

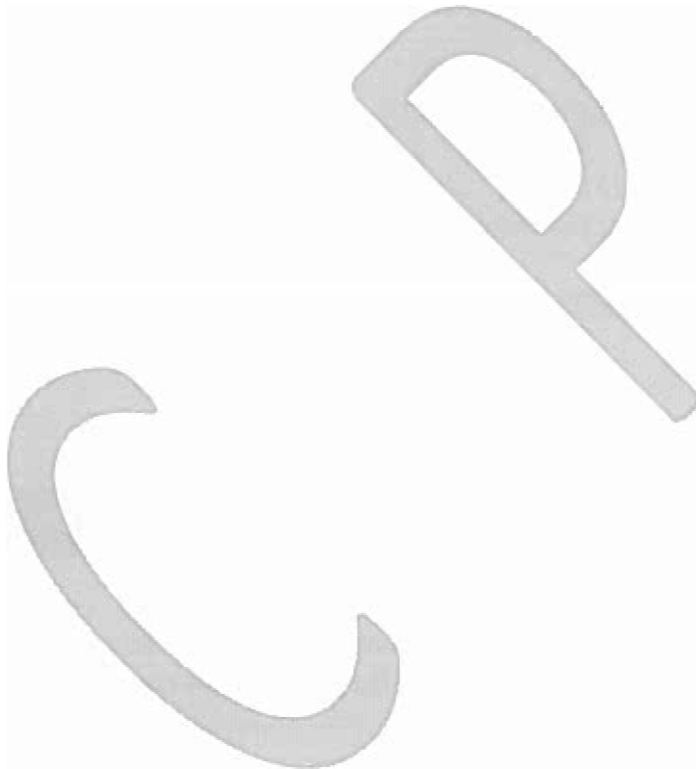
DECISION NOTICE AND REPORT OF HANDLING

Application address - 34 Cockburn Street Edinburgh EH1 1PB

Application Ref. No - 14/02887/FUL

Review Ref No - 15/00057/REVREF

Review Lodged Date 03.05.2015



James Wason.  
17/7 Falcon Road West  
Edinburgh  
EH10 4AD

Mr Vahap Firat  
CID Agent

Date: 10 February 2015,

Your ref:

TOWN AND COUNTRY PLANNING (SCOTLAND) ACTS

DEVELOPMENT MANAGEMENT PROCEDURE (SCOTLAND) REGULATIONS  
2013

Change of use from retail (Class 1) to cafe (Class 3) (as amended from proposed restaurant), and new extract air duct on rear elevation.

At 34 Cockburn Street Edinburgh EH1 1PB

Application No: 14/02887/FUL

### **DECISION NOTICE**

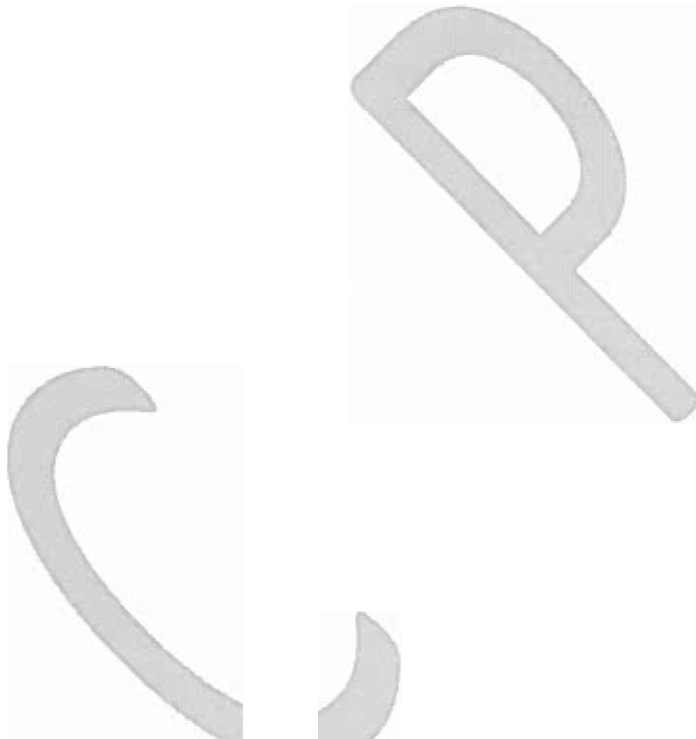
With reference to your application for Planning Permission registered on 18 July 2014, this has been decided by Local Delegated Decision. The Council in exercise of its powers under the Town and Country Planning (Scotland) Acts and regulations, now determines the application as Refused in accordance 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 proposal would result in the loss of a retail unit within a Speciality Shopping Street to the detriment of its special shopping character, contrary to Policy Ret 11 of the Edinburgh City Local Plan.
2. The proposal will lead to an increase in noise and result in the loss of neighbouring residential amenity, contrary to Policy Hou 8 of the Edinburgh City Local Plan.



