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**Decision date: 3 October 2022**

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

Mixed used development with ground floor restaurant (Class 3) and take-away (Sui Generis) and 3x apartments on upper floors  
At 5 West Tollcross Edinburgh

**Application No:** 22/01705/FUL

**DECISION NOTICE**

With reference to your application for Planning Permission registered on 18 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:-**

**Reason for Refusal:-**

1. The proposal is contrary to the Local Development Plan Policy Hou 7 in respect of Inappropriate Uses in Residential Areas, as it will have a detrimental impact on residential amenity by way of noise and disturbance.
2. The proposal is contrary to the Local Development Plan Policy Ret 11 in respect of Food and Drink Establishments, as it will intensify the concentration of food and drink establishments adversely affecting amenity.

3. The proposal is contrary to the Local Development Plan Policy Des 5 in respect of Development Design - Amenity, as it will harm neighbouring residential developments and not provide future occupiers with an acceptable level of amenity
4. The proposal is contrary to the Local Development Plan Policy Des 2 in respect of Co-ordinated Development, as it will compromise the effective development of adjacent land and the regeneration of West Tollcross.
5. The proposal is contrary to Local Development Plan policies Des 1, Des 2, Des 5, Des 4 and Hou 4 in respect of design as the scale form and design is not compatible with the characteristics of the wider townscape, the proposal, it fails to draw on the positive qualities of the area and would be damaging to the character and appearance of the surrounding area.
6. The proposal is contrary to Local Development Plan Policy Hou 3 - Private Green Space in Housing Development as it will not provide a satisfactory living environment.

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 does not harm the setting of the listed buildings and is, therefore, acceptable with regard to Sections 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

The proposal does not accord with the development plan and the principle of development is not acceptable in this location. The proposal will have a detrimental impact on amenity of existing neighbouring residents and future residents of the proposed building. It will prevent co-ordinated development on adjacent sites and is not of an appropriate scale, form and design. There are no transport or archaeological issues. The proposal does not comply with the sustainability principles in SPP. There are no other material considerations that 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 Jackie McInnes directly at [jackie.mcinnnes@edinburgh.gov.uk](mailto:jackie.mcinnnes@edinburgh.gov.uk).

A handwritten signature in black ink, appearing to read 'D. G. ...', with a long horizontal flourish extending to the right.

**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](http://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](mailto: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  
5 West Tollcross, Edinburgh,**

**Proposal: Mixed used development with ground floor restaurant (Class 3) and take-away (Sui Generis) and 3x apartments on upper floors**

**Item – Local Delegated Decision  
Application Number – 22/01705/FUL  
Ward – B11 - City Centre**

## **Recommendation**

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

## **Summary**

The proposal does not harm the setting of the listed buildings and is, therefore, acceptable with regard to Sections 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

The proposal does not accord with the development plan and the principle of development is not acceptable in this location. The proposal will have a detrimental impact on amenity of existing neighbouring residents and future residents of the proposed building. It will prevent co-ordinated development on adjacent sites and is not of an appropriate scale, form and design. There are no transport or archaeological issues. The proposal does not comply with the sustainability principles in SPP. There are no other material considerations that outweigh this conclusion.

## **SECTION A – Application Background**

### **Site Description**

The application site is on the south side of West Tollcross just before it joins Lochrin Place and Ponton Street opposite Tollcross Fire Station. There are three shipping containers in a row (end-on) on the site and another storage facility behind a high timber fence and gate. The street consists of historic stone buildings of four storeys on both sides of the street at its eastern/Lothian Road end. The western part of the street is more open with the fire station being two storeys high and the adjacent sports club/gym/Tae Kwon Do academy being single storey. There is also an expanse of

public realm and road/pavement area to the west. To the south the stone terrace of tenements on Lochrin Place are four and five storeys high.

There are several listed buildings in the street and immediate surrounding area. On the north corner of West Tollcross and Lothian Road there is Methodist Central Hall, a category B listed building (Ref: LB30326; date of listing 7 December 1995). To the south east of the application site 1-3 Lochrin Terrace is a category B listed building which return into 26 and 28 Home Street (LB47783; date of listing 1 February 2000). Tollcross Primary School to the west of the site is a category B listed building (ref: LB30253; date of listing 5 March 1991).

The street and surrounding area contain a mix of uses including a school, a fire station, shops, night club and residential.

Lothian Road, a main thoroughfare, is to the east and is on a high frequency bus route. West Tollcross provides a link for traffic and pedestrians between Lothian Road and Fountainbridge.

### **Description Of The Proposal**

The proposal is for a four storey building of mixed use development comprising a restaurant and takeaway at ground floor and apartments on the upper floors.

The restaurant and takeaway will be in the same ground floor unit. Four covers are shown on the drawings to the front of the unit and the takeaway and kitchen are to the rear.

A separate entrance to the upper floor residential flatted units is proposed and there will be one flat per floor. Each flat will be one bedroom with an open plan living, dining and kitchen area and a balcony facing west. A flat roof with solar panels on top is proposed. A vertical garden wall will be installed on the north elevation and returning around onto part of the west elevation.

