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Decision date: 23 September 2021

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACTS
DEVELOPMENT MANAGEMENT PROCEDURE (SCOTLAND) REGULATIONS 2013**

Change of use from class 1 retail to class 3 restaurant, installation of extract duct (as amended).

At 77A George Street Edinburgh EH2 3ES

Application No: 21/02872/FUL

DECISION NOTICE

With reference to your application for Planning Permission registered on 25 May 2021, this has been decided by **Local Delegated Decision**. The Council in exercise of its powers under the Town and Country Planning (Scotland) Acts and regulations, now determines the application as **Refused** in accordance with the particulars given in the application.

Any condition(s) attached to this consent, with reasons for imposing them, or reasons for refusal, are shown below;

Conditions:-

Informatives

It should be noted that:

1. Consent shall not be issued until a suitable legal agreement has been concluded in relation to tram contributions. The applicant will be required to contribute the sum of

£38,276 to the Edinburgh Tram in line with the approved Tram Line Developer Contributions report.

The legal agreement should be concluded within 6 months of the date of this notice. If not concluded within that 6 month period, a report will be put to committee with a likely recommendation that the application be refused.

Please see the guidance notes on our [decision page](#) for further information, including how to appeal or review your decision.

Drawings 01-03a,04a., represent the determined scheme. Full details of the application can be found on the [Planning and Building Standards Online Services](#)

The reason why the Council made this decision is as follows:

The proposal is contrary to LDP Policy Ret 09 and the associated City Centre Shopping & Leisure Guidance in that it would contribute to over one-third of non-shop uses (50%+) within the block. There are no material considerations that would outweigh this decision.

This determination does not carry with it any necessary consent or approval for the proposed development under other statutory enactments.

Should you have a specific enquiry regarding this decision please contact Conor MacGreevy directly at conor.macgreevy@edinburgh.gov.uk.



Chief Planning Officer
PLACE
The City of Edinburgh Council

NOTES

1. If the applicant is aggrieved by the decision to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within three months beginning with the date of this notice. The Notice of Review can be made online at www.eplanning.scot or forms can be downloaded from that website. Paper forms should be addressed to the City of Edinburgh Planning Local Review Body, G.2, Waverley Court, 4 East Market Street, Edinburgh, EH8 8BG. For enquiries about the Local Review Body, please email localreviewbody@edinburgh.gov.uk.

2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.

Report of Handling

Application for Planning Permission
77A George Street, Edinburgh, EH2 3ES

Proposal: Change of use from class 1 retail to class 3 restaurant, installation of extract duct (as amended).

Item – Local Delegated Decision
Application Number – 21/02872/FUL
Ward – B11 - City Centre

Recommendation

It is recommended that this application be **Refused** subject to the details below.

Summary

The proposal is contrary to LDP Policy Ret 09 and the associated City Centre Shopping & Leisure Guidance in that it would contribute to over one-third of non-shop uses (50%+) within the block. There are no material considerations that would outweigh this decision.

SECTION A – Application Background

Site Description

The application site is a mid-terrace ground floor commercial unit with a basement level.

The property is a Statutory B Listed Building (1966).

Description Of The Proposal

The proposal is for a change of use from class 1 (retail) to a class 3 (restaurant) and the installation of an extract duct to the roof plan.

Scheme 2 amends the proposal to include new ventilation details.

Relevant Site History

No relevant site history.

Consultation Engagement

Environmental Protection

Transportation Planning

Publicity and Public Engagement

Date of Neighbour Notification: 23 September 2021

Date of Advertisement: 11 June 2021

Date of Site Notice: 11 June 2021

Number of Contributors: 1

Section B - Assessment

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 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states 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.

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?

Assessment

To address these determining issues, it needs to be considered whether:

- a) the principle of the proposal is acceptable in this location;
- b) the proposals will adversely affect the character and appearance of the conservation area & scale, design and materials;
- c) the proposals will have an adverse impact on the character of the listed building;
- d) the proposal will result in an unreasonable loss of neighbouring amenity;

- e) tram contribution;
- f) the proposal affects road safety;
- g) any impacts on equalities and human rights are acceptable; and
- h) any comments have been addressed.

a) Principle of Development

LDP Policy Ret 11 (Food & Drink Establishments) states that "the change of use of a shop unit or other premises to a licensed or unlicensed restaurant, café, pub, or shop selling hot food for consumption off the premises (hotfood take-away) will not be permitted if likely to lead to an unacceptable increase in noise, disturbance, on-street activity or anti-social behaviour to the detriment of living conditions for nearby residents or in an area where there is considered to be an excessive concentration of such uses to the detriment of living conditions for nearby residents".

