

Development Management Sub Committee

Wednesday 22 February 2017

Application for Planning Permission 16/04552/FUL At 88 Grassmarket, Edinburgh, EH1 2JR Change of use from shop (Class 1) to restaurant (Class 3)

Item number	4.5
Report number	
Wards	A11 - City Centre

Summary

The proposed use is contrary to policy Ret 10 of the adopted Edinburgh Local Development Plan due to the loss of a retail unit. However, it will not adversely impact on the character of the speciality shopping street, on residential amenity, or upon the character and appearance of the Grassmarket or wider conservation area. Therefore an exception to the policy is considered acceptable.

Links

Policies and guidance for this application	LRET10, LRET11, LEN06, NSBUS, LHOU07, CRPOLD,
--	---

Report

Application for Planning Permission 16/04552/FUL At 88 Grassmarket, Edinburgh, EH1 2JR Change of use from shop (Class 1) to restaurant (Class 3)

Recommendations

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

Background

2.1 Site description

The site is a small shop unit on the ground floor, with tenements above, situated on the north east side of the Grassmarket and located between Scooby Doo's Cafe/Bar and Maggie Dickson's public house.

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

2.2 Site History

Consents granted for a shopfront microcell antenna in 2004 and replaced in 2005 (04/00075/LBC and 05/2368/LBC).

Main report

3.1 Description Of The Proposal

The proposal is to change the use of a joke/costume shop to a Class 3 restaurant specialising as a Scottish themed taster restaurant. Cooking ventilation would be taken up through a flat roof at the rear via an existing chimney which rises up the rear gable to high level. The premises has space for a four bench table bar, four easy chairs and 10 table covers (18 covers in total). The public floor area would be approximately 23 sq.m. It is proposed to install a secondary suspended ceiling for added noise protection to the flatted properties above.

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 change of use is acceptable in principle in this location;
- b) there will be any loss of residential amenity;
- c) there will be any impact on the character and appearance of the building, or the conservation area;
- d) the public objections have been addressed; and
- e) there are any equality or human rights issues.

a) Principle of Use

The site is identified within the Central Area of the adopted Edinburgh Local Development Plan (LDP) as a speciality shopping street. LDP Policy Ret10 applies. The principle issue is the compatibility of the proposed use with surrounding uses and the impact on vitality and viability of the speciality retail frontage within the Grassmarket. The use is intended be a specialised Scottish themed restaurant with 18 covers within a premises with a relatively small floor area of 23 sq.m and a narrow frontage. This street frontage contains 11 commercial units of which four are public houses, three are cafe/restaurants and one is a hotel. Three, including the site, are in retail use.

LDP Policy Ret 10 is relevant to this proposal and sets out policy to guide alternative uses of shop units outwith defined centres. The policy does not define the minimum number of retail units within the frontage that should be retained. Whilst the proposal is for another class 3 use, it is intended to be a specialised Scottish cuisine restaurant among a frontage of Italian, French and Mexican restaurants. It should be noted, however, that there would be no subsequent control over the type of restaurant, if this application were approved.

LDP Policy Ret 10 a) states that where a shop unit is within a speciality shopping street, which the proposal is, regard has to be given as to whether the alternative use would be to the detriment of its special shopping character. At present in this particular retail frontage there are only 3 units out of 11 in retail use, i.e. 27%. The change of use would drop this to 18%. This loss would be detrimental to its shopping character, and therefore the proposal is contrary to this policy.

As the proposal is contrary to the plan, consideration needs to be given to whether the proposal should be granted as an exception to policy on the grounds of material considerations. Firstly, the character of this shopping street within the Grassmarket has become one of street-side cafes and restaurants, which takes advantage of the unique circumstances, i.e. that the main road is set back from the frontage. The character of the area is one of a market square and not a conventional street. The proposed change of use would be entirely in accord with the current character of this street. Secondly, there is nothing to prevent the unit from subsequently reverting back to its current retail unit in the future. Lastly, there are still other retail units with the Grassmarket on the other frontages, and adjacent streets leading to and from the Grassmarket. As a result, in this particular case, there is justification for granting consent as an exception to policy.

