

Development Management Sub-Committee Report

Wednesday 9 November 2022

**Application for Planning Permission
Christmas Market, George Street, Edinburgh.**

Proposal: Erection of ice rink including viewing /seating, sculpture, star flyer, bar and covered seating area, 5 food trader stalls, offices, first aid area and toilets, ancillary storage and generator. Pedestrian walkway retained to southern edge of site. Temporary Period (5 Years).

**Item – Committee Decision
Application Number – 22/04920/FUL
Ward – B11 - City Centre**

Reasons for Referral to Committee

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

Recommendation

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

Summary

With reference to the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 the proposal would result in minor harm to the setting of neighbouring listed buildings for the temporary period of time in which the development would exist on site. Notwithstanding, it is considered that there are significant economic and cultural benefits to the city resulting from the Christmas Market, which arise principally because of it being located within the city centre where high footfall land uses are encouraged. The Christmas Market will be an interesting additional feature of the city centre, that people from Edinburgh and beyond will benefit from. It will contribute positively to the life of the city and the vibrancy of the city centre. Moreover, the site is exceptionally well placed for public transport owing to it being within the city centre.

On balance, these benefits, which are a considerable material consideration, outweigh the short-term adverse impact that the proposal will have on the setting of neighbouring listed buildings and provide reasoned justification for granting planning permission for the proposed development on the site. With reference to the abovementioned Act the proposal does not result in significant harm to the character and appearance of the conservation area.

The proposal does not result in significant harm to the character and appearance of the designed landscape or the Outstanding Universal Value of the New Towns of Edinburgh World Heritage Site. The proposed development is for a temporary period and will not have a long-term impact on the site and will not result in significant harm to residential amenity. The proposals comply with the Edinburgh Local Development Plan. The proposal, subject to the conditions stated, is considered to be acceptable. There are no detrimental impacts on equalities or human rights. There are no material considerations which outweigh this conclusion.

SECTION A – Application Background

Site Description

The site is located on the public road of George Street on the section which runs between Charlotte Square and Castle Street. The site is bound to the north and south by the properties located on George Street and to the east by the junction of George Street and Castle Street and to the west by Charlotte Square.

The site is adjacent to a number of listed buildings, structures and monuments:

- 33-39 Charlotte Square and 142-146 George Street with railing and lamp standards (Category A), LB28506;
- 40-46 Charlotte Square and 143 George Street with railing and lamp standards (Category A), LB28507;
- 112 George Street with railings and lamp standards (Category A), LB28883;
- George Street and Castle Street, Statue of Dr Chalmers (Category A), LB27847; and
- 97-105 (Odd Nos) George Street, Bank of Scotland (Category A), LB28850.

The site is located within the Old and New Towns of Edinburgh World Heritage Site and the Historic Garden Designed Landscape Inventory Site - New Town Gardens.

The site is within the New Town Conservation Area.

Description of the Proposal

The application is for the temporary planning permission, for the use of the adopted public road at George Street to erect and install a covered Ice Rink (including viewing and seating areas) on the eastern portion of the site. Installation of two attractions on the western part of the site; erection of a Bar and Covered Seating Area; erection of 5 Food Trader Stalls; installation of Offices First Aid Area and Toilets; ancillary storage and generator facility. The pedestrian walkway is to be retained to northern and southern edge of site with an access road to the north to be maintained for emergency access.

The application is one of three separate applications for Christmas events proposed by the applicant in the city centre.

The application is for 5 years, for a temporary period annually.

Relevant Site History

20/03708/FUL
Christmas Market
George Street
Edinburgh

Erection of Edinburgh's Christmas at George Street and Castle Street, including Christmas Market Stalls, Ice Rink, Plant and Boot Room, Around the Corner Bar, Box Office, Associated Site Offices, Stores and Ancillary Facilities (amended application for festive period 2021- 2022).

