

Development Management Sub Committee

Wednesday 26 March 2014

**Application for Planning Permission 14/00144/FUL
At 7 East Restalrig Terrace, Edinburgh, EH6 8ED
Change of use from a dwelling house to a house in multiple
occupation.**

Item number	4.1
Report number	
Wards	A13 - Leith

Links

<u>Policies and guidance for this application</u>	LPC, CITH8, CITH9, CITT4, NSG, NSHMO, NSP,
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Executive summary

Application for Planning Permission 14/00144/FUL At 7 East Restalrig Terrace, Edinburgh, EH6 8ED Change of use from a dwelling house to a house in multiple occupation.

Summary

The proposed change of use of the dwelling house from residential to a dwelling in multiple occupation complies with the development plan and complies with the non-statutory guidelines. The character of the property and the surrounding area will be maintained and matters of road safety and neighbouring amenity will not be detrimentally affected.

Recommendations

It is recommended that this application be Granted subject to the details below (in section 3 of the main report).

Financial impact

There are no financial implications to the Council.

Equalities impact

The application has been assessed and has no impact in terms of equalities or human rights.

Sustainability impact

This application is not subject to the sustainability requirements of the Edinburgh Design Guidance.

Consultation and engagement

Pre-Application Process

Pre-application discussions took place on this application.

Publicity summary of representations and Community Council comments

The application was neighbour notified on 27 January 2014 and attracted 17 letters of representation; 16 of objection and 1 in support of the proposal.

These included comments from Leith Links Community Council, Ms Sheila Gilmore MP, Councillor Booth, Councillor Munro and Leith Links Residents Association.

The letters of representation raised the following material issues:

Material Comments in Objection

- there are too many HMO properties in the local area;
- the application shows nine bedrooms within the building with the associated effect on street parking;
- East Restalrig Terrace is narrow with parking on both sides with no capacity for any extra vehicles resulting from the proposal;
- emergency services already have difficulty accessing East Restalrig Terrace;
- the property has been occupied since October prior to the HMO application or this planning application;
- multiple occupancy is at odds with the well-established community feel of the street;
- the street is exclusively one of family homes;
- if approved, the environmental and social impact on existing residents will be significant and detrimental;
- existing instances of congregation at the property late and night and early in the morning disturbing neighbours;
- large numbers of people coming and going at the property already;
- Leith Links is already well provided for HMOs, Bed & Breakfasts for homeless and transient accommodation; and
- concerns of noise to the neighbouring properties.

Material Comments in Support

- with pressures on affordable housing in the city the proposal beneficial to the local community; and
- other multiple occupancy properties exist in the street without detriment.

Non-material Comments

- a previous HMO application here was refused by the Council;
- concerns at the standards of care and conditions provided by the applicant;
- the property has been empty for 10 years with limited repairs and maintenance;
- the proposal is based on a commercial agenda without regard for neighbouring residents; and
- research has shown that HMO properties are at a greater risk of fire outbreaks.

Community Council Comments

Leith Links Community Council responded on 17 February 2014. Those comments are reproduced in full in Appendix 1.

- East Restalrig Terrace has no further capacity for the extra vehicles that the proposal may bring;
- the street forms an 'enclave' with Cornhill, Ryehill, etc. sharing an architectural cohesion and 'ethos' of residential family life;
- the proposal appears to be for a profit motive and not the interests of the local residential community;

- 8 adults in a medium sized family house must mean a degree of overcrowding;
- issues of noise nuisance to neighbours and anti-social behaviour;
- the property owner has a history of poor property maintenance here for which there is little confidence locally that this will change;
- the owners do not appear to respect the civic and legal process;
- there are existing tenants within the property prior to any permission or licence;
- existing over provision locally to the site;
- existing and growing concerns of anti-social behaviour in the wider area;
- HMOs are commercial enterprises and risk damaging residential amenity; and
- existing infrastructure within the local community cannot cope.

A full assessment of the representations can be found in the main report in the Assessment section.

Background reading / external references

- To view details of the application go to
- [Planning and Building Standards online services](#)

Application for Planning Permission 14/00144/FUL At 7 East Restalrig Terrace, Edinburgh, EH6 8ED Change of use from a dwelling house to a house in multiple occupation.

1. Background

1.1 Site description

The application site comprises a two-storey, mid terraced dwelling house situated on the northern side of East Restalrig Terrace, towards its eastern end and junction with Restalrig Road. This is a predominantly residential area.

