

Mr Lynch  
Whitecairns  
42 Ladysmith Road  
Edinburgh  
EH9 3EU

**Decision date: 3 May 2023**

TOWN AND COUNTRY PLANNING (SCOTLAND) ACTS  
**DEVELOPMENT MANAGEMENT PROCEDURE (SCOTLAND) REGULATIONS 2013**

Formation of an area of hard standing to accommodate a new driveway that will allow two cars to park parallel to one another. The driveway is paved with Tobermory Teguela Hydropave to provide a porous surface. (IN RETROSPECT)  
At 42 Ladysmith Road Edinburgh EH9 3EU

**Application No:** 22/05759/FUL

**DECISION NOTICE**

With reference to your application for Planning Permission registered on 15 November 2022, this has been decided by **Local Fast Track Decision**. The Council in exercise of its powers under the Town and Country Planning (Scotland) Acts and regulations, now determines the application as **Refused** in accordance with the particulars given in the application.

Any condition(s) attached to this consent, with reasons for imposing them, or reasons for refusal, are shown below;

**Reason for Refusal:-**

1. The retrospective works do not comply with NPF4 Policy 16g as the works would have a detrimental effect on the character of the home and surrounding area; would not be acceptable in terms of size, design, and materials; and would have a detrimental effect on neighbouring properties.
2. The retrospective works do not comply with LDP policy Des 12 as the works would not be in keeping with the existing building or character of the wider area; would not be acceptable in terms of scale, form, design.

3. The retrospective works do not comply with NPF4 Policy 14c as the works would be poorly designed and inconsistent with the six qualities of successful places as the works do not retain the sense of place or sustainable environment of the area.
4. The retrospective works do not comply with LDP policy Des 1 as the works would be an inappropriate design which is damaging to the character and appearance of the surrounding area.
5. The retrospective works do not comply with the Guidance for Householders as the depth of the driveway is too shallow; the width of the access is too wide; and the distance from the junction is unsuitable.

Please see the guidance notes on our [decision page](#) for further information, including how to appeal or review your decision.

Drawings 01 - 05, represent the determined scheme. Full details of the application can be found on the [Planning and Building Standards Online Services](#)

The reason why the Council made this decision is as follows:

The retrospective works to the dwelling are not in accordance with the Development Plan. The works are not compatible with the existing dwelling and surrounding neighbourhood character. Although the works are considered to provide due regard to global climate and nature crisis, will not result in an unreasonable loss of neighbouring amenity, the proposed works to the dwelling are not in accordance with the Development Plan and there are no material considerations for approving the application. Therefore, the proposal is unacceptable, and it is recommended that the application be refused.

This determination does not carry with it any necessary consent or approval for the proposed development under other statutory enactments.

Should you have a specific enquiry regarding this decision please contact Blair Burnett directly at [blair.burnett@edinburgh.gov.uk](mailto:blair.burnett@edinburgh.gov.uk).



**Chief Planning Officer**  
**PLACE**  
**The City of Edinburgh Council**

## NOTES

1.If the applicant is aggrieved by the decision to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within three months beginning with the date of this notice. The Notice of Review can be made online at [www.eplanning.scot](http://www.eplanning.scot) or forms can be downloaded from that website. Paper forms should be addressed to the City of Edinburgh Planning Local Review Body, G.2, Waverley Court, 4 East Market Street, Edinburgh, EH8 8BG. For enquiries about the Local Review Body, please email [localreviewbody@edinburgh.gov.uk](mailto:localreviewbody@edinburgh.gov.uk)

2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.

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# Report of Handling

**Application for Planning Permission  
42 Ladysmith Road, Edinburgh, EH9 3EU**

**Proposal: Formation of an area of hard standing to accommodate a new driveway that will allow two cars to park parallel to one another. The driveway is paved with Tobermory Teguela Hydropave to provide a porous surface. (IN RETROSPECT)**

**Item – Local Fast Track Decision  
Application Number – 22/05759/FUL  
Ward – B15 - Southside/Newington**

## **Recommendation**

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

## **Summary**

The retrospective works to the dwelling are not in accordance with the Development Plan. The works are not compatible with the existing dwelling and surrounding neighbourhood character. Although the works are considered to provide due regard to global climate and nature crisis, will not result in an unreasonable loss of neighbouring amenity, the proposed works to the dwelling are not in accordance with the Development Plan and there are no material considerations for approving the application. Therefore, the proposal is unacceptable, and it is recommended that the application be refused.

