



---

Decision by Keith Bray, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-230-2226
- Site address: 14 Bath Street, Edinburgh, EH15 1EY
- Appeal by Wotheasy Limited against the decision by City of Edinburgh Council
- Application for planning permission 16/06447/FUL dated 29 December 2016 refused by notice dated 26 February 2018
- The development proposed: retention of principal facade of former cinema and erection of a residential building of 20 flats
- Date of site visit by Reporter: 13 August 2018 and 11 September 2018

Date of appeal decision: 18 October 2018

---

## Decision

I dismiss the appeal and refuse planning permission.

## Preliminary

1. This appeal has been considered at the same time as a related listed building consent appeal with the reference PPA-230-2137. That appeal is dealt with in a separate decision notice.

## Reasoning

### Development Plan

2. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise.

3. Special regard must also be had to the desirability of preserving the listed building or its setting and any special features of historic or architectural interest which it possesses. Given the site is located within the Portobello Conservation Area, I also give special attention to the desirability of preserving or enhancing the character or appearance of the area.

4. Having regard to the provisions of the development plan the main issue in this appeal is the acceptability of the substantial demolition and alteration of a listed building.



5. The development plan consists of SESplan, and the Edinburgh Local Development Plan 2016 (LDP).
6. The purpose of a strategic development plan is to set out the planning framework to assist the preparation of LDPs. It is generally not relevant for assessing individual detailed proposals. No matters have been raised in connection with it for this appeal. In refusing the application the council had relied solely on policies in the LDP.
7. Based on the key issue above, the council and appellant agree that the LDP policies of relevance are policies ENV2 and ENV4. I am in agreement with that. The appellant also contends that the planning application conforms to all other policy requirements of the LDP. Beyond policy ENV2 and ENV4, I find that the council does not raise any other policy concerns with regard to the proposals.
8. Following the consideration of the development plan I turn later in my decision to other material considerations which I must take into account.

#### *Substantial demolition and alteration*

9. I consider that the proposal before me relates to the substantial demolition and alteration of a listed building together with the redevelopment of the site for a flatted housing development. Although elements of the building frontage would remain and be remodelled, the facts of the case demonstrate that I should consider this appeal to include the substantial demolition of the listed building.
10. Policy ENV2 of the LDP only allows the total or substantial demolition of a listed building in exceptional circumstances. Rather than policies tests the decision maker is invited by policy ENV2 to take into account a number of factors. These are:
- the condition of the building and the cost of repairing and maintaining it in relation to its importance and to the value to be derived from its continued use;
  - the adequacy of efforts to retain the building in, or adapt it to, a use that will safeguard its future, including its marketing at a price reflecting its location and condition to potential restoring purchasers for a reasonable period; and
  - the merits of alternative proposals for the site and whether the public benefits to be derived from allowing demolition outweigh the loss.
11. The evidence does not suggest that the building has been on the Buildings at Risk for Scotland register at any point. However, after reviewing the evidence, I find that the appellant is making the argument, as stated in the statement of case, that the building is incapable of repair. Therefore its condition is a key factor that I should consider for policy ENV2. I also consider that my findings on the related listed building consent appeal to be relevant to policy ENV2.
12. A 2016 report (structural inspection by Harley Haddow) noted no evident building stress at ground floor level. However, it noted defects on the exterior; mainly bossed render and corrosion to the steelwork. A conclusion of the 2016 report was that the building

was structurally sound but that future work would be required. The 2016 report did not suggest the building was incapable of repair. A 2017 report (the intrusive visual inspection report of February 2017 Harley Haddow which is marked as draft) discusses what would be required to repair the building. I find that at no point does the report explicitly conclude that the building, in its current state, is incapable of repair. However, the report does point out a number of difficulties.

13. Based on my site inspection, I agree that the coverage of the 2017 report demonstrates a representative assessment of the building. Amongst other defects, the 2017 report finds bossed render, roofing repairs needed, foundations unable to resist further loading and corrosion to the steel frame of the auditorium.

14. The need for strengthening work to steel work is acknowledged and solutions are provided in the 2017 report. It is also noted that existing foundations did not show signs of distress. Solutions are also put forward for tying the brick walls to the steel frame. I am also mindful that alternative reports (including that from David Narro Associates) have concluded that remedial works to the steel frame are possible and that adding ties from the walls to the steelwork could be achievable; both without damage to inner linings. However, the appellant has stated that extensive opening up of the wall lining to the inner face of the auditorium would be required. The appellant has also stated that replacement of the steel frame cannot be achieved without the removal of internal linings including all asbestos contaminated interior features. However, the 2017 report indicates the potential for disturbance and damage rather than extensive opening up or full removal of the linings.

15. It is not disputed that corrosion of the steel frame has occurred. It is the implications for repair work required that is disputed. However, the evidence in this case does not point to the steel frame being incapable of being strengthened and/or repaired if required.

