

Development Management Sub Committee

Wednesday 11 November 2020

**Application for Planning Permission 20/03707/FUL
at East Princes Street Gardens and Land at The Mound,
Princes Street, Edinburgh
Erection of Edinburgh's Christmas at East Princes Street
Gardens including Christmas Market Stalls, Fairground
rides, Box Offices, Associated Site Offices, Stores and
Ancillary Facilities (amended application to cover the festive
period for 2021- 2022).**

Item number

Report number

Wards

B11 - City Centre

Summary

With reference to the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 the proposal would harm the setting of neighbouring listed buildings for the temporary period of time in which the development would exist on site. Notwithstanding, it is considered that there are significant economic and cultural benefits to the city resulting from the Christmas market, which arise principally because of it being located within the city centre where high footfall land uses are encouraged. Moreover, the site is exceptionally well placed for public transport owing to it being within the city centre. On balance, these benefits; which are a considerable material consideration, outweigh the short-term adverse impact that the proposal will have on the setting of neighbouring listed buildings and provide reasoned justification for granting planning permission for the proposed development on the site. With reference to the abovementioned Act the proposal does not result in significant harm to the character and appearance of the conservation area or the setting of the Old Town Conservation Area.

The proposal does not result in significant harm to the character and appearance of the Designed landscape or the Outstanding Universal Value of the Old and New Towns of Edinburgh World Heritage Site. The proposed development is for a temporary period and will not have a long-term impact on the site and will not result in significant harm to residential amenity. The proposal, subject to the conditions stated, is considered to be acceptable. There are no detrimental impacts on equalities or human rights. There are no material considerations which outweigh this conclusion.

Links

[Policies and guidance for this application](#)

LDEL02, LDES01, LDES05, LEN01, LEN03, LEN06, LEN07, LEN12, LEN18, LEN22, CRPNEW, NSLBCA, OTH,

Report

Application for Planning Permission 20/03707/FUL at East Princes Street Gardens and Land At The Mound, Princes Street, Edinburgh. Erection of Edinburgh's Christmas at East Princes Street Gardens including Christmas Market Stalls, Fairground rides, Box Offices, Associated Site Offices, Stores and Ancillary Facilities (amended application to cover the festive period for 2021- 2022).

Recommendations

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

Background

2.1 Site description

The site forms part of East Princes Street Gardens (EPSG) comprising parts of the top (northern) tier of the gardens and extends to include the paved hardstanding of the Mound plaza. Waverley Bridge bounds the site to the east. The remainder of East Princes Street gardens with the tree lined embankment with Market Street beyond bounds the site to the south. The Royal Scottish Academy bounds the site to the west.

The site is irregular shaped. The site includes the Category A listed Adam Black Monument (Listed Building: LB27842). The site is adjacent to the Old Town Conservation Area. The site is also adjacent to several listed buildings, structures and monuments:

- The Category A listed Royal Scottish Academy (listed Building reference LB27744).
- The Category A listed Scott Monument with railings and steps (listed building reference LB27829).
- The Category A listed National Gallery of Scotland with Railings (listed building reference: LB27679).
- The Category A listed Livingston Monument (Listed building reference: LB27864).
- The Category A listed John Wilson Monument (Listed building reference: LB27881).
- The Category A listed Police Box at Royal Scottish Academy (Listed building reference: LB30243).
- The Category B listed Waverley West Signal Box at Princes Street Gardens (Listed building reference: LB52052).
- The Category B listed Market Street and Waverley Bridge Police Box (Listed building reference: LB30239).

- The Category A listed Waverley Station, 4 Waverley Bridge, Former Parcels Office (17 Waverley Bridge) and Waverley Bridge (Excluding Steps) (Listed building reference LB30270).

The site is located within the Old and New Towns of Edinburgh World Heritage Site; the Historic Garden Designed Landscape Inventory Site - New Town Gardens; Special Landscape Area - Princes Street Gardens and a Local Nature Conservation Site. This application site is located within the New Town Conservation Area.

2.2 Site History

25 October 2019 - enforcement investigation into unauthorised formation of Christmas market with associated structures. (application 19/0083/EOPDEV) A delegated closing enforcement report was prepared. The following conclusions were made in that report:

- Investigations undertaken in December 2019 confirmed that there was no permission in place for the use/structures and as such a breach of planning control had occurred.
- Subsequently, the use ceased in January 2020 and the structures were subsequently removed not long after, thereby largely resolving the breach of planning control. However, it was discovered that landscaping works associated with the access improvements to the National Galleries was compromised by the platform associated with the market. This landscaping, which was conditioned as part of this 2018 application, along with the gardens in general, was fully remediated and thereby the breach of planning control was fully resolved.

The Delegated Enforcement Closing Report recommended that the enforcement case be closed, and no further action taken with the caveat that if at a future date works commence in the gardens without the benefit of planning permission, then formal enforcement action can be reconsidered.

Enforcement case 19/0083/EOPDEV was subsequently closed on 11 September 2020.

Other relevant applications:

4 September 2020 - Planning application validated for the erection of Christmas market stalls, tree, associated site offices, stores and ancillary facilities at High Street and Parliament Square (amended application to cover the festive period for 2021- 2022). (application reference number 20/03728/FUL)- Pending determination.

3 September 2020 - Planning application validated for the erection of Christmas market stalls, ice rink, plant and boot room, bar, box office and associated site offices, stores and ancillary facilities at George Street and Castle Street (amended application to cover the festive period for 2021- 2022). (application reference number 20/03728/FUL)- Pending determination.

Main report

3.1 Description of the Proposal

The application is for the erection of Christmas market stalls/concessions, fairground rides, box offices, associated site offices, stores and ancillary facilities. Permission is sought from 20 November 2021 to 2 January 2022. The market and attractions would be operational between the hours of 10am and 10pm.

The application is one of three separate applications for Christmas events proposed by the applicant in the city centre. They would operate in place of the much larger single event in East Princes Street Gardens and the Mound Piazza which has operated without planning permission last year.

