

Development Management Sub Committee

Wednesday 19 January 2022

**Application for Planning Permission 21/05431/FUL
at 36 - 38 Victoria Street, Edinburgh, EH1 2JW.
Erection of decking area on roadway in front of applicant
premises for use as an external dining area (subject to
Roads Department Permits and Licensing).**

Item number

Report number

Wards

B11 - City Centre

Summary

As a result of its location, form and design, the proposal does not comply with Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

The proposal is not acceptable in principle and would be harmful to the Edinburgh World Heritage Site and the Old Town Conservation Area. The proposal is likely to lead to an unacceptable impact on residential amenity and is not acceptable in terms of its impact on road safety. It fails to comply with the Local Development Plan, associated guidance and the principles of sustainability as set out by Scottish Planning Policy. There are no material considerations that outweigh this conclusion and refusal is recommended.

Notwithstanding the reason for decision as set out above, no planning enforcement action will be taken until a decision of Planning Committee on 23 February 2022 on a proposed approach to planning enforcement for temporary structures for hospitality.

Links

[Policies and guidance for this application](#)

LDPP, LEN01, LEN03, LEN06, LDEL02, LDES04, LDES05, LHOU07, NSG, NSLBCA, OTH, CRPOLD,

Report

Application for Planning Permission 21/05431/FUL at 36 - 38 Victoria Street, Edinburgh, EH1 2JW. Erection of decking area on roadway in front of applicant premises for use as an external dining area (subject to Roads Department Permits and Licensing).

Recommendations

1.1 It is recommended that this application be Refused for the reasons below.

Background

2.1 Site description

The site is an area of adopted road located adjacent to Maison Bleue at 36 - 38 Victoria Street (B listed; reference: LB29873; listing date: 14/12/1970). Victoria Street contains a small fragment of the old West Bow, complete with five of its old houses, and a fine group of arcaded shop fronts surmounted by a pedestrian terrace. The premises are three storeys in height with Victoria Terrace above. The area is generally characterised by retail units at ground floor, with residential above.

The site is located within the Edinburgh World Heritage Site.
This application site is located within the Old Town Conservation Area.

2.2 Site History

Other seating applications on High Street

25 October 2021 - Planning application made for outdoor seating area comprising of timber platform and fence with parasols at 148 High Street, Edinburgh, EH1 1QS (application reference 21/05674/FUL).

26 October 2021 - Planning application made for outdoor seating area comprising of timber platform and fence with parasols at 231 High Street, Edinburgh, EH1 1PE (application reference 21/05691/FUL).

24 November 2021 - Planning application made for outdoor seating area at 119 High Street, Edinburgh, EH1 1SG (application reference 21/06213/FUL)

Other seating applications on Cockburn Street

14 October 2021 - Planning application made for outdoor seating area comprising of timber platform and fence with parasols at 19 Cockburn Street, Edinburgh, EH1 1BP (application reference 21/05388/FUL).

22 November 2021 - Planning application made for outdoor seating area comprising of timber platform and fence with clear polycarbonate at 34 Cockburn Street, Edinburgh, EH1 1PB (application reference 21/06159/FUL).

22 November 2021 - Planning application made for outdoor seating area comprising of timber platform and fence with clear polycarbonate at 45 Cockburn Street, Edinburgh, EH1 1BS (application reference 21/06060/FUL).

22 October 2021 - Planning application made for outdoor seating area comprising of timber platform and fence with parasols at 61 Cockburn Street, Edinburgh, EH1 1BS (application reference 21/05625/FUL).

5 October 2021 - Planning application made for outdoor seating area comprising of timber platform and fence with parasols at 63 Cockburn Street, Edinburgh, EH1 1BS (application reference 21/05216/FUL).

27 October 2021L - Planning application made to erect outdoor seating area at 8 - 10 North Bridge Arcade, Edinburgh, EH1 1QL (application reference 21/05721/FUL)

5 November 2021 - Planning application made for outdoor seating area comprising of timber platform and fencing with timber rain-screen covers over at 73 Cockburn Street, Edinburgh, EH1 1BU (application reference 21/05905/FUL).

Main report

3.1 Description of the Proposal

Planning permission is sought for the permanent installation of decked outdoor seating area. The seating area would be approximately ten metres in length, 4.2 metres in height and five metres wide. The area would have a louvre pergola and finished in timber. The outdoor seating area is to be used by customers of Maison Bleue.

