

# Development Management Sub Committee

Wednesday 14 August 2019

**Application for Planning Permission 19/02006/FUL  
At 36 - 39 Market Street, Edinburgh, EH1 1DF  
Change of Use to former nightclub [36-39] to extend  
Fruitmarket Gallery [No 45]: Class 11(d) to 10(c). Various  
alterations to and reinstatement of original windows &  
shopfront, install roof mounted plant. Internal alterations:  
removal of 1st floor to create double height gallery to east  
section of property and on west, over two floors, toilets,  
stores & workshop located to west, with staff  
accommodation above. Internal slappings to single storey  
link connect two properties forming one venue.**

**Item number**

**Report number**

**Wards**

B11 - City Centre

## Summary

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The proposed change of use of the building from a nightclub (Class 11 (d)) to art gallery (Class 10 (c)) is supported by LDP Policy Ret 7 and is considered appropriate to the nature of the city centre location, will not result in adverse impacts to the amenity of neighbours and is considered acceptable.

The proposed conversion will provide a sustainable re-use of the listed building, representing both a logical expansion and enhancement to an established cultural venue in the city centre.

The design proposals to re-model the building and external alterations will be sympathetic to the character of the listed building and its setting and the setting of nearby listed buildings. The proposal will preserve and enhance the character of the Old Town Conservation Area. The proposal will not result in detrimental impact to the outstanding universal values of the Edinburgh World Heritage Site.

The proposal addresses requirements of policy and guidance.

There are no further material considerations which outweigh this conclusion.

## Links

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### [Policies and guidance for this application](#)

LEN01, LEN03, LEN04, LEN06, LEN09, LDES01, LDES03, LDES04, LDES05, LDES12, LDES13, LRET07, LTRA03, NSGD02, NSLBCA, CRPOLD, HEPS, HESCON, HESEXF, HESINT, HESSHP, NSBUS, HESWIN, HESUSE,

# Report

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## Recommendations

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

## Background

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### 2.1 Site description

Nos. 36-39 Market Street form part of a terrace of two storey structures lining the northern edge of Market Street, with the existing Fruitmarket Gallery situated immediately to the east and Waverley Station lying to the rear.

The building occupies a visually prominent location in the Waverley Valley and the Edinburgh World Heritage Site at the northern edges of the Old Town Conservation Area. Market Street is defined by some pronounced changes in level, with topography and built form rising sharply to the south to form the Old Town ridge. A further pronounced level change occurs immediately to the north, with Waverley Station and operational railway tracks situated below.

The building forms part of the Category B group listing including 31, 32-35 & 36-39 Market Street (inclusive) LB reference:- 52353, Date of listing:- 22 June 2015. The building was previously listed at category A as part of Waverley Station becoming separately listed at category B in 2015. The rear of the building also incorporates part of the massive 'N' steel truss beneath the building remains part of the Category A listing of Waverley Station (LB Reference: 30270, Date of Listing: 12 November 1991, Date description amended: 22/06/2015).

Market Street represents a busy city centre location with high levels of pedestrian footfall. The character of the area is predominantly commercial featuring bars and cafes, visitor attractions including the Edinburgh Dungeon, hotels and backpacker accommodation. The recently completed Market Street Hotel lies directly opposite the site to the south, with the City Arts Centre to the south east.

The building lies immediately to the west of the southern pedestrian entrance to Waverley Station.

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

## **2.2 Site History**

### Application Site

The building was originally developed circa. 1931 as a wholesale fruit and vegetable warehouse, this use continuing until 1972. The building subsequently operated as a nightclub since from the late 1970's, this use ceasing in March 2017. This primarily occupied the ground floor with associated plant and office space situated at first floor level.

### Adjacent Sites

20 July 2018 - Planning permission granted for proposed Change of Use from Office and Retail to Hostel and Public House, including external alterations at 32-38 Market Street and alterations at 9-13 Market Street (Application reference:- 18/01444/FUL).

20 July 2018 - Permission granted for conversion from Office and Retail to Hostel and Public House including external and internal alterations at 32-38 Market Street (Application reference:- 18/01517/LBC).

08 October 2018 - Permission granted for illuminated menu, illuminated amenity board and window vinyls on 32 and 36-39 Market Street (Application reference:- 18/04359/ADV).

