

Development Management Sub-Committee Report

Wednesday 17 April 2024

**Application for Planning Permission
181 St John's Road, Edinburgh, EH12 7SL**

Proposal: Section 42 Application to Vary Conditions 04, 05, 06, 07, and 09 and to delete condition 08 of Planning Permission 18/02831/FUL. Mixed use development incorporating residential development (Class 9 and Sui Generis flats) together with commercial floorspace (including Class 1, 2 and 3) and hot food takeaway (Sui Generis), car parking and associated works (amended).

**Item – Committee Decision
Application Number – 23/07342/FUL
Ward – B06 - Corstorphine/Murrayfield**

Reasons for Referral to Committee

This application has been referred to the Development Management Sub-committee as the financial contributions for education to be secured via a legal agreement are in excess of £250,000.

Recommendation

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

Summary

This is an application under Section 42 of the Town and Country Planning (Scotland) Act 1997 that seeks to vary conditions. The proposed changes to Conditions 06 (retail requirement), 07 (drainage), 08 (junction re-design) and 09 (junction re-design implementation) are acceptable. The proposed changes to Conditions 04 and 05 (archaeology) are not acceptable and therefore will remain as per original wording.

As the effect of granting permission for a Section 42 is to create a separate permission there is need to attach the remaining conditions from the previous approval.

The application is acceptable with regards to Section 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. The proposal is acceptable in terms of retail provision, transport and drainage, complying with National Planning Framework 4 and Edinburgh Local Development Plan. There are no other material considerations which outweigh this conclusion.

SECTION A – Application Background

Site Description

The site is 0.56 hectares and is located on the south side of St John's Road, east of the junction with Manse Road. The site is currently vacant brownfield land, with demolition granted under Conservation Area Consent (Ref: 18/02829/CON), which was initiated on 11 September 2023.

The site is located in the Corstorphine Town Centre as defined in the Edinburgh Local Development Plan. The surrounding area is mixed use with a commercial presence on St John's Road and a residential character on Manse Road. The site is bound by the Manse and its curtilage to the south. The Manse is a large detached dwelling set in a generous garden with mature trees. Manse Road is a one-way street where vehicles travel north onto St John's Road. There are two category C listed buildings located opposite the site, the Harp Hotel at 114-116 St John's Road (LB reference number: LB44757) and St Ninian's Church (LB reference number: LB44758).

Description Of The Proposal

The application is made under Section 42 of the Town and Country Planning (Scotland) Act 1997 and seeks to vary the wording of conditions 4, 5, 6, 7 and 9, and delete condition 8 of planning permission 18/02831/FUL - as set out below:

Condition 4

Existing wording:

No development shall take place on the site until the applicant has secured and implemented a programme of archaeological work (excavation, reporting & analysis and publication) in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the Planning Authority.

Proposed wording:

No above ground construction works shall take place on the site until the applicant has secured and implemented a programme of archaeological work (excavation, reporting & analysis and publication) in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the Planning Authority.

Condition 5

Existing wording:

Prior to the commencement of construction works on site:

- a) A site survey (including intrusive investigation where necessary) must be carried out to establish, either that the level of risk posed to human health and the wider environment by contaminants in, on or under the land is acceptable, or that remedial and/or protective measures could be undertaken to bring the risks to an acceptable level in relation to the development; and
- b) Where necessary, a detailed schedule of any required remedial and /or protective measures, including their programming, must be submitted to and approved in writing by the Planning Authority.

- c) Any required remedial and/or protective measures shall be implemented in accordance with the approved schedule and documentary evidence to certify those works shall be provided for the approval of the Planning Authority.

Proposed wording:

Prior to the commencement of above ground construction works on site:

- a) A site survey (including intrusive investigation where necessary) must be carried out to establish, either that the level of risk posed to human health and the wider environment by contaminants in, on or under the land is acceptable, or that remedial and/or protective measures could be undertaken to bring the risks to an acceptable level in relation to the development; and
- b) Where necessary, a detailed schedule of any required remedial and /or protective measures, including their programming, must be submitted to and approved in writing by the Planning Authority.
- c) Any required remedial and/or protective measures shall be implemented in accordance with the approved schedule and documentary evidence to certify those works shall be provided for the approval of the Planning Authority.

Condition 6

Existing wording:

A minimum of one of the four shop units as shown on drawing 5D should remain in Class 1 use, unless agreed otherwise in writing by the Planning Authority.

Proposed wording:

A minimum of one of the four shop units as shown on drawing 5D should remain in Class 1A use, unless agreed otherwise in writing by the Planning Authority.