The current proposal includes:

Top Tier of East Princes Street Gardens (EPSG):

- 2 box offices
- toilet facilities
- 2 fairground attractions - (40-metre-high big wheel and 52 metre high star flyer placed either side of the A-listed Scott Monument)
- generator compound and staff facilities
- exit gate

Mound Piazza:

- entrance gate
- queueing area/ticket check
- 27 single storey stalls for trading concessions
- staff facilities

Additionally, a variety of boundary treatments including 3.05 metre high horizontally boarded timber clad hoarding panels, are proposed within the site to direct the public and improve the flow of patrons around the site, improve legibility, and to encourage the public to stay within the development area and not stray onto the surrounding habitats.

Access to the event is for pedestrians only. There will be no cycle access. Service vehicle access for East Princes Street Gardens is via the Mound Plaza and is limited to deliveries only. Security officers will be on hand to control and allow access. All deliveries will be received between 10pm and 10am.

The applicant informs that waste collection is to be managed by a certified sub-contractor. Separate waste facilities are to be made available for members of the visiting public and stall holders/staff.

Decommissioning is programmed to take place over a maximum of 10 days. Remediation works are to be undertaken by the Council with the costs met by the applicant. The applicant anticipates that remediation of the upper tier of East Princes Street Gardens can be achieved by the end of January 2022.

Detailed drawings including a site layout plan, a Design Statement and a covering letter providing an overview of the proposal have been submitted with the application. These documents are available to view on the Planning and Building Standards online Services.

Revised Scheme:

Given that Edinburgh's Christmas has been cancelled this year there is no longer a requirement to consider the application for the festive period of 2020/2021.

3.2 Determining Issues

Due to its proximity to listed buildings and being a site within the New Town Conservation Area the proposed development first requires to be assessed against Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 means that there is a strong presumption against granting planning permission for development which would harm a listed building or its setting. If engaged, the presumption can only be rebutted if the advantages of the scheme are sufficient to outweigh that strong presumption.

Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 means that there is a strong presumption against granting planning permission for development which would conflict with the objective of preserving or enhancing the character or appearance of the conservation area. If engaged, the presumption can only be rebutted if the advantages of the scheme are sufficient to outweigh that strong presumption.

The determining issues to consider in terms of assessing the development against Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 are:

- Would the development harm a listed building or its setting? If it would, are there any advantages of the proposal that are sufficient to outweigh the strong presumption against granting planning permission?
- Would the development conflict with the objective of preserving or enhancing the character or appearance of the conservation area? If it would, are there any advantages to the proposal that are sufficient to outweigh the strong presumption against granting planning permission?

If the Development complies with Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, it then requires to be considered in terms of Sections 25 and 37 of the Town and Country Planning (Scotland) Act 1997. Section 25 requires that the determination shall be made in accordance with the development plan unless material considerations indicate otherwise.

The determining issues to consider in assessing this are:

- 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) there will be no significant harm to the setting of any adjacent listed building and no significant harm to the character and visual amenity of the conservation area;
- b) the Christmas market is appropriate on part of the garden and civic space;
- c) there will be no significant harm to the character and appearance of the Designed Landscape;
- d) there will be no adverse impact on the Outstanding Universal Value of the World Heritage site;
- e) public health considerations relating to COVID-19 have been addressed;
- f) trees, landscaping and biodiversity will not be harmed;
- g) residential amenity will not be adversely affected;
- h) there are no transport issues;
- i) there is no detrimental impact on archaeology;
- j) representations raise issues to be addressed;
- k) the proposal has any equalities or human rights impacts.

a) Assessment against Listed Buildings & Conservation Areas Requirements

Impact on Listed Buildings

The currently proposed market facilities and fairground rides would be located immediately adjacent to a large number of listed buildings including category A listed buildings. The majority of stalls are located on the paved area adjacent to the A-listed Royal Scottish Academy. The star flyer and big wheel would be placed on the upper level of the Garden either side of the A-listed Scott Monument.

The star flyer would also be adjacent to the A-listed Livingston Monument. Stalls would be positioned adjacent to the A-listed John Wilson Monument and the A-listed Adam Black Monument. Owing to their size, scale, positioning, form and their design and appearance, the temporary structures would have a detrimental impact on the setting of the A-listed Royal Scottish Academy, the A-listed Scott Monument, the A listed Livingston Monument, the A listed John Wilson Monument and the A-listed Adam Black Monument. Owing to their size, scale, form, design and appearance the proposal would also have an adverse impact on the setting of the other neighbouring listed buildings listed in the Background section of this report, however the impact on them would be not as intense as they are located further away from the proposal. The Christmas market including star flyer and big wheel has operated on the site adjacent to these listed buildings for a number of years during the festive season and have become characteristic of the setting of those listed buildings during the festive season. The proposal is for a temporary period of a known duration and the impact on the setting of these neighbouring listed buildings would be short term.

Notwithstanding the detrimental impact on the above mentioned heritage assets, by splitting the event into 3 separate events in the city the scale of the current proposal on this site is significant reduced from previous years and consequently the impact on the heritage assets is not as profound as in previous years. The scale of the currently proposed temporary development is considerably smaller than that of Christmas market that operated in East Princes Street Gardens last year and smaller than Christmas markets that have operated in East Princes Street Gardens in previous years. Nonetheless, given that there would be harm to the setting of neighbouring listed buildings, in terms of the legal tests consideration is required to be given to whether there are significant material considerations that justify the development in this particular location; and if so, does this outweigh any adverse impacts. It is considered that there are significant economic and cultural benefits to the city resulting from the Christmas market, which arise because of it being located within the city centre where high footfall land uses are encouraged. Moreover, the site is exceptionally well placed for public transport owing to it being within the city centre. On balance, these benefits; which are a significant material consideration, outweigh any temporary adverse impact that the proposal will have on the setting of neighbouring listed buildings and provide reasoned justification for granting planning permission for the proposed development on the site.

