

Andrew Megginson Architecture.
128 Dundas Street
Edinburgh
EH3 5DQ

GTS Solutions CIC.
1 Gayfield Square
Edinburgh
EH1 3NW

Decision date: 13 August 2024

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

Change of use to include Sui Generis (dual use to that as already approved).
At 1 Gayfield Square Edinburgh EH1 3NW

Application No: 24/02149/FUL

DECISION NOTICE

With reference to your application for Planning Permission registered on 9 May 2024, 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. The proposal is contrary to Local Development Plan Policy Hou 7 in respect of inappropriate uses in residential areas, as the proposed hours of operation would have a materially detrimental effect on the living conditions and amenity of nearby residents.

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

Drawings 01 - 02, represent the determined scheme. Full details of the application can be found on the [Planning and Building Standards Online Services](#)

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

The proposal is acceptable with regards to Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as it will preserve or enhance the character or appearance of the conservation area and does not harm the character of the listed building, its setting, or the setting of neighbouring listed buildings.

The proposal is contrary to LDP Policy Hou 7 as the proposal would have the potential to result in an materially detrimental effect on the living conditions of nearby residents. There are no material considerations that would outweigh this decision.

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

Should you have a specific enquiry regarding this decision please contact Billy You directly at mingyuan.you@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 1 Gayfield Square, Edinburgh, EH1 3NW

Proposal: Change of use to include Sui Generis (dual use to that as already approved).

**Item – Local Delegated Decision
Application Number – 24/02149/FUL
Ward – B11 - City Centre**

Recommendation

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

Summary

The proposal is acceptable with regards to Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as it will preserve or enhance the character or appearance of the conservation area and does not harm the character of the listed building, its setting, or the setting of neighbouring listed buildings.

The proposal is contrary to LDP Policy Hou 7 as the proposal would have the potential to result in a materially detrimental effect on the living conditions of nearby residents. There are no material considerations that would outweigh this decision.

SECTION A – Application Background

Site Description

The application site relates to the ground floor of a two-storey building. The mixed use site comprises of a cafe, offices, and training around Gayfield Square. The building adjoins to the rear of part of four storey and attic tenement at 11-14 Antigua Street.

Category B listed building. ref LB49145. Listed on 16/06/1966

The site is located within the New Town Conservation Area and World Heritage Site.

Description Of The Proposal

The application seeks planning permission for a change of use from Class 3,4 and 10 to include Sui Generis (dual use to that as already approved).

The proposed hours of operation would be from 9pm - 4am every Friday and Saturday.

Supporting Information

- Supporting statement.

Relevant Site History

23/04307/FUL

1 Gayfield Square

Edinburgh

EH1 3NW

Change of use from Class 3 and 4 to include Class 10.

Granted

12 February 2024

21/02575/LBC

1 Gayfield Square

Edinburgh

EH1 3NW

Internal fit out and external alterations.

Granted

30 June 2021

21/02574/FUL

1 Gayfield Square

Edinburgh

EH1 3NW

Change of use from class 6 storage to class 3 food and drink, 4 business and 10 non-residential institution (as amended to exclude class 10)

Granted

3 September 2021

Other Relevant Site History

23/00525/ECOU

1 Gayfield Square

Edinburgh

EH1 3NW

Alleged breach of planning control for a change of use.

No Breach - no further action is taken

Consultation Engagement

Environmental Protection

Publicity and Public Engagement

Date of Neighbour Notification: 13 August 2024

Date of Advertisement: 17 May 2024

Date of Site Notice: 17 May 2024

Number of Contributors: 62

Section B - Assessment

Determining Issues

Due to the proposals relating to a listed building(s) and being within a conservation area, this report will first consider the proposals in terms of Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (the "1997 Heritage Act"):

- a) Is there a strong presumption against granting planning permission due to the proposals:
 - (i) harming the listed building or its setting? or
 - (ii) conflicting with the objective of preserving or enhancing the character or appearance of the conservation area?

- b) 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 listed building or its setting?

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

The proposal does not include any physical works to the listed building. The proposal will not have a detrimental impact on any historical architectural features and will therefore not adversely impact on the special architectural or historic interest of the listed building.

Conclusion in relation to the listed building

The proposal will not have a detrimental impact on any historical architectural features and will therefore not adversely impact on the special architectural or historic interest of the listed building

b) The proposals harm the character or appearance of the conservation area?

The New Town Conservation Area Character Appraisal is typified by formal plan layouts, spacious stone built terraces, broad streets and an overall classical elegance. The standard building form is three main storeys over a sunken basement, normally three bays wide and three storeys high, including steps from street to basement and cellars under the pavement with a slate covered pitched roof.,

There are no proposed external changes to the listed building therefore the proposal would not have a detrimental impact on the character and appearance of the conservation area.

