

Development Management Sub Committee

Wednesday 19 February 2020

**Application for Planning Permission 19/04018/FUL
at 3 King's Place, Edinburgh, EH15 1DU.
New covered raised floor area forming part of existing
outdoor dining area (in retrospect).**

Item number

Report number

Wards

B17 - Portobello/Craigmillar

Summary

The application is contrary to the development plan and non-statutory guidance. The proposal is not an appropriate scale, form and design for this location.

The proposal will have a detrimental impact upon the amenity of neighbouring properties. There are no material considerations that outweigh this conclusion.

Links

[Policies and guidance for this application](#)

LDPP, LDES12, LDES01, LDES05, NSG, NSGD02,

Report

Application for Planning Permission 19/04018/FUL. at 3 King's Place, Edinburgh, EH15 1DU. New covered raised floor area forming part of existing outdoor dining area (in retrospect).

Recommendations

1.1 It is recommended that this application be Refused for the reasons below.

Background

2.1 Site description

The site comprises a triangular shaped 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 premises include land to the north, part of the promenade, which is under the Council's ownership. It is surrounded by a low wall. The area is used as a beer garden.

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

2.2 Site History

15 Aug 2008 - Enforcement investigation into the unauthorised erection of a conservatory and an extension to the 'beer garden' by erection of a wall (application number 08/00495/EOPDEV).

No further action was taken as the conservatory was considered acceptable in planning terms and the wall did not require planning permission. The extension to the beer garden was minimal and it was concluded that the Council, as landowner, had control over the 'beer garden' area, both originally and as extended.

12 Nov 2009 - Planning permission refused for extension to form new lounge and bar (application number 08/03541/FUL).

13 May 2010 - Enforcement investigation in relation to display of flags, erection of conservatory and extension of a wall (application number 10/00224/EOPDEV).

No action taken. Erection of conservatory was previously investigated and considered acceptable. The wall did not require planning permission and the extension to the beer garden was concluded as ancillary to the beer garden and had been in long standing use, in excess of 10 years.

Main report

3.1 Description of the Proposal

The application seeks retrospective planning permission for external alterations to the existing commercial property operating as The Boathouse.

The alterations to the original building include installing 150mm vertical stained timber cladding to the external wall replacing the white render, the proposal also includes the replacement of all the windows and the door, and the erection of horizontal timber boarding along the roof of the building, which measures approximately 0.8 metres in height.

The development also includes demolishing the existing glass conservatory and the erection of a timber extension to accommodate customer toilet facilities, accessed via the outdoor area and the existing public house. The extension measures approximately 3.1 metres in height.

A raised timber deck has been installed in the enclosed garden area. On the deck a timber frame structure has been erected to create internal space for seating and an outdoor bar. The overall height of the deck and structure is approximately 3.1 metres. The structure is enclosed to the rear with horizontal timber and a temporary perspex enclosure on the remaining sides. The structure measures approximately 12.5 x 9.6 metres, creating approximately 118 sq.m in floorspace. The space is accessed via steps from the outdoor area with no access from the existing building.

The existing stone boundary wall (painted white) has been clad with timber cladding and a level tabletop formed along the surface.

3.2 Determining Issues

Section 25 of the Town and Country Planning (Scotland) Act 1997 states - Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise.

Do the proposals comply with the development plan?

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

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

3.3 Assessment

To address these determining issues, the Committee needs to consider whether:

- a) the proposal adversely affects the character of the surrounding area in terms of scale, form and design;
- b) there is any adverse impact on neighbouring amenity;
- c) the proposal results in increased flood risk;
- d) the proposal impacts upon pedestrian or road safety and
- e) any public comments raised have been addressed.

a) Scale, form and design

LDP Policy Des 12 (Alterations and Extensions) states that planning permission will be granted for alterations and extensions to existing buildings which:

- a) in their design and form, choice of materials and positioning are compatible with the character of the existing building;
- b) will not result in an unreasonable loss of privacy or natural light to neighbouring properties and
- c) will not be detrimental to neighbourhood amenity and character.

Furthermore, LDP Policy Des 1 (Design Quality and Context) requires development to draw upon positive characteristics of the area and create a sense of place. The policy states that planning permission will not be granted for poor quality or inappropriate design or for proposals that are damaging to the character or appearance of the area around it.

