ITEM 1 (d)

9th December 2014

PLANNING APPLICATIONS COMMITTEE

Report by Executive Director of Development and Regeneration Services

Contact: Ms S Connelly Phone: 0141 287 6095

APPLICATION TYPE	Full Planning Permission
RECOMMENDATION	**Refuse**

APPLICATION	14/02246/DC	**DATE VALID**	30.09.2014
SITE ADDRESS	422 Sauchiehall Street Glasgow G2 3JD		
PROPOSAL	Use of shop as restaurant (Class 3) and installation of low level discharge with carbon filtration system (hours of operation 11am until midnight, 7 days a week).		
APPLICANT	Firm Of Kam And Ping 422 Sauchiehall Street GLASGOW G2 3JD	**AGENT**	David Jarvie Per David Jarvie 27 Aytoun Road GLASGOW G41 5HW
WARD NO(S)	10, Anderston/City	**COMMUNITY COUNCIL**	02_032, Garnethill
CONSERVATION AREA	Central Area	**LISTED**	B
ADVERT TYPE	Bad Neighbour Development	**PUBLISHED**	17 October 2014
CITY PLAN	Mixed Development		

REPRESENTATIONS/ CONSULTATIONS

30 letters of support have been submitted in relation to the application from 15 people and all are based on two template letters. Some of the letters are from surrounding businesses and others from people residing outwith the City Centre. No letters of support have been received from nearby residents. The main points of objection can be summarised as follows:

- The applicant has tried to let the unit for years but has been unsuccessful as the shop unit has remained vacant for over seven years.
- Vacant units create an impression of an area in decline and the proposal would bring life to an otherwise vacant unit.
- The proposed restaurant is in a location where such a use is to be expected.
- The extraction system should have little impact due to the installation of carbon filters
- Low level discharge is not uncommon in Sauchiehall Street and elsewhere in the City Centre
- The restaurant shall have similar opening hours to other premises in the street and therefore there will be no increase in disturbance
- Residents in the area appreciate the availability of late night facilities that are unavailable elsewhere and this is why they chose to stay in Sauchiehall Street
- The proposal would also provide much needed jobs.

Land and Environmental Services have objected to the application on the basis of the proposed low level discharge.

SITE AND DESCRIPTION

Introduction

The application site comprises the ground floor and basement of a traditional four and a half storey red sandstone tenement which is occupied by a mixture of commercial and residential uses. The application premises extends out beyond the rear building line beneath the backcourt associated with the tenemental close where it is proposed to terminate the ventilation duct. The 'saloon' backcourt has been formed by the significant change in levels rising northwards and runs the entire length of the tenement block, formed by the roof areas of the ground floor premises.

The building is positioned on the north side of Sauchiehall on the block between Garnet Street and Scott Street, to the east of Glasgow Dental Hospital and is bounded to the north by the playground of Ganetbank Primary School and to the east and west by other commercial premises.

The application seeks full planning permission for the use of a shop as a licensed restaurant (hours of operation 1100 to 2400 hours seven days per week) and the installation of a low level discharge with carbon filtration system terminating in the backcourt. No frontage alterations are proposed at this stage.

Site History

Planning permission (11/00193/DC) was granted in 2011 for the use of a retail shop as a restaurant (class 3) and the erection of an external ventilation flue on the rear elevation. An associated application seeking listed building consent (11/00194/DC) for internal and external alterations to listed building and erection of flue to rear was also granted.

The applicant's agent verbally advised that the applicant had been unsuccessful in obtaining the building owners permission to erect the flue and as such was pursuing a low level discharge. Consequently, an application (13/02509/DC) was submitted seeking full planning permission for the use of a shop as a licensed restaurant (hours of operation 1100 to 0300 seven days per week) and the installation of a low level discharge with carbon filtration system terminating in the backcourt.

This application was refused planning permission on the basis that the hours of operation would have an adverse impact on residential amenity and because the low level discharge would potentially give rise to smell and fume nuisance to the detriment of the amenity of residents and occupiers. In addition, it was considered that the positioning of the termination point was such that it would adversely affect the enjoyment of the communal backcourt area to the detriment of other users. The associated application seeking listed building consent (13/02512/DC) for the installation of termination point for low level discharge was granted, subject to conditions, as its presence and appearance was not considered to detract from the character of the listed building.

