

# Development Management Sub Committee

Wednesday 24 April 2019

**Application for Planning Permission 19/00377/FUL  
At 144 Newhaven Road, Edinburgh, EH6 4PZ  
Partial change of use of the property from residential to a  
private car sales business for up to 8 cars.**

<b>Item number</b>	4.15
<b>Report number</b>	
<b>Wards</b>	B04 - Forth

## Summary

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It is accepted that the physical changes, and the vehicles associated with the change of use are well-screened, and have no impact on the appearance of the conservation area. However, the change of use impacts upon the nature of the residential area in its broader sense, with particular detriment to the neighbours who view over the garden. As such, the use is unacceptable due to its location within an established residential area.

## Links

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[Policies and guidance for this application](#) LDPP, LHOU07, LHOU03, LTRA04,

# Report

## **Application for Planning Permission 19/00377/FUL At 144 Newhaven Road, Edinburgh, EH6 4PZ Partial change of use of the property from residential to a private car sales business for up to 8 cars.**

### **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 the eastmost section of former garden ground relating to a 19th century villa on Newhaven Road facing Victoria Park. The site notionally extends to an area of 330 square metres, but has no boundary defining it from the rest of the garden ground other than the change of surface from hardstanding to grass.

The site is accessed solely from Summerside Place and has no access from Newhaven Road.

The surrounding area is residential in character. A bowling green exists on the south side of Summerside Place but this is wholly compatible with the residential character.

This application site is located within the Victoria Park Conservation Area.

#### **2.2 Site History**

The property has a long enforcement history and a series of applications relating to tree removal on the area in question.

A licence to sell second hand cars from the site was first obtained in August 2007, suggesting the activity has dated from at least that time (licence reference:07/14127/SHDN3). One condition of the licence was that all necessary other permissions (i.e. planning permission) be obtained.

26 October 2007 - mixed decision relating to formation of a driveway and alterations to walls - this approved alterations to house but refused a new vehicle opening south of the house (planning reference 07/03746/FUL).

9 October 2008 - enforcement against unauthorised sale of vehicles (planning reference: 08/00711/ECOU) - closed due to claim that all cars were for family use (which cannot be enforced).

22 December 2008 - planning permission refused for new vehicle access south of the house (planning reference 08/03407/FUL).

11 June 2013 - planning enforcement taken against sale of second hand cars (enforcement reference: 13/00057/ECOU) – closed.

21 June 2013 - consent granted for tree removal (planning reference: 13/02222/TCO).

11 April 2014 - planning permission granted for a new house (planning reference: 13/02120/FUL) - now lapsed.

27 May 2014 - enforcement on unauthorised widening of opening (planning reference: 14/00278/EOPDEV).

19 May 2015 - consent granted for further tree removal (planning reference: 15/02313/TCO).

25 January 2016 - enforcement against unauthorised sale of vehicles (planning reference: 16/00024/ECOU) - enforcement notice served - this related to up to 15 vehicles on site.

4 July 2018 - Council minded not to serve a Tree Preservation Order (planning reference: 18/03223/TCO).

9 October 2018 - appeal against enforcement (sale of 15 vehicles) dismissed (planning reference: 18/00084/ENFORC).

## **Main report**

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

The application proposes a change of use (in retrospect) for an area of formerly residential garden ground to be used for the sale of second hand cars. The area is accessed from Summerside Place and is screened by a high wall and gate.

The area in question is wholly laid out as hard-standing. It is noted that this area of hardstanding is the same area as relating to previous applications and it was put in place at some time over the last 10 years. Whilst the application states it is for "up to 8 cars", it is capable of holding around 15 vehicles.

The scheme was amended to illustrate on-site customer parking (as required within the licence conditions).

### **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.

Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states - special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.

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 use is acceptable;
- b) the impact on neighbouring amenity is acceptable;
- c) the impact on the conservation area is acceptable;
- d) parking and car generation is acceptable;
- e) loss of garden ground is acceptable;
- f) licensing;
- g) other issues (licensing etc); and
- h) comments are addressed.

#### **a) Principle of Use**

The sale or display for sale of motor vehicles does not fall within any use class and is a sui generis use. In this case, part of the rear garden of this property is used for car sales and so a change of use has occurred on part of the residential land. As the use does not fall within business and industry use classes, there are no Local Development Plan (LDP) policies which advise on suitable locations for car sales activity. The principle of the use is therefore dependent on whether other policies in the LDP would indicate the site is unsuitable for this use.

