

Application for a Certificate of Lawful Use

Linda McDonald-Brown

Flat 4 71 South Clerk Street, Edinburgh, Edinburgh, mid lothian, EH8 9PP

09/2023

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1 - Introduction

STL Solutions has been asked to provide a planning statement in support of this application to the City of Edinburgh Council (“the Council”) by Michelle Wirt (“the Applicant”) for the Certificate of Lawfulness of Existing Use or Development (“CLEUD”) in respect of the use of the subject property (“the property”) in their ownership at Flat 4 71 South Clerk Street, Edinburgh, Edinburgh, EH8 9PP.

The purpose of this application is to demonstrate as described in Section 150(2) of the Town and Country Planning (Scotland) Act 1997 (as amended), (“The Planning Act”), that the use of the property as short-term let visitor accommodation does not constitute development as no material change of use has taken place.

The property is used for short-term residential letting purposes and has been used continuously for this purpose since 15/7/2011 before the confirmation of Edinburgh’s short-term let control area designated on 5th September 2022.

The property is indicated on the Site Location plan and Floor Plan submitted in support of this Application.

2 - Property Description and Surroundings

The property is located at Flat 4, 71 South Clerk Street, Edinburgh, EH8 9PP. The property has been available for let since July 15, 2011, and is accessed through a shared doorway leading to a shared stairwell. It is situated on the first floor of a tenement building and features four bedrooms, 1.5 bathrooms, two living rooms, one kitchen, and a large hallway. The property has a floor size of 215 square metres and can accommodate up to eight guests. It is categorised as a tenement.

The property is located in a lively neighbourhood characterised by various commercial establishments, including restaurants, takeaways, supermarkets, and independent grocery stores. It is situated on a busy main road, serving as a key artery in and out of Edinburgh. Within the immediate vicinity, there is a whisky bar two doors down, a general store, and a funeral parlour. The area offers a vibrant nightlife but tends to be quieter during the daytime. Public transport options, such as buses and a train station approximately 20 minutes away on foot, provide convenient accessibility to the property and its connection to the broader city network.

The property is of significance to the Applicant's family and has been their family home since 2001 and continuing to host family holidays now as part of the pattern of use that has developed. It is well-maintained, featuring artworks and furniture from around the world. The property is ideal for various guests, including fringe performers and other theatre performers throughout the year, families on holiday, corporate workers, and rugby match attendees at Murrayfield. It is also within reasonable walking distance of attractions in the Old Town, such as the Writers Museum and The Edinburgh Dungeon. The property benefits from the services of a professional property manager who handles check-ins, manages bookings, and ensures that guests have positive reviews. The property manager does not accept check-ins after 9pm or guests without consistent good reviews. House rules include no parties or events, no shoes worn inside, quiet hours from 8 am to 9 pm, and respectful behaviour on the stairs. Cleaning activities take place between 10 am and 3 pm, with minimal disturbance to guests and neighbours. Key safes are not used, with all short-term residents instead met on arrival at the property. Overall, the property offers a comfortable and convenient living space in a vibrant urban setting.

3 - Determining Matters: Certificate of Lawful Existing Use or Development (CLEUD)

While a Certificate of Lawful Existing Use or Development (CLEUD) is different from a planning permission, these certificates are nevertheless still governed by The Town and Country Planning (Scotland) Act 1997. ("The Planning Act.")

The definition of "lawfulness" and the provisions governing applications for a CLEUD are set out in Sections 150-153 of The Planning Act with further guidance provided in Annex F of Circular 10/2009 "Planning Enforcement".

Section 150 of The Planning Act sets out the provisions for Certificates of Lawfulness.

Section 150(1) states that if any person wishes to ascertain whether:

1. any existing use of buildings or other land is lawful,
2. any operations which have been carried out in, on, over or under land are lawful, or
3. any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful.

He (sic) may make an application for the purpose to the planning authority specifying the land and describing the use, operations or other matter.