The applicant appealed the refusal of planning permission to the local review body however the appeal was dismissed.

POLICIES

DEV 8 'Mixed Development'
SC 11 'Food, Drink and Entertainment Uses'
DES 3 'Protecting and Enhancing the City's Historic Environment'
DG/DES 3 'Design Guidance for Listed Buildings and Properties in Conservation Areas'
DES 10 'External Fittings to Buildings'
DG/DES 9 'External Fittings to Buildings'

ASSESSMENT AND CONCLUSIONS

Sections 25 and 37 of the Town and Country Planning (Scotland) Acts require that planning applications shall be determined in accordance with the Development Plan unless material considerations dictate otherwise. In addition, under the terms of Section 59 of the Planning (Listed Building and Conservation Areas)(Scotland) Act 1997, the Council is required to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possesses. Section 64 of the same Act requires the Council to pay special regard to any buildings or other land in a Conservation Area, including the desirability of preserving or enhancing the character or appearance of that area.

The issues to be taken into account in the determination of this application are therefore considered to be;

(a) whether the proposal accords with the statutory Development Plan;
(b) whether the proposal preserves or enhances the character or the appearance of the Conservation Area;
(c) whether the proposals would impact on the setting of adjoining listed buildings;
(d) whether any other material considerations (including objections) have been satisfactorily addressed.

Glasgow City Plan 2

With respect to the adopted City Plan, the application site is within an area designated as **DEV 8 – 'Mixed Development'**. These areas are characterised by a range of uses and activities with no one use predominating and generally lie within the City Centre and the Clyde Waterfront area, often reflecting an existing range of uses, mixed vertically and/or horizontally. The Council will support appropriate opportunities for mixed development within these areas (vertically as well as horizontally), which support the Plan's Development Strategy.

In general terms, the use of this former retail unit as a restaurant should not conflict with the terms of development policy principle DEV 8, however, in this instance the proposal comprises other elements that conflict with supporting policies.

Policy **SC 11 'Food, Drink and Entertainment Uses'** states that proposals for public houses, hot food shops, and Class 3 and 11 uses, should not result in a significant adverse effect on the amenity of adjacent residents through the effects of noise and/or cooking fumes. When submitting planning applications, applicants must satisfy both 'locational' and 'technical policies'.

In this instance, the proposed restaurant is situated on the ground floor and basement of a four and a half storey tenement, the upper floors of which are mainly in residential use. Whilst the proposal has the potential to increase late night activity when compared to retail use, the applicant has reduced the opening hours proposed in the previous application and noise restrictions and potential mitigation measures can be considered in relation to general operational issues. It should be noted that planning permission has already been granted for a restaurant within the unit and therefore the principle of the use is not in dispute.

In terms of 'technical' issues, 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 application includes a carbon filtration ventilation system which discharges at ground floor roof level vertically into the backcourt area. This type of ventilation system is associated with noise and fume complaints as it requires continual maintenance which is very expensive. In addition, the positioning of the termination point in a 'backcourt' area is unacceptable in terms of residential amenity.

On this basis, the proposal fails to meet the locational and technical requirements and is therefore contrary to policy SC 11.

The aim of **Policy DES 3 'Protecting and Enhancing the City's Historic Environment'** is to preserve and enhance the character and appearance of the City's conservation areas and protect their settings, to protect the special architectural and historic interest of the City's listed buildings, to protect ancient monuments and their settings and to protect and preserve archaeological remains.

The Council encourages the sensitive alteration and extension of listed buildings where this will not harm their special interest. To this end, proposals for the alteration of a listed building must: respect the original layout and plan form of the building; not result in the loss of historic fabric, including fixtures and fittings, which contribute to the building's special interest; incorporate detailed design and materials which reflect the period, style and architectural character of the building; replace missing traditional features, such as period doors or decorative plasterwork with good quality replicas of the originals; and follow the guidance for repairs, alterations and extensions detailed in development guide DG/DES 3.

