

TmC Planning.
FAO: Tommy Cochrane
The Sutherland Suite, Cooper Business Park
37 Dyfrig Street
Shotts
ML7 4DQ

Mr Cook
26 Netherby Road
Edinburgh
EH5 3NA

Decision date: 6 July 2021

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

Replacement windows.
At 26 Netherby Road Edinburgh EH5 3NA

Application No: 21/02692/FUL

DECISION NOTICE

With reference to your application for Planning Permission registered on 14 May 2021, this has been decided by **Local Delegated 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;

Conditions:-

Reasons:-

1. The proposals are contrary to non-statutory guidance on Listed Buildings and Conservation Areas as the proposed replacement windows do not preserve the special character and appearance of the conservation area.
2. The proposal is contrary to the Local Development Plan Policy Env 6 in respect of Conservation Areas - Development, as the proposals do not preserve the character and appearance of the conservation area.

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

Drawings 01-07, 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:

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 Weronika Myslowiecka directly at weronika.myslowiecka@edinburgh.gov.uk.

A handwritten signature in black ink, appearing to read 'D. G. ...', followed by a long horizontal line.

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 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.

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.

Report of Handling

Application for Planning Permission
26 Netherby Road, Edinburgh, EH5 3NA

Proposal: Replacement windows.

Item – Local Delegated Decision
Application Number – 21/02692/FUL
Ward – B04 - Forth

Recommendation

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

Summary

The proposed development is of an inappropriate material and would have an adverse impact on the character and appearance of the existing building and would fail to preserve or enhance the character and appearance of the conservation area. The proposal is therefore contrary to Edinburgh Local Development Plan Policy Env 6 and the non-statutory Guidance for Listed Buildings and Conservation Areas

SECTION A – Application Background

Site Description

The application site is a two-storey mid-terrace sandstone Victorian Terrace house, located on 26 Netherby Road.

The application site is located within Trinity Conservation Area.

Description Of The Proposal

The application proposes to replace the existing timber sash and case windows with sash and case uPVC windows.

The works relate to the ground floor bay window on the front elevation and the upper floor windows and one ground floor window on the rear elevation.

Relevant Site History

No relevant site history.

Consultation Engagement

No Consultations.

Publicity and Public Engagement

Date of Neighbour Notification: 21 May 2021

Date of Advertisement: 28 May 2021

Date of Site Notice: 25 May 2021

Number of Contributors: 1

Section B - Assessment

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?

Assessment

To address these determining issues, it needs to be considered whether:

- a) the proposed scale, form and design is acceptable and will not be detrimental to the conservation area;
- b) the proposal will cause an unreasonable loss to neighbouring amenity;
- c) any impacts on equalities or human rights are acceptable; and
- d) any comments raised have been addressed.

a) Scale, form, design and the conservation area

The Trinity Conservation Area Character Appraisal emphasises the wealth of detached villas set in substantial plots with generous spacing to their neighbours, the high quality stone built architecture of restricted height, the predominant use of traditional building materials, and the predominance of residential use.

The Edinburgh Local Development Plan Policy Env 6 highlights the importance of preserving the character and appearance of the conservation area and the materials used are appropriate to the historic environment.

The proposed replacement of the existing timber framed sash and case windows with uPVC windows would not utilise materials appropriate to the historic environment. There are only few examples of properties on Netherby Road with uPVC windows. The majority of neighbouring properties in the surrounding area retain timber framed windows and subsequently uPVC windows are not an established feature. The proposal, therefore, introduces a non-traditional and uncharacteristic material to the street and conservation area which, on the whole, is characterised by timber framed windows.

The property is part of a Victorian terrace and the uniformity of detailing such as windows is particularly important in this context. The loss of timber windows would undermine the overall appearance of the street and would impact on the architectural detailing of the property and the wider terrace.

The proposal would also be contrary to the Council's non-statutory guidance for Listed Buildings and Conservation Areas, which states that replacement windows must match original proportions and materials. It emphasises that uPVC windows will not be acceptable in conservation areas. The proposed uPVC windows are not appropriate and will detract from the appearance of the building and would not preserve the special character and appearance of the conservation area.

The proposals do not comply with Local Development Plan Policy Env 6 and the non-statutory Guidance for Listed Buildings and Conservation Areas.

b) Neighbouring amenity

The proposals have been assessed against requirements set out in the non-statutory Guidance for Householders to ensure there is no unreasonable loss to neighbouring amenity with respect to privacy, overshadowing and loss of daylight or sunlight.

The proposals comply with Local Development Plan Policy Des 12 and the non-statutory Guidance for Householders.

c) Equalities and human rights

This application was assessed in terms of equalities and human rights. No impact was identified.

d) Public comments

The application has attracted one letter objecting the proposal.

Material consideration:

- UPVC windows would not enhance or preserve the appearance of conservation area. This has been assessed in section (a).

Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following;

Reasons

1. The proposals are contrary to non-statutory guidance on Listed Buildings and Conservation Areas as the proposed replacement windows do not preserve the special character and appearance of the conservation area.
2. The proposal is contrary to the Local Development Plan Policy Env 6 in respect of Conservation Areas - Development, as the proposals do not preserve the character and appearance of the conservation area.

Background Reading/External References

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

Further Information - [Local Development Plan](#)

Date Registered: 14 May 2021

Drawing Numbers/Scheme

01-07

Scheme 1

David Givan
Chief Planning Officer
PLACE
The City of Edinburgh Council

Contact: Weronika Myslowiecka, Planning Officer
E-mail: weronika.myslowiecka@edinburgh.gov.uk

Appendix 1

Consultations

No consultations undertaken.

Neighbours Notified for 21/02692/FUL Date 21 May 2021

Location Plan

Reproduction from the Ordnance Survey mapping with permission of the Controller of Her Majesty's Stationery Office
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Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Licence
Number 100023420 The City of Edinburgh Council 2012.

13 Stirling Road EdinburghEH5 3HZ

11 Stirling Road EdinburghEH5 3HZ

11B Zetland Place EdinburghEH5 3LZ

11A Zetland Place EdinburghEH5 3LZ

11 Zetland Place EdinburghEH5 3LZ

18 Netherby Road EdinburghEH5 3NA

9 Netherby Road EdinburghEH5 3LW

7 Netherby Road EdinburghEH5 3LW

5 Netherby Road EdinburghEH5 3LW

11 Netherby Road EdinburghEH5 3LW

17 Zetland Place EdinburghEH5 3LZ

15 Zetland Place EdinburghEH5 3LZ

13 Zetland Place EdinburghEH5 3LZ

30A Netherby Road EdinburghEH5 3NA

30 Netherby Road EdinburghEH5 3NA

28 Netherby Road EdinburghEH5 3NA

24 Netherby Road EdinburghEH5 3NA

22 Netherby Road EdinburghEH5 3NA

20 Netherby Road EdinburghEH5 3NA

Comments for Planning Application 21/02692/FUL

Application Summary

Application Number: 21/02692/FUL

Address: 26 Netherby Road Edinburgh EH5 3NA

Proposal: Replacement windows.

Case Officer: Weronika Myslowiecka

Customer Details

Name: Dr The Architectural Heritage Society of Scotland

Address: 15 Rutland Square, Edinburgh EH1 2BE

Comment Details

Commenter Type: Amenity Body

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: The AHSS Forth & Borders Cases Panel has examined this application and object to the replacement of timber sash windows with uPVC.

The standard designs of uPVC windows cannot replicate the slim frames of wooden sashes, as is readily demonstrated by comparing the ground floor and first floor windows of this property, and therefore these proposals will neither preserve nor enhance the appearance of this property.

There is no condition report to inform on present condition, but either the existing windows could be repaired, draughtproofed, and double glazing retrofitted, or the cases refurbished and new wooden sashes fitted. If the existing windows are uPVC from the 1990s, they will be near or at the end of their design life, and are therefore a poor precedent.

We note that while the terraces to the north and south retain the vast majority of their original timber sash windows, the terrace of six houses forming numbers 22-30A have mostly had their front sash windows replaced. However only number 30 has permission for front sash window replacements, gaining a Certificate of Lawfulness for wooden sash and case windows in 2017. The others either predate the inclusion of these houses in the conservation area, or have been altered without permission or under superseded guidance and planning frameworks.

We recommend the Historic Environment Scotland guide on Fabric Improvement for Energy Efficiency in Traditional Buildings (2013, freely downloadable), and note that uPVC windows' short life means they must be replaced long before they ever pay for themselves through heat savings (see Energy Saving Trust figures), in a repeating cycle of expense, damage to building fabric, and substantial negative environmental impact. We know that many building owners look at replacement windows believing them to be of positive environmental benefit. The opposite is true,

alongside their negative aesthetic impact upon the property and wider conservation area, and we therefore object to this proposal.

Comments for Planning Application 21/02692/FUL

Application Summary

Application Number: 21/02692/FUL

Address: 26 Netherby Road Edinburgh EH5 3NA

Proposal: Replacement windows.

Case Officer: Weronika Myslowiecka

Customer Details

Name: Not Available

Address: Not Available

Comment Details

Commenter Type: Amenity Body

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: The AHSS Forth & Borders Cases Panel has examined this application and object to the replacement of timber sash windows with uPVC.

The standard designs of uPVC windows cannot replicate the slim frames of wooden sashes, as is readily demonstrated by comparing the ground floor and first floor windows of this property, and therefore these proposals will neither preserve nor enhance the appearance of this property.

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alongside their negative aesthetic impact upon the property and wider conservation area, and we therefore object to this proposal.



