

# Development Management Sub Committee

Wednesday 25 April 2018

**Application for Planning Permission 17/00629/FUL  
At 50 Broughton Street, Edinburgh, EH1 3SA  
Proposed change of use from Grocer's shop to unlicensed  
takeaway. Fit new door and erection of flue both on rear  
elevation. (as amended).**

<b>Item number</b>	4.3
<b>Report number</b>	
<b>Wards</b>	A11 - City Centre (Pre May 2017)

## Summary

---

The proposal forms an appropriate commercial use which will not be detrimental to the vitality and viability of the Broughton Street Town Centre and which will not have a detrimental impact on the living conditions of nearby residents. The proposal will preserve the character and appearance of the New Town Conservation Area and will not have a detrimental impact on the unique architectural character of the listed building. The proposal complies with policies Ret 9, Ret 11, Env 4 and Env 6 of the adopted Edinburgh Local Plan and the Council's Non-Statutory Guidance for Businesses.

## Links

---

<a href="#"><u>Policies and guidance for this application</u></a>	LDPP, LRET09, LRET11, LEN04, LEN06, NSG, NSBUS, CRPNEW,
---	---

# Report

## **Application for Planning Permission 17/00629/FUL At 50 Broughton Street, Edinburgh, EH1 3SA Proposed change of use from Grocer's shop to unlicensed takeaway. Fit new door and erection of flue both on rear elevation. (as amended).**

### **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 ground floor and basement level retail unit situated within a four storey classical style tenement building located on the western side of Broughton Street. The surrounding area has a mixed residential/commercial character consisting of retail units, restaurants, public houses and offices; combined with residential flats situated in tenement buildings.

The premises is a category A listed building (listing date 12.12.1974, listing reference: 30072).

The site is located in the UNESCO World Heritage Site.

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

#### **2.2 Site History**

17 February 2016 - Planning application for a change of use from a retail unit to a hot food takeaway withdrawn (application reference: 15/05394/FUL).

15 February 2017 - Application submitted for listed building consent for internal alterations and the erection of ventilation flues on the rear of the building. This application is currently pending consideration (application reference: 17/00628/LBC).

### **Main report**

---

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

The proposal seeks planning permission for a change of use from retail (class 1) to a hot food takeaway (sui generis). Consent is also sought for the installation of two cast iron ventilation flues 175 millimetres in diameter on the rear elevation of the premises ducting to above eaves level and the creation of a door on the rear elevation at basement level.

No alterations are proposed to the principal elevation of the premises as part of this application.

### Scheme One

The original proposal was amended to alter the proposed noise insulation measures for the premises.

### Supporting Documents

The following documents were submitted in connection with the application and are available to view via Planning and Building Standards Online Services:

- Noise Impact Assessment.
- Noise Impact Assessment Addendum.

### **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 proposal is acceptable in principle;
- b) The proposal will have a detrimental impact on the living conditions of nearby residents;
- c) The proposal will preserve or enhance the character and appearance of the New Town Conservation Area;

- d) The proposal will have a detrimental impact on the unique architectural and historical character of the listed building;
- e) The proposal raises any issues in respect of infrastructure contributions;
- f) Any issues raised by objectors have been addressed, and
- g) The proposal raises any issues in respect of equalities and human rights.

a) Principle of the Proposal

Policy Ret 9 of the adopted Edinburgh Local Development Plan (LDP) states that the change of use of a shop unit in a local centre to a non-shop use will be permitted provided the change of use would not result in four or more non-shop uses, and the proposal is for an appropriate commercial use which would complement the character of the centre and would not be detrimental to its vitality or viability.

The application site lies within a row of commercial properties extending between numbers 42 and 76 Broughton Street all of which form part of the Broughton Street Local Centre in the LDP. The premises is located between the Phoenix public house situated at number 46-48 to its south; and two retail units located directly to its north. Permitting the change of use will not result in four or more consecutive non-shop uses along this section of Broughton Street.

Broughton Street Local Centre encompasses several established uses including retail units, restaurants and public houses and hot food takeaways. The variance of uses is reflective of the mixed character of the area, providing a variety of commercial services and recreational activities throughout both daytime and evening/night time hours. The proposed use is in keeping with the varied character of the local centre and will not be detrimental to its vitality or viability.

The proposal is acceptable in principle and complies with LDP policy Ret 9.

b) Living conditions of nearby residents

LDP policy Ret 11 states that the change of use of a shop unit to a hot food takeaway will not be permitted if likely to lead to an 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 to the detriment of living conditions for nearby residents.

