

# Development Management Sub Committee

Wednesday 16 January 2013

**Application for Planning Permission 12/03582/FUL  
At 350 Morningside Road, Edinburgh, EH10 4QL  
Installation of new shop front. Change of use from  
consented use, use class 3 restaurant, to hot food take away  
(In retrospect)**

Item number	3.7
Report number	
Wards	A10 - Meadows/Morningside

## Links

<a href="#">Policies and guidance for this application</a>	LPC, CITH8, CITD11, CITE6, CITR9, CITR12, NSFODR, OTH, CRPMON,
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# Executive summary

## **Application for Planning Permission 12/03582/FUL At 350 Morningside Road, Edinburgh, EH10 4QL Installation of new shop front. Change of use from consented use, use class 3 restaurant, to hot food take away (In retrospect)**

### Summary

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The proposals comply with the development plan and the Council's non-statutory guidance and are acceptable. The proposals will preserve and enhance the character and appearance of the conservation area and will not adversely affect residential amenity or road safety and there are no material considerations that outweigh a grant of conditional planning permission. Residential amenity will be protected by the application of appropriate planning conditions.

### Recommendations

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It is recommended that this application be Granted subject to the details below (in section 3 of the main report).

### Financial impact

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There are no financial implications to the Council.

### Equalities impact

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This application has no impact in terms of equalities or human rights.

### Sustainability impact

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This application is not subject to the Edinburgh Standards for Sustainable Building

### Consultation and engagement

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#### **Pre-Application Process**

There is no pre-application process history.

#### **Publicity summary of representations and Community Council comments**

The proposals were advertised on 26th October 2012 and attracted one letter of objection and a petition with nine signatures.

The material points of concern are:

- a) The signage is not in keeping with the area.
- b) Over intensification of uses in the area.
- c) Residential amenity issues.
- d) Transport and parking issues.

## Background reading / external references

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- To view details of the application go to
- [Planning and Building Standards online services](#)

## **Application for Planning Permission 12/03582/FUL At 350 Morningside Road, Edinburgh, EH10 4QL Installation of new shop front. Change of use from consented use, use class 3 restaurant, to hot food take away (In retrospect)**

### **1. Background**

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#### **1.0 Site description**

The application site is a ground floor shop unit located on the west side of Morningside Road. The area is characterised by commercial properties at the ground floor with residential above. The site is located on a main Class A road where the restrictions are a single yellow line operating Monday to Friday until 6.00pm there are also six parking bays immediately outside the application property.

This property is located within the Morningside Conservation Area.

#### **1.2 Site History**

06/04/2010 - Planning Permission granted for a change of use from retail (class 1) to food and drink (class 3).

### **2. Main report**

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#### **2.1 Description Of The Proposal**

The proposal is for a change of use to a hot food take away and the installation of a new shop front in retrospect.

#### **2.2 Determining Issues**

Do the proposals preserve the building or its setting or any features of special architectural or historic interest which it possesses? If not, there is a presumption against the granting of consent. For the purposes of this issue, preserve, in relation to the building, means preserve it 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 harm the character or appearance of the conservation area? If they do, there is a strong presumption against granting of permission.

#### **2.3 Assessment**

To address these determining issues, the Committee needs to consider whether:

- a) the scale and design of the proposals are appropriate to preserve or enhance the character and appearance of the conservation area;
- b) there are any adverse impacts on the vitality and viability of the local shopping centre;
- c) there are any adverse impacts upon residential amenity;
- d) the proposal will have an adverse impact on transport infrastructure and road safety;
- e) any impacts on equalities or human rights are acceptable; and
- f) comments raised have been addressed.

a) Impact on Character and Appearance of the Conservation Area

*The Morningside Conservation Area character appraisal states that Morningside Road is a main through route which is a place of activity in terms of social and commercial activities. It is the main shopping street for the area containing a full range of shops and services.*

The proposed shop front alterations have resulted in the unit returning to a more traditional shopfront by moving the doorway from the central position and returning a timber painted stallriser and aluminium glazing frames. The large fascia has been removed and replaced with a smaller one which replicates the adjoining units. The advert does not form part of the assessment of this application and requires advertisement consent. The frontage does not detract from the character and appearance of the conservation area and is in keeping with more of the traditional shopfronts found in this area.

