

**Full Planning Application 05/02405/FUL
at
132 Portobello High Street
Edinburgh
EH15 1AH**

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

1 Purpose of report

To consider application 05/02405/FUL, submitted by Ahmed Al-Saady. The application is for: **Provide tables and chairs and change of use from shop to cafe**

It is recommended that this application be **REFUSED**

2 The Site and the Proposal

Site description

The property is a ground-floor commercial unit set within a three-storey, with attic, traditional stone built tenement on the north east side of Portobello High Street. It stands within a terrace of retail and commercial properties located between the junctions of Portobello High Street with Beach Lane, to the north west, and Bath Street, to the south east.

The site is within the Portobello Conservation Area.

Site history

20 April 2005 - planning enforcement investigation, initially into matters of repainting and new signage to the shop front of the premises, leading to a material change of use of the premises from Class 1 'retail shop' to Class 3 'food and drink'. Development Quality Sub Committee authorised the service of an Enforcement Notice to ensure that the unauthorised use of the premises, as a Class 3 cafe, ceased (Ref 03/00726/E05).

A previous planning application was submitted seeking to formalise the unauthorised change of use in July 2004. The application was invalid as there was insufficient information and was subsequently returned to the applicant in November 2004 (Ref 04/02648/FUL).

Description of the Proposal

The application is for a change of use from a 'Class 1' sandwich shop to a 'Class 3' cafe with the provision of tables and chairs for customers.

Supporting Statement - Available for inspection in Party Group Rooms.

The applicant has submitted, with the application, a two page petition of 138 signatures in support of his request for seating in the Cafe. However, the petition does not meet with the Council's requirements, as stated in the Development Control Planning Charter. Not all of the names are readable, there are no addresses provided and all of the pages do not include the aim of the petition.

3 Officer's Assessment and Recommendations

DETERMINING ISSUES

The determining issues are:

- Do the proposals harm the character and appearance of the conservation area? If they do, there is a strong presumption against the granting of planning permission.
- 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 principal of office use is acceptable in a shopping centre;
- b) The proposed development will have a detrimental impact on the vitality and viability of the local shopping centre;
- c) The proposals preserve or enhance the character and appearance of the conservation area; and
- d) There will be any loss of residential amenity as a result of the proposals.

a) The proposal for a cafe use to be located within the defined District Centre is acceptable in principle. Such an activity is one that is identified as providing a complementary service to the overall benefit of a District Centre. However, the proposal is also required to be assessed against other development plan, retail policies.

b) Policy S5 seeks to protect shopping uses, within the defined District Centre, from an over concentration of non-retail shopping uses, such as that proposed in this application. The proposal stands within a primary frontage, as defined in the plan, one that extends from No 100, adjacent to the junction with Figgate Street, to No 162 Portobello High Street, adjacent to the junction with Bath Street, where non-retail uses should make up a maximum of 20% of the ground floor units. This primary frontage forms the main part (42%) of the central core of the defined Portobello shopping centre.

There are 24 shop units in the relevant frontage including this property and the proposal would increase the number of authorised, non-retail premises from 6 to 7 (25% to 29%) in breach of the policy.

There has been no additional information provided, by the applicant, concerning either attempts to market the premises as a class 1 use or that it has lain empty for a significant period of time.

It is apparent that the sandwich shop operation never operated as a class 1 retail shop. From its beginning it has sold hot and cold food for consumption both on and off the premises incorporating a significant level of 'covers' for the relative size of the premises (there are four tables and eight chairs for customers).

The current proposal would, therefore, represent more than a marginal increase from the 20% criterion. The site is in a busy shopping location at the centre of the Portobello shopping centre and there are no compelling grounds to justify a departure from the development policy in this instance.

As such the continued operation of the business will detract further from the viability of the existing Portobello shopping area.

c) Portobello Conservation Area Character Statement

Portobello Conservation Area includes several distinct character zones. The High Street provides a focus for the Conservation Area, retaining many original two storey Regency buildings as well as a number of significant public buildings. The seaside character of the Promenade is still evident, despite the loss of the pier and the construction of several modern buildings of poor quality. The remainder of the area includes an abundance of fine Georgian (and later) villas as well as a robust stock of Victorian tenements, public buildings and churches. In total there are some 179 listed buildings within the Conservation Area, including building groups of particular interest in Brighton Crescent and Brighton Place.

The alterations that have been made to the shop front, the subject of the original enforcement investigation at these premises, are acceptable and do not detract from the character and appearance of the Portobello Conservation Area.

d) Environmental and Consumer Services are satisfied that should planning permission be granted conditions could be attached to ensure that any noise or vibration is not perceptible within any adjoining residential properties and that any cooking odours are dealt with satisfactorily, by limiting the equipment that can be used within the premises.

In conclusion, the proposal is contrary to the provisions of the Development Plan and the loss of a retail premises would adversely impact on the viability of the shopping centre.

Authorisation has previously been given by the Committee, 20 April 2005, to initiate enforcement action requiring the unauthorised use of the property to cease.

