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FAO: Shona Mackay  
Holyrood Business Park  
146 Duddingston Road West  
Edinburgh  
EH16 4AP

Mr Tarakci.  
235 - 237 Leith Walk  
Edinburgh  
EH6 8NY

**Decision date: 22 November 2023**

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

Change of use from Class 1 (retail) to mixed-use Class 3 (ground floor) and existing Class 1A (cellar).  
At 235 - 237 Leith Walk Edinburgh EH6 8NY

**Application No:** 23/03406/FUL

**DECISION NOTICE**

With reference to your application for Planning Permission registered on 4 August 2023, 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;

**Reason for Refusal:-**

1. Insufficient information has been supplied to allow an adequate assessment of impact of the proposal on residential amenity and therefore the proposals are contrary to National Planning Framework 4 Policy 27 City, town local and commercial centres, Edinburgh Local Development Plan Policy Ret 11, Food and Drink Establishments and Policy Hou 7 Inappropriate Uses in Residential Areas.

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

Drawings 1-3, 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:

Due to the lack of information, the proposal's impact on residential amenity cannot be assessed. The application fails to demonstrate that the proposal complies with the National Planning Framework 4, Development Plan and the non-statutory guidance. There are no material considerations that outweigh this conclusion and refusal is recommended.

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](mailto: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](http://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](mailto: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**  
**235 - 237 Leith Walk, Edinburgh, EH6 8NY**

**Proposal: Change of use from Class 1 (retail) to mixed-use Class 3 (ground floor) and existing Class 1A (cellar).**

**Item – Local Delegated Decision**  
**Application Number – 23/03406/FUL**  
**Ward – B12 - Leith Walk**

## **Recommendation**

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

## **Summary**

Due to the lack of information, the proposal's impact on residential amenity cannot be assessed. The application fails to demonstrate that the proposal complies with the National Planning Framework 4, Development Plan and the non-statutory guidance. There are no material considerations that outweigh this conclusion and refusal is recommended.

## **SECTION A – Application Background**

### **Site Description**

The site relates to a ground floor commercial unit situated on the eastern side of Leith Walk close to the Lorne Street junction. The building is four storeys in height with residential units on the upper floors.

The site is within the Leith Conservation Area.

### **Description Of The Proposal**

Change of use from Class 1 (retail) to mixed-use Class 3 (ground floor) and existing Class 1A (cellar).

### **Supporting Information**

No further details have been submitted.

### **Relevant Site History**

20/03749/FUL

235 - 237 Leith Walk

Edinburgh

EH6 8NY

Proposed change of use from Class 1 retail to Class 3 (unrestricted) restaurant with take-away including installation of external ventilation pipe on rear elevation.

Refused

29 July 2021

### **Other Relevant Site History**

No other relevant site history.

### **Consultation Engagement**

Environmental Protection

### **Publicity and Public Engagement**

**Date of Neighbour Notification:** 7 August 2023

**Date of Advertisement:** 11 August 2023

**Date of Site Notice:** 11 August 2023

**Number of Contributors:** 0

## **Section B - Assessment**

### **Determining Issues**

Due to the proposed development falling within a conservation area, this report will first consider the proposals in terms of Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997:

- Is there a strong presumption against granting planning permission due to the development conflicting with the objective of preserving or enhancing the character or appearance of the conservation area?
- If the strong presumption against granting planning permission is engaged, are there any significant public interest advantages of the development which can only be delivered at the scheme's proposed location that are sufficient to outweigh it?

This report will then consider the proposed development under Sections 24, 25 and 37 of the Town and Country Planning (Scotland) Act 1997 (the 1997 Act):

Having regard to the legal requirement of Section 24(3), in the event of any policy incompatibility between National Planning Framework 4 (NPF4) & Edinburgh Local Development Plan 2016 (LDP) the newer policy shall prevail.

Do the proposals comply with the development plan?

If the proposals do comply with the development plan, are there any compelling material considerations for not approving them?

If the proposals do not comply with the development plan, are there any compelling material considerations for approving them?

In the assessment of material considerations this report will consider:

- equalities and human rights;
- public representations; and
- any other identified material considerations.

