

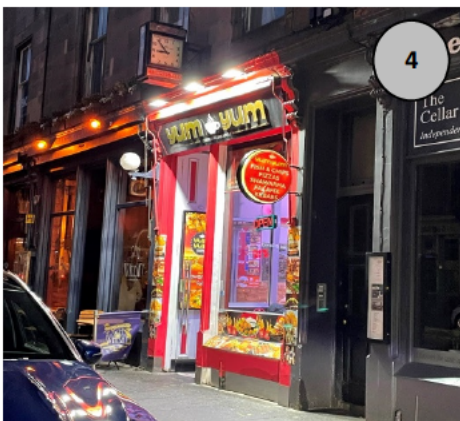
Mr Umberto Crolla - Application 22/06028/FUL – Amend opening hours to 2am  
Local Review Body Support Statement – April 2023.



9. **Festival Stores** – open until 1am
10. Ground floor premises, residential above, next door to Last Drop public house.



11. **Yum Yum** – West Port – open until 2am
12. Ground floor premises with residential above.



13. **Yum Yum** – George IV Bridge – open until 2am
14. Ground Floor Premises with residential above.



15. **Che** – Forrest Road – Open until 2am
16. Ground floor premises with residential above.



- 17. **Cappadocia** – Forrest Road – Open until 2am
- 18. Ground floor premises, residential above.



- 19. **Chikka Ciao's** – Bread Street – open until 2am
- 20. Ground floor premises with residential above.



- 21. **Costcutter** – Corner of Bread Street/Tollcross – open 24 hours
- 22. Ground floor premises with residential above.



- 23. Convenience Store – 11 Cowgatehead – open until 2am
- 24. Ground floor premises with residential above

25. As the evidence above illustrates there are other premises in the vicinity that cater for the late night custom, yet this decision singles out The Castle Rock for different treatment yet it is located arguably at a location where late night noise and activity would and should be expected. The entertainment/visitor sector is critically important to the City of Edinburgh's economy and has long been promoted and accepted in the Grassmarket/Cowgate area.
26. The examples above are benefitting unfairly from a lack of a similar takeaway in the Grassmarket area where one already exists but has to shut before many have left the pub or other nearby venue.
27. As further context, most if not all of these premises started operating after the establishment of The Castle Rock take-away.
28. It should be remembered that **this application is not seeking a new use** but simply the ability to trade to the obviously acceptable time (as determined by other nearby premises and the closing time of complementary businesses).
29. There is an extensive planning history regarding opening hours associated with this property (dating back to 1994). Whilst we appreciate that the Council has consistently refused permission for extended opening hours, we do believe it is an unnecessary and unfair stance to take and are therefore asking the LRB Panel to view the proposals in the full context of the character of the area and acknowledge that there would be no additional detrimental impacts.

## APPLICATION 22/01296/P

30. **Application 22/06028/FUL** was validated on the 13<sup>th</sup> December 2022 and subsequently refused via delegated powers on the 27<sup>th</sup> January 2023. Three reasons for this refusal were given and we address each one in turn below.

### Reason 1

**The proposal is likely to increase late night noise and activity to the detriment of neighbouring residential amenity, contrary to Local Development Plan Policy Ret11 and the ‘Council’s Licence for Businesses’.**

*Policy Ret11 - The change of use of a shop unit or other premises to a licensed or unlicensed restaurant, cafe, pub, or shop selling hot food for consumption off the premises (hot food take-away) will not be permitted:*

*a) 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.*

31. This is an established business which has had little/no harmful impact on residential amenity in the surrounding area. There is no history of disturbance or anti-social behaviour specifically related to the operation of The Castle Rock.
32. There is neither logic nor evidence that extended opening hours will *increase* late night noise and activity to the detriment of residential amenity. The Grassmarket already attracts considerable late night activity as there are many bars and clubs in the immediate area that operate with extended opening hours.
33. The extended opening hours of the hot food takeaway would provide a service not just in terms of food, but also in terms of safety.
- People feel safer when there is a level of activity promoting natural surveillance later at night.
  - Others are less likely to act in an anti-social way creating disturbances etc. when there are more people in the vicinity, the area is better lit.
  - The availability of food and non-alcoholic drinks for those heading home is also a benefit in mitigating against the impacts and effects of alcoholic consumption.
34. There are other hot food providers in the locality who operate with extended opening hours until 2 am. We have shown these elsewhere in this document.



#### Reason 2

The proposal is likely to increase late night noise and activity to the detriment of neighbouring residential amenity, contrary to Local Development Plan Policy Hou7 and Council's 'Guidance for Businesses'.

