

Development Management Sub-Committee Report

Wednesday 8 November 2023

**Application for Planning Permission
6 Picardy Place, Edinburgh, EH1 3JT**

Proposal: S42 application for non-compliance with Condition 1 of permission 21/05443/FUL. Removal/variation of condition sought to ensure the control and treatment of odours from the premises by utilising a recirculation unit; require ongoing maintenance of the odour control equipment and to limit the range of cooking equipment to that used by Taco Bell.

**Item – Committee Decision
Application Number – 23/02655/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 been requested by a Councillor.

Recommendation

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

Summary

The proposal does not comply with the National Planning Framework 4, the Edinburgh Local Development Plan and the Council's non-statutory guidance by virtue of its detrimental impact on amenity. There are no other material considerations which outweigh this conclusion.

SECTION A – Application Background

Site Description

The application site is a ground floor commercial unit, within a four storey and basement tenement building. The building is situated on the north side of Picardy Place and extends north to Broughton Street Lane. There are residential properties within 30 metres of the application site.

It is within the New Town Conservation Area. The property is a Statutory B Listed Building, Item no 29488 (16.6.1966)

Description of the Proposal

An application under Section 42 for non-compliance with Condition 1 of planning permission 21/05443/FUL; removal/variation of condition 1 sought to ensure the control and treatment of odours from the premises by utilising a recirculation unit; require ongoing maintenance of the odour control equipment and to limit the range of cooking equipment.

Specifically, the proposal seeks to include a frier, steamer, rethermaliser, toaster and a hot plate to the permission (21/05443/FUL).

Relevant Site History

21/05442/LBC
6 Picardy Place
Edinburgh
EH1 3JT

Alterations to shopfront; installation of ventilation louvres on rear elevation; internal alterations associated with installation of restaurant.

Granted

17 December 2021

21/05443/FUL
6 Picardy Place
Edinburgh
EH1 3JT

Change of use of premises from class 2 (bank) to class 3 (restaurant) (restricted) and external alterations to shopfront and rear elevation.

Granted

1 April 2022

Other Relevant Site History

No other relevant site history.

Pre-Application process

Pre-application discussions took place on this application.

Consultation Engagement

Environmental Protection

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

Publicity and Public Engagement

Date of Neighbour Notification: 29 June 2023

Date of Renotification of Neighbour Notification: Not Applicable

Press Publication Date(s): 7 July 2023

Site Notices Date(s): 4 July 2023

Number of Contributors: 1

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?

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

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

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

- (b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.

If an application under Section 42 of the Act is granted it creates a new planning permission with a new default time period for implementation unless otherwise determined. Accordingly, the proposals also require to be determined under Sections 25, 37 and 59 of the Act.

Having regard to the legal requirement of Section 24(3), in the event of any policy incompatibility between National Planning Framework 4 (NPF4) & Edinburgh Local Development Plan 2016 (LDP) the newer policy shall prevail.

Do the proposals comply with the development plan?

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

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

Assessment

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

a) The proposals comply with the development plan?

National Planning Framework 4 (NPF4) was adopted by the Scottish Ministers on 13 February 2023 and forms part of the Council's Development Plan. NPF4 policies supports the planning and delivery of Sustainable Places, Liveable Places and Productive Places and are the key policies against which proposals for development are assessed. Several policies in the Edinburgh Local Development Plan (LDP) are superseded by equivalent and alternative policies within NPF4. The relevant policies to be considered are:

- NPF 4 Policies 1, 14, 16 and 27.
- LDP Design Policies Des 5
- LDP Housing Policy Hou 7.

The non-statutory Business Guidance is a material consideration that is relevant when considering the aforementioned policies.

Principle of Development

Since the previous application, National Planning Framework 4 has been adopted and the Non-statutory Guidance for Business has been updated.

The principle of this Section 42 application is to remove Condition 1 that was attached to planning permission 21/05443/FUL. The purpose of condition 1 was to ensure the protection of neighbouring residential amenity. The condition restricted the range of cooking equipment that could be used, as the application did not propose to use a ventilation system that would expel cooking effluvia to a suitable height, rather it proposed to utilise a 'Reflow Recirculation and Filtration System' to deal with the effluvia generated from the cooking operations.

This application seeks to introduce the recirculation system, with a maintenance schedule to ensure it operates at maximum efficiency and continue to have a restriction on the cooking equipment. The equipment proposed is as follows: a cheese melter, a split lid grill, a flat top grill, a rethermaliser and a fryer.

As will be assessed below, the proposed removal of this condition would have the potential to have a detrimental impact on neighbouring residential amenity and for this reason the proposal would be unacceptable in principle.

This is contrary to NPF4 Policies 14, 16 and 27 and LDP Policies Des 5, Hou 7 and would have a neutral impact in terms NPF4 Policy 1.

Amenity

Environmental Protection was consulted in relation to the application and could not support the proposal by virtue of the likely detrimental impact on residential amenity. Specifically, the ventilation system would be unable to achieve a consistent standard without regular maintenance. The applicant has obtained a KC's opinion that sets out reasoning and justification for the imposition of a condition requiring on going maintenance of the system. The applicant would also accept a condition restricting the permission so that it would form a 'personal permission'.

