



**Listed Building Consent 11/00394/LBC
at
7 Clerk Street
Edinburgh
EH8 9JH**

**Development Management Sub-Committee
of the Planning Committee**

1 Purpose of report

To consider application 11/00394/LBC, submitted by Duddingston House Properties. The application is for: **Partial demolition of and alterations (internal and external) to former Odeon cinema.**

It is recommended that this application be **REFUSED** for the reasons below.

2 The Site and the Proposal

Site description

The building is a former cinema, originally the New Victoria Cinema, which remained in this use until its closure on 23 April 2003. The premises have been occupied by temporary entertainment users (during the Edinburgh Festival) since their closure but remain predominantly vacant.

The main entrance to the building faces Clerk Street. The former cinema has a large central portion containing the auditorium that is bounded by residential tenement blocks and their gardens, and it narrows again to the rear, accessed from Buccleuch Street (the western boundary of the site). There is a single storey queue shelter at this boundary.

The building is category B listed, listed on 12 December 1974 (item number 30028).

The property was built as the New Victoria Cinema, executed by John Herdan (for W.E. Trent of London) in 1930. It has been altered a number of times since the cinema opened to accommodate decorative fashions and fit-out requirements.

The front of the building is constructed in 'White Hathernware' faience and is designed in an Art Deco representation of the Classical style. This elevation is two storey, with a loggia forming the first floor balcony. The ground floor was clad with dark red marble in 1956.

The building contains an atmospheric 'Greek Theatre' interior, comprising a curved Ionic vestibule, galleried auditorium, channelled wall surfaces with Ionic order, niches with figures, a wide pedimented proscenium with octagonal Corinthianesque columns, a curved back wall with Ionic colonnades at balcony level, a Greek key gallery front and a sky ceiling with illuminated stars.

The internal accommodation comprises the following:

Entrance Foyer

The entrance foyer has been much altered and is currently in a poor state of repair. It has false ceilings that have been partially removed to reveal service areas above and some evidence of original decorative detail.

Crush Hall

The crush hall sits behind the entrance foyer. It extends the full width of the auditorium and is detailed in the same Art Deco representation of the Classical style as the façade.

The hall has been altered with the insertion of a suspended ceiling and some modern door openings, although much of the original cornice detail and decorative detail to the walls remains, and the original fielded panel doors are still in situ.

Café

The first floor café retains much of its original wall and window detail (the windows were restored in 1999). However, the ceiling has been altered by the installation of hung circular ceiling panels.

Auditorium

The auditorium has been sub-divided horizontally to form three separate cinemas. The first cinema contains the balcony and has a star ceiling, a number of the original niches containing sculptures (some sculptures are missing), and the original decorative detailing of the walls. It also contains the large pedimented proscenium, although this has been altered and the cinema screen conceals its coffered ceiling and arches.

The space beneath the balcony contains three further cinemas. There is evidence of original wall finishes in this space. Original doors remain with their original architraves and surviving motif-work over the doors. The full height of the original auditorium is visible from this space.

This property is located within the Southside Conservation Area.

Site History

2 June 1999 - planning permission approved to alter front elevation (99/00283/FUL).

18 June 1999 - listed building consent approved to alter front elevation, internal redecoration, and minor refurbishment (99/00283/LBC).

16 January 2003 - listed building consent approved to erect 9 units in a four storey and attic residential development on a temporary car park site on the east side of Buccleuch Street directly behind the Odeon cinema (02/03976/LBC).

6 March 2003 - planning permission approved to erect 9 units in a four storey and attic residential development on a temporary car park site on the east side of Buccleuch Street directly behind the Odeon cinema (02/03976/FUL).

8 July 2005 - applications for planning permission and listed building consent withdrawn for the demolition of the cinema to form a 240 bed student residence with bar/restaurant (class 3) accommodation, retaining the existing Clerk Street façade (05/00327/FUL and 05/00327/LBC).

16 January 2006 - application for a liquor licence (entertainment licence) refused at the Licensing Board Meeting.

8 January 2008 - planning permission minded to grant for the renewal of planning approval 02/03976/FUL. Awaiting conclusion of legal agreements regarding financial contributions towards transport infrastructure and alleviation of accommodation pressures in the local school catchment area (07/04375/FUL).

15 January 2008 - letter from Historic Scotland recommending the upgrading of the former Odeon Cinema, 7 Clerk Street, to Category A. (It should be noted that in 2008 The Picture House, Hall Street, Campbeltown list description was updated and the category changed from B to A as part of the Cinema Thematic Study 2007-08) (Historic Scotland Item Number 36).

16 January 2008 - listed building consent approved for the erection of 9 units in a four storey residential development (07/04666/LBC).

29 October 2008 - planning permission minded to grant for part-demolition and conversion of the former cinema to create a 231 bed hotel (incorporating bar/restaurant facilities), artist's studios/galleries and community facilities. Permission was subject to the conclusion of legal agreements regarding financial contributions of £11,500 towards the City Car Club and £5000 for the promotion of a Traffic Regulation Order for loading/disabled bays on Buccleuch Street and Clerk Street (08/00197/FUL). Since consent was minded to grant, new material planning considerations have emerged for the Committee to assess.

29 October 2008 - listed building consent minded to grant for part-demolition and external and internal alterations (08/00197/LBC).

3 June 2009 - letter from Historic Scotland informing of Scottish Ministers' direction to refer application 08/00197/LBC) to them for determination. All parties agreed to determination through written submissions.

