

Development Management Sub Committee

Wednesday 25 February 2015

**Application for Planning Permission 14/05059/FUL
At Shrubhill House, 7 Shrub Place, Edinburgh
Application under section 42 of the Town and Country
Planning (Scotland) Act 1997 to vary condition 7 of planning
permission 13/00241/FUL to allow Sunday deliveries to Unit 4
(Sainsbury's Convenience Store).**

Item number	4.5
Report number	
Wards	A12 - Leith Walk

Summary

The proposal complies with the development plan, is commensurate with the town centre location and will not have an adverse impact on residential amenity or road safety. There are no other material considerations which outweigh this conclusion.

Links

<u>Policies and guidance for this application</u>	LPC, CITD3, CITE6, CITH8, CITR2, NSG, NSBUS, CRPLEI,
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Report

Application for Planning Permission 14/05059/FUL At Shrubhill House, 7 Shrub Place, Edinburgh Application under section 42 of the Town and Country Planning (Scotland) Act 1997 to vary condition 7 of planning permission 13/00241/FUL to allow Sunday deliveries to Unit 4 (Sainsbury's Convenience Store).

Recommendations

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

Background

2.1 Site description

The site is located on the north-west side of Leith Walk, opposite the intersection of Albert Street with Leith Walk and is approximately 0.48 hectares in size.

The previous 1960s office building, Shrubhill House, has been demolished and the construction of the consented student housing scheme with retail and food and drink uses on the ground floor has commenced.

The site is bound by Middlefield to the north and Leith Walk to the east. To the west of the site is Inchkeith Court, a 1960s 11 storey high-rise residential block, accessed from Spey Terrace.

Immediately north of the site at 1-3 Middlefield is the A listed Middlefield House which is three storeys in height and in residential use (LB reference 29335, listed on 25 April 1965).

A three storey tenement property east of Middlefield House fronts Leith Walk. Four storey traditional tenements line the eastern side of Leith Walk accommodating commercial and retail uses at ground floor level with residential flats on the upper levels. These tenements characterise Leith Walk and the wider area.

This application site is located within the Leith Conservation Area.

2.2 Site History

8 December 2014 - section 42 application received to vary condition 7 of planning permission 13/00241/FUL to allow Sunday deliveries to units 4 and 5 at Shrubhill (planning reference 14/05060/FUL).

3 December 2013 - section 42 application granted to vary condition 1 of planning permission 06/05371/FUL to extend the duration of the consent. The extent of the time extension was restricted to 18 months (planning reference 13/00241/FUL).

8 March 2010 - planning permission for two hotels with retail space at ground level minded to grant (planning reference 09/01872/FUL).

9 April 2008 - planning permission granted for the erection of a mixed use development including student housing, retail (class 1) units and food and drink (class 3) units at Shrubhill House (planning reference 06/05371/FUL).

6 August 2008 - permission granted to remove condition 2 of existing consent 05/03128/CON in relation to the requirement that no demolition should take place until the contract for the new development has been let to enable the demolition of Shrub Hill House (planning reference 08/02404/FUL).

20 April 2006 - planning permission granted for demolition of existing office building and Masonic Club, conversion of listed building and new build development to provide for new Masonic Club, retail and commercial provision to Leith Walk and residential development with associated access, parking and landscaping. The application included Shrubhill House as part of the application site as the brief for the site required a co-ordinated approach even though Shrubhill House was outwith the ownership of the developer. This scheme proposed a five storey residential development incorporating 68 one and two bedroom units in place of Shrubhill House (planning reference 05/03128/FUL).

24 May 2006 - conservation area consent granted to demolish existing office block (planning reference 05/03128/CON).

On land adjacent to the site:

23 October 2013 - planning permission for proposed mixed use development comprising 160 residential units and 1150 sqm of retail floorspace minded to grant subject to a legal agreement (planning reference 13/01070/FUL).

10 March 2010 - planning permission for an apart-hotel (Class 7) and associated facilities, Masonic Social Club, landscaping, parking and access arrangements at Shrubhill Block A was minded to grant. This application has now been withdrawn (planning reference 09/00794/FUL).

