

Martin McMullen Architect.
209 Easter Road
Edinburgh
Scotland
EH6 8LG

Metro Inns Ltd.
FAO: Mr Pat Doherty
1 Commercial Street
Edinburgh
Scotland
EH6 6JA

Decision date: 6 December 2019

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

New decking area for external tables and chairs including a parasol with 4m cover, portable planters with perspex sound diffusers (in retrospect)

At 1 Commercial Street Edinburgh EH6 6JA

Application No: 19/04799/FUL

DECISION NOTICE

With reference to your application for Planning Permission registered on 8 October 2019, 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 and Enforced** 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;

Conditions:-

1. The proposal is contrary to LDP policies Des 4 and Env 6 and the Council's Non Statutory Guidance for Business. The proposal is not acceptable in principle and does not preserve or enhance the character and appearance of the Leith Conservation Area. The use of the space and the siting of the furniture associated with the space has a detrimental impact on the character and appearance of the Leith Conservation Area.
2. The proposal is contrary to LDP policy Hou 7 and the Council's Non-Statutory Guidance for Business as it has a detrimental impact on the amenity of neighbouring residents.

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

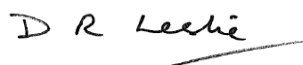
Drawings 01-03, represent the determined scheme. Full details of the application can be found on the [Planning and Building Standards Online Services](#)

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

The proposal will unduly impact the character of the neighbourhood and will result in an unreasonable loss of public space. The proposal is not acceptable in principle and does not accord with the Local Development Plan. There are no material considerations which outweigh this conclusion.

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 Adam Gloser directly on .



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 19/04799/FUL

At 1 Commercial Street, Edinburgh, EH6 6JA

New decking area for external tables and chairs including a parasol with 4m cover, portable planters with perspex sound diffusers (in retrospect)

| | |
|---------------------------|--------------------------|
| Item | Local Delegated Decision |
| Application number | 19/04799/FUL |
| Wards | B13 - Leith |

Summary

The proposal will unduly impact the character of the neighbourhood and will result in an unreasonable loss of public space. The proposal is not acceptable in principle and does not accord with the Local Development Plan. There are no material considerations which outweigh this conclusion.

Links

| | |
|---|--|
| <u>Policies and guidance for this application</u> | LDPP, LDES01, LDES05, LDES08, LDES10, LRET11, NSG, NSBUS, OTH, CRPLEI, |
|---|--|

Report of handling

Recommendations

1.1 It is recommended that this application be Refused and Enforced subject to the details below.

Background

2.1 Site description

The application site is an extremely narrow cobbled section of Commercial Wharf. The site is currently operating as a car park and an external seating area for the adjacent restaurant situated within 1 Commercial Street.

The restaurant is the ground floor of a Victorian building in a prominent location on the west side of the Water of Leith opposite the Shore in Leith. It stands on the corner of Commercial Street and Commercial Wharf.

Commercial Street forms part of the primary coast road around the north of the city. Commercial Wharf is a setted cul-de-sac leading to a converted warehouse to the immediate south.

The building is listed category B, and is surrounded by other listed buildings.

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

Retrospective planning permission is sought for a new decking area with portable planters.

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, it needs to be considered whether:

- a) The proposal will adversely affect neighbouring residential amenity;
- b) the proposals preserve and enhance the character and appearance of the Leith Conservation Area;
- c) The proposal will adversely affect road safety;
- d) Comments raised have been addressed

a) Residential Amenity

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

The proposal involves the active utilisation of an outdoor area for customers to eat and drink in. Although sound diffusers have been proposed to mitigate the impacts of the proposal on neighbouring premises, the extensive level of provision for customers to eat and drink both inside the restaurant and outside in the decked area has the potential to generate significant levels of noise and disturbance for nearby residents residing in the tenement buildings on Commercial Street and Commercial Wharf throughout the course of the day, including into unsociable hours.

The proposal has a detrimental impact on the amenity of neighbouring residents and does not comply with LDP Policy Hou 7.

b) Conservation Area

Edinburgh Local Development Plan policy Env 6 highlights the importance of preserving the character and appearance of the conservation area. In addition, the non-statutory Guidance for Businesses advises that proposals should be architecturally compatible in design, scale and materials with the character of the conservation area.

The timber decking and portable Perspex planters are all constructed from poor quality materials and are of a detrimental design and form which does not reflect a permanent sense of place. These structures form highly incongruous developments which detract from the quality of the streetscape and disrupt the degree of separation between the waterfront and the traditional listed building.

The proposal does not preserve or enhance the character and appearance of the Leith Conservation Area. The proposal is contrary to LDP policy Env 6.

c) Road Safety

The addition of outdoor seating shall not significantly alter the intensity of the premises current use. There are no road safety concerns from the proposed use.

f) Public Comments

One letter of objection was received.

Material Considerations

- Impact on vehicular access through the site: addressed in section 3.3(c).

Conclusion

The proposal will unduly impact the character of the conservation area and will result in an unreasonable impact on residential amenity. The proposal is not acceptable in principle and does not accord with the Local Development Plan. There are no material considerations which outweigh this conclusion.

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

3.4 Conditions/reasons/informatives

Reasons:-

1. The proposal is contrary to LDP policies Des 4 and Env 6 and the Council's Non Statutory Guidance for Business. The proposal is not acceptable in principle and does not preserve or enhance the character and appearance of the Leith Conservation Area. The use of the space and the siting of the furniture associated with the space has a detrimental impact on the character and appearance of the Leith Conservation Area.
2. The proposal is contrary to LDP policy Hou 7 and the Council's Non-Statutory Guidance for Business as it has a detrimental impact on the amenity of neighbouring residents.

Risk, Policy, compliance and governance impact

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

Equalities impact

5.1 The equalities impact has been assessed as follows:

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

Consultation and engagement

6.1 Pre-Application Process

There is no pre-application process history.

6.2 Publicity summary of representations and Community Council comments

One letter of representation has been received.

Background reading / external references

- To view details of the application go to
- [Planning and Building Standards online services](#)

Statutory Development**Plan Provision**

Edinburgh Local Development Plan

Date registered

8 October 2019

**Drawing
numbers/Scheme**01-03,

Scheme 1

David R. Leslie
Chief Planning Officer
PLACE
The City of Edinburgh Council

Contact: Adam Gloser, Assistant Planner
E-mail:adam.gloser@edinburgh.gov.uk Tel:

Links - Policies

Relevant Policies:

Relevant policies of the Local Development Plan.

LDP Policy Des 1 (Design Quality and Context) sets general criteria for assessing design quality and requires an overall design concept to be demonstrated.

LDP Policy Des 5 (Development Design - Amenity) sets criteria for assessing amenity.

LDP Policy Des 8 (Public Realm and Landscape Design) sets criteria for assessing public realm and landscape design.

LDP Policy Des 10 (Waterside Development) sets criteria for assessing development on sites on the coastal edge or adjoining a watercourse, including the Union Canal.

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

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.

Other Relevant policy guidance

The 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

Appendix 1

Consultations

No consultations undertaken.

END

Comments for Planning Application 19/04799/FUL

Application Summary

Application Number: 19/04799/FUL

Address: 1 Commercial Street Edinburgh EH6 6JA

Proposal: New decking area for external tables and chairs including a parasol with 4m cover, portable planters with perspex sound diffusers (in retrospect)|cr|

Case Officer: Adam Gloser

Customer Details

Name: Ms Georgina Gill

Address: 6/12 Commercial Wharf Edinburgh

Comment Details

Commenter Type: Neighbour

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: The area of the Wharf where the decking has been built used to be used for parking by people working in or visiting 1 Commercial Wharf. Since building work was started towards the erection of this decking, people have started parking further along the Wharf. The access lane is narrower at this point and a number of vehicles including council bin lorries have been unable to gain access to the Cooperage car park to collect bins from there. This in turn has led to frequent build ups of rubbish that cause health hazards to the residents of 6 Commercial Wharf. I also have concerns that there could be similar access difficulties if emergency vehicles need to access 6 Commercial Wharf.



Business Centre G.2 Waverley Court 4 East Market Street Edinburgh EH8 8BG Tel: 0131 529 3550 Fax: 0131 529 6206 Email: planning.systems@edinburgh.gov.uk

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100237884-001

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

Applicant or Agent Details

Are you an applicant or an agent? * (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

☐ Applicant ☒ Agent

Agent Details

Please enter Agent details

Company/Organisation: Gray Planning & Development Ltd

Ref. Number:

You must enter a Building Name or Number, or both: *

First Name: *

Building Name:

Last Name: *

Building Number:

Telephone Number: *

Address 1 (Street): *

Extension Number:

Address 2:

Mobile Number:

Town/City: *

Fax Number:

Country: *

Postcode: *

Email Address: *

Is the applicant an individual or an organisation/corporate entity? *

☐ Individual ☒ Organisation/Corporate entity

Applicant Details

Please enter Applicant details

| | | | |
|----------------------|---|--|--|
| Title: | <input type="text"/> | You must enter a Building Name or Number, or both: * | |
| Other Title: | <input type="text"/> | Building Name: | <input type="text"/> |
| First Name: * | <input type="text"/> | Building Number: | <input type="text" value="1"/> |
| Last Name: * | <input type="text"/> | Address 1 (Street): * | <input type="text" value="Commercial Street"/> |
| Company/Organisation | <input type="text" value="Metro Inns Ltd"/> | Address 2: | <input type="text"/> |
| Telephone Number: * | <input type="text"/> | Town/City: * | <input type="text" value="Edinburgh"/> |
| Extension Number: | <input type="text"/> | Country: * | <input type="text" value="Uk"/> |
| Mobile Number: | <input type="text"/> | Postcode: * | <input type="text" value="EH6 6JA"/> |
| Fax Number: | <input type="text"/> | | |
| Email Address: * | <input type="text" value="REDACTED"/> | | |

Site Address Details

| | |
|---|--|
| Planning Authority: | <input type="text" value="City of Edinburgh Council"/> |
| Full postal address of the site (including postcode where available): | |
| Address 1: | <input type="text" value="1 COMMERCIAL STREET"/> |
| Address 2: | <input type="text"/> |
| Address 3: | <input type="text"/> |
| Address 4: | <input type="text"/> |
| Address 5: | <input type="text"/> |
| Town/City/Settlement: | <input type="text" value="EDINBURGH"/> |
| Post Code: | <input type="text" value="EH6 6JA"/> |

Please identify/describe the location of the site or sites

| | | | |
|----------|-------------------------------------|---------|-------------------------------------|
| Northing | <input type="text" value="676543"/> | Easting | <input type="text" value="327029"/> |
|----------|-------------------------------------|---------|-------------------------------------|

Description of Proposal

Please provide a description of your proposal to which your review relates. The description should be the same as given in the application form, or as amended with the agreement of the planning authority: *
(Max 500 characters)

NEW DECKING AREA FOR EXTERNAL TABLES AND CHAIRS INCLUDING A PARASOL WITH 4M COVER, PORTABLE PLANTERS WITH PERSPEX SOUND DIFFUSERS (IN RETROSPECT) (PLANNING REF: 19/04799/FUL)

Type of Application

What type of application did you submit to the planning authority? *

- ☒ Application for planning permission (including householder application but excluding application to work minerals).
- ☐ Application for planning permission in principle.
- ☐ Further application.
- ☐ Application for approval of matters specified in conditions.

What does your review relate to? *

- ☒ Refusal Notice.
- ☐ Grant of permission with Conditions imposed.
- ☐ No decision reached within the prescribed period (two months after validation date or any agreed extension) – deemed refusal.

Statement of reasons for seeking review

You must state in full, why you are seeking a review of the planning authority's decision (or failure to make a decision). Your statement must set out all matters you consider require to be taken into account in determining your review. If necessary this can be provided as a separate document in the 'Supporting Documents' section: * (Max 500 characters)

Note: you are unlikely to have a further opportunity to add to your statement of appeal at a later date, so it is essential that you produce all of the information you want the decision-maker to take into account.

You should not however raise any new matter which was not before the planning authority at the time it decided your application (or at the time expiry of the period of determination), unless you can demonstrate that the new matter could not have been raised before that time or that it not being raised before that time is a consequence of exceptional circumstances.

Please refer to attached Grounds for Review Statement

Have you raised any matters which were not before the appointed officer at the time the Determination on your application was made? *

☐ Yes ☒ No

If yes, you should explain in the box below, why you are raising the new matter, why it was not raised with the appointed officer before your application was determined and why you consider it should be considered in your review: * (Max 500 characters)

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review. You can attach these documents electronically later in the process: * (Max 500 characters)

Please refer to attached List of Appeal Documents

Application Details

Please provide the application reference no. given to you by your planning authority for your previous application.

19/04799/FUL

What date was the application submitted to the planning authority? *

07/10/2019

What date was the decision issued by the planning authority? *

06/12/2019

Review Procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Can this review continue to a conclusion, in your opinion, based on a review of the relevant information provided by yourself and other parties only, without any further procedures? For example, written submission, hearing session, site inspection. *

☐ Yes ☒ No

Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may select more than one option if you wish the review to be a combination of procedures.

Please select a further procedure *

By means of inspection of the land to which the review relates

Please explain in detail in your own words why this further procedure is required and the matters set out in your statement of appeal it will deal with? (Max 500 characters)

Site inspection recommended to view the alleged unlawful decking area and to view it in the context of the surrounding residential properties

In the event that the Local Review Body appointed to consider your application decides to inspect the site, in your opinion:

Can the site be clearly seen from a road or public land? *

☒ Yes ☐ No

Is it possible for the site to be accessed safely and without barriers to entry? *

☒ Yes ☐ No

Checklist – Application for Notice of Review

Please complete the following checklist to make sure you have provided all the necessary information in support of your appeal. Failure to submit all this information may result in your appeal being deemed invalid.

Have you provided the name and address of the applicant?. *

☒ Yes ☐ No

Have you provided the date and reference number of the application which is the subject of this review? *

☒ Yes ☐ No

If you are the agent, acting on behalf of the applicant, have you provided details of your name and address and indicated whether any notice or correspondence required in connection with the review should be sent to you or the applicant? *

☒ Yes ☐ No ☐ N/A

Have you provided a statement setting out your reasons for requiring a review and by what procedure (or combination of procedures) you wish the review to be conducted? *

☒ Yes ☐ No

Note: You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. You may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

Please attach a copy of all documents, material and evidence which you intend to rely on (e.g. plans and Drawings) which are now the subject of this review *

☒ Yes ☐ No

Note: Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice (if any) from the earlier consent.

Declare – Notice of Review

I/We the applicant/agent certify that this is an application for review on the grounds stated.

Declaration Name: Mr Neil Gray

Declaration Date: 05/03/2020

Proposal Details

| | |
|------------------------------|---|
| Proposal Name | 100237884 |
| Proposal Description | New decking area for external tables and chairs including a parasol with 4m cover, portable planters with perspex sound diffusers (in retrospect) |
| Address | 1 COMMERCIAL STREET, EDINBURGH, EH6 6JA |
| Local Authority | City of Edinburgh Council |
| Application Online Reference | 100237884-001 |

Application Status

| | |
|--------------------------|----------|
| Form | complete |
| Main Details | complete |
| Checklist | complete |
| Declaration | complete |
| Supporting Documentation | complete |
| Email Notification | complete |

Attachment Details

| | | |
|--|----------|----|
| Notice of Review | System | A4 |
| Refused Application 19_04799_FUL-_01__LOCATION_PLAN-4388516 | Attached | A4 |
| Refused Application 19_04799_FUL-_02__EXISTING_PLAN-4388517 | Attached | A3 |
| Refused Application 19_04799_FUL-_03__PROPOSED_PLANS_AND_SECTION-4388518 | Attached | A3 |
| Refused Application 19_04799_FUL-APPLICATION_FORM-4388866 | Attached | A1 |
| Refused Application 19_04799_FUL-COVER_LETTER-4397841 | Attached | A4 |
| Refused Application 19_04799_FUL-DECISION_NOTICE-4446115 | Attached | A4 |
| Refused Application 19_04799_FUL-HANDLING_REPORT-4446113 | Attached | A4 |
| Appeal Doc 1 - Decision Notice | Attached | A4 |
| Appeal Doc 2 - Report of Handling | Attached | A4 |
| Appeal Doc 3 - Supporting Statement by architect | Attached | A4 |
| Appeal Doc 4 - Aerial Photo taken August 2012 showing seating | Attached | A4 |
| Appeal Doc 4b Photo of Outside Seating | Attached | A4 |
| Appeal Doc 5 - Licencing Board Approval and Premises Plan 2009 | Attached | A4 |
| Appeal Doc 6 - Enforcement Action CEC Sept 19 | Attached | A4 |
| Appeal Doc 7 - Non-Statutory Guidance For Business | Attached | A4 |

| | | |
|---|----------|----|
| Appeal Doc 8 - Image taken 2011 and 2015 showing outdoor area enclosure | Attached | A4 |
| List of Appeal Documents at 050320 | Attached | A4 |
| Local Review Body Cover Letter 050320 | Attached | A4 |
| Grounds for Review Statement 050320 | Attached | A4 |
| Notice_of_Review-2.pdf | Attached | A0 |
| Application_Summary.pdf | Attached | A0 |
| Notice of Review-001.xml | Attached | A0 |



October 07th, 2019

City Development Department
Planning & Development
Waverley Court,
4 East Market Street,
Edinburgh,
EH8 8BG,

Dear Sirs

**RE: RETROSPECTED PLANNING FOR EXTERNAL SEATING AREA AT
1 COMMERCIAL STREET , EDINBURGH.**

We would like to apply for retrospect planning consent for the proposed external seating area at the above address. . Please find uploaded one colour set of drawings PL-01- 03 showing the proposed alterations which include:-

- New decking area for external tables and chairs
- New parasol with 4m cover.
- Portable planters with Perspex sound diffusers.

supporting statement –

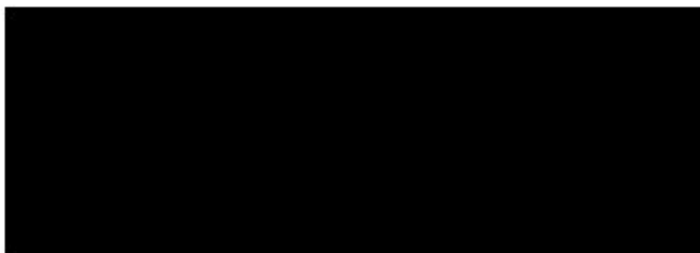
The restaurant seeks to install a level decking area with planters and a parasol for external diners.