Impact on Conservation Area

The New Town Conservation Area Character Appraisal identifies the essential character as being:

The City's collection of civic statuary provides a focus and punctuation point for many vistas creating an outdoor sculpture gallery;

The use of grid layout forms throughout the area provides a formal hierarchy of streets with controlled vistas and planned views;

The central position, grid layout and uniform building heights make the area extremely sensitive to the effects of high buildings; and

Terminated vistas within the grid layouts and the long-distance views across and out of the conservation area are an important feature.

The Christmas market is characteristic of this part of the Conservation Area during the festive season and is an established part of its character during that temporary period and therefore it would not detract from the character and appearance of the Conservation Area or the setting of the Old Town Conservation Area.

Notwithstanding the detrimental impact on the above mentioned heritage assets, by splitting the event into 3 separate events in the city the scale of the current proposal on this site is significantly reduced from previous years and consequently the impact on the heritage assets is not as profound as in previous years. The scale of the currently proposed temporary development is considerably smaller than that of Christmas market that operated in East Princes Street Gardens last year and smaller than Christmas markets that have operated in East Princes Street Gardens in previous years. The current proposal does not include development on the slopes or within the valley base of the garden.

In addition to the other two Christmas markets currently proposed by the applicant in other parts of the city centre and other known developments in the city centre, owing to its size, form and temporary nature the cumulative impact on the character and appearance of the conservation area is not significant.

Overall, the development is not considered to conflict with the objective of preserving or enhancing the character or appearance of the conservation area.

b) Assessment against the Development Plan

Use of site

The application site is located in the city centre within two open space designations in the Edinburgh Local Development Plan (LDP): (i) Princes Street Gardens East and West - classed as public parks and gardens; and, (ii) National Gallery Complex - a civic space which includes the Royal Scottish Academy. Policy Del 2 (City Centre) of the LDP supports a mix of uses appropriate to the location of the site, its accessibility characteristics and the character of the surrounding area. Given that the proposed Christmas market/attractions are temporary they do not conflict with the key principles of Policy Del 2.

The market is not an application to increase retail floorspace because of its temporary nature.

There are no development plan policies or non-statutory guidelines that directly relate to proposals for outdoor markets/attractions.

The proposal would be a temporary change to the normal use of this part of the Garden and Mound plaza for a limited duration of time only. Temporary outdoor markets/attractions are traditionally found in public spaces. The temporary use of this part of the Gardens and the Mound plaza for events including Christmas markets is long established and the Christmas market and attractions have become a familiar presence on the site in the city centre during the festive season.

The proposal would not prevent the continued existing use of the public garden or the remainder of East Princes Street Gardens. The effect of the proposed development on the leisure value and enjoyment of the part of the Gardens comprising the site and the Mound Plaza as a civic space is not permanent and is reversible. The temporarily change of use of the site would not result in the permanent loss of open space provision in the locality and does not conflict with the key principles of Policy Env 18 (Open Space Protection).

Given all of the above, the proposed temporary use on the site is acceptable in principle provided it complies with other development plan policies, or if it does not, there are material considerations that justify approving the proposal.

c) and d) Impact on other Heritage

Owing to their size, scale, positioning, form and their design and appearance, the temporary structures would disrupt key views within the designed landscape and the World Heritage Site and thus would harm the character and appearance of the Designed Landscape and the OUV of the World heritage site.

Notwithstanding the detrimental impact on the above mentioned heritage assets, by splitting the event into 3 separate events in the city the scale of the current proposal on this site is significant reduced from previous years and consequently the impact on the heritage assets is not as profound as in previous years. The scale of the currently proposed temporary development is considerably smaller than that of Christmas market that operated in East Princes Street Gardens last year and smaller than Christmas markets that have operated in East Princes Street Gardens in previous years. The current proposal does not include development on the slopes or within the valley base of the garden. Given this and the fact that the proposal is for a temporary period of a known duration, the impact on the character and appearance of the Designed Landscape and the OUV of the World Heritage Site would be short term and not significantly detrimental.

In addition to the other two Christmas markets currently proposed by the applicant in other parts of the city centre and other known developments in the city centre, owing to its size, form and temporary nature the cumulative impact on the character and appearance of the OUV of the WHS is not significant.

The application includes measures to protect monuments/statues within the site from damage. A condition should be imposed on a grant of permission requiring these measures to be in place prior to development taking place on site and to remain until all the temporary structures/installations have been removed following decommissioning.

e) Public Health - COVID-19

At present the legislation which addresses public health in the context of COVID-19 (Coronavirus disease 2019 pandemic) is the Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020. As is the case with all businesses, the operator of the market would have to meet the COVID-19 legal requirements.

As is the case for all types of businesses the Government retains the powers to close markets if required and if they only consider that certain types of market should be closed, they can define this in the legislation or regulations.

The Scottish COVID-19 guidance on Safer Public Spaces; which provides specific guidance on dealing with COVID-19 in respect of all forms of markets, is guidance rather than strict legal requirements. The Council as landowner and landlord has the authority to require that the applicant demonstrate that they are complying with the Regulations and guidance before allowing them on site to construct the proposed Christmas market. Besides the planning considerations addressed covered later in this report, the proposal has wider interests for the Council to consider through other consenting and licensing regimes and any public health implications. This includes any applications by the operator or any leasee of stalls/concessions within the market for an occasional liquor license.