b) Impact on Vitality and Viability of Local Shopping Centre

The site lies within a Primary Frontage in the Town Centre. The site has an existing consent for a Class 3 Restaurant Use (10/00887/FUL) and the principle of changing the use from retail to non retail was accepted at the time of this application. Therefore the non retail use is acceptable in terms of Policy Ret 9 (a). It is considered that the hot food take away would bring what was a vacant unit back into use and would complement the character of the area which would contribute to the vitality and viability of the area.

c) Impact on Residential Amenity

The mixture of residential and commercial uses on the street make up the areas character. This part of Morningside Road is predominantly retail, although a number of other hot food takeaways operate close to the application site. Pizza Hut is located approximately 38 metres, Pizza king approximately 54 metres and the fish and chip shop approximately 70 metres from the application site. Policy Ret 12 seeks to prevent an excessive concentration of such uses which may be detrimental to the living conditions for nearby residents and the Non Statutory Guideline on Food and Drink Establishments restrict such uses within areas of restrictions by controlling hours of operations. Environmental Health have received no complaints regarding the operations of the takeaway during this period and the location is a reasonably well trafficked area and a main thoroughfare route during daytime hours. The application premises and mix of uses within this part of Morningside Road do not lie within an area of restriction and it is not considered this additional hot food use will result in an excessive concentration of these uses within the area. It is therefore considered that the application premises will not significantly add to the existing street noise and disturbance of the local area and will not result in a use that is detrimental to residential

amenity therefore complying with Policy Hou 8, Ret 12 and the Non Statutory Guideline. Environmental Health have no objections to the application subject to conditions attached on noise, ventilation and deliveries. An informative has also been added making the applicant aware that only exempt appliances/authorised fuel can be operated within Edinburgh.

The proposed conditions need to meet the six tests for conditions as outlined within the Scottish Government's 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 unreasonable 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 requirement for a condition to control the ventilation within the kitchen 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.

#### d) Impact on Transport Infrastructure and road Safety

Morningside Road is a main arterial route into the City Centre and has a high traffic volume. The issue of increase in vehicle movements associated with the delivery element of the takeaway is one that causes great concern to the local residents. The current restrictions on the street are up to 6.00pm in the evenings Monday to Friday with six parking bays immediately outside the application site. It is well established in planning law that it is not competent for planning authorities to control the number of vehicles through the use of planning conditions. It is not legally possible to stop vehicles waiting on the road before accessing the premises and this would render any such condition meaningless. The issues relating to the illegal parking of vehicles within the public road are matters to be pursued by the police.

It is accepted that the original planning permission for the restaurant use was subject to a condition restricting the hours of deliveries but needs to be considered as part of this application whether this is necessary. The application site is located within an area where there are a large number of other commercial businesses. Deliveries and collections associated with these businesses are unrestricted and not subject to planning conditions. Transport Planning has assessed the proposals and although it does not anticipate that the changes will have a significant impact. It has no objections to the proposals.

#### e) Equalities and Human Rights Impacts

The proposed change of use and physical alterations will not have any impacts on either equalities or human rights.

#### f) Representations and Community Council comments

The Community Council has not made any representations regarding this proposal. Planning legislation specifically allows for consideration of applications in retrospect and the application must be considered on the same basis as any other planning application. Matters concerning presentation of trade waste, over provision and pest control are more appropriately dealt with by other regulatory controls as are traffic offences. The signage does not form part of this application. On balance it is considered that the change from a commercial use as restaurant to hot food takeaway is acceptable on this main thoroughfare within a defined shopping centre that is characterised by commercial uses at ground floor level with residential above. It is considered that amenity concerns and road safety issues raised provide insufficient grounds to withhold an express grant of planning permission.

#### CONCLUSION

In conclusion, the proposals are for an appropriate use that will not have a detrimental impact upon the character and appearance of the existing building or the Morningside Conservation Area and will not have a detrimental impact upon residential amenity or road safety.

There are no material considerations which outweigh this conclusion.

It is recommended that the Committee approves this application, subject to conditions relating to noise and vibration.

### **3. Recommendations**

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**3.1** It is recommended that this application be Granted subject to the details below

#### **3.2 Conditions/reasons**

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.

## Informatives

It should be noted that:

1. The applicant must be made aware that only exempt appliances/authorised fuel can be operated/used in Edinburgh.

<b>Statutory Development Plan Provision</b>	Central Edinburgh Local Plan - Primary Frontage in Town Centre.
<b>Date registered</b>	5 October 2012
<b>Drawing numbers/Scheme</b>	01-05 Scheme 1

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## Links - Policies

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### **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 Des 11 (Alterations and Extensions) sets criteria for assessing alterations and extensions to existing buildings.

