

**Full Planning Application**  
**at**  
**23 South Clerk Street**  
**Edinburgh**  
**EH8 9JD**

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

**Proposal:** Restaurant and modification to hours of operation  
**Applicant:** Mr Ghafoor  
**Reference No:** 04/00014/FUL

**1 Purpose of report**

To recommend that the application be **REFUSED** for the following reasons;

**Reasons**

1. The proposal is contrary to Central Edinburgh Local Plan Policy L3, in respect of Leisure Uses Restraint, and Policy H11, in respect of Housing Amenity as the proposal would lead to an unacceptable loss of residential amenity late in the evening due to the nature of the use and the extended hours of operation.
2. The proposal is contrary to Non Statutory Guidelines in respect of the location of Commercial Leisure Uses within identified areas of sensitivity, and the Non-Statutory Guidelines in respect of Restaurants, Cafes and Hot Food Shops, as the hours of operation are likely to create extra activity and disturbance late in the evening, to the detriment of residential amenity.

## **2 Main report**

### **Site description**

The site is a unit situated on the ground floor of a traditional four storey stone built tenement that lies on the east side of South Clerk Street. The surrounding properties are similar, with the exception of the Queens Hall opposite.

The property lies within the South Side Conservation Area. It is a Category B listed building.

### **Site history**

01.08.2003 - Planning permission for change of use to restaurant and takeaway granted with hours restricted to 8am to 8pm (03/02062/FUL).

30.05.2003 - Planning permission for change of use to hot food takeaway/restaurant refused (03/00687/FUL). This proposal was refused as the intended opening hours were beyond 8pm in an area of sensitivity.

### **Development**

The proposal is an amendment to the previously approved application 03/02062/FUL to operate as a restaurant only from the hours 11am to 11pm seven days a week. No external alterations are proposed.

### **Supporting Statement**

The applicant has submitted a statement in support of this application. This is available in the Party Group Rooms.

### **Consultations**

### **Environmental and Consumer Services**

No objection subject to conditions relating to sound insulation/soundproofing and ventilation.

### **Representations**

The application was advertised on 23.01.2004. Three letters of representation have been received from Councillor Robert Cairns, and two neighbouring commercial occupiers. The two letters received from commercial neighbours are in support of the application.

In opposition, the issues raised are:

1. Adverse impact upon residential amenity
2. Contrary to Policy L3

In support the issues raised are:

1. Improve range of facilities within the vicinity
2. Improve the appearance of the building and area

In addition to these letters of support, a petition with 155 signatories has been submitted by the applicant.

## **Policy**

The site lies within an area identified as Housing and Compatible Uses in the Central Edinburgh Local Plan. The site also forms part of a primary retail frontage. It is within a defined area of sensitivity.

### Relevant Policies:

Policy CD2 (LISTED BUILDINGS) sets out criteria for assessing proposals affecting listed buildings and seeks to safeguard their character and setting.

Policy CD5 (CONSERVATION AREAS - REDEVELOPMENT) sets out the criteria against which new development in conservation areas will be assessed, and seeks to preserve or enhance their character and appearance.

Policy L3 (LEISURE USES - RESTRAINT) requires particular care to be taken to prevent an excessive concentration of commercial leisure uses in the following areas of mixed but essentially residential character: Tollcross, Grassmarket and Nicolson Street/Clerk Street and environs.

Policy H11 (HOUSING AMENITY) establishes a presumption against new development and changes of use likely to introduce increased levels of traffic or activity to the detriment of residential amenity or to the reasonable prospects of further residential development where this is an objective of the Local Plan.

Non-statutory guidelines 'COMMERCIAL LEISURE USES: CENTRAL EDINBURGH LOCAL PLAN POLICY L3: SUPPLEMENTARY PLANNING GUIDANCE' provides specific guidance in respect of such uses in identified areas of sensitivity.

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 preserve the building or its setting or any features of special architectural or historic interest? If they do not there is a presumption against the granting of planning permission. For the purposes of this issue, "preserve", in relation to a building, means preserve either in its existing state or subject only to such alterations or extensions as can be carried out without serious detriment to its character;
- Do the proposals enhance or preserve the character and appearance of the Conservation Area? There being a strong presumption against the granting of planning permission if this is not the case.
- 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**

In order to address the determining issues, Committee must consider whether a) the proposals will have any adverse impact upon the district shopping centre, b) there will be any adverse impact upon the character and appearance of the conservation area or upon the character of the listed building, and c) there will be any adverse impact upon residential amenity.

a) The loss of this retail unit has already been accepted. The up to date shopping survey for South Clerk Street indicates that 86% of this frontage will remain in retail use. There will be no adverse impact upon the vitality or viability of the shopping centre.

b) As this is a shopping centre and as no external alterations are proposed, there will be no adverse impact upon the character and appearance of the conservation area or upon the character of the listed building.

c) Whilst the use of the premises as restaurant and take-away has been accepted, this was on the basis of the unit operating from 8am to 8pm only. As the premises lie within a defined area of sensitivity, these opening hours were considered acceptable. Whilst the proposals will now no longer include the take-away element, the proposed use is for a restaurant with opening hours from 11am to 11pm, seven days a week.

It is acknowledged that South Clerk Street is a main thoroughfare within the city and a busy commercial centre which includes a number of late night uses. However, it is an area which has been designated an area of sensitivity due to its essentially residential character and the present concentration of commercial leisure uses. The current proposal would add amenity by way of noise and disturbance. The proposed use fails to comply with policy L3, and non-statutory guidelines on "Commercial Leisure Uses" and "Restaurants, Cafes And Hot Food Shops" in this regard. Whilst there are a number of vacant units within the shopping centre, this is not considered sufficient justification to support this application.

