

# Development Management Sub Committee

**Wednesday 29 April 2015**

**Application for Planning Permission 14/02936/FUL  
At 31 Lothian Road, Edinburgh, EH1 2DJ  
Change of use from Class 11 (Assembly and Leisure) to Sui  
Generis (Public House) including external alterations.**

<b>Item number</b>	9.1
<b>Report number</b>	
<b>Wards</b>	A11 - City Centre

## Summary

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The application complies with the Development Plan and Non Statutory Guidelines. The proposal is appropriate in its location, preserves the character and appearance of the conservation area and would not prejudice residential amenity or road safety.

## Outcome of previous Committee

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The application was considered at the Development Management Sub-Committee on 14 January 2015.

Committee was concerned with the size of the proposed public house and the impact on safety and residential amenity.

Committee requested to undertake a site visit.

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## Links

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[Policies and guidance for this application](#)

LPC, CITE3, CITE4, CITE6, CITH8, CITR12, NSG, NSBUS, NSLBCA,

# Report

## **Application for Planning Permission 14/02936/FUL At 31 Lothian Road, Edinburgh, EH1 2DJ Change of use from Class 11 (Assembly and Leisure) to Sui Generis (Public House) including external alterations.**

### **Recommendations**

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

### **Background**

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#### **2.1 Site description**

The application site comprises the former Caley Picture House on Lothian Road. The property is located on the east side of Lothian Road, at its northern end, towards the commercial centre of Edinburgh.

The property comprises a large monumental entrance from Lothian Road itself, and extends at first floor over the existing shop frontages, to the north. The property is Category B listed and was designated as such in 1974. The main ground floor entrance is adjoined by Frisky (a frozen yoghurt outlet (Use Class 3), to the south. To the north of the site entrance (ground floor level) the site is adjoined by a mixture of Class 2, Class 11 and Sui Generis uses (pub, betting shop and nightclub). The application site extends above these premises. Finally, adjoining the site to the north is a recently converted Class 3 restaurant.

Residential properties adjoin the building to the south at 41 Lothian Road.

The site has previously been used as a cinema, nightclub and most recently as a live music venue.

This application site is located within the West End Conservation Area.

#### **2.2 Site History**

November 2014 - listed building consent application (ref: 14/02732/LBC) granted for internal and external alterations relating to proposed change of use to sui generis public house.

### **Main report**

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#### **3.1 Description Of The Proposal**

This planning application seeks consent for the change of use of the existing building from Class 11 (Assembly and Leisure) to a Sui-Generis (Public House) use.

The proposed hours of operation are:

Sunday to Wednesday 0700 hours to 0030 hours; and  
Thursday to Saturday 0700 hours to 0130 hours.

The kitchen would be operational 0700 hours to 2300 hours seven days per week.

Externally, alterations are limited to the opening of an existing first floor window (currently bricked up), the introduction of a DDA compliant ramp to the entrance, the introduction of new windows to the existing side elevation and two new cupolas.

The application is accompanied by a planning statement as well as a design, access and heritage statement.

### **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 use is acceptable in this location;
- b) the proposals preserve or enhance the character and appearance of the conservation area or the setting of the listed building;
- c) the proposals will result in an unreasonable loss to neighbouring amenity;
- d) the proposals will have any traffic or road safety issues;
- e) the proposals have any equalities or human rights impacts; and
- f) representations raised have been addressed.

## a) Principle of the Development

Policy Ret12 of the Edinburgh City Local Plan seeks to control the change of use from a shop unit or other premises to a licensed or unlicensed restaurant, cafe, pub or hot food take-away. There is a presumption against such a change where it would 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 where there is considered to be an excessive concentration of such uses already in existence.

Lothian Road has a mixed use character with a range of commercial uses on the ground floor and some residential above. It is renowned for containing a large number of bars and public houses and is identified in the Guidance for Businesses as a street or area where an over concentration of such uses already exists. Within such areas, in conjunction with policy Ret 12, the presumption is against new public houses. The 'areas of restriction' designation within the Guidance for Businesses also includes entertainment venues, which does include the existing and historic uses of the application site.

The existing lawful use of the premises is Class 11, Assembly and Leisure, having been operated as a cinema, nightclub and, most recently, a music venue for more than 10 years. As such it is possible for the premises to re-open as a nightclub (which it has previously traded as), as this would not require a change of use. Importantly, such a permitted change of use could be undertaken without the requirement to implement any mitigation or restriction on the nature of the operation. Therefore, the established use for the premises comprises a significant material consideration in the determination of this application.

Police Scotland has been consulted on the application and raised no objections to the proposed change of use. The police consider that the existing use has the potential to create more anti-social behaviour issues than a public house and would be more difficult to police based on the large number of people spilling out of the venue at closing time.

