

**Planning Permission 12/00289/FUL
at
4 - 5 Parsons Green Terrace
Edinburgh
EH8 7AN**

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

1 Purpose of report

To consider application 12/00289/FUL, submitted by Owens Smith Developments LLP. The application is for: **Change of Use to form hot food takeaway from butchers shop.**

It is recommended that this application be **GRANTED** by Committee.

2 The Site and the Proposal

Site description

The site is a vacant butchers shop located on the corner of Parsons Green Terrace. There are a number of commercial uses within the immediate area with residential properties above.

The property does not lie within a conservation area and is not a listed building.

Site History

16 December 2011 - Planning application was withdrawn for a change of use to form 1 bedroom flat to the rear hot food take away to the front of the shop. This was due to concerns over the proximity of the hot food takeaway to the adjacent residential properties (11/03359/FUL).

13 January 2012 - Planning permission granted for a change of use from shop to form one bedroom flat at the rear and office (class 4) at the front (11/03978/FUL).

Pre-Application Process

There is no pre-application process history.

Description Of The Proposal

The proposal is for a change of use from vacant butchers shop (class 1) to a hot food takeaway. The proposed hours of operation are 11am until 11pm. The applicant will utilise the existing internal chimneys to ventilate the property. No external alterations are proposed.

The applicant has submitted a supporting statement for the proposal. This is available to view on the Planning and Building Standards Portal.

3. Officer's Assessment and Recommendation

Determining Issues

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 principle of the proposed use is acceptable;
- b) the proposal will adversely affect residential amenity; and
- c) will have an adverse impact on road safety.

a) The proposal is not located within a defined shopping frontage and is therefore subject to Policy Ret 11. 'Alternative Use of Shop Units in Other Locations' which sets the criteria for assessing alternative use of shop units. This policy requires the proposals to be assessed in terms of whether or not the change of use will be compatible with the character of the area. The character of the area comprises a number of mixed uses ranging from public houses, newsagents, offices and hot food takeaways, some of which operate late into the evening. The change of use would not be out of character with other uses within this cluster of commercial uses. The unit is located on a main arterial route out of the City and is not in an area of restriction as identified in the Non Statutory Guideline on Food and Drink Establishments.

The proposed change of use is acceptable in principle.

b) Policy Hou 8 and Ret 12 of the Edinburgh City Local Plan determines that changes of use will not be permitted where they would have a materially detrimental effect on the living conditions of nearby residents.

The application site is located on the ground floor with residential properties immediately above. Environmental Assessment has stated that given the location of the application premises on a well trafficked, main arterial route into the City Centre any external noise and disturbance associated with the proposed hot food takeaway is unlikely to impact on residential amenity. They concluded that they have no objections to the proposal subject to conditions relating to noise, ventilation and deliveries.

The proposed conditions need to meet the six tests for conditions as outlined within the Scottish Governments Circular 4/1998, 'Use of Conditions in Planning Permissions'.

The application of conditions to restrict the transmission of vocals and music is considered unreasonable as where there is an impact on neighbouring properties there are more stringent provisions within other legislation which control noise and anti social behaviour. Inaudibility is not a test that can be applied in assessing a statutory nuisance. The indication that this can be controlled through planning control renders the condition as excessive.

The control of deliveries and collections, including waste, are out with the control of the applicant and is therefore unreasonable and unenforceable. It should be noted that the application site is located on a major thoroughfare which is characterised by commercial uses at ground floor with residential above. The need to restrict delivery hours in this instance is unnecessary as the other business premises are not subject to these conditions.

Any additional noise resulting from the proposed change of use would be minimal and the effect on neighbouring residential amenity would be negligible, as such it is considered that the amenity of residential occupiers will be maintained.

The agent has confirmed that they can achieve 30 air changes per hour via the internal flue at ridge level. The requirement for this as a condition is unnecessary as any ventilation system could be removed without the benefit of planning permission. Whilst the conditions relating to odours are deemed unnecessary it is considered that if there are any ongoing issues relating to this it would be covered under the Environmental Protection Act and would be pursued by Environmental Services. The conditions covering sound insulation, noise from plant and machinery and deliveries are deemed sufficient to protect amenity.

c) It is not considered that the proposal results in a significant increase in traffic. It is a main route well served by public transport and notwithstanding the parking restrictions there are no road safety issues.

