

# Development Management Sub Committee

Wednesday 21 March 2018

**Application for Variation of Consent 16/04449/VARY  
At 127 Trinity Road, Edinburgh, EH5 3LB  
Application to vary planning permission 16/04449/FUL for  
proposed houses at 127 Trinity Rd, Edinburgh.**

Item number	7.2
Report number	
Wards	B04 - Forth

## Summary

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The proposed variation is minor and raises no new material planning considerations. The variation request is non-material to the original grant of planning permission. It is recommended the permission be varied accordingly.

## Links

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[Policies and guidance for this application](#)

# Report

## **Application for Variation of Consent 16/04449/VARY At 127 Trinity Road, Edinburgh, EH5 3LB Application to vary planning permission 16/04449/FUL for proposed houses at 127 Trinity Rd, Edinburgh.**

### **Recommendations**

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1.1 It is recommended that this application be VARIED subject to the details below.

### **Background**

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#### **2.1 Site description**

The application site is a backland site which includes a lane accessed from Trinity Road. It is an area of land that lies to the west of Trinity Road, to the north of Primrose Bank Road and to the south of Lower Granton Road. There is a considerable height difference between Lower Granton Road and Primrose Bank Road and there is a high retaining wall to the north of the site at the boundary with the gardens of the tenements of Lower Granton Road. The site has recently been occupied by a car repair garage, now demolished. The lane also serves two terraced houses that are located on the north side of the lane close to the entrance from Trinity Road. The application site is 1350 sqm in area.

The surrounding area is almost entirely residential with semi-detached and detached villas to the south, terraced villas on Trinity Road to the east and tenements stretching from the north corner of the lane around the corner onto Lower Granton Road.

This application site is located within the Trinity Conservation Area.

#### **2.2 Site History**

13 April 2015 - Application withdrawn for the demolition of existing garage building and the development of five new houses with associated retaining walls. (application reference: 14/05066/FUL).

06 August 2015 - Planning permission refused for the demolition of existing garage building and the development of five new houses with associated retaining walls (application reference: 15/01788/FUL). The application was refused by Development Management sub-Committee on the grounds of its impact on the character and appearance of the conservation area and the scale, massing, height and form of the proposed development.

04 July 2016 - Appeal allowed for the above planning application. Scottish Ministers concluded that the development would have a positive impact on the setting of the development site, that the scale, massing, form and height of the proposed development to be acceptable and that the proposed development would preserve and enhance the character and appearance of the Trinity Conservation Area. (appeal reference: PPA-230-2163).

27 October 2016 -Conservation Area Consent granted to demolish the existing building with exception of the south wall. (application reference: 14/05070/CON).

17 February 2017 - Application granted for variation to permission ref: 15/01788/FUL. Modification to the design of five houses. (application reference: 16/04449/FUL).

## **Main report**

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### **3.1 Description Of The Proposal**

The applicant seeks to vary the original grant of planning permission to:

- Change the access road off Trinity Road from being brought up to an adoptable standard and for it instead to remain as private access.
- To delete the bin stores in the turning circle and the location for the bins on collection day at the junction of the lane with Trinity Road, and instead, for the future occupants of the development to use the existing communal refuse bin that already is in place on Trinity Road near the bottom of the lane.
- In addition, the applicant seeks to vary Informative 4 and 5 of the permissions so that the lane will remain a private access and that an Roads Construction Consent would therefore not be required.

An adopted road is one which is in the list of public roads which is maintained by the Council, as roads authority. A road can be built to this standard and not adopted. In these circumstances, it would remain a private road, and be maintained privately by the owners. A private access is not a road. It does not require road construction consent.

Because the Council's Scheme of Delegation includes requests to vary planning permissions and as more than six objections have been received, a Committee decision is required.

### **3.2 Determining Issues**

Section 64 of the Town and Country Planning (Scotland) Act 1997 states:

*Notwithstanding any other provision of this Part, a planning authority may, at the request of the grantee or a person acting with his consent, vary any planning permission granted by them, if it appears to them that the variation sought is not material.*

Therefore the determining issue is:

Are the proposed changes material? If so, a new planning application is required.

### 3.3 Assessment

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

- a) The proposed variations to the original scheme represent minor changes to the development when viewed as a whole;
- b) any impacts of equalities and human rights have been addressed; and
- c) any comments raised have been addressed.

