

Development Management Sub Committee

Wednesday 25 June 2014

**Application for Planning Permission 14/01398/FUL
At 76 Colinton Mains Drive, Edinburgh, EH13 9BJ
Installation of external ducts to side elevation, new entrance
door arrangement, removal of condition 6 of planning
permission reference 09/00897/FUL to permit opening hours
until 11pm.**

Item number	4.4
Report number	
Wards	A08 - Colinton/Fairmilehead

Summary

The proposals do not comply with the development plan and relevant non-statutory guidelines and there is a significant impact on character and neighbouring residential amenity.

Links

Policies and guidance for this application	LPC, CITD11, CITH8, CITR12, NSG, NSBUS,
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Report

Recommendations

1.1 It is recommended that this application be Refused for the reasons below.

Background

2.1 Site description

The application site is a commercial unit at ground floor level within a row of commercial units on Colinton Mains Drive. There are residential properties above these commercial units. The surrounding area is predominantly residential and the units are not within a defined town or local centre.

2.2 Site History

An enforcement investigation in connection with the use of the property as a hot food takeaway led to the application below being submitted. (Reference: 09/00045/ECOU).

17 September 2009. Planning permission was granted for a change of use from class 1 to hot food take-away (in part retrospect) (Reference: 09/00897/FUL).

A condition was added to this application to restrict the hours of operation from 08:00 until 18:00 daily. The reason given for the condition was "In order to safeguard the amenity of neighbouring residents and other occupiers".

Neighbouring shop unit with applicable history:

88 Colinton Mains Drive

16 August 2000 Planning application refused for a change of use from retail to hot food takeaway ref: 00/01660/FUL

08 May 2001 Planning appeal dismissed for the change of use from retail to hot food takeaway ref: P/PPA/230/331. The appeal was dismissed owing to the likely impacts upon neighbouring residential amenity.

Main report

3.1 Description of The Proposal

The application is to:

- install two 200mm diameter ventilation ducts to the side elevation of the property, to just above the height of the existing chimney;
- extend the opening hours of the property from 8am until 6pm to 8am until 11:00pm; and

- replace the existing door and window arrangement with a new arrangement in the same location.

3.2 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?

3.3 Assessment

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

- a) neighbouring amenity will be adversely affected;
- b) the proposals will adversely affect the character of the surrounding area in terms of scale, form, position and design;
- c) the proposals would have an adverse impact on parking or road safety;
- d) the proposal will have any detrimental impact on equalities and human rights; and
- e) the representations raise issues to be addressed.

a) Amenity

Policy Ret 12 'Food and Drink Establishments' states that the change of use to food and drink establishments will not be permitted where likely to lead to an unacceptable increase in noise, disturbance, on-street activity or anti-social behaviour to the detriment of living conditions for nearby residents. The non-statutory guidance for businesses reiterates this information.

On this basis the previous application was granted with a restriction on the opening hours to ensure the unit would be day time use only and there would be no adverse impact on residential amenity. The shops in this parade are in a residential area and have residential properties above. The shops are generally closed by 18:00 with the exception of one unit that stays open until 20:00 and one that stays open until 21:00.

The increased opening hours would add to the variety of choice in terms of night time availability for hot food take-away premises in the local area. However, this does not outweigh the concerns regarding amenity and character. There is a significant adverse impact on neighbouring residential amenity.

Environmental Assessment does not support the proposed hours of operation as the impact on residential amenity increases with late night opening. This impact affects surrounding properties as well as the one located directly above the application site. The proposal to alter the opening hours until 23:00 would have an adverse impact on residential amenity in terms of noise and disturbance, which is contrary to policy Ret 12 of the Edinburgh City Local Plan and the non-statutory 'Guidance for Businesses'.

b) Character

Planning permission has been granted for the change of use of the ground floor unit to a hot food takeaway. This was on the basis that, amongst other things, adequate ventilation would be provided within the building. The applicant has stated that the drawings in this previous application are incorrect and it is not possible to provide ventilation internally. However, the premises are in a residential area and the ventilation ducts, which are not typical features of residential properties, or the commercial units below them, would be located on a fairly open/exposed side gable. They would have an adverse impact on visual amenity and the character of the area.