In terms of considering the public health impacts of COVID-19 in planning applications only the impact on neighbour amenity is a material consideration. Permission is sought for the proposal for the temporary period of 20 November 2021 to 2 January 2022. For the duration of the consent sought the COVID-19 health risks could be said to be a permanent factor and is thereby a material consideration. The broader health issues including broader COVID-19 issues are not matters for planning and are controlled by the above mentioned health protection regulations. As clarified in the (Scottish) Chief Planner's Letter of 2 July 2020 managing the health impacts of COVID-19 falls outwith planning. The letter states that:

'Beyond the planning system, there will likely be some wider interests for businesses and local authorities to consider through other consenting and licensing regimes and any public health implications, including working within physical distancing requirements. We would draw your attention to recent guidance issued by the Scottish Government in relation to occasional licenses for licensed premises and temporary traffic regulation orders and notices. In addition, our guidance on Safer Public Spaces for Scotland published on 29 June advises on the design principles for safer urban centres and green spaces, connecting to Scotland's route map through and out of the crisis.'

Permission is sought for the proposal for the temporary period of 20 November 2021 to 2 January 2022. For the duration of the consent sought the COVID-19 health risks could be said to be a permanent factor and is thereby a material consideration. However, this is limited to considering only the application's impact on neighbour amenity. Therefore, from a COVID-19 perspective, the Planning Authority can only consider whether the application creates increased COVID-19 risks for neighbours and if so consider whether this risk can be effectively managed.

The Design Statement submitted with the application states that the proposal has been revised to include COVID-19 mitigations. However, in considering the increased COVID-19 risks for neighbours for the current proposal which is for an event in 2021-2022, a key factor to consider is that it is not known what COVID-19 restrictions will be in place by Christmas 2021. It is a reasonable assumption to make that there is likely to be some form of COVID-19 restrictions remaining in place by Christmas 2021.

The application includes the detailed layout of the structure on site. However, the actual layout of the market; in particular, the positioning of stalls/concessions and installations etc. and the passageways between them, may need to be modified to comply with whatever COVID-19 restrictions are in place at the time. The Planning Authority should avoid a position of granting permission for a detailed layout that effectively prevents a suitable operating layout next year in terms of whatever COVID-19 restrictions are in place at that time. Therefore, if planning permission is granted, the Planning Authority should not approve the detailed layout of the market at this time. Instead, it should be made a condition of a grant of planning permission that the detailed layout of the market including position of stalls/concessions, attractions and ancillary structures etc. and passageways should be submitted for the prior written approval of the Planning Authority within a specified period of time prior to the market/attractions first coming into use/operation. The reason for this condition is to ensure that the Planning Authority is satisfied that the detailed proposal is in accordance with whatever COVID-19 restrictions apply at the time in order to minimise COVID-19 risks for neighbours.

f) Trees and landscaping and biodiversity

The reduced scale of the proposed temporary development means that no established tree will be affected by the proposed development. The supporting statement accompanying the application states that any established tree in proximity to the proposed development is to be protected with Heras fencing or similar. In addition, the Design Statement accompanying the application details how the proposal has been designed to avoid impact on existing mature trees and specifies a number of other minimum measures that will be deployed to protect trees including measures to avoid root damage. The tree protection measures proposed in the application will ensure the protection of the trees and is considered adequate to mitigate harm to existing trees within the site.

Given the scale of the Christmas event that operated in the Garden in 2019/2020 there was extensive repair required to grassed areas within it over a lengthy period before the Garden could reopen. The current site area comprises significantly less areas of grass within the Garden than previous Christmas markets have. Consequently, less soft landscaping restoration/remediation will be necessary at the end of the decommissioning phase than was required in previous years and moreover the duration of restoration/remediation should be considerably less. The ground to be restored/remediated will be unsightly and inaccessible to the public only temporarily. However, the effects are reversible and not considered to be significantly detrimental to amenity including visual amenity. The Council as landowner through non planning related consents, including terms and conditions of a grant of a lease to the operator, would ensure that at the end of the decommissioning stage the land is restored expeditiously to a required specification. This would include the reinstatement of soft landscaping and the repair/replacement of any damaged kerbs and footways being made good at no cost to the Council or Council Tax payers. Therefore, there is no requirement to secure restoration/remediation works through a planning condition.

The proposed development would not result in significant harm to ecology or biodiversity. No evidence been presented to the Planning Authority that the proposal would harm European protected species or other species except trees that require to be protected.

g) Amenity

Due to the nature of the proposal, there will be amplified music and a large number of people attending, including in the evening. The site is however within a city centre location and the proposal is for a temporary period. The Council's Environmental Protection Section notes that the proposal is scaled back from previous years. They inform that if any complaints about noise were received, they would address this directly with the event organiser. They raise no objection to the application.

The proposals would not give rise to significantly harm to the amenity of neighbouring properties including residences.

h) Transport Issues

No roads are required to be closed to facilitate the proposed development. The proposal raises no road safety or pedestrian safety issues including in respect of the number and location of entrance and exit points and access for wheelchair users. Access to the remainder of the Garden including for pedestrians and wheelchair users will be maintained.

The site is exceptionally well placed for public transport and is located next to a local centre where high footfall land uses are encouraged. Consequently, the proposal does not raise any significant parking issues or public transport issues.

The Council's Transportation Section raises no objection to the application.

In relation to the wider COVID-19 health issue the requirement to queue to enter the event should take place within site boundary in order to minimise impact on neighbouring amenity. The queueing arrangement should be included within the detailed layout of the market to be approved in advance by the Planning Authority and secured by the planning condition referred to in section e) above.

i) Archaeology

No groundworks are required to facilitate the proposal and therefore there is no potential for impacts on underground archaeology.

j) Representations

Material Representations - Objection:

The following material planning matters have been raised:

- Consider the cumulative impact of similar proposals in relation to EIA. - The Planning Authority has screened the proposal for EIA and has concluded that an EIA is not required.
- An EIA is required due to last year's market. - A separate screening opinion ref.19/06081/SCR was issued for last year's market.