In conclusion, the proposals comply with the development plan and non statutory guideline. There are no material considerations that outweigh this conclusion.

REASON FOR DECISION

The proposal is in accordance with the Central Edinburgh Local Plan policy and relevant non statutory guidelines subject to the conditions recommended. There are no material considerations that outweigh this conclusion

John Bury
Head of Planning & Building Standards

Contact/tel	Lynsey Townsend on 0131 529 3905
Ward affected	A14 - Craigentenny/Duddingston
Local Plan	Edinburgh City Local Plan
Statutory Development Plan Provision	Urban Area
Date registered	2 February 2012
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 Standards Portal: www.edinburgh.gov.uk/planning.

If you require further information about this application you should contact the following Principal Planner, Paul Devaney, 0131 529 3911, paul.devaney@edinburgh.gov.uk

If this application is not identified on the agenda for presentation and you wish to request one at the Committee meeting, you must contact Committee Services by 9.00a.m. on the Tuesday preceding the meeting. Contact details can be found in the Committee agenda papers.

Application Type Planning Permission
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Consultations, Representations and Planning Policy

Consultations

Environmental Assessment

The application proposes the change of use of a retail premises to a hot food take-away. Residential properties are situated above and to the west with a residential stair situated to the east.

The agent for the application has confirmed that the kitchen ventilation will meet the requirements of this Department by attaining 30 air changes per hour with odours vented via an internal flue to chimney pot level. A condition will be recommended which requires the ventilation to operate in association with the requirements of this Department.

Historically, the Council has received noise complaints from the occupants of residential properties who are situated above or adjacent to operational hot food take-away premises. Complaints from hot food take-away premises received by the Council in the past have related to music, deliveries and collections, plant, general operational noise and vibration and external noise and disturbance from patrons utilising the premises. However, it is the opinion of this Department that both hot food take-away and residential premises can co-exist without complaint of noise as long as the take-away premises and associated operations are in compliance with planning conditions which are designed to protect residential amenity. Therefore, this Department will recommend appropriate conditions relating to the operations and premises requirements to protect the residential amenity of surrounding residential properties.

Additionally, the operation of hot food take-away premises can also cause noise and disturbance to affect the occupants of surrounding residential properties when patrons arrive at and depart from the take-away premises. This can be particularly accentuated during the later evening hours due to the drop off in ambient noise levels which can mask such noise sources at peak times. It is therefore important that hot food take-away premises are only sited in appropriate locations. Such locations tend to be well trafficked, busy

thoroughfares into and out of Edinburgh where ambient noise levels are high during the hours of operation. The proposed location is situated on London Road and is a main arterial, well trafficked route into and out of central Edinburgh with high levels of ambient noise existing into the late evening hours. This Department is therefore of the opinion that external noise and disturbance associated with the operation of the premises is unlikely to impact upon the localised residential amenity.

The application proposes to operate until 11pm and if the food premises operator wishes to carry out activities after 11pm they will be required to apply for a late hours catering licence. The licence allows for the control of subsequent operating hours after 11pm. Thus street noise and disturbance associated with the premises after 11pm can be controlled in this manner.

Therefore, Environmental Assessment has no objections to this proposed development subject to the following conditions:

- (i) The kitchen shall be ventilated by a system capable of achieving 30 air changes per hour, and the cooking effluvia shall be ducted to chimney pot level to ensure that no cooking odours escape or are exhausted into any neighbouring premises.*
- (ii) The ventilation system shall be installed, tested and operational 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 premises.

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.

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.

Deliveries and collections, including waste collections, to be restricted to 0700 – 2100 hours Monday to Saturday.

Should you wish to discuss the above, please do not hesitate to contact me on 0131 469 5802.

Addendum

As stated above, Environmental Assessment has no objections to the approval of the application subject to the recommended conditions being attached to any consent.

NB. However, should all of the above conditions not be applied to any consent, Environmental Assessment will require to review the recommendation. In such event, it is imperative that this is notified immediately to the Environmental Assessment case officer.

