

# Development Management Sub-Committee Report

**Wednesday 16 March 2022**

**Application for Planning Permission  
land 247 metres west of, 1 Distillery Lane, Edinburgh.**

**Proposal: Formation of temporary site compound for use during construction.**

**Item – Committee Decision  
Application Number – 21/01057/FUL  
Ward – B07 - Sighthill/Gorgie**

## **Reasons for Referral to Committee**

The application has been referred to the Development Management Sub Committee because 132 objections have been received. Consequently, under the Council's Scheme of Delegation, the application must be determined by the DM Sub- Committee.

### **Recommendation**

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

### **Summary**

The proposal complies with Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

The proposal will not harm the setting of the Category B Listed Building in compliance with HES guidance.

The proposal complies with the Edinburgh Local Development Plan. The scale, form and design will not have a permanent impact on character of the townscape.

No unreasonable impact on neighbouring amenity or transport issues will occur. Acceptable mitigation is proposed to ensure the development will not adversely affect the natural environment.

A condition limiting the period of consent for 3 years is required as the proposal is temporary in nature.

There are no other material considerations which outweigh this conclusion.

## SECTION A – Application Background

### Site Description

The site is a 1705 sq.m linear parcel of land which is 10.4 metres wide on the western side of Distillery Lane.

This side of the lane is vacant and comprises hardstanding, trees and wild shrubbery. To the east is a car parking.

The northern boundary is delineated by a stone wall, beyond which is land owned by Network rail, Haymarket Station and the main railway line.

To the south, a timber fence, trees and shrubbery separate the site from the residential flats beyond. This includes The Still House and Caledonian Village residential developments, with Easter Dalry Road running north to south in the centre. Three four-storey blocks linear blocks of Caledonian Village run north to south towards to the application site.

Access to the site is from the eastern side of Distillery Lane.

The surrounding area is mixed use.

### Proposal

The application seeks permission for the formation of temporary site compound for use during construction. Temporary permission is sought for a period of three years.

The compound is required to support the construction works taking place at 189 Morrison Street, as consented by applications 18/00715/FUL and 19/02623/FUL.

The compound comprises a 1210 gross internal floorspace and will house site offices, dining, toilet and changing areas.

Three two-storey cabins are proposed with stepped access on the northern side of each cabin, and emergency exit steps on the side elevations. The cabins will be flat roof constructed with 1mm galvanised steel to exterior painted green with PVC windows and solid core timber doors with Georgian wired viewing panels, and aluminium door frames.

The cabins will be set back a minimum of 1- 1.5 metres from the existing timer fencing. 2.4m high plywood boarding if proposed around the perimeter.

Access to the site from the east will be retained. The proposal does not propose any parking.

The application is supported by the following documents which are available to view on the Council's Planning and Building Standards Public Access Portal:

- Temporary Buildings Detail;
- Preliminary Ecological Appraisal;
- Revised Daylight and Sunlight Analysis and
- Visualisations.

### **Relevant Site History**

No relevant site history.

### **Other Relevant Site History**

### **Pre-Application process**

Pre-application discussions took place on this application.

### **Consultation Engagement**

Network Rail

City Archaeologist

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

### **Publicity and Public Engagement**

**Date of Neighbour Notification:** 20 April 2021

**Renotification:** Not Applicable

**Date of Press Publication:** Not Applicable

**Date of Site Notice:** Not Applicable

**Number of Contributors:** 133

## **Section B - Assessment**

### **Determining Issues**

Due to the proposals relating to a listed building(s), this report will first consider the proposals in terms of Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997:

- Is there a strong presumption against granting planning permission due to the development harming the listed building or its setting?
- If the strong presumption against granting planning permission is engaged, are there any significant public interest advantages of the development which can only be delivered at the scheme's proposed location that are sufficient to outweigh it?

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

Do the proposals comply with the development plan?

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

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

In the assessment of material considerations this report will consider:

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

## **Assessment**

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

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

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

- Managing Change

Historic Environment Scotland's guidance on Managing Change sets out the principles that apply and how it should inform planning policies. HES's document (Managing change in the Historic Environment - Setting) states that 'setting' is the way the surroundings of a historic asset or place contribute to how it is understood, appreciated and experienced.