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

Drawings 01 - 03, 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 are contrary to the development plan and the relevant non-statutory guidelines, are not acceptable in principle and have an adverse effect upon neighbouring 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 Eilidh Shaw directly on 0131529 3903.

David R...



David R. Leslie

Acting Head of Planning and Building Standards



## 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 of Review can be made online at [eplanning \(https://eplanning.scotland.gov.uk/WAM/\)](https://eplanning.scotland.gov.uk/WAM/) or forms can be downloaded from that website. Paper forms should be addressed to the City of Edinburgh Planning Local Review Body, G.2, Waverley Court, 4 East Market Street, Edinburgh, EH8 8BG. For enquiries about the Local Review Body, please email

[localreviewbody@edinburgh.gov.uk](mailto:localreviewbody@edinburgh.gov.uk).

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 14/02887/FUL  
At 34 Cockburn Street, Edinburgh, EH1 1PB  
Change of use from retail (Class 1) to cafe (Class 3) (as amended from proposed restaurant), and new extract air duct on rear elevation.

Item	Local Delegated Decision
Application number	14/02887/FUL
Wards	A 11 - City Centre

## Summary

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The proposals are contrary to the development plan and the relevant non-statutory guidelines, are not acceptable in principle and have an adverse effect upon neighbouring amenity.

## Links

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Policies and guidance for this application	LPC, CITR11, CITE4, CITE6, CITE1, CITCA1, CITH8, NSG, NSLBCA, NSBUS, OTH, CRPOLD,
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# Report of handling

## Recommendations

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

## Background

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### 2.1 Site description

The retail unit at 34 Cockburn Street is currently trading under the name of 'Cafe Cockburn'. The cafe has cooking and heating equipment. The majority of the floor area is given over to seating and seating is also provided on the pavement.

The site is located within the Central Area a Speciality Shopping Street (11•71 Cockburn Street and 32•54 Cockburn Street).

The site is a Category B Listed Building (Historic Building Number 49064) within the Old Town Conservation Area and the Edinburgh World Heritage Site.

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

### 2.2 Site History

#### 34 Cockburn Street

18 November 2011. Permission refused for the change of use from retail (Class 1) to cafe (Class 3) (as amended from proposed restaurant). {Reference: 11/02811/FUL}

5 October 2011. Permission not required for alterations in connection with a change of use from retail (Class 1) to cafe (Class 3) (as amended). (Reference: 11/02811/LBC)

1 August 2013. Appeal dismissed, Appeal against enforcement notice. (Reference: 13/00051/ENFORC)

### 40 Cockburn Street

10 March 2014. Application refused for a change of use from Class 1 retail to a mixed use of cafe and delicatessen. (Reference: 13/04308/FUL)

7 May 2014. Appeal upheld and permission granted for a change of use from Class 1 retail to a mixed use of cafe and delicatessen. (Reference: 14/00037/REVREF)

### Main report

#### 3.1 Description Of The Proposal

The proposal is for the retrospective change of use of a ground floor unit from retail (Class 1) to cafe (Class 3) and the installation of a new extract air duct to property's rear elevation.

