

Report of Handling for Application 24/00725/FUL

ADDRESS:	17 Sinclair Drive Glasgow G42 9PR
PROPOSAL:	Use of cafe (Class 3) as hot food takeaway (Sui Generis) and replacement of flue to rear (retrospective)

DATE OF ADVERT:	24 May 2024
NO OF REPRESENTATIONS AND SUMMARY OF ISSUES RAISED	<p>Three representations were received from members of the public, the points raised are summarised below:</p> <ul style="list-style-type: none"> • The use is retrospective. • The use is contrary to the City Development Plan policy CDP 4 and SG 4. • The proposed use will result in increased noise, disruption and litter. • Previous applications for hot food takeaway have been refused recently due to impact on residents. • The flue reflects sunlight directly into habitable rooms.
PARTIES CONSULTED AND RESPONSES	No external consultations were required.
PRE-APPLICATION COMMENTS	No pre-application advice was sought.

EIA - MAIN ISSUES	NONE
CONSERVATION (NATURAL HABITATS ETC) REGS 1994 – MAIN ISSUES	NOT APPLICABLE
DESIGN OR DESIGN/ACCESS STATEMENT – MAIN ISSUES	NOT APPLICABLE
IMPACT/POTENTIAL IMPACT STATEMENTS – MAIN ISSUES	NOT APPLICABLE
S75 AGREEMENT SUMMARY	NOT APPLICABLE
DETAILS OF DIRECTION UNDER REGS 30/31/32	NOT APPLICABLE
NPF4 POLICIES	<p>Policy 12. Zero waste Policy 13. Sustainable Transport Policy 14. Design, quality and place Policy 27. City, town, local and commercial centres</p>
CITY DEVELOPMENT PLAN POLICIES	<p>CDP 1 & SG 1 – Placemaking CDP 4 & SG 4 – Network of Centres CDP 11 & SG 11 – Sustainable Transport</p>
OTHER MATERIAL CONSIDERATIONS	<p>Planning history of the neighbouring commercial unit, 13 Sinclair Drive, for part use as a hot food takeaway:</p> <p>18/03409/FUL – Refused – Use of shop (Class 1) as shop (Class 1) with hot food takeaway (Sui generis), frontage and rear alterations and erection of flue to rear.</p> <p>19/01287/FUL – Refused – Use of shop (Class 1) as shop (Class 1) with hot food takeaway (Sui generis), frontage alterations and erection of flue to rear.</p>

	19/00081/PLGA – Appeal Dismissed – Use of shop (Class 1) as shop (Class 1) with hot food takeaway (Sui generis), frontage alterations and erection of flue to rear.
REASON FOR DECISION	The proposal was not considered to be in accordance with the Development Plan and there were no material considerations which outweighed the proposal's variance with the Development Plan.

Comments	
Planning History	<p>86/00387/DC – GC – Use of shop as tearoom and erection of ventilation duct.</p> <p>97/00370/DC – RF – Variation of conditions G22, NC(b) and NC(c) of Planning consent 387/86 to permit extension of days and hours of operation to Class 3 use.</p> <p>23/00220/FUL – GC – Sub-division of cafe (Class 3) to form 2no cafes (Class 3) and installation of vents to rear.</p> <p>23/00220/DOC01 – GR – Sub-division of cafe (Class 3) to form 2no cafes (Class 3) and installation of vents to rear - discharge of condition 5 of 23/00220/FUL.</p>
Site Visits (Dates)	13 th May 2024 – Use of cafe (Class 3) as hot food takeaway (Sui Generis) and replacement of flue to rear (retrospective).
Siting	The application site consists of a ground floor commercial unit within a four storey red sandstone tenement located on the east side of Sinclair Drive within the Battlefield local town centre. The site is within Ward 7, Langside.
Design and Materials	<p>The proposal is for the change of use of the property from a Class 3 café to a Sui Generis hot food takeaway.</p> <p>The only external alterations shown on the drawings is the replacement of an existing flue with a larger flue terminating 1m above the eaves on the rear elevation.</p> <p>It is noted that as this is a retrospective application, the signage on the shopfront does not benefit from advertising consent.</p>
Daylight	Not applicable to this application.
Aspect	Not applicable to this application.
Privacy	Not applicable to this application.
Adjacent Levels	Not applicable to this application.
Landscaping (Including Garden Ground)	Not applicable to this application.
Access and Parking	Access is unchanged, with no change to the shopfronts proposed. The site is landlocked and offers no car or cycle parking.
Site Constraints	The application site is within Battlefield local town centre.
Other Comments	<p><u>Assessment</u></p> <p>Sections 25 and 37 of the Town and Country Planning (Scotland) Acts require that when an application is made, it shall be determined in accordance with the Development Plan unless material considerations dictate otherwise.</p> <p>The issues to be taken into account in the determination of this application are therefore considered to be:</p> <ul style="list-style-type: none"> a) Whether the proposal accords with the statutory Development Plan; b) Whether any other material considerations (including objections) have been satisfactorily addressed. <p>In respect of (a), the Development Plan comprises of NPF4 adopted 13th February 2023 and the Glasgow City Development Plan adopted 29th March 2017.</p>

