

# Development Management Sub Committee

Wednesday 20 February 2019

**Application for Planning Permission 18/02294/FUL  
At 215 High Street, Edinburgh, EH1 1PE  
Change of use of former nursery site into a small street  
traders market with an indoor area incorporating ancillary  
seating area with a café providing snacks and drinks within  
the existing building.**

<b>Item number</b>	8.1
<b>Report number</b>	
<b>Wards</b>	B11 - City Centre

## Summary

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The proposal does not comply with Local Development Plan Policies Hou 7 and Des 5 as it would have a materially detrimental effect on the residential amenity of nearby residents. The proposal is also contrary to Local Development Plan Policies Env 1 and Env 6 as the wooden kiosks would have a negative impact on the built form and the character and appearance of the Old Town Conservation Area and the Edinburgh World Heritage Site. There are no material considerations which outweigh this conclusion.

## Outcome of previous Committee

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This application was previously considered by Committee on 23 January 2019.

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## Links

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[Policies and guidance for this application](#)

LDPP, LHOU07, LDES05, LEN01, NSBUS, LEN06, LDEL02, NSG, NSLBCA,

# Report

## **Application for Planning Permission 18/02294/FUL At 215 High Street, Edinburgh, EH1 1PE Change of use of former nursery site into a small street traders market with an indoor area incorporating ancillary seating area with a café providing snacks and drinks within the existing building.**

### **Recommendations**

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

### **Background**

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#### **2.1 Site description**

The site is a former nursery, with an external courtyard, that lies between High Street and Cockburn Street. The built element of the site incorporates 215 High Street and 1 Lyon's Close. The site is accessed from the High Street via Old Stamp Office Close. The site forms part of the original close design and is category A listed (Listing date: 14/12/1970; Listing reference: LB29047). The site is within the Edinburgh World Heritage Site and is owned by the City of Edinburgh Council.

This application site is located within the Old Town Conservation Area.

#### **2.2 Site History**

May 2018 - Listed building consent granted for: Take down and remove north and west facing retaining walls and copes. Re-build the walls with salvaged stone, re-bed the copes and fix with new dowelling. Form new concrete walls and foundations for structural support. Uplift existing cobbles and paving and re-lay on completion. Cut down and remove trees from site (application reference: 18/01673/LBC).

August 2018 - enforcement enquiry into the potential change of use of the site as a public house (18/00426/EOPDEV).

### **Main report**

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#### **3.1 Description Of The Proposal**

Planning permission is sought for the change of use from a nursery to an outdoor street traders' market and a cafe. The proposal would result in thirteen market stalls of wooden construction within the open courtyard area, with the cafe being located within the building. Access would be taken from the High Street via Old Stamp Office Close.

The applicant has submitted the following documentation, which is available to view on Planning and Building Online Services:

- Planning Statement

### **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 consent.

In considering whether to grant consent, special regard must be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. For the purposes of this issue, preserve, in relation to the building, means preserve it either in its existing state or subject only to such alterations or extensions as can be carried out without serious detriment to its character.

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 would have an adverse impact on residential amenity;
- b) the proposal would have an adverse impact on the character and appearance of the Old Town Conservation Area and Edinburgh World Heritage Site;
- c) the proposal would form a development that would enhance the character of the city centre;
- d) any impacts on equalities or human rights are acceptable; and
- e) any public comments raised have been addressed.

## **a) Amenity**

The site is accessed through a close and leads onto an open courtyard, surrounded by buildings, with the rear elevations of tenements on the High Street to the south and those of Cockburn Street to the north and east of the site. The building that is proposed for the cafe is single storey, located on the east side of the courtyard and also accessed from the close.

The enclosed character of the land results in the space having a confined and restricted nature, with the rear of the buildings on the High Street and Cockburn Street in close proximity. These tenements contain a variety of uses, but residential accommodation is present within them, and flatted properties look directly onto the courtyard.

Policies Hou 7 and Des 5 of the development plan aim to ensure that new development do not adversely affect amenity through the introduction of incompatible uses and other developments that could affect amenity by way of issues such as noise and outlook. Although located just off the High Street, the site has a discreet and semi-private character to it. Unlike other courtyards that are nearby and accessed from closes, this site has no permeability and would only be accessed as a destination in itself, as opposed to a through route. These other examples, including Advocates Close, contain uses that are potentially noise generating, although they do not have residential properties in close proximity. The previous use as a nursery would have created some noise through the day to day activities associated with such a use, but these would tend to be sporadic and restricted to periods when the children were undertaking outdoor activities. In comparison, the proposal would operate seven days a week between 09:00 and 18:00. In addition, the open air characteristic of the market use in particular would create an environment where the activities would be essentially restricted to the outdoors, creating the potential for significant noise and disturbance to neighbouring residential amenity.