The previous restaurant always had external seating in this area as evident in the historical aerial photos below and my client seeks to keep this tradition going but with a level base in which to set the external seating and tables providing diners with a much better experience.

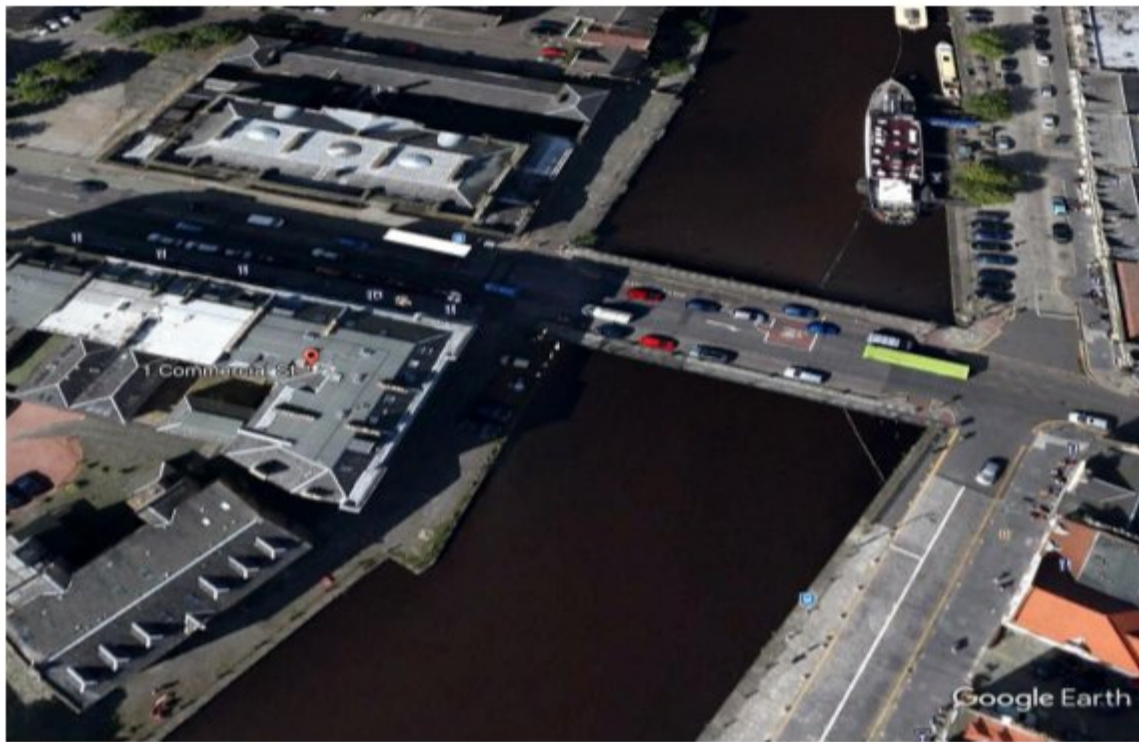
The planters are portable so can be rolled out and removed easily and will provide a splash of colour and greenery to the seating area.

If you require any further information, please don't hesitate to contact me.

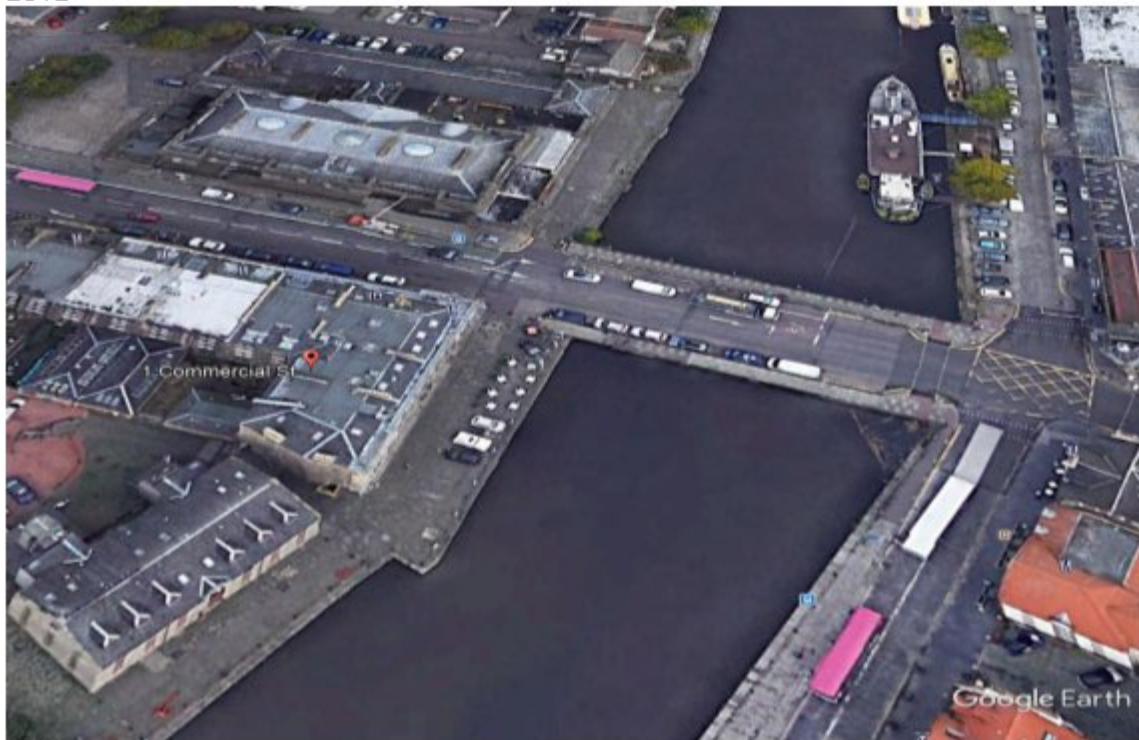
Yours sincerely



Martin McMullen
Cc. Pat Doherty



2012



2016



2018



Example of the proposed planters



Business Centre G.2 Waverley Court 4 East Market Street Edinburgh EH8 8BG Tel: 0131 529 3550 Fax: 0131 529 6206 Email: planning.systems@edinburgh.gov.uk

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100185643-001

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

Type of Application

What is this application for? Please select one of the following: *

- ☒ Application for planning permission (including changes of use and surface mineral working).
- ☐ Application for planning permission in principle.
- ☐ Further application, (including renewal of planning permission, modification, variation or removal of a planning condition etc)
- ☐ Application for Approval of Matters specified in conditions.

Description of Proposal

Please describe the proposal including any change of use: * (Max 500 characters)

New decking area for external tables and chairs including a parasol with 4m cover, Portable planters with Perspex sound diffusers

Is this a temporary permission? *

☐ Yes ☒ No

If a change of use is to be included in the proposal has it already taken place?

☐ Yes ☒ No

(Answer 'No' if there is no change of use.) *

Has the work already been started and/or completed? *

☐ No ☒ Yes – Started ☐ Yes - Completed

Please state date of completion, or if not completed, the start date (dd/mm/yyyy): *

06/09/2019

Please explain why work has taken place in advance of making this application: * (Max 500 characters)

The client wasn't aware he required planning permission as they were just making improvements to the existing external seating area.

Applicant or Agent Details

Are you an applicant or an agent? * (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

☐ Applicant ☒ Agent

Agent Details

Please enter Agent details

| | | | |
|---|---------------------------|--|-------------|
| Company/Organisation: | Martin McMullen Architect | | |
| Ref. Number: | | You must enter a Building Name or Number, or both: * | |
| First Name: * | Martin | Building Name: | |
| Last Name: * | McMullen | Building Number: | 209 |
| Telephone Number: * | | Address 1 (Street): * | Easter Road |
| Extension Number: | | Address 2: | |
| Mobile Number: | | Town/City: * | Edinburgh |
| Fax Number: | | Country: * | Scotland |
| | | Postcode: * | EH6 8LG |
| Email Address: * | | | |
| Is the applicant an individual or an organisation/corporate entity? * | | | |
| <input type="checkbox"/> Individual <input checked="" type="checkbox"/> Organisation/Corporate entity | | | |

Applicant Details

Please enter Applicant details

| | | | |
|----------------------|----------------|--|-------------------|
| Title: | Mr | You must enter a Building Name or Number, or both: * | |
| Other Title: | | Building Name: | |
| First Name: * | Pat | Building Number: | 1 |
| Last Name: * | Doherty | Address 1 (Street): * | Commercial Street |
| Company/Organisation | Metro inns Ltd | Address 2: | |
| Telephone Number: * | | Town/City: * | Edinburgh |
| Extension Number: | | Country: * | Scotland |
| Mobile Number: | | Postcode: * | EH6 6JA |
| Fax Number: | | | |
| Email Address: * | | | |

Site Address Details

Planning Authority:

City of Edinburgh Council

Full postal address of the site (including postcode where available):

Address 1:

1 COMMERCIAL STREET

Address 2:

Address 3:

Address 4:

Address 5:

Town/City/Settlement:

EDINBURGH

Post Code:

EH6 6JA

Please identify/describe the location of the site or sites

Northing

676543

Easting

327029

Pre-Application Discussion

Have you discussed your proposal with the planning authority? *

☐ Yes ☒ No

Site Area

Please state the site area:

723.00

Please state the measurement type used:

☐ Hectares (ha) ☒ Square Metres (sq.m)

Existing Use

Please describe the current or most recent use: * (Max 500 characters)

existing external seating area for the restaurant

Access and Parking

Are you proposing a new altered vehicle access to or from a public road? *

☐ Yes ☒ No

If Yes please describe and show on your drawings the position of any existing. Altered or new access points, highlighting the changes you propose to make. You should also show existing footpaths and note if there will be any impact on these.

| | |
|--|--|
| <p>Are you proposing any change to public paths, public rights of way or affecting any public right of access? * <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If Yes please show on your drawings the position of any affected areas highlighting the changes you propose to make, including arrangements for continuing or alternative public access.</p> | |
| <p>How many vehicle parking spaces (garaging and open parking) currently exist on the application Site?</p> | <div style="border: 1px solid black; padding: 2px 10px;">6</div> |
| <p>How many vehicle parking spaces (garaging and open parking) do you propose on the site (i.e. the Total of existing and any new spaces or a reduced number of spaces)? *</p> | <div style="border: 1px solid black; padding: 2px 10px;">5</div> |
| <p>Please show on your drawings the position of existing and proposed parking spaces and identify if these are for the use of particular types of vehicles (e.g. parking for disabled people, coaches, HGV vehicles, cycles spaces).</p> | |
| <h2 style="margin: 0;">Water Supply and Drainage Arrangements</h2> | |
| <p>Will your proposal require new or altered water supply or drainage arrangements? * <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> | |
| <p>Do your proposals make provision for sustainable drainage of surface water?? * <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (e.g. SUDS arrangements) *</p> <p>Note:-</p> <p>Please include details of SUDS arrangements on your plans</p> <p>Selecting 'No' to the above question means that you could be in breach of Environmental legislation.</p> | |
| <p>Are you proposing to connect to the public water supply network? *</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No, using a private water supply</p> <p><input checked="" type="checkbox"/> No connection required</p> <p>If No, using a private water supply, please show on plans the supply and all works needed to provide it (on or off site).</p> | |
| <h2 style="margin: 0;">Assessment of Flood Risk</h2> | |
| <p>Is the site within an area of known risk of flooding? * <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Don't Know</p> <p>If the site is within an area of known risk of flooding you may need to submit a Flood Risk Assessment before your application can be determined. You may wish to contact your Planning Authority or SEPA for advice on what information may be required.</p> <p>Do you think your proposal may increase the flood risk elsewhere? * <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Don't Know</p> | |
| <h2 style="margin: 0;">Trees</h2> | |
| <p>Are there any trees on or adjacent to the application site? * <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If Yes, please mark on your drawings any trees, known protected trees and their canopy spread close to the proposal site and indicate if any are to be cut back or felled.</p> | |
| <h2 style="margin: 0;">Waste Storage and Collection</h2> | |
| <p>Do the plans incorporate areas to store and aid the collection of waste (including recycling)? * <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> | |

If Yes or No, please provide further details: * (Max 500 characters)

existing refuse location to remain unchanged

Residential Units Including Conversion

Does your proposal include new or additional houses and/or flats? *

☐ Yes ☒ No

All Types of Non Housing Development – Proposed New Floorspace

Does your proposal alter or create non-residential floorspace? *

☐ Yes ☒ No

Schedule 3 Development

Does the proposal involve a form of development listed in Schedule 3 of the Town and Country Planning (Development Management Procedure (Scotland) Regulations 2013 *

☐ Yes ☒ No ☐ Don't Know

If yes, your proposal will additionally have to be advertised in a newspaper circulating in the area of the development. Your planning authority will do this on your behalf but will charge you a fee. Please check the planning authority's website for advice on the additional fee and add this to your planning fee.

If you are unsure whether your proposal involves a form of development listed in Schedule 3, please check the Help Text and Guidance notes before contacting your planning authority.

Planning Service Employee/Elected Member Interest

Is the applicant, or the applicant's spouse/partner, either a member of staff within the planning service or an elected member of the planning authority? *

☐ Yes ☒ No

Certificates and Notices

CERTIFICATE AND NOTICE UNDER REGULATION 15 – TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND) REGULATION 2013

One Certificate must be completed and submitted along with the application form. This is most usually Certificate A, Form 1, Certificate B, Certificate C or Certificate E.

Are you/the applicant the sole owner of ALL the land? *

☒ Yes ☐ No

Is any of the land part of an agricultural holding? *

☐ Yes ☒ No

Certificate Required

The following Land Ownership Certificate is required to complete this section of the proposal:

Certificate A

Land Ownership Certificate

Certificate and Notice under Regulation 15 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Certificate A

I hereby certify that –

(1) - No person other than myself/the applicant was an owner (Any person who, in respect of any part of the land, is the owner or is the lessee under a lease thereof of which not less than 7 years remain unexpired.) of any part of the land to which the application relates at the beginning of the period of 21 days ending with the date of the accompanying application.

(2) - None of the land to which the application relates constitutes or forms part of an agricultural holding

Signed: Martin McMullen

On behalf of: Metro inns Ltd

Date: 07/10/2019

☒ Please tick here to certify this Certificate. *

Checklist – Application for Planning Permission

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Please take a few moments to complete the following checklist in order to ensure that you have provided all the necessary information in support of your application. Failure to submit sufficient information with your application may result in your application being deemed invalid. The planning authority will not start processing your application until it is valid.

a) If this is a further application where there is a variation of conditions attached to a previous consent, have you provided a statement to that effect? *

☐ Yes ☐ No ☒ Not applicable to this application

b) If this is an application for planning permission or planning permission in principle where there is a crown interest in the land, have you provided a statement to that effect? *

☐ Yes ☐ No ☒ Not applicable to this application

c) If this is an application for planning permission, planning permission in principle or a further application and the application is for development belonging to the categories of national or major development (other than one under Section 42 of the planning Act), have you provided a Pre-Application Consultation Report? *

☐ Yes ☐ No ☒ Not applicable to this application

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

d) If this is an application for planning permission and the application relates to development belonging to the categories of national or major developments and you do not benefit from exemption under Regulation 13 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, have you provided a Design and Access Statement? *

☐ Yes ☐ No ☒ Not applicable to this application

e) If this is an application for planning permission and relates to development belonging to the category of local developments (subject to regulation 13. (2) and (3) of the Development Management Procedure (Scotland) Regulations 2013) have you provided a Design Statement? *

☐ Yes ☐ No ☒ Not applicable to this application

f) If your application relates to installation of an antenna to be employed in an electronic communication network, have you provided an ICNIRP Declaration? *

☐ Yes ☐ No ☒ Not applicable to this application

g) If this is an application for planning permission, planning permission in principle, an application for approval of matters specified in conditions or an application for mineral development, have you provided any other plans or drawings as necessary:

- ☒ Site Layout Plan or Block plan.
- ☒ Elevations.
- ☒ Floor plans.
- ☐ Cross sections.
- ☐ Roof plan.
- ☒ Master Plan/Framework Plan.
- ☐ Landscape plan.
- ☒ Photographs and/or photomontages.
- ☐ Other.

If Other, please specify: * (Max 500 characters)

Provide copies of the following documents if applicable:

A copy of an Environmental Statement. *

☐ Yes ☒ N/A

A Design Statement or Design and Access Statement. *

☒ Yes ☐ N/A

A Flood Risk Assessment. *

☐ Yes ☒ N/A

A Drainage Impact Assessment (including proposals for Sustainable Drainage Systems). *

☐ Yes ☒ N/A

Drainage/SUDS layout. *

☐ Yes ☒ N/A

A Transport Assessment or Travel Plan

☐ Yes ☒ N/A

Contaminated Land Assessment. *

☐ Yes ☒ N/A

Habitat Survey. *

☐ Yes ☒ N/A

A Processing Agreement. *

☐ Yes ☒ N/A

Other Statements (please specify). (Max 500 characters)

Declare – For Application to Planning Authority

I, the applicant/agent certify that this is an application to the planning authority as described in this form. The accompanying Plans/drawings and additional information are provided as a part of this application.

