

Development Management Sub Committee

Wednesday 11 March 2015

**Application for Planning Permission 14/04889/FUL
At 26 Hamilton Place, Edinburgh, EH3 5AU
Alterations and a change of use of an existing health and
fitness studio (Class 11 leisure) to a restricted class 3
cheese and wine cafe (Class 3 food & drink).**

Item number	4.5
Report number	
Wards	A05 - Inverleith

Summary

The proposals as submitted comply with the development plan and non-statutory guidance and represent an appropriate use in this location, will preserve the character and appearance of the conservation area, and will have no detrimental impact on residential amenity or road safety.

Links

<u>Policies and guidance for this application</u>	LPC, CITE6, CITR12, CITH8, NSG, NSBUS, NSLBCA, OTH, CRPNEW,
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Report

Application for Planning Permission 14/04889/FUL At 26 Hamilton Place, Edinburgh, EH3 5AU Alterations and a change of use of an existing health and fitness studio (Class 11 leisure) to a restricted class 3 cheese and wine cafe (Class 3 food & drink).

Recommendations

1.1 It is recommended that this application be Granted subject to the details below.

Background

2.1 Site description

The application property is a ground floor and basement commercial unit located in a 4 storey tenemental building on the south side of Hamilton Place. It has previously been the site of a fitness studio and has a temporary unauthorised use as a 'pop up' cat café. It is situated to the east of one of two pends that go under the tenement buildings from Hamilton Place and lead to St Stephen's Place. To the west of the pends is Hamilton's Bar and Kitchen. Above and to the east of the property are residential properties. To the rear the property has access to a communal garden.

The property was B listed on 12.12.1974 (ref. 28995) and dates from 1825.

This application site is located within the New Town Conservation Area.

2.2 Site History

26.10.2006 - Consent granted for change use of shop to café class 1 to class 3 (06/03231/FUL/LBC).

22.04.2009 - Consent granted for change of use from shop to form 'Curves' ladies only health and fitness and weight loss studio (09/00402/FUL/LBC).

02.06.2009 - Consent granted for new shopfront fascia sign for 'Curves' (09/00761/LBC and 09/00762/ADV).

Relevant site history of adjacent sites

At 34 Hamilton Place:

06.08.2012 - Mixed decision to part approve and part refuse change of use to restaurant and 6 flatted dwellings, external alterations to existing street frontage, part removal of roof on the lowest section to north and new extension (as amended). (12/00618/FUL) It was the restaurant element of this application that was refused.

07.12.2012 - Appeal decision to 'allow' the elements refused in above application 12/00618/FUL. (12/00088/REF).

Main report

3.1 Description Of The Proposal

The proposals are for a change of use from a fitness studio or gym (class 11) to a cheese and wine café (Class 3, food and drink) with restricted cooking. There will be no external alterations. There will be a small function room in the basement of 20m2 and the main cafe area will have capacity for 50 seated patrons.

Supporting Statement

A supporting statement has been submitted outlining the proposed business plan, the opening hours and kitchen requirements.

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 consent.

In considering whether to grant consent, special regard must be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. 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 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) the proposed use is acceptable in this location;
- b) the proposals will either preserve or enhance the character and appearance of the conservation area;
- c) the proposal adversely affects residential amenity;
- d) the proposal has any adverse effect on road safety;
- e) any comments on equalities or human rights are acceptable; and

f) comments raised have been addressed.

a) The Acceptability of the Proposed use in this Location

The existing approved use in this location is that of a class 11 gym and fitness club. Therefore there are no issues regarding the loss of retail premises in this street. The relevant local plan policy is Ret 12 that states that food and drink establishments will not be permitted if 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 or, if it leads to an excessive concentration of such uses. Hou 8 similarly presumes against change of use applications that would have materially detrimental impact on nearby residents. A previous application (06/03231/FUL) has already established that a class 3 use is appropriate in this location, although it was not taken up.