As highlighted in section a) the surrounding area has a mixed character which encompasses a suitable balance of both retail units and restaurants/cafes. The nearest hot food takeaway in Broughton Street, Rapido, is located 50 metres to the south of the site. The majority of surrounding commercial properties which are involved in the sale of food and drink, specifically L'Escargot Bleu and Nom De Plume which are situated directly to the north of the premises operate at the latest until 10.30pm and 11pm in the evenings. The Olive Branch which is situated on the opposite side of the street operates until 10.00pm.

The premises is identified in the Council's Non-Statutory Guidance for Businesses as being within an area of restriction for hot food takeaways. The guidance advises that where proposals for hot food takeaways within areas of restriction are considered acceptable, they will be controlled through conditions restricting the hours of operation in order to ensure there is no adverse impact on residential amenity. Taking the requirements of the guidance into account, a condition will be attached restricting the hours of operations to between 0800 and 2200 hours Monday to Sunday. This will allow realistic commercial hours of operation but will place a limit on night time activity which could cause disturbance. Any alteration of these hours will require the submission and approval of a further planning application under section 42 of the Town and Country Planning (Scotland) Act 1997 (as amended).

Environmental Protection were consulted on the proposal and examined both the proposed use and the noise mitigation and insulation measures which will be employed to keep the level of noise from the premises at acceptable levels. Environmental Protection have raised no objection to the proposal either on anti-social behaviour grounds or in respect of noise and cooking odours which may be emitted from the premises.

The proposal will not have a detrimental impact on the living conditions of nearby residents and complies with LDP policy Ret 11.

#### c) Character and Appearance of the New Town Conservation Area

LDP policy Env 6 states that Development within a conservation area or affecting its setting will be permitted which preserves or enhances the special character or appearance of the conservation area and is consistent with the relevant conservation area character appraisal.

The New Town Conservation Area Character Appraisal highlights the varied character of this section of the New Town stating:

*Gayfield has a substantial residential population amongst other uses. This variety has been extended by redevelopment and by the conversion of residential property to office use. Shop units occupy the street level accommodation along Leith Walk and Broughton Street and occasional shop uses are present in Union Street and other locations.*

As stated in sections a) and b), the proposed use is in keeping with the mixed commercial/residential character of the surrounding area. The proposed use will preserve the character of the conservation area.

The principal external alterations involved with the proposal concern the erection of two cast iron flues 175 millimetres in width on the rear elevation of the building. The flues will terminate one metre above eaves level.

The use of cast iron for the flues will ensure that their appearance is broadly similar to the original pipework located on the rear of the building and will aid in minimising their visual impact. Owing to their position on the rear elevation, the ventilation flues will be predominantly obscured from view. The flues will be partially visible from a short stretch of Barony Place, situated to the west of the premises. However, the overall visual impact on the flues on the wider area will be mitigated due to their limited visibility, the presence of mature existing trees situated along the rear boundary of the tenement garden and the impact of a two storey new build house located at 4 Barony Place.

No alterations are proposed to the principal elevation of the premises and the access door which will be created will be located below ground level and as such will be obscured from view.

The proposal will preserve the character and appearance of the New Town Conservation Area and complies with LDP Policy Env 6.

#### d) Architectural and Historical Character of the Listed Building

LDP policy Env 4 states that proposals to alter or extend a listed building will be permitted where there will be no unnecessary damage to historic structures or diminution of its interest.

The interior of the premises has a modern layout and does not encompass any features of architectural interest.

As detailed in section c), the proposed flues on the rear elevation will be cast iron in order to match the existing drains and pipework on the elevation. The design which will ensure they are similar in appearance to the existing pipework and will minimise their impact on the historic character of the building.

The new door to the rear of the building will be formed from an opening in which a window was previously located. The opening has since been filled in and it holds little architectural or historical value. The formation of the door is a minor alteration which will have a negligible impact on the historic character of the building.

The proposal will not have a detrimental impact on the unique architectural and historical character of the listed building and complies with LDP policy Env 4.

#### e) Infrastructure Contributions

The Roads Authority were consulted on the proposal and did not raise any requirement for the proposal to provide a contribution to the tram network.

#### f) Issues Raised by Objectors

##### **Material Considerations:**

- Loss of retail unit - addressed in section 3.3 (a).
- Proposal will have a detrimental impact on residential amenity due to noise, vibrations, cooking odours and anti-social behaviour - addressed in section 3.3 (b).

- Proposal will result in an over provision of food and drink establishments in the surrounding area - addressed in sections 3.3 (a) and (b).
- Detrimental impact on the character and appearance of the conservation area - addressed in section 3.3 (c).
- Detrimental impact on the architectural and historical character of the listed building - addressed in section 3.3 (d).