Declaration Name: Mr Martin McMullen

Declaration Date: 07/10/2019

Payment Details

Pay Direct

Created: 07/10/2019 20:54



October 07th, 2019

City Development Department
Planning & Development
Waverley Court,
4 East Market Street,
Edinburgh,
EH8 8BG,

Dear Sirs

**RE: RETROSPECTED PLANNING FOR EXTERNAL SEATING AREA AT
1 COMMERCIAL STREET , EDINBURGH.**

We would like to apply for retrospect planning consent for the proposed external seating area at the above address. . Please find uploaded one colour set of drawings PL-01- 03 showing the proposed alterations which include:-

- New decking area for external tables and chairs
- New parasol with 4m cover.
- Portable planters with Perspex sound diffusers.

supporting statement –

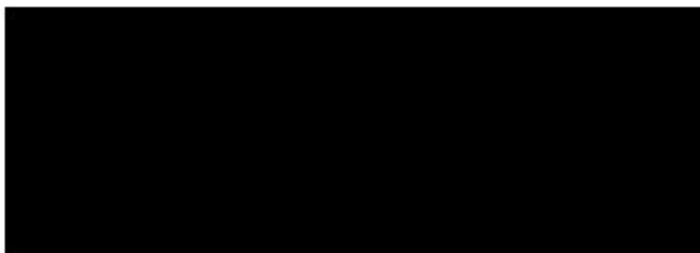
The restaurant seeks to install a level decking area with planters and a parasol for external diners.

The previous restaurant always had external seating in this area as evident in the historical aerial photos below and my client seeks to keep this tradition going but with a level base in which to set the external seating and tables providing diners with a much better experience.

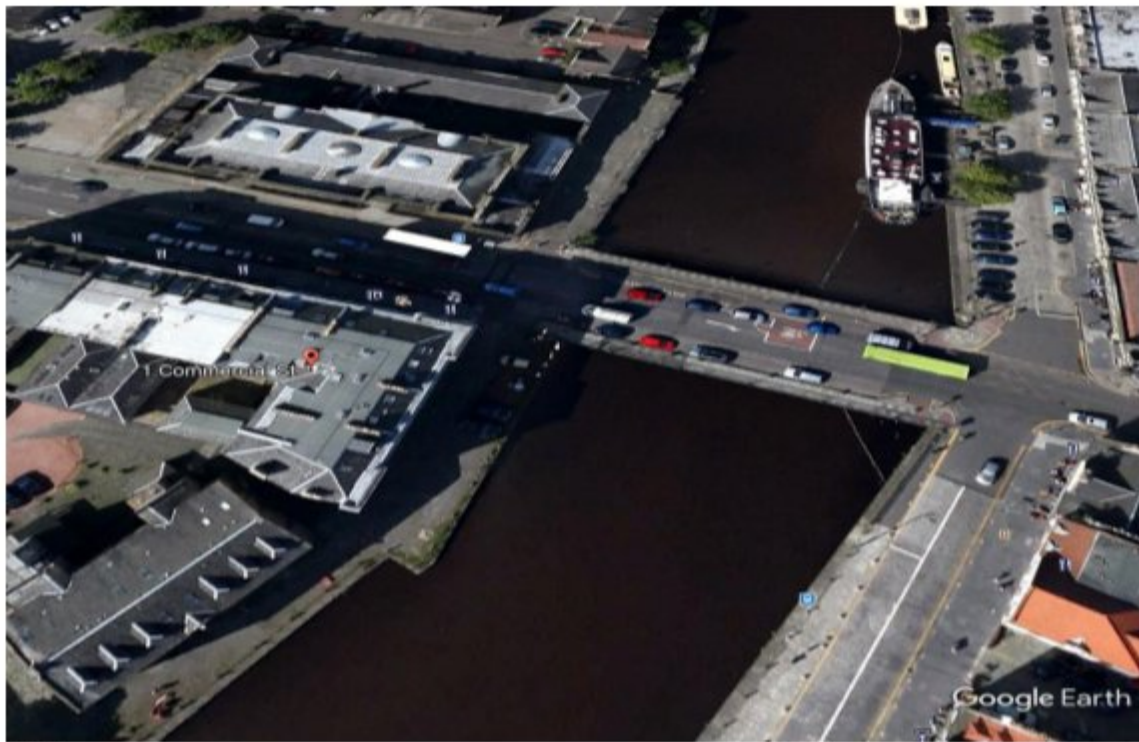
The planters are portable so can be rolled out and removed easily and will provide a splash of colour and greenery to the seating area.

If you require any further information, please don't hesitate to contact me.

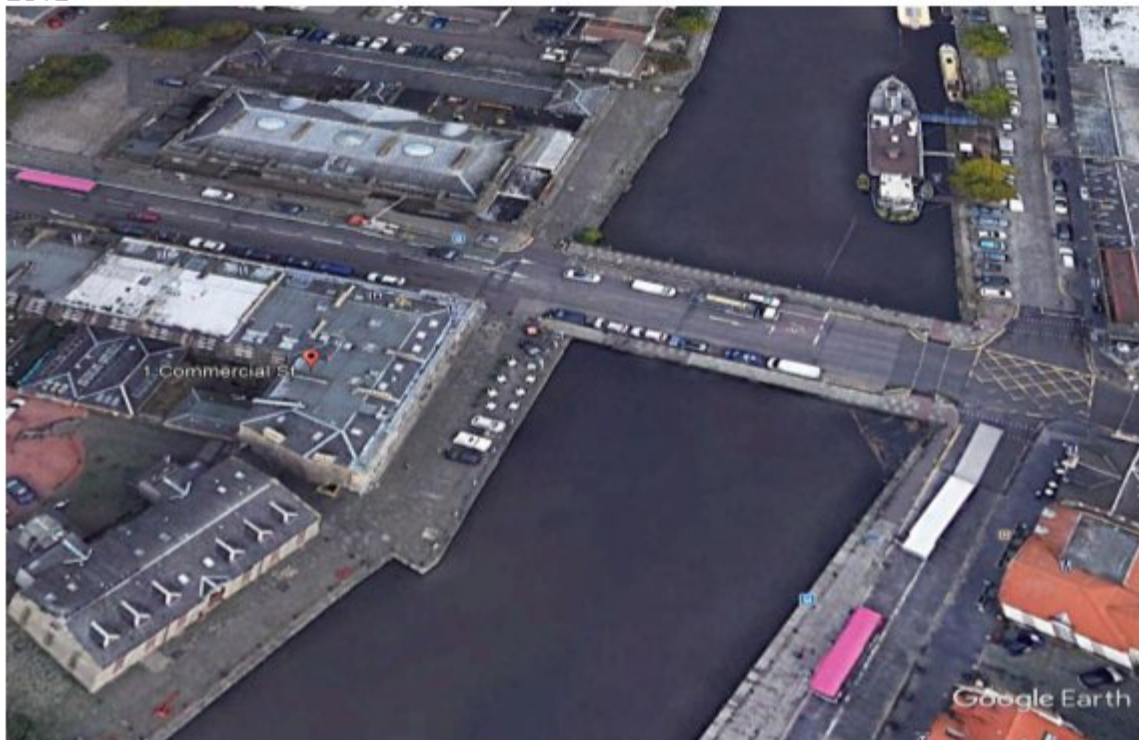
Yours sincerely



Martin McMullen
Cc. Pat Doherty



2012



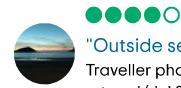
2016



2018



Example of the proposed planters



●●●●○
"Outside seating area"
Traveller photo submitted by
retep d (Jul 2017)



Shop hotels in Edinburgh

dd/mm/yyyy

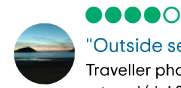
Check In

dd/mm/yyyy

Check Out

Shop hotels





●●●●○
"Outside seating area"
Traveller photo submitted by
retep d (Jul 2017)



Shop hotels in Edinburgh

dd/mm/yyyy

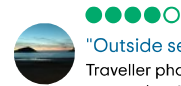
Check In

dd/mm/yyyy

Check Out

Shop hotels





●●●●○
"Outside seating area"
Traveller photo submitted by
retep d (Jul 2017)



Shop hotels in Edinburgh

Check In

Check Out

Shop hotels





LICENSING BOARD

Premises Licence

Issued by The City of Edinburgh Licensing Board under the terms and conditions
of the Licensing (Scotland) Act 2005

| | |
|-------------------------|----------|
| Premises licence number | 08/11947 |
|-------------------------|----------|

| | |
|---------------------------------|------------------|
| Date of commencement of licence | 1 September 2009 |
|---------------------------------|------------------|

| | |
|----------------------------|--|
| Postal address of premises | |
|----------------------------|--|

| | |
|----------------------------------|--|
| 1 Commercial Street Edinburgh | |
|----------------------------------|--|

| | |
|------------------|------------------|
| Postcode EH6 6JA | Telephone number |
|------------------|------------------|

| |
|-------------------------|
| Description of premises |
|-------------------------|

| |
|--|
| Premium Dining Public House & Restaurant |
|--|



LICENSING BOARD

Licensed hours

| | On Sale | Off Sale |
|-----------|----------------|----------------|
| Monday | 11:00 to 01:00 | 11:00 to 22:00 |
| Tuesday | 11:00 to 01:00 | 11:00 to 22:00 |
| Wednesday | 11:00 to 01:00 | 11:00 to 22:00 |
| Thursday | 11:00 to 01:00 | 11:00 to 22:00 |
| Friday | 11:00 to 01:00 | 11:00 to 22:00 |
| Saturday | 11:00 to 01:00 | 11:00 to 22:00 |
| Sunday | 12:30 to 01:00 | 12:30 to 22:00 |

Name and postal address (or registered address if a company), telephone number and email (where relevant) of holder of premises licence

Punch Partnerships (PTL) Limited
Elsley Court
20-22 Great Titchfield Street
London
W1W 8BE

Registered number of premises licence holder, e.g. company number, charity number (where applicable)

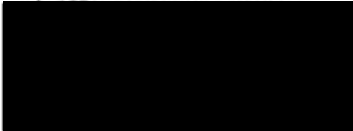
03512363



LICENSING BOARD

Name, postal address and telephone number of premises manager named in the operating plan

Ms Carol Ann Lawrie



Number of the personal licence held by the premises manager named in the operating plan and the name of the issuing Licensing Board

Premises Manager number : 14/02861

Issuing Licensing Board: City of Edinburgh



LICENSING BOARD

Licence Conditions

The mandatory conditions set out in schedule 3 to the Licensing (Scotland) Act 2005 will apply.

The following local conditions will also apply:-

- [1. All amplified music and vocals shall be so controlled as to be inaudible in neighbouring residential premises]

OPERATING PLAN

Licensing (Scotland) Act 2005, section 20(2)(b)(i)

Question 1

STATEMENT REGARDING ALCOHOL BEING SOLD ON PREMISES/OFF PREMISES OR BOTH

| | |
|--|------------|
| <i>I(a) Will alcohol be sold for consumption solely ON the premises?</i> | NO |
| <i>I(b) Will alcohol be sold for consumption solely OFF the premises?</i> | NO |
| <i>I(c) Will alcohol be sold for consumption both ON and OFF the premises?</i> | YES |
| <i>*Delete as appropriate</i> | |

Question 2

STATEMENT OF **CORE** TIMES WHEN ALCOHOL WILL BE SOLD FOR CONSUMPTION ON PREMISES

| <i>Day</i> | <i>ON Consumption</i> | |
|------------------|-----------------------|----------------------|
| | <i>Opening time</i> | <i>Terminal hour</i> |
| <i>Monday</i> | 11AM | 1AM |
| <i>Tuesday</i> | 11AM | 1AM |
| <i>Wednesday</i> | 11AM | 1AM |
| <i>Thursday</i> | 11AM | 1AM |
| <i>Friday</i> | 11AM | 1AM |
| <i>Saturday</i> | 11AM | 1AM |
| <i>Sunday</i> | 12.30PM | 1AM |

Question 3

STATEMENT OF **CORE** TIMES WHEN ALCOHOL WILL BE SOLD FOR CONSUMPTION **OFF** PREMISES

| <i>Day</i> | <i>OFF Consumption</i> | |
|------------------|------------------------|----------------------|
| | <i>Opening time</i> | <i>Terminal hour</i> |
| <i>Monday</i> | 11AM | 10PM |
| <i>Tuesday</i> | 11AM | 10PM |
| <i>Wednesday</i> | 11AM | 10PM |
| <i>Thursday</i> | 11AM | 10PM |
| <i>Friday</i> | 11AM | 10PM |
| <i>Saturday</i> | 11AM | 10PM |
| <i>Sunday</i> | 12.30PM | 10PM |

Question 4

SEASONAL VARIATIONS

| | |
|--|------------|
| <i>Does the applicant intend to operate according to seasonal demand</i> | YES |
|--|------------|

**If YES – provide details*

To benefit from the annual extensions determined by the Licensing Board for the sale of alcohol for consumption on the premises during the Edinburgh Festival and festive period, in line with existing permissions.

Question 5

PLEASE INDICATE THE OTHER ACTIVITIES OR SERVICES THAT WILL BE PROVIDED ON THE PREMISES IN ADDITION TO SUPPLY OF ALCOHOL

| COL. 1 5(a) Activity | COL. 2 Please confirm YES/NO | COL. 3 To be provided during core licensed hours – please confirm YES/NO | COL. 4 Where activities are also to be provided outwith core licensed hours please confirm YES/NO |
|---|------------------------------------|---|--|
| Accommodation | NO | N/A | N/A |
| Conference facilities | YES | YES | YES |
| Restaurant facilities | YES | YES | YES |
| Bar meals | YES | YES | NO |
| | | | |
| 5(b) Activity Social functions including: | Please confirm YES/NO | To be provided during core licensed hours – please confirm YES/NO | Where activities are also to be provided outwith core licensed hours please confirm YES/NO |
| Receptions including Weddings, funerals, birthdays, retirements etc. | YES | YES | YES |
| Club or other group meetings etc. | YES | YES | YES |
| | | | |
| 5(c) Activity Entertainment including: | Please confirm YES/NO | To be provided during core licensed hours – please confirm YES/NO | Where activities are also to be provided outwith core licensed hours please confirm YES/NO |
| Recorded music – see 5(g) | YES | YES | YES |
| Live performances – see 5(g) | YES | YES | NO |
| Dance facilities | YES | YES | NO |

| | | | |
|------------------------------------|--|--|---|
| <i>Theatre</i> | YES | YES | NO |
| <i>Films</i> | YES | YES | NO |
| <i>Gaming</i> | YES | YES | NO |
| <i>Indoor/outdoor sports</i> | NO | YES | NO |
| <i>Televised sport</i> | YES | YES | YES |
| | | | |
| 5(d) <i>Activity</i> | <i>Please confirm</i> YES/NO | To be provided during core licensed hours – please confirm YES/NO | Where activities are also to be provided outwith core licensed hours please confirm YES/NO |
| <i>Outdoor drinking facilities</i> | YES | YES | YES |
| | | | |
| 5(e) <i>Activity</i> | <i>Please confirm</i> YES/NO | To be provided during core licensed hours – please confirm YES/NO | Where activities are also to be provided outwith core licensed hours please confirm YES/NO |
| <i>Adult entertainment</i> | NO | NO | NO |

Where you have answered YES in respect of any entry in column 4 above, please provide further details below.

The activity/activities &/or service will cease 30 minutes after the terminal hour for the sale of alcohol (where alcohol is being consumed with a meal).

Activities/services may continue during the extended hours sought in Question 4 above.

5(f) any other activities

If you propose to provide any activities other than those listed in 5(a) – (e) please provide details or further information in the box below.

Karaoke, charity casino night during core hours and any seasonal variation hours.

5(g) Late night premises opening after 1.00am

| | |
|---|----|
| Where you have confirmed that you are providing live or recorded music, will the decibel level exceed 85dB? | NO |
| When fully occupied, are there likely to be more customers standing than seated? | NO |
| *Delete as appropriate | |

Question 6 (On-sales only)

CHILDREN AND YOUNG PERSONS

| | | |
|------|--|-----|
| 6(a) | When alcohol is being sold for consumption on the premises will children or young persons be allowed entry | YES |
| | *Delete as appropriate | |

6(b) Where the answer to 6(a) is YES provide statement of the **TERMS** under which they will be allowed entry

Children and young persons will only be allowed access if consuming a meal.

6(c) Provide statement regarding the **AGES** of children or young persons to be allowed entry

0 to 17 years

6(d) Provide statement regarding the **TIMES** during which children and young persons will be allowed entry

11AM to 1AM

6(e) Provide statement regarding the **PARTS** of the premises to which children and young persons will be allowed entry

All parts of the premises to which the public have access.

Question 7

CAPACITY OF PREMISES

What is the proposed capacity of the premises to which this application relates?

160

Question 8

PREMISES MANAGER (NOTE: not required where application is for grant of provisional premises licence)

Personal details

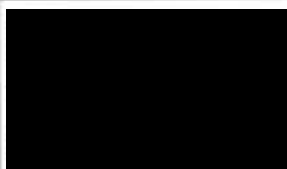
8(a) Name

Carol Ann Lawrie

8(b) Date of birth

17 April 1962

8(c) Contact address



8(d) Email address


8(e) Personal licence

| <i>Date of issue</i> | <i>Name of Licensing Board issuing</i> | <i>Reference no. of personal licence</i> |
|----------------------|--|--|
| 09 April 2014 | City of Edinburgh Licensing Board | 14/02861 |

DECLARATION BY APPLICANT OR AGENT ON BEHALF OF APPLICANT

If signing on behalf of the applicant please state in what capacity.

The contents of this operating plan are true to the best of my knowledge and belief.

Signature ..  (see note below)

Date 12/05/2016

Capacity ~~APPLICANT~~/AGENT (delete as appropriate).

Telephone number and email address of signatory

*** Data Protection Act 1998**

The information on this form may be held on an electronic public register which may be available to members of the public on request.

