

DECISION NOTICE AND REPORT OF HANDLING

Application address - 50 Nicolson Street Edinburgh EH8 9DT

Application Ref. No - 14/01864/FUL

Review Ref No - 14/00147/REVREF

Review Lodged Date 25.11.2014

COPY

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Date: 22.01.2015

Your ref:

TOWN AND COUNTRY PLANNING (SCOTLAND) ACTS

**DEVELOPMENT MANAGEMENT PROCEDURE (SCOTLAND) REGULATIONS
2013**

Change of use from Class 11 (Assembly and Leisure) to Sui Generis (Public House) including external alterations.

At 50 Nicolson Street Edinburgh EH8 9DT

Application No: 14/01864/FUL

DECISION NOTICE

With reference to your application for Planning Permission registered on 13 May 2014, this has been decided by **Local Delegated Decision**. The Council in exercise of its powers under the Town and Country Planning (Scotland) Acts and regulations, now determines the application as **Refused** in accordance with the particulars given in the application.

Any condition(s) attached to this consent, with reasons for imposing them, or reasons for refusal, are shown below;

Conditions:-

Reasons:-

1. The proposals are contrary to Edinburgh City Local Plan Policies Ret 12, in respect of Food and Drink Establishments, and Hou 8, in respect of Inappropriate Uses in Residential Areas, as interpreted using the non-statutory Guidance for Businesses, as the change of use to a public house would, given inadequate means of noise mitigation and ventilation to the premises, lead to an unacceptable increase in noise, odours and disturbance having a material detrimental effect on the living conditions for nearby residents both above and adjoining the application premises.

Please see the guidance notes on our [decision page](#) for further information, including how to appeal or review your decision.

Drawings 01-03+05-07, represent the determined scheme. Full details of the application can be found on the [Planning and Building Standards Online Services](#)

The reason why the Council made this decision is as follows:

The proposals do not comply with the development plan and non-statutory guidelines and would have an adverse impact on residential amenity.

This determination does not carry with it any necessary consent or approval for the proposed development under other statutory enactments.

Should you have a specific enquiry regarding this decision please contact John Maciver directly on 0131 529 3918.

D R Leslie

David R. Leslie

Acting Head of Planning and Building Standards

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NOTES

1. If the applicant is aggrieved by the decision to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within three months beginning with the date of this notice. The notice review should be addressed to the City of Edinburgh Planning Local Review Body, G2, Waverley Court, 4 East Market Street, Edinburgh, EH8 8BG.

2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.

Report of Handling

Application for Planning Permission 14/01864/FUL

At 50 Nicolson Street, Edinburgh, EH8 9DT

Change of use from Class 11 (Assembly and Leisure) to Sui Generis (Public House) including external alterations.

Item	Local Delegated Decision
Application number	14/01864/FUL
Wards	A15 - Southside/Newington

Summary

The proposals do not comply with the development plan and non-statutory guidelines and would have an adverse impact on residential amenity.

Links

<u>Policies and guidance for this application</u>	LPC, CITD11, CITE6, CITH8, CITR9, CITR12, CITT4, NSG, NSBUS, NSP, OTH, CRPSSI,
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Report of handling

Recommendations

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

Background

2.1 Site description

The application site comprises part of the ground floor of a four-storey tenement block, and the whole of the two-storey rear section of the building, situated on the eastern side of Nicolson Street to the south of its junction with Hill Place.

The property is presently used as a bingo hall. It includes a ground floor entrance, situated to the left hand side of the front elevation of a four-storey tenement block, together with a fire escape exit to the right hand side of the front elevation. In between these, on the ground floor, there is a newsagent's shop, the access door to the three-storeys of residential flats above, and an amusement arcade.

To the rear of the tenement is a large two-storey building under a pitched roof that provides a first-floor gallery area, ground floor hall and a basement floor space.

To the north and south of the Nicolson Street entrance and exits are retail and other associated commercial uses at the ground floor levels and residential flatted dwellings above. The properties fronting Hill Place are predominantly the Royal College of Surgeons 'Adamson Centre'.

This application site is located within the Southside Conservation Area.