Business Centre G.2 Waverley Court 4 East Market Street Edinburgh EH8 8BG Email: planning.support@edinburgh.gov.uk

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100453527-001

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

Applicant or Agent Details

Are you an applicant or an agent? * (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

☐ Applicant ☒ Agent

Agent Details

Please enter Agent details

Company/Organisation:	TmC Planning		
Ref. Number:		You must enter a Building Name or Number, or both: *	
First Name: *	Tommy	Building Name:	Unit 117
Last Name: *	Cochrane	Building Number:	
Telephone Number: *	0131 210 0400	Address 1 (Street): *	Eucal Business Centre
Extension Number:		Address 2:	Craigshill Road
Mobile Number:		Town/City: *	Livingston
Fax Number:		Country: *	United Kingdom
		Postcode: *	EH54 5DT
Email Address: *	tommy@tmcplanning.co.uk		

Is the applicant an individual or an organisation/corporate entity? *

☒ Individual ☐ Organisation/Corporate entity

Applicant Details

Please enter Applicant details

Title:	<input type="text" value="Mr"/>	You must enter a Building Name or Number, or both: *
Other Title:	<input type="text"/>	Building Name: <input type="text"/>
First Name: *	<input type="text" value="Stan"/>	Building Number: <input type="text" value="26"/>
Last Name: *	<input type="text" value="Cook"/>	Address 1 (Street): * <input type="text" value="Netherby Road"/>
Company/Organisation	<input type="text"/>	Address 2: <input type="text"/>
Telephone Number: *	<input type="text" value=""/>	Town/City: * <input type="text" value="Edinburgh"/>
Extension Number:	<input type="text"/>	Country: * <input type="text" value="Scotland"/>
Mobile Number:	<input type="text"/>	Postcode: * <input type="text" value="EH5 3NA"/>
Fax Number:	<input type="text"/>	
Email Address: *	<input type="text" value=""/>	

Site Address Details

Planning Authority:	<input type="text" value="City of Edinburgh Council"/>
Full postal address of the site (including postcode where available):	
Address 1:	<input type="text" value="26 NETHERBY ROAD"/>
Address 2:	<input type="text"/>
Address 3:	<input type="text"/>
Address 4:	<input type="text"/>
Address 5:	<input type="text"/>
Town/City/Settlement:	<input type="text" value="EDINBURGH"/>
Post Code:	<input type="text" value="EH5 3NA"/>

Please identify/describe the location of the site or sites

Northing	<input type="text" value="676486"/>	Easting	<input type="text" value="324512"/>
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Description of Proposal

Please provide a description of your proposal to which your review relates. The description should be the same as given in the application form, or as amended with the agreement of the planning authority: *
(Max 500 characters)

Replacement Windows

Type of Application

What type of application did you submit to the planning authority? *

- ☒ Application for planning permission (including householder application but excluding application to work minerals).
- ☐ Application for planning permission in principle.
- ☐ Further application.
- ☐ Application for approval of matters specified in conditions.

What does your review relate to? *

- ☒ Refusal Notice.
- ☐ Grant of permission with Conditions imposed.
- ☐ No decision reached within the prescribed period (two months after validation date or any agreed extension) – deemed refusal.

Statement of reasons for seeking review

You must state in full, why you are seeking a review of the planning authority's decision (or failure to make a decision). Your statement must set out all matters you consider require to be taken into account in determining your review. If necessary this can be provided as a separate document in the 'Supporting Documents' section: * (Max 500 characters)

Note: you are unlikely to have a further opportunity to add to your statement of appeal at a later date, so it is essential that you produce all of the information you want the decision-maker to take into account.

You should not however raise any new matter which was not before the planning authority at the time it decided your application (or at the time expiry of the period of determination), unless you can demonstrate that the new matter could not have been raised before that time or that it not being raised before that time is a consequence of exceptional circumstances.

This is within the appeal document.

Have you raised any matters which were not before the appointed officer at the time the Determination on your application was made? *

☐ Yes ☒ No

If yes, you should explain in the box below, why you are raising the new matter, why it was not raised with the appointed officer before your application was determined and why you consider it should be considered in your review: * (Max 500 characters)

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review. You can attach these documents electronically later in the process: * (Max 500 characters)

Appeal Document Planning statement Material considerations

Application Details

Please provide the application reference no. given to you by your planning authority for your previous application.

21/00404/PPP

What date was the application submitted to the planning authority? *

13/05/2021

What date was the decision issued by the planning authority? *

06/07/2021

Review Procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Can this review continue to a conclusion, in your opinion, based on a review of the relevant information provided by yourself and other parties only, without any further procedures? For example, written submission, hearing session, site inspection. *

☒ Yes ☐ No

In the event that the Local Review Body appointed to consider your application decides to inspect the site, in your opinion:

Can the site be clearly seen from a road or public land? *

☐ Yes ☒ No

Is it possible for the site to be accessed safely and without barriers to entry? *

☐ Yes ☒ No

If there are reasons why you think the local Review Body would be unable to undertake an unaccompanied site inspection, please explain here. (Max 500 characters)

Some of the proposed changed windows are in the rear garden of the property, as this is a row of terraced houses getting access without going through the property may be difficult as our client is not in control of neighbouring gardens.

Checklist – Application for Notice of Review

Please complete the following checklist to make sure you have provided all the necessary information in support of your appeal. Failure to submit all this information may result in your appeal being deemed invalid.

Have you provided the name and address of the applicant?. *

☒ Yes ☐ No

Have you provided the date and reference number of the application which is the subject of this review? *

☒ Yes ☐ No

If you are the agent, acting on behalf of the applicant, have you provided details of your name and address and indicated whether any notice or correspondence required in connection with the review should be sent to you or the applicant? *

☒ Yes ☐ No ☐ N/A

Have you provided a statement setting out your reasons for requiring a review and by what procedure (or combination of procedures) you wish the review to be conducted? *

☒ Yes ☐ No

Note: You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. You may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

Please attach a copy of all documents, material and evidence which you intend to rely on (e.g. plans and Drawings) which are now the subject of this review *

☒ Yes ☐ No

Note: Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice (if any) from the earlier consent.

Declare – Notice of Review

I/We the applicant/agent certify that this is an application for review on the grounds stated.

Declaration Name: Mr Tommy Cochrane

Declaration Date: 08/08/2021

Proposal Details

Proposal Name	100453527
Proposal Description	Appeal to the LRB
Address	26 NETHERBY ROAD, EDINBURGH, EH5 3NA
Local Authority	City of Edinburgh Council
Application Online Reference	100453527-001

Application Status

Form	complete
Main Details	complete
Checklist	complete
Declaration	complete
Supporting Documentation	complete
Email Notification	complete

Attachment Details

Notice of Review	System	A4
Appeal statement	Attached	A4
Material Considerations	Attached	A4
Original Planning Statement	Attached	A4
Notice_of_Review-2.pdf	Attached	A0
Application_Summary.pdf	Attached	A0
Notice of Review-001.xml	Attached	A0

TmC Planning Ltd
Unit 117
Eucal Business Centre
Craighill Road
Livingston

EH54 5DT

EDINBURGH LOCAL REVIEW BODY

Mr S. Cook
26 Netherby Road
Edinburgh
EH5 3NA

Appellant

vs.

Edinburgh City Planning Authority
Defendant

Case No.: 21/02692/FUL

Appeal against Committee Decision to Refuse Planning Permission

Dated this 27th day of July 2021




Thomas Cochrane BSc, (Hons), HND, CPC (Nat and Inter)

TmC Planning Ltd, on behalf of our client, hereby appeal against the decision of the Delegated Officer of Edinburgh City Council Local Authority on 06th July 2021 to refuse planning permission for the change of windows to uPVC at 26 Netherby Road, Edinburgh, EH5 3NA.

This appeal focuses on the precedent set by Edinburgh City Council Local Authority and that the planning authority acted in an unfair manner.

TmC Planning would like to point out to the councillors on the Local review body that previous decisions are a material consideration. This can be found in *Spackman v Secretary of State for the Environment* [1977] 1 All ER 257.

Furthermore, Authorities have to be seen to be acting consistently, so if they depart from previous decisions, they need to give planning reasons for doing so, as was found in *North Wiltshire DC v Secretary of State for the Environment* (1993) 65 P&CR 137. This includes not just the land affected by the current application but also other sites within the same authority. There is a direct reference to this later in this document. The legal precedent is set out in the case of *Fox Strategic Land & Property Ltd v Secretary of State for Communities and Local Government* ((2012) EWCA Civ (2013) 1 P&CR 6.). The of the High Court quashed an inspector's decision on a planning appeal because of serious inconsistencies between that decision and another appeal on a different site in the same area. Although the inspector was entitled to reach a different conclusion, his handling of the appeal was flawed because he had neither considered the other application nor given reasons for reaching a different decision.

Moreover discretionary powers must also be exercised reasonably. In the special legal sense of Wednesbury reasonableness (*Associated Provincial Picture Houses Ltd v Wednesday Corp* (1948) K.B.223), the decision-maker must consider all material considerations and ignore irrelevant matters or ulterior motives. The supervisory jurisdiction allows the court to insist on standards of procedural fairness beyond what is expressly required by statute. Accordingly, judicial review on this ground was reached.

Our reasons for appeal are set out above. However, as the Local Review Body is a quasi-legal committee, we would ask the councillors to relook at this application, considering the legal precedents set out above.

TmC Planning Ltd was informed by the delegated officer, Weronika Myslowiecka, that the planning application 21/02692/FUL at 26 Netherby Road, Edinburgh, was recommended for refusal (See Appendix A).

The reasons for refusal by Edinburgh City Council Planning Authority.

1. The proposals are contrary to non-statutory guidance on Listed Buildings and Conservation Areas as the proposed replacement windows do not preserve the special character and appearance of the conservation area.

2. The proposal is contrary to the Local Development Plan Policy Env 6 in respect of Conservation Areas - Development, as the proposals do not preserve the character and appearance of the conservation area

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

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

Refused Planning application 21/02692/FUL (Appendix B)

The proposal of our clients planning application is to replace three rear timber frame windows with slim profile uPVC on the building's front elevation ground floor. Retaining the sliding sash and case design with similar dimensions to the existing windows but replacing the existing timber windows with uPVC. Thus maintaining the character, design and profile of the windows.

The proposed three windows at the front will match the windows directly above on the first floor, where the timber sash and case design had previously been replaced with uPVC windows of similar design in the early 1990s (See images Appendix C). There has been no enforcement action raised by the Planning authority, even although this property is in a conservation area.

1 The proposed three windows at the rear will be replaced with a similar sliding sash and case uPVC design,
2 excluding the vertical astragal currently on the existing timber frame windows. These windows include the two
3 upper bedroom windows and the lower kitchen window hidden from view from the public road.

