

Development Management Sub-Committee Report

Wednesday 30 March 2022

**Application for Planning Permission
1 Grassmarket, Edinburgh, EH1 2HY.**

Proposal: Change of use from Class 1 (Retail) and Class 3 (Food and Drink) to a mixed use Class 11 (Leisure) and Class 3 (Food and Drink) and associated flue.

**Item – Committee Decision
Application Number – 21/06295/FUL
Ward – B11 - City Centre**

Reasons for Referral to Committee

The application has been referred to Development Management Sub Committee because 13 objections and 15 letters of support have been received. Consequently, under the Council's Scheme of Delegation the application must be determined by the Development Sub-Committee

Recommendation

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

Summary

The proposals do not comply with Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 or the development plan and non-statutory guidance. The proposed flue would fail to respect the architectural integrity and character of the building and the character and appearance of the Old Town Conservation Area. The proposed development would increase the provision of food and drink establishments, whilst introducing an entertainment venue in an area of restriction, where there is a presumption against such uses. The proposal does not comply with the relevant SPP - sustainable development principles. No other material considerations outweigh this conclusion.

SECTION A – Application Background

Site Description

The application property forms the ground and basement floors of a four-storey attic and basement tenement with Scots Baronial details, built circa 1897, with later alterations and additions. It is a statutory C listed building and was listed on 10.04.1986 (LB ref 28932).

The premises have a mixed class 1 retail/class 3 food and drink use but have been empty for around two years. There are residential units on the upper floors. There is a mix of ground floor commercial uses including retail, class 3 and public houses in the surrounding area.

The site lies within the City Centre and is part of Grassmarket Speciality Shopping Street.

It is located within the Old Town Conservation Area and Edinburgh World Heritage Site.

Description of the Proposal

Change of use from Class 1 (Retail) and Class 3 (Food and Drink) to a mixed-use Class 11 (Leisure) and Class 3 (Food and Drink) and associated flue.

The proposed opening hours are 12pm-12am, Monday -Sunday.

Supporting Information

Planning Statement
Noise Impact Assessment
Photographic Schedule of Condition
Marketing Report

Relevant Site History

04/02416/FUL
1 Grassmarket
Edinburgh
EH1 2HY
Music shop with Class 3 cafe use - Hours of opening 8.00 am - 8.00 pm, Monday - Saturday
Granted
23 December 2004

04/02416/LBC
1 Grassmarket
Edinburgh
EH1 2HY
Alterations to form a cafe and music retail shop
Granted
8 October 2004

Other Relevant Site History

No other Relevant Site History

Pre-Application process

Pre-application discussions took place on this application.

Consultation Engagement

Environmental Protection

Refer to Appendix 1 for a summary of the consultation response.

Publicity and Public Engagement

Date of Neighbour Notification: 2 December 2021

Date of Renotification of Neighbour Notification: Not Applicable

Press Publication Date(s): 10 December 2021;

Site Notices Date(s): 7 December 2021;

Number of Contributors: 28

Section B - Assessment

Determining Issues

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

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

- b) If the strong presumption against granting planning permission is engaged, are there any significant public interest advantages of the development which can only be delivered at the scheme's proposed location that are sufficient to outweigh it?

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

If the proposal is in accordance with the development plan the determination should be to grant planning permission unless material considerations indicate otherwise?

If the proposal is not in accordance with the development plan the determination should be refuse planning permission unless material considerations indicate otherwise?

In the assessment of material considerations this report will consider:

- the Scottish Planning Policy presumption in favour of sustainable development, which is a significant material consideration due to the development plan being over 5 years old;
- equalities and human rights;
- public representations; and
- any other identified material considerations.

Assessment

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

a) The proposals harm the listed building and its setting?

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

- Managing Change Re-use and adaptation of listed buildings encourages finding new uses for listed buildings and this could be used to support your application.

Section 59 (1) of the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997 states: *"In considering whether to grant planning permission for development which affects a listed building or its setting, a planning authority or the Secretary of State, as the case may be, shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."*

The proposed development would provide a use for the building which has been vacant for several years and has recently suffered damage from flooding, and the internal alterations would not adversely affect any remaining historic features. However, a stainless-steel duct is proposed from ground floor to one metre above the roofline on the rear elevation. The building is part of a prominent Scots Baronial tenement, emphasised by traditional materials that constitute a fundamental and central element of its character. Although it would be positioned on a secondary elevation, the flue would fail to have regard to the architectural and historical integrity of the listed building and the adjoining listed buildings. It would create an unsympathetic and incongruous addition to the property and would adversely affect the character of the building.

