

Gilberts.
FAO: George Gilbert
39 Grassmarket
Edinburgh
EH1 2HS

Tourist Services [Edinburgh] Ltd.
38 Quality Street
Edinburgh
EH4 5BS

Decision date: 31 August 2022

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

Vary Condition 1 of Planning Consent 14/01199/FUL to permit the opening of the cafe / restaurant until 11.00pm.
At 44 Main Street Edinburgh EH4 5AA

Application No: 22/03376/FUL

DECISION NOTICE

With reference to your application for Planning Permission registered on 29 June 2022, 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:-

Reason for Refusal:-

1. The increase in opening hours is likely to have a materially detrimental effect on the living conditions of nearby residents which is contrary to Policy Hou 7 of the Edinburgh Local Development Plan.

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

Drawings 1, 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 does not comply with the Edinburgh Local Development Plan and the Council's Non -statutory guidance as the proposal would likely lead to an increase in noise and disturbance to the detriment of living conditions for nearby residents. There are no other material considerations to outweigh this conclusion.

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 Jennifer Zochowska directly at jennifer.zochowska@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
44 Main Street, Edinburgh, EH4 5AA**

Proposal: Vary Condition 1 of Planning Consent 14/01199/FUL to permit the opening of the cafe / restaurant until 11.00pm.

**Item – Local Delegated Decision
Application Number – 22/03376/FUL
Ward – B01 - Almond**

Recommendation

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

Summary

The proposal does not comply with the Edinburgh Local Development Plan and the Council's Non -statutory guidance as the proposal would likely lead to an increase in noise and disturbance to the detriment of living conditions for nearby residents. There are no other material considerations to outweigh this conclusion.

SECTION A – Application Background

Site Description

The site lies on the south side of Main Street, Davidson's Mains and relates to the ground floor premises of a two storey building operating as a cafe / restaurant. To the west lies a residential property and to the east lies a retail unit at ground floor with residential above.

The site lies in Davidson's Mains Local Shopping Centre.

Description Of The Proposal

The proposal is a Section 42 application to vary condition 1 of planning permission 14/01199/FUL to permit the opening of the cafe/restaurant until 11pm.

Supporting Information

Report

Relevant Site History

14/01199/FUL
44 Main Street
Edinburgh
EH4 5AA

Change use of existing premises from Class 1 (Home Video Rental) to Class 3 (Cafe/Bistro).

Granted
30 May 2014

Other Relevant Site History

Consultation Engagement

Environmental Protection

Publicity and Public Engagement

Date of Neighbour Notification: 11 July 2022

Date of Advertisement: 15 July 2022

Date of Site Notice: 15 July 2022

Number of Contributors: 10

Section B - Assessment

Determining Issues

Section 42 of the Town and Country Planning (Scotland) Act 1997 (the Act) relates to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.

On such an application the planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and'

(a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly;

(b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.

If an application under Section 42 of the Act is granted it creates a new planning permission with a new default time period for implementation unless otherwise determined. Accordingly, the proposals also require to be determined under Sections 25 and 37 of the Act.

Therefore, consideration shall be given to the proposed change to the condition and any other conditions attached, in particular whether:

- i) the proposed change to the condition would result in a development that is in accordance with the plan; or
- ii) an alternative condition or conditions would result in a development that is in accordance with the plan; and
- iii) there are any material considerations that outweigh the conclusions in respect of i) and ii) above

Assessment

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

a) The proposals comply with the development plan?

The Development Plan comprises the Strategic and Local Development Plans. The relevant Edinburgh Local Development Plan 2016 (LDP) policies to be considered are:

- LDP Shopping policies Ret 5
- LDP Housing policy Hou 7

The non-statutory Business Guidance is a material consideration that is relevant when considering policies Ret 5 and Hou 7.

Principle of Development

The site lies in Davidsons Mains Local Shopping Centre where LDP policy Ret 5 applies.

At present, the premises is permitted to open until 9pm in the evening seven days a week. The surrounding area has an established mixed residential/commercial character which encompasses several nearby commercial premises which operate late into the evening.

The proposed extension of operating hours would allow the premises to operate in a similar manner to the existing commercial use and will accord with the established commercial characteristics of the area.

The proposal will maintain and enhance the character, attractiveness and accessibility of the town centre, and complies with LDP policy Ret 5.

Residential Amenity

LDP Policy Hou 7 relating to inappropriate uses in residential areas, states that developments, including a change of use, which would have a materially detrimental effect on the living conditions of nearby residents, will not be permitted.

The property has been in use as a café with the hours of operation restricted from 0730 am to 9pm.

