

Development Management Sub-Committee Report

Wednesday 30 March 2022

**Application for Planning Permission
11A James' Court, 493 Lawnmarket, Edinburgh.**

Proposal: Proposed refurbishment of and extension to the existing retail/store unit at 11A James Court including provision of ancillary coffee bar, external seating area and formation of a connection to the existing retail unit at 497 Lawnmarket.

**Item – Committee Decision
Application Number – 21/04237/FUL
Ward – B11 - City Centre**

Reasons for Referral to Committee

The application has been referred to Development Management Sub-Committee because 39 objections and 24 letters of support have been received. Consequently under the Council's Scheme of Delegation, the application must be determined by the Development Sub-Committee.

Recommendation

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

Summary

The proposals would preserve the character and appearance of the Old Town Conservation Area and the character and setting of nearby listed buildings, thereby acceptable with regard to Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, the Edinburgh Local Development Plan and the Council's non-statutory guidance. The increase in retail floorspace is supported in this part of the city. The size and nature of the external seating area would not have a materially detrimental effect on the living conditions of residents. The proposal complies with the relevant SPP - sustainable development principles. No other material considerations outweigh this conclusion. It is recommended that planning permission is granted.

SECTION A – Application Background

Site Description

The site lies to the north of the Lawnmarket, within James Court and forms part of a group listing for 497-499 Lawnmarket, 7 and 11 James Court. The group is Category B listed and was listed on 14.12.1970 (LB ref 29235).

This application site is a single storey building to the north of a six-storey tenement fronting 497-499 Lawnmarket. The site is currently in retail / storage use. There is no connection between the extension and the main tenement, the ground floor of which is also in retail use. The site is currently accessed independently from Lady Stairs Close.

The rear extension is finished in white render, with a pitched slate roof and is currently in poor condition. The immediately area within James Court is characterised by tenemental buildings and hard landscaping. The wider surroundings have a mix of uses, being predominantly residential at the upper floors, with a variety of commercial ground floor uses.

The site is within the Edinburgh World Heritage Site and the Old Town Conservation Area.

Description of the Proposal

The application proposes the refurbishment of and extension to the existing retail/store.

The retail use of the rear building would be retained, whilst also providing a small, ancillary coffee bar for use by customers. The ground floor would be extended, and a mezzanine level created, providing by giving an internal floor area of 161sqm. An external seating area would be formed to the rear of the building and an enclosed, external refuse and recycling store would also be created.

The existing roof would be increased in height with flat roof dormers added to the roof planes.

The proposed materials are reused slate roofing and stonework. It is proposed to infill the existing windows with plain rendered panels.

Supporting Information

Planning Statement
Surface Water Management Plan
Design Statement

Relevant Site History

21/04238/LBC
11A James' Court
493 Lawnmarket
Edinburgh
EH1 2PB

Proposed refurbishment of and extension to the existing retail/store unit at 11A James Court including provision of ancillary coffee bar, external seating area and formation of a connection to the existing retail unit at 497 Lawnmarket.

Other Relevant Site History

No other relevant site history.

Pre-Application process

Pre-application discussions took place on this application.

Consultation Engagement

Archaeology

Environmental Protection

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

Publicity and Public Engagement

Date of Neighbour Notification: 8 February 2022

Date of Renotification of Neighbour Notification: Not Applicable

Press Publication Date(s): 11 February 2022; 27 August 2021;

Site Notices Date(s): 8 February 2022; 24 August 2021;

Number of Contributors: 63

Section B - Assessment

Determining Issues

Due to the proposals relating to a listed building(s) and being within a conservation area, this report will first consider the proposals in terms of Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (the "1997 Heritage Act"):

- a) Is there a strong presumption against granting planning permission due to the proposals:
 - (i) harming the listed building or its setting? or
 - (ii) conflicting with the objective of preserving or enhancing the character or appearance of the conservation area?

- b) If the strong presumption against granting planning permission is engaged, are there any significant public interest advantages of the development which can only be delivered at the scheme's proposed location that are sufficient to outweigh it?

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

If the proposal is in accordance with the development plan the determination should be to grant planning permission unless material considerations indicate otherwise?

If the proposal is not in accordance with the development plan the determination should be refuse planning permission unless material considerations indicate otherwise?

