

# Development Management Sub Committee

Wednesday 22 January 2020

**Application for Planning Permission 19/03972/FUL  
at 47A South Clerk Street, Edinburgh, EH8 9NZ.  
Change of Use from class 1 (shop) to class 3 (restaurant)**

**Item number**

**Report number**

**Wards**

B15 - Southside/Newington

## Summary

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The proposal complies with adopted Edinburgh Local Development Plan policy Env 4, Env 6, Ret 9, Ret 11, Hou 7, the Edinburgh Guidance for Businesses, the South Side Conservation Area Character Appraisal and Historic Environment Scotland Managing Change in the Historic Environment Guidance Note on interiors. The proposals preserve the setting of the listed building and meet the requirements of S59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

## Links

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[Policies and guidance for this application](#)

LDPP, LEN04, LEN06, LRET09, LRET11, LHOU07, NSG, NSBUS, NSLBCA, HES, HESINT, OTH, CRPSSI, SGNIC,

# Report

## **Application for Planning Permission 19/03972/FUL at 47A South Clerk Street, Edinburgh, EH8 9NZ. Change of Use from class 1 (shop) to class 3 (restaurant)**

### **Recommendations**

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1.1 It is recommended that this application be Granted subject to the details below.

### **Background**

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#### **2.1 Site description**

The application relates to No. 47A South Clerk Street, a ground floor shop unit which forms part of a three storey tenement block.

The building is category B listed. 29/04/1977, NT 26386 72547

The site falls within the defined Nicolson Street/Clerk Street Town Centre.

This application site is located within the Southside Conservation Area.

#### **2.2 Site History**

8 March 2017 - Planning permission granted to install new shop front (Application number: 17/00127/FUL)

8 March 2017 - Listed Building Consent granted to install new shop front and signage (Application number: 17/00127/LBC)

8 August 2017 - Planning permission refused and enforced for the installation 3 air conditioning units (Application number: 17/02202/FUL)

9 August 2017 - Listed Building Consent refused and enforced for the installation of 3 air conditioning units. (Application number: 17/02202/LBC)

28 February 2018 - Appeal against 17/02202/FUL- Dismissed. (Reference: 17/00123/REVREF)

3 September 2018 - Planning permission approved at Development Management Sub Committee for the relocation of air conditioning unit to rear wall- (Application number: 18/02098/FUL)

3 September 2018 - Listed building consent approved at Development Management Sub Committee for the relocation of air conditioning unit to rear wall (Application number: 18/02098/LBC)

## Main report

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### 3.1 Description of the Proposal

The application is for planning permission for the change of use from a shop (class 1) to a restaurant (class 3). The property is currently used as a photo shop. It is proposed that the unit is converted into a restaurant with an occupant capacity of 19. The proposed flue and ventilation system will be sited internally through the property's two existing internal chimneys. Some existing internal stud partition walls will be removed and new walls formed. No external alterations are proposed.

### 3.2 Determining Issues

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.

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 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.

Do the proposals comply with the development plan?

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

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

### 3.3 Assessment

To address these determining issues, the Committee needs to consider whether:

- a) The proposed use is acceptable in this location;
- b) The proposal will materially impact on residential amenity;
- c) The proposal is of acceptable design and will not be detrimental to the character and appearance of the conservation area;
- d) The proposal will not be detrimental to the special interest of the listed building and
- e) Any matters raised in representation have been addressed.

a) Principle of Use

The property is located within a designated Town Centre (Nicolson Street/Clerk Street).

Policy Ret 9 (Alternative Use of Shop Units in Defined Centres) of the adopted Edinburgh Local Development Plan (LDP) states that change of use proposals which would undermine the retailing function of the centre will not be permitted. Detailed criteria for assessing proposals for the change of use of a shop unit to a non shop unit are set out in the Town Centre supplementary guidance for Nicolson Street/Clerk Street. The property is not in a primary or secondary frontage. For those locations not within an identified frontage within the Nicolson Street/Clerk Street Town Centre boundary, a change of use of a shop unit from shop use to a non-shop use will be permitted provided the proposal is an appropriate and complementary use which would not affect the vitality and viability of the centre.

The proposal is a class 3 use, which would be expected in a Town Centre location and so will not undermine the retailing function of the centre.

The Edinburgh Guidance for Businesses also supports the principle of class 3 uses such as restaurants in designated shopping centres.

The site is located within a defined area of hot food takeaway restriction. However, no element of hot food takeaway provision is proposed.

