

Development Management Sub-Committee Report

Wednesday 9 August 2023

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

Proposal: Pop-up Festival Village including erection of structures and provision of cafe, bars, food, and drink uses, toilets, seating and ancillary facilities and works.

**Item – Committee Decision
Application Number – 23/02154/FUL
Ward – B11 - City Centre**

Reasons for Referral to Committee

In accordance with the statutory scheme of delegation, the application has been referred for determination by the Development Management Sub-committee as it has received more than twenty material representations in support and the recommendation is to refuse planning permission.

Recommendation

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

Summary

For the time period proposed and for the duration the development has been in place to date, the proposal would not 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, consequently it fails to comply with Section 59 and Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. There is a temporary negative impact on the Outstanding Universal Value of the Old and New Town of Edinburgh World Heritage Site with disruption to key views and loss of the publicly available viewing platform to appreciate the juxtaposition of the outstanding design and character of Edinburgh's Old and New Towns.

The proposed scale, design, and appearance of the proposal does not draw upon the positive characteristics of the area and the proposal does not comply with LDP policies Des 1 or Des 4, nor NPF 4 policy 14. The proposal results in the temporary loss of civic open space in its entirety for the period of operation of the development and is contrary to LDP policy Env 18.

The proposal would comply with LDP policy Ret 1 and NPF 4 policy 27 by prioritising development in an existing town centre. The proposal would also comply with NPF 4 policy 1, development plan waste management policies and sustainable transport policy objectives. Partial compliance with NPF 4 objectives to support culture and creativity is demonstrated, as well as compliance with sustainable travel objectives.

On balance, the proposal does not comply with the development plan as a result of its design and scale and resultant effect(s) on local amenity and the historic environment for the duration proposed. There are no material considerations, including the asserted economic benefit of the proposal, 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 is situated immediately to the south and the site extends to the walkway for station lift access at its eastern side.

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 and the walkway to the lift access to Waverley Station. The application site is currently occupied by a range of temporary structures.

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.

The application site is in the New Town Conservation Area and the Edinburgh World Heritage Site. There are a number of listed buildings surrounding the site including buildings on Princes Street, the Scott Monument, the North Bridge and buildings on Market Street and the Old Town. Notable Listed Buildings nearby include:

- 1 Princes Street And 2-18 (Even Nos) North Bridge, The Balmoral Hotel (Former North British Hotel) - Category B Listed 15 June 1994 - Reference LB30315.
- Waverley Station (4 Waverley Bridge), Former Parcels Office (17 Waverley Bridge), And Waverley Bridge, (Excluding Waverley Steps), Edinburgh- Category A Listed 12 November 1991 - Reference LB30270.

Description Of The Proposal

The applicant proposes temporary use of the roof top of Waverley Mall for a pop-up 'Festival Village', seeking permission until 30 September 2023 with a further six-week period from 01 October 2023 to dismantle the development and fully vacate the site.

A site layout plan shows that structures will be distributed around most of the application site. Structures include for cafe, bar, food and drink uses, eight domes, toilets, covered seating areas, ancillary facilities and for back of house and servicing. Screening of varying types including planters, vinyl wrapping and foliage panels at the site peripheries is also proposed. The covered seating areas include various framed structures with a mixture of retractable, louvred and timber and polycarbonate materials applied to the roofs. No scaled elevation plans for structures are included in the submission. The application form notes development has started it is possible to view many of the proposed structures in place at the application site.

The proposal is laid out in five distinct zones and supplemented by circulatory space. The applicant notes in supporting information the intention to diversify activities on the rooftop to increase areas of café and restaurant, and invest in family friendly activities throughout the summer.

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:- Supporting forms and drawings.

- Planning statement.
- Design statement.
- Management statement.
- Noise Management Plan.
- Festival Village Plans document.

Relevant Site History

15/04266/FUL
Roof Terrace
Princes Mall
3 Waverley Bridge
Edinburgh

Erection of Christmas attractions on the public concourse of the roof of Princes Mall.
Granted
3 November 2015

15/05426/FUL
Roof Terrace
Princes Mall
3 Waverley Bridge
Edinburgh

Erecting a traditional carousel, dispense stands, kiosk and planters on the public concourse.

Refused
18 January 2016

16/01660/FUL
Roof Terrace
Princes Mall
3 Waverley Bridge
Edinburgh

Erect temporary entertainment structure on western roof terrace of Princes Mall (as amended).