The building is located centrally within the terrace of eight, stone built properties, under a slated pitched roof. The land levels rise slightly from east to west along the road and the terrace is comprised of paired properties with a small step in height between each pair. Opposite is a longer terrace of two-storey properties and to the west of the application site terrace stands more modern, four-in-a-block flatted dwellings.

There is a small yard to the front, set behind a low boundary wall topped with metal railings. This measures 5.0 metres in depth at its maximum. To the rear, there is a 12 metre long garden, the full width of the property, some 92 square metres in total.

The public road is relatively narrow with no on-street parking restrictions and there are vehicles parked on both sides at most times of the day.

The property is neither listed nor does it stand within a defined conservation area.

1.2 Site History

5 December 2001 - planning permission was refused for the sub division of a dwelling house to form two flats (application number 01/02140/FUL).

13 November 2013 - an application was made for a HMO license application for the occupation of the property by 8 persons. That proposal remains undetermined until such time as this planning application has been determined (application number 13/17525/HMO5P).

2. Main report

2.1 Description Of The Proposal

The application is for a change of use from a dwelling house to a dwelling in multiple occupation (HMO). The application makes no reference to the number of occupants proposed; however, there has been a separate House in Multiple Occupation license application (required for occupation by three or more persons) made to the Council for a total of 8 persons. The applicant contends that the property is compliant for 5 persons.

In planning terms, under the provisions of the Town and Country Planning (Use Classes) (Scotland) Order 1997, the occupation of a single dwelling house by more than five unrelated persons represents a material change of use.

The submitted plans indicate internal alterations resulting in 11 habitable rooms within the property. These comprise:

- lower ground floor - a kitchen, living room and bedroom;
- ground floor - a living room, lounge and a kitchen;
- first floor - three rooms and a bathroom; and
- roof space - two rooms with en-suite.

There are no external physical alterations proposed to the property.

2.2 Determining Issues

Do the proposals comply with the development plan?

If the proposals do comply with the development plan, are there any compelling reasons for not approving them?

If the proposals do not comply with the development plan, are there any compelling reasons for approving them?

2.3 Assessment

To address these determining issues, the Committee needs to consider whether:

- (a) the principle of the proposal is acceptable in this location;
- (b) the proposals affect road safety;
- (c) the proposals will result in an unreasonable loss of neighbouring amenity;
- (d) the proposals provide sufficient amenity for the future occupiers of the development;
- (e) the proposals have any equalities or human rights impacts;
- (f) comments raised have been addressed.

a) The Acceptability of the Proposal in this Location

In terms of the development plan, policy Hou 9 permits change of use to a house in multiple occupation (HMO) only where there is not considered to be an excessive concentration of such accommodation in the locality. In that regard, the threshold is 30% of all households in the locality (defined as the census output areas) being HMOs.

The development plan identifies that HMOs play an important role by providing affordable housing; however, they tend to be concentrated heavily in a limited number of locations and property types, for example tenement flats in central housing areas.

It is the impact that an excessive concentration of HMOs has on the amenity and character of an area that is a matter of concern. The local plan aims to promote mixed, sustainable communities and an over-concentration of any one type is contrary to those aims.

In this part of Leith Links, the census output area extends to:

- numbers 1-71 (odds) East Restalrig Terrace (35 properties);
- all even numbers between 2-38 Restalrig Road (26 properties); and
- numbers 1-14 and 27-31 (inclusive) Summerfield Place (19 properties).

There is a total of 80 properties in the census output area.

Of these none have planning permission for multiple occupancy and none have a HMO license. Accordingly, this proposal would be the first multiple occupancy property, equating to 1.25% of all households in the locality.

Although the representations refer to other HMOs and B&Bs within the locality of the application premises, these would be outwith this census output area and therefore do not count towards the development plan policy assessment for this application.

Therefore, there would be no over concentration of households in multiple occupation within this locality and as such the proposal would comply with the provisions as set out in the policy and the guidance.

In principle the change of use to a property of multiple occupancy is appropriate in this location subject to full assessment against the other relevant development plan policies and guidance.

Concern has been raised that the use of the premises may have already commenced without the necessary HMO license and planning permission. The HMO license issues are matters for those regulations. In planning terms, there exists the facility for the regulation of a breach of planning control by means of the submission of a retrospective application for consideration and determination by the Council, as the Planning Authority.

b) Road Safety Issues

The Council's parking standards for a dwelling house requires a single, off-street parking space.

