

# Development Management Sub-Committee Report

**Wednesday 9 November 2022**

**Application for Planning Permission  
3 King's Place, Edinburgh, EH15 1DU.**

**Proposal: Proposed alterations and extension of a public house with restaurant.**

**Item – Committee Decision  
Application Number – 21/05935/FUL  
Ward – B17 - Portobello/Craigmillar**

## **Reasons for Referral to Committee**

This planning application requires to be considered by Development Management Sub Committee because there are more than six objections and the recommendation is to grant planning permission.

### **Recommendation**

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

### **Summary**

The proposal complies with the relevant policies within the adopted Edinburgh Local Development Plan. The proposal also complies with the sustainability principles set out in SPP. There are no material planning considerations which outweigh this conclusion.

## **SECTION A – Application Background**

### **Site Description**

The site comprises a triangular shaped, flat roofed, public house located to the rear (northern) boundary of the four storey tenement that fronts King's Road. It is located at the eastern end of King's Road and fronts the promenade (King's Place) beyond which lies the sea wall. The property had an external beer garden that was surrounded by a low level wall. The principal elevation of the building had a variable height of between 4- 3 metres and its external walls were finished in render.

The site currently has a large flat roofed extension to the original building, covering the beer garden and other alterations. These were constructed without planning permission. Planning permission was refused for these works at Development Management Sub Committee under application 19/04018/FUL.

Planning enforcement case, 19/00233/EOPDEV, relating to these unauthorised alterations and extensions, remains open and a planning enforcement notice has been served which requires removal of the unauthorised development by March 2023.

It is now proposed that these unauthorised extensions and alterations be removed and the proposed works be carried out in their place.

While the current proposal, if implemented would resolve the breach of planning control, the ability to progress enforcement action and secure compliance with the notice is not prejudiced by determination of this application.

The surrounding area is mixed in character with residential tenements to the south and commercial garages to the north west.

Planning application 22/00203/FUL, for a smaller extension to the public house was recently granted.

### **Description Of The Proposal**

The application is for planning permission for an extension to the existing public house and alterations to the original building in order to enable a larger restaurant element.

The existing building on the site is single storey, with rendered walls and a large selection of windows. It is proposed that the extension also be single storey and will be a mixture of rendered walls and aluminium dark grey framed glazing. The proposed building will encompass the area of the site and will increase the internal floor area of the building from 73sqm to 295sqm. The extension will have a length of approximately 21.5 metres to its principal elevation, it will have a length of approximately 16 metres to its rear and will have a width of approximately 13 metres. It will have a maximum height of approximately 4.6 metres.

### **Supporting Information**

Surface Water Management Plan and Flood Risk Assessment  
Noise Impact Assessment  
Sunlight and Daylight analysis

### **Relevant Site History**

08/03541/FUL  
3 King's Place  
Edinburgh  
EH15 1DU  
New extension to existing building to form new lounge and bar  
Refused  
12 November 2009

19/04018/FUL

3 King's Place

Edinburgh

EH15 1DU

New covered raised floor area forming part of existing outdoor dining area (in retrospect).

Refused

21 February 2020

20/03844/FUL

3 King's Place

Edinburgh

EH15 1DU

New public house and restaurant (with staff accommodation) on site of existing. withdrawn

11 March 2021

22/00203/FUL

3 King's Place

Edinburgh

EH15 1DU

Internal and external alterations.

Granted

21 June 2022

### **Other Relevant Site History**

None.

### **Pre-Application process**

There is no pre-application process history.

### **Consultation Engagement**

Environmental Protection

Flood Planning

Roads Authority

SEPA

Refer to Appendix 1 for a summary of the consultation response.

### **Publicity and Public Engagement**

**Date of Neighbour Notification:** 22 November 2021

**Date of Renotification of Neighbour Notification:** Not Applicable

**Press Publication Date(s):** 26 November 2021;

**Site Notices Date(s):** Not Applicable;  
**Number of Contributors:** 13

## **Section B - Assessment**

### **Determining Issues**

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

Do the proposals comply with the development plan?

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

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

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.