In regard to the assessment of residential living conditions policy, Hou8 seeks to resist those developments, including changes of use, which would have a materially detrimental effect on the living conditions of nearby residents.

The nearest residential units are in the adjoining tenement building, 41 Lothian Road. Environmental Assessment has confirmed that the change of use to a public house from an entertainment venue is a planning gain in terms of noise. The residential properties in the neighbouring block have been protected historically by the licence requirement of the nightclub, which required inaudibility in any neighbouring noise sensitive premises. The onus therefore was on the nightclub and music venue to ensure this inaudibility. Failure to do so would have resulted in loss of their licence. As such, and given that there would be no amplified music within the new use, the proposal represents an improvement in terms of noise for neighbouring properties.

The proposed use is not considered to be contrary to the provisions of policy Ret 12, as supplemented by the 'Guidance for Businesses'. As the existing lawful use of the premises is an entertainment venue, the venue is already considered as part of the over concentration of such uses on Lothian Road.

The change of use would not result in a worsening of the established situation. Environmental Assessment has no objections to the proposed use with regards to neighbouring amenity and therefore there is compliance with Ret12 of the Edinburgh City Local Plan. Accordingly, the proposed use would be appropriate at this location in principle.

It should be clarified that the venue is an 'entertainment venue' as defined by the Use Classes (Scotland) Order 1997 and not a music venue. As such, the assessment of whether the loss of a music venue is acceptable is not a material planning consideration.

#### b) Conservation Area and Listed Building

The West End Conservation Character Appraisal states *the east side of Lothian Road is a solid wall, at ground floor, of shops, pubs and clubs with shops filtering into the side streets to the east and a number of restaurants occurring on Grindlay Street.*

The proposed use is in keeping with the established character of Lothian Road.

The proposed use requires only minor alterations to the fabric of the building. The two cupolas on the roof are designed to match similar cupolas on neighbouring buildings to allow more light into the main pub area. These cupolas would be appropriately designed and would be constructed using timber having no adverse impact on the character or appearance of the conservation area. The opening up of two windows on a side elevation, unseen from any public view, would not have any adverse impact on the character or appearance of the conservation area.

The proposed access ramp is a minor alteration having no adverse impact on the character or appearance of the conservation area.

There is no impact on the character of the listed building arising from the proposals. These proposals have already been granted listed building consent.

#### c) Residential Amenity

Environmental Assessment has no objections to the proposals. There are residential properties adjoining the site. However, these properties are afforded protection through the noise requirements of the previous entertainment use. The sound insulation required for the operation of this use is such that no noise could be audible in the neighbouring residential properties, a requirement of the license for the venue. As such, Environmental Assessment considers the proposed use as a public house to be a less onerous use in terms of noise and residential amenity.

In terms of anti-social behaviour the police have no objections to the use considering it to be less onerous than the use as an entertainment venue, which includes the potential to become a nightclub.

#### d) Traffic and Road Safety

Transportation has no objections to the proposals subject to the informative attached to the consent. There are no issues relating to traffic or road safety.

#### e) Equalities and Human Rights

The proposed public house would provide a DDA compliant ramp into an entrance point to the front of the building. The building and public house would be easily accessible. Access for people with disabilities will be required to meet with current building standards.

#### f) Representations

- Over provision of food and drink establishments/public houses on Lothian Road - this is addressed in section 3.3a);
- Noise and anti social behaviour - addressed in section 3.3c); and
- Petition seeking to save the Picture House as a music venue - addressed in section 3.3a).

#### Conclusion

In conclusion, the proposal complies with the development plan and relevant non-statutory guidelines, is appropriate in its location, preserves the character and appearance of the conservation area and would not prejudice residential amenity or road safety. There are no material considerations that outweigh this conclusion.

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

#### **Addendum to Assessment**

The application was considered at the Development Management Sub-Committee on 14 January 2015.

Committee was concerned with the size of the proposed public house and the impact on safety and residential amenity.

Committee requested to undertake a site visit.

#### **3.4 Conditions/reasons/informatives**

##### **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.

## **Financial impact**

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### **4.1 The financial impact has been assessed as follows:**

There are no financial implications to the Council.

## **Risk, Policy, compliance and governance impact**

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

## **Equalities impact**

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### **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**

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### **7.1 The sustainability impact has been assessed as follows:**

This application meets the sustainability requirements of the Edinburgh Design Guidance.

## **Consultation and engagement**

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### **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 01.08.2014. One hundred and forty letters of representations were received, one hundred and thirty nine of which were objections. The letters of representation raised the following material issues:

- Over provision of public houses/food and drink establishments on Lothian Road;
- Impact on residential amenity; and
- Noise and anti-social behaviour.

A petition containing thirteen thousand, four hundred and three signatures was submitted as a late representation. This petition seeks to save the picture house as a music venue.

