

The City of Edinburgh Planning Local Review Body (Panel 2)

10.00am, Wednesday 23 June 2021

Present: Councillors Booth, Child, Osler, Rose and Ethan Young.

1. Appointment of Convener

Councillor Rose was appointed as Convener for item 4 and Councillor Booth was appointed as Convener for items 5 to 7.

2. Minutes

To approve the minute of the Local Review Body (LRB Panel 2) of 12 May 2021 as a correct record.

3. Planning Local Review Body Procedure

Decision

To note the outline procedure for consideration of reviews.

(Reference – Local Review Body Procedure, submitted)

4. Continued Request for Review – 2 Allan Park Road, Edinburgh

Details were submitted of a request for a review for conversion of an existing freestanding garage to a dog grooming studio (Class 2 - professional services). Replacement of existing roof structure with new inner leaf structure and finishes, and existing openings with new doors, glazing and infill at 2 Allan Park Road Edinburgh. Application No. 20/03878/FUL.

This application was continued from the meeting of 24 March 2021, noting that the Panel was minded to grant planning permission, subject to the approval of Environmental Protection on satisfactory levels of noise insulation.

Assessment

At the meeting on 23 June 2021, the LRB had been provided with copies of the notice of review submitted by you including a request that the review proceed on the basis of an assessment of the review documents only. The LRB had also been provided with copies of the decision notice and the report of handling.

The LRB heard from the Planning Adviser who summarised the issues raised and presented the drawings of the development and responded to further questions.

The plans used to determine the application were numbered 08A – 14A, Revised Plans, being the drawings shown under the application reference number 20/03878/FUL on the Council's Planning and Building Standards Online Services.

The LRB, having considered these documents, felt that they had sufficient information before it and agreed to determine the review using the information circulated.

The LRB in their deliberations on the matter, considered the following:

- 1) The development plan, including the relevant policies of the Edinburgh Local Development Plan.
Edinburgh Local Development Plan Policy Des 12 (Alterations and Extensions)
Edinburgh Local Development Plan Policy Hou 7 (Inappropriate uses in residential areas)
- 2) Relevant Non-Statutory Guidelines.
Edinburgh Design Guidance
- 3) The procedure used to determine the application.
- 4) The reasons for refusal and the arguments put forward in the request for a review.

Conclusion

The LRB considered all the arguments put before it in respect of the proposed planning application and discussion took place in relation to the following issues:

- It was necessary to consider the additional information the panel requested from Environmental Protection on satisfactory levels of noise insulation with the two additional conditions, including the condition on the hours of opening.
- That the Panel had full discussion at the previous meeting and the two additional conditions agreed with Environmental Protection satisfied the concerns raised regarding noise.
- The application should be granted with the two additional conditions, which included the hours of opening, specified in the second condition.

Having taken all the above matters into consideration, the LRB determined that the two additional conditions agreed by Environmental Protection on satisfactory levels of noise insulation, satisfied the concerns raised by the Panel at the previous meeting.

It therefore overturned the decision of the Chief Planning Officer and granted planning permission, subject to additional conditions regarding sound insulation and hours of opening.

Decision

To not uphold the decision by the Chief Planning Officer and to grant planning permission subject to:

Conditions

1. The sound insulation of the garage should be upgraded in accordance with the construction specified in drawing 10A Floor plan and elevation rev B, May 2021 and drawing 13A Proposed east elevation and section, Rev A, May 2021, prior to the change of use being implemented. This level of insulation should be maintained for the duration of the operation of the dog grooming business.
2. The dog grooming studio should only operate between the hours of 08:00 and 18:00 hours; Monday to Friday and between 09:00 and 18:00 hours on Saturday and Sunday.

Reasons

1. In order to protect neighbouring residential amenity.
2. In order to protect neighbouring residential amenity.

Informatives:

- (a) The development hereby permitted should be commenced no later than the expiration of three years from the date of this consent.
- (b) No development should take place on the site until a 'Notice of Initiation of Development' had been submitted to the Council stating the intended date on which the development is to commence. Failure to do so constituted a breach of planning control under section 123(1) of the Town and Country Planning (Scotland) Act 1997.
- (c) 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.