Materials proposed are dark grey render bands and uprights, large aluminium framed windows and buff brick cladding. At ground floor level the shopfront (i.e. restaurant frontage) will be dark grey aluminium with frameless glass. Buff coloured brick cladding is also proposed.

The commercial bin store will be to the northwest of the site and be enclosed by a high timber fence. The domestic bin store will be at ground floor level of the proposed building.

An internal cycle store is proposed for the flats and zero parking is proposed.

### **Supporting Information**

- no supporting information submitted.

### **Relevant Site History**

19/04005/FUL  
5 West Tollcross

Edinburgh

Change of Use from derelict public toilets to restaurant (Class 3) and hot food takeaway (Sui Generis)

Granted

10 December 2019

### **Other Relevant Site History**

17 August 2022 - enforcement case closed for siting of food vans (Enforcement enquiry ref: 21/00552/EOPDEV).

### **Consultation Engagement**

Archaeology

Environmental Protection

Transport (Roads Authority)

### **Publicity and Public Engagement**

**Date of Neighbour Notification:** 27 April 2022

**Date of Advertisement:** 6 May 2022

**Date of Site Notice:** Not Applicable

**Number of Contributors:** 2

## **Section B - Assessment**

### **Determining Issues**

Due to the proposals relating to a listed building(s), this report will first consider the proposals in terms of Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997:

- Is there a strong presumption against granting planning permission due to the development harming the listed building or its setting?
- 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):

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 harm the setting of the listed buildings?**

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

- Managing Change in the Historic Environment: Guidance on the Principles of Listed Building Consent
- Managing Change in the Historic Environment: Setting

Managing Change in the Historic Environment: Interim Guidance on the principles of listed building consent sets out the principles for assessing the impact of a development on a listed building.

Managing Change in the Historic Environment: Setting sets out the principles that apply to developments affecting the setting of historic assets or places including listed buildings and conservation areas. It includes factors to be considered in assessing the impact of a change on the setting.

The application site is not immediately adjacent to the neighbouring listed buildings and its existing condition is currently not contributing positively to the setting of the neighbouring listed buildings. Change has previously taken place in the western part of West Tollcross in relation to developments and changes to the street layout, e.g. where Lochrin Terrace, Thornybauk and Ponton Street come together at West Tollcross. Modern development is now found in the area, e.g. Tollcross Fire Station and residential development further west. As such, the setting of the neighbouring listed buildings has been slightly altered due to such developments and the proposal would have a neutral effect on the setting of the listed buildings.

The setting of neighbouring listed buildings will not be harmed by the proposal.

### **Conclusion in relation to the listed building**

The proposal does not harm the setting of the listed buildings and is, therefore, acceptable with regard to Sections 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

### **b) 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 Design policies Des 1, Des 2, Des 4, Des 5, Des 6.
- LDP Environment policies Env 3, Env 8, Env 9, Env 21.
- LDP Hou 1, Hou 3, Hou 4, Hou 7.
- LDP Shopping and Leisure policy Ret 11.
- LDP Transport policies Tra 2, Tra 3, Tra 4.
- LDP Delivering the Strategy policy Del 2.

The non-statutory Guidance for Business and Edinburgh Design Guidance are a material consideration relevant when considering the policies listed above.

### Setting of Listed Buildings

LDP Environment policy Env 3 (Listed Buildings - Setting) states that development affecting the setting of a listed building will be permitted only if not detrimental to the appearance or character of the building, or to its setting.

The impact on the listed building, its setting and the setting of neighbouring listed buildings has been assessed in section a) above which concluded that the special architectural and historic interest of the building would not be harmed and the setting of the listed buildings would be preserved. As the proposal complies with the statutory test, it therefore also complies with LDP policies Env 3.

### Principle of Development

The principle of the site being a development site (and on a brownfield site) has been established in the Local Development Plan and in the West Tollcross Development Brief.

Local Development Plan (LDP) Policy Hou 1 (Housing Development) supports housing on suitable sites in the urban area, provided that the proposals are compatible with other policies in the Plan.

The surrounding area is mixed use with much residential use. To the west of this part of the Tollcross area there are tenements and modern flatted developments giving the area a residential character. Historically, the area is characterised with commercial units at ground floor and residential use above.

The principle of the development for residential use in this location is acceptable. The proposal complies with LDP policy Hou 1, subject being compatible with other LDP policies.

LDP policy Del 2 (City Centre) states that development which lies within the City Centre area as shown on the proposals map will be permitted 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.

Although the application site is small, the proposed restaurant and takeaway would contribute to the role of the city centre including its vitality.

The proposal complies with LDP policy Del 2.

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.

LDP policy Ret 11 (Food and Drink Establishments) 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.

