

Development Management Sub-Committee Report

Wednesday 21 September 2022

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

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

**Item – Committee Decision
Application Number – 22/02035/FUL
Ward – B11 - City Centre**

Reasons for Referral to Committee

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

Recommendation

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

Summary

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

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

However, the proposals fail to comply with the amenity requirements of LDP Policies Des 5, Ret 7 and Ret 11, and it is determined the proposals would cause an unreasonable level of harm to neighbouring amenity.

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

SECTION A – Application Background

Site Description

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

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

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

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

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

Proposal

The application seeks permission for the erection of temporary structures and enclosures, including a Spiegel tent and service area/bar, to facilitate the use of St James Square as an external events space for a defined period each year.

The space is proposed as part of a series of linked event spaces within St James Quarter.

The structures will be in the form of a Spiegel tent, bar, seating and low level timber fence to provide a perimeter to the space.

The space is proposed to operate between 10am and 11pm during August each year, with one week on either side for set up and take down.

The space will have the capacity to accommodate up to 200 people, with capacity reduced for some shows.

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

The tent has been erected and the space has been in operation since the start of August 2022, and was operating under the '28 day rule', under the provisions of Class 15 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992.

Supporting Documents

A Noise Impact Assessment and Noise Management Plan submitted in support of the application.

Relevant Site History

21/05177/FUL

Proposed Festival Event Space At
St James Square
Edinburgh

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

Granted

15 December 2021

Other Relevant Site History

22/02039/FUL

Erection of temporary structures and enclosures, including bar, to facilitate the use of Register Square as an external events space.

Granted

19 August 2022

22/02040/FUL

Erection of temporary structures and enclosures, including bar, to facilitate the use of Calton View as an external events space.

Granted

19 August 2022

Pre-Application process

Pre-application discussions took place on this application.

Consultation Engagement

HES

Environmental Protection

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

Publicity and Public Engagement

Date of Neighbour Notification: 27 July 2022

Date of Renotification of Neighbour Notification: Not Applicable

Press Publication Date(s): 5 July 2022; 13 May 2022;

Site Notices Date(s): ; 10 May 2022;

Number of Contributors: 13

Section B - Assessment

Determining Issues

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

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

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

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

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

In the assessment of material considerations this report will consider:

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

Assessment

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

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

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

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

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

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

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

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

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

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

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

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

The Courts have clarified that Section 64 means that there is a strong presumption against granting planning permission for development which would conflict with the objective of preserving or enhancing the character or appearance of the conservation area. If engaged, the presumption can only be rebutted if the proposals would result in significant public interest advantages which can only be delivered at the scheme's proposed location.

The New Town Conservation Area Character Appraisal states that the area is typified by the formal plan layout, spacious stone terraces, broad streets and an overall classical elegance. The buildings are of a generally consistent three storey and basement scale, with some four-storey corner and central pavilions.

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

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

c) The proposals comply with the development plan?

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

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

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

Impact on the UNESCO World Heritage Site

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

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

LDP Policy Env 1 (World Heritage Sites) states that development which would harm the qualities which justified the inscription of the Old and New Towns of Edinburgh as World Heritage Sites or would have a detrimental impact on a Site's setting will not be permitted. This policy requires development to respect and protect the outstanding universal values of the World Heritage Sites and their settings. Setting may include sites in the immediate vicinity, viewpoints identified in the key views study and prominent landscape features throughout the city.

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

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

Impact on the setting of the Listed Buildings

LDP Policy Env 3 (Listed Buildings- Setting) states that Development within the curtilage or affecting the setting of a listed building will be permitted only if not detrimental to the architectural character, appearance or historic interest of the building, or to its setting.

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

Impact on the setting of the Conservation Area

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

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

Principle

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

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

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

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

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

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

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

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

Scale, Design and Materials

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

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

Amenity

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

There nearest residential properties are located along St James Walk and 23-26 St James Square, with the closest properties being approximately 10m from the site.

The applicant has submitted a Noise Impact Assessment along with a Noise Management Plan in support of the application. The Noise Impact Assessment demonstrates that the proposal will exceed the expected noise standards.

