

Development Management Sub-Committee Report

Wednesday 23 October 2024

**Application for Planning Permission
254 Leith Walk, Edinburgh, EH6 5EL**

Proposal: Change of use from storage and distribution (Class 6) to food, drink, and crafts market (Sui Generis).

**Item – Committee Decision
Application Number – 23/03964/FUL
Ward – B12 - Leith Walk**

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 received more than twenty material representations in support and the recommendation is to refuse planning permission.

Recommendation

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

Summary

The proposal is unacceptable in that it would not accord with the objectives of the Edinburgh Local Development Plan and NPF4, specifically Policies Ret 11 and Hou 7 and NPF 4 Policy 27 as it would have an unacceptable impact on amenity. No material considerations would outweigh this conclusion.

SECTION A – Application Background

Site Description

The application site is an enclosed area of land, approximately 1190sq metres, situated off Leith Walk and Balfour Street. The site is comprised of a vehicular parking area and a single storey warehouse. The site is bound by residential dwellings to the west, south-west, east and north-east. The site is currently used as a storage and distribution centre (Class 6). It was previously used for storage and as a showroom as part of an antique shop.

The site lies on the periphery of the Leith Conservation Area.

Description of the Proposal

The application is for a change of use from a Class 6 (storage and distribution) to a Sui Generis (food, drink, and crafts market). The market would have 18 internal plots and six external plots. It would operate from 09:00-17:30, seven days a week, with the hours of operation increasing until 20:30 during the Festival. The application also proposes external alterations and landscaping to the courtyard area, including cycle storage, an outdoor market space and two parking spaces. The internal alterations would create an area to display art. Access to the site would be gained via Leith Walk and New Orchardfield.

Additional Material

Noise Impact Assessment (NIA).

Relevant Site History

22/04571/FUL
254 Leith Walk
Edinburgh
EH6 5EL

Application for change of use Class 6 storage and distribution to possibly Sui Generis.
withdrawn
16 December 2022

22/06335/FUL
254 Leith Walk
Edinburgh
EH6 5EL

Proposal to apply for change of use from storage and distribution (Class 6) to Sui Generis.
withdrawn
18 May 2023

19/01810/FUL
254 Leith Walk
Edinburgh
EH6 5EL

Demolition of existing warehouse. Erection of residential development comprised of one- and two-bedroom flats, 10no. in total plus associated access and landscaping. Incorporating modern green roofs. (as amended)
Granted
16 December 2020

Other Relevant Site History

No other relevant history.

Pre-Application process

Pre-application discussions took place on this application.

Consultation Engagement

Environmental Protection

Roads Authority

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

Publicity and Public Engagement

Date of Neighbour Notification: 6 September 2023

Date of Renotification of Neighbour Notification: Not Applicable

Press Publication Date(s): 15 September 2023

Site Notices Date(s): 12 September 2023

Number of Contributors: 75

Section B - Assessment

Determining Issues

This report will consider the proposed development under Sections 24, 25 and 37 of the Town and Country Planning (Scotland) Act 1997 (the 1997 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?

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:

- 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?

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:

- LDP Design Policy Des 1
- LDP Housing Policy Hou 7
- LDP Transport Policies Tra 2 and Tra 3
- LDP Developer Contributions Policy Del 1
- NPF4 Policy 1 Climate Change
- NPF4 Policy 13 Sustainable Transport
- NPF4 Policy 14 Design, Quality & Place
- NPF4 Policy 18 Infrastructure First
- NPF4 Policy 27 City, Town and Commercial Centres

The non-statutory Guidance for Businesses and Edinburgh Design Guidance are material considerations that are relevant as part of the assessment.

Principle

The site is within the Urban Area of the Edinburgh Local Development Plan (LDP). Therefore, general plan-wide policies apply. In this case, it is important to consider the context of the application site. While the site is bounded by the Leith Town Centre to the south, the immediate locale is predominantly residential in nature.

The principle of the proposal could be acceptable, insofar as the use as a space to display goods and, sell arts and crafts would create vitality within the location and offer vibrancy in the local community. However, due to the intensification of the use of the land, it would have the potential to have a detrimental impact on neighbouring residential amenity. This is expanded on in greater detail in the Amenity section below. Taking this into consideration, the overall principle cannot be supported as the proposals are contrary to NPF4 Policy 27 and LDP Policy Hou 7.