The use of the building as a cafe would also lead to an increased pedestrian footfall within the close and the courtyard, and although that activity would be predominantly restricted to indoors, neighbouring residential amenity would be still be impacted upon through noise and disturbance as customers enter and leave the premises. There is no specific request for a restrictive use on the cafe, although the planning statement states that it will serve hot and cold drinks, soups and mainly cold food with no requirement for cooking, and by implication, ducted ventilation. However, the statement makes reference to the fact that some of the stalls may serve food, which has the potential to impact negatively on the surrounding residential properties by way of dispersed cooking odours.

The proposal would be contrary to Policies Hou 7 and Des 5 of the Edinburgh Local Development Plan.

## **b) Impact on the Conservation Area and Edinburgh World Heritage Site**

The courtyard has a distinct character, and although enclosed by buildings, it creates a pleasant small scale parcel of open space.

Policies Env 1 and Env 6 seek to protect the character and appearance of the Edinburgh World Heritage Site and conservation areas. The wooden kiosk style market stalls are not of an appropriate design or material with regards to the Old Town Conservation Area and not in keeping with the predominant use of stone surrounding the site. Courtyards are a characteristic of parts of the conservation area and the proposed stalls would take up the majority of the open area, and impact on its historic form and appearance. They would be visible from within the close running into the courtyard, and would have a negative impact on the built form and the character and appearance of the Old Town Conservation Area and the Edinburgh World Heritage Site, contrary to policies Env 1 and Env 6. of the Edinburgh Local Development Plan.

### **c) Impact on the vitality of the City Centre**

Policy Del 2 seeks to promote development within the city centre that would retain and enhance its character and attractiveness. Criterion (b) of the policy is relevant, with its aim to encourage a use or mix of uses appropriate to the location.....and the character of the surrounding area.

Although the proposal would have the potential to provide opportunities for small businesses and encourage visitors to the close and courtyard, Policy Del 2 cannot be taken in isolation, and regard must be had to the impact of the development on other elements within the area, including residential amenity. As set out in sections 3.3 (a) and (b) of this report, the proposal has a significant potential to adversely affect the residential amenity of surrounding properties and the historic character of the site. Any benefits to the commercial vitality of the city centre would be outweighed by the impact on other receptors.

The proposal would form an inappropriate development with the potential to have an adverse impact on residential amenity. It does not comply with LDP Policies Hou 7, Des 5 and the non-statutory Guidance for Businesses.

### **d) Equalities and human rights**

The application has been assessed and has no impact in terms of equalities or human rights.

### **e) Public comments**

#### **Material Considerations**

- Impact on amenity: addressed in section 3.3(a);
- Create a destination attraction: addressed in section 3.3(c); and
- Opportunity for independent retailers: addressed in section 3.3(c).

#### **Non-Material Considerations**

- Public safety

#### **Community Council**

- Impact on amenity: addressed in section 3.3(a).

## **Conclusion**

The proposal does not comply with Local Development Plan Policies Hou 7 and Des 5 as it would have a materially detrimental effect on the residential amenity of nearby residents. The proposal is also contrary to Local Development Plan Policies Env 1 and Env 6 as the wooden kiosks would have a negative impact on the built form and the character and appearance of the Old Town Conservation Area and the Edinburgh World Heritage Site. 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**

#### **Reason for Refusal:-**

1. The proposal is contrary to the Local Development Plan Policy Hou 7 as the proposal would have a materially detrimental effect on the residential amenity of nearby residents.
2. The proposal is contrary to the Local Development Plan Policy Des 5 as it would have an unacceptable impact on neighbouring amenity due to increased activity within the enclosed courtyard.
3. The proposal is contrary to Local Development Plan Policies Env 1 and Env 6 as the wooden kiosks would have a negative impact on the built form and the character and appearance of the Old Town Conservation Area and the Edinburgh World Heritage Site.

## **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**

Following statutory neighbour notification on 11/06/2018, and advertisement in the Edinburgh Evening News on 15/06/2018, 23 letters of representation have been received. The matters raised are addressed in the assessment section of the report.

