

Development Management Sub Committee

Wednesday 22 September 2021

**Application for Planning Permission 21/02735/FUL
at 74 Telford Road, Edinburgh, EH4 2NF.
Section 42 Variation of Condition GD0 of Planning
Permission 96/01125/FUL to enable the drive-thru to
operate between the hours of 07:00-23:00, seven days a
week.**

Item number

Report number

Wards

B05 - Inverleith

Summary

The proposal is acceptable subject to a condition allowing the additional hour in the mornings on Monday to Saturday but retaining the existing operating hours on Sundays. The condition ensures that the proposal complies with policy Hou 7 of the LDP and will not lead to the deterioration of amenity for nearby residents. The application under section 42 should be granted and there are no material considerations which outweigh this conclusion.

Links

[Policies and guidance for this application](#) LDPP, LHOU07,

Report

Application for Planning Permission 21/02735/FUL at 74 Telford Road, Edinburgh, EH4 2NF. Section 42 Variation of Condition GD0 of Planning Permission 96/01125/FUL to enable the drive-thru to operate between the hours of 07:00-23:00, seven days a week.

Recommendations

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

Background

2.1 Site description

The site is an existing McDonald's restaurant and is located to the south of Telford Road. To the east is a public house, and to the south and west are residential properties.

The existing building is located centrally within the site with separate access and egress points onto Telford Road. The periphery of the site is comprised of car parking and internal access road. The drive-thru facility is located on the rear and western elevations of the building with a separate access road skirting close to the side and rear elevations of the building.

2.2 Site History

20 September 1994 - Planning permission was refused for the redevelopment of an existing petrol filling station (Texaco) & carwash bay along with a new restaurant (McDonalds) with 'Drive Thru' facility and associated car parking (application number: A/00563/94).

20 September 1995 - Planning permission was approved for the redevelopment of an existing petrol filling station to form a new restaurant (McDonalds) with 'Drive-Thru' facility and associated car parking. A condition (GA2) was imposed restricting the hours of operation of the 'Drive-Thru' facility between 9am to 11pm daily. There was no restriction placed on the restaurant (application number: A/01004/95).

11 September 1996 - Permission was granted for an amendment to condition GA2 (application number: A/01004/95) to extend the hours of operation for the 'Drive-Thru' facility allowing opening at 8am (application number A/01125/96)

7 April 2010 - Planning permission was refused for a variation of condition GA2 (Ref A/01004/95) to allow the 'Drive-Thru' facility to operate between the hours of 6am and midnight, seven days a week (application number: 09/01373/FUL).

13 June 2016 - Permission refused for a Section 42 Variation of Condition GD0 of Planning Permission 96/01125/FUL to enable the drive thru to operate between the hours of 06:00 - 00:00, seven days a week (application number: 16/01815/FUL).

Main report

3.1 Description of the Proposal

The proposal is for a Section 42 Variation of Condition GD0 of Planning Permission 96/01125/FUL to enable the drive-thru facility to operate between the hours of 07:00 - 23:00, seven days a week. In effect, this would allow one extra hour during morning trade on Monday to Saturday and two extra hours on Sunday morning.

The operation of the main restaurant is not subject to any planning controls. Accordingly, this application relates to an extension of opening hours to the drive-thru facility only.

3.2 Determining Issues

Section 25 of the Town and Country Planning (Scotland) Act 1997 states:

(1) 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 37 of the Town and Country Planning (Scotland) Act 1997 states:

(1) Where an application is made to a planning authority for planning permission -

(a) subject to sections 27B(2) and 59(1)(b), they may grant planning permission, either unconditionally or subject to such conditions as they think fit, or

(b) they may refuse planning permission.

(2) In dealing with such an application the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations

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?

Section 42 of the Town and Country Planning (Scotland) Act 1997 requires that the planning authority shall consider only the question of the conditions subject 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?

