

Holder Planning Ltd.
FAO: Lesley McGrath
5 South Charlotte Street
Edinburgh
EH2 4AN

Forth Ports Ltd.
1 Prince Of Wales Dock
Edinburgh
EH6 7DX

Decision date: 10 February 2021

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACTS
DEVELOPMENT MANAGEMENT PROCEDURE (SCOTLAND) REGULATIONS 2013**

Install protective barrier along the south of Albert Dock at Stevedore Place, Leith.
At Land To The South Of Albert Dock Edinburgh

Application No: 20/05548/FUL

DECISION NOTICE

With reference to your application for Planning Permission registered on 11 December 2020, this has been decided by **Local Delegated Decision**. The Council in exercise of its powers under the Town and Country Planning (Scotland) Acts and regulations, now determines the application as **Refused** in accordance with the particulars given in the application.

Any condition(s) attached to this consent, with reasons for imposing them, or reasons for refusal, are shown below;

Conditions:-

1. The proposal fails to preserve the special character and setting of the Category 'B' listed Albert Dock including its setting and is therefore contrary to Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and Policies Env 3 'Listed Buildings - Setting' and Env 4 'Listed Buildings - Alterations and Extensions' of the Edinburgh Local Development Plan.

2. The proposal fails to preserve or enhance the special character and appearance of the Leith Conservation Area and is therefore contrary to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and to Policy Env 6 'Conservation Areas - Development' of the Edinburgh Local Development Plan.

Please see the guidance notes on our [decision page](#) for further information, including how to appeal or review your decision.

Drawings 01 - 05, represent the determined scheme. Full details of the application can be found on the [Planning and Building Standards Online Services](#)

The reason why the Council made this decision is as follows:

The proposal would have an adverse impact on the character on the listed structure including its setting and the Leith Conservation Area. The proposal fails to comply Section 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and Env 3, Env 4 and Env 6 of the Edinburgh Local Development Plan. There are no material considerations which justify approval of this application.

This determination does not carry with it any necessary consent or approval for the proposed development under other statutory enactments.

Should you have a specific enquiry regarding this decision please contact Daniel Lodge directly at daniel.lodge@edinburgh.gov.uk.

D R Leeke

Chief Planning Officer

PLACE

The City of Edinburgh Council

NOTES

1. If the applicant is aggrieved by the decision to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within three months beginning with the date of this notice. The Notice of Review can be made online at www.eplanning.scot or forms can be downloaded from that website. Paper forms should be addressed to the City of Edinburgh Planning Local Review Body, G.2, Waverley Court, 4 East Market Street, Edinburgh, EH8 8BG. For enquiries about the Local Review Body, please email localreviewbody@edinburgh.gov.uk.
2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.

Report of Handling

Application for Planning Permission Land To The South Of, Albert Dock, Edinburgh

Proposal: Install protective barrier along the south of Albert Dock at Stevedore Place, Leith.

**Item – Local Delegated Decision
Application Number – 20/05548/FUL
Ward – B13 - Leith**

Recommendation

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

Summary

SECTION A – Application Background

Site Description

The application site comprises the dockside and pedestrian pathway between the Albert Dock basin to the north east and the rear gardens of the recently constructed housing at Stevedore Place to the south west.

Albert Dock lies within the 'Old Leith and Shore' sub-area of the Leith Conservation Area. The Dock, together with its stone flagged and setted quayside with bollards, railway tracks and three travelling cranes was listed at Category 'B' on 29 March 1996 (Ref. LB27590).

The site is located in the Leith Conservation Area.

Bollard and chain barriers are a feature of many throughout the Conservation Area which protect dockside edges.

Description Of The Proposal

It is proposed to replace the metal chain links between the existing bollards located to the south of Albert Dock and north of the residential development at Stevedore Place, Leith, with panels comprising vertical railings. The proposed vertical railing panels will

be attached to existing eyelets on the bollards and can be removed without causing damage to the listed structure.

The proposals are considered necessary to address the immediate requirement to improve safety along the Dock edge at Stevedore Place.

A 'Design Statement' has been submitted in support of the proposals.

A concurrent application for listed building consent is currently under consideration.

Relevant Site History

20/05546/LBC

Install protective barrier along the land to the south of Albert Dock at Stevedore Place, Leith.

Consultation Engagement

Archaeologist

Publicity and Public Engagement

Date of Neighbour Notification: 10 February 2021

Date of Advertisement: 8 January 2021

Date of Site Notice: 31 December 2020

Number of Contributors: 31

Section B - Assessment

Determining Issues

Section 14 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states - In considering whether to grant consent, special regard must be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. For the purposes of this issue, preserve, in relation to the building, means preserve it either in its existing state or subject only to such alterations or extensions as can be carried out without serious detriment to its character.

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

In determining applications for listed building consent, the Development Plan is not a statutory test. However the policies of the Local Development Plan (LDP) inform the assessment of the proposals and are a material consideration.

Assessment

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

- a) the principle of the development is acceptable;
- b) the proposals will adversely affect the character and appearance of the conservation area;
- c) the proposals will have an adverse impact on the character of the listed building;
- d) the proposals will have an adverse impact on the archaeological interest of the site;
- e) any impacts on equalities and human rights are acceptable; and
- f) any comments received are addressed.

a) Principle

The proposals apply to a boundary historically established in this location and forming part of the listed Albert Dock. It is appreciated that the current boundary treatment is not of a design to prevent access to the dock edge and that additional measures could be put in place to make the boundary more secure. The principle of design changes proposed to the boundary treatment or within the surrounding context is therefore acceptable subject to compliance with the remaining considerations of the assessment.

It should also be noted that Industry guidance and good practice set out in the HSE (Health and Safety Executive) publication L148 Safety in Docks: Approved Code of Practice and Guidance (ACOP) specifically states *secure fencing should consist of an upper rail and an intermediate rail. In certain circumstances, eg the presence of children, a higher standard of protection will be required.* The ACOP defines this higher standard for protection as a *taut wire, taut chain or other taut material* as being an acceptable solution for a barrier rail in a dockside setting close to residential properties.

b) Character and appearance of conservation area

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

The Leith Conservation Area Character Appraisal emphasises the older parts of the Port of Leith, containing many early features including listed dock buildings. Scheduled Ancient Monuments associated with the Port of Leith consist of: the Victoria Bridge, the dry dock off Sandport Street, the swing bridge and lock at the East Old Dock, and features related to the Albert Dock.

The Albert Dock lies within a prominent location within the heart of the older part of the Port of Leith. The dock side contains robust surfaces required for dock sides, is separated by bollards with chains linking them; and matches the streetscape at the Shore and character of the medieval core of the Leith Conservation Area. The contemporary design of recent additions, such as new dock gates, sculptures and tree guards reinforce the prevailing character. The proposals would seriously diminish these special characteristics by enclosing the footpath with an uncharacteristic boundary

treatment thereby reducing the visual permeability along this key route through dock where views across the historic dock towards the Firth of Forth and beyond can be appreciated.

The proposals would not preserve the special character or appearance of the Leith Conservation Area.

c) Impact on the Listed Building

Section 14 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states - *In considering whether to grant consent, special regard must be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. For the purposes of this issue, preserve, in relation to the building, means preserve it either in its existing state or subject only to such alterations or extensions as can be carried out without serious detriment to its character.*

Historic Environment Scotland's guidance on *Managing Change - Boundaries* set out the principles that apply and how they should inform planning policies and the determination of applications relating to the historic environment.

The layout and design of the bollard and chain boundary, its materials and the way in which it relates to the dock basin, dockside and footpath comprise important elements of the character of the dock and dock edge, and contribute substantially to the sense of place and historical understanding of the listed dock.

The quality of its design includes the way in which the boundary is laid out, its physical dimensions and appearance, the particular sense of enclosure it provides, its associated features, and its relationship with other dockside features including moorings and surface treatments. These qualities have been consciously determined by the designer and mimic the manner in which many quaysides and dock edges have been treated throughout Leith and the rest of Scotland. The quality of the boundary specifically relates to its design and the visual permeability it purposely was designed to allow for. The intentional design of the boundary is reflective of the original dock operations and to allow views both ways across the dock edge. The position and design of the boundary therefore, specifically relates to its original function as an operational dock.

The age and rarity of the boundary and other associated features are also factors in determining its special interest. It is therefore noted, whilst many of the bollards are new and the chain link is not original, many of the related structures and surfacing materials are original. These include the stone dock edge, train tracks, moorings and 22 of the 52 bollards. It is also important to recognise the conservation-led approach adopted in the manner in which the dock edge and footpath have been restored and sensitively altered in association with the relatively recently completed residential development along Stevedore Place that directly abuts the footway (Ref: 12/03959/FUL).

While It is recognised that the context to the south west of the dock has changed with the erection of a new residential development where a metal railings with gated openings has been erected to delineate the rear garden boundaries with the footpath,

historically, dock related buildings and structures were previously present at this location.

The removal of the chain link and its infilling with panels comprising vertical railings will severely impact on the architectural and historic interest of the listed structure given the extent of the design change proposed. The visual permeability of the existing boundary will be compromised to a such a degree, that the immediate south west setting of the dock basin will be adversely impacted . The level of appreciation of the dock edge and basin currently affords when moving across the public footpath will also be adversely impacted on given the decreased level of visual permeability created and the subsequent sense of enclosure created by the proposals in conjunction with the existing garden railings.

The quality of the bespoke manufactured railing panels and the level of intervention required to the existing bollards using their existing eyelets to render the proposals reversible is noted. However, while it is considered preferable for new work to be reversible, so that changes can be undone without harm to historic fabric, reversibility alone does not justify alteration that is not justified on other grounds. Crucially, the degree of the design change the intervention would generate is judged to diminish the special architectural and historic interest of the listed structure including its setting to an unacceptable degree.

The proposals would not preserve the special architectural or historic interest of the listed structure.

d) Impact on archaeological interests

The site is regarded as being of archaeological significance both in terms of buried remains and potential impacts upon setting and character of the listed dock. Having assessed the potential impacts of the proposals, The City Archaeologist has confirmed that given that the scale and nature of the proposed new barriers, it has been concluded that there are no significant permanent impacts upon the character or setting of this historic listed dock in archaeological terms.

e) Equalities and human rights

This application was assessed in terms of equalities and human rights. No impacts were identified.

f) Public Comments

- Impact on the special architectural and historic interest of the listed structure including its setting is addressed in Section 3.3 a)
- Impact on the special character and appearance of the Leith Conservation Area is addressed in Section 3.3 b)

Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following;

Conditions

1. The proposal fails to preserve the special character and setting of the Category 'B' listed Albert Dock including its setting and is therefore contrary to Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and Policies Env 3 'Listed Buildings - Setting' and Env 4 'Listed Buildings - Alterations and Extensions' of the Edinburgh Local Development Plan.
2. The proposal fails to preserve or enhance the special character and appearance of the Leith Conservation Area and is therefore contrary to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and to Policy Env 6 'Conservation Areas - Development' of the Edinburgh Local Development Plan.

Background Reading/External References

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

Further Information - [Local Development Plan](#)

Date Registered: 11 December 2020

Drawing Numbers/Scheme

01 - 05

Scheme 1

**David R. Leslie
Chief Planning Officer
PLACE
The City of Edinburgh Council**

Contact: Daniel Lodge, Planning officer
E-mail:daniel.lodge@edinburgh.gov.uk

Appendix 1

Consultations

NAME: Leith Harbour and Newhaven Community Council

COMMENT:I am submitting this objection to the applications listed above on behalf of Leith Harbour and Newhaven Community Council (LHNCC). Both applications have been reviewed by our Planning Sub-Group and the wider Community Council, in the light of a number of complaints received from local residents. This response, which incorporates the feedback from residents living alongside Albert Dock, is supported by all members.

Context for LHNCC objection

Forth Ports Ltd carried out unauthorised works to alter the bollard and chain perimeter barrier at the B-listed Albert Dock on 29 December 2020 (see photograph below). New modern panels of vertical railings have been installed between each bollard, which replace the original chains. We understand that this work has been carried out as a health and safety response to an unsupervised child jumping in the Dock on 16 September 2020.

LHNCC and local residents first raised objections to the then proposed works with Forth Port staff and the CEC Planning Enforcement team in November 2020. This was on the grounds that planning permission and listed building consent had not been applied for and the community had not been consulted. The works were again reported, this time as a breach of planning, on 29 December when Forth Port's contractors arrived to start work on the dockside.

This is a second recent breach of the planning process - LHNCC lodged an official complaint about unauthorised works at the A-listed bridge near Teuchters Landing on 29 November 2020.

Grounds for LHNCC objection

The alteration of the bollard and chain perimeter barrier at Albert Dock on 30 December without planning permission is in breach of legislation and Scottish Government, Historic Environment Scotland and City of Edinburgh Council policies. The works on a listed structure without planning consent is a criminal offence under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

Planning policy and context

This application also does not meet Edinburgh Local Development Plan (EDLP) polices (Annex 1) and other relevant Scottish Government and statutory agency requirements on conservation areas and listed structures (referenced below). Listed Building Consent (LBC) assesses whether the works will affect the historic interest of the listed dock and preserve or enhance the special character or appearance of the conservation area. Local authorities have a statutory duty to identify and designate areas of special architectural or historic interest and ensure that any alterations, for whatever reason, are carefully considered.

Scottish Government Scottish Planning Policy

According to Scottish planning policy, listed structures should be protected from demolition or other work that would adversely affect them or their setting. Any change to a listed structure should be managed to protect its special interest. Where planning permission and listed building consent are sought for development to, or affecting, a listed structure, special regard must be given to the importance of preserving and enhancing the structure, its setting and any features of special architectural or historic interest. The layout, design, materials, scale, siting and use of any development which will affect a listed structure, or its setting, should be appropriate to the character and appearance of the structure and setting.

Listed Buildings and Conservation Areas Guidance

Albert Dock lies within the Leith Conservation Area ('Old Leith and Shore' sub-area). The Dock, together with its '..stone flagged and setted quayside with bollards, railway tracks and three travelling cranes...', is Category B-Listed as being of special architectural and historical interest by Historic Environment Scotland. Bollard and chain barriers are a feature of many throughout the Conservation Area which protect dockside edges.

Conservation Area Character Appraisals identify the essential character of conservation areas. They guide the local planning authority in making planning decisions and, where opportunities arise, preparing enhancement proposals. The Character Appraisals are a material consideration when considering applications for development within conservation areas. Listed Building Consent (LBC) assesses whether the works will affect the historic interest of the listed dock and preserve or enhance the special character or appearance of the conservation area. The alterations at Albert Dock do not meet the recommendations in Edinburgh Local Development Plan (referenced in Annex 2).

Leith Conservation Area Character Appraisal

The character appraisal for the conservation area identifies the essential character of Leith. It should be seen as a material consideration in relation to this planning application. The streetscape section of the character appraisal specifically highlights the quayside areas being separated by bollards with chains linking them. Bollards with chains are a quintessential part of the public realm and streetscape within Leith. They can be found as perimeter barriers around the Albert and Victoria Dock Basins and along all parts of the nearby Shore area. This continuity is important to the character of the entire Leith conservation area. The replacement barrier panels are not in keeping with the Leith conservation area character appraisal and set a precedent for the wider area should this application be approved.

Scottish Government Planning Advice Note (PAN) 71: Conservation Area Management

The designation of a conservation area is a means to safeguard and enhance the sense of place, character and appearance of our most valued historic places. Buildings of character, listed buildings, scheduled monuments, trees, historic street patterns, open spaces and designed gardens and landscapes are important components of these areas.

Historic Environment Policy for Scotland (HEPS)

The alteration of the listed perimeter barrier at Albert Dock is in breach of Historic Environment Policy for Scotland (HEPS), which is designed to support good decision making for Scotland's unique places. The designation of Albert Dock is the legal recognition of its importance as a historic site. The designation seeks to ensure that the cultural, social, environmental and economic value of Scotland's historic environment makes a strong contribution to the development and wellbeing of the nation and its people. It should also ensure that sites and places are recognised by law through the planning system and other regulatory processes.

Managing Change in the Historic Environment

This HES policy states that decisions about listed structures should always focus on the qualities that make them important - their special interest. A range of factors contributes to a special interest, but the key factor when considering whether change should be made is overall historic character.

The Historic Environment Scotland listing for Albert Dock in Leith makes pointed reference to post and chain barriers to the perimeter of the swing bridge. Post and chain barrier is therefore in our view the barrier solution most in keeping with the dock edge itself and as mentioned above, already widely used throughout the entire conservation area. The modern fencing installed by Forth Ports at Albert Dock negatively impacts on the historic character of Albert Dock and the Old Shore area. It negatively impacts on the local community's sense of place, identity and wellbeing.

Health and safety

LHNCC is aware of the health and safety aspects and that it is one of the considerations the planning process for applications (FUL) takes into account. However, we would like to point out that the assertion in the Forth Port's Design Statement that 'Garden gates provide direct access from the dwellings to the Dock edge' is incorrect. The houses along Stevedore Place are separated from the dock edge by:

- A 2 m wide fenced-in garden with a gate that can be easily locked with a padlock or similar.
- A 3 m wide public footpath (approximately 150 m in length) that runs between the gardens and bollard and chain barrier. It is used primarily by residents and pedestrians as a walkway along the dockside.
- A bollard and chain barrier, which is set approximately 1.5 m back from the dock edge.

Industry guidance and good practice set out in the HSE (Health and Safety Executive) publication L148 Safety in Docks: Approved Code of Practice and guidance (ACOP) specifically highlights taut chain as being an acceptable solution for a barrier rail in a dockside setting close to residential properties. There is no reason for it not to be acceptable at Albert Dock in Leith. To that end we are concerned that there is not a copy of completed Risk Assessment Form providing analysis behind the decision made by Forth Ports Ltd that rejects alternative and more appropriate solutions.

Community and statutory engagement

LHNCC is disappointed by the lack of engagement shown by Forth Ports and its approach to implementing the works without planning permission or consultation with the local community and statutory agencies. Works started on 29 December 2020; the day residents received the notification of the application for Planning. Consultee and Public official notifications for these applications were only made available week beginning 4 January with a closing date for comments set as 29 January 2021. This would appear to be a second recent breach of the planning process; we lodged an official complaint about unauthorised works at the A-listed bridge near Teuchters Landing in November.

LHNCC and local residents have been keen to meet constructively with Forth Ports Ltd to discuss options to improve safety that are not to the detriment of historic character. Residents have put together a letter and information that shows safety measures adopted at other comparable locations in the UK (see for example Annex 3, which shows the design of the perimeter barrier at Albert Dock in Liverpool, an area with much higher pedestrian footfall). However, despite numerous requests and pleas for meetings with the Port there has been no engagement from Port staff, beyond a standard response to say works were going ahead but that they are temporary.

Next steps

These issues are a cause for concern for the LHNCC and the Leith Harbour community. There is potential for this work to set a precedent for piecemeal and hastily installed safety measures that are detrimental to the amenity and historic character of the dock basins (which are not all in the same ownership) and the wider Shore area. LHNCC believes that a more considered and strategic approach to improving safety should be adopted, and one that does not negatively impact on the character of the Old Leith and Shore Area. We understand from Forth Ports that the recently installed fencing panels are temporary. We therefore look forward to engaging with Port staff, City of Edinburgh Council, relevant statutory authorities (Historic Environment Scotland) and the community to agree and take forward a more appropriate and permanent solution in due course.

LHNCC believes that Planning Enforcement should have a key role to play in the protection of conservation areas and listed structures such as the Docks in Leith Harbour. Guidance set out under Scottish Government Planning Advice Note (PAN) 71: Conservation Area Management questions the current reactive nature of local authority enforcement strategies, which result in investigation only when a formal complaint is made. Good practice for conservation areas set out in PAN71 states that local authorities should consider a more proactive approach, including monitoring development activity and ensuring compliance with the terms of planning permissions. Such a positive and active approach to enforcement will help to reduce the number of contraventions and secure sustained improvements in environmental quality.

Yours sincerely

Jennifer Marlborough, Secretary, LHNCC

Annex 1 - Contraventions of the Edinburgh Local Development Plan 2016

DES 1: Design Quality and Context

The modern fencing panels installed by Forth Ports Ltd at Albert Dock are inappropriate and not in line with the considerations set out in the ELDP. They are, by Forth Port's own acknowledgement in the Design Statement, designed to match the garden fencing of the nearby Cala housing development (constructed in 2014). The scale and form of the panels conflict with the scale and form of the historic dockside - both at Albert Dock and within the wider Shore area.

DES 3: Development Design

As above, Forth Ports have not considered the existing historic and listed features, by altering them to reflect the garden fence design at the adjacent residential development at Stevedore Place. The fence panels have resulted in an unacceptable visual impact on the character of the dockside and the removal of the chains has resulted in an unacceptable physical impact on the listed structures.

DES 4: Layout Design

As above, Forth Ports has not considered the surrounding context. Albert Dock is part of the Old Shore Conservation Area. The new fence panels at the dockside edge negatively impact on existing eye-level views along the public right of way along the list dockside and the character and streetscape of the wider Shore area.

DES 10: Waterside Development

The south side of Albert Dock is not part of the operational port and the existing path that separates the houses at Stevedore Place with the Dock is a public right of way. The new modern fence significantly diminishes the public frontage of the waterside. It negatively impacts on the conservation and landscape interests of the water environment and creates an unnecessary visual and physical barrier that prevents the enjoyment of the many residents and visitors who use the public footpath for recreation, exercise and to enjoy (and photograph) the historic dockland area.

ENV 3: Listed Buildings - Setting

Albert Dock forms part of the Port of Leith and its function is intrinsic to its character, appearance and historic interest. The altered barrier to the B-listed dock is visually detrimental to the architectural character, appearance and historic interest of the dock and its setting.

ENV 4: Listed Buildings - Alterations and Extensions

The modern fencing panels are not justified on the grounds that they are required to address health and safety risk on the basis of a single incident. The barrier is an unsympathetic modern design that has been created to copy the garden fencing in a nearby modern housing development - it is not appropriate in design, scale and materials to the listed structures.

ENV 6: Conservation Areas - Development

Albert Dock is within the Old Leith and Shore area of the Leith Conservation Area. The Character Area Appraisal specifically mentions the bollard and chain style perimeter barrier as part of the streetscape at the Shore. The modern fencing panels installed by

Forth Ports are inappropriate and unsympathetic to the listed structures and the Shore streetscape. They do not reflect the special character of the Old Shore conservation area. Other dockland areas in other UK cities have addressed health and safety issues without compromising the historic character. For example, Albert Dock in Liverpool retains bollard and chain barriers, but there are four rather than two chains and they are thicker.

Annex 2 - Contraventions of the Listed Buildings and Conservation Areas guidance

Part 2 - Conservation Areas/Conservation Area Character Appraisals (page 23)

2. Special attention must be paid to the character and appearance of the conservation area when planning controls are being exercised. Most applications for planning permission for alterations will, therefore, be advertised for public comment and any views expressed must be taken into account when making a decision on the application.

General Principles (page 24)

- Designation of a conservation area does not mean development is prohibited. However, when considering development within a conservation area, special attention must be paid to its character and appearance. Proposals which fail to preserve or enhance the character or appearance of the area will normally be refused. Guidance on what contributes to character is given in the conservation area character appraisals.
- The aim should be to preserve the spatial and structural patterns of the historic fabric and the architectural features that make it significant.
- Preservation and re-use should always be considered as the first option.
- Interventions need to be compatible with the historic context, not overwhelming or imposing.
- Without exception, the highest standards of materials and workmanship will be required for all works in conservation area

EDLP Des 12: Extensions and Alterations (page 24)

- Proposals must preserve or enhance the character or appearance of the conservation area.

NAME: City of Edinburgh Council Archaeology Service

COMMENT: Further to your consultation request I would like to make the following comments and recommendations concerning this application to install protective barrier along the south of Albert Dock at Stevedore Place, Leith.

The site is regarded as being of archaeological significance both in terms of buried remains and potential impacts upon setting of the listed dock. Having assessed the potential impacts of the new scheme, given that there will be physical impacts upon the historic fabric of the dock, it has been concluded that there are no archaeological implications regarding this FUL application.

Comments for Planning Application 20/05548/FUL

Application Summary

Application Number: 20/05548/FUL

Address: Land To The South Of Albert Dock Edinburgh

Proposal: Install protective barrier along the south of Albert Dock at Stevedore Place, Leith.

Case Officer: Daniel Lodge

Customer Details

Name: Ms Elaine Dick

Address: 36 Stevedore Place, Edinburgh EH6 7BF

Comment Details

Commenter Type: Neighbour

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment:I am writing to object and request that the Planning Committee refuses this (now retrospective) planning application.

The alteration by Forth Ports Ltd of the bollard and chain perimeter barrier at Albert Dock without planning permission is in breach of legislation and Scottish Government, Historic Environment Scotland and City of Edinburgh Council policies. The works on a listed structure without planning consent is a criminal offence under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

Community and statutory engagement

I am disappointed by the lack of engagement shown by Forth Ports and its approach to implementing the works without planning permission or consultation with the local community and statutory agencies. Works started on 29 December 2020 - the day I received the notification of the application for Planning.

I have emailed Forth Ports several times with a request to meet constructively to discuss options to improve safety that are not to the detriment of historic character. Our neighbourhood has put together a letter and information that shows safety measures adopted at other comparable locations in the UK (for example the perimeter barrier at Albert Dock in Liverpool, an area with much higher pedestrian footfall). However, despite numerous requests and pleas for meetings with the Port there has been no engagement from Port staff, beyond a standard response to say works were going ahead but that they are temporary.

Planning policy and context

This application also does not meet Edinburgh Local Development Plan (EDLP) polices (see below) and other relevant Scottish Government and statutory agency requirements on conservation areas and listed structures (referenced below). CEC has a statutory duty to identify and designate areas of special architectural or historic interest and ensure that any alterations, for whatever reason, are carefully considered.

Contraventions of the Edinburgh Local Development Plan (2016)

DES 1: Design Quality and Context

The modern fencing panels installed by Forth Ports Ltd at Albert Dock are inappropriate and not in line with the considerations set out in the ELDP. They are, by Forth Port's own acknowledgement in the Design Statement, designed to match the garden fencing of the nearby Cala housing development (constructed in 2014). The scale and form of the panels conflict with the scale and form of the historic dockside - both at Albert Dock and within the wider Shore area.

DES 3: Development Design

As above, Forth Ports have not considered the existing historic and listed features, by altering them to reflect the garden fence design at the adjacent residential development at Stevedore Place. The fence panels have resulted in an unacceptable visual impact on the character of the dockside and the removal of the chains has resulted in an unacceptable physical impact on the listed structures.

DES 4: Layout Design

As above, Forth Ports has not considered the surrounding context. Albert Dock is part of the Old Shore Conservation Area. The new fence panels at the dockside edge negatively impact on existing eye-level views along the public right of way along the list dockside and the character and streetscape of the wider Shore area.

DES 10: Waterside Development

The south side of Albert Dock is not part of the operational port and the existing path that separates the houses at Stevedore Place with the Dock is a public right of way. The new modern fence significantly diminishes the public frontage of the waterside. It negatively impacts on the conservation and landscape interests of the water environment and creates an unnecessary visual and physical barrier that prevents the enjoyment of the many residents and visitors who use the public footpath for recreation, exercise and to enjoy (and photograph) the historic dockland area.

ENV 3: Listed Buildings - Setting

Albert Dock forms part of the Port of Leith and its function is intrinsic to its character, appearance and historic interest. The altered barrier to the B-listed dock is visually detrimental to the architectural character, appearance and historic interest of the dock and its setting.

ENV 4: Listed Buildings - Alterations and Extensions

The modern fencing panels are not justified on the grounds that they are required to address health and safety risk on the basis of a single incident. The barrier is an unsympathetic modern design that has been created to copy the garden fencing in a nearby modern housing development - it is not appropriate in design, scale and materials to the listed structures.

ENV 6: Conservation Areas - Development

Albert Dock is within the Old Leith and Shore area of the Leith Conservation Area. The Character Area Appraisal specifically mentions the bollard and chain style perimeter barrier as part of the streetscape at the Shore. The modern fencing panels installed by Forth Ports are inappropriate and unsympathetic to the listed structures and the Shore streetscape. They do not reflect the special character of the Old Shore conservation area. Other dockland areas in other UK cities have addressed health and safety issues without compromising the historic character. For example, Albert Dock in Liverpool retains bollard and chain barriers, but there are four rather than two chains and they are thicker.

Scottish Government Scottish Planning Policy

According to Scottish planning policy, listed structures should be protected from demolition or other work that would adversely affect them or their setting. Any change to a listed structure should be managed to protect its special interest. Where planning permission and listed building consent are sought for development to, or affecting, a listed structure, special regard must be given to the importance of preserving and enhancing the structure, its setting and any features of special architectural or historic interest. The layout, design, materials, scale, siting and use of any development which will affect a listed structure, or its setting, should be appropriate to the character and appearance of the structure and setting.

Listed Buildings and Conservation Areas guidance (2019)

Part 2 - Conservation Areas/Conservation Area Character Appraisals (page 23)

2. Special attention must be paid to the character and appearance of the conservation area when planning controls are being exercised. Most applications for planning permission for alterations will, therefore, be advertised for public comment and any views expressed must be taken into account when making a decision on the application.

General Principles (page 24)

- Designation of a conservation area does not mean development is prohibited. However, when considering development within a conservation area, special attention must be paid to its character and appearance. Proposals which fail to preserve or enhance the character or appearance of the area will normally be refused. Guidance on what contributes to character is

given in the conservation area character appraisals.

- The aim should be to preserve the spatial and structural patterns of the historic fabric and the architectural features that make it significant.
- Preservation and re-use should always be considered as the first option.
- Interventions need to be compatible with the historic context, not overwhelming or imposing.
- Without exception, the highest standards of materials and workmanship will be required for all works in conservation area

Extensions and Alterations (page 24)

- Proposals must preserve or enhance the character or appearance of the conservation area.

Albert Dock lies within the Leith Conservation Area ('Old Leith and Shore' sub-area). The Dock, together with its '...stone flagged and setted quayside with bollards, railway tracks and three travelling cranes...', is Category B-Listed as being of special architectural and historical interest by Historic Environment Scotland. Bollard and chain barriers are a feature of many throughout the Conservation Area which protect dockside edges.

Conservation Area Character Appraisals identify the essential character of conservation areas. They guide the local planning authority in making planning decisions and, where opportunities arise, preparing enhancement proposals. The Character Appraisals are a material consideration when considering applications for development within conservation areas. The alteration of the listed perimeter barrier at Albert Dock is in breach of this guidance.

Leith Conservation Area Character Appraisal

The character appraisal for the conservation area identifies the essential character of Leith. It should be seen as a material consideration in relation to this planning application. The streetscape section of the character appraisal specifically highlights the quayside areas being separated by bollards with chains linking them. Bollards with chains are a quintessential part of the public realm and streetscape within Leith. They can be found as perimeter barriers around the Albert and Victoria Dock Basins and along all parts of the nearby Shore area. This continuity is important to the character of the entire Leith conservation area. The replacement barrier panels are not in keeping with the Leith conservation area character appraisal and set a precedent for the wider area should this application be approved.

Scottish Government Planning Advice Note (PAN) 71: Conservation Area Management

The designation of a conservation area is a means to safeguard and enhance the sense of place, character and appearance of our most valued historic places. Buildings of character, listed buildings, scheduled monuments, trees, historic street patterns, open spaces and designed gardens and landscapes are important components of these areas.

Historic Environment Policy for Scotland (HEPS)

The alteration of the listed perimeter barrier at Albert Dock is in breach of Historic Environment Policy for Scotland (HEPS), which is designed to support good decision making for Scotland's unique places. The designation of Albert Dock is the legal recognition of its importance as a historic site. The designation seeks to ensure that the cultural, social, environmental and economic value of Scotland's historic environment makes a strong contribution to the development and wellbeing of the nation and its people. It should also ensure that sites and places are recognised by law through the planning system and other regulatory processes.

Managing Change in the Historic Environment

This HES policy states that decisions about listed structures should always focus on the qualities that make them important - their special interest. A range of factors contributes to a special interest, but the key factor when considering whether change should be made is overall historic character.

The Historic Environment Scotland listing for Albert Dock in Leith makes pointed reference to post and chain barriers to the perimeter of the swing bridge. Post and chain barrier is therefore in our view the barrier solution most in keeping with the dock edge itself and as mentioned above, already widely used throughout the entire conservation area. The modern fencing installed by Forth Ports at Albert Dock negatively impacts on the historic character of Albert Dock and the Old Shore area. It negatively impacts on the local community's sense of place, identity and wellbeing.

Health and safety

I am aware that health and safety is one of the considerations the planning process takes into account. However, I would like to point out that the assertion in the Forth Port's Design Statement that 'Garden gates provide direct access from the dwellings to the Dock edge' is incorrect. The houses along Stevedore Place are separated from the dock edge by:

- A 2 m wide fenced-in garden with a gate that can be easily locked with a padlock or similar.
- A 3 m wide public footpath (approximately 150 m in length) that runs between the gardens and bollard and chain barrier. It is used primarily by residents and pedestrians as a walkway along the dockside.
- A bollard and chain barrier, which is set approximately 1.5 m back from the dock edge.

Forth Ports took three months to take any action on site following the incident of the child jumping into the dock (16 September 2020). If the previous chain barrier was deemed acceptable for those three months, it seems strange that the installation of inappropriate fence panelling was rushed through at the end of December, without proper consideration or planning permission. The Port

could have made the site safe immediately by using temporary barriers and safety signage, while an appropriate solution was considered - in consultation with the planning authorities, statutory agencies and the local community.

If the original chain barrier was not deemed acceptable then, a chain barrier such as that used at Albert Dock in Liverpool (and in other docklands in the UK) is an obvious solution as it protects a significantly more public dockside than exists in Leith. Industry guidance and good practice set out in the HSE (Health and Safety Executive) publication L148 Safety in Docks: Approved Code of Practice and guidance (ACOP) specifically highlights taut chain as being an acceptable solution for a barrier rail in a dockside setting close to residential properties. There is no reason for it not to be acceptable at Albert Dock in Leith. To that end I am concerned that there is not a copy of completed Risk Assessment Form providing analysis behind the decision made by Forth Ports Ltd that rejects alternative and more appropriate solutions.

The new barrier is stronger and rigid however, it that makes it much easier to climb or jump over. The bottom horizontal rail provides a higher step encouraging people to stand on it, making it easier to climb. The top horizontal rail is rigid, which makes a perfect place for an older children and teenagers to try to walk along. The original chain barrier did not offer this sort of opportunity.

Summary

There is potential for this work to set a precedent for piecemeal and hastily installed safety measures that are detrimental to the amenity and historic character of the dock basins (which are not all in the same ownership) and the wider Shore area. I believe that a more considered and strategic approach to improving safety should be adopted, and one that does not negatively impact on the character of the Old Leith and Shore Area. I understand from Forth Ports that the recently installed fencing panels are temporary. I therefore hope that the CEC will reject this application and any potential for this to become a permanent solution. I hope CEC works to ensure that a more appropriate and permanent solution is considered in due course - involving consultation with the relevant statutory authorities (Historic Environment Scotland) and the Leith community.

Comments for Planning Application 20/05548/FUL

Application Summary

Application Number: 20/05548/FUL

Address: Land To The South Of Albert Dock Edinburgh

Proposal: Install protective barrier along the south of Albert Dock at Stevedore Place, Leith.

Case Officer: Daniel Lodge

Customer Details

Name: Mrs Sharon McKinlay

Address: 34 Stevedore Place Edinburgh

Comment Details

Commenter Type: Neighbour-Residential

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment:I object as the fencing is not in keeping with the character of the listed dockside setting. Heavier or an extra layer of chains would be more suitable to stay aligned to the principal of Grade B listing of the dock. One unique incident in the 6 years since the development was built does not warrant the need for fencing. There is much higher footfall in other areas which have close proximity to the water but don't have fencing. It should also be noted that planning application notification was received on the morning of 29th December 2020 and work commenced that same afternoon.

Comments for Planning Application 20/05548/FUL

Application Summary

Application Number: 20/05548/FUL

Address: Land To The South Of Albert Dock Edinburgh

Proposal: Install protective barrier along the south of Albert Dock at Stevedore Place, Leith.

Case Officer: Daniel Lodge

Customer Details

Name: Mrs Lora Ward

Address: 14 stevedore place Edinburgh

Comment Details

Commenter Type: Neighbour-Residential

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: The new fence (already partially installed!) is not in keeping with the tone of the area.

No consultation has taken place to date.

The new fence makes material change to a listed structure.

Comments for Planning Application 20/05548/FUL

Application Summary

Application Number: 20/05548/FUL

Address: Land To The South Of Albert Dock Edinburgh

Proposal: Install protective barrier along the south of Albert Dock at Stevedore Place, Leith.

Case Officer: Daniel Lodge

Customer Details

Name: Mr Ian Morrison

Address: 43 Waterfront Ave Edinburgh

Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: A proper railing will destroy the atmosphere of the Shore. It'll look like a prison. The current chains enhance the character and allow the public to sit on the edge of the water. Harbours in France and other locations don't even have protection, so no need from that point of view.

Comments for Planning Application 20/05548/FUL

Application Summary

Application Number: 20/05548/FUL

Address: Land To The South Of Albert Dock Edinburgh

Proposal: Install protective barrier along the south of Albert Dock at Stevedore Place, Leith.

Case Officer: Daniel Lodge

Customer Details

Name: Mr David Young

Address: 19/5 India Street Edinburgh

Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: These proposals seem to be a panicked reaction to one recent incident in which a child fell into the water and had to be rescued. This event has prompted Forth Ports to respond with the standard corporate mantra, viz, that they "take extremely seriously" whatever issue it is that has exposed some corporate shortcoming - in this case, the issue of "health and safety."

But, for once, it doesn't seem there has been any such shortcoming. And replacing the chain links with the proposed "protective barrier" seems to take health and safety concerns to unnecessary, and aesthetically damaging, lengths.

If this one incident has caused Forth Ports such shock and consternation, then presumably accidents of this kind are extremely rare, and it would seem that the bollards and chain links must have been effective for many years in preventing children falling into the water. (Could Forth Ports be required to share their records of such accidents with the Planning Committee?)

The bollards and chain links are also aesthetically pleasing, and in the general style of marine/dock-side street furniture. They fit in well with their environment. And purely by chance - not design - the rise and fall of the chains resembles a stylised pattern of undulating waves - another happy feature of the relaxed dock-side ambience.

According to the Design Statement, the barriers which would replace the chains are of a "sympathetic" design. They're not.

They're bland, they're straight, they're stern, and as aesthetically pleasing as a row of crush barriers erected by the police to protect a politician's motorcade. Even painted black - Forth Ports' one concession to aesthetics - they mark a crude border, a harsh separation, between people

strolling on the dock-side and the adjacent sea (or firth).

These proposals are unnecessary. They would change, for the worse, the whole feel of these dock-side locations, and compromise the public's enjoyment of these amenities.

I object to these proposals.

Comments for Planning Application 20/05548/FUL

Application Summary

Application Number: 20/05548/FUL

Address: Land To The South Of Albert Dock Edinburgh

Proposal: Install protective barrier along the south of Albert Dock at Stevedore Place, Leith.

Case Officer: Daniel Lodge

Customer Details

Name: Mrs Lesley Gibson-Eaglesham

Address: 87 Ravenscroft Street Edinburgh

Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: The replacement fencing is totally out of place and is not in keeping with the area.

Comments for Planning Application 20/05548/FUL

Application Summary

Application Number: 20/05548/FUL

Address: Land To The South Of Albert Dock Edinburgh

Proposal: Install protective barrier along the south of Albert Dock at Stevedore Place, Leith.

Case Officer: Daniel Lodge

Customer Details

Name: Mr Alex H-Dimchenko

Address: 19 Lindsay Road 1F3 Edinburgh

Comment Details

Commenter Type: Neighbour-Residential

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: The fence posts do not fit with the original aesthetic of the building and are extremely detrimental to the historic significance of the docks.

Furthermore, the fence is not only ugly and not keeping with the area or original design but it also alters the public's ability to use the area. Traditionally one would sit on the ledge by the water and enjoy the area, but with this fencing this is no longer possible.

Safety is important but the chains were not unsafe, they've been there for an incredibly long time without issue. People simply just need to be aware of any risks and behave accordingly. We simply cannot destroy a historic area and building in order to create a safe space devoid of any risk. What is next, padding on the pavements incase someone trips? Netting over the water? How far does it go?

Forth Ports have furthermore not followed the rules and shown an absolute disregard for the council, its authority, the planning process, and historic/listed buildings as a whole. They should not be allowed to decide what additions can be made to a listed, historical building and this breach should not be tolerated.

So, to stress this point, I object very strongly to the addition of this fencing; safety can be achieved another way, once again through users of the area understanding any risks that may be involved with letting their child (or themselves) walk right on the edge of a ledge (!!); if common sense doesn't make it clear perhaps signage would help?..

Comments for Planning Application 20/05548/FUL

Application Summary

Application Number: 20/05548/FUL

Address: Land To The South Of Albert Dock Edinburgh

Proposal: Install protective barrier along the south of Albert Dock at Stevedore Place, Leith.

Case Officer: Daniel Lodge

Customer Details

Name: Miss Kate Kelly

Address: 4/3 Saunders Street Edinburgh

Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: Why has this clumsy, ugly and unnecessary fencing been proposed? It looks cheap and obtrusive and is completely out of keeping with the surrounding area.

Comments for Planning Application 20/05548/FUL

Application Summary

Application Number: 20/05548/FUL

Address: Land To The South Of Albert Dock Edinburgh

Proposal: Install protective barrier along the south of Albert Dock at Stevedore Place, Leith.

Case Officer: Daniel Lodge

Customer Details

Name: Mrs Jacqueline Rogers

Address: 48 Ryehill Avenue Edinburgh

Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: Not in keeping with the area and works carried out before any decision made on planning. B listed doc, works to repair should be sensitive to the overall aesthetic.

Comments for Planning Application 20/05548/FUL

Application Summary

Application Number: 20/05548/FUL

Address: Land To The South Of Albert Dock Edinburgh

Proposal: Install protective barrier along the south of Albert Dock at Stevedore Place, Leith.

Case Officer: Daniel Lodge

Customer Details

Name: Mr Robert Roy Kilpatrick

Address: 18/1 West Castle Road EDINBURGH

Comment Details

Commenter Type: Other

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: As someone who lives in Edinburgh and regularly visits and walks in the area, I see no reason to change the look and character of the docks area by the installation of dockside barriers. Existing measures by bollards and chains have been in place successfully for generations. The only argument put forward in favour is of health and safety. Comparisons with other docks in the UK and EU show this to be a weak reason. Amsterdam with over 100 km of canals and other NL canal cities have no such barriers and retain both look and safety in harmony. The utilitarian look of the barriers, even if deemed acceptable at all, is poor.

Comments for Planning Application 20/05548/FUL

Application Summary

Application Number: 20/05548/FUL

Address: Land To The South Of Albert Dock Edinburgh

Proposal: Install protective barrier along the south of Albert Dock at Stevedore Place, Leith.

Case Officer: Daniel Lodge

Customer Details

Name: Mr Paul Stretton

Address: Western Harbour Terrace Edinburgh

Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: Surely this is an unnecessary and rather ghastly intervention on one of Europe's most iconic and beautiful areas? Addressing a non-existent problem with a "solution" that is disproportionate.

Comments for Planning Application 20/05548/FUL

Application Summary

Application Number: 20/05548/FUL

Address: Land To The South Of Albert Dock Edinburgh

Proposal: Install protective barrier along the south of Albert Dock at Stevedore Place, Leith.

Case Officer: Daniel Lodge

Customer Details

Name: Mr David Igoe

Address: 80 Pirniefield Place Edinburgh

Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: As you will be aware, railings have been installed without planning permission. This is high handed and shows a complete disregard for the planning system as an assumption has been made that approval is a certainty. Also, the quality of the fencing is simply not of a high enough standard or fitting into the historic setting if Leith Docks. It's unclear if there is any need for the fencing in the first place.

Comments for Planning Application 20/05548/FUL

Application Summary

Application Number: 20/05548/FUL

Address: Land To The South Of Albert Dock Edinburgh

Proposal: Install protective barrier along the south of Albert Dock at Stevedore Place, Leith.

Case Officer: Daniel Lodge

Customer Details

Name: Ms Celia Mainland

Address: 11/6 Rennie's Isle Edinburgh

Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: The proposed fence panels are completely out of keeping with the historic conservation area and listed status of the dock itself and would set a precedent for other quaysides along the Water of Leith and in the port of Leith.

The argument that the panels are essential safety measures is belied by the fact that the incident involving a child jumping into the water occurred in mid September yet no action was taken until the end of December (and that action, as it breached listed status, was itself illegal).

Other docks, such as those open to the public as a visitor attraction in Liverpool, are subject to much higher footfall but combine safety and pleasing aesthetics by installing taut chainlink fencing. The residents affected by this proposal have already suggested that this might offer an acceptable way forward. I am not aware that this has been considered by the applicant as an alternative.

Comments for Planning Application 20/05548/FUL

Application Summary

Application Number: 20/05548/FUL

Address: Land To The South Of Albert Dock Edinburgh

Proposal: Install protective barrier along the south of Albert Dock at Stevedore Place, Leith.

Case Officer: Daniel Lodge

Customer Details

Name: Mr Ian Anderson

Address: 11 Rennie's Isle 6 Edinburgh

Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: Having checked with HSE I find no contact was made with them regarding the incident in September 2020. Nor was any other advice sought from them. Forth Ports sold the land for housing some years ago and didn't consider it was necessary to install enhanced fencing then. Then, after an incident (allegedly involving an unsupervised child) it took Forth Ports 3 months to install any enhanced protection. If they were so concerned about safety they could have installed temporary fencing of the type which is in use all around the dock estate.

There was no attempt to involve the immediate residents in any discussion about the style of fencing used. It is clear that there are many examples around the UK which would have been preferable. The style chosen is totally out of character from that used throughout the remainder of the publicly-accessible quayside.

I object in the strongest terms to this work going ahead in advance of approval. This is a breach of law and my citizen's rights and I expect CEC to address this accordingly.

My biggest fear is that this will be held as a precedent, and that The Shore and other quayside areas owned by FP will follow suit. In fact, it is illogical NOT to repeat this exercise around The Shore, where a much heavier footfall exists and equal proximity to housing.

Comments for Planning Application 20/05548/FUL

Application Summary

Application Number: 20/05548/FUL

Address: Land To The South Of Albert Dock Edinburgh

Proposal: Install protective barrier along the south of Albert Dock at Stevedore Place, Leith.

Case Officer: Daniel Lodge

Customer Details

Name: Mrs Barbara Creighton

Address: 23 Stevedore Place Edinburgh

Comment Details

Commenter Type: Neighbour-Residential

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment:I have two objections based on a) the proposed design and b) the adherence to the planning process.

a) Design:

The design of the proposed fencing does not make any attempt to reflect the traditional heritage of the dock. Rather, it appears to have taken the tone of the surrounding modern suburban housing development.

b) Forth Ports installed the fencing panels two days before I received the Neighbour Notification. As the bollards are randomly spaced, each panel has had to be manufactured to a different specification which will have required significant lead time and expense. These panels will be unfit for use in any other context other than at this site. On the day of installation, a senior manager at Forth Ports was advised that planning permission hadn't been agreed and that not all notifications had been received by neighbours.

This indicates contempt by Forth Ports Ltd for both it's neighbours and the planning process and elected officials.

Comments for Planning Application 20/05548/FUL

Application Summary

Application Number: 20/05548/FUL

Address: Land To The South Of Albert Dock Edinburgh

Proposal: Install protective barrier along the south of Albert Dock at Stevedore Place, Leith.

Case Officer: Daniel Lodge

Customer Details

Name: Mr Stuart Creighton

Address: 23 Stevedore Place Edinburgh

Comment Details

Commenter Type: Neighbour-Residential

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment:I have two objections based on a) the proposed design and b) the adherence to the planning process.

a) Design:

The design of the proposed fencing does not make any attempt to reflect the traditional heritage of the dock. Rather, it appears to have taken the tone of the surrounding modern housing development which is functional but characterless.

b) Forth Ports installed the fencing panels two days before I received the Neighbour Notification. This indicates contempt by Forth Ports Ltd for both it's neighbours and the planning process.

Comments for Planning Application 20/05548/FUL

Application Summary

Application Number: 20/05548/FUL

Address: Land To The South Of Albert Dock Edinburgh

Proposal: Install protective barrier along the south of Albert Dock at Stevedore Place, Leith.

Case Officer: Daniel Lodge

Customer Details

Name: Dr Scott Dalgarno

Address: 25 Stevedore Place Edinburgh

Comment Details

Commenter Type: Neighbour-Residential

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment:Forth Ports Ltd carried out unauthorised works to alter the bollard and chain perimeter barrier at the B-listed Albert Dock on 29 December 2020 (see photo). New modern panels of vertical railings have been installed between each bollard, which replace the original chains. I understand that this work has been carried out as a health and safety response to an unsupervised child jumping in the Dock on 16 September 2020. This is reactive and has not been thought out fully.

Grounds for objection:

The alteration of the bollard and chain perimeter barrier at Albert Dock on 30 December without planning permission is in breach of legislation and Scottish Government, Historic Environment Scotland and City of Edinburgh Council policies. The works on a listed structure without planning consent is a criminal offence under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

The planning system is designed to protect the long-term public interest. It does not exist to protect the interests of one person or business against the activities of another - e.g. Forth Ports claiming in person to me that they would not want to be responsible for people in the water, risk being sued. In distinguishing between public and private interests, the question is whether the proposal would unacceptably affect the amenity and existing use of land or buildings which ought to be protected in the public interest, not whether owners/occupiers of neighbouring or other existing properties would experience financial or other loss from a particular development.

Noteworthy material considerations:

Scottish Government policy and UK Government policy

National Planning Framework

Scottish Government planning advice and circulars

Strategic development plan, local development plan, or supplementary guidance

Guidance adopted by a Strategic Development Plan Authority or a planning authority that is not supplementary guidance adopted under section 22(1) of the 1997 Act

Community plans

Environmental impact of the proposal

Design of the proposed development and its relationship to its surroundings

Access, provision of infrastructure and planning history of the site

Views of statutory and other consultees (e.g. HES - who weren't consulted)

Legitimate public concern or support expressed on relevant planning matters.

Planning policy and context

This application does not meet Edinburgh Local Development Plan (EDLP) policies (vide infra) and other relevant Scottish Government and statutory agency requirements on conservation areas and listed structures (referenced below). Listed Building Consent (LBC) assesses whether the works will affect the historic interest of the listed dock and preserve or enhance the special character or appearance of the conservation area. Local authorities have a statutory duty to identify and designate areas of special architectural or historic interest and ensure that any alterations, for whatever reason, are carefully considered.

Contraventions of the Edinburgh Local Development Plan (Reference 1)

DES 1: Design Quality and Context

The modern fencing panels installed by Forth Ports Ltd at Albert Dock are inappropriate and not in line with the considerations set out in the ELDP. They are, by Forth Port's own acknowledgement in the Design Statement, designed to match the garden fencing of the nearby Cala housing development (constructed in 2014). The scale and form of the panels conflict with the scale and form of the historic dockside - both at Albert Dock and within the wider Shore area.

DES 3: Development Design

As above, Forth Ports have not considered the existing historic and listed features, by altering them to reflect the garden fence design at the adjacent residential development at Stevedore Place. The fence panels have resulted in an unacceptable visual impact on the character of the dockside and the removal of the chains has resulted in an unacceptable physical impact on the listed structures.

DES 4: Layout Design

As above, Forth Ports has not considered the surrounding context. Albert Dock is part of the Old Shore Conservation Area. The new fence panels at the dockside edge negatively impact on existing eye-level views along the public right of way along the list dockside and the character and

streetscape of the wider Shore area. One is drawn to the fence panels, not the character of the Old Shore.

DES 10: Waterside Development

The south side of Albert Dock is not part of the operational port and the existing path that separates the houses at Stevedore Place with the Dock is a public right of way. The new modern fence significantly diminishes the public frontage of the waterside. It negatively impacts on the conservation and landscape interests of the water environment and creates an unnecessary visual and physical barrier that prevents the enjoyment of the many residents and visitors who use the public footpath for recreation, exercise and to enjoy (and photograph) the historic dockland area.

ENV 3: Listed Buildings - Setting

Albert Dock forms part of the Port of Leith and its function is intrinsic to its character, appearance and historic interest. The altered barrier to the B-listed dock is visually detrimental to the architectural character, appearance and historic interest of the dock and its setting.

ENV 4: Listed Buildings - Alterations and Extensions

The modern fencing panels are not justified on the grounds that they are required to address health and safety risk on the basis of a single incident. The barrier is an unsympathetic modern design that has been created to copy the garden fencing in a nearby modern housing development - it is not appropriate in design, scale and materials to the listed structures.

ENV 6: Conservation Areas - Development

Albert Dock is within the Old Leith and Shore area of the Leith Conservation Area. The Character Area Appraisal does not specifically mention dockside edges but there are a variety of railings and protective barriers within the Conservation Area, most based on pragmatic engineered designs appropriate to a lively dock area. The proposed barriers are of a sympathetic engineered design and similar in scale and material to the listed structures. They will replace chain railings that already prevent access to the dockside edge and, in so doing, they will address the health and safety issues identified without obstructing views of and across Albert Dock.

Scottish Government Scottish Planning Policy

According to Scottish planning policy, listed structures should be protected from demolition or other work that would adversely affect them or their setting. Any change to a listed structure should be managed to protect its special interest. Where planning permission and listed building consent are sought for development to, or affecting, a listed structure, special regard must be given to the importance of preserving and enhancing the structure, its setting and any features of special architectural or historic interest. The layout, design, materials, scale, siting and use of any development which will affect a listed structure, or its setting, should be appropriate to the character and appearance of the structure and setting.

Part 2 - Conservation Areas/Conservation Area Character Appraisals (page 23)

2. Special attention must be paid to the character and appearance of the conservation area when planning controls are being exercised. Most applications for planning permission for alterations will, therefore, be advertised for public comment and any views expressed must be taken into account when making a decision on the application.

General Principles (page 24)

- Designation of a conservation area does not mean development is prohibited. However, when considering development within a conservation area, special attention must be paid to its character and appearance. Proposals which fail to preserve or enhance the character or appearance of the area will normally be refused. Guidance on what contributes to character is given in the conservation area character appraisals.
- The aim should be to preserve the spatial and structural patterns of the historic fabric and the architectural features that make it significant.
- Preservation and re-use should always be considered as the first option.
- Interventions need to be compatible with the historic context, not overwhelming or imposing.
- Without exception, the highest standards of materials and workmanship will be required for all works in conservation area

Extensions and Alterations (page 24)

- Proposals must preserve or enhance the character or appearance of the conservation area.

Albert Dock lies within the Leith Conservation Area ('Old Leith and Shore' sub-area). The Dock, together with its '...stone flagged and setted quayside with bollards, railway tracks and three travelling cranes...', is Category B-Listed as being of special architectural and historical interest by Historic Environment Scotland. Bollard and chain barriers are a feature of many throughout the Conservation Area which protect dockside edges.

Conservation Area Character Appraisals identify the essential character of conservation areas. They guide the local planning authority in making planning decisions and, where opportunities arise, preparing enhancement proposals. The Character Appraisals are a material consideration when considering applications for development within conservation areas. The alteration of the listed perimeter barrier at Albert Dock is in breach of this guidance.

Leith Conservation Area Character Appraisal

The character appraisal for the conservation area identifies the essential character of Leith. It should be seen as a material consideration in relation to this planning application. The streetscape section of the character appraisal specifically highlights the quayside areas being separated by bollards with chains linking them. Bollards with chains are a quintessential part of the public realm and streetscape within Leith. They can be found as perimeter barriers around the Albert and

Victoria Dock Basins and along all parts of the nearby Shore area. This continuity is important to the character of the entire Leith conservation area. The replacement barrier panels are not in keeping with the Leith conservation area character appraisal and set a precedent for the wider area should this application be approved.

Scottish Government Planning Advice Note (PAN) 71: Conservation Area Management

The designation of a conservation area is a means to safeguard and enhance the sense of place, character and appearance of our most valued historic places. Buildings of character, listed buildings, scheduled monuments, trees, historic street patterns, open spaces and designed gardens and landscapes are important components of these areas.

Historic Environment Policy for Scotland (HEPS)

The alteration of the listed perimeter barrier at Albert Dock is in breach of Historic Environment Policy for Scotland (HEPS), which is designed to support good decision making for Scotland's unique places. The designation of Albert Dock is the legal recognition of its importance as a historic site. The designation seeks to ensure that the cultural, social, environmental and economic value of Scotland's historic environment makes a strong contribution to the development and wellbeing of the nation and its people. It should also ensure that sites and places are recognised by law through the planning system and other regulatory processes.

Managing Change in the Historic Environment

This HES policy states that decisions about listed structures should always focus on the qualities that make them important - their special interest. A range of factors contributes to a special interest, but the key factor when considering whether change should be made is overall historic character.

The Historic Environment Scotland listing for Albert Dock in Leith makes pointed reference to post and chain barriers to the perimeter of the swing bridge. Post and chain barrier is therefore in our view the barrier solution most in keeping with the dock edge itself and as mentioned above, already widely used throughout the entire conservation area. The modern fencing installed by Forth Ports at Albert Dock negatively impacts on the historic character of Albert Dock and the Old Shore area. It negatively impacts on the local community's sense of place, identity and wellbeing.

Health and safety

We are aware of the health and safety aspects and that it is one of the considerations the planning process for applications (FUL) takes into account. However, we would like to point out that the assertion in the Forth Port's Design Statement that 'Garden gates provide direct access from the dwellings to the Dock edge' is incorrect. The houses along Stevedore Place are separated from the dock edge by:

- A 2 m wide fenced-in garden with a gate that can be easily locked with a padlock or similar.

- A 3 m wide public footpath (approximately 150 m in length) that runs between the gardens and bollard and chain barrier. It is used primarily by residents and pedestrians as a walkway along the dockside.
- A bollard and chain barrier, which is set approximately 1.5 m back from the dock edge.

Industry guidance and good practice set out in the HSE (Health and Safety Executive) publication L148 Safety in Docks: Approved Code of Practice and guidance (ACOP) specifically highlights taut chain as being an acceptable solution for a barrier rail in a dockside setting close to residential properties. There is no reason for it not to be acceptable at Albert Dock in Leith. To that end we are concerned that there is not a copy of completed Risk Assessment Form providing analysis behind the decision made by Forth Ports Ltd that rejects alternative and more appropriate solutions. Furthermore, the height and nature of these fences is a serious problem. As we have seen this past year (and in others), revellers frequently go beyond chains / fences around The Shore area and sit on the dockside drinking until the small hours. Getting over / back over these challenging fences has not been thought through fully and an appropriate risk assessment made in my opinion. Additional chain link would be a far better H&S addition, preserving the character of the area and still allowing safer access (albeit more restricted).

Community and statutory engagement

We are disappointed by the lack of engagement shown by Forth Ports and its approach to implementing the works without planning permission or consultation with the local community and statutory agencies. Works started on 29 December 2020; the day we received the notification of the application for Planning.

We have been keen to meet constructively with Forth Ports Ltd to discuss options to improve safety that are not to the detriment of historic character. We have put together a letter and information that shows safety measures adopted at other comparable locations in the UK (see for example photo below, which shows the design of the perimeter barrier at Albert Dock in Liverpool, an area with much higher pedestrian footfall). However, despite numerous requests and pleas for meetings with the Port there has been no engagement from Port staff, beyond a standard response to say works were going ahead but that they are temporary.

References

1. Edinburgh Local Development Plan (EDLP) November 2016. Policies (Policy Des 12 Alterations and Extensions - page 100); (Caring for the Environment - page 101)
2. Listed Buildings and Conservation Areas Guidance (City of Edinburgh Council - updated February 2019)

Comments for Planning Application 20/05548/FUL

Application Summary

Application Number: 20/05548/FUL

Address: Land To The South Of Albert Dock Edinburgh

Proposal: Install protective barrier along the south of Albert Dock at Stevedore Place, Leith.

Case Officer: Daniel Lodge

Customer Details

Name: Mr Mark McKinlay

Address: 34 Stevedore Place Edinburgh

Comment Details

Commenter Type: Neighbour-Residential

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment:I object as the fencing is not in keeping with the character of the listed dockside setting. Heavier or an extra layer of chains would be more suitable to stay aligned to the principal of Grade B listing of the dock. One unique incident in the 6 years since the development was built does not warrant the need for fencing. There is much higher footfall in other areas which have close proximity to the water but don't have fencing. It should also be noted that planning application notification was received on the morning of 29th December 2020 and work commenced that same afternoon.

Comments for Planning Application 20/05548/FUL

Application Summary

Application Number: 20/05548/FUL

Address: Land To The South Of Albert Dock Edinburgh

Proposal: Install protective barrier along the south of Albert Dock at Stevedore Place, Leith.

Case Officer: Daniel Lodge

Customer Details

Name: Mr David Scott

Address: 2 stevedore place ocean drive Edinburgh

Comment Details

Commenter Type: Neighbour-Residential

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment:I would like to object to the installation of the protective barrier a Albert Dock.

The alteration of the bollard and chain perimeter barrier at Albert Dock on 30 December without planning permission is in breach of legislation and Scottish Government, Historic Environment Scotland and City of Edinburgh Council policies. The works on a listed structure without planning consent is a criminal offence under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. This application also does not meet Edinburgh Local Development Plan (EDLP) polices. Contraventions of the Edinburgh Local Development Plan:

DES 1: Design Quality and Context

The modern fencing panels installed by Forth Ports Ltd at Albert Dock are inappropriate and not in line with the considerations set out in the ELDP. They are, by Forth Port's own acknowledgement in the Design Statement, designed to match the garden fencing of the nearby Cala housing development (constructed in 2014). The scale and form of the panels conflict with the scale and form of the historic dockside - both at Albert Dock and within the wider Shore area.

DES 3: Development Design

As above, Forth Ports have not considered the existing historic and listed features, by altering them to reflect the garden fence design at the adjacent residential development at Stevedore Place. The fence panels have resulted in an unacceptable visual impact on the character of the dockside and the removal of the chains has resulted in an unacceptable physical impact on the listed structures.

DES 4: Layout Design

As above, Forth Ports has not considered the surrounding context. Albert Dock is part of the Old

Shore Conservation Area. The new fence panels at the dockside edge negatively impact on existing eye-level views along the public right of way along the list dockside and the character and streetscape of the wider Shore area.

DES 10: Waterside Development

The south side of Albert Dock is not part of the operational port and the existing path that separates the houses at Stevedore Place with the Dock is a public right of way. The new modern fence significantly diminishes the public frontage of the waterside. It negatively impacts on the conservation and landscape interests of the water environment and creates an unnecessary visual and physical barrier that prevents the enjoyment of the many residents and visitors who use the public footpath for recreation, exercise and to enjoy (and photograph) the historic dockland area.

ENV 3: Listed Buildings - Setting

Albert Dock forms part of the Port of Leith and its function is intrinsic to its character, appearance and historic interest. The altered barrier to the B-listed dock is visually detrimental to the architectural character, appearance and historic interest of the dock and its setting.

ENV 4: Listed Buildings - Alterations and Extensions

The modern fencing panels are not justified on the grounds that they are required to address health and safety risk on the basis of a single incident. The barrier is an unsympathetic modern design that has been created to copy the garden fencing in a nearby modern housing development - it is not appropriate in design, scale and materials to the listed structures.

ENV 6: Conservation Areas - Development

Albert Dock is within the Old Leith and Shore area of the Leith Conservation Area. The Character Area Appraisal specifically mentions the bollard and chain style perimeter barrier as part of the streetscape at the Shore. The modern fencing panels installed by Forth Ports are inappropriate and unsympathetic to the listed structures and the Shore streetscape. They do not reflect the special character of the Old Shore conservation area. Other dockland areas in other UK cities have addressed health and safety issues without compromising the historic character. For example, Albert Dock in Liverpool retains bollard and chain barriers, but there are four rather than two chains and they are thicker.

Comments for Planning Application 20/05548/FUL

Application Summary

Application Number: 20/05548/FUL

Address: Land To The South Of Albert Dock Edinburgh

Proposal: Install protective barrier along the south of Albert Dock at Stevedore Place, Leith.

Case Officer: Daniel Lodge

Customer Details

Name: Mr Gabriel PICHARDO

Address: 2 STEVEDORE PLACE EDINBURGH

Comment Details

Commenter Type: Neighbour-Residential

Stance: Customer objects to the Planning Application

Comment Reasons:

- Councillor's Reference

Comment: Dear Srs,

Forth Ports Ltd carried out unauthorised works to alter the bollard and chain perimeter barrier at the B-listed Albert Dock on 29 December 2020 (see photo). New modern panels of vertical railings have been installed between each bollard, which replaced the original chains. I have the understanding that these works have been carried out as a H&S response to an unsupervised child jumping in the Dock on 16 September 2020.

Some grounds for this objection are:

A) The alteration of the bollard and chain perimeter barrier at Albert Dock on 30 December without planning permission is in breach of legislation and Scottish Government, Historic Environment Scotland and City of Edinburgh Council policies. The works on a listed structure without planning consent is a criminal offence under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

B) The planning system is designed to protect the long-term public interest. It does not exist to protect the interests of one person or business against the activities of another. In distinguishing between public and private interests, the question is whether the proposal would unacceptably affect the amenity and existing use of land or buildings which ought to be protected in the public interest, not whether owners/occupiers of neighbouring or other existing properties would experience financial or other loss from a particular development.

This application also does not meet Edinburgh Local Development Plan (EDLP) polices (see box below) and other relevant Scottish Government and statutory agency requirements on

conservation areas and listed structures (referenced below). Listed Building Consent (LBC) assesses whether the works will affect the historic interest of the listed dock and preserve or enhance the special character or appearance of the conservation area. Local authorities have a statutory duty to identify and designate areas of special architectural or historic interest and ensure that any alterations, for whatever reason, are carefully considered.

In addition:

DES 1: Design Quality and Context

The modern fencing panels installed by Forth Ports Ltd at Albert Dock are inappropriate and not in line with the considerations set out in the ELDP. They are, by Forth Port's own acknowledgement in the Design Statement, designed to match the garden fencing of the nearby Cala housing development (constructed in 2014). The scale and form of the panels conflict with the scale and form of the historic dockside - both at Albert Dock and within the wider Shore area.

DES 3: Development Design

As above, Forth Ports have not considered the existing historic and listed features, by altering them to reflect the garden fence design at the adjacent residential development at Stevedore Place. The fence panels have resulted in an unacceptable visual impact on the character of the dockside and the removal of the chains has resulted in an unacceptable physical impact on the listed structures.

DES 4: Layout Design

As above, Forth Ports has not considered the surrounding context. Albert Dock is part of the Old Shore Conservation Area. The new fence panels at the dockside edge negatively impact on existing eye-level views along the public right of way along the list dockside and the character and streetscape of the wider Shore area.

DES 10: Waterside Development

The south side of Albert Dock is not part of the operational port and the existing path that separates the houses at Stevedore Place with the Dock is a public right of way. The new modern fence significantly diminishes the public frontage of the waterside. It negatively impacts on the conservation and landscape interests of the water environment and creates an unnecessary visual and physical barrier that prevents the enjoyment of the many residents and visitors who use the public footpath for recreation, exercise and to enjoy (and photograph) the historic dockland area.

ENV 3: Listed Buildings - Setting

Albert Dock forms part of the Port of Leith and its function is intrinsic to its character, appearance and historic interest. The altered barrier to the B-listed dock is visually detrimental to the architectural character, appearance and historic interest of the dock and its setting.

ENV 4: Listed Buildings - Alterations and Extensions

The modern fencing panels are not justified on the grounds that they are required to address health and safety risk on the basis of a single incident. The barrier is an unsympathetic modern design that has been created to copy the garden fencing in a nearby modern housing development - it is not appropriate in design, scale and materials to the listed structures.

ENV 6: Conservation Areas - Development

Albert Dock is within the Old Leith and Shore area of the Leith Conservation Area. The Character Area Appraisal specifically mentions the bollard and chain style perimeter barrier as part of the streetscape at the Shore. The modern fencing panels installed by Forth Ports are inappropriate and unsympathetic to the listed structures and the Shore streetscape. They do not reflect the special character of the Old Shore conservation area. Other dockland areas in other UK cities have addressed health and safety issues without compromising the historic character. For example, Albert Dock in Liverpool retains bollard and chain barriers, but there are four rather than two chains and they are thicker.

Comments for Planning Application 20/05548/FUL

Application Summary

Application Number: 20/05548/FUL

Address: Land To The South Of Albert Dock Edinburgh

Proposal: Install protective barrier along the south of Albert Dock at Stevedore Place, Leith.

Case Officer: Daniel Lodge

Customer Details

Name: Miss A Smith

Address: Stevedore Place Edinburgh

Comment Details

Commenter Type: Neighbour-Residential

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: Dear Mr Lodge,

I am very strongly objecting to the planning application number 20/05548/FUL and I shall provide my material objections below. Before I do so, I would like to highlight that alteration of the bollard and chain perimeter barrier at Albert Dock on 30 December 2020 without planning permission is in breach of legislation and Scottish Government, Historic Environment Scotland and City of Edinburgh Council policies. The works on a listed structure without planning consent is a criminal offence under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

The planning system is designed to protect the long-term public interest. It does not exist to protect the interests of one person or business against the activities of another. In proceeding with the installation without planning consent, and before the public has had an opportunity to comment, Forth Ports Ltd has treated the process and their neighbours with contempt.

The planning request to replace the bollard and chain barriers with railing panels is completely out of keeping with the historical Category B listing of Albert Dock and would have a negative material impact on the Leith Conservation Area as a whole.

This application does not meet Edinburgh Local Development Plan (EDLP) policies and other relevant Scottish Government and statutory agency requirements on conservation areas and listed structures (referenced below). Listed Building Consent (LBC) assesses whether the works will affect the historic interest of the listed dock and preserve or enhance the special character or appearance of the conservation area. Local authorities have a statutory duty to identify and designate areas of special architectural or historic interest and ensure that any alterations, for whatever reason, are carefully considered.

Contraventions of the Edinburgh Local Development Plan

DES 1: Design Quality and Context

The modern fencing panels installed by Forth Ports Ltd at Albert Dock are inappropriate and not in line with the considerations set out in the ELDP. They are, by Forth Port's own acknowledgement in the Design Statement, designed to match the garden fencing of the nearby Cala housing development (constructed in 2014). The scale and form of the panels conflict with the scale and form of the historic dockside - both at Albert Dock and within the wider Shore area.

DES 3: Development Design

As above, Forth Ports have not considered the existing historic and listed features, by altering them to reflect the garden fence design at the adjacent residential development at Stevedore Place. The fence panels have resulted in an unacceptable visual impact on the character of the dockside and the removal of the chains has resulted in an unacceptable physical impact on the listed structures.

DES 4: Layout Design

As above, Forth Ports has not considered the surrounding context. Albert Dock is part of the Old Shore Conservation Area. The new fence panels at the dockside edge negatively impact on existing eye-level views along the public right of way along the listed dockside and the character and streetscape of the wider Shore area.

DES 10: Waterside Development

The south side of Albert Dock is not part of the operational port and the existing path that separates the houses at Stevedore Place with the Dock is a public right of way. The new modern fence significantly diminishes the public frontage of the waterside. It negatively impacts on the conservation and landscape interests of the water environment and creates an unnecessary visual and physical barrier that prevents the enjoyment of the many residents and visitors who use the public footpath for recreation, exercise and to enjoy (and photograph) the historic dockland area.

ENV 3: Listed Buildings - Setting

Albert Dock forms part of the Port of Leith and its function is intrinsic to its character, appearance and historic interest. The altered barrier to the B-listed dock is visually detrimental to the architectural character, appearance and historic interest of the dock and its setting.

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The modern fencing panels are not justified on the grounds that they are required to address health and safety risk on the basis of a single incident. The barrier is an unsympathetic modern design that has been created to copy the garden fencing in a nearby modern housing development - it is not appropriate in design, scale and materials to the listed structures.

ENV 6: Conservation Areas - Development

Albert Dock is within the Old Leith and Shore area of the Leith Conservation Area. The Character Area Appraisal specifically mentions the bollard and chain style perimeter barrier as part of the streetscape at the Shore. The modern fencing panels installed by Forth Ports are inappropriate and unsympathetic to the listed structures and the Shore streetscape. They do not reflect the special character of the Old Shore conservation area. Other dockland areas in other UK cities have addressed health and safety issues without compromising the historic character. For example, Albert Dock in Liverpool retains bollard and chain barriers, but there are four rather than two chains and they are thicker.

Scottish Government Scottish Planning Policy (SPP)

According to Scottish planning policy, listed structures should be protected from demolition or other work that would adversely affect them or their setting. Any change to a listed structure should be managed to protect its special interest. Where planning permission and listed building consent are sought for development to, or affecting, a listed structure, special regard must be given to the importance of preserving and enhancing the structure, its setting and any features of special architectural or historic interest. The layout, design, materials, scale, siting and use of any development which will affect a listed structure, or its setting, should be appropriate to the character and appearance of the structure and setting.

According to the SPP ("Conservation Areas"): "Proposals for development within conservation areas and proposals outwith which will impact on its appearance, character or setting, should preserve or enhance the character and appearance of the conservation area. Therefore, for this planning application, special planning attention must be paid to the character and appearance of the conservation area when planning controls are being exercised. Planning permission for alterations will, therefore, be advertised for public comment and any views expressed must be taken into account when making a decision on the application."

The policy further states that (Page 24):

- Designation of a conservation area does not mean development is prohibited. However, when considering development within a conservation area, special attention must be paid to its character and appearance. Proposals which fail to preserve or enhance the character or appearance of the area will normally be refused. Guidance on what contributes to character is given in the conservation area character appraisals.
- The aim should be to preserve the spatial and structural patterns of the historic fabric and the architectural features that make it significant.
- Preservation and re-use should always be considered as the first option.
- Interventions need to be compatible with the historic context, not overwhelming or imposing.
- Without exception, the highest standards of materials and workmanship will be required for all works in conservation area

Extensions and Alterations (page 24)

- Proposals must preserve or enhance the character or appearance of the conservation area.

Albert Dock lies within the Leith Conservation Area ('Old Leith and Shore' sub-area). The Dock, together with its '...stone flagged and setted quayside with bollards, railway tracks and three travelling cranes...', is Category B-Listed as being of special architectural and historical interest by Historic Environment Scotland. Bollard and chain barriers are a feature of many throughout the Conservation Area which protect dockside edges.

Conservation Area Character Appraisals identify the essential character of conservation areas. They guide the local planning authority in making planning decisions and, where opportunities arise, preparing enhancement proposals. The Character Appraisals are a material consideration when considering applications for development within conservation areas. The alteration of the listed perimeter barrier at Albert Dock is in breach of this guidance.

Leith Conservation Area Character Appraisal

The character appraisal for the conservation area identifies the essential character of Leith. It should be seen as a material consideration in relation to this planning application. The streetscape section of the character appraisal specifically highlights the quayside areas being separated by bollards with chains linking them. Bollards with chains are a quintessential part of the public realm and streetscape within Leith. They can be found as perimeter barriers around the Albert and Victoria Dock Basins and along all parts of the nearby Shore area. This continuity is important to the character of the entire Leith conservation area. The replacement barrier panels are not in keeping with the Leith conservation area character appraisal and set a precedent for the wider area should this application be approved.

Scottish Government Planning Advice Note (PAN) 71: Conservation Area Management

The designation of a conservation area is a means to safeguard and enhance the sense of place, character and appearance of our most valued historic places. Buildings of character, listed buildings, scheduled monuments, trees, historic street patterns, open spaces and designed gardens and landscapes are important components of these areas.

Historic Environment Policy for Scotland (HEPS)

The alteration of the listed perimeter barrier at Albert Dock is in breach of Historic Environment Policy for Scotland (HEPS), which is designed to support good decision making for Scotland's unique places. The designation of Albert Dock is the legal recognition of its importance as a historic site. The designation seeks to ensure that the cultural, social, environmental and economic value of Scotland's historic environment makes a strong contribution to the development and wellbeing of the nation and its people. It should also ensure that sites and places are recognised by law through the planning system and other regulatory processes.

Managing Change in the Historic Environment

This HES policy states that decisions about listed structures should always focus on the qualities that make them important - their special interest. A range of factors contributes to a special

interest, but the key factor when considering whether change should be made is overall historic character.

The Historic Environment Scotland listing for Albert Dock in Leith makes pointed reference to post and chain barriers to the perimeter of the swing bridge. Post and chain barrier is therefore in our view the barrier solution most in keeping with the dock edge itself and as mentioned above, already widely used throughout the entire conservation area. The modern fencing installed by Forth Ports at Albert Dock negatively impacts on the historic character of Albert Dock and the Old Shore area. It negatively impacts on the local community's sense of place, identity and wellbeing.

Health and safety

We are aware of the health and safety aspects and that it is one of the considerations the planning process for applications (FUL) takes into account. However, we would like to point out that the assertion in the Forth Port's Design Statement that 'Garden gates provide direct access from the dwellings to the Dock edge' is incorrect. The houses along Stevedore Place are separated from the dock edge by:

- A 2 m wide fenced-in garden with a gate that can be easily locked with a padlock or similar.
- A 3 m wide public footpath (approximately 150 m in length) that runs between the gardens and bollard and chain barrier. It is used primarily by residents and pedestrians as a walkway along the dockside.
- A bollard and chain barrier, which is set approximately 1.5 m back from the dock edge.

Industry guidance and good practice set out in the HSE (Health and Safety Executive) publication L148 Safety in Docks: Approved Code of Practice and guidance (ACOP) specifically highlights taut chain as being an acceptable solution for a barrier rail in a dockside setting close to residential properties. There is no reason for it not to be acceptable at Albert Dock in Leith. To that end we are concerned that there is not a copy of completed Risk Assessment Form providing analysis behind the decision made by Forth Ports Ltd that rejects alternative and more appropriate solutions.

Community and statutory engagement

We are disappointed by the lack of engagement shown by Forth Ports and its approach to implementing the works without planning permission or consultation with the local community and statutory agencies. Despite numerous requests and pleas for meetings with Forth Ports Ltd there has been no engagement from Port staff, beyond a standard response to say works were going ahead but that they are temporary.

Works started on 29 December 2020; the day we received the notification of the application for Planning. Stevedore Place residents were dumbfounded when external contractors arrived on site to erect the fencing. We felt it was a deliberate move to avoid any of the authorities or interested parties being available due to the festive holiday. Also, when challenging Forth Ports Ltd as to why they were proceeding without planning consent, Mr David Webster (Senior Port Manager - Dundee, Leith & Methil, Forth Ports Ltd) responded that he had permission to do so as "it is a

health and safety matter as the work is in response to a young child having fallen in the water in that area back in October." Forth Ports Ltd further stated to residents living along Albert Dock that the recommendation to replace the existing barriers with "metal fencing" or "metal panels" came from the Health and Safety Executive.

Subsequently we made an open request under the Freedom of Information Act 2000 with the Health and Safety Executive on 05 January 2021. On 06 January 2021, the Health and Safety Executive confirmed that they could not find any records relating to this matter, therefore did not have, or given:

Information request 1:

Any written correspondence, notes of telephone conversation(s) or meetings between Health and Safety Executive and Forth Ports Ltd as to all Health and Safety recommendations made by the Health and Safety Executive to Forth Ports Ltd following this incident.

Information request 2:

Any advice, recommendation(s) or instruction(s) the Health and Safety Executive has given to Forth Ports Ltd following this incident as to the type of "fencing" Forth Ports Ltd was instructed to install on the edges of the Albert Dock.

Information request 3:

Any advice, recommendation(s) or instruction(s) the Health and Safety Executive has given to Forth Ports Ltd following this incident whether the said "fencing" was "mandatory" or "optional".

Information request 4

Any written correspondences, notes of telephone conversation(s) or meetings between the Health and Safety Executive and the police in connection with this incident.

Information request 5

Any written correspondence, notes of telephone conversation (s) or meetings between the Health and Safety Executive and Edinburgh City Council in connection with this incident.

Information request 6

Any written correspondence, notes of telephone conversation (s) or meetings between the Health and Safety Executive and Crown Office and Procurator Fiscal Service in connection with this incident.

Information request 7

If no advice, recommendation(s) or instruction(s) exists, I would like this stated.

Forth Ports Ltd deceived Stevedore Place residents in order to continue with the installation. It should be noted that the police were also called to stop Forth Ports Ltd carrying on with their

installation. As it is criminal offense to make such alteration to a listed structure without Listed Building Consent, the police should have arrested the Forth Ports Ltd employees, and could have prevented the installation from being carried out, but failed to do so.

You will have received information and example photos from other Stevedore Place residents that show safety measures adopted at other comparable locations in the UK. We are not against the intent of Forth Ports to upgrade pedestrian safety measures around Albert Dock. However, we believe there are much more sympathetic ways of achieving this, in line with various planning frameworks, planning policies and Health and Safety requirements. One such way would be to increase the number of chains between the bollards (from 2 currently to 3 or 4) and reduce the 'sag' of the chains. This would meet the presumed intent of upgrading safety measures whilst still being in keeping with the historical quayside setting of Albert Dock and the conservation area character appraisal. Albert Dock in Liverpool is a good example of a listed historical dockside with extremely high footfall that has successfully retained their bollard and chain perimeter barriers with 3 or 4 chains between each bollard.

The Historic Environment Scotland listing for Albert Dock in Leith makes pointed reference to post and chain barriers to the perimeter of the swing bridge. Post and chain barrier is therefore in our view the barrier solution most in keeping with the dock edge itself and as mentioned above, already widely used throughout the entire conservation area. The Health and Safety Executive (HSE) publication 'L148 Safety in Docks: Approved Code of Practice and guidance (ACOP)' specifically highlights taut chain as being an acceptable solution for a barrier rail in such a dockside setting. There is no reason for it not to be acceptable here at Albert Dock in Leith.

It should also be noted that the properties in close proximity to Albert Dock all have secure perimeter fencing to enclose their small rear gardens, and every property has a gate which can be securely locked with a padlock. This is more than adequate to provide a safe and secure environment for children living in these properties to play in. The perimeter fencing to Albert Dock itself should not be treated as the only barrier between the dock basin and the residential properties as insinuated by Forth Ports in their Design Statement. The design statement also frequently mentions Albert Dock as being an Operational port. Whilst this is true, it is an immaterial consideration for this planning application as the purpose of the barrier panels has nothing to do with the operational nature of the port.

In conclusion I'd like to reiterate my strong objection to this planning application. I'd also like to say how disappointed I am with Forth Ports Ltd and their complete lack of consultation and engagement with their immediate neighbours and indeed any heritage bodies on this important matter.

Comments for Planning Application 20/05548/FUL

Application Summary

Application Number: 20/05548/FUL

Address: Land To The South Of Albert Dock Edinburgh

Proposal: Install protective barrier along the south of Albert Dock at Stevedore Place, Leith.

Case Officer: Daniel Lodge

Customer Details

Name: Mr Tim Threlfall

Address: 28 Stevedore Place Edinburgh

Comment Details

Commenter Type: Neighbour-Residential

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment:

I am strongly objecting to the planning application number 20/05548/FUL.

The alteration of the bollard and chain perimeter barrier at Albert Dock on 30 December 2020 without planning permission is in breach of legislation and Scottish Government, Historic Environment Scotland and City of Edinburgh Council policies. The works on a listed structure without planning consent is a criminal offence under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

This application does not meet Edinburgh Local Development Plan (ELDP) polices and other relevant Scottish Government and statutory agency requirements on conservation areas and listed structures (referenced below).

I have provided material objections below.

****Contraventions of the Edinburgh Local Development Plan****

DES 1: Design Quality and Context

The modern fencing panels installed by Forth Ports Ltd at Albert Dock are inappropriate and not in line with the considerations set out in the ELDP. They are, by Forth Port's own acknowledgement in the Design Statement, designed to match the garden fencing of the nearby Cala housing development (constructed in 2014). The scale and form of the panels conflict with the scale and form of the historic dockside - both at Albert Dock and within the wider Shore area.

DES 3: Development Design

As above, Forth Ports have not considered the existing historic and listed features, by altering them to reflect the garden fence design at the adjacent residential development at Stevedore Place. The fence panels have resulted in an unacceptable visual impact on the character of the dockside and the removal of the chains has resulted in an unacceptable physical impact on the listed structures.

DES 4: Layout Design

As above, Forth Ports has not considered the surrounding context. Albert Dock is part of the Old Shore Conservation Area. The new fence panels at the dockside edge negatively impact on existing eye-level views along the public right of way along the listed dockside and the character and streetscape of the wider Shore area.

DES 10: Waterside Development

The south side of Albert Dock is not part of the operational port and the existing path that separates the houses at Stevedore Place with the Dock is a public right of way. The new modern fence significantly diminishes the public frontage of the waterside. It negatively impacts on the conservation and landscape interests of the water environment and creates an unnecessary visual and physical barrier that prevents the enjoyment of the many residents and visitors who use the public footpath for recreation, exercise and to enjoy (and photograph) the historic dockland area.

ENV 3: Listed Buildings - Setting

Albert Dock forms part of the Port of Leith and its function is intrinsic to its character, appearance and historic interest. The altered barrier to the B-listed dock is visually detrimental to the architectural character, appearance and historic interest of the dock and its setting.

ENV 4: Listed Buildings - Alterations and Extensions

The modern fencing panels are not justified on the grounds that they are required to address health and safety risk on the basis of a single incident. The barrier is an unsympathetic modern design that has been created to copy the garden fencing in a nearby modern housing development - it is not appropriate in design, scale and materials to the listed structures.

ENV 6: Conservation Areas - Development

Albert Dock is within the Old Leith and Shore area of the Leith Conservation Area. The Character Area Appraisal specifically mentions the bollard and chain style perimeter barrier as part of the streetscape at the Shore. The modern fencing panels installed by Forth Ports are inappropriate

and unsympathetic to the listed structures and the Shore streetscape. They do not reflect the special character of the Old Shore conservation area. Other dockland areas in other UK cities have addressed health and safety issues without compromising the historic character. For example, Albert Dock in Liverpool retains bollard and chain barriers, but there are four rather than two chains and they are thicker.

