

Development Management Sub Committee

Wednesday 7 December 2016

**Application for Planning Permission 16/03328/FUL
At GF90, 15 - 19 Hanover Street, Edinburgh
Change of Use from Class 1 (Shops) to Class 3 (Restaurant).
Installation of flue to rear elevation (as amended)**

Item number	4.4
Report number	
Wards	A11 - City Centre

Summary

The proposals would have no adverse effect on the character or appearance of the conservation area or the setting of the listed building and would have no detrimental impact on residential amenity or road safety. The proposed uses would, however weaken the shopping ambience of the city centre core frontage contrary to policy Ret 8 of the Adopted Local Development Plan and to Policy ERC 2 of the City Centre Retail Core Supplementary Guidance.

Links

<u>Policies and guidance for this application</u>	LDPP, PLDP70, PLDP24, PLDP68, PLDP22, PLDP01, NSG, NSLBCA, NSBUS, NSDCAH, OTH, CRPNEW, CRPWHS,
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Report

Application for Planning Permission 16/03328/FUL At GF90, 15 - 19 Hanover Street, Edinburgh Change of Use from Class 1 (Shops) to Class 3 (Restaurant). Installation of flue to rear elevation (as amended)

Recommendations

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

Background

2.1 Site description

The application site a three-storey attic and basement classical office located on the east side of Hanover Street. The site lies between Rose Street to the north and Princes Street to the south and has a rear access onto Rose Street South Lane. The building was designed by James McLachlan, 1930 and has projecting shop at ground floor level. There are mezzanine floors to the rear of the unit at ground floor level.

The property is linked to a 3 storey with attic warehouse building to the rear on Rose Street South Lane. This also forms part of the application site.

The property was in retail use up to early November 2016 as Miss Selfridge clothing with retail storage above. The property is currently vacant.

The property is listed category C(S), listed 28 March 1996, LB Ref 43292. The interior is modern.

The surrounding area comprises a mix of commercial uses with the upper floors of the adjacent property to the north at 21 Hanover Street in use as 3 no. holiday flats.

The site is within the World Heritage Site.

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

2.2 Site History

26.10.2016 - Associated listed building consent application granted for minor internal and external alterations. Installation of flue to rear elevation (as amended) (application number 16/03329/LBC).

Listed building consent application under consideration for internal alterations for restaurant use and installation of external flue (application number 16/04884/LBC).

Main report

3.1 Description Of The Proposal

The application is for the change of use of the existing 689 square metre Class 1 retail unit to a Class 3 (restaurant use). The proposed restaurant use will provide 243 seats.

The existing and proposed use is as follows:

Hanover Street:	EXISTING (Miss Selfridge)	PROPOSED (Restaurant)
Basement	Retail Storage	Restaurant (Back of House)
Lower Ground	Retail	Restaurant
Ground	Retail	Restaurant
Mezzanine	Retail	Restaurant
First Floor	Retail Storage	Restaurant and Back of House
Second	Not required	Not required

Rose Street South Lane:

Basement	Retail Storage	Restaurant (Back of House)
Mezzanine	Retail Storage	Restaurant (Back of House)
First	Retail Storage	Restaurant (Back of House)
Second	Not required	Not required
Third Floor	Not required	Not required

No alterations are proposed to the Hanover Street (front) elevation.

A new flue will be installed at the rear (lane) elevation of the property. The positioning of the flue has been amended, and it is routed through the building and will exit onto the lane elevation at eaves level.

The proposed internal alterations form part of the associated application for listed building consent.

Supporting Statement

A Supporting Statement has been submitted by the agent. This document is available to view on the Planning and Building Standards on-line services.

Scheme 1

The proposed external flue was located within a central courtyard to the rear of the building.

3.2 Determining Issues

Section 25 of the Town and Country Planning (Scotland) Act 1997 states - Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise.

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 proposal preserves or enhances the character and appearance of the conservation area;
- c) the proposal adversely affects the listed building or its setting;
- d) the proposal is detrimental to the amenity of neighbours;
- e) the proposal affects road safety;
- f) the proposal is sustainable;
- g) any impacts on equalities of human rights are acceptable; and
- h) comments raised have been addressed.

a) Principle of Development

Local Development Plan policy Ret 8 sets out that the change of use of a shop unit to a non-shop unit will not be permitted where it lies within a Core Shopping Frontage. This is to ensure that the lively shopping ambience is not weakened by the loss of retail. The proposed change of use of the shop unit to a Class 3 restaurant use is contrary to Ret 8 as it involves a change to a non-retail use. Where a shop unit occupies more than one floor, as in this case, the policy applies to the unit as whole, not solely its street level portion.