Condition 7

Existing wording:

No development shall take place on the site until the applicant has submitted full details of the proposed drainage measures, including the Sustainable Urban Drainage Systems, to the Planning Authority for approval in writing.

Proposed wording:

No above ground construction works shall take place on the site until the applicant has submitted full details of the proposed drainage measures, including the Sustainable Urban Drainage Systems, to the Planning Authority for approval in writing.

Condition 8

Existing wording:

No development shall take place on the site until the applicant has submitted for approval of the Planning Authority, the re-design of the junction at Manse Road and St John's Road as defined in the Council's drawing titled 'Manse Rd and St John's Road - Active travel improvement plan'.

Proposed to be deleted.

Condition 9

Existing wording:

The applicant shall implement the agreed re-design of the junction at Manse Road and St John's Road prior to occupation.

Proposed wording:

The applicant shall implement the agreed re-design of the junction at Manse Road and St John's Road as shown in drawing 'A8 / Manse Road Active Travel Improvements' dated 15th January 2019 prepared by City of Edinburgh Council prior to occupation unless otherwise agreed in writing with the Council.

Relevant Site History

22/04607/OBL

181 St John's Road

Edinburgh

EH12 7SL

Application for the Modification of Planning Agreement (Section 75) associated with planning permission 18/02831/FUL. Remove clauses to provide on site affordable housing and replace these with clauses seeking to make an off-site financial contribution as the construction costs of delivering the existing consent are non-viable for affordable housing developers.

Refused

20 December 2023

18/02831/VARY

181 St John's Road

Edinburgh

EH12 7SL

Non-Material Variation application for 18/02831/FUL.

VARIED

8 June 2022

18/02831/FUL

181 St John's Road

Edinburgh

EH12 7SL

Mixed use development incorporating residential development (Class 9 and sui generis flats) together with commercial floorspace (including Class 1, 2 and 3) and hot food takeaway (sui generis), car parking and associated works. (Amended).

Granted

11 March 2020

18/02829/CON

181 St John's Road

Edinburgh

EH12 7SL

Complete Demolition in a Conservation Area.

Granted

9 May 2019

Other Relevant Site History

Pre-application discussions are on-going for further development on this site and a PAN has been approved for a Care Home (Ref: 24/00149/PAN).

Pre-Application process

There is no pre-application process history.

Consultation Engagement

Flood Planning

Archaeology

Waste Services

SEPA

Transport Planning

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

Publicity and Public Engagement

Date of Neighbour Notification: 3 January 2024

Date of Renotification of Neighbour Notification: Not Applicable

Press Publication Date(s): 12 January 2024

Site Notices Date(s): 9 January 2024

Number of Contributors: 1

Section B - Assessment

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?

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 subject 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 harm the listed building or its setting?

The following HES guidance is relevant in the determination of this application:

- Managing Change: Setting

The architectural quality and more appropriate town centre scale of the proposed development will improve both the appearance of St John's Road and the definition of the junction with Manse Road at this location. In this respect, it is considered that the

proposed development will improve the setting of both listed buildings, possibly more so St Ninian's Church where the more defined junction will better frame the off-axial view.

The proposed development will not be detrimental to the setting of the Category C Listed Harp Hotel and St Ninian's Church.

Conclusion in relation to the listed building

The proposal is acceptable with regards to Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 in that it would preserve the setting of the listed building.

b) The proposals harm the character or appearance of the conservation area?

The Corstorphine Conservation Area Character Appraisal refers to the application site as being developed in the 1960s, establishing St John's Road as an important local shopping centre. The uniformity of materials, sandstone buildings with slate roofs, are crucial in establishing the conservation area's architectural character.

The proposed development is of appropriate architectural quality and relates in mass, scale, outline, materials and character to the existing village fabric, as well as the high street of St Johns Road. Furthermore, the proposed commercial and residential uses will maintain the balance of uses which contribute to the character 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.

c) 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 Policy 7o) and 22c)
- LDP policies Env 21, Ret 3, Ret 9 and Del 1.

The non-statutory 'Listed Buildings and Conservation Area' guidance is a material consideration that is relevant when considering NPF 4 Policy 7.

Archaeology

NPF4 Policy 7o) aims to protect and preserve archaeological remains in situ wherever possible, with developers providing an evaluation of the archaeological resource at an early stage.

Condition 4 and 5 require the undertaking of a programme of archaeological works and a site survey during all groundbreaking works. The Councils Archaeology Service has confirmed that a WSI has been agreed with AOC Archaeology in March 2023. However, as further works are still required both of these planning conditions remain live and should not be varied as it would not cater for all related ground works such as services and landscaping which could have an archaeological impact.