- A Heritage Impact Assessment is required. - Adequate information has been submitted with the application in order for the Planning Authority to understand the exact nature of the proposal and to consider the application including its impact on the setting of listed buildings and other heritage assets.
- Harm to the garden and unduly long period of restoration. - This is addressed in sections c) and f) above.
- loss of space for recreation/exercise and well-being. - This is addressed in section b) above.
- Harm to the World Heritage site. - This is addressed in section b) above.
- Harm to trees and insufficient tree protection. - This is addressed in section f) above.
- Inadequate entry and exit points to the market. - This is addressed in section h) above.
- Concern about traffic generation and resultant congestion and insufficient parking provision. - This is addressed in f) above.
- The Council should not have accepted the application as it is for two separate Christmas events for two separate years. - The application is considered to be a valid planning application and therefore the Planning Authority was duty bound to accept the application.
- There should be no loss of public circulation space. - This is addressed in section h) above.
- The timescale for submission of representations on the application should be extended given that the proposal is for a Christmas event in 2021. - The neighbour notification and advertisement of the applications have been carried out in accordance with Statutory requirements, including the required time period for the receipt of representations.
- The applicant has not undertaken any consultation with the community. - The application is a 'local' application and there is no statutory requirement for the applicant to undertake formal pre-application consultation.
- The three Christmas markets should be considered as a single planning entity, as they form a single event organised and promoted by a single operator. - The applicant site and the planning unit for the current application is different to that of the other two Christmas market applications within other parts of the city centre. Therefore, it is considered that each of these separate applications stand to be determined on their own merits.
- Strict deadlines for reinstatement of the soft landscaped surfaces damaged by the proposal and should not extend beyond the end of January in any event. - This is addressed in section f) above.
- An EIA is required, and this was confirmed in the report to the Policy & Sustainability Committee. - The Director clarified that this statement reflected the only proposals that the Planning Authority had seen at the time and did not reflect the potential for smaller Christmas Markets as is now proposed.
- An enhanced security and people management for all aspects of the winter festivals should be a priority in respect of public protection. Thereby, the Christmas Market should be out with East Princes Street Gardens. - Matters of security and public protection are dealt with through other licensing regimes and/or are police matters and therefore are not material considerations in the determination of this application.
- An arboricultural survey should be submitted. - This is not considered necessary to assess the impact of the proposal on trees.

- Harm to biodiversity including bats. - This is addressed in section f) above.
- Concern about impact on traffic congestion in the city. - This is addressed in section h) above.
- The proposal does not support local needs. - It is considered that the proposal will meet some need of the local and wider community.

Non-Material Representations - Objection:

The following broad issues relating to COVID-19 are not material planning considerations:

- The development would increase the risk of transmission of COVID-19 infections and therefore it raises a public health concern.
- Contravenes Government rules/regulations relating to the COVID-19 Pandemic.
- Poor crowd control and the Government's social distancing rule being difficult to maintain and enforce.
- Splitting the market up into smaller markets at different locations in the city risks spreading the transmission of COVID-19 to different parts of the city.
- Concern about the ability and willingness of operators/staff to disinfect rides after each use and the resultant risk of transmission of COVID-19.
- Any pop-up bars operating in the market would be problematic to the effectiveness of COVID-19 test and trace systems.
- Physical arrangements should be put in place to control crowds and to ensure compliance with COVID-19 regulations/guidance.

The following additional non-material planning issues have been raised:

- Commodification of public space/common good land. - Whether there exists any legal impediment to the Council as landowner to grant a lease to the applicant/operator for the temporary use of the land is a legal matter and not a planning matter.
- The Council taxpayers of Edinburgh should not have to pay the costs of site restoration. - This is addressed in section f) above.
- Rubbish generation and resultant nuisance. - Any nuisance resulting from waste generated from the proposal can be satisfactorily dealt with through legislation other than planning legislation.
- The majority of the stalls/concessions in previous Christmas markets were not leased to local businesses and the rents are unaffordable. - The affordability of renting a stall and the businesses that they are leased to is not a matter for planning.
- Would unfairly compete with existing neighbouring bars/restaurants/retailers for trade. - The sale of food and non-food items, competition between operators/providers and consumer choice is not a material planning consideration.
- Christmas markets of a scale previously operated within the Gardens resulted in harm to the garden and to views within the city. - The application stands to be assessed and determined on its own merits and not on the basis of previous similar developments on the site.
- Other Christmas markets abroad have been cancelled. - Whether markets in other areas will be operating is not a material planning consideration.

- A Christmas market by the operator is not wanted or needed. - This is not a material planning consideration.
- The market sells unoriginal and inferior quality merchandise that is overpriced. - Quality control of merchandise/goods and affordability and value for money are not planning matters.
- The market does not represent the meaning of Christmas. - This is not a material planning consideration.
- No positive contribution to the community; but instead, it harms the community. - The Planning Authority has not been presented with any evidence to substantiate this claim.
- ISO 2021 Sustainable Events Management Introduction and Awareness standards should be followed. - This is a voluntary standard for sustainable event management and is not a planning matter and therefore is not a material consideration in the determination of this application.
- The accounts of the applicant/operator should be made available for public scrutiny as the event is financially subsidised by the Council. - The funding of the event and the financial affairs of the applicant is not a material consideration in the determination of this application.
- There is an on-going independent examination of conduct of Council officials in respect of allegations of exceeding their authority/neglecting their remit. - This is not a material consideration in the determination of this application.
- Any Christmas market should be a Council organised, funded and run event instead of a private venture. - The application stands to be determined on its own merits.
- The event should not be a commercial venture; but instead, it should be not for profit, or the profits should be shared among whose common good land it is, or it should be run as a charitable event. -The business type of the operator is not a material planning consideration.

Non-Material Representations - Support:

- The development will be fun. - This is not a material planning consideration.

Community Council

- New Town & Broughton Community Council did not request to be a statutory consultee, but it submitted a representation raising the following matters:
- Ferris Wheel, Star Flyer and market stalls not appropriate next to the Scott Monument. -This is addressed in section a) above.
- Use of soft landscape surfaces not appropriate owing to environmental damage and reduction of access for the general public to common good land. - This is addressed in sections b) and f) above.
- Need for conditions to be appended to a grant of planning permission to secure timeous remediation and reinstatement of soft landscaping. - This is addressed in section f) above.