21 May 2010 - listed building consent for part-demolition and external and internal alterations refused by Scottish Ministers (08/00197/LBC). Reasons for refusal were:

- the auditorium is of particular interest as one of few remaining of this style in the UK and the work of an eminent architect
- the building is capable of repair
- the scheme which would result from demolition would deliver economic benefits to the local community and nationally, but they would not be so significant as to outweigh the presumption against demolition, and since benefits would also be gained from the repair or restoration of the building its demolition is not essential
- the repair of the building is not economically unviable, and while no potential restoring purchasers have been found who are acceptable to the applicants, there remains interest in the purchase of the building from parties whose intentions would be to preserve it.

Pre-Application Process

2 November 2010 - meeting held with representatives from the Scottish Government, Historic Scotland, the City of Edinburgh Council (CEC), Duddingston House Properties (DHP), GVA Grimley, Montagu Evans and GL Hearn to update on progress being made with the marketing of the former Odeon cinema. Remarketing commenced in mid-August 2010. Agreed to run marketing until 30 December 2010, agent's to issue a closing date letter and website to be updated to include a planning statement.

5 January 2011 - meeting held with representatives from the Scottish Government, Historic Scotland, the City of Edinburgh Council (CEC), Duddingston House Properties (DHP), GVA Grimley, Montagu Evans, GL Hearn and Tods Murray to review the bids received at the revised closing date for offers of 5 January 2011. CEC advised that offers made by various parties at the closing date are evidence that there are alternative potential uses of the building and these would need to be assessed in terms of being long-term viable solutions for the building. Historic Scotland noted that there are queries about the independence and credibility of the valuations by Colliers and DM Hall. DHP expressed concern that the best offer was less than 50% of the current valuation. CEC reported that the Council would be monitoring the condition of the property. DHP confirmed that problem areas in terms of condition would be addressed and concluded that it would reconsider its position generally.

Description of the Proposal

The proposals are identical to those in the previous application for listed building consent (08/00197/LBC).

The proposals comprise the partial demolition of the listed building, including the removal of the auditorium and shed structure fronting Buccleuch Street. The brick walls of the auditorium will be retained along with the Clerk Street façade, the entrance foyer and crush hall at ground floor, and the café at first floor level.

Artists' studio space is proposed within the envelope of the auditorium, facing onto an internal courtyard at ground level, with some hotel accommodation located behind the studios. Slot windows will be punched into the existing brick wall envelope.

Hotel accommodation totalling 231 beds is proposed on the upper levels, amounting to six floors of accommodation.

The entrance foyer will be retained as the hotel reception, the crush hall interior will be restored and occupied by a restaurant/café, and the original café will be retained as a café/bar space.

The proposed Buccleuch Street elevation will offer four-storey and attic accommodation, with café/gallery space at ground floor and hotel accommodation on the upper floors. This elevation is a contemporary intervention in the streetscape, set back from the existing building line and finished in modern materials, including glass, zinc panels and white render, with a metal roof.

There is private gated pend access to the internal courtyard from Buccleuch Street and access to services (refuse storage/bicycle storage/fire escape) to the south.

A small basement area containing plant/services, including a heat pump, a rainwater harvesting facility, and a CHP engine is located beneath the southwest corner of the original auditorium space.

Supporting Information

The applicant has submitted the following supporting documents:

- Conservation Plan, including a condition assessment of the building (September 2007)
- Consultation Report (January 2007)
- Planning and Design Statement (January 2008)
- Marketing and Economic Statement (January 2008)
- Planning Statement (February 2011)
- Building Survey Report (28 January 2011)
- Marketing Report (February 2011)
- Updated Valuation 2011 (February 2011)

These documents are available to view on the Planning and Building Standards Portal.

A summary of the reasons given by the applicant for the partial demolition of the building in the applicant's supporting information are as follows:

- after four years of unsuccessful marketing, including the most recent campaign, and the failure of a late night licence application, the owner contends that it has been demonstrated that there is no substantial use which would retain the upper auditorium in its entirety. Consequently, there is an economic case to support the demolition of a substantial part of the building

- while four bids were received at the end of the latest marketing period, none of the bids received are at a level close to the independent valuation of the property and have been rejected by Montagu Evans and GL Hearn who undertook the marketing exercise
- the requirements of the Scottish Ministers in respect of fully exploring the building's re-use have been met
- there is clearly a demand for affordable accommodation (budget hotel and short-term post-graduate accommodation) within the city and, in implementing this proposal, the strategy unlocks the long term future of the building in a manner which retains and restores many, but not all, of the significant historic elements identified in the Conservation Plan.

3. Officer's Assessment and Recommendation

Determining Issues

Do the proposals harm the character or appearance of the conservation area? If they do, there is a strong presumption against granting of permission.

Do the proposals preserve the building or its setting or any features of special architectural or historic interest which it possesses? If not, there is a presumption against the granting of permission. For the purposes of this issue, "preserve", in relation to the building, means preserve it either in its existing state or subject only to such alterations or extensions as can be carried out without serious detriment to its character.

Do the proposals preserve the building or its setting or any features of special architectural or historic interest which it possesses? If not, there is a presumption against the granting of consent.

Do the proposals comply with the development plan?

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

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

ASSESSMENT

To address these determining issues, the Committee needs to consider whether:

- (a) the loss of the listed auditorium is acceptable; and
- (b) the alterations to the retained front portion of the building are acceptable.

(a) National Planning Policy Guidelines (NPPG 18) presumes in favour of preserving listed buildings except where a strong case has been made for demolition. Edinburgh and the Lothians Structure Plan policy ENV 1C and Edinburgh City Local Plan Policies Env 2 and 4 reflect this.

