

Restaurants, Cafes and Hot Food Shops

■ OBJECTIVE

To provide guidance on the location of food and drink uses and hot food shops in support of Local Plan policies and, in cases where the proposed use is acceptable in principle, to set out standard conditions to control the impact of the proposed use on its surroundings.

■ POLICY CONTEXT

NPPG 8 “Town Centres and Retailing” (1998) states that:

“Similar considerations in relation to noise and disturbance may also be relevant in relation to restaurants, pubs and hot food shops. It will normally be appropriate for them to be located in existing shopping or commercial areas. Such proposals should be assessed not only on their positive contribution to diversifying uses in existing centres, but also have regard to local problems which could arise from a concentration of such uses. Account should be taken of traffic noise and nuisance, particularly in close proximity to residential areas. Special consideration should be taken of possible impacts on tenement areas, and on listed buildings and conservation areas. In such circumstances it may be appropriate to avoid a proliferation or a clustering in order to minimise disturbance and to protect the amenity of an area. When giving planning approval, it will often be appropriate to apply conditions restricting opening hours.” (para 83)

Local plan policies protect residential amenity and support housing regeneration. Examples include policy H1 of the Central Edinburgh Local Plan and policy H7 of the North East Edinburgh Local Plan which states: “Planning permission will not be given for new non-residential development and changes of use likely to introduce increased levels of traffic and activity to the detriment of residential or of reasonable prospects of further residential development where this is an objective of the Plan.”

Policy L2 of the Central Edinburgh Local Plan generally supports commercial leisure uses (including restaurants, cafes and hot food shops) within the City Centre Retail and Office Cores and indicates that such uses may be acceptable in the City Centre Mixed Activities Zone subject to protecting residential amenity and complying with other policies. Policy L3 of the Central Edinburgh Local Plan (amplified by supplementary planning guidance) resists proposals for further commercial leisure uses giving rise to late night activity (including food and drink uses) in defined areas of sensitivity - Tollcross, the Grassmarket and Nicolson Street/Clerk Street and their environs.

■ SCOPE OF GUIDANCE

This guideline applies on a city wide basis to development proposals (including changes of use) :

- the sale of food or drink for consumption on the premises (Class 3 of the Town and Country Planning (Use Classes) (Scotland) Order 1997); and
- the sale of hot food for consumption off the premises.

This guideline does not apply to:

- proposals for shops selling cold food for consumption off the premises, such as sandwich bars; such uses fall within Class 1 of the Use Classes Order 1997; or
- proposals for licensed premises, as defined in the Location of Licensed Premises guideline.

■ STATUTORY AND OTHER REQUIREMENTS

Class 3 of the Use Classes Order 1997 (Food and Drink) groups together a range of uses where food and drink is sold for consumption on the premises - for example, restaurants, cafes and snack bars. Public houses are excluded from this use class by virtue of Article 3(5) of the Use Classes Order. The Council's Planning Committee (12 March 1998) has agreed that Section 23 certificates should be issued only for refreshment or restaurant type licences in cases where premises have an approved Class 3 use.

Establishments selling hot food for consumption off the premises were removed from Class 3 in 1997 and are now classed as sui generis; all changes of use to form a hot food shop therefore require planning permission.

A restaurant whose trade is primarily in-house dining but which has a minor take away ancillary to the main in-house dining, falls within Class 3 of the Use Classes Order 1997.

A sandwich bar, or other shop selling cold food for consumption off the premises, falls within Class 1 of the Use Classes Order 1997. Scottish Office Circular 1/1998 states that a sandwich bar does not cease to be in the shops class merely because it also sells hot drinks, or if a few customers eat on the premises.

The Council's assessment of whether a material change of use from Class 1 to Class 3 (or from Class 1 to a hot food shop) has or will have occurred will depend upon the particular circumstances under consideration. The area used for retailing and circulation space should be the principal use and the unit should have the appearance of a retail unit from the street.

