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Decision date: 9 December 2022

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACTS
DEVELOPMENT MANAGEMENT PROCEDURE (SCOTLAND) REGULATIONS 2013**

Temporary use of the Waverley Market roof top for pop-up Festival Village, including erection of structures and provision of cafe, bars, food and drink uses, retail kiosks, toilets, seating and ancillary facilities and works.
At Roof Terrace Waverley Mall 3 Waverley Bridge Edinburgh

Application No: 22/04639/FUL

DECISION NOTICE

With reference to your application for Planning Permission registered on 14 September 2022, this has been decided by **Local Delegated Decision**. The Council in exercise of its powers under the Town and Country Planning (Scotland) Acts and regulations, now determines the application as **Refused** in accordance with the particulars given in the application.

Any condition(s) attached to this consent, with reasons for imposing them, or reasons for refusal, are shown below;

Reason for Refusal:-

1. Over a continuous period of three years the proposal will have a detrimental impact on the character and appearance of the New and Old Town conservation areas and is therefore contrary to Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and Local Development Plan Policy Env 6 (Conservation Areas - Development).

2. Over a continuous period of three years the proposal will have an adverse impact on the setting of a number of nearby listed buildings and is therefore contrary to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and Local Development Plan Policy Env 3 (Listed Buildings - Setting).
3. Over a continuous period of three years the proposal will have a detrimental impact on the Outstanding Universal Value of the Edinburgh World Heritage Site contrary to Local Development Plan Policy Env 1 (World Heritage Sites).
4. Over a continuous period of three years the proposal does not represent a high-quality design that safeguards the historic environment and is therefore contrary to Local Development Plan policies Del 2 (City Centre) and Ret 7 (Entertainment and Leisure Developments - Preferred Locations).
5. The proposal is of a poor-quality design which is inappropriate over a period of three continuous years and damaging to the special character and appearance of the site and its surroundings. The proposal is therefore contrary to Local Development Plan policies Des 1 (Design Quality and Context) and Des 4 (Development Design - Impact on Setting).

Please see the guidance notes on our [decision page](#) for further information, including how to appeal or review your decision.

Drawings 01-04, represent the determined scheme. Full details of the application can be found on the [Planning and Building Standards Online Services](#)

The reason why the Council made this decision is as follows:

The proposal fails to preserve the character and appearance of the New and Old Towns Conservation Areas and has an adverse impact on the setting of adjacent listed buildings. As such, the overall impact is negative, and it fails to comply with S59 and S64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. In addition, there is a negative impact on the Outstanding Universal Value of the Old and New Town of Edinburgh World Heritage Site. There is therefore a statutory presumption against planning permission being granted. The potential benefits of the proposal in economic terms would not justify the harm being done.

The installation of temporary development for a continuous period of three years is not acceptable at this location and the proposal is contrary to LDP policies Del 2, Ret 7, Des 1, Env 1, Env 3, and Env 6. The proposal would comply with the Council's sustainable transport policies and LDP policies Env 15. On balance, the proposal does not comply with the LDP.

There are no material considerations that outweigh this conclusion.

This determination does not carry with it any necessary consent or approval for the proposed development under other statutory enactments.

Should you have a specific enquiry regarding this decision please contact Sean Fallon directly at sean.fallon@edinburgh.gov.uk.

A handwritten signature in black ink, appearing to read 'Sean Fallon', with a long horizontal flourish extending to the right.

Chief Planning Officer
PLACE
The City of Edinburgh Council

NOTES

1. If the applicant is aggrieved by the decision to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within three months beginning with the date of this notice. The Notice of Review can be made online at www.eplanning.scot or forms can be downloaded from that website. Paper forms should be addressed to the City of Edinburgh Planning Local Review Body, G.2, Waverley Court, 4 East Market Street, Edinburgh, EH8 8BG. For enquiries about the Local Review Body, please email localreviewbody@edinburgh.gov.uk.

2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.

Report of Handling

Application for Planning Permission Roof Terrace, Waverley Mall, 3 Waverley Bridge

Proposal: Temporary use of the Waverley Market roof top for pop-up Festival Village, including erection of structures and provision of cafe, bars, food and drink uses, retail kiosks, toilets, seating and ancillary facilities and works.

**Item – Local Delegated Decision
Application Number – 22/04639/FUL
Ward – B11 - City Centre**

Recommendation

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

Summary

The proposal fails to preserve the character and appearance of the New and Old Towns Conservation Areas and has an adverse impact on the setting of adjacent listed buildings. As such, the overall impact is negative, and it fails to comply with S59 and S64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. In addition, there is a negative impact on the Outstanding Universal Value of the Old and New Town of Edinburgh World Heritage Site. There is therefore a statutory presumption against planning permission being granted. The potential benefits of the proposal in economic terms would not justify the harm being done.

The installation of temporary development for a continuous period of three years is not acceptable at this location and the proposal is contrary to LDP policies Del 2, Ret 7, Des 1, Env 1, Env 3, and Env 6. The proposal would comply with the Council's sustainable transport policies and LDP policies Env 15. On balance, the proposal does not comply with the LDP.

There are no material considerations that outweigh this conclusion.

SECTION A – Application Background

Site Description

The application site is located at the roof terrace of Waverley Mall shopping centre. The roof terrace lies adjacent to the southern side of Princes Street and the eastern side of

Waverley Bridge. Waverley Station and Waverley Steps are situated immediately to the south and east.

The roof terrace is an area of public space which comprises a mixture of open plaza, grassed areas and walkways accessible only from Princes Street. The plaza and walkways are finished in silver grey granite.

