

Development Management Sub Committee

Wednesday 31 July 2019

**Application for Planning Permission 18/09995/FUL
At 25 Milton Link, Edinburgh, EH15 3QH
Variation of condition (ii) imposed on planning permission
TP/5/M/2264/85 to enable the sale of food for up to 743
sq.m.**

Item number

Report number

Wards

B17 - Portobello/Craigmillar

Summary

The unit has a current gross retail floorspace of 6,503 square metres and is subject to a condition restricting it to non-food retail. However, a subsequent planning permission allowed for the sale of up to 292 square metres of food retail. This proposal would mean that a total of 743 square metres of the gross retail floorspace, including the previously consented 292 square metres, could be used for the sale of food retail, which is 11% of the total floorspace.

The nature of the proposal is such that it will not have an adverse impact on any nearby town centres, local centres or commercial centres and will not detract from the current provisions at these centres. There will be no impact on the vitality or viability of these centres, and this level of floorspace for food sales would be complementary to the existing retail provision at this existing retail store.

Taking all these issues into account, as well as the supporting information and representations, the proposal is acceptable in terms of LDP Policies Ret 1 and Ret 6, subject to a condition limiting the amount of floorspace for food sales, and a legal agreement pertaining to this.

Links

[Policies and guidance for this application](#)

LDPP, LRET01, LRET06, OTH, NSGD02,

Report

Application for Planning Permission 18/09995/FUL At 25 Milton Link, Edinburgh, EH15 3QH Variation of condition (ii) imposed on planning permission TP/5/M/2264/85 to enable the sale of food for up to 743 sq.m.

Recommendations

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

Background

2.1 Site description

The site is located directly to the east of the A1 Milton Link. The existing building is a retail warehouse with a total floorspace of approximately 10,219 square metres. It has a gross retail floorspace of 6,503 square metres. There is also a fast food concession within the unit. The site lies lower than the A1 link. It is bound to the west by a landscaped area and a footpath which provides a link/access under the A1. The car parking area for this unit lies to the southern half of the site.

The site is currently occupied by The Range, providing a mix of household goods with a small area for confectionery. There are 324 car parking spaces to the south of the store, with a small Costa Coffee takeaway unit located in the car park.

To the east of the site is the existing railway line and the Brunstane station. There is an existing Asda superstore and Fort Kinnaird Retail Park to the southwest of the site on the west side of the A1. Brunstane Primary School is to the east of the site, with residential areas further east, north and west. There is another warehouse unit directly to the south of the site.

2.2 Site History

November 1970 - Outline planning permission was granted for a supermarket and shops (application number: 70/134).

April 1971 - Planning permission was granted for a supermarket and a petrol service station (application number: 71/438).

July 1982 - Application was granted to re-orientate superstore (due to bypass) (application number: 959/82).

1985 - Amendment to S50 agreed by Committee (application number: 1112/85).

May 1986 - Planning permission was granted for the redevelopment of the site for two non food retail warehouses and a garden centre (2264/85). Condition 2 of the planning permission states that 'the premises shall be used for the retail of non food goods and for no other purpose.' The permission was granted subject to a Section 50 Agreement, dated 12 May 1986. This agreement includes restrictions on the premises. The second schedule states that the new buildings shall not be used for the sale of food and that the gross total area of all buildings (excluding any garden centre) shall at no time exceed 70,000sq feet.

2 December 1986 - Planning permission was granted to vary the above consent to enable the two buildings to be merged into a single unit.

March 1987 - Permission was granted to extend the retail warehouse (application number: 87/02370).

June 1988 - Permission was granted to change the use of vacant land to a garden centre for a temporary period of one year to eighteen months (application number: 88/00638).

21 December 1998 - Modification agreed for condition (ii) of planning consent (2264/85) to allow the sale of confectionary and snacks in up to 292 square metres of floorspace (application number: 98/3080/FUL).

10 February 1999 - Planning permission was granted for the non food redevelopment of the existing site to provide replacement retail buildings including a revised site layout. Condition G24 restricted the use for the sale of non food goods only and for no other use within class 1 (application number: 97/03396/FUL).

May 1999 - Planning permission was granted to modify planning permission 2264/85 and 98/03080/FUL for change of use from cafe to cafe with sale of hot food for consumption off the premises (application number: 99/00632/FUL).

