

Development Management Sub Committee

Wednesday 2 March 2022

**Application for Planning Permission 21/05858/FUL
at 23 Elm Row, Edinburgh, EH7 4AA.
External seating area.**

Item number

Report number

Wards

B12 - Leith Walk

Summary

As a result of its location, form and design, the proposal does not comply with Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

The proposal is not acceptable in principle and would be harmful to the New Town Conservation Area and the setting of the A listed building. The proposal is likely to lead to an unacceptable impact on residential amenity and is not acceptable in terms of its impact on road safety. It fails to comply with Local Development Plan policies Env 3, Env 4, Env 6, Des 5, and Hou 7 and associated guidance on Listed Buildings and Conservation Areas as well as the principles of sustainability as set out by Scottish Planning Policy. There are no material considerations that outweigh this conclusion and refusal is recommended.

Links

[Policies and guidance for this application](#)

LDPP, LEN03, LEN06, LDES05, LHOU07, LEN04, NSG, NSLBCA, OTH, CRPNEW,

Report

Application for Planning Permission 21/05858/FUL at 23 Elm Row, Edinburgh, EH7 4AA. External seating area.

Recommendations

1.1 It is recommended that this application be Refused for the reasons below.

Background

2.1 Site description

The application site is an area of public footway adjacent to Joseph Pearce at 23 Elm Row (A listed; reference: LB28734; listing date: 16/12/1965). The group forms one of the architectural set-pieces of Playfair's Calton scheme, set on a commanding corner site framing the Eastern exit and entry to the New Town Conservation Area. It is an important example of the work of one of Scotland's leading early 19th century architects. The area is characterised by commercial units at ground floor with residential above.

This application site is located within the New Town Conservation Area.

2.2 Site History

PENDING - Listed building consent sought for: External seating area (application reference: 21/05859/LBC)

Main report

3.1 Description of the Proposal

Planning permission is sought for the installation of a timber decked outdoor seating area, with a pergola type structure for coverage. The outdoor area would be approximately 70 square metres with the decked area being approximately 40 square metres. The structure would be approximately three metres in height and would be painted in colours to match the signage of the existing premises. The proposal also includes wooden planters and whisky barrels as a boundary treatment

Permission is sought for a temporary period of three months over the winter period. No specific dates have been requested.

3.2 Determining Issues

Due to the proposals relating to a listed building(s) and being within a conservation area, this report will first consider the proposals in terms of Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (the "1997 Heritage Act"):

- a) Is there a strong presumption against granting planning permission due to the proposals:
 - (i) harming the listed building or its setting? or
 - (ii) conflicting with the objective of preserving or enhancing the character or appearance of the conservation area?

- b) If the strong presumption against granting planning permission is engaged, are there any significant public interest advantages of the development which can only be delivered at the scheme's proposed location that are sufficient to outweigh it?

This report will then consider the proposed development under Sections 25 and 37 of the Town and Country Planning (Scotland) Act 1997 (the 1997 Act):

If the proposal is in accordance with the development plan the determination should be to grant planning permission unless material considerations indicate otherwise?

If the proposal is not in accordance with the development plan the determination should be refuse planning permission unless material considerations indicate otherwise?

In the assessment of material considerations this report will consider:

- the Scottish Planning Policy presumption in favour of sustainable development, which is a significant material consideration due to the development plan being over 5 years old;
- equalities and human rights;
- public representations and
- any other identified material considerations.

3.3 Assessment

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

- a) the proposal will have an acceptable impact on the listed building;
- b) the proposal will have an acceptable impact on character and appearance of the conservation area;
- c) the proposal will have any adverse impact on residential amenity;
- d) the proposal will have an adverse impact on road safety;
- e) other material considerations and
- f) public comments have been addressed.

a) Listed Building

Section 59 of the LBCA Act states that in considering whether to grant planning permission for development which affects a listed building or its setting, a planning authority or the Secretary of State, as the case may be, shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. The impact on the setting of surrounding listed buildings needs to be considered.

Although the proposed decking and roof would not be physically attached to the building, the structure is of such a scale and in such proximity to the building, that it would require listed building consent. The proposal would appear as a front extension to the building and cut across the windows of the premises, obscuring important architectural features. It would adversely impact upon the ability to read the 'A' listed building and would detract from its special character.