Granted
25 May 2016

16/04001/FUL
Roof Terrace
Waverley Mall
3 Waverley Bridge
Edinburgh

Changes of use from Tourist Information Centre, Office, Retail, mall + plaza to form Restaurant/Bar with terrace + Tourist Information Centre; recladding, new glazing + rooflights, reconfiguration of shopfronts, formation of fire escape, erection of glass balustrade, public realm + downtakings.

withdrawn
17 May 2018

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

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

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

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

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

19/04383/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 (including disabled) and associated structures/works (partially in retrospect).

withdrawn

19 February 2020

19/04390/FUL
Roof Terrace
Waverley Mall
3 Waverley Bridge
Edinburgh

Erection (temporary) of festival village extension, including: bar areas, beer garden, live stage area, hot food kiosks, associated seating area, toilets and associated structures/works (including winter marquee).

withdrawn

19 February 2020

19/05095/FUL
Roof Terrace
Waverley Mall
3 Waverley Bridge
Edinburgh

Erection of a temporary pop-up bar.

withdrawn

7 February 2020

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

Non Material Variation to planning consent 18/02748/FUL

VARIED

26 August 2020

22/04639/FUL
Roof Terrace
Waverley Mall
3 Waverley Bridge
Edinburgh

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.

Refused

9 December 2022

Other Relevant Site History

None.

Pre-Application process

There is no pre-application process history.

Consultation Engagement

Flood Planning

Network Rail

Edinburgh World Heritage

Police Scotland

Historic Environment Scotland

Environmental Protection

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

Publicity and Public Engagement

Date of Neighbour Notification: 30 May 2023

Date of Renotification of Neighbour Notification: Not Applicable

Press Publication Date(s): 9 June 2023

Site Notices Date(s): 6 June 2023

Number of Contributors: 68

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 24, 25 and 37 of the Town and Country Planning (Scotland) Act 1997 (the 1997 Act):

Having regard to the legal requirement of Section 24(3), in the event of any policy incompatibility between National Planning Framework 4 (NPF4) & Edinburgh Local Development Plan 2016 (LDP) the newer policy shall prevail.

Do the proposals comply with the development plan?

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

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

In the assessment of material considerations this report will consider:

- 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

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 which is situated in closest proximity and lies directly to the east of the site, and the adjacent Waverley Station. Across Princes Street and the Waverley Valley further listed buildings are clearly visible in the distance with this sense of space contributing to their setting and their understanding in both the Old and New Towns.

Apart from 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 the listed rooftop of Waverley Station 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, the temporary development as shown in the applicant's existing site plan has been in place at the mall without the benefit of planning permission since emergency planning legislation and guidance during the Covid 19 pandemic. Previous developments have typically been for development of a lesser footprint at this site where some of the rooftop was still available as civic open space to retain to a degree key views in the area and access to space to appreciate the setting of listed buildings.

The applicant proposes to retain the temporary development that is currently in place at Waverley Mall until 30 September 2023, followed by a six-week period to remove the temporary structures. The proposal for temporary development to continue until the end of September 2023 would result in adverse effects on the setting of listed buildings at this sensitive location. The proposal has been largely in place for most of 2022 and 2023 over a continuous period. Previous planning permission(s) for time-limited periods during a twelve-month period have been at targeted times of the year, the proposal has largely been in place for seven months of the twelve in 2023 already. The proposal would extend the adverse effects on listed buildings for nine months of the calendar year before being removed.

The proposal has to date and will until its removal disrupt key vistas to and from listed buildings and the general backdrop of historic assets across the Waverley Valley. Consequently, the setting of historic buildings and structures will be adversely affected for the proposed duration of the development and a period thereafter during its removal.

Conclusion in relation to the listed building

The proposal has for a continued period since its operation adversely affected the setting of surrounding listed buildings. The identified impacts are proposed to continue until the date of the proposal's removal and for this duration compliance with Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 would not be achieved.

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 character appraisal goes on to state that opportunities for enhancing the Conservation Area should include the sensitive interpretation of traditional spaces in new development, whilst the importance of the Balmoral Hotel and its positive contribution to important views along Princes Street is identified as well.

The application site is in a prominent location at the meeting of the New and Old Town Conservation Areas, with the proposal occupying most 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 on this occasion is for a temporary development up to 30 September 2023 with six weeks thereafter to remove all aspects of the development. The extent of development proposed is of a more intense nature in comparison to previous temporary permissions.

