

# Development Management Sub Committee

Wednesday 6 November 2019

**Application for Planning Permission 18/05069/FUL  
At 6 Baberton Loan, Juniper Green, Edinburgh  
Electronically Controlled Timber Gates across Baberton  
Loan and at the entrance to the Water of Leith in the  
vicinity of No's 1-6 Baberton Loan, Juniper Green,  
Edinburgh. (in retrospect)**

**Item number**

**Report number**

**Wards**

B02 - Pentland Hills

## Summary

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The development has an adverse effect on the character and appearance of the conservation area by virtue of its inappropriate and incongruous siting and intimidating and negative appearance, contrary to LDP policies Des 1 (Design Quality and Context) and Env 6 (Conservation Areas - development).

The proposal discourages access through the site, resulting in the use of an alternative footpath which does not meet the Council's standards in terms of width, surface and alignment. The proposal does not comply with the local development plan and is contrary to LDP Policy Tra 9 (Cycle and Footpath Network).

No material considerations outweigh this conclusion.

# Links

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[Policies and guidance for this application](#)

LDPP, LTRA09, LEN06, LDES01, CRPJGR, NSG, NSLBCA,

# Report

## **Application for Planning Permission 18/05069/FUL At 6 Baberton Loan, Juniper Green, Edinburgh Electronically Controlled Timber Gates across Baberton Loan and at the entrance to the Water of Leith In the vicinity of No's 1-6 Baberton Loan, Juniper Green, Edinburgh. (in retrospect)**

### **Recommendations**

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1.1 It is recommended that this application be Refused for the reasons below.

### **Background**

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#### **2.1 Site description**

The site is a parcel of land, approximately 1.07 ha in area, located on the south side of Lanark Road at Juniper Green.

The site is in residential use, having been converted from warehouses to six residential units in 2013. It is accessed via Baberton Loan, which is a private tarmac road off Lanark Road. It is located within the Greenbelt and is identified as being a Local Nature Conservation Site and within a Special Landscape Area.

The building is approximately 65.13m wide by 21.22m deep. A steep wooded area runs along the northern face of the building, defining and separating the northern section of the site from the residential properties along Lanark Road. The site is bounded to the south by the Water of Leith Walkway.

This application site is located within the Juniper Green Conservation Area.

#### **2.2 Site History**

11 November 2005 - Outline planning permission for residential development with associated access and landscaping works withdrawn application reference 05/03612/OUT.

04 May 2006 - Outline planning permission refused for a residential development with associated access and landscaping works (06/00258/OUT).

20 May 2007 - Appeal dismissed in relation to residential development with associated access and landscaping works (appeal ref: P/PPA/230/858).

29 August 2014 - Planning permission granted for a change of use for the proposed conversion of existing brick built disused warehouse facility to form six residential units with associated gardens (as amended) (13/01525/FUL).

04 January 2018 - Application refused and enforced for pedestrian and vehicular gates, public footpath and balustrade fencing (17/05343/FUL).

13 July 2018 - Enforcement Notice served requiring the removal of the gates and fence across Baberton Loan and the alteration of the gate to the Water of Leith walkway to allow unfettered public access. (17/00409/ENCOMP).

18 March 2019 - appeal against enforcement notice upheld.

26 August 2019 - enforcement notice withdrawn and re-served, requiring the removal of the gates and fence across Baberton Loan and the gate to the Water of Leith Walkway. (17/00409/ENCOMP).

## **Main report**

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### **3.1 Description of the Proposal**

This application, which is in retrospect, is for two sets of timber gates. The first gates are approximately 1.8m high and 6.5m wide, and extend across Baberton Loan, with an electronically controlled barrier for pedestrians and vehicles. The second set of gates are approximately 1.7m high and 3.5m wide and are located on the southern boundary of the site, where it adjoins the Water of Leith Walkway. For clarification, the proposal does not differ from that that was subject to the service of the enforcement notices in 2018 and 2019.

### **3.2 Determining Issues**

Section 25 of the Town and Country Planning (Scotland) Act 1997 states - Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise.

Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states - special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.

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?

### 3.3 Assessment

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

- a) The proposal preserves or enhances the character and appearance of the conservation area
- b) The proposal is acceptable in terms of access and road safety
- c) The proposal has an adverse impact on the Greenbelt, Special Landscape Area and Local Nature Conservation Site and
- d) Any public comments have been raised and addressed.