Design Guidance DG/DES 3 **'Design Guidance for Listed Buildings and Properties in Conservation Areas'** provides additional detailed guidance in relation to works affecting listed buildings and properties within conservation areas. With regard to 'external fittings' DG/DES 3 states that all proposals for an external fitting to a building will firstly have to meet the standards set out in policy DES 10 'External Fittings to Buildings'.

The proposal does not seek any external alterations to the listed building other than the installation of the termination point for the ventilation. Whilst raising amenity issues, it is not considered that this element of the proposal would adversely affect the character, appearance or setting of the Conservation area or the listed building to which it relates.

Policy DES 10 **'External Fittings to Buildings'** states that such items should: not detract from the visual amenity of the property; be positioned as unobtrusively as possible, preferably to the rear of the property; be coloured to match their background, where located on public elevations and where acceptable to the Council; not be located on a public elevation of a listed building; and not be detrimental to the character or setting of a listed building or to the visual amenity of a conservation area.

Whilst the proposed termination point is discreetly positioned at the rear of the building and cannot be viewed from the street, it is located within the backcourt close to both windows on the rear of the tenemental block and directly adjacent to a school playground. It is considered that the termination point is inappropriately sited and would adversely affect the residential amenity of surrounding properties and the potential enjoyment of the backcourt area.

Material Considerations

Land and Environmental Services have objected to the application on the basis of the proposed low level discharge. No objections have been received. 15 letters of support have, however, been submitted, the main points of which are summarised and addressed below:

Comment: The applicant has tried to let the unit for years but has been unsuccessful as the shop unit has remained vacant for over seven years.

Response: This is unfortunate and the Council has sought to address this by granting planning permission for a restaurant.

Comment: Vacant units create an impression of an area in decline and the proposal would bring life to an otherwise vacant unit.

Response: This point is not disputed, however, this cannot be at any cost and the Council must consider the amenity of residents living in close proximity to the premises.

Comment: The proposed restaurant is in a location where such a use is to be expected.

Response: Agreed.

Comment: The extraction system should have little impact due to the installation of carbon filters

Response: The Council's experience has shown this not to be the case.

Comment: Low level discharge is not uncommon in Sauchiehall Street and elsewhere in the City Centre.

Response: There may be a limited number of premises with historic and even unauthorised low level discharge, however, due to the smell and fume issues associated with this type of ventilation, the Council's policy is to encourage high level ventilation to lessen the impact on surrounding properties.

Comment: The restaurant shall have similar opening hours to other premises in the street and therefore there will be no increase in disturbance.

Response: The hours of operation now proposed are considered to be acceptable.

Comment: Residents in the area appreciate the availability of late night facilities that are unavailable elsewhere and this is why they chose to stay in Sauchiehall Street.

Response: This comment makes a general assumption about people who live in Sauchiehall Street that cannot be qualified.

Comment: The proposal would also provide much needed jobs.

Response: It is agreed that the proposal would provide a source of employment.

Conclusions

Whilst in principle restaurant use may be compatible with the 'mixed use' nature of this area, the positioning of the ventilation termination point and inadequate ventilation arrangements mean that it does not meet the locational or technical requirements of policy SC 11 and also conflicts with the aims of DEV 8 due to its potential adverse effects on residential amenity.

The proposal is therefore contrary to the provisions of the Glasgow City Plan 2 and there are no material considerations that outweigh the provisions of the Development Plan. Accordingly, it is recommended that planning permission be refused for the reasons stated below.

REASONS FOR REFUSAL

01. 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.

02. The proposal is contrary to Policy SC 11 - Food, Drink and Entertainment Uses of the Glasgow City as detailed below and there is no over-riding reason to depart therefrom.

03. The proposed low level discharge point from the ventilation system is situated within a backcourt area below the level of surrounding windows of both residential and commercial premises which would potentially give rise to smell and fume nuisance to the detriment of the amenity of residents and occupiers. In addition, the positioning of the termination point is such that it would adversely affect the enjoyment of the communal backcourt area to the detriment of other users.