Section 150(2) of the Act goes on to clarify that uses and operations may be considered lawful if:

1. no enforcement action may then be taken in respect of them (**whether because they did not involve development; or require planning permission**; or because the time for enforcement action has expired or for any other reason), and
2. they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

In this case under part (a) the first and second criteria (because it did not involve development or require planning permission) are the reasons upon which this application is being made. It is considered that the use of the flat as short term let visitor accommodation (sui generis) does not constitute a material change of use from being operated as a residential flat (sui generis). Further, under part (b) there is no enforcement notice currently outstanding in respect of this property.

The detailed arguments why it is considered that this position holds for the subject property are set out below in section 4 of this supporting Planning Statement 'Material Change of Use'

Further advice on the determination of CLEUDs is contained within Annex F 'Certificates of Lawful Use or Development' within Scottish Government Planning Circular 10/2009: Planning Enforcement.

The annex helpfully notes at paragraph 4 that the first and second criteria under section 150(2) are to be treated as one and the same. Consistent with the arguments presented in this application (see 3.1.6), paragraph 4 notes the following:

“If no enforcement action may then be taken in respect of them, whether **because they did not involve development or require planning permission**, or because the time for enforcement action against them has expired, or for any other reason”.

Paragraphs 16 and 21 of the same annexes also offers useful commentary on the type of decision-making practice Planning Authority's need to employ when determining applications for CLEUDs.

Paragraph 16 notes the following:

“In determining an application under section 150 the planning authority will have to address the question whether, on the facts of the case and the planning law applicable to the site, the specified use, operational development or failure to comply with a condition is lawful”.

Paragraph 21 meanwhile states:

“Moreover, the applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the planning authority has no evidence to contradict or otherwise make the applicant's version of events less than probable, this is not in itself a valid reason to refuse the application”.

As detailed in the next section of this Planning Statement, the recent Scottish Government Planning Circular '1/2023 Short Term Lets and Planning' clarifies that the making of a short term let control area does not have a retrospective effect on existing short term lets within the boundaries of such areas. By contrast, rather than automatically deeming all existing short term lets as material changes of use requiring planning permission, the Planning Authority will still need to assess whether individual existing short term lets are in fact material changes of use on a case-by-case basis.

Paragraphs 16 and 21 of Planning Circular 10/2009 confirm to Planning Authorities that the existence of a short term let control area alone is not justification for refusing to issue CLEUDs when these have been applied for under Section 150(2) and where it is considered by the applicant that no material change of use has taken place.

By contrast, any assessment as to whether a material change of use has taken place in respect of such properties must consider in detail the fact and degree of any change. It would therefore be inappropriate for the Planning Authority to rely upon the formation of a short term let control area to automatically and without further justification deem any change of use within its territory as a material change of use requiring the benefit of planning permission.

4 - Material Change of Use: Short Term Lets

4.1 - Relevant Legislation Regarding Material Change of Use

Section 28(1) of the Planning Act:

Section 28(1) of the Planning Act is a fundamental clause that states, “planning permission is required for the carrying out of any development of land.” This provision makes it clear that any development activity on land must be approved and guided by the proper planning permission.

Clarification of Development: Section 26(1)

The Act further defines what development means under section 26(1), noting that “‘development’ means the carrying out of building, engineering, mining, or other operations in, on, over or under land, or the making of any **material change** in the use of any buildings or other land.” This comprehensive definition includes various aspects of construction and usage changes and sets the stage for understanding when planning permission is necessary.

Amendments to the Planning Act in 2019: Section 26B

With the amendments to the Planning Act in 2019, section 26B was introduced, titled 'Material Change of Use: Short Term Lets.' This section particularly emphasises that in a short-term let control area, the usage of a dwellinghouse for the purpose of providing short-term lets is considered a material change of use. Section 26B(5) of the Act empowers the Scottish Ministers to make regulations to further detail the purposes of this section. It allows them to define circumstances or types of dwellinghouses to which this section does not apply, providing flexibility in the application of the law.

While the Town and Country Planning (Short Term Let Control Area) (Scotland) Regulations 2021 did outline excluded properties, it left ambiguity about the retroactive application of the control area rules. This initially led to a degree of uncertainty over how the rules should be applied to existing short-term let properties.