The proposal in this application is for a wine and cheese café with restricted cooking. The agent has indicated that the menu will concentrate on cheese and antipasti served with a choice of wines. The serving of wine will require a license to serve alcohol and will be subject to separate licensing assessment. The application that is proposed is for a class 3 use. Although many objectors have concerns that it will in reality be a bar, this is not what is being applied for. Should, the business operate as a public house and not a class 3 use, then it could be the subject of enforcement action.

The area is characterised by a mixture of uses which includes residential, retail, class 3 and public houses and not far from the application site is the site of the Stockbridge Market which is held on Sundays. The addition of another class 3 use would not be out of character with the area. It was noted in the appeal decision from the application for a restaurant at 34 Hamilton Place that some general noise and disturbance is a common and generally accepted feature of living in a mixed use area with a night time economy such as the Stockbridge area. Given the mixed use nature of the area, a class 3 use must therefore be considered acceptable within this area as long as it does not result in an excessive concentration of uses to the detriment of nearby residents. Hamilton Place has class 3 or public house uses at 5 Hamilton Place, 42a Hamilton Place, 16-18 Hamilton Place and 4-6 Glanville Place (on the corner of Hamilton Place) and a consent in place for 34 Hamilton Place as well as a mix of retail and residential properties. There is no numerical definition in the Local Plan that would determine 'over concentration' but it is not viewed that this application would result in an over concentration of these uses in an area that is designated a town centre and is of a mixed use character.

A material consideration is possible economic benefits that may ensue as a result of the proposed business. Although the premises are small, the proposed business has the potential to attract customers into the area and enhance the reputation of Stockbridge as a town centre and destination.

A class 3 use with restricted cooking would be appropriate in this location.

b) Impact on Character and Appearance of the Conservation Area

The New Town Character Area Appraisal notes that:

Stockbridge forms a neighbourhood shopping centre primarily based around small shop units in Raeburn Place. To the southeast, across the bridge, the shops in Kerr Street and Hamilton Place are similar but tend to be more specialist in character many of the shops have fine original shop fronts. The majority of property remains in residential use.

The area is designated as a town centre and characterised by its mixed uses and variety of shops, cafes and restaurants. The addition of another café would not be out of character with the area and would contribute to the vitality of the area. The change of use would preserve the character and appearance of the area.

c) Residential Amenity

Environmental Assessment notes that the replacement of the existing class 11 use with a class 3 will result in potentially less operational noise as the restricted cooking use does not necessitate the addition of plant equipment or kitchen extract facilities. However because alcohol will be served there is potential for noise that could impact nearby residential properties. They recommend that the opening hours be restricted to between 12:00 and 20:00.

Since the application, as submitted, is for a class 3 use and not for a hot food takeaway or a public house, it is not appropriate to impose a restriction on opening hours. It would however be within the remit of Licensing to impose restrictions on opening hours. Should issues of noise arise Environmental Assessment also has the ability to intervene under powers covered by the Environmental Protection Act 1990.

Likewise, Environmental Assessment seeks to limit the hours of deliveries and waste collections. The control of deliveries and collections are outwith the control of the applicant and are unenforceable. The application site is located in close proximity to a major traffic junction in Stockbridge, and lies on a busy road leading to Canonmills/Inverleith. The area is characterised by commercial uses at ground floor with residential above. The need to restrict delivery hours in this instance is impracticable as the other business premises are not subject to these conditions. The public footway stands immediately adjacent to the application site and stands outwith the red line of the application site and the control of the applicant. The applicant would not be able to exercise control over deliveries to the pavement or stop vehicles waiting within the public road before accessing the premises. Therefore it is not appropriate to add a condition restricting times of deliveries and collections.

Environmental Services have not asked for a Noise Impact Assessment however it is noted that acoustic insulation is provided for in the ceiling space. Furthermore, the previous change of use to gym required that the unit conform to noise insulation criteria as there was a potential for impact and airborne noise. It is noted by Environmental Services that in some respects the proposed class 3 use has less potential to cause noise to neighbours.

With respect to the operational requirements of this restricted class 3 use, there is potential for less impact on residential amenity than occurs with the existing use.

The application for a licence to serve alcohol will be assessed within the context of a class 3 as opposed to public house use and will be able to impose restrictions on opening hours. Furthermore, Environmental Services have powers to address any issues of noise, rubbish and anti social behaviour that may arise.