## **SECTION A – Application Background**

### **Site Description**

The application refers to a 1.5 storey detached bungalow style property located within a residential area. The property is situated at an elevated level from the road with the original front garden featuring a stone wall delineating the boundary line. The front garden itself has extensive vegetation, foliage and land variance with a small retaining wall within the garden.

The surrounding area features various building types with 1.5 storey detached and semi-detached properties on the south side of Ladysmith Road featuring similar front gardens to the applicant property. In terms of parking, some properties with less land

variance have original driveways as intended by design and others have been developed in the past.

On the north side of Ladysmith Road, there is a two storey terrace with small ground level front garden. These properties do not include any examples of driveways.

Ladysmith Road includes extensive on street parking on both sides of the carriageway.

### **Description Of The Proposal**

The application refers to the retrospective development to remove the stone boundary wall and excavation of the front garden to ground level; creating a retaining wall stepped to 3m high with a 1.1 meter safety rail; creating a 5.5m deep, 6m wide hardstanding driveway; and the addition of an electric vehicle charging point on the retaining wall.

### **Supporting Information**

"Pre-Application Discussion" included in the application form stated details of the previous CLP and CLE applications. Also, information from the Transport regarding a road permit for a dropped kerb and individual opinion on road safety.

### **Relevant Site History**

03/02560/FUL  
42 Ladysmith Road  
Edinburgh  
EH9 3EU  
House extension and car run in  
Granted

24 September 2003

08/03320/FUL  
42 Ladysmith Road  
Edinburgh  
EH9 3EU  
House extension and car run-in (renewal of consent)  
Granted

7 October 2008

22/01927/CLP  
42 Ladysmith Road  
Edinburgh  
EH9 3EU  
Formation of hard standing to accommodate new driveway  
withdrawn

30 June 2022

22/03379/CLE

42 Ladysmith Road  
Edinburgh  
EH9 3EU

Formation of an area of hard standing, 5.5m x 6m, to accommodate a new driveway that will allow two cars to park parallel to one another. The driveway will be paved using Tobermore Tegula Hydropave to provide a porous surface that will allow surface water to soak through to a free draining, compacted pea gravel layer laid upon a permeable concrete base with minimal fines. This area is currently a mixture of heathers and shrubs. The proposed driveway amounts to 24% of the front garden space.

Refused

10 October 2022

### **Other Relevant Site History**

The Certificate Of Lawfulness (Proposed) ref 22/01927/CLP was withdrawn as the works had commenced. At this time the applicant was advised the works would require planning permission due to the level of excavation to the embankment.

A Certificate Of Lawfulness (Existing) application ref 22/03379/CLE was then resubmitted. As advised, the Permitted Development Rights do not extend to the level of excavation works, subsequently the application was refused.

### **Consultation Engagement**

Transport Planning

### **Publicity and Public Engagement**

**Date of Neighbour Notification:** 23 November 2022

**Date of Advertisement:** Not Applicable

**Date of Site Notice:** Not Applicable

**Number of Contributors:** 0

## **Section B - Assessment**

### **Determining Issues**

This report will consider the retrospective 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 retrospective works comply with the development plan?

If the retrospective works do comply with the development plan, are there any compelling material considerations for not approving them?

If the retrospective works 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 retrospective works 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 NPF4 and LDP policies to be considered are:

- NPF4 Policy 1.
- NPF4 Policy 16g.
- LDP Design policy Des 12.
- NPF4 Policy 14c.
- LDP Design policy Des 1.

The non-statutory Guidance for Householders is a material consideration relevant to all policies.

### Global climate and nature crisis

Policy 1 of the NPF4 gives significant weight to the global climate and nature crisis to ensure that it is recognised as a priority in all plans and decisions. It has been applied together with other policies in NPF4 and the overall intended outcome of NPF4.

