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**Decision date: 30 September 2022**

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

Change of use from Class 1 to Class 3 with ancillary hot food take away and installation of rear mounted kitchen extract flue.  
At 45 - 47 Shandwick Place Edinburgh EH2 4RG

**Application No:** 22/02672/FUL

**DECISION NOTICE**

With reference to your application for Planning Permission registered on 17 May 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 LDP Retail Policy Ret 9 and the associated City Centre Shopping and Leisure Supplementary Guidance in that it would result in over 50% of non-shop uses within the block, thus undermining the retailing function of the City Centre Retail Core.

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

Drawings 01-07, 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 acceptable with regard to Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. However, it does not comply with Edinburgh Local Development Plan as the proposal is contrary to LDP Retail Policy Ret 9 and the associated City Centre Shopping and Leisure Supplementary Guidance in that it would result in over 50% of non-shop uses within the block, thus undermining the retailing function of the City Centre Retail Core. There are no other material considerations which would indicate that proposal should be approved. Therefore, the recommendation is to refuse planning permission.

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 Andrea Orellano directly at [andrea.orellano@edinburgh.gov.uk](mailto:andrea.orellano@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](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**  
**45 - 47 Shandwick Place, Edinburgh, EH2 4RG**

**Proposal: Change of use from Class 1 to Class 3 with ancillary hot food take away and installation of rear mounted kitchen extract flue.**

**Item – Local Delegated Decision**  
**Application Number – 22/02672/FUL**  
**Ward – B11 - City Centre**

## **Recommendation**

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

## **Summary**

The proposal is acceptable with regard to Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. However, it does not comply with Edinburgh Local Development Plan as the proposal is contrary to LDP Retail Policy Ret 9 and the associated City Centre Shopping and Leisure Supplementary Guidance in that it would result in over 50% of non-shop uses within the block, thus undermining the retailing function of the City Centre Retail Core. There are no other material considerations which would indicate that proposal should be approved. Therefore, the recommendation is to refuse planning permission.

## **SECTION A – Application Background**

### **Site Description**

The site is a two storey terraced vacant retail unit on Shandwick Place located in the City Centre Retail Core.

The site lies within the New Town Conservation Area.

### **Description Of The Proposal**

The application proposes a change of use from Class 1 to Class 3 with ancillary hot food take away and installation of rear mounted kitchen extract flue.

## Relevant Site History

10/01422/FUL  
45 - 47 Shandwick Place  
Edinburgh  
EH2 4RG  
Installation of new shopfront  
Granted  
8 July 2010

10/00255/FUL  
45 - 47 Shandwick Place  
Edinburgh  
EH2 4RG  
Change of use from retail shop (Class 1) to restaurant (Class 3)  
Refused  
16 April 2010

## Other Relevant Site History

## Consultation Engagement

## Publicity and Public Engagement

**Date of Neighbour Notification:** 2 June 2022  
**Date of Advertisement:** 10 June 2022  
**Date of Site Notice:** 10 June 2022  
**Number of Contributors:** 0

## 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 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 kitchen duct is located at the rear of the building so cannot be seen from the main streetscape. The proposal would have a neutral impact on the character and appearance of the conservation area.

### **Conclusion in relation to the conservation area**

The proposal is 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.

### **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 Retail policies Ret 9 and Ret 11.
- LDP Design policies Des 1 and Des 12.
- LDP Environment policies Env 6.
- LDP Housing policy Hou 7.

The City Centre Shopping and Leisure Supplementary Guidance is relevant when considering LDP policy Ret 9.

### Principle

The principle of the proposal is assessed against LDP Policy Ret 9. The application is located within the City Centre Retail Core, so the City Centre Shopping and Leisure Supplementary Guidance is relevant, in particular Policy CC 4. The application must comply with both criteria a) and b) of Policy CC 4 to be considered acceptable.

By the applicants own analysis in the covering letter, they state: "At present of the 19 units on the south side of the street. 10 are in retail use which equates to 53% of units. 9 are in non-retail use. If the subject premises are permitted to change to class 3 use then the percentage will change to 47% being in non-retail use". However, if the change of use were permitted this would result in the loss of a retail unit equating to 53% of non shop uses along the frontage which is contrary to criteria a).

When assessing the application site, it was found that there are 19 units on the immediate street frontage but only 6 are currently operating as retail, so it is possible that the applicant included the three vacant sites (one being the site from the application) as retail units. These calculations would still result in more than half of the total number of units being in non-shop use. In this regard, the application is contrary to criteria a).

In terms of criteria b), the proposal complies with this part of the policy. As the site is currently vacant and has been in a vacant state since April 2021, the change of use to a restaurant would complement the character of the City Centre Retail Core. The proposal would not be detrimental to its vitality and viability.

Within the City Centre Retail Core, a strong, high quality retail offer is a key aspect of sustaining and enhancing the city centre. As the proposal fails to comply with criteria a) of the Supplementary Guidance, it is contrary to LDP Policy Ret 9.

### 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 area. The proposal would not represent over development.

The application complies with LDP Policy Des 1 and Des 12.

### Amenity

There are a few residential properties located near the property.

Environmental Protection was consulted and requested an NIA in order to assess noise impact on nearby residential properties. Although there could be potential issues regarding noise, it would be inappropriate to ask for an NIA to be carried out as this would be a great cost to the applicant and the proposal is not acceptable in principle regardless of impact on amenity.

It cannot be concluded whether the proposal complies with LDP Policies Des 12, Hou 7 and Ret 11.

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

The application does not comply with LDP Policy Ret 9 and Policy CC 4 in the City Centre Shopping and Leisure Supplementary Guidance. Therefore, the application does not comply with the Development Plan.

### **b) 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 of SPP as it undermines the retail function of the defined centre.

#### 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

No comments have been received.

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

There are no material considerations that outweigh the relevant policies in the Local Development Plan.

#### **Overall conclusion**

The proposal is acceptable with regard to Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. However, it does not comply with Edinburgh Local Development Plan as the proposal is contrary to LDP Retail Policy Ret 9 and the associated City Centre Shopping and Leisure Supplementary Guidance in that it would result in over 50% of non-shop uses within the block, thus undermining the retailing function of the City Centre Retail Core. There are no other material considerations which would indicate that proposal should be approved. Therefore, the recommendation is to refuse planning permission.

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

The recommendation is subject to the following;

**Reason for Refusal**

1. The proposal is contrary to LDP Retail Policy Ret 9 and the associated City Centre Shopping and Leisure Supplementary Guidance in that it would result in over 50% of non-shop uses within the block, thus undermining the retailing function of the City Centre Retail Core.

**Background Reading/External References**

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

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

**Date Registered: 17 May 2022**

**Drawing Numbers/Scheme**

01-07

Scheme 1

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

Contact: Andrea Orellano, Student Planner  
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## Appendix 1

### **Consultations**

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