The proposals for a class 3 use with restricted cooking will not have a detrimental impact on residential amenity.

d) Traffic and Road Safety

Transport have not objected to the proposals but have comments regarding possible signage. This would be addressed in any subsequent advert application and the informative suggested by Transport in respect of this is not appropriate within in this current planning application.

e) Equalities and Human Rights Impacts

The proposed café will provide level access and will have a positive impact on equalities and human rights issues. An Equalities and Rights Impact Assessment has been completed.

f) Public Comments

Material representations-

- Proposed use - this has been addressed in section 2.3a);
- An excessive concentration of class 3 and drinking establishments - this is addressed in sections 2.3a);
- Contrary to Ret 12 of the Local Plan and SPP8 - Town Centres and Retailing - this addressed in 2.3a) and 2.3c);
- This will not be a 'café' but a pub.- This is addressed in sections 2.3a);
- Possible anti-social behaviour- addressed in section 2.3c);
- The use will create issues of noise from patrons, deliveries, rubbish uplift and glass disposal - issues of use are covered in section 2.3a), issues of residential amenity are covered in section 2.3c);
- Rubbish will be stored in the pend and there will be associated litter - this is addressed in section 2.3c);
- There will be an increase in traffic and parking problems - This has been addressed in section 2.3d);
- The proposals will bring economic benefit to the community - this is addressed in section 2.3a);
- The business will bring customers into the area - this is addressed in section 2.3a); and
- The use will be appropriate to the character of the area as Stockbridge is becoming an area noted for its food- this is addressed in section 2.3a) and 2.3b).

Community Council Comments-

The Stockbridge and Inverleith Community Council was not a statutory consultee but have commented about opening hours. This issue is addressed in section 2.3.c).

Conclusion

In conclusion, the proposals as submitted comply with the development plan and non-statutory guidance and represents an appropriate use in this location, will preserve the character and appearance of the conservation area, and will have no detrimental impact on residential amenity or road safety. There are no other material considerations which outweigh this conclusion and approval is recommended.

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

3.4 Conditions/reasons/informatives

Conditions:-

1. Cooking operations on the premises shall be restricted to the use of a Panini grill, soup urn and microwave only; no other forms of cooking shall take place without the prior written approval of the planning authority; and cooking odour shall not escape or be exhausted into any neighbouring premises, all to the satisfaction of the Council's Planning Authority.

Reasons:-

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

Informatives

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.

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:

This application was assessed in terms of equalities and human rights. The impacts are identified in the Assessment section of the main report.

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

This application was advertised on 5 December 2014 and re-advertised as a bad neighbour on 16 January 2015. It has attracted 26 letters of representation. There have been 18 letters of objections from neighbours as well as letters from one MP, three MSPs, one Councillor and the St Stephen's Community Association. The Stockbridge and Inverleith Community Council have written a letter of comment. There have been five letters of support.

The letters of objection raised the following material concerns:

Principle of the change of use:-

- Will cause and excessive concentration of class 3 and drinking establishments;
- Contrary to Ret 12 of the Local Plan and SPP8 - Town Centres and Retailing; and
- This will not be a 'café' but a pub.

Residential Amenity:-

- Will encourage anti-social behaviour;
- The use will create issues of noise from patrons, deliveries, rubbish uplift and glass disposal; and
- Rubbish will be stored in the pend and there will be associated litter.

Traffic and Parking:-

- There will be an increase in traffic and parking problems;
- The letters of support raise the following material issues;
- The proposals will bring economic benefit to the community;
- The business will bring customers into the area; and

- The use will be appropriate to the character of the area as Stockbridge is becoming an area noted for its food.

The Stockbridge and Inverleith Community Council have commented that should the application be granted a restriction on opening hours of 11:00 to 23:00 be added.

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](#)
- [Edinburgh City Local Plan and Rural West Edinburgh Local Plan](#)
- [Planning guidelines](#)
- [Conservation Area Character Appraisals](#)
- [Edinburgh Local Development Plan](#)
- [Scottish Planning Policy](#)

Statutory Development

Plan Provision

Located within a town centre in the Edinburgh City Local Plan.