24 April 2019 - Application lodged for external and internal works relating to the existing gallery at 45 Market Street. External works include alteration to the main entrance and existing service access & fire exit, replace rooflights, flat roof coverings & install new services. Internal: Form access linking Nos 36-39 & 45 to extend into adjacent building [as per separate application], relocate kitchen, alter cafe, passenger lift & WCs, replace main stair, alter upper floor galleries, form learning suite [staff accommodation relocates to Nos 36-39]. No works are proposed to North facade Category A Listed substructure of Station. Application to be determined. (Application reference:- 19/02007/FUL).

## **Main report**

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### **3.1 Description Of The Proposal**

#### Scheme 2

The proposed conversion of the category B listed, 36-39 Market Street comprises part of a project to both expand and refurbish the existing Fruitmarket Gallery at 45 Market Street.

The application to convert the building will necessitate a change of use from a former nightclub (Class 11, Assembly and Leisure - (d) dance hall or discotheque) to Class 10, Non-residential institutions - (c) the display of works of art (otherwise than for sale or hire).

The building conversion will include the formation of a new double height gallery space, with visitor toilets, production workshop and storage space at ground floor level. A new internal access ramp will form a connection between the existing gallery to the east, this also addressing a number of changes in floor level within the listed building. Production offices for the gallery including staff facilities will occupy the western part of the first floor.

The proposed internal alterations to the building are assessed in the related application for listed building consent (application reference 19/02004/LBC).

External alterations to the building will include:-

#### Front Elevation

Alterations to existing two shop frontages (windows currently blanked off) associated with former fruit warehouses. These works will include the formation of a new entrance with existing columns being retained. New stall risers will be formed with powder coated cills and painted ply cladding below. The original projecting bases to the columns and stall risers will be re-instated and clad in painted timber. The existing fascia above will be retained and repainted.

Existing door and fanlight (not original) to be removed and replaced with fully glazed fixed window, installed flush with recessed arched ashlar.

Signage panels and painted ply panels covering ground floor windows (x 2) to be removed.

Louvred ventilation panels (x 2) covering first floor windows to be removed and replaced with single glazed casement windows.

Frontage to the existing, single storey structure (linking Nos 36-39 and 45 Market Street) to be replaced, comprising a replacement concealed door and parapet of increased height to partially conceal roof plant. This is to be finished in painted exterior grade plywood.

Existing timber sash and case windows (x 6) to first floor level (2 over 2 pattern) to be refurbished and made openable, replacing glass as required to match original panes.

Mechanical ventilation units to be installed midpoint on the flat roof. The top of the highest unit will not rise above the existing parapet balustrade.

### Rear elevation

Existing timber sash and case windows to ground floor level (x 3) and first floor level (x7) (predominantly 2 over 2 pattern) to be refurbished and made openable, replacing glass as required to match original panes.

### Single Storey Link Structure

Flat roof area to include a mechanical handling unit, vent ducts (x 3) and boiler flue (150mm diameter) affixed to the east elevation of the listed building and terminating 1 metre above the roof parapet to the main building. Existing roof membrane and parapet upstand flashings to be replaced.

### Scheme 1

As above. The original scheme was submitted prior to internal soft strip out of the listed building which has revealed details of the original shopfronts. Further design development, relating to the shopfront elements and rooftop plant has been undertaken as part of the Scheme 2 proposals.

### Supporting Information

The following documents were submitted in support of the application:-

- Design Statement - 23 April 2019;
- Design Statement - Supporting Information, 22 July 2019;
- Conservation Statement; and
- Noise Impact Assessment.

These documents can be viewed on the Planning and Building Standards Online Service.

## **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 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 proposed use is acceptable;
- b) The design proposals are acceptable and will preserve the special architectural or historic interest of the listed building;
- c) The proposal will preserve and enhance the character of the Old Town Conservation Area;
- d) The proposal will preserve the outstanding universal value of the Edinburgh World Heritage Site;
- e) The proposal will have a detrimental impact on the character and setting of adjacent listed buildings;
- f) The proposals raise issues in respect of archaeology;
- g) The proposal raises issues in respect of neighbour amenity;
- h) The proposal raises issues relating to transport and public realm;
- i) Any impacts on equalities or human rights are acceptable;
- j) The proposals raise other matters to be addressed; and
- k) Any comments raised have been addressed.

#### **a) Proposed Use**

This proposal will see the existing gallery use being expanded into the adjacent building to form a single premises and single planning unit. Accordingly, in planning terms, the assessment is whether the proposed use for the enlarged premises would be acceptable.

LDP Policy Ret 7 supports well designed arts facilities in the City Centre.