In the assessment of material considerations this report will consider:

- the Scottish Planning Policy presumption in favour of sustainable development, which is a significant material consideration due to the development plan being over 5 years old;
- 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 harm the listed building and its setting.

The following HES guidance is relevant in the determination of this application:

- Managing Change Setting, Extending Listed Buildings
- Roofs

Section 59 (1) of the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997 states: "In considering whether to grant planning permission for development which affects a listed building or its setting, a planning authority or the Secretary of State, as the case may be, shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."

Historic Environment Scotland's document 'Managing Change in the Historic Environment - Setting' states.

"Setting' is the way the surroundings of a historic asset or place contribute to how it is understood, appreciated and experienced."

The document states that where development is proposed it is important to:

- "identify the historic assets that might be affected.
- define the setting of each historic asset and
- assess the impact of any new development on this".

The proposal relates to a later rear extension to the six-storey tenement fronting onto the Lawnmarket. Although the roof would be increased in height, it would remain subservient to the main building. The pitch and profile of the new roof would preserve the character of the building. Dormers would be added to the roof planes which are appropriately designed to protect the special interest of the building.

The vaulted basement would be retained and the render from the older north and west walls would be stripped off to expose the stonework. A new access would be formed into the courtyard area.

The materials for the external seating area include granite which is not considered to be an appropriate finish in these circumstances, where sandstone is the predominant material. To ensure the proposed materials have no adverse effect on the character and setting of the adjoining buildings, it is recommended that a condition is added requiring a detailed specification of all proposed external materials.

Conclusion in relation to the listed building

The proposals are in accordance with Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, and the proposals preserve the character and setting of the listed buildings, in compliance with LDP Policies Env 3 and 4.

b) The proposals impact on the 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 Old Town Conservation Area Character Appraisal emphasises the survival of the original medieval street pattern; the wealth of important landmark buildings; the survival of an outstanding collection of archaeological remains, medieval buildings, and 17th-century town houses; the consistent and harmonious height and mass of buildings; the importance of stone as a construction material for both buildings and the public realm; the vitality and variety of different uses; and the continuing presence of a residential community.

The proposal retains the single storey element of the existing building and creates a new mezzanine level by the formation of flat roofed dormers on the roof planes. These are contemporary in design but tie in with the character and appearance of the Old Town Conservation Area, where modern additions are present on the elevations of the surrounding buildings. The materials are high quality reflecting the surrounding area.

The formation of the seating area would extend the building's footprint into the court area to the north. However, it would be open and would not extend beyond the line of the outshot of the building to the east of the site. It would form a modest and unobtrusive addition to the square and would not adversely affect the spatial character of the square. The proposal would retain the setting of the surrounding area and would be a positive addition to it in terms of design.

The proposed alterations would be architecturally compatible in design, scale and materials with the original building and its surrounding area.

Conclusion in relation to the conservation area

The proposals is acceptable with regard to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and preserve and enhance the character and appearance of the conservation area.

c) The proposals comply with the development plan.

The development plan comprises the Strategic and Local Development Plans. The relevant Edinburgh Local Development Plan 2016 (LDP) policies to be considered are:

- LDP Environment policies Env 3, Env 4, Env 6, Env 9 and Env 15
- LDP Strategy policies Del 2
- LDP Design Des 1, Des 5, Des 12
- LDP Retail Ret 1
- LDP Transport Tra 2, Tra 3

The non-statutory 'Listed Buildings and Conservation Area' guidance is a material consideration that is relevant when considering LDP policies Env 3, Env 4 and Env 6.

The non-statutory 'Business' guidance is a material consideration that is relevant when considering policies Del 2 and Ret 1.

The non-statutory 'Edinburgh Design Guidance' is a material consideration that is relevant when considering policies Des 1, Des 5 and Des 12.

Impact on the setting of the listed buildings and conservation area

LDP Policy Env 3 (Listed Buildings - Settings) states that development within the curtilage or affecting the setting of a listed building will only be permitted if not detrimental to the appearance or character of the building or its setting.

LDP Policy Env 4 (Listed Buildings - Alterations and Extensions) states that states that proposals to alter or extend a listed building will be permitted where: those alterations are justified, there will be no unnecessary damage to historic structures or diminution of its interest; and, where any additions are in keeping with other parts of the building.