The structure is already built. The side facing the drawing has a timber fence made of decking boards. Although the drawings show a pergola structure with electric patio heaters. This has not been installed. Instead there are parasols.

3.2 Determining Issues

Section 25 of the Town and Country Planning (Scotland) Act 1997 states - Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise.

Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states that in considering whether to grant planning permission for development which affects a listed building or its setting, a planning authority shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

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

Do the proposals comply with the development plan?

If the proposals do comply with the development plan, are there any compelling reasons for not approving them?

If the proposals do not comply with the development plan, are there any compelling reasons for approving them?

3.3 Assessment

To address these determining issues, the Committee needs to consider whether:

- a) the proposal will have an acceptable impact on built heritage;
- b) the proposal is acceptable in principle;
- c) the proposal will have any adverse impact on residential amenity;
- d) the proposal will have an adverse impact on road safety;
- e) other material considerations and
- f) public comments have been addressed.

a) Built Heritage

Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (the LBCA Act) states that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the conservation area. If there is harm to a Conservation Area as a result of development, there is a strong presumption against granting planning permission. This presumption can only be overcome if there are advantages to the scheme at its location which outweigh the harm and justify granting planning permission. If such advantages are found, it is necessary to consider then whether these can only be delivered at the development's particular location.

The Old Town Conservation Area Character Appraisal states that:

The provision of consistent and high quality natural materials, street furniture and lighting in the public realm is a critical factor in uniting and complementing the built heritage. Natural stone paving slabs and stone setts have historically been used for street surfaces for many centuries. The historic paving displays a tradition of high-quality workmanship, attention to detail and the use of robust and durable materials.

Victoria Street, formed in the mid-19th century, is a steep sloping street that connects the Grassmarket with George IV Bridge and onto the High Street. It is characterised by speciality shops, many of which have vividly painted frontages. Its contours and curves contribute significantly to the intimate character and warmth.

The proposal is for a deck, with a louvre pergola to provide a covering. It has a utilitarian character that does not demonstrate a high standard of design, nor does it utilise materials appropriate to the historic environment.

Seen within the this uniquely designed street, the proposed structure detracts from the visual quality of the street as a whole. It therefore harms the character and appearance of the Conservation Area. The presumption against granting planning permission is therefore engaged.

The primary advantage to this installation is that it provides additional space for the business to enable social distancing (as a result of the coronavirus pandemic). Its use will help support the business and bring some economic benefit. However, only limited weight can be attached to these benefits as this application is for a permanent installation. The benefits do not outweigh the harm identified above.

The proposal therefore does not comply with Section 64 of the LBCA Act.

As a result of this, the proposal does not comply with Edinburgh Local Development Plan (LDP) Policy Env 6 Conservation Areas - Development or LDP Policy Des 4 Development Design - Impact on Setting.

Section 59 of the LBCA Act states that in considering whether to grant planning permission for development which affects a listed building or its setting, a planning authority or the Secretary of State, as the case may be, shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. The impact on the setting of surrounding listed buildings needs to be considered.

The setting of these buildings includes the street itself. As a result of the impacts described above, there would be harm to the setting of the listed buildings that are in close proximity to the structure. For similar reasons as described above, the proposal breaches the requirements of section 59 of the LBCA Act. Similarly, the advantages described above, do not outweigh the harm. The proposal is therefore not acceptable in relation to LDP Policy Env 3 - Listed Buildings Setting.

As well as the conservation area, and listed buildings, the proposal's impact on the Old and New Towns of Edinburgh World Heritage Site also needs to be considered.

The proposed development would harm the qualities which justified the inscription of the World Heritage Site and would have a detrimental impact on the site's setting. The use of low quality materials, not in keeping with the area, and poor design would negatively impact the outstanding universal value of the World Heritage Site. The proposal would essentially restrict public space and in doing so upset the balance and uniqueness of the historic streets.