16. The Harley Haddow report of 2016 indicated that the roof appeared to be structurally sound. Furthermore, the appellant's report of 2017 does not provide me with clear advice that the existing roof sheeting needs to be completely removed, although leaks are noted. Nor is there a conclusion within the report that the removal of the roof would necessitate the linings of the main auditorium to be removed or that replacement of the roof must be addressed from within the building rather than externally. The appellant indicates that expert opinion has been sought on that matter. However, no evidence of that opinion is contained in submissions. There is also contrary evidence put forward by third parties. I have not found a clear basis for the appellant's case that roof replacement would require the substantial removal of the interior linings and features.

17. The 2017 report also points to roof trusses needing to be replaced or strengthened; but only if a heavier roof covering was proposed. The report does not require that the roof trusses must be fully replaced. In fact the report points to a further structural appraisal to assess the suitability and feasibility of retaining the existing structure in light of any need for a new roof.

18. On the other hand the 2017 report is clear that the chimney stack is in need of removal and I accept that advice. No other party has questioned that particular conclusion.

19. The City of Edinburgh 'structures' consultation response on the application is suggested by the appellant to reinforce their case. However, it would appear to me that the advice has been given in the light of achieving current standards. It is acknowledged by parties that the response has also provided an assessment without detailed knowledge of the building. This is reflected in the inaccurate reference to the lack of wall ties. The existence of header bricks, as wall ties, is a matter which the appellant now agrees upon. The main conclusion is that the auditorium has reached the conclusion of its useful life. In light of the above, I am not persuaded that the consultation response provides clear evidence that the building is incapable of repair.

20. An asbestos survey was carried out in December 2016. I note that the survey does not require the immediate removal of the roof structure or the internal linings. However, I find that the 2017 report has translated the findings of the asbestos survey to mean that. I therefore consider that the 2017 report does not correspond directly to the findings of the asbestos survey. I cannot see any reference to the roof surpassing the end of its design lifespan in the asbestos survey. In addition, I cannot find references in the asbestos survey to the removal of asbestos other than in relation to the demolition of the building.

21. Having read all the material, I find that no specific recommendations are made or advice put forward within the asbestos survey that relate directly to refurbishment. I have concluded that any asbestos assessment for refurbishment would require to react and plan from a set of proposals for refurbishment. It has not been clearly demonstrated to me that a refurbishment solution would automatically require all asbestos to be removed. Based on the documentation submitted, that may depend on the extent of the works proposed. I am aware that the appellant argues that the removal of the asbestos would be mandatory. However, I find that for refurbishment, removal is required where reasonably practical and the interests of the safety of workers. This is articulated in the asbestos report on page 9 section 5. Therefore, I find the matter is not clear cut. Also, the asbestos report does not provide a priority assessment or an ongoing Asbestos Management Plan in the case of refurbishment. It does however give clear advice for the removal of material prior to a demolition solution. I also see no balanced assessment or plan of work that indicates that asbestos removal would cause a lesser risk to employees than if the asbestos is left in place during a refurbishment.

22. I also note that caveats are provided in the asbestos report. One is that additional investigation is required to assess the presence of asbestos in the areas not tested. In that regard I note the inclusion of ceilings and walls above the main hall's suspended ceiling tiles are included in such a caveat due to height and accessibility. This includes a significant area of internal lining that is subject to dispute.

23. On removing an objection, Historic Environment Scotland (HES) state that arguments relating to the building being incapable of being repaired are not made explicitly. HES advises that independent advice should be sought to verify the matter. In saying that, HES does have a level of doubt over the feasibility of retention. As with the evidence above, I find that the HES advice does not provide a clear basis upon which I can find that the building cannot be repaired. HES state that if the extent of repair of walling and asbestos removal means the interior decoration of the auditorium cannot be salvaged, it would be inclined to be pragmatic. This does not demonstrate to me that HES are convinced on the matter.

24. What I do find is that there is a broad consensus across the submissions that the auditorium structure is nearing the end of its useful life and that without intervention in the future it may be lost. I saw the evidence of that during my site visits. Therefore I have no doubt in my mind that the building requires a solution in relation to its current condition.

25. As highlighted by HES, there is a level of doubt and a lack of clear evidence to show that the building as a whole is incapable of repair. My conclusion is that the appellant has not provided robust and defensible evidence, in the light of other contrary reports, to clearly show that the building is in such a condition that it is incapable of repair.

26. I note that the 2017 report states that repair would likely be considered excessive in terms of cost and potential gain. However, I find that these statements are caveated and point to a need for further assessment. A costed proposal does exist from 'Friends of the George' and has been carried out by a firm of quantity surveyors. The total cost of the works were estimated at £3.2 million (as at 2016). There is no evidence put forward that such a cost is considered by any party to be economically unviable.