Conclusion in relation to the conservation area

The proposal has regard to the desirability of preserving or enhancing the character or appearance of the conservation area. The proposal is acceptable with regards to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

c) 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:

- NPF4 Policy 1 Global Climate and Nature Crises
- NPF4 Policy 7 Historic Assets and Places
- NPF4 Policy 14b Design, Quality and Place
- NPF4 Policy 27 City, Town, Local and Commercial Centres
- LDP Housing and Community Facilities Policy Hou 7.

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

Principal

The site lies within the urban area as designated in the Edinburgh Local Development Plan. The principle of this mixed-use application is acceptable given its city centre designation. However, this is subject to compliance with other relevant policies set out in this report.

The proposal complies with NPF4 Policies 14b and 27.

Listed Building

The impact on the listed building has been assessed above in a). It is concluded that the proposal will not adversely impact on the listed building or its setting.

The proposal complies with NPF4 Policy 7.

Conservation area

The impact on the character and appearance of the conservation area has been assessed above in b). It is concluded that the proposal will not adversely impact on the conservation area or its setting.

The proposal complies with NPF4 Policy 7.

Residential Amenity

The site is located near a busy central location with restaurants and businesses on the corner of Antigua Street and Gayfield Square. 1 Gayfield Square is located on the corner of Gayfield Square and South Gayfield Lane.

The main entrance to the application site is located on South Gayfield Lane which is opposite Gayfield Square police station. South Gayfield Lane has several residential properties with the nearest residential properties being 3 South Gayfield Lane. The main entrance of the site is approximately 15 m from 3 South Gayfield Lane. Gayfield Square Garden is located to the northeast which is characterised by residential properties.

East of the site lies a major traffic route. A site visit around 13:00 on 17/07/2024 showed that even with the close proximity to a major city centre traffic route, South Gayfield Lane has low ambient noise.

Although it is acknowledged that the police station, which operates 24 hours a day, is in close proximity, the entrance is on Gayfield Square. The elevation facing onto South Gayfield Lane has predominately high level windows and no access into the building. Therefore, despite being in such close proximity to the application site, pedestrian traffic entering and exiting the station would have no necessity to use the lane.

The proposed hours of operations from 9pm - 4 am every Friday and Saturday would introduce an increased frequency of movements to the building outside of normal

working hours. As set out above, South Gayfield Lane is a quiet street, despite its proximity to Leith Walk, and the proposal would have the potential to increase noise and disturbance in a location which currently enjoys relatively low levels of background noise.

The potential for noise to be generated at unsociable hours would have a significantly detrimental effect on the living conditions and amenity of nearby residents. Accordingly, the proposal does not comply with LDP Policy Hou 7.

Transport and parking

Existing parking spaces around Gayfield square is restricted to parking permit holders and the site is well connected by public transport.

The site is located near to the city centre designation and is well served by public transport. No tram contribution is required.

Global Climate and Nature Crises

Policy 1 of the NPF4 gives significant weight to the global climate and nature crisis to ensure that it is recognised as a priority in all plans and decisions.

The proposal would have a neutral impact when assessed against NPF4 Policy 1.

Conclusion in relation to the Development Plan

The proposal does not comply with LDP Policy Hou 7, as the development would have the potential to materially harm neighbouring amenity. There are no material considerations that outweigh this conclusion.

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

The following material planning considerations have been identified:

Emerging policy context

On 5 April 2024 the Planning and Environmental Appeals Division published its report into the examination of the Proposed City Plan 2030 and supporting documents in terms of Section 19 of the Town and Country Planning (Scotland) Act 1997. On 27 June 2024 the Council accepted the recommendations and modifications required to the Proposed City Plan 2030. The Proposed City Plan 2030 has now been submitted to Scottish Ministers for their final consideration. At this time in the context of the consideration of this particular application limited weight can be given to the relevant policies of City Plan 2030 until the adoption of the plan.

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

62 objecting comments were received and one objecting petition was received with 12 signatures.

A summary of the representations is provided below:

material considerations

- Concerns regarding the increased noise disturbance on residential amenity.
- Comments raised regarding the increase in parking pressure on the area. This has been addressed in part c)
- Use statement not visible to the public for brief period. Additional time was given for public representations to allow individuals to have regard to that document.

non-material considerations

- Comments raised regarding the organisations practices are not material consideration.
- Comments relating to a late night license. Licensing is not regulated by planning control and therefore cannot be considered a Planning matter.
- Objecting comments with no reasons given.
- Objection comments regarding anticipated change of use to a public house. The allegations raised against the future intent of use cannot be considered a material consideration. Any change of use would require future planning permission which would be assessed on its own merits.

