

Development Management Sub-Committee Report

Wednesday 25 October 2023

**Application for Planning Permission
West Princes Street Gardens, Princes Street, Edinburgh.**

Proposal: Temporary change of use and siting of performance units, catering units and other associated moveable structures for Edinburgh's Christmas Festival.

**Item – Committee Decision
Application Number – 23/04143/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 the city centre location 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 owing to it being within the city centre.

On balance, these 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 of the Old and New Towns of Edinburgh World Heritage Site. The proposals comply with the Edinburgh Local Development Plan.

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

SECTION A – Application Background

Site Description

The site forms part of West Princes Street Gardens (WPSG) comprising the hard standing area of the red Blaise adjacent to the Ross Fountain and areas of soft landscaping along the southern edge of the gardens. The application site includes the Ross Bandstand and is bound by the remainder of the gardens.

There are two category A listed buildings within the application site:

- Ross Fountain (LB27911);
- Robert Louis Stevenson Memorial (LB48255).

In addition to this, the Category A listed St Cuthbert's Church, Churchyard, Monuments and Boundary Walls (LB27339) are located directly to the west of the application site.

Edinburgh Castle, a Scheduled Ancient Monument, lies beyond the rail line to the south and provides a backdrop to the site.

The application site has numerous significant designations, as listed below:

- Old and New Towns of Edinburgh World Heritage Sites.
- New Town Conservation Area.
- Historic Garden Designed Landscape: New Town Gardens and Dean.
- Special Landscape Area: Princes Street Gardens; and
- Local Nature Conservation Site.

Description of the Proposal

The application is for the temporary change of use and siting of performance units, catering units and other associated moveable structures for Edinburgh's Christmas Festival. Permission is sought from 30 October 2023 to 19 January 2024 for a one year temporary period, which includes time to set up and decommission the event. The proposed timescale for set up, operation and decommissioning is as follows:

- Set up: 30 October - 17 November.
- Operation: 18 November - 6 January.
- Take down: 7 January - 19 January.

The facilities will be operational between the hours of 1000 - 2200 daily.

Remediation works are to be undertaken by the Council with the costs of these works met by the applicant.

The proposals within West Princes Street Gardens incorporate the following:

- Market stalls;
- Fairground rides;
- Accessible toilets with baby changing facilities;
- Ancillary site office stores and facilities;
- Outdoor seating and associated facilities (e.g. picnic benches, bistro tables, chairs and umbrellas).

Access to the event is for pedestrians only. Any servicing requirements would be via the existing access through the graveyard directly to the west of the site and Kings Stables Road.

Waste collection is to be managed by a certified sub-contractor, collected daily. Separate waste facilities are to be made available for members of the visiting public and stallholders.

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

Supporting Information

The following documents were submitted in support of this application and can be viewed on the Planning and Building Standards Online Services:

- Details of the funfair rides;
- Planning and Design Statement; and
- Tree Protection Plan.

Relevant Site History

22/04921/FUL
West Princes Street Gardens
Princes Street
Edinburgh

Temporary change of use and siting of performance units, catering units and other associated moveable structures for Edinburgh's Christmas Festival. Recurring Period of 5 Years.

Granted
10 November 2022

21/04954/FUL
West Princes Street Gardens
Princes Street
Edinburgh

Erection of Edinburgh's Christmas at West Princes Street Gardens including Christmas market stalls, fairground rides, Santa's grotto, Christmas tree maze, Associated site offices, stores, and ancillary facilities (Proposed for one year 2021 - 2022).

Granted
15 November 2021

Other Relevant Site History

This application is part of a wider proposal including 23/04142/FUL, 23/04144/FUL and 23/04199/FUL.

Pre-Application process

Pre-application discussions took place on this application.

Consultation Engagement

Historic Environment Scotland

Parks and Greenspace

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: 4

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

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 market facilities and fairground rides would be located near to many listed buildings including those that are category A-listed. The application is primarily located between two category A-listed structures the Ross Fountain and St Cuthbert's Church. The scale, positioning, form, and design of the temporary structures would have a detrimental impact on the setting of these A-listed structures.

Owing to the size, scale, form, and design of the proposal, it would have a minor impact on the setting of the other neighbouring listed buildings which are located further away from the proposal. Previous iterations of the Christmas market have operated on the site adjacent to these listed buildings for a number of years during the festive season and has become characteristic of the setting of those listed buildings during the festive season. 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 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?

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

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

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

Conclusion in relation to the conservation area

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

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.

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

The Princes Street Gardens are protected as Designed Landscape, Historic Gardens and Special Landscape Area to preserve the fabric of the city's historic green spaces and landscaping. Owing to the proposal's size, scale, positioning, form and their design and appearance, the temporary structures would disrupt key views within the Designed Landscape, Historic Gardens and thus would harm the character and appearance of the Designed Landscape and 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.

Alternative Locations

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

Trees and soft landscaping

The ground to be restored/remediated will be unsightly and inaccessible to the public only temporarily. The effects are reversible and not considered to be significantly detrimental to amenity, including visual amenity. The Council as landowner through non-planning related consents, including terms and conditions of a grant of a lease to the operator, would ensure that at the end of the decommissioning stage the land is restored expeditiously to a required specification. This would include the reinstatement of soft landscaping and the repair/replacement of any damaged kerbs and footways being made good at no cost to the Council.

