

John Tod Associates.
59 Edinburgh Road
Musselburgh
EH21 6EE

Mr Murdochy
227 Portobello High Street
Edinburgh
EH15 2AN

Decision date: 17 June 2022

TOWN AND COUNTRY PLANNING (SCOTLAND) ACTS
DEVELOPMENT MANAGEMENT PROCEDURE (SCOTLAND) REGULATIONS 2013

Proposed alterations extension and use of a hot food takeaway and an office to form a restaurant.

At 227 & 229 Portobello High Street Edinburgh EH15 2AN

Application No: 21/04749/FUL

DECISION NOTICE

With reference to your application for Planning Permission registered on 6 October 2021, this has been decided by **Local Delegated Decision**. The Council in exercise of its powers under the Town and Country Planning (Scotland) Acts and regulations, now determines the application as **Refused** in accordance with the particulars given in the application.

Any condition(s) attached to this consent, with reasons for imposing them, or reasons for refusal, are shown below;

Conditions:-

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.
2. The proposal is contrary to the Local Development Plan Policy Ret 11 in respect of Food and Drink Establishments, as it would be likely to lead to an unacceptable increase in noise and disturbance to the detriment of living conditions for nearby residents.

Please see the guidance notes on our [decision page](#) for further information, including how to appeal or review your decision.

Drawings 01-08, represent the determined scheme. Full details of the application can be found on the [Planning and Building Standards Online Services](#)

The reason why the Council made this decision is as follows:

The proposal does not comply with the relevant policies within the Edinburgh Local Development Plan and the relevant Guidance in that it would have an unacceptable impact on amenity. No material considerations would outweigh this decision.

This determination does not carry with it any necessary consent or approval for the proposed development under other statutory enactments.

Should you have a specific enquiry regarding this decision please contact Murray Couston directly at murray.couston@edinburgh.gov.uk.



Chief Planning Officer
PLACE
The City of Edinburgh Council

NOTES

1. If the applicant is aggrieved by the decision to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within three months beginning with the date of this notice. The Notice of Review can be made online at www.eplanning.scot or forms can be downloaded from that website. Paper forms should be addressed to the City of Edinburgh Planning Local Review Body, G.2, Waverley Court, 4 East Market Street, Edinburgh, EH8 8BG. For enquiries about the Local Review Body, please email localreviewbody@edinburgh.gov.uk.

2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.

Report of Handling

Application for Planning Permission

227 & 229 Portobello High Street, Edinburgh, EH15 2AN

Proposal: Proposed alterations extension and use of a hot food takeaway and an office to form a restaurant.

Item – Local Delegated Decision

Application Number – 21/04749/FUL

Ward – B17 - Portobello/Craigmillar

Recommendation

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

Summary

The proposal does not comply with the relevant policies within the Edinburgh Local Development Plan and the relevant Guidance in that it would have an unacceptable impact on amenity. No material considerations would outweigh this decision.

SECTION A – Application Background

Site Description

The application site is a two storey building with the existing takeaway at ground floor and a flat above. The site also takes in the neighbouring single storey office.

Description Of The Proposal

Planning permission is sought for a change of use from hot food takeaway and office to a restaurant including a rear extension.

Supporting Information

A noise impact assessment has been submitted.

Relevant Site History

19/00020/FUL
227 Portobello High Street
Edinburgh

EH15 2AN

Alterations, extension & change of use of existing hot food takeaway to form class 3 restaurant.

Granted

2 April 2019

17/02368/FUL

227 Portobello High Street

Edinburgh

EH15 2AN

Sub-divide existing shop to form shop and 2 bedroom flat

Refused

11 August 2017

Other Relevant Site History

Consultation Engagement

Environmental Protection

Publicity and Public Engagement

Date of Neighbour Notification: 17 June 2022

Date of Advertisement: 15 October 2021

Date of Site Notice: 15 October 2021

Number of Contributors: 2

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?

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):

Do the proposals comply with the development plan?

If the proposals do comply with the development plan, are there any compelling material considerations for not approving them?

If the proposals do not comply with the development plan, are there any compelling material considerations for approving them?

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 character or appearance of the conservation area?

The proposed changes represent minor alterations to the building. By virtue of their size, location and suitable materials, the works would not have a detrimental impact on the character and appearance of the conservation area.

Conclusion in relation to the conservation area

The proposal has regard to the desirability of preserving or enhancing the character or appearance of the conservation area. The proposal is acceptable with regards 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 Strategic and Local Development Plans. The relevant Edinburgh Local Development Plan 2016 (LDP) policies to be considered are:

- LDP Environment policy Env 6
- LDP Retail policies Ret 3 and Ret 11
- LDP Housing policy Hou 7
- LDP Design policy Des 12

The non-statutory 'Listed Buildings and Conservation Area' guidance is a material consideration that is relevant when considering policy Env 6. The non-statutory Guidance for Businesses is a material consideration that is relevant when considering policies Ret 3 and Ret 11.