The proposed expansion of the existing gallery into an adjacent listed building will result in an attractive street frontage and a high quality of design that safeguards the character of the location. The proposed details of the conversion are further assessed in sections b) and e).

A Noise Impact Assessment has been prepared by the applicant and this is further assessed in section g). However, the proposed change of use from nightclub to an art gallery will not lead to a significant increase in noise, disturbance and on-street activity at unsocial hours to the detriment of living conditions for nearby residents.

The proposed change of use would comply with all relevant sections of LDP Policy Ret 7 - Entertainment and Leisure Developments and is acceptable.

**b) The design proposals are acceptable and will preserve the special architectural or historic interest of the listed building**

Early proposals for potential redevelopment of the existing gallery were presented to the Edinburgh Urban Design Panel in August 2014. The Panel's comments were based around the redevelopment of the existing gallery at 45 Market Street. The scope of the project has evolved considerably since this time and whilst the existing gallery will be subject to internal refurbishment and upgrading, the principal focus of the proposals will now be to expand the gallery operation into the listed 36-39 Market Street. The proposed changes form the scope of these current applications.

The Historic Environment Policy for Scotland (HEPS) outlines how we should undertake our collective duty of care whenever a decision in the planning system will affect the historic environment. There are three key areas which define how the historic environment should be understood, recognised and managed to support participation and positive outcomes, including 'Managing Change' under policies HEP2, HEP3 and HEP4.

Historic Environment Scotland (HES) were consulted as part of the application and did not make comments on the proposals.

LDP Policy Env 4 - Listed Buildings - Alterations and Extensions states that proposals to alter or to extend listed buildings will be permitted where those alterations are justified; would not result in unnecessary damage to historic structures or diminution of its interest; and would be in keeping with other part of the building.

The key design changes to the listed building are assessed as follows:-

Former Shop Frontages

The shop frontages to the Market Street elevation originally related to the former warehouse use and represent a key element of the listed building's character. The previous use of the building as a nightclub resulted in the window openings being blocked off with the shopfront detail subject to a level of external alteration. However, the recent internal soft strip out of the building interior has uncovered the detail of the original shopfronts dating from the 1930's.

The proposed retention of historic shopfront features incorporated into a remodelled contemporary design approach is considered acceptable, would relate sensitively to the building façade and provide a new element of active frontage to the street. The proposed alterations to the shopfronts would not diminish the historic and architectural interest of the listed building and would accord Policy Des 13, HEPS and current Council guidance.

## Windows and Door Openings

The original timber sash and case window frames to both the front and rear elevations will be restored and re-painted. A number of the window and door openings previously blocked up as a consequence of the previous use, will be reinstated as functioning windows.

The proposed changes to the windows will not diminish the architectural and historic interest of the listed building would be in line with HEPS and current Council guidance.

## Rooftop Plant

Mechanical ventilation units are to be installed midpoint on the main flat roof. This equipment has been positioned to minimise visual impact from the street, and the maximum height of the unit will not rise above the existing parapet balustrade.

This equipment may be evident in views from North Bridge. To mitigate any adverse visual effects, it is recommended that all rooftop plant equipment be painted in a single co-ordinated colour finish. This detail can be controlled through condition.

## Single Storey Link Structure

This structure comprises a modern flat roofed extension, situated between 36-39 Market Street and the existing gallery. Although this is not identified as part of the listing description, the proposed changes including the replacement of the street facade are minor and will not adversely affect the character of the listed building.

## Internal Alterations

The internal alterations are assessed in the related application for listed building consent (application reference 19/02004/LBC) and are acceptable.

In relation to Policy Env 4, the proposed alterations to the listed building are justified and there will be no unnecessary damage to historic structures or diminution of its interest. The proposed changes, particularly the opening up of the former shopfronts have sought to acknowledge the architectural composition of the existing gallery lying to the east.

In terms of the proposed alterations, their proposed design and form, use of material finishes are compatible with the character of the existing building, would not be detrimental to neighbouring amenity of character and address relevant requirements of LDP Policy Des 12 - Alterations and Extensions.

The design approach will also promote active frontage and increase levels of natural surveillance to Market Street, which represents an important thoroughfare. This aspect of the proposal will also address requirements of LDP Des 5 c), Development Design - Amenity in that community safety will be promoted by providing active frontage to important thoroughfares and designing for natural surveillance.

In summary, the design proposals are based upon an overall concept, recognise and respect the architectural quality of the listed building. The key elements of building character will be retained. The proposed changes are seen as part of an evolution of the listed building, these required to convert the building to the proposed new use. The proposal would represent both an innovative and viable re-use of the listed building and the enhancement to an existing cultural facility.

