

Development Management Sub Committee

Wednesday 24 January 2018

**Application for Planning Permission 17/03932/FUL
At 137 Liberton Brae, Edinburgh, EH16 6LD
Change of use from Class 2 to hot food takeaway.**

Item number	4.5
Report number	
Wards	B16 - Liberton/Gilmerton

Summary

The proposal does not comply with the development plan and non-statutory guidance. The proposal is not acceptable in this location and will have a detrimental impact on residential amenity but will have no adverse impact on traffic and road safety. There are no other considerations which outweigh this conclusion.

Links

[Policies and guidance for this application](#) LRET05, NSG, NSBUS, LDPP, LRET11, LHOU07,

Report

Application for Planning Permission 17/03932/FUL At 137 Liberton Brae, Edinburgh, EH16 6LD Change of use from Class 2 to hot food takeaway.

Recommendations

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

Background

2.1 Site description

The application refers to a ground floor commercial unit, currently in class 2 use as a letting agent, that is part of a parade of approximately 10 units that forms a 'local centre' on the east side of Liberton Brae. The commercial units are below residential flats and, apart from this parade, the area is predominantly residential in character.

2.2 Site History

01 March 2007 - Application granted for change of use from retail shop to estate agents office. (application ref. 07/00420/FUL).

27 January 2015 - Application granted for installation of ATM to shop front. (application ref. 14/04937/FUL).

03 August 2017 - Application withdrawn for change of use from class 2 to hot food takeaway. (application ref. 17/02222/FUL).

Main report

3.1 Description Of The Proposal

The application is for a change of use from class 2 to hot food takeaway (sui generis). Proposed hours of opening are 11AM to 11 PM.

Supporting Statement

As part of this application the following documents have been submitted which are available to view on Planning and Building Standard's Portal:

- Noise Impact Assessment.

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 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) there will be any detrimental impact on residential amenity;
- c) there will be any detrimental impact on traffic or road safety; and
- d) any comments raised have been addressed.

a) The Acceptability of the Proposed Use this Location

The application property is a class 2 use within a 'local centre'. It is not an existing retail unit, therefore the loss of a retail use does not need to be assessed. Instead the application must be assessed against LDP Policy Ret 11 which presumes against the change of use to a shop selling hot food for consumption off the premises 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
- In an area where there is considered to be an excessive concentration of such uses.

Policy Hou 7 also applies as it presumes against changes of use that would have a materially detrimental impact on the living conditions of nearby residents. The Non-statutory Guidance for Businesses states that proposals for new hot food takeaways will be supported in "existing clusters of commercial uses, provided it will not lead to an unacceptable increase in disturbance, on-street activity or anti-social behaviour to the detriment of the living conditions of nearby residents".

There is one other hot food takeaway open to 11 PM in this parade of commercial uses. A baker that sells takeaway food is only open until 3:30 PM. Therefore it cannot be considered that there is an excessive concentration in this location. The surrounding area is overwhelmingly residential in character. The principle of a hot food takeaway is only acceptable in this location if it meets criteria assessed in the points below.

b) Neighbouring Residential Amenity

A noise impact assessment has been submitted and Environmental Protection has not objected. It is not expected that upstairs residents would be impacted by plant or noise transfer through the building structure.

However, apart from the local centre at street level, the surrounding area is overwhelmingly residential. The hours of the takeaway are such that on street activity is likely to occur late into the night. Although hot food takeaways can be compatible with, and contribute to, the vitality of a local centre this should not be at the expense of the amenity of nearby residents. While they may be acceptable in an area that is more dominated by commercial uses, this area is characterised by residential uses and the proposed closing hours of 11PM at night could cause an increase in on street activity and noise that would be of detriment to the surrounding residents.

The nature of the proposed use, and the hours that it will be open, are likely to cause adverse impact on the living conditions of neighbouring residents.

c) Traffic or Road Safety Issues

Although parking in the layby in front of the cluster of commercial units may be limited, there is ample parking in the surrounding area and the proposed change of use will not cause any significant issues with parking in the area.

There will be no adverse impact on traffic and road safety.

d) Public Comments

Material points of objection relate to:

- The proposed use. There are already other takeaways in this area and this use will undermine commercial viability of the area (assessed in section 3.3.a);
- The area is primarily residential and this use is not appropriate in this location. (assessed in section 3.3.a and b);
- Adverse impact on residential amenity (assessed in section 3.3.b);
- Proposed opening hours are anti-social (assessed in section 3.3.a); and
- Traffic, parking and road safety (assessed in section 3.3.c).

Material points of support relate to:

- The benefits of another hot food takeaway in this location (assessed in section 3.3.a).

Non-material comments relate to:

- Possible impact on drains and sewers; and
- Fire risk.

Community Council objections:

The Liberton and District Community Council object to the application on the following grounds:

- The use in this location (assessed in section 3.3.a);
- Opening hours would be antisocial (assessed in section 3.3.a);
- Residential amenity (assessed in section 3.3.b); and
- Parking (assessed in section 3.3.c).