LDP Policy Env 6 (Conservation Areas - Development) supports development within a conservation area or affecting its setting which preserves or enhances the special character and appearance of the conservation area and is consistent with the relevant character appraisal, preserves trees, hedges, boundary walls, railings, paving and other features which contribute positively to the character and demonstrates high standards of design and utilises materials appropriate to the historic environment.

LDP Policy Des 1 (Design Quality and Context) states that planning permission will be granted for proposals which create or contribute towards a sense of place. Proposals should be based on an overall design concept that draws upon positive characteristics of the surrounding area.

LDP Policy 12 (Extensions and Alterations) states that planning permission will be granted for alterations to existing buildings which are compatible with the character of the existing building.

As assessed in a) and b) above, the impacts on the listed building and the conservation area are acceptable. As a result, the proposal complies with Policy Evn3, Env4 and Env6. The proposed condition on materials will ensure that the proposal is acceptable with regard to Policy Des1 and Policy 12.

Principle of Development

LDP Policy Del 2 (City Centre) supports development which retains and enhances the character, attractiveness, vitality, and accessibility of the City Centre and contributes to its role as a strategic business and regional shopping centre and the role of Edinburgh as a capital city.

The proposals are for an extension to the existing retail use and to improve the attractiveness of the site. The extension would improve the vitality of the site and surrounding area. The proposed ancillary coffee bar use would support the existing retail use without detriment to the surrounding area.

The proposed development is in accordance with LDP Policy Del 2.

LDP Policy Ret 1 (Town Centres First) supports the principle of retail development within town centres, including the city centre, as a first preference. The proposed development would extend the existing retail floorspace whilst safeguarding the historic character of the site and improving the appearance of this part of the city centre. The principle of increasing the retail floorspace with an ancillary cafe is compatible with the existing and surrounding uses.

The authorised use of the premises is as a retail unit (class 1). The proposed sales area of the premises encompasses an area of 160.5 square metres. The proposed area to be utilised for coffee bar would encompass an area of 12 square metres. This would represent a very minor amount of the overall floorspace within the premises and is ancillary to its primary use as a retail unit.

The proposed development is in accordance with LDP Policy Ret 1.

Amenity

LDP Policy Des 5 (Development Design - Amenity) states that planning permission will be granted where it can be demonstrated that the amenity of neighbouring properties is not adversely affected in relation to noise, daylight, sunlight, privacy or immediate outlook.

The site is bounded by tenemental buildings, with residential properties at upper floor levels. Details have been submitted which confirm that these properties would have no reduction in daylighting and only ground floor windows would be affected by increasing the height of the roof.

To the west of the site there is a residential property at ground floor level which has four windows overlooking the site. One of these windows would not meet the requirements for daylighting as set out in the Council's Edinburgh Design Guidance. Whilst it is acknowledged that there will be a loss of light into this room, the property is open plan and there are existing windows facing east to minimise the loss.

Given the historic and organic character of the Old Town and the circumstances of this particular situation, is it considered that the impact on daylighting is acceptable. To avoid overlooking from the east facing dormer window, it is recommended that a condition is attached requiring obscure glazing.

The coffee bar within the unit is ancillary to the main retail use and does not constitute a change of use of the land. In such circumstances there is no opportunity to require ventilation details or restrict the hours of operation of this element. Environmental Protection has raised concerns regarding noise from the external seating area. However the premises are in a city centre location where there is, existing ambient noise environment during the day. It has been stated that the external seating area would only operate during the opening hours of the shop minimising the disturbance to neighbours.

Refuse and recycling facilities have been sensitively integrated into the design.

The proposal complies with LDP Policy Des 5.

Road Safety

Policy Tra 2 (Private Car Parking) is applicable to the proposed development. The proposed development would not provide any car parking, which is in accordance with the Council's guidelines.

Policy Tra 3 (Private Cycle Parking) is applicable to the proposed development. The site is located within Zone 1 of the EDG parking standards, which does not require cycle parking for retail proposals of less than 250sqm. As such, there is not a requirement for cycle parking as part of the proposed development.

The proposals are in accordance with LDP Policies Tra 2 and Tra 3.