The application site extends to most of the roof terrace area but excludes the glazed and concreted roof areas of the shopping centre. The application site is currently occupied by a range of temporary structures as part of a previously approved 'Festival Village' which allows development at limited times of the year.

The surrounding area is predominantly commercial in nature and is characterised by the various street level retail premises situated along Princes Street and the Balmoral Hotel located directly to the east. Princes Street Gardens is situated to the west of the site. The site affords expansive views towards Edinburgh Castle to the southwest, the Old Town ridge to the south and Arthur's Seat to the southeast.

Description Of The Proposal

The applicant proposes to use the roof top of Waverley Mall for a pop-up 'Festival Village', seeking permission for a continuous period of three years. This would include the erection of structures for cafe, bar, food and drink uses, retail kiosks, toilets, seating and ancillary facilities and for back of house and servicing. Two performance stages are proposed within the covered and seating areas. A site layout plan shows that structures will be distributed around most of the application site.

No detailed elevation plans for structures are included in the submission.

Supporting Information

The applicant has included the below information in support of the application which is available to view on the Planning & Building Standards Online Services:

- Application forms & site layout plans (proposed and existing uses);
- Supporting planning statement;
- Design Statement.

Relevant Site History

18/02748/FUL
Roof Terrace
Waverley Mall
3 Waverley Bridge
Edinburgh

Reconfiguration of roof-top structures and construction of new commercial accommodation (Class 1, 2 and 3), internal cinema use (Class 11) and creation of external multi-use space to include external seating area, performance space, open air cinema, festival/seasonal event space, pop-ups, farmers market and musical entertainment (Classes 1, 2, 3 and 11).

Granted

1 August 2019

18/02610/FUL
Roof Terrace
Waverley Mall
3 Waverley Bridge
Edinburgh

Application to Vary Condition 2 of Permission Reference: 17/03159/FUL to allow operation on the following dates:

June 15th 2018 to September 1st 2018,
November 15th 2018 to January 1st 2019,
June 15th 2019 to September 1st 2019.

Granted

5 September 2018

17/03159/FUL
Roof Terrace
Waverley Mall
3 Waverley Bridge
Edinburgh

Erection (Temporary) of Festival Village including: public house/bar areas, beer garden, live stage area, hot food kiosks, associated seating area, toilets (inc. disabled) and associated structures/works (as amended).

mixed decision

13 November 2017

16/04882/FUL
Roof Terrace
Waverley Mall
3 Waverley Bridge
Edinburgh

Temporary provision of Christmas attractions on roof concourse from 18 November 2016 until 8 January 2017.

Granted

12 December 2016

16/04038/FUL
Roof Terrace
Waverley Mall
3 Waverley Bridge
Edinburgh

Erect temporary entertainment structure on western roof terrace of Princes Mall.

Granted

5 October 2016

Other Relevant Site History

Consultation Engagement

Roads Authority

Environmental Protection service

Network Rail

Edinburgh World Heritage

Historic Environment Scotland

Police Scotland

Old Town Community Council

Publicity and Public Engagement

Date of Neighbour Notification: 9 December 2022

Date of Advertisement: 14 October 2022

Date of Site Notice: 14 October 2022

Number of Contributors: 12

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 setting of surrounding listed buildings?

The following Historic Environment Scotland (HES) guidance is relevant in the determination of this application:

- Managing Change - Setting

The application site contributes to the setting of a number of category A and B listed buildings and structures, namely with respect to views to and from them. These include the Balmoral Hotel, situated in closest proximity and lies directly to the east of the site, and the Royal British Hotel and former Forsyth's Department Store which are both located directly to the north across Princes Street. Across the Waverley Valley further category A and B listed buildings forming the Old Town spine are clearly visible in the distance with this sense of space contributing to their setting.

With the exception of the covered roof area of Waverley Steps to the east of the site, when not occupied by temporary structures the expanse of the Waverley Mall roof is open and helps to facilitate largely unhindered views to many of these listed buildings and structures, in particular views to the Balmoral Hotel and towards the listed buildings of the Old Town from Princes Street.

The HES Managing Change guidance on Setting states: Setting can be important to the way in which historic structures or places are understood, appreciated and experienced. Setting often extends beyond the property boundary or 'curtilage' of an individual historic asset into a broader landscape context. Both tangible and less tangible elements can be important in understanding the setting. Less tangible elements may include function, sensory perceptions or the historical, artistic, literary and scenic associations of places or landscapes.

The guidance goes on to state the factors that contribute to setting include: views to, from and across or beyond the historic asset or place; key vistas; the prominence of the historic asset or place in views throughout the surrounding area; general and specific views including foregrounds and backdrops; and a 'sense of place': the overall experience of an asset which may combine some of these factors.

In recent years, pop-up development has operated at the site for time-limited periods during a twelve-month period. Previous assessments for applications for planning

permission for similar development at this location concluded that pop-up development would have an acceptable time-limited impact on the setting of surrounding listed buildings since the adverse effects would be over short periods of time. At present, temporary development as shown in the applicant's existing site plan is in place at the mall without the benefit of planning permission.

The applicant proposes to retain the temporary development that is currently in place at Waverley Mall for a continuous three year period. The introduction of a range of structures of varying heights and materials which are designed for temporary use, over a continuous period of three years, would not be appropriate within the setting of the surrounding listed buildings at this sensitive location.

The proposal will disrupt key vistas to listed buildings and the general backdrop of historic assets across the Waverley Valley. Consequently, the setting of many of these buildings and structures will be adversely affected.

Conclusion in relation to the listed building

The proposal would adversely affect the setting of surrounding listed buildings and does not comply with Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

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

The application site is within the New Town Conservation Area. The roof terrace of Waverley Mall adjoins the Old Town Conservation Area.