Stephen J. McGowan
Partner - Head of Licensing (Scotland)
TLT LLP
140 West George Street, Glasgow, G2 2HG
+44 (0)333 006 1203
Stephen.McGowan@TLTsolicitors.com

18 MAY 2016



LICENSING BOARD

SUMMARY PREMISES LICENCE

Issued by The City of Edinburgh Licensing Board under the terms and conditions
of the Licensing (Scotland) Act 2005

Premises licence number 08/11947

Postal address of premises

1 Commercial Street
Edinburgh

Postcode EH6 6JA

Telephone number

Description of premises

Premium Dining Public House & Restaurant

Name and postal address (or registered address if a company) of premises licence holder

Punch Partnerships (PTL) Limited
Elsley Court
20-22 Great Titchfield Street
London
W1W 8BE

Registered number of premises licence holder, e.g. company number, charity number
(where applicable)

03512363

Name of premises manager named in the operating plan

Ms Carol Ann Lawrie

Granted: 5 March 2018



LICENSING BOARD

Licence Conditions

The mandatory conditions set out in schedule 3 to the Licensing (Scotland) Act 2005 will apply.

The following local conditions will also apply:-

- (1) All amplified music and vocals shall be so controlled as to be inaudible in neighbouring residential premises

NOTES

This drawing is copyright.
It is sent to you in confidence and must not be reproduced or disclosed to third parties without our prior permission.

This drawing is to be read in conjunction with all relevant consultants, specialist manufacturers drawings and specifications.

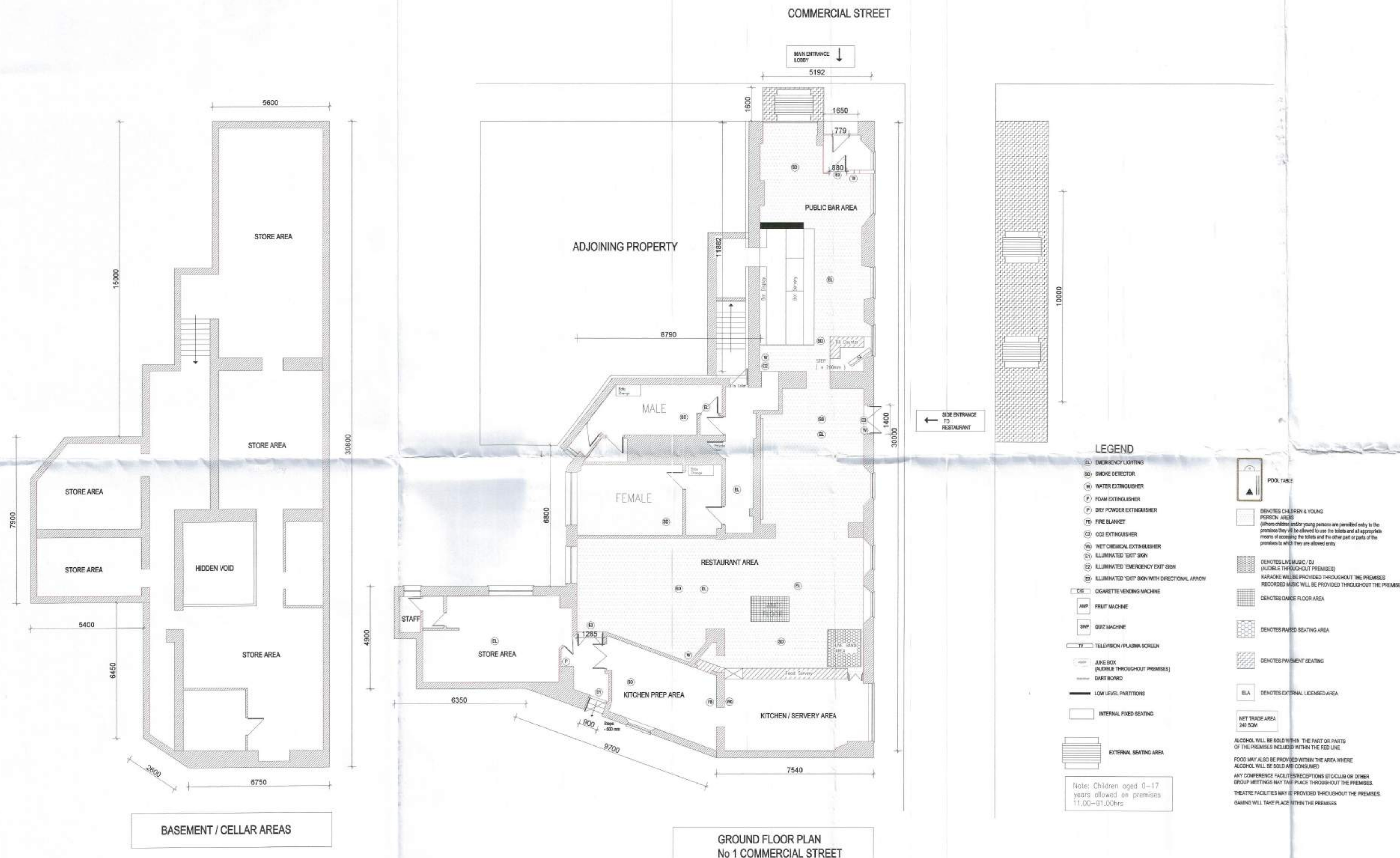
Any discrepancies in dimensions or details on or between these drawings should be drawn to our attention.

All dimensions are in millimetres unless noted otherwise.

Any surveyed information incorporated within this drawing cannot be guaranteed as accurate unless confirmed by fixed dimension.

All electrical works required to meet the requirements of Part P (Electrical Safety) must be designed, installed, inspected and tested by a person competent to do so.

This may require an appropriate BS 7671 electrical installation certificate to be issued for the work by a person competent to do so.



This is the layout plan approved by the
City of Edinburgh Licensing Board on:
Date: 30/03/09
Relative to Premises Licence Number:
08/11947.

Gill Lindsay
Clerk of the Licensing Board

| REV | DATE | DESCRIPTION | INITIAL | CHECKED |
|-----|----------|--|---------|---------|
| B | 16.10.08 | Basement areas added | DGB | |
| A | 13.05.08 | Rear store and corridor added. Music area also added | DGB | |

| | | | | |
|--|-------------|---|---------|------------|
| Head Projects Wincersh, Reading 0118 930 0099 | CLIENT | Punch Taverns Plc | | |
| | PROJECT | Scottish Licensing | | |
| | TITLE | Guilianos on the Shore 1 Commercial St Edinburgh - Outlet - 727721 | | |
| | SCALE | 1:100 | DATE | 18-03-2008 |
| | DRAWN | HEJ | CHECKED | DGB |
| | PROJECT NO. | 727721 B | | |

1/12/08
Approved
Plans

• EDINBURGH •

THE CITY OF EDINBURGH COUNCIL

Planning & Transport
Directorate of Place

Owner / occupier,
Hemmingway's
Edinburgh,
EH6 6JA

Our ref 19/00444/EOPDEV

19th of September
2019.

Dear Sir/Madam,

Alleged unlawful decking , Bernard Street Bridge / Commercial Street,

The planning authority has recently received an enquiry regarding the above. I have undertaken a site inspection in response to these enquiries and can advise you accordingly as to the position of the planning authority in respect of this matter.

It is evident from the site visit a section of raised decking to accommodate tables and chairs has been erected adjacent to your restaurant. Further investigation revealed that no planning permission was in place for the decking.

The decking is an inappropriate form of development in this conservation area locality, and is contrary to the policy Des Env 6 of the Edinburgh Local Development Plan. The decking is inappropriate in terms of its scale, materials and that it covers a substantial proportion of the original cobble setts on Custom Wharfe. Therefore, it is unlikely that any subsequent planning application would be approved. This being the case, I am writing to you to inform you of the Council's position on this matter, and to give you the opportunity to remedy the situation through removal of the decking. Failure to do so within 28 days of receipt of this letter will result in formal enforcement action,

If you have any further queries, please contact, Alan Atkins at alan.atkins@edinburgh.gov.uk or telephone (0131) 529 6771 (Direct Dial).

Alan Atkins
Planning Officer
Householders and Enforcement West

Waverley Court
4 East Market Street Edinburgh EH8 8BG
Tel 0131 469 3557 Fax 0131 529 6206

METRO INNS LTD

GROUNDS FOR REVIEW OF A PLANNING DECISION

1 COMMERCIAL STREET, EDINBURGH EH6 6JA

**NEW DECKING AREA FOR EXTERNAL TABLES AND
CHAIRS INCLUDING A PARASOL WITH 4M COVER,
PORTABLE PLANTERS WITH PERSPEX SOUND DIFFUSERS
(IN RETROSPECT)**

(PLANNING REF: 19/04799/FUL)

Online E-planning ref: 100237884 -001

March 2020
Our Ref: 2020_02

W: www.grayplanning.co.uk

Contents

| | | |
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| 1 | INTRODUCTION | 2 |
| 2 | THE APPEAL SITE AND PROPOSALS | 3 |
| 3 | GROUND FOR REVIEW..... | 6 |
| 4 | CONCLUSIONS | 12 |

Appendices

The following documents are referred to in this Grounds for Review Statement.

All such documents have been electronically uploaded to the ePlanning.Scot online portal.

Document 01 – Decision Notice Application Ref: 19/04799/FUL dated 06.12.19

Document 02 – Report of Handling of Planning Application 19/04799/FUL

Document 03 – Cover Letter with Supporting Statement submitted with planning application
19/04799/FUL

Document 04 – Further Aerial Photo from Google StreetView 3D Birds Eye View Taken 2012 showing
outdoor seating present

Document 05 – Restaurant Licence Approval by CEC with Premises Floorplan showing approved outdoor
seating plan

Document 06 – City of Edinburgh Council Enforcement Investigation September 2019

Document 07 – City of Edinburgh Council's Non- Statutory Guidance for Business February 2019

Document 08 – Google Street View image taken May 2011 and again May 2015 showing outdoor street
area with enclosed seating

Full Planning application drawings and sections, application form, landowner certification all as submitted
for planning approval.

1 INTRODUCTION

THE PROPOSED DEVELOPMENT AND REASONS FOR REFUSAL

- 1.1 These are Grounds for Review of a decision to install a new decking area for external tables and chairs including a parasol with 4m cover, portable planters with perspex sound diffusers (all in retrospect) at 1 Commercial Street, Edinburgh EH6 6JA.
- 1.2 The Review request is submitted under Section 43A of the Town and Country Planning (Scotland) Act 1997 (as amended 2006). The Notice of Review has been lodged within the prescribed three-month period from the refusal of planning permission dated 6th December 2019 (**Document 01**).
- 1.3 By Delegated Powers, the Chief Planning Officer (PLACE) of The City of Edinburgh Council decided to refuse the application, as recommended by an Assistant Planning Officer in the Report of Handling (**Document 02**). The two reasons for refusal are per the Decision Notice (**Document 01**), which state:
- 1. The proposal is contrary to LDP policies Des 4 and Env 6 and the Council's Non Statutory Guidance for Business. The proposal is not acceptable in principle and does not preserve or enhance the character and appearance of the Leith Conservation Area. The use of the space and the siting of the furniture associated with the space has a detrimental impact on the character and appearance of the Leith Conservation Area.*
 - 2. The proposal is contrary to LDP policy Hou 7 and the Council's Non-Statutory Guidance for Business as it has a detrimental impact on the amenity of neighbouring residents.*

PROPOSED PROCEDURE TO BE FOLLOWED IN DECIDING THE REVIEW

- 1.4 We recommend two procedures - a site visit (accompanied) and further written representations should be the procedure followed by the Local Review Body in deciding the case.
- 1.5 With respect to the two reasons for refusal, visual inspection of the appeal site is necessary to confirm that the apparatus alleged unlawfully erected on the appeal site does not have a detrimental impact on the character and appearance of the Conservation Area. Visual inspection will also confirm the position and context for neighbouring residents.

2 THE APPEAL SITE AND PROPOSALS

- 2.1 Full details of the planning application site, detailed site layout, technical land use considerations are contained in the planning application.
- 2.2 The proposal is to seek permission retrospectively, for erection of a decking area with portable planters, associated with the existing long-established restaurant business at 1 Constitution Street – currently known as ‘Hemingways’ operated since 2017 by Metro Inns Ltd (Margherita Restaurants) and until then previously known as ‘Giulianos on the Shore’ (operated by the Giuliano family). A restaurant use has operated here for over 40 years. The property is a lease from Star Bars and includes up to 10 car parking spaces, which is where the tables and chairs are situated.
- 2.3 The development is located within an existing car parking area serving the restaurant and surrounding properties. The proposal site lies in the Leith Conservation Area, and situated on a cobbled section of Commercial Wharf. The decking structure is not attached to the existing building housing the restaurant (within the ground floor of a Grade B-Listed Building) so no Listed Building Consent is necessary for the development. The property stands on the corner of Commercial Street and Commercial Wharf which is a cul-de-sac leading to a converted warehouse to the immediate south.
- 2.4 The decking area would house tables and chairs for customers, parasols with 4m covers and planters as sound diffusers. The decking would be finished in treated timber, with portable planters formed of Perspex. The appeal proposals sought to continue the tradition of outdoor seating which was started by Giulianos, over 30-years ago, through minor improvements to the design.
- 2.5 Details of the form and design of the decking and planters is found in the drawings which were submitted by the architects, as follows:
- Existing Plan (Drawing PL-01)
 - Proposed Plan and Sections (Drawing PL-02)
- 2.6 The architects also provided a detailed supporting statement submitted with the planning application (See **Document 03**). It explains the proposals summarized as follows:
- The decking, parasols and planters will be housed externally and not fixed to the existing building. The decking and planters would therefore be moveable.
 - The appellants are seeking to extend the tradition of outdoor seating utilised by the previous occupants (Giulianos) during 2005-2017. **Document 03** (page 2) shows an aerial photo (by Google ©) showing the external seating images taken 2012 and 2016. **Document 04** shows an aerial photo (by Google StreetView (in 3D birds eye view)) which clearly shows the seating present in 2012. Further image taken May 2011 and again May 2015 show the street furniture in place (**Document 08**).
 - See Section 2.6 below for background to the historical occupation and function of the property as it is relevant to the appeal case. This demonstrates there has been external seating without any objection or enforcement action prior to the matter being raised in 2019

which required the submission of the retrospective planning application now before this appeal.

- An example of the form and design of proposed planters is found in Page 3 of **Document 03**.

BACKGROUND TO USE OF EXTERNAL AREA FOR SEATING

- 2.7 The appellants are seeking to extend the tradition of outdoor seating provided to customers, since the previous occupants (Giulianos) were housed here from 2005-2017. Giuliano's started the outdoor seating tradition over 30-years ago.
- 2.8 **Document 05** shows the City of Edinburgh Council Licencing Board approved an application by Giuliano's (approved 2016). The application reports the Licence previously commenced in September 2009 and described as "Premium Dining Public House & Resturant". The Licence condition is also relevant to this appeal, it states "*All amplified music and vocals shall be so controlled as to be inaudible in neighbouring residential premises*". The appended site plan to the Licencing Board approval found last page of the Licence **Document 05** shows the premises floor plan and seating area externally clearly indicated. The drawing is stamped approved by City of Edinburgh Council Licencing Board of 30.03.09 relative to the premises Licence No. 08/11947. We will return to the significance of **Document 05** in relation to the planning appeal, as it clearly shows the premises licence permits outdoor seating since 2009 some ten years prior to the Council's planning authority taking enforcement action which has led to the retrospective planning application subject to this planning appeal.
- 2.9 Giuliano's established outdoor seating with tables and chairs placed on the cobbles, for over 30 years. The City of Edinburgh Council's Licencing Board approved outdoor drinking in the above permits. There have been no reported issues of the licensees breaching the licence conditions for the premises (i.e. all amplified music and vocals shall be so controlled as to be inaudible in neighbouring residential premises).
- 2.10 When the new occupants, Margherita Restaurants took assignation of the lease in 2017, they reviewed the suitability (and safety) of the established outdoor seating area and decided to improve conditions given the situation on the cobbled street (which also runs steeply), might one day result in injury to customers or members of the public. The proposal for a deck along with screening provided by the planters is intended to remedy the potential risk to safety by creating a level, flat surface instead of the cobbled area. The planters would provide screening and beautification through flowers and plants arranged around the deck.

ENFORCEMENT INVESTIGATION

- 2.11 Appeal **Document 06**, shows the City of Edinburgh Council investigated the alleged unlawful erection of the proposals - i.e. formation of "raised decking", with reference 19/00444/EOPDEV.
- 2.12 The investigation by the Council's Enforcement Officer advised the raised decking did not have planning permission. The Officer claimed the decking to be "*inappropriate form of development in the conservation area locality*". The appellants were asked to remedy the situation by removal of the decking. No formal enforcement action was progressed by City of

Edinburgh Council however, as the appellants did their right to retrospectively apply for planning permission for the alleged unlawful “raised decking”. The planning application 19/04799/FUL then followed. It was submitted for determination on 7th October 2019. This prompt action by the appellant demonstrates that despite the Enforcement Officer’s opinion that planning permission would not be supported (which is highly presumptuous, given that no planning application had been submitted for the consideration of the planning authority), the appellants were keen to ensure legal compliance for a misunderstanding, as they did not realise the erection of raised decking constituted ‘development’ in planning law terms. On realising the breach, they promptly applied for planning permission.

3 GROUNDS FOR REVIEW

3.1 Section 1 outlined the Planning Authority's two reasons for refusal. Based on the evidence presented in this appeal, the appellant contends both these reasons can be set aside, and planning permission should be granted for the proposed development. This is subject to the imposition of relevant, enforceable planning conditions.