4
5 Our client's proposal that was refused was as detailed in the Handling Report (Appendix B) and is extracted below,

6
7 “The proposed replacement of the existing timber framed sash and case windows with uPVC windows
8 would not utilise materials appropriate to the historic Environment. There are only few examples of properties on
9 Netherby Road with uPVC windows. The majority of neighbouring properties in the surrounding area retain timber
10 framed windows and subsequently uPVC windows are not an established feature. The proposal, therefore,
11 introduces a non-traditional and uncharacteristic material to the street and conservation area which, on the whole, is
12 characterised by timber framed windows.

13 The property is part of a Victorian terrace and the uniformity of detailing such as windows is particularly
14 important in this context. The loss of timber windows would undermine the overall appearance of the street and
15 would impact on the architectural detailing of the property and the wider terrace. The proposal would also be
16 contrary to the Council's non-statutory guidance for Listed Buildings and Conservation Areas, which states that
17 replacement windows must match original proportions and materials. It emphasises that uPVC windows will not be
18 acceptable in conservation areas. The proposed uPVC windows are not appropriate and will detract from the
19 appearance of the building and would nor preserve the special character and appearance of the conservation area.”

20
21 The planning authority has issued the following policies for a reason for refusal:
22 “DES 6 in respect of Conservation areas.

23 LDP policy Env 6 (Conservation Areas - Development) states that development within a
24 conservation area or affecting its setting will be permitted which a) preserves or
25 enhances the special character or appearance of the conservation area and is
26 consistent with the relevant conservation area character appraisal, b) preserves trees,
27 hedges, boundary walls, railings, paving and other features which contribute positively

1 to the character of the area and c) demonstrates high standards of design and utilises
2 materials appropriate to the historic Environment.”

3
4 Non-statutory Guidance for Listed Buildings and Conservation Areas Edinburgh City Council
5 (Updated February 2019)
6 Replacing Original Windows

7 “In the event that replacement windows can be justified, they should be designed to replicate the
8 original details, including materials, design and opening method. Particular attention must be paid to the mouldings;
9 standard modern sections are not acceptable for reinstatement work. uPVC will not be acceptable. Care should be
10 taken to ensure that replacement windows are fitted in the same plane as the originals, are made of timber sections
11 (the profile and dimensions of which match the originals) and have the meeting rails in the same position as the
12 originals; this is especially important where the windows of only one property in a tenement or terrace block are
13 being replaced.”

14
15 We will look at these in detail. In addition, comments on other relevant planning applications within the
16 authorities other conservation areas set precedence. These are highlighted in red below. This emphasises the
17 inconsistencies of the planning authority applying consistent decisions areas throughout the cities conservation
18 areas.

19
20 TmC Planning Ltd answers response with the following.

21
22 **Precedence**

23 Planning Application 20/01694/FUL (Appendix D) shows a consented application dated the 2nd
24 July 2020 to replace seven timber sash and case style windows on the rear of the property at 24 Netherby Road,
25 which adjoins 26 Netherby Road. This is described in the planning application as replacing with five sash and case
26 style slim-framed white uPVC with sealed double-glazed units and two fixed pain windows with no astragals.

1 Our client proposed a similar design, profile and material, including the white uPVC material to
2 replace the timber windows. In contrast, the property adjoining was accepted with the same choice of uPVC
3 material. The officers handling report for 20/01694/FUL is listed in Appendix D. We have outlined in red relevant
4 points that would be considered relevant to 21/02692/FUL.

5
6
7
8 Planning Application 18/07085/FUL (Appendix E) shows a consented application dated the 10th October
9 2018 for proposed alterations, garage and attic conversion with dormer windows to front and rear elevations of 23
10 Netherby Road, situated 88 metres from 26 Netherby Road and within the conservation area.

11 Part of the alterations included the change of window materials to uPVC, which is stated in the proposal drawings
12 (See Appendix E)
13
14

15 Planning Application 19/01719/FUL(Appendix F) shows a consented application on the 7th June
16 2019 for alterations to rear elevation fenestration, including the combination of 2no. Openings into 1no. Sliding
17 doorset opening and replacement of 2no. Windows and 1no. Door to the annexe. This was granted for the property
18 at 6 Netherby Road Edinburgh EH5 3NA within the Trinity Conservation area and 76 metres from our client's
19 property.
20

21 The planning application consented to included the replacement of window frame with an
22 aluminium window profile.
23

24 Planning Application 21/00197/FUL (Appendix G) shows a consented application dated the 12th March
25 2021 to replace wooden sash windows with uPVC windows at 3F2 45 Roseburn Terrace Edinburgh, EH12 5NQ.
26 This property is within the Coltbridge and Wester Coates Conservation Area.
27
28

1 This planning applicant shows that Edinburgh City Council Planning Authority shows an
2 inconsistent application of planning policy when determining planning applications. Please see the legal precedent
3 set out but the case of Fox Strategic Land &- Property Ltd v Secretary of State for Communities and Local
4 Government ((2012) EWCA Civ (2013)1 P&CR 6.).

5
6 Edinburgh City Council adopted the most current local development plan in November 2016, and the same
7 policies apply to all planning applications above 20/01694/FUL, 18/07085/FUL, 19/01719/FUL, 21/00197/FUL
8 and our clients refused application 21/02692/FUL.

9 Edinburgh City Council revised the most current non-statutory guidance in November 2016, and the same
10 policies apply to all planning applications above 20/01694/FUL, 18/07085/FUL, 19/01719/FUL, 21/00197/FUL
11 and our clients refused application 21/02692/FUL.

12 13 14 Conclusion

15 We have shown above that the planning authority has been unreasonable in refusing this
16 application when other developments of similar proposals of replacing windows with uPVC have been approved in
17 the immediate vicinity and within other conservation areas. As we have stated above, this is a material consideration
18 that the delegated officer refused to consider despite TmC planning sending this information to the relevant officer
19 and her senior.

20 We have also highlighted an inconsistent application of policy throughout conservation area within the city.
21 Under the legislation, all conservation areas should be treated the same, and therefore there should be a consistent
22 application of policy when planning applications are being assessed.

23 'Mr Cook was informed by his neighbour at 24 Netherby Road that their application for UPVC windows
24 was granted. In making his application, Mr Cook intends to use the same firm of window installers and practically
25 the same windows. 24 And 26 Netherby Road are identical from the exterior, front and back. Practically, the same
26 houses look onto both, again front and back. For the purposes of considering the windows, the interiors of both
27 houses are the same. To award planning permission to 24, and not to 26 is perverse and amounts to
28

maladministration. As such, that falls within the remit of the SPSO (albeit the decision itself does not). Mr Cook is saying that he will pursue that case with the SPSO if his application is refused without the Authority giving a rational reason as to why his application is being refused and that of 24 (and others) were accepted.

If the authority had acted consistently, the application would have been granted.

Therefore, we would ask the councillors of the Edinburgh Local Review Body to look at this application and to consider the legal and moral matters raised in this appeal

Thomas Cochrane BSc. (Hons), HND, CPC (Nat and Inter.)

Planning consultant

TmC Planning Ltd

0131 210 0400

07450939889

Tommy@tmcplaning.co.uk

Appendix A

"Dear Mr Cochrane,

I am currently assessing the above application. Just to let you know that replacement for upvc windows would not be acceptable and it is contrary to the guidance, as well as policy Env 6 from Local Development Plan. Therefore, the application would be recommended for refusal.

I understand that there are some individual examples of Upvc in the area. However, some of them do not have planning permission and any proposal from the past and which do not comply with the current guidelines will not be taken as setting any form of precedent, and should not be used as example to follow.

If you wish to amend drawings or withdrawn this application please do that by 21st June.

Regards,

Weronika"

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Appendix B

Report of Handling

Application for Planning Permission
26 Netherby Road, Edinburgh, EH5 3NA

Proposal: Replacement windows.

Item – Local Delegated Decision
Application Number – 21/02692/FUL
Ward – B04 - Forth

Recommendation

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

Summary

The proposed development is of an inappropriate material and would have an adverse impact on the character and appearance of the existing building and would fail to preserve or enhance the character and appearance of the conservation area. The proposal is therefore contrary to Edinburgh Local Development Plan Policy Env 6 and the non-statutory Guidance for Listed Buildings and Conservation Areas

SECTION A – Application Background

Site Description

The application site is a two-storey mid-terrace sandstone Victorian Terrace house, located on 26 Netherby Road.

The application site is located within Trinity Conservation Area.

Description Of The Proposal

The application proposes to replace the existing timber sash and case windows with sash and case uPVC windows.

The works relate to the ground floor bay window on the front elevation and the upper floor windows and one ground floor window on the rear elevation.

Relevant Site History

No relevant site history.

Consultation Engagement
No Consultations.

Publicity and Public Engagement

Date of Neighbour Notification: 21 May 2021
Date of Advertisement: 28 May 2021
Date of Site Notice: 25 May 2021
Number of Contributors: 1

Section B - Assessment

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?

Assessment

To address these determining issues, it needs to be considered whether:

a) the proposed scale, form and design is acceptable and will not be detrimental to the conservation area;

b) the proposal will cause an unreasonable loss to neighbouring amenity;

c) any impacts on equalities or human rights are acceptable; and

d) any comments raised have been addressed.

a) Scale, form, design and the conservation area

The Trinity Conservation Area Character Appraisal emphasises the wealth of detached villas set in substantial plots with generous spacing to their neighbours, the high quality stone built architecture of restricted height, the predominant use of traditional building materials, and the predominance of residential use.

The Edinburgh Local Development Plan Policy Env 6 highlights the importance of preserving the character and appearance of the conservation area and the materials used are appropriate to the historic environment.

The proposed replacement of the existing timber framed sash and case windows with uPVC windows would not utilise materials appropriate to the historic environment. There are only few examples of properties on Netherby Road with uPVC windows. The majority of neighbouring properties in the surrounding area retain timber framed windows and subsequently uPVC windows are not an established feature. The proposal, therefore, introduces a non-traditional and uncharacteristic material to the street and conservation area which, on the whole, is characterised by timber framed windows.

The property is part of a Victorian terrace and the uniformity of detailing such as windows is particularly important in this context. The loss of timber windows would undermine the overall appearance of the street and would impact on the architectural detailing of the property and the wider terrace.

