

Format Building Design.
FAO: Shona MacKay
Holyrood Business Park
146 Duddingston Road West
Edinburgh
EH16 4AP

Windows Catering Company
(West End Ltd).
77A George Street
Edinburgh
EH2 3ES

Decision date: 2 August 2022

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

Part change of use from Class 1 (shop) to Class 1 (shop /deli) and Class 3
(restaurant).
At 77A George Street Edinburgh EH2 3ES

Application No: 22/02158/FUL

DECISION NOTICE

With reference to your application for Planning Permission registered on 22 April 2022, 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** 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:-

Reasons:-

1. The proposal is contrary to the Local Development Plan Policy Ret 9 in respect of, Alternative Use of Shop Units - Elsewhere in defined centres, as it would contribute to over 1/3 of non-shop uses within the block.

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

Drawings 01-04, 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 is contrary to LDP Retail Policy Ret 9 and the associated City Centre Shopping and Leisure Supplementary Guidance in that it would contribute to over one third of non-shop uses within the block (50%+ currently). There are no material considerations that would outweigh this decision.

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 Conor MacGreevy directly at conor.macgreevy@edinburgh.gov.uk.



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
77A George Street, Edinburgh, EH2 3ES

Proposal: Part change of use from Class 1 (shop) to Class 1 (shop /deli) and Class 3 (restaurant).

Item – Local Delegated Decision
Application Number – 22/02158/FUL
Ward – B11 - City Centre

Recommendation

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

Summary

The proposal is contrary to LDP Retail Policy Ret 9 and the associated City Centre Shopping and Leisure Supplementary Guidance in that it would contribute to over one third of non-shop uses within the block (50%+ currently). There are no material considerations that would outweigh this decision.

SECTION A – Application Background

Site Description

The application site is a mid-terrace ground floor commercial unit with a basement level.

The property is a Statutory B Listed Building (1966).

Description Of The Proposal

The proposal is for a change of use from class 1 (retail) to a class 3 (restaurant), a small ancillary area for retail and an extract fan to the rear elevation.

Relevant Site History

21/02873/LBC
77A George Street
Edinburgh
EH2 3ES

Minor internal and external alterations to allow installation of extract duct.
Granted
12 July 2021

21/02872/FUL
77A George Street
Edinburgh
EH2 3ES

Change of use from class 1 retail to class 3 restaurant, installation of extract duct (as amended).

Refused
23 September 2021

Other Relevant Site History

Consultation Engagement

Environmental Protection

Roads Authority

Publicity and Public Engagement

Date of Neighbour Notification: 3 May 2022

Date of Advertisement: 13 May 2022

Date of Site Notice: 13 May 2022

Number of Contributors: 1

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 - Conservation Areas.
- Managing Change - External Fixtures.

The proposed works will not have a detrimental impact on the historical architectural features and will therefore not adversely impact on the special architectural or historic interest of the listed buildings. When looking specifically at the proposed flue and canopies, these would be concealed to the enclosed rear of the building which does not play host to any significant features of architectural merit. By virtue of this, the alterations would represent sympathetic additions that would not detrimentally impact on the historic features of the host property or the adjacent listed buildings.

Conclusion in relation to the listed building

The proposed changes are acceptable with regards to Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

b) The proposals harm the character or appearance of the conservation area?

The New Town Conservation Area Character Appraisal states that the area is typified by the formal plan layout, spacious stone built terraces, broad streets and an overall classical elegance. The buildings are of a generally consistent three storey and basement scale, with some four storey corner and central pavilions.

The proposed works are of a modest size and scale that would have a subordinate and subservient relation with the host property and in turn the surrounding Conservation Area. The proposals would fit harmoniously within the roof plan of the application site and would be almost entirely obscured from the public realm. The proposed materials

would represent suitable additions and are acceptable in this location. The proposal would have a neutral impact on the Conservation Area.

Conclusion in relation to the conservation area

The proposals are acceptable with regards to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 in that it would preserve 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 3, Env 4 and Env 6
- LDP Retail policies Ret 9 and Ret 11.
- LDP Design policies Des 1 and Des 12.

The non-statutory 'Listed Buildings and Conservation Area guidance' and the City Centre Shopping and Leisure Supplementary Guidance are a material considerations that are relevant when considering the aforementioned.