Similarly, the setting of the building would be impacted. The decking and roof would detract from the setting of the listed group as a whole, extending from 1-23 Elm Row and including 2 Montgomery Street. The proposal would impact on the setting of the listed building by detracting from its special architectural character.

The proposal breaches the requirements of section 59 of the LBCA Act. The proposal is contrary to LDP Policy Env 3 - Listed Buildings Setting and LDP Policy Env 4 - Listed Buildings - Alterations and Extensions.

b) Conservation Area

Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (the LBCA Act) states that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the conservation area. If there is harm to a Conservation Area as a result of development, there is a strong presumption against granting planning permission. This presumption can only be overcome if there are advantages to the scheme at its location which outweigh the harm and justify granting planning permission. If such advantages are found, it is necessary to consider then whether these can only be delivered at the development's particular location.

The New Town Conservation Area Character Appraisal states that Elm Row plays an important role as the entrance to the Conservation Area. The structure, by virtue of its scale, would intrude significantly into the streetscape and create a disjointed and clumsy addition, detracting from the visual quality of the immediate vicinity and the wider appreciation of the townscape. It therefore harms the character and appearance of the Conservation Area, as it impacts on the site's role as an entrance to the New Town. The presumption against granting planning permission is therefore engaged.

The primary advantage to this installation is that it provides additional space for the business to enable social distancing (as a result of the coronavirus pandemic). Its use would help support the business and bring some economic benefit. Nonetheless, the impact would be similar to that of a permanent structure for a quarter of each year, and the benefits do not outweigh the harm identified above. It should be noted that the premises benefit from an existing outdoor seated area.

As a result of this, the proposal does not comply with Section 64 of the LBCA Act as a result of the harm to the character and appearance of the New Town Conservation Area. It fails to comply with Edinburgh Local Development Plan (LDP) Policy Env 6 Conservation Areas - Development.

c) Residential Amenity

Although it is a busy area with a vibrant night-time economy, the addition of a decked and covered outdoor seating area would alter the character of the area through the creation of a formalised arrangement that is conducive to the congregation of groups.

Environmental Protection has objected to the proposal and consider that it could lead to a noise nuisance that would be detrimental to the living standards of local residents. That service has already received noise complaints with regard to the existing arrangement. Discussions between Environmental Protection and Planning explored the potential for a condition to control the use. It is not appropriate to restrict the hours of operation of one part of a premises, with the remainder having different hours of operation. Therefore, a condition is not appropriate.

The proposal is likely to be detrimental to residential amenity and fails to comply with LDP Policies Des 5 Development Design - Amenity and Hou 7 Inappropriate Uses in Residential Areas.

d) Road Safety

Transportation has recommended refusal as the proposal would be detrimental to road safety. The occupancy of a section of footway that forms part of an adopted road would not be supported. The current tables and chairs are removed each night. Furthermore, the presence of a structure on the road would have an adverse impact on various road operations (road maintenance, gully cleaning, gritting, street cleansing, events etc) and obligations (utilities access etc). The structure may also result in restrictions on the footway which is contrary to the Council's Equal Pavements Pledge.

The proposal would be detrimental to road safety.

e) Other Material Considerations

Scottish Planning Policy (SPP) presumption in favour of sustainable development is a significant material consideration due to the development plan being over five years old. The planning system should support economically, environmentally and socially sustainable places by enabling development that balances the costs and benefits of a proposal over the longer term. The aim is to achieve the right development in the right place; it is not to allow development at any cost. SPP sets out thirteen principles of sustainable development. The proposal is assessed against the relevant principles below.

– *giving due weight to net economic benefit*

Although it is acknowledged that there may be economic benefit to the outdoor seating area, this is outweighed by the issues set out above relating to the historic environment, residential amenity and road safety.

– *supporting good design and the six qualities of successful places*

As set out above, the structure is out of keeping with the character of the area. The proposal does not comply with the six qualities of successful places, as it would impact on the ability to move around and due to the potential for nuisance, would not be safe and welcoming.

- *protecting, enhancing and promoting access to cultural heritage, including the historic environment*

The proposal would negatively impact on the character and appearance of the New Town Conservation Area.

- *avoiding over-development, protecting the amenity of new and existing development and considering the implications of development for water, air and soil quality*

The proposal is likely to result in an adverse impact on the amenity of local residents.

