

Development Management Sub Committee

Wednesday 4 August 2021

**Application for Planning Permission 21/01222/FUL
At 126 - 130 Raeburn Place, Edinburgh, EH4 1HG
Section 42 Application seeking variation to condition No.9 of
Planning Permission 12/03567/FUL, to allow the use of
acoustic glazing on the elevation fronting onto Comely Bank
Road.**

Item number

Report number

Wards

B05 - Inverleith

Summary

The proposal is an application made under Section s42 of the Town and Country Planning Act; it is for a proposed change to the requirements and wording of condition 9 of planning permission 12/03567/FUL.

The proposal will result in no material change to the external appearance of the building and will preserve the character and appearance of the Inverleith Conservation Area.

The proposal to amend condition 9 will not have a detrimental impact on the living conditions of nearby residents and complies with LDP policy Hou 7. The principle of the use and development has been established under planning permission 12/03567/FUL.

Planning conditions to be attached to the permission shall ensure the development does not have an unacceptable impact on neighbouring residential amenity; condition 9 is updated to reflect this. Informatives include the requirement for a new s75 legal agreement which would be attached to this new planning permission. There are no other material considerations which outweigh this conclusion.

Links

[Policies and guidance for this application](#)

LDPP, LEN06, LHOU07, LDEL01, NSG, NSLBCA, SGDC,

Report

Application for Planning Permission 21/01222/FUL At 126 - 130 Raeburn Place, Edinburgh, EH4 1HG Section 42 Application seeking variation to condition No.9 of Planning Permission 12/03567/FUL, to allow the use of acoustic glazing on the elevation fronting onto Comely Bank Road.

Recommendations

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

Background

2.1 Site description

The site lies to the north side of Comely Bank Road. The development has been recently under construction and is almost complete. Some commercial units on the ground floor are occupied. The building is set back from the main road. There are commercial units with tenemental flats above on the opposite side of Comely Bank Road. The rugby grounds and stadium are directly to the north, with Inverleith Park further beyond this.

There are residential properties along North Park Terrace to the north west. There is an existing public house/ restaurant directly to the east of the site. Portgower Place lies to the east and links through to Inverleith Park. There are some commercial premises with residential above at the first part of Portgower Place.

This application site is located within the New Town Conservation Area.
This application site is located within the Inverleith Conservation Area.

2.2 Site History

31 October 2013 - Conservation area consent was granted for the demolition of part of the existing site boundary wall to Comely Bank Road and North Park Terrace and alterations to Portgower Place (revised scheme 2) (application reference: 12/03567/CON).

2 July 2014 - Planning permission was granted for the erection of stands, clubhouse and facilities, associated commercial, business and retail uses including museum, licensed premises and function space, retail units, alterations to external landscape, car and coach parking, sports pitch realignment, sport floodlighting and alterations to vehicular access points and boundary walls. A condition was imposed on the planning permission (condition 9) which required that the development be completed in accordance with all of the construction and other details specified in sections 7 to 10 in the submitted Noise Impact Assessment (October 2012).

The proposal was subject to a s75 legal agreement which required the following i) Public realm; ii) Pitch upgrade works at Inverleith; ii) Transport infrastructure improvements; and iv) provision for replacement street tree planting to semi-mature woodland as required. (application reference: 12/03567/FUL)

27 February 2017 - Variation approved for non material works (application reference: 12/03567/VARY)

7 May 2019 - Variation approved for non material works (application reference: 12/03567/VAR2)

30 June 2020 - Permission was granted for installation of an additional double glazed door into the existing glass screen at ground floor level (application reference: 20/01853/FUL)

Main report

3.1 Description Of The Proposal

The proposal is an application under section 42 to alter condition 9 of planning approval 12/03567/FUL which proposes potential noise from the first floor front elevation of the building being dealt with by enhanced acoustic glazing instead of the use of room buffers etc.

The applicant has confirmed that the acoustic glazing would be to the same performance glazing already installed along the north facade. It would have a sound insulation of R_w 50 dB and comprises an outer pane of 8.8mm acoustic laminated glass, a 24mm cavity, and an inner pane 12.8mm acoustic laminated glass.