Conclusion in relation to identified material considerations

Identified material considerations have been assessed above and do not raise issues which outweigh the conclusion in relation to the development plan.

Overall conclusion

The proposal is acceptable with regards to Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as it will preserve or enhance the character or appearance of the conservation area and does not harm the character of the listed building, its setting, or the setting of neighbouring listed buildings.

The proposal would have the potential to have a materially detrimental effect on the living conditions and amenity of nearby residents. It does not comply with Local Development Plan (LDP) Policy Hou 7. The proposal is unacceptable. There are no material considerations that outweigh this conclusion.

Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following;

Reason for Refusal

1. The proposal is contrary to Local Development Plan Policy Hou 7 in respect of inappropriate uses in residential areas, as the proposed hours of operation would have a materially detrimental effect on the living conditions and amenity of nearby residents.

Background Reading/External References

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

Further Information - [Local Development Plan](#)

Date Registered: 9 May 2024

Drawing Numbers/Scheme

01 - 02

Scheme 1

David Givan
Chief Planning Officer
PLACE
The City of Edinburgh Council

Contact: Billy You, Student Planner
E-mail: mingyuan.you@edinburgh.gov.uk

Consultations

NAME: Environmental Protection

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

The application proposes the change of use of a Class 3/4 premises to a mixed use of Class 3 and Class 4, Class 10 and Sui Generis Use operating until 4am Friday and Saturday. It is the intention that the main uses of the spaces will be divided into 4 sections including secure CCTV room and communications room, office area, training / VR/ XR suites and a café bar area. These areas are serviced by 3 unisex toilets and a disabled toilet facility.

1 Gayfield Square is located on the corner of Gayfield Square and South Gayfield Lane, and the proposed development comprises the entire ground floor area of the 2-storey building. Immediately located to the southwest is an existing commercial business sharing its northeast separating wall with the premises and there is a fitness equipment showroom immediately above the property. Gayfield Police Station is located on the other side of South Gayfield Lane to the northwest.

The nearest existing residential properties are 3 South Gayfield Lane at an approximate distance of 15 m from the South Gayfield Lane entrance doors of the ground floor premisses and 12 Antigua Street at an approximate distance of 6 metres from the nearest extract fan louvers located on the northeast façade and at an approximate distance of 9 metres from the Training Room. Gayfield Square Garden is located to the northeast beyond which there are residential properties at an approximate distance of 55 m from the northeast façade of the premises.

The Café is located on the corner of South Gayfield Lane and Gayfield Square. A liquor licence application has been made for the Café with the operating days and hours applied for being Monday to Sunday between 11:00 a.m. and 1:00 a.m. (on sale) and 11:00 a.m. to 10:00 p.m. (off sale). It is however understood that the proposal does not include the use as a public bar.

The supporting information advises that 'Street Assist' are a city centre organization who assist the local authority, NHS and Police during Friday and Saturday evenings. Their main function is to minimize 999 calls to emergency services by providing a 'gap' service to the nighttime economy. Essentially, they deploy on foot around the city centre, and assist vulnerable persons who may be at risk of harm to themselves or others. Their 'about us' states "At Street Assist Edinburgh we aim to reduce vulnerability within the nighttime economy, making sure the people we assist receive immediate support and return home free from further harm.

The previous application included Class 10 use to the premises. A number of uses are included within Class 10, some of which can seriously impact upon residential amenity and are not recommended below residential properties (e.g. nursery, place of worship etc). A noise impact assessment has been provided in support of the application which advises that in this case the applicant wishes to use the Class 10 area solely for educational uses (Class 10b) and therefore has recommended measures to ensure such operations will be inaudible within all nearby residential properties. Should the

application be granted then a condition is recommended below advising that the Class 10 element be restricted to educational uses only.

The NIA does not assess the proposal for the Sui Generis extended hours proposal therefore at this stage this team can only surmise that there could be additional noise issues from the later opening times. The exact nature of activities that will occur on site within the remit of the Sui Generis use is not clear and concerns remain that this may mushroom to involve using the premises as a place to support patrons assisted within the scope of the business/operations. Should that happen, and taking into consideration that it is much quieter to the rear of the premises (Sth Gayfield Lane) where access and egress is proposed to occur, then amenity impacts on residential properties by way of noise could occur in practice.

