

Appeal Decision Notice

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Decision by Donald Harris, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-230-2114
- Site address: 30 McDonald Place, Edinburgh EH7 4NH
- Appeal by Batleys Limited against the decision by the City of Edinburgh Council
- Application for planning permission reference 13/04453/FUL dated 25 October 2013 to carry out the development without compliance with condition 3 imposed in the grant of planning permission 834/88 dated 3 August 1988
- The proposed development: change of use from printing works to Cash and Carry warehouse
- Date of site visit by Reporter: 10 June 2014

Date of appeal decision: 19 June 2014

Decision

I allow the appeal and grant planning permission for the change of use from printing works to Cash and Carry warehouse in accordance with the application no. 13/04453/FUL dated 25 October 2013 without compliance with condition 3 previously imposed on planning permission no. 834/88 dated 3 August 1988 but subject to the other conditions imposed by that permission, so far as they are still subsisting and capable of taking effect and subject to the following condition: -

3. The hours of operation shall be restricted to between 07:00 hours and 20:00 hours (Monday to Saturday) with no deliveries or loading outwith these hours.

Reason: In order to limit the effect of noise and disturbance on nearby residents.

Reasoning

1. The Cash and Carry warehouse the subject of this appeal is located in a mainly residential area. The planning permission of 1988 restricted the opening hours to 08:00 to 20:00 hours (Monday to Friday) and 08:00 to 12:00 hours (Saturday), with no deliveries or loading outwith these hours. In July 2012, the present appellant applied for planning permission to extend the opening hours to: 07:00 to 20:00 hours (Monday to Saturday) and 08:30 to 12:00 hours (Sunday) (application 12/02594/FUL). Permission was granted for a limited period of one year. The reason given was "in the interests of amenity and in order



to assess the impact of the development over a trial period". Following the expiry of that period, the appellant sought to retain the extended opening hours, but permission was refused on the grounds of non-compliance with the development plan and non-statutory guidance and the adverse effect on neighbouring amenity.

2. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The most relevant policy is Policy Hou 8 of the Edinburgh City Local Plan 2010. This concerns inappropriate uses in residential areas and among other things, is intended to preclude the intensification of non-residential uses in predominantly residential areas which would have a materially detrimental effect on the living conditions of nearby residents.
3. Having regard to the provisions of the development plan, the main issue in this appeal is the effect on the residential amenities of the dwellings nearby.
4. The appellant produced the results of two noise assessments, made in October 2013 (survey in September) and March 2014 (survey in February). Measurements were taken at the boundary of the appeal site opposite the loading bay in the period 07:00 – 08:00 hrs, when the store was open, trading and receiving deliveries. It was concluded that the noise generated in the proposed extended hours would not cause significant adverse impact on the health and quality of life of local residents. The appellant noted that the Council's Environmental Assessment Team had advised that "operations were being suitably managed to ensure that amenity is not being detrimentally affected by the hours proposed". Also, the Council's Environmental Health Department had confirmed that no complaints had been received from local residents in the previous 12 months.
5. However, I note that the Council's Planning and Building Standards department had received complaints from nearby residents; and a number of letters of objection were received when the latest planning application was made and in response to the present appeal. These objections covered a number of related issues, some of them not planning matters, but I am persuaded that those residents nearest the loading bay would experience a degree of disturbance bordering on the unacceptable. That border would be crossed by the warehouse being open on Sundays, which is a time generally regarded as particularly sensitive. I conclude that provided that the permitted hours excluded Sundays, the proposal would not have a materially detrimental effect on the living conditions of nearby residents and would accord with the development plan.
6. The appeal therefore succeeds except in so far as the opening hours are not extended to include any time on Sundays. I am satisfied that the condition imposed meets the six tests set out in Annex A to Circular 4/1998.
7. I have considered all other matters raised, including the relevance of non-statutory advice, but find none that persuades me to alter my decision.

Donald Harris

Reporter