

Development Management Sub-Committee Report

Wednesday 23 August 2023

**Application for Planning Permission
2 Bath Road, Edinburgh, EH6 7JT.**

Proposal: New build development comprising 3 No. residential flats and ground floor extension to public house (as amended).

**Item – Committee Decision
Application Number – 23/00040/FUL
Ward – B13 - Leith**

Reasons for Referral to Committee

The application has been referred to the Development Management Sub-Committee because the application has an outstanding unresolved objection from a statutory consultee and the application is recommended for approval. Consequently, under the Council's Scheme of Delegation, the application must be determined by the Development Management Sub-Committee.

Recommendation

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

Summary

Overall, the proposal is in accordance with the development plan and National Planning Framework 4 (NPF4).

The site and area will have a flood risk in the future. This may result in an inability to provide safe, access and egress for residents from the development in the event of a flood. This risk cannot reasonably be mitigated against within this application as it relates to the external land level out with the application site.

Residential use is supported in principle here through its LDP land allocation where there is an identified need for new homes. It is in an area that is increasingly residential in character.

Having regard to the above and level of future risk of the site being flooded, there is a presumption on balance to support residential use.

The proposal will deliver a sustainable, well-designed development on a brownfield site that minimises environmental impact. The design is high quality and takes cues from the character of the surrounding area. The uses will help support local living and are consistent with the six qualities of a successful place.

Subject to condition, the proposal will result in a satisfactory living environment for future occupiers and will not result in an unreasonable impact on neighbouring occupiers.

It encourages use of sustainable modes of transport and reduced reliance on car usage. No specific road or pedestrian safety issues are raised.

Matters of equality are raised as the three residential units will not be accessible. However, given the constrained nature of the site this is acceptable in these specific circumstances.

Other material considerations support the presumption to grant planning permission.

The application requires the Scottish Ministers to be notified prior to determination due to the outstanding objection from SEPA.

SECTION A – Application Background

Site Description

The site is an area of vacant land consisting of overgrown foliage and shrubbery. It is located beside a four-storey tenement building with a public house at ground floor. Historically, there was a row of tenements facing Bath Road with commercial use at ground floor which have been demolished. Some remnants of this structure are visible on-site.

The site is in an area with a range of uses evident. Industrial uses are evident including a waste transfer station and a wastewater treatment works to the north whilst a metal recycling yard is to the south. Beyond this are modern residential flatted developments with some ground floor commercial uses. The site faces onto land where a mixed-use development is under construction of residential flats with commercial ground units at ground floor.

Description of the Proposal

The proposal is for a ground floor extension to the public house with three residential flats above.

The building will be approximately 16.8 metres (m) in height to match the adjacent tenement, 11.8 m in depth and 7.4 m in width.

The design will be modern. The front elevation will be constructed externally in a steel cladding for the walls and roof with timber framing. Large, full-height, glazed openings will be constructed at ground floor. The window pattern of the upper floors includes a dual and single pane vertical arrangement.

The other sides of the building will be finished in an off-white render colour. Windows at the rear will face out onto the adjacent tenements communal garden.

The flats will include a one bedroom unit with a floorspace of 64 m², a four bedroom unit of 96 m² and a five bedroom unit of 96 m².

The public house extension will be 54 m² floorspace internally.

Revised Scheme

- Design of the upper floor on the front elevation changed from one window opening to two.
- Supplementary information on daylight and accessibility received.

Supporting Information

- Accessibility Information
- Air Quality Report
- Daylight and Sunlight Information
- Design Report
- Flood Risk Assessment and Surface Water Management Plan
- Noise Impact Assessment

Relevant Site History

03/02105/FUL

2 Bath Road

Edinburgh

EH6 7JT

Proposed reinstatement of tenement to form three flats and extension to public house

Granted

21 August 2003

03/02105/VARY

2 Bath Road

Edinburgh

EH6 7JT

Proposed reinstatement of tenement to form three flats and extension to public house

(as amended to four flats)

VARIED

15 March 2004

04/04474/FUL

2 Bath Road

Edinburgh

EH6 7JT

Amend planning application 03/02105 for re-instatement of tenement to form 4 flats and extension to public house, to form 2 additional flats (as amended)

Granted

12 May 2005

09/02293/FUL
2 Bath Road
Edinburgh
EH6 7JT
Renewal of consent - 04/04474/FUL
Granted
8 October 2009

12/02715/FUL
2 Bath Road
Edinburgh
EH6 7JT
Amend Condition 1 of 09/02293.
Granted
14 September 2012

15/03495/FUL
2 Bath Road
Edinburgh
EH6 7JT
Application to extend previous consent, Ref: 12/02715/FUL, (reinstatement of tenement to form six flats and extension to public house - Ref: 04/04474/FUL).
Granted
26 October 2015

19/00027/FUL
2 Bath Road
Edinburgh
EH6 7JT
Extend previous consent for six flats and extension to public house.
withdrawn
28 March 2019

19/02156/FUL
2 Bath Road
Edinburgh
EH6 7JT
Reinstatement of tenement to form five flats and extension to public house (as amended).

