

Development Management Sub-Committee Report

Wednesday 10 May 2023

**Application for Planning Permission
272 Portobello High Street, Edinburgh, EH15 2AT**

**Proposal: Alter hours of operation from 8am to 10pm to 8am to 11pm
7 days a week.**

**Item – Committee Decision
Application Number – 23/00131/FUL
Ward – B17 - Portobello/Craigmillar**

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 letters of 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 proposal is acceptable with regards to Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. However, the proposal would be contrary to the relevant Local Development Plan (LDP) policy, as it would have a materially detrimental effect on the living conditions of nearby residents through the increase in late night noise. There are no material considerations that outweigh this conclusion.

SECTION A – Application Background

Site Description

The application site is a ground floor unit within a two-storey building from the later 19th century. The unit is in use as a café (class 3). The property is located on Portobello High Street, a busy thoroughfare within a commercial centre.

It is a category C listed building, listed on 4 July 1985, LB ref. 27495.

The site is located within the Portobello Conservation Area.

Description of the Proposal

This is an application under Section 42 of the Town and Country Planning (Scotland) Act 1997 to modify hours of operation approved in planning permission 21/00108/FUL from 8am-10pm to 8am-11pm 7 days a week.

Supporting Information

- Planning Statement

Relevant Site History

21/00108/FUL

272 Portobello High Street

Edinburgh

EH15 2AT

S42 application to vary condition of original consent (336/87) approved 1988 to alter hours of operation of restaurant from 8am - 8pm for 7 days to 8am - 10pm for 7 days.

Granted

10 March 2021

22/04208/FUL

272 Portobello High Street

Edinburgh

EH15 2AT

Alter hours of operation approved in planning permission 21/00108/FUL from 8am-10pm to 8am-12am 7 days a week.

withdrawn

10 January 2023

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: 18 January 2023

Date of Renotification of Neighbour Notification: Not Applicable

Press Publication Date(s): 27 January 2023

Site Notices Date(s): Not Applicable

Number of Contributors: 15

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.**

Section 59 (1) of the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997 states: -

"In considering whether to grant planning permission for development which affects a listed building or its setting, a planning authority or the Secretary of State, as the case may be, shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."

Historic Environment Scotland's document 'Managing Change in the Historic Environment - Setting' states.

"Setting' is the way the surroundings of a historic asset or place contribute to how it is understood, appreciated and experienced."

The document states that where development is proposed it is important to:

- identify the historic assets that might be affected.
- define the setting of each historic asset; and
- assess the impact of any new development on this.

There are no structural alterations proposed so there will be no impact on the listed building and its setting.

Conclusion in relation to the listed building

The proposal will not impact on the special architectural or historic interest of the listed building and is acceptable with regards to Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

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

Section 64(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 which states:

"In exercise, with respect to any buildings or other land in a conservation area, of any powers under any of the provisions in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area."

The Portobello Conservation Area Character Appraisal emphasises the village/small town character of the area, the importance of the long sea-front promenade, the high-quality architecture, and the predominant use of traditional building materials.

No internal or external physical changes are proposed. Therefore, there will be no adverse impact on the character or 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.

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:

- NPF4 Sustainable Places Policy 1
- NPF4 Sustainable Places Policy 7
- NPF4 Productive Places Policy 27
- LDP Housing Policy Hou 7

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

Listed Building

The impact on the listed building and its setting has been addressed in section a) above. It is concluded that the proposal will not harm the listed building and its setting and therefore complies with NPF4 Policy 7.

Conservation Area

The impact on the character and appearance of the conservation area has been addressed in section b) above. It is concluded that the proposal will not adversely impact on the character or appearance of the conservation area and therefore complies with NPF4 Policy 7.

Principle

A residential property is situated above the application premises, and commercial premises are located to the east with a residential stair to the west. Residential properties are also situated to the north and on the upper floor of the building to the north-west.

Portobello High Street is a main thoroughfare, where ambient noise is influenced by a relatively high level of vehicular and pedestrian traffic. Whilst daytime noise levels are high, and noise from individuals or businesses can be obscured or concealed, the background road and street noise drop in the evening and night-time hours. This reduction in noise levels becomes more pronounced as it gets later into the evening.

Whilst there are some late-night operations, road and street noise begins to quieten into the evening and night-time hours. By increasing the hours of operation to 11pm, when ambient noise levels are low, the proposal would have the potential to introduce relatively high levels of audible disruption, with patrons leaving the premises and exiting onto the pavement, in close proximity to residential properties. This change in hours would have the potential to impact considerably on the amenity of nearby residents.

