

Development Management Sub Committee

Wednesday 28 October 2020

**Application for Planning Permission 20/03336/FUL
at 1 Waverley Bridge, Edinburgh, EH1 1BQ.
Pop-up event on mall roof, consisting of canvas tipi bar
and food truck. Decorated with festoon lighting (as
amended).**

Item number

Report number

Wards

B11 - City Centre

Summary

This temporary commercial development will contribute to the city centre's vitality and role as a strategic business and regional shopping centre. Whilst the site is within a prominent location, the proposal will clearly be a temporary addition associated with the festive season and relatively contained within Waverley Mall's roofscape.

As a time limited temporary development, the proposal will not have a significant or long term detrimental effect on the special character or appearance of the conservation area or detrimental impact on the Outstanding Universal Value of the Edinburgh World Heritage Site or setting of the surrounding listed buildings.

As such, the development complies with the Development Plan. There are no material considerations which outweigh this conclusion.

Links

[Policies and guidance for this application](#)

HES, HESSET, LDPP, LDEL02, LRET07, LEN06, LEN01, LEN03, LEN15, LEN18, LHOU07, LDES04, LDES01,

Report

Application for Planning Permission 20/03336/FUL at 1 Waverley Bridge, Edinburgh, EH1 1BQ. Pop-up event on mall roof, consisting of canvas tipi bar and food truck. Decorated with festoon lighting (as amended).

Recommendations

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

Background

2.1 Site description

The development site is the north eastern portion of the roof terrace of Waverley Mall shopping centre. The roof terrace lies adjacent to the southern side of Princes Street and the eastern side of Waverley Bridge. Waverley Station and Waverley Steps are situated immediately to the south and east.

The roof terrace is an area of public space which comprises a mixture of open plaza, grassed areas and walkways accessible only from Princes Street. The plaza and walkways are finished in silver grey granite.

The site covers approximately half of the eastern main plaza area. The site sits approximately 0.25 metres below the street level of Princes Street.

The surrounding area is predominantly commercial in nature and is characterised by the various street level retail premises situated along Princes Street. The Balmoral Hotel and Waverley Steps are located directly to the east. Princes Street Gardens is situated to the west of the site across Waverley Bridge. The site affords expansive views towards Edinburgh Castle to the south west, the Old Town ridge to the south and Arthur's Seat to the south east.

The site is located in the Old and New Town of Edinburgh World Heritage Site.

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

2.2 Site History

The site has an extensive planning history relating to the mall and includes numerous applications for temporary developments on the mall rooftop. There are no current temporary planning consents covering the mall roof top.

Relevant previous temporary proposals directly relating to the development site include:

3 November 2015 - Planning permission granted for the temporary erection of Christmas attractions on the public concourse of the roof of Princes Mall including various fairground rides on the north west roof area for the period 12 November 2015 to 4 January 2016 (application number: 15/04266/FUL).

18 January 2016 - Planning permission refused for the erection of a traditional carousel, dispense stands, kiosk and planters on the north portion of the roof for a continuous period of 3 years due to adverse impact on the conservation areas, world heritage site and the setting of listed buildings (application number: 15/05426/FUL).

25 May 2016 - Planning permission granted for the temporary erection of a 'bungee dome' entertainment structure on western roof terrace of Princes Mall (as amended) for the periods 16 June 2017 - 28 August 2017, 15 June 2018 - 27 August 2018, 14 June 2019 - 01 September 2019 (application number: 16/01660/FUL).

5 October 2016 - Planning permission granted for the temporary erection of a 'bungee dome' entertainment structure on western roof terrace of Princes Mall (as amended) for the period 12 November 2015 to 4 January 2016. (application number: 16/04038/FUL).

12 December 2016 - Planning permission granted for the temporary erection of Christmas attractions on public concourse of the roof of Princes Mall including a fairground ride on the north west roof area for the period 18 November 2016 until 8 January 2017 (application number: 16/04882/FUL).