Date registered

26 November 2014

Drawing numbers/Scheme

1-10,

Scheme 1

David R. Leslie

Acting Head of Planning and Building Standards

Contact: Barbara Stuart, Senior planning officer

E-mail: barbara.stuart@edinburgh.gov.uk Tel: 0131 529 3927

Links - Policies

Relevant Policies:

Relevant policies of the Edinburgh City Local Plan.

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

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

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.

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 'LISTED BUILDINGS AND CONSERVATION AREAS' provides guidance on repairing, altering or extending listed buildings and unlisted buildings in conservation areas.

Other Relevant policy guidance

The New Town Conservation Area Character Appraisal states that the area is typified by the formal plan layout, spacious stone built terraces, broad streets and an overall classical elegance. The buildings are of a generally consistent three storey and basement scale, with some four storey corner and central pavilions.

Appendix 1

Application for Planning Permission 14/04889/FUL At 26 Hamilton Place, Edinburgh, EH3 5AU Alterations and a change of use of an existing health and fitness studio (Class 11 leisure) to a restricted class 3 cheese and wine cafe (Class 3 food & drink).

Consultations

Transport

I have no objections to the application subject to the following being included as conditions or informatives as appropriate:

Any sign mounted perpendicular to the building (i.e. overhanging the footway) must be mounted a minimum of 2.25m above the footway and 0.5m in from the carriageway edge to comply with Section 129(8) of the Roads (Scotland) Act 1984.

Note: current Council parking standards require between 0 and 5 spaces for retail space of 129m² in Zone 2. The development provides zero parking.

Environmental Assessment

The applicant proposes the change of use of an existing class 11 property to a restricted class 3 cheese and wine cafe. 26 Hamilton Place forms ground and basement levels of a tenement block and as such is located directly below and adjacent to residential dwellings.

Environmental Assessment supports the proposed change of use to restricted class 3 as the potential operational noise from a cafe is likely to be less than that from a class 11 fitness studio. The proposed cafe does not include any associated plant equipment nor will it require any kitchen extract facilities as no hot cooking will be permitted within the class use, this appears to be a planning gain. However, the serving of wine and suggested opening hours of Tuesday - Thursday: 4pm - 11pm and Friday - Sunday: 12pm - 12am negate this potential gain by introducing a late opening property serving alcohol to 50 patrons, with associated noise, adjacent to and below residential dwellings. Conditions regarding kitchen equipment and hours of operation are recommended to protect amenity.

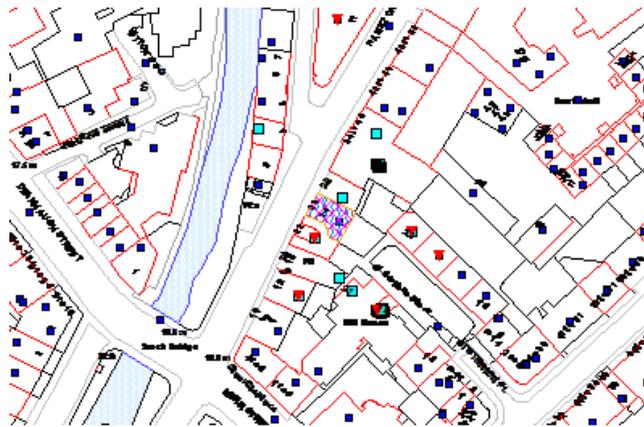
Environmental Assessment has no objection to this proposed development, subject to the following conditions:

- 1. Cooking operations on the premises shall be restricted to the use of a Panini grill, soup urn and microwave only; no other forms of cooking shall take place without the prior written approval of the planning authority; and cooking odour shall not escape or be exhausted into any neighbouring premises, all to the satisfaction of the Council's Planning Authority.*

2. Deliveries and collections, including waste collections, shall be restricted to between the hours of 07:00 - 19:00, Monday to Saturday.

3. The hours of operation of the premises shall be restricted to between 12:00 - 20:00 daily.

Location Plan



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