LDP Policy Ret 9 (Alternative Use of Shop Units in Defined Centres) states that in the City Centre Retail Core and town centres, change of use proposals which would undermine the retailing function of the centre will not be permitted. Detailed criteria for assessing proposals for the change of use of a shop unit to a non-shop use will be set out in supplementary guidance. Supplementary Guidance will detail an approach tailored to different parts of the city centre retail core and each town centre to be informed by town centre health checks which will assess the centres strengths, vitality and viability, weaknesses and resiliencies.

Policy CC 3 in the City Centre Retail Core Supplementary Guidance supports a non-shop use provided that: as a result of permitting the change of use, no more than one third of the total number of in the frontage of that block will be in non-shop use; and the proposal is for an appropriate commercial or community use which would complement the character of the City Centre Retail Core and would not be detrimental to its vitality or viability.

There are approximately 14 businesses within the block including the application site. Within this stretch of George Street, significantly only 7 of the 14 units are in retail use. The proposed change of use from a class 1 (retail) to a class 3 (restaurant) would be unacceptable in that not only would it result in the further loss of retail in the defined area, but it would also not comply with policy CC 3 as over one third of the businesses would be in non-shop use. Taking into consideration that 50% of the units within this block are currently in non-shop use, the further erosion of the retail character and excessive non-shop use of this section of George Street would have a further detrimental impact upon the vitality of the surrounding area.

This is contrary to LDP Policy Ret 9 and Policy CC 3 in the Supplementary Guidance.

b) Character and appearance of conservation area & scale, design and materials

The New Town Conservation Area Character Appraisal states that the area is typified by the formal plan layout, spacious stone built terraces, broad streets and an overall classical elegance. The buildings are of a generally consistent three storey and basement scale, with some four storey corner and central pavilions.

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 and demonstrates high standards of design and utilises materials appropriate to the historic environment.

The non-statutory 'Listed Buildings and Conservation Areas' guideline states that it is usually acceptable for an addition to be different and distinguishable from the existing building, in terms of design. The use of high-quality materials which complement the main building will be required.

The proposed works are of a modest size and scale that would have a subordinate and subservient relation with the host property and in turn the surrounding Conservation Area. The proposals would fit harmoniously within the roof plan of the application site and would be almost entirely obscured from the public realm. The proposed materials would represent suitable additions and are acceptable in this location. The proposal would have a neutral impact on the Conservation Area.

This complies with LDP Policy Env 06 and the relevant Guidance.

c) Impact on the Listed Building

LDP Policy Env 4 in the Edinburgh Local Plan (LDP) states that proposals to alter a listed building will be permitted where those alterations are justified; will not result unnecessary damage to historic structures or result in an diminution of the buildings interest; and any additions would be in keeping with other parts of the building.

The non-statutory 'Listed Buildings and Conservation Areas' guideline states that it is usually acceptable for an addition to be different and distinguishable from the existing building, in terms of design. The use of high-quality materials which complement the main building will be required.

The proposal will not have a detrimental impact on the historical architectural features and will therefore not adversely impact on the special architectural or historic interest of the listed building. The internal and external alterations are sympathetic and will not impact on any historic features. The property has also been subject to various alterations in the past.

The proposal is acceptable in this regard and complies with LDP Policy Env 04 and the relevant Guidance.

d) Residential Amenity

LDP Policy Des 5 (Development Design - Amenity) states that planning permission will be granted where it is demonstrated that the amenity of neighbouring developments is not adversely affected and that future occupiers have acceptable levels of amenity in relation to noise, daylight, sunlight, privacy or immediate outlook.

Environmental Protection were consulted as part of the application and as part of the amended 'Scheme 2' the proposal would be acceptable subject to Environmental Planning criterion being appeased. Further detail regarding Environmental Planning's consultation can be found in the consultation section.

Taking the above into consideration, the proposal would not impact on neighbouring residential amenity.

e) Tram

The Transport Planner was consulted in relation to the Edinburgh Tram. The consultation concluded that the applicant will be required to contribute the sum of £38,276 to the Edinburgh Tram in line with the approved Tram Line Developer Contributions report. Please see the consultation section for further information regarding this.

f) Road Safety

The proposal would not impact on road safety.

g) Equalities and human rights

No issues were identified.

h) Public Comments

Two comments were received. One in objection and one in support.

Material Representations (Objections) -

Noise and smell; this is addressed in section e).

Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following;

Informatives

1. Consent shall not be issued until a suitable legal agreement has been concluded in relation to tram contributions. The applicant will be required to contribute the sum of £38,276 to the Edinburgh Tram in line with the approved Tram Line Developer Contributions report.

The legal agreement should be concluded within 6 months of the date of this notice. If not concluded within that 6 month period, a report will be put to committee with a likely recommendation that the application be refused.