The publication of the Scottish Government Planning Circular 'Short-term Lets and Planning 1/2023' in May 2023, and its subsequent amendment in June, provided clarity on the retrospective application of the control area regulations. The Circular emphasises that section 26B is not retrospective and requires planning permission for a material change of use to short-term letting, whether before or after the control area designation.

The amended Circular notes at paragraph 4.3: “Section 26B (of the 1997 Planning Act as amended), is not retrospective, meaning that the designation of a control area does not, in itself, retrospectively deem any previous change of use of a dwellinghouse to use for short-term lets within that area to be a material change of use. Section 26B applies where a change of use of a dwellinghouse occurs after designation of a control area. However, it is important to bear in mind that section 26B does not replace the existing requirements of the 1997 Act in respect of the need for planning permission for a

material change of use. This means that material changes of use to short-term letting whether before or after the designation of a control area would require planning permission”.

In the case of the property of the Applicant, the operation precedes the control area's designation, and thus section 26B of the Planning Act does not govern it. Instead, assessment for planning permission must consider whether the ongoing operation as a short term let constitutes a material change of use under section 26 of the Act. Therefore, the fact that Edinburgh is now in a control area should have no bearing on the overall assessment of this application and should be considered in an identical manner as any other similar property in other local authority areas.

4.2 - Use Classes Order Regarding Material Change of Use

The Use Classes Order indicates that a residential flat falls under a sui generis use and does not fall within Use Class 9: Houses. Sui generis uses are regarded as those that do not clearly fall within any use class and require planning permission for changes of use to or from such uses.

The Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended) defines a flat as "a separate and self-contained set of premises whether or not on the same floor and forming part of a building from some other part of which it is divided horizontally."

Although a flat and a house do not belong to the same use class, they share some similarities. Use Class 9: Houses includes use for a house (other than a flat) and limited use as a bed and breakfast or guesthouse. Planning Circular 1/1998 states that when paying guests are accommodated in a house on a bed and breakfast or guest house basis within modest thresholds, there is no material change of use as the character and impacts remain unchanged.

There is no specific use class for short-term residential letting, and if it is considered that a material change of use has occurred, it falls under a sui generis use.

4.3 - Relevant Planning Case Law Regarding Material Change of Use

Several court cases and appeal decisions have shed light on the complexities involved in determining a material change of use. The English Court of Appeal Case of Sheila Moore v (1) Secretary of State for Communities and Local Government and (2) Suffolk Coastal District Council (2012 EWCA CIV 1202) and appeal decisions such as 11 Stevenson Drive (CLUD-230-2007) and others have set precedence and provide substantial insight into the decision-making process.

Cameron v Scottish Ministers [2020] is the relevant decision by the Court of Session. This was an appeal against a decision by a reporter in relation to a property which could accommodate up to 30 people in 8 bedrooms. The reporter held that the provision of short-stay accommodation in those premises amounted to a material change of use from the previous dwellinghouse use. The Court held this was an issue of fact and degree for the reporter.

In Cameron, the Court of Session referred to the decision of the English Court of Appeal in Moore v Secretary of State for Communities and Local Government [2012] EWCA Civ 1202, that it was not correct to say either that using a dwelling for commercial holiday lettings would never amount to a material change of use or that it would always amount to a material change of use. Rather, in each case

it would be a matter of fact and degree and would depend on the characteristics of the use as holiday accommodation.

In Moore, the Court upheld the inspector's decision that there had been a material change of use (the inspector is the equivalent in England and Wales of the Reporter). However, the key issue for the inspector was the use of the property by non-pre-formed groups of people, for example a yoga group of 15 people, which distinguished it from occupation by single households or larger family groups.