The proposals will be in proximity to the Category B Patent Still House (reference: LB26811).

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

The Courts have clarified that Section 59(1) means that there is a strong presumption against granting planning permission for development which would harm a listed building or its setting. If engaged, the presumption can only be rebutted if the proposals would result in significant public interest advantages which can only be delivered at the scheme's proposed location.

The compound will be located sufficiently away as to not have a harmful impact on the historical integrity of the listed building. Given the context of the wider mixed-use area, which has a mix of modern and traditional buildings, the temporary siting of the cabins will have a negligible effect on the setting of the listed building.

### **Conclusion in relation to the listed building**

Overall, the proposal will not harm the setting of the category B listed building and therefore meets the requirements of Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. It is in compliance with HES guidance.

### **b) The proposals comply with the development plan?**

The development plan comprises the Strategic and Local Development Plans.

#### Impact on the setting of the listed building

Policy Env 3 (Listed Buildings - Setting) of the Edinburgh Local Development Plan permits development that will not be detrimental to the architectural character, appearance or historic interest of listed buildings, or their setting. The non-statutory 'Listed Buildings and Conservation Area' guidance is a material consideration that is relevant when considering policies Env 3.

This has been assessed in section a) above. The proposal will not be detrimental to the architectural character, appearance or historic interest of the listed building and complies with LDP Policies Env 3.

#### Principle

The site falls within the Urban Area as designated within the Edinburgh Local Development Plan.

The City Centre boundary runs along the centre of the lane. LDP Policy Del 2 (City Centre) states development which lies within the area of the City Centre as shown on the Proposals Map will be permitted which retains and enhances its character, attractiveness, vitality and accessibility and contributes to its role as a strategic business and regional shopping centre and Edinburgh's role as a capital city.

The proposal is of a temporary nature and therefore will retain the character of the area. It will contribute to the delivery of the mixed use Haymarket Development (including retail, offices and restaurants) at 189 Morrison Street, in line with the objectives of LDP Del 2.

LDP Policy Emp 1 (Office Development) supports high quality office developments in locations identified within categories (a) to (c) including the City Centre, other strategic centres, town and local centres. Where these sites are unsuitable or unavailable, other accessible mixed-use locations may be considered in proximity to public transport nodes, compatible with the accessibility of the location by public transport and the character of the local environment.

The site does not fall within the above categories. However, relocating existing site accommodation temporarily is required for construction works at 189 Morrison Street. The proposed location is geographically suitable given its proximity to the main development site.

The site has good access to public transport and is accessible by walking from the main development site. Its proposed use is compatible with the mixed use area, and the temporary nature of building will have no permanent impact on the character of the local environment.

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

Whilst the area is mixed use in character, the immediate locality is predominantly residential. Residential amenity is addressed in the Amenity section below. The proposed temporary use of the site as a compound will not be the detriment of neighbouring amenity given the size and scale of the development and the proposed use of the cabins.

The proposal complies with LDP Policy Emp 1 and Hou 7.

### Scale, Form and Design

LDP policy Des 1 (Design Quality and Context) requires development proposals to create or contribute towards a sense of place. The design should be based on an overall design concept that draws upon the positive characteristics of the surrounding area.

LDP Policy Des 4 (Development Design - Impact on Setting) requires development proposals to have a positive impact on its surroundings, including the character of the wider townscape, having regard to its height and form, scale and proportions, including the spaces between the buildings, position of the buildings and other features on the site; and the materials and detailing.

The buildings are of a functional appearance in terms of materials and form.

They are of a lesser scale to surrounding buildings where there is varied architecture, scale and forms present, with immediate buildings being four storey flats. In terms of layout, the cabins are to be positioned running west to east in line with the lane. They are sited to align with the gable walls of the adjacent development to minimise the visual impact.

Visualisations were submitted by the application showing the proposed structures in the context of the site. The structures will be visible from the public realm. However, the design would clearly read as temporary installations, and not as a permanent addition to the streetscape and therefore will not result in any permanent impact on the character of the wider townscape. Moreover, the cabins will be coloured green, reducing the visual impact.