13 November 2017 - Mixed decision for application covering north west, north east and south west portions of Waverley Mall roof. For the portion directly covering the application site in north west area of roof terrace, planning permission was refused for a live stage and bar area due to adverse impact on the conservation area, world heritage site and the setting of listed buildings and adverse impact on amenity. Planning permission was granted for north east area of roof terrace raised seating area, bar, food kiosks and ancillary toilet block on a temporary basis covering the periods 15 November 2017 to 15 January 2018, 1 July 2018 to 1 September 2018, 15 November 2018 to 15 January 2019 and 1 July 2019 to 1 September 2019 (application number: 17/03159/FUL). This application was amended before determination to remove a further bar and live stage area from the south west area of the roof due to adverse impacts on the conservation area, world heritage site and the setting of listed buildings.

1 August 2019 - Planning permission granted for reconfiguration of permanent roof-top structures and construction of new commercial accommodation (Class 1, 2 and 3), internal cinema use (Class 11) and creation of external multi-use space to include external seating area, performance space, open air cinema, festival/seasonal event space, pop-ups, farmers market and musical entertainment (Classes 1, 2, 3 and 11) (application number: 18/02748/FUL).

The following temporary developments took place over the period of November 2019 to early January 2020, with planning applications withdrawn before determination:

31 January 2020 - Application withdrawn for temporary bar and food areas in the north east portion of the mall roof (application number 19/04383/FUL)

31 January 2020 - Application withdrawn for temporary bar areas, marquee and live stage area on the south west portion of the mall roof (application number: 19/04390/FUL).

6 February 2020 - Application withdrawn for erection of a temporary pop-up tipi bar on north west portion of the mall roof (application number: 19/05095/FUL).

Main report

3.1 Description of the Proposal

The proposal seeks planning permission for a temporary development over the winter 2020 period. This was originally proposed from 21 September 2020 until 10 January 2021 with the venue trading from 7 October until Sunday 3 January 2021. However, in part as a result of restrictions associated with the pandemic and as the application has not been determined, the development has not commenced.

The temporary development is proposed as a canvas tipi tent housing a bar area with internal and external seating. There will be an external food truck, illuminated 'Edinburgh' signage, a Christmas tree and other lighting. A back of house storage unit is also proposed to the rear of the site.

The proposed 'tipi' tent measures 22.5 metres in length and 10.5 metres in width, with two pointed peaks measuring 6.5 metres in height. It will be beige canvas fabric and wooden poles with festoon lighting.

Supporting Documents

The applicant has submitted the following supporting documents which are available to view on Planning and Building Standards on-line services:

- Planning Statement with Event Overview.

Revised Scheme

The proposed development has been reduced in scale with the removal of a large transparent marquee from the north west roof section and removal of a further outdoor bar structure, food trucks and seating to the north west section.

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.

Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states - special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.

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 preserve the character and appearance of the Old and New Town Conservation Areas;
- c) the proposal will preserve the Outstanding Universal Value of the Old and New Towns of Edinburgh World Heritage Site;
- d) the proposal will have a detrimental impact on the setting of any listed buildings;
- e) the proposal will have a detrimental impact on the amenity of neighbouring residents;
- f) the proposal is appropriate in respect of the potential impact on the Local Nature Conservation Site;
- g) the proposal is acceptable in respect of the potential loss of designated open space;
- h) the proposal raises any issues in respect of transport and road safety;
- i) the proposal raises any other issues and
- j) any comments raised by third parties are addressed.

a) Principle of the Proposal

The application site is located within the city centre area in the adopted Edinburgh Local Development Plan (LDP). LDP Policy Del 2 (City centre) states that development which lies within the area of the City Centre as shown on the Proposals Map will be permitted which retains and enhances its character, attractiveness, vitality and accessibility and contributes to its role as a strategic business and regional shopping centre and Edinburgh's role as a capital city.

Policy Ret 7 (Entertainment and Leisure Uses) states that permission will be granted for high quality, well designed arts, leisure and entertainment facilities and visitor attractions in the city centre provided it meets the following criteria:

- The proposal can be satisfactorily integrated into its surrounding with attractive frontages to a high quality design that safeguards existing character;
- The proposal is compatible with surrounding uses and will not lead to significant increase in noise, disturbance and on street activity at unsocial hours to the detriment of living conditions for nearby residents; and
- The development will be easily accessible by public transport, foot and cycle.

