

# Development Management Sub Committee

Wednesday 21 April 2021

**Application for Planning Permission 20/05478/FUL  
at Land 30 Metres South of 31 Groathill Road South,  
Edinburgh.**

**Amend the design of the consented and commenced  
development of flatted building (14/00026/FUL and  
19/01333/FUL) to split the penthouse apartment into two flats  
to create one additional unit, extension to 5th floor and  
alterations to building elevations.**

Item number

Report number

Wards

B05 - Inverleith

## Summary

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The proposal complies with the adopted Local Development Plan. The proposal is acceptable in this location and there will be no adverse impact on residential amenity, traffic or road safety. There are no material planning considerations which outweigh this conclusion.

## Links

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[Policies and guidance for  
this application](#)

LDPP, LHOU01, LDES01, LDES04, LDES05,  
LHOU03, LHOU04, LEN21, LTRA02, LTRA03,  
LHOU06,

# Report

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alterations to building elevations.**

## Recommendations

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

## Background

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### 2.1 Site description

The application site is a triangular shaped area of land, measuring around 1177 square metres and is located south west off Groathill Road South. Two new houses have been built to the north of the site and there is a shared access from Groathill Road South which is partially complete.

The site is set below and to the north of a former railway junction, raised on embankments above the surrounding land and passing along both the eastern and western boundaries of the site. The tracks of the former railway lines have been converted into public footpaths and cycle paths.

The site is located within a residential area with the nearest residential properties located on Maidencraig Crescent, Queens Road and Groathill Road South.

### 2.2 Site History

17 March 2006 - A planning application for the demolition of the existing four houses on site and the erection of a 5-storey block of 22 flats and ancillary works was withdrawn (Application reference: 04/04395/FUL).

16 July 2008 - Development Management Sub Committee was minded to grant planning permission for the erection of five, three-storey terraced townhouses and an attached 4-storey block of 6 flats together with private garden space, vehicular access and car parking for 11 vehicles (Application reference: 08/01117/FUL).

9 January 2009 - The associated legal agreement was concluded for a financial contribution towards the provision of Tramline 1 proportionate to the scale of the development, and planning permission was granted (Application reference: 08/01117/FUL).

23 August 2013 - From submitted details, the demolition of the dwellings on the site was carried out prior to 28 August 2010. Those works constitute the carrying out of building operations and, therefore, the development of land had been initiated in terms of the provisions of Condition No 1 of the grant of planning permission 08/01117/FUL.

24 November 2014 - Planning permission was granted to erect 9 flats and 1 detached house (as amended) (Application reference: 14/00026/FUL).

26 June 2015 - Non-material variation - change to design and materials (Application reference: 14/00026/VARY).

28 August 2015 - Planning permission granted to erect two storey dwelling with hipped roof (as amended) (Application reference:15/02901/FUL).

3 November 2015 - Planning permission refused to erect two storey dwelling with hipped roof, on land to the south of 29 Groathill Road South and adjacent to a previously permitted detached house (15/02901/FUL) (Application reference: 15/04130/FUL).

16 March 2016 - Planning permission granted for the development of one additional detached dwelling over and above previously consented detached dwelling (15/02901/FUL), on land to the south of 31 Groathill Road South (Application reference: 16/00761/FUL).

12 October 2017 - Non material variation to permission 14/00026/FUL (Application reference: 14/00026/VAR2).

23 May 2019 - planning permission granted to amend the design of the consented and commenced development of 9 flats on the site. This involved the addition of a room to the roof (Application reference:19/01333/FUL).

## **Main Report**

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### **3.1 Description of The Proposal**

The application is to amend the scheme for nine flats to sub-divide the penthouse flat on the top two floors into two separate duplex units. This would increase the number of units to 10.

The building will be on six floors being the same height as that approved under application 19/01333/FUL which created a roof top extension to the consented scheme to create a large penthouse flat on the fourth and fifth floors combined. All units will have three bedrooms and range from 96 square metres to 136 square metres.