The New Town Conservation Area Character Appraisal places a particular emphasis on the numerous viewpoints throughout the New Town as being a key aspect in contributing to the character of the conservation area stating:

Terminated vista within the grid layouts and the long distance views across and out of the Conservation Area are important features. The grid layout follows the topography throughout the area providing a formal hierarchy of streets with controlled vistas and planned views both inward and outward and particularly northwards over the estuary. The cohesive, historic skyline makes an important contribution to the Conservation Area and it is particularly crucial to control building heights, particularly along skyline ridges.

The application site is in a prominent location at the meeting of the New and Old Town Conservation Areas, occupying much of the roof space of Waverley Mall. The applicant highlights that previous planning permissions have been approved for temporary development of a similar style. The proposal is once again for a temporary development, but in this instance with no restrictions for the number of days of operation during the calendar year. The presence of a 'pop-up Festival Village' for a continuous period of three years would introduce a semi-permanent development at this location, rather than a pop-up feature over a short duration of time(s) within a calendar year. The applicant asserts that the proposal is designed with visual sensitivity in terms of appearance, height, and form at this sensitive location. A mixture of materials such as aluminium framing and canopies, timber, simple kiosk structures of varying colours, seating areas of unspecified design and appearance and unknown boundary treatments would not be consistent with the appearance of the New Town

Conservation Area for a three-year duration. The visual impact of a pop-up style development over a three-year continuous period is significant in harming the interpretation of the Waverley Valley and views towards the Old Town from Waverley Bridge and in addition, the character of the New Town Conservation Area, and the character of the Princes Street streetscape at this location.

Conclusion in relation to the conservation area

The proposal does not relate positively to the special character and appearance of the New Town Conservation Area and will create an environment which is not in keeping with its historical context.

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 Strategy policy Del 2
- LDP Design policies Des 1, Des 4, Des 5
- LDP Environment policies Env 1, Env 3, Env 6, Env 15, Env 18
- LDP Shopping and Leisure policies Ret 1, 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 & conservation area

Local Development Plan policies Env 3 (Listed Buildings - Setting) and Env 6 (Conservation Areas - Development) seek to protect listed buildings and conservation areas from development that would adversely affect their setting and character.

The impact of the proposal on the setting of surrounding listed buildings and the Old and New Town Conservations Areas has been assessed above in the context of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997). For the reasons outlined in the above assessment the proposal would not comply with LDP Policies Env 3 and Env 6.

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 World Heritage Site or would have a detrimental impact on a Site's setting will not be permitted.

The Old and New Towns of Edinburgh World Heritage Site was inscribed in 1995 for a number of reasons but a significant factor is *the contrast between the organic medieval Old Town and the planned Georgian New Town provides a clarity of urban structure unrivalled in Europe. The juxtaposition of these two distinctive townscapes, each of exceptional historic and architectural interest, which are linked across the landscape divide, the "great arena" of Sir Walter Scott's Waverley Valley, by the urban viaduct, North Bridge, and by the Mound, creates the outstanding urban landscape.* This is embodied in the Statement of Outstanding Universal Value of the Site (OUV).

Edinburgh World Heritage (EWH) notes in consultation comments that currently the pop-up Festival Village disrupts some of the key views from the New Town across the Waverley Valley to the Old Town. Comments further note that the proposal would also in-effect limit access to patrons visiting the pop-up development. The EWH comments encourage the Council to carefully consider the heritage impact of retaining pop-up style structures over a period of three years and whether the proposals are acceptable in principle.

Due to the mall's prominent position and the adverse impact on views across the Waverley Valley and views towards the Old Town, the proposal will have a detrimental impact on the Outstanding Universal Value of the Edinburgh World Heritage Site. The structures would impede views and impact upon the appreciation of the juxtaposition of the two distinctive townscapes at this important location. Over a continuous three-year period, the proposal would have an adverse impact on the setting of the World Heritage Site.

The proposal fails to accord with LDP policy Env 1.

Principle

The application site is located within the city centre area in the adopted Edinburgh Local Development Plan (LDP). Policy Del 2 states that development which lies within the area of the City Centre as shown on the Proposals Map will be permitted which retains and enhances its character, attractiveness, vitality and accessibility and contributes to its role as a strategic business and regional shopping centre and Edinburgh's role as a capital city.

Policy Ret 1 supports development of retail and other uses that generate a significant footfall using a sequential basis with priority given to town and city centre locations. Retail and leisure proposals with a gross floor area of over 2,500 square metres must be supported by a retail impact analysis.

Policy Ret 7 (Entertainment and Leisure Uses) states that permission will be granted for high-quality, well designed arts, leisure and entertainment facilities and visitor attractions in the city centre provided it meets the following criteria:

- a) The proposal can be satisfactorily integrated into its surrounding with attractive frontages to a high quality design that safeguards existing character;
- b) The proposal is compatible with surrounding uses and will not lead to 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 proposal seeks approval for a 'pop-up Festival Village' to operate for a period of three years on a year-round basis. Previous planning permissions for similar development established that for short durations of the year, pop-up development(s) linked to particular calendar events including Christmas and the City's summer festival programme, were acceptable.

The proposal is for development that would be in place for three years over a continuous period for the duration of any permission. The intensification of the 'pop-up

Festival Village' development would result in a semi-permanent development in-situ at the application site, rather than being in place at certain times of the year as is typically the case for 'pop-up' types of development. The proposal could contribute to the city's strategic business and shopping function as has been accepted in previous applications at this location for development of a similar nature, albeit over much shorter temporary time periods. However, the proposal does not represent a high-quality design or a comprehensive design approach for development in this sensitive location that is required to safeguard the historic environment, to enhance the character of the city centre or its attractiveness. Consequently, the proposal does not comply with the broad aims and intentions of LDP policies Del 2 and Ret 7 due to its impact on the character and appearance of the area over a continuous period of three years. A retail impact analysis is not required in respect of LDP policy Ret 1 as the proposal is within the city centre.

