

Development Management Sub-Committee Report

Wednesday 8 February 2023

**Application for Planning Permission
13 Antigua Street, Edinburgh, EH1 3NL**

Proposal: Installation of replacement external duct (existing unauthorised full height flue to be removed and install new flue in accordance with guidance)

**Item – Committee Decision
Application Number – 21/05140/FUL
Ward – B11 - City Centre**

Reasons for Referral to Committee

The application has been referred to the Development Management Sub-Committee because seven letters of representation in objection to the proposals have been received. Consequently, under the Council's Scheme of Delegation, the application must be determined by the Council's Development Management Sub-Committee.

Recommendation

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

Summary

The proposals are acceptable with regards to Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and are in accordance with the relevant policies within the local development plan. There are no material considerations that outweigh this conclusion. Therefore, the recommendation is to grant planning permission.

SECTION A – Application Background

Site Description

The application property is a ground floor and basement commercial property located within a tenement building with shops and commercial uses at ground floor level.

The property is Category B listed, and was listed on 16 June 1966, LB Ref 49145.

The site is located within the New Town Conservation Area and World Heritage Site.

There are residential flats above the property.

Description of the Proposal

The application is for the installation of a single 450 x 300 mm full height external duct on the rear elevation of the property. The duct will serve the existing use of the property as a restaurant. The duct will terminate at a position 1m above the eaves of the building and will be painted to match the surrounding pipework.

The existing unauthorised duct will be removed. The ducting obscures a residential window at lower level and is the subject of a current Enforcement investigation (21/000268/EOPDEV).

The associated application for Listed Building Consent (21/05137/LBC) is still under consideration. It is anticipated this will be determined under delegated powers.

Land Ownership Certificate

The agent had submitted an incorrect land ownership certificate (Certificate A) with the original application, indicating the applicant was the sole owner of the property. The correct land ownership certificate (Certificate B) has now been served to owners of the flats above the development.

Supporting Information

The agent has submitted a Noise Impact Assessment (February 2022).

Relevant Site History

21/05137/LBC
13 Antigua Street
Edinburgh
EH1 3NL
Installation of replacement external duct

10/03316/FUL
13 Antigua Street
Edinburgh
EH1 3NL
Erection of two 150mm ducts painted out black to match existing cast iron conductors on rear elevation
Granted
30 December 2010

10/03316/LBC
13 Antigua Street
Edinburgh
EH1 3NL
Erection of two 150mm ducts painted out black to match existing cast iron conductors on rear elevation
Granted
30 December 2010

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: 16 May 2022

Date of Renotification of Neighbour Notification: Not Applicable

Press Publication Date(s): 22 October 2021

Site Notices Date(s): 19 October 2021

Number of Contributors: 7

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 - External Fixtures*
- *Managing Change - Setting*

The existing unauthorised duct is inappropriately sited and presents a clumsy addition to this elevation. Its removal and replacement with a more sympathetic addition is welcomed.

The proposed new duct will allow the commercial use of the building to be continued without detriment to its special interest. There are a number of examples of full height ducts in the terrace and its addition among the various alterations would not appear conspicuous or look out of place. The new duct will be painted to match the surrounding pipework to minimise the visual impact of the structure. The proposal will not result in adverse harm to the special interest of the listed building.

An appropriate timescale for the installation of the new duct is added as a condition of this consent.

Conclusion in relation to the listed building

The proposals are acceptable with regards to Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and relevant HES guidance.

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

The New Town Conservation Area Character Appraisal states that *the area is typified by the formal plan layout, spacious stone-built terraces, broad streets, and an overall classical elegance. The buildings are of a generally consistent three-storey and basement scale, with some four-storey corner and central pavilions*

The proposed new duct will not be visible from public views and its impact on the appearance of the conservation area will be limited. The insertion of the flue will be in-keeping with the degree of interventions that have taken place on the rear elevations of neighbouring commercial buildings. The duct would be painted to match the colour of the existing ducts which will minimise its visual impact.

The works will not harm the character and appearance of the conservation area.

Conclusion in relation to the conservation area

The proposed works will preserve the character and appearance of the conservation area, and they are 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 3, Env 4 and Env 6
- LDP Design Policy Hou 7

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 'Guidance for Businesses' is a material consideration that is relevant when considering LDP Policy Hou 7.

Impact of the character and setting of the listed building and the conservation area

The proposed alterations are to allow the commercial use of the building to be continued and is justified. The works will not result in a diminution of the building's special interests. The works are an appropriate intervention to the building where it will be in-keeping with the other changes to neighbouring buildings. The proposal accords with LDP Policies Env 3 and Env 4 and non-statutory guidance.

The proposal will not harm the character and appearance of the conservation area and is consistent with the New Town Conservation Area. The proposal accords with LDP Policy Env 6 and non-statutory guidance.

Residential Amenity

The removal of the existing structure would benefit the existing occupants of the building as the structure cuts across a window.