Archaeology

LDP Policy Env 9 (Development of Sites of Archaeological Significance) is to protect and enhance archaeological remains where possible by preservation in situ in appropriate setting. The Archaeologist has confirmed that the site lies within an area of potential archaeological significance. A condition is recommended requesting that an archaeology survey is undertaken.

The proposals comply with LDP Policy Env 9.

Open Space

LDP Policy Env 15 (Sites of Local Importance) does not support development that is likely to have an adverse impact on the flora, fauna, landscape or geological features of a Local Nature Reserve or a Local Nature Conservation Site.

The open character of the courtyard would be retained by the modest scale of the extension and adjacent trees will remain in their present positions and not be adversely affected by the proposals.

The proposal complies with LDP policy Env 15.

Conclusion in relation to the Development Plan

The proposal complies with the Edinburgh Local Development Plan.

d) There are any other material considerations which must be addressed?

The following material planning considerations have been identified:

SPP - Sustainable development

Scottish Planning Policy presumption in favour of sustainable development is a significant material consideration due to the development plan being over five years old. SPP introduces a presumption in favour of development that contributes to sustainable development and sets out 13 principles to guide policy and decisions.

The development proposes an appropriate and sustainable land use, which would support the local economy, and protect the historic environment. The outdoor seating area within an open courtyard overlooked by residential properties would not be detrimental to residential amenity.

The proposed development complies with SPP principles 3, 10 and 13, as it supports good design and the six qualities of successful places. It would protect and enhance the historic environment and protect the amenity of nearby residents.

Emerging policy context

The Draft National Planning Framework 4 is being consulted on at present and has not been adopted. As such, little weight can be attached to it as a material consideration in the determination of this application.

While City Plan 2030 represents the settled will of the Council, it has not yet been submitted to Scottish Ministers for examination. As such, little weight can be attached to it as a material consideration in the determination of this application.

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

The application was advertised on 27th August 2021 and 58 comments were received: 34 objecting and 24 supporting. These included comments from the Cockburn Association, the Architectural Heritage Society of Scotland and the Old Town Community Council who have not requested to be a statutory consultee.

The application was re-advertised on 11th February 2022 and a further 5 objections were received including one from Alison Johnstone MSP.

A summary of the representations is provided below:

material considerations

Material Comments - Objections:

- excessive concentration of food and drink premises - this is assessed in section (c) of the assessment.
- neighbouring amenity - this is assessed in section (c) of the assessment.
- loss of open area - this is assessed in section (c) of the assessment.
- impact on the character and appearance of the conservation area - this is assessed in section (a) of the assessment.
- loss of historic fabric - assessed in section (a) of the assessment.
- impact on outlook - this is assessed in section (c) of the assessment.
- loss of light to ground floor residential property - this is assessed in section (c) of the assessment.

Material Comments - Supporting:

- improvements to building will bring revenue to the area - this is assessed in section (c) of the assessment.
- the design sympathetic to surrounding buildings and enhance appearance of James Court - this is assessed in section (a) of the assessment.
- the new cafe will improve recovery and regeneration of the area - this is assessed in section (c) of the assessment.

non-material considerations

- the distance between the extension and existing building to east would make maintenance of the building a problem - this is not a planning issue.

Conclusion in relation to identified material considerations

The proposal complies with the relevant sustainable development policy principles set out in SPP. There are no other issues raised in the material considerations.

e) Overall conclusion

The proposals would preserve the character and appearance of Old Town Conservation Area and the character and setting of nearby listed buildings, thereby acceptable with regard to Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, the Edinburgh Local Development Plan and the Council's non-statutory guidance. The increase in retail floorspace is supported in this part of the city. The size and nature of the external seating area would not have a materially detrimental effect on the living conditions of residents. The proposal complies with the relevant SPP - sustainable development principles. No other material considerations outweigh this conclusion. It is recommended that planning permission is granted.

Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following;

Conditions :-

1. Cooking, heating and reheating operations on the premises shall be restricted to the use of a Panini machine, toasty machine, baked potato oven, soup urn and one microwave only; no other forms of cooking, heating and reheating shall take place without prior written approval of the Planning Authority and no odours shall be exhausted into any neighbouring premises.
2. No development shall take place on the site until the applicant has secured and implemented a programme of archaeological and conservation work (Historic building recording, excavation, conservation, analysis & reporting, publication) in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the Planning Authority.
3. A detailed specification, including trade names where appropriate, of all the proposed external materials shall be submitted to and approved in writing by the Planning Authority before work is commenced on site; Note: samples of the materials may be required. Granite will not be used in the external seating area.
4. The approved east facing dormer shall be fitted with obscure glazing before occupation of the extension and remain in perpetuity. Details of the glazing shall be submitted to the Planning authority for approval prior to the initiation of development.

Reasons: -

1. In order to safeguard the amenity of neighbouring residents and other occupiers.
2. In order to safeguard the interests of archaeological heritage.
3. In order to safeguard the character of the conservation area.
4. In order to protect the privacy of adjoining neighbours.

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.

Background Reading/External References

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

Further Information - Local Development Plan

Date Registered: 10 August 2021

Drawing Numbers/Scheme

1A, 2, 3A, 4-8, 9A, 10-12

Scheme 2

David Givan
Chief Planning Officer
PLACE
The City of Edinburgh Council

Contact: Jennifer Zochowska, Senior Planning Officer
E-mail: jennifer.zochowska@edinburgh.gov.uk

Summary of Consultation Responses

NAME: Archaeology

COMMENT: This court was constructed in the 1720s on the site of several medieval closes running northwards at right-angles from the medieval high street (Lawnmarket) necessitating their demolition. As has been proved elsewhere up and down the Royal mile, the 18th century redevelopment of the Royal Mile often retained the walls and cellars of the earlier tenements which can date back to the 16th century and in some cases possibly earlier.

Although the current out-building dates to the 20th century, it clearly utilises earlier walls principally its northern wall and western along the Close. The building is regarded as being of historic and archaeological significance and as the proposals will require works to the surviving historic building, it is essential that a detailed programme of archaeological work is undertaken during development to record this historic building and ensure conservation/preservation are undertaken.

To secure this programme of archaeological works is undertaken it is recommended that the following condition is attached

'No development shall take place on the site until the applicant has secured and implemented a programme of archaeological and conservation work (Historic building recording, excavation, conservation, analysis & reporting, publication) in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the Planning Authority.'

DATE: 28 February 2022

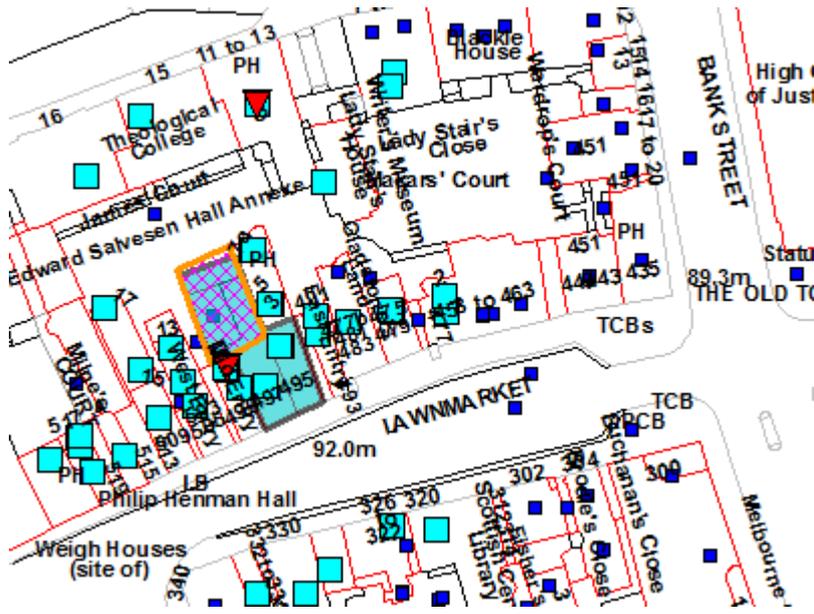
NAME: Environmental Protection

COMMENT: Environmental Protection have concerns that noise from the outdoor area may be difficult to modulate and control . Nearby residents would likely be subjected to unacceptable levels of noise, and it would be detrimental to residential amenity.

DATE: 28 February 2022

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

Location Plan



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