

Development Management Sub Committee

Wednesday 19 April 2017

**Application for Planning Permission 16/02868/FUL
At Land 20 Metres Northwest Of 45, Shore, Edinburgh
Installation of a 18.5 m x 6.28 m deck with one access
gangplank (no founds) on the eastern edge of the Water of
Leith basin south of Bernard Street Bridge to allow
expansion of the adjacent public house seating area to
accommodate a servery, storage and an accessible WC. (as
amended)**

Item number	4.20
Report number	
Wards	A13 - Leith

Summary

The use is acceptable in terms of surrounding uses. The scale, form and design will have an impact upon the character and appearance of the conservation area, but this effect is acceptable. Impacts on parking and road safety are acceptable. Impact upon residential amenity will largely be controlled through the operational licence and subject to compliance will be within acceptable limits. No other considerations outweigh this conclusion.

Links

<u>Policies and guidance for this application</u>	LDPP, LDES01, LDES03, LDES04, LDES05, LDES10, LEN03, LEN06, LTRA02, LDES07, LEN15, LTRA09, LDEL01, NSG, NSLBCA,
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Report

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Recommendations

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

Background

2.1 Site description

The site is a section of the river water surface on the Water of Leith near the junction of the Shore with Bernard Street Bridge, opposite the "Malt and Hops" public house on the Shore.

The water surface lies around 2 metres below the adjacent road and pavement level. The footpath here is setted and flush with the road, being separated by a crash barrier detail. It is separated from the river edge by a series of posts and chains.

The Water of Leith has 14 listed buildings and an Ancient Monument visible from the site. The closest and most relevant are: the King's Wark to the north-east, listed category A on 14 December 1970 (reference number: 27890); Lawson Donaldson warehouse, slightly set back, just north of the Malt and Hops, listed category A on 12 December 1974 (reference number: 27078); 45,46 Shore, including the Malt and Hops, listed category C on 10 April 1986 (reference number: 27892); Leith Customs House to the north-west, listed category A on 14 December 1970 (reference number: 26787); the huge Victorian tenement on the west bank, opposite the site, listed category B on 14 December 1970 (reference number: 26812); and the Cooperage to the south-west, listed category B on 12 December 1974 (reference number: 26878). In addition to these, the old Commercial Wharf dry dock to the south-west is a Scheduled Ancient Monument.

The Water of Leith is designated as a Local Nature Conservation Site.

This application site is located within the Leith Conservation Area.

2.2 Site History

20 November 2002 - Consent granted for six static barges and ancillary development along the two sections of water north and south of Bernard Street Bridge (application number: 01/01951/FUL).

Main report

3.1 Description Of The Proposal

The application proposes a floating bar acting as an extension to (but physically detached from) a public house at 45 Shore.

The proposal adopts a raft form, accessed via a gangway. It provides a service area for drinks and a large seating area. An enclosed area to the north end provides storage and a single toilet. This toilet facility is a single "accessible WC", accessed from a narrow "corridor area on the north side. Patrons of the bar will otherwise use the toilets within the existing bar on the opposite side of the carriageway.

The gross area is 18.5m x 6.3m, with an operational drinking area of 95 square metres.

The edges of the raft are enclosed by "acrylic balustrading". The upstand section has the general form of a timber shed.

Supporting Statement

A Design Statement was submitted with the application. This is available to view on the Planning and Building Standards Online Services.

It has been clarified that although the area in question would normally have an occupant capacity of 190 people the operational plan will limit numbers to a maximum of 60.

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) the use is acceptable in principle;
- b) the scale, form and design are appropriate to the character and appearance of the conservation area;
- c) impact on the setting of listed buildings is considered;
- d) parking and road safety issues are addressed;
- e) impact on neighbouring amenity is acceptable;
- f) public comments are addressed; and
- g) equalities and human rights are considered.

a) Proposed Use

The Edinburgh Local Development Plan (LDP) shows the site within a Local Nature Conservation Area (covering the Water of Leith).

LDP policy Env15 Sites of Local Importance considers impact upon wildlife in relation to this designation. This policy requires that reasons for development must outweigh nature conservation issues and that the impact is either minimised or mitigated by other measures.

The site contributes to wildlife habitat and specifically on occasion has nesting birds on the water surface.

However, in this instance, in the commercial heart of old Leith, there would not be any significant impact upon wildlife. The small scale of the development, in relation to the scale of the Local Nature Conservation Area as a whole, is such that there will not be any significant impact upon wildlife habitat, nor specifically upon nesting birds. It is also noted that the principle of development on this site has already been accepted by virtue of the extant planning permission.