The last known use of the site was for the sale of food and drink which did not benefit from planning permission and was an unauthorised use. The last established land use was as a public convenience building, now demolished. In these circumstances, policy Ret 11 is applicable in the consideration of the application as its aim is to protect residential amenity and to prevent concentrations of such uses.

The street and surrounding area already experience noise and disturbance to residents due to the night club and other noise sources. The addition of a restaurant and takeaway could add to the footfall and activity on the street and nearby streets in the late evening and at night, such as noise from patrons of the hot food takeaway/restaurant and anti-social behaviour.

In terms of the potential for harm to existing neighbouring residential properties, adding the proposed hot food takeaway/restaurant to the uses in the street could be subsumed into existing street noise. However, the addition of the restaurant and hot food takeaway in the street will result in more people in the late evening and nighttime concentrating in a small part of the street and spilling into the surrounding streets which contain much residential use. The proposal will have an adverse impact on residential amenity, including those of the proposed flats above the restaurant and hot food take away. The ventilation and other plant associated with the proposed hot food takeaway/restaurant will cause some noise and adversely impact on neighbouring amenity.

The Guidance for Businesses advises that Tollcross is in an area of restriction. It states that, "The provision of food and drink establishments in areas where people live is a recognisable component of urban living. However, such uses can cause a number of problems for local residents. Particular care will be taken to prevent an excessive concentration of hot food shops, pubs and bars in areas of mixed but essentially residential character." The Guidance identifies sensitive areas for such proposed development including Tollcross. The application site is not included in the map of the sensitive area. Notwithstanding that the site is just outwith sensitive boundary area, the proposed hot food takeaway/restaurant would be so close to the area of sensitivity that it would result in an unreasonable and detrimental impact on neighbouring residential amenity.

The proposal does not comply with LDP policies Hou 7 or with Ret 11 as it will have a materially detrimental effect on neighbouring amenity due to increased noise and activity on the street and immediate surrounding streets.

Planning permission (application number 19/04005/FUL) was granted on 10 December 2019 for the change of use from derelict public toilets to restaurant (class 3) and hot food takeaway (sui generis). Little weight can be attached to this permission which is now incapable of implementation due to the demolition of the public toilets while it should be noted that this application was for the conversion and refurbishment of the toilet block and did not include a residential use above the restaurant/hot food takeaway.

While Anti-social behaviour such as noise disturbance can be dealt with through relevant legislation, such as by Police Scotland or Environmental Health Acts, impact on amenity associated with patrons using the hot food use is a planning consideration.

The proposal does not comply with LDP policy Hou 7 or LDP policy Ret 11 and, therefore, the principle of development is not acceptable in this location

#### Scale, form and design

LDP Policy Des 1 (Design Quality and Context) requires development proposals to create or contribute towards a sense of place. The design should be based on an overall design concept that draws upon the positive characteristics of the surrounding area.

LDP Policy Des 2 (Co-ordinated Development) states that planning permission will be granted for development which will not compromise the effective development of adjacent land.

LDP Policy Des 4 (Development Design - Impact on Setting) also requires development proposals to have a positive impact on its surroundings, including the character of the wider townscape, having regard to its height and form, scale and proportions, including the spaces between the buildings, position of the buildings and other features on the site; and the materials and detailing.

LDP Policy Hou 4 (Housing Density) states that the density of a development on a site will be dependent on its characteristics and those of the surrounding area; the need to create an attractive residential environment within the development; the accessibility of the site to public transport; and the need to encourage and support the provision of local facilities necessary to high quality urban living. It goes on to explain that in established residential areas, proposals will not be permitted which would result in unacceptable damage to local character, environmental quality or residential amenity.

Policy Des 6 (Sustainable Buildings) sets out criteria for new buildings in relation to carbon dioxide emissions, zero carbon generating technologies and minimal environmental resource use and impact.

West Tollcross Development Brief (January 2006) sets out principles for the redevelopment of West Tollcross. It states that, "The challenge for new development is

to respect the height and scale of neighbouring properties whilst creating a positive edge to the street...".

West Tollcross, between Lothian Road/Home Street and Ponton Street, has no cohesion in terms of building styles, heights and uses. There is variety on both sides of the street. It does contain, at the junction with Home Street, a grand and landmark building i.e. Central Hall. The proposed building, of four storeys, would abut the four storey west elevation of 3 West Tollcross and the single storey elevations of 9 West Tollcross which are to the rear and west side. Whilst it would tie in with the building height of 3 Tollcross, it would be overbearing for 9 West Tollcross and introduce a harsh elevational appearance on the south elevation. The roof design will not be compatible with the established roof style of the neighbourhood and it will not sit comfortably abutting the existing adjacent building.

Materials proposed are at odds with the prevailing materials of the street and surrounding area, which is stone. Brick cladding is inappropriate as brick frontages are not found in the street and cladding does not offer high quality durability material for the location. The living/vertical wall is unlikely to thrive in this location due to its positioning in terms of aspect and high maintenance. Whilst proposing a sustainable and biodiverse living wall is welcomed, it will be very conspicuous in the streetscene and will be an incongruous feature. The proposed materials are unacceptable.