### **Assessment**

To address these determining issues, it needs to be considered whether:

#### **a) The proposals comply with the development plan?**

The Development Plan comprises the Strategic and Local Development Plans. The relevant Edinburgh Local Development Plan 2016 (LDP) policies to be considered are:

- LDP Design Policies Des 1, Des 10 and Des 12.
- LDP Natural Environment Policies Env 12 and Env 21.
- LDP Housing Policy Hou 7.

The non-statutory Edinburgh Design Guidance is a material consideration that is relevant when considering these policies.

### Principle

The application site is located within the urban area, the property is a long established public house/restaurant with a large beer garden. As a result, the extension of the existing pub/restaurant would not constitute a material change of use of the land and is acceptable in principle.

## Design

The existing building on the site is a flat roofed, single storey structure, with a varying roof height. It has been adapted and extended at various times, not always sympathetically, and most recently with the unauthorised extensions and alterations which were refused under application 19/04018/FUL. Previously the property had a number of smaller extensions attached to it, including a Upvc conservatory.

The walls of the proposal shall be finished in render to match the original building, whilst large elements of the new extension shall be finished in glazing, with dark grey frames. Large windows with dark grey frames have been utilised on many of the recently approved flatted developments now present along the promenade. The single storey extension is simple, yet elegant, and is acceptable on this site, as it will continue the form of the original building and will minimise any loss of sunlight/daylight to the residential properties which are located near to the site.

The proposal will modernise and refresh the existing building. The development will improve the frontage of the building which faces the water. It will have no impact upon the public access as the works will be located within the land owned by the applicant.

The applicant has confirmed that there are no security or safety barriers proposed at the new opening windows of the extension, as the floor level is to be 600mm above the promenade level. Building Standards has confirmed that barriers would only be required if the edge of the floor was more than 600mm above the level of ground immediately outside an openable window.

The proposal complies with LDP Policies Des 1, Des 10 and Des 12 in terms of the proposals design and form.

## Neighbouring Amenity

The applicant has submitted a sunlight and daylight analysis. The daylight and sunlight calculations undertaken confirm that there will be no detrimental impact to the vertical sky component levels for existing neighbouring windows or amenity of sunlight to the gardens of properties at 48-52, 54 and 56 Kings Road.

The building currently has a window in its rear elevation which appears to have been rendered up. No new windows or doors to the rear of the site are proposed. No material loss of privacy shall result from the proposal.

A noise impact assessment was submitted as part of the application. Environmental Protection was consulted and confirmed that it had no objections, subject to the inclusion of a condition relating to the mitigation measures proposed. This has been applied. The land that is to be developed is incidental to the lawful use of the overall site and no planning permission would be required for operations, provided they are ancillary to that use. In such circumstances, the development would not introduce activities that would have any additional impact on residential amenity by virtue of noise and disturbance.

The applicant has shown an area within the building in which waste and recycling shall be stored. Waste and recycling will be picked up by private contractor.

The plans submitted do not show any external seating proposed and the agent has confirmed that there are no plans for external seating related to the proposal. There are no planning restrictions that could be imposed to prevent individuals from sitting outwith the boundary of the site.

The proposal will not result in an unreasonable loss of privacy or light to neighbouring properties. It will not be detrimental to neighbouring amenity or character.

The proposal complies with LDP Policies Des 12 and Hou 7.

### Natural Environment

It is noted that there are some trees to the rear of the site, within the gardens of the flatted properties. However, it is likely that root intrusion into the site would be limited given the existing building which is present and the brick boundary wall along the site. None of the trees are covered by a Tree Preservation Order (TPO) and they are not sited within a conservation area. The plans submitted do not show that the trees will need to be removed or pruned.

The application complies with LDP Policy Env 12.

### Flood Protection

A Flood Risk Assessment (FRA) was submitted with the application.

The application was assessed by the Council's Flood Planning service. It has confirmed that it has no objections to the proposal. The proposal was also assessed by the Scottish Environmental Protection Agency (SEPA). It also confirmed that it had no objections.

The proposal complies with LDP Policy Env 21.

### Transport and Road Safety

The application was assessed by the Roads Authority. It confirmed that it had no objections.

## **Conclusion in relation to the Development Plan**

The proposal complies with the relevant policies contained within the adopted Edinburgh Local Development Plan.