The application premises are situated on a main thoroughfare road where the existing ambient noise environment would be dominated by a certain amount of traffic and footfall noise. The two-storey unit is located at the end of a row of shops to the west are residential properties and there is a residential unit on the upper floor. Whilst there are other premises on Main Street, Davidsons Mains which open later into the evening these are further away from residential premises.

Environmental Protection does not support the increase in opening hours as this is likely to lead to extending the opening hours would cause further disturbance to the neighbours and reduce their amenity

The proposal does not comply with LDP policy Hou 7.

Road Safety and Car Parking

There is restricted on-street parking on this part of Main Street. The street is served by public transport and on street parking is available in the neighbouring streets. There are no concerns in relation to road safety.

Conclusion in relation to the Development Plan

The proposal does not comply with policies LDP Ret 11 and Hou 7 of the Edinburgh Local Development Plan as the proposal may lead to a significant increase in noise and disturbance to the detriment of living conditions for nearby residents.

b) There are any other material considerations which must be addressed?

The following material planning considerations have been identified:

SPP - Sustainable development

Scottish Planning Policy (SPP) is a significant material consideration due to the LDP being over 5 years old. Paragraph 28 of SPP gives a presumption in favour of development which contributes to sustainable development. Paragraph 29 outlines the thirteen principles which should guide the assessment of sustainable development.

The proposed development does not comply with SPP principle 13, as it would not protect the amenity of nearby residents by virtue of increase noise and disturbance.

Emerging policy context

The Draft National Planning Framework 4 has been consulted on but has not yet been adopted. As such, little weight can be attached to it as a material consideration in the determination of this application.

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

Equalities and human rights

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.

Public representations

A summary of the representations is provided below:

material considerations - support

- Few places to eat out shame to restrict the times ' assessed in section a)

material considerations - objections

- Additional traffic and no on street parking late at night. Assessed in section a).
- Noise and on-street disturbance. Assessed in section a).
- additional cooking smells late at night. Assessed in section a).

non-material considerations

- Behaviour and actions of applicant
- Ownership and access issues
- No smoking area proposed
- Already 10 places offering food

Conclusion in relation to identified material considerations

The proposal does not accord with the relevant sustainable development policy principles set out in SPP. There are no other issues raised in the material considerations

Overall conclusion

The proposal does not comply with the Edinburgh Local Development Plan and the Council's Non -statutory guidance as the proposal would likely lead to an increase in noise and disturbance to the detriment of living conditions for nearby residents. There are no other material considerations to outweigh this conclusion.

Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following;

Reason for Refusal

1. The increase in opening hours is likely to have a materially detrimental effect on the living conditions of nearby residents which is contrary to Policy Hou 7 of the Edinburgh Local Development Plan.

Background Reading/External References

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

Further Information - [Local Development Plan](#)

Date Registered: 29 June 2022

Drawing Numbers/Scheme

1

Scheme 1

David Givan
Chief Planning Officer
PLACE
The City of Edinburgh Council

Contact: Jennifer Zochowska, Senior Planning Officer
E-mail:jennifer.zochowska@edinburgh.gov.uk

Appendix 1

Consultations

NAME: Environmental Protection

COMMENT: Environmental Protection does not support the increase in opening hours as this is likely to lead to extending the opening hours would cause further disturbance to the neighbours and reduce their amenity

DATE: 5 August 2022

The full consultation response can be viewed on the Planning & Building Standards Portal.

Comments for Planning Application 22/03376/FUL

Application Summary

Application Number: 22/03376/FUL

Address: 44 Main Street Edinburgh EH4 5AA

Proposal: Vary Condition 1 of Planning Consent 14/01199/FUL to permit the opening of the cafe / restaurant until 11.00pm.

Case Officer: Local1 Team

Customer Details

Name: Mr Robin Harrison

Address: 44A Main Street Davidsons Mains EDINBURGH

Comment Details

Commenter Type: Neighbour-Residential

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: We are the owners of the property above 44 Main Street

We are objecting to the later opening time application again as we did back in around 2014

The basis is quite simple as before

We pointed out previously that we have a bedroom which our grandchildren sleep in at the front of the property

There is a unique situation to this particular property in respect to the fact we actually own the land outside the property

It is in fact our front garden

We are required to allow access to property which is fine however it is not acceptable to have people walking around our private property and cars when we are trying to get to sleep

The 9pm closing time was set in stone by the planning committee and we were assured this was the end of it

I would also like to point out that there have been many many complaints to the council and police regarding noise and closing time breaches

Your sincerely

Robin Harrison

Comments for Planning Application 22/03376/FUL

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Proposal: Vary Condition 1 of Planning Consent 14/01199/FUL to permit the opening of the cafe / restaurant until 11.00pm.