The impact upon nature conservation is therefore deemed to be similar to that within the previous consent and remains acceptable.

The LDP has no policies specific to new-build bars or restaurants. The Shore has a wide diversity of uses including many existing bars and restaurants. There is no policy which would indicate that further bar provision would be limited due to over-provision.

The seasonal variation to the usage of this outdoor space is inevitable. However, policies do not contain any aspect which relates to occupation or non-occupation of an approved use.

In conclusion, an additional bar area is acceptable in principle subject to all other policy requirements being met.

b) Impact Upon the Conservation Area

Leith Conservation Area Character Appraisal

On the east side of the Shore the continuity of building frontages, the building line set to the pavement edge, and the road and quayside, contain the inner harbour. They frame it to give the impression of a long square and a focus for the area, especially to the cafes, bars and restaurants that look out over it.

Policy Env6 Conservation Areas - Development, considers impact on the character and appearance of the conservation area.

The proposal has two visual impacts: the impact of the structure itself in relation to the character of the wider area; and the impact on the reflective nature of the water itself, where currently views of the Shore and its mirror reflection in the water have become an iconic view.

The proposal has the form of a raft, floating on the river, and in this respect is similar to the existing raft structure which exists on the west side of the river, to the north-west of Sandport, which can be said to be part of the character of the wider area. Whilst the newly proposed "raft" is more publically visible, it is therefore not without precedent in terms of form. Conditions relating to the materials of the shed-like structure attached to the raft mitigate against any potential negative impact upon the surrounding area. This element is of very limited scale, and has little impact on the character or appearance of the conservation area as a whole.

The principle of a raft may also be compared to the previous (and still live) permission for a barge-like form in the same location. In this respect, the raft form is lower, but more open and exposed in nature. The form and design are considered to be acceptable in relation to their impact upon the area.

The impact upon the iconic reflection of the line of buildings along the Shore, reflected in the Water of Leith when still and calm, is again similar to that intrinsically conceded in the previous consent for barges.

In conclusion, a proposed raft, of the form and design proposed, is acceptable in this location and context.

c) Setting of Listed Buildings

Policy Env3 Listed Buildings- Setting considers the setting of listed buildings.

The proposal impacts on the setting of several listed buildings, three of which are listed category A.

The most important listed building on the Shore, the Kings Wark building dating from 1706, stands immediately to the north-east of the proposal.

The raft would appear in views from the western side of the river and from Sandport Bridge towards this listed building. However, due to its low-lying form, it would lie largely below road level, and would not directly impede views to the listed building. Impact would be less than that created by the approved barges (which were to be taller). It is concluded that the proposal is acceptable and also represents a potential improvement in relation to the existing consent.

d) Parking and Road Safety

Policy Tra2 - Private Car Parking, considers appropriate parking levels.

The application does not and cannot provide off-street parking, but may potentially create additional parking pressure.

Parking on this section of the Shore is restricted during working hours and very limited in the evenings, with the area generally already being at full capacity. However, no existing public house within this area provides off-street car-parking.

In mitigation for the lack of parking, the proposal lies immediately adjacent to a bus stop and is also relatively close to the proposed tram route. Absence of car-parking is not seen as a reason for refusal and is acceptable in this context.

It is noted that the proposal does give rise to an unusual road safety scenario. The Roads Authority raises serious concerns about road safety and obstruction to the footway and recommend refusal of the application. However, in assessing the planning application it is the land use which must be considered, and not the potential behaviour of patrons outwith the site boundary. This, as with other factors, is appropriately dealt with through the licensing regime.

The application is made as an extension to the existing public house but physically separated by a public road. Persons wishing to return to the main bar (e.g. to use the toilet) will require to cross the public carriageway to reach the existing public house. This is clearly far from ideal in terms of road safety, especially at night. Section e) of policy Des7 Layout Design states that "safe and convenient access and movement in and around the development will be promoted, having regards especially to the needs of people with limited mobility or special needs". This section of the policy is not fully met.

The Roads Authority highlight that the access ramp lies close to an existing bus stop. This bus stop serves only buses heading to Ocean Terminal: the local terminus, which is also within easy walking distance. Passengers waiting at this bus stop are therefore rare and the bus stop serves largely for people alighting on the Shore. The juxtaposition is therefore seen as a positive feature.