#### 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, it needs to be considered whether:

- a) the principle of the proposal is acceptable in this location;
- b) the proposal is of an appropriate scale, form and design and will not adversely affect the character or appearance of Listed Building or the Conservation Area;
- c) the proposal will result in an unreasonable loss of neighbouring amenity;
- d) the proposal will have any traffic or road safety issues; and
- e) comments raised have been addressed.

#### a) The Acceptability of the Proposal in this Location

The proposal is for the retrospective change of use from retail (Class 1) to cafe (Class 3) and new extract air duct on rear elevation. Notwithstanding the previous

refusal of planning permission (Reference: 11/0281 1/FUL), Enforcement Notice and Appeal decision (Reference: 13/00051/ENFORC), the property continues to operate within a Class 3 use.

The site is located within a Speciality Shopping Street (11- 71 Cockburn Street and 32 - 54 Cockburn Street) as defined on the Proposals Map of the Edinburgh City Local Plan. Therefore Policy Ret 11 (Alternative Use of Shop Units in Other Locations) applies. There are no vacant units within the frontage.

There are currently six retail units and three non-retail units within the frontage 32 - 54 Cockburn Street. The proposal would result in five retail units and four non-retail units. The frontage would begin to be dominated by cafe type uses rather than small independent retail traders. This number of non-retail units within this Speciality Shopping Street would be to the detriment of its special shopping character. The proposal is contrary to criteria a), b) and d).

The unit is not readily suitable for small business use and is not essential for local needs and the proposal does not involve residential use. Therefore criteria c) and e) of Policy Ret 11 do not apply.

The proposal is contrary to Policy Ret 11 of the Edinburgh City Local Plan.

#### b) Character and Appearance of the Listed Building and Conservation Area

The proposed flue would be located on the rear of the Category B Listed Building. The flue would not be visible from the street, however, it would be visible from properties to the rear. The application drawings indicate the flue would be 150mm diameter and painted matt black to resemble a rainwater pipe. Subject to confirmation of the materials for the flue, the character of the Listed Building and Conservation Area would be safeguarded.

#### c) Neighbouring Amenity

The application includes written confirmation from the residents of 38 Cockburn Street (properties directly above Whisky World} confirming 'no objection' to the extract vent. No written confirmation has been provided from the residents of 34A Cockburn Street {directly above Cafe Cockburn}.

Environmental Assessment has raised concerns regarding this proposal. Environmental Assessment has requested a noise impact assessment be submitted that confirms the potential impact of the proposed kitchen extract fan on the residential properties above.

A noise impact assessment has not been submitted. Insufficient evidence has been provided to confirm that the proposal does not result in any loss of neighbouring residential amenity. The proposal is contrary to Policy Hou 8 of the Edinburgh City Local Plan.

d) Traffic or Road Safety I \_\_\_\_\_ ssues



The site is located within the Central Area and is close to public transport routes. Transport has been consulted and has no objections to the application.

The proposal does not raise any traffic or road safety issues.

e) Public comments



Material representations:

- Principle of use - this has been addressed in detail in section 3.3a);
- Odour - this has been addressed in detail in section 3.3c); and
- Noise and anti-social behaviour - this has been addressed in detail in section 3.3c}.

Non-Material representations:

- Litter - this is not a material planning consideration but is a matter for control under the provisions of another legal regime;
- Refuse/storage - this is not a material planning consideration but is a matter for control under the provisions of another legal regime;
- Number of covers within the restaurant - this is not a material planning consideration but is a matter for control under the provisions of another legal regime; and
- Facilities - this is not a material planning consideration but is a matter for control under the provisions of another legal regime.

## CONCLUSIONS

The proposals are contrary to the development plan and the relevant non-statutory guidelines, are not acceptable in principle and have an adverse effect upon neighbouring 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.

### 34 Conditions/reasons/informatives

Reasons:-

1. The proposal would result in the loss of a retail unit within a Speciality Shopping Street to the detriment of its special shopping character, contrary to Policy Ret 11 of the Edinburgh City Local Plan.

2 The proposal will lead to an increase in noise and result in the loss of neighbouring residential amenity, contrary to Policy Hou 8 of the Edinburgh City Local Plan.

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

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

#### Equalities impact

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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

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##### 6.1 Pre-Application Process

Preapplication discussions took place on this application.