The building will be in a prominent position in the street and will not create a landmark building nor a building of high quality. The proposal will not contribute positively to the surrounding character or to a sense of place. The building is out of context with the surrounding buildings and will not sit comfortably within the streetscape.

An active ground floor frontage would be achieved with the restaurant/takeaway facade and this conforms with West Tollcross Development Brief. The proposed development will be near existing infrastructure such as public transport and shops. However, it is not in keeping with local character and will be detrimental to the environmental quality and setting of the street and surrounding area.

The proposal will compromise development on adjacent sites due to the positioning of windows on the west elevation which are directly above the roof and hard on the boundary of 9 West Tollcross. There is a window opening on the east neighbouring building which is on the boundary and, although it is currently boarded up, its positioning and presence has not been taken into account in the design of the proposal. The proposal will compromise the effective development of adjacent land and the comprehensive development and regeneration of the wider area as defined in the West Tollcross Development Brief.

The building will be required to meet Building Regulations and as such will meet the latest energy standards. Windows of habitable rooms are large and will maximise daylight received. Solar panels and a living/garden wall are proposed and these will contribute to energy efficiency. The proposal will comply with Des 6.

Overall the proposal does not comply with the LDP design policies Des 1, Des 2, Des 4 or Hou 4 of the LDP.

### Amenity

### *Neighbouring amenity*

LDP Policy Des 5 (Development Design - Amenity) requires development proposals to demonstrate that neighbouring amenity of a development will have acceptable levels of amenity in relation to noise, daylight, sunlight, privacy or immediate outlook.

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 front windows will look onto the public street and then onto a car park. The side windows on the west elevation will look onto the public road and over the existing neighbouring building. Windows will not be opposite any windows associated with residential use and existing privacy will not be compromised.

Most of the overshadowing will fall onto the public road and onto the building at 9 West Tollcross. There will be no overshadowing or loss of daylight caused to neighbouring properties.

The impact on the amenity of residential neighbouring properties has been considered above under the heading Principle of Development. It was concluded that the proposal would have a detrimental impact on residential neighbouring amenity.

The proposal does not comply with LDP policies Des 5 or Hou 7.

### *Amenity of future occupants (of flats)*

LDP Policy Des 5 (Development Design - Amenity) states that planning permission will be granted for development where it is demonstrated that future occupiers have acceptable levels of amenity in relation to noise, daylight, sunlight, privacy or immediate outlook.

LDP Policy Hou 4 (Housing Density) takes account of the need to create an attractive residential environment within the development.

LDP Policy Hou 3 (Private Green Space in Housing Development) requires developments to provide adequate provision for green space to meet the needs of future residents.

The one bedroom flats will be 58 square metres and this exceeds the minimum size of 52 sq m in the Edinburgh Design Guidance. The large windows will enable sufficient lighting to penetrate the rooms. The open plan living area will have dual aspect including a west facing balcony. Outlook will be open across West Tollcross to the west and there are no buildings immediately opposite the any windows. Internally, the occupants would have an adequate living environment.

There is no private outdoor usable amenity space apart from the small balconies. The site is constrained and it is unlikely that any usable outdoor space could be provided as this would take away from the floor space of the flats. However, there is public open space nearby including The Meadows and Bruntsfield Links.

Environmental Protection has advised that it objects to the proposed development. It is concerned that the residential properties are likely to be impacted by noise from a number of different sources and has advised that the amenity is likely to be very poor.

Noise will be experienced from the Fire Station, e.g. sirens for emergencies at night-time, and from the night club next door, also at night-time. These are existing land uses that currently sit within the context of surrounding flats and residential use. The principle of the Agent of Change is enshrined on a statutory basis under the Planning Act and in terms of the existing night club, places the responsibility for mitigating any detrimental impact of noise on neighbours with those carrying out the development. The proposed development will result in residential properties being much closer to these existing noise sources compared to existing residential units in the surrounding area.

In terms of the proposed residential flats, there is the potential these will be affected by noise from the adjacent night club/entertainment venue, road traffic noise, fire station noise and plant from neighbouring commercial uses. There are many residential units in the surrounding area which are near existing commercial units, the fire station and next to busy roads and experience such levels of noise, often at night-time. This relationship between the mix of land uses is well established. However, the proposed use must be assessed against the criteria of LDP policy Ret 11 and the residential element will experience poor amenity as the flats will be affected by noise from all sides and there would be no quiet place to give respite from the surrounding noise sources, including from the proposed hot food takeaway and restaurant on the ground floor, such as operational and external patron noise.

The hot food premises proposed on the ground floor with residential flats above will impact upon the residential properties by way of operational and external patron noise.

Future occupiers would not have a sufficient or good living environment and would have a poor living environment.

The proposal does not comply with Des 5, Hou 7, Hou 3 and Hou 4.