The proposal complies with LDP policy Des 1 and Des 4.

## Amenity

LDP Policy Des 5 (Development Design - Amenity) requires development proposals to demonstrate that neighbouring amenity of a development will have acceptable levels of amenity in relation to noise, daylight, sunlight, privacy or immediate outlook. It further requires new development to offer suitable level of amenity to future residents.

The gable walls of the three residential blocks to the south have no windows. However, bay windows are present on the west and eastern elevations of the blocks, adjacent to the boundary. Three windows are located on the northern gable of Still House.

In terms of privacy, primary access will be on the northern side of the cabins. Any windows facing the residential flats to the south will be obscured to minimise any overlooking of neighbouring properties. There will be no direct overlooking because of the development.

Concerns have been raised by adjacent neighbours regarding the loss of outlook. The nearest neighbouring windows are bay windows which have three windows (two side-panes and a main pane). The cabins will be present in the outlook from the northern side windows.

However, the primary outlook of the bays is directly over the garden ground of the flatted development. As such, there is no immediate loss of outlook to the detriment of amenity. The gable windows on the northern elevation of Still House are located sufficiently away as to not be impacted by the proposal.

A Sunlight and Daylight Analysis was submitted which considered the impact of the proposed units on the daylight levels into neighbouring windows, in line with BRE Guidelines. It also measured the level of overshadowing the proposed development would result in. Following concerns raised with regards to inaccurate assumptions within the analysis, updated Sunlight and Daylight Analysis was submitted.

The most impacted windows are the northern side of the bay windows closest to the boundary. Despite the impact upon daylight into these affected side windows, the level of daylight into the bay windows as a whole remains within the guidelines.

The updated report finds that the rooms analysed all retain between 97% and 100% of their existing levels of daylight distribution (that is the measure of the penetration of daylight within a room). Overall, the analysis shows that the impacts of the proposed development on the daylight and sunlight available to the residential rooms within the neighbouring properties are within the levels recommended within the BRE Guidelines.

In terms of the noise, this is a mixed- use site within the urban area and adjacent to the railway line. The nature of the proposed use as office, toilets and kitchen facilities would not constitute activities that would result in noise detrimental to neighbouring residential amenity.

The proposal will not impact on their amenity in terms of privacy, outlook, daylight, sunlight or noise, in compliance with LDP policy Des 5.

## Natural Environment

### *Protected species and habitats*

LDP Policy Env 16 (Species Protection) aims to ensure development will not be to the detriment to the maintenance of a protected species and suitable mitigation is proposed.

The site is vacant and has wild grown shrubbery. As such, a Preliminary Ecological Appraisal Report was requested to assess the potential impact upon wildlife and habitats.

Due to the lack of connectivity to the site it is unlikely that protected species utilise the site other than bat species at night. Therefore, it is not considered that the proposed work will have a negative impact on the qualifying protected species.

Suitable habitat to support nesting birds was recorded on site. Therefore, it is recommended that, if any vegetation clearance is necessary for the works to proceed, this be cleared outside of the nesting season (between March and August inclusive). Should site clearance not be possible during this time then vegetation should be checked by an ecologist no more than 48 hours prior to works. If nests are identified within the site which are deemed to be active, a temporary pause of works may be required to identify species and monitor for any signs of disturbance.

Suitable habitat to support hedgehogs was recorded on site. Hedgehog cannot be ruled out as present on site and therefore it is recommended that any removal of suitable habitat should be undertaken using a precautionary approach with a suitably qualified ecologist present.

The measures set out within the submitted Preliminary Ecological Appraisal Report have been accepted. On the proviso works are carried out in line with these measures, the proposed works will not be to the detriment to the maintenance of a protected species. As suitable mitigation is proposed the proposal is compliance with LDP Policy Env 16.

### *Trees*

LDP Policy Env 12 (Trees) ensures development will not be permitted if likely to have a damaging impact on a tree protected by a Tree Protection Order or on any other tree or woodland worthy of retention unless necessary for good arboriculture reasons. This policy recognises the important contribution made by trees to character, biodiversity, amenity, and green infrastructure.