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

The application was advertised on 1 August 2014 and attracted two letters of representation from neighbours objecting to the proposal.

The letters of representation raised the following material issues:

- Principle of use - excessive number of Class 3 uses within this area of Cockburn Street;
- Odour - odour and cooking smells affect nearby residential properties and will be made worse by the proposal; and
- Noise and anti-social behaviour - Increase to opening hours.

The letters of representation raised the following non-material issues:

- Litter - increased litter;
- Refuse/storage - insufficient provision for refuse storage;
- Number of covers within the restaurant; and
- Facilities - only one toilet is provided.

#### **Background reading / external references**

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



David R. Leslie

Statutory Development

Plan Provision

The application site is located within the Central Area, a Speciality Shopping Street (11 - 71 Cockburn Street and 32 - 54 Cockburn Street), the Old Town Conservation Area and the Edinburgh World Heritage Site covered by the Edinburgh City Local Plan.

Date registered

18 July 2014

Drawing numbers/Scheme 01 - 03

Scheme 1

Acting Head of Planning and Building Standards



Contact: Eilidh Shaw, Planning officer

E-mail: eilidh.shaw@edinburgh.gov.uk Tel: 0131 529 3903

Links - Policies

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Relevant Policies:

Relevant policies of the Edinburgh City Local Plan.

Policy Ret 11 (Alternative Use of Shop Units in Other Locations) sets out the factors to be taken into account in assessing the change of use of a shop unit outwith defined centres.

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 Env 1 (World Heritage Site) protects the quality of the World Heritage Site and its settings.

Policy Ca 1 (Central Area) sets criteria for assessing development in the Central Area.

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

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.

#### Other Relevant policy guidance

The Old Town Conservation Area Character Appraisal emphasises the survival of the original medieval street pattern; the wealth of important landmark buildings; the survival of an outstanding collection of archaeological remains, medieval buildings, and 17th-century town houses; the consistent and harmonious height and mass of buildings; the importance of stone as a construction material for both buildings and the public realm; the vitality and variety of different uses; and the continuing presence of a residential community



## Appendix 1

### Consultations

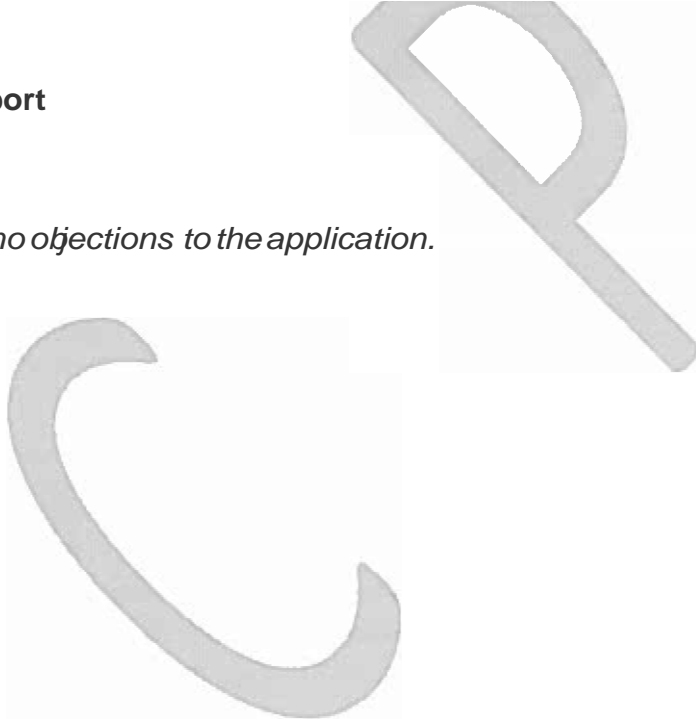
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#### Environmental Assessment

*A noise impact assessment is required that looks at the potential impact of the proposed kitchen extract fan on the residential properties above. It should also look at the worst case scenario of what a class 3 could be in operational terms (i.e. kitchen, patron and music noise) and suggest mitigation measures to ensure that such noise will be inaudible in the residential property directly above.*

#### Transport

*I have no objections to the application.*



END



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14/02887/FUL

Chris Hunter  
34 a 1f Cockburn Street  
Edinburgh,  
EH2 1PB

The City of Edinburgh Council  
Planning department,  
Waverly Court,  
4 East Market Street  
Edinburgh EH8 8BG

✓ Ack  
NP

Dear Sirs

1st August 2014

Ref: Objection to planning application No: 14/02877/FUL

I wish to object to the planning application to change the current class 1 retail site to a restaurant with Class 3. As it stands today the site appears to be already operating illegally by cooking food on the premises as I am already suffering from cooking smells currently entering my property.