In summary, the proposal is not acceptable in relation to Sections 59 and 64 of the LBCA Act as a result of the harm to the setting of listed buildings and to the character and appearance of the conservation area. As a result, it does not comply with LDP Policies, Env 3, Env 6 and Des 4. It would harm the World Heritage Site contrary to LDP Policy Env 1.

b) Principle

The site is located within the city centre where LDP Policy Del 2 applies. The proposal would be detrimental to the character and attractiveness of the city centre by virtue of the structure's poor quality design and use of unsympathetic materials. Furthermore, the siting of the structure on a public road would impact on the vitality and accessibility of the city centre by cluttering up the street and creating difficulties for access.

As a result of its impact on the character and attractiveness of the street, the proposal fails to comply with LDP Policy Del 2 City Centre.

c) Residential Amenity

The proposal is likely to result in an adverse impact on local residential amenity. Although it is a busy area with a vibrant night-time economy, the permanent addition of a decked outdoor seating area would alter the character of the area though creating a formalised arrangement that is conducive to the congregation of groups.

Environmental Protection has objected to the proposal and consider that it could lead to a noise nuisance that would be detrimental to the living standards of local residents. Discussion between Environmental Protection and Planning explored the potential for a condition to control the use. It is not however appropriate to restrict the hours of operation of one part of a premises with the remainder having different hours of operation. Therefore, a condition is not appropriate.

The proposal is likely to be detrimental to residential amenity and fails to comply with LDP Policies Des 5 Development Design - Amenity and Hou 7 Inappropriate Uses in Residential Areas.

d) Road Safety

Following consultation, Transportation has recommended refusal as the proposal would be detrimental to road safety. The permanent occupancy of a section of adopted road would not be supported. Furthermore, the structure would result in the loss of parking and loading bays to the detriment of disabled drivers and passengers as well as residents, visitors and business operations. The presence of a structure on the road would have an adverse impact on various road operations (road maintenance, gully cleaning, gritting, street cleansing, events etc) and obligations (utilities access etc).

The proposal would be detrimental to road safety.

e) Other Material Considerations

Scottish Planning Policy (SPP) presumption in favour of sustainable development is a significant material consideration due to the development plan being over five years old. The planning system should support economically, environmentally and socially sustainable places by enabling development that balances the costs and benefits of a proposal over the longer term. The aim is to achieve the right development in the right place; it is not to allow development at any cost. SPP sets out thirteen principles of sustainable development. The proposal is assessed against the relevant principles below.

- *giving due weight to net economic benefit*

Although it is acknowledged that there may be economic benefit to the outdoor seating area, this is outweighed by the issues set out above relating to the historic environment, residential amenity and road safety.

- *supporting good design and the six qualities of successful places*

As set out above the structure is of a poor-quality design and out of keeping with the character of the area. The proposal does not comply with the six qualities of successful places as it would impact on the ability to move around, would not be welcoming and due to the potential for nuisance would not be safe and welcoming.

- *improving health and well-being by offering opportunities for social interaction and physical activity, including sport and recreation*

The proposals could offer opportunities for social interaction, particularly where Coronavirus is concerned (this is discussed further below), however this does not outweigh the impact on the historic environment, residential amenity and road safety.

- *protecting, enhancing and promoting access to cultural heritage, including the historic environment*

The proposal would have a negative impact on the outstanding universal value of the Edinburgh World Heritage Site as well as on the character and appearance of the Old Town Conservation Area.

- *avoiding over-development, protecting the amenity of new and existing development and considering the implications of development for water, air and soil quality*

The proposal is likely to result in an adverse impact on the amenity of local residents.

The proposal does not comply with the relevant principles of sustainable development as set out in Scottish Planning Policy.

Coronavirus Pandemic

Although there is an understanding that a flexible approach is required given the fast-changing nature of the global pandemic and that it continues to impact on hospitality businesses, the application seeks permission for the permanent siting of the structure. It should be noted that the recent letter from the Scottish Government Chief Planner has stated that a relaxed approach to planning enforcement should remain in place until September 2022. A report will be brought to Planning Committee on 23 February 2022 which will set out a proposed approach to planning enforcement for temporary structures for hospitality. This will enable Planning Committee to decide on the extent of relaxation to planning enforcement for the months ahead.

Given the current restrictions on social distancing etc remain in place, if the application is refused, the Chief Planning Officer would not instigate any planning enforcement action until further consideration has been given to enforcement by Planning Committee on 23 February 2022.

