

Development Management Sub-Committee Report

Wednesday 24 January 2024

**Application for Planning Permission
68 Inverleith Row, Edinburgh, EH3 5LT.**

**Proposal: S42 application for non-compliance with condition No. 1 of
planning permission 22/03124/FUL.**

**Item – Committee Decision
Application Number – 23/06424/FUL
Ward – B05 - Inverleith**

Reasons for Referral to Committee

In accordance with the statutory scheme of delegation, the application has been referred for determination by the Development Management Sub-committee as it has been requested by a Councillor.

Recommendation

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

Summary

The proposal does not comply with the relevant policies within the Edinburgh Local Development Plan and the relevant Guidance in that it would have an unacceptable impact on amenity. No material considerations would outweigh this decision.

SECTION A – Application Background

Site Description

The application site relates to a ground-floor commercial premises on the East side of Inverleith Row at its junction with Eildon Street. The property does not form part of a listed building but is within the Inverleith Conservation Area.

Description of the Proposal

The Section 42 application is for the non-compliance with condition No. 1 of planning permission 22/03124/FUL.

Condition 1

That cooking operations on the premises shall be restricted to the use of a toaster, single panini sandwich machine, soup tureen and one microwave oven only; no other forms of cooking shall take place without the prior written approval of the planning authority.

Supporting Information

Application Justification

Relevant Site History

22/03124/FUL
68 Inverleith Row
Edinburgh
EH3 5LT

Retrospective consent sought for change of use from retail shop unit (Class 1) to coffee shop /cafe, (Class 3 restricted use), including outdoor seating areas. Ancillary Class 1 retail use to be retained as a bookshop.

Refused

28 October 2022

Other Relevant Site History

No other relevant site history

Pre-Application process

Pre-application discussions took place on this application.

Consultation Engagement

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

Publicity and Public Engagement

Date of Neighbour Notification: 24 November 2023

Date of Renotification of Neighbour Notification: Not Applicable

Press Publication Date(s): 1 December 2023

Site Notices Date(s): 28 November 2023

Number of Contributors: 16

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?

Section 42 of the Town and Country Planning (Scotland) Act 1997 (the Act) relates to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.

On such an application the planning authority shall consider only the question of the conditions subject to which planning permission should be granted and

- (a) if they decide that planning permission should be granted subject to conditions differing from those subjects to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly.
- (b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.

If an application under Section 42 of the Act is granted it creates a new planning permission with a new default time period for implementation unless otherwise determined. Accordingly, the proposals also require to be determined under Sections 25 and 37 of the Act.

Having regard to the legal requirement of Section 24(3), in the event of any policy incompatibility between National Planning Framework 4 (NPF4) & Edinburgh Local Development Plan 2016 (LDP) the newer policy shall prevail.

Do the proposals comply with the development plan?

Therefore, consideration shall be given to the proposed change to the condition and any other conditions attached, in particular whether:

- i) the proposed change to the condition would result in a development that is in accordance with the development plan; or

- ii) an alternative condition or conditions would result in a development that is in accordance with the development plan; and
- iii) there are any material considerations that outweigh the conclusions in respect of i) and ii) above.

Assessment

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

a) The proposals impact on the character or appearance of the conservation area?

The Inverleith Conservation Area Character Appraisal emphasises the predominance of Georgian, Victorian and Edwardian villas and terraces which form boundaries to extensive blocks of public and private open space. The villa streets are complemented by a profusion of mature trees, extensive garden settings, stone boundary walls and spacious roads. The villas are in a considerable variety of architectural styles, unified by the use of local building materials.

No external alterations are proposed. The works would not have a detrimental impact on the character and appearance of the conservation area.

Conclusion in relation to the conservation area

The proposal is acceptable with regards to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 in that it would preserve the character and appearance of the conservation area.

b) The proposals comply with the development plan?

National Planning Framework 4 (NPF4) was adopted by the Scottish Ministers on 13 February 2023 and forms part of the Council's Development Plan. NPF4 policies supports the planning and delivery of Sustainable Places, Liveable Places and Productive Places and are the key policies against which proposals for development are assessed. Several policies in the Edinburgh Local Development Plan (LDP) are superseded by equivalent and alternative policies within NPF4. The relevant policies to be considered are:

- NPF 4 Policies 1, 7 and 14.
- LDP Housing Policy Hou 7.

The non-statutory Guidance for Businesses is a material consideration that is relevant when considering policies.

Principle

The principle of this Section 42 application is to remove Condition 1 that was attached to planning permission 22/03124/FUL. The purpose of condition 1 was to ensure the protection of neighbouring residential amenity. The condition restricted the range of cooking equipment that could be used, as the application did not propose to use a ventilation system that would expel cooking effluvia to a suitable height.

This application seeks to remove the condition and continue to operate as existing, with equipment proposed as follows: an oven and a hob.

As will be assessed below, the proposed removal of this condition would have the potential to have a detrimental impact on neighbouring residential amenity and for this reason the proposal would be unacceptable in principle.

This is contrary to NPF4 Policy 14 and LDP Policies Des 5, Hou 7 and would have a neutral impact in terms NPF4 Policy 1.

Amenity

Environmental Protection was consulted in relation to the application and could not support the proposal by virtue of the likely detrimental impact on residential amenity. Environmental Protection further states that the Service has previously received a number of past complaints in relation to the premises from odours affecting surrounding residential properties. The Environmental Protection Service is sufficiently concerned that the unrestricted operation of the premises, in its current or future operations, could have a negative impact on neighbouring residential amenity and does not support the application to remove condition 1 from the premise without a suitable ventilation strategy.