The proposal would also be contrary to the Council's non-statutory guidance for Listed Buildings and Conservation Areas, which states that replacement windows must match original proportions and materials. It emphasises that uPVC windows will not be acceptable in conservation areas. The proposed uPVC windows are not appropriate and will detract from the appearance of the building and would not preserve the special character and appearance of the conservation area.

The proposals does not comply with Local Development Plan Policy Env 6 and the non-statutory Guidance for Listed Buildings and Conservation Areas.

b) Neighbouring amenity

The proposals have been assessed against requirements set out in the non-statutory Guidance for Householders to ensure there is no unreasonable loss to neighbouring amenity with respect to privacy, overshadowing and loss of daylight or sunlight.

The proposals comply with Local Development Plan Policy Des 12 and the non-statutory Guidance for Householders.

c) Equalities and human rights

This application was assessed in terms of equalities and human rights. No impact was identified.

d) Public comments

The application has attracted one letter objecting the proposal.

Material consideration:

- UPVC windows would not enhance or preserve the appearance of conservation area. This has been assessed in section (a).

Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following;

Reasons

1. The proposals are contrary to non-statutory guidance on Listed Buildings and Conservation Areas as the proposed replacement windows do not preserve the special character and appearance of the conservation area.
2. The proposal is contrary to the Local Development Plan Policy Env 6 in respect of Conservation Areas - Development, as the proposals do not preserve the character and appearance of the conservation area.

Background Reading/External References

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

Further Information - [Local Development Plan](#)

Date Registered: 14 May 2021

Drawing Numbers/Scheme

01-07

Scheme 1

David Givan
Chief Planning Officer
PLACE
The City of Edinburgh Council

Contact: Weronika Myslowiecka, Planning Officer
E-mail: weronika.myslowiecka@edinburgh.gov.uk

Appendix C



Appendix D

Report of Handling

**Application for Planning Permission 20/01694/FUL
At 24 Netherby Road, Edinburgh, EH5 3NA
Installation of 7x replacement windows to rear**

Item	Local Delegated Decision
Application number	20/01694/FUL
Wards	B04 - Forth

Summary

The proposal is of an appropriate scale, form and design and will preserve the character and appearance of the conservation area. There are no amenity issues in terms of overlooking or privacy. The proposal complies with policies Des 12 and Env 6 and the minor infringement of the Listed Buildings and Conservation Areas non-statutory guideline is justified in this case.

Links

Policies and guidance for this application	LDPP, LDES12, LEN06, NSG, NSHOU, NSLBCA, OTH, CRPTR1.
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Report of handling

Recommendations

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

Background

2.1 Site description

The application property is a two storey stone terraced dwellinghouse located on the east side of Netherby Road.

This application site is located within the Trinity Conservation Area.

2.2 Site History

There is no relevant planning history for this site.

Main report

3.1 Description Of The Proposal

- Replacement windows

The proposal is for the replacement of seven timber sash and case style windows on the rear of the property with five sash and case style slim-framed white PVC with sealed double-glazed units and two fixed pain windows with no astragals.

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, it needs to be considered whether:

- a) The scale, form and design are acceptable;
- b) There is any impact on the character and appearance of the conservation area;
- c) There is any impact on the amenity of neighbouring properties;
- d) The public comments have been addressed.

a) Scale, form and design

LDP policy Des 12 (Alterations and Extensions) states that planning permission will be granted for alterations and extensions to existing buildings which in their design and form, choice of materials and positioning are compatible with the character of the existing building.

The proposed replacement windows will generally have the same design and opening method as the existing original windows. Two small windows will change slightly in design but this will not detract from the character of the building. The proposed windows will look similar to the existing windows and will respect the character and appearance of the building. They will not be an incongruous alteration. As they will be on the rear elevation, they will not have any effect on the streetscene.

The proposal is of an acceptable scale form and design and complies with Local Development Plan Policy Des 12 (Alterations and Extensions).

b) Conservation

LDP policy Env 6 (Conservation Areas - Development) states that development within a conservation area or affecting its setting will be permitted which a) preserves or enhances the special character or appearance of the conservation area and is consistent with the relevant conservation area character appraisal, b) preserves trees, hedges, boundary walls, railings, paving and other features which contribute positively to the character of the area and c) demonstrates high standards of design and utilises materials appropriate to the historic environment.

LDP policy Des 12 (Alterations and Extensions) states that planning permission will be granted for alterations and extensions to existing buildings which will not be detrimental to neighbourhood amenity and character.

The Trinity Conservation Area Character Appraisal states that, the style and mix of Georgian and Victorian villas in Trinity is unique in Edinburgh and the area is overwhelmingly domestic in scale and suburban in nature. Despite the variety of architectural styles, a significant degree of unity of appearance is achieved by the restricted height and the predominant use of traditional building materials.

The replacement windows will retain the style and opening method of the existing windows. The design proposed for the two small windows will not harm the character of the building nor conservation area.

The proposed material, uPVC, is not generally acceptable in a conservation areas. However, most of the properties in this part of Netherby Road, including the immediate neighbouring properties, have uPVC replacement windows and this material is now an established characteristic in this stone terrace. The proposed replacement windows will be on the rear elevation and will not be seen within the streetscene nor in public views within the conservation area. In these special circumstances, the proposal will not detract from the overall character of the building as a whole and will not have an adverse impact on the character and appearance of the conservation area.

A window survey is not normally required for applications for replacement windows in conservation areas, although if the building was listed a window survey would be requested.

The character and appearance of the conservation area will be preserved. The proposal complies with policy Env 6 and Des 12 and the minor infringement of the appropriate non statutory guideline is justified in this instance.

c) Amenity

Policy Des 12 of the Edinburgh City Local Plan states that the amenity of occupiers or neighbours should not be harmed, by effects on privacy, daylight, sunlight or immediate outlook.

There are no overlooking or privacy issues.

The proposal will not have a detrimental impact on amenity and complies with Policy Des 12.

d) Public Comments

Material

- No window condition survey. Addressed in 3.3 c).
- Contrary to non statutory guidance. Addressed in 3.3 c)

Non Material

- Eco-friendly - toxins from uPVC manufacturing process
- Longevity of material

Support

None.

Conclusion

In conclusion, the proposal is of an appropriate scale, form and design and will preserve the character and appearance of the conservation area. There are no amenity issues in terms of overlooking or privacy. The proposal complies with policies Des 12 and Env 6 and the minor infringement of the Listed Buildings and Conservation Areas non-statutory guideline is justified in this case.

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

3.4 Conditions/reasons/informatives

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. No development shall take place on the site until a 'Notice of Initiation of Development' has been submitted to the Council stating the intended date on which the development is to commence. Failure to do so constitutes a breach of planning control, under Section 123(1) of the Town and Country Planning (Scotland) Act 1997.

3. 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.

Risk, Policy, compliance and governance impact

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

Equalities impact

5.1 The equalities impact has been assessed as follows:

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

Consultation and engagement

6.1 Pre-Application Process

There is no pre-application process history.

6.2 Publicity summary of representations and Community Council comments

The application was advertised on 22 May 2020 and one public comment has been received from The Architectural Heritage Society of Scotland objecting to the proposal.

Background reading / external references

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- To view details of the application go to
- [Planning and Building Standards online services](#)

Statutory Development Plan Provision	Local Development Plan - Conservation Area.
Date registered	6 May 2020
Drawing numbers/Scheme	01-03, Scheme 1

David R. Leslie
Chief Planning Officer
PLACE
The City of Edinburgh Council

Contact: Jackie McInnes, Planning officer
E-mail: jackie.mcinnis@edinburgh.gov.uk Tel: 0131 469 3731

Links - Policies

Relevant Policies:

Relevant policies of the Local Development Plan.

LDP Policy Des 12 (Alterations and Extensions) sets criteria for assessing alterations and extensions to existing buildings.

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

Relevant Non-Statutory Guidelines

Non-statutory guidelines 'GUIDANCE FOR HOUSEHOLDERS' provides guidance for proposals to alter or extend houses or flats.

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

Other Relevant policy guidance

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The Trinity Conservation Area Character Appraisal emphasises the wealth of detached villas set in substantial plots with generous spacing to their neighbours, the high quality stone built architecture of restricted height, the predominant use of traditional building materials, and the predominance of residential use.

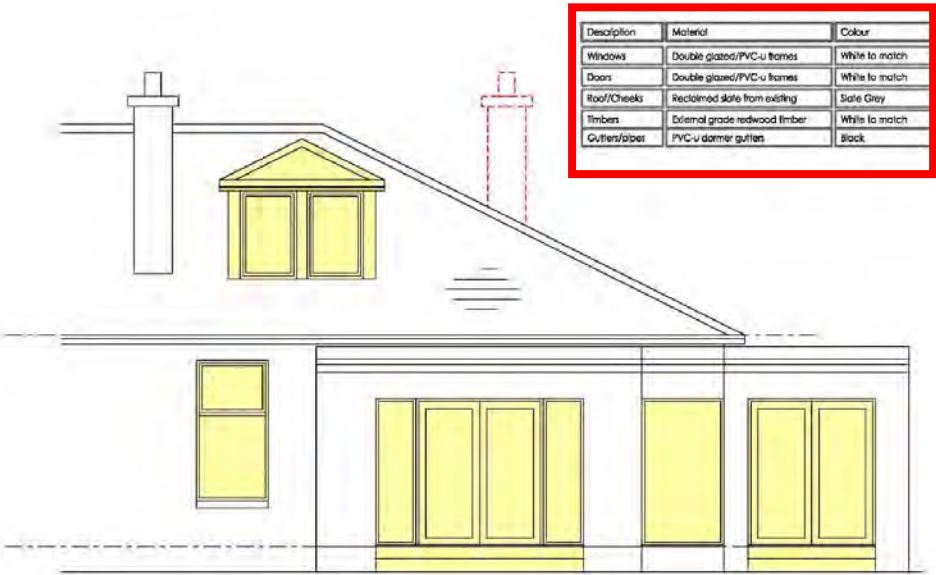
Appendix 1

Consultations

No consultations undertaken.