I am the owner of the property directly above the site and have been here for almost 20 years. I am extremely concerned that allowing a class 3 restaurant to open directly below my flat will have a significantly negative impact within my property and the rest of the building due to increased smells and noise both inside and outside my property especially in my bedroom.

My reasons for objection:

Noise: I am already experiencing noise transmission from the kitchen and seating area in the existing shop due to poor sound insulation. A commercial extraction fan with ducting travelling up the length of the neighbouring building and later opening hours is only going to increase this noise and misery.

Cooking Smells:

Currently cooking smells already enter my bedroom through the floor from the current shop operation, changing to a class 3 is only going to worsen the situation, the barrier between my residential flat and the shop is extremely thin and has never been addressed or considered by anyone when it changed from a retail shop to a full blown cafe.

Extraction Fan

The extraction ducting shown on the application is travelling up a neighbouring building and venting out outside a residential flat window on the top floor is that legal?

Has listed building consent been approved for an external flue?

Waste and storage

I am concerned there is not enough space within the property to store commercial food rubbish and especially food waste created from a class 3 operation this could lead to health risks therefore creating increased cooked food waste leading to bad smells and attracting pests.

Facilities:

There appears to be only 1 toilet, is this sufficient for a class 3 operations requiring a Male, Female Disabled toilet and baby changing facility?

Covers:

Are there restrictions :1s to how many customers this premises is applying for as there is no indication on the plan;?

Does this type of class change allow for late ight opening and take away food? If so then it would significantly increase noise and street rubbish outside my property and in general on Cockburn Street.

For the reasons statec above Iwish to object to this Planning application.

Yours Sincerely,



Chris Hunter

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14/02877/FUL

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The City of Edinburgh Council  
Planning Applications,  
Waverly Court,  
4 East Market Street  
Edinburgh  
EH8 8BB

J Christian  
34a (2F) Cockburn Street  
Edinburgh  
EH2 1PB  
4/8/2014

✓ Ack  
NP

Dear Sirs

Ref: Planning application: 14/02877/FUL Change of Use From retail to Restaurant Class 3

I write to object to the above planning application for the following reasons:

The reasons for my objections:

Food smells travelling through the building and from the flue at high level beside an attic bedroom window.  
Ducting noise level from a commercial extraction unit terminating at window level at unsociable hours.  
Increased Street noise from take away food customers or late night customers.

Increase street rubbish which is already a contentious issue.  
Why does applicant need change of use when already operating a cafe/restaurant?  
Site is too small to offer suitable toilet facilities for male, female, disabled and baby changing facilities associated with a class 3.  
Site is too small to store food rubbish associated with class 3 food waste?  
Is there a requirement for direct permissions from the neighbouring building owners to install an external flue? Not associated with their building?  
Has listed building consent been approved for an external commercial flue attached to a residential building which will be clearly visible from the courtyard behind?  
I have had no notification and do not agree to it.

What will stop the food smells entering my property on the top floor from the ducting termination and as the building is lower than some neighbouring buildings could also affect them. The ducting is shown far below the chimney flue venting height.

There are already a large amount of class 3 premises on the street with another just granted at 30 Cockburn St. Surely there must be some sort of restriction on the number of class 3 sites allowed on the street as creating more will significantly affect it's character.

The Application state! change of use from class 1 retail to class 3, the existing cafe must be operating illegally as it is already cooking food on the premises which you can see from it's menu offering full cooked breakfasts and burgers amongst others things.

I am objecting to this application

Yours Sincerely,