## **Assessment**

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

### **a) The proposals harm the character or appearance of the conservation area?**

The following HES guidance is relevant in the determination of this application:

- Managing Change Conservation Areas

Leith Conservation Area Character Appraisal emphasises the area's unique and complex architectural character, the concentration of buildings of significant historic and architectural quality, the unifying effect of traditional materials, the multiplicity of land use activities, and the importance of the Water of Leith and Leith Links for their natural heritage, open space and recreational value.

There are no external alterations proposed to the building so the proposal would have a neutral impact on the character and appearance of the conservation area.

## **Conclusion in relation to the conservation area**

The proposal is acceptable with regards to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 in that it would preserve the character and appearance of the conservation area.

### **a) The proposals comply with the development plan?**

National Planning Framework 4 (NPF4) was adopted by the Scottish Ministers on 13 February 2023 and forms part of the Council's Development Plan. NPF4 policies supports the planning and delivery of Sustainable Places, Liveable Places and Productive Places and are the key policies against which proposals for development are assessed. Several policies in the Edinburgh Local Development Plan (LDP) are superseded by equivalent and alternative policies within NPF4. The relevant policies to be considered are:

- NPF 4 Climate and Nature Crises Policy 1
- NPF 4 Historical Assets and Places Policy 7
- NPF 4 City, Town and Local Commercial Centres Policy 27
- NPF 4 Design Quality and Place Policy 14
- LDP Shopping policies Ret 11
- LDP Housing policy Hou 7
- LDP Design Policies Des 1, Des 12

Leith Town Centre Supplementary Guidance is relevant when considering NPF 4 Policy 27.

The non-statutory 'Listed Buildings and Conservation Area' guidance is a material consideration that is relevant when considering NPF 4 Policy 7.

### Conservation Area

This is assessed in section a) and the proposal complies with NPF 4 Policy 7.

### Principle of Development

The proposal is neutral in the impact on sustainability and the environment, and thus complies with NPF4 Policy 1.

The site lies within Leith Town Centre where the proposed use would be in keeping with the range of neighbouring uses, therefore complying with NPF 4 Policy 27.

The applicant has failed to supply additional information requested relating to ventilation of the unit and its impact of noise to neighbouring properties. As a result, it is not possible to establish if the proposal is likely to have an unacceptable impact on residential amenity. The proposal therefore fails to demonstrate compliance with LDP Policy Ret 11. This matter is assessed in the Amenity section below.

### Scale, Design and Materials

There are no external alterations proposed to the building so the proposed change of use is compatible with the character of the existing building.

The proposal complies with NPF 4 Policy 14 and LDP Policies Des 1 and Des 12 in terms of scale, design, materials and character.

### Residential Amenity

The unit is currently run as a café and there are residential flats on the floors above. The agent has failed to supply additional information requested relating to a Noise Impact Assessment and ventilation. As a result, it is not possible to establish if the proposal is likely to have an unacceptable impact on amenity. As such, the proposal fails to demonstrate compliance with NPF 4 Policy 27 and LDP Policies Hou 7 and Ret 11 in terms of amenity.

### **Conclusion in relation to the Development Plan**

It is not possible to establish if the proposed change complies with the National Planning Framework 4, Development Plan and the non-statutory guidance with regard to the impact on residential amenity due to a lack of information being supplied.

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

The following material planning considerations have been identified:

Emerging policy context

On 30 November 2022 the Planning Committee approved the Schedule 4 summaries and responses to Representations made, to be submitted with the Proposed City Plan 2030 and its supporting documents for Examination in terms of Section 19 of the Town and Country Planning (Scotland) Act 1997. At this time 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

No comments have been received.

**Conclusion in relation to identified material considerations**

The proposals do not raise any additional issues in relation to other material considerations.

**Overall conclusion**

Due to the lack of information, the proposal's impact on residential amenity cannot be assessed. The application fails to demonstrate that the proposal complies with the National Planning Framework 4, Development Plan and the non-statutory guidance. There are no material considerations that outweigh this conclusion and refusal is recommended.

**Section C - Conditions/Reasons/Informatives**

The recommendation is subject to the following;

**Reason for Refusal**



1. Insufficient information has been supplied to allow an adequate assessment of impact of the proposal on residential amenity and therefore the proposals are contrary to National Planning Framework 4 Policy 27 City, town local and commercial centres, Edinburgh Local Development Plan Policy Ret 11, Food and Drink Establishments and Policy Hou 7 Inappropriate Uses in Residential Areas.