Background Reading/External References

To view details of the application go to the [Planning Portal](#)

Further Information - [Local Development Plan](#)

Date Registered: 25 May 2021

Drawing Numbers/Scheme

01-03a,04a.

Scheme 2

**David Givan
Chief Planning Officer
PLACE
The City of Edinburgh Council**

Contact: Conor MacGreevy, Planning Officer
E-mail:conor.macgreevy@edinburgh.gov.uk

Appendix 1

Consultations

NAME: Environmental Protection

COMMENT: The application proposes the change of use of a Class 1 retail premises to a Class 3 restaurant. The application includes the erection of a new ventilation duct and extraction system. A restaurant is situated above with residential flats further above on the upper floors. A bank is situated to the east with a restaurant to the west.

The application includes additional supporting information relating to noise and ventilation.

A noise impact assessment has been provided in support of the application which confirms that noise from normal internal operations will be inaudible within surrounding residential properties. The ventilation system requires to be fitted with attenuators/silencers within the ducting. The details have been shown on a drawing and been referenced within a condition below.

The applicant has confirmed that the ventilation system proposed will meet the requirements of this team in that it will attain a minimum of 30 air changes per hour and is ducted to eaves level. In addition, the ventilation has been designed to ensure that all odours will be vented to atmosphere to will not impact upon nearby residential properties.

Therefore Environmental Protection offers no objections to the application subject to the following conditions:

Conditions

1. The ventilation and noise mitigation details shown on drawings titled "ventilation proposal" drawing 003 Rev P2 (dated August 2021) and drawing 001 Rev P3 (dated August 2021) should be installed and operational prior to start of operations on site.
2. The ventilation extraction system noise levels should not exceed the following maximum sound pressure level (SPL) as measured 1m from the flue:

SPL @ 1m -

125Hz - 81.5
250Hz - 71.1
500Hz - 65.6
1kHz - 61.6
2kHz - 58.7
4kHz - 57.3
8kHz - 57.1

NAME:

COMMENT: No objections to the application subject to the following being included as conditions or informatives as appropriate:

1. The applicant will be required to contribute the sum of £38,276 to the Edinburgh Tram in line with the approved Tram Line Developer Contributions report. The sum to be indexed as appropriate and the use period to be 10 years from date of payment;

Note:

The tram contribution is calculated by a Net Contribution that takes the existing use of the building into consideration. The proposed development (296m² restaurant) is within zone 1 of the tram contribution zone in which the proposed use generates a contribution level of £60,448. The existing use (296m² Retail) generates a contribution level of £22,172. Therefore:

Net Use = Proposed Use - Existing Use = £60,448 - £22,172 = £38,276.

To: Conor MacGreevy
From: Colin Brown, Environmental Protection, Place

Date: 23/08/21

**TOWN AND COUNTRY PLANNING SCOTLAND ACT 1997
CHANGE OF USE FROM CLASS1 RETAIL TO CLASS3 RESTAURANT, INSTALLATION OF EXTRACT
DUCT AT 77A GEORGE STREET, EDINBURGH EH2 3ES
REFERENCE NUMBER: 21/02872/FUL**

I refer to the above and would advise that Environmental Protection has no objections to the proposed development.

The application proposes the change of use of a Class 1 retail premises to a Class 3 restaurant. The application includes the erection of a new ventilation duct and extraction system. A restaurant is situated above with residential flats further above on the upper floors. A bank is situated to the east with a restaurant to the west.

The application includes additional supporting information relating to noise and ventilation.

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2. The ventilation extraction system noise levels should not exceed the following maximum sound pressure level (SPL) as measured 1m from the flue:

	125Hz	250Hz	500Hz	1kHz	2kHz	4kHz	8kHz
SPL @ 1m (dB)	81.5	71.7	65.6	61.6	58.7	57.3	57.1

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

Comments for Planning Application 21/02872/FUL

Application Summary

Application Number: 21/02872/FUL

Address: 77A George Street Edinburgh EH2 3ES

Proposal: Change of use from class 1 retail to class 3 restaurant, installation of extract duct.

Case Officer: Conor MacGreevy

Customer Details

Name: Ms Lynn Mackenzie

Address: 44/7 Frederick Street 44/7 Frederick Street Edinburgh

Comment Details

Commenter Type: Neighbour-Residential

Stance: Customer objects to the Planning Application

Comment Reasons:

- Councillor's Reference

Comment: I would like confirmation that the ducts will not create noise or create smells and will not be a deterioration in my outlook from my bedroom or sitting room.

I have had to make previous complaints re noise from the ducts in this area to the council which were upheld.

Until I have full assurance on these 3 points I have to object to the planning application.