There are no formal standards for an HMO as such. These are generally assessed in a similar way as student accommodation, which would require a minimum of one space per 12 beds within this part of the city.

As the existing use of the property has no off-street car parking provision at present and the proposal change of use would not increase that potential demand, the standards do not require the provision of an off-street car parking space at the property as a consequence of the proposed change of use.

Therefore, the proposal would not result in any additional detrimental levels of road safety as a result of the proposed development in this instance.

c) Neighbouring Amenity

The proposed use of the premises will remain in residential use. As such residential occupation would not represent an inappropriate use within an existing residential area, as identified within the provisions of policy Hou 8: Inappropriate Uses in Residential Areas. That policy seeks to preclude the introduction or intensification of incompatible non-residential uses.

Instances have been identified of existing disturbance in the area resulting from the property. However, Planning cannot control how individuals occupy or manage the use or occupation of a building only whether the proposed use is acceptable in land use planning terms. The control over such matters would be more appropriate for other regulatory regimes controlling noise and disturbance, in particular under the tenancy management requirements under the licensing regime.

Accordingly, the proposal represents an appropriate use within this predominantly residential area.

d) Amenity of Future Occupants

The minimum standards identified for room sizes and other facilities for individual residents within a HMO are covered by the licensing regulations. These are not matters for control under the planning regulations.

There remains an area of external garden amenity space for use by the occupants. As such the proposal represents an acceptable level of future amenity provisions for the occupants of the property in this instance.

e) Equalities and Human Rights Impacts

This application has no impact in terms of equalities or human rights.

f) Public Comments

Material Comments in Objection

- number of HMO properties - assessed in section 2.3(a) and found that there is no overprovision within the defined locality.
- prior occupation without permission - assessed in section 2.3(a) and found that the planning regulations provide for regularising such applications.
- use at odds with surroundings - assessed in section 2.3(a) and found that the use is appropriate within a residential area.
- no more capacity for on-street parking - assessed in section 2.3(b) and found that there is no requirement for off-street car parking spaces for this development.
- emergency services access - assessed in section 2.3(b) and found that the proposal would not significantly alter the existing situation within the public road.

- significant and detrimental environmental and social impact - assessed in section 2.3(c) and found that the proposal would have no detrimental impact on the existing levels of residential amenity presently within the area.
- existing instances of disturbance - assessed in section 2.3(c) and found planning cannot control how individuals occupy or manage the use or occupation of a building.

Material Comments in Support

- beneficial affordable housing for the local community - assessed in section 2.3(a) and found that policy seeks to promote mixed, sustainable communities of differing property types.
- multiple occupancy elsewhere in the street without detriment - assessed in section 2.3(c) and found such a use to be appropriate in principle within an existing residential area.

Non-Material Comments

- a previous HMO application here was refused by the Council;
- concerns at the standards of care and conditions provided by the applicant;
- research has shown that HMO properties are at a greater risk of fire outbreaks;
- the property has been empty for 10 years with limited repairs and maintenance; and
- the proposal is based on a commercial agenda without regard for neighbouring residents.

These are not material land use planning matters and are either more appropriately controlled under the provision of other legislation or are not relevant to this determination.

Leith Links Community Council comments

- the street forms an 'enclave' with Cornhill, Ryehill, etc. sharing an architectural cohesion and 'ethos' of residential family life - assessed in section 2.3(a) and found that the use is appropriate within a residential area.
- there are existing tenants within the property prior to any permission or licence - assessed in section 2.3(a) and found that the planning regulations provide for regularising such applications.
- existing infrastructure within the local community cannot cope - assessed in section 2.3(a) and found that there is no overprovision within the defined locality.
- East Restalrig Terrace has no further capacity for the extra vehicles that the proposal may bring - assessed in section 2.3(b) and found that the proposal would not significantly alter the existing situation within the public road.