Granted
18 July 2019

22/02725/FUL
2 Bath Road
Edinburgh
EH6 7JT
New build development comprising 3 No. residential flats and ground floor extension to public house.
withdrawn
29 November 2022

Other Relevant Site History

None.

Pre-Application process

Pre-application discussions took place on this application.

Consultation Engagement

Archaeology

Flood Planning

Environmental Protection

Scottish Water

SEPA

Communities and Families

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

Publicity and Public Engagement

Date of Neighbour Notification: 17 January 2023

Date of Renotification of Neighbour Notification: Not Applicable

Press Publication Date(s): Not Applicable

Site Notices Date(s): Not Applicable

Number of Contributors: 1

Section B - Assessment

Determining Issues

This report will 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 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 Sustainable Place Policies 1, 2, 7, 9, 13
- NPF4 Liveable Place Policies 14, 15, 16, 20, 22, 23
- NPF4 Productive Places Policies 27

- LDP Developer contributions policy Del 1
- LDP Design policies Des 1, Des 2, Des 3, Des 4, Des 5, Des 12
- LDP Environment policies Env 12, Env 21
- LDP Housing policies Hou 1, Hou 2, Hou 3, Hou 4,
- LDP Retail policy Ret 8
- LDP Transport policies Tra 2, Tra 3, Tra 4

The non-statutory Edinburgh Design Guidance is a material consideration that is relevant when considering a number of LDP policies.

Use

Residential

The site is located in the urban area as designated in the Local Development Plan (LDP).

LDP policy Hou 1 (Housing Development) prioritises delivery of the housing land supply and relevant infrastructure on allocated sites through part a) of this policy.

NPF4 policy 16 a) states development proposals for new homes on land allocated for housing in LDPs will be supported.

The site is part of the 'Central Leith Waterfront' area in the LDP, an area allocated for mixed use regeneration with provision of a significant number of new homes.

The residential use is compatible with its land allocation and complies with these policies.

In addition, the area is increasingly residential in character. For example, residential led mixed use development is near the site, with flatted buildings recently constructed including on the opposite side of Bath Road.

Planning permission in principle 21/01163/PPP has also been granted subject to legal agreement for residential led, mixed-use development bordering the site to the north and east. In addition, a number of permissions for residential use have been granted on-site previously.

LDP policy Hou 3 (Private Greenspace) states planning permission will be granted for development that makes adequate provision for green space to meet the needs of future residents. This should be based on 10 square metres per flat and 20 % of the overall site area. Supporting paragraph 226 states that exceptions to these requirements may be justifiable if there are good reasons why this cannot happen, for example where justified by the following policy on density.

LDP policy Hou 4 (Housing Density) seeks an appropriate density of development having regard to its characteristics and those of the surrounding area, the need to create an attractive residential environment, accessibility, and its impact on local facilities.

The proposal does not meet the greenspace standards of policy Hou 3. However, the scale, mass and position of the building will be in keeping with the adjoining tenement form and demolished row of tenements on-site. There is a range in the proportion of greenspace provision for residential developments in the area. However, the capacity to meet greenspace standards on this site is constrained by its small scale.

Given this, and the site's immediate context where a compatible scale of residential building will be re-instated, an infringement of these standards is appropriate based on density. The residential environment, accessibility, and impact on local facilities will be considered through other sections of this report.

The proposal therefore complies with NPF policy 16 a), LDP policies Hou 1 and Hou 4. An infringement of policy Hou 3 is acceptable in this context.

Public House Extension

NPF4 Policy 15 (Local Living and 20 minute neighbourhoods) refers to development proposals contributing to local living and 20 minute neighbourhoods.

NPF4 Policy 27 (City, town, local and commercial centres) adopts a town centre first approach to the location of commercial uses which will generate significant footfall.

Criteria b) states proposals for uses which generate significant footfall out with defined centres will not be supported subject to submission of a town centre first assessment.

The policy intent is to encourage, promote and facilitate development in our city and town centres.

LDP policy Ret 8 (Entertainment and Leisure Developments - Other Locations) adopts a similarly sequential approach to the preferred location for entertainment and leisure use. Supporting LDP paragraph 253 states this applies to uses such as a restaurant. As a public house is similar in its functioning this policy is deemed applicable to the proposal.

The site is not located with a defined centre. However, as the proposal is for a small-scale extension to an established public house, it is not anticipated to generate any significant additional footfall, or subsequently impact on the vitality or viability of centres. In this regard, a full town centre or sequential assessment is not required in this instance.

In addition, on a small-scale, the extension to the public house contributes to the general principles of local living by enhancing an existing commercial facility in a location near to houses and sustainable transport modes.

Overall, the proposal does not conflict with LDP policy Ret 8, NPF4 policies 15 and 27.

Climate Change and Mitigation

Flooding

LDP Env 21 (Flood Protection) states planning permission will not be granted for development that would increase a flood risk or be at risk of flooding itself.