In conclusion, the use as a restaurant is acceptable in principle in this location.

b) Amenity

LDP Policy Ret 11 seeks to resist changes of use of shop units to restaurant, cafe, pub, or hot food takeaway a) if it would lead to an unacceptable increase in noise, disturbance, on street activity or anti-social behaviour to the detriment of living conditions of nearby residents, and b) where this is in an area where there is considered to be an excessive concentration of such uses to the detriment of living conditions for nearby residents. LDP Policy Hou7 resists uses which would have a materially detrimental effect on the living conditions of nearby residents.

The protection of existing residential amenity would be assured by noise insulation being fitted to the ceiling of the shop to prevent upward noise outbreak to the flats above. Details have been submitted and a condition ensuring compliance is recommended. An existing internal chimney will be used at the back of the premises to duct effluvia from the proposed kitchen from within a flat roofed extension up to chimney pot height. The chimney breast rises up the back gable of the tenement. Environmental Protection is satisfied with the sound insulation and the ventilation. An appropriate condition is recommended.

Sound outbreak by clientelle within the street fronting the premises is not controllable, but is unlikely to be any worse than that already created by other existing commercial restaurant premises in the vicinity. It will be a restaurant use rather than a takeaway use restricted to 11pm closing, which should be less noisy than a hot food takeaway and would not lead to significant unsocial behaviour.

There will be no loss of residential amenity.

c) Conservation Area

There will be little impact on the character and appearance of the building apart from cosmetic changes to the shopfront, such as re-painting. Correspondingly, there will be little impact on the conservation area. The proposal therefore accords with LDP Policy Env6 and will have no adverse impact on the character and appearance of the conservation area.

d) Public Comments:

Material representations - Objection:

- Continues trend away from speciality shopping to restaurant. This is addressed in paragraph 3.3a).
- Affect of noise on residential amenity despite noise insulation measures. This is addressed in paragraph 3.3b).
- Opening hours not defined. There could be no planning justification in this city centre location for closing before 11pm at night and thereafter it would be subject to a late night license which would be determined on its own merits by the Licensing Board. Unsocial behaviour. This is addressed in paragraph 3.3b).
- Contrary to LDP Policy Hou8 and Ret11. This is addressed in paragraph 3.3a) and 3.3b).

Late representation - Objection:

- Edinburgh Old Town Association - Object in principle for change from Class 1 to Class 3 use. This is addressed in 3.3a).

Non-material representation:

- Quality of life. This is a subjective comment and is indirectly addressed in paragraph 3.3b).
- Business Improvement District, shops not cafes should be supported. This is addressed below:

Typically, a Business Improvement District (BID) is a precisely defined geographical area of a town, commercial district or tourism and visitor area, where businesses vote to invest collectively in local improvements resulting in an improved business environment and improved local economic growth. BIDs are developed, managed and paid for by the commercial sector by means of a compulsory BID levy. Consequently, the BID is not funded by the Council nor is it subject to planning control. The comment is not therefore material to the consideration of this case.

Material representations - Support and Comment:

- Individual retailing getting difficult for operators to succeed. Regulated Restaurant better than another tartan tat shop.

e) Human Rights:

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

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

3.4 Conditions/reasons/informatives

Conditions:-

1. The following works, as defined in the RMP noise impact assessment '88 Grassmarket Edinburgh' (Technical Report No. R-7694-EK-RRM) dated 21st December 2016, shall be completed in full, to the satisfaction of the Head of Planning, prior to the first use of the property as a restaurant:
 - i. All gaps or cracks in the existing ceiling shall be filled and made good, gaps greater than 25mm in diameter shall be covered by two layers of 12.5mm high density plasterboard which extends to a minimum of 50mm around the opening.
 - ii. A new metal frame ceiling, suspended on metal straps or wires, shall be installed. The ceiling should consist of a double staggered layer of gypsum-based boards (minimum 12kg/m³ per layer) such as 15mm Gyproc Soundbloc, Knauf Soundshield, Siniat dBcheck or equivalent. Resilient hangers should be used to fix this new metal frame ceiling to the existing lath and plaster ceiling, such as BG Gypframe GAH Acoustic Hangers or equivalent. A ceiling cavity of minimum 200mm should be created incorporating 100mm of mineral fibre insulation (minimum density 10kg/m³).
 - iii. No service penetrations shall be made through the new ceiling and should be run in a void between the acoustic ceiling and a false ceiling underneath.

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. 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.
3. 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.
4. Worktops/food preparation surfaces - In order to reduce impact noise from worktops transferred to the first floor via the walls, worktops and surfaces in the counter service area should be free standing, ensuring the work surfaces are not rigidly linked to the wall. Where necessary for rigidity, limited fixings may be made to the walls through a resilient layer such as Ethafoam.

Sound Systems - The maximum noise level from any amplified music associated with the restaurant or the take away should not exceed an LAeq of 80dB. For bathrooms and kitchen areas the maximum level should not exceed LAeq 75dB.

The loudspeakers throughout the café should be hung using resilient speaker hangers such as Mason Industries 30N series (e.g. Type X33) depending on the weight of each speaker being supported. It would be preferable to support the lighter speakers using wire. Alternatively, the speakers should be mounted on shelves lined with 20mm thick Sylomer foam or equivalent resilient underlay. Speakers should not be directly fixed to the ceiling or any of the structural walls

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:

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

Sustainability impact

7.1 The sustainability impact has been assessed as follows:

This application meets 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 7 October 2016. Ten letters have been received, including those from the Grassmarkets Residents' Association and the Edinburgh Old Town Association (whose letter was late); Seven of objection, one of comment, one of support and one late objection.

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 site is allocated as a Speciality Shopping Street in the Edinburgh City Local Plan. Policies HOU07, LEN06, RET10 and RET11 apply as well as the non-statutory Guidance for Business Uses.

Date registered

20 September 2016

Drawing numbers/Scheme

01 - 03,

Scheme 1

David R. Leslie

Chief Planning Officer
PLACE
The City of Edinburgh Council

Contact: Duncan Robertson, Senior Planning Officer
E-mail:d.n.robertson@edinburgh.gov.uk Tel:0131 529 3560

Links - Policies

Relevant Policies:

LDP Policy Ret 10 (Alternative Use of Shop Units in Other Locations) sets out the criteria for assessing the change of use of a shop unit outwith defined centres.

LDP Policy Ret 11 (Food and Drink Establishments) sets criteria for assessing the change of use to a food and drink establishment.

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

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.

LDP Policy Hou 7 (Inappropriate Uses in Residential Areas) establishes a presumption against development which would have an unacceptable effect on the living conditions of nearby residents.

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

Application for Planning Permission 16/04552/FUL At 88 Grassmarket, Edinburgh, EH1 2JR Change of use from shop (Class 1) to restaurant (Class 3)

Consultations

Environmental Protection

The applicant seeks planning permission to change the use of a shop to form a restaurant at 88 Grassmarket. The property is located between an existing café to the west and a residential common stair to the east, directly above are residential flats.

Environmental Protection has concerns regarding the potential for noise break-out from the proposed restaurant as this is likely to be louder than the existing use and has the potential to negatively affect amenity in the flats above. The agent has submitted a noise impact assessment which concludes that a program of upgrading works to the building envelope will be required to mitigate any increases in operational noise and protect the amenity of the flats above. A condition is recommended.

Class 3 properties can also harm amenity through the production of odours associated with the production of hot food. The agent has submitted information regarding the proposed ventilation system which complies with Environmental Protection's standards.

