

**Enforcement Report into Breach of Control  
at  
52 - 54 Rodney Street  
Edinburgh  
EH7 4DX**

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**Development Management Sub-Committee  
of the Planning Committee**

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**Owner/s**

**Occupier**

**Reference No:** 07/00797/ECOND

**1. Purpose of Report**

**Breach of Control:**

The breach of condition 2 (relating to noise and vibration from plant, machinery and equipment) attached to planning permission 04/00760/FUL.

**Recommendation:**

That Committee initiates statutory enforcement action to ensure compliance with condition 2 of application 04/00760/FUL.

**The Site**

**Site Description**

The property is a ground floor commercial unit underneath four storeys of traditional tenemental flats on the east side of Rodney Street. The surrounding area is characterised by ground floor shop/commercial units with residential flats above. The property lies within a defined local shopping centre and within a mainly residential area in the adopted local plan. It is not statutorily listed and is not within a conservation area.

## **Site History:**

December 1990 - consent granted for change of use from shop to hot food take away at 52 Rodney Street (application 90/02746/FUL)

November 1991 - consent granted to alter and combine two shops at 52 and 54 Rodney Street (application 91/01559/FUL)

July 2004 - consent granted to sub-divide the existing hot food outlet into two hot food outlets (application 04/00760/FUL). Condition 2 required "the design and installation of any plant, machinery or equipment shall be such that any associated noise complies with NR25 when measured within any nearby living apartment, and no structure borne vibration is perceptible within any nearby living apartment".

November 2006 - enforcement investigation 06/00708/E33 into compliance with approved plans in respect to the locations of ventilation flues; no breach of planning control was established.

November 2007 - Services for Communities, in response to a complaint from a neighbour, had found that the noise levels from the internal cooker extraction system was considerably above the maximum permitted under the NR25 criteria and that there was also a problem with structure borne vibrations in the room where measurements were taken. The proprietor advised that he had a noise suppression system installed and Services for Communities contacted the Enforcement Section to witness whether or not this now complied with Condition 2.

December 2007 - A further survey was undertaken, at a joint site visit on 18 December 2007, when both noise and vibration were perceptible in the residential flat above the premises, still in breach of condition 2.

January 2008 - The Enforcement Officer wrote to the proprietor to indicate that further remediation measures would be necessary. The proprietor was advised to engage the services of a specialist acoustic consultant, to prepare a report detailing appropriate remediation measure. Despite an extension of time for submission of this report, none has been submitted.

## **Representations**

E-mail of 9 November 2007 from Community Safety, Services for Communities.

## **Description of Development**

The failure to comply with Condition 2 of planning permission 04/00797/FUL requiring that "the design and installation of any plant, machinery or equipment shall be such that any associated noise complies with NR25 when measured within any nearby living apartment, and no structure borne vibration is perceptible within any nearby living apartment"

### 3. Officer's Assessment and Recommendations

The determining issue in this case is the effect of the failure to comply with Condition 2 of planning permission 04/00760/FUL on nearby residential amenity.

On the basis of data collated by Services for Communities, and the evidence witnessed by an officer from the City Development Department, it is clear that the noise and vibration generated by this take away unit has a severe effect on the amenity of one neighbouring resident in particular, whose living apartment is directly above the premises. The initial efforts of the proprietor to carry out meaningful remedial action to resolve this have not been successful and he does not appear to be inclined to co-operate further with this Department or with Services for Communities. This is unacceptable given the impact on the amenity of the neighbouring residential occupier.



**Alan Henderson**  
Head of Planning and Strategy

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<b>Contact/tel</b>	Val Malone on 0131 529 3485
<b>Ward affected</b>	Ward A12 - Leith Walk (NEW)
<b>Local Plan</b>	Central Edinburgh
<b>Statutory Development Plan Provision</b>	Housing & Compatible Uses
<b>File</b>	
<b>Date Complaint Received</b>	15 November 2007

## **Planning Policy**

### **Adopted Central Edinburgh Local Plan**

Policy S7 (Protection of Shopping Uses) sets out the criteria to be used for assessing changes of use from a shop unit to a service or other non-retail use appropriate to a shopping area, within defined retail frontages.

Policy H11 (Housing amenity) establishes a presumption against new development or changes of use likely to introduce increased levels of traffic or activity to the detriment of residential amenity.

### **Finalised Edinburgh City Local Plan**

Policy Ret 4 (Local Centres) outlines the criteria whereby retail development in or at the edge of a local centre will be permitted. Proposals for non-retail development which have a detrimental effect on the function of a local centre will not be permitted.

Policy Ret 12 (Food and Drink establishments) outlines the criteria for assessing proposals for changes of use of a shop or other premises to hot food take away businesses.

### **Non Statutory Guideline "Restaurants, Cafes and Hot Food Shops".**

1. Location - hot food shops shall only be permitted in areas where there already exists a significant number of properties in non-residential use and shall be subject to conditions to ensure that they do not impinge materially on the amenities of residential and other neighbours.
3. Other Amenity Considerations -the design and installation of any plant or equipment shall be such that:
  - (1) any associated noise complies with NR25 when measured within any neighbouring living apartment; and
  - (2) No structure borne vibration is perceptible within any neighbouring living apartment.