

Development Management Sub Committee

Wednesday 4 November 2015

**Application for Planning Permission 15/01164/FUL
At 18 Foulis Crescent, Edinburgh, EH14 5BN
Change of use from mixed domestic and commercial use to
solely commercial use.**

Item number

Report number

Wards

A02 - Pentland Hills

Summary

The proposed increase in operations of a previously established use and loss of a housing unit is appropriate within this location. The proposals demonstrate that the amenity of neighbouring residents will remain adequately safeguarded and that road safety and the character and appearance of the area will not be prejudiced. The proposal complies with relevant development plan policies and guidance and is acceptable.

Links

[Policies and guidance for this application](#)

LPC, CITH6, CITH8, NSG, NSBUS,

Report

Application for Planning Permission 15/01164/FUL At 18 Foulis Crescent, Edinburgh, EH14 5BN Change of use from mixed domestic and commercial use to solely commercial use.

Recommendations

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

Background

2.1 Site description

The site lies on the north side of Foulis Crescent, Juniper Green and relates to a detached dwelling house within a residential area. The property is set back from the road with a paved area to the side for car parking. It is surrounded by residential properties. The rear garden ground is screened on all sides by mature hedging and fencing.

2.2 Site History

25 October 2007 - planning permission granted for the change of use of rear area of property into a nursery - consent was granted for a limited period of one year to allow the impact of the use to be assessed and reconsidered after one year of operation (application number 07/02746/FUL).

07 March 2008 - planning permission granted for the erection of a upvc conservatory to property (application number 08/00352/FUL).

18 February 2009 - planning permission granted to continue using rear of property as a nursery including garden, conservatory, additional room and changes to staff and children numbers. Consent was granted limiting the number of children and hours of operation through the attachment of planning conditions (application number 08/04043/FUL).

15 February 2010 - planning permission granted for the removal of the existing roof and the formation of new pitched roof with dormer windows to front side and rear (application number 09/02681/FUL).

15 January 2015 - enforcement investigation pending regarding an unauthorised change of use from mixed residential and children's nursery to full children's and the subject of this application for planning permission (enforcement investigation number 15/00031/ECOU).

Main report

3.1 Description Of The Proposal

The application seeks planning permission for the change of use of the building from a mixed use of residential and children's nursery into a full children's nursery.

The children's nursery will accommodate a maximum of 37 children and operate between 07.30 until 18:00, Monday to Friday.

The amended application includes the erection of a 2.8 metre high close timber boarded fence along the western (side) boundary of the rear garden area.

Supporting information

An Environmental Noise Impact Assessment has been submitted in support of the proposals. This document is available to view on the Planning and Building Standards Online Services.

3.2 Determining Issues

Section 25 of the Town and Country Planning (Scotland) Act 1997 states - Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise.

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 loss of housing and the sole use of the property as a children's nursery are acceptable;
- (b) there is any adverse effect on the amenity of the neighbouring properties;
- (c) there is any adverse effect on road safety;
- (d) the physical alterations proposed will adversely affect the character or appearance of the surrounding area;
- (e) any impacts on equalities or human rights are acceptable; and
- (f) any comments raised have been addressed.

(a) Loss of housing and principle of use

Policy Hou 6 of the Edinburgh City Local Plan states that the change of use of an existing dwelling will only be permitted if it can be demonstrated that either the property provides a poor living environment which could not readily be improved or the proposal is for a use that will benefit the local community without loss of amenity for neighbouring residents.

The proposal is for the change of use of a detached building in a mixed use comprising residential and children's day nursery. The residential element of the existing property utilises two large rooms and a bathroom with the kitchen and garden shared with the children's nursery. The property therefore does not have a poor living environment.

Children's day nurseries are normally acceptable within residential areas as they are seen to benefit the local community. This benefit has already been adequately demonstrated by the operation of the children's day nursery element of the property for a period of almost eight years. However, the acceptability of allowing the full use of the property for such a use is dependent upon the impact that it would have on neighbouring residential amenity.

The loss of housing is therefore acceptable in principle subject to its impact on neighbouring residential amenity and road safety being acceptable.

(b) Impact on neighbouring residential amenity

Within the eight years the property has accommodated a children's day nursery it has only generated one noise complaint.

Nevertheless, the increased operations applied for has the potential to lead to a loss of amenity to neighbouring properties. The main concern relates to potential noise disturbance associated with operational aspects of a nursery; in particular from noise associated with play activities in the outdoor area.

