

Full Planning Application 05/00975/FUL
at
13A Brougham Street
Edinburgh
EH3 9JS

Development Quality Sub-Committee
of the Planning Committee

1 Purpose of report

To consider application 05/00975/FUL, submitted by Aydemir Demirezen. The application is for: **Amendment to opening hours - Extension of opening hours from 8 pm - 11 pm all week**

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

2 The Site and the Proposal

Site description

The property is a small cafe unit on the south west side of Brougham Street. It was currently trading as 'A La Turka', a Turkish restaurant. The property is within a four-storey tenement, and is within the Tollcross Shopping Centre. Surrounding properties are commercial, generally retail, at street level, with residential above.

Site history

15 December 1999 - Consent granted for change of use from shop to cafe, 99/02552/FUL

Conditions of consent are;

- The hours of operation shall be restricted to 0800 to 2000 daily.
- The ventilation system shall be designed so that there is no requirement for the erection of an external flue or duct.
- 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.
- The approved ventilation system shall be installed and tested for the escape of odours to the satisfaction of the Head of Planning & Strategy, prior to the use hereby approved being taken up.
- All music and vocals, amplified or otherwise, shall be so controlled as to be inaudible within any neighbouring residential premises.
- 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.
- 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.

Description of the Proposal

The proposal is for the extension of the opening hours of the restaurant from 0800 to 2000, to 0800 to 2300 daily. No other changes are proposed.

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 take account of whether:

- a) This is a suitable location for such a use, with these hours of operation; and
- b) The effects of the extended hours of operation on existing residential amenity.

a) The site is within the mixed activities zone, and the local plan policy L2 considers a class 3 use to be acceptable subject to the protection of existing residential amenity and compliance with other policies. Policy L2 states that new Food and Drink uses or hot food shops shall only be permitted in areas where there exist already a significant number of properties in non-residential use. Proposals for changes of use in quiet housing areas and residential side streets will not normally be given consent. As Brougham Street is a main thoroughfare where a number of commercial uses exist, there is no conflict with policy for this location, assuming that residential amenity is preserved.

With regards to compliance with other policies, the most relevant is policy L3 (and the non-statutory guideline on "Commercial Leisure Uses - Central Edinburgh Local Plan Policy L3 - Supplementary Planning Guidance"). In this policy and supplementary guidance specific areas of sensitivity are highlighted, and this includes the Tollcross area, which specifically includes Brougham Street. In principle, the location of a class three unit which operates until 2300 is therefore contrary to policy L3 and the supplementary guidelines.

b. The main issue is with regards to the potential increase in noise and activity due to the extended hours. Therefore, in accordance with the non-statutory guidelines, the proposed extension to the opening hours should only be permitted if;

a) It can be demonstrated that the use will not contribute to late night activity within the defined "area of sensitivity". The use of conditions restricting opening hours may be considered in the case of commercial leisure uses that are unlikely to give rise to late night activity (for example cafes opening during shopping hours) in order to restrict subsequent changes within the relevant use class that may lead to late night operation. Such conditions will normally restrict hours of operation to a maximum period of 8am to 8pm.

b) The proposal complies with other local plan policies and supplementary guidance relating to speciality shopping streets, and

c) There will be no adverse impact upon existing residential amenity.

Due to the very small size of the restaurant, and the fact that it is non-licensed, it is unlikely that this restaurant by itself will create any adverse effect on neighbouring residential amenity. The applicant owns the property,

and is prepared to accept a personal consent to ensure that the restaurant is not sold and the style of operation changed. The applicant has advised that the premises are not licensed, and the premises are in fact so small that this is likely to remain the case. There is certainly no scope for the installation of a bar or servery. A licensed restaurant could have more potential to create disturbance. The gross floor area of the premises is about 75 square metres. At the time of the site visit there were only 24 covers, and no room for any increase (8 tables of two, and two tables of 4 seats). There is no servery; only a single toilet (unisex); and a small kitchen. A small retail display of Turkish jewellery made by the owner's wife, is present in the window area of the premises.

The property has an internal flue that ducts from the small kitchen area at the rear of the premises, to chimney head level. This is currently operating successfully. There have been no complaints of noise regarding the existing use. Environmental Services has raised no objection to the proposals subject to the conditions attached to the original consent.

In conclusion, it is considered that the proposal does not comply with the development plan, and there is the potential for this to set an undesirable precedent.

It is recommended that the committee refuses this application for being contrary to the development with regards to areas of sensitivity.

Alan Henderson

Alan Henderson
Head of Planning and Strategy

Contact/tel	Kingsley Drinkwater on 0131 529 3648 (FAX 529 3717)
Ward affected	32 - Tollcross
Local Plan	Central Edinburgh
Statutory Development Plan Provision	Mixed Activities
Date registered	1 April 2005
Drawing numbers/ Scheme	01 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, Ian Dryden on 0131 529 3464. Email: ian.dryden@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

Application Address:

Proposal:

Reference No: 05/00975/FUL

Consultations, Representations and Planning Policy

Consultations

Environmental and Consumer Services

This Department would have no objections to the above application.

