

Development Management Sub-Committee Report

Wednesday 25 October 2023

**Application for Planning Permission
St Andrew Square Gardens, St Andrew Square, Edinburgh.**

Proposal: Proposed installation of a Spiegel tent for use as a performance space for Santa's Stories. A storytelling experience with Santa for children as part of Edinburgh's Christmas 2023.

**Item – Committee Decision
Application Number – 23/04199/FUL
Ward – B11 - City Centre**

Reasons for Referral to Committee

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

Recommendation

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

Summary

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

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

The proposal does not result in significant harm to the character and appearance of the designed landscape or the Outstanding Universal Value (OUV) of the Old and New Towns of Edinburgh World Heritage Site. The proposed development is for a temporary period and will not have a long-term impact on the site and will not adversely impact on residential amenity. The proposals comply with the National Planning Framework 4 and the Edinburgh Local Development Plan.

The proposal, subject to the conditions stated, is considered to be acceptable. There are no detrimental impacts on equalities or human rights. There are no material considerations which outweigh this conclusion.

SECTION A – Application Background

Site Description

The proposal relates to the south eastern corner of St Andrew Square, surrounded by a mature tree backdrop. George Street lies to the west of the site, whilst St Andrew Street is adjacent on the eastern boundary. The application site lies within a dense urban area in the city centre.

A number of category A listed buildings are within close proximity to the site, as listed below:

- Melville's Monument (LB27816);
 - Bank of Scotland, 39 St Andrew Square (LB29707);
 - Royal Bank of Scotland, 42 St Andrew Square (LB29708);
 - 3 St Andrew Square (LB29696).
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- The site is also located within the following significant designations:
 - Old and New Towns of Edinburgh World Heritage Sites;
 - New Town Gardens and Dean Historic and Designed Landscape;
 - New Town Conservation Area;
 - Open Space.

Description of the Proposal

The proposal seeks to erect a small Spiegel tent in the south east corner of St Andrews Square. The tent would have a capacity of 192 people, set up with fixed bench seating in a theatre style. The structure would be used for Santa Stories daily. The tent would be an accessible venue with ramped access via the fire exit and staired access to the front. Permission is sought for a one year period. The time period is as follows:

- Set up: 6 -17 November 2023
- Operational: 18 November 2023 - 6 January 2024
- Take down: 7 - 14 January 2024.

Shows would be held every 30 minutes between 1000 and 2100 daily, operating under a Public Entertainment License.

This proposal forms part of a suite of four applications for a Christmas Festival across the city centre. The three remaining applications are located at West Princes Street Gardens, East Princes Street Gardens and George Square/ Castle Street.

Relevant Site History

13/04041/FUL
St Andrew Square Gardens
St Andrew Square
Edinburgh

Spiegeltent, bar, market stalls, nativity scene, box office, fairground rides and associated site office, stores, and ancillary facilities.

Granted
25 November 2013

14/03914/FUL
St Andrew Square Gardens
St Andrew Square
Edinburgh

Erect ice rink, Spiegeltent, bar, market stalls, nativity scene, box office, fairground rides and associated site office, stores, and ancillary facilities.

Granted
7 November 2014

Other Relevant Site History

This application is part of a wider proposal including 23/04143/FUL, 23/04142/FUL and 23/04144/FUL.

Pre-Application process

Pre-application discussions took place on this application.

Consultation Engagement

Historic Environment Scotland

Parks and Greenspace

Environmental Protection

Edinburgh World Heritage

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

Publicity and Public Engagement

Date of Neighbour Notification: 12 September 2023

Date of Renotification of Neighbour Notification: Not Applicable

Press Publication Date(s): 15 September 2023

Site Notices Date(s): 12 September 2023

Number of Contributors: 3

Section B - Assessment

Determining Issues

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

- a) Is there a strong presumption against granting planning permission due to the proposals:
 - (i) harming the listed building or its setting? or
 - (ii) conflicting with the objective of preserving or enhancing the character or appearance of the conservation area?

- b) If the strong presumption against granting planning permission is engaged, are there any significant public interest advantages of the development which can only be delivered at the scheme's proposed location that are sufficient to outweigh it?

This report will then consider the proposed development under Sections 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 in the Historic Environment: Setting

Listed Building and Setting

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

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

The proposed tent would be located within close proximity to many listed buildings including those that are category A-listed. The scale, positioning, form and design of the temporary structures would have a minor detrimental impact on the setting of these A-listed structures. The proposal is for a temporary period of a known duration and the impact on the setting of these listed buildings would be short term.

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

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

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

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

Conclusion in relation to the listed building

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

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

Conservation Area

The scale of the proposed temporary development is considerably smaller than some previous Christmas markets that operated solely within East Princes Street Gardens. The development has been divided between four locations which has seen the effect of development being mitigated to some level.