Therefore, in determining the materiality of the change, the question is whether short stay occupation necessarily has different planning considerations. Short stay occupation involves people living in the property, just for shorter periods. However, that does not necessarily mean the nature of the occupation is different. There are not necessarily greater movements of people, or different times of movement. More permanent residents can have vastly different movements depending on their employment, leisure interests, family circumstances, health, etc. For example, an offshore worker might occupy his/ her house for a few weeks and then work offshore for a few weeks; a family with teenage children might enter and leave the house many times during the day and night; a single person with care needs might be visited by carers several times a day. Users of a self-catering property, which use the property for a variety of purposes, including short term residential needs for work purposes, are therefore unlikely to exhibit markedly different characteristics to more permanent residents. Disruptive or anti-social behaviour is just as likely in residential use as self-catering use. Servicing of self-catering accommodation is also not a differentiator, as some residential occupiers use cleaners on a regular basis, especially if the occupier is in poor health.

4.4 - Edinburgh Local Policies

The guidance provided by the City of Edinburgh Council, both in its recent April 2023 non-statutory document and the previous November 2021 version, further helps articulate the situation, especially regarding short-term lets. These documents aim to guide individuals and businesses in understanding when planning permission is required. This includes consideration of:

*"The change of use from a residential property to short term commercial visitor accommodation may require planning permission. In deciding whether this is the case, regard will be had to: *

- The character of the new use and of the wider area
- The size of the property
- The pattern of activity associated with the use including numbers of occupants, the period of use, issues of noise, disturbance and parking demand, and
- The nature and character of any services provided."

Whilst the Development plan policy and other guidance can provide indications of factors which can be relevant to determining the materiality of the change, it is essential that the individual circumstances are always taken into account. A policy or guidance cannot be applied as a "blanket rule" by a local authority.

Some planning authorities have prepared a checklist to assist assessing whether planning permission is required. However, the checklist does not remove the legal requirement to consider the individual circumstances of the premises, even if the checklist derives from development plan policy or other

guidance. The checklist questions do not necessarily take into account those individual circumstances: for example, why should 'a flat' in a predominately residential area necessarily mean there is a material change of use? The specific use of that flat in relation to neighbouring properties is the issue at hand.

4.5 - Relevant Appeals And Certificate Of Lawfulness Applications On Short-Term Residential Letting

Most relevant planning appeals have involved enforcement notices. In those cases, the enforcement notice has been served after the planning authority have investigated and reached the conclusion that there has been a material change of use and that planning permission is required. It is therefore unsurprising that most planning appeal decisions conclude there has been a material change of use given these are normally triggered by complaints.

The need to assess the facts and circumstances of the individual cases is illustrated by the decision in the enforcement notice appeal for Flat 2, 5 Castle Wynd South, Edinburgh (ENA-230-2193 9 November 2021). The Reporter concluded the change of use from residential dwelling to short stay commercial visitor accommodation was not a material change of use:

"Taking all of these matters together, I consider that in this instance, on balance, the number and nature of arrivals and departures to and from the flat, the likelihood of increased noisy activity for neighbouring properties and activity as a result of servicing would not be at a level materially different to the property in long term use. In my view this does not constitute a material change in use which would require planning permission. Accordingly, I conclude that a breach of planning control has not taken place. The appeal therefore succeeds on appeal ground c)."

This appeal decision is a reminder that, in law, planning permission is not necessarily required for a change of use to short-term holiday accommodation, as it depends on the facts and circumstances of each individual premises.

Other relevant cases are as follows:

108 Crewe Road West - 20/04697/CLP

In December 2020, The City of Edinburgh Council granted a certificate of lawfulness to a flat located on the ground floor with 2 bedrooms, noting "The property has only two bedrooms and occupancy will be limited, and it has its own direct access to the street. The use as detailed will not be substantially different from the established residential character of the area." This property had neighbouring properties above and the application was based on a 4-guest maximum and a 2-night minimum. No upper limit on activity in terms of frequency or occupancy levels was required.

2F, 45 Moray Place, Edinburgh - 17/00292/CLP

The council granted a Certificate of Lawfulness to use this property (2F) for short-term commercial visitor letting. Maximum occupancy would be 2 persons with approximately 60% occupancy. This was a shared stair property and the summary within the report of handling noted the following: "located within an area where a mix of commercial and residential uses currently exist. This does not constitute a change of use. The proposal is lawful".

