

Development Management Sub Committee

Wednesday 24 September 2014

**Application for Planning Permission 14/02892/FUL
At 30 Mcdonald Place, Edinburgh, EH7 4NH
Variation of Condition 3 of planning permission 834/88 (as amended under appeal reference: PPA-230-2114, dated 19 June 2014) to extend the opening hours of the cash and carry to 08:30 to 12:00 hours on Sundays**

Item number	6.3
Report number	
Wards	A12 - Leith Walk

Summary

The proposed variation to the condition, extending the hours of operation of the premises to include Sunday opening but no deliveries, complies with the development plan and matters of residential amenity and road safety will not be detrimentally affected.

Links

[Policies and guidance for this application](#) LPC, CITH8,

Report

Application for Planning Permission 14/02892/FUL At 30 McDonald Place, Edinburgh, EH7 4NH Variation of Condition 3 of planning permission 834/88 (as amended under appeal reference: PPA-230-2114, dated 19 June 2014) to extend the opening hours of the cash and carry to 08:30 to 12:00 hours on Sundays

Recommendations

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

Background

2.1 Site description

The application site comprises an existing 'Cash & Carry' warehouse situated at the head of McDonald Place, a cul-de-sac road off Bellevue Road to the west, at its junction with McDonald Street.

The property has a vehicular access situated at the northern apex of the site; diagonally opposite the junction between McDonald Place and McDonald Street. The access leads to a hard surfaced car parking, manoeuvring area and goods vehicle service yard along the north western boundary of the site. There is also an additional car parking area along the north eastern boundary. Overall there is provision for 50 car parking spaces within the site. The building comprises a large, single-storey warehouse building that extends up to the south east and south western boundaries of the site.

To the east of the site, at the head of the McDonald Place cul-de-sac, there are residential dwellings and a commercial garage. To the south-east there is a five-storey flatted block fronting Hopetoun Street. To the south-west are residential dwellings fronting onto a small cul-de-sac off Annandale Street and to the north-west there is a similar arrangement of residential dwellings fronting onto a small cul-de-sac off Bellevue Road. To the north there are new, three-storey flatted properties fronting onto both McDonald Place and McDonald Street.

2.2 Site History

The relevant site history is:

3 August 1988 - planning permission was granted for a proposed change of use from printing works to Cash & Carry warehouse (reference 834/88).

That permission was subject to a number of conditions, in the interests of amenity, including:

(3) the hours of operation shall be restricted to between 8am and 8pm Monday to Friday and 8am to 12 noon Saturday with no deliveries or loading outwith these hours;

12 June 2012 - a planning enforcement investigation was carried out into alleged contraventions of the authorised hours of operation (reference 12/00364/ECOND), resulting in a retrospective application.

11 October 2012 - planning permission was granted in retrospect and for a temporary period of 1 year for a variation of condition No 3 (Ref 834/88) to extend opening hours to: 07:00 - 20:00 hours (Monday to Saturday) and 08:30 - 12:00 hours (Sunday) (reference 12/02594/FUL).

That permission was granted subject to the following condition:

*"Permission for the extended hours of operation of the premises; to those between 07:00-20:00 hours Monday to Saturday and 08:30-12:00 hours on Sundays, with no deliveries or loading outwith these hours; is hereby granted **for a limited period of one year** from the date of this grant of planning permission. At the end of that period of time the hours of operation shall revert back to those originally approved, namely; between 08:00-20:00 hours Monday to Friday and 08:00-12:00 hours on Saturday, with no deliveries or loading outwith these hours."*

17 December 2012 - a planning enforcement investigation was carried out into an alleged non-compliance with the authorised hours of operation (reference 12/00777/ECOND). It was found that there had been no breach of planning control and no further action was taken.

16 January 2014 - planning permission was refused for a permanent variation of the hours of operation of the premises to between 07:00 and 20:00 hours Monday to Saturday and 08:30 and 12:00 hours Sunday (reference 13/04453/FUL).

