

Development Management Sub Committee

Wednesday 11 September 2013

**Application for Planning Permission 13/01217/FUL
At Land At, Broughton Street Lane, Edinburgh
Application under section 42 of the Town and Country
Planning (Scotland) Act 1997, to vary the terms of condition
1 of planning permission 07/01631/FUL to extend period of
time.**

Item number	4.2
Report number	
Wards	A11 - City Centre

Links

Policies and guidance for this application	LPC, CITE1, CITE3, CITE6, CITD1, CITD3, NSG, NSGD02, NSLBCA, NSDCAH,
--	--

David R. Leslie

Acting Head of Planning and Building Standards

Contact: Eileen McCormack, Planning Officer
E-mail: eileen.mccormack@edinburgh.gov.uk Tel: 0131 529 3609

Executive summary

Application for Planning Permission 13/01217/FUL At Land At, Broughton Street Lane, Edinburgh Application under section 42 of the Town and Country Planning (Scotland) Act 1997, to vary the terms of condition 1 of planning permission 07/01631/FUL to extend period of time.

Summary

Since determination of planning permission 07/01631/FUL there have been no significant, relevant alterations in planning policy, guidance or other material considerations which would prevent the variation of condition 1 of planning permission 07/01631/FUL and extend the period of time for starting the development. There are no material considerations that outweigh this conclusion.

Recommendations

It is recommended that this application be Granted subject to the details below (in section 3 of the main report).

Financial impact

The application is subject to a legal agreement for developer contributions. The existing legal agreement will require updating. The terms will acknowledge that the number of houses proposed falls below the limit above which an education contribution is now required.

Equalities impact

This application was assessed in terms of equalities and human rights. The impacts are identified in the Assessment section of the main report.

Sustainability impact

This application meets the sustainability requirements of the Edinburgh Design Guidance.

Consultation and engagement

Pre-Application Process

Pre-application discussions took place on this application.

Publicity summary of representations and Community Council comments

The application was advertised on 26 April 2013 and ten letters of representation were received. These included comments from the New Town and Broughton Community Council. The letters of representations raised the following material issues:

- Non-compliance with current planning law, policy and guidance;
- Overdevelopment;
- Amenity issues, including noise;
- Traffic and parking issues;
- World Heritage Site impact; and
- Lack of consultation.

Non-material comments included: the economic climate has changed, the original permission should not have been granted; and a time extension would place more stress on neighbours.

The New Town and Broughton Community Council objected to the application on the grounds of overdevelopment, non-compliance with current policy and guidance, traffic issues and removal of trees.

A full assessment of all the representations can be found in the main report in the Assessment section.

Background reading / external references

- [To view details of the application go to](#)
- [Planning and Building Standards online services](#)

Application for Planning Permission 13/01217/FUL At Land At, Broughton Street Lane, Edinburgh Application under section 42 of the Town and Country Planning (Scotland) Act 1997, to vary the terms of condition 1 of planning permission 07/01631/FUL to extend period of time.

1. Background

1.1 Site description

The application site lies on the north side of Broughton Street Lane, accessed via a pend from Union Street to the east and Broughton Street to the west. The site is a gap site in a lane which originally functioned as a mews lane, lying within a traditional tenemental block. The site measures 45 metres by 15 metres and is currently used as a private car park accommodating 31 car parking spaces. The site formerly accommodated a four storey warehouse building demolished before 1980.

A modern four storey office block sits to the west. The site is bounded by a gated wire mesh fence on the south with category B listed tenements beyond (LB ref 29488, listed 16.06.1966). These mostly accommodate commercial and entertainment uses. The service entrance and rear extension to the Holiday Inn fronting Picardy Place are directly opposite the site to the south. To the north and east of the site there are three and four-storey category B listed classical terraced tenements fronting Forth Street and Union Street respectively (LB ref 29864, 45949, 45948, 45947, listed 16.06.1966). Within the site these tenements are mainly residential flats. Within the site, there is a planting belt of mature hedging and some deciduous trees on the north. Immediately east of the site lies a small car parking area bounded by a stone wall delineating the rear garden of the Union Street tenements.

The topography rises from Forth Street to Broughton Street Lane. Basement properties of the Forth Street tenements are located below the level of the planting belt.