The upper floor uses are proposed to be altered to include a fitness suite, bar and offices instead of the previously approved function suite, bar and offices.

The original approved plans (and subsequent variation 2) proposed that the first floor function suite was to be separated from the Comely Bank Road frontage by other less noisy uses. Sets of door openings were also used to provide separation. These mechanisms to reduce noise were included in the Noise Impact Assessment for the original planning approval, and condition 9 relates/ refers to these specifically in the NIA. The proposed bar areas were also included in the NIA as potentially creating noise from some live music etc.

The proposed bar, fitness suite and break out spaces proposed to the first floor of the building will be mechanically ventilated. The applicant has confirmed that all windows will be permanently locked and only open in the event of an emergency. Also, a noise level limiter will be installed in the bar area which will cut off the power to the sound system if the level exceeds 90dBA.

The applicant states that the access doors to the south facing roof via the bar and break out spaces are for maintenance access only and will be locked. They will only be opened when these areas are not in use to carry out periodic maintenance.

An updated Noise Impact Assessment has been submitted in support of the application.

3.2 Determining Issues

Section 42 of the Town and Country Planning (Scotland) Act 1997 requires that the planning authority must consider only the question of conditions to which planning permission should be granted.

Should planning permission be granted subject to conditions different from those imposed on the previous permission?

Should planning permission be granted unconditionally?

Should planning permission be granted subject to the same conditions resulting in a refusal of planning permission to develop the land without complying with the conditions subject to which planning permission was previously granted?

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.

Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states - special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.

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 s42 application affects the principle of the development
- b) the proposal affects the character or appearance of the conservation area
- c) the proposed changes affect residential amenity
- d) public comments have been addressed

a) Principle of the development

The principle of the development was established under application 12/03567/FUL; this remains extant and the development is almost completed on site.

At the time of determination of the original planning application, the adopted local plan was the Edinburgh City Local Plan. In terms of land designation there is no change in

the now adopted Edinburgh Local Development Plan; the majority of the site is designated as an area of open space and it is adjacent to the Stockbridge Town Centre. There would be no additional S75 requirements as required by policy Del1 (Developer Contributions and Infrastructure Delivery) of the LDP. Contributions have already been paid via the S75 attached to the original planning permission to the total sum of £383,450 for bus stop improvements, TRO contribution, pitch upgrade and public realm works. Since payment, the contribution of £30,000 has been repaid in relation to bus stop improvements as they were no longer required, and £63,948.50 repaid for pitch upgrade works as works carried out were at a cost lower than originally estimated. The proposed new s75 is updated to reflect these changes and would require a total financial contribution of £289,501.50. This would comprise £34,501.50 for pitch upgrade works, £250,000.00 for public realm works and £5,000 for a TRO.

Issues raised relating to parking problems and anti social behaviour on match days cannot be re-visited through this S42 planning application.

b) Character or appearance of the Conservation Area

Section 64(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states: "In exercise, with respect to any buildings or other land in a conservation area, of any powers under any of the provisions in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area."

The installation of the acoustic glazing would not have any impact on the character or appearance of the Inverleith Conservation Area.

c) Amenity of neighbouring property

The proposed change to noise protection measures to the front facade of the first floor of the property needs to be assessed in terms of its potential impact on the amenity of neighbouring residential properties. Local Development Plan policy Hou 7 (Inappropriate uses in residential areas) states that 'Developments, including changes of use, which would have a materially detrimental effect on the living conditions of nearby residents, will not be permitted.'

The planning permission is for a range of uses, and this current proposal indicates the re-arrangement/ relocation of uses on the first floor of the building; bar and function rooms are no longer proposed at first floor level and, instead, a bar and fitness suite are proposed. Condition 9 requires noise control by means of building fabric, location and number of access doors etc. The proposal is to install enhanced acoustic glazing instead as a method of noise control.

The building has permission for stands, clubhouse and facilities, associated commercial, business and retail uses including museum, licensed premises and function space and retail units. The fitness suite proposed on the upper floor would fall within the uses approved at the site.