Main report

3.1 Description Of The Proposal

The application seeks to vary condition 7 of planning permission 13/00241/FUL to allow Sunday deliveries to Unit 4 at Shrubhill, Leith Walk. The unit is currently under construction as part of a mixed use scheme incorporating student housing and five ground floor units for retail and food and drink use. Unit 4 is 892 sqm and is expected to be operated as a convenience store by Sainsbury's.

Condition 7 states:

Deliveries and collections to and from the class 1 and class 3 retail units, including waste collections, shall be restricted to 0700 - 1900 hours Monday to Saturday only.

Reason: In order to safeguard the amenity of neighbouring residents and other occupiers.

The applicant wishes to agree a Sunday delivery window with the Council.

A planning statement and a noise impact assessment have been submitted in support of the application.

3.2 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?

3.3 Assessment

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

- a) the amenity of neighbouring occupiers will be safeguarded;
- b) there are any traffic or road safety issues;
- c) the proposal will preserve or enhance the character and appearance of the conservation area;
- d) any impacts on equalities or human rights are acceptable; and
- e) comments raised have been addressed.

a) Amenity

The local plan policy context is covered by Edinburgh City Local Plan (ECLP) Policies Ret 2 Town Centres and Hou 8 Inappropriate Uses in Residential Areas.

The site is located within Leith Walk Town Centre where Policy Ret 2 generally supports retail development subject to a number of criteria. Policy Hou 8 states that development which would have a materially detrimental effect on the living conditions of nearby residents will not be permitted.

When considering the application to allow Sunday deliveries, it is necessary to have regard to the prevailing character of the area.

Leith Walk is generally characterised as having a number of varying commercial uses at ground floor below tenements. It is a busy location and deliveries to other commercial/retail uses within the area are not governed by planning conditions controlling delivery hours. A mixed use application (planning reference 13/01070/FUL) for development at Shrub Place next to the site proposed retail units at the ground floor, and although only minded to grant, does not have any recommendations to impose conditions in relation to deliveries.

Transport has advised that the bus lane, waiting and loading restrictions on Leith Walk will remain in place as currently exist. Therefore the assessment is based on deliveries being provided to the rear service yard, as shown on the approved plans for the original planning application.

The nearest residential properties are the proposed student flats above the ground floor units. The nearest window is approximately 10m away from the location of the proposed delivery activities. In terms of existing residential uses, Inchkeith Court flatted block is approximately 30m to the northwest of the service yard, whilst there are properties adjacent on Middlefield.

A Noise Impact Assessment has been provided in support of the application. This predicts the noise levels for the proposed delivery options at the nearest noise sensitive residential properties as noted above.

The noise survey establishes the existing background noise levels for both Saturday and Sunday. The survey notes that background noise levels are already lower during certain parts of the approved Saturday delivery hours than those proposed for Sunday.

When assessed against the predicted delivery noise levels for Sunday delivery times, the noise levels will exceed the measured background noise at the proposed student flat above the ground floor units by 2 decibels. In relation to the flats at Inchkeith Court, the delivery noise is predicted to be lower than the prevailing background noise.

The applicant also suggests that a Delivery Noise Management Plan will be utilised by Sainsbury's for Unit 4. This includes a system to ensure that stores are ready to accept a delivery, delivery schedules for consistency, a policy for employees involved in deliveries to keep noise to a minimum, managing the delivery area and the training of delivery drivers to minimise noise. Whilst good working practice, these are matters that could not be adequately covered and enforced by planning conditions.

Environmental Assessment has commented that commercial deliveries can be noisy activities and also that the measures set out in the Delivery Noise Management Plan cannot be enforced. The response goes on to state that, as deliveries will take place in an open environment, there is no way to control noise particularly on Sundays when background noise is generally at lower levels.