(References – Local Review Body of 24 March 2021 (item 4); Decision Notice, Report of Handling and Notice of Review, submitted)

5. Request for Review – Albert Dock, Edinburgh (Land to the South Of)

Details were submitted of a request for a review to install protective barrier along the south of Albert Dock at Stevedore Place, Leith at land to the south of Albert Dock. Application No. 20/05548/FUL.

Assessment

At the meeting on 23 June 2021, the LRB had been provided with copies of the notice of review, including a request that the review proceed on the basis of an assessment of the review documents, a site inspection, further written submissions on specific matters and holding one or more hearing sessions. The LRB had also been provided with copies of the decision notice and the report of handling.

The LRB heard from the Planning Adviser who summarised the issues raised and presented the drawings of the development and responded to further questions.

The plans used to determine the application were numbered 01 - 05, Scheme 1, being the drawings shown under the application reference number 20/05548/FUL on the Council's Planning and Building Standards Online Services.

The LRB, having considered these documents, felt that they had sufficient information before it and agreed to determine the review using the information circulated.

The LRB in their deliberations on the matter, considered the following:

- 1) The development plan, including the relevant policies of the Edinburgh Local Development Plan.
Edinburgh Local Development Plan Policy Des 1 (Design Quality and Context)
Edinburgh Local Development Plan Policy Des 3 (Development Design - Incorporating and Enhancing Existing and Potential Features)
Edinburgh Local Development Plan Policy Des 4 (Development Design - Impact on Setting)
Edinburgh Local Development Plan Policy Des 10 (Waterside Development)
Edinburgh Local Development Plan Policy Env 3 (Listed Buildings - Setting)
Edinburgh Local Development Plan Policy Env 4 (Listed Buildings - Alterations and Extensions)
Edinburgh Local Development Plan Policy Env 6 (Conservation Areas - Development)
- 2) Relevant Non-Statutory Guidelines.
Listed Buildings and Conservation Areas
Leith Conservation Area Character Appraisal
Guidance on Conservation Areas
Historic Environment Policy for Scotland
Planning Advice Note 71 on Conservation Management
- 3) The procedure used to determine the application.
- 4) The reasons for refusal and the arguments put forward in the request for a review.

Conclusion

The LRB considered all the arguments put before it in respect of the proposed planning application and discussion took place in relation to the following issues:

- Confirmation that the parallel Listed Building application had been refused and subsequently appealed to the Directorate for Planning and Environmental Appeals (DPEA). The DPEA had issued its decision on 27th May and dismissed the Listed Building appeal.

- As the LBC appeal was determined by the DPEA after the Local Review was submitted, the decision could not be included in the papers as no new information could be submitted once a Review is underway unless this was specifically requested by the Local Review Body. If the Panel wanted sight of the DPEA decision notice on the Listed Building application, the Panel would need to continue the Review and request that the decision be made available to all interested parties to allow for further comments.
- With regards to the timescale for the Review to be returned for consideration, as the council would be in recess, from the week beginning 28 June, the next meeting of the LRB would not be until August. Once the information was circulated, all parties were legally required to be given 21 days to make comment.
- One Panel member felt it would be advantageous to continue consideration of the application to allow the Panel the opportunity to see the arguments put forward by the DPEA in their decision to dismiss the Listed Building appeal.
- Clarification was sought regarding the process for determining a listed building application and a planning application.
- It was confirmed that these were two separate applications with two separate processes for determination, and the Panel could take a different decision to the DPEA. The planning application should be determined in accordance with the Development Plan unless material considerations indicated otherwise.
- That there was sufficient information to make a decision at this meeting of the Local Review Body.
- It was suggested that the Panel should hear the presentation, in order to determine if it required additional information on the issues raised.
- It was noted that, although this application was retrospective, the decision had been to refuse the application, but not to take enforcement action. Clarification was sought regarding whether enforcement action would be pursued to remove the barriers as this may have safety implications.
- It was explained that the applicant did not have listed building consent for the protective barrier. If the Panel was to uphold the officer's decision, they would be refusing the railing and therefore the railings should be removed. However, it was acknowledged in the Report of Handling that an alternative safety structure would be necessary and it was hoped that a more appropriate alternative would be brought forward. The officers could take enforcement action at a later date, if they were so minded.
- There were two processes taking place, but both were quite similar and both had been refused on legal grounds. To determine/overturn the case, it was necessary to see the arguments that had been used. In the Report of Handling, insufficient weight had been given to safety conditions. Therefore, to make a decision, it was necessary to see the reporter's decision.