NPF 4 policy 22 (Flood risk and water management) a) outlines that development proposals in a flood risk area will only be supported subject to certain criteria.

A flood risk area or an area at risk of flooding is defined as 'land or built form with an annual probability of being flooded of greater than 0.5% (i.e. a 1 in 200 year flood event) which must include an appropriate allowance for future climate change.'

Criteria iv of this policy, refers to development only being supported if for the redevelopment of previously used sites in built up areas where the LDP has identified a need to bring these into positive use and where proposals demonstrate that long-term safety and resilience can be secured in accordance with relevant SEPA advice.

In addition, the explanatory text includes additional criteria to be met including demonstration that future adaptations can be made to accommodate the effects of climate change and safe access / egress can be achieved.

The definition of egress (safe, flood free pedestrian access and egress) is given as a route for the movement of people (not vehicles) of all abilities (on foot or with mobility assistance) between the development and a place of safety out with the design flood level.

The site is beside an area with a medium surface water flood risk as identified on SEPA flood maps where there is a 0.5 % chance of a flood each year. Currently, the site is not identified as being within an area of a coastal or river flood risk.

However, SEPA future flood risk maps identify the site as being within an area of flood risk from both of these sources in the future. It is stated here that by the 2080s, each year the area may have a 0.5 % chance of flooding. This map is based on a 'high

emissions scenario' where 'little or no action is taken to avoid dangerous levels of climate change'.

Given this, the site meets the above NPF 4 definition of a 'flood risk area'.

With regard to criteria iv, the site forms part of an area identified in the LDP to be brought back into positive use through the mixed-use regeneration of 'Central Leith Waterfront'.

SEPA's flooding advice 'Climate Change allowances for flood risk assessment in land use planning' has been updated to reflect the changed policy circumstance through adoption of NPF 4.

The change for a coastal site, is an additional sea level rise allowance accounting for impacts from climate change when assessing the risk of coastal flooding. Sites in Leith are detailed as falling within the 'Forth River Basin Region' where the appropriate allowance should be 0.86 m to 2100.

To account for flood risk, the applicant has submitted a Flood Risk Assessment (FRA) and Surface Water Management Plan (SWMP). Following review, SEPA has objected to the planning application as it has not been demonstrated that a safe access and egress route from the building for future residents can be achieved.

With regard to the applicable NPF 4 policy, SEPA consider the 'design flood level' to be a 1 in 200 year flood risk with a climate change allowance. To achieve a 'place of safety' for residents that accounts for the sites' relatively coastal location SEPA require an access / egress route of 4.82 m (AOD) above the sea level.

The ability for the access route to achieve this has not been demonstrated in the Flood Risk Assessment. Furthermore, the applicant has stated the entrance and pavement level into the flats is at 4.6 m (AOD) therefore falling below the level required.

On this basis, SEPA has objected to introduction of residential use on site as the proposal would be contrary to NPF 4 policy 22 a. The Council's flood prevention team have also objected on these grounds stating safe access and egress to residential properties may not be achieved.

With regard to the above it has not been demonstrated that the specific constraints of this site can be overcome in terms of potential future flood risk for residents in the context of the global climate crises.

In light of this, the proposal does not fully comply with NPF 4 policy 22 a (Flood risk and water management).

However, planning authorities have to consider a range of material considerations as well as flood risk. There may be circumstances where applications are granted planning permission despite an objection from SEPA.

Whilst it is not possible to mitigate for the flood risk caused by climate change allowances in the longer term, the site is identified as an area for development including residential use in the Local Development Plan. The proposed development will be no lower in AOD at ground floor level than the adjacent existing building which also includes residential flats. In addition, the surrounding area consists of much

residential use and sites under construction for residential properties. Although there are no measures that can be taken to mitigate this situation, the proposal is in an area defined in the LDP for mixed regeneration, including residential, and it will utilise previously developed land. On balance, other material planning considerations outweigh the flood risk in this case.

As SEPA has objected to the application, if the Council is minded-to-grant planning permission, it must notify the application to Scottish Ministers prior to determination of the application.

Sustainability

NPF 4 policy 1 (Tackling the climate and nature crises) states when considering development proposals significant weight will be given to the global climate and nature crises.

NPF 4 policy 2 (Climate mitigation and adaptation) intent refers to development minimising emissions and adapting to current and future impact of climate change.

NPF 4 policy 3 (Biodiversity) intent being to protect biodiversity, reverse biodiversity loss, deliver positive effects from development and strengthen nature networks.

NPF 4 policy 9 (Brownfield, vacant and derelict land and empty buildings) intent refers to encouraging reuse of brownfield, vacant or derelict land and empty buildings.

NPF 4 policy 14 b) (Design, quality and place) refers to a quality of a successful place being sustainable. The efficient use of resources, ensuring climate resilience and nature positive solutions.

The development incorporates energy efficient and sustainable measures that are outlined in the submitted design statement. These include the use of low or negative carbon materials in construction, high levels of insulation, mechanical means of ventilation, air source heat pumps and a green roof.