The conditions attached to the previous planning permission relating to the number children allowed within the garden and the hours in which it can be used are not considered appropriate for the scheme proposed in this application given the impracticable nature of ensuring compliance with such a condition.

In view of this, a noise impact assessment has been provided allowing a clear assessment of the proposals impact on the amenity of neighbouring residents to be undertaken. The noise impact assessment recommends measures designed to ensure that noise from the garden area will not prejudice the amenity of neighbouring residents.

Environmental Assessment raise no objections to the proposals subject to the attachment of a planning condition in accordance with the acoustic requirements specified in noise impact assessment with specific reference to the requirement of the close boarded timber screen fence.

The proposed fencing extends to a height of approximately 2.8 metres and will not overshadow or block daylight to neighbouring land or windows above what is considered to carry no adverse impacts as defined by the relevant planning guidelines.

The proposals will not prejudice the amenity of neighbouring residents.

(c) Impact upon road safety

The application does not propose any parking facilities so the dropping off and collection of the children would remain reliant on the existing on-street parking facilities. The site is located on a street where there are no parking restrictions. Transport Planning raise no objections to the proposed development.

The proposals will not prejudice road safety within the local road network.

(d) Impact upon character and appearance

The proposed boundary alteration replaces a tall hedgerow with a close boarded timber fence of a similar height. The fence is of an acceptable scale, design and utilises appropriate materials. The fence will preserve the character and appearance of the surrounding area.

(e) Equalities and Human Rights

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

(f) Public Comments

Material representations – Objection:

- Over intensification of use– this matter has been addressed in section 3.3(a).
- Adverse impact upon the amenity of neighbouring residential uses – this matter has been addressed in section 3.3(b).
- Adverse impact on public safety within local road network – this matter has been addressed in section 3.3(c).

Material representations – Support:

- Appropriateness of use within the locality – this matter has been addressed in section 3.3(a).

Community Council

- No comments were received.

Conclusion

The proposed increase in operations of a previously established use and loss of a housing unit is appropriate within this location. The proposals demonstrate that the amenity of neighbouring residents will remain adequately safeguarded and that road safety and the character and appearance of the area will not be prejudiced. The proposal complies with relevant development plan policies and guidance and is acceptable.

There are no material considerations that outweigh this conclusion.

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

3.4 Conditions/reasons/informatives

Conditions:-

1. The development shall be completed in accordance with the acoustic and ventilation requirements specified in the Atmos Environmental Noise Impact Assessment No. 32300-01 (Dated 24th August 2015). The requirements are detailed in Section 3 (Summary) and state:

A solid timber fence will be erected along the western boundary of the property. The fence will be 2 metres in height and 16.9 metres in length. The fence will have no gaps along its length or at ground level, will be at least 20mm thick and have a mass of 10-15kg/m².

The acoustic fence as shown in drawing no. E0104B-02 and dated 31 July 2015 should be sited as shown.

Reasons:-

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

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

Pre-application discussions took place on this application.

8.2 Publicity summary of representations and Community Council comments

The application has received 45 representations from local residents: 15 objecting and 30 supporting.

Material representations: Objection:

- Over intensification of use;
- Adverse impact upon the amenity of neighbouring residential uses; and
- Adverse impact on public safety within local road network.

Material representations: Support:

- Appropriateness of use within the locality.

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](#)

- [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**

The Edinburgh City Local Plan identifies the site as falling within general 'Urban Area'.

Date registered

16 March 2015

Drawing numbers/Scheme

01 - 03,

Scheme 1

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Links - Policies

Relevant Policies:

Relevant policies of the Edinburgh City Local Plan.

Policy Hou 6 (Loss of Housing) identifies the circumstances in which the change of use of an existing dwelling to another use will be permitted.

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.

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.

Appendix 1

Application for Planning Permission 15/01164/FUL At 18 Foulis Crescent, Edinburgh, EH14 5BN Change of use from mixed domestic and commercial use to solely commercial use.

Consultations

Environmental Assessment

The application proposes the change of use of a mixed residential and nursery property to solely nursery use. Residential properties surround the site to the north, west, east and across Foulis Crescent to the south.

The application in effect will remove any planning conditions attached to the existing nursery premises' operations and associated consent. In terms of impacts upon residential amenity from noise, the existing conditions of most importance are those which restrict the number of children in the rear garden to 10, the hours of operation of the nursery and the hours that children will be allowed within the garden.

