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**Decision date: 8 December 2022**

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

Fixed canopy structure above 1st floor front terrace.  
At Unit 5 5 New Street Edinburgh EH8 8BH

**Application No:** 22/04254/FUL

**DECISION NOTICE**

With reference to your application for Planning Permission registered on 6 October 2022, 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;

**Reason for Refusal:-**

1. The application is contrary to Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as the proposed canopy structure will have a harmful impact on the architectural character and setting of the listed building.
2. The application is contrary to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as the proposed canopy structure will fail to preserve or enhance the character or appearance of the Old Town Conservation Area.

3. The proposal is contrary to the LDP policy Env 3 (Listed Buildings - Setting), as it will have a detrimental impact on the setting of the listed building.
4. The proposal is contrary to the LDP policy Env 4 (Listed Buildings - Alterations and Extensions), as it will diminish the special interest of the listed building.
5. The proposal is contrary to the LDP policy Env 6 (Conservation Areas - Development), as it will fail to preserve or enhance the special character or appearance of the conservation area.

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

Drawings 01, 04, 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 proposals are unacceptable with regard to Section 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

The proposal will have a harmful impact on the character and setting of the listed building and will fail to preserve or enhance the character or appearance of the Old Town Conservation Area.

The proposals do not comply with the Edinburgh Local Development Plan.

There are no material considerations which outweigh this conclusion.

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 Lewis McWilliam directly at [lewis.mcwilliam@edinburgh.gov.uk](mailto:lewis.mcwilliam@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](http://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](mailto: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  
Unit 5 5 New Street, Edinburgh, EH8 8BH**

**Proposal: Fixed canopy structure above 1st floor front terrace.**

**Item – Local Delegated Decision  
Application Number – 22/04254/FUL  
Ward – B11 - City Centre**

## **Recommendation**

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

## **Summary**

The proposals are unacceptable with regard to Section 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

The proposal will have a harmful impact on the character and setting of the listed building and will fail to preserve or enhance the character or appearance of the Old Town Conservation Area.

The proposals do not comply with the Edinburgh Local Development Plan.

There are no material considerations which outweigh this conclusion.

## **SECTION A – Application Background**

### **Site Description**

The proposal site is a Category C listed, former school building dating from 1900-1 (listed on 13.08.1987, ref. LB29393). It is two-storeys, constructed in red sandstone with a pitched slate roof. The north elevation has projecting gables either side with a central bay, timber sash and case windows with stone surrounds.

The building now contains a food and drink unit at ground floor with a roof terrace above and hotel accommodation on its upper levels.

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

### **Description Of The Proposal**

The application is for the installation of a black, fixed steel-framed canopy structure with a corrugated steel canopy between the steel frame.

The structure would be approximately 3 metres in height, 4 metres in depth and 8 metres in depth. It would be positioned in front of the building, to the west side of the north elevation.

### **Supporting Information**

-Planning statement

### **Relevant Site History**

22/04255/LBC

Unit 5 5 New Street

Edinburgh

EH8 8BH

Fixed canopy structure above 1st floor front terrace.

### **Other Relevant Site History**

27 March 2014 - planning permission granted for redevelopment/demolition/erection of buildings for mixed use development comprising class 7 hotels, class 1, 2, 3 commercial, class 4 business, community uses (class 8 and 10), leisure (class 11), other associated uses, landscaping/public realm and associated works - application reference 13/03407/FUL

18 August 2016 - listed building consent granted for conversion of former school house to 30 room hotel, including demolition of extension, and construction of glazed restaurant and external terrace - application reference 16/01952/LBC

8 October 2021 - advertisement consent granted for fascia sign, one projecting sign, internally mounted shopfront sign and one internal neon sign - application reference : 21/04444/ADV

2 November 2021 - planning application determined as not development for external seating area to side (New Street) elevation of building - application reference : 21/05616/FUL

17 December 2021 - listed building consent determined as permission not required for external seating area to side (New Street) elevation of listed building - application reference : 21/05618/LBC

6 January 2022 - listed building consent determined as refuse and enforce for the installation of fixed canopy structure above existing first floor terrace - application reference : 21/05617/LBC

10 January 2022 - planning application determined as refuse and enforce for the installation of fixed canopy structure above first floor terrace - application reference : 21/05616/FUL

27 January 2022 - planning permission granted for erection of outbuildings (part in retrospect) - application reference : 21/00315/FUL

### **Consultation Engagement**

No consultations.

### **Publicity and Public Engagement**

**Date of Neighbour Notification:** 8 December 2022

**Date of Advertisement:** 28 October 2022

**Date of Site Notice:** 28 October 2022

**Number of Contributors:** 3

## **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 in the Historic Environment : Setting
- Managing Change in the Historic Environment : Fixtures

HES Managing Change : Setting, refers to the setting of a historic asset incorporating a range of factors. These include views to the historic asset and its prominence in views throughout the surrounding area.