The retrospective works would directly impact water management through the incorporation of porous materials for the driveway hardstanding. The works will indirectly contribute towards climate mitigation to reduce the emissions of greenhouse gasses by installing an electric vehicle (EV) charging port. Nevertheless, the original condition of the garden would have allowed for sufficient water management and the use of electric vehicles cannot be controlled or guaranteed as part of this application.

Therefore, the works would have a negligible impact and would comply with NPF4 Policy 1.

### Scale, Form, Design, and Neighbourhood Character

The retrospective works are not an acceptable scale, form or design and are not compatible with the existing dwelling and the surrounding area.

The creation of a driveway is guided by the non-statutory Guidance for Householders which seeks to consider road safety and protect the integrity of street boundaries by minimising the disruption of too many or too large openings. As such, the Guidance requires driveways would be a minimum of 6 metres deep with a maximum access opening of 3 metres wide.

The retrospective driveway is 6 metres wide and 5.5 metres deep. Therefore, the retrospective driveway does not meet the relevant criteria in terms of width or depth. The access width was also highlighted as a reason for refusal by Transport.

Looking at the garden ground, the non-statutory guidance states that parking spaces in front gardens should be a maximum of 21 square meters or 25% of the area, whichever is the greater. The parking space created measures 33 square meters and would account for 24.3% of the front garden. Therefore, in terms of footprint, the retrospective driveway would comply with the Guidance by 0.7%.

In terms of character, the south side of Ladysmith Road demonstrates multiple properties which are situated at a high level with a sloped front garden, extensive foliage, and a stone boundary wall. While some examples of developed driveways exist in the area, these have been considered within their own merit and these very limited examples were granted permission in the past which do not comply with current guidelines. Therefore, as directed by the Guidance for Householders, these examples should not be taken as setting any form of precedent and should not be used as examples to follow as they do not represent the character of the area.

The excavation of the front garden has removed approximately 49.5 cubic meters of the sloped garden ground and vegetation; removed a portion of the stone boundary in order to create a ground level parking area; and the addition of a retaining wall, stepped to 3 metres high, topped with a 1.1 metre metal safety fence. The removal of an extensive portion of green infrastructure to be replaced with a hardstanding double driveway would impact both the visual and environmental amenity of the neighbourhood.

Overall, the cumulative impact of the development would result in an overly dominant feature which removes characteristic features and green infrastructure, detracting from the established character of the neighbourhood. The retrospective works does not comply with NPF 4 policy 16g)i) and LDP Policy Des 12a).

### Design, Quality and Place

The retrospective works are an inappropriate design which would be an incongruous addition to the neighbourhood. The original front garden was sloped and featured green infrastructure similar to neighbouring properties which contributed towards the green network of the neighbourhood. Although the works do not severely disconnect the green network, the design by way of significant removal of green infrastructure would not contribute towards a sense of place or draw upon the positive environmental features of the surrounding area.



In terms of distinctive design, a driveway is limited in its contribution towards a sense of place. While the materials are of high quality and as expected for a driveway, the removal of green infrastructure to accommodate this addition would negatively impact the sense of place. Similarly, this removal will also impact the sustainability of the neighbourhood as successful places are guided to be sustainable by integrating nature positive biodiversity solutions.

Considering these elements and the impact of the design, the retrospective works are an inappropriate design which is inconsistent with the six qualities of successful places and would damage the character and appearance of the surrounding neighbourhood.

The retrospective works does not comply with NPF4 policy 14c and LDP Policy Des 1.

### Neighbouring Amenity

With respect to privacy, overlooking, physical impact, overshadowing and loss of daylight or sunlight, the retrospective works have been assessed against requirements set out in the non-statutory 'Guidance for Householders'. The retrospective works will not result in any unreasonable loss to neighbouring amenity. The retrospective works complies with NPF 4 policy 16g)ii) and LDP Policy Des 12b) and c).

### Road Safety

The non-statutory Guidance for Householders requires driveways to be a minimum of 6 metres deep to ensure a vehicle can draw in entirely off the street and will not obstruct the road or carriageway. As the retrospective driveway measures 5.5 metres deep, this non-compliance may cause an obstruction although it is accepted this is a minimal infringement.