The site is on major transportation routes with easy access to public transport and cycle lanes. There is some car parking available but due to the main arterial status of the road, this is limited and more car parking would not be encouraged

The proposal is an appropriate use in this location and complies with LDP policy Ret 9 and the Edinburgh Guidance for Businesses.

b) Residential Amenity

LDP Policy Hou 7 (Inappropriate Uses in Residential Areas) states that developments, including changes of use, which would have a materially detrimental effect on the living conditions of nearby residents will not be permitted.

LDP Policy Ret 11 (Food and Drink Establishments) states that the change of use of a shop unit or other premises to a licensed or unlicensed restaurant, cafe, or shop selling hot food for consumption off the premises (hot food takeaway) 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 or

(b) in an area where there is considered to be an excessive concentration of such uses to the detriment of living conditions for nearby residents.

Environmental Protection requested specific details on the proposed commercial ventilation and this was submitted for assessment. Environmental Protection have confirmed that the details provided show that the kitchen extract will be capable of reaching the chimney pot level and achieve 30 air changes per hour in the kitchen. The plans also show that two flue liners will be installed serving the cooking areas.

A condition has been applied to the consent to ensure that the flue and ventilation system as shown shall be installed prior to the use of the site being operational. As such, the proposed flue and ventilation system will not have a material impact upon the amenity of neighbouring residents in terms of potential noise disruption and will ensure that the proposal will cause no issues in terms of smell or odours.

It is also acknowledged that the site is located in a defined town centre on an arterial route to and from the City Centre where commercial activities dominate the ground floor with flats located directly above them. Many premises, including shops, take-away premises and public houses have no controls restricting their use or operation. Clerk Street has a wide variety of units with a range of different established use classes. In the future, if a nuisance or noise disturbance was reported from the site then there are statutory provisions in order to mitigate these concerns under the Environmental Protection Act 1990.

The proposal complies with LDP Policies Hou 7 and Ret 11.

c) Conservation Area

Policy Env 6 (Conservation Areas- Development) presumes against development that does not preserve or enhance the special character and appearance of the conservation area or that is inconsistent with the conservation area character appraisal.

The application site is located within the South Side Conservation Area. The character appraisal states the following:

*South Clerk Street/Nicolson Street is the principal route through the area and acts as the main shopping street or "High Street" for the South Side' Building heights vary across the area from two and half to five storeys, with the average height being four storeys. As with the rest of the South Side all buildings erected up to the second world war are of stone construction with pitched slated roofs'. There is a continuing variety and diversity of architectural styles throughout this area although the emphasis moves more into Victorian buildings with the Georgian period being evidenced more in the south where the boundaries of the South Side and Blacket Conservation Areas meet'. Despite the variety of architectural styles and periods which are evidenced the area remains generally harmonious in scale, massing and materials'*

There are no external alterations proposed to the shopfront or to the rear of the premises.

The proposal will cause no adverse impact to the character and appearance of the conservation area and complies with LDP policy Env 6 and the associated character appraisal.

d) Listed Building

Historic Environment Scotland's (HES) guidance notes on Managing Change in the Historic Environment set out the principles that apply to altering historic buildings.

*HES guidance note on Managing Change in the Historic Environment: Interiors sets out that an alteration to a historic building should protect its character. The contribution of the interior to that character must therefore be fully understood before considering how to alter the building. Alterations should be carefully planned and located to best protect the interest of the internal spaces. In general, the principal spaces in a building are more sensitive to change as these are the spaces that normally make the most significant contribution to its character. Sometimes secondary spaces such as basement kitchens or attic rooms are sensitive to change, for example where they survive in their original form, or are particularly noteworthy*

LDP Policy Env 4 (Listed Buildings- Alterations and Extensions) states that proposals to alter a listed building will be permitted where those alterations are justified; will not result in unnecessary damage to historic structures or result in a diminution of the buildings interest; and any additions would be in keeping with other parts of the building.

There are no external alterations proposed to the shopfront or to the rear of the premises.

Internally, the unit has clearly been subject to quite a high degree of intervention during its years of use as a shop. The property already has lowered ceilings and no features of architectural merit were seen during the site visit.

