

Development Management Sub-Committee Report

Wednesday 21 June 2023

Application for Planning Permission
10 - 14 Haymarket Terrace, Edinburgh, EH12 5JZ

Proposal: Sub-divide the property and change use of No. 14 from Class 1 (retail) to (Sui Generis) to open an immersive magic experience for a small number of guests at a time, with refreshments and participation in a live entertainment experience.

Item – Committee Decision
Application Number – 23/00808/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 more than twenty 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 would be contrary to Edinburgh Local Development Plan (LDP) Policies Hou 7 and Ret 8 and NPF4 Policy 27, as it would have a materially detrimental effect on the living conditions of nearby residents through the potential increase in noise and disturbance. There are no material considerations that outweigh this conclusion.

SECTION A – Application Background

Site Description

The application site is a ground floor retail unit within a five-storey tenement building on Haymarket Terrace with residential properties above. The area is essentially mixed in character with a range of ground floor commercial units with residential properties above located in the surrounding area. Haymarket Train Station and a tram stop are located to the south of the site.

The site is located within the New Town Conservation Area.

Description of the Proposal

The application is for the change of use from Class 1 (retail) to (Sui Generis) - magic experience for a small number of guests, with refreshments and participation in live entertainment.

Supporting Information

- Supporting letter.

Relevant Site History

20/01836/ADV

10 - 14 Haymarket Terrace

Edinburgh

EH12 5JZ

Advertisement of the following types: Canopy, projecting sign.

Granted

24 June 2020

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: 13 March 2023

Date of Renotification of Neighbour Notification: Not Applicable

Press Publication Date(s): 17 March 2023

Site Notices Date(s): Not Applicable

Number of Contributors: 23

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.

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

- *Managing Change - Conservation Areas*

The New Town Conservation Area Character Appraisal states that the area is typified by the formal plan layout, spacious stone-built terraces, broad streets, and an overall classical elegance. The buildings are of a generally consistent three storey and basement scale, with some four-storey corner and central pavilions.

No 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 regard 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 policies to be considered are:

- NPF4 Policy 1 Global Climate and Nature Crises
- NPF4 Policy 7 Historic Assets and Places
- NPF4 Policy 27 City, Town, Local and Commercial Centres
- LDP Housing Policy Hou 7
- LDP Retail Policy Ret 8

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 NPF 4 Policy 27 and LDP Policies Ret 8 and Hou 7.

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.

Principle

LDP Policy Ret 8 sets out criteria for assessing proposals for entertainment and leisure developments out with the preferred locations. Key considerations include accessibility by public transport, design quality and impact on the character of the area and local residents. NPF4 Policy 27 supports this and seeks to encourage, promote, and facilitate development in our city and town centres, recognising they are a national asset.

The proposal broadly complies with criteria a) to c) within LDP Policy Ret 8, which is mirrored in NPF 4 Policy 27, in that the site is immediately adjacent to the city centre, as defined within the LDP. In these circumstances, it would not have been reasonable or necessary to require alternative city centre sites to have been considered and discounted. The site is easily accessible by a choice of means of transport and the proposal could be integrated satisfactorily into its surroundings should a proposal be brought forward for an alternative frontage of a high quality of design. However, the proposal, for reasons that are fully assessed below, fails to comply with criterion d) of LDP Policy Ret 8, due to its potential impact on residential amenity.

Whilst the proposal would be broadly compliant with the objectives of LDP Policy Ret 8 and NPF4 Policy 27, in that it could support the vitality and viability of the area and increase the mix of uses, the failure to protect residential amenity aspects outweighs the benefits that the proposal could bring. Although the area is mixed in character with a transport hub located to the south and other ground floor commercial units surrounding the site, it has an important residential function. Residential properties are located immediately above the site and the proposal would not be acceptable in this location.

The proposal would not comply with LDP Policy Ret 8 and NPF4 Policy 27.

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

Amenity

Residential properties are situated directly above the application premises. The introduction of an entertainment use, with possible noise transference of music and customers voices, would have the potential to create significant levels of noise and disturbance to residents in the flats above.