In addition, the proposal re-uses brownfield land in a sustainable location. The site is near to bus services, shops and places of employment in the immediate area. This includes on Salamander Place and Salamander Street. Furthermore, the site is an approximate 5 minute walk to Leith Links and a 10 minute walk to Leith Walk Town Centre.

In this regard, the development and its location are sustainable. The proposal broadly complies with NPF4 policies 1, 2, 3, 9 and 14 b).

Design

NPF4 Policy 14 (Design, quality and place) supports development proposals that are designed to improve the quality of an area and are consistent with six qualities of a successful place. These qualities include a place being healthy, pleasant, connected, distinctive, sustainable, and adaptable.

LDP policy Des 1 (Design Quality and Context) states that new development should contribute towards a sense of place and design should draw from positive aspects of the surrounding area.

LDP policy Des 3 (Development Design - Existing and Potential Features) states planning permission will be granted for development where it is demonstrated existing features worthy of retention on-site have been incorporated.

LDP policy Des 4 (Design - Setting) states development will be granted that has a positive impact on its surroundings including the character of the wider townscape. Including regard to height and form; scale and proportions, including space between buildings; position of buildings and other features on site; materials and detailing.

LDP policy Des 12 (Alterations and extensions) states planning permission will be granted for alterations and extensions which are compatible with the character of the existing building.

The site has a dilapidated, unkempt appearance that does not presently make a positive contribution to the area's character. This includes remnants of a tenements' upper floor, blank wall to the public house at ground floor with overgrown vegetation behind. In this respect, removing these elements as part of the proposal is acceptable.

The modern design concept of the proposed building will clearly differ from the adjacent tenement particularly through use of alternate materials with its steel frontage and timber framing. The design statement refers to this style taking reference from the sites industrial port location.

Whilst of differing design, the new building is in keeping with the tenement height and form. The window pattern takes some cues from this building in terms of its consistent size and vertical alignment of windows on the middle floors.

The wider area is undergoing significant change with larger residential led development and a range of architectural styles evident. In this context, the proposed development will read as a small-scale, innovative modern design to a townscape of a varied, evolving character and appearance.

The proposal will help create a distinctive place as the high-quality design reinforces identity through the cues it takes from the area's industrial heritage.

It will help create a safe, pleasant place through the natural surveillance of the public street from windows facing onto Bath Road.

The ground floor, through its design with large, glazed openings and use where evening activity will be expected will help create an active street frontage supporting women safety through enhanced surveillance and potentially additional footfall.

In addition, it is conceivable the proposal could be adaptable, in future, to accommodate a different use if necessary. However specific alternative uses are not identified by the applicant and cannot be assessed under this submission.

In this regard, the proposal supports the delivery of a health, pleasant, distinctive and adaptable place. Other identified place qualities are considered through other sections of the report.

The design is a high quality, contemporary architecture that will be a positive addition to the area in compliance with relevant NPF 4 and LDP Design policies.

A condition has been applied for full details of all external materials prior to commencement of development to consider these matters in detail.

Amenity

LDP policy Des 5 (Development Design - Amenity) requires development proposals to demonstrate future that future occupiers will have acceptable levels of amenity.

Furthermore, EDG states that private views are not protected however immediate outlook of the foreground of what can be seen from within a building may be.

In regard to privacy, the guidance states that the pattern of development in an area will help to define appropriate distances between buildings and privacy distances.

Future Occupiers

Daylight, sunlight, privacy and outlook

All flats will exceed the minimum floorspace standards with the sizes ranging between 64 m² one bedroom unit and 96 m² for the 3 / 4 bedroom units.

Adequate levels of daylight will be achieved internally from the large size of openings serving habitable rooms facing the front and rear.

The lack of garden space provision is acceptable in this instance given the site's constrained footprint. In addition, the site is within 5 minutes of Leith Links, a large open greenspace which will provide accessible amenity space for occupiers nearby.

In respect to privacy, the area around the site is undergoing change with potential for new residential buildings to be constructed in proximity to the site.

To the west, the proposed flats would face onto land under construction for a large mixed-use development. The space retained between buildings each side of Bath Road will be similar to the existing neighbouring tenement facing this land and relationship between residential buildings nearby. The distance is therefore appropriate in this regard.

North and east, the adjacent land has been granted permission (ref: 21/01163/PPP) in principle for a mixed-use, residential led development subject to conclusion of a legal agreement.

This potential permission would relate to the use of the land only with matters of building layout, massing, and height reserved by condition. It is therefore anticipated the amenity of this site's future occupiers would be considered as part of any later details.

To the south, the development would join to the existing neighbouring tenement. There would be no direct views between windows here and, therefore no privacy issues would occur.

Overall, the proposal would reinstate residential use on-site and its spatial pattern is not at odds with the area. Appropriate distances will be retained to neighbouring buildings and subsequently adequate levels of privacy and immediate outlook will be retained.

In addition, all flats meet or exceed the minimum space standards in the EDG.

With regard to the above aspects, the proposal complies with LDP policy Des 5.

