

Full Planning Application 04/02938/FUL
at
88 Walter Scott Avenue
Edinburgh
EH16 5RL

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

15 December 2004

1 Purpose of report

To consider application 04/02938/FUL, submitted by Mr Yip. The application is for: **Change of use from shop to hot food take-away and installation of external duct**

It is recommend that this application be **GRANTED** subject to the conditions in Appendix B.

2 The Site and the Proposal

Site description

The property is part of a two-storey shopping parade with flats at first floor level. The building is a white-rendered terrace, with a gabled, tiled roof. The whole block is provided with flat-roofed rear outshots and external ducts have been added to the rear of existing hot-food take-aways at nos. 72 and 74.

There are 14 commercial businesses in the parade, four of which are currently in non-retail use (betting office and three hot-food take-ways). There is an extended lay-by in front of the parade and a new housing estate opposite with gable-ends facing Walter Scott Avenue. The wider area is wholly residential in character.

Site history

Other Sites.

9 June 1993 - Planning permission was granted for the use of no. 72 as a hot food take away. This followed previous refusals on 31 January and 21 August 1991.

15 September 1995 - Planning permission was granted for the use of no. 74 as a hot food take away.

6 April 2000 - Planning permission was granted for the use of no. 82 as a hot food take away (personal consent; day-time use). This followed a previous refusal on 6 January 1999.

Description of the Proposal

It is proposed to change the use of the vacant premises from retail to hot-food take-away. The proposed hours of use are 5-11 pm.

The proposals also include the provision of an external duct (0.45 x 0.20 metre section), from first floor level to the ridge line, at the rear of the building.

3 Officer's Assessment 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 the determining issues, the Committee needs to consider a) whether the proposed use is in keeping with the retail character of the neighbourhood centre, b) whether residential amenities are safeguarded and c) whether the proposed external duct is appropriate to the visual amenity of its surroundings.

a) Existing statutory local plan policy is ambiguous in relation to retention of retail uses, Policy S2 merely stating that in 'appropriate' neighbourhood centres (undefined) not more than 20% units should be in non-retail use. In the draft replacement South East Edinburgh Local Plan, Policy R6 merely requires (apart from amenity considerations) that non-retail uses in a neighbourhood centre (including Sir Walter Scott Avenue) should be appropriate to and compatible with its retail function. The Report of Inquiry into the replacement plan has not queried this policy and it is likely to be formally adopted in due course; it is therefore regarded as being the more relevant policy context.

Hot-food take-away shops provide a local consumer service and generally form an integral part of most shopping centres. There are a number of existing convenience-goods shops in the parade, including a supermarket, pharmacy, post office, grocer and general store; the proposal will not therefore detract from the effectiveness of the centre in meeting local needs. The proposal will not result in there being more than 40% non-retail uses in the frontage, nor will it result in there being three consecutive non-retail units (standards used in larger Local Centres - Policy R7); it could not therefore be argued that the character and vitality of the centre will be adversely affected to an unacceptable degree. The use is not therefore contrary to Policy R6. It would also be inappropriate to use planning legislation to restrict the number of units on the grounds of increased competition.

b) In relation to residential amenity, the unit is in the middle of an extended parade which is fronted by a deep lay-by and parking spaces. The houses opposite also have gable-ends facing Walter Scott Avenue. The main impact would be on the flats on the upper floor.

A precedent has also been set by the three previous consents for hot food shops in this parade. Environmental Services has raised no objection to the proposal but advises that a number of conditions be imposed in order to safeguard neighbouring amenities, particularly in relation to the upper floor flats. These conditions are included in the recommendation, except for the proposed restriction on delivery times - the existing shop and its neighbours have unrestricted servicing hours and it would be unreasonable to impose the condition on this specific unit.

c) The proposed external duct is utilitarian, but similar to two others in the parade. Public views of the back of the building are mainly restricted to a local service lane. The owner of the upper flat has confirmed that he has no objection to the duct being affixed to his property. In the circumstances, this element of the proposals is acceptable.

In conclusion, the proposal would not prejudice the retail function of the centre or residential and visual amenity.

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

FURTHER ASSESSMENT

This item was continued by the Committee on 10 November 2004 to enable further consideration to be given to the policy implications of the proposal.

The current statutory South East Local Plan Policy S2 states that "where appropriate", the change of use to a non-shopping purpose in a neighbourhood centre will only be acceptable provided the total number of non-retail units does not exceed 20%. Although the policy is ambiguous in not defining neighbourhood centres and in the use of the term "appropriate", it

could be argued that the proposal, which would result in 36% (5/14) non-retail units within this local parade would be contrary to this policy.

However, the 1992 Local Plan is imminently to be superseded by a new South East Edinburgh Local Plan (2004) where the relevant policy R6 is less prescriptive; it merely states that, in defined neighbourhood centres such as this one, the proposed use should be an appropriate shopping centre use. In the preamble to the policy, hot-food shops are deemed to be appropriate. While the proposal would result in there being four take-aways within this small parade, there are three existing general stores, a pharmacy and a post office which still provide a satisfactory level of mainstream retail services. The proposal does not contravene the retail provisions of this policy.

Both of the above policies, together with policies H5 (1992)/H6 (2004) relating to residential areas and non-statutory guidelines, also seek to safeguard residential amenity.

In relation to the amenity of immediately adjacent residents, as far as issues such as noise and ventilation are concerned, Environmental Services is satisfied that these can be controlled by conditions. The proposal also includes a suitable ventilation duct to roof level and the resident of the upper flat has agreed to the proposal.