The main potential adverse noise impact is from amplified music noise from both the bar and fitness suite. The updated Noise Impact Assessment states that the roof of the development is a concrete construction; the weakest element in the sound insulation of

the building envelope is the glazed facades. The north facade glazing is already upgraded to have an enhanced sound insulation of Rw 50 dB and the glazing now proposed for the south elevation is also to be enhanced to this specification. Calculations have been carried out to demonstrate that a relatively high level of music noise - 90 dB(A) - commensurate with a very busy bar or loud gym class, would be inaudible in the nearest residential premises to the south across Comely Bank Road.

The Noise Impact Assessment confirms that bar and fitness suite spaces will have to be mechanically ventilated to avoid the need to have windows opened for ventilation while any loud activities take place. The original design for first floor level was a mix of natural ventilation and mechanical. The applicant confirms that the proposed ventilation systems are designed to meet a noise limit of NR55 at 3 metres from any rooftop plant item or louvres on the building facade. The Noise Impact Assessment clarifies that this will ensure noise meets the local authority criterion of NR25 inside the nearest dwellings with the windows open for ventilation. and that this criterion should be readily achievable with standard building services noise control measures such as atmospheric side attenuators to extract fans.

The building management system (BMS) will automatically close any windows that are open in order for the mechanical plant to operate as designed, mechanically ventilating the space. The applicant also states that a noise level limiter will be installed in the bar area which will cut off the power to the sound system if the level exceeds 90dBA. Access doors (labelled A & B on the plan) to the south facing roof/ terrace area via the bar and break out spaces are confirmed as being for maintenance access only.

Environmental Protection consider the revised noise protection measures to be acceptable. They state that both the bar and the fitness suite will need to be mechanically ventilated and that the applicant has advised that only doors for servicing and maintenance would be openable on this façade. Environmental Protection confirm that if this is the case and adequate space ventilation is provided then they support this approach.

The proposal would not raise any additional amenity issues in terms of noise. The proposal to amend condition 9 will not have a detrimental impact on the living conditions of nearby residents and complies with LDP policy Hou 7.

d) Public comments

Public comments - Objections:

- parking potentially a problem on match days; assessed in part a) of this assessment.
- anti social behaviour and amenity issues; assessed in part a) of this assessment and
- details should be provided and demonstrated that proposed noise protection measures are acceptable before any permission is granted; assessed in part c) of this assessment.

Conclusion

The proposal will result in no material change to the external appearance of the building and will preserve the character and appearance of the Inverleith Conservation Area.

The proposal to amend condition 9 will not have a detrimental impact on the living conditions of nearby residents and complies with LDP Hou 7. The principle of the use and development has been established under planning permission 12/03567/FUL. The development is near completion, and conditions and informatives have been removed or updated to reflect this.

Condition 9 is updated to ensure the development does not have an unacceptable impact on neighbouring residential amenity. Informatives include the requirement for a new s75 legal agreement which would be attached to the new planning permission. The updated s75 reflects changes in terms of amount of monies required due to repayments which have been previously made.

There are no other material considerations which outweigh this conclusion and approval is recommended.

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

3.4 Conditions/reasons/informatives

1. The approved tree works shall be carried out prior to the commencement of all other site operations and in accordance with BS 3998:2010 Tree Work Recommendations and the approved Arboricultural Implications Assessment and Method Statement dated October 2012. No other tree works or removal shall be carried out without the prior written approval of the Head of Planning and Building Standards.
2. The approved site landscape scheme EFR.AR.(PL)025_B and approved external works to Comely Bank Road shall be implemented within six months of completion of the development.
3. The completed landscape scheme shall be maintained by the applicants and their successors in accordance with the approved landscape management plan. This shall include the replacement of any plant stock which fails to survive for whatever reason within a period of 5 years from implementation, to ensure its establishment in accordance with the approved landscape scheme.
4. The development shall be completed in accordance with all of the construction and other details specified in sections 7 to 10 in the Noise Impact Assessment (October 2012) with the exception of the noise protection measures to the first floor south elevation. This shall be completed as detailed in the updated Noise Impact Assessment (March 2021) and as shown on drawing EFR4.AR.(PL)012_B. It shall be installed prior to occupation and associated use

of the first floor of the development and retained in situ, unless otherwise agreed in writing with the Planning Authority.