Scottish Government Scottish Planning Policy (SPP)

According to Scottish planning policy, listed structures should be protected from demolition or other work that would adversely affect them or their setting. Any change to a listed structure should be managed to protect its special interest. Where planning permission and listed building consent are sought for development to, or affecting, a listed structure, special regard must be given to the importance of preserving and enhancing the structure, its setting and any features of special architectural or historic interest. The layout, design, materials, scale, siting and use of any development which will affect a listed structure, or its setting, should be appropriate to the character and appearance of the structure and setting.

According to the SPP (143 - "Conservation Areas"): "Proposals for development within conservation areas and proposals outwith which will impact on its appearance, character or setting, should preserve or enhance the character and appearance of the conservation area. Therefore, for this planning application, special planning attention must be paid to the character and appearance of the conservation area when planning controls are being exercised. Planning permission for alterations will, therefore, be advertised for public comment and any views expressed must be taken into account when making a decision on the application."

The policy further states that (Page 24):

- Designation of a conservation area does not mean development is prohibited. However, when considering development within a conservation area, special attention must be paid to its character and appearance. Proposals which fail to preserve or enhance the character or appearance of the area will normally be refused. Guidance on what contributes to character is given in the conservation area character appraisals.
- The aim should be to preserve the spatial and structural patterns of the historic fabric and the architectural features that make it significant.
- Preservation and re-use should always be considered as the first option.
- Interventions need to be compatible with the historic context, not overwhelming or imposing.
- Without exception, the highest standards of materials and workmanship will be required for all works in conservation area

Extensions and Alterations (page 24):

- Proposals must preserve or enhance the character or appearance of the conservation area.

Albert Dock lies within the Leith Conservation Area ('Old Leith and Shore' sub-area). The Dock, together with its '...stone flagged and setted quayside with bollards, railway tracks and three travelling cranes...', is Category B-Listed as being of special architectural and historical interest by Historic Environment Scotland. Bollard and chain barriers are a feature of many throughout the Conservation Area which protect dockside edges.

Conservation Area Character Appraisals identify the essential character of conservation areas. They guide the local planning authority in making planning decisions and, where opportunities arise, preparing enhancement proposals. The Character Appraisals are a material consideration when considering applications for development within conservation areas. The alteration of the listed perimeter barrier at Albert Dock is in breach of this guidance.

Leith Conservation Area Character Appraisal

The character appraisal for the conservation area identifies the essential character of Leith. It should be seen as a material consideration in relation to this planning application. The streetscape section of the character appraisal specifically highlights the quayside areas being separated by bollards with chains linking them. Bollards with chains are a quintessential part of the public realm and streetscape within Leith. They can be found as perimeter barriers around the Albert and Victoria Dock Basins and along all parts of the nearby Shore area. This continuity is important to the character of the entire Leith conservation area. The replacement barrier panels are not in keeping with the Leith conservation area character appraisal and set a precedent for the wider area should this application be approved.

Scottish Government Planning Advice Note (PAN) 71: Conservation Area Management

The designation of a conservation area is a means to safeguard and enhance the sense of place, character and appearance of our most valued historic places. Buildings of character, listed buildings, scheduled monuments, trees, historic street patterns, open spaces and designed gardens and landscapes are important components of these areas.

Historic Environment Policy for Scotland (HEPS)

The alteration of the listed perimeter barrier at Albert Dock is in breach of Historic Environment Policy for Scotland (HEPS), which is designed to support good decision making for Scotland's unique places. The designation of Albert Dock is the legal recognition of its importance as a historic site. The designation seeks to ensure that the cultural, social, environmental and economic value of Scotland's historic environment makes a strong contribution to the development and wellbeing of the nation and its people. It should also ensure that sites and places are recognised by law through the planning system and other regulatory processes.

Managing Change in the Historic Environment

This HES policy states that decisions about listed structures should always focus on the qualities that make them important - their special interest. A range of factors contributes to a special interest, but the key factor when considering whether change should be made is overall historic character.

The Historic Environment Scotland listing for Albert Dock in Leith makes pointed reference to post and chain barriers to the perimeter of the swing bridge. Post and chain barrier is therefore in our view the barrier solution most in keeping with the dock edge itself and as mentioned above, already widely used throughout the entire conservation area. The modern fencing installed by Forth Ports at Albert Dock negatively impacts on the historic character of Albert Dock and the Old Shore area. It negatively impacts on the local community's sense of place, identity and wellbeing.

Health and safety

We are aware of the health and safety aspects and that it is one of the considerations the planning process for applications (FUL) takes into account. However, we would like to point out that the assertion in the Forth Port's Design Statement that 'Garden gates provide direct access from the dwellings to the Dock edge' is incorrect. The houses along Stevedore Place are separated from the dock edge by:

A 2 m wide fenced-in garden with a gate that can be easily locked with a padlock or similar.

A 3 m wide public footpath (approximately 150 m in length) that runs between the gardens and bollard and chain barrier. It is used primarily by residents and pedestrians as a walkway along the dockside.

A bollard and chain barrier, which is set approximately 1.5 m back from the dock edge.

Industry guidance and good practice set out in the HSE (Health and Safety Executive) publication L148 Safety in Docks: Approved Code of Practice and guidance (ACOP) specifically highlights taut chain as being an acceptable solution for a barrier rail in a dockside setting close to residential properties. There is no reason for it not to be acceptable at Albert Dock in Leith. To that end we are concerned that there is not a copy of completed Risk Assessment Form providing analysis behind the decision made by Forth Ports Ltd that rejects alternative and more appropriate solutions.

Community and statutory engagement

We are disappointed by the lack of engagement shown by Forth Ports and its approach to implementing the works without planning permission or consultation with the local community and statutory agencies. Despite numerous requests and pleas for meetings with Forth Ports Ltd there has been no engagement from Port staff, beyond a standard response to say works were going

ahead but that they are temporary.

Works started on 29 December 2020; the day we received the notification of the application for Planning. Stevedore Place residents were dumbfounded when external contractors arrived on site to erect the fencing. We felt it was a deliberate move to avoid any of the authorities or interested parties being available due to the festive holiday. Also, when challenging Forth Ports Ltd as to why they were proceeding without planning consent, Mr David Webster (Senior Port Manager - Dundee, Leith & Methil, Forth Ports Ltd) responded that he had permission to do so as "it is a health and safety matter as the work is in response to a young child having fallen in the water in that area back in October." Forth Ports Ltd further stated to residents living along Albert Dock that the recommendation to replace the existing barriers with "metal fencing" or "metal panels" came from the Health and Safety Executive.

Subsequently we made an open request under the Freedom of Information Act 2000 with the Health and Safety Executive on 05 January 2021. On 06 January 2021, the Health and Safety Executive confirmed that they could not find any records relating to this matter, therefore did not have, or given:

Information request 1:

Any written correspondence, notes of telephone conversation(s) or meetings between Health and Safety Executive and Forth Ports Ltd as to all Health and Safety recommendations made by the Health and Safety Executive to Forth Ports Ltd following this incident.

Information request 2:

Any advice, recommendation(s) or instruction(s) the Health and Safety Executive has given to Forth Ports Ltd following this incident as to the type of "fencing" Forth Ports Ltd was instructed to install on the edges of the Albert Dock.

Information request 3:

Any advice, recommendation(s) or instruction(s) the Health and Safety Executive has given to Forth Ports Ltd following this incident whether the said "fencing" was "mandatory" or "optional".

Information request 4:

Any written correspondences, notes of telephone conversation(s) or meetings between the Health and Safety Executive and the police in connection with this incident.

Information request 5:

Any written correspondence, notes of telephone conversation (s) or meetings between the Health and Safety Executive and Edinburgh City Council in connection with this incident.

Information request 6:

Any written correspondence, notes of telephone conversation (s) or meetings between the Health

and Safety Executive and Crown Office and Procurator Fiscal Service in connection with this incident.

Information request 7:

If no advice, recommendation(s) or instruction(s) exists, I would like this stated.

Forth Ports Ltd deceived Stevedore Place residents in order to continue with the installation. It should be noted that the police were also called to stop Forth Ports Ltd carrying on with their installation. As it is criminal offense to make such alteration to a listed structure without Listed Building Consent, the police should have arrested the Forth Ports Ltd employees, and could have prevented the installation from being carried out, but failed to do so.

You will have received information and example photos from other Stevedore Place residents that show safety measures adopted at other comparable locations in the UK. We are not against the intent of Forth Ports to upgrade pedestrian safety measures around Albert Dock. However, we believe there are much more sympathetic ways of achieving this, in line with various planning frameworks, planning policies and Health and Safety requirements. One such way would be to increase the number of chains between the bollards (from 2 currently to 3 or 4) and reduce the 'sag' of the chains. This would meet the presumed intent of upgrading safety measures whilst still being in keeping with the historical quayside setting of Albert Dock and the conservation area character appraisal. Albert Dock in Liverpool is a good example of a listed historical dockside with extremely high footfall that has successfully retained their bollard and chain perimeter barriers with 3 or 4 chains between each bollard.

The Historic Environment Scotland listing for Albert Dock in Leith makes pointed reference to post and chain barriers to the perimeter of the swing bridge. Post and chain barrier is therefore in our view the barrier solution most in keeping with the dock edge itself and as mentioned above, already widely used throughout the entire conservation area. The Health and Safety Executive (HSE) publication 'L148 Safety in Docks: Approved Code of Practice and guidance (ACOP)' specifically highlights taut chain as being an acceptable solution for a barrier rail in such a dockside setting. There is no reason for it not to be acceptable here at Albert Dock in Leith.

It should also be noted that the properties in close proximity to Albert Dock all have secure perimeter fencing to enclose their small rear gardens, and every property has a gate which can be securely locked with a padlock. This is more than adequate to provide a safe and secure environment for children living in these properties to play in. The perimeter fencing to Albert Dock itself should not be treated as the only barrier between the dock basin and the residential properties as insinuated by Forth Ports in their Design Statement. The design statement also frequently mentions Albert Dock as being an operational port. Whilst this is true, it is an immaterial consideration for this planning application as the purpose of the barrier panels has nothing to do with the operational nature of the port.

In conclusion I'd like to reiterate my strong objection to this planning application.

Comments for Planning Application 20/05548/FUL

Application Summary

Application Number: 20/05548/FUL

Address: Land To The South Of Albert Dock Edinburgh

Proposal: Install protective barrier along the south of Albert Dock at Stevedore Place, Leith.

Case Officer: Daniel Lodge

Customer Details

Name: Miss Angie Meffanmain

Address: 10 Stevedore Place Edinburgh

Comment Details

Commenter Type: Neighbour

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment:Forth Ports Ltd carried out unauthorised works to alter the bollard and chain perimeter barrier at the B-listed Albert Dock on 29 December 2020 (see photo). New modern panels of vertical railings have been installed between each bollard, which replace the original chains. We understand that this work has been carried out as a health and safety response to an unsupervised child jumping in the Dock on 16 September 2020.

The alteration of the bollard and chain perimeter barrier at Albert Dock on 30 December without planning permission is in breach of legislation and Scottish Government, Historic Environment Scotland and City of Edinburgh Council policies. The works on a listed structure without planning consent is a criminal offence under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

As occupier of number 10 Stevedore Place I am amazed as to why I did not receive a Neighbour Notification to be notified of these works. The works and change in environment are directly in front of my property so it is simply negligent not to be informed. In terms of your guidance on planning applications it states:- If you live within 20m of the application boundary, you will receive a letter from the Council telling you about the planning application and how to make comments. I live within this area yet received no notification.

The planning system is designed to protect the long-term public interest. It does not exist to protect the interests of one person or business against the activities of another. In distinguishing between public and private interests, the question is whether the proposal would unacceptably affect the amenity and existing use of land or buildings which ought to be protected in the public interest, not whether owners/occupiers of neighbouring or other existing properties would

experience financial or other loss from a particular development.

Planning policy and context

This application also does not meet Edinburgh Local Development Plan (EDLP) policies (see box below) and other relevant Scottish Government and statutory agency requirements on conservation areas and listed structures (referenced below). Listed Building Consent (LBC) assesses whether the works will affect the historic interest of the listed dock and preserve or enhance the special character or appearance of the conservation area. Local authorities have a statutory duty to identify and designate areas of special architectural or historic interest and ensure that any alterations, for whatever reason, are carefully considered.

Contraventions of the Edinburgh Local Development Plan¹

DES 1: Design Quality and Context

The modern fencing panels installed by Forth Ports Ltd at Albert Dock are inappropriate and not in line with the considerations set out in the ELDP. They are, by Forth Port's own acknowledgement in the Design Statement, designed to match the garden fencing of the nearby Cala housing development (constructed in 2014). The scale and form of the panels conflict with the scale and form of the historic dockside - both at Albert Dock and within the wider Shore area.

DES 3: Development Design

As above, Forth Ports have not considered the existing historic and listed features, by altering them to reflect the garden fence design at the adjacent residential development at Stevedore Place. The fence panels have resulted in an unacceptable visual impact on the character of the dockside and the removal of the chains has resulted in an unacceptable physical impact on the listed structures.

DES 4: Layout Design

As above, Forth Ports has not considered the surrounding context. Albert Dock is part of the Old Shore Conservation Area. The new fence panels at the dockside edge negatively impact on existing eye-level views along the public right of way along the list dockside and the character and streetscape of the wider Shore area.

DES 10: Waterside Development

The south side of Albert Dock is not part of the operational port and the existing path that separates the houses at Stevedore Place with the Dock is a public right of way. The new modern fence significantly diminishes the public frontage of the waterside. It negatively impacts on the conservation and landscape interests of the water environment and creates an unnecessary visual and physical barrier that prevents the enjoyment of the many residents and visitors who use the public footpath for recreation, exercise and to enjoy (and photograph) the historic dockland area.

ENV 3: Listed Buildings - Setting

Albert Dock forms part of the Port of Leith and its function is intrinsic to its character, appearance and historic interest. The altered barrier to the B-listed dock is visually detrimental to the architectural character, appearance and historic interest of the dock and its setting.

ENV 4: Listed Buildings - Alterations and Extensions

The modern fencing panels are not justified on the grounds that they are required to address health and safety risk on the basis of a single incident. The barrier is an unsympathetic modern design that has been created to copy the garden fencing in a nearby modern housing development - it is not appropriate in design, scale and materials to the listed structures.

ENV 6: Conservation Areas - Development

Albert Dock is within the Old Leith and Shore area of the Leith Conservation Area. The Character Area Appraisal specifically mentions the bollard and chain style perimeter barrier as part of the streetscape at the Shore. The modern fencing panels installed by Forth Ports are inappropriate and unsympathetic to the listed structures and the Shore streetscape. They do not reflect the

special character of the Old Shore conservation area. Other dockland areas in other UK cities have addressed health and safety issues without compromising the historic character. For example, Albert Dock in Liverpool retains bollard and chain barriers, but there are four rather than two chains and they are thicker.

Scottish Government Scottish Planning Policy

According to Scottish planning policy, listed structures should be protected from demolition or other work that would adversely affect them or their setting. Any change to a listed structure should be managed to protect its special interest. Where planning permission and listed building consent are sought for development to, or affecting, a listed structure, special regard must be given to the importance of preserving and enhancing the structure, its setting and any features of special architectural or historic interest. The layout, design, materials, scale, siting and use of any development which will affect a listed structure, or its setting, should be appropriate to the character and appearance of the structure and setting.

Listed Buildings and Conservation Areas Guidance

Listed Buildings and Conservation Areas guidance2

Part 2 - Conservation Areas/Conservation Area Character Appraisals (page 23)

2. Special attention must be paid to the character and appearance of the conservation area when planning controls are being exercised. Most applications for planning permission for alterations will, therefore, be advertised for public comment and any views expressed must be taken into account when making a decision on the application.

General Principles (page 24)

Designation of a conservation area does not mean development is prohibited. However, when considering development within a conservation area, special attention must be paid to its character and appearance. Proposals which fail to preserve or enhance the character or appearance of the area will normally be refused. Guidance on what contributes to character is given in the conservation area character appraisals.

The aim should be to preserve the spatial and structural patterns of the historic fabric and the architectural features that make it significant.

Preservation and re-use should always be considered as the first option.

Interventions need to be compatible with the historic context, not overwhelming or imposing.

Without exception, the highest standards of materials and workmanship will be required for all works in conservation area

Extensions and Alterations (page 24)

Proposals must preserve or enhance the character or appearance of the conservation area.

Albert Dock lies within the Leith Conservation Area ('Old Leith and Shore' sub-area). The Dock, together with its '...stone flagged and setted quayside with bollards, railway tracks and three travelling cranes...', is Category B-Listed as being of special architectural and historical interest by Historic Environment Scotland. Bollard and chain barriers are a feature of many throughout the Conservation Area which protect dockside edges.

Conservation Area Character Appraisals identify the essential character of conservation areas. They guide the local planning authority in making planning decisions and, where opportunities arise, preparing enhancement proposals. The Character Appraisals are a material consideration when considering applications for development within conservation areas. The alteration of the listed perimeter barrier at Albert Dock is in breach of this guidance.

Leith Conservation Area Character Appraisal

The character appraisal for the conservation area identifies the essential character of Leith. It should be seen as a material consideration in relation to this planning application. The streetscape section of the character appraisal specifically highlights the quayside areas being separated by bollards with chains linking them. Bollards with chains are a quintessential part of the public realm and streetscape within Leith. They can be found as perimeter barriers around the Albert and Victoria Dock Basins and along all parts of the nearby Shore area. This continuity is important to the character of the entire Leith conservation area. The replacement barrier panels are not in keeping with the Leith conservation area character appraisal and set a precedent for the wider area should this application be approved.

Scottish Government Planning Advice Note (PAN) 71: Conservation Area Management

The designation of a conservation area is a means to safeguard and enhance the sense of place, character and appearance of our most valued historic places. Buildings of character, listed buildings, scheduled monuments, trees, historic street patterns, open spaces and designed gardens and landscapes are important components of these areas.

Historic Environment Policy for Scotland (HEPS)

The alteration of the listed perimeter barrier at Albert Dock is in breach of Historic Environment Policy for Scotland (HEPS), which is designed to support good decision making for Scotland's unique places. The designation of Albert Dock is the legal recognition of its importance as a historic site. The designation seeks to ensure that the cultural, social, environmental and economic value of Scotland's historic environment makes a strong contribution to the development and wellbeing of the nation and its people. It should also ensure that sites and places are recognised by law through the planning system and other regulatory processes. It is unacceptable for entities to be able to simply circumvent the processes and ignore the system set down which is designed to act in the public interest overall not in the private interest of one developer or one company.

This HES policy states that decisions about listed structures should always focus on the qualities that make them important - their special interest. A range of factors contributes to a special interest, but the key factor when considering whether change should be made is overall historic character.

The Historic Environment Scotland listing for Albert Dock in Leith makes pointed reference to post and chain barriers to the perimeter of the swing bridge. Post and chain barrier is therefore in our view the barrier solution most in keeping with the dock edge itself and as mentioned above, already widely used throughout the entire conservation area. The modern fencing installed by Forth Ports at Albert Dock negatively impacts on the historic character of Albert Dock and the Old Shore area. It negatively impacts on the local community's sense of place, identity and wellbeing. It changes the character of the Dock and the Old Shore from a historic place to something which is simply ill-fitting in an historic environment. The proposed replacement barrier panels (which have now been installed without planning permission) are not in keeping with the Leith conservation area character appraisal and set a horrible frightening precedent for the wider area should this application be approved.

To increase health and safety but fit with the historic environment an option would be to increase the number of chains between the bollards (from 2 currently to 3 or 4) and reduce the 'sag' of the chains. This would meet the presumed intent of upgrading safety measures whilst still being in keeping with the historical quayside setting of Albert Dock and the conservation area character appraisal. Albert Dock in Liverpool is a good example of a listed historical dockside with extremely high footfall that has successfully retained their bollard and chain perimeter barriers with 3 or 4 chains between each bollard.

Health and safety

We are aware of the health and safety aspects and that it is one of the considerations the planning process for applications (FUL) takes into account. However, we would like to point out that the assertion in the Forth Port's Design Statement that 'Garden gates provide direct access from the dwellings to the Dock edge' is incorrect. The houses along Stevedore Place are separated from the dock edge by:

A 2 m wide fenced-in garden with a gate that can be easily locked with a padlock or similar. The small garden area secured with a padlock is more than adequate to provide a safe and secure place for children to play in. The perimeter fencing should not be treated as the only barrier between the dock area and the residential properties as seems to be being suggested by Forth Ports. It is of note that the area at the other side of the houses which leads straight onto the road up through the middle of them has no fencing at all provided which would of course pose a risk to the health and safety of an unsupervised child.

A 3 m wide public footpath (approximately 150 m in length) that runs between the gardens and bollard and chain barrier. It is used primarily by residents and pedestrians as a walkway along the dockside.

A bollard and chain barrier, which is set approximately 1.5 m back from the dock edge.

Industry guidance and good practice set out in the HSE (Health and Safety Executive) publication L148 Safety in Docks: Approved Code of Practice and guidance (ACOP) specifically highlights taut chain as being an acceptable solution for a barrier rail in a dockside setting close to residential properties. There is no reason for it not to be acceptable at Albert Dock in Leith. To that end we are concerned that there is not a copy of completed Risk Assessment Form providing analysis behind the decision made by Forth Ports Ltd that rejects alternative and more appropriate solutions.

It is of note that the area near to the Fingal which has a similar design has the use of taut chains. There is no basis for which that could not be the case in this development. Children are regularly seen there admiring the swans who nest in that area. These children are, of course, supervised. It is of note that it would be extremely difficult to make any development safe for unsupervised children. In particular, the installation of trams and car traffic pose great risks to unsupervised children in the area on the street itself and the vicinity.

There is also the issue of the installation of a gate by Forth Ports here which can be opened at will by members of the public and provides unrestricted access to the water area. This is entirely inappropriate if these measures are being done as a health and safety measure. The gate opens across and exposes an area of around 2 metres open without any barriers in place. This would

seem to be an example of a quick solution not well thought through as to its appropriateness nor of course fitting with the historic dock area. My suggestion below would deal both with the safety issue generally and also the safety issue of installing a gate which can now be opened and actually poses a much greater risk.

A way to increase safety would be to increase the number of chains between the bollards (from 2 currently to 3 or 4) and reduce the 'sag' of the chains. This would meet the presumed intent of upgrading safety measures whilst still being in keeping with the historical quayside setting of Albert Dock and the conservation area character appraisal. Albert Dock in Liverpool is a good example of a listed historical dockside with extremely high footfall that has successfully retained their bollard and chain perimeter barriers with 3 or 4 chains between each bollard. Chains of appropriate weight could be considered rather than flimsy chains which although cheaper may not be so safe.

The area around the basin at the Shore has similar chains which fit with the character and families are regularly seen at all times of year enjoying the amenity of the area. That area also has homes nearby where children reside.

It is of course appropriate to respect health and safety in all areas in so far as reasonably practicable. It is just so very disappointing that Forth Ports felt the need to take planned action (the barriers obviously had to be made and ordered) without involving those who have chosen to reside here in this historic environment. This is especially disappointing as residents had indicated to Forth Ports that they wished to engage and explore options with them.

Community and statutory engagement

We are disappointed by the lack of engagement shown by Forth Ports and its approach to implementing the works without planning permission or consultation with the local community and statutory agencies. Works started on 29 December 2020; the day we received the notification of the application for Planning.

I did not receive a notification of the application for Planning at all. I am not listed on the Neighbour Notification list despite living right in front of the proposed works.

We have been keen to meet constructively with Forth Ports Ltd to discuss options to improve safety that are not to the detriment of historic character. We have put together a letter and information that shows safety measures adopted at other comparable locations in the UK (see for example photo below, which shows the design of the perimeter barrier at Albert Dock in Liverpool, an area with much higher pedestrian footfall). However, despite numerous requests and pleas for meetings with the Port there has been no engagement from Port staff, beyond a standard response to say works were going ahead but that they are temporary.

It is interesting that despite having engaged both a planning expert and an architectural firm there was a lack of adherence to basic neighbour notification. There is simply no reason why I should not have received it except that I was for some reason deliberately or neglectfully left off the list submitted by Forth Ports as those affected by the development. A short consideration of the street layout would be all that was required to ensure that the appropriate properties received a notification.

I would like to make reference to Planning Advice Note 3/2010. It states:- Planning authorities and developers should ensure appropriate and proportionate steps are taken to engage with communities when planning policies and guidance are being developed, when development proposals are being formed and when applications for planning permission are made.

There is simply no reason why an entity who has taken professional advice would not comply with the basic engagement with a community directly affected. To begin works in the festive period in inclement conditions and when local authority planning offices were closed is at best inappropriate, and at worst, calculated to close down any chance for residents to object. This is highly unacceptable for an entity such as Forth Ports.

Comments for Planning Application 20/05548/FUL

Application Summary

Application Number: 20/05548/FUL

Address: Land To The South Of Albert Dock Edinburgh

Proposal: Install protective barrier along the south of Albert Dock at Stevedore Place, Leith.

Case Officer: Daniel Lodge

Customer Details

Name: Miss Angie Meffanmain

Address: 10 Stevedore Place Edinburgh

Comment Details

Commenter Type: Neighbour

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment:Forth Ports Ltd carried out unauthorised works to alter the bollard and chain perimeter barrier at the B-listed Albert Dock on 29 December 2020 (see photo). New modern panels of vertical railings have been installed between each bollard, which replace the original chains. We understand that this work has been carried out as a health and safety response to an unsupervised child jumping in the Dock on 16 September 2020.

The alteration of the bollard and chain perimeter barrier at Albert Dock on 30 December without planning permission is in breach of legislation and Scottish Government, Historic Environment Scotland and City of Edinburgh Council policies. The works on a listed structure without planning consent is a criminal offence under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

As occupier of number 10 Stevedore Place I am amazed as to why I did not receive a Neighbour Notification to be notified of these works. The works and change in environment are directly in front of my property so it is simply negligent not to be informed. In terms of your guidance on planning applications it states:- If you live within 20m of the application boundary, you will receive a letter from the Council telling you about the planning application and how to make comments. I live within this area yet received no notification.

The planning system is designed to protect the long-term public interest. It does not exist to protect the interests of one person or business against the activities of another. In distinguishing between public and private interests, the question is whether the proposal would unacceptably affect the amenity and existing use of land or buildings which ought to be protected in the public interest, not whether owners/occupiers of neighbouring or other existing properties would experience financial or other loss from a particular development.

Planning policy and context

This application also does not meet Edinburgh Local Development Plan (EDLP) polices (see box below) and other relevant Scottish Government and statutory agency requirements on conservation areas and listed structures (referenced below). Listed Building Consent (LBC) assesses whether the works will affect the historic interest of the listed dock and preserve or enhance the special character or appearance of the conservation area. Local authorities have a statutory duty to identify and designate areas of special architectural or historic interest and ensure that any alterations, for whatever reason, are carefully considered.

Contraventions of the Edinburgh Local Development Plan¹

DES 1: Design Quality and Context

The modern fencing panels installed by Forth Ports Ltd at Albert Dock are inappropriate and not in line with the considerations set out in the ELDP. They are, by Forth Port's own acknowledgement in the Design Statement, designed to match the garden fencing of the nearby Cala housing development (constructed in 2014). The scale and form of the panels conflict with the scale and form of the historic dockside - both at Albert Dock and within the wider Shore area.

DES 3: Development Design

As above, Forth Ports have not considered the existing historic and listed features, by altering them to reflect the garden fence design at the adjacent residential development at Stevedore

Place. The fence panels have resulted in an unacceptable visual impact on the character of the dockside and the removal of the chains has resulted in an unacceptable physical impact on the listed structures.

DES 4: Layout Design

As above, Forth Ports has not considered the surrounding context. Albert Dock is part of the Old Shore Conservation Area. The new fence panels at the dockside edge negatively impact on existing eye-level views along the public right of way along the list dockside and the character and streetscape of the wider Shore area.

DES 10: Waterside Development

The south side of Albert Dock is not part of the operational port and the existing path that separates the houses at Stevedore Place with the Dock is a public right of way. The new modern fence significantly diminishes the public frontage of the waterside. It negatively impacts on the conservation and landscape interests of the water environment and creates an unnecessary visual and physical barrier that prevents the enjoyment of the many residents and visitors who use the public footpath for recreation, exercise and to enjoy (and photograph) the historic dockland area.

ENV 3: Listed Buildings - Setting

Albert Dock forms part of the Port of Leith and its function is intrinsic to its character, appearance and historic interest. The altered barrier to the B-listed dock is visually detrimental to the architectural character, appearance and historic interest of the dock and its setting.

ENV 4: Listed Buildings - Alterations and Extensions

The modern fencing panels are not justified on the grounds that they are required to address health and safety risk on the basis of a single incident. The barrier is an unsympathetic modern design that has been created to copy the garden fencing in a nearby modern housing development - it is not appropriate in design, scale and materials to the listed structures.

ENV 6: Conservation Areas - Development

Albert Dock is within the Old Leith and Shore area of the Leith Conservation Area. The Character Area Appraisal specifically mentions the bollard and chain style perimeter barrier as part of the streetscape at the Shore. The modern fencing panels installed by Forth Ports are inappropriate and unsympathetic to the listed structures and the Shore streetscape. They do not reflect the special character of the Old Shore conservation area. Other dockland areas in other UK cities have addressed health and safety issues without compromising the historic character. For example, Albert Dock in Liverpool retains bollard and chain barriers, but there are four rather than two chains and they are thicker.

Scottish Government Scottish Planning Policy

According to Scottish planning policy, listed structures should be protected from demolition or other work that would adversely affect them or their setting. Any change to a listed structure should be managed to protect its special interest. Where planning permission and listed building consent are sought for development to, or affecting, a listed structure, special regard must be given to the importance of preserving and enhancing the structure, its setting and any features of special architectural or historic interest. The layout, design, materials, scale, siting and use of any development which will affect a listed structure, or its setting, should be appropriate to the character and appearance of the structure and setting.

Listed Buildings and Conservation Areas Guidance

Listed Buildings and Conservation Areas guidance2

2. Special attention must be paid to the character and appearance of the conservation area when planning controls are being exercised. Most applications for planning permission for alterations will, therefore, be advertised for public comment and any views expressed must be taken into account when making a decision on the application.

General Principles (page 24)

Designation of a conservation area does not mean development is prohibited. However, when considering development within a conservation area, special attention must be paid to its character and appearance. Proposals which fail to preserve or enhance the character or appearance of the area will normally be refused. Guidance on what contributes to character is given in the conservation area character appraisals.

The aim should be to preserve the spatial and structural patterns of the historic fabric and the architectural features that make it significant.

Preservation and re-use should always be considered as the first option.

Interventions need to be compatible with the historic context, not overwhelming or imposing.

Without exception, the highest standards of materials and workmanship will be required for all works in conservation area

Extensions and Alterations (page 24)

Proposals must preserve or enhance the character or appearance of the conservation area.

Albert Dock lies within the Leith Conservation Area ('Old Leith and Shore' sub-area). The Dock, together with its '...stone flagged and setted quayside with bollards, railway tracks and three travelling cranes...', is Category B-Listed as being of special architectural and historical interest by Historic Environment Scotland. Bollard and chain barriers are a feature of many throughout the Conservation Area which protect dockside edges.

Conservation Area Character Appraisals identify the essential character of conservation areas. They guide the local planning authority in making planning decisions and, where opportunities arise, preparing enhancement proposals. The Character Appraisals are a material consideration when considering applications for development within conservation areas. The alteration of the listed perimeter barrier at Albert Dock is in breach of this guidance.

Leith Conservation Area Character Appraisal

The character appraisal for the conservation area identifies the essential character of Leith. It should be seen as a material consideration in relation to this planning application. The streetscape section of the character appraisal specifically highlights the quayside areas being separated by bollards with chains linking them. Bollards with chains are a quintessential part of the public realm and streetscape within Leith. They can be found as perimeter barriers around the Albert and Victoria Dock Basins and along all parts of the nearby Shore area. This continuity is important to the character of the entire Leith conservation area. The replacement barrier panels are not in keeping with the Leith conservation area character appraisal and set a precedent for the wider area should this application be approved.

Scottish Government Planning Advice Note (PAN) 71: Conservation Area Management

The designation of a conservation area is a means to safeguard and enhance the sense of place, character and appearance of our most valued historic places. Buildings of character, listed buildings, scheduled monuments, trees, historic street patterns, open spaces and designed gardens and landscapes are important components of these areas.

Historic Environment Policy for Scotland (HEPS)

The alteration of the listed perimeter barrier at Albert Dock is in breach of Historic Environment Policy for Scotland (HEPS), which is designed to support good decision making for Scotland's unique places. The designation of Albert Dock is the legal recognition of its importance as a historic site. The designation seeks to ensure that the cultural, social, environmental and economic value of Scotland's historic environment makes a strong contribution to the development and wellbeing of the nation and its people. It should also ensure that sites and places are recognised by law through the planning system and other regulatory processes. It is unacceptable for entities

to be able to simply circumvent the processes and ignore the system set down which is designed to act in the public interest overall not in the private interest of one developer or one company.

Managing Change in the Historic Environment

This HES policy states that decisions about listed structures should always focus on the qualities that make them important - their special interest. A range of factors contributes to a special interest, but the key factor when considering whether change should be made is overall historic character.

The Historic Environment Scotland listing for Albert Dock in Leith makes pointed reference to post and chain barriers to the perimeter of the swing bridge. Post and chain barrier is therefore in our view the barrier solution most in keeping with the dock edge itself and as mentioned above, already widely used throughout the entire conservation area. The modern fencing installed by Forth Ports at Albert Dock negatively impacts on the historic character of Albert Dock and the Old Shore area. It negatively impacts on the local community's sense of place, identity and wellbeing. It changes the character of the Dock and the Old Shore from a historic place to something which is simply ill-fitting in an historic environment. The proposed replacement barrier panels (which have now been installed without planning permission) are not in keeping with the Leith conservation area character appraisal and set a horrible frightening precedent for the wider area should this application be approved.

To increase health and safety but fit with the historic environment an option would be to increase the number of chains between the bollards (from 2 currently to 3 or 4) and reduce the 'sag' of the chains. This would meet the presumed intent of upgrading safety measures whilst still being in keeping with the historical quayside setting of Albert Dock and the conservation area character appraisal. Albert Dock in Liverpool is a good example of a listed historical dockside with extremely high footfall that has successfully retained their bollard and chain perimeter barriers with 3 or 4 chains between each bollard.

Health and safety

We are aware of the health and safety aspects and that it is one of the considerations the planning process for applications (FUL) takes into account. However, we would like to point out that the assertion in the Forth Port's Design Statement that 'Garden gates provide direct access from the dwellings to the Dock edge' is incorrect. The houses along Stevedore Place are separated from the dock edge by:

A 2 m wide fenced-in garden with a gate that can be easily locked with a padlock or similar. The small garden area secured with a padlock is more than adequate to provide a safe and secure place for children to play in. The perimeter fencing should not be treated as the only barrier between the dock area and the residential properties as seems to be being suggested by Forth Ports. It is of note that the area at the other side of the houses which leads straight onto the road up through the middle of them has no fencing at all provided which would of course pose a risk to the health and safety of an unsupervised child.

A 3 m wide public footpath (approximately 150 m in length) that runs between the gardens and bollard and chain barrier. It is used primarily by residents and pedestrians as a walkway along the dockside.

A bollard and chain barrier, which is set approximately 1.5 m back from the dock edge.

Industry guidance and good practice set out in the HSE (Health and Safety Executive) publication L148 Safety in Docks: Approved Code of Practice and guidance (ACOP) specifically highlights taut chain as being an acceptable solution for a barrier rail in a dockside setting close to residential properties. There is no reason for it not to be acceptable at Albert Dock in Leith. To that end we are concerned that there is not a copy of completed Risk Assessment Form providing analysis behind the decision made by Forth Ports Ltd that rejects alternative and more appropriate solutions.

It is of note that the area near to the Fingal which has a similar design has the use of taut chains. There is no basis for which that could not be the case in this development. Children are regularly seen there admiring the swans who nest in that area. These children are, of course, supervised. It is of note that it would be extremely difficult to make any development safe for unsupervised children. In particular, the installation of trams and car traffic pose great risks to unsupervised children in the area on the street itself and the vicinity.

There is also the issue of the installation of a gate by Forth Ports here which can be opened at will by members of the public and provides unrestricted access to the water area. This is entirely inappropriate if these measures are being done as a health and safety measure. The gate opens across and exposes an area of around 2 metres open without any barriers in place. This would seem to be an example of a quick solution not well thought through as to its appropriateness nor of course fitting with the historic dock area. My suggestion below would deal both with the safety issue generally and also the safety issue of installing a gate which can now be opened and actually poses a much greater risk.

A way to increase safety would be to increase the number of chains between the bollards (from 2 currently to 3 or 4) and reduce the 'sag' of the chains. This would meet the presumed intent of upgrading safety measures whilst still being in keeping with the historical quayside setting of Albert Dock and the conservation area character appraisal. Albert Dock in Liverpool is a good example of a listed historical dockside with extremely high footfall that has successfully retained their bollard and chain perimeter barriers with 3 or 4 chains between each bollard. Chains of appropriate weight could be considered rather than flimsy chains which although cheaper may not be so safe.

The area around the basin at the Shore has similar chains which fit with the character and families are regularly seen at all times of year enjoying the amenity of the area. That area also has homes nearby where children reside.

It is of course appropriate to respect health and safety in all areas in so far as reasonably practicable. It is just so very disappointing that Forth Ports felt the need to take planned action (the barriers obviously had to be made and ordered) without involving those who have chosen to reside here in this historic environment. This is especially disappointing as residents had indicated to Forth Ports that they wished to engage and explore options with them.

We are disappointed by the lack of engagement shown by Forth Ports and its approach to implementing the works without planning permission or consultation with the local community and statutory agencies. Works started on 29 December 2020; the day we received the notification of the application for Planning.

I did not receive a notification of the application for Planning at all. I am not listed on the Neighbour Notification list despite living right in front of the proposed works.

We have been keen to meet constructively with Forth Ports Ltd to discuss options to improve safety that are not to the detriment of historic character. We have put together a letter and information that shows safety measures adopted at other comparable locations in the UK (see for example photo below, which shows the design of the perimeter barrier at Albert Dock in Liverpool, an area with much higher pedestrian footfall). However, despite numerous requests and pleas for meetings with the Port there has been no engagement from Port staff, beyond a standard response to say works were going ahead but that they are temporary.

It is interesting that despite having engaged both a planning expert and an architectural firm there was a lack of adherence to basic neighbour notification. There is simply no reason why I should not have received it except that I was for some reason deliberately or neglectfully left off the list submitted by Forth Ports as those affected by the development. A short consideration of the street layout would be all that was required to ensure that the appropriate properties received a notification.

I would like to make reference to Planning Advice Note 3/2010. It states:- Planning authorities and developers should ensure appropriate and proportionate steps are taken to engage with communities when planning policies and guidance are being developed, when development proposals are being formed and when applications for planning permission are made.

There is simply no reason why an entity who has taken professional advice would not comply with the basic engagement with a community directly affected. To begin works in the festive period in

inclement conditions and when local authority planning offices were closed is at best inappropriate, and at worst, calculated to close down any chance for residents to object. This is highly unacceptable for an entity such as Forth Ports.

Comments for Planning Application 20/05548/FUL

Application Summary

Application Number: 20/05548/FUL

Address: Land To The South Of Albert Dock Edinburgh

Proposal: Install protective barrier along the south of Albert Dock at Stevedore Place, Leith.

Case Officer: Daniel Lodge

Customer Details

Name: Mr Gregor McIntyre

Address: 30 Stevedore Place Edinburgh

Comment Details

Commenter Type: Neighbour

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: Dear Mr Lodge,

I am writing to strongly object to the planning application number 20/05548/FUL. The proposal to replace the bollard and chain barriers with barrier panels is completely out of keeping with the historical Category B listing of Albert Dock and would have a negative material impact on the Leith Conservation Area as a whole.

I've outlined my objection points below, and then collated specific contraventions of the Edinburgh Local Development Plan at the end.

Albert Dock is located within the Leith Conversation Area ("Old Leith and Shore" sub-area). The Dock, together with its '...stone flagged and setted quayside with bollards, railway tracks and three travelling cranes...', is Category B-Listed as being of special architectural and historical interest by Historic Environment Scotland. The character appraisal for the conservation area identifies the essential character of Leith. It should be seen as a material consideration in relation to this planning application. The streetscape section of the character appraisal specifically highlights the quayside areas being separated by bollards with chains linking them. Bollards with chains are a quintessential part of the public ream and streetscape within the conservation area. They can be found as perimeter barriers around the Albert and Victoria Dock Basins and along all parts of the nearby Shore area. This continuity is important to the character of the entire Leith conservation area. The proposed replacement barrier panels (which have now been installed without planning permission) are not in keeping with the Leith conservation area character appraisal and set a horrible precedent for the wider area.

The alteration of the listed perimeter barrier at Albert Dock is in breach of Historic Environment

Policy for Scotland (HEPS), which is designed to support good decision making for Scotland's unique places. The designation of Albert Dock is the legal recognition of its importance as a historic site. The designation seeks to ensure that the cultural, social, environmental and economic value of Scotland's historic environment makes a strong contribution to the development and wellbeing of the nation and its people. It should also ensure that sites and places are recognised by law through the planning system and other regulatory processes. This HES policy states that decisions about listed structures should always focus on the qualities that make them important - their special interest. A range of factors contributes to a special interest, but the key factor when considering whether change should be made is overall historic character. The Historic Environment Scotland listing for Albert Dock in Leith makes pointed reference to post and chain barriers to the perimeter of the swing bridge. Post and chain barrier is therefore in my view the barrier solution most in keeping with the dock edge itself and as mentioned above, already widely used throughout the entire conservation area. The modern fencing installed by Forth Ports at Albert Dock negatively impacts on the historic character of Albert Dock and the Old Shore area. It negatively impacts on the local community's sense of place, identity and wellbeing.

I am aware of the health and safety aspects and that it is one of the considerations the planning process for applications (FUL) takes into account. However, I would like to point out that the assertion in the Forth Port's Design Statement that 'Garden gates provide direct access from the dwellings to the Dock edge' is incorrect. The properties in close proximity to Albert Dock all have secure perimeter fencing to enclose their small (2m wide) rear gardens and every property has a gate which can be securely locked with a padlock. This is more than adequate to provide a safe and secure environment for children living in these properties to play in. The perimeter fencing to Albert Dock itself should not be treated as the only barrier between the dock basin and the residential properties as insinuated by Forth Ports in their Design Statement.

Industry guidance and good practice set out in the HSE (Health and Safety Executive) publication L148 Safety in Docks: Approved Code of Practice and guidance (ACOP) specifically highlights taut chain as being an acceptable solution for a barrier rail in a dockside setting close to residential properties. There is no reason for it not to be acceptable at Albert Dock in Leith. To that end I am concerned that there is not a copy of completed Risk Assessment Form providing analysis behind the decision made by Forth Ports Ltd that rejects alternative and more appropriate solutions.

The Forth Ports design statement also frequently mentions Albert Dock as being an Operational port. Whilst this is true, it is an immaterial consideration for this planning application as the purpose of the barrier panels has nothing to do with the operational nature of the port. The south side of Albert Dock is not part of the operational port, and indeed is part of a 'no build zone' as per the title deeds for: OCEAN DRIVE, LEITH DOCKS, EDINBURGH (TITLE NUMBER: MID79002).

I am not against the intent of Forth Ports to upgrade pedestrian safety measures around Albert Dock, however I believe there are much more sympathetic ways of achieving this. One such way would be to increase the number of chains between the bollards (from 2 currently to 3 or 4) and reduce the 'sag' of the chains. This would meet the presumed intent of upgrading safety measures

whilst still being in keeping with the historical quayside setting of Albert Dock and the conservation area character appraisal. Albert Dock in Liverpool is a good example of a listed historical dockside with extremely high footfall that has successfully retained their bollard and chain perimeter barriers with 3 or 4 chains between each bollard.

In conclusion I'd like to reiterate my strong objection to this planning application. I'd also like to say how disappointed I am with Forth Ports and their complete lack of consultation and engagement with their immediate neighbours and indeed any heritage bodies on this important matter.

Kind regards,
Gregor McIntyre

Specific contraventions of the Edinburgh Local Development Plan

DES 1: Design Quality and Context

The modern fencing panels installed by Forth Ports Ltd at Albert Dock are inappropriate and not in line with the considerations set out in the ELDP. They are, by Forth Port's own acknowledgement in the Design Statement, designed to match the garden fencing of the nearby Cala housing development (constructed in 2014). The scale and form of the panels conflict with the scale and form of the historic dockside - both at Albert Dock and within the wider Shore area.

DES 3: Development Design

As above, Forth Ports have not considered the existing historic and listed features, by altering them to reflect the garden fence design at the adjacent residential development at Stevedore Place. The fence panels have resulted in an unacceptable visual impact on the character of the dockside and the removal of the chains has resulted in an unacceptable physical impact on the listed structures.

DES 4: Layout Design

As above, Forth Ports has not considered the surrounding context. Albert Dock is part of the Old Shore Conservation Area. The new fence panels at the dockside edge negatively impact on existing eye-level views along the public right of way along the list dockside and the character and streetscape of the wider Shore area.

DES 10: Waterside Development

The south side of Albert Dock is not part of the operational port and the existing path that separates the houses at Stevedore Place with the Dock is a public right of way. The new modern fence significantly diminishes the public frontage of the waterside. It negatively impacts on the conservation and landscape interests of the water environment and creates an unnecessary visual and physical barrier that prevents the enjoyment of the many residents and visitors who use the public footpath for recreation, exercise and to enjoy (and photograph) the historic dockland area.

ENV 3: Listed Buildings - Setting

Albert Dock forms part of the Port of Leith and its function is intrinsic to its character, appearance and historic interest. The altered barrier to the B-listed dock is visually detrimental to the architectural character, appearance and historic interest of the dock and its setting.

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The modern fencing panels are not justified on the grounds that they are required to address health and safety risk on the basis of a single incident. The barrier is an unsympathetic modern design that has been created to copy the garden fencing in a nearby modern housing development - it is not appropriate in design, scale and materials to the listed structures.

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Comments for Planning Application 20/05548/FUL

Application Summary

Application Number: 20/05548/FUL

Address: Land To The South Of Albert Dock Edinburgh

Proposal: Install protective barrier along the south of Albert Dock at Stevedore Place, Leith.

Case Officer: Daniel Lodge

Customer Details

Name: Dr David Hill

Address: 30 Stevedore Place Edinburgh

Comment Details

Commenter Type: Neighbour

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: Dear Mr Lodge,

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whilst still being in keeping with the historical quayside setting of Albert Dock and the conservation area character appraisal. Albert Dock in Liverpool is a good example of a listed historical dockside with extremely high footfall that has successfully retained their bollard and chain perimeter barriers with 3 or 4 chains between each bollard.

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Kind regards,
David Hill

Specific contraventions of the Edinburgh Local Development Plan

DES 1: Design Quality and Context

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Comments for Planning Application 20/05548/FUL

Application Summary

Application Number: 20/05548/FUL

Address: Land To The South Of Albert Dock Edinburgh

Proposal: Install protective barrier along the south of Albert Dock at Stevedore Place, Leith.

Case Officer: Daniel Lodge

Customer Details

Name: Mr Anthony Walker

Address: 35/11 Ocean Drive 0 Edinburgh

Comment Details

Commenter Type: Neighbour-Residential

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: As a local resident, recently retired as a Health and Safety Manager working in the Oil and Gas Sector I must object to the installation of the new and inappropriate fencing along the South side of the Albert Dock.

As is normal for Forth Ports Ltd., there has been a lack of consultation with residents and it appears, a complete disregard for the Planning System and the Planning Committee of The City of Edinburgh Council.

Health and Safety:

In addition to my objections relating to issues of planning, conservation, regulation and criminal disregard referred to below, I would like to state that, in my opinion, as an H&S professional, the solution that Forth Ports Ltd., and their Architects have arrived at and have installed is, at best no better than what existed before and at worst, may well cause more problem than before.

I say this for the following reasons:

What was pre-existing and what has been put in its place both act as a barrier both visual and structurally.

The new barrier is undoubtedly stronger and rigid however, in my opinion that makes it easier to climb or vault over.

The bottom horizontal rail provides a higher step encouraging people to stand on it making it easier to climb over.

In addition the top horizontal rail being rigidly fixed makes a perfect place for an older child, teenager or adult to walk along to show off their gymnastic skills.

Those with less good balance will fall off either on the landward side or the other way towards or beyond the dock edge and end up in the water!

The original chain barrier did not offer the same gymnastic opportunities.

Clearly Forth Ports did not see this issue as being a safety issue as I understand it took them 3 months to take any action on site.

If the previous chain barrier was deemed acceptable for the 3 months following the incident it seems strange that they then flaunt the most basic Health and Safety rules by failing to immediately make the site safe by using temporary safety signage, restrictions, barriers etc.

I suggest that Forth Ports Ltd. have got it wrong and there was no need to install new barriers and they should be required to replace these out of character steel barriers and return the original chains which are appropriate to the docks and the conservation status.

In addition:

Contravention of Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

The alteration of the bollard and chain perimeter barrier at Albert Dock on 30 December without planning permission is in breach of legislation and Scottish Government, Historic Environment Scotland and City of Edinburgh Council policies. The works on a listed structure without planning consent is a criminal offence under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

Contraventions of the Edinburgh Local Development Plan1

DES 1: Design Quality and Context

The modern fencing panels installed by Forth Ports Ltd at Albert Dock are inappropriate and not in line with the considerations set out in the ELDP. They are, by Forth Port's own acknowledgement

in the Design Statement, designed to match the garden fencing of the nearby Cala housing development (constructed in 2014). The scale and form of the panels conflict with the scale and form of the historic dockside - both at Albert Dock and within the wider Shore area.

DES 3: Development Design

As above, Forth Ports have not considered the existing historic and listed features, by altering them to reflect the garden fence design at the adjacent residential development at Stevedore Place. The fence panels have resulted in an unacceptable visual impact on the character of the dockside and the removal of the chains has resulted in an unacceptable physical impact on the listed structures.

DES 4: Layout Design

As above, Forth Ports has not considered the surrounding context. Albert Dock is part of the Old Shore Conservation Area. The new fence panels at the dockside edge negatively impact on existing eye-level views along the public right of way along the listed dockside and the character and streetscape of the wider Shore area.

DES 10: Waterside Development

The south side of Albert Dock is not part of the operational port and the existing path that separates the houses at Stevedore Place with the Dock is a public right of way. The new modern fence significantly diminishes the public frontage of the waterside. It negatively impacts on the conservation and landscape interests of the water environment and creates an unnecessary visual and physical barrier that prevents the enjoyment of the many residents and visitors who use the public footpath for recreation, exercise and to enjoy (and photograph) the historic dockland area.

ENV 3: Listed Buildings - Setting

Albert Dock forms part of the Port of Leith and its function is intrinsic to its character, appearance and historic interest. The altered barrier to the B-listed dock is visually detrimental to the architectural character, appearance and historic interest of the dock and its setting.

ENV 4: Listed Buildings - Alterations and Extensions

The modern fencing panels are not justified on the grounds that they are required to address health and safety risk on the basis of a single incident. The barrier is an unsympathetic modern design that has been created to copy the garden fencing in a nearby modern housing development - it is not appropriate in design, scale and materials to the listed structures.

ENV 6: Conservation Areas - Development

Albert Dock is within the Old Leith and Shore area of the Leith Conservation Area.

The Character Area Appraisal specifically mentions the bollard and chain style perimeter barrier as part of the streetscape at the Shore.

The modern fencing panels installed by Forth Ports are inappropriate and unsympathetic to the listed structures and the Shore streetscape. They do not reflect the special character of the Old Shore conservation area. Other dockland areas in other UK cities have managed to address health and safety issues without compromising the historic character. For example, Albert Dock in Liverpool retains bollard and chain barriers, but there are four rather than two chains and they are thicker.

Contravention of: The Scottish Government Scottish Planning Policy

According to Scottish planning policy, listed structures should be protected from demolition or other work that would adversely affect them or their setting. Any change to a listed structure should be managed to protect its special interest. Where planning permission and listed building consent are sought for development to, or affecting, a listed structure, special regard must be given to the importance of preserving and enhancing the structure, its setting and any features of special architectural or historic interest. The layout, design, materials, scale, siting and use of any development which will affect a listed structure, or its setting, should be appropriate to the character and appearance of the structure and setting.

Forth Ports Ltd., ignores: Listed Buildings and Conservation Areas Guidance

Listed Buildings and Conservation Areas guidance2 Part 2 - Conservation Areas/Conservation Area Character Appraisals (page 23) 2.

Special attention must be paid to the character and appearance of the conservation area when planning controls are being exercised. Most applications for planning permission for alterations will, therefore, be advertised for public comment and any views expressed must be taken into account when making a decision on the application.

General Principles (page 24) .

Designation of a conservation area does not mean development is prohibited. However, when considering development within a conservation area, special attention must be paid to its character and appearance.

Proposals which fail to preserve or enhance the character or appearance of the area will normally be refused.

Guidance on what contributes to character is given in the conservation area character appraisals. · The aim should be to preserve the spatial and structural patterns of the historic fabric and the architectural features that make it significant. · Preservation and re-use should always be considered as the first option. · Interventions need to be compatible with the historic context, not overwhelming or imposing. · Without exception, the highest standards of materials and workmanship will be required for all works in conservation area Extensions and Alterations (page 24) · Proposals must preserve or enhance the character or appearance of the conservation area.

Specifically:

Albert Dock lies within the Leith Conservation Area ('Old Leith and Shore' sub-area). The Dock, together with its '...stone flagged and setted quayside with bollards, railway tracks and three travelling cranes...', is Category B-Listed as being of special architectural and historical interest by Historic Environment Scotland. Bollard and chain barriers are a feature throughout the Conservation Area which protect dockside edges.

The alteration of the listed perimeter barrier at Albert Dock is in breach of this guidance.

Leith Conservation Area Character Appraisal

The character appraisal for the conservation area identifies the essential character of Leith. It should be seen as a material consideration in relation to this planning application. The streetscape section of the character appraisal specifically highlights the quayside areas being separated by bollards with

chains linking them. Bollards with chains are a quintessential part of the public realm and streetscape within Leith. They can be found as perimeter barriers around the Albert and Victoria Dock Basins and along all parts of the nearby Shore area. This continuity is important to the character of the entire Leith conservation area.

The replacement barrier panels are not in keeping with the Leith conservation area character appraisal and set a precedent for the wider area should this application be approved.

The City of Edinburgh Planning Committee must note and take account of:

Scottish Government Planning Advice Note (PAN) 71: Conservation Area Management

The alteration already carried out and this planning application is in breach of several policies, namely:

The Historic Environment Policy for Scotland (HEPS)

This policy is designed to support good decision making for Scotland's unique places. The designation of Albert Dock is the legal recognition of its importance as a historic site. The designation seeks to ensure that the cultural, social, environmental and economic value of Scotland's historic environment makes a strong contribution to the development and wellbeing of the nation and its people. It should also ensure that sites and places are recognised by law through the planning system and other regulatory processes.

Managing Change in the Historic Environment

This HES policy states that decisions about listed structures should always focus on the qualities that make them important - their special interest. A range of factors contributes to a special interest, but the key factor when considering whether change should be made is overall historic character.

The Historic Environment Scotland listing for Albert Dock in Leith makes pointed reference to post and chain barriers to the perimeter of the swing bridge. Post and chain barrier is therefore in our view the barrier solution most in keeping with the dock edge itself and as mentioned above, already widely used throughout the entire conservation area. The modern fencing installed by Forth Ports at Albert Dock negatively impacts on the historic character of Albert Dock and the Old Shore area. It negatively impacts on the local community's sense of place, identity and wellbeing.

Health and Safety

We are aware of the health and safety aspects and that it is one of the considerations the planning process for applications (FUL) takes into account. However, we would like to point out that the assertion in the Forth Port's Design Statement that 'Garden gates provide direct access from the dwellings to the Dock edge' is incorrect. The houses along Stevedore Place are separated from the dock edge by:

- A 2 m wide fenced-in garden with a gate that can be easily locked with a padlock or similar.
- A 3 m wide public footpath (approximately 150 m in length) that runs between the gardens and bollard and chain barrier. It is used primarily by residents and pedestrians as a walkway along the dockside.
- A bollard and chain barrier, which is set approximately 1.5 m back from the dock edge.

Industry guidance and good practice set out in the HSE (Health and Safety Executive) publication L148 Safety in Docks: Approved Code of Practice and guidance (ACOP) specifically highlights taut chain as being an acceptable solution for a barrier rail in a dockside setting close to residential properties. There is no reason for it not to be acceptable at Albert Dock in Leith.

To that end we are concerned that there is not a copy of completed Risk Assessment Form providing analysis behind the decision made by Forth Ports Ltd that rejects alternative and more appropriate solutions.

Conclusion:

For all the reasons listed above, I request the committee refuse this retrospective application and demand that the original chain barriers be reinstated.

If the original chain barrier is not deemed acceptable then, a development of the chain solution be found in consultation with local residents and the planning authorities. The chain barrier used at Liverpool Docks is an obvious solution as it protects a significantly more public dockside than exists in Leith.

When a satisfactory solution is agreed by all parties then permission for any alteration should be applied for following the correct application procedure.

Comments for Planning Application 20/05548/FUL

Application Summary

Application Number: 20/05548/FUL

Address: Land To The South Of Albert Dock Edinburgh

Proposal: Install protective barrier along the south of Albert Dock at Stevedore Place, Leith.

Case Officer: Daniel Lodge

Customer Details

Name: Ms Martha Findlay

Address: 33 Madeira Street Edinburgh

Comment Details

Commenter Type: Neighbour

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment:I was alerted to the proposals via the article in the Edinburgh Reporter:

<https://theedinburghreporter.co.uk/2020/12/residents-object-as-forth-ports-remove-listed-chains-at-albert-dock/>

Albert Docks is part of Leith Conservation Area, and the railings in question are an integral element of the unique built heritage environment. The railings are part of the overall historic aesthetic, making the area a more attractive neighbourhood for people to live, work and visit.

The new modern barriers erode the heritage of Albert Docks and significantly reduce the historic appeal of the area. The Shore and Albert Docks should be a jewel in Edinburgh's crown, but continued modern developments and interventions threaten to ruin the area for present and future generations.

If the historic railings present a health and safety hazard, then a design solution needs to be applied to ensure that the railings can remain in place, with additional measures designed in-keeping with the historic environment of Albert Docks. The proposed new barriers are an unsightly and ill-planned solution which I strongly object to.

Comments for Planning Application 20/05548/FUL

Application Summary

Application Number: 20/05548/FUL

Address: Land To The South Of Albert Dock Edinburgh

Proposal: Install protective barrier along the south of Albert Dock at Stevedore Place, Leith.

Case Officer: Daniel Lodge

Customer Details

Name: Lord Cockburn Association

Address: 1 Trunks Close, 55 High Street, Edinburgh EH1 1SR

Comment Details

Commenter Type: Amenity Body

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: The Cockburn Association OBJECTS to this application.

The proposed replacement barrier panels are completely out of keeping with the historical quayside setting of Albert Dock. We do appreciate the intent by Forth Ports to improve pedestrian safety around the dock, however we feel there are more sympathetic ways of achieving this.

This proposal relates to a listed structure.

Policy Env 2 Listed Buildings states that proposals for the total or substantial demolition of a listed building will only be supported in exceptional circumstances, taking into account: a) the condition of the building and the cost of repairing and maintaining it in relation to its importance and to the value to be derived from its continued use b) the adequacy of efforts to retain the building in, or adapt it to, a use that will safeguard its future, including its marketing at a price reflecting its location and condition to potential restoring purchasers for a reasonable period. c) the merits of alternative proposals for the site and whether the public benefits to be derived from allowing demolition outweigh the loss.

The tests for demolition are also detailed in the Scottish Historic Environment Policy. No listed building should be demolished unless it has been clearly demonstrated that every effort has been made to retain it.

This proposal relates to a site is within the Old Leith and Shore area of the Leith Conservation Area.

Policy Env 4 Conservation Areas - Demolition of Buildings states that proposals for the demolition

of any building within a conservation area, whether listed or not, will not normally be permitted unless a detailed planning application is approved for a replacement building which enhances or preserves the character of the area or, if acceptable, for the landscaping of the site.

We understand that there has been no meaningful consultation with the local community, including Albert Dock residents. We are disappointed by the lack of engagement shown by Forth Ports and its approach to implementing these works.

We note that the CEC has opened an Enforcement File having been altered to the ongoing works on this site, in the absence of planning permission and LBC.

Comments for Planning Application 20/05548/FUL

Application Summary

Application Number: 20/05548/FUL

Address: Land To The South Of Albert Dock Edinburgh

Proposal: Install protective barrier along the south of Albert Dock at Stevedore Place, Leith.

Case Officer: Daniel Lodge

Customer Details

Name: Mr Robert Drysdale

Address: 31/17 Ocean Drive Edinburgh

Comment Details

Commenter Type: Other

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: I object to any works being carried out in advance of the granting of planning permission, such as was the case here. If the works were considered pressing from a public safety point of view, as is claimed in the Design Statement, temporary barriers ought to have been erected immediately following the incident with the child, pending discussions with local residents and the council as to an appropriate design for a permanent solution. No such interim precautions were taken. The decision to press ahead with the fabrication and installation of the railings in advance of the granting of permission and without consultation showed no regard for the interests of local residents and was in clear breach of planning legislation. The excuse for lack of consultation stated in the Design Statement, that no pre-application consultation was required, is not a justification for the premature action taken here.

Comments for Planning Application 20/05548/FUL

Application Summary

Application Number: 20/05548/FUL

Address: Land To The South Of Albert Dock Edinburgh

Proposal: Install protective barrier along the south of Albert Dock at Stevedore Place, Leith.

Case Officer: Daniel Lodge

Customer Details

Name: Mr Alan Chalmers

Address: 36 Stevedore Place Edinburgh

Comment Details

Commenter Type: Neighbour-Residential

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: Dear Planners,

I would like to register my very strong objection to planning application number 20/05548/FUL and listed building consent application number 20/05546/LBC.

I'd like to add at this point that, on top of my objection, I find it extremely concerning that Forth Ports actually carried out their 'proposed' alterations to the bollard and chain perimeter barrier at Albert Dock on 30 December without planning permission and that this is in breach of legislation and Scottish Government, Historic Environment Scotland and City of Edinburgh Council policies. The works on a listed structure without planning consent is a criminal offence under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

I find it quite shocking that this can happen with no measures taken against Forth Ports, or actions to stop or reverse this, pending the outcome of the planning applications. The residents of Stevedore Place reported this to the CoE compliance officer the morning these unauthorised works were about to begin, but they appeared powerless to step in and stop this. Surely this cannot be correct; and as a consequence how is it possible to control unauthorised works on listed buildings (and especially so in a city as rich in listings as Edinburgh) that will undermine the whole point of the protection that listing is there to give?

I feel very strongly that this application by Forth Ports to replace the bollard and chain barriers with modern vertical fence railings is completely out of keeping with the historical quayside setting of Albert Dock and directly contravenes the Grade B listing. I do appreciate the intent by Forth Ports to improve pedestrian safety around the dock, however I feel there are more sympathetic and considered ways of achieving this (e.g. increasing the number and thickness of chains to 3 or even

4) - covered further below.

Albert Dock is located within the Leith Conversation Area ("Old Leith and Shore" sub-area). The character appraisal for the conservation area identifies the essential character of Leith. It should be seen as a material consideration in relation to this planning application. The streetscape section of the character appraisal specifically highlights the quayside areas being separated by bollards with chains linking them. Bollards with chains are a quintessential part of the public realm and streetscape within Leith. They can be found as perimeter barriers around the Albert and Victoria Dock Basins and along all parts of the wider Shore area. This continuity is important and integral to the character of the entire Leith conservation area.

The proposed replacement railings are not in keeping with the Leith conservation area character appraisal and would set a precedent that is detrimental to the overall character of the wider area should this application be approved. Piece meal and gradual works like this taken together, if approved, will erode this character and undermine the sense of place that makes the Leith docksides and Shore area so special.

My objection is based on the following material considerations:

Planning policy and context

This application also does not meet Edinburgh Local Development Plan (EDLP) polices (see below) and other relevant Scottish Government and statutory agency requirements on conservation areas and listed structures (referenced below). Listed Building Consent (LBC) assesses whether the works will affect the historic interest of the listed dock and preserve or enhance the special character or appearance of the conservation area. Local authorities have a statutory duty to identify and designate areas of special architectural or historic interest and ensure that any alterations, for whatever reason, are carefully considered.

Contraventions of the Edinburgh Local Development Plan*

*Edinburgh Local Development Plan (EDLP) November 2016. Policies (Policy Des 12 Alterations and Extensions - page 100); (Caring for the Environment - page 101)

DES 1: Design Quality and Context

The modern fencing panels installed by Forth Ports Ltd at Albert Dock are inappropriate and not in line with the considerations set out in the ELDP. They are, by Forth Port's own acknowledgement in the Design Statement, designed to match the garden fencing of the nearby Cala housing development (constructed in 2014). The scale and form of the panels conflict with the scale and form of the historic dockside - both at Albert Dock and within the wider Shore area.

DES 3: Development Design

As above, Forth Ports have not considered the existing historic and listed features, by altering

them to reflect the garden fence design at the adjacent modern residential development at Stevedore Place. The fence panels have resulted in an unacceptable visual impact on the character of the dockside and the removal of the chains has resulted in an unacceptable physical impact on the listed structures.

DES 4: Layout Design

As above, Forth Ports has not considered the surrounding context. Albert Dock is part of the Old Shore Conservation Area. The new fence panels at the dockside edge negatively impact on existing eye-level views along the public right of way along the list dockside and the character and streetscape of the wider Shore area.

DES 10: Waterside Development

The south side of Albert Dock is not part of the operational port and the existing path that separates the houses at Stevedore Place with the Dock is a public right of way. The new modern fence significantly diminishes the public frontage of the waterside. It negatively impacts on the conservation and landscape interests of the water environment and creates an unnecessary visual and physical barrier that prevents the enjoyment of the many residents and visitors who use the public footpath for recreation, exercise and to enjoy (and photograph) the historic dockland area.

ENV 3: Listed Buildings - Setting

Albert Dock forms part of the Port of Leith and its function is intrinsic to its character, appearance and historic interest. The altered barrier to the B-listed dock is visually detrimental to the architectural character, appearance and historic interest of the dock and its setting.

ENV 4: Listed Buildings - Alterations and Extensions

The modern fencing panels are not justified on the grounds that they are required to address health and safety risk on the basis of a single incident. The barrier is an unsympathetic modern design that has been created to copy the garden fencing in a nearby modern housing development - it is not appropriate in design, scale and materials to the listed structures.

ENV 6: Conservation Areas - Development

Albert Dock is within the Old Leith and Shore area of the Leith Conservation Area. The Character Area Appraisal specifically mentions the bollard and chain style perimeter barrier as part of the streetscape at the Shore. The modern fencing panels installed by Forth Ports are inappropriate and unsympathetic to the listed structures and the Shore streetscape. They do not reflect the special character of the Old Shore conservation area. Other dockland areas in other UK cities have addressed health and safety issues without compromising the historic character. For example, Albert Dock in Liverpool retains bollard and chain barriers, but there are four rather than two chains and they are thicker.

Scottish Government Scottish Planning Policy:

According to Scottish planning policy, listed structures should be protected from demolition or

other work that would adversely affect them or their setting. Any change to a listed structure should be managed to protect its special interest. Where planning permission and listed building consent are sought for development to, or affecting, a listed structure, special regard must be given to the importance of preserving and enhancing the structure, its setting and any features of special architectural or historic interest. The layout, design, materials, scale, siting and use of any development which will affect a listed structure, or its setting, should be appropriate to the character and appearance of the structure and setting.

Listed Buildings and Conservation Areas Guidance

Listed Buildings and Conservation Areas guidance*

*Listed Buildings and Conservation Areas Guidance (City of Edinburgh Council - updated February 2019)

Part 2 - Conservation Areas/Conservation Area Character Appraisals (page 23)

2. Special attention must be paid to the character and appearance of the conservation area when planning controls are being exercised. Most applications for planning permission for alterations will, therefore, be advertised for public comment and any views expressed must be taken into account when making a decision on the application.

General Principles (page 24):

- Designation of a conservation area does not mean development is prohibited. However, when considering development within a conservation area, special attention must be paid to its character and appearance. Proposals which fail to preserve or enhance the character or appearance of the area will normally be refused. Guidance on what contributes to character is given in the conservation area character appraisals.
- The aim should be to preserve the spatial and structural patterns of the historic fabric and the architectural features that make it significant.
- Preservation and re-use should always be considered as the first option.
- Interventions need to be compatible with the historic context, not overwhelming or imposing.
- Without exception, the highest standards of materials and workmanship will be required for all works in conservation area

Extensions and Alterations (page 24):

- Proposals must preserve or enhance the character or appearance of the conservation area.

Albert Dock lies within the Leith Conservation Area ('Old Leith and Shore' sub-area). The Dock, together with its '...stone flagged and setted quayside with bollards, railway tracks and three travelling cranes...', is Category B-Listed as being of special architectural and historical interest by Historic Environment Scotland. Bollard and chain barriers are a feature throughout the Conservation Area which protect dockside edges.

Conservation Area Character Appraisals identify the essential character of conservation areas. They guide the local planning authority in making planning decisions and, where opportunities arise, preparing enhancement proposals. The Character Appraisals are a material consideration when considering applications for development within conservation areas. The alteration of the listed perimeter barrier at Albert Dock is in breach of this guidance.

Leith Conservation Area Character Appraisal:

The character appraisal for the conservation area identifies the essential character of Leith. It should be seen as a material consideration in relation to this planning application. The streetscape section of the character appraisal specifically highlights the quayside areas being separated by bollards with chains linking them. Bollards with chains are a quintessential part of the public realm and streetscape within Leith. They can be found as perimeter barriers around the Albert and Victoria Dock Basins and along all parts of the nearby Shore area. This continuity is important to the character of the entire Leith conservation area. The replacement barrier panels are not in keeping with the Leith conservation area character appraisal and set a precedent for the wider area should this application be approved.

Scottish Government Planning Advice Note (PAN) 71: Conservation Area Management:

The designation of a conservation area is a means to safeguard and enhance the sense of place, character and appearance of our most valued historic places. Buildings of character, listed buildings, scheduled monuments, trees, historic street patterns, open spaces and designed gardens and landscapes are important components of these areas.

Historic Environment Policy for Scotland (HEPS):

The alteration of the listed perimeter barrier at Albert Dock is in breach of Historic Environment Policy for Scotland (HEPS), which is designed to support good decision making for Scotland's unique places. The designation of Albert Dock is the legal recognition of its importance as a historic site. The designation seeks to ensure that the cultural, social, environmental and economic value of Scotland's historic environment makes a strong contribution to the development and wellbeing of the nation and its people. It should also ensure that sites and places are recognised by law through the planning system and other regulatory processes.

Managing Change in the Historic Environment:

This HES policy states that decisions about listed structures should always focus on the qualities that make them important - their special interest. A range of factors contributes to a special

interest, but the key factor when considering whether change should be made is overall historic character.

The Historic Environment Scotland listing for Albert Dock in Leith makes pointed reference to post and chain barriers to the perimeter of the swing bridge. Post and chain barrier is therefore in our view the barrier solution most in keeping with the dock edge itself and as mentioned above, already widely used throughout the entire conservation area. The modern fencing installed by Forth Ports at Albert Dock negatively impacts on the historic character of Albert Dock and the Old Shore area. It negatively impacts on the local community's sense of place, identity and wellbeing.

Health and safety

We are aware of the health and safety aspects and that it is one of the considerations the planning process for applications (FUL) takes into account. However, we would like to point out that the assertion in the Forth Port's Design Statement that 'Garden gates provide direct access from the dwellings to the Dock edge' is incorrect. The houses along Stevedore Place are separated from the dock edge by:

- A 2 m wide fenced-in garden with a gate that can be easily locked with a padlock or similar.
- A 3 m wide public footpath (approximately 150 m in length) that runs between the gardens and bollard and chain barrier. It is used primarily by residents and pedestrians as a walkway along the dockside.
- A bollard and chain barrier, which is set approximately 1.5 m back from the dock edge.

Industry guidance and good practice set out in the HSE (Health and Safety Executive) publication L148 Safety in Docks: Approved Code of Practice and guidance (ACOP) specifically highlights taut chain as being an acceptable solution for a barrier rail in a dockside setting close to residential properties. There is no reason for it not to be acceptable at Albert Dock in Leith. To that end we are concerned that there is not a copy of completed Risk Assessment Form providing analysis behind the decision made by Forth Ports Ltd that rejects alternative and more appropriate solutions.

I am not against the intent of Forth Ports to upgrade pedestrian safety measures around Albert Dock, however I believe there are much more sympathetic and appropriate ways of achieving this. One such way would be to increase the number of chains between the bollards (from 2 currently to 3 or 4) and reduce the 'sag' of the chains. This would meet the presumed intent of upgrading safety measures whilst still being in keeping with the historical quayside setting of Albert Dock and the conservation area character appraisal. Albert Dock in Liverpool is a good example of a listed historical dockside with extremely high footfall that has successfully retained their bollard and chain perimeter barriers with 3 or 4 chains between each bollard.

I would also like to state that, in my opinion as someone who works in the design of outdoor

recreation provision, the solution that Forth Ports have arrived at and installed is, at best no better than what existed before and at worst may well cause more problem than before. I say this for the following reasons:

What was pre-existing and what has been put in its place both act as a barrier both visual and structurally.

The new barrier is undoubtedly stronger and rigid however, in my opinion that makes it easier to climb or vault over. People will be more inclined to attempt to climb over these rigid railings to get to the dockside with the potential for slips and trips - the most common cause of all accidents.

The bottom horizontal rail provides a higher step encouraging people to stand on it making it easier to climb over.

In addition the top horizontal rail being rigidly fixed makes a perfect place for an older child, teenager or adult to try walking along/balancing on to show off their 'gymnastic' skills. Those with less good balance will fall off either on the landward side or the other way towards or beyond the dock edge and end up in the water!

The original chain barrier did not offer the same opportunities. Chains also have the benefit of being less stable to try to stand, or balance, on (e.g. they move/swing) and don't offer the same 'challenge' or 'temptation'.

Clearly Forth Ports did not see this issue as being a safety issue as I understand it took them 3 months to take any action on site. If the previous chain barrier was deemed acceptable for the 3 months following the incident it seems strange that they then flaunt just about every possible Planning Regulation and fail to make the site safe by using temporary safety signage, barriers during this time.

I conclude that Forth Ports have got this wrong the their proposed solution is ill considered and there was no need to install new barriers and they should be required to replace these out of character steel barriers and return the original chains (or solution with added chains) which are appropriate to the historic docks, the conservation & listed status, the level of H&S required by HSE guidelines at this type of dockside and commensurate with the risk.

Community and statutory engagement

The community are disappointed by the lack of engagement shown by Forth Ports and its approach to implementing the works without planning permission or consultation with the local community and statutory agencies. Works started on 29 December 2020; the day local community received the notification of the application for Planning.

The community have been keen to meet constructively with Forth Ports Ltd to discuss options to improve safety that are not to the detriment of historic character. We have put together a letter and information that shows safety measures adopted at other comparable locations in the UK (e.g. Albert Dock in Liverpool, an area with much higher pedestrian footfall). However, despite numerous requests and pleas for meetings with the Port there has been no engagement from Port staff, beyond a standard response to say works were going ahead but that they are temporary.

For all the reasons listed above, I request the committee refuse these applications and insist that the original chain barriers be reinstated.

If the original chain barrier is not deemed acceptable', then a development of the chain solution should be found in consultation with local residents and the planning authorities. The chain barrier used at Liverpool Docks is an obvious solution as it protects a significantly more public dockside than exists in Leith. When all parties agree a satisfactory solution then permission for any alteration should be applied for following the correct application procedure.

•EDINBURGH•

THE CITY OF EDINBURGH COUNCIL

Business Centre G.2 Waverley Court 4 East Market Street Edinburgh EH8 8BG Email: planning.support@edinburgh.gov.uk

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100339741-004

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

Applicant or Agent Details

Are you an applicant or an agent? * (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

Applicant Agent

Agent Details

Please enter Agent details

| | | | |
|-----------------------|-------------------------------------|--|----------------|
| Company/Organisation: | HolderPlanning Ltd | | |
| Ref. Number: | | You must enter a Building Name or Number, or both: * | |
| First Name: * | Lesley | Building Name: | |
| Last Name: * | McGrath | Building Number: | 1 |
| Telephone Number: * | 07841487916 | Address 1 (Street): * | Bridgend |
| Extension Number: | | Address 2: | |
| Mobile Number: | | Town/City: * | East Linton |
| Fax Number: | | Country: * | United Kingdom |
| | | Postcode: * | EH40 3AF |
| Email Address: * | lesley.mcgrath@holderplanning.co.uk | | |

Is the applicant an individual or an organisation/corporate entity? *

Individual Organisation/Corporate entity

Applicant Details

Please enter Applicant details

| | | |
|----------------------|----------------------|---|
| Title: | <input type="text"/> | You must enter a Building Name or Number, or both: * |
| Other Title: | <input type="text"/> | Building Name: <input type="text"/> |
| First Name: * | <input type="text"/> | Building Number: <input type="text"/> 1 |
| Last Name: * | <input type="text"/> | Address 1 (Street): * <input type="text"/> Prince of Wales Dock |
| Company/Organisation | Forth Ports Limited | Address 2: <input type="text"/> Leith |
| Telephone Number: * | <input type="text"/> | Town/City: * <input type="text"/> Edinburgh |
| Extension Number: | <input type="text"/> | Country: * <input type="text"/> UK |
| Mobile Number: | <input type="text"/> | Postcode: * <input type="text"/> EH6 7DX |
| Fax Number: | <input type="text"/> | |
| Email Address: * | <input type="text"/> | |

Site Address Details

| | |
|---|--|
| Planning Authority: | <input type="text"/> City of Edinburgh Council |
| Full postal address of the site (including postcode where available): | |
| Address 1: | <input type="text"/> |
| Address 2: | <input type="text"/> |
| Address 3: | <input type="text"/> |
| Address 4: | <input type="text"/> |
| Address 5: | <input type="text"/> |
| Town/City/Settlement: | <input type="text"/> |
| Post Code: | <input type="text"/> |

Please identify/describe the location of the site or sites

Northing

676791

Easting

327338

Description of Proposal

Please provide a description of your proposal to which your review relates. The description should be the same as given in the application form, or as amended with the agreement of the planning authority: *
(Max 500 characters)

Install protective barrier along the land to the south of Albert Dock at Stevedore Place, Leith

Type of Application

What type of application did you submit to the planning authority? *

- Application for planning permission (including householder application but excluding application to work minerals).
- Application for planning permission in principle.
- Further application.
- Application for approval of matters specified in conditions.

What does your review relate to? *

- Refusal Notice.
- Grant of permission with Conditions imposed.
- No decision reached within the prescribed period (two months after validation date or any agreed extension) – deemed refusal.

Statement of reasons for seeking review

You must state in full, why you are seeking a review of the planning authority's decision (or failure to make a decision). Your statement must set out all matters you consider require to be taken into account in determining your review. If necessary this can be provided as a separate document in the 'Supporting Documents' section: * (Max 500 characters)

Note: you are unlikely to have a further opportunity to add to your statement of appeal at a later date, so it is essential that you produce all of the information you want the decision-maker to take into account.

You should not however raise any new matter which was not before the planning authority at the time it decided your application (or at the time expiry of the period of determination), unless you can demonstrate that the new matter could not have been raised before that time or that it not being raised before that time is a consequence of exceptional circumstances.

Please refer to Appeal Statement

Have you raised any matters which were not before the appointed officer at the time the
Determination on your application was made? *

Yes No

If yes, you should explain in the box below, why you are raising the new matter, why it was not raised with the appointed officer before
your application was determined and why you consider it should be considered in your review: * (Max 500 characters)

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review. You can attach these documents electronically later in the process: * (Max 500 characters)

Please refer to Section 1 of the Appeal Statement which contains a list of all Appeal Documents

Application Details

Please provide the application reference no. given to you by your planning authority for your previous application.

20/05548/FUL

What date was the application submitted to the planning authority? *

10/12/2020

What date was the decision issued by the planning authority? *

10/02/2021

Review Procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Can this review continue to a conclusion, in your opinion, based on a review of the relevant information provided by yourself and other parties only, without any further procedures? For example, written submission, hearing session, site inspection. *

Yes No

Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may select more than one option if you wish the review to be a combination of procedures.

Please select a further procedure *

By means of inspection of the land to which the review relates

Please explain in detail in your own words why this further procedure is required and the matters set out in your statement of appeal it will deal with? (Max 500 characters)

The development is site specific to its surroundings. A site visit will allow the Local Review Body to understand matters of safety, development in context of the Listed Building and Conservation Area and proximity of gated residential properties. Should the LRB wish to view the site from areas within the Port of Leith access is restricted for reasons of safety and security. Access is not available to the public. Access must be arranged in advance.

Please select a further procedure *

Further written submissions on specific matters

Please explain in detail in your own words why this further procedure is required and the matters set out in your statement of appeal it will deal with? (Max 500 characters)

The Appellant welcomes any requirement to further address matters relating to health and safety or other matters, which the Local Review Body may consider appropriate.

Please select a further procedure *

Holding one or more hearing sessions on specific matters

Please explain in detail in your own words why this further procedure is required and the matters set out in your statement of appeal it will deal with? (Max 500 characters)

The Appellant welcomes any requirement to further address matters relating to health and safety or other matters, which the Local Review Body may consider appropriate.

In the event that the Local Review Body appointed to consider your application decides to inspect the site, in your opinion:

Can the site be clearly seen from a road or public land? *

Yes No

Is it possible for the site to be accessed safely and without barriers to entry? *

Yes No

Checklist – Application for Notice of Review

Please complete the following checklist to make sure you have provided all the necessary information in support of your appeal. Failure to submit all this information may result in your appeal being deemed invalid.

Have you provided the name and address of the applicant? * Yes No

Have you provided the date and reference number of the application which is the subject of this review? * Yes No

If you are the agent, acting on behalf of the applicant, have you provided details of your name and address and indicated whether any notice or correspondence required in connection with the review should be sent to you or the applicant? * Yes No N/A

Have you provided a statement setting out your reasons for requiring a review and by what procedure (or combination of procedures) you wish the review to be conducted? * Yes No

Note: You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. You may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

Please attach a copy of all documents, material and evidence which you intend to rely on (e.g. plans and Drawings) which are now the subject of this review * Yes No

Note: Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice (if any) from the earlier consent.

Declare – Notice of Review

I/We the applicant/agent certify that this is an application for review on the grounds stated.

Declaration Name: Mrs Lesley McGrath

Declaration Date: 05/05/2021

APPEAL STATEMENT

Development: Installation of protective barrier

Location: Albert Dock at Stevedore Place, Leith

Date: 5 May 2021



FORTH PORTS LIMITED

HolderPlanning

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1.0 APPEAL DOCUMENTS

- 1.1 On behalf of Forth Ports Limited, the Documents submitted with the Appeal against refusal of an application for Planning Permission for development to ‘install protective barrier along the land to the south of Albert Dock at Stevedore Place, Leith (ref: 20/05548/FUL) are as follows:

| Document number | Description |
|------------------------|---|
| FP01 | Planning Application Form |
| FP02 | Location Plan |
| FP03 | Existing Site Plan LPL002 |
| FP04 | Existing Bollards LPL010 |
| FP05 | Proposed site plan LPL102 |
| FP06 | Railings between bollards LPL110 |
| FP07 | Design Statement |
| FP08 | Listed Building Consent Form |
| FP09 | Neighbour notification letter - Stevedore Place Fence Works |
| FP10 | Email correspondence notifying Council of works |
| FP11 | Health and Safety Executive, ‘Safety in docks, Approved Code of Practice and guidance |
| FP12 | Liverpool Docks Fencing Examples |
| FP13 | Email Holder Planning to CEC 250121 |
| FP14 | Legal Opinion for Forth Ports Limited prepared by Pinsent Masons |
| FP15 | Listed Building Consent Refusal Response, prepared by LDN Architects |
| FP16 | Decision Notice, Planning Permission Application ref: 20/05548/FUL |
| FP17 | Decision Notice, Listed Building Consent Application ref: 20/05546/LBC |

| Document number | Description |
|------------------------|---|
| FP18 | Report of Handling, Planning Application ref: 20/05548/FUL |
| FP19 | Report of Handling, Listed Building Consent Application ref: 20/05546/LBC |
| FP20 | Leith Harbour and Newhaven Community Council Consultation Response |
| FP21 | City of Edinburgh Council, Archaeology consultation response |
| FP22 | Forth Ports Risk Assessment |
| FP23 | Leith Conservation Area Character Appraisal |
| FP24 | Plan showing boundary of operational Port of Leith |

2.0 INTRODUCTION

INTRODUCTION

- 2.1 This Appeal Statement has been prepared on behalf of Forth Ports Limited (Forth Ports) in support of an Appeal against the refusal of Planning Permission for the installation of a protective barrier along land to the south of Albert Dock at Stevedore Place, for the purpose of public safety.
- 2.2 At the time of submission of the Appeal, the outcome of the Appeal against refusal of Listed Building Consent in respect of the works is awaited from the DPEA. The Appeal has DPEA reference LBA-230-2216 and was submitted on 17 March 2021. The Appellant requests that consideration of the Appeal awaits the DPEA Reporter's decision, which, should be issued shortly. The decision will provide the Local Review Body with the Reporter's detailed consideration of matters relating to the Listed Building and Conservation Area.
- 2.3 Forth Ports is the harbour authority for the Forth and Tay estuaries and owns and operates the Port of Leith (FP24). Albert Dock forms part of the Port and it remains in operational use, with the transfer of cargo between vessel and land taking place on its northern and eastern quaysides. Residential development has taken place immediately to the south of the Dock at Stevedore Place, with gated gardens providing access directly on to a footpath, which formerly comprised an operational quayside and which leads to the edge of Albert Dock.
- 2.4 Until December 2020 posts and chains provided a barrier between the footway and the Dock edge. For the reasons set out below, the chains have now been replaced with protective barriers, comprising black painted metal vertical railings. The posts remain in place with the barriers attached using the 'lugs' previously used for holding the chains in place.