Scale, Form and Design

The overall design of the proposal would be acceptable; the main external elements consist of additions and landscaping to the courtyard area which would have an appropriate relationship with the site and would not have a detrimental impact on the character and appearance of the surrounding area. The external alterations (landscaping, planters, cycle parking) would be subservient in design and would consist of materials that would be sympathetic to the site and surrounding area.

Amenity

The application site is almost fully enclosed by the residential dwellings along Balfour Street, Leith Walk and New Orchardfield. These properties are a mix of four-storey traditional tenements and more recent two and three-storey units. The very close proximity of some of these dwellings to the site is a key element when assessing neighbouring amenity.

The supporting statement, submitted as part of the application, states that the operations would avoid noise generating activities, such as amplified music and the use of equipment that would have the potential to cause noise and disturbance. It also highlights that there will be no cooking on site and that food will be re-heated only, thereby avoiding the potential for cooking effluvia to enter neighbouring properties. Acoustic improvements would also be carried out to the building to reduce the level of noise transference.

Whilst the use of the building for a food and drink and arts and crafts market could potentially be subject to sufficient controls through the imposition of conditions, the Council would be unable to exercise an appropriate degree of control over the activities that would take place in the open area, including customers and staff accessing the building. There is no way of restricting the level of individuals' voices or on the number of people entering and exiting the site, and such activities could, dependent on circumstances, create a significant degree of disturbance to residents occupying the dwellings that are adjacent to the application site.

Environmental Protection was consulted in relation to the application and assessed the accompanying NIA. That service could not support the proposal, as the NIA identified various concerns relating to noise and nuisance that would require a number of measures to be attached to the permission as conditions. Having regard to the circular on Planning conditions, it has been determined that they would be unenforceable.

The proposal would be contrary to NPF4 Policy 27 and LDP Policy Hou 7 by virtue of the uses having the potential to adversely affect neighbouring residential amenity.

Transport Issues

The Council, as Roads Authority, was consulted in relation to the proposal and returned no objections providing conditions and/or informatives were attached to a grant of planning permission. Please see the consultations section for the recommended conditions/informatives.

Given the central location of the site, it is unlikely that it would generate significant private car journeys; the proposal would have a neutral impact when assessed against NPF 4 Policy 1.

This would comply with NPF4 Policies 1, 13 and 18 and LDP Policies Tra 2, Tra 3 and Del 1.

Conclusion in relation to the Development Plan

The proposal is contrary to NPF4 Policy 27 and LDP Policy Hou 7 by virtue of the potential detrimental impact it would have on neighbouring residential amenity.

b) 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. On 27 June 2024, the Council accepted the recommendations and modifications required to the Proposed City Plan 2030.

On 10 September 2024 Scottish Ministers issued a Direction under section 20(5) of the Town and Country Planning Scotland Act 1997 that City of Edinburgh Council consider modifying the proposed City of Edinburgh Local Development Plan 2, City Plan 2030 as detailed within the annex to the direction. The required modifications are being reviewed and will be considered at a further meeting of the Planning Committee and then further Full Council.

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 adoption of the plan.

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

76 representations were received (25 in objection, 51 in support). A summary of the representations is provided below.

material considerations - objections

Noise and nuisance; this is addressed in section a).

Detrimental impact on character of area; this is addressed in section a).

non-material considerations - objections

Precedent: each application is required to be considered on its merits.

material considerations - support

Design; this is addressed in section a).

Contributes to the local area; this is addressed in section a).

Contributes to the community; this is addressed in section a).

Conclusion in relation to identified material considerations.

The have been identified and addressed within the report.

Overall conclusion

The proposal is unacceptable in that it would not accord with the objectives of the Edinburgh Local Development Plan and NPF4, specifically LDP Policy Hou 7 and NPF 4 Policy 27, as it would have the potential to have an unacceptable impact on residential amenity. No material considerations would 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 Ret 11 in respect of Food and Drink Establishments, as it would have an unacceptable impact on amenity by virtue of noise mitigation measures being unenforceable.
2. The proposal is contrary to the Local Development Plan Policy Hou 7 in respect of Inappropriate Uses in Residential Areas, as it would have an unacceptable impact on amenity by virtue of noise mitigation measures being unenforceable.
3. The proposal is contrary to NPF4 Policy 27 as it would have an unacceptable impact on amenity.