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

A Tree Protection Plan has been submitted which details the relevant measures that will be put in place to ensure the mature trees are protected during construction, operation and decommissioning. A condition is attached to the planning permission, that stipulates the applicant must implement these tree protection measures before development on site begins. With this condition it is considered that the proposal will comply with LDP Policy Env 12.

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 Princes Street Gardens. The effect of the proposed development on the leisure value and enjoyment of the part of the Gardens is not permanent and is reversible. The temporary change of use of the site would not result in the permanent loss of open space provision in the locality and 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. The proposed Christmas Festival is temporary and does 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 will be amplified music and a large number of people attending, including in the evening. 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.

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

It is considered that the proposal complies with LDP Policy 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 Gardens, 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 four public objections. A summary of the representations is provided below:

material considerations

- Princes Street Gardens is a vital green space for the residents of the immediate area and the events proposed would disrupt the amenity of residents for the duration of the permission. The effect of the amenity is discussed within section 'B' of the report.
- No provision of accessible toilets - the plans have since been revised and now show accessible toilets.
- The application has not followed Council guidance on tree protection. This has been discussed within section 'B' and a condition has been attached to the permission making the applicant to meet the council's guidance before any development of any kind can take place on site.
- Concern of the damage done to soft surfaced areas especially in areas of high footfall associated with attractions. This is discussed in section 'B' of the report. Any damage to soft landscaping will be restored at no cost to the Council.

non-material considerations

- Not enough information provided within application to make informed decision.

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 immediate listed buildings and further conservation area. The Christmas markets, rides and associated kiosks will bring an interesting additional feature to the city centre, that people from Edinburgh and beyond will benefit from. It will contribute positively to the life of the city and the vibrancy of the city centre. Moreover, the site is exceptionally well placed for public transport owing to it being within the city centre.

On balance, these benefits 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 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 the 30 October 2023 - 19 January 2024.
2. The temporary market and other attractions hereby approved shall only be operational between the hours of 10am and 10pm on the dates specified in Condition 1.
3. The temporary buildings, attractions, installations and associated temporary structures and plant hereby approved shall be removed from the site in their entirety by no later than two weeks after expiry of the temporary planning period, the 19th of January.
4. No development on site may begin without written consent from Edinburgh Council Planning Authority. At least 3 days written notice shall be given to the Planning Authority of the date of commencement of the tree protection measures to be carried out. Following the completion of the tree protection measures and prior to development commencing on the site the operator shall write to the Planning Authority confirming that the tree protection measures have been completed. No development shall commence on site unless and until an arboricultural specialist from the Council's Parks and Greenspace Section or a representative authorised by them, has inspected the completed tree protection measures and subsequently written confirmation has been received from the Planning Authority that the completed tree protection measures are acceptable.

Access shall be made available to officers of the Council's Parks and Greenspace Section or a representative authorised by them, to carry out site survey/monitoring checks of the tree protection measures being carried out.

5. Prior to the commencement of development, the applicant must provide a boundary strategy to ensure the public safety in and around the site. Prior to development commencing on the site the operator shall submit a boundary strategy to the Planning Authority. At least 3 days written notice shall be given to the Planning Authority of the date of development. If it is deemed that the strategy is acceptable the applicant will receive a written response from Edinburgh Council Planning Authority allowing development to begin.

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

4. In the interests of safeguarding trees which make a significant contribution to the character and amenity of the area. To comply with the Local Development Plan policy Env 12.
5. In the interests of public safety.

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: 12 September 2023

Drawing Numbers/Scheme

1 - 2a, 3 - 5

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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:

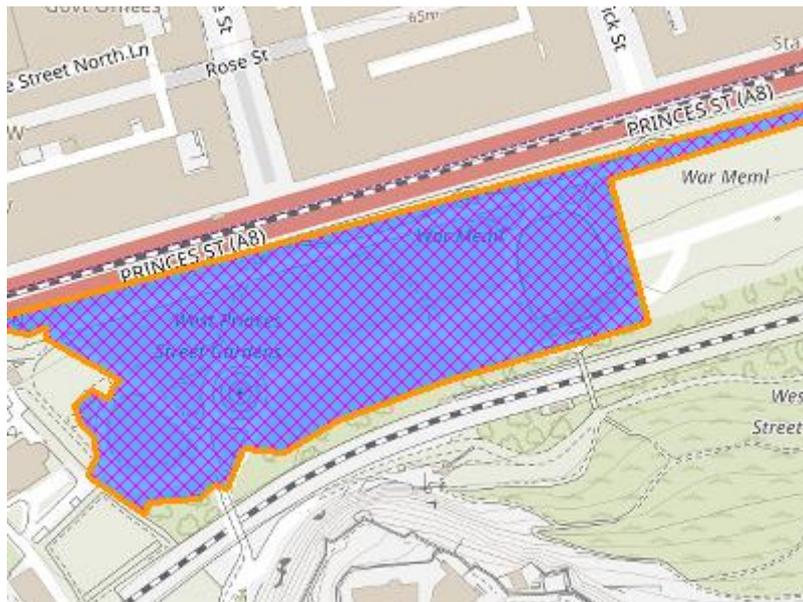
NAME: Edinburgh World Heritage

COMMENT: Do not support the proposals due to the harmful impact 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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