3.3 Assessment

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

- a) residential amenity will be adversely affected;
- b) there are any traffic or road safety implications;
- c) any impacts on equalities or human rights are acceptable and
- d) comments raised have been addressed.

a) Amenity

Policy Hou 7 (Inappropriate Uses in Residential Areas) aims to preclude the introduction or intensification of non-residential uses incompatible with predominately residential areas and to prevent any further deterioration in living conditions in more mixed use areas which nevertheless have important residential functions.

There are currently no restrictions on the operation of the restaurant premises. However, the drive-thru has been restricted to the hours of 08:00-23:00 Monday to Saturday and 09:00 - 23:00 on Sundays. Any activity on the site not related to the drive-thru outwith these hours is not subject to planning control. At present, customers can be served by the premises during the hours applied for. However, before 08:00 and 09:00 on Sundays they have to park their vehicles and enter the restaurant to be served.

Environmental Protection has been consulted on the application and advised that there is no recorded history of noise complaints from the premises. They have advised that they have no objection to the additional hour in the morning Monday to Saturday but have objected to the additional two hours on a Sunday. The reason for the objection is that 07:00 Monday to Saturday is considered to be normal working hours when a reasonable level of activity is expected. However, Sunday mornings are considered to be generally quieter, and less activity is normal.

The operation of the main restaurant is unrestricted and there is already established commercial activities taking place at the application site during the proposed extended hours of operation of the drive-thru facility. These activities include customers driving into the site, opening and closing car doors and accessing the restaurant. Considering the existing activity at the restaurant during the time of the proposed extended hour in the mornings from Monday to Saturday will not lead to the deterioration of amenity for nearby residents. However, Sunday mornings are generally quieter, and with less traffic on the road network, ambient noise levels are lower. Therefore, in order to protect neighbouring residential amenity a condition is required to allow the additional hour in the mornings on Monday to Saturday but to retain the existing operating hours on Sunday.

b) Traffic and Road Safety

The applicant advises that based on experiences of other restaurants within the group, the bulk of the custom during the extended hours will be drawn from passing trade rather than drawing people into the area. On the basis that these vehicles will already be on the local road network, the proposal will not result in any significant increase in vehicular traffic or noise associated with movements.

There are no traffic or road safety issues arising as a result of the proposal.

c) Equalities and Human Rights

There are no equalities or human rights impacts.

d) Public Comments

A total of 16 representations have been made objection to the proposal. The representations include objections from Councillor Barrie and Craigleith/Blackhall Community Council.

The material reasons for objecting to the proposal are:

- Proposal will result in increased noise and disturbance from the premises - addressed in Section 3.3 a)
- Increased pollution from cars - addressed in Section 3.3 b)
- Nuisance form cooking odours -addressed in Section 3.3 a)

Conclusion

The proposal is acceptable subject to a condition allowing the additional hour in the mornings on Monday to Saturday but retaining the existing operating hours on Sundays. The condition ensures that the proposal complies with policy Hou 7 of the LDP and will not lead to the deterioration of amenity for nearby residents. The application under section 42 should be granted and there are no material considerations which outweigh this conclusion.

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

3.4 Conditions/reasons/informatives

Conditions :-

1. The hours of operation of the restaurant drive-thru shall be restricted to 07:00 to 23:00 hours Monday to Saturday and 09:00 to 23:00 hours on Sundays.

Reasons: -

1. In order to safeguard the amenity of neighbouring residents and other occupiers

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. 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.
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.

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

The application was advertised on 28 May 2021. A total of 15 representations have been received objecting to the proposal including from Councillor Barrie and Craigleith/Blackhall Community Council. A summary of the comments is contained in the assessment.

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 lies within the urban area of Edinburgh City
Local Plan.

Date registered

17 May 2021

Drawing numbers/Scheme

01,

Scheme 1

David Givan

Chief Planning Officer

PLACE

The City of Edinburgh Council

Contact: Alex Gudgeon, Planning Officer

E-mail:alexander.gudgeon@edinburgh.gov.uk

Links - Policies

Relevant Policies:

Relevant policies of the Local Development Plan.

