

# Development Management Sub-Committee Report

**Wednesday 29 June 2022**

**Application for Planning Permission  
162 Ferry Road, Edinburgh, EH6 4NX**

**Proposal: S42 variation to planning condition to extend opening hours from 8.00p.m. to 11.00p.m.**

**Item – Committee Decision  
Application Number – 21/06362/FUL  
Ward – B04 - Forth**

## **Reasons for Referral to Committee**

The application is presented to the Development Management Sub-Committee due to the degree of public representation. Under the Council's Scheme of Delegation the scheme must be determined by the Development Management Sub-Committee.

### **Recommendation**

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

### **Summary**

The proposal has no further impact on the conservation area and is acceptable in regard to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. The proposed increase in operational hours would have a detrimental impact on residential amenity by virtue of increased noise and disturbance, contrary to the requirements of the LDP and the SPP. The proposed change to the planning condition therefore fails to comply with the development plan in relation to likely loss of residential amenity contrary to LDP policy Hou7. The application under Section 42 should be refused and there are no material considerations which outweigh this conclusion.

## **SECTION A – Application Background**

### **Site Description**

The property is a Class 3, ground floor, corner unit, within a three storey tenemental block, dating from around 1870. It is located at the junction of Ferry Road and Summerside Street.

It is within the Urban Area, as defined in the Edinburgh Local Development Plan, and within a defined Local Centre.

It is located within the Victoria Park Conservation Area.

### **Description Of The Proposal**

The application is made under Section 42 of the Town and Country Planning (Scotland) Act 1997 and seeks variation of a condition placed by the Local Review Body (LRB) in their approval of an application for Class 3 use (planning application reference 15/01077/FUL) limiting opening hours as 8am to 8pm to instead allow opening from 8am to 11pm.

### **Relevant Site History**

14/00511/FUL  
162 Ferry Road  
Edinburgh  
EH6 4NX

Alterations and change of use of existing shop to form coffee shop with take-away facility (in retrospect)  
Refused and Enforced  
12 September 2014

15/01077/FUL  
162 Ferry Road  
Edinburgh  
EH6 4NX

Alterations and change of use of existing shop to form coffee shop with take-away facility.  
Refused and Enforced  
6 May 2015

20/05387/FUL  
162 Ferry Road  
Edinburgh  
EH6 4NX

The proposal is to vary the condition restricting opening hours of the cafe operation from 2000 up to 2300.  
Refused  
23 February 2021

### **Other Relevant Site History**

No other relevant site history.

### **Pre-Application process**

There is no pre-application process history.

## Consultation Engagement

Environmental Protection

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

## Publicity and Public Engagement

**Date of Neighbour Notification:** 10 December 2021

**Date of Renotification of Neighbour Notification:** Not Applicable

**Press Publication Date(s):** 17 December 2021;

**Site Notices Date(s):** Not Applicable;

**Number of Contributors:** 462

## Section B - Assessment

### Determining Issues

Due to the proposed development falling within a conservation area, this report will first consider the proposals in terms of Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997:

- Is there a strong presumption against granting planning permission due to the development conflicting with the objective of preserving or enhancing the character or appearance of the conservation area?
- 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?

Section 42 of the Town and Country Planning (Scotland) Act 1997 (the Act) relates to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.

On such an application the planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and

- a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly;
- b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.

If an application under Section 42 of the Act is granted it creates a new planning permission with a new default time period for implementation unless otherwise determined. Accordingly, the proposals also require to be determined under Sections 25, 37 and 59 of the Act.

Therefore, consideration shall be given to the proposed change to the condition and any other conditions attached, in particular whether:

- I. the proposed change to the condition would result in a development that is in accordance with the plan; or
- II. an alternative condition or conditions would result in a development that is in accordance with the plan; and
- III. there are any material considerations that outweigh the conclusions in respect of i) and ii) above.

## **Assessment**

To address these determining issues, it needs to be considered whether:

### **a) The proposals harm the character or appearance of the conservation area?**

The application has no external component and will have no impact on the character or appearance of the conservation area. The proposal is acceptable with regard to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

### **b) The proposals comply with the development plan?**

The development plan comprises the Edinburgh Local Development Plan (2016). The main policy identified in the determination of this application is Hou 7 - Inappropriate Uses in Residential Areas.

## Principle of Use

The property lies in an identified Local Shopping Centre - Ferry Road West. Policy Ret 9 - Alternative Use of Shop Units - Elsewhere in Defined Centres, applies.

Whilst the unit does represent one of four consecutive non-retail uses the change of use is already approved and established, no further assessment is required on the use.

## Impact on Residential Amenity

The previous application (planning reference 15/01077/FUL) was refused under delegated powers, but was approved following appeal to the Local Review Body. In this granting of planning permission in 2015 the Local Review Body stated that permission should be subject to a planning condition limiting opening hours to 8am until 8pm to protect residential amenity. This decision had regard to the recommendation for refusal by Environmental Assessment and the Head of Planning's report of handling

In this instance, the ambient noise levels are relatively high during the day due to traffic levels on Ferry Road. The existing permission has regard to the local circumstances and recognises that daytime background noise levels assist in masking noise and disturbance created by the use. However, after 8pm the ambient background noise

drops considerably, and on-street activity linked to the use would create a potential nuisance.