Neighbouring Occupiers

LDP policy Des 2 - states permission will not be granted for development which will compromise the effective development of adjacent land.

LDP policy Des 5 (Development Design - Amenity) also requires development proposals to demonstrate the amenity of neighbouring developments is not adversely affected.

In regard to privacy, as per the above retained distances between buildings on Bath Street would not be at odds with the spatial pattern of the area. At the rear, proposed openings would have direct view onto the communal garden of the neighbours' tenement. However, this area is presently overlooked by windows of these flatted properties with limited privacy as existing. Therefore, no new privacy issues would arise.

In regard to Des 2, it is acknowledged new openings here would face directly onto this adjacent land therefore will take some amenity from a neighbouring site. This arrangement is largely consistent with the site's previous permission 19/02156/FUL for five flats, assessed against the same LDP.

New openings facing this area may have implications for potential future development here. However, the capacity for this proposal to avoid direct outlook over this land and still provide an adequate living environment is limited by its constrained footprint. In addition, this garden is a small part of the adjacent land where historic tenements have been established for a number of years with the proposal site previously forming part of the tenement row.

In light of these factors, it is considered unreasonable to withhold planning permission on this basis.

In regard to the undeveloped land north and east, no openings will face directly onto this space therefore raise no concern in this regard. In addition, any shade cast on this land will be a minor proportion of this overall land therefore will not compromise its effective redevelopment.

The submitted sun path diagram detail there would be no material impact on shade cast on the communal garden space during the spring equinox.

In regard to daylight, the scale and position of the new building in relation to the existing neighbouring tenement is similar to the previous approval 19/02156/FUL on-

site. Its position to the side of neighbours' rear windows and proportionate width will ensure no adverse impact will occur.

In addition, this position of the building will still allow direct outlook for neighbouring residents.

In regard to noise, the proposed land uses are acceptable in this regard. Residential use is compatible with existing and approved land uses nearby. As a small-scaled extension to an established Class 3 facility the public house extension is not envisaged to raise unreasonable impact on residents in regard to noise.

In addition, the NIA sets out measures to limit noise break out from the public house facility whilst there are statutory provisions under the Environmental Health legislation.

The proposal will not have an adverse effect on the amenity of neighbouring developments and therefore complies with LDP policy Des 5. An infringement of LDP policy Des 2 is appropriate given the specific characteristics of the site and immediate area.

Noise

Policy Des 5 (Amenity) states planning permission will be granted for development where demonstrated the amenity of neighbouring developments is not adversely affected and future occupiers have acceptable levels of amenity in relation to noise.

NPF4 policy 23 e) (Health and Safety) states development proposals that are likely to raise unacceptable noise issues will not be supported.

The agent of change principle applies to noise sensitive development. A Noise Impact Assessment may be required where the nature of the proposal or its location suggests that significant effects are likely.

The Agent of Change Principal places responsibility for mitigating any detrimental impact from noise on neighbours with those carrying out the new development. The Planning Advice Note on Noise (PAN 1/2011) advocates a pragmatic approach to the location of new development within the vicinity of existing noise generating uses.

The submitted Noise Impact Assessment (NIA) considers potential noise sources from transport, various industry, plant, and entertainment from the existing public house. The report concludes there is potential for industrial noise to have significant adverse impacts on the proposed residential flats.

Environmental Protection has been consulted and have recommended refusal on this basis. Within the flats, noise would exceed the required criteria with windows open.

To reduce internal noise levels and comply with the relevant criteria, triple glazed units and mechanical ventilation are proposed. The site is located within an increasingly residential area where several developments are exposed to these noise sources where this form of mitigation has been accepted.

Therefore, subject to full detail of this mitigation as required by condition, it is anticipated an adequate living environment could be achieved for future occupiers that will in turn safeguard the operations / activities of nearby uses.

Furthermore, measures are set out to limit noise transfer from the public house including wall insulation specifications. As a small-scale extension to an established food/ drink unit this land use is not envisaged to raise unreasonable impact on residents regarding noise. Certain insulation specifications would be required to be secured by planning condition.

In addition, recommended measures to limit noise break out including a noise management plan are operational activities of the public house cannot be controlled under planning legislation. However, it is recommended the applicant is mindful of these suggestions.

The NIA demonstrates that noise from plant equipment can be contained to acceptable thresholds and this matter is addressed in the aforementioned planning condition.

Air Quality

NPF4 policy 23 d (Health and Safety) also states development proposals that are likely to have significant effects on air quality will not be supported. Opportunities to improve and reduce exposure to poor air quality will be considered and an air quality assessment may be required.

LDP policy Env 22 (Pollution and Air, Water and Soil Quality) states permission will only be granted where there will be no significant effects on health and air quality.

The site is located within the Salamander Street Air Quality Management Area (AQMA) to the south side. The AQMA was originally designated as it was considered unlikely that air quality objectives could be achieved. Levels of PM 10 (particulate matter) a common air pollutant and NO₂ nitrogen dioxide exceeding required thresholds.