Granted
13 November 2020

Other Relevant Site History

This application is part of a wider proposal including 22/04921/FUL and 22/04917/FUL.

Pre-Application process

Pre-application discussions took place on this application.

Consultation Engagement

Edinburgh World Heritage

Historic Environments Scotland

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

Publicity and Public Engagement

Date of Neighbour Notification: 4 October 2022

Date of Renotification of Neighbour Notification: Not Applicable

Press Publication Date(s): 7 October 2022;

Site Notices Date(s): 4 October 2022;

Number of Contributors: 3

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 - Setting

Listed Building and Setting

The Managing Change guidance states setting can be important to the way in which historic structures or places are understood, appreciated and experienced. It can often be integral to a historic asset's cultural significance.

Setting extends beyond the property boundary or 'curtilage' of an individual historic asset into a broader landscape context. Development proposals should seek to avoid or mitigate detrimental impacts on the settings of historic assets.

The proposal includes two fairground rides that would be located immediately adjacent to many listed buildings including those that are category A listed. The covered ice rink and associated attractions are to be placed on George Street between a collection of A-listed structures. The scale, positioning, form and design of the temporary structures would have a detrimental impact on the setting of the A-listed buildings.

Owing to the size, scale, form and design of the proposal, it would impact on the setting of the additional neighbouring listed buildings in the wider vicinity. However, the impact on them would not be reduced due to these buildings being located further away from the proposal. Previous iterations of the Christmas market, which have included an ice rink and similar attractions which have operated in this location over the festive season and has become characteristic of the setting. The proposal is for a temporary period of a known duration and the impact on the setting of these neighbouring listed buildings would be short term.

Dividing the event into 3 separate locations in the city has diminished the concentrated scale of the current proposal. The impact on a single environment has been reduced from previous years and consequently the impact on the heritage assets is not as profound as in previous years.

Historic Environment Scotland (HES) has stated that "the design and siting of the installation within a historically open streetscape will inevitably cause some harm to the setting of these assets, and will also have some impact on the OUV of the WHS. However, these impacts will be short-lived, and limited to the market's seasonal operation. The design of the market is clearly focussed on its use, and quick and straightforward installation, although pre-app discussion may have allowed scope for improvements, if perhaps limited ones".

HES further concluded "do not raise historic environment issues of national significance and therefore we do not object."

Given that there would be harm to the setting of neighbouring listed buildings, consideration is required to be given to whether there are significant material considerations that justify the development in this location; and if so, does this outweigh any adverse impacts.

It is considered that there are significant economic and cultural benefits to the city resulting from the Christmas market, which arise because of its location within the city centre, where high footfall land uses are encouraged. The Christmas Market will be an interesting additional feature to the city centre, that people from Edinburgh and beyond will benefit from. It will contribute positively to the life of the city and improve the vibrancy of the city centre. It is likely to draw people to the city centre who might not otherwise go there and therefore there will be economic benefit to surrounding businesses.

On balance, these benefits, which are significant material considerations, outweigh the temporary adverse impact that the proposal will have on the setting of neighbouring listed buildings and provide reasoned justification for granting planning permission for the proposed development on the site.

Conclusion in relation to the listed building

The proposal would have a minor temporary adverse impact on the setting of the neighbouring listed buildings and their setting. As the proposal is temporary and the development is non-permanent it is therefore acceptable with regard to section 59(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

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

Conservation Area

The scale of the proposed temporary development is considerably smaller than past Christmas markets that operated solely within East Princes Street Gardens. More recently the development has been divided between three locations which has seen the effect of development being mitigated. This has seen the size and form of the development within an individual site reduce through dividing the market across three locations.

Between the reduction in scale and form and the temporary nature of the development, the cumulative impact on the character and appearance of the conservation area is not significant enough to refuse planning permission.

Overall, the development does not conflict with the objective of preserving or enhancing the character or appearance of the conservation area.

