

Development Management Sub Committee

Wednesday 3 March 2021

**Application for Planning Permission 20/03083/FUL
at 72 Leith Walk, Edinburgh, EH6 5HB.
Change of use from funeral directors to restaurant.**

Item number

Report number

Wards

B13 - Leith

Summary

The principle of a change of use of a shop to a non-shop use is acceptable. However, the use of the premises as a Class 3 (Food and Drink) would have the potential to adversely impact on residential amenity by way of cooking effluvia entering neighbouring residential properties. The proposed use does not comply with the relevant policies in the Edinburgh Local Development Plan and the 'Guidance for Businesses'. There are no material considerations that would outweigh this.

Links

[Policies and guidance for this application](#)

OTH, SGLTC, LDPP, LHOU07, LRET09, LRET11, LEN04, LEN06, NSG, NSBUS,

Report

Application for Planning Permission 20/03083/FUL at 72 Leith Walk, Edinburgh, EH6 5HB. Change of use from funeral directors to restaurant.

Recommendations

1.1 It is recommended that this application be Refused for the reasons below.

Background

2.1 Site description

The application site occupies the ground floor and basement at 72 and 74 Leith Walk, where 74 Leith Walk forms a side extension to a wider two and a half storey building. The upper floors are in residential use. A four and half storey tenement building, with residential properties on the upper floors and a mixture of commercial uses on the ground floor, lies adjacent to the property. Immediately behind the premises, to the west, is a small courtyard and a four-storey tenement.

The property is category B listed on the 19 December 1970 (LB: 27692).

This application site is located within the Leith Conservation Area.

2.2 Site History

There is no relevant planning history for this site.

Main report

3.1 Description of the Proposal

The proposal is for a change of use from Class 1 (retail) to class 3 (food and drink).

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 principle of a change of use is acceptable;
- b) the proposed use will impact on residential amenity;
- c) the proposal will preserve the character of the listed building;
- d) it preserves or enhances the special character or appearance of the conservation area and
- e) any matters raised in representations have been addressed.

a) Principle

LDP Policy Ret 9 states that change of use proposals which would undermine the retailing function of the centre will not be permitted.

Detailed criteria for assessing the change of use of a shop to a non-shop use is set out in the Leith Town Centre Supplementary Guidance. Policy LTC 3 - Alternative Use of Shop Units Elsewhere in Leith Town Centre states that the change of use of a shop to non-shop use will be permitted, provided the proposal would be a Class 3 - food and drink use.

The use of the premises as a restaurant would complement the character of the centre.

The proposal complies with LDP Policy Ret 9 and the Leith Town Centre Supplementary Guidance. The principle of a change of use is acceptable, subject to compliance with other policies in the plan.

b) Impact on Residential Amenity

LDP Policy Ret 11 states that the change of use of shop unit 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: if it would be:

- a) 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..

The premises are situated on a busy thoroughfare and the proposed use would be concomitant with the existing characteristics of the surrounding area. The proposal complies with this policy

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

The non-statutory 'Guidance for Businesses' supports restaurant uses within existing clusters of commercial uses and designated shopping centres. However, a Class 3 establishment must satisfy noise and ventilation requirements to ensure that they will not impinge on the amenity of neighbouring residential properties.

The proposal seeks to utilise an existing chimney stack for the ventilation flue, which shall be ducted to chimney height. Environmental Protection has noted that the top two floors of the nearest residential building to the north are located eight metres away and above the height of the chimney and ducting point of the application premises. In these circumstances, the proposed ventilation system is insufficient to clear the height of those properties and other residential units within a 30m radius.

The relationship and height of the application premises and nearby residential properties is such that the proposed ventilation system would be insufficient to allow adequate dilution and dispersal of cooking effluvia. It is likely that the proposed use would result in cooking odours entering residential properties and significantly impact on their amenity.

Environmental Protection objects to the application for a Class 3 use due to the impact on residential amenity.

The proposal does not comply with LDP Policy Hou 7 and the 'Guidance for Businesses'.

c) Impact on the Listed Building

Section 59 (1) of the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997 states:-

"In considering whether to grant planning permission for development which affects a listed building or its setting, a planning authority or the Secretary of State, as the case may be, 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."

LDP Policy Env 4, Listed Buildings - Alterations and Extensions, permits alterations to listed buildings when they are justified, in keeping with its character and can be undertaken without damage to historic structures or diminution of interest.

The proposal will not impact on any historical architectural features and will therefore not adversely impact on the special architectural or historic interest of the listed building. The works are minor in nature and will not impact the special character of the building. The proposal complies with LDP Policy Env 4.

d) Impact on the Conservation Area

LDP Policy Env 6, Conservation Areas - Development, permits development affecting the setting of a conservation area where it preserves or enhances its special character and appearance.

No external alterations are proposed, and the change of use will not have any material impact on the setting of the conservation area. The proposal complies with LDP Policy Env 6.

e) Matters raised in representations

Objection

Material

- Negative impact on neighbouring amenity in terms of noise and cooking odours Addressed in Section 3.3 (b).

Support

Material

- Positive impact on neighbourhood character - Addressed in Section 3.3 (a).
- Use of otherwise vacant space - Addressed in Section 3.3 (a).
- Minor impact on neighbouring amenity in terms of noise and cooking odours - Addressed in Section 3.3 (b).

CONCLUSION

In conclusion, the principle of a change of use of a Class 1 to a Class 3 use is acceptable. However, the proposal would adversely impact on residential amenity by way of the inability of the proposed ventilation system to disperse cooking effluvia. The proposed use does not comply with LDP Policy Hou 7 and the 'Guidance for Businesses'. There are no material considerations that would outweigh this. It is recommended that the application is refused.