Design and appearance

LDP policy Des 1 (Design Quality and Context) states that planning permission will not be granted for poor quality or inappropriate design or for proposals that would be damaging to the character or appearance of the area around it, particularly where this has a special importance.

Policy Des 4 (Impact on Setting) requires development to have a positive impact on its surroundings including the character of the wider townscape and landscape, and impact on existing views.

Technical details including the design, materials, and colour for some, but not all, of the proposed structures were submitted with the application. The dimensions of the café/bar structures, pergolas, snack vans, glass domes, toilets, partitions and boundary treatments, and the back of house compound vary in their width and depth, and all structures measure between two and three metres in height. As the applicant's supporting existing temporary uses site plan is identical to the details shown in the proposed site layout plan, it is to be assumed that the structures that are currently in place at the site without the benefit of planning permission are proposed to remain in place for a duration of three years. Images of these structures are shown in the applicant's supporting Design Statement.

The design and appearance of these temporary structures have not been developed with attention to the surrounding context and would appear as incongruous elements in the historic townscape over a continuous period of three years, rather than over shorter spells as has been the case in recent years. The proposal is clearly designed to be temporary in nature with simple structures and materials, however such a design approach within a sensitive city centre location for the proposed duration would not comply with the requirements LPD policy Des 1 or Des 4. As noted above within this assessment, the adverse impact on existing views in relation to the historic environment and the proposal's surroundings, means the proposal would not be appropriate in the context of policy Des 4.

The proposal does not demonstrate compliance with LDP policies Des 1 or Des 4.

Open Space

Most of the application site is identified as 'Open Space' in the LDP Proposals Map. Local Development Plan Policy Env 18 (Open Space Protection) sets out the criteria for applications that would result in the loss of open space. Proposals must comply with all of criterion a) to c) and either of criteria d) or e). Due to the nature and scale of this proposal, access would in the most part be limited to patrons of the proposal for a period of three years. The open space at Waverley Mall is identified in the Council's 2016 Open Space audit as reference CIV 2 and categorised as part of the City's 'civic open space' measuring 0.18 hectares. The Open Space audit (2016) reports that civic open space consists '*predominantly of hard landscaping that provide a focus for pedestrian activity and can make connections for people and wildlife*'.

The proposal would not comply with criterion a) of policy Env 18 as there would be a significant adverse impact on the quality and character of the local environment for a continuous period of three years, as noted above within this assessment report.

In relation to criterion b) of policy Env 18, the proposal's footprint extends across most of the Princes Mall open space area shown in the LDP map. The space offers good amenity value within the city centre as a civic amenity space. Criterion b) notes where there is a significant over-provision of open space serving the immediate area the loss of open space may be acceptable. The proposal's footprint extends across most of this specific open space and reduces its amenity value, as well as limiting it to customers. The proposal does not comply with criterion b).

Criterion c) of policy Env 18 restricts the loss of open space where development would be detrimental to the wider network including its continuity or biodiversity value. As a civic open space consisting of mostly hard landscaping, with small areas of grass, the proposal would comply with this criterion as the impact on biodiversity value would be minimal. Proposals must also accord with either qualifying criteria d) or e) of Policy Env 18 to meet the requirements for any loss of protected open space.

Criterion d) of policy Env 18 does not apply as it would not be proportional to request contributions to improve an existing public park or open space. Criterion e) states that development must be *for a community purpose and the benefits to the local community outweigh the loss*. The proposal does not comply with this part of the policy.

In summary, the proposal does not comply with all the required terms of LDP policy Env 18 and the loss of civic open space for a continuous duration of three years is not acceptable.

Impact on the Local Nature Conservation Site

LDP policy Env 15 (Sites of Local Importance) states that development likely to have an adverse impact on the flora, fauna, landscape or geological features of a Local Nature Reserve or a Local Nature Conservation Site will not be permitted. The application site is included within the Castle Rock Local Geodiversity Site.

As the proposal is located on areas of hard standing and small areas of grass planting, it would not affect the flora, fauna, landscape or geological features of the Site and complies with LDP policy Env 15.

Amenity

LDP policy Des 5 (Development Design - Amenity) states that proposals will be supported where the amenity of neighbouring developments is not adversely affected. Criterion b) of LDP policy Ret 7 also states that new leisure and entertainment facilities should not lead to a significant increase in noise, disturbance or on-street activity at unsocial hours to the detriment of living conditions for nearby residents.

The applicant notes in its supporting Management Statement that there are few residential properties in the immediate vicinity of the application site with the nearest being approximately 305 metres away from proposed stage location(s). Reference is also made to the applicant's community liaison efforts with neighbouring uses such as the Balmoral hotel and notes live music performances are limited to solo or duo acts which minimises noise generation. Reference is made to noise mitigation measures within a Noise Management Plan however this was not submitted with the application.

The Council's Environmental Protection service was consulted during the application process, comments concluded the application is not supported. Comments advise the applicant has not demonstrated that noise from the proposal will not impact on nearby residential amenity. A noise impact assessment would be required in support of the application to establish the proposal's acceptability in the context of nearby residential amenity.

Public representations objected to the proposal on noise impact grounds, largely in relation to impact of noise in the public realm and on commercial or office uses nearby, rather than a residential amenity context.