As the site is within a residential area, the proposal has been assessed against policy Hou 7 - Inappropriate Uses in Residential Areas and found to be in breach of this policy (see below). The principle of the proposed use is therefore unacceptable.

#### **b) Impact on Neighbouring Amenity**

LDP policy Hou 7 considers Inappropriate Uses in Residential Areas. This states: "developments, including changes of use, which would have a materially detrimental effect on the living conditions of nearby neighbours will not be permitted". The intention of this policy is to preclude the introduction or intensification of non-residential uses incompatible with predominantly residential areas.

The area is residential in character and the main issue is whether the development affects residential amenity.

The various enforcement enquiries (see History) stemmed from complaints from neighbours regarding the ongoing unauthorised use for car sales. Case law is clear that "loss of amenity" is a combination of actual loss and perceived loss (i.e. there is a psychological dimension to "amenity"). Therefore, the existence of a car sales facility can have a psychological impact over and above any measurable noise or disturbance.

The proposal has received considerable support. However, the majority of those giving support do not live in close proximity to the site and so would not logically expect to be disturbed. Letters of support do include the neighbour to the immediate south and the neighbour two houses to the east, and these are the most relevant letters of support as these properties might be expected to suffer some loss of amenity. These representations therefore carry some weight.

Set against this, the most relevant objections are from the two immediate neighbours to the north and two neighbours to the east. Of these, the neighbours to the immediate east and north are most likely to suffer loss of amenity. Both these neighbours object to the proposal. These representations therefore carry significant weight.

It is noted that, from the time of the earliest enforcement, the applicant has argued that vehicles are also for the use of his own extended family. There is no limitation on the number of cars a private family may possess, and the initial enforcement enquiry was closed due to the inability to determine who was driving the vehicles.

However, the combination of the licensing history and the formal application for sale of cars now establishes that the use is beyond what might be expected for personal family use. As such, the proposed commercial use of the site, and the activity associated with this, have the potential to detrimentally affect the living conditions of nearby residents.

Whilst it is accepted that the frequency of car sales may currently be limited, this is not within the scope of planning controls. The site is capable of taking up to 15 cars and whilst the applicant states only up to eight cars would be sold, this cannot be enforced through a planning condition. The planning authority cannot be expected to monitor on an ongoing basis the number of cars being sold and whether the cars on the forecourt are for business or personal use.

The two immediate neighbours (to north and east) do have windows from which the area in question is visible. This activity associated with commercial use is likely to impact on visual amenity especially as parked cars dominate the rear garden.

The fact that neighbours have previously raised concerns about the level of activity associated with the car sales - noise and disturbance from car valeting and a steady stream of customers and employees going to/from the site - indicates the use is not compatible with the residential character of the area. It is concluded that this commercial use is not appropriate in a residential area as the level of sales activity detrimentally affects the living conditions and amenity of neighbours.

The proposals do not comply with LDP policy Hou 7.

c) Impact on the Conservation Area

Policy Env 6 in the LDP requires development proposals to preserve or enhance the character or appearance of the conservation area and permits development which is consistent with the relevant conservation character appraisal.

The Victoria Park Conservation Area character appraisal states that part of the essential character is large villas set in generous garden grounds are located around three sides of the Park. The application site is one of them.

The site cannot be seen from the street as it is well screened behind timber gates. There is no impact on the appearance of the conservation area. In addition, whilst a hardstanding has been put in place which facilitates the use, this has been in place for more than four years and as operational development, does not form part of the current application. The overall character of the conservation area is unaffected by the development.

The proposal complies with policy Env 6.

d) Parking and Layout

The location of the parking lies behind the main house and is screened by a high wall and gate. LDP policy Tra 4 on parking layout is met.

There should be no impact on adjacent on-street parking.

e) Loss of Garden Ground

LDP policy Hou 3 considers garden ground serving housing.

The use of the rear part of the garden for car sales now dominates this area. However, the existing house retains ample garden ground for its amenity needs albeit with a commercial use adjacent to it.

f) Licensing

The property has benefitted from over 10 years of licensing for the sale of second hand cars without the requisite planning permission as required within the licence conditions.

