

Development Management Sub-Committee Report

Wednesday 26 April 2023

Application for Planning Permission
44 Biggar Road, Edinburgh, EH10 7BJ

Proposal: Section 42 application seeking to reword condition 7 attached to planning permission ref. 12/00758/FUL, to allow the sale of convenience goods from 248sqm gross sales floorspace at the site.

Item – Committee Decision
Application Number – 22/04184/FUL
Ward – B08 - Colinton/Fairmilehead

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 more than six material representations objecting to the proposal and the recommendation is to grant planning permission.

Recommendation

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

Summary

The proposal complies with the relevant policies contained within the National Planning Framework 4 and Policy Ret 6 of the Edinburgh Local Development Plan and associated guidance. It has been demonstrated that there is a gap in the provision and the proposed floor space for the sale of convenience goods has been reduced in size to one that would complement the retail provision within the nearest centres, without adversely affecting their vitality. It would have no adverse effect on road safety or amenity. There are no material considerations that outweigh this conclusion.

SECTION A – Application Background

Site Description

The site lies on the west side of Biggar Road at its junction with the City Bypass. It is a three storey building accommodating retail, restaurant, and office space.

Description of the Proposal

This is a Section 42 application to amend condition 7 of planning permission 12/00758/FUL, to allow the sale of convenience goods from 248sqm gross sales floorspace at the site.

The remainder of the existing retail unit, at lower ground level, will continue to operate with the comparison goods condition. Similarly, the independently run café on the top floor will continue to operate, but with a separate access that will provide improved flexibility for its operation.

Supporting Information

A planning statement has been submitted. Full details can be viewed online on the Planning and Building Standards Portal.

Relevant Site History

22/01820/FUL
44 Biggar Road
Edinburgh
EH10 7BJ

Section 42 Reword condition 7 attached to planning permission Ref: 12/00758/FUL. To enable the sale of convenience goods from 262sqm (net) retail floorspace at the site. Please see the attached planning statement for further details.

Refused
6 July 2022

Other Relevant Site History

12/00758/FUL

Pre-Application process

There is no pre-application process history.

Consultation Engagement

Transport Planning

Refer to Appendix 1 for a summary of the consultation response.

Publicity and Public Engagement

Date of Neighbour Notification: 30 August 2022

Date of Renotification of Neighbour Notification: Not Applicable

Press Publication Date(s): Not Applicable

Site Notices Date(s): Not Applicable

Number of Contributors: 71

Section B - Assessment

Determining Issues

Section 42 of the Town and Country Planning (Scotland) Act 1997 (the Act) relates to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.

On such an application the planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and

- (a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly;
- (b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.

If an application under Section 42 of the Act is granted it creates a new planning permission with a new default time period for implementation unless otherwise determined. Accordingly, the proposals also require to be determined under Sections 25 and 37 of the 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?

Therefore, consideration shall be given to the proposed change to the condition and any other conditions attached, in particular whether:

- i) the proposed change to the condition would result in a development that is in accordance with the development plan; or
- ii) an alternative condition or conditions would result in a development that is in accordance with the development plan; and
- iii) there are any material considerations that outweigh the conclusions in respect of i) and ii) above.

Assessment

To address these determining issues, it needs to be considered whether:

a) 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 Climate and Nature Crises - Policy 1
- NPF 4 City, town, local and commercial centres Policy 27
- NPF 4 Productive Places Policy 28
- NPF 4 Sustainable Transport Policy 13
- NPF 4 Liveable Places Policy 15
- LDP Retail Policy Ret 6
- LDP Transport Policies Tra 2 and Tra 3.
- LDP Housing Policy Hou 7

The non-statutory Guidance for Businesses is a material consideration that is relevant when considering NPF 4 Policy 28 and LDP Policy Ret 6.

The non-statutory Edinburgh Design Guidance is a material consideration that is relevant when considering policies Tra 2 and Tra 3.

Principle

Planning permission was recently refused for a Section 42 application to vary condition 7 of planning permission 12/00758/FUL to enable the sale of convenience goods from 262sqm (net) retail floorspace at the site. Since the refusal, the proposed floor space for the sale of convenience goods has been reduced to 248sqm.

The site does not lie within a retail centre. The nearest retail centres to the site are local centres situated at Oxfords Broadway and Buckstone Terrace.

NPF 4 Policy 28 does not support retail in out of centre locations (other than those meeting policy 28(c)). LDP Policy Ret 6 (Out of Centre Development) recognises that in exceptional circumstances, there may be retail proposals that can justify an out of centre location, for example smaller units to meet the needs of a growing population or where a gap in provision can be demonstrated.

The applicant has supplied a sequential analysis which demonstrates that there are no sequentially preferable sites where the retailer could be accommodated.

The supporting text to LDP Ret 6 states that there are benefits in providing small scale, convenience stores (up to 250sq.m. gross floorspace) in locations easily accessible on foot or by cycle. These will complement the role of the identified centres.