END

Appendix E



Proposed Garden Elevation



Proposed Entrance Elevation

REV	DATE	BY	DESCRIPTION
A	2008/18	PK	ALTERATIONS TO REFLECT CLIENT INSTRUCTIONS

0 1 2 3 4 5m

0 50 100

kingarchitects

CLIENT: Mairi & Andy Stevenson

JOB: Proposed alterations and conversions, 23 Netherby Road, Trinity.

DRAWING: Proposed Elevations

Drawn: [blank] Checked: [blank] Approved: [blank] Date: 14/06/18 Job No: KAV0077 Rev: 1/1-101 Rev: A

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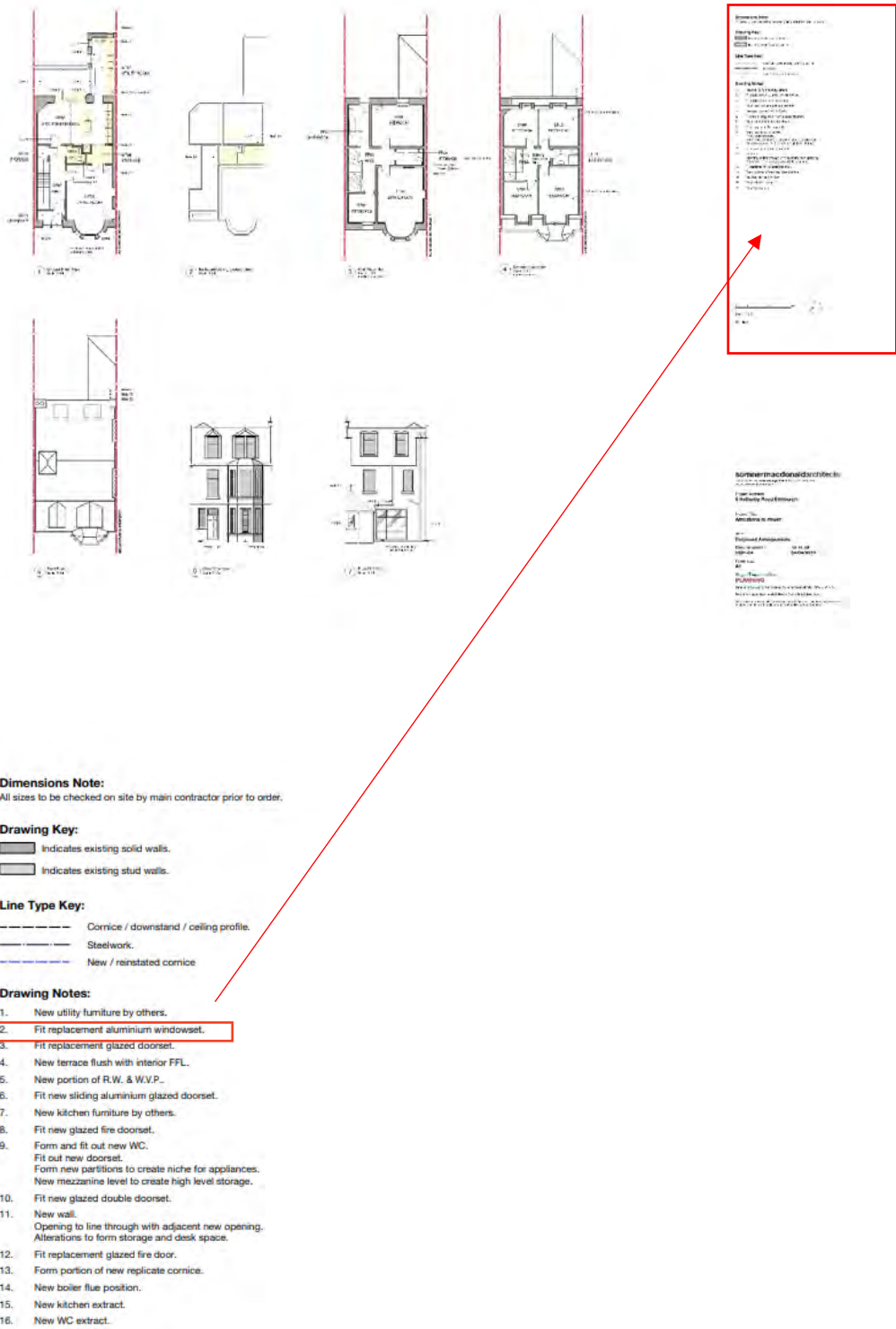
Scale: 1/50 Sheet Size: A3 Do not scale from this drawing

70 Douglas Road
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East Lothian
EH13 0J

to: 01773 899 466
m.07912 616 916
a: mark@kingarchitects.co.uk
www.kingarchitects.co.uk

architecture alterations
interior planning
home improvement

Appendix F



Report of Handling

Application for Planning Permission
3F2 45 Roseburn Terrace, Edinburgh, EH12 5NQ

Proposal: Replacing wooden sash windows with uPVC sash windows.

Item – Local Delegated Decision
Application Number – 21/00197/FUL
Ward – B06 - Corstorphine/Murrayfield

Recommendation

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

Summary

The application for development is in accordance with the Edinburgh Local Development Plan as it complies with policy Des 12 (Alterations and Extensions) and policy Env 6 (Conservation Areas - Development). It is compatible with the existing building, preserves the special character and appearance of the conservation area and has no adverse impact on neighbouring residential amenity. There are no material considerations which outweigh this conclusion.

SECTION A – Application Background

Site Description

The property is a third floor flat within a four storey traditional tenement development. Located within an established mixed use urban area, Roseburn Public Park lies to the south west of the property and Roseburn Street lies to the south east.

The property lies within the Coltbridge and Wester Coates Conservation Area.

Description Of The Proposal

The application proposes the replacement of the windows to the front and rear elevations, with UPVC double glazed units.

Relevant Site History

No relevant site history.

Consultation Engagement
No Consultations.

Publicity and Public Engagement

Date of Neighbour Notification: 22 January 2021
Date of Advertisement: 29 January 2021
Date of Site Notice: 26 January 2021
Number of Contributors: 1

Section B - Assessment

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?

Assessment

To address these determining issues, it needs to be considered whether:

- a) the proposed scale, form and design is acceptable and will not be detrimental to the conservation area;
- b) the proposal will cause an unreasonable loss to neighbouring amenity;
- c) any impacts on equalities or human rights are acceptable; and
- d) any comments raised have been addressed.

a) Scale, form, design and the conservation area

The Coltbridge and Wester Coates Conservation Area Character Appraisal emphasises low density form of the area and the predominance of detached and semi-detached villas complemented by the profusion of mature trees, extensive garden settings, and stone boundary walls.

Roseburn Terrace forms a main arterial route into the city centre from the west. The streetscape can be characterised as a central urban area, lined with four storey, sandstone tenement properties with commercial uses to the ground floor and residential to the floors above. There is an established character of alterations to front and rear elevations and alterations to fenestration of which include UPVC framed windows.

The proposed replacement units provide double glazed units with white UPVC frames. The form and design of the proposed units provide a suitable two pane sash and case form which offer a sympathetic replacement to the form and design of the units as existing.

Concern raised for the proposed materials are noted. There is an established character for the use of UPVC within the neighbouring properties. Given the sympathetic form and design proposed and surrounding character of UPVC units, the use of UPVC is considered a minor infringement to the non-statutory Guidance for Listed Buildings and Conservation Areas. Therefore, the proposed use of UPVC units will not have a detrimental impact to the character or appearance of the conservation area.

The proposals are of an acceptable scale, form and design and are compatible with the existing dwelling and will preserve the character and appearance of the conservation area.

The proposals comply with Local Development Plan Policy Des 12, Env 6 and the non-statutory Guidance for Listed Buildings and Conservation Areas.

b) Neighbouring amenity

The proposals have been assessed against requirements set out in the non-statutory Guidance for Householders to ensure there is no unreasonable loss to neighbouring amenity with respect to privacy, overshadowing and loss of daylight or sunlight.

The proposals comply with Local Development Plan Policy Des 12 and the non-statutory Guidance for Householders.

c) Equalities and human rights

This application was assessed in terms of equalities and human rights. No impact was identified.

d) Public comments

One comment from an amenity body in objection to the proposal has been received.

Material considerations:

Concern for the impact to the character and appearance of the conservation area; this is addressed in section a);
Concern for the materials proposed; this is addressed in section a).

Section C - Conditions/Reasons/Informatives

The recommendation is subject to the following;

Informatives

1. The development hereby permitted shall be commenced no later than the expiration of three years from the date of this consent.
2. No development shall take place on the site until a 'Notice of Initiation of Development' has been submitted to the Council stating the intended date on which the development is to commence. Failure to do so constitutes a breach of planning control, under Section 123(1) of the Town and Country Planning (Scotland) Act 1997.
3. 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.

Background Reading/External References

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

Further Information - [Local Development Plan](#)

Date Registered: 15 January 2021

Drawing Numbers/Scheme

01 - 07

Scheme 1

David R. Leslie
Chief Planning Officer
PLACE
The City of Edinburgh Council

Contact: Luke Vogan, Planning Officer
E-mail: luke.vogan@edinburgh.gov.uk

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Appendix 1
Consultations
No consultations undertaken

Planning Justification



For the replacement of windows at 26 Netherby Road, Edinburgh.

JUNE 15

Thomas Cochrane BSc.(Hons), HND, CPC (Nat & Inter.)
Planning Consultant

TOWN PLANNING CONSULTANTS

TMC
PLANNING
LIMITED
0131 210 0400

Executive summary

We were informed by the delegated officer, Weronika Myslowiecka, that the planning application 21/02692/FUL at 26 Netherby Road, Edinburgh, was to be recommended for refusal.

The email is listed below.

“Dear Mr Cochrane,

I am currently assessing the above application. Just to let you know that replacement for upvc windows would not be acceptable and it is contrary to the guidance, as well as policy Env 6 from Local Development Plan. Therefore, the application would be recommended for refusal.

I understand that there are some individual examples of Upvc in the area. However, some of them do not have planning permission and any proposal from the past and which do not comply with the current guidelines will not be taken as setting any form of precedent, and should not be used as example to follow.

If you wish to amend drawings or withdrawn this application please do that by the 21st of June.