Background to Application

- 2.5 In September 2020, a young child exited one of the houses adjacent to the Dock, crossed the footpath, defeated the bollard and chain link barrier and fell into the Dock. Fortunately, the child was saved by a local resident using a lifebuoy located at the quayside and a member of the public who entered the Dock to retrieve the child. Had members of the public not witnessed the incident and acted in the manner in which they did, the potential consequences could have been fatal.
- 2.6 The Appellant has statutory obligations and duties in accordance with the provisions of the Occupiers' Liability (Scotland) Act 1960 and Health and Safety at Work etc. Act 1974. These obligation and duties are enacted in the public interest. Following the incident, the Appellant identified that there was a risk that it could re-occur and undertook a risk assessment (FP22) to determine the appropriate preventative measures to mitigate the risk. It concluded that the appropriate measures comprised the replacement of the chain link between the existing posts with vertical railing panels. The Appellant considers that the panels provide the sufficient level of protection required, whilst respecting the character and setting of the listed building (B Listed Albert

Dock) and the conservation area (Leith Conservation Area), as well as the adjacent residential dwellings on Stevedore Place.

- 2.7 The Appellant notified local residents that works would be undertaken to mitigate the risk which had been identified (FP09). It advised the Council (FP10) that as a matter of urgency, in the interests of safety and to prevent such an incident taking, protective barriers would be installed. The Appellant confirmed that the necessary applications for Planning Permission and Listed Building Consent would be submitted.

Application Procedure

- 2.8 Applications for Planning Permission (ref: 20/05548/FUL) and Listed Building Consent (ref: 20/05546/LBC) were submitted to City of Edinburgh Council on 10 December 2020. The Applications were supported with the relevant identical plans and drawing and a Design Statement (FP02 to FP08). Works commenced on 29 December 2020. The chain link was removed and the black painted panels installed utilising the existing lugs on the posts. The chain links are catalogued and held in storage by the Appellant.
- 2.9 Consultation responses were provided by the Council's Archaeologist (FP21) and the Community Council (FP20).
- 2.10 On 13 January 2021, the Case Officer met with representatives of the Appellant online. The meeting provided the Applicant with the opportunity to explain the requirement for the protective panels and explain in further detail the rationale for the design, including consideration of the Health and Safety Executive's, 'Safety in docks, Approved Code of Practice and guidance' (FP11). Examples of enhanced barrier treatments adjacent to residential dwellings around Liverpool Docks were also discussed (FP12). The Case Officer gave no indication that he was unsupportive of the proposal or suggested consideration of alternative or modified proposals. The meeting was followed up with an email which set out the key points raised at the meeting (FP13).
- 2.11 On 9 February 2021, the Case Officer contacted the Appellant's agent to advise that Applications would be refused, the reasons for this and that the decision notices would be issued imminently. No opportunity was therefore provided for further discussion. The decision notices are dated 10th and 11th February 2021 (FP16 and FP17). If the Case Officer had allowed for further discussion and consideration of relevant matters, the Appellant would have been able to assist in his understanding of the legal obligations and duties; the status and interpretation of Health and Safety Executive Practice and Guidance (FP11), which regrettably has been mis-interpreted; and factors taken into account in putting in place a protective barrier which provides the appropriate levels of access to the Dock.

- 2.12 On 10 February 2021, the decision notice (FP16) was issued in respect of the Application for Planning Permission (ref: 20/05548/FUL). The reasons for refusal of the Application are recorded on the decision notice as follows:
1. *The proposal fails to preserve the special character and setting of the Category 'B' listed Albert Dock including its setting and is therefore contrary to Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and Policies Env 3 'Listed Buildings - Setting' and Env 4 'Listed Buildings - Alterations and Extensions' of the Edinburgh Local Development Plan.*
 2. *The proposal fails to preserve or enhance the special character and appearance of the Leith Conservation Area and is therefore contrary to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and to Policy Env 6 'Conservation Areas - Development' of the Edinburgh Local Development Plan.*
- 2.13 On 11 February 2021, the decision notice (FP17) was issued in respect of the Application for Listed Building Consent (ref: 20/05546/LBC). The reasons for refusal of the Application are recorded on the decision notices as follows:
1. *The proposal fails to preserve the special character and setting of the Category 'B' listed Albert Dock and is therefore contrary to Section 14 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.*
 2. *The proposal fails to preserve the special character or appearance of the Leith Conservation Area and is therefore contrary to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.*
- 2.14 The Reports of Handling for the Applications were published upon issue of the decision notices (FP18 and FP19). These Reports contain errors and omissions and have been reviewed the Appellant's legal and architectural advisors. The Legal Opinion, prepared by Pinsent Masons (FP14) and Listed Building Consent Refusal Response, prepared by LDN Architects (FP15), which it should be noted is relevant to the Planning Application and this Appeal Statement address these matters.

Report of Handling - Factual Errors

- 2.15 The Report of Handling (FP18) fails to properly acknowledge the correct determining factors in the Application.
- 2.16 Firstly, it advises that the determining factors (page 2) include Section 14 of the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997. Section 14 of the Act relates to the determination of Listed Building applications and not the determination of applications for planning permission. The associated commentary then goes on to summarise Section 59 of the Act, which is

the appropriate section of the Act. The approach is illustrative of a lack of proper consideration, which is particularly concerning given that the Application was submitted and works undertaken to protect the public following a near fatal accident.

- 2.17 The same error is repeated at section C (page 4) of the Handling Report.
- 2.18 Secondly, again under the heading of determining factors the Handling Report (page 2) states that, *In determining applications for listed building consent, the Development Plan is not a statutory test. However the policies of the Local Development Plan (LDP) inform the assessment of the proposals and material considerations.*
- 2.19 The Handling Report is misleading. The Application and the Appeal are against refusal of planning permission and not listed building consent. The legal framework for determining applications and appeals for planning permission is the Town and Country Planning (Scotland) Act 1997. The determination of planning applications must be made in accordance with the development plan unless material considerations indicate otherwise (S25 of Town and Country Planning (Scotland) Act 1997). Section 59 of the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997 is also relevant. We have also identified the Appellant's obligations and duties which they must fulfil in accordance with the Occupiers Liability (Scotland) Act 1960 and the Health and Safety at Work etc. Act 1974 as a significant material consideration.
- 2.20 Thirdly, under the heading of 'Principle' (page 3), the Report states that the current boundary treatment is not of a design to prevent access to the dock edge and that additional measures could be put in place to make the boundary more secure.
- 2.21 The Appeal submission sets out the circumstances for the development and the legal provisions which make it essential to put in place a more secure boundary. The statement in the Handling Report is entirely misleading and could lead a decision maker to consider that in some way enhancing boundary treatments at this location is optional, which it clearly is not.
 - Fourthly, the Handling Report misinterprets the Health and Safety Executive, 'Safety in docks, Approved Code of Practice and guidance) (FP11), paragraph 155 and edits the text to imply 'taut wire, taut chain or other taut material as providing appropriate mitigation where children are present. The statement is entirely misleading and could lead a decision maker to consider that a lesser level of safety intervention than that proposed by the Appellant may be appropriate. Paragraph 155 of the Practice and guidance states,
Secure fencing should consist of an upper rail and an intermediate rail. In certain circumstances, eg the presence of children, a higher standard of protection will be required. The rails may where necessary consist of taut wire, taut chain or other taut material.

- Paragraph 155 read correctly advises that a higher standard of protection is required where children are present. It gives suggestions of appropriate materials for rails which are not specific to the presence of children.
- Paragraph 155 is guidance and it is for the Appellant determine the appropriate measures.
- The Appellant's legal obligations require it not just to take any measures to protect the public but to take measures that are actually effective and sufficient to eliminate any foreseeable danger (FP14, para 2.7)
- There is no evidence that the Council's assessment of the development is based on any expert Health and Safety opinion or technical advice.

Reasons for Appeal

- 2.22 With respect to the refusal of Planning Permission ref:20/05548/FUL:
- **The development is in accordance with the Development and in particular Edinburgh Local Development Plan, Policies ENV 3: Listed Buildings – Setting, ENV 4: Alterations and Extensions and ENV 6 – Conservation Areas Development.**
 - **The development is in accordance with Section 59 and Section 64 of the Planning (Listed Buildings and Conservation Area) (Scotland) Act 1997**
 - **The Planning Authority has failed to take into account relevant material considerations and in particular it has not considered the need to ensure that Albert Dock is safe to persons accessing it (especially children) nor allowed the Appellant to fully comply with its obligations under occupiers liability and health and safety law.**
- 2.23 **Had the Planning Authority appropriately considered these matters, we consider that the Application would have been granted and we invite the Local Review Body to allow the Appeal.**

Post Application

- 2.24 Following refusal of the Applications, the Appellant and their advisors met with the Council's Head of Planning and the Case Officer. The online meeting took place on 18 February 2021. The Appellant set out the justification for the development and the serious implications that the Planning Authority's decision had in regard to public safety and their ability to uphold their statutory obligations and duties. The Council advised that they accepted the principle of development, however, they did not support the Appellant's design solution. The Council's Head of Planning stated that the matter would now be for Scottish Government and Local Review Body (as appropriate) to determine.

- 2.25 The Council referred to the potential need for further boundary treatments elsewhere in the local area. The Appellant advised that the development at Albert Dock / Stevedore Place was site specific and required to address a particular set of local circumstances which comprised the availability of unsupervised immediate access to the Dock edge, especially by young children via garden gates from the adjacent residential development.

Structure of Appeal Statement

- 2.26 This Appeal Statement is structured in the following manner. Section 3 provides a description of the site, the justification for development, describes the development and sets out the factors which have been taken into consideration in the final form of development. Section 4 sets out the Appeal determination process, considers the Development Plan and relevant material considerations. Section 5 sets out the Appellant's concluding remarks.

3.0 THE DEVELOPMENT

Site Location

- 3.1 The Appeal site is located on the southern edge of Albert Dock at Stevedore Place, Leith. It lies on the immediate southern boundary of the operational Port of Leith. Albert Dock forms part of the Port's operational estate and movements between vessel and quayside continue to take place predominantly on the northern and eastern areas of the Dock.
- 3.2 To the south of the Appeal site lies a public footpath. Inset into the footpath are metal rails which were historically utilised for port operations when the quayside area to the south of Albert Dock formed part of the operational port estate. Residential dwellings are located to the south of the footpath, for which the Council granted planning permission in 2013 (ref: 12/03959/FUL). The dwellings have gated gardens with immediate access to the footpath. The Dock edge is located approximately 4m from the gated gardens.
- 3.3 To the east of the Appeal site, the Albert Dock quayside continues. The boundary treatment comprises suitable security fencing to delineate the operational port estate from the residential development and areas of public access. The former casino, which has planning permission for a change of use to Office (Class 4) is located to the east of Stevedore Place and the operational Port of Leith lies beyond these premises.
- 3.4 To the west of the Appeal site, the Albert Dock quayside continues. A timber fence forms a boundary to the footway and prevents pedestrian access to the west of the Appeal site. The carpark for the Fingal Hotel lies to the west of the timber fence. Posts and chains are located adjacent to the Dock edge at this location with a low metal barrier fence located approximately 2m to the south, this barrier acts as the car park's northern boundary. Timber fencing forms the western and southern boundaries of the car park.
- 3.5 The Appeal site lies close to the Albert Dock's western edge. At this location an armco security barrier is located close to the Dock edge and is designed to prevent vehicles accessing the Dock. The secure area of the Port of Leith, to which there is no public access, is located beyond this area.
- 3.6 The site is within the Leith Conservation Area, it is located on its northern most edge and forms a boundary between the operational Port and the Conservation Area.
- 3.7 The site area is 80 sq m, extending along the edge of residential development of Stevedore Place, and no further.

Site Description

- 3.8 The Appeal site comprises a small area of Dock edge along Albert Dock adjacent to the residential dwellings on Stevedore Place (FP02). It is a flat site which comprises stone setts and flagged stone quayside, black painted posts set in concrete with lugs for connecting protective barriers. As stated

in the Introduction and as can be seen on page 2 of the Design Statement and Application Drawings (FP03, FP04, FP07), prior to their removal (and safe storage), the barrier was formed of chain links. The chain links have been replaced with protective barrier panels comprising black painted metal vertical railings hooked into position using the existing metal lugs on the posts (FP05, FP06, FP15).

- 3.9 Albert Dock is B Listed Building (ref: LB27590). Records from www.pastmap.org.uk provide the following description:

Description

A M Rendall and G Robertson, engineers, 1869. Rectangular-shaped wet dock with masonry walls, 1100 ft long, 450 ft wide; 2 masonry slipways to E. Stone flagged and setted quayside with bollards, railway tracks and 3 travelling cranes (8 ton, 1950). Cast-iron, plate girder parallel swing bridge to W with post and chain barriers to perimeter and gearing house kiosk flanking.

Justification for Development

- 3.10 Following the recent incident, when a young child had to be rescued from Albert Dock basin, having accessed it from the Dock edge at Stevedore Place, the Appellant undertook a review of the incident and assessed the risk (FP22). It was concluded that from an urgent safety perspective works were required to prevent the risk of any further incidents happening again.
- 3.11 The Appellant has legal obligations and duties as outlined in the Occupiers' Liability (Scotland) Act 1960 and Health and Safety at Work etc 1974 in respect of health and safety. These are outlined in the Legal Opinion (FP14) which is submitted with the Appeal and provide an unequivocal justification for the development. It states,

2.1 As the owner and occupier of Albert Dock, FP has a duty of care to all visitors to ensure the premises are reasonably safe under the Occupiers' Liability (Scotland) Act 1960 (the 1960 Act).

2.2. The 1960 Act imposes an obligation to take reasonable care "...towards persons entering on the premises in respect of dangers which are due to the state of the premises or to anything done or omitted to be done on them and for which he is in law responsible"¹.

2.3 The 1960 Act specifies that an occupier must take "...such care as in all the circumstances of the case is reasonable to see that that person will not suffer injury or damage by reason of any such danger".

2.4 What is "reasonable" will depend on the facts and circumstances of each case but, generally, it is assessed in line with what a reasonable person would consider to be reasonable care. In short, if it is reasonably foreseeable that a certain danger to a third party exists, the occupier will

¹ S.1(1) of the 1960 Act.

owe a duty of care in respect of that danger. It follows that the occupier would be obliged under the 1960 Act to take measures to protect that third party.

2.5 *It is precisely in the context of this statutory framework that FP has submitted the Planning Application and LBC Application:*

2.5.1 *The southern extent of Albert Dock is accessible to the public.*

2.5.2 *Further to a planning application granted by CEC, there is now residential development directly adjacent to the southern extent of Albert Dock.*

2.5.3 *An incident occurred in September 2020 when a child from the said residential development crossed the existing metal chain links and fell into the basin. By good fortune, a passer by managed to rescue the child.*

2.5.4 *It is evident from the factors and circumstances above (accessibility, proximity of dwellings and prior accident) that the risk of a person suffering injury or damage is "reasonably foreseeable". Conversely, we see no good counter-arguments that the risk of injury or damage is not "reasonably foreseeable" in such circumstances.*

2.6 ***FP must therefore, as a matter of law, take measures to protect members of the public (especially young children) accessing Albert Dock from the danger of falling from height into water. A failure to take measures to mitigate this risk means that it would otherwise subsist, rendering FP in potential breach of its statutory obligations. In any event, this is also plainly unacceptable to FP in its capacity as a responsible landowner who wishes to uphold the highest safety standards possible.***

2.7 *The nature and extent of the measures that FP must take to mitigate the risk to the public must be carefully considered. The measures must be fit for their core purpose of avoiding or mitigating the identified health and safety risk. ...*

2.12 *Separately, FP must also comply with health and safety law which includes the obligation to ensure, so far as is reasonably practicable, the safety of persons either working at or attending premises operated by those conducting businesses – whether or not the attendees are themselves working there. Significant obligations under the criminal law are imposed by the Health & Safety at Work etc. Act 1974 and in particular in the present context:*

2.12.1 *Section 2: the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees including "...the provision and maintenance of a working environment for employees that is, so far as is reasonably practicable, safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work."*

2.12.2 *Section 3: the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety.*

2.12.3 *Section 4: the duty of parties with control of non-domestic premises that are used by persons that are not their employees as a place of work, or as a place where they may use plant or substances provided for their use there.*

2.13 *Drawing together the above requirements, the need to ensure that premises are properly safe is fundamental to FP's obligations under both occupiers' liability and health and safety law. This is especially the case where the very nature of the premises creates, as here, an inherent risk of falling from height into water.*

2.14 *As set out in the appeal submission, FP takes its health and safety obligations extremely seriously and is determined to fully address an ongoing risk to the public, which necessitates the installation of the vertical fencing.*

Description of Development

3.12 The development comprises a new barrier, which replaces the chains between the posts and consists of panels formed of a painted metal frame and upright balusters at approximately 100 millimetre centres. The panels have a railing at the top and bottom and sit at a height flush with the existing posts. The panels are fixed in position using the existing lugs on the posts. This method of fixing allows the panels to be removed without causing any damage to the listed structure. Details of the protective barrier were provided with the Application (FP05, FP06, FP07). Photographs of the protective barrier are provided throughout LDN's Listed Building Consent Refusal Response (FP15). The interconnecting chains which previously formed the barrier at Albert Dock have been retained by the Appellant and catalogued with their former position along Albert Dock.

Design Considerations

3.13 In considering the appropriate design for the protective barrier, the Appellant considered the following factors:

- The need to take effective and sufficient measures to eliminate any reasonably foreseeable danger;
- Consideration of the Listed structure;
- Consideration of the Conservation area;
- Impact on the surrounding area, and in particular the adjacent residential development;

The need to take effective and sufficient measures to eliminate any reasonably foreseeable danger

The Legal Opinion (FP14) observes that good design goes beyond aesthetic considerations. The functionality of fencing, including fitness for purpose and sustainability, is also a relevant consideration and in the factual context of this instance, it is one to which significant importance must attach.

- 3.14 The Appellant has an dedicated team of staff with many years of experience who have been closely involved in the fence design at the Port and in developing proposals alongside and experienced fencing contractor appointed to carry out the works.. The advice given by both the Appellant's staff and the fencing contractor was that a higher level of protection was required and the use of vertical railings was necessary, as this is the most effective method to stop children defeating the barrier and entering the water. Building Standards Technical Handbook 2020 Section 0.3.2 Schedule 1 Table 0.1 states that works of a civil engineering construction e.g. harbours, quays and docks are exempt from the regulations. Even so, the regulations do still represent a reasonable benchmark for design standards given the nature of the public realm and changing use of the docks.

- 3.15 Section 4.4.0 states:

Protective barriers are necessary to prevent people in and around buildings from an accidental fall at an unguarded change of level.

In assessing the type of barrier to be used, the likely hazards, the use of the building and the risk to the people that may be present should all be considered. Any barrier should minimise the risk of persons falling or slipping through gaps in the barrier.

Young children are often adept at climbing anything within their reach. It is important that the design of protective barriers restrict the ability of young children to climb them, thereby reducing the possibility of injury from falls.

- 3.16 Section 4.4.2 also states that:

In and around non-domestic buildings gaps in any protective barrier should not be large enough to permit a child to pass through. To ensure this, openings in a protective barrier should prevent the passage of a 100mm diameter sphere.

A protective barrier should be designed and constructed so that it cannot be easily climbed by young children. The provision of potential hand and footholds should be minimised.

- 3.17 The Appellant considered the Health and Safety Guidance, Safety in Docks, Approved Code of Practice and guidance (FP11). It is important to note that the Practice and guidance does not lay out a prescribed solution and it is for port operators to determine the level of risk and appropriate response. Guidance on 'Fencing at dock edges,' is addressed at Paragraph 155, which states,

Secure fencing should consist of an upper rail and an intermediate rail. In certain circumstances, eg the presence of children, a higher standard of protection will be required. The rails may where necessary consist of taut wire, taut chain or other taut material.

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- 3.18 As noted above, **the Appellant has identified there is risk of children defeating the bollard and chain barrier and a higher level of protection than set out in the guidance is required.** The guidance says that taut wire, taut chain or other taut material may be appropriate materials for railings.
 - 3.19 The Practice and guidance does not say, as the Council implies in the Report of Handling (page 3 point 'a' second paragraph FP18), that the higher standard of protection comprises taut wire, taut chain or other taut material. This mis-interpretation has dangerous and potentially fatal consequences.
 - 3.20 Requirements will vary depending on the nature of the risk. This is demonstrated in the area around Liverpool Docks (FP12), where vertical fencing is utilised adjacent to residential development.

Consideration of the Listed Structure

- 3.21 Albert Dock is a working Dock and is used for the purpose for which it was constructed. As noted in the Leith Conservation Area Appraisal, there has been a substantial reduction in Leith's traditional manufacturing and port related industries around which its growth was based (FP23, page 39). It is evident that the nature of development to the south of the Port of Leith has changed, with the development of the residential dwellings on Stevedore Place within the last decade.
- 3.22 The quayside has evolved over time, adapting and responding to requirements. The bollard and chain barrier to the south of Albert Dock, were not original features of the Listed structure, as a working quayside requires clear passage.
- 3.23 Where previously posts and chains were considered to provide an appropriate barrier, with residential development now established, which has immediate access to the footway and Dock, it is now evident that there is a requirement for the barrier between residential dwellings and dock edge to respond appropriately to the changing context. The development retains the posts and utilises the existing lugs for holding the new protective barriers in place. The barriers can be removed without damage to the Listed structure and the development is entirely reversible.
- 3.24 As demonstrated in LDN's Listed Building Consent Refusal Response (FP15, pp16:19) the development still allows the Category B Listed historic dockside, materials, open-ness and views to be appreciated without detriment to their special character or setting.
- 3.25 It is appropriate to consider the development against alternative interventions that achieve the same outcome but with potentially less change. The necessary degree of change has been considered and is outlined in LDN's Listed Building Consent Refusal Response (FP15, pp20:21).
- 3.26 Retention of the existing bollard and chain barrier and closing off access to the entire length of the dockside was considered but this would create an unacceptable loss of public access to the dockside

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- and does not solve the problem of access from the gardens along its length which cannot be closed off. It was therefore discounted as a potential solution.
- 3.27 The construction of a temporary “heras” type security fencing barrier that would be in place until permanent proposals had been agreed was also considered but considered inappropriate in terms of impact on residents.
- 3.28 Alternative railing designs were considered, and whilst the barrier is not required to comply with Building Standards, the Building Standards Technical Handbook, sections 4.4.0 and 4.4.2, which are highlighted above provide clear direction on design considerations for protective barriers and this has been taken into consideration.
- 3.29 Glass infill panels between the posts was rejected because it is not a material common to dock edges or the dock area. Furthermore, whilst transparent in certain circumstances sunlight and accumulation of dirt can make the barrier appear solid and this would have a detrimental impact on the listed structure. Maintenance would be high and introduce safety risks in relation to working at dock edges. Glass would also be susceptible to vandalism.
- 3.30 LDN’s report goes on to consider further alternative design solutions (page 20),
Various types of mesh panels were considered but, if the spacing of the mesh was reduced to the size required to prevent finger and toe holds for climbing, the mesh would be essentially solid. Light mesh panels have been installed at the Teuchter’s Landing pub but the situation and range of uses is very different. The character of this type of mesh would also be out of character with the robust scale and industrial nature of Albert Dock. The use of mesh was therefore rejected on the basis that the size of mesh required would be visually solid and this could have a serious detrimental impact on the character of the listed structure. Larger mesh sizes would not stop children climbing and would not provide the level of safety required.
Designs incorporating horizontal rods or wires at 100mm centres were rejected as they create climbing opportunities and do not provide the level of safety required.
Vertical wires at 100mm centres can provide the level of safety required but only if the wires are fixed in position laterally with horizontal rigid spacers which create climbing points. This solution was therefore rejected.
Rigid vertical balusters at 100mm centres do provide the level of safety required and, as described previously, do not have a detrimental impact on the character of the listed building. This design solution was therefore chosen.”

Consideration of the Conservation Area

- 3.31 The use of posts and chains is observed through-out the Conservation Area and, as noted in LDN's Listed Building Consent Refusal Response (FP15, p11), it is the 'default' approach to protecting publicly accessible dockside. Photographic evidence shows that this does not prevent people from accessing dock edges (FP15 p12).
- 3.32 There is evidence of many other robust barriers along the dock edges where the need to enhance security or safety is considered greater and this does not appear to be detrimental to listed buildings or the Conservation Area as a whole. LDN's Listed Building Consent Refusal Response, (Doc FP15 pages 11 and 23) identifies these locations and photographs of the range of protective barriers are provided in the Response (pages 6, 12, 16 and 22). In the immediate area of Albert Dock these include timber and galvanised steel palisade security fencing; low level armco traffic barriers; concrete walls; high steel mesh security fencing; and re-purposed railway tracks with mesh infill. Within the wider Shore area, they also include mesh-infill panels at Teuchter's Landing; posts and rails; and vertical railings on both sides of the Commercial Street Bridge, similar in design to those proposed for Stevedore Place.
- 3.33 The Appeal site lies on the edge of the Conservation Area. LDN's Listed Building Consent Refusal Response, (FP15, p23:25) outlines that the dockside of Albert Dock presents a unique set of circumstances in comparison to other areas within the Conservation Area as follows:

Each unit of the residential development has direct access, through a 2m wide garden and garden gate, to the dockside. This is very different from other existing housing developments around the dockside of the Shore area where the developments either have no direct access to the dockside or are separated from docksides by solid garden walls and high fences with only a few communal gates.

Within the central Shore area, young children near the dock edges are normally accompanied by their parents who should be aware of the potential risk. The recent accident at Albert Dock proves that, there, it is possible for a child to get to the dock edge unsupervised.

Albert Dock is much quieter than the central Shore area with less chance of passive monitoring of dock edges by the public.

Albert Dock retains much of its robust and functional industrial character and dockyard scale in contrast to the gentrified vibrancy of the central Shore area.

The gardens of the Stevedore Place housing are surrounded by vertical baluster metal fences.

The design solution described in the application is a unique solution developed to meet the specific requirements of Albert Dock and is not intended as a precedent for other sites with different needs within the Conservation Area. It:

- *provides the level of safety required*
- *does not detrimentally affect the character or setting of listed structures*
- *represents the least possible change required to deliver the level of safety required*
- *is much less intrusive than the nearby palisade, steel and mesh fencing along Albert Dock edges*
- *re-uses the existing historic bollards*
- *is reversible in the future without damage to listed structures if circumstances change*
- *is robust and functional in character, reflecting the industrial character of its surroundings*
- *does not obstruct views to, from or over Albert Dock*
- *is not a solution applicable elsewhere generally within the Conservation Area if the set of needs is different*

3.34 The Report of Handling (FP18) states that, the proposal would seriously diminish characteristics of the Conservation Area, “*by enclosing the footpath with an uncharacteristic boundary thereby reducing the visual permeability along this key route through the dock where views across the historic dock towards the Firth of Forth and beyond can be appreciated.*” This statement is incorrect. The development allows visual permeability to be retained across the Dock. The barriers are 1 m in height as can be seen from the Application drawings (FP06) and are no taller than the existing posts. The statement in the Handling Report implies the barriers are considerably taller.

Impact on the surrounding area, and in particular the adjacent residential development;

3.35 The foregoing consideration of the Conservation Area addresses much of the impact on the surrounding area. In designing the protective barriers, the design of the adjacent garden boundary treatment was also taken into account. As can be seen in LDN’s Listed Building Consent Refusal Response (FP15, pages 1 and 24), the metal vertical panels reflect those which form the garden fence and gates of the residential dwellings which lie to the immediate south of Albert Dock.

Conclusion

3.36 The foregoing demonstrates that the development has appropriately considered the relevant key factors:

- The need to take effective and sufficient measures to eliminate any reasonably foreseeable danger;
- Consideration of the Listed structure, including consideration of alternative measures;
- Consideration of the Conservation area;
- Impact on the surrounding area, and in particular the adjacent residential development;

- 3.37 The development provides the optimal solution which provides the appropriate level of safety whilst having regard to the Listed structure, the Conservation area and the surrounding area.

4.0 STATUTE, DEVELOPMENT PLAN AND RELEVANT MATERIAL CONSIDERATIONS

- 4.1 The Applications for Planning Permission and Listed Building Consent were submitted by the Appellant for the protective barrier as it is necessary to address health and safety risks related to persons (particularly young children) falling from height into Albert Dock basin.
- 4.2 The Appellant has legal responsibilities as the owner of Albert Dock, as provided for in the Occupiers' Liability (Scotland) Act 1960 and statutory duties under health and safety legislation (Health and Safety at Work etc Act 1974) and these are explained at Section 3 under the heading 'Justification for Development.' and in the Appellant's Legal Opinion (FP14). The refusal of the Applications prevents the Appellant from addressing these statutory duties.

The Decision Making Process

- 4.3 The Legal Opinion (FP14) explains how the requirements of the different legal frameworks should be considered in the planning decision making process. It states,
 - 3.1 *The land use planning system sits alongside other statutory regimes (such as those cited above) each of which serves a different purpose and has different objectives. Planning law has a guiding purpose of controlling "development" and the listed building regime with the protection of important heritage assets. Conversely, the legal framework's for occupier's liability and HSE matters is set out above.*
 - 3.2 *In the absence of a statutory provision to the contrary and in general terms one legal framework does not automatically override another in the event of potential conflict. However, that must not be interpreted as meaning that the planning regime is intended to operate in a vacuum without regard to other statutory regimes, or that a party's obligations under other statutory regimes are not capable of materially influencing (or being determinative) of decision making under the planning regime.*
 - 3.3 *From this starting point, it is informative to take a closer look at the statutory framework for decision-making under planning and listed building legislation.*

Planning decision making

- 3.4 *It is well established that decisions on planning applications must be made in accordance with the development plan unless material considerations indicate otherwise. [Town and Country Planning (Scotland) Act 1997]*
- 3.5 *The House of Lords judgement on City of Edinburgh Council v the Secretary of State for Scotland (1998) (as cited in Annex A of Circular 3/2013) provides further direction and confirms that there are two main tests in deciding whether a consideration is material and relevant. First, it should*

serve or be related to the purpose of planning (and should therefore relate to the development and use of land). Second, it should relate to the particular application.

3.6 *It was further held:*

The decision maker will have to decide what considerations it considers are material to the determination of the application. However, the question of whether or not a consideration is a material consideration is a question of law and so something which is ultimately for the courts to determine. It is for the decision maker to assess both the weight to be attached to each material consideration and whether individually or together they are sufficient to outweigh the development plan.

3.7 *Turning to the present circumstances, the first step in determining the Planning Application (or subsequent appeal) is to determine whether the proposed development is in accordance with the development plan "when read as a whole" [Gladman Developments Ltd v Canterbury City Council (2019) EWCA Civ 669]. For the reasons more fully set out in the Appeal Statement, FP's firm position is that the proposals are in accordance with the development plan.*

3.8 *Once the decision maker has determined whether the Planning Application is in accordance with the development plan, he or she must then assess whether there are other "material considerations" for or against the proposed development. In our opinion the health and safety considerations that underpin the Planning Application meet the test of being a "material consideration" for the following reasons:*

3.8.1 ***Are the health and safety considerations serving or related to the "purpose of planning"?***
The "purpose of planning" is defined as "to manage the development and use of land in the long term public interest." [Gladman Developments Ltd v Canterbury City Council (2019) EWCA Civ 669.] There can be no question that health and safety considerations fall squarely within that purpose. It is plainly not in the long-term public interest to leave land in a situation which is unsafe. More broadly, health and safety considerations are at the heart of all decisions related to the development and use of land. That is reflected in the fact that it is entirely standard practice for health and safety matters to be assessed as part of considering the acceptability of development, for the HSE being invited to comment upon planning applications, and for conditions to be imposed upon the grant of planning permission for reasons related to the protection of the public.

3.8.2 ***Do the health and safety considerations "relate to the application"?*** Again, there can be no question that this test is satisfied: health and safety objectives are the driving reason for seeking to carry out the works that the Planning Application seeks to regularise.

3.9 *The next consideration is the weight that attaches to this material consideration. As established in the City of Edinburgh case, that is ultimately a matter for the decision maker. However, we make the following observations:*

3.9.1 *If the decision maker is satisfied that the proposed development is in accordance with the development plan, the clear benefit of addressing a health and safety risk would only serve to bolster the case for the grant of the Planning Application.*

3.9.2 *If the decision maker were to conclude that the proposed development was not in accordance with the development plan (which FP do not accept) it is clear that issues of health and safety are of fundamental importance and in our submission, in the particular circumstances of this case, must carry substantial weight in the decision making process. It follows that there would be a very strong basis for warranting a departure from the development plan policies in such circumstance.*

3.9.3 *As we have already established, consideration of the safety of persons is inherently fundamental to all land use planning decisions and plainly in the public interest. It follows that a failure to consider that factor at all in the planning balance, or a decision to attach insufficient weight to such matters, in the determination of the Planning Application may be interpreted by the court as Wednesbury unreasonable or irrational [A standard of unreasonableness used in assessing an application for judicial review of a public authority's decision. A reasoning or decision is Wednesbury unreasonable (or irrational) if it is so unreasonable that no reasonable person acting reasonably could have made it (Associated Provincial Picture Houses Ltd v Wednesbury Corporation (1948) 1 KB 223)].*

3.10 *When making a decision on a planning application for development that affects a listed building or its setting, **the planning authority must 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** [S.59(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997]. However the following must be borne in mind in the context of the Planning Application:*

3.10.1 *It is self-evident that having "special regard" to the desirability of preserving a building or its setting is only engaged where a proposed development would be detrimental to the preservation of a listed building or its setting:*

"preserving", in relation to a building, means preserving it either in its existing state or subject only to such alterations or extensions as can be carried out without serious detriment to its character, and "development" includes redevelopment [S.59(3) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997].

3.10.2 In short, "preservation" in this context means not harming the interest in the building, as opposed to keeping it utterly unchanged. For the reasons set out in the Design Statement and Appeal Statement, FP's firm position is that the proposed fencing is sympathetic to its surrounding and would not cause detriment to Albert Dock or its setting. The dock and its setting would be preserved.

3.10.3 Even if it were to be concluded that the fencing causes some detriment, and that the need to have "special regard" to the preservation of Albert Dock and its setting carries weight in the decision making process, such weight must still be balanced against the need to ensure that Albert Dock is safe to persons accessing it (especially children) and that FP is able to fully comply with its obligations under occupiers liability and health and safety law.

3.10.4 The need is to have "special regard" to the "desirability" of preserving the asset and its setting. The statutory test is not absolute and must not be seen as always determinative; it can be outweighed by other factors as part of the planning balance. What the test requires is that the decision maker specifically considers the importance of preserving listed buildings and attaches appropriate weight to that objective – but that cannot (and should not) always result in the refusal of planning applications.

3.11 The same principle applies in respect of the "special attention" that must be paid to the desirability of preserving or enhancing the character or appearance of a conservation area [Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997]. Specifically, it is not sufficient to conclude that the need to pay "special attention" to preserving Leith Conservation Area means that the Planning Application must be refused. The decision maker must first be satisfied that the proposals are harmful to the conservation area. For the reasons set out in the Design Statement and Appeal Statement, there is a strong basis for concluding very little or no harm would occur in respect of the proposed development. Second, even if harm is identified, one must still then consider whether that is sufficient to refuse the Planning Application taking into account: the primacy of the development plan and other material considerations, including the obvious and significant health and safety benefits that underpin the proposals.

3.12 Applying the above analysis, the CEC officer has plainly fallen into error: the safety objectives that underpin the Planning Application, and that are at the very heart of FP's case for the proposals to be authorised, are the subject of no analysis whatsoever in the Report of Handling. In fact the only mention of "safety" is in the description of the proposals and the consultation responses appended to the Report. In short, in arriving at a conclusion that the Planning Application must be refused, it is clear from reading the Report that the case officer has, on the one hand, failed to consider an important material consideration in this case (health and safety risk) and, on the other hand, applied the tests of "special regard" and "special attention" as automatically determinative factors, rather than factors that need to be weighed in the wider planning balance.

3.13 *The only logical conclusion is that the CEC officer has failed to take into account the very significant issue of safety as a material consideration in the determination of the Planning Application. Had the issue of safety been properly taken into account, and afforded appropriate (substantial) weight in the decision making process, there is a compelling basis for concluding that the Planning Application should have been granted.*

The Development Plan

- 4.4 The Development Plan for the Appeal site is SESplan (2013) and Edinburgh Local Development Plan, Adopted 2016.
- 4.5 The key policies of the Development Plan are set out in the LDP and are identified as:
- 4.6 **DES 1: Design Quality and Context** – The Policy seeks to ensure that development will create or contribute to a sense of place. Design should draw on positive characteristics of the surrounding area.
- 4.7 As demonstrated in Section 3 of the Appeal Statement and LDN's Listed Building Consent Refusal Response (FP15) the development considers its context and the surrounding area. The design of the protective barrier complements the garden fences and gates of the adjacent residential dwellings. It has been carefully designed to respect the features of the Listed Dock and provide the appropriate level of protection required.
- 4.8 **DES 3: Development Design – Incorporating and Enhancing Existing and Potential Features** – The Policy supports development where it is demonstrated existing characteristics and features worthy of retention are identified and are incorporated or enhanced through design.
- 4.9 The development has retained the existing posts and utilises the existing lugs for fixing the new protective barriers. The materials, black painted metal vertical balustrades compliment both the posts and the garden fences of the adjacent residential dwellings. The vertical balustrades provide views through and across the Listed structure.
- 4.10 **DES 4: Development Design – Impact on Setting** – The Policy supports development which will have a positive impact on its surroundings.
- 4.11 The development has been designed to provide the appropriate level of protection required. In addition, the height of the development, responds to the height of the posts and the garden fences of the adjacent residential dwellings. The vertical railings allow view through and across the Listed structure and is connected without any unnecessary intervention to the existing posts. The black metal painted vertical balustrades complement the existing posts.

- 4.12 **DES 10: Waterside Development** – The relevant elements of the Policy seek to ensure that development provides an attractive frontage to water and; ‘where appropriate’ maintains, provides or improves public access to and along the water’s edge.
- 4.13 As outlined above the proposed development provides a protective barrier, designed to provide the necessary level of protection and which is also complementary to surrounding area and Listed structure. Notably the policy recognises that ‘where appropriate’ development should maintain, provide or improve public access. The proposed development allows safe public access to the footway along the Dock edge.
- 4.14 **ENV 3: Listed Building – Setting** – The Policy states, “*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.*”
- 4.15 The installed protective barriers, as illustrated in photographs within LDN’s Listed Building Consent Refusal Response (FP15 pp 16:19), demonstrate that they meet the need of to improve safety, but their visual permeability still allows the Category B Listed historic dockside, materials, open-ness and views to be appreciated without detriment to their special character or setting. A photograph similar to the photograph on page 16 of the LDN document was uploaded to the Council’s Planning Portal as a record of the case officer’s site visit but was taken at a more oblique angle with a zoom lens and created a false impression of the actual situation.
- 4.16 **ENV 4: Listed Buildings – Alterations and Extensions** – The Policy permits alterations and extensions to listed buildings where, “*a) those alterations or extensions are justified; b) there will be no unnecessary damage to historic structures or diminution of its interest; and c) where any additions are in keeping with other parts of the building.*”
- 4.17 Undoubtedly the development is justified. It is necessary to address health and safety risks related to persons (particularly young children) falling from height into Albert Dock basin. Without the development the Appellant is unable to comply with its legal responsibilities as the owner of Albert Dock, as provided for in the Occupiers’ Liability (Scotland) Act 1960 and statutory duties under health and safety legislation (Health and Safety at Work etc. Act 1974). The structure is not damaged by the proposed works, and as described above the works are reversible. The structure’s interest is retained, as it remains a working dock, with views to and across retained. The design of the proposal reflects the industrial character, views and setting are not diminished.
- 4.18 **ENV 6: Conservation Areas – Development** – The Policy permits development where “*a) preserves or enhances the special character or appearance of the conservation area and is consistent with the relevant conservation area character appraisal b) preserves trees, hedges, boundary walls, railings, paving and other features which contribute positively to the character of the area and c)*

demonstrates high standards of design and utilises materials appropriate to the historic environment. Planning applications should be submitted in a sufficiently detailed form for the effect of the development proposal on the character and appearance of the area to be assessed.”

- 4.19 The Conservation Area Appraisal makes little mention of the area around Albert Dock. As outlined in LDN's Listed Building Consent Refusal Response (FP15) and above, Albert Dock lies on the very edge of the Conservation Area, forming a boundary with the working docks which are outside the Conservation Area. Albert Dock is not within the heart of the older part of the Port of Leith and its character is very different to other parts of the Conservation area.
- 4.20 The area around Albert Dock retains much of its robust and functional industrial character and dockyard scale in contrast to the gentrified vibrancy of the central Shore area which the Report of Handling describes. Its character will continue to develop as new residential and other developments are completed and the tram arrives. The dockside at Stevedore Place is much quieter than the central Shore area with less opportunity for passive monitoring of dock edges by the public. Within the central Shore area, existing housing developments are separated from docksides by solid walls and high fences with few communal gates. This is in contrast to Stevedore Place where each property has direct access from living areas through a 2m wide garden and garden gate and across the dockside foot path to the dock edge.
- 4.21 The very nature of the development removes the chain link for reasons of safety in the public interest. As illustrated in LDN's Listed Building Consent Refusal Response (FP15) and above, a range of protective barriers are in place throughout the Conservation Area where these are deemed necessary. The proposed protective barrier uses high quality materials reflecting the surrounding character of the Appeal site and does not diminish the character and appearance of the conservation area.

The Report of Handling (FP18) states that, the proposal would seriously diminish characteristics of the Conservation Area, “by enclosing the footpath with an uncharacteristic boundary thereby reducing the visual permeability along this key route through the dock where views across the historic dock towards the Firth of Forth and beyond can be appreciated.” This statement is incorrect. The development allows visual permeability to be retained across the dock. The barriers are 1m in height as can be seen from the Application drawings (FP06) and are no taller than the existing posts. The statement in the Handling Report implies the barriers are considerably taller.

Material Considerations

Decisions on planning applications must be made in accordance with the development plan unless material considerations indicate otherwise, (S25 Town and Country Planning (Scotland) Act 1997).

Health and Safety

Above and in the Appellant's legal opinion (FP14) we have outlined how the decision maker should determine what a material consideration is and that the weight to be given to a material consideration is for the decision maker to decide. We have outlined that health and safety considerations are related to the purposes of planning and that they relate to this Application. Whilst it is for the decision maker to determine the weight to be given to material considerations it is clear that matters of health and safety are of such fundamental importance, given the potential for fatal accidents to occur without the protective barrier measures in place, matters of health and safety must carry considerable weight.

Scottish Planning Policy

- 4.22 Paragraphs 135 – 151 set out the Government's planning policy on matters relating to the Historic Environment including Listed Buildings and Conservation Areas. The policy principles are set out at paragraph 137,

promote the care and protection of the designated and non-designated historic environment (including individual assets, related settings and the wider cultural landscape) and its contribution to sense of place, cultural identity, social well-being, economic growth, civic participation and lifelong learning; and

enable positive change in the historic environment which is informed by a clear understanding of the importance of the heritage assets affected and ensure their future use. Change should be sensitively managed to avoid or minimise adverse impacts on the fabric and setting of the asset, and ensure that its special characteristics are protected, conserved or enhanced.

- 4.23 Paragraph 141, sets out how Listed Buildings should be addressed by Development Management, and states,

Change to a listed building should be managed to protect its special interest while enabling it to remain in active use...

- 4.24 Paragraph 143, sets out how development in Conservation Areas should be considered and states,
- ... Proposals that do not harm the character or appearance of the conservation area should be treated as preserving its character or appearance...*

- 4.25 As the Appeal Statement and Appeal documents demonstrate the development fully considers the function of the Listed structure and enables it to continue to function for the use for which it was constructed. The development allows for the quayside footpath to remain open for public use by providing the level of safety measures necessary for safe access. The development design does not

impact on the setting or character of the Listed structure or Conservation Area and as such should be treated as preserving its character and appearance.

Historic Environment Policy for Scotland (2019)

- 4.26 The Historic Environment Policy for Scotland document is a material consideration in relation to listed building consent applications. The Policy recognise that there are challenges and opportunities for the historic environment and it is clear that the requirements of other regulatory frameworks, such as the Occupiers' Liability (Scotland) Act 1960 and Health and Safety at Work etc. Act 1974 need to be taken into account. The Policy states,

There are a number of challenges and opportunities that affect how we understand, manage and care for the historic environment. Decision-making has to be sufficiently flexible and adaptable to deal with wide ranging and ongoing changes in society and the environment. Good decisions will aim to achieve the best possible outcome for the historic environment and maximise its benefits. (page 10).

- 4.27 It recognises that regulatory regimes can impact on the management of the historic environment, *REGULATORY CHANGE - Changes to a wide range of laws and regulations can affect the management of the historic environment. It can be hard to predict and fully understand the impact of these changes* (page 11).

- 4.28 The Policy document puts in place six policies for managing the historic environment, these are addressed in below.

- *HEP1 Decisions affecting any part of the historic environment should be informed by an inclusive understanding of its breadth and cultural significance* (page 13)

- 4.29 The Albert Dock was constructed as an operational dock and remains in use for its intended purpose. The development does not alter any of the original construction, rather it removes chain links which were an addition to the original structure and were put in place after the southern quayside fell out of operational use. The protective barrier utilises the existing lugs on the posts and the development is entirely reversible as the barriers can be removed. As demonstrated in this Appeal Statement and supporting documents, the development does not have a harmful impact on the Listed Structure or Conservation Area. Indeed, the cultural significance of the Listed structure and this area on the boundary of the Conservation Area can be enjoyed safely with the development in place.

- *HEP2 Decisions affecting the historic environment should ensure that its understanding and enjoyment as well as its benefits are secured for present and future generations.* (page 14)

- 4.30 The response to HEP1 above equally applies to HEP2.

- *HEP3 Plans, programmes, policies and strategies, and the allocation of resources, should be approached in a way that protects and promotes the historic environment. If detrimental impact on the historic environment is unavoidable, it should be minimised. Steps should be taken to demonstrate that alternatives have been explored, and mitigation measures should be put in place.* (page 14)

And

- *HEP4 Changes to specific assets and their context should be managed in a way that protects the historic environment. Opportunities for enhancement should be identified where appropriate.*
If detrimental impact on the historic environment is unavoidable, it should be minimised. Steps should be taken to demonstrate that alternatives have been explored, and mitigation measures should be put in place. (page 14)

- 4.31 The Policy recognises that change requires to be carefully managed in the interests of the historic features. It is notable that the Policy's supporting text recognises that action for other interests can be required,

Sometimes the best actions for the historic environment will not be the best actions for other interests. There will be occasions where decision makers need to manage conflicting needs. Potential conflicts should be identified and reduced as much as possible (page 15).

- 4.32 It goes on to say that when decision-makers are considering potential changes, whether as a result of a development proposal or arising from environmental processes, the following general approach should be applied:

- Understand the historic background
- Understand the background for the change
- Understand the likely impact of proposed actions or decision
- Make decision about impact
- Monitoring

- 4.33 Historic background - The historic background is set out in the Appeal Statement and Appeal documents and is not repeated here. The background for the change is clear but is worth re-stating given the potential risk to human life, in the absence of the development.

- 4.34 Background to change - The development is necessary to address health and safety risks related to persons (particularly young children) falling from height into Albert Dock basin. The Appellant has legal responsibilities as the owner of Albert Dock, as provided for in the Occupiers' Liability (Scotland) Act 1960 and statutory duties under health and safety legislation (Health and Safety at

Work etc. Act 1974). The development is required for the Appellant to discharge its legal responsibilities and duties.

- 4.35 Level of impact - The level of impact is set out in the Appeal Statement and Appeal documents and is not repeated here. The development does not cause harm to the Listed structure or Conservation Area.
- 4.36 Make decisions about impact – The Legal Opinion (FP14) and LDN’s Listed Building Consent Refusal Response (FP15) set out the range of factors which were considered in arriving at an appropriate design and the alternative approaches are summaries earlier in the Appeal Statement. It is demonstrated that the development achieves the necessary level of protection whilst causing least harm to the Listed structure and Conservation Area, indeed, it is not considered that the development causes any harm.
- 4.37 Monitoring – it is incumbent upon the Appellant to monitor the development for reasons of health and safety to ensure that it remains effective. The Appellant regularly undertake repair and maintenance surveys as part of their ongoing operations. The development will continue to be actively monitored.
- *HEP5 Decisions affecting the historic environment should contribute to the sustainable development of communities and places. (page 16)*

And

- *HEP6 Decisions affecting the historic environment should be informed by an inclusive understanding of the potential consequences for people and communities. Decision-making processes should be collaborative, open, transparent and easy to understand. (page 16)*

- 4.38 The Appellant’s decision to install the protective barrier was made in the public interest, to ensure that the address the health and safety risks related to persons (particularly young children) falling from height into Albert Dock basin. It is the Appellant’s legal responsibility to ensure that the barrier appropriately addresses and mitigates the risk, in so far as it is possible. The protective barrier allows the footpath to be utilised and enjoyed safely by the public and does so in a manner that does not cause harm to the Listed structure and Conservation Area.
- 4.39 The potential consequences of not putting the development in place are apparent and were outlined in the Application. The Report of Handling (FP18) however fails to recognise the potential consequence of the development not being in place. In this manner, the decision-making process as failed to satisfy HEP6.

HES Managing Change Guidance Note – Setting

- 4.40 The guidance note sets out the principles that apply to developments affecting the setting of historic assets or places, including listed buildings and conservation areas. It notes that if a planning authority identifies a potential impact on a designated asset it may consult HES who act as statutory consultee in the planning process.
- 4.41 The guidance note explains the meaning of setting, factors which contribute to setting, assessment of the impact of change and mitigation of impacts and enhancement of setting. The setting of the development is described in the Appeal Statement and Appeal documents and is not repeated. It is demonstrated that the development continues to allow views to and from the asset, the change does not impact on the original structure of Albert Dock or the role it plays in the Conservation Area, as it remains an operational dock and all original features of the Dock remain visible. The scale of development is limited to the dockside immediately adjacent to residential development on Stevedore Place, it does not extend to any other locations on the dock. Albert Dock can still be appreciated from all areas around the Dock. The area to the south of the Appeal site has been developed for residential use and it is precisely within this context the protective barrier is required and the nature and form of development takes this fully into account. The level of change is negligible, the Dock and dockside remain visible and do not diminish the key characteristics of Albert Dock or the northern edge of the Conservation Area. The open aspect remains around the Dock, which continues to be in operational use.

HES Managing Change Guidance Note – Boundaries

- 4.42 The guidance note identifies the key issues when considering matters related to boundaries. Amongst other matters these issues include:
- 4.43 The importance of walls, fences and other boundary treatments as elements in defining the character of historic buildings, conservation areas and designed landscapes; Age, design, materials, and associated features are amongst the factors that contribute to the interest of historic boundaries.
- 4.44 There is no reference to the requirement for boundaries to consider safety in the guidance. The only mention of safety can be found where the need for boundaries is explained at paragraph 3.2.
- 4.45 The bollard and chain boundary did not form part of the Dock when it was constructed. The bollard and chain arrangement was added after the southern quayside fell out of operational use. It cannot be described as '*a historic boundary*' (page 6). In terms of contribution towards the setting of the Conservation Area and Listed structure, posts and chains are the default boundary treatment to Dock edges in the Leith Conservation Area, however where there is a requirement for a higher level of protection, alternative boundary treatments are utilised. The development, which comprises

black painted metal vertical railings provides the necessary level of protection without harming the character and setting of the Listed structure or Conservation Area.

Leith Conservation Area Character Appraisal

- 4.46 The Leith Conservation Area Character Appraisal is considered earlier in the Appeal Statement in considering the justification for the development design and in response to LDP Policy ENV 6 – Conservation Areas – Development and in LDN's Listed Building Consent Refusal Response (FP15). Further detailed consideration is therefore not repeated here. The barriers are not detrimental to the special character or setting of either the listed structures or character or appearance of the Conservation Area.

Stevedore Place, Planning Permission ref: 12/03959/FUL

- 4.47 Whilst the Stevedore Place residential development permission ref:12/03959/FUL made provision for the bollard and chain boundary, it is clear that it does not provide a sufficient barrier to the Dock access, and especially against access by young children. It is therefore necessary for a barrier to be put in place which provides the appropriate level of protection, as proposed by the Appellant in the interests of health and safety.

Conclusion

- 4.48 The Town and Country Planning (Scotland) Act 1997 is the statutory instrument which governs the consideration and determination of applications for planning permission and in particular section 25 which advises that Decisions on planning applications must be made in accordance with the development plan unless material considerations indicate otherwise. We have demonstrated that the development is in accordance with the Development Plan.
- 4.49 The legal framework which governs the determination of planning applications does not exist in a bubble. Section 59 and Section 64 of the Planning (Listed Buildings and Conservation) (Scotland) Act 1997 must be considered. Other statutory regimes including the Occupiers' Liability (Scotland) Act 1960 and the Health and Safety at Work etc. Act 1974 must also be considered fully
- 4.50 The requirements of the planning and listed building regime are not intended to operate in isolation and the obligations of the Appellant (in this instance in relation to safety and the protection of life) are capable of influencing (or being determinative) of the decision making process. The influence of different regulatory regimes is noted in the Government's Historic Environment Policy for Scotland.
- 4.51 It is demonstrated that the development is not detrimental to the special character or setting of either the listed structures or character or appearance of the Conservation Area. This is illustrated in the approach to design outlined in Section 3 and in considering relevant material considerations in Section 4. Nevertheless, the legal framework, includes for the appropriate weighting of material

considerations, in this instance the health and safety benefits are clear and substantial versus the potential damage to the Listed structure is negligible.

5.0 CONCLUSION

- 5.1 In September 2020, a young child exited a garden, via a garden gate, adjacent to Albert Dock. The child crossed the footpath, passed through the bollard and chain barrier and fell into the Dock. The child was rescued by members of the public but the consequences of the incident could have been fatal had it not been for their intervention, who by good fortune were in the vicinity of the incident and able to selflessly respond.
- 5.2 The Appellant subsequently undertook a risk assessment and concluded that there was potential for the incident to re-occur. In accordance with their legal and obligations and duties under the Occupiers' Liability (Scotland) Act 1960 and the Health and Safety at Work etc. Act 1974, the Appellant considered the necessary appropriate measures required to mitigate the risk. It was concluded that the installation of a protective barrier was necessary to address health and safety risks related to persons (particularly young children) falling from height into Albert Dock basin.
- 5.3 The development was designed by the contractor, taking into account the advice from the Appellant's safety team and their considerable experience who considered a higher level of protection was required and the use of vertical railings was necessary. The design takes cognises guidance and standards and ensures that the design and construction cannot be easily defeated by young children. Alternative measures were considered and the protective panels which comprise the development address the necessary safety requirements whilst ensuring they do not cause harm to the Listed structure or Conservation Area.
- 5.4 The installed railings meet the need to improve safety and that their visual permeability still allows the Category B Listed historic dockside, materials, open-ness and views to be appreciated without detriment to their special character or setting.
- 5.5 The design, materials and character of the barriers are sympathetic to the robust and functional industrial character and dockyard scale of Albert Dock and represent the minimum change necessary to achieve the level of safety required.
- 5.6 The design retains all existing historic features. It is reversible should circumstances change in future.
- 5.7 The barrier, like others in the Conservation Area, are designed to meet the requirements of their specific locational and functional requirements and context.
- 5.8 The Handling Report contains errors and omissions which make incorrect references the relevant statutory framework and include mis-leading statements which could lead a decision maker to consider that the works are not essential and are not appropriately designed.
- 5.9 As demonstrated in this Appeal Statement and supporting documents, the development does not cause harm to the Listed structure or Conservation Area. Nevertheless, the legal framework, includes for the appropriate weighting of material considerations. In this instance the health and

safety benefits are clear and substantial versus the potential damage to the Listed structure and conservation area.

- 5.10 The Development accords with Section 25 of the Town and Country Planning (Scotland) Act 1997 and Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) Scotland Act 1997 and we respectfully request that Planning Permission is granted for the development.

Proposal Details

| | |
|------------------------------|---|
| Proposal Name | 100339741 |
| Proposal Description | Planning Permission and Listed Building Consent for installation of protective barrier along the land to the south of Albert Dock at Stevedore Place, Leith |
| Address | |
| Local Authority | City of Edinburgh Council |
| Application Online Reference | 100339741-004 |

Application Status

| | |
|--------------------------|----------|
| Form | complete |
| Main Details | complete |
| Checklist | complete |
| Declaration | complete |
| Supporting Documentation | complete |
| Email Notification | complete |

Attachment Details

| | | |
|---|----------|----------------|
| Notice of Review | System | A4 |
| FP01 Planning Application Form | Attached | A4 |
| FP02 Location Plan | Attached | A3 |
| FP03 Existing Site Plan LPL002 | Attached | A3 |
| FP04 Existing Bollards LP010 | Attached | A3 |
| FP05 Proposed Site Plan LPL102 | Attached | A3 |
| FP06 Railings between bollards | Attached | A3 |
| LPL110 | | |
| FP07 Application Design Statement | Attached | A4 |
| FP08 Listed Building Consent Form | Attached | A4 |
| FP09 Neighbour notification letter - Stevedore Place Fence Works | Attached | A4 |
| FP10 Email correspondence notifying Council of works | Attached | Not Applicable |
| FP11 Health and Safety Executive_Safety in docks_Approved Code of Practice and guidance | Attached | A4 |
| FP12 Liverpool Dock Fencing Examples | Attached | A4 |
| FP13 Email to Holder Planning to CEC 250121 | Attached | A4 |
| FP14 Legal Opinion for Forth Ports Limited prepared by Pinsent Masons | Attached | A4 |

| | | |
|--|----------|----------------|
| FP15 Listed Building Consent Refusal Response prepared by LDN Architects | Attached | A4 |
| FP16 Decision Notice Planning Permission Application ref 20_05548_FUL | Attached | A4 |
| FP17 Decision Notice Listed Building Consent Application ref 20_05546_LBC | Attached | A4 |
| FP18 Report of Handling Planning Application Ref 20_05548_FUL | Attached | A4 |
| FP19 Report of Handling Listed Building Consent Application ref 20_05546_LBC | Attached | A4 |
| FP20 Leith Harbour and Newhaven Community Council Response | Attached | A4 |
| FP20 Addendum to Leith Harbour and Community Council Response | Attached | A4 |
| FP21 Council Archaeologist Response | Attached | A4 |
| FP22 Forth Ports Risk Assessment | Attached | A4 |
| FP23 Leith Conservation Area Character Appraisal | Attached | A4 |
| FP24 Port of Leith operational estate boundary | Attached | Not Applicable |
| Appeal Statement | Attached | A4 |
| Notice_of_Review-2.pdf | Attached | A0 |
| Application_Summary.pdf | Attached | A0 |
| Notice of Review-004.xml | Attached | A0 |



Business Centre G.2 Waverley Court 4 East Market Street Edinburgh EH8 8BG Email: planning.support@edinburgh.gov.uk

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100339741-001

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

Type of Application

What is this application for? Please select one of the following: *

- Application for planning permission (including changes of use and surface mineral working).
- Application for planning permission in principle.
- Further application, (including renewal of planning permission, modification, variation or removal of a planning condition etc)
- Application for Approval of Matters specified in conditions.

Description of Proposal

Please describe the proposal including any change of use: * (Max 500 characters)

Install protective barrier along the south of Albert Dock at Stevedore Place, Leith

Is this a temporary permission? *

Yes No

If a change of use is to be included in the proposal has it already taken place?

Yes No

(Answer 'No' if there is no change of use.) *

Has the work already been started and/or completed? *

- No Yes – Started Yes - Completed

Applicant or Agent Details

Are you an applicant or an agent? * (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

Applicant Agent

Agent Details

Please enter Agent details

| | | | |
|-----------------------|--|-----------------------|------------------------|
| Company/Organisation: | HolderPlanning Ltd | | |
| Ref. Number: | You must enter a Building Name or Number, or both: * | | |
| First Name: * | Lesley | Building Name: | |
| Last Name: * | McGrath | Building Number: | 5 |
| Telephone Number: * | 07841487916 | Address 1 (Street): * | South Charlotte Street |
| Extension Number: | | Address 2: | |
| Mobile Number: | | Town/City: * | Edinburgh |
| Fax Number: | | Country: * | United Kingdom |
| | | Postcode: * | EH2 4AN |
| Email Address: * | lesley.mcgrath@holderplanning.co.uk | | |

Is the applicant an individual or an organisation/corporate entity? *

Individual Organisation/Corporate entity

Applicant Details

Please enter Applicant details

| | | | |
|----------------------|--|----------------------|--|
| Title: | You must enter a Building Name or Number, or both: * | | |
| Other Title: | Building Name: | | |
| First Name: * | Building Number: | 1 | |
| Last Name: * | Address 1 (Street): * | Prince of Wales Dock | |
| Company/Organisation | Address 2: | Leith | |
| Telephone Number: * | Town/City: * | Edinburgh | |
| Extension Number: | Country: * | UK | |
| Mobile Number: | Postcode: * | EH6 7DX | |
| Fax Number: | | | |
| Email Address: * | | | |

Site Address Details

Planning Authority:

City of Edinburgh Council

Full postal address of the site (including postcode where available):

Address 1:

Address 2:

Address 3:

Address 4:

Address 5:

Town/City/Settlement:

Post Code:

Please identify/describe the location of the site or sites

Northing

676791

Easting

327338

Pre-Application Discussion

Have you discussed your proposal with the planning authority? *

Yes No

Pre-Application Discussion Details Cont.

In what format was the feedback given? *

Meeting Telephone Letter Email

Please provide a description of the feedback you were given and the name of the officer who provided this feedback. If a processing agreement [note 1] is currently in place or if you are currently discussing a processing agreement with the planning authority, please provide details of this. (This will help the authority to deal with this application more efficiently.) * (max 500 characters)

Meeting with Enforcement Officer to explain health and safety background to the proposed works. Enforcement Officer confirmed requirement for Listed Building Consent and Planning Permission for works.

Title:

Mrs

Other title:

First Name:

Jane

Last Name:

Iannarelli

Correspondence Reference Number:

Date (dd/mm/yyyy):

03/12/2020

Note 1. A Processing agreement involves setting out the key stages involved in determining a planning application, identifying what information is required and from whom and setting timescales for the delivery of various stages of the process.

Site Area

Please state the site area:

80.00

Please state the measurement type used:

Hectares (ha) Square Metres (sq.m)

Existing Use

Please describe the current or most recent use: * (Max 500 characters)

Albert Dock edge

Access and Parking

Are you proposing a new altered vehicle access to or from a public road? *

Yes No

If Yes please describe and show on your drawings the position of any existing. Altered or new access points, highlighting the changes you propose to make. You should also show existing footpaths and note if there will be any impact on these.

Are you proposing any change to public paths, public rights of way or affecting any public right of access? *

Yes No

If Yes please show on your drawings the position of any affected areas highlighting the changes you propose to make, including arrangements for continuing or alternative public access.

How many vehicle parking spaces (garaging and open parking) currently exist on the application Site?

0

How many vehicle parking spaces (garaging and open parking) do you propose on the site (i.e. the Total of existing and any new spaces or a reduced number of spaces)? *

0

Please show on your drawings the position of existing and proposed parking spaces and identify if these are for the use of particular types of vehicles (e.g. parking for disabled people, coaches, HGV vehicles, cycles spaces).

Water Supply and Drainage Arrangements

Will your proposal require new or altered water supply or drainage arrangements? *

Yes No

Do your proposals make provision for sustainable drainage of surface water?? *
(e.g. SUDS arrangements) *

Yes No

Note:-

Please include details of SUDS arrangements on your plans

Selecting 'No' to the above question means that you could be in breach of Environmental legislation.

Are you proposing to connect to the public water supply network? *

- Yes
- No, using a private water supply
- No connection required

If No, using a private water supply, please show on plans the supply and all works needed to provide it (on or off site).

Assessment of Flood Risk

Is the site within an area of known risk of flooding? *

Yes No Don't Know

If the site is within an area of known risk of flooding you may need to submit a Flood Risk Assessment before your application can be determined. You may wish to contact your Planning Authority or SEPA for advice on what information may be required.

Do you think your proposal may increase the flood risk elsewhere? *

Yes No Don't Know

Trees

Are there any trees on or adjacent to the application site? *

Yes No

If Yes, please mark on your drawings any trees, known protected trees and their canopy spread close to the proposal site and indicate if any are to be cut back or felled.

Waste Storage and Collection

Do the plans incorporate areas to store and aid the collection of waste (including recycling)? *

Yes No

If Yes or No, please provide further details: * (Max 500 characters)

not applicable to proposed development

Residential Units Including Conversion

Does your proposal include new or additional houses and/or flats? *

Yes No

All Types of Non Housing Development – Proposed New Floorspace

Does your proposal alter or create non-residential floorspace? *

Yes No

Schedule 3 Development

Does the proposal involve a form of development listed in Schedule 3 of the Town and Country Planning (Development Management Procedure (Scotland) Regulations 2013) *

Yes No Don't Know

If yes, your proposal will additionally have to be advertised in a newspaper circulating in the area of the development. Your planning authority will do this on your behalf but will charge you a fee. Please check the planning authority's website for advice on the additional fee and add this to your planning fee.

If you are unsure whether your proposal involves a form of development listed in Schedule 3, please check the Help Text and Guidance notes before contacting your planning authority.

Planning Service Employee/Elected Member Interest

Is the applicant, or the applicant's spouse/partner, either a member of staff within the planning service or an elected member of the planning authority? *

Yes No

Certificates and Notices

CERTIFICATE AND NOTICE UNDER REGULATION 15 – TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND) REGULATION 2013

One Certificate must be completed and submitted along with the application form. This is most usually Certificate A, Form 1, Certificate B, Certificate C or Certificate E.

Are you/the applicant the sole owner of ALL the land? *

Yes No

Is any of the land part of an agricultural holding? *

Yes No

Certificate Required

The following Land Ownership Certificate is required to complete this section of the proposal:

Certificate A

Land Ownership Certificate

Certificate and Notice under Regulation 15 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Certificate A

I hereby certify that –

(1) - No person other than myself/the applicant was an owner (Any person who, in respect of any part of the land, is the owner or is the lessee under a lease thereof of which not less than 7 years remain unexpired.) of any part of the land to which the application relates at the beginning of the period of 21 days ending with the date of the accompanying application.

(2) - None of the land to which the application relates constitutes or forms part of an agricultural holding

Signed: Lesley McGrath

On behalf of: Forth Ports Ltd

Date: 10/12/2020

Please tick here to certify this Certificate. *

Checklist – Application for Planning Permission

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Please take a few moments to complete the following checklist in order to ensure that you have provided all the necessary information in support of your application. Failure to submit sufficient information with your application may result in your application being deemed invalid. The planning authority will not start processing your application until it is valid.

a) If this is a further application where there is a variation of conditions attached to a previous consent, have you provided a statement to that effect? *

Yes No Not applicable to this application

b) If this is an application for planning permission or planning permission in principle where there is a crown interest in the land, have you provided a statement to that effect? *

Yes No Not applicable to this application

c) If this is an application for planning permission, planning permission in principle or a further application and the application is for development belonging to the categories of national or major development (other than one under Section 42 of the planning Act), have you provided a Pre-Application Consultation Report? *

Yes No Not applicable to this application

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

d) If this is an application for planning permission and the application relates to development belonging to the categories of national or major developments and you do not benefit from exemption under Regulation 13 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, have you provided a Design and Access Statement? *

Yes No Not applicable to this application

e) If this is an application for planning permission and relates to development belonging to the category of local developments (subject to regulation 13. (2) and (3) of the Development Management Procedure (Scotland) Regulations 2013) have you provided a Design Statement? *

Yes No Not applicable to this application

f) If your application relates to installation of an antenna to be employed in an electronic communication network, have you provided an ICNIRP Declaration? *

Yes No Not applicable to this application

g) If this is an application for planning permission, planning permission in principle, an application for approval of matters specified in conditions or an application for mineral development, have you provided any other plans or drawings as necessary:

- Site Layout Plan or Block plan.
- Elevations.
- Floor plans.
- Cross sections.
- Roof plan.
- Master Plan/Framework Plan.
- Landscape plan.
- Photographs and/or photomontages.
- Other.

If Other, please specify: * (Max 500 characters)

Provide copies of the following documents if applicable:

A copy of an Environmental Statement. *

Yes N/A

A Design Statement or Design and Access Statement. *

Yes N/A

A Flood Risk Assessment. *

Yes N/A

A Drainage Impact Assessment (including proposals for Sustainable Drainage Systems). *

Yes N/A

Drainage/SUDS layout. *

Yes N/A

A Transport Assessment or Travel Plan

Yes N/A

Contaminated Land Assessment. *

Yes N/A

Habitat Survey. *

Yes N/A

A Processing Agreement. *

Yes N/A

Other Statements (please specify). (Max 500 characters)

Declare – For Application to Planning Authority

I, the applicant/agent certify that this is an application to the planning authority as described in this form. The accompanying Plans/drawings and additional information are provided as a part of this application.

Declaration Name: Mrs Lesley McGrath

Declaration Date: 10/12/2020

This detailed map illustrates a coastal town's layout, centered around a port area. The town features a mix of residential, commercial, and industrial zones. Key locations include Rennes Isle, Ocean Drive, and Construction Street. The port section is highlighted by a prominent red line running from the bottom center through the town center to the top right. The map shows various buildings such as the Custom House, Medical Centre, Port Office, Bank, and numerous houses labeled with numbers like 92 to 96, 72 to 88, and 14 to 15. Industrial facilities like the Granaries, Substation, and Store are also depicted, along with conveyor belt systems and large storage tanks. The map uses grayscale shading to represent different land uses and includes labels for streets, wharfs, and specific buildings.

Job Title:
2026
**INSTALLATION OF NEW RAILINGS ALONG
ALBERT DOCK AT STEVEDORE PLACE**

Drawing Title:

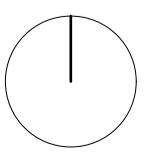
Location Plan

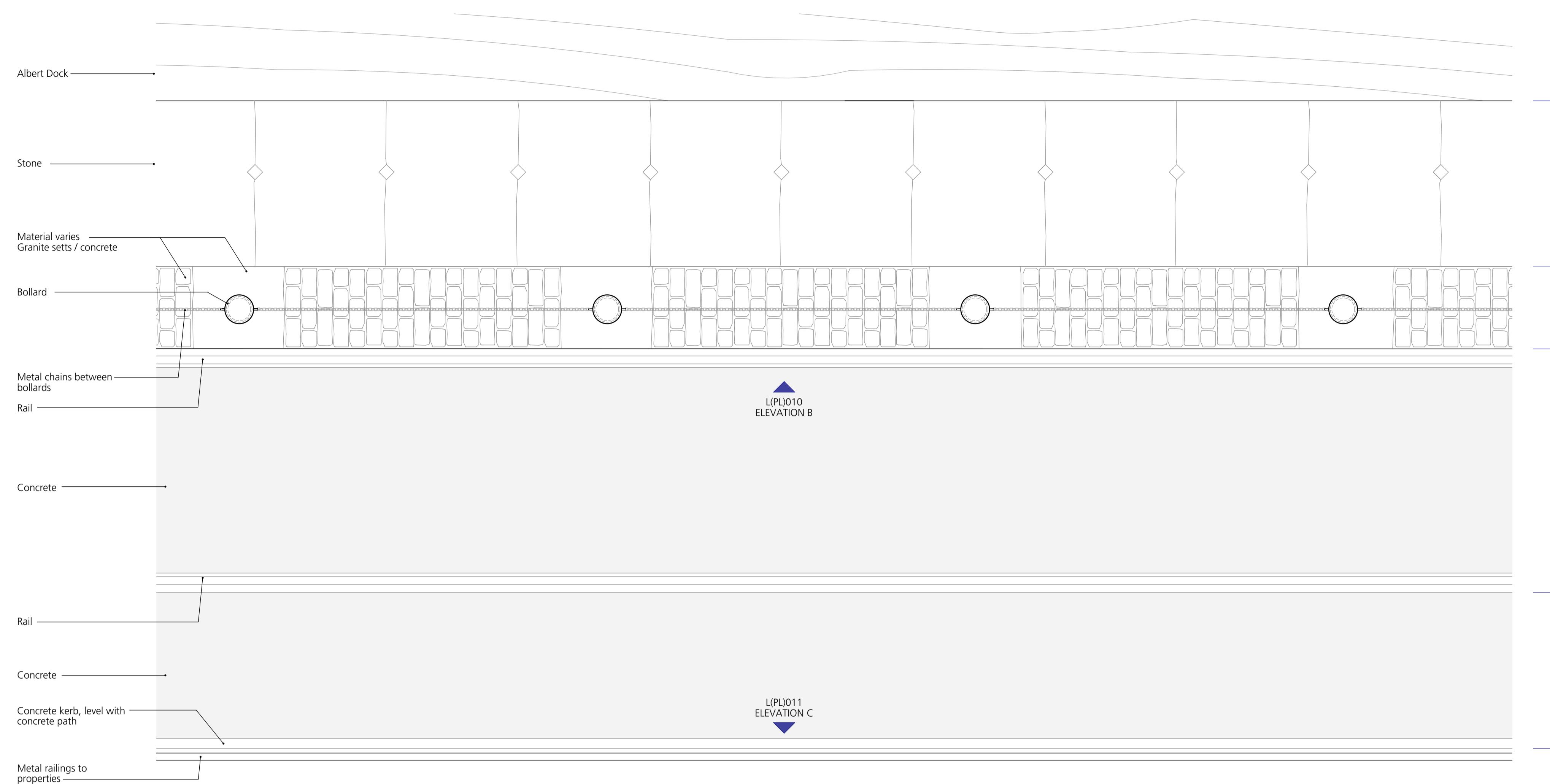
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LISTED BUILDING CONSENT

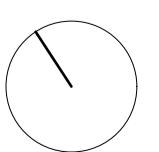
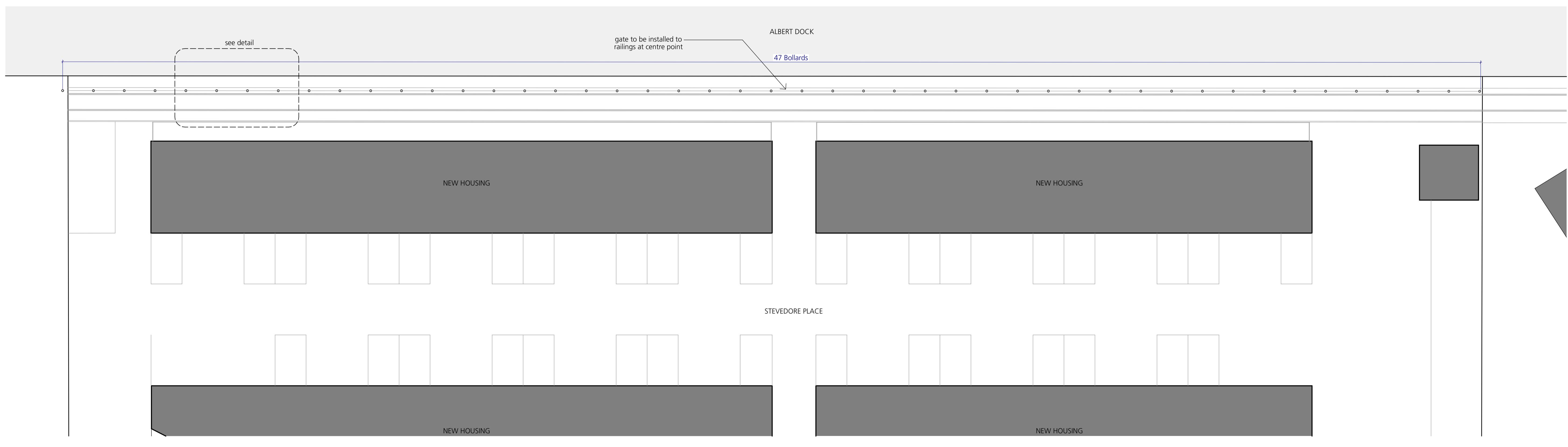
Drawing Number:
L(PL)001

Scale: Date: Drawn: Reviewed:
1:1250 @ A1 11.2020 CH MTH
1:2500 @ A3





Site Plan - Detail | 1:20



Stevedore Place Site Plan | 1:200

1:200 0 2 10 20m

© This drawing is copyright of LDN Architects LLP

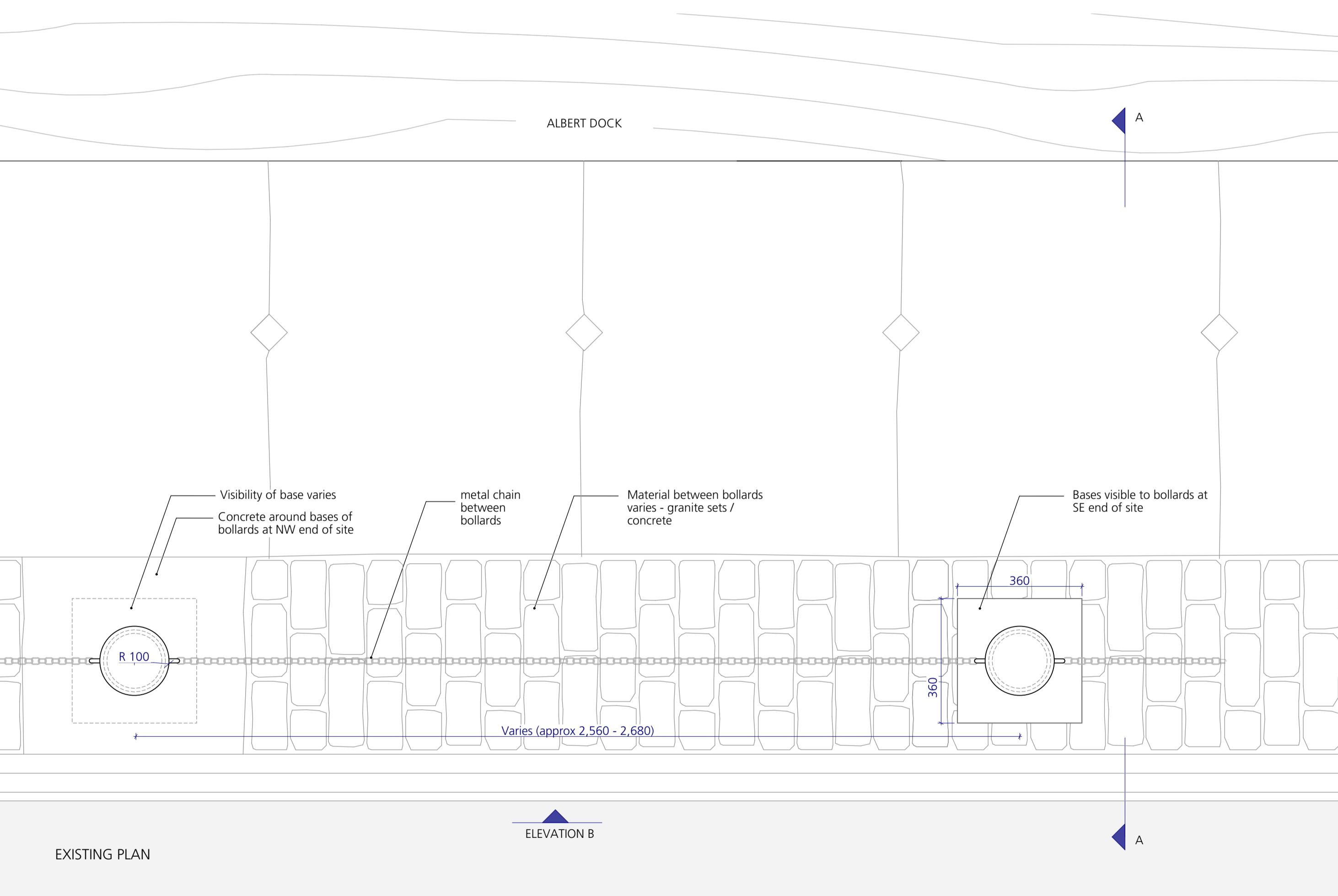
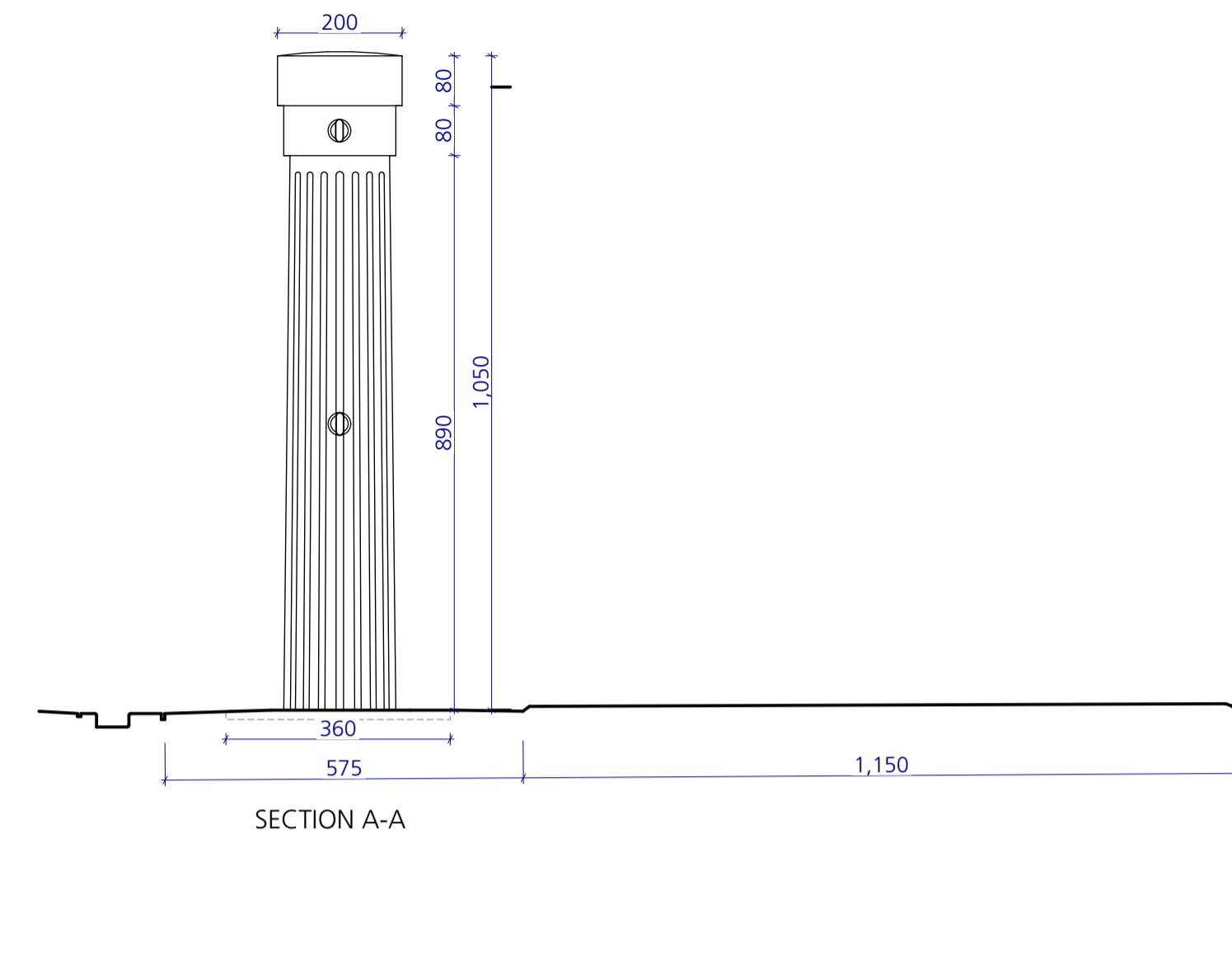
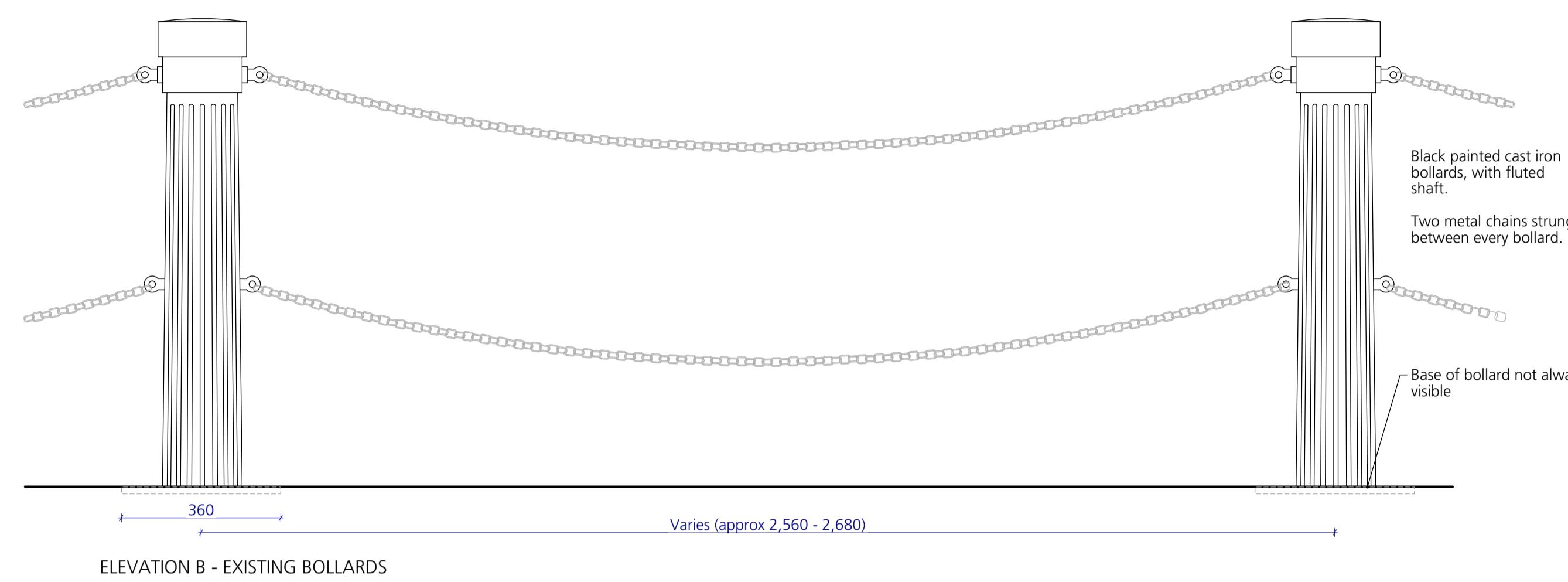
Job Title:
2026
INSTALLATION OF NEW RAILINGS ALONG
ALBERT DOCK AT STEVEDORE PLACE