The design proposals are acceptable and will preserve the special architectural or historic interest of the listed building. The proposal meets requirements of relevant policies and guidance.

### **c) Character and Appearance of the Conservation Area**

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 and designate such area's.

The Old Town Conservation Area Character Appraisal refers to:-

*The plan of the Old Town has retained much of its ancient pattern and distinctive character. It is an environment of enclosed streets and dramatic changes of level with numerous framed distant views. The skilful use of land contours, the careful siting and design of individual buildings and groups of buildings, and the use of local stone, combine to create an intricate and varied character.*

The Character Appraisal also identifies elements of character with the presence of landmark buildings, architectural detailing, shopfronts, materials and uses considered relevant to the application proposal.

LDP Policy Env 6, Conservation Areas states that Development within a conservation area will be permitted which preserves or enhances the special character of the conservation area and is consistent with the relevant character appraisal.

The proposed design approach in respect of proposed material finishes, the retention of shopfronts and building lines would be consistent with the key features identified in the Conservation Area Character Appraisal. The proposal demonstrates high standards of design and will utilise materials appropriate to the historic environment.

In terms of uses, the Conservation Area Character Appraisal also recognises the importance of the Old Town as a cultural, leisure, entertainment and tourism centre of national importance. The proposed expansion of the Fruitmarket Gallery will reinforce its role as a cultural destination and the mixed use character of the Old Town to maintain active streets and a vibrant town centre.

The proposed alterations to the listed building are relatively small in nature. The refurbishment of the building will preserve and enhance the special character and appearance of the Old Town Conservation Area, and are consistent with the relevant character appraisal and the requirements of Policy Env 6.

#### **d) Outstanding Universal Value of the Edinburgh World Heritage Site**

LDP Policy Env 1 - World Heritage Sites states that development which would harm the qualities which justified the inscription of the Old and New Towns of Edinburgh as a World Heritage Site or which would have a detrimental impact on the site setting will not be permitted.

Edinburgh World Heritage were consulted in relation to the application but did not make any comments in relation to the proposal.

The proposed alterations are relatively small scale in nature and the proposal will not have a detrimental impact to the outstanding universal values of the Edinburgh World Heritage Site.

#### **e) Setting of listed buildings**

LDP Policy Env 3 - Listed Buildings - Setting, states that development within the curtilage 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.

The existing Fruitmarket Gallery at 45 Market Street is unlisted, however, the building abuts the Category B group listing including 31, 32-35 & 36-39 Market Street to form part of a terrace, with the Gallery terminating the eastern end. Whilst the application proposal seeks to form an internal link with the listed 36-39 Market Street, any impact to the setting of this group of listed building associated with the alterations to 45 Market Street are considered negligible. The proposed alterations to the listed building will seek to provide greater architectural coherence and unity between the two buildings.

In summary, the built envelope, form and mass of the listed building will be retained and enhanced and will not impact upon the setting of adjacent listed buildings.

#### **f) Archaeology**

The City Archaeology Officer welcomes the proposals which seek to retain and conserve the buildings historic fabric, however the scheme will have impacts upon the buildings historic fabric such as the removal of the upper floor to create a larger gallery. Having assessed such impacts it is considered that such impacts on archaeological grounds are not regarded as significantly adverse.

Overall the proposals are considered to have a low archaeological/heritage impacts. However, the development will reveal and remove areas of historic fabric providing evidence of how it was constructed and used. Accordingly, if consent is granted it is essential that a historic building survey is undertaken during any alterations and demolition, building upon and enhancing the work already undertaken Andrew PK Wright.

It is recommended that a condition be applied to ensure that a programme of archaeological works is undertaken. This would include an historic building survey, analysis and reporting.

### **g) Neighbour Amenity**

A range of Hotel and Hostel accommodation exists in the vicinity of the site. Backpackers' accommodation was recently granted permission in the adjacent at 32-38 Market Street.

A Noise Impact Assessment has been prepared by the applicant. This has considered the proposed activities of the gallery and noise impacts arising from new plant to be installed to the roof areas of the building.

Environmental Protection have advised that they are unable to support application and recommend refusal of the application due to potential noise impacts to neighbouring residential properties.

The applicant does not envisage the new gallery space will be used as a performance venue with amplified music as this does not form part of its regular activities. The gallery space may feature occasional amplified speech, but again this does not form part of its regular activities and noise could be controlled to acceptable levels.