The agent's supporting statement argues that an exception to established policy should be made for the following reasons:

1. The proposed Class 3 use is part of an established restaurant company with over 170 restaurants in 31 countries. The restaurant will constitute an investment upwards of £2million to the area and 70 jobs which will add to the vitality and viability of the city centre by attracting jobs and footfall and presenting a lively frontage;
2. The Scottish Planning Policy (SPP) 2014 highlights the importance of planning in supporting the role of town centres, encouraging a mix of uses to support their vibrancy, vitality and viability throughout the day and into the evening;
3. The introduction of the proposed restaurant use is contrary to Ret 8 of the Edinburgh City Local Plan and to the City Centre Retail Core Supplementary Guidance. The proposed use would bring the number of non class 1 uses within the primary frontage to three and would therefore exceed the policy guidance. The Edinburgh City Local Plan (ECLP) is outdated. The emerging policy context set out in the new Local Development Plan (due to be adopted in November 2016) recognises that 'a more flexible approach to the introduction of complementary uses is proposed that support the main shopping function and encourage use into the evening';
4. The building is now vacant; and
5. The significant future development of the St James Centre will change the focus of the retail core within the city centre. In advance of this, high quality restaurant proposals such as this need to be supported to ensure the viability and vitality of this part of the city centre.

It is not disputed that the unit is now vacant and such a vacancy could have a detrimental impact on the Hanover Street frontage. The restaurant could offer an active street frontage and contribute to the vitality and viability of the city centre compared to the current vacant unit. Also, the enablement of appropriate and viable uses of vacant upper floors would be encouraged in buildings where the upper floors are not part of a retail unit. However, the key issue is the loss of a large retail unit within the City Centre Retail Core.

In terms of the vacancy of the building, the property has only been unoccupied since early November. Furthermore, the overall low retail vacancy rate in the city centre indicates that there is still a high demand for retail units in the Hanover Street frontage.

The change of use is contrary to policy Ret 8 of the adopted Local Development Plan which states that in the City Centre Retail Core 'change of use proposals which would undermine the retailing function of the centre will not be permitted'. This policy does not permit the change of use of a shop unit to a non-shop use.

However, detailed criteria for assessing changes of use of a shop unit to a non-shop use is set out in supplementary guidance.

As the application site falls within the City Centre Retail Core in the Primary Frontage, Policy ERC 2 of the City Centre Retail Core Supplementary Guidance applies. The change of use of a shop unit to a non-shop use will be permitted provided:

- a. as a result of permitting the change of use, no more than one third of the total number of units in the frontage will be in non-shop use; and,
- b. permitting the change of use, would not result in four or more consecutive non-shop uses; and,
- c. the proposal is for an appropriate commercial or community use which would complement the character of the City Centre Retail Core and would not be detrimental to its vitality or viability.

There are currently six units within this frontage. Two thirds of them are in retail use. Change of use of this unit would lead to half the shops being in non-retail uses, and therefore the proposal would be contrary to the supplementary guidance, and in turn the LDP. Whilst it is the case that the new restaurant would not result in four or more consecutive non retail uses, it still is required to meet all criterion in the policy ERC 2.

The change of use is contrary to Ret 8 of the adopted Local Development Plan and to Policy ERC 2 of the City Centre Retail Core Supplementary Guidance and would weaken the shopping ambience of this core frontage to the detriment of the vitality and viability of the city centre.

b) Impact on Character and Appearance of Conservation Area and World Heritage Site

The New Town Conservation Area Character Appraisal identifies the key characteristics of this part of the New Town as:

- the historic grid hierarchy of grand streets, lesser streets, lanes and mews;
- the established new and larger forms of building over the original terraces;
- spectacular views of Edinburgh Castle and the Old Town skyline; and
- the convergence of major routes in and out of the city.

This city centre location is characterised predominantly by retail uses, although there are other uses such as hotels, offices and occasional banks. This is a busy city centre street in which the proposed Class 3 use would not be out of keeping in terms of vitality and viability, provided the proposed use is not allowed to undermine the core retail frontages.

In terms of physical alterations and appearance of the conservation area, there are no alterations proposed to the Hanover Street (front) elevation.