3.2 This section will argue the following Grounds:

1. The proposal is acceptable in principle as there has been 30 years of external seating at this established restaurant and bar premises. This is evidenced by previous tenants' documents, aerial photography and the City of Edinburgh Council's Licensing Board approval of Licence of 2009 and again of 2016 - see appeal **Documents 03, 04 and 05**. See background Section 2.7 explaining the longevity of the premises use and external seating arrangements. The proposal is therefore not contrary to LDP Policy Des 4.
2. The character and appearance of the Leith Conservation Area will not be damaged – it will not affect a need to preserve or enhance the conservation area given the small-scale nature of the raised decking proposal. For the reason given above, the outdoor seating has been established at the premises for 30 years and licenced for outdoor drinking since 2009 then renewed in 2016. The raised decking is a small addition to the established outdoor seating arrangements with limited impact on the conservation area, so not contrary to LDP Policy Env 6.
3. The proposal is not contrary to the Council's Non-Statutory Guidance for Business 2019. The use of the space and the siting of the furniture associated with the space does not have a detrimental impact on the character and appearance of the Leith Conservation Area.
4. The appellants demonstrate that never before has there been any complaint of noise from nearby residential premises, therefore the licensee has never before breached the City of Edinburgh Council Licensing Board licence that all amplified music and vocals shall be so controlled as to be inaudible in neighbouring residential premises (See **Document 05**). The proposal includes mitigation measure (Perspex planters) to reduce any further risk of audible noise impacting on residential amenity. The proposal is not contrary to LDP policy Hou 7 and the Council's Non-Statutory Guidance for Business as it has not before and does not (through virtue of the mitigation proposed) pose any risk to amenity of neighbouring residents.

3.3 Each of these points is expanded in the paragraphs below, with evidence presented and justification given to support the appellants case that planning permission should be granted. Not only do the proposals meet the provisions of the Development Plan, there are also material considerations which are relevant, add weight to and support the appellants case.

1 – PRINCIPLE OF THE PROPOSED DECKING / SEATING AREA

- 3.4 The planning authority's reason for refusal is the proposal has a detrimental impact on setting contrary to LDP Policy Des4. Policy Des 4 states amongst other things, planning permission will be granted for development where it is demonstrated that it will have a positive impact on its surroundings, including the character of the wider townscape and landscape, and impact on existing views, having regard to: a) height and form b) scale and proportions, including the spaces between buildings c) position of buildings and other features on the site d) materials and detailing. The proposal is of a very small scale and in proportion with the outdoor space occupied by existing car parking and in line with the curtilage of the restaurant premises. It does not encroach wider or extend beyond the area immediately outside of the premises.
- 3.5 The space between the building and the shore is occupied by parked vehicles and this can affect views and vistas of the Shore from the frontage. Therefore the formal raised decking area is intended to provide a seating area which adds to the surroundings positively.
- 3.6 It is acknowledged the surrounding area is a built environment of high quality. The area also has a settled townscape character, ie since conversion to residential flats above, the bonded warehouses have a new character and offer interest to the area. The proposed decking's siting and design has been guided by views within the wider landscape across the Shore and the waterfront to add value and experience for patrons.
- 3.7 The appellants would argue that of more relevance than Policy Des4, is Policy Des 3 which more reasonably applies to existing features of a place. Policy Des 3 was not considered by the Planning officer in the determination of the planning application (See **Document 03**). The appellants argue that over the 30-years of past outdoor seating for customers, the proprietors have sought to provide a place to relax and enjoy the outdoor setting. The Policy states proposals that incorporate development design that incorporates and enhances existing features to add to "*existing characteristics and features worthy of retention on the site and in the surrounding area*" will be supported. The appellants have explained that when they took over operations at the premises in 2017 they wanted to continue and prolong the successful, unchallenged use of the area for customer seating, through improvements. One of the improvements to the existing seating area they saw was to cover over the cobbles to reduce any risk of injury to visitors on an uneven surface. The raised decking proposal came from this idea.

2 – CHARACTER AND APPEARANCE OF LEITH CONSERVATION AREA (SMALL SCALE NATURE OF DECKING PROPOSAL)

- 3.8 The reason for refusal states the proposed development would not preserve or enhance the character and appearance of Leith Conservation Area and is contrary to LDP Policy Env 6.
- 3.9 Policy Env 6 permits proposals which meets three criteria – that the proposal preserves or enhances the special character and is consistent with the relevant conservation area character appraisal. Preserves trees, boundaries, paving or other features that contribute

positively to the character of the area, and demonstrates high standards of design and uses material appropriate to the historic environment.

- 3.10 The proposals preserve the Leith Conservation Area, as no building will be harmed, and none of the surrounding places will be affected. The proposals are for a relatively small-scale raised decking – proportionate to the surrounding area. There are several examples of outdoor furniture along the Shore at Leith – seats, tables and parasols. These several examples are part of the character and make consistency of this part of the Leith Conservation Area – they are all associated with leisure and tourism experiences for people to spend longer in the area.
- 3.11 There are several examples in the Shore area nearby, of a mixture of design of the tables and chairs – for instance stainless steel effect chairs, stacked chairs, wooden fencing and planters. The example street view shot below is “Malt and Hops” bar on The Shore lying opposite to the appeal site, on outdoor paving on a busy through street. The appeal site is on a quite cul de sac street by comparison. The figures overleaf demonstrate the variety.



The figure above shows closer detail of the on-street tables and chairs at a property opposite the appeal site. Shows the broad variety of materials, finishes and types of furniture in the conservation area.

- 3.12 The scale of decking proposed will not encroach into neighbouring premises space, nor onto the public highway. At 4.6m by 14m, 64 sq m is a very small proportion of the public amenity space along The Shore and the waterfront.
- 3.13 It is noted the non-statutory Guidance for Businesses advises that proposals should be architecturally compatible in design, scale and materials with the character of the conservation area. The small-scale nature of the decking proposals, and their functional need to be capable of removal/replacement owing to the heavy use of the materials would make the use of alternative materials more costly and prohibitive.
- 3.14 In the Report of Handling, (**Document 03**) it is stated how the timber decking and portable Perspex planters are all “constructed from poor quality materials and are of a detrimental design and form which does not reflect a permanent sense of place”. For the reason given above, the materials and construction are designed to be functional and capable of being removed or replaced (for example out of season, or when maintenance or repair is necessary), so the intention was never to create permanent fixed structures to the streetscape.
- 3.15 The structures do not detract from the quality of the streetscape and do not disrupt the degree of separation between the waterfront and the traditional listed building. For the reasons given above, the decking and the planters can be moved, re-located or removed altogether and so would not result in damage to the streetscape quality.
- 3.16 Based on all of these points above, it is contended that the proposal’s nature and scale, and potential for removal or replacement (based upon the choice of materials and design) means the development is not of harm to the Conservation Area and does not detract from the streetscape. The proposal is not contrary to LDP Policy Env 6.

3 - NON STATUTORY GUIDANCE FOR BUSINESS 2019 (USE OF THE SPACE)

- 3.17 The Edinburgh Non-Statutory Guidance for Business is cited by the planning authority of not being complied with in the appeal proposals. The Planning Officer’s Report of Handling (**Document 02**) does not consider the document in any detail, and therefore it is difficult to fully understand why the proposals do not comply with this Guidance.
- 3.18 The appellants contend that the proposal for raised decking and planters does comply with the Guidance for Business 2019, (see **Document 07**) , for the following reasons:
- 3.19 It is noted the Guidance for Business 2019 requests occupants of premises to obtain “tables and chairs permits” if the business sells food and drink. The appellants refer to the appeal Document 05, the City of Edinburgh Council Licencing Board approval for the sale of food and drink from the premises. The site floor plan attached to the Licence approved in 2009 and renewed in 2016 shows the outside table and chairs area showing clearly 2no. picnic type tables. This is historical and the appeal development proposal was intended to improve and make safer the outside seating area through the development of a raised deck to make the cobbled surface more even and welcoming for customers.

- 3.20 The Guidance refers to advice about extension to food and drink uses, at Page 9. It states; *“Proposals for extensions to venues in the areas of restriction (i.e. within the midst of housing) will only be accepted if there will be no adverse impact of the residential amenity caused by night time activity.* However, **Document 05** clearly shows the appellant’s Licence to operate the premises for food and drink, its only restriction is on keeping noise inaudible around surrounding residential properties. We comment on residential amenity below.

4– NEARBY RESIDENTIAL AMENITY

- 3.21 The 2nd reason for refusal in the Decision Notice claims that the proposal is unacceptable because it would have a detrimental impact on nearby residents. It is alleged this would make the proposal contrary to Policy Hou 7 of the LDP.
- 3.22 Policy Hou 7 states that developments, including changes of use, which will have a materially detrimental effect on living conditions of nearby residents will not be permitted. As has been stated before, and supported by the Licencing evidence, the proprietors before the appellant (Giulianos) and the current (Margherita Restaurants) have never received complaint from nearby residents nor any formal action from the Environmental Health authority about noises or disturbances to surrounding residential occupants.
- 3.23 It is acknowledge the proposal involves the active utilisation of an outdoor area for customers to eat and drink in. However this practice has been ongoing for over 30-years, and tables and chairs formed from at least 2012 and 2016 as the appeal supporting **Document 04** demonstrates.
- 3.24 The appellants are particularly concerned that the planning officer has misunderstood the nature of the long-established business as the Licence describes as a “Premium Dining Public House & Resturant” (**Document 05**). The proprietors have had signs in place within the premises and external on the entrance door to remind visitors to respect residential amenity and to keep noise controlled. Therefore the additional measure of sound diffusers formed as planters, is a further enhancement to the development to respect the surrounding character and comply with Policy Hou 7. The proposal does not have a detrimental impact on the amenity of neighbouring residents and does comply with LDP Policy Hou 7.

4 CONCLUSIONS

4.1 This Grounds for Review statement sets out the appellants case, that the 2 reasons for refusal can be set aside, and planning permission should be granted. This is because:

- The premises have been operating as a “Premium Dining Public House & Restaurant” per the City of Edinburgh Council Licencing Board licence conferred in 2009 and renewed in 2016 (**Document 05**). The Licence allows for eating and drinking and approved the attached seating plan with the Licence (**Document 05** last page). That seating plan shows clearly the presence of external seating on the appeal site, from as early as 2009.
- The previous proprietors (Giuliano’s) have confirmed, for over 30-years, they have served customers outdoors on tables and seating. The appellants want to continue that tradition.
- The appeal site conditions of cobbles was recognised as a potential safety risk to the proprietor’s customers, so the proposed raised decking is a design response to improve the surface and make it more safe and welcoming.
- The raised decking area is not of excessive scale or nature, rather it is confined to the area immediately outside of the premises. The scale and nature is therefore unlikely to detrimentally impact on the character of the area within the wider context of the conservation area designation. There are shown to be several other examples of outdoor seating and tables in locations that are less well sited as demonstrated in this appeal.
- The raised decking is not a permanent structure (i.e. not fixed to building), so can be removed, replaced or stored. This is the intention of the appellants, during any period out of season for instance, or for maintenance or repair purposes to ease replacement and make the operation cost-effective. Should the appeal be allowed, then a suitable planning condition to enforce control over the period of use, its removal or storage, of the raised decking and the planters’ position on the area can be discussed with the planning authority.
- The choice of materials of the raised decking is therefore a product of the intended operation of the decking, i.e. that it can be maintained and replaced if necessary, without undue expense.
- The proposal for Perspex planters to diffuse noise, is not because the proprietors anticipate a noisy outdoor seating arrangement – as this has not been the case for the 30 years it has been practiced, but rather it is to comply with and meet the proprietors Licencing Board conditions to reduce noise on the surrounding residential area.
- **The proposals are therefore not detrimental to the conservation area or the character of the streetscape, so are not contrary to LDP Policy Env 6.**
- **The proposals are not out of keeping or character and do not impact on the setting of the place, so are not contrary to LDP Policy Des 4.** We do however refer to the support the proposed additional street furniture would have under LDP Policy Des 3 which supports well-designed additions - in this case the reason for the addition to the outdoor seating area is to protect visitors from risk of injury over the cobbled street, and to provide a more even surface.
- **The proposals will not detrimentally impact on nearby and surrounding residential amenity.** There have been no complaints of disturbance from the premises outdoor or indoor use, for over 30 years, and referring to the Council’s Licence Board approval of 2009 and renewal of 2016 (Document 05), the condition of Licence therein to ensure no audible noise impacts on surrounding residential properties has been and continues to be complied with. The installation of proposed planters as noise diffusers is intended to strengthen

mitigation against any noise and thus protect residential amenity. **As such the proposal complies with LDP Policy Hou 7.**

- 4.2 It is respectfully requested therefore that the Local Review Body reconsider the proposals and find favour with the arguments set out in this Review and grant planning permission.

PLANNING APPEAL – ONLINE REFERENCE 100237884 -001

NEW DECKING AREA FOR EXTERNAL TABLES AND CHAIRS INCLUDING A PARASOL WITH 4M COVER, PORTABLE PLANTERS WITH PERSPEX SOUND DIFFUSERS (IN RETROSPECT) (PLANNING REF: 19/04799/FUL)

LIST OF DOCUMENTS FOR APPEAL

The following documents are relied upon to support the appeal case:

Please note other documents such as Local Development Plan, Supplementary Planning Guidance, Advice Notes, Scottish Government policy and guidance are not reproduced. We have assumed, at this stage, City of Edinburgh Council can provide these if necessary.

Document 01 – Decision Notice Application Ref: 19/04799/FUL dated 06.12.19

Document 02 – Report of Handling of Planning Application 19/04799/FUL

Document 03 – Cover Letter with Supporting Statement submitted with planning application 19/04799/FUL

Document 04 – Further Aerial Photo from Google StreetView 3D Birds Eye View Taken 2012 showing outdoor seating present

Document 04b – TripAdvisor Photos showing outdoor seating

Document 05 – Restaurant Licence Approval by CEC with Premises Floorplan showing approved outdoor seating plan

Document 06 – City of Edinburgh Council Enforcement Investigation September 2019

Document 07 - City of Edinburgh Council's Non- Statutory Guidance for Business February 2019

Document 08 – Street View Image taken May 2011 and again May 2016 showing outdoor seating enclosure area

Full Planning application drawings and sections, application form, landowner certification all as submitted for planning approval 19/04799/FUL.

2020-02

5th March 2020

The City of Edinburgh Council
Local Review Body
Business Centre
G.2 Waverley Court
4 East Market Street
Edinburgh
EH8 8BG

Emailed to: planning.systems@edinburgh.gov.uk

Dear Sir/Madam

PLANNING APPEAL TO LOCAL REVIEW BODY – ONLINE REFERENCE 100237884 -001

**1 COMMERCIAL STREET, EDINBURGH EH6 6JA
NEW DECKING AREA FOR EXTERNAL TABLES AND CHAIRS INCLUDING A PARASOL WITH 4M
COVER, PORTABLE PLANTERS WITH PERSPEX SOUND DIFFUSERS (IN RETROSPECT)
(PLANNING REF: 19/04799/FUL)**

We are instructed by Metro Inns Ltd to request that City of Edinburgh Local Review Body reviews the decision by the planning authority to refuse planning permission for the above proposed development. The Review has been electronically submitted with reference 100237884 -001.

The Review Documents comprise the following:

- Completed Notice of Review forms
- Grounds for Review Statement
- List of Documents intended to be relied upon in the Review

Should you require any further information to assist in determining the Review, please contact me in the first instance.

Yours sincerely,

Neil Gray
MA (Hons), MSc, Dip TP, MRTPI
Director

Metro Inns Ltd

Guidance for Businesses

February 2019



Guidance for Businesses



Who is this guidance for?

This guidance is intended to assist businesses in preparing applications to change the use of a property or carry out alterations to a business premises.

Policy Context

This document interprets policies in the *Edinburgh Local Development Plan*. Relevant policies are noted in each section and should be considered alongside this document.



Misc: Student Housing, Radio Telecommunications, Open Space Strategy etc.

This document and other non-statutory guidance can be viewed at: www.edinburgh.gov.uk/planningguidelines

Listed Buildings and Conservation Areas

If the building is listed or located within a Conservation Area, guidance on *Listed Buildings and Conservation Areas* must also be considered. Boxes throughout this guideline give specific information relating to Listed Buildings and Conservation Areas. You can check if your property is listed or located within a conservation area on the Council's website www.edinburgh.gov.uk/planning

Business Gateway

Business Gateway offers businesses free practical help and guidance. Whether you're starting up or already running a business, and provide access to business support and information services.

To get more information on help for your business, or to book an appointment with our experienced business advisers please contact our Edinburgh office.

Contact details:

Business Gateway (Edinburgh Office)
Waverley Court
4 East Market Street
Edinburgh
EH8 8BG
Tel: 0131 529 6644

Email: bglothian@bgateway.com

www.bgateway.com

This guidance was initially approved in December 2012 and incorporates additional text on short term commercial visitor accommodation approved in February 2013, and minor amendments approved in February 2014, February 2016, March 2018 and February 2019.

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Do I need Planning Permission?

Planning Permission

Planning permission is required for many alterations, and changes of use. However, some work can be carried out without planning permission; this is referred to as 'permitted development'. Permitted development is set out in legislation.

Common enquiries are set out in the relevant chapters of this document.

If you believe your building work is 'permitted development', you can apply for a [Certificate of Lawfulness](#) to confirm that the development is lawful and can go ahead. This can be applied for online at www.eplanning.scot

What is a change of use?

Most properties are classified under categories known as a 'Use Class'. For example, shops are grouped under Class 1 and houses under Class 9. Some uses fall outwith these categories and are defined as 'sui generis', meaning 'of its own kind'. This is set out in The Use Classes (Scotland) Order 1997 (as amended).

Changing to a different use class is known as a change of use and may require planning permission, although some changes between use classes are allowed without planning permission. Planning permission is not required when both the present and proposed uses fall within the same 'class' unless there are specific restrictions imposed by the council. [The Scottish Government Circular 1/1998](#) contains guidance on use classes.

Listed Buildings and Conservation Areas

Fewer alterations are considered to be permitted development and most changes to the outside of a building, including changing the colour, require planning permission. More information on other consents which may be required is included on the next page.

Listed Building Consent

Listed building consent is required for works affecting the character of listed buildings and also applies to the interior of the building and any buildings within the curtilage. Planning permission may also be required in addition to Listed Building Consent. If your building is listed, specific guidance on [Listed Buildings and Conservation Areas](#) must also be considered along with this document.

What Other Consents Might Be Required?

Advertisement Consent

Advertisements are defined as any word, letter, model, sign, placard, board, notice, awning, blind, device or representation, whether illuminated or not, and employed wholly or partly for the purpose of advertisement, announcement or direction.

While many advertisements require express consent, certain types do not need express consent as they have 'deemed consent'. You can check this by consulting *The Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984*. Advertisements displayed in accordance with the advert regulations do not require advertisement consent.