18 Spring Gardens - ENA-230-2217 - November 2022

This appeal is considered a four-storey townhouse. The property benefited from a separate front entrance door with no communal internal space linked with neighbouring properties. This property was marketed as accommodating up to eight guests. The report quashed this enforcement notice, noting "There is no indication that it has been advertised for or occupied at any point by more than eight guests or as a party or event venue. The current internal layout of the property with three double bedrooms, a single bedroom and a single sofa bed would lead me to conclude that eight guests occupying the property as a family is within the normally designed occupancy of the house."

Of note, this property had already been refused planning permission by the Council, however, the reporter concluded "Even when balanced against the refusal of the planning application my assessment of the level of bookings, associated cleaning activity, self-contained nature of the property and parking arrangements leads me to conclude that this level of activity would not be materially different to that of a normal dwellinghouse of this size. On this basis, the use of the property for short-stay commercial visitor accommodation would not result in a material change to the existing residential character of the dwellinghouse. I therefore conclude that the use of the property for short stay commercial visitor accommodation would be incidental to the use of the property as a Class 9 dwellinghouse."

24 Royal Mile Mansions - ENA-230-2237 - April 2022

The appeal was successful on ground (c) because the appellant demonstrated that the alleged breach did not constitute a material change of use. The property in question was a one-bedroom flat on the second floor being used for short-stay commercial visitor accommodation, and the council argued that this constituted a material change of use, causing disturbance to the established residential character of the building.

The appellant countered the council's argument by pointing out that the use of the property was not materially different from what one would reasonably expect from the lawful use of a one-bedroom flat.

In making the decision, the DPEA considered factors such as the property's character, manner of lettings, frequency of arrivals and departures, and intensity of noise and disturbance. The appellant's evidence showed that the property was let out on average 15 days per month with a maximum occupancy of three guests, making it comparable to permanent or long-term residential use. The property's layout and location also mitigated potential noise and security concerns. Therefore, the authority concluded that the use of the property as short-stay commercial visitor accommodation did not constitute a material change of use.

17/04252/CLE - 1/1 South Gyle Mains, Edinburgh (Appeal Ref: CLUD-230-2004)

The City of Edinburgh Council refused a Certificate of Lawfulness for the short-term letting of a residential flat at South Gyle Mains, arguing that it represented a material change of use. However, the decision was overturned on appeal, and the Certificate of Lawfulness was granted. The Appeal Reporter concluded that the use for short-term letting was not substantially different from that of a residential flat, rendering the Council's reason for refusal unfounded.

18/02508/CLE - 11 Stevenson Drive, Edinburgh (Appeal Ref: CLUD-230-2007)

The City of Edinburgh Council failed to determine an Application for a Certificate of Lawfulness within the statutory period. During the appeal process against non-determination, the Council indicated its intention to refuse the application without providing reasons. Nevertheless, the appeal was successful, and the Certificate of Lawfulness was granted. The Reporter stated that the use of the property for residential letting was in harmony with its character and location and did not amount to a material change of use.

19/02399/CLE - 1 Crichton Place, Edinburgh (Appeal Ref: CLUD-230-2011)

The City of Edinburgh Council refused to issue a Certificate of Lawfulness (existing use) for the use of the property for short term residential letting. This Application related to a ground and basement floor; two-bedroom flat situated on Crichton Place. This decision was again overturned on Appeal and a Certificate of Lawfulness granted. In her decision, Reporter Craggs noted that the property has its own access directly onto the street and there is no direct interaction between the occupants of the property and those of the upper flats.

Reporter Craggs was therefore clear that a private access into the property was a key reason for allowing the Appeal. In her conclusion, Reporter Craggs noted that: "...I find that the existing use is in keeping with the nature and size of the property and that there is no significant disturbance or impact from the use. I therefore conclude that no material change of use has taken place."