The applicant submits that the proposal is appropriate in terms of its overall design, appearance, height and form at this sensitive location. A number of design features utilise materials such as vinyl wrapping at boundaries, artificial foliage panels, patterned screening, timber decking, metal and timber covered seating areas with pergola roofs of timber and polycarbonate, and food and café/bar kiosks with decorative detailing. The New Town is characterised by a variety of open spaces and development with traditional materials and decoration such as sandstone, pitched slate roofs, timber windows, cast iron work and railings, and generally high-quality and durable materials that display a degree of permanency. As a temporary 'pop-up' development the proposal's design is not consistent with the appearance of the area; however, the scale of the proposal on most of the roof top intensifies the adverse visual impact of the proposal at a highly sensitive location within the City.

With reference to the New Town's character at this location, the character appraisal notes that buildings along Princes Street have evolved to be in retail use with office, leisure and hotels at upper floors; the proposal intensifies the leisure aspect of Princes Street at this location. The proposal currently occupies and has occupied for a number of months a prominent position within the New Town Conservation Area, operating as a pop-up style development. The proposal would continue to contrast with the characteristics of the conservation area until it is removed at the end of September 2023, having been in place for a longer than usual period for a pop-up use within the New Town.

The proposal has been in operation for a continued period of time since 2022 without planning permission after the end of the Covid-19 pandemic emergency legislation and government guidance. The applicant's supporting statement acknowledges that guidance from the Scottish Government's chief planner for planning authorities to relax planning controls expired on 01 October 2022. As noted above in considering the effect of the proposal on the setting of listed buildings in the area, the temporary development has already been in place for a long-period of time and would continue to have an adverse effect on the character of the New Town Conservation Area up to 30 September 2023 and a period thereafter until the proposals' removal.

During the proposed period of operation, the proposal will impact adversely on the character and appearance of the New Town Conservation area due to its scale, intensity, visual impact on the Balmoral Hotel's importance in the local area, and the interpretation of the juxtaposition between the Old and New Towns. 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.

Conclusion in relation to the conservation area

The development 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 for a temporary period of time up to 30 September 2023 and the period thereafter for removal of the development.

c) The proposals comply with the development plan?

National Planning Framework 4 (NPF4) was adopted by the Scottish Ministers on 13 February 2023 and forms part of the Council's Development Plan. NPF4 policies

supports the planning and delivery of Sustainable Places, Liveable Places and Productive Places and are the key policies against which proposals for development are assessed. Several policies in the Edinburgh Local Development Plan (LDP) are superseded by equivalent and alternative policies within NPF4. The relevant policies to be considered are:

- NPF 4 policies 1 (Tackling the climate and nature crisis), 4 (Natural Places), 7 (Historic assets and places), 9 (Brownfield, vacant and derelict land and empty buildings), 12 (Zero Waste), 13 (Sustainable Transport), 14 (Design, quality and place), 23 (Health and safety), 27 (City, town, local and commercial centres), 31 (Culture and creativity).
- LDP policies Del 2, Des 1, Des 4, Des 5, Env 15, Env 18, Ret 1, Ret 7.

The non-statutory 'Listed Buildings and Conservation Area' guidance and the Edinburgh Design Guidance are material considerations.

Listed buildings, conservation area and World Heritage Site

The impact of the proposal on the setting of surrounding listed buildings and the Old and New Town Conservation Areas has been addressed above in the context of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997).

In addition to the above assessments, National Planning Framework 4 policy 7 intends to protect and enhance historic environment assets and places, and to enable positive change as a catalyst for the regeneration of places. A series of policy criteria are listed in the policy to achieve this policy aim. Of relevance to this assessment are parts of policy 7 criteria a) c), d), e), and l). The policy text concludes that where impacts cannot be avoided, they should be minimised.

- Criterion a) requires development proposals with a potentially significant impact on historic assets of places to be accompanied by an assessment which is based on an understanding of the cultural significance of the historic asset and/or place. Likely visual or physical impacts should be identified and proposals should be informed by national policy and guidance on managing change in the historic environment. The applicant's planning statement notes the required assessment has not been submitted and affirms that the design statement sufficiently demonstrates a sensitive and acceptable design approach to the historic environment.
- Criterion c), in the second sentence, requires development proposals that affect the setting of a listed building to preserve its character and its special architectural or historic interest. In this case the proposal would have a time-limited adverse effect on the setting of the Balmoral Hotel, Waverley Station, and other nearby listed buildings in the New and Old Towns.
- Criterion d) seeks to protect the character and appearance of conservation areas including the architectural and historic character of the area; existing density, built form and layout; and context and siting, quality of design and suitable materials. As noted in the above assessment text, the scale of the development proposal at this site in combination with its design features result in an adverse impact on the character and appearance of the New Town Conservation Area at this location and the contrast with the adjacent Old Town

Conservation Area. As a temporary development, the adverse impact identified in this report would occur until the proposal is removed.