Details demonstrate that the proposed gangway will not obstruct the public footpath. Policy Tra9 Cycle and Footpath network is therefore not breached. The layout is therefore acceptable in terms of impact upon road safety and all relevant policies are met.

The Roads Authority seek a contribution of £14,596 towards the Edinburgh tram project in accordance with current policy guidelines. This will be achieved by legal agreement prior to the issue of consent.

e) Neighbouring Amenity

Policy Des5 Development Design - Amenity, section a) considers impact on the amenity of neighbouring developments, the relevant aspects in this context being noise and outlook. In this context the main concern is noise outbreak to surrounding houses. Policy Hou7 considers Inappropriate Uses in Housing Areas. The underlying principles within the local plan seek to encourage development as long as this can be achieved without undue impact upon residential amenity.

It is noted that Environmental Protection object to the application on grounds of potential loss of residential amenity, due to the potential for noise nuisance.

In terms of impact upon residential amenity the primary consideration is the impact upon the Cooperage immediately opposite the proposal, which will have both direct and reflected noise (caused by the wall effect of the Shore buildings).

However, many of the issues relating to the likely impact upon amenity would be addressed through the licencing application. Through this occupant capacity and use of amplified music would be controlled.

The area already contains a high number of bars and restaurants, and this forms part of the existing character of the Shore.

Usage of the proposal will be greatest in summer months. All calculations of impact are assessed in relation to full use and neighbouring windows being open.

The licence operating plan would specify the maximum occupant capacity and deal with matters such as amplified music, it is appropriate for Planning to control hours of operation. To ensure that the residential amenity of neighbours is protected, a condition is proposed to restrict hours of operation.

f) Public Comments

The application attracted considerable objection but a greater number wrote in support (19 to 30).

Objections were largely from local residents on the Shore.

Reasons for Support

- benefit to business
- benefit to customers
- innovative solution
- unobtrusive
- helps to realise the potential of the Shore

Material Comments

- sufficient bar provision in the area - considered in section 3.3 a) of the Assessment.
- structure may "look odd" during long periods of non-use in winter - considered in section 3.3 a) of the Assessment.
- design of proposal - considered in section 3.3 b) of the Assessment.
- impact on iconic views - considered in section 3.3 b) of the Assessment.
- impact on the conservation area - considered in section 3.3 b) of the Assessment.
- conflict with Leith Conservation Area Character appraisal objectives - considered in section 3.3 b) of the Assessment.
- impact on setting of existing buildings - considered in section 3.3 c) of the Assessment.
- lack of parking - considered in section 3.3 d) of the Assessment.
- access clashes with bus stop location - considered in section 3.3 d) of the Assessment.
- noise and disturbance - considered in section 3.3 e) of the Assessment.
- main use will coincide with warm weather and prevent neighbours opening windows - considered in section 3.3 e) of the Assessment.
- impact on wildlife habitat - considered in section 3.3 a) of the Assessment.

Non-material Comments

- fire risk - this is not a planning issue.
- precedent for other approved barges to change to rafts - this is not debated but is not part of the current application.
- proposed numbers may easily be exceeded - this is an issue for licencing control.
- lack of full neighbour notification - neighbour notification met legal requirements.
- no resemblance to previously approved barges - there is no reason why an application for a different design cannot be made.

Community Council

Leith Harbour and Newhaven Community Council wrote:

We have nothing to add to the comprehensive submission by our colleagues at Friends of Water of Leith Basin (FOWLBS). We fully support their objections and the reasons for them.

g) Equalities and Human Rights

The nature of the gangway would mean the access would not be fully DDA compliant in terms of access to persons with wheelchairs.

Conclusion

The proposal creates a satellite seating area for an existing bar. Much of the required controls for this function will be made through the operational licence of the existing premises.

The use is acceptable in terms of surrounding uses. The scale, form and design will have an impact upon the character and appearance of the conservation area, but this is acceptable. Impacts on parking and road safety are acceptable. Impact upon residential amenity will largely be controlled through the operational licence and subject to compliance will be within acceptable limits. No other considerations outweigh this conclusion.

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

3.4 Conditions/reasons/informatives

Conditions:-

1. The hours of operation shall be restricted to 11:00 until 21:00 Monday to Sunday.

Reasons:-

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

Informatives

It should be noted that:

1. Prior to the issue of consent the applicant shall enter into a suitably worded legal agreement with the Council to ensure a contribution of £14,596 towards the Edinburgh tram project.
2. The development hereby permitted shall be commenced no later than the expiration of three years from the date of this consent.
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. 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.