Conclusion in relation to the conservation area

Overall, the proposal would have a minor temporary adverse impact on the character and appearance of the New Town Conservation Area. As this effect is minor and temporary it is therefore acceptable with regard 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 Edinburgh Local Development Plan 2016 (LDP) policies to be considered are:

- LDP Delivering the LDP policies Del 2
- LDP Design policies Des 1, Des 4 and Des 5;
- LDP Environment policies Env 1, Env 3 and Env 6; and
- LDP Shopping and Leisure policies Ret 7.

The non-statutory 'Listed Buildings and Conservation Area' guidance is a material consideration that is relevant when considering policies Env 3 and Env 6.

Listed Buildings

The impact on surrounding listed buildings and the conservation area has been assessed above and complies with LDP Policies Env 3 and Env 6.

Conservation Area

As discussed, the effect on the New Town Conservation Area would be detrimental, however this effect is mitigated through the temporary nature of the development. Therefore, the cumulative impact on the character and appearance of the conservation area is not significant enough to refuse planning permission.

Overall, the development does not conflict with the objective of preserving or enhancing the character or appearance of the conservation area, allowing it to comply with Env 6.

World Heritage Site

The Local Development Plan 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."

Edinburgh World Heritage noted that "the proposals will result in a level of harm to the World Heritage Site's OUV - infilling of public realm specifically designed for high quality open space, with structures which are not in keeping with the character of their environment; in particular, the imposing, long, covered structure housing the ice rink and skate facilities". The consultation further commented that the proposal could be improved by reducing the massing of the tent structure allowing both pedestrians and users access to the streets open vistas rather than constructing "long, narrow 'alleys'" on either side of the development. Due to the size, scale, positioning, form and the design and appearance, the proposal would temporarily impact on key views within the World Heritage Site. Notwithstanding, by splitting the event into 3 separate events in the city the scale of the proposal is relatively small and consequently the impact on the heritage assets is not profound. Given this and the fact that the proposal is for a temporary period of a known duration, the impact on the OUV of the World Heritage Site would be short term and not significantly detrimental.

In addition to the other two Christmas markets currently proposed by the applicant in other parts of the city centre and other known developments in the city centre, owing to its size, form and temporary nature the cumulative impact on the character and appearance of the OUV of the WHS is not significant.

Therefore, given the temporary nature of the proposal and the contribution to the City's cultural offering and economic recovery, it is considered to comply with LDP Policy Env 1.

Alternative Locations

As the proposal is for a Christmas Market within Edinburgh it is appropriate that it is located in the city centre. Given its proximity to bus routes, bus station, tram and train, there are few locations with better connectivity. For example, the Meadows or George Square do not have such connectivity. Other locations in the city centre, given the large number of listed buildings throughout the city centre, are likely to give rise to similar impacts on other listed buildings. Therefore, the benefits realised by the market can only realistically be delivered at its proposed location at George Street.

Use

The site is located within the City Centre in the Local Development Plan. It is considered the proposal can be well integrated into the surrounding environment with minimal impact on the historic environment. The proposal is located within a central location which is considered easily accessible by various sustainable modes of transport and no parking will be provided.

The Edinburgh Local Development Plan (LDP) supports a mix of uses appropriate to the location of the site, its accessibility characteristics and the character of the surrounding area. Development which lies within the City Centre will be supported 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.

There are no development plan policies or non-statutory guidelines that directly relate to proposals for outdoor markets/attractions.

The proposal would be a temporary change to the normal use of this part of George Street for a limited duration of time only. The temporary use of George Street for Christmas markets and public events is long standing and established. The Christmas market and attractions have become a familiar presence within the city centre during the festive season.

The principle of development is considered acceptable given the temporary nature of the proposal and is supported in this location. The proposal complies with LDP Policy Ret 7. The proposal would not prevent the continued existing use of the public access to George Street and its pedestrian use. The proposal will help the city centre fulfil its role as a capital city. Given that the proposed Christmas market/attractions are temporary they do not conflict with the key principles of Policy Del 2.