It is recommended that the Committee refuse this application for reasons relating to an overprovision of non-retail uses and a detrimental impact upon the viability of the Portobello shopping centre.

ADDENDUM

This application was considered by the Development Quality Sub Committee on 26 October 2005 and was continued to provide a history and analysis of use of this particular retail unit and of other retail/non-retail uses in this part of the Portobello shopping centre and as the Committee was minded to grant planning permission for this application and wished to be advised of appropriate conditions.

The planning enforcement investigation into the change of use of these premises commenced in November 2003. Prior to that time there had been no relevant planning history on file for this site.

At the adoption of the North East Edinburgh Local Plan in 1998 there were 5 non-retail frontages out of 24 (21%) within this primary frontage:

- Barbeque take-away at 102;
- Chinese take-away at 108;
- Pop-In public house at 124;
- Lloyds TSB bank at 134C; &
- McIntyre Lewis estate agents at 158.

Since that time there have been 4 planning applications made for a change of use from retail uses to non-retail uses in this particular primary frontage.

- No 100 - Change of Use to form a Cafe and Sandwich Bar (Ref 00/02294/FUL) refused on 15 November 2000 as it would have been in breach of policy S5 of the plan.

- No 128 (now Roma) - Change of Use to form a hot-food take-away (Ref 02/00269/FUL) approved on 3 October 2002. The reasoning was;

The vacancy of the unit is of some concern and the applicant has demonstrated that the unit has been vacant for two years and is still being actively marketed. The property is not currently contributing to the vitality or viability of the centre or the continuity of the shopping frontage. An exception to Policy S5 is justified in this case.

- No 140 - Change of Use to form a hot-food take-away (Ref 03/00989/FUL) refused on 25 August 2003 as it would have been in breach of policy S5 of the plan.

- No 162 - Change of Use to form a licensed betting office (Ref 05/00383/FUL) refused on 16 June 2005 as it would have been in breach of policy S5 of the plan.

There are no proposals contained within this application to make any alterations to the ground floor frontage of the property.

If the Committee is to grant the planning application the following conditions should be attached:

1. The development hereby permitted shall be commenced no later than five years from the date of this consent.

Reason - In order to accord with the statutory requirements of the Town and Country Planning (Scotland) Acts.

2. Cooking, heating and reheating operations on the premises shall be restricted to the use of; 1 microwave oven, 1 soup kettle and a toastie machine only; no other forms of cooking, heating or reheating shall take place without the prior written approval of the planning authority.

Reason - In order to safeguard the amenity of neighbouring residents and other occupiers.

3. 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.

Reason - In order to safeguard the amenity of neighbouring residents and other occupiers.

4. All music and vocals, amplified or otherwise, shall be so controlled as to be inaudible within any neighbouring premises.

Reason - In order to safeguard the amenity of neighbouring residents and other occupiers.

5. 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.

Reason - In order to safeguard the amenity of neighbouring residents and other occupiers.

It is recommended that the Committee refuses the application for reasons of retail vitality.

Alan Henderson

Alan Henderson
Head of Planning and Strategy

Contact/tel	John Maciver on 0131 529 3918
Ward affected	39 - Portobello
Local Plan	North East Edinburgh Local Plan
Statutory Development Plan Provision	District Shopping Centre
Date registered	1 September 2005
Drawing numbers/ Scheme	01-03 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, Graham Dixon on 0131 529 3519. Email: graham.dixon@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

Application Type Full Planning Application
Application Address: 132 Portobello High Street
Edinburgh
EH15 1AH

Proposal: Provide tables and chairs and change of use from shop to cafe
Reference No: 05/02405/FUL

Consultations, Representations and Planning Policy

Consultations

Environmental and Consumer Services

This planning application was submitted with a proposed low level ventilation system, terminating at first floor level. This Department is aware that this can lead to smell nuisance complaints from neighbouring residential properties. Consequently this Department is of the opinion that restrictions should be put on the extent of cooking undertaken on this premises. This Department therefore recommends that the following conditions should be attached to the permission, should it be granted.

- 1. Cooking heating and reheating operations on the premises shall be restricted to the use of; 1 microwave oven, 1 soup kettle and a 'toastie' machine only; no other forms of cooking, heating or reheating shall take place without prior written approval of the planning authority.*
- 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, installation and design 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.*

Transportation

Has no objections to the application.

Representations

The application was advertised as a 'bad neighbour' development and development within a Conservation Area on 9 September 2005.

Two letters of objection were received. Those concerns raised are summarised as follows:

- These premises have already been trading as a cafe for some 18 months prior to this application - a clear disregard of both the Council and other lawful traders.

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

North East Edinburgh Local Plan - The site is within the Portobello Conservation Area, where the protection and enhancement of the special character and appearance of the designated conservation areas will be protected. The site is also within an area allocated as a 'District Shopping Centre', where there is presumption to retain and maintain retail shopping as the principle use.

Relevant Policies:

Policy E21 (CONSERVATION AREAS - GENERAL): requires proposed development within a conservation area to retain all features which contribute to the character and appearance of the area.