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.

Appendix 1

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Consultations

Environmental Protection

The application proposes an amendment to the conditioned hours of operation of the drive-through facility of the McDonalds restaurant at 74 Telford Road. The existing condition (as part of planning consent for application 96/01125/FUL) restricts hours of operation of the drive-through to 08:00 to 23:00 Monday to Saturday, and 09:00 to 23:00 on Sundays (the restaurant itself is understood to have consent to operate 24 hours). The proposal is to extend the drive-through hours from 07:00 to 23:00 hours daily; an extension of one hour in the morning Monday to Saturday and a 2-hour morning extension on a Sunday. There are no proposed changes to the delivery hours as a result of this application.

The property is located at a junction on the busy Telford Road (A902) with residential dwellings adjacent to the west and south, a pub is to the east.

This application has been made following the refusal of the 2016 application which sought permission for the restaurant to operate between 07:00 - 00:00, seven days a week. The 2016 Application was refused based on the potential impact on residential amenity, specifically during the night-time hours.

The application solely relates to drive-through operating hours as the restaurant already opens and has consent to operate 24 hours. Drive-through noise will generally stem from additional traffic and amplified speech via the communications between the restaurant staff and patrons within their vehicles.

The proposed 7am start, Monday to Saturday would be in line with the opinion of this team, that the working day is deemed to be 7am to 7pm Monday to Saturday. In this regard, traffic on Telford Road would already be significant at that time on those days. Therefore, the extension during the working days of Monday to Saturday is unlikely to cause any significant additional noise and is likely to be considerably masked by traffic noise during the proposed additional rush hour time of 7am to 8am. However, Sunday is quieter and not deemed to be a working day, so it is recommended that the existing drive-through starting time of 9am continues to stay in place.

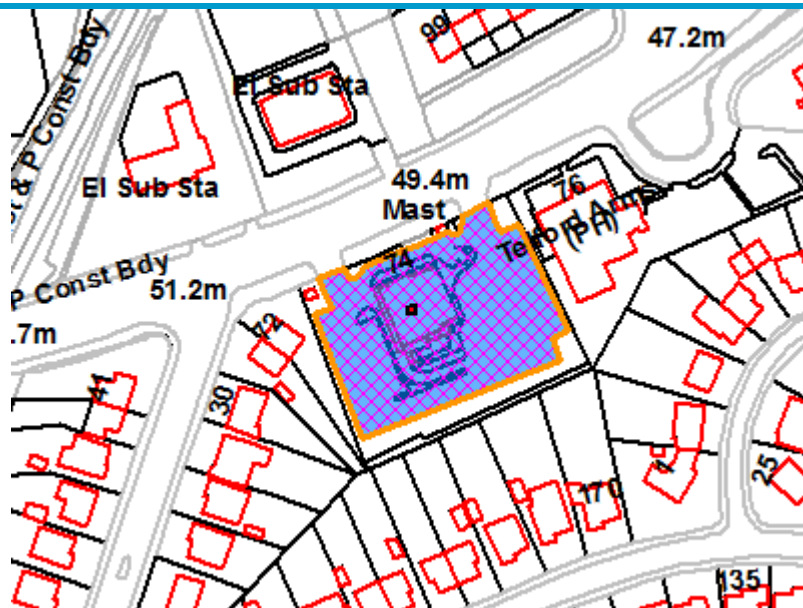
There is no record of any complaints regarding noise from the operation of the drive-through facility to date but Environmental Protection has received a number of plant noise complaints in the last couple of years which have been investigated by this team. It is

acknowledged however, that the impacts of plant noise will not be made any worse by this proposal as the premises (and the plant) already operates 24 hours a day under existing restaurant operating consents.

Therefore, Environmental Protection has no objection to this proposed development, subject to the following condition:

- o Hours of operation of the drive-through facility shall be restricted to 07:00 to 23:00 hours Monday to Saturday and 09:00 to 23:00 hours on Sundays.

Location Plan



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