- Although one member thought that the application should be continued for more information, the Panel was of the opinion that it should be determined at the present meeting.
- It could be argued that applicant was correct to carry out the work first, because of the safety implications. There should be a safe solution, but one that respected the character and appearance of the conservation area, the character of the listed building and archaeological interests. The applicant should submit an application which took account of these.
- There was the question of accepting the present solution which was in place or finding a better solution that fitted in better with the environment. However, it might be argued that the possible alternatives might not be more effective or better from a conservation point of view. For this reason, the decision of the Chief Planning Officer should be overturned.
- It was important that safety was the primary concern. The applicant should be given the opportunity to find a more appropriate solution, but also one that ensured there was no period where safety measures were not in place.

Having taken all the above matters into consideration, although one of the members was in disagreement, the LRB was of the opinion that no material considerations had been presented in the request for a review which would lead it to overturn the determination by the Chief Planning Officer.

Decision 1

To refuse the request for continuation and to agree to determine the application at the meeting of the Local Review Body of 23 June 2021.

Decision 2

To uphold the decision by the Chief Planning Officer to refuse planning permission.

Reasons for Refusal:

1. The proposal failed to preserve the special character and setting of the Category 'B' listed Albert Dock including its setting and was therefore contrary to Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and Policies Env 3 'Listed Buildings - Setting' and Env 4 'Listed Buildings - Alterations and Extensions' of the Edinburgh Local Development Plan.
2. The proposal failed to preserve or enhance the special character and appearance of the Leith Conservation Area and was therefore contrary to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and to Policy Env 6 'Conservation Areas - Development' of the Edinburgh Local Development Plan.

(References – Decision Notice, Report of Handling and Notice of Review, submitted)

Dissent

Councillor Rose requested that his dissent be recorded in respect of the above decisions (1 and 2).

6. Request for Review – 104 Constitution Street, Edinburgh

Details were submitted of a request for a review for change of use from office to single open plan residential unit. Internal fit out to include kitchen and minimal internal walls at 104 Constitution Street Edinburgh. Application No. 20/05447/FUL.

Assessment

At the meeting on 23 June 2021, the LRB had been provided with copies of the notice of review, including a request that the review proceed on the basis of an assessment of the review documents only. The LRB had also been provided with copies of the decision notice and the report of handling.

The LRB heard from the Planning Adviser who summarised the issues raised and presented the drawings of the development and responded to further questions.

The plans used to determine the application were numbered 1-15, Scheme 1, being the drawings shown under the application reference number 20/05447/FUL on the Council's Planning and Building Standards Online Services.

The LRB in their deliberations on the matter, considered the following:

- 1) The development plan, including the relevant policies of the Edinburgh Local Development Plan.
Edinburgh Local Development Plan Policy Hou 5 (Conversion to Housing)
- 2) Relevant Non-Statutory Guidelines.
Listed Buildings and Conservation Areas
Leith Conservation Areas
- 3) The procedure used to determine the application.
- 4) The reasons for refusal and the arguments put forward in the request for a review.

Conclusion

The LRB considered all the arguments put before it in respect of the proposed planning application and discussion took place in relation to the following issues:

- There was some doubt if there was sufficient information to make an informed decision.
- Clarification was sought as to whether there had been a response from Environmental Protection on the additional information included in the Noise Impact Assessment (NIA) submitted by the applicant and if the description of this property below, by the agent, as a small upmarket restaurant was an accurate description.
- It was confirmed that Environmental Protection indicated that whilst an NIA was submitted, this made several unsupported claims and was not sufficient to safely grant a consent. It was also clarified that Environmental Protection had not provided a further response with regards to the additional information now

included in the NIA. Regarding the second question, the ground floor commercial use was granted consent in 2009 for a bar/restaurant, so that was its authorised use.

