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**Decision date: 24 October 2022**

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACTS  
DEVELOPMENT MANAGEMENT PROCEDURE (SCOTLAND) REGULATIONS 2013**

New decking area for external tables and chairs including steel cladding, portable oak barrel planters with toughened glass sound diffusers, 2 parasols with 4m cover and brass lighting.

At 1 Commercial Street Edinburgh EH6 6JA

**Application No: 22/02836/FUL**

**DECISION NOTICE**

With reference to your application for Planning Permission registered on 8 June 2022, this has been decided by **Local Delegated Decision**. The Council in exercise of its powers under the Town and Country Planning (Scotland) Acts and regulations, now determines the application as **Refused** in accordance with the particulars given in the application.

Any condition(s) attached to this consent, with reasons for imposing them, or reasons for refusal, are shown below;

**Conditions:-**

**Reasons:-**

1. The proposal is contrary to LDP policy Env 6 and Section 64 of the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997. The does not preserve or enhance the character and appearance of the Leith Conservation Area.
2. The proposal is contrary to LDP policy Hou 7 and the Council's Non-Statutory Guidance for Business as it has a detrimental impact on the amenity of neighbouring residents.

Please see the guidance notes on our [decision page](#) for further information, including how to appeal or review your decision.

Drawings 01-04, represent the determined scheme. Full details of the application can be found on the [Planning and Building Standards Online Services](#)

The reason why the Council made this decision is as follows:

The proposal will unduly impact the character of the neighbourhood and will result in an unreasonable loss of public space. The proposal is not acceptable in principle and does not accord with the Local Development Plan. There are no material considerations which outweigh this conclusion.

This determination does not carry with it any necessary consent or approval for the proposed development under other statutory enactments.

Should you have a specific enquiry regarding this decision please contact Murray Couston directly at [murray.couston@edinburgh.gov.uk](mailto:murray.couston@edinburgh.gov.uk).



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

## NOTES

1. If the applicant is aggrieved by the decision to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within three months beginning with the date of this notice. The Notice of Review can be made online at [www.eplanning.scot](http://www.eplanning.scot) or forms can be downloaded from that website. Paper forms should be addressed to the City of Edinburgh Planning Local Review Body, G.2, Waverley Court, 4 East Market Street, Edinburgh, EH8 8BG. For enquiries about the Local Review Body, please email [localreviewbody@edinburgh.gov.uk](mailto:localreviewbody@edinburgh.gov.uk).

2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.

# Report of Handling

**Application for Planning Permission  
1 Commercial Street, Edinburgh, EH6 6JA**

**Proposal: New decking area for external tables and chairs including steel cladding, portable oak barrel planters with toughened glass sound diffusers, 2 parasols with 4m cover and brass lighting.**

**Item – Local Delegated Decision  
Application Number – 22/02836/FUL  
Ward – B13 - Leith**

## **Recommendation**

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

## **Summary**

The proposal will unduly impact the character of the neighbourhood and will result in an unreasonable loss of public space. The proposal is not acceptable in principle and does not accord with the Local Development Plan. There are no material considerations which outweigh this conclusion.

## **SECTION A – Application Background**

### **Site Description**

The application site is an extremely narrow cobbled section of Commercial Wharf. The site is currently operating as a car park and an external seating area for the adjacent restaurant situated within 1 Commercial Street.

The restaurant is the ground floor of a Victorian building in a prominent location on the west side of the Water of Leith opposite the Shore in Leith. It stands on the corner of Commercial Street and Commercial Wharf. Commercial Street forms part of the primary coast road around the north of the city. Commercial Wharf is a setted cul-de-sac leading to a converted warehouse to the immediate south.

The building is listed category B, and is surrounded by other listed buildings.

### **Description Of The Proposal**

Planning permission is sought for a decking area for external tables and chairs including steel cladding, portable oak barrel planters with toughened glass sound diffusers, 2 parasols with 4m cover and brass lighting.

### **Supporting Information**

A planning statement has been submitted.

### **Relevant Site History**

19/04799/FUL

1 Commercial Street

Edinburgh

EH6 6JA

New decking area for external tables and chairs including a parasol with 4m cover, portable planters with perspex sound diffusers (in retrospect)

Refused and Enforced

6 December 2019

### **Other Relevant Site History**

### **Consultation Engagement**

Environmental Protection

### **Publicity and Public Engagement**

**Date of Neighbour Notification:** 24 October 2022

**Date of Advertisement:** 17 June 2022

**Date of Site Notice:** 17 June 2022

**Number of Contributors:** 7

## **Section B - Assessment**

### **Determining Issues**

Due to the proposed development falling within a conservation area, this report will first consider the proposals in terms of Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997:

- Is there a strong presumption against granting planning permission due to the development conflicting with the objective of preserving or enhancing the character or appearance of the conservation area?
- 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):

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 harm the character or appearance of the conservation area?**

The proposals are of a detrimental design and form which does not reflect a permanent sense of place. These structures form highly incongruous developments which detract from the quality of the streetscape and disrupt the degree of separation between the waterfront and the traditional listed building.