18 December 2000 - Planning permission was granted for the provision of a new stockroom (application number: 00/03135/FUL).

A minute of agreement was recorded on 22 May 2001 which varies the original agreement. This states that the 'gross total area (excluding any garden centre) of all buildings on the New Agreement subjects use for retail trading shall at no time exceed 70,000 square feet'.

12 January 2011 - Planning permission was refused for a section 42 application to vary condition (ii) of planning permission 2264/85 to erect 2 non-food retail warehouses and garden centre, variation required to allow for the sale of food from this existing retail unit (application number: 10/01663/FUL).

1 March 2012 - Appeal was dismissed for the section 42 application to vary condition (ii) of planning permission 2264/85 to erect 2 non-food retail warehouses and garden centre, variation required to allow for the sale of food from this existing retail unit (appeal reference: PPA-230-2055).

Main report

3.1 Description Of The Proposal

This is an application made under Section 42 of the Town and Country Planning (Scotland) Act 1997 (as amended) to vary condition (ii) of permission 2264/85.

The application is proposing that the condition be changed to be:

"The premises shall be used for the sale of non-food goods and for no other purpose save that up to 743 square metres can be used for the sale of food."

The applicant has advised that the premises will continue to be occupied by The Range. The application seeks a variation in the permitted ranges of goods in respect of allowing a limited amount of the existing retail space to be used for the sale of food. The proposed parameters are as follows:

- It does not involve the sub-division of the existing unit;
- There will be no separate entrance or exit for customers wishing to buy food items;
- All items will be purchased at the main store entrance/exit; and
- The main range of food goods sold will be frozen products with a limited range of chilled and ambient items.

In addition, there is already planning permission for the sale of food retail for up to 292 square metres, as per planning permission 98/3080/FUL. The current proposal will encompass this already-consented 292 square metres into the total permitted floorspace for food sales. Thus, the overall additional food sale floorspace would be 451 square metres.

A Planning Statement containing retail information of nearby town centres was submitted in support of the application. This is available to view on the Planning and Building Standards Online Service.

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 is acceptable in principle and would it comply with the policies for the location of retail development;
- b) there would be any adverse effect on amenity; and
- c) Issues raised in representations have been addressed.

a) The Principle of the Development

Under section 42 of the Town and Country Planning (Scotland) Act 1997, the Planning Authority can consider whether to amend or remove conditions previously applied to a planning permission. The assessment in this instance is whether the condition restricting the food retail floorspace should be amended to limit the amount of food retail floorspace to 743 square metres.

Since the approval of the existing consent (2264/85) in 1986, several development plans have been adopted. The statutory planning framework and material considerations are in place as if a new application had been submitted.

SPP (Scottish Planning Policy) states that the sequential approach should be used when selecting locations for all retail and commercial uses unless the development plan identifies an exception. Out-of-centre locations should only be considered for uses which generate significant footfall where they have met a number of criteria, including:

- all town centre, edge of town centre and other commercial centre options have been assessed and discounted as unsuitable or unavailable;
- the scale of development proposed is appropriate, and it has been shown that the proposal cannot reasonably be altered or reduced in scale to allow it to be accommodated at a sequentially preferable location;
- the proposal will help to meet qualitative or quantitative deficiencies; and
- there will be no significant adverse effect on the vitality and viability of existing town centres.

The Strategic Development Plan (SESplan 2013) requires new retail development to be assessed using the sequential approach and that retail development should support and promote the network of existing centres. The site does not fall within any of the town centres or other shopping centres identified in SESplan.

In terms of the LDP policies, the proposal is within the urban area, and within these areas, a range of land uses are acceptable provided they are in accordance with other policies in the plan. The reporter noted in the previous appeal decision (PPA-230-2055) that although the site is close to The Jewel/Newcraighall commercial centre, it does not relate well to this centre due to the road infrastructure and the difficult pedestrian connections. The site is also outwith any identified centre and is therefore subject to LDP Policy Ret 6 (Out of Centre Development).

Policy Ret 6 contains four key policy tests which are used to assess this application proposal. These are:

(a) - the proposal will address a quantitative or qualitative deficiency or will meet the needs of an expanding residential or working population within its catchment area:

The Council commissioned a Commercial Needs Study in order to support retail analysis for the City Plan 2030. This study is useful in assessing whether there is a quantitative or qualitative deficiency in the area.