With regard to the above, there is potential for future residents of this site to be exposed to higher levels of pollutants which may have adverse effects on health. Environmental Protection recommends the application is refused party due to poor levels of amenity for the site regarding air quality.

In assessing this application, regard has been had to the appeal decision at 2 Ocean Drive (14/05127/FUL and appeal ref: PPA-230-2201). In this case, the Council refused planning permission on air quality and impact on health grounds. This decision was overturned and planning permission granted, with the Reporter observing that there was a general downward trend in annual mean PM₁₀ levels at the monitoring station at Salamander Street and across the city.

Furthermore, comment is made on the use of MHVR (Mechanical Heat Recovery Ventilation) in this decision to control pollutant levels within the flats and the subsequent lack of necessity for windows to be opened. On this matter, the reporter refers to flat occupants appreciating their highly urbanised location where air quality could not be expected to be the same as elsewhere.

On balance, the Reporter concluded that he was not satisfied overall that adverse effects for health should be properly regarded as significant and the proposal would not conflict with LDP Policy Env 22.

The submitted Air Quality Impact Assessment (AQIA) considers that it is not anticipated the proposal will cause any significant change in road traffic. Given the relatively small-scale of the development this conclusion is accepted. In addition, no concerns on this matter have been raised by the Roads Authority. No significant additional adverse effect on the area's air quality or environment from the proposal are therefore anticipated. Management of dust from construction activity is out with the control of planning and is for the applicant to consider under separate legislation.

In regard to occupiers' amenity and health, the NIA proposes MHVR and triple glazed windows to reduce levels of pollutants to an appropriate standard within each residential unit. This form of mitigation has been accepted for residential development within the AQMA. As detailed above, this highly urbanised area is becoming increasingly residential in character, and there is potential for this to continue through the areas' allocation for housing.

In this context, it is reasonable and appropriate to accept such means of mitigation here subject to full detail of these measures to be submitted by condition. To ensure the amenity of future occupiers is safeguarded.

Moreover, it is accepted that PM10 levels have breached national levels in the past. However, it is acknowledged that with the designation of the Salamander Street AQMA, an Action Plan will be prepared which will have the primary objective of reducing PM10 levels in the area.

Furthermore, the Council's 2022 Annual progress report on Local Air Quality Management highlights a general downward trend in PM10 and NO2 concentrations within the Salamander designation.

City Council objectives to improve air quality include promoting a modal shift away from car use and encouraging reduced vehicular emissions. The proposal can be seen as aligning to these objectives as no parking is provided on site. and will be close to sustainable transport modes.

In light of the above, the proposal does not conflict with NPF4 policy 23 d) or LDP Policy Env 22 in terms of air quality.

Contaminated Land

NPF 4 policy 23 a) (Health and Safety) also states development proposals likely to have a significant adverse effect on health will not be supported.

NPF 4 policy 9 c) (Brownfield, vacant and derelict land) states on unstable or contaminated land, development proposals will demonstrate land is or can be made safe and suitable for its proposed new use.

LDP policy Env 22 (Pollution and Air, Water and Soil Quality) also states planning permission will only be granted for development where there will be no significant adverse effects for health, the environment or ground stability. In addition, that appropriate mitigation to minimise any adverse effects can be provided.

Given the previously developed nature of the site, Environmental Protection has recommended a condition for information on the land's potential contaminants and any required mitigation measures to be submitted thereafter.

This condition has been applied. Therefore, compliance with parts of these policies will be dependent on the later consideration of these details.

Transport

Car Parking

LDP policy Tra 2 states that car parking provision should comply with and not exceed the levels set out in Council guidance.

NPF 4 policy 14 b) (Design, quality and place) refers to a quality of a successful place being its connectivity. Supporting well-connected networks that reduce car dependency.

NPF 4 policy 13 (Sustainable Transport) b) states development proposals will be supported where demonstrated transport requirements have been considered including transport needs of diverse groups including users with protected characteristics.

Part e) (Sustainable Transport) refers to proposals with low or no car parking being supported in urban locations well served by sustainable transport provided there are no barriers to access by disabled people.

The site is within Zone 2 of the Edinburgh Design Guidance Parking Standards where residential properties should have a maximum car parking provision of 1 space per dwelling. There is no minimum car parking provision.

The proposed development is suitable in terms of the site's sustainable location and will have zero vehicle parking. Furthermore, whilst no accessible parking bays will be accommodated the capacity to provide this is restricted by the site's small footprint.

In regard to accessibility, footways of adequate width for wheelchair use indirectly link the site to a bus service on Salamander Place and tram service on Constitution Street. These services can be accessed in an approximate five-minute walk, and a slightly longer duration by wheelchair.

In this respect, whilst not immediately accessible there is capacity for disabled access through connections in the local transport network nearby. Given this and the constrained nature of the site a lack of accessible parking bays is acceptable in this specific context.

In addition, no specific road or pedestrian safety issues are raised. As a relatively small scale of the development, it is not anticipated the proposal will result in any significant increase in traffic generation. Therefore, no further transport information has been sought.