Historic Scotland's policy in relation to the demolition of listed buildings stated in the Scottish Historic Environment Policy (SHEP) is clear that no listed building should be demolished unless it can be demonstrated that every effort had been made to retain it.

This assessment will be carried out in terms of the four SHEP tests to establish whether there is a case for demolition of the auditorium.

i) SHEP test a) is to establish whether the building is not of special interest.

The building is category B listed, although Historic Scotland notes that it is of National Importance in heritage terms and is the finest surviving cinema building in Edinburgh. Whilst it is not customary to change a listing category while there is an extant application, it is worth noting that the process of upgrading the listing from category B to category A had commenced prior to the submission of planning application (08/00197/FUL) and the corresponding application for listed building consent (08/00197/LBC).

The building is important in terms of its design by William Trent, a noted cinema architect. In 1929 Trent was the chief architect of the Provincial Cinematograph Theatres (PCT) and, although he had designed very few cinemas prior to this appointment, went on to become one of the leading cinema designers in the country. As cinemas tended to be built by local architects, examples in Scotland by leading English architects are very rare; the New Victoria is cited as the best (and only large-scale) example of a custom-built PCT cinema in Scotland and the most intact example of an acclaimed English architect's work in Scotland.

It is one of only two surviving 'atmospheric' cinemas in Scotland, designed to create the illusion of being outside (within a classical landscape). The only other remaining atmospheric cinema in Scotland (in Campbeltown) was upgraded from category B to A listed status as part of the Cinema Thematic Study 2007-2008.

The building has a visually interesting exterior facing onto Clerk Street, and internally there are a number of remaining features of architectural and historic interest that contribute to its importance. The façade is the only example of this type in Edinburgh and the original interior of the auditorium is clearly readable, in spite of its subdivision, and is the only remaining 1930s large-scale auditorium in a Scottish city centre.

The applicant's own Conservation Plan gauges the importance of the history of the building and its architectural importance in national terms, grading the crush hall and café to be of moderate significance, and grading the façade and the auditorium to be of considerable importance, having 'a high degree of intact original fabric that contributes substantially to the importance of the building or site overall'. The Conservation Plan recommends that these elements should be 'respected, repaired and restored where possible'.

The Conservation Plan also details the social value of the building as a point of social interaction and entertainment, holding a number of national film premiers and music concerts since 1930, and as a venue with an educational role during the inter war years and World War II.

These findings are supported by the Scottish Ministers report on the refusal of the previous application for listed building consent (08/00197/LBC) in which the Reporter concludes that the building is of special interest and its auditorium is of particular interest as one of few remaining examples of this style in the UK and the work of an eminent architect.

Therefore, in relation to SHEP test a), it is concluded that the building in its entirety remains of special interest and there is no justification for the loss of the auditorium area.

ii) SHEP test b) is to establish whether the building is incapable of repair.

In assessing the building's condition, the cost of repairing and maintaining it in relation to its importance and whether it has already received or been pledged grants from public funds should be considered. It is also important to distinguish between serious structural faults and less serious but frequently more obvious consequences of poor maintenance, neglect or vandalism.

The Building Survey Report (28 January 2011) was based on an internal and external inspection carried out on 21 January 2011. The report notes that the building is largely in a semi-shell condition as the majority of the fixtures and fittings have been removed, leaving the original wall linings and raking floors. In conclusion, the report states that the building is in fair condition overall. The following significant areas of concern were raised:

- saturation of the wall plaster and plaster/plasterboard ceiling of the north corridor due to leaks
- delamination of areas of plasterwork in the central stair due to localised water ingress

- collapsed ceiling in the cafe area (front portion) due to water ingress
- failure of felt covering on flat roof areas re-felting and slipped, cracked or missing slates (likely to be rotten timbers beneath)
- vertical cracking to the brickwork at several locations on the façade.

The report recommended fabric repairs to bring the property into a wind and water tight condition, including repairs to the roof and an overhaul of the rainwater goods. Also, the report advised the removal of asbestos material (if still present) and pigeons, including waste. The final significant recommendation was to carry out a full rot survey of the saturated area of the north corridor, including a soft strip to expose the structure and determine the extent of timber decay whilst allowing drying out of the external wall plaster.

These defective areas were visible at the site visit of 29 March 2011. The leaks in the north corridor had been repaired, but a soft strip had not been carried out as recommended. Dry rot spores were evident on the floor and walls of this corridor, the adjacent cinema (former screen 4) and in areas of the central stair walls. There were no remaining signs of pigeon occupation.

The applicant's Building Survey Report estimates the cost of remedial works at between £50,000 and £100,000. This is a small percentage of the potential value of the property.

Therefore in relation to SHEP test b), there is no dispute that the building is in fair condition and not beyond repair, nor are the costs of repairs prohibitive. On this basis, there is no justification for the loss of part of the building on grounds of being incapable of repair.

Were the building to deteriorate over a lengthy period, the planning authority could implement legislation enforcing essential repairs to prevent the property falling into disrepair. Ultimately, Compulsory Purchase powers could be used to achieve the desired result of preserving and reusing the building. However, the latter option is premature at this stage.

iii) SHEP test c) is to establish whether the demolition of the building is essential to delivering significant benefits to economic growth or the wider community.

The building is currently unoccupied. The applicants have submitted an up-to-date Marketing Report which covers the most recent period of marketing from 30 September 2010 till 5 January 2011. The Marketing and Economic Statement, dated January 2008, details previous attempts to secure either a restoring purchaser or an appropriate tenant for the premises.