### **b) There are any other material considerations which must be addressed?**

The following material planning considerations have been identified:

#### SPP - Sustainable development

Scottish Planning Policy (SPP) is a significant material consideration due to the LDP being over 5 years old. Paragraph 28 of SPP gives a presumption in favour of development which contributes to sustainable development. Paragraph 29 outlines the thirteen principles which should guide the assessment of sustainable development.

The proposal complies with Paragraph 29 of SPP.

### Emerging policy context

The Draft National Planning Framework 4 has been consulted on and has not been adopted. As such, little weight can be attached to it as a material consideration in the determination of this application.

While City Plan 2030 represents the settled will of the Council, it has not yet been submitted to Scottish Ministers for examination. As such, little weight can be attached to it as a material consideration in the determination of this application.

### Equalities and human rights

Due regard has been given to section 149 of the Equalities Act 2010. No impacts have been identified.

Consideration has been given to human rights. No impacts have been identified through the assessment and no comments have been received in relation to human rights.

### Public representations

A summary of the representations is provided below:

#### *material considerations*

- Loss of sunlight/daylight and overshadowing. - this is addressed in section (b) above
- Loss of privacy- this is addressed in section (b) above
- Design, scale and materials inappropriate - this is addressed in section (b) above
- Parking concerns and road safety - This is addressed in section (b) above.
- Noise concerns- This is addressed in section (b) above.
- Storage of waste/recycling- This is addressed in section (b) above.
- -Principle is unacceptable - This is addressed in section (b) above.
- Concerns relating to outdoor seating- This is addressed in section (b) above.

#### *non-material considerations*

- Anti-social behaviour- This is not a planning matter.
- Land ownership and burden concerns- The applicant has submitted a signed land ownership certificate which states all works will be carried out on land within their ownership. Any dispute is a civil matter.

#### *material considerations- support*

- Proposed single storey design is better, will improve run down site. Noted.
- Noise aspects will be improved with more solid design- Noted.

### *Non material considerations- support*

-Questions over land burdens on the site. This is not a planning issue.

### **Conclusion in relation to identified material considerations**

There are no material considerations which indicate the proposal should be refused.

### **Overall conclusion**

The proposal complies with the adopted Edinburgh Local Development Plan. The proposal also complies with the sustainability principles set out in SPP. There are no material planning considerations which outweigh this conclusion.

## **Section C - Conditions/Reasons/Informatives**

The recommendation is subject to the following;

### **Conditions :-**

1. The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which this permission is granted. If development has not begun at the expiration of this period, the planning permission lapses.
2. A detailed specification, including trade names where appropriate, of all the proposed external materials shall be submitted to and approved in writing by the Planning Authority before work is commenced on site; Note: samples of the materials may be required.
3. The noise mitigation measures as shown on drawing No.7b and dated/revised 23rd October 2022 should be installed prior to start of operations on site.

### **Reasons:-**

1. To accord with Section 58 of the Town and Country Planning (Scotland) Act 1997.
2. In the interests of amenity.
3. In the interests of amenity.



## **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.
4. This proposal is located within the SEPA Flood Warning Target Area Portobello Esplanade where SEPA operates a flood warning service. We advise that site users sign up to this free service to receive flood warning messages:  
<https://floodline.sepa.org.uk/floodingsignup/>.

## **Background Reading/External References**

To view details of the application go to the [Planning Portal](#)

**Further Information - [Local Development Plan](#)**

**Date Registered: 18 November 2021**

## **Drawing Numbers/Scheme**

01b, 02a, 03a, 04b, 06c, 07b, 08a, 09a, 10,

Scheme 1

**David Givan**  
**Chief Planning Officer**  
**PLACE**  
**The City of Edinburgh Council**

Contact: Robert McIntosh, Planning Officer  
E-mail: [robert.mcintosh@edinburgh.gov.uk](mailto:robert.mcintosh@edinburgh.gov.uk)

## Summary of Consultation Responses

NAME: Environmental Protection

COMMENT:

I refer to the above and would advise that Environmental Protection has no objections to the proposed development.

The application proposes alterations and an extension to an existing public house. Residential properties are situated to the south and west with Portobello promenade to the north-east.