Amenity

A site and plant compound are proposed on the western most section of the application site, including a site office, generator and first aid centre. This is in close proximity to 35-39 Charlotte Square (The Roxburghe Hotel). In 2017 a generator and refrigeration plant were positioned at this location in association with an 'Ice Kingdom Display' and no complaints were received by the Council. However, given the high noise levels the ice-rink refrigeration plant will generate, there is a concern with potential for noise nuisance to occupiers of the hotel. In order to mitigate noise nuisance from the plant it should be made a condition of a grant of planning permission that the exact positioning of the plant and generators on the site and the acoustic containment of the plant is such that an acoustic attenuation of NR35 is achieved within the guest bedrooms of the hotel between 23:00 hours and 07:00 hours with the windows closed.

Due to the nature of the proposal and its location, there will be amplified music and a large number of people attending, including in the evening. As the site is situated within the city centre it is acceptable as it promotes a diverse uses in a way that promotes vitality and engagement with the City Centre. The Council's Environmental Protection Section have previously advised that if any complaints about noise were received, they would address this directly with the event organiser.

The applicant has confirmed that a private waste collection service, will be in place for the development. Waste will be collected daily, at pre-arranged times as agreed with City Edinburgh Council. Waste will be streamed on site into waste, mixed recycling and glass.

It is considered that the proposal complies with LDP Policy Env 5.

Transport

To facilitate the proposal the western part of George Street would have to be closed to both eastbound and westbound traffic. The temporary closure of the road does not raise any transportation concerns. A permit to close the road would be required to be obtained from the Council in advance of its closure. The proposal does not raise any road safety concerns.

There will be no restrictions to pedestrian flow on the pavements adjacent to the site. The proposal raises no pedestrian safety concerns.

The site is exceptionally well placed for public transport and is located next to a local centre where high footfall land uses are encouraged. Consequently, the proposal does not raise any significant parking issues or public transport issues.

Pedestrian Access

Whilst the proposal would reduce the available area for pedestrians' access within the centre of George Street for a temporary period, the ice rink and associated stools and entertainment would become a focal point and bring additional vibrancy to become a well utilised area of public realm. The existing pavement to the north and south of George Street will see no development.

Conclusion in relation to the Development Plan

Overall, the proposals comply with the Local Development Plan and given the temporary nature of the proposal, is supported in this location. There are no material considerations that would outweigh this conclusion.

d) There are any other material considerations which must be addressed?

The following material planning 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 Paragraph 29 of 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.

No impacts have been identified through the assessment and no comments have been received in relation to human rights.

Public representations

The application received three public contributions, one objection and two general comments. A summary of those comments;

material considerations

- The proposal harms the amenity of immediate businesses with unnecessary noise, which should be restricted between business hours. The effect of noise has been discussed within section 'B' of the report.
- Vehicle access should be maintained on the northern side of the carriage way. Vehicle and pedestrian access has been discussed within section 'B' of the report.

- No information on the management of support infrastructure is provided. We are concerned with the impact of generators, etc on the immediate environment. A noise condition is attached to the granted permission mitigating noise associated with the event.
- Objections to bars being proposed within the application as they would create unnecessary competition with local businesses. This has been discussed within section 'B'.

