

Format Design.
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Holyrood Business Park
146 Duddingston Road West
Edinburgh
EH16 4AP

Mr Umberto Crolla.
Castle Rock
87 Grassmarket
Edinburgh
EH1 2HJ

Decision date: 27 January 2023

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

Amend opening hours to 2.00am.
At 87 Grassmarket Edinburgh EH1 2HJ

Application No: 22/06028/FUL

DECISION NOTICE

With reference to your application for Planning Permission registered on 13 December 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;

Reason for Refusal:-

1. The proposal is likely to increase late night noise and activity to the detriment of neighbouring residential amenity, contrary to Local Development Plan Policy Ret 11 and the Council's 'Guidance for Businesses'.
2. The proposal is likely to increase late night noise and activity to the detriment of neighbouring residential amenity, contrary to Local Development Plan Policy Hou 7 and the Council's 'Guidance for Businesses'.

3. The proposal is contrary to NPF 4 Policy 27, as it would erode living conditions and have a detrimental impact on neighbouring residential amenity.

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

Drawings 01, 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 would have an adverse impact on residential amenity and would be contrary to the relevant LDP and NPF 4 policies. There are no 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 Anna Simpson directly at anna.simpson@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
87 Grassmarket, Edinburgh, EH1 2HJ**

Proposal: Amend opening hours to 2.00am.

**Item – Local Delegated Decision
Application Number – 22/06028/FUL
Ward – B11 - City Centre**

Recommendation

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

Summary

The proposal would have an adverse impact on residential amenity and would be contrary to the relevant LDP and NPF 4 policies. There are no material considerations that outweigh this conclusion.

SECTION A – Application Background

Site Description

The site is a hot food takeaway on the ground floor of a four storey tenement in the Grassmarket, located on the corner of Cowgatehead and adjacent to Warden's Close. There are residential properties on the upper floors. The area is characterised by commercial uses at ground floor level, including public houses, retail and class three uses, and residential uses on the floors above.

The site lies within the Old Town Conservation Area.

Description Of The Proposal

This application seeks to extend the opening hours of the hot food takeaway from 12:00am to 2am.

Supporting Information

The agent has provided a planning statement that includes comments of support. However, these comments do not count as representations as they were signed before the application was submitted.

Relevant Site History

15/00848/FUL
87 Grassmarket
Edinburgh
EH1 2HJ

Adjustment of trading hours until 02:00, 7 days per week at Castle Rock Take-Away.
Refused

24 April 2015

12/03399/FUL
87 Grassmarket
Edinburgh
EH1 2HJ

Amend opening hours on Friday and Saturdays to 1.45a.m.
Refused

22 November 2012

02/04432/FUL
87 Grassmarket
Edinburgh
EH1 2HJ

Extension of opening hours 7am up to 3am (Sat-Sun)
Refused

5 February 2003

99/01933/FUL
87 Grassmarket
Edinburgh
EH1 2HJ

Extend opening hours 7.00am to 1.00am
Refused

29 September 1999

93/00480/FUL
87 Grassmarket
Edinburgh
EH1 2HJ

Remove condition of planning consent relating to opening hours
Refused

19 May 1993

Other Relevant Site History

Since 1994, five applications have been made to extend the opening hours, all of which have been refused on the grounds that associated noise and disturbance would be detrimental to residential amenity. Three of these five applications were appealed and subsequently dismissed following detailed consideration of the implications of the proposal within its context. The planning history for this site is a material consideration in the determination of this application.

Consultation Engagement

Environmental Protection

Publicity and Public Engagement

Date of Neighbour Notification: 14 December 2022

Date of Advertisement: 23 December 2022

Date of Site Notice: 23 December 2022

Number of Contributors: 9

Section B - Assessment

Determining Issues

Due to the proposed development falling within a conservation area, this report will first consider the proposals in terms of Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997:

- Is there a strong presumption against granting planning permission due to the development conflicting with the objective of preserving or enhancing the character or appearance of the conservation area?
- 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 character or appearance of the conservation area?

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

- Managing Change - Conservation Areas

As there will be no material change to the character or appearance of the conservation area, the proposal does not harm the conservation area.

Conclusion in relation to the conservation area

In relation to the conservation area the proposals preserve the character and appearance of the conservation area. The proposals are acceptable in regards to Section 64 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 Environment policy Env 6;
- LDP Shopping and Leisure policy Ret 11;
- LDP Housing and Community policy Hou 7.

The non-statutory 'Listed Buildings and Conservation Area' guidance and Guidance for Businesses are material considerations that are relevant when considering LDP policies Env 6, Ret 11 and Hou 7

Conservation Area

This has been addressed in section a).

Residential Amenity

The Council's Guidance for Businesses identifies areas of restriction relating to mixed use locations with an essentially residential character where there is a high concentration of hot food takeaways, public houses and entertainment venues. Grassmarket is within an area of restriction and its sensitivity to these uses (either established or new) requires to be carefully considered. The Guidance states that proposals in areas of restriction will only be acceptable if there will be no adverse impact on residential amenity caused by night-time activity.

