

# Development Management Sub Committee

Wednesday 26 January 2022

**Application for Planning Permission 21/01673/FUL  
at 211A Portobello High Street, Edinburgh, EH15 1EU.  
Change of use of class 1 shop to class 3 restaurant with  
alterations to shop and front and flue.**

**Item number**

**Report number**

**Wards**

B17 - Portobello/Craigmillar

## Summary

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The proposals would fail to preserve the character and appearance of Portobello conservation area which is contrary to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. It would also be contrary to the Edinburgh Local Development Plan and the Council's non-statutory guidance in respect to LDP Policies Env 6, Ret 11 and Hou 7 as the proposed flue on the building would form an incongruous addition detracting from the character and appearance of the conservation area. The height of the flue and its positioning on the building would have a materially detrimental effect on the living conditions of nearby residents. Furthermore, the proposal does not comply with the relevant SPP - sustainable development principles. There are no other material considerations which outweigh this conclusion.

## Links

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[Policies and guidance for this application](#)

LDPP, LRET09, LRET11, LEN06, LHOU07, SGPOR, NSG, NSBUS, NSLBCA, OTH, CRPPOR,

# Report

## **Application for Planning Permission 21/01673/FUL at 211A Portobello High Street, Edinburgh, EH15 1EU. Change of use of class 1 shop to class 3 restaurant with alterations to shop and front and flue.**

### **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 lies on the south side of Portobello High Street within a group of retail buildings. It is single storey in height. Residential properties are situated to the west and south of the site.

This application site is located within the Portobello Conservation Area.

#### **2.2 Site History**

20th October 2021 -An Enforcement inquiry was received for an alleged change of use and shop front alterations (application number 21/00741/ECOU).

### **Main report**

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#### **3.1 Description of the Proposal**

The proposal is for change of use of the premises from a class 1 (retail) to class 3 (food and drink) with alterations to the shopfront and the erection of a flue.

The proposed materials are white painted brickwork for the walls, with grey aluminium PPC coated windows.

The grey metal flue 4 metres high would be positioned on the roof. The new shopfront also proposes a vent to the front.

#### **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 proposals preserve or enhance the character and appearance of the conservation area;
- (b) the proposal is acceptable in principle;
- (c) the proposal is detrimental to the amenity of neighbours;
- (d) the proposal affects road safety;
- (e) the proposals comply with the 13 principles of the Scottish Planning Policy (SPP);
- (f) other material planning matters have been addressed and
- (g) public comments raised have been addressed.

#### **(a) Conservation Area**

Section 64(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states:

*"In exercise, with respect to any buildings or other land in a conservation area, of any powers under any of the provisions in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area."*

LDP Policy Env 6 Conservation Areas - Development states that development within a conservation area will be permitted which preserves or enhances the special character or appearance of the conservation area and is consistent with the relevant conservation area character appraisal.

The Portobello Conservation Area Character Appraisal states that "Portobello retains the character of a small town with a distinct town centre, an exceptionally high-quality residential hinterland, a shoreline setting and a long sea-front promenade. The architectural form and character of Portobello is rich and varied, with many fine Georgian and Victorian historic buildings. The building materials are traditional: stone, harling, slate, pantiles, timber windows and doors."

The conservation has three-character zones and the site lies within Portobello's High Street zone which provides the commercial and administrative focus for the conservation area, retaining many original two storey Georgian buildings as well as a number of significant public buildings.

The High Street is an identified shopping centre that provide a diverse mix of commercial activities and in which retail frontages are protected. Key objectives involve encouraging regeneration to attract investors and generate new employment opportunities, promoting good quality design and enhancing existing quality.

The proposals for the new shopfront would have no adverse effect on the character of the building. However, it is proposed to erect a flue to the front of the building, to a height of four metres on the flat roof projecting element of the premises. The flue would be extremely visible from public views and would form an incongruous, intrusive and unsympathetic addition to the building and to the immediate streetscape. It would detract from the character and appearance of the conservation area.

With reference to the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, the proposals do not preserve and enhance the character and appearance of the conservation area and would be contrary to LDP Policy Env 6.

#### (b) Principle of Development

The site lies within Portobello Town Centre where LDP Policy Ret 9 Alternative Use of Shop Units in Defined Centres applies. The Supplementary Guidance for Portobello Town Centre does not define the application site as a primary retail frontage so Policy PTC 2 - Alternative Use of Shop Units Elsewhere in Portobello Town Centre is applicable. For those locations not within a 'frontage', but elsewhere within the Portobello Town Centre boundary, a change of use from a shop to a non-shop use will be permitted provided a proposal is: Class 2 - financial, professional or other services, Class 3 - food and drink uses, an appropriate commercial or community use which would complement the character of the centre and would not be detrimental to its vitality and viability.

The proposed Class 3 use is an appropriate use for this location.

The proposal complies with LDP Policy Ret 9.

#### (c) Neighbouring Amenity

LDP Policy Ret 11 Food and Drink Establishments supports restaurants and cafes in principle provided this will not lead to an unacceptable increase in noise, disturbance, or on-street activities to the detriment of living conditions for nearby residents and provided there is not considered to be an excessive concentration of such uses.