The proposal broadly complies with NPF 4 policy 13, 14 b) and LDP policy Tra 2.

Cycle Parking

LDP policy Tra 3 states cycle parking and storage provision should comply with the standards set out in Council guidance.

The EDG standards state properties in this zone should have a minimum of 2 cycle spaces for dwellings with 3 habitable rooms. For properties with 4 habitable rooms or more, this should equate to 3 cycle spaces.

NPF 4 policy 13 b (Sustainable Transport) refers to the supply of safe, secure and convenient cycle parking to meet needs of users.

In addition, principles of the Council's cycle parking factsheet include that provision should include 20% non-standard bicycles.

For the three flats, the required provision equates to 9 cycles in total. The cycle parking will be provided via a two-tier arrangement near the building entrance. Whilst not enclosed, the storage is located within the building and the applicant has confirmed the cycles can be locked. Therefore, this arrangement provides an appropriate degree of security for future use.

No non-standard cycle provision has been included however it is acknowledged the ground floor is of a limited floor space. The inclusion of non-standard provision of adequate size and a suitable location near the building entrance would likely have implications on the customer space for the public house near its front windows. As per the above design section, the use of this space will have a positive impact by creating an active street frontage.

The proposal complies with LDP policy Tra 3 in regard to quantity of cycle provision. In this specific context, an infringement of the cycle parking factsheet is appropriate based on the constrained nature of the site.

Transport planning have been consulted on the proposal and raise no objection.

Archaeology

NPF4 Policy 7 o) states that non-designated historic environment assets, places and their setting should be protected and preserved in situ wherever feasible.

The City Archaeologist has been consulted on the proposals and has stated the site is located within an area of historic and archaeological significance.

A condition has therefore been recommended regarding a programme of archaeological works in accordance with a written scheme of investigation to be submitted, in order to safeguard potential archaeological remains.

Subject to condition, the proposal complies with NPF4 policy 7 o).

Conclusion in relation to the Development Plan

Overall, the proposed development broadly complies with the provisions of NPF4 and the LDP.

There are significant issues of conflict as the residential development is anticipated to have a future coastal and river flood risk.

As per the Chief Planner's letter on 'Transitional arrangements for National Planning Framework 4' conflicts between policies are to be expected. Factors for and against development will be weighed up in the balance of planning judgement.'

In this case, the principle of residential development on this site is acceptable through the development plan and the site is in an area increasingly residential in character. In addition, the public house extension is generally compatible with applicable policies.

There is a potential for future flood risk for residential use. As per the above, this is anticipated to be a 0.5 % chance of flooding by the 2080s. This risk cannot reasonably be mitigated against within this application as it relates to the external land level out with the application site..

However, with regard to the degree and period of time until this flood risk may occur, this factor against the development does not outweigh the principle factor for the development. The presumption to support residential use in this location through the LDP.

Moreover, the proposal delivers a high-quality, appropriate design on a brownfield site and the uses will help support local living. A satisfactory living environment for future occupiers can be achieved and no unreasonable impact on neighbouring occupiers.

It encourages use of sustainable modes of transport and reduced reliance on car usage. No specific road or pedestrian safety issues are raised.

Scottish Ministers will require to be notified should Committee be minded to grant the application.

b) 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.

The site provisionally forms part of the 'Central Leith Waterfront' area - designated for commercial and housing led mixed-use development in the draft plan.

However, at this time little weight can be attached to it as a material consideration in the determination of this application.

Equalities and human rights

Section 149 of the Equalities Act 2010 refers to a public authority in exercise of its functions having due regard to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not.

Protected characteristics can include for example age, disability, pregnancy and maternity.

The proposal raises matters of equality as the three residential flats will be accessed via a staircase only. Therefore, their layout limits the suitability of these units for some future residents, having regard to the above protected characteristics.

The capacity for the development to include a passenger lift has been explored by the applicant. The submitted information shows the incorporation of a lift and associated circulation space would significantly reduce the floor space for each dwelling. This would have subsequent implications upon future occupiers' amenity, the capacity to provide a small range of unit sizes and viability of the scheme.

The site has a constrained footprint and having regard to the above factors the lack of accessible residential provision is acceptable in this specific instance. In addition, there are separate requirements under any subsequent Building Warrant in regard to accessibility. The applicant has confirmed the public house extension will be fully accessible.

Through these above considerations, due regard has been had to the public sector equality duty under the above section of the Equalities Act.

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

One representation has been received (support comment) summarised below:

material considerations

- General support for development : This comment is noted.
- Cycle storage has lack of security and non standard cycle provision : Addressed in Transport section.

Conclusion in relation to identified material considerations

The material considerations raise other material considerations in regard to equality as the three flats are not fully accessible. However, the proposal will contribute to the provision of homes in a well located site close to local amenities.

Overall conclusion

Overall, the proposal is broadly in accordance with the development plan and National Planning Framework 4 (NPF4).