Background Reading/External References

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

Further Information - [Local Development Plan](#)

Date Registered: 6 September 2023

Drawing Numbers/Scheme

01-09

Scheme 1

David Givan
Chief Planning Officer
PLACE
The City of Edinburgh Council

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Appendix 1

Summary of Consultation Responses

NAME: Environmental Protection

COMMENT: Environmental Protection have assessed all the available supporting information including the Noise Impact Assessment. The noise impact assessment has identified many noise issues that will require a level of mitigation. The applicant was requested to submit further detailed supporting information which has been submitted and reviewed by both Environmental Health and Planning. The level and proposed mitigation measures will not be enforceable therefore it is not possible for Environmental Health to recommend conditions.

Therefore, the level of information provided continues to be insufficient for us to consider supporting the planning application and recommend refusal.

DATE:

NAME: Roads Authority

COMMENT: No objections to the application subject to the following being included as conditions or informatives as appropriate:

1. The applicant should be required to provide 4 Sheffield-style cycle parking spaces for visitors and 2 spaces for staff in a secure and undercover location.
2. The applicant should consider whether the proposed access ramp to the side entrance meets its responsibilities under the Equality Act 2010. An access ramp to the main entrance is considered more appropriate.
3. The applicant will be required to contribute the sum of £20,373 (based on 280m² retail in Zone 1, existing use zero contribution) to the Edinburgh Tram in line with the approved Tram Line Developer Contributions report. The sum to be indexed as appropriate and the use period to be 10 years from date of payment.
4. The April 2024 Building Standards Technical Handbook sets out that electric vehicle charging points are required for all parking spaces. See Mandatory Standard 7.2, Building Standards Non-Domestic Technical Handbook, April 2024.
5. The applicant should note that the proposed development lies on or adjacent to a 'traffic sensitive street' and that this may affect the method and timing of construction, including public utilities - see <https://www.edinburgh.gov.uk/roads-pavements/road-occupation-permits/2>

Note:

The 2 parking spaces for staff / deliveries is considered acceptable.

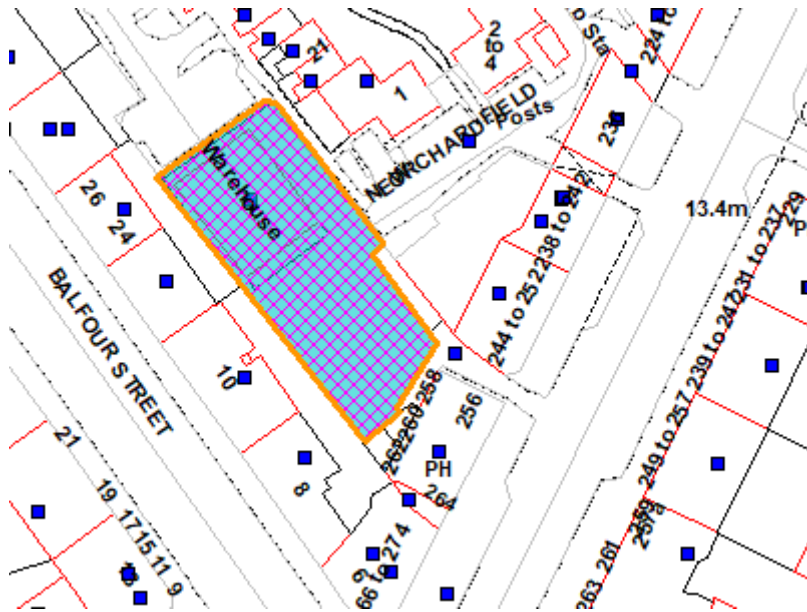
TRAMS - Important Note:

The proposed site is on or adjacent to the operational / proposed Edinburgh Tram. To ensure that work on or near the tramway is carried out safely, it is necessary to obtain authorisation to agree a safe system of work. It is a legal obligation to comply with the Authority to Work (AtW) process whilst working on or near the tramway. See <https://edinburghtrams.com/atw>.

DATE: 4 June 2024

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

Location Plan



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