There are existing trees on the southern boundary of the site that lie outwith the site boundary.

There is an area of overgrown mature shrubbery and young trees to the west of the lane. Any small trees within this area are not worthy of retention as they do not add to the character of the site or have value in terms of amenity and green infrastructure. The loss of these trees is acceptable. There are no Tree Protection Orders on the site.

Notwithstanding this, boundary trees along with southern boundary should be protected. As such, a condition requiring a tree protection plan to be submitted and approved by the Planning Authority is recommended to ensure the development will not be to the detriment of these trees.

### Transport

The Roads Authority have not requested to comment on the proposal. The proposal does not alter the existing access arrangements or create parking provision.

The site is accessible by foot from the main development site at 189 Morrison Street.

### Archaeology

LDP Policy Env 9 (Development of Sites of Archaeological Significance) aims to ensure that no significant archaeological features are likely to be affected by the development.

Potential ground works (foundations, services) associated with the creation, construction and use of this temporary works compound could reveal evidence of the Mid-19th century Caledonian Distillery buildings linked to the adjacent railway yards located on this site.

Therefore, it is recommended that a suitable condition is attached if permission is granted to ensure that a programme of archaeological mitigation is undertaken.

The proposal raises no issues with regards to archaeology, and subject to the recommended condition is in compliance with LDP Env 9.

### Flood Risk

Policy Env 21 (Flood Prevention) states that planning permission will not be granted for development that would increase a flood risk or be at risk of flooding itself, impede the flow of flood water or prejudice existing or planned flood defence systems.

The site is an existing hardstanding. The installation of the temporary cabins will not increase flood risk and is in line with Env 21.

Concern was raised with regards to potential damp on the gables due to the siting of the cabins. The cabins are to be located 1-1.5 metres from the existing boundary fence and therefore will not cause damp in neighbouring residential properties.

### Waste

Waste and Recycling collection arrangements will be required to be agreed with the Council's Waste Team.

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

The proposal complies with the Edinburgh Local Development Plan. The scale, form and design will not have a permanent impact on character of the townscape.

No unreasonable impact on neighbouring amenity or transport issues will occur.

Acceptable mitigation is proposed to ensure the development will not adversely affect the natural environment.

### **c) There are any other material considerations which must be addressed?**

The following material planning considerations have been identified:

#### Road Safety

The proposal raises no road safety issues.

#### Network Rail

The applicant has undertaken a survey regarding the boundary wall to the north.

Network Rail's Asset Protection Engineers are satisfied with the report and do not object to the proposal.

An Informative is recommended requiring detailed cross sections to be submitted to Network Rail's Asset Protection Engineers during the design phase to ensure the safety of the railway, along with a Construction Method Statement.

#### Scottish Planning Policy

Scottish Planning Policy (SPP) presumption in favour of sustainable development is a significant material consideration due to the development plan being over 5 years old. It sets out 13 principles to guide policy and decisions.

The proposal is a temporary development that will have minimal impact on the surrounding environment and re-uses brownfield land. It is in a sustainable location with good access to public transport. The site facilities provided will help enable construction of the Haymarket Development at 189 Morrison Street.

The proposed development therefore complies with the SPP sustainability principles.

#### Emerging Policy Context

NPF 4 - Draft National Planning Framework 4 is being consulted on at present. As such, it has not yet been adopted. Therefore, little weight can be attached to it as a material consideration in the determination of this application.

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

## Equalities and Human Rights

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

## Public Comments

132 letters of objection were received in relation to the proposal, along with one letter that raised neutral comments.

The following material considerations were raised: -

- Height- addressed in section b;
- Appearance of cabins- addressed in section b;
- Character of area-addressed in section b;
- Privacy- addressed in section b;
- Noise - addressed in section b;
- Daylight/Sunlight- addressed in section b;
- Impact on wildlife- addressed in section b;
- Impact on trees- addressed in section b;
- Parking and traffic- addressed in section b and c;
- Waste- addressed in section b;
- Network Rail not consulted-this is incorrect. Network Rail was consulted and provided comment on the proposal;
- Inaccurate information and plans- updated information was submitted to amend/clarify any inaccuracies; and
- Period of temporary permission/ three years is too long - three years constitutes an appropriate period for temporary permission in line with legislation.