National Planning Framework 4 (NPF4)

The policies of relevance to this proposal within the National Planning Framework 4 are considered below:

Due to the scale, nature and location of the proposed development, the following policies are considered:

Policy 12. Zero waste

- a) Development proposals will seek to reduce, reuse, or recycle materials in line with the waste hierarchy.*
- c) Development proposals that are likely to generate waste when operational, including residential, commercial, and industrial properties, will set out how much waste the proposal is expected to generate and how it will be managed including:
 - i. provision to maximise waste reduction and waste separation at source, and*
 - ii. measures to minimise the cross-contamination of materials, through appropriate segregation and storage of waste; convenient access for the collection of waste; and recycling and localised waste management facilities.**

An area has been indicated on the floor plans for the storage of waste. No details of the collection have been provided however if minded to grant consent then this could be subject of a condition to ensure appropriate arrangements are put in place.

Subject to conditions, the proposal accords with Policy 12 on zero waste.

Policy 13. Sustainable Transport

- e) Development proposals which are ambitious in terms of low/no car parking will be supported, particularly in urban locations that are well-served by sustainable transport modes and where they do not create barriers to access by disabled people.*

The proposal is for the change of use of an existing commercial unit within a tenement in an area identified as highly accessible. The proposal includes no car parking which is in accordance with the low/no car parking in an area well served by public transport ambition of this policy.

The proposal accords with Policy 13 on sustainable transport.

Policy 14. Design, quality and place

- a) Development proposals will be designed to improve the quality of an area whether in urban or rural locations and regardless of scale.*
- b) Development proposals will be supported where they are consistent with the six qualities of successful places:
 - Healthy:** Supporting the prioritisation of women's safety and improving physical and mental health.
 - Pleasant:** Supporting attractive natural and built spaces.
 - Connected:** Supporting well connected networks that make moving around easy and reduce car dependency.
 - Distinctive:** Supporting attention to detail of local architectural styles and natural landscapes to be interpreted, literally or creatively, into designs to reinforce identity.
 - Sustainable:** Supporting the efficient use of resources that will allow people to live, play, work and stay in their area, ensuring climate resilience, and integrating nature positive, biodiversity solutions
 - Adaptable:** Supporting commitment to investing in the long-term value*

of buildings, streets and spaces by allowing for flexibility so that they can be changed quickly to accommodate different uses as well as maintained over time. Further details on delivering the six qualities of successful places are set out in Annex D.

- c) *Development proposals that are poorly designed, detrimental to the amenity of the surrounding area or inconsistent with the six qualities of successful places, will not be supported."*

The proposed development would provide a hot food takeaway (Sui Generis) within a tenemental property to the detriment of the residential amenity of the flatted properties above and the adjacent residential flats. This would highly likely lead to a loss of residential amenity.

Overall, the proposed development does not comply with Policy 14 of NPF4 due to the detrimental impact to residential amenity in the surrounding area.