Whilst the relevant circular on the imposition of conditions does include reference to the use of conditions requiring maintenance to be carried out, it requires a planning authority to be fully satisfied that it is reasonable in its effects. Moreover, a condition must also meet the six tests sets out in the circular, and these include enforceability and reasonableness in all other respects.

The Council is satisfied that the approach advocated by the applicants fails to meet all six tests; although the Council, as planning authority, could require confirmation that the agreed maintenance regime was being undertaken, thereby complying with the enforceability test in a purely practical manner, it would have no comfort that the result of such maintenance was reasonable in its effects or in all other respects.

Advice from Environmental Protection is that these systems do not necessarily operate as efficiently as claimed, and although it could be demonstrated that maintenance had been carried out, it would not necessarily follow that it had been undertaken in a manner that would ensure residential amenity was suitably protected.

In addition, Environmental Protection has concerns that the efficiency of such systems could be affected by the type of cooking; whilst a condition could be imposed to restrict cooking equipment, it would be unreasonable to seek to control the type of food cooked.

As the overarching reason for the imposition of a condition is to make a development otherwise unacceptable, acceptable, the Council is entitled to come to a conclusion that the application would not effectively protect residential amenity and should be refused for that reason.

This is contrary to NPF4 Policies 14, 16 and 27 and LDP Policies Des 5, Hou 7

Conclusion in relation to the Development Plan

The proposal would be contrary to NPF4 Policies 14, 16 and 27 and LDP Policies Des 5, Hou 7

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.

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

One comment was received (Objection).

Material Representations -

Odours: this is addressed in section a)

Conclusion in relation to identified material considerations

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

Overall conclusion

The proposal does not comply with the National Planning Framework 4, the Edinburgh Local Development Plan and the Council's non-statutory guidance by virtue of its detrimental impact on amenity. There are no other material considerations which outweigh this conclusion.

Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following;

Reasons

1. The proposal is contrary to the Local Development Plan Policy Des 5 in respect of Development Design - Amenity, as it could not be certain that residential amenity could be protected.
2. The proposal is contrary to the Local Development Plan Policy Hou 7 in respect of Inappropriate Uses in Residential Areas, as it could not be certain that residential amenity would be protected.
3. The proposal would be contrary to NPF4 Policy 14 (Liveable Places), which seeks to protect amenity, as it could not be certain that the proposal would not have an unacceptable impact on amenity.
4. The proposal would be contrary to NPF4 Policy 16 (Liveable Places) which seeks to protect amenity, as it could not be certain that the proposal would not have an unacceptable impact on amenity.
5. The proposal would be contrary to NPF4 Policy 27 (Productive Places) which seeks to protect amenity, as it could not be certain that the proposal would not have an unacceptable impact on amenity.

Background Reading/External References

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

Further Information - [Local Development Plan](#)

Date Registered: 20 June 2023

Drawing Numbers/Scheme

01

Scheme 1

David Givan
Chief Planning Officer
PLACE
The City of Edinburgh Council

Contact: Conor MacGreevy, Planning Officer
E-mail: conor.macgreevy@edinburgh.gov.uk

Appendix 1

Summary of Consultation Responses

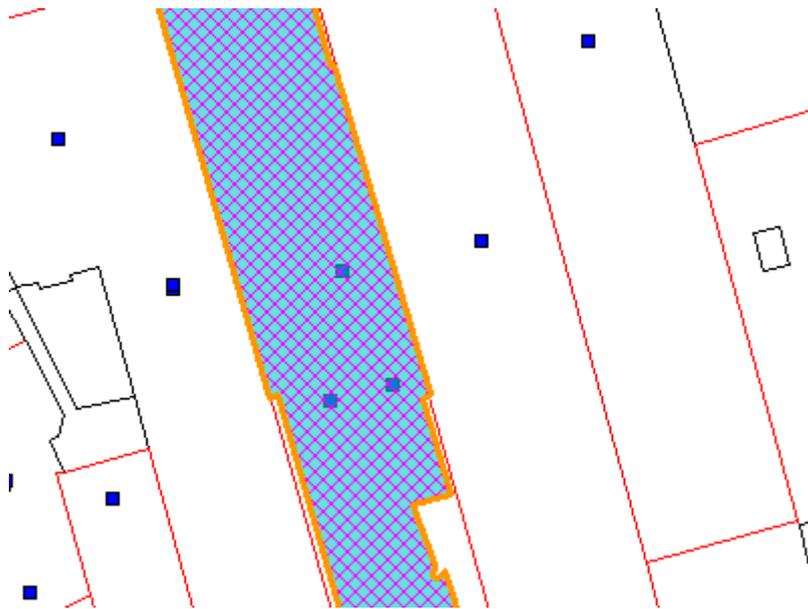
NAME: Environmental Protection

COMMENT: Object to the proposal on the grounds of its impact on amenity.

DATE:

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

Location Plan



© Crown Copyright and database right 2014. All rights reserved. Ordnance Survey License number 100023420