Furthermore, it is noted that given the potential time lapse since the agreement of the earlier WSI it is recommended that if the works are delayed beyond March 2024 that an updated WSI may be required. Similarly, if a new archaeological company should be contracted to undertake the work then this would be regarded as a material alteration requiring the agreement of a new WSI.

The proposal does not comply with NPF Policy 7o) and therefore, the wording of condition 4 and 5 are not permitted to be varied and will remain the same as per the original planning consent (Ref: 18/02831/FUL).

Use Class

LDP Policies Ret 3 (Town Centres) and Ret 9 (Alternative Use of Shop Units in Defined Centres) supports proposals for a good mix of retail development in town centres.

Corstorphine Town Centre Supplementary Guidance (2017) states that 181-195 St John's Road is located within a defined frontage where no more than one third of the total number of units in the frontage should be in non-shop use. The previous Report of Handling (Ref: 18/02831/FUL) states that 'In order to comply with this, a minimum of one shop unit should be in Class 1 use'.

Since the approval of the previous application, Use Class 1 (Shops) and Use Class 2 (financial, professional and other services) have been amalgamated into a single Use Class 1A (Shops, financial, professional and other services), under the Town and Country Planning (General Permitted Development and Use Classes) (Scotland) Miscellaneous Amendment Order 2023. These changes came into effect on 31 March 2023.

Therefore the rewording of Condition 6 to refer to Class 1A use is acceptable and complies with LDP Ret 3 and 9.

Flooding

LDP Policy Env 21 (Flood Prevention) states that planning permission will not be granted for development that would increase a flood risk or be at risk of flooding itself.

NPF 4 policy 22c) (Flood risk and water management) states that development proposals will not increase the risk of surface water flooding.

The proposed change to condition 7 seeks to change the wording which would result in the submission of full details of proposed drainage measures prior to above ground construction works commencing, opposed to prior to development.

The Council's Flooding Team have been consulted on this and have no concerns, therefore the wording of Condition 7 can be altered to the proposed wording.

Transport

A Public Life Street Assessment was carried out for Corstorphine Town Centre in June 2017 and highlighted problems with the narrow pavements and unsafe pedestrian movements at Manse Road. The results of this were included in the Corstorphine Town Centre Supplementary Guidance. The intensification of use on this site would exacerbate this problem and therefore the Roads Authority requested that the junction is re-designed to improve pedestrian movement, via Condition 8 and 9 of the original consent.

The redesign of the junction at Manse Road and St Johns Road has since been submitted and agreed with the Planning Authority and therefore the deletion of Condition 8 is acceptable. Condition 9, discussed below, will secure the implementation of these works.

Furthermore, the rewording of Condition 9 which seeks to refer to the agreed drawing 'A8/ Manse Road Active Travel Improvements' dated 15 January 2019 is acceptable. This refers to the approved Drawing 02.

Other considerations

Education Contributions

LDP Policy Del 1 ensures that suitable infrastructure is provided to facilitate new development.

The Section 75 legal agreement for the original application (Ref: 18/02831/FUL) secured an education contribution comprising of £158,008 for infrastructure and £21,972 for the land. This was assessed against the education infrastructure actions identified in the 2018 Supplementary Guidance (SG), which are no longer appropriate to mitigate the cumulative impact of development that would be anticipated if this proposal progressed because the costs in the SG have significantly increased.

On 19 April 2023 the Planning Committee approved the Edinburgh Local Development Plan: Action Programme 2023 which set out the latest pupil generation rates which are used to assess the cumulative impact of housing developments across the learning estate.

To mitigate the cumulative impact of development that would be anticipated if this proposal and other urban area sites progressed, the proposed development is therefore required to make a contribution towards the delivery of the following actions based on the 'per house' and 'per flat' rates for the appropriate Zone. Based on 29 flats (the two one-bedroom flats are excluded) and four houses, a contribution of £232,611 is required for the Primary infrastructure, £211,574 for the Secondary infrastructure and £21,972 for the Primary land.

This results in a total contribution towards education of £466,157. As a section 42 application creates a new planning permission, this will be secured through a suitable legal agreement and the infrastructure costs subject to indexation at the time of payment.

Affordable Housing

The requirements for the delivery of 25% Affordable Housing remain unaltered and a legal agreement to secure this provision will be required for the new grant of planning permission.

The proposed changes do not result in any further change to the proposal and does not engage assessment of any further NPF4 or LDP policies.