Drawing Title:
**Existing
Site Plan**

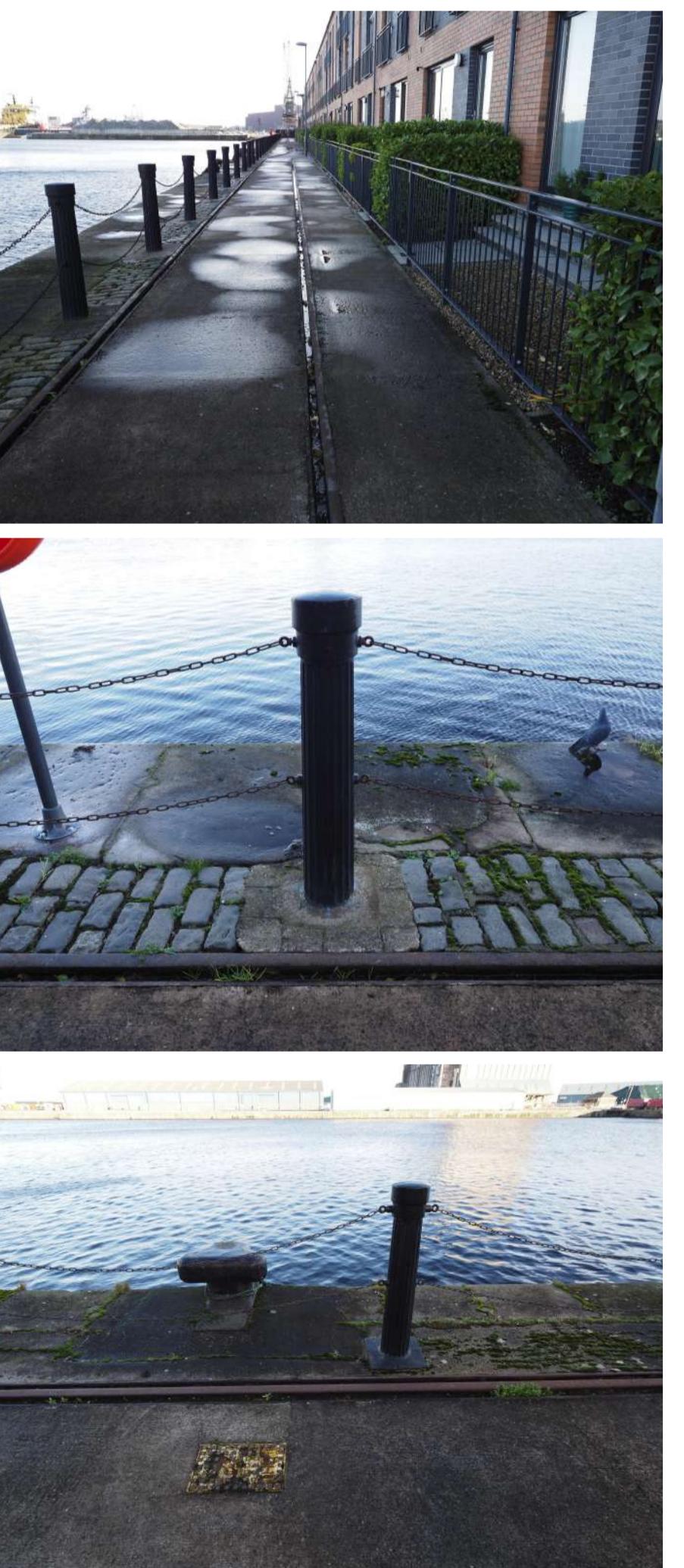
Drawing Status:
LISTED BUILDING CONSENT

Drawing Number:
L(PL)002

Scale: Date: Drawn: Reviewed:
1:200 @ A1 11.2020 CH MTH



Existing Bollards | 1:10



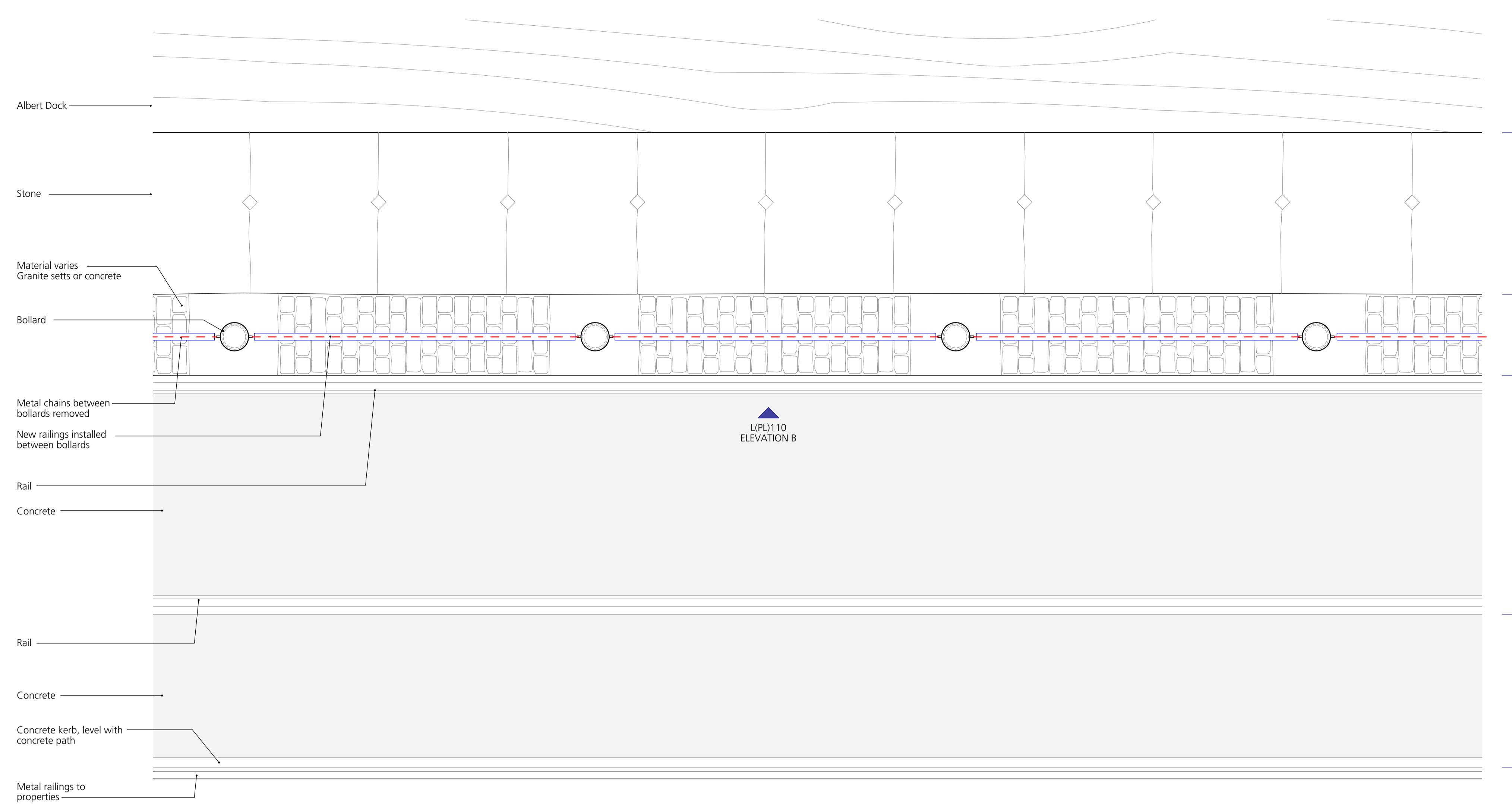
Job Title:
2026
INSTALLATION OF NEW RAILINGS ALONG
ALBERT DOCK AT STEVEDORE PLACE

Drawing Title:
**Existing
Bollards**

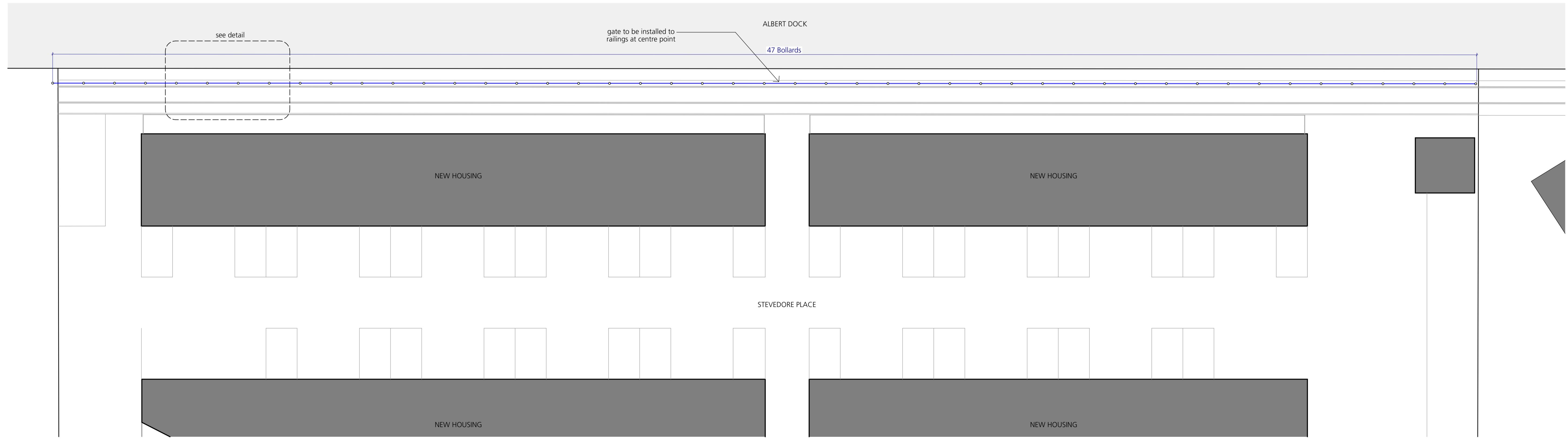
Drawing Status:
LISTED BUILDING CONSENT

Drawing Number:
L(PL)010

Scale: Date: Drawn: Reviewed:
1:10 @ A1 1:20 @ A3 CH MTH



Site Plan - Detail | 1:20



Stevedore Place Site Plan | 1:200

Job Title:
2026
INSTALLATION OF NEW RAILINGS ALONG
ALBERT DOCK AT STEVEDORE PLACE

Drawing Title:
**Proposed
Site Plan**

Drawing Status:
LISTED BUILDING CONSENT

Drawing Number:
L(PL)102

Scale: Date: Drawn: Reviewed:
1:200 @ A1 11.2020 CH MTH

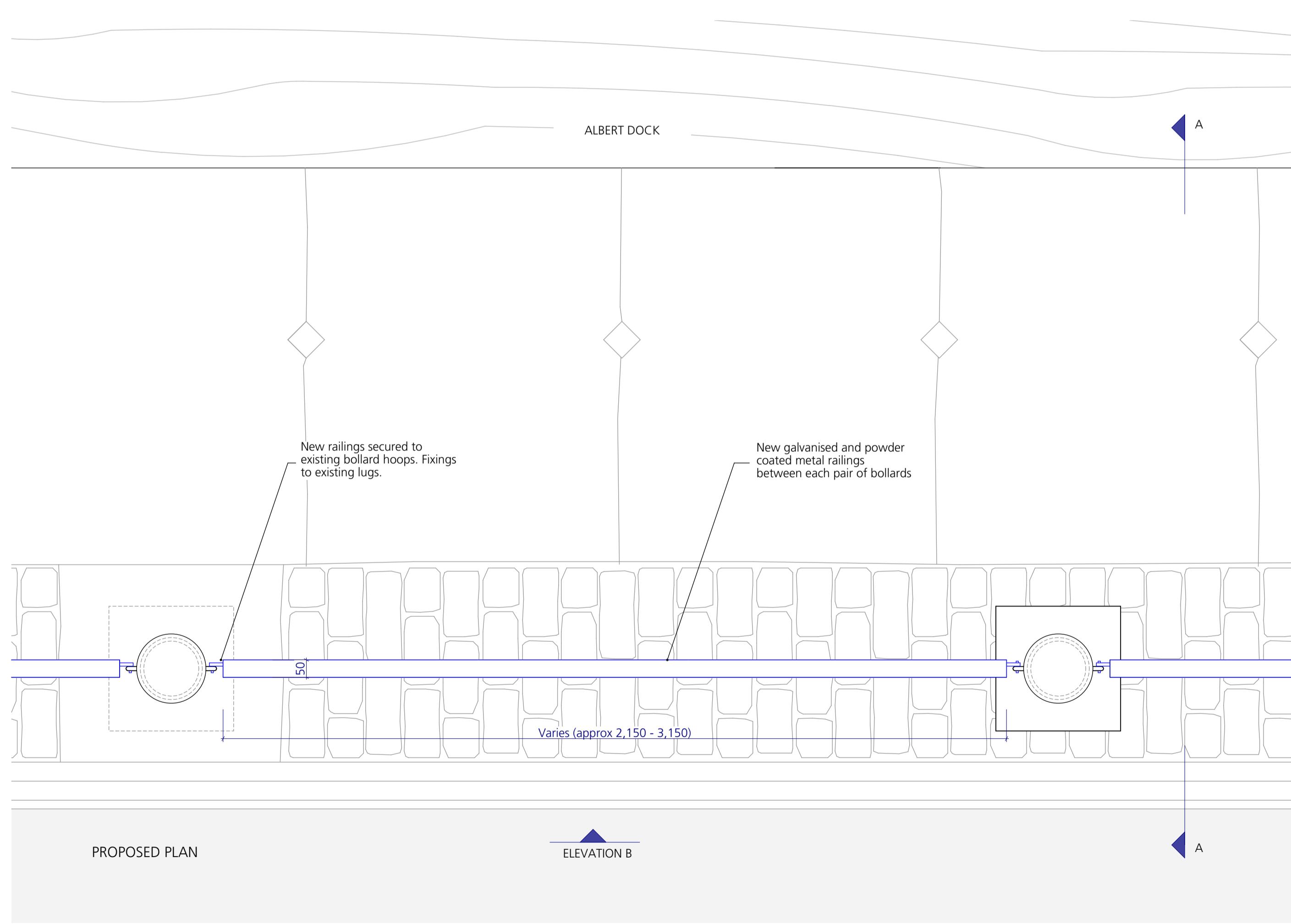
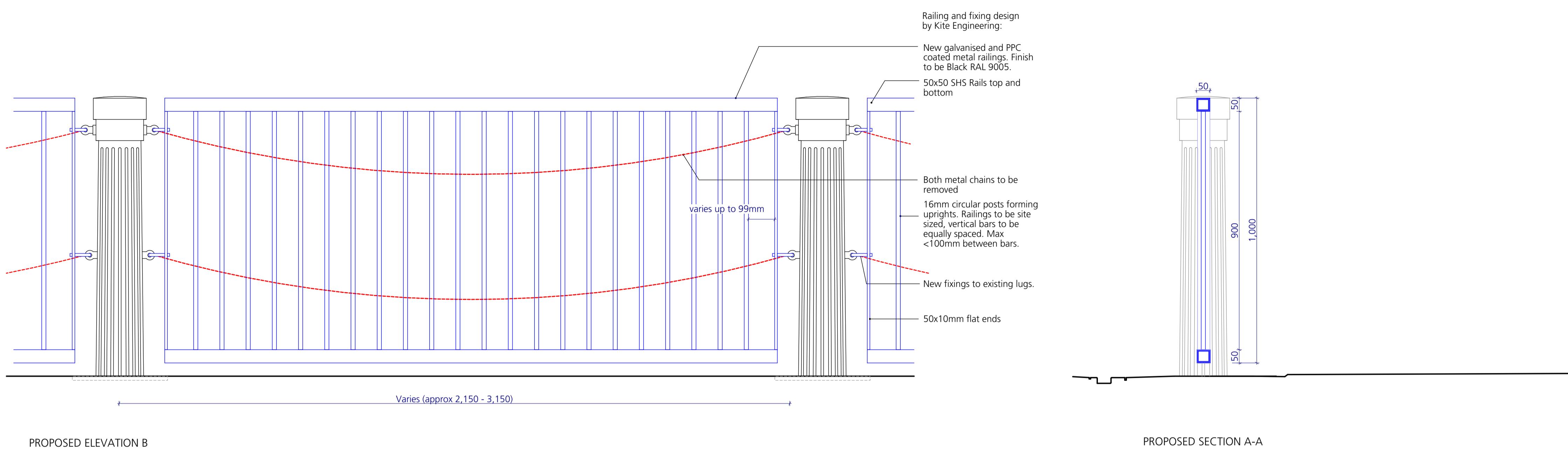
Job Title:
2026
INSTALLATION OF NEW RAILINGS ALONG
ALBERT DOCK AT STEVEDORE PLACE

Drawing Title:
Proposed
Railings between Bollards

Drawing Status:
LISTED BUILDING CONSENT

Drawing Number:
L(PL)110

Scale: Date: Drawn: Reviewed:
1:10 @ A1 11.2020 CH MTH



Proposed Railings between Bollards | 1:10

Installation Of Protective Barrier Along The Land To The South Of Albert Dock At Stevedore Place, Leith

Design Statement

December 2020

LDN Architects





Existing Bollards and Chain fence



Dockside viewed from East

OWNERSHIP

Forth Ports, is the harbour authority for the Forth and Tay estuaries and owns and operates the Port of Leith which includes Albert Dock.

INTRODUCTION & JUSTIFICATION

Forth Ports propose to replace the metal chain links between the existing bollards located to the south of Albert Dock and north of the residential development at Stevedore Place, Leith, with panels comprising vertical railings. The works are required to take place as a matter of urgency for reasons of health and safety. Recently, a young child had to be rescued from Albert Dock basin having accessed it from the Dock edge at Stevedore Place. Fortunately, the child was saved by a local resident using a lifebuoy located at the quayside and a member of the public who entered the Dock to retrieve the child.

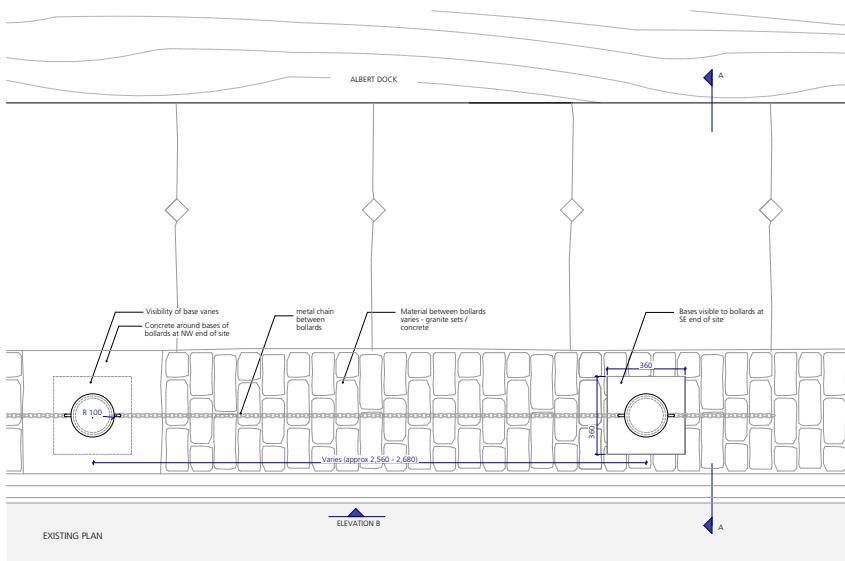
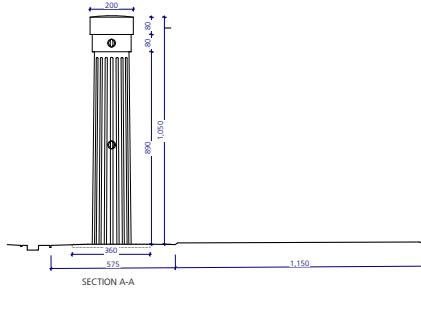
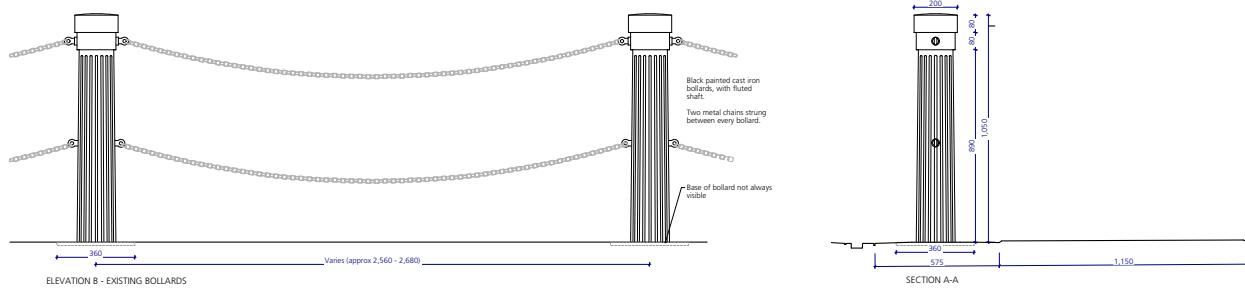
Forth Ports have a high level of commitment to health and safety across their business, taking its obligations and statutory requirements extremely seriously. It implements a 'Safety F1rst' culture at all levels across the business, which aims to protect employees, customers and visitors and is the first port group to be awarded ISO health and safety standard ISO 45001. Having reviewed the recent incident and assessed the risk, Forth Ports propose to undertake works from an urgent safety perspective to prevent the risk of any further incidents happening again.

The proposed vertical railing panels, which will be attached to existing eyelets on the bollards and can be removed without causing damage to the Listed Structure, comprise the intervention which Forth Ports consider to have least impact on Albert Dock and the surrounding area considered necessary to address the immediate requirement to improve safety along the Dock edge at Stevedore Place.

CONSULTATION

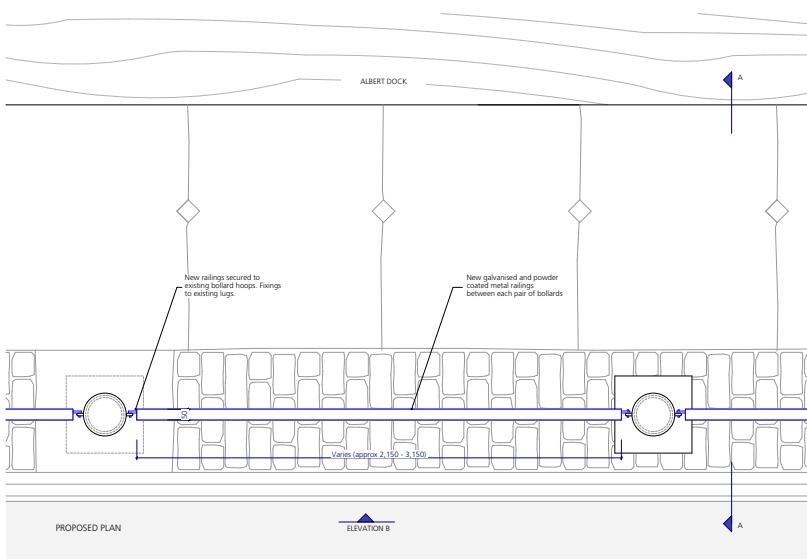
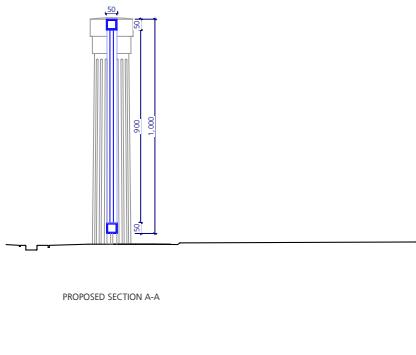
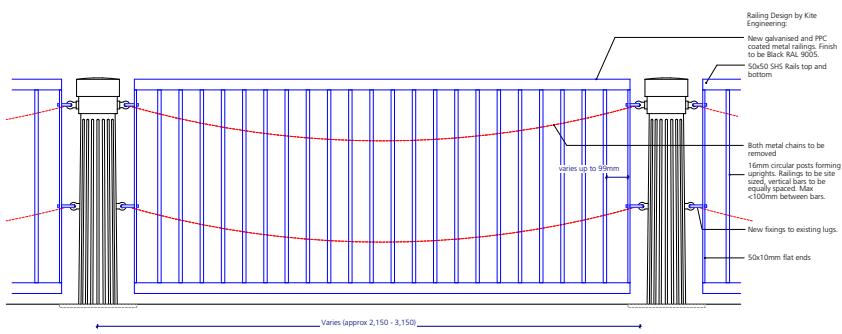
Following the incident at Albert Dock, Forth Ports undertook an urgent health and safety review of their assets to which the public have access to in and around the Port of Leith. The extent of the risk was considered and subsequently Forth Ports wrote to all residents of the adjacent Stevedore Place development to advise them of the proposed works. A copy of this letter was seen by the Planning Authority. Forth Ports subsequently advised the Council of the urgent need for the works and confirmed that applications for Listed Building Consent and Planning Permission would be submitted.

The proposed development is defined as a local development and there is no statutory requirement to undertake pre-application consultation.



Existing Bollards | 1:10

Existing Bollards and Chain Fencing



Proposed Railings between Bollards | 1:10

Proposed Railings retaining existing Bollards

PLANNING POLICY CONTEXT

In addition to the Historic Environment Policy for Scotland, the following City of Edinburgh Planning Policies are relevant:

- DES 1: Design Quality & Context
- DES 3: Development Design
- DES 4: Layout Design.
- DES 10: Waterside Development
- ENV 3: Listed Buildings – Setting
- ENV 4: Listed Buildings – Alterations and Extensions
- ENV 6: Conservation Areas – Development
- Leith Conservation Area Character Appraisal

DESIGN CONTEXT

The dockside of Albert Dock along which it is proposed to install the new safety barrier lies within the Leith Conservation Area and Albert Dock, including its “*...stone flagged and setted quayside with bollards, railway tracks and three travelling cranes...*”, is Category B Listed as being of special architectural and historical interest by Historic Environment Scotland.

The historically open nature of the dockside prevalent in the area has been changed in recent years by the construction of a new housing development on Stevedore Place which is located approximately 4 metres back from the dockside. It is separated from the dock edge by small fenced-in gardens which have direct gated access to the dockside and a bollard and chain barrier which is set approximately 1 metre back from the dock edge. The bollards and chains are typical of many throughout the Conservation Area which protect dockside edges and are set in a 600 millimetre wide strip, comprising old concrete and setts. The bollard centres vary between 2-3 metres and the dock edge is formed of large stone blocks with square stone locking pegs between each. Railway tracks for the travelling cranes are visible set into the concrete surface between the housing and bollard and chain barrier

The dockside pathway is approximately 150 metres long. It is not intended for vehicle use and is used primarily by pedestrians as a route along the dock edge as well as by residents of the new housing

DESIGN PROPOSALS

The proposed new protective barrier is intended to improve the safety of the dock edge because of the proximity of the housing development and the potentially fatal risk of children gaining access to the dock edge without supervision, as occurred recently.

The design of the new barrier, which will replace the chains between the bollards, consists of panels formed of a painted metal frame and upright balusters at approximately 100 millimetre centres. It has been developed by Kite Engineering on behalf of Forth Ports and is intended to address the health and safety issue with minimum visual impact on the character of the dockside and minimum physical impact on the Listed structures:

It is similar in appearance, height and scale to the railings of the adjacent housing development.

It is intended to be as visually plain, simple and transparent as possible whilst addressing the safety issue which is its primary purpose.

The vertical nature of the balusters, without intermediate horizontals, reduces the risk of children climbing the barrier whilst stopping them from passing through it.

The length of each panel will be sized on site to accommodate the variance in distance between bollard centres without visual change.

The new panels will be fixed in position using the eyelet lugs on the side of the existing bollards with no need to disturb historic dockside finishes with new footings.

The new metalwork will be painted black to match the predominant colour of dockside railings elsewhere in the dock area.

The barriers are removable in the future without damage to historic structures.

The proposals have been considered and respond in terms of the Edinburgh Local Development Plan (2016) as follows:

DES 1: Design Quality & Context

The Port of Leith which is an operational Port. Albert Dock forms part of the operational port estate and as such, it is necessary to ensure that appropriate health and safety measures are in place.

The proposals are of an appropriate design which will mitigate a very real health and safety risk, as demonstrated by the recent incident outlined in this Statement. Accordingly, the use of vertical balusters is proposed as these cannot be climbed upon.

The metalwork of the barrier panels will be painted black to match the existing bollards. This is the established and predominant colour for railings in the public realm of the Leith docks area.

The proposed panels are designed to be in keeping with the scale of the existing bollards; a higher boundary treatment would diminish the presence of the bollards and detract from the Listed structures and character of the surrounding area, whilst a smaller panel would not mitigate the health and safety risk.

The fence panels are designed to be fitted to the existing eyelets on the bollards, thus reducing the level of intervention required.

The proposal extends from the secure west end to secure east end of the housing development on Stevedore Place and is the necessary extent of development required to address health and safety risks.

The scale of the proposed development does not conflict with the scale and form of the residential development. Garden gates provide direct access from the dwellings to the Dock edge and the proposals provides a secure barrier between the Dock basin and the residential use.

DES 3: Development Design

As referred to in the response to DES 1, the Applicant has considered the existing features including Albert Dock and the adjacent residential development at Stevedore Place and the proposed design addresses the health and safety issue with minimum visual impact on the character of the dockside and minimum physical impact on the Listed structures.

DES 4: Layout Design

The Applicant has considered the surrounding context. The proposal will close off the dockside edge but will not impact on the character of the wider townscape and landscape or impact on existing eye-level views.

DES 10: Waterside Development

Albert Dock forms part of the operational port and therefore it is not appropriate to promote recreational use of the Dock basin. The proposed development is designed to mitigate a health and safety risk whilst ensuring the public frontage of the waterside is not diminished.

Public access to the water's edge is not reduced by the proposed development as there is an existing chain fence preventing access in the same location as the proposed new barrier.

The proposal will not impact on the conservation or landscape interests of the water environment. As noted above Albert Dock forms part of the operational port and therefore it is not appropriate to promote recreational use of the Dock basin

ENV 3: Listed Buildings – Setting

The policy seeks to ensure that proposals to listed buildings where these are not detrimental to the architectural character, appearance or historic interest of the building and or its setting. Albert Dock forms part of the operational Port of Leith and its function is intrinsic to its character, appearance and historic interest. The proposal addresses the safety issue with minimum visual impact on the character of the dockside and minimum physical impact on the Listed structures

ENV 4: Listed Buildings – Alterations and Extensions

The proposed fencing panels are justified on the grounds that they are required to address an identified health and safety risk.

There will be no damage to the listed structure as the barriers are removable in the future without damage to historic structures.

The proposed barriers are of a sympathetic engineered design and similar in scale and material to the listed structures.

The railings will be painted black to match the existing bollards.

ENV 6: Conservation Areas – Development

The site is within the Old Leith and Shore area of the Leith Conservation Area. The Character Area Appraisal does not specifically mention dockside edges but there are a variety of railings and protective barriers within the Conservation Area, most based on pragmatic engineered designs appropriate to a lively dock area. The proposed barriers are of a sympathetic engineered design and similar in scale and material to the listed structures. They will replace chain railings that already prevent access to the dockside edge and, in so doing, they will address the health and safety issues identified without obstructing views of and across Albert Dock.

The metalwork of the barrier panels will be painted black to match the existing bollards. This is the established and predominant colour for railings in the public realm of the Leith docks area.

LDN Architects



Business Centre G.2 Waverley Court 4 East Market Street Edinburgh EH8 8BG Email: planning.support@edinburgh.gov.uk

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100339741-002

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

Description of Proposed Works to Listed Building

Are the proposals to alter, extend or demolish the listed building(s)? *

Yes No

If Yes, please provide further details: * (Max 500 characters)

Install protective barrier along the land to the south of Albert Dock at Stevedore Place, Letih

Has the work already been started and/or completed? *

No Yes – Started Yes - Completed

Please Note: it can be a criminal offence to undertake works that require listed building consent in advance of obtaining consent.

Applicant or Agent Details

Are you an applicant or an agent? * (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

Applicant Agent

Agent Details

Please enter Agent details

| | | | |
|-----------------------|--|-----------------------|------------------------|
| Company/Organisation: | HolderPlanning Ltd | | |
| Ref. Number: | You must enter a Building Name or Number, or both: * | | |
| First Name: * | Lesley | Building Name: | |
| Last Name: * | McGrath | Building Number: | 5 |
| Telephone Number: * | 07841487916 | Address 1 (Street): * | South Charlotte Street |
| Extension Number: | | Address 2: | |
| Mobile Number: | | Town/City: * | Edinburgh |
| Fax Number: | | Country: * | United Kingdom |
| | | Postcode: * | EH2 4AN |
| Email Address: * | lesley.mcgrath@holderplanning.co.uk | | |

Is the applicant an individual or an organisation/corporate entity? *

Individual Organisation/Corporate entity

Applicant Details

Please enter Applicant details

| | | | |
|----------------------|--|----------------------|--|
| Title: | You must enter a Building Name or Number, or both: * | | |
| Other Title: | Building Name: | | |
| First Name: * | Building Number: | 1 | |
| Last Name: * | Address 1 (Street): * | Prince of Wales Dock | |
| Company/Organisation | Address 2: | Leith | |
| Telephone Number: * | Town/City: * | Edinburgh | |
| Extension Number: | Country: * | UK | |
| Mobile Number: | Postcode: * | EH6 7DX | |
| Fax Number: | | | |
| Email Address: * | | | |

Site Address Details

Planning Authority:

Full postal address of the site (including postcode where available):

Address 1:

Address 2:

Address 3:

Address 4:

Address 5:

Town/City/Settlement:

Post Code:

Please identify/describe the location of the site or sites

Northing Easting

Existing and Proposed Uses

Please describe the current use: * (Max 500 characters)

Please describe the proposed use: * (Max 500 characters)

Pre-Application Discussion

Have you discussed your proposal with the planning authority? *

Yes No

Pre-Application Discussion Details Cont.

In what format was the feedback given? *

- Meeting Telephone Letter Email

Please provide a description of the feedback you were given and the name of the officer who provided this feedback. If a processing agreement [note 1] is currently in place or if you are currently discussing a processing agreement with the planning authority, please provide details of this. (This will help the authority to deal with this application more efficiently.) * (max 500 characters)

Meeting with Enforcement Officer to explain health and safety background to the proposed works. Enforcement Officer confirmed requirement for Listed Building Consent and Planning Permission for works.

Title:

Mrs

Other title:

First Name:

Jane

Iannarelli

Correspondence Reference Number:

Date (dd/mm/yyyy):

03/12/2020

Note 1. A Processing agreement involves setting out the key stages involved in determining a planning application, identifying what information is required and from whom and setting timescales for the delivery of various stages of the process.

Listed Building Category

Please state the category of listing (if known) of the building in the list of Buildings of Special Architectural or Historic interest: *

- Category A
 Category B
 Category C
 A (Group)
 B (Group)
 Ecclesiastical Category A
 Ecclesiastical Category B
 Ecclesiastical Category C
 Don't Know

Demolition of Listed Building

Does the proposal involve demolition of a listed building or a building within the curtilage of a listed building? *

- Total or substantial demolition of the listed building
 Total or substantial demolition of a building within the curtilage of the listed building
 Other (partial demolition or alterations)

Listed Building Alterations

Do the proposed works include alterations and/or extension to a listed building? *

(This may be in addition to any demolition works specified previously)

Yes No

Does the proposal include:

Works to the exterior of the building? This would include works to any structure or object fixed to the building Yes No
Or to any other buildings within its curtilage: *

Works to the interior of the building? This should include any stripping out of any internal features eg. Wall, Ceiling, plasterwork, joinery, panelling, fireplaces, chimney pieces, staircases, ironmongery, doors, flooring, Floor finishes/floorboards, tiling, stencilled decoration, fixed furniture and fittings, including machinery: *

Please state the number of attachments you will be including with this proposal, this may include plans, drawings and photographs sufficient to identify the location, extent and character of the items to be altered, extended or removed, and the proposal for their replacement, including any new means of structural support and detailed specification of proposed finishing materials.

Number of plans, drawings and photographs in total? *

6

Proposal Relating to Listed Building

Are there any current applications or existing consents or permissions for this site? *

Yes No

Proposals Relating to Listed Building

Please describe the application and include the planning application reference number(s), if known: (Max 500 characters)

An application for planning permission is being submitted concurrently with the application for listed building consent for the installation of the protective barrier.

Reference Number

Are you submitting an application for Planning Permission, Conservation Area Consent or other consent at the same time as this application? *

Yes No

If Yes, please provide further details: * (Max 500 characters)

As noted above, an application for planning permission is being submitted concurrently with the application for listed building consent for the installation of the protective barrier.

Planning Service Employee/Elected Member Interest

Is the applicant, or the applicant's spouse/partner, either a member of staff within the planning service or an elected member of the planning authority? *

Yes No

Certificates and Notices

Certificate and Notice

The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

The Town and Country Planning (Listed Building and Buildings in Conservation Areas) (Scotland) Regulations 1987

One Certificate must be completed and submitted along with this form; either Certificate A, Certificate B or Certificate C.

Are you the sole owner of ALL the land/building relevant to this proposal? *

Yes No

Certificate Required

The following Land Ownership Certificate is required to complete this section of the proposal:

Certificate A

Land Ownership Certificate

Certificate and Notice

The Planning (Listed Buildings and Conservation Areas) (Scotland) act 1997

The Town and Country Planning (Listed Buildings and Buildings in Conservation Areas) (Scotland) Regulations 1987

Certificate A

I hereby certify that – (See the help section for notes)

(1) - No person other than myself/the applicant was an owner [Note 1] of any part of the land to which the application relates at the beginning of the period of 21 days ending with the date of the accompanying appeal.

Signed: Lesley McGrath

Date: 10/12/2020 15:01:40

Please tick here to certify this Certificate. *

Checklist – Application for Listed Building Consent

Please complete the following checklist to make sure you have provided all the necessary information in support of your application. Failure to submit the necessary information may result in your application being deemed invalid. The planning authority will not start processing your application until it is valid.

A Location plan which identifies the land to which the application relates drawn to an identified scale
And showing the direction of north. *

Yes No

A copy of other detailed plans, drawings, photographs (with annotations to describe the details of Materials and workmanship) as necessary to describe your proposals. *

Yes No

Elevations. *

Yes No

Floor Plans. *

Yes No

Roof Plan. *

Yes No

Does your plan include:

Sections. *

Yes No

Perspectives of Photomontages. *

Yes No

Block Plan. *

Yes No

Special Detailed Drawing. *

Yes No

Detailed specification of finishes. *

Yes No

Current or old photographs. *

Yes No

What other information are you submitting in support of your application? *

- Design Statement.
- Supporting Statement.
- Condition Survey Report.
- Feasibility Study.
- Development Appraisal.
- Environmental Impact Statement.
- Conservation Survey/Statement/Plan.
- Other.

Declare – Listed Building Consent

I, the applicant/agent certify that this is an application for listed building consent as described in this form the accompanying plan/drawings and additional information.

Declaration Name: Mrs Lesley McGrath

Declaration Date: 10/12/2020

November 2020

Dear Neighbour,

**Forth Ports Limited – Port of Leith
Stevedore Place – Planned Fence Works**

We are writing to advise you of works which are to be undertaken to the existing bollard and chain fence along the quayside at Stevedore Place which fronts onto Albert Dock. These works are being carried out as a necessary safety measure to reduce the likelihood of anyone gaining access to the water.

The works include the installation of a new pedestrian guard rail between the existing bollards as well as access/egress gates at each dock ladder in the event of having to recover anything from the water and for maintenance and inspection purposes only. The gates will be kept locked.

Further details on the proposed fencing are shown below.



The works are estimated to commence around the end of November and will take several weeks to complete.

Any noise and disruption will be kept to a minimum however should you have any queries please do not hesitate to contact us on 0131 555 8700.

Yours faithfully,

Forth Ports Limited

From: Lesley McGrath
Sent: 07 December 2020 11:08
To: Jane Iannarelli <Jane.Iannarelli@edinburgh.gov.uk>
Cc: Alasdair Sibbald [REDACTED]
Subject: RE: Planning Enforcement Enquiry - Forth Ports

Jane

I write to advise you that following an incident involving a child who managed to gain entry to Albert Dock recently, Forth Ports have undertaken an urgent health and safety review of their assets to which the public have access to in and around the Port of Leith.

Forth Ports have a high level of commitment to health and safety across their business, taking its obligations and statutory requirements extremely seriously. It implements a 'Safety First' culture at all levels across the business, which aims to protect employees, customers and visitors and is the first port group to be awarded ISO health and safety standard ISO 45001. Having reviewed the recent incident and assessed the risk, the following risks have been identified, which require urgent attention:

Stevedore Place – the existing chain link is insufficient to prevent entry to the Dock from the immediate residential development. Forth Ports intend to put in place vertical railing panels which will be attached to existing eyelets on the bollards and can be removed without causing damage. The proposal comprises the minimum intervention considered necessary to address the immediate requirement to improve safety along the Dock edge at Stevedore Place. Applications for Listed Building Consent and Planning Permission are expected to be submitted this week, with the intention of works commencing as soon as the panels are available. Either Forth Ports or myself will advise you when works will commence.

Former East Dock at Dock Place / Rennies Isle – it has been necessary to enforce the bollard and single chain link barrier at this location. The works have included replacement of the existing chain link where necessary and the addition of a second lower chain link which has been affixed to the existing bollards via new welded eyelets. The works are in keeping with the existing materials and structure. I will await your feedback pending your discussions with Local Developments.

No further works to Forth Ports' assets in and around the Port of Leith have been identified as part of the health and safety review. Should further works be identified in due course, we will advise the Council.

I trust the above clearly sets out Forth Ports position, however should you require further information please do not hesitate to contact me.

Lesley McGrath

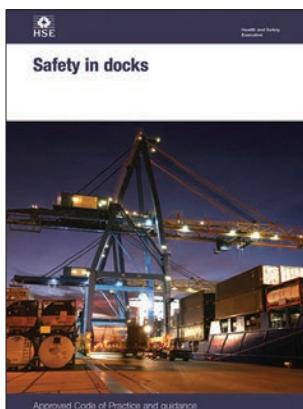
HolderPlanning

Mobile. 07841 487916
www.holderplanning.com

5 South Charlotte Street
Edinburgh
EH2 4AN

Safety in docks

Approved Code of Practice and guidance



L148 (First edition)
Published 2014

This Approved Code of Practice (ACOP) and guidance covers safety in dock operations and is aimed at those who have a duty to comply with provisions of the Health and Safety at Work etc Act 1974. This includes people who control dock premises, suppliers of plant and equipment, dock employers, managers, safety officers, safety representatives and workers.

The ACOP has been designed to address both the larger end of the industry as well as those engaged in dock work in small harbours. The focus is on helping dutyholders of all sizes to easily understand the key requirements needed to comply with the general duties of the Act and other relevant statutory provisions.

This publication also provides details of relevant guidance that has been developed by the Health and Safety Executive, Port Skills and Safety and Unite the Union and others to help employers, employees and the self-employed to comply with the law.

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Approved Code of Practice

This Code has been approved by the Health and Safety Executive, with the consent of the Secretary of State. It gives practical advice on how to comply with the law. If you follow the advice you will be doing enough to comply with the law in respect of those specific matters on which the Code gives advice. You may use alternative methods to those set out in the Code in order to comply with the law.

However, the Code has a special legal status. If you are prosecuted for breach of health and safety law, and it is proved that you did not follow the relevant provisions of the Code, you will need to show that you have complied with the law in some other way or a Court will find you at fault.

Guidance

This guidance is issued by the Health and Safety Executive. Following the guidance is not compulsory, unless specifically stated, and you are free to take other action. But if you do follow the guidance you will normally be doing enough to comply with the law. Health and safety inspectors seek to secure compliance with the law and may refer to this guidance.

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Introduction

What this book is about

1 This publication contains an Approved Code of Practice (ACOP) on the duties under the Health and Safety at Work etc Act 1974 (the HSW Act) and its relevant statutory provisions that are specific to the docks industry. It also provides details of relevant guidance that has been developed by the Health and Safety Executive (HSE), Ports Skills and Safety (PSS), Unite the Union and others to help employers, employees and the self-employed comply with the law. It does not introduce any new requirements for dutyholders.

2 This ACOP only addresses some specific dock-related issues and complying with this ACOP alone will not be sufficient to fulfil your full duties under health and safety law. You will also need to refer to other ACOPs and Regulations for more general matters.

Who needs to read this

3 The HSW Act and its relevant statutory provisions cover the safety of anyone at work while they are in Great Britain, or engaged in certain other activities in the territorial sea. Regulations under the HSW Act do not generally apply to the master and crew of a ship carrying out shipboard activities. However, masters do have duties under the HSW Act when ships' crew work alongside shore-based personnel on the ship, or when ships' plant, eg a lift truck, is used ashore.

Content and scope of this ACOP

4 The ACOP provides practical guidance on sections 2, 3, 4, 7 and 8 of the HSW Act in respect of some of the work activities carried out in docks. These set out the basic requirements to ensure, so far as reasonably practicable, the health, safety and welfare of all involved. In docks employers, employees and others need to comply with these and a number of other sets of Regulations made under the HSW Act which prescribe more specific ways in which the general duties should be complied with. Many of those duties apply to work carried out in docks, as they would apply in other places of work. Examples of regulations which also apply to work carried out in docks include:

- Management of Health and Safety At Work Regulations 1999 (the Management Regulations)
- Workplace (Health, Safety and Welfare) Regulations 1992 (the Workplace Regulations)
- Work at Height Regulations 2005 (WAHR)
- Lifting Operations and Lifting Equipment Regulations 1998 (LOLER)
- Provision and Use of Work Equipment Regulations 1998 (PUWER)
- Personal Protective Equipment at Work Regulations 1992

- Confined Spaces Regulations 1997
- Loading and Unloading of Fishing Vessels Regulations 1988
- Dangerous Substances and Explosive Atmospheres Regulations 2002 (DSEAR)
- Control of Substances Hazardous To Health Regulations 2002
- Safety Representatives and Safety Committees Regulations 1977
- Health and Safety (Consultation with Employees) Regulations 1996

5 Some of these Regulations have associated ACOPs and it is important that dutyholders refer to these as well as this ACOP when considering their duties under health and safety law. This ACOP only provides preferred or recommended methods of compliance for some of the work practices which are specific to docks.

6 In situations where regulations made under the HSW Act do not apply on ships, equivalent duties are specified under Merchant Shipping and Fishing Vessel Regulations.

7 This ACOP only applies to duties under the HSW Act. Other non-HSW regulations may also apply to work in docks, including the Working Time Regulations 1998, though these are not covered by this ACOP.

Summary of change

8 The Docks Regulations 1988 were revoked in April 2014 because the duties had been replaced by equivalent requirements in more modern legislation. Some of the guidance with ACOP status has been transferred from HSE's *Safety in docks: Docks Regulations 1988: Approved Code of Practice with Regulations and guidance* publication (COP25).

9 The main changes in the remaining ACOP material are as follows:

- References to duties in the Docks Regulations 1988 have been removed.
- Some guidance has had its ACOP status removed because it is no longer comparable with more modern regulations or because it already exists in ACOPs for the various Regulations referred to in this document.
- There is a consequential amendment to the WAHR to provide an exemption for fencing at straight and level quaysides.

About ACOPs

10 ACOPs are approved by the HSE Board with the consent of the Secretary of State (see Appendix 1 Notice of Approval for details).

11 The ACOP describes preferred or recommended methods that can be used (or standards to be met) to comply with the regulations and the duties imposed by the HSW Act and relevant statutory provisions. The accompanying guidance also provides advice on achieving compliance, or it may give information of a general nature, including explanation of the requirements of the law, more specific technical information or references to further sources of information.

12 The legal status of ACOP and guidance text is given on the copyright page.

13 The ACOP text is set out in **bold** and the accompanying guidance in normal type. A coloured border also indicates each ACOP section clearly.

Terms used in regulations and ACOP/guidance

14 Words and expressions which are defined in the HSW Act and the Management Regulations 1999 have the same meaning in this ACOP and guidance unless the context requires otherwise.

Managing for health and safety in docks

15 Organisations have a legal duty to put in place suitable arrangements for managing health and safety. The keys to effectively managing for health and safety are:

- leadership and management (including appropriate business processes); and
- a trained/skilled workforce; operating in
- a safe working environment where people are trusted and involved.

16 All of these elements are vital and need to be underpinned by an understanding of the profile of risks that the organisation creates or faces.

17 A formal management system or framework can help employers to manage health and safety. Organisations can decide whether to use one or not, but whatever approach is used is likely to contain the steps Plan, Do, Check, Act which are advocated in *Managing for health and safety* HSG65.

18 The Department for Transport's *Port Marine Safety Code*, which applies to all harbour authorities in the UK that have statutory powers and duties, requires a similar approach. It applies the principles of risk assessment and safety management systems to port marine operations.

19 Particular challenges for effective management of health and safety within the docks industry include:

- the number of different employers and/or contractors who can all affect each other's activities. These may include harbour authorities, dock operators, stevedoring firms, hauliers, ships' masters and crew;
- the changing nature of docks as workplaces. This may be due to tidal movements, weather and timing issues;
- the use of temporary workers who may be less familiar with the dock environment than permanent employees. Employer's duties to protect the health, safety and welfare of workers are the same whether they are full-time, part-time, permanent, non-permanent or temporary. This includes workers who are on short-term contracts or rolling contracts;
- the need to board ships and use ships' equipment. Workers should not be allowed to work in an area of a ship that is unsafe until it has been made safe or a safe method of work is in place. If dock workers are using ships' equipment then their employer must ensure that this is safe. This may require the employer to check the equipment and ships' documentation;
- the presence of members of the public who visit dock premises. These may be either passengers or users of public rights of way. These people are more vulnerable as they may be unfamiliar with the premises and/or hazards;
- the need to converse with ships' crew and other parties, eg hauliers, whose first language may not be English.

Legal duties for managing health and safety at work

20 The Management Regulations require employers to put in place arrangements to control health and safety risks. As a minimum, employers should have:

- a written health and safety policy (for employers of five or more people);
- assessments of the risks to employees, contractors, customers, partners, and any other people who could be affected by those activities – and record the significant findings in writing (for employers of five or more people). Any risk assessment must be ‘suitable and sufficient’;
- arrangements for the effective planning, organisation, control, monitoring and review of the preventive and protective measures that come from risk assessment;
- access to competent health and safety advice;
- arrangements to provide health surveillance where appropriate;
- arrangements to provide employees with information about the risks in the workplace and how they are protected;
- arrangements to provide instruction and training for employees in how to deal with the risks;
- arrangements to provide adequate and appropriate supervision;
- arrangements to consult with employees and their representatives about the risks at work and current preventive and protective measures.

Responsibilities of specific organisations

21 In addition to the general duties outlined in paragraph 20, organisations may have additional specific duties dependent on their role. The primary legal duties are placed on the employer(s) of those working in the dock and those in control of the premises and activities carried out. The following categories of organisations may have specific responsibilities, the extent of these will be determined by the exact circumstances.

Organisations with landlord duties, eg harbour authorities and/or dock operators

22 Additional duties may include:

- ensuring that premises are provided in a structurally safe and fit-for-purpose condition;
- passing on any relevant health and safety information about the premises to others;
- identifying areas where specific personal protective equipment (PPE) should be worn;
- where parts of dock premises are leased to tenants, the leasing arrangements should make clear the extent to which the tenant has control of the premises.

23 A good way of exercising control over competence on the premises is to operate a health and safety passport scheme for dock operatives.

Organisations operating within the dock, eg dock operator, stevedores, terminal operator and warehouse operator

24 Additional duties may include:

- ensuring that all workers, whether employees or employed through someone else, are properly trained;
- if organisations exercise some control over other employers and their employees on parts of their premises, they will have some responsibility to

make sure that these people are not endangering others in these areas, including monitoring working hours and fatigue;

- co-operating with other employers.

Labour suppliers

25 Additional duties may include:

- where required, co-operate with the client organisation to agree who will take responsibility for what, and make sure that the worker also knows the position;
- labour suppliers still have responsibility for their employees' health and safety if they are working at someone else's premises and/or under someone else's direct day-to-day control, including monitoring working hours and fatigue.

Ships' masters and shipping agents

26 Additional duties may include:

- ensuring that any contractors that are used are controlled, eg stevedores contracted to load ships' cargo;
- where a ships' master provides a place of work and or equipment for others to use (such as workers employed by the dock operator or a stevedore) then, so far as reasonably practicable, these should be safe and without risks to health.

Other organisations

27 Other organisations will include mooring crews, delivery drivers, enforcement agencies, representatives from clients and customers etc.

28 Additional duties may include:

- what the organisation does is likely to affect others in the dock area, and vice versa. As such, co-operation is essential to minimise health and safety risks;
- not entering areas where authorisation has not been given.

ACOP

29 Where shore-based employees go aboard ship, all dutyholders involved, including the ship's master, should collaborate with one another to ensure that their respective duties are discharged.

30 Where work involves more than one party, eg when loading a vessel, it is important that everyone agrees an overall plan for the work so that everyone knows what they are doing. Unless very simple, this plan should be written down and explained to the workers involved. The plan should cover:

- the responsibilities of each party;
- how each party will do its part;
- how the different parties will interface;
- common issues and arrangements, eg for emergencies;
- how the work will be co-ordinated and controlled.

31 In some operations, such as ro-ro (roll-on, roll-off) movements, control may be with either shoreside management or the ships' master or, in some instances, both. In such cases, collaboration is required to avoid confusion and ensure that clearly defined procedures are followed.

Core elements of managing for health and safety

32 All organisations have management processes or arrangements to deal with payroll, personnel issues, finance and quality control – managing health and safety is no different.

33 Whatever the industry, or the size or nature of an organisation, the core elements to effectively managing for health and safety are:

Leadership and management

34 Leaders, at all levels, need to understand the range of health and safety risks in their part of the organisation and to give proportionate attention to each of them. This applies to the level of detail and effort put into assessing the risks and the effort put into implementing controls, supervising and monitoring.

More advice on leading and managing for health and safety:
www.hse.gov.uk/managing/leading.htm

A competent workforce

35 The competence of the workforce is vital, whether they are employees, managers, supervisors or contractors. It ensures they recognise the risks in their activities and can apply the right measures to control and manage those risks.

More advice on competence: www.hse.gov.uk/managing/competence.htm

An environment where people are trusted and involved

36 At its most effective, the full involvement of the workforce creates a culture where relationships between employers and employees are based on collaboration, trust and joint problem solving.

37 This is where employees and their representatives are involved in assessing workplace risks and the development and review of workplace health and safety policies in partnership with the employer.

More advice on worker consultation and involvement:
www.hse.gov.uk/managing/worker.htm

Delivering effective arrangements: the Plan, Do, Check, Act approach

38 Managing health and safety can rarely be achieved by one-off interventions. A sustained and systematic approach is necessary. While this may not always require a formal health and safety management system, whatever approach is used it probably contains the steps **Plan, Do, Check, Act.**

Plan

39 Determining policy – think about what could be done to manage health and safety, and then decide who is going to do what and how.

40 Planning for implementation – planning is essential for the implementation of health and safety policies. Adequate control of risk can only be achieved through co-ordinated action by all members of the organisation.

Do

41 Identify the organisation's health and safety risks – assess the risks, identify what could cause harm in the workplace, who it could harm and how, and what will be done to manage the risk. Assessments should also consider the ergonomics of work processes and tasks, and the organisation of work. Within a dock environment, there are often a number of different parties who can all affect and be affected by one another's activities. Ongoing maintenance requirements should also be considered as part of this, eg maintenance of cranes, quayside ladders and rescue equipment.

42 Organising for health and safety – this covers activities in four key areas that together promote positive health and safety outcomes, ie controls, co-operation, communication and competence:

(a) **Controls** within the organisation – this will include:

- (i) role of supervisors;
- (ii) systems for managing contractors.

(b) **Co-operation** – this is needed:

- (i) between workers, their representatives and managers through active consultation and involvement.

43 Employers have a legal duty to consult with their employees, or their representatives, on health and safety matters including:

- risks arising from their work;
- proposals to manage and/or control these risks;
- the best ways of providing information and training.

44 Active consultation and involvement of employees and their health and safety representatives is essential to good health and safety management.

45 Consultation involves employers not only giving information to employees but also listening to them and taking account of what they say before making health and safety decisions.

46 Consultation should take place in good time on health and safety matters. In workplaces where the trade union is recognised, this will be through union appointed health and safety representatives. In non-unionised workplaces employers can consult employees either directly or through other elected representatives. In workplaces where there are unionised and non-unionised employees, employers must consult with both.

47 Involving employees and their safety representatives when carrying out and reviewing risk assessments is a good way of helping to manage health and safety risk.

48 Consider asking employees what they think the hazards are, as they may notice things that are not obvious and often have good, practical ideas on how to control the risks. Employees are more likely to understand and adopt controls for risks if they have been actively involved in reaching these decisions.

(c) **Communication** – to achieve success in health and safety management, there needs to be effective communication throughout each organisation, and with other relevant parties.

49 Co-operation and communication are vital within the dock industry due to the number of parties that are often involved in the work activity and the ever-changing circumstances.

(d) **Competence** – this includes capabilities training and experience – helping people to gain the skills and knowledge and ultimately competence to carry out their work safely and without risk to their health. Further guidance on training within the industry can be obtained from the relevant trade associations and trade unions.

50 Implement the plan:

- Decide on the preventive and protective measures needed and put them in place.
- Provide the right facilities and equipment to do the job and keep them maintained.
- Inform, train and instruct, to ensure everyone is competent to carry out their work.
- Supervise to make sure that arrangements are followed.

Check

51 Measure performance – make sure that plans have been implemented and assess how well risks are being controlled.

52 Investigate the causes of accidents, incidents or near misses. An investigation can help to identify why the existing risk control measures failed and what improvements or additional measures are needed.

Act

53 Review performance – learn from accidents and incidents, ill-health data, errors and experience.

54 Take action on lessons learned, including from audit and inspection reports.

Find out more

Legislation

Management of Health and Safety at Work Regulations 1999
www.legislation.gov.uk/uksi/1999/3242/made

Safety Representatives and Safety Committee Regulations 1977
www.legislation.gov.uk/uksi/1977/500/contents/made

Health and Safety (Consultation with Employees) Regulations 1996
www.legislation.gov.uk/nisr/1996/511/contents/made

Working Time Regulations 1998
www.legislation.gov.uk/uksi/1998/1833/contents/made

HSE guidance

Managing for health and safety HSG65 (Third edition) HSE Books 2013
ISBN 978 0 7176 6456 6 www.hse.gov.uk/pubns/books/hsg65.htm

Managing shift work: Health and safety guidance HSG256 HSE Books 2006 ISBN 978 0 7176 6197 8 www.hse.gov.uk/pubns/books/hsg256.htm

Investigating accidents and incidents: A workbook for employers, unions, safety representatives and safety professionals HSG245 HSE Books 2004
ISBN 978 0 7176 2827 8 www.hse.gov.uk/pubns/books/hsg245.htm

Involving your workforce in health and safety: Good practice for all workplaces HSG263 HSE Books 2008 ISBN 978 0 7176 6227 2
www.hse.gov.uk/pubns/books/hsg263.htm

Workplace health, safety and welfare: A short guide for managers Leaflet INDG244(rev2) HSE Books 2007 www.hse.gov.uk/pubns/indg244.htm

HSE web pages

Health surveillance
www.hse.gov.uk/health-surveillance

Risk assessment
www.hse.gov.uk/risk

Competence in health and safety
www.hse.gov.uk/competence

Leading in health and safety
www.hse.gov.uk/leadership

Worker involvement
www.hse.gov.uk/involvement

Joint PSS/HSE guidance

SIP013 *Guidance on management of non-permanent employees in ports*
www.portskillsandsafety.co.uk/publications/safety_in_ports_guidance

Other sources of information

Port Marine Safety Code Department for Transport
www.dft.gov.uk/mca/mcga07-home/shipsandcargoes/mcga-shipsregsandguidance/navigation/dms-nav-pmsc-gtgp.htm

Workplace transport

55 Every year accidents involving transport result in people being killed or seriously injured. People fall off vehicles, or are struck or crushed by them. Many different people drive in docks – this includes drivers from a number of different employers and members of the public. Not all of these drivers will be familiar with the dock environment.

56 Typical workplace transport hazards in docks include:

- movement of vehicles and other plant on and around the dock;
- loading and unloading of vehicles;
- unsecured loads on vehicles;
- trailer coupling and uncoupling in the dock and on the ship;
- unsegregated vehicle/pedestrian access, eg ro-ro bridges and vessel ramps;
- reversing vehicles throughout the dock including adjacent to open quay edges;
- movement of vehicles in cargo storage areas, vehicle parks, ships' holds and quaysides;
- use of vehicles with limited visibility, including straddle carriers and reach stackers.

57 To manage workplace transport risks in docks effectively everyone involved should work together when considering the following three areas:

- Safe site – design and activity
- Safe vehicle
- Safe driver

ACOP

Safe site – design and activity

Pedestrian walkways on shore

58 Walkways should if possible be so laid out that they do not cross cargo handling areas. If it is necessary that they do, then they should be carefully designed and laid out to provide safe access.

Vehicle access to ships

59 Ramps used by vehicles should not also be used for pedestrian access unless there is suitable segregation of vehicles and pedestrians, whether by providing a suitable protected walkway or by ensuring that pedestrians and vehicles do not use the ramp at the same time.

60 A suitable and safe traffic movement system, appropriate to the circumstances, which includes the regulation of traffic between ship and shore, should be set up and adequately supervised and monitored.

Vehicle movements

- 61 In areas where ships are loaded or unloaded, vehicles should avoid manoeuvring close to unprotected quay edges.
- 62 Where the pattern of vehicle movement presents a foreseeable risk from vehicles running over the edge of a quay or other dangerous edge, suitable barriers should be provided and maintained.
- 63 Vehicles that are not involved in dock operations should not be admitted to areas where loading or unloading is taking place, except in emergency, or in exceptional circumstances or for law enforcement agencies to carry out their duties.

Suitability of structures for use by vehicles

- 64 Structures used by vehicles should be of adequate strength to be used safely.
- 65 Ramps should not be used at a slope greater than that for which they were designed. In general, no plant or other heavy vehicle should use a ramp with a slope of more than 10% unless a competent person is satisfied that the vehicle can safely be moved on that ramp, and if necessary the surface of the ramp has been suitably treated to provide sufficient grip.
- 66 Vehicles should not be used on any hatch covering on a ship (unless the hatch is specifically designed for that purpose) without the authority of the ships' master or their authorised and competent representatives.

Drivers in cabs

- 67 Other than for the purposes of driving onto or off a straddle carrier grid in a container handling area, no person should remain in the cab of a haulage vehicle while it is on the grid. People should have safe access to and from all haulage vehicles on a straddle carrier grid to a safe place.

Pedestrian/vehicle segregation

- 68 Every workplace should be safe for the people and vehicles using it.
- 69 Vehicles and pedestrians should be separated where they share the same workspace. This may involve excluding pedestrians from certain areas or providing separate pedestrian routes.
- 70 Where pedestrians are required to enter a high-risk area (eg cargo handling area for a particular task) then additional control measures (eg a safe system of work) may be required.
- 71 All vehicle and pedestrian traffic routes should be clearly marked and signs clearly visible. Appropriate crossing points should be provided where pedestrians and vehicles meet.
- 72 Haulage drivers should remain in a safe area while their vehicles are being loaded and unloaded. The location of the safe area will depend on individual circumstances although in some instances this may be within the actual vehicle cab.

ACOP

Load securing

- 73 Loads should be adequately secure on a lorry or trailer. In the case of containers, twistlocks or guides should be used.

ACOP

74 Where containers or other loads are moved from the loading position to a safe area nearby in the dock to be adequately secured, the control measures necessary to ensure the safety of workers and other affected parties in the vicinity should be identified through risk assessment.

75 All parties involved in the loading of vehicles should co-operate to ensure that the load is safe to be moved from the loading position.

76 It is important to differentiate between the two stages of a journey:

- (a) the initial transfer of a load (ie from the loading/unloading position to a safe area nearby for proper securing); and
- (b) the onward journey from that safe area (eg a road journey for delivery or to storage).

77 No matter how short a journey to/from the quayside, the load must be appropriately secure. However, it is recognised that there is a risk associated with personnel having to strap loads and apply twistlocks in cargo handling areas. The extent to which the load needs to be secured for the initial transfer stage along with other control measures required should be determined through an assessment of the risks.

78 Factors to consider will include:

- type of load (eg bulk, bundled etc);
- stability of load;
- method of stacking;
- type of vehicle;
- length of journey;
- road surface;
- vehicle speed;
- weather conditions.

79 Possible control measures may include:

- containment of the load using stanchions, chocks, or blocks;
- controlling pedestrian access to the vicinity.

80 All parties involved in the loading and unloading of vehicles should co-operate to ensure that foreseeable risks are identified and appropriate control measures are identified and used.

81 For the onward journey the load should be properly secured to the lorry or trailer.

Vehicle movements

82 Appropriate road signs and markings should be provided.

83 Appropriate speed limits around site should be set and drivers should be given instructions about safe speeds.

84 Establish and enforce site rules and provide these to visiting drivers.

85 Avoid reversing where possible.

86 Where lift trucks need to be used on board ship, unless the operating surface is sufficiently strong, level and well made, it may be necessary to provide a suitable

surface that covers a sufficient area for the truck to carry out necessary manoeuvres.

87 Where the driver's view is incomplete, and the vehicle could move in a way such that the driver can not see the path of travel of their vehicle, then a system of work should be developed to enable them to operate safely.

88 Consider the application of the Road Traffic Act and other relevant legislation, such as dock byelaws.

ACOP

Safe vehicle

Brakes

89 When the driver is out of the cab, the vehicle parking brake must be applied in all cases.

90 Some roll trailers used in dock premises are not fitted with brakes by the manufacturer and are not designed to be so fitted. Tractor units used to haul such trailers must have sufficient braking capacity to brake both the haulage unit and the trailer with the trailer carrying the maximum permitted load.

Parking

91 Vehicles should be securely parked with brakes applied or otherwise secured where appropriate.

Maintenance

92 For certain categories of vehicle which are intended to be driven in dock premises but which do not form a part of dock operations (eg vehicles being imported or exported), the person in control of the supply of the vehicles (eg the manufacturer or shipping agent) has a duty to ensure such vehicles are maintained in a safe condition. The duty of the dock operator in relation to such vehicles (as regards whether any particular vehicle is safe to move) is limited to matters within their control.

93 Road vehicles that remain within docks, but are of a type used on public highways, should be maintained to a standard that would meet the requirements for use on a public highway, except where this is clearly unnecessary or inappropriate for safety, and the vehicle concerned is never used on the public highway.

94 Vehicles should be safe, suitable for the purpose for which they are used, regularly maintained, repaired and inspected.

95 All vehicles should be provided with suitable and sufficient lighting for the task and location.

96 Appropriate control measures which may include audible and visual reversing aids (such as CCTV, proximity sensors, reversing alarms etc) should be identified through risk assessment.

97 Provide well-constructed steps or ladders, non-slip walkways and guard rails where possible to reduce the risk of falling when people have to climb onto a vehicle or trailer.

98 Lifting attachments for lift trucks (eg reel clamps) should be used in line with manufacturers' recommendations to ensure that all loads lifted are secure.

99 Vehicles should be fitted with seatbelts if either used on the road or deemed necessary by risk assessment. A seatbelt will be required where roll-over protective structures (ROPS) are fitted. Where seatbelts are provided, they should be used, unless the risk determines their use unnecessary or inappropriate. When seatbelts are required, their use should be monitored.

100 Where fitted, trailer parking brakes must be used unless there are circumstances where the application of the brake may increase the risk of injury to dock staff and collecting/delivering drivers. In these circumstances, the cargo handler should undertake a comprehensive assessment of the risks of the activity to ensure that adequate control measures are in place. Key points to consider include:

- design of trailer park (layout, surface condition, gradient, size of bays, backstops);
- instructions to workers and visiting drivers;
- control of pedestrians; and
- general site rules.

ACOP

Refuelling

101 Safe arrangements should be made for refuelling vehicles, particularly on freight decks or in ships' holds.

102 Safe arrangements should be made for refuelling vehicles. Petroleum or liquefied petroleum gas (LPG) powered vehicles should be refuelled in a safe well-ventilated area and not in any confined space.

ACOP

Safe driver

103 Employers who authorise their employees to drive vehicles or operate lifting equipment should keep and maintain records, which are readily accessible at all times to the relevant person, which should take the form of a list of employees and the vehicle and lifting equipment each is authorised to drive or operate. Each authorisation should generally be for a set period, until the driver or operator is reassessed, rather than for a particular occasion.

104 Authorised drivers and operators on dock premises should be monitored to ensure that they remain fit and competent for the tasks and activities they carry out.

105 Any employee whose ability to drive a vehicle or operate lifting equipment appears to be impaired by alcohol or other drugs should be considered unfit while that impairment lasts.

Safe driver

106 All drivers should be fit, authorised and competent to operate all the vehicles they use at work.

107 Drivers should follow safe working practices.

108 Employers should monitor these practices.

109 Drivers should be made aware of their own health and safety responsibilities including informing employers of medical conditions that impair their ability to drive.

110 Drivers should be provided with the correct PPE.

111 Drugs mentioned above will include prescription drugs where they impair the employee's ability to drive or operate equipment.

Find out more

HSE ACOPs and guidance

Safe use of work equipment. Provision and Use of Work Equipment Regulations 1998. Approved Code of Practice and guidance L22 (Third edition) HSE Books 2008 ISBN 978 0 7176 6295 1 www.hse.gov.uk/pubns/books/l22.htm

Workplace health, safety and welfare. Workplace (Health, Safety and Welfare) Regulations 1992. Approved Code of Practice and guidance L24 (Second edition) HSE Books 2013 ISBN 978 0 7176 6583 9 www.hse.gov.uk/pubns/books/l24.htm

Rider-operated lift trucks: Operator training and safe use. Approved Code of Practice and guidance L117 (Third edition) HSE Books 2013 ISBN 978 0 7176 6441 2 www.hse.gov.uk/pubns/books/l117.htm

Workplace transport safety: An employers' guide HSG136 HSE Books 2005 ISBN 978 0 7176 6154 1 www.hse.gov.uk/pubns/books/hsg136.htm

HSE web pages

Ports

www.hse.gov.uk/ports

Workplace transport

www.hse.gov.uk/workplacetransport

Trailer coupling and uncoupling

www.hse.gov.uk/workplacetransport/information/coupling.htm

Work-related road safety

www.hse.gov.uk/roadsafety

Load safety

www.hse.gov.uk/loadsafety

Joint PSS/HSE guidance

SIP001 *Guidance on workplace transport: Port and terminal planning*
www.portskillsandsafety.co.uk/publications/safety_in_ports_guidance

SIP010 *Guidance on workplace transport (ro-ro and sto-ro operations)*
www.portskillsandsafety.co.uk/publications/safety_in_ports_guidance

SIP012 *Guidance on ro-ro passenger and cruise operations*

www.portskillsandsafety.co.uk/publications/safety_in_ports_guidance

Other sources of information

Roll-on/Roll-off – Stowage and securing of vehicles: Code of Practice Maritime and Coastguard Agency
www.dft.gov.uk/mca/ro-ro_stowage_securing_of_vehicles_cop.pdf

Safety of loads on vehicles Department for Transport

www.dft.gov.uk/pgr/roads/vehicles/vssafety/safetyloadsonvehicles.pdf

Load safe, road safe – A professional driver's guide to safe loading and transport
Health and Safety Laboratory www.hsl.gov.uk

Transport Safety – An Operator’s Guide to Safe Loading and Transport Health and Safety Laboratory www.hsl.gov.uk

Working at height

112 Working at height is one of the biggest causes of work-related fatalities and major injuries.

113 Many of the activities carried out in docks could lead to a fall from height. These activities may be during routine operations, maintenance activities or unexpected or unplanned activities. In docks, the added hazard of working near water means a fall may lead to the risk of drowning.

114 Typical falls from height hazards in docks include:

- access to and from vessels by accommodation ladders, quayside ladders and gangways;
- container working – lashing and unlashing;
- loading and unloading some types of cargo, such as pipework, timber packs etc, can result in open edges from ships' decks, and from the cargo itself;
- access to and from places of work onboard vessels (holds, hatches, decks etc);
- falls from vehicles and trailers during loading/unloading and sheeting;
- maintenance and unplanned work;
- working adjacent to open edges of docks, wharves etc;
- falls from plant and machinery;
- mooring points (eg 'dolphins').

115 Before any work is carried out at height the risk should be determined and appropriate control measures put in place.

ACOP

Access to ships

116 Access should generally be provided by the ship's accommodation ladder or by the ship's gangway in accordance with MCA's Marine Guidance Note 533 *Means of Access*.

117 Accommodation ladders or gangways should be properly rigged and secure. All necessary facilities and arrangements should be provided on shore to enable this to be done.

118 Shore-based equipment which is at least as safe as a properly rigged and secured ship's accommodation ladder or gangway should be provided and used where the use of ships' equipment is impossible or unsafe, especially where ships' decks are significantly below or above the level of the quay, wharf, dock or jetty.

119 Each end of a gangway or accommodation or other ladder should provide safe access to a safe place, or to an auxiliary safe access. Where necessary, bulwark ladders should be provided, securely rigged and used.

ACOP

120 Where no safer means of access can be provided, a system of fixed ladders should be provided onshore where there is regular need for them. Any such ladders should be adequately protected from damage by ships, by recessing, fendering or otherwise.

121 Where means of access passes over water and there is a significant risk of a person falling into the water and drowning from or at either end of the means of access, or from the quayside or ships' deck immediately adjacent to the means of access, suitable safety nets should be securely rigged to minimise this risk. Suitable and sufficient attachment points for nets should be provided.

122 A safe means of access to workplaces and working positions should be provided. This includes access on to plant onshore, afloat and to ships and ships' holds.

123 Where such access is provided by the ship, the shoreside employer should also ensure that it is safe for their employees to use.

124 Where access is provided by the shore, the duty to rig and maintain access remains with the person providing it.

125 If a gangway or other physical means of access is lent or loaned by a shoreside employer to the master for use as ships' equipment, then access will be deemed to have been provided by the ship, and the rigging and maintenance of that access will fall to the ships' master. The shoreside supplier still retains a duty under section 6 of the HSW Act to supply the equipment in a safe condition.

126 Other risks to consider include:

- prevailing environmental conditions (eg high winds, rain, snow, poor visibility etc) that may present additional hazards when working at height;
- changes to cargo condition;
- cargo movement;
- vessel movement due to tide, loading or unloading.

127 Consider emergency evacuation and rescue procedures, for example where a person works in an isolated position such as a deep cargo hold or a crane cab. See chapter 'Emergency planning' for more detail.

ACOP

Access between ships

128 Where access between ships is necessary, the access should generally be provided by the ship lying outboard, unless there is a great disparity in freeboard when access should be provided by the ship with the higher freeboard.

129 Pilot ladders should only be used to provide access between a ship with high freeboard and a barge or similar ship with low freeboard.

130 A safe means of access to workplaces and working positions should be provided.

131 Pilot ladders should only be used in exceptional circumstances where no other practicable means of access are possible. Ladders should be secured so that they are firmly held against twist, turnover or tilt.

- 132 Consider emergency evacuation and rescue procedures.
- 133 Other risks to consider include extreme weather (eg high winds, rain, snow, poor visibility etc) that may present additional hazards when working at height.

ACOP

Cargo

- 134 No ships' hold should be left open for dock operations for longer than is required.
- 135 Except where adequate precautions have been taken to prevent injury, no work should be performed adjacent to an open edge or hatchway if the work involves someone being in a position where they could fall or be struck by a falling object.
- 136 Where cargo is built up in the hold or on deck and there is a risk of people falling or being struck by moving cargo, suitable safety measures should be taken to protect them against such a fall or being struck by moving cargo.
- 137 When container ships are not equipped with suitable lashing platforms then suitable platforms or cages, lifted by crane and designed for use between container aisles, should where reasonably practicable be provided and used.

How the risks can be reduced

- 138 All work at height should be properly planned and organised.
- 139 Use risk assessment as a means of identifying and determining the safe distance from open edges.
- 140 When loading or unloading cargo, risk assessment will determine if safe by virtue of position away from any open edge is an appropriate control measure. In certain circumstances, this may only be adequate when used in conjunction with other control measures such as soft landing systems.
- 141 Workers involved in work at height should be competent.
- 142 Avoid work at height where possible, for example working from the ground using a long-handled tool.
- 143 If work at height cannot be avoided, use work equipment or other measures to prevent falls, eg guardrails, mobile elevating working platforms (MEWPs).
- 144 Select and use suitable work equipment which may include container top safety frames and restraint devices.
- 145 Equipment for work at height must be properly inspected and maintained.
- 146 Where access to the workplace requires a worker to pass over cargo, then a safe means of access must be provided.
- 147 A safe means of access to workplaces and working positions should be provided. This includes access on to plant onshore and to ships and ships' holds.

148 If there is still a risk of falls, use work equipment that minimises the distance and consequences of a fall, eg nets, airbags, fall arrest systems.

149 Adverse weather may pose additional hazards that should be taken into account.

ACOP

Fencing at dock edges

150 Except for straight and level quaysides, fencing should be provided at all dock, wharf, quay or jetty edges from which people may fall into water, and where they must pass within 1 m of the edge, or the configuration of the quay or the arrangement of walkways is such that they are more than ordinarily liable to fall over such an edge.

151 Fencing should be provided throughout every open side of narrow access ways, whether the fall would be into water or not.

152 These provisions do not apply to areas where there is no work activity being undertaken, subject to any foreseeable risk to members of the public.

153 Secure and adequate fencing should be provided where risk assessment has found this to be needed.

154 Particular consideration should be given to:

- every break, dangerous corner and other part or edge of a dock, wharf, jetty or quay;
- open sides of a gangway, footway over a bridge, caisson or dock gate; and
- any other place where someone working or passing might fall.

155 Secure fencing should consist of an upper rail and an intermediate rail. In certain circumstances, eg the presence of children, a higher standard of protection will be required. The rails may where necessary consist of taut wire, taut chain or other taut material.

156 Where the work involves being within 1 m of an unprotected quay edge, people should wear suitable PPE, eg lifejackets or buoyancy aids.

157 Dock premises should be provided with adequate and suitable rescue and lifesaving equipment and means to escape from danger, eg handholds on the quayside at water level, ladders on quay walls and life-saving appliances.

158 Take into account the risks to lone workers.

159 Take into account the risks to members of the public where public access is possible or foreseeable, even if there is no dock work activity being undertaken (to comply with section 3 of the HSW Act).

Find out more

Legislation

Work at Height Regulations 2005 (as amended)

www.legislation.gov.uk/uksi/2005/735/schedule/3/made

HSE guidance

Working at height: A brief guide Leaflet INDG401(rev2) HSE Books 2014
www.hse.gov.uk/pubns/indg401.htm

HSE web pages

Ports

www.hse.gov.uk/ports

Work at height

www.hse.gov.uk/work-at-height

Joint PSS/HSE guidance

SIP002 *Guidance on general cargo*

www.portskillsandsafety.co.uk/publications/safety_in_ports_guidance

SIP003 *Guidance on container handling*

www.portskillsandsafety.co.uk/publications/safety_in_ports_guidance

SIP005 *Guidance on mooring*

www.portskillsandsafety.co.uk/publications/safety_in_ports_guidance

SIP014 *Guidance on safe access and egress in ports*

www.portskillsandsafety.co.uk/publications/safety_in_ports_guidance

Other sources of information

Code of Safe Working Practices for Merchant Seamen Maritime and Coastguard Agency/Department for Transport

www.dft.gov.uk/mca/coswp2010.pdf

Port Marine Safety Code Department for Transport

www.gov.uk/government/publications/port-marine-safety-code

Code of Practice for the Safe Mooring of Vessels on the Thames Port of London Authority www.pla.co.uk/Safety/Code-of-Practice-for-the-Safe-Mooring-of-Vessels-on-the-Thames

Code of Practice on safety and health in ports (ILO152) International Labour Organisation www.ilo.org/public/libdoc/ilo/2005/105B09_39_engl.pdf

Means of Access Marine Guidance Note 533 MCA

www.gov.uk/government/publications/mgn-533-m-means-of-access

Also refer to the 'Slips and trips' chapter of this publication

Lifting operations

160 Loading and unloading at docks involves the use of a wide range of lifting equipment. This may include gantry cranes, slewing cranes, forklift trucks or other similar machinery. Poorly planned lifting operations can create significant risks to people working in the area.

161 Typical hazards from lifting operations include:

- failure of lifting equipment;
- falling loads; and
- workers being crushed by a moving load or lifting equipment.

ACOP

Planning and organising lifting operations

162 Where loads are not marked with their weight, and the weight is not easy to estimate, the loads should be check-weighed, unless accurate information is available to determine their weight by reference to the cargo manifest or otherwise.

163 A safe system of work for lifting operations should include adequate arrangements for any necessary checking, inspection or examination of goods, including arrangements to ensure that the movement of the goods, or any plant carrying them, does not put any person performing such an operation in a position of danger.

164 Where two or more items of lifting equipment are working the same ship, additional control methods will be required.

165 Operations which include the use of ships' equipment or plant must be planned and executed safely. Dutyholders should make pre-use checks concerning the safety of the plant, so far as it is within their control. In particular, before any employer of shore workers authorises their employees to use ships' equipment and accessories, they should arrange for it to be checked before use, and check any associated certificates of test or thorough examination.

166 Walkways leading to ships should wherever practicable reach the ships' access without having to pass beneath overhead operations.

167 Loads should not be placed on hatch coverings, unless specifically designed for that purpose, without the authority of the ships' master or their authorised/competent representatives.

168 When planning and organising lifting operations, ensure employees and supervisors are trained, competent and experienced in safe lifting operations.

169 Ensure lifting plans address the foreseeable risks involved in the lifting operation and identify contingencies, eg:

- shifted loads;
- changes to the centre of gravity of the load;
- jammed containers or failure of twistlocks;
- bad weather;
- movement of the ship, eg when carrying out tandem or simultaneous lifts.

170 Items with a centre of gravity significantly away from their apparent centres in any plane should be appropriately marked to facilitate safe slinging, lifting and securing.

171 Operational procedures should include means for establishing the gross weight of each load to be lifted. Where reasonably practicable, this information should be marked on the load together with any other information necessary for its safe handling.

172 Lifting equipment must be suitable for the proposed use, including any unexpected forces to which the lifting equipment might be subjected. The equipment used should provide an appropriate 'factor of safety' against foreseeable risks, particularly where people are being lifted.

173 Take all practical steps to avoid people being struck by loads or lifting equipment and minimise the need to lift over people. Lifts should not take place over areas where people are likely to be working or passing where this can be avoided. Loads should not be suspended over occupied areas.

174 Where these situations cannot be avoided, the risks to people must be minimised by safe systems of work and appropriate precautions. Where loads are suspended, the area below them should be classed as a hazard zone and access restricted.

175 No hold should be left open for dock operations for longer than is required.

176 Operational procedures should include adequate arrangements for landing cargo and for storage of goods including safe stacking. Goods should be stowed on board ship in such a way that they do not obstruct any regular means of access unless an alternative means of access is provided.

ACOP

Use of lifting equipment

177 Where cranes and equipment are rail mounted or guided, those rails should be securely jointed, anchored and supported.

178 Crane rails should generally be straight, and should be provided with suitable crane arresting devices, including end stops, which should be properly maintained.

179 Cranes should have an efficient braking mechanism to stop the motion along the rails when the crane is in service. An effective system should also be provided to prevent inadvertent movement of the crane where it is exposed to high winds; for example, storm pins at sufficient intervals along the track, or some other suitable device which enables the crane to be securely anchored when not in use.

ACOP

180 Cranes liable to be affected by high winds should be fitted with an accurate device to indicate to the driver, and at ground level or terminal control, actual wind speed.

181 Lifting operations should be stopped if wind conditions make it unsafe to continue them.

182 For rail-guided lifting equipment, always ensure that there are facilities to minimise the consequences of collision, where there is more than one rail-mounted item in motion at the same time. Adequate devices should be provided for braking and stopping in the event of emergency or failure.

183 Always use suitable lifting equipment to securely lift cargo. Lifting equipment and accessories should be suitable for their intended use, eg paper reels should be handled with equipment such as reel clamps.

184 If a ships' lifting equipment is to be used, ensure that it is suitable and subject to a pre-use examination. Check the ships' documentation of thorough examination.

185 Cargo handling equipment, for example a forklift truck, that is lifted on to or off ships by crane or derrick should be provided with suitable points for the attachment of lifting gear. Such equipment should be marked with its gross weight.

186 Tank containers should not be lifted directly with the forks of forklift trucks, because of the risks of instability and of damaging the container with the ends of the forks. Tank containers may be lifted using forklift trucks fitted with suitably designed side or top lifting attachments, but care must be exercised due to the risk of surge in partly filled tanks.

187 The following also need to be considered:

- impact of climatic conditions, eg high winds, ice or unduly cold or hot weather, on the performance of lifting equipment and accessories;
- mist, fog and other conditions that reduce visibility;
- the impact of the prevailing weather on people involved in the lifting operation (crane driver, slinger, banksman etc).

Lifting equipment used for lifting people

188 If lifting people cannot be avoided, then lifting plant used for raising or lowering people should include:

- a suitable platform or cage of good construction, sound material and adequate strength, which is properly maintained;
- except in the case of ships' cargo lifts which only carry drivers at the controls of their vehicles, fencing around the platform or cage up to a height of at least 1 m, constructed and arranged to prevent someone falling out or being trapped;
- an adequate secure foothold and handhold for someone travelling on the platform or cage;
- arrangements to prevent the platform or cage tipping or spinning in a manner dangerous to any occupant, or from becoming accidentally displaced.

189 When lifting people, ensure that the correct type of equipment is used for the task and that it provides an appropriate 'factor of safety' against foreseeable risk.