The NIA recommends that a noise management plan is put in place to ensure that the customers of the proposed operations are aware that the building is located near existing residential properties, therefore, arrivals and departures to the premises are carried out in a considerate manner. The details contained within the plan are unlikely to be able to be conditioned and therefore enforceable and so it is debatable as to how effective such a plan will be to reduce noise from the proposed operations.

The applicant has advised that the Class 3 area will not include cooking equipment which could cause cooking odours and therefore will not require ventilation. This has previously been controlled by a suitably worded condition and is included again below.

It should also be noted that some of the premises' operations will be 24 hours a day and occasional licensed events will occur at the site albeit unlikely to include large audiences.

Previous conditions as applied for the existing consent to protect residential amenity included the following:

1. Cooking operations on the premises shall be restricted to the use of a microwave, Panini machine and soup kettle only; no other forms of cooking shall take place on site.
2. The application Class 10 aspect of the premises should be restricted to educational uses only with no permitted change to other Uses within Class 10.
3. The noise mitigation measures as specified within RMP Noise impact Assessment referenced Technical Report No. R-9740-MP1-RGM and dated 5th September 2023 should be installed and operational prior to start of operations on site.
4. Hours of operation to be restricted to 0800 - 2100 hours Monday to Sunday.

In addition to the above, the application proposes the inclusion of a Sui Generis use which would involve use of the premises until 4am with the applicant advising that the following operations will occur:

"We would like to gain permission for; Use of the training space for Street Assist (not including the cafe area but including the toilets), to conduct a team briefing @ 9pm every Friday and Saturday. Use of the training space for Street Assist (not including the café area but including the toilets), to use as a space to facilitate breaks for the

volunteers until 4am every Friday and Saturday. Access and egress would be through the entrance/ exit located on South Gayfield Lane which faces onto the Gayfield police station which is in use 24 hours per day every day of the week."

It is therefore the opinion of Environmental Protection that the new proposals could include operations that cause external noise and concerns remain that amenity could be affected by noise. Due to this, Environmental Protection is sufficiently concerned that the application cannot be supported. However, should Planning support the application then the previous conditions should be attached and are shown below:

1. Cooking operations on the premises shall be restricted to the use of a microwave, Panini machine and soup kettle only; no other forms of cooking shall take place on site.
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4. Hours of operation of any licensed events and the café premises operations should to be restricted to 0800 - 2100 hours Monday to Sunday.

DATE: 19 July 2024

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: Billy You

Date: 30 July 2024

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): Alan Moonie

Date: 13 August 2024

To: Billy You

From: Colin Brown, Environmental Protection, Place

Date: 19/07/24

TOWN AND COUNTRY PLANNING SCOTLAND ACT 1997

**CHANGE OF USE TO INCLUDE SUI GENERIS (DUAL USE TO THAT AS ALREADY APPROVED),
SEE USE STATEMENT SUBMITTED WITH PLANNING APPLICATION AT 1 GAYFIELD SQUARE,
EDINBURGH, EH1 3NW.**

REFERENCE NUMBER: 24/02149/FUL

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

The application proposes the change of use of a Class 3/4 premises to a mixed use of Class 3 and Class 4, Class 10 and Sui Generis Use operating until 4am Friday and Saturday. It is the intention that the main uses of the spaces will be divided into 4 sections including secure CCTV room and communications room, office area, training / VR/ XR suites and a café bar area. These areas are serviced by 3 unisex toilets and a disabled toilet facility.

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states "At Street Assist Edinburgh we aim to reduce vulnerability within the nighttime economy, making sure the people we assist receive immediate support and return home free from further harm.

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The NIA does not assess the proposal for the Sui Generis extended hours proposal therefore at this stage this team can only surmise that there could be additional noise issues from the later opening times. The exact nature of activities that will occur on site within the remit of the Sui Generis use is not clear and concerns remain that this may mushroom to involve using the premises as a place to support patrons assisted within the scope of the business/operations. Should that happen, and taking into consideration that it is much quieter to the rear of the premises (Sth Gayfield Lane) where access and egress is proposed to occur, then amenity impacts on residential properties by way of noise could occur in practice.

The NIA recommends that a noise management plan is put in place to ensure that the customers of the proposed operations are aware that the building is located near existing residential properties, therefore, arrivals and departures to the premises are carried out in a considerate manner. The details contained within the plan are unlikely to be able to be conditioned and therefore enforceable and so it is debatable as to how effective such a plan will be to reduce noise from the proposed operations.

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4. Hours of operation of any licensed events and the café premises operations should to be restricted to 0800 - 2100 hours Monday to Sunday.

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