The site is in an accessible location, within walking distance of a populated area and well served by public transport, in keeping with the requirements of NPF 4 Policy 13. The sale of convenience goods of this scale would contribute to local living and 20 minute neighbourhoods.

With a reduced floorspace of 248 sqm, the proposal will not adversely affect the vitality of the nearest retail centres.

The proposal complies with NPF 4 Policies 13, 15, 27 and 28(c) and LDP Policy Ret 6..

Amenity

There are no anticipated impacts on neighbouring amenity as a result of this application. The remaining conditions on the original application are attached to this permission to ensure residential amenity is protected.

The proposal complies with NPF 4 Policy 27 and LDP Policy Hou 7.

Road Safety and Car Parking

The Roads Authority was consulted and returned no comment on the proposal.

No changes are proposed to the existing access arrangements at the site which were approved in January 2013. The site is accessible by a range of transport modes including by car, bus, on foot and bicycle, and there is sufficient parking available within the car park to serve the retail, café and office uses.

The proposal complies with NPF 4 Policy 13 and LDP Policies Tra 2 and Tra 3.

Conclusion in relation to the Development Plan

The proposal complies with the National Planning Framework 4 and Edinburgh Local Development Plan. It would provide an appropriate level of convenience retail floorspace, which would complement the existing retail centres and would have no adverse impact on road safety or amenity.

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

The following material planning considerations have been identified:

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.

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 total of seventy one representations have been received. Of these 17 object to the proposal and 54 support it of those supporting the proposal 18 did not provide reasons for their support.

A summary of the representations is provided below:

material considerations - objecting

- Use for convenience goods.
- Customer and delivery traffic will cause chaos.
- Plenty of existing supermarkets in area so no need for anymore.
- More accidents especially exiting traffic travelling south.
- No crossing point for pedestrians from Winton Estate.
- Increased traffic and parking particularly on side streets.
- Detrimental to existing local businesses.
- Cycle parking needs to be improved to allow more cyclists.
- Access arrangements for pedestrians, cyclists and vehicles need to be improved.
- Increase noise disturbance from refrigeration equipment necessary for food.

material considerations - supporting

- Benefits of having a local supermarket nearby.
- May help traffic flow.
- Avoid the use of car within walking distance.
- Handy for the elderly and those with a disability.
- Boost other businesses operating within the building.
- Local employment opportunities.
- Great local addition within easy walking distance.
- Retain the viability of the building.

non-material considerations

- loss of outdoor store.
- How will waste management and deliveries work in restricted access time onto Swanston Drive.
- Increase noise disturbance from refrigeration equipment necessary for food.

Conclusion in relation to identified material considerations.

The proposals do not raise any issues in relation to other material considerations identified.

Overall conclusion

The proposal complies with the relevant policies contained within the National Planning Framework 4 and Policy Ret 6 of the Edinburgh Local Development Plan and associated guidance. It has been demonstrated that there is a gap in the provision and the proposed floor space for the sale of convenience goods has been reduced in size to one that would complement the retail provision within the nearest centres, without adversely affecting their vitality. It would have no adverse effect on road safety or amenity. There are no material considerations that outweigh this conclusion.

Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following.

Conditions

1. The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which this permission is granted. If development has not begun at the expiration of this period, the planning permission lapses.
2. Prior to the sale of convenience goods, a floor plan showing the area of sales shall be submitted to and agreed by the Planning Authority. For the avoidance of doubt the sale of convenience goods shall be restricted to a maximum of 250sqm at ground floor level only.
3. The design and installation of any plant, machinery or equipment shall be such that any associated noise complies with NR25 when measured within any nearby living apartment, and no structure borne vibration is perceptible within any nearby living apartment.
4. The net retail sales area within the building shall not exceed 704sqm.
5. The kitchen shall be ventilated by a system capable of achieving 30 air changes per hour and the cooking effluvia shall be ducted to roof height as agreed with the Planning Authority to ensure that no cooking odours escape or are exhausted into any neighbouring premises.

Reasons

1. To accord with Section 58 of the Town and Country Planning (Scotland) Act 1997.
2. In order to ensure that there will be no adverse impact on established retail centres.
3. In order to ensure that the nature of the use of the premises remains compatible with the character of the surrounding area, and that no activities or processes take place which may be detrimental to its amenities.

4. In order to give due recognition to the special circumstances displayed by the applicant/s in this particular case and to ensure the range and scale of uses remain compatible and suitable for the location.
5. In order to safeguard the amenity of neighbouring residents and other occupiers.

Background Reading/External References

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

Further Information - Local Development Plan

Date Registered: 19 August 2022

Drawing Numbers/Scheme

1

Scheme 1

David Givan
Chief Planning Officer
PLACE
The City of Edinburgh Council

Contact: Jennifer Zochowska, Senior Planning Officer
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Appendix 1

Summary of Consultation Responses

NAME: Transport Planning
COMMENT: No objections.
DATE: 14 March 2023

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

Location Plan



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