18/01049/CLP - 103 Restalrig Road, Edinburgh (Appeal Ref: CLUD-230-2006)

The City of Edinburgh Council denied a Certificate of Lawfulness for the proposed use of a dwelling house as a holiday let, citing insufficient information provided. On appeal, the decision was allowed, and the Certificate of Lawfulness was granted. The Reporter determined that the proposed use would not constitute a material change of use and would align with the existing use.

17/02880/CLP - 20 Pirniefield Grove, Edinburgh (Appeal Ref: CLUD-230-2003)

The City of Edinburgh Council refused a Certificate of Lawfulness for the proposed use of a dwelling house as holiday lets. Nonetheless, the decision was overturned on appeal, and the Certificate of Lawfulness was granted. The Reporter found the Council's reason for refusal to be unsubstantiated.

5 - Assessment

In making this assessment, the Applicant has carefully considered the factors that may constitute a material change of use, as outlined in the City of Edinburgh Council's non- statutory Guidance for Business document (2021), specifically on page 6 of the document. This guidance document provides relevant considerations in determining whether the change of use from a residential property to short-term commercial visitor accommodation necessitates planning permission. The key factors considered in this guidance are:

- The character of the new use and of the wider area
- The size of the property
- The pattern of activity associated with the use including numbers of occupants, the period of use, issues of noise, disturbance, and parking demand, and
- The nature and character of any services provided.

5.1 - Character of the New Use And Of The Wider Area

The property is located at 71 South Clerk Street, Edinburgh, EH8 9PP. It is a four-bedroom tenement flat situated on the first floor. The property has a shared entrance, accessed through a shared door leading to a shared stairwell. It is surrounded by commercial establishments such as restaurants, bars, and supermarkets, creating a vibrant atmosphere. The property has been used as a short-term let since 15th July 2011, but the applicant and their family also use it for personal stays. The location and size of the property make it suitable for various types of guests, including Fringe performers, families, and corporate workers. The property is well-maintained, filled with artwork and furniture from around the world, creating a truly residential feel.

5.2 - Size of the Property

The property has a floor size of approximately 215 square metres, with four bedrooms. It can accommodate up to 8 guests, which is consistent with other flats of this size in the area.

5.3 - Pattern of Activity Associated With The Use

The property has been available for let for approximately 300 days per year, with an average booking duration of 4 days. It is frequently used by Fringe performers, local theatre performers, families, and corporate workers. The property is professionally managed, and the property manager conducts thorough guest screening. Guest are only accpeted if they have existing positive reviews. There are strict house rules, including no parties or events and quiet hours between 8 am and 9 pm. Noise levels in the property are monitored, and cleaning and maintenance activities are scheduled between 10 am and 3 pm to minimise disruption. Keysafes are not used for access, with all short-term residents instead met at the property when they take possession.

5.4 - Nature and Character of Any Services Provided

Guests staying at the property undergo thorough vetting and must agree to the house rules before booking. There is a strict no-parties policy, and guests are reminded of the importance of noise control, especially on the stairs. Cleaning activities are carried out between 10 am and 3 pm to ensure minimal disruption to guests. The property does not provide facilities for bag storage, but guests are directed to nearby storage units. The property has a history of proactive maintenance, including fixing leaks and renovating the garden, demonstrating the owner's commitment to maintaining the property's condition.

5.5 - Relevant Cases

The case of Flat 2, 5 Castle Wynd South (ENA-230-2193) provides valuable insights when an enforcement notice is issued alleging a change of use from residential dwelling to short-stay commercial visitor accommodation. In this case, the notice was quashed upon appeal, highlighting that the change of use did not constitute a material change. The Reporter took into account factors such as arrivals and departures, potential noise and disturbance levels, and activities associated with servicing the property. The decision in this case serves as a reminder that a material change of use will not always follow where a property being operated as a short-term let. It reinforces the significance of assessing the specific circumstances of each property and its impact on the surrounding area when evaluating the suitability of a Certificate of Lawfulness.