There is a significant adverse impact on character.

c) Parking and Road Safety

The proposal is located within a parade of shops with a dedicated parking area. A hot food takeaway would not have any significant additional impact on parking or road safety than a shop use. It is acknowledged that car movements in the evening (between nine and eleven) would be increased, adding to the adverse impact on residential amenity. However, the existing shop units do not have restrictions on the hours of operation.

d) Equalities and Human Rights

This application was assessed in terms of equalities and human rights. No impact was identified.

e) Public Comments

Material representations -

Objections:

- Impact on residential amenity - noise, smell, disturbance, anti-social behaviour - this has been addressed in section 3.3b)
- Impact on parking and road safety - this has been addressed in section 2.3c)

Support:

- Support for the growth, variety and choice in Colinton Mains - this has been addressed in section 2.3a)

CONCLUSIONS

The proposals do not comply with the development plan and relevant non-statutory guidelines and there is a significant impact on character and neighbouring residential amenity.

The proposals are not acceptable.

There are no material considerations which outweigh this conclusion.

It is recommended that this application be Refused for the reasons below

3.4 Conditions/reasons/informatives

Conditions:-

Reasons:-

1. The proposal is contrary to Edinburgh City Local Plan policy Ret 12 in respect of Food and Drink Establishments and the non-statutory 'Guidance for Businesses' as the proposed opening hours would cause noise and disturbance to neighbouring properties, to the detriment of residential amenity.
2. The proposal is contrary to Edinburgh City Local Plan Policy Des 11 in respect of Alterations and Extensions, as the addition of two metal flues on an open gable would be out of character with the property and surrounding area, to the detriment of visual amenity and the character of the area.

Financial impact

4.1 The financial impact has been assessed as follows:

There are no financial implications to the Council.

Risk, Policy, compliance and governance impact

5.1 Provided planning applications are determined in accordance with statutory legislation, the level of risk is low.

Equalities impact

6.1 The equalities impact has been assessed as follows:

The application has been assessed and has no impact in terms of equalities or human rights.

Sustainability impact

7.1 The sustainability impact has been assessed as follows:

This application is not subject to the sustainability requirements of the Edinburgh Design Guidance.

Consultation and engagement

8.1 Pre-Application Process

There is no pre-application process history.

8.2 Publicity summary of representations and Community Council comments

The application was advertised on 18 April 2014. Twenty one representations and one petition with fourteen signatures were received which raised general comments and objections to the application.

One petition was received in support of the application. This was signed by 112 people. One representation queried the validity of this petition. However this comment is not material to the planning application and there is no evidence to support the claims.

The letters of representation and petitions raised the following material issues:

Objections:

- Impact on residential amenity - noise, smell, disturbance, anti-social behaviour
- Impact on parking and road safety

Support:

- Support for the growth, variety and choice in Colinton Mains

Non-material points were made regarding structural problems and health dangers.

Colinton Community Council made comments regarding the accuracy of the drawings available to view online.

A full assessment of the representations can be found in the main report in the Assessment section.

Background reading / external references

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

**Statutory Development
Plan Provision**

The application site is located within urban area covered by the Edinburgh City Local Plan.

Date registered

10 April 2014

Drawing numbers/Scheme

1,

Scheme 1

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Links - Policies

Relevant Policies:

Relevant policies of the Edinburgh City Local Plan.

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

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 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 'GUIDANCE FOR BUSINESSES' provides guidance for proposals likely to be made on behalf of businesses. It includes food and drink uses, conversion to residential use, changing housing to commercial uses, altering shopfronts and signage and advertisements.

Appendix 1

Consultations

Environmental Assessment

The applicant proposes a change to the ventilation arrangement of a hot food takeaway - and the removal of an existing condition on hours of use - to allow opening to 11pm. The property is located directly below a residential dwelling with other commercial uses adjacent to the east.

Environmental Assessment welcomes the proposal of an improved ventilation system in this hot food takeaway. However, the agent has failed to provide information regarding the specifics of the system, i.e. the make and model of kitchen extract fan, its noise output or operational capacity.

Environmental Assessment does not support the proposed hours of operation as the potential impact on amenity of a hot food takeaway on neighbouring residential properties increases with late night opening. It is accepted that the applicant is in ownership of the residential dwelling above the application property and that this may help avoid some issues. However, this is not a solution as there is nothing to stop ownership changing in the future.

Environmental Assessment recommends that this application be refused due to lack of information.

Location Plan



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