Principle

The site is located within Portobello Town Centre. The existing uses are a hot food takeaway and office. The proposal would not result in the loss of a retail unit and therefore complies with policy Ret 3.

Policy Ret 11 states that if a proposal is likely to lead to an unacceptable increase in noise to the detriment of living conditions for nearby residents then it will not be supported. Although it is acknowledged that the current use is that of a hot food takeaway, the extension to the rear would intensify the use of the premises and potentially impact on surrounding properties. Furthermore, consent was granted for a similar proposal in 2019 (19/00020/FUL), however, this was assessed with no noise impact assessment and on the basis that the flat above did not object.

Environmental Protection have objected to the proposal. This is discussed further in the section on amenity below. The proposal does not comply with policy Ret 11 and is therefore not acceptable in principle.

Scale, form and design

The proposed external works would represent suitable additions that would be acceptable in this location. The proposed materials are also acceptable in that they would be congruous to the application site and the surrounding area.

This would comply with Des 12 in terms of design.

Amenity

Following submission of a noise impact assessment, Environmental Protection have objected to the proposal. Concerns have been raised regarding breakout noise from the rear extension and the lack of information regarding the flue and ventilation. As noted above, permission for a similar scheme was granted in 2019 without the benefit of a noise impact assessment. Furthermore, regardless of the ownership or stance on the scheme of the property above the proposed restaurant, this is not something that can be controlled in perpetuity by the Council and any future tenants may find the restaurant a nuisance.

Taking this into consideration, the proposal would not be acceptable in terms of amenity by virtue of its potential adverse impact on residential amenity.

This is contrary to Hou 7 in terms of amenity.

Conservation area

This has been addressed above. The proposal complies with policy Env 6.

Conclusion in relation to the Development Plan

The proposal is not acceptable in principle and is likely to have an adverse impact on neighbouring residential amenity. It is, therefore, contrary to the Development Plan.

c) 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.

The proposal is contrary to Paragraph 29 of SPP, specifically principle 13.

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

Two letters of representation have been received, one objecting and one making neutral comments. A summary of the representations is provided below:

material considerations

- noise: this has been assessed in the amenity section;
 - extension and decking: this has been assessed in the scale, form and design section;
 - principle: this has been assessed in the section on principle;
 - potential signage: this would be assessed separately by way of an advert application.
- No changes to the front elevations were submitted as part of the application.

non-material considerations

- recycling

Conclusion in relation to identified material considerations

The proposal is not acceptable with regards to the above as it does not comply with Paragraph 29 of SPP.

Overall conclusion

The proposal does not comply with the relevant policies within the Edinburgh Local Development Plan and the relevant Guidance in that it would have an unacceptable impact on amenity. No material considerations would outweigh this decision.

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.
2. The proposal is contrary to the Local Development Plan Policy Ret 11 in respect of Food and Drink Establishments, as it would be likely to lead to an unacceptable increase in noise and disturbance to the detriment of living conditions for nearby residents.

Background Reading/External References

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

Further Information - [Local Development Plan](#)

Date Registered: 6 October 2021

Drawing Numbers/Scheme

01-08

Scheme 1

David Givan
Chief Planning Officer
PLACE
The City of Edinburgh Council

Contact: Murray Couston, Planning Officer
E-mail:murray.couston@edinburgh.gov.uk

Appendix 1

Consultations

NAME: Environmental Protection

COMMENT: Environmental Protection is unable to support this application.

The current takeaway part of the proposed site is the ground floor of a two-storey building with residential property above. The application also includes a proposal to have decking and seating for patrons in the rear garden with folding doors at the rear of the ground floor premises to provide access. There are residential properties overlooking the garden.

Environmental Protection has significant concerns about the noise from outdoor activities affecting the amenity of nearby residents. Noise, in particular vocals, from outdoor eating and drinking areas are extremely difficult to modulate and control. There are no mitigation measures, beyond fully enclosing the area, which has not been suggested as part of this application. Nearby residents would likely be subjected to unacceptable levels of noise, and it would be detrimental to residential amenity. In addition, the Noise Impact Assessment (Sandy Brown Limited, ref: 22165-R01-B, dated 17 May 2022) submitted by the applicant relies on the sound insulation properties of glazing to the rear, including large folding doors to meet the expected sound insulation standards. It is highly likely these doors will be kept open for long periods to provide access to the rear seating area, thus no longer meeting the standards set to protect nearby residential amenity.

The Noise Impact Assessment advises that the intention is to operate the business between 10.00 - 01.00 hours. Our Planning colleagues have advised that conditions on hours of operation would not be accepted.