- issues of noise nuisance to neighbours and anti-social behaviour - assessed in section 2.3(c) and found planning cannot control how individuals occupy or manage the use or occupation of a building.
- HMOs are commercial enterprises and risk damaging residential amenity - assessed in section 2.3(c) and found that the proposal would have no detrimental impact on the existing levels of residential amenity presently within the area.
- the proposal appears to be for a profit motive and not the interests of the local residential community - not a material planning consideration.
- 8 adults in a medium sized family house must mean a degree of overcrowding - not material to Planning.
- the property owner has a history of poor property maintenance here for which there is little confidence locally that this will change - not material to Planning.
- the owners do not appear to respect the civic and legal process - not material to Planning.
- existing over provision locally to the site - assessed in section 2.3(a) and found that there is no overprovision within the defined locality.
- existing and growing concerns of anti-social behaviour in the wider area - not material to Planning.

CONCLUSIONS

In conclusion, the proposals comply with the development plan and the relevant non-statutory guidance, preserve the character and appearance of the property and the surrounding area and would not prejudice road safety or residential amenity. There are no material considerations which outweigh this conclusion.

3. Recommendations

3.1 It is recommended that this application be Granted subject to the details below

3.2 Conditions/reasons

Informatives

It should be noted that:

1. The development hereby permitted shall be commenced no later than the expiration of three years from the date of this consent.

2. No development shall take place on the site until a 'Notice of Initiation of Development' has been submitted to the Council stating the intended date on which the development is to commence. Failure to do so constitutes a breach of planning control, under Section 123(1) of the Town and Country Planning (Scotland) Act 1997.

3. As soon as practicable upon the completion of the development of the site, as authorised in the associated grant of permission, a 'Notice of Completion of Development' must be given, in writing to the Council.

**Statutory Development
Plan Provision**

Edinburgh City Local Plan - Urban Area.

Date registered

22 January 2014

Drawing numbers/Scheme

01-05,

Scheme 1

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Links - Policies

Relevant Policies:

Relevant policies of the Edinburgh City Local Plan.

Policy Hou 8 (Inappropriate Uses in Residential Areas) establishes a presumption against development which would have an unacceptable effect on the living conditions of nearby residents.

Policy Hou 9 (HMOs) sets criteria for assessing proposals for Houses in Multiple Occupation.

Policy Tra 4 (Private Car Parking) requires private car parking provision to comply with the parking levels set out in supplementary planning guidance, and sets criteria for assessing lower provision.

Relevant Non-Statutory Guidelines

Non-statutory guidelines on 'HOUSES IN MULTIPLE OCCUPATION' provide guidance on the location of such premises.

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

Appendix 1

Consultations

Leith Links Community Council

Planning Application Ref 14/00144/FUL

Change of use of the premises from a residential dwelling to a residential property occupied by unrelated persons (numbering 6 or more).

7 East Restalrig Terrace, Edinburgh

Leith Links Community Council object to the planning application for the above address and in support of Leith Links Residents Association who have also objected. This application is clearly also linked to the application for an HMO licence for the same address, that is currently under consideration.

Leith Links Community Council also objects to the change of use application for 7 East Restalrig Terrace, the on the following grounds:

- East Restalrig Terrace is a particularly narrow street, with parking on both sides. There is barely space for even a medium/large car to drive along, and there is already an issue for both cleansing and emergency vehicles - they can have difficulties accessing the street at all. There is simply no capacity for any extra vehicles that multiple occupancy might bring.*

- This particular street forms part of a little 'enclave' of streets (Cornhill, Ryehill etc.) that share not only an architectural cohesion but also a very special 'ethos' that is purely residential and very much based on family life. Houses in the street are in high demand: there would be no difficulty selling No. 7 and returning it to family occupation, and that would be the most appropriate course of action. There is no reason or need to impose an HMO in the middle of this neighbourhood. The sole driver for doing so would appear to be a commercial/profit oriented motive, on the part of the property owner; it is not in the interests of the local residential community.*

- This is just a medium sized terraced house that was designed and built for shared family dwelling - not for 8 adults. Accommodating that number of adults there in separate bedrooms must mean radical restructuring and/or a degree of overcrowding/reduction of amenity within the house. For example, it is clear (because you can see through the window, from the street, an attic stair going up) that the owners have built into the roof space LLRA will be requesting information about the planning permission for this restructuring.*

- Another concern for neighbours, especially those with younger children, is noise - both coming through the walls in the terrace, and in general with so many people moving around, perhaps playing numerous separate TVs or music, and even just coming and going at different times throughout the day and night. (In this, we are not assuming anti-social behaviour but even just normal living noises - anyone who lives in a flat or terrace knows that this can be very considerable, especially where people work shifts, and/or there are uncarpeted/laminated floors.)*

- The property owners already have a history of poor property maintenance - as well as poor neighbourly-ness - in that the property has been left empty for over a*

decade, and the owner has routinely failed to respond to enquiries from neighbours about maintenance and repairs. She may now be saying - all of a sudden (presumably because she has been shown letters of objection) - that things will change, but there is little local confidence that this apparent change of heart is due to anything other than self-interest.