Consideration has been given to whether a temporary permission could be granted by means of a planning condition to restrict the duration of the operation. However, as the length of coronavirus restrictions is unknown, the approach to enforcement to 23 February with subsequent Planning Committee oversight provides a better, more flexible framework for continued use of this installation.

f) Public Comments

Twenty letters of representation have been received. All representations object to the proposal.

Material Considerations

- Amenity: this has been addressed in section 3.3(c);
- Design: this has been addressed in section 3.3(a) and (b);
- Privatisation of public space: this has been addressed in section 3.3(a);
- Impact on Conservation Area: this has been addressed in section 3.3(a);
- Impact on World Heritage Site: this has been addressed in section 3.3(a);
- Impact on Listed Buildings: this has been addressed in section 3.3(a);
- Road safety: this has been addressed in section 3.3(d).

Conclusion

As a result of its location, form and design, the proposal does not comply with Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

The proposal is not acceptable in principle and would be harmful to the Edinburgh World Heritage Site and the Old Town Conservation Area. The proposal is likely to lead to an unacceptable impact on residential amenity and is not acceptable in terms of its impact on road safety. It fails to comply with the Local Development Plan, associated guidance and the principles of sustainability as set out by Scottish Planning Policy. There are no material considerations that outweigh this conclusion and refusal is recommended.

Notwithstanding the reason for decision as set out above, no planning enforcement action will be taken until a decision of Planning Committee on 23 February 2022 on a proposed approach to planning enforcement for temporary structures for hospitality.

It is recommended that this application be Refused for the reasons below.

3.4 Conditions/reasons/informatives

Reasons: -

1. The proposal does not comply with LDP policy Env 1 World Heritage Sites as the proposed development would harm the qualities which justified the inscription of the Old and New Towns of Edinburgh as a World Heritage Site and would have a detrimental impact on the site's setting.

2. The proposal does not comply with LDP policy Env 6 Conservation Areas - Development as the proposal would not preserve or enhance the special character or appearance of the Old Town Conservation Area.
3. The proposal fails to comply with the principles of sustainability as set out by Scottish Planning Policy.
4. The proposal's adverse impact on setting of listed buildings and the conservation area means it does not comply with the requirements of Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.
5. The proposal will have a negative impact on road safety as it would result in the permanent occupancy of a section of adopted road.
6. The proposal does not comply with LDP policy Des 5 Development Design - Amenity as it is likely to adversely impact on the amenity of neighbouring properties.
7. The proposal does not comply with LDP policy Hou 7 Inappropriate Uses in Residential Areas as it is likely to have a materially detrimental effect on the living conditions of nearby residents.

Financial impact

4.1 The financial impact has been assessed as follows:

In general, in respect of on carriageway installations, any loss of parking income may be mitigated by income from tables and chair licences.

Risk, Policy, compliance and governance impact

5.1 Provided planning applications are determined in accordance with statutory legislation, the level of risk is low.

Equalities impact

6.1 The equalities impact has been assessed as follows:

The application has been assessed and has no impact in terms of equalities or human rights.

Sustainability impact

7.1 The sustainability impact has been assessed as follows:

This application is not subject to the sustainability requirements of the Edinburgh Design Guidance.

Consultation and engagement

8.1 Pre-Application Process

There is no pre-application process history.

8.2 Publicity summary of representations and Community Council comments

Following statutory neighbour notification and advertisement in the Edinburgh Evening News, twenty letters of representation have been received.

Background reading/external references

- To view details of the application, go to
- [Planning and Building Standards online services](#)
- [Planning guidelines](#)
- [Conservation Area Character Appraisals](#)
- [Edinburgh Local Development Plan](#)
- [Scottish Planning Policy](#)

Statutory Development

Plan Provision

The site is within the City Centre, Old Town Conservation Area and Edinburgh World Heritage Site as defined by the adopted Local Development Plan.

Date registered

15 October 2021

Drawing numbers/Scheme

01-04,

Scheme 1

David Givan

Chief Planning Officer

PLACE

The City of Edinburgh Council

Contact: Murray Couston, Planning Officer

E-mail: murray.couston@edinburgh.gov.uk

Links - Policies

Relevant Policies:

Relevant policies of the Local Development Plan.