27. The appellant has argued that the use as a single screen cinema was not considered a viable option for the site given the condition of the building and the availability of various modern equivalents in reasonable proximity to the application site. The appellant is also of the view that marketing of the property has been adequately addressed and relies on a letter from the marketing agent.

28. In that letter, the marketing history of the site shows reasonable interest; in the form of two hundred and thirty three enquiries. This could suggest a selling price that the market was interested in. However, I note there is no indication given within the letter on the issue of price. An indication of price is however given in the letter from Rob Hoon of 'Out of the Blue' which indicates that the sum sought was in the order of £850,000. The council, in its submissions, indicates an understanding that the site sold for £750,000.

29. The premises would appear to have been openly marketed from November 2014. The marketing agent's letter also confirms that a number of parties who wanted to operate the facility as a theatre and cinema were interested but none were able to make an offer. This could point to the price being out of reach for such a repairing use.

30. The property was purchased twenty one months after being placed on the market. This is a period of time which I would accept as a reasonable period to allow a restoring purchaser to come forward. However, I note that a restoring purchaser in the form of Friends of the George, through their consultants, had an interest in the buildings before it was sold. In the Rob Hoon letter it is stated that the building was sold without notification. A matter which is not challenged by the appellant.

31. I recognise that no potential restoring purchasers were found to purchase the property, despite interest. However, there is current and recent interest in the purchase of the building from parties who would intend to refurbish it.

32. On the balance of probabilities it appears to me that the property may not have been marketed at a price reflecting its location and condition to potential restoring purchasers

albeit the property was on the market for a for a reasonable period of time. In reaching that conclusion I find that the low key and informal marketing to bingo hall operators is of no consequence in relation to the policy. I would not regard such closed marketing as involving potential restoring purchasers.

33. I acknowledge that twenty housing units on this site would bring benefits through the provision of new homes. However, the modest scale of the site, in my view, falls far short of a threshold sought in policy ENV2 concerning overriding public benefit. Also, the appellant does not argue a case in terms of wider public benefit arising from the proposal.

34. Based on the paragraphs above (11 to 33) and taking into account the factors outlined in policy ENV2, my conclusion is that the proposal would not comply with policy ENV2.

35. With regard to policy ENV4 the council found that the proposals would diminish the special architectural and historic interest of the listed building. I find that ENV4 supports proposals to alter or extend a listed building where all of the following are met:

- those alterations or extensions are justified;
- there will be no unnecessary damage to historic structures or diminution of its interest; and
- where any additions are in keeping with other parts of the building.

36. As the proposals relate to a substantial demolition, the first criterion of ENV4 would require that a proposal for demolition work to be justified. However, as noted above (in relation to policy ENV2) my conclusion is that exceptional circumstances are not justified. I also find that the damage proposed to the listed building should be considered unnecessary in light of the doubt concerning the overall condition of the building, the possibility of repair and the associated costs. The alterations and additions to the building (including the remodelled front elevation) are also a factor. However, I find that the works to the frontage is a secondary matter in light of my other conclusions on demolition.

#### *Compliance with development plan*

37. A proposal that is contrary to policy ENV2 undermines the protection given to listed buildings in the LDP. No other policies have been brought to my attention that would override the need for policy compliance with ENV2. In any case, policy ENV2 provides a basis to support a development in exceptional circumstances. However, I do not find that exceptional circumstances exist.

38. Given my assessment against policy ENV2 and ENV4, I conclude that the proposal does not accord with the development plan. Such a conclusion means that there is no need to consider other secondary policy matters raised in this case such as housing, car parking and neighbour amenity.

## Material considerations

39. The Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997 requires that decision makers have regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

40. Scottish Planning Policy 2014 (SPP) states that listed buildings should be protected from demolition or other work that would adversely affect them or their setting.

41. Historic Environment Scotland's Policy Statement 2016 reiterates the SPP position. It also states that no listed building should be demolished unless at least one of four criteria can be clearly demonstrated. In my decision concerning the listed building consent appeal (reference LBA-230-2137) and as reflected above, I have concluded that it has not been clearly demonstrated that the building is incapable of repair or that the repair of building is not economically viable.

42. The appeal site is within the Portobello Conservation Area. In my decision on the appeal LBA-230-2137, I noted the cultural significance of the building and its frontage to Bath Street. Taking into account the contrast that the existing building provides, I found that the proposals would not be detrimental to the overall character or appearance of the conservation area.

## Conclusion

43. I conclude, for the reasons set out above, that the proposed development does not accord with the development plan provisions for the substantial demolition and alteration of a listed building. I therefore find that the proposal does not accord with the development plan overall. Although I have assessed the proposal as having a neutral impact on the conservation area, my assessment of the material considerations would not justify granting planning permission in this case.

*Keith Bray*

Reporter