- Criterion I) requires new development that affects a World Heritage Site (WHS) or its setting to protect and preserve Outstanding Universal Value. 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). 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 and time-limited 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.

The applicant is of the view that the proposal's design as proposed will mitigate the adverse effects in relation the setting of listed buildings, character and appearance of the New and Old Town Conservation Areas, and the OUV of the WHS. Mitigation measures identified by the applicant include a rationalised design approach to structures and boundaries, and positioning structures to avoid infringement of key views. The applicant concludes there will be no harm to the WHS and as the development is temporary in nature it will be a temporary feature until 30 September 2023. Furthermore, the applicant emphasises any impact on the historic environment should be carefully balanced against economic and social benefits associated with the development.

Historic Environment Scotland (HES) provided a neutral comment on the proposal simply noting potential effects on the setting of Waverley Station, whilst Edinburgh World Heritage (EWH) did not submit comments on this occasion.

In conclusion, the proposal would have an adverse effect on the historic environment until its removal.

Principle of development

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. Criterion b) requires a use or a mix of uses appropriate to the location of the site, its accessibility characteristics and the character of the surrounding area. The applicant contends that the proposal makes a positive contribution to the City as an area for local businesses to operate. The supporting text of policy Del 2 states that its intention is to guide development in the City Centre to ensure proposals provide an appropriate mix of uses and are of a high quality of design taking account of the characteristics of the historic environment. The proposal's effect on character and attractiveness of the City and its historic environment is considered

elsewhere within this assessment. It is accepted that the pop-up style development has provided a space for local business however a pop-up development up to September 2023 would make a limited strategic contribution to the City's business function.

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. The proposal complies with policy Ret 1.

Policy 27 of NPF 4 has a similar policy intent to that of LDP policy Ret 1 and seeks to encourage, promote and facilitate development in city and town centres. Criterion a) of the policy sets out that development that enhances and improves the vitality and viability of city centres will be supported, and Policy 27 b) sets out that development proposals should be consistent with the town centre first approach, whereby proposals which generate significant footfall will be supported in existing city centres. The proposal would comply with this policy.

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 temporary approval for a 'Festival Village' to operate until 30 September 2023 followed by six weeks thereafter to remove the development. Previous planning permissions for temporary 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, can be acceptable for short periods of time in a twelve-month calendar year.

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 shorter temporary time periods than the proposal has been in place to date and for lesser scales of development. In this case as a result of the intensity of the proposal in combination with its design, 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.

A retail impact analysis is not required in respect of LDP policy Ret 1 as the proposal is within the city centre.

In supporting information, the applicant states that NPF 4 policy 9 applies to the proposal as it utilises a previously developed site. The application site is comprised of a mixture of civic open space and vacant roof space at the Waverley Mall. One of the policy's outcomes seeks to maximise the use of existing assets and minimise additional

land take. Criterion a) of this policy lends support to temporary development that results in the sustainable reuse of vacant land and buildings, where the biodiversity value of the land is taken into account. In this case the site has limited biodiversity value and the proposed intensification on those areas of vacant rooftop space would draw a degree of support from this policy. The impact on the areas of the application site that are designated as civic open space are addressed below within this report.

Design and appearance

Policy 14 of NPF 4 intends to encourage, promote, and facilitate well designed development that makes successful places by taking a design-led approach and applying the Place Principle. The policy goes on to state in criterion a) that proposals must be designed to improve the quality of an area regardless of scale, and in clause c) confirms that proposals that are poorly designed and detrimental to the amenity of the surrounding area or inconsistent with the six qualities of successful places will not be supported.

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.