Broughton Street Lane accommodates a mix of uses including a bar, several offices and a limited number of residential properties. The service entrances of a nightclub, the Holiday Inn, a Hertz car rental garage and a restaurant are also accessed from the lane.

The property is within the Edinburgh World Heritage Site.

This property is located within the New Town Conservation Area.

1.2 Site History

9 March 2006 - permission refused for the erection of 12 flats in three-storey development (03/01779/FUL). Reasons for refusal related to noise from existing businesses, overdevelopment of the site, overshadowing and privacy and non-compliance with the non-statutory guidelines relating to Mews Development.

23 August 2006 - appeal dismissed for the erection of 12 flats in three-storey development (as amended) (06/00023/REF). Reasons for dismissal related to impact on the setting of the surrounding listed buildings by virtue of the height and proximity of the proposal to the listed tenements, impact on the character of the conservation area by virtue of the alien and incongruous design and inappropriate materials proposed. The reporter also highlighted the impact on neighbouring properties in respect of privacy, daylight and sunlight.

16 September 2008 - planning permission granted for new-build development of 11 residential units as terraced mews houses without car parking (07/01631/FUL).

2. Main report

2.1 Description Of The Proposal

This application proposes amending condition 1 of 07/01631/FUL ('the original permission'), to allow for a three year extension period for starting development. The original permission is for a new-build development of 11 residential units as terraced mews houses without car-parking.

The development will form a two-storey terrace with a pitched roof, fronting Broughton Street Lane. It will adjoin the modern office building, Playfair House, to the west. The development will be set forward of the building line of Playfair House by 2 metres and will line through with the building line of the mews buildings to the west of Playfair House. The terrace will be 8 metres in depth and the ridge line will be 8.7 metres high. The houses will have 2 or 3 bedrooms. The exterior materials include natural sandstone, natural slate roof tiles, galvanised steel rainwater goods, dark grey aluminium- framed windows and brown aluminium louvres. Waste storage facilities are on the east most part of the site.

Supporting Information

The applicant submitted the following documents in support of the original application:

- Design Statement
- Acoustic Survey and Report
- Shadow Studies Analysis
- Daylighting calculations
- Arboricultural Survey

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

2.2 Determining Issues

Do the proposals harm the character or appearance of the conservation area? If they do, there is a strong presumption against granting of permission.

Do the proposals comply with the development plan?

If the proposals do comply with the development plan, are there any compelling reasons for not approving them?

If the proposals do not comply with the development plan, are there any compelling reasons for approving them?

2.3 Assessment

To address these determining issues, the Committee needs to consider whether:

- (a) the principle of the development is acceptable;
- (b) the proposals preserve or enhance the character and appearance of the conservation area or the setting of a listed building;
- (c) the proposed scale, design and materials are acceptable;
- (d) the proposals have any impact on the Outstanding Universal Value of the Edinburgh World Heritage Site;
- (e) the amenity of neighbours is affected and there is sufficient occupier amenity;
- (f) the proposals affect road safety;
- (g) the proposals meet sustainability criteria;
- (h) the proposals have any equalities and human rights impacts;
- (i) there are other material considerations; and
- (j) material representations and community council comments raise issues to be addressed.

In the following assessment, some documents are referred to as 'submitted in connection with the original permission'. These are available to view on Planning and Building Standards Online Services, under reference 07/01631/FUL.

(a) Principle

The application seeks, under the provisions of Section 42 of the Town & Country Planning (Scotland) Act 1997, planning permission for the development of land without *complying with a condition subject to which a previous planning permission (the original permission) was granted.*

Condition 1 of the original permission (07/01631/FUL) restricted the time for starting development under that permission to a period of no more than five years from the date of the permission. The assessment of this application is limited to considerations raised by condition 1 only.

The determining issue is whether the condition should be removed, and permission granted, by virtue of Section 58 of the Act (Duration of Planning Permission), for a period of three years, or whether the planning circumstances have sufficiently changed such that planning permission should be refused for the extension of time period to begin development.

The original permission was approved on 16 September 2008. It was considered and determined against the provisions of the Central Edinburgh Local Plan, relevant guidance and the finalised Edinburgh City Local Plan.

Since then, the Edinburgh City Local Plan has been adopted (January 2010). There is also an emerging Local Development Plan and some new Planning Guidance,

including Listed *Buildings and Conservation Areas* and *The Edinburgh Design Guidance* which supersede some older guidelines.