The site and area will have a flood risk in the future. This may result in an inability to provide safe, access and egress for residents from the development in the event of a flood. This risk cannot reasonably be mitigated against within this application as it relates to the external land level out with the application site.

Residential use is supported in principle here through its LDP land allocation where there is an identified need for new homes. It is in an area that is increasingly residential in character.

Having regard to the above and level of future risk of the site being flooded, there is a presumption on balance to support residential use.

The proposal will deliver a sustainable, well-designed development on a brownfield site that minimises environmental impact. The design is high quality and takes cues from the character of the surrounding area. The uses will help support local living and are consistent with the six qualities of a successful place.

Subject to condition, the proposal will result in a satisfactory living environment for future occupiers and will not result in an unreasonable impact on neighbouring occupiers.

It encourages use of sustainable modes of transport and reduced reliance on car usage. No specific road or pedestrian safety issues are raised.

Matters of equality are raised as the three residential units will not be accessible. However, given the constrained nature of the site this is acceptable in these specific circumstances.

Other material considerations support the presumption to grant planning permission.

As SEPA has objected to the application, if the Council is minded-to-grant planning permission, it must notify the application to Scottish Ministers prior to determination of the application.

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. A detailed specification, including trade names where appropriate, of all the proposed external materials shall be submitted to and approved in writing by the Planning Authority before work is commenced on site; Note: samples of the materials may be required.

3. Prior to the commencement of development, full details and specification of the mitigation measures identified in the submitted Noise Impact Assessment Report, reference R-9294-CL1-DJC, dated 9th August 2022, including those specified in relation to the MHVR system, noise break out measures (pub extension, flats and plant noise) and glazing specifications for residential windows shall be submitted to and approved by the Planning Authority.
4. The approved details of condition 3 shall be fully implemented and operational prior to occupation of all approved residential units.
5. No demolition or development shall take place on the site until the applicant has secured the implementation of a programme of archaeological work (excavation, historic building recording, public engagement, interpretation, analysis & reporting, publication) in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the Planning Authority.
6. (a) A site survey (including initial desk study as a minimum) must be carried out to demonstrate, either that the level of risk posed to human health and the wider environment by contaminants in, on or under the land is acceptable, or that the remedial and/or protective measures could be undertaken to bring the risks to an acceptable level in relation to the development; and

(b) Where necessary, a detailed schedule of any remedial and/or protective measures, including their programming, must be submitted to and approved in writing by the Planning Authority. Any required remedial and/or protective measures shall be implemented in accordance with the approved schedule and documentary evidence to certify those works shall be provided to the Planning Authority prior to occupation of the development.

Reasons

1. To accord with Section 58 of the Town and Country Planning (Scotland) Act 1997.
2. In order to enable the planning authority to consider this/these matter/s in detail.
3. In order to ensure the adequate specification of details to safeguard the living environment of future occupiers and prevent limitations on the activities of nearby uses.
4. To ensure the adequate implementation of details to safeguard the living environment of future occupiers and prevent limitations on the activities of nearby uses.
5. In order to safeguard the interests of archaeological heritage.
6. In order to ensure the site is made safe for the proposed use.

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.
3. Flood prevention informatives :
 1. Flood resilient materials and construction methods should be used to limit the vulnerability of the ground floor non-residential properties to flooding.
 2. A flood evacuation plan should be developed and integrated into the operation of the development to improve the resilience of the non-residential and residential development to flooding.
 3. The applicant should confirm that Scottish Water accept the proposed surface water discharge rate to the combined network.
 4. 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.
 5. The design of the public house extension ceiling should achieve NR 15 to ensure noise transmission from the pub to residential above will not be adverse.
 6. The applicant should consider developing a Travel Plan including provision of public transport travel passes, a Welcome Pack, a high-quality map of the neighbourhood (showing cycling, walking and public transport routes to key local facilities), timetables for local public transport.

Background Reading/External References

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

Further Information - [Local Development Plan](#)

Date Registered: 6 January 2023

Drawing Numbers/Scheme

01, 02 A - 04 A, 05 - 10

Scheme 2

David Givan
Chief Planning Officer
PLACE
The City of Edinburgh Council

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Appendix 1

Summary of Consultation Responses

NAME: Archaeology

COMMENT: No objections subject to condition for a programme of archaeological works.

DATE: 19 January 2023

NAME: Flood Planning

COMMENT: Our objection on grounds of coastal flood risk to the development, which may prevent safe access and egress to the residential properties.

DATE: 11 July 2023

NAME: Environmental Protection

COMMENT: Recommend refusal on grounds of poor amenity to occupiers due to noise and air quality.

DATE: 27 July 2023

NAME: Scottish Water

COMMENT: No objections however further review at the technical application stage.

DATE: 10 March 2023

NAME: SEPA

COMMENT: Objection on grounds of future coastal and river flood risk to access/egress route from the residential use contrary to NPF4 policy 22 a.

DATE: 13 June 2023

NAME: Communities and Families

COMMENT: No education infrastructure contribution required.

DATE: 22 March 2023

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

Location Plan



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