### Archaeology

LDP Policy 8 (Protection of Important Remains) states that development will not be permitted which would damage or destroy non-designated archaeological remains which the council considers should be preserved in situ.

LDP Policy Env 9 (Development of Sites of Archaeological Significance) states that planning permission of known or suspected archaeological significance if it can be concluded from information derived from a desk-based assessment and if required a field evaluation.

The City's Archaeologist has advised that archaeological evidence from nearby sites at Tollcross/Fountainbridge indicate that there are significant archaeological remains insitu in the area. It is therefore recommended that a condition be applied to any permission, if granted, to secure this programme of archaeological works.

The proposal complies with LDP policies Env 8 and Env 9, with the use of a condition.

## Transport

LDP Policies Tra 2 - Tra 4 sets out the requirements for private car and cycle parking.

The Council's Parking Standards are set out in the Edinburgh Design Guidance.

Policy Tra 2 (Private Car Parking) states that planning permission will be granted for development where proposed car parking provision complies with and does not exceed the parking levels set out in Council guidance.

Policy Tra 3 (Private Cycle Parking) states that planning permission will be granted for development where proposed cycle parking and storage provision complies with the standards set out in Council guidance.

Policy Tra 4 (Design of Off Street Car and Cycle Parking) sets out that design considerations which will be taken into account. This includes location of parking, structured planting, safety and community recycling space.

The Roads Authority has advised that it has no objections subject to appropriate conditions and informatives relating to cycle parking provision, developer contribution for a car club vehicle, a Travel Plan, residential parking permits and presence of the fire station.

A storage area has been identified in the ground floor stairwell for the proposed flats. It is not in secured from the common stair and an appropriate condition would secure six cycle spaces in secure storage.

As part of the site forms part of an adopted road it would be necessary to progress a stopping up order under section 207 of the Town and Country Planning (Scotland) Act 1997 if planning permission is granted

The proposal complies with LDP policies Tra 2, Tra 3 and Tra 4, with the use of a condition.

## Flood Planning

LDP Policy Env 21 (Flood Protection) states that planning will not be granted for development that would increase flood risk or be at risk of flooding.

As the proposal is not acceptable in principle as it does not comply with other relevant policies of the LDP, flooding and drainage information was not requested and, therefore, Flood Planning was not consulted. Should planning permission be granted at Local Review Body, then it is recommended that a condition is attached requesting a Surface Water Management Plan (SWMP).

## Waste

A bin storage area is proposed. The applicant or developer is responsible for agreeing a waste strategy with the Council's Waste Management for the flatted domestic residential units and a commercial waste agreement for the restaurant/takeaway.

## **Conclusion in relation to the Development Plan**

The proposal does not accord with the Local Development Plan. The principle of development on the site is not acceptable as the proposal does not comply with LDP policies Hou 1, Hou 7 and, Ret 11. The scale, form and design are not appropriate and the proposal will have a detrimental impact on existing residential amenity and amenity of future occupiers. There are no transport or archaeology issues.

### **c) 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 does not comply with paragraph 29. Although it supports the economy, it does not support good design or the qualities of good places and does not protect amenity.

#### Emerging policy context

The Draft National Planning Framework 4 has been consulted on but has not yet 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

A summary of the representations is provided below:

##### *material considerations*

- amenity - noise; disturbance; late night disruption; on-street activity; ventilation; impact on neighbouring uses; open space for future occupants; Addressed in b) under headings Principle of development and Amenity.

- restaurant/takeaway - designed as takeaway; nominal seating. Addressed in b) under heading Principle of development.
- co-ordinated development of wider site; compromise wider regeneration. Addressed in section b) under heading Scale, form and design.
- impact on setting. Addressed in section b) under heading Scale, form and design.
- design - does not contribute to/create a sense of place; designed in isolation; lack of context. Addressed in section b) under heading Scale, form and design. Addressed in section b) under heading Scale, form and design.
- West Tollcross Development Brief - no opportunities to enhance public realm/widen footways/improve environment/create "friendly" environment. Addressed in section b) under heading Scale, form and design.

#### *non-material considerations*

- lack of supporting/background information. Background/supporting information not required to validate this type of application.
- pre-application advice. Pre-application was not requested or given.
- drainage of flat roof. This is not a material planning consideration.
- impact on and provision of existing plant e.g. sprinklers, ASHP and equipment. This is not a material planning consideration.
- party wall - maintenance. This is a civil matter and is not a material planning consideration.

#### *Material support comments*

- support housing on brownfield land. Addressed in b) under Principle of development.
- principle of development of site. Addressed in b) under Principle of development.

#### *Tollcross Community Council comments*

- objected to application:
  - contrary to LDP policy Ret 11. Addressed in section b) under heading Principle of Development.
  - contrary to Guidance for Business. Addressed in section b) under heading Principle of Development.
  - impact on residential amenity. Addressed in section b) under headings Principle of Development and Neighbouring Amenity.
  - residential amenity of future occupiers. Addressed in b) under heading Amenity of Future Occupiers

### **Conclusion in relation to identified material considerations**

The proposals do not raise any issues in relation to other material considerations identified. Therefore, there are no material considerations that indicate the application should be granted.