In summary, the property was purchased in April 2003 and marketed in June 2003. No material interest in the site was reported by August 2003. A design competition was held in 2004, which resulted in interest from bodies such as Edinburgh University, the Gilded Balloon and the Scottish Chamber Orchestra. In 2005 sale discussions with the Rock Elim Trust, lead to an offer to lease the building due to a disagreement on sale price. However, the Trust rejected the offer to lease.

An application for a new Entertainment liquor licence, which would have varied the type of entertainment provided within the premises, was refused in January 2006. The current licence lapsed in September 2009 and the licence holders have not applied for a new licence in terms of the new Licensing (Scotland) Act 2005.

In October 2006, 'The Consortium' (Save the Odeon Ltd.) made an offer of £3.4m, which was agreed in November, to reuse the building as a cinema with conference and banqueting facilities, and an apartment hotel. However, when 'The Consortium' sought to reduce the sale price to £2.75m, in December 2006, this was rejected on the grounds of lack of credibility.

A new marketing campaign was implemented in July 2007, with a closing date for offers of September 2007, which resulted in an offer of £4m from Fat Cat Productions, which was accepted. However, the bidder withdrew the offer in November 2007, stating that their main business required full attention due to other business development opportunities.

The latest marketing strategy was carried out in response to the Scottish Minister's recommendation that a further marketing exercise be undertaken as part of fully exploring all alternatives to demolition. This was carried out on an agreed basis with the various stakeholders, namely the applicants, CEC, Historic Scotland and the Scottish Government. The only area of contention was that the council and Historic Scotland recommended that the valuation price should not form part of the sales particulars as there were concerns this would deter potential bidders. DHP did not accept this advice.

The marketing tools were thorough, comprising marketing boards, a professional brochure, website, a listing on the Scottish Property Network, advertisements in the Scotsman, Herald and Property Week, a mail shot to a targeted list of agents, developers and potential occupiers and editorials in the Evening News.

Four bids were received at the closing date as follows.

- Alan Scobie, £1.6m for two-screen cinema, café and market/meeting place on ground floor, restaurant on mezzanine level, multi-purpose venue in main auditorium and flats or student accommodation to rear.
- Elim Trust Corporation, £1.45m for use as church, community venue, theatre, cinema, coffee shop and development of flats to rear. This bid has now been withdrawn.

- New Victoria Limited, £0.6m to retain the cinema and provide community space
- JD Wetherspoon to lease part of the building (front section and crush bar), for 30 years, for £90,000 per annum with fixed upward only reviews at 7.50% every five years. Subject to Class 3 consent.

The marketing agents explained to the bidders that the applicants were relying on the terms of the independent valuation prepared by Colliers International in September 2010 which produced a value of £2.93m. Although now updated to £2.83m, this has not changed significantly. An opportunity was given to the bidders to improve the amount of their offers to £2.5m. However, to date the various bidders have not responded with any improved offers. The advice from the marketing agents to the applicants was to reject the various offers, primarily based on the significant discount to value that the bid figures propose.

The financial aspect of these bids will be discussed further in the following section which addresses SHEP test d). Notwithstanding the fact that none of the bids meet the applicant's expected price, these offers are evidence that there are parties willing to purchase the premises for reuse without demolition of the auditorium or any other significant part of the listed building.

In 2008, the Head of Planning and Strategy commissioned an independent report on the Future Use and Economic Viability of the building which addressed the feasibility of a variety of potential uses for the building, including licensed properties, a cinema, a bingo hall, student accommodation, residential, and hotel use. The report found that there is increasing pressure on the existing independent cinema market and a downturn in demand for bingo outlets. Whilst there is likely demand for the building in its current form as a nightclub, bar, restaurant, and/or music venue, many operators would seek a late licence and the majority would only likely require part of the premises. The report stated that demand exists for 4,000 new hotel rooms within the city by 2015 and there is still latent demand for hotel use in spite of a notable impact on the market for various sectors since the onset of the 'credit crunch'.

Commercial leisure uses for the building are compatible with its existing use class and would likely allow the building to retain its current form. Re-use of the building for student or residential accommodation or hotel use would invariably involve considerable intervention to the existing building, including the loss of the auditorium.

The report concluded that the most viable use for the building, that would retain the auditorium intact, is a commercial leisure use that is not restrained by the need for a late licence.

Alan Scobie, the current highest bidder, commissioned market research for his proposed use of the building which analysed local cinema-going habits including frequency of visits, current cinema destinations, preferred film genres, age and employment profile, additional purchases, film experience preferences, etc. These were cross-referenced with national trends, local screen provision, comparisons with other UK city markets, patterns in cinema-going habits since 2003, and expected local changes in cinema screen provision, including the possible consent for a new facility at Cameron Toll Shopping Centre. The research and supporting information suggests that there is commercial viability for a two-screen cinema providing around 500 seats in this location. Evidence of funding is in place as requested by the applicants.

The proposed multi-purpose venue is within the same use class as the current cinema use (class 11) which includes concert halls. The café, restaurant and market/meeting place would be ancillary to the principal use as a cinema/concert hall. Mr Scobie has held discussions with this department on the acceptability of the proposed uses and has been advised that these would be acceptable in principle.

In conclusion, the above evidence concurs with the Scottish Ministers' call-in report that the building has the potential to accommodate an alternative use without major alterations that would diminish its architectural importance. While the current proposals would provide economic and community benefits, there could also be significant social benefits to the community from two of the offers received. This is supported by comments from the local and wider community on the use of the premises as a cinema/arts venue.