5. The design and installation of any plant, machinery or equipment shall be such that any associated noise complies with NR25 when measured within any nearby living apartment.
6. The development shall be designed and constructed so that any noise associated with the electrical substation complies with NR20 when measured within any nearby living apartment with the windows open for adequate ventilation.
7. No more than three flagpoles shall be erected on each street frontage. Details of the location of these will be agreed in writing by the Planning Authority prior to their erection.
8. The maximum gross floor area of individual commercial / retail units on the ground floor fronting Comely Bank Road shall be limited to a maximum of 500sqm each.
9. Hours of operation of the floodlighting system shall be restricted to 0800 hours to 2200 hours daily.
10. A Final Travel Plan shall be submitted to the Planning Authority within 12 months of the date of submission of the Draft Travel Plan..

Reasons:-

1. In order to safeguard protected trees.
2. In order to ensure that a high standard of landscaping is achieved, appropriate to the location of the site.
3. In order to ensure that the approved landscaping works are properly established on site.
4. In order to safeguard the amenity of neighbouring residents and other occupiers.
5. In order to safeguard the amenity of neighbouring residents and other occupiers.
6. In order to safeguard the amenity of neighbouring residents and other occupiers.
7. To avoid visual clutter
8. To support the aims, objectives and policies of Edinburgh City Council's Local Transport Strategy and Edinburgh City Local Plan policies on parking requirements and retail developments to reflect the character of Stockbridge town centre.

9. In order to safeguard the amenity of neighbouring residents and other occupiers.
10. To support a sustainable form of development.

Informatives

It should be noted that:

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

2. The applicant shall advise the Council's event planning team and police traffic management section to arrange traffic and pedestrian management of large events (those expected to attract over 1,000 spectators).

3. 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.

4. The proposed lighting should be directed only to where it is needed; light spillage should be minimised through the design of the luminaire and by using appropriate hoods, cowls, louvres and shields to direct light to the intended area only. UV filtering should be fitted to the floodlights to reduce their attractiveness to nocturnal insects.

5. The applicant shall enter into a suitable legal agreement in respect of the following:
i) Public realm works to sum of £250,000.00;
ii) Pitch upgrade works at Inverleith to sum of £34,501.50;
iii) Transport infrastructure improvements to the sum of £5,000.00 for Traffic Regulation Order; and
iv) Provision for replacement street tree planting to semi-mature woodland as required.

6. It should be noted that when designing the exhaust ducting, Heating, ventilation and Air Conditioning (HVAC) good duct practice should be implemented to ensure that secondary noise is not generated by turbulence in the duct system. It is recommended that the HVAC Engineer employed to undertake the work, undertakes the installation with due cognisance of the Chartered Institute of Building Services Engineers (CIBSE) and American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Guidance.

Financial impact

4.1 The financial impact has been assessed as follows:

The application is subject to a legal agreement for developer contributions.

Risk, Policy, compliance and governance impact

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 meets the sustainability requirements of the Edinburgh Design Guidance.

Consultation and engagement

8.1 Pre-Application Process

Pre-application discussions took place on this application.

8.2 Publicity summary of representations and Community Council comments

The application was advertised on 26 March 2021 and 11 June 2021 . Two letters of objection were received.

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**

Local Development Plan

The site is within an area of open space. It lies adjacent to the Stockbridge Town Centre and is within an area of importance for flood management. The majority of the site is within the Stockbridge Conservation Area.

Date registered

9 March 2021

Drawing numbers/Scheme

1-3,

Scheme 1

David Givan
Chief Planning Officer
PLACE
The City of Edinburgh Council

Contact: Karen Robertson, Senior planning officer
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Links - Policies

Relevant Policies:

Relevant policies of the Local Development Plan.

LDP Policy Env 6 (Conservation Areas - Development) sets out criteria for assessing development in a conservation area.

LDP Policy Hou 7 (Inappropriate Uses in Residential Areas) establishes a presumption against development which would have an unacceptable effect on the living conditions of nearby residents.

LDP Policy Del 1 (Developer Contributions and Infrastructure Delivery) identifies the circumstances in which developer contributions will be required.

