

# Development Management Sub-Committee Report

**Wednesday 7 December 2022**

**Application for Planning Permission  
Proposed Festival Event Space at, St James Square, Edinburgh.**

**Proposal: Erection of temporary structures and enclosures, including bar, and other associated works to facilitate use of St James Square as an external events space. Permission sought for one year (2022/23).**

**Item – Presentation Item at Committee  
Application Number – 22/04715/FUL  
Ward – B11 - City Centre**

## **Reasons for Referral to Committee**

This application has been referred to the Development Management Sub-Committee because the application is of wider public interest

### **Recommendation**

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

### **Summary**

The proposals are acceptable with regards to Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and are in accordance with the development plan in terms of impact upon the setting of listed buildings, the Old and New Towns of Edinburgh Heritage Site and the New Town Conservation Area.

The principle of development is accepted, and the proposals are appropriate in terms of design in accordance with the development plan.

Subject to a condition limiting the use of amplified music the proposals comply with the amenity requirements of LDP Policies Des 5, Ret 7 and Ret 11.

There are no material considerations which indicate that the proposals should be refused. Therefore, the recommendation is to grant planning permission.

## SECTION A – Application Background

### Site Description

The site comprises the central portion of St James Square, an external space of the new St James Quarter development- a retail and leisure led development in the city centre that surrounds the majority of the square on the north, west and eastern sides.

The B- Listed 27-31 James Craig Walk (Ref: LB30026) forms the southern side of the square.

The four storey and attic A-Listed tenements at 23-26 St James Square (Ref: LB29728) are located to the west of the square.

The Category B Listed Sassine Office (Ref: LB30027) and Category B Circular Record Hall (Ref: LB30025) are located to the south of the square.

The site is located within the UNESCO Old and New Towns of Edinburgh Heritage Site and the New Town Conservation Area.

### Proposal

The application seeks permission for the erection of temporary structures and enclosures, including a bar and other associated works, to facilitate the use of St James Square as an external festive events space. The space is proposed as part of a series of linked event spaces within St James Quarter.

Bar Hütte would be a festive mini alpine village comprising a bar cabin, external seating area (partially covered by a stretch tent) and "karaoke" cabins in the following configuration:

- 2 no. VIP Hüttes (capacity 20 people)
- 11 no. Hüttes (capacity 8 people)

The site's overall capacity would be for 200 people, including occupants of huts and bar/stretch tent area.

Permission is sought for one year (2022/23). This comprises set-up from 28 October 2022 and operating from 10 November until 2 January 2023 with take down until 7 January 2023.

Daily Hours of Operation would be as follows:

#### 10 November 2022 - 30 November 2022

- Monday - Friday 12noon - 10pm
- Saturday 11am - 10pm
- Sunday 11am - 8pm

#### 1 December 2022 - 2 January 2023 (exceptions below)

- Monday - Friday 12noon - 10pm
- Saturday 11am - 10pm
- Sunday 10am - 8pm

- Christmas eve - 12noon - 10pm
- Christmas day - Closed
- Boxing day - 11am - 10pm
- New year's eve - 12noon - 10pm
- New year's day - 12noon - 10pm

The event began operating on 14th November 2022.

In terms of materials, the bar, store and the Hüttes themselves would be constructed of tanalised spruced timber walls, with a black rubber roof and Perspex windows. The central tent, comprising sand coloured tensile membrane suspended from timber uprights would cover the internal circulation space and seating area. The site perimeter would be enclosed by picket fencing with an entrance portal at the south west corner and an emergency exit portal at the north west corner.

The Hüttes include private karaoke machines, but there is no external live music/stage included in the proposals. Music will occur within the karaoke and bar cabins.

Servicing and deliveries will be via the St James Quarter service yard and existing facilities.

### Site History

The Bar Hutte event which operated between November 2021 to January 2022 was granted planning permission for one year only by the Development Management Sub Committee in December 2021. This permission was granted on the proviso that a Noise Impact Assessment would be submitted identifying the noise impact of the event and to address any of the noise complaints received during its operation for any future years. Accordingly, a condition was appended to this permission requiring a Noise Impact Assessment to be submitted. A Noise Impact Assessment was subsequently submitted in accordance with the condition, however, the report found that the noise generated as a result of the development would be in excess of current noise standards.