The key policies required to determine the principle of the application have not changed significantly and residential development remains acceptable in principle in this location.

(b) Conservation area and setting of listed buildings

The New Town Conservation Area Character Appraisal was approved in June 2005. It comments:

The Conservation Area ranks as one of the most important in the United Kingdom, in terms of both its architectural and historic interest. Its significance is reflected in the extensive number of Statutory Listed Buildings, the number of tourists that visit the area, its 'Outstanding' status and its international recognition as part of the UNESCO designated Edinburgh Old and New Town World Heritage Site.

The character appraisal is unchanged since the date of the original permission.

The impact on the character and appearance of the New Town Conservation Area and surrounding listed buildings was considered in the original application and has not altered.

(c) Scale, design and materials

Design, scale and materials were considered in the original application and found to be acceptable. The development was assessed as helping restore the established urban form of the New Town with mews lining rear lanes.

In the context of these proposals, current policy and guidance are not materially different from those at the date of the original permission. The surrounding character of the area has not changed substantially and the density of the proposed development remains suitable for the central location and immediate site conditions. The proposals continue to represent a high quality design of a scale and form appropriate to the context and using suitable materials.

There are no significant changes in policy and guidance in respect of scale, design and materials in this context.

(d) World Heritage Site

The original permission considered the impact of the proposals on The Edinburgh World Heritage Site. There has been no change since.

(e) Neighbour and occupier amenity

Daylighting, sunlight and privacy

Neighbour amenity was considered in detail when the original permission was granted. The applicant submitted Shadow Studies Analysis, daylighting calculations and privacy calculations. Overshadowing, daylighting and privacy were assessed and found to be acceptable.

The assessment noted that the proposal breached the Mews, and Daylight, Sunlight and Privacy guidelines in certain respects. It also noted that the proposal was set within the historic townscape where the tenements on Forth Street did not themselves conform to the guidelines. A mature planting belt on site was noted as providing a partial barrier between the site and adjacent residential property. The assessment concluded that, on balance, a breach in the guidelines was acceptable as the proposal would be entirely in keeping with the prevailing historic grain of the New Town and overlooking had been mitigated as far as possible.

The planting belt remains in place. Current policy and guidance on daylighting, sunlight and privacy in this context does not materially alter the assessment in the original report.

Noise

Noise was considered in detail when the original permission was granted and found to be acceptable in the context. The applicant submitted an Acoustical Survey and Report ('Acoustic Report') in support of the application.

As at the time the original permission was granted, Broughton Street Lane is on the boundary between the areas designated as Central and Urban in the local plan. In addition to nearby residential properties, the site remains adjacent to commercial premises generating noise and activity. There is also general noise from traffic and activity, both near and more distant, as at the time the original permission was granted. The applicant has not proposed altering the development which is arranged with the main living and bedroom areas to the rear of the property, furthest away from the licensed uses on the lane.

Environmental Assessment was consulted on the current application. It has repeated the concerns it expressed about the original permission, regarding noise from nearby commercial and entertainment premises. It does not maintain that noise has increased materially since the original permission was granted or that different noise standards should be applied.

The original report stated that the proposed development would be affected by noise from nearby licensed premises and other sources. It went on to conclude that, given the location in the context of the city centre, the positioning of sensitive accommodation to the rear of the proposed houses and the potential sound reduction measures indicated in the Acoustic Report, the amenity of future occupiers would be acceptable in respect of noise, provided the properties were insulated as recommended in the Acoustic Report. A condition on the original permission requires this and it is recommended that the same condition is re-applied. The report also noted that the proposed buildings will provide a sound barrier for the residential property in Forth Street and Union Street, improving their amenity.

A condition on the original permission controlled both hard and soft landscaping, including trees. This condition would also be applied.

The impact and the relevant planning policy and guidance on neighbour and residential amenity have not altered materially since the date of the original permission.

Issues such as general street noise and disturbance and anti-social behaviour can be dealt with through more appropriate statutory legislation.

(f) Transport

The original permission is for a car-free development. Transport has confirmed that it complies with current Parking Standards and on-street parking is controlled during the day. Transport has also advised that levels of overnight parking have increased since the original permission was granted. However, there has not been a policy change reflecting this and Transport has withdrawn an initial objection.