Regards,

Weronika”

This document will provide material evidence that should be taken as a material consideration for the approval of 21/02692/FUL

The property at 26 Netherby Road had windows replaced in the 1990s. There has been no enforcement action raised by the Planning authority, even although this property is in a conservation area. See images below



Zooming in on the image, we can see that the windows are uPVC sash and case windows. See below. The windows have water drip holes for those who may not be familiar with the uPVC window profile. These are only found on Aluminium or uPVC windows.



Precedent

Number 24 Netherby Road had windows installed recently. These were applied for under planning application 20/01694/FUL.

Edinburgh City Council adopted the most current local development plan in November 2016, the same policies apply to both 20/01694/FUL and 21/02692/FUL.

The officers handling report for 20/01694/FUL is listed below. We have outlined in red relevant points that would be considered relevant to 21/02692/FUL.

Report of Handling

**Application for Planning Permission 20/01694/FUL
At 24 Netherby Road, Edinburgh, EH5 3NA
Installation of 7x replacement windows to rear**

Item	Local Delegated Decision
Application number	20/01694/FUL
Wards	B04 - Forth

Summary

The proposal is of an appropriate scale, form and design and will preserve the character and appearance of the conservation area. There are no amenity issues in terms of overlooking or privacy. The proposal complies with policies Des 12 and Env 6 and the minor infringement of the Listed Buildings and Conservation Areas non-statutory guideline is justified in this case.

Links

<u>Policies and guidance for this application</u>	LDPP, LDES12, LEN06, NSG, NSHOU, NSLBCA, OTH, CRPTRI,
--	---

Report of handling

Recommendations

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

Background

2.1 Site description

The application property is a two storey stone terraced dwellinghouse located on the east side of Netherby Road.

This application site is located within the Trinity Conservation Area.

2.2 Site History

There is no relevant planning history for this site.

Main report

3.1 Description Of The Proposal

- Replacement windows

The proposal is for the replacement of seven timber sash and case style windows on the rear of the property with five sash and case style slim-framed white PVC with sealed double-glazed units and two fixed pain windows with no astragals.

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, it needs to be considered whether:

- a) The scale, form and design are acceptable;
- b) There is any impact on the character and appearance of the conservation area;
- c) There is any impact on the amenity of neighbouring properties;
- d) The public comments have been addressed.

a) Scale, form and design

LDP policy Des 12 (Alterations and Extensions) states that planning permission will be granted for alterations and extensions to existing buildings which in their design and form, choice of materials and positioning are compatible with the character of the existing building.

The proposed replacement windows will generally have the same design and opening method as the existing original windows. Two small windows will change slightly in design but this will not detract from the character of the building. The proposed windows will look similar to the existing windows and will respect the character and appearance of the building. They will not be an incongruous alteration. As they will be on the rear elevation, they will not have any effect on the streetscene.

The proposal is of an acceptable scale form and design and complies with Local Development Plan Policy Des 12 (Alterations and Extensions).

b) Conservation

LDP policy Env 6 (Conservation Areas - Development) states that development within a conservation area or affecting its setting will be permitted which a) preserves or enhances the special character or appearance of the conservation area and is consistent with the relevant conservation area character appraisal, b) preserves trees, hedges, boundary walls, railings, paving and other features which contribute positively to the character of the area and c) demonstrates high standards of design and utilises materials appropriate to the historic environment.

LDP policy Des 12 (Alterations and Extensions) states that planning permission will be granted for alterations and extensions to existing buildings which will not be detrimental to neighbourhood amenity and character.

The Trinity Conservation Area Character Appraisal states that, the style and mix of Georgian and Victorian villas in Trinity is unique in Edinburgh and the area is overwhelmingly domestic in scale and suburban in nature. Despite the variety of architectural styles, a significant degree of unity of appearance is achieved by the restricted height and the predominant use of traditional building materials.

The replacement windows will retain the style and opening method of the existing windows. The design proposed for the two small windows will not harm the character of the building nor conservation area.

The proposed material, uPVC, is not generally acceptable in a conservation areas. However, most of the properties in this part of Netherby Road, including the immediate neighbouring properties, have uPVC replacement windows and this material is now an established characteristic in this stone terrace. The proposed replacement windows will be on the rear elevation and will not be seen within the streetscene nor in public views within the conservation area. In these special circumstances, the proposal will not detract from the overall character of the building as a whole and will not have an adverse impact on the character and appearance of the conservation area.

A window survey is not normally required for applications for replacement windows in conservation areas, although if the building was listed a window survey would be requested.

The character and appearance of the conservation area will be preserved. The proposal complies with policy Env 6 and Des 12 and the minor infringement of the appropriate non statutory guideline is justified in this instance.

c) Amenity

Policy Des 12 of the Edinburgh City Local Plan states that the amenity of occupiers or neighbours should not be harmed, by effects on privacy, daylight, sunlight or immediate outlook.

There are no overlooking or privacy issues.

The proposal will not have a detrimental impact on amenity and complies with Policy Des 12.

d) Public Comments

Material

- No window condition survey. Addressed in 3.3 c).
- Contrary to non statutory guidance. Addressed in 3.3 c).

Non Material

- Eco-friendly - toxins from uPVC manufacturing process
- Longevity of material

Support

None.

Conclusion

In conclusion, the proposal is of an appropriate scale, form and design and will preserve the character and appearance of the conservation area. There are no amenity issues in terms of overlooking or privacy. The proposal complies with policies Des 12 and Env 6 and the minor infringement of the Listed Buildings and Conservation Areas non-statutory guideline is justified in this case.

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

3.4 Conditions/reasons/informatives

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. No development shall take place on the site until a 'Notice of Initiation of Development' has been submitted to the Council stating the intended date on which the development is to commence. Failure to do so constitutes a breach of planning control, under Section 123(1) of the Town and Country Planning (Scotland) Act 1997.
3. 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.

Risk, Policy, compliance and governance impact

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

Equalities impact

5.1 The equalities impact has been assessed as follows:

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

Consultation and engagement

6.1 Pre-Application Process

There is no pre-application process history.

6.2 Publicity summary of representations and Community Council comments

The application was advertised on 22 May 2020 and one public comment has been received from The Architectural Heritage Society of Scotland objecting to the proposal.

Background reading / external references

-
- To view details of the application go to
 - [Planning and Building Standards online services](#)

**Statutory Development
Plan Provision**

Local Development Plan - Conservation Area.

Date registered

6 May 2020

**Drawing
numbers/Scheme**

01-03.,

Scheme 1

David R. Leslie
Chief Planning Officer
PLACE
The City of Edinburgh Council

Contact: Jackie McInnes, Planning officer
E-mail:jackie.mcinnnes@edinburgh.gov.uk Tel:0131 469 3731

Links - Policies

Relevant Policies:

Relevant policies of the Local Development Plan.

LDP Policy Des 12 (Alterations and Extensions) sets criteria for assessing alterations and extensions to existing buildings.

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

Relevant Non-Statutory Guidelines

Non-statutory guidelines 'GUIDANCE FOR HOUSEHOLDERS' provides guidance for proposals to alter or extend houses or flats.

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

Other Relevant policy guidance

The Trinity Conservation Area Character Appraisal emphasises the wealth of detached villas set in substantial plots with generous spacing to their neighbours, the high quality stone built architecture of restricted height, the predominant use of traditional building materials, and the predominance of residential use.