The proposal will cause no material impact to the special interest of the listed building and therefore complies with LDP policy Env 4 and HES Managing Change in the Historic Environment guidance. An application for listed building consent for the works proposed is not required.

e) Public Comments

**Material Representations- Objections:**

- Loss of amenity, noise disturbance/odours, contrary to LDP policy Ret 11 and Hou 7 - this is addressed in section 3.3(b)
- Impact upon listed building and conservation area- this is addressed in section 3.3 (c) & (d)
- Overprovision of class 3 and loss of retail, against LDP policy Ret 11, people have to travel further to get to retail shops- this is addressed in section 3.3 (a)
- Lack of detail of ventilation system and noise protection measures - this is addressed in section 3.3(b)
- The requirement for an application for listed building consent - this is addressed in section 3.3 (d).

**Material Representations- Support:**

- The proposal will provide more jobs.
- The proposal will positively contribute to the vitality and viability of the Newington Area.

**Non Material Representations**

- Increased fire risk and exit concerns- this will be addressed through the required building warrant submission.
- Lack of details with regards to waste- the Council does not collect waste from commercial premises. Private arrangements will have to be made. There are numerous restaurants along Clerk Street that have private waste collections.
- Better local choice of food- this is not a material planning consideration.
- There is a clear requirement and demand for more class 3 units- this is not a material planning consideration.

## Conclusion

The proposal complies with adopted Edinburgh Local Development Plan policy Env 4, Env 6, Ret 9, Ret 11, Hou 7, the Edinburgh Guidance for Businesses, the South Side Conservation Area Character Appraisal and Historic Environment Scotland Managing Change in the Historic Environment Guidance Note on interiors. The proposals preserve the setting of the listed building and meet the requirements of S59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

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

### **3.4 Conditions/reasons/informatives**

#### **Conditions**

1. Prior to the development hereby approved becoming operational, the ventilation and flue system, capable of 30 air changes per hour, as shown in approved plans 02b and 03, shall be fully installed and will be operational in perpetuity to the satisfaction of the Council as Planning Authority.

#### **Reasons:-**

1. In the interests of residential amenity.

#### **Informatives**

It should be noted that:

1. The development hereby permitted shall be commenced no later than the expiration of three years from the date of this consent.
2. No development shall take place on the site until a 'Notice of Initiation of Development' has been submitted to the Council stating the intended date on which the development is to commence. Failure to do so constitutes a breach of planning control, under Section 123(1) of the Town and Country Planning (Scotland) Act 1997.
3. As soon as practicable upon the completion of the development of the site, as authorised in the associated grant of permission, a 'Notice of Completion of Development' must be given, in writing to the Council.

## **Financial impact**

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### **4.1 The financial impact has been assessed as follows:**

There are no financial implications to the Council.

## **Risk, Policy, compliance and governance impact**

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**5.1** Provided planning applications are determined in accordance with statutory legislation, the level of risk is low.

## **Equalities impact**

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### **6.1 The equalities impact has been assessed as follows:**

The application has been assessed and has no impact in terms of equalities or human rights.

## **Sustainability impact**

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### **7.1 The sustainability impact has been assessed as follows:**

This application meets the sustainability requirements of the Edinburgh Design Guidance.

## **Consultation and engagement**

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### **8.1 Pre-Application Process**

Pre-application discussions took place on this application.

### **8.2 Publicity summary of representations and Community Council comments**

The application received 24 letters of objection and 18 letters of support including one petition letter of support with 37 names, addresses and signatures. The issues raised have been addressed in section 3.3 of this report.

## **Background reading/external references**

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- To view details of the application go to
- [Planning and Building Standards online services](#)
- [Planning guidelines](#)
- [Conservation Area Character Appraisals](#)
- [Edinburgh Local Development Plan](#)
- [Scottish Planning Policy](#)

## **Statutory Development**

### **Plan Provision**

**Date registered** 21 August 2019

**Drawing numbers/Scheme** 01, 02b, 03,

Scheme 1

### **David R. Leslie**

Chief Planning Officer

PLACE

The City of Edinburgh Council

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## **Links - Policies**

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### **Relevant Policies:**

#### **Relevant policies of the Local Development Plan.**

LDP Policy Env 4 (Listed Buildings - Alterations and Extensions) identifies the circumstances in which alterations and extensions to listed buildings will be permitted.

LDP Policy Env 6 (Conservation Areas - Development) sets out criteria for assessing development in a conservation area.

LDP Policy Ret 9 (Alternative Use of Shop Units in Defined Centres) protects the City Centre Retail Core and Town Centres from development which would undermine their retailing function, and specifies that detailed criteria for change of use will be set out in supplementary guidance. It provides criteria for assessing the change of use of a shop unit to a non shop unit in local centres.