The interior of the listed building has been purposely stripped back to reveal the historic fabric of the building, with previous noise attenuation measures associated with the former nightclub use now removed. The installation of new sound attenuation measures would be at odds with the design concept for the project and could also diminish the character of the listed building.

In summary, given the nature of the proposed change of use, were any negative impacts to arise from activities or noise in the future, these could be controlled through other environmental legislation.

The proposals would therefore meet the requirements of LDP Policy Des 5, Development Design - Amenity, part a) in that the amenity of neighbouring developments would not be adversely affected by the proposed change of use.

Environmental Protection have indicated that should Committee be minded to approve the application, then the following condition should be applied:- The maximum noise levels as specified in Table 3 of the Max Fordham Noise Impact Assessment, issue 5, dated 23 July 2019, shall be adhered to at all times. Whilst this would not be enforceable as a planning condition, it is recommended that this be applied as an informative.

### **h) Transport and Public Realm**

No new car parking or cycle parking is proposed as part of the application. The proposed extension to the gallery would be serviced from Market Street, as per arrangements for the existing gallery.

The Roads Authority have no objections to the application subject to an informative being applied, highlighting that the applicant should consider developing a travel plan. This should address the provision of cycle parking and measures to promote active travel and local public transport amongst users of the building.

### **i) Equalities and human rights**

The application was assessed in terms of equalities and human rights.

The key equalities impacts relate to the accessibility of the building. This application seeks to improve the accessibility of the gallery facilities to all users, through a range of internal and external works including the remodelling of the main entrance and provision of a ramped access to address floor level differences within the listed building. The change seek to upgrade the building to meet current standards in respect of accessibility and Building Standards.

No impact to human rights has been identified.

### **j) Other matters**

Network Rail have been consulted as part of the application, given the proximity of the application site above an operation railway and station. They have recommended than an informative be placed on the application requiring details of the proposals be submitted to Network Rail's Asset Protection Engineer for approval.

### **k) Representations**

No representations were received.

### **Conclusion**

The proposed change of use of the building from a nightclub (Class 11 (d)) to art gallery (Class 10 (c)) is supported by LDP Policy Ret 7 and is considered appropriate to the nature of the city centre location, will not result in adverse impacts to the amenity of neighbours and is considered acceptable.

The proposed conversion will provide a sustainable re-use of the listed building, representing both a logical expansion and enhancement to an established cultural venue in the city centre.

The design proposals to re-model of the building and external alterations will be sympathetic to the character of the listed building and its setting and the setting of nearby listed buildings. The proposal will preserve and enhance the character of the Old Town Conservation Area. The proposal will not result in detrimental impact to the outstanding universal values of the Edinburgh World Heritage Site.

The proposal addresses requirements of policy and guidance.

There are no further material considerations which outweigh this conclusion.

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

### **3.4 Conditions/reasons/informatives**

#### **Conditions:-**

1. No demolition/development shall take place on the site until the applicant has secured the implementation of a programme of archaeological work (historic building survey, analysis and reporting) in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the Planning Authority.
2. That prior to the commencement of works, details of the proposed colour finish for all roof top plant shall be submitted to and approved in writing by the Planning Authority. Thereafter the development shall be implemented in accordance with the agreed scheme. All such equipment shall be finished in a single coordinated colour finish.
3. That prior to the commencement of works, details of all proposed external colour finishes including those to window frames, doors, the shopfront fascia and external facing to the single storey link structure shall be submitted to and approved in writing by the Planning Authority. Thereafter the development shall be implemented in accordance with the agreed scheme.

#### **Reasons:-**

1. In order to safeguard the interests of archaeological heritage.
2. In order to enable the planning authority to consider this/these matter/s in detail.
3. In order to enable the planning authority to consider this/these matter/s in detail.

#### **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. In accordance with the Council's Travplan 3 policy, the applicant should consider developing a Travel Plan including the provision of pedal cycles (inc. electric cycles), secure cycle parking for staff and customer, staff and customer, staff changing and shower facilities, public transport travel passes and timetables for local public transport.

4. The maximum noise levels as specified in Table 3 of the Max Fordham Noise Impact Assessment, issue 5, dated 23 July 2019, shall be adhered to at all times.
5. Construction works must be undertaken in a safe manner which does not disturb the operation of the neighbouring railway. Applicants must be aware of any embankments and supporting structures which are in close proximity to their development.