190 Specially designed equipment for lifting people should be used where possible. The use of lifting equipment which has not been specifically designed for lifting people should only occur in exceptional circumstances (eg for rescue purposes). In these cases, additional safety precautions may need to be taken.

191 Lifting equipment used to lift people should be thoroughly examined at six-monthly intervals, or in accordance with the examination scheme.

ACOP

Maintenance of lifting equipment and accessories

192 The employer should check the condition of all lifting equipment and accessories so far as reasonably practicable to do so, and consider the use to which they are to be put.

193 This applies to all lifting equipment and accessories including multi-trip and one-trip slings, intermediate bulk containers (IBCs) and also rope, webbing or chains used in pre-slung loads.

194 So that the shoreside employer may comply with their obligations, they should provide and maintain a system of work which in the case of wire rope slings includes checking the test certificates for the wire rope from which the slings were made, where these are available. Where they are not available, the employer should, where possible, otherwise verify that a test has been carried out.

195 One-trip slings should be disposed of at the end of the trip and should never be reused.

196 Lifting appliances should not be used to drag loads.

197 All lifting equipment and accessories should be inspected and examined by suitably trained and competent people. This includes equipment such as crane anemometers, which should be regularly maintained and calibrated.

198 People who use lifting equipment should carry out pre-use checks on the equipment and accessories they use, as well as ongoing, regular checks as part of an overall maintenance programme (eg the checks undertaken by an operator on their crane). Operators may be best placed to identify faults or damage to equipment. A suitable system should be in place to ensure that any defect identified is reported and action taken to prevent the lifting equipment/accessory being used until properly investigated and remedied.

199 The nature and frequency of thorough examinations should take account of any manufacturer's recommendations or otherwise take place every 6 months for lifting equipment and associated accessories used to lift people; every 6 months for lifting accessories, and every 12 months for all other lifting equipment.

200 Where one-trip slings are used in lifting operations, the employer in control of the operation should ensure, so far as reasonably practicable, that the slings are not used again for lifting operations.

Cranes used in dock operations

201 Dutyholders should have in place robust, proactive planned maintenance

regimes for cranes, including an assessment of design life, post-supply structural modifications and actual use patterns.

202 Safety critical parts of the crane should be identified and have maintenance and testing regimes in place to monitor such parts, in line with suggested testing and maintenance intervals.

203 Dutyholders should consider ‘foreseeable misuse’, such as overloading or use in high winds. This should include consideration of dynamic and static overloading that may occur from the following and how to reduce and mitigate its effects:

- snagging where a container gets caught up during movement and creates significant momentary forces in ropes and parts of structure;
- trying to lift the ship where a container has not been released from those beneath it but the crane driver believes that it has and the crane attempts to lift, creating significant forces for a short time;
- jammed containers or twistlocks where a container is still partially connected to those beneath it but the crane driver believes that it has been freed and the crane attempts to lift, creating significant forces for a short time;
- twin lifting situations where the originally specified safe working load (SWL) is exceeded, reducing the factor of safety.

204 Dutyholders must consider the role, scope, time and access afforded to companies carrying out thorough examinations of cranes, particularly with regard to how schemes are determined and how it can be ensured that necessary safety critical parts are included in such schemes. Dutyholders must consider how to proceed where conflicting expert advice is received and keep records of such conflicts.

205 Dutyholders must consider the importance of involving crane operators and maintenance staff in plans for new purchase and/or modifications to existing cranes and crane working practices.

Find out more

Legislation

Lifting Operations and Lifting Equipment Regulations 1998 (LOLER)
www.legislation.gov.uk/uksi/1998/2307/contents/made

Provision and Use of Work Equipment Regulations 1998 (PUWER)
www.legislation.gov.uk/uksi/1998/2306/contents/made

Merchant Shipping and Fishing Vessels (Lifting Operations and Lifting Equipment) Regulations 2006 www.legislation.gov.uk/uksi/2006/2184/contents/made

Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) (Amendment) Regulations 2008
www.legislation.gov.uk/uksi/2008/2165/contents/made

HSE ACOPs and guidance

Safe use of lifting equipment. Lifting Operations and Lifting Equipment Regulations 1998. Approved Code of Practice and guidance L113 HSE Books 1998
ISBN 978 0 7176 1628 2 www.hse.gov.uk/pubns/books/l113.htm

Safe use of work equipment. Provision and Use of Work Equipment Regulations 1998. Approved Code of Practice and guidance L22 (Third edition) HSE Books 2008 ISBN 978 0 7176 6295 1 www.hse.gov.uk/pubns/books/l22.htm

Thorough examination of lifting equipment: A simple guide for employers Leaflet
INDG422 HSE Books 2008 www.hse.gov.uk/pubns/indg422.htm

The freeing of jammed freight containers and container fittings on ships Docks
Information Sheet DIS1(rev1) HSE Books 2008 www.hse.gov.uk/pubns/dis1.pdf

HSE web pages

LOLER

www.hse.gov.uk/work-equipment-machinery/loler.htm

PUWER

www.hse.gov.uk/work-equipment-machinery/puwer.htm

Joint PSS/HSE guidance

SIP002 *Guidance on general cargo*

www.portskillsandsafety.co.uk/publications/safety_in_ports_guidance

SIP003 *Guidance on container handling*

www.portskillsandsafety.co.uk/publications/safety_in_ports_guidance

Other sources of information

BS 7121-2-9:2013 *Code of practice for the safe use of cranes. Inspection, maintenance and thorough examination. Cargo handling and container cranes*
British Standards Institution <http://shop.bsigroup.com/>

The Merchant Shipping and Fishing Vessels (Lifting Operations and Lifting Equipment) Regulations 2006 MGN332 Maritime and Coastguard Agency
www.dft.gov.uk/mca/mgn332a.pdf

The Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006 MGN 331 Maritime and Coastguard Agency
www.dft.gov.uk/mca/mgn331.pdf

Slips and trips

206 Over a quarter of all reportable accidents in docks are due to slips or trips. These can be serious, resulting in broken or dislocated bones and long periods off work. They should not be accepted as 'one of those things' and often simple measures can be taken to prevent them happening.

207 Typical slip and trip hazards in docks include:

- working on uneven, wet or icy surfaces on loads;
- adverse weather conditions;
- badly stowed mooring ropes, lashing gear and other equipment;
- use of inappropriate flooring or surfaces on walkways, ramps and access steps;
- discarded packaging and pallets;
- deck fittings and pipework on ship;
- poor or unsuitable lighting in work areas.

ACOP

208 All parts of dock premises which are used for working ships should, so far as reasonably practicable, be kept clear of loose material. In addition such materials should be cleared at appropriate intervals in the course of cargo handling.

209 Ways to reduce slip and trip risks may include:

- Good housekeeping – encourage a 'see it, sort it' culture and appropriate monitoring and reporting systems. Report and follow up where a work area has been left untidy by employees from other companies.
- Loose lifting accessories should be adequately stored.
- Specify appropriate flooring/surfaces. Slopes and ramps should have a suitable surface which should where necessary be ribbed or coated so as to be slip-resistant.
- Maintain floors, steps and walkways in a good condition.
- Where surfaces do become slippery due to adverse weather or tidal conditions then they should be maintained to ensure that vehicles and pedestrians can move about safely.
- Beware of oil spillages, spilt bulk cargo and trip hazards across walkways.
- Where a vessel is a frequent visitor, work with the master to make sure trip hazards are painted a conspicuous colour.
- Consider the type of load, weather conditions and likely contaminants when selecting suitable footwear. For example, studs or chains may be required if accessing cargoes covered in ice.
- Plan pedestrian and vehicle routes to avoid contaminated areas.
- Provide adequate lighting.
- Maintain plant to prevent contamination, eg oil getting onto the floor.

Find out more

Legislation

Workplace (Health, Safety and Welfare) Regulations 1992
www.legislation.gov.uk/uksi/1992/3004/contents/made

HSE ACOPs and guidance

Workplace health, safety and welfare. Workplace (Health, Safety and Welfare) Regulations 1992. Approved Code of Practice and guidance L24 (Second edition)
HSE Books 2013 ISBN 978 0 7176 6583 9 www.hse.gov.uk/pubns/books/l24.htm

Preventing slips and trips at work: A brief guide Leaflet INDG225(rev2) HSE Books 2012 www.hse.gov.uk/pubns/indg225.htm

HSE web pages

Slips and trips
www.hse.gov.uk/slips

Work at height
www.hse.gov.uk/work-at-height

STEP – Slips and trips e-learning package
www.hse.gov.uk/slips/step/index.htm

Joint PSS/HSE guidance

SIP014 *Guidance on safe access and egress in ports*
www.portskillsandsafety.co.uk/publications/safety_in_ports_guidance

Other sources of information

'Your Safety At Sea' leaflet 3 *Protecting yourself and others from slips, trips and falls* Maritime and Coastguard Agency
www.dft.gov.uk/mca/mcga07-home/workingatsea/mcga-healthandsafety/mcga-ds-ssh-leafletsandposters.htm

Rescue and life-saving from water

210 Given the nature of dock premises, it is important to ensure that there are adequate and suitable provisions in place to facilitate the rescue of anyone who falls into the water from the quayside. This section does not apply to disused or redundant docks but employers may have duties under section 3 of the HSW Act in respect of these.

ACOP

Unfenced quay edges

211 At jetties and quay edges where the edges are unfenced, means should be provided to help people to rescue themselves from drowning, and also provision for other people to rescue those in danger without endangering themselves. The means should include:

- handholds on the quayside at water level (at any state of the tide);
- ladders on quay walls;
- life-saving equipment.

Fenced quay edges

212 At jetties or quays where the edges are fenced throughout in accordance with paragraphs 150–152, the provision of life-saving equipment alone is sufficient unless:

- the public has access to the quay edge; or
- the dutyholder is made aware of a risk of people falling over a fenced edge that is comparable to the risk of people falling over an unfenced edge (whether or not by means of risk assessment).

213 In these situations additional measures will be required such as handholds and/or ladders.

Pontoons and ship-to-ship operations

214 Where a fixed quay is not involved, eg ship-to-ship operation or the use of pontoons, adequate and suitable lifesaving equipment should be provided.

Handholds

215 Handholds should be suitable for use and be protected where possible to avoid damage both to and from ships.

216 Some quays may be constructed so that the actual structure provides handholds. In deciding whether these are adequate, remember that someone in the water is likely to be cold, shocked, exhausted and possibly injured. Handholds should therefore be suitable for use in such a situation. They may take the form of chains, fibre ropes, rubber tyres, fenders or other suitable material hung from the quayside. All handholds should be properly maintained.

ACOP

Ladders on quay walls

217 Each ladder should be suitably protected against accidental damage, and should enable someone who reaches it to climb from the water to the quay. It should extend to 1 m below the water line at any foreseeable state of the tide (or to the sea/river bed where there is less than 1 m of water at the foot of the quay at low water). Suitable hand-grips will need to be provided on the quayside, designed so that they are not readily obstructed by ice or dirt. They should also be recessed or positioned to prevent tripping hazards. All ladders should be properly maintained.

Positioning of handholds and ladders on quay walls

218 At all quays constructed or reconstructed after 1 January 1989, handholds and ladders should each be at intervals not exceeding 30 m, with handholds approximately midway between each pair of ladders, so that there is either a handhold or ladder at least every 15 m.

219 At all quays constructed before 1 January 1989, the following may be considered reasonable intervals for the provision of ladders and handholds:

- where the design of the quay provides convenient protected positions for ladders, they should be installed at intervals which do not exceed 50 m and intermediate handholds should provide a means of support at intervals not exceeding 25 m; or
- where the quay is not so designed, ladders should be installed at intervals not exceeding 85 m and intermediate handholds should provide a means of support at intervals of approximately 30 m; or
- where dock operations are not normally carried out, or only infrequently, and the quay is not equipped with ladders to the above standards, suitable portable ladders should be provided and securely placed fore and aft of each ship when it has moored to work.

ACOP

Life-saving equipment

220 Life-saving equipment should be conspicuous, properly maintained and provided at appropriate intervals.

221 Life-saving equipment will include lifebuoys, throwing lines and rescue poles.

222 What is suitable life-saving equipment will depend on the circumstances. In some situations, particularly where there is a strong tide or current, a throwing line may be appropriate either in addition to or in place of a conventional lifebuoy. Instructions for the use of each piece of life-saving equipment should be given or displayed.

223 Life-saving equipment should be provided at intervals no greater than 100 m. A suitable lifeline of a length adequate for the dock should be attached to each lifebuoy or a separate throwing line should be provided. All such equipment should be kept readily accessible. Draglines are not rescue equipment.

Find out more

Joint PSS/HSE guidance

SIP020 Guidance on water safety in ports

www.portskillsandsafety.co.uk/publications/safety_in_ports_guidance

Other sources of information

Safety at Inland Water sites ROSPA

www.rospa.com/leisuresafety/adviceandinformation/watersafety/

Guidelines for training crews for the purpose of launching lifeboats and rescue boats from ships making headway through the water MSN 1722 Maritime and Coastguard Agency www.dft.gov.uk/mca/msn1722.pdf

Transport by water

224 All vessels that are used to carry people from one part of the dock to another to enable them to participate in dock operations should be safe for use.

ACOP

225 Vessels used for this purpose should be of a sound and suitable construction, properly maintained and properly equipped for their intended use. Vessels should be in the charge of a competent person, who should hold a boatmasters' licence issued by the Maritime and Coastguard Agency or equivalent.

226 This ACOP applies to vessels used to carry people from one part of the dock premises to another, specifically to enable them to take part in dock operations. It does not apply to vessels such as tugs, conservancy launches and vessels carrying pilots.

227 Vessels used should not be undermanned, overloaded or overcrowded. Vessels should provide adequate and sufficient shelter, should have seating, heating and ventilation sufficient for safety, appropriate navigational equipment according to the conditions prevailing and the length of the journey, and should always be equipped with adequate life-saving, firefighting and first-aid equipment.

228 Manning levels for such vessels should be determined by reference to Annex 11 of *The Safety of Small Workboats & Pilot Boats* (The Brown Code).

229 Vessels that are used for work (such as tugs, dredgers, crane barges and pilot vessels that operate in protected waters, such as docks, harbours and estuaries) should meet the minimum mandatory regulatory requirements as outlined in the Maritime and Coastguard Agency (MCA) Marine Guidance Note 469.

230 Certain Royal Yachting Association and Scottish Qualifications Agency qualifications are accepted in place of a boatmasters' licence for masters of commercial vessels under 24 m and carrying no more than 12 passengers.

231 Annex 1 of MCA Merchant Shipping Notice 1808 provides further advice on these and other alternative qualifications.

Find out more

Legislation

Merchant Shipping (Inland Waterway and Limited Coastal Operations)
(Boatmasters' Qualifications and Hours of Work) Regulations 2006
www.legislation.gov.uk/uksi/2006/3223/contents/made

HSE ACOPs

Safe use of work equipment. Provision and Use of Work Equipment Regulations 1998. Approved Code of Practice and guidance L22 (Third edition) HSE Books 2008 ISBN 978 0 7176 6295 1 www.hse.gov.uk/pubns/books/l22.htm

HSE web pages

PUWER

www.hse.gov.uk/work-equipment-machinery/puwer.htm

Other sources of information

Standards for Non-Passenger Vessels operating solely on Inland Waterways in the United Kingdom MGN 469 Maritime and Coastguard Agency
www.gov.uk/government/uploads/system/uploads/attachment_data/file/244682/draft-mgn469_m_.pdf

Categorisation of Waters Merchant Shipping Notice MSN 1837 Maritime and Coastguard Agency www.dft.gov.uk/mca/1827.pdf

MCA Boatmasters' License

www.dft.gov.uk/mca/mcga07-home/workingatsea/mcga-trainingandcert/ds-ss-bml1stop.htm

The Merchant Shipping (Inland Waterways and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006 – Structure and Requirements Merchant Shipping Notice MSN 1808 Maritime and Coastguard Agency www.dft.gov.uk/mca/msn1808.pdf

The Safety of Small Workboats & Pilot Boats – A Code of Practice (The Brown Code) Maritime and Coastguard Agency
www.dft.gov.uk/mca/brown-withpage8.pdf

Port Marine Safety Code Department for Transport

www.gov.uk/government/publications/port-marine-safety-code

A Guide to Good Practice on Port Marine Operations Supplement to the *Port Marine Safety Code* Department for Transport www.gov.uk/government/publications/a-guide-to-good-practice-on-port-marine-operations

Sound Practice, Safer Waters: The Inland Waters Small Passenger Boat Code Maritime and Coastguard Agency and the Association of Inland Navigation Authorities www.dft.gov.uk/mca/final_brochure-2.pdf

Small Vessels in Commercial Use for Sport or Pleasure, Workboats and Pilot Boats – Alternative Construction Standards Marine Guidance Note MGN 280 Maritime and Coastguard Agency www.dft.gov.uk/mca/mgn_280-2.pdf

Lighting

232 Many docks operate on a 24-hour basis so the need for suitable lighting in the workplace is particularly important. The quicker and easier it is to see a hazard, the more easily it is to avoid. The types of hazard present in the workplace will determine the lighting requirements for safe operation.

233 Each part of the dock premises that is being used for dock operations should be suitably and adequately lit. Lighting should be properly maintained.

234 The following should be provided:

- well-lit stairs, pedestrian and vehicle access routes;
- well-lit outside areas – for pedestrians and to help with activities such as loading/unloading at night, checking cargo and access to vessels;
- well-lit areas for working on board ship (eg in holds);
- adequate lighting to allow safe access to small vessels;
- good light – use natural light where possible but try to avoid glare;
- suitable forms of emergency lighting.

235 Obstacles and hazards which are likely to be dangerous when vehicles, lifting equipment or people move should be made conspicuous through suitable lighting and/or marking.

Find out more

HSE ACOPs and guidance

Workplace health, safety and welfare. Workplace (Health, Safety and Welfare) Regulations 1992. Approved Code of Practice and guidance L24 (Second edition)
HSE Books 2013 ISBN 978 0 7176 6583 9 www.hse.gov.uk/pubns/books/l24.htm

Lighting at work HSG38 (Second edition) HSE Books 1998
ISBN 978 0 7176 1232 1 www.hse.gov.uk/pubns/books/hsg38.htm

HSE web pages

PUWER
www.hse.gov.uk/work-equipment-machinery/puwer.htm

Human factors
www.hse.gov.uk/humanfactors

Joint PSS/HSE guidance
SIP009 Guidance on lighting
www.portskillsandsafety.co.uk/publications/safety_in_ports_guidance

Other sources of information

Code for Lighting published by the Society of Light and Lighting and the Chartered Institute of Building Services Engineers
www.cibseknowledgeportal.co.uk/component/dynamicdatabase/?layout=publications&revision_id=1873

ILO Code of Practice: Safety and health in ports (ILO152) International Labour Organization
www.ilo.org/public/libdoc/ilo/2005/105B09_39_engl.pdf

MCA Code on Safe Movement Onboard Ships Regulations 1988 Maritime and Coastguard Agency
www.dft.gov.uk/mca/mcga07-home/shipsandcargoes/mcga-shipsregsandguidance/mcga-mnotice.htm?textobjid=F4FC5B8655B516AC

Dusty cargoes

236 Typical cargoes in UK docks include grain, soya, animal foodstuffs, fishmeal, ores, coal and coke, cement, biomass, phosphate and other fertilisers.

237 Handling these cargoes can create large quantities of dust. In some cases, eg coal and aggregates, the dust is simply small particles of the material itself. In other cases, eg grains and pulses, the dust may include contaminants such as bacteria and fungi. Some of these substances will have specific workplace exposure limits (WELs) and may also be classified as dangerous substances.

238 Different dusts have different adverse effects on health, but the most important effects of dusty cargoes are on the lungs. Some of these dusts (including grain and soya) can act as a respiratory sensitiser, that is, they can be a cause of occupational asthma. Other dusts may cause chronic obstructive pulmonary disease (COPD).

239 Under certain conditions the dusts given off by some cargoes may form an explosive and/or flammable mixture with air. Examples include sugar, coal, wood, grain, certain metals and many synthetic organic chemicals.

How to reduce the risks from dusty cargoes

Health risks

240 Exposure to dust should be avoided. If this is not possible then it should be adequately controlled. The level of control of exposure required will depend on the potential health effects of the dust. Some ways to control exposure include:

- design tasks to reduce the amount of dust generated;
- restrict staff entry to dusty areas such as warehouses especially during tipping, loading and pushing activities;
- use totally enclosed, continuous handling systems – these usually provide the best control and should be used whenever reasonably practicable;
- suppress dust with sprays of water or other binding agents;
- ensure all equipment used to reduce dust exposure is properly maintained and in efficient working order;
- provide suitable air-filtration systems to the cabs of all vehicles used to handle dusty cargoes;
- provide and use respiratory protective equipment (RPE) – this should be suitable for its purpose, maintained and compatible with other protective equipment worn. This should only be as a last resort after other measures have been taken;
- provide adequate information, instruction and training to workers so that they are aware of the health risks and are able to use control measures properly; and
- provide health surveillance for workers.

Explosion risks

241 Possible control measures include:

- maintaining good housekeeping, ie avoiding or minimising the build-up or release of dust;
- the use of suitably maintained local exhaust ventilation systems;
- excluding or controlling any sources of ignition, eg use of protected lighting;
- the use of permit to work systems for activities such as hot work in affected areas.

242 Due to the specialist nature of this topic, further guidance should be sought from the references below.

Find out more

Legislation

Control of Substances Hazardous to Health Regulations 2002
www.legislation.gov.uk/uksi/2002/2677/contents/made

HSE ACOPs and guidance

Control of substances hazardous to health (COSHH). The Control of Substances Hazardous to Health Regulations 2002 (as amended). Approved Code of Practice and guidance L5 (Sixth edition) HSE Books 2013
www.hse.gov.uk/pubns/books/l5.htm

Dangerous substances and explosive atmospheres. Dangerous Substances and Explosive Atmospheres Regulations 2002. Approved Code of Practice and guidance L138 (Second edition) HSE Books 2013
www.hse.gov.uk/pubns/books/l138.htm

Respiratory protective equipment at work: A practical guide HSG53 (Fourth edition)
HSE Books 2013 www.hse.gov.uk/pubns/books/hsg53.htm

A step by step guide to COSHH assessment HSG97 (Second edition) HSE Books 2004
www.hse.gov.uk/pubns/books/hsg97.htm

Safe handling of combustible dusts: Precautions against explosions HSG103 (Second edition) HSE Books 2003 www.hse.gov.uk/pubns/books/hsg103.htm

EH40/2005 Workplace exposure limits: Containing the list of workplace exposure limits for use with the Control of Substances Hazardous to Health Regulations (as amended) Environmental Hygiene Guidance Note EH40 (Second edition) HSE Books 2011 www.hse.gov.uk/pubns/books/eh40.htm

Grain dust Environmental Hygiene Guidance Note EH66 (Third edition) HSE Books 2013 www.hse.gov.uk/pubns/eh66.htm

HSE web pages

COSHH
www.hse.gov.uk/coshh

Chronic obstructive pulmonary disease
www.hse.gov.uk/copd

Fire and explosion
www.hse.gov.uk/fireandexplosion

Asthma
www.hse.gov.uk/asthma

Respiratory protective equipment
www.hse.gov.uk/respiratory-protective-equipment

Health surveillance
www.hse.gov.uk/health-surveillance

Joint PSS/HSE guidance
SIP007 *Guidance on loading and unloading of dry bulk cargo*
www.portskillsandsafety.co.uk/safety_in_ports_guidance

SIP008 *Guidance on the storage of dry bulk cargo*
www.portskillsandsafety.co.uk/publications/safety_in_ports_guidance

SIP011 *Guidance on sources of occupational health information in ports*
www.portskillsandsafety.co.uk/publications/safety_in_ports_guidance

Musculoskeletal disorders

243 Dock workers carry out a number of activities which, if not properly managed, may lead to a variety of musculoskeletal disorders (MSDs).

244 MSDs include back pain and muscle injuries, and are often the result of poor handling techniques or tasks involving repetitive movements and/or excessive force. Injuries can also be caused by the vibration created by some vehicles – this is known as whole-body vibration. Some people may not fully recover from MSDs and they can greatly affect an individual's quality of life.

245 Where MSD hazards can be found in docks:

- manual manoeuvring of lifting gear and attachments or slung loads;
- handling of twistlocks and unlocking poles;
- lifting/manoeuvring of lashing bars;
- breaking out pre-packed or palleted loads;
- storage and warehousing activities;
- hauling mooring ropes;
- vibration transmitted through the seat or feet of employees who drive mobile machines, such as tugs and other similar vehicles, over uneven ground or on rails;
- use of pneumatic lashing systems.

How to reduce MSD risks

246 For manual handling:

- Use mechanical aids such as motorised winches for hauling mooring ropes of large ships, vehicle-mounted hydraulic hoists, portable roller conveyors, pallet trucks, scissor lifts and customised trolleys.
- Consider whether a load can be changed to make it easier to carry, for example smaller packages, providing handles or handholds.
- Adopt safe lifting techniques.
- Consider the ergonomics of dock machinery and equipment when specifying and purchasing.
- Ensure sufficient provision of training and instruction in manual handling techniques.

247 For whole-body vibration:

- Select and use appropriate machinery for the job.
- Maintain plant and equipment, eg cranes and lift trucks. Maintenance should include seats, suspension and visibility through windows.
- Maintain roadways, quays, container park surfaces and rails.
- Take account of vibration information when buying or hiring equipment.
- Reduce exposure, eg through job rotation.

- Provide health surveillance for workers where appropriate.
- Provide drivers with information on how to reduce risks to their health.

Find out more

Legislation

Manual Handling Operations Regulations 1992
www.legislation.gov.uk/uksi/1992/2793/contents/made

Control of Vibration at Work Regulations 2005
www.legislation.gov.uk/uksi/2005/1093/contents/made

HSE guidance

Manual handling. Manual Handling Operations Regulations 1992 (as amended).
Guidance on Regulations L23 (Third edition) HSE Books 2004
www.hse.gov.uk/pubns/books/l23.htm

Whole-body vibration. The Control of Vibration at Work Regulations 2005. Guidance on Regulations L141 HSE Books 2005 www.hse.gov.uk/pubns/books/l141.htm

Manual handling assessment charts (The MAC tool) Leaflet INDG383(rev1)
HSE Books 2014 www.hse.gov.uk/pubns/indg383.htm

HSE web pages

Ergonomics
www.hse.gov.uk/humanfactors

Health surveillance
www.hse.gov.uk/health-surveillance

Whole-body vibration
www.hse.gov.uk/vibration/wbv/index.htm

MSDs
www.hse.gov.uk/msd/msds.htm

Confined spaces

248 People are killed or seriously injured in confined spaces each year in the UK. This happens in a wide range of industries, from those involving complex plant to simple storage vessels.

249 Those involved in these incidents include not just people working in a confined space, but also those who try to rescue them without proper training and equipment.

250 A confined space can be any space of an enclosed nature where there is a risk of death or serious injury from hazardous substances or dangerous conditions (eg lack of oxygen).

251 Confined spaces can be found in a variety of places within the dock environment including some ships' holds, warehouses, silos and freight containers. In addition, some places may only become confined spaces when particular work is carried out, eg fumigation. Further guidance on where confined spaces may be found in docks can be found in SIP015 *Guidance on confined spaces in ports*.

252 Confined spaces may pose a significant risk because they are enclosed, either largely or completely and they have a clearly foreseeable risk of serious injury or death caused by one of the following:

- lack of oxygen – this can occur in ships' holds, freight containers, lorries etc as a result of the cargo or contents consuming the oxygen inside the space;
- fire and explosion (eg from flammable vapour/dust, excess oxygen etc);
- build up of poisonous gas, fume or vapour – possibly due to decomposing, leaking or oxidation of cargo (eg wood pellets), incomplete fumigation, inadequate cleaning processes, or welding/vehicle fumes;
- incomplete ventilation of fumes in containers, eg due to incomplete fumigation or build up of fumes given off by contents of containers while in transit;
- discharge of gases, fume or vapour from pieces of equipment including some fire suppression systems, exhaust fumes etc;
- liquids and solids which can suddenly fill the space causing drowning, or release gases into it, when disturbed, eg grain;
- hot conditions leading to a dangerous increase in body temperature.

How to reduce the risks in confined spaces

253 Where a confined space on a ship is involved, co-operation between the shoreside employer and master is essential to ensure that all relevant risks are managed and duties are adequately discharged.

254 Avoid carrying out tasks in confined spaces but, if this not possible, the risks will need to be assessed and control measures implemented.

255 Items to consider will include:

- testing for noxious fumes or flammable atmospheres and how these can be vented or removed;
- the risk of liquids or gases flooding in and how to stop or limit this, eg lock valves shut;
- the lack of oxygen and the need to provide breathing apparatus;
- the job being done and the equipment being used, eg welding gear that will reduce the amount of oxygen in the room, chemical cleaners that may require ventilation, gases released when disturbing residues, using appropriate electrical equipment in ignition risk areas etc;
- the person identified to do the job, eg training, physical ability, pre-existing medical conditions and any personal protective equipment (PPE) needs etc;
- the need for rescue arrangements – this should cover the necessary equipment, training and practice drills. Ensure that the equipment provided is actually suitable for the space;
- the use of permit-to-work systems – these are a formal check to ensure that all elements of the safe system of work are in place before people are allowed to enter the confined space;
- communications – ensure workers inside a confined space have a mechanism for communicating with others inside and those outside, especially if they cannot be physically monitored.

256 On each occasion for the same confined space the risks will need to be reassessed as things may have changed, the task and equipment being used may be different and it may not be the same person doing the work.

Find out more

Legislation

Confined Spaces Regulations 1997

www.legislation.gov.uk/uksi/1997/1713/contents/made

Personal Protective Equipment Regulations 2002

www.legislation.gov.uk/uksi/2002/1144/contents/made

Merchant Shipping (Entry into Dangerous Spaces) Regulations 1988

www.legislation.gov.uk/uksi/1988/1638/contents/made

HSE ACOPs and guidance

Safe work in confined spaces. Confined Spaces Regulations 1997. Approved Code of Practice, Regulations and guidance L101 (Second edition) HSE Books 2009
ISBN 978 0 7176 6233 3 www.hse.gov.uk/pubns/books/l101.htm

Fumigation: Health and safety guidance for employers and technicians carrying out fumigation operations HSG251 HSE Books 2005
www.hse.gov.uk/pubns/books/hsg251.htm

Confined spaces: A brief guide to working safely Leaflet INDG258(rev1) HSE Books 2013 www.hse.gov.uk/pubns/indg258.htm

Diesel engine exhaust emissions HSG286 HSE Books 2012
www.hse.gov.uk/pubns/indg286.htm

Control of diesel engine exhaust emissions in the workplace HSG187 HSE Books 2012 www.hse.gov.uk/pubns/books/hsg187.htm

HSE web pages

Confined spaces

www.hse.gov.uk/confinedspace

Respiratory protective equipment

www.hse.gov.uk/respiratory-protective-equipment

Joint PSS/HSE guidance

SIP015 *Guidance on confined spaces in ports*

www.portskillsandsafety.co.uk/publications/safety_in_ports_guidance

Other sources of information

Risk Management: Entry into enclosed spaces – ships' cargo spaces and freight

containers Two pocket guides published jointly by TT Club/ICHCA International

www.ttclub.com

Entry into enclosed spaces: Spaces potentially unsafe for entry Safety Alert

Maritime and Coastguard Agency

www.dft.gov.uk/mca/entry_into_enclosed_spaces.pdf

Emergency planning

257 Docks and associated organisations should have plans for dealing with emergencies that could have a wider impact. These special procedures will include actions to stem the effects of the emergency at source, such as fighting fires, combating the release of radioactivity or toxic chemicals, the spread of disease, the extent of floods, serious injuries, and explosions.

258 There should be a written emergency plan if a major incident at the dock could involve risks to the public, rescuing employees or co-ordinating emergency services.

259 Where the dock is shared with other employers consider whether the emergency plans and procedures should be co-ordinated or integrated with wider plans.

260 Contact emergency services and include them where appropriate in the development of emergency plans.

261 The Dangerous Substances in Harbour Areas Regulations 1987 (DSHAR) and the Control of Major Accident Hazards Regulations 1999 (COMAH) will apply to some docks dependent on the types of goods handled/stored.

262 In emergencies people are more likely to respond reliably if they:

- are well trained and competent – don't forget the needs of people with disabilities and vulnerable workers. Appropriate awareness should also be provided for people such as visiting drivers, ships' crew, contractors and passengers;
- take part in regular and realistic practice – consider extending training and familiarisation of the plan to outside agencies that may need to be called on;
- have clearly agreed, recorded and rehearsed plans, actions and responsibilities – nominate competent people with clearly defined roles and functions to take control. Decide which other key people are needed, such as a nominated incident controller, someone who is able to provide technical and other site-specific information if necessary, or first-aiders.

263 Points to consider in an emergency plan include:

- Consider what might happen, how the alarm will be raised and how to activate procedures. Don't forget night and shift working and weekends.
- Plan what to do – include contact details and how to call the emergency services. Consider drawing up a simple plan showing the location of hazardous items.
- Define evacuation routes and identify where rescue equipment is kept.
- Plan essential actions such as emergency plant shutdown, isolation or making processes safe. Clearly identify important items like shut-off valves and electrical isolators etc.

- Take account of the potential fire risks on board vessels, particularly those associated with hazardous cargoes.
- In responding to an emergency event, ensure the response is managed so that rescuers are not put at unnecessary risk.
- Plan for rescuing people from the scene, or evacuating them and treating their injuries, or providing them with shelter and comfort, or arranging for an orderly return to the scene when it is safe.
- Consider establishing containment areas for personnel.

264 In general work should not resume after an emergency until the area is declared safe. If there are any doubts ask for assistance from the emergency services.

Rescue from isolated positions

265 Where a person works in an isolated position such as a crane cab or deep bulk cargo hold, consider means of rescue should that person be injured or collapse while at work and the possibility of that person becoming trapped.

Find out more

Legislation

Radiation (Emergency Preparedness and Public Information) Regulations 2001
www.hse.gov.uk/radiation/ionising/reppir.htm

Control of Major Accident Hazards Regulations 1999
www.legislation.gov.uk/uksi/1999/743/contents/made

HSE guidance

A guide to the Dangerous Substances in Harbour Areas Regulations 1987 HSR27
HSE Books 1988 www.hse.gov.uk/pubns/hsr27.htm

The bulk transfer of dangerous liquids and gases between ship and shore HSG186
HSE Books 1999 www.hse.gov.uk/pubns/books/hsg186.htm

The Dangerous Substances (Notification and Marking of Sites) Regulations 1990 (NAMOS): A brief guide on an amendment to the Regulations 2013 Leaflet
INDG467 HSE 2013 www.hse.gov.uk/pubns/indg467.htm

HSE web pages

COMAH
www.hse.gov.uk/comah

Joint PSS/HSE guidance

SIP016 *Guidance on emergency planning in ports*
www.portskillsandsafety.co.uk/publications/safety_in_ports_guidance

Other sources of information

International Maritime Dangerous Goods (IMDG) Code International Maritime Organization www.imo.org/Publications/IMDGCode/Pages/Default.aspx

Personal protective equipment (PPE)

266 Making the workplace safe includes providing instructions, procedures, training and supervision to encourage people to work safely and responsibly. Even where engineering controls and safe systems of work have been applied, some hazards might remain. In these cases, employers have duties concerning the provision and use of PPE at work, and employees have a duty to use PPE correctly and in accordance with instructions.

267 PPE must only be used as a last resort. If PPE is still needed after implementing other controls, employers must provide this for their employees free of charge.

268 PPE is equipment that will protect the user against health or safety risks at work. It can include items such as life jackets, safety helmets, gloves, eye protection, high-visibility clothing, safety footwear and safety harnesses. It also includes respiratory protective equipment (RPE).

269 When selecting suitable PPE, consider:

- Who is exposed and to what?
- How long are they exposed for?
- How much are they exposed to?

270 To ensure the suitability of PPE:

- Choose products which are CE marked in accordance with the Personal Protective Equipment Regulations 2002 – suppliers can advise. If in doubt, seek further advice from a specialist adviser and explain the job to them.
- Choose equipment that suits the user – consider the size, fit and weight of the PPE and the health of the user. If the users help choose it, they will be more likely to use it.
- Make sure that if more than one item of PPE is being worn they can be used together, eg wearing safety glasses may disturb the seal of a respirator, causing air leaks.
- Instruct and train people how to use it. Explain why it is needed, when to use it, what its limitations are and know how to detect and report any faults.
- Ensure that the right replacement parts that match the original are used, eg respirator filters, and have replacement PPE available.
- Clarify who is responsible for maintenance and how it is to be done.
- Ensure PPE is properly looked after and stored when not in use. If it is reusable it must be cleaned and kept in good condition.

271 Never allow exemptions from wearing PPE for those jobs that ‘only take a few minutes’.

Find out more

Legislation

Personal Protective Equipment Regulations 2002
www.legislation.gov.uk/ukssi/2002/1144/contents/made

HSE guidance

Personal Protective Equipment at Work (Second edition). Personal Protective Equipment at Work Regulations 1992 (as amended). Guidance on Regulations L25 (Second edition) HSE Books 2005 www.hse.gov.uk/pubns/books/l25.htm

Personal protective equipment (PPE) at work: A brief guide Leaflet INDG174(rev2)
HSE Books 2013 www.hse.gov.uk/pubns/indg174.htm

HSE web pages

Respiratory protective equipment
www.hse.gov.uk/respiratory-protective-equipment

Personal protective equipment
www.hse.gov.uk/toolbox/ppe.htm

Lone working

272 Lone workers are those who work by themselves without close or direct supervision so additional controls may be needed to reduce risks to acceptable levels. Think about and deal with any health and safety risks before people work alone.

273 Establishing a healthy and safe working environment for lone workers can be different from organising the health and safety of other employees.

274 There are no absolute restrictions on working alone but it will depend on the risks faced by the individual.

275 It will often be safe to work alone. However, the law requires employers to think about and deal with any health and safety risks before people are allowed to do so.

276 There are some high-risk activities where at least one other person may need to be present. Examples include: crane operators; engineering staff and security staff; some high-risk confined space working where a supervisor may need to be present, as well as someone dedicated to a rescue role; and electrical work at or near exposed live conductors where at least two people are sometimes required.

277 Consider:

- whether there is a need to assess areas of risk (including violence, manual handling), the medical suitability of the individual to work alone and any risks arising from the nature of the workplace itself;
- whether there are any particular requirements for training and the levels of experience needed;
- what systems might be needed to supervise and keep in touch with lone workers.

278 Depending on the risks, some lone workers may require extra control measures, which may include instruction, training, supervision, protective equipment, rescue procedures etc. Employers should check that control measures are used and procedures reviewed from time to time to ensure they are still adequate.

Find out more

HSE guidance

Working alone: Health and safety guidance on the risks of lone working Leaflet INDG73(rev3) HSE Books 2013 www.hse.gov.uk/pubns/indg73.htm

First aid

279 There is a legal duty to make arrangements to ensure employees receive immediate attention if they are injured or take ill at work. The first aid needs and arrangements will depend on the particular circumstances in the dock.

280 As a minimum, there must be:

- a suitably stocked first-aid box;
- an appointed person to take charge of first-aid arrangements;
- information for all employees giving details of first-aid arrangements.

281 Make an assessment of the hazards and risks in the workplace and establish an appropriate level of first-aid provision. The assessment may also indicate that a first-aid room should be provided.

282 Decide if you need a first-aider, ie someone trained by an approved organisation, and who holds a qualification in first aid at work or emergency first aid at work.

283 Qualified first-aiders must have the right training and a certificate valid for three years – after that a refresher course and re-examination is necessary.

Find out more

HSE guidance

First aid at work: The Health and Safety (First-Aid) Regulations 1981. Guidance on Regulations L74 (Third edition) HSE Books 2013
www.hse.gov.uk/pubns/books/l74.htm

First aid at work: Your questions answered Leaflet INDG214(rev1) HSE Books 2009
www.hse.gov.uk/pubns/indg214.htm

Basic advice on first aid at work Leaflet INDG347(rev2) HSE Books 2011
www.hse.gov.uk/pubns/indg347.htm

HSE web pages

First aid at work
www.hse.gov.uk/firstaid

First aid at work assessment tool
www.hse.gov.uk/firstaid/assessmenttool.htm

Accident reporting

284 The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR) require employers, or in certain circumstances others who control or manage the premises, to report to the relevant enforcing authority and keep records of:

- work-related deaths;
- specified injuries to people at work, which are listed in RIDDOR, such as fractures, amputations and serious burns;
- all ‘over-seven-day injuries’ to workers, which are those where a person who is injured from a workplace accident is incapacitated for more than seven consecutive days;
- cases of certain occupational diseases as listed in RIDDOR;
- certain ‘dangerous occurrences’ (near-miss accidents);
- injuries to a person who is not at work, such as a member of the public, which are caused by an accident at work and which result in the person being taken to hospital from the site for treatment.

285 The reporting and recording of accidents/incidents are legal requirements. The report tells the enforcing authorities for occupational health and safety (HSE and local authorities) about serious incidents and cases of disease. This means they can identify where and how risks arise and whether they need to be investigated.

286 It also allows HSE and local authorities to target their work and provide advice on how to avoid work-related deaths, injuries, ill health and accidental loss.

287 Information on accidents, incidents and ill health can be used by companies as an aid to risk assessment, helping to develop solutions to potential risks. Records also help to prevent injuries and ill health, and control costs from accidental loss.

288 The HSE website provides information on RIDDOR which puts duties on employers, the self-employed and people in control of work premises (the responsible person) to report serious workplace accidents, occupational diseases and specified dangerous occurrences (near misses) – see www.hse.gov.uk/riddor.

289 In certain circumstances, eg where ships or ships' crew and shore-based operations or equipment are involved in an incident, it may also be necessary to report accidents to the Marine Accident Investigation Board (MAIB) under the Merchant Shipping (Accident Reporting and Investigation) Regulations 2012.

Find out more

Legislation

Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013
www.legislation.gov.uk/uksi/2013/1471/contents/made

Merchant Shipping (Accident Reporting and Investigation) Regulations 2012
www.legislation.gov.uk/ukssi/2012/1743/contents/made

HSE guidance

Reporting accidents and incidents at work: A brief guide to the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR) Leaflet INDG453(rev1) HSE Books 2013 www.hse.gov.uk/pubns/indg453.htm

HSE web pages

RIDDOR
www.hse.gov.uk/riddor

Other sources of information

Merchant Shipping (Accident Reporting and Investigation) Regulations 2012
www.maib.gov.uk/cms_resources.cfm?file=/ARI_Regulations_2012.pdf

Appendix 1 Notice of Approval

By virtue of section 16(4) of the Health and Safety at Work etc Act 1974 ('the 1974 Act'), and with the consent of the Secretary of State for Work and Pensions pursuant to section 16(2) of the 1974 Act, the Health and Safety Executive has on 4 December 2013 approved the Code of Practice entitled *Safety in docks: Approved Code of Practice and guidance* (First edition, 2014, L148).

The Code of Practice gives practical guidance on regulations 2, 3 and 7 of the 1974 Act as they relate to docks.

By virtue of section 16(5) and with the consent of the Secretary of State for Work and Pensions under that paragraph, the Health and Safety Executive has withdrawn its approval of the Code of Practice *Safety in Docks. Docks Regulations 1988. Approved Code of Practice with Regulations and guidance COP25*, which shall cease to have effect on 6 April 2014.

The Code of Practice comes into effect on 6 April 2014.

Signed

LOUISE STEVENS
Secretary to the Board of the Health and Safety Executive

27 March 2014

Appendix 2 Legislation

Health and Safety at Work etc Act 1974

www.legislation.gov.uk/ukpga/1974/37/contents

- | | |
|-----------|--|
| Section 2 | <i>General duties of employers to their employees</i> |
| Section 3 | <i>General duties of employers and self-employed to persons other than their employees</i> |
| Section 4 | <i>General duties of persons concerned with premises to persons other than their employees</i> |
| Section 7 | <i>General duties of employees at work</i> |
| Section 8 | <i>Duty not to interfere with or misuse things provided pursuant to certain provisions</i> |

Management of Health and Safety at Work Regulations 1999

www.legislation.gov.uk/uksi/1999/3242/made

- | | |
|---------------|--|
| Regulation 3 | <i>Risk assessment</i> |
| Regulation 5 | <i>Health and safety arrangements</i> |
| Regulation 8 | <i>Procedures for serious and imminent danger and for danger areas</i> |
| Regulation 11 | <i>Co-operation and co-ordination</i> |
| Regulation 13 | <i>Capabilities and training</i> |
| Regulation 14 | <i>Employees' duties</i> |

Confined Spaces Regulations 1997

www.legislation.gov.uk/uksi/1997/1713/made

- | | |
|--------------|--------------------------------|
| Regulation 4 | <i>Work in confined spaces</i> |
|--------------|--------------------------------|

Dangerous Substances and Explosive Atmospheres Regulations 2002

www.legislation.gov.uk/uksi/2002/2776/made

Regulation 7 *Places where explosive atmospheres may occur*

Lifting Operations and Lifting Equipment Regulations 1998

www.legislation.gov.uk/uksi/1998/2307/made

Regulation 4 *Strength and stability*

Regulation 5 *Lifting equipment for lifting persons*

Regulation 6 *Positioning and installation*

Regulation 8 *Organisation for lifting operations*

Regulation 9 *Thorough examination and inspection*

Personal Protective Equipment at Work Regulations 1992

www.legislation.gov.uk/uksi/1992/2966/made

Regulation 4 *Provision of personal protective equipment*

Provision and Use of Work Equipment Regulations 1998

www.legislation.gov.uk/uksi/1998/2306/made

Regulation 4 *Suitability of work equipment*

Regulation 5 *Maintenance*

Regulation 9 *Training*

Regulation 18 *Control systems*

Regulation 28 *Self-propelled work equipment*

Work at Height Regulations 2005

www.legislation.gov.uk/uksi/2005/735/made

Regulation 6 *Avoidance of risks from work at height*

Regulation 8 *Requirements for particular work equipment*

Schedule 6 *Requirement for ladders [Regulation 8(e)]*

Workplace (Health, Safety and Welfare) Regulations 1992

www.legislation.gov.uk/uksi/1992/3004/made

Regulation 12 Conditions of floors and traffic routes

Regulation 17 Organisation etc. of traffic routes

Control of Substances Hazardous to Health Regulations 2002

www.legislation.gov.uk/uksi/2002/2677/contents/made

Regulation 6 Assessment of the risk to health created by work involving substances hazardous to health

Regulation 7 Prevention or control of exposure to substances hazardous to health

Regulation 8 Use of control measures etc.

Regulation 9 Maintenance, examination and testing of control measures

Regulation 10 Monitoring exposure at the workplace

Regulation 11 Health surveillance

Health and Safety (Consultation with Employees) Regulations 1996

www.legislation.gov.uk/nisr/1996/511/contents/made

Regulation 3 Duty of employers to consult

Regulation 4 Persons to be consulted

Safety Representatives and Safety Committee Regulations 1977

www.legislation.gov.uk/uksi/1977/500/contents/made

Regulation 4 Functions of safety representatives

Glossary

access to includes egress from.

cargo or goods includes:

- animals;
- pallets and freight containers;
- waste;
- solid ballast; and
- vehicles which are being transported as cargo.

container means a freight container as defined in regulation 2 of the Freight Containers (Safety Convention) Regulations 1984.

dock includes a port.

dock operations means:

- (a) the loading or unloading of goods on or from a ship at dock premises;
- (b) the embarking or disembarking of passengers on or from a ship at dock premises;
- (c) any activity incidental to the activities in subparagraphs (a) and (b) of this definition which takes place on dock premises, including any of the following activities specified in this subparagraph if they are so incidental and take place on dock premises –
 - (i) the fuelling and provisioning of a ship;
 - (ii) the mooring of a ship;
 - (iii) the storing, sorting, inspecting, checking, weighing or handling of goods;
 - (iv) the movement of goods, passengers or vehicles;
 - (v) the use of welfare amenities in relation to the carrying out of activities referred to in sub-paragraphs (a), (b) and (c)(i) to (iv) above;
 - (vi) attending dock premises for the purposes of the activities referred to in subparagraphs (a), (b) and (c)(i) to (v) above; or
- (d) the embarking or disembarking on or from a ship of its crew at dock premises;

but does not include –

- (e) a fish loading process within the meaning of the Loading and Unloading of Fishing Vessels Regulations 1988;
- (f) the loading or unloading of goods, or embarking or disembarking of persons, from a pleasure craft or any activity incidental to those activities; or
- (g) beach landing operations wholly carried out by serving members of Her Majesty's Forces or visiting forces within the meaning of the provisions of Part 1 of the Visiting Forces Act 1952 or a combination of both.

dock premises means any dock, wharf, quay, jetty or other place at which ships load or unload goods or embark or disembark passengers, together with neighbouring land or water which is used or occupied, or intended to be used or occupied, for those or incidental activities, and any part of a ship when used for those or incidental activities.

goods see **cargo**.

harbour authority this includes both statutory and competent harbour authorities.

hatch means a ships' hatch.

hatch covering includes hatch covers, beams and attached fixtures and fittings.

loading includes unloading.

one-trip sling means a sling which has not previously been used for lifting any other load and is fitted to the load at the commencement of the journey and intended to be disposed of at the destination of that journey.

pre-slung cargo sling means a sling which was in position round the goods before they were handled in the course of dock operations.

ship includes every description of vessel used in navigation.

ships' master should be taken to include any ships' officer in charge of a ship during the absence of the master.

stevedore is an organisation or company that may employ its own workforce permanent or temporary and is licensed or contracted to load vessels and handle cargo.

Further information

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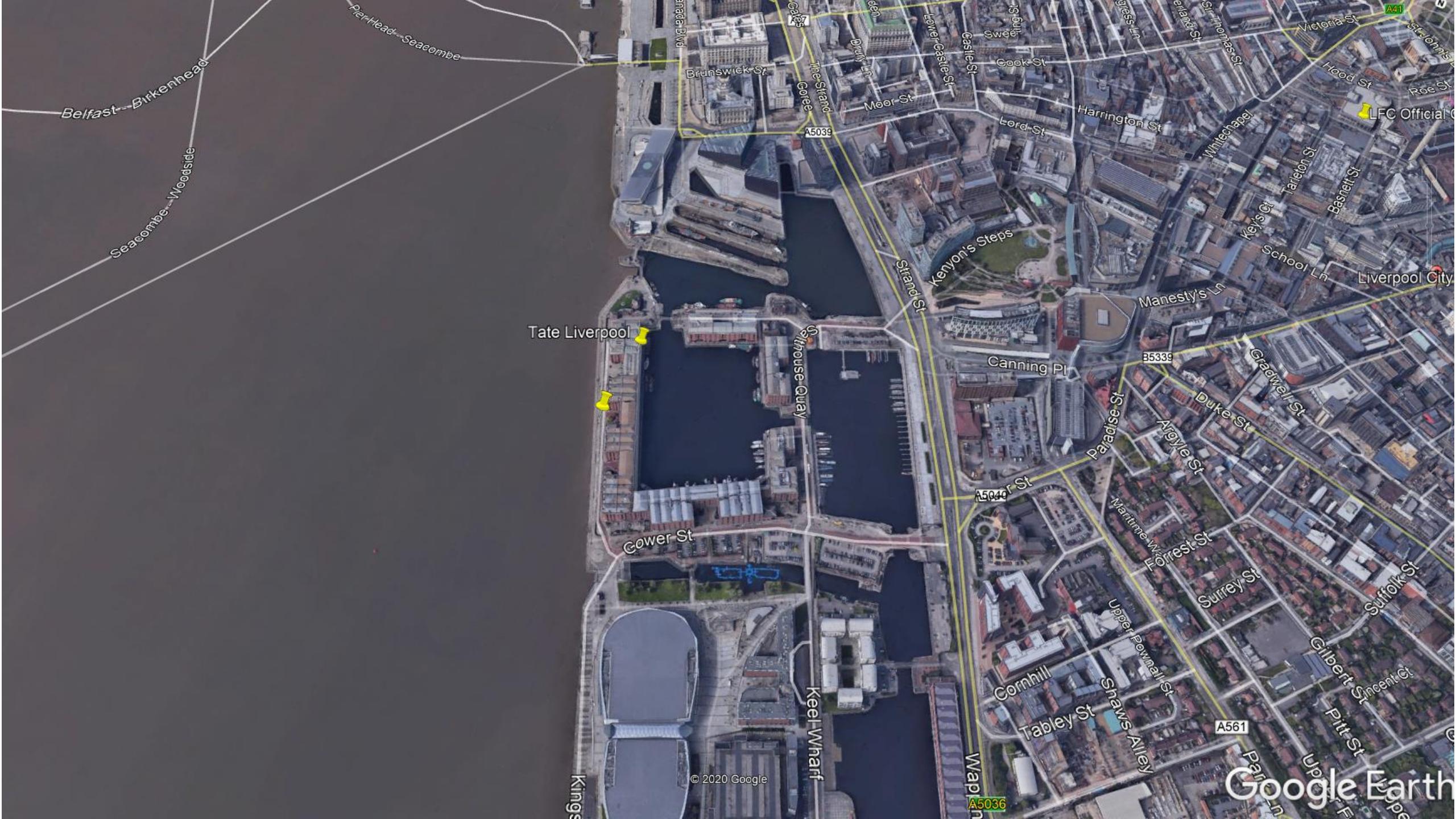
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Liverpool Docks Fencing













Lesley McGrath

From: Lesley McGrath
Sent: 25 January 2021 11:05
To: Daniel Lodge
Subject: 20/05546/LBC and 20/05548/FUL
Attachments: HSE - Safety In Ports (Approved Code of Practice 2014).pdf; Liverpool Docks Fencing Examples (002).pdf

Daniel

I write with reference to the Planning and Listed Building applications (ref: 20/05546/LBC and 20/05548/FUL) submitted for the installation protective barrier along the land to the south of Albert Dock at Stevedore Place, Leith and to provide further information regarding health and safety matters pertaining to the works.

As you are aware, applications have been made and the works undertaken because Forth Ports have had to take urgent measures to protect human life.

As outlined in the Application submissions, a young child from the adjacent residential development at Stevedore Place exited a gated garden, crossed the chain link barrier at the edge of Albert Dock and fell into the Dock. The child was saved by a member of the public who entered the Dock but the consequences of the incident could have been much worse.

Forth Ports must therefore take appropriate measures to protect human life all in accordance with their obligations as governed by Health and Safety legislation.

The necessary measures comprise the installation of fencing panels with vertical railings. The design addresses essential health and safety requirements, the character and setting of the Listed Building and Conservation Area and the adjacent residential development.

- The design of the fence takes into account HSE guidance – Safety in Docks, Approved Code of Practice, and in particular point 155 (extract below), which provides details on appropriate requirements where children may be present.

Fencing at dock edges

150 Except for straight and level quaysides, fencing should be provided at all dock, wharf, quay or jetty edges from which people may fall into water, and where they must pass within 1 m of the edge, or the configuration of the quay or the arrangement of walkways is such that they are more than ordinarily liable to fall over such an edge.

151 Fencing should be provided throughout every open side of narrow access ways, whether the fall would be into water or not.

152 These provisions do not apply to areas where there is no work activity being undertaken, subject to any foreseeable risk to members of the public.

153 Secure and adequate fencing should be provided where risk assessment has found this to be needed.

154 Particular consideration should be given to:

- every break, dangerous corner and other part or edge of a dock, wharf, jetty or quay;
- open sides of a gangway, footway over a bridge, caisson or dock gate; and
- any other place where someone working or passing might fall.

155 Secure fencing should consist of an upper rail and an intermediate rail. In certain circumstances, eg the presence of children, a higher standard of protection will be required. The rails may where necessary consist of taut wire, taut chain or other taut material.

156 Where the work involves being within 1 m of an unprotected quay edge, people should wear suitable PPE, eg lifejackets or buoyancy aids.

157 Dock premises should be provided with adequate and suitable rescue and lifesaving equipment and means to escape from danger, eg handholds on the quayside at water level, ladders on quay walls and life-saving appliances.

158 Take into account the risks to lone workers.

159 Take into account the risks to members of the public where public access is possible or foreseeable, even if there is no dock work activity being undertaken (to comply with section 3 of the HSW Act).

- The use vertical metal railings ensure that they cannot be climbed by young children.
- The fencing panels link into the existing bollard eyelets and the works are fully reversible.
- The height of the panels is commensurate with the height of the existing bollards.
- The railings are metal and painted to match the existing bollards.
- The panels do not interrupt views.
- The design of the panels is similar in appearance, height and scale to the railings of the adjacent housing development.

The approach taken by Forth Ports at Albert Dock is in place around Liverpool's Dock area. The attached document illustrates boundary treatments close to residential dwellings in the Liverpool Dock area.

The works do not set a precedent for barrier treatments within the wider Shore area. The works are specific to the location of the Application – a residential development with immediate access via garden gates to the Dock side.

I note the Council's Archaeologist and Historic Environment Scotland have not recorded any objection to the works.

I trust the above provides you with the necessary Health and Safety context to enable the Council to determine the Applications, however should you require further information or clarification, please do not hesitate to contact me.

Lesley McGrath

HolderPlanning

Mobile. 07841 487916
www.holderplanning.com

5 South Charlotte Street
Edinburgh
EH2 4AN

Legal Opinion

Stevedore Place, Edinburgh

5 March 2021

1. INTRODUCTION

- 1.1 On 10 December 2020 Forth Ports (**FP**) submitted a planning application (ref: 20/05548/FUL) to the City of Edinburgh Council (**CEC**) for the installation of a protective barrier along the south of Albert Dock at Stevedore Place, Leith (the **Planning Application**).
- 1.2 As the proposed development involved alterations to the Category B listed Albert Dock¹ (situated within the Leith Conservation Area) FP concurrently submitted a listed building consent application (ref: 20/05546/LBC) (the **LBC Application**).
- 1.3 The nature of the works, and the underlying objective for FP carrying them out, was set out in the Design Statement submitted with the Planning Application and LBC Application:

Forth Ports propose to replace the metal chain links between the existing bollards located to the south of Albert Dock and north of the residential development at Stevedore Place, Leith, with panels comprising vertical railings. The works are required to take place as a matter of urgency for reasons of health and safety. Recently, a young child had to be rescued from Albert Dock basin having accessed it from the Dock edge at Stevedore Place... Having reviewed the recent incident and assessed the risk, Forth Ports propose to undertake works from an urgent safety perspective to prevent the risk of any further incidents happening again.
- 1.4 On 10 February 2021, CEC issued decision notices confirming that both the Planning Application and LBC Application had been refused due to the unacceptable impact of the proposed development on the special character and setting of the Albert Dock, and the special character and appearance of the Leith Conservation Area.
- 1.5 The refusal of the Planning Application and LBC Application raises serious concern for FP given the protective barrier is necessary to address a health and safety risk related to persons (particularly young children) falling from height into Albert Dock basin. In this regard, owing to the decision of CEC, there is now conflict between the outcome of the planning process (at first instance) and FP's legal responsibilities as the owner of Albert Dock and statutory duties under health and safety legislation. It is specifically on this issue that we have been asked to opine.

- 1.6 This Opinion comprises two parts:

- 1.6.1 Part 1 summarises FP's duty of care as owner and occupier of Albert Dock, and its statutory duties under health and safety legislation;
- 1.6.2 Part 2 sets out our opinion on the relevance of the matters at Part 1 in respect of:
 - (a) the determination of the Planning Application (and subsequent appeal); and
 - (b) the determination of the LBC Application (and subsequent appeal)

2. FP'S OBLIGATIONS AND DUTIES

- 2.1 As the owner and occupier of Albert Dock, FP has a duty of care to all visitors to ensure the premises are reasonably safe under the Occupiers' Liability (Scotland) Act 1960 (the **1960 Act**).

¹ Category 'B' listed on 29 March 1996 (Ref. LB27590).

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- 2.2 The 1960 Act imposes an obligation to take reasonable care "...towards persons entering on the premises in respect of dangers which are due to the state of the premises or to anything done or omitted to be done on them and for which he is in law responsible"².
- 2.3 The 1960 Act specifies that an occupier must take "...such care as in all the circumstances of the case is reasonable to see that that person will not suffer injury or damage by reason of any such danger".
- 2.4 What is "reasonable" will depend on the facts and circumstances of each case but, generally, it is assessed in line with what a reasonable person would consider to be reasonable care. In short, if it is reasonably foreseeable that a certain danger to a third party exists, the occupier will owe a duty of care in respect of that danger. It follows that the occupier would be obliged under the 1960 Act to take measures to protect that third party.
- 2.5 It is precisely in the context of this statutory framework that FP has submitted the Planning Application and LBC Application:
- 2.5.1 The southern extent of Albert Dock is accessible to the public.
 - 2.5.2 Further to a planning application granted by CEC, there is now residential development directly adjacent to the southern extent of Albert Dock.
 - 2.5.3 An incident occurred in September 2020 when a child from the said residential development crossed the existing metal chain links and fell into the basin. By good fortune, a passer by managed to rescue the child.
 - 2.5.4 It is evident from the factors and circumstances above (accessibility, proximity of dwellings and prior accident) that the risk of a person suffering injury or damage is "reasonably foreseeable". Conversely, we see no good counter-arguments that the risk of injury or damage is not "reasonably foreseeable" in such circumstances.
- 2.6 FP must therefore, as a matter of law, take measures to protect members of the public (especially young children) accessing Albert Dock from the danger of falling from height into water. A failure to take measures to mitigate this risk means that it would otherwise subsist, rendering FP in potential breach of its statutory obligations. In any event, this is also plainly unacceptable to FP in its capacity as a responsible landowner who wishes to uphold the highest safety standards possible.
- 2.7 The nature and extent of the measures that FP must take to mitigate the risk to the public must be carefully considered. The measures must be fit for their core purpose of avoiding or mitigating the identified health and safety risk. The case officer makes comment in the Reports of Handling for the Planning Application and LBC Application that the specific use of vertical railings is unacceptable at this location. Again, this fails to take into account the broader statutory obligations of FP as an occupier to not just take "any" measures to protect the public but to take measures that are actually effective and sufficient to eliminate any reasonably foreseeable danger. The visual appearance of a structure is a relevant factor. But good design goes far beyond aesthetic considerations. The functionality of the fencing, including fitness for purpose and sustainability, is also a relevant consideration and, in the factual matrix described above, it is one to which significant importance must attach.
- 2.8 For the reasons above, the assessment by CEC that the use of vertical railings is excessive or unnecessary at this location does not appear to be based on any expert H&S opinion or technical evidence and is thus ill founded. As is an assumption that the potential use of taut wire, taut chain or other taut material may be more acceptable on

² S.1(1) of the 1960 Act.

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the basis that such measures "may" be appropriate where "a higher level of protection is required" (paragraph 155 of HSE Guidance, *Safety Docks*).

- 2.9 FP has a dedicated team of in-house safety professionals with many years of experience who have been closely involved in the fence design at this location. In addition, FP obtained advice and guidance on the design of the fencing from the contractor appointed to carry out the works (an experienced fencing contractor responsible for undertaking projects across the UK). Taken together, FP has been advised and has concluded that a "higher level of protection" is required in the present case and that the use of vertical railings is necessary to provide such protection: this being the most effective way to stop children climbing over the fence and entering the water (a risk that would subsist at this location with the use of taut wire).
- 2.10 In practice the assessment of what is "reasonably foreseeable" must be made by the occupier as the party who is obliged to comply with the obligations under the 1960 Act. FP's position, based on professional advice and experience, is unambiguous in this regard: only the installation of the vertical fencing will be sufficient to meet its statutory duty of care and see that young children will not suffer further injury or damage as a consequence of entering its premises.
- 2.11 In determining the appropriate design of the fencing, and in FP selecting a vertical design, it is also informative to refer to the *Building Standards Technical Handbook 2020: non-domestic* which provides guidance on achieving the standards set in the Building (Scotland) Regulations 2004³. Standard 4.4.2 paragraph 2 states:
- "A protective barrier should be designed and constructed so that it cannot be easily climbed by young children. The provision of potential hand and footholds should be minimised."*
- 2.12 Separately, FP must also comply with health and safety law which includes the obligation to ensure, so far as is reasonably practicable, the safety of persons either working at or attending premises operated by those conducting businesses – whether or not the attendees are themselves working there. Significant obligations under the criminal law are imposed by the Health & Safety at Work etc. Act 1974 and in particular in the present context:
- 2.12.1 Section 2: the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees including "...the provision and maintenance of a working environment for employees that is, so far as is reasonably practicable, safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work"⁴.
 - 2.12.2 Section 3: the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety⁵.
 - 2.12.3 Section 4: the duty of parties with control of non-domestic premises that are used by persons that are not their employees as a place of work, or as a place where they may use plant or substances provided for their use there.
- 2.13 Drawing together the above requirements, the need to ensure that premises are properly safe is fundamental to FP's obligations under both occupiers' liability and health and safety law. This is especially the case where the very nature of the premises creates, as here, an inherent risk of falling from height into water.

³ Works of a civil engineering construction including at harbours, quays and docks are exempt from the Regulations. However, even if the Regulations do not formally apply, the guidance in the Technical Handbook represents a reasonable benchmark for design standards given the nature of the public realm and changing use of the area (in particular the proximity of the residential units to Albert Dock basin).

⁴ S.2(2)(e) of the Health and Safety at Work etc. Act 1974.

⁵ S.3(1) of the Health and Safety at Work etc. Act 1974.

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- 2.14 As set out in the appeal submission, FP takes its health and safety obligations extremely seriously and is determined to fully address an ongoing risk to the public, which necessitates the installation of the vertical fencing.

3. THE DECISION MAKING PROCESS

- 3.1 The land use planning system sits alongside other statutory regimes (such as those cited above) each of which serves a different purpose and has different objectives. Planning law has a guiding purpose of controlling "development" and the listed building regime with the protection of important heritage assets. Conversely, the legal framework's for occupier's liability and HSE matters is set out above.

- 3.2 In the absence of a statutory provision to the contrary and in general terms one legal framework does not automatically override another in the event of potential conflict. However, that must not be interpreted as meaning that the planning regime is intended to operate in a vacuum without regard to other statutory regimes, or that a party's obligations under other statutory regimes are not capable of materially influencing (or being determinative) of decision making under the planning regime.

- 3.3 From this starting point, it is informative to take a closer look at the statutory framework for decision-making under planning and listed building legislation.

Planning decision making

- 3.4 It is well established that decisions on planning applications must be made in accordance with the development plan unless material considerations indicate otherwise⁶.

- 3.5 The House of Lord's judgement on *City of Edinburgh Council v the Secretary of State for Scotland (1998)* (as cited in Annex A of Circular 3/2013) provides further direction and confirms that there are two main tests in deciding whether a consideration is material and relevant. First, it should serve or be related to the purpose of planning (and should therefore relate to the development and use of land). Second, it should relate to the particular application.

- 3.6 It was further held:

The decision maker will have to decide what considerations it considers are material to the determination of the application. However, the question of whether or not a consideration is a material consideration is a question of law and so something which is ultimately for the courts to determine. It is for the decision maker to assess both the weight to be attached to each material consideration and whether individually or together they are sufficient to outweigh the development plan.

- 3.7 Turning to the present circumstances, the first step in determining the Planning Application (or subsequent appeal) is to determine whether the proposed development is in accordance with the development plan "when read as a whole"⁷. For the reasons more fully set out in the Appeal Statement, FP's firm position is that the proposals are in accordance with the development plan.

- 3.8 Once the decision maker has determined whether the Planning Application is in accordance with the development plan, he or she must then assess whether there are other "material considerations" for or against the proposed development. In our opinion the health and safety considerations that underpin the Planning Application meet the test of being a "material consideration" for the following reasons:

- 3.8.1 **Are the health and safety considerations serving or related to the "purpose of planning"?** The "purpose of planning" is defined as "*to manage the development and use of land in the long term*

⁶ S.25(1) of the Town and Country Planning (Scotland) Act 1997.

⁷ *Gladman Developments Ltd v Canterbury City Council (2019)* EWCA Civ 669.

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*public interest*⁸. There can be no question that health and safety considerations fall squarely within that purpose. It is plainly not in the long-term public interest to leave land in a situation which is unsafe. More broadly, health and safety considerations are at the heart of all decisions related to the development and use of land. That is reflected in the fact that it is entirely standard practice for health and safety matters to be assessed as part of considering the acceptability of development, for the HSE being invited to comment upon planning applications, and for conditions to be imposed upon the grant of planning permission for reasons related to the protection of the public.

- 3.8.2 **Do the health and safety considerations "relate to the application"?** Again, there can be no question that this test is satisfied: health and safety objectives are the driving reason for seeking to carry out the works that the Planning Application seeks to regularise.
- 3.9 The next consideration is the weight that attaches to this material consideration. As established in the *City of Edinburgh* case, that is ultimately a matter for the decision maker. However, we make the following observations:
- 3.9.1 If the decision maker is satisfied that the proposed development is in accordance with the development plan, the clear benefit of addressing a health and safety risk would only serve to bolster the case for the grant of the Planning Application.
 - 3.9.2 If the decision maker were to conclude that the proposed development was not in accordance with the development plan (which FP do not accept) it is clear that issues of health and safety are of fundamental importance and in our submission, in the particular circumstances of this case, must carry substantial weight in the decision making process. It follows that there would be a very strong basis for warranting a departure from the development plan policies in such circumstance.
 - 3.9.3 As we have already established, consideration of the safety of persons is inherently fundamental to all land use planning decisions and plainly in the public interest. It follows that a failure to consider that factor at all in the planning balance, or a decision to attach insufficient weight to such matters, in the determination of the Planning Application may be interpreted by the court as *Wednesbury* unreasonable or irrational⁹.
- 3.10 When making a decision on a planning application for development that affects a listed building or its setting, the planning authority must have "special regard" to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses¹⁰. However the following must be borne in mind in the context of the Planning Application:
- 3.10.1 It is self-evident that having "special regard" to the desirability of preserving a building or its setting is only engaged where a proposed development would be detrimental to the preservation of a listed building or its setting:

"preserving", in relation to a building, means preserving it either in its existing state or subject only to such alterations or extensions as can be carried out without serious detriment to its character, and "development" includes redevelopment¹¹.
 - 3.10.2 In short, "preservation" in this context means not harming the interest in the building, as opposed to keeping it utterly unchanged. For the reasons set out in the Design Statement and Appeal Statement,

⁸ s.3ZA of the Town and Country Planning Act 1997.

⁹ A standard of unreasonableness used in assessing an application for judicial review of a public authority's decision. A reasoning or decision is Wednesbury unreasonable (or irrational) if it is so unreasonable that no reasonable person acting reasonably could have made it (*Associated Provincial Picture Houses Ltd v Wednesbury Corporation* (1948) 1 KB 223).

¹⁰ S.59(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

¹¹ S.59(3) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

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FP's firm position is that the proposed fencing is sympathetic to its surrounding and would not cause detriment to Albert Dock or its setting. The dock and its setting would be preserved.

- 3.10.3 Even if it were to be concluded that the fencing causes some detriment, and that the need to have "special regard" to the preservation of Albert Dock and its setting carries weight in the decision making process, such weight must still be balanced against the need to ensure that Albert Dock is safe to persons accessing it (especially children) and that FP is able to fully comply with its obligations under occupiers liability and health and safety law.
- 3.10.4 The need is to have "special regard" to the "desirability" of preserving the asset and its setting. The statutory test is not absolute and must not be seen as always determinative; it can be outweighed by other factors as part of the planning balance. What the test requires is that the decision maker specifically considers the importance of preserving listed buildings and attaches appropriate weight to that objective – but that cannot (and should not) always result in the refusal of planning applications.
- 3.11 The same principle applies in respect of the "special attention" that must be paid to the desirability of preserving or enhancing the character or appearance of a conservation area¹². Specifically, it is not sufficient to conclude that the need to pay "special attention" to preserving Leith Conservation Area means that the Planning Application must be refused. The decision maker must first be satisfied that the proposals are harmful to the conservation area. For the reasons set out in the Design Statement and Appeal Statement, there is a strong basis for concluding very little or no harm would occur in respect of the proposed development. Second, even if harm is identified, one must still then consider whether that is sufficient to refuse the Planning Application taking into account: the primacy of the development plan and other material considerations, including the obvious and significant health and safety benefits that underpin the proposals.
- 3.12 Applying the above analysis, the CEC officer has plainly fallen into error: the safety objectives that underpin the Planning Application, and that are at the very heart of FP's case for the proposals to be authorised, are the subject of no analysis whatsoever in the Report of Handling. In fact the only mention of "safety" is in the description of the proposals and the consultation responses appended to the Report. In short, in arriving at a conclusion that the Planning Application must be refused, it is clear from reading the Report that the case officer has, on the one hand, failed to consider an important material consideration in this case (health and safety risk) and, on the other hand, applied the tests of "special regard" and "special attention" as automatically determinative factors, rather than factors that need to be weighed in the wider planning balance.
- 3.13 The only logical conclusion is that the CEC officer has failed to take into account the very significant issue of safety as a material consideration the determination of the Planning Application. Had the issue of safety been properly taken into account, and afforded appropriate (substantial) weight in the decision making process, there is a compelling basis for concluding that the Planning Application should have been granted.

LBC Decision Making

- 3.14 When determining the LBC Application, the primacy of the development plan does not apply. However, it remains a material consideration that, for the reasons set out in the Appeal Statement, would strongly point towards the grant of the LBC Application. Similarly, the health and safety objectives are an important material consideration in the determination of the LBC Application which, for the reasons above, must be afforded substantial weight.
- 3.15 When making a decision on a listed building consent application, the planning authority must also have "special regard" to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses¹³. Furthermore, there is also a corresponding need to pay "special

¹² Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

¹³ S.14 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

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5 March 2021

attention" to the desirability of preserving or enhancing the character or appearance of the conservation area when determining a listed building consent application¹⁴.

- 3.16 The term "preserving" is not defined in the context of s.14 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 ("LBC Act"). However, analogous to s.59 of the LBC Act in respect of planning decisions, any change at all to a listed building or its setting should not be treated as a failure to preserve the asset: only a change that would cause serious detriment or harm.
- 3.17 Scottish Planning Policy is also informative in the context of the impacts on conservation areas:
*Proposals that do not harm the character or appearance of the conservation area should be treated as preserving its character or appearance*¹⁵.
- 3.18 It bears repeating that the fact that these statutory tests apply does not mean: a) other relevant considerations in the determination of the LBC Application are ignored; or b) that heritage considerations are decisive and automatically outweigh all other considerations.
- 3.19 As with the Planning Application, there is little or no evidence in the Report of Handling that the case officer has taken such factors into account in the planning balance. Had he done so, there is in our opinion a compelling basis for the grant of the LBC Application.
- 3.20 In establishing the weight that must be afforded to health and safety matters in the determination of listed building consent applications, it is instructive to examine how this issue is treated elsewhere in the LBC Act. In particular, it is notable that it is a defence against prosecution for carrying out works without listed building consent where "...works to the building were urgently necessary in the interests of safety or health or for the preservation of the building".
- 3.21 Whilst not of direct relevance to the determination of the LBC Application, this strongly indicates that matters of health and safety should carry substantial weight in decision making and should, in certain circumstances, take precedence over the broader objectives of the LBC Act to preserve and enhance heritage assets.
- 3.22 The degree of benefit associated with the works versus the degree of potential harm must also be relevant in this regard: where (as in the present case) the health and safety benefit is clear and very substantial, and the potential damage to a listed asset is (for the reasons set out in the Design Statement and Appeal Statement) negligible, this must add weight to the case for the grant of the LBC Application.

4. CONCLUSION

- 4.1 In our opinion there is no question that the issue of health and safety is an important material consideration that must be afforded substantial weight in the determination of the Planning Application and LBC Application. Whilst the issue of weight is one for the decision maker, it is our view in the circumstances of this case, that the health and safety benefits of the proposals (and the need for FP to comply with its associated statutory obligations) should be one of if not the determining factor.

PinSENT Masons LLP
 15 March 2021

¹⁴ S.64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

¹⁵ Paragraph 143 of Scottish Planning Policy (Revised December 2020).

Installation Of Protective Barrier Along The Land To The South Of Albert Dock At Stevedore Place, Leith

Listed Building Consent Refusal Response



LDN Architects

| Revision no. | Date | Notes |
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Dockside prior to installation of Secure Barrier



Proposed Secure Barrier (now installed)

Introduction

This report has been prepared by Mark Hopton, an RIAS Conservation Accredited Architect (Advanced Level) and partner in LDN Architects, on behalf of Forth Ports PLC in response to City of Edinburgh Council's decision to refuse Forth Port's application to install a protective barrier along the land to the south of Albert Dock at Stevedore Place, Leith (Application 20/05546/LBC).

The justification for the refusal is summarised in the Report of Handling on page 1 as follows:

The development does not comply with the Planning (Listed Building and Conservation Areas) Scotland Act 1997 as it fails to preserve the character and setting of the listed building and fails to preserve or enhance the character and appearance of the conservation area.

The decision notice states that:

1. The proposal fails to preserve the special character and setting of the Category 'B' listed Albert Dock and is therefore contrary to Section 14 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.
2. The proposal fails to preserve the special character or appearance of the Leith Conservation Area and is therefore contrary to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

This report should be read in conjunction with the following documents which are included as Appendices at the end of this report:

- Legal Opinion prepared by Pinsent Masons
- the Design Statement, included with the original application
- the Report of Handling

This report concludes that, given that the installation of an enhanced barrier is considered essential to prevent further potentially fatal accidents and that this need has been accepted by planning officers, the Report of Handling has failed to demonstrate that, under Section 14 and 64 of the Planning (Listed Buildings and Conservation Areas) Scotland Act 1997, the proposed alterations have a serious detrimental impact on the character and setting of the listed structures or character or appearance of the wider Conservation Area for the following reasons:

- Photos of the installed railings demonstrate that the railings meet the need to improve safety and that their visual permeability still allows the Category B Listed historic dockside, materials, open-ness and views to be appreciated without detriment to their special character or setting;
- The design, materials and character of the barriers are sympathetic to the robust and functional industrial character and dockyard scale of Albert Dock and represent the minimum change necessary to achieve the level of safety required;
- The design retains all existing historic features and is reversible should circumstances change in the future;
- There is no one "characteristic" barrier solution at dock edges within the Conservation Area as suggested in the Report of Handling. Each dock edge barrier has been designed to meet the needs of its specific location. The barrier design described in the application is designed to meet the specific needs of its location and is considerably more sympathetic to the character of the listed structures and Conservation Area than others already in place nearby around Albert Dock; They are similar in design to those already installed in front of the residential development.
- The barriers are not detrimental to the special character or setting of either the listed structures or the Conservation Area;



Albert Dock is of a robust and functional industrial character and scale compared with the gentrified vibrancy of the central Shore area.



Bollard and Chain barriers at Custom House in the central Shore area.

Special Interest

The special interest of the site is described on pages 3, 4 & 5 of the Report of Handling (our paragraph reference letters):

- a. *The layout and design of the bollard and chain boundary, its materials and the way in which it relates to the dock basin, dockside and footpath comprise important elements of the character of the dock and dock edge, and contribute substantially to the sense of place and understanding of the listed dock.*

The quality of its design includes the way in which the boundary is laid out, its physical dimensions and appearance, the particular sense of enclosure it provides, its associated features, and its relationship with other dockside features including moorings and surface treatments. These qualities have been consciously determined by the designer and mimic the manner in which many quaysides and dock edges have been treated throughout Leith and the rest of Scotland. The quality of the boundary specifically relates to its design and visual permeability it purposely was designed to allow for. The intentional design of the boundary is reflective of the original dock operations and to allow views both ways across the dock edge. The position and design of the boundary therefore, specifically relates to its original function as an operational dock.

- b. *The age and rarity of the boundary and other associated features are also factors in determining its special interest. It is therefore noted, whilst many of the bollards are new and the chain link is not original, many of the related structures and surfacing materials are original. These include the stone dock edge, train tracks, moorings and 22 of the 52 bollards. It is also important to recognise the conservation-led approach adopted in the manner in which the dock's retaining wall, edge and footpath have been restored and sensitively altered in association with the relatively recently completed residential development along Stevedore Place that directly abuts the footpath (Ref::12/03959/FUL).*

The Conservation Area's character and appearance is described on page 5 of the report (our paragraph reference numbers):

- c. *The Leith Conservation Area Character Appraisal emphasises the older parts of the Port of Leith, containing many early features including listed dock buildings. Scheduled Ancient Monuments associated with the Port of Leith consist of: the Victoria Swing Bridge, the dry dock off Sandport Street, the swing bridge and lock at the East Old Dock, and features related to the Albert Dock.*
- d. *The Albert Dock lies within a prominent location within the heart of the older part of the Port of Leith. The dock side contains robust surfaces required for dock sides, is separated by bollards with chains linking them; and matches the streetscape at the Shore and character of the medieval core of the Leith Conservation Area. The contemporary design of recent additions, such as new dock gates, sculptures and tree guards reinforce the prevailing character.*

Reasons for Refusal

The decision notice states that:

1. The proposal fails to preserve the special character and setting of the Category 'B' listed Albert Dock and is therefore contrary to Section 14 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.
2. The proposal fails to preserve the special character or appearance of the Leith Conservation Area and is therefore contrary to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

The justification of the reasons for refusal is set out on pages 3, 4 & 5 of the Report of Handling (our paragraph reference numbers):

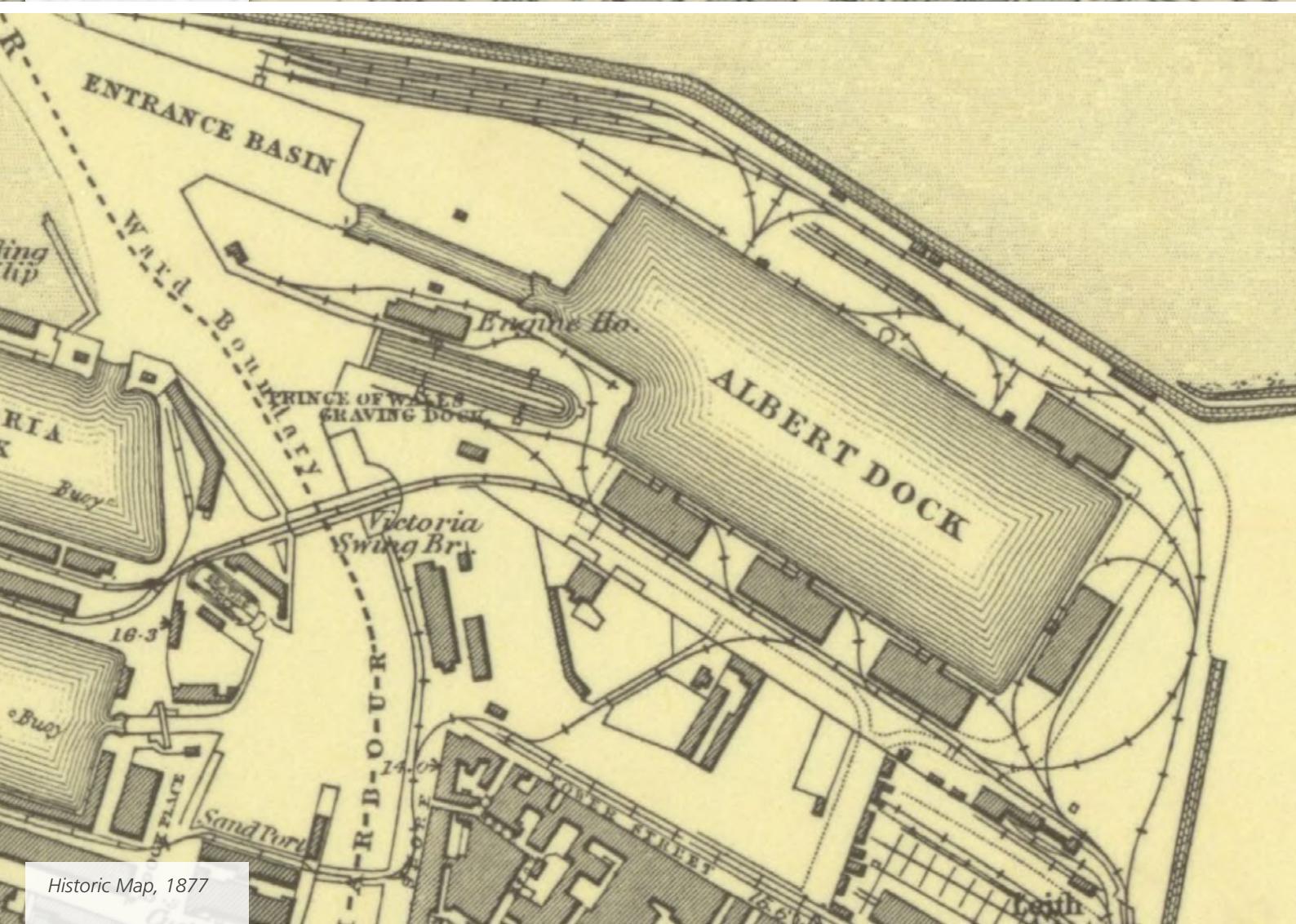
1. *While it is recognised that the context to the south west of the dock has changed with the erection of the new residential development where a metal railing with gated openings has been erected to delineate the rear garden boundaries with the footpath, historically, dock related buildings and structures were previously present at this location. The removal of the chain link and its infilling with panels comprising vertical railings will severely impact on the architectural and historical interest of the listed structure given the extent of design change proposed. The visual permeability of the existing boundary will be compromised to such a degree that the immediate south west setting of the dock edge and basin currently affords when moving across the public footpath will also be adversely impacted on given the decreased level of visual permeability created and the subsequent sense of enclosure created by the proposals in conjunction with the garden railings.*
2. *The quality of the bespoke manufactured railing panels and the level of intervention required to the existing bollards using their existing eyelets to render the proposals reversible is noted. However, while it is considered preferable for new work to be reversible, so that changes can be undone without harm to historic fabric, reversibility alone does not justify alteration that is not justified on other grounds. Crucially, the degree of design change the intervention would generate is judged to diminish the special architectural and historic design interest of the listed structure including its setting to an unacceptable degree.*

The proposals would not preserve the special architectural or historic interest of the listed structure.