As with the original application, the applicant has agreed to make financial contributions towards the promotion of a Traffic Regulation Order to amend loading and waiting restrictions on Broughton Street Lane and towards the construction of Tramline 1. These would be secured by a new section 75 agreement.

Transport policy has not materially altered since the date of the original permission.

(g) Sustainability

The applicant has submitted a sustainability statement in support of the application. The proposal complies with the requirements of Part A of the Edinburgh Standards for Sustainable Buildings. No external low carbon equipment is proposed within this application.

(h) Equalities and human rights

Since the original permission was granted, a duty has been placed on local authorities to explicitly consider equality issues in their work. Human rights issues are also considered. An Equality and Rights Impact Assessment has been completed

There are no equalities or human rights impacts which would prevent the granting of this application.

i) Other considerations

Children and Families has confirmed that the proposals do not require a contribution towards education provision. This has altered since the original permission when a contribution was requested. This does not affect the granting of this application.

(j) Representations and community council comments

Material representations

- Non-compliance with current planning law, policy and guidance - this has been addressed in sections 2.3(a) to 2.3(g);
- Amenity issues, including noise - addressed in section 2.3(e);
- Overdevelopment - addressed in section 2.3 (c);
- Traffic and parking issues - addressed in 2.3 (f);
- World Heritage Site impact - addressed in 2.3(d); and
- Lack of consultation - this has been addressed in 2.3 (h).

Non-material representations

- The original consent should not have been granted;
- The economic climate has changed; and
- Time extension would place more stress on neighbours.

Community Council comments

The New Town and Broughton Community Council raised concerns about overdevelopment, non-compliance with current policy and guidance, traffic issues and removal of trees. These issues are addressed in sections 2.3(c), 2.3(a) to 2.3 (g), 2.3(f), and 2.3(e) above respectively.

CONCLUSION

There has been no significant change in relevant policy or guidance since the determination of the original application that would prevent removal of condition 1 of the original permission. It is therefore reasonable to allow an extension of time to begin development. There are no material considerations which outweigh this conclusion.

3. Recommendations

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

3.2 Conditions/reasons

1. i) Prior to the commencement of construction works on site:

a) A site survey (including intrusive investigation where necessary) must be carried out to establish to the satisfaction of the Head of Planning and Building Standards, 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 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 required remedial and /or protective measures, including their programming, must be submitted to and approved in writing by the Head of Planning and Building Standards.

ii) 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 satisfaction of the Head of Planning and Building Standards.

2. Prior to the occupation of the development, the 11 residential units approved shall be fitted with sound insulation fittings as per the recommendations in respect of window and door finishes and roof construction in section 5.0 of Sandy Brown Associates Acoustical Survey and Report of 22 May 2006 submitted as part of application 13/01217/FUL.

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

4. A fully detailed landscape plan, including details of all hard and soft surface and boundary treatments and all planting, shall be submitted to and approved in writing by the Head of Planning and Building Standards before work is commenced on site.

5. The approved landscaping scheme shall be fully implemented within six months of the completion of the development, and thereafter shall be maintained by the applicants and/or their successors to the entire satisfaction of the planning authority; maintenance shall include the replacement of plant stock which fails to survive, for whatever reason, as often as is required to ensure the establishment of the approved landscaping scheme.

6. Only the tree/s shown for removal on the approved drawing/s shall be removed, and no work shall be carried out on the remaining trees at any time without the prior written consent of the Head of Planning & Strategy.

Reasons:-

1. In order to ensure that the site is suitable for redevelopment, given the nature of previous uses/processes on the site.

2. In order to protect the amenity of the occupiers of the development.

3. In order to enable the planning authority to consider this/these matter/s in detail.

4. In order to protect the privacy of adjoining neighbours.

5. In order to ensure that the approved landscaping works are properly established on site.

6. In order to safeguard protected trees.

Informatives

It should be noted that:

1. The development hereby permitted shall be commenced no later than the expiration of three years from the date of this consent.

2. 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.

3. 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.

4. Consent shall not be issued until a suitable legal agreement, including a financial contribution payable to the City of Edinburgh Council, has been concluded in relation to tram and transport infrastructure. The legal agreement should be concluded within three months from the date of approval of the application by the Development Management Sub-Committee. If the agreement is not concluded within that three month period, no planning consent will be issued.