Details of works in proximity to the station must be submitted to Network Rail's Asset Protection Engineer for approval prior to works commencing on site. Where any works cannot be carried out in a "fail-safe" manner, it will be necessary to restrict those works to periods when the railway is closed to rail traffic i.e. by a "possession" which must be booked via Network Rail's Asset Protection Engineer and are subject to a minimum notice prior notice period of 20 weeks.

The developer must contact our Asset Protection Engineers regarding the above matters, see contact details below:

Network Rail Asset Protection Engineer  
151 St Vincent Street  
GLASGOW  
G2 5NW  
Tel 0141 555 4352  
Email: AssetProtectionScotland@networkrail.co.uk

6. This permission does not negate any requirement for further permissions to be sought, e.g. advertisement consent, should new elements of signage or advertising be proposed to the building.

## **Financial impact**

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### **4.1 The financial impact has been assessed as follows:**

No legal agreement will be required for this application proposal.

The Council own the lease for 36-39 Market Street.

## **Risk, Policy, compliance and governance impact**

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

## **Equalities impact**

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### **6.1 The equalities impact has been assessed as follows:**

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

## **Sustainability impact**

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### **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**

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### **8.1 Pre-Application Process**

Extensive pre-application discussions have taken place in relation to this project since 2013, these involving the applicant, respective design teams and Historic Environment Scotland. The applicant has also held informal discussions with the Cockburn Association.

Initial proposals for the redevelopment of the Gallery were considered by the Edinburgh Urban Design Panel on 27 August 2014. However, the scope of the project has changed considerably since that time, with the principal focus for expansion of the gallery now being placed on the conversion of the former nightclub at 36-39 Market Street.

### **8.2 Publicity summary of representations and Community Council comments**

The application was advertised on 13 May 2019. No representations were received.

The Old Town Community Council were consulted in relation to the application but no comments were received.

## **Background reading/external references**

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- 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 designated as City Centre in the Edinburgh Local Development Plan.

Old Town Conservation Area, Edinburgh World Heritage Site and Local Nature Conservation Site (LNCS) designations are also applicable.

**Date registered**

24 April 2019

**Drawing numbers/Scheme**

01, 02A-07A,

Scheme 2

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

Contact: Francis Newton, Senior Planning Officer  
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**Links - Policies**

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**Relevant Policies:**

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 4 (Listed Buildings - Alterations and Extensions) identifies the circumstances in which alterations and extensions to listed buildings will be permitted.

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

LDP Policy Env 9 (Development of Sites of Archaeological Significance) sets out the circumstances in which development affecting sites of known or suspected archaeological significance will be permitted.

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

LDP Policy Des 3 (Development Design - Incorporating and Enhancing Existing and Potential Features) supports development where it is demonstrated that existing and potential features have been incorporated into the design.

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 Des 12 (Alterations and Extensions) sets criteria for assessing alterations and extensions to existing buildings.

LDP Policy Des 13 (Shopfronts) sets criteria for assessing shopfront alterations and advertising proposals.

LDP Policy Ret 7 (Entertainment and Leisure Developments - Preferred Locations) identifies the City Centre, at Leith and Granton Waterfront and town centres as the preferred locations for entertainment and leisure developments.

LDP Policy Tra 3 (Private Cycle Parking) requires cycle parking provision in accordance with standards set out in Council guidance.

**Non-Statutory guidelines** Edinburgh Design Guidance supports development of the highest design quality and that integrates well with the existing city. It sets out the Council's expectations for the design of new development, including buildings, parking, streets and landscape, in Edinburgh.

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

**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

The Historic Environment Policy for Scotland 2019 outlines Government policy on how we should care for the historic environment when taking planning decisions. Planning Advice Note 71 on Conservation Area Management recognises conservation areas need to adapt and develop in response to the modern-day needs and aspirations of living and working communities.

Managing Change in the Historic Environment: External Fixtures sets out Government guidance on the principles that apply to altering the external fixtures of listed buildings.

Managing Change in the Historic Environment: Interiors sets out Government guidance on the principles that apply to alterations to the interiors of listed buildings.

Managing Change in the Historic Environment: Shopfronts and Signs sets out Government guidance on the principles that apply to altering historic shopfronts and signs.

**Non-statutory guidelines** 'GUIDANCE FOR BUSINESSES' provides guidance for proposals likely to be made on behalf of businesses. It includes food and drink uses, conversion to residential use, changing housing to commercial uses, altering shopfronts and signage and advertisements.

Managing Change in the Historic Environment: Windows sets out Government guidance on the principles that apply to altering the windows of listed buildings.