Given that the site is located within a bustling town centre where there is general support for retail uses, the lack of planning controls on the established units along Leith Walk and the limited increase over the existing background noise, it would be reasonable to allow a limited Sunday delivery window. However, delivery hours need to be restricted to avoid unacceptable impact on residential amenity.

Accordingly, following discussion with the applicant it is recommended that the condition should be varied to enable Sunday deliveries between 10:00 and 16:00 hours. This will enable some flexibility in their operations and ensure no adverse impacts on residential amenity.

b) Traffic and Road Safety

Leith Walk is a busy town centre and a main route into the city centre. The delivery yard is linked to Leith Walk via Middlefield, which is only a short distance of approximately 35 metres. There are also 'no entry' signs from Spey Terrace to Middlefield limiting traffic moving west to east.

Transport has not objected to the proposal and there are no road safety implications arising from the proposed Sunday deliveries.

c) Conservation Area

The proposal does not seek to physically alter the proposed building and there are no impacts on the conservation area arising from this Section 42 application.

d) Equalities and Human Rights

The application was assessed in terms of equalities and human rights. No adverse impact was identified.

e) Public Comments

No comments have been received.

Conclusion

Taking into account the context of the site and its proximity to Leith Walk, the planning condition should be varied to enable Sunday deliveries between 10:00 - 16:00 hours. The new condition reads:

Deliveries and collections to and from the class 1 and class 3 retail units, including waste collections, shall be restricted to 0700-1900 hours Monday to Saturday, except retail unit 4 which shall be restricted to 0700-1900 Monday to Saturday and 1000-1600 on Sunday.

Reason: In order to safeguard the amenity of neighbouring residents and other occupiers.

If granted the Section 42 would form a new permission and therefore all relevant outstanding conditions from the original permission should be applied.

The original application was subject to a legal agreement in relation to Edinburgh Tram (£294,381), City Car Club (16,500), cycle facilities (£36,900), the cost of any Traffic Regulation Orders and a travel plan. As such a new legal agreement will be required covering the same matters before consent can be issued.

The proposal complies with the development plan, is compatible with the town centre location and will not have an adverse impact on residential amenity or road safety. There are no other material considerations which outweigh this conclusion.

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

3.4 Conditions/reasons/informatives

Conditions:-

1. Deliveries and collections to and from the class 1 and class 3 retail units, including waste collections, shall be restricted to 0700-1900 hours Monday to Saturday, except retail unit 4 which shall be restricted to 0700-1900 hours Monday to Saturday and 1000-1600 hours on Sunday.
2. 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, 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 Planning Authority.
 - 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 for the approval of the Planning Authority.
3. Class 1 and 3 Retail Units: The sound insulation properties or sound transmission characteristics of the structures and finishes shall be such that no impact or airborne noise from the normal operations within the application premises is audible in any neighbouring living apartment.
4. Class 1 and Class 3 Retail Units: The design, installation and operation 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 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.

6. The kitchens associated with the class 3 units shall be ventilated by a system capable of achieving 30 air changes per hour, and the cooking effluvia shall be ducted to chimney head level to ensure that no cooking odours escape or are exhausted into any neighbouring premises, all to the satisfaction of the Head of Planning.
7. Class 3 units: The sound insulation properties or sound transmission characteristics of the structures and finishes shall be such that no impact or airborne noise from the normal operations within the application premises is audible in any neighbouring living apartment.
8. Prior to the commencement of works on site, a sample panel of the proposed stonework on the front elevation, to be no less than 1.5 metres by 1.5 metres shall be produced, demonstrating each proposed external material and accurately indicating the quality and consistency of future workmanship and submitted for written approval by the Head of Planning and Building Standards.
9. 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.
10. The approved landscaping scheme shall be fully implemented within six months of the completion of the development. Any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced with others of a size and species similar to those originally required to be planted, or in accordance with such other scheme as may be submitted to and approved in writing by the Planning Authority.
11. Before any part of the development is brought into use, cycle parking shall be provided within the site to meet the standard required by City of Edinburgh Council policy; the type and siting of such parking shall be approved in writing by the Head of Planning & Strategy before work commences on site, and no alteration to the approved cycle parking provision shall be made without the further written approval of the Head of Planning & Building Standards.