Reason: "The proposal is contrary to Edinburgh City Local Plan Policy Hou 8 in respect of Inappropriate Uses in Residential Areas, as the commencement of operations before 08:00 hours would be likely to result in unacceptable levels of noise and disturbance to the occupiers of neighbouring residential properties to the detriment of their amenity in this area of predominantly residential character."

19 June 2014 - an appeal against the above refusal to the Directorate for Planning and Environmental Appeals was part upheld; permitting the increased hours of operation, 07:00 and 20:00 hours Monday to Saturday, but refusing any operations on Sundays (reference PPA-230-2114).

Main report

3.1 Description Of The Proposal

This application is made for a variation of the hours of operation of the premises, from both the original planning permission (Ref 834/88) dated 3 August 1988, and those authorised following the Directorate for Planning and Environmental Appeals appeal decision.

The authorised hours of operation for the premises, are as follows:

"The hours of operation shall be restricted to between 07:00 and 20:00 hours Monday to Saturday with no deliveries or loading outwith these hours."

It is proposed to extend those operational hours to include 08:30 and 12:00 hours on Sundays and to amend the condition to read:

"The hours of operation shall be restricted to between 07:00 and 20:00 hours Monday to Saturday and 08:30 and 12:00 hours on Sunday. No deliveries shall take place outwith those hours Monday to Saturday and no deliveries shall take place at all on Sunday."

There is additional information provided by the applicant in support of their position. This is available to view on the Planning and Building Standards Portal.

3.2 Determining Issues

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?

3.3 Assessment

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

- (a) the proposals affect road safety;
- (b) the proposals will result in an unreasonable loss of neighbouring amenity;
- (c) the proposals have any equalities or human rights impacts; and
- (d) representations raise issues to be addressed.

a) Road Safety Issues

Matters relating to the capacity of the neighbouring public roads to safely accommodate the traffic generated by the Cash & Carry warehouse operation were fully assessed as part of the 1988 permission and found to be acceptable in road safety terms.

This application relates solely to a proposed revision of the operating hours of those premises. As such those changes would have no additional impact on matters of road safety within the vicinity of the application site.

Those matters raised by neighbours, regarding delivery vehicles parked within the public road and the individual driving habits of customers, are matters for control under the provisions of other legal regimes.

b) Neighbouring Amenity

Environmental Assessment considers that noise, associated with the increased hours and mainly from deliveries to the premises, would represent the most significant impact.

The applicant has previously provided two 'noise impact assessments' (made in October 2013 (survey in September) and March 2014 (survey in February)) in support of the principle of the proposed application. They reaffirmed that any noise, associated with the increased hours, would not have a detrimental impact upon residential amenity. They addressed matters concerning; the noisiest operations at the property, their proximity to the residential properties and considered them against the provisions of the World Health Organisation, the British Standards and defined 'day and night time hours', regarding noise.

Environmental Assessment is content with the findings of those assessments; that the operations are being suitably managed to ensure that amenity would not be detrimentally affected by the hours proposed. During the trial period for extended opening hours in 2013 there were no noise complaints received by the Council's Noise Team.

At appeal the Reporter was satisfied that the proposed extended opening hours, during week days, would not cause a significant adverse impact on the health and quality of life of local residents. However, he was persuaded that those residents, nearest the loading bay, would experience a degree of disturbance bordering on the unacceptable and that Sunday opening would tip that balance. As such he allowed the appeal, with the proviso that Sunday operation was not included.

The 'noise impact assessments' relate to those periods when the store was open, trading and receiving deliveries; therefore, when all of the activities were operating at the site. This application proposes that there would be no deliveries undertaken on Sundays.

Consequently, noise from delivery operations, including the loading and unloading of goods between the delivery vehicles and the warehouse, at the loading bays, located at the north western elevation of the building, would not occur during the proposed Sunday operation of the Cash and Carry business. This would result in a suitably reduced level of operation and associated noise impact without detriment to the existing levels of residential amenity presently enjoyed by the occupants of those neighbouring properties.