Managing Change in the Historic Environment: Use and Adaptation of Listed Buildings sets out Government guidance on the principles that apply to enable the use, the reuse and adaptation of listed buildings.

# Appendix 1

**Application for Planning Permission 19/02006/FUL  
At 36 - 39 Market Street, Edinburgh, EH1 1DF  
Change of Use to former nightclub [36-39] to extend  
Fruitmarket Gallery [No 45]: Class 11(d) to 10(c). Various  
alterations to and reinstatement of original windows &  
shopfront, install roof mounted plant. Internal alterations:  
removal of 1st floor to create double height gallery to east  
section of property and on west, over two floors, toilets,  
stores & workshop located to west, with staff  
accommodation above. Internal slappings to single storey  
link connect two properties forming one venue.**

## Consultations

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### Archaeology comment

*Further to your consultation request I would like to make the following comments and recommendations concerning these linked FUL & LBC applications the change of Use to former nightclub [36-39] to extend Fruitmarket Gallery [No 45]: Class 11(d) to 10(c). Various alterations to and reinstatement of original windows & shopfront, install roof mounted plant. Internal alterations: removal of 1st floor to create double height gallery to east section of property and on west, over two floors, toilets, stores & workshop located to west, with staff accommodation above plus internal slappings to single storey link connect two properties forming one venue.*

*The application concerns a listed (B) former fruit-warehouses located on the southern boundary of Waverley Station. The building was first designed in 1889 and constructed soon after as part of a wider scheme, with the building extended eastwards in 1931 along with the construction of the neighbouring No45 Market Street. The Edinburgh Fruitmarket vacated the site in 1972.*

*Accordingly, buildings have been identified as of historic and archaeological significance. Accordingly, this application must be considered under terms Scottish Government's Our Place in Time (OPIT), Scottish Planning Policy (SPP), Historic Environment Scotland's Policy Statement (HESPS) 2016 and Archaeology Strategy and CEC's Edinburgh Local Development Plan (2016) Policy ENV4, ENV9. The aim should be to preserve archaeological remains in situ as a first option, but alternatively where this is not possible, archaeological excavation or an appropriate level of recording may be an acceptable alternative.*

*It is welcomed that proposals seek to retain and conserve the buildings historic fabric, however the scheme will have impacts upon the buildings historic fabric such as the removal of the upper floor to create a larger Gallery. Having assessed such impacts it is considered that such impacts on archaeological grounds are not regarded as significantly adverse.*

*Overall the proposals are considered to have a low archaeological/heritage impacts. However, the development will reveal and remove areas of historic fabric providing evidence of how it was constructed and used. Accordingly, if consent is granted it is essential that a historic building survey is undertaken during any alterations and demolition, building upon and enhancing the work already undertaken by Andrew PK Wright.*

*It is recommended that the following condition be attached to ensure that this programme of archaeological works is undertaken:*

*'No demolition/development shall take place on the site until the applicant has secured the implementation of a programme of archaeological work (historic building survey, analysis & reporting) in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the Planning Authority.'*

*The work must be carried out by a professional archaeological organisation, either working to a brief prepared by CECAS or through a written scheme of investigation submitted to and agreed by CECAS for the site. Responsibility for the execution and resourcing of the programme of archaeological works and for the archiving and appropriate level of publication of the results lies with the applicant.*

### **Environmental Protection comment**

*Environmental Protection has some concerns about potential noise from the proposed new venue affecting the amenity of nearby noise-sensitive premises (Likely to be residential accommodation up Fleshmarket Close and along Market Street). We would therefore ask for the applicant to submit a Noise Impact Assessment to demonstrate that noise from activities in the gallery (performance noise, music etc) meets NR15 when assessed from the nearest noise-sensitive premise (with window open for ventilation). A worst-case scenario should be assumed. Please note we would not accept noise-limiting devices in relation to the control of music noise.*

*The Noise Impact Assessment should also demonstrate that any new mechanical plant introduced as part of this application meets NR25 when measured within the nearest noise-sensitive premises (with windows open for ventilation).*

*In terms of air quality, we note there are plans to install a new heating system / boiler. Dependent on the size of the proposed boiler we may need further information to ensure the proposals do not affect local air quality.*

### **Environmental Protection comment**

*Environmental Protection cannot support application 19/02006/FUL and recommends refusal. We have no objections to 19/02007/FUL subject to conditions:*

*Prior to the use being taken up, mechanical plant which meets the maximum noise levels as detailed in Tables 4, 5, and 6 of the Max Fordham Noise Impact Assessment, issue 5, dated 23 July 2019, should be implemented.*

