

# Development Management Sub-Committee Report

**Wednesday 22 November 2023**

**Application for Planning Permission  
162 Ferry Road, Edinburgh, EH6 4NX.**

**Proposal: Change to planning condition to extend the opening hours of this restaurant from 20.00 to 21.00 to match existing tables and chairs licence.**

**Item – Committee Decision  
Application Number – 23/02174/FUL  
Ward – B04 - Forth**

## **Reasons for Referral to Committee**

This application has been referred to the Development Management Sub-Committee because forty-one letters of objections to the proposals have been received and the recommendation is 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**

The proposed extension of opening hours would not result in an unreasonable loss of neighbouring amenity and are compliant with the relevant local development plan policies contained within the Edinburgh Local Development Plan and NPF 4. There are no other material considerations which outweigh this decision.

## **SECTION A – Application Background**

### **Site Description**

The application site is a ground floor, corner unit, forming part of a three storey tenement building, with residential properties located on the floors above. Other commercial units occupy the ground floor of the wider building.

It is situated at the junction of Ferry Road and Summerside Street. The property is a class three unit, with an incidental takeaway element.

### **Description of the Proposal**

The application, made under Section 42 of the Town and Country Planning (Scotland) Act 1997, seeks to increase the hours of operation from 08:00 - 20:00 to 08:00 - 21:00.

### **Relevant Site History**

21/06362/FUL  
162 Ferry Road  
Edinburgh  
EH6 4NX  
S42 variation to planning condition to extend opening hours from 8.00p.m. to 11.00p.m.  
Refused  
6 July 2022

20/05387/FUL  
162 Ferry Road  
Edinburgh  
EH6 4NX  
The proposal is to vary the condition restricting opening hours of the cafe operation from 2000 up to 2300.  
Refused  
23 February 2021

15/01077/FUL  
162 Ferry Road  
Edinburgh  
EH6 4NX  
Alterations and change of use of existing shop to form coffee shop with take-away facility.  
Refused and Enforced  
6 May 2015

### **Other Relevant Site History**

No other relevant site history.

### **Pre-Application process**

There is no pre-application process history.

### **Consultation Engagement**

Archaeology

Environmental Protection

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

## Publicity and Public Engagement

**Date of Neighbour Notification:** 8 June 2023

**Date of Renotification of Neighbour Notification:** Not Applicable

**Press Publication Date(s):** 16 June 2023

**Site Notices Date(s):** 13 June 2023

**Number of Contributors:** 922

## 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.

There are no external alterations proposed to the building. As such there will be no material change to the character or appearance of the conservation area.

### Conclusion in relation to the conservation area

The proposals are acceptable in regard to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and would preserve the character and appearance of the conservation area.

### 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:

- NPF 4 Policy 1
- NPF 4 Policy 7
- LDP Policy Hou 7.

The non-statutory 'Listed Buildings and Conservation Area' guidance is a material consideration that is relevant when considering NPF 4 policy 7.

### Principle of use

Policy 1 of NPF 4 gives significant weight to the global climate and nature crisis to ensure that it is recognised as a priority in all plans and decisions. The proposal would have a neutral impact in terms of NPF 4 Policy 1.

The property is located within the designated Ferry Road West Local Shopping Centre Area. However, the principle of the food and drink use is established through a grant of permission on appeal and no further assessment of the principle of the use is required.

### Impact on residential amenity

The Council's Environmental Protection consultation has recommended the application be refused on the grounds of residential amenity. Their response has been considered as part of this assessment.

A planning application (15/01077/FUL) for the change of use of the unit to a food and drink use was refused under delegated powers but was subsequently approved following an appeal to the Local Review Body. This permission was subject to a condition limiting the opening hours from 8am until 8pm. This was in order to protect residential amenity.

A Section 42 application (21/06362/FUL) to extend the opening hours from 20:00 to 23:00 was refused by the Development Management Sub-Committee in 2022. An appeal was submitted to the DPEA, with the Council's decision to refuse being upheld.

However, as part of the decision, it was noted by the Reporter that whilst levels of background noise and activity in the street reduce considerably, later into the evening, there were still relatively high levels of ambient noise and activity at 21:00. The Reporter noted that vehicle frequency was around 15 vehicles at 20:45, dropping to nine vehicles at 21:00. Given the characteristics of the immediate vicinity at 21:00, with background noise forming part of the makeup of the area, the proposed increase in hours would not have an unacceptable impact on the residential amenity of properties within the surrounding area. Moreover, it is noted that other businesses located slightly further down Ferry Road, including a bar and takeaway business, also contribute to noise levels in the area and are open until later in the evening. In these circumstances, the proposed extension of opening hours would not have a materially detrimental effect on the amenity of nearby residents.

The proposal complies with LDP Policy Hou 7.

#### Impact on conservation area

This has been addressed above; the proposals comply with NPF 4 Policy 7.

#### Increase in Parking

It is noted that the site has no dedicated private parking and currently relies on on-street parking availability. There will be no significant increase in parking on the street or on congestion as a result of the extended opening hours.

#### **Conclusion in relation to the Development Plan**

The proposal, by virtue of the characteristics of the immediate vicinity, would not have an unacceptable impact on residential amenity. The proposal would have no impact on parking or on the character and appearance of the conservation area.

#### **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 summary of the representations is provided below:

The application attracted a total of 921 representations, with 41 objections and 880 supporting comments.

#### *material considerations objections*

- Loss of residential amenity - This has been addressed in section (b) above.
- Additional vehicles and parking - This has been addressed in section (b) above.

#### *non-material considerations objections*

- The application site has been subject to enforcement action for breach of planning regulations.
- Existing refused applications and appeals for later closing times.

#### *material considerations support*

- Lack of similar class three facilities within the area.
- Adds to local economy.
- The road is already busy at proposed closing time, extended hours unlikely to cause significant further disturbance.

#### *non-material considerations support*

- Beneficial as a family run, local business.
- Food is of a high quality.

### **Conclusion in relation to identified material considerations**

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

## Overall conclusion

The proposed extension of opening hours would not result in an unreasonable loss of neighbouring amenity and would be compliant with LDP Policy Hou 7. There are no other material considerations which outweigh this decision.

## 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 hours of operation of the premises shall be restricted from 08:00 - 21:00.

### 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.

### 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 June 2023**

**Drawing Numbers/Scheme**

01-02

Scheme 1

**David Givan**  
**Chief Planning Officer**  
**PLACE**  
**The City of Edinburgh Council**

Contact: Craig Zirmer, Assistant Planning Officer  
E-mail: [craig.zirmer@edinburgh.gov.uk](mailto:craig.zirmer@edinburgh.gov.uk)

## Appendix 1

### Summary of Consultation Responses

NAME: Archaeology

COMMENT:

DATE:

NAME: Environmental Protection

COMMENT: Recommends refusal on the basis of impact on residential 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