Conclusion in relation to the listed building

The proposal is unacceptable with regard to Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and HES guidance as the proposal would not preserve the character and setting of the listed building.

b) The proposals impact on the character or appearance of the conservation area.

Section 64(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states: *"In exercise, with respect to any buildings or other land in a conservation area, of any powers under any of the provisions in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area."*

The Old Town Conservation Area Character Appraisal emphasises the survival of the original medieval street pattern; the wealth of important landmark buildings; the survival of an outstanding collection of archaeological remains, medieval buildings, and 17th-century town houses; the consistent and harmonious height and mass of buildings; the importance of stone as a construction material for both buildings and the public realm; the vitality and variety of different uses; and the continuing presence of a residential community.

There are existing windows facing both Kings Stables Road and Grassmarket. The proposal would see these retained in their existing proportions, but with an active frontage.

The galvanised sheet steel extraction duct would rise one metre above the roof level. It would be located to the rear of the building. Whilst the height and varying roof forms of the adjoining buildings would limit its visual impact when viewed from pavement level, the form and materials are not appropriate to the historic environment. It would have an adverse effect on the building and the immediate surroundings and would detract from the character and appearance of the conservation area.

Conclusion in relation to the conservation area

The proposals are unacceptable with regard to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as the proposed flue would not preserve and enhance the character and appearance of the conservation area.

c) The proposals comply with the development plan?

The development plan comprises the Strategic and Local Development Plans. The relevant Edinburgh Local Development Plan 2016 (LDP) policies to be considered are:

- LDP Environment policies Env 4, Env 6, Des 1 and Des 12
- LDP Shopping and Leisure policies Ret 7, Ret 10 and Ret 11
- LDP Housing policy Hou 7
- LDP Mixed Use /Regeneration Policy Del 2

The non-statutory 'Listed Buildings and Conservation Area' guidance is a material consideration that is relevant when considering policies Env 4 and Env 6.

The non-statutory 'Business' guidance is a material consideration that is relevant when considering policies Del 2, Hou 7, Ret 7, Ret 10 and Ret 11.

Impact on the setting of the listed buildings and conservation area

LDP Policy Env 4 (Listed Buildings (Alterations and Extensions) seeks to ensure that alterations to listed buildings do not cause unnecessary damage to historic structures or a diminution of its interest.

LDP Policy Env 6 (Conservation Areas - Development) supports development within a conservation area or affecting its setting which preserves or enhances the special character and appearance of the conservation area and is consistent with the relevant character appraisal, preserves trees, hedges, boundary walls, railings, paving and other features which contribute positively to the character and demonstrates high standards of design and utilises materials appropriate to the historic environment.

LDP Policy Des 1 (Design Quality and Context) states that planning permission will be granted for proposals which create or contribute towards a sense of place. Proposals should be based on an overall design concept that draws upon positive characteristics of the surrounding area.

LDP Policy Des 12 (Extensions and Alterations) states that planning permission will be granted for alterations to existing buildings which are compatible with the character of the existing building.

This has been assessed in sections a) and b) and the proposals do not comply with LDP Policies Env 4, Env 6, Des 1 and Des 12, as the proposed flue would not preserve and enhance the character and appearance of the conservation area and would harm the listed building.

Principle of Development

LDP Policy Del 2 (City Centre) supports proposals which retains and enhances its character, attractiveness, vitality and accessibility and contributes to its role as a strategic business and regional shopping centre and Edinburgh's role as a capital city. The relevant requirements will be for a use or mix of uses appropriate to the location of the site in accordance with any development principles, development briefs and other guidance.

LDP Policy Ret 7 (Entertainment and Leisure Developments - Preferred Locations) identifies the preferred locations for entertainment and leisure development to ensure that such proposals make a positive contribution in terms of the type of use and quality of design, are in accessible locations and do not introduce unacceptable noise and late-night disturbance. The City Centre has a mixed-use character and provides a wide range of leisure uses, arts and cultural establishments and pubs and restaurants. Whilst recognising the importance of such uses to the local and national economy, the policy takes account of potential impact on the environment and local residents.

The retail unit is part of a Speciality Shopping Street designated in the LDP. LDP Policy Ret 10 (Shop units in Other Locations) guides proposals for change of use involving shop units not located within defined centres. The supporting text states that independent and specialist retailers may be found in secondary locations throughout the city, but their concentration in some streets in the Old Town and on the fringes of the City Centre has given these a distinctive shopping character and interest worthy of protection.

LDP Policy Ret 11 (Food and Drink Establishments) states the change of use of a shop unit or other premises to a licensed or unlicensed restaurant, café, pub, or shop selling hot food for consumption off the premises (hot food take-away) will not be permitted: a) if likely to lead to an unacceptable increase in noise, disturbance, on-street activity or anti-social behaviour to the detriment of living conditions for nearby residents or b) in an area where there is considered to be an excessive concentration of such uses to the detriment of living conditions for nearby residents.