In terms of scale, the height of the extension and the timber structure in the beer garden appear to match the height of the main building. However, the height of this building was altered through the installation of timber boarding and therefore the works exceed the height of the original building, dominating its original character and appearance.

The existing building measures approximately 148 sq.m in floorspace. Whilst the toilet extension replaces the former conservatory, the bar/restaurant structure in the beer garden constitutes a significant addition to the commercial premises equating to an additional 118 sq.m of internal floor space. The garden structure has enclosed a previously open area of hardstanding and informal seating by creating internal accommodation for seating as well as a new bar area. Given this, the development is not subservient in scale to the original building and the works represent overdevelopment of the site, to the detriment of the character of the area.

Additionally, the development allows the area to be utilised all year round as opposed to the former arrangement which would only be utilised in the warmer months due to lack of shelter. As such, the scale and additional bar area constitutes an intensification of use to the detriment of residential properties in the area.

In terms of materials, the development has introduced a stained timber clad finish to the exterior of the existing rendered building, with the extension and garden structure constructed in matching materials. This is not characteristic of the area nor in keeping with the appearance and character of the existing building, which has been diminished by the works. The garden structure has been constructed using a timber frame, horizontal timber planks and uses perspex panels as glazing. This material palette results in a poor quality finish that appears temporary in appearance and has a negative effect on the character of the area.

The installation of timber boarding on the flat roof appears unfinished when viewed from the neighbouring properties. This vertical boarding along with the toilet extension now encloses the neighbouring gardens which were previously relatively open. Whilst this does not impact the immediate outlook given the distance, it has resulted in an unattractive and obtrusive boundary treatment.

Overall, the materials are not appropriate for this site and the works carried out represent incongruous additions that are not sympathetic to the character and appearance of the original building.

In light of the above, the development is contrary to LDP Policy Des 1 and LDP Policy Des 12 in relation to design, scale and materials. The development does not represent an acceptable addition to the site and is detrimental to the character and appearance of the locality.

b) Neighbouring amenity

LDP Des 5 (Development Design- Amenity) requires demonstration that the amenity of neighbouring properties is not affected by development in terms of noise, daylight, sunlight, privacy and immediate outlook. LDP Policy Des 12 particularly requires that development will not result in an unreasonable loss of privacy or natural light to neighbouring properties.

Representations have raised concern with regards to noise disturbance as a result of the development. The raised floor area has a roof, but the sides have been designed to be open, providing little mitigation in terms of noise impacts. Environmental Protection was consulted on the application and confirmed that the City of Edinburgh Council is already in receipt of complaints about this site in relation to noise. Environmental Protection recommends refusal of the application. No mitigation is proposed and therefore the development is not in compliance with LDP Policy Des 5.

Representations have also raised concern with regards to the impact of the development upon the availability of daylight into neighbouring properties. The additional height of the building through the installation of the timber boarding does not result in a significant reduction in the availability of daylight into neighbouring properties. In terms of sunlight, the additional height does not result in harmful overshadowing. As such the works will not adversely impact upon neighbouring amenity in respect to these matters and are in compliance with LDP Policy Des 12 and Des 5.

In terms of privacy, there is no direct window to window overlooking and no outdoor seating looks towards the neighbouring properties. As such, the development does not adversely impact upon the privacy of neighbouring residents, in compliance with LDP Policy Des 12 and Des 5.

LDP Policy Des 5 also states that refuse and recycling facilities be integrated into the design of the development. In this instance, the former area for waste storage has been occupied by the new development and the waste storage has been displaced to the public highway, contrary to the policy requirements.

Overall, the proposal fails to comply with Policy Des 5 in relation neighbouring amenity.

c) Flood risk

The Councils Flood Prevention Team was consulted on the proposal and have raised no issues in respect to the development.

d) Pedestrian and road safety

The Roads Authority was consulted on the development and have responded that it is understood the development has encroached onto the road (footway) which in the absence of the Road's Authority's consent in writing, is considered an obstruction under Section 59 of the Roads (Scotland) Act 1984.

This application does not propose a change of use of the section of land that encroaches the public highway. Land Ownership is not a planning matter and this matter was addressed under previous enforcement investigations.

