

**Full Planning Application
at
232 Leith Walk
Edinburgh
EH6 5EQ**

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

Proposal: Modification of Condition 2 attached to the planning premission granted on appeal on 2 September 2002 (ref. 01/02782/FUL) to enable takeaway operations between the hours of 17.00 - 01.00 Sundays to Thursdays and 17.00 - 03.00 on Fridays and Saturdays

Applicant: Mr Stevenson

Reference No: 02/03863/FUL

1 Purpose of report

To recommend that the application be **REFUSED**

Reasons

- 1 The proposal is contrary to North East Edinburgh Local Plan Policy H7, in respect of Housing Amenity, as the proposed late night opening hours are likely to lead to loss of amenity for neighbouring residents.

2 Main report

Site description

The property is a ground floor commercial unit in a five-storey Victorian tenement block (including dormers) and is currently in use as a hot food take-away shop. Two shops and another take-away occupy the same building frontage and there are flats on the upper floors. The application premises occupy a corner site, with a

gable wall abutting a private lane to the side. The building fronts on to Leith Walk, a five-lane carriageway (including parking bays and bus lanes). The property is within Leith Conservation Area.

Site history

APPLICATION SITE

18 September 2001 - Planning permission was refused for the use of the premises as a hot food take-away shop, the reason being that the proposal would result in an excess of non-retail uses in the protected frontage (policy S5) (Ref. 01/02782/FUL).

The development was allowed on appeal on 2 September 2002; the consent was subject to additional conditions 2) limiting the hours of use (8 am to 11 pm), 3) requiring grease traps and ventilation to be approved by the planning authority and 4) requiring compliance with noise standard NR25 (SEIRU Ref. PPA/230/410).

23 June 2004 - The Committee authorised enforcement action in respect of unsatisfactory alterations to the shopfront and signage (03/00236/E05). The relevant enforcement notices have been served and are currently subject to an appeal.

OTHER SITES

1 March 1978 - Retrospective planning permission was granted for the use of 224 Leith Walk as a hot food take-away. There was no restriction on opening hours (1962/77)

5 February 1996 - Planning permission was granted for the use of 266 Leith Walk as a hot food shop with a condition limiting opening hours to between 8 am and 11 pm, Mondays to Saturdays. Subsequent consents in 1987 and 1988 extended the opening hours until 1 am. The condition was removed on 4 September 1996 on the grounds that Licensing was the more appropriate vehicle for controlling the opening hours (96/01350/FUL).

24 September 1997 - Planning permission was refused for the use of 236 Leith Walk as a restaurant and takeaway for the reasons a) of inadequate ventilation (in a tenement building) and b) the loss of a retail unit in a protected frontage (97/01740/FUL).

Development

The application is for the relaxation of a restrictive condition, imposed on appeal, in order to allow the take-away to operate from 17.00 to 01.00 on Sundays to Thursdays inclusive and 17.00 to 03.00 on Fridays and Saturdays.

The agent has submitted two supporting statements which point out that other take-aways in the vicinity open until 1.00 or 2.00 am and that there is also a 24-hour shop opposite. The applicant would be prepared to accept additional noise condition and also an alternative opening hours limit of 2.00 am at week-ends.

Consultations

Environmental Services

The Department has received additional information in relation to this application and has further examined the opening hours of similar existing establishments in the vicinity. It is apparent that the majority of hot food take-away outlets in this area are open until midnight during the week and until 0100 hours Friday and Saturday nights. In the light of this information it may be appropriate to adjust the hours restrictions imposed by the Scottish Executive reporter.

The Department has concerns about noise that may be transmitted from inside the take-away to the flat directly above. As there is no condition on the main planning consent to protect the amenity of those existing residents above, the application cannot be supported at this time. However, this Department would not object to an amended application which allowed for opening hours in line with those which are already generally found in this section of Leith Walk (as above).

Representations

Neighbours were notified on 22 October 2002 and the proposal was advertised (bad neighbour) on 08 November 2002.

The Pilrig Residents Association has objected on the grounds that the proposed extension in opening hours will cause a reduction in the quality of life for residents in the area, through noise, smells and pollution.

Policy

The site is within an area of Housing and Compatible Uses in the North East Edinburgh Local Plan. Residential character and amenities are to be safeguarded.