HES guidance on External Fixtures, states as a general principle that new external fixtures must be sited to minimise impact on the architectural integrity and fabric of the building. Where no alternative to a prominent elevation is appropriate then it should be discreetly located.

Historically, the external area the proposed steel canopy would be positioned on was part of the school's playground. It was bordered by cast iron railings which allowed clear sight of the building's front elevation from public view. This historic building has since been altered and converted with visible change on this side.

The approved hotel and restaurant conversion included a transparent, glass balustrade bordering a roof terrace above the new ground floor commercial unit facing East Market Street. This modern change still principally allowed visibility through to this important listed facade.

The north side of this historic building has traditional detailing including timber sash and case windows of varying scale with red sandstone 'Gibbs' surrounds. These elements contribute to the overall formality of this elevation and the appreciation of the building from public view.

The proposal is of a smaller footprint than the current canopy structure in situ. However, this is an unauthorised development recently refused planning permission 21/05616/FUL and listed building consent 21/05617/LBC. Therefore, limited weight can be applied to the presence of this structure in consideration of this current scheme.

The proposed canopy would be positioned in proximity to this listed frontage and its 4 m depth would extend near to the glass balustrade and exceed its height by just under 2 m. It would extend approximately a third in width across the principal elevation of the listed building.

With specific regard to facing the building centrally and to the west on East Market Street, the proposed canopy's immediacy, size and dark grey solid steel construction will continue to disrupt views of the principal elevation. It would mask architectural detailing to a degree that would be harmful to the buildings' overall architectural character and historic interest. In addition, this degree of impact will be exacerbated by the corrugated steel canopy roof, further reducing views of this elevation from public view.

Whilst temporary tables and seating on the roof terrace has impact on public views of the building, these are low level and do not raise the same concerns.

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

The proposal has a harmful impact on the character and setting of the listed building, contrary to Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and the relevant HES guidance.

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

In its summary of the significance of the conservation area, the Old Town Conservation Area Character Appraisal states:

The Old Town Conservation Area Character Appraisal emphasises the survival of the original medieval street pattern; the wealth of important landmark buildings; the survival of an outstanding collection of archaeological remains, medieval buildings, and 17th-century town houses; the consistent and harmonious height and mass of buildings; the importance of stone as a construction material for both buildings and the public realm; the vitality and variety of different uses; and the continuing presence of a residential community.

The immediate area of the Old Town around the site has changed over time. Large, modern developments are to the north, east and west of the site with old historic tenements to the south fronting the Canongate with variety of uses present.

The early 20th century historic former school building makes a positive contribution to the Old Town. It occupies a corner plot location with traditional architectural detailing on its publicly visible sides.

Whilst modern changes to the building have occurred as part of its recent conversion, these alterations still preserved important characteristics of the building through the level of visibility onto its listed façades.

The proposed canopy structure will be particularly apparent when approaching the building from the west on East Market Street.

Its combined height, extent of projection and steel material will add visual clutter to the front of an important historic frontage. Despite its lesser scale than the present structure on-site, it will continue to obscure the historic frontage to a degree that will impact adversely on the appreciation of this historic building from public views. Therefore failing to preserve the character or appearance of the conservation area.

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

The proposed canopy fails to preserve or enhance the character or appearance of the Old Town Conservation Area, contrary to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and the relevant HES guidance.

#### **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 1, 3, 4 and Env 6

The non-statutory 'Listed Buildings and Conservation Area' guidance is a material consideration that is relevant when considering policies Env 3, 4 and Env 6.

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

This has been assessed in sections a) and b). The proposal does not comply with LDP Policies Env 3, Env 3 and Env 6.

#### Outstanding Universal Value of World Heritage Site

LDP policy Env 1 (World Heritage Sites) states development which would harm the qualities which justify inscription of the Old and New Towns of Edinburgh as World Heritage Site or would have a detrimental impact on site's setting will not be permitted.

In the context of the Old and New Towns of Edinburgh World Heritage site, the proposal is small-scaled and will not affect wider views or the relationship of the medieval Old Town with the Georgian New Town.

The development will therefore not harm the qualities that justify the inscription of the Old and New Towns of Edinburgh World Heritage Site. Therefore, it complies with LDP policy Env 1.

#### Amenity

LDP policy Des 5 (Development Design - Amenity) states permission will be granted for development where the amenity of neighbouring developments is not adversely affected.

The proposals have been assessed in terms of amenity and no impacts were identified with regard to sunlight or daylight.

In addition, the separation distances retained to all residential properties will prevent any material impact on privacy.

In regard to noise, this proposal does not alter the established use of the premises. If a noise nuisance is reported from the site there is separate Environmental Protection legislation to assess this.

The development will not impact on neighbouring residential amenity, complying with LDP Policy Des 5.

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

The proposal is contrary to the Local Development Plan.

**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.

These principles include protecting, enhancing and promoting access to cultural heritage including the historic environment.