Therefore in relation to SHEP test c), the applicant has failed to provide robust evidence to demonstrate beyond doubt that there were no other uses for the building which could provide similar or greater benefits. The demolition of the auditorium area of the building is not essential to delivering benefits to economic growth or the wider community. Mr Scobie's research and many opponents of the proposed part-demolition suggest that there is demand for a cinema/arts venue in this location.

iv) SHEP test d) is to establish whether the building has been marketed at a price reflecting its location and condition to potential restoring purchasers for a reasonable period.

The two marketing campaigns from 2003 till 2007 were based on two independent valuations by Colliers International for the applicant's funding partner, The Royal Bank of Scotland. The first, dated April 2003, gave a value of £2.3m and the second, dated December 2008, gave a value of £2.9m. It should be noted that the Register of Sasines records that DHP paid £1.5m for the building in 2003.

Neither campaign was successful, due to disagreement on sale price (Rock Elim Trust), lack of bid credibility (Save the Odeon Ltd) and withdrawal of offer (Fat Cat Productions).

The absence of a restoring purchaser from the above marketing periods did not necessarily imply that either valuation was unrealistically high or that a buyer willing did not exist. Hence, the Scottish Ministers called-in application 08/00197/LBC on the basis that not every effort had been made to preserve the building without demolition. In particular the reporter stated.

'The essence of the fourth SHEP test is that a proposal involving demolition of a listed building should only be permitted where it has been demonstrated beyond reasonable doubt through a marketing campaign that no other party exists who would be prepared to acquire and restore (or, I would contend, preserve) the building'.

The Reporter also suggests that a failure to agree on price (Para 171) is not a sufficient reason to conclude that the building cannot be sold, and that the previous bid (1.8M from the Elim Church) might have been accepted, or at least investigated further.

This department recommended approval of the associated planning application (08/00197/FUL) on the basis that the proposals met the third test of the Memorandum of Guidance on Listed Buildings and Conservation Areas 1998, namely that it was not possible to adapt the existing building concerned to accommodate any new use or mix of uses". The Memorandum has since been superseded by the SHEP, the criteria of which for assessing the acceptability of demolition or part-demolition of a listed building is more rigorous.

In particular, SHEP test d) introduces the key issues of

- i) whether the building has been marketed at a price reflecting its location and condition to potential restoring purchasers and
 - ii) whether this marketing has been carried out for a reasonable period.
- i) The latest marketing strategy was carried in response to the Scottish Minister's recommendation that a further marketing exercise be undertaken as part of fully exploring all alternatives to demolition.

This department cannot challenge either the September 2010 or February 2011 valuation by Colliers International. It accepts that both valuations have been carried out in accordance with the RICS Valuation Standards ("Red Book"). Nor does it dispute the accepted standard industry methodology. Questions have however been raised about some of the assumptions made in items of floorspace and comparators.

At a RICS conference entitled "Market Valuation and Financial Stability" held in Lisbon on 30 November 2010 the Global President of the RICS, Robert Peto FRICS, highlighted the definition of a willing buyer in the RICS "Red Book", i.e. "one who is motivated, but not compelled to buy...neither over-

eager nor determined to buy at any price. This buyer is also one who purchases in accordance with the realities of the current market and with current market expectations, rather than on an imaginary or hypothetical market which cannot be demonstrated or anticipated to exist. The assumed buyer would not pay a higher price than the market requires. The present property owner is included among those who constitute 'the market'....."The book goes on to state that "...a valuer must not make unrealistic assumptions about market conditions or assume a level of market value above that which is reasonably obtainable".

The process of valuation is not an exact science, particularly in the case of listed buildings. Arriving at a value of any given listed building through comparison with other listed buildings albeit of similar size, condition and location is ultimately speculative. It is the responsibility of any seller to prove the robustness of their valuation through marketing.

The valuation report specifically states "this lack of market activity and the resulting lack of market evidence means that it is generally not possible to value with as high a degree of certainty as would be the case in a more stable market with a good level of market evidence.

The offers received at the end of the latest marketing period are indeed significantly less than the £2.83m valuation. However, these bids are in accordance with the realities of the current market and the fact that the property is a listed building with severe restrictions on alterations or demolition/part-demolition that in turn restrict potential uses.

Crucially, the SHEP tests do not exist to underwrite a minimum sale value for a seller. Rather, these are in place to test whether a listed building is economically viable without demolition. The existence of one fully-funded offer for the former Odeon cinema proves that this is the case. The Scottish Ministers' call-in report states that failure to agree on price is not sufficient reason to conclude that the building cannot be sold.

ii) This was carried out largely on an agreed basis with the various stakeholders, namely the applicants, CEC, Historic Scotland and the Scottish Government. While a marketing period of three months was agreed, this does not mean further marketing periods would not be required. This could not be determined at the outset of the latest marketing campaign. Concerns were raised during the marketing campaign about various issues such as lack of power in the building, closure date and reference to valuation price.

To conclude, in relation to SHEP test d), there is reasonable doubt that the property has not been marketed at a price reflecting its location and condition to potential restoring purchasers. It is acknowledged that the latest marketing period was reasonable in terms of timescale, given the input by key stakeholders in the formulation of this process. However, the result of this exercise suggests that a further marketing period could attract offers from other restoring purchasers, particularly if the price aspirations of the seller

were reduced. Whilst the price has been reduced to £2.5M, this is still well above what the market, in times of recession, is willing to pay.

In terms of ECLP policy Env2 which covers demolition of listed buildings, total or substantial demolition will only be supported in exceptional circumstances taking into account the following:

(a) the condition of the building and the cost of the repairing and maintaining it in relation to its importance and to the value to be derived from its continued use

(b) the adequacy of efforts to retain the building in, or adapt it to, a use that will safeguard its future, including its marketing at a price reflecting its location and condition to potential restoring purchasers for a reasonable period.