The supporting site layout plan and supporting design statements show that a range of structures are currently in place and proposed at the application site including café/bar structures, pergolas, food huts, glass domes, toilets, partitions and boundary treatments, and the back of house compound vary in their width and depth. The applicant details how many design features and materials are now rationalised for a more coherent design, and the position of some units have been amended. Whilst detailed elevation plans are not submitted, images of many of these structures are shown in the applicant's supporting Design Statement. The design, layout 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 for the duration of the development. The proposal would have an adverse impact in design terms, and the combination of the proposal's duration, scale and design results in a development that does not have a positive impact on its surroundings such as the character of the wider townscape and landscape, and impact on existing views.

In the context of NPF 4 policy 14 and LDP policy Des 1 the proposal does not draw on the characteristics of the local area and the proposed materials are not characteristic of the City in this location. As note above in relation to 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's design is not supported by the above noted development plan design policies.

Open space

Much 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 only. 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 the proposed duration of the proposal. The proposal has already been mostly implemented since 2022 without interruption and it is proposed to be in place for nine out of twelve months in 2023.

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 to erect boundary screening as a means to mitigate the appearance of the development and contain the area results in the creation of an enclosure of the open space which limits access to patrons of the proposal. 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 to the duration, extent, and scale proposed is not appropriate.

Culture and creativity

The applicant highlights that NPF 4 policy 31 intends to encourage, promote and facilitate development culture and creative industries. Criterion b) of this policy supports development proposals for cultural uses that involve the temporary use of vacant spaces or property. This policy applies to vacant spaces or property only and the application site is a mixture of civic open space and vacant roof top areas. One of the two proposed stages is to be located on a rooftop area of Waverley Mall which could be considered a vacant space. The proposal partly complies with this policy by temporarily providing space for creative industry in the form of live music performance, however simultaneously the scale of the proposal infringes on the area of designated civic open space which is neither vacant nor a property in the form of a building or premises.

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. Similarly, NPF4 policy 4 intends to protect, restore and enhance natural assets and criterion d) of the policy supports development only where there will be no adverse effects on the integrity of local nature conservation sites. The proposal would not cause adverse effects and complies with the policy.

Amenity and waste management

The applicant submitted a management plan and a noise statement in support of the application. 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. Policy 23 of National Planning Framework 4 within clause e) also confirms that development resulting in unacceptable noise issues will not be supported. The policy further notes that a Noise Impact Assessment may be required where the nature of the proposal or its location suggests that significant effects are likely.

The applicant's supporting information highlights that the closest dwellings to the stage area are to the west on Princes Street at a separation distance of approximately 20m, and to the south beyond Waverley Station on High Street and Fleshmarket Close. These dwellings are at an approximate separation distance of 285m. Two stages are included for live music which would be the principal source of potential noise from the development to sensitive receptors, along with deliveries and operational effects. Supporting information advises that music is generally between 12pm and 10pm and will be turned off at 10pm. Outwith the 6 weeks a year where there is a two-hour extension of licence times until 12am, and during these periods live music will take place between 12pm - 12am. There are generally 25 - 45 live music performances per week depending on the time of year with live music booked into two-hour slots, from 12pm-2pm, 2pm-4pm, 4pm-6pm, 6pm-8pm and 8pm-10pm.

The results of the applicant's supporting study state that the predicted off-site music noise levels will meet NR15 inside the closest identified habitable rooms, however meteorological conditions may significantly affect the received noise levels at any particular location. The applicant proposes a range of mitigation measures such as communication with local residents in advance of events, active monitoring of any effects and tailoring sound to specific conditions with particular focus on low frequencies, and use directional components to focus sound on the live music area.

The supporting information demonstrates that while noise from live music will be audible it is predicted to comply with NR15 standards and can be managed. The applicant highlights that a range of significant noise sources within the City can mask music noise in some instances but not all, and it is further highlighted that application site is located within the city centre, where there is already a high level of ambient street noise. Noise amenity impacts associated with the proposal will be subject to regulations not controlled by the planning authority. Environmental Protection acknowledge the applicant's supporting information and note a degree of concern with regard to noise impact and in the event the committee grant planning permission, a condition is recommended.

Policy 12 of NPF 4 supports development proposals that seek to reduce, reuse, or recycle materials in line with the waste hierarchy. Criterion c) specifies where development proposals are likely to generate waste when operational they must set out how much waste is likely to be generated and how it will be managed. Whilst no estimate on the likely quantum of waste to be generated has been provided with the application, the applicant's supporting Management Statement confirms that waste management facilities are included in the proposal which cater for mixed recyclables, general waste, and glass. The supporting information confirms waste separation, appropriate segregation and storage of waste, convenient access for collection and waste management at source will be possible and the proposal complies with the intent of NPF 4 policy 12.