### **Overall conclusion**

The proposal does not accord with the development plan and the principle of development is not acceptable in this location. The proposal will have a detrimental

impact on amenity of existing neighbouring residents and future residents of the proposed building. It will prevent co-ordinated development on adjacent sites and is not of an appropriate scale, form and design. There are no transport or archaeological issues. The proposal does not comply with LDP policies Hou 1, Hou 7, Ret 11, Des 1, Des 2, Des 5, Des 4, Hou 4 or Hou 3. It does not comply with the sustainability principles in SPP. There are no other material considerations that outweigh this conclusion.

## **Section C - Conditions/Reasons/Informatives**

The recommendation is subject to the following;

### **Reason for Refusal**

1. The proposal is contrary to the Local Development Plan Policy Hou 7 in respect of Inappropriate Uses in Residential Areas, as it will have a detrimental impact on residential amenity by way of noise and disturbance.
2. The proposal is contrary to the Local Development Plan Policy Ret 11 in respect of Food and Drink Establishments, as it will intensify the concentration of food and drink establishments adversely affecting amenity.
3. The proposal is contrary to the Local Development Plan Policy Des 5 in respect of Development Design - Amenity, as it will harm neighbouring residential developments and not provide future occupiers with an acceptable level of amenity
4. The proposal is contrary to the Local Development Plan Policy Des 2 in respect of Co-ordinated Development, as it will compromise the effective development of adjacent land and the regeneration of West Tollcross.
5. The proposal is contrary to Local Development Plan policies Des 1, Des 2, Des 5, Des 4 and Hou 4 in respect of design as the scale form and design is not compatible with the characteristics of the wider townscape, the proposal, it fails to draw on the positive qualities of the area and would be damaging to the character and appearance of the surrounding area.
6. The proposal is contrary to Local Development Plan Policy Hou 3 - Private Green Space in Housing Development as it will not provide a satisfactory living environment.

### **Background Reading/External References**

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

**Further Information** - [Local Development Plan](#)

**Date Registered: 18 April 2022**

**Drawing Numbers/Scheme**

01-03.

Scheme 1

**David Givan**  
**Chief Planning Officer**  
**PLACE**  
**The City of Edinburgh Council**

Contact: Jackie McInnes, Planning officer  
E-mail: [jackie.mcinnnes@edinburgh.gov.uk](mailto:jackie.mcinnnes@edinburgh.gov.uk)

## Appendix 1

### Consultations

NAME: Archaeology

COMMENT: The site has been identified as within an area of archaeological potential relating to the development of Edinburgh's historic Lochrin and Tollcross area.

Therefore, it is recommended that a condition be applied to any permission:

"No development shall take place on the site until the applicant has secured the implementation of a programme of archaeological work (excavation, analysis & reporting, publication) in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the Planning Authority."

DATE: 16 August 2022

NAME: Environmental Protection

COMMENT: Environmental Protection objects to the application: -.

- the residential properties are likely to be impacted by noise from a number of different sources, the amenity is likely to be very poor, is concerned that the Council will receive noise complaints from the occupants of the proposed residential properties and that the surrounding commercial and fire service operations will be impacted.

DATE: 7 September 2022

NAME: Transport (Roads Authority)

COMMENT: No objections subject to appropriate conditions and informatives relating to:

1. provision of 6 No. cycle parking spaces in a secure and undercover location;
2. Contributing the sum of £7,000 towards the provision of a car club vehicle in the area;
3. developing a Travel Plant;
4. The development being located in Zones 1 to 8, occupiers will not be eligible for residential parking permits;
5. The applicant should note the presence of the fire station and the potential implications for any construction works.

The proposed zero car parking is considered acceptable.

DATE: 10 August 2022

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

**From:** [Jackie McInnes](#)  
**To:** [Planning Support](#)  
**Subject:** FW: 5 West Tollcross 22/01705/FUL - Objection Comment  
**Date:** 31 May 2022 08:05:06  
**Attachments:** [image003.png](#)  
[image002.png](#)

---

Dear Planning Support,

Please log the email below as an objection and upload to Idox etc as per your normal practice.