2.2 Site History

The relevant site history is:

24 June 1986 - Planning permission was granted for a change of use from a cinema to a mixed use as a licensed restaurant, conference/cinema/theatre use (Ref 580/86/14).

3 November 1986 - Planning permission was granted for a change of use from a cinema to a betting office (Ref 1691/86).

12 December 1990 - Planning permission was refused for a change of use from a bookmaker's office to a licensed venue for live music (Ref 2143/90/34).

The reason being: *That the proposal would result in the introduction of licensed premises under and in the midst of housing, contrary to the policy of the local authority and to the detriment of neighbouring residential property through increased noise and disturbance.*

20 November 1991 - Planning permission was granted for a change of use from a betting office to a bingo hall (Ref A/02149/91).

Conditions attached: *(E09) The design and installation of any plant, machinery or equipment being 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.*

and (E10) The soundproofing of the premises and the control of all amplified sound including music, speech, electronic video games or other amusement machines, shall be such that no amplified sound is audible within nearby residential or commercial property.

27 April 1994 - Planning permission was granted for the alteration of the property frontage (Ref 94/00541/FUL).

2 July 2013 - A certificate of lawfulness was granted for the use of premises as dance hall or discotheque (Class 11 Assembly and Leisure) (Ref 13/01995/CLP).

Main report

3.1 Description Of The Proposal

The revised application seeks a material change of use of the premises from a bingo hall (Class 11 - Assembly and Leisure) to a public house (*sui generis*) including internal and external alterations.

Externally the alterations relate to the following. The removal of the large advertisement fascia, above the main entrance on the left-hand side of the frontage, and its replacement with a metal clad surround and silicone jointed glass panels above stained timber framed, bolding doors. It is also proposed to replace solid timber escape doors with a new metal cladding above to the existing escape doors to the right-hand side of the frontage.

To the rear of the building it is proposed to overhaul the existing felt roof and re-instate a roof light at the ridge on the southern roof slope. Also the two existing doorways, at the rear of the southern elevation, the left-hand side will be in-filled, on the right-hand side the existing escape door will be widened slightly and a new door, for the goods lift, will be installed immediately to the left of the widened escape door.

Within the building there is a ground floor area of some 256 square metres, including disabled toilet facilities, with an additional first-floor area of some 142 square metres; a total of 398 square metres. The existing basement area is to be reconfigured to provide customer toilets, kitchen, beer cellar and various storage areas.

The applicant proposes to operate the premises in accordance with its standard operational procedures of:

- Sundays to Wednesdays 07:00 hours to 00:30 hours; and
- Thursdays to Saturdays 07:00 hours to 01:30 hours;

within those hours the kitchen would operate from 07:00 hours to 23:00 hours
Sundays to Saturdays.

The applicant also provides (in a Planning Statement) general details relating to their standard operation in other premises; this is submitted as an indication of how they intend to operate these premises, if planning permission is granted.

The revised scheme related to internal alterations only.

3.2 Determining Issues

Do the proposals harm the character or appearance of the conservation area? If they do, there is a strong presumption against granting of 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?

3.3 Assessment

To address these determining issues, it needs to be considered whether:

- (a) the principle of the proposals are acceptable in this location;
- (b) the proposed scale, form, design and materials preserve or enhance the character and appearance of the conservation area;
- (c) the proposals affect road safety;
- (d) the proposals will result in an unreasonable loss of neighbouring amenity;
- (e) the proposals have any equalities or human rights impacts; and

(f) representations raised have been addressed.

a) The application site stands within a defined principle frontage within the Nicolson Street/Clerk Street town centre where policy Ret 9 seeks to control changes of use away from retail uses.

The site also stands within a defined 'area of restriction', as identified within the 'Guidance for Businesses'. Within such areas, in conjunction with policy Ret 12, the presumption is against new public houses; especially where they would lead to an unacceptable increase in on-street activity or anti-social behaviour or in an area where there is an excessive concentration of such uses to the detriment of living conditions for nearby residents.

In regard to the assessment of residential living conditions policy Hou 8 seeks to resist those developments, including changes of use, which would have a materially detrimental effect on the living conditions of nearby residents.