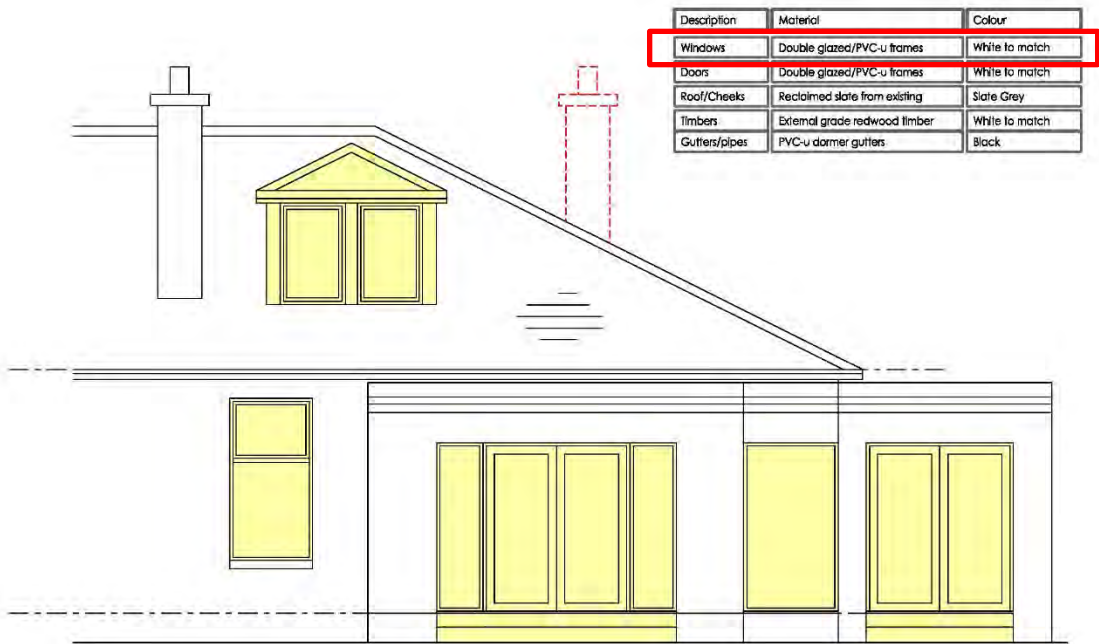
Appendix 1

Consultations

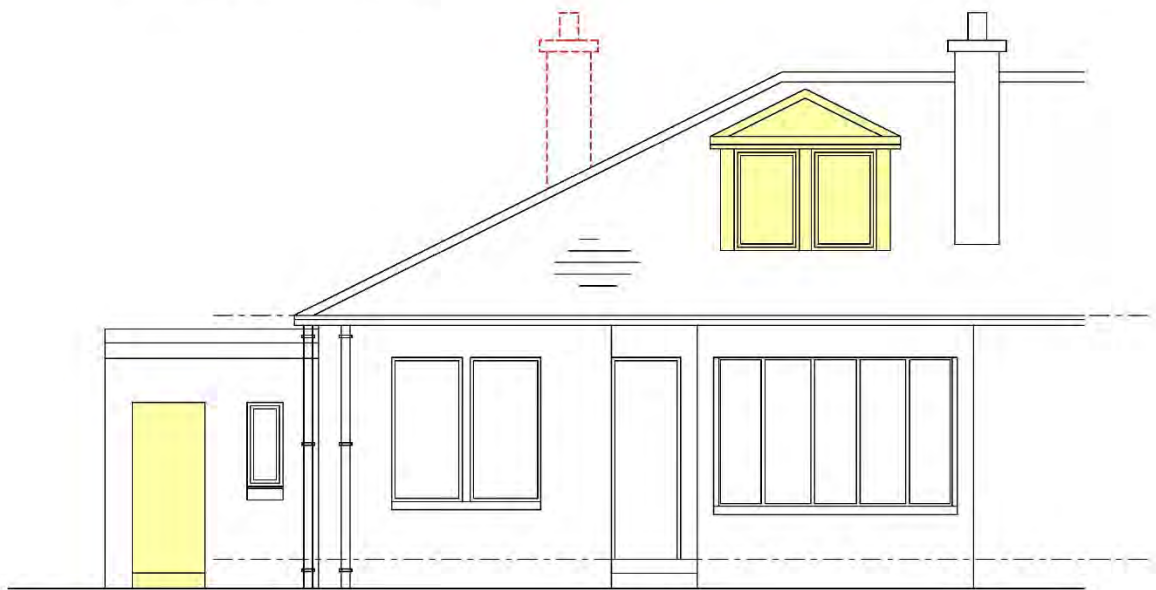
No consultations undertaken.

END

23 Netherby Road application number 18/07085/FUL



Proposed Garden Elevation



Proposed Entrance Elevation

REV	DATE	DRAWN	DESCRIPTION
A	30/08/18	MK	ALTERATIONS TO REFLECT CLIENT INSTRUCTIONS

0 1 2 3 4 5m					
0 50 100					
CLIENT Maini & Andy Stevenson					
JOB Proposed alterations and conversions, 23 Netherby Road, Trinity.					
DRAWING Proposed Elevations					
Drawn	Checked	Approved	Date AUG'18	Job No KA/0087/18	Rev A
This drawing and its data are the copyright of King Architects and must not be used for any purpose other than that for which it is intended. King Architects accepts no responsibility for any inaccuracy or omission of this drawing to any person.					
Scale 1:50 Sheet Size A3 Do not scale from this drawing					

king architects

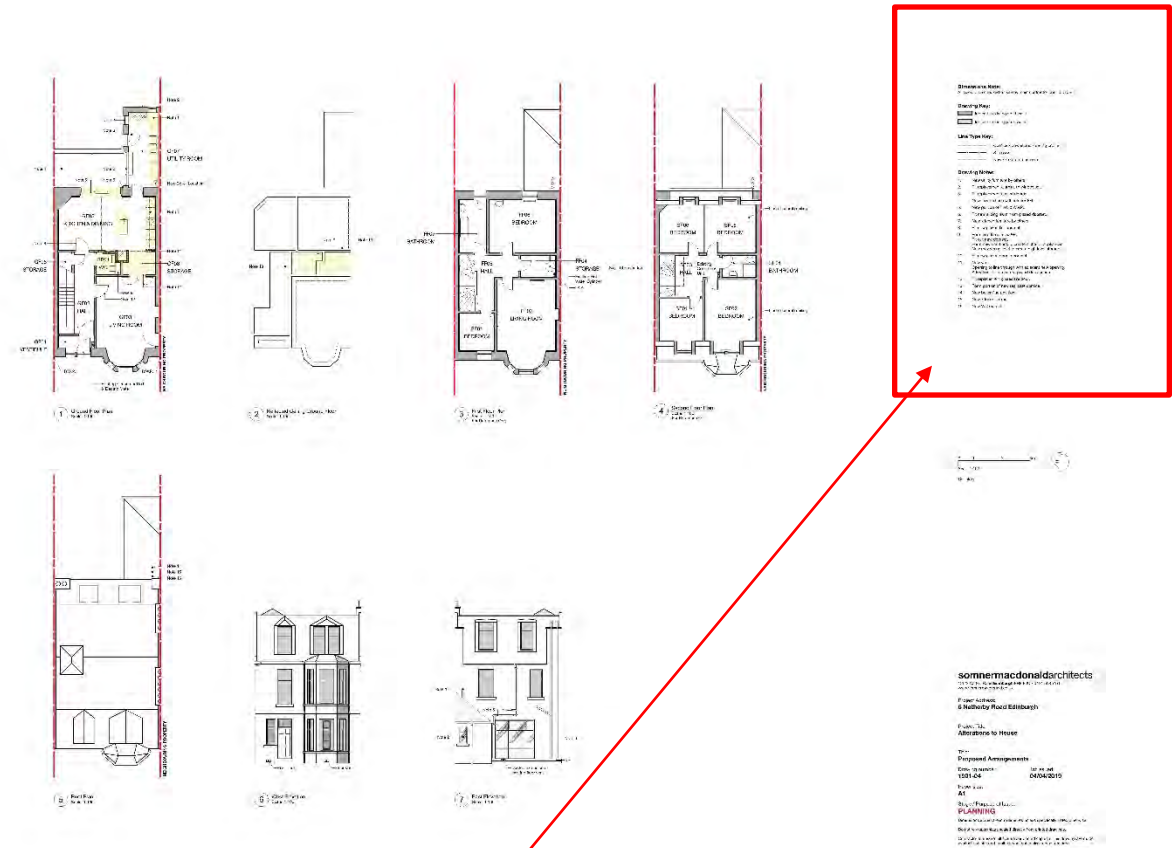
architecture alterations

masterplanning home improvement

73 douglas road
longniddry
east lothian
eh32 0lj

t: 01875 899 466
m: 079517 625 580
e: mark@kingarchitects.co.uk
www.kingarchitects.co.uk

6 Netherby Road 19/01719/FUL



6 Netherby road is 76m from number 26.



Precedent

Previous decisions are material considerations, set in law by *Sparkman v Secretary of State for the Environment* (1977) 1 AJ1ER257. Over and above this, Authorities have to be seen to be acting consistently. If they depart from a previous decision, they need to give planning reasons for doing so. This was seen in the case of *North Wiltshire DC v Secretary of State for the Environment* (1993) 65 P&CR137.

Furthermore, *Dunster Properties Ltd v First Secretary of state* (2007) EWCA Civ 236; (2007) 2 P&CR 2 shows that this includes decisions on other sites, not just for the land affected by the application under consideration.

Moreover, In the case of Fox Strategic Land & Property Ltd v Secretary of State for Communities and Local Government, the Court of Appeal upheld a decision of the High Court to quash an inspector's decision on a planning appeal because of serious inconsistencies between that decision and one for another appeal on a different site in the same area. Although the inspector was entitled to reach a different decision, his handling of the appeal was flawed because he had neither considered the other application nor given reasons for reaching a different decision.

Discretionary powers must also be exercised reasonably, in the special legal sense of Wednesbury reasonableness (Associated Provincial Picture Houses Ltd v Wednesday Corp (1948) K.B.223)requires the decision-maker to consider all material considerations and ignore all irrelevant matters or ulterior motives.

The supervisory jurisdiction allows the court to insist on standards of procedural fairness beyond what is expressly required by statute. Judicial review on this ground reached.

Considering all of the above, we would ask the delegated officer and her senior to relook at this application.

Thomas Cochrane BSc. (Hons)

Planning consultant

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Planning Statement

Replacement of Windows to Property

26 Netherby Road

Edinburgh

EH5 3NA

Client: Mr Stan Cook

Planning Statement prepared by Jennifer Campbell

Contents

Planning Statement	1
1 Location of development	3
2 History of the site.....	5
3 Current Use	5
4 Proposal	5
5 Local Development Plan.	7
6 Listed Building.....	7
7 Summary	9

1 Location of development

Netherby Road is a Victorian Terrace situated between Zetland Place and Cargil Terrace. It is located within the Trinity Conservation Area situated North of Edinburgh and located close to the Firth of Forth. 26 Netherby Road is a residential dwelling located within the middle section of six terraced houses located on the eastern side of Netherby Road.

This property is not listed and is located within the Trinity Conservation Area, therefore permitted development does not apply.

Access to the front of the property is from Netherby Road, while access to the rear of the property is accessed via a garden gate by Zetland Place and is not visible from the public road.

Our client is submitting a householder planning application to replace three existing wooden windows with thin profile uPVC case and sash windows at the front of the property and three existing wooden windows with uPVC windows at the rear.