- The owners do not appear to respect civic and legal processes, in that they have apparently already attempted to prevent comments and objections from neighbours by failing to display the HMO Application site notice properly, on the property, in November/December 2013.

- As further evidence of bad faith, neighbours report that a number of adult tenants (quite possibly more than 6) are quite clearly already living in the property, in spite of the absence of permission for a change of use and absence of HMO licence. A number of young people are seen going in and out, and sizeable groups have been seen gathered at the front of the property.

- Neighbours have already been disturbed and sometimes intimidated by such groups on occasion gathering in front of this house to socialise and smoke, late at night. This is a noise nuisance damaging the quality of life of existing residents in the street.

As clearly recognised in the 2012 Scottish Government Publication *HOUSES IN MULTIPLE OCCUPATION: GUIDANCE ON PLANNING CONTROL AND LICENSING* (<http://www.scotland.gov.uk/Resource/0039/00396049.pdf>), "a high concentration of HMOs can lead to a range of potential problems".

All of points made above in objection to the change of use application for 7 East Restalrig Terrace are highly apposite illustrations of potential problems identified by the 2012 Scottish Government document quoted above, in relation to HMOs. i.e.

- **"increased population density, resulting in increased demand on services, infrastructure and on-street parking provision;**
- **potential physical deterioration caused by lack of investment by absentee landlords;**
- **increased competition for private houses..."**

The change of use application is clearly linked to the application for an HMO licence that is also current.

Grounds for objection general to the community as a whole:

- As has already been widely recognised by a number of bodies, including the City of Edinburgh Council itself, the Leith Links area - compared to other parts of Edinburgh - is already significantly over-provisioned with HMOs, B&Bs used for homeless people, hostels and 'guest houses', and units offering supported accommodation of various types. While we recognise that people need places to live, we feel that the local community as a whole experiences a negative impact from this unbalanced concentration of transient, often vulnerable and sometimes anti-social groups and individuals. Such establishments need to be more evenly spread out across different areas of the city. Leith Links has enough and cannot take more.

- As corroborated/confirmed by the 'Feeling Safe in Leith' Forum, which is supported by Police Scotland, many people in Leith already suffer from feeling intimidated by gatherings of groups of people - e.g. street drinkers on the Links, substance abusers in the Kirkgate, drinkers and smokers outside pubs, B&Bs and hostels, and from time to time by anti-social behaviour that may break out in these groups. For that reason, we would be inclined to oppose establishment of a further 'group' residence of any type.

- *Leith Links is a well-established residential area. HMOs are commercial enterprises. Adding commercial premises in the form of an HMO within the heart of the residential community without taking into consideration the views of existing residents, is not appropriate - and risks damaging the existing residential amenity.*

- *The infrastructure in the Leith Links area is already at cracking point and may not support the influx of new groups of people. For example, recent research by the Leith Links Community Council revealed that all the local Health Centres' patient lists are at capacity and are closed to new patients. New and planned housing around the Salamander Place/Seafield Road area is likely to exacerbate the infrastructure crisis further, in the near future.*

- *It would appear that the property in question may be owned by a member of a well known family that has been at the centre of many and serious complaints over a long period of time both in the Leith Links area and elsewhere, concerning poor property maintenance, damage to the environment, bad management, and anti-social behaviour of tenants. Leith Links Community Council can see no reason to suppose that the attitude or behaviour of this family is likely to change.*

These points all illustrate issues identified in the 2012 Scottish Government document quoted above, for example:

- ***"High concentrations of HMOs can lead to a range of cultural, social, economic and physical changes in a community.***

- ***Areas of high HMO concentrations can become unpopular with non-HMO residents; altering the community;***

- ***High concentrations of HMOs can be associated with -...***

- ***A high number of transient residents, leading to less community cohesion;***

- ***Changes in demand for services altering the availability and nature of services provided."***

In short, local residents feel that a change of use to multiple occupancy would have a negative impact on this well established little residential community and street.