As noted above within this report, the proposal is not acceptable in principle due to its adverse effect(s) on the appearance of the City Centre, conservation areas and World Heritage Site. The applicant advised after the application determination deadline, upon submission of a Management Statement, that information in relation to noise impact would not be submitted for consideration. It would not be expedient to request the applicant to prepare and submit a noise impact assessment in response to Environmental Protection comments when the proposal is not supported by the LDP in principle and the outcome of such an assessment would not be of sufficient weight to outweigh the acceptability of the proposal in principle.

Information to demonstrate how the proposal would comply with LDP policy Des 5 or Ret 7 clause b) was not submitted with the application when submitted. Compliance with these policies not demonstrated.

Transportation and road safety matters

The proposal seeks to utilise the application site for a greater intensity than previous planning permission(s) did so. The Roads Authority confirms no objections in relation to movement and transport as a result of this proposal, and a several advisory notes are included in the response.

The application site is situated in an area of the City that has excellent links for public transport and the proposal accords with the LDP's objectives to prioritise sustainable travel.

Conclusion in relation to the Development Plan

The proposal is contrary to LDP policies that seek to protect the setting of listed buildings, conservation areas and the World Heritage Site. The proposal is not supported by policies Del 2 and Ret 7 or design policies Des 1 and Des 4 in respect of its design and appearance within this sensitive city centre location. The proposal is not supported by LDP policy Env 18 in relation to the duration of the loss of civic open space and compliance with policy Des 5 has not been demonstrated in the submission. The proposal would adhere to sustainable travel objectives in the LDP and there would be no effect on the Local Nature Conservation Site in the context of policy Env 15.

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

The following material planning considerations have been identified:

Height

Representations have noted that any development which takes place on the roof of Waverley Mall has been historically required to remain below certain height levels which have been set out in various Acts of Parliament, most recently the City of Edinburgh District Council Order Confirmation Act 1991. Section 35 of the 1991 act specifies that no buildings shall be constructed on the roof of the mall beyond a height of 4.55 metres above the south foot pavement of Princes Street.

Whilst this is a legal issue, it does set an acceptable height limit for the development of Waverley Mall. The applicant has not submitted details in relation to height for every structure with this planning application, however details of the pergolas and bar structures are shown to measure up to approximately three metres in height.

Compliance with this height restriction is not demonstrated for all proposed structures in the application, however this is a legal matter, and the applicant would be required to ensure all development is below the maximum height(s) specified in the City of Edinburgh District Council Order Confirmation Act 1991.

Waverley Station Access

Network Rail submitted an objection to the proposal. The consultation comment objects to the adverse effect of the proposal on access to the Waverley Station lift via the eastern path within the application site. Due to the presence of kiosks and patrons of the kiosks, Network Rail advises there will be operational impact on the walkway to the station lifts. The proposed layout would reduce the width of the existing path, which without development measures approximately five-metres-wide. The objection further notes a fire escape appears to spill out in front of the lifts which may interrupt station access.

Other objection matters that are raised by Network Rail in relation to safety including potential for antisocial behaviour, fire, and litter/bins are non-material matters in planning terms.

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 28 clarifies that

the presumption in favour of development that contributes to sustainable development in SPP, is to *'achieve the right development in the right place and not allow development at any cost.*

Paragraph 29 lists the thirteen principles which should guide the assessment of sustainable development. The first principle requires that due weight be given to net economic benefit of development. Bullet point ten of the thirteen principles concerns the historic environment. In a supporting planning statement, the applicant outlined the economic benefits that the temporary proposal has brought in recent years under the terms of previous planning permissions and the existing development that does not currently benefit from planning permission. The applicant's supporting statement includes eighteen letters of support from a mixture of local and national businesses and other organisations.

Whilst there would likely be an economic benefit to the continued use of the site as a pop-up festival village, the duration of time requested would conflict with the other principles of sustainable development that require appropriate design (bullet three), and protection of Scotland's cultural heritage and historic environment (bullet 10). The proposal would not protect, enhance, or promote access to cultural heritage inclusive of the historic environment.

For a continuous duration of three years the proposal would prioritise the weight of economic benefit at the expense of other principles such as cultural heritage and the historic environment, resulting in development that is on balance not sustainable.

The proposal does not accord with Paragraphs 28 and 29 of SPP.

Emerging policy context

The Revised Draft National Planning Framework 4 was laid before the Scottish Parliament on 08 November 2022 for approval. As it has not completed its parliamentary process, only limited 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

Network Rail highlights potential for conflict between the location of kiosks with seating at the eastern part of the site. This area would see development located along the path leading to lift access to Waverley Station from the north of the station. The existing path measures approximately five-metres-wide without any development in place. With the inclusion of kiosks and associated seating, the path width would be reduced, and likely to have customers standing in the remaining pathway which would sit between the kiosk and seating. There would be potential for adverse effects on visitors to the station via the lifts at this location, such as wheelchair users or reduced mobility, having to navigate a narrowed path and frequent obstacles when the Festival Village is busy.

Disability is a protected characteristic in Section 149 of the Equality Act 2010 that must be given due regard by the planning authority. Whilst the developer may be able in

future to negotiate or mitigate any impact on access at this location directly with Network Rail as operator of Waverly station, the proposed site layout as submitted for consideration would have the potential to impact upon disabled access to the station via the lifts at this location.

