



LICENSING BOARD

SUMMARY PREMISES LICENCE

Issued by The City of Edinburgh Licensing Board under the terms and conditions of the Licensing (Scotland) Act 2005

Premises licence number 08/11947

Postal address of premises

1 Commercial Street
Edinburgh

Postcode EH6 6JA

Telephone number

Description of premises

Premium Dining Public House & Restaurant

Name and postal address (or registered address if a company) of premises licence holder

Punch Partnerships (PTL) Limited
Elsley Court
20-22 Great Titchfield Street
London
W1W 8BE

Registered number of premises licence holder, e.g. company number, charity number (where applicable)

03512363

Name of premises manager named in the operating plan

Ms Carol Ann Lawrie

Granted: 5 March 2018



LICENSING BOARD

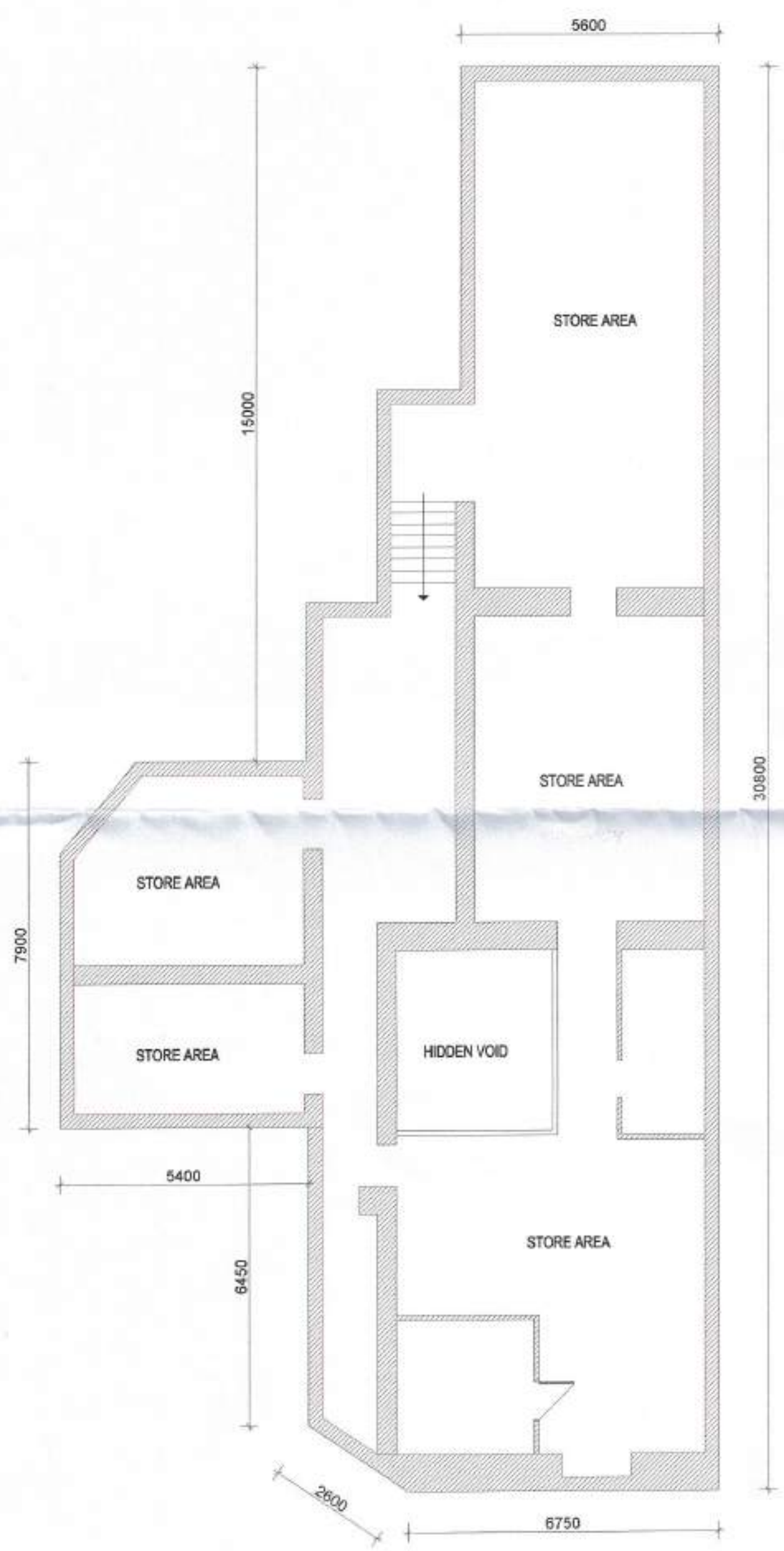
Licence Conditions

The mandatory conditions set out in schedule 3 to the Licensing (Scotland) Act 2005 will apply.

