

# Development Management Sub Committee

Wednesday 8 June 2016

**Application for Planning Permission 16/01672/FUL  
At 88 Bruntsfield Place, Edinburgh, EH10 4HG  
Erection of external flue on rear elevation.**

|                      |                           |
|----------------------|---------------------------|
| <b>Item number</b>   | 4.1                       |
| <b>Report number</b> |                           |
| <b>Wards</b>         | A10 - Meadows/Morningside |

## Summary

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The proposed development complies with the provisions of the Edinburgh City Local Plan and is acceptable. There are no material considerations upon which to justify refusal.

## Links

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[Policies and guidance for this application](#) CRPMAR, CITD11, CITE6, NSBUS, NSLBCA,

# Report

## **Application for Planning Permission 16/01672/FUL At 88 Bruntsfield Place, Edinburgh, EH10 4HG Erection of external flue on rear elevation.**

### **Recommendations**

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

### **Background**

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#### **2.1 Site Description**

The application property is a restaurant on the north-west side of Bruntsfield Place, on the corner with Viewforth Gardens. The restaurant occupies the ground floor of a five storey tenement. Due to the nature of the proposed operational development, the application includes the flats above.

This application site is located within the Marchmont, Meadows And Bruntsfield Conservation Area.

#### **2.2 Site History**

23 September 2013 - the Local Review Body decided to not uphold the decision to refuse planning permission for change of use from Class 1 to Class 3, reference 13/01968/FUL. Ventilation was to be via existing internal chimneys.

9 September 2015 - a Temporary Stop Notice was served on the premises.

### **Main report**

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#### **3.1 Description of the Proposal**

The application proposes the addition of 2 x 200mm diameter flues on the rear (north-west) elevation, connected at ground floor level via a single 400mm external duct. The proposed flues will terminate at chimney level, and are to be painted stone colour to match the existing stonework.

#### **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 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) There is any adverse impact on the character and appearance of the conservation area;
- b) There is any adverse impact on the character and appearance of the building;
- c) The proposed use would result in any loss of amenity;
- d) Any matters raised in representations have been addressed; and
- e) Equalities and human rights impacts have been addressed.

#### **a) Impact on the character and appearance of the conservation area.**

Edinburgh City Local Plan (ECLP) Policy Env6 states that development in a conservation area will be permitted which preserves or enhances the character or appearance of the conservation area and is consistent with the relevant conservation area character appraisal. Marchmont and Meadows Conservation Area Character Appraisal refers to the structure of the area being formed by the tenements on Bruntsfield Place, with consistency of building form and materials providing integrity and character. The proposed flues are of a scale and type that is common on rear elevations throughout the city, and will only be visible from the rear gardens of the neighbouring tenements. The flues would be associated with a lawful use within a mixed commercial/residential area. In general terms, rear elevations are the preferred location for the location of balanced flues, air conditioning units, and other similar operational development. The proposed positioning of the flues on the rear elevation towards the corner of the rear green will not harm the character of the conservation area. The proposal complies with ECLP Policy Env6.

#### **b) Impact on the appearance of the building.**

The proposed development will not harm the appearance of the building. The proposed flues are relatively small in scale when seen against the backdrop of the rear wall of the tenements. Painting the flues stone coloured will further reduce their visual impact.

#### **c) Amenity.**

There will be no loss of amenity as a result of the installation of the flues. When planning permission was granted for the use of the property as Class 3, it was subject to the condition that "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 neighbouring living apartment".

The application under consideration is for operational development on a building with a lawful use restricted by that condition. As such, the restrictive noise condition would apply to the proposed flues. Any breach of that condition in future would be a breach of planning control and liable to enforcement action. A restrictive noise or smell condition attached to this planning permission would be unnecessary, thereby failing the first test for conditions set out in Circular 4/1998 - The Use of Conditions in Planning Permissions.

#### d) Representations.

##### **Material representations in objection.**

- Noise. This has been addressed in section 3.3c.
- Smell. When planning permission was granted for the use of the property as Class 3, it was subject to the condition that "the kitchen 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 residential property". The application under consideration is for operational development on a building with a lawful use restricted by that condition. As such, the restrictive ventilation condition attached to planning permission 13/01968/FUL would apply to the proposed flues. Any breach of that condition in future would be a breach of planning control and liable to enforcement action.
- The appearance of the flues is not compatible with the character and appearance of the building or that of the conservation area. This has been addressed in sections 3.3a and 3.3b.
- Neighbour and owner notification was not done correctly. Neighbour notification was carried out by the Council on 15th April 2016. A site notice and the application advertisement were displayed and published on the same date. The Council is satisfied that the applicable neighbouring owners were notified in accordance with Regulation 15 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013.
- Allegation that the drawings are not clear. The Council is satisfied that the submitted drawings are sufficient for the purposes of validating and determining the application.