Statutory Development

Plan Provision The Site is within the Urban Area as allocated in the Edinburgh City Local Plan

Date registered 12 April 2013

Drawing numbers/Scheme 01,

Scheme 1

David R. Leslie

Acting Head of Planning and Building Standards

Links - Policies

Relevant Policies:

Relevant policies of the Edinburgh City Local Plan.

Policy Env 1 (World Heritage Site) protects the quality of the World Heritage Site and its settings.

Policy Env 3 (Listed Buildings - Setting) identifies the circumstances in which development within the curtilage or affecting the setting of a listed building will be permitted.

Policy Env 6 (Conservation Areas Development) sets out criteria for assessing development in conservation areas.

Policy Des 1 (Design Quality and Context) sets general criteria for assessing design quality and requires an overall design concept to be demonstrated.

Policy Des 3 (Development Design) sets criteria for assessing development design.

Relevant Non-Statutory Guidelines

Non-Statutory guidelines Edinburgh Design Guidance supports development of the highest design quality and that integrates well with the existing city. It sets out the Council's expectations for the design of new development, including buildings and landscape, in Edinburgh.

Non-statutory guidelines 'LISTED BUILDINGS AND CONSERVATION AREAS' provides guidance on repairing, altering or extending listed buildings and unlisted buildings in conservation areas.

Non-statutory guidelines on Developer Contributions and Affordable Housing gives guidance on the situations where developers will be required to provide affordable housing and/or will be required to make financial or other contributions towards the cost of, providing new facilities for schools, transport improvements, the tram project, public realm improvements and open space.

Appendix 1

Consultations

Resources, Children and Families

This site is located within the catchment areas of:

- *Broughton Primary School;*
- *St Mary's (Edinburgh) RC Primary School;*
- *Drummond Community High School; and*
- *St Thomas of Aquin's RC High School*

Given the small scale nature of the proposal (i.e. under 12 residential units) the impact on the catchment schools would be minimal and Resources Children and Families has no objection to the proposed development.

Further Comment

As under 12 no. units are proposed, in terms of the Developer Contributions Policy, C & F would not pursue a payment with regard to this proposal

Environmental Assessment

The application proposes to extend the time period of an existing consent for a residential development. Residential properties are situated to the north on Forth Street and east on Union Street. Offices are situated to the west with a hotel across Broughton Street Lane to the south. Commercial premises including a public house (with beer garden and smoking area) and restaurant both with external plant are situated across Broughton Street Lane to the south-east and south-west respectively. A club situated on Picardy Place which includes an external public area backing onto Broughton Street Lane is situated to the south.

Environmental Assessment previously provided the following response which highlighted areas of concern relating to the original 07/01631/FUL application.

NEW BUILD DEVELOPMENT OF 12NO RESIDENTIAL UNITS AS TERRACED MEWS HOUSES WITHOUT CAR PARKING, 8 BROUGHTON STREET LANE, EDINBURGH (07/01631/FUL)

The proposed development site is a vacant plot of land, currently being used as a car park for nearby commercial premises. Along Broughton Street Lane there are a variety of uses, most notably an office block to the west of the application site and a bar with beer garden to the south west of the application site. To the north and west, the application site is bound by the rear elevation of residential tenement properties on Forth Street and Union Street. To the south of the application lies the rear elevation and rear access to a hotel and a nightclub on Picardy Place.

An application was submitted in 2003 for the erection of a residential development, with consent refused in March 2006. Among the reasons given for refusal were the concerns of this Department in relation to noise from nearby licensed premises.

This Department continues to receive complaints from nearby properties, including the hotel, regarding noise from patrons of the bar on Broughton Street Lane and noise from the nightclub on Picardy Place. Complaints are generally received during summer months when residential windows are open for ventilation and patrons of these licensed entertainment venues are using beer gardens and other external areas.

In addition, the commencement of the smoking ban in March 2006 has resulted in a new noise source being introduced to the area (since the original application); namely smokers from the licensed premises congregating to smoke and converse.

The close proximity of the proposed development to these noise sources raises significant concerns.

An acoustic report was commissioned by the applicant, carried out by Sandy Brown Associates LLP, and submitted alongside the present application. The report confirms the concerns of this department in relation to noise from the licensed premises and patrons smoking outside.