Policy 27. City, town, local and commercial centres

Development proposals for non-retail uses will not be supported if further provision of these services will undermine the character and amenity of the area or the health and wellbeing of communities, particularly in disadvantaged areas. These uses include:

- i. Hot food takeaways, including permanently sited vans;*
- ii. Betting offices; and*
- iii. High interest money lending premises.*

Comment: The proposed development would provide a hot food takeaway (Sui Generis) within a tenemental property to the detriment of the residential amenity of the flatted properties above and the adjacent residential flats. This would highly likely lead to a loss of residential amenity, therefore the proposal cannot be supported under Policy 27.

The proposals does not accord with the relevant NPF4 policies.

City Development Plan

CDP 1 & SG 1 – Placemaking

Waste Storage, Recycling & Collection – The following guidance applies:

All new developments must include appropriate and well-designed provision for waste storage, recycling and collection which meets the City's wider placemaking objectives, see also SG 1 - Placemaking, Part 1. All waste/recycling areas must be located discreetly, so as to have no adverse visual impact or cause traffic/noise nuisance to neighbours. Applicants must provide full details of the provision for waste storage, recycling and collection in the initial submission for planning permission.

Comment: The proposed waste storage and recycling is unchanged from the existing arrangements. While the increase in the range of food sold may increase the waste and recycling, a safeguarding condition would ensure adequate capacity in the waste storage.

Chiller/Air Conditioning Units/Flues - The following guidance applies:

- a) external fittings such as air conditioning units should be located out of sight of public view, on rear/side elevations, concealed on a roof, or in back yards;
- b) within residential buildings, units should be located to minimise noise and vibration. In general units should be located away from any residential window; and
- c) the title deeds of a tenemental property, or other building, may require that the agreement of other owners be obtained before any structure is fitted to a wall in common ownership. Any grant of planning permission does not remove the obligation,

which is a separate legal matter.

Comment: The proposed kitchen extract flue, already installed, is positioned on the rear elevation of the premises. This is a discrete position, as the rear elevation is not visible from the street. The flue location is in accordance with this supplementary guidance.

The proposal is in accordance with CDP 1 and SG 1 'Placemaking'.

CDP 4 & SG 4 – Network of Centres

Assessment Guideline 10: Food, Drink and Entertainment Uses

In order to protect residential amenity, certain factors will be taken into consideration when assessing whether the location of proposed food, drink and entertainment uses is acceptable.

a) City-Wide:

(i) Proposals for food, drink and entertainment uses must not result in a detrimental effect on the amenity of residents through the effects of increased noise, activity and/or cooking fumes. No more than 20% of the number of units in a street block frontage, containing or adjacent to residential uses, should be in use as a hot food shop, public house, composite public house/Class 3 or composite hot food shop/Class 3 use.*

(ii) Public houses, Class 11 and Sui Generis uses must not be located under new build residential development.

(iii) The Council will not support food, drink and entertainment uses (including extensions to existing uses or extensions of opening hours) in rear lanes that are immediately adjacent to residential properties, unless part of a comprehensive redevelopment of an existing rear lane or creation of a new rear lane, where it can be demonstrated that residential amenity will not be adversely affected.

c) Outwith the City Centre:

(i) Public houses, Class 11 and Sui Generis uses must not be located within, or immediately adjacent to, existing residential buildings.

(ii) Applications for extensions to existing public houses, Class 11 and Sui Generis uses must not increase the floorspace for public use under residential flats, or extend into residential backcourt areas.

(iii) Hours of operation will be agreed with the Planning Authority, based on local circumstances and the impact of the proposal on residential amenity, but shall not exceed 08:00 to 24:00 hours.

Comment: No details of the hours of operation are provided, however it is noted from Google that the business is operating from Noon to 10pm. The proposal would not result in more than 20% of the street block in hot food shop, public house or composite uses.

The application site is a ground floor commercial unit within a four storey tenemental property and the proposed use is a Sui Generis Use Class. This is contrary to Assessment Guideline 10's requirement that "Sui Generis uses must not be located within, or immediately adjacent to, existing residential buildings."

The proposal is contrary to Assessment Guideline 10.