(c) The merits of alternative proposals for the site and whether the public benefits to be derived from allowing demolition outweigh the loss.

(a) the building is in fair condition with recent water ingress being halted. Whilst there is some evidence of dry rot, the building is serviceable and a case cannot be made for partial demolition on the grounds of repair costs.

(b) the applicants have never come forward with a scheme to retain and use the building. Recent attempts to market the building has brought credible bids for its re-use. There is therefore a market for the building.

(c) Whilst the proposals for the site remain of high quality, there are no discernible public benefits which would justify the loss of much of the historic building. Previously the lack of hotel accommodation in the city was cited as a factor in the determination. This no longer applies as the city is now well on the way to filling this gap in provision.

(b) The alterations to the retained front portion of the building are acceptable.

The areas of architectural interest within the front portion of the building will be retained and restored and the new build is confined within the existing envelope of the building and the Buccleuch Street elevation. The proposals for redevelopment of the site are of high standard of design and the portion of the building to remain will be improved. The studio space and hotel bedrooms contained within the existing envelope of the site will not visually dominate or compete with the retained portion of the building. The Buccleuch Street new-build will be clearly modern but using many references from its context, including some white tiled panels in recognition of the Hatherware facade of the Clerk Street elevation. Overall, the scheme is a well designed contemporary response to the surrounding streetscape.

The design, scale and materials of the replacement building are appropriate in this context. The development respects the envelope of the original building, its roofline, and the internal arrangement of the front portion.

Conclusion

The Reporter's Inquiry into the called-in application for listed building consent was to ensure that every effort is made to preserve the building without demolition.

In essence, there is a compelling argument to retain the building intact, based on its architectural and historic significance. The repair of the building is not economically unviable. Whilst the proposed scheme could deliver economic benefits to the local community, these benefits would not be so significant as to outweigh the presumption against demolition. This is in line with the Reporter's finding and the Minister's decision. Furthermore, benefits to the local and wider community would also be gained from the repair or restoration of the building. While no potential restoring purchasers have been found who are acceptable to the applicants, there remains interest in the purchase of the building from parties whose intentions would be to preserve it.

In conclusion, the proposals fail to comply with Scottish Historic Environment policy and policy Env2 of ECLP. The proposals do not preserve the building or its setting and any features of special architectural or historic interest which it possesses. There are no material considerations which outweigh this conclusion. It is recommended that the committee refuses this application for the reasons stated.

REASON FOR DECISION

The failure of the proposals in terms of SHEP tests a), b), c) and the reasonable doubt in terms of SHEP test d) leads to the conclusion that, at this stage, not all alternatives to partial demolition of the building have been fully explored.

John Bury
Head of Planning

Contact/tel	Clare Macdonald on 0131 529 6121
Ward affected	A15 - Southside/Newington
Local Plan	Edinburgh City Local
Statutory Development Plan Provision	Secondary Shopping Frontage
Date registered	4 March 2011
Drawing numbers/ Scheme	01 - 41 Scheme 1

Advice to Committee Members and Ward Councillors

The full details of the application are available for viewing on the Planning and Building Control Portal: www.edinburgh.gov.uk/planning.

If you require further information about this application you should contact the following Principal Planner, Anna Grant on 529 3521. Email: anna.grant@edinburgh.gov.uk.

If this application is not identified on the agenda for presentation, and you wish to request a presentation of this application at the Committee meeting, you must contact Committee Services by 9.00a.m. on the Tuesday preceding the meeting on extension 529 4229 or 529 4273. Alternatively, you may e-mail gillian.ferrier@edinburgh.gov.uk or jack.dunn@edinburgh.gov.uk



Application Type Listed Building Consent
Application Address: 7 Clerk Street
Edinburgh
EH8 9JH

Proposal: Partial demolition of and alterations (internal and external) to former Odeon cinema

Reference No: 11/00394/LBC

Consultations, Representations and Planning Policy

Consultations

Historic Scotland

The application drawings and proposals are similar to the 2008 application but an updated planning statement by GVA, dated February 2011, has been included.

The planning statement outlines the applicant's attempts to address the fourth SHEP test for demolition; The repair of the building is not economically viable and that it has been marketed at a price reflecting its location and condition to potential restoring purchasers for a reasonable period.

This is a two part test, both parts of which should be addressed. The aim of the first part of the test is to establish whether the repair of the building is economically viable. Once this is satisfied the second part of the test attempts to find a restoring (or preserving) purchaser who can reuse the building without recourse to demolition. This key consideration was explored in the determination of the previous application for demolition. In his report to Scottish Ministers (30 October 2009) the Reporter stated that he believed the repair of the building is not economically unviable, and that is why significant offers for the building had been made.

The re-marketing process was carried out with the agreement of all parties following advice contained in the Scottish Ministers' decision letter dated 21 May 2010. We agreed to a valuation of the building being undertaken using the RICS 'Red book' valuation standards, and commented on the process in our letter of 1 October 2010, following advice from the Property Advice Division of the Scottish Government. In this letter we stated that any valuation undertaken using the same RICS standards should be considered acceptable, provided it was otherwise realistic and credible. The credibility of certain bidders was questioned during the previous application for listed building

consent (2008), so this element was specifically addressed in the current process with prospective bidders being asked for their uses for the building and proof of funding.

At the closing date in January 2011 we understand, that the bids by Mr Alan Scobie (£1.6M) and the Elim Church (£1.45M) are supported by a valuation by DM Hall, undertaken using the same RICS 'red book' standards as the Colliers valuation. DM Hall have previously advised the church and prepared valuations.