- The initial comment from Environmental Protection indicated that they did not accept the NIA. The property in question was not operating as a bar because of the Covid Pandemic. Plant noise from the bar/restaurant had not been assessed and could not be assessed until the restaurant re-opened. Therefore, it had not been possible to carry out an accurate assessment on this basis.
- That it was probably necessary to continue consideration of the matter to allow Environmental Protection to comment on the additional information in the NIA submitted as part of the Local Review.

Having taken all the above matters into consideration, the LRB was unable to make a final decision and determined to continue consideration of the matter to allow Environmental Protection to comment on the new information provided in the updated Noise Impact Assessment, submitted by the applicant.

Decision

To continue consideration of the matter to a further meeting of the Local Review Body (Panel 2) to allow Environmental Protection to comment on the new information provided in the updated Noise Impact Assessment submitted by the applicant in support of their appeal.

(References – Decision Notice, Report of Handling and Notice of Review, submitted)

Dissent

Councillor Rose requested that his dissent be recorded in respect of the above item.

7. Request for Review – 16 Western Gardens, Edinburgh

Details were submitted of a request for a review for the removal of existing shed and replacement with new shed (in retrospect) at 16 Western Gardens, Edinburgh. Application No. 20/05305/FUL.

Assessment

At the meeting on 23 June 2021, the LRB had been provided with copies of the notice of review, including a request that the review proceed on the basis of an assessment of the review documents only. The LRB had also been provided with copies of the decision notice and the report of handling.

The LRB heard from the Planning Adviser who summarised the issues raised and presented the drawings of the development and responded to further questions.

The plans used to determine the application were numbered 01-05, Scheme 1, being the drawings shown under the application reference number 20/05305/FUL on the Council's Planning and Building Standards Online Services.

The LRB in their deliberations on the matter, considered the following:

- 1) The development plan, including the relevant policies of the Edinburgh Local Development Plan.
Edinburgh Local Development Plan Policy Des 12 (Alterations and Extensions)
- 2) Relevant Non-Statutory Guidelines.
Guidance for Householders
- 3) The procedure used to determine the application.
- 4) The reasons for refusal and the arguments put forward in the request for a review.

Conclusion

The LRB considered all the arguments put before it in respect of the proposed planning application and discussion took place in relation to the following issues:

- Whether there was any information about the original size of shed, and photos of the current shed.
- It was confirmed that there no photos of the current shed available. One photo had been provided showing that the structure was not attached to the boundary fence and that it was a timber structure. Regarding the previous shed, the only information was that which was displayed in the drawing, which gave an indication of the size of the structure.
- The new shed which measured 9.02 metres X 3.51 metres seemed to be slightly longer than the original shed.
- The application should be continued to provide a photograph of the current shed. The key issues to consider were LDP Policy Des 12 and Non-Statutory Guidance for Householders.
- That the Panel needed to get visual information of the dimensions on the original shed and a photograph of the new shed. The plans were not sufficient and it was necessary to determine the impact on neighbouring amenity.
- Whether it was possible to request information on the issue of overshadowing which the shed caused on the neighbouring garden.
- It was confirmed that the shed has been erected directly against this boundary and stood at 2.33 metres. As a result, there was 2.98 square metres of overshadowing to the neighbouring garden, which was approximately 67.5 square metres and was a sizeable garden. As such, it was deemed that though there was a slight impact in terms of overshadowing, this was limited and had not been cited as a reason for refusal. However, it would be possible to request a plan which would indicate where overshadowing would occur.
- It would be advantageous to continue the application to get information on the size of the original shed and photos the new shed, and to get plans of where the overshadowing would occur in the garden next door.

Having taken all the above matters into consideration, the LRB was unable to make a final decision and determined to continue consideration of the matter to allow for the provision of information on size of the original shed, photos of the new shed and plans of where the overshadowing would occur in the garden next door.

Decision

To continue consideration of the matter to a further meeting of the Local Review Body (Panel 2) to provide information to members on the size of the original shed, photos of the new shed, and to provide plans of where the overshadowing would occur in the garden next door.

(References – Decision Notice, Report of Handling and Notice of Review, submitted)