Conclusion in relation to the Development Plan

The proposal complies with the National Planning Framework 4 and Local Development Plan.

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

The following material planning considerations have been identified:

Emerging policy context

On 5 April 2024 the Planning and Environmental Appeals Division published its report into the examination of the Proposed City Plan 2030 and supporting documents in terms of Section 19 of the Town and Country Planning (Scotland) Act 1997. The Council is currently considering the recommendations and modifications required to the Proposed City Plan 2030. It is the intention that the modifications will be considered by the Council before the end of June 2024. At this time in the context of the consideration of this particular application limited weight can be given to the relevant policies of City Plan 2030 until the proposed modifications have been fully considered.

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

One objection was received which objected to the level of parking within the scheme, which does not form part of this proposal.

Conclusion in relation to identified material considerations

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

This is an application under Section 42 of the Town and Country Planning (Scotland) Act 1997 that seeks to vary conditions. The proposed changes to Conditions 06 (retail requirement), 07 (drainage), 08 (junction re-design) and 09 (junction re-design implementation) are acceptable. The proposed changes to Conditions 04 and 05 (archaeology) are not acceptable and therefore will remain as per original wording.

As the effect of granting permission for a Section 42 is to create a separate permission there is need to attach the remaining conditions from the previous approval.

The application is acceptable with regards to Section 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. The proposal is acceptable in terms of retail provision, transport and drainage, complying with National Planning Framework 4 and Edinburgh Local Development Plan. There are no other material 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. Prior to the commencement of the construction of the superstructure or above ground works, sample panels, to be no less than 1.5m x 1.5m, shall be produced, demonstrating each proposed external material and accurately indicating the quality and consistency of future workmanship, and submitted for written approval by the Planning Authority.
3. The approved site landscape scheme shall be implemented within six months of occupation of the development, or a revised timescale as agreed by the Planning Authority.
4. The implemented landscape scheme shall thereafter be maintained by the applicants and their successors for five years in accordance with the approved landscape maintenance strategy. This shall include the replacement of any trees which fail to survive for whatever reason to ensure its establishment in accordance with the approved landscape scheme.
5. No development shall take place on the site until the applicant has secured and implemented a programme of archaeological work (excavation, reporting & analysis and publication) in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the Planning Authority.
6. Prior to the commencement of construction works on site:

a) A site survey (including intrusive investigation where necessary) must be carried out to establish, either that the level of risk posed to human health and the wider environment by contaminants in, on or under the land is acceptable, or that remedial and/or protective measures could be undertaken to bring the risks to an acceptable level in relation to the development; and

b) Where necessary, a detailed schedule of any required remedial and /or protective measures, including their programming, must be submitted to and approved in writing by the Planning Authority.

c) Any required remedial and/or protective measures shall be implemented in accordance with the approved schedule and documentary evidence to certify those works shall be provided for the approval of the Planning Authority.

7. A minimum of one of the four shop units as shown on drawing 5D should remain in Class 1A use, unless agreed otherwise in writing by the Planning Authority.

8. The applicant shall implement the agreed re-design of the junction at Manse Road and St Johns Road as shown in drawing A8/ Manse Road Active Travel Improvements dated 15th January 2019 prepared by City of Edinburgh Council prior to occupation unless otherwise agreed in writing by the Council.

9. The following noise protection measures to the proposed residential units, as defined in the Robin Mackenzie Partnership 'Environmental Noise Assessment' report (Ref R-8102-RRM3-RGM), dated 3 May 2018, shall be carried out in full and completed prior to occupation of the residential units:

- Glazing units with a minimum insulation value of 8.8/20/12.8mm double glazing should be installed for the external residential doors and windows on the St John's Road and Manse Road facades.

10. Prior to occupation, the mechanical ventilation, inlets, outlets, and ducting, as show on drawing 35 shall be fully installed and implemented.

11. Prior to occupation, the extract flue and ventilation system serving the class 3 use and capable of 30 air changes per hour, as shown on drawing 36 shall be implemented.

Reasons

1. To accord with Section 58 of the Town and Country Planning (Scotland) Act 1997.

2. In order to ensure the adequacy of external building materials.

3. In order to ensure that the approved landscaping works are properly established on site.

4. In order to ensure that the approved landscaping works are properly established.

5. In order to safeguard the interests of archaeological heritage.

6. To ensure the site is suitable for redevelopment.
7. In order to ensure compliance with the Corstorphine Town Centre Supplementary Guidance.
8. To safeguard public safety.
9. In order to safeguard the amenity of neighbouring residents and other occupiers.
10. In order to safeguard the amenity of neighbouring residents and other occupiers.
11. In order to safeguard the amenity of neighbouring residents and other occupiers.