The Reporter stated that 'The essence of the fourth SHEP test is that a proposal involving demolition of a listed building should only be permitted where it has been demonstrated beyond reasonable doubt through a marketing campaign that no other party exists who would be prepared to acquire and restore (or, I would contend, preserve) the building'. The Reporter also suggests that a failure to agree on price (Para 171) is not a sufficient reason to conclude that the building cannot be sold, and that the previous bid (£1.8M from the Elim Church) might have been accepted, or at least investigated further.

Scottish Ministers' policy is that no listed building should be demolished unless it can be demonstrated that every effort has been made to retain it. The most recent remarketing exercise resulted in four bids, two supported by a RICS valuation. You need to assess if these bids are credible and realistic and whether they show that parties exist who are willing to reuse the building without recourse to demolition. This will then assist in determining if the test has been met.

The application does not appear to contain any information which responds to the Reporter's requirement to further investigate the bids to assess whether or not a case for demolition of the Odeon has been made. I understand, however, that your authority has been carrying out your own assessment of the bids and the case by the applicant and his team. Should you be minded to grant listed building consent we would expect to see evidence that the bids submitted had been pursued further to assess if they are credible and realistic. If that is not the case, the reason for their rejection needs to be clearly laid out to address the failings identified in the previous case by the Reporter.

CECAS (Archaeology)

Further to your consultation request concerning this application for partial demolition and alterations to this listed former cinema I would like to make the following comments and recommendations.

As stated in my response to Jenny Bruce regarding the earlier 2008 (08/00187/FUL/LBC) application for the redevelopment of this site, The Odeon Cinema is a building regarded as being of historic regional (if not national) importance and also occurs within an area of archaeological importance. This application must therefore be considered under terms of the

Scottish Government's Scottish Planning Policy (SPP) and Scottish Historic environment Policy (SHEP) and also CEC's Edinburgh City Local Plan (adopted 2010) policies ENV2, ENV4, ENV5, ENV8 & ENV9. The aim should be to preserve archaeological remains in situ as a first option, but alternatively where this is not possible, archaeological excavation or an appropriate level of recording may be an acceptable alternative.

As I stated in 2008 the development has much to commend it, in terms of innovative design, and the retention of much of the historic elements of the cinema (e.g. the façade, crush hall, foyer), however these proposals will still see the demolition of arguably the buildings most important feature and it's raison d'être, the auditorium. The potential national importance of which was and is recognised in the application's accompanying 2008 Conservation Plan undertaken by Simpson & Brown who state "the cinema is the only remaining 1930's, large scale (capable of over 2000 seats) cinema auditorium left in a Scottish city centre" Para 5.3 p66. Indeed Section 8.7 (Opportunities) para 5, of this report goes on to state that the auditorium should be restored, though recognising (para 4, p 85) that this would be a potentially considerable cost.

Having assessed this updated application I am left to conclude that the proposed loss of the auditorium must be considered as having a severe adverse impact upon both the character and fabric of this listed cinema. Accordingly based upon the scale and significance of what is proposed this application can clearly be seen to be contrary to CEC Policies ENV 2 & ENV8. It is therefore essential that the economic case for justifying the loss of the auditorium and the redevelopment be independently scrutinised by the Council prior to determination. Although the proposals are exciting it is on this alone that the final justification of this application can be made, as on purely heritage grounds it would fail.

If the economic argument can be made and consent for this scheme is granted by the Planning Committee, it is essential that as part of an overall programme of archaeological works that a detailed historic building survey is undertaken of the Cinema, prior to its demolition and during any proposed alterations. This work will build upon the work undertaken by Simpson & Browns in compiling their conservation plan.

Further, although the site lies out with the core of Edinburgh's medieval Old Town, an UNESCO World Heritage Site, the western boundary (Baccleuch Street) lies upon the northern route of the late-medieval/16th century road of Causeyside (Causewayside) leading into the southern limits for the post-medieval suburbs of Bristo and Potterrow. Although likely to have been open ground for much of the medieval period its location out with the confines of the medieval town two and historical references, in particular connected with Potterrow, suggest that this site has the potential for post-medieval and later industrial archaeological remains.

Having assessed the likely impacts of the Cinema construction/ demolition works upon any buried archaeological resource; I have concluded that potential for the survival of significant remains insitu is limited. However as

there has been no archaeological ground truthing the potential for important archaeological remains occurring cannot be discounted completely at this stage. It is recommended therefore that a programme of archaeological works be undertaken, by a professional archaeological company, in order to record, excavate and analyse any significant archaeological remains uncovered during development.

If consent is granted it is recommended that these programme of works be secured using a condition based upon the model condition stated in PAN 42 Planning and Archaeology (para 34), as follows;

'No development shall take place on the site until the applicant has secured the implementation of a programme of archaeological work (excavation, conservation, historic building survey, reporting and analysis & publication) in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the Planning Authority.'

The work must be carried out by a professional archaeological organisation, either working to a brief prepared by CECAS or through a written scheme of investigation submitted to and agreed by CECAS for the site. Responsibility for the execution and resourcing of the programme of archaeological works and for the archiving and appropriate level of publication of the results lies with the applicant.

Representations

The application was advertised on 18 March 2011. A total of 421 representations have been received objecting to the proposals, including letters from Sheila Gilmore MP, Ian Murray MP, Sarah Boyack MSP, Dr Ian McKee MSP, George Foulkes MSP, Shirley-Anne Somerville MSP, Mike Pringle MSP. Representations have also been received from the Southside Community Council, the Southside Association, the Scottish Civic Trust, the Cockburn Association, the AHSS, the Theatres Trust, the Cinema Theatres Association, Save Britain's Heritage and one of the current bidders.