The following local conditions will also apply:-

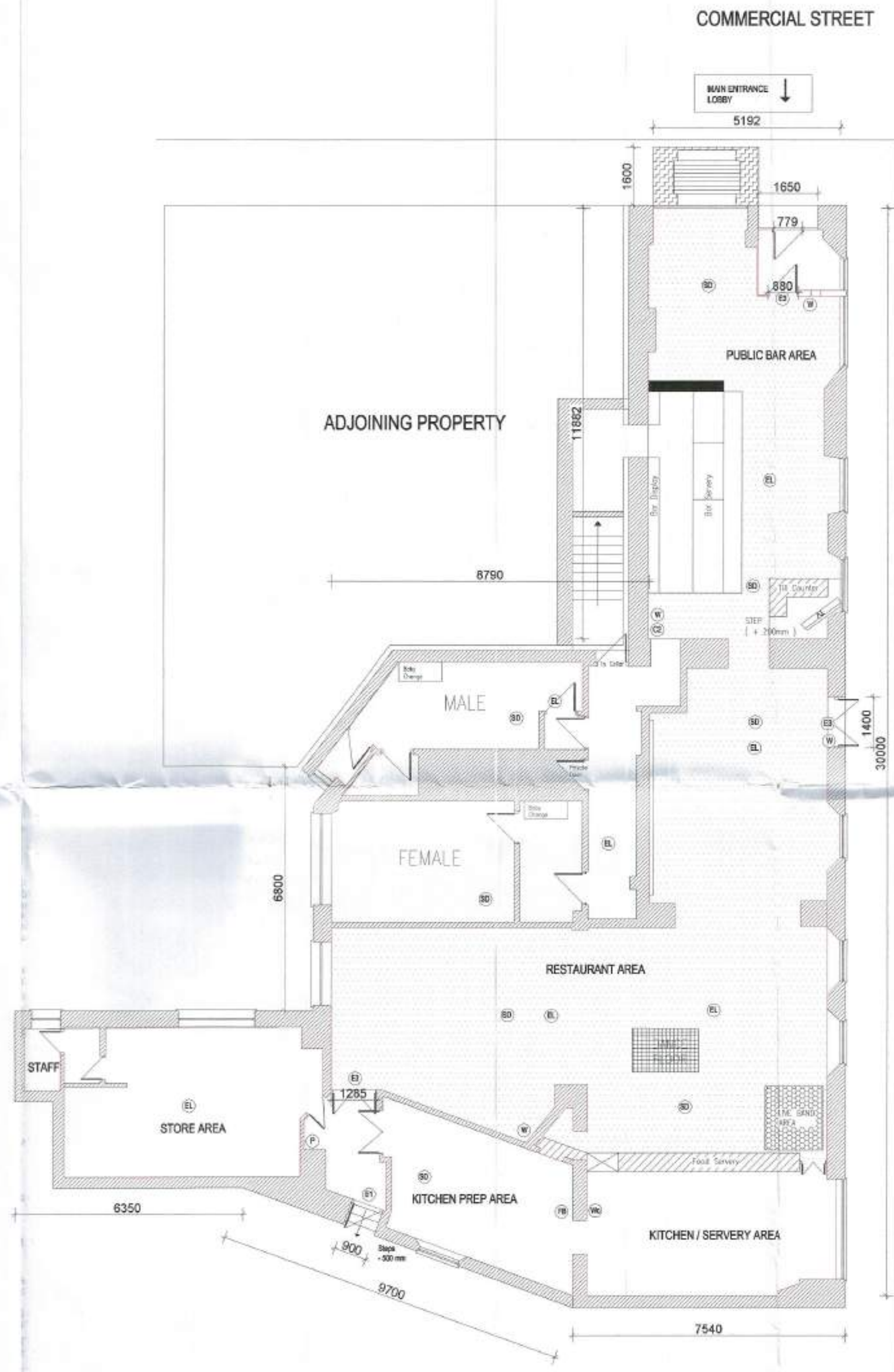
- (1) All amplified music and vocals shall be so controlled as to be inaudible in neighbouring residential premises

NOTES:
 This drawing is copyright. It is sent to you in confidence and must not be reproduced or disclosed to third parties without our prior permission.
 This drawing is to be read in conjunction with all relevant consultants, specialist manufacturers drawings and specifications.
 Any discrepancies in dimensions or details on or between these drawings should be drawn to your attention.
 All dimensions are in millimetres unless noted otherwise.
 Any surveyed information incorporated within this drawing cannot be guaranteed as accurate unless confirmed by fixed dimension.
 All electrical works required to meet the requirements of Part P (Electrical Safety) must be designed, installed, inspected and tested by a person competent to do so.
 This may require an appropriate BS 7671 electrical installation certificate to be issued for the work by a person competent to do so.