### Supporting Documents

The application is supported by a Noise Impact Assessment prepared by Waterman, a Design and Access Statement and Site Visualisations.

### Revised Plans

Revised plans were submitted to show details of the proposed timber accoustic wall on the drawings. No changes were made to the proposed scheme.

### **Relevant Site History**

21/05177/FUL  
Proposed Festival Event Space At  
St James Square  
Edinburgh

Use of St James Square as a festive events space, including erection of temporary structures, stage, enclosures and other associated works. Permission sought for four years (2021/22, 2022/23, 2023/24 and 2024/25).

Granted

15 December 2021

22/02035/FUL

Proposed Festival Event Space At

St James Square

Edinburgh

Erection of temporary structures and enclosures, including Spiegeltent and bar, and other associated works to facilitate use of St James Square as an external events space.

Refused

30 September 2022

### **Other Relevant Site History**

NONE

### **Pre-Application process**

Pre-application discussions took place on this application.

### **Consultation Engagement**

Roads Authority

Environmental Protection

Historic Environment Scotland (HES)

Refer to Appendix 1 for a summary of the consultation response.

### **Publicity and Public Engagement**

**Date of Neighbour Notification:** 5 October 2022

**Date of Renotification of Neighbour Notification:** Not Applicable

**Press Publication Date(s):** 14 October 2022.

**Site Notices Date(s):** 11 October 2022.

**Number of Contributors:** 3

## **Section B - Assessment**

### **Determining Issues**

Due to the proposals relating to a listed building(s) and being within a conservation area, this report will first consider the proposals in terms of Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (the "1997 Heritage Act"):

- a) Is there a strong presumption against granting planning permission due to the proposals:
- (i) harming the listed building or its setting? or
  - (ii) conflicting with the objective of preserving or enhancing the character or appearance of the conservation area?
- b) If the strong presumption against granting planning permission is engaged, are there any significant public interest advantages of the development which can only be delivered at the scheme's proposed location that are sufficient to outweigh it?

This report will then consider the proposed development under Sections 25 and 37 of the Town and Country Planning (Scotland) Act 1997 (the 1997 Act):

If the proposal is in accordance with the development plan the determination should be to grant planning permission unless material considerations indicate otherwise?

If the proposal is not in accordance with the development plan the determination should be refuse planning permission unless material considerations indicate otherwise?

In the assessment of material considerations this report will consider:

- the Scottish Planning Policy presumption in favour of sustainable development, which is a significant material consideration due to the development plan being over 5 years old;
- equalities and human rights;
- public representations and
- any other identified material considerations.

## **Assessment**

To address these determining issues, it needs to be considered whether:

### **a) The proposals harm the listed building and its setting?**

The following HES guidance is relevant in the determination of this application:

- **Managing Change in the Historic Environment - Setting**

Section 59 (1) of the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997 states: "In considering whether to grant planning permission for development which affects a listed building or its setting, a planning authority or the Secretary of State, as the case may be, shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."

The Courts have clarified that Section 59(1) 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 proposals would result in significant public interest advantages which can only be delivered at the scheme's proposed location.

Historic Environment Scotland's Managing Change guidance on Setting gives guidance on when proposals impact the setting of listed buildings.

The proposal sits within the urban context of the surrounding modern St James Quarter development, including the contemporary hotel development. Given the transient nature of the installations, along with their scale and positioning within the context of the developed square, the proposed event space will not be to the detriment of the nearby listed buildings and will continue to preserve their historical setting, in compliance with Managing Change guidance.

With reference to the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 the proposal would not result in harm to the setting of listed buildings.

Historic Environment Scotland (HES) was consulted on the proposal and has raised no objections.

**b) The proposals impact on the character or appearance of the conservation area?**

Section 64 (1) of the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997 states: "special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area."

The Courts have clarified that Section 64 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 proposals would result in significant public interest advantages which can only be delivered at the scheme's proposed location.

The New Town Conservation Area Character Appraisal states that the area is typified by the formal plan layout, spacious stone 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.

The temporary nature of the structure is a material factor in the assessment of any impact on the character or appearance of the conservation area. The structure will be set within the context of the wider contemporary development and will have no impact on the skyline. The development will sit within the context of the backdrop of the entrance to the modern St James Quarter.