The existing use of the premises, as lawfully defined by the grant of a 'certificate of lawfulness' is for the use of the premises, including those uses as a dance hall or a discotheque; within Class 11 - Assembly and Leisure of the Town and Country Planning (Use Classes) (Scotland) Order 1997. As such the proposal would not result in a change away from an existing retail use.

Nonetheless, the premises are located, '*under and within the midst of housing*' as defined in the 'Guidance for Businesses' as;

'Under or in the midst of housing', means;

*a) where there is existing residential property above the application site or premises;
or*

b) where there is existing residential property immediately adjoining two or more sides of the building or curtilage comprising the application site. and

'Residential property', means; dwelling houses, flats or houses in multiple occupancy and includes any vacant units.

Accordingly, the proposed use would ordinarily be contrary to the provisions of policies Ret 12 and Hou 8, as supplemented by the 'Guidance for Businesses'.

However, as the existing lawful use of the premises would include such uses as a dance hall or a discotheque, this is also material in this assessment of this application.

Accordingly, the proposed use of the premises, subject to adequate mitigation measures being carried out to the fabric of the building and identified as part of a noise impact assessment for the property and adequate means of ventilation the proposed use would be appropriate at this location in principle.

b) South Side Conservation Area Character Statement

The buildings of the South Side are predominantly tenemental, with examples of Georgian and Victorian architecture in the Scottish style. Wallhead gables once common in many Scottish cities, are a particular feature of many buildings. The development of the area started in the late eighteenth century, although several villas predate this, with the construction of George Square, laid out as a spacious speculative housing development by James Brown in 1766. The expansion of the South Side continued into the nineteenth century with the construction of late Georgian squares (such as St Patrick Square and Hill Square); subsequent development resulted in a high density mix of flats, shops, pubs, schools and churches. The University of Edinburgh occupies much of the northern part of the conservation area with several significant buildings (e.g. Medical School and McEwan Hall) as well as more recent, and less sympathetic, academic buildings.

The proposed external alterations to the principle elevation of the property are relatively minor. The two, neon illuminated 'Bingo' signs are to be removed and the entrance door opened from dual doors to a folding system that permits full width opening. These changes, together with the glazed panels above and metal framing, would be beneficial to the existing appearance of the property within this part of the Southside Conservation Area.

The changes to the secondary escape door and the fascia above would also represent an improvement to the overall appearance of the building and this part of the streetscape.

The changes at the rear would have a limited visual impact being relatively contained by the neighbouring buildings. A representation has identified that the building is in need of some maintenance and repair and the applicant identifies their willingness to carry out the necessary works. These changes would also represent an improvement to the appearance and future viability of the building in this instance.

Overall, the changes would preserve the character and appearance of both the premises and this part of the wider conservation area.

c) Transport has raised no objections to the proposed change of use of the property at this location.

The concern raised at the potential dangers of the narrow width of the footway, in close proximity to a busy road, would be no worse than that of the potential existing position. As a Bingo Hall it is more likely that a greater percentage of the clientele would seek to enter and leave the premises within a short time period that would the proposed public house, albeit that the numbers may be different.

Nonetheless, within a defined town centre and a historic part of the city centre, narrow footways are characteristic and in the absence of any Transport concerns it would be inappropriate to resist the proposal on road safety grounds.

d) Environmental Assessment having considered the additional submissions provided with the application have raised concerns based on the size of proposal, the building fabric and proximity of residential properties that it is highly likely that noise would adversely impact upon the residential amenity of a number of neighbouring occupants to the site.

Equally, they have identified that the proposed installation of a carbon filtration commercial ventilation system, as the means of reducing cooking odours at the premises, would also be unacceptable. Such systems require continuous

maintenance to ensure their viability to remove odours. As a non-planning related matter to require the maintenance as a planning condition would not appropriate; resulting in a potential decrease in its viability over time. The proposed system is also proposed to terminate at a low level on the building, not the high, roof level necessary to allow the acceptable dispersal of odours.

Therefore, Environmental Assessment cannot support the application as it would adversely impact upon the neighbouring residential amenity.