The property is also within a Secondary Frontage (retail) as defined in the Local Plan. Retail character and function are to be maintained.

The site is also within the Leith Conservation Area. The special character and appearance of the conservation area are to be maintained and enhanced. Summary Character Statement:

The Leith Conservation Area covers the extent of the historic town, including the Madeira Area (Leith's 'First New Town'), and also Leith Walk - the town's main link with Edinburgh City Centre. The character of the Conservation Area derives from Leith's history both as a port and as an independent burgh. Several fine Georgian and Victorian warehouses survive, some now converted for residential or office use; in many cases these were initially built to hold wine and dry goods, although many were converted in the late 19th Century to serve the whisky industry. A rich mixture of civic buildings and mercantile architecture survive, particularly at Bernard Street and The Shore. Significant earlier buildings include Lamb's House and St Ninian's Manse (both early 17th Century); although many more recent buildings have been built, the present street pattern of The Shore closely follows that of the historic town.

Leith Walk remains the main artery linking the centre of Edinburgh to the old burgh of Leith. It is characterised mainly by Victorian tenements with shops and pubs at the ground floor level. There are a number of Georgian survivals, most notably Smith's Place dating from 1814. Between Smith's Place and Albert Street lies a series of tenemented streets, mainly designed by John Chesser.

Relevant Policies:

Policy ED6 (LEISURE DEVELOPMENT) supports, and sets out criteria, for assessing leisure developments, principally within the Mixed Activities Zone in Leith and the Portobello Promenade area.

Policy H7 (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 the reasonable prospects of further residential development where this is an objective of the Local Plan.

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 the proposed extension of opening hours will detract from residential amenities. The proposal will have no implications for the character and amenity of the Conservation Area.

Local Plan policy H7 requires that non-residential uses should not be detrimental to residential amenity. Policy S5 also requires changes of use in shopping centres not to be detrimental to residential amenity. The proposal has also been advertised under 'bad neighbour' legislative provisions.

Although hours of use conditions were not imposed in 1978 in relation to a neighbouring take-way (no. 224), it is appropriate for the Committee to impose conditions should this be necessary in present circumstances in order to safeguard residential amenity (Circular 4/1998.70/PAN 56.38-39). The Committee's adopted guidelines on 'Restaurants, Cafes and Hot Food Shops' further state that where a limited hours condition has been imposed as a result of an appeal decision, this

will not normally be departed from unless there has been a material change in circumstances.

The relevant Condition 2, subject of the current application and restricting the hours of use to between 8 am and 11 pm (in order to safeguard residential amenity), was imposed on a permission allowed on Appeal. However, there was no discussion of this issue in the Reporter's assessment and the condition was worded so as to suggest it could be varied with the consent of the Local Authority. In support of the proposal, the agent has also claimed that most take-aways in the area operate with later hours and Environmental Services has accepted this point. It is therefore appropriate to consider a relaxation of the condition.

In relation to general street noise and disturbance, while there is an extensive frontage of tenemental flats on upper floors, the property faces on to a busy main road with extensive commercial frontages. Other take-aways in the vicinity are open until midnight (weekdays) and 1.00 am (weekends) and the Environmental Health Officer accepts that it would not be unreasonable for this facility to be allowed to operate to a similar pattern. However, the early morning hours proposed (until 3.00 am) would be likely to generate an additional source of nuisance for neighbouring residents. Although the proposal has not given rise to objections from immediate neighbours, Pilrig Residents Association has objected on amenity grounds.

The unit is also sited within a tenement and immediately under a flat and noise from late night opening until 3.00 am (with subsequent clearing up) could potentially cause an unacceptable loss of amenity. It might be feasible to carry out sound-proofing measures but the applicant has not provided any information to demonstrate this.

The applicant has also failed to provided details of ventilation, as required by a condition on the appeal decision, although it appears that this may have been dealt with by the use of a pair of original internal chimneys.

While late opening hours until midnight (weekdays) and 1.00 am (weekends) should not give rise to a significant additional loss of residential amenity, subject to appropriate measures to improve sound-proofing, the application as it currently stands is unacceptable.