In relation to the impact on the wider neighbourhood, Councillor Murray has forwarded comments from the local police inspector which state that "I am not in favour of another takeaway opening. It is a fact that people will tend to congregate in these areas and there will be a corresponding increase in low-level anti-social behaviour". It is debatable whether there is a significant unmet local demand for hot-food provision and the proposal is as likely to dilute existing levels of custom rather than generate substantial new levels of activity (a neighbouring takeaway has objected on this basis). It is also difficult to substantiate the argument that such facilities are the direct cause of anti-social behaviour. The three previous hot-food consents in this location set a precedent and it would not be reasonable to refuse the current proposal on amenity grounds when the others were considered acceptable.

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

ADDENDUM

At its meeting on 15 December 2004, the Committee resolved that it was minded to refuse this application on the grounds that the additional Class 3 take-away use would be detrimental to residential amenity and would affect the vitality and viability of the shopping centre.

The relevant development plan is the South East Edinburgh Local Plan (1992). However, this is imminently to be superseded by a replacement South East Edinburgh Local Plan and its retail policies will be adopted. It is therefore recommended that the grounds of refusal should be based on this plan.

In the replacement plan, the shopping parade is defined as a Neighbourhood Centre and policy R6 (Changes of Use in Local and Other Neighbourhood Centres) states that proposals should be compatible with its retail function and should not be detrimental to the amenity of any nearby housing. The Committee's view that the provision of a fourth hot-food take-away in this small parade of 14 shops would be detrimental to its retail function and that the intensification of these uses would lead to a loss of residential amenity is a valid interpretation of this policy but would need further elaboration in the event of an appeal. It is recommended that the Committee therefore confirm the following ground for refusal:

The proposal is contrary to Policy R6 (Changes of Use in Local and Other Neighbourhood Centres) in the finalised South East Edinburgh Local Plan in that the provision of a fourth hot-food take-away in this small parade of 14 shops will be detrimental to its retail function, while the intensification of hot-food take-away uses will lead to a loss of residential amenity.

Alan Henderson

Alan Henderson
Head of Planning and Strategy

Contact/tel	Ian Smith on 0131 529 3555 (FAX 529 3706)
Ward affected	53 - Alnwickhill
Local Plan	South East Edinburgh Local Plan
Statutory Development Plan Provision	Mainly Residential
Date registered	2 August 2004
Drawing numbers/ Scheme	01-02 Scheme 1

Advice to Committee Members and Ward Councillors

The full details of the application are available for viewing on the Planning and Building Control Portal : www.edinburgh.gov.uk/planning.

If you require further information about this application you should contact the following Principal Planner, Helen Martin on 0131 529 3517. Email: helen.martin@edinburgh.gov.uk.

If this application is not identified on the agenda for presentation, and you wish to request a presentation of this application at the Committee meeting, you must contact Committee Services by 9.00a.m. on the Tuesday preceding the meeting on extension 4229/4239. Alternatively, you may e-mail blair.ritchie@edinburgh.gov.uk or sarah.bogunovic@edinburgh.gov.uk

Appendix A



Application Type Full Planning Application
Application Address: 88 Walter Scott Avenue
Edinburgh
EH16 5RL
Proposal: Change of use from shop to hot food take-away and installation of external duct
Reference No: 04/02938/FUL

Consultations, Representations and Planning Policy

Consultations

Environmental Services

This Department has no objections to the above application, subject to the following conditions:

1. The sound insulation properties or sound transmission characteristics of the structures and finishes shall be such that no impact or airborne noise from the normal operations within the application premises is audible in any neighbouring living apartment.
2. All music and vocals, amplified or otherwise, shall be so controlled as to be inaudible within any neighbouring premises.
3. The design, installation and operation 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.
4. 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 odour escape or are exhausted into any neighbouring premises, all to the satisfaction of the Head of Planning.
5. Deliveries to be restricted to 0700 - 2000 Monday to Saturday and 0900 - 1800 on Sundays.

Representations

Neighbours were notified on 31 July 2004 and the proposal was advertised (bad neighbour) on 13 August 2004.

Objections have been received from Inch Community Association, one adjoining resident and one adjoining take-away proprietor.

The grounds of objection are that there are already sufficient take-aways in the parade and that another will exacerbate problems of litter, noise and general disturbance.

Full copies of the representations made in respect of this application are available in Group Rooms or can be requested for viewing at the Main Reception, City Chambers, High Street.

Planning Policy

The site is in a Mainly Residential Area in the South East Edinburgh Local Plan. Residential character and amenities are to be safeguarded.

In the finalised draft of the replacement South East Edinburgh Local Plan, the site is within the designated Urban area. It is also defined as a Neighbourhood Shopping Centre. Relevant policies are H6 (Residential Amenity), R6 (Non-Retail Uses in Neighbourhood Centres) and DQ6 (Design).

Relevant Policies:

Policy S2 sets out criteria for assessing changes of use from a shop to a non-shopping use within principal shopping centres and other neighbourhood centres.

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.

Non-statutory guidelines on 'SERVICES ON BUILDINGS' supplement local plan conservation and design policies, providing additional guidance on the installation of services on the exterior of buildings.

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Conditions/Reasons associated with the Recommendation

Recommendation

To recommend that this application be **Granted**

Conditions

1. The development hereby permitted shall be commenced no later than five years from the date of this consent.
2. The sound insulation properties or sound transmission characteristics of the structures and finishes shall be such that no impact or airborne noise from the normal operations within the application premises is audible in any neighbouring living apartment.
3. All music and vocals, amplified or otherwise, shall be so controlled as to be inaudible within any neighbouring premises.
4. 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.
5. 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.

Reasons

1. In order to accord with the statutory requirements of the Town and Country Planning (Scotland) Acts.
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.
4. In order to safeguard the amenity of neighbouring residents and other occupiers.
5. In order to safeguard the amenity of neighbouring residents and other occupiers.

End