Transport Planning

No objection.

Representations

The proposal was advertised on 10 February 2011. A total of 29 letters have been received. One is from an MSP, three from the local Councillor and 25 from the neighbouring residents.

The main grounds of objection are as follows:-

- a) There are too many takeaways in the area, taken in account of assessment (a)
- b) the affect on neighbours in terms of noise and disturbance, taken in account of assessment (b).
- c) Increased traffic, taken in account of assessment (c)

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

Edinburgh City Local Plan - Urban Area

Relevant Policies:

Relevant policies of the Edinburgh City Local Plan.

Policy Hou 8 (Inappropriate Uses in Residential Areas) establishes a presumption against development which would have an unacceptable effect on the living conditions of nearby residents.

Policy Ret 11 (Alternative Use of Shop Units in Other Locations) sets out the factors to be taken into account in assessing the change of use of a shop unit outwith defined centres.

Policy Ret 12 (Food and Drink Establishments) sets criteria for assessing the change of use to a food & drink establishment.

Relevant Non-Statutory Guidelines

Non-statutory guidelines 'FOOD AND DRINK ESTABLISHMENTS' provide guidance on the location of such uses and set out conditions to control their impact.

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**Conditions/Reasons associated with the Recommendation
Recommendation**

It is recommended that this application be Granted by Committee, subject to the conditions, reasons and informatives stated below.

Conditions:-

1. 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.

Reasons:-

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

Infomatives

It should be noted that:

1. The development hereby permitted shall be commenced no later than the expiration of three years from the date of this consent.
2. No development shall take place on the site until a 'Notice of Initiation of Development' has been submitted to the Council stating the intended date on which the development is to commence. Failure to do so constitutes a breach of planning control, under Section 123(1) of the Town and Country Planning (Scotland) Act 1997.
3. As soon as practicable upon the completion of the development of the site, as authorised in the associated grant of permission, a 'Notice of Completion of Development' must be given, in writing to the Council.

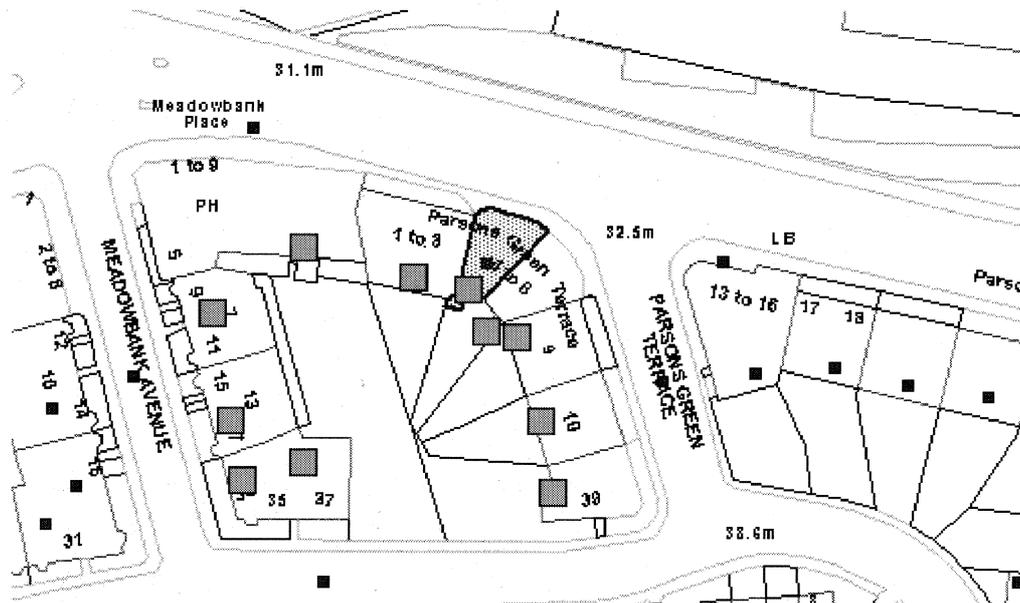
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Appendix C

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Location Plan

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