#### **a) Impact on the character and appearance of the conservation area**

*The Juniper Green Conservation Area Character Appraisal states to the south, the valley of the Water of Leith and the mill area, once a source of water power for the former mills which served the farms, then a route by which the railway could serve the mills and enable village expansion, remains an important element as part of the natural heritage, amenity and wildlife which is an integral part of the rural character. It is important to retain generous riverside pathways to reinforce links with adjoining areas. The basic brick built warehouse at the former railway station location is obtrusive and with heavy vehicle access down into the valley forms development that is not sympathetic to the natural surroundings.*

LDP Policy Des 1 encourages development that will create or contribute towards a sense of place and states that planning permission will not be granted for proposals that would be damaging to the character or appearance of the area around it.

LDP Policy Env 6 advises that attention will be paid to ensuring that development in conservation areas does not damage their special interest. Development should also demonstrate high standards of design and utilise materials appropriate to the historic environment.

The applicant has stated that the gates are required for security of the residents and that the gates provide a perception of security. It is also claimed that the gates do not restrict pedestrian access, as an electronic access code is available on the side of the gates.

The set of vehicular and pedestrian gates on Baberton Loan spans the entire roadway, including the footpath, and although the treatment is of a relatively modest scale and formed from high quality materials, the location of the gates and fence ensures they create a visual and physical barrier across the primary means of access to the residential units beyond. They form an intimidating and unexpected barrier within their immediate context, and an incongruous feature by virtue of their siting across a road that has all the characteristics of an adopted highway.

In addition, there is no evidence to suggest that the site is subject to a lack of security or levels of anti-social behaviour that would not be found elsewhere within the area. The creation of a site that is essentially separated from its surroundings fails to create an environment where community security and safety and natural surveillance can be promoted and enhanced.

The proposal would have an adverse impact on the character and appearance of the conservation area by virtue of its inappropriate siting, resulting in a negative and intimidating boundary treatment.

### **b) Road Safety**

LDP Policy Tra 9 (Cycle and Footpath Network) states that development will not be permitted if it interferes with any pedestrian or cycle route unless satisfactory provisions are made for its replacement.

Although the gates at the road provide access from outwith the site, they have the appearance of being secure and create a deterrent to anyone unfamiliar with their means of operation. Similarly, the gates that are formed onto the Water of Leith create an unwelcoming and intimidating barrier, that discourages access from the walkway.

In practical terms both sets of gates restrict easy access by virtue of their appearance, which is suggestive of a means of enclosure of a private access, more readily associated with individual properties within their own curtilage. Moreover, continued access cannot be guaranteed or conditioned through the planning process.

Although there are alternative routes to the walkway, they are steep, poorly maintained and fail to meet the Council's standards with regard to width, surface and alignment. The information provided has not demonstrated that these routes are suitable for disabled and cycle access.

The Roads Authority has recommended that the application be refused due to the fact that the gates are an obstruction under the Roads (Scotland) Act 1984. The Council's Access Officer has raised similar issues with regard to the fact that section 14 of the Land Reform (Scotland) Act 2003 also applies to public rights of way, and that the purpose of the gates is to prevent or deter access. Although these points are noted, these elements are outwith the scope of enforcement or control under the planning legislation.

The proposal does not comply with policy Tra 9 of the Edinburgh Local Development Plan.

### **c) Greenbelt, Special Landscape Area and Local Nature Conservation Site**

The site is within the green belt, where LDP Policy Env 10 (Development in the Green Belt and Countryside) is relevant. Within these areas, development will only be permitted where it meets criteria relating to the use of the site, and where the development is appropriate in terms of the existing use and being of an appropriate scale and design. Development in these areas should not detract from the landscape quality and/or rural character of the area.

The site is also within a Special Landscape Area (SPA) and Local Nature Conservation Site (LNCS). In these areas, development should not have a significant adverse impact on the special characters or qualities of the area, or have an adverse impact on the flora, fauna or landscape.

The gates and fencing are largely restricted to ground that has been hard surfaced, and they have no adverse impact on the landscape character or quality of the area, or any existing flora, fauna or landscape. The development has no adverse effect on the green belt, given their siting on the boundary of the curtilage of an authorised residential development.