Principle

There are approximately 14 businesses within the block including the application site. Within this stretch of George Street, significantly only 7 of the 14 units are in retail use. The proposed change of use from a class 1 (retail) to a class 3 (restaurant), with a small ancillary area for retail would be unacceptable in that not only would it result in the further loss of retail in the defined area, but it would also not comply with policy CC 3 in the City Centre Shopping and Leisure Supplementary Guidance as over one third of the businesses would be in non-shop use. Taking into consideration that 50% of the units within this block are currently in non-shop use, the further erosion of the retail character and excessive non-shop use of this section of George Street would have a further detrimental impact upon the vitality of the surrounding area.

This is contrary to LDP Policies Ret 9, Ret 11 and the relevant supplementary guidance.

Scale, Form and Design

The proposed works would represent suitable additions that would be acceptable in this location. The proposed design and materials are also acceptable in that they would be congruous to the application site and the surrounding conservation area. The proposal would not represent over development.

The application complies with LDP Policy Des 1, Des 12, Env 3, Env 4 and Env 6.

Amenity

The proposal was assessed against the amenity criterion in the non-statutory Guidance for Householders. No impacts were identified.

In addition, Environmental Protection was consulted as part of the application and the proposal would be acceptable subject to Environmental Planning criterion being appeased. Further detail regarding Environmental Planning's consultation can be found in the consultation and conditions sections.

This complies with ELDP Policies Des 12, Ret 7 and part of Ret 11.

Transport

Transport Planning were consulted in relation to the application. Please see the consultations section for further detail.

Conclusion in relation to the Development Plan

The proposal is contrary to the Edinburgh Local Development Plan and the relevant guidance with respect to the principle of the change of use.

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 proposal complies 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

One comment was received (Objection)

material considerations

Flue; this is addressed in sections a), b) and c).
Canopy; this is addressed in sections a), b) and c).

Conclusion in relation to identified material considerations

These have been addressed.

Overall conclusion

The proposal is contrary to LDP Retail Policy Ret 9 and the associated City Centre Shopping and Leisure Supplementary Guidance in that it would contribute to over one third of non-shop uses within the block (50%+ currently). There are no material considerations that would outweigh this decision.

Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following;

Reasons

1. The proposal is contrary to the Local Development Plan Policy Ret 9 in respect of, Alternative Use of Shop Units - Elsewhere in defined centres, as it would contribute to over 1/3 of non-shop uses within the block.

Background Reading/External References

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

Further Information - [Local Development Plan](#)

Date Registered: 22 April 2022

Drawing Numbers/Scheme

01-04

Scheme 1

David Givan

Chief Planning Officer
PLACE
The City of Edinburgh Council

Contact: Conor MacGreevy, Planning Officer
E-mail: conor.macgreevy@edinburgh.gov.uk

Appendix 1

Consultations

NAME: Environmental Protection

COMMENT: A noise impact assessment (NIA) has been provided in support of the application which confirms that noise from normal internal operations will be inaudible within surrounding residential properties. The ventilation system requires to be fitted with attenuators/silencers within the ducting. The mitigation details contained within the NIA should be installed prior to operation and a condition is included below to that effect.

The applicant has confirmed that the ventilation system proposed will meet the requirements of this team in that it will attain a minimum of 30 air changes per hour and is ducted to an appropriate level. The ventilation has been designed to ensure that all odours will be vented to atmosphere and will not impact upon nearby residential properties.

Recommended conditions:

1 - The ventilation details as specified within report 3996-SAV-GST-ZZ-SPEC-M-001 and dated 4/8/21 should be installed and operational prior to start of operations on site.

2 -The ventilation extraction system noise mitigation measures specified within noise impact assessment 14898399/rmg/R1 and dated 7th June 2022 should be installed and operational prior to start of operations on site.

3 - Plant noise (as measured 1m from source) should comply with the highlighted noise specification when installed and operational on site - see Council Portal and consultation for exact specification.

DATE: 14 July 2022

NAME: Roads Authority

COMMENT: Response -

Contribute the sum of £15,756 to the Edinburgh Tram in line with the approved Tram Line Developer Contributions report. The sum to be indexed as appropriate and the use period to be 10 years from date of payment.

DATE: 15 July 2022

The full consultation response can be viewed on the Planning & Building Standards Portal.

Comments for Planning Application 22/02158/FUL

Application Summary

Application Number: 22/02158/FUL

Address: 77A George Street Edinburgh EH2 3ES

Proposal: Part change of use from Class 1 (shop) to Class 1 (shop /deli) and Class 3 (restaurant).

Case Officer: Local1 Team

Customer Details

Name: Dr The Architectural Heritage Society of Scotland

Address: 15 Rutland Square, Edinburgh EH1 2BE

Comment Details

Commenter Type: Amenity Body

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: The AHSS Forth and Borders Cases Panel has examined the proposal for the change of use to a B-listed building within the New Town Conservation Area and World Heritage Site, and we object.