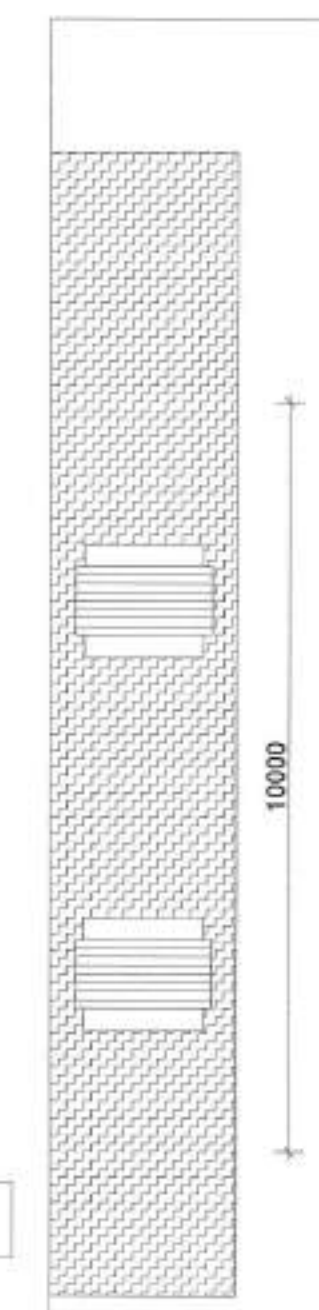


BASEMENT / CELLAR AREAS

NOTE:
 BASEMENT CONTAINS OTHER AREAS /CHAMBERS WHICH COULD NOT BE ACCESSED OR HAVE BEEN BLOCKED UP



**GROUND FLOOR PLAN
 No 1 COMMERCIAL STREET**



LEGEND

- (EL) EMERGENCY LIGHTING
 - (SD) SMOKE DETECTOR
 - (W) WATER EXTINGUISHER
 - (F) FOAM EXTINGUISHER
 - (D) DRY POWDER EXTINGUISHER
 - (FB) FIRE BLANKET
 - (CO) CO2 EXTINGUISHER
 - (WC) WET CHEMICAL EXTINGUISHER
 - (E) ILLUMINATED 'EXIT' SIGN
 - (EA) ILLUMINATED 'EXIT' SIGN WITH DIRECTIONAL ARROW
 - CC CIGARETTE VENDING MACHINE
 - AMP FRUIT MACHINE
 - SMT QUIZ MACHINE
 - TV TELEVISION / PLASMA SCREEN
 - J BOX JUNK BOX (AUDIBLE THROUGHOUT PREMISES)
 - DB DART BOARD
 - LP LOW LEVEL PARTITIONS
 - IF INTERNAL FIXED SEATING
 - ES EXTERNAL SEATING AREA
- POOL TABLE
 - CHILDREN & YOUNG PERSON AREAS (Where children and/or young persons are permitted entry to the premises they will be allowed to use the toilets and all appropriate means of egressing the toilet and the other part or parts of the premises to which they are allowed entry)
 - LIVE MUSIC / DJ (ALSO SEE THROUGHOUT PREMISES) KARAOKE WILL BE PROVIDED THROUGHOUT THE PREMISES RECORDED MUSIC WILL BE PROVIDED THROUGHOUT THE PREMISES
 - DANCE FLOOR AREA
 - PAVED SEATING AREA
 - PAYMENT SEATING
 - EXTRA LICENSED AREA
 - NET TRADE AREA 240 SQM
- ALCOHOL WILL BE SOLD WITHIN THE PART OR PARTS OF THE PREMISES INCLUDED WITHIN THE RED LINE.
 FOOD MAY ALSO BE PROVIDED WITHIN THE AREA WHERE ALCOHOL WILL BE SOLD AND CONSUMED.
 ANY CONFERENCE FACILITIES/RECEPTIONS ETC/CLUB OR OTHER GROUP MEETINGS MAY TAKE PLACE THROUGHOUT THE PREMISES.
 THEATRE FACILITIES MAY BE PROVIDED THROUGHOUT THE PREMISES.
 GAMING WILL TAKE PLACE WITHIN THE PREMISES.

Note: Children aged 0-17 years allowed on premises 11.00-01.00hrs

This is the layout plan approved by the City of Edinburgh Licensing Board on:
 Date: 30/03/09
 Relative to Premises Licence Number: 08/11947.
 Gill Lindsay
 Clerk of the Licensing Board

REV	DATE	DESCRIPTION	INITIAL	CHECKED
B	16.10.08	Basement areas added	DGB	
A	13.05.08	Rear store and corridor added. Music area also added	DGB	

Head Projects

CLIENT: Punch Taverns Plc
 PROJECT: Scottish Licensing
 TITLE: Guilianos on the Shore 1 Commercial St Edinburgh - Outlet - 727721

Winnersh, Reading 0118 930 6060
 SCALE: 1:100
 DATE: 18.03.2008
 PROJECT NO: Tier 2

DRAWN: HEJ
 CHECKED: DGB
 727721 | B

1/12/08
 Approved Plans

PLANNING APPEAL – ONLINE REFERENCE 100570752-002

1 COMMERCIAL STREET, EDINBURGH EH6 6JA

NEW DECKING AREA FOR EXTERNAL TABLES AND CHAIRS INCLUDING STEEL CLADDING, PORTABLE OAK BARREL PLANTERS WITH TOUGHENED GLASS SOUND DIFFUSERS, 2 PARASOLS WITH 4M COVER AND BRASS LIGHTING

(PLANNING REF: 22/02836/FUL)

LIST OF DOCUMENTS FOR APPEAL

The following documents are relied upon to support the appeal case:

Please note other documents such as Local Development Plan, Supplementary Planning Guidance, Advice Notes, Scottish Government policy and guidance are not reproduced. We have assumed, at this stage, City of Edinburgh Council can provide these if necessary.