### **Background Reading/External References**

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

**Further Information - [Local Development Plan](#)**

**Date Registered: 4 August 2023**

### **Drawing Numbers/Scheme**

1-3

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](mailto:jennifer.zochowska@edinburgh.gov.uk)

## Appendix 1

### **Consultations**

NAME: Environmental Protection

COMMENT: Further details are required to ensure that the proposal would not have a materially detrimental effect on the living conditions of nearby residents.

DATE:

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

## Appendix 2

### **Application Certification Record**

#### **Case Officer**

I have assessed the application against the City of Edinburgh Council's Scheme of Delegation (2023) Appendix 6 – Chief Planning Officer and the Statutory Scheme of Delegation (2023) and can confirm the application is suitable to be determined under Local Delegated Decision, decision-making route.

Case Officer: Jennifer Zochowska

Date: 21 November 2023

#### **Authorising Officer**

To be completed by an officer as authorised by the Chief Planning Officer to determined applications under delegated powers.

I can confirm that I have checked the Report of Handling and agree the recommendation by the case officer.

Authorising Officer (mRTPI): Sonia Macdonald

Date: 21 November 2023

**From:** Claire Devlin  
**Sent:** Wednesday, October 4, 2023 3:50 PM  
**To:** Jennifer Zochowska <[Jennifer.Zochowska@edinburgh.gov.uk](mailto:Jennifer.Zochowska@edinburgh.gov.uk)>  
**Subject:** RE: 23/03406/FUL: 235-237 Leith Walk, Edinburgh

Hi Jennifer,

Food establishments tend to create more noise than e.g. shops and offices, with kitchen noise (even when there isn't cooking, there is often prep, and cleaning up) and extended customer noise, music, etc. Food establishments also tend to have longer opening hours than shops and offices, potentially creating more disturbance into evening hours. Therefore we would still look for an NIA to demonstrate that the general commercial activities of the business will not negatively impact nearby receptors.

The conditioning of any proposed equipment relates to the potential for odours to be created by cooking in the premises. Either a full ventilation system is required for full Class 3, or a limited amount of equipment for reheating / hot-holding is allowed under restricted Class 3.

Many thanks

Claire

Claire Devlin | Environmental Health Officer | Environmental Protection | Regulatory Services | Directorate of Place | The City of Edinburgh Council | G1, Waverley Court, 4 East Market Street, Edinburgh, EH8 8BG | Tel 0131 469 5685 | [Claire.devlin@edinburgh.gov.uk](mailto:Claire.devlin@edinburgh.gov.uk)

**From:** Jennifer Zochowska <[Jennifer.Zochowska@edinburgh.gov.uk](mailto:Jennifer.Zochowska@edinburgh.gov.uk)>  
**Sent:** Tuesday, October 3, 2023 3:10 PM  
**To:** Claire Devlin <[Claire.Devlin@edinburgh.gov.uk](mailto:Claire.Devlin@edinburgh.gov.uk)>  
**Subject:** FW: 23/03406/FUL: 235-237 Leith Walk, Edinburgh

Claire

I refer to the above application.

I have received the comments below from the agent in response to our request for a NIA.

In view of these comments would a NIA still be required.

Any comments would be helpful.

Kind regards

Jennifer

**From:** [formatdesign@aol.com](mailto:formatdesign@aol.com) <[formatdesign@aol.com](mailto:formatdesign@aol.com)>  
**Sent:** Tuesday, September 26, 2023 11:04 AM  
**To:** Jennifer Zochowska <[Jennifer.Zochowska@edinburgh.gov.uk](mailto:Jennifer.Zochowska@edinburgh.gov.uk)>  
**Subject:** Re: 23/03406/FUL: 235-237 Leith Walk, Edinburgh

 External email >

Hi Jennifer

I hope you have had a good holiday and are 'delighted' to be back!

I refer to the above and awaited your return before replying to your email with Environmental Protection's Request for an NIA. I do not understand EP's stance on this one as the application is for a Class 3 (coffee shop) with no cooking. As you know a Class 1 coffee shop, (now Class 1a), only needs planning permission because of the seating facilities being provided. The applicant is happy to have a condition restricting the equipment to be used as per EP's statement below (attached to the same email requesting an NIA).

