

Development Management Sub-Committee Report

Wednesday 10 May 2023

**Application for Planning Permission
67 St Leonard's Street, Edinburgh, EH8 9QR**

Proposal: Change of use from Class 2 stationery /printshop to Class 3 hot-food takeaway.

**Item – Committee Decision
Application Number – 22/05923/FUL
Ward – B15 - Southside/Newington**

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 objections and the recommendation is to grant planning permission.

Recommendation

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

Summary

The proposals will preserve the character and appearance of the conservation area. It is acceptable with regards to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. The proposals comply with National Planning Framework 4, the Edinburgh Local Development Plan, and the relevant non-statutory guidance. The proposal is acceptable in principle and would not have a detrimental impact on residential amenity. There are no material considerations that outweigh this conclusion.

SECTION A – Application Background

Site Description

The application site is a ground floor premises within a four-storey tenement building. It is located at the end of a cluster of commercial uses on St Leonard's Street.

The site is located within the Southside Conservation Area.

Description of the Proposal

The application proposes change of use from Class 2 stationery /printshop to Class 3 hot-food takeaway. This includes the installation of ventilation extract ducts running up the rear elevation. The two ducts will have a diameter of 150mm and will be black to resemble existing pipes. The rear window will also be replaced with a fire rated door.

Supporting Information

- Noise Impact Assessment
- Site photographs

These are available to view on the Planning and Building Standards Online Service.

Relevant Site History

No relevant site history.

Other Relevant Site History

No other relevant site planning 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: 8 December 2022

Date of Renotification of Neighbour Notification: Not Applicable

Press Publication Date(s): 16 December 2022

Site Notices Date(s): 13 December 2022

Number of Contributors: 69

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 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 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 following HES guidance is relevant in the determination of this application:

- *Managing Change - Conservation Areas*

The South Side Conservation Area Character Appraisal emphasises the harmonious scale, massing and materials and the significance of key institutional buildings within the 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.

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 Climate and Nature Crises Policy 1
- NPF4 Historic Assets and Places Policy 7
- NPF4 Design, Quality and Place Policy 14
- LDP Design Policies Des 1 and Des 12
- LDP Retail Policy Ret 11
- LDP Housing Policy Hou 7

The non-statutory 'Listed Buildings and Conservation Area' guidance is a material consideration that is relevant when considering the above policies.

The non-statutory 'Guidance for Businesses' is a material consideration that is relevant when considering the above policies.

Conservation Area

The impact on the character and appearance of the conservation area has been addressed in section a) 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.

Proposed Use

The proposal is for a class three hot food takeaway and is assessed as a mixed use. The proposed floor plans include the provision of seating in the front area of the premises.

The application site occupies the ground floor premises of a four-storey tenement building with residential properties directly above. The premises have an established commercial use and sit within an existing cluster of commercial activity. The site is not identified as being within the area of restriction for class three premises and there is not an excessive concentration of such uses to the detriment of living conditions for nearby residents.

The proposed class three hot food takeaway is acceptable in this location subject to amenity considerations which are assessed below.

The proposal has a neutral impact in terms of NPF4 Policy 1 and complies with LDP Policy Ret 11 Food and Drink Establishments.

Scale, Form and Design

The external alterations proposed are to the rear and include the installation of ventilation extract ducts running up the rear elevation. These make up part of the character of the immediate vicinity. The two ducts will have a diameter of 150mm and will be black to resemble existing pipes. The rear window will also be replaced with a fire rated door.

The proposal complies with NPF4 Policy 14 and LDP Policies Des 1 Design Quality and Context and Des 12 Alterations and Extensions.

Amenity

The site lies out with the area of restriction for hot food takeaways as defined within the Council's Guidance for Businesses and within a cluster of existing commercial uses. The Guidance supports hot food takeaways within such areas provided it will not lead to an unacceptable increase in disturbance, on-street activity, or antisocial behaviour to the detriment of the living conditions of nearby residents.