The proposal would see the class 3 use increased to a larger scale cafe /restaurant over both floors. The shop unit had been trading as a retail operation, with a cafe area on the ground floor, but has been vacant for some time. Although the proposal would result in the loss of a retail use in a defined speciality shopping street, in terms of the other criteria in LDP Policy Ret 10, a leisure use within a predominantly commercial area can be compatible with the character of the area and where there is no local need to retain it in retail use. Whilst the loss of the retail unit would not necessarily have a significant impact on the vitality of the area, the impact of the proposal on amenity is assessed in greater detail below.

Class 11 (Assembly and Leisure) includes a wide range of interchangeable uses many of which would significantly alter the character of the area and are likely to generate noise and disturbance to neighbouring premises.

This is in an area where there is considered to be an excessive concentration of such uses. The proposal would exacerbate this situation and likely lead to an unacceptable increase in noise, disturbance, on street activity to the detriment of living conditions for nearby residents.

If the principle of Class 11 is accepted, it is recommended that a condition is included to ensure that the permission is restricted to a golf use only and for no other purpose falling within Class 11 of the Town and Country Planning (Use Classes) (Scotland) Order 1997 (as amended).

Amenity

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

The unit occupies the ground floor and basement of a tenement, with residential properties directly above.

Council's Guidance for Businesses states public houses, entertainment venues and hotels outwith Class 7 (Hotels and Hostels) uses should be located so as not to impinge on residential surroundings. The Grassmarket is an area of restriction where there is a presumption against new uses which generate night-time activity.

The proposed opening hours are 12pm to 12am Monday to Sunday. This is earlier than many of the surrounding bars and restaurants in the Grassmarket, but the unit lies closer to Kings Stables Road, which has seen new residential developments in recent years. The proximity of the premises to these units could have the potential to adversely affect residential amenity through disruption and on-street activity.

Attenuation measures in relation to noise and odour have been submitted, which, if implemented, could minimise the likely impact on the internal living conditions of nearby residential properties. However, the Grassmarket is a mixed-use area where there is a considerable number of residential units. It is also where there is an existing concentration of food and drink establishments. The scale of the activities proposed as part of this development could not be integrated satisfactorily into the surroundings without being to the detriment of living conditions for nearby residents.

Transport

There are no changes to the existing parking arrangements and the site is well served by public transport.

Conclusion in relation to the Development Plan

The proposals do not comply with LDP Policies Env 4, Env 6, Ret 7, Ret 11 and Hou 7. The proposed flue would fail to respect the architectural integrity and character of the building and the character and appearance of the conservation area. The proposed development would increase the provision of food and drink establishments in an area where there is an excessive concentration, whilst introducing an entertainment venue in an area of restriction, where there is a presumption against such uses.

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

The following material planning considerations have been identified:

SPP - Sustainable development

Scottish Planning Policy (SPP) is a significant material consideration due to the LDP being over 5 years old. Paragraph 28 of SPP gives a presumption in favour of development which contributes to sustainable development. Paragraph 29 outlines the thirteen principles which should guide the assessment of sustainable development.

The proposed development does not comply with SPP principles 3, 10 and 13, as it would not support good design and the six qualities of successful places. It would not protect or enhance the historic environment and the food and drink use would not protect the amenity of nearby residents by virtue of excessive concentration of such uses and disturbance late in the evening.

The proposal does not comply with Paragraph 29 of SPP.

Emerging policy context

The Draft National Planning Framework 4 is being consulted on at present and has not been adopted. As such, little weight can be attached to it as a material consideration in the determination of this application.

While City Plan 2030 represents the settled will of the Council, it has not yet been submitted to Scottish Ministers for examination. As such, little weight can be attached to it as a material consideration in the determination of this application.

Equalities and human rights

Due regard has been given to section 149 of the Equalities Act 2010. No impacts have been identified.

Consideration has been given to human rights. No impacts have been identified through the assessment and no comments have been received in relation to human rights.

Public representations

The application was advertised on 10 December 2021 and 27 comments were received: 12 objecting and 15 supporting. These included comments from the Cockburn Association, the Grassmarket Residents Association (GRASS) and the Old Town Community Council who did not request to be a statutory consultee.