Document 01 – Decision Notice Application Ref: 22/02836/FUL dated 24.10.22

Document 02 – Report of Handling of Planning Application 22/02836/FUL

Document 03 – Minute of Local Review Body meeting 13th October 2021 for planning reference 19/04799/FUL

Document 04 – Restaurant Licence Approval by CEC with Premises Floorplan showing approved outdoor seating plan

Document 05 – Decision Notice for previously refused planning application 19/04799/FUL December 2019

Document 06 – Google Aerial Photo image taken 2012 showing outdoor street area with enclosed seating

Document 07 – City of Edinburgh Council's Non- Statutory Guidance for Business 2021

Document 08 – Environmental Protection consultation response to planning application 22/02836/FUL

Full Planning application drawings and sections, application form, landowner certification all as submitted for planning approval 22/02836/FUL.

2020-02

17th December 2022

The City of Edinburgh Council
Local Review Body
Business Centre
G.2 Waverley Court
4 East Market Street
Edinburgh
EH8 8BG

Emailed to: planning.systems@edinburgh.gov.uk

Dear Sir/Madam

PLANNING APPEAL TO LOCAL REVIEW BODY – ONLINE REFERENCE 100570752-002

**1 COMMERCIAL STREET, EDINBURGH EH6 6JA
NEW DECKING AREA FOR EXTERNAL TABLES AND CHAIRS INCLUDING STEEL CLADDING,
PORTABLE OAK BARREL PLANTERS WITH TOUGHENED GLASS SOUND DIFFUSERS, 2
PARASOLS WITH 4M COVER AND BRASS LIGHTING
(PLANNING REF: 22/02836/FUL)**

We are instructed by Metro Inns Ltd to request that City of Edinburgh Local Review Body reviews the decision by the planning authority to refuse planning permission for the above proposed development. The Review has been electronically submitted with reference 100570752-002.

The Review Documents comprise the following:

- Completed Notice of Review forms
- Grounds for Review Statement
- List of Documents intended to be relied upon in the Review

Should you require any further information to assist in determining the Review, please contact me in the first instance.

Yours sincerely,



Neil Gray
MA (Hons), MSc, Dip TP, MRTPI
Director
GRAY PLANNING & DEVELOPMENT Ltd
E: neil@grayplanning.co.uk
M: 07514 278498

2020-02

27th May 2022

The City of Edinburgh Council
City Development
Waverley Court,
4 E Market St,
Edinburgh EH8 8BG

Email to: planning.support@edinburgh.gov.uk

Dear Sir/Madam

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED 2006)

**NEW DECKING AREA FOR EXTERNAL TABLES AND CHAIRS INCLUDING STEEL CLADDING,
PORTABLE OAK BARREL PLANTERS WITH TOUGHENED GLASS SOUND DIFFUSERS, 2
PARASOLS WITH 4M COVER AND BRASS LIGHTING**

1 COMMERCIAL STREET EDINBURGH EH6 6JA

We are instructed by Metro Inns Ltd to submit a full planning application for the above proposed works. The application has been made online at e-Planning.Scot, with reference 100570752-001 and comprises drawings and documents as listed below:

- Design Statement by G1 Architects (to follow).
- Planning Statement by Gray Planning & Development Ltd (Follows overleaf in this letter)
- Location Plan, 790-G1-B1-00-DR-A-SP01 PL - Location Plan
- Existing drawing, 790 G1 XX XX DR A PI01 S0 PL Existing
- Proposed drawing 790 G1 XX XX DR A PL02 PL P1_ Plans with South and East Elevations Proposed
- Proposed drawing 790 G1 XX XX DR A PL03 PL P1 Plans with N and W Elevations Proposed
- Imagery to reflect maritime and whisky context - 790 G1 XX XX DR A PI01 S0 PL Leith Image
- Copy of Premises Licence as agreed by City of Edinburgh Licencing Board

In line with the Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Regulations 2022, for the proposal meets category 4 which states “4. *The construction of buildings, structures or erections including extensions (other than construction within categories 1, 5, and 6). And (b) where the gross floor space created exceeds 50 square metres, £600 in respect of any gross floor space up to 100 square metres*” – the total fee payable in this case is £600. This fee has been paid electronically to City of Edinburgh Council today.

Contd./

We trust the information enclosed is sufficient to register and proceed the planning applications. If you require any further assistance, please contact me.