3. *The Albert Dock lies within a prominent location within the heart of the older part of the Port of Leith. The dockside contains robust surfaces required for docksides, is separated by bollards with chains linking them; and matches the streetscape at the Shore and character of the medieval core of the Leith Conservation Area. The contemporary design of recent additions, such as new dock gates, sculptures and tree guards reinforce the prevailing character. The proposals would seriously diminish these special characteristics by enclosing the footpath with an uncharacteristic boundary treatment thereby reducing the visual permeability along this key route through dock where views across the historic dock towards the Firth of Forth and beyond can be appreciated.*

The proposals would not preserve the special character or appearance of the Leith Conservation Area.

Commentary and Rebuttal of Refusal



Special Interest of Site and Conservation Area

The sections of the Report on Handling in relation to the special interest of the site contain errors and omissions and therefore do not accurately reflect the nature and character of the site:

- The report states that "*The Albert Dock lies within a prominent location within the heart of the older part of the Port of Leith.* The dock was constructed on the foreshore of Leith as part of the dock development in 1869. It is on the very edge of the Conservation Area, forming a boundary with the working docks which are outside the Conservation Area. Albert Dock is certainly not within the heart of the older part of the Port of Leith and its character is very different.
- The report states that "*The dock side contains robust surfaces required for dock sides, is separated by bollards with chains linking them; and matches the streetscape at the Shore and character of the medieval core of the Leith Conservation Area. The contemporary design of recent additions, such as new dock gates, sculptures and tree guards reinforce the prevailing character.* In fact, today, the area around Albert Dock retains much of its robust and functional industrial character and dockyard scale in contrast to the gentrified vibrancy of the central Shore area which the report describes. Its character will continue to develop as new residential and other developments are completed and the tram arrives.
- The dockside at Stevedore Place is much quieter than the central Shore area with less opportunity for passive monitoring of dock edges by the public.
- Within the central Shore area, existing housing developments are separated from docksides by solid walls and high fences with few communal gates. This is in contrast to Stevedore Place where each unit of the residential development has direct access, through a 2m wide garden and garden gate, to the dockside.
- The report states that "*The position and design of the boundary therefore, specifically relates to its original function as an operational dock.*" Whilst it is correct that the stone dock edge and railway tracks are related to the original function of the docks, the bollards and chain would have impeded the original function of the dockside and were only added as a public safety feature after docking operations ceased and the dockside became more publicly accessible.
- The report states incorrectly that Victoria Swing Bridge is a Scheduled Ancient Monument. It is in fact Category A Listed. The only Scheduled Ancient Monument related to Albert Dock (B Listed), according to the HES description, is the hydraulic crane which is not near the site of the application.
- Throughout the report, the sympathetic use of bollard and chain fencing along dock edges is noted and is also highlighted in the Leith Conservation Area Character Appraisal. Whilst this is correct, both the report and Appraisal fail to identify that the bollards and chains are simply the "default" approach to protecting publicly accessible dockside edges. The bollard and chain fences do not stop access to the dock edges as can be seen clearly in the central Shore area where people regularly occupy the dock edge. There are also however many other examples of more robust barriers along dock edges where the need to enhance safety or security has been deemed greater and, it would appear, not detrimental to listed buildings or the Conservation Area as a whole. In the immediate area of Albert Dock these include timber and galvanised steel palisade security fencing; low level armco traffic barriers; concrete walls; high steel mesh security fencing; and re-purposed railway tracks with mesh infill. Within the wider Shore area, they also include mesh-infill panels at Teuchter's Landing; posts and rails; and vertical railings on both sides of the Commercial Street Bridge, similar in design to those proposed for Stevedore Place.



The bollard and chain fences around Shore area patently fail to keep people away from dock edges.



Existing barriers around Albert Dock including timber palisade fencing and armco barriers.

- The report states that "...views across the historic dock towards the Firth of Forth and beyond can be appreciated." from the site. It is possible to see the warehousing and other dock buildings across Albert Dock, if not obscured by working vessels, but it is not possible to see "the Firth of Forth and beyond" which are obscured by the working port.
- The report makes reference to the age and rarity of boundary and other associated features. The proposals described in the application retain all existing bollards and have no physical impact on historic surfaces. The proposals are also reversible.



Garden walls and Bollard and Chain Barriers in the central Shore Area



Vertical barriers on bridge across the Water of Leith in the central Shore area.

Reasons for Refusal

The justification of the reasons for refusal is set out in the Report on Handling:

1. *The visual permeability of the existing boundary will be compromised to such a degree that the immediate south west setting of the dock edge and basin currently affords when moving across the public footpath will also be adversely impacted on given the decreased level of visual permeability created and the subsequent sense of enclosure created by the proposals in conjunction with the garden railings.*
2. *Crucially, the degree of design change the intervention would generate is judged to diminish the special architectural and historic design interest of the listed structure including its setting to an unacceptable degree.*

The proposals would not preserve the special architectural or historic interest of the listed structure.

3. *The proposals would seriously diminish these special characteristics by enclosing the footpath with an uncharacteristic boundary treatment thereby reducing the visual permeability along this key route through dock where views across the historic dock towards the Firth of Forth and beyond can be appreciated.*

The proposals would not preserve the special character or appearance of the Leith Conservation Area.

Detrimental Visual Permeability

The justification for refusing the application on this basis is that the vertical railing design is a much more solid visual barrier than the bollard and chain barrier, and that this reduced visual permeability unacceptably compromises appreciation of:

- the open-ness of the dockside between the residential development and the dock edge;
- the visible architectural and historical interest of the dock edge in terms of materials and past use;
- views across Albert Dock

Unusually in such circumstances, the new railings have already been installed in compliance with health and safety legislation and it is possible to see physically whether these assertions are credible or not within the context of creating a secure barrier to dockside access:

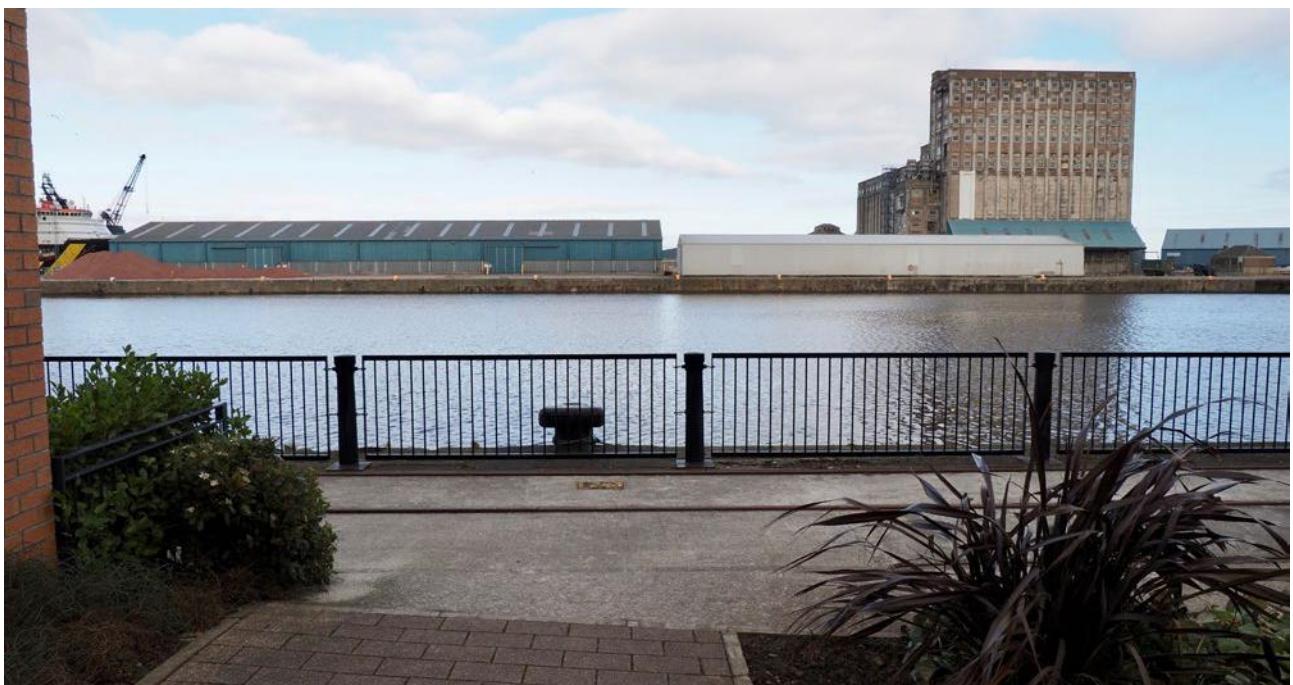


Taken from just outside the entrance to the working docks which are not accessible by the public, this photo describes the site context including the long stretch of dockside that is blocked off visually by the palisade fencing of the Fingal hotel carpark and the armco security barrier in the foreground. This is the closest view of the railings from across the dock and even from this distance and at such an extreme oblique angle, it is evident that the new vertical railings do not create a visual barrier; the dock edge surfaces can be seen on both sides of the railings.

A similar photo included with the Report of Handling was taken from a considerably more oblique angle with a zoom lens and creates a false impression of the actual situation.

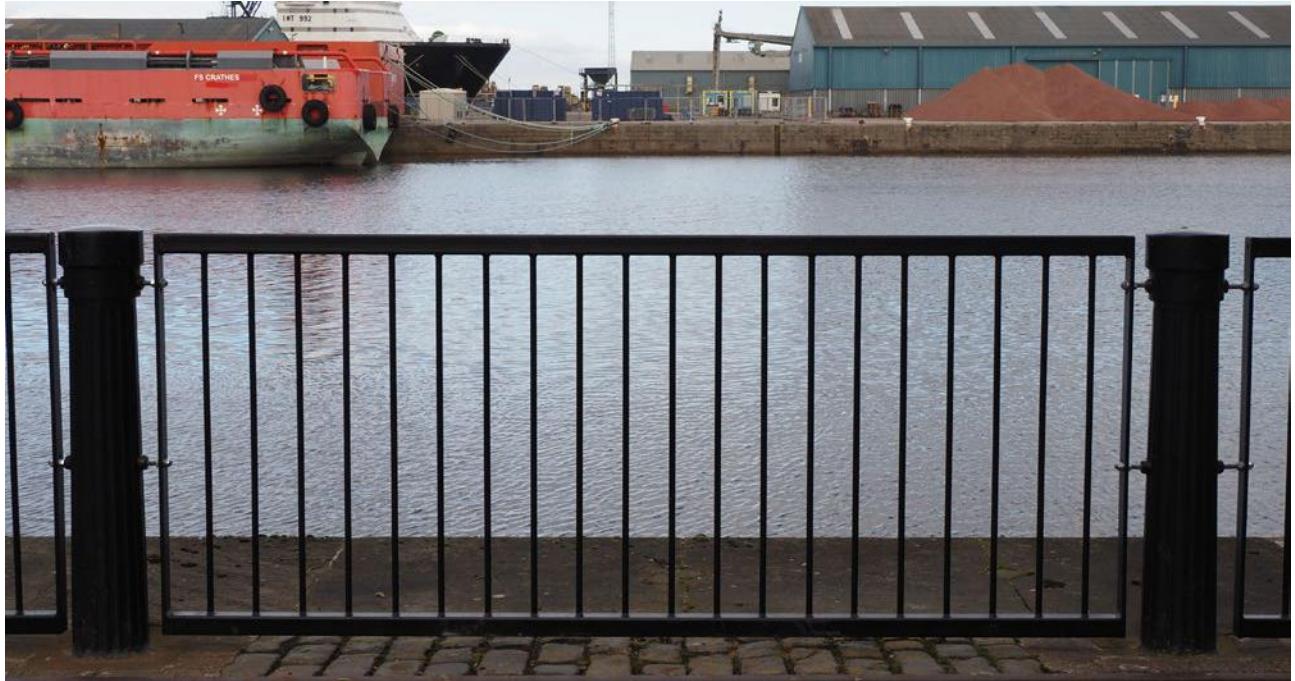


West End Approach from Stevedore Place



East End Approach from Stevedore Place

Taken from the west and east approaches to Albert Dock, these photos demonstrate that the vertical railings do not visually obscure either appreciation of the dock edge or views across Albert Dock. The Dock edge and historic fittings and finishes can still clearly be seen. All bollards have been retained and the new barrier ensures that safety requirements are met using a simple and robust design that is consistent with both the industrial and functional character of the Dock and the railings of the new residential development.



Taken from eye-level, close to the railings, this photo demonstrates that historic dock finishes and material relationships have been left untouched by the installation of the railings and can still clearly be seen through and under the railings.



Taken from eye-level, this photo shows the proximity of living areas and garden gates to the dock edge. It also demonstrates that whilst the new railings prevent access to the dock edge, the dock edge and historic fittings and materials are clearly visible through the railings. Views across Albert Dock over the railings are not obstructed.

Conclusion

The determining issue under Section 14 of the Planning (Listed Buildings and Conservation Areas) Scotland Act 1997 is that proposed alterations should have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it [the listed building] possesses. Preserving as referred to in section 59 of the Act means, " preserving it either in its existing state or subject only to such alterations or extensions as can be carried out without serious [our underlining] detriment to its character," Given that the installation of an enhanced barrier is essential to prevent further potentially fatal accidents, the photos of the installed railings demonstrate that the railings meet this need but their visual permeability still allows the special character of the historic dockside, materials, open-ness and views to be appreciated without serious detriment to its character. There are therefore no credible grounds to refuse the application in relation to lack of visual permeability.

Degree of Design Change

At a meeting held with the Planning Officer and Head of Planning on 18.2.21 the Planning Officers stated that they accepted the need for an intervention to improve the safety of the dock edge and that their objections were not to the principle of this. Their objections instead related to:

1. The risk that the design proposed would become a precedent for other sites within the Conservation Area.
2. Whether the visual impact of change in relation to the design proposal could be reduced by an alternative design.

The visual impact of the proposed railings is described in the previous section and it is obvious that they have no serious detrimental visual impact on the listed structure. It is reasonable to question however whether there are alternative interventions that achieve the same outcome but with potentially less change.

In developing proposals, Forth Ports has taken into account HSE Guidance Publication L148 Safety in Docks: Approved Code of Practice and Guidance. (See Pinsent Masons legal opinion dated 26.2.21)

Retention of the existing bollard and chain barrier and closing off access to the entire length of the dockside was considered but this would create an unacceptable loss of public access to the dockside and does not solve the problem of access from the gardens along its length which cannot be closed off. It was therefore discounted as a potential solution.

The construction of a temporary "heras" type security fencing barrier that would be in place until permanent proposals had been agreed was also considered but considered inappropriate in terms of impact on residents.

Alternative railing designs were also considered. Building Standards Technical Handbook 2020 Section 0.3.2 Schedule 1 Table 0.1 states that works of a civil engineering construction eg harbours, quays and docks are exempt from the regulations. Even so, the regulations are a reasonable benchmark for design standards given the nature of the public realm and changing use of the docks. Section 4.4.0 states:

Protective barriers are necessary to prevent people in and around buildings from an accidental fall at an unguarded change of level.

In assessing the type of barrier to be used, the likely hazards, the use of the building and the risks to the people that may be present should all be considered. Any barrier should minimise the risk of persons falling or slipping through gaps in the barrier.

Young children are often adept at climbing anything within their reach. It is important that the design of protective barriers restrict the ability of young children to climb them, thereby reducing the possibility of injury from falls.

Section 4.4.2 also states that:

In and around non-domestic buildings gaps in any protective barrier should not be large enough to permit a child to pass through. To ensure this, openings in a protective barrier should prevent the passage of a 100mm diameter sphere.

A protective barrier should be designed and constructed so that it cannot be easily climbed by young children. The provision of potential hand and footholds should be minimised.

Table 4.5 states that the height of a barrier should be 1100mm.

The installation of glass infill panels between the bollards was considered but rejected because glass is not a material that is common on dock edges or within the dock area. Experience on other projects also suggested that, whilst glass is transparent in certain circumstances, sunlight reflections and accumulated dirt can make it appear solid from a distance and which could have a serious detrimental impact on the character of the listed structure. Maintenance requirements would be high, create additional safety risks in relation to working at dock edges, and the glass panels would also be susceptible to vandalism. The use of glass panels was therefore rejected as a solution.

Various types of mesh panels were considered but, if the spacing of the mesh was reduced to the size required to prevent finger and toe holds for climbing, the mesh would be essentially solid. Light mesh panels have been installed at the Teuchter's Landing pub but the situation and range of uses is very different. The character of this type of mesh would also be out of character with the robust scale and industrial nature of Albert Dock. The use of mesh was therefore rejected on the basis that the size of mesh required would be visually solid and this could have a serious detrimental impact on the character of the listed structure. Larger mesh sizes would not stop children climbing and would not provide the level of safety required.

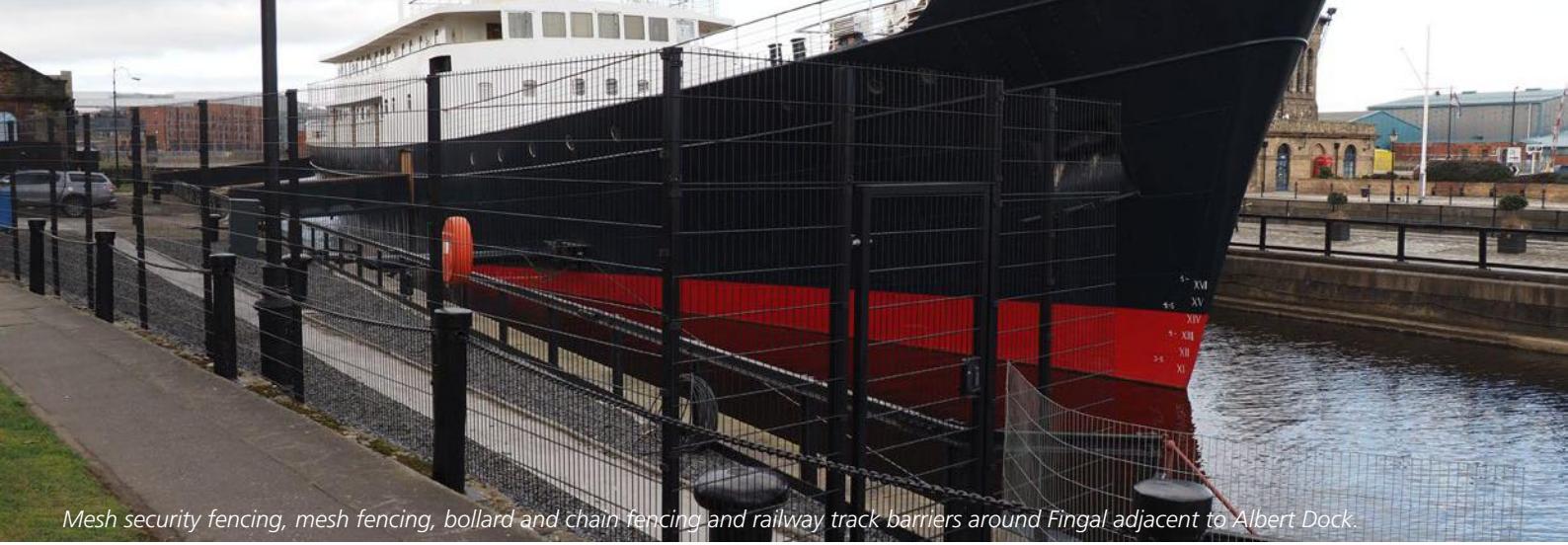
Designs incorporating horizontal rods or wires at 100mm centres were rejected as they create climbing opportunities and do not provide the level of safety required.

Vertical wires at 100mm centres can provide the level of safety required but only if the wires are fixed in position laterally with horizontal rigid spacers which create climbing points. This solution was therefore rejected.

Rigid vertical balusters at 100mm centres do provide the level of safety required and, as described previously, do not have a detrimental impact on the character of the listed building. This design solution was therefore chosen.

Conclusion

The planning officers have accepted that change is required in order to address the safety issue. In developing the current design, a number of alternative interventions have been considered but rejected either because they fail to provide the level of safety required or because their probable visual impact will affect the character and setting of the listed structures more seriously than that described in the application. The design solution described in the application therefore represents the minimum change essential to provide the level of safety required and, as substantiated in the previous section, does so with no serious detriment to the character and setting of the listed structures.



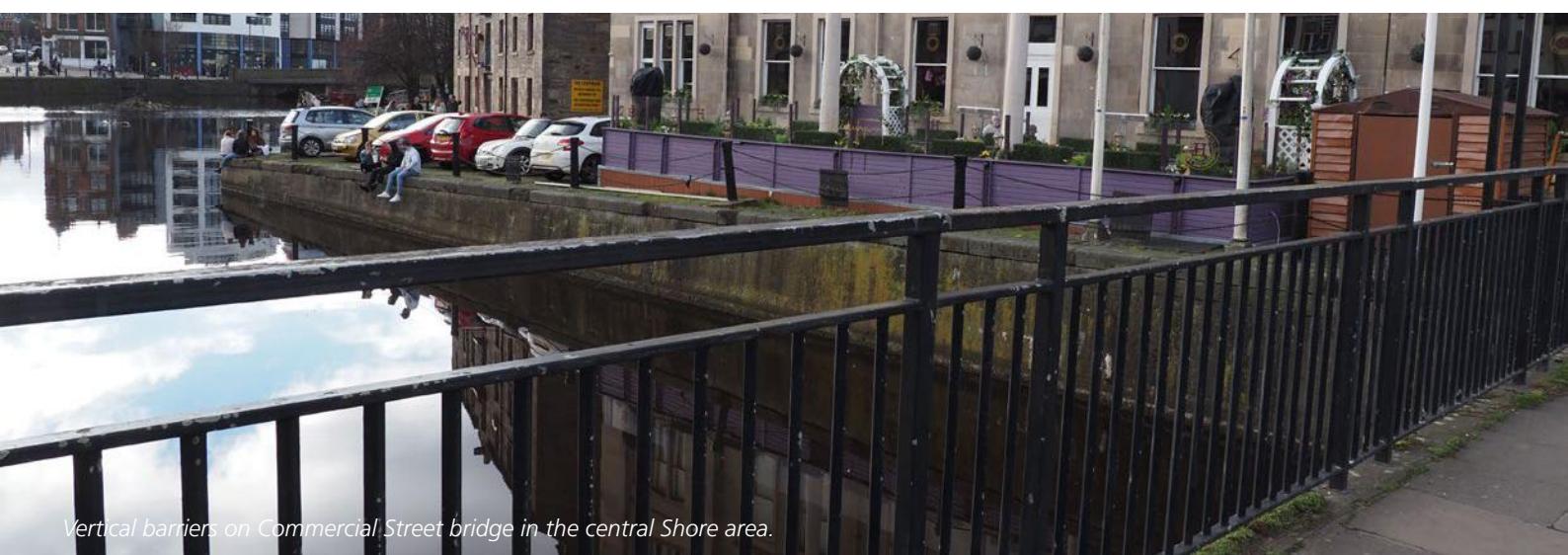
Mesh security fencing, mesh fencing, bollard and chain fencing and railway track barriers around Fingal adjacent to Albert Dock.



Existing barriers around Albert Dock including timber palisade fencing and armco barriers.



Historic post and rail barrier infilled with stainless steel mesh at the Teuchter's Landing pub.



Vertical barriers on Commercial Street bridge in the central Shore area.

An uncharacteristic boundary treatment

The Report of Handling states that:

"The proposals would seriously diminish these special characteristics by enclosing the footpath with an uncharacteristic boundary treatment thereby reducing the visual permeability along this key route through dock where views across the historic dock towards the Firth of Forth and beyond can be appreciated.

The proposals would not preserve the special character or appearance of the Leith Conservation Area."

Throughout the report, the sympathetic use of bollard and chain fencing along dockside edges is noted and also highlighted in the Leith Conservation Area Character Appraisal. Whilst this is correct, both the report and Appraisal fail to identify that the bollards and chain barriers are simply the "default" approach to protecting publicly accessible dockside edges. The bollard and chain barriers do not stop access to the dock edges as can be seen clearly in the central Shore area where people regularly occupy the dock edge [ref photo p12].

There are also however many other examples of more robust barriers along dockside edges where the need to enhance safety or security has been deemed greater. It would appear that these are not deemed detrimental to the character or setting of listed buildings or the Conservation Area as a whole. In the immediate area of Albert Dock these include:

- tall timber and galvanised steel palisade security fencing
- concrete walls and low-level armco traffic barriers along road edges close to the dock edge
- high steel mesh security fencing
- and re-purposed railway tracks with mesh infill

Within the wider central Shore area, other examples include:

- historic posts and rods infilled with mesh-infill panels at the Teuchter's Landing pub
- posts and rails formed from historic components
- vertical railings on both sides of the Commercial Street Bridge

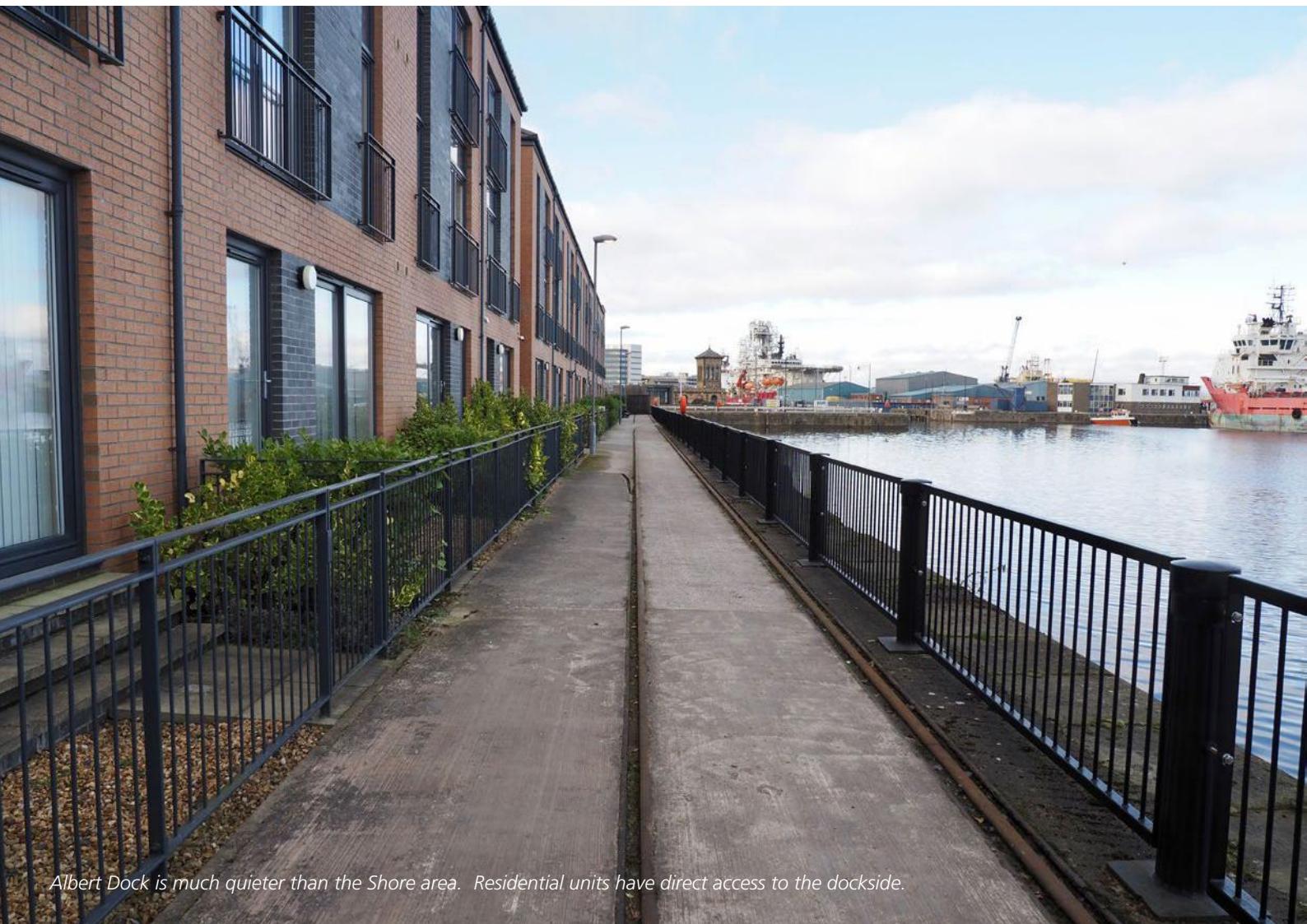
It is therefore clear that there is no one "characteristic" dock edge barrier solution that meets all requirements. The bollard and chain barrier is common in public areas but there are many other forms of barrier within the Conservation Area. Each has been designed to provide the level of security and safety required given the different uses and contexts in each instance. Many do however re-use and adapt historic structures to meet current needs.

The dockside of Albert Dock presents a unique set of circumstances in comparison to other areas within the Conservation Area:

- Each unit of the residential development has direct access, through a 2m wide garden and garden gate, to the dockside. This is very different from other existing housing developments around the dockside of the Shore area where the developments either have no direct access to the dockside or are separated from docksides by solid garden walls and high fences with only a few communal gates.
- Within the central Shore area, young children near the dock edges are normally accompanied by their parents who should be aware of the potential risk. The recent accident at Albert Dock proves that, there, it is possible for a child to get to the dock edge unsupervised.



Existing residential developments in the Shore area are separated from dock edges by a mix of garden walls and high fences with only a few communal garden gates.



Albert Dock is much quieter than the Shore area. Residential units have direct access to the dockside.

- Albert Dock is much quieter than the central Shore area with less chance of passive monitoring of dock edges by the public.
- Albert Dock retains much of its robust and functional industrial character and dockyard scale in contrast to the gentrified vibrancy of the central Shore area.
- The gardens of the Stevedore Place housing are surrounded by vertical baluster metal fences.

The design solution described in the application is a unique solution developed to meet the specific requirements of Albert Dock and is not intended as a precedent for other sites with different needs within the Conservation Area. It:

- provides the level of safety required
- does not detrimentally affect the character or setting of listed structures
- represents the least possible change required to deliver the level of safety required
- is much less intrusive than the nearby palisade, steel and mesh fencing along Albert Dock edges
- re-uses the existing historic bollards
- is reversible in the future without damage to listed structures if circumstances change
- is robust and functional in character, reflecting the industrial character of its surroundings
- does not obstruct views to, from or over Albert Dock
- is not a solution applicable elsewhere generally within the Conservation Area if the set of needs is different

Conclusion

Contrary to what is suggested in the Report of Handling, whilst the bollard and chain barriers are a distinctive feature of the docks, there is no one “characteristic” barrier solution at dock edges within the Conservation Area. Each dock edge barrier has been designed to meet the safety and security needs of its specific location. It would appear that the existing range of solutions has not been deemed detrimental to the character or setting of listed buildings or the Conservation Area as a whole.

Albert Dock retains its much of its robust and functional industrial character and dockyard scale and its dockside presents a unique set of circumstances in comparison to other areas within the Conservation Area. The barrier design described in the application is designed to meet the specific safety and security needs of its location and is considerably more sympathetic to the special character of the listed structures and Conservation Area than other barriers already in place nearby around Albert Dock.

Appendices

Design Statement

Installation Of Protective Barrier Along The Land To The South Of Albert Dock At Stevedore Place, Leith

Design Statement

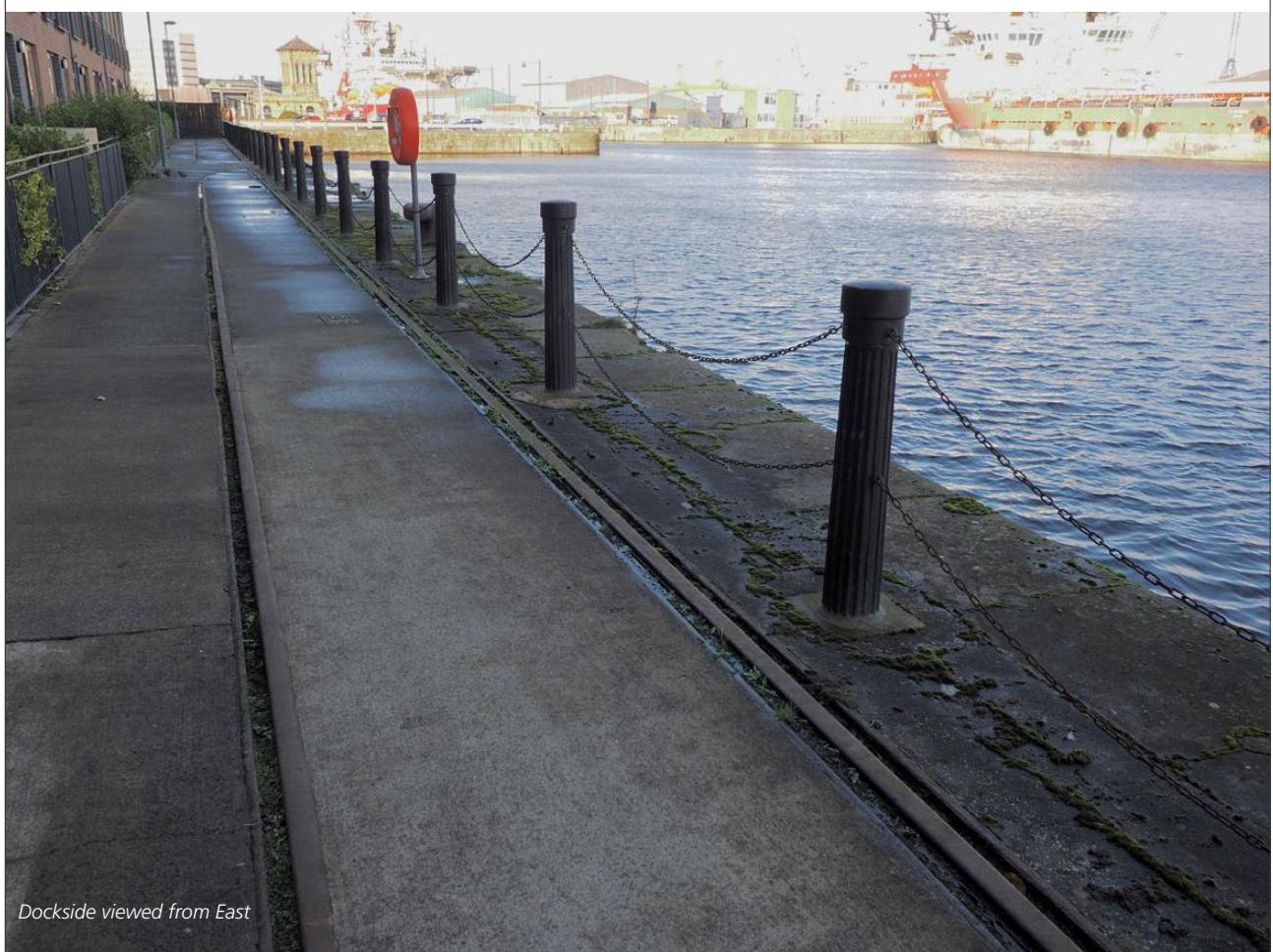
December 2020

LDN Architects





Existing Bollards and Chain fence



Dockside viewed from East

OWNERSHIP

Forth Ports, is the harbour authority for the Forth and Tay estuaries and owns and operates the Port of Leith which includes Albert Dock.

INTRODUCTION & JUSTIFICATION

Forth Ports propose to replace the metal chain links between the existing bollards located to the south of Albert Dock and north of the residential development at Stevedore Place, Leith, with panels comprising vertical railings. The works are required to take place as a matter of urgency for reasons of health and safety. Recently, a young child had to be rescued from Albert Dock basin having accessed it from the Dock edge at Stevedore Place. Fortunately, the child was saved by a local resident using a lifebuoy located at the quayside and a member of the public who entered the Dock to retrieve the child.

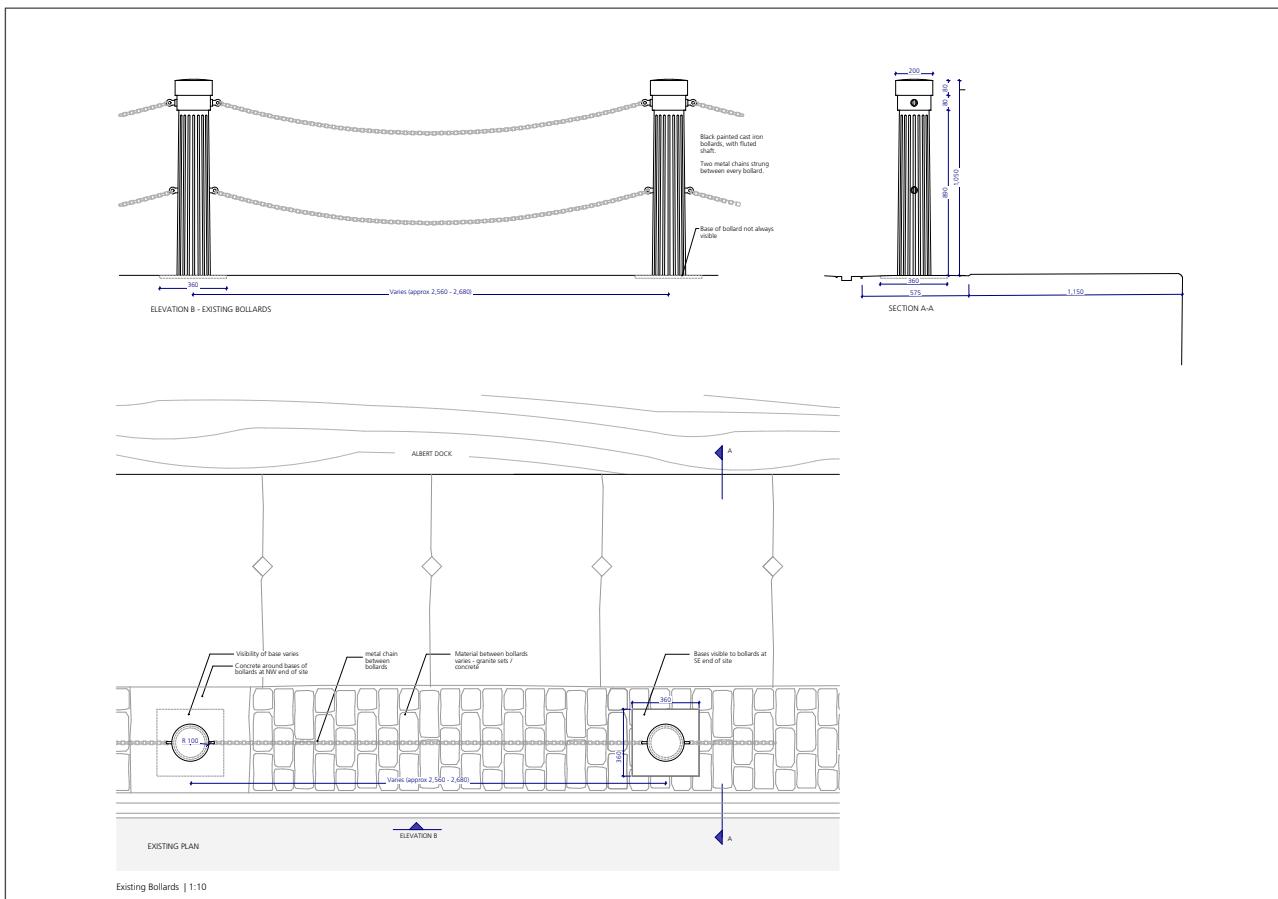
Forth Ports have a high level of commitment to health and safety across their business, taking its obligations and statutory requirements extremely seriously. It implements a 'Safety First' culture at all levels across the business, which aims to protect employees, customers and visitors and is the first port group to be awarded ISO health and safety standard ISO 45001. Having reviewed the recent incident and assessed the risk, Forth Ports propose to undertake works from an urgent safety perspective to prevent the risk of any further incidents happening again.

The proposed vertical railing panels, which will be attached to existing eyelets on the bollards and can be removed without causing damage to the Listed Structure, comprise the intervention which Forth Ports consider to have least impact on Albert Dock and the surrounding area considered necessary to address the immediate requirement to improve safety along the Dock edge at Stevedore Place.

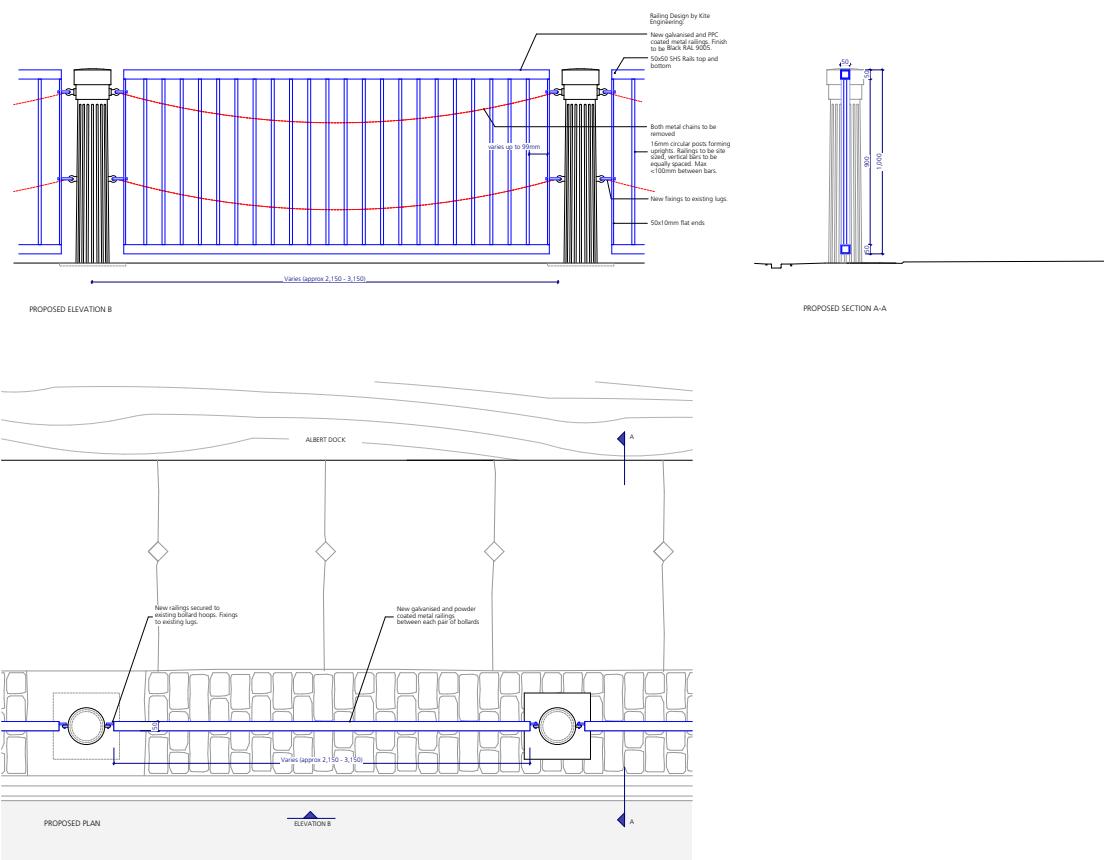
CONSULTATION

Following the incident at Albert Dock, Forth Ports undertook an urgent health and safety review of their assets to which the public have access to in and around the Port of Leith. The extent of the risk was considered and subsequently Forth Ports wrote to all residents of the adjacent Stevedore Place development to advise them of the proposed works. A copy of this letter was seen by the Planning Authority. Forth Ports subsequently advised the Council of the urgent need for the works and confirmed that applications for Listed Building Consent and Planning Permission would be submitted.

The proposed development is defined as a local development and there is no statutory requirement to undertake pre-application consultation.



Existing Bollards and Chain Fencing



Proposed Railings retaining existing Bollards

PLANNING POLICY CONTEXT

In addition to the Historic Environment Policy for Scotland, the following City of Edinburgh Planning Policies are relevant:

- DES 1: Design Quality & Context
- DES 3: Development Design
- DES 4: Layout Design.
- DES 10: Waterside Development
- ENV 3: Listed Buildings – Setting
- ENV 4: Listed Buildings – Alterations and Extensions
- ENV 6: Conservation Areas – Development
- Leith Conservation Area Character Appraisal

DESIGN CONTEXT

The dockside of Albert Dock along which it is proposed to install the new safety barrier lies within the Leith Conservation Area and Albert Dock, including its "...stone flagged and setted quayside with bollards, railway tracks and three travelling cranes...", is Category B Listed as being of special architectural and historical interest by Historic Environment Scotland.

The historically open nature of the dockside prevalent in the area has been changed in recent years by the construction of a new housing development on Stevedore Place which is located approximately 4 metres back from the dockside. It is separated from the dock edge by small fenced-in gardens which have direct gated access to the dockside and a bollard and chain barrier which is set approximately 1 metre back from the dock edge. The bollards and chains are typical of many throughout the Conservation Area which protect dockside edges and are set in a 600 millimetre wide strip, comprising old concrete and setts. The bollard centres vary between 2-3 metres and the dock edge is formed of large stone blocks with square stone locking pegs between each. Railway tracks for the travelling cranes are visible set into the concrete surface between the housing and bollard and chain barrier

The dockside pathway is approximately 150 metres long. It is not intended for vehicle use and is used primarily by pedestrians as a route along the dock edge as well as by residents of the new housing

DESIGN PROPOSALS

The proposed new protective barrier is intended to improve the safety of the dock edge because of the proximity of the housing development and the potentially fatal risk of children gaining access to the dock edge without supervision, as occurred recently.

The design of the new barrier, which will replace the chains between the bollards, consists of panels formed of a painted metal frame and upright balusters at approximately 100 millimetre centres. It has been developed by Kite Engineering on behalf of Forth Ports and is intended to address the health and safety issue with minimum visual impact on the character of the dockside and minimum physical impact on the Listed structures:

It is similar in appearance, height and scale to the railings of the adjacent housing development.

It is intended to be as visually plain, simple and transparent as possible whilst addressing the safety issue which is its primary purpose.

The vertical nature of the balusters, without intermediate horizontals, reduces the risk of children climbing the barrier whilst stopping them from passing through it.

The length of each panel will be sized on site to accommodate the variance in distance between bollard centres without visual change.

The new panels will be fixed in position using the eyelet lugs on the side of the existing bollards with no need to disturb historic dockside finishes with new footings.

The new metalwork will be painted black to match the predominant colour of dockside railings elsewhere in the dock area.

The barriers are removable in the future without damage to historic structures.

The proposals have been considered and respond in terms of the Edinburgh Local Development Plan (2016) as follows:

DES 1: Design Quality & Context

The Port of Leith which is an operational Port. Albert Dock forms part of the operational port estate and as such, it is necessary to ensure that appropriate health and safety measures are in place.

The proposals are of an appropriate design which will mitigate a very real health and safety risk, as demonstrated by the recent incident outlined in this Statement. Accordingly, the use of vertical balusters is proposed as these cannot be climbed upon.

The metalwork of the barrier panels will be painted black to match the existing bollards. This is the established and predominant colour for railings in the public realm of the Leith docks area.

The proposed panels are designed to be in keeping with the scale of the existing bollards; a higher boundary treatment would diminish the presence of the bollards and detract from the Listed structures and character of the surrounding area, whilst a smaller panel would not mitigate the health and safety risk.

The fence panels are designed to be fitted to the existing eyelets on the bollards, thus reducing the level of intervention required.

The proposal extends from the secure west end to secure east end of the housing development on Stevedore Place and is the necessary extent of development required to address health and safety risks.

The scale of the proposed development does not conflict with the scale and form of the residential development. Garden gates provide direct access from the dwellings to the Dock edge and the proposals provides a secure barrier between the Dock basin and the residential use.

DES 3: Development Design

As referred to in the response to DES 1, the Applicant has considered the existing features including Albert Dock and the adjacent residential development at Stevedore Place and the proposed design addresses the health and safety issue with minimum visual impact on the character of the dockside and minimum physical impact on the Listed structures.

DES 4: Layout Design

The Applicant has considered the surrounding context. The proposal will close off the dockside edge but will not impact on the character of the wider townscape and landscape or impact on existing eye-level views.

DES 10: Waterside Development

Albert Dock forms part of the operational port and therefore it is not appropriate to promote recreational use of the Dock basin. The proposed development is designed to mitigate a health and safety risk whilst ensuring the public frontage of the waterside is not diminished.

Public access to the water's edge is not reduced by the proposed development as there is an existing chain fence preventing access in the same location as the proposed new barrier.

The proposal will not impact on the conservation or landscape interests of the water environment. As noted above Albert Dock forms part of the operational port and therefore it is not appropriate to promote recreational use of the Dock basin

ENV 3: Listed Buildings – Setting

The policy seeks to ensure that proposals to listed buildings where these are not detrimental to the architectural character, appearance or historic interest of the building and or its setting. Albert Dock forms part of the operational Port of Leith and its function is intrinsic to its character, appearance and historic interest. The proposal addresses the safety issue with minimum visual impact on the character of the dockside and minimum physical impact on the Listed structures

ENV 4: Listed Buildings – Alterations and Extensions

The proposed fencing panels are justified on the grounds that they are required to address an identified health and safety risk.

There will be no damage to the listed structure as the barriers are removable in the future without damage to historic structures.

The proposed barriers are of a sympathetic engineered design and similar in scale and material to the listed structures.

The railings will be painted black to match the existing bollards.

ENV 6: Conservation Areas – Development

The site is within the Old Leith and Shore area of the Leith Conservation Area. The Character Area Appraisal does not specifically mention dockside edges but there are a variety of railings and protective barriers within the Conservation Area, most based on pragmatic engineered designs appropriate to a lively dock area. The proposed barriers are of a sympathetic engineered design and similar in scale and material to the listed structures. They will replace chain railings that already prevent access to the dockside edge and, in so doing, they will address the health and safety issues identified without obstructing views of and across Albert Dock.

The metalwork of the barrier panels will be painted black to match the existing bollards. This is the established and predominant colour for railings in the public realm of the Leith docks area.

LDN Architects

Report on Handling

Report of Handling

**Application for Listed Building Consent 20/05546/LBC
At Land To The South Of, Albert Dock, Edinburgh
Install protective barrier along the land to the south of Albert
Dock at Stevedore Place, Leith.**

| | |
|---------------------------|--------------------|
| Item | Delegated Decision |
| Application number | 20/05546/LBC |
| Wards | B13 - Leith |

Summary

The development does not comply with the Planning (Listed Building and Conservation Areas) Scotland Act 1997 as it fails to preserve the character and setting of the listed building and fails to preserve or enhance the character and appearance of the conservation area.

Links

| | |
|---|--|
| Policies and guidance for this application | HEPS, HES, HESBND, HESCAC, HESSET, NSG, CRPLEI, |
|---|--|

Report of handling

Recommendations

1.1 It is recommended that this application be Refused for the reasons below.

Background

2.1 Site description

This application site is located within the Leith Conservation Area.

2.2 Site History

Main report

3.1 Description Of The Proposal

Site Description

The application site comprises the dockside and pedestrian pathway between the Albert Dock basin to the north east and the rear gardens of the recently constructed housing at Stevedore Place to the south west.

Albert Dock lies within the 'Old Leith and Shore' sub-area of the Leith Conservation Area. The Dock, together with its stone flagged and setted quayside with bollards, railway tracks and three travelling cranes was listed at Category 'B' on 29 March 1996 (Ref. LB27590).

The site is located in the Leith Conservation Area.

Bollard and chain barriers are a feature of many throughout the Conservation Area which protect dockside edges.

Description Of The Proposal

It is proposed to replace the metal chain links between the existing bollards located to the south west of Albert Dock and north east of the residential development at Stevedore Place, Leith, with panels comprising vertical railings. The proposed vertical railing panels will be attached to existing eyelets on the bollards and can be removed without causing damage to the listed structure.

The proposals are to address the requirement to improve safety along the Dock edge at Stevedore Place.

A 'Design Statement' has been submitted in support of the proposals.

A concurrent application for planning permission is currently under consideration.

3.2 Determining Issues

Section 14 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states - In considering whether to grant consent, special regard must be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. For the purposes of this issue, preserve, in relation to the building, means preserve it either in its existing state or subject only to such alterations or extensions as can be carried out without serious detriment to its character.

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

In determining applications for listed building consent, the Development Plan is not a statutory test. However the policies of the Local Development Plan (LDP) inform the assessment of the proposals and are a material consideration.

3.3 Assessment

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

- a) the proposals will have an adverse impact on the character of the listed building;
- b) the proposals will preserve or enhance the character of the conservation area;
- c) the proposals will adversely impact on the archaeological interest of the site;
- d) any impacts on equalities and human rights are acceptable; and
- e) any comments have been addressed.

Listed Building

Section 14 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states - *In considering whether to grant consent, special regard must be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. For the purposes of this issue, preserve, in relation to the building, means preserve it either in its existing state or subject only to such alterations or extensions as can be carried out without serious detriment to its character.*

Historic Environment Scotland's guidance on *Managing Change - Boundaries* set out the principles that apply and how they should inform planning policies and the determination of applications relating to the historic environment.

The layout and design of the bollard and chain boundary, its materials and the way in which it relates to the dock basin, dockside and footpath comprise important elements

of the character of the dock and dock edge, and contribute substantially to the sense of place and historical understanding of the listed dock.

The quality of its design includes the way in which the boundary is laid out, its physical dimensions and appearance, the particular sense of enclosure it provides, its associated features, and its relationship with other dockside features including moorings and surface treatments. These qualities have been consciously determined by the designer and mimic the manner in which many quaysides and dock edges have been treated throughout Leith and the rest of Scotland. The quality of the boundary specifically relates to its design and the visual permeability it purposely was designed to allow for. The intentional design of the boundary is reflective of the original dock operations and to allow views both ways across the dock edge. The position and design of the boundary therefore, specifically relates to its original function as an operational dock.

The age and rarity of the boundary and other associated features are also factors in determining its special interest. It is therefore noted, whilst many of the bollards are new and the chain link is not original, many of the related structures and surfacing materials are original. These include the stone dock edge, train tracks, moorings and 22 of the 52 bollards. It is also important to recognise the conservation-led approach adopted in the manner in which the dock's retaining wall, edge and footpath have been restored and sensitively altered in association with the relatively recently completed residential development along Stevedore Place that directly abuts the footway (Ref: 12/03959/FUL).

While it is recognised that the context to the south west of the dock has changed with the erection of a new residential development where a metal railings with gated openings has been erected to delineate the rear garden boundaries with the footpath, historically, dock related buildings and structures were previously present at this location. The removal of the chain link and its infilling with panels comprising vertical railings will severely impact on the architectural and historic interest of the listed structure given the extent of the design change proposed. The visual permeability the existing boundary will be compromised to a such a degree, that the immediate south west setting of the dock basin would be adversely impacted. The level of appreciation of the dock edge and basin currently affords when moving across the public footpath will also be adversely impacted on given the decreased level of visual permeability created and the subsequent sense of enclosure created by the proposals in conjunction with the existing garden railings.

The quality of the bespoke manufactured railing panels and the level of intervention required to the existing bollards using their existing eyelets to render the proposals reversible is noted. However, while it is considered preferable for new work to be reversible, so that changes can be undone without harm to historic fabric, reversibility alone does not justify alteration that is not justified on other grounds. Crucially, the degree of the design change the intervention would generate is judged to diminish the special architectural and historic interest of the listed structure including its setting to an unacceptable degree.

The proposals would not preserve the special architectural or historic interest of the listed structure.

Conservation Area

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

The Leith Conservation Area Character Appraisal emphasises the older parts of the Port of Leith, containing many early features including listed dock buildings. Scheduled Ancient Monuments associated with the Port of Leith consist of: the Victoria Bridge, the dry dock off Sandport Street, the swing bridge and lock at the East Old Dock, and features related to the Albert Dock.

The Albert Dock lies within a prominent location within the heart of the older part of the Port of Leith. The dock side contains robust surfaces required for dock sides, is separated by bollards with chains linking them; and matches the streetscape at the Shore and character of the medieval core of the Leith Conservation Area. The contemporary design of recent additions, such as new dock gates, sculptures and tree guards reinforce the prevailing character. The proposals would seriously diminish these special characteristics by enclosing the footpath with an uncharacteristic boundary treatment thereby reducing the visual permeability along this key route through dock where views across the historic dock towards the Firth of Forth and beyond can be appreciated.

The proposals would not preserve the special character or appearance of the Leith Conservation Area.

Archaeology

The site is regarded as being of archaeological significance both in terms of buried remains and potential impacts upon setting and character of the listed dock. Having assessed the potential impacts of the proposals, The City Archaeologist has confirmed that given that the scale and nature of the proposed new barriers, it has been concluded that there are no significant permanent impacts upon the character or setting of this historic listed dock in archaeological terms.

Equalities and human rights

This application was assessed in terms of equalities and human rights. No impacts were identified.

Public Comments

- Impact on the special architectural and historic interest of the listed structure including its setting is addressed in Section 3.3 a)
- Impact on the special character and appearance of the Leith Conservation Area is addressed in Section 3.3 b)

It is recommended that this application be Refused for the reasons below.

3.4 Conditions/reasons/informatives

1. The proposal fails to preserve the special character and setting of the Category 'B' listed Albert Dock and is therefore contrary to Section 14 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

2. The proposal fails to preserve the special character or appearance of the Leith Conservation Area and is therefore contrary to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

Risk, Policy, compliance and governance impact

4.1 Provided planning applications are determined in accordance with statutory legislation, the level of risk is low.

Equalities impact

5.1 The equalities impact has been assessed as follows:

The application has been assessed and has no impact in terms of equalities or human rights.

Consultation and engagement

6.1 Pre-Application Process

Pre-application discussions took place on this application.

6.2 Publicity summary of representations and Community Council comments

The application was advertised on 08.01.2021. 25 representations were received from members of the public and neighboring residents. One objection was received from the Leith Harbour and Newhaven Community Council and one was received from the Cockburn Association. All of the representations received objected to the proposals.

The specific material grounds of the representations are fully addressed in section 3.3 e) of this report of handling.

Background reading / external references

- To view details of the application go to

- [Planning and Building Standards online services](#)

| | |
|---|--|
| Statutory Development Plan Provision | <p>Section 14 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states - In considering whether to grant consent, special regard must be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. For the purposes of this issue, preserve, in relation to the building, means preserve it either in its existing state or subject only to such alterations or extensions as can be carried out without serious detriment to its character.</p> <p>Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states - special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.</p> <p>In determining applications for listed building consent, the Development Plan is not a statutory test. However the policies of the Local Development Plan (LDP) inform the assessment of the proposals and are a material consideration.</p> |
| Date registered | 11 December 2020 |
| Drawing numbers/Scheme | 01 - 05, Scheme 1 |

David R. Leslie
 Chief Planning Officer
 PLACE
 The City of Edinburgh Council

Contact: Daniel Lodge, Planning officer
 E-mail:daniel.lodge@edinburgh.gov.uk

Links - Policies

Development Management report of handling –

Page 8 of 16

20/05546/LBC

Relevant Policies:

The Historic Environment Policy for Scotland 2019 outlines Government policy on how we should care for the historic environment when taking planning decisions.

Relevant Government Guidance on Historic Environment.

Managing Change in the Historic Environment: Boundaries sets out Government guidance on the principles that apply to altering boundary treatments of listed buildings.

HES Interim Guidance on Conservation Area Consent sets out Government guidance on the principles that apply to the demolition of unlisted buildings in conservation areas

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

Relevant Non-Statutory Guidelines

The Leith Conservation Area Character Appraisal emphasises the area's unique and complex architectural character, the concentration of buildings of significant historic and architectural quality, the unifying effect of traditional materials, the multiplicity of land use activities, and the importance of the Water of Leith and Leith Links for their natural heritage, open space and recreational value

Appendix 1

Consultations

Historic Environment Scotland

We have considered the information received and do not have any comments to make on the proposals. Our decision not to provide comments should not be taken as our support for the proposals. This application should be determined in accordance with national and local policy on listed building/conservation area consent, together with related policy guidance.

City of Edinburgh Council Archaeology Service

Further to your consultation request I would like to make the following comments and recommendations concerning this application to install protective barrier along the south of Albert Dock at Stevedore Place, Leith.

The site is regarded as being of archaeological significance both in terms of buried remains and potential impacts upon setting/character of the listed dock. Having assessed the potential impacts of the new scheme, given that the scale and nature of the proposed new barriers, it has been concluded that there are no significant permanent impacts upon the character or setting of this historic listed dock.

Leith Harbour and Newhaven Community Council

I am submitting this objection to the applications listed above on behalf of Leith Harbour and Newhaven Community Council (LHNCC). Both applications have been reviewed by our Planning Sub-Group and the wider Community Council, in the light of a number of complaints received from local residents. This response, which incorporates the feedback from residents living alongside Albert Dock, is supported by all members.

Context for LHNCC objection

Forth Ports Ltd carried out unauthorised works to alter the bollard and chain perimeter barrier at the B-listed Albert Dock on 29 December 2020 (see photograph below). New modern panels of vertical railings have been installed between each bollard, which replace the original chains. We understand that this work has been carried out as a health and safety response to an unsupervised child jumping in the Dock on 16 September 2020.

LHNCC and local residents first raised objections to the then proposed works with Forth Port staff and the CEC Planning Enforcement team in November 2020. This was on the grounds that planning permission and listed building consent had not been applied for and the community had not been consulted. The works were again reported, this time

as a breach of planning, on 29 December when Forth Port's contractors arrived to start work on the dockside.

This is a second recent breach of the planning process - LHNCC lodged an official complaint about unauthorised works at the A-listed bridge near Teuchters Landing on 29 November 2020.

Grounds for LHNCC objection

The alteration of the bollard and chain perimeter barrier at Albert Dock on 30 December without planning permission is in breach of legislation and Scottish Government, Historic Environment Scotland and City of Edinburgh Council policies. The works on a listed structure without planning consent is a criminal offence under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

Planning policy and context

This application also does not meet Edinburgh Local Development Plan (EDLP) policies (Annex 1) and other relevant Scottish Government and statutory agency requirements on conservation areas and listed structures (referenced below). Listed Building Consent (LBC) assesses whether the works will affect the historic interest of the listed dock and preserve or enhance the special character or appearance of the conservation area. Local authorities have a statutory duty to identify and designate areas of special architectural or historic interest and ensure that any alterations, for whatever reason, are carefully considered.

Scottish Government Scottish Planning Policy

According to Scottish planning policy, listed structures should be protected from demolition or other work that would adversely affect them or their setting. Any change to a listed structure should be managed to protect its special interest. Where planning permission and listed building consent are sought for development to, or affecting, a listed structure, special regard must be given to the importance of preserving and enhancing the structure, its setting and any features of special architectural or historic interest. The layout, design, materials, scale, siting and use of any development which will affect a listed structure, or its setting, should be appropriate to the character and appearance of the structure and setting.

Listed Buildings and Conservation Areas Guidance

Albert Dock lies within the Leith Conservation Area ('Old Leith and Shore' sub-area). The Dock, together with its '...stone flagged and setted quayside with bollards, railway tracks and three travelling cranes...', is Category B-Listed as being of special architectural and historical interest by Historic Environment Scotland. Bollard and chain barriers are a feature of many throughout the Conservation Area which protect dockside edges.

Conservation Area Character Appraisals identify the essential character of conservation areas. They guide the local planning authority in making planning decisions and, where opportunities arise, preparing enhancement proposals. The Character Appraisals are a material consideration when considering applications for

development within conservation areas. Listed Building Consent (LBC) assesses whether the works will affect the historic interest of the listed dock and preserve or enhance the special character or appearance of the conservation area. The alterations at Albert Dock do not meet the recommendations in Edinburgh Local Development Plan (referenced in Annex 2).

Leith Conservation Area Character Appraisal

The character appraisal for the conservation area identifies the essential character of Leith. It should be seen as a material consideration in relation to this planning application. The streetscape section of the character appraisal specifically highlights the quayside areas being separated by bollards with chains linking them. Bollards with chains are a quintessential part of the public realm and streetscape within Leith. They can be found as perimeter barriers around the Albert and Victoria Dock Basins and along all parts of the nearby Shore area. This continuity is important to the character of the entire Leith conservation area. The replacement barrier panels are not in keeping with the Leith conservation area character appraisal and set a precedent for the wider area should this application be approved.

Scottish Government Planning Advice Note (PAN) 71: Conservation Area Management

The designation of a conservation area is a means to safeguard and enhance the sense of place, character and appearance of our most valued historic places. Buildings of character, listed buildings, scheduled monuments, trees, historic street patterns, open spaces and designed gardens and landscapes are important components of these areas.

Historic Environment Policy for Scotland (HEPS)

The alteration of the listed perimeter barrier at Albert Dock is in breach of Historic Environment Policy for Scotland (HEPS), which is designed to support good decision making for Scotland's unique places. The designation of Albert Dock is the legal recognition of its importance as a historic site. The designation seeks to ensure that the cultural, social, environmental and economic value of Scotland's historic environment makes a strong contribution to the development and wellbeing of the nation and its people. It should also ensure that sites and places are recognised by law through the planning system and other regulatory processes.

Managing Change in the Historic Environment

This HES policy states that decisions about listed structures should always focus on the qualities that make them important - their special interest. A range of factors contributes to a special interest, but the key factor when considering whether change should be made is overall historic character.

The Historic Environment Scotland listing for Albert Dock in Leith makes pointed reference to post and chain barriers to the perimeter of the swing bridge. Post and chain barrier is therefore in our view the barrier solution most in keeping with the dock edge itself and as mentioned above, already widely used throughout the entire conservation area. The modern fencing installed by Forth Ports at Albert Dock

negatively impacts on the historic character of Albert Dock and the Old Shore area. It negatively impacts on the local community's sense of place, identity and wellbeing.

Health and safety

LHNCC is aware of the health and safety aspects and that it is one of the considerations the planning process for applications (FUL) takes into account. However, we would like to point out that the assertion in the Forth Port's Design Statement that 'Garden gates provide direct access from the dwellings to the Dock edge' is incorrect. The houses along Stevedore Place are separated from the dock edge by:

- A 2 m wide fenced-in garden with a gate that can be easily locked with a padlock or similar.*
- A 3 m wide public footpath (approximately 150 m in length) that runs between the gardens and bollard and chain barrier. It is used primarily by residents and pedestrians as a walkway along the dockside.*
- A bollard and chain barrier, which is set approximately 1.5 m back from the dock edge.*

Industry guidance and good practice set out in the HSE (Health and Safety Executive) publication L148 Safety in Docks: Approved Code of Practice and guidance (ACOP) specifically highlights taut chain as being an acceptable solution for a barrier rail in a dockside setting close to residential properties. There is no reason for it not to be acceptable at Albert Dock in Leith. To that end we are concerned that there is not a copy of completed Risk Assessment Form providing analysis behind the decision made by Forth Ports Ltd that rejects alternative and more appropriate solutions.

Community and statutory engagement

LHNCC is disappointed by the lack of engagement shown by Forth Ports and its approach to implementing the works without planning permission or consultation with the local community and statutory agencies. Works started on 29 December 2020; the day residents received the notification of the application for Planning. Consultee and Public official notifications for these applications were only made available week beginning 4 January with a closing date for comments set as 29 January 2021. This would appear to be a second recent breach of the planning process; we lodged an official complaint about unauthorised works at the A-listed bridge near Teuchters Landing in November.

LHNCC and local residents have been keen to meet constructively with Forth Ports Ltd to discuss options to improve safety that are not to the detriment of historic character. Residents have put together a letter and information that shows safety measures adopted at other comparable locations in the UK (see for example Annex 3, which shows the design of the perimeter barrier at Albert Dock in Liverpool, an area with much higher pedestrian footfall). However, despite numerous requests and pleas for meetings with the Port there has been no engagement from Port staff, beyond a standard response to say works were going ahead but that they are temporary.

Next steps

These issues are a cause for concern for the LHNCC and the Leith Harbour community. There is potential for this work to set a precedent for piecemeal and hastily installed safety measures that are detrimental to the amenity and historic character of the dock basins (which are not all in the same ownership) and the wider Shore area. LHNCC believes that a more considered and strategic approach to improving safety should be adopted, and one that does not negatively impact on the character of the Old Leith and Shore Area. We understand from Forth Ports that the recently installed fencing panels are temporary. We therefore look forward to engaging with Port staff, City of Edinburgh Council, relevant statutory authorities (Historic Environment Scotland) and the community to agree and take forward a more appropriate and permanent solution in due course.

LHNCC believes that Planning Enforcement should have a key role to play in the protection of conservation areas and listed structures such as the Docks in Leith Harbour. Guidance set out under Scottish Government Planning Advice Note (PAN) 71: Conservation Area Management questions the current reactive nature of local authority enforcement strategies, which result in investigation only when a formal complaint is made. Good practice for conservation areas set out in PAN71 states that local authorities should consider a more proactive approach, including monitoring development activity and ensuring compliance with the terms of planning permissions. Such a positive and active approach to enforcement will help to reduce the number of contraventions and secure sustained improvements in environmental quality.

Yours sincerely

Jennifer Marlborough, Secretary, LHNCC

Annex 1 - Contraventions of the Edinburgh Local Development Plan 2016

DES 1: Design Quality and Context

The modern fencing panels installed by Forth Ports Ltd at Albert Dock are inappropriate and not in line with the considerations set out in the ELDP. They are, by Forth Port's own acknowledgement in the Design Statement, designed to match the garden fencing of the nearby Cala housing development (constructed in 2014). The scale and form of the panels conflict with the scale and form of the historic dockside - both at Albert Dock and within the wider Shore area.

DES 3: Development Design

As above, Forth Ports have not considered the existing historic and listed features, by altering them to reflect the garden fence design at the adjacent residential development at Stevedore Place. The fence panels have resulted in an unacceptable visual impact on the character of the dockside and the removal of the chains has resulted in an unacceptable physical impact on the listed structures.

DES 4: Layout Design

As above, Forth Ports has not considered the surrounding context. Albert Dock is part of the Old Shore Conservation Area. The new fence panels at the dockside edge

negatively impact on existing eye-level views along the public right of way along the list dockside and the character and streetscape of the wider Shore area.

DES 10: Waterside Development

The south side of Albert Dock is not part of the operational port and the existing path that separates the houses at Stevedore Place with the Dock is a public right of way. The new modern fence significantly diminishes the public frontage of the waterside. It negatively impacts on the conservation and landscape interests of the water environment and creates an unnecessary visual and physical barrier that prevents the enjoyment of the many residents and visitors who use the public footpath for recreation, exercise and to enjoy (and photograph) the historic dockland area.

ENV 3: Listed Buildings - Setting

Albert Dock forms part of the Port of Leith and its function is intrinsic to its character, appearance and historic interest. The altered barrier to the B-listed dock is visually detrimental to the architectural character, appearance and historic interest of the dock and its setting.

ENV 4: Listed Buildings - Alterations and Extensions

The modern fencing panels are not justified on the grounds that they are required to address health and safety risk on the basis of a single incident. The barrier is an unsympathetic modern design that has been created to copy the garden fencing in a nearby modern housing development - it is not appropriate in design, scale and materials to the listed structures.

ENV 6: Conservation Areas - Development

Albert Dock is within the Old Leith and Shore area of the Leith Conservation Area. The Character Area Appraisal specifically mentions the bollard and chain style perimeter barrier as part of the streetscape at the Shore. The modern fencing panels installed by Forth Ports are inappropriate and unsympathetic to the listed structures and the Shore streetscape. They do not reflect the special character of the Old Shore conservation area. Other dockland areas in other UK cities have address health and safety issues without compromising the historic character. For example, Albert Dock in Liverpool retains bollard and chain barriers, but there are four rather than two chains and they are thicker.

Annex 2 - Contraventions of the Listed Buildings and Conservation Areas guidance

Part 2 - Conservation Areas/Conservation Area Character Appraisals (page 23)

2. Special attention must be paid to the character and appearance of the conservation area when planning controls are being exercised. Most applications for planning permission for alterations will, therefore, be advertised for public comment and any views expressed must be taken into account when making a decision on the application.

General Principles (page 24)

- Designation of a conservation area does not mean development is prohibited. However, when considering development within a conservation area, special attention must be paid to its character and appearance. Proposals which fail to preserve or enhance the character or appearance of the area will normally be refused. Guidance on what contributes to character is given in the conservation area character appraisals.
- The aim should be to preserve the spatial and structural patterns of the historic fabric and the architectural features that make it significant.
- Preservation and re-use should always be considered as the first option.
- Interventions need to be compatible with the historic context, not overwhelming or imposing.
- Without exception, the highest standards of materials and workmanship will be required for all works in conservation area

EDLP Des 12: Extensions and Alterations (page 24)

- Proposals must preserve or enhance the character or appearance of the conservation area.

END

Pinsent Masons Legal Opinion

Legal Opinion

Stevedore Place, Edinburgh

5 March 2021

1. INTRODUCTION

- 1.1 On 10 December 2020 Forth Ports (**FP**) submitted a planning application (ref: 20/05548/FUL) to the City of Edinburgh Council (**CEC**) for the installation of a protective barrier along the south of Albert Dock at Stevedore Place, Leith (the **Planning Application**).
- 1.2 As the proposed development involved alterations to the Category B listed Albert Dock¹ (situated within the Leith Conservation Area) FP concurrently submitted a listed building consent application (ref: 20/05546/LBC) (the **LBC Application**).
- 1.3 The nature of the works, and the underlying objective for FP carrying them out, was set out in the Design Statement submitted with the Planning Application and LBC Application:

Forth Ports propose to replace the metal chain links between the existing bollards located to the south of Albert Dock and north of the residential development at Stevedore Place, Leith, with panels comprising vertical railings. The works are required to take place as a matter of urgency for reasons of health and safety. Recently, a young child had to be rescued from Albert Dock basin having accessed it from the Dock edge at Stevedore Place... Having reviewed the recent incident and assessed the risk, Forth Ports propose to undertake works from an urgent safety perspective to prevent the risk of any further incidents happening again.

- 1.4 On 10 February 2021, CEC issued decision notices confirming that both the Planning Application and LBC Application had been refused due to the unacceptable impact of the proposed development on the special character and setting of the Albert Dock, and the special character and appearance of the Leith Conservation Area.
- 1.5 The refusal of the Planning Application and LBC Application raises serious concern for FP given the protective barrier is necessary to address a health and safety risk related to persons (particularly young children) falling from height into Albert Dock basin. In this regard, owing to the decision of CEC, there is now conflict between the outcome of the planning process (at first instance) and FP's legal responsibilities as the owner of Albert Dock and statutory duties under health and safety legislation. It is specifically on this issue that we have been asked to opine.
- 1.6 This Opinion comprises two parts:
 - 1.6.1 Part 1 summarises FP's duty of care as owner and occupier of Albert Dock, and its statutory duties under health and safety legislation;
 - 1.6.2 Part 2 sets out our opinion on the relevance of the matters at Part 1 in respect of:
 - (a) the determination of the Planning Application (and subsequent appeal); and
 - (b) the determination of the LBC Application (and subsequent appeal)

2. FP'S OBLIGATIONS AND DUTIES

- 2.1 As the owner and occupier of Albert Dock, FP has a duty of care to all visitors to ensure the premises are reasonably safe under the Occupiers' Liability (Scotland) Act 1960 (the **1960 Act**).

¹ Category 'B' listed on 29 March 1996 (Ref. LB27590).

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Stevedore Place, Edinburgh

5 March 2021

- 2.2 The 1960 Act imposes an obligation to take reasonable care "...towards persons entering on the premises in respect of dangers which are due to the state of the premises or to anything done or omitted to be done on them and for which he is in law responsible"².
- 2.3 The 1960 Act specifies that an occupier must take "...such care as in all the circumstances of the case is reasonable to see that that person will not suffer injury or damage by reason of any such danger".
- 2.4 What is "reasonable" will depend on the facts and circumstances of each case but, generally, it is assessed in line with what a reasonable person would consider to be reasonable care. In short, if it is reasonably foreseeable that a certain danger to a third party exists, the occupier will owe a duty of care in respect of that danger. It follows that the occupier would be obliged under the 1960 Act to take measures to protect that third party.
- 2.5 It is precisely in the context of this statutory framework that FP has submitted the Planning Application and LBC Application:
 - 2.5.1 The southern extent of Albert Dock is accessible to the public.
 - 2.5.2 Further to a planning application granted by CEC, there is now residential development directly adjacent to the southern extent of Albert Dock.
 - 2.5.3 An incident occurred in September 2020 when a child from the said residential development crossed the existing metal chain links and fell into the basin. By good fortune, a passer by managed to rescue the child.
 - 2.5.4 It is evident from the factors and circumstances above (accessibility, proximity of dwellings and prior accident) that the risk of a person suffering injury or damage is "reasonably foreseeable". Conversely, we see no good counter-arguments that the risk of injury or damage is not "reasonably foreseeable" in such circumstances.
- 2.6 FP must therefore, as a matter of law, take measures to protect members of the public (especially young children) accessing Albert Dock from the danger of falling from height into water. A failure to take measures to mitigate this risk means that it would otherwise subsist, rendering FP in potential breach of its statutory obligations. In any event, this is also plainly unacceptable to FP in its capacity as a responsible landowner who wishes to uphold the highest safety standards possible.
- 2.7 The nature and extent of the measures that FP must take to mitigate the risk to the public must be carefully considered. The measures must be fit for their core purpose of avoiding or mitigating the identified health and safety risk. The case officer makes comment in the Reports of Handling for the Planning Application and LBC Application that the specific use of vertical railings is unacceptable at this location. Again, this fails to take into account the broader statutory obligations of FP as an occupier to not just take "any" measures to protect the public but to take measures that are actually effective and sufficient to eliminate any reasonably foreseeable danger. The visual appearance of a structure is a relevant factor. But good design goes far beyond aesthetic considerations. The functionality of the fencing, including fitness for purpose and sustainability, is also a relevant consideration and, in the factual matrix described above, it is one to which significant importance must attach.
- 2.8 For the reasons above, the assessment by CEC that the use of vertical railings is excessive or unnecessary at this location does not appear to be based on any expert H&S opinion or technical evidence and is thus ill founded. As is an assumption that the potential use of taut wire, taut chain or other taut material may be more acceptable on

² S.1(1) of the 1960 Act.

Legal Opinion

Stevedore Place, Edinburgh

5 March 2021

the basis that such measures "may" be appropriate where "a higher level of protection is required" (paragraph 155 of HSE Guidance, *Safety Docks*).

- 2.9 FP has a dedicated team of in-house safety professionals with many years of experience who have been closely involved in the fence design at this location. In addition, FP obtained advice and guidance on the design of the fencing from the contractor appointed to carry out the works (an experienced fencing contractor responsible for undertaking projects across the UK). Taken together, FP has been advised and has concluded that a "higher level of protection" is required in the present case and that the use of vertical railings is necessary to provide such protection: this being the most effective way to stop children climbing over the fence and entering the water (a risk that would subsist at this location with the use of taut wire).
- 2.10 In practice the assessment of what is "reasonably foreseeable" must be made by the occupier as the party who is obliged to comply with the obligations under the 1960 Act. FP's position, based on professional advice and experience, is unambiguous in this regard: only the installation of the vertical fencing will be sufficient to meet its statutory duty of care and see that young children will not suffer further injury or damage as a consequence of entering its premises.
- 2.11 In determining the appropriate design of the fencing, and in FP selecting a vertical design, it is also informative to refer to the *Building Standards Technical Handbook 2020: non-domestic* which provides guidance on achieving the standards set in the Building (Scotland) Regulations 2004³. Standard 4.4.2 paragraph 2 states:
- "A protective barrier should be designed and constructed so that it cannot be easily climbed by young children. The provision of potential hand and footholds should be minimised."*
- 2.12 Separately, FP must also comply with health and safety law which includes the obligation to ensure, so far as is reasonably practicable, the safety of persons either working at or attending premises operated by those conducting businesses – whether or not the attendees are themselves working there. Significant obligations under the criminal law are imposed by the Health & Safety at Work etc. Act 1974 and in particular in the present context:
- 2.12.1 Section 2: the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees including "...*the provision and maintenance of a working environment for employees that is, so far as is reasonably practicable, safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work*"⁴.
- 2.12.2 Section 3: the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety⁵.
- 2.12.3 Section 4: the duty of parties with control of non-domestic premises that are used by persons that are not their employees as a place of work, or as a place where they may use plant or substances provided for their use there.
- 2.13 Drawing together the above requirements, the need to ensure that premises are properly safe is fundamental to FP's obligations under both occupiers' liability and health and safety law. This is especially the case where the very nature of the premises creates, as here, an inherent risk of falling from height into water.

³ Works of a civil engineering construction including at harbours, quays and docks are exempt from the Regulations. However, even if the Regulations do not formally apply, the guidance in the Technical Handbook represents a reasonable benchmark for design standards given the nature of the public realm and changing use of the area (in particular the proximity of the residential units to Albert Dock basin).

⁴ S.2(2)(e) of the Health and Safety at Work etc. Act 1974.

⁵ S.3(1) of the Health and Safety at Work etc. Act 1974.

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5 March 2021

- 2.14 As set out in the appeal submission, FP takes its health and safety obligations extremely seriously and is determined to fully address an ongoing risk to the public, which necessitates the installation of the vertical fencing.

3. THE DECISION MAKING PROCESS

- 3.1 The land use planning system sits alongside other statutory regimes (such as those cited above) each of which serves a different purpose and has different objectives. Planning law has a guiding purpose of controlling "development" and the listed building regime with the protection of important heritage assets. Conversely, the legal framework's for occupier's liability and HSE matters is set out above.

- 3.2 In the absence of a statutory provision to the contrary and in general terms one legal framework does not automatically override another in the event of potential conflict. However, that must not be interpreted as meaning that the planning regime is intended to operate in a vacuum without regard to other statutory regimes, or that a party's obligations under other statutory regimes are not capable of materially influencing (or being determinative) of decision making under the planning regime.

- 3.3 From this starting point, it is informative to take a closer look at the statutory framework for decision-making under planning and listed building legislation.

Planning decision making

- 3.4 It is well established that decisions on planning applications must be made in accordance with the development plan unless material considerations indicate otherwise⁶.

- 3.5 The House of Lord's judgement on *City of Edinburgh Council v the Secretary of State for Scotland* (1998) (as cited in Annex A of Circular 3/2013) provides further direction and confirms that there are two main tests in deciding whether a consideration is material and relevant. First, it should serve or be related to the purpose of planning (and should therefore relate to the development and use of land). Second, it should relate to the particular application.

- 3.6 It was further held:

The decision maker will have to decide what considerations it considers are material to the determination of the application. However, the question of whether or not a consideration is a material consideration is a question of law and so something which is ultimately for the courts to determine. It is for the decision maker to assess both the weight to be attached to each material consideration and whether individually or together they are sufficient to outweigh the development plan.

- 3.7 Turning to the present circumstances, the first step in determining the Planning Application (or subsequent appeal) is to determine whether the proposed development is in accordance with the development plan "when read as a whole"⁷. For the reasons more fully set out in the Appeal Statement, FP's firm position is that the proposals are in accordance with the development plan.

- 3.8 Once the decision maker has determined whether the Planning Application is in accordance with the development plan, he or she must then assess whether there are other "material considerations" for or against the proposed development. In our opinion the health and safety considerations that underpin the Planning Application meet the test of being a "material consideration" for the following reasons:

- 3.8.1 **Are the health and safety considerations serving or related to the "purpose of planning"?** The "purpose of planning" is defined as "*to manage the development and use of land in the long term*

⁶ S.25(1) of the Town and Country Planning (Scotland) Act 1997.

⁷ *Gladman Developments Ltd v Canterbury City Council* (2019) EWCA Civ 669.

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Stevedore Place, Edinburgh

5 March 2021

*public interest*⁸. There can be no question that health and safety considerations fall squarely within that purpose. It is plainly not in the long-term public interest to leave land in a situation which is unsafe. More broadly, health and safety considerations are at the heart of all decisions related to the development and use of land. That is reflected in the fact that it is entirely standard practice for health and safety matters to be assessed as part of considering the acceptability of development, for the HSE being invited to comment upon planning applications, and for conditions to be imposed upon the grant of planning permission for reasons related to the protection of the public.

- 3.8.2 **Do the health and safety considerations "relate to the application"?** Again, there can be no question that this test is satisfied: health and safety objectives are the driving reason for seeking to carry out the works that the Planning Application seeks to regularise.
- 3.9 The next consideration is the weight that attaches to this material consideration. As established in the *City of Edinburgh* case, that is ultimately a matter for the decision maker. However, we make the following observations:
- 3.9.1 If the decision maker is satisfied that the proposed development is in accordance with the development plan, the clear benefit of addressing a health and safety risk would only serve to bolster the case for the grant of the Planning Application.
- 3.9.2 If the decision maker were to conclude that the proposed development was not in accordance with the development plan (which FP do not accept) it is clear that issues of health and safety are of fundamental importance and in our submission, in the particular circumstances of this case, must carry substantial weight in the decision making process. It follows that there would be a very strong basis for warranting a departure from the development plan policies in such circumstance.
- 3.9.3 As we have already established, consideration of the safety of persons is inherently fundamental to all land use planning decisions and plainly in the public interest. It follows that a failure to consider that factor at all in the planning balance, or a decision to attach insufficient weight to such matters, in the determination of the Planning Application may be interpreted by the court as *Wednesbury* unreasonable or irrational⁹.
- 3.10 When making a decision on a planning application for development that affects a listed building or its setting, the planning authority must have "special regard" to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses¹⁰. However the following must be borne in mind in the context of the Planning Application:
- 3.10.1 It is self-evident that having "special regard" to the desirability of preserving a building or its setting is only engaged where a proposed development would be detrimental to the preservation of a listed building or its setting:
*"preserving", in relation to a building, means preserving it either in its existing state or subject only to such alterations or extensions as can be carried out without serious detriment to its character, and "development" includes redevelopment*¹¹.
- 3.10.2 In short, "preservation" in this context means not harming the interest in the building, as opposed to keeping it utterly unchanged. For the reasons set out in the Design Statement and Appeal Statement,

⁸ s.3ZA of the Town and Country Planning Act 1997.

⁹ A standard of unreasonableness used in assessing an application for judicial review of a public authority's decision. A reasoning or decision is Wednesbury unreasonable (or irrational) if it is so unreasonable that no reasonable person acting reasonably could have made it (Associated Provincial Picture Houses Ltd v Wednesbury Corporation (1948) 1 KB 223).

¹⁰ S.59(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

¹¹ S.59(3) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

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Stevedore Place, Edinburgh

5 March 2021

FP's firm position is that the proposed fencing is sympathetic to its surrounding and would not cause detriment to Albert Dock or its setting. The dock and its setting would be preserved.

