

# Development Management Sub-Committee Report

**Wednesday 11 January 2023**

**Application for Planning Permission  
272 Portobello High Street, Edinburgh, EH15 2AT**

**Proposal: Alter hours of operation approved in planning permission  
21/00108/FUL from 8am-10pm to 8am-12am 7 days a week.**

**Item – Committee Decision  
Application Number – 22/04208/FUL  
Ward – B17 - Portobello/Craigmillar**

## **Reasons for Referral to Committee**

The application has been referred to Development Management Sub Committee because four objections and 65 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 **Refused** subject to the details below.

### **Summary**

The proposal is acceptable with regards to Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. However, it would have an adverse impact on the amenity of neighbouring residents, contrary to the relevant policy contained within the Edinburgh Local Development Plan. There are no other material considerations which would outweigh this conclusion.

## **SECTION A – Application Background**

### **Site Description**

The application relates to the ground floor of a two-storey building from the later 19th century. The unit is in use as a café (class 3). The property is located on Portobello High Street, a busy thoroughfare within a commercial centre.

It is a category C listed building, listed on 04.07.1985, LB ref. 27495.

The site lies within the Portobello Conservation Area.

## Description of the Proposal

This is an application under Section 42 of the Town and Country Planning (Scotland) Act 1997 to modify hours of operation approved in planning permission 21/00108/FUL from 8am-10pm to 8am-12am 7 days a week.

## Supporting Information

Planning Statement

## Relevant Site History

21/00108/FUL

272 Portobello High Street

Edinburgh

EH15 2AT

S42 application to vary condition of original consent (336/87) approved 1988 to alter hours of operation of restaurant from 8am - 8pm for 7 days to 8am - 10pm for 7 days.

Granted

10 March 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:** 15 September 2022

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

**Press Publication Date(s):** 23 September 2022; 9 September 2022.

**Site Notices Date(s):** Not Applicable; 6 September 2022.

**Number of Contributors:** 69

## 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 Use and Adaptation of Listed Buildings

There are no structural alterations proposed so the proposal will have a neutral impact on the listed building.

### **Conclusion in relation to the listed building**

The proposal is acceptable with regard to Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

### **b) The proposals harm the character or appearance of the conservation area.**

The site lies within Portobello Conservation Area.

Portobello Conservation Area Character Appraisal emphasises the village/small town character of the area, the importance of the long sea-front promenade, the high-quality architecture, and the predominant use of traditional building materials.

There are no physical alterations proposed to the building so the special character and appearance of the conservation area will be retained.

### **Conclusion in relation to the conservation area**

The proposal is acceptable with regard to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

### **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 4 and Env 6
- LDP Housing policy Hou 7

The non-statutory Business Guidance is a material consideration that is relevant when considering policy Hou 7.

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

### Listed Building and Conservation Area

This is assessed in sections a) and b) above and the proposal complies with LDP Policies Env 4 and Env 6.

### Residential Amenity

LDP Policy Hou 7 relates to inappropriate uses in residential areas; it states that developments, including a change of use, which would have a materially detrimental effect on the living conditions of nearby residents, will not be permitted.

At present, the premises are permitted to open until 10pm, seven days a week. The current operations create employment opportunities and support the local economy and the community.

There are a significant number of residential properties adjoining and adjacent to the premises, including a flat directly above.

Portobello High Street is a main thoroughfare, where ambient noise is influenced by a relatively high level of vehicular and pedestrian traffic. Whilst daytime noise levels are high, and noise from individuals or businesses can be obscured or concealed, the background road and street noise drop in the evening and night-time hours. This reduction in noise levels becomes more pronounced as it gets later into the evening.

Whilst there are some late-night operations, by increasing the hours of operation to midnight, when ambient noise levels are low, the proposal would have the potential to introduce relatively high levels of audible disruption, with patrons leaving the premises and exiting onto the pavement, in close proximity to residential properties. This change in hours would have the potential to impact considerably on the amenity of nearby residents. The majority of the properties within this part of Portobello High Street close significantly earlier than this unit.

Environmental Protection does not support the increase in opening hours, as this is likely to cause increased disturbance to neighbours and reduce residential amenity.

The noise and disruption caused by the extension of the hours of operation would adversely affect the living conditions of nearby residents. The proposal does not comply with LDP Policy Hou 7.

### Road Safety and Car Parking

There is unrestricted on-street parking on this part of Portobello High Street. The street is served by public transport and on-street parking is available in the neighbouring streets. There are no concerns in relation to road safety.

### **Conclusion in relation to the Development Plan**

The proposal does not comply with LDP Policy Hou 7 as the proposal is likely to lead to a significant increase in noise and disturbance to the detriment of living conditions for nearby residents.

#### **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 (SPP) is a significant material consideration due to the LDP being over 5 years old. Paragraph 28 of SPP gives a presumption in favour of development which contributes to sustainable development. Paragraph 29 outlines the thirteen principles which should guide the assessment of sustainable development.

#### Emerging policy context

The Revised Draft National Planning Framework 4 was laid before the Scottish Parliament on 08 November 2022 for approval. As it has not completed its parliamentary process, only limited weight can be attached to it as a material consideration in the determination of this application.

On 30 November 2022 the Planning Committee approved the Schedule 4 summaries and responses to Representations made, to be submitted with the Proposed City plan 2030 and its supporting documents for Examination in terms of Section 19 of the Town and Country Planning (Scotland) Act 1997. At this time 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

A summary of the representations is provided below:

There are 69 contributors of these 65 were supporting and 4 objecting to the proposals. It should also be noted that 32 letters of support do not include any considerations and one of which does not have a valid postal address.

### *material considerations - objections*

- increase noise and disturbance - this is addressed in section c)
- increased sound - this is addressed in section c)
- increased odour - this is addressed in section c)

### *material considerations - support*

- improve economic development by providing employment - this is addressed in section c)
- existing hours appear short - this is addressed in section c)
- same hours as other existing businesses - this is addressed in section c)
- good addition to community -this is addressed in section c)
- would allow more time to enjoy food - this is addressed in section c)
- bolster local economy - this is addressed in section c)
- great addition to thriving community - this addressed in section c)

### *non-material considerations*

- uses local suppliers
- good food, wonderful restaurant
- welcoming and inclusive

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

There are no other issues raised in the material considerations.

## **Overall conclusion**

The proposal is acceptable with regards to Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. However, it would have an adverse impact on the amenity of neighbouring residents, contrary to LDP Policy Hou 7. There are no other material considerations which would outweigh this conclusion.

## Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following.

### Reason for Refusal: -

1. The proposal is contrary to the Local Development Plan Policy Hou 7 in respect of Inappropriate Uses in Residential Areas, as it would have a materially detrimental effect on the living conditions of nearby residents.

### Background Reading/External References

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

**Further Information - Local Development Plan**

**Date Registered: 22 August 2022**

### Drawing Numbers/Scheme

1,2

Scheme 1

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

Contact: Jennifer Zochowska, Senior Planning Officer  
E-mail: [jennifer.zochowska@edinburgh.gov.uk](mailto:jennifer.zochowska@edinburgh.gov.uk)

## Appendix 1

### Summary of Consultation Responses

NAME: Environmental Protection

COMMENT: Environmental Protection raises significant concerns regarding the proposal and is not in a position to support the application until further information is provided by the applicant which confirms that residential amenity will not be affected by the application and the associated premises' operations.

DATE: 3 October 2022

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

### Location Plan



© Crown Copyright and database right 2014. All rights reserved. Ordnance Survey License number 100023420