The licence also has other limitations which both in theory and in practice do limit the extent of any "nuisance". Clientele may arrive by appointment only, and this aspect in particular, does limit potential impact.

The limitation within the licence as to a maximum of eight vehicles for sale at any given time is very difficult to police.

The enforcement and appeal decision of 2018, relating to the sale of 15 vehicles, in combination with a layout capable of holding 15 vehicles, would imply an existing breach of licence.

The Licensing Board have independence from the planning system and are free to grant a licence for the sale of 8 (or 15) vehicles should they be so minded. However, it is normal within the licence to also state that such granting is conditional upon obtaining all necessary consents, including planning permission, and this has clearly not been addressed, and is a breach of existing licence conditions.

#### g) Other Issues

In the agent's supporting statement they list other "commercial uses" in the area. However all uses listed would be deemed compatible with their surrounding residential neighbours.

No examples cited were of a similar nature regarding the sale of second hand cars. This use is specifically "sui generis" as it raises issues not present in other use classes. None of the examples cited could be used for the sale of second-hand cars.

#### h) Public Comments

##### **Material Objections**

- the use is inappropriate in this area - addressed in section 3.3 a).
- impact on parking - addressed in section 3.3 d).
- impact on neighbouring amenity - addressed in sections 3.3 a) and b).
- impact on trees and garden - all impact is historic (see History).

##### **Material Comments in support**

- proposals comply with policy Hou 7 as there is no impact on amenity - addressed in section 3.3 b).
- no noise or waste products associated with the business - addressed in section 3.3 b).
- the business is not visible from the public road - addressed in section 3.3 c).
- no impact on parking - addressed in section 3.3 d).

##### **Non-Material comments**

- good character of the applicant - this is not a material planning consideration.

##### **Community Council**

Trinity Community Council responded as a formal consultee (see Appendix 1) and wrote in objection.

#### Conclusion

The existing use has a long history of enforcement and, despite having a valid licence to sell second-hand cars, has never had the requisite planning permission to accompany this licence.

Although it is accepted that the same number of vehicles could in theory be privately owned and operated from the same area, this is materially different from the formal use

of the same area to sell second-hand cars. Such a use is not compatible with the residential character of the area, and materially affects the living conditions and amenity of nearby residents. It is contrary to LDP policy Hou 7 and there are no material planning considerations to justify approval.

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 use is unacceptable in principle within an established residential area.

### **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 15 February 2019.

Response to the application has been complicated by multiple emails from multiple sources, duplicating support letters, but often with small variations to each letter.

A total of 28 individuals wrote in support of the application but submitted in total around 90 comments (mainly duplicated by the agent by e-mail).

Objection comments did not suffer from the same issue of multiplication. These were received from a total of eight individuals.

## **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 lies within the Victoria Park Conservation Area.

**Date registered**

29 January 2019

**Drawing numbers/Scheme**

1,2,

Scheme 1

**David R. Leslie**

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PLACE

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**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 Hou 3 (Private Green Space in Housing Development) sets out the requirements for the provision of private green space in housing development.

LDP Policy Tra 4 (Design of Off-Street Car and Cycle Parking) sets criteria for assessing design of off-street car and cycle parking.

# Appendix 1

## **Application for Planning Permission 19/00377/FUL At 144 Newhaven Road, Edinburgh, EH6 4PZ Partial change of use of the property from residential to a private car sales business for up to 8 cars.**

### **Consultations**

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#### **Trinity Community Council**

Trinity Community Council discussed the current amended application. The Community Council has grave reservations about the proposed development and strongly objects to the use of a large portion of the garden for the sale and parking of cars.

For more than ten years the Community Council and local residents have expressed serious concerns about car trading activities taking place in the garden area of the property. The site has a long and complicated history. There is a close correlation between applications for trading licences made to the City Licensing Board and applications made, or which should have been made, to City of Edinburgh Council as planning authority.

Applications for trading licences were made in 2012, 2013, 2015 and 2016. It is requested that the case officer refers to the details of the applications and the consistent objections from the Community Council and local residents on the basis that a commercial activity taking place in a domestic garden is neither appropriate nor acceptable. In particular it should be noted that the 2013 application was refused on the grounds that the location of the premises in a residential and conservation area is not suitable for car dealing.