Building Warrant

Converted, new or altered buildings may require a Building Warrant. There is more Building Standards information at www.edinburgh.gov.uk/buildingwarrants. For detailed information please go to the [Scottish Government website](http://www.scottishgovernment.gov.uk).

Road Permit

You must get a permit to the Council if you want to carry out work in or to occupy a public street. A *road permit* will be required if forming a new access or driveway or if placing a skip or excavation in a public road. It will also be required for scaffolding or to occupy a portion of the road to place site huts, storage containers, cabins, materials or contractors

plant, to put up a tower crane or to operate mobile cranes, hoists and cherry pickers from the public highway. For more information contact the Areas Roads Manager in your [Neighbourhood Team](#).

Licensing

Some activities, such as the sale and supply of alcohol or late hours catering, require a licence. Please contact [Licensing](#) for more information on 0131 529 4208 or email licensing@edinburgh.gov.uk.

The Civic Government (Scotland) Act 1982 (Licensing of houses in Multiple Occupation) Order 2000, requires operators of HMOs to obtain a licence allowing permission to be given to occupy a house as a HMO where it is the only or principal residence of three or more unrelated people.

Table and Chairs Permit

If your business sells food and drink you may be able to get a permit from the Council to put tables and chairs on the public pavement outside your business.

A *tables and chairs permit* allows you to put tables and chairs on the public pavement between 9am and 9pm, seven days a week and is issued for either six or twelve months. For more information please email TablesChairsPermits@edinburgh.gov.uk or phone 0131 529 3705.

Biodiversity

Some species of animals and plants are protected by law. Certain activities, such as killing, injuring or

capturing the species or disturbing it in its place of shelter, are unlawful. It is also an offence to damage or destroy a breeding site or resting place (or obstruct access to).

If the presence of a European Protected Species (such as a bat, otter or great crested newt) is suspected, a survey of the site must be taken. If it is identified that an activity is going to be carried out that would be unlawful, a license may be required.

More information on European Protected Species, survey work and relevant licenses is available on the [Scottish Natural Heritage website](http://www.scottishnaturalheritage.gov.uk).

Trees

If there are any trees on the site or within 12 meters of the boundary, they should be identified in the application. Please refer to [the Edinburgh Design Guidance \(chapter 3.5\)](#) for advice.

All trees in a Conservation Area or with a Tree Preservation Order are protected by law, making it a criminal offence to lop, top, cut down, uproot wilfully, damage or destroy a tree unless carried out with the consent of the council. To apply for works to trees, go to www.eplanning.scot.

Trade Waste

Proposals for commercial use of a property should ensure that there will be sufficient storage space off street to store segregated waste containers, in line with the Council's Trade Waste policy.

Changing a Residential Property to a Commercial Use

What does this chapter cover?

Changes of use to:

- guest houses
- short term commercial visitor accommodation
- house in multiple occupation (HMOs)
- private day nurseries
- running a business from home

This guideline is not intended to address new hotel development which is covered by [Edinburgh Local Development Plan](#) (LDP) Policy Emp 10 Hotel Development.

Where an extension to a residential property is required to then run a business from home, please refer to the [Guidance for Householders](#) to understand what permissions are required.

When is planning permission required?

Some activities within a residential property can be undertaken without requiring planning permission. Some common enquiries are given below.

What should I do if it is permitted development?

If you believe planning permission is not required, you can apply for a [Certificate of Lawfulness](#) for legal confirmation.

Using your home as a guest house

Planning permission will not be required for the use of a house as a bed and breakfast or guest house if:

- The house has less than four bedrooms and only one is used for a guest house or bed and breakfast purpose
- The house has four or more bedrooms and no more than two bedrooms are used for a guest house or bed and breakfast purpose

Planning permission will always be required if a flat is being used as a guest house or bed and breakfast, regardless of the number of rooms.

Short Term Commercial Visitor Accommodation

The change of use from a residential property to short term commercial visitor accommodation may require planning permission. In deciding whether this is the case, regard will be had to:

- The character of the new use and of the wider area
- The size of the property
- The pattern of activity associated with the use including numbers of occupants, the period of use, issues of noise, disturbance and parking demand, and
- The nature and character of any services provided.

Houses of Multiple Occupation (HMOs)

The sharing of accommodation by people who do not live together as a family is controlled at the point at which there is considered to be a material change of use. For houses, Class 9 of the Town and Country Planning (Use Classes) (Scotland) Order 1997 considers this to be when more than 5 people are living together, other than people living together as a family. As with houses, the Council would also expect a material change of use to occur in flats when more than 5 unrelated people share accommodation. All planning applications for Houses in Multiple Occupancy (HMOs) are assessed using LDP Policy Hou 7: Inappropriate Uses in Residential Areas, having regard to the advice below.

Private day nurseries

The change of use from a residential property to a private day nursery requires planning permission.

Where child minding is undertaken from a residential property, whether a change to a private day nursery has occurred will be assessed on a case by case basis. Consideration will be given to the number of children, the frequency of activity and the duration of stay. The criteria under 'Running a business from home' should also be considered.

Running a business from home

Proposals which comply with all the following may not need planning permission, but always check with the council first.

- There should be no change in the character of the dwelling or the primary use of the area. For example signage, display of commercial goods, increased pedestrians and vehicular movements, noise etc.
- There should be no more than the parking of a small vehicle used for commercial and personal purposes within the curtilage of a dwelling house.
- Any ancillary business should not be detrimental to the amenity of the area by reason of noise, vibration, smell, fumes, smoke, ash, dust, or grit.
- There should be no impact on the amenity or character of the area as a result of visitors or deliveries to the property.
- The primary use of the property must be domestic and any members of staff on the premises should have no impact on the amenity and character of the property.

What to consider if planning permission is required

Policy Hou 7

Sets out when uses will not be permitted in predominately residential or mixed use areas i.e. uses which would have a materially detrimental effect on the living conditions of nearby residents.

Amenity

Proposals for a change of use will be assessed in terms of their likely impact on neighbouring residential properties. Factors which will be considered include background noise in the area and proximity to nearby residents.

In the case of short stay commercial leisure apartments, the Council will not normally grant planning permission in respect of flatted properties where the potential adverse impact on residential amenity is greatest.

In the case of private day nurseries, whether nearby residential uses overlook the garden will also be considered. This is due to the potential for increased noise to those households.

Road Safety and Parking

The *car parking standards* define the levels of parking that will be permitted for new development and depends on the scale, location, purpose of use and the number of staff. Parking levels will also be dependent on the change of use and proximity to public transport.

The existing on-street parking and traffic situation will be important considerations in this assessment. The location should be suitable to allow people and deliveries to be dropped-off and collected safely. This is especially important for children going to and from a private day nursery. The potential impact on vulnerable road users – cyclists and pedestrians – will also be a consideration.

Parking in Gardens

The provision of new car parking should have regard to character and setting of the property and should normally preserve a reasonable amount of front garden. In a conservation area parking in the front garden would only be considered if there was an established pattern and it was part of the character of the area. Parking in the front garden of a listed building is not likely to be supported and there is normally a presumption against loss of original walling and railings and loss of gardens. Further information on the design of parking in gardens can

be found in the *Guidance for Householders*.

Flatted Properties

Change of use in flatted properties will generally only be acceptable where there is a private access from the street, except in the case of HMOs. Nurseries must also benefit from suitable garden space.

Further information

If a proposal has the potential to result in impacts then these should be addressed at the outset so they can be considered by the case officer. Examples of information that may be required include:

- An acoustic report if there is potential for noise impact.
- Details of ventilation systems if the application has the potential to create odour problems, and details of the noise impact of any proposed ventilation system.
- Details of any plant and machinery
- Details of attenuation measures if structure-borne and air-borne vibrations will occur.

Changing to a Food or Drink Use

What does this chapter cover?

Uses such as:

- Restaurants, cafes and snack bars (Class 3)
- Hot food takeaways (Sui Generis)
- Cold food takeaways which are classed as a shop (Class 1)
- Public houses and bars (Sui Generis)
- Class 7 uses (hotels and hostels) licensed or intending to be licensed for the sale of alcohol to persons other than residents or persons other than those consuming meals on the premises. i.e. with a public bar.

It does not include:

- Class 7 uses (hotels and hostels) without a public bar.

When is planning permission required?

Some food and drink uses do not require planning permission. Information on some common enquiries is given on this page.

Changing a shop to Class 3 use or hot food takeaway

Planning permission is required for a change of use from a shop to a hot food takeaway or to a Class 3 use, such as a café or restaurant. Whether this change has, or will occur will be determined on a case by case basis. Regard will be given to:

- Concentration of such uses in the locality
- The scale of the activities and character and appearance of the property
- Other considerations are the impact on vitality and viability, the effect on amenity and potential road safety and parking problems.

Selling cold food for consumption off the premises

Businesses selling cold food for consumption off the premises, such as sandwich bars, fall within Class 1 shop use. If the building is already in use as a shop then permission is not required.

Some secondary uses alongside the main uses also do not need permission; this is dependant on the scale of the activity.

Ancillary uses which are not likely to require planning permission in addition to a Class 1 shop use are:

- The sale of hot drinks
- The provision of one microwave oven and/or one soup tureen
- Seating constituting a very minor element to the overall use. The limit will vary according to the size and layout of the premises
- An appropriately sized café in a larger unit, such as a department store, if it is a relatively minor proportion of the overall floorspace and operates primarily to service the shop's customers.

What should I do if it is permitted development?

If you believe planning permission is not required, you can apply for a *Certificate of Lawfulness* for legal confirmation.

What to consider if planning permission is required

Protecting Shops

Policies Ret 9-11

Set out which locations a non-shop use is acceptable. These policies should be considered if a shop will be lost as part of the changes. In some areas of the City, the loss of a shop use will not be permitted. In other areas, certain criteria must be met.

Policy Hou 7

sets out when uses will not be permitted in predominantly residential or mixed use areas.

Policy Ret 11

Sets out when food and drink establishments will not be permitted.

Restaurants, cafés, snack bars and other Class 3 Uses

Proposals will be supported in principle in the following locations:

- Throughout the Central Area
- In designated shopping centres
- In existing clusters of commercial uses, provided it will not lead to an unacceptable increase in disturbance, on-street activity or anti-social behaviour to the detriment of the living conditions of nearby residents.

Proposals in predominantly housing areas will not normally be permitted.

Hot Food Takeaways

With the exception of proposals within areas of restriction (shown on the next page), proposals will be supported in principle in the following locations:

- Throughout the Central Area
- In designated shopping centres
- In existing clusters of commercial uses, provided it will not lead to an unacceptable increase in disturbance, on-street activity or anti-social behaviour to the detriment of the living conditions of nearby residents.

Proposals in the areas of restriction will only be accepted if there will be no adverse impact upon existing residential amenity caused by night-time activity. Where acceptable, this will normally be controlled through conditions restricting the hours of operation to 0800 to 2000.

Proposals in predominantly housing areas will not normally be permitted.

Where a restaurant's trade is primarily in-house dining but a minor element is take-away food then this still falls within the Class 3 use. Where take-away is a minor component of the business it will not require planning permission.

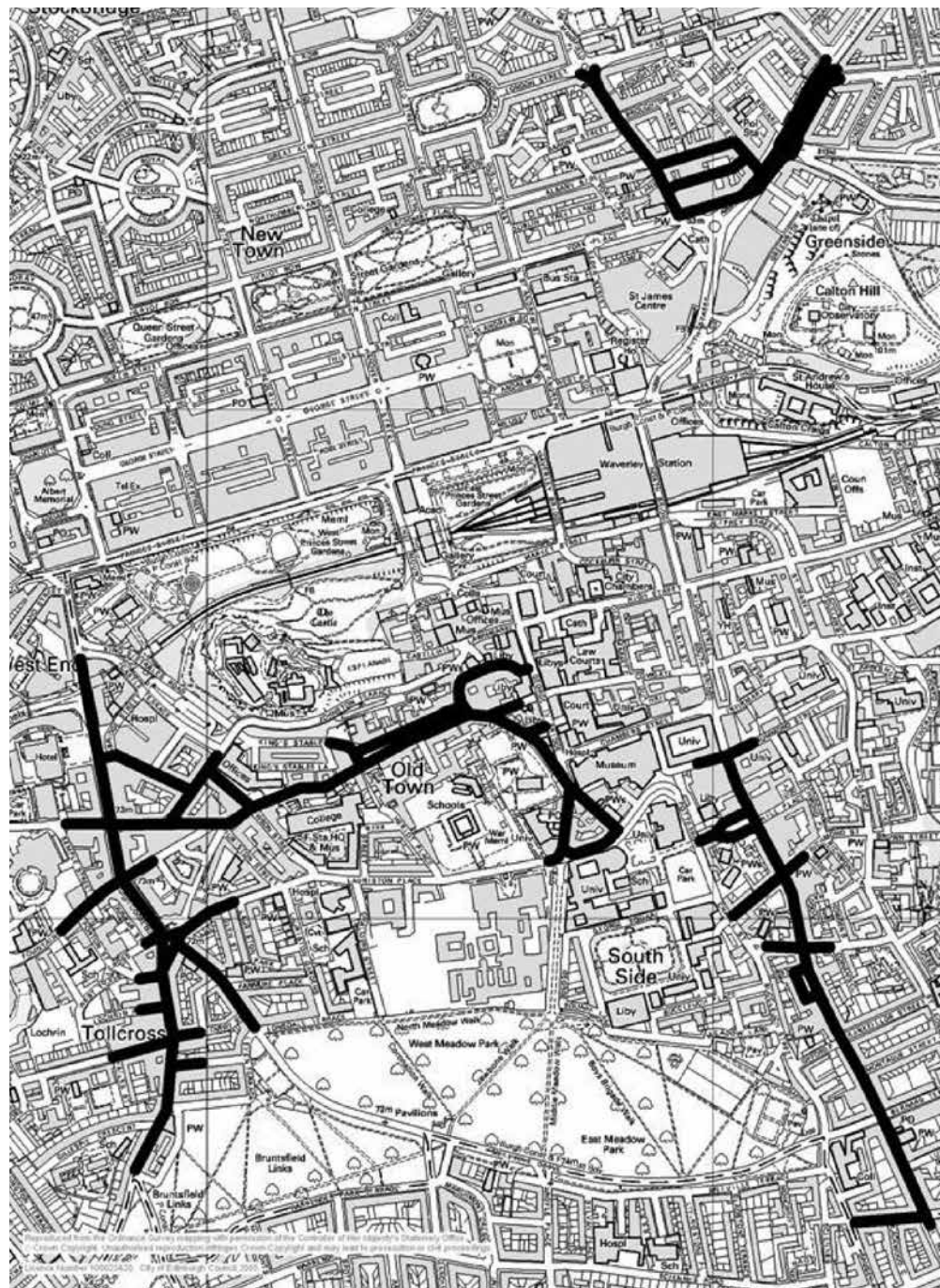
Public houses, entertainment venues and hotels outwith Class 7 (Hotels and Hostels)

In all locations, these uses should be located so as not to impinge on residential surroundings. Accordingly, such developments, with the exception of public houses designed as part of a new build development, will not be allowed under or in the midst of housing¹

There will be a presumption against new public houses and entertainment venues in the areas of restriction (shown on Page 10). Proposals for extensions to venues in the areas of restriction will only be accepted if there will be no adverse impact of the residential amenity caused by night time activity.

Proposals in predominantly housing areas and residential side streets will not normally be permitted.

[1] "Under or in the midst of housing" means a) where there is existing residential property above the application site or premises; or b) where there is existing residential property immediately adjoining two or more sides of the building or curtilage comprising the application site. "Residential property" means dwelling houses, flats or houses in multiple occupancy and includes any vacant units.



Ventilation

If the use is acceptable in principle, establishments with cooking on the premises must satisfy ventilation requirements to ensure that they do not impinge on the amenity of the residential area or other neighbourhoods.

An effective system for the extraction and dispersal of cooking odours must be provided. Details of the system, including the design, size, location and finish should be submitted with any planning application. A report from a ventilation engineer may also be required where it is proposed to use an internal route in an existing building for ventilation ducting.

The ventilation system should be capable of achieving 30 air changes an hour and the cooking effluvia ducted to a suitable exhaust point to ensure no cooking odours escape or are exhausted into neighbouring premises.

Conditions shall be applied to ensure the installation of an effective system before any change of use is implemented, and/or the restriction of the form and means of cooking where necessary.

On a listed building or in a conservation area, the use of an internal flue should be explored before considering external options. The flue would need planning permission and listed building consent in its own right.

Design

Any external duct should be painted to match the colour of the existing building to minimise its visual impact.

Location

Ventilation systems should be located internally. Where this is not practicable, systems located to the rear may be considered.

Noise

Conditions may be put in place to ensure that there is no increase in noise that will affect the amenity of the area.

The map identifies areas of restriction. These are areas of mixed but essentially residential character where there is a high concentration of hot food takeaways, public houses and entertainment venues.

Changing a Commercial Unit to Residential Use

When is permission required?

Planning permission is required to convert a business to a house or flat. Permission will also be required for physical alterations to any external elevation. Listed building consent, where relevant, may also be required.

What to consider if planning permission is required

Protected shops

Policies Ret 9-11

set out when a non-shop use is acceptable. They should be considered if a shop will be lost as part of the changes.

In some areas of the city, the loss of a shop use will not be permitted. In other areas, certain criteria must be met. These policies should be considered for more information.

Amenity

Policy Hou 5

Sets out the criteria to be met by proposals to convert to residential use.

Applications for a change of use will need to prove that the quality and size of accommodation created is satisfactory.

Units with insufficient daylight will be unacceptable; proposals should fully meet the council's daylight requirements in the [Edinburgh Design Guidance](#). Basement apartments with substandard light will only be accepted where the remainder of the created unit represents a viable unit in its own right with regards to adequate daylight.