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

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

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

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

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

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

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

Relevant Non-Statutory Guidelines

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

Other Relevant policy guidance

The Old Town Conservation Area Character Appraisal emphasises the survival of the original medieval street pattern; the wealth of important landmark buildings; the survival of an outstanding collection of archaeological remains, medieval buildings, and 17th-century town houses; the consistent and harmonious height and mass of buildings; the importance of stone as a construction material for both buildings and the public realm; the vitality and variety of different uses; and the continuing presence of a residential community

Appendix 1

Application for Planning Permission 21/05431/FUL at 36 - 38 Victoria Street, Edinburgh, EH1 2JW. Erection of decking area on roadway in front of applicant premises for use as an external dining area (subject to Roads Department Permits and Licensing).

Consultations

Environmental Protection

The application is to install a decking area on the roadway in front of the application premises, Maison Blue at 36-38 Victoria Street, Edinburgh; to use as an external dining area.

The application is being made in retrospect, as during the Coronavirus Pandemic, to assist food businesses to operate and recover from the lockdown and restrictions, temporary structures were permitted. The applicant now seeks to make the structure permanent.

Environmental Protection have concerns that the use of external dining areas; especially late at night, may generate noise and complaints will be received. It is noted that so far, this decked area has operated without complaint.

Discussions have taken place with Planning who advised that it is not possible to place time restrictions on only part of the premises, namely the use of the decked external dining area. Therefore, it is not possible to recommend a time restriction as a planning condition, which would alleviate some of the concerns.

Although no complaints have been received to date, consent would allow an external dining area permanently with no controls in place to protect the amenity of residents. There have also been media reports of these dining areas being abused after business trading hours, late at night by groups of people, creating noise and disturbance.

There are no other avenues open to ensuring that the decked area does not get used during the more sensitive night-time hours. Therefore, on balance Environmental Protection is unable to support the application and recommends it is refused.

Transportation

The application should be refused.

Reasons:

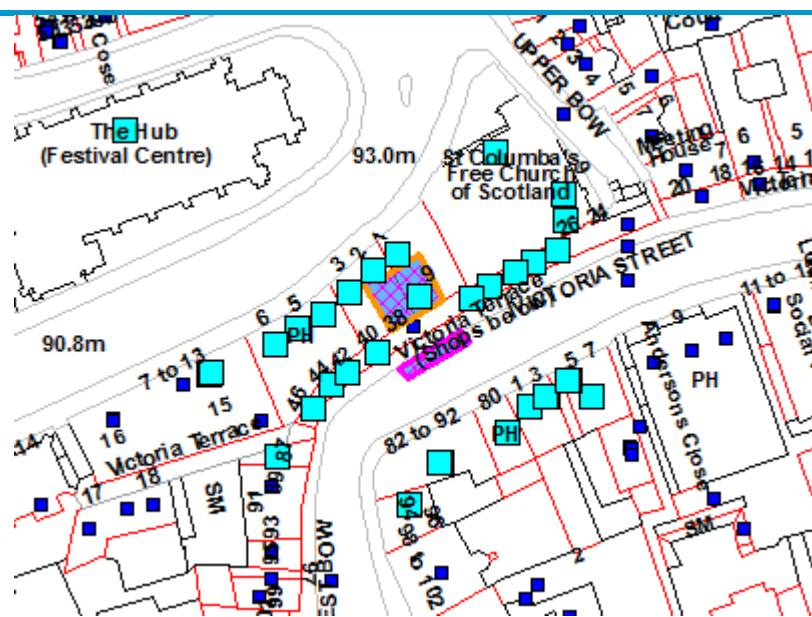
1. The proposals seek to occupy a section of the carriageway that forms part of the adopted road;

2. The placement of a structure on a road or footway is considered detrimental to road safety;
3. The structure results in the loss of parking and/or loading bays to the detriment of disabled drivers/passengers, residents, visitors and business operations and will likely lead to indiscriminate parking nearby;
4. The presence of a structure on a road or footway has an adverse impact on various road operations (road maintenance, gully cleaning, gritting, street cleansing, events etc) and obligations (utilities access etc);
5. The operation of the facility may result in restrictions on the adjacent footway which is contrary to the Councils Equal Pavements Pledge.

Notes -

1. The Council as Roads Authority has confirmed that written approval, as required under Section 59 of the Roads (Scotland) Act 1984, will not be given for these structures.

Location Plan



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