Section 5.0 of the acoustic report (Assessment and Recommendations) sets out various mitigating measures that might be employed to reduce the impact of the noise on the proposed development. However, the report confirms it is unlikely that the measures proposed would be able to mitigate against the low frequency noise commonly associated with noise from the nightclub. In addition, the author recommends closed windows with an internal ventilation system for the proposed development. This Department could not support this particular measure.

Section 6.0 of the acoustic report (Summary) confirms that the CEC policy of inaudibility of entertainment noise from licensed premises within nearby residential premises is unlikely to be achieved. This is particularly likely with regard to low frequency noise commonly associated with music from the nightclub. Further comment from the author suggests that improvement can only be achieved by reducing the noise at source. This would be a matter for the parties concerned and the planning authority to agree on should this measure be considered.

Considering the issues outlined, Environmental Health recommends that this application be refused.

Further investigation into the previously outlined areas of noise concern show that the Council has continued to receive complaints of entertainment noise from the surrounding licensed premises since the application was granted in 2008. Complaints have been received from the occupants of residential properties situated on Broughton Street, Forth Street and Union Street which are significantly further away from the licensed premises than the application site. In addition, plant is situated to the rear of two commercial premises situated on Picardy Place/Broughton Street Lane and is situated only a few metres from the application properties.

Environmental Assessment continues to have concerns that the proposed properties could be affected by noise from surrounding commercial premises' operations and the recommendation of refusal for the 07/01631/FUL application still stands. In effect,

Environmental Assessment also recommends that this application to extend the time period of the application be refused. However, Environmental Assessment is willing to review this recommendation should a new noise impact assessment be provided which confirms that the existing noise climate will not impact upon the residential amenity of the proposed properties.

Transport

I would advise that the application be refused.

(Reason: The original '07 application provided no off street parking in line with parking standards and any overspill onto the public road could be accommodated. Overtime the situation with regards to on street parking availability has changed significantly with on street parking at a premium out with controlled times. A new application should be submitted for the development parking to be addressed to meet today's situation)

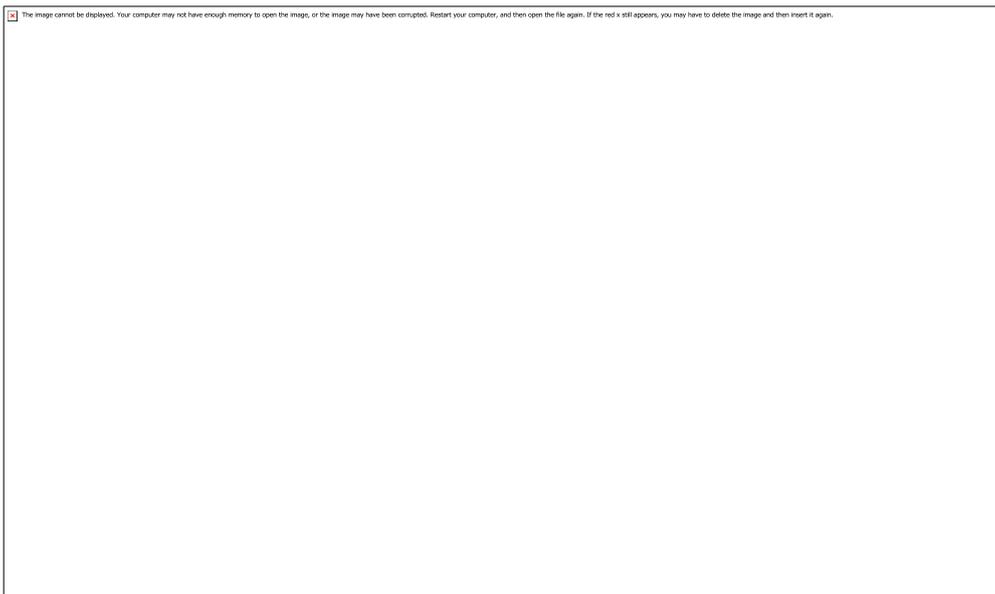
Should you be minded to grant the original application transportation conditions should remain.

Transport - Amended Response

AMENDED RESPONSE

I have no objections to the applications. Conditions on response to application 07/01631/FUL remain.

Location Plan



© Crown Copyright and database right 2012. All rights reserved. Ordnance Survey License number 100023420

END