Transport and road safety

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. The proposal would accord with NPF 4 policy 13 which also seeks to encourage, promote and facilitate developments that prioritise walking, wheeling, cycling and public transport for everyday travel and reduce the need to travel unsustainably.

The Roads Authority did not comment on this application, however noting the site's recent application history for a similar scale of development no objections in relation to movement and transport were previously raised. The applicant has highlighted that the operational area of the Festival Village has been reduced at its northern boundary to reduce congestions along Princes Street and adjacent bus stops.

Climate

Policy 1 of NPF 4 requires significant weight be given to the global climate and nature crises when considering development proposals. The proposal is well-situated to cater for sustainable transport and includes suitable waste management facilities under commercial arrangement. In the context of the climate and nature crises the scale of the proposal means it will have a negligible effect. The proposal complies with NPF 4 policy 1.

Conclusion in relation to the Development Plan

The proposal would result in adverse effects on the historic environment including the setting of listed buildings, character and appearance of conservation areas, and the OUV of the WHS for a time-limited period while the proposal is in place for nine out of the twelve months of 2023. In relation to design, the proposal's scale, and overall scale is not supported by the development plan. The temporary enclosure of civic open space on the scale proposed is not supported by policy objectives. The proposal would comply with some aspects of the development plan including the sequential test for prioritising development in town centres, sustainable travel, culture and creativity, and its neutral effect on the Local Nature Conservation Site.

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

The following material planning considerations have been identified:

Emerging policy context

On 30 November 2022 the Planning Committee approved the Schedule 4 summaries and responses to Representations made, to be submitted with the Proposed City Plan 2030 and its supporting documents for Examination in terms of Section 19 of the Town and Country Planning (Scotland) Act 1997. At this time little weight can be attached to it as a material consideration in the determination of this application.

Circular 4/1998

Paragraph 105 of Circular 4/1998 'Use of Conditions in Planning Permissions' outlines the principles that apply to temporary planning permissions stating *"the reason for granting a temporary permission can never be that a time-limit is necessary because of the effect of the development on the amenity of the area. Where such objections to a development arise they should, if necessary, be met instead by conditions whose requirements will safeguard amenity. If it is not possible to devise such conditions and the damage to amenity cannot be accepted, then the proper course is to refuse permission.* The applicant's supporting statement advises that the Circular also states *that a temporary permission will normally only be appropriate either where the applicant himself proposes temporary development'*. In this case as the applicant has proposed the limited time period and the proposal can be assessed on its merits as an application for temporary development.

Height

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 in recently refused application reference 22/ 04639/FUL which are broadly the same as those proposed in this application are shown to measure up to approximately three metres in height.

Compliance with this height restriction is not clearly 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.

Network Rail comments

Network Rail provided comments that confirm no objection to the proposal subject to recommended conditions in relation to details on waste management and litter collection at the site and the submission of a fire risk assessment due to the site's close proximity to the operational railway land. Should the committee be minded to grant planning permission it is recommended these conditions be attached to any decision.

Police Scotland comments and anti-social behaviour

Police Scotland notes anecdotally in consultation comments that in the past the application site has been a problem area for anti-social behaviour, but pop-up bars and the associated footfall and security presence reduce the need for police intervention. The Police Scotland comments further note that continuous trading of the operation will only enhance those benefits and further displace any youths still congregating in that area. Public comments note that the proposal may impact upon anti-social behaviour, with some comments highlighting the development benefits the area and others asserting the development is a source of anti-social behaviour. Whilst anti-social behaviour and behaviour of individuals is not a planning matter, the proposal's design, extent, and scale can influence the potential for anti-social behaviour.

Equalities and human rights

Due regard has been given to section 149 of the Equalities Act 2010. No impacts have been identified.

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

Public representations

Sixty-eight representations were received on the application comprising of 62 in support and six objection comments. A summary of the representations is provided below:

Material considerations - object

- Object to adverse impact on historic environment.
- Objection to adverse effect on views and local character.
- Object to proposal's design.
- Object to layout and resultant congestion within the street.

Material considerations - support

- Support for the continued use of the application site as a temporary development and the associated economic and cultural industry benefits.
- Support positive contribution of the proposal to East Princes Street.
- Support design concept and details for the proposal.

