

Development Management Sub-Committee Report

Wednesday 15 March 2023

**Application for Planning Permission
31 Lothian Road, Edinburgh, EH1 2DJ**

Proposal: External works to facilitate use of balcony as a customer terrace.

**Item – Committee Decision
Application Number – 22/06022/FUL
Ward – B11 - City Centre**

Reasons for Referral to Committee

In accordance with the statutory scheme of delegation, the application has been referred for determination by the Development Management Sub-committee as it has received a petition with more than six material representations in support and the recommendation is to refuse planning permission.

Recommendation

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

Summary

The proposals are not acceptable with regards to Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and are contrary to the relevant policies within National Planning Framework 4 and the Edinburgh Local Development Plan. The proposals will not preserve the character and appearance of the conservation area and will have a detrimental impact on the character of the listed building. There are no material considerations which outweigh this conclusion.

SECTION A – Application Background

Site Description

The site is located on the eastern side of Lothian Road. The surrounding area has a mixed residential/commercial character, which is characterised by ground floor commercial units situated within tenement buildings.

The building was designed by JS Richardson and JR Mackay in 1922. It is Category B listed and was listed on 12.12.1974.(LB ref: 30021.

The site lies in the West End Conservation Area.

Description of the Proposal

External works to facilitate use of balcony as a terrace and internal alterations involving reconfiguration of toilets.

Supporting Information

Heritage Statement
Planning Statement
Noise Impact Assessment

Relevant Site History

22/06023/LBC
31 Lothian Road
Edinburgh
EH1 2DJ

External works to facilitate use of balcony as a terrace and internal alterations involving reconfiguration of toilets.

19/05064/FUL
31 Lothian Road
Edinburgh
EH1 2DJ

External works at first-floor level to facilitate use of existing balcony to front elevation as an external customer terrace.

withdrawn
18 December 2019

19/05065/LBC
31 Lothian Road
Edinburgh
EH1 2DJ

External works at first-floor level to facilitate use of existing balcony to front elevation as an external customer terrace and internal alterations on balcony floor level involving reconfiguration of toilets.

withdrawn
18 December 2019

Other Relevant Site History

No other relevant site history.

Pre-Application process

There is no pre-application process history.

Consultation Engagement

No consultations undertaken.

Publicity and Public Engagement

Date of Neighbour Notification: 14 December 2022

Date of Renotification of Neighbour Notification: Not Applicable

Press Publication Date(s): 23 December 2022

Site Notices Date(s): 19 December 2022

Number of Contributors: 1

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 24, 25 and 37 of the Town and Country Planning (Scotland) Act 1997 (the 1997 Act):

Having regard to the legal requirement of Section 24(3), in the event of any policy incompatibility between National Planning Framework 4 (NPF4) & Edinburgh Local Development Plan 2016 (LDP) the newer policy shall prevail.

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:

- 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 Windows
- Managing Change Roofs
- Managing Change Interiors
- Managing Change External Fixtures
- Managing Change External Walls
- Managing Change Setting
- Managing Change Use and Adaptation of Listed Buildings

The building was originally built as a cinema and has been adapted to be used as a public house, retaining the original architectural and historic features. The use of the balcony would be incidental to the main use.

Internally these alterations would result in no change to the special interest and character of the building.

Externally, it is proposed to create a terrace at first floor level by converting an existing window into a doorway to access the area above the projecting ground floor shops. The main entrance and the frontage above the ground floor retail units create a very powerful appearance, with the first floor level windows having a particularly impressive pedimented design.

The formation of the balcony would require the introduction of a stainless-steel decorative balustrade, with a Perspex barrier behind it. This would disrupt its sense of symmetry and severely reduce the ability to appreciate the composition of the building, creating an undesirable and unsympathetic focal point on the first floor.

Moreover, the creation of an accessible use of the space at first floor level would formalise an outdoor use. It would result in people being able to congregate on a very prominent location on the building, which was never intended to be accessed and used in the way that is now being proposed. The change of this part of the building from an architectural feature, positively contributing to the overall character of the building, to a functional space, occupied by individuals, would have a negative effect on the special interest and character of the listed building.

Conclusion in relation to the listed building

The proposal is unacceptable with regard to Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and HES guidance as the proposal would not preserve the character of the listed building.

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

The site lies in the West End Conservation Area. The West End Conservation Area Character Appraisal emphasises that the area is characterised by mixed, residential commercial buildings. The central section of the conservation area is a major modern financial area consisting of modern offices. The Georgian and Victorian tenements within the area are mainly 4-6 storeys, and constructed of stone with pitched, slated roofs.

The proposal would form a significant and visually intrusive external feature, which would have a detrimental and negative impact on the integrity of the listed building. The building forms an important focal point within Lothian Road and the development would erode its contribution to the streetscene, to the detriment of the character and appearance of the conservation area.

Conclusion in relation to the conservation area

The proposal has an adverse impact on the character and appearance of the conservation area and is unacceptable in regard to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

c) The proposals comply with the development plan?

National Planning Framework 4 (NPF4) was adopted by the Scottish Ministers on 13 February 2023 and forms part of the Council's Development Plan. NPF4 policies supports the planning and delivery of Sustainable Places, Liveable Places and Productive Places and are the key policies against which proposals for development are assessed. Several policies in the Edinburgh Local Development Plan (LDP) are superseded by equivalent and alternative policies within NPF4.