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

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

Conclusion in relation to the conservation area

Overall, the proposal would have a minor temporary adverse impact on the character and appearance of the Old and New Town Conservation Area. As this effect is minor and temporary it is therefore acceptable with regard to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

a) 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:

- NPF4 Sustainable Place Policies 4 and 7
- LDP Delivering the LDP policies Del 2;
- LDP Design policies Des 1, Des 4 and Des 5;
- LDP Environment policies Env 12 and Env 18; and
- LDP Shopping and Leisure policies Ret 7.

The non-statutory 'Listed Buildings and Conservation Area' guidance is a material consideration.

Listed Buildings

The impact on surrounding listed buildings and the conservation area has been assessed above and complies with NPF4 Policy 7.

Conservation Area

Overall, the development does not conflict with the objective of preserving or enhancing the character or appearance of the conservation area, allowing it to comply with NPF4 Policy 7.

World Heritage Site

NPF4 states that "development proposals affecting a World Heritage Site, or its setting will only be supported where their Outstanding Universal Value is protected and preserved".

Edinburgh World Heritage stated that whilst the impact is temporary in nature, the proposals would constitute notable harm to the OUV of the World Heritage Site and they therefore cannot support the application.

Due to the size, scale, positioning, form and the design and appearance, the proposal would temporarily impact on key views within the World Heritage Site. Notwithstanding, by splitting the event into four separate events across the city, the scale of the proposal is relatively small and consequently the impact on the heritage assets is not profound. Given this and the fact that the proposal is for a temporary period of a known duration, the impact on the OUV of the World Heritage Site would be short term and not significantly detrimental.

In addition to the other three proposals by the applicant and other known developments in the city centre, owing to its size, form and temporary nature the cumulative impact on the character and appearance of the OUV of the World Heritage Site is not considered significant.

Therefore, given the temporary nature of the proposal and the contribution to the City's cultural offering and economic recovery, it is considered to comply with NPF4 Policy 7.

Historic Gardens and Designed Landscapes

St Andrew Square lies within the New Town Gardens and Dean Historic Gardens and Designed Landscape. Owing to the proposal's size, scale, positioning, form and their design and appearance, the temporary structure would disrupt key views and thus would harm the character and appearance of the Historic Gardens.

On balance, the benefits discussed prior, which are significant material considerations, outweigh the temporary adverse impact that the proposal will have on the Historic Gardens and Designed Landscapes, justifying the proposal be granted for planning permission at this site. It is considered that the proposal protects the policy requirements of NPF4 Policy 4 as it will help retain and protect the fabric of the city's historic green spaces and designed landscaping.

Trees and soft landscaping

The current site area occupies a small area of the gardens and therefore the soft landscaping restoration/remediation will be minor at the end of the decommissioning phase. The effects are reversible and not considered to be significantly detrimental to amenity. The restoration of the area is a matter for the applicant and the owner of the site who in this instance is Essential Edinburgh.

Therefore, there is no requirement to secure restoration/remediation works through a planning condition for soft landscaping.

The tent is located outwith any Tree Protection zone.

Use

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

The LDP supports a mix of uses appropriate to the location of the site, the accessibility and the character of the surrounding area. Development which lies within the City Centre will be supported which retains and enhances its character, attractiveness, vitality and accessibility, whilst contributing to its role as a strategic business and regional shopping centre and Edinburgh's role as a capital city.

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

The proposal would not prevent the continued existing use of the public garden or the remainder of St Andrew Square. The effect of the proposed development on the leisure value and enjoyment of the part of the Square is not permanent and is reversible. The temporarily change of use of the site would not result in the permanent loss of open space provision does not conflict with the key principles of LDP Policy Env 18.

The principle of development is considered acceptable given the temporary nature of the proposal and is supported in this location. The proposal will help the city centre fulfil its role as a capital city. Given that the proposed Christmas Festival is temporary they do not conflict with the key principles of LDP Policy Del 2. The development is considered acceptable given the temporary nature of the proposal and is supported in this location. The proposal complies with LDP Policy Ret 7.

Amenity

Due to the nature of the proposal, there may be a large number of people in attendance at one time. The site is however within a city centre location and the proposal is for a temporary period. The Council's Environmental Protection Section have previously advised that if any complaints about noise were received, they would address this directly with the event organiser.

The proposals would not give rise to significant harm to the amenity of neighbouring properties including residences. It is considered that the proposal complies with LDP Policy Des 5.

Transport

No roads are required to be closed to facilitate the proposed development. The proposal raises no road safety or pedestrian safety issues including in respect of the number and location of entrance and exit points and access for wheelchair users. Access to the remainder of the Square, including for pedestrians and wheelchair users, will be maintained.

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

Archaeology

No groundworks are required to facilitate the proposal and therefore there is no potential for impacts on underground archaeology.