Relevant Non-Statutory Guidelines

Non-statutory guidelines 'LISTED BUILDINGS AND CONSERVATION AREAS' provides guidance on repairing, altering or extending listed buildings and unlisted buildings in conservation areas.

Draft Developer Contributions and Infrastructure Delivery SG sets out the approach to infrastructure provision and improvements associated with development.

Appendix 1

Application for Planning Permission 21/01222/FUL At 126 - 130 Raeburn Place, Edinburgh, EH4 1HG Section 42 Application seeking variation to condition No.9 of Planning Permission 12/03567/FUL, to allow the use of acoustic glazing on the elevation fronting onto Comely Bank Road.

Consultations

Environmental Protection

We are satisfied with what is being proposed as per the submitted drawing EFR4.AR.(PL)012_B which is referenced as Appendix A in the supporting noise impact assessment 20351-R01-C dated 8 March 2021. Both the bar and the fitness suite will need to be mechanically ventilated to avoid needing to open windows or other ventilation openings directly in the building envelope when any louder activities such as bar music or gym classes take place. The applicant had previously advised that only doors allowing for servicing and maintenance would be openable on this façade. If this is the case and adequate space ventilation is provided then this could be supported.

To control building services plant noise to meet our required criterion (NR25), external building services plant items and louvres to the environment will need to meet a noise limit of NR55 at 3 metres. The applicant has advised that this could be achievable but may require atmospheric side attenuators on extract fans depending on fan noise levels. We will need the applicant to ensure that NR25 is achieved in the nearest residential property allowing for their windows to be open we recommend an informative and condition for plant noise. If new condition(s) are required we would recommend;

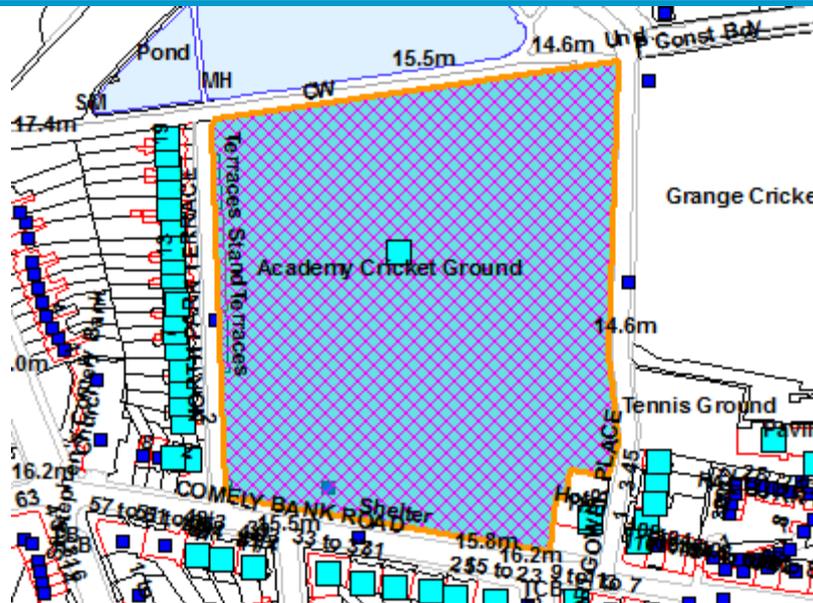
- 1. The acoustic glazing highlighted in drawing EFR4.AR.(PL)012_B shall comprise of as a minimum an outer pane of 8.8 mm acoustic laminated glass, a 24 mm cavity, and an inner pane 12.8 mm acoustic laminated glass. This shall be installed prior to occupation and to the satisfaction of the Planning Authority.*
- 2. Prior to occupation of the development, details demonstrating that noise from all plant complies with NR25 shall be submitted for written approval by the Planning Authority.*

Recommended Informative:

It should be noted that when designing the exhaust ducting, Heating, ventilation and Air Conditioning (HVAC) good duct practice should be implemented to ensure that secondary noise is not generated by turbulence in the duct system. It is recommended that the HVAC Engineer employed to undertake the work, undertakes the installation with due cognisance of the Chartered Institute of Building Services Engineers (CIBSE)

and American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Guidance.

Location Plan



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