The Noise Impact Assessment advises that the Spiegeltent would be used primarily for live radio broadcasts with the BBC during year 2022, comedy shows and spoken word events with only low levels of intermittent amplified music being played, this includes early morning broadcasts. The proposed operating hours will ensure the space will cease operation at 11pm.

Environmental Protection were consulted on the proposal and has raised concerns about the noise from outdoor activities negatively affecting the amenity of nearby residents.

Environmental Protection comment that the "Just the Tonic" events proposed to operate late in the evening, will not meet the expected noise standard, along with the bar area which would operate at the same time as the shows. As such, Environmental Protection has recommended refusal of the application. There are no mitigative measures identified to sufficiently reduce the level of noise.

The space sits at the entrance of the St James Quarter within the public realm where there a significant level of on street activity existing and examples of outdoor seating associated with adjacent uses. There has also been examples of event/bar uses in the space previously which were granted temporary permission.

The permission granted was on the proviso that a Noise Impact Assessment would be submitted identifying the noise impact of the event and to address any of the noise complaints received during its operation for future years.

Whilst this is a central location, it is located within a relatively enclosed site in comparison to other spaces identified for events throughout St James Quarter, with residential properties being in close proximity. There have been objections received from local residents prior to the development taking place, as well as subsequent complaints received since its installation and operation.

Given that the Noise Impact Assessment demonstrates that the proposal will exceed the expected noise standards, and complaints relating to noise continue to be received, it can be reasonably determined that the proposal results in harm to neighbouring amenity and would continue to in the forthcoming years of operation without suitable mitigation.

Overall, whilst this is city centre location where the principle is accepted, the proposal currently results in an unacceptable level of noise disturbance and there are no mitigative measures proposed that would prevent further unreasonable harm to residential amenity if approved for future years. As such, the proposal does not comply with the amenity requirements of LDP policies Des 5, Ret 7 and Ret 11.

The proposal fails to comply with the objectives of LDP Des 5, Ret 7 and Ret 11 and would result in an unreasonable level of noise disturbance to the detriment of neighbouring amenity.

Waste

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

Access and Parking

The proposal makes no amendments to existing arrangements.

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

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

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

Conclusion in relation to the Development Plan

Overall, the proposals will contribute to an appropriate mix of uses in this city centre location. The proposals will not harm the setting of any nearby listed buildings and preserve the appearance of the conservation area. The proposals are acceptable in terms of scale, design and materiality.

However, the proposals give rise to a level of noise disturbance that is to the detriment of residential amenity, and no mitigative measures are proposed to mitigate this impact. As such the proposals fail to comply with the overall objectives of the Local Development Plan.

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

The following material considerations have been identified:

SPP - Sustainable development

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

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

Emerging policy context

The Draft National Planning Framework 4 has been consulted on but has not yet been adopted. As such, little weight can be attached to it as a material consideration in the determination of this application.

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

Equalities and human rights

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

Public representations

13 letters of representation have been received in relation to the proposal. Four of these are in support of the application, and nine object to the proposal.

Material Considerations

- Noise. Addressed in Section a) above;
- Lack of Noise Impact Assessment. This has been submitted and neighbour re-notification carried out;
- Quality of materials. Addressed in Section a) above;
- Clutter. Addressed in Section a) above;
- Detrimental to setting of Listed Buildings. Addressed in Section a) above;
- Doesn't preserve the New Town Conservation Area or World Heritage Site. Addressed in Section a) above and
- Permission should be conditioned to one year.

Non-Material Considerations

- Anti-social behaviour and public urination. This is not controlled through the planning process. Toilet facilities are provided in the St James Centre adjacent; and
- Commercialisation of the public realm. This not a planning matter.

Support

- Will lead to vibrancy and increase footfall in the city centre location;
- Will benefit local businesses post Covid by bringing in customers to area;
- Location upon hardstanding in city centre location will preserve greenspace and avoid damage to grassed areas on alternative sites;
- Will allow the event to be well managed by the St James Quarter management;
- Will be less intrusive and less noise impact in city centre location than alternative locations upon greenspace.