The 2015 decision and attached planning condition recognised that although the area is busier during normal business hours, it is considerably quieter in the evening. The use, if extended beyond 8pm, would be more noticeable in relation to the ambient background noise levels. The proposed extension to the hours of operation would likely give rise to an unacceptable loss of residential amenity during the time period 8pm to 11pm by virtue of on-street noise and disturbance associated with such uses. The proposal is unacceptable for this reason.

In relation to the absence of other class 3 premises in the area, it should be noted that an isolated class 3 use can have considerable impact on neighbouring residents, and is not, in its own right, a reason to grant permission. It highlights that a grant of permission could have a disproportionate effect in relation to other areas which may already contain a number of such uses.

Environmental Assessment recommend refusal on the basis of loss of residential amenity.

The extension of hours is contrary to LDP Policy Hou7 due to the loss of residential amenity.

The section 42 application to vary the existing condition to allow opening from 8am to 11pm is refused for this reason.

#### Impact on Parking

The property has no dedicated parking, but current parking policy would support zero parking due to wider Council objectives.

The potential impact, if any, on street parking is unaltered in relation to the existing permission. The impact on street parking is not a further reason for refusal

#### **c) There are any other material considerations which must be addressed?**

The following material considerations have been identified:

#### SPP - Sustainable development

Scottish Planning Policy (SPP) is a significant material consideration due to the LDP being over 5 years old.

The proposal does not comply with SPP sustainable development principle "protecting the residential amenity of new and existing development" in that it will cause harm to the amenity of nearby dwellings.

#### Emerging policy context

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

City Plan 2030 - While the proposed City Plan is 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 attracted 428 representations writing in support and 34 writing in objection. Approximately half the support letters did not state their reason for support.

#### *Material Objections*

- The proposal will cause nuisance to residential neighbours - addressed in section (b) above
- Additional vehicles - addressed in section (b) above

#### *Non-Material Objections*

- The property already exceeds its 8pm limit - whilst this is an enforcement issue, it does not relate to the current assessment (but it is noted that it is a source of complaint)

#### *Material Reasons for Support*

- Current lack of this sort of facility in the area
- Does not cause excessive noise
- Adds to the vitality of the area
- Longer hours would benefit more people and be more convenient

#### *Non-Material Reasons for Support*

- The premises are family run
- Offers deliveries and collections
- Quality of food is good

### **Conclusion in relation to other material considerations**

It is considered that the proposal has the potential to result in a loss of neighbouring residential amenity.

## Overall conclusion

The proposal has no further impact on the conservation area and is acceptable in regard to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. The proposed increase in operational hours would have a detrimental impact on residential amenity by virtue of increased noise and disturbance, contrary to the requirements of the LDP and the SPP. The proposed change to the planning condition therefore fails to comply with the development plan in relation to likely loss of residential amenity contrary to LDP policy Hou7. The application under Section 42 should be refused and there are no material considerations which outweigh this conclusion.

## Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following;

1. The increase in hours of opening would cause a loss of amenity to nearby residential properties by way of increased noise and disturbance, contrary to LDP Policy Hou7 - Inappropriate Uses in Residential Areas.

## Background Reading/External References

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

**Further Information - Local Development Plan**

**Date Registered: 2 December 2021**

## Drawing Numbers/Scheme

1,2

Scheme 1

**David Givan**  
**Chief Planning Officer**  
**PLACE**  
**The City of Edinburgh Council**

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## Appendix 1

### Summary of Consultation Responses

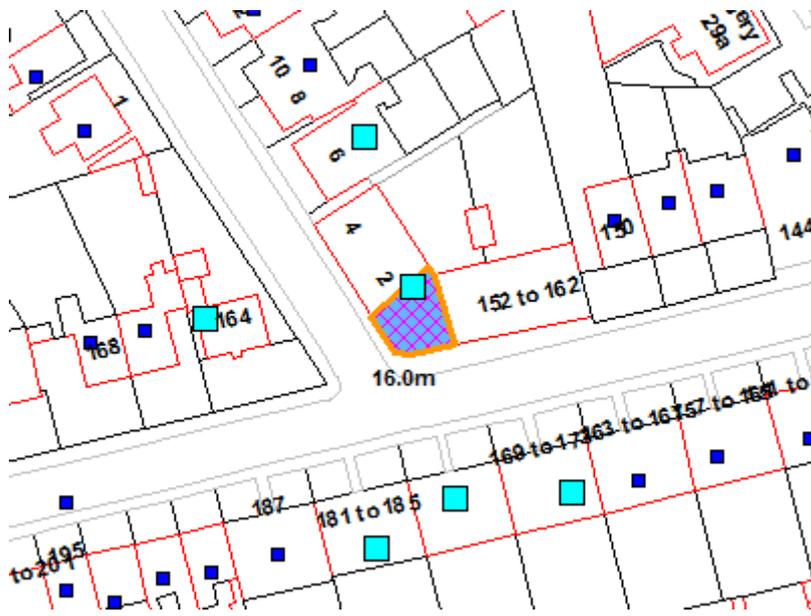
NAME: Environmental Protection

COMMENT: Continue to recommend refusal due to likely impact upon neighbouring residents.

DATE: 22 December 2021

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

### Location Plan



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