*"From the information submitted it would appear the applicant is looking for a restricted Class 3 permission. We would therefore look to condition the equipment to be used."*

The applicant and his business has no requirement for any equipment that would give concern for noise affecting the amenity of nearby neighbours, as suggested below in the email from EH.

*'noise to affect the amenity of nearby residential neighbours, due to general use and plant machinery (e.g. air con, industrial fridges and freezers).'*

There is no noise to affect the amenity of nearby residential neighbours, due to general use and plant machinery (e.g. air con, industrial fridges and freezers).

There will be no air con, industrial fridges or freezers, as there is no need for such equipment in a Coffee Shop with seats.

The use as proposed is a perfectly normal and compatible use within this mixed commercial and residential area, particularly in this location with added external general traffic and tram noise.

In view of the above, hopefully you can consider the application favourably with conditions on equipment to be used (as suggested by EP).

If it would be helpful to discuss this further please give me a call, but I hope you can see our position and proceed to a favourable conclusion.

We look forward to hearing from you in due course.

Kind regards.

Bob

**Bob Tait**

## **format** DESIGN

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On Wed, 13 Sept 2023 at 17:21, Jennifer Zochowska  
<[Jennifer.Zochowska@edinburgh.gov.uk](mailto:Jennifer.Zochowska@edinburgh.gov.uk)> wrote:

Shona,

I refer to the above application.

Colleagues from Environmental Protection have made the following comments:

*From the information submitted it would appear the applicant is looking for a restricted Class 3 permission. We would therefore look to condition the equipment to be used.*

*A Class 3 use has the potential for noise to affect the amenity of nearby residential neighbours, due to general use and plant machinery (e.g. air con, industrial fridges and freezers). We would therefore need the applicant to submit a Noise Impact Assessment, demonstrating that:*

- *NR15 is met within the nearest noise-sensitive premises for all commercial noise (such as vocals, music, impact, kitchen noise etc.). A worst-case scenario should be assumed. Please note we would not accept noise-limiting devices in relation to the control of music noise.*
- *Any mechanical plant should meet NR25 when measured within the nearest noise-sensitive premises (with their windows open for ventilation).*

I would be obliged if this information could be provided as soon as possible and in any case before 13.10.23.

Kind regards

Jennifer

Jennifer Zochowska | Senior Planning Officer | Locals | Planning and Building Standards | Sustainable Development | PLACE Directorate | The City of Edinburgh Council | Waverley Court G:2, 4 East Market Street, Edinburgh, EH8 8BG | [jennifer.zochowska@edinburgh.gov.uk](mailto:jennifer.zochowska@edinburgh.gov.uk)

You can access our services at [www.edinburgh.gov.uk/planning-building](http://www.edinburgh.gov.uk/planning-building) and follow the [Planning Edinburgh](#) blog for updates on our service.

Please note my work pattern is Monday, Tuesday and Wednesday.

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**From:** Claire Devlin  
**Sent:** Friday, September 8, 2023 9:47 AM  
**To:** Jennifer Zochowska <[Jennifer.Zochowska@edinburgh.gov.uk](mailto:Jennifer.Zochowska@edinburgh.gov.uk)>  
**Subject:** 23/03406/FUL: 235-237 Leith Walk, Edinburgh

Good morning Jennifer,

I've been asked to comment on the above application on behalf of Environmental Protection. From the information submitted it would appear the applicant is looking for a restricted Class 3 permission. We would therefore look to condition the equipment to be used.

A Class 3 use has the potential for noise to affect the amenity of nearby residential neighbours, due to general use and plant machinery (e.g. air con, industrial fridges and freezers). We would therefore need the applicant to submit a Noise Impact Assessment, demonstrating that:

- NR15 is met within the nearest noise-sensitive premises for all commercial noise (such as vocals, music, impact, kitchen noise etc.). A worst-case scenario should be assumed. Please note we would not accept noise-limiting devices in relation to the control of music noise.
- Any mechanical plant should meet NR25 when measured within the nearest noise-sensitive premises (with their windows open for ventilation).

Many thanks

Claire

Claire Devlin | Environmental Health Officer | Environmental Protection | Regulatory Services | Directorate of Place | The City of Edinburgh Council | G1, Waverley Court, 4 East Market Street, Edinburgh, EH8 8BG | Tel 0131 469 5685 | [Claire.devlin@edinburgh.gov.uk](mailto:Claire.devlin@edinburgh.gov.uk)

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