Yours sincerely,

A black rectangular redaction box covering the signature of Neil Gray.

Neil Gray

MA (Hons), MSc, Dip TP, MRTPI

Director

GRAY PLANNING & DEVELOPMENT Ltd

E: neil@grayplanning.co.uk

M: 07514 278498

PLANNING STATEMENT

NEW DECKING AREA FOR EXTERNAL TABLES AND CHAIRS INCLUDING STEEL CLADDING, PORTABLE OAK BARREL PLANTERS WITH TOUGHENED GLASS SOUND DIFFUSERS, 2 PARASOLS WITH 4M COVER AND BRASS LIGHTING

1 COMMERCIAL STREET EDINBURGH EH6 6JA

The proposal is seeking full planning permission for erection of a 61 sq m external decking area with portable planters and parasols, associated with the existing long-established restaurant business at 1 Commercial Street – currently known as ‘Hemingways’. The restaurant has operated since 2017 by Metro Inns Ltd (Margherita Restaurants) and before then, known as ‘Giulianos on the Shore’ (operated by the Giuliano family). A restaurant use has operated here for over 40 years. The property is a lease from Star Bars and includes up to 10 car parking spaces. The property stands on the corner of Commercial Street and Commercial Wharf which is a cul-de-sac leading to a converted warehouse to the immediate south.

The proposed development is to be located within an existing car parking area serving the restaurant and surrounding properties. The proposal site lies in the Leith Conservation Area, and situated on a cobbled section of Commercial Wharf.

The proposed decking structure will not be attached to the existing building housing the restaurant (within the ground floor of a Grade B-Listed Building) so no Listed Building Consent is necessary for the development.

The decking area would house tables and chairs for customers and would be wheelchair accessible. The decking superstructure would be formed in treated timber, then clad in blackened steel and decorated with brass nautical downlights. Two parasols each with 4m covers in sail white adorned with Hemingways branding would be erected overhead. Fourteen oak barrel planters with toughened glass would be erected as sound diffusers. The new proposals are designed to project a much higher quality of materials and finish. The new proposals also take influence from the location’s maritime and whisky distilling history (with the use of brass, ropeworks, oak barrels, sail white parasols and darker colour finishes). The applicants are looking to continue the tradition of outdoor seating which was started by Giulianos, over 30-years ago, through significant improvement to the design on recent external seating which was deemed to be unlawful and did not meet the high quality of appearance and finish expected of the location in the Leith Conservation Area.

This new proposal has come forward since a recent planning history provoked enforcement action by City of Edinburgh Council for the unlawful erection of a decking area with tables, chairs, planters and perspex screens (ref 19/00708/EOPDEV). Following refusal of a planning application submitted retrospectively for the development described (ref 19/04799/FUL) on 6th December 2019, the owners appealed the decision. The appeal was subsequently upheld by the Council’s Local Review Body on 13th October 2021. The City of Edinburgh Council then enforced the unlawful development with the issue of Enforcement Notice on 13th December 2021. The owners appealed the terms of the Enforcement Notice to Scottish Ministers, which was dismissed on 11th March 2022. This resulted with the owners’ complying with the terms of the Enforcement Notice as issued by City of Edinburgh Council, whereby all decking, tables, chairs, parasols, planters and perspex screens were removed from the site and the site returned to its previous condition, earlier this year.

This new proposal is now submitted to seek the planning authority's permission to lawfully develop the site for a much improved proposed decking area where the attention to improved design, use of higher quality materials and finishes has been prioritized in the proposals. As it is argued in this Statement, the new plans address the previous concerns of the planning authority raised during determination of the previous scheme and address the reasons for the subsequent enforcement action which was progressed.

Details of the form and design of the decking, parasols, planters and high quality finishes is found in the drawings and accompanying Design Statement, which have been prepared by G1 Architects as follows:

- Existing Plan (790 G1 XX XX DR A PI01 S0 PL Existing)
- Proposed drawing 790 G1 XX XX DR A PL02 PL P1_ Plans with South and East Elevations Proposed
- Proposed drawing 790 G1 XX XX DR A PL03 PL P1 Plans with N and W Elevations Proposed
- Imagery to reflect maritime and whisky context - 790 G1 XX XX DR A PI01 S0 PL Leith Image.

Broadly, the proposed development components are the same as before, but with a much improved design and use of higher quality materials and finishes, which are influenced by the location's maritime and whisky heritage as follows:

- The decking, parasols and planters will be housed externally and not fixed to the existing building. The decking and planters would therefore be moveable.
- The decking superstructure would be formed of treated timber. The area of 61 sq m. It would have 2 entrances including a wheelchair accessible entrance.
- The decking superstructure would be clad in blackened steel and decorated with brass nautical downlights
- Two parasols each with 4m covers in sail white adorned with 'Hemingways' branding (in black and white lettering) would be erected overhead.
- Fourteen oak barrel planters with toughened glass would be erected on the decking perimeter as sound diffusers

The applicants are seeking to extend the tradition of outdoor seating utilised by the previous occupants (Giulianos) during 2005-2017 and to regularise the most recent period of outdoor seating which was subject to refusal of planning permission and subsequent enforcement action in 2019-22. There had been external seating without any objection or enforcement action prior to the enforcement matter being raised in 2019.