The building footprint is 276 square metres (23.5% of site area); roads and parking 459 square metres (39% of site area) and amenity space is 442 square metres (37% of site area)

The building is to be flat roofed with a predominant use of brick in buff or dark grey. The walls to the recessed top floor will be metal clad. Each flat will have a balcony and there will also be a terraced area on the top floor.

Nine car parking spaces are provided off the access road.

A bin store is located at the entrance to the site and a cycle store for 20 bikes is located to the west of the site

### Supporting Statement

The applicant has submitted a lawyer's statement detailing the acquisition of the site and the case for not paying a commuted sum for affordable housing.

This document is available to view on the Planning and Building Standards online services.

### **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.

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 principle of the development is acceptable on this site;
- b) the design, scale and layout is appropriate to the site;
- c) there is an acceptable level of amenity;
- d) there are any transport issues;
- e) any other material considerations are addressed;
- f) comments raised have been addressed.

#### a) Principle

Policy Hou1 (Housing Development) of the adopted Edinburgh Local Development Plan (LDP) states that priority will be given to the delivery of the housing land supply and relevant infrastructure on suitable sites in the urban area, provided proposals are compatible with other policies in the plan.

The application site is defined as being part of the urban area in the adopted LDP. The principle of housing development at the site has been established through previous consents which have been implemented but not completed. During building works it was discovered that there are two sewers passing through the site, west to east, each with a 10.0 metre wide wayleave. The scheme was then changed with a central access road being formed with the flats on one side and a house on the other. A further house was then approved adjacent to this house.

LDP policy Hou 2 - (Housing Mix) states that the Council will seek a mix of house types and sizes where practicable to meet a range of housing needs. The surrounding area consists of largely detached, semi-detached and terraced dwellings. The proposed flats all have three bedrooms and would provide further accommodation within the area for families and complies with LDP policy Hou 2.

The proposal complies with Policies Hou1 and Hou 2.

#### b) Scale, Form and Design

LDP policy Des 1 (Design Quality and Context) states that planning permission will be granted for development where it is demonstrated that the proposal will create or contribute towards a sense of place.

LDP Policy Des 4 (Development Design- Impact on Setting) states that planning permission will be granted for development where it is demonstrated that it will have a positive impact upon its surroundings.

LDP policy Hou 4 - (Housing Density) sets out criteria for establishing whether the density of a proposed development is compatible with the character of the area.

The dwellings in the surrounding area are largely traditional bungalows and two storey detached houses. The new houses on the other side of the original site are three storey high.

The new flats will be six storeys but the upper floor will be recessed. Whilst the building will be higher than surrounding residential properties, it has been established through previous consents and is in the process of being built. The top floor will be slightly deeper than the previous consent for the additional penthouse extension but this is a minor change to the overall design.

Objectors have raised the issue that a fifth floor was previously removed from application 14/00026/FUL. However, this was a full height storey with no recess. The subsequent application (19/01333/FUL) added a rooftop addition to the penthouse flat and this application extends it by around 3m either end but does not add a full floor as proposed in 14/00026/FUL. The additional rooftop extension was approved by the Development Management Sub-Committee.

It is acknowledged that in terms of height, scale and density, the development introduces a change to the character of the area but the principle of these factors has already been accepted via the extant consents and the form of the development is led by the constraints of the site in terms of the sewers to the north and a culvert to the south. As the building sits in a dip between embankments, it will not appear over dominant.

Overall, the scale, form and design are compatible with previous consents and the proposal will contribute to a sense of place compliant with policy Des 1.

#### c) Amenity

LDP Policy Des 5 (Development Design- Amenity) states that planning permission will be granted for development where it is demonstrated that future occupiers have acceptable levels of amenity in relation to noise, daylight, sunlight, privacy and immediate outlook.

Policy Hou 3 states that planning permission will be granted for development which makes adequate provision for green space to meet the needs of future residents.