## **Background reading/external references**

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- 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 within the City Centre, World Heritage Site and Old Town Conservation Area as defined by the Local Development Plan.

**Date registered**

30 May 2018

**Drawing numbers/Scheme**

01-05,

**David R. Leslie**  
Chief Planning Officer  
PLACE  
The City of Edinburgh Council

Contact: Murray Couston, Planning Officer  
E-mail:murray.couston@edinburgh.gov.uk Tel:0131 529 3594

**Links - Policies**

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**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.

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

LDP Policy Env 1 (World Heritage Site) protects the quality of the World Heritage Site and its setting.

**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.

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

LDP Policy Del 2 (City Centre) sets criteria for assessing development in the city centre.

### **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

## **Application for Planning Permission 18/02294/FUL At 215 High Street, Edinburgh, EH1 1PE Change of use of former nursery site into a small street traders market with an indoor area incorporating ancillary seating area with a café providing snacks and drinks within the existing building.**

### **Consultations**

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#### **Environmental Health**

1. Noise from the outdoor market - whilst we appreciate the stalls themselves will not be dismantled each night, there will inevitably be noise from set-up and close up each morning and evening, as well as general noise from activities within the market (noise of people, operational noise). In order to assess the planning application and ensure sufficient amenity for nearby residents, I require a Noise Impact Assessment (NIA) taking into account a worst case scenario of voices and general operational noise. Assessment Criteria (with open window assessment) of:

Habitable room (bedroom or living room) (internal/daytime) - 35dB LAeq and 55dB LAfmax.

Any adjoining or nearby external amenity space - 55dB LAeq.

The planning statement notes that "there will be no amplified music". We would like to see a condition attached to that effect.

2. Smell from outdoor market - to ensure there is no impact on residential amenity from odours, we would like to see a condition stating there should be no cooking or reheating of food within the market space.

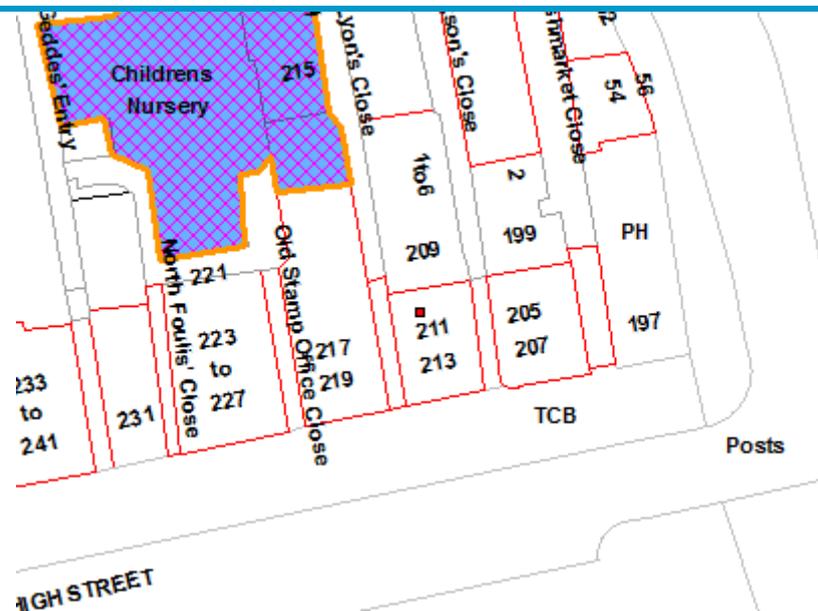
3. Café Activities - we will look for the café to have a restricted class 3 condition limiting operations to reheating with specified equipment (e.g. microwave). Café operational noise (kitchen noise, commercial noise, raised voices, and including music should they plan to have any internally etc.) should be assessed within the Noise Impact Assessment to ensure that all operational noise from the cafe be inaudible (i.e. not breaching NR15) within the nearby noise-sensitive receptors. A worst-case scenario should be assumed. Plant equipment should not breach NR25 at any noise-sensitive receptor with windows open for ventilation.

4. Hours of operation - The planning statements states that they will be open between 9am - 6pm, seven days a week, with an intention to expand upon those hours during festival periods. This is a source of concern for this service, as nearby residents will have no respite from the market and will be subjected to its activities at least nine hours every day (not including set-up and close down). The operators of the market could also chooses to expand to later or even earlier hours should they wish. We would therefore look for a condition to control the hours of operation of the market.

## Transport

A tram contribution of £29,975 would be required.

## Location Plan



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