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

Conditions

1. The following works, as defined in the RMP noise impact assessment '88 Grassmarket Edinburgh' (Technical Report No. R-7694-EK-RRM) dated 21st December 2016, shall be completed in full, to the satisfaction of the Head of Planning, prior to the first use of the property as a restaurant:

i. All gaps or cracks in the existing ceiling shall be filled and made good, gaps greater than 25mm in diameter shall be covered by two layers of 12.5mm high density plasterboard which extends to a minimum of 50mm around the opening.

ii. A new metal frame ceiling, suspended on metal straps or wires, shall be installed. The ceiling should consist of a double staggered layer of gypsum-based boards (minimum 12kg/m³ per layer) such as 15mm Gyproc Soundbloc, Knauf Soundshield, Siniat dBcheck or equivalent. Resilient hangers should be used to fix this new metal frame ceiling to the existing lath and plaster ceiling, such as BG Gypframe GAH Acoustic Hangers or equivalent. A ceiling cavity of minimum 200mm should be created incorporating 100mm of mineral fibre insulation (minimum density 10kg/m³).

iii. *No service penetrations shall be made through the new ceiling and should be run in a void between the acoustic ceiling and a false ceiling underneath.*

2. *The hours of operation of the property shall be restricted to 07:00 to 23:00, daily.*
Informative

1. *Worktops/food preparation surfaces - In order to reduce impact noise from worktops transferred to the first floor via the walls, worktops and surfaces in the counter service area should be free standing, ensuring the work surfaces are not rigidly linked to the wall. Where necessary for rigidity, limited fixings may be made to the walls through a resilient layer such as Ethafoam.*

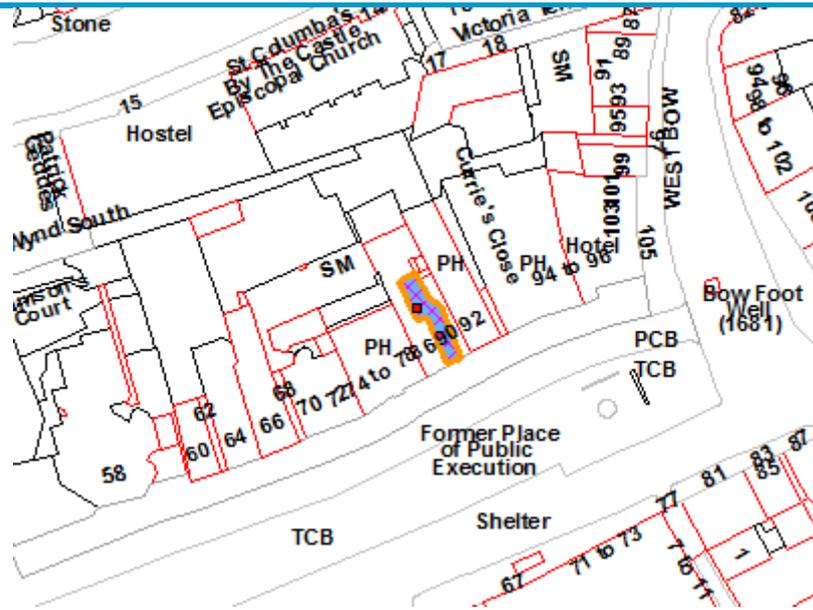
Sound Systems - The maximum noise level from any amplified music associated with the restaurant or the take away should not exceed an LAeq of 80dB. For bathrooms and kitchen areas the maximum level should not exceed LAeq 75dB.

The loudspeakers throughout the café should be hung using resilient speaker hangers such as Mason Industries 30N series (e.g. Type X33) depending on the weight of each speaker being supported. It would be preferable to support the lighter speakers using wire. Alternatively, the speakers should be mounted on shelves lined with 20mm thick Sylomer foam or equivalent resilient underlay. Speakers should not be directly fixed to the ceiling or any of the structural walls.

Transport

No objections

Location Plan



© Crown Copyright and database right 2014. All rights reserved. Ordnance Survey License number 100023420
END