- Concern about unfair competition to local businesses. - This is not a material planning consideration.
- Further consultation required with local residents. - The neighbour notification and advertisement of the applications have been carried out in accordance with Statutory requirements, including the required time period for the receipt of representations.
- Potential for light pollution to harm amenity. - Given the location of the proposal it would not be reasonable to impose a condition to control light pollution.
- Public safety concern with queuing arrangements and circulation space. - This is addressed in section h) above.

k) Equalities and Rights Issues:

The Design Statement submitted with the application details measures to facilitate access for disabled people within the event. These measures are considered to be adequate. The proposal does not raise any significant issues in terms of qualities and human rights.

CONCLUSION

With reference to the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 the proposal would harm the setting of neighbouring listed building for the temporary period of time in which the development would exist on site. Notwithstanding, it is considered that there are significant economic and cultural benefits to the city resulting from the Christmas market, which arise principally because of it being located within the city centre where high footfall land uses are encouraged. Moreover, the site is exceptionally well placed for public transport owing to it being within the city centre. On balance, these benefits; which are a considerable material consideration, outweigh the short-term adverse impact that the proposal will have on the setting of neighbouring listed buildings and provide reasoned justification for granting planning permission for the proposed development on the site. With reference to the abovementioned Act the proposal does not result in significant harm to the character and appearance of the conservation area or the setting of the Old Town Conservation Area.

The proposal does not result in significant harm to the character and appearance of the Designed Landscape or the Outstanding Universal Value of the Old and New Towns of Edinburgh World Heritage Site. The proposed development is for a temporary period and will not have a long-term impact on the site and will not result in significant harm to residential amenity. The proposal, subject to the conditions stated, is considered to be acceptable. There are no detrimental impacts on equalities or human rights. There are no material considerations which outweigh this conclusion.

Committee Considerations

Committee consideration is required as the recommendation is that planning permission be granted.

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

3.4 Conditions/reasons/informatives

Conditions :-

1. Planning permission is hereby granted for the proposal for the period between 20 November 2021 and 2 January 2022 only.
2. The temporary market and other attractions hereby approved shall only be operational between the hours of 10am and 10pm on the dates specified in condition 1.
3. The temporary buildings, attractions, installations and associated temporary structures and plant hereby approved shall be removed from the site in their entirety by no later than the 12 January 2022.
4. No development shall take place on site unless and until the following is submitted to the Planning Authority between the period of the 05 October 2021 and the 06 November 2021 and written confirmation is subsequently received from the Planning Authority that the details are approved:
 - (i) Notwithstanding that delineated on drawings and documents docketed to this planning permission, a revised detailed site layout plan delineating the precise layout of the stalls/concessions, attractions including fairground rides, other installations and ancillary structures and plant to be sited within the market and listed on pages 17 & 18 of the Design Statement, dated September 2020, docketed to this planning permission.
 - (ii) a written specification of how the layout of the stalls/concessions, attractions including fairground rides, other installations and ancillary structures and plant within the market delineated on the aforesaid site layout plan (i) has been laid out to comply with the COVID-19 regulations/restrictions in place at the time of submission of the revised site layout plan (i).

Notwithstanding the attractions/concessions listed on pages 17 & 18 of the Design Statement dated September 2020 and docketed to this planning permission, the quantum of structures, concessions, attractions and associated structures and plant delineated on (i) and specified in (ii) above and subsequently erected/sited on the site shall; if necessary, be reduced in order to comply with the COVID-19 regulations/restrictions in place at the time of submission of the revised site layout plan (i) and the written specification (ii).

5. The tree protection measures detailed in Part 3, section titled: "Greenspace Strategy" of the Design Statement dated September 2020 and docketed to this planning permission shall be carried out/adhered to in full prior to development commencing and until all of the temporary structures/installations approved by the grant of this planning permission have been removed from the site.
6. The monument/statue protection delineated/detailed on docketed drawings Nos.09-05-2020 KE and 12-06-2020 KE shall be in place prior to development commencing on site and thereafter they shall be retained in situ until all of the temporary structures/installations approved by the grant of this planning permission have been removed from the site.

Reasons:-

1. To restrict the duration of the development to the temporary period applied for.
2. In the interests of safeguarding the amenity of neighbouring noise sensitive properties.
3. In order to safeguard visual amenity.
4. To ensure that the detailed layout of the market including various structures, stalls/concessions, attractions, installations and ancillary structures and plant and the passageways between them complies with the Covid-19 (coronavirus) Regulations in place at the time when market/attractions first start trading/operating, in the interests of minimising the risk of transmission of Covid-19 to occupants of neighbouring properties.
5. In the interests of safeguarding trees which make a significant contribution to the character and amenity of the area.
6. In the interests of safeguarding listed monuments/statues from damage.

Informatives

It should be noted that:

1. The applicant will repair any damage to the kerbs and footways when accessing and exiting the site. In this regard he will require to contact the Council's Transportation Section to agree the extent of the dilapidation survey and the required roads permits required during the erection and dismantling of the market.
2. 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.

3. Any sign, canopy or similar structure mounted perpendicular to the building (i.e. overhanging the footway) must be mounted a minimum of 2.25m above the footway and 0.5m in from the carriageway edge to comply with Section 129(8) of the Roads (Scotland) Act 1984;
4. The proposed site is adjacent to the operational Edinburgh Tram. The operator(s) of the market should 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. The operator(s) should note 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. 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:

This application was assessed in terms of equalities and human rights. The impacts are identified in the Assessment section of the main report.

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 application was advertised on the 15 September 2020. Fifty representations were received including forty eight objecting to the application including an objection from the Cockburn Association, and two in support of the application.

A full assessment of these representations can be found in the main report in the Assessment Section.

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**

The adopted Edinburgh Local Development Plan..