Thank you,

Jackie

Jackie McInnes  
Senior Planner  
Locals 2 and Householdors

Planning | Sustainable Development | Place Directorate | The City of Edinburgh Council |  
Waverley Court, Level G:2, 4 East Market Street, Edinburgh, EH8 8BG |  
[jackie.mcinnnes@edinburgh.gov.uk](mailto:jackie.mcinnnes@edinburgh.gov.uk) | [www.edinburgh.gov.uk](http://www.edinburgh.gov.uk) | **Working hours: Mon -Thursday;  
Friday morning.**

**Have you signed up to the [Planning Blog](#)? We will be using the Planning Blog to communicate and consult on important changes and improvements to the Planning service in 2021. Please sign up to the [Planning Blog](#) to make sure you are up-to-date.**



**Sent:** 30 May 2022 14:04

**To:** Jackie McInnes <[Jackie.McInnes@edinburgh.gov.uk](mailto:Jackie.McInnes@edinburgh.gov.uk)>

**Subject:** 5 West Tollcross 22/01705/FUL - Objection Comment

**REF 22/01705/FUL  
Objection Comment**

Jackie,

We are the owners of the neighbouring property to this application, 3 West Tollcross. We have a number of concerns regarding the submitted proposal, as set out below. I would be grateful if you can please give these consideration during your assessment. Whilst we do not object to development of the site in principle, we are keen to highlight the need for coordinated development of the adjacent land.

**Application**

There has been no reference made to any pre-application advice regarding the

proposals. While this is not a major development, there is no reference made to existing design guidance or the previous local development plan.

There should be details of whether a Noise Impact Assessment will be required to determine window and elevation treatments and details of how GFL unit is ventilated, and any vents treated. Details of how GFL and 1FL residential units are acoustically separated should also be considered.

Given the proposals flank a gym, a nightclub and a fire station, we'd expect that these will impact on specification and amenity of these units.

### **Impact on setting**

These proposals will have a significant impact on the neighbouring buildings and wider coordinated development of the wider site, should this happen in the future.

While the north elevation is interesting, there is a concern how a green / living wall will work on a north facing and heavily trafficked elevation. The other elevations are either blank (to avoid overlooking) but cover existing windows on 3 West Tollcross or overlook the neighbouring Taekwondo studio (via west facing fenestration).

The flat roof has no relation to the eaves height of the neighbouring dancehall and appears incongruous with the established streetscape. The flat roof also jars – particularly when viewed from south to north or west to east directions and does not either improve or key into the varied roofs across the locale.

### **Design**

There is limited plant detailed on the drawings and concern that sprinklers, ASHPs and equipment will impact facades adjacent to existing properties – particularly where boilers will puncture the façade.

As the proposals at over 7.5m a sprinkler system will be required and there is limited space within the current proposals. This will potentially impact the bin and bike storage provision provided at GFL.

There are no details how the flat roof will be drained and the impact this will have on the existing or proposed suds strategy.

### **Party Wall**

There is no consideration of access and maintenance to existing SVP, waste and downpipes on the west elevation of the property boundary with 3 West Tollcross. Furthermore, the applicant is proposing to block an existing window opening on the west elevation of 3 West Tollcross, as shown outlined red on the attached photo.

### **Policy Des 1 Design Quality and Context**

*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 proposal neither creates or contributes towards a sense of place, it appears to have been designed in isolation without consideration of its immediate surrounds or taking account of positive characteristics in the area e.g. stone is the predominant building material in the area not brick (use of stone specifically encouraged by West Tollcross Development Brief, how does the flat roof reflect some of the traditional features of its neighbours

### **Policy Des 2 Co-ordinated Development**

*Planning permission will be granted for development which will not compromise: a) the effective development of adjacent land; or b) the comprehensive development and regeneration of a wider area as provided for in a master plan, strategy or development*

*brief approved by the Council.*

Proposed development likely to compromise the effective redevelopment of the wider block – a key element of the West Tollcross Development Brief. No evidence provided to demonstrate positive relationship with neighbouring sites and how they can be effectively redeveloped in the future.

### **Policy Des 5 Development Design – Amenity**

*Planning permission will be granted for development where it is demonstrated that: a) the amenity of neighbouring developments is not adversely affected and that **future occupiers have acceptable levels of amenity in relation to noise, daylight, sunlight, privacy or immediate outlook** b) the design will facilitate adaptability in the future to the needs of different occupiers, and in appropriate locations will promote opportunities for mixed uses c) community security will be promoted by providing active frontages to more important thoroughfares and designing for natural surveillance over all footpaths and open areas d) a clear distinction is made between public and private spaces, with the latter provided in enclosed or defensible forms e) refuse and recycling facilities, cycle storage, low and zero carbon technology, telecommunications equipment, plant and services have been sensitively integrated into the design*

Does the proposal provide sufficient open space/amenity space for future residents – amenity looks poor. No consideration of amenity of future occupiers terms of daylight, sunlight levels the properties will achieve, noise/odour impacts from adjacent commercial uses etc. The application is deficient in terms of being able to undertake any kind of amenity assessment.

### **West Tollcross Development Brief**

No consideration of opportunities to enhance the public realm / widen footways to create a friendlier pedestrian environment as per development brief.