The following will usually be considered as ancillary to Class 1 Retail use:

- the sale of hot drinks; and/or
- the provision of one microwave oven and/or one soup tureen; and/or
- the provision of up to three seats for customers wishing to consume food and drink on the premises. More seats may be allowed in particular circumstances, although seating must always constitute an insignificant element of the overall use: the limit will vary according to the size and layout of the premises. In the case of a larger unit (a department store, for example) the introduction of an appropriately sized cafe may be considered to be ancillary to the main class 1 use if it is an insignificant proportion of the overall floorspace and operates primarily to serve the shop's customers.

1. LOCATION

In accordance with, and subject to, the relevant Local Plan policies, new Food and Drink uses or hot food shops shall only be permitted in areas where there already exists a significant number of properties in non-residential use (e.g. shopping centres, busy main roads etc) and shall be subject where appropriate to the conditions detailed below to ensure that they do not impinge materially on the amenities of residential and other neighbours. Proposals for changes of use in quiet housing areas and residential side streets will not normally be given consent.

2. VENTILATION

If acceptable in principle, proposals for Food and Drink uses or hot food shops must satisfy the following ventilation requirements:

- a) An effective system for the extraction and dispersal of cooking odours must be provided.
- b) Details of the system shall be submitted with any planning application which shall not be determined until such time as the feasibility of the proposed ventilation system has been established.
- c) Conditions shall be applied to ensure the installation of an effective system before any change of use is effected, and/or the restriction of the form and means of cooking when necessary.
- d) Any proposed ventilation system shall be designed to accord with all of the following where appropriate:
 - (1) The ventilation system for the kitchen shall be capable of achieving 30 air changes per hour and the cooking effluvia ducted to a suitable exhaust point to ensure no cooking odours escape or are exhausted into any neighbouring premises.
 - (2) The ventilation system shall be tested for the escape of odours prior to the commencement of operations.
 - (3) In those cases where it is necessary to provide a duct up the back of the property, the applicant shall confirm by means of a certificate signed by the relevant parties that the agreement of all the owners of the properties to which the duct has to be fixed, has been obtained.
 - (4) The provision of an external flue will not normally be accepted on a listed building or within conservation areas, unless it can be located and designed so that there is no adverse effect on the character and appearance of the building and/or the conservation area.
 - (5) An external duct shall be painted to match the colour of the existing stonework, and shall be erected and operational before the change of use is effected, all to the satisfaction of the Head of Planning.

3. OTHER AMENITY CONSIDERATIONS

If acceptable in principle, proposals for Food and Drink uses or hot food shops may be subject to the following conditions:

- a) Any amplified music or sound attributable to the premises shall be so controlled as to be inaudible in any nearby residential or commercial property.
- b) 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.
- c) The sound insulation properties, or sound transmission characteristics of the structures and finishes, shall be such that no impact or airborne noise from the normal operations within the commercial catering premises, is audible in any neighbouring living apartment.
- d) In certain cases, for example within the “areas of sensitivity” of Tollcross, the Grassmarket and Nicolson Street/Clerk Street identified in the Central Edinburgh Local Plan, conditions restricting hours of operation may be imposed in order to discourage the further introduction of uses giving rise to late night activity. Where such conditions have been imposed previously, for example through an appeal decision, the Council will not normally depart from them, unless there has been a material change in circumstances.

■ REASONED JUSTIFICATION

Food and drink uses can give rise to a number of problems for residential neighbours and other occupiers in their immediate vicinity as well as the surrounding area in general. These problems include cooking smells, noise and disturbance, litter, late opening hours and anti-social behaviour. The Council and its predecessor have been aware of these difficulties for some time and guidelines on the location of hot food shops have operated since 1980. In the past, these guidelines have not supported the imposition of controls over hours of operation through planning conditions on the grounds that other controls exist outwith planning legislation. However, in view of concerns about the concentration of uses giving rise to late night activity in certain areas of Central Edinburgh (the “areas of sensitivity” of Tollcross, the Grassmarket and Nicolson Street/Clerk Street and their environs), it is now recognised that controls over hours of operation may be necessary to safeguard residential amenity in certain circumstances. Such a view is supported by NPPG 8.

For further details contact:

Head of Planning, The City of Edinburgh Council, 1 Cockburn Street, Edinburgh, EH1 1ZJ.
Tel: 0131 529 3596 Fax: 0131 529 7478