The temporary commercial development will contribute to the city centre's vitality and role as a strategic business and regional shopping centre. The development's impact on existing character and amenity will be limited by the temporary nature of the development (and is justified). This is assessed further in b) to i) below.

b) Character and Appearance of the Old and New Town Conservation Areas

The development site is within the New Town Conservation Area. The roof terrace of Waverley Mall adjoins the Old Town Conservation Area.

LDP policy Env 6 (Conservation Areas - Development) 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 places a particular emphasis on the numerous viewpoints throughout the New Town as being a key aspect in contributing to the character of the conservation area stating:

Terminated vista within the grid layouts and the long distance views across and out of the Conservation Area are important features. The grid layout follows the topography throughout the area providing a formal hierarchy of streets with controlled vistas and planned views both inward and outward and particularly northwards over the estuary. The cohesive, historic skyline makes an important contribution to the Conservation Area and it is particularly crucial to control building heights, particularly along skyline ridges.

Whilst the site is within a prominent location where the New and Old Town Conservation Areas meet, the proposed tent structure will clearly be a temporary element associated with the festive season.

The central eastern portion of the roof terrace sits partially below the pavement level of Princes Street and whilst relatively flat, contains modern projecting signage fins and raised areas for glazing and planting. The proposal will sit within this immediate context which will contain and reduce its overall visual impact and ensure that it does not significantly impact on views.

As a time limited temporary development, the proposal will not have a significant or long term detrimental effect on the special character or appearance of the conservation area.

c) Outstanding Universal Value of the World Heritage Site

The Old and New Towns of Edinburgh World Heritage Site was inscribed in 1995 for a number of reasons but a significant factor is the contrast between the organic medieval Old Town and the planned Georgian New Town provides a clarity of urban structure unrivalled in Europe. The juxtaposition of these two distinctive townscapes, each of exceptional historic and architectural interest, which are linked across the landscape divide, the "great arena" of Sir Walter Scott's Waverley Valley, by the urban viaduct, North Bridge, and by the Mound, creates the outstanding urban landscape. This is embodied in the Statement of Outstanding Universal Value of the Site.

LDP policy Env 1 (World Heritage Sites) states that development which would harm the qualities which justified the inscription of the Old and New Towns of Edinburgh World Heritage Site or would have a detrimental impact on a Site's setting will not be permitted.

As the development is relatively small in scale, clearly temporary and is for a limited period, it would not have a detrimental impact on the Outstanding Universal Value of the Edinburgh World Heritage site.

d) Impact on the Setting of Listed Buildings

Historic Environment Scotland's guidance on Managing Change - Setting, sets out principles for developments affecting the setting of historic assets.

Policy Env 3 states that development within the curtilage or affecting the setting of a listed building will be permitted only if not detrimental to the architectural character, appearance or historic interest of the building or its setting.

The low profile of the Waverley Mall roof terrace helps to facilitate largely unhindered views to the many category A and B listed buildings and structures which surround it. These include the Balmoral Hotel which is situated in closest proximity to the east of the site and across the Waverley Valley to the Old Town's spine.

As indicated in b) the development will be partially contained within the existing form of the roof terrace and sits at a slightly lower level than Princes Street helping to minimise its impact. When combined with the temporary nature of the proposal, the development will have only a limited impact on the setting of the surrounding listed buildings.

e) Impact on the Amenity of Neighbouring Residents

LDP Policy Hou 7 (Inappropriate Uses in Residential Areas) states that developments, including changes of use, which would have a materially detrimental effect on the living conditions of nearby residents, will not be permitted.

The development is within the city centre and sits amongst a number of commercial uses including retail, hotel and leisure uses as well as Waverley Rail Station. The nearest residential properties are on Fleshmarket Close and the High Street approximately 300 metres to the south of the site.

The proposed commercial use would not be unexpected in the city centre area and its scale is unlikely to add significant noise or disturbance to this normally busy commercial area. The supporting statement to the proposal indicates that there be background music only and there are no residential properties within the immediate vicinity.