Feedback from the Planning Local Review Body (LRB) is summarised below (taken from the minute of the LRB meeting), which lists relevant concerns with the previous unlawful scheme. The new planning application seeks to remedy and significantly improve the quality and appearance of the proposed decking (our comments in italic as response):

- Whether the colour of the planters was appropriate ? *(the planters are proposed to be oak barrel finish, which is more in keeping with the blend of other materials and colours proposed rather than the purple tone previously applied which matched the premises branding).*

- There was an additional area of decking which had been added during Covid for which no planning permission existed either. – *the decking proposed in this application is for 61 sq m to be housed on the position as shown.*
- That the decking had an unsightly appearance -*the proposed decking would be clad in blackened steel and decorated with brass nautical downlighters. The use of oak barrels for planters and toughened glass as acoustic barriers, white sail parasols, along with ropework decoration all blend in terms of colour, materials and finish to the projected maritime and whisky heritage associated with the Leith area.*
- That the statement from Environmental Protection to the Appeal advised that there was no nearby overlooking properties and there were no noise concerns confirmed by Environmental Health, and that there had been no recent change to this in the intervening period since the matter was last considered by the LRB panel 1 on 27 May 2020. – *this should continue to be the case given that the applicants have complied with enforcement requests to remove the previous decking and return the site to its previous condition.*
- That the impact on the conservation area was concerning – *the planning policy assessment ahead will demonstrate that the attention to higher quality design, finish and use of materials makes a significant improvement visually and architecturally to be sensitive to the character and appearance of the conservation area.*
- Whether the appellant had the option to resubmit their application with revised proposals – *this planning application is a direct response.*
- That the application should be overturned on the basis of Env 6 – *the planning policy assessment ahead will demonstrate that the proposed development meets the City of Edinburgh Local Development Plan policy requirements of Env 6*
- That the outside use was appropriate during Covid – *notwithstanding the flexibility afforded by Scottish Government relaxation of planning regulations over the course of the pandemic, the applicants wish to formalise the permanent use of the location for outdoor seating.*
- That the decking detracted from the visual interests as set out within the Leith Conservation Character Appraisal, and the proposals would have a detrimental impact on this space between the Water of Leith and the adjacent buildings - *the proposed decking would be clad in blackened steel and decorated with brass nautical downlighters. The use of oak barrels for planters and toughened glass as acoustic barriers, white sail parasols, along with ropework decoration all blend in terms of colour, materials and finish to the projected maritime and whisky heritage associated with the Leith area*
- That the additions as seen on the site visit were of concern, which did not follow the form of the original planning application, but that the application would be assessed by the LRB based on what was outlined within the planning appeal - *all structures (including the additions) have subsequently been removed and site returned to its previous condition.*
- That the materials used were not of a high enough quality to have in a conservation area - *the proposed decking would be clad in blackened steel and decorated with brass nautical downlighters. The use of oak barrels for planters and toughened glass as acoustic barriers, white sail parasols, along with ropework decoration all blend in terms of colour, materials and finish to the projected maritime and whisky heritage associated with the Leith area*
- That it was understood why the appellant would wish to encourage patrons to the water of Leith area – the setting, convenience and ongoing concern for customer safety (as the pandemic continues to be around us and social distancing remains a choice for customers) then outdoor seating is a responsible hospitality approach to serving customers and to enabling a recovery of the tourism economy in Edinburgh.

Planning History

This new proposal has come forward since a recent planning history provoked enforcement action by City of Edinburgh Council for the unlawful erection of a decking area with tables, chairs, planters and perspex screens (ref 19/00708/EOPDEV).

Following refusal of a planning application submitted retrospectively for the development described (ref 19/04799/FUL) on 6th December 2019, the owners appealed the decision.

The appeal was subsequently upheld by the Council's Local Review Body on 13th October 2021.

The City of Edinburgh Council then enforced the unlawful development with the issue of Enforcement Notice on 13th December 2021. The owners appealed the terms of the Enforcement Notice to Scottish Ministers, which was dismissed on 11th March 2022.

This resulted with the owners' complying with the terms of the Enforcement Notice as issued by City of Edinburgh Council, whereby all decking, tables, chairs, parasols, planters and perspex screens were removed from the site and the site returned to its previous condition, earlier this year.

Planning Procedure and Policy Context

The proposal site is in the Leith Conservation Area. The works do not involve attachment to the Category B Listed Building but does sit within the setting of this and other surrounding listed buildings. The surrounding area is in mixed, predominantly commercial use, including shops, hotels, offices, restaurants and bars with residential properties nearby.