Environmental Assessment has identified that the Council's Noise Team received a number of complaints, regarding early morning incoming deliveries to the premises, since the determination of the last application. However, they offer no objection to the proposed operating hours on Sundays provided that no deliveries are permitted, in order to ensure that the neighbouring residential amenity is protected.

Accordingly, the proposed permanent revision to the operating hours of the premises would not result in any detrimental impact on the existing levels of residential amenity presently enjoyed by the occupants of the neighbouring residential premises to the site.

c) Equalities and Human Rights Impacts

This application has no impact in terms of equalities or human rights.

d) Public Comments

Material Representations: Objections

- the appeal decision should be final - this application is materially different, precluding deliveries to the site on Sundays.
- Batleys remain open on Sunday despite the DPEA decision to cease - existing Sunday operation is a breach of planning control. However, no enforcement action should be taken pending the determination of this application.
- Sunday operation for 2 years (1 trial year then in breach of planning) resulting in week long noise and disturbance;
- impact of noise and disturbance on neighbours' health continues throughout the day - noise and disturbance levels have not been found to be detrimental, except those relating to full Sunday operations.
- existing site noise from 05:30 hours; 07:45 hours on Sunday - noise prior to opening relates to delivery vehicles in the public road and staff preparations for opening. Vehicle noise in a public road cannot be controlled through planning within and staff arrivals have been investigated by enforcement and no further action was taken.
- Batleys regularly fail to adhere to the opening times - the actions of the operator, where they conflict with the grant of planning permission, should be assessed on a case-by-case basis. The previous actions or inactions cannot influence a determination by the Planning Authority.
- the area has changed to predominantly residential in character - this assessment is concerned at the change in hours of operation and its impact on the immediate environment. Whether the use of the premises is acceptable was a decision made in 1988.
- the site access has inadequate forward visibility - road safety matters were found to be acceptable, as part of the 1988 determination. As this proposal relates to

extended hours of an existing use, it is not relevant to address operational development matters as part of this application.

Non-material Representations

- goods vehicles waiting in the adjoining road for the premises to open;
- commercial vehicles reversing into the public road without a guide; and
- additional traffic within the public road - are not material planning considerations but matters for control under the provisions of other legal regimes.

CONCLUSIONS

In conclusion, the proposals comply with the development plan and would not prejudice residential amenity or road safety. There are no material considerations which outweigh this conclusion.

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

3.4 Conditions/reasons/informatives

1. The hours of operation shall be restricted to between 07:00 and 20:00 hours Monday to Saturday and 08:30 and 12:00 hours on Sunday. No deliveries shall take place outwith those hours Monday to Saturday and no deliveries shall take place at all on Sunday.

Reasons:-

1. In the interests of amenity.

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.

Financial impact

4.1 The financial impact has been assessed as follows:

There are no financial implications to the Council.

Risk, Policy, compliance and governance impact

5.1 Provided planning applications are determined in accordance with statutory legislation, the level of risk is low.

Equalities impact

6.1 The equalities impact has been assessed as follows:

The application has been assessed and has no impact in terms of equalities or human rights.

Sustainability impact

7.1 The sustainability impact has been assessed as follows:

This application is not subject to the sustainability requirements of the Edinburgh Design Guidance.

Consultation and engagement

8.1 Pre-Application Process

There is no pre-application process history.

8.2 Publicity summary of representations and Community Council comments

Neighbour notification was carried out on 17 July 2014, and again on 8 August 2014, and attracted 24 letters of representation from Councillor Gardner, Malcolm Chisholm MSP, Mark Lazarowicz MP, the New Town and Broughton Community Council, the Capricorn Residents Association and from the occupants of 17 neighbouring properties; 23 of those letters raise objections to the proposal and one letter supports the proposed hours of operation.

Those matters, regarding a failure to neighbour notify the new residential properties on McDonald Place and McDonald Street, was redressed on 8 August 2014.