No noise impact assessment has been submitted, despite a request for such a report, to demonstrate that the new use would be capable of maintaining an acceptable level of amenity for nearby residents. The use of the property as an 'immersive magic experience' would be incompatible with the nature of the unit and its relationship with neighbouring residential properties.

Environmental Protection has been consulted and does not support the application due to the level of noise disturbance that could be generated by the proposed activity.

The proposal does not comply with criteria d) within LDP Policy Ret 8 in that it is incompatible with surrounding uses and would have the potential to lead to a significant increase in noise and disturbance, to the detriment of living conditions for nearby residents.

LDP Policy Hou 7 seeks to protect residential amenity from uses that would have the potential to cause noise and disturbance. As assessed above, the proposal would be in close proximity to flats and no information has been submitted to demonstrate that the use would not adversely affect residential amenity.

The proposal does not comply with LDP Policies Hou 7 and Ret 8.

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 is contrary to LDP Policies Hou 7 and Ret 8 and NPF4 Policy 27 as it would have a materially detrimental effect on the living conditions of nearby residents.

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

A total of 23 representations have been received including one objection, one general comment and 21 support comments.

A summary of the representations is provided below:

material objections and general comment

- There are no other late-night businesses in this part of Haymarket Terrace; This has been addressed above in b).
- Alcohol license being sought so may be evening opening and that will affect noise levels at night; This has been addressed above in b).

material support comments

- Proposal will be an asset to the local area; This has been addressed above in b).
- Proposal supports local businesses and tourism; This has been addressed above in b).

- Proposal provides more entertainment options in Edinburgh; This has been addressed above in b).

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 would be contrary to Edinburgh Local Development Plan (LDP) Policies Hou 7 and Ret 8 and NPF4 Policy 27, as it would have a materially detrimental effect on the living conditions of nearby residents through the potential increase in noise and disturbance. 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 noise and disturbance.
2. The proposal is contrary to the Local Development Plan Policy Ret 8 in respect of Entertainment and Leisure Developments - Other Locations, as it would not be compatible with the surrounding uses and has the potential to lead to a significant increase in noise and disturbance, to the detriment of living conditions for nearby residents.
3. The proposal is contrary to NPF4 Policy 27 in respect of City, town, local and commercial centres, as it would undermine the character and amenity of the area.

Informatives

Background Reading/External References

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

Further Information - [Local Development Plan](#)

Date Registered: 2 March 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

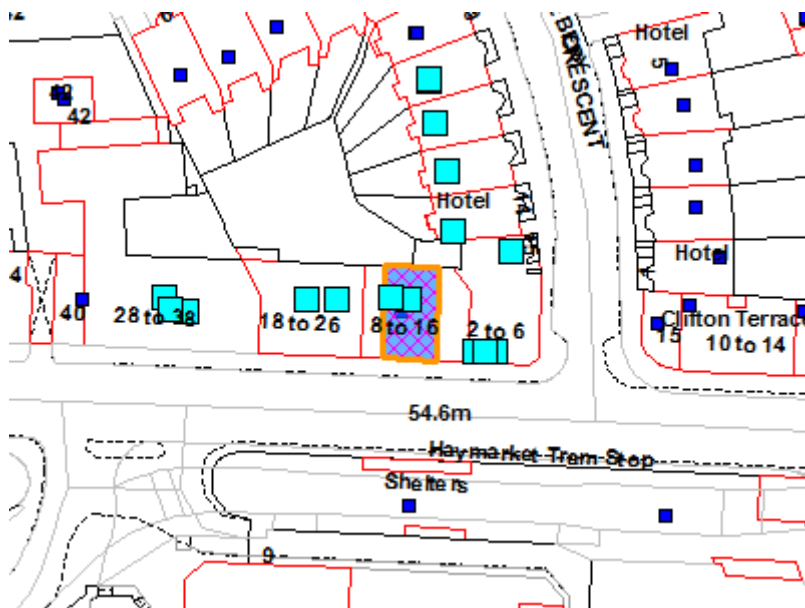
NAME: Environmental Protection

COMMENT: Environmental Protection cannot support this application and recommends refusal.

DATE:

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

Location Plan



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