Overall Conclusion

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

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

However, the proposals fail to comply with the amenity requirements of LDP Policies Des 5, Ret 7 and Ret 11, and it is determined the proposal would cause an unreasonable level of harm to neighbouring amenity.

Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following;

Reasons:-

1. The proposal is contrary to the Local Development Plan Policy Ret 7 in respect of Entertainment and Leisure Developments - Preferred Locations, as it could have an unacceptable impact on residential amenity.
2. The proposal is contrary to the Local Development Plan Policy Ret 11 in respect of Food and Drink Establishments, as it could have an unacceptable impact on residential amenity.
3. The proposal is contrary to the Local Development Plan Policy Des 5 in respect of Development Design - Amenity, as it could have an unacceptable impact on residential amenity.

Background Reading/External References

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

Further Information - Local Development Plan

Date Registered: 29 April 2022

Drawing Numbers/Scheme

01-09

Scheme 1

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

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Appendix 1

Summary of Consultation Responses

NAME: HES

COMMENT: No comments made in relation to the proposals.

DATE: 9 August 2022

NAME: Environmental Protection

COMMENT: Environmental Protection is unable to support this application.

The proposal is for an external events space at St James Square to operate during the month of August. The submitted Noise Management Plan and Design Statement advise the hours of operation would be 10am - 11pm daily.

The Noise Impact Assessment advises there will be a live Breakfast Broadcast from 06.30 hours (doors open 06.00 hours). There is also an event currently being advertised which starts at 08.00 (with doors open at 07.30 hours).

Environmental Protection has significant concerns about the noise from outdoor activities negatively affecting the amenity of nearby residents overlooking St James Square.

A Noise Impact Assessment (NIA) was requested by this service.

The applicant has submitted this in July (Waterman Infrastructure and Environment Limited, ref: WIE 17806-100). This assessment demonstrates that the proposal will exceed the expected noise standards.

The NIA advises that "it is currently envisaged that the Spiegel tent would be used primarily for live radio broadcasts with the BBC signed up for the festival in 2022, comedy shows and spoken word events with only low levels of intermittent amplified music being played."

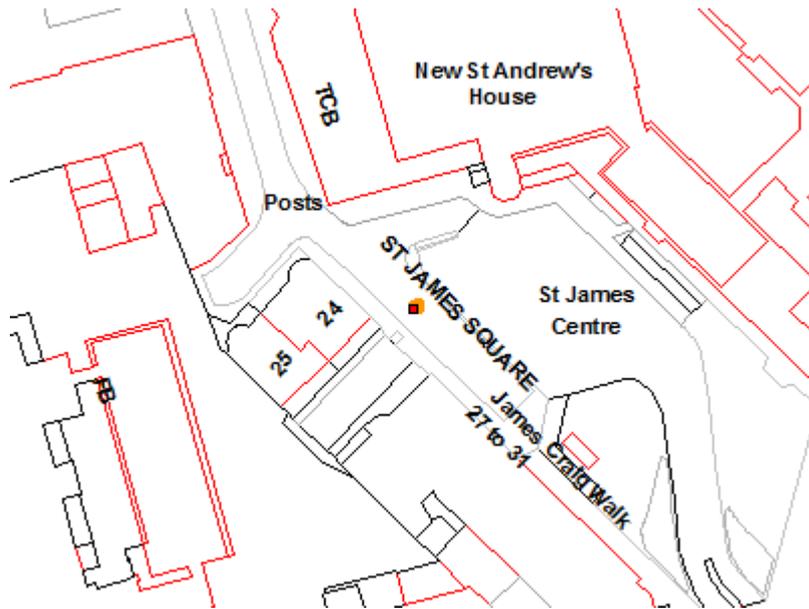
The NIA demonstrates that the Just the Tonic events, primarily operating later in the evening, will not meet the expected noise standard. Currently over 60 hours of Just the Tonic shows are programmed at this venue. The bar area is also envisaged not to meet the noise standard, and it would be anticipated that the bar would often operate at the same time as the shows.

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

DATE: 29 July 2022

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

Location Plan



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