## **Non- material considerations**

- Impact on bike storage shed and potential damage to fencing- the proposed cabins will be located at least 1 metre from the existing fencing. Damage to property is not controlled by planning legislation;
- Damage to properties due to construction- this is not controlled by planning legislation;
- Potential loss of incomes because of vacating tenants- this is not controlled by planning legislation;
- Noise and dust due to construction- not a matters controlled by planning legislation;
- Request that alternative use of site be used as green space - this is not relevant to the application submitted;
- Potential graffiti- this is not controlled by planning legislation;
- Potential anti-social behaviour and noise from construction workers- this is not controlled by planning legislation;
- Concerns what happens in event of insolvency- this is a legal matter;
- Fire Risk - this is not a planning matter;
- Presence of smokers- this is not a planning matter;
- Danger due to construction and use of cranes and lack of risk assessments; this is not controlled by planning legislation;

- Potential precedence for future use of site- the application seeks permission for a temporary period of three years. After which the land will be required to be reinstated to its previous state. Any future change of use or development will require permission and be assessed on its own merits; and
- Designation of 'Transportation Receiver', legal agreement between Cruden Homes and Beazer Homes and right of servitude- this is a legal matter.

## **Community Council**

Gorgie Dalry Community Council raised concerns regarding:

- Impact on residents;
- Size & scale;
- Loss of privacy & natural light;
- Noise & smell;
- Damage to property;
- 2.4m high boarding and impact on daylight;
- Management of site;
- Overdevelopment;
- Construction hours;
- Impact on bay windows;
- Impact upon wildlife living in the land including rabbits, foxes and several species of birds that nest there and impact upon trees;
- Parking and Congestion;
- Change in appearance of Caledonian Village; and
- Contrary to Policies Des 4, Des 5, Hou 7 and Env 22 as adversely affects the amenity, privacy, appearance of and parking provision as exists.

## **Overall conclusion**

The proposal complies with Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. The proposal will not harm the setting of the Category B Listed Building in compliance with HES guidance.

The proposal complies with the Edinburgh Local Development Plan.

The scale, form and design will not have a permanent impact on character of the townscape. No unreasonable impact on neighbouring amenity or transport issues will occur.

Acceptable mitigation is proposed to ensure the development will not adversely affect the natural environment.

A condition limiting the period of consent for 3 years is required as the proposal is temporary in nature.

There are no other material considerations which outweigh this conclusion.

## Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following;

### Conditions :-

1. Permission is granted for a limited period of three years from the date of this permission. The development hereby approved shall be removed prior to or on the date of expiry of the limited period of permission and the land and/or buildings restored to their previous condition within three months of the removal of the development.
2. Prior to commencement of development, final detailed foundation designs and plans for any associated services and ground-breaking works must be submitted to the Planning Authority. This is in order to determine scope of archaeological works (excavation, analysis & reporting) to be undertaken in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the Planning Authority.
3. Prior to commencement of development, a Tree Protection Plan shall be submitted for approval to the Planning Authority. Works shall be carried out in accordance with the approved plan and protection fencing shall remain in situ during construction works.

### Reasons:-

1. Due to the temporary nature of the proposed development.
2. In the interest of protecting any archaeological remains on site.
3. In the interest of protecting existing trees.

### Informatives

It should be noted that:

1. No development shall take place on the site until a 'Notice of Initiation of Development' has been submitted to the Council stating the intended date on which the development is to commence. Failure to do so constitutes a breach of planning control, under Section 123(1) of the Town and Country Planning (Scotland) Act 1997.
2. As soon as practicable upon the completion of the development of the site, as authorised in the associated grant of permission, a 'Notice of Completion of Development' must be given, in writing to the Council.

### 3. Network Rail Informative

#### Design Details

More detailed cross sections with relevant dimensions must be submitted to Network Rail's Asset Protection Engineers during the design phase to ensure the safety of the railway.

#### Construction Method Statement

The developer must submit details of the installation of compound units along with RAMS, plant and vehicle movements, compound foundation details and details of the staircases for Network Rail's approval before constructing the site.

