

Development Management Sub Committee

Wednesday 5 December 2018

**Application for Planning Permission 18/07477/FUL
At 7 Broughton Road, Edinburgh, EH7 4EW
Section 42 application for non-compliance with condition 1
of planning permission ref. 09/00039/FUL to allow
extension of store deliveries between the hours of 1000 to
1800 on Sundays.**

Item number	4.2
Report number	
Wards	B12 - Leith Walk

Summary

The changes to the delivery hours could prejudice residential amenity which does not comply with Policy Hou 7 of the adopted Edinburgh Local Development Plan and the non-statutory Guidance for Businesses. The mitigation measures proposed by the applicant are not enforceable by condition. There are no material considerations which outweigh this conclusion.

Links

Policies and guidance for this application	LDPP, LHOU07, NSG, NSBUS,
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Report

Application for Planning Permission 18/07477/FUL At 7 Broughton Road, Edinburgh, EH7 4EW Section 42 application for non-compliance with condition 1 of planning permission ref. 09/00039/FUL to allow extension of store deliveries between the hours of 1000 to 1800 on Sundays.

Recommendations

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

Background

2.1 Site description

The application site comprises a large, single-storey supermarket fronting Broughton Road which has car parking on two levels. Vehicular access is taken from Broughton Road and egress is on to Logie Green Road. The store entrance faces into the site and the delivery area is at the northern end of the store. The delivery area is accessed from Logie Green Road. The surrounding area is predominantly residential with the exception of a small retail grouping on Rodney Street and some commercial uses including a Lidl supermarket on Logie Green Road.

2.2 Site History

13 July 1983 - Planning permission was granted for the erection of a supermarket, service area and car park. A condition imposed restricted store opening and servicing hours to 8am-8pm Monday to Saturday (application number 795/83).

26 September 1991 - Planning permission was granted for a temporary period of one year for an extension of store opening hours. The approved hours were: 10am-5pm on Sunday and extending Friday opening from 8pm to 9pm. Permission was refused for an extension to delivery hours (application number A/01678/91).

03 March 1993 - Planning permission was granted for the hours of opening previously approved on a temporary basis (application number A/02152/92).

04 March 1998 - Planning permission was granted for an alteration to trading hours (Mon-Sat 8am-9pm, Sun 10am- 6pm). Permission was also granted for a period of one year for a change in servicing hours (Mon-Sat 7.30am-8pm and Sun 3pm-5pm) (application number 97/02480/FUL).

17 November 2006 - Planning permission was granted for a temporary period of one year for an extension to the store operating hours. The approved hours for trading were - 8am-9pm Monday to Friday and 8am-8pm Saturday and Sunday; deliveries - 7.30am-8pm Monday to Saturday and 3pm-5pm on Sunday (application number 06/03853/FUL).

22 July 2003 - An enforcement enquiry into a breach of opening hours was closed (Enforcement reference number 03/00513/E39).

14 November 2008 - An enforcement enquiry into a breach of opening hours was closed (Enforcement reference number 08/00485/ECOND).

09 April 2009 - Planning permission was granted for a variation of condition 6 of planning application Ref, 795/83 to extend store delivery hours to 07:00- 20:00 Monday to Saturday and 12:00 - 18:00 Sunday (application number 09/00039/FUL).

09 April 2009 - Planning permission was granted for a variation of condition G03 planning application Ref 97/02480/FUL to extend store trading hours to 07:00 - 22:00 Monday to Saturday and 09:00 - 22:00 Sunday (application number 09/00040/FUL).

14 July 2014 - Planning permission was refused for a Section 42 application for the non-compliance with condition 1 of permission ref. 09/00039/FUL. Variation sought to allow extension of store deliveries between the hours of 07:00 to 21:00 Mon-Sat and 09:00-18:00 Sunday (application number 14/01866/FUL).

Main report

3.1 Description Of The Proposal

This is an application under Section 42 of the Town and Country Planning (Scotland) Act 1997 which seeks to modify condition 1 of planning permission ref. 09/00039/FUL to allow store deliveries between the hours of 10:00 to 18:00 on Sundays. It is currently restricted to 12:00 to 18:00 hours on a Sunday.

Supporting Documents

Noise Impact Assessment

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 proposed extension of store delivery hours will intrude upon residential amenity; and
- b) any comments raised have been addressed.

a) Residential Amenity

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 non- statutory Guidance for Businesses states that proposals will be assessed in terms of their likely impact on neighbouring residential properties. Factors which will be considered include background noise in the area.