The proposal does not preserve or enhance the character and appearance of the Leith Conservation Area.

### **Conclusion in relation to the conservation area**

The proposal does not have regard to the desirability of preserving or enhancing the character or appearance of the conservation area. The proposal is not acceptable with regards to Section 64 of the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997.

### **b) 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 Environment policy Env 6
- LDP Housing policy Hou 7

The non-statutory 'Listed Buildings and Conservation Area' guidance is a material consideration that is relevant when considering policy Env 6. The non-statutory 'Guidance for Businesses' is a material consideration that is relevant when considering policy Hou 7.

## Conservation Area

Edinburgh Local Development Plan policy Env 6 highlights the importance of preserving the character and appearance of the conservation area. In addition, the nonstatutory Guidance for Businesses advises that proposals should be architecturally compatible in design, scale and materials with the character of the conservation area.

The proposals are of a detrimental design and form which does not reflect a permanent sense of place. These structures form highly incongruous developments which detract from the quality of the streetscape and disrupt the degree of separation between the waterfront and the traditional listed building.

The proposal does not preserve or enhance the character and appearance of the Leith Conservation Area. The proposal is contrary to LDP policy Env 6.

## Residential Amenity

Policy Hou 7 of the (LDP) states that developments, including changes of use, which will have a materially detrimental effect on living conditions of nearby residents will not be permitted.

The proposal involves the active utilisation of an outdoor area for customers to eat and drink in. Although sound diffusers have been proposed to mitigate the impacts of the proposal on neighbouring premises, the extensive level of provision for customers to eat and drink both inside the restaurant and outside in the decked area has the potential to generate significant levels of noise and disturbance for nearby residents residing in the tenement buildings on Commercial Street and Commercial Wharf throughout the course of the day, including into unsociable hours.

The proposal has a detrimental impact on the amenity of neighbouring residents and does not comply with LDP Policy Hou 7.

## Road Safety

The addition of outdoor seating shall not significantly alter the intensity of the premises current use. There are no road safety concerns from the proposed use.

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

The proposal does not comply with the Local Development Plan.

### **c) 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 does not comply with Paragraph 29 of SPP.

### Emerging policy context

The Draft National Planning Framework 4 has been consulted on but has not yet 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*

- impact on conservation area: this has been addressed above;
- impact on amenity: this has been addressed above;

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

The proposal is not acceptable with regards to the above.

### **Overall conclusion**

The proposal will unduly impact the character of the neighbourhood and will result in an unreasonable loss of public space. The proposal is not acceptable in principle and does not accord with the Local Development Plan. There are no material considerations which outweigh this conclusion.

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

The recommendation is subject to the following;

### **Reasons**

1. The proposal is contrary to LDP policy Env 6 and Section 64 of the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997. The does not preserve or enhance the character and appearance of the Leith Conservation Area.



2. The proposal is contrary to LDP policy Hou 7 and the Council's Non-Statutory Guidance for Business as it has a detrimental impact on the amenity of neighbouring residents.

### **Background Reading/External References**

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

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

**Date Registered:** 8 June 2022

### **Drawing Numbers/Scheme**

01-04

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

## Appendix 1

### **Consultations**

NAME: Environmental Protection

COMMENT: No objections

DATE:

The full consultation response can be viewed on the Planning & Building Standards Portal.

# Comments for Planning Application 22/02836/FUL

## Application Summary

Application Number: 22/02836/FUL

Address: 1 Commercial Street Edinburgh EH6 6JA

Proposal: New decking area for external tables and chairs including steel cladding, portable oak barrel planters with toughened glass sound diffusers, 2 parasols with 4m cover and brass lighting.

Case Officer: Local1 Team

## Customer Details

Name: Ms A Smith

Address: Giles Street Edinburgh

## Comment Details

Commenter Type: Neighbour-Residential

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: I firmly object to this on the basis that Hemingway's is an appalling custodian of this public area; their previous temporary structure proves that point. Hemingway's had no regard for the area and no care for the environment with broken glass everywhere, commercial bins not being emptied and litter strewn all over, empty gas bottles hanging over the Water of Leith and so on. Even the demolishing of that illegal structure has resulted in construction rubbish left in piles for days and nobody can be bothered to clear it up. I have got photo's to back all this up.

I would like to highlight that this is a public area and I would like to see public benches here as it is a great viewing point over the water of Leith, and especially the nest under the bridge. This will enable residents and visitors to enjoy a better quality of life, as public spaces are a scarcity in densely populated Leith (one of the five aims and strategy points of the Edinburgh Local Development plan).

In terms of delivering the Edinburgh Local Development Plan, it states that (Policy Del 3 Edinburgh Waterfront): "the provision of open space in order to meet the needs of the local community, create local identity and a sense of place" - by providing public benches this is delivering on that policy. Policy Des 10 Waterside Development states that : "They have considerable potential to enhance adjacent development by offering recreational value" - so unless you are a paying customer of Hemingway's, recreational value will NOT be provided by this structure.

This is a public space in a conservation area, not a private space. Please keep it public and allow residents and visitors to enjoy this area looking over the Water of Leith.

