

{Redacted}

Subject: FW: Appeal Decision PPA-230-2290

From: {Redacted}
Sent: 02 April 2020 13:37
To: DPEA <DPEA@gov.scot>
Subject: Appeal Decision PPA-230-2290

Dear Sirs,

I have attached a letter for the consideration of the Chief Reporter in respect of a recent appeal decision.

I understand that in these circumstances this matter will not be given attention until a later date.

Yours faithfully

{Redacted}

{Redacted} | Local One Team | Place | The City of Edinburgh Council | Waverley Court, Level G:3,
4 East Market Street, Edinburgh, EH8 8BG | {Redacted}

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The Chief Reporter
Planning and Environmental Appeals Division
4 The Courtyard
Callendar Business Park
Callendar Road
Falkirk FK1 1XR

Date: 2 April 2020

Your Ref: PPA-230-2290

Our Ref: 19/01531/FUL

Dear Sir,

I write to you in respect of the recent appeal decision (Your ref PPA-230-2290) relating to the grant of planning permission for a change of use from 'Residential to commercial short term residential let.' (CSTRL)

Having assessed the reporter's assessment and determination to grant planning permission, I consider it important to draw your attention to some of the very considerable concerns that I and my colleagues have with regard to the conclusion reached by the reporter, particularly the imposition of three conditions.

I shall not cover the background to the case or the preliminary content of the reporter's decision and concentrate on the elements that I feel could benefit from some scrutiny, guidance and potentially further discussions between yourself and this council;

The reporter identifies that CSTRLs inherently involves a greater level of noise generation and the potential for increased disturbance to surrounding residents than long term letting and that the use would in all probability result in a level of noise and disturbance above the more usual residential, six months tenure. He goes on to state that 'I am mindful that there are presently no controls or reasonable planning conditions which could limit the rate of turnover or the maximum number of occupants to that currently applied.'

He concludes that there has been no specific complaint, other than relating to the lack of planning permission, and that the increased activity is not likely to result in undue noise and disturbance to surrounding residents, adding that 'the council has not suggested planning conditions (as part of their submissions) to control the occupation level or frequency of changeover, but I consider these necessary to make the proposal acceptable.'

The reporter sets out the three conditions that he considers necessary, and these are:

1. The property shall be let for overnight occupation by a maximum of five persons at any one time. (Reason - in the interests of preserving residential amenity)
2. The minimum letting period shall be three consecutive night (Reason – in the interests of preserving residential amenity)

3. A register of occupation and letting periods shall be maintained at the property by the owner/letting agent and available at all reasonable times for inspection, on request by the planning authority. (Reason – to ensure compliance with conditions 1 and 2)

The Scottish Government's circular 4/1998; the use of conditions in planning permissions provides the acknowledged guidance and framework in which consideration should be given to the use of conditions. It includes the six tests that each condition must comply with to be competent and avoid the challenge of being ultra vires, including the test of enforceability and being reasonable in all other respects.

The supporting text within the circular goes on to advise that conditions imposed in an unreasonable way, so that it proves impracticable or inexpedient to enforce should be avoided. It also clarifies that if a breach of condition notice is contravened, the resulting offence is open to summary prosecution, where the burden of proof of the offence requires to be beyond all reasonable doubt, and that consequently, if a breach of condition notice procedure is to operate effectively, planning conditions must be formulated precisely.

Having regard to the above, it is my concern that the conditions attached by the reporter, however well meaning in their intent, are ultra vires by virtue of being practically unenforceable and unreasonable:

Condition One would require planning authorities to have the power of entry into a property and the power to detain and question those found within the property. Planning authorities are not in possession of such powers and compliance with the condition cannot be proved or disproved. The condition is unenforceable.

Condition Two would require planning authorities to undertake surveillance of a property for periods beyond three days to prove that the same occupants were in residence. Notwithstanding the implications of carrying out surveillance of individuals who are, in themselves, not breaching any condition or requirement of a notice, the resource implications for an authority would be impracticable and unreasonable.

Condition Three requires the maintenance of a register to ensure compliance with the above conditions; there can be no effective control of the accuracy of the entries and no means for an authority to obtain any form of corroborative evidence to prove or disprove the authenticity of the contents of the register. The condition is practically unenforceable.

The City of Edinburgh Council has not sought to challenge this decision through judicial review, but considers it necessary to draw to your attention, with the hope of discussing how such situations can be avoided in the future. I would be very grateful if we can meet to cover the points that have been raised in this correspondence.

Yours faithfully

{Redacted}

PLACE Development
Tel. {Redacted}