Case Officer: Local1 Team

Customer Details

Name: Ms Ann Stewart

Address: 44a Main Street Davidsons Mains Edinburgh

Comment Details

Commenter Type: Neighbour-Residential

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: I am the co owner of the property above 44 Main St and strongly object to the application to extend the opening hours to 11pm. It is absurd as the closing time of 9pm was set in stone by the council due to the unique layout of the property.

We have bedrooms to both the front and rear of the property and would be unreasonable to expect us to put up with this as their kitchen and prep area under main bedroom.

The other major factor is we own the front of the property, we have to allow access in and out to downstairs but that is our front garden and our car parking spaces and we do not want people crossing our garden after 9pm and the council agreed to this.

I often sleep with windows open and this would be a disturbance to us and our life.

I can't believe this application has been made as was strongly objected to the last time and we were assured that the 9pm closing was final decision.

Kind regards

Ann Stewart

Comments for Planning Application 22/03376/FUL

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Address: 44 Main Street Edinburgh EH4 5AA

Proposal: Vary Condition 1 of Planning Consent 14/01199/FUL to permit the opening of the cafe / restaurant until 11.00pm.

Case Officer: Local1 Team

Customer Details

Name: Mrs Catherine Mason

Address: 42 1F1 Main Street Davidson's Mains Edinburgh

Comment Details

Commenter Type: Neighbour

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: This is a quiet village and I feel we have enough Eateries/Carry Out Food outlets. Also there is the noise issue, I don't think people realise how sound carries late at night and at 11pm the elderly and young children will be in bed.

Also there is the issue of parking.

Comments for Planning Application 22/03376/FUL

Application Summary

Application Number: 22/03376/FUL

Address: 44 Main Street Edinburgh EH4 5AA

Proposal: Vary Condition 1 of Planning Consent 14/01199/FUL to permit the opening of the cafe / restaurant until 11.00pm.

Case Officer: Local1 Team

Customer Details

Name: Mr Andy Cole

Address: 48A Main Street Davidson's Mains Edinburgh

Comment Details

Commenter Type: Neighbour

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: I am emailing you to note my objection to 44 Main St being allowed to open until 11pm. We had enough problems last time with closing time at 9pm.

I don't want a repeat of last time with people hanging around under my windows both at the front and back, being loud, smoking, drunk rolling about the pavement on a couple of occasions and bins being moved from the back to the front late on.

I am surprised that this application has been submitted at all as closing time of 9pm confirmed by council.

I know it caused upstairs neighbours a lot of hassle.

Andrew Gordon Cole

Comments for Planning Application 22/03376/FUL

Application Summary

Application Number: 22/03376/FUL

Address: 44 Main Street Edinburgh EH4 5AA

Proposal: Vary Condition 1 of Planning Consent 14/01199/FUL to permit the opening of the cafe / restaurant until 11.00pm.

Case Officer: Local1 Team

Customer Details

Name: Mr John George McFadden

Address: 1 CORBIEHILL PLACE EDINBURGH

Comment Details

Commenter Type: Neighbour-Residential

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment:unwarranted increase in a quiet residential area.

Additional cooking smells late at night.

Comments for Planning Application 22/03376/FUL

Application Summary

Application Number: 22/03376/FUL

Address: 44 Main Street Edinburgh EH4 5AA

Proposal: Vary Condition 1 of Planning Consent 14/01199/FUL to permit the opening of the cafe / restaurant until 11.00pm.

Case Officer: Jennifer Zochowska

Customer Details

Name: Mrs Sarah Gant

Address: 7A Quality Street Lane Edinburgh

Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: This extension of hours should not go ahead. When the 'cafe' was opened before until 9.00pm there were noisy diners smoking and drinking outside the 'cafe', it was disgusting behaviour and we the residents had to put up with this. The owner of these premises (and others he owns in the village) has ruined our village, through his greed he has changed our village from a quiet tranquil place to a tacky, cheap, litter strewn hovel. If this goes ahead, it will be the final nail in the coffin to call Davidson's Mains a "nice place to stay".

Comments for Planning Application 22/03376/FUL

Application Summary

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Case Officer: Jennifer Zochowska

Customer Details

Name: Mr Chris Powell

Address: 13 Corbiehill Rd Edinburgh

Comment Details

Commenter Type: Neighbour-Residential

Stance: Customer made comments in support of the Planning Application

Comment Reasons:

Comment:there are relatively few places to dine out in the evening in the area. Since pubs and takeaways in the vicinity open later, it would be unreasonable to restrict this particular business to 2130. It would also be useful when dining out not to have to leave by 2130.

Comments for Planning Application 22/03376/FUL

Application Summary

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Address: 44 Main Street Edinburgh EH4 5AA

Proposal: Vary Condition 1 of Planning Consent 14/01199/FUL to permit the opening of the cafe / restaurant until 11.00pm.