The proposals therefore are acceptable with regards to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

**c) The proposals comply with the development plan?**

The development plan comprises the Strategic and Local Development Plans. The relevant policies to be considered are:

Delivering the Strategy Policy Del 2  
Shopping and Leisure Policies Ret 7 and Ret 11  
Environment Policies Env 1, Env 3 and Env 6  
Design Policy Des 5

The non-statutory Listed Building and Conservation Area Guidance and Guidance for Businesses are material considerations relevant when considering LDP policy.

Impact on the UNESCO World Heritage Site

The Outstanding Universal Value of the Old and New Towns of Edinburgh World Heritage Site is defined as the remarkable juxtaposition of two clearly articulated urban planning phenomena: the contrast between the organic medieval Old Town and the planned Georgian New Town which provides a clarity of urban structure unrivalled in Europe.

The Statement of Outstanding Universal Value emphasises the importance of maintaining the authenticity of the Site which "continues to retain its historic role as the administrative and cultural capital of Scotland, while remaining a vibrant economic centre."

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 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.

Due to the temporary nature and the size, scale and design of the proposed structure it is considered that there would not be an adverse impact on the setting of the World Heritage Site.

The proposal will not have an impact on the outstanding universal value and the reasons for inscription in compliance with policy Env 1.

Impact on the setting of the Listed Buildings

LDP Policy Env 3 (Listed Buildings- Setting) 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 to its setting.

This has been assessed through sections a) above, and the proposals comply with LDP Policies Env 3 in terms of its impact on the setting of the listed buildings.

## Impact on the setting of the Conservation Area

LDP Policy Env 6 (Conservation Areas - Development) supports development within a conservation area or affecting its setting which preserves or enhances the special character and appearance of the conservation area and is consistent with the relevant character appraisal, preserves trees, hedges, boundary walls, railings, paving and other features which contribute positively to the character and demonstrates high standards of design and utilises materials appropriate to the historic environment.

This has been assessed through sections b) above, and the proposals comply with LDP Policies with Env 6 in terms of its impact on the conservation area.

## Principle

The site is within the City Centre as identified in the Edinburgh Local Development Plan (LDP).

LDP Policy Del 2 (City Centre) supports a mix of uses appropriate to the location of the site and proposals that are comprehensively designed considering relevant development briefs and guidance.

Policy Ret 7 (Entertainment and Leisure Developments - Preferred Locations) states:

Planning permission will be granted for high-quality, well-designed arts, leisure and entertainment facilities and visitor attractions in the City Centre, at Leith and Granton Waterfront and in a town centre, provided:

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

The site is located within the city centre as defined in the Local Development Plan. The principle of leisure and entertainment provision is accepted within this area. The temporary nature and positioning of the installations ensure the proposal will integrate adequately into its surroundings. Criteria b) and c) are considered below.

LDP Policy Ret 11 Food and Drink Establishments permits changes of use in areas where the use will not lead to an unacceptable impact on residential amenity. Matters of amenity are addressed in the amenity section below.

The principle of the use of the site is therefore acceptable given the temporary nature of the proposal.

## Scale, Design and Materials

The proposal is in the form of timber huts and stretched tent which is of a temporary festive appearance. The proposed materials and tented accommodation appears transient in nature and does not appear as a permanent structure. As such, the proposed materials are appropriate.



The space is enclosed by low level fencing, ensuring the space is self contained and providing separation from the rest of the public realm and thoroughway. As such, it will not dominate the square or result in clutter.

### Amenity

LDP Policy Ret 11 (Food and Drink Establishments) permits changes of use in areas where the use will not lead to an unacceptable impact on residential amenity. LDP Policy Des 5 (Development Design - Amenity) requires development proposals to demonstrate that neighbouring amenity of a development will have acceptable levels of amenity. LDP Policy Ret 7 requires the proposal is compatible with surrounding uses and will not lead to a significant increase in noise, disturbance and on- street activity at unsocial hours to the detriment of living conditions for nearby residents.

There nearest residential properties are located along St James Walk and 23-26 St James Square.

Environmental Protection were consulted on the proposal and the comments made are a material consideration in the assessment of the proposals.