04. Approval of the installation of a ventilation termination point within a backcourt area would set a precedent for further similar proposals with a cumulative detrimental impact on the amenity of the surrounding residential properties.

for Executive Director of Development and Regeneration Services DC/ SCO/c 26/11/2014

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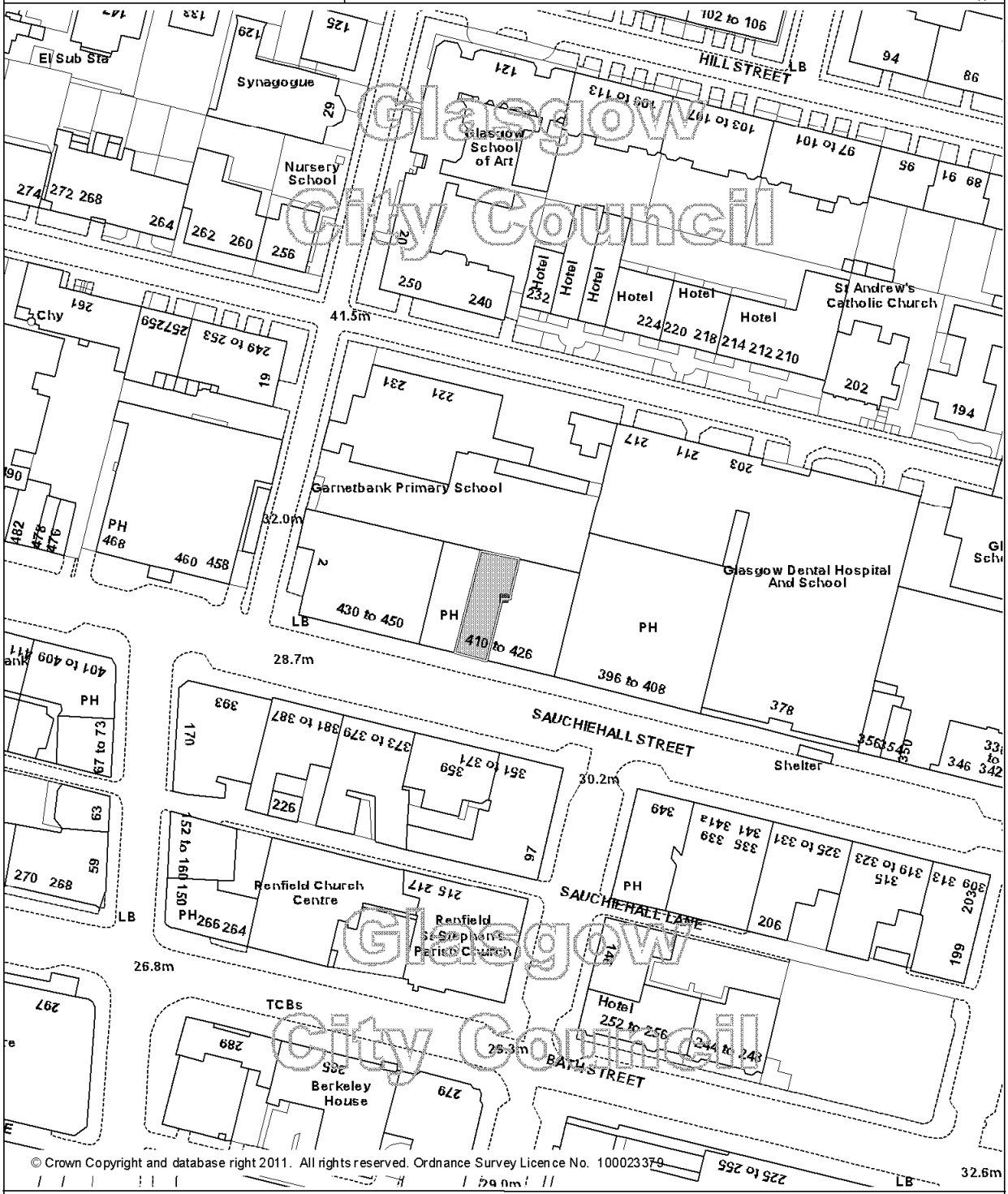
Reference No. **14/02246/DC**

Address : **422 Sauchiehall Street, Glasgow, G2 3JD**

Scale : 1:1250

Indicative Site Location

Ward : **10**



Location of Site
(For details, refer to Report)