The new duct would terminate above eaves level and would be positioned an acceptable distance from neighbouring windows to avoid a loss of natural light.

Environmental Protection had concerns regarding noise and vibration from this proposal affecting nearby sensitive receptors and requested a Noise Impact Assessment to ensure that vibration and noise issues would be rectified by this replacement ducting.

A Noise Impact Assessment by RMP (ref R-9256-EP-DJC, dated 7 February 2022) has been submitted on behalf of the applicant to address the concerns, demonstrating that the design of the ducting, in combination with the existing fan, will meet the expected standards for protecting the amenity of nearby residents in terms of noise and vibration.

Therefore, Environmental Protection has no objections to the application subject to the addition of appropriate conditions.

The proposal complies with LDP Policy Hou 7.

Conclusion in relation to the Development Plan

Overall, therefore, the proposals comply with the Local Development Plan.

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

The following material planning considerations have been identified:

Emerging policy context - National Planning Framework 4

The Revised Draft National Planning Framework 4 was approved by the Scottish Parliament on 11 January 2023 to proceed to adoption. On adoption the Revised Draft NPF 4 (2022) will form part of the Council's Development Plan, but at present it remains a material consideration. As adoption of the Revised Draft NPF 4 (2022) is understood to be imminent, and it is now the settled position of Scottish Ministers and the Scottish Parliament, it requires to be given significant weight. Revised Draft NPF 4 (2022) lists various policy provisions under the themes of Sustainable Places, Liveable Places and Productive Places.

Policy 1 of the Draft NPF 4 gives significant weight to the global climate and nature crisis to ensure that it is recognised as a priority in all plans and decisions.

In conclusion, the proposed development is considered to broadly comply with the provisions of NPF 4 and there is not considered to be any significant issues of conflict.

City Plan 2030

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.

There are no material considerations that outweigh the assessment.

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

Seven letters of representation were received.

A summary of the representations is provided below:

material considerations

- impact on listed building and conservation area, assessed in sections a) to c) above
- impact on stone fabric, this is assessed in sections a) to c) above and is addressed by an appropriate condition.
- fumes, smell, and noise from duct, this is addressed in section c) above. Environmental Protection has considered the Noise Impact Assessment and has no objections, subject to appropriate conditions.

non-material considerations

- impact on property insurance, this is not a material planning consideration

Conclusion in relation to identified material considerations

The proposals are in compliance with the other material considerations that have been identified above.

Overall conclusion

The proposals are acceptable with regards to Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and are in accordance with the relevant policies within the local development plan. There are no material considerations which outweigh this conclusion. Therefore, the recommendation is to grant planning permission.

Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following;

Conditions

1. The proposed flue shall be implemented within three months of the date of this consent.
2. The existing flue shall be removed, and the stonework made good to repair any damage caused by the unauthorised flue within three months of the date of this consent.
3. The proposed ducting shall be installed as shown in Figure 2 of the RMP Noise Impact Assessment, ref R-9256-EP-DJC, dated 7 February 2022, and will meet the predicted internal noise levels as outlined in Table 3 and Table 4 of the RMP report.

4. All mechanical fixings of the new duct to the existing structure should incorporate resilient mountings to control any vibration from passing into the building and installed as proposed in para. 4.3 of the RMP Noise Impact Assessment, ref R-9256-EP-DJC, dated 7 February 2022,
5. The duct shall be painted black to match the colour of the existing ducts within months of the date of this consent.
 1. In order to safeguard the amenity of neighbouring residents and other occupiers.
 2. In order to safeguard the character of the conservation area.
 3. In order to safeguard the amenity of neighbouring residents and other occupiers.
 4. In order to safeguard the amenity of neighbouring residents and other occupiers.
 5. In order to safeguard the character of the statutorily listed building.

Informatives

It should be noted that:

1. This consent is for planning permission only. Work must not begin until other necessary consents, e.g., listed building consent, have been obtained.
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.
4. This application relates to a flatted building. This planning permission does not affect the legal rights of any other parties with an interest in the building. In that respect, the permission does not confer the right to carry out the works without appropriate authority.

Background Reading/External References

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

Further Information - [Local Development Plan](#)

Date Registered: 11 October 2021

Drawing Numbers/Scheme

1-2

Scheme 1

David Givan
Chief Planning Officer
PLACE
The City of Edinburgh Council

Contact: Diana Garrett, Planning officer
E-mail: diana.garrett@edinburgh.gov.uk

Appendix 1

Summary of Consultation Responses

NAME: ENVIRONMENTAL PROTECTION

COMMENT: Environmental Protection has no objection to the application subject to the following conditions:

1. The proposed ducting shall be installed as shown in Figure 2 of the RMP Noise Impact Assessment, ref R-9256-EP-DJC, dated 7 February 2022, and will meet the predicted internal noise levels as outlined in Table 3 and Table 4 of the RMP report.
2. All mechanical fixings of the new duct to the existing structure should incorporate resilient mountings to control any vibration from passing into the building.

DATE: 2 November 2022

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

Location Plan



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