In terms of determining issues, 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”* and 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 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.*

The City of Edinburgh Local Development Plan 2019, particularly policies Hou 7, Env 6, Des 4 are key development plan matters for assessment, along with the Council's Approved Supplementary Guidance “Listed Buildings and Conservation Areas” 2019 and Non Statutory Guidance for Businesses 2021.

The relevance of the Leith Conservation Area Appraisal and Management Plan 2002, along with the planning history and previous consultee responses, such from Environmental Health, are considered to be material considerations in addition to the development planning framework which will be assessed in the section ahead.

Planning Policy Discussion

An assessment of the proposed development needs to consider:

- If the proposals will adversely affect neighbouring residential amenity;
- If the proposals preserve and enhance the character and appearance of the Leith Conservation Area; and
- If the proposals will adversely affect road safety.

It is also relevant to consider the economic benefit to the Leith and wider Edinburgh economy, in the ongoing circumstances of the pandemic and a future leisure economy which will continue to rely on hospitality and customer service to keep the sector thriving.

Residential Amenity

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

The Council's non-statutory Guidance for Businesses 2021 refers to circumstances where use may be permitted "*In existing clusters of commercial uses, provided it will not lead to an unacceptable increase in disturbance, on-street activity or anti-social behaviour to the detriment of the living conditions of nearby residents*".

The proposal involves the active utilisation of an outdoor area for customers to eat and drink in. Sound diffusers have been proposed to mitigate the impacts of the proposal on neighbouring residents. Since the outbreak of pandemic generally, outdoor seating has been used by many proprietors as way of increasing a proportion of the overall space provision for customers to eat and drink at restaurants. A decked area at this location could have the potential to generate levels of noise and disturbance for nearby residents residing in the tenement buildings on Commercial Street and Commercial Wharf throughout the course of the day, including into unsociable hours.

However this practice has been ongoing for over 30-years, and tables and chairs formed from at least 2012 and 2016 and in the period 2019/20 prior to enforcement action. The applicants have never received complaint from nearby residents nor any formal action from the Environmental Health authority about noises or disturbances to surrounding residential occupants.

The applicants have the necessary operating licence to serve food and drink from the premises (1100-0100hrs Monday to Sunday) per the submitted licencing details. The Licence describes as a "*Premium Dining Public House & Restaurant*". The proprietors have had signs in place within the premises and external on the entrance door to remind visitors to respect residential amenity and to keep noise controlled. The formal Licence permits outdoor seating use until 2100hrs. However the nature of the sunlight path means that in fact by 1500hrs the building creates shade from the sun, so the premises generally sees peak visitors (external) during 1200-1500 when lunch would be served. After 1500hrs visitors either shelter inside, or move to another outdoor seated premises which remains in sunlight/daylight beyond 1500hrs. There is no restriction on the licence for the external area, nothing has been stated formally in the Licence, but the applicants have always regarded (unofficially) 2100hrs for the closure of the outdoor area. If the planning authority is minded to approve this planning application, a planning condition worded to restrict the use of the outdoor seating area to 2100hrs would be acceptable.

There are no residential properties that overlook the site, in terms of window to window or immediacy. The nearest residential properties lie more than 200-300m on the other side of Water of Leith (The Shore). On the same matter (Commercial Street), there is a scheme called the Cooperage however there is no overlooking as aspects are directed across the Water of Leith and The Shore.

Therefore the additional measure of sound diffusers formed as planters with toughened glass, is a positive enhancement to the development to respect the surrounding character and comply with Policy Hou 7. The proposal lies in a mixed use area where there are nearby clusters of restaurants and bars. The history of use and record of no complaints of disturbance or anti-social behaviour demonstrates the proposal has not in the past, and can continue to be managed going forward, to protect the living conditions of nearby residents as required by the Guidance for Businesses.

Should the planning authority be minded to support the planning application, the proposal can be controlled by an appropriate planning condition, such as limiting the use of outdoor seating to 2100hrs which is in line with the licencing terms already in operation at the premises.

Conservation Area

Edinburgh Local Development Plan policy Env 6 highlights the importance of preserving the character and appearance of the conservation area. In addition, the non-statutory Guidance for Businesses advises that proposals should be architecturally compatible in design, scale and materials with the character of the conservation area.

LDP Policy Des 4 is also relevant. It states *“Planning permission will be granted for development where it is demonstrated that it will have a positive impact on its surroundings, including the character of the wider townscape and landscape, and impact on existing views, having regard to:*

- a) height and form*
- b) scale and proportions, including the spaces between buildings*
- c) position of buildings and other features on the site*
- d) materials and detailing”*

Through the determination of planning applications, the Leith Conservation Area Management Plan 2002 asks applicants and planning authority to consider the *“public realm is regarded and understood as an historic element of the Leith Conservation Area, and that any alterations to it take the historical and cultural significance of the public realm into consideration”*. In terms of actions, the Plan requires the authority to *“Maintain, protect and reinforce the historic street patterns, materials and geometry in both design and high standards of co-ordinated maintenance and repair on paving and street surfaces.”*

The proposed design and appearance of the external decking area has been significantly improved since the previous proposal. The applicants have understood the architectural and historical significance of Leith and this part of the conservation area. Rather than apply the standard ‘Hemingways’ corporate branding (purple colour scheme) and use of poor quality materials and finish, the applicants have researched the maritime and whisky heritage context of Leith and propose a style and finish which projects high quality and clear cultural and historic connection to maritime and whisky in its materials.