- 3.10.3 Even if it were to be concluded that the fencing causes some detriment, and that the need to have "special regard" to the preservation of Albert Dock and its setting carries weight in the decision making process, such weight must still be balanced against the need to ensure that Albert Dock is safe to persons accessing it (especially children) and that FP is able to fully comply with its obligations under occupiers liability and health and safety law.
- 3.10.4 The need is to have "special regard" to the "desirability" of preserving the asset and its setting. The statutory test is not absolute and must not be seen as always determinative; it can be outweighed by other factors as part of the planning balance. What the test requires is that the decision maker specifically considers the importance of preserving listed buildings and attaches appropriate weight to that objective – but that cannot (and should not) always result in the refusal of planning applications.
- 3.11 The same principle applies in respect of the "special attention" that must be paid to the desirability of preserving or enhancing the character or appearance of a conservation area¹². Specifically, it is not sufficient to conclude that the need to pay "special attention" to preserving Leith Conservation Area means that the Planning Application must be refused. The decision maker must first be satisfied that the proposals are harmful to the conservation area. For the reasons set out in the Design Statement and Appeal Statement, there is a strong basis for concluding very little or no harm would occur in respect of the proposed development. Second, even if harm is identified, one must still then consider whether that is sufficient to refuse the Planning Application taking into account: the primacy of the development plan and other material considerations, including the obvious and significant health and safety benefits that underpin the proposals.
- 3.12 Applying the above analysis, the CEC officer has plainly fallen into error: the safety objectives that underpin the Planning Application, and that are at the very heart of FP's case for the proposals to be authorised, are the subject of no analysis whatsoever in the Report of Handling. In fact the only mention of "safety" is in the description of the proposals and the consultation responses appended to the Report. In short, in arriving at a conclusion that the Planning Application must be refused, it is clear from reading the Report that the case officer has, on the one hand, failed to consider an important material consideration in this case (health and safety risk) and, on the other hand, applied the tests of "special regard" and "special attention" as automatically determinative factors, rather than factors that need to be weighed in the wider planning balance.
- 3.13 The only logical conclusion is that the CEC officer has failed to take into account the very significant issue of safety as a material consideration the determination of the Planning Application. Had the issue of safety been properly taken into account, and afforded appropriate (substantial) weight in the decision making process, there is a compelling basis for concluding that the Planning Application should have been granted.

LBC Decision Making

- 3.14 When determining the LBC Application, the primacy of the development plan does not apply. However, it remains a material consideration that, for the reasons set out in the Appeal Statement, would strongly point towards the grant of the LBC Application. Similarly, the health and safety objectives are an important material consideration in the determination of the LBC Application which, for the reasons above, must be afforded substantial weight.
- 3.15 When making a decision on a listed building consent application, the planning authority must also have "special regard" to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses¹³. Furthermore, there is also a corresponding need to pay "special

¹² Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

¹³ S.14 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

Legal Opinion

Stevedore Place, Edinburgh

5 March 2021

attention" to the desirability of preserving or enhancing the character or appearance of the conservation area when determining a listed building consent application¹⁴.

- 3.16 The term "preserving" is not defined in the context of s.14 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 ("LBC Act"). However, analogous to s.59 of the LBC Act in respect of planning decisions, any change at all to a listed building or its setting should not be treated as a failure to preserve the asset: only a change that would cause serious detriment or harm.
- 3.17 Scottish Planning Policy is also informative in the context of the impacts on conservation areas:
*Proposals that do not harm the character or appearance of the conservation area should be treated as preserving its character or appearance*¹⁵.
- 3.18 It bears repeating that the fact that these statutory tests apply does not mean: a) other relevant considerations in the determination of the LBC Application are ignored; or b) that heritage considerations are decisive and automatically outweigh all other considerations.
- 3.19 As with the Planning Application, there is little or no evidence in the Report of Handling that the case officer has taken such factors into account in the planning balance. Had he done so, there is in our opinion a compelling basis for the grant of the LBC Application.
- 3.20 In establishing the weight that must be afforded to health and safety matters in the determination of listed building consent applications, it is instructive to examine how this issue is treated elsewhere in the LBC Act. In particular, it is notable that it is a defence against prosecution for carrying out works without listed building consent where "...works to the building were urgently necessary in the interests of safety or health or for the preservation of the building".
- 3.21 Whilst not of direct relevance to the determination of the LBC Application, this strongly indicates that matters of health and safety should carry substantial weight in decision making and should, in certain circumstances, take precedence over the broader objectives of the LBC Act to preserve and enhance heritage assets.
- 3.22 The degree of benefit associated with the works versus the degree of potential harm must also be relevant in this regard: where (as in the present case) the health and safety benefit is clear and very substantial, and the potential damage to a listed asset is (for the reasons set out in the Design Statement and Appeal Statement) negligible, this must add weight to the case for the grant of the LBC Application.

4. CONCLUSION

- 4.1 In our opinion there is no question that the issue of health and safety is an important material consideration that must be afforded substantial weight in the determination of the Planning Application and LBC Application. Whilst the issue of weight is one for the decision maker, it is our view in the circumstances of this case, that the health and safety benefits of the proposals (and the need for FP to comply with its associated statutory obligations) should be one of if not the determining factor.

PinSENT Masons LLP
15 March 2021

¹⁴ S.64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

¹⁵ Paragraph 143 of Scottish Planning Policy (Revised December 2020).

LDN Architects

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Holder Planning Ltd.
FAO: Lesley McGrath
5 South Charlotte Street
Edinburgh
EH2 4AN

Forth Ports Ltd.
1 Prince Of Wales Dock
Edinburgh
EH6 7DX

Decision date: 10 February 2021

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACTS
DEVELOPMENT MANAGEMENT PROCEDURE (SCOTLAND) REGULATIONS 2013**

Install protective barrier along the south of Albert Dock at Stevedore Place, Leith.
At Land To The South Of Albert Dock Edinburgh

Application No: 20/05548/FUL

DECISION NOTICE

With reference to your application for Planning Permission registered on 11 December 2020, this has been decided by **Local Delegated Decision**. The Council in exercise of its powers under the Town and Country Planning (Scotland) Acts and regulations, now determines the application as **Refused** in accordance with the particulars given in the application.

Any condition(s) attached to this consent, with reasons for imposing them, or reasons for refusal, are shown below;

Conditions:-

1. The proposal fails to preserve the special character and setting of the Category 'B' listed Albert Dock including its setting and is therefore contrary to Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and Policies Env 3 'Listed Buildings - Setting' and Env 4 'Listed Buildings - Alterations and Extensions' of the Edinburgh Local Development Plan.

2. The proposal fails to preserve or enhance the special character and appearance of the Leith Conservation Area and is therefore contrary to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and to Policy Env 6 'Conservation Areas - Development' of the Edinburgh Local Development Plan.

Please see the guidance notes on our [decision page](#) for further information, including how to appeal or review your decision.

Drawings 01 - 05, represent the determined scheme. Full details of the application can be found on the [Planning and Building Standards Online Services](#)

The reason why the Council made this decision is as follows:

The proposal would have an adverse impact on the character on the listed structure including its setting and the Leith Conservation Area. The proposal fails to comply Section 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and Env 3, Env 4 and Env 6 of the Edinburgh Local Development Plan. There are no material considerations which justify approval of this application.

This determination does not carry with it any necessary consent or approval for the proposed development under other statutory enactments.

Should you have a specific enquiry regarding this decision please contact Daniel Lodge directly at daniel.lodge@edinburgh.gov.uk.

D R Leeke

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

NOTES

1. If the applicant is aggrieved by the decision to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within three months beginning with the date of this notice. The Notice of Review can be made online at www.eplanning.scot or forms can be downloaded from that website. Paper forms should be addressed to the City of Edinburgh Planning Local Review Body, G.2, Waverley Court, 4 East Market Street, Edinburgh, EH8 8BG. For enquiries about the Local Review Body, please email localreviewbody@edinburgh.gov.uk.
2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.

Holder Planning Ltd.
FAO: Lesley McGrath
5 South Charlotte Street
Edinburgh
EH2 4AN

Forth Ports Ltd.
1 Prince Of Wales Dock
Edinburgh
EH6 7DX

Decision date: 11 February 2021

TOWN AND COUNTRY PLANNING (SCOTLAND) ACTS
PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) (SCOTLAND) ACT
1997
Install protective barrier along the land to the south of Albert Dock at Stevedore Place,
Leith.
At Land To The South Of Albert Dock Edinburgh

Application No: 20/05546/LBC

DECISION NOTICE

With reference to your application for Listed Building Consent registered on 11 December 2020, this has been decided by **Delegated Decision**. The Council in exercise of its powers under the Town and Country Planning (Scotland) Acts and regulations, now determines the application as **Refused** in accordance with the particulars given in the application.

Any condition(s) attached to this consent, with reasons for imposing them, or reasons for refusal, are shown below;

Conditions:-

1. The proposal fails to preserve the special character and setting of the Category 'B' listed Albert Dock and is therefore contrary to Section 14 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

2. The proposal fails to preserve the special character or appearance of the Leith Conservation Area and is therefore contrary to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

Please see the guidance notes on our [decision page](#) for further information, including how to appeal or review your decision.

Drawings 01 - 0501 - 05, represent the determined scheme. Full details of the application can be found on the [Planning and Building Standards Online Services](#)

The reason why the Council made this decision is as follows:

The development does not comply with the Planning (Listed Building and Conservation Areas) Scotland Act 1997 as it fails to preserve the character and setting of the listed building and fails to preserve or enhance the character and appearance of the conservation area.

This determination does not carry with it any necessary consent or approval for the proposed development under other statutory enactments.

Should you have a specific enquiry regarding this decision please contact Daniel Lodge directly at daniel.lodge@edinburgh.gov.uk.

D R Leechie

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

NOTES

1. If the applicant is aggrieved by the decision of the planning authority to refuse listed building consent or conservation area consent for the proposed works, or to grant such consent subject to conditions, he may, by notice served within 3 months of the receipt of this notice, appeal to the Scottish Ministers (on a form obtainable at <https://eplanning.scotland.gov.uk/WAM/> or addressed to the Planning and Environmental Appeals Division, 4 The Courtyard, Callendar Business Park, FALKIRK FK1 1XR.) in accordance with section 18 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as amended, as also applied to buildings in conservation areas by section 66 of that Act.
2. If listed building consent or conservation area consent is refused, or granted subject to conditions, whether by the planning authority or Scottish Ministers and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any works which have been or would be permitted, he may serve on the planning authority in whose district the land is situated, a listed building purchase notice requiring that authority to purchase his interest in the land in accordance with the provisions of section 28 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as amended, as also applied to buildings in conservation areas by section 66 of that Act.

Report of Handling

Application for Planning Permission Land To The South Of, Albert Dock, Edinburgh

Proposal: Install protective barrier along the south of Albert Dock at Stevedore Place, Leith.

**Item – Local Delegated Decision
Application Number – 20/05548/FUL
Ward – B13 - Leith**

Recommendation

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

Summary

SECTION A – Application Background

Site Description

The application site comprises the dockside and pedestrian pathway between the Albert Dock basin to the north east and the rear gardens of the recently constructed housing at Stevedore Place to the south west.

Albert Dock lies within the 'Old Leith and Shore' sub-area of the Leith Conservation Area. The Dock, together with its stone flagged and setted quayside with bollards, railway tracks and three travelling cranes was listed at Category 'B' on 29 March 1996 (Ref. LB27590).

The site is located in the Leith Conservation Area.

Bollard and chain barriers are a feature of many throughout the Conservation Area which protect dockside edges.

Description Of The Proposal

It is proposed to replace the metal chain links between the existing bollards located to the south of Albert Dock and north of the residential development at Stevedore Place, Leith, with panels comprising vertical railings. The proposed vertical railing panels will

be attached to existing eyelets on the bollards and can be removed without causing damage to the listed structure.

The proposals are considered necessary to address the immediate requirement to improve safety along the Dock edge at Stevedore Place.

A 'Design Statement' has been submitted in support of the proposals.

A concurrent application for listed building consent is currently under consideration.

Relevant Site History

20/05546/LBC

Install protective barrier along the land to the south of Albert Dock at Stevedore Place, Leith.

Consultation Engagement

Archaeologist

Publicity and Public Engagement

Date of Neighbour Notification: 10 February 2021

Date of Advertisement: 8 January 2021

Date of Site Notice: 31 December 2020

Number of Contributors: 31

Section B - Assessment

Determining Issues

Section 14 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states - In considering whether to grant consent, special regard must be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. For the purposes of this issue, preserve, in relation to the building, means preserve it either in its existing state or subject only to such alterations or extensions as can be carried out without serious detriment to its character.

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

In determining applications for listed building consent, the Development Plan is not a statutory test. However the policies of the Local Development Plan (LDP) inform the assessment of the proposals and are a material consideration.

Assessment

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

- a) the principle of the development is acceptable;
- b) the proposals will adversely affect the character and appearance of the conservation area;
- c) the proposals will have an adverse impact on the character of the listed building;
- d) the proposals will have an adverse impact on the archaeological interest of the site;
- e) any impacts on equalities and human rights are acceptable; and
- f) any comments received are addressed.

a) Principle

The proposals apply to a boundary historically established in this location and forming part of the listed Albert Dock. It is appreciated that the current boundary treatment is not of a design to prevent access to the dock edge and that additional measures could be put in place to make the boundary more secure. The principle of design changes proposed to the boundary treatment or within the surrounding context is therefore acceptable subject to compliance with the remaining considerations of the assessment.

It should also be noted that Industry guidance and good practice set out in the HSE (Health and Safety Executive) publication L148 Safety in Docks: Approved Code of Practice and Guidance (ACOP) specifically states *secure fencing should consist of an upper rail and an intermediate rail. In certain circumstances, eg the presence of children, a higher standard of protection will be required.* The ACOP defines this higher standard for protection as a *taut wire, taut chain or other taut material* as being an acceptable solution for a barrier rail in a dockside setting close to residential properties.

b) Character and appearance of conservation area

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

The Leith Conservation Area Character Appraisal emphasises the older parts of the Port of Leith, containing many early features including listed dock buildings. Scheduled Ancient Monuments associated with the Port of Leith consist of: the Victoria Bridge, the dry dock off Sandport Street, the swing bridge and lock at the East Old Dock, and features related to the Albert Dock.

The Albert Dock lies within a prominent location within the heart of the older part of the Port of Leith. The dock side contains robust surfaces required for dock sides, is separated by bollards with chains linking them; and matches the streetscape at the Shore and character of the medieval core of the Leith Conservation Area. The contemporary design of recent additions, such as new dock gates, sculptures and tree guards reinforce the prevailing character. The proposals would seriously diminish these special characteristics by enclosing the footpath with an uncharacteristic boundary

treatment thereby reducing the visual permeability along this key route through dock where views across the historic dock towards the Firth of Forth and beyond can be appreciated.

The proposals would not preserve the special character or appearance of the Leith Conservation Area.

c) Impact on the Listed Building

Section 14 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states - *In considering whether to grant consent, special regard must be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. For the purposes of this issue, preserve, in relation to the building, means preserve it either in its existing state or subject only to such alterations or extensions as can be carried out without serious detriment to its character.*

Historic Environment Scotland's guidance on *Managing Change - Boundaries* set out the principles that apply and how they should inform planning policies and the determination of applications relating to the historic environment.

The layout and design of the bollard and chain boundary, its materials and the way in which it relates to the dock basin, dockside and footpath comprise important elements of the character of the dock and dock edge, and contribute substantially to the sense of place and historical understanding of the listed dock.

The quality of its design includes the way in which the boundary is laid out, its physical dimensions and appearance, the particular sense of enclosure it provides, its associated features, and its relationship with other dockside features including moorings and surface treatments. These qualities have been consciously determined by the designer and mimic the manner in which many quaysides and dock edges have been treated throughout Leith and the rest of Scotland. The quality of the boundary specifically relates to its design and the visual permeability it purposely was designed to allow for. The intentional design of the boundary is reflective of the original dock operations and to allow views both ways across the dock edge. The position and design of the boundary therefore, specifically relates to its original function as an operational dock.

The age and rarity of the boundary and other associated features are also factors in determining its special interest. It is therefore noted, whilst many of the bollards are new and the chain link is not original, many of the related structures and surfacing materials are original. These include the stone dock edge, train tracks, moorings and 22 of the 52 bollards. It is also important to recognise the conservation-led approach adopted in the manner in which the dock edge and footpath have been restored and sensitively altered in association with the relatively recently completed residential development along Stevedore Place that directly abuts the footway (Ref: 12/03959/FUL).

While It is recognised that the context to the south west of the dock has changed with the erection of a new residential development where a metal railings with gated openings has been erected to delineate the rear garden boundaries with the footpath,

historically, dock related buildings and structures were previously present at this location.

The removal of the chain link and its infilling with panels comprising vertical railings will severely impact on the architectural and historic interest of the listed structure given the extent of the design change proposed. The visual permeability of the existing boundary will be compromised to a such a degree, that the immediate south west setting of the dock basin will be adversely impacted . The level of appreciation of the dock edge and basin currently affords when moving across the public footpath will also be adversely impacted on given the decreased level of visual permeability created and the subsequent sense of enclosure created by the proposals in conjunction with the existing garden railings.

The quality of the bespoke manufactured railing panels and the level of intervention required to the existing bollards using their existing eyelets to render the proposals reversible is noted. However, while it is considered preferable for new work to be reversible, so that changes can be undone without harm to historic fabric, reversibility alone does not justify alteration that is not justified on other grounds. Crucially, the degree of the design change the intervention would generate is judged to diminish the special architectural and historic interest of the listed structure including its setting to an unacceptable degree.

The proposals would not preserve the special architectural or historic interest of the listed structure.

d) Impact on archaeological interests

The site is regarded as being of archaeological significance both in terms of buried remains and potential impacts upon setting and character of the listed dock. Having assessed the potential impacts of the proposals, The City Archaeologist has confirmed that given that the scale and nature of the proposed new barriers, it has been concluded that there are no significant permanent impacts upon the character or setting of this historic listed dock in archaeological terms.

e) Equalities and human rights

This application was assessed in terms of equalities and human rights. No impacts were identified.

f) Public Comments

- Impact on the special architectural and historic interest of the listed structure including its setting is addressed in Section 3.3 a)
- Impact on the special character and appearance of the Leith Conservation Area is addressed in Section 3.3 b)

Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following;

Conditions

1. The proposal fails to preserve the special character and setting of the Category 'B' listed Albert Dock including its setting and is therefore contrary to Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and Policies Env 3 'Listed Buildings - Setting' and Env 4 'Listed Buildings - Alterations and Extensions' of the Edinburgh Local Development Plan.
2. The proposal fails to preserve or enhance the special character and appearance of the Leith Conservation Area and is therefore contrary to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and to Policy Env 6 'Conservation Areas - Development' of the Edinburgh Local Development Plan.

Background Reading/External References

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

Further Information - [Local Development Plan](#)

Date Registered: 11 December 2020

Drawing Numbers/Scheme

01 - 05

Scheme 1

**David R. Leslie
Chief Planning Officer
PLACE
The City of Edinburgh Council**

Contact: Daniel Lodge, Planning officer
E-mail:daniel.lodge@edinburgh.gov.uk

Appendix 1

Consultations

NAME: Leith Harbour and Newhaven Community Council

COMMENT:I am submitting this objection to the applications listed above on behalf of Leith Harbour and Newhaven Community Council (LHNCC). Both applications have been reviewed by our Planning Sub-Group and the wider Community Council, in the light of a number of complaints received from local residents. This response, which incorporates the feedback from residents living alongside Albert Dock, is supported by all members.

Context for LHNCC objection

Forth Ports Ltd carried out unauthorised works to alter the bollard and chain perimeter barrier at the B-listed Albert Dock on 29 December 2020 (see photograph below). New modern panels of vertical railings have been installed between each bollard, which replace the original chains. We understand that this work has been carried out as a health and safety response to an unsupervised child jumping in the Dock on 16 September 2020.

LHNCC and local residents first raised objections to the then proposed works with Forth Port staff and the CEC Planning Enforcement team in November 2020. This was on the grounds that planning permission and listed building consent had not been applied for and the community had not been consulted. The works were again reported, this time as a breach of planning, on 29 December when Forth Port's contractors arrived to start work on the dockside.

This is a second recent breach of the planning process - LHNCC lodged an official complaint about unauthorised works at the A-listed bridge near Teuchters Landing on 29 November 2020.

Grounds for LHNCC objection

The alteration of the bollard and chain perimeter barrier at Albert Dock on 30 December without planning permission is in breach of legislation and Scottish Government, Historic Environment Scotland and City of Edinburgh Council policies. The works on a listed structure without planning consent is a criminal offence under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

Planning policy and context

This application also does not meet Edinburgh Local Development Plan (EDLP) polices (Annex 1) and other relevant Scottish Government and statutory agency requirements on conservation areas and listed structures (referenced below). Listed Building Consent (LBC) assesses whether the works will affect the historic interest of the listed dock and preserve or enhance the special character or appearance of the conservation area. Local authorities have a statutory duty to identify and designate areas of special architectural or historic interest and ensure that any alterations, for whatever reason, are carefully considered.

Scottish Government Scottish Planning Policy

According to Scottish planning policy, listed structures should be protected from demolition or other work that would adversely affect them or their setting. Any change to a listed structure should be managed to protect its special interest. Where planning permission and listed building consent are sought for development to, or affecting, a listed structure, special regard must be given to the importance of preserving and enhancing the structure, its setting and any features of special architectural or historic interest. The layout, design, materials, scale, siting and use of any development which will affect a listed structure, or its setting, should be appropriate to the character and appearance of the structure and setting.

Listed Buildings and Conservation Areas Guidance

Albert Dock lies within the Leith Conservation Area ('Old Leith and Shore' sub-area). The Dock, together with its '..stone flagged and setted quayside with bollards, railway tracks and three travelling cranes...', is Category B-Listed as being of special architectural and historical interest by Historic Environment Scotland. Bollard and chain barriers are a feature of many throughout the Conservation Area which protect dockside edges.

Conservation Area Character Appraisals identify the essential character of conservation areas. They guide the local planning authority in making planning decisions and, where opportunities arise, preparing enhancement proposals. The Character Appraisals are a material consideration when considering applications for development within conservation areas. Listed Building Consent (LBC) assesses whether the works will affect the historic interest of the listed dock and preserve or enhance the special character or appearance of the conservation area. The alterations at Albert Dock do not meet the recommendations in Edinburgh Local Development Plan (referenced in Annex 2).

Leith Conservation Area Character Appraisal

The character appraisal for the conservation area identifies the essential character of Leith. It should be seen as a material consideration in relation to this planning application. The streetscape section of the character appraisal specifically highlights the quayside areas being separated by bollards with chains linking them. Bollards with chains are a quintessential part of the public realm and streetscape within Leith. They can be found as perimeter barriers around the Albert and Victoria Dock Basins and along all parts of the nearby Shore area. This continuity is important to the character of the entire Leith conservation area. The replacement barrier panels are not in keeping with the Leith conservation area character appraisal and set a precedent for the wider area should this application be approved.

Scottish Government Planning Advice Note (PAN) 71: Conservation Area Management

The designation of a conservation area is a means to safeguard and enhance the sense of place, character and appearance of our most valued historic places. Buildings of character, listed buildings, scheduled monuments, trees, historic street patterns, open spaces and designed gardens and landscapes are important components of these areas.

Historic Environment Policy for Scotland (HEPS)

The alteration of the listed perimeter barrier at Albert Dock is in breach of Historic Environment Policy for Scotland (HEPS), which is designed to support good decision making for Scotland's unique places. The designation of Albert Dock is the legal recognition of its importance as a historic site. The designation seeks to ensure that the cultural, social, environmental and economic value of Scotland's historic environment makes a strong contribution to the development and wellbeing of the nation and its people. It should also ensure that sites and places are recognised by law through the planning system and other regulatory processes.

Managing Change in the Historic Environment

This HES policy states that decisions about listed structures should always focus on the qualities that make them important - their special interest. A range of factors contributes to a special interest, but the key factor when considering whether change should be made is overall historic character.

The Historic Environment Scotland listing for Albert Dock in Leith makes pointed reference to post and chain barriers to the perimeter of the swing bridge. Post and chain barrier is therefore in our view the barrier solution most in keeping with the dock edge itself and as mentioned above, already widely used throughout the entire conservation area. The modern fencing installed by Forth Ports at Albert Dock negatively impacts on the historic character of Albert Dock and the Old Shore area. It negatively impacts on the local community's sense of place, identity and wellbeing.

Health and safety

LHNCC is aware of the health and safety aspects and that it is one of the considerations the planning process for applications (FUL) takes into account. However, we would like to point out that the assertion in the Forth Port's Design Statement that 'Garden gates provide direct access from the dwellings to the Dock edge' is incorrect. The houses along Stevedore Place are separated from the dock edge by:

- A 2 m wide fenced-in garden with a gate that can be easily locked with a padlock or similar.
- A 3 m wide public footpath (approximately 150 m in length) that runs between the gardens and bollard and chain barrier. It is used primarily by residents and pedestrians as a walkway along the dockside.
- A bollard and chain barrier, which is set approximately 1.5 m back from the dock edge.

Industry guidance and good practice set out in the HSE (Health and Safety Executive) publication L148 Safety in Docks: Approved Code of Practice and guidance (ACOP) specifically highlights taut chain as being an acceptable solution for a barrier rail in a dockside setting close to residential properties. There is no reason for it not to be acceptable at Albert Dock in Leith. To that end we are concerned that there is not a copy of completed Risk Assessment Form providing analysis behind the decision made by Forth Ports Ltd that rejects alternative and more appropriate solutions.

Community and statutory engagement

LHNCC is disappointed by the lack of engagement shown by Forth Ports and its approach to implementing the works without planning permission or consultation with the local community and statutory agencies. Works started on 29 December 2020; the day residents received the notification of the application for Planning. Consultee and Public official notifications for these applications were only made available week beginning 4 January with a closing date for comments set as 29 January 2021. This would appear to be a second recent breach of the planning process; we lodged an official complaint about unauthorised works at the A-listed bridge near Teuchters Landing in November.

LHNCC and local residents have been keen to meet constructively with Forth Ports Ltd to discuss options to improve safety that are not to the detriment of historic character. Residents have put together a letter and information that shows safety measures adopted at other comparable locations in the UK (see for example Annex 3, which shows the design of the perimeter barrier at Albert Dock in Liverpool, an area with much higher pedestrian footfall). However, despite numerous requests and pleas for meetings with the Port there has been no engagement from Port staff, beyond a standard response to say works were going ahead but that they are temporary.

Next steps

These issues are a cause for concern for the LHNCC and the Leith Harbour community. There is potential for this work to set a precedent for piecemeal and hastily installed safety measures that are detrimental to the amenity and historic character of the dock basins (which are not all in the same ownership) and the wider Shore area. LHNCC believes that a more considered and strategic approach to improving safety should be adopted, and one that does not negatively impact on the character of the Old Leith and Shore Area. We understand from Forth Ports that the recently installed fencing panels are temporary. We therefore look forward to engaging with Port staff, City of Edinburgh Council, relevant statutory authorities (Historic Environment Scotland) and the community to agree and take forward a more appropriate and permanent solution in due course.

LHNCC believes that Planning Enforcement should have a key role to play in the protection of conservation areas and listed structures such as the Docks in Leith Harbour. Guidance set out under Scottish Government Planning Advice Note (PAN) 71: Conservation Area Management questions the current reactive nature of local authority enforcement strategies, which result in investigation only when a formal complaint is made. Good practice for conservation areas set out in PAN71 states that local authorities should consider a more proactive approach, including monitoring development activity and ensuring compliance with the terms of planning permissions. Such a positive and active approach to enforcement will help to reduce the number of contraventions and secure sustained improvements in environmental quality.

Yours sincerely

Jennifer Marlborough, Secretary, LHNCC

Annex 1 - Contraventions of the Edinburgh Local Development Plan 2016

DES 1: Design Quality and Context

The modern fencing panels installed by Forth Ports Ltd at Albert Dock are inappropriate and not in line with the considerations set out in the ELDP. They are, by Forth Port's own acknowledgement in the Design Statement, designed to match the garden fencing of the nearby Cala housing development (constructed in 2014). The scale and form of the panels conflict with the scale and form of the historic dockside - both at Albert Dock and within the wider Shore area.

DES 3: Development Design

As above, Forth Ports have not considered the existing historic and listed features, by altering them to reflect the garden fence design at the adjacent residential development at Stevedore Place. The fence panels have resulted in an unacceptable visual impact on the character of the dockside and the removal of the chains has resulted in an unacceptable physical impact on the listed structures.

DES 4: Layout Design

As above, Forth Ports has not considered the surrounding context. Albert Dock is part of the Old Shore Conservation Area. The new fence panels at the dockside edge negatively impact on existing eye-level views along the public right of way along the list dockside and the character and streetscape of the wider Shore area.

DES 10: Waterside Development

The south side of Albert Dock is not part of the operational port and the existing path that separates the houses at Stevedore Place with the Dock is a public right of way. The new modern fence significantly diminishes the public frontage of the waterside. It negatively impacts on the conservation and landscape interests of the water environment and creates an unnecessary visual and physical barrier that prevents the enjoyment of the many residents and visitors who use the public footpath for recreation, exercise and to enjoy (and photograph) the historic dockland area.

ENV 3: Listed Buildings - Setting

Albert Dock forms part of the Port of Leith and its function is intrinsic to its character, appearance and historic interest. The altered barrier to the B-listed dock is visually detrimental to the architectural character, appearance and historic interest of the dock and its setting.

ENV 4: Listed Buildings - Alterations and Extensions

The modern fencing panels are not justified on the grounds that they are required to address health and safety risk on the basis of a single incident. The barrier is an unsympathetic modern design that has been created to copy the garden fencing in a nearby modern housing development - it is not appropriate in design, scale and materials to the listed structures.

ENV 6: Conservation Areas - Development

Albert Dock is within the Old Leith and Shore area of the Leith Conservation Area. The Character Area Appraisal specifically mentions the bollard and chain style perimeter barrier as part of the streetscape at the Shore. The modern fencing panels installed by

Forth Ports are inappropriate and unsympathetic to the listed structures and the Shore streetscape. They do not reflect the special character of the Old Shore conservation area. Other dockland areas in other UK cities have addressed health and safety issues without compromising the historic character. For example, Albert Dock in Liverpool retains bollard and chain barriers, but there are four rather than two chains and they are thicker.

Annex 2 - Contraventions of the Listed Buildings and Conservation Areas guidance

Part 2 - Conservation Areas/Conservation Area Character Appraisals (page 23)

2. Special attention must be paid to the character and appearance of the conservation area when planning controls are being exercised. Most applications for planning permission for alterations will, therefore, be advertised for public comment and any views expressed must be taken into account when making a decision on the application.

General Principles (page 24)

- Designation of a conservation area does not mean development is prohibited. However, when considering development within a conservation area, special attention must be paid to its character and appearance. Proposals which fail to preserve or enhance the character or appearance of the area will normally be refused. Guidance on what contributes to character is given in the conservation area character appraisals.
- The aim should be to preserve the spatial and structural patterns of the historic fabric and the architectural features that make it significant.
- Preservation and re-use should always be considered as the first option.
- Interventions need to be compatible with the historic context, not overwhelming or imposing.
- Without exception, the highest standards of materials and workmanship will be required for all works in conservation area

EDLP Des 12: Extensions and Alterations (page 24)

- Proposals must preserve or enhance the character or appearance of the conservation area.

NAME: City of Edinburgh Council Archaeology Service

COMMENT: Further to your consultation request I would like to make the following comments and recommendations concerning this application to install protective barrier along the south of Albert Dock at Stevedore Place, Leith.

The site is regarded as being of archaeological significance both in terms of buried remains and potential impacts upon setting of the listed dock. Having assessed the potential impacts of the new scheme, given that there will be physical impacts upon the historic fabric of the dock, it has been concluded that there are no archaeological implications regarding this FUL application.

Report of Handling

Application for Listed Building Consent 20/05546/LBC At Land To The South Of, Albert Dock, Edinburgh Install protective barrier along the land to the south of Albert Dock at Stevedore Place, Leith.

| | |
|---------------------------|--------------------|
| Item | Delegated Decision |
| Application number | 20/05546/LBC |
| Wards | B13 - Leith |

Summary

The development does not comply with the Planning (Listed Building and Conservation Areas) Scotland Act 1997 as it fails to preserve the character and setting of the listed building and fails to preserve or enhance the character and appearance of the conservation area.

Links

| | |
|---|--|
| Policies and guidance for this application | HEPS, HES, HESBND, HESCAC, HESSET, NSG, CRPLEI, |
|---|--|

Report of handling

Recommendations

1.1 It is recommended that this application be Refused for the reasons below.

Background

2.1 Site description

This application site is located within the Leith Conservation Area.

2.2 Site History

Main report

3.1 Description Of The Proposal

Site Description

The application site comprises the dockside and pedestrian pathway between the Albert Dock basin to the north east and the rear gardens of the recently constructed housing at Stevedore Place to the south west.

Albert Dock lies within the 'Old Leith and Shore' sub-area of the Leith Conservation Area. The Dock, together with its stone flagged and setted quayside with bollards, railway tracks and three travelling cranes was listed at Category 'B' on 29 March 1996 (Ref. LB27590).

The site is located in the Leith Conservation Area.

Bollard and chain barriers are a feature of many throughout the Conservation Area which protect dockside edges.

Description Of The Proposal

It is proposed to replace the metal chain links between the existing bollards located to the south west of Albert Dock and north east of the residential development at Stevedore Place, Leith, with panels comprising vertical railings. The proposed vertical railing panels will be attached to existing eyelets on the bollards and can be removed without causing damage to the listed structure.

The proposals are to address the requirement to improve safety along the Dock edge at Stevedore Place.

A 'Design Statement' has been submitted in support of the proposals.

A concurrent application for planning permission is currently under consideration.

3.2 Determining Issues

Section 14 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states - In considering whether to grant consent, special regard must be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. For the purposes of this issue, preserve, in relation to the building, means preserve it either in its existing state or subject only to such alterations or extensions as can be carried out without serious detriment to its character.

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

In determining applications for listed building consent, the Development Plan is not a statutory test. However the policies of the Local Development Plan (LDP) inform the assessment of the proposals and are a material consideration.

3.3 Assessment

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

- a) the proposals will have an adverse impact on the character of the listed building;
- b) the proposals will preserve or enhance the character of the conservation area;
- c) the proposals will adversely impact on the archaeological interest of the site;
- d) any impacts on equalities and human rights are acceptable; and
- e) any comments have been addressed.

Listed Building

Section 14 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states - *In considering whether to grant consent, special regard must be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. For the purposes of this issue, preserve, in relation to the building, means preserve it either in its existing state or subject only to such alterations or extensions as can be carried out without serious detriment to its character.*

Historic Environment Scotland's guidance on *Managing Change - Boundaries* set out the principles that apply and how they should inform planning policies and the determination of applications relating to the historic environment.

The layout and design of the bollard and chain boundary, its materials and the way in which it relates to the dock basin, dockside and footpath comprise important elements

of the character of the dock and dock edge, and contribute substantially to the sense of place and historical understanding of the listed dock.

The quality of its design includes the way in which the boundary is laid out, its physical dimensions and appearance, the particular sense of enclosure it provides, its associated features, and its relationship with other dockside features including moorings and surface treatments. These qualities have been consciously determined by the designer and mimic the manner in which many quaysides and dock edges have been treated throughout Leith and the rest of Scotland. The quality of the boundary specifically relates to its design and the visual permeability it purposely was designed to allow for. The intentional design of the boundary is reflective of the original dock operations and to allow views both ways across the dock edge. The position and design of the boundary therefore, specifically relates to its original function as an operational dock.

The age and rarity of the boundary and other associated features are also factors in determining its special interest. It is therefore noted, whilst many of the bollards are new and the chain link is not original, many of the related structures and surfacing materials are original. These include the stone dock edge, train tracks, moorings and 22 of the 52 bollards. It is also important to recognise the conservation-led approach adopted in the manner in which the dock's retaining wall, edge and footpath have been restored and sensitively altered in association with the relatively recently completed residential development along Stevedore Place that directly abuts the footway (Ref: 12/03959/FUL).

While it is recognised that the context to the south west of the dock has changed with the erection of a new residential development where a metal railings with gated openings has been erected to delineate the rear garden boundaries with the footpath, historically, dock related buildings and structures were previously present at this location. The removal of the chain link and its infilling with panels comprising vertical railings will severely impact on the architectural and historic interest of the listed structure given the extent of the design change proposed. The visual permeability the existing boundary will be compromised to a such a degree, that the immediate south west setting of the dock basin would be adversely impacted. The level of appreciation of the dock edge and basin currently affords when moving across the public footpath will also be adversely impacted on given the decreased level of visual permeability created and the subsequent sense of enclosure created by the proposals in conjunction with the existing garden railings.

The quality of the bespoke manufactured railing panels and the level of intervention required to the existing bollards using their existing eyelets to render the proposals reversible is noted. However, while it is considered preferable for new work to be reversible, so that changes can be undone without harm to historic fabric, reversibility alone does not justify alteration that is not justified on other grounds. Crucially, the degree of the design change the intervention would generate is judged to diminish the special architectural and historic interest of the listed structure including its setting to an unacceptable degree.

The proposals would not preserve the special architectural or historic interest of the listed structure.

Conservation Area

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

The Leith Conservation Area Character Appraisal emphasises the older parts of the Port of Leith, containing many early features including listed dock buildings. Scheduled Ancient Monuments associated with the Port of Leith consist of: the Victoria Bridge, the dry dock off Sandport Street, the swing bridge and lock at the East Old Dock, and features related to the Albert Dock.

The Albert Dock lies within a prominent location within the heart of the older part of the Port of Leith. The dock side contains robust surfaces required for dock sides, is separated by bollards with chains linking them; and matches the streetscape at the Shore and character of the medieval core of the Leith Conservation Area. The contemporary design of recent additions, such as new dock gates, sculptures and tree guards reinforce the prevailing character. The proposals would seriously diminish these special characteristics by enclosing the footpath with an uncharacteristic boundary treatment thereby reducing the visual permeability along this key route through dock where views across the historic dock towards the Firth of Forth and beyond can be appreciated.

The proposals would not preserve the special character or appearance of the Leith Conservation Area.

Archaeology

The site is regarded as being of archaeological significance both in terms of buried remains and potential impacts upon setting and character of the listed dock. Having assessed the potential impacts of the proposals, The City Archaeologist has confirmed that given that the scale and nature of the proposed new barriers, it has been concluded that there are no significant permanent impacts upon the character or setting of this historic listed dock in archaeological terms.

Equalities and human rights

This application was assessed in terms of equalities and human rights. No impacts were identified.

Public Comments

- Impact on the special architectural and historic interest of the listed structure including its setting is addressed in Section 3.3 a)
- Impact on the special character and appearance of the Leith Conservation Area is addressed in Section 3.3 b)

It is recommended that this application be Refused for the reasons below.

3.4 Conditions/reasons/informatives

1. The proposal fails to preserve the special character and setting of the Category 'B' listed Albert Dock and is therefore contrary to Section 14 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.
2. The proposal fails to preserve the special character or appearance of the Leith Conservation Area and is therefore contrary to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

Risk, Policy, compliance and governance impact

4.1 Provided planning applications are determined in accordance with statutory legislation, the level of risk is low.

Equalities impact

5.1 The equalities impact has been assessed as follows:

The application has been assessed and has no impact in terms of equalities or human rights.

Consultation and engagement

6.1 Pre-Application Process

Pre-application discussions took place on this application.

6.2 Publicity summary of representations and Community Council comments

The application was advertised on 08.01.2021. 25 representations were received from members of the public and neighboring residents. One objection was received from the Leith Harbour and Newhaven Community Council and one was received from the Cockburn Association. All of the representations received objected to the proposals.

The specific material grounds of the representations are fully addressed in section 3.3 e) of this report of handling.

Background reading / external references

- To view details of the application go to

- [Planning and Building Standards online services](#)

Statutory Development**Plan Provision**

Section 14 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states - In considering whether to grant consent, special regard must be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. For the purposes of this issue, preserve, in relation to the building, means preserve it either in its existing state or subject only to such alterations or extensions as can be carried out without serious detriment to its character.

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

In determining applications for listed building consent, the Development Plan is not a statutory test. However the policies of the Local Development Plan (LDP) inform the assessment of the proposals and are a material consideration.

Date registered 11 December 2020

Drawing numbers/Scheme 01 - 05,
Scheme 1

David R. Leslie
Chief Planning Officer
PLACE
The City of Edinburgh Council

Contact: Daniel Lodge, Planning officer
E-mail:daniel.lodge@edinburgh.gov.uk

Links - Policies

Relevant Policies:

The Historic Environment Policy for Scotland 2019 outlines Government policy on how we should care for the historic environment when taking planning decisions.

Relevant Government Guidance on Historic Environment.

Managing Change in the Historic Environment: Boundaries sets out Government guidance on the principles that apply to altering boundary treatments of listed buildings.

HES Interim Guidance on Conservation Area Consent sets out Government guidance on the principles that apply to the demolition of unlisted buildings in conservation areas

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

Relevant Non-Statutory Guidelines

The Leith Conservation Area Character Appraisal emphasises the area's unique and complex architectural character, the concentration of buildings of significant historic and architectural quality, the unifying effect of traditional materials, the multiplicity of land use activities, and the importance of the Water of Leith and Leith Links for their natural heritage, open space and recreational value

Appendix 1

Consultations

Historic Environment Scotland

We have considered the information received and do not have any comments to make on the proposals. Our decision not to provide comments should not be taken as our support for the proposals. This application should be determined in accordance with national and local policy on listed building/conservation area consent, together with related policy guidance.

City of Edinburgh Council Archaeology Service

Further to your consultation request I would like to make the following comments and recommendations concerning this application to install protective barrier along the south of Albert Dock at Stevedore Place, Leith.

The site is regarded as being of archaeological significance both in terms of buried remains and potential impacts upon setting/character of the listed dock. Having assessed the potential impacts of the new scheme, given that the scale and nature of the proposed new barriers, it has been concluded that there are no significant permanent impacts upon the character or setting of this historic listed dock.

Leith Harbour and Newhaven Community Council

I am submitting this objection to the applications listed above on behalf of Leith Harbour and Newhaven Community Council (LHNCC). Both applications have been reviewed by our Planning Sub-Group and the wider Community Council, in the light of a number of complaints received from local residents. This response, which incorporates the feedback from residents living alongside Albert Dock, is supported by all members.

Context for LHNCC objection

Forth Ports Ltd carried out unauthorised works to alter the bollard and chain perimeter barrier at the B-listed Albert Dock on 29 December 2020 (see photograph below). New modern panels of vertical railings have been installed between each bollard, which replace the original chains. We understand that this work has been carried out as a health and safety response to an unsupervised child jumping in the Dock on 16 September 2020.

LHNCC and local residents first raised objections to the then proposed works with Forth Port staff and the CEC Planning Enforcement team in November 2020. This was on the grounds that planning permission and listed building consent had not been applied for and the community had not been consulted. The works were again reported, this time

as a breach of planning, on 29 December when Forth Port's contractors arrived to start work on the dockside.

This is a second recent breach of the planning process - LHNCC lodged an official complaint about unauthorised works at the A-listed bridge near Teuchters Landing on 29 November 2020.

Grounds for LHNCC objection

The alteration of the bollard and chain perimeter barrier at Albert Dock on 30 December without planning permission is in breach of legislation and Scottish Government, Historic Environment Scotland and City of Edinburgh Council policies. The works on a listed structure without planning consent is a criminal offence under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

Planning policy and context

This application also does not meet Edinburgh Local Development Plan (EDLP) policies (Annex 1) and other relevant Scottish Government and statutory agency requirements on conservation areas and listed structures (referenced below). Listed Building Consent (LBC) assesses whether the works will affect the historic interest of the listed dock and preserve or enhance the special character or appearance of the conservation area. Local authorities have a statutory duty to identify and designate areas of special architectural or historic interest and ensure that any alterations, for whatever reason, are carefully considered.

Scottish Government Scottish Planning Policy

According to Scottish planning policy, listed structures should be protected from demolition or other work that would adversely affect them or their setting. Any change to a listed structure should be managed to protect its special interest. Where planning permission and listed building consent are sought for development to, or affecting, a listed structure, special regard must be given to the importance of preserving and enhancing the structure, its setting and any features of special architectural or historic interest. The layout, design, materials, scale, siting and use of any development which will affect a listed structure, or its setting, should be appropriate to the character and appearance of the structure and setting.

Listed Buildings and Conservation Areas Guidance

Albert Dock lies within the Leith Conservation Area ('Old Leith and Shore' sub-area). The Dock, together with its '...stone flagged and setted quayside with bollards, railway tracks and three travelling cranes...', is Category B-Listed as being of special architectural and historical interest by Historic Environment Scotland. Bollard and chain barriers are a feature of many throughout the Conservation Area which protect dockside edges.

Conservation Area Character Appraisals identify the essential character of conservation areas. They guide the local planning authority in making planning decisions and, where opportunities arise, preparing enhancement proposals. The Character Appraisals are a material consideration when considering applications for

development within conservation areas. Listed Building Consent (LBC) assesses whether the works will affect the historic interest of the listed dock and preserve or enhance the special character or appearance of the conservation area. The alterations at Albert Dock do not meet the recommendations in Edinburgh Local Development Plan (referenced in Annex 2).

Leith Conservation Area Character Appraisal

The character appraisal for the conservation area identifies the essential character of Leith. It should be seen as a material consideration in relation to this planning application. The streetscape section of the character appraisal specifically highlights the quayside areas being separated by bollards with chains linking them. Bollards with chains are a quintessential part of the public realm and streetscape within Leith. They can be found as perimeter barriers around the Albert and Victoria Dock Basins and along all parts of the nearby Shore area. This continuity is important to the character of the entire Leith conservation area. The replacement barrier panels are not in keeping with the Leith conservation area character appraisal and set a precedent for the wider area should this application be approved.

Scottish Government Planning Advice Note (PAN) 71: Conservation Area Management

The designation of a conservation area is a means to safeguard and enhance the sense of place, character and appearance of our most valued historic places. Buildings of character, listed buildings, scheduled monuments, trees, historic street patterns, open spaces and designed gardens and landscapes are important components of these areas.

Historic Environment Policy for Scotland (HEPS)

The alteration of the listed perimeter barrier at Albert Dock is in breach of Historic Environment Policy for Scotland (HEPS), which is designed to support good decision making for Scotland's unique places. The designation of Albert Dock is the legal recognition of its importance as a historic site. The designation seeks to ensure that the cultural, social, environmental and economic value of Scotland's historic environment makes a strong contribution to the development and wellbeing of the nation and its people. It should also ensure that sites and places are recognised by law through the planning system and other regulatory processes.

Managing Change in the Historic Environment

This HES policy states that decisions about listed structures should always focus on the qualities that make them important - their special interest. A range of factors contributes to a special interest, but the key factor when considering whether change should be made is overall historic character.

The Historic Environment Scotland listing for Albert Dock in Leith makes pointed reference to post and chain barriers to the perimeter of the swing bridge. Post and chain barrier is therefore in our view the barrier solution most in keeping with the dock edge itself and as mentioned above, already widely used throughout the entire conservation area. The modern fencing installed by Forth Ports at Albert Dock

negatively impacts on the historic character of Albert Dock and the Old Shore area. It negatively impacts on the local community's sense of place, identity and wellbeing.

Health and safety

LHNCC is aware of the health and safety aspects and that it is one of the considerations the planning process for applications (FUL) takes into account. However, we would like to point out that the assertion in the Forth Port's Design Statement that 'Garden gates provide direct access from the dwellings to the Dock edge' is incorrect. The houses along Stevedore Place are separated from the dock edge by:

- A 2 m wide fenced-in garden with a gate that can be easily locked with a padlock or similar.*
- A 3 m wide public footpath (approximately 150 m in length) that runs between the gardens and bollard and chain barrier. It is used primarily by residents and pedestrians as a walkway along the dockside.*
- A bollard and chain barrier, which is set approximately 1.5 m back from the dock edge.*

Industry guidance and good practice set out in the HSE (Health and Safety Executive) publication L148 Safety in Docks: Approved Code of Practice and guidance (ACOP) specifically highlights taut chain as being an acceptable solution for a barrier rail in a dockside setting close to residential properties. There is no reason for it not to be acceptable at Albert Dock in Leith. To that end we are concerned that there is not a copy of completed Risk Assessment Form providing analysis behind the decision made by Forth Ports Ltd that rejects alternative and more appropriate solutions.

Community and statutory engagement

LHNCC is disappointed by the lack of engagement shown by Forth Ports and its approach to implementing the works without planning permission or consultation with the local community and statutory agencies. Works started on 29 December 2020; the day residents received the notification of the application for Planning. Consultee and Public official notifications for these applications were only made available week beginning 4 January with a closing date for comments set as 29 January 2021. This would appear to be a second recent breach of the planning process; we lodged an official complaint about unauthorised works at the A-listed bridge near Teuchters Landing in November.

LHNCC and local residents have been keen to meet constructively with Forth Ports Ltd to discuss options to improve safety that are not to the detriment of historic character. Residents have put together a letter and information that shows safety measures adopted at other comparable locations in the UK (see for example Annex 3, which shows the design of the perimeter barrier at Albert Dock in Liverpool, an area with much higher pedestrian footfall). However, despite numerous requests and pleas for meetings with the Port there has been no engagement from Port staff, beyond a standard response to say works were going ahead but that they are temporary.

Next steps

These issues are a cause for concern for the LHNCC and the Leith Harbour community. There is potential for this work to set a precedent for piecemeal and hastily installed safety measures that are detrimental to the amenity and historic character of the dock basins (which are not all in the same ownership) and the wider Shore area. LHNCC believes that a more considered and strategic approach to improving safety should be adopted, and one that does not negatively impact on the character of the Old Leith and Shore Area. We understand from Forth Ports that the recently installed fencing panels are temporary. We therefore look forward to engaging with Port staff, City of Edinburgh Council, relevant statutory authorities (Historic Environment Scotland) and the community to agree and take forward a more appropriate and permanent solution in due course.

LHNCC believes that Planning Enforcement should have a key role to play in the protection of conservation areas and listed structures such as the Docks in Leith Harbour. Guidance set out under Scottish Government Planning Advice Note (PAN) 71: Conservation Area Management questions the current reactive nature of local authority enforcement strategies, which result in investigation only when a formal complaint is made. Good practice for conservation areas set out in PAN71 states that local authorities should consider a more proactive approach, including monitoring development activity and ensuring compliance with the terms of planning permissions. Such a positive and active approach to enforcement will help to reduce the number of contraventions and secure sustained improvements in environmental quality.

Yours sincerely

Jennifer Marlborough, Secretary, LHNCC

Annex 1 - Contraventions of the Edinburgh Local Development Plan 2016

DES 1: Design Quality and Context

The modern fencing panels installed by Forth Ports Ltd at Albert Dock are inappropriate and not in line with the considerations set out in the ELDP. They are, by Forth Port's own acknowledgement in the Design Statement, designed to match the garden fencing of the nearby Cala housing development (constructed in 2014). The scale and form of the panels conflict with the scale and form of the historic dockside - both at Albert Dock and within the wider Shore area.

DES 3: Development Design

As above, Forth Ports have not considered the existing historic and listed features, by altering them to reflect the garden fence design at the adjacent residential development at Stevedore Place. The fence panels have resulted in an unacceptable visual impact on the character of the dockside and the removal of the chains has resulted in an unacceptable physical impact on the listed structures.

DES 4: Layout Design

As above, Forth Ports has not considered the surrounding context. Albert Dock is part of the Old Shore Conservation Area. The new fence panels at the dockside edge

negatively impact on existing eye-level views along the public right of way along the list dockside and the character and streetscape of the wider Shore area.

DES 10: Waterside Development

The south side of Albert Dock is not part of the operational port and the existing path that separates the houses at Stevedore Place with the Dock is a public right of way. The new modern fence significantly diminishes the public frontage of the waterside. It negatively impacts on the conservation and landscape interests of the water environment and creates an unnecessary visual and physical barrier that prevents the enjoyment of the many residents and visitors who use the public footpath for recreation, exercise and to enjoy (and photograph) the historic dockland area.

ENV 3: Listed Buildings - Setting

Albert Dock forms part of the Port of Leith and its function is intrinsic to its character, appearance and historic interest. The altered barrier to the B-listed dock is visually detrimental to the architectural character, appearance and historic interest of the dock and its setting.

ENV 4: Listed Buildings - Alterations and Extensions

The modern fencing panels are not justified on the grounds that they are required to address health and safety risk on the basis of a single incident. The barrier is an unsympathetic modern design that has been created to copy the garden fencing in a nearby modern housing development - it is not appropriate in design, scale and materials to the listed structures.

ENV 6: Conservation Areas - Development

Albert Dock is within the Old Leith and Shore area of the Leith Conservation Area. The Character Area Appraisal specifically mentions the bollard and chain style perimeter barrier as part of the streetscape at the Shore. The modern fencing panels installed by Forth Ports are inappropriate and unsympathetic to the listed structures and the Shore streetscape. They do not reflect the special character of the Old Shore conservation area. Other dockland areas in other UK cities have addressed health and safety issues without compromising the historic character. For example, Albert Dock in Liverpool retains bollard and chain barriers, but there are four rather than two chains and they are thicker.

Annex 2 - Contraventions of the Listed Buildings and Conservation Areas guidance

Part 2 - Conservation Areas/Conservation Area Character Appraisals (page 23)

2. Special attention must be paid to the character and appearance of the conservation area when planning controls are being exercised. Most applications for planning permission for alterations will, therefore, be advertised for public comment and any views expressed must be taken into account when making a decision on the application.

General Principles (page 24)

- Designation of a conservation area does not mean development is prohibited. However, when considering development within a conservation area, special attention must be paid to its character and appearance. Proposals which fail to preserve or enhance the character or appearance of the area will normally be refused. Guidance on what contributes to character is given in the conservation area character appraisals.
- The aim should be to preserve the spatial and structural patterns of the historic fabric and the architectural features that make it significant.
- Preservation and re-use should always be considered as the first option.
- Interventions need to be compatible with the historic context, not overwhelming or imposing.
- Without exception, the highest standards of materials and workmanship will be required for all works in conservation area

EDLP Des 12: Extensions and Alterations (page 24)

- Proposals must preserve or enhance the character or appearance of the conservation area.

END

Leith Harbour and Newhaven Community Council (LHNCC)

Documents relating to: Land To The South Of Albert Dock Edinburgh 20/05548/FUL

CEC View and comment on planning applications

<https://www.edinburgh.gov.uk/planningcomments>

What you can comment on. Comments which are relevant to planning issues, such as

- appearance of the area
- impact on a conservation area
- setting or character of a listed building
- loss of significant landscape features

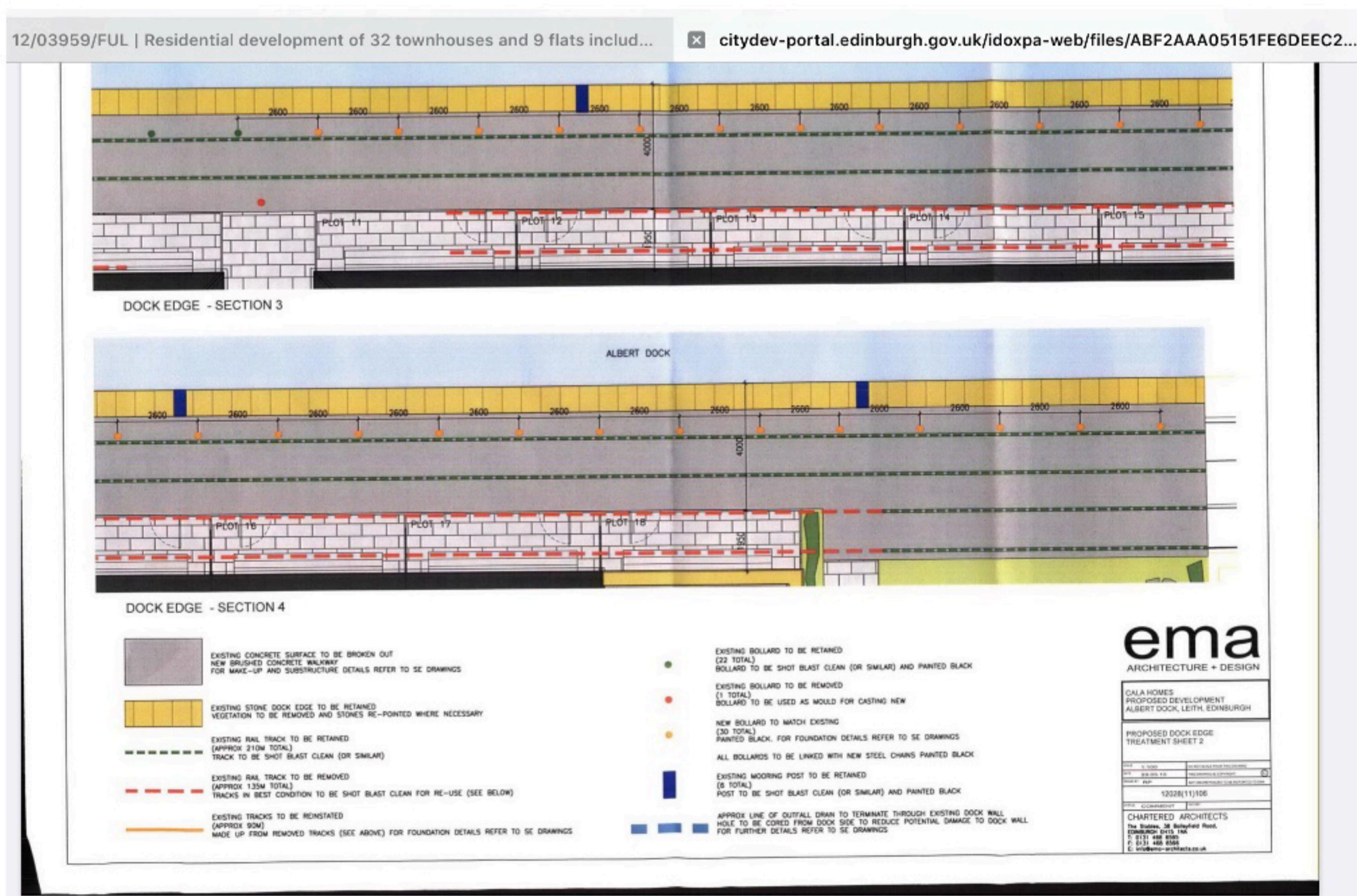
Documents relating to: Land To The South Of Albert Dock Edinburgh 20/05548/FUL

12/03959/FUL Residential development of 32 townhouses and 9 flats including associated roads and landscaping (as amended). | Land 40 Metres North West Of 2 Ocean Drive Edinburgh. **Not mentioned in related cases**

Decision 9/10/13

http://citydev-portal.edinburgh.gov.uk/idxpa-web/files/D315F136B1AE89942E1EC361E94A31D4/12_03959_FUL--1681719.rtf

26/6/13 : Landscape details



Jennifer Marlborough, Secretary, LHNCC

Comments for Planning Application 20/05548/FUL

Application Summary

Application Number: 20/05548/FUL

Address: Land To The South Of Albert Dock Edinburgh

Proposal: Install protective barrier along the south of Albert Dock at Stevedore Place, Leith.

Case Officer: Daniel Lodge

Customer Details

Name: Mrs Jennifer Marlborough

Address: Flat 9, 144 Commercial Street, Edinburgh EH6 6LB

Comment Details

Commenter Type: Community Council

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment:

26 January 2021

Email: secretary@lhncc.org.uk

Daniel Lodge
Case Officer,
PLACE,
Waverley Court,
4 East Market Street,
Edinburgh EH8 8BG

Dear Mr Lodge

Ref: 20/05548/FUL - Land to The South of Albert Dock Edinburgh

Ref: 20/05546/LBC - Land to The South of Albert Dock Edinburgh

Applicant: Forth Ports Ltd

Agent: Lesley McGrath, Holder Planning Ltd

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Sub-Group and the wider Community Council, in the light of a number of complaints received from local residents. This response, which incorporates the feedback from residents living alongside Albert Dock, is supported by all members.

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This is a second recent breach of the planning process - LHNCC lodged an official complaint about unauthorised works at the A-listed bridge near Teuchters Landing on 29 November 2020.

Grounds for LHNCC objection

The alteration of the bollard and chain perimeter barrier at Albert Dock on 30 December without planning permission is in breach of legislation and Scottish Government, Historic Environment Scotland and City of Edinburgh Council policies. The works on a listed structure without planning consent is a criminal offence under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

Planning policy and context

This application also does not meet Edinburgh Local Development Plan (EDLP) polices (Annex 1) and other relevant Scottish Government and statutory agency requirements on conservation areas and listed structures (referenced below). Listed Building Consent (LBC) assesses whether the works will affect the historic interest of the listed dock and preserve or enhance the special character or appearance of the conservation area. Local authorities have a statutory duty to identify and designate areas of special architectural or historic interest and ensure that any alterations, for whatever reason, are carefully considered.

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Policy for Scotland (HEPS), which is designed to support good decision making for Scotland's unique places. The designation of Albert Dock is the legal recognition of its importance as a historic site. The designation seeks to ensure that the cultural, social, environmental and economic value of Scotland's historic environment makes a strong contribution to the development and wellbeing of the nation and its people. It should also ensure that sites and places are recognised by law through the planning system and other regulatory processes.

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Yours sincerely

Jennifer Marlborough, Secretary, LHNCC

Annex 1 - Contraventions of the Edinburgh Local Development Plan 2016

DES 1: Design Quality and Context

The modern fencing panels installed by Forth Ports Ltd at Albert Dock are inappropriate and not in line with the considerations set out in the ELDP. They are, by Forth Port's own acknowledgement in the Design Statement, designed to match the garden fencing of the nearby Cala housing development (constructed in 2014). The scale and form of the panels conflict with the scale and form of the historic dockside - both at Albert Dock and within the wider Shore area.

DES 3: Development Design

As above, Forth Ports have not considered the existing historic and listed features, by altering them to reflect the garden fence design at the adjacent residential development at Stevedore Place. The fence panels have resulted in an unacceptable visual impact on the character of the dockside and the removal of the chains has resulted in an unacceptable physical impact on the listed structures.

DES 4: Layout Design

As above, Forth Ports has not considered the surrounding context. Albert Dock is part of the Old Shore Conservation Area. The new fence panels at the dockside edge negatively impact on existing eye-level views along the public right of way along the list dockside and the character and streetscape of the wider Shore area.

DES 10: Waterside Development

The south side of Albert Dock is not part of the operational port and the existing path that separates the houses at Stevedore Place with the Dock is a public right of way. The new modern fence significantly diminishes the public frontage of the waterside. It negatively impacts on the conservation and landscape interests of the water environment and creates an unnecessary visual and physical barrier that prevents the enjoyment of the many residents and visitors who use the public footpath for recreation, exercise and to enjoy (and photograph) the historic dockland area.

ENV 3: Listed Buildings - Setting

Albert Dock forms part of the Port of Leith and its function is intrinsic to its character, appearance and historic interest. The altered barrier to the B-listed dock is visually detrimental to the architectural character, appearance and historic interest of the dock and its setting.

ENV 4: Listed Buildings - Alterations and Extensions

The modern fencing panels are not justified on the grounds that they are required to address health and safety risk on the basis of a single incident. The barrier is an unsympathetic modern design that has been created to copy the garden fencing in a nearby modern housing development - it is not appropriate in design, scale and materials to the listed structures.

ENV 6: Conservation Areas - Development

Albert Dock is within the Old Leith and Shore area of the Leith Conservation Area. The Character Area Appraisal specifically mentions the bollard and chain style perimeter barrier as part of the streetscape at the Shore. The modern fencing panels installed by Forth Ports are inappropriate and unsympathetic to the listed structures and the Shore streetscape. They do not reflect the special character of the Old Shore conservation area. Other dockland areas in other UK cities have addressed health and safety issues without compromising the historic character. For example, Albert Dock in Liverpool retains bollard and chain barriers, but there are four rather than two chains and they are thicker.

Annex 2 - Contraventions of the Listed Buildings and Conservation Areas guidance

Part 2 - Conservation Areas/Conservation Area Character Appraisals (page 23)

2. Special attention must be paid to the character and appearance of the conservation area when planning controls are being exercised. Most applications for planning permission for alterations will, therefore, be advertised for public comment and any views expressed must be taken into account when making a decision on the application.

General Principles (page 24)

- Designation of a conservation area does not mean development is prohibited. However, when considering development within a conservation area, special attention must be paid to its character and appearance. Proposals which fail to preserve or enhance the character or appearance of the area will normally be refused. Guidance on what contributes to character is given in the conservation area character appraisals.
- The aim should be to preserve the spatial and structural patterns of the historic fabric and the architectural features that make it significant.
- Preservation and re-use should always be considered as the first option.
- Interventions need to be compatible with the historic context, not overwhelming or imposing.
- Without exception, the highest standards of materials and workmanship will be required for all works in conservation area

EDLP Des 12: Extensions and Alterations (page 24)

- Proposals must preserve or enhance the character or appearance of the conservation area.

Annex 3 - Albert Dock in Liverpool (Photo)

Memorandum

To Head of Planning
City of Edinburgh Council
Planning and Transport
Place
Waverley Court
4 East Market Street
Edinburgh
EH8 8BG

F.A.O. Daniel Lodge

From John A Lawson

Your ref 20/05548/FUL

Date 11th January 2021

Our ref 20/05548/FUL

Dear Daniel,

Land to The South of Albert Dock

Further to your consultation request I would like to make the following comments and recommendations concerning this application to install protective barrier along the south of Albert Dock at Stevedore Place, Leith.

The site is regarded as being of archaeological significance both in terms of buried remains and potential impacts upon setting of the listed dock. Having assessed the potential impacts of the new scheme, given that there will be physical impacts upon the historic fabric of the dock, it has been concluded that there are no archaeological implications regarding this FUL application.

Please contact me if you require any further information.

[REDACTED] sincerely



John A Lawson
(Archaeology Officer)

Lynne Halfpenny, Director of Culture, Cultural Services, Place
City of Edinburgh Council Archaeology Service, Museum of Edinburgh, 142 Canongate, Edinburgh, EH8 8DD
Tel 0131 558 1040 john.lawson@edinburgh.gov.uk



Assessment of Quayside Safety Fencing at Stevedore Place.

00021

Overall Potential Risk Level

105

Overall Residual Risk Level

43

| | |
|-----------------------------|--|
| Org Unit | Forth Ports -> Scottish Operations -> Leith |
| Activity Location | Dedicated RA carried out after a near drowning incident where an unescorted 3 year old child was allowed to access the quayside directly from the rear of Cala Housing at Stevedore Place and fell into the dock. A suitable Risk Assessment is deemed necessary to establish if current fencing is adequate or if controls need to be increased. Albert Dock area is one of the last remaining operational docks with vessels working and transiting in this part of port in close proximity to housing. |
| Assessment Date | 17/09/2020 |
| Next Review | 08/10/2021 |
| Primary Function | Engineering |
| Activity Description | Assessment of Quayside Safety Fencing at Stevedore Place. |
| Is This An Acceptable Risk? | No |
| Assessor Name | Geoff Valentine |

Assessment Team Members

Chris Monteith Port Engineer
Kenny Williamson Deputy Port Manager
Stelios Moraitis Port Asst Operations Manager
Fraser Lindsay Port Field Safety Adviser
Derek McGlashan Group Sustainability, Safety & Regulatory Manager
David Webster Port of Leith Senior Port Manager
Alasdair Sibbald Corporate Real Estate Manager

Hazards And Control Measures

| HAZARD CATEGORY, HAZARD DETAIL | WHO MIGHT BE HARMED, HOW COULD THE HARM OCCUR | APPLICABLE LIFE SAVING RULES | POTENTIAL RISK SCORE | CONTROL MEASURES | RESIDUAL RISK SCORE |
|---|--|------------------------------|---|---|---|
| Fall from height Fall from quayside to water or onto / into berthed vessel | Forth Ports Employees, Vessel Crews working in area, Members of the public, Children , Animals / Pets Impact with water Impact with berthed vessels (this includes potential to fall into a vessels hold which may be situated below the dock water line). | WORKING AT HEIGHT | 20 Level 5- Intolerable Severity : 5 - Extremely Harmful Likelihood : 4 - Likely | Forth Ports Employees are required to wear fall arrest PPE and life saving floatation workwear. Hard barrier erected to prevent (ALARP) members of the public being exposed. | 9 Level 3- Moderate Severity : 3 - Harmful Likelihood : 3 - Unlikely |

| | | | | | |
|------------------------------|---|------------------------|---|--|---|
| Strike by Object | Employees of Forth Ports, Vessel Crews, Members of the public, children and animals (pets). Parting mooring lines release of energy | CONTROL OF WORK | 10 Level 3- Moderate Severity : 5 - Extremely Harmful Likelihood : 2 - Rare | Restricted access (Control of Work) Hard barrier erected to protect walkway users from snapback risk. | 4 Level 2- Low Severity : 2 - Slightly Harmful Likelihood : 2 - Rare |
| Slips, Trips or Falls | Employees of Forth Ports, Vessel Crews, Members of the public, children and animals (pets) defeating existing barriers Slipping and tripping on vessel securing ropes, bollards or cargo. | CONTROL OF WORK | 25 Level 5- Intolerable Severity : 5 - Extremely Harmful Likelihood : 5 - Very Likely | Good Housekeeping standards to be included with good tool management at all times. Bollards, ropes, mooring lines (including tools and equipment) are to be highlighted at Tool Box Talks. Vessel securing ropes & mooring lines to be highlighted by high viz indicators in this area. Hard barrier erected to prevent easy defeat of existing post and chain barrier. | 10 Level 3- Moderate Severity : 5 - Extremely Harmful Likelihood : 2 - Rare |

| | | | | | |
|--|---|---|--|--|--|
| Falls into water Escape from open water by children inadequate | Children and families with children (who's presence has significantly increased in the area) Existing life saving arrangements include access ladder / safety ropes / 3 x life buoys | WORKING NEAR WATER Children playing near water | 25 Level 5- Intolerable Severity : 5 - Extremely Harmful Likelihood : 5 - Very Likely | Upgrade fencing to include custom fillers sympathetic to the existing housing railings in the area to enclose the quayside space and restrict access. To allow ALARP controls to be raised to higher standards as per L148 (Para 150-155) where children are present near docks and quay sides. | 10 Level 3- Moderate Severity : 5 - Extremely Harmful Likelihood : 2 - Rare |
| Falls into water Current Post and Chain fencing is easily accessible / defeated by members of the public including children | Members of the public Easily negotiated existing post and chain guards. Fixed barrier insufficient. Children can go under chain barrier / adults can easily climb over chain barrier allowing increased capacity for defeat. | WORKING NEAR WATER Adults defeating current barriers | 25 Level 5- Intolerable Severity : 5 - Extremely Harmful Likelihood : 5 - Very Likely | Upgrade fencing to include custom fillers sympathetic to the existing housing railings in the area to enclose the quayside space and restrict access. (vertical bars selected as opposed to horizontal bars to further prevent a ladder effect being present) | 10 Level 3- Moderate Severity : 5 - Extremely Harmful Likelihood : 2 - Rare |

Record Actions

| Action, Action Detail | Priority | Current Status | For User | Due Date |
|--|----------|----------------|----------------|------------|
| Assess, Measure and order retrofitted Custom Designed Panels to fit existing guard rail. Complete and fitted Jan 2021 | High | Completed | Chris Monteith | 31/01/2021 |



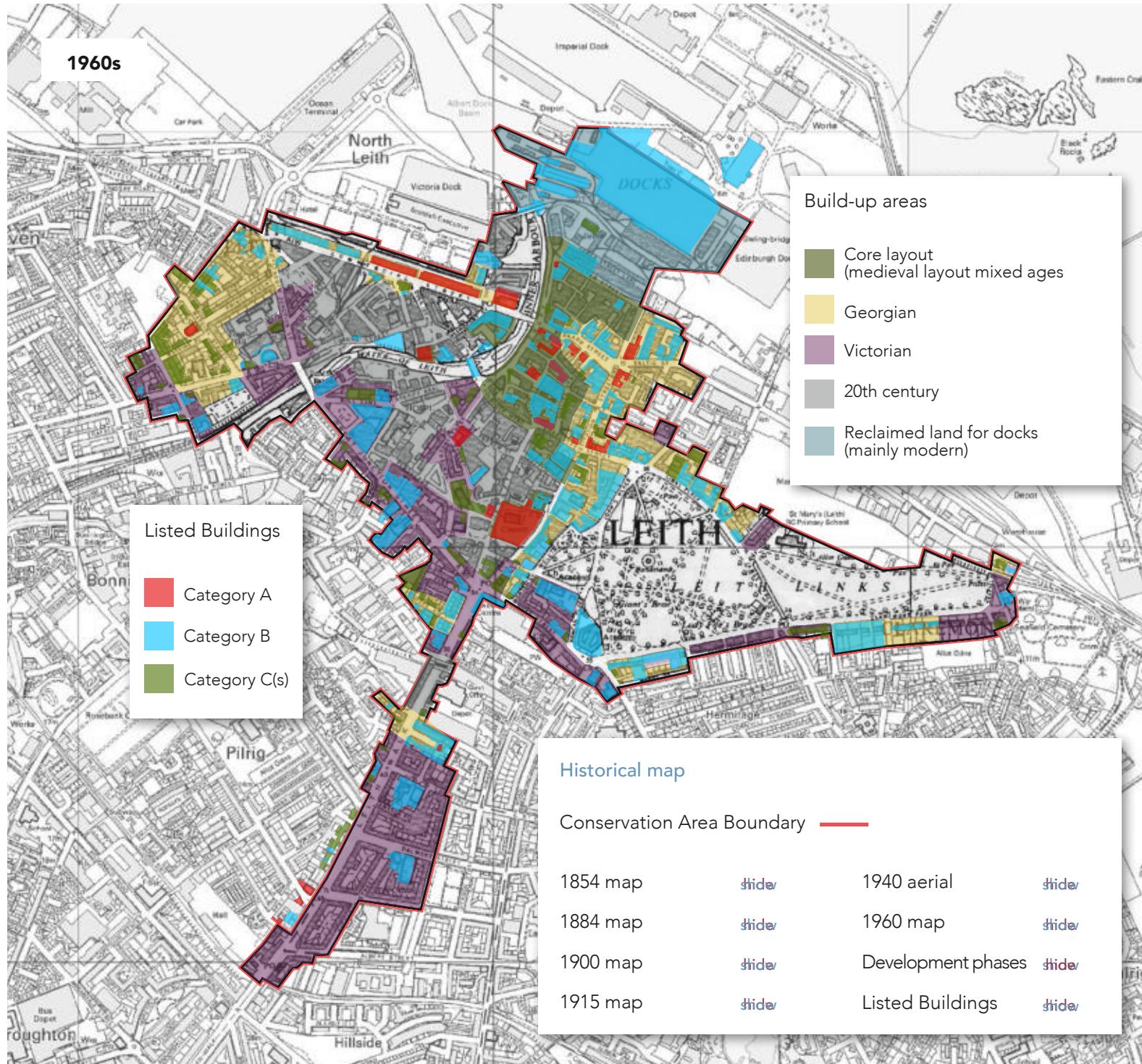
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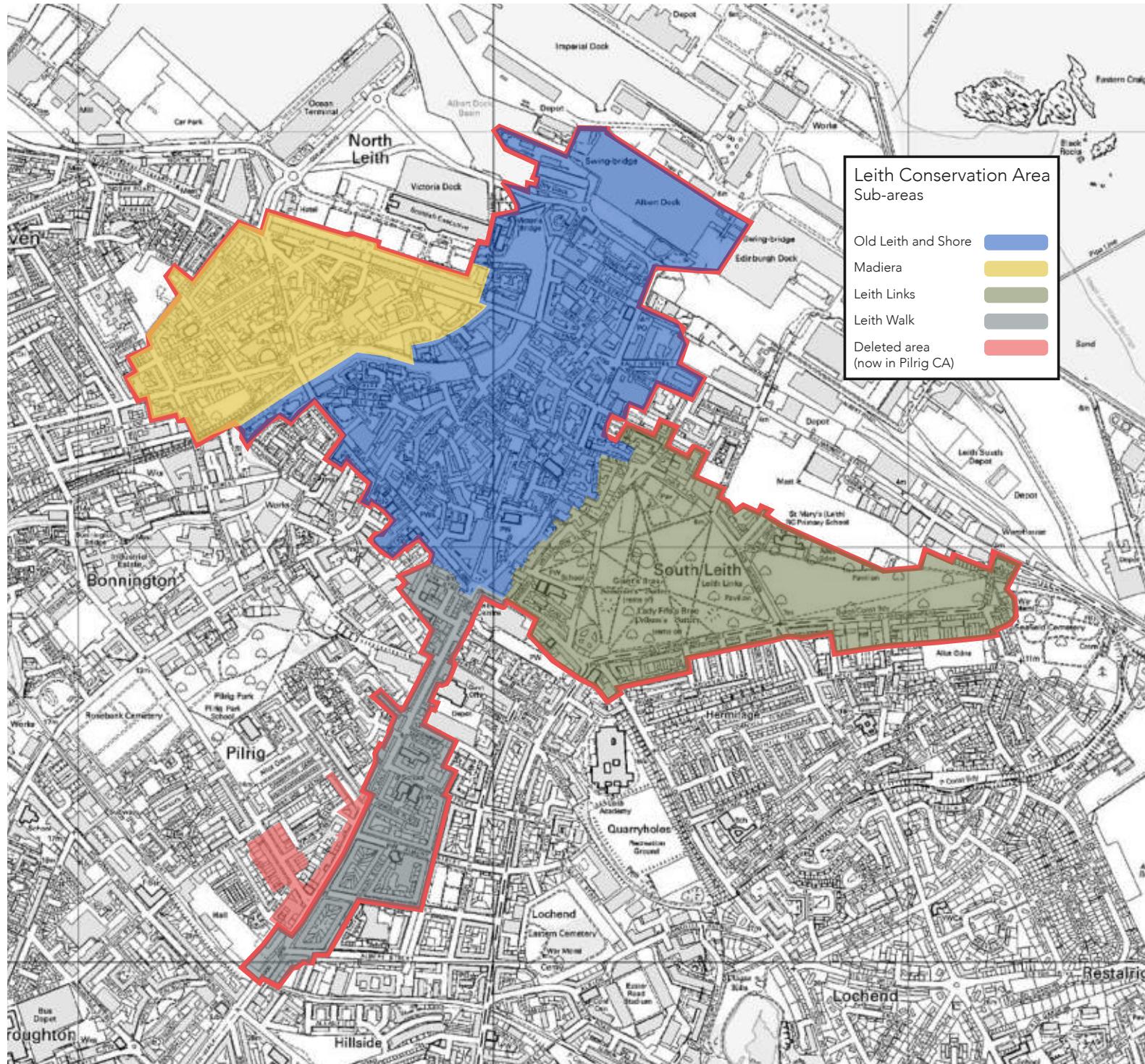
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Summary Information

Location and boundaries

Leith lies on the coast, some 1.5 miles north east of the centre of Edinburgh. The Conservation Area covers the extent of the historic town, and includes the Madeira area and Leith Walk, the town's main link with Edinburgh city centre.

The area is included within the Forth, Leith, Leith Walk and Craigentinny/Duddingston wards, and is covered by the Leith and Newhaven, Leith Central, and Craigentinny/Meadowbank Community Councils. The population of the Leith Conservation Area in 2011 was approximately 13,804 in 7,852 households.

Dates of designation/amendments

The Leith Conservation Area was designated in 1998. It comprises the former Madeira and Old Leith Conservation areas with extensions at Leith Walk, Kirkgate, Albert Dock and the Citadel. The Old Leith Conservation Area was designated in 1977, with a number of subsequent amendments and the Madeira Conservation Area was designated in 1975. The Conservation Area boundary was amended on 30 August 2013 to transfer part of Leith Walk and Pilrig Street to the Pilrig Conservation Area.

Statement of Significance

The character of the Conservation Area derives from Leith's history both as a port and an independent burgh. Several fine Georgian and Victorian warehouses survive, some now converted for residential or office use. A rich mixture of civic buildings and mercantile architecture survives particularly at Bernard Street and The Shore. Significant earlier buildings include Lamb's House and St Ninian's Manse (both early 17th Century). The present street pattern of The Shore area closely follows that of the historic town.

The Inner Harbour of the Water of Leith provides a vibrant focus for the Conservation Area, with buildings along The Shore forming an impressive waterfront townscape. The Conservation Area also covers the older parts of the Port of Leith, containing many early features including listed dock buildings and the Victoria Bridge, a scheduled Ancient Monument.

The Madeira area retains a largely Georgian domestic character, with stone buildings and slate roofs predominating; some of the Georgian buildings retain astragaled windows and doors with fanlights. Many of the roads are setted, the main exception being Prince Regent Street. Stone garden walls are a feature of the area. North Leith Parish church provides a visual focus to this mainly residential area, which also includes major public buildings such as Leith Library and Town Hall.

Leith Walk remains the main artery linking the centre of Edinburgh to the old burgh of Leith. It is characterised mainly by Victorian tenements with shops and pubs at ground floor level. There are a number of Georgian survivals, most notably Smith's Place dating from 1814.

Building types within the Conservation Area vary but are traditionally in stone with slate roofs. Pockets of public housing development from the 1960s and 1970s, of a contemporary character, fall within the expanded Conservation Area. Open space is concentrated at Leith Links, which provides a spacious contrast to the relatively dense settlement pattern of the remainder of the Conservation Area.

Acknowledgements

This document has been produced with the assistance of the Friends of the Water of Leith Basin.

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Conservation Area Character Appraisals

Purpose of character appraisals – why do we need them?

Conservation area character appraisals are intended to help manage change. They provide an agreed basis of understanding of what makes an area special. This understanding informs and provides the context in which decisions can be made on proposals which may affect that character. An enhanced level of understanding, combined with appropriate management tools, ensures that change and development sustains and respects the qualities and special characteristics of the area.

"When effectively managed, conservation areas can anchor thriving communities, sustain cultural heritage, generate wealth and prosperity and add to quality of life. To realise this potential many of them need to continue to adapt and develop in response to the modern-day needs and aspirations of living and working communities. This means accommodating physical, social and economic change for the better."

Physical change in conservation areas does not necessarily need to replicate its surroundings. The challenge is to ensure that all new development respects, enhances and has a positive impact on the area. Physical and land use change in conservation areas should always be founded on a detailed understanding of the historic and urban design context."

From PAN 71, Conservation Area Management. www.scotland.gov.uk/Publications/2004/12/20450/49052

How to use this document

The analysis of the Leith's character and appearance focuses on the features which make Leith special and distinctive. This is divided into two sections: Structure, which describes and draws conclusions regarding the overall organisation and macro-scale features of the area; and Key elements, which examines the smaller-scale features and details which fit within the structure.

This document is not intended to give prescriptive instructions on what designs or styles will be acceptable in the area. Instead, it can be used to ensure that the design of an alteration or addition is based on an informed interpretation of context. This context should be considered in conjunction with the relevant Local Development Plan policies and planning guidance.

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The Management section outlines the policy and legislation relevant to decision-making in the area. Issues specific to Leith are discussed in more detail and recommendations or opportunities identified.

Historical Origins And Development

A review of the historical development of Leith is important in order to understand how the area has evolved in its present form and adopted its essential character.

As the port of Edinburgh and a gateway to Europe, Leith has played a conspicuous part in the history of Scotland. It retains a strong sense of individuality based on its long history as a thriving and independent burgh, and Edinburgh's rise to importance can be attributed in part to the success of Leith as Scotland's primary port for almost five centuries.

From the late 13th Century until 1707, when it was overtaken by Glasgow, Leith was not only Edinburgh's port but it was the gateway to Scotland and its busiest port. Indeed well into the 20th Century Leith ships traded with the Baltic, the Low Countries, France, America and the Mediterranean, carrying coal, grain, fish and hides and returning with spice, cloth, whale oil and wine.

Leith officially became Edinburgh's port in 1329 and has remained a busy cargo destination ever since. Significant improvements and alterations took place during the 19th Century in association with the Port of Leith's marine-industrial functions and many of these remain in the original state, including the harbour basins.

Leith was first established on the banks of the Water of Leith, at the point where the river

entered the Firth of Forth. The tidal mouth of the river would have afforded a haven for ships long before any artificial harbour was constructed. The first historical reference to the settlement dates from 1140, when the harbour and fishing rights were granted to Holyrood Abbey by David I. At this time, it was known by the compound name 'Inverleith' (meaning 'Mouth of the Leith').

Leith constantly features in the powerstruggles that took place in Scotland throughout the period and the battles, landings and sieges of Leith have had an influence on its physical development. In 1548, the Regent Mary of Guise moved the seat of government to Leith and the town was fortified. The fortifications ran from the west-end of Bernard Street south-east to the junction of the present Maritime and Constitution Street, south to the foot of Leith Walk, returning to the Shore along the line of what is now Great Junction Street. The siege of 1560 resulted in the subsequent partial demolition of its defensive walls. However, Leith continued to develop as a merchant port.

In 1656-7 a large Cromwellian fort, Leith Citadel, was built west of the river; a gateway of which still survives in Dock Street. By the end of the 17th century, Leith had developed from its original nucleus by the Shore to fill the area which had been enclosed by the line of the 1548 fortifications. One of the few developments outside the line of the walls

was a short row of tenements and a windmill, now known as the Signal Tower, built by Robert Mylne in about 1686 at the north end of the Shore

After Edinburgh's North Bridge was completed in 1772, Leith Street and Leith Walk were firmly established as the major route to Leith. Market gardens developed along the length of Leith Walk to meet the needs of the growing population of Edinburgh during the first half of the 18th century. In 1764, Professor John Hope developed 13 acres of land on the west side of Leith Walk at Shrubhill as Botanic Gardens.

The Foot of Leith Walk was still almost entirely rural in 1785 when John Baxter prepared a scheme for development east of the street. Scattered development on both sides of Leith Walk followed in the late 18th century and the first years of the 19th century. James Smith, a merchant, bought the site of Smith's Place in 1800 and by 1814 he had laid out a cul-de-sac and the next year built a large house at its end.

By the mid 19th century, Leith Walk was an important public transport route. Horse drawn trams were introduced in the 1870s, cable cars in 1899, and electric trams a few years later. Expansion of the railways resulted in redevelopment at the Foot of Leith Walk and the formation of large goods yards at Steads Place and Brunswick Road.