The Edinburgh Design Guidance (EDG) also seeks to address the criteria of an acceptable level of amenity for future occupiers of the development.

The units all meet the space standards set out in the EDG and levels of daylight will be good inside rooms. The greenspace meets the requirements of policy Hou 3 and there are additional private balconies and terraces for each flat.

In terms of neighbouring amenity, the nearest houses are the ones built as part of the original consent for nine flats and one house and then the additional house. There is a separating access road and window to window distances are around 20m.

Two objections relate to the house beyond one of the new houses but this is 30m from the edge of the flats and the garden is largely obscured by the new house. There is around 42m to the edge of the objectors' house but again, the new house is in between this. The third objection relates to a house even further away.

The level of amenity for future and existing occupiers will be in compliance with policies Des 5 and Hou 3.

#### d) Access and Parking

Policies Tra 2 (Car Parking) and Tra 3 (Cycle Parking) of the LDP sets out the requirement for private car and cycle parking.

The access road has partially been formed. Car and cycle parking are in compliance with the standards set out in the EDG and the Roads Authority has no objections.

## e) Other Material Considerations

### *Flood Risk*

LDP Policy Env 21 (Flood Protection) states that planning permission will not be granted for development that would increase flood risk or be at risk of flooding itself.

A drainage strategy was agreed as part of the previous consent and this is now being implemented.

### *Waste*

Bin storage is located adjacent to the road and complies with the Council's standards.

### *Affordable Housing*

Policy Hou 6 (Affordable Housing) states that residential development, including conversions, with more than 12 units should include provision for affordable housing amounting to 25% of the total of number of units proposed.

Affordable Housing has requested an affordable housing contribution on the basis that this is a phased development. In this case they have said a commuted sum would be an acceptable option. The applicant considers his development of 10 flats should not be eligible for an affordable housing contribution as there is no connection between his development and the two houses built on the larger original site by a separate developer.

The Council's non-statutory Affordable Housing guidance gives no information on what constitutes a phased development. It states *Where a proposal is fewer than 12 units but is clearly part of a phased development of a larger site which would be subject to an affordable housing requirement, the affordable housing policy and this guidance will apply.* The only question in this case is whether the current proposal is clearly part of a phased development.

The Council solicitor has advised that this is down to planning judgement. Policy Hou 6 does not directly address this issue, nor is it directly picked up in the LDP supporting text. The LDP supporting text paragraph 233 does set out that further information on affordable housing requirements is provided in planning guidance. However, as shown above this is broad brush with no detail in terms of phased development. It is generally accepted that the inclusion of phased development is trying to cover off the scenario of a developer owning a large plot of land and submitting multiple applications for 11 units for various portions of it to avoid the AH requirements, or similar.

The Council solicitor has advised that the site appears to involve a number of developers, over quite a period of time and, by more accident than design, the larger plot of 9 flats and 1 house has gradually been increased to 10 flats and two houses. In addition, the current developer's interest is only in relation of the 10 flats and they have no link (profit) from the 2 houses.

There is therefore an argument that the development proposed in this application is not "clearly part of a phased development of a larger site which would be subject to an affordable housing requirement" and therefore no affordable commuted should be due. However, if a judgement is made that it does apply, all that can reasonably be sought is a 25% commuted sum against the 10 units in the current application given the lack of link between the developer and the 2 previously consented houses.

When we look at the planning history of this site, a case can be constructed that it is a phased development but this is not strong. Since 2008, the red line boundary has consistently been round the whole site and the original consent in 2008 for 11 units is the starting point. The applicant was Ciji developments and the consent was then sold to Beaufort Property who presumably then realised there was two sewers down the middle of the site and had to amend the scheme. Having therefore got permission for an amended scheme for 9 flats and 1 house in 2014, Beaufort Property then got consent for another house adjacent to this. Both the houses were built by Beaufort Property but they did not proceed with the rest of the development and instead the site for 9 flats was sold to a separate developer, the current applicant, Carmichael Homes. The history of this site would indicate there was no plan from the beginning to avoid affordable housing and it was more a case of selling consents on by different developers with the last one being potentially liable for affordable housing on the wider site. There is not a strong argument that this was **clearly** a phased development.