The application states that the large flue to the rear façade has been previously assessed under application 21/02872/FUL. This application was refused, so the flue shown on the proposed elevations does not have permission. Previous applications have shown a smaller flue in a different location.

Detailed drawings of any proposed flue, whether venting through the roof or rear wall, should be provided to ensure the impact on the listed building is kept to a minimum. The interior of the rear saloon contains historic wall painted decoration, and the ceiling has highly decorative plasterwork.

Similarly, we object to the installation of the new kitchen canopy and extract ducts due to the impact on the historic painted interior and plasterwork. Further details should be provided on the interior positioning and fixings so the impact on the listed building can be adequately assessed.

These elements of the proposal fail to preserve or enhance the special architectural character of the listed building and conservation area, contradict Edinburgh Council guidance and conflicts with the Local Development Plan policy ENV 4 & ENV 6. We therefore object to these proposals.

To: Conor MacGreevy
From: Colin Brown, Environmental Protection, Place

Date: 07/07/22

**TOWN AND COUNTRY PLANNING SCOTLAND ACT 1997
CHANGE OF USE FROM CLASS 1 RETAIL TO CLASS 3 RESTAURANT, INSTALLATION OF
EXTRACT DUCT AT 77A GEORGE STREET, EDINBURGH EH2 3ES
REFERENCE NUMBER: 21/02872/FUL**

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

The application proposes the change of use of a Class 1 retail premises to a Class 3 restaurant. The application includes the erection of a new ventilation duct and extraction system. A restaurant is situated above with residential flats further above on the upper floors. A bank is situated to the east with a restaurant to the west.

The application includes additional supporting information relating to noise and ventilation.

A noise impact assessment (NIA) has been provided in support of the application which confirms that noise from normal internal operations will be inaudible within surrounding residential properties. The ventilation system requires to be fitted with attenuators/silencers within the ducting. The mitigation details contained within the NIA should be installed prior to operation and a condition is included below to that effect.

The applicant has confirmed that the ventilation system proposed will meet the requirements of this team in that it will attain a minimum of 30 air changes per hour and is ducted to an appropriate level. The ventilation has been designed to ensure that all odours will be vented to atmosphere and will not impact upon nearby residential properties.

Therefore Environmental Protection offers no objections to the application subject to the following conditions:

Conditions

1. The ventilation details as specified within report 3996-SAV-GST-ZZ-SPEC-M-001 and dated 4/8/21 should be installed and operational prior to start of operations on site.
2. The ventilation extraction system noise mitigation measures specified within noise impact assessment 14898399/rmg/R1 and dated 7th June 2022 should be installed and operational prior to start of operations on site.
3. Plant noise (as measured 1m from source) should comply with the following noise specification when installed and operational on site:

| | 125Hz | 250Hz | 500Hz | 1kHz | 2kHz | 4kHz | 8kHz |
|---------------|-------|-------|-------|------|------|------|------|
| SPL @ 1m (dB) | 81.5 | 71.7 | 65.6 | 61.6 | 58.7 | 57.3 | 57.1 |

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

MEMORANDUM

To: Planning Officer
Conor MacGreevy

From: Transport
Steven Saunders

Our Ref: 22/02158/FUL

**22/02158/FUL
77A GEORGE STREET
EDINBURGH
EH2 3ES**

TRANSPORT CONSULTATION RESPONSE

Summary Response

No objections to the application subject to the following being included as conditions or informatives appropriate;

1. Contribute the sum of £15,756 to the Edinburgh Tram in line with the approved Tram Line Developer Contributions report. The sum to be indexed as appropriate and the use period to be 10 years from date of payment;

Full Response

No objections to the application subject to the following being included as conditions or informatives appropriate;

1. Contribute the sum of £15,756 to the Edinburgh Tram in line with the approved Tram Line Developer Contributions report. The sum to be indexed as appropriate and the use period to be 10 years from date of payment;

Note on tram contribution;

The tram contribution amount has been calculated as follows;

Distance to tram line 230m approx. (zone 1).

As the application is for a change of use, the contribution is the net of the proposed minus the existing use contribution.

In this case, the existing (class 1) retail has a trading floor area of 296 sq.m (contribution £22,173).

The proposed use is class 1 area 54 sq.m (contribution zero) and class 3 restaurant with a area of 174 sq.m (contribution £37,929).

Therefore the net contribution due will be **£15,756** (£37,929 - £22,173).

Steven Saunders

TRANSPORT
Steven Saunders
Transport Officer 15.07.2022