The development is acceptable in terms of its impact on the greenbelt, the SPA and the LNCS.

#### d) Public Comments

A total of 87 representations were received. These comprised 55 letters of support and 32 letters of objections.

#### Material Representation - Support

- Increased security and privacy - addressed in section 3.3a;
- Discourages anti-social behaviour - addressed in section 3.3a;

#### Material Representation - Objection

- Unacceptable alternative route - addressed in section 3.3b;
- Inaccessible for disabled users and cyclists - addressed in section 3.3b;
- Blocking public right of way - addressed in section 3.3b.

### **Conclusion**

The proposal has an unacceptable impact on the character and appearance of the Juniper Green Conservation Area, contrary to policy Env6 and adversely impacts on the ability to obtain free access through the site and onto the Water of Leith Walkway, contrary to policy Tra 9.

No material considerations outweigh this conclusion.

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

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

#### **Reasons:-**

1. The development has an adverse effect on the character and appearance of the conservation area by virtue of its inappropriate and incongruous siting and intimidating and negative appearance, contrary to local development plan policies Des 1 (Design Quality and Context) and Env 6 (Conservation Areas - development)

2. The proposal is contrary to local development plan policy Tra 9 (Cycle Footpath Network) as it discourages access to the site and the Water of Leith Walkway and results in the use of an alternative footpath that fails to meet the Council's standards in terms of width, surface and alignment.

## **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**

There is no pre-application process history.

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

Following neighbour notification and press advertisement, the application received 32 letters of objection and 55 letters of support.



## 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**

The site is within the Juniper Green Conservation Area and within the green belt in the Edinburgh Local Development Plan (LDP). It is also within a Special Landscape Area (Water of Leith West) and a local nature conservation site.

**Date registered**

30 August 2018

**Drawing numbers/Scheme**

01-04,

Scheme 1

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**Links - Policies**

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**Relevant Policies:**

**Relevant policies of the Local Development Plan.**

LDP Policy Tra 9 (Cycle and Footpath Network) prevents development which would prevent implementation of, prejudice or obstruct the current or potential cycle and footpath network.

LDP Policy Env 6 (Conservation Areas - Development) sets out criteria for assessing development in a conservation area.

LDP Policy Des 1 (Design Quality and Context) sets general criteria for assessing design quality and requires an overall design concept to be demonstrated.

The Juniper Green Conservation Area Character Appraisal emphasises the traditional village character, and the wide and interesting mix of architectural styles and forms.

## **Relevant Non-Statutory Guidelines**

**Non-statutory guidelines** 'LISTED BUILDINGS AND CONSERVATION AREAS' provides guidance on repairing, altering or extending listed buildings and unlisted buildings in conservation areas.

# Appendix 1

## **Application for Planning Permission 18/05069/FUL At 6 Baberton Loan, Juniper Green, Edinburgh Electronically Controlled Timber Gates across Baberton Loan and at the entrance to the Water of Leith In the vicinity of No's 1-6 Baberton Loan, Juniper Green, Edinburgh (in retrospect)**

### **Consultations**

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#### The Roads Authority

The application should be refused.

#### **Reasons:**

The Transport Consultation response dated 19.12.2013 for the original planning application (no. 13/01525/FUL) and reiterated on 23.02.2018 in relation to planning application 17/05343/FUL required that:

'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 this applies to the internal development roads and an application will be required under Section 21 of The Roads (Scotland) Act 1984 to construct these works

The private access road will be subject to an application under Section 16 of The Roads (Scotland) Act 1984. All costs associated with bringing the private access road to adoptable standards to be borne by the developer'

The vehicle and pedestrian gate does not permit open use by the public for access to visitor parking, turning area, servicing, onward routes etc.

Note: The proposed replacement public footpath is not acceptable as it does not meet the Councils standards with regards to width, surface, alignment, etc. As full details of the levels have not been provided, it has not been possible to assess the footpath for suitability for disabled access (gradient).

The temporary route to the Water of Leith is not suitable for use as a permanent access as it does not meet the Councils standards for a pedestrian / cycle route. It is understood that this access was formed only to allow the upgrading of the existing section of Baberton Loan to adoptable standard and was not intended to be a replacement (permanent) access.

The applicant should note that the gate may be considered an obstruction under the Roads (Scotland) Act 1984.

## Location Plan

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