The proposal will have an adverse impact on the historic environment therefore is contrary to this principle of the SPP.

### 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.

The Planning Committee considered the objections received to City Plan 2030 on 30 November 2022. 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:

#### *material considerations*

- Adverse impact on Listed building : Addressed in section a) Listed Building
- Adverse impact on Conservation Area : Addressed in section b) Conservation Area
- Adverse impact on World Heritage Site : Addressed in section c) World Heritage Site
- Adverse impact on Amenity : Addressed in section c) Amenity

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

The material considerations support the presumption to refuse planning permission.

### **Overall conclusion**

The proposals are unacceptable with regard to Section 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

The proposal will have a harmful impact on the character and setting of the listed building and will fail to preserve or enhance the character or appearance of the Old Town Conservation Area.

The proposals do not comply with 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;

### **Reason for Refusal**

1. The application is contrary to Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as the proposed canopy structure will have a harmful impact on the architectural character and setting of the listed building.
2. The application is contrary to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as the proposed canopy structure will fail to preserve or enhance the character or appearance of the Old Town Conservation Area.
3. The proposal is contrary to the LDP policy Env 3 (Listed Buildings - Setting), as it will have a detrimental impact on the setting of the listed building.
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5. The proposal is contrary to the LDP policy Env 6 (Conservation Areas - Development), as it will fail to preserve or enhance the special character or appearance of the conservation area.

### **Background Reading/External References**

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

**Further Information - [Local Development Plan](#)**

**Date Registered: 6 October 2022**

**Drawing Numbers/Scheme**

01, 04

Scheme 1

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

Contact: Lewis McWilliam, Planning Officer  
E-mail: [lewis.mcwilliam@edinburgh.gov.uk](mailto:lewis.mcwilliam@edinburgh.gov.uk)

Appendix 1

## **Consultations**

No consultations undertaken.

# Comments for Planning Application 22/04254/FUL

## Application Summary

Application Number: 22/04254/FUL

Address: Unit 5 5 New Street Edinburgh EH8 8BH

Proposal: Fixed canopy structure above 1st floor front terrace.

Case Officer: Lewis McWilliam

## Customer Details

Name: Mr Ian Hay

Address: Flat 14, 1 Shoemakers Square Edinburgh

## Comment Details

Commenter Type: Neighbour-Residential

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

Comment Reasons:

Comment: The proposal borders onto Shoemakers Sq, a recently-completed mixed residential and commercial development linking Holyrood to The New Town.

The revised development would accommodate larger groups of customers at first floor level and alter the orientation of the canopy area to face towards residential locations in the square.

As well as noise and disturbance, this also raises privacy issues which could be resolved by the addition of opaque screens and restrictions on operating hours.

# Comments for Planning Application 22/04254/FUL

## Application Summary

Application Number: 22/04254/FUL

Address: Unit 5 5 New Street Edinburgh EH8 8BH

Proposal: Fixed canopy structure above 1st floor front terrace.

Case Officer: Lewis McWilliam

## Customer Details

Name: Dr Berenice Muir

Address: Flat 18 1 Shoemakers Square

## Comment Details

Commenter Type: Neighbour-Residential

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: We have objections on 2 counts - noise and appearance

Noise is stipulated in Ret 7 and 11 in correspondence from FirstPlan but is afterwards ignored. We live about 100 metres from the development. This summer we were plagued with noise coming from it. Singing, music and shouting were only too easily heard, even with closed windows. There is no indication of how this will be dealt with.

Appearance. It is evident that the appearance of the school was regarded as important when the previous application was refused, and quoting from recent correspondence from FirstPlan "will ensure the listed façade of the listed building is not compromised in anyway", this is still an issue. However images 2&3 and photo no 3 in that letter showing how the proposed canopy could be placed, indicate there will still be an impact on the appearance of the building frontage.

We do not want to see this structure retained

# Comments for Planning Application 22/04254/FUL

## Application Summary

Application Number: 22/04254/FUL

Address: Unit 5 5 New Street Edinburgh EH8 8BH

Proposal: Fixed canopy structure above 1st floor front terrace.

Case Officer: Lewis McWilliam

## Customer Details

Name: Dr The Architectural Heritage Society of Scotland

Address: 15 Rutland Square, Edinburgh EH1 2BE

## Comment Details

Commenter Type: Amenity Body

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: The AHSS Forth & Borders Cases Panel objects to this case as the installation of a permanent canopy structure to the front elevation of this building will detract from and obscure the symmetry of this important and Grade C-listed Queen Anne style building.

As one of the few historic buildings in the immediate area, modifying the façade in such a way would homogenise the visual appearance of the area and disguise this important example of architectural variation and history.

The structure would be excessively visible and compromise the aesthetic of the World Heritage Site in which it is located. Exterior tables and chairs are not objectionable, but the construction of a permanent canopy structure obscures the historic building to the detriment of its special interest, and the wider character of the conservation area. We therefore object.