Representations

The application has been advertised as a potential departure from the development plan on 15/04/05. No letters of representation have been received.

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 identified by the **Central Edinburgh Local Plan** as being within the mixed activities zone. It is within a designated 'area of sensitivity'. The property is also within a district shopping centre.

Relevant Policies:

Policy L2 (COMMERCIAL LEISURE USES) sets out criteria for assessing commercial leisure uses within the Retail and Office Cores, Mixed Activities Zone and other areas where commercial uses are present.

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.

Application Type

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Conditions/Reasons associated with the Recommendation

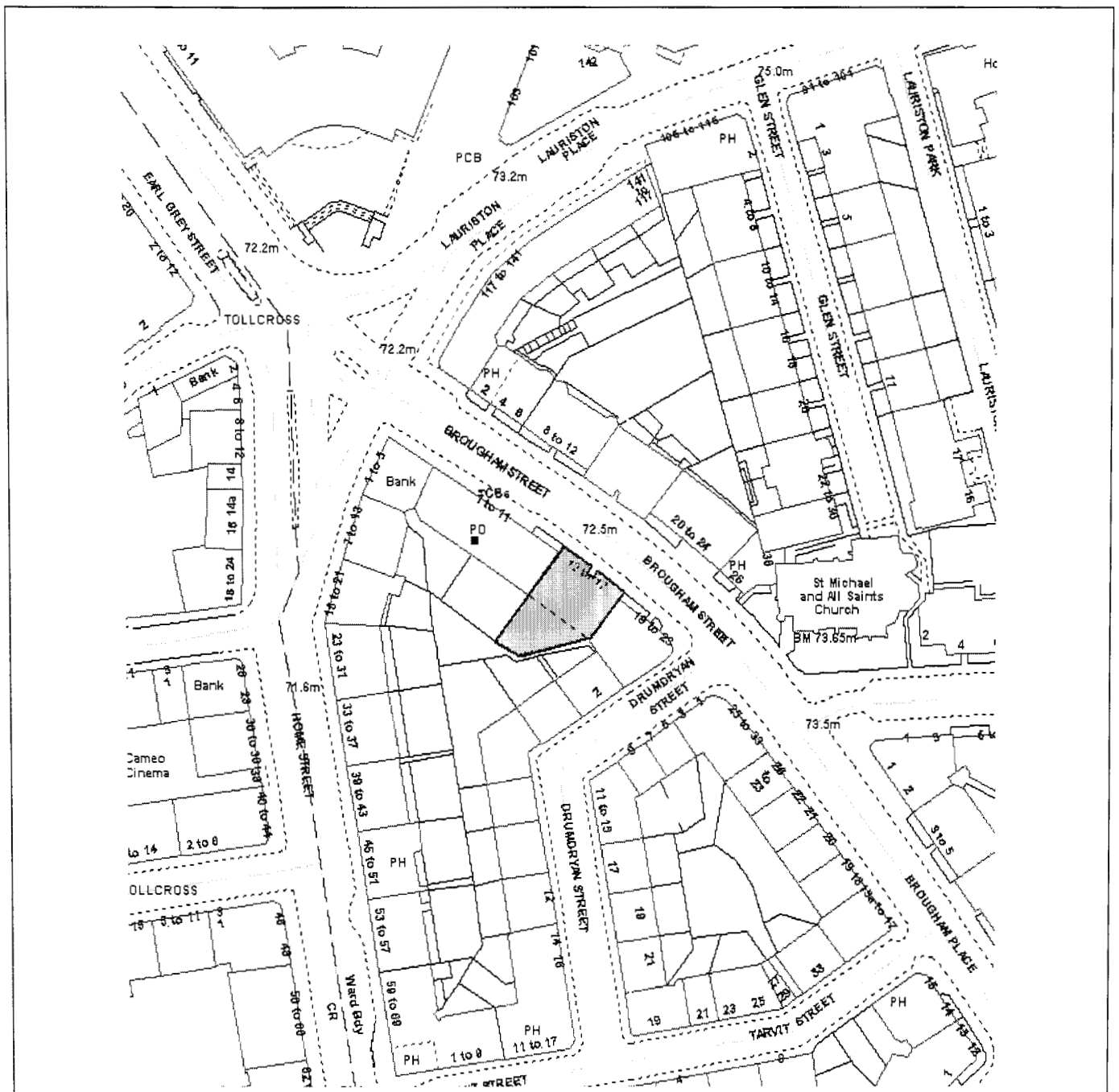
Recommendation

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

Reasons

1. The proposal is contrary to Central Edinburgh Local Plan Policy L3, in respect of Leisure Uses Restraint, and the Non Statutory Guidelines in respect of the location of Commercial Leisure Uses the within identified areas of sensitivity, as the proposal would set an unwelcome precedent and would lead to the introduction of an activity that would create extra noise and activity into the area during unsociable hours, namely 2000 to 2300, to the detriment of residential amenity.

End



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PLANNING APPLICATION

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Proposal	Amendment to opening hours - Extension of opening hours from 8 pm - 11 pm all week		
Application number:	05/00975/FUL	WARD	32- Tollcross

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