Whilst the Grassmarket attracts significant late night activity, the proposal would encourage an intensity of such activities. This would have the potential to cause a

greater number of people to remain within the area late into the evening and erode the existing level of residential amenity.

Environmental Protection has also recommended refusal due to the considerable loss of amenity from patrons during unsocial hours.

Conclusion in relation to the Development Plan

This proposal does not comply with LDP Policies Ret 11 and Hou 7 as it would result in an increase in noise, disturbance and on-street activity, to the detriment of living conditions of nearby residents.

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

The following material planning considerations have been identified:

Emerging policy context - National Planning Framework 4

The Revised Draft National Planning Framework 4 was approved by the Scottish Parliament on 11 January 2023 to proceed to adoption. On adoption the Revised Draft NPF 4 (2022) will form part of the Council's Development Plan, but at present it remains a material consideration. As adoption of the Revised Draft NPF 4 (2022) is understood to be imminent, and it is now the settled position of Scottish Ministers and the Scottish Parliament, it requires to be given significant weight. Revised Draft NPF 4 (2022) lists various policy provisions under the themes of Sustainable Places, Liveable Places and Productive Places.

Policy 1 of the Draft NPF 4 gives significant weight to the global climate and nature crisis to ensure that it is recognised as a priority in all plans and decisions. The application addresses this through:

- The proposal would have a neutral impact in terms of NPF 4 Policy 1.

Policy 27 of NPF4 states that development proposals for city or town centre living will take into account the residential amenity of the proposal. The proposal is contrary to this and would result in an increase in litter and late night noise, which would be detrimental to nearby residential amenity.

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

material considerations

8 letters of objections were received regarding:

- noise resulting from the extension of opening hours.
- litter accumulating from the extension of opening hours.
- creation of antisocial behaviour due to the extension of opening hours.

non-material considerations

A letter of support has been received regarding the service provided by staff and that the business provides for late night workers.

Conclusion in relation to identified material considerations

All other matters have been considered.

Overall conclusion

The proposals would have an unacceptable impact on residential amenity and is contrary to the relevant policies contained within the local development plan and NPF 4. There are no material considerations which outweigh this conclusion.

Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following;

Conditions

Reasons

Reason for Refusal

1. The proposal is likely to increase late night noise and activity to the detriment of neighbouring residential amenity, contrary to Local Development Plan Policy Ret 11 and the Council's 'Guidance for Businesses'.
2. The proposal is likely to increase late night noise and activity to the detriment of neighbouring residential amenity, contrary to Local Development Plan Policy Hou 7 and the Council's 'Guidance for Businesses'.
3. The proposal is contrary to NPF 4 Policy 27, as it would erode living conditions and have a detrimental impact on neighbouring residential amenity.

Background Reading/External References

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

Further Information - [Local Development Plan](#)

Date Registered: 13 December 2022

Drawing Numbers/Scheme

01

Scheme 1

David Givan
Chief Planning Officer
PLACE
The City of Edinburgh Council

Contact: Anna Simpson, Student Planner
E-mail: anna.simpson@edinburgh.gov.uk

Appendix 1

Consultations

NAME: Environmental Protection

COMMENT: Environmental Protection have commented and recommends this application to be refused. This is due to the amenity of the neighbouring residents. Licensing Officers have also witnessed this business operating outwith their permitted hours.

DATE:

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

Comments for Planning Application 22/06028/FUL

Application Summary

Application Number: 22/06028/FUL

Address: 87 Grassmarket Edinburgh EH1 2HJ

Proposal: Amend opening hours to 2.00am.

Case Officer: Local1 Team

Customer Details

Name: Miss Danielle Campbell

Address: 85/2 Grassmarket Edinburgh

Comment Details

Commenter Type: Neighbour-Residential

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: The mess that the chip shop generates is disgusting, our lane is continually full of chippy waste. They dump their rubbish in our residential bins.

Comments for Planning Application 22/06028/FUL

Application Summary

Application Number: 22/06028/FUL

Address: 87 Grassmarket Edinburgh EH1 2HJ

Proposal: Amend opening hours to 2.00am.

Case Officer: Local1 Team

Customer Details

Name: Mr Stuart Carruthers

Address: 5/1 Gilmours Close 65 Grassmarket EDINBURGH

Comment Details

Commenter Type: Neighbour-Residential

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: Our Close is used as a dumping ground for the waste from this place and have to put up with drunks eating up the Close late at night already so a 2am closing time would disturb us further.

Comments for Planning Application 22/06028/FUL

Application Summary

Application Number: 22/06028/FUL

Address: 87 Grassmarket Edinburgh EH1 2HJ

Proposal: Amend opening hours to 2.00am.