A petition organised by the Southside Community Council has been submitted with a total of 4294 signatures, including a sheet of selected comments from petitioners.

The material concerns raised are:

- proposed part-demolition fails the SHEP test in every aspect the above (*this point is considered in parts a), i), ii), iii) and iv) of the assessment*)
- contrary to Policy Env 2 of Edinburgh City Local Plan (*this point is considered in parts a), ii), iii) and iv) of the assessment*)
- building is of special interest as outstanding example of work of famous British cinema architect, W E Trent, and worthy of category A listing

- demolition of auditorium will irreparably damage character of listed building
- one of only two complete surviving “atmospheric” cinemas in Scotland
(the above three points are considered in part a), i) of the assessment)
- building is capable of repair *(this point are considered in part a), i) of the assessment)*
- the owners have failed to demonstrate that the entire building cannot be successfully operated as a commercial venture
- benefits to community from reuse of building as arts venue/cinema
- widespread demand for retention as arts venue/cinema
- market exists for cinema/music venue
- no evidence retention of auditorium would not be financially viable
- hotel use will not benefit community
(the above points are considered in part a), iii) of the assessment)
- unrealistically high valuation
- valuation fails to acknowledge unique qualities of this particular building
- property has not been put on market at price which reflects condition, location and fall in property market
- marketing period too short, over Christmas and New Year and developer put off potential buyers by not providing electricity
- potential buyers exist offering realistic, fully-funded prices who consider repair of building economically viable
(the above points are considered in part a), iv) of the assessment).

The following general comments were made:

- CEC should take immediate steps to force Compulsory Purchase Order for acquisition and onward sale to restoring purchaser
- independent valuation should be carried out
- property should be returned to market with better likelihood of being sold

- Odeon may suffer same fate as Glasgow Odeon, i.e. not developed and neglected even with planning permission for demolition
- building used as fringe venue since 2003 when cinema use ceased
- upgrade to category A may entitle owner to grants for restoration.

The following points were raised by the highest bidder, Alan Scobie:

- proof of funding was included bid
- personal bid is completely unconnected to any other
- informed business proposal delivered for successful re-use of site whilst retaining auditorium
- satisfied that offer contained in bid is reflective of appropriate value for subjects.

Full copies of the representations made in respect of this application are available in Group Rooms or can be requested for viewing at the Main Reception, City Chambers, High Street.

Planning Policy

National Planning Guidance

NPPG18: Planning and the Historic Environment (April 1999) promotes the protection, conservation and enhancement of the historic environment and reflects the existing statutory framework and existing guidance set out in the Scottish Historic Environment Policy (July 2009).

Scottish Historic Environment Policy (July 2009)

Paragraph 3.44 states that in the case of applications for the demolition of listed buildings, applicants will be expected to provide evidence to show that:

- a. the building is not of special interest; or
- b. the building is incapable of repair; or
- c. the demolition of the building is essential to delivering significant benefits to economic growth or the wider community; or
- d. the repair of the building is not economically viable and that it has been marketed at a price reflecting its location and condition to potential restoring purchasers for a reasonable period.

Edinburgh and the Lothians Structure Plan 2015 (approved 17 June 2004)

Policy ENV 1C states that development which would harm the character, appearance and setting of listed buildings and/or the specific features which justify their designation, should be resisted.

Relevant Policies of the Edinburgh City Local Plan (adopted 28 January 2010):

Policy Env 2 (Listed Buildings - Demolition) identifies the circumstances in which the demolition of listed buildings will be permitted.

Policy Env 4 (Listed Buildings – Alterations & Extensions) identifies the circumstances in which alterations and extensions to listed buildings will be permitted.

Relevant Non-Statutory Guidelines

Non-statutory guidelines 'ALTERATIONS TO LISTED BUILDINGS' provide general guidance for assessing proposals for both internal and external alterations, including alarm boxes and access stairs on listed buildings.

Appendix B



Application Type Listed Building Consent
Application 7 Clerk Street
Address: Edinburgh
EH8 9JH

Proposal: Partial demolition of and alterations (internal and external) to former Odeon cinema

Reference No: 11/00394/LBC

Conditions/Reasons associated with the Recommendation

Recommendation

It is recommended that this application be **REFUSED**

Reasons

1. The proposed demolition of the auditorium does not satisfy tests a), b) c) or d) of the Scottish Historic Environment Policy (July 2009).
2. The proposals are contrary to policy ENV 1C of the Edinburgh and the Lothians Structure Plan 2015 as demolition of the auditorium would harm the character and appearance of the listed building and the specific features which justify its designation.
3. The proposal is contrary to Edinburgh City Local Plan Policy Env 2 in respect of Listed Buildings - Demolition, as the circumstances for the demolition of the auditorium are not exceptional, taking into account criterion a), b) and c)
4. The proposal is contrary to Edinburgh City Local Plan Policy Env 4 in respect of Listed Buildings – Alterations and Extensions, as the demolition of the auditorium would cause unnecessary damage to and diminish the interest of the listed building
5. The proposal is contrary to Non Statutory Guidelines in respect of Alterations to Listed Buildings, as the demolition of the auditorium would adversely affect the character of the listed building.

End

Appendix C



Application Type Listed Building Consent
Proposal: Partial demolition of and alterations (internal and external) to former Odeon cinema
Reference No: 11/00394/LBC