### **Non-Material Representations:**

- Applicant does not have access rights to rear garden or rights to the tenement wall - Access rights and matters set out in private title deeds cannot be controlled by the planning authority and are a civil matter. In addition, a grant of planning permission under section 37 of the Town and Country Planning (Scotland) Act 1997 (as amended) does not remove or supersede the requirement for an individual to ascertain all other relevant legal and statutory permissions prior to undertaking works.
- Noise from the Phoenix Public House - The Phoenix is a separate premises and is regulated through a premises alcohol licence. Concerns regarding noise emanating from this premises should be addressed separately to the Council's Licensing Section.
- Waste Collections - The City of Edinburgh Council no longer operates a trade waste collection service. The operator of the premises will be required to make arrangements with a private contractor for the storage and collection of any waste.
- Employment levels associated with the current and proposed use - The site is situated within a local centre and levels of employment are subject to continual fluctuation based on overall market demand for services and provisions. The change of use of this unit will have a negligible impact on overall employment levels within the local centre.
- Neighbour notification not undertaken correctly - The Council's records detail that all properties located within 20 metres of the application site were notified of the application on March 3rd 2017. In addition, a site notice and advertisement in the Edinburgh Evening News were both posted on March 10th 2017. The Council has undertaken its statutory duty in respect of notifying members of the public about the application in accordance with the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013.
- Proposal will have an adverse impact on existing drainage system - The impact of the proposal on the premises drainage system is a separate matter under the remit of Building Standards and which would have to be addressed through the building warrant process.

### **g) Equalities and Human Rights**

The proposal has been assessed and raises no issues in respect of equalities and human rights.

## Conclusion

In conclusion, the proposal forms an appropriate commercial use which will not be detrimental to the vitality and viability of the Broughton Street Town Centre and which will not have a detrimental impact on the living conditions of nearby residents. The proposal will preserve the character and appearance of the New Town Conservation Area and will not have a detrimental impact on the unique architectural character of the listed building. The proposal complies with policies Ret 9, Ret 11, Env 4 and Env 6 of the adopted Edinburgh Local Plan and the Council's Non-Statutory Guidance for Businesses.

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

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

#### **Conditions:-**

1. Prior to the use hereby approved being taken up, the existing suspended ceiling situated throughout the ground floor takeaway servery area shall be replaced with an acoustic ceiling which shall be installed throughout the room in accordance with the details specified on drawing 02A (agents reference: MIG 2017-103A, Sheet no 2.)
2. Prior the use hereby approved being taken up, all areas of damaged and missing lath and plaster ceiling on the lower ground floor will be made good, with all voids on the underside of the floor to be packed with Rockwool RW5 slabs including any holes in the deafening boards. Any damage to the lath and plaster ceiling will be made good with 19mm plank and 15mm Soundbloc plasterboard as specified in approved drawing 02A (agents reference: MIG 2017-103A, Sheet 2).
3. Prior to the use hereby approved being taken up, A new independent ceiling for the kitchen area is to be installed as specified in drawing 02A (agents reference: MIG 2017-103A, Sheet 2).
4. Prior to the use hereby approved being taken up, within the kitchen area, all exposed walls should be lined with an independent metal or timber frame incorporating 100mm insulation quilt and finished with two staggered layers of 15mm Soudbloc plasterboard, as specified in drawing 02A (agents reference: MIG 2017-103A sheet no 2).
5. Prior to the use hereby approved being taken up, the kitchen ventilation extract system as detailed in drawings 01A and 03 (agent reference: MIG 2016-102A sheet no 1 and P/L/2017/22/01A) shall be installed and operational.
6. The hours of operation shall be restricted to between 08:00 and 22:00 Monday to Sunday.

#### **Reasons:-**

1. In order to safeguard the amenity of neighbouring residents and other occupiers.

2. In order to safeguard the amenity of neighbouring residents and other occupiers.
3. In order to safeguard the amenity of neighbouring residents and other occupiers.
4. In order to safeguard the amenity of neighbouring residents and other occupiers.
5. In order to safeguard the amenity of neighbouring residents and other occupiers.
6. 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. 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.
3. 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.
4. This application relates to a flatted building. This planning permission does not affect the legal rights of any other parties with an interest in the building. In that respect, the permission does not confer the right to carry out the works without appropriate authority.
5. No services should puncture the ceiling with the exception of lighting power cables
6. The kitchen area ceiling shall be removed if requested by Environmental Protection in order to allow a full inspection at their discretion if required.
7. No services should puncture the proposed ceiling. The ventilation extract ductwork should run under the ceiling.
8. The holes cut in the kitchen external wall for the ventilation extract duct should be made to match the size of the duct and properly sealed from both the inside and outside.
9. The kitchen ventilation extract fan is to be located within an acoustically insulated housing.
10. An induct attenuator is to be installed with a minimum insertion loss as specified in the Noise Impact Assessment.