The rear of the building affected by the proposed external alterations is a later warehouse building and is utilitarian in character. The proposed works have been designed sensitively to have minimal impact on the external appearance. The rear elevation is only partly visible from one public viewpoint in Rose Street.

The proposed uses and associated external alterations will have no detrimental impact on the character or appearance of the conservation area.

c) Impact on Character and Setting of Listed Building

The proposed external alterations have been detailed appropriately and will have no adverse effect on the character or setting of the adjacent listed buildings.

d) Residential Amenity

The proposed restaurant use would potentially have an impact on residential amenity. However, the nearest residential properties are three holiday flats at first, second and attic levels at 23 Frederick Street (above RS Mc Coll's and Lothian Bus offices, respectively) and the flats are accessed via a separate door and steps from street level. An existing internal stairwell serves the common stair at No. 23 and separates the flats with the proposed restaurant use.

The agent has included information on the plans regarding the proposed ventilation system which meets Environmental Protection performance standards. The associated ventilation duct will terminate at high level to the rear of the site which, in conjunction with the performance of the proposed extraction system, should exhaust effluvia at a vertical rate which Environmental Protection considers to be suitable for the protection of amenity of the nearby short-term let apartments. Due to the busy city centre location a negative impact from operational noise of the proposed restaurant is not expected.

Environmental Protection has raised no objections to this use, subject to a condition restricting the hours of operations to within 10am and 23.00pm daily. However, opening hours are controlled by licensing and it is not appropriate to add this condition.

The proposed use will not adversely impact on neighbouring residential amenity.

e) Road Safety

Transport has raised no objections to the proposal particularly given that the site is located to good public transport provision including being within walking distance of Waverley Station and major bus routes.

From a road safety perspective a planning assessment needs to consider the proposed impact in terms of traffic generation over and above that of the existing use. Transport identified a contribution of £120,980 towards the Edinburgh Tram; however, the existing retail use has a higher predicted usage compared to a restaurant use and would attract a contribution of £63,388 as confirmed in the new Developer Contributions and Affordable Housing. The new use will have a lesser impact than the existing use and therefore the revised contribution will be £57,592.

f) Sustainability

There are no sustainability issues.

g) Impact on Equalities and Human Rights

There are no concerns regarding equalities or human rights.

h) Representations

No comments were received.

In conclusion, whilst the proposals would have no adverse effect on the character or appearance of the conservation area or the setting of the listed building and would have no detrimental impact on residential amenity or road safety the proposed uses would weaken the shopping ambience of the city centre core frontage contrary to policy Ret 8 of the adopted Local Development Plan and to Policy ERC 2 of the City Centre Retail Core Supplementary Guidance.

There are no material planning considerations which outweigh this conclusion.

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

3.4 Conditions/reasons/informatives

Reasons:-

1. The proposal is contrary to adopted Local Development Plan Policy Ret 8 in respect of Alternative Use of Shop Units - City Centre Core Frontages, as the proposed use would result in the loss of a retail unit and weaken the shopping ambience of the city centre
2. The proposal is contrary to the Local Development Plan Policy Ret 2 in respect of City Centre Retail Core, as the proposed use would result in more than one third of total number of units being in non-shop use.

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

The application was advertised on the 15 July 2016.

No letters of representation were received.

Background reading/external references

- To view details of the application go to
- [Planning and Building Standards online services](#)
- [Planning guidelines](#)
- [Conservation Area Character Appraisals](#)
- [Edinburgh Local Development Plan](#)
- [Scottish Planning Policy](#)

**Statutory Development
Plan Provision**

The property is situated in a Core Shopping Frontage as identified in the Edinburgh City Local Plan.

Date registered

4 July 2016

Drawing numbers/Scheme

1-16, 17A, 18-19, 20-26.,

Scheme 2

John Bury

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Links - Policies

Relevant Policies:

Relevant policies of the Local Development Plan.

Second Proposed LDP Policy Ret 10 (Food and Drink Establishments) sets criteria for assessing the change of use to a food and drink establishment.

Second Proposed LDP Policy Env 6 (Conservation Areas - Development) sets out criteria for assessing development in a conservation area.

Second Proposed LDP Policy Ret 8 (Alternative Use of Shop Units in Defined Centres) protects the City Centre Retail Core and Town Centres from development which would undermine their retailing function, and specifies that detailed criteria for change of use will be set out in supplementary guidance. It provides criteria for assessing the change of use of a shop unit to a non shop unit in local centres.

