

Development Management Sub-Committee Report

Wednesday 29 June 2022

**Application for Planning Permission
42 Craigentiny Road, Edinburgh, EH7 6LT**

Proposal: Change of use of existing Class 1 shop to form hot food shop including external extract duct (as amended)

**Item – Local Delegated Decision
Application Number – 20/04483/FUL
Ward – B14 - Craigentiny/Duddingston**

Reasons for Referral to Committee

In accordance with the statutory scheme of delegation, the application has been referred for determination by the Development Management Sub-committee as it has received more than 20 material representations in support and the recommendation is to refuse planning permission.

Should members be minded to overturn the recommendation, the attachment of the conditions suggested by Environmental Protection is advised in order to safeguard residential amenity.

Recommendation

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

Summary

The proposals are not in accordance with the Development Plan. They do not comply with Local Development Plan Policies Ret 11, Hou 7 or Des 1 or Scottish Planning Policy. It will result in an excessive concentration of hot food takeaways, to the detriment of the living conditions of nearby residents. The proposals do not create or contribute towards a sense of place, as the over-development of a single use within a small and commercially isolated row of units would fail to generate a distinctive local environment. There are no material considerations that outweigh the conclusion to recommend refusal of the application.

SECTION A – Application Background

Site Description

The application site is the southeasternmost unit within a row of six commercial properties. It fronts Craigentenny Road, a one-way street that is separated from the primary Craigentenny Road by an area of greenspace. Residential flats occupy the two floors above and two blocks at each end of the street.

Description of the Proposals

Planning permission is sought for the change of use of a shop (Class 1) to a hot food takeaway (*sui generis*).

The proposal was amended prior to this recommendation. Scheme 2 confirmed ventilation and noise mitigation measures.

Supporting Information

A Noise Impact Assessment was submitted in support.

Relevant Site History

No relevant site history.

Other Relevant Site History

Pre-Application process

There is no pre-application process history.

Consultation Engagement

CEC Environmental Protection (7 January 2022)

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

Publicity and Public Engagement

Date of Neighbour Notification: 23 October 2020

Date of Renotification of Neighbour Notification: Not Applicable

Press Publication Date(s): 30 October 2020;

Site Notices Date(s): Not Applicable;

Number of Contributors: 42

Section B - Assessment

Determining Issues

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

Do the proposals comply with the development plan?

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

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

In the assessment of material considerations this report will consider: 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 comply with the Development Plan?

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

- LDP Policy Des 1 - Design Quality and Context;
- LDP Policy Des 12 - Alterations and Extensions;
- LDP Policy Hou 7 - Inappropriate Uses in Residential Areas;
- LDP Policy Ret 11 - Food and Drink Establishments;
- LDP Policy Tra 2 - Private Car Parking; and
- LDP Policy Tra 3 - Private Cycle Parking.

The non-statutory Guidance for Businesses and the Edinburgh Design Guidance are material in the consideration of these policies.

Principle of the proposals

LDP Policy Ret 11 states that 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".

LDP Policy Hou 7 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".

From southeast to northwest, the six units are currently occupied, or were most recently occupied by:

- 'best-one', a shop (Class 1) and the application site;
- 'Yum Yum - Takeaway', a *sui generis* hot food takeaway (HFT);
- 'Dino's', a *sui generis* HFT;
- 'Supan Thai Takeaway', a *sui generis* HFT;
- 'AQQA Convenience Store', a shop (Class 1); and
- 'SIA Barber', a shop (Class 1).

26 Craigentenny Road ('SIA Barber') received planning permission for the change of use from a shop (Class 1) to a HFT on the 29 June 2018 (application reference: 18/01537/FUL). This consent would have expired on the 28 June 2021 if it was not for the provisions of The Coronavirus (Scotland) Act 2020 and its subsequent modifications. The most recent relevant legislation is The Town and Country Planning (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2022 which came into force on the 30 March 2022. This effects planning permissions that would have expired between 7 April 2020 and 30 September 2022 and means that they benefit from an automatic extension to the period for implementation to 31 March 2023; this includes planning permission 18/01537/FUL.

The proposals, if considered in isolation, will not of itself be of detriment to the living conditions of nearby residents. Noise from kitchen activity and ventilation can be mitigated and no complaints have been received in connection with deliveries from the existing businesses. Notwithstanding this, it is accepted that HFTs can be associated with disturbance, on-street activity and anti-social behaviour principally by their ability to serve extensive catchment areas through vehicular deliveries and their often late opening hours where there is a greater expectation for a quiet environment.

However, granting this application would mean that five of the six units are either operating as a HFT or have planning permission to operate as a HFT. Whilst four units operating as a HFT was deemed acceptable under planning permission 18/01537/FUL, five would constitute an excessive concentration, to the detriment of the living conditions of nearby residents through the cumulative effects of five customer and delivery vehicle movements and resulting increased potential for disturbance, on-street activity and anti-social behaviour.