144 Newhaven Road is a large Victorian villa on a prominent corner site. It has an extensive area of garden ground much of which has been covered with hard standing material. The use of one room in the house as an office may be reasonable. However the proposal to use a significant portion of the garden area for commercial purposes is a fundamental and unacceptable change of use, detracting from the amenity and setting of the villa and the surrounding neighbourhood. The trading of cars and associated parking in the garden are not appropriate and cannot in any way be considered as incidental to the normal use and enjoyment of the house.

144 Newhaven Road is situated within the Victoria Park Conservation Area. Conservation Area status recognises the particular value of the area and special controls are exercised over any development which should preserve protect and enhance the character and amenity of the area. A car sales business taking place in a domestic garden in a predominantly residential area is not compatible with the designation. Such a use significantly damages the character, appearance and amenity of both the house and the Conservation Area.

The approved Local Plan for the City defines the property as being within the urban area. The type of business proposed, being conducted in the garden area, is contrary to Policy Hou 7 as it represents an inappropriate change of use detrimental to the amenity and living conditions of the surrounding residents. The Council has non-statutory guidelines relating to businesses run from home. The nature of the proposed activities is damaging to the character and amenity of the area by virtue of increased noise, vehicular and pedestrian activity on and around the site.

In April 2018 an enforcement notice was served alleging that without planning consent there had been a partial change of use from residential to residential/second hand car sales. An appeal was lodged against the notice. Again consideration of the current application should take into account evidence submitted by the City Council, the Community Council and many other objectors. The appeal was dismissed in October 2018 on the grounds that the private garden area of the house had been reduced to the detriment of its residential character and that the business activities taking place were no longer incidental to the normal use and enjoyment of the dwelling.

There appear to be no new material considerations or change of circumstances which would warrant any deviation from the dismissal of the appeal. The Community Council therefore recommends that the application should be refused on the grounds that car trading from a domestic property is inappropriate, intrusive and damaging to the residential and Conservation area. The commercial activity represents a significant and detrimental change of use.

It is also requested that Enforcement Action should be instigated as soon as possible.

### **Environmental Protection**

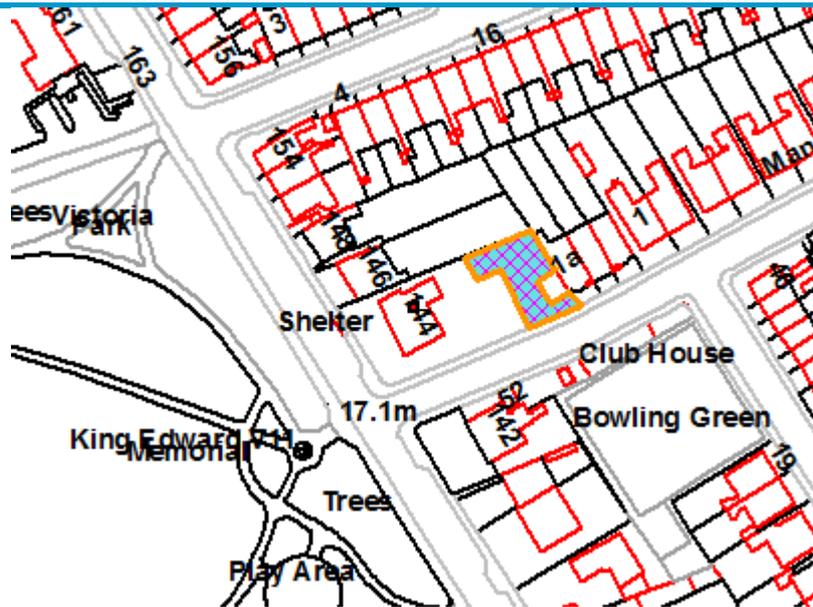
I refer to your consultation on the above application. Within the context outlined below Environmental Protection would offer no objections in respect of this proposal.

The application proposes a partial change of use from residential to a private car sales business. It is understood that the business has been operating for several years now from the premises and a second hand dealers licence is held by the applicant in relation to the car sales business at these premises. In addition to the standard conditions the licence is subject to a number of specific additional conditions. These conditions limit the number of cars kept for sale at the premises to eight, prohibit display of business signage, direct that all business to be carried out via appointment only, all customers to park on the premises and limit the hours of operation to between 9am and 7pm.

No records of complaints to Environmental Protection are held in relation to the operation of the business at this location.

## Location Plan

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