Material Representations in Objection

- appeal decision should be final;
- Batleys remain open on Sunday despite the DPEA decision to cease;
- Sunday operation results in week long noise and disturbance;
- Sunday operation for 2 years; 1 trial year then in breach of planning;
- existing site noise from 05:30 hours; 07:45 hours on Sunday;
- impact of noise and disturbance on neighbours' health continues throughout the day;
- Batleys regularly fail to adhere to the opening times;
- the area has changed to predominantly residential in character; and

- the site access has inadequate forward visibility.

Non-material Representations

- goods vehicles waiting in the adjoining road for the premises to open;
- commercial vehicles reversing into the public road without a guide; and
- additional traffic within the public road.

Community Council Comments

New Town & Broughton Community Council reproduced in full in the consultations section of the report.

A full assessment of 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](#)

Statutory Development

Plan Provision

Edinburgh City Local Plan - Urban Area.

Date registered

16 July 2014

Drawing numbers/Scheme

01,

Scheme 1

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Links - Policies

Relevant Policies:

Relevant policies of the Edinburgh City Local Plan.

Policy Hou 8 (Inappropriate Uses in Residential Areas) establishes a presumption against development which would have an unacceptable effect on the living conditions of nearby residents.

Appendix 1

Application for Planning Permission 14/02892/FUL At 30 McDonald Place, Edinburgh, EH7 4NH Variation of Condition 3 of planning permission 834/88 (as amended under appeal reference: PPA-230-2114, dated 19 June 2014) to extend the opening hours of the cash and carry to 08:30 to 12:00 hours on Sundays

Consultations

Environmental Assessment

The application proposes to vary an existing condition of consent currently applied to a cash and carry retail premises. The condition under consideration presently restricts the operational and delivery hours associated with the premises. Residential properties surround the site to the north, north-west, north-east, south-west and south-east. The premises are entered by both patrons and delivery vehicles from the main entrance off McDonald Place which is a reasonably quiet cul-de-sac street.

An application was received by the Council to vary the hours of operation and deliveries to the application premises in July 2012 (Ref 12/02594/FUL). Consent was granted for the premises in October 2012 to operate within the hours of 07:00-20:00 Monday to Saturday and 08:30-12:00 hours on Sundays. However, the consent was subject to a one year trial period to consider the impacts associated with the proposed earlier and later hours.

Following the trial period the applicant submitted an application requesting that these hours of operation are made permanent (Ref 13/04453/FUL).

At that time Environmental Assessment considered that noise would be the most significant impact associated with the increased hours, mainly from deliveries to the premises. In this regard, noise impact assessments were provided in support of the above mentioned applications which advised that noise associated with the increased hours will not impact upon residential amenity. Environmental Assessment was content to support these conclusions and responded to that effect for the applications in 2012 and 2013. Further to this, no noise complaints had been received by the Council Noise Team relating to the operational or delivery activities during the trial period. It was therefore concluded that the operations were being suitably managed to ensure that amenity would not be detrimentally affected by the hours proposed shown below:

"The hours of operation shall be restricted to between 07:00-20:00 hours Monday to Saturday and 08:30-12:00 hours on Sundays with no deliveries or loading outwith these hours."

Although 2013 application (Ref 13/04453/FUL) was refused planning permission by the Council, a subsequent appeal (Ref: PPA-230-2114) was upheld, but only in part. The Sunday operations were removed from the approved scheme.

The applicant is now seeking Sunday opening based on the previous Environmental Assessment response to the 2013 application. It is clear that the proposal remains unchanged in the request for Sunday operating hours from the previous 2013 scheme. However, it should now be noted that the Council Noise Team have received a number of complaints regarding early morning incoming deliveries to the Cash and Carry.

Environmental Assessment offers no objection to the proposed operating hours but recommends that no deliveries are permitted on Sundays in order to ensure that the neighbouring residential amenity is protected.

On balance Environmental Assessment offers no objection to this application subject to the following condition:

"The hours of opening shall be restricted to between 07:00 and 20:00 hours (Monday to Saturday), and 08:30 and 12:00 hours on Sunday. No deliveries shall take place outwith these hours Monday to Saturday and no deliveries shall take place at all on Sunday."