#### a) Material Considerations

The merits of the proposal are not the subject of this request to vary the planning permission. What is being assessed is whether the proposed changes are 'material' to the planning permission when viewed as a whole.

An informative was added to the original permission advising the applicant of additional obligations that do not fall under the jurisdiction of planning. The informative stated: "*All accesses must be open for use by the public in terms of the statutory definition of 'road' and require to be the subject of applications for road construction consent. Structural approval for the existing retaining wall will be required.*" The planning permission drawing shows the lane leading to the five houses are subject of the 16/04449/FUL permission to be brought up to an adoptable standard with shared surface. The variation drawing shows this as remaining a private access.

There are no physical changes to the materials or dimensions of the lane from those granted planning permission when compared to this request to vary. The only change relates to the omission of the text on the drawing stating that the access would be brought up to an adoptable standard. The decision as to whether the access is completed to an adoptable standard is a matter for the Council as Roads Authority under the Road Construction Consent process. This change does not raise any new traffic or road safety considerations when the approved drawings are compared to those of this request to vary.

In respect of the informative, this is advice only and it is immaterial whether or not it is changed. It has been concluded by Transport in conjunction with Legal Services, that the lane does not require to be a road under the statutory definition of the Roads (Scotland) Act 1984.

The applicant will require to consider the impacts of this change in relation to the Building (Scotland) Act 2003 and the associated Building Regulations, including reference to emergency access purposes. and an informative is included to this effect.

The proposed changes to the designation of the lane are not a planning matter and are not therefore not a material change to the planning permission.

The deletion of the bin stores in favour of the future occupiers using the communal refuse bin, has been arrived at in agreement with Waste Services. This change to the waste collection strategy is not within the remit of planning and therefore not a material change to the planning application.

The proposals represent very minor alterations to the original scheme of development and are not material.

#### b) Equalities and Human Rights

No material impacts on equalities or human rights are identified. An Equalities and Human Rights Assessment has been completed.

#### c) Public Comments

Material comments with respect to this request to vary a previous planning permission relate to whether the proposed changes are material. These include traffic and road safety and waste management. The matter of public safety and emergency access (also raised) are more appropriately dealt with under the remit of Building Standards. These issues are addressed in section 3.3.a) above.

#### Non-material Objections

Non material objections relate to:

- principle of the development;
- ownership of the land; and
- lighting.

#### Community Council Comments

Material comments by the Trinity Community Council relate to whether the proposed changes are material, traffic and road safety and refuse collection. This is addressed in section 3.3.a). Non material comments relate to:

- quality of information; and
- emergency access.

#### Conclusion

The proposed alterations are within the extent of the original grant of planning permission, are sufficiently minor and are non-material to the original grant of planning permission.

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

### **3.4 Conditions/reasons/informatives**

#### **Informatives**

It should be noted that:

1. Notwithstanding this decision to vary the original express grant of planning permission, the applicant/agent should avail themselves of any requirements under the Building (Scotland) Act 2003.
2. Conditions, directions and informatives of the planning permission to which this request for variation relates remain and are not altered by this decision.

## **Financial impact**

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### **4.1 The financial impact has been assessed as follows:**

There are no financial implications to the Council.

## **Risk, Policy, compliance and governance impact**

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5.1 Provided planning applications are determined in accordance with statutory legislation, the level of risk is low.

## **Equalities impact**

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### **6.1 The equalities impact has been assessed as follows:**

The application has been assessed and has no impact in terms of equalities or human rights.

## **Sustainability impact**

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### **7.1 The sustainability impact has been assessed as follows:**

This application is not subject to the sustainability requirements of the Edinburgh Design Guidance.

## **Consultation and engagement**

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### **8.1 Pre-Application Process**

Pre-application discussions took place on this application.

### **8.2 Publicity summary of representations and Community Council comments**

There have been 19 letters of objection from neighbours and the Trinity Community Council. Thirteen letters make material comments. One of these letters of objection was withdrawn.

## Background reading/external references

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- To view details of the application go to
- [Planning and Building Standards online services](#)
- [Planning guidelines](#)
- [Conservation Area Character Appraisals](#)
- [Edinburgh Local Development Plan](#)
- [Scottish Planning Policy](#)

**Statutory Development****Plan Provision**

None.

**Date registered**

27 October 2017

**Drawing numbers/Scheme**

01,

Scheme 1

**David R. Leslie**

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PLACE

The City of Edinburgh Council

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**Links - Policies**

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