Design quality and context

LDP Policy Des 1 states that *"planning permission will be granted for development where it is demonstrated that the proposal will create or contribute towards a sense of place. Design should be based on an overall design concept that draws upon positive characteristics of the surrounding area. Planning permission will not be granted for poor quality or inappropriate design or for proposals that would be damaging to the character or appearance of the area around it, particularly where this has a special importance"*.

The nearest town or local centre to the proposals is Piershill which constitutes a 1km one way walk from the application site. The provisions of an additional HFT would not create or contribute towards a sense of place, as the relative domination of a single use, within a small and commercially isolated row of units, would fail to generate a distinctive local environment and a diverse and vibrant local community.

External alterations

LDP Policy Des 12 states that *"planning permission will be granted for alterations and extensions to existing buildings which:*

- a) in their design and form, choice of materials and positioning are compatible with the character of the existing building;*
- b) will not result in an unreasonable loss of privacy or natural light to neighbouring properties and*
- c) will not be detrimental to neighbourhood amenity and character"*.

The only external alteration is the installation of a ventilation duct to the southeast elevation. This will sit to the rear of an existing chimney and is proposed to be painted to match the wall. It is of an acceptable scale, form and design, will not result in an unreasonable loss of privacy or natural light to neighbouring properties and is compatible with character of the existing building and the neighbourhood.

Car and cycle parking

LDP Policy Tra 2 and Tra 3 support development where the proposed car and cycle parking provision complies with the Edinburgh Design Guidance.

The unit has no dedicated car or cycle parking, but vehicular spaces exist on the street which has no car parking controls; this is also the case for roads in the immediate area. The continuation of this informal arrangement is considered acceptable for these small-scale proposals given that the existing shop (Class 1) is likely to generate pedestrian, cycle and vehicle movements at present.

Conclusion in relation to the Development Plan

The proposals comply with LDP Policy Des 12, Tra 2 and Tra 3. The physical alterations are compatible with the character of the existing building and will not result in any loss of privacy and natural light to neighbouring properties or be detrimental to neighbourhood amenity and character. There are no car or cycle parking concerns.

The proposals do not comply with LDP Policy Ret 11, Hou 7 and Des 1. It will result in an excessive concentration of HFTs to the detriment of the living conditions of nearby residents. The proposals do not create or contribute towards a sense of place as the domination of a single use would fail to generate a distinctive local environment.

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

The following material planning considerations have been identified:

Scottish Planning Policy - 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.

It is accepted that the occupation of a unit which may be left vacant is likely to have a net economic benefit. However, this is not considered to outweigh the adverse effects from the over-development of a single use within a small and commercially isolated row of units and the resulting negative impacts on the amenity of existing development.

Emerging policy context

The Draft National Planning Framework 4 is being consulted on at present and has not been adopted. City Plan 2030 has not been submitted to Scottish Ministers for examination. As such, little weight can be attached to these as material considerations.

Equalities and human rights

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

Public representations

42 letters of representation were received: 37 in support and five in objection. One letter of representation was submitted as an objection but its contents indicate support. It has been treated as being in favour of the development.

Material considerations in support

- Increased choice and convenience in HFT offering for local residents - a decision of grant would approve a *sui generis* HFT use but there would be no restriction on the HFT offering subject to any ownership or leasing requirements.

Non-material considerations in support

- Increased choice and convenience in HFT offering for local residents - as stated above, whilst the number of HFTs has the potential to increase, the Council as Planning Authority would have no control over the nature of its offering.

Material considerations in objection

- Adverse impacts on residential amenity from noise, odour and anti-social behaviour - this is addressed under the 'principle of the proposals' heading with paragraph a).
- Concentration of HFTs - this is addressed under the 'principle of the proposals' heading with paragraph a).
- Reduced car parking spaces - this is addressed under the 'car and cycle parking' heading with paragraph a).

Non-material considerations in objection

- Impact on residential property value or the ability to sell property.
- Risk of fire.
- Damage to the building from the installation of ventilation ducts; and
- Potential for increased transmission of COVID-19.

c) Conclusion in relation to identified material considerations

In respect of SPP, the adverse effects from the over-development of a single use are considered to outweigh any possible net economic benefits. The other material considerations do not outweigh the conclusion to recommend refusal of the application.

d) Overall conclusion

The proposals are not in accordance with the Development Plan. They do not comply with Local Development Plan Policy Ret 11, Hou 7 or Des 1 or Scottish Planning Policy. It will result in an excessive concentration of hot food takeaways to the detriment of the living conditions of nearby residents. The proposals do not create or contribute towards a sense of place as the over-development of a single use within a small and commercially isolated row of units would fail to generate a distinctive local environment. There are no material considerations that outweigh the conclusion to recommend refusal of the application.

Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following;

Reason for Refusal:-

1. The proposals do not comply with Scottish Planning Policy as it constitutes over-development and would result in negative impacts on the amenity of existing developments.
2. The proposals do not comply with Local Development Policy Ret 11 Food and Drink Establishments as the change of use of a shop unit to a hot food takeaway will result in an excessive concentration to the detriment of living conditions for nearby residents.

3. The proposals do not comply with Local Development Plan Policy Hou 7 Inappropriate Uses in Residential Areas as the change of use would result in five of the six commercial properties having the potential to operate as a hot food takeaway to the materially detrimental effect on the living conditions of nearby residents.
4. The proposals do not comply with Local Development Plan Policy Des 1 Design Quality and Context as it will not create or contribute towards a sense of place and it would damage the character of the area around it.

Background Reading/External References

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

Further Information - [Local Development Plan](#)

Date Registered: 16 October 2020

Drawing Numbers/Scheme

01A

Scheme 2

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Summary of Consultation Responses

NAME: CEC Environmental Protection (7 January 2022)

COMMENT: No objection subject to conditions

The application is for a change of use from an existing class 1 premises to a hot food takeaway at 42 Craigentenny Road, Edinburgh. The application relates to the ground floor of a 3 storey tenement style building. To the north-west are located other hot food takeaway premises, a convenience shop and a barbers. The upper floors of the buildings are in residential use. Adjacent to the site, to the south-east is an unattached 3 storey block of flats on the corner at Loganlea Drive. To the rear of the site, to the south-west is located playing fields for Craigentenny Primary School.

The plans show a full height kitchen ventilation extract system at the side of the building and terminating at the adjacent chimney height. The system is to be designed to give minimum 30 air changes per hour to kitchen, with a venturi on the extract duct to give an upward velocity of 15 metres per second. The system is considered satisfactory to ensure that cooking odours will not impact on the amenity of neighbours.

With regard to noise, a Noise Impact Assessment (NIA) was submitted with the application. The NIA assessed noise from kitchen activity noise as well as the kitchen ventilation extract system. The NIA concluded a noise attenuator was required to reduce noise to an acceptable level for the nearest domestic properties. The NIA identified a suitable attenuator model and specification required, as well as other measures to control noise and vibration. It was also identified that the acoustic performance of the ceiling required improving and the NIA provided a specification for an independent ceiling. The conclusions in the NIA, formed the basis of the recommended conditions.

Noise from delivery vehicles associated with hot food takeaways can be a source of complaint if it occurs late at night. The neighbouring hot food takeaways do not appear to have any restrictions on operating hours and we have no records of noise complaints concerning deliveries from these businesses. Therefore, it is not considered necessary or appropriate to recommend a condition restricting operating hours.

In summary, Environmental Protection are satisfied that the mitigation measures proposed will address potential noise and odour problems and therefore have no objections subject to the conditions.

1. A 450mm Helios Flanged circular noise attenuator RSD or a noise attenuator with the same or better noise attenuation performance shall be installed as marked on drawing: P1, rev A, 12/21.

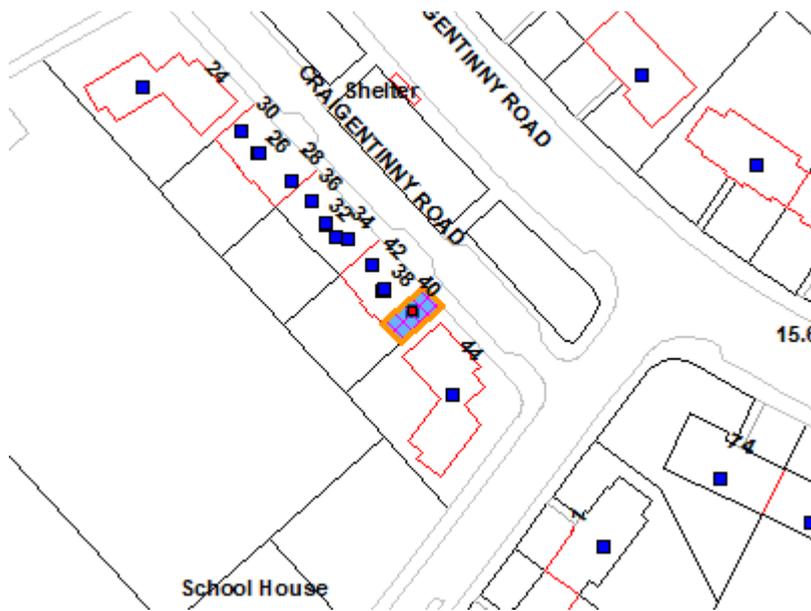
2. For the kitchen ventilation extraction system, all mechanical fixings to the existing structure shall incorporate resilient mountings to control vibration.

3. An independent ceiling as specified in drawing P1, rev A, 12/21, shall be installed over the entire ground floor of the premises. The new independent ceiling shall not be penetrated by any building services equipment serving the restaurant, including recessed ceiling lights. Any required building services equipment must be installed below the proposed ceiling construction.

DATE: 7 January 2022

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

Location Plan



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