Due regard has been given to section 149 of the Equalities Act 2010 and potential for adverse effect on disabled access to Waverley station has 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

A summary of the representations is provided below:

Material considerations (objections)

- Proposed duration of temporary use not appropriate.
- Adverse impact on setting of surrounding listed buildings, conservation area, views between the Old and New Towns, and the World Heritage Site.
- Poor design and visual impact of the proposal on Princes Street area.
- Adverse effect on amenity and noise impact.
- Object to use of Waverley Mall for food and retail uses to the detriment of empty units on Princes Street.
- Request confirmation of compliance with Section 35 (Special provisions as to Waverley Market) of the City of Edinburgh District Council Order Confirmation Act 1991.
- Noise impact from live music on East Princes Street Gardens.
- Adverse impact of crowd congestion at an existing bus stop and train station entrance.

Neutral comments (neither object nor support)

- Request opening days and hours for retail units on the east footpath to station elevators - proposal outlines 11am to 10pm Monday to- Sunday, and 11am-12am during the Fringe Festival and for two weeks at the 'Festive Season'.
- Request details of any live music and performance times - the supporting management statement proposes live performances would be 'generally between 12pm and 10pm'.
- Query if alcohol be served in the eastern path area - the proposed plan labels this area as a liscenced (sic) area.
- Request if security will cover the eastern path area - security presence is a private management matter.
- What will the height of the retail kiosks at the eastern path be - no details are available in the submission.
- Will access to the station elevators be maintained 24/7 - this is a matter for the station operator to ensure in discussion with the applicant if required.
- Request details on litter management responsibility and bin provision - commercial waste is a private matter.
- Clarify if any lighting will be installed with the development - lighting will likely be installed around the development.
- Request noise assessment.

Non-material considerations

- Impact on grass and trees in Princes Street Gardens - the application site is not located in Princes Street Gardens.
- Object to anti-social behaviour resulting from the development - this is not a planning matter.
- Request noise management measures to reduce noise pollution from amplified music during regular office hours (8am to 6pm).
- Object to alcohol being sold at this location - licensing is not within the scope of this assessment.
- Request urban greening and ecological climate adaptation planting to replace artificial green aspects in place at the site currently.

Conclusion in relation to identified material considerations

With reference to material considerations, the proposal is not acceptable in the context of the sustainable development principles established in SPP, and has high potential to impact adversely on lift access for disabled patrons of Waverley station.

Overall conclusion

The proposal fails to preserve the character and appearance of the New and Old Towns Conservation Areas and has an adverse impact on the setting of adjacent listed buildings. As such, the overall impact is negative, and it fails to comply with Section 59 and Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. In addition, there is a negative impact on the Outstanding Universal Value of the Old and New Town of Edinburgh World Heritage Site. There is therefore a statutory presumption against planning permission being granted. The potential benefits of the proposal in economic terms would not justify the harm being done.

The installation of temporary development as proposed for a continuous period of three years is not acceptable at this location and the proposal is contrary to LDP policies Del 2, Ret 7, Des 1, Env 1, Env 3, Env 6, and Env 18. The proposal would comply with the Council's sustainable transport policies and LDP policies Env 15. On balance, the proposal does not comply with the LDP.

There are no material considerations that outweigh this conclusion.

Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following;

Reason for Refusal

1. Over a continuous period of three years the proposal will have a detrimental impact on the character and appearance of the New and Old Town conservation areas and is therefore contrary to Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and Local Development Plan Policy Env 6 (Conservation Areas - Development).

2. Over a continuous period of three years the proposal will have an adverse impact on the setting of a number of nearby listed buildings and is therefore contrary to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and Local Development Plan Policy Env 3 (Listed Buildings - Setting).
3. Over a continuous period of three years the proposal will have a detrimental impact on the Outstanding Universal Value of the Edinburgh World Heritage Site contrary to Local Development Plan Policy Env 1 (World Heritage Sites).
4. Over a continuous period of three years the proposal does not represent a high-quality design that safeguards the historic environment and is therefore contrary to Local Development Plan policies Del 2 (City Centre) and Ret 7 (Entertainment and Leisure Developments - Preferred Locations).
5. The proposal is of a poor-quality design which is inappropriate over a period of three continuous years and damaging to the special character and appearance of the site and its surroundings. The proposal is therefore contrary to Local Development Plan policies Des 1 (Design Quality and Context) and Des 4 (Development Design - Impact on Setting).

Background Reading/External References

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

Further Information - [Local Development Plan](#)

Date Registered: 14 September 2022

Drawing Numbers/Scheme

01-04

David Givan
Chief Planning Officer
PLACE
The City of Edinburgh Council

Contact: Sean Fallon, Planning Officer
E-mail: sean.fallon@edinburgh.gov.uk

Appendix 1

Consultations

NAME: Roads Authority
COMMENT: NO OBJECTIONS
DATE: 21 October 2022

NAME: Environmental Protection service
COMMENT: Recommend refusal due to impact on nearby residential amenity.
DATE: 8 December 2022

NAME: Network Rail
COMMENT: Currently object to proposal for reasons relating to access / station operations, and safety matters including anti-social behaviour, fire, and litter/bins.
DATE: 14 November 2022

NAME: Edinburgh World Heritage
COMMENT: Comments note the proposals have some negative impact on appreciation and enjoyment of key views of the World Heritage Site, and recommend some elements are reduced/removed to minimise impact on views.
DATE: 8 November 2022

NAME: Historic Environment Scotland
COMMENT: Proposals affect listed building reference LB30270 (WAVERLEY STATION (4 WAVERLEY BRIDGE), FORMER PARCELS OFFICE (17 WAVERLEY BRIDGE), AND WAVERLEY BRIDGE, (EXCLUDING WAVERLEY STEPS), EDINBURGH).

No comments on the proposals.
DATE: 1 November 2022

NAME: Police Scotland
COMMENT: No objection.
DATE: 7 November 2022

NAME: Old Town Community Council
COMMENT: No comments received.
DATE:

The full consultation response can be viewed on the Planning & Building Standards Portal.

