

**Full Planning Application  
at  
48 Magdalene Drive  
Edinburgh  
EH15 3DZ**

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**Development Quality Sub-Committee  
of the Planning Committee**

**Proposal:** Change of Use to form Hot Food Take away shop (In retrospect)  
**Applicant:** Scott Vehicle Services Ltd.  
**Reference No:** 03/02975/FUL

**1 Purpose of report**

To recommend that the application be **GRANTED** subject to;

**Conditions**

1. The design and installation of any plant, machinery or equipment shall be such that any associated noise complies with NR25 when measured within any nearby living apartment, and no structure borne vibration is perceptible within any nearby living apartment.
2. The kitchen shall be ventilated by a system capable of achieving 30 air changes per hour, and the cooking effluvia shall be ducted to a suitable exhaust point to ensure that no cooking odours escape or are exhausted into any neighbouring premises, all to the satisfaction of the Head of Planning & Strategy.
3. The hours of operation shall be restricted to 8am to 5pm Monday to Saturday only. The unit shall not open on Sundays..

## **Reasons**

1. In order to safeguard the amenity of neighbouring residents and other occupiers.
2. In order to safeguard the amenity of neighbouring residents and other occupiers.
3. In order to safeguard the amenity of neighbouring residents and other occupiers.

## **2 Main report**

### **Site description**

The application site comprises a single storey shop unit within a small group in a residential area. There are two storey residential properties within 10 metres of the unit.

### **Site history**

An application for planning permission for change of use to hot food takeaway was refused at Committee on 14 June 2000. A subsequent appeal dated April 2001 was dismissed.

Reasons for refusal were:

1. The proposal is contrary to South East Edinburgh Local Plan Policy H5, in respect of Residential Amenity, as it is likely to lead to loss of amenity through smell, noise and disturbance, particularly at a late hour.
2. The proposal is contrary to the Non-Statutory Guidelines in respect of Restaurants, Cafes and Hot Food Shops, as it is likely to lead to loss of amenity through smell, noise and disturbance, particularly at a late hour.

### **Development**

The application is for change of use of a shop to hot food takeaway. Ventilation is via a vent pipe in the roof of the property.

The application is retrospective.

### **Consultations**

#### **Environmental and Consumer Services**

This Department has serious concerns regarding the above application.

The application proposes to create a hot food takeaway in a residential area. Our concerns relate to a loss of amenity for the residential property due to both noise and smell.

The plans indicate that the unit is single storey but surrounding residential properties are two storey, therefore, any ventilation system will terminate at a lower level than the openable windows of the nearby houses. It is likely that the discharge of effluvia will cause a smell nuisance within the properties.

With regard to noise, the premises may be able to obtain a late hours catering licence, thereby introducing both pedestrian and vehicular traffic to this location late at night.

Consideration should be given to the guidance contained within PAN 56. This states "commercial developments such as hot food takeaways always pose particular difficulties, not least because associated activities are often at their peak in the evening and late at night. For this type of development vocal noise can create noise disturbance when heard by the residents of adjacent properties, even at low levels".

In conclusion, this Department can not support the application.

### **Further Consultation**

I refer to the above application and to my previous correspondence dated 02 October 2003 which expressed concerns regarding the potential for loss of amenity for the residential property due to both noise and smell.

Subsequently there have been discussions held with the architect regarding these issues. The ventilation duct has been extended to approximately eaves level with the surrounding residential properties. This will eliminate the potential impact of cooking odours affecting neighbouring residents with the associated increase dilution of a high stack.

Discussions have also taken place with the proprietor of the business with regard to opening hours. Agreement has been reached that the operating times can be restricted by condition to 8am to 5pm Monday to Saturday. This would eliminate the introduction of both pedestrian and vehicular traffic to the location late at night.

Therefore most of this Department's concerns have been addressed with regard to odour and noise.

Accordingly this Department has no objection to the above application subject to the following conditions:

1. The design and installation of any plant, machinery or equipment shall be such that any associated noise complies with NR25 when measured within any nearby living apartment, and no structure borne vibration is perceptible within any nearby living apartment.