The proposal does not comply with the relevant principles of sustainable development as set out in Scottish Planning Policy.

e) Public Comments

Seventy-one letters of representation have been received. Of these, twenty-two object to the proposal, forty-eight are in support and one makes neutral comments.

Material Considerations

- Amenity: this has been addressed in section 3.3(c);
- Design: this has been addressed in section 3.3(b);
- Privatisation of public space: this has been addressed in section 3.3(b);
- Impact on Conservation Area: this has been addressed in section 3.3(b);
- Impact on Listed Buildings: this has been addressed in section 3.3(a);
- Road safety: this has been addressed in section 3.3(d);
- Economic benefits: this has been addressed in section 3.3(e);
- Reduce the spread of COVID 19: this has been addressed in section 3.3(b).

Conclusion

As a result of its location, form and design, the proposal does not comply with Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

The proposal is not acceptable in principle and would be harmful to the New Town Conservation Area and the setting of the A listed building. The proposal is likely to lead to an unacceptable impact on residential amenity and is not acceptable in terms of its impact on road safety. It fails to comply with Local Development Plan policies Env 3, Env 4, Env 6, Des 5, and Hou 7 and associated guidance on Listed Buildings and Conservation Areas as well as the principles of sustainability as set out by Scottish Planning Policy. There are no material considerations that outweigh this conclusion and refusal is recommended.

It is recommended that this application be Refused for the reasons below.

3.4 Conditions/reasons/informatives

Reasons:-

1. The proposal does not comply with Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, LDP Policy Env 3 Listed Buildings - Setting or Env 4 Listed Buildings - Alterations and Extensions as it would adversely impact the special character of the listed building.
2. The proposal does not comply with Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 or LDP Policy Env 6 Conservation Areas - Development as the proposal would not preserve or enhance the special character or appearance of the New Town Conservation Area.
3. The proposal does not comply with LDP Policy Des 5 Development Design - Amenity as it is likely to adversely impact on the amenity of neighbouring properties.
4. The proposal does not comply with LDP Policy Hou 7 Inappropriate Uses in Residential Areas as it is likely to have a materially detrimental effect on the living conditions of nearby residents.
5. The proposal will have a negative impact on road safety as it would result in the occupancy of a section of public footway that forms part of an adopted road.

Financial impact

4.1 The financial impact has been assessed as follows:

There are no financial implications to the Council.

Risk, Policy, compliance and governance impact

5.1 Provided planning applications are determined in accordance with statutory legislation, the level of risk is low.

Equalities impact

6.1 The equalities impact has been assessed as follows:

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

Sustainability impact

7.1 The sustainability impact has been assessed as follows:

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

Consultation and engagement

8.1 Pre-Application Process

There is no pre-application process history.

8.2 Publicity summary of representations and Community Council comments

Following statutory neighbour notification and advertisement in the Edinburgh Evening News, seventy-one letters of representation have been received.

Background reading/external references

- To view details of the application, go to
- [Planning and Building Standards online services](#)
- [Planning guidelines](#)
- [Conservation Area Character Appraisals](#)
- [Edinburgh Local Development Plan](#)
- [Scottish Planning Policy](#)

**Statutory Development
Plan Provision**

The site is located in the Urban Area, New Town Conservation Area and Leith Walk Town Centre as defined by the adopted Local Development Plan.

Date registered

4 November 2021

Drawing numbers/Scheme

01-02,

Scheme 1

David Givan

Chief Planning Officer

PLACE

The City of Edinburgh Council

Contact: Murray Couston, Planning Officer

E-mail: murray.couston@edinburgh.gov.uk

Links - Policies

Relevant Policies:

Relevant policies of the Local Development Plan.

LDP Policy Env 3 (Listed Buildings - Setting) identifies the circumstances in which development within the curtilage or affecting the setting of a listed building will be permitted.

LDP Policy Env 6 (Conservation Areas - Development) sets out criteria for assessing development in a conservation area.

LDP Policy Des 5 (Development Design - Amenity) sets criteria for assessing amenity.

LDP Policy Hou 7 (Inappropriate Uses in Residential Areas) establishes a presumption against development which would have an unacceptable effect on the living conditions of nearby residents.