We also have concerns that the position of the extract flue termination point may be too low and cause odour issues in nearby residential properties. In addition, no detail has been provided about the sound levels from the extract flue.

Therefore, Environmental Protection cannot support the application and recommend refusal.

DATE:

The full consultation response can be viewed on the Planning & Building Standards Portal.

To: Murray Couston
From: Claire Devlin, Environmental Protection

Date: 27 May 2022

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

21/04749/FUL | Proposed alterations extension and use of a hot food takeaway and an office to form a restaurant. | 227 & 229 Portobello High Street Edinburgh EH15 2AN

Environmental Protection is unable to support this application.

The current takeaway part of the proposed site is the ground floor of a two-storey building with residential property above. The application also includes a proposal to have decking and seating for patrons in the rear garden with folding doors at the rear of the ground floor premises to provide access. There are residential properties overlooking the garden.

Environmental Protection has significant concerns about the noise from outdoor activities affecting the amenity of nearby residents. Noise, in particular vocals, from outdoor eating and drinking areas are extremely difficult to modulate and control. There are no mitigation measures, beyond fully enclosing the area, which has not been suggested as part of this application. Nearby residents would likely be subjected to unacceptable levels of noise, and it would be detrimental to residential amenity. In addition, the Noise Impact Assessment (Sandy Brown Limited, ref: 22165-R01-B, dated 17 May 2022) submitted by the applicant relies on the sound insulation properties of glazing to the rear, including large folding doors to meet the expected sound insulation standards. It is highly likely these doors will be kept open for long periods to provide access to the rear seating area, thus no longer meeting the standards set to protect nearby residential amenity.

The Noise Impact Assessment advises that the intention is to operate the business between 10.00 – 01.00 hours. Our Planning colleagues have advised that conditions on hours of operation would not be accepted.

We also have concerns that the position of the extract flue termination point may be too low and cause odour issues in nearby residential properties. In addition, no detail has been provided about the sound levels from the extract flue.

Therefore, Environmental Protection cannot support the application and recommend refusal.

Should you wish to discuss the above please contact me on 0131 469 5685.

Comments for Planning Application 21/04749/FUL

Application Summary

Application Number: 21/04749/FUL

Address: 227 & 229 Portobello High Street Edinburgh EH15 2AN

Proposal: Proposed alterations extension and use of a hot food takeaway and an office to form a restaurant.

Case Officer: Local1 Team

Customer Details

Name: Mrs Lynn Houmdi

Address: TF1, 3 Mount Lodge Place Edinburgh

Comment Details

Commenter Type: Neighbour-Residential

Stance: Customer made comments neither objecting to or supporting the Planning Application

Comment Reasons:

Comment: While I support the diversification of businesses on Portobello High St and the range of restaurants available, I would like to note that this proposed restaurant is surrounded by residential properties. Our garden backs on to the proposed extension at the back of Oscar's and we have heard work being conducted there since the start of the first lockdown.

I would like to strongly urge the Council to set and enforce noise limit levels around the use of the outside space which ensure that my family and I and our neighbours are not disturbed when using our own garden in good weather. I would also like to note that adjoining the property is elderly residential housing (where my mother is resident) and the residents there should not be disturbed with loud music either.

Comments for Planning Application 21/04749/FUL

Application Summary

Application Number: 21/04749/FUL

Address: 227 & 229 Portobello High Street Edinburgh EH15 2AN

Proposal: Proposed alterations extension and use of a hot food takeaway and an office to form a restaurant.

Case Officer: Murray Couston

Customer Details

Name: Org Portobello Amenity Society

Address: 4a Elcho Terrace Edinburgh

Comment Details

Commenter Type: Amenity Body

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: Portobello Amenity Society wishes to object to this application for the following reasons:

The drawings are incomplete in that no proposed front elevation to the two premises is shown.

Whilst there may be no major changes proposed there will undoubtedly be an illuminated sign and this design for this should be included in this application. It is particularly important to do so as the applicant has on many occasions ignored the need for planning permission, notably at King's Place. As shown, work has already started on a rear extension that does not comply with consented approval.

Clarity of use of the raised decking area to the rear is required as it could be used as an outdoor seated area for serving drinks and food. If this is intended then it should be shown on the application and any possibility of noise nuisance, especially during the late evening and night time taken into account when assessing this proposal. There are domestic properties backing onto this open court yard that may be affected.

The agent states that waste storage and recycling storage will be provided on site but these areas are not indicated on the submitted plans. It is not conceivable that these areas could be accommodated in the cellars. Again, as there are residential properties adjacent, these facilities should be located so as not to cause a nuisance to existing residents.

In addition to these objections, the Society is concerned about the loss of another commercial/shop unit in Portobello High Street. Recent applications in close proximity for change of use to class 3 from class 1 have been granted or are under consideration. It is necessary for a vibrant town centre to have a mixture of uses.