The convenience goods analysis presented in this study forecasts overall expenditure growth, as strong population growth is expected to offset a decline in expenditure per capita. The survey shows that the north, south and east zones each retain around three-quarters of their residents' convenience expenditure. The application site falls within the east zone, where the population projections show an increase from 60,681 to 64,709 by 2028.

However, the convenience retail capacity analysis also suggests that Edinburgh is currently well served by supermarkets and discount food stores. The scope for servicing additional new convenience floorspace over and above the current planning consents will mostly be in the form of trade diversion from existing stores, rather than reliance on spare capacity. Nevertheless, this situation still presents opportunities to improve the quality, range and choice of convenience stores generally.

In terms of deficiencies in existing provision, the applicant asserts that The Range is already an established part of the shopping patterns in the south eastern and eastern parts of the city. The applicant states that the existing restriction on the sale of food prevents the company from updating the store layout and retail offer, commensurate with its national strategy of extending the retail offer within its larger stores. The sale of food within similar discount stores such as B and M and Home Bargains is meeting a market requirement for such products.

Therefore, it is accepted that the retail study identifies that population growth in this area of the city, and the proposal to allow up to 743 square metres of food sales from the existing unit, could reasonably be accommodated at this existing store in order to address this expanding residential population without detriment to the existing town centres. This is in consideration of the fact that there is already permission for up to 292 square metres of food sales, and the additional impact is 451 square metres.

(b) - all potential sites, either within or on the edge of an identified centre have been assessed and can be discounted as unsuitable or unavailable.

A sequential assessment has been completed in the context of The Range's business model, which is mainly based on large stores with a product range of around 65,000 products. The Range stores typically require 5000 square metres of gross floor area and a minimum site requirement of 1.8 hectares.

As part of this proposal, the food (convenience) items will largely comprise frozen goods displayed in cabinets within the main trading area. A limited range of ambient products will also be sold and two chiller cabinets will display a limited range of fresh cheese, meat, dairy and delicatessen products.

According to the supporting information, The Range stores typically serve catchments extending to around a 10 minute drive time. Within this context, only one town centre is located at Portobello. However, the applicant has also examined Dalkeith and Musselburgh within the assessment for the sake of completeness.

There is one commercial centre at Newcraighall/The Jewel, within this catchment. This commercial centre lies immediately to the south of The Range and incorporates the Fort Kinnaird Retail Park. However, there are no available units of adequate size, and consequently this commercial centre is not suitable or available as an alternative site.

There are a limited number of local centres within the catchment. These are too small and tightly constrained by other development to accommodate the size of store required and the applicant has therefore concentrated on the three town centres when looking for alternative available sites.

The retail analysis submitted in support of the application does not identify any appropriate sites within the town centres as there are no units of adequate size to support The Range's business model.

(c) - the proposal will not have a significant adverse effect, either individually or cumulatively with other developments, on the vitality or viability of an existing centre.

The submitted retail information concludes that the development will have no adverse impact on the overall vitality and viability of the existing network of centres. This is based upon the assumption that the scale and location of the sale of these food goods will draw trade from existing large food stores in the area rather than cause a significant adverse impact on the vitality and viability of Edinburgh City Centre or any Town Centres or Local Centres nearby.

This is accepted as The Range is currently an established store within the area and the shopping habits of users of the town centres are unlikely to favour using increased convenience offering of The Range as their main source of shopping.

(d) - the site is or can be made easily accessible by a choice of transport modes and will not add to the length and overall number of shopping trips made by car.

There is good access to the site by rail and bike. There is reasonably good accessibility by bus services within relatively short direct line distances, but actual pedestrian routes to the site from bus stops and nearby housing is less convenient. These routes also have disadvantages. Access from the east is poor for the mobility impaired due to the bridge over the railway. The footpaths from the west and north are poor in terms of community safety due to the lack of natural surveillance from buildings or passing traffic.

It is assumed that the proposal will not generate a noticeable increase in traffic as a result of the proposal. This is on the basis that it would provide the opportunity to undertake a linked trip, and The Range does not anticipate that the range of food products would provide the opportunity for meeting main food shopping needs. Rather, the products would facilitate impulse and some top-up shopping purchases.