Conclusion

In conclusion, the proposal does not comply with the development plan and non-statutory guidance. The proposal is not acceptable in this location and will have a detrimental impact on residential amenity but will have no adverse impact on traffic and road safety. There are no other 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 the Local Development Plan Policy Ret 11 in respect of Food and Drink Establishments, as the proposed use is likely to lead to an unacceptable increase in noise, disturbance and on-street activity to the detriment of neighbour's living conditions.
2. The proposal is contrary to the Local Development Plan Policy Hou 7 in respect of Inappropriate Uses in Residential Areas, as the proposed use will have a materially detrimental effect on the living conditions of nearby residents.
3. The proposals are contrary to development plan policy as interpreted using the non-statutory Guidance for Businesses as it is likely to lead to an unacceptable increase in disturbance, on-street activity or anti-social behaviour to the detriment of the living conditions of nearby residents.

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 is not subject to the sustainability requirements of the Edinburgh Design Guidance.

Consultation and engagement

8.1 Pre-Application Process

Pre-application discussions took place on this application.

8.2 Publicity summary of representations and Community Council comments

The application was advertised on 22 September 2017. There have been 16 material letters of objection and seven material letters of support. Also received were 12 non-material letters of support and one non material letter of objection as they gave no reason for objecting or supporting.

The letters of objection were received from both residential and commercial neighbours, a ward councillor and the Liberton and District Community Council. The letters of support were submitted by members of the public who do not live locally.

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](#)
- [Planning guidelines](#)
- [Conservation Area Character Appraisals](#)

- [Edinburgh Local Development Plan](#)
- [Scottish Planning Policy](#)

**Statutory Development
Plan Provision**

The application site is located within a 'local centre' in the urban area as defined by the Local Development Plan.

Date registered

24 August 2017

Drawing numbers/Scheme

01,

Scheme 1

David R. Leslie

Chief Planning Officer

PLACE

The City of Edinburgh Council

Contact: Barbara Stuart, Senior Planning Officer

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

Links - Policies

Relevant Policies:

LDP Policy Ret 5 (Local Centres) sets criteria for assessing proposals in or on the edge of local centres.

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.

Relevant policies of the Local Development Plan.

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

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.

Appendix 1

Application for Planning Permission 17/03932/FUL At 137 Liberton Brae, Edinburgh, EH16 6LD Change of use from Class 2 to hot food takeaway.

Consultations

Transport

No objections to the application.

Note:

The proposed change of use is from 54m² of Class 2 Financial / professional to 54m² of Class 3 takeaway. Current (2017) parking standards for Zone 2 are:

- o For the existing use, up to 1 space per 50m² for Class 2 financial / professional, that is 1 space;*
- o For the proposed use, up to 1 space per 14m² for Class 3 takeaways, that is 4 spaces.*

The existing layby and adjacent parking in Wolrige Road is considered adequate for the various residential and business demands.

Environmental Services

The applicant proposes changing the use of a ground floor commercial property from use class 2 to hot food takeaway. The property is two storeys with residential above located on Liberton Brae in the middle of a small row of various commercial and retail uses. There are also further residential properties located to the rear and front of this property.

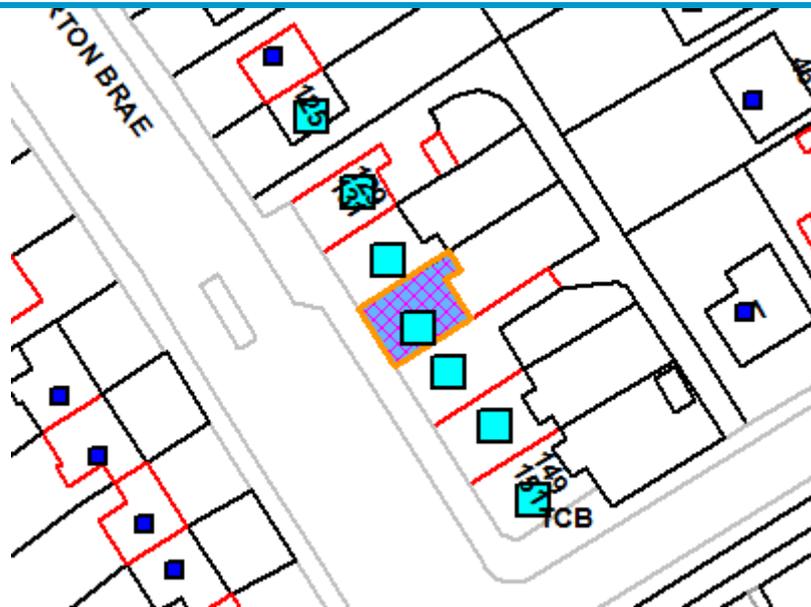
There is one takeaway already operating on this row. Environmental Protection have received odour complaints and a noise complaint regarding the operation of that takeaway.

The applicant states that they intend ducting the kitchen extract up through the existing chimney. The applicant has confirmed that this chimney has been physically checked and it is cable of being lined with the required flue liner to achieve the minimum required air changes. The applicant has also submitted a Noise Impact Assessment which has investigated the potential noise impacts this proposal may have on the neighbouring residential properties. It has considered all the associated operational noise that may occur in a hot food take away. The applicant has advised that is will only operate during day-time hours. No mitigation acoustic measures are required.

Therefore, Environmental Protection offers no objection subject to the following condition;

1. Prior to the use being taken up, the extract flue and ventilation system, capable of 30 air changes per hour, as show on drawing no. P/L2017/14/01 dated May 2017 shall be implemented.

Location Plan



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