Following the overturned decision by the Local Review Body, the applicant has written to the planning authority requesting to use equipment falling outwith the restrictions imposed within condition 1. Furthermore, the applicant has obtained signed petitions from local residents and a KC's opinion that sets out reasoning and justification for the use of the existing equipment which falls outwith the restrictions as stated within condition 1.

The Planning Authority responded by stating that "In the absence of a suitable ventilation strategy and an updated NIA, the Council, including Environmental Protection, has serious concerns in relation to the use of the additional equipment, due to the possible negative impact the appliances may have on residential amenity. Whilst it is acknowledged that no complaints have been received from neighbouring residents, the Council would be unable to control the type of food prepared: were the appliances to be permitted, the impact of cooking effluvia from the operations could increase, with potentially adverse effects on residential amenity. For this reason, the Planning Authority does not approve of the use of an oven and hob in these premises."

The applicant has gathered significant local support for the continued operation of the business in its current form and argues that the current uses do not impact on the immediate amenity of neighbours. Previous discussions have also identified the use of personal permissions. Whilst the relevant circular (Planning Circular 4/1998: the use of conditions in planning permissions) on the imposition of conditions includes reference to the use of personal permissions, such conditions restricting occupancy to a particular occupier should only be used when special planning grounds can be demonstrated and where the alternative would normally be refusal of permission. Planning permission runs with the land and it is seldom desirable to provide otherwise while there are no strong compassionate or other grounds, to suggest the use of a personal permission is appropriate. The circular advises that permission personal to a company is generally inappropriate.

Although it could be argued that the current operations do not cause a significant impact to neighbouring residential amenity, the Council, as planning authority, would not be able to ensure that residential amenity was suitably protected if the operator or nature of the business changed in the future. The intensification of cooking operations, without a suitable ventilation strategy, would no longer be practically enforceable by the relevant authorities upon the removal of existing restrictions to cooking equipment, and could lead to a detrimental impact on neighbouring residential amenity. The applicant has not demonstrated that there are special planning grounds that would justify the use of a personal permission and such an option is not deemed appropriate by the Council.

The overarching reason for the imposition of condition 1 was to ensure that neighbouring amenity is safeguarded in the future, and the Council is entitled to conclude that the application could effectively have a detrimental impact on residential amenity. The application to remove condition 1 should be refused for that reason.

This is contrary to NPF4 Policy 14 and LDP Policies Des 5, Hou 7

Conclusion in relation to the Development Plan

The proposal would be contrary to NPF4 Policy 14 and LDP Policies Des 5, Hou 7

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

The following material planning considerations have been identified:

Emerging policy context

On 30 November 2022 the Planning Committee approved the Schedule 4 summaries and responses to Representations made, to be submitted with the Proposed City Plan 2030 and its supporting documents for Examination in terms of Section 19 of the Town and Country Planning (Scotland) Act 1997. At this time 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

16 comments were received (Support).

material considerations

Principle: this is addressed in section b).

Community benefit: this is addressed in section b).

Conclusion in relation to identified material considerations.

The proposals do not raise any issues in relation to other material considerations identified.

Overall conclusion

The application is acceptable with regard to Sections 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

The proposal does not comply with the National Planning Framework 4, the Edinburgh Local Development Plan and the Council's non-statutory guidance by virtue of its detrimental impact on amenity. There are no other 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 the Local Development Plan Policy Hou 7 in respect of Inappropriate Uses in Residential Areas, as they proposal does not demonstrate that it would protect amenity.
2. The proposal would be contrary to NPF4 Policy 14 (Liveable Places), which seeks to protect amenity, as the removal of condition No. 1 of planning permission 22/03124/FUL, could detrimentally impact on residential amenity.

Background Reading/External References

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

Further Information - Local Development Plan

Date Registered: 14 November 2023

Drawing Numbers/Scheme

01

Scheme 1

David Givan
Chief Planning Officer
PLACE
The City of Edinburgh Council

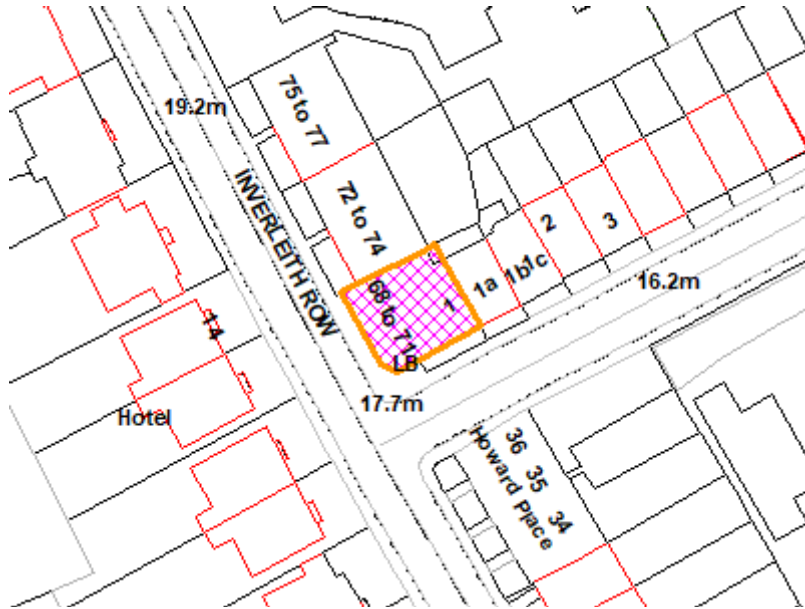
Contact: Adam Gloser, Planning Officer
E-mail: adam.gloser@edinburgh.gov.uk

Appendix 1

Summary of Consultation Responses

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