#### *Policy Hou7*

*Developments, including changes of use, which would have a materially detrimental effect on the living conditions of nearby residents, will not be permitted.*

*The intention of the policy is firstly, to preclude the introduction or intensification of non-residential uses incompatible with predominantly residential areas and secondly, to prevent any further deterioration in living conditions in more mixed use areas which nevertheless have important residential functions.*

#### Reason 3

The proposal is contrary to NPF 4 Policy 27, as it would erode living conditions and have a detrimental impact on neighbouring residential amenity.

#### *Policy 27*

- a) Development proposals that enhance and improve the vitality and viability of city, town and local centres, including proposals that increase the mix of uses, will be supported.*
- c) Development proposals for non-retail uses will not be supported if further provision of these services will undermine the character and amenity of the area or the health and wellbeing of communities, particularly in disadvantaged areas. These uses include:
  - i. Hot food takeaways.**

- 35. The second and third reason for refusal cover the same issue; the impact on residential amenity. **The reference to NPF4 Policy 27 is irrelevant as the business is already in existence – this is not a new business or use.** It is arguable that by permitting the business to open to 2am it would improve the vitality and viability of the area in that it would encourage further visitor spend and prevent people loitering with nowhere to go and nothing to do. The passive surveillance would improve general security and atmosphere around the Grassmarket/Victoria Street/Cowgate area.
- 36. Extended opening hours will not cause deterioration in the living conditions of nearby residents nor does it represent an intensification of a use – it is already there. Intensification would relate to more premises being changed to hot-food takeaway premises and this is not the case. Concern has previously been raised about the creation of a 'cluster' of such uses, yet this is an existing use and other similar outlets are further away at West Port and George IV Bridge.
- 37. The kebab shop on Candlemaker Row is the only similar outlet in relative proximity. We would argue that two outlets do not constitute a cluster and that the current situation actually sees the planning decisions handing Bobby's Kebab Shop an unfair commercial advantage.

38. As has already been highlighted, this is an established business in a popular and vibrant part of the city. The area has a well-known night-time economy and this application does not see the introduction of an incompatible use.
39. The bars in the neighbouring premises are open until at least 1am and there is no other hot food provision available in the immediate vicinity. However, as we have shown there is a convenience store opposite The Castle Rock that is open until 1am, another convenience store to the east at Cowgatehead and a number of takeaway premises in other streets that are permitted to remain open until 2am.
40. As has been proven previously, there is an expectation when choosing to live in any city centre, that it is a more vibrant and active area. This inevitably means more noise and potential disturbance but is countered by the advantages of city centre living. This is certainly the case in Edinburgh and nowhere is this mix of uses more evident, with the vibrant evening economy and acceptance of potential noise, than in The Grassmarket.
41. This is a commercially sound application that provides a valued and popular service that is appropriate to the location. The current situation puts the business at a clear and unfair disadvantage to other nearby similar businesses. **The planning system is not in place to create commercial advantage or disadvantages.**
42. As has already been outlined, extended opening hours can have a positive impact on the living conditions of nearby residents as there has been concern about people loitering in dark alleyways leading off from the Grassmarket. People feel safe where there is activity; this is an opportunity to optimise natural surveillance of these alleyways and public places until later into the night when the streets will naturally quieten.

## SUMMARY

40. The Castle Rock is a well-established existing business. We are not seeking to introduce a new hot food take away to the Grassmarket Area.
41. The imposition of the midnight closing time materially impacts on the viability of the business when comparing to similar businesses in the general area, most of which are able to remain open until 2am. Even general convenience stores nearby are open after midnight again benefitting from the late night spend as people pass by after a night out or a late shift.
42. It is not for the planning system to create commercial imbalance where very similar businesses are forced to operate under unjustifiable and arbitrarily imposed different trading conditions. Whilst planning cannot be seen to commercially favour one business over another, we can assume that it cannot be used to disadvantage another business and that is what is happening in this instance.
43. The Grassmarket is already one of the most vibrant parts of the city which attracts considerable late night activity. Anyone choosing to live in such an area takes on board the character of this city centre location and very much the hub of Edinburgh night-life. Buying, renting or staying in the area has many many advantages and in benefitting from these, a resident or visitor accepts that it might be noisier until later (and hardly the result of a hot food take away being open for a couple of hour longer anyway).
44. We have commented on previous concerns over creating a cluster of such uses. Bobby's Kebab Shop is relatively close-by but would not be described as being in the Grassmarket whilst the takeaway at West Port is at the opposite end of the Grassmarket, perhaps attracting those heading in a different direction.
45. **Just to stress once again, this business is already there. We are not adding to the mix or creating a cluster just asking to be treated fairly and equally.**
46. We understand that in some situations a delicate balance needs to be struck between residential amenity and commercial operations. We believe that in this instance the case has been over exaggerated.