The majority of the properties within this part of Portobello High Street close significantly earlier than this unit.

Environmental Protection was consulted and could not support the increase in opening hours, as this is likely to cause increased disturbance to neighbours and reduce residential amenity. That service has concluded that existing noise levels would not mask any additional noise stemming from the application premises between 10pm and 11pm. Moreover, any noise from the front road would not provide any masking effect to the rear of the property where operational noise from the kitchen is more evident.

Whilst an increase in opening hours would be broadly compliant with NPF4 Policy 27, in that it could support the vitality and viability of the area, the failure to comply with the amenity aspects of this policy through the increase in late night noise outweighs any benefits that the increase in hours could bring.

The noise and disruption caused by the extension of the hours of operation would adversely affect the living conditions of nearby residents. The proposal does not comply with LDP Policy Hou 7.

The proposal has a neutral impact in terms of NPF4 Policy 1.

Road Safety and Parking Standards

There is unrestricted on-street parking on this part of Portobello High Street. The street is served by public transport and on-street parking is available in the neighbouring streets. There are no concerns in relation to road safety.

Conclusion in relation to the Development Plan

The proposal is contrary to LDP Policy Hou 7 as it would have a materially detrimental effect on the living conditions of nearby residents.

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 total of 15 representations have been made including one general comment, one objection and 13 letters of support. It should be noted that four of the letters of support were non-material or included no considerations.

A summary of the representations is provided below:

material objections

- Negative impact on residential amenity; This has been addressed above in c).
- Noise and odour penetration to above properties; This has been addressed above in c).
- Contrary to LDP Policy Hou 7; This has been addressed above in c).

material support comments

- Supports local businesses and community; This has been addressed above in c).
- Not inconsistent with other licenses for operating hours; This has been addressed above in c).
- Excellent addition to the high street; This has been addressed above in c).

non-material comments

- Great restaurant and owners exceptionally caring with their clients; This is not a material planning consideration.
- Three of the support comments do not include any considerations.
- Excellent food and friendly staff; This is not a material planning consideration.

Conclusion in relation to identified material considerations.

None of the identified material considerations outweigh the proposals compliance with the Development Plan

Overall conclusion

The proposal is acceptable with regards to Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. However, the proposal would be contrary to Local Development Plan (LDP) Policy Hou 7 as it would have a materially detrimental effect on the living conditions of nearby residents through the increase in late night noise. There are no material considerations that outweigh this conclusion.

Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following.

Conditions

Reasons

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 through the increase in late night noise.

Informatives

Background Reading/External References

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

Further Information - Local Development Plan

Date Registered: 13 January 2023

Drawing Numbers/Scheme

01-02

Scheme 1

David Givan
Chief Planning Officer
PLACE
The City of Edinburgh Council

Contact: Stephanie Fraser, Assistant Planning Officer
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Appendix 1

Summary of Consultation Responses

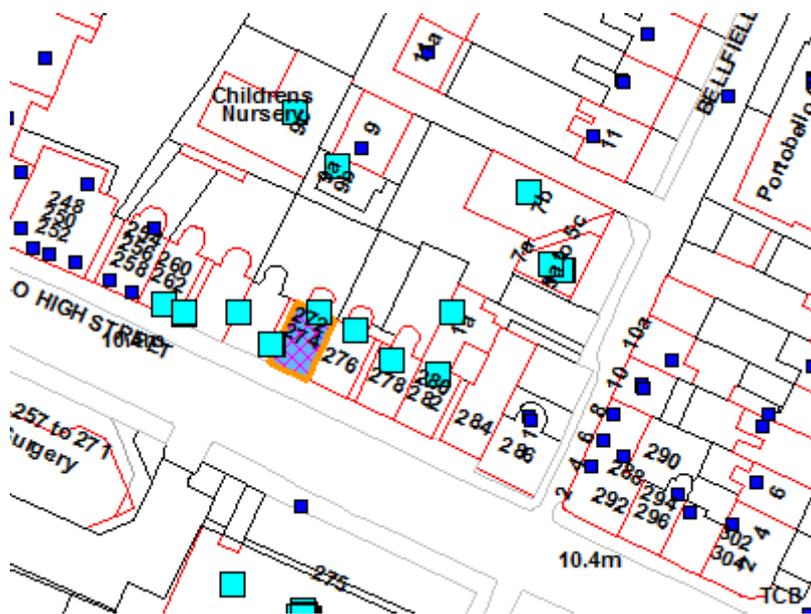
NAME: Environmental Protection

COMMENT: Environmental Protection raises significant concerns relating to the proposed development and recommends it be refused.

DATE:

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

Location Plan



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