LDP Policy Hou 7 Inappropriate Uses in Residential Areas states that developments including changes of use, which would have a materially detrimental effect on the living conditions of nearby residents will not be permitted.

The ventilation system which has been proposed would vent cooking odours from the flat roof of the application premises, exhausting effluvia in front of the residential windows to the south and south-east. In this regard, the vent would exhaust to approximately the level of the first-floor windows of the residential properties and below the windows of the first and second floor overlooking properties to the west.

Given the proximity and relative height of the flue to the flats, there are concerns that effluvia blowback would regularly swirl down and enter those properties. There is a likelihood that effluvia cooking odours would impact upon the amenity of the surrounding residential properties. Although private views are not protected, the outlook for some residents would be impacted on to a considerable extent by the erection of the flue.

Environmental Protection recommends that this application be refused as it is highly likely that the existing level of amenity enjoyed by surrounding residential properties will be diminished and detrimentally impacted should this application be granted.

In addition to ventilation odour concerns, noise may also impact upon the surrounding residential properties; no information has been provided by the applicant which demonstrates that noise from the ventilation system or the restaurant operations would not impact upon the amenity of the surrounding residential properties.

The proposal would be contrary to LDP Policies Ret 11 and Hou 7 as there would be an adverse impact on residential amenity.

(d) Road Safety

Although the proposal indicates seating on the pavement to the front of the property, it falls outwith the red line of the premises and would be controlled through the permit system regime. There is no adverse effect on road safety.

(e) Scottish Planning Policy (SPP)

Scottish Planning Policy presumption in favour of sustainable development is a significant material consideration due to the development plan being over five years old. SPP introduces a presumption in favour of development that contributes to sustainable development and sets out 13 principles to guide policy and decisions.

Although the development proposes an appropriate and sustainable land use, which would support the local economy, the proposed flue would not protect the historic environment. In addition, the height of the flue and its proximity to residential properties would have an adverse effect on residential amenity.

The proposed development does not comply with SPP principles 3, 10 and 13, as it would not support good design and the six qualities of successful places. It would not protect or enhance the historic environment and the flue would not protect the amenity of nearby residents by virtue of effluvia being ducted into nearby flats.

(f) Other Material Considerations

Accuracy of drawings; the plans submitted with the application are sufficient to allow a proper and thorough assessment of the proposal.

## Emerging Policy Context

NPF 4 - Draft National Planning Framework 4 is being consulted on at present. As such, it has not yet been adopted. Therefore, little weight can be attached to it as a material consideration in the determination of this application.

City Plan 2030 - While the proposed City Plan is the settled will of the Council, it has not yet been submitted to Scottish Ministers for examination. As such, limited weight can be attached to it as a material consideration in the determination of this application.

### (g) Public Comments

#### Material Comments - Objections:

- excessive concentration of food and drink premises - this is assessed in section 3.3(b) of the assessment
- neighbouring amenity - this is assessed in section 3.3(c) of the assessment
- impact on the character and appearance of the conservation area - this is assessed in section 3.3(a) of the assessment.
- impact on outlook - this is assessed in section 3.3(c) of the assessment.
- road safety - this is assessed in section 3.3(d) of the assessment.

#### Material Comments - Supporting:

- improvements to an existing empty building will bring revenue to the area - this is assessed in section 3.3(b) of the assessment.
- the new use with seated area will give greater choice of cafes and restaurants - this is assessed in section 3.3(b) of the assessment.
- the new use will improve recovery and regeneration of the area - this is assessed in section 3.3(b) of the assessment.

### Conclusion

The proposals would fail to preserve the character and appearance of Portobello conservation area which is contrary to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. The proposals would be contrary to LDP Policy Env 6 of the Edinburgh Local Development Plan and the Council's non-statutory guidance as the proposed flue would form an incongruous addition to the building, detracting from the character and appearance of the conservation area. The height of the flue, and its proximity to nearby flats, would have a materially detrimental effect on the living conditions of residents. Furthermore, the proposal does not comply with the relevant SPP - sustainable development principles. There are no other material considerations which justify the proposal being granted. Therefore, it is recommended that planning permission is refused.

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

### **3.4 Conditions/reasons/informatives**

#### **Reasons:-**

1. The application is contrary to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as the proposed flue fails to preserve the character or appearance of the conservation area.
2. The proposal is contrary to the Local Development Plan Policy Env 6 in respect of Conservation Areas - Development, as the proposed external flue fails to preserve the character and appearance of the conservation area.
3. The proposal is contrary to the Local Development Plan Policy Hou 7 in respect of Inappropriate Uses in Residential Areas, as it would have a materially detrimental effect on the living conditions of nearby residents.
4. The proposal is contrary to the Local Development Plan Policy Ret 11 in respect of Food and Drink Establishments, as it is likely to lead to an unacceptable increase in noise to the detriment of living conditions for nearby residents.

### **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:**

Due regard has been given to section 149 of the Equalities Act 2010. No impacts have been identified.

