

Development Management Sub Committee

Wednesday 15 August 2018

**Application for Planning Permission 17/05943/FUL
At 24 Dalmeny Street, Edinburgh, EH6 8RG
Change of use for Ukrainian Church yard to be used as a
street food and drinks market featuring art, crafts and music
(retrospective)**

Item number	4.3
Report number	
Wards	B12 - Leith Walk

Summary

The proposal does not comply with the Local Development Plan and the Council's Guidance for Businesses as the proposal would have a materially detrimental effect on the living conditions of nearby residents. There are no material considerations which outweigh this conclusion.

Links

<u>Policies and guidance for this application</u>	LDPP, LEN03, LEN06, LHOU07, LRET08, NSG, NSLBCA, NSBUS, OTH, CRPLEI,
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Report

Application for Planning Permission 17/05943/FUL At 24 Dalmeny Street, Edinburgh, EH6 8RG Change of use for Ukrainian Church yard to be used as a street food and drinks market featuring art, crafts and music (retrospective)

Recommendations

1.1 It is recommended that this application be Refused for the reasons below.

Background

2.1 Site description

The site lies to the south of Dalmeny Street to the east of the Ukrainian church and forms the yard belonging to the church. The building is Category B listed and was listed on 13.03.1995 (Ref. LB 26716).

To the east of the site lies a 2 storey neo-Baroque former drill hall which has been converted to an arts and education centre and offices. The building is Category A listed and was listed on 13.03.1995 (Ref LB 26729). Residential properties lie beyond this and to the north.

This application site is located within the Leith Conservation Area.

2.2 Site History

10 November 2017 - An Enforcement case was received for unauthorised operational development for an unauthorised change of use from church yard to pop up bar, food market and music venue. (reference number 17/00634/ECO). The operation of this land as a street food/music venue has temporarily ceased and the case was closed on 16 July 2018.

Main report

3.1 Description Of The Proposal

The proposal is for an retrospective change of use of the yard as an open air street, food and drinks market featuring art, craft and music. The market is being operated by a community group called Off The Walk. The market has been running since August 2017 at weekends.

The supporting information states that events will be held on Saturdays from 12pm to 9pm and Sundays 2pm to 9pm.

The area is laid out with a series of stalls, a stage and bar with an area to display artwork. There are toilets to the rear of the site.

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 proposal is acceptable in principle;
- b) the proposals will have an adverse impact on the setting of the adjacent listed buildings;
- c) the proposals will have an adverse impact on the character or appearance of the conservation area;
- d) the proposal will cause unacceptable loss of residential amenity;
- e) the proposal affects road safety and car parking;
- f) any impacts on equalities or human rights are acceptable; and
- g) any comments raised have been addressed.

a) Principle of Proposal

The site lies within the urban area of the adopted Edinburgh Local Development Plan (LDP). The site is in a predominately residential area but is bounded on either side by non-residential uses.

The LDP seeks to create strong and sustainable communities and this proposal supports community activity and interaction.

LDP Policy Ret 8 Entertainment and Leisure Developments - Other Locations applies a sequential approach to the location of entertainment and leisure uses. Planning permission will be granted for entertainment and leisure developments on other locations provided:

- a) all potential City Centre, or town centre options have been thoroughly assessed and can be discounted as unsuitable or unavailable.
- b) the site is or will be made easily accessible by a choice of means of transport and will not lead to an unacceptable increase in road safety.
- c) the proposal can be integrated satisfactorily into its surroundings with attractive frontages to a high quality of design that safeguards existing character.
- d) the proposal is compatible with surrounding uses and will not lead to a significant increase in noise disturbance and on-street activity at unsocial hours to the detriment of living conditions for nearby residents.