It is recommended that this application be Refused for the reasons below.

3.4 Conditions/reasons

Reasons:-

1. The proposal is contrary to Local Development Plan Policy Hou 7 and the non-statutory Guidance for Business, as the ventilation system would be insufficient to allow adequate dilution and dispersal of cooking effluvia and would significantly impact on nearby residential amenity.

Financial impact

4.1 The financial impact has been assessed as follows:

There are no financial implications to the Council.

Risk, Policy, compliance and governance impact

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

Equalities impact

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

7.1 The sustainability impact has been assessed as follows:

This application is not subject to the sustainability requirements of the Edinburgh Design Guidance.

Consultation and engagement

8.1 Pre-Application Process

There is no pre-application process history.

8.2 Publicity summary of representations and Community Council comments

25 letters of representation were received comprising 24 comments in support and one comment in objection. The Community Council did not comment on the application.

A full assessment of the representations can be found in the main report in the assessment section.

Background reading/external references

- 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**

Edinburgh Local Development Plan

Date registered

29 July 2020

Drawing numbers/Scheme

01-03,

Scheme 1

David R. Leslie

Chief Planning Officer

PLACE

The City of Edinburgh Council

Contact: Adam Gloser, Assistant Planner

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Links - Policies

Relevant Policies:

Other Relevant policy guidance

The Leith Town Centre Supplementary Guidance sets out over arching aims for the town centre as a whole and sets criteria for change of use of shop units.

Relevant policies of the Local Development Plan.

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.

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 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.

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.

Appendix 1

Application for Planning Permission 20/03083/FUL at 72 Leith Walk, Edinburgh, EH6 5HB. Change of use from funeral directors to restaurant.

Consultations

Environmental Protection:

Environmental Protection cannot support this application and recommends that it is refused.

Assessment

The proposed restaurant consists of an existing single storey flat roof extension to the side and front of a two and a half storey building and includes part of the ground floor, of the main part of the building. The proposal also includes a basement underneath the side extension. The property likely dates from the mid to late 19th Century and may have originally been a single residential property. The site was previously used as a funeral director. The upper floors of the building appear to be used as residential accommodation. To the south, adjacent to the application site, on the other side of the common stair door is located an estate agent business. Further south is located a row of townhouses which are currently used as offices. Adjoining the application site to the north is a small office. Adjacent to this is located a four and half storey tenement building with residential properties on the upper floors and a mixture of commercial uses on the ground floor. Immediately behind the proposed restaurant to the east, is located a small courtyard and a four storey tenement.

The plans submitted show that a full kitchen ventilation extract system shall be installed to chimney pot height. However, chimney pot height of this building is insufficient to clear the height of other residential properties within a 30m radius. The chimney is around 8m away from the nearest residential building to the north and below the height of the top two floors of the building. Therefore, the height and distance of the ventilation system proposed is insufficient to allow adequate dilution and dispersal of cooking effluvia and would very likely generate cooking odour complaints from residents and significantly impact on their amenity.

It is unlikely that increasing the height of the ventilation extract duct would be acceptable to Planning and there are no alternative mitigation measures that are acceptable to Environmental Protection. Therefore, the likely issues with cooking odour are the principal reason why Environmental Protection recommends that the application is refused.

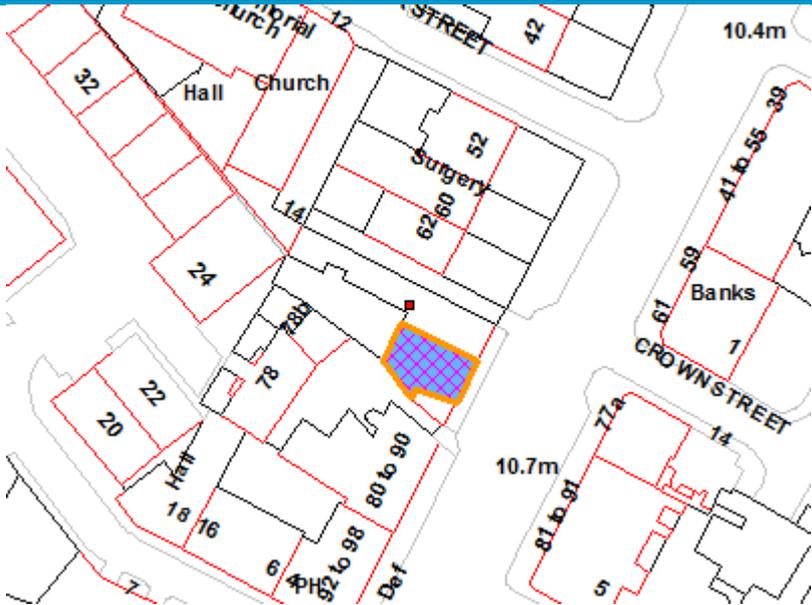
No information was provided which demonstrated that the two chimneys proposed to be used to house the ventilation extract ducts, are in a suitable condition and able to

accept the ducts proposed. Similarly, no supporting information was provided that demonstrated that the size of the ducts could facilitate 30 air changes per hour by volume of the kitchen. This information if not provided with the application is normally requested. However, as the application is recommended for refusal, it is of no benefit to request it.

In terms of noise, a Noise Impact Assessment (NIA) was not provided and is information that is normally required to assess certain planning applications. The proposal will generate mechanical ventilation noise that will impact on residents within the building as well as the neighbouring tenement. In addition, the residents in the floors above proposed restaurant may be subjected to customer noise. However, as the application is recommended for refusal, it is of no benefit to request a NIA.

In summary, for the reasons outlined above, Environmental Protection cannot support the application and recommends that it is refused.

Location Plan



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