# Comments for Planning Application 22/02836/FUL

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Case Officer: Local1 Team

## Customer Details

Name: Mr Zack Graham

Address: 67/30 Giles Street Edinburgh

## Comment Details

Commenter Type: Neighbour-Residential

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: I strongly object to this planning application based on three points:

1. When the structure was in place, they did not maintain it in good order, showed complete disregard for the local environment, allowing rubbish to overflow, broken glass to be left unswept, and used gas bottles for their heaters to be stored precariously at the edge of the dockside/riverside wall. When demolishing the structure, they have left the materials in piles for days with no sign of it being cleared. They have proven themselves to be poor custodians of this public space
2. This area of Leith has historic interest, and I don't think it is appropriate for such a structure to be imposed on the historic environment for commercial gain. It is also a public space so should be freely accessible. The historic nature of the area and free public access needs to be maintained. A structure built here would not meet the requirements of the Edinburgh Local Development Plan - Policy Del 3 Edinburgh Waterfront, which states: "the provision of open space in order to meet the needs of the local community, create local identity and a sense of place". Nor would it meet the requirements of Policy Des 10 Waterside Development, which states that permission will be granted where proposals: "where appropriate, maintains, provides or improves public access to and along the water's edge", as only paying customers of Hemingways will have access. Therefore, this is not public access to the waterside
3. Hemingway's have already built an illegal structure on the site, with no planning permission, which they operated from for well over a year, and when they did apply for planning permission this was rejected, as was their appeal. This shows that they have a complete disregard for the planning process, the local residents, and the historic environment

# Comments for Planning Application 22/02836/FUL

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Case Officer: Murray Couston

## Customer Details

Name: Mr Matthew Dale

Address: 6/20 Commercial Wharf Edinburgh

## Comment Details

Commenter Type: Neighbour-Residential

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: Parking is currently extremely limited with no disabled spaces for my wife and I and this new decking would take up much needed parking space.

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Case Officer: Local1 Team

## Customer Details

Name: Miss Karen Ross

Address: 30 Sandport Street Edinburgh

## Comment Details

Commenter Type: Neighbour-Commercial

Stance: Customer made comments neither objecting to or supporting the Planning Application

Comment Reasons:

Comment: Please confirm the building of said structure will not effect access to the side street that leads to the car park at the Cooperage during business hours 7am - 4pm - This is used daily to empty commercial waste from several business properties, This has been an issue in the past so I wish to highlight.

# Comments for Planning Application 22/02836/FUL

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Case Officer: Murray Couston

## Customer Details

Name: Ms C Mainland

Address: 11/6 Rennie's Isle EDINBURGH

## Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: Despite what the applicant states, efforts to remove the previous unauthorised structure were not begun until well after this application was made. Demolition began on 12 June and a very large and unsightly pile of rubble and rubbish remains to this day. This calls into question Hemingway's commitment to the look and heritage of the quayside and the assurances of better quality contained in the application narrative.

In ruling against a recent planning appeal (20/05546/LBC), the Reporter alluded to the desirability of preserving the setting of historic buildings, and the importance of boundary treatments in defining their character. ...."design qualities can include the sense of enclosure provided, along with height and visual permeability." She particularly commented on the Leith dockside character of openness.

Hemingway's application concerns a dockside space within the Leith conservation area. I feel that permitting an enclosed seating area would remove the open character of the dockside, blocking views and setting a precedent for other such structures.

I oppose this application.

To: Murray Couston  
From: Claire Devlin, Environmental Protection

Date: 11 July 2022

## **TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997**

22/02836/FUL | New decking area for external tables and chairs including steel cladding, portable oak barrel planters with toughened glass sound diffusers, 2 parasols with 4m cover and brass lighting. | 1 Commercial Street Edinburgh EH6 6JA

Environmental Protection has no objections to the proposed development.

The application proposes a new decking area for external tables and chairs including a parasol for external dining associated with an existing restaurant and bar. The agent for the application has confirmed that there are no residential properties immediately overlooking the application site from Commercial Wharf. The application premises already has an existing, smaller seating area for restaurant guests to use adjacent to the Water of Leith on Commercial Wharf and this has been in use by diners since 1995.

Environmental Protection has no complaints of noise on record for the duration of use of the dining and drinking area.

The nearest residential properties with a line of sight to the external dining area are situated around 70 metres away across the Water of Leith at the Shore so there is a low level of likelihood that noise will impact upon the amenity of those properties.

The application proposes to increase the size of the dining and drinking area although in terms of noise production, the increase is unlikely to significantly generate more noise from that which can already occur. Therefore, Environmental Protection is of the opinion that existing arrangements could continue to be utilised by the proprietor (active monitoring by restaurant staff/owner and the premises' licensing obligations) to ensure that the new larger outdoor area does not cause noise to impact upon residential amenity.

Based on there being an existing external dining and drinking area associated with an existing restaurant and that the increase in the area appears modest, Environmental Protection do not object to the application.

Should you wish to discuss the above please contact me on 0131 469 5685.