Representations have raised concern with regards to wooden planters being placed along the boundary of the site. There is no depiction of these planters on the submitted plans and these are therefore not subject to this planning application. This matter would need to be addressed by the Roads Authority as part of the ongoing enforcement case.

e) Public comments

Material Considerations- Objections

- impact upon availability of daylight into neighbouring windows - addressed under Section 3.3b;
- impact upon sunlight - addressed under Section 3.3b;
- appearance of wooden hoarding on roof - addressed under Section 3.3a;
- noise pollution, audible speaking and live music - addressed under Section 3.3b;
- scale of development, now results in a new restaurant and bar without needing to access original bar - addressed under Section 3.3a;
- poor quality materials and temporary appearance and not in keeping with area - addressed under Section 3.3a;
- obstructions to public path caused by planters and metal barriers to create area around the boundary wall which is used to serve drinks - addressed in Section 3.3d and
- size and scale not subservient - addressed under Section 3.3a.

Material Considerations- Support

- has created a new sense of place and attractive place for people to visit;
- improves vitality and benefits the area economically;
- uses sympathetic materials in keeping with the area;
- development has improved noise disturbance as terraced area now covered and quiet; and
- the development has improved the appearance of the formally neglected area and the appearance is better than previous arrangement.

Non-Material Representations

- materials not durable and don't meet sustainability standards - this matter is controlled under separate legislation. A building warrant has been submitted and is pending consideration;
- business is an asset to the community and owners are active in the community and charity events - the applicant's circumstances are not a material planning consideration;
- concern over business's Facebook posts suggesting venue will be used as a live music venue during the Fringe - this matter is not controlled through planning legislation and would require a licence;
- concern that alcohol is being served out with boundary - this matter is not controlled through planning legislation and would require a licence;
- discrepancies on licencing application - this matter is not controlled through planning legislation and would require to be dealt with by Licencing;
- business attracts better clients - the type of client is not a material planning consideration;
- concern raised over neighbouring parked caravans and resultant litter caused by caravans - this matter is not relevant to this application;
- suggestion that the Council should seek Council Tax from neighbouring caravans and clean up the immediate area - this matter is not relevant to this application;
- plans do not show all development that has taken place - this will be addressed through on going enforcement investigation;
- no disabled access to the covered area - this matter is controlled under separate legislation. A building warrant has been submitted and is pending consideration; and
- waste now being stored on public path as result of development - this is a matter for waste services.

Conclusion

The proposal is contrary to LDP Policies Des 1 and Des 12 in relation to design, scale and materials. The proposal is contrary to LDP Policy Des 5 in relation to its impact upon neighbouring amenity. The proposal is an unacceptable addition to the site that adversely affects the appearance and character of the locality and is detrimental to neighbouring amenity. There are no material considerations that outweigh this conclusion and refusal is recommended.

It is recommended that this application be Refused for the reasons below.

3.4 Reasons

Reasons: -

1. The proposal is contrary to LDP Policies Des 1 and Des 12 in relation to design, scale and materials. The proposal is contrary to LDP Policy Des 5 in relation to its impact upon neighbouring amenity. The proposal is an unacceptable addition to the site that adversely affects the appearance and character of the original building and the locality and is detrimental to neighbouring amenity.

Financial impact

4.1 The financial impact has been assessed as follows:

There are no financial implications to the Council.

Risk, Policy, compliance and governance impact

5.1 Provided planning applications are determined in accordance with statutory legislation, the level of risk is low.

Equalities impact

6.1 The equalities impact has been assessed as follows:

The application has been assessed and has no impact in terms of equalities or human rights.

Sustainability impact

7.1 The sustainability impact has been assessed as follows:

This application is not subject to the sustainability requirements of the Edinburgh Design Guidance.

Consultation and engagement

8.1 Pre-Application Process

There is no pre-application process history.

8.2 Publicity summary of representations and Community Council comments

There have been 66 support comments and 10 objection comments received in relation to the development.

Background reading/external references

- To view details of the application go to
- [Planning and Building Standards online services](#)
- [Planning guidelines](#)
- [Conservation Area Character Appraisals](#)
- [Edinburgh Local Development Plan](#)
- [Scottish Planning Policy](#)

Statutory Development Plan Provision	The adopted Edinburgh Local Development Plan.
Date registered	25 September 2019
Drawing numbers/Scheme	01, Scheme 1

David R. Leslie
 Chief Planning Officer
 PLACE
 The City of Edinburgh Council

Contact: Sonia Macdonald, Planning Officer
 E-mail: Sonia.Macdonald@edinburgh.gov.uk Tel:0131 529 4279

Links - Policies

Relevant Policies:

Relevant policies of the Local Development Plan.