The relevant NPF4 and LDP policies to be considered are:

- NPF 4 Global Climate and Nature Crises Policy 1
- NPF 4 Historic Assets and Places Policy 7
- NPF 4 Design Policy 14
- NPF 4 City Centre Policy 16
- LDP Design Policies Des 1, Des 5 and Des 12

The non-statutory 'Listed Buildings and Conservation Area' guidance is a material consideration that is relevant when considering NPF 4 Policy 7.

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

Listed Building and Conservation Area

This is assessed in sections a) and b) and the proposal does not comply with NPF4 Policy 7 as the proposal would not preserve the character, special architectural or historic interest of the building. In addition, it would not preserve the character and appearance of the conservation area.

Design, Materials

The Caley Picture House is a grand building with Beaux-Arts detailing in a prominent location. The proposed alterations to the upper windows and formation of a balcony feature, with balustrade, would detract from the architectural style and would not be compatible with the character of the existing building. It would create an incongruous and unsympathetic addition, to the detriment of the surrounding sense of place.

The proposal does not comply with NPF4 Policy 14 and LDP Policies Des 1 and Des 12.

Amenity/Employment

The site is located within the City Centre which is characterised by mixed, residential and commercial buildings where there are uses with the potential to generate significant footfall. Whilst the formation of an external seating area would generate additional noise, the submitted Noise Impact Assessment demonstrates that no residential amenity would be affected.

The provision of the terrace would be an incidental function of the lawful use of the building. It is recognised that the development could provide a modest increase in employment opportunities through increased customer space. However, this potential benefit does not outweigh the adverse impact on the historic assets.

The proposal is in keeping with NPF4 Policy 16 and LDP Policy Des 5.

Conclusion in relation to the Development Plan

The proposal would form a significant and visually intrusive external feature, which would have a detrimental impact on the integrity of the listed building and an adverse impact on the character and appearance of the conservation area, which would be in conflict with the provisions set out in the NPF 4 and the LDP.

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

The following material planning considerations have been identified:

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.

City Plan

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.

Public representations

A summary of the representations is provided below

A petition in support of the application was received with 261 signatures

material considerations

- use of the external space - assessed in sections a) and b)
- bringing a vacant part of listed building into use - assessed in sections a) and b)
- no loss of amenity - assessed in section c)
- increases employment - the proposal would form an incidental operation within the existing use of the building - assessed in section c)

non-material considerations

None

Conclusion in relation to identified material considerations

There are no other issues raised in the material considerations.

Overall conclusion

The proposals are not acceptable with regards to Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 or the development plan and non-statutory guidance. The proposals will not preserve the character and appearance of the conservation area and will have a detrimental impact on the character of the listed building. The proposals are contrary to the relevant policies within National Planning Framework 4 and the Edinburgh Local Development Plan. There are no material considerations which outweigh this conclusion.

Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following.

Reasons

1. The proposal is contrary to NPF4 Policy 7 as the proposal would not preserve the character, special architectural or historic interest of the listed building and would not preserve the special character and appearance of the conservation area.
2. The proposal is contrary to NPF4 Policy 14 and LDP Policies Des 1 and Des 12 as the proposals would detract from the local architectural style and not be compatible with the character of the existing building.

Background Reading/External References

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

Further Information - Local Development Plan

Date Registered: 13 December 2022

Drawing Numbers/Scheme

1-9

Scheme 1

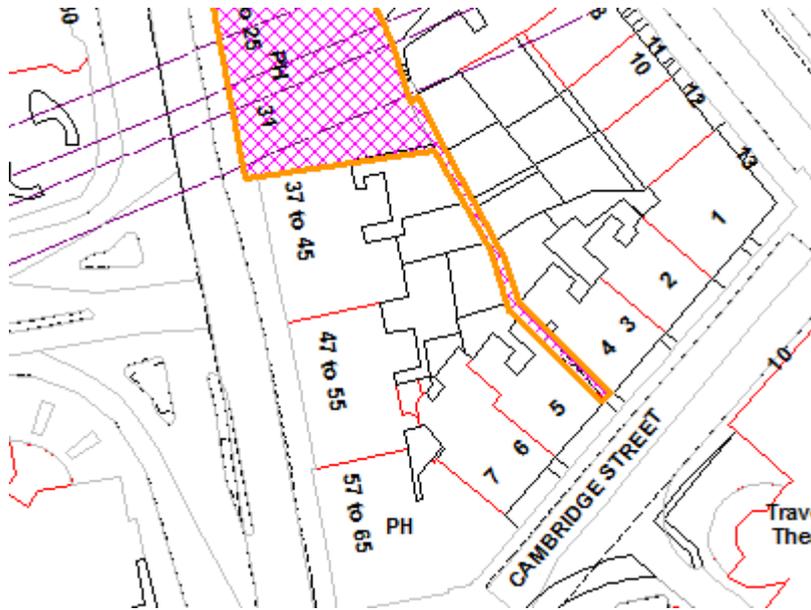
David Givan
Chief Planning Officer
PLACE
The City of Edinburgh Council

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

Summary of Consultation Responses

No consultations undertaken.

Location Plan



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