Conclusion in relation to the Development Plan

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

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

The following material planning considerations have been identified:

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.

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

The application received three public representations. A summary of the representations is provided below:

material considerations

- The proposal will have a detrimental impact on the soft landscaping
- No detail on how footfall will avoid Tree Protection Areas
- External illumination will be detrimental to wildlife
- No detail on how the tent would be powered - if by diesel generator this is contrary to Councils ambition of achieving Net Zero targets by 2030. There is on site power in this location and therefore no generators are required.

- There are multiple high value trees in St Andrew Square and these are not recorded on plans therefore it is difficult to show if the RPA's will be impacted. No assurance how these trees will be protected during construction, operation and take down. A Tree Protection Plan has since been submitted to support the application. The impact on trees is further discussed in section 'B'.

non-material considerations

- Not enough information provided within application to make informed decision.
- No detail showing that the proposal would not be responsible for soil compaction.

Conclusion in relation to identified material considerations.

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

Overall conclusion

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

The development will have a minor temporary effect on the surrounding listed buildings and conservation area. The Christmas Festival will contribute positively to the life of the city and the vibrancy of the city centre. Moreover, the site is exceptionally well placed for public transport owing to it being within the city centre.

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

The proposal does not result in significant harm to the character and appearance of the designed landscape or the Outstanding Universal Value of the Old and New Towns of Edinburgh World Heritage Site. The proposed development is for a temporary period and will not have a long-term impact on the site and will not have an adverse impact on residential amenity. The proposals comply with the NPF4 and Edinburgh Local Development Plan.

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

Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following;

Conditions

1. Planning permission is hereby granted for the proposal for the period between 6 November 2023 - 14 January 2024.
2. The temporary attraction hereby approved shall only be operational between the hours of 10am and 9pm.
3. The temporary structures hereby approved shall be removed from the site in their entirety no later than 14 January 2024.

Reasons

1. In recognition of the temporary nature of the proposal.
2. In the interests of safeguarding the amenity of neighbouring noise sensitive properties.
3. In recognition of the temporary nature of the proposal.

Informatives

It should be noted that:

1. No development shall take place on the site until a 'Notice of Initiation of Development' has been submitted to the Council stating the intended date on which the development is to commence. Failure to do so constitutes a breach of planning control, under Section 123(1) of the Town and Country Planning (Scotland) Act 1997.
2. As soon as practicable upon the completion of the development of the site, as authorised in the associated grant of permission, a 'Notice of Completion of Development' must be given, in writing to the Council.

Background Reading/External References

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

Further Information - [Local Development Plan](#)

Date Registered: 15 September 2023

Drawing Numbers/Scheme

1 - 4

David Givan
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PLACE
The City of Edinburgh Council

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Appendix 1

Summary of Consultation Responses

NAME: Historic Environment Scotland

COMMENT: No comment.

DATE: 25 September 2023

NAME: Parks and Greenspace

COMMENT: No comment.

DATE:

NAME: Environmental Protection

COMMENT: No objection.

DATE: 3 October 2023

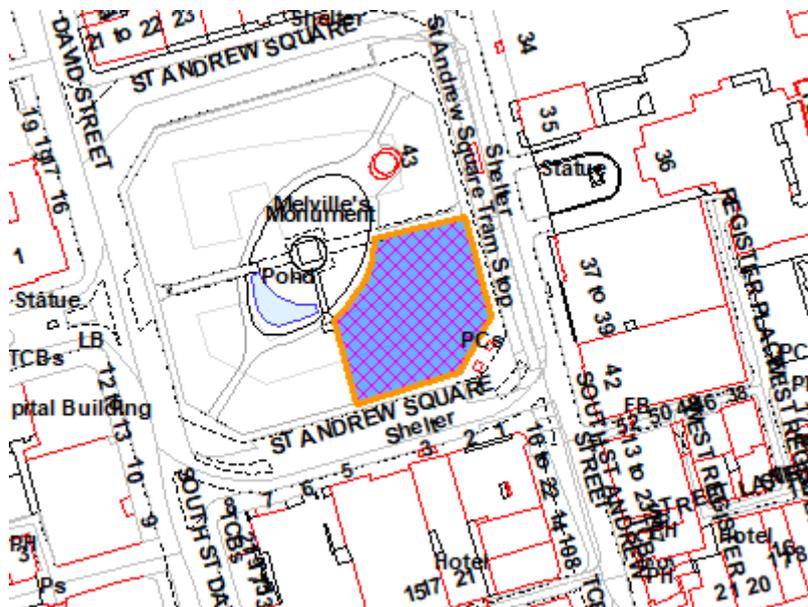
NAME: Edinburgh World Heritage

COMMENT: Cannot support the proposals due to the harm on the OUV of the World Heritage Site.

DATE:

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

Location Plan



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