Reasons:-

1. In order to safeguard the amenity of neighbouring residents and other occupiers.
2. In order to ensure that the site is suitable for redevelopment, given the nature of previous uses/processes on the site.
3. In order to safeguard the amenity of neighbouring residents and other occupiers.
4. In order to safeguard the amenity of neighbouring residents and other occupiers.
5. In order to protect the amenity of the occupiers of the development.
6. In order to safeguard the amenity of neighbouring residents and other occupiers.

7. In order to safeguard the amenity of neighbouring residents and other occupiers.
8. In order to ensure that the external finish is satisfactory, in the interests of visual amenity.
9. In order to enable the Head of Planning and Building Standards to consider this/these matter/s in detail.
10. In order to ensure that the approved landscaping works are properly established on site.
11. In order to ensure adequate cycle parking provision.

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. For the duration of development, between the commencement of development on the site until its completion, a notice shall be: displayed in a prominent place at or in the vicinity of the site of the development; readily visible to the public; and printed on durable material.
5. **Legal Agreement**

Consent shall not be issued until a suitable legal agreement has been concluded in relation to Edinburgh Tram contributions, City Car Club, cycle facilities, Traffic Regulation Orders and a travel plan.

Financial impact

4.1 The financial impact has been assessed as follows:

The application is subject to a legal agreement for developer contributions.

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

The application was advertised on 19 December 2014. No letters of representation have been received. The community council has been consulted on the application and no response has been received.

Background reading/external references

- To view details of the application go to
- [Planning and Building Standards online services](#)
- [Edinburgh City Local Plan and Rural West Edinburgh Local Plan](#)
- [Planning guidelines](#)
- [Conservation Area Character Appraisals](#)
- [Edinburgh Local Development Plan](#)
- [Scottish Planning Policy](#)

**Statutory Development
Plan Provision**

This site is located within the Urban Area and part of the site is within the Leith Walk Town Centre as identified in the Edinburgh City Local Plan Proposals Map.

Date registered

8 December 2014

Drawing numbers/Scheme

01, 02,

Scheme 1

David R. Leslie

Acting Head of Planning and Building Standards

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Links - Policies

Relevant Policies:

Relevant policies of the Edinburgh City Local Plan.

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

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

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.

Policy Ret 2 (Town Centres) sets criteria for assessing retail development in or on the edge of town centres.

Relevant Non-Statutory Guidelines

Non-statutory guidelines 'GUIDANCE FOR BUSINESSES' provides guidance for proposals likely to be made on behalf of businesses. It includes food and drink uses, conversion to residential use, changing housing to commercial uses, altering shopfronts and signage and advertisements.

The Leith Conservation Area Character Appraisal emphasises the area's unique and complex architectural character, the concentration of buildings of significant historic and architectural quality, the unifying effect of traditional materials, the multiplicity of land use activities, and the importance of the Water of Leith and Leith Links for their natural heritage, open space and recreational value.

Appendix 1

Application for Planning Permission 14/05059/FUL At Shrubhill House, 7 Shrub Place, Edinburgh Application under section 42 of the Town and Country Planning (Scotland) Act 1997 to vary condition 7 of planning permission 13/00241/FUL to allow Sunday deliveries to Unit 4 (Sainsbury's Convenience Store).

Consultations

Environmental Assessment response - dated 15 December 2014

The applicant proposes the variation of condition 7 of consent granted to application 13/00241/FUL to allow Sunday deliveries to unit 4 of a mixed use development. The development includes student accommodation above the retail use; there are further residential dwellings to the west, north and east.

Commercial deliveries can be noisy activities, for example, the process of lorries reversing with audible warnings, voices being raised, the use of metal cages and roller doors being opened and closed. Because these activities take place in an open environment, there is no way of ensuring the level of noise generated does not breach acceptable standards in nearby residential dwellings; particularly on Sundays when background noise is generally at lower levels.