The following are key improvements to the design and finish which are considered to address the previous weaknesses, and previous lacking in sensitivity towards the conservation area and surroundings:

- The decking, parasols and planters will be housed externally and not fixed to the existing building. The decking and planters would therefore be moveable.
- The decking superstructure would be formed of treated timber. The area of 61 sq m. It would have 2 entrances including a wheelchair accessible entrance.
- The decking superstructure would be clad in blackened steel and decorated with brass nautical downlights
- Two parasols each with 4m covers in sail white adorned with 'Hemingways' branding (in black and white lettering) would be erected overhead.
- Fourteen oak barrel planters with toughened glass would be erected on the decking perimeter as sound diffusers

The scale of the development is to return the same size of space previously used, prior to the additional decking that was unlawfully erected in 2019-21. At 61 sq m this is a small area in proportion to the water frontage on which the development shares and is comparable to other outdoor seating areas identified in the area. There are several examples of outdoor furniture along the Shore at Leith – seats, tables and parasols. These several examples are part of the character and make consistency of this part of the Leith Conservation Area – they are all associated with leisure and tourism experiences for people to spend longer in the area.

Whilst timber will be used to form the superstructure, the proposal to clad this entirely in blackened steel and decorated with brass nautical down lights, aims to completely improve the overall appearance of the structure and to project a visual appearance of much higher quality and colour that blends in better with the surroundings and projects the historical links back to distilling (where black roofing and finishing was common). The use of oak barrels to form the perimeter of the decking is also a link back to the whisky history as well as a much more subtle tone of wood which has more character than treated timber.

The use of white sails for the proposed parasols, blending with the black and oak barrel tones and brass, with ropeworks also serves to combine the maritime detailing found on shipping of the past. The 'Hemingways' branding is less loud with the use of simple black lettering on the white sail parasol background. The measures when viewed as a whole tone in much more comfortably as finish and materials compared with the poor quality timber and exposed skirtings of the previous decking scheme.

The existing built environment is of high quality and has a settled townscape character. The proposed new decking aims to give a visual appearance of being "settled" i.e. the use of materials to better blend in with the waterside location (maritime links) and whisky connection, the materials and finishes provide similar characteristics to the surrounding buildings and urban grain. The development in this improved form promises to generate coherence and distinctiveness – and add to the sense of place.

The proposal does preserve and enhance the character and appearance of the Leith Conservation Area. The proposal is compliant with LDP policy Env 6.

Road Safety

The proposed development would sit on the waterfront, with the existing access lane, used to reach customer car parking adjacent, positioned between the building and the proposed decking area.

In previous planning application, there were concerns raised in representations about road safety. However the planning authority, after consultation with its transportation colleagues, determined that the addition of outdoor seating would not significantly alter the intensity of the premises current use and concluded that there are no road safety concerns from the proposed use. This position has not altered nor will the circumstances change as a result of this proposal.

Conclusion

With reference to the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 these revised proposals considerably improve on the appearance and compatibility of the new development to better blend into the streetscape and to appear more in compatibility with its surroundings, supported by cultural and historical linkages to the past (maritime and whisky theme). The new proposals do seek to preserve the special character or appearance of the conservation area and the use of higher quality materials and finishes along with a coherent theme and blend of colours makes the proposal consistent with the relevant conservation area character appraisal which seeks to promote the Leith area's past heritage with care and attention.

The proposed location and siting of the decking is to reduce the overall scale of the then (combined including additional) previous structure. The addition of wheelchair access, the introduction of better quality finishes to the entire timber superstructure considerably enhances the visual appearance of the outdoor seating area.

The proposals therefore do not harm the wider conservation area and is more compatible with its surrounding streetscape. The proposals add new visual interest without reducing the overall quality or character of the conservation area, and do not impact on the setting of the listed building. The plans are therefore compliant with Local Development Plan Policies Env 6 and Des 4, and the Council's Supplementary Guidance on Listed Buildings and Conservation Areas and on statutory guidance for Businesses 2021.

The impact on residential amenity is unlikely to be significant given there has been outdoor seating at this location over 30 years and that there has been no recorded incidence of complaint or nuisance to the Environmental Health authority. The applicant has displayed their existing Sales Licence to operate the premises, including a voluntary management decision to close the outdoor seating area from 2100hrs. Should the planning authority be minded to approve this planning application, then a planning condition to control the operation of outdoor seating to further mitigate any low risk of residential disturbance, the applicants would be content to agree to this measure.