Following submission of the initial application, the applicant submitted a Noise Impact Assessment. This was subsequently updated to address inconsistencies in the detail submitted and to include missing information that was considered necessary for Environmental Protection to be able to fully assess the proposal.

Environmental Protection has concerns about the noise from outdoor activities negatively affecting the amenity of nearby residents overlooking St James Square. Whilst the Bar Hutte event last year ran without any complaints, a complaint has been received about music noise from this current event, which is in operation.

The Noise Impact Assessment demonstrates that noise from the site will not meet the expected current noise standard. The NIA attempts to argue that a less onerous standard would be more suitable in this case, however it then demonstrates that this lesser standard would also not be met in all sensitive receptors. Therefore, Environmental Protection cannot support the application and recommends refusal.

The space sits at the entrance of the St James Quarter within the public realm where there a significant level of on street activity existing and examples of outdoor seating associated with adjacent uses. However, whilst this is a central location, it is located with residential properties being in close proximity. There have been objections received prior to the development taking place, as well as subsequent complaints received since its installation and operation from one neighbour and observations on noise received from the community council.

Given that the Noise Impact Assessment demonstrates that the proposal will exceed the expected noise standards, and complaints relating to noise continue to be received, it can be reasonably determined that the proposal results in harm to neighbouring amenity. Whilst it is acknowledged a timber acoustic wall has been included in the current scheme, this does not appear to mitigate noise disturbance by effectively reducing the noise heard from the development. Further updated NIA was received to the application and this has not been reconsulted on with neighbours.

It is considered that the outcomes of this report do not alter the material matters raised in terms of noise disturbance from the neighbouring property.

The inclusion of amplified music within the form of the karaoke booths and the collective disturbance caused by multiple sources of amplified music from the 14 huts increases the level of disturbance. The noise assessment identifies that the Karaoke Booths have no specific noise mitigation measures built in and are a single timber construction. Mitigation identified in the NIA for within the karaoke booths is to limit the internal noise to 85dB(A) and where possible to ensure that the doors remain closed. Neither of these elements can be controlled through the planning process.

Overall, whilst this is a city centre location where the principle is accepted, the proposal as operating currently results in an unacceptable level of noise disturbance through the inclusion of amplified music with limited mitigation. It is therefore recommended that a condition be attached which requires that no amplified music be played within the bar area or the huts.

Subject to the inclusion of the condition the proposal will comply with the objectives of LDP Des 5, Ret 7 and Ret 11.

### Waste

Servicing and deliveries will be via the St James Quarter service yard and existing facilities.

### Access and Parking

The proposal makes no amendments to existing arrangements.

The proposal is located within a central location and no additional parking will be provided for the event. Parking, including disabled parking provision is located within the St James Centre Car Park, with drop off at Elder Street.

The site is in an accessible location with good transport links.

The use of the space and structures will not impede pedestrian flow in and around the St James Quarter or impact pedestrian safety.

### **Conclusion in relation to the Development Plan**

Overall, the proposals will contribute to an appropriate mix of uses in this city centre location. The proposals will not harm the setting of any nearby listed buildings, and preserve the appearance of the conservation area. The proposals are acceptable in terms of scale, design and materiality. However, the proposals give rise to a level of noise disturbance that is to the detriment of residential amenity, and no mitigative measures are proposed that successfully mitigate this impact. As such the proposals fail to comply with the overall objectives of the Local Development Plan.

**d) there are any other material considerations which must be assessed?**

The following material considerations have been identified:

*SPP - Sustainable development*

Scottish Planning Policy (SPP) is a significant material consideration due to the LDP being over 5 years old. Paragraph 28 of SPP gives a presumption in favour of development which contributes to sustainable development. Paragraph 29 outlines the thirteen principles which should guide the assessment of sustainable development.

The proposal complies with the relevant sustainability principles set out in SPP.

*Emerging policy context*

The Revised Draft National Planning Framework 4 was laid before the Scottish Parliament on 08 November 2022 for approval. As it has not completed its parliamentary process, only limited weight can be attached to it as a material consideration in the determination of this application.

While City Plan 2030 represents the settled will of the Council, it has not yet been submitted to Scottish Ministers for examination. As such, little weight can be attached to it as a material consideration in the determination of this application.