Comments for Planning Application 22/04639/FUL

Application Summary

Application Number: 22/04639/FUL

Address: Roof Terrace Waverley Mall 3 Waverley Bridge Edinburgh

Proposal: Temporary use of the Waverley Market roof top for pop-up Festival Village, including erection of structures and provision of cafe, bars, food and drink uses, retail kiosks, toilets, seating and ancillary facilities and works.

Case Officer: Sean Fallon

Customer Details

Name: Mr Iain Davidson

Address: 1 Princes Street EDINBURGH

Comment Details

Commenter Type: Neighbour-Commercial

Stance: Customer made comments neither objecting to or supporting the Planning Application

Comment Reasons:

Comment: Please can you confirm the following regarding the proposal for the East footpath.

- What will the days and hours the retail units will be in operation on the east footpath to station elevators
- Will any live music be taking place in this area? If so, what will the timings be?
- Will alcohol be served in this area?
- Will there be on-site security covering this area?
- What will the height of the units be?
- Will access to the station elevators be maintained 24/7?
- Who is responsible for any litter and will there be bins provided?
- Will any additional lighting be installed in the area?

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Case Officer: Sean Fallon

Customer Details

Name: Ms Stephanie Rose

Address: 11/12 Buchanan Street Refuge Edinburgh

Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: I was involved in a focus group a while back about Christmas / Hogmanay and it seems that nothing that was agreed has been implemented. The idea of alcohol free zones, moving the market to Castle Terrace or doing away with the fun fair - all to protect PSG from the terrible damage inflicted on the grass and the trees every year.

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Case Officer: Sean Fallon

Customer Details

Name: Ms Valerie THORNTON HUNTER

Address: 2 West Castle Road EDINBURGH

Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: My goodness we are morphing into Blackpool Pleasure Beach... without the sea, or the class. Obviously this will be passed all about the ka-ching these days. Another reason not to visit Princes Street. Perhaps if the concentrated more on all the empty shops. What a dump.. what a dump

Comments for Planning Application 22/04639/FUL

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Case Officer: Sean Fallon

Customer Details

Name: Mrs E Dickie

Address: 4/1 Hopetoun Credscent Edinburgh

Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: No way for this length of time; anything on the roof of Waverley Market is an eye sore and detrimental to the city landscape. OK have short season but definitely short!

Comments for Planning Application 22/04639/FUL

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Case Officer: Sean Fallon

Customer Details

Name: Ms OLD TOWN ASSOCIATION

Address: 1 Trunks Close, 55 High Street, Edinburgh EH1 1SR

Comment Details

Commenter Type: Amenity Body

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: The proposal is objectionable on many counts.

"Temporary" use of the top of Waverley Market roof top is recurrent and so has, in reality, become permanent.

There is a historic presumption, backed up by Acts of Parliament, against building on the south side of Princes Street. The top-hamper blocks the views of the Old Town from Princes Street.

Bars and take-away outlets encourage anti-social behaviour, whether it be littering, drinking in public, or uncontrolled drunken behaviour.

Erecting shacks on Waverley Market prevents the beneficial use of empty shop units in Princes Street for food provision (now permitted).

Comments for Planning Application 22/04639/FUL

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Case Officer: Sean Fallon

Customer Details

Name: Dr Ross Green

Address: 40 Royal Mile Mansions 50 North Bridge EDINBURGH

Comment Details

Commenter Type: Neighbour-Residential

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment:(1) Applications for 'temporary development' seem to now constitute almost constant and permanent development of this space and its negative impact on the heritage site should be assessed on this basis. The level of so-called 'pop-up' development has become a permanent eyesore in the heart of the heritage site.

(2) It should be confirmed that the development complies with legal restrictions, i.e., it meets the restrictions set out in Section 35 (Special provisions as to Waverley Market) of the City of Edinburgh District Council Order Confirmation Act 1991.

(3) Throughout the operation of the 'temporary' Festival Village in 2022, open-air loud music was performed almost constantly throughout the entirety of summer. This was in an acoustic competition with uncontrolled buskers performing on Waverly Bridge. It resulted in an unpleasant and inappropriate cacophony of noise across East Princes Street Gardens that is detrimental to others in the city centre enjoying what is a valuable park, a green space allowing some peace and quiet for a moment of contemplation.

Comments for Planning Application 22/04639/FUL

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Case Officer: Sean Fallon

Customer Details

Name: Dr Andrew McNiven

Address: 6th Floor, 40 Princes Street Edinburgh

Comment Details

Commenter Type: Neighbour-Commercial

Stance: Customer made comments neither objecting to or supporting the Planning Application

Comment Reasons:

Comment: I would like to see a statement in regard to noise pollution during regular office hours: 08.00 - 18.00. We are affected regularly and adversely by excessive daytime noise from amplified buskers in the area around Waverley Bridge (in breach of local guidelines in busking) and I would like to see some undertaking that noise pollution and amplified music (live and recorded) from the proposed development will be minimised during these hours.

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Case Officer: Sean Fallon

Customer Details

Name: Mrs Dorothy law

Address: 14 garry park glencraig lochgelly

Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: This is the worse possible place to have this. Its so congested in this area as it is , with a bus stop and the entrance to the station .

Do we really need more drinking places ?