LDP Policy Env 4 (Listed Buildings - Alterations and Extensions) identifies the circumstances in which alterations and extensions to listed buildings will be permitted.

Relevant Non-Statutory Guidelines

Non-statutory guidelines 'LISTED BUILDINGS AND CONSERVATION AREAS' provides guidance on repairing, altering or extending listed buildings and unlisted buildings in conservation areas.

Other Relevant policy guidance

The New Town Conservation Area Character Appraisal states that the area is typified by the formal plan layout, spacious stone built terraces, broad streets and an overall classical elegance. The buildings are of a generally consistent three storey and basement scale, with some four storey corner and central pavilions.

Appendix 1

Application for Planning Permission 21/05858/FUL At 23 Elm Row, Edinburgh, EH7 4AA External seating area.

Consultations

Environmental Protection

Environmental Protection is unable to support the application and recommends refusal.

The application concerns proposals for a temporary part covered structure which will house outdoor seating for diners and drinkers. The structure will be located to the front of Joseph Pearce's Bar on the corner of Elm Row and Montgomery Street. The premises already has existing outdoor tables and chairs area for customers. There are residential properties on the upper floors of the tenements above the bar and in the surrounding area.

Complaints have, in the past, been received in relation to noise from customers using the outdoor area, most of those however related to the time when bars were restricted to off sales only. Environmental Protection have concerns that the use of external dining areas, especially late at night, may generate noise leading to complaints from residents and would prefer for the use of the temporary structure not to be permitted beyond 10pm. Following discussions with Planning it is understood that it would not be possible to place time restrictions on only part of the premises, namely the use of the decked external dining area.

As it will not be possible to impose a condition restricting the time of use of the structure and there are no other means to ensure that these structures can't be used during the more sensitive night time hours, Environmental Protection is unable to support this application.

Transportation

The application should be refused.

Reasons:

1. The proposals seek to occupy a section of the footway that forms part of the adopted road;
2. The placement of a structure on a road or footway is considered detrimental to road safety;
3. The presence of a structure on a road or footway has an adverse impact on various road operations (road maintenance, gully cleaning, gritting, street cleansing, events etc) and obligations (utilities access etc);
4. The operation of the facility may result in restrictions on the adjacent footway which is contrary to the Councils Equal Pavements Pledge.

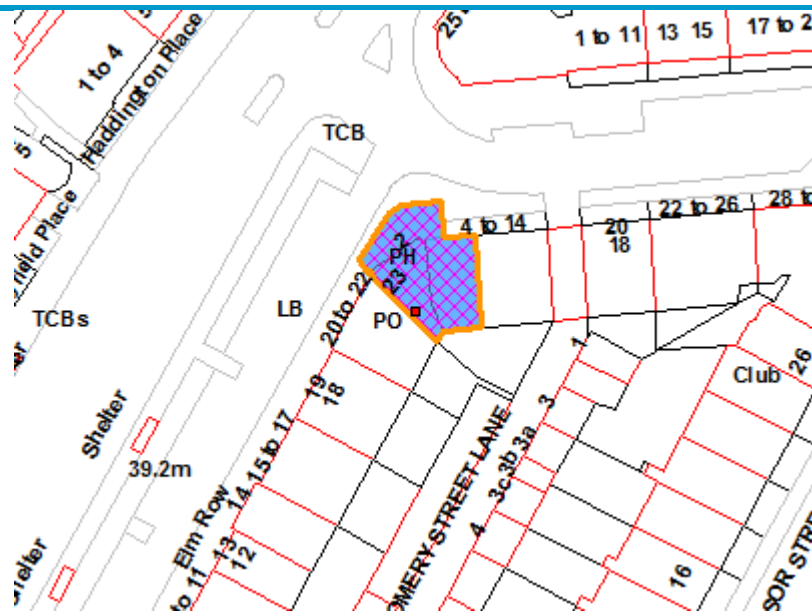
Notes -

1. The Council as Roads Authority has confirmed that written approval, as required under Section 59 of the Roads (Scotland) Act 1984, will not be given for these structures.

Historic Environment Scotland

We have considered the information received and do not have any comments to make on the proposals. Our decision not to provide comments should not be taken as our support for the proposals. This application should be determined in accordance with national and local policy on development affecting the historic environment, together with related policy guidance.

Location Plan



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