2. The kitchen shall be ventilated by a system capable of achieving 30 air changes per hour, and the cooking effluvia shall be ducted to a suitable exhaust point to ensure that no cooking odours escape or are exhausted into any neighbouring premises, all to the satisfaction of the Head of Planning.
3. This permission is for the benefit of the applicant/s only and the use hereby approved shall cease at the end of his or her or their occupation of the premises.
4. The hours of operation shall be restricted to 8am to 5 pm Monday to Saturday only.

## **Representations**

The application was advertised on 19 September 2003.

There have been 7 letters of objection from nearby residents

Two letters of comment have been received with regard to the opening times of the unit.

A petition in favour of the proposed change of use has been received with 147 signatures.

Four further letters of complaint have been received from local residents via the Council's Planning Enforcement team, with regard to the operation of the site.

## **Policy**

South East Edinburgh Local Plan - The area is allocated as Mainly Residential, where existing residential character and amenities are to be safeguarded.

The draft replacement South East Edinburgh Local Plan is also a material consideration in the determination of this application. The following draft policies apply in this case:

H6 Protection of amenity

R2 Retail development in local and Other Neighbourhood Centres

R6 Changes of use in local and Other Neighbourhood Centres

R7 Non-retail uses in Local Centres

### Relevant Policies:

Policy H5 presumes against the establishment or extension of a non-residential use likely to lead to an unacceptable loss of amenity through increased traffic, unsightliness or noise.

Policy E4 sets quality objectives for new development.

Non-statutory guidelines 'RESTAURANTS, CAFES AND HOT FOOD SHOPS' provide guidance on the location of such uses and set out conditions to control their impact.

### **3 Conclusions and Recommendations**

#### **DETERMINING ISSUES**

The determining issues are:

- do the proposals comply with the development plan?
- if the proposals do comply with the development plan, are there any compelling reasons for not approving them?
- if the proposals do not comply with the development plan, are there any compelling reasons for approving them?

#### **ASSESSMENT**

To address these determining issues, the Committee needs to consider whether:

(a) the proposed use as a hot food takeaway will have a detrimental impact on the viability or vitality of the neighbourhood shopping centre.

(b) there will be any adverse impact on the character of the area

(c) the proposed use will have any adverse affect on surrounding residential amenity.

(a) The application site is not within a protected retail frontage, as defined in the adopted South East Edinburgh Local Plan.

The finalised South East Edinburgh Local Plan defines the site as being within a neighbourhood centre. There are six units in the centre, of which none are currently in a non-retail use. The draft plan seeks to retain 60% of the units in the centre in a retail use. The proposed change of use will result in one unit being in a non-retail use, this represents 16 % of the units being in a non-retail use, in compliance with the draft local plan policy.

The proposed development will not have a detrimental impact on the vitality and viability of the retail function of the neighbourhood centre.

(b) The application includes a ventilation flue approx 2 metres high on the flat roof. This has been constructed, and is acceptable, given its setting.

(c) The proposed development is within a mainly residential area, and the Council has previously refused planning permission for the formation of a hot food takeaway in this location. The stated grounds for refusal included the impact of the development on residential amenity. The decision was the subject of an Appeal, which was dismissed. However, the Appeal Reporter stated that a hot food takeaway in this location, which would not be operated at late hours, would be unlikely to cause disturbance to local residents through the creation of noise. If the hours of operation were to be adequately controlled, the proposed development would comply with local plan policy H5 in relation to housing amenity.

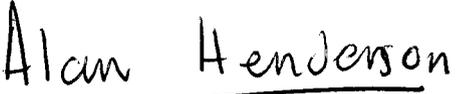
Further to this, the Appeal Reporter supported the Council's position with regard to the height of the ventilation flue and the detrimental impact that effluvia from this would have on the occupiers of neighbouring properties. The flue has now been constructed to above the eaves level of neighbouring houses and Environmental and Consumer Services are now satisfied with the development.

It is considered that the applicant has addressed the Council's previous grounds for refusal in terms of local amenity.

The proposed development, with appropriate conditions, will have no detrimental impact on the amenity of the occupiers of any neighbouring property.

There are no material considerations which outweigh this conclusion.

It is recommended that the Committee approves the application, subject to the conditions stated.

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**Alan Henderson**  
Head of Planning and Strategy

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**Ward affected** 40 -Milton

**Local Plan** South East Edinburgh

**Statutory Development  
Plan Provision** Mainly Residential Area

**File**

**Date registered** 1 September 2003

**Drawing numbers/  
Scheme** 1-3