Consideration has been given to human rights. No impacts have been identified through the assessment and no comments have been received in relation to 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 23rd April 2021 and 116 comments were received: 57 objecting and 59 supporting. These included comments from the Portobello Amenity Society.

A full assessment of the representations can be found in the main report in the Assessment section.

## **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 urban area of the Edinburgh Local Development Plan where it lies within Portobello Town Centre and Portobello Conservation Area.

### **Date registered**

12 April 2021

### **Drawing numbers/Scheme**

1-4,

Scheme 1

## **David Givan**

Chief Planning Officer

PLACE

The City of Edinburgh Council

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## **Links - Policies**

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### **Relevant Policies:**

#### **Relevant policies of the Local Development Plan.**

LDP Policy Ret 9 (Alternative Use of Shop Units in Defined Centres) protects the City Centre Retail Core and Town Centres from development which would undermine their retailing function, and specifies that detailed criteria for change of use will be set out in supplementary guidance. It provides criteria for assessing the change of use of a shop unit to a non shop unit in local centres.

LDP Policy Ret 11 (Food and Drink Establishments) sets criteria for assessing the change of use to a food and drink establishment.

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

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.

The Protobello Town Centre Supplementary Guidance sets out aims for the town centre as a whole and sets criteria for change of use of shop units.

### **Relevant Non-Statutory Guidelines**

**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.

**Non-statutory guidelines** 'LISTED BUILDINGS AND CONSERVATION AREAS' provides guidance on repairing, altering or extending listed buildings and unlisted buildings in conservation areas.

### **Other Relevant policy guidance**

**The Portobello Conservation Area Character Appraisal** emphasises the village/small town character of the area, the importance of the long sea-front promenade, the high quality architecture, and the predominant use of traditional building materials

# Appendix 1

## **Application for Planning Permission 21/01673/FUL at 211A Portobello High Street, Edinburgh, EH15 1EU. Change of use of class 1 shop to class 3 restaurant with alterations to shop and front and flue.**

### **Consultations**

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#### **Environmental Protection**

*I refer to the above and would advise that Environmental Protection recommends that the application be refused.*

*The application proposes the change of use of a retail premises to a Class 3 restaurant with full cooking operations. The application premises consist of a single storey property which juts out to meet Portobello High Street pavement. To the rear (south and south-east) and situated further back from the pavement on the ground and first floors, are residential properties which have windows overlooking the proposed restaurant roof. To the west are residential properties with windows overlooking the roof of the application premises.*

*A ventilation system has been proposed which vents cooking odours from the flat roof of the application premises, exhausting effluvia in front of and barely above the residential windows to the south and south-east. In this regard, Environmental Protection would have significant concerns that effluvia blowback will regularly swirl down and enter the properties to the south and south-east either via an open window or enter via their passive ventilation spaces and under the roof. The vent exhausts to around the level of the first-floor windows of the residential properties to the south and south-east and well below the windows of the first and second floor overlooking properties to the west. There is a likelihood that effluvia cooking odours will impact upon the amenity of the surrounding residential properties should this application be granted.*

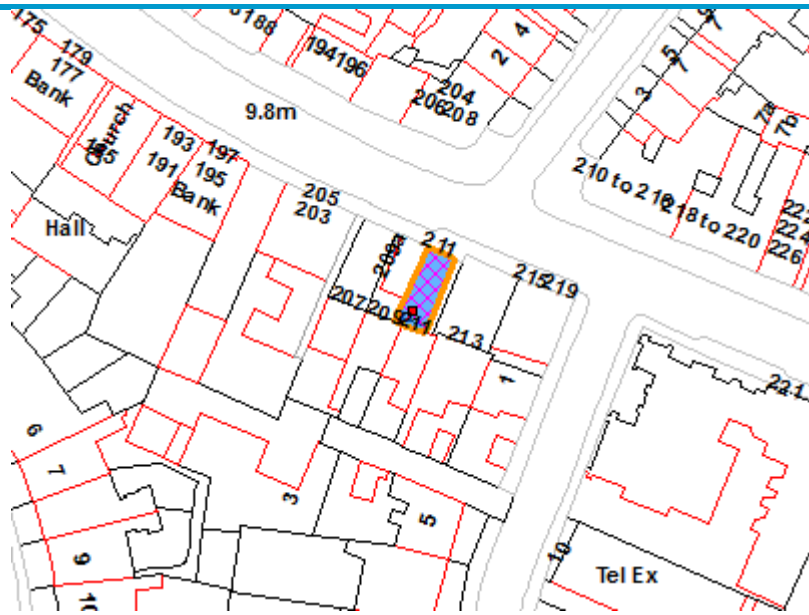
*In addition to ventilation odour concerns, Environmental Protection would highlight that noise may also impact upon the surrounding residential properties especially to rear/south. No information has been provided by the applicant which proves that noise from the ventilation or the structurally attached restaurant operations will not impact upon the amenity of the surrounding residential properties.*

*In conclusion, Environmental Protection recommends that this application be refused as it is highly likely that the existing level of amenity enjoyed by surrounding residential properties will be diminished and detrimentally impacted should this application be granted.*

*Should you wish to discuss the above please contact me on 0131 469 5802.*

## Location Plan

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