## **Background reading/external references**

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- 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**

The application property is located in the Central Area in the Edinburgh City Local Plan within an area of restriction in relation to the location of licensed premises.

**Date registered**

28 July 2014

**Drawing numbers/Scheme**

1-8, 9A, 10 and 11,

Scheme 2

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Acting Head of Planning and Building Standards

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**Links - Policies**

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**Relevant Policies:**

**Relevant policies of the Edinburgh City Local Plan.**

Policy Env 3 (Listed Buildings - Setting) identifies the circumstances in which development within the curtilage or affecting the setting of a listed building will be permitted.

Policy Env 4 (Listed Buildings – Alterations & Extensions) identifies the circumstances in which alterations and extensions to listed buildings will be permitted.

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 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.

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

# Appendix 1

## **Application for Planning Permission 14/02936/FUL At 31 Lothian Road, Edinburgh, EH1 2DJ Change of use from Class 11 (Assembly and Leisure) to Sui Generis (Public House) including external alterations.**

### **Consultations**

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#### **Police Scotland**

*There are no comments.*

#### **Transportation**

*No objections to the application subject to the following being included as conditions or informatives as appropriate:*

- 1) *A Road Opening Permit may be required for works affecting or adjacent to the footway. Details of drainage and materials may be required.*

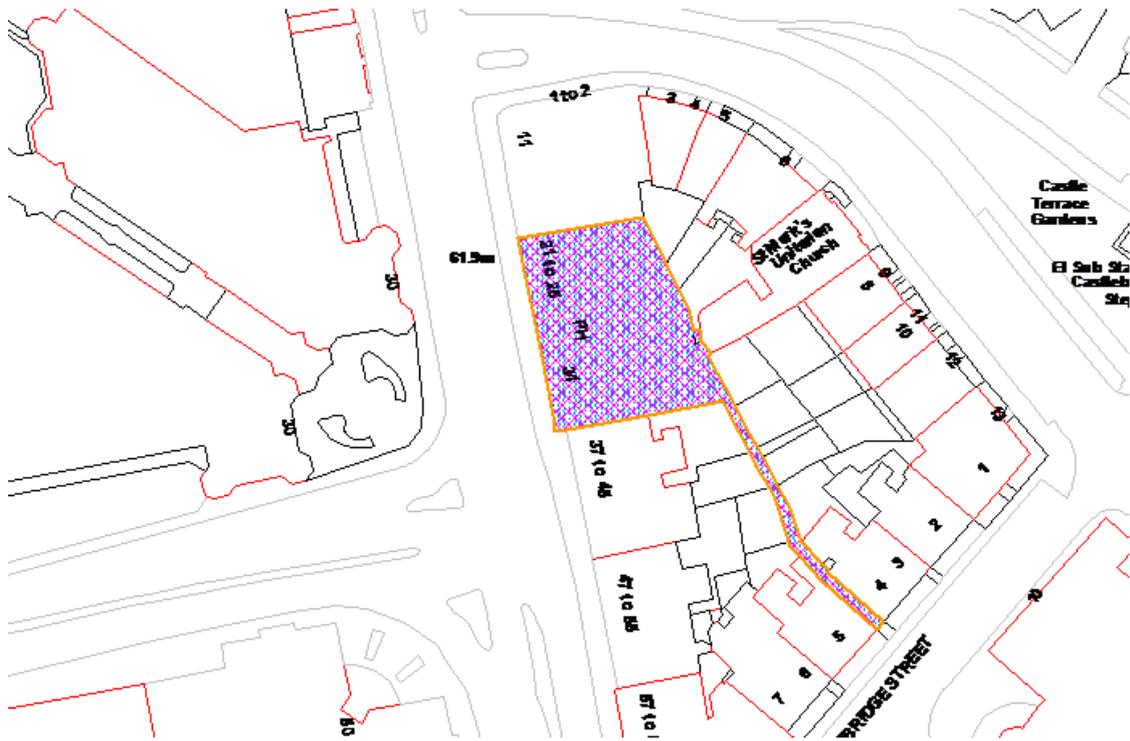
#### **Environmental Assessment**

*The applicant proposes the change of use of an existing class 11 property to a sui generis public house at 31 Lothian Road. The property is located on the east side of Lothian Road in an area of mixed use. Neighbouring properties include restaurants, bars, cafes, betting shops and - to the rear (east) and side (south) of the building - some residential properties.*

*The existing use of this property as a live music venue has resulted in noise related complaints from the nearby residential dwellings. Although a public house is not normally regarded as a quiet use of a building, in this instance it is likely to be quieter than the live music venue it will replace. In addition, Environmental Assessment notes that this property will be subject to controls under its license to sell alcohol.*

*Amenity is unlikely to be adversely affected by this proposal; therefore, Environmental Assessment has no objection to this proposed development.*

# Location Plan



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