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

Second Proposed LDP Policy Del 1 (Developer Contributions) identifies the circumstances in which developer contributions will be required.

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.

Non-statutory guidelines on Developer Contributions and Affordable Housing gives guidance on the situations where developers will be required to provide affordable housing and/or will be required to make financial or other contributions towards the cost of, providing new facilities for schools, transport improvements, the tram project, public realm improvements and open space.

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.

World Heritage Site

The historic centre of Edinburgh, including the medieval Old Town and the Georgian New Town, was inscribed on the United Nations Education, Scientific and Cultural Organisation's (UNESCO's) List of World Heritage Sites in December, 1995. This represents international recognition that the Site is of outstanding universal value.

The organic plan form of the medieval Old Town and the clarity of the geometrically planned neo-classical New Town together with the outstanding historic buildings are fundamental characteristics of the World Heritage Site. All proposals affecting the plan form or historic buildings, including their setting, will be considered for their impact on their design integrity.

Appendix 1

Application for Planning Permission 16/03328/FUL At GF90, 15 - 19 Hanover Street, Edinburgh Change of Use from Class 1 (Shops) to Class 3 (Restaurant). Installation of flue to rear elevation (as amended)

Consultations

ENVIRONMENTAL ASSESSMENT

The applicant proposes the change of use of the ground floor of a retail unit to form a class 3 restaurant at 15-19 Hanover Street. The property is located between an existing class 3 property to the south and the entrance to a common stair (serving the living accommodation above the adjacent retail outlet) to the north. These former residential flats are now in use as short term let apartments. No change of use from the current class 1 is proposed for the floors directly above the application level.

Class 3 use can have a negative effect on amenity if noise and odour production are not properly considered at the design stage. In this instance, the agent has included on the plans information regarding the proposed ventilation system which meets Environmental Protection's performance standards. The associated ventilation duct will terminate at high level which - in conjunction with the performance of the proposed extraction system - should exhaust effluvia at a vertical rate which Environmental Protection considers to be suitable for the protection of amenity of the nearby short-term let apartments. Due to the busy city centre location a negative impact from operational noise of the proposed restaurant is not expected.

Environmental Protection has no objections to this proposed development, subject to the following condition:

- *The restaurant shall not operate outwith the hours of 10:00 to 23:00, daily*

TRANSPORTATION

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

1. *Consent should not be issued until the applicant has entered into a suitable legal agreement to provide:-*
 - o *In line with the councils approved planning guidance with respect to developers contributions a financial contribution to the Edinburgh Tram of £120,980 is relevant (based on 689m² Restaurant in Zone 1). Should it be considered that this not applicable due to the nature of the use, or discounted given the previous use of the site, it is recommended that this is fully documented in the delegated powers report or report to committee ;*
 - o *Install a monitor capable of receiving an internet connection to display Public Transport Real Time information in the reception area of the restaurant. (Reason to advise staff and visitors of public transport).*

2. 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;
3. The City of Edinburgh Council acting as Roads Authority reserves the right under Section 93 of The Roads (Scotland) Act 1984 to adjust the intensity of any non-adopted lighting applicable to the application address.
4. The proposed site is on or adjacent to the Edinburgh Tram which is now operational. Tram power lines are over 5m above the tracks and do not pose a danger to pedestrians and motorists at ground level or to those living and working in the vicinity of the tramway. However, the applicant should be informed that there are potential dangers and, prior to commencing work near the tramway, a safe method of working must be agreed with the Council and authorisation to work obtained. Authorisation is needed for any of the following works either on or near the tramway:
 - o Any work where part of the site such as tools, materials, machines, suspended loads or where people could enter the Edinburgh Tram Hazard Zone. For example, window cleaning or other work involving the use of ladders;
 - o Any work which could force pedestrians or road traffic to be diverted into the Edinburgh Trams Hazard Zone;
 - o Piling, using a crane, excavating more than 2m or erecting and dismantling scaffolding within 4m of the Edinburgh Trams Hazard Zone;
 - o Any excavation within 3m of any pole supporting overhead lines;
 - o Any work on sites near the tramway where vehicles fitted with cranes, tippers or skip loaders could come within the Edinburgh Trams Hazard Zone when the equipment is in use;
 - o The Council has issued guidance to residents and businesses along the tram route and to other key organisations who may require access along the line.
 - o See our full guidance on how to get permission to work near a tram way <http://edinburghtrams.com/community/working-around-trams>

Location Plan



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