No noise impact assessment was submitted with the application and as such Environmental Protection has commented that it cannot support the proposal. However, a previous live music area has been removed from the scheme which was the principal area of concern. In addition, any noise amenity impacts associated with the proposal will be subject to regulations not controlled by the planning authority.

The proposal will not have a materially detrimental impact on the living conditions of any nearby residents and complies with LDP policy Hou 7.

f) Impact on Local Sites

LDP policy Env 15 (Sites of Local Importance) states that development likely to have an adverse impact on the flora, fauna, landscape or geological features of a Local Nature Reserve or a Local Nature Conservation Site will not be permitted. The site is included within the Castle Rock Local Geodiversity Site.

The proposal will not involve any permanent development which would affect the flora, fauna, landscape or geological features of the Site and complies with LDP policy Env 15.

g) Loss of Designated Open Space

LDP policy Env 18 (Open Space Protection) states that proposals involving the loss of open space will not be permitted unless it is demonstrated that there will be no significant impact on the quality or character of the local environment. The roof top of Waverley Mall is designated open space.

The proposal will not involve development which would result in the permanent loss of open space. The site remained partially accessible to members of the public throughout the time period of the development and the proposal complies with LDP policy Env 18.

h) Road Safety

The Roads Authority was consulted on the proposal and raised no objection subject to informatives on lighting and footway width and signage to ensure social distancing.

i) Other Material Considerations

Temporary development

The roof terrace has a long history of temporary developments taking place over the summer and winter months. These generally coincide with other temporary attractions which take place across the city and overall do not look out of place within this context though, the frequency, duration and quality of temporary developments has previously raised concerns. In 2020 the context has changed, with events including the Christmas Market in the nearby East Princes Street Gardens not taking place.

The Scottish Government's Chief Planner wrote to all Planning Authorities in May 2020 to 'encourage a supportive, pragmatic and flexible approach to temporary developments and changes of use which would enable businesses to diversify or adjust the way they operate' in response to the affects of the Covid-19 pandemic.

The proposed temporary development would not fall within the category of permitted development, being a development on top of land containing a building and for a duration of longer than 28 days. However, enabling temporary development such as this is within the spirit of the Chief Planner's letter.

Consent has been granted under application 18/02748/FUL for a permanent alteration to Waverley Mall roof. This proposal will result in a sympathetic reconfiguration of the roof with a contemporary structure and includes a dedicated plaza area of approximately 575 square metres. The operators of Waverley Mall previously signalled their intention to commence work on the permanent reconfiguration in September 2020. This has been delayed as a result of the pandemic. However, once complete this will better accommodate future temporary uses.

As indicated in a) to d), the temporary use is also considered acceptable in this instance

Air Quality

The plans indicate that fire pit will be included within the tent. Environmental Protection has commented that it would be unlikely to be able to support the application if they were planning on open fires with wood burning. However, this element of the proposal will be controlled under the Clean Air Act.

k) Public comments

Material Representations - Objections:

- Adverse impact on views to listed buildings, addressed in 3.3 (d).
- Adverse impact on Conservation Area, addressed in 3.3 (b).
- Adverse impact on World Heritage Site, addressed in 3.3 (c).
- Noise impact from generators, no generators are indicated on the plans, noise is assessed in 3.3(e)
- Potential for antisocial behaviour, impact on neighbouring amenity is assessed in 3.3(e)

Non-Material Representations:

- Unfair competition for local businesses, which should be supported at this time - competition is not a factor subject to planning control.
- Creates Covid-19 hazard - the operator of the development would have to meet the COVID-19 legal requirements. These are not subject to planning control.
- Environmental impact from plastic waste - whilst not material, the applicant has stated how such waste will be minimised.

Support:

- Will encourage people into city centre and shops.

Conclusion

The temporary commercial development will contribute to the city centre's vitality and role as a strategic business and regional shopping centre. Whilst the site is within a prominent location, the proposal will clearly be a temporary addition associated with the festive season and relatively contained within Waverley Mall's roofscape.