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


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Ward affected 22 -Lorne

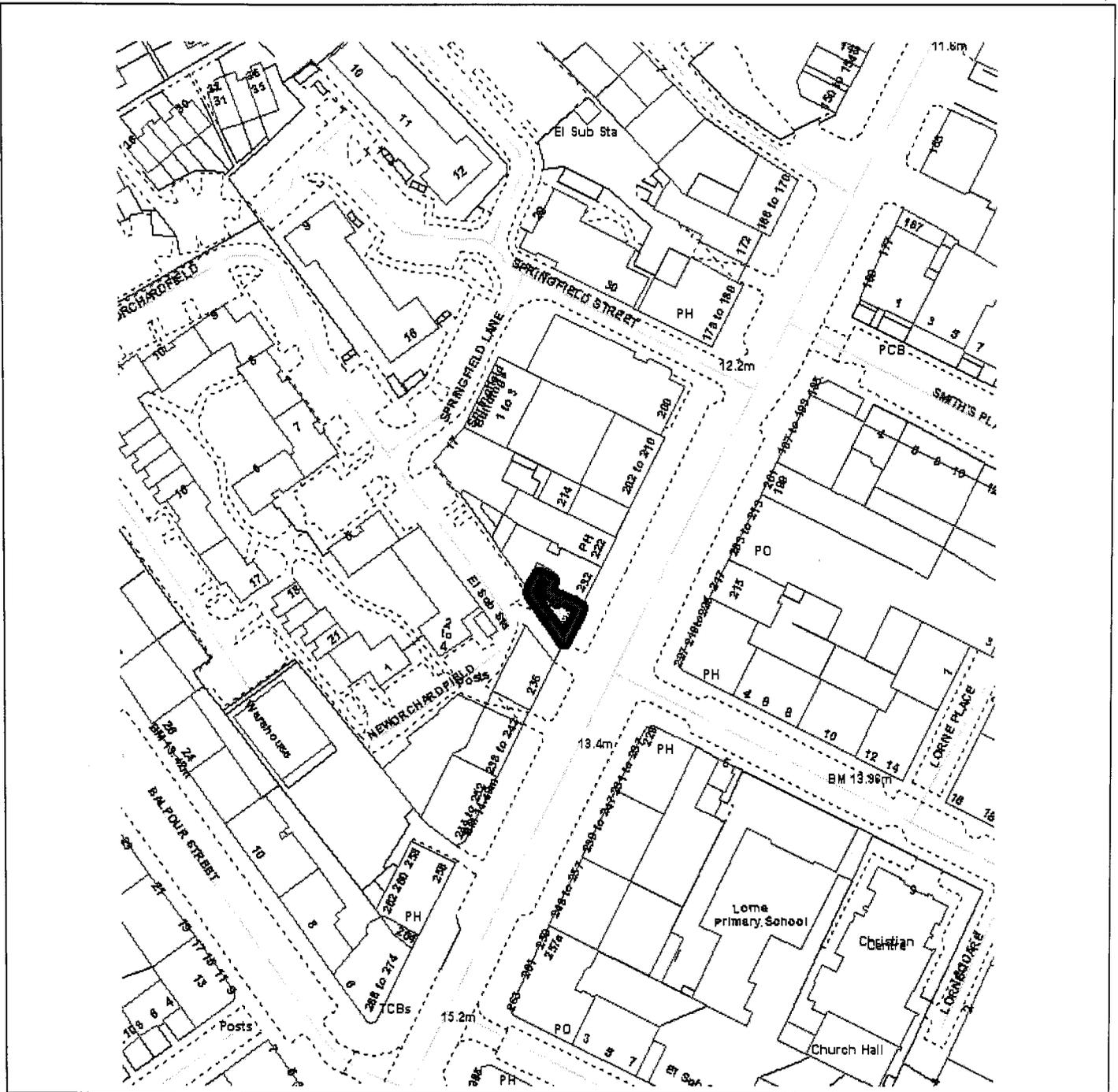
Local Plan North East Edinburgh

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

File af

Date registered 24 October 2002

**Drawing numbers/
Scheme** Scheme 1



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PLANNING APPLICATION

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THE CITY OF EDINBURGH COUNCIL			
THE CITY DEVELOPMENT DEPARTMENT- PLANNING & STRATEGY			