Date registered

3 September 2020

Drawing numbers/Scheme

01, 04, 05, 06, 07, 08, 09, 10, 12, 13, Design
Statement,

Scheme 1

David R. Leslie

Chief Planning Officer

PLACE

The City of Edinburgh Council

Contact: Adam Thomson, Planning Officer

E-mail:adam.thomson@edinburgh.gov.uk

Links - Policies

Relevant Policies:

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

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

LDP Policy Des 5 (Development Design - Amenity) sets criteria for assessing amenity.

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

LDP Policy Env 7 (Historic Gardens and Designed Landscapes) protects sites included in the national Inventory of Gardens and Designed Landscapes and other historic landscape features.

LDP Policy Env 12 (Trees) sets out tree protection requirements for new development.

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

LDP Policy Env 22 (Pollution and Air, Water and Soil Quality) sets criteria for assessing the impact of development on air, water and soil quality.

The New Town Conservation Area Character Appraisal states that the area is typified by the formal plan layout, spacious stone built terraces, broad streets and an overall classical elegance. The buildings are of a generally consistent three storey and basement scale, with some four storey corner and central pavilions.

Non-statutory guidelines 'LISTED BUILDINGS AND CONSERVATION AREAS' provides guidance on repairing, altering or extending listed buildings and unlisted buildings in conservation areas.

Other Relevant policy guidance

Appendix 1

Application for Planning Permission 20/03707/FUL At East Princes Street Gardens And Land At The Mound, Princes Street, Edinburgh Erection of Edinburgh's Christmas at East Princes Street Gardens including Christmas Market Stalls, Fairground rides, Box Offices, Associated Site Offices, Stores and Ancillary Facilities (amended application to cover the festive period for 2021- 2022).

Consultations

Historic Environment Scotland - 30/09/2020

Thank you for your consultation which we received on 09 September 2020. We have assessed it for our historic environment interests and consider that the proposals affect the following:

EDINBURGH WORLD HERITAGE SITE BOUNDARY (100018438),
EAST PRINCES STREET GARDENS (GDL00367)
SCOTT MONUMENT WITH RETAINING WALL AND STEPS (LB27829),
ROYAL SCOTTISH ACADEMY (LB27744),
ADAM BLACK MONUMENT (LB27842),
LIVINGSTONE MONUMENT (LB27864),
JOHN WILSON MONUMENT (LB27881),
WAVERLEY STATION (4 WAVERLEY BRIDGE, FORMER PARCELS OFFICE (17
Waverley Bridge) and WAVERLEY BRIDGE (EXCLUDING STEPS) (LB30270).

You should also seek advice from your archaeology and conservation service for matters including unscheduled archaeology and category B and C-listed buildings.

Our Advice

The application is for the erection of market stalls, fairground rides, box offices, associated site offices, stores and ancillary facilities within East Princes Street Gardens, as part of Edinburgh's Christmas Market. The current application is part of wider proposals that also include facilities in George Street, Castle Street and the High Street.

We note that the extent of the proposed development area within the gardens has been scaled back significantly from previous years, with no development within the gardens' valley base. The facilities would now be sited on the upper level of East Princes Street Gardens, with the majority of stalls in the paved area adjacent to the A-listed Royal Scottish Academy. The star flyer and big wheel would be placed either side of the A-listed Scott Monument.

The market facilities (stalls and rides) would be placed immediately adjacent to Category A listed buildings within the heart of Edinburgh's World Heritage site. They would clearly have a harmful impact.

However, taking into account the time-limited consent and temporary nature of the application proposals, in this instance we consider that the proposals for East Princes Street Gardens would not have a significant impact on the OUV of the World Heritage Site, or the setting of the Category A listed assets noted above.

Should an application come forward to either extend the period of consent, or make such an arrangement permanent, we would be likely to have a different view.

Planning authorities are expected to treat our comments as a material consideration, and this advice should be taken into account in your decision making. Our view is that the proposals do not raise historic environment issues of national significance and therefore we do not object. However, our decision not to object should not be taken as our support for the proposals. This application should be determined in accordance with national and local policy on development affecting the historic environment, together with related policy guidance.

Further Information

This response applies to the application currently proposed. An amended scheme may require another consultation with us.

Guidance about national policy can be found in our 'Managing Change in the Historic Environment' series available online at www.historicenvironment.scot/advice-and-support/planning-and-guidance/legislation-and-guidance/managing-change-in-the-historic-environment-guidance-notes/. Technical advice is available through our Technical Conservation website at www.englished.org.

Please contact us if you have any questions about this response. The officer managing this case is Gordon Mackie who can be contacted by phone on 0131 668 8628 or by email on Gordon.Mackie@hes.scot.

Edinburgh World Heritage ' 13 October 2020

The principal focus of Edinburgh World Heritage is the impact on the Outstanding Universal Value (OUV) of the 'Old and New Towns of Edinburgh' World Heritage Site ('the World Heritage Site' or 'WHS'). Therefore, proportional comment may be made on impact upon individual heritage assets (e.g. Listed Buildings and Conservation Areas), but only to the extent that this impacts upon the city's overall OUV. The Local Planning Authority should therefore give additional consideration to individual heritage assets affected, beyond the scope of our comments, in line with planning policy and legislation.

This application lies within the context of two associated applications for dispersed Christmas markets in the city (references 20/03708/FUL and 20/03728/FUL). For the benefit of the Planning Department, we have provided separate responses to these associated consultations, though clearly they merit consideration as a cumulative whole.

SUMMARY OF OUTSTANDING UNIVERSAL VALUE

The OUV of the World Heritage Site is well-established in the UNESCO inscription, and will therefore not be repeated here.

Edinburgh World Heritage has broken this down into 5 overarching qualities which can be found on our website. Due to the nature and location of the proposed development, the following elements of World Heritage Site's Outstanding Universal Value are most likely to be affected.