non-material considerations

- Concerns re impact to wifi signal and more business interruption.
- Concerns about unnecessary waste of electricity to power fun fair machinery.
- Fails to respect the terms and conditions of occupational tenancy with our landlord.
- This area is a business district.
- A local economic study should be required as part of any consent (should it be given) to quantify the level of local economic value and of economic spillage outside the city. Greater need to support local businesses is required, 65% of traders should be local to Edinburgh to support the local economy.
- It is suggested that the event be further divided to further mitigate its detrimental effect on the city and rather creating a Christmas Trail using a string of sites across the city, which would include existing markets such as Stockbridge, Castle Terrace and Grassmarket.
- The application should be limited to one year to allow an improved application to be submitted next year. The application does not comprehensively articulate the impact that the development will have on Edinburgh's heritage assets and listed buildings. Nor does it give detailed locational information on stalls, rides etc... or the associated management of crowds.
- There is no way of ascertaining the impact on the neighbouring businesses or listed buildings and Conservation Area without them, and strongly advise that no consent be issued until this information has been submitted. It is essential that any development here respects the qualities of George Street and the World Heritage Site.
- Concerned with the lengthy periods required for set up and take down of the temporary structures and the disruption that this will cause for pedestrians and businesses alike.

Conclusion in relation to identified material considerations

The proposal fully addresses the material considerations as set out above.

Overall conclusion

The proposal is acceptable in terms of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and complies with the development plan.

The development will have a minor temporary effect on the immediate listed buildings and further conservation area. The ice rink and associated stalls will bring an interesting additional feature to the city centre, that people from Edinburgh and beyond will benefit from. It will contribute positively to the life of the city and the vibrancy of the city centre. Moreover, the site is exceptionally well placed for public transport owing to it being within the city centre.

On balance, these benefits; which are a considerable material consideration, outweigh the short-term adverse impact that the proposal will have on the setting of neighbouring listed buildings and provide reasoned justification for granting planning permission for the proposed development on the site. With reference to the abovementioned Act the proposal does not result in significant harm to the character and appearance of the conservation area.

The proposal does not result in significant harm to the character and appearance of the designed landscape or the Outstanding Universal Value of the Old and New Towns of Edinburgh World Heritage Site. The proposed development is for a temporary period and will not have a long-term impact on the site and will not result in significant harm to residential amenity. The proposals comply with the Edinburgh Local Development Plan. The proposal, subject to the conditions stated, is considered to be acceptable.

The proposed temporary nature of the development is considered acceptable in this location. There are no material considerations which outweigh this conclusion.

Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following;

Conditions :-

1. Planning permission is hereby granted for the proposal for the period between the 4th November 2022 and the 4th January 2023, recurring between 4th November and 4th of January annually for 5 consecutive years, until January 2027.
2. The temporary ice rink, associated rides and kiosks approved shall only be operational between the hours of 10am and 10pm on the dates specified in condition 1.
3. The temporary buildings, attractions, installations and associated temporary structures and plant hereby approved shall be removed from the site in their entirety by no later than two weeks after expiry of the temporary planning period each year, the 18th of January.
4. Prior to the commencement of development, the applicant must provide a boundary strategy to ensure the public safety in and around the site. Prior to development commencing on the site the operator shall submit a boundary strategy the Planning Authority. At least 3 days written notice shall be given to the Planning Authority of the date of development. If it is deemed that the strategy is acceptable the applicant will receive a written response from Edinburgh Council Planning Authority allowing development to begin.

5. Notwithstanding the location of the George Street ice rink plant and generators delineated on drawing 03 A - Site Plan and the detailed of them specified on other application drawings, the positioning of them on the site and the acoustic containment/enclosures installed/erected around them shall achieve an acoustic attenuation of NR35 within the neighbouring hotel at 35-39 Charlotte Square or any residential property between 22:00 hours and 07:00 hours. The noise measurements shall be taken within any affected hotel bedroom/ residential bedroom with the windows closed.

Reasons: -

1. In recognition of the temporary nature of the proposal.
2. In the interests of safeguarding the amenity of neighbouring noise sensitive properties.
3. In recognition of the temporary nature of the proposal.
4. In the interests of public safety.
5. In the interest of amenity protection.

Background Reading/External References

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

Further Information - [Local Development Plan](#)

Date Registered: 3 October 2022

Drawing Numbers/Scheme

01, 02, 03 A, 05, 07

Scheme 2

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