A summary of the representations is provided below:

material considerations - objecting

- Increased noise, antisocial behaviour and disruption - assessed in section c
- Noise late at night - assessed in section c
- Overprovision of licensed and eating premises in Grassmarket - assessed in section c
- Too many venues of this type in locality - assessed in section c
- Loss of retail affect viability of Grassmarket - assessed in section c
- Smell from extractor system - assessed in section c
- Contrary to policies Hou7 and Des 5 - assessed in section c

material considerations - supporting

- Support local businesses - assessed in section c
- Good and welcome addition to Grassmarket - assessed in section c
- Add to thriving tourist area - assessed in section c
- Improve economy and jobs - assessed in section c

non-material considerations

attract the wrong type of person to area
name of business distasteful
lower the tone of the Grassmarket
increase drunken behaviour

Conclusion in relation to identified material considerations

The proposal does not accord with the relevant sustainable development policy principles set out in SPP. There are no other issues raised in the material considerations.

e) Overall conclusion

The proposals do not comply with Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 or the development plan and non-statutory guidance. The proposed flue would fail to respect the architectural integrity and character of the building and the character and appearance of the conservation area. The proposed development would increase the provision of food and drink establishments in an area where there is an excessive concentration, whilst introducing an entertainment venue in an area of restriction, where there is a presumption against such uses. The proposal does not comply with the relevant SPP - sustainable development principles. No other material considerations outweigh this conclusion.

Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following: -

Reason for Refusal: -

1. The proposals are contrary to Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and Policy Env 4 of the Edinburgh Local Development Plan, as the proposed flue would diminish the special architectural character of the building.
2. The application is contrary to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and Policy Env 6 of the Edinburgh Local Development Plan, as the proposal would not preserve the character and appearance of the conservation area.
3. The proposed food and drink element of the proposal is contrary to LDP Policy Ret 11 of the Edinburgh Local Development Plan as there is an excessive concentration of such uses which would be detrimental to amenity within the area.
4. The proposal would see the intensification of a non-residential use which would have a materially detrimental effect on the living conditions of nearby residents which is contrary to Policy Hou 7 of the Edinburgh Local Development Plan.
5. The proposal would not be compatible with surrounding uses and would have a materially detrimental effect on the living conditions of nearby residents which is contrary to Policy Ret 7 of the Edinburgh Local Development Plan.

Background Reading/External References

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

Further Information - Local Development Plan

Date Registered: 30 November 2021

Drawing Numbers/Scheme

1-6

Scheme 1

David Givan
Chief Planning Officer
PLACE
The City of Edinburgh Council

Contact: Jennifer Zochowska, Senior Planning Officer
E-mail: jennifer.zochowska@edinburgh.gov.uk

Appendix 1

Summary of Consultation Responses

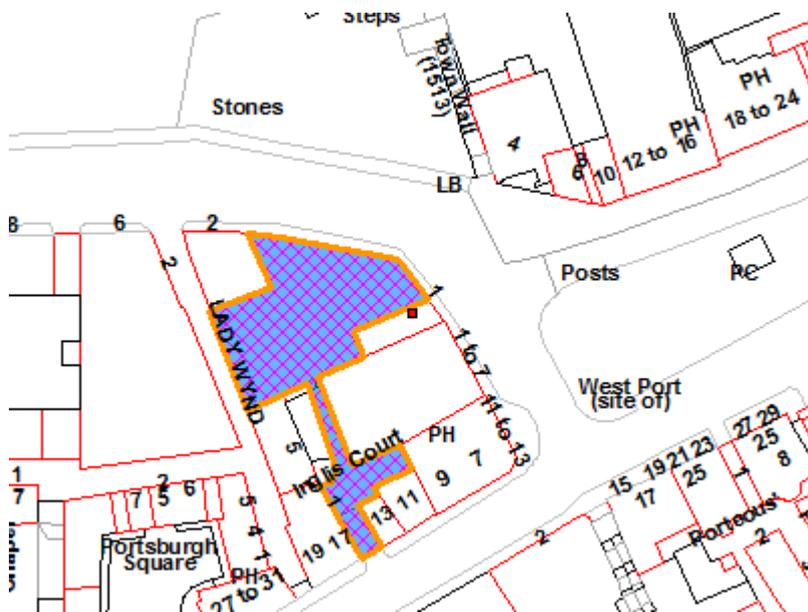
NAME: Environmental Protection

COMMENT: Environmental Protection had concerns regarding noise and odour from this application affecting nearby residential properties. However, the submitted ventilation details and a Noise Impact Assessment indicates that satisfactory standards in relation to noise and odour would be met if attenuation measures are implemented. They have no objections to the proposal subject to conditions relating to ventilation and odour, sound and vibration. The proposal occupies the ground and basement floors of a tenement building so it is recommended that the use is restricted to crazy golf only.

DATE: 1 February 2022

The full consultation response can be viewed on the [Planning & Building Standards Portal](#).

Location Plan



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