Informatives

It should be noted that:

1. A new legal agreement is required and must be signed before planning permission is granted.

Revised Education contributions have been calculated as follows:

- Primary Infrastructure: £232,611;
- Secondary Infrastructure: £211,574; and
- Primary Land: £21,972.

Affordable Housing:

- 25% on-site provision.

2. The development hereby permitted shall be commenced no later than the expiration of three years from the date of this consent.

3. 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.

4. For the duration of development, between the commencement of development on the site until its completion, a notice shall be: displayed in a prominent place at or in the vicinity of the site of the development; readily visible to the public; and printed on durable material.

5. 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.

6. In accordance with the Council's LTS Travplan3 policy, the applicant should consider developing a Travel Plan including provision of pedal cycles (inc. electric cycles), secure cycle parking, public transport travel passes, a Welcome Pack, a high

quality map of the neighbourhood (showing cycling, walking and public transport routes to key local facilities), timetables for local public transport.

7. Any works affecting an adopted road must be carried out under permit and in accordance with the specifications. See Road Occupation Permits http://www.edinburgh.gov.uk/downloads/file/1263/apply_for_permission_to_create_or_alter_a_driveway_or_other_access_point

8. 100% of the car parking spaces shall have individual 7KW, Type 2 electric vehicle charging points installed and operational prior to occupation.

9. The applicant must ensure that when the proposed junction improvements are completed at Manse Road and St John's Road, that the Split Cycle Offset Optimisation Technique (SCOOT) system is linked and operational.

10. Noise from new plant must not exceed NR25 within the nearest noise sensitive receptors, with windows slightly open for ventilation.

11. This application will be subject of a Section 75 obligation to capture all of the mitigation measures identified by the original determination (Ref: 18/02831/FUL) and including any new or revised provision as a result of the subsequent changes from NPF 4.

Background Reading/External References

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

Further Information - Local Development Plan

Date Registered: 21 December 2023

Drawing Numbers/Scheme

01-02

Scheme 1

David Givan
Chief Planning Officer
PLACE
The City of Edinburgh Council

Contact: Nicola Orr, Planning Officer
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Appendix 1

Summary of Consultation Responses

NAME: Flood Planning
COMMENT: No objection.
DATE: 20 February 2024

NAME: Archaeology
COMMENT: No support for changing the wording of Condition 4 or 5 and these should remain as per on the original consent.
DATE: 16 January 2024

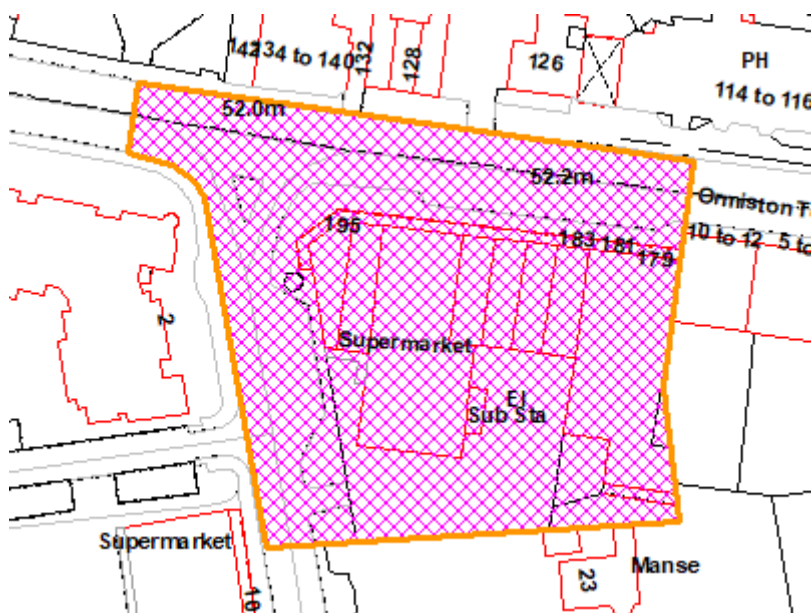
NAME: Waste Services
COMMENT: Further dialogue ongoing with agent.
DATE: 5 January 2024

NAME: SEPA
COMMENT: No objection.
DATE: 23 January 2024

NAME: Transport Planning
COMMENT: No objection. Agree to re-design of the junction as shown in Drawing 02.
DATE: 18 January 2024

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

Location Plan



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