- 'A Model City': The Old and New Towns embody the changes in European urban planning from inward looking, defensive walled medieval cities, through 18th and 19th centuries formal Enlightenment planning, to the 19th century revival of the Old Town with its adaptation of a Baronial style of architecture in an urban setting.
 - 'Authentic City': The survival and condition of Edinburgh's historic buildings, many being authentic examples of their time ' a noteworthy and rare quality.
 - 'City of Contrasts': The survival of two contrasting styles of urban development: the organic multiple layers of the medieval Old Town and the enlightened, spacious, ordered elegance of the New Town.
 - 'Monumental City': The city's fine collection of neo-classical monuments that reflect its status as Scotland's capital. These monuments contribute to the richness and diversity of the townscape and their subjects represent a variety of personalities who were significant in their time.
 - 'Iconic Skyline': The dramatic hills and green spaces of the landscape, plus key buildings of the Old and New Towns give Edinburgh its iconic skyline that has inspired generations of artists, writers, visitors and residents. Princes Street Gardens makes a significant contribution to these values ' being an essential designed feature associated with the development of the New Town in the 18th century. The gardens, set within the Waverley Valley, are of a high quality design and composition which are of considerable heritage value in their own right. The historic associations and numerous historically significant monuments and memorials within them add further to this careful composition and rich history. At the wider scale, the Princes Street Gardens are a fundamentally important space from/over/around which the rich history, character, architecture and contrasting planning of the Old and New Towns of Edinburgh can be understood and appreciated. As such, the Princes Street gardens make an exceptional contribution to the overall OUV of the World Heritage Site and to the contribution to OUV made by associated heritage assets. Given the contribution of the site area to the setting of so many historic sites, many heritage assets are affected by the proposals ' including but not limited to;
- New Town Historic Garden and Designed Landscape
 - New Town Conservation Area
 - Old Town Conservation Area (setting of)
 - John Wilson Monument (Category A listed building)

- The setting of a large number of highly-designated listed buildings and structures, including monuments, the National Gallery of Scotland, the Royal Scottish Academy and the Scott Monument.

IMPACT ON OUTSTANDING UNIVERSAL VALUE

Overall we consider that the proposals would cause harm to the OUV of the World Heritage site as a result of disrupting key views, setting of individual historic sites and public realm character. It is acknowledged that this harm is temporary in nature. Given that we understand the Christmas markets will not be going forward this year, the application principally relates to holiday period of 2021-22 for a period of approximately 59 days (including construction and deconstruction).

RELEVANT POLICY & LEGISLATION

In addition to the duties, legislation and policies relating to individual heritage assets, the following are those most pertinent to the World Heritage Site in this case (not exhaustive):

- Duty to protect, conserve and present OUV for future generations (UNESCO)
- Where a development proposal has the potential to affect a World Heritage Site, or its setting, the planning authority must protect and preserve its Outstanding Universal Value (Scottish Planning Policy, 147)
- The siting and design of development should take account of all aspects of the historic environment (Scottish Planning Policy, 140)
- Development which would harm the qualities which justified the inscription of the Old and New Towns of Edinburgh and/or the Forth Bridge as World Heritage Sites or would have a detrimental impact on a Site's setting will not be permitted. This policy requires development to respect and protect the outstanding universal values of the World Heritage Sites and their settings. Setting may include sites in the immediate vicinity, viewpoints identified in the key views study and prominent landscape features throughout the city (Edinburgh Local Development Plan, Policy Env 1 World Heritage Sites)
- Ensure that the Outstanding Universal Value of the WHS is taken into account in planning decision (WHS Management Plan 2017-22)

RESULTANT POSITION

In relation to previous years Christmas markets, we acknowledge that the current applications (please refer to associated references cited above) are of a lesser intensity and more dispersed throughout

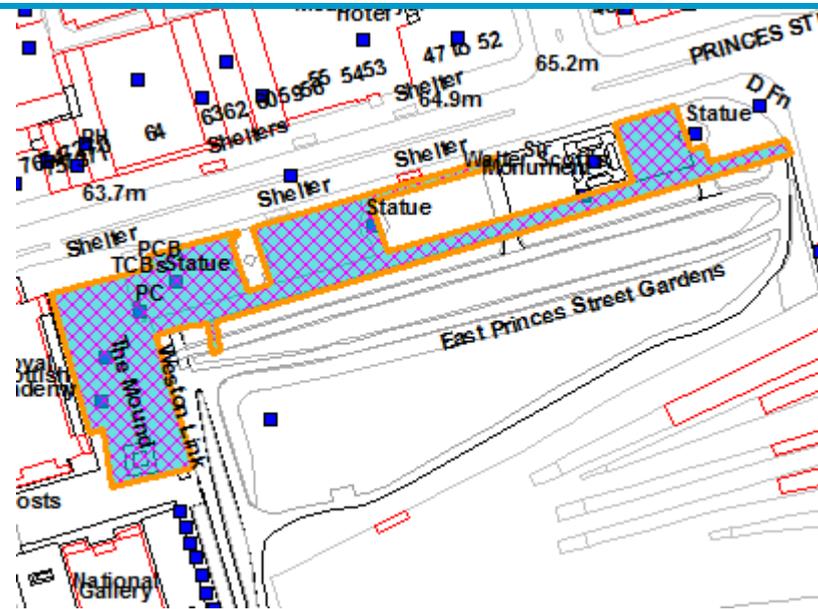
the city. This is welcome from a heritage perspective. On this basis, and with an understanding of the wider context balanced needs within the city, we do not wish to object to this lesser degree and temporary harm.

We would stress that future years should take the opportunity to put people, quality and place at the heart of the process 'moving away from tall fairground rides and other structures in sensitive historic

settings, and towards a tasteful approach that reinforces the unique offer of Edinburgh as a high quality and historic visitor destination. We would welcome round-table early discussions in future to help achieve this. As always, we advise you engage the heritage expertise within your planning department to inform the wider heritage

considerations of this application as well as detailed considerations and opportunities for design/layout enhancement.

Location Plan



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