Policy Env 6 (Conservation Areas Development ) sets out criteria for assessing development in conservation areas.

Policy Ret 9 (Alternative Use of Shop Units – Primary Frontages in the City Centre and Town Centres) sets criteria for assessing the change of use of a shop unit to a non-shop use in primary frontages in the City Centre and town 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.

#### **Other Relevant policy guidance**

The Morningside Conservation Area Character Appraisal emphasises that the architectural character of the conservation area is largely composed of Victorian and Edwardian villas and terraces which form boundaries to extensive blocks of private open space. The villa streets are complemented by the profusion of mature trees, extensive garden settings, stone boundary walls and spacious roads. The villas which are in variety of architectural styles are unified by the use of local building materials.

# Appendix 1

## Consultations

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### ENVIRONMENTAL ASSESSMENT

*This application is in retrospect as the takeaway has been operating at this location for a short period of time. Environmental Health have received no complaints regarding the operations of the takeaway during this period of operation. There is a Sainsbury's express located at 145 Morningside Road which opens until 11pm, a bakery neighbouring to one side and residential above. There is a Pizza Hut takeaway on the corner of Millar Crescent/Morningside Road.*

*The applicant has provided details of the ventilation system in use and it should meet our recommended ventilation condition which will ensure that odours are not allowed to escape or be exhausted into any neighbouring premises.*

*This Department will also recommend conditions to control noise from within the application premises to ensure that the residential property above is protected from noise.*

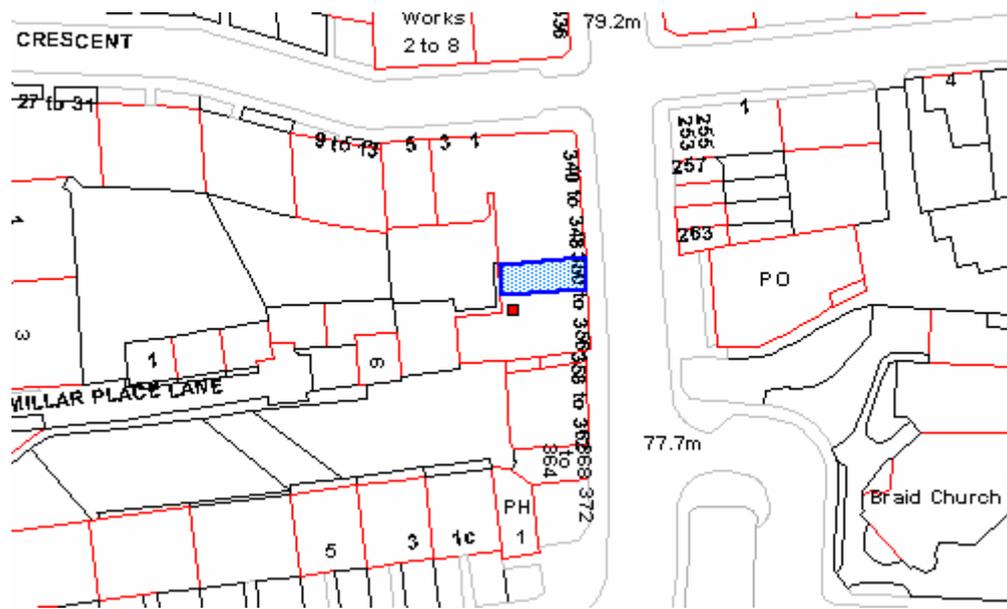
*The location is a reasonably well trafficked area and a main thoroughfare route during daytime hours. A mini market and takeaway are already operational in the vicinity they are situated on either side of the application premises. Therefore, it is unlikely that the application premises will significantly add to the existing street noise and disturbance of the local area. Additionally, the premises will be required to apply for a late hours catering licence to operate after the hours of 11pm.*

*Its not a planning concern, however, under the Clean Air Act Edinburgh has been declared a smoke control area. It is an offence to emit smoke from a 'non exempt' wood-fired oven if located in a designated smoke control area. It is also an offence to acquire an "unauthorised fuel" for use within a smoke control area unless it is used in an "exempt" appliance ("exempted" from the controls which generally apply in the smoke control area). The wood-fired oven installed by the applicant is not exempt, we are currently investigating this issue with the Department for Environment Food and Rural Affairs. The applicant has indicated that they are in the process of having the wood-fire oven tested to see if it can gain exempt status. An informative will be recommended for this issue.*

### TRANSPORT PLANNING

*No objections to the proposed application.*

## Location Plan



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