For properties with a shared entrance, the case of 17/04252/CLE (1/1 South Gyle Mains, Edinburgh) provides essential insights. Initially, The City of Edinburgh Council refused to grant a Certificate of Lawfulness for short-term letting of a residential flat in that case, citing a material change of use due to the shared entrance. However, the decision was overturned on appeal, with the Appeal Reporter determining that the use for short-term letting was not substantially different from that of a residential flat. This case highlights the significance of evaluating the specific characteristics and contextual elements of a property when assessing material change of use, irrespective of any shared entrance. It establishes a precedent for properties with shared access and emphasises that a Certificate of Lawfulness can be justified in some cases.

Additionally, the case of 19/02399/CLE (1 Crichton Place, Edinburgh) is relevant. City of Edinburgh Council initially refused to grant a Certificate of Lawfulness for short-term residential letting of the property, but the decision was overturned on appeal, resulting in the issuance of a Certificate of Lawfulness. This case emphasises the importance of determining the level of impact or disturbance caused by any given short-term letting operation. The use of the subject property in the present application aligns with its existing character and size and does not cause significant impact or disturbance. Therefore, similar to 1 Crichton Place, its operation ought to be considered lawful and not represent a material change of use.

Moreover, the case of 24 Royal Mile Mansions (ENA-230-2237 April 2022) is pertinent, as the appellant successfully established that the use of the property was not materially different from what would be expected lawfully, considering factors such as frequency of lettings, occupancy levels, and the property's layout and location. In particular, noise mitigation measures were found to potentially prevent there being a material change of use, especially where aspects of the property's construction

or management address noise or security concerns, and where the local area itself may already be considered noisy. The subject property operates under strict house rules to mitigate the risk of noise or disturbance and is located in an already busy and potentially noisy part of the city. The construction of the property is robust, and the property further features noise monitoring to address noise concerns.

In 18 Spring Gardens - ENA-230-2217 - November 2022 the reporter concluded that the accommodation of eight guests sleeping in 3 double and one single bedroom and on a sofa bed was not indicative of a material change of use. In respect of the property at Spring Gardens, the reporter stated "There is no indication that it has been advertised for or occupied at any point by more than eight guests or as a party or event venue." The same can be said of the subject property in this application, which accommodates up to 8 guests but in designated bedrooms in all cases, where guests often occupy the property as a family, and where house rules preclude parties.

Lastly, the case of 17/02880/CLP (20 Pirniefield Grove, Edinburgh) is worth considering when assessing the refusal of a Certificate of Lawfulness for a dwelling house as holiday lets. In this case, the Council's decision was overturned on appeal, highlighting the importance of fair and consistent decision-making in determining material change of use. The case emphasises that a material change of use may not always universally occur when a property operates as a short-term let. It reinforces the significance of evaluating the specific circumstances of each property and its impact on the surrounding area when assessing the suitability of a Certificate of Lawfulness.

Considering the subject property's unique characteristics and usage patterns, it can be inferred that the property aligns with its established residential character and that of the area, and its use does not constitute a material change of use. The property's usage as a short-term let is consistent with similar cases where Certificates of Lawfulness were granted. The property's adherence to house rules, consideration of neighbours, and minimal impact on the area support the applicant's view that no material change of use has occurred at the subject property. As such, the granting of a Certificate of Lawfulness is justified based on the available precedents.

6 - Conclusion

Given the fact and degree of the change that has taken place here is minimal when compared with a permanent residential use, it is the view of the Applicant that 'development' as set out in section 26 of the Planning Act did not take place here when this change was initiated on 15/07/2011.

It follows that if no material change of use has taken place, no development has taken place, and the Planning Authority can confirm this by issuing a certificate of lawfulness confirming its existing use as short-term let visitor accommodation. The Planning Authority cannot rely on the making of a short-term let control area in Edinburgh as grounds for automatically seeking a planning application for change of use. By contrast, the Planning Authority is required to consider matters of fact and degree in determining whether a material change of use here has in fact taken place.

As explained in Appendix F of Planning Circular 10/2009, unless the Council has reason to reach a different conclusion on those matters assessed in section 5 of this planning statement, the logical outcome of this application is that a CLEUD should be issued in the Applicants' favour.

It is therefore respectfully requested that this Certificate of Lawful Use or Development be granted.