*Equalities and human rights*

Due regard has been given to section 149 of the Equalities Act 2010. No impacts have been identified. Consideration has been given to human rights. No impacts have been identified through the assessment and no comments have been received in relation to human rights.

*Public representations*

Two objections and one neutral representations have been received in relation to the proposal.

*Material Considerations*

- Noise. Addressed in Section a) above;
- Incomplete and inconsistent details in Noise Impact Assessment. Addressed above- revised documents submitted to address.
- Neighbour Notification not being carried out correctly. Neighbour notification was carried out on 5th October 2022. Following queries from neighbours about the lack of notification it has been confirmed that all properties within the required radius by legislation have been notified in line with Development Management Procedures.
- Access for Emergency Vehicles. The application has been reviewed by the Roads Authority who have no objections in terms of Roads or Pedestrian Safety.

### *Non-Material Consideration*

- Increase in crime. This application is not for a change of use. The matter of crime cannot be controlled through the Planning process.

### **Overall Conclusion**

The proposals are acceptable with regards to Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and are in accordance with the development plan in terms of impact upon the setting of listed buildings, the Old and New Towns of Edinburgh Heritage Site and the New Town Conservation Area.

The principle of development is accepted, and the proposals are appropriate in terms of design in accordance with the development plan.

Subject to a condition limiting the use of amplified music the proposals comply with the amenity requirements of LDP Policies Des 5, Ret 7 and Ret 11.

## **Section C - Conditions/Reasons/Informatives**

The recommendation is subject to the following;

### **Conditions :-**

1. Notwithstanding the approved plans, there shall be no amplified music be played within the bar area or the huts. For the avoidance of doubt this includes any karaoke speakers.
2. Notwithstanding the approved plans, permission is hereby granted for a restricted Festive period of 2022/ 2023 and all structures shall be removed from the site by 10 January 2023.

### **Reasons:-**

1. In the interest of residential amenity.
2. In the interest of amenity.

### **Background Reading/External References**

To view details of the application go to the [Planning Portal](#)

**Further Information - [Local Development Plan](#)**

**Date Registered: 3 October 2022**

### **Drawing Numbers/Scheme**

01-02, 03A-06A

Scheme 1

**David Givan**  
**Chief Planning Officer**  
**PLACE**  
**The City of Edinburgh Council**

Contact: Sonia Macdonald, Planning Officer  
E-mail: [sonia.macdonald@edinburgh.gov.uk](mailto:sonia.macdonald@edinburgh.gov.uk)

## Appendix 1

### Summary of Consultation Responses

NAME: Roads Authority  
COMMENT: No objections  
DATE: 21 October 2022

NAME: Environmental Protection  
COMMENT: Environmental Protection is unable to support this application.

The proposal is for an external events space at St James Square to operate during between the 10 November 2022 and 2 January 2023. The applicant has confirmed operations will cease at 22.00 hours. The site comprises a bar cabin, external seating area (partially covered by a stretch tent) and several "karaoke" cabins. Music will only occur within the karaoke and bar cabins.

Environmental Protection has significant concerns about the noise from outdoor activities negatively affecting the amenity of nearby residents overlooking St James Square. Whilst the Bar Hutte event last year appeared to run without issue, the temporary activities in this space during August generated justified complaints where officers witnessed intrusive level of noise within a nearby residential property. A complaint has been received about music noise from this current event, which has started operating.

A Noise Impact Assessment (NIA) has been submitted by the applicant. (Waterman Infrastructure and Environment Limited, ref: WIE17806-100-R-3.5.2- Bar Hutte NIA, November 2022). This assessment demonstrates that noise from the site will not meet the expected standard. The NIA attempts to argue that a less onerous standard would be more suitable in this case, however it then demonstrates that this lesser standard would also not be met in all sensitive receptors.

Therefore, Environmental Protection cannot support the application and recommends refusal.

DATE: 22 November 2022

NAME: Historic Environment Scotland (HES)  
COMMENT: HES have considered the information received and do not have any comments to make on the proposals. HES's decision not to provide comments should not be taken as 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.  
DATE: 18 October 2022

The full consultation response can be viewed on the [Planning & Building Standards Portal](#).

## Location Plan



© Crown Copyright and database right 2014. All rights reserved. Ordnance Survey License number 100023420