Policy E22 (CONSERVATION AREAS - REDEVELOPMENT): sets out criteria against which new development in conservation areas will be assessed.

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.

Policy S5 (PROTECTION OF SHOPPING USES - DISTRICT AND LOCAL CENTRES) sets out criteria for assessing changes of use (within defined retail frontages) from a shop unit to a non-retail use appropriate to a shopping centre.

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.

The Portobello Conservation Area Character Appraisal emphasises the village/small town character of the area, the importance of the long sea-front promenade, the high quality architecture, and the predominant use of traditional building materials

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Conditions/Reasons associated with the Recommendation

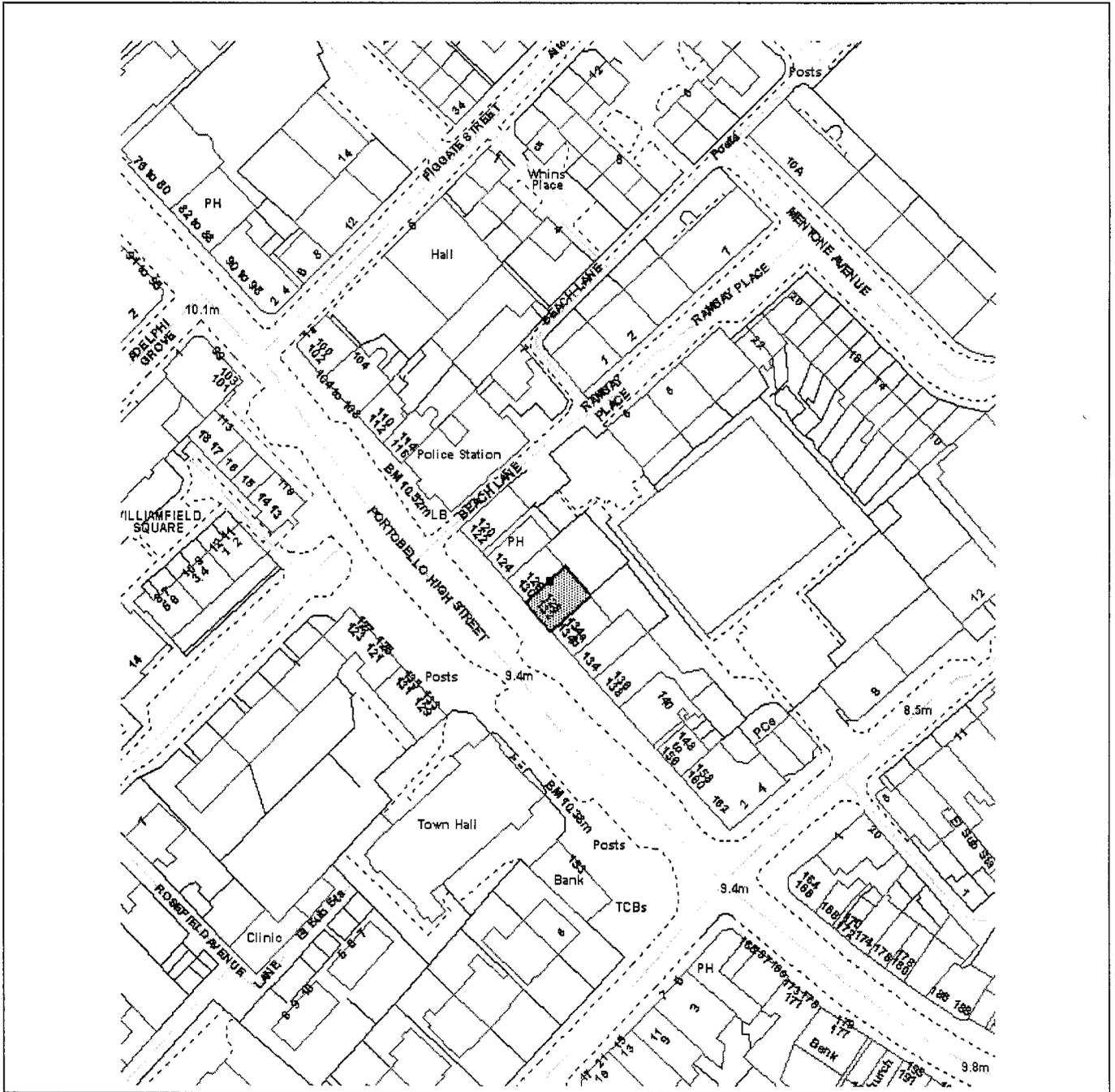
Recommendation

It is recommended that this application be **REFUSED**

Reasons

1. The proposal is contrary to North East Edinburgh Local Plan Policy S5, in respect of Protection of Shopping Uses in District Centres, as it would result in an overprovision of non-retail uses, detrimental to the viability of the retail character and function of the area.

End



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PLANNING APPLICATION

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Application number:	05/02405/FUL	WARD	39- Portobello
THE CITY OF EDINBURGH COUNCIL THE CITY DEVELOPMENT DEPARTMENT- PLANNING & STRATEGY			