*The premises are part of a series of warehouses built along the side of Waverley Station with some residential properties in close proximity on Market Street and on Fleshmarket Close. The two warehouses have previously been used as a gallery and nightclub. The proposal looks to connect the two warehouses to extend the art gallery and carry out extensive works to the buildings.*

*Environmental Protection expressed concerns about noise from the proposed development affecting the nearby residences. A Noise Impact Assessment was duly commissioned from Max Fordham by the applicants. Due to the planned works to the warehouses, it was quickly established that amplified music with the development would not meet the required standard at neighbouring residential properties. The applicants did not wish to consider mitigation measures in relation to amplified music. The Noise Impact Assessment therefore states that there will be no amplified sources (including music) other than spoken word.*

*Planning does not accept conditions which would restrict amplified music at the premises. Therefore, the risk of music being played within the premises and negatively affecting nearby residents remains. We therefore cannot support application 19/02006/FUL.*

*However, should the Committee be minded to grant, we would recommend the following condition be attached:*

*The maximum noise levels as specified in Table 3 of the Max Fordham Noise Impact Assessment, issue 5, dated 23 July 2019, shall be adhered to at all times.*

## **HES comment**

### *Our Advice*

*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 development affecting the historic environment, together with related policy guidance.*

## **Network Rail comment**

*Whilst Network Rail has no objections in principle to the proposal, due to its close proximity to the operational railway, we would request that the following matters are taken into account, and if necessary and appropriate included as advisory notes, if granting the application:*

*Construction works must be undertaken in a safe manner which does not disturb the operation of the neighbouring railway. Applicants must be aware of any embankments and supporting structures which are in close proximity to their development.*

Details of works in proximity to the station must be submitted to Network Rail's Asset Protection Engineer for approval prior to works commencing on site. Where any works cannot be carried out in a "fail-safe" manner, it will be necessary to restrict those works to periods when the railway is closed to rail traffic i.e. by a "possession" which must be booked via Network Rail's Asset Protection Engineer and are subject to a minimum prior notice period for booking of 20 weeks.

## Roads Authority Issues

No objections to the application subject to the following being included as conditions or informatives as appropriate:

1. In accordance with the Council's LTS Travplan3 policy, the applicant should consider developing a Travel Plan including provision of pedal cycles (inc. electric cycles), secure cycle parking for staff and customer, staff changing and shower facilities, public transport travel passes and timetables for local public transport;

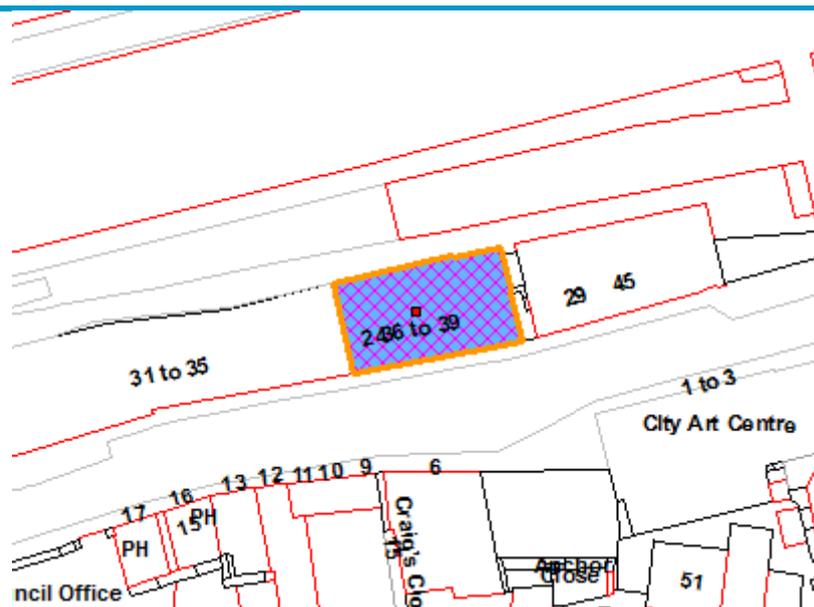
Note:

I. The proposed zero car parking associated with this development is considered acceptable due to the accessibility of public transport to this site;

II. With regards to the current taxi rank on Market Street, Transport are currently developing options to minimise the impact of the taxi rank on the current streetscape;

III. It should also be noted that Market Street will be majorly altered as part of the wider City Centre Transformation project.

## Location Plan



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**END**