Nurseries and associated outdoor play areas are known to cause noise complaints to be received by the Council Noise Team from occupants of surrounding residential properties. In this regard, the Council is in receipt of one noise complaint relating to noise emanating from the application premises.

The proposed larger nursery premises will be able to accommodate a maximum of 37 children although it is unlikely that all of these children would be able to be safely accommodated within the garden at any one time. Therefore, a noise impact assessment has been provided in support of the application which assesses the noise levels likely to occur within the garden from 25 children. Environmental Assessment deems an assessment of noise from 25 children in the garden at any one time to be a fair and representative assessment of what is likely to occur.

The present hours of operation are from 8am to 6pm five days per week. The proposed hours of operation are to change to 7.30am to 6pm five days per week. In addition, it is understood that the planning conditions attached to the existing consent allow commercial nursery garden use between the times of 10am - 4pm. Environmental assessment understands that such conditions can no longer be attached to such applications as they are deemed unenforceable or unreasonable. Therefore such conditions cannot be recommended by Environmental Assessment to be utilised to protect amenity in this situation. Thus it is possible that an unrestricted number of children could enter and use the garden as a play area from 7.30am until 6pm five days per week.

The noise impact assessment found that noise levels within surrounding gardens will be within acceptable limits and unlikely to cause significant annoyance to the occupants of neighbouring properties when enjoying their garden. However, the report did find that internal annoyance criteria could be exceeded within neighbouring properties at 16 and 20 Foulis Crescent. The assessments were based on daytime external and internal noise annoyance criteria stipulated by Environmental Assessment.

The noise impact assessment has therefore recommended that a barrier in the form of a close boarded fence be included as mitigation and be sited between the application premises and 20 Foulis Crescent to protect the property from noise. In addition, the agent for the application has confirmed that the nursery extension separating the application premises from 16 Foulis Crescent will break the line of sight and effectively act as suitable noise barrier. The report advises that such mitigation is likely to ensure that the internal noise levels of the adjacent properties will be within acceptable levels when children play in the nursery garden.

It is always the case that a noise impact assessment will consider noise levels representative of the situation under consideration and all attempts are made to ensure that a worst case assessment is provided. It is however difficult to categorically say that noise levels will always be within acceptable levels both within surrounding residential properties and their associated gardens even with mitigation in place. Environmental assessment is of the opinion that the increase in the number of children using the garden coupled with the potential to utilise the garden earlier in the morning and later in the afternoon has the potential to disturb the occupants of surrounding residential properties. However, the mitigation in the form of the acoustic fence which is proposed to reduce potential noise impact will go some way to reduce noise emanating from the garden play areas. Bearing in mind that there is an existing nursery in this position and this application proposes to increase its size and operations, Environmental Assessment is of the opinion that should the noise mitigation measures be incorporated, it is unlikely that the changes proposed by this development will increase noise levels significantly above that which presently exists.

Therefore, Environmental Assessment has no objections to this proposed development subject to the following condition:

1. The development shall be completed in accordance with the acoustic and ventilation requirements specified in the Atmos Environmental Noise Impact Assessment No. 32300-01 (Dated 24th August 2015). The requirements are detailed in Section 3 (Summary) and state:

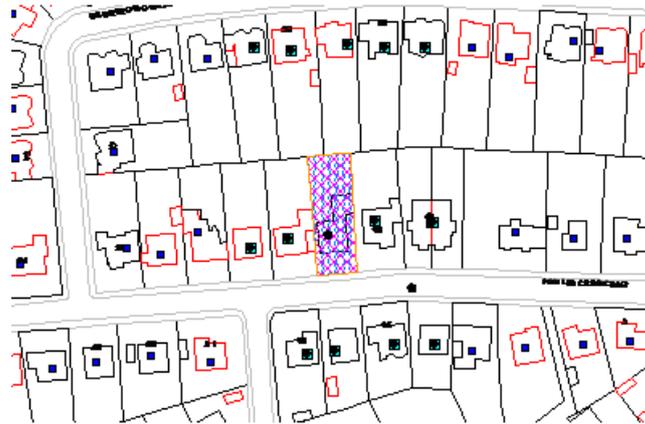
A solid timber fence will be erected along the western boundary of the property. The fence will be 2 metres in height and 16.9 metres in length. The fence will have no gaps along its length or at ground level, will be at least 20mm thick and have a mass of 10-15kg/m².

The acoustic fence as shown in drawing no. E0104B-02 and dated 31 July 2015 should be sited as shown.

Transport Planning

No objections

Location Plan



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