Albeit that the representations place an emphasis on the residential character of the area the site is contained within a town centre location, as defined within the development plan. As such there is an existing pedestrian presence within the public road at the site, throughout the day and even into the late hours of the night. Planning cannot control public activity on the public road related to a specific grant of planning permission for the use of one building and policy seeks to steer application, such as this, towards defined town centre locations.

On-street activity and potential anti-social behaviour cannot be controlled through the planning process but would be appropriate for control by means of the licensing process; a necessary next step for the lawful operation of such a use.

Concern has also been identified with regard to air conditioning plant and any subsequent noise levels. No such plant is proposed in this application and, therefore, cannot be assessed at this time.

Overall, the proposed use of the premises as a public house, given the supporting information provided, would be unacceptable in this location as it would result in a detrimental impact on the existing levels of amenity presently enjoyed by the occupants of neighbouring residential properties within close proximity of the premises.

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

f) The public comments regarding those matters of principle are addressed in paragraph 3.3(a); those matters of road safety are addressed in paragraph 3.3(c); and those matters of amenity are addressed in paragraph 3.3(d).

Those non-material issues regarding; reference to the 'Edinburgh Alcohol and Drug Partnership' report, landownership/access rights and means of crowd control management; are not material to the planning determination of this application.

The proposals do not comply with the relevant Local Plan policies and non-statutory guidelines and there are no material considerations which outweigh this conclusion.

Refusal is recommended, for the reasons stated.

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

3.4 Conditions/reasons/informatives

Reasons:-

1. The proposals are contrary to Edinburgh City Local Plan Policies Ret 12, in respect of Food and Drink Establishments, and Hou 8, in respect of Inappropriate Uses in Residential Areas, as interpreted using the non-statutory Guidance for Businesses, as the change of use to a public house would, given inadequate means of noise mitigation and ventilation to the premises, lead to an unacceptable increase in noise, odours and disturbance having a material detrimental effect on the living conditions for nearby residents both above and adjoining the application premises.

Risk, Policy, compliance and governance impact

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

Equalities impact

5.1 The equalities impact has been assessed as follows:

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

Consultation and engagement

6.1 Pre-Application Process

There is no pre-application process history.

6.2 Publicity summary of representations and Community Council comments

The application was advertised on 23 May 2014 and attracted ten letters of representation. Eight letters from Old Town Community Council, the Old Town Association, Sarah Boyack MSP, Sheila Gilmore MP, Councillor Burgess and three neighbours were submitted objecting to the proposal; one letter from a neighbour was submitted neither objecting nor supporting the application and one letter from a neighbour was submitted supporting the proposal.

The material points of objection/concern are:

- Issues of principle:
 - the suitability of this location, in a busy and highly populated part of the city, for a 'Super-Pub';
 - the area has too many licensed premises at present;
 - the proposal is contrary to the development plan policy Ret 12;

- concentration/overprovision of late-night alcohol and food sales in this location; and

- a presumption against new public house in areas of restriction (Guidance for Businesses), especially for one of the size proposed.

- Transport issues:

- The pavement, at the entrance to the premises, is narrow and often congested, resulting in a potential danger given the potential numbers of patrons using the premises.

- Residential amenity issues:

- Nicolson Street is a mixed commercial and residential area, with predominantly residential street off it, but would be disruptive on residential amenity;

- increase in noise, disturbance, on-street activity and anti-social behaviour, including a Police operation in Nicolson Street in the recent past, to the detriment of residents; and

- existing noise problems from air conditioning fans at this location without a new development requiring more.

The material points of support are:

- The reuse of a vacant and poorly maintained building will benefit adjoining neighbours.

Other points raised including; reference to the 'Edinburgh Alcohol and Drug Partnership' report, landownership/access rights and means of crowd control management; are not material to the planning determination of this application.

Background reading / external references

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

David R. Leslie

Statutory Development

Plan Provision

Edinburgh City Local Plan - Central Area, Southside Conservation Area and Nicolson Street/Clerk Street Primary Shopping Frontage.

Date registered

13 May 2014

Drawing numbers/Scheme

01-03+05-07

Scheme 2

Acting Head of Planning and Building Standards

Contact: John Maciver, Senior planning officer
E-mail:john.maciver@edinburgh.gov.uk Tel:0131 529 3918

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

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 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.