We encourage the developer to continue to liaise closely with our Asset Protection Engineers to ensure there is no risk to the adjacent wall or the safety of the railway.

### 4. Natural Environment Informatives

#### Bats

Due to the lack of connectivity to the site it is unlikely that protected species utilise the site other than bat species (Chiroptera spp) at night for foraging and commuting. Therefore, it is not considered that the proposed work will have a negative impact on the qualifying species associated with the LBS' and SSSI. However, if the development footprint changes, then proximity to the LBS will need to be reconsidered.

#### Invasive Non-native Species

Several stands of giant hogweed were recorded during the survey. Therefore, a precautionary approach should be taken to avoid the spread of this species during construction and, if works are necessary within 7 m of the invasive species, a management plan will need to be drawn up by an invasive species specialist, highlighting mitigation measures to avoid the spread of this plant.

#### Night works

If night works are due to be undertaken during construction, it is recommended that a lighting strategy should be designed to minimise the disturbance on foraging and commuting bats.

#### Nesting Birds

Suitable habitat to support nesting birds was recorded on site. Therefore, it is recommended that, if any vegetation clearance is necessary for the works to proceed, this be cleared outside of the nesting season (between March and August inclusive). Should site clearance not be possible during this time then vegetation should be checked by an ecologist no more than 48 hours prior to works.

If nests are identified within the site which are deemed to be active, a temporary pause of works may be required in order to identify species and monitor for any signs of disturbance.

### Hedgehog

Suitable habitat to support Eurasian hedgehog was recorded on site, with potential nesting material identified. Hedgehog cannot be ruled out as present on site and therefore it is recommended that any removal of suitable habitat should be undertaken using a precautionary approach with a suitably qualified ecologist present.

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

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

### **Further Information - Local Development Plan**

**Date Registered: 14 April 2021**

### **Drawing Numbers/Scheme**

01-04

Scheme 1

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

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

## Appendix 1

### Summary of Consultation Responses

NAME: Network Rail

COMMENT: No objection, informatives recommended in relation to design details and a Construction Method Statement,

Network Rail's Asset Protection Engineers are satisfied with the survey undertaken by the applicant and removed their previous objection.

DATE: 22 February 2022

NAME: City Archaeologist

COMMENT: No objection subject to condition.

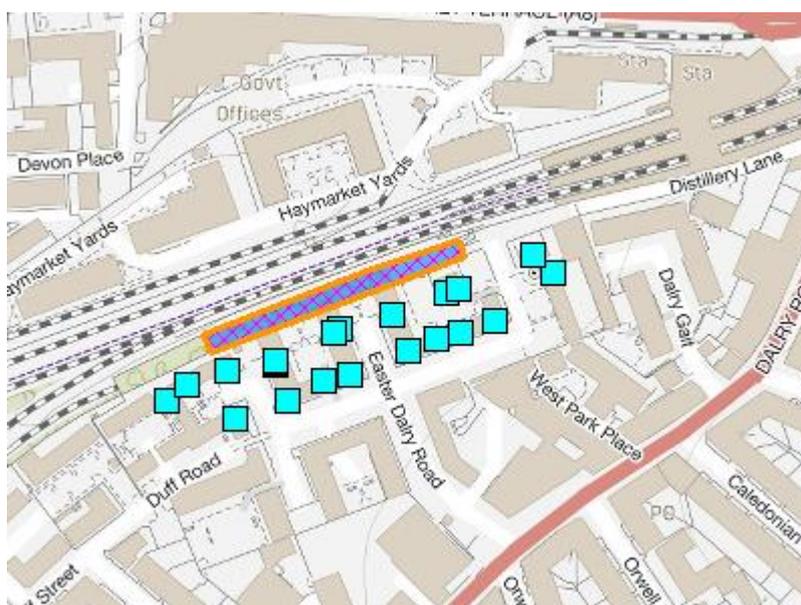
Application considered against Policies ENV8 & ENV9.

Potential ground works could reveal evidence of the Mid-19th century Caledonian Distillery buildings linked to the adjacent railway yards located on this site. As such a condition is recommended.

DATE: 22 February 2022

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

### Location Plan



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