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:

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

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 was advertised on 24 June 2016.

It attracted 49 representations: 30 in support; 19 in objection. A full assessment of the representations can be found in section 3.3 f) of the Assessment.

Background reading/external references

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

Statutory Development

Plan Provision

The site is designated as a Local Nature Conservation Site within the Edinburgh City Local Plan.

Date registered

14 June 2016

Drawing numbers/Scheme

1a,2a,3,4,5,

Scheme 1

David R. Leslie

Chief Planning Officer

PLACE

The City of Edinburgh Council

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Links - Policies

Relevant Policies:

Relevant policies of the Local Development Plan.

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

LDP Policy Des 3 (Development Design - Incorporating and Enhancing Existing and Potential Features) supports development where it is demonstrated that existing and potential features have been incorporated into the design.

LDP Policy Des 4 (Development Design - Impact on Setting) sets criteria for assessing the impact of development design against its setting.

LDP Policy Des 5 (Development Design - Amenity) sets criteria for assessing amenity.

LDP Policy Des 10 (Waterside Development) sets criteria for assessing development on sites on the coastal edge or adjoining a watercourse, including the Union Canal.

LDP 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.

LDP Policy Env 6 (Conservation Areas - Development) sets out criteria for assessing development in a conservation area.

LDP Policy Tra 2 (Private Car Parking) requires private car parking provision to comply with the parking levels set out in Council guidance, and sets criteria for assessing lower provision.

LDP Policy Des 7 (Layout design) sets criteria for assessing layout design.

LDP Policy Env 15 (Sites of Local Importance) identifies the circumstances in which development likely to affect Sites of Local Importance will be permitted.

LDP Policy Tra 9 (Cycle and Footpath Network) prevents development which would prevent implementation of, prejudice or obstruct the current or potential cycle and footpath network.

LDP Policy Del 1 (Developer Contributions and Infrastructure Delivery) identifies the circumstances in which developer contributions will be required.

Relevant Non-Statutory Guidelines

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

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Consultations

Roads Authority

The application should be refused.

Reasons:

The proposed development:

1. Requires the introduction of a gangway on an adopted footway;
2. Is adjacent to an existing bus stop;
3. Is on a road with a considerable flow of traffic and buses;
4. Would require the moving of the gangway to and from the opposite premises by crossing the carriageway;
5. Is likely to lead to customers crossing the carriageway;
6. May lead to glass being deposited on the carriageway or footway.

All to the detriment of the safety of road users, customers and staff, particularly during the hours of darkness.

If approving the application the development would require a Tram contribution would be £14,596 based on 111.8m² at 260m (Zone 2) to the tram line.

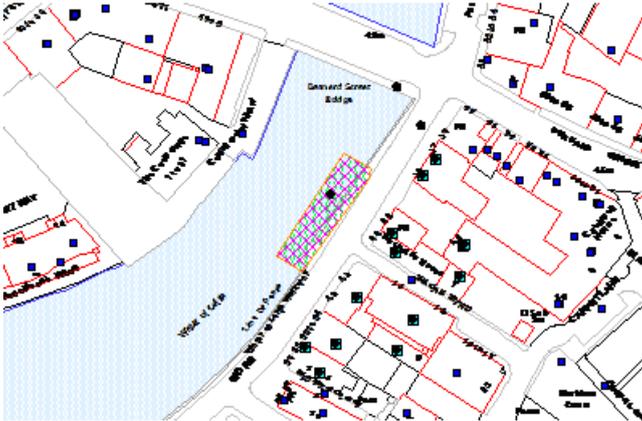
Environmental Protection

The applicant proposes the installation of a deck in the Water of Leith basin south of Bernard Street to allow expansion of the adjacent public house seating area at 45 Shore. The deck is also proposed to accommodate a servery, storage area and a WC. This is a busy mixed use area with contributing noise sources being Bernard Street, approximately 15m to the north, and various pubs and restaurants approximately 10m to the east. Above the commercial uses to the east, residential flats overlook the application site; further flats are situated on the west shore of the Water of Leith.

Environmental Assessment has concerns over the potential impact to amenity that this open air extension to a public house could create. The dominant noise source in the immediate area is road traffic, however, in the evening and night-time periods this source will contribute less to the background level and as such any additional commercial activity noise (particularly that generated by an outdoor public house) could lead to a reduction in amenity. In particular, this could be the case should amplified music be played.

Environmental Assessment recommends that this application be refused on the grounds of reduced amenity.

Location Plan



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