Dwelling sizes should meet the following minimum requirements and exceeding these standards is encouraged. Provision of cycle and waste storage is encouraged and may be required in some instances.

| Number of Bedrooms | Minimum Gross Floor Area (sq m) |
|--------------------|---------------------------------|
| Studio | 36 |
| 1 (2 persons) | 52 |
| 2 (3 persons) | 66 |
| 2 (4 persons) | 81 |
| 3 (4 persons) | 81 |
| Larger Dwellings | 91 |

Design

New designs should be of a high quality and respect their context

1. **Consider the architectural or historic merit of the shopfront and its context and identify an appropriate design from one of the following three basic approaches.**

Retain the shopfront



Henderson Street

Retaining the existing shopfront and adapting it for residential use is a simple method of conversion and ensures the property fits well within its context. Where the shopfront is of architectural or historic merit this will be the only appropriate design.

A design which retains the shop front could be used in residential areas or within a row of shops.

Simple contemporary design



Royal Park Terrace

Simple contemporary designs are often the most successful. The existing structural openings should be retained and any features of architectural or historic merit retained and restored. High quality materials should be used.

A simple contemporary design could be used in residential areas or within a row of shops.

Residential appearance

Conversions with a residential appearance are rarely successfully achieved. Attention should be paid to structural openings, materials and detailing to ensure the new residential property does not stand out from its context.

Windows which are a version of those on the upper floors in terms of proportions, location and detail are usually most appropriate. Doors should relate to the scale of the building and should not result in a cluttered appearance.

Paint work should be removed to expose the stone or toned to match the building above.

A design with a residential appearance may be appropriate in residential areas but not within a row of shops.



Consider the privacy of residents

To create privacy within the property, shutters or moveable screens behind the window could be considered as an alternative to frosted glass. Where considered acceptable, frosted glass should not occupy more than 50% of the height of the window. Retaining recessed doors also provides a degree of separation from the street. Metal gates could also be added.

Altering a Shopfront

There should always be a presumption to improve, where possible, a poor shopfront.

Understanding your shopfront

Policy Des 12 sets out the principles for altering a shopfront

1. Consider the period of the building and the style of the shopfront

Shopfronts come in many styles, reflecting the different periods of architecture in Edinburgh. Those of architectural merit or incorporating traditional features or proportions should be retained and restored.

2. Determine whether there are any original or important architectural features or proportions which need to be retained

The pilasters, fascia, cornice and stallriser form a frame around the window and should be retained. Recessed doorways, including tiling, should not be removed. Original proportions should be retained.



Pilasters



Cornice



Stallriser

3. Identify any inappropriate additions which should be removed

Large undivided areas of plate glass can be appropriate within a small shopfront, however over a larger area can appear like a gaping hole over which the upper storeys look unsupported.

Large deep fascia boards and other claddings should be removed and any original features reinstated.



Deep Fascia



Proportions



Cladding

Good Example

At 37-41 Nicolson Street, Edinburgh, restoration work has been carried out to remove modern additions and unveil the original Victorian shopfront of 'McIntyre's Drapery Stores'. Architectural features, including the cornice, pilasters and glazing bars have been exposed. Views into the store have now been opened up and the shop is more noticeable in the street.



Context

Shopfronts should be designed for their context

1. Consider the relationship of the frontage to the rest of the street

The relationship of the frontage to the established street pattern should be considered, particularly in terms of fascia and stallriser height and general proportions. Alterations should preserve and strengthen the unity of the street.



One shopfront across two separate buildings will not normally be acceptable as it disrupts the vertical rhythm of the facades above.



2. Consider the relationship to features on the upper floors

Where units have a narrow frontage and vertical emphasis, they should retain their individual integrity, rather than attempting to achieve uniformity with adjoining properties.



Good Examples



St Stephen Street



William Street



Grassmarket

New Design

New designs should be of high quality and respect their surroundings

1. Identify the features or proportions which will need to be retained or restored

The pilasters and frame should be retained, even if the rest of the frontage is not of sufficient quality to merit retention.

Poorly designed fascias and pilasters do not make up a well composed frame. Pilasters should not be flat to the frontage and fascias should not exceed one-fifth of the overall frontage height or be taken over common staircases. Stallrisers should be in proportion to the frontage.

Cornice which continues from the adjacent frontages will require to be restored. No part of the frontage should be located above this.

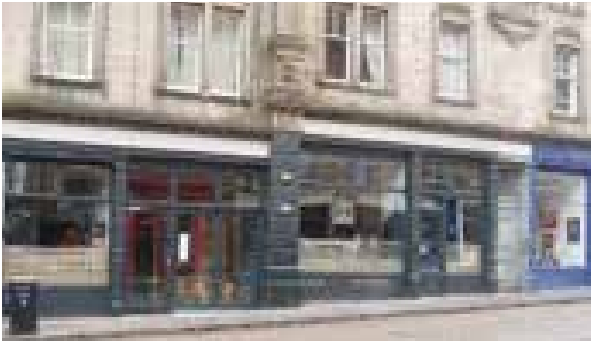
2. Consider the design and materials to be used

Where a new frontage is considered appropriate, there is no particular correct style. Modern designs will be considered acceptable providing they incorporate high quality materials, are well proportioned, and retain any features of architectural merit.

Reproduction frontages should be based on sound historical precedent in terms of archival evidence or surviving features.

Appropriate spacing and cornice should be used to create a visual break between the frontage and the building above.

Good Examples



Barclay Place



Bread Street

In general, natural and traditional materials, such as timber, stone, bronze, brick and render should be used. These should be locally sourced from renewable or recycled materials, wherever possible. Frontages clad in incongruous materials will not be acceptable.

Paint and Colour

When is permission required?

Planning permission, and where relevant listed building consent, will be required to paint a building which is listed or within a conservation area, including a change of colour.

Planning Permission will not be required to paint an unlisted building out with conservation areas. However the painting and colour of a building should reflect its character and the area.

Good Example



Victoria Street

Listed Buildings and Conservation Areas

Paint

Unpainted stonework and other good quality materials should not be painted.

Colour Schemes

The creation of a strong identity for a business must come second to an appropriate balance with the context. Colour schemes should clarify the architectural form and not apply alien treatments and design. The most successful are simply schemes which employ only one or two colours.

Muted or dark colours are preferable.

Uniform Appearance

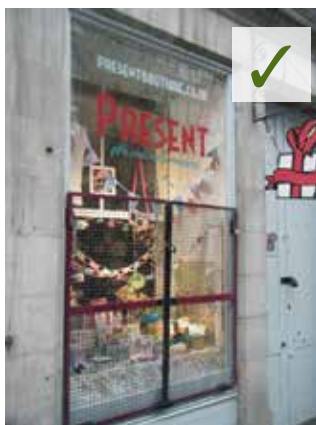
Coordinated paint schemes are encouraged and should be retained where present. In particular, common details, such as arches and pilasters, should have a uniform treatment. Similar lettering and signage should also be used.

The range of colours within a block should be limited.

Security

1. Determine whether a security device is necessary and consider alternative solutions

Security devices should not harm the appearance of the building or street. Toughened glass or mesh grilles could be used as an alternative to security shutters.



2. If a device is considered acceptable, consider its location in relation to the window

Where shutters are not common within the immediate area, they should be housed internally, running behind the window.

Elsewhere, shutters should be housed behind the fascia or a sub-fascia.

Shutters should not be housed within boxes which project from the front of the building.

3. Identify an appropriate shutter design

Solid roller shutters are unacceptable. They do not allow window shopping at night, the inability to view the inside of the shop can be a counter security measure and they tend to be a target for graffiti.



Roller shutters of the non-solid type may be acceptable in a perforated, lattice, brick bond or open weave pattern. Shutters made up of interlocking clear polycarbonate sheets running externally to the glass may also be acceptable.



Where there is evidence of early timber shutters, they should be restored to working order or replaced to match.



Listed Buildings and Conservation Areas

Externally mounted shutters will not be considered acceptable.

The most appropriate security method is toughened glass. Internal open lattice shutters or removable mesh grilles may also be acceptable.

Metal gates are most appropriate on recessed doors.

Shutters should be painted an appropriate colour, sympathetic to the rest of the frontage and immediate area.

Blinds and Canopies

1. Consider whether a blind or canopy is appropriate on the building

Blinds and canopies should not harm the appearance of the building or street.

Traditional projecting roller blinds, of appropriate quality, form and materials, will be considered generally acceptable

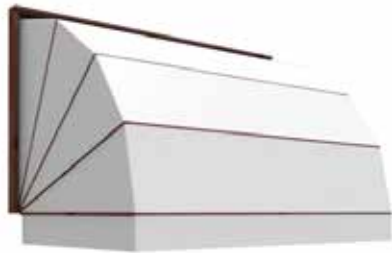
Dutch canopies will not be acceptable on traditional frontages where important architectural elements would be obscured.

Listed Buildings and Conservation Areas

Dutch canopies will not be acceptable on listed buildings or in conservation areas.

Blinds and canopies will not be considered acceptable on domestic fronted buildings.

Solar glass and film are acceptable alternative methods of protecting premises from the sun, providing they are clear and uncoloured.



Dutch canopy

2. If acceptable, consider the location of the blind or canopy

Blinds and canopies should fold back into internal box housings, recessed within the frontage. They must not be visually obtrusive or untidy when retracted.



Boxes housing blinds and canopies that project from the building frontage will not be acceptable.

Blinds and canopies will not be acceptable above the ground floor level.



3. Determine an appropriate design and materials

Blinds and canopies must be made of high quality fabric. Shiny or high gloss materials in particular will not be supported.

An advert, including a company logo or name, on a blind or canopy will need advertisement consent.



Automatic Teller Machines

1. Consider whether an ATM will be acceptable

ATMs should not impact upon the character of the building or area.

Free standing ATMs add to street clutter and will not be considered acceptable.

ATMs may be considered acceptable when integrated into a frontage, providing no features of architectural or historic interest will be affected and the materials and design are appropriate.

2. If acceptable, consider the location, design and access

Consideration should be given to pedestrian and road safety. Terminals should be sited to avoid pedestrian congestion at street corners and narrow pavements. The assessment of the impact on road safety will include any potential increase in the number of vehicles stopping, visibility and sightlines.

The use of steps for access to ATMs should be avoided and the units should be suitable for wheelchair access.

Where ATMs are removed, the frontage should be reinstated to match the original.

Listed Buildings and Conservation Areas

Consideration should first be given to locating the ATM internally. For guidance on internal alterations, consider the Listed Buildings and Conservation Area guidance.

Externally, ATMs should be located in a concealed position on the façade, within an inner vestibule or on a side elevation.

ATMs should not be fitted to finely detailed façades or shopfronts of historic or architectural merit. They will not be acceptable where stone frontages, architectural features or symmetry will be disturbed. New slappings (knocking a hole through a wall to form an opening for a door, window etc) will be discouraged.

Only one ATM will be allowed on the exterior of any building.

Where acceptable, the ATM should not be surrounded by coloured panels or other devices and signage should not be erected. The ATM and any steps or railings, where necessary, should be formed in high quality materials and be appropriate to the area. Surrounding space should match the façade in material and design.

Permissions Required

ATMs which materially affect the external appearance of a building require planning permission. Listed building consent may also be required for an ATM on a listed building. In addition, advertisement consent may be required for any additional signage.

Air Conditioning and Refrigeration

Location

Air conditioning and refrigeration units should not be located on the front elevation or any other conspicuous elevations of buildings, including roofs and the flat roofs of projecting frontages.

It will normally be acceptable to fix units to the rear wall. These should be located as low as possible.

Design

Units should be limited in number, as small as practicably possible and painted to tone with the surrounding stonework or background.

Listed Buildings and Conservation Areas

The preferred location for units on listed buildings and within conservation areas are:

- standing within garden or courtyard areas (subject to appropriate screening and discreet ducting)
- Within rear basement areas
- Inconspicuous locations on the roof (within roof valleys or adjacent to existing plant). However, in the New Town Conservation Area and World Heritage Site, aerial views will also be considered.
- Internally behind louvers on inconspicuous elevations. This should not result in the loss of original windows.

Where it is not practicably possible to locate units in any of the above locations, it may be acceptable to fix units to the wall of an inconspicuous elevation, as low down as possible.

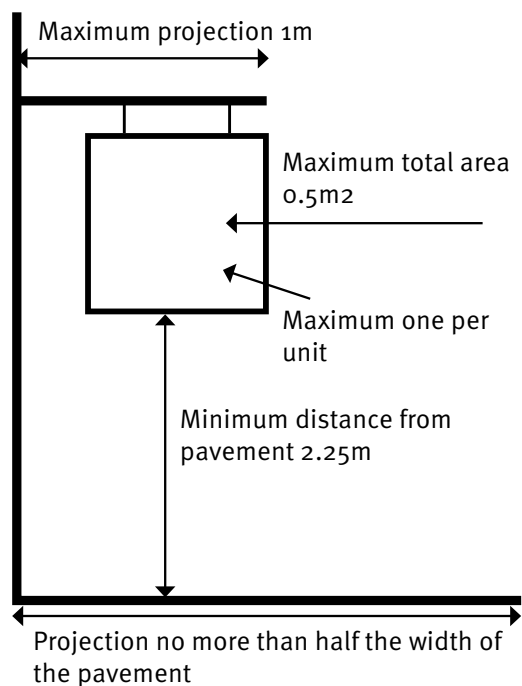
Units should be limited in number, as small as practicably possible and painted to tone with the surrounding stonework or background.

Ducting must not detract from the character of the building.

Signage and Advertisements

1. Consider the scale, location and materials of the advertisement and any lettering

High level signage is not normally considered acceptable.



NB. Dimensions may be reduced for smaller frontages

Projecting and Hanging Signs

Traditional timber designs are most appropriate on traditional frontages.



Fascia

Box fascia signs applied to existing fascias are not considered acceptable.

Individual lettering should not exceed more than two thirds the depth of the fascia, up to a maximum of 450mm.

Princes Street

Projecting signs and banners will not be supported. Illumination must be white and static.



Listed Buildings, Conservation Areas and Royal Mile

Signage obscuring architectural details is not acceptable.

Signage should be timber, etched glass or stainless steel; synthetic materials are not appropriate.

Signage should harmonise with the colour of the shopfront.

Applied fascia boards/panels will not normally be acceptable. Lettering shall be applied directly onto the original fascia. If there is an existing applied fascia board/panel in place, this should a) be removed and the original fascia restored, or b) an appropriate new fascia applied but only where there is no original fascia.

Letters must be individual and hand painted.

On buildings of domestic character, lettering or projecting signs are not acceptable. Guidance on alternative signage is given on the next page.

In the Royal Mile area of Special Control, there are additional controls on advertisements.

2. Consider an appropriate method of illumination

External illumination will only be acceptable if unobtrusive.

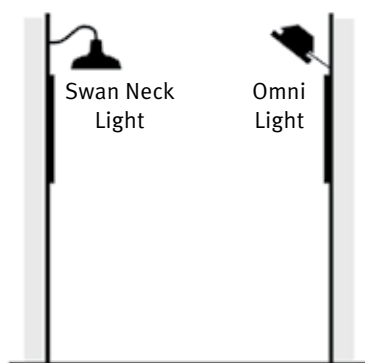
Individual letters should be internally or halo lit. Discreet spotlights painted out to match the backing material or fibre optic lighting may also be acceptable. Illumination must be static and no electrical wiring should be visible from outside of the premises. White illumination is preferable.

Projecting signs should only be illuminated by concealed trough lights.

LED strip lighting to illuminate signage may be acceptable where it can be positioned discreetly on the shop front.

Listed Buildings and Conservation Areas

Swan neck lights, omni-lights on long arms or trough lights along the fascia will not normally be acceptable. Letters should be halo or internally lit.



3. Consider alternative advertisements

Internal Advertisements

Advertisements behind the glass should be kept to a minimum to allow maximum visibility into the premises.



Directional Signs/ Temporary On-Street Advertising / A boards

Advance directional signs outwith the curtilage of the premises to which they relate (including 'A boards' and other temporary on-street advertising) will not be permitted.

Guest Houses

Houses in residential use (Class 9) but with guest house operations should not display signs, except for an official tourism plaque or a window sticker.

For properties operating solely as a guest house (Class 7), any pole signs located in front gardens should not exceed 0.5sq metres in area.

Listed Buildings and Conservation Areas

Basement properties

Basement properties may be identified by a name plate or modest sign on the railings, or where they don't exist, discreet and well designed pole mounted signs may be acceptable.



Buildings of domestic character

On buildings of domestic character, identification should consist of a brass or bronze nameplate, smaller than one stone. Where the building is in hotel use, consideration will be given to painted lettering on the fanlight or a modest sign on the railings.



HAPPY TO TRANSLATE

ترجمہ کے لئے حاضر آئانہدیںر سچے انیواد کررر

يسمدنا توفير الترجمة MOŻEMY PRZETŁUMACZYĆ 很樂意翻譯

You can get this document on tape, in Braille, large print and various computer formats if you ask us. Please contact ITS on 0131 242 8181 and quote reference number 12-0930. ITS can also give information on community language translations.