Non-material considerations

- Positive effect on tourism.
- Positive environment for employees.
- Object to potential anti-social behaviour.
- Support beneficial effect on previous anti-social behaviour at the site.
- Object to potential for impact on trade for permanent businesses in the area.

Conclusion in relation to identified material considerations

The proposal raises no material considerations that would outweigh or influence the outcome of the assessment against the development plan.

Overall conclusion

For the time period proposed and for the duration the development has been in place to date, the proposal would not 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, consequently it fails to comply with Section 59 and Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. There is a temporary negative impact on the Outstanding Universal Value of the Old and New Town of Edinburgh World Heritage Site.

The proposed scale, design, and appearance of the proposal does not draw upon the positive characteristics of the area and the proposal does not comply with LDP policies Des 1 or Des 4, nor NPF 4 policy 14. The proposal results in the temporary loss of civic open space in its entirety for the period of operation of the development and is contrary to LDP policy Env 18.

The proposal would comply with LDP policy Ret 1 and NPF 4 policy 27 by prioritising development in an existing town centre. The proposal would also comply with NPF 4 policy 1, development plan waste management policies and sustainable transport policy objectives. Partial compliance with NPF 4 objectives to support culture and creativity is demonstrated, as well as compliance with sustainable travel objectives.

On balance, the proposal does not comply with the development plan as a result of its design and scale and resultant effect(s) on local amenity and the historic environment for the duration proposed. There are no material considerations, including the asserted economic benefit of the proposal, that outweigh this conclusion.

Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following;

Conditions

Reasons

1. 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 National Planning Framework 4 policy 7 (Historic Assets and Places).
2. 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 National Planning Framework 4 policy 7 (Historic assets and places).
3. The proposal will have a detrimental impact on the Outstanding Universal Value of the Edinburgh World Heritage Site contrary to National Planning Framework 4 policy 7 (Historic assets and places).
4. The proposal does not represent a high quality design that safeguards the historic environment or contributes to placemaking and is therefore contrary to Local Development Plan policies Del 2 (City Centre), Des 1 (Design Quality and Context), Des 4 (Development Design - Impact on Setting), Ret 7 (Entertainment and Leisure Developments - Preferred Locations) or National Planning Framework 4 policy 14 (Design, quality and place).

Informatives

Background Reading/External References

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

Further Information - Local Development Plan

Date Registered: 22 May 2023

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

Summary of Consultation Responses

NAME: Flood Planning
COMMENT: No objection.
DATE: 29 June 2023

NAME: Network Rail
COMMENT: No objection subject to recommended conditions.
DATE: 20 June 2023

NAME: Edinburgh World Heritage
COMMENT: No comments received.
DATE:

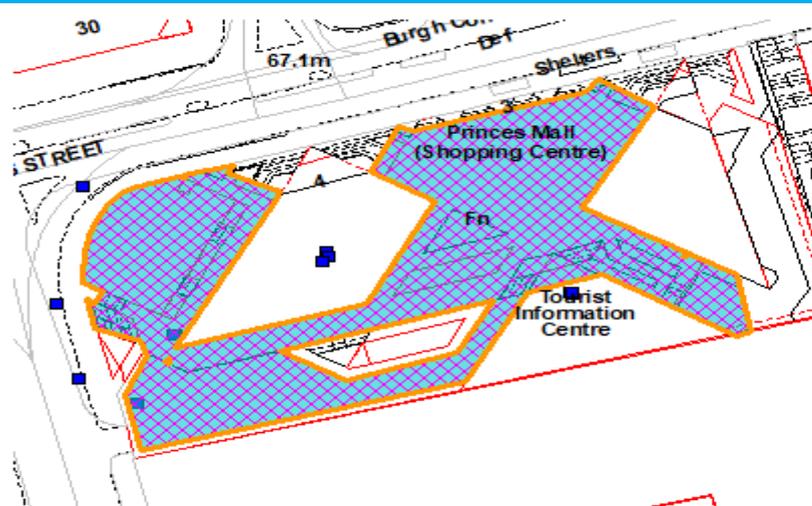
NAME: Police Scotland
COMMENT: No objection with benefits of development at this location highlighted.
DATE: 27 June 2023

NAME: Historic Environment Scotland
COMMENT: No comment.
DATE: 12 June 2023

NAME: Environmental Protection
COMMENT: Concern raised with regard to noise and recommend a condition should committee resolve to grant planning permission.
DATE: 20 July 2023

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

Location Plan



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