Environmental Assessment recommends that this application be refused as there is no proposed method of noise control to safeguard existing amenity.

Environmental Assessment further response - dated 24 December 2014

The applicant proposes the variation of condition 7 of consent granted to application 13/00241/FUL to allow Sunday deliveries to unit 4 of a mixed use development. The development includes student accommodation above the retail use; there are further residential dwellings to the west, north and east.

Commercial deliveries can be noisy activities, for example, the process of lorries reversing with audible warnings, voices being raised, the use of metal cages and roller doors being opened and closed. The agent has submitted a noise impact assessment to support this proposal, however, none of the mitigation methods that the report suggests are enforceable (e.g. a Delivery Noise Management plan).

Because deliveries will take place in an open environment, there is no way of ensuring the level of noise generated does not breach acceptable standards in nearby residential dwellings; particularly on Sundays when background noise is generally at lower levels.

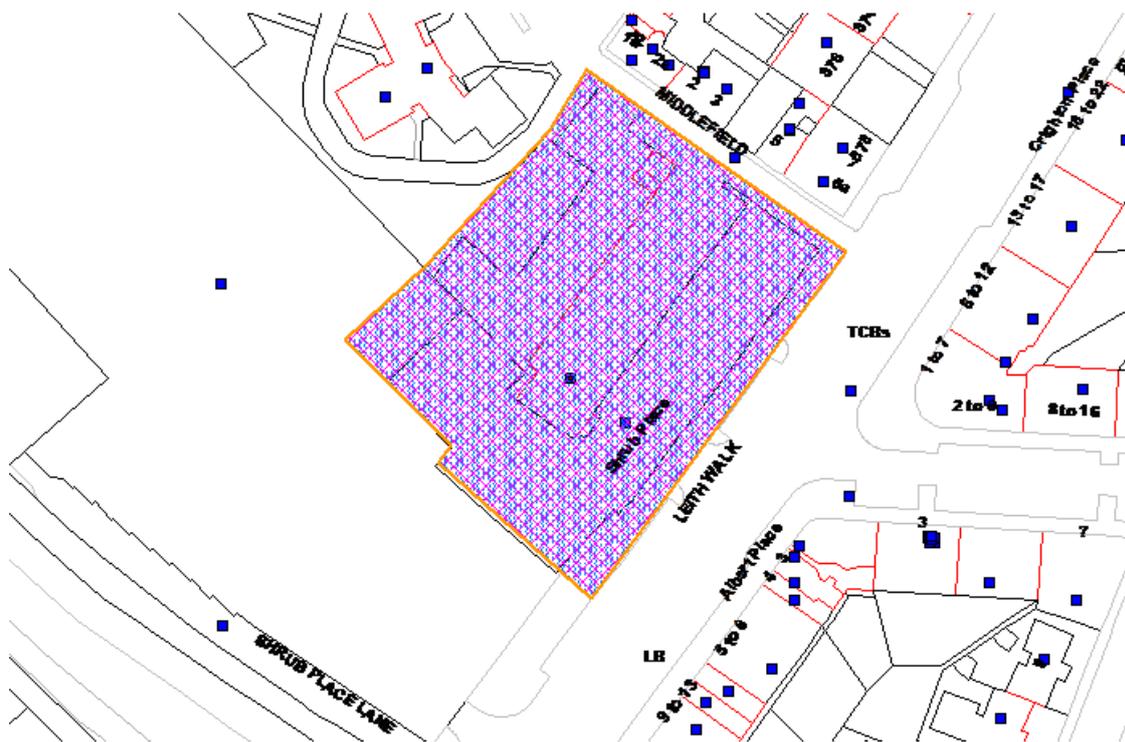
Environmental Assessment recommends that this application be refused as the proposed methods of noise control to safeguard existing amenity are unenforceable.

Transport response - dated 29 December 2014

I have no objections to the application.

Note: The applicant should note that the bus lane and waiting and loading restrictions etc. on Leith Walk will remain in place as currently exist.

Location Plan



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