The existing conditioned hours of delivery are 07:30-20:00 hours (Monday to Saturday) and 12:00-18:00 hours (Sunday). This application would increase this to 10:00-18:00 on a Sunday.

This would allow deliveries 2 hours earlier on a Sunday morning. The supermarket is surrounded by residential dwellings, the closest of which to the north, is within approximately 20m of the service yard. There is a history of complaints from surrounding residential regarding delivery noise from the service yard.

A Noise Impact Assessment has been submitted which seeks to demonstrate that no negative impact on amenity will result from this proposal. It finds that typical noise levels associated with the delivery yard will be no louder than the existing background noise levels. Notwithstanding this, it also suggests that a specific program of noise reducing measures is introduced to the operation of the service yard through a 'Service Yard Noise Management Plan'. To ensure that noise from the service yard is minimised, the document suggests that the requirements of a Service Yard Noise Management Plan can be secured through a planning condition.

Environmental Protection does not accept the statement that the noise levels associated with the delivery yard will be no louder than the existing background noise levels as there is no physical structure designed to mitigate a known level of noise. In addition, the program of measures outlined in the Noise Impact Assessment is not enforceable as it does not meet the six tests as set out in Circular 4/1998 relating to the use of conditions on planning permissions. A Service Yard Noise Management Plan would by its nature contain mitigating measures outwith the control of the planning authority and so would be without remedy through an enforcement notice. It would be unreasonable to expect the planning authority to effectively monitor the continual implementation of that management plan and any potential infringements of it, no matter how small. It would raise public expectation that the planning authority could provide such a role. Little weight can therefore be attached to the proposed management plan especially as the planning permission runs with the land and not a specific operator.

No control can be placed on the noise level of the service yard in the proposed extended hours of operation so the potential for a negative impact on residential amenity would exist.

Whilst the increase in delivery hours may have benefits to the store, extending the operational hours to those requested would be likely to cause a loss of amenity to residents.

The proposal is not acceptable in terms of adverse impact on residential amenity and does not comply with LDP Policy Hou 7 and the Non- statutory Guidance for Businesses.

b) Public comments

Material Considerations – objection

- increased noise and disturbance early in the morning. This has been addressed in section 3.3a).
- whether the terms of the submitted service yard management plan are enforceable. This has been addressed in section 3.3a).

Material Considerations- support

- earlier deliveries would allow fresh produce to be available to the customer earlier in the day; this is addressed in section 3.3a).

Conclusion

The changes to the delivery hours could prejudice residential amenity which does not comply with Policy Hou 7 of the adopted Edinburgh Local Development Plan and the non-statutory Guidance for Businesses. The mitigation measures proposed by the applicant are not enforceable by condition. There are no material considerations which outweigh this conclusion.

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 proposed extended hours has the potential for a materially detrimental effect on the living conditions of nearby residents.
2. The proposals are contrary to development plan policy as interpreted using the non-statutory Guidance for Businesses as it has the potential to lead to an increase in noise and disturbance to the detriment 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 attracted 5 letters of objection and a petition containing 45 signatures supporting the application.

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 with the urban area of Edinburgh Local Development Plan.

Date registered

14 September 2018

Drawing numbers/Scheme

1,

Scheme 1

David R. Leslie

Chief Planning Officer

PLACE

The City of Edinburgh Council

Contact: Jennifer Zochowska, Senior Planning Officer

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Links - Policies

Relevant Policies:**Relevant policies of the Local Development Plan.**

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.

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

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Consultations

Environmental Protection

The applicant seeks to extend the conditioned hours of operation (application 09/00039/FUL) of the service yard of the supermarket at 7 Broughton Road on Sundays from 1200-1800 to 1000-1800. The supermarket is surrounded by residential dwellings, the closest of which to the north is approximately 20m of the service yard. Complaints from neighbouring residents regarding delivery noise from the service yard are on record.

The agent has submitted a noise impact assessment which seeks to demonstrate that no negative impact on neighbouring amenity will result from this proposal. The author finds that the typical average noise levels associated with the delivery yard will be no louder than the existing background noise levels. The author also suggests that a specific program of noise control measures is introduced to the operation of the service yard through a 'Service Yard Noise Management Plan'. The suggestions in this plan are not enforceable by condition and therefore no controls can be placed on the noise level of the service yard; the potential for a negative impact on residential amenity would exist.

Environmental Protection recommends that this application be refused due to the risk to neighbouring amenity.

Should you wish to discuss the above please contact me on 0131 469 5807.

Location Plan



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