##### **Non-material representations.**

- The flues are not necessary/there is a previous grant of planning permission which should be adhered to/this is incremental development/the applicant's behaviour is questionable. Having accepted an application for planning permission, the Council is required to determine it in accordance with s25 of the Town and Country Planning (Scotland) Act 1997. The existence of a current planning permission has no bearing on the right to apply for planning permission for something different, and it cannot prejudice the Council's determination of the application under consideration. There is no statutory reason why further applications may not be made for the same property, and no statutory bar to

their determination. The applicant's behaviour does not form part of the assessment of the application for planning permission.

- Right of access for building and maintenance. Access is a civil matter, not within the remit of planning law to control.
- Land ownership/title deeds and refusal of legal right to develop. These are civil matters, not within the remit of planning law to control. If the DM Sub-Committee grants planning permission the decision notice would include a caveat to the effect that "this determination does not carry with it any necessary consent or approval for the proposed development under other statutory enactments".
- Loss of private view. The planning system seeks to protect amenity, which is a broad consideration of the interaction between people and places. Private views are not protected by the planning system.
- Disruption from building work. Noise arising from the implementation of a lawful planning permission is not a planning matter. Operational noise of this nature is properly considered by the Council under relevant legislation, not under planning powers.
- Loss of property value. This is not a planning matter.
- Questioning whether Tribeca is entitled to apply for planning permission at all. There is no statutory restriction on who may apply for planning permission, and planning permission runs with the land, not with the applicant.
- Vermin. The installation of the proposed flues would not automatically result in the presence of vermin on the roof, walls, or ground. Vermin control is carried out by the Council under relevant legislation, not under planning powers.
- The development would set a precedent. There is no precedence in planning. Each application is determined on its merits, having regard to the development plan and to any material considerations, in accordance with s25 of the Town and Country Planning (Scotland) Act 1997.
- One representation has noted that "it is very likely that the erection of the external flue will have to be built further than the proposed plans, and onto the adjacent building". Failure to carry out development in accordance with the approved drawings would be liable to enforcement action.

#### e) Equalities and human rights.

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

#### Conclusion

The proposed development complies with the provisions of the Edinburgh City Local Plan and is acceptable. There are no material considerations upon which to justify refusal.

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

### **3.4 Conditions/reasons/informatives**

#### **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. In accordance with the planning permission granted on 23rd September 2013, reference 13/01968/FUL, 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 neighbouring living apartment.

### **Financial impact**

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#### **4.1 The financial impact has been assessed as follows:**

There are no financial implications to the Council.

### **Risk, Policy, compliance and governance impact**

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

### **Equalities impact**

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#### **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**

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#### **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**

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### **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 15th April 2016 and 27 letters of representation were received, all in objection to the proposal. A full assessment of the representations can be found in the main report in the Assessment section.

## **Background reading/external references**

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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 application property is in a designated Town Centre, a designated Primary Shopping Frontage, and the Marchmont and Meadows Conservation Area.

**Date registered**

29 March 2016

**Drawing numbers/Scheme**

01, 02,

Scheme 1

**John Bury**

Head of Planning & Transport  
PLACE  
City of Edinburgh Council

Contact: Mark Dunlop, Planning Officer  
E-mail: [mark.dunlop@edinburgh.gov.uk](mailto:mark.dunlop@edinburgh.gov.uk) Tel: 0131 469 3642

## Links - Policies

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### **Relevant Policies:**

The Marchmont, Meadows and Bruntsfield Conservation Area Character Appraisal emphasises the well proportioned Victorian tenemental perimeter blocks with Baronial detailing and the substantial area of the open parkland formed by the Meadows and Bruntsfield Links.

Policy Des 11 (Alterations and Extensions) sets criteria for assessing alterations and extensions to existing buildings.

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

**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.

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

# Appendix 1

**Application for Planning Permission 16/01672/FUL  
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## **Consultations**

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No consultations undertaken.