The applicant has submitted a solicitor's letter setting out the position on the acquisition of the site by the current applicant. This confirms the land was acquired in good faith and for commercial value based on the land value derived from the planning permission for nine flats. There was no conditional missive on achieving further planning permission for 10 flats and no deduction of abnormalities such as developer contributions. There was no clawback or other agreements between Beaufort Property and Carmichael Homes. The letter confirms the transaction was entirely arms-length and that neither Beaufort Property nor their owners retain any financial or other interest in the site.

Government Circular 3/2012 on Planning Obligations sets out the policy tests for seeking developer contributions. These are:

- necessary to make the proposed development acceptable in planning terms
- serve a planning purpose
- relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area
- fairly and reasonably relate in scale and kind to the proposed development
- be reasonable in all other respects

The last two criteria are particularly relevant in this case and based on the evidence submitted and the history of the site, it would be unfair to expect the current applicant to pay a commuted sum based on two houses which do not form part of his application site.

A strong case has been made that affordable housing should not be delivered on the basis of the current application for 10 flats. Based on planning judgement and Planning Obligations Circular 3/2012, it would be unreasonable to expect a commuted sum on the basis of the original site over which the current applicant has no link or profit and has only an interest in the current site for 10 flats.

#### f) Public Comments

#### **Material Comments - Objections:**

- building too high - addressed in 3.3 b)
- privacy - addressed in 3.3 c)

#### Conclusion

The proposal complies with the adopted Local Development Plan. The proposal is acceptable in this location and there will be no adverse impact on residential amenity, traffic or road safety.

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

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

##### **Conditions:-**

1. A detailed specification, including trade names where appropriate, of all the proposed external materials shall be submitted to and approved in writing by the Planning Authority before work is commenced on site; Note: samples of the materials may be required.

##### **Reasons:-**

1. In order to enable the planning authority to consider this/these matter/s in detail.

##### **Informatives**

It should be noted that:

1. The development hereby permitted shall be commenced no later than the expiration of three years from the date of this consent.
2. As soon as practicable upon the completion of the development of the site, as authorised in the associated grant of permission, a 'Notice of Completion of Development' must be given, in writing to the Council.

## **Financial impact**

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## **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**

Three comments have been received, all objecting.

## **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**

**Date registered** 8 December 2020

**Drawing numbers/Scheme** 01-11A,

Scheme 1

### **David Givan**

Chief Planning Officer

PLACE

The City of Edinburgh Council

Contact: Nancy Jamieson, Team Manager

E-mail: nancy.jamieson@edinburgh.gov.uk

## **Links - Policies**

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### **Relevant Policies:**

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

LDP Policy Hou 1 (Housing Development) sets criteria for assessing the principle of housing proposals.

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

LDP Policy Des 4 (Development Design - Impact on Setting) sets criteria for assessing the impact of development design against its setting.

LDP Policy Des 5 (Development Design - Amenity) sets criteria for assessing amenity.

LDP Policy Hou 3 (Private Green Space in Housing Development) sets out the requirements for the provision of private green space in housing development.

LDP Policy Hou 4 (Housing Density) sets out the factors to be taken into account in assessing density levels in new development.

LDP Policy Env 21 (Flood Protection) sets criteria for assessing the impact of development on flood protection.

LDP Policy Tra 2 (Private Car Parking) requires private car parking provision to comply with the parking levels set out in Council guidance, and sets criteria for assessing lower provision.

LDP Policy Tra 3 (Private Cycle Parking) requires cycle parking provision in accordance with standards set out in Council guidance.

LDP Policy Hou 6 (Affordable Housing) requires 25% affordable housing provision in residential development of twelve or more units.