LDP Policy Ret 11 (Food and Drink Establishments) sets criteria for assessing the change of use to a food and drink establishment.

LDP Policy Hou 7 (Inappropriate Uses in Residential Areas) establishes a presumption against development which would have an unacceptable effect on the living conditions of nearby residents.

## **Relevant Non-Statutory Guidelines**

**Non-statutory guidelines** 'GUIDANCE FOR BUSINESSES' provides guidance for proposals likely to be made on behalf of businesses. It includes food and drink uses, conversion to residential use, changing housing to commercial uses, altering shopfronts and signage and advertisements.

**Non-statutory guidelines** 'LISTED BUILDINGS AND CONSERVATION AREAS' provides guidance on repairing, altering or extending listed buildings and unlisted buildings in conservation areas.

## **Relevant Government Guidance on Historic Environment.**

Managing Change in the Historic Environment: Interiors sets out Government guidance on the principles that apply to alterations to the interiors of listed buildings.

## **Other Relevant policy guidance**

**The South Side Conservation Area Character Appraisal** emphasises the harmonious scale, massing and materials and the significance of key institutional buildings within the area.

The Nicolson Street/Clerk Street Town Centre Supplementary Guidance sets out aims for the town centre as a whole and sets criteria for change of use of shop units.

# Appendix 1

## **Application for Planning Permission 19/03972/FUL At 47A South Clerk Street, Edinburgh, EH8 9NZ Change of Use from class 1 (shop) to class 3 (restaurant)**

### **Consultations**

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Environmental Protection

(Response 1)

The applicant proposes changing the use of a shop into a restaurant. The unit is located below residential properties with other commercial uses located at either side on the ground floor level.

Environmental Protection have concerns that this proposed use will have an adverse impact on the amenity for the properties above. The main concerns are noise created by the proposed restaurant, such as customers, music, kitchen noise and plant noise from the required ventilation and air handling units. It should be noted that Environmental Protection require specific details on commercial ventilation up-front. This must include a drawing showing the route of the flue including an elevation highlighting the termination point in relation to the surrounding buildings. If the flue is going to be internal the above information is still required along with confirmation that the chimney has been checked and is capable of having the required sized flue liner installed. Any ventilation system must be capable of achieving 30 air changes per hour.

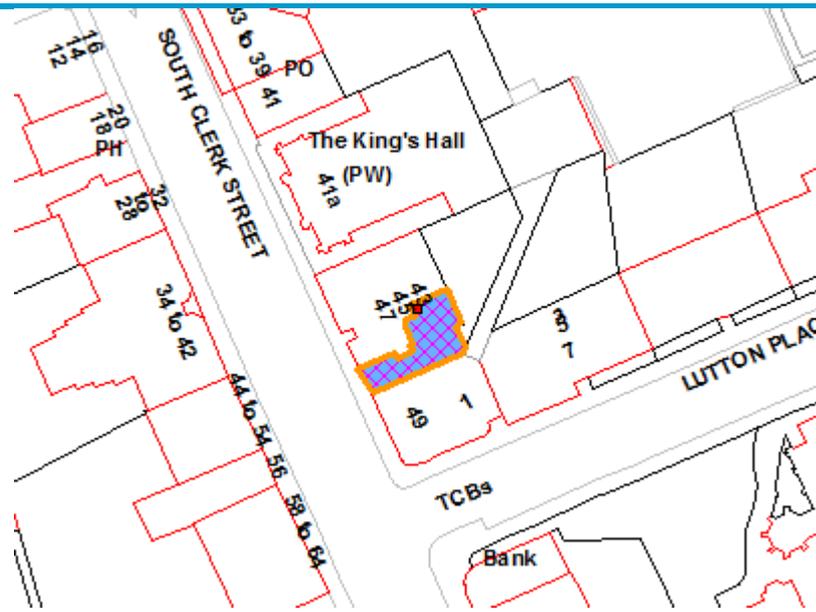
None of the above information has been provided therefore Environmental Protection recommend the application is refused.

(Response 2)

Environmental Protection can confirm that the details provided do confirm that the kitchen extract will be capable of reaching the chimney pot level and achieve 30 air changes per hour in the kitchen. The plans show that two flue liners will be installed serving the cooking areas. This will need to be conditioned if these documents are made available on the planning portal. Will the applicant be submitting a supporting noise impact assessment to address the noise issues?

## Location Plan

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