New Town & Broughton Community Council

1) We are aware of the history of this site and various applications to vary Condition 3 of the original planning permission (834/88) which was originally granted when this site use was changed from a print works to its current use as a Cash & Carry warehouse.

Although we recognise that each application needs to be and should be assessed on the specific factors of the site and the proximity of residential houses, we are surprised that there is not a clearer policy regarding both the opening times and permitted hours of delivery for establishments such as these - in which we would also include supermarkets e.g. Tesco in Broughton Road and the proposed Lidl in Logie Green Road.

There appears to be very subjective assessments of the compliance or otherwise of extended opening times and more importantly delivery windows for these establishments with the Edinburgh Local Development Plan applicable policies.

2) We note over the intervening period that permission was originally granted that there have been several new residential developments such that the Cash & Carry site now operates in the midst of a >95% residential area of flats and houses, with the only exception being an adjacent small car rental business on McDonald Place. To quote the local resident's group, this site "...is an island in a sea of homes".

3) Given the current situation, we would expect therefore that businesses such as this which are in close proximity to a large number of residential properties would conduct their business with due regard to their impact on their neighbours and in compliance with the permission granted for the site.

Whilst being supportive in principle of the current mixed uses for properties in this area consistent with maintaining diversity, local employment opportunities & in line with the City Centre LDP, it is not clear that this particular business has conducted its business in a reasonable manner commensurate with the nature of its surroundings.

4) It is clear as to the relevant policies within the EDLP (2010) are applicable in this case: Policy Hou 8 ("Inappropriate Uses in Residential Areas") establishes a presumption against development which would have an unacceptable effect on the living conditions of nearby residents. However, there appears to have been a lack of consistency in assessing what constitutes "an unacceptable effect on the living conditions (amenity) of nearby residents".

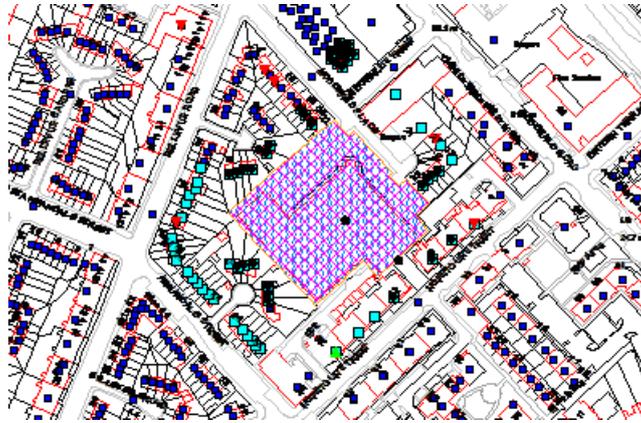
5) Despite Edinburgh Council Environmental Assessment Department recognising the need to protect the residential amenity associated with Sunday mornings (to allow the occupants of residential properties one day a week of relative quiet at the start of that day), they assess that the hours requested for Sunday operations in this instance (which would include deliveries and uplifts) "are generally considered to correspond with these requirements and are therefore acceptable".

This view was not supported by the Development Management Sub-Committee when this application was put before them in January 2014 and furthermore, and more significantly; this view was NOT shared by the Scottish Government Reporter during his assessment of the appeal (PPA-230-2114) against refusal of permission to vary Condition 3 of the original consent (13/04453/FUL).

6) In summary, the New Town & Broughton Community Council, whilst aware of the possible impact of no Sunday operations on local businesses, would support the Scottish Government Reporter's position regarding Sunday operation and would continue to object on grounds of resident's amenity to this application being granted. As a commercial wholesale business we feel that there is no strongly compelling reason that necessitates Sunday openings in the midst of an overwhelmingly residential area.

7) Finally & perhaps more importantly, the decision of the Reporter as documented under PPA-230-2114 in response to the appeal against CEC refusal of 13/04453 should allow a more consistent assessment to be made under Policy Hou 8 for other planning applications - for example, Sunday deliveries to city centre supermarkets. Unfortunately, there had been a number of recent precedents to the contrary.

Location Plan



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