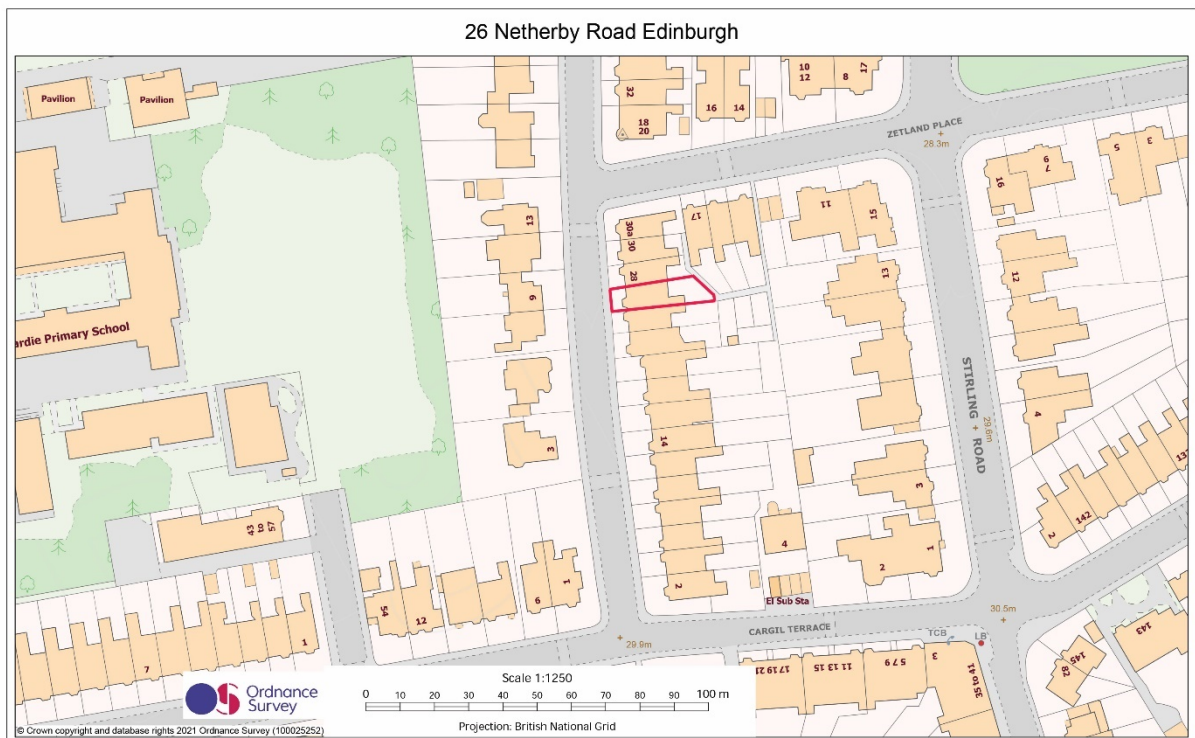
Front of property



Rear of Property



The property is within the redline boundary shown below.



2 History of the site.

The Trinity area expanded South and West until 1914, which was when these Victorian terraced dwellings were established.

According to the Conservation Appraisal, the conservation area of Trinity expanded, including Netherby Road in the 1990s.

3 Aim of Proposal and Design

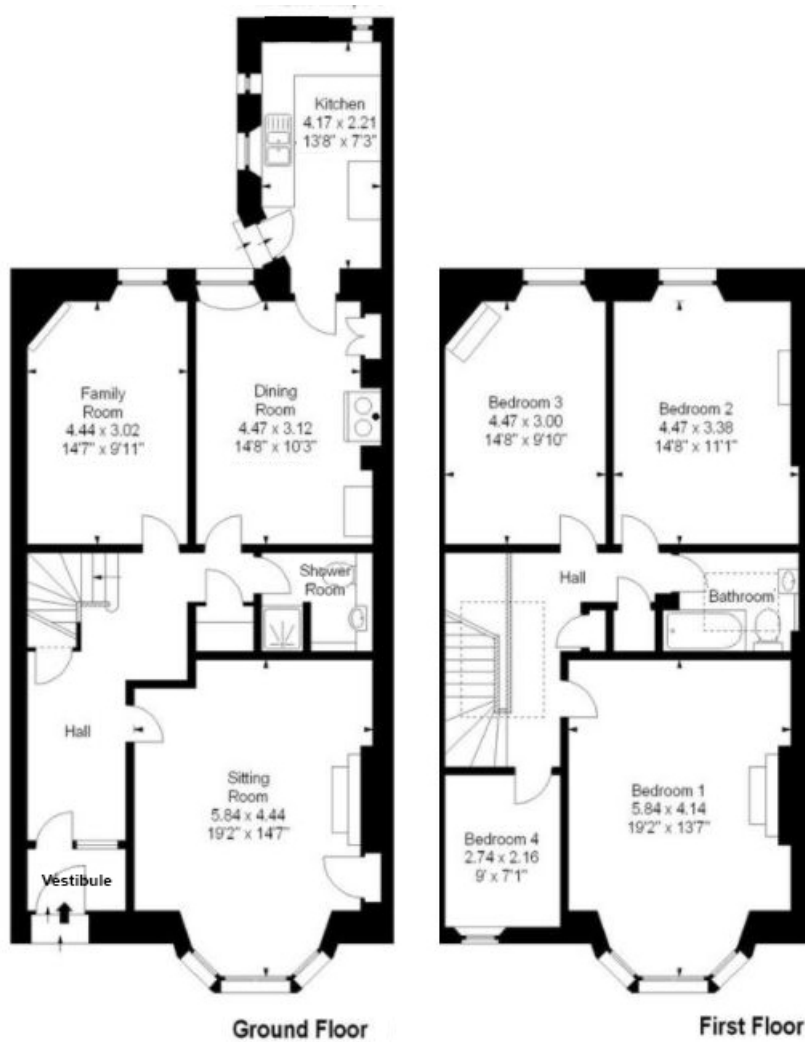
The proposal is to replace three rear wooden windows with slim profile uPVC on the building's front elevation.

These windows at the front elevation, ground floor, will retain the sliding sash and case design with similar dimensions to the existing windows but replacing the existing timber windows with uPVC, thus maintaining the character of the windows, and addressing the deterioration and improving the quality and maintenance of windows with a more energy-efficient design.

The proposed three windows at the front will match the windows directly above on the first floor, where the timber sash and case design had previously been replaced with uPVC windows of similar design in the early 1990s.

The proposed three windows at the rear will be replaced with a similar sliding sash and case uPVC design, excluding the vertical astragal currently on the existing timber frame windows. These windows include the two upper bedroom windows and the lower kitchen window hidden from view from the public road. Again, the aim is to address the timber-framed windows' deterioration and maintain a more energy-efficient design.

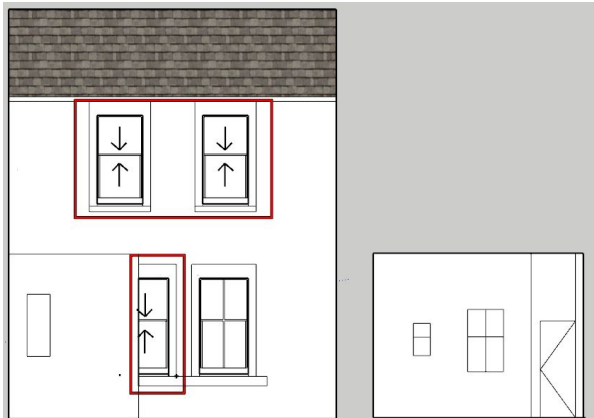
Overall, the windows will be slim white uPVC with sealed double-glazed units, and no alterations to the existing ashlar brickwork shall be made, thus maintaining the overall character of the building.



FLOORPLAN



Front Elevation Proposal



Rear Elevation Proposal

4 Edinburgh Local Development Plan.

The property is within the Trinity Conservation area, and the overriding policies will be ENV 6 and Policy Des 12 Alterations and Extensions

Policy Env 6 Conservation Areas - Development

Development within a conservation area or affecting its setting will be permitted which:

- a) preserves or enhances the special character or appearance of the conservation area and is consistent with the relevant conservation area character appraisal
- b) preserves trees, hedges, boundary walls, railings, paving and other features which contribute positively to the character of the area and
- c) demonstrates high standards of design and utilises materials appropriate to the historic environment.

Planning applications should be submitted in a sufficiently detailed form for the effect of the development proposal on the character and appearance of the area to be assessed.

174 The purpose of the above policies is to protect and, where possible, enhance the character and appearance of Edinburgh's many conservation areas. By controlling the demolition of buildings and ensuring new development is of appropriate design and quality, their aim is to protect the City's heritage for future generations.

175 Applications for demolition will be permitted only where this does not erode the character and appearance of the conservation area. The general presumption will be in favour of retaining buildings that make a positive contribution to the conservation area, particularly where it can be demonstrated that the building is able to support a new viable use, or might be capable of such in the future. Conservation Area Consent may be subject to conditions or a legal agreement to link demolition works to the

provision of the proposed replacement building or, in exceptional circumstances, to require temporary landscaping.

176 Design statements are required for new developments in a conservation area. This statement should include reference to the relevant Conservation Area Character Appraisal and Council guidance on Conservation Areas and Listed Buildings and show how these have informed the proposed design.

Env 6

- (a) The design of the windows will preserve the visual amenity of the area.
- (b) not applicable
- (c) The windows have been designed to look as close to the original windows as is possible whilst delivering high heat and noise insulation.

Policy Des 12 Alterations and Extensions

Policy Des 12 Alterations and Extensions

Planning permission will be granted for alterations and extensions to existing buildings which:

- a) in their design and form, choice of materials and positioning are compatible with the character of the existing building
- b) will not result in an unreasonable loss of privacy or natural light to neighbouring properties
- c) will not be detrimental to neighbourhood amenity and character

168 Every change to a building, street or space has the potential to enrich or, if poorly designed, impoverish a part of the public realm. The impact of a proposal on the appearance and character of the existing building and street scene generally must be satisfactory and there should be no unreasonable loss of amenity and privacy for immediate neighbours.

8Design Precedence

Our onsite visit has noticed a precedent within the area, in that various residential dwellings within the conservation area have had their wooden windows replaced by uPVC, aluminium windows of various designs.

As well as an onsite inspection, similar approved projects were granted planning permission. Accordingly, all the following properties applying for planning permission were of similar status as 26 Netherby Road; within the conservation context, they were all unlisted residential dwellings within the Trinity Conservation area.

**20/01694/FUL | Installation of 7x replacement windows to rear | 24 Netherby Road
Edinburgh EH5 3NA**

**19/01719/FUL | Alterations to rear elevation fenestration including the combination of
2no. Openings into 1no. Sliding doors opening and replacement of 2no. Windows and 1no.
door to the annex. | 6 Netherby Road Edinburgh EH5 3NA**

**18/02711/FUL | Extension to side & rear, Velux windows to front & rear, creation of off-
street parking place (as amended). | 11 Zetland Place Edinburgh EH5 3LZ**

8 Summary

Our client's proposal of replacing rotting timber-framed windows with uPVC frame double glazed replacements is appropriate for the scale and sympathetic to the original design and, therefore, will have no detriment to the look of the conservation area. In addition, our client's proposal will improve energy efficiency, better light and maintenance.

There are no amenity issues in terms of overlooking or privacy due to the position of the house, and therefore, the proposed replacement of windows to the rear elevation will not be visible to the public. Therefore, we look forward to the Edinburgh City Councils response hoping that planning permission will be approved.

Jennifer Campbell BSc.(Hons)



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