Case Officer: Local1 Team

Customer Details

Name: Miss Siobhan Malone

Address: 85 Edinburgh

Comment Details

Commenter Type: Neighbour

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: I live next door, the noise and mess generated from this shop is unbelievable, I get up in the morning and have to clean away the food being thrown in my close, not to mention the vomit and urine.

A few years ago this shop was closed for a couple of months being renovated and none of the above was happening.

Please for once think of the residents in this instance.

Comments for Planning Application 22/06028/FUL

Application Summary

Application Number: 22/06028/FUL

Address: 87 Grassmarket Edinburgh EH1 2HJ

Proposal: Amend opening hours to 2.00am.

Case Officer: Local1 Team

Customer Details

Name: Mr Daniel Moore

Address: 85/2 Grassmarket Edinburgh

Comment Details

Commenter Type: Neighbour-Residential

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: The mess generated is disgusting, being open later will create more waste which they won't clear up

Comments for Planning Application 22/06028/FUL

Application Summary

Application Number: 22/06028/FUL

Address: 87 Grassmarket Edinburgh EH1 2HJ

Proposal: Amend opening hours to 2.00am.

Case Officer: Local1 Team

Customer Details

Name: Mr Jake McLeod

Address: 83 Grassmarket Edinburgh

Comment Details

Commenter Type: Neighbour-Commercial

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: This chip shop is atrocious.

The owner is vile.

The drunken crowds that gather outside and all around the building is disgusting!

I work beside it and regularly have to clean their food away.

Not so much with them closing earlier.

Don't forget they don't close on time EVER, they where illegally opening until 2 for a long time until recently, the council didn't control that, nor do they control any of the other issues surrounding this establishment.

Comments for Planning Application 22/06028/FUL

Application Summary

Application Number: 22/06028/FUL

Address: 87 Grassmarket Edinburgh EH1 2HJ

Proposal: Amend opening hours to 2.00am.

Case Officer: Local1 Team

Customer Details

Name: Mr Marian Ivascu

Address: 6 Harewood Crescent Edinburgh

Comment Details

Commenter Type: Member of Public

Stance: Customer made comments in support of the Planning Application

Comment Reasons:

Comment: Lovely place to go for food after finishing work friendly staff amazing food

Comments for Planning Application 22/06028/FUL

Application Summary

Application Number: 22/06028/FUL

Address: 87 Grassmarket Edinburgh EH1 2HJ

Proposal: Amend opening hours to 2.00am.

Case Officer: Local1 Team

Customer Details

Name: Mr John Campbell

Address: 85/2 Grassmarket Edinburgh

Comment Details

Commenter Type: Neighbour-Residential

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: The mess created will just bring rats and mice into the area.

Comments for Planning Application 22/06028/FUL

Application Summary

Application Number: 22/06028/FUL

Address: 87 Grassmarket Edinburgh EH1 2HJ

Proposal: Amend opening hours to 2.00am.

Case Officer: Local1 Team

Customer Details

Name: Mr William Orr

Address: 85/1 Grassmarket Edinburgh

Comment Details

Commenter Type: Neighbour

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: I live above this chip shop, the noise, messy absolute filth is horrible. I can only get to sleep once they close.

This is absurd to think it's ok to stay open until 2.

At least the previous owner tried to clean the mess from my close.

Comments for Planning Application 22/06028/FUL

Application Summary

Application Number: 22/06028/FUL

Address: 87 Grassmarket Edinburgh EH1 2HJ

Proposal: Amend opening hours to 2.00am.

Case Officer: Local1 Team

Customer Details

Name: Ms OLD TOWN ASSOCIATION

Address: 1 Trunks Close, 55 High Street, Edinburgh EH1 1SR

Comment Details

Commenter Type: Amenity Body

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: The takeaway occupies the ground floor of a tenement with residential flats above and in neighbouring properties. The proposed extended hours would adversely affect the amenity of the flats. The application should be refused.

To: Local Planning Team 1
From: Claire Devlin, Environmental Protection

Date: 29 December 2022

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

22/06028/FUL | Amend opening hours to 2.00am. | 87 Grassmarket
Edinburgh EH1 2HJ

Environmental Protection cannot support this application and recommends refusal.

The applicant proposes a change to the operational hours of a hot food takeaway at 87 Grassmarket.

Environmental Assessment has concerns about this proposed change to opening hours as the application property is situated directly below residential units. Whilst the wider Grassmarket area can be busy late at night, increasing the opening hours of this hot food takeaway will extend the period of time people gather in this location. It is this department's opinion that extending the opening hours beyond midnight will result in a considerable loss of amenity for local residents due to noise from patrons. This year, in response to complaints, Licensing Officers have witnessed the shop operating outwith its current permitted hours.

Therefore, Environmental Assessment recommends that this application is refused due to the adverse impact it could have on amenity.

Should you wish to discuss the above please contact me on 0131 469 5685.