Policy Tra 4 (Private Car Parking) requires private car parking provision to comply with the parking levels set out in supplementary planning guidance, and sets criteria for assessing lower provision.

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.

Non-statutory guidelines on 'PARKING STANDARDS' set the requirements for parking provision in developments.

Other Relevant policy guidance

The South Side Conservation Area Character Appraisal emphasises the harmonious scale, massing and materials and the significance of key institutional buildings within the area.

Consultations

Environmental Assessment

The applicant proposes changing the use of an existing bingo hall into a Public House. The site has residential properties located in very close proximity; they overlook the site from all angles. During the pre planning process Environmental Assessment raised concerns regarding the potential adverse impacts a Public House in this location may have on the neighbouring residential amenity. It was therefore advised that a noise impact assessment and ventilation details were submitted to ensure that noise and cooking odours were mitigated. It was stressed that the noise impact assessment took into account the worst case scenario for this type of use class including music noise. Environmental Assessment also advised on the minimum requirements for commercial ventilation systems.

The applicant has submitted a supporting noise impact assessment however it has not provided any of the information requested and has not taken into account the worst case scenarios. The main points we needed assessed were music noise breakout and noise from the proposed smoking area. However, the noise impact assessment did not address these points and made use of the British Standard 4142:1997 Method for rating industrial noise affecting mixed residential and industrial areas which is not wholly appropriate.

Environmental Assessment stressed that we needed confirmation that the neighbouring residential amenity would not be adversely affected by this change of use. Therefore we needed the noise impact assessment to demonstrate that a Public House operating in this location will be able to do so without exceeding the recommended noise levels which in this case would be inaudible for the operational noise (including music) and no worse than what is existing for areas such as the smoking area. Environmental Assessment advised that appropriate detailed noise mitigation measure would need to be prescribed. The applicant requested that a no music condition was attached to any consent. Planning Enforcement have confirmed that this is not a condition that they would permit, therefore Environmental Assessment cannot consider it as an appropriate form of mitigation.

The existing bingo hall operates under a use class 11 (Assembly and Leisure) which does include dance hall and discotheque uses. However, Environmental Assessment is satisfied that these other uses cannot be easily established without appropriate licences. Therefore we have been clear in asking for the proposed use of a Public House (with music) use being compared to the existing bingo hall use.

Environmental Assessment have concerns that if Planning Permission is granted for a public house it's possible that another operator may occupy the unit and most likely want to play music. As music noise has not been assessed it's not possible to quantify the impacts this may have on the surrounding residential properties. However based on the size of proposal, building fabric and proximity of residential properties it is highly likely that music noise will adversely impact upon the residential amenity. Therefore Environmental Assessment cannot support the application as it will adversely impact upon the neighbouring residential amenity.

The proposed ventilation extract is also a cause of concern; it terminates below the level of the surrounding residential properties. The applicant has advised that they will install a carbon filtration commercial ventilation system which is designed to reduce cooking odours. Environmental Assessment does not support this type of system as it requires maintenance to ensure that it continues to remove odours. The applicant has been advised that maintenance cannot be conditioned. Further advice has been provided reiterating that the ventilation duct must terminate at a high level to ensure that cooking odours don't adversely affect neighbouring amenity. However, the applicant proposes to install the carbon filtration low level termination ventilation system. Environmental Assessment cannot support this method of ventilation as it will adversely impact upon the neighbouring residential amenity.

Environmental Assessment raised several issues which needed to be addressed in more detail before Environmental Assessment could support the application. The applicant subsequently submitted various supporting documents to deal with noise, and odour impacts. Environmental Assessment has considered the information provided in the reports and concludes that the information provided is insufficient at this stage. Therefore Environmental Assessment recommends that this application is refused.

Transport

Has no objections to the application.

Police Scotland

Observations and comments:

It is recommended that a good CCTV system is installed in the premises. An Operational Requirement for CCTV should be developed prior to installing a system. Advice on preparing this can be given by your Architectural Liaison Officer.

END