Google





Sandport

Custom House

Customs Wharf

Shore

Timber Bush

Commercial Street

Sandport Street

A199

Commercial Wharf

Commercial Street

Shore

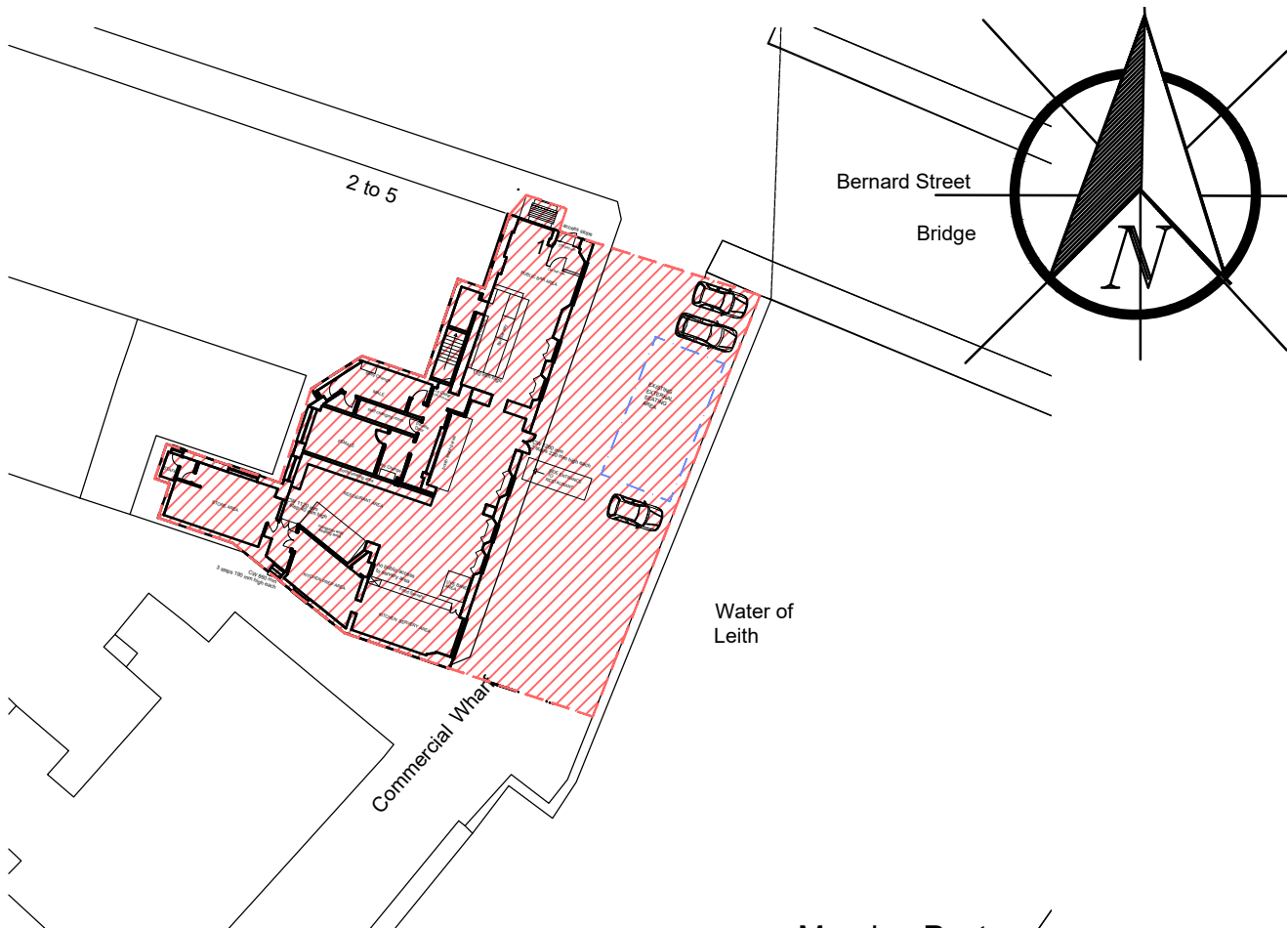
The Cooperage

The Shore (NE-bound)

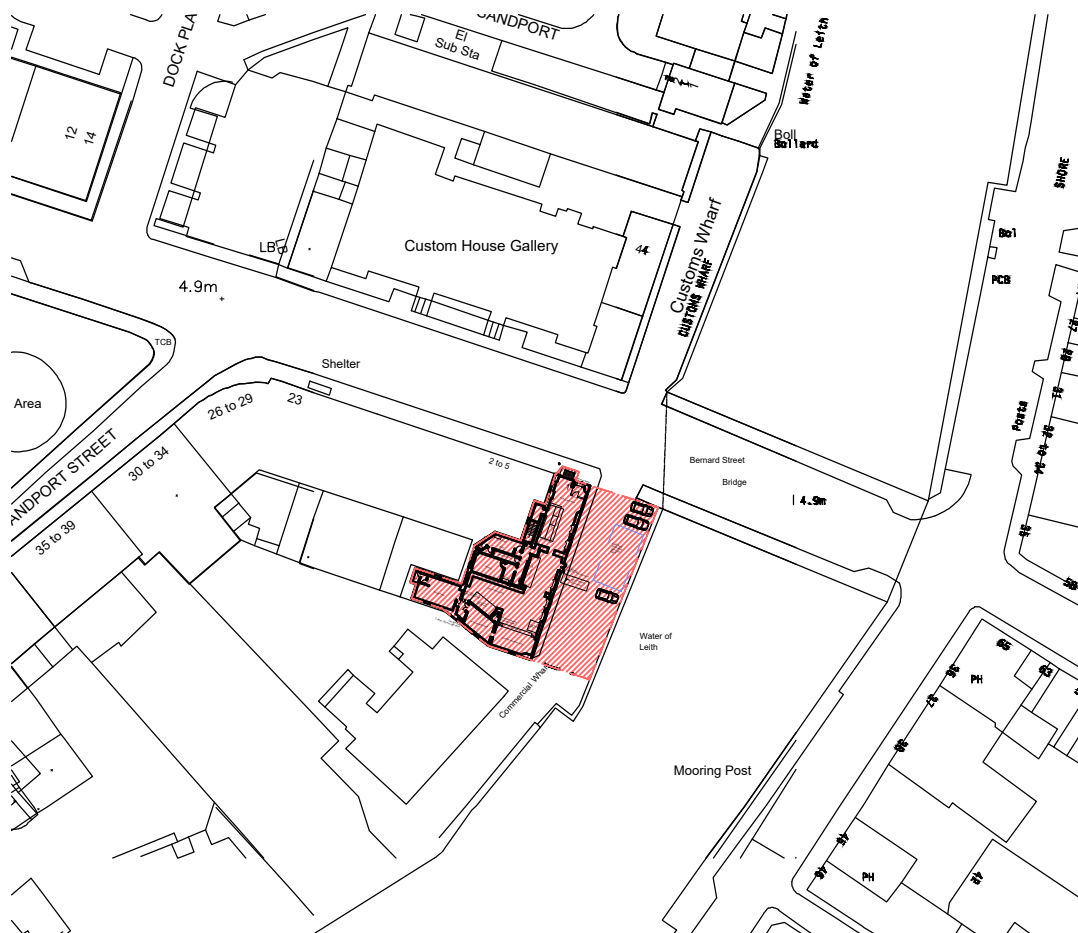
Broad Wynd

Chapel Lane

The Warehouse Sound Services Ltd



SITE PLAN 1/500



SITE PLAN 1/1250

NOTE: All proprietary goods and materials are to be fitted in accordance with manufacturer's instructions, relevant Codes of Practise, and British Standards.
All dimensions to be verified by the Contractor on site.
Do not scale drawings, work to figured dimensions only.

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PROPOSED EXTERNAL SEATING AT 1 COMMERCIAL STREET

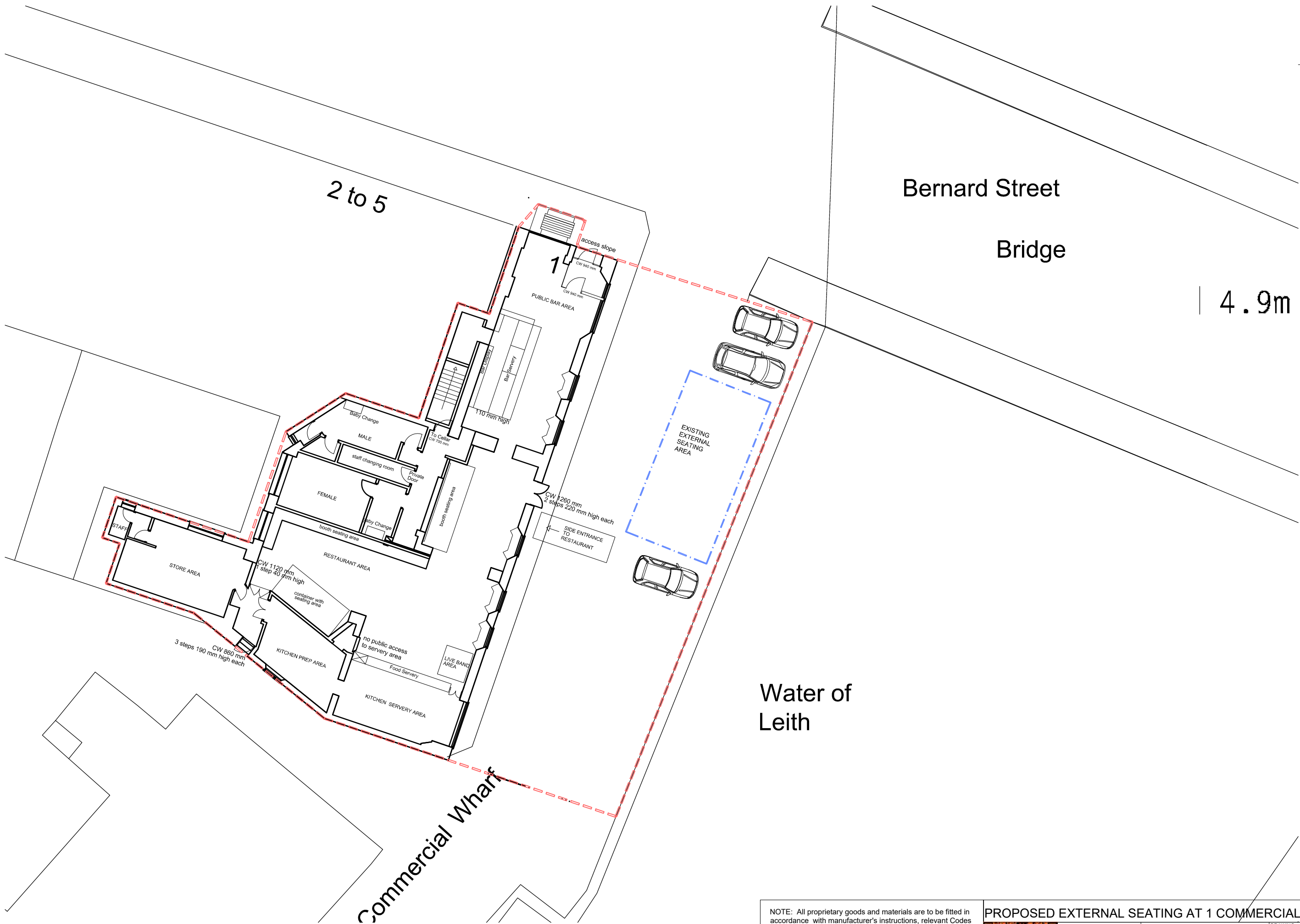
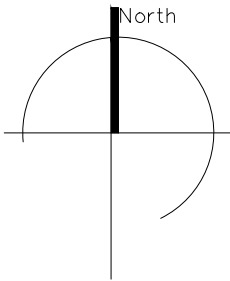


**martin
mcmullen
architect**

METRO INN LTD

LOCATION & SITE PLAN

| | |
|-----------------------|------------------|
| SCALE 1:500/1250 | DATE OCT 19 |
| JOB No. H'WAY -128 | DWG No. PL-03 |
| DRAWN BY MMcM | REVISIONS |



EXISTING SITE LAYOUT SCALE 1:200

EXISTING EXTERNAL SEATING ZONE

NOTE: All proprietary goods and materials are to be fitted in accordance with manufacturer's instructions, relevant Codes of Practise, and British Standards.
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PROPOSED EXTERNAL SEATING AT 1 COMMERCIAL STREET



martin mcmullen architect

METRO INN LTD

| | |
|------------------------------|---------------|
| DRAWING EXISTING SITE LAYOUT | |
| SCALE 1:200 | DATE OCT 19 |
| JOB No. H'WAY -122 | DWG No. PL-01 |
| DRAWN BY MMcM | REVISIONS |

FAO Neil Gray
Gray Planning & Development Ltd
AYE House
Admiralty Park
Rosyth
Dunfermline
KY11 2YW

Date: 3 June 2020

Our Ref: LRB6.2/SS

Dear Mr Gray,

**THE CITY OF EDINBURGH PLANNING LOCAL REVIEW BODY
REQUEST FOR REVIEW – APPLICATION NO 19/04799/FUL
1 COMMERCIAL STREET, EDINBURGH
TOWN AND PLANNING (SCOTLAND) ACT 1997 AS AMENDED BY THE PLANNING
ETC (SCOTLAND) ACT 2006**

I refer to your request for a review submitted on behalf of Metro Inns Ltd for the refusal of planning permission for the new decking area for external tables and chairs including a parasol with 4m cover, portable planters with perspex sound diffusers (in retrospect) at 1 Commercial Street, Edinburgh, which was dealt with by the Chief Planning Officer under delegated powers.

The request was considered by the City of Edinburgh Planning Local Review Body (LRB) at a meeting on Wednesday 27 May 2020.

Decision

To continue consideration of the request for review in order to:

1. Allow for a site visit to be conducted safely under social distancing measures.
2. Request a response from Environmental Protection on this proposal.
3. Confirm that the required neighbour notifications had been issued.

The request for review will be further considered by the LRB at a future meeting, once the information requested has been made available and the appropriate arrangements for a site visit have been cleared by the Chief Planning Officer in order to ensure we are fully compliant with the Scottish Government's recommendation of social distancing. Once a site visit has been arranged you will be notified of the date of the meeting of the Local Review Body when your application will be further considered.

Assessment

At the meeting on 27 May 2020, the LRB had been provided with copies of the notice of review submitted by you including a request that the review proceed on the basis of an assessment of the review documents and a site inspection. The LRB had also been provided with copies of the decision notice and the report of handling.

The LRB heard from the Planning Adviser who summarised the issues raised and presented the drawings of the development and responded to further questions.

The plans used to determine the application were numbered 01-03, Scheme 1, being the drawings shown under the application reference number 19/05705/FUL on the Council's Planning and Building Standards Online Services.

The LRB, having considered these documents, felt that they had insufficient information before it and agreed to visit the site before determining the review.

The LRB in their deliberations on the matter, considered the following:

- 1) The development plan, including the relevant policies of the Edinburgh Local Development Plan.

Edinburgh Local Development Plan Policy DES 1 (Design Quality and Context)

Edinburgh Local Development Plan Policy DES 5 (Development Design - Amenity)

Edinburgh Local Development Plan Policy DES 8 (Public Realm and Landscape Design)

Edinburgh Local Development Plan Policy DES 10 (Waterside Development)

Edinburgh Local Development Plan Policy RET 11 (Food and Drink Establishments)

- 2) Relevant Non-Statutory Guidelines.

'Guidance for Businesses'

'The Leith Conservation Area Character Appraisal'

- 3) The procedure used to determine the application.

- 4) The reasons for refusal and the arguments put forward in the request for a review.

Conclusion

The LRB considered all the arguments put before it in respect of the proposed planning application and discussion took place in relation to the following issues:

- That it would be difficult to fully to determine the matter without further information on the site and that a site visit would be beneficial, although the difficulties of arranging this with the current Covid-19 situation were recognised. The LRB decided to ask questions of the Planning Adviser to determine whether a site visit would be necessary.

- Whether any photographs of the decking in situ had been submitted and confirmation that the appellant had not submitted any.
- Whether the decking was removable and whether a site visit could clarify this matter.
- That there were concerns regarding the potential noise impact and whether there had been any complaints regarding the noise. The LRB were advised there had been no noise complaints and that the site was operating within its conditions set by Licensing.
- Whether a response could be requested from Environmental Protection on the proposal.
- That the number of representations appeared to be low and whether the required neighbour notifications had all been issued, including whether the Water of Leith Conservation Trust had been notified.

Having taken all the above matters into consideration the LRB felt that they had insufficient information before it and agreed to continue consideration of the matter in order to allow for a site visit before determining the review, to request a response from Environmental Health on this proposal and to confirm that the required neighbour notifications had been issued.

Contact

Please contact Sarah Stirling on 0131 529 3009 or e-mail sarah.stirling@edinburgh.gov.uk if you have any queries about this letter.

Yours sincerely

Sarah Stirling

for the Clerk to the Review Body

Notes:

- 1 If the applicant is aggrieved by the decision of the planning authority to refuse permission or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within six weeks of the date of the decision.
- 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 the 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 in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.

To: Gina Bellhouse

From: Colin Brown, Environmental Protection, Place

Date: 19/6/20

TOWN AND COUNTRY PLANNING SCOTLAND ACT 1997

New decking area for external tables and chairs including a parasol with 4m cover, portable planters with Perspex sound diffusers (in retrospect) at 1 Commercial Street, Edinburgh. (19/04799/FUL)

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

The application proposes a new decking area for external tables and chairs including a parasol for external dining associated with an existing restaurant and bar. No visit has been able to be undertaken by Environmental Protection, however the agent for the application advises that there are no residential properties immediately overlooking the application site from Commercial Wharf. The application premises already has an existing, smaller seating area for restaurant guests to use adjacent to the Water of Leith on Commercial Wharf.

The agent has advised that the newly proposed decking area has yet to be utilised by the restaurant for external dining. However they advise that that the previously utilised seating area has been in use by diners since 1995. Environmental Protection has no complaints of noise on record for the duration of use of the dining and drinking area.

The nearest residential properties with a line of sight to the external dining area are situated around 70 metres away across the Water of Leith at the Shore so there is a low level of likelihood that noise will impact upon the amenity of those properties.

The agent has advised that the premises' formal licence permits outdoor seating use to 2100hrs, 7 days a week. There are no complaints of noise on record which would indicate the premises ever breaching this restriction.

The application proposes to increase the size of the dining and drinking area although in terms of noise production, the increase is unlikely to significantly generate more noise from that which can already occur. Therefore, Environmental Protection is of the opinion that existing arrangements could continue to be utilised by the proprietor (active monitoring by restaurant staff/owner and the premises' licensing obligations) to ensure that the new larger outdoor area does not cause noise to impact upon residential amenity.

Based on there being an existing external dining and drinking area associated with an existing restaurant and that the increase in the area appears modest, Environmental Protection do not object to the application. It is also the opinion of Environmental Protection that the area is best controlled by licensing restrictions covering times of use of the dining and drinking area.

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