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Character Appraisal



Historical Origins And Development

The railways provided work for large numbers of people and resulted in major speculative developments that extended along the east side of Leith Walk and the adjacent streets towards the end of the 19th century. These streets form a herringbone pattern meeting Leith Walk at offset junctions.

In the second half of the 18th century, regular streets (Bernard Street and Constitution Street) were formed on the edges of the town, Queen Charlotte Street (then Quality Street) cut through the medieval layout, and Constitution Street was extended south to the foot of Leith Walk. At the same time, villas were built nearby and Leith became a fashionable seaside resort which, as early as 1767, included a golf clubhouse built by the Honourable Company of Edinburgh Golfers at the west end of the Links.

Leith expanded substantially during the 19th century, associated with railway building and the growth of the Port of Leith; port related industries and warehousing also grew rapidly during this period. The following description of some of the activities in Leith during this period is given: "Leith possesses many productive establishments, such as ship-building and sail-cloth manufactories ... manufactories of glass ... a corn-mill ... many warehouses for wines and spirits ... and there are also other manufacturing establishments

besides those for the making of cordage for brewing, distilling, and rectifying spirits, refining sugar, preserving tinned meats, soap and candle manufactories, with several extensive cooperages, iron-foundries, flourmills, tanneries and saw-mills."

New docks west of the harbour were begun in 1800, and in 1810 Great Junction Street was formed, leading to a new bridge over the Water of Leith, as a road to them from the foot of Leith Walk. The large parklands of the 18th century houses surrounding Leith were laid out for terraces and villas, beginning in 1800 with land south of Leith Links and continuing in 1807 with James Gillespie Graham's plan for a large area north of Ferry Road and Great Junction Street. Robert Burn laid out a scheme for land south of Ferry Road in 1808 and later a feuing plan for Great Junction Street. However, building was sporadic and these ambitious schemes were only completed (in significantly revised form) in the late 19th century.

These first decades of the 19th century also witnessed a period of major civic building reflecting Leith's growing power and wealth. A number of Leith's finest remaining buildings date from this period, including the Leith Bank, the Customs House, the Assembly Rooms, Trinity House, and North Leith Parish Church.

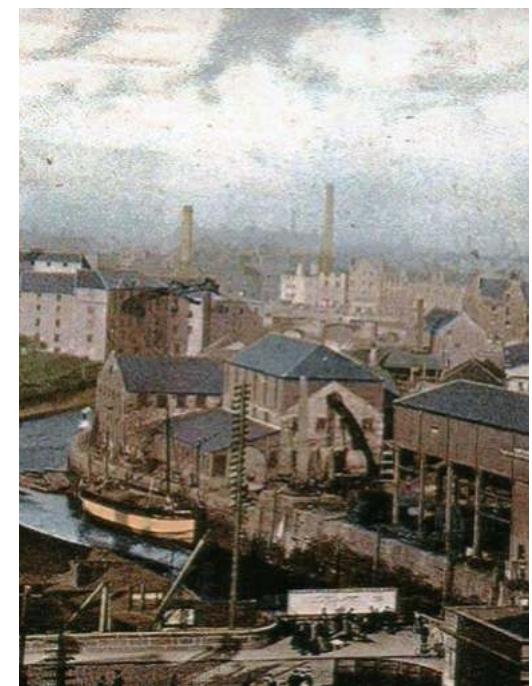
The Madeira area was conceived as a comprehensive design prompted by the success of James Craig's New Town in Edinburgh. Beginning in 1800 with land south of Leith Links it continued in 1807 with James Gillespie Graham's feuing scheme for a large area of north of Ferry Road. The grid pattern of streets was developed sporadically through the 19th century with Georgian buildings set back behind front gardens. By the turn of the century these basic rules were abandoned and Victorian buildings were inserted in the gaps taking their building lines directly from the heel of the pavement. This is most noticeable on Portland Place where a curved Victorian tenement projects forward from its Georgian wings on either side. The most important building in the area is William Burn's North Leith Parish Church (1816).

In 1833, Leith was established as an independent Municipal and Parliamentary Burgh with full powers of local government. Leith's architectural development of the time reflected its new status and a number of substantial buildings - a Town Hall, Burgh Court, Police Office - appropriate to its burgh status were built in the centre of the town throughout the 19th century. Leith expanded as massive warehouses and additional docks were built: the Victoria Dock in 1851, the Albert Dock in 1881; the Imperial Dock in 1903.

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Historical Origins And Development

After the passing of the Leith Improvement Act in 1880 many of the slums and most of the 16th and 17th century buildings were cleared away and replaced with tall tenements. Henderson Street was also forced through the old pattern of closes and wynds. Concurrent with the improvement schemes were programmes of major tenemental development, most significantly the building of dense tenement blocks over the fields between Leith Walk and Easter Road. Leith Links were part of a larger area of common land which stretched along the coast including part of Seafield. Links is Scots meaning sandy ground with hillocks and dunes, and the present artificial flatness dates from about 1880.

The Links were significantly remodelled at this time and brought, more or less, into their present form. A formal park, enclosed by railings with extensive avenues of trees, replaced the former rolling landscape of grassed dunes. These improvements removed most of the world's oldest golf course, which is mentioned as early as 1456. The Links were an important recreational centre, hosting horse racing and athletic meetings, and still contain bowling greens and cricket pitches that date from the 19th century.

Following the First World War, the number of shipyards was reduced from six or seven to one, and the stream of pre-war trade dwindled significantly. Through the inter-war years Leith had high unemployment. However, the population of Leith was still around 80,000 at the start of the Second World War.

Leith was the focus of slum clearance programmes between the 1950s and 1970s that resulted in the loss of the historic Kirkgate and the construction of a number of large public housing schemes. The demolition of large numbers of sub-standard houses resulted in a housing shortage, and many younger people were forced to move out of Leith to find accommodation. This distorted the community profile, with a bias towards the elderly.

In more recent years the emphasis has moved to urban regeneration, community needs and the conservation of Leith's historic environment. The Leith Project Initiative of 1980-85, incorporated an industrial and environmental programme directed at cleaning up buildings; helping to renovate and convert properties for quality housing, offices and workshops; developing industrial units in disused gap sites; consolidating key industries and encouraging new business to develop in the historic centre. The Vaults, the Cooperage and buildings along the Shore

were converted to housing from redundant industrial buildings with assistance from the Leith Project Initiative. An important factor in Leith's revitalisation was the large stock of solidly built warehouses, usually with plenty of natural daylight making them suitable for conversion. The King's Landing (1985) was a substantial new private housing development on a former gap site.

This more recent approach has resulted in the central shore and basin areas of Leith taking on new identities as important centres for high profile and innovative business, the relocation of the Scottish Government offices, new housing, and high quality restaurants and bars. Leith is also now the permanent home of the former Royal Yacht Britannia and its importance has been further strengthened by the Ocean Terminal development. The Leith Townscape Heritage Initiatives resulted in improvements to the public realm and individual buildings in Leith.

Despite having lost many of the original buildings on the quayside around the Inner Harbour basins and, most of the industries associated with the river and the life on the water, there are enough buildings remaining, enough life and business around the Harbour. The basins all have a different character, all tell a story and all have a beauty of their own.

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Character Appraisal



Kirkgate

Special Characteristics and Key Elements overall

Topography & Setting

Leith has a unique and complex architectural character that makes it distinctive and clearly identifiable within the context of Edinburgh. The Conservation Area has at its centre an important historical harbour town with its origins in the 12th Century. The architectural character of the Conservation Area derives from Leith's history, both as a port and an independent burgh, which imbue its individual architectural elements with a deeply rooted significance. Despite having lost most of its medieval buildings, Leith provides an excellent example of a small 19th century provincial town containing architecture which displays a rightness and fitness of scale (grand but not intimidating) and uniformly high quality of materials, detailing and design which have a unique significance in the context of Scottish architectural history. The historical and architectural importance of the Leith Conservation Area is reflected in the concentration of Statutorily Listed Buildings in the area: approximately 400 buildings are included on the Statutory List [32, Category A; 243, Category B and 122, Category C(S)].

Development pattern

Leith was a thriving and expanding commercial and industrial area throughout the 19th century, and much of the town's present urban structure and varied architectural fabric stem from this significant period in its development as an independent burgh and trading port. A combination of the grouping of its buildings, the form of its spaces and the many features of visual interest contribute to Leith's positive identity and distinctive urban character. Much of the architectural character stems from the juxtaposition of large warehouses and well detailed later-Georgian houses and public buildings.

Building Types

Leith retains a broader range of building types from the past than most areas of the city. It has also been the subject of greater foreign architectural influence, which can be seen in a number of buildings in Leith. Although less visible than in its heyday (when Dutch, Nordic and French styles influenced many warehouses and offices), this is still reflected in remnants such as the Norwegian and Ukrainian churches, and replica buildings, such as St Thomas's on Sherrif Brae (copied from a church in Brittany) and South Leith Parish Church (copied from a St. Petersburg design). Street names such as Elbe, Baltic Street, Cadiz, and Madeira also testify to Leith's maritime tradition and extensive trading links.

Each period of Leith's long history has left buildings of major interest. The relatively formal spaces of Bernard Street and Constitution Street, the remnants of the medieval street pattern, the range of neo-classical buildings, the Victorian contribution of boldly detailed Italianate banks, offices and Baronial tenements, with massive warehouses behind, all unified by the common use of stone, combine to produce a town centre which is among the best and most varied in Scotland. A rich mixture of civic buildings and mercantile architecture also survives particularly

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Character Appraisal



St Ninians

Special Characteristics and Key Elements overall

at Bernard Street and The Shore. The concentration of public buildings within the Conservation Area makes an important contribution to the architectural character and reflects Leith's former civic independence and importance.

Leith's ecclesiastical history is very old, and the area has a considerable number of fine church buildings. The best is possibly the elegant neoclassical 18th century North Leith Parish Church, with its full-height Ionic portico and tall steeple, in Madeira Street. More common are Victorian Gothic buildings such as the South Leith Parish Church (1847-8) by Thomas Hamilton, in the Kirgate and St Mary Star of the Sea (1853-4) by Pugin & Hansom in Constitution Street. St. Thomas's (1840-3) Church at the head of Sheriff Brae is now the Sikh Temple. The graveyard of South

Leith Parish Church contains a number of fine Georgian grave markers.

More modern and brutalist architecture of the 1950s and 60s is represented by Thomas Fraser Court, John Russell Court, Cables Wynd House (known as the 'banana block'), Linksview House on the line of the old Tolbooth Wynd, and the Newkirkgate Shopping Centre. Other more recent developments such as Citadel Place, Hamburgh Place and West Cromwell Street have retained a low-rise human scale.

Materials & Details

Building types within the Conservation Area vary but are traditionally of stone, with slate roofs. Pockets of public housing development from the 1960s and 1970s, of a contemporary character, also fall within the Conservation Area. Warehouses are a prominent element throughout the central area, many of them fine examples of industrial architecture, which act as a backcloth to earlier buildings. Several fine Georgian and Victorian examples survive, many now converted for residential or office use. The large rubble warehouse at 87 Giles Street known as the Vaults is one of the earliest, dating from 1682, and most outstanding.

The Leith Conservation Area is of considerable size covering various historical periods and stages of development that form a variety of character areas and spatial patterns. For this analysis the Character Appraisal is split into four sub areas representing distinctive patterns of growth and development:

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Special Characteristics and Key Elements

Topography and Setting

Streets

Building Types

Grain and Density

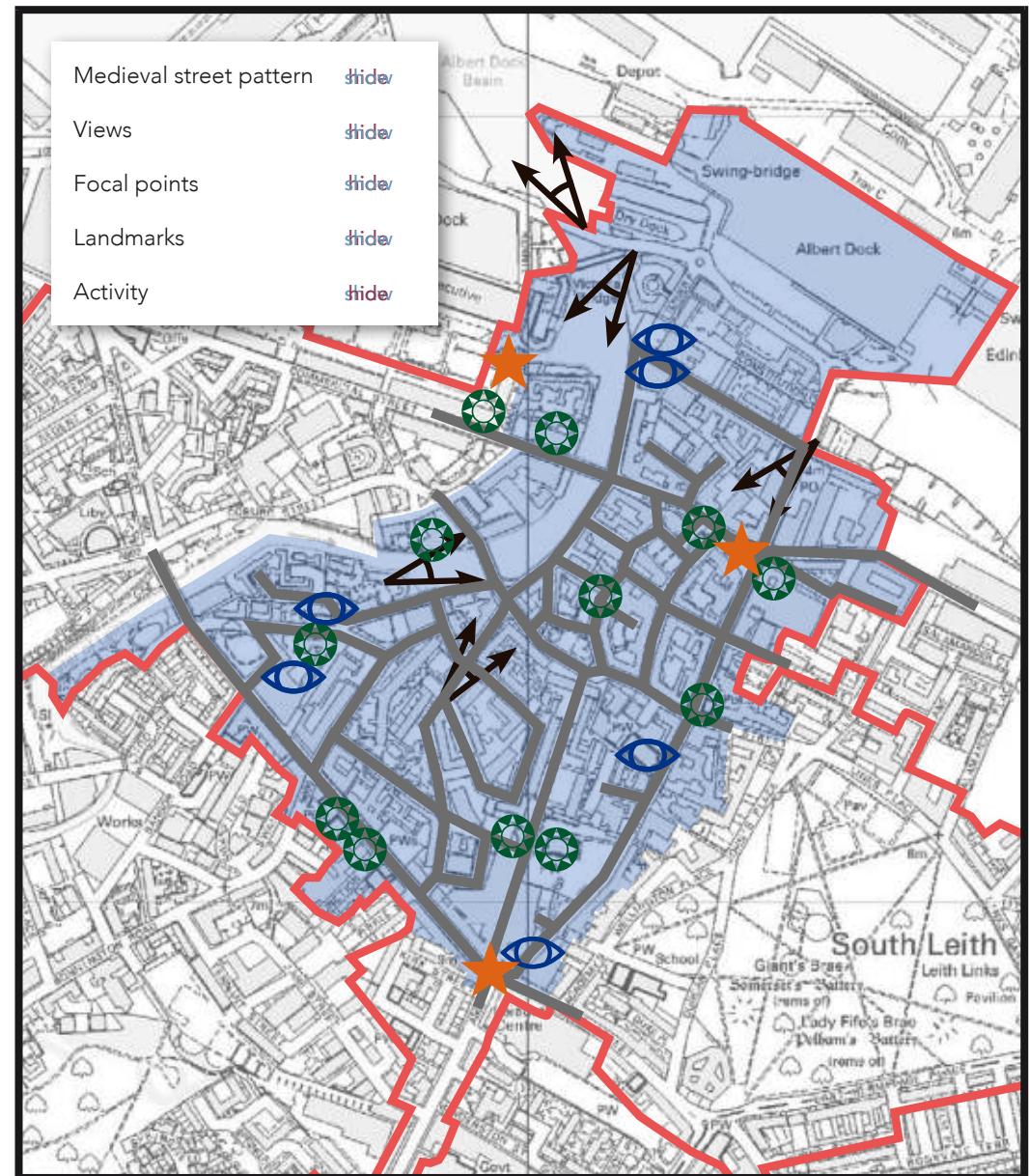
Development Pattern

Streetscape and Activity

Views

Spaces

Landmarks



Topography & Setting

The central historic core of the Conservation Area is bounded by the Port of Leith to the north, Great Junction Street to the south, Constitution Street to the east and the Water of Leith to the west. This area more or less coincides with that enclosed by the early defensive walls. Historically it was the centre of the port activities that sustained Leith's growth and gave it an identity separate from Edinburgh.

On its eastern edge this sub-area covers the core of the conservation area along Constitution Street, from Bernard Street and the Port of Leith to the north, to property surrounding the foot of Leith Walk, Great Junction Street and the river estuary to the west.

The Shore area includes both sides of the old harbour waterfront to the west. Distinctive and contrasting edges are provided by Great Junction Street and the Water of Leith. Great Junction Street runs along the path of the old citadel wall retaining a straight and formal edge. The river with its steeply rising banks, flowing in a gently winding pattern to the sea, gives more organic and informal edges, softer and green along the upper reaches - harder and functional along the quays and harbour walls at the river mouth.

Views

As a result of the asymmetric road pattern there are few long views through the area, but rather a strong sense of enclosure and containment. Views are predominantly internal. Longer views to and from the Port of Leith and Nelson Monument on Calton Hill relate Leith to the city and to the sea.

Towers and turrets of a variety of styles and scales mark views down most of the main streets. Examples include the octagonal Art Nouveau tower at the end of Great Junction Street and the Italianate octagonal tower on the Corn Exchange which terminates Constitution Street. Many of these landmark features play a variety of roles.

The spires on the corner buildings with Bernard Street and Coalhill emphasise and turn the corners, and their added interest in the skyline attract and encourage progress further towards the Shore. The streets to either side provide distant views to church spires in the distance, which together with the varied rooflines around the harbour, some of the warehouses still being gable end on, the cranes and ships now visible in the Port of Leith, provide interest and colour to the skyline.

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Development pattern

The spatial structure of this area still reveals the underlying medieval street pattern, with strong radial routes to and from the port. Constitution Street to the east resembles a town main street. The redeveloped Kirkgate runs between the Shore and Constitution Street. It retains the line of the original route in pedestrianised form and some of the original buildings along it, including South Leith Parish Church and Trinity House.

The physical and visual disruption to the spatial structure caused by redevelopment in the 1960s is significant and makes analysis and description of the structure more complex than first impressions convey. The major redevelopment programme of the 1960s was the final part of a continuum stretching back to the development of Great Junction Street in the 18th century and the late 19th century Leith Improvement Programme.

Great Junction Street is strongly linear with its sense of formality strengthened by the location of important institutions along its length, such as the former Leith Hospital, St. Thomas's Church, Dr. Bell's School, and its termination at the east by the clock tower of the former Leith Railway Station. Henderson Street demonstrates the Victorian interest in improving housing conditions; with its model tenements, broader street width, design for light and fresh air, and the

provision of amenity open spaces. The contrast with the later redevelopment of the 1960s is the use of 'traditional' urban design principles in relating buildings to each other, to their surroundings and to the street, and in providing mixed uses with 'active' street frontages.

The form of the Kirkgate Centre incorporates features, such as the separation of pedestrians and cars and the grouping of buildings around a precinct, which are a product of the urban design principles prevalent in British post-war reconstruction and the development of new 'satellite' communities.

Constitution and Maritime Streets echo the traditional street pattern. Although Constitution Street has been widened in parts, many of the narrow individual plot widths reflected in the building frontages and the differing building heights along it are reminders of the earlier street pattern. This traditional spatial structure is still apparent in the network of narrow streets and lanes with their changing widths and curving layouts that lead from the western part of the Shore. The frequent street interconnection, the pends running under buildings, the small scale of the perimeter blocks and the variety of properties within them all reinforce this character.

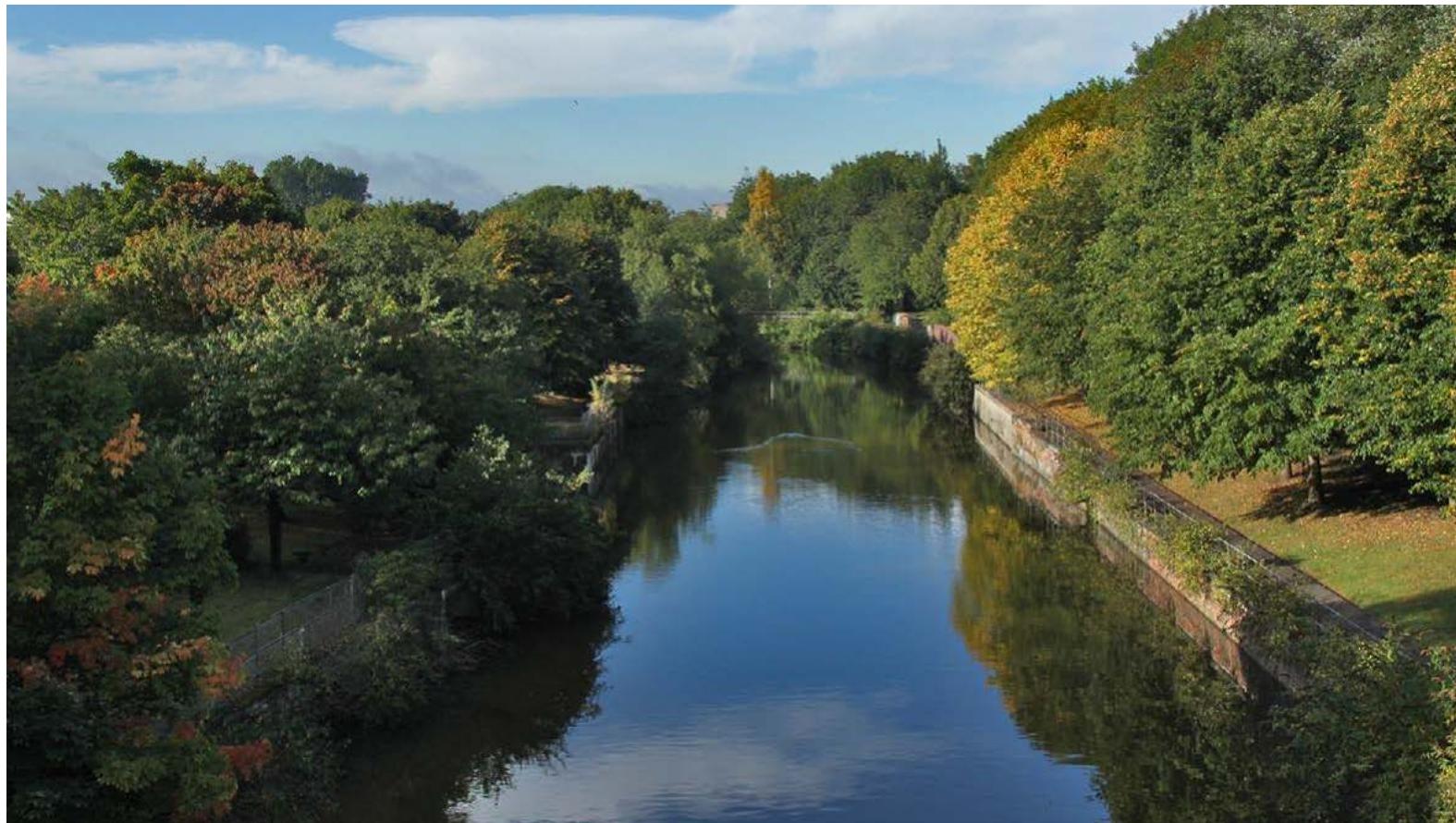
Maritime Street shows a change to predominantly larger plot sizes occupied by warehouses behind the Shore frontage. Many of these warehouses and bonds are now largely converted to residential use, they stand cheek by jowl just allowing lanes and wynds to squeeze between them, their bulk accentuating the narrowness of the lanes. This pattern of development reflects its functional origins and priorities for the efficient storage of goods, and though a number of warehouses have been lost, this area still retains a robust urban character.



Old Leith and The Shore

In the way that ancient road alignments tend to remain whilst the buildings change, the bends in the Water of Leith remains, gently angled by a series of straight edges evidence of early moorings. The bustle of port activity has been replaced by the calmer recreational pursuits of walking and cycling along the riverside walkway. Following the section of river in the Conservation Area there is a progression of moving from the openness of the parks on either side of its banks, to the enclosure of the inner harbour back to the present openness of the Port of Leith and eventually the sea beyond. Views through to the Port of Leith and the sea are being considerably eroded, it is very important that contact with Leith's maritime heritage and the operational port are not lost.

The river has varying combinations of development and space. On the east side of the Shore the continuity of frontages, the building line set to the pavement edge, and the road and quayside, contain the inner harbour. They frame it to give the impression of a long square and a focus for the area, especially to the cafes, bars and restaurants that look out over it. This impression is retained on the west side of the river, although development is more mixed and less tightly knit.



Leith

Conservation Area

Character Appraisal

Old Leith and The Shore

The north end of Constitution Street is terminated by Bernard Street in which the impression of a square is reinforced by a combination of the street layout, important civic and commercial buildings and their architecture. The Buildings of Edinburgh describes this part of Bernard Street as "Leith's most formal space, a broad triangle with the combined atmosphere of a street and a square narrowing at its west end as it jinks to the left for its exit to the Shore". The sudden turn of the street to the left at the west end means that the space is enclosed by buildings, an impression which is strengthened by exposed gable ends at the 'corners'. The former Leith Exchange with its giant ionic columns terminates the east side of the 'square'. However, the focal point is the former Leith Bank, the smallest building in the square. Only two storeys high, its ionic columns and bow front, the shallow domed roof over the banking hall, and the symmetry of the frontage with matching pilastered bays to each side all combine to give it a presence far greater than its size would suggest. The symmetry is reinforced by the way the tenements on either side step up from it, first to three and then to four storeys towards the corners. The north side, though different in interpretation is of a similar formula.



The buildings range over almost the whole of the 19th century, and although their contribution to creating the space may not have been due to a formal plan, neither was it completely by accident. They demonstrate the continuation of a civic tradition in the design of individual buildings which contribute to the creation of a sense of place, a belief that their combined presence is more important than their individual status.



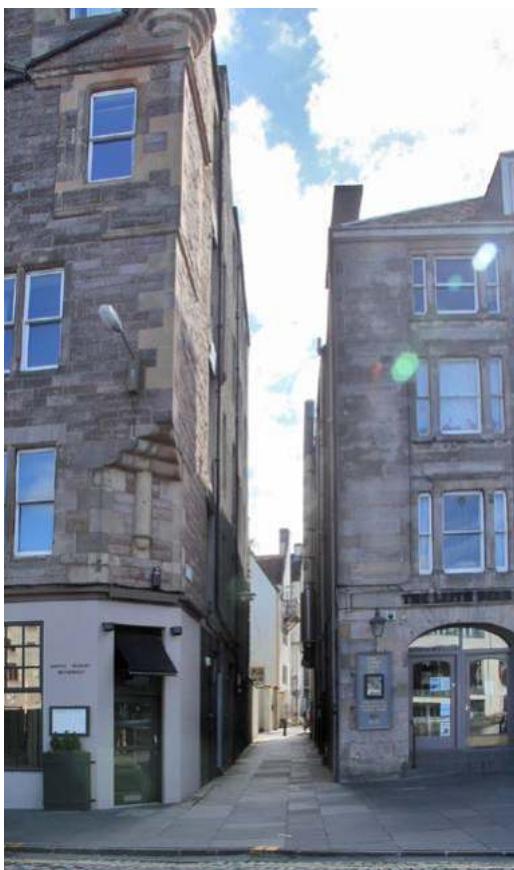
Leith

Conservation Area

Character Appraisal

Grain & Density

A dense fabric of closely grouped buildings separated by narrow lanes creates a distinctive character. The main routes through the area are those which define its edges: the Shore along the Water of Leith, Constitution Street and Great Junction Street. The centre of Leith has been identified as an area of archaeological significance.



Streets

Constitution Street was laid out at the end of the 18th century, along the line of one of the old ramparts of the 1560 fortifications. It is characterised by the juxtaposition of buildings of diverse architectural styles, dates and scales. These include Georgian villas, austere 19th century tenements, warehouses, and church buildings (St James', St John's and St Mary's star of the Sea).

Great Junction Street follows the line of one of the ramparts of the Leith defensive walls of 1560. It was laid out in 1818 and is one of the busiest roads in Leith. Its straight linear form contrasts with the narrower winding roads to the north. The street is defined by a long procession of mainly four-storey late 19th century tenements built hard to the heel of the pavement, and it is lined with shops at ground level, above which are a few small businesses but mainly residential properties. The tenement on the Henderson Street corner (Nos. 48-52) dates from 1885, and was the first buildings erected under the Leith Improvement Scheme. The former Leith Hospital forms a major architectural feature standing to the rear of Taylor Gardens. At the west end of the street the former Co-operative building with its distinctive clock tower overlooking Taylor Gardens, forms a major landmark and the view eastwards is terminated by the clock tower on the corner of the former Leith Central Station.

Spaces

The area has a medieval structure at the historic centre which is still reflected in the network of narrow streets and lanes, the frequent street interconnections, the small size of the perimeter blocks and the variety of properties.

The Foot of the Walk is closed visually by tenements at the end of the street. The west side of the street is set back behind large front gardens which opens up the space between building lines and gives a visual impression of Leith Walk terminating in a square overlooked by the statue of Queen Victoria. The location of the former Leith Central Station, the increase in pedestrians, the bus terminals and street junctions all reinforce a sense of arrival.

The Kirkgate was old Leith's main street with a lively and varied streetscape. The intimate urban pattern of winding streets and densely grouped buildings of the Old Kirkgate was lost in the redevelopment of this area during the 1960s. The remaining historic remnants include the 15th century South Leith Parish Church, the earliest building in the area, the Gothic revival style of which forms an interesting contrast to its opposite neighbour, the classically proportioned Trinity House.

Old Leith and The Shore

The New Kirkgate shopping precinct and housing development to the north disregard the distinctive organic structure and scale of the surrounding urban pattern. The Kirgate is a courtyard of low rise housing with zigzag rendered fronts which is terminated by the multi-storey slab of Linksview House.

The eastwards approach to the Shore along Commercial Street, with high buildings on both sides giving a strong sense of enclosure and direction, passes the monumental Customs House and opens out dramatically to reveal the Water of Leith, the Inner Harbour and the Shore, a space of historic and visual interest. Bernard Street cuts through the centre of the area and is lined with buildings of great architectural merit which reflect Leith's thriving past, epitomising the mercantile prosperity of the 19th century. It forms the civic centre of the Conservation Area and is Leith's most formal space; a broad triangle in which the effect of enclosure, the irregular form and articulation of the space enclosed, and the relationship of the surrounding buildings create a place of great architectural interest.

The harbour remains a significant open space in which interest is provided by the buildings and activities on either bank. The views in this part of the Conservation Area are mainly internal. At either end there are limited views through the bridge towards the Port of Leith and to distant church spires inland. Longer views down Henderson Street to the Port of Leith and up Constitution Street to Calton Hill and the Nelson Monument are also important.

The contrast between open space and enclosure at the Shore is reinforced by a wall of similar building heights and types set at the heel of pavement along the narrow quayside access road. Warehouses with a higher ratio of wall to window, where the windows are smaller and at wider spacing than tenements, accentuate the enclosure. Tenement and former warehouse development around the harbour is mainly 4 to 5 storeys, of continuous frontages and building lines, given vertical emphasis by gabled frontages and dormers.

The Inner Harbour of the Water of Leith provides a vibrant focus for the Conservation Area, the older parts of the Port of Leith, containing many early features including listed dock buildings. Scheduled Ancient Monuments associated with the Port of Leith consist of: the Victoria Bridge, the dry dock off Sandport Street, the swing bridge and lock at the East Old Dock, and features related to the Albert Dock.

Leith

Conservation Area

Character Appraisal

The spatial significance of Bernard Street is best appreciated when entering at the east and wider end where the street gradually narrows and changes direction, masking the western outlet and giving a powerful enclosing effect to the street space. The quality and cohesive grouping of the flanking buildings, the variety of their architectural styles and roof shapes, and such incidental features as the decorative cast iron lamp posts are part of the street's individual character and visual interest.

Early 19th century Georgian buildings line much of the south side of Bernard Street. The centrepiece being the former Leith Bank (1804) an elegant two storey classical structure with an Ionic-columned bow window standing on an island, separated by narrow lanes on either side from the neighbouring three and four-storey blocks and flanked by symmetrical tenements of 1807-15. The north side is more varied with the Italianate former Royal Bank of Scotland (1871-2) at the east end, followed by the Clydesdale Bank (1923), in a modernistic neo-Georgian. Then the early 19th century Nos. 8-14, adjoining a mid-Victorian palazzo, followed by the twin bows of Nos. 22-24. The north side of the final section of Bernard Street is lined with late Georgian buildings. The restrained Georgian grouping is broken by the Baronial detailing of Nos. 50-58.

Building Types

Warehouse conversions in Maritime and Water, Streets and Timber Bush show how the traditional character can be preserved. Overall their conversion retains the sense of confinement given their robust stone construction, pend entrances, punched windows, and cast iron work detailing. The retention of the original streetscape of setts and stone kerbs, iron rails and cart track stones, heavy cast iron bollards protecting corners and entrances all still convey an image of a busy maritime past.

New developments have shown mixed responses to the traditional character of the area. Sheriff Bank and Park with their suburban layout, frequent changes in scale, miniaturised proportions and orange brick, do not reflect the traditional character. The recent developments in Shore Place and Bowies Close, retain and tie in sympathetically with existing buildings at either end of the street, their frontages replicate narrow plot widths giving a vertical emphasis which is reinforced by changes in material and traditional gables.

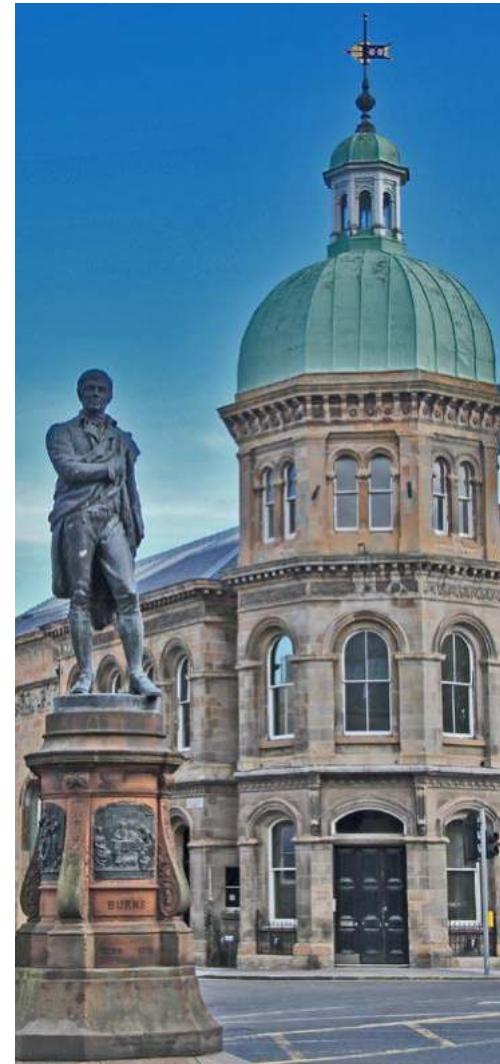


Landmarks

The bronze statue of Burns (1898) stands at the junction of Bernard Street and Constitution Street, adjoining the massive five storey Waterloo Buildings (1820) with its setback bowed corner, which is the largest and grandest of Leith's Georgian tenements. Distinguished buildings such as the old Corn Exchange, and the dignified 18th century Exchange Building provide a strong civic character to the junction. The Italianate former Corn Exchange (1860-3) emphasises its prominent corner site with an octagonal domed tower surmounted by a cupola, flanked by two storeys of arcaded windows and incorporates a distinctive carved frieze.

A number of significant early historic buildings are located in the Shore area. These include:

- The circular battlemented Signal Tower, built in 1686 by Robert Mylne as a windmill for making rape-seed oil, which forms an important focal point at the corner of the Shore and Tower Street.
- Lamb's House in Water's Close off Burgess Street is one of the largest and most architecturally important early 17th century merchants' houses in Scotland. It is an impressive four storeys, incorporating traditional architectural features such as harled walls, corbels, asymmetrical gables, crowsteps, a steep pitched pantiled roof, and windows with fixed leaded upper lights with shutters below. The building was restored and converted into a day centre for the elderly in 1959 by Robert Hurd and has recently been refurbished as a house and office by Groves Raines Architects.
- St Ninian's Church and Manse which dates from circa 1493 with later reconstructions. The building incorporates a distinctive ogee spire, and has been recently restored and converted for residential / commercial.
- The King's Wark at the corner of Bernard Street and The Shore has characteristic Dutch gables and scrolled skewputts in typical early 18th century fashion. It stands on older foundations and was part of a complex of buildings that included a chapel, royal mansion and tennis court.



Old Leith and The Shore

- The Custom House in Commercial Street was designed by Robert Reid in 1812. Its Greek Doric Revival style is typical of the way Leith buildings of the period tended to reflect on a smaller scale those of the neo-classical New Town of Edinburgh.

Notable buildings on Great Junction Street include:

- The former State Cinema at No. 105 dating from 1938 in a Modern Movement style with white geometric walls massing up to a pagoda inspired tower.
- An Edwardian Art Nouveau inspired group at 160-174 which includes the former Leith Provident Cooperative Society building with its imposing domed octagonal corner-tower and a four-storey red sandstone fronted Glasgow style tenement dating from 1905.
- The long Tudor frontage of Dr Bell's School which dates from 1839 with its crowstepped screen walls, octagonal piers and ornately canopied niche containing a statue of Dr Andrew Bell who endowed the school in 1831. It was taken over by the Leith School Board in 1891 (becoming the Great Junction Street School). At the rear of the original building, the Swimming Baths of 1896 reflect the architectural style of the school.
- St Thomas's is a plain late-classical church dating from 1824-5.

Notable buildings on Constitution Street include:

- Leith Assembly Rooms and Exchange (Nos. 37-43), dating from 1809. The Exchange Building was built as a meeting place for merchants, and incorporated the Assembly Rooms which were the centre of old Leith's social scene while the Exchange and Bernard Street were regarded as the commercial centre. The building presents a long three storey frontage to Constitution Street with a central pediment incorporating Ionic columns. It fits in well with the scale of Bernard Street creating a varied but unified composition.
- Leith Town Hall and Police Station is located at the north east corner of Constitution Street and Queen Charlotte Street. A robust monumental neo-classical building which makes excellent use of its corner site.
- 92 Constitution Street was built as a merchant's house in 1793 and with its giant Corinthian pilasters and urns surmounting the pediment is the grandest late 18th century house in Leith.

Leith

Conservation Area

Character Appraisal



Streetscape & Activity

The robust streetscape enhances the character of the medieval core and the harbour.

Leith is an intensively developed urban area with a multiplicity of land use activities co-existing with the predominant residential use. It contains a full range of social, commercial and community facilities, and performs an important shopping and service role for people working and living in the area. There has been a substantial reduction in Leith's traditional manufacturing industries around which its growth was based. However, industry remains an important land use in Leith, but is now spread across a more diverse base with increasing growth in the service and technology sectors.

The business area is centred on its historic core and contains a variety of commercial activities amidst housing and shops. The office of the Scottish Executive is based at Victoria Quay, and the Port of Leith are an important port with some 2000 jobs based in the dock area. Outside of the historic core residential uses within mainly tenemental property, with retail uses on the ground floors, predominate.

Leith's urban heritage and identity also make it a pleasant and stimulating place to live, work and visit. The range of mixed uses contributes considerable pedestrian movement and an active 'street life', an important feature in the area's character. Its riverside location and the increasing range of restaurants and similar establishments have also made it an attraction for tourists and other visitors.



In the historic core of Leith, the street pattern retains elements of its medieval form and most of the principal roads within the Conservation Area were established in the 19th century. The flow of large commercial vehicles and other traffic detracts from their environmental quality. Redevelopment on the northern fringes of the Conservation Area herald further retail, office and residential development.

The streetscape at the Shore matches the character of the medieval core and the robust surfaces required for the harbour. Most of the streets are setted with stone kerbs intact. The quay side is separated by bollards with chains linking them. Many of the capstans used to tie up boats remain in place. The contemporary design of the new dock gates, the sculptures and tree guards reinforce the prevailing character. Good examples of the reinstatement of original railings and a contemporary gateway supporting a globe can also be found in Dock Place. Throughout the area there are many early 20th century street lighting standards with decorative brackets.

Madeira - Leith's 'New Town'

Leith
Conservation Area
Character Appraisal

Special Characteristics and Key Elements

Topography and Setting

Grain and Density

Views

Streets

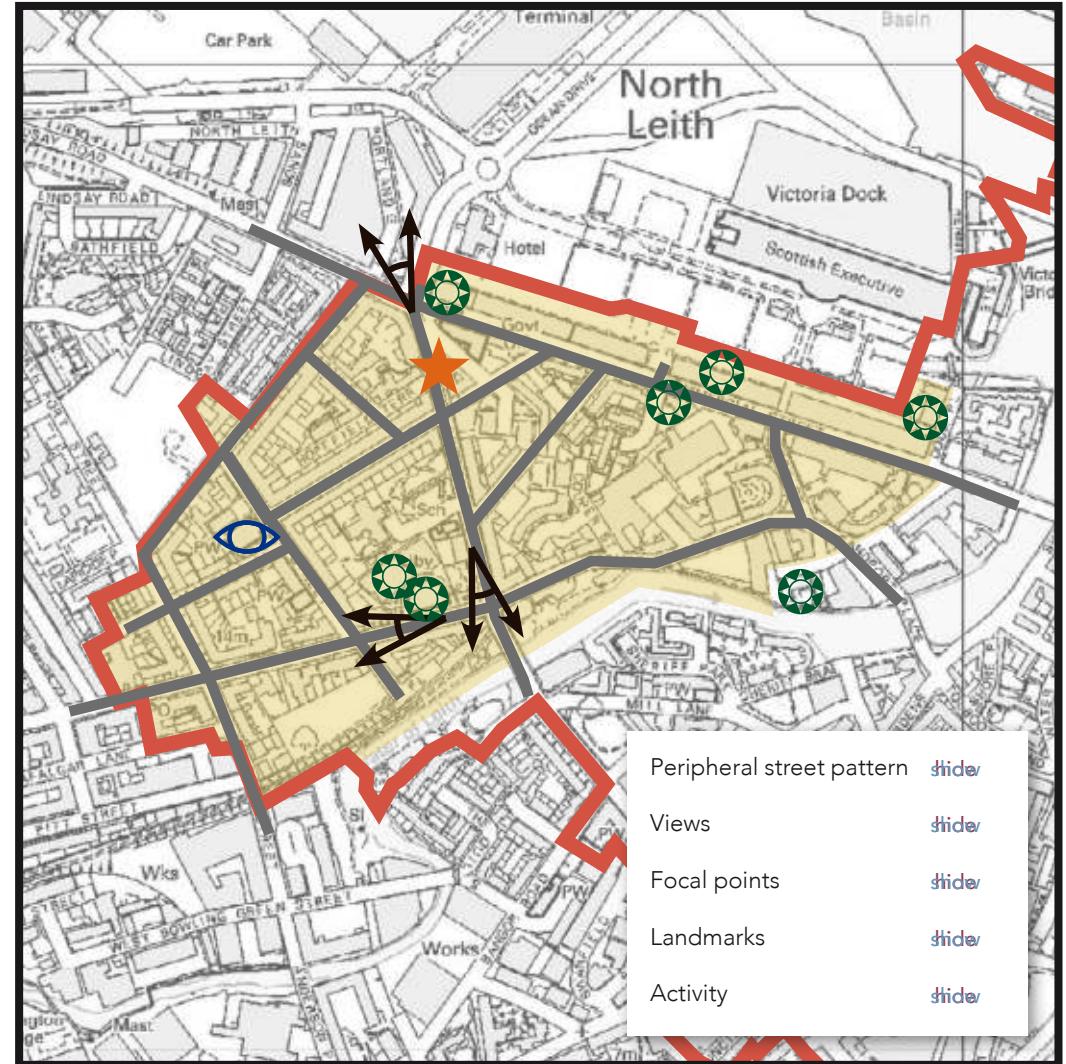
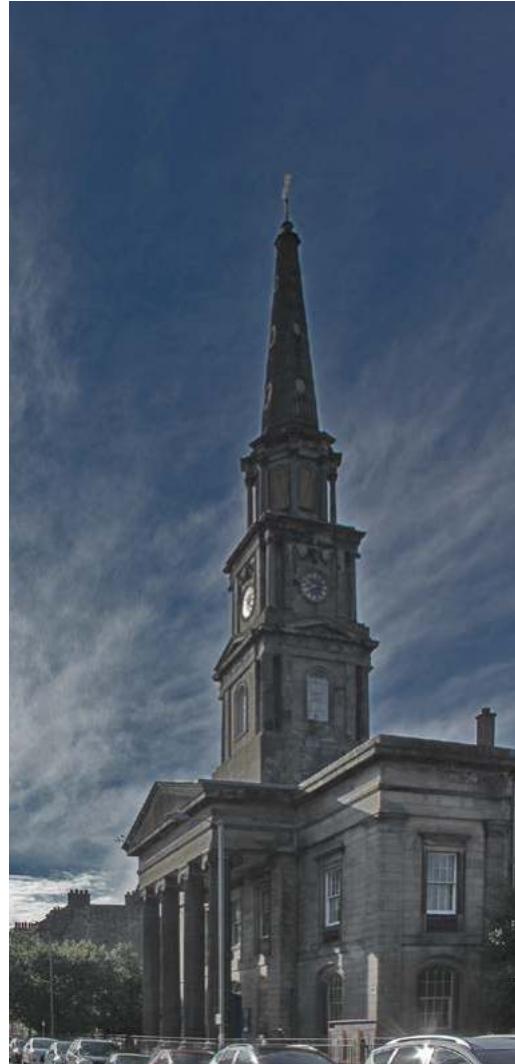
Development Pattern

Building Types

Landmarks

Materials & Details

Streetscape & Activity



Topography & Setting

Madeira forms a triangular area in the west of the Conservation Area. The north side is bounded by the bonded warehouses which run along the entire length of Commercial Street; the west by the high stone wall of Leith Fort, which runs down one side of Portland Street; and the east by the Water of Leith.

Views

The former Town Hall and main library are located at the start of Ferry Road indicating a historic change of focus for Leith's institutions. The most impressive landmarks are the bonded warehouses along Commercial Street, North Leith Parish Church with its tall and elegant spire which acts as a focal point in views along Prince Regent and most recently the new Scottish Executive Office at Victoria Quay.

Much of the area is introspective with planned or glimpsed views to the spire of North Leith Parish Church, some of these views down lanes, through gates and pends, to the cemetery and the rear of the Library create considerable interest and charm. From the bridge over the Water of Leith, views open out back to the city with Calton Hill and the Castle visible either side of the warehouses along South Fort Street.

Development pattern

Madeira retains the appearance of a planned extension with its focus on North Leith Parish Church. Development, however, was sporadic and took place over much of the 19th century. The formality of the street layout, the apparent symmetry of the Georgian architecture and disposition of key buildings to create focal points and vistas all contribute to the impression of this area as Leith's own version of the New Town.

This formality is best demonstrated today by Madeira Street and Prince Regent Street, terminated by North Leith Parish Church, in a layout which is an example of scaled down classically inspired urban design. The approach uphill from the Port of Leith to the Church is processional, the climb up the hill accentuating the separation from the water's edge. The uniformity and formality of the layout along Prince Regent Street is softened in the surrounding streets by subtle variations in plot size and building design. The mix of plot widths, the variety of architects involved, the differing house types, larger front gardens and an air of faded grandeur all help to reinforce a more informal and relaxed character.

Ferry Road, the main access to Madeira, is at this point more densely developed and provides a more urban environment of tenements with a mix of commercial uses at ground floor. The intersection with Great Junction Street is the setting for the Town Hall and main library built in the 1930s. Relief to this more urban character is provided by the Memorial Gardens along North Junction Street, Keddie Gardens off Largo Place and the gardens with gable wall mural at the corner of Ferry Road and North Junction Street.



Grain & Density

A number of modern developments have not been sympathetic to the spatial structure. The housing along Portland and Commercial Streets is suburban in scale, although its backland location makes it less apparent. The tower block at Cooper Street is set across the middle of the old street line. The west bank of the river as it approaches the Shore becomes an area of transition from the mainly residential character of Madeira. The mix of small industrial estates, infill 'suburban' housing developments and vacant sites, make the spatial structure less intact and distinctive than that on the east of the Shore. Many of the now subsidiary streets appear to have connected with the water, suggesting a previous need for direct access routes convenient for earlier modes of transport. Whilst the bonded warehouses along Commercial Street form a barrier between Madeira and the port, the connections between these routes and the gaps between warehouses are still apparent.

Streets

The majority of routes into the area link it back to the historical core of Leith. From the east, four bridges cross the river and act as gateways into the area. From the west the descent on the coast road, Lindsay Road, to the raised walkway and six storey mass of the bayed tenement at the corner with North Junction Street creates a sense of passing through into a more dense and urban form of development. Junctions are usually associated with a sense of arrival at the centre of a settlement, but in Leith they are also in gateway locations.

The most used approach today is along Ferry Road, where the boundary and development of the Conservation Area is conterminous with that of the Victoria Park Conservation Area. Ferry Road is one of the oldest routes leading to and from Leith and whilst sequences of differing building heights are discernible along it, these appear to relate to the growth of formerly independent settlements rather than an intention to form gateways.

Ferry Road and Great Junction Street are bounded by a continuous building line, usually of four storey tenements with shops on the ground floor set to the heel of the pavement. Residential uses predominate on the side streets. There is a continuity of three storey tenements along Madeira and Prince Regent Streets, but beyond the building sizes are more mixed. They range from single storey cottages, colony type flats, terraced villas to three and four storey tenements, at some corner locations with shops projecting into the front garden space. Despite this mix they are characterised by a terraced form, and a continuous street frontages only rarely broken by mews lanes or pends through to the rear. Their use of standard proportions, sash and case windows, a similar sand stone and slate roofing reinforces a sense of uniformity, even if less formal than the New Town.



Building Types

The north side of Commercial Street is occupied almost entirely by former bonded warehouses on a continuous building line right to the heel of the pavement. Their blackened stone work, small window openings, lack of access doors to the street, long eaves and ridge lines are only relieved by changes in height and the occasional rotunda providing light and ventilation to the floors below. Property on the other side of the street includes Leith's original railway station and is more mixed in use and in form.

Landmarks

Madeira Place, with a terrace of circa 1825 on its north side, leads to Madeira Street which has North Leith Parish Church as its centrepiece. The church, with its Greek Doric portico and classical steeple, is an important early example of the Greek Revival style by William Burn and provides a visual focus to this mainly residential area, which also includes major public buildings such as Leith Library and Town Hall.



Materials & Details

The Madeira area retains a largely homogeneous Georgian domestic character, with stone buildings and slate roofs predominating; some of the Georgian buildings retain astragal windows and doors with fanlights.

Streetscape & Activity

The main routes in the area foresaw large volumes of traffic and are significantly broader and straighter than those of the early historic core. With tenements and warehouses directly onto the pavement, they have a robust and practical character, sometimes marked by the remains of railway or tram lines lined by the high Fort stone walls; sturdy cast iron bollards, some of which have recently been identified as old canons, with gates and weighbridges at the accesses to the Port of Leith.

Many of the roads are setted, the main exception being Prince Regent Street, and stone garden walls are a feature of the area.

Leith

Conservation Area

Character Appraisal

Special Characteristics and Key Elements

Topography and Setting

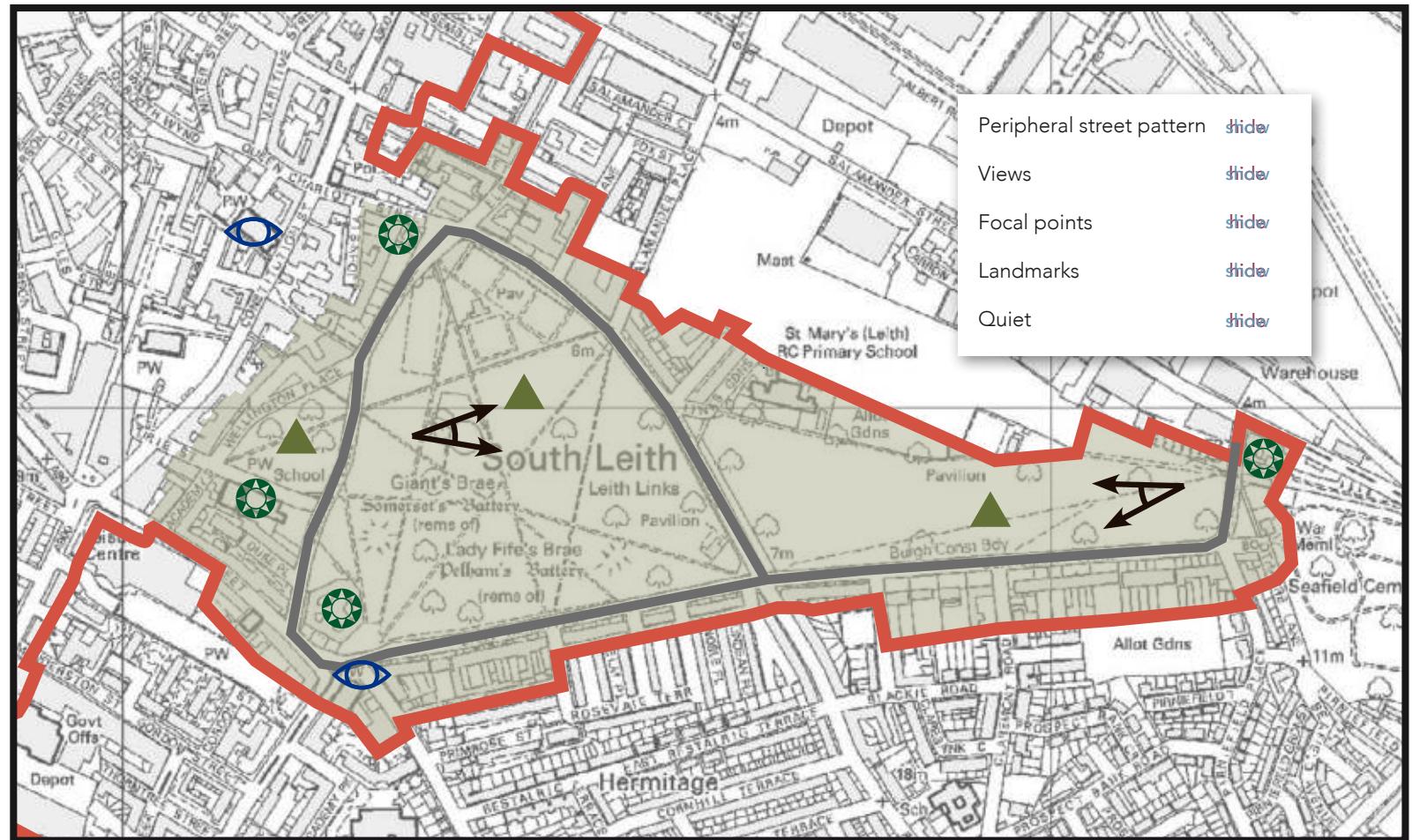
Views

Streets

Scale

Landmarks

Materials & Details



Topography & Setting

Leith Links is located to the east of the Conservation Area and is similar in character to those other parks and gardens in Edinburgh, for example the Meadows and Pilrig Park, formed by the draining of former lochs. Development is confined to the outer side of all the roads surrounding it and while the sense of containment by development is greater to the west nearly all the edges are dominated by mature trees. The exception is that part of the north east edge fringed by industrial premises.

Leith Links forms the largest area of open green space in the Conservation Area. The Links once extended as far as Portobello and are intimately associated with the history of Leith. The two visible mounds on the Links, known as the Giant's Brae and Lady Fyfe's Brae, are reputedly old gun emplacements dating back to the siege of Leith in 1560 when the English army bombarded the French held citadel. It was also where the sick were brought during the great plague of 1645. The Links have long provided a recreational facility for Leith being the home of the Leith Races and in the 17th and 18th centuries were recognised as Edinburgh's premier place for golf. It is likely that the golf course was an attraction that resulted in the construction of many fine houses close to the Links.

The present layout of the Links was established in the 1880s as part of the Leith Improvement Scheme. They form the most extensive area of parkland in Leith covering an area of 48 acres (19.44 hectares), and are bordered by John's Place on the west side, Seafield Place on the east and are dissected mid-way by Links Gardens. Their open expanse is in striking contrast to the densely developed parts of Central Leith and areas south of the Links. They form an attractive, large open space with tree-lined avenues and walkways and are used for a whole range of recreational purposes. Facilities include putting and bowling greens, cricket and football pitches and a children's play area. Walkers, joggers and families also extensively use the Links for games and picnics. An allotment area is situated on the north side.

The Links have been designated as a Millennium Park, a status that ensures that it will be protected for the future, and the Artillery Mounds on the Links are Scheduled Ancient Monuments. The park is also recognised as a neighbourhood nature area within the Nature Conservation Strategy.

Leith

Conservation Area

Character Appraisal



Views



The focus created where the north ends of Easter and Lochend Roads meet is marked by Leith - St. Andrews Church and the former Leith Academy. Views westwards along Vanburgh Place and through the Links focus on the church spire of Leith St. Andrews and to the bell tower of the former Leith Academy Annex, which terminates the north end of Easter and Lochend Roads. In the distance the spire of St. James Church, once at the heart of the town and still a major landmark, soars above the tree canopy. The tower of Kirkgate House looms up to one side.

The prospect westwards from Hermitage Place has panoramic qualities with the broad expanse of the Links and, in the background, an interesting sequence of contrasting but well-related buildings: Leith Academy, the terraced houses in Wellington Place, massive warehouses with their regular pattern of windows, the Victorian Gothic Church of St James, the unified Georgian terrace in John's Place and the late 18th century detached houses in Queen Charlotte Street.

Duncan Street and John's Place lying behind Constitution Street reflect a more urban character with their mix of institutional and educational uses, churches, warehouses and Georgian tenements. The small triangle of park at Wellington / St Andrew's Place is developed on two sides and could have the appearance of a village green.

Around part of the north side, a harder character is maintained by Victorian tenements. Smaller streets on to Link's Place create permeability. Villa development is located to the south looking over the longest side of the Links and gradually reduces in density as it extends away from the centre.

Leith

Conservation Area

Character Appraisal

Streets

The openness and greenery of the Links is in contrast to its approaches. From the north east, it is completely obscured by industrial premises and the access is via a sharp turn off from Seafield Road which then passes under a former railway bridge before trees and green are revealed. At the corner of Seafield Road, in the midst of industrial and warehouse sheds, stands the former Seafield Baths, now converted on the ground floor to a public house with flats above. Dating from 1810-13, the building with its projecting doric porticos, linked above by shallow domed roofs forms one of the most graceful buildings turning a street corner in the whole city.

The approach from the west is through the narrow confines of Duke Street. The Links provides a sense of release from Leith's densely tight urban core. The tapering form of the Links accentuates the perspective, making it seem longer and even more spacious. The terraced villas have short front gardens which create a transition in planting from the trees around the Links. There are gate openings for pedestrian access and none of the gardens has been given over to off street car parking. Continuity is given to the varying plot sizes on the south side of the Links by small dwarf walls and railings.

The western side of Leith Links is surrounded by a continuous line of four storey buildings of good architectural quality, which provide a strong edge to the park. The eastern end of the Links tapers to a narrow point, lined on the south by particularly fine two storey Georgian terraces and villas set behind stone boundary walls, and on the north by industrial buildings behind Salamander Street. The sense of containment is enhanced by well-established mature tree planting.

The group of buildings on Claremont Park, designed by Thomas Hamilton from 1827, is of outstanding architectural quality. Designs vary but unity is provided by gatepiers with shallow pyramidal tops and linking screen walls separating the back and front gardens. The terrace on East Hermitage Place, was commenced by the Industrial Co-operative Building Society in 1868, but not completed until 1883. Robert Burn drew up the plan for West Hermitage Place in 1800, and, in 1825, Thomas Bonnar prepared elevations for the unfeued plots. It contains a simple terrace dating from 1805, and later grander houses incorporating rusticated stonework and typical Georgian decoration. Vanburgh Place, a unified terrace, was designed and built by William Lamb from 1825.

Leith

Conservation Area

Character Appraisal



Scale

The earlier villas along Hermitage/Vanburgh Terrace are two storey terraces with the rhythm of their narrow plot widths emphasised by repeating bay windows, original attic dormers and chimney heads giving vitality to their long frontage. These continue down to the entrance to Restalrig Road and are followed by five tenemental four storey blocks. From here to the end of the Links, the villas are two storey semi-detached and detached.

Landmarks

At the east end of the Links are the gates, railings and lodge to Seafield cemetery. Their potential to terminate the view at the end of Claremont Park is partially obscured by mature trees. However, this makes their discovery one of Leith's surprises. Trees also obscure the former St. Andrews Place Church, now the Hindu temple. Its full height pedimented portico and giant ionic columns create a frontage of real presence.

Materials & Details

Unity is given to terraced and detached villas by the continuity of small dwarf walls with railings on the same line along the heel of the pavement. This detail continues along the larger plots of the detached and semi-detached villas where the street becomes Claremont Park. Here entrances are marked by repeating stone gate piers with shallow pyramidal caps and the remains in most cases of cast iron brackets presumably for lights. These provide for vehicular access, and some villas have screen walls separating front and back gardens. 'The Buildings of Edinburgh' cites these villas between the tenements and red sandstone houses at the east end of Claremont Park as " a line of villas whose concentrated architectural quality makes it among the best such group in Edinburgh."



Special Characteristics and Key Elements

Topography and Setting

Grain and Density

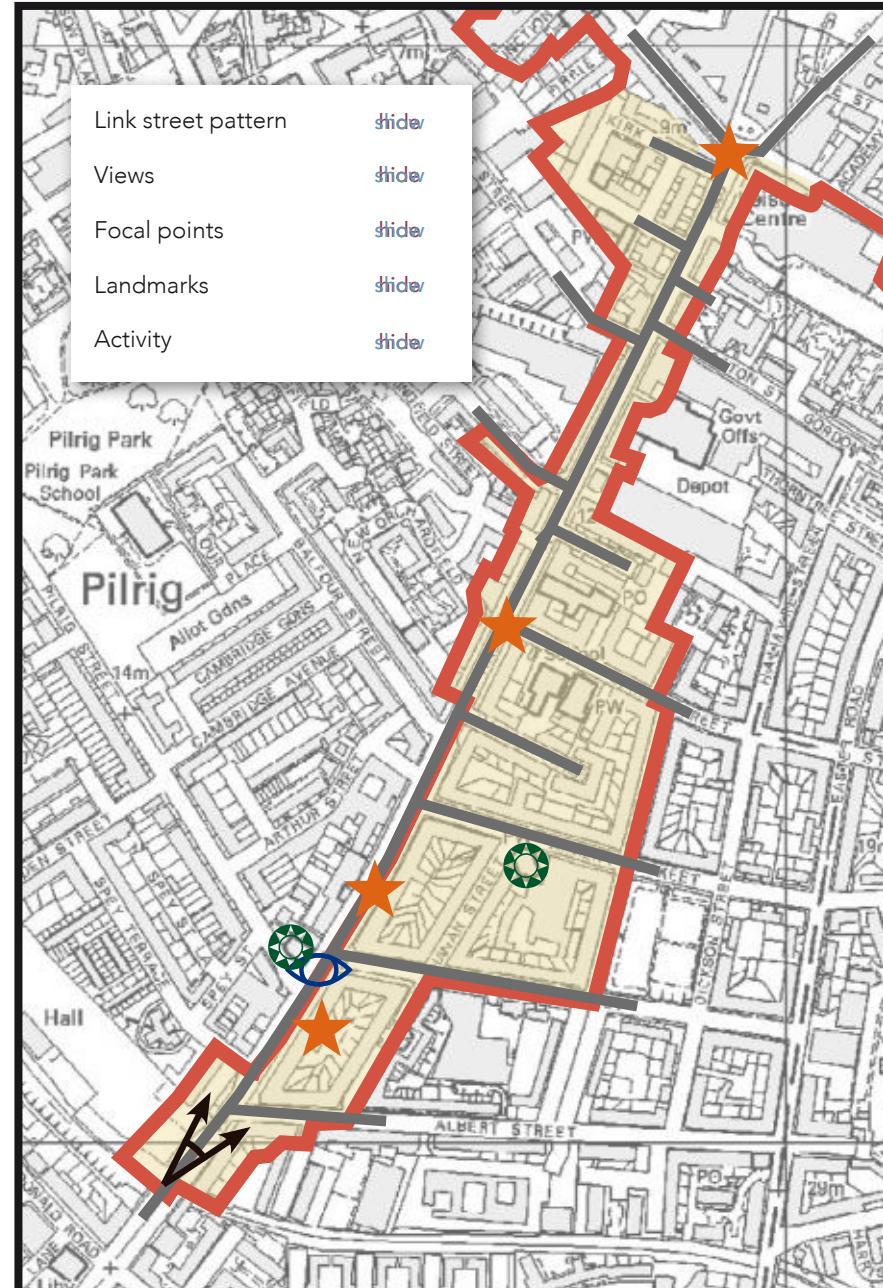
Streets

Landmarks

Leith

Conservation Area

Character Appraisal



Leith Walk - Special Characteristics

Topography & Setting

Leith Walk is one of the most important routes in the city. Its continuity as it stretches gradually downhill from the city centre is so prominent that it is clearly visible from many high vantage points around the city. It links the old fortified town of Edinburgh and its sea port, as other European capital cities are linked with their ports.

Grain & Density

Leith Walk is characterised by a mix of buildings of widely varied design, use, quality and relationship to the street. Victorian tenements set to the heel of the pavement predominate, particularly on the east side, with shops and pubs at ground floor level. The west side is less co-ordinated with Georgian development, tenements and industrial buildings. There are number of Georgian survivals, notably Smith's Place, which was laid out as a cul-de-sac by 1814. It consists of a palace fronted block on its north side, later plainer tenements on the south and an architecturally significant two storey villa, with a rusticated basement and Venetian windows, terminating the eastern end of the cul-de-sac. The building at 7 Steads Place is a former small country house dating from around 1750 and is one of the earliest on Leith Walk.

Streets

Leith Walk starts outside the Conservation Area. The steep slope and narrow street width down from the former North British Hotel frames the dramatic view up to its landmark clock tower. To the north, from the Picardy Place roundabout the views are gradually restricted by the changing street width. From the roundabout and clock at the junction with London Road the street seems to pick up momentum for its journey northwards. The slope downhill and the gentle curve draw the traveller along the street in the absence of any one particular focal point, until Kirkgate House becomes visible. Pilrig Church acts as a pivot to this curve helping to add to the momentum. The Foot of the Walk with its set back to the west gives the impression of another elongated square like that at Bernard Street, and provides a sense of arrival. The gently curving form of the street is accentuated by the greenways, heavy white lines and raised central reservation. Many of the side streets retain their setts which reflect the different colours of sandstone in the buildings giving an 'integrity' to the townscape and helping to slow traffic.

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Leith Walk - Special Characteristics

A hard continuous edge is given to the east by almost uniform and repetitive tenements. These continue to form traditional perimeter blocks around common greens down the side streets. These are given life by the local communities and the variety of goods and services on offer in ground floor premises.

The side streets to the east are mainly residential, but several include churches or a school and just to the edge of the area are completely taken up by a park such as at Iona / Sloan Streets. One exception to this block form is Smith's Place, the focus of which is the splendid decorative and pedimented villa by James Smith.

The development pattern, building types and uses on the west side are more diverse. Tenements are still the predominant form, but they show much greater variety in their design, heights, building lines, roofscapes and ages which in many cases look much earlier than that to the east. In places tenements are interspersed with town houses or smaller tenements well set back with front gardens to the street. Middlefield is a small Georgian mansion which has development in its original front garden and the corner tenement into Pilrig Street is followed by Georgian villas gently stepping down the hill towards Pilrig Park.

Casselbank Street with its mix of Turkish and gothic inspired architecture is set against more Georgian survivals. This demonstrates the importance of the building line and the perimeter block as organising elements in the development pattern and shows, in contrast to the formal and planned development of Smith's Place, how an informal and almost romantic architecture can also produce significant townscape.

Leith Walk is a busy urban thoroughfare and the main road linking the centre of Edinburgh to the old burgh of Leith. It has a strongly directional character, rising gently from the Foot of the Walk, with linear vistas. It is terminated to the north by the tower block of the New Kirkgate development which contrasts with the visual scale of the bay fronted Georgian building at the Foot of the Walk which forms the foreground.



Smith's Place



Casselbank Street

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Landmarks

The Foot of Leith Walk, where four roads and a pedestrian route meet, is an important arrival point in the Conservation Area and a lively commercial and social focal point. The bronze statue of Queen Victoria, which stands in a central position in the area of open space with a low bow fronted Georgian block as a backdrop, is one of Leith's principal landmarks.

Kirkgate House, despite its camouflaged outline, towers over the Foot of the Walk making it appear out of context with its surroundings. Pilrig Church with its cascading roofscapes to Pilrig Street and its spire and eastern facade which terminate Iona Street are as good as the set pieces in some of the city's better known locations. Less dominant, but with the reflection of a different culture, the accentuated roofscapes and distantly familiar timber belfry of the Ukrainian Catholic Church gives added interest to Dalmeny Street.

The spiky Gothic spire of Pilrig and Dalmeny Street Church, approximately halfway down Leith Walk, is a conspicuous and important landmark at what was the old boundary between the City of Edinburgh and the former Burgh of Leith. A slight curve in the street line at Pilrig prevents a continuous vista along the full length of the street.



Management - Legislation, Policies and Guidance

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Conservation areas

The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states that conservation areas "are areas of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance". Local authorities have a statutory duty to identify and designate such areas.

Special attention must be paid to the character and appearance of the conservation area when planning controls are being exercised. Conservation area status brings a number of special controls:

- The demolition of unlisted buildings requires conservation area consent.
- Permitted development rights, which allow improvements or alterations to the external appearance of dwellinghouses and flatted dwellings, are removed.
- Works to trees are controlled (see Trees for more detail).

The demolition of unlisted buildings considered to make a positive contribution to the area is only permitted in exceptional circumstances, and where the proposals meet certain criteria relating to condition, conservation deficit, adequacy of efforts to retain the building and the relative public benefit of replacement proposals. Conservation area character appraisals are a material consideration when considering applications for development within conservation areas.

Listed buildings

A significant proportion of buildings within Leith are listed for their special architectural or historic interest and are protected under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. Listed building consent is required for the demolition of a listed building, or its alteration or extension in any manner which would affect its special character.

National policy

The Scottish Historic Environment Policy (SHEP) is the strategic statement of national policy relating to the historic environment.

The Development Plan

The Edinburgh City Local Plan sets out policies and proposals for the development and use of land in the City. The policies in the Plan are used to determine applications for development.

In broad summary, the key policy areas affecting the Leith Conservation Area are:

- Design of new development DES 1, 3, 5, 11, 12
- Listed buildings ENV 2-4
- Conservation areas ENV 5-6
- Historic gardens and designed landscapes ENV 7
- Archaeology ENV 8-9
- Trees ENV 12
- Natural heritage and nature conservation ENV 10-16

The proposed City of Edinburgh Local Development Plan (LDP) contains broadly similar policies and is a material consideration in current planning decisions.

Planning guidance

More detailed, subject-specific guidance is set out in Planning Guidance documents. Those particularly relevant to the Leith Conservation Area are:

- Guidance for Householders
- Guidance for Businesses
- Listed Buildings and Conservation Areas
- Developer contributions and affordable housing
- Edinburgh Design guidance
- Communications Infrastructure
- Street Design Guidance - draft to be published

In addition, a number of statutory tools are available to assist development management within the conservation area:

GPDO and Article 4 Directions

The Town and Country Planning (General Permitted Development) (Scotland) Order 1992, amended 2012, (abbreviated to GPDO), restricts the types of development which can be carried out in a conservation area without the need for planning permission. These include most alterations to the external appearance of dwellinghouses and flats. Development is not precluded, but such alterations will require planning permission and special attention will be paid to the potential effect of proposals. See Guidance on Householder Permitted Development Rights 2012.

Under Article 4 of the GPDO the planning authority can seek the approval of the Scottish Ministers for Directions that restrict development rights further. The Directions effectively control the proliferation of relatively minor developments in conservation areas which can cumulatively lead to the erosion of character and appearance. The Leith Conservation Area has Article 4 Directions covering the following classes of development:

- 7 The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure;
- 23 The extension or alteration of an industrial building or a warehouse;

- 24 Development carried out on industrial land for the purposes of an industrial process;
- 25 The creation of a hard surface within the curtilage of an industrial building or warehouse;
- 35 Development on operational land by statutory undertakers in respect of dock, pier, harbour, water transport, or canal or inland navigation undertakings;
- 38 Development by statutory undertakers for the purpose of water undertakings;
- 39 Development by public gas supplier; and
- 40 Development by electricity statutory undertaker.

Trees

Trees within conservation areas are covered by the Town and Country Planning (Scotland) Act 1997. This Act applies to the uprooting, felling or lopping of a tree having a diameter exceeding 75mm at a point 1.5m above ground level. The planning authority must be given six weeks notice of the intention to uproot, fell or lop trees. Failure to give notice will render the person liable to the same penalties as for contravention of a Tree Preservation Order (TPO).

TPOs are used to secure the preservation of trees which are of significant stature, in sound condition, and prominently located to be of public amenity value. When assessing contribution to amenity, the importance of trees as wildlife habitats will be taken into consideration. There is a strong presumption against any form of development or change of use of land which is likely to damage or prejudice the future long term existence of trees covered by a TPO. The removal of trees for arboricultural reasons will not imply that the space created by their removal can be used for development.

Landscape and Biodiversity

The Council has an obligation to take account of the impact of development on species protected by legislation and international commitments. The Nature Conservation (Scotland) Act 2004 places a duty on all public bodies to further the conservation of biodiversity as far as is consistent with their functions.

Landscape and Scenery

Local Nature Sites and Protected Species

Archaeology (historical map)

Leith's archaeology contains some of Scotland's best urban archaeological deposits and historic buildings. Recent excavations within its historic core have established evidence for a pre-burgh (pre 1128) settlement and for the development of the town and port from 12th century to the present day.

The wealth of archaeological remains and artefacts has aided the understanding of medieval domestic life. Due to Leith's role as a port and its importance in the development of trade, there is a vast legacy of industrial and maritime artefacts still visible including cranes, dry docks and warehouses.

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Management - Pressures and Sensitivities

The following pressures are associated with development proposals which conservation area designation, together with the Council's policies and guidance, are designed to manage. The Edinburgh Design Guidance, Guidance for Householders and Listed Buildings and Conservation Areas explain the Council's approach to design in historic contexts.

Townscape

The quality of the townscape is a critical factor in the enhancement of the conservation area. It is essential that the traditional townscape character is preserved and enhanced, and that a high quality, sustainable and vibrant environment is created for present and future communities. Respect for design should be demonstrated in the way new buildings are inserted into the framework of the existing townscape; on the one hand respecting its scale and form while on the other producing contemporary architecture of the highest quality.

Public Realm

The public realm of Leith offers a wealth of streets, squares and spaces, gardens and pedestrian spaces which act as a setting for the historic buildings and make an important contribution to the architectural character of the area. However, many of

these would benefit from improvement. There are also few linkages available to the Port of Leith, and integration is essential between the port and the tenemental heartland.

Public realm improvements should take account of a range of issues including; transport movement, pedestrian flow, street furniture, lighting and landscape quality.

The main objective is to ensure that the public realm is regarded and understood as an historic element of the Leith Conservation Area, and that any alterations to it take the historical and cultural significance of the public realm into consideration.

Architectural Character

Leith's architectural character with both civic and commercial institutions reflects its former independence and maritime history. The historical and architectural importance of Leith is reflected in the concentration of statutorily listed buildings in the area. However, many historic buildings are no longer used for their original purpose, require extensive repairs and are vacant or under utilised.

Generally, a low priority is given to ongoing building maintenance and repair which is exacerbated due to the levels of multiple ownership. More detailed historic building issues include: stone work deterioration,

missing architectural details (such as railings and decorative stone enhancement), poorly executed mortar repairs, leaking rainwater goods and structural movement. The quality of alterations to shop fronts, extensions, dormers and other minor alterations needs to be improved.

Important heritage features, within Leith, range in scale from small streetscape items such as bollards, rail lines and quay walls to larger scale structures. These should be integrated into developments providing a valuable contribution to the identity and quality of the public realm.

Activities and Uses

Leith is an intensively developed urban area with a multiplicity of land use activities co-existing with the predominant residential use. It contains a full range of social, commercial and community facilities, and performs an important shopping and service role for people working and living in the area.

There has been a substantial reduction in Leith's traditional manufacturing and port related industries around which its growth was based. However, industry remains an important land use in Leith, and is now spread across a more diverse base with increasing growth in the service and technology sectors.

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Community

Residential uses, within mainly traditional tenement property and with retail uses on the ground floors, predominate. However, some recent development has seen the erosion of such mixed uses and a creation of single-use zones of shopping, business and housing.

It is important to support the vitality and viability of Leith Walk, the Foot of the Walk and Great Junction St as a retail and commercial centre. Environmental improvements and repairs within and around the shopping area are required to help create a safer and more attractive shopping environment.

High traffic volumes threaten the character of the Conservation Area particularly of Bernard Street, Commercial Street, Great Junction Street and Ferry Road. New development should incorporate safe access by a range of means of transport options. The design of development can assist in altering the relative attractiveness of different transport modes and in encouraging means of access other than by private car. In considering the design of development, priority should be given to providing convenient access for pedestrians and cyclists. The intrusive effect of car parking should also be sensitively controlled.

Community regeneration involves building strong, safe and attractive places. The quality of houses, shops, commercial premises, community facilities, local parks, green spaces, play areas, roads and pavements directly impact on the image and sense of comfort and safety.

Recent, high value new development has attracted people on higher than average incomes whose lifestyles are in contrast to many local residents living in the tenemental heartland. A critical concern for local people and business is about "closing the gap" to ensure that the whole community benefits, from increased investment, in a sustainable and balanced way. In particular, there is evidence through public consultations of the priority need to ensure a continuing sense of place and belonging, one in which old traditions remain alongside the new in a mixed, balanced and sustainable community.

Natural Heritage

The Water of Leith Walkway and Corridor is central to the Conservation Area and important for its natural heritage, open space and recreational value. It is designated as an Urban Wildlife Site and is an important habitat for a wide range of flora and fauna. The Firth of Forth coastline

is recognised for its natural heritage importance, in providing important open space and in the setting of the Conservation Area. The extensive area of open space at Leith Links the local parks and green space within the urban area are also important for their seclusion, historic context, recreational and natural heritage value. The existing tree groups and specimens are particularly important to the character of the Conservation Area.

The Forth coastline is generally recognised for its natural heritage importance and in many parts provides important open space. The Port of Leith separates the Conservation Area from a direct relationship with the estuary. The outer shoreline is protected as both an Urban Wildlife Site in Edinburgh and as a Site of Special Scientific Interest (SSSI) nationally. Special Protection Area (SPA) and Ramsar status, that give it European/ International importance for its wintering bird populations and wetlands, reinforce the SSSI designation. Under this designation proposals are being drawn up for the creation of a tern colony within the western harbour area.

Management - Pressures and Sensitivities

Port of Leith

Forth Ports is the statutory Harbour Authority for the Firth of Forth and performs a number of functions as prescribed by legislation including overseeing the safety of navigation and licensing of all works between the tidal limits inland and the mouth of the Firth.

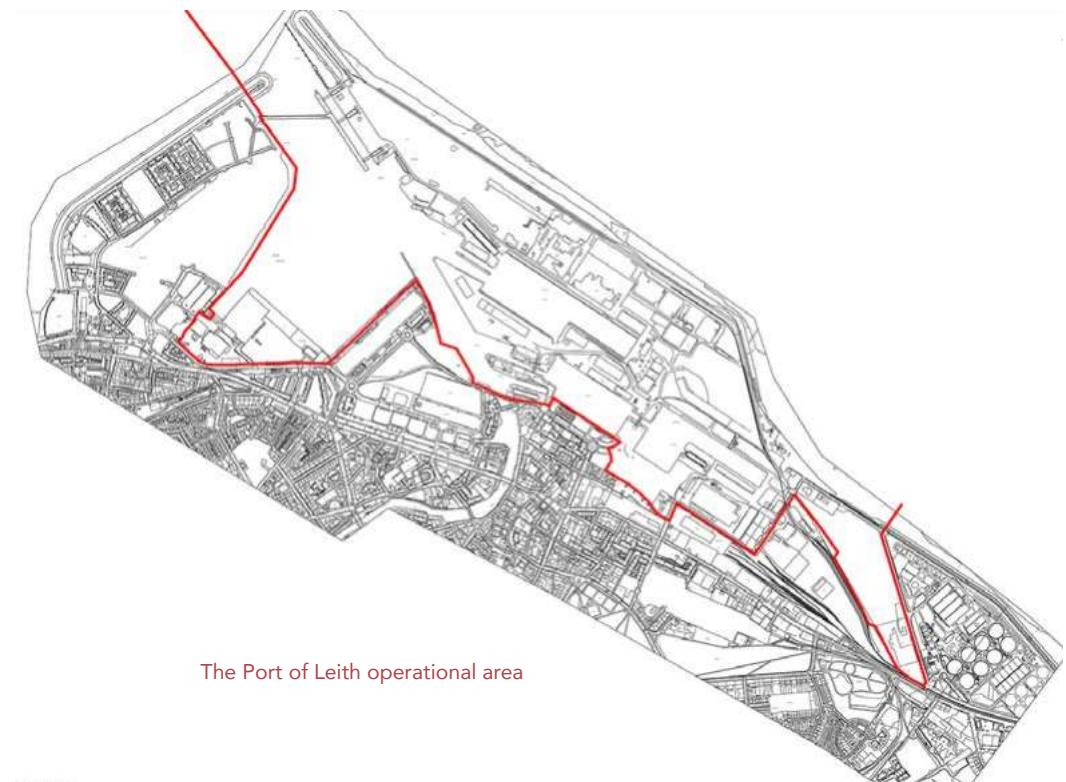
The Port of Leith has been in existence since the 14th Century and Leith has been shaped and grown up around the Port, helping to give it the history and character it has today. The Port has had to adapt over years to the changing economy and has been successful in doing this and making it a key asset for both Edinburgh and Forth Ports.

Forth Ports Limited has a clear strategy to continue as an infrastructure business and has stated its commitment to the continued operation of the Port of Leith as a port infrastructure operation, utilising its operational estate in its entirety for port operational uses. The City of Edinburgh Council and Forth Ports Ltd are committed to working in partnership. This approach will enable the economic benefits to be realised from the Port of Leith's unique assets supporting the local Leith, wider City economies and beyond.

Forth Ports Ltd will continue to function as a port operation infrastructure organisation. The Port requires flexibility to deliver the best service it can for its customers. This relates to both land usage as well as cargo handling services. The port estate is well utilised and despite some perceptions that there are large areas of land lying empty, this is not the case. Land within the Port will continue to be fully utilised for port use. These areas include the main port estate, Britannia Quay and Seafield. All these areas are important to the port operation and will continue to remain in industrial use.

Over recent years the Port of Leith has experienced an increase in activity, with 2014 being recorded as its most successful year in recent times. The Port hosts some 500-600 vessel calls per year and handles around 1 million tonnes of cargo. The Port of Leith is responsible for 533 (full time equivalent) jobs and supports the provision of local goods and services. In addition, the Port of Leith provides 'free' berth to the Royal Yacht Britannia. Through port enabled projects it generates in the region of £133M GVA per annum and 1,556 (full time equivalent) jobs.

The Port of Leith is the largest impounded deepwater port in Scotland of which Imperial Dock is a key infrastructure asset. This allows it to handle vessels which cannot be handled elsewhere within the country and underlines how important the Port is at a national level. It accommodates and can handle a broad range of requirements. A key strength is its flexibility, which allows it to respond to a range of markets.



The Port of Leith operational area

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Management - Opportunities for Planning Action

The Council recognises that the Leith Conservation Area is a living environment that will continue to adapt and develop. Conservation area status does not mean a prohibition on development. The Council will carefully manage change to ensure that the character and appearance of conservation areas are safeguarded and enhanced. The following are the main aims within the conservation area:

- To ensure that the historic and architectural character of listed buildings in the Leith Conservation Area is maintained, there is a presumption against demolition. Alterations should not harm the elements that contribute to the special interest of the building and its setting.
- To promote new high quality architecture which is sympathetic to the historic character, reflects and interprets the particular qualities of its surroundings, and responds to and reinforces the distinctive patterns of development, townscape, landscape, scale, materials and quality in the Leith Conservation Area.
- To ensure that historic street patterns, open spaces, associated landscaping and materials are maintained, protected and enhanced, and that any alterations give due consideration to the historical and cultural significance of the public realm.

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Management - Leith Inner Harbour

The ancient Port of Leith and in particular the Old Inner Harbour, dating from 1143 was the most significant harbour in Scotland for centuries. The original layout of the four Inner Harbour basins remains unchanged, other than the introduction or replacement of bridges and the infilling of associated dry docks, some of which are designated Ancient Monuments. While a number of buildings that faced onto the basins have been demolished a significant number of historically important properties remain, many listed and in good condition.

The regeneration of the area, further enhanced by the recent improvements carried out on the south Shore, has reinforced the Inner Harbour basins as the focus of this part of central Leith.

The Water of Leith is an important corridor for wildlife and supports a rich diversity of flora and fauna. The Inner Harbour basins are home to many water birds and the river otters are regular visitors to the basins.

The closure of the tidal flow of the Water of Leith in 1968 has contributed significantly to silting of the harbour basins with the consequent increased risk of flooding, which has noticeably risen in recent years. Silting and the construction of bridges mean that the basins are no longer navigable - existing barges have been brought in by crane. These, together with the adjacent overgrown trees and uncontrolled parking, block the view of the water and restrict public use of the harbour side along the length of the North Shore, much to the detriment of the many quality restaurants opposite. There are, therefore, concerns that the character and amenity of the area will be adversely affected further by any increase in the number of fixed barges in the Inner Harbour basins or other inappropriate developments.

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Sources

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Buildings of Scotland: Edinburgh. J. Gifford, C. McWilliam & D. Walker, Penguin, 1984.

Leith Lives-Memories at Work. Photographs and reminiscences collected and published by the Leith Oral History Project, 1985.

Leith Today. Ramsay Head Press, Edinburgh, 1974.

Old Leith at Leisure. J. S. Marshall, Edina Press, Edinburgh, 1976.

Old and New Statistical Accounts of Scotland: Edinburgh and Leith entries, 1791-99 & 1845.

The Life and Times of Leith. J. S. Marshall, John Donald, Edinburgh, 1985.

The Sculptured Stones of Leith. D. H. Robertson, Reid & Sons, Leith, 1851.

The Story of Leith. J. Russell, London, 1925.

The Water of Leith. Ed. S. Jamieson, The Water of Leith Project Group, 1984.

Traditions of Trinity and Leith. J. M. Wallace, John Donald, Edinburgh. 1985



Leith Conservation Area Character Appraisal

For further information please contact:

built.heritage@edinburgh.gov.uk

0131 529 4238



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