Think what you are inflicting in the public

Comments for Planning Application 22/04639/FUL

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Case Officer: Sean Fallon

Customer Details

Name: Mr Roy Kilpatrick

Address: 18/1 West Castle Road EDINBURGH

Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: The near permanent use of Waverley Market roof is an ugly mess of cheaply constructed and poorly decorated buildings. The pavement still has a brass stamp as a photography view point, a relic of when the view was intact. The approach from the lift up from the station is a poor reflection on the Capital City, with the utilities exposed and inevitable rubbish left to collect in corners. Chiefly, the use of the roof totally obscured the view across Waverley Valley, despite legal protection by Act of Parliament. It seems a great pity when local hospitality businesses have to compete with a hotch potch of structures. The location adds severe pressure to the pavement between N Bridge and Waverley Bridge, where it is unpleasant to try and squeeze past. I am opposed to the application.

Comments for Planning Application 22/04639/FUL

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Case Officer: Sean Fallon

Customer Details

Name: Ms caroline castle

Address: 24/4 Hillside Crescent Edinburgh

Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: Structures incompatible with Historic Capital City and UNESCO World Heritage site. Results in increased litter, a tatty and poor quality impression, pavement congestion , and the debasement of a civic space.

Comments for Planning Application 22/04639/FUL

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Case Officer: Sean Fallon

Customer Details

Name: Mr James Milne

Address: 27 Stenhouse Place West Edinburgh

Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: A temporary, 3 year all round semi permanent facility with no safeguards on opening at a pedestrian bottleneck that is the Waverley Market is a recipe for disaster. There are too many vacant premises on Princess Street that need reopened if the applicants are serious about improving the area.

Comments for Planning Application 22/04639/FUL

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Case Officer: Sean Fallon

Customer Details

Name: Lord Cockburn Association

Address: 1 Trunks Close, 55 High Street, Edinburgh EH1 1SR

Comment Details

Commenter Type: Amenity Body

Stance: Customer made comments neither objecting to or supporting the Planning Application

Comment Reasons:

Comment: This application has been brought our attention by concerned Cockburn stakeholders and has now been scrutinized by our technical committee. We are aware that planning permission has been granted for the roof area of Waverley Market in the past. However, it is disappointing that its current use for bars and food outlets has been permitted to operate without planning enforcement for so long.

No noise assessment is included in the application. This is a concern. If planning approval is given, we suggest that ongoing the monitoring of noise levels would be appropriate with enforcement action, if required.

The application site is adjacent to a particularly busy and congestion section of Princes Street. Every effort should be made to pull back the boundaries of this application to avoid further exacerbating congestion.

Since approval is being sought for an extended period, it would be appropriate on this exposed, city-centre site, and in the context of Edinburgh's ambitious climate change and greenspace targets, to include urban greening and ecological climate adaptation planting schemes to replace the artificial 'greenery' currently used on site.

Mr Sean Fallon
Senior Planning Officer
City of Edinburgh Council
Waverley Court
4 East Market Street
Edinburgh
EH8 8BG

30 January 2023

Dear Fallon,

Waverley Market Rooftop Planning Appeal

Essential Edinburgh works with the city centre business community to support improvements to the city centre as well as supporting increased trade through a provision of core services to our members.

We represent over six hundred businesses in the city centre, and work very closely with the City of Edinburgh Council on all aspects of development and operations within the city centre. This includes all of the core city centre including the vital Waverley Market.

I am making contact in relation to the recent refusal to allow use of the roof space of Waverley Market to deliver an improved offer for the residents and visitors to Edinburgh.

Princes Street is evolving quickly. Edinburgh has been affected by the global decrease in bricks and mortar retail, compounded by the new St James Quarter which has attracted new tenants away from other traditional streets such as Princes and George Street.

Princes Street is undergoing much need and welcome changes and we must continue to take opportunities to develop the provision on the street. We firmly believe that there is capacity for more leisure use on the street which compliments the existing provision.

Following securing planning consent for the rooftop space in August 2019, Waverley Market has been faced with challenges such as the pandemic and the cost of living crisis.

The use of outdoor space for additional hospitality space has been used very successfully throughout the city in recent years. Culturally people's mindsets have now changed, they want to sit outside to both eat and drink.

The use of the space on the rooftop of Waverley Market has been hugely successful for the city centre and supports real and genuine vibrancy at the eastern end of Princes Street.

The space complements the other hospitality offerings in the city centre, giving consumers choice across many providers. It also creates a significant number of jobs. The site has become a popular destination for residents and visitors alike, and a real attraction in the city.

Essential Edinburgh have worked in partnership with Waverley Market, Police Scotland and youth groups to reduce anti-social behaviour in the area around the rooftop. This has been a serious issue in recent years.

Since the rooftop has been used for the additional hospitality space, this issue has all but disappeared. This has been evidenced by Police Scotland who are very supportive of the facilities on the rooftop.

The only area that has proven an issue is at the far eastern extremity of the site running up to the Network Rail lift, and area controlled and managed by Network Rail, not by Festival Village. The application deliberately includes this location to bring it under the control and management of our operator.

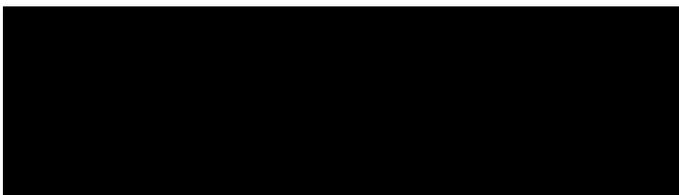
Essential Edinburgh are fully supportive of the proposals to improve the facilities on the rooftop of Waverley Market and urge the Council to reconsider their decision.

The activation of the area supports footfall in the city centre, increases the diversity of the offering for residents and visitors, and has made a positive impact on the anti-social behaviour that previously took place in the area.

I am aware that the proprietors are looking for a high quality long term solution that we would be supportive of, this temporary application for the Festival Village will assist them in reaching the optimal plans for the longer term.

If you require any additional information please make contact.

Regards,



Roddy Smith
Chief Executive