

REPORT TO: Planning Committee
MEETING DATE: 20 August 2024
BY: Executive Director – Place
SUBJECT: Application for Planning Permission for Consideration

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Note: This application has been called off the Scheme of Delegation List by Councillor Forrest for the following reason: Due to objections I have received, I feel that this would warrant a discussion at the Planning Committee.

Application No. **24/00237/P**
Proposal Installation of vent and air conditioning unit (Retrospective)
Location **82 - 84 High Street
Musselburgh
East Lothian
EH21 7BX**
Applicant Crown Nails & Spa
Per One Foot Square

RECOMMENDATION Granted Permission

This application relates to the ground floor commercial premises at 84 High Street, Musselburgh which is set within a two storey, mid-terrace building. The property is situated within the Musselburgh Town Centre as defined by Policy TC2. The property is within the Musselburgh Conservation Area and the building is listed as being of special architectural or historic interest (Category C). The property also falls within the Battle of Pinkie Cleugh Historic Battlefield Site.

The property is bounded to the north by High Street, to the east and west by commercial premises at ground floor with residential properties situated above and to the south by a neighbouring residential property.

Planning permission is sought retrospectively for:

- i) The installation of an extract vent to the fanlight situated above the entrance door to the front (north) elevation of the building; and
- ii) The installation of an air conditioning unit to the security bars to the window at ground floor level on the side (east) elevation of the building.

Through separate application 24/00238/LBC listed building consent is sought for the installation of a vent, air conditioning unit, erection of signage and painting of the frontage of the building. That application stands to be determined on its own merits.

The painting of the shopfront in black does not form part of this planning application as the shopfront has been painted black since at least May 2016. Therefore, as this work has been in place for more than 4 years the painting of the shopfront in black is now deemed as lawful development.

DEVELOPMENT PLAN

Section 25 of the Town and Country Planning (Scotland) Act 1997 requires that the application be determined in accordance with the development plan, unless material considerations indicate otherwise.

The development plan is National Planning Framework 4 (NPF4) and the adopted East Lothian Local Development Plan 2018.

Material to the determination of the application are Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 that in considering whether to grant planning permission for development which affects a listed building or its setting a planning authority shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

Also material to the determination of the application is Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states that a planning authority must have regard to the desirability of preserving or enhancing the character or appearance of a conservation area in exercising its responsibilities in the determination of any application for planning permission for development affecting a conservation area.

Policy 7 (Historic Assets and Places) of NPF4 is relevant to the determination of this application. Policies CH1 (Listed Buildings), CH2 (Development Affecting Conservation Areas), CH5 (Battlefields) and DP5 (Extensions and Alterations to Existing Buildings) of the adopted East Lothian Local Development Plan 2018 are also relevant to the determination of this application.

REPRESENTATIONS

Four objections have been received in relation to this planning application. In summary, the main grounds of objection are:

- i) The works were undertaken without notification, consultation or consent of neighbouring properties;
- ii) The bin storage mentioned on the drawings were not discussed or agreed with neighbouring properties;
- iii) Damage has been caused to the building which is listed and situated within the Musselburgh Conservation Area as a result of the works;
- iv) The removal of a section of glazing to install the extract vent within the fanlight is detrimental to the Conservation Area and results in a loss of light to the communal close;
- v) The works are unsightly and have spoiled the character of the entry to the property

which is listed and situated within the Musselburgh Conservation Area;

- vi) The works are detrimental to the amenity of neighbouring properties and the communal close;
- vii) The fumes from the business are now extracted below the windows of neighbouring residential properties and an objector notes they can smell fumes within their property;
- viii) The works raise fire safety concerns;
- ix) The business at 84 High Street allegedly has access to the communal close and south aspect of the property for maintenance and emergencies only; and
- x) No other nail shops on the High Street appear to ventilate their premises through a residential property.

In response to the above this planning application is of a local type development. There is no requirement in planning legislation to consult neighbouring properties prior to the submission of a planning application of a local development type.

The works carried out within the communal close are internal works that do not require planning permission. Therefore they do not form part of this planning application.

All relevant neighbours within 20m of the application site were notified of the application when it was first registered. The application was also advertised in the local paper. Therefore the notification and publication of the planning application has been carried out in accordance with the requirements of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013. Furthermore a site notice was placed close to the premises.

There is no proposals to build a structure within which bins will be stored. Therefore the matter of where bins are stored is not a matter relevant to the determination of this planning application. That is a civil matter between the applicant and the occupants of the flats within the building.

The alleged damage caused to the building as a result of the works is a civil matter between affected parties and as such is not material to the determination of this planning application.

The matter of fire safety as a result of the works is a matter controlled by legislation other than planning. Therefore it is not a material planning consideration relevant to the determination of this planning application.

The applicant has certified on the planning application form that the owner of the building was notified of the planning application being submitted. Thereafter it is for the applicant to ensure they have the legal right to carry out works on land or buildings that they do not own. Therefore the matters raised regarding a right of access to the communal close by the applicant for maintenance and emergencies is a civil matter between affected parties and is not a material consideration relevant to the determination of this planning application.

Any complaints about fumes from the nail bar would be a matter for the Council's Protective Services to investigate. Those complaints would not be relevant to the determination of this planning application for the mechanical air vent and air conditioning unit.

Furthermore, the comments noting other nail shops have not vented their fumes via a residential property are not material considerations in the determination of this planning application.

PLANNING ASSESSMENT

The mechanical extract vent has been installed within the fan light (window) above the door in the front (north) elevation of the building. It is readily visible from public views from High Street. However, the extract vent whilst visible is small in size and scale and is seen in relation to the commercial frontages of Musselburgh High Street. Therefore, it is not an overly prominent feature on the building. By virtue of its form, size, materials and positioning the extract vent does not harm the special architectural or historic interest of the listed building and does not harm the character and appearance of the building, the surrounding area or the Musselburgh Conservation Area.

The air conditioning unit has been attached to the security bars of a ground floor window on the rear (south) elevation of the building, below an external stair. In its positing below the external stair of the building it does not mask or draw focus from any part of the listed building that is of particular special architectural or historic interest. Therefore, by virtue of its form size, materials and positioning the air conditioning unit does not harm the special architectural or historic interest of the listed building and does not harm the character and appearance of the building, the surrounding area or the Musselburgh Conservation Area.

The mechanical air vent has been installed in a part of the fan light (window) above the front door of the building, which serves a communal close. As the communal close is not a habitable room then any loss of daylight would not harm the residential amenity of the neighbouring residential properties that access this communal close.

With regards to the impact of the works upon the amenity of neighbouring residential properties, the **Council's Senior Environmental Health Officer** has been consulted on the application. He informs that a formal Abatement Notice was served upon the proprietor of the nail salon at 84 High Street due to odour nuisance arising from solvent fumes emanating from the nail salon, into the flat above. The works that have been undertaken are to mitigate the odour nuisance. Accordingly, the Council's Senior Environmental Health Officer supports this planning application.

Therefore the works do not harm the residential amenity of neighbouring residential properties.

The works undertaken do not have a significant adverse effect on the Battle of Pinkie Cleugh Historic Battlefield Site.

Given the above considerations, the works are consistent with Policy 7 of NPF4 and Policies CH1, CH2, CH5 and DP5 of the adopted East Lothian Local Development Plan 2018. In conclusion, the works are considered to be in accordance with the provisions of the stated relevant Development Plan policies and there are no material considerations which outweigh the proposals accordance with the Development Plan.

CONDITION:

1 None.