Case Officer: Jennifer Zochowska

Customer Details

Name: Mr Robin Watson

Address: 50 Main Street Davidsons Mains EDINBURGH

Comment Details

Commenter Type: Neighbour

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: Good afternoon,

I have reservations, being a close neighbour, to the proposed new alterations.

I believe that changing the premise license could negatively impact the area and those residing within for the following reasons:

- * Additional traffic with no local parking available.
- * Another location (on top of the current 4 premises which sell alcohol.
- * There are already 10 premises offering food in this area.
- * Foot traffic for said premise includes smokers with no smoking area to accommodate them. I would imagine, that customers would then stand out on the street in the evenings smoking and chatting directly outside neighbours properties making noise and dropping cigarette butts at what most of us class as late up to 11 pm.
- * Bins?

I am not adverse to young people developing businesses and setting out to provide for their families, however, the quiet village is fast becoming a thorough fair for traffic, people looking to get drunk, eat and leave the residents with the mess, noise and nowhere to park.

Comments for Planning Application 22/03376/FUL

Application Summary

Application Number: 22/03376/FUL

Address: 44 Main Street Edinburgh EH4 5AA

Proposal: Vary Condition 1 of Planning Consent 14/01199/FUL to permit the opening of the cafe / restaurant until 11.00pm.

Case Officer: Jennifer Zochowska

Customer Details

Name: Org Davidson's Mains & Silverknowes Association Cowe

Address: 151 Main Street Davidson's Mains EDINBURGH

Comment Details

Commenter Type: Residents Association

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: These comments are being made on behalf of the Management Committee of the Davidson's Mains and Silverknowes Association (DMSA) who have considered this application to extend the opening hours of the cafe/restaurant from a closing time of 9.30 pm to a later time of 11pm.

The basis of the application is that the applicant wishes to seek parity and equality of trading conditions with the other hot food outlets in the village which are variously permitted to open until 10.30 or 11 pm.

The DMSA recognises that the applicant has made the case for extending the opening hours until a later time given the situation with the other food outlets but we have some concern about the impact of possible noise and inconvenience for the residents in the domestic flat above the cafe/restaurant and in other domestic properties in very close proximity. Some of these residents have contacted us to register their concerns.

In our opinion an extension of the opening hours until 10.30 pm would be an appropriate compromise to meet the operating requirements of the cafe/restaurant, but also take into account the concerns of the residents.

This is a question of judgement and while we are opposed to the extension of opening hours to 11 pm we would support an extension to 10.30 pm.

Yours sincerely

Davidson's Mains & Silverknowes Association

Charlotte Cowe

Secretary

From: Charlotte Cowe [REDACTED]
Sent: 07 August 2022 08:12
To: Planning Local1 <planning.local1@edinburgh.gov.uk>
Cc: DMSA Com Rod Alexander [REDACTED]
Subject: Planning Reference: 22/03376/FUL

Planning Reference: 22/03376/FUL 44 Main Street, Davidson's Mains, Edinburgh, EH4 5AA

I am making these supplementary comments on behalf of the Davidson's Mains and Silverknowes Association (DMSA)

I tried to submit them on line on Friday 5 August but the website was down so I would be obliged if you would pass them on to the Chair and Members of the relevant Committee and the appropriate Planning Officers for consideration.

The DMSA has already commented on this application with a submission on Friday 29 July which objected to an extension of the opening hours until the requested 11 pm , with a recommendation that 10.30 pm would be more appropriate. That recommendation was based on our knowledge of the local situation with food outlets in the village and our understanding of the operation of businesses who have occupied the premises.

Since our submission we have been contacted by the occupants of the flat above the premises who tell us that there is a long history of complaints to the Council and the Police about excessive noise and anti social behaviour from patrons of the cafe/restaurant and also breaches of the closing time by the management. The occupants of the flat have been unable to give us any details of dates, times or events although they say the Council and the Police will have records of any complaints. This means that we do not have any firm basis on to change our earlier recommendation but we would suggest it may be reasonable for the Committee and Council Officers to check the records and take account of any relevant details before reaching a decision.

Charlotte Cowe, Secretary DMSA

25 Bobriehill Place,

Edinburgh

EH 4 5AX.

15th July, 2022.

Dear Sir / Madam.

Thank you for the neighbour Notification Application number 22/03376/FUL, although I was very disappointed to read this I was compelled once again to write to you. I will keep this brief as you will have all my previous letters.

In no such circumstances do I think that any cafe / bistro / restaurant should open again in Main Street especially untill 11 PM. or have any form of music from these premises.

yours faithfully

[Redacted Signature]