There are residential properties above the application site, however, it is not considered that there will be an unacceptable increase in noise, disturbance, on-street activity, or anti-social behaviour to the detriment of living conditions for nearby residents. The area is mixed in character and the premises will only open until 10.30pm. Traffic noise already exists to the east of the building façade which is likely to provide some masking of any noise.

A Noise Impact Assessment (NIA) was provided, and Environmental Protection raise no objections with regard to amenity, subject to conditions. The NIA advises that the fan/ventilation will be within acceptable noise levels (based on noise and vibration mitigation/attenuation measures being installed at the fan and flue). A condition has been attached to that effect.

The proposals will not detrimentally impact upon residential amenity and the proposals comply with the requirements of LDP Policy Hou 7.

Parking and Road Safety

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 complies with the relevant policies within NPF4 and the LDP and are in accordance with the relevant non-statutory guidance.

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

The following material planning considerations have been identified:

Emerging policy context

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

69 representations have been received including 35 objections and 34 letters of support. It should also be noted that 18 of the support comments do not include any considerations.

A summary of the representations is provided below:

material objections

- Noise disturbance: This has been addressed above in b).
- Contrary to LDP Policy Hou 7; This has been addressed above in b).
- Impact on shared garden by installing doors to the rear; This has been addressed above in b).
- Safety of residents; This has been addressed above in b).
- Impact on traffic and parking; This has been addressed above in b).
- Accumulation of takeaways/restaurants; This has been addressed above in b).
- Fumes from extractor fan; This has been addressed above in b).
- Anti-social behaviour: This has been addressed above in b).
- Impact of extract on Conservation Area; This has been addressed above in a).
- Increased waste levels: A waste strategy should be agreed between applicant and CEC's Waste Services.

non-material objections

- Difficult to get insurance and mortgages; This is a commercial consideration not covered by planning policy.
- Drainage blockage issues and fire risk; This is not a material planning consideration and is controlled by building standards.
- Impact on health of nearby residents; This is a public health issue and not a material planning consideration.
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material letters of support

- Good use of premises.
- Supports small businesses.
- Takeaway needed in this street.
- Generates employment for wider community.
- Variety of food options.

non-material letters of support

- 18 of the letters of support included no considerations.

Conclusion in relation to identified material considerations.

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

Overall conclusion

The proposals will preserve the character and appearance of the conservation area. It is acceptable with regards to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. The proposals comply with the relevant policies contained within National Planning Framework 4, the Edinburgh Local Development Plan, and the relevant non-statutory guidance. The proposal is acceptable in principle and would not have a detrimental impact on residential 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. The noise mitigation/attenuation measures recommended within the Ellendale Environmental noise impact assessment referenced 67 St Leonard's Street, Edinburgh for planning application 22/05923/FUL and updated 27/02/23 shall be installed and operational prior to start of operations on site.
3. The ventilation proposals as shown in drawing "DWG Ref: PR.EL.GRPR 03 Proposed Elevations - REV A / A2" and dated 28/02/22 and drawing "DWG Ref: PR.FP.GRPR 02 - Proposed Floor Plan - REV A /A2" and dated 28/02/22 shall be installed and operational prior to start of operations on site

Reasons

1. To accord with Section 58 of the Town and Country Planning (Scotland) Act 1997.
2. In order to safeguard the amenity of neighbouring residents and other occupiers.
3. In order to safeguard the amenity of neighbouring residents and other occupiers.

Informatives

It should be noted that:

1. No development shall take place on the site until a 'Notice of Initiation of Development' has been submitted to the Council stating the intended date on which the development is to commence. Failure to do so constitutes a breach of planning control, under Section 123(1) of the Town and Country Planning (Scotland) Act 1997.
- 2, As soon as practicable upon the completion of the development of the site, as authorised in the associated grant of permission, a 'Notice of Completion of Development' must be given, in writing to the Council.

Background Reading/External References

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

Further Information - [Local Development Plan](#)

Date Registered: 7 December 2022

Drawing Numbers/Scheme

01, 02, 03A, 04A

Scheme 2

David Givan
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Appendix 1

Summary of Consultation Responses

NAME: Environmental Protection

COMMENT: No objections.

DATE:

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

Location Plan