Assessment Guideline 12: Treatment and Disposal of Cooking/Heating Fumes

a) Proposals for a food and drink use will only be considered favourably if suitable arrangements for the dispersal of fumes can be provided, to the complete satisfaction of the Council. The following information will be required:

(i) Plans to show all proposed cooking/heating equipment, with full details of the fume dispersal method. This information must be shown on both the Plan and the Elevation drawings;

(ii) Full specifications of the proposed ventilation system, including the

design, size, location and finish;

(iii) A full maintenance schedule of the ventilation system to ensure its continued effectiveness; and

(iv) Prior to the installation of any system for the dispersal of cooking fumes or odours, a certificate from a member of the Building Engineering Services Association (BESA) shall be submitted confirming that the proposed fume/odour treatment method will operate to its full specification, when fitted at the application site. This requirement will be secured by a suspensive condition imposed on any relevant planning permission granted.

b) Dispersal of cooking/heating fumes should be by an externally mounted flue, erected on the rear or side elevation to a height sufficient to disperse fumes above any nearby property

Comment: The proposed kitchen extract flue, already installed, is positioned on the rear elevation of the premises. This is a discrete position, as the rear elevation is not visible from the street. The flue location is in accordance with this supplementary guidance.

There is a lack of maintenance information to support the proposed extract, however a safeguarding condition would ensure adequate maintenance of the flue.

Subject to conditions, the proposal is in accordance with Assessment Guideline 12.

Given the above, the proposed development does not comply with the criteria set out within CDP 4 & SG 4.

CDP 11 & SG 11 – Sustainable Transport

CDP11 aims to ensure that Glasgow is a connected City, characterised by sustainable and active travel. SG 11 supports the above policy by providing guidance on how development proposals will be expected to address the transport implications that they give rise to.

Variation of SG 11 may be justified against the following factors: public transport accessibility; density and open space considerations; placemaking, townscape and design requirements; house size and house form; car availability; existing pressure on on-street parking in the surrounding area; practical considerations in relation to conversions, redevelopments and subdivisions; and residential moorings.

Comment: The site is within a high accessibility, inner urban area zone. No additional parking / cycle parking has been proposed as part the application and this is considered to be acceptable given the scale and location of the proposed development

The proposal accords with CDP 11 and SG 11.

The proposal does not accord with the relevant City Development Plan Policies.

In respect of (a) the proposal is contrary to the Development Plan.

In respect of (b) other material considerations include the views of statutory and other consultees and the contents of letters of representations.

Material Considerations

Objections

Three representations were received from members of the public, the points raised are summarised below:

	<ul style="list-style-type: none"> • The use is retrospective. • The use is contrary to the City Development Plan policy CDP 4 and SG 4. • The proposed use will result in increased noise, disruption and litter. • Previous applications for hot food takeaway have been refused recently due to impact on residents. • The flue reflects sunlight directly into habitable rooms. <p><i>Comment:</i> The proposal is contrary to the Development Plan, these points of objection are noted.</p> <p><u>Recent Decisions in Sinclair Drive</u></p> <p>Planning history of the neighbouring commercial unit, 13 Sinclair Drive, for part use as a hot food takeaway:</p> <p>18/03409/FUL – <u>Refused</u> – Use of shop (Class 1) as shop (Class 1) with hot food takeaway (Sui generis), frontage and rear alterations and erection of flue to rear.</p> <p>19/01287/FUL – <u>Refused</u> – Use of shop (Class 1) as shop (Class 1) with hot food takeaway (Sui generis), frontage alterations and erection of flue to rear.</p> <p>19/00081/PLGA – <u>Appeal Dismissed</u> – Use of shop (Class 1) as shop (Class 1) with hot food takeaway (Sui generis), frontage alterations and erection of flue to rear.</p> <p>In respect of (b) none of the material considerations would outweigh the proposals variance from the Development Plan.</p> <p>The proposal was not considered to be in accordance with the Development Plan and there were no material considerations which outweighed the proposal's variance with the Development Plan.</p>
Recommendation	Refuse & Enforce.

Date: 08/07/2024	DM Officer	Neil Moran
Date: <u>10/07/2024</u>	DM Manager	Ross Middleton