Therefore, the estimated increase in the total number of trips that would be generated from the development compared to the estimated trips for the site without selling food is minimal. The junctions in the vicinity of the site have sufficient capacity to cater for the increase and there are no road safety concerns.

In summary, and on balance, the proposal is not contrary to LDP Policy Ret 6.

Although LDP Policy Ret 1 (Town Centres First) states that planning permission will be granted for retail use following a town centres first approach, the existing unit is in established retail use. The increase in the amount of floorspace allowed for convenience sales would not generate a significantly higher footfall than the present situation, and the small amount of convenience sales would be incidental to the overall retail provision at this unit. The unit would operate on a basis similar to other comparable retail units such as B and M and Home Bargains, and on this basis there would be no significant adverse effect on the vitality or viability of existing town centres.

The proposal is therefore acceptable in policy terms, on the basis that the food retail floorspace will be complementary to the existing retail offering. A legal agreement is required in order to restrict the quantum of food retail to 743 square metres.

b) Amenity

The existing unit is not restricted in terms of hours of opening or noise control. The site is also buffered by Milton Link to the west and the railway line to the east.

The current occupier operates the application site with around 380 car parking spaces. This level of parking will remain the same with this new proposal and this application will result in a negligible additional impact on the network. As a result, there will be a negligible impact on air quality.

No amenity issues are raised as a result of the development.

c) Representations

Material Objections

- The proposal would have a negative impact on the vitality and viability of Portobello town centre (addressed in 3.3(a)); and
- There is no need for an increase in retail food sales in the area as there is adequate provision (addressed in 3.3(a)).

Conclusion

The unit has a current gross retail floorspace of 6,503 square metres and is subject to a condition restricting it to non-food retail. However, a subsequent planning permission allowed for the sale of up to 292 square metres of food retail. This proposal would mean that a total of 743 square metres of the gross retail floorspace, including the previously consented 292 square metres, could be used for the sale of food retail, which is 11% of the total floorspace.

The nature of the proposal is such that it will not have an adverse impact on any nearby town centres, local centres or commercial centres and will not detract from the current provisions at these centres. There will be no impact on the vitality or viability of these centres, and this level of floorspace for food sales would be complementary to the existing retail provision at this existing retail store.

Taking all these issues into account, as well as the supporting information and representations, the proposal is acceptable in terms of LDP Policies Ret 1 and Ret 6, subject to a condition limiting the amount of floorspace for food sales, and a legal agreement pertaining to this.

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

3.4 Conditions/reasons/informatives

Conditions:-

1. The premises shall be used for the sale of non-food goods and for no other purpose with the exception of up to 743 square metres that can be used for the sale of food.

Reasons:-

1. In order to limit the sale of food (convenience) retail in accordance with LDP Policies Ret 1 (Town Centres First) and Ret 6 (Out of Centre Development) and to protect the viability and vitality of existing town centres, local centres and commercial centres.

Informatives

It should be noted that:

1. Planning permission shall not be issued until a suitable legal agreement has been agreed in order to restrict the quantum of food retail floorspace to 743 square metres.
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. 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.

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

Following neighbour notification and press advertisement on the 7 December 2018 and 18 January 2019, 30 letters of objection were received.

These are assessed in the main report in the assessment section.

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 site is within the urban area in the Edinburgh Local Development Plan.

Also relevant is the Fort Kinnaird Development Brief (approved 26 May 2005) and the Craigmillar Urban Design Framework 2013.

Date registered

21 November 2018

Drawing numbers/Scheme

01,

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

Contact: Lesley Carus, Senior Planning Officer
E-mail:lesley.carus@edinburgh.gov.uk Tel:0131 529 3770

Links - Policies

Relevant Policies:

Relevant policies of the Local Development Plan.

LDP Policy Ret 1 (Town Centres First Policy) sets criteria for retail and other town centre uses following a town centre first sequential approach.

LDP Policy Ret 6 (Out-of-Centre Development) identifies the circumstances in which out-of-centre retail development will be permitted.

Other Relevant policy guidance

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

**Application for Planning Permission 18/09995/FUL
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Consultations

No Consultations received.

Location Plan



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