A noise impact assessment (NIA) has been provided in support of the application which recommends a number of noise mitigation measures designed to ensure that adjacent residential amenity is not impacted by the extension and intensification of use. A condition is recommended below which ensures the noise mitigation measures outlined within the NIA are implemented prior to the start of operations on site (in order to protect residential amenity).

Therefore, Environmental Protection does not object to the application subject to the following condition:

1. The noise mitigation measures as shown on drawing No.7A and dated/ revised 20th April 2022 should be installed prior to start of operations on site.

DATE: 19 October 2022

NAME: Flood Planning

COMMENT: Thank you for sending through the updated information. Due to the scale of the extension and lower vulnerability of the proposed land use, this application can proceed to determination with no further comments from CEC Flood Prevention. We would however note that the applicant should use flood resilient materials and construction methods to improve the resilience of the extension to flooding.

DATE: 19 October 2022

NAME: Roads Authority

COMMENT: No objections to the application.

DATE: 21 October 2022

NAME: SEPA

COMMENT: Thank you for consulting SEPA on planning application 21/05935/FUL. We have no objection to this planning application on the grounds of flood risk.

The site is outwith the fluvial and coastal functional floodplains based on the SEPA Flood Maps. You can view the SEPA Flood Maps and find out more about them at [Flood Maps | SEPA - Flood Maps | SEPA](#)

The approximate 1 in 200-year flood level is 3.95mAOD based on calculations using the Coastal Flood Boundary Method. This is a still water level which does not account for the effects of wave action, climate change, funnelling or local bathymetry. The recommended sea level rise for the area is 0.86m by 2100 based on the latest UK climate change predictions published in 2018.

This allowance, plus a minimum freeboard allowance of 0.6m to account for uncertainties and the effects of wave action means that we would recommend that all development on the site is limited to land which is higher than 5.41m AOD.

The Flood Risk Assessment notes in Section 2.3 that site levels are approximately 5m AOD.

We are satisfied that flood resilience has been considered in the design and the new build area of the unit is to be elevated 0.6m above existing finished floor levels (FFL). The Flood Risk Assessment has provided additional information in the form of surge levels which were found to be higher than the site level.

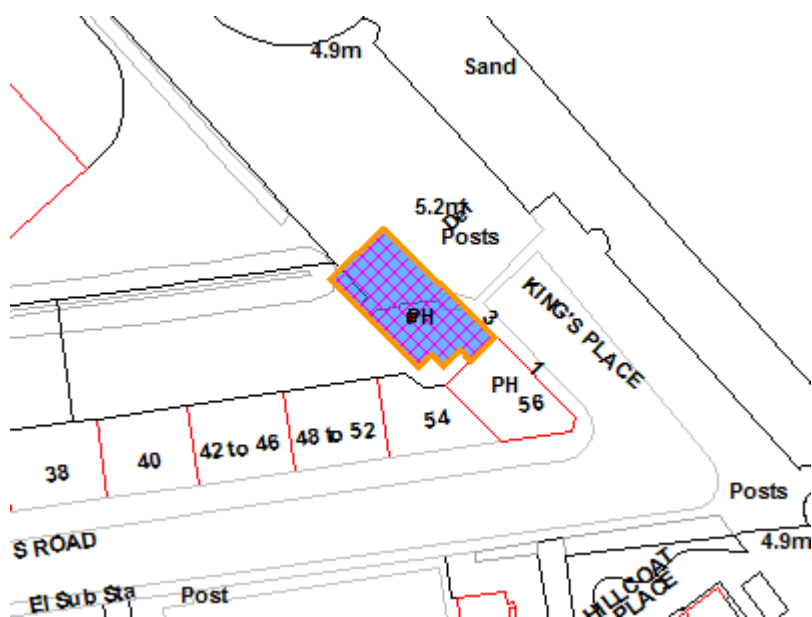
This proposal is located within the SEPA Flood Warning Target Area Portobello Esplanade where SEPA operates a flood warning service. We advise that site users sign up to this free service to receive flood warning messages:

<https://floodline.sepa.org.uk/floodingsignup/>.

DATE: 19 October 2022

The full consultation response can be viewed on the [Planning & Building Standards Portal](#).

## Location Plan



© Crown Copyright and database right 2014. All rights reserved. Ordnance Survey License number 100023420