11. The fan and ductwork are to be suspended from the new acoustic ceiling using anti vibration mounts but should not penetrate it.

## **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 proposal attracted twenty letters of objection. A full assessment of the representations can be found in section 3 of the main report.

## **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 designated as being within the UNESCO World Heritage Site and the Broughton Town Centre in the adopted Edinburgh Local Development Plan (LDP).

### **Date registered**

1 March 2017

### **Drawing numbers/Scheme**

01A - 02A, 03,

## **David R. Leslie**

Chief Planning Officer

PLACE

The City of Edinburgh Council

Contact: James Allanson, Planning Officer

E-mail:james.allanson@edinburgh.gov.uk Tel:0131 529 3946

## **Links - Policies**

---

### **Relevant Policies:**

#### **Relevant policies of the Local Development Plan.**

LDP Policy Ret 9 (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.

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

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

## **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.

**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.

# Appendix 1

## **Application for Planning Permission 17/00629/FUL At 50 Broughton Street, Edinburgh, EH1 3SA Proposed change of use from Grocer's shop to unlicensed takeaway. Fit new door and erection of flue both on rear elevation. (as amended).**

### **Consultations**

---

#### Roads Authority

*No objections to the application*

#### Environmental Protection

*TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997*

*17/00629/FUL | Proposed change of use from Grocer's shop to unlicensed takeaway.  
Fit new door and erection of flue both on rear elevation. | 50 Broughton Street  
Edinburgh EH1 3SA*

*Planning application 17/00629/FUL is for the change of use from the existing use as a newsagent / convenience store to a take-away at 50 Broughton Street, Edinburgh. The development site is located on the western side of Broughton Street on the ground floor of a four-storey tenement building, near the corner with Barony Street. Broughton Street is a busy city centre thoroughfare. The ground floor and some of the basements of the building in this locality are used for commercial purposes and the upper floors above are used as residential accommodation. The businesses at this locality include cafés, retail shops, bars and restaurants. The eastern side of the street includes some different styles of buildings but share similar features, with a mixture of businesses on the ground floor and residential apartments above. To the west of the development site at the rear are shared gardens which is bounded to the south and south west by the residential apartments on Barony Street.*

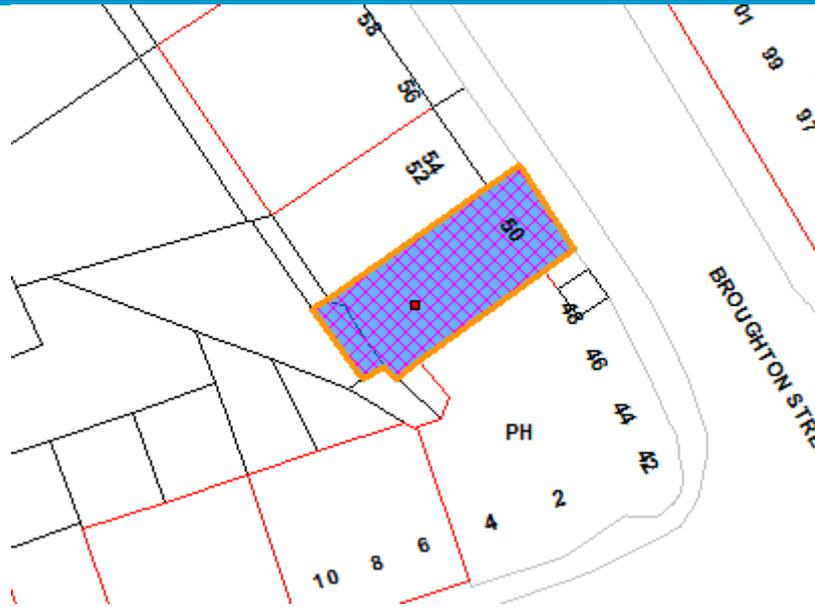
*The principal concerns regarding this application relate to noise and cooking odour. In terms of noise, a Noise Impact Assessments (NIA) and addendum were submitted in support of the application. The mitigation measures recommended in the NIA have been recommended as conditions.*

#### Historic Environment Scotland

*We have considered the information received and do not have any comments to make on the proposals.*

## Location Plan

---



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