LDP Policy Des 12 (Alterations and Extensions) sets criteria for assessing alterations and extensions to existing buildings.

LDP Policy Des 1 (Design Quality and Context) sets general criteria for assessing design quality and requires an overall design concept to be demonstrated.

LDP Policy Des 5 (Development Design - Amenity) sets criteria for assessing amenity.

Relevant Non-Statutory Guidelines

Non-Statutory guidelines Edinburgh Design Guidance supports development of the highest design quality and that integrates well with the existing city. It sets out the Council's expectations for the design of new development, including buildings, parking, streets and landscape, in Edinburgh.

Appendix 1

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Consultations

Roads Authority Issues

The application should be refused:

1. *It is understood that this development has apparently encroached onto the road (footway) which, in the absence of the Roads Authority's consent in writing, is considered an obstruction under Section 59 of the Roads (Scotland) Act 1984.;*

Note:

I. *If this issue can be dealt with through the Planning process, then there would be no objections and the following can be added as an informative:*

a. *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;*

II. *The proposed zero parking is considered acceptable;*

III. *It is also noted that a number of wooden planters have been placed in the proximity of this application site on the adopted road, without the express permission of the Council as the Road's Authority. If these are associated with this proposal, the Applicant should contact the Locality Office to discuss further;*

IV. *The road in question is adopted for maintenance purposes by the Council as "Public Road" as defined in the Roads (Scotland) Act 1984. The ownership of the land underneath is therefore irrelevant.*

Flood Planning comment

There is no surface water management information on the portal for me to review. Given the scale and nature of the development, this application can proceed to determination without the requirement for self-certification information and with no further comments from Flood Planning.

Environmental Protection comment

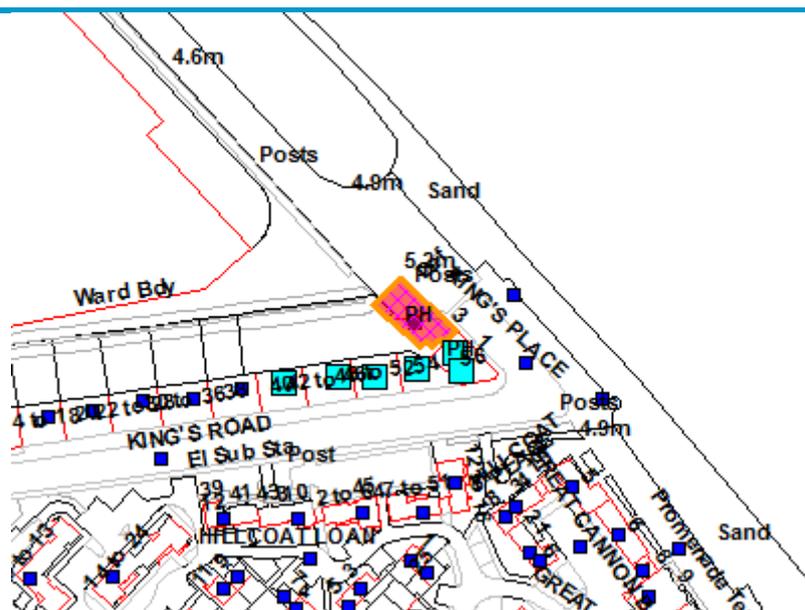
The application site is an outdoor bar area attached to the existing licensed premises at 3 King's Place. The site is overlooked by a row of residential tenement buildings to the south.

Whilst the raised floor area does have a roof, the sides are open, so this roof provides very little mitigation in terms of noise control.

Noise, in particular vocals, from outdoor drinking areas are extremely difficult to modulate and control. There are no mitigation measures, beyond fully enclosing the area, which has not been suggested as part of this application. Nearby residents would likely be subjected to unacceptable levels of noise, and it would be detrimental to residential amenity. City of Edinburgh Council is already in receipt of complaints about this area, in relation to music noise and patrons talking.

Environmental Protection therefore cannot support this application and recommends refusal.

Location Plan



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