As a time limited temporary development, the proposal will not have a significant or long term detrimental effect on the special character or appearance of the conservation area or detrimental impact on the Outstanding Universal Value of the Edinburgh World Heritage Site or setting of the surrounding listed buildings.

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

3.4 Conditions/reasons/informatives

Conditions: -

1. Permission is granted for a limited period from between 7 October 2020 until 10 January 2021.
2. All temporary structures hereby approved shall be removed within 48 hours upon the expiry of permission and the site shall be returned to its original state.

Reasons: -

1. Due to the temporary nature of the proposed development and the site's sensitive location.
2. Due to the temporary nature of the proposed development and the site's sensitive location.

Informatives

It should be noted that:

1. The City of Edinburgh Council acting as Roads Authority reserves the right under Section 93 of The Roads (Scotland) Act 1984 to adjust the intensity of any non-adopted lighting applicable to the application address.
2. Footways within the proposed should be wide, clearly marked and be provided with directional signage to ensure social distancing.
3. The proposed site is on or adjacent to the operational Edinburgh Tram and it would be desirable for the applicant to consult with the tram team regarding construction timing. This is due to the potential access implications of construction / delivery vehicles and likely traffic implications as a result of diversions in the area which could impact delivery to, and works at, the site. See our full guidance on how to get permission to work near a tram way <http://edinburghtrams.com/community/working-around-trams>.

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

There is no pre-application process history.

8.2 Publicity summary of representations and Community Council comments

The proposal received 11 objection comments and one support comment. A full assessment of the representations can be found in section 3 of the 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

Date registered 14 August 2020

Drawing numbers/Scheme 01b-07b,

Scheme 3

David R. Leslie

Chief Planning Officer

PLACE

The City of Edinburgh Council

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Links - Policies

Relevant Policies:

Relevant Government Guidance on Historic Environment.

Managing Change in the Historic Environment: Setting sets out Government guidance on the principles that apply to developments affecting the setting of historic assets or places.

Relevant policies of the Local Development Plan.

LDP Policy Del 2 (City Centre) sets criteria for assessing development in the city centre.

LDP Policy Ret 7 (Entertainment and Leisure Developments - Preferred Locations) identifies the City Centre, at Leith and Granton Waterfront and town centres as the preferred locations for entertainment and leisure developments.

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

LDP Policy Env 1 (World Heritage Site) protects the quality of the World Heritage Site and its setting.

LDP Policy Env 3 (Listed Buildings - Setting) identifies the circumstances in which development within the curtilage or affecting the setting of a listed building will be permitted.

LDP Policy Env 15 (Sites of Local Importance) identifies the circumstances in which development likely to affect Sites of Local Importance will be permitted.

LDP Policy Env 18 (Open Space Protection) sets criteria for assessing the loss of open space.

LDP Policy Hou 7 (Inappropriate Uses in Residential Areas) establishes a presumption against development which would have an unacceptable effect on the living conditions of nearby residents.

LDP Policy Des 4 (Development Design - Impact on Setting) sets criteria for assessing the impact of development design against its setting.

LDP Policy Des 1 (Design Quality and Context) sets general criteria for assessing design quality and requires an overall design concept to be demonstrated.

Appendix 1

Application for Planning Permission 20/03336/FUL At 1 Waverley Bridge, Edinburgh, EH1 1BQ Pop-up event on mall roof, consisting of canvas tipi bar and food truck. Decorated with festoon lighting (as amended).

Consultations

Roads Authority

No objections to the application subject to the following being included as conditions or informatives as appropriate:

- 1. The City of Edinburgh Council acting as Roads Authority reserves the right under Section 93 of The Roads (Scotland) Act 1984 to adjust the intensity of any non-adopted lighting applicable to the application address;*
- 2. Footways within the proposed should be wide, clearly marked and be provided with directional signage to ensure social distancing.*

TRAMS - Important Note:

The proposed site is on or adjacent to the operational Edinburgh Tram. An advisory note should be added to the decision notice, if permission is granted, noting that it would be desirable for the applicant to consult with the tram team regarding construction timing. This is due to the potential access implications of construction / delivery vehicles and likely traffic implications as a result of diversions in the area which could impact delivery to, and works at, the site. Tram power lines are over 5m above the tracks and do not pose a danger to pedestrians and motorists at ground level or to those living and working in the vicinity of the tramway. However, the applicant should be informed that there are potential dangers and, prior to commencing work near the tramway, a safe method of working must be agreed with the Council and authorisation to work obtained. Authorisation is needed for any of the following works either on or near the tramway:

- Any work where part of the site such as tools, materials, machines, suspended loads or where people could enter the Edinburgh Tram Hazard Zone. For example, window cleaning or other work involving the use of ladders;*
- Any work which could force pedestrians or road traffic to be diverted into the Edinburgh Trams Hazard Zone;*
- Piling, using a crane, excavating more than 2m or erecting and dismantling scaffolding within 4m of the Edinburgh Trams Hazard Zone;*
- Any excavation within 3m of any pole supporting overhead lines;*
- Any work on sites near the tramway where vehicles fitted with cranes, tippers or skip loaders could come within the Edinburgh Trams Hazard Zone when the equipment is in use;*
- The Council has issued guidance to residents and businesses along the tram route and to other key organisations who may require access along the line.*

Environmental Protection

Original response 03/09/20 -

We have concerns in relation to noise from the proposal affecting nearby sensitive receptors, particularly as they intend to have live music.

Therefore, before we could consider supporting this application, we would need the applicant to submit a Noise Impact Assessment to demonstrate that amplified music and vocals from the venue would meet NR15 within the nearest noise-sensitive premises.

Additional comments 08/09/20 -

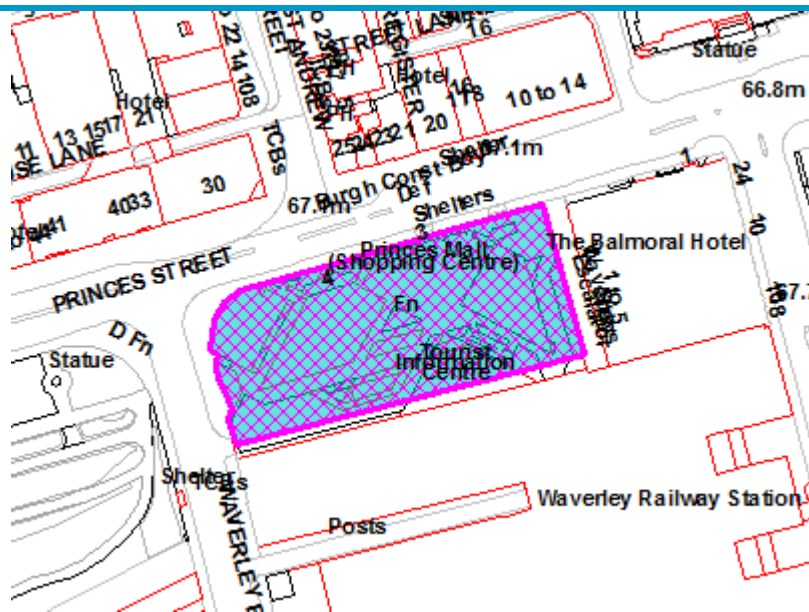
The whole of Edinburgh is a Smoke Control Area under the Clean Air Act. This means that it would be an offence if, on any day smoke is emitted from a chimney. It looks to me like the glass house structure has a chimney (I'm unsure of the set-up for the Tipis).

In relation to the chimney, the only exemption to the Clean Air Act about smoke emissions would be if one of the authorised smokeless fuels (not wood) is being burned or if an exempt fireplace is in use. (and being used for the burning the fuel which it is permitted to burn under the terms of its authorisation - usually kiln dried wood or something of that description).

Finally, the proposal is situated within the Central Edinburgh Air Quality Management Area. That AQMA has been declared on the basis of NO₂ rather than particles however burning will increase the load of particles and NO₂.

Therefore, I think we would be unlikely to be able to support the application if they were planning on open fires with wood burning.

Location Plan



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