of the premises to persons over the age of 55. (05/03694/FUL)

August 2006 - Appeal against the above decision was dismissed.

There has been a delay in the consideration of enforcement action due to the application to rescind condition 6 and subsequent appeal, change in occupation and ownership of the flats, complexity of the case and insufficient evidence on the nature of the use.

## **Representations**

Complaints have been received from 4 neighbouring residents. The issues raised can be summarised as follows:

1. Use of flats as holiday lets
2. Breach of condition restricting occupation to persons 55 and over
3. Late night noise and disturbance

## **Description of Development**

Failure to comply with condition 6, attached to planning permission 00/01948/FUL, as granted on appeal, restricting occupancy to persons 55 years and over

### **3. Officer's Assessment and Recommendations**

The determining issues are whether the development is acceptable with regard to the provisions of the development plan, so far as they are material, to any other material considerations, and in the light of these considerations, whether it is expedient to initiate enforcement action.

For this purpose, the Committee needs to consider whether the development is consistent with Policy T4 and the potential impact on road safety.

Policy T4 of the North West Edinburgh Local Plan states that adequate provision for car parking in all new development must be made by developers in conformity with the Council's adopted standards. In parking zone 3, where the site is located, the requirement is for a minimum of 1 space per dwelling. That results in a requirement for 11 spaces to be provided on-site and such a number cannot be provided. Parking for 7 vehicles could be provided to meet Council standards.

The courtyard area is currently marked out for 9 parking spaces, but each space fails to meet Council standards which require a parking bay to measure 2.4m x 4.8m. As a result, there is not sufficient space for effective vehicle circulation within the site, which is likely to result in vehicles exiting the site in reverse gear to the detriment of road safety.

Although the site is close to main public transport routes the immediately surrounding area is heavily parked on-street and if the condition was not enforced there would be increased pressure for on-street parking.

Regarding the concerns of neighbouring residents, this condition was imposed by the Reporter in order to reflect the fact that the proposed development was specifically for the elderly and could proceed with the provision of a lower number of car parking spaces than would be required for general housing. The condition was not imposed to seek to control noise and disturbance. In the main, the complaints from neighbouring residents relate to noise and disturbance which, in this instance, is not subject to planning control.

Case law and current legal advice indicates that a change from permanent residential use to holiday use is not a material one requiring the benefit of planning permission. Against this background, no action can be taken in this regard.

For the reasons stated above, it is recommended that Committee initiates enforcement action to secure compliance with condition 6 attached to planning permission 00/01948/FUL.

Alan Henderson

**Alan Henderson**  
Head of Planning and Strategy

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<b>Contact/tel</b>	Callum Aitchison on 0131 529 3946
<b>Ward affected</b>	Ward 24 - South East Corstorphine (OLD)
<b>Local Plan</b>	North West Edinburgh
<b>Statutory Development Plan Provision</b>	Mainly Residential
<b>File</b>	
<b>Date Complaint Received</b>	23 September 2005

### **Planning Policy**

North West Edinburgh Local Plan

Mainly residential

Finalised Edinburgh City Local Plan

Within the urban area

### **Relevant Policies:**

Policy T4 states that adequate provision for car parking must be made by developers in all new development in conformity with the Council's adopted standards.

Non-statutory guidelines on 'PARKING STANDARDS' set the requirements for parking provision in developments.

## Consultations

### Services for Communities

I visited the above mentioned site and note the area is generally a quiet residential area, although there are a number of commercial outlets which back out onto the northern end of the courtyard of 9 Featherhall Avenue. The background noise level is low, with nearby traffic being the dominant source.

I note with interest that there have been complaints to the Council about the use of the development as holiday lets and in particular complaints about noise from its users.

Although these complaints have not been proven it would appear that the change of use from a residential development to a 'holiday lets' development is having an adverse impact on the amenity of nearby residential.

It is not unusual that the use pattern of short term accommodation like holiday lets, hostels or even hotels, conflicts with surrounding residential use.

## Transport

Parking arrangements will restrict turning movements within the parking court to the detriment of road safety.

## Appendix A



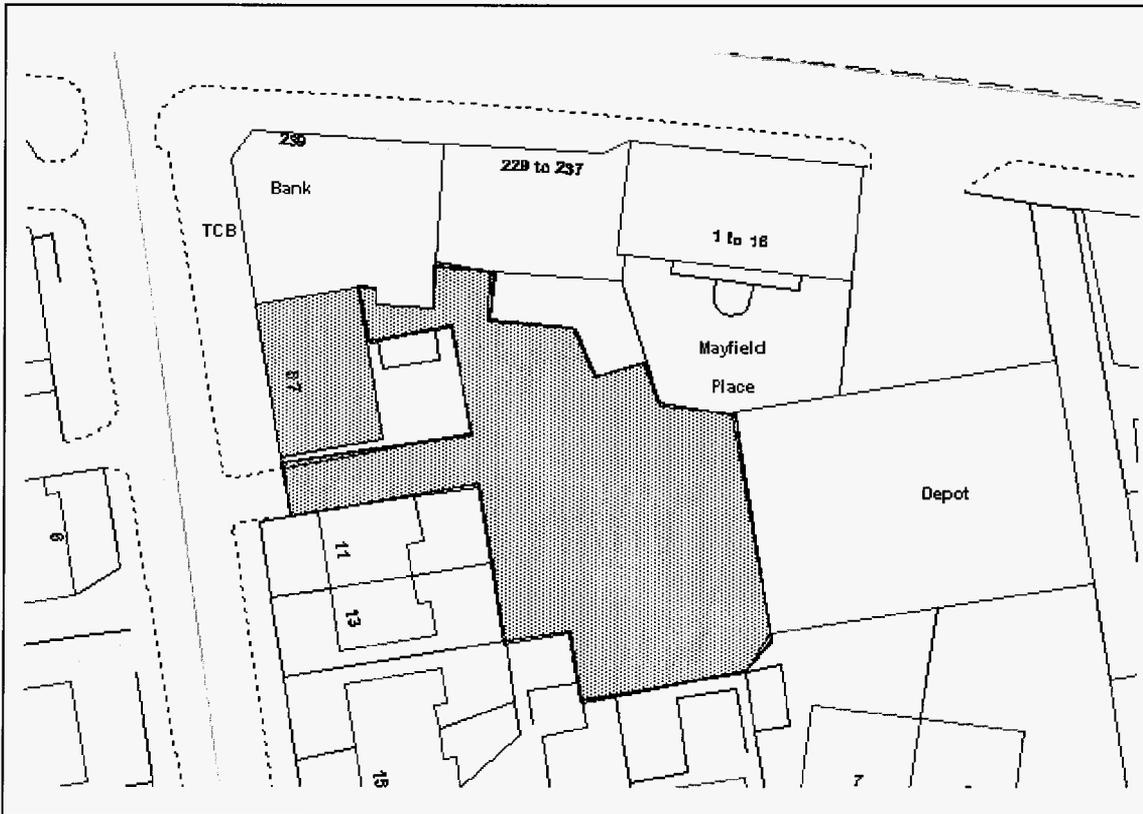
**Address:** 9 Featherhall Avenue  
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### Location Plan



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