With regards to the proposals:

- a) no details have been provided to confirm whether all potential City Centre, or town centre options have been thoroughly assessed and can be discounted or are unavailable.
- b) the site is easily accessible by public transport and will not lead to an unacceptable increase in traffic locally.
- c) the proposal can be integrated satisfactorily into its surroundings as the stalls are positioned well within the site.
- d) the proposed use is compatible with surrounding uses as it lies between a church and a community and arts centre. A more detailed assessment of its impact on residential amenity is set out in section 3.3d).

LDP Policy Hou 7 Inappropriate Uses in Residential Areas does not support developments, including changes of use which would have a materially detrimental effect on the living conditions of nearby residents. This policy aims to prevent any further deterioration to living conditions in more mixed use areas which nevertheless have important residential functions.

The Council's Guidance for Businesses aims to support cafes, snack bars and other Class 3 uses in certain locations within the city. The proposal lies outwith a designated shopping centre and whilst bounded by commercial uses, there are residential properties close by.

A more detailed assessment of its impact on residential amenity is set out in section 3.3d).

b) Setting of Listed Building

The church has been designed to have a dynamic visual impact at the road junction. The temporary stage and the market stalls would be positioned within the courtyard in such a manner that the main elevations of the church and the neighbouring Drill Hall would not be distorted.

Historic Environment Scotland has been consulted on the proposals and has no concerns.

The proposal would not have an adverse impact on the setting of the adjacent listed buildings.

The proposal complies with LDP Policy Env 3.

c) Character and Appearance of the Conservation Area

The site lies within Leith Conservation Area where 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.*

The conservation area is made of four sub-areas each with its own special characteristics and key elements. The site lies within Leith Walk which is characterised by its topography and setting, grain and density, streets and landmarks.

The site is presently screened from public view by high painted boards. When the event is taking place it would be open to view. Overall the proposal is not detrimental to the spatial form and characteristics of the street.

The proposal complies with LDP Policy Env 6.

d) Residential Amenity

There are residential properties located 21 metres from the site and a number of representations have raised concerns about noise and disturbance for nearby residents. It is an open plot without any physical structures to prevent noise and odour break-out and the proposed use could lead to existing residential amenity being negatively affected. The nature of the development could lead to on-street activity at unsocial hours to the detriment of living conditions.

Given the characteristics of the site, it would be difficult for this impact to be mitigated through appropriate conditions.

Environmental Protection does not support the proposal as it is likely to lead to increased noise and disturbance, particularly late at night resulting in a significant loss of residential amenity. A number of complaints have been made to licensing regarding noise pollution from the operation.

The proposal is not acceptable in terms of adverse impact on residential amenity and does not comply with LDP Policy Ret 8 or Policy Hou 7.

e) Road Safety

The site would be accessed from Dalmeny Street and is in an area where there is both unrestricted and restricted car parking. The proposals do not include any provision for car parking. The site is well served by public transport.

The proposal is satisfactory in terms of parking and traffic implications.

f) Equalities and Human Rights

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

g) Public comments

Material Considerations - objecting

- noise and disturbance particularly late in the evening - addressed in section 3.3a).
- parking issues - addressed in section 3.3e).

Material Considerations - supporting

- good area for events - addressed in section 3.3a).
- enriches the community - addressed in section 3.3a).
- good space for artists and entrepreneurs - addressed in section 3.3a).

Non-material

- devalues property prices.

Community Council

No comments were received.

Conclusion

Whilst the proposal may be compatible with the immediate neighbouring uses, it is located close to residential properties and given the physical characteristics of the site, the proposal would lead to a significant increase in noise, disturbance and on-street activity at unsocial hours to the detriment of living conditions for nearby residents which would not comply with the adopted Local Development Plan and the Council's Guidance for Businesses. The proposal will preserve the character of the conservation area and the setting of the listed buildings. There will be no adverse impact on traffic and road safety. There are no other material considerations which outweigh this conclusion to refuse planning permission.

It is recommended that this application be Refused for the reasons below.