Nonetheless, a driveway should not be located within 15 metres of a junction for visibility and road safety concerns of a vehicle turning in to the driveway. The retrospective driveway is situated directly opposite a T-junction of Ladysmith Road and Eva Place, this has also been highlighted by Transport Planning as a reason for refusal. While road safety is ultimately the responsibility of the road user, this non-compliance with the Guidance would raise concerns for road safety.

In terms of the removal/ re-location of on-street parking as a improvement, there are no on-street parking standards to be considered for householder applications and if there were concerns for turning capacity, parking opposite the junction would have been restricted. The removal/relocation of parking cannot be considered as a benefit as part of this application.

### **Conclusion in relation to the Development Plan**

The retrospective works have due regard to global climate and nature crisis, and do not result in an unreasonable loss of neighbouring amenity. The works are not of an acceptable scale, form, and design, and are not compatible with both the existing building and neighbourhood character. Therefore, the proposals do not broadly comply with the overall objectives of the Development Plan.

### **b) 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

No comments have been received.

#### **Conclusion in relation to identified material considerations**

The retrospective works do not raise any issues in relation to other material considerations identified.

#### **Overall conclusion**

The retrospective works to the dwelling are not in accordance with the Development Plan. The works are not compatible with the existing dwelling and surrounding neighbourhood character. Although the works are considered to provide due regard to global climate and nature crisis, will not result in an unreasonable loss of neighbouring amenity, and there are no material considerations which indicate that the proposal should be refused. Therefore, the retrospective works are not acceptable, and it is recommended that the application be refused.

### **Section C - Conditions/Reasons/Informatives**

The recommendation is subject to the following;

#### **Conditions**

#### **Reasons**

#### **Reason for Refusal**

1. The retrospective works do not comply with NPF4 Policy 16g as the works would have a detrimental effect on the character of the home and surrounding area; would not be acceptable in terms of size, design, and materials; and would have a detrimental effect on neighbouring properties.

2. The retrospective works do not comply with LDP policy Des 12 as the works would not be in keeping with the existing building or character of the wider area; would not be acceptable in terms of scale, form, design.
3. The retrospective works do not comply with NPF4 Policy 14c as the works would be poorly designed and inconsistent with the six qualities of successful places as the works do not retain the sense of place or sustainable environment of the area.
4. The retrospective works do not comply with LDP policy Des 1 as the works would be an inappropriate design which is damaging to the character and appearance of the surrounding area.
5. The retrospective works do not comply with the Guidance for Householders as the depth of the driveway is too shallow; the width of the access is too wide; and the distance from the junction is unsuitable.

### **Background Reading/External References**

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

**Further Information** - [Local Development Plan](#)

**Date Registered: 15 November 2022**

### **Drawing Numbers/Scheme**

01 - 05

Scheme 1

**David Givan**  
**Chief Planning Officer**  
**PLACE**  
**The City of Edinburgh Council**

Contact: Blair Burnett, Assistant Planning Officer  
E-mail: [blair.burnett@edinburgh.gov.uk](mailto:blair.burnett@edinburgh.gov.uk)

## Appendix 1

### **Consultations**

NAME: Transport Planning

COMMENT: The application should be refused.

DATE: 20 April 2023

The full consultation response can be viewed on the Planning & Building Standards Portal.

## MEMORANDUM

**To:** Planning Officer  
Blair Burnett

**From:** Transport  
Steven Saunders

**Our Ref:** 22/05759/FUL

**22/05759/FUL  
42 LADYSMITH ROAD  
EDINBURGH  
EH9 3EU**

### TRANSPORT CONSULTATION RESPONSE

#### Summary Response

The application should be refused.

#### Full Response

The application should be refused.

Reasons;

The driveway does not meet the Councils guidelines for access and parking with respect to the following;

1. It is within 15m of a junction.
2. The access to be no wider than 3m.

Note – the driveway dimensions shown on the submitted drawings are 5.5m access width by 6m length (total 33 sq.m).

*Steven Saunders*

**TRANSPORT  
Steven Saunders  
Transport Officer 20.04.2023**