# Appendix 1

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## Consultations

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### Flood Planning

*We have no concerns over the proposed alterations to the previously approved development. This application can proceed to determination with no comments from CEC Flood Prevention.*

### Affordable Housing - dated 23 December 2020

*1. Housing Management and Development are the consultee for Affordable Housing. Housing provision is assessed to ensure it meets the requirements of the city's Affordable Housing Policy (AHP).*

*- Policy Hou 6 Affordable Housing in the Edinburgh Local Development Plan states that planning permission for residential development, including conversions, consisting of 12 or more units should include provision for affordable housing.*

*- 25% of the total number of units proposed should be affordable housing.*

*- The Council has published Affordable Housing Guidance which sets out the requirements of the AHP, and the guidance can be downloaded here:*

*<https://www.edinburgh.gov.uk/affordable-homes/affordable-housing-policy/1>*

### 2. Affordable Housing Provision

*This application is to amend a previously consented proposal to deliver an additional flat. 12 units would then be delivered across the site as a whole - two houses and 10 flats.*

*The Council's planning guidance on 'Affordable Housing' states that 'where a proposal is fewer than 12 units but is clearly part of a phased development of a larger site which would be subject to an affordable housing requirement, an affordable element will be required at an appropriate stage in the development of the site as a whole'.*

*There is therefore an AHP requirement for a minimum of three homes of approved affordable tenures from this site. This is 25% of the 12 units that are now to be delivered. The applicant will be required to enter into a Section 75 legal agreement to secure the affordable housing element of this proposal.*

*The application makes no provision for affordable housing. Housing Management and Development is therefore not able to support the application.*

*We request that the developer therefore enters into dialogue with the Council on the design, mix and location of the affordable housing, and identification of the Registered Social Landlords (RSL) so that an integrated and representative mix of affordable housing can be delivered on site. The tenure of the affordable housing must be agreed by the Council.*

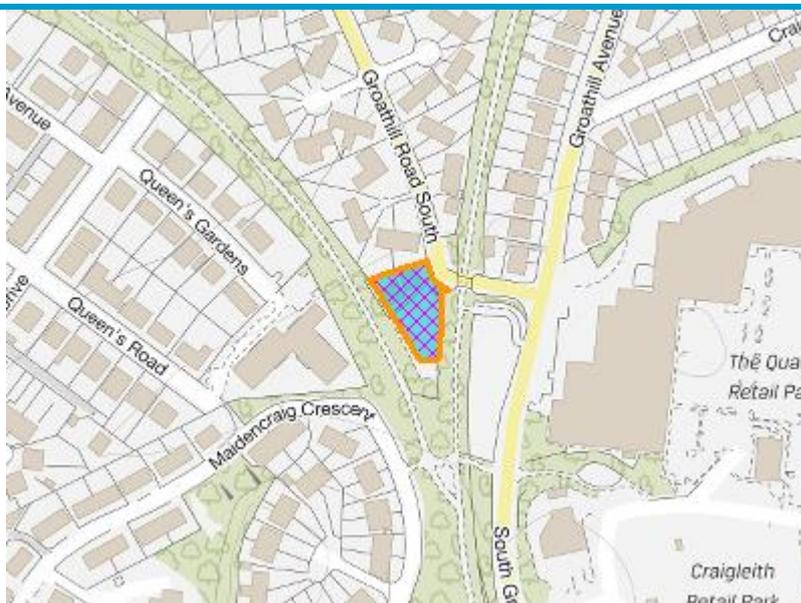
*As an alternative, the applicant may propose the payment of a commuted sum in lieu of on-site affordable housing. Given the planning history of the site and as the development is for less than 20 units, it is likely that the payment of a commuted sum would be acceptable. The planning guidance sets out how this would be calculated.*

*The applicant should submit an "Affordable Housing Statement" explaining how they propose to address the affordable housing requirement. This will be a public document available on the City of Edinburgh Council's Planning Portal.*

## **Roads Authority**

*No objections*

## **Location Plan**



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**END**