Regards,

Jonathan Lonie

Silvermills Estates and Land Ltd  
11 Alva Street, Edinburgh, EH2 4PH

m. 07970 043 499 | t. 0131 510 7454 | e. [jonny@silvermills.org](mailto:jonny@silvermills.org)

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**TOLLCROSS COMMUNITY COUNCIL**

6 GILLESPIE STREET  
EDINBURGH  
EH3 9NH

18 May 2022

Head of Planning  
Department of City Development  
City Development – Planning & Strategy  
Waverley Court  
4 East Market Street  
Edinburgh EH8 8BG

**Mixed used development with ground floor restaurant (Class 3) and takeaway (Sui Generis) and 3x apartments on upper floors at 5 West Tollcross Edinburgh.**

**22/01705/FUL**

Case Officer : Jackie McInnes [jackie.mcinnnes@edinburgh.gov.uk](mailto:jackie.mcinnnes@edinburgh.gov.uk)

Dear Ms McInnes

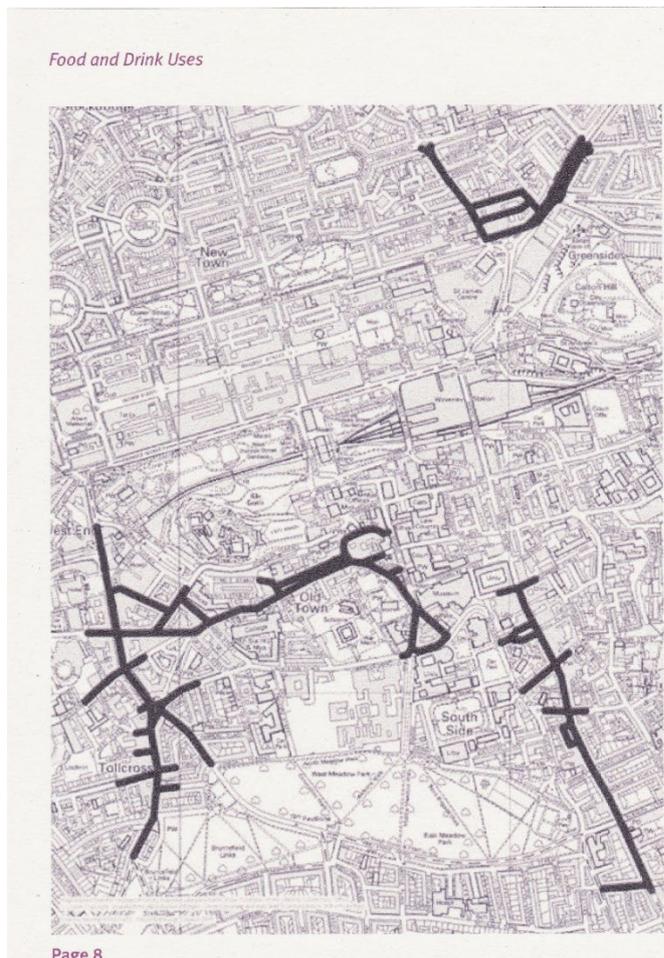
Tollcross Community Council would like to object to this application on the grounds that it adds another food and drink establishment in an area of overprovision and its siting is inappropriate. Furthermore, the proposed flats would have very compromised residential amenity. The proposal contravenes the LDP and Guidance for Business (2019).

**1. Restaurant and Take-away**

The proposal shows 4 tables for diners and a further 56 m<sup>2</sup> for serving and take-away. This is in fact designed as a take-away in the same way as other take-aways in the area where the seating is no more than nominal and used by waiting take-away customers. It is a particularly inappropriate site for a take-away, just a few metres from the exit of a night club. The police have previously commented on the importance of dispersal from the night club and that trouble tends to start outside take-aways.

Both the LDP and Guidance for Business cover the issue of areas of overprovision.

Guidance for Business (2019) specifies where areas of restriction on hot food takeaways are located. From the Guidance: Hot Food Takeaways with the exception of proposals within areas of restriction, proposals will be supported in principle in the following locations: ..... Page 10 shows that this is in an area of restriction – The map shown below demonstrates that the application is on one of the marked offshoots of the main road.



Page 8

The Local Development Plan (Policy Ret 11 Food and Drink Establishments) applies in this instance where Tollcross is specifically mentioned. 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: ----- 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 provision of food and drink establishments in areas where people live is a recognisable component of urban living. However, such uses can cause a number of problems for local residents. Particular care will be taken to

prevent an excessive concentration of hot food shops, pubs and bars in areas of mixed but essentially residential character. The Council's Guidance for Businesses identifies sensitive areas in this regard namely **Tollcross**, Grassmarket, Nicolson/Clerk Street and Broughton Place/Picardy Place and their environs.

## **2. The Proposed flats on the site**

Whilst we support the provision of housing on brown field sites, we have some concerns about the residential amenity for occupiers in this case. Having your flat windows a few metres from the entry/exit of a busy nightclub is likely to be disruptive for residents late at night. Furthermore, being directly above a take-away will also lead to disruption at night. Within our area we have had complaints from residents about the late-night disruption from take-aways and in one case Planning had to change the hours of business.

Again, to quote *Policy Ret 11 Food and Drink Establishments*:

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.

We hope that you can take our concerns into account on determining this application.

Yours sincerely,      Paul Beswick for Tollcross Community Council