3.4 Conditions/reasons/informatives

Reasons:-

1. The proposal is contrary to the Local Development Plan Policy Hou 7 in respect of Inappropriate Uses in Residential Areas, as the proposal would have a materially detrimental effect on the living conditions of nearby residents.

2. The proposal is contrary to Local Development Plan Policy Ret 8 in respect of the location of leisure developments because it would lead to an increase in noise disturbance and on-street activity at unsocial hours.
3. The proposals are contrary to development plan policy as interpreted using the non-statutory Guidance for Businesses as it will lead to a significant increase in noise, disturbance and on-street activity at unsocial hours to the detrimental of living conditions for nearby residents.

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

The application was advertised on 23 February 2018 and a total of 138 letters of representations were received. Fifteen objected to the proposals and seventy one supported. Fifty two did not include reasons for their representation.

A full assessment of the representations can be found in the assessment section in the main report.

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 lies in the urban area of Edinburgh Local Development Plan where it is designated as being within Leith Conservation Area.

Date registered

16 January 2018

Drawing numbers/Scheme

1-3,

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 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 Hou 7 (Inappropriate Uses in Residential Areas) establishes a presumption against development which would have an unacceptable effect on the living conditions of nearby residents.

LDP Policy Ret 8 (Entertainment and Leisure Developments - Other Locations) sets out the circumstances in which entertainment and leisure developments will be permitted outwith the identified preferred locations.

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.

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.

Other Relevant policy guidance

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

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Consultations

Roads Authority Issues

No objections to the application

Environmental Protection

The applicant proposes the change of use of an open-air area adjacent to the church at 24 Dalmeny Street as a mixed use food and drink market with additional arts crafts and music. Adjacent to the east is a commercial property. Residential dwellings are across Dalmeny Street to the north, approximately 10m away.

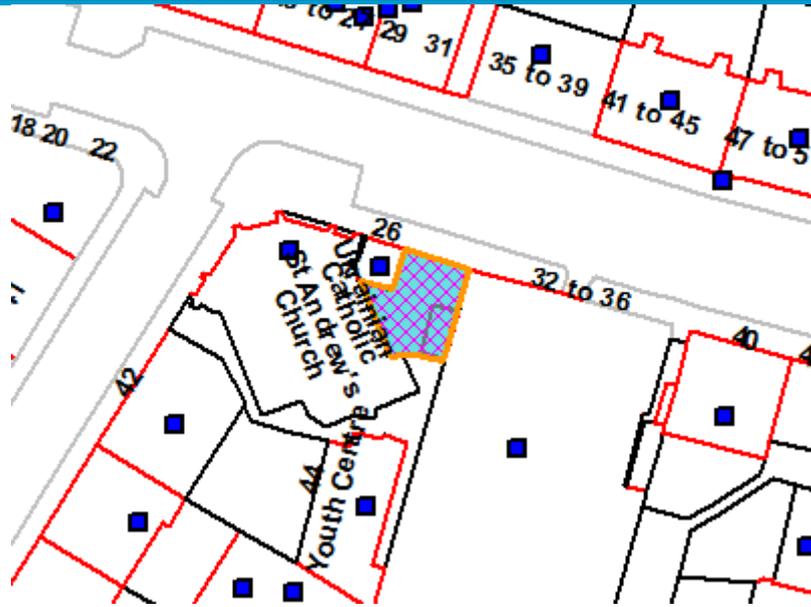
As the site is an open plot without any physical structures to prevent noise and odour break-out, the proposed use could lead to existing residential amenity being negatively affected. Environmental Protection understands that several complaints have already been made to the Licensing Team regarding noise from the site.

Due to the possibility of amenity be negatively affected by the breakout of patron/music noise and odours associated with the production of hot food, Environmental Protection recommends refusal of this application.

Historic Environment Scotland

We have considered the information received and do not have any comments to make on the proposals. Our decision not to provide comments should not be taken as our support for the proposals. This application should be determined in accordance with national and local policy on development affecting the historic environment, together with related policy guidance.

Location Plan



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