Although no ventilation details have been submitted with this application, the previously approved application indicated that kitchen ventilation would be internally ducted to roof level and capable of achieving 30 air changes per hour. This complies with the non-statutory guidelines on 'Restaurants, Cafes and Hot Food Shops' and there is no reason to believe that this position has changed.

In conclusion, the proposals will have no adverse impact upon the vitality or viability of the district shopping centre or the character or appearance of the conservation area or the character of the listed building. However, the use of the premises as a restaurant until 11pm will have an adverse impact upon the amenity of neighbouring occupiers through increased noise and activity at late hours, contrary to current policy. There are no considerations to outweigh this conclusion.

It is recommended that the Committee refuses this application, for the reasons stated.

*Alan Henderson*

**Alan Henderson**  
Head of Planning and Strategy

**Contact/Tel** David Mudie on 0131 529 3442 (FAX 529 3717)

**Ward affected** 33 -Southside

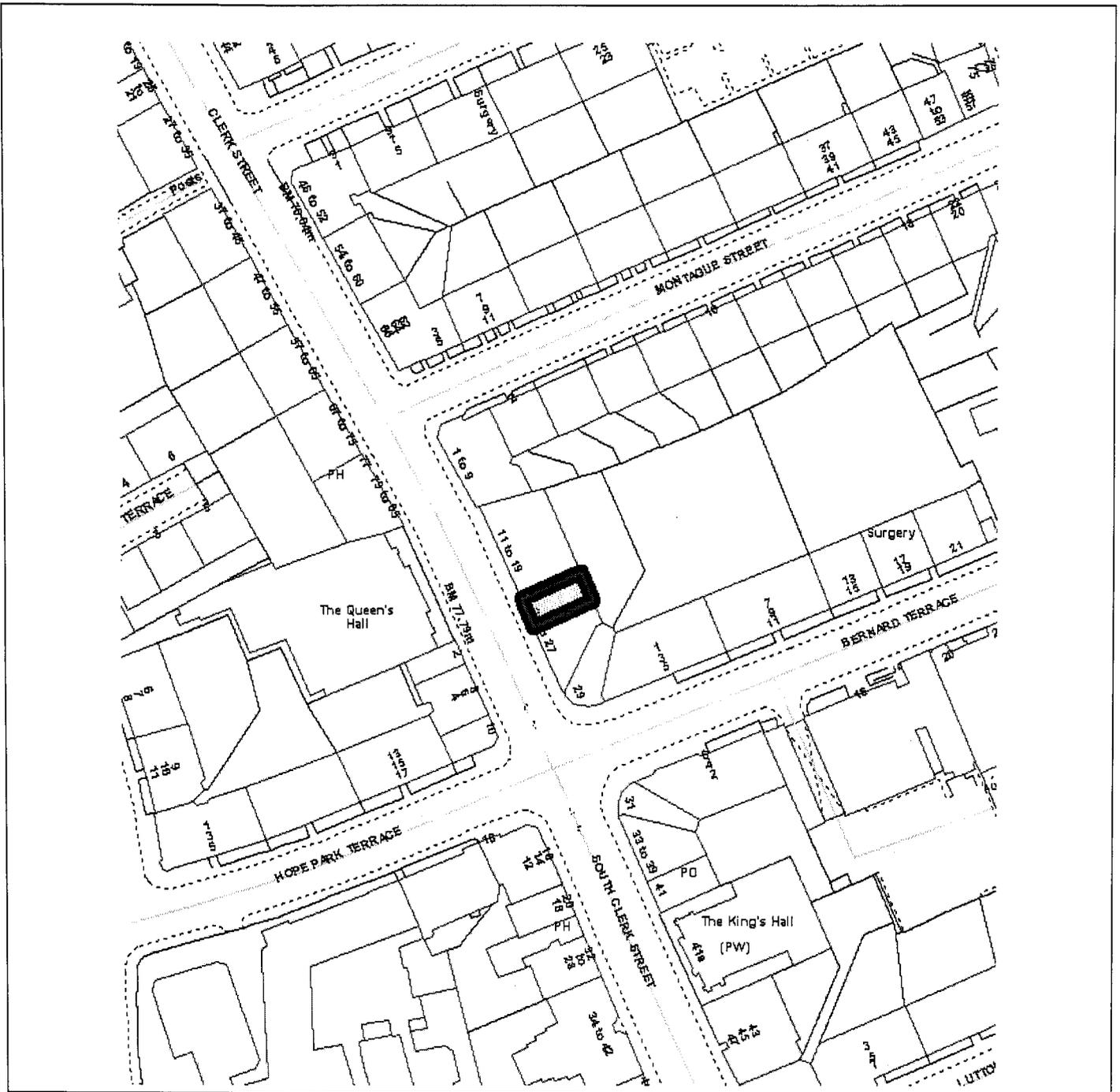
**Local Plan** Central Edinburgh

**Statutory Development  
Plan Provision** Housing and Compatible Uses

**File** AF

**Date registered** 13 January 2004

**Drawing numbers/  
Scheme**



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# PLANNING APPLICATION

<b>Address</b>	<b>23 South Clerk Street, Edinburgh, EH8 9JD,</b>		
<b>Proposal</b>	<b>Restaurant and modification to hours of operation</b>		
<b>Application number:</b>	<b>04/00014/FUL</b>	<b>WARD</b>	<b>33- Southside</b>
<b>THE CITY OF EDINBURGH COUNCIL</b>			
<b>THE CITY DEVELOPMENT DEPARTMENT- PLANNING &amp; STRATEGY</b>			